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### ***An overview of relevant legislation for Environmental Planning in the Alfred Nzo District***

This section unpacks the legislation cited in the summary of issues in section 1. The EMP has to comply with guidelines as provided for in South African environmental legislation. In addition, it has to follow along best practice guidelines such as sustainability principles to ensure that priority issues are addressed in the most cost-effective manner.

This document will also be of assistance to officials and practitioners as a check list and summary of relevant legislation for consideration. It is not exhaustive and reference should be made to the original texts and Acts.

Environmental legislation for South Africa follows along the constitutional principles of the ***rights of citizens to a clean and healthy environment***. Constitutional principles therefore provide the basis for environmental policy and legislation dealing with environmental protection. South Africa has well developed environmental, resource and water management legislation, providing a well structured, if somewhat cumbersome policy framework for environmental considerations across the development and water services sector.

Other related legislation specific to natural resources management that is applicable to the Municipality, and designed to ameliorate possible negative effects of exploitation and use of environmental resources, include:

- National Environmental Management Act 107 of 1998, providing an overall framework for environmental management to ensure the effective protection and responsible utilisation of the environment
- The National Water Act 36 of 1998 which aims to manage the country's water resources to meet a wide range of objectives including basic needs, equitable access, facilitating social and economic development, protecting ecosystems and preventing pollution.
- The National Forests Act 84 of 1998 which seeks to provide for sustainable forest management.
- The National Environmental Management: Biodiversity Act 10 of 2004 relates to protection of biodiversity, and threatened species and habitats
- National Environmental Management: Protected Areas Act no 57 of 2003 deals with proclaimed protected areas. The Matatiele Nature Reserve is dealt with in detail by the Integrated Management Plan (IMP) for the reserve.
- Environment Conservation Act (73 of 1989) section 20 addresses issues of waste disposal, permitting of landfill sites, and littering

An outline is given of each relevant Act, along with its spirit and intent, applicable regulations and amendments, dates of promulgation, and relevant sections pertaining to environmental management for the District.

**These laws are subdivided below for easier access and understanding, as follows:**

1. Overarching environmental legislation, including pollution issues of air quality and waste
2. Physical and biodiversity law, including protected areas
3. Water specific law
4. Land use, agricultural and forest legislation
5. Heritage legislation
6. Development facilitation, planning and management
7. General procedural and criminal legislation
8. Social, employment and economic frameworks

## **1. Overarching environmental legislation, including air quality and waste**

### **1.1 Environment Conservation Act, No. 73 of 1989 (ECA)**

The Act provided the original foundation for the effective protection and controlled utilization of the environment and for matters incidental thereto. This was based on previous Acts such as the Atmospheric Pollution Prevention Act of 1965, and also gave rise to other more specific Acts such as NEMA in 1998.

Subsequent bills and acts, outlined in the sections below, have provided further detail and regulations to activate the ECA intentions. The most recent of these is the **National Environmental Laws Amendment Act 14 of 2009**, which can be summarized as follows:

To amend the—

- Atmospheric Pollution Prevention Act, 1965, so as to adjust the penalties provided for in the said Act;
- Environment Conservation Act, 1989, so as to adjust the penalties provided for in the said Act; and to remove the need to publish directions in the *Gazette*;
- National Environmental Management Act, 1998, so as to delete certain definitions; to provide for the establishment of fora or advisory committees; to make provision for increased powers of the courts; to remove the requirement that Environmental Management Inspectors must carry notices of designation with them; to extend the scope of routine inspections to the search of vehicles; and to regulate the jurisdiction of magistrate's courts in instances where the maximum fines have been increased;
- National Environmental Management: Protected Areas Act, 2003, so as to provide for increased measures of control over escaped animals; and to adjust the penalties provided for in the said Act;
- National Environmental Management: Biodiversity Act, 2004, so as to provide for general surveillance monitoring; to provide further considerations for a biodiversity management plan; to provide that an environment impact assessment must be obtained when genetically modified organisms are involved; to introduce notification requirements in the discovery phase of a bioprospecting project; to take into consideration knowledge of specific individuals when issuing specific bioprospecting permits; to allow the Director-General or a trustee to manage the Bioprospecting Fund; to allow for the renewal or amendment of a permit; to amend the regulations to allow for hunting; and to effect certain textual alterations;
- National Environmental Management: Air Quality Act, 2004, so as to provide for a processing fee to review a licence; and to include directors or senior managers in a juristic person for the criteria for a fit and proper person; and to provide for matters connected therewith.

