

SECTION 3: REGULATORY FRAMEWORK

3.1 LEGAL REQUIREMENTS

This component of the report provides a brief overview of the pertinent policies and legal and administrative requirements applicable to the proposed expansion of the iron ore facility. This section represents the PDNA/SRK's interpretation of the relevant legislation and highlights the principal legislation applicable, and is not a comprehensive list.

3.1.1 Environmental Impact Assessment Requirements

The EIA process being followed (Figure 3) is in accordance with Section 26 of the Environment Conservation Act (ECA), 1989 (Act No. 73 of 1989) and the EIA Regulations promulgated under this Act (Government Notice No.'s 1182, 1183 and 1184 of 1997). The proposed development involves 'listed activities', as defined by the ECA. Listed activities are those that may have potentially detrimental impacts on the environment and therefore require environmental authorisation from the relevant environmental authorities.

The proposed development involves the following listed activities as stipulated in the EIA regulations:

1(d) The construction or upgrading of roads, railways and associated structures;

1(e) The construction or upgrading of marinas, harbours and all structures below the high-watermark of the sea and marinas, harbours and associated structures on inland waters;

2(c) The change of land use from agricultural or zoned undetermined use or an equivalent zoning to any other land use;

7. The reclamation of land, including wetlands, below the high-water mark of the sea, and in inland waters;

9. Scheduled processes listed in the Second Schedule to the Atmospheric Pollution Prevention Act, 1965 (Act No. 45 of 1965);

Scheduled process 59: The bulk storage and handling of ore: That is to say, the storage and handling of ore ... at dumps designed to hold 100 000 tonnes or more and not situated on the premises of a mine or works as defined in the Mines and Works Act, 1956.

10. The cultivation or any other use of virgin ground.

The proposed development occurs in the Western Cape Province, but the relevant authority for this EIA application is the National Department of Environmental Affairs and Tourism (DEAT) (refer to Appendix B4), with the Western Cape Department of Environmental Affairs and Development Planning (DEA&DP) as a key advisory authority.

3.1.2 Transitional Arrangements of NEMA EIA Regulations

On 21 April 2006, the Minister of Environmental Affairs and Tourism published new EIA regulations in terms of section 24(5) and section 44 of the National Environmental Management Act, (NEMA) Act 107 of 1998. Chapter 9 of these new regulations indicates the transitional arrangements and commencement date of the regulations (Section 82, GN No. R 385). The provisions of Section 84(1) are such that “an application for authorisation of an activity submitted in terms of the previous regulations and which is pending when these regulations take effect, must despite the repeal of the previous regulations be dispensed with in terms of the previous regulations as if the previous regulations were not repealed”.

As this application was submitted to DEAT in February 2006, before the new regulations took effect on 3 July 2006, this EIA is being undertaken in terms of the ECA and under the previous EIA regulations. Nevertheless, a comprehensive EIA is being undertaken such that the cumulative impacts of the past, current, and proposed expansions of the port are investigated. The intention is to undertake the EIA to the required degree of detail, and with the full complement of specialist studies that would have been required for a large scale development as if it were under the dispensation of the new EIA regulations.

