



Integrated Environmental Management Information Series

Environmental Monitoring Committees

21



Department of
Environmental Affairs and Tourism

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Information Series 21:	Environmental Monitoring Committees

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PREFACE

This document is one of a series of overview information documents on the concepts of, and approaches to, integrated environmental management (IEM). IEM is a key instrument of South Africa's National Environmental Management Act (NEMA). South Africa's NEMA promotes the integrated environmental management of activities that may have a significant effect (positive and negative) on the environment. IEM provides the overarching framework for the integration of environmental assessment and management principles into environmental decision-making. It includes the use of several environmental assessment and management tools that are appropriate for the various levels of decision-making.

The aim of this document series is to provide general information on techniques, tools and processes for environmental assessment and management. The material in this document draws upon experience and knowledge from South African practitioners and authorities, and published literature on international best practice.

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NOTE

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SUMMARY

Environmental monitoring committees are structures made up from representatives from stakeholders affected by a development activity. Their constitution and function differs from case to case as a result of the specific circumstances and needs determined by the specific development project. This basic function is to monitor the implementation of the environmental management plan (EMP), but they also fulfil an important communication function.

In South Africa, several EMCs have been established by authorities as part of the conditions of the project approval. The requirements for an EMC has frequently been stipulated in the record of decision issued by authorities that concludes the environmental impact assessment (EIA) process. These EMCs have an advisory, monitoring and “watch-dog” role that can extend for the duration of the construction or operational phase of the project. In this manner, EMCs provide a voluntary forum to ensure adherence to ROD and EMP conditions.

With regards to decision-making, EMCs have no decision making powers. It is generally recognised that EMCs can submit advice and information, while environmental authorities retain the power of decision-making for environmental management aspects of the project. The EMC has the power to make decisions relating to their own administration activities.

There is no one structure and level of EMC that fits all project contexts. There is also no one approach or recipe for the successful establishment and functioning of EMCs. However, generic criteria and principles can be extracted from practice to facilitate the design, establishment and functioning of EMCs. EMCs would have to adapt their structure and function according to their mandate in terms of ROD and EMP conditions.

A key purpose of EMCs is to ensure that environmental management does not end with the conclusion of the EIA process and the production of the final document (i.e. the environmental impact report or the environmental management plan). Instead, EMCs aim to ensure an on-going process of monitoring to assist in minimising negative impacts and maximising the benefits of development.

In conclusion the key functions of EMCs are to:

- * regularly monitor and review the progress towards adhering to the specific conditions of the environmental management plan (EMP) and meet the requirements contained in the record of decision;
- * consider any modification or additions to the original version of the EMP that was approved by the government authority;

- * inform decision-making authorities when there is non-compliance with conditions of approval; and
- * promote the participation of key stakeholders in a structured forum, that provides exchange of information and insights.

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1. INTRODUCTION

Within South Africa, as is the global trend, local communities are increasingly demanding higher levels of engagement in planning and project implementation decision-making processes (DEAT, 2002). Communities are no longer content with merely being informed or consulted about predetermined project decisions. There is now widespread use of processes that are participatory and which draw communities into the wider governance framework. Authors such as Owens and Cowell (2002) advocate the development of community-led panels, forums, focus groups or committees that stimulate participation in planning and project implementation. This trend in greater community involvement reflects dissatisfaction with the traditional technocratic approaches such as the establishment of independent expert review panels or panels consisting solely of government officials. It is a matter of democracy and social justice that local people become involved in projects that will materially affect their lives and their communities (Rossouw and Wiseman, 2004). It has also been recognised that the process of assessing and monitoring the biophysical, economic and social impacts of projects on communities cannot simply be a technical exercise (Rossouw, 2003). Rather, community values and local knowledge can enrich the functioning of governance structures such as environmental monitoring committees (EMCs) by highlighting locally relevant issues as well as engaging the knowledge and skills of local groups and individuals. The South African government, via permit conditions and clauses in environmental impact assessment (EIA) records of decision has enthusiastically endorsed community involvement and participation in environmental monitoring (Midgley, in press). EMCs can serve as forums where feedback of monitoring information and community needs are deliberated. Within this conceptual framework EMCs serve two key purposes: firstly that EMCs are created with the involvement of various participants to collaborate with government in monitoring whether the conditions of an authorisation are being adequately addressed; and secondly that EMCs offer communities the opportunity to participate in monitoring and auditing processes.

EMCs can be seen as a response to resolve the problem of a lack of monitoring after EIA approval is granted by environmental authorities. Sadler (1996) identified this problem as a challenge for global environmental practice. Within the South African context the main roles of EMCs are to encourage participative monitoring of the:

- * conditions specified in the record of decision for project approval; and
- * performance and implementation of the environmental management plan (EMP).

As the term "environmental monitoring committee" implies, the primary purpose and objective is one of monitoring. In South Africa different types of environmental monitoring committees can be identified. There are committees established by the Department of Water Affairs and Forestry to monitor performance of waste site operators against permit conditions. Other monitoring committees focus on the monitoring of a natural resource or issue (e.g. Saldanha Bay Water Quality Trust). This document focuses on monitoring committees established by the various environmental affairs

departments as part of the project authorisation following an EIA process.

2. PURPOSE OF THIS DOCUMENT

This document has been written for a wide audience. Its objective is to serve as an initial reference text. The aim is to provide an introductory information source to government authorities, environmental practitioners, non-governmental organisations (NGOs), industry, project proponents, academics, students and other interested and affected parties (I&APs). The purpose of this document is to provide an overview of the objectives of EMCs within integrated environmental management (IEM). It is not the purpose of this document to provide a set of guidelines on the practical requirements for the establishment and functioning of EMCs. The focus of this document is on providing generic information at the principle level for EMCs established by authorities to monitor compliance with conditions of project approval.

3. SOUTH AFRICA'S GOVERNANCE FRAMEWORK FOR EMCs

Since the early years of the implementation of IEM in South Africa, post-EIA follow-up and project monitoring has been weak (Rossouw et al, 2003). However, the emphasis of environmental policy is moving towards compliance monitoring. Government departments are also being restructured to focus on compliance, enforcement and the monitoring of project implementation. EMCs play an important role in the framework for the monitoring of conditions set in the ROD and EMP during project implementation and operation.

A rights-based approach was introduced by the Constitution supported by the principles of accountability and transparency in governance. Environmental rights and environmental justice are the newly accepted values in environmental management (Rossouw and Wiseman, 2004). An environmental right was enshrined in the Constitution, which obliges the State to protect the environment for the benefit of present and future generations. It states that:

"Everyone has the right: to an environment that is not harmful to their health or well-being; and to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that - prevent pollution and ecological degradation; promote conservation; and secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development (Republic of South Africa, 1996, section 24)."

The constitutional environmental right immediately highlights the critical area of trade-offs by indicating the need to balance the right to have the environment protected with an emphasis on promoting justifiable economic and social development. Key components of environmental justice are fair distribution of environmental impacts across society, access to information and monitoring project compliance by an appropriate cross-section of stakeholders, including directly affected representatives.

The National Environmental Management Act (NEMA, Act 107 of 1998) is a framework law providing overarching principles for sustainable development. It also provides for co-operative governance structures and networks, as well as integrated environmental management (IEM). The NEMA principles strongly reflect the values of South Africa's participative democracy. Chapter 5 of NEMA

deals with IEM, and states that one of the general objectives is to "ensure adequate and appropriate opportunity for public participation in decisions that may affect the environment" (Section 23 (2) (d)). A review of the principles for environmental management contained in Chapter 1 of NEMA (Act 107 of 1998) provides broad guidance for EMCs (Table 1).

Table 1: Selection of NEMA principles, which are relevant for the establishment and functioning of EMCs

Theme	NEMA principles
Participation of I&APs	The participation of all interested and affected parties (I&APs) in environmental governance must be promoted, and all people must have the opportunity to develop the understanding, skills and capacity necessary for achieving equitable and effective participation, and participation by vulnerable and disadvantaged persons must be ensured.
Decision-making	Decisions must take into account the interests, needs and values of all interested and affected parties and recognise traditional knowledge.
Community wellbeing	Community wellbeing and empowerment must be promoted through environmental education, the raising of environmental awareness, the sharing of knowledge and experience and other appropriate means.
Access to information	Decisions must be taken in an open and transparent manner, and access to information must be provided in accordance with the law.
Involvement of women and youth	The vital role of women and youth in environmental management and development must be recognised and that their full participation therein must be promoted.

Source: Republic of South Africa (1998a)

EMCs are structures created to promote sustainable environmental monitoring. This is based on the understanding that environmental monitoring is the total system within which various groups (e.g. civil society, business and government) implement environmental management initiatives aligned with national policy. Environmental management is not the sole domain and responsibility of the government. Civil society and business sectors have equally important roles to play. EMCs, therefore provide the means by which local communities and civil society can actively engage with project

authorities and monitor the performance of project implementation. It is widely recognised that effective environmental governance should include all sectors of society (Ashton et al., 2002). For example, for a particular project, this could include:

- * government organisations;
- * the project proponent and/or site contractor;
- * non-governmental organisations (NGOs);
- * the business sector; and
- * community or civil society.