### **1.2. National Environmental Management Act, No. 107 of 1998**

Intent:

To provide for co-operative environmental governance by establishing principles for decision making on matters affecting the environment, institutions that will promote cooperative governance and procedures for co-ordinating environmental functions exercised by organs of state; to provide for certain aspects of the

administration and enforcement of other environmental management laws; and to provide for matters connected therewith.

The Act defines environment as<sup>1</sup>:

*“The surroundings within which humans exist, and that are made up of ...land, water and atmosphere...plant and animal life... the interrelationships between them...the physical, chemical, aesthetic and cultural properties and conditions that influence human health and well-being”*

The Environmental Management Act provides an overall framework for environmental management in South Africa to ensure the effective protection and responsible utilisation of the environment. According to the Act, the protection of the environment and the promotion of sustainable utilisation of natural resources will take place as a matter of policy. Its prime aim is to provide for co-operative governance to establish principles for decision making on matters affecting the environment, establishing institutions to promote co-operative governance and establishing procedures for coordinating environmental functions.

The primary roleplayer with respect to resource use and management is the Department of Environmental Affairs and Tourism (DEAT), which is responsible for ensuring compliance with NEMA. DEAT promulgated revised environmental impact assessment (EIA) regulations in July 2006 based on NEMA, which superseded the older Environmental Conservation Act EIA procedures. These NEMA regulations provide thresholds for listed activities, above which the need for environmental authorisation is triggered. There are two levels of assessment, namely ‘basic assessment,’ which covers lower impact activities listed in Government Notice R386, as well as more intensive scoping and comprehensive EIA ,which must be applied to activities listed in GN R387. These thresholds are due to be revised in 2009.

The current thresholds include developments which would be applicable in the Matatiele situation such as:

- New or upgraded roads wider than 4m, and associated structures and activities, outside of the borders of town planning schemes
- Development of vacant or undeveloped land greater than 1 hectare.
- Changes of land use, including from residential to commercial or industrial, from grazing or agricultural to any other use, and use of nature conservation or zoned open space to any other land use.
- Schemes for abstraction and utilisation of water for bulk water supply schemes, and diversions of the normal flow of water in a river bed, e.g. Dams
- Sewage treatment plans and associated infrastructure
- Disposal of waste (solid, liquid or gaseous)
- Public and private resorts and associated infrastructure
- Concentration of livestock for mass commercial production
- Scheduled processes as per the second schedule to the atmospheric pollution prevention act, which include incineration of medical waste and wood by-products

The level at which these activities are planned to occur would trigger either a basic assessment process, or a scoping and full EIA process. This would need to be advised by either the regional Environmental office (DEDEA) or an independent environmental practitioner. The latter is required to undertake and submit an assessment report to DEDEA in order to obtain authorization for a listed activity to proceed.

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<sup>1</sup> DWAF (2004), National Water Resource Strategy, chapter 1, notes pp12.

The Environmental Impact Assessment regulations underpin legal procedures to ensure rational decision making regarding sustainable land use against the realities of growing population and economic needs. The emergence of EIA regulations in South Africa has had a notable positive effect on the promotion of resource conservation and material efficiency. In South Africa authorities are obligated to exercise their powers in a manner that protects the environment.

There are specific provisions in the act for protection of the natural environment with special reference to creation of nature reserves. Part IV of the Act deals with Control of Environmental Pollution, with specific provisions on prohibition of littering and removal of litter and general waste management.

It should be noted that developments, and use of water resources, regardless of thresholds, in proclaimed Protected Areas will also need to undergo assessment based on the Protected Areas Act, with liaison with the relevant organ of state or para-statal body responsible for such a protected area. This applies to the Ongeluksnek and Matatiele Nature Reserves in particular.

The cumulative impacts of developments in towns, which individually fall below the thresholds but which overload demand on resources and waste management systems, are a current loophole in this system, as their cumulative impacts are difficult to determine when developments take place on a consecutive basis rather than in a planned manner.

