

**The efficiency and alignment of planning and
environmental impact assessment (EIA) authorisation
processes in the Mpumalanga Province**

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ABSTRACT

The legal reform process in South Africa has led to increasingly complex legislative requirements for new developments in the form of various authorization processes. Currently different organs of state, at different spheres of government exercise a range of powers and functions in respect of the approval of development applications. These authorisations typically relate to planning, water management, heritage resources, environmental management, air quality, etc. In order to improve the efficiency and alignment of authorisation processes there is a serious need to gain a better understanding of the interaction between the different authorisation processes as well as the challenges experienced. This research presents the results of a critical analysis of planning and environmental impact assessment (EIA) authorisation processes in the Mpumalanga Province and examines how authorisation processes are implemented and aligned, how efficient the processes are, why process inefficiencies occur and how the efficiency of processes can be improved. The outcome of the research suggests that there are three main success factors for efficiency, namely the legislative framework that provides for administrative and environmental justice, co-operative governance that provides the basis for good communication, and information and competence that injects expertise into the authorisation process. The so-called 'efficiency triangle' is conceptualised, which clearly illustrates the interaction between these success factors.

Key words:

Efficiency, authorisation processes, integration, alignment, timeframes, delays.

ABSTRAK

Die wetlike hervormingsproses in Suid-Afrika het komplekse wetlike vereistes vir ontwikkelings in die vorm van verskeie magtigingsprosesse tot gevolg gehad. Huidiglik pas verskeie staatsinstellings vanaf verskillende sfere hul mag en funksies, met betrekking tot die goedkeuring van ontwikkelingsaansoeke, toe. Hierdie magtigings hou tipies verband met beplanning, die bestuur van water, kulturele hulpbronne, omgewingsbestuur, ens. Dit is van kritieke belang dat die interaksie tussen die verskillende magtigingsprosesse sowel as die struikelblokke wat ervaar word beter verstaan word, sodat die doeltreffendheid van magtigingsprosesse bevorder kan word. Die navorsing behels 'n kritiese analise van beplannings en omgewingsimpakstudies se magtigingsprosesse in die Mpumalanga Provinsie. Die navorsing bestudeer hoe die magtigingsprosesse huidiglik geïmplementeer en belyng word, hoe doeltreffend die prosesse is, hoekom ondoeltreffende prosesse voorkom en hoe die doeltreffendheid van prosesse verbeter kan word. Die navorsing bevind dat daar hoofsaaklik drie sukses faktore vir doeltreffendheid bestaan, naamlik die wetlike raamwerk wat administratiewe- en omgewingsregmatigheid verseker, koöperatiewe regering wat die basis vir voldoende kommunikasie voorsien, en inligting en bevoegdheid wat deskundigheid in die magtigingsproses verseker. Die sogenoemde 'doeltreffendheidsdriehoek' word gekonseptualiseer, wat die interaksie tussen die drie sukses faktore duidelik uiteensit.

Sleutelwoorde:

Doeltreffendheid, magtigingsprosesse, integrasie, belyning, tydsraamwerke, vertragings.

DECLARATION

I declare that this research report, apart from the contributions mentioned in the acknowledgements, is my own, unaided work. It is being submitted for the Degree Master of Environmental Management at the North West University, Potchefstroom Campus. It has not been submitted before for any degree or examination at any other university.



(Signature of candidate)

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LIST OF ACRONYMS

The following acronyms are used or referred to in this document:

BA	Basic Assessment
BAR	Basic Assessment Report
CBD	Central Business District
DWEA	Department of Water and Environmental Affairs
DEAT	Department of Environmental Affairs and Tourism
EA	Environmental Authorisation
EAP	Environmental Assessment Practitioner
ECA	Environmental Conservation Act No. 73 of 1989
EIA	Environmental Impact Assessment
EIR	Environmental Impact Report
EMF	Environmental Management Framework
GDP	Gross Domestic Product
HIA	Heritage Impact Assessment
HOD	Head of the Department
IAIA	International Association of Impact Assessors
IEM	Integrated Environmental Management
MEC	Member of the Executive Council
MOU	Memorandum of Understanding
NEMA	National Environmental Management Act No. 107 of 1998
PoS	Plan of Study
SAHRA	South African Heritage Resources Agency
SDF	Strategic Development Framework
WUL	Water Use License

CHAPTER 1 INTRODUCTION

This chapter provides the background and the problem statement (section 1.1) after which the research objective and sub-research questions are introduced (section 1.2). To assist the reader to navigate the text, the final section presents an outline of the mini-dissertation, clearly linking the sub-research questions and the methods to the different chapters (section 1.3).

1.1. BACKGROUND AND PROBLEM STATEMENT

"We cannot forever be held hostage by butterfly eggs that have been laid, because environmentalists would care about those things that are important for the preservation of the environment, while we sit around and wait for them to conclude the environmental studies" (Minister of Housing, Lindiwe Sisulu, as quoted by Macleod, 2006).

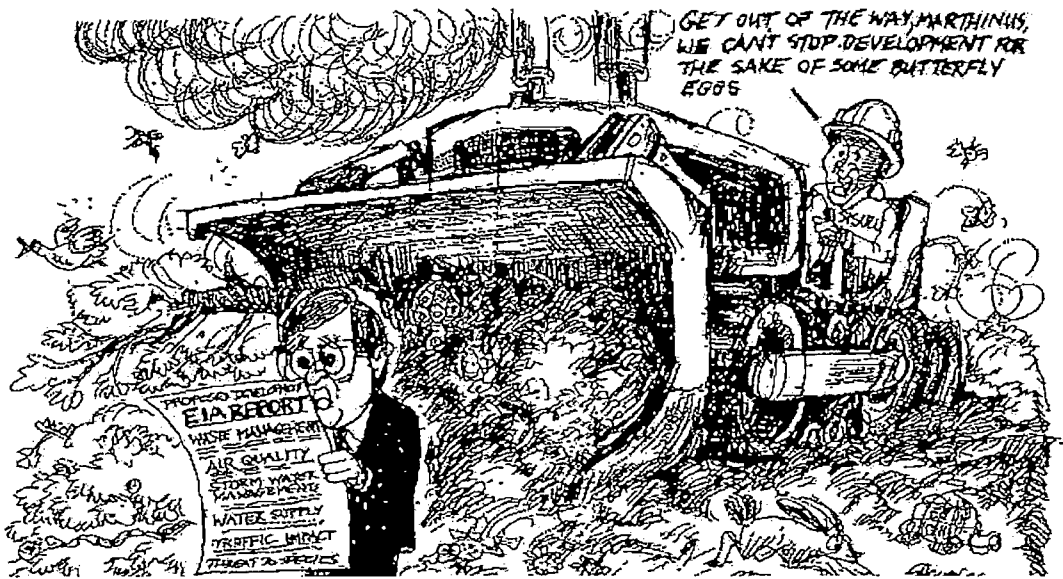


Figure 1.1: Cartoon featured in the Mail and Guardian (Macleod, 2006)

It has been argued that the fragmented and uncoordinated legislative framework in South Africa may be ascribed to the country's colonial and apartheid past, which did not provide for a holistic view towards development or the consideration of sustainable development (Nel, 2005:357). However, it is ironic that the extensive law reform process that has been used since 1994 seems to have produced even more complex and arguably fragmented legislative requirements. Uncoordinated and lengthy decision-making and authorisation processes are experienced, which lead to increased frustration and conflict between government officials, consultants and project proponents. According to a 2005 study conducted by the Strategic Partnerships for Business Growth in Africa, overall regulatory compliance costs South African business R79 billion per annum, which amounted to 6,5% of the total gross domestic product (GDP) for 2003 (SBP, 2005:74). It is therefore acknowledged that South Africa is in dire need of efficient and seamless decision-making and authorisation processes to facilitate economic growth to address issues such as poverty, unemployment, housing backlogs and the need for infrastructure and services (Chaballala & Retief 2006:1-2; Kotze & Van der Walt, 2003:40).

In light of the government's Accelerated and Shared Growth Initiative of South Africa, the former Minister of Environmental Affairs and Tourism, Minister Van Schalkwyk (2006) stated with reference to environmental impact assessment (EIA) that, *"Government is concerned about any delay, cost and associated impacts on economic growth and development. This is why we need to improve efficiency and effectiveness without compromising basic environmental rights and quality."* A particular area of contention has been the efficiency and alignment of authorisation processes for EIA and planning. The notion that EIA is negatively impacting on economic growth arising inter alia from extended timeframes, was further underscored when former President Thabo Mbeki referred to the number of unprocessed EIA applications as *"quite frightening"* (Engineering News, 2006). It was also reported that former President Mbeki specifically criticised environmental laws and authorisation requirements for causing development delays that slowed down economic growth (Kidd & Retief, 2009:54).

The need for efficient authorisation processes is well recognised. However, very little empirical research has been conducted to explore the efficiency and alignment of authorisation processes. Most of the existing understanding is based on perceptions and / or anecdotal evidence. There is a need to obtain a better understanding of the interaction between different processes in order to improve efficiency and identify shortcomings. This research therefore aims to address the lack of empirical research and knowledge on the efficiency of multiple authorisation processes, with particular reference to EIA and planning.

1.2. RESEARCH OBJECTIVE AND SUB-RESEARCH QUESTIONS

In view of the problem statement described in the previous section the main objective of the research is:

To critically review the efficiency and alignment of planning and environmental impact assessment (EIA) authorisation processes in the Mpumalanga Province.

In order to achieve the above-mentioned research objective, the following sub-research questions need to be answered:

1. What are the prescribed legal processes relating to environmental assessment and planning authorisations?
2. What are the debates relating to the efficiency of authorisation processes?
3. How are the processes implemented and aligned in practice?
4. How efficient are the authorisation processes?
5. Why do process inefficiencies occur?
6. How can the efficiency of authorisation processes be improved?

1.3. STRUCTURE OF THE RESEARCH

To allow for easy interpretation of results the research aimed to provide a clear linkage between the sub-research questions, the methodology applied to address the questions, the phases in the research process and ultimately the chapters relating to each sub-research question – as illustrated in Table 1.1 and described below:

In order to achieve the research objective (defined in section 1.2) the following research process, consisting of four phases, was followed:

Phase 1: Introduction and methodology

Phase 1 introduces the research and describes the research methodology. Phase 1 includes the following chapters:

- Chapter 1: Introduction
The research is introduced by providing background and the problem statement after which the research objective and sub-research questions are defined. It concludes by explaining the outline and structure of the mini-dissertation.
- Chapter 2: Methodology
This chapter describes the research methodology that was applied to address the research objective and sub-research questions introduced in Chapter 1.

Phase 2: Define and prepare

Phase 2 of the research addresses sub-research questions 1 and 2 (outlined in section 1.2), and aims to define the research by setting the framework within which authorisation processes take place by introducing the relevant legislation applicable to the different authorisation processes. This phase also prepares the research by illustrating what the processes look like in theory. The debates related to the efficiency of authorisation processes are also explored. Phase 2 includes the following chapters:

- Chapter 3: Legislative framework
This chapter describes the legislative procedural framework for environmental impact assessment and planning authorisation processes applicable to the selected case studies. The research only focuses on two specific pieces of legislation (namely the National Environmental Management Act (NEMA) and the Transvaal Ordinance) to inform the data gathering and analysis presented in Chapter 5. The basic assessment and scoping and EIA procedures related to environmental assessment and the Transvaal Ordinance procedure related to planning, are explained and illustrated in detailed diagrams.
- Chapter 4: Literature review
This chapter explores the various debates related to the efficiency of authorisation processes. It introduces the need for more efficient authorisation processes and the cross-cutting themes related to the latter. Firstly the chapter explores the legislative framework, the problems related to legislative fragmentation and the opportunities for integrated environmental management (IEM). Secondly the procedural framework is analysed and the debates related to timeframes and delays and the alignment of regulatory procedures are explored, after which the debates related to the institutional framework are explored in terms of co-operative governance. The chapter concludes in section 4.5 by highlighting the main challenges for process efficiency, as reflected in the existing literature.

Phase 3: Collect and analyse

Phase 3 of the research addresses sub-research questions 3 to 6 (outlined in section 1.2). During this phase data is collected via case studies, documentation review and interviews

(outlined in sections 2.2, 2.3.2 and 2.3.3), and then analysed. It includes the following chapter:

- Chapter 5: Case study and data analysis
The case studies are introduced and analysed by comparing the various timeframe requirements prescribed by legislation with the actual timeframes followed by the five case studies, to determine how the processes are implemented. After the comparison between the actual and the prescribed timeframes, the alignment between the environmental and planning processes is evaluated. The analysis enables the identification of areas where delays occurred and an evaluation of how efficient the processes were. The possible reasons for inefficient authorisation processes are examined through interviewing consultants and government officials. The consultants and government officials are also given the opportunity to present proposals on how these delays should be avoided, and how the efficiency of authorisation processes may be improved.

Phase 4: Conclude and recommend

In the final phase, a summary of the research results is presented after which the overall conclusions are made in terms of the research results. This phase includes Chapter 6: Conclusion and recommendations.

Table 1.1: The structure of the mini-dissertation

SUB-RESEARCH QUESTIONS (Refer to Chapter 1, section 1.2)	METHODS (Refer to Chapter 2)	PHASES	CHAPTERS (Refer to Chapter 1, section 1.3)	Introduction and research methodology Phase 1
1. What are the prescribed legal processes relating to environmental assessment and planning authorisations?	Literature review (Refer to Chapter 2, section 2.3.1)	Phase 2 Define and prepare	Chapter 3 The legislative procedural framework	
2. What are the debates relating to the efficiency of authorisation processes?	Literature review (Refer to Chapter 2, section 2.3.1)		Chapter 4 Literature review	
3. How are the processes implemented and aligned in practice?	Documentation review (Refer to Chapter 2, section 2.3.2)	Phase 3 Collect and analyse	Chapter 5 Case study and data analysis	
4. How efficient are the authorisation processes?	Documentation review (Refer to Chapter 2, sections 2.3.2)			
5. Why do process inefficiencies occur?	Interviews (Refer to Chapter 2, sections 2.3.3)			
6. How can the efficiency of authorisation processes be improved?	Interviews (Refer to Chapter 2, section 2.3.3)			
RESEARCH OBJECTIVE (Refer to Chapter 1, section 1.2) To critically review the efficiency and alignment of planning and environmental impact assessment (EIA) authorisation processes in the Mpumalanga Province.		Phase 4 Conclude and recommend	Chapter 6 Conclusion and recommendations	

CHAPTER 2 METHODOLOGY

This chapter describes the research methodology applied to address the research objective introduced in Chapter 1, namely:

To critically review the efficiency and alignment of planning and environmental impact assessment (EIA) authorisation processes in the Mpumalanga Province.

The chapter starts by introducing the research design (section 2.1) and the approach followed in the selection of case studies (section 2.2). The research methods, namely the literature review, documentation review and interviews are explored in section 2.3. The chapter is concluded in section 2.4 with the challenges that were experienced during the conduction of the research.

2.1. RESEARCH DESIGN

Due to the lack of research on the efficiency of authorisation processes, no methodological blueprint exists and therefore various challenges exist. The first challenge is to select a method, or combination of methods, to answer the sub-research questions and achieve the overall research objective. When considering the sub-research questions described in the previous chapter, it is evident that both quantitative (measuring actual timelines) and qualitative (gauging perspectives and views on efficiency) research methods would be required within a so-called 'mixed research' strategy (Robson, 2002; McCulloch, 2000; Oakley, 2000).

Experience in 'mixed research' strategies suggests that case study approaches are particularly appropriate and that detailed investigation of 'case' rather than 'sample' is preferred (Robson, 2002:205; Yin, 2003). This is because case studies allow for more in-depth context-specific analysis with detailed consideration of context-specific variables and influencing factors. In the case of process efficiency it is important to consider the influence of contextual factors, which would be very difficult to distil from a larger sample explored in less detail. For the purpose of the research five case studies were selected. The main research methods applied as part of the mixed research strategy include a literature review, documentation review and interviews. Section 2.3 provides a detailed description of these methods and their relation to addressing the different sub-research questions.

The second challenge is to find ways of measuring efficiency. For the purpose of this research efficiency is defined in relation to terms such as effectiveness. According to Blanchard (quoted by Kotze, 2007:19) "*doing things right in terms of getting the most of the available resources, can be related to efficiency, whereas doing the right things in terms of setting goals and objectives correctly and making sure it is reached, is related to effectiveness.*" The most viable criteria for measuring efficiency relate to i) the prescribed timeframes according to the relevant legislation and ii) where legislative timeframes do not exist, timeframes considered to be reasonable by relevant role players.

2.2. CASE STUDY SELECTION

Case study research is defined as “a strategy for doing research, which involves an empirical investigation of a particular contemporary phenomenon within its real life context using multiple sources of evidence” (Robson, 2002:178). As already highlighted, a case study approach was followed for the research. Five cases were selected in the Mpumalanga Province, which cover planning procedures from the Transvaal Ordinance and EIA procedures from the NEMA EIA regulations. The criteria used to select the case studies are the following:

- It was considered ideal to select cases with the same type of planning process (Transvaal Ordinance) and the same type of EIA process (NEMA) to ensure consistency.
- The cases should represent what could be considered large-scale projects to ensure that they represent some complexity. The selected cases included mixed housing developments, an industrial development and a golf and country estate.
- To ensure consistency it was considered ideal to select cases within the same authority jurisdiction conducted by the same environmental and planning consultants. In this case the Mpumalanga Province was selected, mainly based on established networks, which allowed for easy access to information.

The following five case studies were selected and analysed:

- Corridor Hill Township Establishment;
- Duvha Park Extension 2 Township Establishment;
- Hendrina Extension 4 Township Establishment;
- Sungazer Golf and Country Estate; and
- Riverview Extension 1 Township Establishment.

2.3. RESEARCH METHODS

This section describes the qualitative and quantitative research methods used as illustrated in Figure 2.1.

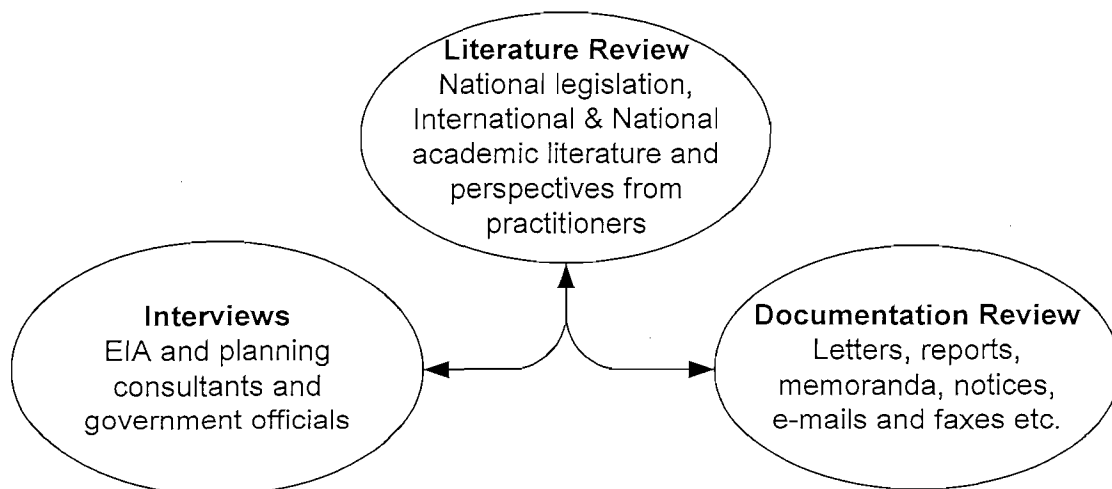


Figure 2.1: Research methods

2.3.1. LITERATURE REVIEW

The literature review was conducted by utilising electronic, Internet and library sources, which included national legislation and policy documents, academic sources and International Association for Impact Assessment (IAIA) conference proceedings, aimed to answer sub-research questions 1 and 2:

1. What are the prescribed legal processes relating to environmental assessment and planning authorisations?
2. What are the debates relating to the efficiency of authorisation processes?

A review of both international and local academic literature was conducted to obtain a broad overview of the key challenges related to the efficiency of authorisation processes. The perspectives of numerous practitioners were also considered in order to explore the different debates related to authorisation process efficiency. It should be noted that given the paucity of published literature relating to the efficiency of planning and environmental authorisation processes, heavy reliance was put on the South African IAIA conference papers. However it is argued that these papers reflect current debate and are important in a fast moving field such as this. A legal study was undertaken to ascertain best practices and legislative requirements at the national level. Detailed diagrams of the prescribed processes were developed to illustrate the timeframe requirements.

A basic literature study was performed in terms of:

- The legal mandate for environmental management;
- The legal mandate for planning;
- Legislative fragmentation;
- Process integration;
- Development delays;
- EIA process;
- Development timeframes;
- Alignment of processes; and
- Co-operative governance.

2.3.2. DOCUMENTATION REVIEW

The documentation review aimed to collect the dates of prescribed steps in the authorisation processes from the relevant project files. The data allowed for the accurate plotting of process flow graphs in order to answer sub-research questions 3 and 4.

3. How are the processes implemented and aligned in practice?
4. How efficient are the authorisation processes?

The types of documents covered a wide spectrum, for example:

- Minutes of meetings;
- Letters;
- Reports;
- Memoranda;

- Notices;
- E-mails; and
- Faxes etc.

These documents were obtained through administrative records of the consultants involved with the projects. In some instances data were supplemented and confirmed via interviews.

2.3.3. INTERVIEWS

A combination of semi-structured interviews was used to answer sub-research questions 5 and 6:

- 5. Why do process inefficiencies occur?
- 6. How can the efficiency of authorisation processes be improved?

A semi-structured interview has predetermined questions, but the order, question wording and explanations given may be changed randomly in order to be appropriate for a particular interviewee (Robson, 2002:270). Telephonic interviews were used where the persons were not available for a formal interview or where they were geographically dispersed. The same set of questions was asked during the different interviews. It was decided that interviewees remain anonymous to facilitate the most objective collection of information. The following four groups of role players were interviewed (refer to Annexure A for the interview schedule):

- Environmental consultants;
- Planners;
- Environmental authorities; and
- Planning authorities.

The said individuals were selected because they were the key stakeholders involved with the particular applications and were responsible for either obtaining or issuing the authorisations and adhering to the prescribed timeframes. The aim of the interviews was to clarify and confirm data obtained and analysed during the documentation review, but also to obtain the different stakeholders' view on the efficiency of authorisation processes and to provide them the opportunity to make recommendations for improving the efficiency of authorisation processes.

The interviews covered the following broad lines of enquiry:

- What problems do you experience in terms of the efficiency of the relevant authorisation processes within the Mpumalanga Province?
- Do you have any recommendations to improve the efficiency of the relevant authorisation processes within the Mpumalanga Province?
- Do you have any recommendations in order to align the relevant authorisation processes better within the Mpumalanga Province?

2.4. CHALLENGES FOR THE RESEARCH

In order to inform the research design of possible future research the following two main challenges are highlighted:

- Incomplete administrative records: Obtaining the correct dates from the administrative documents were more difficult than were initially anticipated. In some instances the

verification of dates required triangulation of the information from consultant project files; and

- Access to interviewees: Identifying the relevant interviewees was surprisingly difficult, mostly due to staff turnover, which resulted in unexpected time delays.

As explained in previous sections, these challenges were successfully addressed. However, for the purpose of future research it may be important to acknowledge these challenges as a contribution to future research methodological design.

CHAPTER 3

LEGISLATIVE PROCEDURAL FRAMEWORK

This chapter aims to answer sub-research question 1:

1. What are the prescribed legal processes relating to environmental assessment and planning authorisations?

3.1. INTRODUCTION

Numerous environmental law and land use planning policies have been drafted in recent years, aiming to give effect to the provisions of section 24 of the Constitution (1996). Section 24 imposes the duty on the state to protect the environment for present and future generations through reasonable legislative and other measures, while promoting sustainable development (Kotze, 2003:167). Since 1994, the principles of sustainability have been an integral part of policies and legislation.

This chapter describes the legal mandate for environmental assessment after which the authorisation processes in terms of the NEMA are presented in section 3.2.1. The legal mandate for planning is introduced after which the authorisation process in terms of the Transvaal Ordinance is presented in section 3.3.1. The procedural requirements of three specific legal procedures, namely the basic assessment, the scoping and EIA and the Transvaal Ordinance procedures are presented and illustrated in detailed diagrams. The latter is important as basis for the analysis presented in Chapter 5.

3.2. THE LEGAL MANDATE FOR ENVIRONMENTAL ASSESSMENT IN SOUTH AFRICA

The environmental assessment system in South Africa has evolved from an era of voluntary practice (pre-1997) to the so-called Environmental Conservation Act (ECA) regime (1997-2006) and the present so-called NEMA regime (2006-present). The purpose of Chapter 5 of the NEMA (107/1998) is to promote the application of appropriate environmental management tools in order to ensure the integrated environmental management of activities. The NEMA sets general objectives for integrated environmental management, such as to promote the integration of the principles of environmental management into decision-making; to identify, predict and evaluate actual and potential impacts, associated consequences, alternatives and options for mitigation of activities, to ensure that the impacts associated with the development receive adequate consideration before actions are taken.

In order to give effect to these objectives, the potential impacts of activities that require authorisation or permission by law and which may significantly affect the environment, must be considered, investigated and assessed prior to their implementation. Thereafter the findings must be reported to the organ of state charged by law with authorising, permitting, or otherwise allowing the implementation of an activity.

3.2.1. THE AUTHORISATION PROCESSES IN TERMS OF THE NEMA

The environmental impact assessment regulations in terms of Chapter 5 of the NEMA (107/1998) include three government notices, namely:

- Regulation 385 relating to the process to be followed;
- Regulation 386 includes a list of activities, which must follow the basic assessment procedure as described in regulation 22-26 of regulation 385. These listed activities potentially have an impact on the environment; and
- Regulation 387 includes activities, which must follow the scoping and EIA procedure as described in regulation 27-36 of regulation 385. These listed activities potentially have a more severe impact on the environment.

According to the General Guide to the EIA regulations (Department of Environmental Affairs and Tourism, 2006:2) the main objectives of the regulations are:

“... to establish the procedures that must be followed in consideration, investigation, assessment and reporting of the activities that have been identified. The purpose of these procedures is to provide the competent authority with adequate information to make decisions which ensure that activities which may impact negatively on the environment to an acceptable degree are not authorized, and that activities which are authorized are undertaken in such a manner that the environmental impacts are managed to acceptable levels.”

One of the main objectives of the regulations was to reduce the time taken to obtain an environmental authorisation, by introducing compulsory timeframes and by excluding activities that fall below certain thresholds (Kidd & Retief, 2009:23). This research only focuses on one specific piece of environmental legislation (namely the NEMA) to inform the data gathering and analysis presented in Chapter 5. The following section introduces the authorisation processes in terms of the NEMA.

3.2.1.1. The basic assessment process

Chapter 3 of regulation 385 promulgated in terms of Chapter 5 of the NEMA relates to environmental authorisation applications. The first application route, basic assessment, is the subject of regulations 22-26 of regulation 385 (SA, 2006). The different steps that need to be complied with according to regulations 22-26 are explored in more detail below (refer to Diagram 3.1).

Step 1: Project initiation

Regulation 17 of regulation 385 (SA, 2006) requires an applicant to appoint an independent consultant to carry out the procedure required for an environmental authorisation. Regulation 13 of regulation 385 (SA, 2006) requires that an application has to be submitted to the relevant provincial authority for consideration.

Step 2: Submit notification of intention

Regulation 22 of regulation 385 (SA, 2006) requires the submission of a notification of intention to submit a basic assessment report to the competent authority and any organ of state, which has jurisdiction in respect of any aspect of the activity.

Step 3: Competent authority accept notification of intention

The competent authority accepts and acknowledges the notification of intention to submit a basic assessment report.

Step 4: Requirements prior to the submission of the application

Regulation 22 of regulation 385 (SA, 2006) requires that the environmental assessment practitioner (EAP) managing the application must conduct at least a public participation process in compliance with regulations 56-59 of regulation 385 (SA, 2006) before submitting the application to the competent authority. Thereafter the EAP must subject the proposed application to basic assessment by assessing the potential impacts of the activity on the environment, whether and to what extent those impacts should be mitigated and whether there are any significant issues and impacts that require further investigation. A basic assessment report must then be prepared and all registered interested and affected parties must be given an opportunity to comment on the report.