4. TERMS OF REFERENCE FOR EMCs

The terms of reference (i.e. roles and responsibilities) for EMCs depend on the reasons for their establishment. For example, in South Africa, one of the frequently specified conditions of project authorisation (ROD) is the implementation of EMPs (DEAT, 2004). For most large development projects, the establishment of an EMC is also frequently a condition of project authorisation. When an EMC is established as a result of a condition of an environmental authorisation, then their primary role is to monitor compliance with permit conditions, the record of decision and the implementation of the EMP (Midgley, in press). Examples of projects in South Africa, where EMCs were established as a result of project authorisation include Thesen Island, Coega Industrial Development Zone (IDZ) and Port of Ngqura, Century City and Berg Water Project (see Appendices A to D). EMCs established as a result of project authorisation, generally have a collaborative and facilitative approach to problem solving. Since they follow from the project authorisation, establishment of these EMCs is normally driven by the applicant in co-operation with the decision-making authorities.

The purpose of an EMC is to provide a structure where representative sectors of society (e.g. government, NGOs, private sector, community and civil society) collaborate with the authorities to:

Box 1: Terms of reference of an EMC

- * To participate actively in the compliance monitoring of the sites, amongst others, by overseeing the implementation of various monitoring programmes, by ensuring that conditions stipulated in the records of decision (RoDs) and other environmental specifications are complied with and by ensuring that the sites are developed and managed responsibly with minimal impact on the environment.
- * To provide a forum for discussing issues relating to the sites' operations and for raising, addressing and, where possible, resolving, any concerns.
- * To facilitate participative monitoring, and to act as a link between local communities, the developers and the regulatory authorities and to promote trust among the EMC's various constituencies including government.
- * Where appropriate, to disseminate information to the relevant authorities and to the public about the sites' operations and/or areas of environmental concern.
- * To evaluate the complaints procedure and the channels of communication with the public and to ensure improvements, where necessary.
- * To promote environmental awareness and capacity building regarding site activities among the developers and appropriate stakeholders.
- * To appoint an environmental control officer (ECO) whose functions shall be to ensure compliance with RoD and EMP conditions and that environmental management plans are implemented, and who shall conduct regular site inspections and environmental, safety and health audits.
- * To supervise and manage the ECO.
- * To review the ECO's audit and site inspection reports.

According to Midgley (in press) it is important to note that the EMC:

- is not a forum established primarily for dispute resolution (although mechanisms can be put in place for resolving disputes when they arise);
- does not have any executive or decision-making power over the developer or project authorities;
- is not a management committee;
- has no power to become involved in daily management of the site that it is supposed to monitor; and

- monitor a project to ensure that it is compliant with ROD and EMP conditions;
- promote the participation of key stakeholders in environmental monitoring;
- provide an opportunity for information exchange between government authorities, the developer and interested and affected parties;
- provide a structured forum for discussion so as to make recommendations when appropriate;
- provide the opportunity to reach common understanding between interested groups about the nature, scope and results of monitoring and remedial actions undertaken in terms of the project EMP and thereby increasing the scope for issues to be resolved amicably;
- promote understanding about the project operation more widely, through dissemination of relevant information by committee members; and
- promote understanding by the developer of the nature of the projects impacts (both positive and negative) on local communities.

An example of the terms of reference for an EMC is provided in Box 1. This terms of reference indicates the focus on compliance monitoring of the conditions stipulated in the record of decision issued by the environmental authorities.

- doesn't become directly involved in monitoring, but reviews and queries monitoring information provided by the ECO.

The terms of reference of the EMC should be restricted to compliance monitoring of permit or record of decision conditions, as well as the associated EMP that usually follows from the record of decision. EMCs established by authorities as conditions of approval and which are made up of stakeholder groups, have a distinct advisory, monitoring and “watch-dog” role. This results in the EMCs advising project proponents and government authorities of community priorities so as to ensure that localised project benefits are realised. Depending on when they are established EMCs can also be involved in a review and advisory capacity during the formulation of the EMP. The monitoring role of an EMC relates to the monitoring of the implementation of the EMP. Many of the environmental controls described in the EMP are designed to ensure the mitigation of potential impacts on local communities and the biophysical environment and to ensure that the predicted benefits for communities are optimised in a sustainable manner. EMCs (some of whose members would be drawn from the local community) provide a specific monitoring role to ensure that they are not being affected unduly by the proposed activities associated with the particular project.

An EMC represents a formal mechanism for stakeholders and directly affected communities to determine whether the conditions in the ROD and EMP are being met. The “watch-dog” role of the EMC is probably its most important function. When mitigation measures fail, or are not implemented, local communities and directly affected groups (represented on the EMC) are those who would experience or observe the negative impacts first. An EMC may also be the forum where the environmental control officer (ECO) reports on matters such as monitoring results, implementation of environmental specifications,

progress with social strategies, audits and site inspections. Following this the EMC would give judgement on the exercise of due diligence, with regards to the implementation of the EMP. EMCs are in a good position to act in a “watch-dog” role on behalf of the environmental authorities.

An EMC is a means by which the proponent and government authorities are able to link to local priorities and community issues. EMCs advise and inform decisions while environmental authorities retain the power of decision-making. All EMC members, including the project proponent and authorities should enter the EMC process in good faith, with the understanding that negotiation and give-and-take is a prerequisite for the effective functioning of the committee. An all-or-nothing or adversarial approach to deliberations in the EMC will quickly result in a stalemate and cause the polarisation of stakeholders (de Klerk, 2002).

5. THE CHANGING ROLE AND FOCUS OF EMCs DURING THE PROJECT LIFE CYCLE

An EMC is most frequently established as a result of a condition of project approval. An EMC is therefore established at the stage in the project lifecycle when the project is about to be implemented and the necessary planning (including the approval of the EIA) and project design has been completed. The period within which the EMC should function must be clearly defined. The role and focus of an EMC changes as a project progresses from construction to operation. Because development activities change, the nature and extent of its impacts also change. Along with these changes should be a change in the focus of the EMC, besides a change in its structure and mode of operation. A description of the changing role and focus of EMCs during the different stages of the project cycle is presented in Table 2.

Table 2: The changing role and focus of an EMC during its period of existence in a project cycle.

Activities in the project cycle	The changing role and focus of EMCs
Feasibility	An EMC forum is not required.
Design	An EMC forum is not required.
Construction	The primary role of the EMC is to monitor the implementation of the construction EMP and compliance with the requirements of the environmental authorisation (ROD).
Operation	The role of EMCs during operations is to monitor the implementation of the EMP for operation.
Decommissioning	The role of the EMC is to monitor the requirements of the environmental authorisation (ROD) and the EMP for decommissioning.

6. PARTICIPATION OF STAKEHOLDERS IN EMCs

The key stakeholders that should participate in an EMC include the following:

- * **Government authorities**, from local, provincial and national spheres, and particularly those directly associated with the environmental authorisation and environmental permitting process as observers in the EMC.
- * **Project proponent**, for large-scale construction projects the project proponent may be a complex combination of investors, implementing agents, project beneficiaries and project managers. The suitable representative is likely to be the legal entity to which the record of decision was issued.
- * **NGOs**, particularly those advocating issues, which are of direct relevance for the project.
- * **Community organisations**, in particular those with local knowledge and presence in existing social or environmental projects or activities in the area.
- * **Representatives of civil society**, particularly those representing groups directly affected by the project.
- * **Private sector**, such as representatives of local business and directly affected land owners.

Participation of NGOs, community organisations and representatives of civil society is voluntary, whereas the participation of the project proponent is compulsory. Ideally, relevant government departments (provincial and national) should also be permanently represented as observers on such forums. The involvement of local stakeholders is central to the effective establishment and functioning of EMCs. Government authorities will need to consider the various methods by which they can involve communities in the establishment of EMCs. These methods will have to recognise that individuals belong simultaneously to a number of communities, of both place and interest, and will identify with different communities according to their circumstances and the issues under discussion. EMCs should reflect this complexity and should accommodate it by employing a variety of mechanisms for participation. In this way the full range of perspectives and contributions can be obtained and included.

EMC process facilitators will have to consider how best to involve the various communities in their area and devise techniques that are most appropriate to the local circumstances. Particular measures may be needed to encourage the involvement of communities which otherwise could be marginalised in these processes. Equity considerations would result in developing measures to take account of gender, race and disability. The duty to promote equal opportunities means that facilitators must ensure that the techniques they employ do not discriminate against particular groups. Disabled people and women from disadvantaged backgrounds can inadvertently be under-represented or excluded by the methods commonly chosen to engage communities (i.e. open public meetings or scheduling meetings at night), since they can find that some consultation techniques and methods of communication are difficult to access. Using a variety of different methods is more likely to avoid this problem. Facilitators will also need to be imaginative and flexible

Facilitators will also need to be imaginative and flexible in their approach and take advantage of the range of available methods that have been successfully used for achieving the widest participation. The nature and degree of community involvement will inevitably vary at different stages of the process and according to the issue. When establishing the EMC, facilitators need to be aware of not inadvertently raising expectations that they cannot meet. Clear parameters need to be established and communities must understand the context and constraints within which EMCs need to operate (such as government expectations, the voluntary nature of EMCs, decision-making ability and legal limitations).