NEMA is amended by the following Acts, which add to the original text:

- National Environmental Management Amendment Act 56 of 2002
- Mineral and Petroleum Resources Development Act 28 of 2002
- National Environmental Management Amendment Act 46 of 2003 [with effect from 1 May 2005]
- National Environmental Management Amendment Act 8 of 2004 [with effect from 7 January 2005]
- National Environmental Management Amendment Act 62 of 2008 [with effect from 1 May 2009]

### **1.3. National Environmental Management: Waste Act 59 of 2008**

Of particular importance here is the redefinition of liquid waste / sewage to hazardous waste, and the need for licensing of waste activities defined in both NEMA and this Act. The intent of the Act, effective from 1 July 2009, is to

To reform the law regulating waste management in order to protect health and the environment by providing reasonable measures for the prevention of pollution and ecological degradation and for securing ecologically sustainable development; to provide for institutional arrangements and planning matters; to provide for national norms and standards for regulating the management of waste by all

spheres of government; to provide for specific waste management measures; to provide for the licensing and control of waste management activities; to provide for the remediation of contaminated land; to provide for the national waste information system; to provide for compliance and enforcement; and to provide for matters connected therewith.

The act has a preamble as follows:

WHEREAS everyone has the constitutional right to have an environment that is not harmful to his or her health and to have the environment protected for the benefit of present and future generations through reasonable legislative and other measures that—

(a) prevent pollution and ecological degradation;

(h) promote conservation: and

(c) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development;

AND WHEREAS waste management practices in many areas of the Republic are not conducive to a healthy environment and the impact of improper waste management practices are often borne disproportionately by the poor;

AND WHEREAS poor waste management practices can have an adverse impact both locally and globally;

AND WHEREAS sustainable development requires that the generation of waste is avoided, or where it cannot be avoided, that it is reduced, re-used, recycled or recovered and only as a last resort treated and safely disposed of:

AND WHEREAS the minimisation of pollution and the use of natural resources through vigorous control, cleaner technologies, cleaner production and consumption practices, and waste minimisation are key to ensuring that the environment is protected from the impact of waste:

AND WHEREAS waste under certain circumstances is a resource and offers economic opportunities;

AND WHEREAS waste and management practices relating to waste are matters that—

- require national legislation to maintain essential national standards;
- in order to be dealt with effectively, require uniform norms and standards that apply throughout the Republic: and

- in order to promote and give effect to the right to an environment that is not harmful to health and well-being, have to apply uniformly throughout the Republic: and

- require strategies, norms and standards which seek to ensure best waste practices within a system of co-operative governance.

### **1.2 National Environmental Management: Air Quality Act 39 of 2004**

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; to provide for national norms and standards regulating air quality monitoring, management and control by all

spheres of government; for specific air quality measures; and for matters incidental thereto.

Whereas the quality of ambient air in many areas of the Republic is not conducive to a healthy environment for the people living in those areas let alone promoting their social and economic advancement; And whereas the burden of health impacts associated with polluted ambient air falls

most heavily on the poor; And whereas air pollution carries a high social, economic and environmental cost that is seldom borne by the polluter; And whereas atmospheric emissions of ozone-depleting substances, greenhouse gases and other substances have deleterious effects on the environment both locally and globally; And whereas everyone has the constitutional right to an environment that is not harmful to their health or well-being; And whereas everyone has the constitutional right to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that-

(a) prevent pollution and ecological degradation;

(b) promote conservation; and

(c) secure ecologically sustainable development and use of natural resources

And whereas minimisation of pollution through vigorous control, cleaner technologies and cleaner production practices is key to ensuring that air quality is improved; And whereas additional legislation is necessary to strengthen the Government's strategies for the protection of the environment and, more specifically, the enhancement of the quality of ambient air, in order to secure an environment that is not harmful to the health or well-being of people.

This Act replaced the original Atmospheric Pollution Prevention Act, No. 45 of 1965, and is currently being amended for local by-law application through gazetted legislation in gazette no 32394 of 15 July 2009.

## ***2. Physical and biodiversity law, including protected areas***

### **2.1 National Environmental Management: Biodiversity Act, No. 10 of 2004**

To provide for the management and conservation of South Africa's biodiversity within the framework of the National Environmental Management Act; the protection of species and ecosystems that warrant national protection; the sustainable use of indigenous biological resources; the fair and equitable sharing of benefits arising from bioprospecting involving indigenous biological resources; the establishment and function of a South African National Biodiversity Institute; and for matters connected therewith.

Of relevance to the District, and which assists with practical application of biodiversity legislation is the

Eastern Cape Biodiversity Conservation Plan (ECBCP), published by DWAF in 2007. This excellent document provides a land use decision making tool, based on current land status categories (BLMCs, or Biodiversity Land Management Category). These are based on land use objectives, with suggested allowable land uses.