Step 5: Submission of application to competent authority

After having complied with the previous step, regulation 24 of regulation 385 (SA, 2006) provides that the EAP may complete the application form and submit the completed application form to the competent authority. The basic assessment report must also be submitted with copies of any representations, objections and comments received, copies of the minutes of any meetings recording the views of the participants, any responses by the EAP to those representations, objections, comments and views, and a declaration of interest by the EAP.

Step 6: Review of the application

According to regulation 14(2) of regulation 385 (SA, 2006) the competent authority must review the application for completeness and either accept or reject it. A basic assessment report that has been rejected may be amended and resubmitted by the EAP to the competent authority.

Step 7: Consideration of application

Regulation 25 of regulation 385 (SA, 2006) requires the competent authority to consider the application and the basic assessment report within 30 days of acknowledging receipt of an application. If the competent authority is unable to decide the application on the basic assessment report alone, the competent authority must request the EAP to:

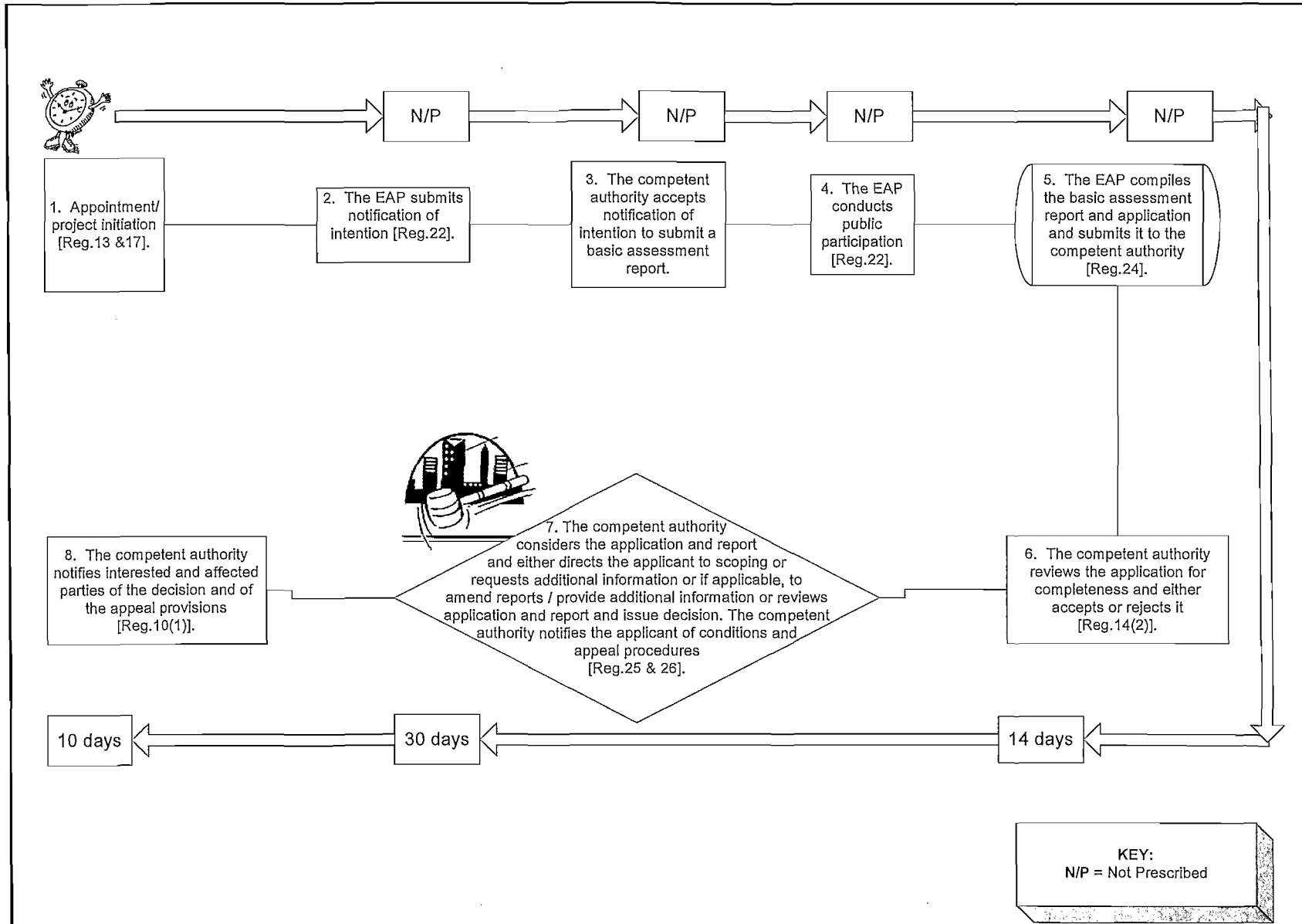
- (a) Submit additional information;
- (b) Submit a report on any specialist study or specialised process;
- (c) Suggest, consider or comment on feasible and reasonable alternatives; or
- (d) Subject the application to scoping and EIA.

The competent authority may reject the basic assessment report if it does not comply with the regulations in a material respect, or if it is based on an insufficient public participation process. A basic assessment report that has been rejected may be amended and resubmitted by the EAP to the competent authority. Regulation 26 of regulation 385 (SA, 2006) provides that a competent authority must within 30 days of acknowledging receipt of an application, or if additional information was requested and has been supplied, or if the basic assessment report has been rejected, within 30 days of receipt of the required information or the amended basic assessment report, in writing grant authorisation in respect of all or part of the activity applied for or refuse authorisation in respect of all or part of the activity.

Step 8: Notification

After a competent authority has reached a decision on an application, the competent authority must, as required by regulation 10(1) of regulation 385 (SA, 2006), in writing and within 10 days notify the applicant of the decision, give reasons for the decision and draw the attention of the applicant to the fact that an appeal may be lodged against the decision.

Diagram 3.1: The basic assessment process in terms of the NEMA



3.2.1.2. The scoping and EIA process

The second application route, scoping and EIA, is the subject of regulations 27-36 of regulation 385 (SA, 2006) promulgated in terms of Chapter 5 of the NEMA. The different steps that need to be complied with, according to regulations 27-36, are explored in more detail below (refer to Diagram 3.2).

Step 1: Project initiation

Regulation 17 of regulation 385 (SA, 2006) requires an applicant to appoint an independent consultant to carry out the procedure required for an environmental authorisation. Regulation 13 of regulation 385 (SA, 2006) requires that an application has to be submitted to the relevant provincial authority for consideration.

Step 2: Submission of the application to the competent authority

Regulation 27 of regulation 385 (SA, 2006) requires the EAP managing the application to complete an application form for the environmental authorisation of the relevant activity and to submit the completed application form to the competent authority.

Step 3: Acceptance of the application form

The competent authority must, according to regulation 14(2) of regulation 385 (SA, 2006), within 14 days of receipt of the application, in writing acknowledge receipt of the application if the application is in order.

Step 4: Requirements after the submission of the application

After having submitted an application, regulation 28 of regulation 385 (SA, 2006) requires the EAP to at least conduct a public participation process in compliance with regulations 56-59 of regulation 385 (SA, 2006). The EAP must subject the application to scoping by identifying issues that will be relevant for consideration of the application, the potential environmental impacts of the proposed activity and alternatives to the proposed activity that are feasible and reasonable. Thereafter a scoping report must be prepared and all registered interested and affected parties must be given an opportunity to comment on the scoping report.

Step 5: Submission of the scoping report to the competent authority

Regulation 30 of regulation 385 (SA, 2006) requires the EAP to submit the scoping report (prepared in accordance to regulation 29 of regulation 385 (SA, 2006)) and plan of study (POS) to the competent authority, containing copies of any representations, objections and comments received, copies of the minutes of any meetings and any responses by the EAP to those representations, objections, comments and views.

Step 6: Consideration of the scoping report

According to regulation 31 of regulation 385 (SA, 2006) the competent authority must, within 30 days of receipt of a scoping report, consider the report, and in writing either –

- (a) Accept the report and the plan of study for EIA and advise the EAP to proceed with the tasks contemplated in the plan of study;
- (b) Request the EAP to make amendments to the report or the plan of study; or
- (c) Reject the scoping report or the plan of study if it does not contain the required material information or has not taken into account the applicable guidelines.

A scoping report or plan of study for EIA that has been rejected by the competent authority may be amended and resubmitted by the EAP. On receipt of the amended scoping report or plan of study for EIA, the competent authority must reconsider the scoping report or plan of study for EIA in accordance with regulation 31(1) of regulation 385 (SA, 2006).

Step 7: Environmental impact assessment report

Regulation 32 of regulation 385 (SA, 2006) provides that if the competent authority accepts the scoping report and advises the EAP to proceed with the tasks contemplated in the plan of study for EIA, the EAP must proceed with those tasks, including the public participation process for the EIA, and prepare an EIA report.

Step 8: Consideration of the EIA report

There is a different timeframe prescribed for the EIA decision-making than for the basic assessment decision-making described in the previous section. According to regulation 35 of regulation 385 (SA, 2006) the competent authority must, within 60 days of receipt of an EIA report, in writing either –

- (a) Accept the report;
- (b) Notify the applicant that the report has been referred for specialist review;
- (c) Request the applicant to make such amendments; or
- (d) Reject the report if it does not comply with the regulations in a material respect.

An EIA report that is rejected may be amended and resubmitted by the EAP. On receipt of the amended report, the competent authority must reconsider the report.

Step 9: Consideration of EIA report

The competent authority must, according to regulation 36 of regulation 385 (SA, 2006), within 45 days of acceptance of the EIA report or, if the report was referred for specialist review, within 45 days of receipt of the findings of the specialist reviewer, in writing grant authorisation in respect of all or part of the activity applied for or refuse authorisation in respect of all or part of the activity. This means that the total time within which a decision on an activity requiring scoping and EIA must be made, is 135 days.

Step 10: Notification

After the competent authority has reached a decision on the application, the competent authority must, as required by regulation 10(1) of regulation 385 (SA, 2006), in writing and within 10 days notify the applicant of the decision, give reasons for the decision and draw the attention of the applicant to the fact that an appeal may be lodged against the decision.

The flowchart illustrates the EIA process in the UK, starting with an appointment and ending with a decision and appeal. The process is divided into two main sections: the initial application and scoping phase, and the decision and appeal phase.

Initial Application and Scoping Phase:

1. Appointment / project initiation [Reg.13 &17].
2. Pre-application consultation and EAP submits application form and relevant prescribed documents to the competent authority [Reg.27].
3. The competent authority accepts the application form [Reg.14(2)].
4. The EAP conducts basic public participation and compiles the scoping report and PoS for EIA [Reg.28].
5. The EAP submits the scoping report and PoS for EIA to the competent authority [Reg.30].
6. The competent authority considers and accepts the scoping report (or revised scoping report / PoS) or notifies the applicant of the required amendments [Reg.31].
7. The EAP conducts the EIA in line with the approved PoS and compile the EIA report and draft EMP. The EAP submits the reports to the competent authority for consideration [Reg.32].
8. The competent authority considers the reports and either accept it or refer parts of it for specialist review [Reg.35].
9. The competent authority grants authorisation with conditions or refuse the authorisation [Reg.36].

Time Limits and N/P Stages:

- 30 days from receipt (from step 5 to step 6)
- N/P (from step 6 to step 7)
- 60 days from receipt (from step 7 to step 8)
- 45 days from acceptance notice (from step 8 to step 9)
- 10 days (from step 9 to step 10)

Final Step:

10. The competent authority notifies interested and affected parties of the decision and appeal provisions [Reg.10(1)].

KEY:
N/P = Not Prescribed

3.2.1.3. The appeal process

Another significant aspect of the NEMA authorisation process is the appeal process. Regulations 60-68 of regulation 385 (SA, 2006), promulgated in terms of Chapter 5 of the NEMA, regulates the appeal process in terms of section 43 of the NEMA (107/1998). The different requirements for lodging an appeal are explained in more detail below.

A person who wishes to appeal against a decision must, as required by regulation 62 of regulation 385 (SA, 2006), lodge a notice of intention to appeal with the Minister, Member of the Executive Council (MEC) or delegated organ of state, as the case may be, within 10 days after that person has been notified of the decision. Regulation 64 of regulation 385 (SA, 2006) requires an appeal to be submitted to the relevant department within 30 days of the lodging of the notice of intention to appeal.

Regulation 65 of regulation 385 (SA, 2006) provides that a person (including applicant) or organ of state, notified of the appeal, may submit to the Minister, MEC or delegated organ of state a responding statement within 30 days from the date when the appeal submission was made available for inspection. A person, organ of state or applicant who submits a responding statement (hereinafter referred to as a respondent), must serve a copy of the statement on the appellant. If a respondent introduces any new information not dealt with in the appeal submission of the appellant, the appellant is entitled to submit an answering statement to such new information to the Minister, MEC or delegated organ of state within 30 days of receipt of the responding statement. The appellant must serve a copy of the answering statement on the respondent who submitted the new information.

The processing of appeals is dealt with in regulation 66 of regulation 385 (SA, 2006) and is the only part of the process that does not have a prescribed timeframe. Receipt by the Minister, MEC or delegated organ of state of an appeal, responding statement or answering statement must be acknowledged within 10 days of receipt thereof. An appellant and each respondent is entitled to be notified of a direction, if the Minister, MEC or delegated organ of state issues such a direction, and of the appointment of an appeal panel, if the Minister, MEC or delegated organ of state appoints an appeal panel for purposes of the appeal. The Minister, MEC or delegated organ of state may request the appellant or a respondent to submit such additional information in connection with the appeal as they may require.

Regulation 67 of regulation 385 (SA, 2006) provides that if the Minister, MEC or delegated organ of state appoints an appeal panel, the Minister, MEC or delegated organ of state must furnish the panel with a written instruction concerning the issues in respect of which the panel must make recommendations and the period within which recommendations must be submitted. If an appeal panel introduces any new information not dealt with in the appeal submission of the appellant or in the statements of the respondents, both the appellant and each respondent are entitled to submit to the panel, within a period determined by the panel, any additional statements rebutting or supporting such new information. When the Minister, MEC or delegated organ of state has reached a final decision on an appeal, the appellant and each respondent must, as required by regulation 68 of regulation 385 (SA, 2006), be notified in writing of the decision and the extent to which the decision appealed against is upheld or overturned. Reasons for the decision must on written request be given to the appellant or respondent.

3.3. THE LEGAL MANDATE FOR PLANNING IN SOUTH AFRICA

When South Africa's first democratically elected government came into power in 1994, it inherited a fragmented, unequal and incoherent planning system. As a result, human settlements are characterised by racial, socio-economic and land use segregation (Department of Environmental Affairs and Tourism, 1999:7). The current distorted settlement

pattern will not correct itself automatically, nor will it be addressed by default; therefore planning is necessary to amongst others provide vision, direction and assessment of what is desirable and possible in various contexts (Department of Environmental Affairs and Tourism, 1999:20-21).

There are numerous laws at national level that impact on land development such as the Municipal Systems Act (32/2000); Subdivision of Agricultural Land Act (70/1970); Development Facilitation Act (67/1995); Physical Planning Act (125/1991); Less Formal Township Establishment Act (113/1991), etc. Moreover, old ordinances are still used in many of the provinces, which set out the legal basis for zoning, town planning schemes, the drafting and amendment of schemes, and procedures for new developments (Department of Environmental Affairs and Tourism, 1999:52). The current legal framework regulating planning is therefore very diverse. It is not the purpose of this research to explore these complexities in detail, but rather to focus on the Transvaal Ordinance, apart from the NEMA, to inform the data gathering and analysis presented in Chapter 5.

3.3.1. THE AUTHORISATION PROCESS IN TERMS OF THE TRANSVAAL ORDINANCE

Part C of the Transvaal Ordinance (15/1986) is applicable to township establishments within the areas of jurisdiction of an authorised local authority. The different steps that need to be complied with in order to establish a township, according to the Transvaal Ordinance are explored in more detail below (refer to Diagram 3.3).

Step 1: Project initiation

Although not required by the Transvaal Ordinance, the owner of land who wishes to establish a township needs to appoint a town and regional planner to prepare the application and manage the authorisation process.

Step 2: Submission of the application

Section 96 of the Transvaal Ordinance (15/1986) provides that an owner of land who wishes to establish a township must apply in writing to the authorised local authority within whose area of jurisdiction the land is located.

Step 3: Public participation start

Section 96(3) of the Transvaal Ordinance (15/1986) requires that the provisions of subsection 3 up to and including subsection 11 of section 69 apply *mutatis mutandis* to an application contemplated in section 96(1) of the Transvaal Ordinance (15/1986). After the provision of subsections 3-5 have been complied with (which are not deemed to be essential for discussion within the scope of this research), the local authority may give notice of the application by publishing once a week for two consecutive weeks a notice as may be prescribed. The local authority or the applicant shall also forward copies of the application to relevant stakeholders. Such stakeholders may, within a period of 60 days from the date on which the copy of the application was forwarded, comment in writing thereon. Subsection 7 provides that any person may, within a period of 28 days from the date of the first publication of the notice contemplated in subsection 6(a), lodge an objection with or make representations in writing to the local authority in respect of the application.

Step 4: Public participation end

The public participation period ends after the 60 day period, as required by Regulation 69(6) of the Transvaal Ordinance (15/1986), expires.

Step 5: Reply to objections / Hearing / Consideration of the application

Section 69(8) of the Transvaal Ordinance (15/1986) requires that the local authority forward a copy of every objection lodged and all representations and comments made to the applicant. According to section 69(9) of the Transvaal Ordinance (15/1986), the applicant

shall, within 28 days from the date of receipt of the copy contemplated in subsection 8, forward his reply thereto to the local authority. The local authority shall then consider the application with due regard to every objection lodged and all representations and comments made and every reply contemplated in section 69(9), and may determine a hearing date for any person or body who lodged an objection, comment etc. to, according to subsection 11, state his or her case.

Step 6: Decision on the application

After receiving the application, the authorised local authority shall consider the application and according to section 98 of the Transvaal Ordinance (15/1986), it may approve the application, either wholly or in part, or refuse it or postpone a decision thereon, either wholly or in part. After an application has been approved, the authorised local authority shall notify the applicant, every objector, the Surveyor-General and the Registrar of Deeds in writing thereof and of any condition imposed.

Appeals

Another significant aspect of the Transvaal Ordinance authorisation process is the appeal process. Section 104 of the Transvaal Ordinance (15/1986) provides for appeals against decisions made by the authorised local authority. Subsection 1 provides that an applicant or objector who is aggrieved by a decision of the local authority on any application may appeal, within a period of 28 days from the date of notification of the decision by the local authority, or within such further period, not exceeding 28 days, as the Head of the Department (HOD) may allow. An applicant who is aggrieved by the refusal or unreasonable delay of an authorised local authority to give a decision, may also at any time appeal through the HOD to the Member of the Executive Council (MEC) by lodging with the HOD a notice of appeal setting out the grounds of appeal.

Subsection 2 provides that the authorised local authority shall, within a period of 30 days from the date of receipt of a copy of a notice of appeal, submit copies of the application, objections, replies, records of proceedings and reasons for its decision to the HOD.

Subsection 3 provides that subsection 3 up to and including subsection 14 of section 59 of the Transvaal Ordinance (15/1986) shall apply *mutatis mutandis* to an appeal contemplated in subsection 1. In other words, any person who is aggrieved by a decision of an authorised local authority in favour of another person (third person) or the refusal or unreasonable delay of an authorised local authority to give a decision in respect of an application, appeals to the MEC, the MEC shall afford that person the opportunity to oppose the appeal. Any other person who is a party to the appeal shall, within a period of 30 days from the date on which he became a party to the appeal, deposit with the HOD such amount of money as may be prescribed as security for the payment of the expenses in connection to the appeal, and in failing to deposit the amount, ceases to be a party to the appeal.

The HOD shall refer the appeal to the Board¹, and the Board shall determine a day, time and place for the hearing of the appeal and not less than 14 days prior to the day determined, notify every party to the appeal, including the authorised local authority, of the day, time and place. At a hearing the local authority may state its case and adduce evidence in support thereof, and any other party to the appeal may also state his case and adduce evidence in support thereof or authorise any other person to do so on his behalf. After a hearing, the Board shall prepare a report in which it recommends that the appeal be upheld or dismissed, and the Board shall notify every party to the appeal in writing of its recommendation.

Every party to the appeal may, within a period of 28 days from the date of notification of the recommendation of the Board, request the Board in writing to furnish its reasons for the recommendation, and the Board shall furnish such reasons in writing on payment of such

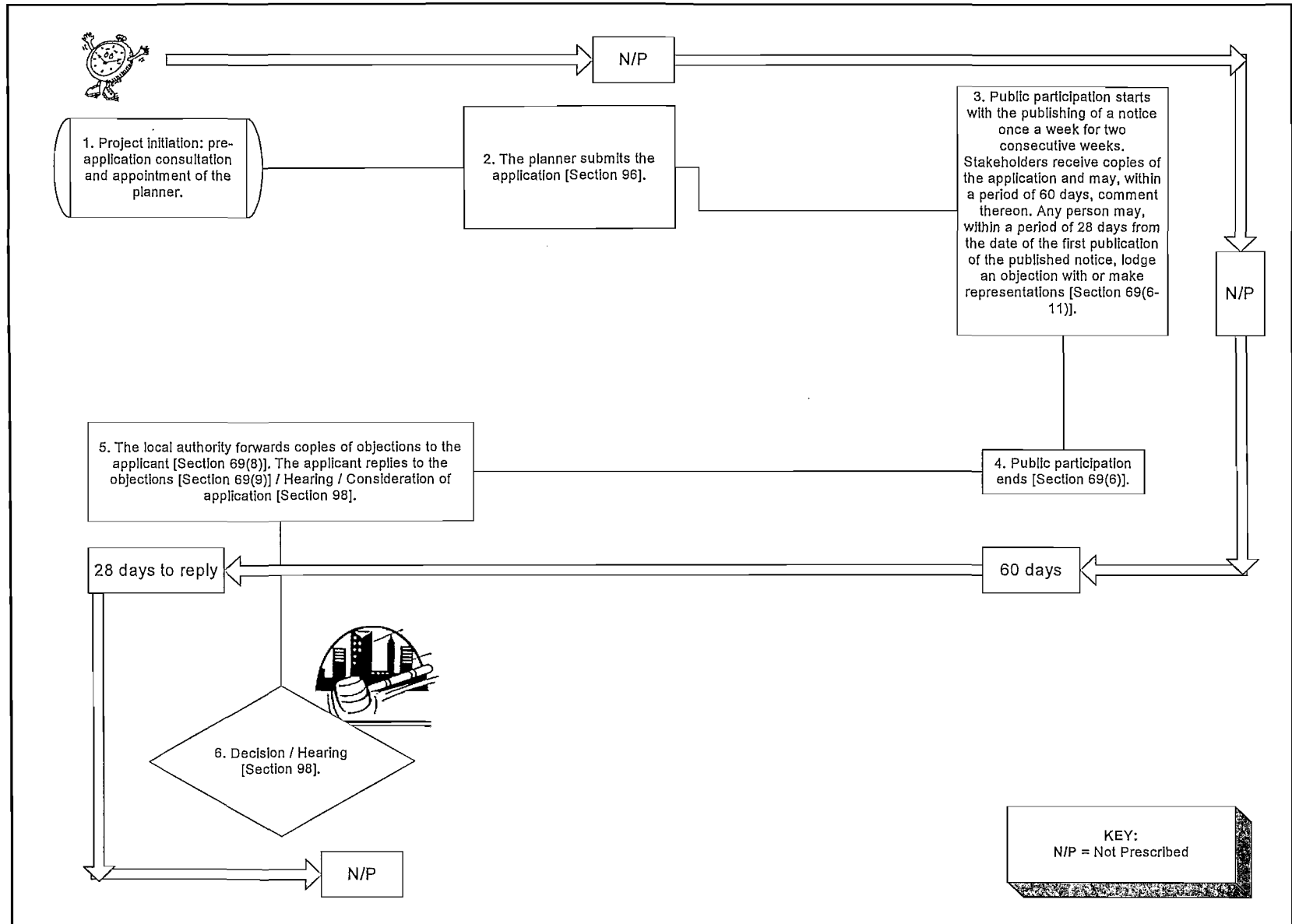
¹ "Board" in so far as the provision of the Transvaal Ordinance (15/1986) is applied in or with reference to a particular province, means, subject to subsection 3(2), the Board established for that province by section 3(1).

fees as may be prescribed. Any person to whom reasons have been furnished may, within a period of 60 days from the date the reasons were furnished, forward a reply thereto to the Board.

After the 60 day period and, where applicable, the period has expired, the Board shall submit the documents as mentioned above through the HOD to the MEC together with the report and, where applicable, the reasons and reply and its comments on such reply. On receipt of the documents the MEC shall consider the appeal and uphold it subject to any condition he may deem expedient, including a condition providing for the amendment of the scheme or application concerned, or dismiss it, and thereupon the HOD shall notify every party to the appeal in writing of the decision of the MEC.

The MEC shall direct one or more of the parties to the appeal to pay all the expenses incurred in connection with the appeal on such terms and conditions as he may determine. When the MEC upholds or dismiss an appeal, he may make such order with regard to costs as he may deem just, and where he makes such an order he shall determine the amount of the costs.

Diagram 3.3: The process for obtaining a planning authorisation in terms of the Transvaal Ordinance

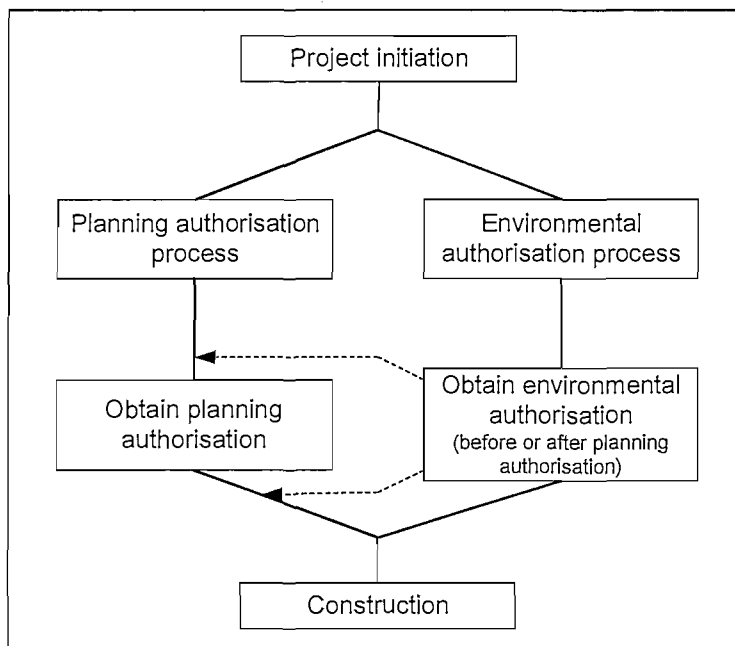


3.4. CONCLUSION

Despite development and environmental management being inseparable, it is evident that individual procedures exist, in terms of different statutes, which are applicable to determine the impact of a particular development. The author agrees with Van Wyk (2007:77) that legislation has not really provided for more integration of procedures to determine, assess and mitigate the effects of development on the environment. Diagram 3.4 illustrates how the planning and environmental authorisation processes are currently implemented as separate authorisation procedures for a single development. Local authorities traditionally required the environmental authorisation to be submitted with the planning application, therefore not allowing parallel authorisation processes. However increasing pressure has been put on environmental authorisations not to delay development and since the latter requirement clearly militates against efficiency, most local authorities (including local authorities in the Mpumalanga Province) decided to issue planning authorisations on the condition that the environmental authorisation is obtained before construction starts.