It is important that all those significantly affected by a development should, as far as reasonably possible, have access to a representative who can speak on their behalf. While the exact size of the committee will depend upon local circumstances, the committee should be of a manageable size. For fair and equitable treatment of the various stakeholders, it is more important to ensure that there is a representative balance of affected interests rather than to attempt equal numeric representation. The groups represented will vary depending on the scale of the project. Large projects may encompass a wider spectrum of stakeholders than smaller projects. The degree of involvement of the local community and local authorities is also likely to be more significant with larger projects as the positive and negative impacts are likely to cover a wider geographical area.

Constituencies represented on EMCs should ensure that they have both an elected member as well as an alternate. Where the member is unable to attend, the alternate should be permitted to represent that constituency. Because of the changing nature of structures in a democracy, constituencies may also change. The EMC structure needs to be flexible and respond to these changes. Elected members representing non-functioning constituencies should be obliged to resign. The EMC should have procedures to ensure smooth transition following the loss of members or constituencies in this event.

7. GENERIC STRUCTURE FOR EMC FUNCTIONING

The structure of the EMC will depend on its purpose, the range of stakeholders affected by the project and the scale of the project. The key roles necessary for the functioning of the EMC are described below. These roles are those of the chairperson, the secretariat and representative groupings. According to Midgley (in press) the EMC must have appropriate administrative infrastructure and capacity but not become a separate bureaucracy. The descriptions of the key roles in the EMC and their specific responsibilities are outlined in Table 3.

For large projects it might be necessary to have a separate forum for authorities where the management aspects of development projects can be discussed. Members of this forum can also serve on the EMC. If such a forum exists, it will enable the EMC to focus on issues within their mandate more effectively. If it functions efficiently and provides regular feedback to the I&APs, it can create a situation where the EMC can be a more informal structure.

7.1 EMC Chairperson

The overall responsibility of the EMC chairperson is to ensure that the EMC functions effectively and achieves its primary purpose of ensuring that the implementation of the ROD conditions and the EMP is properly monitored and reported upon. There are a variety of options to consider in terms of the role and appointment of an EMC chairperson. For example, the role of the chairperson could be rotated among the EMC members. The key stakeholders could identify and agree upon a suitable candidate to serve as chairperson or a chairperson could be formally and democratically elected. The choice of the option depends on the decision-making authorities, the nature of the project and degree of controversy associated with the project. The option of having a rotating chairperson, drawn directly from the committee members can be used to build capacity and transfer facilitation skills, especially to historically disadvantaged community representatives. To maintain independence and the confidence of a broad range of stakeholders it is important that the chairperson should not be closely identified or linked with any sectional interest or interest group.

Where the chairperson is appointed by the developer, this appointment should be made in consultation with the relevant environmental authority. To ensure continuity in the operation of the committee it may be desirable for the chairperson to be appointed for a specified period (e.g. the duration of the construction activities or for a period determined by the committee). The chairperson may receive an appropriate fee or remuneration, depending on local circumstances, workload and the scope of services defined by the project authorities. The project proponent should cover the costs of payment where the chairperson is an independent facilitator.

7.2 EMC Secretariat

The EMC Secretariat serves the logistical and organisational needs of the EMC.

The ECO or the project proponent may provide this service. The secretariat needs to be properly resourced to ensure the effective working of the committee. The duties of the secretariat should be to:

- prepare minutes of the committee meetings and distribute them to all members;
- issue notices of meetings of the committee and to place on the agenda any matters that are proper for the committee to consider;
- receive and respond to all EMC correspondence;
- maintain a record of the contact details of all EMC members and their representatives, including the alternative representatives;
- circulate relevant documents; and
- ensure that a proper record keeping system is maintained for all minutes and other documents produced by the EMC.

Table 3: Responsibilities of the key functions in EMCs

Role	Description	Responsibilities
Independent Chairperson	The chairperson would ideally be determined through an appropriate stakeholder engagement process. The government authorities would be intimately involved in this process and would need to approve the identification and appointment of the chairperson. It should be noted that the function of a chairperson is a role to be played and not for a position to be created or filled.	<ul style="list-style-type: none"> * Facilitate effective functioning of the EMC and meaningful involvement of all representatives. * Ensure smooth and regular flow of information between all EMC members. * Independently chair the meetings of the EMC. * Encourage stakeholder ownership of the EMC processes and its procedures. * Endeavour to facilitate the EMC in a manner that develops trust among all members, especially between the NGOs, community representatives and the project proponent. * Ensure a structured and thorough process is followed in the monitoring and implementation of the EMP. * Prevent and discourage stakeholders from using the EMC as a platform to further their own agendas. * Prevent and discourage stakeholders from raising issues that are not in alignment with the EMCs terms of reference and the task at-hand (i.e. monitoring the implementation of the EMP). * Prevent articulate and powerful stakeholders from dominating the agenda of the EMC. * Ensure and promote the discussion of relevant environmental issues.

Secretariat	The EMC secretariat serves the logistical and organisational needs of the EMC. The secretariat may be an independent function that could be subcontracted to a service provider. Alternatively, this role could be fulfilled by the ECO or the project proponent.	<ul style="list-style-type: none"> * Prepare minutes of the committee meetings. * Issue notices of meetings. * Direct issues or queries from EMC members to the relevant party for a response.
Actively Participating Members	Description	Responsibilities
Project proponents	The project proponent is the developer or implementer of the project. The proponent may be directly involved in the construction and/or operation of the project or have an implementation agent.	<ul style="list-style-type: none"> * Adhere to conditions of environmental authorisation (ROD) and implement the EMP. * Ensure that adequate resources (human resources, time and finance) are available to ensure the efficient functioning of the EMC. * Provide adequate information to stakeholder groupings. * Provide resources for building the capacity of stakeholder groupings. * Timeously respond to actions and reasonable requests from the EMC.
Interested and affected parties	Interested and affected parties include among others non-governmental organisations (NGOs), the business sector and community based organisations.	<ul style="list-style-type: none"> * Provide observations and insights based on local knowledge and/or proximity to the project. * Keep constituencies informed of progress with the implementation of the EMP. * Avoid getting into the situation of a conflict of interests and/or duties in terms of the role on the EMC and the project itself by focusing on environmental issues and impacts of the project. * Inform the EMC of any issues or concerns constituencies may have with regard to environmental impacts of the project.
Observing Members	Description	Responsibilities
Government authorities	Government authorities include the environmental authorities (who may have authorised the development), other decision-making authorities (i.e. those who need to issue permits for specific activities) and interested authorities who may be impacted upon by the project.	<ul style="list-style-type: none"> * Oversee that all commitments in the record of decision and the EMP are met by being involved in the monitoring function of the EMC. * Provide guidance for the functioning and structure of the EMC. * Take into account all relevant information and issues raised by stakeholders when making project decisions. * Evaluate the reports and correspondence received from the independant chairperson.

8. FUNCTIONING OF EMCs

The effective functioning of EMCs depends on how well meetings are facilitated and debates accurately documented. This section briefly describes the operational and logistical aspects of EMCs, such as determining the agenda, capturing minutes, participation of members and the issue of remuneration.

8.1 Agenda

EMC meetings should be driven and controlled within the framework of the agenda. The agenda should be related to the objectives, actions and issues described in the EMP. All members should make available to the committee (through the secretary) at as early a date as possible, details of any matter of concern to that member which he or she wishes to raise at a meeting of the committee. Provided that a matter is within the terms of reference of the EMC, it is recommended that all committee members be able to propose agenda items for discussion.

8.2 Circulation of documents

Documents should be circulated well in advance, at least 14 days prior to the meeting, to allow representatives to prepare fully and obtain technical advice if necessary. The secretariat will need to ensure that the circulation of papers does not breach copyright, privacy or data protection.

8.3 Participation

To ensure the effective operation of the committee; it may be considered useful to have a commitment from all members to participate actively in the work and discussions of the committee. During meetings it is important that members should be given adequate opportunity to express their views and that no organisation, group or individual should dominate proceedings. There is an often untapped pool of ideas, knowledge, skills, experience, energy and enthusiasm among individuals, groups and communities as a whole which, if realised, can be the key driver for sustaining the EMC.

8.4 Sub-groups

It may be useful for some EMCs, particularly those for larger projects, to form sub groups dealing with specific issues or areas. However, the need for sub groups will depend on the scale of activities and the nature of the project impacts. These groups can cover topics in more detail and investigate particular issues on behalf of the main committee. No sub-groups should operate outside of the EMC. All correspondence from a sub-group should be directed via the independent EMC chairperson.

8.5 Minutes

The minutes should provide a valid reflection of the meeting and be adequate to serve as a reference. Committee minutes should reflect the range of views and advice and/or recommendations put forward by members and should not merely reflect the majority viewpoint on any issue. The minutes must clearly capture what decisions are taken, what actions are agreed upon and to whom they are assigned.