It is widely recognized that some land use types have a greater impact on biodiversity than others: timber and urban settlements are seen to be more damaging to biodiversity than low-impact tourism or livestock grazing. The ECPCP recommends permissible land use types for each terrestrial BLMC based on the impact of these land uses on biodiversity. These guidelines provide a broad framework rather than specific detail, and should be used in conjunction with site verification. The table below shows the recommended permissible land uses for these BLMCs – note that 'conditional' indicates the requirement for an EIA.



The BLMCs are outlined below:

FIGURE 1: Biodiversity Land Management Categories

BLMC	Recommended land use objective
BLMC 1: Natural landscapes	Maintain biodiversity in as natural state as possible. Manage for no biodiversity loss.
BLMC 2: Near natural landscapes	Maintain biodiversity in near natural state with minimal loss of ecosystem integrity. No transformation of natural habitat should be permitted.
BLMC 3: Functional landscapes	Maintain ecosystem functioning to ensure sustainable agricultural production, keeping natural habitat intact in wetlands (including wetland buffers) and riparian zones. Environmental authorisations should support ecosystem integrity.
BLMC 4: Transformed landscapes	Manage for sustainable development.

*Abbreviations: No = not recommended; Yes = recommended; Conditional = Approval conditional on environmental authorisation.*

Land use	Biodiversity Land Management Class			
	BLMC 1	BLMC 2	BLMC 3	BLMC 4
Conservation	Yes	Yes	Yes	Yes
Game farming	No	Yes	Yes	Yes
Communal livestock	No	Yes	Yes	Yes
Commercial livestock ranching	No	No	Yes	Yes
Dry land cropping	No	No	Conditional	Yes
Irrigated cropping	No	No	Conditional	Yes
Dairy farming	No	No	Conditional	Yes
Timber	No	No	Conditional	Yes
Settlement	No	No	Conditional	Yes

Biodiversity and its conservation are important issues that have to be integrated into the overall management strategy in the development and management of activities and infrastructure in the District. Plantations are a particular concern here, with respect to biodiversity and water impacts.

### 2.2 National Environmental Management: Protected Areas Act, No. 57 of 2003

To provide for the protection and conservation of ecologically viable areas representative of South Africa's biological diversity and its natural landscapes and seascapes; for the establishment of a national register of all national, provincial and local protected areas; for the management of those areas in accordance with national

norms and standards; for intergovernmental co-operation and public consultation in matters concerning protected areas; and for matters in connection therewith.

The District has two proclaimed protected areas, the Ongeluksnek / Malekgalonyane Nature Reserve ( consisting of 13 000 hectares, proclaimed in 1969, and managed by Eastern Cape Parks Board as a provincial reserve) and the Matatiele Nature Reserve (approximately 4 000 ha, proclaimed 2006, owned and managed by the Matatiele Local Municipality), the latter consisting of two parcels of land, Mountain Lake and Wilfred Bauer / Pleasure Dam.

### **3. Water specific law**

#### **3.1 National Water Act, No. 36 of 1998**

The National Water Act 36 of 1998 provides a broad framework and comprehensive legal instrument for water resource management, upon which the National Water Resource Strategy is based. The National Water Policy, adopted by Cabinet in 1997 was a foundation for the Act, and was preceded by 28 Fundamental Principles and Objectives for a New South African Water Law <sup>2</sup>, with principle 7 bearing particular relevance to environmental considerations within Matatiele, which at the time of the study was facing a severe water shortage and contamination crisis:

*The objective of managing the quantity, quality and reliability of the Nation's water resources is to achieve optimum long-term, environmentally sustainable social and economic benefit for society from their use.*

Section 21 of the National Water Act provides a system for licensing and registration of water use, based on certain thresholds, and covers activities including abstraction, diversion, in-stream activities such as bridge construction, recreational use and discharge.

The eleven uses of water in accordance with the National Water Act are, in summary:

- ☐ taking water from a water resource
- ☐ storing of water
- ☐ impeding or diverting the flow of water in a watercourse
- ☐ engaging in stream flow reduction activities
- ☐ engaging in controlled activities
- ☐ discharging of waste water containing waste
- ☐ disposing of waste in a manner which may detrimentally impact on a water resource
- ☐ disposing of heated or waste water
- ☐ altering the bed, banks, course or characteristics of a water course
- ☐ removal of underground water
- ☐ using water for recreational purposes.