The research also showed that the environmental and planning authorisation processes have their own timeframes by which to abide. The purpose of the timeframes is undoubtedly to avoid unreasonable time delays in authorisation processes and to ascertain best practice, but it is questionable whether the timeframes actually prevent unreasonable delays (Chapter 4 will explore the challenges associated with timeframes and delays). The sheer number of statutes applicable, the apparent overlapping of functions and requirements, reinforce the conclusion that integrated development planning remains elusive.

Diagram 3.4: Different authorisation processes on the critical path of a single development



CHAPTER 4

LITERATURE REVIEW

This chapter aims to answer sub-research question 2:

2. What are the debates relating to the efficiency of authorisation processes?

4.1. INTRODUCTION

Since the democratic election in 1994 a goal of the South African government has been to promote economic development in order for employment levels to grow and the average level of human development in the country to improve (Weaver *et al.*, 1998:1; Kotze and Van der Walt, 2003:65; Sampson, 2007:77). It is believed that large investment projects, the development of small, medium and micro enterprises and addressing the basic needs of the people will accelerate economic development (Weaver *et al.*, 1998:1). With this increasing emphasis on economic development, EIAs have come to play a crucial role in protecting and conserving our natural resource base while allowing responsible development. Glazewski (quoted by Kotze & Van der Walt, 2003:43) argues that environmental assessment plays a central role in meeting the ideals of sustainability, especially since the EIA process facilitates sound, integrated decision-making, by ensuring that environmental (bio-physical and socio-economic) considerations are explicitly and systematically taken into account as early as possible in the planning process.

However, as explained in Chapter 1, EIAs have also recently been severely criticised for frustrating development by causing unacceptable delays (Sampson, 2007:77). Subsequently the former Minister of Environmental Affairs and Tourism, Marthinus van Schalkwyk (2006), presented what could be considered a vision for the EA system at the launch of the new EIA regulations in 2006. The title of his speech was: *"Environmental Protection: Quicker, Simpler, Better."* Since the promulgation of the EIA regulations in 1997 to 31 March 2009, 59 677 applications have been received by environmental authorities nationally (National Assembly, 2009:5). According to the March 2009 quarterly report (National Assembly, 2009:4) 66% (7 141) of the total number (10 881) of the NEMA EIA applications received in the period 1 July 2006 to 31 March 2009 have been finalised. The latest anecdotal information indicates that approximately 65% of all EIA applications are processed within or faster than the prescribed timeframes. When the NEMA regulations came onto effect in 2006, 6% (368) of the total number of ECA EIA applications (5 859) were still pending. The report indicates that staff vacancies had decreased to 36% at the end of the reporting cycle (March 2009), but also states that there is still a shortage in capacity to ensure an efficient system.

Although great strides have been made in improving the efficiency and effectiveness of the EIA system, the question remains whether the processes have become more efficient, whether co-ordination between environmental authorities has improved and if there is greater clarity in the application of the legislation.

A review of the literature and debates over the previous decade relating to the efficiency of authorisation processes suggests that key debates revolve around the following cross-cutting and interrelated themes (refer to Figure 4.1):

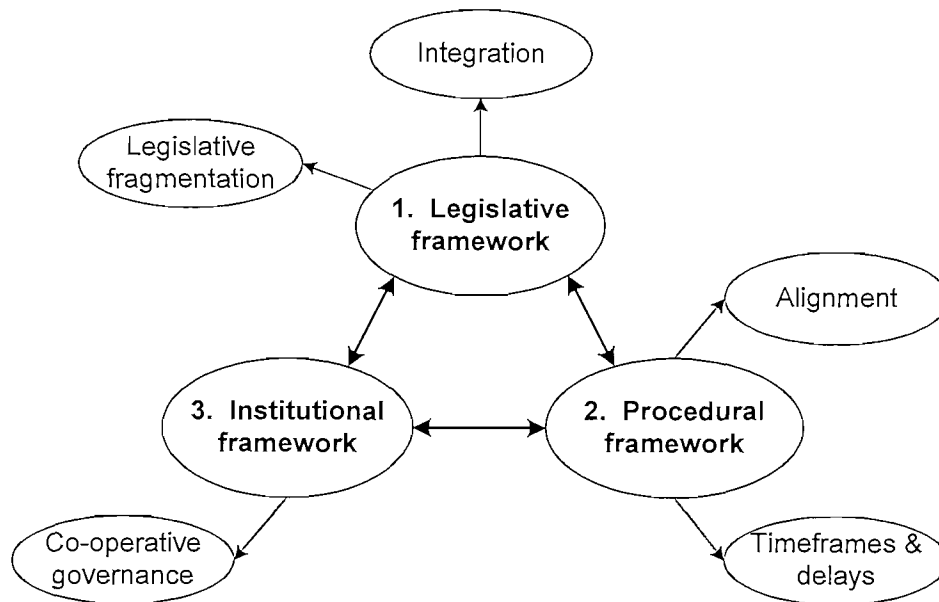


Figure 4.1: The cross-cutting themes relating to the debates around the efficiency of authorisation processes

Theme 1: Legislative framework (refer to section 4.2): Underlying debates include concerns related to legislative fragmentation and the need for integration.

Theme 2: Procedural framework (refer to section 4.3): Examine issues such as the alignment of authorisation processes and issues concerning timeframes and delays.

Theme 3: Institutional framework (refer to section 4.4): Examine challenges related to co-operative governance.

The following sections consider the debates relating to these themes. The chapter concludes in section 4.6 after highlighting the main challenges for EIA process.

4.2. THE LEGISLATIVE FRAMEWORK

4.2.1. LEGISLATIVE FRAGMENTATION

South Africa is a country in dire need of development. In reaction to this need a comprehensive legislative framework was developed that aims to support developers in conducting development, but a number of inhibiting circumstances in the development decision-making process still exist (Kotze & Van der Walt, 2003:65).

The comprehensive legislative framework resulted in numerous acts, in terms of which a developer needs to obtain authorisation for certain activities. Section 24 of the NEMA (107/1998) provides that obtaining an environmental authorisation in terms of section 24(4) of

the Act, does not remove the need to obtain any other environmental authorisation for that activity, which may be required from another organ of state. Furthermore, authorisations or permits obtained under any other law for a listed activity specified in terms of the NEMA does not absolve the applicant from obtaining authorisation under the NEMA. The Act also provides that authorisations or permits required by another organ of state may only be considered if they are in compliance with section 24(4)(d) of the NEMA. A certain activity might therefore be required to obtain authorisations under numerous legislative statutes; consequently different authorisation processes, such as the NEMA and Transvaal Ordinance procedures explored in Chapter 3, must be complied with (Kidd & Retief 2009:20).

Nel (2005:360) argues that the fragmented environmental governance system in South Africa results in duplication and overlapping of procedural requirements, governance mandates and the adoption and use of governance tools (Nel, 2005:360). Figure 4.2 illustrates the cause-and-effect relationship of fragmentation:

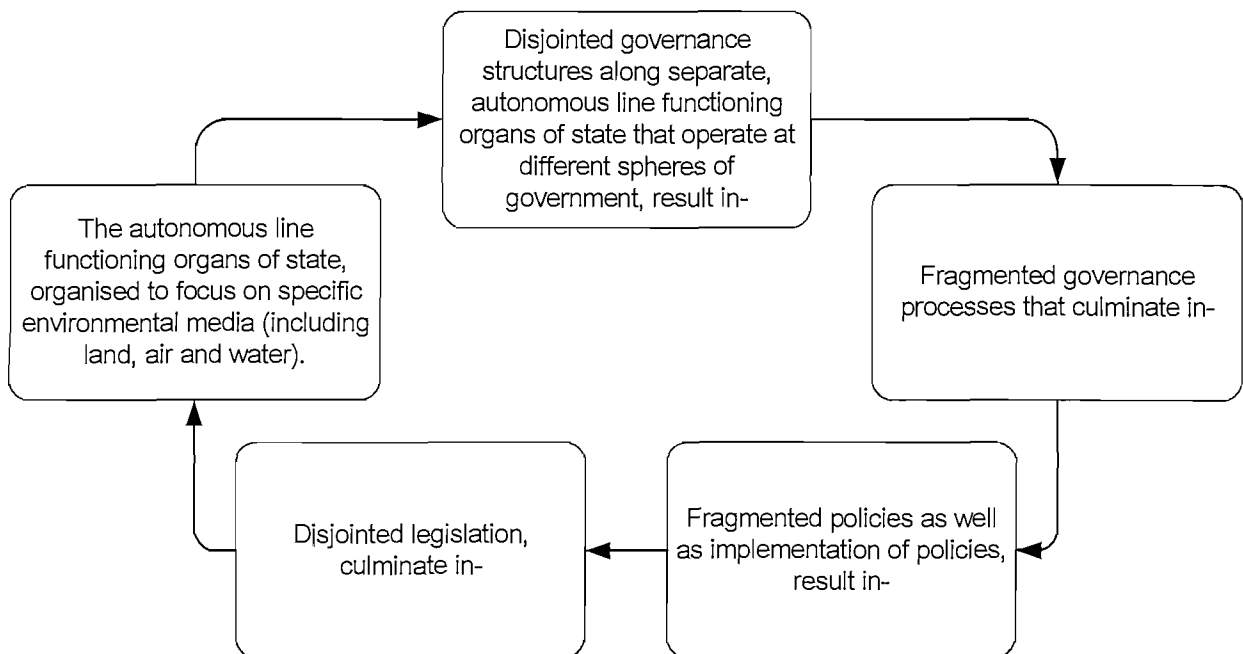


Figure 4.2: The cause-and-effect relationship of fragmentation (Nel, 2005:360, own illustration).

The following characteristics define the nature and extent of authorisation processes in South Africa:

- Different standards are applied to guide approval of authorisations for similar activities;
- Several departments need to issue separate authorisations;
- There is a duplication of required information, while the format of information required differs;
- Few agreements for co-operative governance are formalised and / or implemented;
- The conditions formulated in authorisations issued by different departments are often contradictory; and
- There are differences in the interpretation and implementation of legislation and policies that result in inconsistent behaviour (Nel, 2005:361; Van Wyk, 2007:71).

Another cause of concern is that environmental affairs are not only continuously separated into its own national government department, but are also politically separated from land affairs by allocating environmental affairs to a provincial level of authority and planning to a local level. Land affairs are responsible for regulating the activities, whose impact environmental affairs seeks to evaluate. Therefore this separation does not contribute to the horizontal integration of legislation or the integrative or sustainability approach national legislation strives towards (Jordi *et al.*, 1998:8).

Current legislation requires the co-operation of the different spheres of government and presupposes the sharing of expertise and other scarce resources to avoid the fragmentation of laws and policies and to avoid unnecessary duplication. The White Paper on Spatial Planning, Land Use Management and Land Development (quoted by Van Wyk, 2007:73) acknowledged that a critical problem with multiple authorisations is the overlapping of procedures for the authorisations. Regulation 6 of regulation 385 (SA, 2006:13) promulgated in terms of Chapter 5 of the NEMA provides that, where an application must be made in terms of other legislation, the Minister or MEC must enter into a written agreement with the relevant authority in respect of the co-ordination of the requirements of the various legislation to avoid duplication in the submission of substantially similar information or the carrying out of similar processes (Kidd & Retief 2009:30).

Policy documents and legislation confirm that government is aware of the interplay between development, planning and the environment, since the need for sustainability, co-operative governance and efficiency is a concurrent theme throughout the legislation. However, research conducted by Snyman (2003:298) indicates that existing legislative requirements need to be clarified and aligned, since the current conflicting legislative provisions are difficult to co-ordinate. Jurisdictions and mandates must be better defined, integrated and regulated and should not be vigorously guarded (Snyman, 2003:299).

4.2.2. INTEGRATED ENVIRONMENTAL MANAGEMENT

Scherzer *et al.* (2005:446) and Van Wyk (2007:73) support the view of Snyman (2003:299) that the fundamentally disjointed and fragmented legislative framework justifies a need for an integrated and a more rational system. The term integration is commonly used in the environmental management field. The following variables may be integrated:

- Spheres of government;
- Line functions;
- Environmental management cycle;
- Decision-making cycles in the process of environmental management;
- Tools employed to facilitate integrated environmental management (IEM); and
- Different environmental media, which include water, air and soil (Kotze, 2003:169; Scherzer *et al.*, 2005:444; Van Wyk, 2007:74).

This vision of integration is underpinned by national legislation, which provides for principles of integration and co-operative governance. However, the actual application of these requirements remains questionable (Scherzer *et al.*, 2005:446). Major stumbling blocks remain that hinder government from realising its Constitutional obligations. These challenges include:

Challenge 1: The division between the fields of environmental evaluation and planning that stems from separate methodologies, academic training and practice.

Deep philosophical, methodological and professional differences are fostered from separate academic training, which hinder communication between the two professions. Furthermore the political and legislative separation of environmental affairs from planning only reinforces the distance (Jordi *et al.*, 1998:1). As a result Integrated Environmental Management (IEM) is accused of being largely reactive due to its inappropriate focus on projects, and hence its limited influence on project decision-making and design. It is argued that environmental evaluation is better located at a strategic level where it may have more influence on development decisions, while ensuring the efficient use of limited resources and skills for environmental evaluation (Jordi *et al.*, 1998:6-8; Sampson, 2007:82; Spinks *et al.*, 2003:309; Scherzer *et al.*, 2005:448). However for environmental matters to be considered at a strategic level, planners need to be aware of the importance of environmental management. This awareness should be fostered at an academic level through integrating or linking the planning and environmental management courses at tertiary institutions. This may be the only way to ensure proper communication between the two professions in practice.

Challenge 2: The stand-alone nature of the environmental management procedure perpetuates the separation between planning and environmental evaluation.

Development planning and environmental management are still implemented as two separate activities (Sowman *et al.*, quoted by Jordi *et al.*, 1998:6). This separation results in the assumption in practice that planning may proceed, that the impacts will be managed and addressed in the EIA. Scherzer *et al.* (2005:448) state that *"the avoidance of impacts or adopting a risk-averse and cautious approach towards the environmental impacts is only seriously considered prior to the EIA if it could affect the economic viability of an option, rather than in terms of what resources should actually be valued and conserved."* The economic dimension therefore dominates decision-making and the hope of avoiding impacts later on by reopening previous options is futile. In other words, *"environmental impacts are downplayed until mitigation, not avoidance, is the only real option"* (Scherzer *et al.*, 2005:448-449). Consequently, the responsibility of avoiding environmental impacts currently rests with developers or engineers whilst it is the responsibility of the environmental managers to minimise these impacts later on (Scherzer *et al.*, 2005:450). Integrated Environmental Management (IEM) would encourage environmental management to be a complementary and integral part of the planning, design and decision-making process (Jordi *et al.*, 1998:7-8).

Challenge 3: The political and legislative separation of environmental affairs within government.

The separation of environmental affairs from the other government departments and the lack of integrated legislation and regulations have resulted in uncoordinated planning. The separation of government departments having interests in the development of land has perpetuated the dual decision-making process and the continuation of the state of fragmentation (Jordi *et al.*, 1998:10).

Jordi *et al.* (1998:1) argue that addressing these stumbling blocks should be an exciting challenge for planners and environmental professionals. Integrated environmental planning may only be obtained with a spirit of co-operation and a practical programme that seeks integration. If the challenges facing integration do lie in the broader political, legislative and professional dynamics, progressive planners and environmental professionals need to jointly determine what they should contribute to the process. If the vision of holistic environmental planning is shared, they should seek co-operation in confronting the challenges (Jordi *et al.*, 1998:11).

The White Paper on Spatial Planning gives us the solution for integrating land use planning and environmental issues in an ideal local government scenario. The White Paper explains that it would be possible to align authorisation procedures by locating the function within one sphere of government. This would enable that sphere of government to determine practical approaches to the problem, which will be in line with its capacity and resources. The White Paper acknowledges that the integration of processes would be difficult, but supports the notion of new legislation with a single procedure, providing for thorough yet speedy consideration of applications (Van Wyk, 2007:76).

MacDonald and Brown, propose a move toward the incorporation of the environmental assessment process directly into project designs and planning activities. MacDonald and Brown (quoted by Jordi *et al.*, 1998:6) argue *"in the longer term we should be able to dispose of the separate tool that we currently call EIA."* The following necessary steps are identified for the process of integrating environmental evaluation procedures into the planning practice:

- The internal transformation of the planning profession to embrace the philosophy, insights and techniques that are used in environmental evaluation;
- The environmental profession needs to fashion evaluation tools that are appropriate to planning;
- Formal co-operation is required at a professional and government level;
- Integrate environmental requirements into planning legislation; and
- Promote strategic level planning (Jordi *et al.*, 1998:6).

MacDonald and Brown caution that it might still be too soon for complete procedural integration, but state that a programme that will eventually facilitate this needs to be developed (Jordi *et al.*, 1998:6). Nel (2005:362) developed a model that maps the potential journey of South Africa towards an integrated framework for environmental authorisations. The scenarios focus on practical arrangements and imply a cumulative and progressive advancement, from an initial informal strategy towards one that requires fundamental legal and structural reform. The four scenarios identified are illustrated in Figure 4.3.

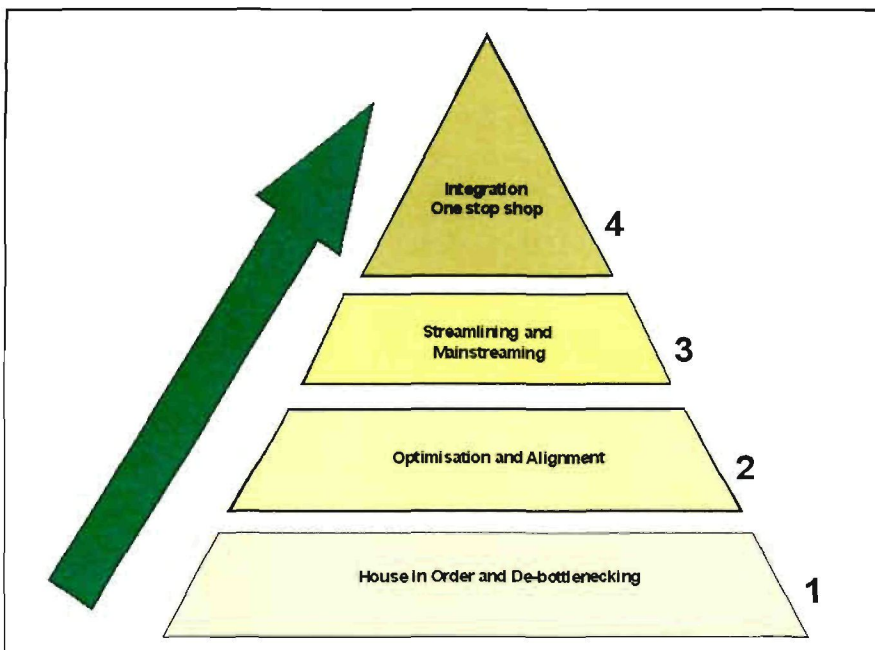


Figure 4.3: Integration scenarios (Nel, 2005:363)

"De-bottlenecking" and house in order

The scenario of "de-bottlenecking" addresses logistical, administrative, staff and procedural issues and the alignment of decision-making competencies (Nel, 2005:363). This scenario won't threaten the independence and mandate of the various spheres of government and no changes to the legal framework are proposed (Nel, 2005:364). This scenario should start with the informal and voluntary alignment of administrative processes to:

- Establish administrative alliances between organs of state;
- Improvement of service delivery;
- Improved understanding of the processes followed by authorities;
- Improved guidance to and access to information for potential investors;
- Optimisation of governance efforts; and
- Improvements in the consistency of governance (Nel, 2005:363).

Research conducted by Snyman (2003:300) suggested the establishment of interdepartmental liaison committees, as was established by the Department of Agriculture, Environmental Affairs and Tourism in the Eastern Cape province. The establishment of such a committee will ensure the involvement of all the relevant authorities and will aim to align the different authorisation processes. The Dutch authorisation system also provides for a pre-application meeting, which involves all relevant authorities, applicants and members of the public. The meetings aim to co-ordinate authorisation activities and to provide the applicant with the relevant information. KwaZulu-Natal Province has established a technical working group, where the developer is directed to the relevant authority and other authorities are invited to examine the application (Snyman, 2003:300).

Increased optimisation and improved alignment

Scenario 2 consists of 5 elements. The first element is to formalise the voluntary and informal relationships established in terms of the previous scenario. The second element would be to establish informal and voluntary relationships with relevant line functions that were not part of scenario 1. Thereafter the informal and voluntary relationships would be extended to line functions operating at national and local spheres of government. Thereafter the relationships established in terms of scenario 1 should be reviewed and enhanced, followed finally by the improvement in post-decision phase follow-up (Nel, 2005:364). A practical example of the voluntary and informal relationship could be in the form of a memorandum of understanding (MOU's) between the relevant departments (Snyman, 2003:301).

Streamlining and mainstreaming

The first element for this scenario would be the structural and legal reform of the decision-making mandates into a streamlined legal and structural format (Kotze, 2003:170; Nel, 2005:364). The formalisation of relationships with environmentally orientated decision-making structures of the national and local spheres of government would be addressed thereafter. The third element would focus on improving existing relationships established within the previous scenarios. Finally governance control over the entire project / development cycle would be formalised (Nel, 2005:364).

The one-stop authorisation shop

With the existence of a multitude of sectoral statutes, different procedures and authorities dealing with applications to develop land, Van Wyk (2007:58) raises the question whether it is

not desirable to introduce some rationalisation into these different processes. Kotze (2003:166) argues that the clarification, simplification and alignment of existing authorisation systems are a fundamental element of integrated governance. Subsequently, Scenario 4 describes the fully integrated, one-stop shop scenario. It is based on integrated legislative and resultant administrative arrangements and requires a fully integrated approach based on a holistic premise. This scenario promotes the formulation of a single act dealing with environmental authorisations in a holistic manner with standardised authorisation application forms and procedures. It is proposed that a centralised body oversees the authorisation procedures and decision-making (Kotze, 2003:171; Snyman, 2003: 301; Nel, 2005:364).

The National Department of Environmental Affairs and Tourism (DEAT) has attempted to develop a one-stop shop approach. The strategy included scheduling a meeting with all relevant departments to clarify information requirements and an attempt was made to follow one process. But this attempt was however not successful. DEAT also attempted to establish an integrated multi-licensing process with the National Nuclear Regulator but administrative, procedural and personnel-related problems prevented this endeavour from succeeding (Snyman, 2003:302). The City of Durban established a one-stop shop but it is also not successful due to a lack of institutional capacity (Snyman, 2003:302). The Western Cape province has successfully aligned the planning and the EIA processes (Snyman, 2003:301). With the introduction of scenarios towards an integrated framework for environmental authorisations, Nel (2005:362) strongly recommended that a staged roll-out be adopted, because he argued that integration will be difficult to obtain if legislation and procedures are not aligned and if there are no co-operative arrangements in place. This may provide the reason for the low success rate of the attempts towards integration.

Kotze (2003:171) states that integration aims to:

- *“Reduce the amount of steps and contacts with authorities that a developer has to make in order to obtain an authorisation for an activity;*
- *Ascertain the most feasible option for the harmonisation of legislation and policies pertaining to infrastructural development;*
- *Provide the means for co-operative governance;*
- *Provide the means for a holistic and integrated approach towards dealing with different environmental media;*
- *Establish institutional role clarification and institutional alignment; and*
- *Facilitate capacity building.”*

An integrated approach may therefore improve the environmental sustainability of development processes, address environmental considerations in development planning efficiently and strengthen the capacity of involved organisations, government departments and individuals (Kotze, 2003:167).

4.3. PROCEDURAL FRAMEWORK

4.3.1. TIMEFRAMES AND DELAYS

Concerns relating to time-consuming bureaucratic processes and slow response from government departments are well documented. The reason for the afore-mentioned is that prolonged processes result in increased development costs, which negatively affects the perceptions regarding authorisation processes (Prinsloo, 2006:4). Prinsloo (2006:4) suggests the implementation of measures to avoid prolonged authorisation processes.

The absence of the provision of timeframes within the ECA regulations was seen to be problematic; hence the new regulations addressed this by providing timeframes within the authorisation processes (Kidd & Retief 2009:34). The aim of the introduction of the timeframes was to avoid unreasonable time delays in authorisation processes via either negligence or purposeful delaying tactics by the different role players (Kotze & Van der Walt, 2003:45-46). The introduction of timeframes seems to be a welcome innovation, but it is questionable whether the delays experienced under the ECA regulations were due to the absence of time limits (Kidd & Retief 2009:34). It is also debatable whether one fixed time period is suitable for all applications (Kotze & Van der Walt, 2003:48). Although timeframes have since been introduced, there is still no guarantee that the authorisation process will be efficient (Kidd & Retief 2009:52).

A careful analysis shows that delays are often caused due to the great number of applications, inadequate skills of officials and serious resource capacity problems (Kotze & Van der Walt; 2003:47; Sampson, 2007:77; Kidd & Retief 2009:34). Kotze and Van der Walt (2003:47) state that *"the flaws lie not in the EIA process but in its poor administrative enforcement by various people."* A study conducted by Kok and Duthie (2003:10) found that a project with higher probable environmental impact, which did not regularly interact with the authority, was approved faster than a project with lower probable environmental impact, which interacted with the authority on a regular basis. In other words the amount of effort invested in a project is directly proportionate to the amount of time to obtain the environmental authorisation. It is therefore concluded that regular interaction with authorities throughout the authorisation process does not necessarily ensure an efficient authorisation process. The study also found that the stage during which issues are introduced into the process, and authorities raising more procedural and administrative issues during the scoping stage, are contributing towards inefficient authorisation processes. Kok and Duthie (2003:10) argue that this is one of the primary reasons for delays during the final stages of the project cycle. If the substantive issues were raised earlier in the process it could have been incorporated earlier in the planning process, which would increase the ability of these issues to influence the project design. Instead the result is an endless amount of alterations and back-and-forth reviews, which increases the time required to obtain the authorisation. During the study, Kok and Duthie (2003:10) also found that authorities seldom stay within the allocated timeframes when reviewing and issuing an authorisation.

Notwithstanding delays are also often caused by EIA consultants who do not understand the process sufficiently, developers seeking to avoid transparent assessment or competitors and other parties with vested interests (Sampson, 2007:77). The incompatibility between the different timeframes has also given rise to numerous delays and concerns are expressed that this results in inadequate decisions based on insufficient information, thereby compromising the quality of decision-making (Osman, 2003:247; Rigby & Diab, 2003:172). Musselman (2006:856) suggests that issues unrelated to environmental review like funding, the prioritisation of other projects, community concerns, or engineering and design evaluation, may delay authorisation processes and that altering legislation and introducing compulsory deadlines will not necessarily reduce delays. Compulsory deadlines may result in applications not being considered properly and decisions will be challengeable on the basis of rationality, reasonableness or other grounds of administrative law review (Musselman, 2006:825; Kidd & Retief, 2009:34 & 52).

Kidd and Retief (2009:54) state that recent attempts to improve authorisation processes are indispensable but that the problems are being dealt with on a rather piecemeal basis. *"It is hoped that the real problems are addressed, rather than tinkering with the legislation, which is not perfect but is not where the real shortcomings lie"* (Kidd & Retief, 2009:54). According to Prinsloo (2006:5) a critical part of resolving delays within authorisation processes is improving communication, interaction and co-operation between the relevant authorities and project team members. Prinsloo (2006:8) explains that increased communication might have certain cost

implications, but that it may ultimately benefit the project through saving time and money by solving problems prior to the commencement of construction.

4.3.2. THE ALIGNMENT OF REGULATORY PROCEDURES

As mentioned previously, there are a multitude of professions dealing with authorisation processes in South Africa, and this resulted in a range of applications having to be prepared and submitted to different governmental organisations (Nel, 2005:360; Snyman & Brent, 2006:2-3). Chapter 3 described the procedures that exist in order to obtain an environmental and planning authorisation but numerous other authorisations could also be required, such as a water use licence (WUL) through the Department of Water and Environmental Affairs (DWEA), and a Heritage Impact Assessment (HIA) could be required to obtain a permit through the National Heritage Resources Agency (SAHRA). Unfortunately, it has become obvious over time that the various authorisation processes do not foster an environment for co-operative governance, as enshrined in the Constitution and the NEMA (Osman, 2003:248). However, a number of documents such as the White Paper on Spatial Planning, Land Use Management and Land Development acknowledge the current overlap between the procedures for land development and EIA in terms of planning and environmental legislation (Van Wyk, 2007:73).