8.6 Reimbursement of expenses for meeting attendance

The period of the existence of the EMC is typically for the duration of the construction period, though they can be extended to the operations phase of the project, depending on the particular project and the associated environmental management requirements (e.g. refer to the Blouvtlei monitoring committee case study in Appendix C). During this time there are meetings to prepare for and attend. Participating in EMCs involve expenditure of time and money. Time costs entail reading and understanding documents. Actual costs are incurred through travel, lost wages or business earnings. These should be reimbursed by the applicant on submission of a receipt or a valid claim. Lack of money should not be an obstacle that prevents key stakeholders from participating in EMCs. Because participating in EMCs is voluntary for interested and affected parties (e.g. NGOs and community representatives), project proponents and authorities cannot be expected to reimburse all the full time costs of participants. EMCs is not a job opportunity, it is a voluntary investment of time. Stakeholders who are actively interested in being involved and who want to participate will invest the time it takes for EMC processes to develop.

Community and organisational representatives participate to ensure that the interests of their constituencies are considered. EMCs have a purely monitoring role and as such if remuneration is provided to members, they may get involved for the financial reward and not the contribution they should be making to society. Members should not be remunerated for participation, but only for reimbursable expenses (e.g. travel, accommodation or administrative costs). If members are representing their employers (e.g. agricultural sector or NGOs), then attending EMC meetings could be part of their work. Members representing community organisations or civil society do it on a voluntary basis. Access to and participation on the EMC should be proactively facilitated and the chairperson could be reimbursed. It would be reasonable for a project budget to be provided that is controlled and agreed to under clear guidelines for disbursement. These would include reimbursement for travel and accommodation costs incurred for people who

cannot otherwise afford to attend meetings and poor people who will lose income through attendance (DWAF, 2001). Where wages are lost because of participation in EMC processes, it would be reasonable in this instance to consider reimbursement of such a cost after verification.

9. COMMUNICATING INFORMATION WITHIN EMCs

Participating in EMC processes can be demanding to stakeholders. Project information typically contains engineering specifications and technical scientific information. For large projects, the sheer volume of specialised scientific information can be daunting. With the diverse range of scientific information (i.e. from ecological studies, to social impact assessment, to cost-benefit-analysis, etc.) debated in EMCs, non-experts with no specialised knowledge or understanding can easily feel overwhelmed. Lack of specialised knowledge may effectively exclude some stakeholders from participating in debates (Cormick et al., 1996). Stakeholders should have timely access to information to participate effectively. The information should be accessible in terms of language and terminology in order to build the capacity, understanding and knowledge of stakeholders. Material should be easily obtainable and copies should be available in appropriate languages. It is necessary to be familiar with the stakeholders' level of knowledge during the process of establishing the EMC.

According to Lloyd-Laney (2003) it is important to realise that the poor and unemployed rely on means of communication such as word-of-mouth, community meetings and listening to the radio to access information. The world of information is a divided one, where on the one hand people with access to the internet and electronic mail complain of information overload, while at the other extreme the poor generally live in an information vacuum. Improvements should be made in the way that information is presented for the benefit of the poor. Men and women living in poor communities cannot access the full range of information and knowledge. They are dependent on information being provided to them and they also do not know where to find information or how to access it (Lloyd-Laney, 2003). The scientific results presented and disseminated in EMCs are frequently not appropriate to meet the information needs of the poorer communities. The information is frequently not appropriate in content or packaging (e.g. language and presentation of information). Information disseminated by EMCs is often done without the understanding of users' needs or the contexts in which they can access and adopt the information. Even with the advent and progress being made in information technology, face-to-face communication is still the most effective way for parties to understand and assimilate information (Lloyd-Laney, 2003).

Understanding the socio-economic context within which EMCs need to operate and share information is critical for its effectiveness. The socio-economic context provides barriers and opportunities for information dissemination and communication (Jensen and Jansen, 1998). Inequality and structural barriers are issues which need to be addressed to enable the disadvantaged stakeholders to

understand and use information.

An EMC can inform its members and interested parties about its functions and receive feedback in a number of ways including:

- Personal face-to-face interaction;
- electronic mail;
- background information documents;
- telephone contact;
- newsletters;
- website;
- public meetings; and
- written correspondence with individuals.

9.1 Publicity

The local community should be made aware of the existence of the EMC and its role in relation to the project, and how it may be contacted. Any publicity undertaken by the EMC should be in proportion to the scale of the project development. This could be achieved by:

- a visible notice and information at public places;
- local press coverage;
- an annual or biennial committee report;
- publication of committee agendas and minutes; and
- members serving on the committee should be encouraged to proactively provide feedback to their constituencies.

9.2 Public access to meetings

Meetings of the committee may be open to the media and the public at the discretion of the committee. It is recognised that in some circumstances public access could hinder the flow of information, possibly preventing free and frank discussion. It may be necessary to hold meetings, or parts of meetings, in private when matters of a confidential or sensitive nature are being discussed. Attendance of the general public should be arranged prior to the meeting taking place and all members of the EMC must be timeously informed.

9.3 Complaints

The EMC should have an agreed formal procedure for recording complaints. These arrangements, which should be well publicised, should provide for complaints to be made to the EMC by telephone, electronically or in writing. Complainants should normally be invited to give their name, address, telephone number and sufficient detail to enable any investigation to be carried out. The number and general location of complaints should be made available to the committee. It should be noted that the EMC is not an arbiter of last resort, and its recommendations are not binding on the project authorities or developers. So, it should not be the committee's function to investigate individual complaints as a matter of routine. When this is done the secretariat should ensure that complainants are given anonymity unless express permission has been given for their identities and addresses to be circulated.

9.4 Reporting progress

If the EMC and its continuing functioning are to maintain credibility with local communities, it is vital that I&APs are kept informed of project progress. They should also be made aware of the reasons why particular decisions or actions were taken (or not taken). An important part

of the EMC functioning is the feedback given by members to their constituencies on the progress that is being made with EMP implementation. The style and manner in which this is done will depend on local circumstances and the preferences of communities themselves. However, it is important that reporting should be clear and understandable and that all sections of the community should have access to it.

10. ACCOUNTABILITY AND LIABILITY OF THE EMC AND THE INDIVIDUAL MEMBERS

This section provides a summary of the legal opinion of Winstanley and Cullinan (2003) on the potential liability of members of an EMC.

Legal liability can be divided into three main categories: criminal liability, civil liability and administrative liability. In most cases, a person will only be held criminally liable if that person intentionally commits an act which they know to be an offence (i.e. unlawful). Avoiding conventional criminal offences is entirely within the powers of the members of the EMC. Project authorities don't have the legal power to indemnify a person against the consequences of being prosecuted for a deliberate criminal act. Civil liability arises in situations in which one person commits a wrongful act in relation to another, and which is not necessarily a criminal offence. This can arise as a result of a breach of a contract, but since the EMC has no powers to enter into contracts, this is not relevant.

However, it is necessary to consider the extent to which members of the EMC could be held liable for intentional or negligent acts or omissions which cause damage or loss under common law. For a third party to succeed in an action to recover damages the plaintiff will have to prove on a balance of probabilities that a defendant who had the capacity to appreciate whether or not conduct is wrongful, intentionally or negligently committed a wrongful (unlawful) act which caused another to suffer loss. If the plaintiff can prove this, the defendant must pay the plaintiff compensation for the loss suffered. The law does not require compensation to be paid in respect of harm which is only distantly related to the conduct of the defendant.

One of the most important limiting factors is the question of foreseeability. The courts will not impose liability unless the general nature of the harm and the general manner of the harm occurring would have been reasonably foreseeable to the reasonable person. The critical issue to be determined here is whether or not the EMC is a separate legal entity from the project authority. EMCs would not be constituted as an independent legal entity. The EMC is not one of the more common forms of legal entity such as a company, close corporation, trust or partnership. The EMC does not have a separate legal entity and so could not be sued in its own name as a juristic person.

EMCs are not intended to take operational decisions and its role is to monitor compliance with the EMP. This limited function has a direct bearing on the likelihood of the members of the EMC incurring liability. Both the National Environmental Management Act (Act No. 107 of 1998) (Republic of South Africa, 1998a, chapter 10, section 49 (a), (b)) and the National Water Act (NWA, Act No. 36 of 1998) (Republic of South Africa, 1998b, chapter 17, section 157, (a), (b)) limits the liability of persons acting under the Act, in certain circumstances and states that: "Neither the State nor any other person is liable for any damage or loss caused by -
(a) the exercise of any power or the performance of any duty in terms of this Act; or
(b) the failure to exercise any power, or perform any duty in terms of this Act, unless the exercise of or failure to exercise the power, or performance or failure to perform the act was unlawful, negligent or in bad faith."