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<sup>2</sup> DWAF (2004), National Water Resource Strategy, chapter 1, pp7.

The eleven uses are not rights and may generally take place only in terms of an authorisation or licence.

In its implementation of the Act, the Department must take into account the following:

- a) basic human needs of present and future generations;
- b) the need for equitable access to water;
- c) redressing the results of past racial and gender discrimination;
- d) promoting the efficient, sustainable and beneficial use of water in the public interest;
- e) facilitating social and economic development;
- f) providing for growing demand for water use;
- g) protecting aquatic and associated ecosystems and their biological diversity;
- h) reducing and preventing pollution and degradation of water resources;
- i) meeting international obligations;
- j) promoting dam safety;
- k) managing exposure to, and effects of, floods and droughts.

Water services are governed by these instruments, and DWA (formerly DWAF) should be commended on its comprehensive consideration of the legislative framework into actionable policy through tools such as the National Water Resource Strategy and the Groundwater protocol, both of which are critical guidelines for the integration of environmental considerations within the sector. National government, through DWA, acts as a custodian of the nation's water resources, and its powers are exercised as a public trust.<sup>3</sup>

Water resource development and management in South Africa have continuously evolved over the years to meet the needs of a growing population and a vibrant economy. Considering the constraints imposed by nature these developments have largely been made possible by recognising water as a national asset, which permits its transfer from where it is available to where the greatest overall benefits for the nation can be achieved. South Africa is today recognised internationally for its progressive water legislation and its sophistication in water resources management.<sup>4</sup>, based on the sound DWA principle: "some for all (equity), forever" (sustainability).

The Groundwater Protocol is another essential resource management tool, clearly outlining a set of procedures for sanitation provision within the context of protection of groundwater resources from contamination. The GW Protocol assessments are based on the principle of risk, taking three factors into consideration:

- Vulnerability of aquifers

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<sup>3</sup> DWAF (2004), National Water Resource Strategy, chapter 1, pp7

<sup>4</sup> DWAF (2004), National Water Resources Strategy, chapter 2, pp 5

- Contamination load from the particular sanitation system
- Strategic value of the water

The issues surrounding water use and management are critical within the Matatiele context, as verified by the reports from civil studies. The Local Municipality and town fall under the jurisdiction of the Alfred Nzo District Municipality as the Water Service Authority / WSA responsible for water use Management

### **3.2 Water Services Act No. 108 of 1997**

To provide for the rights of access to basic water supply and basic sanitation; to provide for the setting of national standards and of norms and standards for tariffs; to provide for water services development plans; to provide a regulatory framework for water services institutions and water services intermediaries; to provide for the establishment and disestablishment of water boards and water services committees and their powers and duties; to provide for the monitoring of water services and intervention by the Minister or by the relevant Province; to provide for financial assistance to water services institutions; to provide for certain general powers of the Minister; to provide for the gathering of information in a national information system and the distribution of that information; to repeal certain laws; and to provide for matters connected therewith.

#### **PREAMBLE**

RECOGNIZING the rights of access to basic water supply and basic sanitation necessary to ensure sufficient water and an environment not harmful to health or well-being;

ACKNOWLEDGING that there is a duty on all spheres of Government to ensure that water supply services and sanitation services are provided in a manner which is efficient, equitable and sustainable;

ACKNOWLEDGING that all spheres of Government must strive to provide water supply services and sanitation services sufficient for subsistence and sustainable economic activity;

RECOGNIZING that in striving to provide water supply services and sanitation services, all spheres of Government must observe and adhere to the principles of co-operative government;

ACKNOWLEDGING that although municipalities have authority to administer water supply services and sanitation services, all spheres of Government have a duty, within the limits of physical and financial feasibility, to work towards this object;

RECOGNIZING that the provision of water supply services and sanitation services, although an activity distinct from the overall management of water resources, must be undertaken in a manner consistent with the broader goals of water resource management;

RECOGNIZING that water supply services and sanitation services are often provided in monopolistic or near monopolistic circumstances and that the interests of consumers and the broader goals of public policy must be promoted; and

CONFIRMING the National Government's role as custodian of the nation's water resources;

### **3.3 Water Services Amendment Act 30 of 2004**

To amend the Water Services Act, 1997, so as to enable water boards to perform activities outside the borders of South Africa; and to provide for matters connected therewith.