These documents recognise that the challenge is to align the various application processes with the various project lifecycle phases for the project. Vermaak (2006:2) states that initial project planning coupled, where necessary, with specialist legal advice on what environmental authorisations are required to undertake a project, how these should be undertaken and how these processes may be aligned, should optimise the overall implementation process. It is crucial that the environmental practitioner follow a legally defensible process, however a simple over-cautious approach is not desirable, since process efficiency and cost-effectiveness are also crucial aspects of the authorisation process. Therefore a well-considered environmental authorisation strategy or plan is critical. Such a strategy or plan should include the identification of:

- *"All relevant authorisations;*
- *Scientific or technical information;*
- *Overlaps between the required processes;*
- *Opportunities for exemptions;*
- *General or specific requirements imposed by the relevant departments; and*
- *The authorising departments' formal sign-off"* (Vermaak, 2006:3).

The alignment of authorisation processes would result in the public being better served, improved quality and extent of public involvement in decision-making, improved quality of applications, increased co-operative governance, more efficient use of scarce human resources and the reduction of negative 'turf' squabbles. The quality of decision-making would also improve due to a more integrated decision-making process (Osman, 2003:251; Van Wyk, 2007:73). Osman (2003:251) states that we need to have faith in a more efficient system where the processes have been integrated, as this will free up time and resources to consider EIAs and will also provide an environment for capacity building.

4.4. INSTITUTIONAL FRAMEWORK

4.4.1. CO-OPERATIVE GOVERNANCE

Environmental policy, governance and legislation have undergone major transformations and have embraced tools, structures and processes to facilitate sustainable environmental governance. A modern and comprehensive framework within which environmental governance is executed is provided for, but unfortunately structural fragmentation of governance into separate, disjointed line functions at all three spheres of government and within the nine provinces remain (Kotze, 2003:167; Snyman, 2003:295; Nel, 2005:356; Vermaak, 2006:4). This reality results in the inefficient review of authorisations required by the different processes by multiple departments. Furthermore the processes result in the duplication of information that is submitted and subsequent increased administration, which also hampers effective service delivery by government departments (Kotze, 2003:167; Snyman, 2003:295; Vermaak, 2006:4; Van Wyk, 2007:57).

Nel (2005:356) argues that current policies provide interesting initiatives to address the challenges posed by disjointed and fragmented governance processes, one of which is the strategy of co-operative governance. The written agreements in terms of regulation 6 of regulation 385 (SA, 206) promulgated in terms of the NEMA, should make running multiple authorisation processes procedurally easier and relieve the burden of co-ordinating processes. The purpose of the agreements proposed in regulation 6 is to create certainty and ensure that the relevant authority realises its responsibility for co-ordination. Vermaak (2006:7) urges industry and environmental practitioners to actively encourage this approach.

Sampson (2007:81) challenges the decision made by the Constitutional Court in the Fuel Retailers Association case and argues that the court placed insufficient weight on the obligation for co-operative governance. He argues that the court was right in insisting that socio-economic issues needed to be revisited due to the lapse of time between the planning decision and the EIA decision, but should not have insisted that the EIA authority should assess the socio-economic impact. Government departments should be required to work seamlessly and effectively together, to pool their various resources and fields of expertise for a full assessment of the impacts, whether social, economical or environmental. The court therefore underscored the potential value of co-operative governance (Sampson, 2007:81). Furthermore, Sampson (2007:82) argues that the complete assessment of the entire impact of an activity can only be assessed at a strategical level through co-operatively pooling all government resources. This would determine the types of development that are suitable for certain areas and any future EIAs could be limited to assessing the environmental impacts of the project itself (Sampson, 2007:82). Research conducted by Snyman (2003:299) suggested that an overarching body is required to facilitate and co-ordinate the different authorisation processes required by the different authorities. It was also suggested that communication between authorities be improved and that education and capacity building are crucial. It should be noted that improvement cannot only be measured according to the speed of decision-making and that a qualitative and quantitative improvement should be aspired to.

It is evident that DEAT agrees with the above discussions, since the Department recently initiated a five-point action plan for improving the efficiency and effectiveness of the EIA process. The action plan aims to:

1. Expedite the processing of applications still pending;
2. Develop and implement 'strategic spatial systems' (such as EMFs);
3. Build and maintain human resource capacity;

4. Develop and implement decision-support systems and tools (e.g. guidelines); and
5. Develop and implement province-specific generic capacity and support strategies (Kidd & Retief 2009:54).

4.5. CHALLENGES FOR THE EIA PROCESS

Weaver (1998:4) provided the following definition of what constitutes a good EIA process in terms of international experience and accordingly states that a good EIA process:

- *"Is aligned with the legal requirements, has clear purpose and clearly defined responsibilities at the various stages of the process;*
- *Includes appropriate procedure controls that ensure an appropriate level of assessment, well defined scope and relevant timetables;*
- *Includes structured opportunities for public and stakeholders involvement which are tailored to the circumstances;*
- *Is focussed on the key issues, provides relevant information with explicit linkages to approval and decision-making; and*
- *Includes follow-up and feedback loops to ensure complaints and effects monitoring, input management, auditing and evaluation."*

Many of the challenges experienced in terms of the alignment and efficiency of authorisation processes relate to the latter definition and may be divided into two distinct groups, namely the intrinsic shortcomings and extrinsic shortcomings.

4.5.1. INTRINSIC SHORTCOMINGS

According to Spinks *et al.* (2003:308), intrinsic shortcomings cannot easily be addressed without a significant paradigm shift and appropriate legal reform. Intrinsic shortcomings include the following:

- a) Lack of commitment
There is no real commitment to sound environmental management and / or the EIA process. Despite the lip-service paid to the importance of environment management, developers' first priority is to develop quickly and to maximise profit (Spinks *et al.*, 2003:308). In other words EIAs are often viewed as a mandated process rather than a critical part of determining project feasibility (Snyman, 2003:300; Nel, 2005:361; Musselman, 2006:857; Van Wyk, 2007:78).
- b) The separation between environmental evaluation and planning
Deep philosophical, methodological and professional differences are fostered from separate academic training, which hinder communication between the two professions. Furthermore the political and legislative separation of environmental affairs from planning only reinforces the distance (Jordi *et al.*, 1998:1). As a result Environmental management is accused of being largely reactive due to its inappropriate focus.
- c) Project focus
EIAs are typically reactive as they are used as a tool at project level and accordingly have little leverage beyond the influence of that single project (Jordi *et al.*, 1998:7; Spinks *et al.*, 2003:309; Scherzer *et al.*, 2005:448).

d) Timing

EIAs are retrospective assessment tools, which are usually undertaken too late in the decision-making cycle when its influence on alternatives and designs is limited (Jordi et al., 1998:7-8; Kok & Duthie, 2003:10; Spinks et al., 2003:309; Scherzer et al., 2005:448; Sampson, 2007:82).

e) Defining significance

The EIA process is inherently subjective in nature and may never escape the subjectivity in attempting to define significance (Jordi et al., 1998:7; Spinks et al., 2003:309; Kidd & Retief, 2009:70).

f) Bias and confidentiality

The EIA process should fundamentally be objective and transparent. However, developers may introduce bias to the EIA by determining restrictive terms of reference and private sector proponents may refrain from disclosing confidential information even if it has significant bearing on the EIA process (Spinks et al., 2003:309; Sampson, 2007:77).

4.5.2. EXTRINSIC SHORTCOMINGS

The extrinsic shortcomings are not necessarily innate to the EIA process and show a much greater degree of regional variation (Spinks et al., 2003:310). The following extrinsic shortcomings are experienced:

a) Capacity problems

Many government officials are not capacitated to evaluate authorisation applications, which result in unnecessary delays and inconsistent behaviour (Kotze & Van der Walt; 2003:47; North West Local Agenda 2012 (quoted by Kotze, 2003:169); Snyman, 2003:297; Spinks, 2003:313; Nel, 2005:356; Sampson, 2007:77; Kidd & Retief, 2009:34; National Assembly, 2009).

b) Time delays

Time delays during authorisation processes are often caused due to the great number of applications, inadequate skills and serious resource capacity problems. The result is increased development costs, which negatively affects the perceptions regarding authorisation processes (Kok & Duthie, 2003:10; Kotze & Van der Walt; 2003:47; Osman, 2003:247; Rigby & Diab, 2003:172; Snyman, 2003:297; Nel, 2005:356; Musselman, 2006:856; Prinsloo, 2006:4; Sampson, 2007:77; Kidd & Retief, 2009:34).

c) Lack of financial and human resources

Government is experiencing a lack of financial and human resources, which ultimately result in officials being overworked, which in turn results in high staff turnover (Jordi et al., 1998:7-8; North West Local Agenda 2012 (quoted by Kotze, 2003:169); Osman, 2003:251; Snyman, 2003:297; Spinks et al., 2003:309; Nel, 2005:361; Scherzer et al., 2005:448; Van Wyk, 2007:73).

d) Public participation

Research conducted by Snyman (2003:297) identified that public participation processes are time-consuming and expensive, because it is difficult to identify all the relevant stakeholders and to get the information to them.

e) Lack of co-operative governance

There is inadequate consultation and communication between the different spheres of government, between government departments, and also within government departments (Kotze, 2003:167; North West Local Agenda 2012 (quoted by Kotze, 2003:169); Osman, 2003:248; Snyman, 2003:297; Spinks et al., 2003:313; Nel, 2005:361; Sampson, 2007:82; Van Wyk, 2007:73). The result is the duplication and overlapping of governance effort, political rivalry and subsequent contradictory conditions in authorisations (Jordi et al., 1998:7-8; McDaid, 2000:216; Kotze, 2003:167; Snyman, 2003:295; Nel, 2005:356; Vermaak, 2006:4; Van Wyk, 2007:73; Kidd & Retief, 2009:30).

f) Consultants / Lack of effective screening

Many environmental consultants or specialists are not properly qualified to do EIAs or specialist studies, resulting in inadequate reports which ultimately increase the workload of the relevant authority (Snyman, 2003:298; Spinks et al., 2003:313).

g) Legislative and administrative problems

There are a multiplicity of fragmented legislation, which results in duplication and overlapping of procedural requirements, governance mandates and the adoption and use of governance tools (Jordi et al., 1998:8; North West Local Agenda 2012 (quoted by Kotze, 2003:169; Snyman, 2003:298; Spinks et al., 2003:313; Nel, 2005:361; Scherzer et al., 2005:446; Vermaak, 2006:4; Van Wyk, 2007:71; Kidd & Retief, 2009:54)

h) Follow-up, monitoring and compliance

There is a lack of follow-up and monitoring and the adequacy of remedies provided for in cases where the developer fails to comply with legislation are questionable (North West Local Agenda 2012 (quoted by Kotze, 2003:169); Snyman, 2003:298; Nel, 2005:356; Kidd & Retief, 2009:70).

4.6. CONCLUSION

The former Minister of Environmental Affairs and Tourism, Marthinus van Schalkwyk, envisioned an EA system that is quicker, simpler and faster at the launch of the new EIA regulations in 2006. The need for the first aim related to quicker authorisation processes is evident from discussions around timeframes and the delays currently experienced. Debates corroborate with a statement made by Kidd and Retief (2009:69) that government's approach to improving efficiency has been through redrafting legislation. Spinks et al. (2003:316) recommend that "*authorities need to step from behind the legal web which they have erected in an attempt to make the decision-making process systematic, predictable and defensible to recognise that the environment is diverse and that environmental impacts are broad ranging and will not be adequately addressed by such a dogged perspective.*" If we continue introducing new legislative measures whenever faults are found with current processes, we move away from the ideal of sustainable development and not towards it (O'Beirne & Boer, 2001:212). Kidd and Retief (2009:69) agree that the problem mainly lies with the inapt implementation of the legal mandate prescribed in legislation. "*It holds true that poor legislation can be implemented through strong capacity in government – but not the reverse*" (Kidd & Retief, 2009:69). Government's environmental assessment capacity both in terms of the number of personnel and their levels of experience needs to improve greatly (Kidd & Retief 2009:69). Experience in dealing with the complex issues inherent to EIA is required but the circulation of personnel has led to a lack in institutional memory. In an attempt to improve efficiency, government has been drafting more prescriptive legislation aiming to 'clarify' requirements. However, this only

provides less opportunity for officials to apply their knowledge. Efficiency should rather be attained through empowering officials to exercise sound judgment (Kidd & Retief 2009:70).

The second aim is towards 'simpler' processes and legal requirements that are easier to understand. Kidd and Retief (2009:70) argue that decision-making in relation to environmental assessment is bound to become even more complex due to the diverse contexts within which it operates. Research conducted by Snyman (2003:300) suggests that provision should be made for a central advisory office, which should supply information on the applicable legislation, authorisations and permits. The advisory office should also be able to provide all relevant application forms, including guidance on the procedures to be followed. Furthermore, Snyman (2003:300) suggests the record keeping of all authorisations and permits issued.

The final objective reflected in the vision is that of a 'better' environmental assessment system. The problem of evaluating whether this objective is being achieved is that, no baseline exists against which the current situation may be compared. However, the review of the literature pertaining to the efficiency of authorisation processes indicated that the various challenges that were debated since 1998 are still being debated. Therefore, the improvement of the environmental assessment system is questionable. The author agrees with Kidd and Retief (2009:70) that it is necessary to set a performance baseline for the continual improvement of the environmental assessment system over time in order for the environmental assessment fraternity to be able to prove environmental assessment's added value.

The high profile discussions on environmental assessment confirm that environmental assessment has had a major influence on developmental processes in South Africa. Some would argue that it has contributed negatively through delays and endless administrative red tape, while others would argue that environmental assessment has made valuable contributions in the form of participative decision-making and raising the profile of the environment. However, since the early inception of environmental assessment in South Africa it has been stressed that it should not be seen as anti-development or as a barrier to development. This would inevitably lead to animosity from politicians and developers, something environmental assessment can ill afford. Rather environmental assessment should be seen as a value-adding tool, which aims to ensure that development decisions support more sustainable alternatives (Kidd & Retief, 2009:70-71).

CHAPTER 5

CASE STUDY AND DATA ANALYSIS

This chapter aims to address the following sub-research questions:

3. How are the processes implemented and aligned in practice?
4. How efficient are the authorisation processes?
5. Why do process inefficiencies occur?
6. How can the efficiency of authorisation processes be improved?

5.1. INTRODUCTION

The applicable legislative procedures and their relation to each other were summarised, illustrated and explained in detailed diagrams in Chapter 3. It was concluded that individual procedures exist, in terms of different statutes, which are applicable to determine the impact of a single development. Diagram 3.4 illustrated how the planning and environmental authorisation processes are currently implemented as separate authorisation procedures for a single development. It was also explained that each of these procedures has their own timeframes by which to abide. The following sections introduce the case studies and the data analysis results for the different case studies (sections 5.2 to 5.3). The analysis of the case study provides the opportunity to determine how the processes are implemented and aligned in practice, how efficient the authorisation processes are and to identify where and why delays occurred. Finally, government officials and consultants provide the possible causes of inefficient processes and propose recommendations for improving the efficiency of authorisation processes (sections 5.3.4 and 5.3.5).

The efficiency of the case studies' processes is therefore evaluated and a brief explanation is given below of the criteria used for the evaluation of efficiency. Efficiency in the NEMA processes were evaluated based on whether the authorisations were issued within the prescribed timeframes, while the efficiency of the planning processes where no prescribed timeframes exist, were evaluated based on timeframes considered to be reasonable by the relevant role players. The planner provided the timeframe against which the efficiency of the planning process was compared.

5.2. THE SINGLE CASE ANALYSIS

5.2.1. CORRIDOR HILL

5.2.1.1. Introduction

A rezoning application was lodged in terms of Section 56 of the Transvaal Town Planning and Townships Ordinance (15/1986) to amend the Witbank Town Planning Scheme (1991), in order to establish a township on the Remaining Extent of Portion 129 of the farm Zeekoewater 311 J.S., Mpumalanga Province.

The township is a mixed-use development, which includes business land uses, high-class residential land uses and a hotel. The site is located east of the Witbank central business district (CBD) in President Avenue, opposite the Ridge Casino and adjacent to the Highveld Mall. The extent of the property is 18.5 Ha. The property was previously zoned for "Agricultural" purposes but was vacant at the time when application was submitted.

5.2.1.2. The planning authorisation process for Corridor Hill

The planner was appointed on 1 August 2006 and the town planning application was submitted on 12 October 2006, 72 days after the planner was appointed. These 72 days is the period available to the planner to finalise the application and to obtain all the necessary information, such as the relevant specialist studies. Advertisements were published on 12 and 19 October 2006 and a notice was also put on the site from 12 to 26 October 2006. The public had 28 days (until 9 November 2006) and government departments had a period of 60 days (until 12 December 2006) to comment on the proposed development (refer to Table 5.1 for the summary of the prescribed and actual steps of the planning process for Corridor Hill).

It is not clear whether comments from the public and government departments were received within the timeframes provided. Objections were received from neither the public nor any government departments. The application was approved on 20 March 2007, which is approximately 5 months (154 days) after the application was submitted (refer to Figure 5.1 for an illustration of the planning process for Corridor Hill).

Table 5.1: Summary of the prescribed and actual steps in the planning process for Corridor Hill

Steps	Corridor Hill Transvaal Ordinance process	Responsibility	Prescribed timeframe (days)	Actual time (days)	Cumulative prescribed timeframe (days)	Cumulative actual time (days)	Project dates
1	Appointment	Applicant	-	-	-	-	1/8/2006
2	Submit application	Consultant	-	72	-	72	12/10/2006
3	Public participation start	Consultant/ Local authority	-	0	-	72	12/10/2006
4	Public participation end	Consultant/ Local authority	60	60	-	132	12/12/2006
6	Decision	Local authority	-	94	-	226	20/3/2007

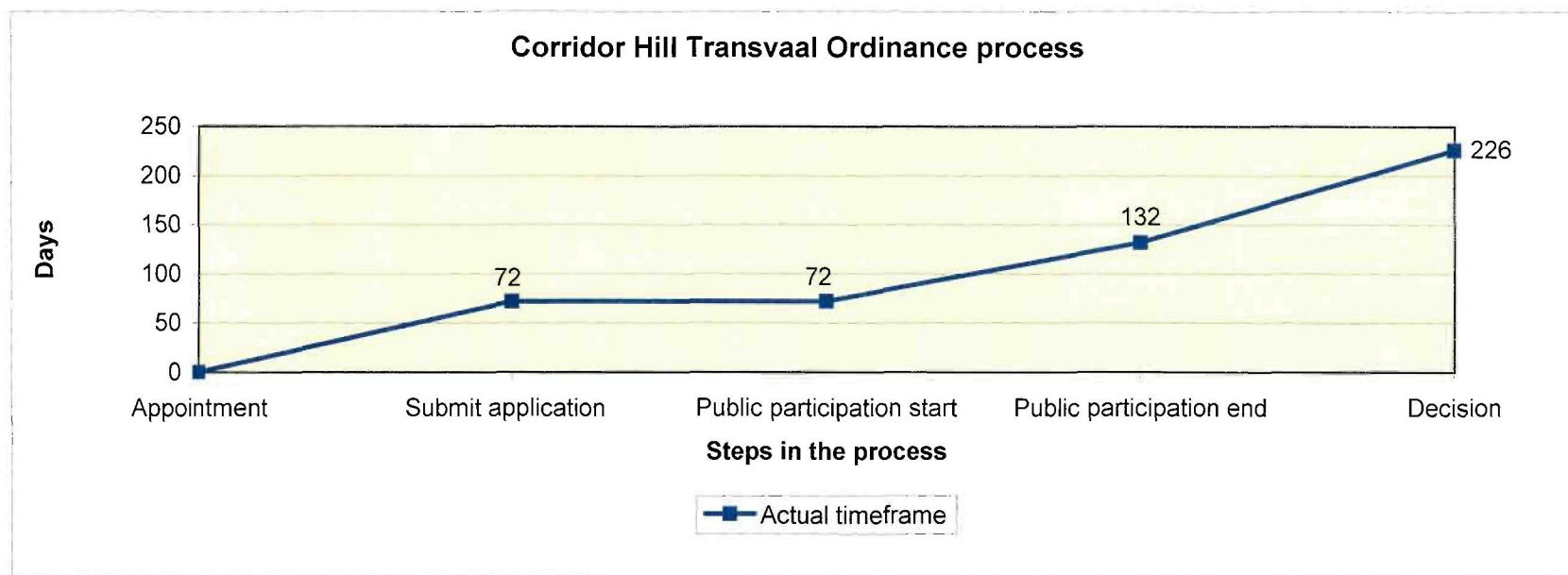


Figure 5.1: An illustration of the planning process for Corridor Hill

5.2.1.3. The environmental authorisation process for Corridor Hill

Due to the nature and extent of the proposed development, the regulations (SA, 2006) required that the development be subjected to a basic assessment. The environmental consultant was appointed at approximately the same time as the planner on 1 August 2006. The environmental assessment practitioner (EAP) submitted the notice of intent to submit a basic assessment on 1 October 2006, 2 months (60 days) after they were appointed. The competent authority acknowledged receipt of the notice of intent 8 days later on 9 October 2006 (refer to Table 5.2 for a summary of the prescribed and actual steps of the environmental process for Corridor Hill).

The EAP initiated the public participation process on 17 November 2006, 39 days after the acknowledgement of the notice of intent. The public and relevant stakeholders (government departments and organisations) had a period of 30 days, approximately until 17 December 2006, to comment on the application. It is not clear whether comments from the public or the government departments were received within the timeframe provided. Objections were neither received from the public nor any government departments.

Approximately 4 months (119 days) after the initiation of the public participation process, the application form and basic assessment report were submitted on 19 March 2007. The period between the appointment of the EAP and submission of the report is the period available to the EAP to obtain all the necessary information, such as the specialist studies, in order to finalise the report. In this case this stage of the process required approximately 7 and a half months (226 days).

The competent authority accepted the application form and basic assessment report (BAR) on 22 March 2007, only 3 days after it was submitted. The prescribed timeframe for the acceptance of the application form and BAR is 14 days. The BAR was approved on 25 April 2007, 35 days after the acceptance of the report. The prescribed timeframe for issuing a decision on a BAR is 30 days. The competent authority therefore exceeded this timeframe by 5 days (refer to figure 5.2 for an illustration of the environmental process for Corridor Hill).

Table 5.2: Summary of the prescribed and actual steps in the environmental process for Corridor Hill

Steps	Corridor Hill basic assessment process	Responsibility	Prescribed timeframe (days)	Actual time (days)	Cumulative prescribed timeframe (days)	Cumulative actual time (days)	Project dates
1	Appointment	Applicant	-	-	-	-	1/8/2006
2	Submit notice of intent	Consultant	-	60	60	60	1/10/2006
3	Acknowledge notice of intent	Authority	-	8	68	68	9/10/2006
4	Public participation	Applicant/ Consultant	-	39	107	107	17/11/2006
5	Submit application form & report	Applicant	-	119 ²	226	226	19/03/2007
6	Review application, accept or reject	Authority	14	3	240	229	22/3/2007
7(b)	Review application & report & issue decision	Authority	30	35	270	264	25/4/2007

* The red indicates areas where delays occurred.

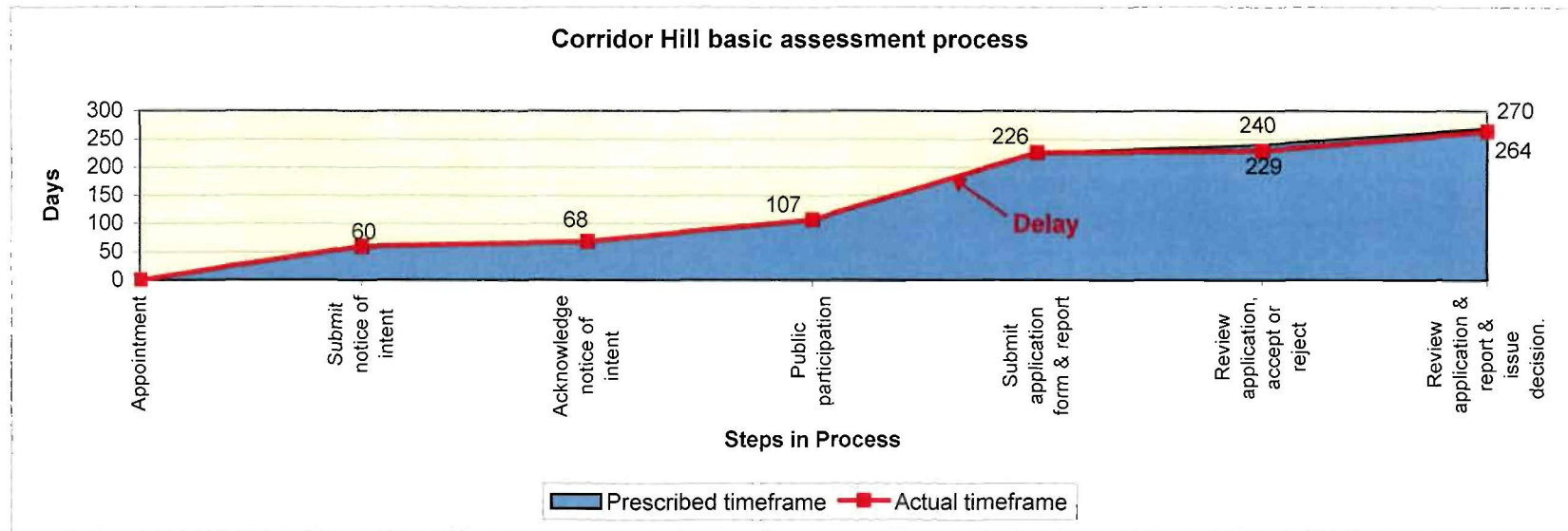


Figure 5.2: An illustration of the environmental process for Corridor Hill

² Take note that since no prescribed timeframe is provided for the submission of the application form and BAR, the delay cannot be measured in table 5.2 or illustrated in figure 5.2. However, it was found that a delay occurred during this stage of the process as evaluated against the timeframe considered to be reasonable.

5.2.1.4. The alignment of the processes for Corridor Hill

Project initiation

Discussions with the EAP and planner revealed that both processes were initiated at approximately the same time.

Public participation

The public participation for the planning process was initiated from 12 October 2006 to 12 December 2006 and from 17 November 2006 until approximately 17 December 2006 for the environmental process. The planning process' public participation process was initiated 36 days prior to the public participation for the environmental process (refer to Figure 5.3 illustrating the alignment of the two processes). The orange lines in Figure 5.3 indicate the stages at which the public participation was conducted. It is concluded that the two processes conducted their individual public participation at the same time during November and December and therefore it could have been integrated to avoid duplication.

Submission of the applications

The planning application was submitted on 12 October 2006 and the BAR was submitted on 19 March 2007. Usually the EIA application is submitted before the planning application but in this particular case the planning application was submitted 5 months (154 days) prior to the BAR. The reasons for the delay in submitting the BAR will be explored in section 5.3.2.1.

Issuing of decisions

The planning application was approved on 20 March 2007 and the environmental authorisation was issued on 25 April 2007. The planning application was approved 38 days prior to the environmental authorisation being issued. Subsequently, as explained in section 3.4, the planning application was approved conditionally, subject to the environmental authorisation being issued. The EIA process delayed the development by approximately 1 month.

Table 5.3: The alignment of processes for Corridor Hill

The alignment of Corridor Hill processes		
Steps	Basic assessment process (days)	Transvaal Ordinance process (days)
1	-	--
2	60	72
3	68	72
4	107	132
5	226	132
6	229	226
7	264	-

* For descriptions of the different steps, refer to Tables 5.1 and 5.2.
The red indicates areas where delays occurred.