Given the limited monitoring role of the EMC, it is difficult to envisage a situation in which the negligence of a member acting within their mandate as such could cause foreseeable loss to a third party and so provide the basis for a claim. If civil proceedings were to be launched by a third party for compensation for harm suffered, the applicant and the authorities are likely to be cited as the defendant. The EMC would not be cited as a defendant since it is not a legal entity. Furthermore, since decisions within the EMC are made collectively, it is highly unlikely that a potential claimant would seek to recover damages from any member of the EMC in their personal capacity.

11. CONCLUSIONS

In the South African context EMCs give effect to the environmental rights contained in the Constitution. At a project level EMCs are a clear indication and product of the concept of governance articulated in NEMA.

There is no one structure and level of EMC that fits all project contexts. There is also no one approach or recipe for the successful establishment and functioning of EMCs. There are valuable lessons to be learnt from the different approaches, failures and successes of other EMCs. Each EMC will have to adapt their structure and participation approach to the local needs and culture within which it is being established.

EMCs are structures within the environmental monitoring context to promote stakeholder participation in monitoring the implementation of project-specific environmental, social and economic objectives (as specified in the ROD and the EMP). Case studies from four EMCs in South Africa

are provided in Appendices A to D. Based on the experience gained from these case studies as well as learning from other EMCs in South Africa, the following ten principles for successful EMCs can be identified:

(i) Sensitivity towards local culture is necessary
There is no standard recipe or approach to be applied in all instances and contexts. The world views, ethics and culture of each community are different. Perceptions and attitudes towards projects, proponents and project authorities will be different from one community to the next. The process for the establishment of EMCs would need to be acutely aware of local culture.

(ii) Transparency and honesty is vital
The process of project implementation and decision-making needs to be transparent. Open and honest relationships need to be developed between the project proponent, the project authorities and the stakeholders.

(iii) Communication and access to information is critical
South Africa's Constitution and the national policies (e.g. the Promotion of Access to Information Act and the Promotion of Administrative Justice Act) confer rights on individuals and communities to be informed and be given the opportunity to have their concerns heard. Technical information needs to be made available in accessible format and language. Project progress and the implementation of the EMP objectives need to be communicated regularly. Stakeholders need to be able to access information whenever it is convenient for them.

(iv) Empowerment of local communities and other stakeholders is important
There is an inherent unequal relationship between project proponents, authorities, stakeholders and local communities, especially considering South Africa's historical legacy of unequal development. Communities need to be empowered to understand their rights, the implications of project decisions and to be able to interpret technical information. Capacity building and training programmes may need to be considered, especially where communities do not have the capacity and resources to participate meaningfully.

(v) Participation of interested and affected parties
What needs to be made clear at the outset of the establishment of EMCs is that participation is voluntary for interested and affected parties (e.g. representatives of interested and affected parties such as NGOs, community groups and private sector groups). These parties have the right to leave at any time. Withdrawal by certain stakeholder groups need not be seen as the "death-blow" for the continued functioning of the EMC. Parties should agree at the outset that if they become disenchanted they have the freedom to withdraw from the process. All parties must be supportive of the process and willing to invest their own time. It is the freedom to participate or not that gives a process its integrity and strength.

(vi) *A commitment to show respect*

Respect and understanding depend on consistently good civil behaviour. Demonstrating genuine respect in all dealings shows a willingness to understand and accept differences. It is important to realise that mistakes and misunderstandings will happen. These should be turned into learning opportunities with prompt apologies and joint reflection on how to do better.

(vii) *A commitment to share knowledge and information*

Mutual sharing of information and insights about experience and knowledge invites stakeholders to be open to each other. This is especially important in cross-cultural settings, where there is much to be learnt about styles of communication, customs and distinct world views.

(viii) *Inclusive involvement*

All parties with a significant interest in the issue should be involved in the process. Inclusiveness lends credibility to the process. It ensures that the insights and interests of all affected parties are known. Inclusiveness invites co-operation and understanding. Representation of all stakeholders in terms of race, gender, age, cultural group and demographic representation is essential.

(ix) *Accountability and responsibility*

Stakeholders are accountable to their constituencies and to the process of establishing the EMC, in which they were involved. Most people cannot be involved in structures like EMCs, and they depend on their representatives to keep them informed of project progress. Accountability is thus a key factor in the success of EMCs. There should be shared responsibility between stakeholders in terms of commitments, burdens and benefits. There should also be a shared accountability for the successes and failures of the process. Stakeholders should take responsibility for familiarising themselves with documentation to be discussed at meetings. Submitting comments and making contributions within agreed deadlines is part of the responsibility of participating in EMCs.

(x) *Ongoing environmental management*

EMCs are a mechanism to ensure that environmental management does not end with a document (i.e. the environmental impact report or EMP), but that it is an on-going process of monitoring to maximise the benefits of development and limit or prevent the negative impacts. Furthermore, the implementation of EMPs regularly requires ongoing improvement and refinement. The EMC provides the opportunity to provide local insights and knowledge into this process of ongoing improvement of the EMP and the associated implementation and monitoring programme.

In conclusion the key functions of EMCs are to:

- * regularly monitor and review the progress towards adhering to the conditions of approval of the ROD and the EMP;
- * consider and endorse any deviation from the original version of the EMP;
- * inform decision-making authorities when there is non-compliance with conditions of approval; and
- * promote the participation of key stakeholders in a structured forum that provides exchange of information and insights, managed discussion and an opportunity to promote effective environmental monitoring.

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Case Studies

Four case studies are discussed below as examples of current EMCs. They should however not be regarded as models for any future EMCs and are just added as examples.

APPENDIX A: THESEN ISLAND ENVIRONMENTAL MONITORING COMMITTEE

(This case study was drafted by Dr Allan Heydorn, the chairperson of the Thesen Island EMC)

1) Background:

During the early 1990's Thesen and company. investigated the development potential of Thesen Island, which covers an area of approximately 102 hectares within the Knysna lagoon. At the time, a timber business was operational on the island, which was zoned for industrial land use. This led to a planning and EIA process, with the EIA being finalised in October 1996. The EIA considered a range of development scenarios, based on various combinations of the following elements: retaining the timber factory, relocating the timber factory, nature conservation; tourism and recreational development, canal estate development and small craft harbours.

The key issues that were assessed in the EIA were:

- * improving water quality and circulation in the Ashmead Channel (which runs between Thesen Island and the shore of the Knysna Lagoon);
- * maintaining acceptable water quality in the canals for the canal estate scenario;
- * managing the risks from contaminated soil on the island;
- * conserving the saltmarsh vegetation on the perimeter of the island;
- * minimising disturbance to birds using the saltmarsh, channels and other habitats in and around the Island; and
- * maximising local employment opportunities, in terms of direct and indirect jobs.

The EIA led to the identification of the canal estate scenario as the most favourable option, based on ecological, social and economic considerations. The first Thesen Island Environmental Monitoring Committee (TIEMC) meeting was held in November 1998. This committee oversaw the various stages of subsequent environmental management and planning, in particular the preparation of the Environmental Management Plan (EMP), which was approved by DEAT in April 2000.

2) Membership: List the members of the EMC and their affiliations (i.e. who they represent on this committee).

Name	and affiliation
Dr Allan Heydorn	(Chairperson)
Mr Peet Joubert	(SANParks *)
Mr Sarel Yssel	(SANParks)
Ms Lorna Watt	(Knysna Ecoforum*)
Mr Chris Rabie	(DEADP, Western Cape Government*)
Mr Shaun Schaefer	(MCM, DEAT)*
Dr Steve du Toit	(Cape Nature)*
Mr Johan van Schalkwyk	(Knysna Town Council*)
Mr Chris Mulder	(Thesen Islands Development Co.)
Mr John Enslin	(Thesen Islands Homeowners Association*)

Consultants in attendance to report to TIEMC:

Mr Duard Barnard	(legal aspects)
Mr Sean Doel	(ground water pollution & rehabilitation)
Mr Norman Leite	(project management)
Mr Pieter Badenhorst	(ECO: environmental management)

Stakeholder groups represented on TIEMC are indicated by an * on the list above.

3) What is the main purpose of the EMC?

The TIEMC was appointed in terms of the government approval for the redevelopment of Thesen Island, a former industrial timber processing site, as a residential canal development, which includes retail business and tourism. The purpose and functions of the TIEMC are contained in the record of decision. One of the first tasks of the TIEMC was to guide and supervise the compilation of an EMP, as well as of an operational management plan (OMP), for the redevelopment of Thesen Island. The record of decision defines the duties of the TIEMC to:

- be a body of specific expertise suitably qualified to monitor the implementation of and adherence to the EMP and to suggest amendments to the EMP, where appropriate.
- ensure effective environmental management of the project.
- define the role, powers and functions of the Environmental Control Officer (ECO), in consultation with the appropriate authorities and developer.
- receive and comment on reports by the ECO to Knysna Town Council.
- define and ensure implementation of additional steps to prevent detrimental effects on the environment, over and above any provisions of the EMP.
- recommend to the Town Council to halt construction and/or earthworks or any other activity, should the developer not comply with prescribed environmental control mechanisms or stipulations of the record of decision.

4) How was the EMC established?

Through a consultative process between the relevant authorities and the developer.

5) Does the EMC function according to a formal constitution, or equivalent set of overarching guidelines or terms of reference?

