



WESTERN CAPE PROVINCIAL EIA EVALUATION INCEPTION REPORT

Prepared for:

Western Cape Department of Environmental Affairs and Development Planning

Prepared by:

Walter Anderson and Ingrid Coetzee
Cullinan & Associates Inc

23 April 2014

Our ref. DEADP: EIA evaluation project/D007-017

Specialists in environmental & sustainability law

Cullinan & Associates Incorporated (2001/001024/21)
DIRECTORS: CP Cullinan, GN Daniels, SD Kvalsvig
ASSISTED BY: A Pienaar, S Ramcharan, L Kleynhans
CONSULTANT: BL Adams

www.cullinans.co.za
E info@greencounsel.co.za

HEAD OFFICE

Ubunye House
70 Rosmead Avenue
Kenilworth 7708
Cape Town

T +27 (0) 21 671 7002
F +27 (0) 21 671 7003

BRANCH OFFICE

79 Waller Crescent
Roseglen
Morningside 4001
Durban

T +27 (0) 31 208 4576
F +27 (0) 31 208 4576



TABLE OF CONTENTS

<i>Acronyms and Abbreviations</i>	<i>ii</i>
<i>Acknowledgements</i>	<i>ii</i>
1. INTRODUCTION	3
1.1 Purpose of the Project as per the terms of reference (TOR)	3
1.2 Project Team	3
2. BACKGROUND	4
3. PROJECT APPROACH AND METHODOLOGY	5
3.1 Approach and Methodology	5
3.2 Overview of the Project Phases	6
3.2.1 Phase 1: Project inception and preparation	7
3.2.2 Phase 2: Compilation of case law databases	7
3.2.3 Phase 3: Analysis of case law trends, gaps and lessons learned	8
3.2.4 Phase 4: Preparation and presentation of the Draft Evaluation Report for comment	10
3.2.5 Phase 5: Preparation and presentation of the Final Evaluation Report for comment	11
3.2.6 Phase 6: Delivery of deliverables and data	11
3.3 Evaluation questions	12
3.3.1 Primary: TOR evaluation questions	12
3.3.2 Secondary: Provincial Evaluation Plan evaluation questions	12
3.4 Data gathering methodology, criteria and sources	13
3.4.1 Methodology	13
3.4.2 Criteria	13
3.4.3 Case lists	14
3.4.4 Sources	16
4. EVALUATION REPORT OUTLINE	16
5. AGREEMENT WITH THE CLIENT	18
5.1 Project Tasks	18
5.2 Project management arrangements	19
5.3 Progress meetings and reports	19
5.4 Documentation and information requirements	20



5.4.1 Work plan	20
5.4.2 Schedule of Payments	21
Annexure 1 WORK PLAN	23
Annexure 2 MINUTES OF INCEPTION MEETING	28
Annexure 3 DATA CAPTURE FORM for EIA DECISIONS [excel]	40
Annexure 4 REFERENCES	43

Acronyms and Abbreviations

EIA	Environmental Impact Assessment
TOR	Terms Of Reference
NEMA	National Environmental Management Act, 107 of 1998
PAJA	Promotion Of Administrative Justice Act, 3 of 2000
PEP	Provincial Evaluation Plan 2013/14–2015/16
PSO	Provincial Strategic Objectives
NEP	National Evaluation Plan
DPME	National Department Of Performance Monitoring And Evaluation
RBM&E	Results-Based Monitoring And Evaluation
M&E	Monitoring and Evaluation
GTAC	Government Technical Advisory Centre
SOP	Standard Operating Procedure
TAU	Technical Assistance Unit

Acknowledgements

We would like to acknowledge the inputs of Anique Rossouw, Paul Hardcastle and the members of the steering committee for their contributions to this inception report.

1. INTRODUCTION

1.1 Purpose of the Project as per the terms of reference (TOR)

The purpose of the Project is to undertake a comprehensive evaluation of court challenges against environmental impact assessment (EIA) and other administrative decisions of the Department, with a view to evaluate the implementation of the EIA process in the Western Cape and identifying how to strengthen the current system of environmental impact assessment related “review” and decision making in the Western Cape. The Project’s aim is to ensure more defensible decisions and more sustainable decision making by the Department.

1.2 Project Team

The service provider’s project team comprises:

- Ingrid Coetzee who is the team leader and responsible for project management and liaison with the Department;
- Cormac Cullinan who will provide strategic advice to the team;
- Gregory Daniels who is the lead lawyer and responsible for the technical legal evaluation and drafting the draft and final evaluation reports;
- Sarah Kvalsvig who will review the draft and final evaluation reports to ensure quality assurance;
- Walter Anderson who will be responsible for analysing the cases and assisting in the evaluation and drafting of the draft and final evaluation reports; and
- Davide Bishop, Tendai Bonga and Danjelle Midgley who will gather cases, populate the database template and assist with legal research where necessary.

Information on the qualifications and expertise of each of the team members is captured in the bid proposal document.

2. BACKGROUND

The Department is faced with an increasing number of court applications challenging its decisions in terms of planning and EIA legislation. Judicial review in terms of the Promotion of Administrative Justice Act, 3 of 2000 (PAJA) is the primary method used to challenge the Department's EIA decisions and have substantial negative implications for the Department in terms of costs, time delays and additional resources and capacity required. In response to the above the Department intends to identify and utilise the lessons learnt from court challenges in order to inform ways of strengthening the current system of environmental impact assessment review and decision making within the Department (the Project). The Project's aim is to ensure more defensible decisions and more sustainable decision making by the Department.

The Project is included as one of the 10 evaluations agreed upon as provincial priorities in the Provincial Evaluation Plan 2013/14–2015/16 (PEP). The PEP forms part of the roll-out of the National Evaluation Policy Framework and the National Evaluation System which is coordinated and overseen by the National Department of Performance Monitoring and Evaluation (DPME). The PEP is aligned to the National Evaluation Plan (NEP) which sets the benchmark for evaluations in the country. The guidelines for the National Evaluation System being developed by DPME set the minimum norms and standards within which evaluations and improvement plans should be produced. The PEP focuses on a variety of government interventions and Provincial Strategic Objectives (PSOs). It also takes into account the existing Province-wide Monitoring and Evaluation (M&E) Framework in which the Results-based M&E (RBM&E) approach is articulated.¹

The Department put the Project out on tender in December 2013 and accepted the service provider's proposal in January 2014. After appointment, the Department and service provider attended an inception meeting on 24 February 2014, the result of which is outlined below.