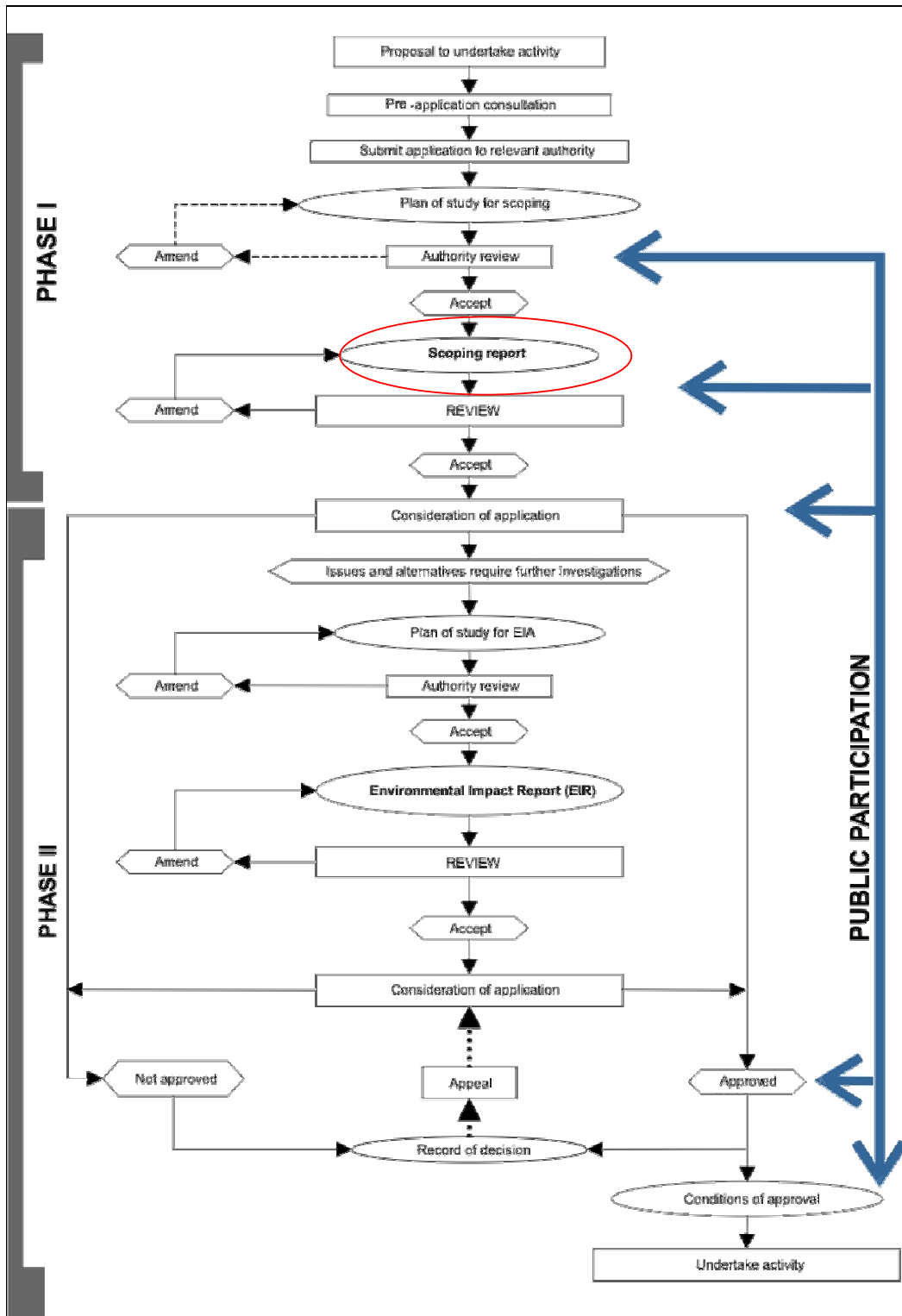


Figure 3: Standard EIA procedure as prescribed by the Department of Environmental Affairs and Tourism (DEAT).

3.1.3 National Legislation

The following list of legislation is applicable to the proposed development of the iron ore handling facility at Saldanha Bay. Some of the national legal requirements and policy guidelines are discussed below:

3.1.3.1 *National Environmental Management Act (NEMA), 1998 (Act No. 107 of 1998)*

NEMA serves as a framework and provides general environmental principles and guidelines, which must be adhered to by decision makers, authorities and environmental practitioners. In accordance with NEMA's principles, development must be socially, environmentally and economically sustainable.

3.1.3.2 *National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004)*

The purpose of the Biodiversity Act is to provide for the management and conservation of South Africa's biodiversity within the framework of the NEMA and the protection of species and ecosystems that warrant national protection. As part of its implementation strategy, the National Spatial Biodiversity Assessment was developed. The proximity of the site to sensitive dunes supporting possible red data species makes this legislation applicable to the proposal.

3.1.3.3 *National Water Act, 1998 (Act No. 36 of 1998)*

This Act guides the management of water in South Africa as a common resource. The Act aims to regulate the use of water and activities, which may impact on water resources through the categorisation of 'listed water uses' encompassing water extraction, flow attenuation within catchments as well as the potential contamination of water resources, where DWAF is the administering body in this regard.

Transnet currently utilises approximately 11 000 m³ of water per month. The current water use licence authorises the use of 34 000 m³ per month. Therefore, Transnet only uses about a third of its allocated water usage at present. Based on the scope of works to be undertaken for this application, it is evident that the volume of water that will be needed for Phase 2 operations is larger than the licensed volumes. Given the scarcity of water as a resource, Transnet has identified the need to investigate alternative water

usages and strategic sources. Transnet is obligated to avoid pollution and waste of water resources as a result of its operations.