The EMC functions according to the stipulations in the record of decision summarized in section 3 above, by: keeping a watchful eye upon foreseen or unforeseen effects of the development which may be of detriment to the environment;

- promoting activities which may be of benefit to the environment;
- ensuring that all requirements contained in the EMP are implemented;
- considering and acting upon comments or complaints about the development;
- ensuring that any additional specialist studies are commissioned and carried out, if shortcomings in the EIA become evident; and
- ensuring an effective transition from the construction to the operational phase.

6) Does the EMC have decision-making authority?

No, it is purely an advisory body. However, the standing of the TIEMC is such that its recommendations have, without exception, been acted upon.

7) What resources (e.g. human, financial and administrative resources) does the committee have at its disposal?

All expenses of additional work carried out at the recommendation of the TIEMC, are borne by the developer. (Examples: Additional work in relation to water quality of the canals, monitoring of the development of biological communities within gabion cavities and on the canal beds, seahorse protection and the prevention of pollution of canal water by outboard motor emissions during the operational phase).

8) What are the success factors for the effective functioning of the EMC?

Key success factors of the EMC includes:

- professional conduct of all meetings;
- all recommendations based on honest and rational discussion of all problems which may have arisen;
- genuine commitment by the development company to sound environmental management;
- improvement of ecology of Knysna Lagoon, inter alia, through the addition of some 25 hectares of viable aquatic canal habitat to the water area of the system and through re-instatement of tidal circulation around Thesen Island by means of construction of a 25 m wide bridged opening in the causeway connecting the island with the mainland;
- natural migration of endangered seahorses (*Hippocampus capensis*) into the protected environment offered by the canals;
- significant educational initiative through the development of an Ecocentre and historic data base of all information relevant to Knysna and its lagoon;
- elimination of residual pollution dangers to Knysna Lagoon through successful encapsulation of the highly polluted poleyard area;
- ongoing protection of the saltmarshes surrounding Thesen Island, inter alia, through ongoing biological monitoring programmes with special emphasis on birds;
- huge input into the local and regional economy, including job creation, enlargement of the rates and taxes base and attraction of both tourists and new residents to Knysna; and
- active upliftment of impoverished local communities through skills training and encouragement of entrepreneurship.

9) What are the main obstacles that could prevent the EMC from functioning effectively?

Main obstacles that prevented the EMC from functioning at times included:

- irrational and emotionally driven vociferous criticism by well-meaning but ill-informed environmental groups; and
- occasional unnecessary bureaucracy by authorities, mainly at local government levels.

APPENDIX B: COEGA/NGQURA ENVIRONMENTAL MONITORING COMMITTEE

(This case study was drafted by Prof. Rob Midgley, the chairperson of the Coega/Ngqura EMC)

1) Background

The Coega Industrial Development Zone (IDZ) and Port of Ngqura are located at the mouth of the Coega River, approximately 15 km north-east of Port Elizabeth in the Eastern Cape province. The Coega IDZ is situated within the Nelson Mandela Metropolitan Municipality (NMMM), which includes the former Port Elizabeth, Uitenhage and Despatch municipalities. The Coega IDZ consists of 12 000 hectares of land, and will be serviced by the Port of Ngqura, which is currently being constructed. This is the first IDZ to be established in South Africa, and forms part of the South African government's Growth, Employment and Redistribution (GEAR) strategy.

The establishment of the Coega IDZ follows extensive environmental assessment studies. A strategic environmental assessment was undertaken in 1996 to assess the opportunities and constraints to developing the IDZ and the deepwater port at Coega. Subsequently, EIAs have been completed for the rezoning of land for the IDZ and the establishment of

the Port of Ngqura. These EIAs were authorised by the DEAT in May 2002.

2) Membership: List the members of the EMC and their affiliations (i.e. who they represent on this committee).

The members of the EMC are drawn from the following sectors:

- * Developers: the Coega Development Corporation (CDC) and the National Ports Authority (NPA);
- * Authorities: the national Department of Environmental Affairs and Tourism (DEAT), Marine and Coastal Management (MCM), the provincial Department of Economic Affairs, Environment and Tourism (DEAE&T), the Department of Water Affairs and Forestry (DWAF), the Department of Mineral and Energy Affairs (DME) and the Nelson Mandela Metropolitan Municipality (NMMM);
- * South African National Parks (SANParks);
- * Business;
- * Civil Society;
- * Tenants within the IDZ and Port;
- * Relevant and interested environmental non-governmental organisations (NGOs), represented by the Wildlife and Environment Society of South Africa (WESSA) and one other NGO;
- * Algoa Bay Users; and
- * Affected Communities.

3) What is the main purpose of the EMC?

- * To participate actively in the compliance monitoring of the sites, by overseeing the implementation of various monitoring programmes and ensuring that conditions stipulated in the records of decision and other environmental specifications are complied with. Ensuring that the sites are developed and managed responsibly with minimal impact on the environment.
- * To provide a forum for discussing issues relating to the sites' operations and for raising, addressing and, where possible, resolving any concerns.
- * To facilitate participative governance, and to act as a link between local communities, the developers and the regulatory authorities and to promote trust among the EMCs various constituencies.
- * Where appropriate, to disseminate information to the relevant authorities and the public about site operations and/or areas of concern.
- * To evaluate the complaints procedure and the channels of communication with the public and to ensure improvements, where necessary.
- * To promote a sustainable social and biophysical environment through environmental education and awareness.
- * To promote environmental awareness and capacity building regarding site activities among the developers and appropriate stakeholders.
- * To appoint an ECO whose functions shall be to ensure compliance with the record of decision conditions and that environmental management plans are implemented, and who shall conduct regular site inspections and environmental, safety and health audits.
- * To supervise and manage the ECO.
- * To review the ECO's audit and site inspection reports.

4) How was the EMC established?

The Coega/Ngqura EMC was established to monitor the Coega Industrial Development Zone and the development of the Port of Ngqura and currently operates in terms of two separate records of decision issued by the Minister of Environmental Affairs and Tourism in 2002. The RoD stipulates, amongst others, that the developers shall establish an EMC to monitor compliance with the conditions set out in the record of decision.

5) Does the EMC function according to a formal constitution, or equivalent set of overarching guidelines or terms of reference?

The EMC has terms of reference that were drafted by the members of the EMC. These contain guiding principles and set out the goals and aims of the EMC. In addition, although not a foundational document of the EMC, the record of decision for the Coega IDZ and Port of Ngqura set out the areas on which the EMC should focus its monitoring activities.

6) Does the EMC have decision-making authority?

The DEAT is the primary regulator and the ultimate decision-making authority in all EMC matters. The EMC has a monitoring function, not a management function, and its decisions usually take the form of recommendations to either the developers or the regulatory authorities. The regulatory authorities and developers must consider, but are not obliged to accept, the EMCs recommendations. Nonetheless, the EMC has the power to decide issues relating to its own operation and activities, but has no power to impose its decisions on any of its members regarding matters falling outside these activities.

7) What resources (e.g. human, financial and administrative resources) does the committee have at its disposal?

The EMC has an independent chairperson, with this role currently being fulfilled by Prof Rob Midgley, Professor and Dean of Law at Rhodes University. The EMC also employs an ECO who monitors compliance with the records of decision and provides secretariat services to the EMC. The ECO provides secretariat services to the EMC, which includes convening

meetings, providing minutes, filing and record-keeping, and other administrative tasks. The developers are jointly responsible for all administrative costs and meet all the appropriate and reasonable costs associated with the EMCs effective functioning (e.g. remuneration of the chairperson and the ECO, administrative disbursements, the actual travel expenses of representatives of affected communities and specialist or professional service fees.

8) What are the success factors for the effective functioning of the EMC?

The key success factors that should ensure the effective functioning of the EMC include:

- * regular monitoring and auditing activities;
- * proper administrative infrastructure and sufficient financial resources to conduct its activities; and
- * recognition by the developers of the importance of the EMC and willingness on their part to accept EMC monitoring and to implement EMC suggestions and recommendations.

9) What are the main obstacles that could prevent the EMC from functioning effectively?

The main obstacles that could prevent the EMC from functioning effectively are:

- * inadequate resources;
- * insufficient attention to EMC activities (For most of the EMC members, the Committee is an ancillary activity and not their core business. Part-time activity does not receive the same care and attention as full-time work does); and
- * developers seeing the EMC as “the enemy” rather than a partner in ensuring sound practices.

APPENDIX C: BLOUVLEI ENVIRONMENTAL COMMITTEE

(This case study was drafted by Paul Lochner, the chairperson of the Blouville environmental committee)

1) Background

A 16-hectare nature area called “Intaka Island” is situated in the centre of the Century City mixed-use development, in Cape Town. The nature area consists of two main components: the 8-hectare Constructed Wetland Zone and the 8-hectare Seasonal Salt Pan Zone. The constructed wetlands fulfil a vital role in improving the water quality within the wider canal system of the Century City development, as well as providing additional ecological and social benefits. The Seasonal Salt Pan Zone comprises rare ephemeral saltpan and Sand Plain fynbos habitats. The ecological value and uniqueness of the 16-hectare nature area has led to it being included as one of the core conservation sites in the Cape Metropolitan Area.