¹ Western Cape Provincial Evaluation Plan 2013/14–2015/16, p5

3. PROJECT APPROACH AND METHODOLOGY

3.1 Approach and Methodology

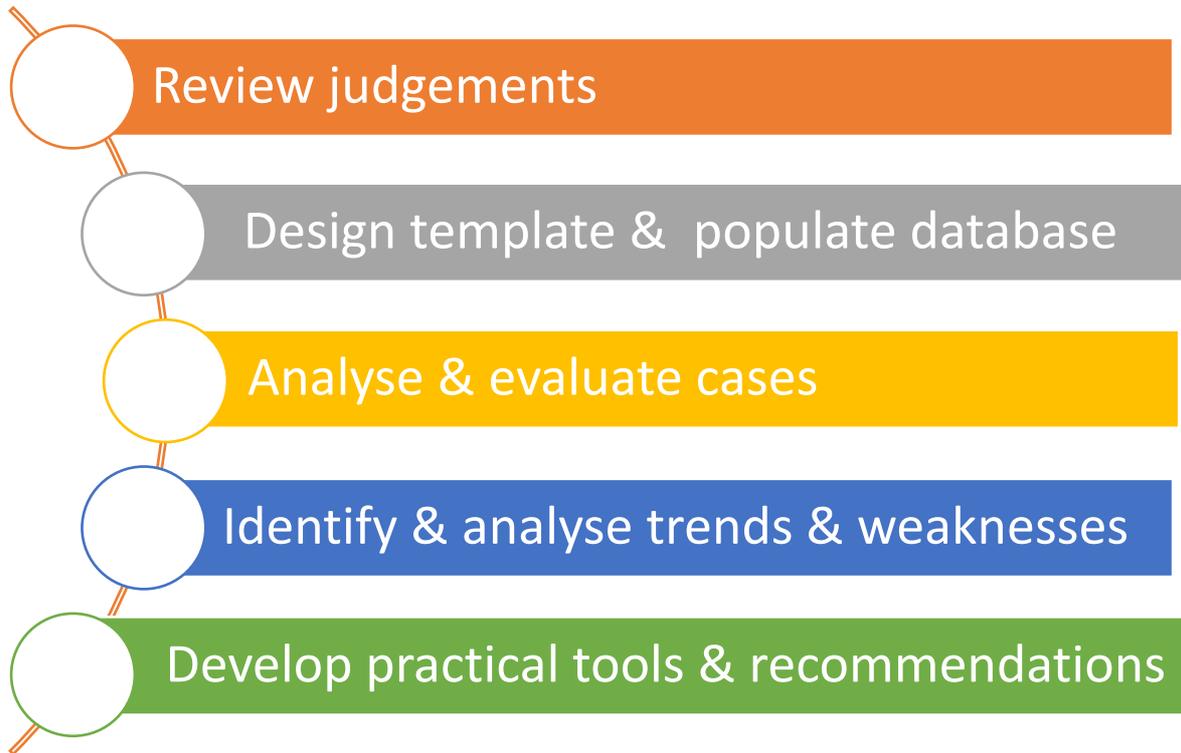
We have refined our approach and methodology to take into account issues and assumptions arising from our initial interaction with the Department during the inception meeting of 24 February.

Our approach entails working very closely with the Department to ensure that we address its specific needs and issues in identifying cases for evaluation, developing the case law database template, undertaking the evaluation of the selected cases and producing the required deliverables. We will consult regularly with the designated officials from the Department on all activities and tasks of the Project and all major milestones will be submitted to the Department for consideration and sign off before we commence work. The purpose of close and regular interaction with the Department is to clarify and confirm that our understanding aligns with what the Department requires and has in mind and to ensure that the Department approves of the envisaged outputs.

Secondly, we will apply the diagnostic model to undertaking the analysis and review of cases. This model is informed by systems thinking and theory and is well suited to results-based monitoring and evaluation. The diagnostic model is widely used by the Government Technical Advisory Centre (GTAC) to inform data collection and performance assessment.² We will customise the diagnostic model to meet the specific requirements and time constraints of this Project. For example, as part of our diagnostic approach we will map the decision making process and internal and external drivers which may have a bearing on the review of EIA and other administrative decisions by the Department.

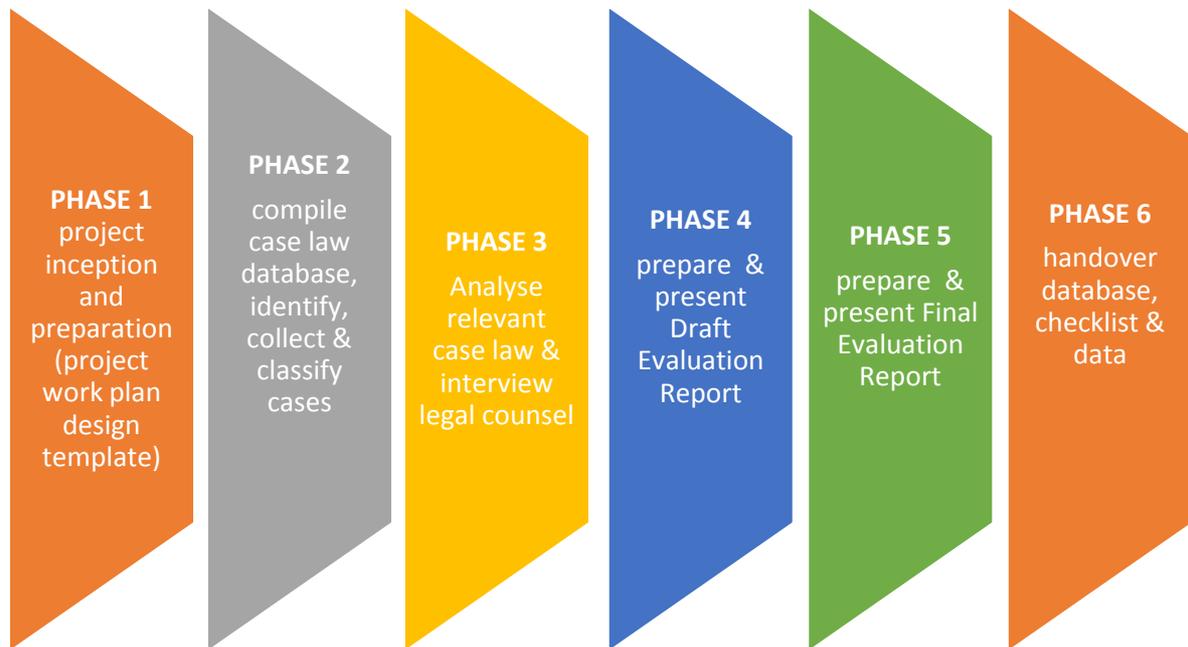
Our methodology includes all of the tasks and deliverables identified in the TOR and the key elements of the methodology are summarised in the following figure:

² GTAC is an externally orientated programme, formerly the Technical Assistance Unit (TAU), which supports the National Treasury's core business. Its responsibilities include providing technical consulting services to departments and government Agencies; advice on the feasibility of infrastructure projects; and knowledge management services for projects undertaken



3.2 Overview of the Project Phases

The major project activities and tasks are grouped into the following six phases. Each phase is described in detail below. Activities in phases 2 and 3 will overlap largely. The specific methodology that we will use for data collection and evaluation is discussed in more detail after the description of the phases.



3.2.1 Phase 1: Project inception and preparation

The focus of the project inception phase is to produce the inception report and formulate the evaluation questions. The inception report will also include a draft standard template to capture information for the case law database. This phase comprises various activities including the project inception meeting with the Departmental steering committee to clarify and agree on the scope of work, activities to be undertaken and time frames; finalisation of contractual arrangements with the Department; refining the project work plan and work flow; and agree on progress reporting arrangements.

3.2.2 Phase 2: Compilation of case law databases

Phase 2 focuses on the identification, collection and cataloguing of cases. Cases will be classified into three classes, namely:

- reviews of EIA decisions by the Department (class A);
- reviews of other administrative decisions by the Department (class B);
- reviews of other relevant decisions by other decision makers (class C).

(The classification is necessitated by the fact that each class will have to be analysed differently to add value to the evaluation.)

The tasks to be undertaken in this phase include:

- identification of best sources for:
 - all PAJA reviews against the Department's EIA decisions since January 1999;
 - administrative justice related challenges of the Department decisions like planning decisions; and
 - challenges of non-Department decisions able to inform the purpose of the evaluation;
- collection of identified cases and associated information/documents from the Department and other sources; and
- classification and cataloguing of all cases collected.