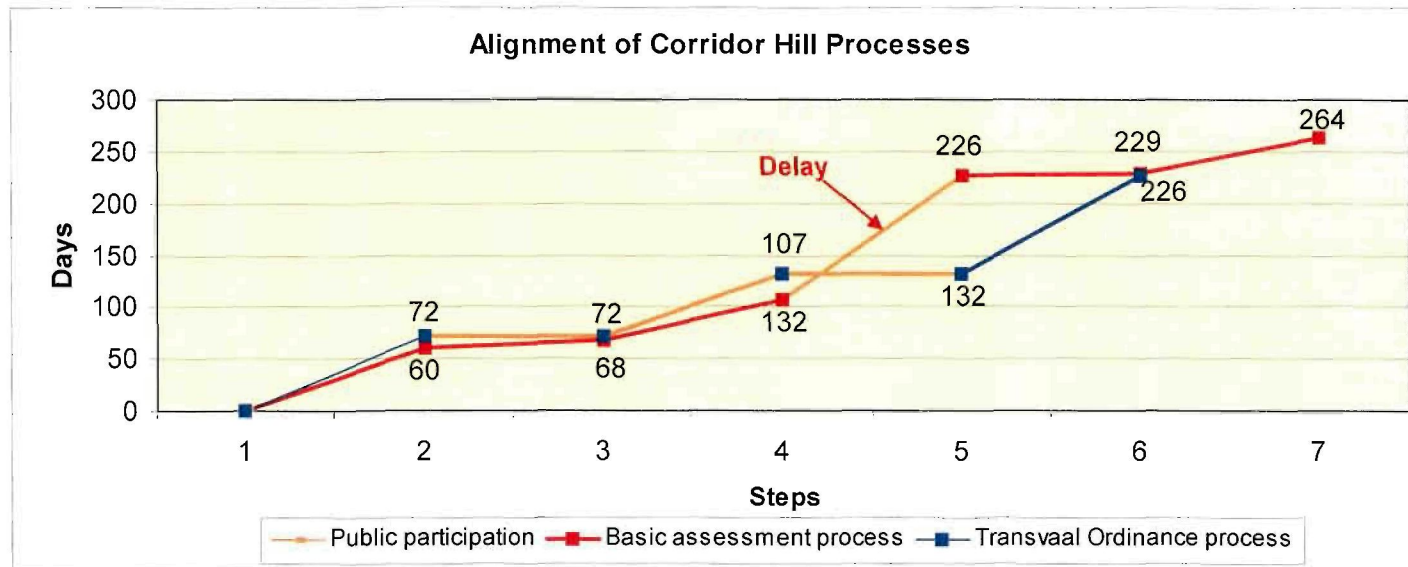


Figure 5.3: An illustration of the alignment of processes for Corridor Hill

5.2.2. DUVHA PARK EXTENSION 2

5.2.2.1. Introduction

An application was lodged in terms of Section 96(1) of the Transvaal Town Planning and Townships Ordinance (15/1986) to amend the Witbank Town Planning Scheme (1991) in order to establish a township on Portion 79 (a Portion of Portion 71) of the farm Klipfontein 322 J.S. and Portion 1 of the Farm Klippoort 334 J.S., Mpumalanga Province.

The township is a mixed-use development containing residential, business, educational, institutional, special and private open space erven. The site is situated adjacent the R544 and is located at the boundary of the urban edge. The extent of the site is 4.0662 Ha. The properties were previously zoned for "Agricultural" purposes but the following existing activities could be found on the properties:

- North: Spring Valley informal settlers located next to the Naauwpoort Municipal Sewer Treatment plant. The local authority was in the process of relocating the informal settlers to a formal site at the time when the application was submitted;
- East: A truck depot, sport bar and a restaurant;
- South: Numerous illegal activities including informal settlers and informal trading activities. Farming activities were present on the south-eastern portion of the property; and
- West: A middle-income residential development and a primary school.

5.2.2.2. The planning authorisation process for Duvha Park Extension 2

The planner was appointed on 1 September 2006 and the town planning application was submitted on 1 December 2006, 3 months (91 days) after the planner was appointed. The public participation process was initiated on 1 December 2006 when the application was submitted. Advertisements were published on 1 and 8 December 2006 and a notice was put on site from 1 to 15 December 2006. The public had 28 days (until 29 December 2006) and government departments had 60 days (until 1 February 2007) to comment on the proposed development (refer to Table 5.4 for a summary of the prescribed and actual steps for the planning process of Duvha Park Extension 2).

It is not clear whether comments from the public or government departments were received within the timeframes provided. Objections were received from neither the public nor any government departments. The application was approved on 14 May 2008, which is approximately 1 year and 8 months (607 days) after the planner was appointed (refer to Figure 5.4 for an illustration of the planning process for Duvha Park Extension 2). The local authority therefore required 1 year and 5 months (516 days) to issue a decision.

Table 5.4: The planning process for Duvha Park Extension 2

Steps	Duvha Park X2 Transvaal Ordinance process	Responsibility	Prescribed timeframe (days)	Actual time (days)	Cumulative prescribed timeframe (days)	Cumulative actual time (days)	Project dates
1	Appointment	Applicant	-	-	-	-	1/9/2006
2	Submit application	Consultant	-	91	-	91	1/12/2006
3	Public participation start	Consultant/ Local authority	-	0	-	91	1/12/2006
4	Public participation end	Consultant/ Local authority	-	60	-	151	1/2/2007
6	Decision	Local authority	-	456	-	607	14/5/2008

* The red indicates areas where delays occurred.

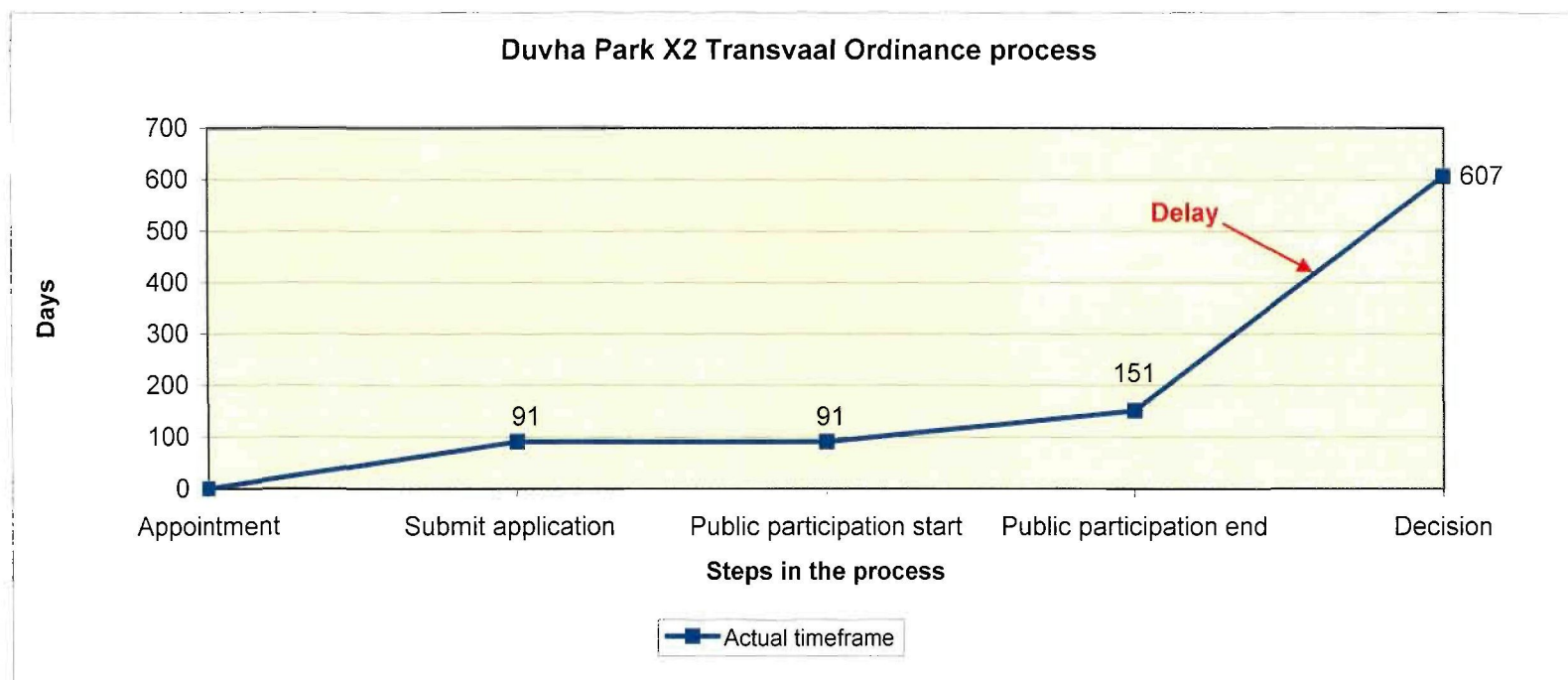


Figure 5.4: An illustration of the planning process for Duvha Park Extension 2

5.2.2.3. The environmental authorisation process for Duvha Park Extension 2

Due to the nature and extent of the proposed development, the regulations (SA, 2006) required that the development be subjected to scoping and EIA. The environmental consultant was appointed at approximately the same time as the planner on 1 November 2006. The EAP submitted the application form on 8 November 2006, 7 days after they were appointed. The competent authority accepted the application form 14 days later on 22 November 2006 (refer to Table 5.5 for a summary of the prescribed and actual steps for the environmental process for Duvha Park Extension 2).

Meanwhile the EAP initiated the public participation process on 10 November 2006. The public and relevant stakeholders had a period of 30 days, approximately until 10 December 2006, to comment on the application. It should be noted that for this case study the EAP initiated the public participation before receiving the written notice of the acceptance of the application form from the competent authority. It is not clear whether comments from the public or government departments were received within the timeframe provided. Objections were received from neither the public nor any government departments.

The scoping report and plan of study for EIA were submitted 21 days after the acceptance of the application form on 14 December 2006. The period between the appointment of the EAP and submission of the report is the period available to the EAP to obtain all the necessary information, such as the relevant specialist studies, in order to finalise the report. In this case 42 days were required for the finalisation of the report.

The competent authority accepted the scoping report on 10 January 2007, 24 days after it was submitted. The prescribed timeframe for the acceptance of the scoping report is 30 days. The EIA report and plan of study for EIA were subsequently submitted on 16 February 2007 and the competent authority accepted the reports on 22 February 2007, only 6 days after submission. The prescribed timeframe for accepting the EIA report is 60 days. The application was however only approved on 31 May 2007, 3 months (94 days) after the EIA report was accepted, opposed to the prescribed timeframe of 45 days (refer to Figure 5.5 illustrating the environmental process for Duvha Park Extension 2).

Table 5.5: The environmental process for Duvha Park Extension 2

Steps	Duvha Park X2 scoping and EIA process	Responsibility	Prescribed timeframe (days)	Actual time (days)	Cumulative prescribed timeframe (days)	Cumulative actual time (days)	Project dates
1	Appointment	Applicant	-	-	-	-	1/11/2006
2	Submit application form	Applicant/ Consultant	-	7	7	7	8/11/2006
3	Conduct basic PP	Consultant	-	2	9	9	10/11/2006
4	Accept application form	Authority	14	12	23	21	22/11/2006
5	Submit scoping report & PoS	Consultant	-	21	44	42	14/12/2006
6(b)	Consider & accept scoping report & PoS	Authority	30 days from receipt of acceptance	24	74	66	10/1/2007
7	Submit EIA & PoS	Applicant/ Consultant	-	37	111	103	16/2/2007
8	Consideration of reports, either accept it 9(a) or refer parts of it for specialist review 9(b) & (c)	Authority	60 days from receipt	6	171	109	22/2/2007
9(a)	Issue decision	Authority	45 days from acceptance notice	94	216	203	31/5/2007

* Note that steps 3 and 4 switched around in this process.

* The red indicates areas where delays occurred.

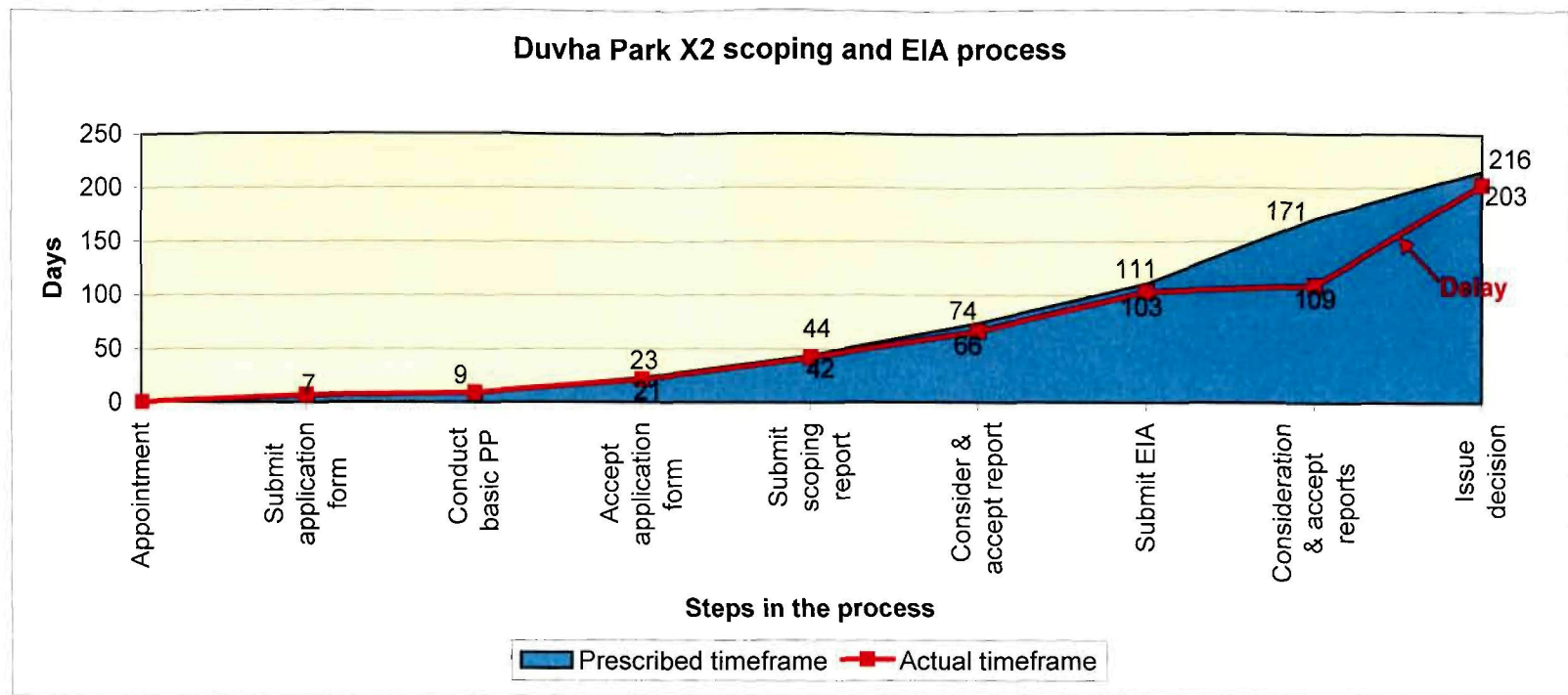


Figure 5.5: An illustration of the environmental process for Duvha Park Extension 2

5.2.2.4. The alignment of the processes for Duvha Park Extension 2

Project initiation

Discussions with the EAP and planner revealed that the planning application was initiated on 1 September 2006, 2 months (61 days) prior to the environmental process, which was initiated on 1 November 2006 (refer to Table 5.6 for the alignment of processes for Duvha Park X2).

Public participation

The public participation for the planning process was initiated from 1 December 2006 to 1 February 2007 and was initiated from 10 November 2006 up until approximately 10 December 2006 for the environmental process (refer to Figure 5.6 illustrating the alignment of the two processes). The environmental process' public participation process was initiated 21 days prior to the public participation for the planning process. The orange lines in Figure 5.6 indicate the stages at which the public participation was conducted. It is concluded that the two processes conducted their individual public participation at approximately the same time during November and December, and therefore it could have been integrated to avoid duplication.

Submission of the applications

The planning application was submitted on 1 December 2006 and the EIA report was submitted on 16 February 2007. Usually the EIA application is submitted prior to the planning application but in this particular case the planning application was submitted approximately 2 months (73 days) prior to the EIA application.

Issuing of decisions

The planning application was approved on 14 May 2008 and the environmental authorisation was issued on 31 May 2007. The environmental authorisation was issued approximately 11 months (343 days) before the planning authorisation and the planning process therefore delayed the development by approximately 11 months.

Table 5.6: The alignment of processes for Duvha Park Extension 2

The alignment of Duvha Park X2 processes		
Steps	Scoping and EIA process (days)	Transvaal Ordinance process (days)
1	61 days after planning application	-
2	7 + 61 = 68	91
3	9 + 61 = 70	91
4	21 + 61 = 82	151
5	42 + 61 = 103	151
6	66 + 61 = 127	607
7	103 + 61 = 164	-
8	109 + 61 = 170	-
9	203 + 61 = 264	-

* For descriptions on the actions for each of the different steps, refer to Tables 5.4 and 5.5.
The red indicates areas where delays occurred.

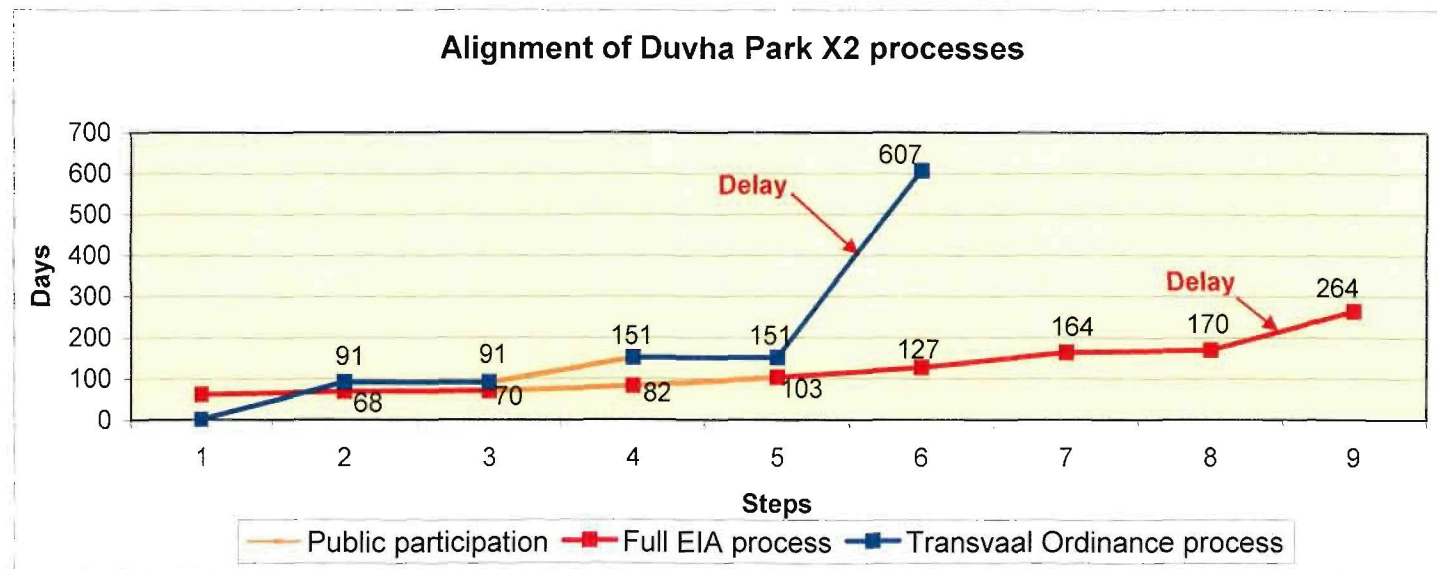


Figure 5.6: An illustration of the alignment of processes for Duvha Park Extension 2

5.2.3. HENDRINA EXTENSION 4

5.2.3.1. Introduction

An application was lodged in terms of Section 96(6)(a) of the Transvaal Town Planning and Townships Ordinance (15/1986) to amend the Witbank Town Planning Scheme (1991) in order to establish a public residential township on Portion 157 (a Portion of Portion 70) of the farm Kromdraai 292, Registration Division J.S., Mpumalanga Province.

The township is situated on the corner of Kort and Fontein Streets, adjacent Oos Street in the town Hendrina. The site is approximately 9.9002 hectares in extent and the township consists of 136 "Residential 1" erven, 1 "Business 3" erf, 1 "Institutional" erf, 2 "Public Open Space" erven and streets. The property was previously zoned for "Agricultural" purposes but was vacant at the time when the application was submitted.

5.2.3.2. The planning authorisation process for Hendrina Extension 4

The planner was appointed on 15 August 2007 and the town planning application was submitted on 28 November 2007, approximately 3 months (104 days) after they were appointed. The public participation process was initiated from 7 December 2007. Advertisements were published in a local newspaper on 7 and 14 December 2007 and a notice was put on the site from 7 to 21 December 2007. The public had 28 days (until 4 January 2008) and government departments had a period of 60 days (until 7 February 2007) to comment on the proposed development (refer to Table 5.7 for a summary of the prescribed and actual steps for the planning process for Hendrina Extension 4).

It is not clear whether comments and objections from the public or government departments were received within the timeframes provided. Objections were made against the development and the planners replied to the objections on 10 June 2008. After the hearing took place the local authority once again considered the application. The application was approved on 10 March 2009, which is approximately 1 and a half years (560 days) after the application was submitted (refer to Figure 5.7 for an illustration of the planning process for Hendrina Extension 4). The local authority therefore required approximately 15 months (456 days) after the submission of the application, or approximately 9 months after the hearing took place, to issue a decision.

Table 5.7: Summary of the prescribed and actual steps for the planning process for Hendrina Extension 4

Steps	Hendrina X4 Transvaal Ordinance process	Responsibility	Prescribed timeframe (days)	Actual time (days)	Cumulative prescribed timeframe (days)	Cumulative actual time (days)	Project dates
1	Appointment	Applicant	-	-	-	-	15/8/2007
2	Submit application	Consultant	-	104	-	104	28/11/2007
3	Public participation start	Consultant/ Local authority	-	9	-	113	7/12/2007
4	Public participation end	Consultant/ Local authority	60	60	-	173	7/2/2008
5	Reply to objection/ Hearing/ Consideration of application	Local authority	-	120	-	293	10/6/2008
6	Decision	Local authority	-	267	-	560	10/3/2009

* The red indicates areas where delays occurred.

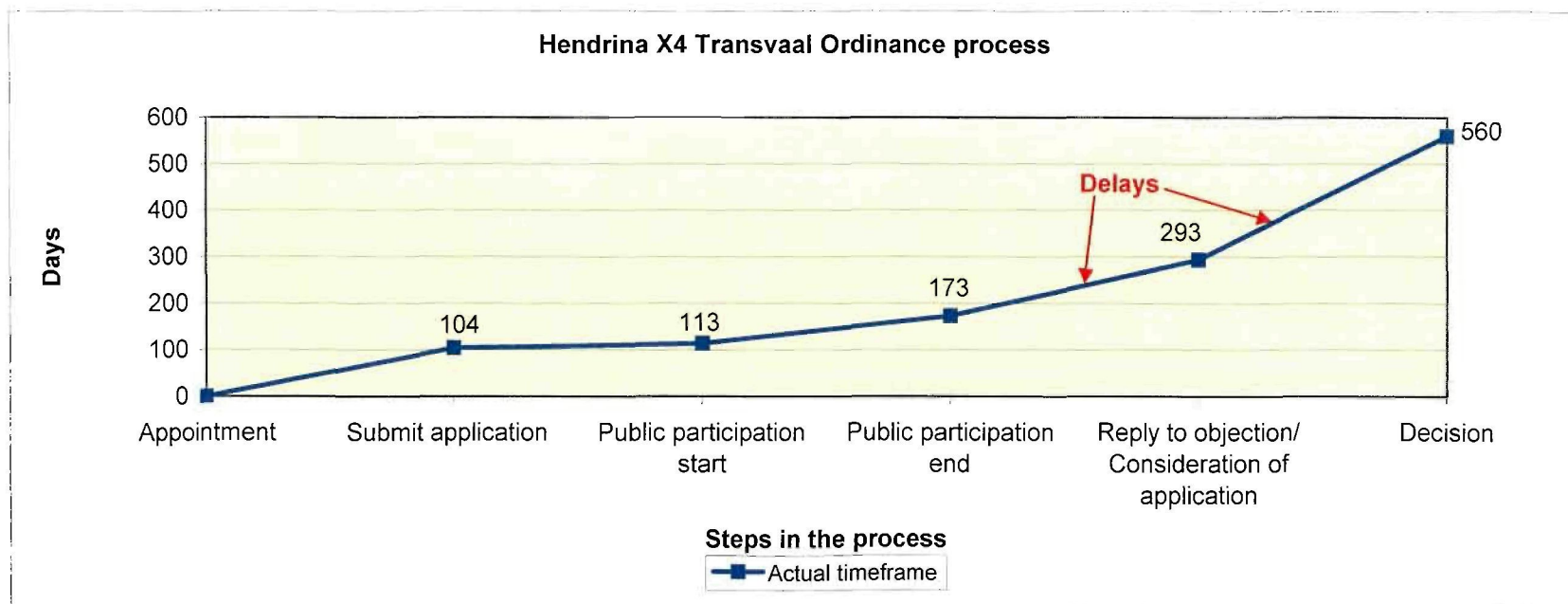


Figure 5.7: An illustration of the planning process for Hendrina Extension 4

5.2.3.3. The environmental authorisation process for Hendrina Extension 4

Due to the nature and extent of the proposed development, the regulations (SA, 2006) required that the development be subjected to a basic assessment. The environmental consultant was appointed at approximately the same time as the planner on 15 August 2007 and the notice of intention to submit a basic assessment was submitted on 2 October 2007, 47 days after they were appointed. The competent authority acknowledged receipt of the notice of intent 7 days later, on 9 October 2007 (refer to Table 5.8 for a summary of the prescribed and actual steps for the environmental process for Hendrina Extension 4).

The EAP initiated the public participation process on 12 October 2007, 3 days after the acknowledgement of the notice of intent. The public and relevant stakeholders had a period of 30 days, approximately until 12 November 2007, to comment on the application. It is not clear whether comments from the public or government departments were received within the timeframe provided. Objections were received from neither the public nor any government departments.

Approximately 10 months (305 days) after the initiation of the public participation process, the application form and basic assessment report was submitted on 20 August 2008. The period between the appointment of the EAP and submission of the report is the period available to the EAP to obtain all the necessary information, such as the relevant specialist studies, in order to finalise the report. In this case this stage in the process required approximately 1 year (366 days).

The competent authority accepted the application form and BAR on 3 September 2008, only 6 days after it was submitted. The prescribed timeframe for the acceptance of the application form and BAR is 14 days. The BAR was approved on 16 September 2008, 13 days after the acceptance of the report. The prescribed timeframe for issuing a decision on a BAR is 30 days (refer to figure 5.8 for an illustration of the environmental process for Hendrina Extension 4).

Table 5.8: Summary of the prescribed and actual steps for the environmental process for Hendrina Extension 4

Steps	Hendrina X4 basic assessment process	Responsibility	Prescribed timeframe (days)	Actual time (days)	Cumulative prescribed timeframe (days)	Cumulative actual time (days)	Project dates
1	Appointment	Applicant	-	-	-	-	15/8/2007
2	Submit notice of intent	Consultant	-	47	47	47	2/10/2007
3	Acknowledge notice of intent	Authority	-	7	54	54	9/10/2007
4	Public participation	Applicant/ Consultant	-	3	57	57	12/10/2007
5	Submit application form & report	Applicant	-	305 ³	362	362	20/8/2008
6	Review application, accept or reject	Authority	14	6	376	368	3/9/2008
7(b)	Review application & report & issue decision.	Authority	30	13	406	381	16/9/2008

* The red indicates areas where delays occurred.