In a site meeting with DWAF officials in order to discuss the application for a Water Use Licence, DWAF suggested that a comprehensive Integrated Water and Waste Management Plan (IWWMP) be compiled and submitted to DWAF for approval. DWAF can exercise the right to approve this IWWMP instead of going through the Water Use Licence process.

3.1.3.4 National Heritage Resources Act, 1999 (Act No. 25 of 1999)

The National Heritage Resources Act legislates the necessity for cultural and heritage impact assessment in areas earmarked for development, which exceed 0.5ha. The Act makes provision for the potential destruction to existing sites, pending the archaeologist's recommendations through permitting procedures. Permits are administered by the South African Heritage Resources Agency (SAHRA).

In terms of the act, historically important features such as shipwrecks and the fossil beds in the area are protected. In this regard, should Transnet's proposed activity involve the expansion of the current footprint of the site, the impact on historically important features may need to be considered.

3.1.3.5 National Environmental Management Air Quality Act, 2004 (Act No 39 of 2004)

This act aims to reform the law regulating air quality in order to protect the environment by providing reasonable measures for the prevention of pollution and ecological degradation, and for securing ecologically sustainable development, while promoting justifiable economic and social development. It also aims to provide for national norms and standards regulating air quality monitoring, management and control by all spheres of government; to provide for specific air quality measures; and for matters incidental thereto. It repealed the previous Atmospheric Pollution Prevention Act, 1965 (Act No. 45 of 1965). It is unclear whether the scheduled processes in the old act are now to be replaced by the listed activities to be published by the Minister in terms of section 21 of the new act.

Nevertheless, it is clear that the stockpiling and handling of iron ore invariably constitutes an activity that requires Air Quality Management Measures as contemplated the National Environmental Management Air Quality Act (NEM:AQA).

A notice regulating listed activities published by the Minister -

(a) must establish minimum emission standards in respect of a substance or mixture of substances resulting from a listed activity and identified in the notice, including -

- (i) The permissible amount, volume, emission rate or concentration of that substance or mixture of substances that may be emitted; and
- (ii) The manner in which measurements of such emissions must be carried out.

Transnet is therefore obligated to comply with section 22 of the act, which indicates that *“no person may without a provisional atmospheric emission licence or an atmospheric emission licence conduct an activity-*

(a) Listed on the national list anywhere in the Republic; or

(b) Listed on the list applicable in a province anywhere in that province.

Transnet currently has a Registration Certificate from DEAT for the handling of 45 million tonnes per annum. Transnet must, therefore, apply for a new Registration Certificate from the Chief Air Pollution Officer (CAPCO) before they may legally undertake the proposed upgrade for the handling of 93 million tonnes per annum. The EIA must conform to both the requirements of the CAPCO at DEAT and DEA&DP. Any new requirements and / or ambient air quality standards in terms of the NEMA:AQA must also be complied with.

3.1.3.6 Integrated Environmental Management

Integrated Environmental Management (IEM) is a philosophy for ensuring that environmental considerations are fully integrated into all stages of the development process. This philosophy aims to achieve a desirable balance between conservation and development (Department of Environmental Affairs, 1992). The IEM guidelines intend endearing a pro-active approach to sourcing, collating and presenting information in a manner that can be interpreted at all levels.

3.1.3.7 Additional Legislation

Other legislation and conventions that are relevant to the port operations include but are not limited to:

- The Sea Fisheries Act, 1973 (Act No. 58 of 1973);
- Dumping at Sea Control Act, 1980 (Act No. 73 of 1980);
- Sea Shore Act, 1935 (Act No. 21 of 1935);
- Health Act, 1977 (Act No. 63 of 1977);
- Protected Areas Act, 2003 (Act No. 57 of 2003); and
- The Marine Living Resources Act, 1998 (Act No. 18 of 1998).

3.1.4 Provincial and Local legislation

3.1.4.1 Protected species – Provincial Ordinances

Provincial ordinances were developed to protect particular plant species within provinces. The protection of these species is enforced through permitting requirements associated with provincial lists of protected species. These permits are administered by the DEAT.