3.2.3 Phase 3: Analysis of case law trends, gaps and lessons learned

Phase 3 will commence with an overview of all the national and provincial legislation, guidelines, SOPs and practices governing the Department's evaluation and determination of EIA applications. The aim of this initial analysis will be to map the prescribed decision-making process which will be the baseline against which to measure the current implementation of the decision-making framework in the Western Cape. This assessment will be used to identify the policy considerations and guidelines of which decision-makers must take account and the circumstances in which these will be relevant to a decision.

Once the decision-making baseline is determined and understood, each case will be captured in the standard form and analysed in accordance with a strict set of parameters designed to inform the evaluation questions. Where it is necessary to clarify a particular point or legal argument with counsel our queries will be directed to the Department who will liaise with counsel directly.

Once the prescribed information has been captured, various analyses will be undertaken to isolate the specific trends of each class as well as more general administrative law and contextual trends which manifest across the body of cases.

The following aspects will be captured in the standard form:

- case name and number (citation)
- parties, citation and dates;
- grounds of review;
- substantive or procedural challenge;
- the Department's position (opposing or abiding);
- overall outcome (settled, decision overturned, upheld or returned to decision-maker with directives);
- outcome in relation to each ground (successful, unsuccessful or undecided)
- summary of facts and specifically;
 - the nature of the development;
 - particular listed activities triggered / assessed;
 - the Department's role in the alleged defect in the decision;
- recommendations; and
- sources used in compiling the analysis (case law, interviews etc.)

We propose that the following analyses are done to assess weaknesses and trends within the classes of cases and the body of cases:

- ratio: decisions overruled, upheld and referred to the decision maker;
- ratio: substantive vs procedural defects;
- ratio: grounds of review invoked to challenge the Department decisions;
- ratio: grounds of review most successfully relied on to challenge the Department decisions;
- contextual analysis which identifies the extent to which the review of decisions are influenced by legislative changes and amendments to the EIA regulatory regime, changing policy priorities and external drivers / factors (such as economic pressures, sector pressures);
- gap analysis and identification of procedural and substantive gaps, shortcomings and problem areas in the current way that the Department makes decisions which impact on the defensibility of its decisions; and
- a comparative review of legal challenges against similar decisions by other decision makers to isolate lessons to be applied to the Department's decision-making.

The product of phase 3 will be an indexed set of statistical datasets isolating likely weaknesses in the review and decision-making process applicable to each case, to each class of cases and to the body of cases.

3.2.4 Phase 4: Preparation and presentation of the Draft Evaluation Report for comment

Once the deficiencies in the implementation of the review and decision-making framework have been identified, the Project will enter phase 4. In this phase the trends and weaknesses isolated in the preceding phases will be analysed with a view to formulate a set of action-based draft recommendations to fortify the process. The recommended actions will depend on whether the deficiency relates to the procedure or substance of the decision. Recommendations will also be sought in other review and decision-making frameworks (prescribed for similar administrative decisions) which exhibit more successful and defensible processes and outcomes.

The recommendations and prescribed data collected in the preceding phases will be captured in a Draft Evaluation Report prepared according to the full and abridged 1/3/25 format specified in the TORs. The Draft Evaluation Report will be submitted to the Department for consideration and approval. We will present and contextualise the findings and results of the Draft Evaluation Report in a PowerPoint presentation to the steering committee.

The tasks to be undertaken in this phase include:

1. analysing the trends and findings with a view to:
 - 1.1. formulate action-based recommendations and protocols to address the apparent gaps and vulnerabilities in the current review and decision-making process; and
 - 1.2. identify the policy implications applicable to the results and recommendations;
2. preparation of a full Draft Evaluation Report;
3. preparing an abridged Draft Evaluation Report in the prescribed form which will include:
 - 3.1. a 1 page summary of the policy implications identified in the evaluation;
 - 3.2. a 3 page executive summary; and
 - 3.3. a 25 page summary of the evaluation findings including:

- an overview of the results of the analyses together with the trends and lessons learned;
 - a set of draft recommendations and guidelines to address identified gaps and shortcomings of –
 - i. the procedural aspects of decision-making;
 - ii. the substantive (factual) aspects of decisions-making; and
 - iii. the discretionary aspects of decision-making; and
 - a set of draft recommendations and guidelines to improve the efficacy of the review process;
4. preparing a PowerPoint presentation setting out the draft findings; and
 5. presenting the Draft Evaluation Report to the steering committee.

3.2.5 Phase 5: Preparation and presentation of the Final Evaluation Report for comment

Phase 5 will involve the finalisation of the recommendations and incorporating the steering committee's comments. The final report will be prepared and presented in the prescribed abridged and full format.

The tasks to be undertaken in this phase include:

- assessment and incorporation of the steering committee's comments into the Final Evaluation Report;
- preparation of the abridged and full versions of the Final Evaluation Report;
- preparation of a PowerPoint presentation setting out the final findings and recommendations; and
- presentation of the Final Evaluation Report to steering committee.

3.2.6 Phase 6: Delivery of deliverables and data

The task to be undertaken in the final phase includes delivery to the Department of:

- the Final Evaluation Report (electronic and hardcopy of the abridged and full versions);
- administrative tools & checklists developed (if any);
- databases;

- metadata; and
- all other information and reports used in the evaluation.

3.3 Evaluation questions

The primary evaluation questions formulated for this Project by the Department will be the main focus point for this evaluation. The secondary evaluation questions as formulated in the 2013 Provincial Evaluation Plan will be addressed only to the degree that they fall within the scope of this Project.

3.3.1 Primary: TOR evaluation questions

- i. What are the trends emerging from court challenges relevant to the Department's decision-making in terms of environmental impacts assessments?
- ii. How can the trends be utilised to further strengthen the current environmental impact assessment review and decision-making process?
- iii. What are the lessons learnt from other relevant judgments, challenging the Department and other decision-makers, which can be further applied to approve the Department's current environmental impact assessment review and decision-making framework?

3.3.2 Secondary: Provincial Evaluation Plan evaluation questions

- iv. What is the emerging picture from the court cases on EIAs?
 - What are the main issues on which the public and developers are challenging the Department?
 - Are the areas in terms of which the Department is challenged related to the manner in which EIA processes are implemented?
 - How many court cases have been dealt with from 2009/10 to date?
 - How many cases have been successful and how many not successful?
 - How much has been spent since 2009/10 on court cases?
- v. Does the Department's implementation of the EIA regulations contribute to the lodging of court cases, and is the outcome of the EIA process resulting in the right area being excluded?

- vi. What is the relationship [correlation] between the implementation of the EIA processes or guidelines and the areas on which the public challenges the Department in court?
- vii. What do we need to do to ensure the optimum results of EIA in terms of development and the environment?
- viii. Which approach would work best with regard to minimising the number of court cases the Department has to deal with?
- ix. How do we need to strengthen the EIA programme?

3.4 Data gathering methodology, criteria and sources

3.4.1 Methodology

The overarching objective for the data selection methodology is to isolate cases able to improve the EIA decision-making process and to make the decisions more defensible. This will necessarily require an assessment of what the Department is doing wrong and what other decision makers are doing right.

To ensure that defects, lessons and administrative principles are extracted from the most appropriate sources, cases have been classified into three classes, namely:

- Class A: reviews of EIA decisions by the Department (what the Department is doing wrong and doing correctly);
- Class B: reviews of other administrative decisions by the Department on non EIA processes such as land use planning decisions (what the Department is doing wrong and doing correctly);
- Class C: reviews of other relevant decisions by other decision-makers (principles of administrative law and lessons).