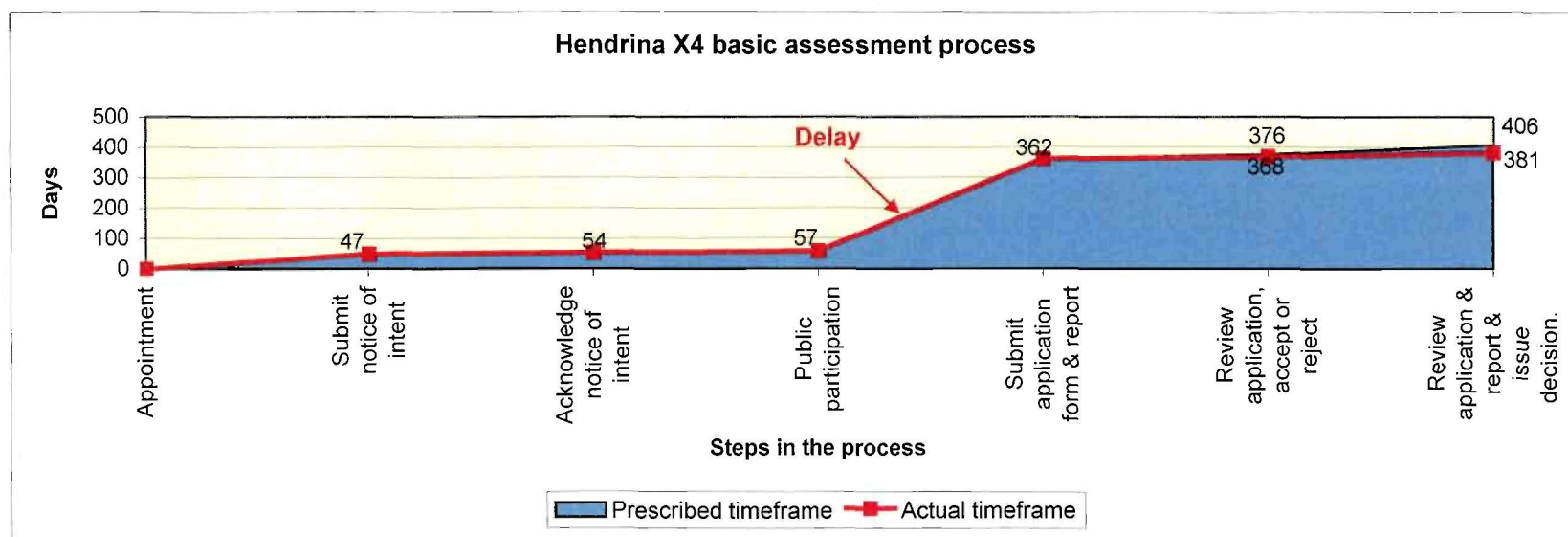


Figure 5.8: An illustration of the environmental process for Hendrina Extension 4

³ Take note that since no prescribed timeframe is provided for the submission of the application form and BAR, the delay cannot be measured in table 5.8 or illustrated in figure 5.8. However, it was found that a delay occurred during this stage of the process as evaluated against the timeframe considered to be reasonable.

5.2.3.4. The alignment of the processes for Hendrina Extension 4

Project initiation

Discussions with the EAP and planner revealed that both processes were initiated at approximately the same time.

Public participation

The public participation for the planning process was initiated from 7 December 2007 to 7 February 2008 and was initiated from 12 October 2007 up until approximately 12 November 2007 for the environmental process (refer to Figure 5.9 illustrating the alignment of the two processes). The environmental process' public participation process was initiated 31 days prior to the public participation for the planning process. The orange lines in Figure 5.9 indicate the stage at which public participation was conducted. It is concluded that the two processes conducted their individual public participation at approximately the same time during the end of 2007 and therefore it could have been integrated to avoid duplication.

Submission of the applications

The planning application was submitted on 28 November 2007 and the basic assessment report was submitted on 20 October 2008. The BAR was submitted almost 9 months (258 days) after the planning application was submitted.

Issuing of decisions

The environmental authorisation was issued on 16 September 2008 and the planning application was approved on 10 March 2009. The environmental authorisation was issued approximately 6 months (179 days) prior to the planning authorisation being issued. The planning process therefore delayed the development by approximately 6 months.

Table 5.9: The alignment of processes for Hendrina Extension 4

The alignment of Hendrina X4 processes		
Steps	Basic assessment process (days)	Transvaal Ordinance process (days)
1	-	0
2	47	104
3	54	113
4	57	173
5	362	293
6	368	560
7	381	-

* For descriptions on the actions for each of the different steps, refer to Tables 5.7 and 5.8.
The red indicates areas where delays occurred.

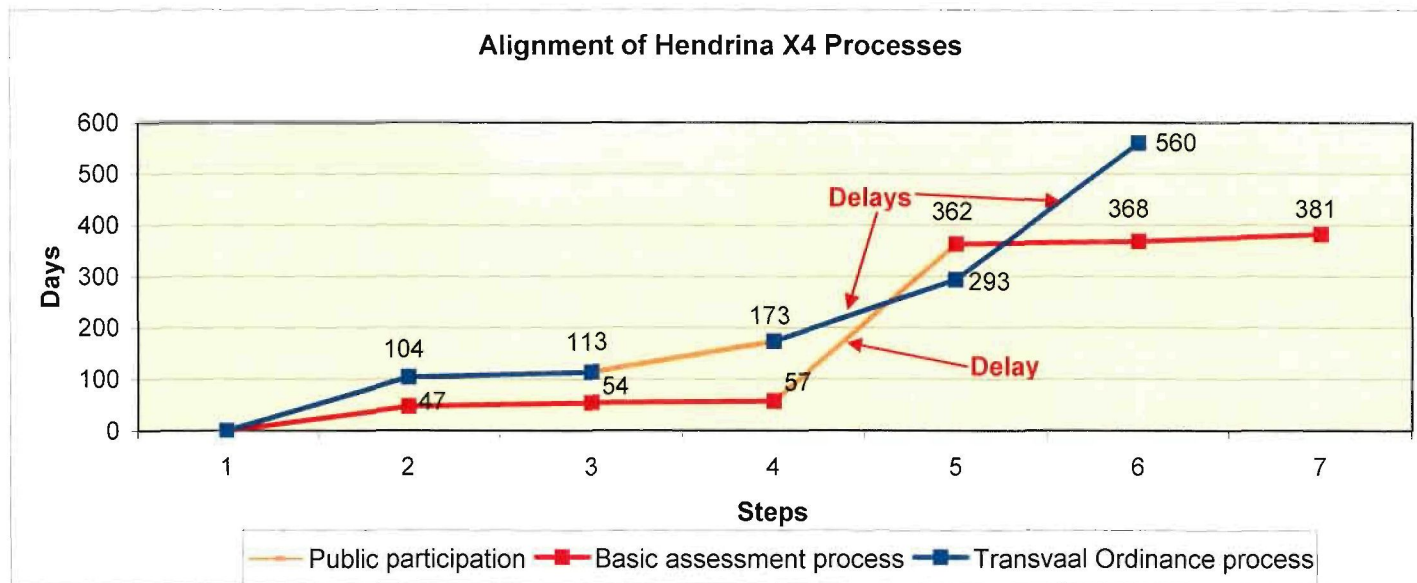


Figure 5.9: An illustration of the alignment of processes for Hendrina Extension 4

5.2.4. SUNGAZER GOLF AND COUNTRY ESTATE

5.2.4.1. Introduction

An application was lodged in terms of Section 96(1) of the Transvaal Town Planning and Townships Ordinance (15/1986) to amend the Witbank Town Planning Scheme (1991) in order to establish a golf and country estate on a Portion of Portion 43, and on Portion 58 of the farm Amersfoort Town and Townlands No. 57 Registration Division H.S., Mpumalanga Province.

The proposed development is located on the existing Amersfoort Country Club. Portion 43 of the farm Amersfoort Town and Townlands is 38.7486 hectares in extent but not all 38.7486 hectares were used for the development. Portion 58 of the farm Amersfoort Town and Townlands is 70.9766 hectares in extent. The properties were previously zoned for "Agricultural" purposes but at the time when the application was submitted the majority of the site (60 hectares) was utilised for golfing activities and was also used as an airfield. The golf and country estate consist of the following land uses as illustrated in Table 5.10.

Table 5.10: Land uses at Sungazer golf and country estate

Uses	Number of erven
Extension 1	
Residential 1	66
Special for Residential use & hangers for airplanes	12
Special for a club house	1
Special for a hotel	1
Special for a driving range	1
Special for stables	1
Private Open Space with annexure for a golf course	5
Private Road	1
Airfield	1
Extension 2	
Residential 1	84
Total	173

5.2.4.2. The planning authorisation process for Sungazer

The planner was appointed on 2 July 2007 and the town planning application was submitted on 2 November 2007, 4 months (121 days) after they were appointed. The public participation process was initiated from 2 January 2008. Advertisements were published in the local newspaper on 2 and 9 January 2008 and a notice was put on the site from 2 to 23 January 2008. The public had 28 days (until 30 January 2008) and government departments had a period of 60 days (until 2 March 2008) to comment on the proposed development (refer to Table 5.11 for a summary of the prescribed and actual steps for the planning process for Sungazer).

It should be noted that the application was only advertised 2 months after the application was submitted. Usually the application is advertised on the day that it is submitted to the local authority but the local authority in consultation with the planner decided that it was best for the particular application to be advertised 2 months after submission, because if the public participation process started immediately after the submission of the application it would have stretched over the December holiday period. This is deemed unfavourable, since the government departments may not have been able to submit their comments within the 60 day period provided.

It is not clear whether comments from the public or government departments were received within the timeframes provided. Objections were neither received from the public nor any government departments. The application was approved on 4 August 2008, approximately 1 year and 1 month (390 days) after the application was submitted (refer to Figure 5.10 for an illustration of the planning process for Sungazer). The local authority therefore required approximately 9 months (270 days) after the submission of the application to issue a decision.

Table 5.11: Summary of the prescribed and actual steps for the planning process for Sungazer

Steps	Sungazer Transvaal Ordinance process	Responsibility	Prescribed timeframe (days)	Actual time (days)	Cumulative prescribed timeframe (days)	Cumulative actual time (days)	Project dates
1	Appointment	Applicant	-	-	-	-	1/7/2007
2	Submit application	Consultant	-	120	-	120	2/11/2007
3	Public participation start	Consultant/ Local authority	-	60	-	180	2/1/2008
4	Public participation end	Consultant/ Local authority	-	60	-	240	2/3/2008
6	Decision	Local authority	-	150	-	390	4/8/2008

* The red indicates areas where delays occurred.

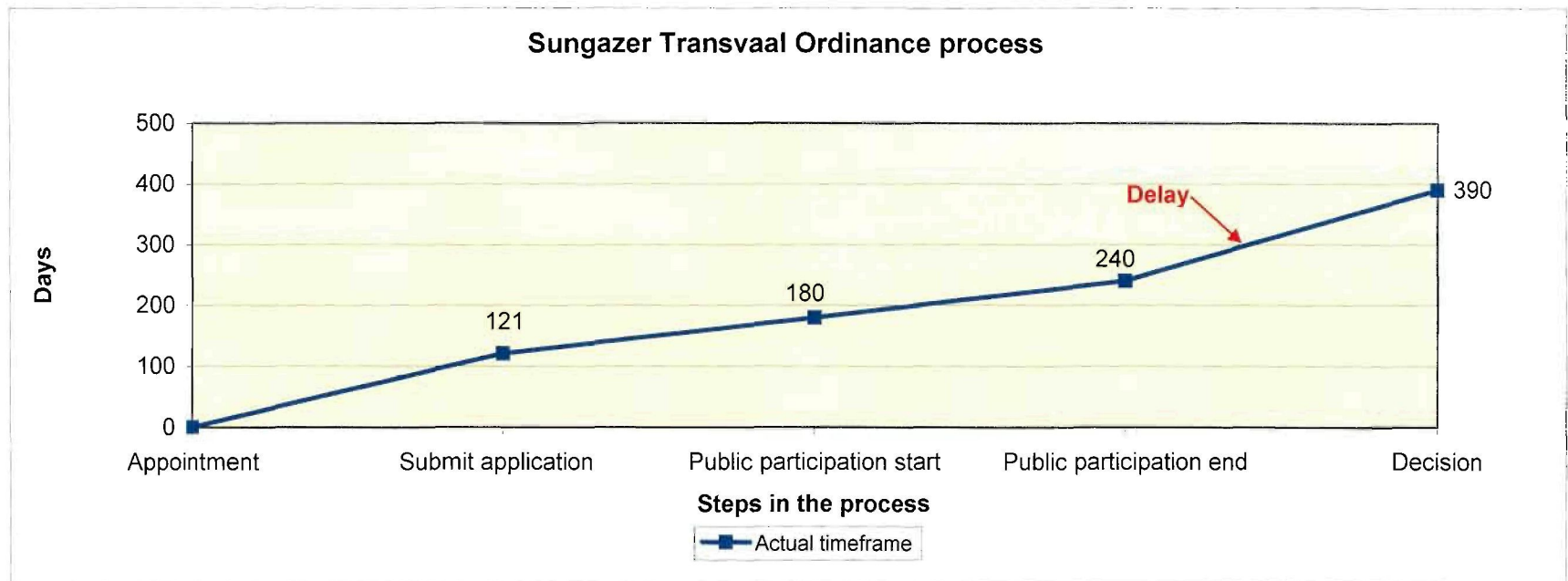


Figure 5.10: An illustration of the planning process for Sungazer

5.2.4.3. The environmental authorisation process for Sungazer

Due to the nature and extent of the proposed development, the regulations (SA, 2006) required that the development be subjected to scoping and EIA. The environmental consultant was appointed at approximately the same time as the planner on 2 July 2007 and submitted the application form on 7 August 2007, 36 days after they were appointed. The competent authority accepted the application form 13 days later on 20 August 2007 (refer to Table 5.12 for a summary of the prescribed and actual steps for the environmental process for Sungazer).

The EAP initiated the public participation process on 14 September 2007. The public and relevant stakeholders had a period of 30 days (until 14 October 2007) to comment on the application. It is not clear whether comments from the public or government departments were received within the timeframe provided. Objections were neither received from the public nor any government departments.

Approximately 2 months (76 days) after the acceptance of the application form, the scoping report and plan of study for EIA were submitted on 29 October 2007. The period between the appointment of the EAP and submission of the report is the period available to the EAP to obtain all the necessary information, such as the relevant specialist studies, in order to finalise the report. In this case, this stage of the process required 4 months (125 days).

The competent authority considered and accepted the scoping report on 30 October 2007, only 1 day after it was submitted. The prescribed timeframe for considering and accepting the scoping report is 30 days. The EIA report and plan of study for EIA were subsequently submitted on 12 February 2008.

The scoping report was submitted 2 and a half months (78 days) after the acceptance of the application form, but the process was delayed when the EIA report was only submitted 3 and a half months (102 days) after the acceptance of the scoping report. The process was further delayed on 17 March 2008, 33 days after the acceptance of the EIA report, when the competent authority requested additional information. It is unclear when the additional information was provided, but the competent authority only issued the environmental authorisation on 17 September 2008, approximately 6 months (184 days) after the request for additional information. The prescribed timeframe for this stage in the process is 45 days (refer to Figure 5.11 illustrating the environmental process for Sungazer).

The above is indicative of an inefficient process, since the environmental authorisation was only issued approximately 1 year and 1 month (409 days) after the submission of the application form. The actual timeframe was 83 days more than the prescribed timeframe.

Table 5.12: Summary of the prescribed and actual steps for the environmental process for Sungazer

Steps	Sungazer scoping and EIA process	Responsibility	Prescribed timeframe (days)	Actual time (days)	Cumulative prescribed timeframe (days)	Cumulative actual time (days)	Project dates
1	Appointment	Applicant	-	-	-	-	2/7/2007
2	Submit application form	Applicant/ Consultant	-	36	36	36	7/8/2007
3	Accept application form	Authority	14	13	50	49	20/8/2007
4	Conduct basic PP & compile scoping report & PoS	Consultant	-	32	82	81	14/9/2007
5	Submit scoping report & PoS	Consultant	-	44	126	125	29/10/2007
6(b)	Consider & accept scoping report & PoS	Authority	30 days from receipt of acceptance	1	156	126	30/10/2007
7	Submit EIA & PoS	Applicant/ Consultant	-	102 ⁴	258	228	12/2/2008
8	Consideration of reports, either accept it (see 9(a)) or refer parts of it for specialist review (see 9(b) and (c) – notify applicant of outcome	Authority	60 days from receipt	33	318	261	17/3/2008- request additional info
9(a)	Issue decision	Authority	45 days from acceptance notice	184	363	445	17/9/2008

* The red indicates areas where delays occurred.

⁴ Take note that since no prescribed timeframe is provided for the submission of the EIA report and POS, the delay cannot be measured in table 5.12 or illustrated in figure 5.11. However, it was found that a delay occurred during this stage of the process as evaluated against the timeframe considered to be reasonable.

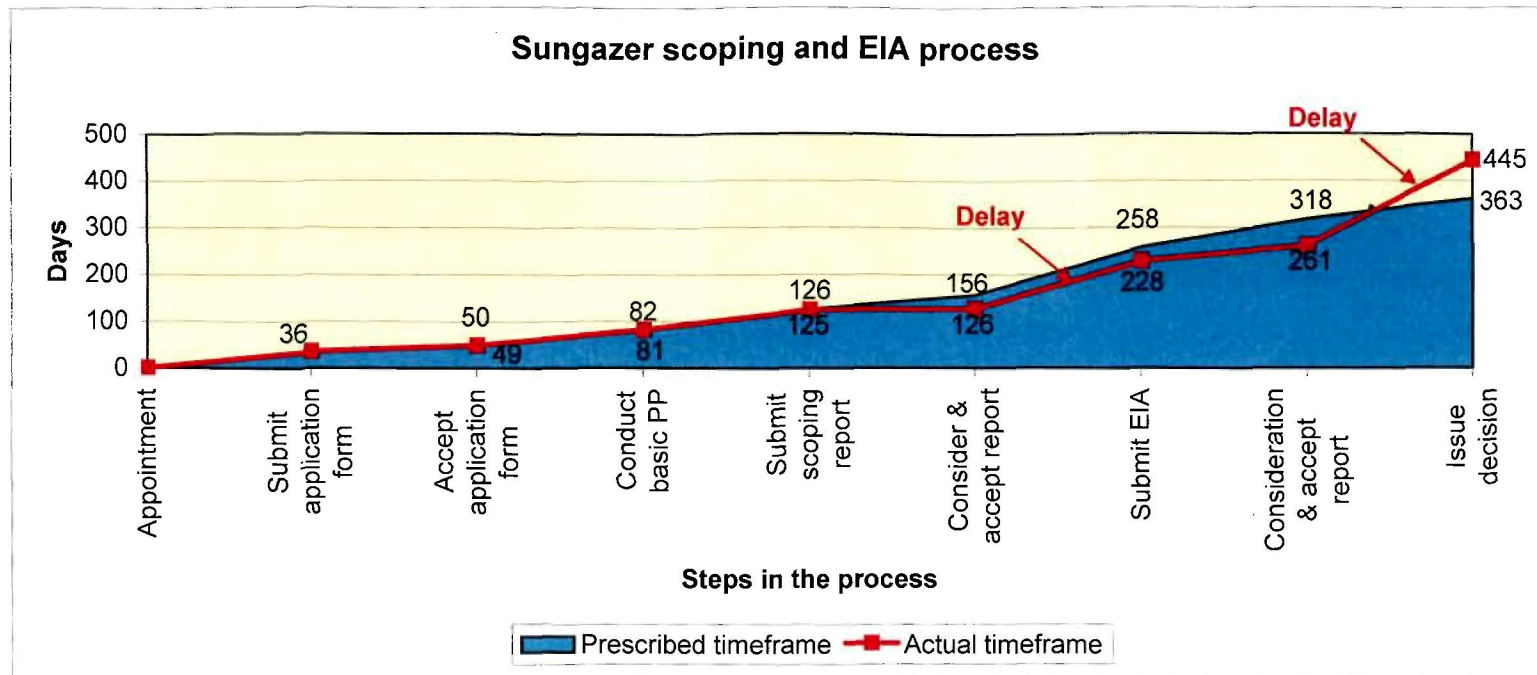


Figure 5.11: An illustration of the environmental process for Sungazer

5.2.4.4. The Alignment of the Processes for Sungazer

Project initiation

Discussions with the EAP and planner revealed that both processes were initiated at approximately the same time.

Public participation

The public participation period for the planning process was initiated from 2 January 2008 to 2 March 2008 and was initiated from 14 September 2007 up until approximately 7 October 2007 for the environmental process (refer to Figure 5.12 illustrating the alignment of the two processes). The environmental process' public participation process was initiated 3 months prior to the initiation of the public participation for the planning process. The orange lines in Figure 5.12 indicate the stages at which the public participation was conducted. It is concluded that the two processes conducted their individual public participation at different times. The public participation for the environmental process was initiated approximately 3 months prior to the public participation for the planning process; therefore the integration of public participation processes would have been difficult.

Submission of the applications

The planning application was submitted on 2 November 2007 and the EIA report was submitted on 12 February 2008. Usually the EIA application is submitted prior to the planning application but in this case the planning application was submitted almost 3 and a half months (107 days) prior to the final EIA report.

Issuing of decisions

The planning application was approved on 4 August 2008 and the environmental authorisation was issued on 17 September 2008. The planning authorisation was issued almost 2 months (55 days) prior to the environmental authorisation being issued. Subsequently, as explained in section 3.4, the planning application was approved conditionally, subject to the environmental authorisation being issued. The environmental process delayed the development by approximately 2 months.

Table 5.13: The alignment of the processes for Sungazer

The alignment of Sungazer processes		
Steps	Scoping and EIA process (days)	Transvaal Ordinance process (days)
1	-	-
2	36	121
3	49	180
4	81	240
5	125	240
6	126	390
7	228	-
8	261	-
9	445	-

* For descriptions on the actions for each of the different steps, refer to Tables 5.11 and 5.12.
The red indicates areas where delays occurred.

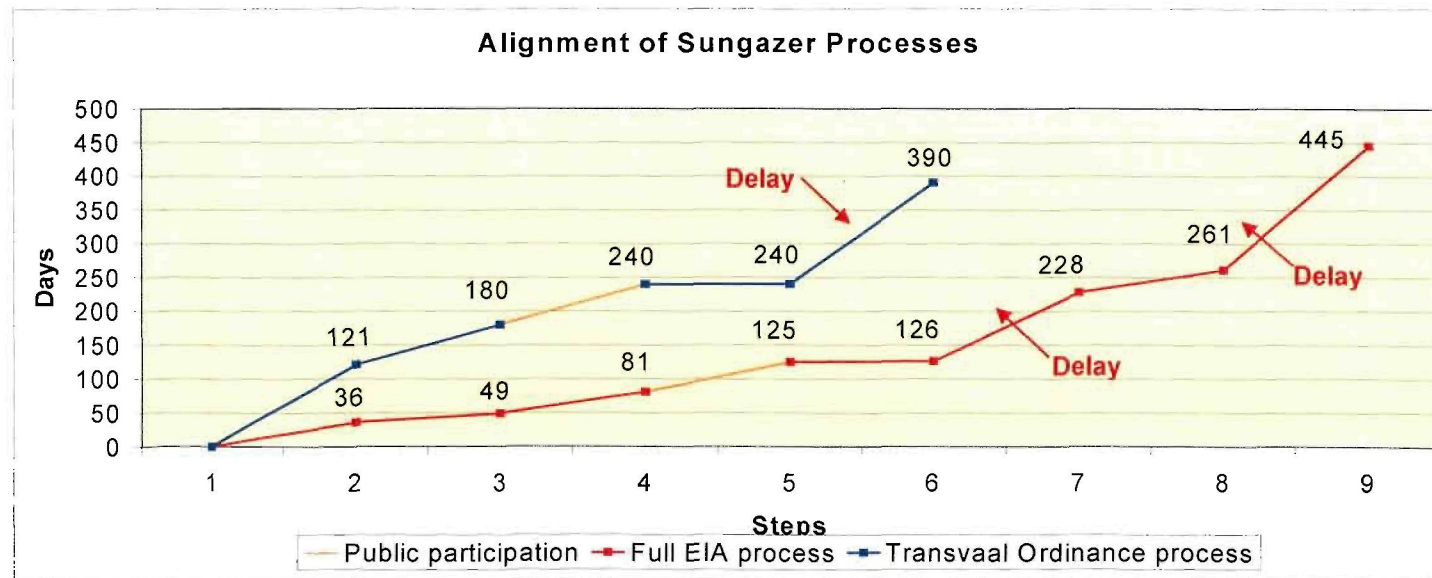


Figure 5.12: An illustration of the alignment of processes for Sungazer

5.2.5. RIVERVIEW EXTENSION 1

5.2.5.1. Introduction

An application was lodged in terms of Section 96(1) of the Transvaal Town Planning and Townships Ordinance (15/1986) to amend the Witbank Town Planning Scheme (1991) for a township establishment on Portion 1 of the farm Klippoort 334 J.S. and Portion 79 (a Portion of Portion 71) of the farm Klipfontein 322 Registration Division J.S., Mpumalanga Province.

The site was previously zoned for “Agricultural” purposes but was vacant at the time when the application was submitted. The properties are approximately 4.3492 hectare in extent. The township comprises of an “Industrial 3” erf and a public road. The proposed development is located adjacent and west to the Jackaroopark Holdings.

5.2.5.2. The planning authorisation process for Riverview Extension 1

The planner was appointed on 14 June 2007 and the town planning application was submitted on 21 September 2007, 3 months (98 days) after they were appointed. The public participation process was initiated from 21 September 2007. Advertisements were published in the local newspaper on 21 and 28 September 2007 and a notice was also put on the site from 21 September to 5 October 2007. The public had a 28 day period (until 19 October 2007) and government departments had a period of 60 days (until 21 November 2007) to comment on the proposed development (refer to Table 5.14 for a summary of the prescribed and actual steps for the planning process for Riverview Extension 1).

It is not clear whether comments from the public or government departments were received within the timeframes provided. Objections were neither received from the public nor any government departments. The application was approved on 30 October 2008, which is approximately 1 year and 4 months (493 days) after the application was submitted (refer to Figure 5.13 for an illustration of the planning process for Riverview Extension 1).

Table 5.14: Summary of the prescribed and actual steps for the planning processes for Riverview Extension 1

Steps	Riverview X1 Transvaal Ordinance process	Responsibility	Prescribed timeframe (days)	Actual time (days)	Cumulative prescribed timeframe (days)	Cumulative actual time (days)	Project dates
1	Appointment	Applicant	-	-	-	-	14/06/2007
2	Submit application	Consultant	-	98	-	98	21/09/2007
3	Public participation start	Consultant/ Local authority	-	0	-	98	21/09/2007
4	Public participation end	Consultant/ Local authority	60	60	-	158	21/11/2007
6	Decision	Local authority	-	335	-	493	30/10/2008

* The red indicates areas where delays occurred.