3.1.5 Provincial Policies/Guidelines

Additional policies and guidelines that are relevant to the port operations include but are not limited to:

- Saldanha Bay Interim Integrated Development Plan (IDP) 2004/2005;
- West Coast District Municipality IDP 2002/2006;
- Western Cape Department of Environmental Affairs and Development Planning (DEA&DP), EIA Guideline Series, Information document on requirements with respect to the EIA Regulations, January 2003;

- Western Cape Department of Environmental Affairs and Development Planning (DEA&DP), EIA Guideline Series, Guideline for the Public Participation for the EIA process, September 2006;
- Western Cape Department of Environmental Affairs and Development Planning (DEA&DP), EIA Guideline Series, Guideline for the Plan of Study for Scoping, November 2001; and
- Western Cape Department of Environmental Affairs and Development Planning (DEA&DP), Guideline for determining the scope of specialist involvement in the EIA process, Edition 1: June 2005.

3.1.6 International conventions and agreements relevant to this study

The London Convention, the Ramsar Convention and the MARPOL Convention are three conventions that are particularly relevant to the study. Two other conventions are discussed, which are relevant because they refer to the management of ballast water and the security of maritime and port operations.

3.1.6.1 London Convention

The dredging and disposal of material at sea must conform to the requirements and obligations of the London Convention. The Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972, commonly called the "London Convention", is an agreement to control pollution of the sea by dumping and to encourage regional agreements supplementary to the Convention. It covers the deliberate disposal at sea of waste or other matter from vessels, aircraft, and platforms. It does not cover discharges from land-based sources such as pipes and outfalls, waste generated incidental to normal operation of vessels, or placement of materials for purposes other than mere disposal, providing such disposal is not contrary to aims of the Convention. It entered into force in 1975.

As of 2005, there were 81 Parties to the Convention, including South Africa (<http://www.londonconvention.org/>, accessed, 3 November 2006).

3.1.6.2 Ramsar Convention

The Ramsar Convention is an international treaty for the conservation and sustainable utilization of wetlands, i.e. to stem the progressive encroachment on and loss of wetlands now and in the future, recognizing the fundamental ecological functions of wetlands and their economic, cultural, scientific, and recreational value.

Also called The Convention on Wetlands of International Importance, especially as Waterfowl Habitat, it was developed and adopted by participating nations at a meeting in Ramsar, Iran on February 2, 1971 and came into force on December 21, 1975.

The Ramsar List of Wetlands of International Importance now includes over 1,616 sites (known as Ramsar sites) covering around 1,455,000 km², up from 1,021 sites in 2000. The Langebaan Lagoon in the Western Cape is one of such sites (source: <http://www.ramsar.org/>, accessed, 3 November 2006).

3.1.6.3 MARPOL Convention

MARPOL 73/78 is the International Convention for the Prevention of Pollution From Ships, 1973 as modified by the Protocol of 1978. ("MARPOL" is short for marine pollution and 73/78 short for the years 1973 and 1978).

MARPOL 73/78 is the most important international marine environmental convention. It was designed to minimise pollution of the seas, including dumping, oil and exhaust pollution. Its stated object is: to preserve the marine environment through the complete elimination of pollution by oil and other harmful substances and the minimization of accidental discharge of such substances.

The original MARPOL Convention was signed on 17 February 1973, but did not come into force. The current Convention is a combination of 1973 Convention and the 1978 Protocol. It entered into force on 2 October 1983. As at 31 December 2005, 136 countries, representing 98% of the world's shipping tonnage, were parties to the Convention (source: <http://www.imo.org/Conventions>, accessed, 3 November 2006).

3.1.6.4 *International Convention for the Control and Management of Ships' Ballast Water and Sediments*

This convention provides for the management and control of ballast water exchange procedures in several countries. Under Article 2 of the General Obligations Parties undertake to give full and complete effect to the provisions of the Convention and the Annex in order to prevent, minimize and ultimately eliminate the transfer of harmful aquatic organisms and pathogens through the control and management of ships' ballast water and sediments.

Ships are required to be surveyed and certified (Article 7) and may be inspected by port State control officers (Article 9) who can verify that the ship has a valid certificate; inspect the Ballast Water Record Book; and/or sample the ballast water. Where there are concerns, a detailed inspection may be carried out and "the Party carrying out the inspection shall take such steps as will ensure that the ship shall not discharge Ballast Water until it can do so without presenting a threat of harm to the environment, human health, property or resources (source: <http://www.imo.org/Conventions/>, accessed 17 January 2007).

3.1.6.5 *International Shipping and Port Security Code (ISPS)*

This code came into effect in July 2004. It is a comprehensive security regime for international shipping and it aims at measures to strengthen maritime security. Contracting parties, like the South African government have various responsibilities, including setting the applicable security level, approving the Ship Security Plan (source: <http://www.imo.org/Conventions/>, accessed, 17 January 2007).