3.4.2 Criteria

The criteria for selecting the types of cases to inform this evaluation is apparent from the classes created, i.e. reviews of EIA decisions by the Department (class A), reviews of other administrative decisions by the Department (class B) and reviews of other relevant decisions by other decision makers (class C).

The criteria for case selection within each class have been left open ended by agreement on inception.

The Department has selected class A & B cases which they deem valuable for this evaluation. The Department did not specify criteria for selection at the time of providing the list of class A & B cases.

The service provider is responsible for recommending class C cases. The service provider's criteria for class C case selection will be limited to cases which:

- confirm fundamental principles of administrative law;
- confirm principles of EIA decision-making; and
- provide lessons and examples of sound decision-making processes.

3.4.3 Case lists

The class A and B cases selected for inclusion by the Department are listed below. The service provider will recommend further inclusions during phase 2.

Class A

DLA ref.:	DLA name	DEADP file ref.:	Court Case no.	Status	Applicable legislation	Class
R12	SEAFA (Seafront for all)	E18/1/2/3	15974/07	Pending	Promotion of Administrative Justice Act 3 of 2000	A
A2	Hangklip/Kleinmond Fe	E18/1/2/3/3	4009/2008	?	651/08/P12	A
	SLC Property Group (Pty) Ltd [First Applicant]		5542/2007			A
R27	Dealtime Trade 63	E18/1/2/3	21729/11	Pending	National Environmental Management Act 107 of 1998 (NEMA); 2006 & 2010 Regulations in terms thereof; Promotion of Administrative Justice Act 3 of 2000	A
R36	Shadewind (Pty) Ltd	10/2/2/1	22732/2012	Pending	NEMA	A
R37	Gonnemanskraal Home Owners Association	10/2/2/1	2476/13	Pending	Environmental Conservation Act 73 of 1989;	A
R41	Lions Watch Action Group	20/1/1/R41	5678/13	pending	NEMA; PAJA	A
R45	Durbanville Community Forum	20/1/1/R45	13854/13	Pending	NEMA; PAJA	A

Class B

DLA ref.:	DLA name	DEADP file ref.:	Court Case no.	Status	Applicable legislation	Class
R16	Houtbay & Llandudno Env	E18/1/2/3	23827/10	Closed: 2012/11/09	Land Use Planning Ordinance	B
R19	Clairison's CC	E18/1/2/3	26165/10	Pending	Environment Conservation Act	B
R24	Lagoon Bay Lifestyle Estat	E18/1/2/3	10751/11	Closed (28 Feb 2012)	LUPO	B
R26	Colmant	E18/1/2/3	19119/11	Pending	Land Use Planning Ordinance	B
R42	The Habitat Council	20/1/1/R42	6227/2013	pending	LUPO	B
A10	Astral Operations Ltd t/a	E18/1/2/3	20183/2009	LT/207/2009	?	B
R4	Green Collection Four (Pty) Ltd	E18/1/2/3/19	19926/2010	Closed: 2012/03/31	Land Use Planning Ordinance 15 of 1985; Promotion of Administrative Justice Act 3 of 2000	B
R25	Green Collection Four (PTY) LTD	E18/1/2/3	119292/11	To be closed	Land Use Planning Ordinance 15 of 1985; Promotion of Administrative Justice Act 3 of 2000	B
R38	Folkes Holdings (Pty) Ltd - Second Review	10/2/2/1	3274/13	Pending	PAJA; Removal of Restriction	B
R39	Llandudno Civic Association	20/1/1/R39	4452/13	Pending	Removal of Restrictions Act	B

The preliminary class C cases selected by the service provider are listed below. The service provider intends to reduce the list to between 10 -15 essential cases during phase 2 and 3.

Class C

DLA Name	Court Case Number	Status	Applicable area of Administrative Law
Chirwa v Transnet Limited and Others	CCT 78/06	Closed	Administrative action in terms of PAJA
Greys Marine Hout Bay (Pty) Ltd and Others v Minister of Public Works and Others	347/2004	Closed	Administrative action in terms of PAJA
Minister of Health and Another v New Clicks South Africa (Pty) Ltd and Others	CCT 59/2004	Closed	Administrative action in terms of PAJA
SA Freight Consolidators (Pty) Ltd v Chairman, National Transport Commission, and Another		Closed	Lawfulness – Delegation
Minister of Environmental Affairs and Tourism and Another v Scenematic Fourteen	85/2004	Closed	Lawfulness – Delegation
Minister of Environmental Affairs and Tourism and Another v Scenematic Fourteen (Pty) Ltd	85/2004	Closed	Fettering
Kemp and Others v Wyk and Others	335/2004	Closed	Fettering
South African Defence and Aid Fund and Other v Minister of Justice		Closed	Conditions: Procedural & substantive
Weenen Transitional Local Council v Van Dyk	399 / 2000	Closed	Conditions: Procedural & substantive
Pepcor Retirement Fund and Another v Financial Services Board and Another	198/2002	Closed	Mistake of fact
Bennett Pringle (Pty) Ltd v Dreyer and Others	2737/2006	Closed	Relevant & irrelevant considerations
Hira and Another v Booyesen and Another	308/90	Closed	Error of law
Van Eck, NO and Van Rensburg NO v Etna Stores 1947(2) SA 984(A) at 995		Closed	Motive and Purpose
Vumazonke and Others v MEC for Social Development and Welfare for Eastern Cape Province	ECJ 050/2004	Closed	Failure to Act
Standard Bank of Bophuthatswana Ltd v Reynolds NO and Others 1995 (3) BCLR 305 (B)		Closed	Reasonableness under the constitutional dispensation
Bel Porto School Governing Body and Others v Premier of the Western Cape Province and Another	CCT58/00	Closed	Rationality
Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism and Others	CCT 27/03	Closed	Contextual Reasonableness
BTR Industries South Africa (Pty) Ltd. and Others v Metal and Allied Workers' Union and Another	151/89	Closed	Bias
Transnet Ltd. v Goodman Brothers (Pty) Ltd	373/98	Closed	Reasons
Minister of Environmental Affairs and Tourism and Others v Phambili Fisheries (Pty) Ltd and Another	32/2003, 40/2003	Closed	Reasons
Kiva v Minister of Correctional Services and Another	1453/04, 43/2006	Closed	Reasons
King William's Town Transitional Local Council v Border Alliance Taxi Association		Closed	Reasons
Nichol and Another v Registrar of Pension Funds and Others	467/2004	Closed	Internal Remedies

The service provider notes that no settled matters have been selected for inclusion by the Department and recommends that some are included.

3.4.4 Sources

The service provider will source case files primarily from the court which decided the matter. Secondary sources for case files will be the attorneys of record in the matter and the Department itself. It is agreed that the service provider will report as soon as possible which cases could not be uplifted from court and that the Department will take further responsibility for locating the files for these cases.

Policy, circulars, directives, plans, guidelines and any other documents which emanate from an organ of state will be sourced from the Department or the organ of state from which it emanated (with the Department's assistance).

4. EVALUATION REPORT OUTLINE

The preliminary proposed outline for the evaluation report is as follows:

- 1) Introduction
- 2) Index
- 3) Acronyms
- 4) Executive summary
- 5) Background
- 6) Terms of reference
- 7) Methodology & work plan
- 8) The principles of administrative law which govern the Department's EIA decisions
- 9) EIA decision making baseline & diagram
- 10) Findings and trends in the EIA decision making process relating to:
 - i. procedure;
 - ii. completeness of record;
 - iii. relevant considerations within the context of:
 - nature and purpose of the decision

- criteria for decision making
- relevant law
- relevant policies, guidelines and similar instruments
- relevant facts;
- iv. nexus between the facts and the decision;
- v. reasons for the decision; and
- vi. conditions.