The ecological importance of the permanent and seasonal wetlands on the Century City site was identified in 1995 during the planning process for the Century City development. The most prominent ecological feature of the site was the heronry that existed at the time, which consisted of some 3800 birds of 12 species. Consequently, when the site was rezoned to mixed land use in December 1995, one of the conditions of approval was that an EIA be prepared for incorporating the existing wetlands system and associated birdlife and vegetation into the new development. Furthermore, the approval required that an environmental management plan be prepared and approved by Cape Nature Conservation (the environmental authority responsible for such approvals at the time).

The EIA was prepared by CSIR in the first half of 1996. A key feature of the EIA was that it was closely integrated with the planning process for the site. Key issues that were addressed in the EIA included: incorporation of hydro-geological features of the site into the wetland design; conservation of seasonal pan habitats; maintenance of acceptable water quality in the wetlands; and re-incorporation of the heronry into the development following the construction phase. Based on the EIA, an EMP was prepared for the construction phase of the wetlands and approved by Cape Nature Conservation in July 1996. The construction phase continued until 1998. Thereafter, an EMP was prepared for the establishment phase for the wetlands, which ran from January 1999 to mid-2002. In July 2002, an internal audit was undertaken of the implementation of the establishment phase EMP, leading to the preparation of an operational phase EMP in June 2003.

2) Membership: List the members of the EMC and their affiliations (i.e. who they represent on this committee).

An environmental committee was established in 1996 to guide the implementation of the EMP for the wetlands at Century City. This committee, called the Blouville Environmental Committee, has met on a monthly basis since 1996. It includes representatives of the Century City Property Owners Association (CCPOA), Western Cape Nature Conservation Board, City of Cape Town local authority, Friends of Rietvlei, specialist botanical and ornithological consultants. The CCPOA representatives include the ECO, site manager and the water quality manager. The ECO is the key person responsible for implementing the EMP. In terms of the original structure of the committee that was established in 1996 by the provincial planning department is also part of the committee. They have, however, decided to play an observer role and not be an active member of the committee. The committee has an independent chairperson, with Paul Lochner from CSIR currently fulfilling this role.

3) What is the main purpose of the EMC?

The main purpose of the Blouville environmental committee is to:

- * participate actively in the design of the EMP for the wetlands, including inputs to the regular updates of the EMP

- and the monitoring programmes that it contains;
- * contribute to the implementation of the EMP, in particular the monitoring and evaluation aspects, and make recommendations for ongoing improvements to the EMP;
- * prepare the annual budget for the implementation of the EMP, including agreement on the priority actions;
- * review proposals for surrounding developments and provide guidance in order to minimise the potential impact of such developments on the integrity of the wetlands and their water treatment function;
- * contribute to the regular internal audits of the EMP, which are undertaken approximately every 2 to 3 years; and
- * build public awareness about the wetlands and the educational opportunities they offer.

4) How was the EMC established?

In 1996, an EIA was prepared by CSIR for the incorporation of the wetlands into the Century City development. The EIA was approved by provincial government, with two of the conditions being that (i) an EMP be prepared and approved by Cape Nature Conservation, and (ii) an environmental committee is established to oversee the implementation of the EMP. The EIA process included a comprehensive public participation process. As part of the EIA process, agreement was reached with interested and affected parties on the approach to the EMP, the 10 over-arching management objectives that need to be included in the EMP, and the representation on the environmental committee. The first committee meeting was held in July 1996.

5) Does the EMC function according to a formal constitution, or equivalent set of overarching guidelines or terms of reference?

The three main guiding documents are the:

- * original approval of the EIA by the provincial Department of Housing, Local Government and Planning, dated 24 July 1996;
- * environmental policy of the CCPOA; and
- * EMP, which is the primary guiding document for the committee and includes the vision, goal, objectives, actions, monitoring requirements, criteria/targets and remedial actions.

6) Does the EMC have decision-making authority?

The Blouville Environmental Committee has decision-making authority within the wetland area for aspects such as: deciding on actions to be undertaken, allocation of the annual budget, and appointment of specialists or sub-consultants. The annual budget is determined by the CCPOA, in consultation with the Committee.

7) What resources (e.g. human, financial and administrative resources) does the committee have at its disposal?

The main human resources that the committee relies on are the ECO, the water quality manager and support staff such as the guides that run the entry office to the wetlands and assist visitors. Through the annual management budget, the committee is able to appoint specialists to undertake monitoring and provide annual reports. The CCPOA provides facilities such as meeting venues.

The EMC is also supported by an operations budget, which is used for maintenance work in wetlands and for financing staff that work in the wetlands and the guides. If new capital investment items are required for the wetlands (e.g. bird hides and boardwalks), the committee can submit annual motivations to the Capex budget of the CCPOA.

8) What are the success factors for the effective functioning of the EMC?

The key success factors that should ensure the effective functioning of the EMC include:

- * an effective ECO who takes the lead in actively implementing the requirements of the EMP;
- * an independent chairperson who has the respect and confidence of the committee members; and
- * open and honest interaction and deliberation between the committee and the developers.

9) What are the main obstacles that could prevent the EMC from functioning effectively?

The main obstacles that could prevent the Blouville Environmental Committee from functioning effectively are:

- * lack of commitment by the CCPOA to assigning adequate resources (staff, equipment and financial resources) to the ECO and the Committee; and
- * lack of trust, leading to a breakdown of communication between the Committee and the CCPOA and developers.

APPENDIX D: BERG WATER PROJECT ENVIRONMENTAL MONITORING COMMITTEE

(This case study was drafted by Nigel Rossouw, the TCTA environmental manager for the Berg Water Project)

1) Background

The Berg Water Project (BWP) consists of the Berg River Dam and Supplement Scheme. The BWP was investigated as a potential water source for the City of Cape Town as part of the Western Cape Systems Analysis (WCSA). The WCSA was undertaken between 1989 and 1995 to reassess water demand and potential water supply options of the City of Cape Town and associated water users. The EIA for the Berg River Dam was completed in November 1996 and the EIA for the Supplement Scheme in October 1997. Both reports were submitted to the national Department of Environmental Affairs and Tourism who issued a single record of decision on 10 May 1999. On 6 May 2002, the Minister of Water Affairs and Forestry (DWAF) directed TCTA to implement and fund the BWP as an implementing agent of DWAF. The Berg River Dam is on the upper reaches of the Berg River, approximately 6 km west of Franschoek. The dam structure is a concrete faced rockfill dam with a gross storage capacity of 126 million m³, a length of 900 m and height of 70 m, including foundation. The Supplement Scheme involves diverting water during the winter months from the Berg River at a point downstream of the confluence with the Dwars River and pumping it to the dam. The Scheme entails the construction of a low weir across the Berg River and a balancing dam excavated into the river floodplain. A pump station would pump the water via a pipeline to the Dam. The key issues associated with the implementation of the project includes: a socio-economic strategy, on-site environmental specifications and a river monitoring programme. An EMC was established through a participative and consultative process involving key stakeholders.

2) Membership: List the members of the EMC and their affiliations (i.e. who they represent on this committee).

The functioning of the Berg Water Project (BWP) EMC is facilitated by an independent chairperson. The EMC comprises representatives from the project authorities (i.e. Department of Water Affairs and Forestry, City of Cape Town, Department of Environmental Affairs and Tourism and TCTA), mandated representatives from interested and affected parties and the provincial authority.

Stakeholder groups represented on the EMC are:

- * Agriculture
- * Water users
- * Directly affected landowners
- * Directly affected community (i.e. La Motte village)
- * Local civic organisations
- * Local business
- * Local tourism sector
- * Local authorities
- * Local environmental groups
- * Regional environmental groups
- * Integrated Development Planning (IDP) structure, which has been replaced by the municipal ward structures
- * Cape Nature
- * Down stream stakeholders

3) What is the main purpose of the EMC?

The purpose of the EMC is to:

- * participate actively in monitoring the social, economic and environmental impacts of all processes related to the implementation of the BWP;
- * report to and exchange information with the constituent stakeholder sectors on the functioning of the EMC and the implementation of the project;
- * provide input into, review and recommend approval of the EMP to the environmental authorities, and once approved, monitor compliance with the EMP and report non-compliance;
- * ensure continued involvement of stakeholder constituencies in the environmental, social and economic aspects of project planning, construction and operational phases;
- * ensure dissemination of relevant project information to and from TCTA and to and from stakeholder groups; and
- * release a statement on the level of compliance with the EMP and the standard of environmental management on the project as and when necessary.

4) How was the EMC established?

The record of decision issued by DEAT for the construction of the BWP required the establishment of an EMC to ensure effective participation in the environmental management of the project. The EMC was established through a participative and consultative process involving key stakeholders.

5) Does the EMC function according to a formal constitution, or equivalent set of overarching guidelines or terms of reference?

The EMC functions according to a formal constitution and procedures documented in the EMP.

6) Does the EMC have decision-making authority?