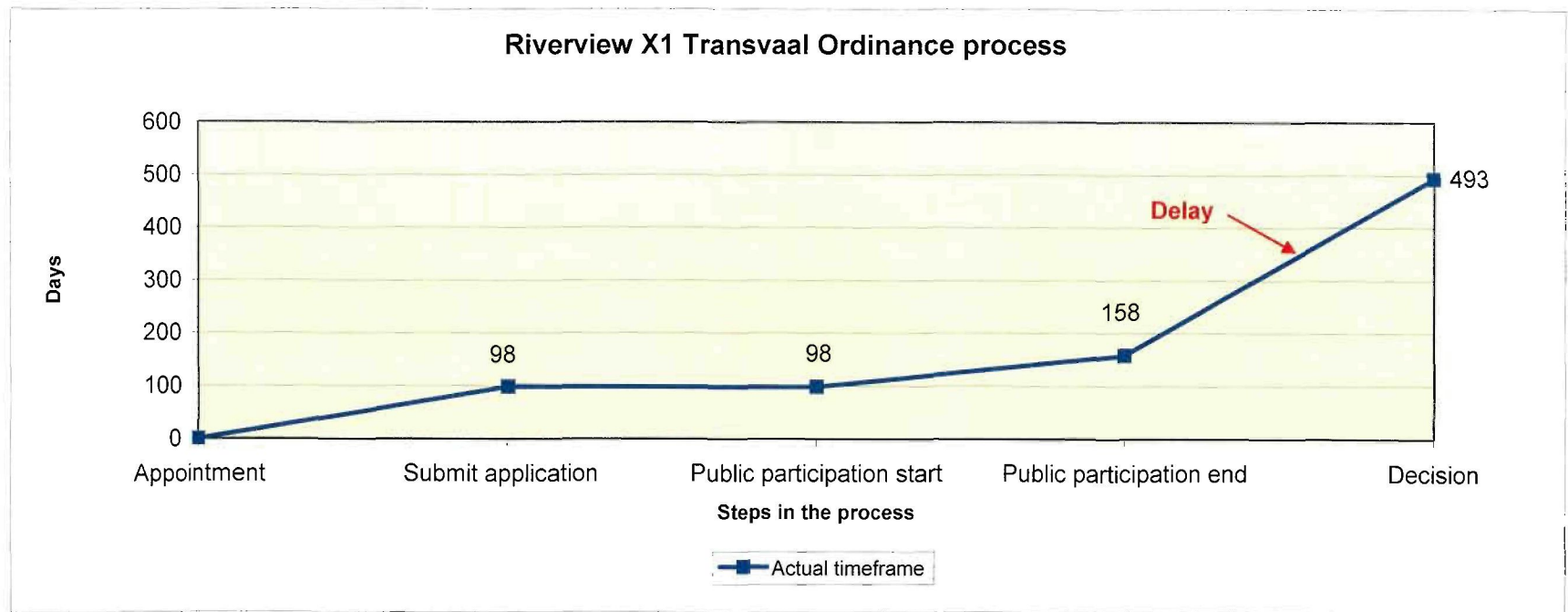


Figure 5.13: An illustration of the planning process for Riverview Extension 1

5.2.5.3. The environmental authorisation process for Riverview Extension 1

Due to the nature and extent of the proposed development, the regulations (SA, 2006) required that the development be subjected to a basic assessment. The environmental consultant was appointed at approximately the same time as the planner on 14 June 2007 and the notice of intention to submit a basic assessment was submitted on 4 July 2007, 20 days after they were appointed. The competent authority acknowledged receipt of the notice of intent 7 days later on 11 July 2007 (refer to Table 5.15 for a summary of the prescribed and actual steps for the environmental process for Riverview Extension 1).

The EAP initiated the public participation process on 10 August 2007, 29 days after the acknowledgement of the notice of intent. The public and relevant stakeholders had a period of 30 days (until 10 September 2007) to comment on the application. It is not clear whether comments from the public or government departments were received within the timeframe provided. Objections were neither received from the public nor any government departments.

Approximately 1 month (41 days) after the initiation of the public participation process, the application form and basic assessment report were submitted on 20 September 2007. The period between the appointment of the EAP and the submission of the report is the period available to the EAP to obtain all the necessary information, such as the relevant specialist studies, in order to finalise the report. In this case this stage of the process required approximately 3 months (97 days).

The competent authority accepted the application and basic assessment report on 27 September 2007, only 6 days after it was submitted. The prescribed timeframe to accept the application form and BAR is 14 days. The BAR was approved on 1 November 2007, 1 month (35 days) after the acceptance of the report. The prescribed timeframe for the issuing of the decision on a BAR is 30 days. The competent authority therefore exceeded the prescribed timeframe by 5 days (refer to Figure 5.14 illustrating the environmental process for Riverview Extension 1).

Table 5.15: The environmental process for Riverview Extension 1

Steps	Riverview X1 basic assessment process	Responsibility	Prescribed timeframe (days)	Actual time (days)	Cumulative prescribed timeframe (days)	Cumulative actual time (days)	Project dates
1	Appointment	Applicant	-	-	-	-	14/06/2007
2	Submit notice of intent	Consultant	-	20	20	20	4/7/2007
3	Acknowledge notice of intent	Authority	-	7	27	27	11/7/2007
4	Public participation	Applicant/ Consultant	-	29	56	56	10/8/2007
5	Submit application form & report	Applicant	-	41	97	97	20/9/2007
6	Review application, accept or reject	Authority	14	6	111	103	27/9/2007
7(b)	Review application & report & issue decision.	Authority	30	35	141	138	1/11/2007

* The red indicates areas where delays occurred.

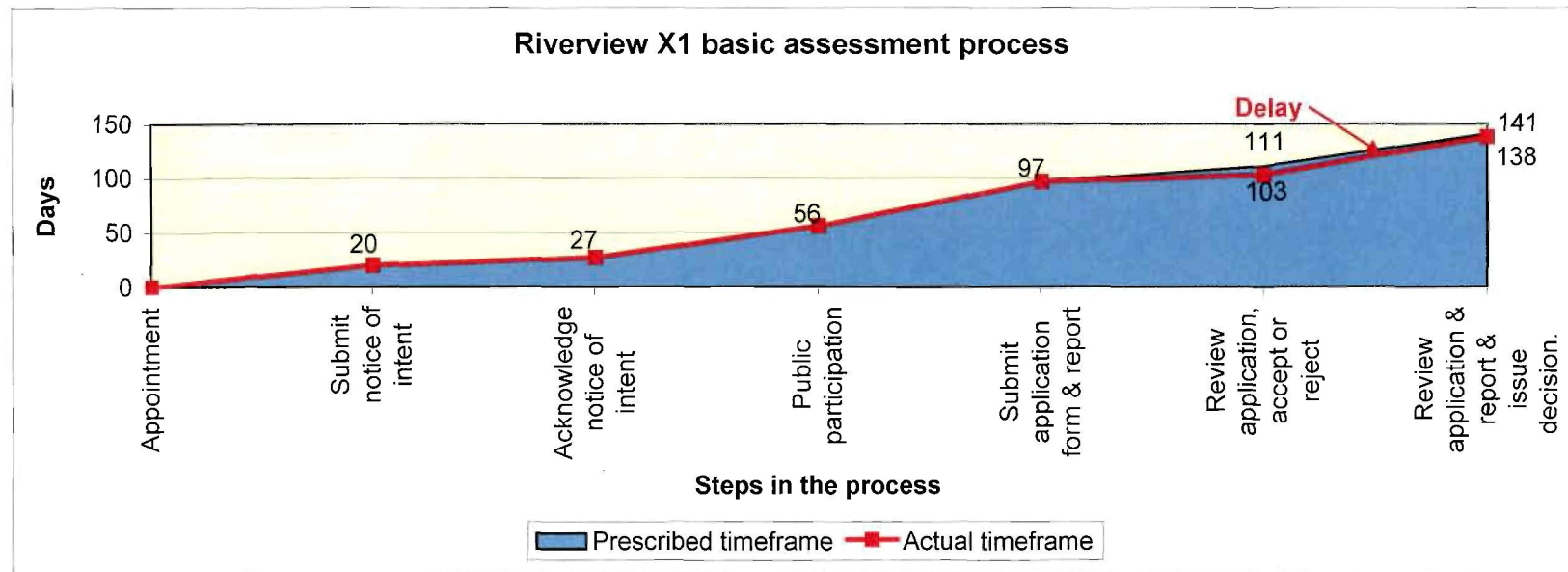


Figure 5.14: An illustration of the environmental process for Riverview Extension 1

5.2.5.4. The alignment of the processes for Riverview Extension 1

Project initiation

Discussions with the EAP and planner revealed that both processes were initiated at approximately the same time.

Public participation

The public participation period for the planning process was initiated from 21 September 2007 to 21 November 2007 and was initiated from 10 August 2007 to approximately 10 September 2006 for the environmental process (refer to Figure 5.15 illustrating the alignment of the two processes for Riverview Extension 1). The environmental process' public participation was initiated 42 days prior to the initiation of the public participation for the planning process. The orange lines in Figure 5.15 indicate the stages at which public participation was conducted. It is concluded that the two processes conducted their individual public participation at approximately the same time at the end of 2007, and therefore it could have been integrated to avoid duplication.

Submission of the applications

The planning application was submitted on 21 September 2007 and the basic assessment report was submitted on 20 September 2007. The two applications were therefore submitted at almost exactly the same time.

Issuing of decisions

The planning application was approved on 30 October 2008 and the environmental authorisation was issued on 1 November 2007. The environmental authorisation was issued 355 days prior the planning authorisation being issued. The planning process therefore delayed the development by approximately 1 year.

Table 5.16: The alignment of processes for Riverview Extension 1

The alignment of Riverview X1 processes		
Steps	Basic assessment process (days)	Transvaal Ordinance process (days)
1	-	-
2	20	98
3	27	98
4	56	158
5	97	158
6	103	493
7	138	-

* For descriptions on the actions for each of the different steps, refer to Tables 5.14 and 5.15.
The red indicates areas where delays occurred.

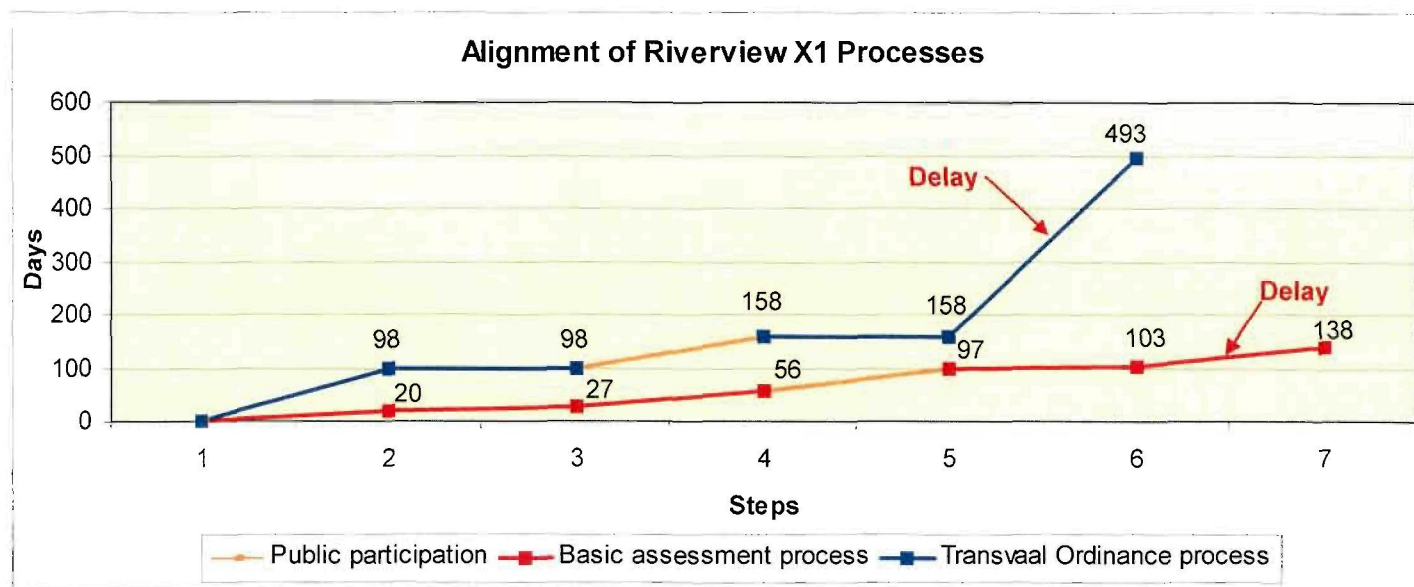


Figure 5.15: An illustration of the alignment of processes for Riverview Extension 1

5.3. CROSS-CASE ANALYSIS

5.3.1. THE ALIGNMENT OF THE PROCESSES

Through analysing the alignment of the planning and environmental authorisation processes for each of the case studies, the research found that for most of the case studies both processes were initiated at approximately the same time. The same goes for the public participation processes and consultants should therefore aim to integrate this stage within the two processes. Table 5.17 indicates that for only one of the case studies the planning and environmental applications were submitted during the same time. The table also indicates that the environmental application is on average submitted approximately 4 months (118 days) after the planning application.

Table 5.17: The difference in submission of the applications

No.	Case study	Submission of environmental application	Submission of planning application	Difference in submission of the applications (days)
1	Corridor Hill	19 March 2007	12 October 2006	154
2	Duvha Park X1	16 February 2007	1 December 2006	73
3	Hendrina X4	20 October 2008	28 November 2007	258
4	Sungazer	12 February 2008	2 November 2007	107
5	Riverview X1	20 September 2007	21 September 2007	1

Table 5.18 indicates that for three of the case studies the planning authorisation was obtained after the environmental authorisation. The seriousness of the delays caused by the planning authorisation process is also evident from this comparison. Where the planning authorisation process was responsible for the delay, the project was on average delayed by 10 months (292 days). Where the environmental authorisation process was obtained after the planning application, it on average delayed the project with 1 and a half months (47 days).

Table 5.18: The difference in approval of the applications

No.	Case study	Approval of environmental application	Approval of planning application	Difference in approvals of the applications (days)
1	Corridor Hill	25 April 2007	20 March 2007	38
2	Duvha Park X1	31 May 2007	14 May 2008	343
3	Hendrina X4	16 September 2008	10 March 2009	179
4	Sungazer	17 September 2008	4 August 2008	55
5	Riverview X1	1 November 2007	30 October 2008	355

5.3.2. THE EFFICIENCY OF THE PROCESSES FOR THE INDIVIDUAL CASE STUDIES

5.3.2.1. Corridor Hill

The alignment of the planning and environmental processes for Corridor Hill was analysed in section 5.2.1.4. The analysis showed that both processes were initiated at approximately the same time. However, the basic assessment report was submitted almost 6 months after the planning application was submitted. Subsequently the environmental authorisation was issued 38 days after the planning authorisation and delayed the development with approximately 1 month (refer to figure 5.3).

Table 5.19 indicates that the planning authorisation was obtained 5 months (154 days) after the submission of the town planning application. The table also indicates that the entire planning process lasted approximately 7 and a half months (226 days). The process for this

application is deemed to be efficient, since the timeframe considered to be reasonable for obtaining a decision on an application is approximately 6 months. In other words a decision on the application was issued in time without causing unreasonable delay (refer to Figure 5.1).

The delay during the environmental process may be ascribed to the delay experienced during the period between the appointment of the EAP and the submission of the basic assessment report. This was a period of 7 and a half months (226 days) (refer to Figure 5.2). During an interview with the EAP responsible for this application, it was revealed that obtaining the specialist studies often causes delays. Another reason for the delay could be that the project proponent changed the scope of the project during the EIA process and subsequently the EIA process was held up. Since the delay during the environmental process for this case study is caused during the period when specialist studies are obtained and this is also the time during which the scope of the development must be finalised, it is likely that the reason for the delay is similar to the reasons given above. Table 5.20 indicates that the environmental authorisation was issued 38 days after the basic assessment report was submitted and was therefore within the 44 day prescribed timeframe provided by the NEMA regulations. The table also indicates that the entire environmental process lasted almost 9 months (264 days). The process is considered to be efficient, since an environmental authorisation was issued within the prescribed timeframes (refer to Figure 5.2).

5.3.2.2. Duvha Park Extension 2

The alignment of the planning and environmental processes for Duvha Park Extension 2 was analysed in section 5.2.2.4. The analysis showed that both processes were initiated at approximately the same time but that the final EIA report was submitted 1 and a half months after the submission of the planning application. However, the planning authorisation was issued 11 and a half months (343 days) after the environmental authorisation and delayed the development with approximately 1 year (refer to figure 5.6).

The delay caused by the planning process may be due to the delay experienced while the local authority reviewed the application. It was a period of 15 months (456 days). During an interview with the planner responsible for this application, it was revealed that the project experienced delays due to a shortage in the capacity of existing services infrastructure. The project proponent had to negotiate the responsibility of service provision with the local authority, which delayed the project considerably. Negotiations concluded that the project proponent had to construct a mini-substation. Another challenge was a number of large ESKOM servitudes on the site, which had to be cancelled. ESKOM initially agreed to the cancellation of the servitudes but afterwards decided that the servitudes should rather be included in the layout plan. The layout plan consequently had to be modified to accommodate the servitudes. The planner also mentioned that a number of illegal settlements had to be accommodated in the layout plan. Table 5.19 indicates a period of 1 year and 5 months (516 days) after the submission of the town planning application the planning authorisation was obtained. The table also indicates that the entire planning process lasted approximately 1 year and 8 months (607 days). The process for this application is deemed to be inefficient, since the timeframe considered to be reasonable for obtaining a decision on an application is approximately 6 months. In other words a decision on the application was not issued in time to avoid causing unreasonable delay (refer to Figure 5.4).

Although the environmental authorisation was obtained prior to the planning authorisation and did not delay the development, it should be noted that delays occurred during the final stages of the process. The competent authority only issued a decision 3 months (94 days) after the EIA report was accepted as opposed to the prescribed timeframe of 45 days (refer

to Figure 5.5). This delay could be a result of the competent authority not considering and evaluating the scoping and EIA report properly prior to accepting it. This is evident since the scoping report was accepted 24 days after submission and the EIA report 6 days after submission. Table 5.21 indicates that the environmental authorisation was issued 3 and a half months (100 days) after the EIA report was submitted. The table also indicates that the entire environmental process lasted almost 7 months (203 days). The process is considered to be efficient, since an environmental authorisation was issued 6 and a half months (196 days) after the application form was submitted, which is 13 days faster than the prescribed timeframe as provided by the NEMA regulations. If the prescribed timeframes were adhered to the entire process would have lasted 216 days (refer to Figure 5.5).

5.3.2.3. Hendrina Extension 4

The alignment of the planning and environmental processes for Hendrina Extension 4 was analysed in section 5.2.3.4. The analysis showed that both processes were initiated at approximately the same time but that the planning application was submitted approximately 9 months (258 days) after the environmental application. The planning authorisation was however issued 6 months (179 days) after the environmental authorisation, and therefore delayed the development with approximately 6 months (refer to Figure 5.9).

During an interview with the planner responsible for this application, it was revealed that the delay occurred due to the public objecting to the development and consequently a hearing had to be scheduled. The hearing was scheduled 4 months (120 days) after the public participation period ended. The objections had to be resolved and the development proposal had to be altered in order to take the public's comments into consideration. Therefore the application was only approved approximately 9 months after the hearing took place (refer to Figure 5.7). Table 5.19 indicates that the planning authorisation was obtained 1 year and 3 months (456 days) after the submission of the application and also that the entire planning process lasted approximately 1 and a half years (560 days). The process for this application is deemed to be inefficient, since the timeframe considered to be reasonable for obtaining a decision on an application is approximately 6 months. In other words the development was seriously delayed while awaiting the planning approval (refer to Figure 5.7).

Although the environmental authorisation was obtained prior to the planning authorisation and was not responsible for delaying the development, it should be noted that a delay occurred prior to the submission of the application form and basic assessment report. The application form and basic assessment report were submitted approximately 10 months (305 days) after the initiation of the public participation process (refer to Figure 5.8). The analysis of the alignment of the environmental and the planning processes indicated that the delays experienced in both processes occurred at approximately the same time. The latter indicates that the environmental process was put on hold until more certainty was obtained regarding the planning process. The basic assessment report was only submitted 69 days after the hearing took place to resolve the objections received during the planning process (refer to Figure 5.9). Table 5.20 indicates that the environmental authorisation was issued 19 days after the basic assessment report was submitted and was therefore within the 44 day prescribed timeframe provided by the NEMA regulations. The table also indicates that the entire environmental process lasted approximately 1 year and a month (381 days). The application process is considered to be efficient, since an environmental authorisation was issued within the timeframes as prescribed (refer to Figure 5.8).

5.3.2.4. Sungazer

The alignment of the planning and environmental processes for Sungazer was analysed in section 5.2.4.4. The analysis showed that both processes were initiated at approximately the

same time but that the EIA report was submitted almost 3 and a half months after the planning application was submitted. Subsequently the environmental authorisation was issued 2 months (55 days) after the planning authorisation and delayed the development with approximately 2 months (refer to Figure 5.12).

Table 5.19 indicates a period of 10 months (312 days) after the submission of the town planning application the authorisation was obtained. The table also indicates that the entire planning process lasted approximately 1 year and 1 month (390 days). The process for this application was deemed to be efficient, since the timeframe considered to be reasonable for obtaining a decision on an application is approximately 6 months. In other words a decision on the application was issued in time to avoid causing unreasonable delay (refer to Figure 5.10). However, although the planning process was not responsible for delaying the development, it did require more time for the review of the application. The latter is attributed to the nature and complexity of the application.

Numerous delays were experienced during the EIA process, which is attributed to the complexity of the project and the possible detrimental effects of a golf estate on the environment. Delays during the environmental process were experienced prior to the submission of the EIA report and during the time when the competent authority reviewed the application before issuing an authorisation. The EIA report was only submitted 3 and a half months (102 days) after the acceptance of the scoping report (refer to Figure 5.11). This delay is attributed to the fact that numerous specialist studies had to be conducted to evaluate the potential impacts of the proposed golf estate on the environment. During an interview with the EAP responsible for this application, it was revealed that the process was further delayed when the competent authority requested additional information after already accepting the EIA report. The EAP explained that requests for additional information often causes severe delays during environmental authorisation processes, since it takes approximately 1 or 2 months for a specialist study to be concluded. Furthermore, the provision of additional information imposes an unexpected financial burden on the project proponent. As a result the environmental authorisation was only issued approximately 6 months after the request for additional information (refer to Figure 5.11). It is doubtful whether this was the appropriate stage in the process to request additional information. Additional information should be requested after the consideration of the scoping report, so that the required information can be included for consideration in the EIA report. Since the competent authority accepted the scoping report only one day after it was submitted, it is doubtful whether the scoping report was evaluated properly. The latter implied an unnecessary delay in the process as a result of requesting additional information at an inappropriate stage in the process.

Table 5.21 indicates that the environmental authorisation was issued 7 months (217 days) after the EIA report was submitted and was therefore not issued within the 105 day prescribed timeframe provided by the NEMA regulations. The table also indicates that the entire environmental process lasted approximately 1 year and 3 months (445 days). This process is considered to be inefficient, since an environmental authorisation was not issued within the prescribed timeframes. If the prescribed timeframes were adhered to, the entire process would have taken 363 days to complete opposed to the actual timeframe of 445 days (refer to Figure 5.11). Tables 5.19 and 5.21 indicate that, compared to the other applications, both processes stretched over substantially longer periods of time.

5.3.2.5. Riverview Extension 1

The alignment of the planning and environmental processes for Riverview was analysed in section 5.2.5.4. The analysis showed that both processes were initiated at approximately the same time and were also submitted at the same time. However, the planning authorisation

was issued almost 1 year (355 days) after the environmental authorisation, and therefore delayed the development with approximately 1 year (refer to Figure 5.15).

The delay was experienced while the local authority reviewed the planning application before authorising it. This was a period of 11 months (335 days) (refer to Figure 5.13). Table 5.19 indicates that the planning authorisation was obtained 1 year and a month (395 days) after the submission of the town planning application. The reason for the delay is unclear. The table also indicates that the entire planning process lasted approximately 1 year and 4 months (493 days). The process for this application is deemed to be inefficient, since the timeframe considered to be reasonable for obtaining a decision on an application is approximately 6 months. In other words a decision was not issued in time to avoid causing an unreasonable delay (refer to Figure 5.13).

Table 5.20 indicates that the environmental authorisation was issued 41 days after the basic assessment report was submitted and was therefore within the 44 day prescribed timeframe provided by the NEMA regulations. The table also indicates that the entire environmental process lasted almost 4 and a half months (138 days). The process is considered to be efficient, since an environmental authorisation was issued within the prescribed timeframes. If the prescribed timeframes were adhered to, the entire process would have taken 141 days to complete, as opposed to the actual timeframe of 138 days (refer to Figure 5.14).

5.3.3. THE EFFICIENCY OF THE VARIOUS AUTHORISATION PROCESSES

5.3.3.1. The efficiency of the planning process

Table 5.19 indicates that it takes an average 3 months (97 days) after the appointment of the planner for the application to be submitted. The table also indicates that an application is usually approved 1 year after being submitted. Overall, an application is approved 15 months (455 days) after the appointment of the planner. It is concluded that delays are generally experienced when the local authority reviews the application.

Table 5.19: The efficiency of the planning process

The efficiency of the planning process						
Steps	Corridor Hill (days)	Duvha Park X2 (days)	Hendrina X4 (days)	Sungazer (days)	Riverview X1 (days)	Average (days)
Appointment to submission	72	91	104	121	98	97.2
Submission to decision	154	516	456	312	395	366.6
Appointment to decision	226	607	560	390	493	455.2

* The red indicates areas where delays occurred.

5.3.3.2. Efficiency of the basic assessment process

Table 5.20 indicates that the basic assessment report is usually submitted 7 and a half months (228 days) after the appointment of the EAP. The basic assessment reports are usually approved a month (33 days) after submission. This is in line with the prescribed timeframe of 30 days to issue an environmental authorisation after acknowledging receipt of a basic assessment report. Overall, a basic assessment application is approved 9 months (261 days) after the appointment of the EAP. It is concluded that delays are generally experienced prior to the submission of a basic assessment report to the competent authority.

Table 5.20: The efficiency of the basic assessment process

The efficiency of the basic assessment process				
Steps	Corridor Hill (days)	Hendrina X4 (days)	Riverview X1 (days)	Average (days)
Appointment to submission	226	362	97	228.3
Submission to decision	38	19	41	32.6
Appointment to decision	264	381	138	261

* The red indicates areas where delays occurred.

5.3.3.3. Efficiency of the scoping and EIA process

Table 5.21 indicates that the EIA report is usually submitted 5 and a half months (166 days) after the appointment of the EAP. The environmental authorisation is issued 5 months (159 days) after the submission of the EIA report. This is not in line with the prescribed timeframe of 105 days to issue an environmental authorisation after an EIA report has been submitted. Overall, the EIA report is approved 11 months (324 days) after the appointment of the EAP. It is concluded that delays are generally experienced prior to the submission of the EIA report and also during the review of the application by the competent authority.

Table 5.21: The efficiency of the scoping and EIA process

The efficiency of the full EIA process			
Steps	Duvha Park X2 (days)	Sungazer (days)	Average (days)
Appointment to submission	103	228	165.5
Submission to decision	100	217	158.5
Appointment to decision	203	445	324

* The red indicates areas where delays occurred.

5.3.3.4. A comparative assessment of the efficiency of the authorisation processes

Table 5.22 indicates the efficiency of the various authorisation processes. A comparative assessment of the efficiency of the various authorisation processes shows that the basic assessment process requires the most time for the preparation of the report. The preparation process for planning applications seems to be the most efficient. However, decision-making by the environmental authority is more efficient than the decision-making by the planning authority. This is also evident from the analysis done in Tables 5.19, 5.20 and 5.21.

Except for one, all the environmental processes were conducted within the overall prescribed timeframe. The environmental processes are therefore considered to be efficient. During three of the five case studies the planning processes caused serious delays and therefore the efficiency of the planning process is questionable (refer to Table 5.22). The planning process was responsible for delaying development for Duvha Park Extension 2 (refer to Figure 5.4), Hendrina Extension 4 (refer to Figure 5.7) and Riverview Extension 1 (refer to Figure 5.13). The environmental process was responsible for delaying development for Corridor Hill (refer to Figure 5.2) and Sungazer (refer to Figure 5.11). It is concluded that

the environmental process is not exclusively responsible for delays in the overall development process.

Table 5.22: The efficiency of the authorisation processes

The efficiency of the authorisation processes			
Steps	Planning process (months)	Basic assessment process (months)	Scoping and EIA process (months)
Appointment to submission	3	8	5.5
Submission to decision	12	1	5
Appointment to decision	15	9	11

5.3.4. POSSIBLE CAUSES OF INEFFICIENCY

During interviews with different role players the following possible causes for inefficient authorisation processes were identified. The views of the consultants and that of the government officials are presented separately.

5.3.4.1. The consultants' view

Public participation

Town planning and environmental legislation require public participation to be conducted and therefore the public, relevant government departments and organisations must be notified of the applications. All interested parties are provided with the opportunity to comment on the proposed development within a specified timeframe. During interviews conducted with the consultants it was indicated that they often struggle to obtain comments from government departments. This has proven to be especially problematic for planners, since the planning authority refrains from issuing a decision on an application before all the comments from the government departments have been submitted.