11) Findings and trends in the internal appeal process

12) Findings and trends in High Court review proceedings

13) Findings in relation to:

- i. What are the trends emerging from court challenges relevant to the Department's decision-making in terms of environmental impacts assessments?
- ii. How can the trends be utilised to further strengthen the current environmental impact assessment review and decision-making process?
- iii. What are the lessons learnt from other relevant judgments, challenging the Department and other decision-makers, which can be further applied to approve the Department's current environmental impact assessment review and decision-making framework?

14) Recommendations relating to:

- i. drafting precedents;
- ii. EIA decision making process;
- iii. internal appeal process; and
- iv. review proceedings

15) Annexures

- i. List of references
- ii. List of tools

This preliminary outline is submitted for the Department's consideration and will be tabled for discussion and adoption at the first project progress meeting.

5. AGREEMENT WITH THE CLIENT

5.1 Project Tasks

The project tasks agreed to in the inception report are the following:

TASK	RESPONSIBILITY	DATE
• Provide service provider with electronic copy of PEP	Department	25/ 02/ 14
• Provide outcome of SOP/PAJA alignment exercise	Department	03/ 03/ 14
• Finalise & provide list of case numbers for class A & B	Department	28/ 02/ 14
• Propose list of cases for class C	Service Provider	10/ 03/ 14
• Identify which contextual points should inform the selection process	Department	TBD
• Uplift case files from court	Service Provider	14/ 04/ 2014
• Provide Department with a list of court files not able to uplift	Service Provider	14/ 04/ 2014
• Provide pleadings in the department's possession to service provider	Department	04 / 2014
• Assist service provider to obtain copies of pleadings if it experiences problems or delays in uplifting court documents	Department	04/ 2014
• Direct all questions for counsel to Department	Service Provider	05/ 2014
• Liaise with counsel	Department	05/ 2014
• Pay counsel fees	Department	TBD
• Provide list of current matters acting against Department	Service Provider	03/ 03/ 2014
• Provide service provider with SOPs for: <ul style="list-style-type: none"> - Land management - Appeals - Environmental management 	Department	03/ 03/ 2014
• Provide copy of Departmental organogram	Department	28/ 02/ 2014
• Include evaluation questions in inception report	Service Provider	10/ 03/ 2014
• Re-evaluate selection and evaluation criteria periodically	Both in consultation	TBD
• Provide selection and evaluation criteria	Department	03/ 03/ 2014
• Recommend better templates for decision letters, authorisations, and arguments to template committee	Service Provider	08/ 2014
• Supply Chain Management will clarify payment procedures and requirements	Department	28/ 02/ 2014
• Include payment schedule in Inception Report	Service Provider	10/ 03/ 2014
• Submit first Invoice before 15 March	Service Provider	15/ 03 /2014
• Propose dates for bi-monthly progress meeting with steering committee	Department	10/ 03/ 2014
• Provide schedule of steering committee meetings	Department	28/ 03/ 2014
• Generate order number	Department	28/ 03/ 2014

TASK	RESPONSIBILITY	DATE
• Provide agreement	(SCM) Department	07/ 03/ 2014
• Refine project work plan and work flow and include in Inception Report	Service Provider	10/ 03/ 2014
• Deliver inception report incl. of evaluation questions	Service provider	10/ 03/ 2014
• Develop standard form/ template to capture information on cases for case law database	Service Provider	10/ 03/ 2014
• Collect identified cases and associated information / documentation from the Department and other sources	Service Provider	04/ 2014
• Classify and catalogue cases in line with criteria	Service Provider	04/ 2014
• Email Mark Pearce to inform him that Cullinan & Associates is service provider on this project and will contact him; copy email to Ingrid	Department	07/ 03/ 2014
• Deliver minutes	Service Provider	28/02/14

The tasks listed above are not definitive but rather a list of tasks identified and scheduled at the inception meeting.

5.2 Project management arrangements

Ingrid Coetzee and Anique Rossouw are responsible for project management and all contact and liaison between the service provider and Department will be channelled through them.

5.3 Progress meetings and reports

At the inception meeting it was agreed to stagger the bi-monthly progress meetings and reports so that written progress reports will only be submitted for months when no progress meetings are scheduled. The service providers and steering committee will meet in May, June and August 2014 to discuss and get agreement on the delivery of key milestones and deliverables. Progress reports will be submitted to the steering committee in April and July 2014, being the months between progress meetings.

5.4 Documentation and information requirements

The information required by the service provider during the first phase is:

- a list of class A & B cases;
- SOPs for environmental management, land management and appeals;
- organograms for environmental management, land management and appeals;
- a copy of the Provincial Evaluation Plan;
- an index of guidelines used in EIA decisions;
- copies of the guidelines selected by the service provider from the above index;
- steering committee meeting schedule

The information required by the Department during the first phase is:

- a list of class C cases;
- a list matters in which the service provider is currently acting against Department;
- inception report inclusive of payment schedule, refined work plan and evaluation questions;
- Standard data capturing sheet; and
- minutes of the inception meeting.

5.4.1 *Work plan*

The service providers plan to complete the Project in 6 months.

Phase one will be completed in March 2014. During this period the parties will exchange the agreed information sets and finalise the contractual arrangements (service level agreement). The service provider will refine the project work plan and flow and develop the standard data sheet to capture case law.

Phase two will start in the latter part of March and will be completed in April. The period in March will be spent refining the case lists, uplifting court files and searching for and copying documents. During April the first bi-monthly progress report will be prepared and the service provider will classify and catalogue the cases collected.

Phase 3 will span across April, May and June. During the latter part of April the service provider will start analysing legislation, guidelines and SOPs to map the decision making baseline. During May the prescribed information in the case transcripts will be captured in the standard form and analysed to isolate a predefined set of trends, lessons and ratios within each class and across the body of cases. The bi-monthly progress meeting will take place in May to present the analysis of legislation, guidelines and SOPs and mapping of the review and decision making framework. The initial analysis of cases will be presented to the steering committee and the bi-monthly progress report scheduled to take place in June.

The draft evaluation report will be prepared and presented for comment during July. The Project will come to a close during August when the final evaluation report will be prepared and presented and delivered together with all agreed data sets. Project closure and hand over of all final deliverables is scheduled for the beginning of September

The work plan is attached below as Annexure 1.

5.4.2 Schedule of Payments

NO	DELIVERABLE	TIME PERIOD	AMOUNT PAYABLE (excluding VAT & admin fee)
1	Project Inception Report	Mid March 2014	R31 850.00
2	Progress Report on the upliftment of cases & compilation of case law database to steering committee	Mid April 2014	R36 300.00
3	Presentation of analysis of legislation, guidelines & SOPs & mapping of review & decision making framework to steering committee & minutes of meeting	Mid May 2014	R37 750.00
4	Presentation of initial analysis of cases to steering committee & minutes of meeting	Mid June 2014	R168 700.00
5	Submission & presentation of Draft Evaluation Report to steering committee	End July 2014	R88 550.00

NO	DELIVERABLE	TIME PERIOD	AMOUNT PAYABLE (excluding VAT & admin fee)
6	Presentation of Final Evaluation Report to steering committee	End August 2014	R46 450.00
7	Handover of Final Evaluation Report, case law database, checklists & associated information used in the evaluation	Beginning September 2014	R9 800.00
Sub-total			R409 850.00
VAT thereon @ 14%			R57 379.00
4% admin fee			R16 394.00
VAT thereon @ 14%			R2 295.16
TOTAL			R485 918.16

DATED at CAPE TOWN on this 23rd day of April 2014.