The EMC does not have project decision-making authority. The EMC was established to advise the project authorities and serve as a forum where the implementation of the EMP is monitored. The EMC has the power to:

- * provide input into, review and endorse the terms of reference for the ECO and approve the person to be appointed as the ECO;
- * secure independent expertise to provide advice and/or review documents as is reasonably required for the EMC to perform its role;
- * monitor the environmental, social and economic impacts with regards to the planning, construction and operational phases of the BWP;
- * report any irregularities or non-compliance with the EMP to TCTA, who as the implementing agent must report such non-compliance to DWAF for reporting to the environmental authorities; and
- * consider and recommend changes, additions or upgrades to the EMP as and when necessary.

7) What resources (e.g. human, financial and administrative resources) does the committee have at its disposal?

The functioning of the EMC is facilitated by an independent chairperson, who is supported by a full-time secretariat. Office space and hardware (i.e. furniture and computers, etc.) has been provided to ensure the independent functioning of the EMC. The EMC was provided with an independent budget and have the authority to secure professional specialist advice.

8) What are the success factors for the effective functioning of the BWP EMC?

The success factors that should ensure the effective functioning of the BWP EMC include:

- * an independent chairperson who has the respect and confidence of the stakeholders and project authorities;
- * open and honest interaction and deliberation between the EMC and project authorities; and
- * regular flow of communication within the EMC and between the EMC and the project authorities.

9) What are the main obstacles that could prevent the BWP EMC from functioning effectively?

The main obstacles that could prevent the BWP EMC from functioning effectively include:

- * breakdown of communication within the EMC and between the EMC and the project authorities; and
- * lack of trust between the EMC and the project authorities.

GLOSSARY

Definitions

Affected environment

Those parts of the socio-economic and biophysical environment impacted on by the development.

Affected public

Groups, organizations, and/or individuals who believe that an action might affect them.

Alternative proposal

A possible course of action, in place of another, that would meet the same purpose and need. Alternative proposals can refer to any of the following but are not necessarily limited thereto:

- * alternative sites for development
- * alternative projects for a particular site
- * alternative site layouts
- * alternative designs
- * alternative processes
- * alternative materials

In IEM the so-called “no-go” alternative also requires investigation.

Authorities

The national, provincial or local authorities, which have a decision-making role or interest in the proposal or activity. The term includes the lead authority as well as other authorities.

Baseline

Conditions that currently exist. Also called “existing conditions.”

Baseline information

Information derived from data which:

- * Records the existing elements and trends in the environment; and
- * Records the characteristics of a given project proposal

Decision-maker

The person(s) entrusted with the responsibility for allocating resources or granting approval to a proposal.

Decision-making

The sequence of steps, actions or procedures that result in decisions, at any stage of a proposal.

Environment

The surroundings within which humans exist and that are made up of -

- i. the land, water and atmosphere of the earth;
- ii. micro-organisms, plant and animal life;
- iii. any part or combination of (i) and (ii) and the interrelationships among and between them; and
- iv. the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and well-being. This includes the economic, cultural, historical, and political circumstances, conditions and objects that affect the existence and development of an individual, organism or group.

Environmental Assessment (EA)

The generic term for all forms of environmental assessment for projects, plans, programmes or policies. This includes methods/tools such as EIA, strategic environmental assessment, sustainability assessment and risk assessment.

Environmental consultant

Individuals or firms who act in an independent and unbiased manner to provide information for decision-making.

Environmental Control Officer

The environmental practitioner tasked with monitoring compliance with the EMP during the construction phase of a project.

Environmental Impact Assessment (EIA)

A public process, which is used to identify, predict and assess the potential environmental impacts of a proposed project on the environment. The EIA is used to inform decision-making.

Environmental Monitoring Committee (EMC)

The committee that is established to monitor the implementation of the conditions of the record of decision. The EMC acts on behalf of the competent environmental authority and are constituted by the project proponent. EMCs provide a structure where representative sectors of society (e.g. government, NGOs, private sector, community and civil society) collaborate to:

- * regularly monitor and review the progress towards achieving the specific strategies, objectives and targets of the environmental management plan (EMP) and meet the requirements contained in the record of decision;
- * consider and endorse any modification or additions to the original version of the EMP that was approved by the government authority;
- * inform decision-making authorities when there is non-compliance with conditions of approval; and
- * promote the participation of key stakeholders in a structured forum that provides exchange of information and insights, managed discussion and an opportunity to promote effective environmental governance.

Fatal flaw

Any problem, issue or conflict (real or perceived) that could result in proposals being rejected or stopped.

Impact

The positive or negative effects on human well-being and/or on the environment.

Integrated Environmental Management (IEM)

A philosophy which prescribes a code of practice for ensuring that environmental considerations are fully integrated into all stages of the development and decision-making process. The IEM philosophy (and principles) is interpreted as applying to the planning, assessment, implementation and management of any proposal (project, plan, programme or policy) or activity - at the local, national and international level - that has a potentially significant effect on the environment. Implementation of this philosophy relies on the selection and application of appropriate tools to a particular proposal or activity. These may include environmental assessment tools (such as Strategic Environmental Assessment and Risk Assessment); environmental management tools (such as monitoring, auditing and reporting) and decision-making tools (such as multi-criteria decision-support systems or advisory councils).

Interested and affected parties (I&APs)

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. These may include local communities, investors, business associations, trade unions, customers, consumers and environmental interest groups. The principle that environmental consultants and stakeholder engagement practitioners should be independent and unbiased excludes these groups from being considered stakeholders.

Lead authority

The environmental authority at the national, provincial or local level entrusted in terms of legislation, with the responsibility for granting approval to a proposal or allocating resources and for directing or coordinating the assessment of a proposal that affects a number of authorities.

Mitigate

The implementation of practical measures to reduce adverse impacts.

Non-governmental organizations (NGOs)

Voluntary environmental, social, labour or community organisations, charities or pressure groups.

Proponent

Any individual, government department, authority, industry or association proposing an activity (e.g. project, programme or policy).

Proposal

The development of a project, plan, programme or policy. Proposals can refer to new initiatives or extensions and revisions to existing ones.

Public

Ordinary citizens who have diverse cultural, educational, political and socio-economic characteristics. The public is not a homogeneous and unified group of people with a set of agreed common interests and aims. There is no single public. There are a number of publics, some of whom may emerge at any time during the process depending on their particular concerns and the issues involved.

Record of Decision

The record of decision is the written decision issued by the environmental authority after the conclusion of the EIA process. The record of decision contains information explaining the written approval or rejection of a particular project. If approval is granted, the record of decision contains the conditions under which the project should be implemented. Record of decisions for large projects often include the requirement for the development and implementation of an EMP.

Role-players

The stakeholders who play a role in the environmental decision-making process. This role is determined by the level of engagement and the objectives set at the outset of the process.

Scoping

The process of determining the spatial and temporal boundaries (i.e. extent) and key issues to be addressed in an environmental assessment. The main purpose of scoping is to focus the environmental assessment on a manageable number of important questions. Scoping should also ensure that only significant issues and reasonable alternatives are examined.

Screening

A decision-making process to determine whether or not a development proposal requires environmental assessment, and if so, what level of assessment is appropriate. Screening is initiated during the early stages of the development of a proposal.

Significant/significance

Significance can be differentiated into impact magnitude and impact significance. Impact magnitude is the measurable change (i.e. intensity, duration and likelihood). Impact significance is the value placed on the change by different affected parties (i.e. level of significance and acceptability). It is an anthropocentric concept, which makes use of value judgements and science-based criteria (i.e. biophysical, social and economic). Such judgement reflects the political reality of impact assessment in which significance is translated into public acceptability of impacts.

Stakeholders

A sub-group of the public 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. The term therefore includes the proponent, authorities (both the lead authority and other authorities) and all interested and affected parties (I&APs). The principle that environmental consultants and stakeholder engagement practitioners should be independent and unbiased excludes these groups from being considered as stakeholders.

Stakeholder engagement

The process of engagement between stakeholders (the proponent, authorities and I&APs) during the planning, assessment, implementation and/or management of proposals or activities. The level of stakeholder engagement varies depending on the nature of the proposal or activity as well as the level of commitment by stakeholders to the process. Stakeholder engagement can therefore be described by a spectrum or continuum of increasing levels of engagement in the decision-making process. The term is considered to be more appropriate than the term "public participation".

Stakeholder engagement practitioner

Individuals or firms whose role it is to act as independent, objective facilitators, mediators, conciliators or arbitrators in the stakeholder engagement process. The principle of independence and objectivity excludes stakeholder engagement practitioners from being considered as stakeholders.

ABBREVIATIONS

CBO	Community-based Organization
EA	Environmental Assessment
ECO	Environmental Control Officer
EIA	Environmental Impact Assessment
EMC	Environmental Monitoring Committee
EMP	Environmental Management Plan
EMS	Environmental Management Systems
I&AP	Interested and Affected Party
IEM	Integrated Environmental Management
NGO	Non-governmental Organization
RoD	Record of Decision
SEA	Strategic Environmental Assessment



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