Another challenge that was raised is that objections are often received outside the timeframe allocated to the public and / or government departments. This results in the application being modified numerous times instead of dealing with the objections and comments once off.

Lack of services infrastructure

Most environmental and planning applications require the submission of a services report in order to establish, amongst other things, whether the necessary services can be provided. Authorities refrain from approving applications where such proof cannot be provided. Obtaining commitment from the local authority to provide the necessary services may cause delays within the authorisation processes.

Specialist studies

Obtaining specialist studies is time consuming. During interviews it was revealed that it takes approximately 1 to 2 months for these studies to be concluded. It was also explained that obtaining quotations for the specialist studies, that is acceptable to the project proponent, is often even more time consuming.

Delaying tactics by competitors

It has come to the attention of the consultants that competitors occasionally register as interested and affected parties, claiming to act on behalf of the environment and / or the

public, while only seeking to deliberately delay the process through for example requesting additional information.

Lack of capacity

The view was expressed that there seem to be a lack of capacity in the public sector. The complexity of specialist studies may contribute to the problem, as these reports are often complex and beyond the technical competence of the relevant official that needs to interpret the reports. This results in the improper evaluation and interpretation of the specialist reports. Government acknowledged the lack of capacity as a problem in the March 2009 quarterly report (National Assembly, 2009:4) where it was stated that there is still a shortage in capacity to ensure an efficient system (refer to section 4.1).

Lack of co-operative governance

Some local authorities require the environmental authorisation to be submitted with the planning application but when asked to comment on the environmental application they refuse to comment, arguing that they have not received a planning application. However, during interviews with the consultants it was indicated that this matter has been resolved after explaining the circumstances to the local authorities. It was decided that local authorities would only submit their comments during the planning process; therefore the environmental authority no longer requires these comments to be submitted with environmental reports before considering the reports.

Changing the nature or scope of the project

The project proponent often changes the nature or scope of the project during the EIA process. These changes need to be incorporated in the environmental reports, because the environmental authorisation is issued for specific activities. This means that serious delays and back tracking could be experienced, especially in relation to the public participation process if the public need to be informed of the proposed changes to the development.

Requests for additional information

When additional information is requested during the environmental process, it often causes serious delays, since it takes approximately 1 or 2 months for a specialist studies to be conducted. The provision of additional information also imposes an unexpected financial burden on the project proponent. It was also argued that the requests for additional information are often made during inappropriate stages in the environmental process, for example after the EIA report has been accepted. The consultants argued that additional information should be requested after the consideration of the scoping report so that the required information may be included in the EIA report.

5.3.4.2. The government's view

Vacancies

The shortage of staff increases the workload of officials and in turn results in officials not evaluating the applications properly and / or increased staff turnover. Table 5.23 indicates the EIA applications received versus the number of EIA staff and vacancies during 31 March 2009. The table indicates that 3 173 applications have been submitted in the Mpumalanga Province since September 1997. The table also indicates that the Mpumalanga Province has 32 environmental posts but 18 of the posts are vacant. In other words 56% of the environmental posts at the Mpumalanga Province were vacant during 31 March 2009. This clearly demonstrates the enormous workload put on the officials currently working at the Mpumalanga Province.

Table 5.23: EIA applications received versus the EIA staff establishment and vacancies as on 31 March 2009 (National Assembly, 2009:5)

Competent authority	Total number of applications received			Total number of posts in EIA establishment	Total number of vacancies on 31 March 2009
	ECA	NEMA	TOTAL		
Mpumalanga	2 390	783	3 173	32	18
Total of all provincial authorities	48 796	10 881	59 677	472	172

Staff turnover

A very high staff turnover is currently experienced in most of the government departments. Officials that were trained for a specific project either get reassigned or resign due to more lucrative salaries being offered elsewhere. It was also revealed during interviews that the prospects for a promotion within government are not very good and that officials often stay in the same position for 6 years or more.

Quality of reports

During interviews the view was expressed that the quality of reports received from EAPs is sometimes problematic. Often reports are insufficient or of poor quality and officials need to continuously request additional information in order to make an informed decision on the application.

5.3.5. IMPROVING EFFICIENCY

During interviews with the different role players the following proposals were made for improving the efficiency of authorisation processes. The views of the consultants and that of the government officials are presented separately.

5.3.5.1. The consultants' view

Use of the strategic framework

It was suggested that strategic frameworks should be consulted and interpreted for evaluating the desirability and probable impact of developments. It was proposed that when a development is in line with the guidelines set by the relevant strategic document, such as the strategic development framework (SDF) and environmental management framework (EMF), decision-making should be streamlined.

Integration of planning and EIA

Environmental considerations should be integrated in the planning and design phases of projects. The sooner the environmental assessment starts, the less likely it is for delays to occur, because risks would be identified at an early stage and the authorisation processes may also be integrated or aligned.

Communication between consultants

It was acknowledged that communication between consultants is crucial. Regular communication between consultants, may amongst others, avoid unnecessary duplication and delays within the authorisation processes.

Consultants providing assistance

Consultant could assist authorities on a contractual basis with the evaluation of reports, providing training for officials, etc. The latter has already been explored for 24G applications in certain provinces. However, it needs to be stressed that the mandate of government to make decisions may never be fully delegated to the private sector.

Alignment of processes

Certain stages of the authorisation processes should be aligned, for example the public participation processes. Alignment could minimise costs and avoid duplication and confusion amongst stakeholders. During interviews consultants pointed out that the two separate public participation processes often cause confusion, since stakeholders think the notices refer to two separate development projects. However, it needs to be stressed that the potential for alignment will need to be considered independently for different projects.

5.3.5.2. The government's view

Project initiation meeting

Having all the relevant departments meet at the initiation of the project in order to discuss and resolve any issues, could streamline authorisation processes. During such meetings the scope, content and procedural requirements need to be agreed upon. This could save time and avoid uncertainty, which could result in delays. The author is aware that the latter has been included in guideline documents under the ECA regime as well as within international best practice.

Registration of EAPs

Government officials supported the notion of creating a registration body to govern EAPs. It was suggested that the registration of EAPs should be mandatory to ensure that only properly qualified EAPs may conduct EIAs. The author is aware that the progress with the establishment of such a body has reached a point where qualification standards have already been finalised.

Lack of human resources

It was indicated that a serious concern for government is the appointment of the necessary personnel to fill vacant posts. It was indicated that some posts have been vacant for more than two years.

Avoiding the duplication of information

Most of the authorisation applications include similar information. Ideally information, such as specialist reports, should only be submitted once in an attempt to avoid duplication.

Review of EIA regulations

The view was expressed that a multi-disciplinary team should review the EIA regulations, since the environmental department often places too much emphasis on conserving the environment. It was also stated that the current regulations result in too many unnecessary EIAs being conducted for irrelevant activities, which have insignificant impacts on the environment.

Integrating environmental management and planning into one department

It was suggested that the environmental and planning functions should be integrated into one government department. This would facilitate co-operative governance and will also assist in streamlining decision-making. The author is aware that certain provinces, such as the Western Cape, have already managed to achieve the integration of the planning and environmental departments.

5.4. CONCLUSION

After the analysis of the five case studies, it is concluded that, only one environmental process deviated from the prescribed timeframe within which a decision on an environmental authorisation should be issued. The majority of the environmental processes were implemented more or less in accordance with the prescribed timeframes. Since the Transvaal Ordinance provides no timeframes, such a comparative study was not possible for the planning authorisation process. It should however be noted that the timeframes within which the planning processes were implemented varied considerably from 7 and a half to 20 months.

Furthermore, after comparing the actual and the prescribed timeframes and illustrating how the processes are implemented, the alignment between the processes could be evaluated. Results indicate that planning applications are usually submitted 4 months prior to the environmental application being submitted, but that for the majority of the case studies the planning authorisation was obtained after the environmental authorisation. Where the planning process was responsible for delaying the project, it delayed the project with an average of 10 months, compared to the average of 1 and a half month delay that the environmental process was responsible for. The efficiency of the planning process is therefore questionable.

The analysis of the efficiency of the authorisation processes for the individual case studies enabled the identification of the case-specific reasons for delays. All five case studies experienced delays in either the planning or the environmental process or both. Most delays occurred during the final stages of the authorisation processes. The reasons for delays are summarised below:

- Obtaining specialist studies is time consuming;
- Changing the scope of the application during the authorisation processes;
- Lack of available services infrastructure;
- Lack of proper evaluation of scoping reports and subsequent requests for additional information during inappropriate stages of the environmental process;
- Public participation is time consuming;
- Complexity of the project; and
- The review by the planning authority is time consuming.

The cross-case analysis indicated that the preparation process for planning applications is the most efficient, while the decision-making by the planning authority is the least efficient amongst the different authorisation processes. The environmental authorisation processes are deemed to be more efficient than the planning process, since serious delays were experienced in the planning process for three of the five case studies. Therefore, the commonly expressed view that environmental authorisations hold up necessary development is proved to be untrue.

During interviews with planners, environmental consultants and government officials, possible causes for inefficient authorisation processes were identified. Numerous possible reasons for inefficient authorisation processes were identified. Interestingly the government officials and consultants gave entirely different reasons for what they believe to be the causes of inefficient authorisation processes. However it should be noted that some of the reasons are indirectly linked to each other, for example the lack of capacity (identified by consultants) and the staff turnover (identified by government officials). The interviews conducted also provided interviewees the opportunity to present proposals for improving the efficiency of the authorisation processes and valuable suggestions were made. Again the government officials and consultants provided different proposals for improving the efficiency of authorisation processes. It is concluded that government officials and consultants are each facing its own unique set of challenges to efficient authorisation processes and it is

argued that each role-player (government and consultant) are the most appropriate 'person' to identify and apply solutions to overcome their specific challenges. The following chapter will provide a summary of the research results and the overall conclusions for the research after which recommendations are made for further research.

CHAPTER 6

RECOMMENDATIONS AND CONCLUSIONS

6.1. INTRODUCTION

In this chapter final conclusions and recommendations are made in terms of the main objective of the research introduced in Chapter 1, namely:

To critically review the efficiency and alignment of planning and environmental impact assessment (EIA) authorisation processes in the Mpumalanga Province.

The aim of this chapter is firstly to demonstrate that the main objective of the research has been achieved and that the sub-research questions presented in Chapter 1 have been answered. The chapter starts in section 6.2 by summarising the research results in relation to the different sub-research questions. This provides an easy reference to the outcomes of the research. In section 6.3 conclusions and recommendations are made on how to improve the efficiency of authorization processes. These recommendations are based on a reflection on the existing knowledge from the literature review (refer to Chapter 4) as well as the empirical research results emanating from the case study analysis and interviews (refer to Chapter 5). The chapter concludes with recommendations for further research in section 6.4.

6.2. SUMMARY OF RESULTS

In order to achieve the overall research objective presented in Chapter 1 a number of sub-research questions were answered. Table 6.1 presents a summary of the research results in relation to the sub-research questions.

Table 6.1: Summary of research results in relation to sub-research questions

Sub-research question 1: What are the prescribed legal processes relating to environmental assessment and planning authorisations?

In Chapter 3 two specific pieces of legislation, namely the NEMA and the Transvaal Ordinance were explored to inform the data gathering and analysis for the case studies presented in Chapter 5. The legal provisions of these two pieces of legislation are briefly presented below.

The regulations promulgated in terms of Chapter 5 of the NEMA (107/1998) determine that an EIA process should be followed for certain listed activities, which might have a detrimental effect on the environment. The three government notices, include regulation 385 relating to the process to be followed, regulation 386, which includes a list of activities, which must follow the basic assessment procedure, and regulation 387, which includes a list of activities, which must follow the scoping and EIA procedure. The regulations introduced compulsory timeframes and thresholds for listed activities to reduce the time taken to obtain an environmental authorisation (Kidd & Retief, 2008:23).

Part C of the Transvaal Ordinance (15/1986) is applicable to township establishments within the areas of jurisdiction of an authorised local authority. The different steps required by the Transvaal Ordinance, in order to obtain a planning authorisation were explored in detail and it was found that the Transvaal Ordinance provides very little timeframes.

The exploration of the prescribed legal processes revealed that individual procedures exist in terms of different statutes, which are applicable to determine the impact of a particular development. It is concluded that legislation has not really provided for more integration of procedures, since planning and environmental authorisation processes still implemented as separate authorisation procedures during a single development.

Sub-research question 2: What are the debates relating to the efficiency of authorisation processes?

Debates relating to the efficiency of authorisation processes revolved around three cross-cutting and interrelated themes: the first relates to the legislative framework and debates include concerns about legislative fragmentation and the need for integration. The second theme relates to the procedural framework and examines issues such as the alignment of authorisation processes and issues concerning timeframes and delays. The third theme relates to the institutional framework where concerns related to co-operative governance are examined.

The need for improving the efficiency of the authorisation processes is evident from the high profile discussions on environmental assessment. It became evident that government's response to inefficient processes has been through the redrafting legislation. Debates lean towards seeking alternative strategies apposed to overly prescriptive legislation to address complex environmental challenges. It is argued that we rather need to improve the implementation of the legislation through strong capacity in government with improved communication, interaction and co-operation between the relevant authorities and project team members.

It is concluded that the efficiency of authorisation processes is still a contentious issue that is frequently debated. This may be ascribed to the persistence of numerous challenges that hamper the efficiency of authorisation processes. These challenges may be divided into two distinct groups, namely the intrinsic shortcomings and extrinsic shortcomings. Intrinsic shortcomings identified in the literature include: a lack of commitment, the separation between environmental evaluation and planning, the reactive nature of the project focus, EIA acting as a retrospective assessment tool, ineffective timeframes, the subjectivity of defining significance and EIAs may be biased. The following extrinsic shortcomings was identified:

- Legislative fragmentation;
- Lack of integration;
- Lack of capacity;
- Time delays;
- Lack of financial and human resources;
- Public participation is time-consuming and expensive;
- Lack of co-operative governance;
- Consultants lacking competence;
- Legislative and administrative problems; and
- Lack of follow-up, monitoring and compliance.

Sub-research question 3: How are the processes implemented and aligned in practice?

After the prescribed and actual timeframes for the different case studies were summarised in table format and plotted on graphs a comparative analysis could be conducted on how the processes were implemented and aligned in practice.

It is concluded that, only one environmental process deviated from the prescribed timeframe

within which a decision on an environmental authorisation should be issued. The majority of the environmental processes are implemented more or less in accordance with the prescribed timeframes. Since the Transvaal Ordinance provides no timeframes, such a comparative study was not possible for the planning authorisation process. It should however be noted that the timeframes within which the planning processes were implemented varied considerably.

Furthermore, after comparing the actual and the prescribed timeframes and illustrating how the processes are implemented, the alignment between the processes could be evaluated. Results indicate that planning applications are usually submitted 4 months prior to the environmental application being submitted, but that for the majority of the case studies the planning authorisation was obtained after the environmental authorisation.

Sub-research question 4: How efficient is the authorisation processes?

A comparative assessment of the efficiency of the different authorisation processes indicated that the planning applications are usually submitted before the environmental applications, but that for the majority of the case studies the planning authorisation was obtained after the environmental authorisation. Where the planning process was responsible for delaying the project, it delayed the project with an average of 10 months, compared to the average of 1 and a half month delay that the environmental process was responsible for. The efficiency of the planning process is therefore questionable.

The cross-case analysis indicated that the preparation process for planning applications is the most efficient, while the decision-making by the planning authority is the least efficient. The environmental processes are deemed to be more efficient than the planning processes, since planning caused serious delays in three of the five case studies.

Sub-research question 5: Why do process inefficiencies occur?

The analysis of the efficiency of the authorisation processes for the individual case studies enabled the identification of the case-specific reasons for delays. All five case studies experienced delays in either the planning or the environmental process or both. Most delays occurred during the final stages of the authorisation processes. The following reasons for inefficient authorisation processes were identified in the literature, the analysis of the case studies and the interviews:

- Obtaining specialist studies is time consuming;
- Lack of capacity / competence;
- Lack of co-operative governance; and
- Obtaining comments during the public participation process is time consuming.

The following reasons for inefficient authorisation processes were also identified by the case studies and the interviews:

- Changing nature of the project scope;
- Lack of available infrastructure for service delivery; and
- Requests for additional information.

The interviews also identified the following additional reasons for inefficient authorisation processes:

- Delaying tactics by competitors;
- Staff vacancies at government institutions;
- Rapid staff turn-over; and
- Poor quality of reports.

During the interviews government officials and consultants gave different reasons for what they believe to be the causes of inefficient authorisation processes.

Sub-research question 6: How can the efficiency of authorisation processes be improved?

The following proposals for improving the efficiency of the authorisation processes were presented in the literature, and the interviews:

- Integrating planning and EIA;
- Integrating or linking planning and environmental management courses at tertiary institutions;
- Improving communication and / or co-operation at a professional and government level;
- Aligning authorisation processes;
- Develop and implement decision-support systems and tools;
- Making use of the strategic frameworks;
- Build and maintain human resource capacity;
- Consultants to provide assistance to government;
- Scheduling a project initiating meeting;
- Avoiding duplication of information;
- Registration of EAPs; and
- The review of the EIA regulations.

Again the government officials and consultants provided different proposals for improving the efficiency of authorisation processes. It is concluded that government officials and consultants are each facing its own unique set of challenges to efficient authorisation processes and it is argued that each role-player (government and consultant) are the most appropriate 'person' to identify and apply solutions to overcome their specific challenges.

6.3. OVERALL CONCLUSION - THE EFFICIENCY TRIANGLE

The research covered a wide spectrum of literature and produced a significant amount of data related to the efficiency of authorisation processes. The final challenge for the research is to integrate and triangulate the results and present it in the form of a single conceptual understanding of the problem, to serve as basis for recommendations for improving efficiency. It already became evident during the literature review phase of the research, that efficiency is a cross-cutting theme, which requires an integrative understanding of the different influencing and / or 'success factors or ingredients'. The outcome of the research suggests that there are three main success factors for efficiency, namely (justification for these factors is discussed in relation to the research results in sections 6.3.1 to 6.3.3):

- Success factor 1 - Legislative framework: The first requirement towards achieving efficiency is a strong legislative framework. Such a framework could provide strong regulatory procedures, which in turn provide a strong basis and mandate for the management of processes as well as sound decision making. Fundamentally it provides for administrative and environmental justice.

- Success factor 2 - Co-operative governance: In order to ensure efficiency there is a need for good communication processes between all parties involved (the project proponent, consultants, authorities, interested and affected parties, etc.). The basis for good communication is strong co-operative governance arrangements.
- Success factor 3 - Information and competence: In any authorisation process information gets generated and fed into the decision making process. To ensure efficiency it is crucial that those who generate information (consultants) and those who consider the information (government) are competent. The combination of sound information and competent consultants and officials injects expertise into the authorisation process. Without expertise providing skill and knowledge it is difficult to sustain and implement the legal framework and / or facilitate meaningful communication.

These three factors should strengthen each other in a synergistic fashion. For this reason Figure 6.1 is conceptualised in the form of the so-called 'efficiency triangle', which clearly illustrates the interaction between these factors. For example, a strong legislative framework with poor communication and no expertise is bound to lead to frustration and inefficiency. Moreover, communication would be difficult without a strong legal framework and / or expertise to provide the knowledge required for decision-making.

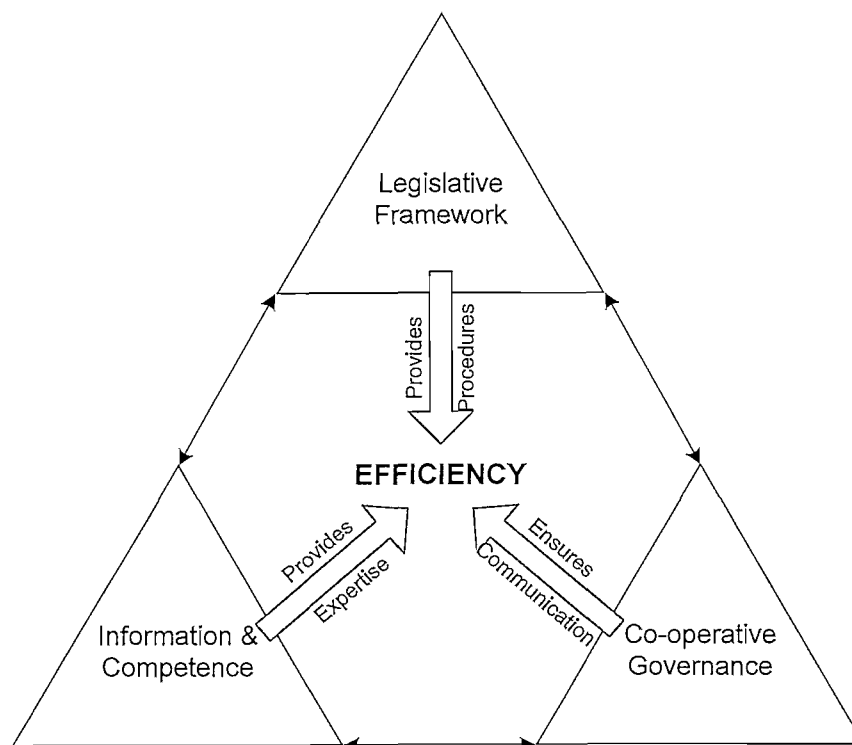


Figure 6.1: The Efficiency triangle

It is argued that efficient authorisation processes will only be obtained if all three success factors are in place. At present the weakest ingredient in the South African context seems to be the lack of expertise followed by weak co-operative governance and communication. The strong legislative framework is seriously undermined by weaknesses in expertise and communication. In order to support and validate the rational behind the effectiveness triangle the following sections present the research results relating to the different success factors.

6.3.1. SUCCESS FACTOR 1: LEGISLATIVE FRAMEWORK - PROCEDURES

It is argued in the literature that South Africa does provide a strong legislative framework for both planning and environmental authorisations. However, somewhat contradictorily the literature also points out that our legal framework is overly complex and fragmented (Spinks et al., 2003:313; Nel, 2005:361; Scherzer et al., 2005:446; Vermaak, 2006:4; Van Wyk, 2007:71; Kidd & Retief, 2009:54). The research concluded that the strong procedural framework provided by the legislation was exceedingly important because it provided the basis and legal parameters against which to evaluate efficiency in the first place. In this regard the EIA legal framework is somewhat more explicit in terms of timeframes than the planning legal framework covered by this research.

Based on the research results it is concluded that the main frustration with inefficiency lies with the lack of implementation of the legal framework and not the content of the legislation (refer to section 4.2). The latter has also been highlighted by other authors (Kotze, 2003:169; Snyman, 2003:298; Nel, 2005:356). The case study analysis highlights various instances where the consultants were frustrated by the lack of what they considered to be commitment from government to adhere to the legal requirements (refer for example to the Duvha Park Extension 2 and Sungazer case studies sections 5.3.2.2 and 5.3.2.4). No indication was given during the case study analysis or interviews that role players were unhappy with the content of the legislation or prescribed procedures. Rather the lack of the efficient implementation of the legislative framework seems to cause the most frustration. It is concluded that without a strong legal framework, efficiency would be very difficult to attain.

6.3.2. SUCCESS FACTOR 2: CO-OPERATIVE GOVERNANCE - COMMUNICATION

The failure of co-operative governance in South Africa is widely acknowledged and well documented (Kotze, 2003:167; Nel, 2005:361; Sampson, 2007:82; Van Wyk, 2007:73). The result has been the duplication and overlapping of governance efforts, wasting of resources and ultimately inefficiency (Jordi *et al.*, 1998:7-8; McDaid, 2000:216; Snyman, 2003:295; Vermaak, 2006:4; Kidd & Retief, 2009:30).

These views are also borne out by the research, which clearly found that there is inadequate consultation and communication between the different spheres of government (vertical communication), between government departments at the same sphere of government (horizontal communication) as well as within government departments. For example the interviews highlighted the fact that some local authorities do not allow parallel authorisation processes but require the environmental authorisation to be submitted with the planning application (refer to section 5.3.4.1). The latter requirement clearly militates against efficiency. The interviews also confirmed that certain information required in the EIA process is very difficult and time consuming to obtain from local authorities such as the status of services infrastructure (refer to section 5.3.4.1). Furthermore, the research found that there is a lack of communication between the project proponent and the EAP, the EAP and relevant specialists as well as between the EAP and the competent authority. For example a number of case studies (refer to Corridor Hill and Sungazer case studies, sections 5.3.2.1 and 5.3.2.4) highlighted the fact that appointing specialists as well as obtaining specialist studies caused delays, which could have been avoided through better communication. Case studies also suggest that changes to the project scope were picked up late in the process due to a lack of communication between the project proponent and the EAP, resulting in delays (for example refer to Corridor Hill case study, section 5.3.2.1). It is concluded that the need for sound co-operative governance to facilitate good communication processes between role players is a crucial success factor for efficiency of authorisation processes.

6.3.3. SUCCESS FACTOR 3: INFORMATION & COMPETENCE - EXPERTISE

The literature shows that there is a serious lack of capacity within the public sector, which is the root cause of process inefficiencies (Kotze & Van der Walt; 2003:47; Nel, 2005:356; Sampson, 2007:77; Kidd & Retief, 2009:34; National Assembly, 2009). This research supports the this view but also highlights a lack of capacity within the private sector.

The emphasis on the lack of capacity (both public and private sector) was evident throughout the case study analysis as well as the interviews. To some extent it seemed as if there was a degree of placing blame between the consultants and the authorities (refer to sections 5.3.4). The authorities highlighted the fact that incomplete and poor applications increased their workload and that continual requests for additional information causes serious delays (refer to for example the Sungazer case study, section 5.3.2.4). The consultants were also quick to point out the lack of capacity in the public sector as a major cause of inefficiency and general frustration. This lack of capacity refers both to the insufficient number of staff as well as the inappropriate and low skill levels. For example, for the Duvha Park Extension 2 and Sungazer case studies the consultants complained that the reports were not properly reviewed and that the specialist studies seemed too complex for the authorities to interpret. Therefore there seems to be a lack of quality information going into the system combined with lack of capacity to deal with the information. Combining good information and capacity will ensure expertise able to provide efficient process outcomes.

6.4. RECOMMENDATIONS FOR FURTHER RESEARCH

In terms of taking the efficiency debate forward the following areas of future research is recommended:

- A larger sample of case studies could be analysed to test the results obtained through this research and particularly the robustness of the 'effectiveness triangle'.
- The research could be expanded to other provinces to test geographical variances. It may reasonably be expected that the efficiency of different provincial environmental authorities would differ depending on their levels of staff and resources.
- Future research may explore other planning authorisation processes, for example the Development Facilitation Act process, Less Formal Township Establishment Process, other Provincial Ordinances, Provincial Acts, etc.
- Other authorisation processes could also be included in the analysis, for example water use licenses, heritage assessments, etc.
- Future research may explore the possibilities for integrating the planning and environmental professions at an earlier level, for example during tertiary education.

This research therefore serves as a first step towards gaining a better understanding of the efficiency of authorisation processes in South Africa. The results presented are not exhaustive, especially since the main emphasis was merely on the Mpumalanga Province, and it is hoped that the research fraternity will continue to explore this important theme.

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ANNEXURE A: INTERVIEW SCHEDULE

Company / Department	Involvement	Interviewee	Date of interview
Town and Regional Planners	Planner – responsible for the preparation of the town planning applications.	Anonymous	11 June 2009
	Planner - responsible for the preparation of the town planning applications.	Anonymous	17 July 2009
Environmental Consultants	EAP - responsible for the preparation of environmental assessment applications.	Anonymous	30 June 2009
	EAP - responsible for the preparation of environmental assessment applications.	Anonymous	30 June 2009
Department of environmental affairs	Official - responsible for the evaluation and approval of environmental assessment applications.	Anonymous	30 June 2009
	Official - responsible for the evaluation and approval of environmental assessment applications.	Anonymous	30 June 2009
Emalahleni (Witbank) Local Municipality	Official - responsible for the evaluation and approval of planning applications.	Anonymous	20 July 2009
	Official - responsible for the evaluation and approval of planning applications.	Anonymous	21 July 2009