I COETZEE



Annexure 1 WORK PLAN

PROPOSED WORK PLAN & TIME FRAMES

	DESCRIPTION OF ACTIVITIES & TASKS	MILESTONE	March	April	May	June	July	August	Sept
PHASE 1 - PROJECT INCEPTION & PREPARATION									
0.1	Attend project inception meeting with client	Agreement on way forward and expectations							
0.2	Produce action based minutes of inception meeting	Deliver minutes to Department							
0.3	Receive all agreed documentation from the Department	Reference materials file							
0.4	Refine project work plan & work flow	Finalisation of work plan and work flow							
0.5	Finalisation of contractual arrangements with the Department (Service Level Agreement)	Sign SLA							
0.6	Preparation and delivery of draft inception report in the prescribed form;	Delivery of inception report							
0.7	Finalisation of signed off inception report	Inception report signed off							
0.7	Develop standard form to capture case law	Standard data capturing form signed off							
PHASE 2 - COMPILATION OF CASE LAW DATABASES									
1.1	Identify best sources for information required in consultation with the Department	Agreement on source and sourcing responsibility							



DESCRIPTION OF ACTIVITIES & TASKS		MILESTONE	March	April	May	June	July	August	Sept
1.2.1	Collection of identified PAJA reviews against the Department EIA decisions and associated information/documents incl – uplifting court files and searching for and copying documents at the Department & legal counsel;	Class A Cases & associates information [unorganised]							
1.2.2	Collection of identified challenges against planning and similar administrative decisions by the Department and associated information/documents incl – uplifting court files and searching for and copying documents at the Department & legal counsel;	Class B Cases & associates information [unorganised]							
1.2.3	Collection of identified challenges against similar or relevant administrative decisions by decision makers other than the Department able to advance the purpose of the evaluation at hand.	Class C Cases & associates information [unorganised]							
1.3	classification and cataloguing of all cases collected	Finalise database for each class of cases							
1.4	Bi-monthly progress report	Delivery of progress report							
PHASE 3 - ANALYSIS OF CASE LAW AND INTERVIEWS									
2.1	Analyse legislation, guidelines and SOPs to map the prescribed review and decision-making framework for EIAs	Decision-making baseline signed off							
2.2	Analyse transcripts and capture cases in standard format	PAJA reviews against the Department EIA decisions							
	challenges against planning and similar administrative decisions by the Department	Peer reviewed class B data sheets							
	challenges against similar or relevant administrative decisions by decision makers other than the Department	Peer reviewed class C data sheets							



DESCRIPTION OF ACTIVITIES & TASKS		MILESTONE	March	April	May	June	July	August	Sept
2.3	Direct questions to legal counsel via Department	PAJA reviews against the Department EIA decisions challenges against planning and similar administrative decisions by the Department							
		Closing gaps in data sheets							
2.4	Bi-monthly progress meeting	Report on progress and agree to the way forward							
2.5	Produce action based minutes of progress meeting	Delivery and acceptance of minutes							
2.6	Statistical analysis each class of cases to isolate a predefined set of trends, lessons and ratios within the class	Peer reviewed stat-sets for each class of cases							
2.7	Statistical analysis the body of cases to isolate a predefined set of overall trends, lessons and ratios	Peer reviewed stat-sets for overall trends							
2.8	Bi-monthly progress report	Deliver progress report							
2.9	Process and catalogue findings	Index of statistical information							
PHASE 4 – PREPARATION AND PRESENTATION OF DRAFT EVALUATION REPORT									
3.1	Analyse the specific and statistical findings and formulate draft recommendations	Peer reviewed recommendations [unorganised]							
3.2	Bi-monthly progress meetings with steering committee	Report on progress and agree to the way forward							
3.3	Prepare full and abridged Draft Evaluation Report in the 1/3/25 form	Deliver draft evaluation report							
3.4	Prepare a PowerPoint presentation setting out the draft findings	Present draft evaluation report to steering committee							
3.5	Present the Draft Evaluation Report to the steering committee for comment								



	DESCRIPTION OF ACTIVITIES & TASKS	MILESTONE	March	April	May	June	July	August	Sept
PHASE 5 - PREPARATION AND PRESENTATION OF FINAL EVALUATION REPORT									
4.1	Assess and incorporate comments into the Evaluation Report	Incorporate comments							
4.2	Prepare the full and Final Evaluation Report	Deliver evaluation report							
4.3	Bi-monthly progress report	Deliver progress report							
4.4	Prepare the PowerPoint presentation setting out the final findings and recommendations	Present evaluation report to steering committee							
4.5	Present Final Evaluation Report								
PHASE 6 - DELIVERY OF DELIVERABLES AND DATA									
5.1	Delivery to the Department of: <ul style="list-style-type: none"> • Final Evaluation Report • administrative tools & checklists (if any); • databases; • metadata; and • all associated information and reports used in the evaluation. 	Completion of contract							

**Annexure 2 MINUTES OF INCEPTION MEETING**

INCEPTION MEETING
PROVINCIAL EVALUATION PROJECT: EVALUATION OF THE IMPLEMENTATION AND IMPACT OF ENVIRONMENTAL IMPACT ASSESSMENT
DRAFT ACTION MINUTES
Monday, 24 February 2014 09:00 – 11:20
DEA&DP Offices, 1 Dorp street, Cape Town

Present:

1. Azad Sayed (DEADP Monitoring and Evaluation)
2. Gary Birch (DEADP ELSS)
3. Amanda De Vaux (DEADP ELSS)
4. Jaqueta Keet (DEADP Environmental Appeals Management)
5. Paul Hardcastle (DEADP Policy and Planning Coordination)
6. Anique Rossouw (DEADP Policy and Planning Coordination)
7. Tammy Christie (DEADP Development Facilitation)
8. Ingrid Coetzee (Cullinan & Associates)
9. Sarah Kvalsvig (Cullinan & Associates)
10. Greg Daniels (Cullinan & Associates)
11. Walter Anderson (Cullinan & Associates)

Apologies:

1. Ayub Mohamed
2. Tracy-Ann McGivern



1. Welcome and Introductions

Anique Rossouw welcomed and introduced everyone in the meeting and discussed the purpose of the project briefly.

2. Presentation

Ingrid Coetzee from the Cullinan & Associates project team presented the high level objectives and methodology proposed by Cullinan & Associates. [A copy of the presentation is attached to the Minutes.](#)

3. Discussion and Next steps

NO	DISCUSSION ITEM		AGREED / CONFIRMED	ACTION	DATE	RESPONSIBILITY
3.1	Provincial Evaluation Plan	<ul style="list-style-type: none"> • Desired outcomes in term of the provincial evaluation plan (PEP) <ul style="list-style-type: none"> - PEP requires external evaluation of DEA&DP performance - Concept note is captured in PEP 	Y Y	<ul style="list-style-type: none"> • Provide service provider with electronic copy of PEP 	25/ 02/ 14	Department
3.2	Scope of report & tools developed	<ul style="list-style-type: none"> • Purpose <ul style="list-style-type: none"> - identify where decisions and procedure are lacking - Systems to reduce defects - Improve Policy & SoPs - Systems for continued monitoring • DEADP will be introducing new content management system in the next financial year 	Y Y Y Y	<ul style="list-style-type: none"> • Provide outcome of SoP/PAJA alignment exercise 		Department



NO	DISCUSSION ITEM		AGREED / CONFIRMED	ACTION	DATE	RESPONSIBILITY
3.3	Selection Criteria	<ul style="list-style-type: none"> • Department has compiled list of Class A & B cases (15 – 20) • Class C (10 – 15) • Context and prevailing statutory regime is important to gauge value of judgment • S24G applications are not included in the evaluation 	Y Y Y	<ul style="list-style-type: none"> • Finalise & provide list of case numbers for class A & B • Propose list of cases for class C • Identify which contextual points should inform the selection process 	28/ 02/ 14	<p>Department</p> <p>Service Provider</p> <p>Department</p>
3.4	Who provides the cases	<ul style="list-style-type: none"> • The budget included in the bid proposal is based on the assumption that the majority of cases will be provided by the Department. • The service provider raised concern about the difficulties experienced in uplifting court documents. 		<ul style="list-style-type: none"> • Uplift case files from court • Provide Department with a list of court files not able to uplift • Provide pleadings in the department's possession to service provider • Assist service provider to obtain copies of pleadings if it experiences problems or delays in uplifting court documents 		<p>Service Provider</p> <p>Service Provider</p> <p>Department</p> <p>Department</p>
3.5	Consulting with Counsel	<ul style="list-style-type: none"> • Counsel will not be consulted in every instance • Service provider queried who would be responsible for paying counsel fees for interviews • Service provider to direct questions to Department 	Y Y	<ul style="list-style-type: none"> • Direct all questions for counsel to Department • Liaise with counsel • Pay counsel fees 		<p>Service Provider</p> <p>Department</p> <p>Department</p>
3.6	Conflict of interest	<ul style="list-style-type: none"> • Service Provider's current matters against Department 		<ul style="list-style-type: none"> • Provide list of current matters acting against Department 		<p>Service Provider</p>



NO	DISCUSSION ITEM		AGREED / CONFIRMED	ACTION	DATE	RESPONSIBILITY
		<ul style="list-style-type: none"> reporting obligations <ul style="list-style-type: none"> - bi-monthly report - bi-monthly meeting Clarify project management responsibilities and arrangements between service provider & Department 	<p>Y</p> <p>Y</p>	<ul style="list-style-type: none"> with steering committee Stagger progress reports for months when no progress meetings are scheduled I. Coetzee is project manager for service provider and A Rousseau is project manager for DEADP All contact and liaison between service provider and Department to go through Ingrid Coetzee and Anique Rousseau 		Service Provider
		<ul style="list-style-type: none"> Meetings schedule to be finalised asap 	Y	<ul style="list-style-type: none"> Provide schedule of steering committee meetings 		Department & Service Provider
3.13	Contracts	<ul style="list-style-type: none"> Must conclude service agreement 	Y	<ul style="list-style-type: none"> Generate order number Provide agreement 	28/ 03/ 14	Department (SCM) Department Department
3.14	Inception Report and Work Plan	<ul style="list-style-type: none"> Inception Report by 10 March Requirements re content confirmed as set out in TOR (para 4.1) 	<p>Y</p> <p>Y</p>	<ul style="list-style-type: none"> Refine project work plan and work flow and include in Inception Report Deliver inception report incl. of evaluation questions 	10/ 03/ 14	Service Provider
3.15	Evaluation Report	<ul style="list-style-type: none"> Provide abridged and full versions for both Draft and Final Evaluation Reports (PEP requirement) 	Y	<ul style="list-style-type: none"> 		Service Provider
3.16	Case law database	<ul style="list-style-type: none"> Data capture Data collection 		<ul style="list-style-type: none"> Develop standard form/ template to capture information 		Service Provider



NO	DISCUSSION ITEM		AGREED / CONFIRMED	ACTION	DATE	RESPONSIBILITY
		<ul style="list-style-type: none"> Data classification 		on cases for case law database <ul style="list-style-type: none"> Collect identified cases and associated information / documentation from the Department and other sources Classify and catalogue cases in line with criteria 		Service Provider/ Department Service Provider Department
3.17	DEA	<ul style="list-style-type: none"> Mark Pearse has indicated interest in the project and DEADP has undertaken that service provider will communicate with him 		<ul style="list-style-type: none"> Email Mark Pearse to inform him that EnAct International is service provider on this project and will contact him; copy email to Ingrid 		Department
3.18	Action Minutes	<ul style="list-style-type: none"> Minutes by 28 February 	Y	<ul style="list-style-type: none"> Deliver minutes 	28/02/14	Service Provider

4. Closure & Next Meeting

The meeting closed at 11h20.
 The next meeting to be fixed via email.

Prepared By: Walter Anderson, Cullinan & Associates inc.

Ingrid Coetzee
 EnAct International

Annique Rousseau
 DEADP



EVALUATION OF THE IMPLEMENTATION AND IMPACT OF EIA – PROJECT INCEPTION MEETING 24 JANUARY 2014

CULLINAN & ASSOCIATES
Expertise grounded in experience



ENACT PROJECT TEAM



- Ingrid Coetzee (team leader)
- Cormac Cullinan (strategic advice)
- Gregory Daniels (lead drafter & technical legal advice)
- Sarah Kvalsvig (review evaluation)
- Walter Anderson (evaluation)
- Candidate attorneys - all have LLM Environmental Law (gather cases & populate template)



THE PROJECT BRIEF AS PER TORs

- Purpose or objective of the Project: to evaluate and strengthen the decision-making framework in the Department with regards to environmental authorisations
- Outcome: defensible decisions & less challenges
BUT we suggest:
 - ✓ Need to also look at process before decision is made (ie information that is put before competent authority & refer back to applicant if incomplete)
 - ✓ Outcome to be defensible decisions & unsuccessful review applications & confirmation of authority's decision



CONFIRMATION OF DELIVERABLES

- Inception Report and Project Plan
 - confirm requirements for both as per items i – iv of paragraph 4.1 of TORs
- Draft and Final Evaluation Reports
 - confirm requirements regarding abridged & full report versions as per TORs
- Provision of the data and information used in the evaluation
- PowerPoint presentation of the evaluation findings





SCOPE OF WORK - WHAT ARE WE GOING TO DO

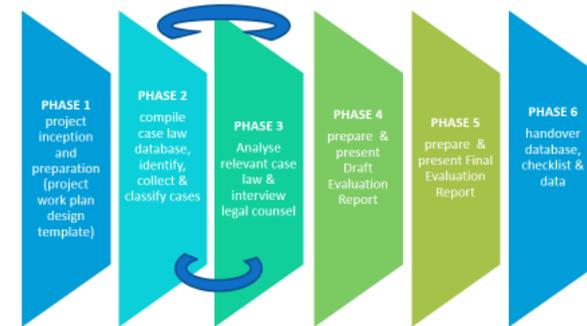


PHASE 1: PROJECT INCEPTION AND PREPARATION

- Inception meeting & action minutes of meeting
- Clarify progress reporting obligations
 - bi-monthly progress meetings with the steering committee
 - progress reports for the gap-months when progress meetings are not scheduled
- Clarify project management arrangements (including liaison, payment procedure & payment of counsel fees for interviews)
- Finalise contractual arrangements (SLA)
- Refine project work plan and work flow
- **Agree on principles and criteria for case review and evaluation with the Department & clarify administrative & operation procedure for decision making**
- Develop standard form (template) to capture information for case law database
- Prepare inception report in the prescribed format -clarify

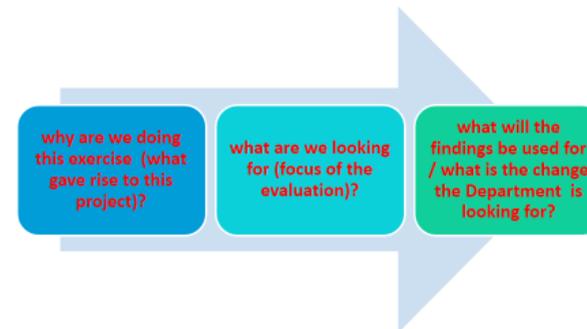


METHODOLOGY – HOW ARE WE GOING TO DO THE EVALUATION



DRAFT

PRINCIPLES AND CRITERIA FOR CASE REVIEW AND EVALUATION





PHASE 2: COMPILATION OF CASE LAW DATABASE

- Identify best sources for:
 - all PAJA reviews of the Department's EIA decisions since January 1999;
 - reviews of the Department's administrative decisions - like planning decisions; and
 - review of other relevant decisions made by other decision-makers;
- **Agree on scope of cases to be evaluated and criteria for classification of trends, gaps, challenges & lessons learned with Department**
- Collect identified cases and associated information / documents from the Department and other sources; and
- Classify cases and catalogue cases

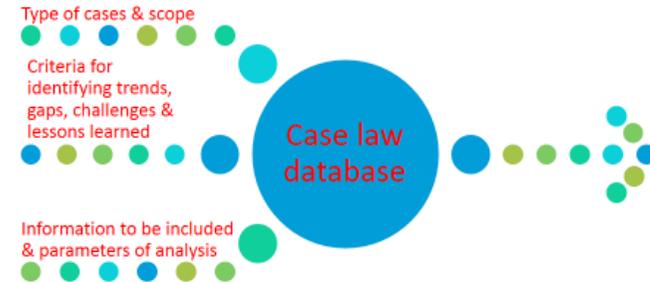


PHASE 3: ANALYSIS OF CASE LAW AND INTERVIEWS WITH COUNSEL

- Map the prescribed review and decision-making processes to provide baseline against which to measure selected cases (clarify process with Department)
- Analysis will consider national and provincial laws, guidelines, policies and practices governing the evaluation and determination of applications
- Analyse case transcripts of each case & interview counsel
- Capture information on each case on the standard form
- Identify trends, gaps & challenges
- Compare with cases against other decision-makers
- Extract lessons learned and identify key improvements in decision-making



IDENTIFICATION OF CASES & DESIGN OF CASE LAW DATABASE



PHASE 3: ANALYSIS OF CASE LAW cont'd

Clarify parameters of the analysis – rationale for, and application of, the evaluation exercise:

- **Quantitative analysis:**
 - annual number of legal challenges instituted between 01/01/1999 and 01/01/2014
 - ratio: decisions overruled, upheld and referred to the decision maker
 - ratio: judgments vs settlements
 - ratio: substantive vs procedural defects
 - ratio: grounds of review invoked to challenge the Department decisions
 - ratio: grounds of review most successfully relied on to challenge the Department decisions:
- **Contextual analysis**
 - legislative context - changes / amendments to EIA regulatory regime
 - changing policy priorities
 - external drivers / factors (eg economic pressures, sector pressures)
 - I&A)
- **Substantive analysis :** gap analysis and identification of procedural and substantive gaps, shortcomings and problem areas in the current way that the Department makes decisions which impact on the defensibility of its decisions; and
- **Comparative review of legal challenges** against other decision makers to isolate lessons to be applied to the Department decision-making





PHASE 4 PREPARATION & PRESENTATION OF DRAFT EVALUATION REPORT

- Formulate practical recommendations and protocols to address the apparent weaknesses & vulnerabilities in the current review and decision-making process
- Identify the policy implications of the evaluation findings and recommendations
- Prepare Draft Evaluation Report in the prescribed format:
 - ✓ 1 page summary of the policy implications identified in the evaluation;
 - ✓ 3 page executive summary; and
 - ✓ 25 page summary of the evaluation findings which gives an overview of the trends and lessons; a set of draft recommendations and guidelines to address identified challenges and shortcomings on:
 - > the procedural aspects of decision-making;
 - > the substantive (factual) aspects of decisions-making; and
 - > the discretionary aspects of decision-making; and
 - ✓ Full version of the report
- Draft recommendations and guidelines to improve the efficacy of the review process (clarify scope & purpose of guidelines)
- PowerPoint presentation setting out the draft evaluation findings to the steering committee.

PHASE 6 DELIVERY OF DELIVERABLES

- Final Evaluation Report (electronic and hardcopy);
- Administrative tools & checklists developed as agreed with Department
- Database of case – including metadata and all other information and reports used in the evaluation exercise

PHASE 5 PREPARATION & PRESENTATION OF FINAL EVALUATION REPORT

- Assess and incorporate the steering committee's comments into the Final Evaluation Report
- Prepare Final Evaluation Report (2 versions)
- PowerPoint presentation setting out the final findings and recommendations
- Present Final Evaluation Report to steering committee

DISCUSSION & NEXT STEPS

A. CONTENT ISSUES

- What is the desired outcome?
 - Concept note in Provincial Evaluation Plan
- What gave rise to this project being commissioned?
- What is the Department looking for (focus)?
- What will the findings be used for / what is the change the Department is looking for?
- Type, scope & selection of cases
- Criteria for identifying trends, gaps, challenges & lessons learned
- Information to be included & parameters of analysis
- Administrative & operational decision making
- Use of case law database post evaluation exercise
- Scope & purpose of the guideline
- Other?



DISCUSSION & NEXT STEPS

A. PRACTICAL ISSUES

- Project management arrangements & payment procedure
- Which counsel & who pays counsel fees (for interviews)
- Project duration, deadlines & milestones (project work plan)
- Regularity of steering committee meetings
- Progress reporting requirements
- Report format requirements
- Requirements in terms of providing datasets & metadata
- Other?

THANK YOU

CULLINAN & ASSOCIATES
Expertise grounded in experience





Annexure 3 DATA CAPTURE FORM for EIA DECISIONS [excel]

[Citation]		Year	[case number]		
[Applicants / Appellants]			[Respondents]		
Chain of Proceedings	EIA	Internal appeal	HC	SCA	CC
[Yes = 1] [No = 0]	0	0	0	0	0
Outcome	settled	upheld	overturned	partially overturned	returned to decision-maker with directives
[Yes = 1] [No = 0]	0	0	0	0	0
Department's position		opposing	abiding		
[Yes = 1] [No = 0]		0	0		
Did the MEC uphold the initial EIA decision					
[Yes = 1] [No = 0]		0			
Review Grounds			[Yes = 1] [No = 0]		
ground	successful	unsuccessful	not used		
Decision maker not authorised	0				
Unauthorised delegation of power	0				
Bias	0				
Procedural non-compliance	0				
Decision procedurally unfair	0				
Decision influenced by an error of law	0				
Reason for decision unauthorised	0				
Ulterior motive	0				
Irrelevant considerations taken into account	0				
Unwarranted dictates prompted decision	0				

Bad faith	0		
Decision is arbitrary / capricious	0		
Decision contravenes the law	0		
No rational nexus with purpose for decision	0		
No rational nexus with purpose of provision	0		
No rational nexus with info before decision maker	0		
No rational nexus with reasons for decision	0		
Failure to take decision	0		
So unreasonable, no other could do the same	0		
Otherwise unconstitutional / unlawful	0		
Relevant of facts			
Relevant issues			
Type of development			
Listed activities triggered			
Relevant <i>ratio</i> points in judgment			
Evidence of emerging trend			

Recommendations

Information
Sources

Annexure 4 REFERENCES

- 1) Terms of Reference, BID REF: DEADP15/2013
- 2) Provincial Evaluation Report, 2013
- 3) Minutes: Inception meeting for project REF: DEADP15/2013