### **3.4 National Water Amendment Act No. 45 of 1999**

To amend the National Water Act, 1998 so as to effect textual improvements; and to change the procedure for the appointment of members of the Water Tribunal; and to provide for matters connected therewith.

### **3.5 Other relevant water-related policies for consideration in District level environmental planning:**

#### **3.5.1 Policy and Strategy for Groundwater Quality Management in South Africa, First Edition 2000**

Traditionally, groundwater has been the only source of water supply in most of South Africa's rural areas making up about 65 per cent of our total supply. It will, however, be impossible to meet - in a cost-effective way and using water from dams and piped surface water supplies – the needs of eight million people in approximately 15000 settlements.

#### **3.5.2 The Groundwater Protocol:**

Although not enacted, this is an excellent policy guideline which forms part of a set of procedures for the provision of sanitation and the protection of water resources, and should not in itself be used to justify a particular choice of action without the financial and socio-economic assessments required for holistic decision making. It is intended to permit assessments of environmental impact of sanitation systems to be carried out using the lowest skills levels feasible. Where resources are limited, effort in assessment needs to be in proportion to impact. The procedures are to be integrated into regional institutional structures to ensure that the responsible authorities are informed of all studies and outcomes. The GW Protocol needs to be allocated in conjunction with institutional structuring, and is a functional and easy to use tool to assist with ground water pollution prevention.

#### **3.5.3 SEA for Water Management Area 12 (WMA 12)**

The Department of Water Affairs and Forestry (DWAF) compiled a Strategic Environmental Assessment report of Water Management Area 12, which encompasses the Alfred Nzo, OR Tambo, Chris Hani, Ukhahlamba and Amathole Districts of the Eastern Cape.

The purpose of the SEA was to assess the potential for commercial forestry, as a significant water use activity, taking into account other land uses, ecosystem functions and sustainability issues related to these identified land uses. Taking into account the existing land uses, climate, soil types and income levels in Alfred Nzo District, more than 50% of the land area in the district was determined to have 'good potential' for afforestation. Certain areas have been identified as *exclusionary zones*, based on limiting factors such as important conservation areas or presence of indigenous forests, or *precautionary zones*, based on SANBI (SA National Biodiversity Institute) grassland priority zones and quaternary catchments with high ecological sensitivity and ecological importance.

It is important to determine if the existing water resources can sustain the growing local population and the ecological reserve whilst catering for the water needs of afforestation over the long term.

## **2. Land use, agricultural and forest legislation**

### **2.1 Conservation of Agricultural Resources Act, No. 43 of 1983**

The Act requires the protection of land against soil erosion and the prevention of water logging and salinization of soils by means of suitable soil conservation works to be constructed and maintained. Land has to be maintained in a good condition and the following monitored by authorized personnel:

- extent of soil erosion or other damage occurs on that land;
- incidences of weeds or invader plants on the land;
- condition of the grazing and groundcover on that land;
- determination of the extent of deterioration and destruction of natural vegetation and associated land;

- the need for construction of soil conservation works on that land, and whether a direction should be served on the land user;
- demarcation of the area which is required for the purposes of the scheme, and for the purposes of such demarcation to make the necessary surveys and erect or effect beacons or marks;

## **2.2 National Forests Act, No. 84 of 1998**

Although the Act does not specifically provide for utilization of communal land for plantation by private companies, the section of the Act dealing with agreement for partnerships between the state and local communities provides guidelines that can be used to ensure that the parties concerned form a good working relationship to ensure sustainability of the forestry projects.

According to the Act, community forestry agreements must identify accurately the area of forest subject to the agreement, regulate the use and the management of the forest in a way which is sustainable, identify the management powers delegated to the community and provide for dispute resolution through informal mediation or arbitration.

In addition, a community forestry agreement may require the community or communities to comply with a sustainable forest management plan which is acceptable to the Minister. This section that the Act gives an indication and guidelines for communities on inclusion of parties or persons who are not members of the community, and who wish to conduct forestry for commercial, environmental or other purposes.

A community forestry agreement must identify the duties of the various parties in terms of the agreement. Including prohibit the parties to the agreement from transferring their rights under the agreement in any way without the consent of the Minister

The economic circumstances of the community and their historical association with the land have to be taken into consideration in drawing up agreements, to ensure fairness, regard to rights in terms of the interim Protection of Informal Land Rights Act, 1996 (Act No. 31 of 1996), in addition to abiding by the law.

Section 32 of the Act outlines assistance for disadvantaged communities which includes providing information and training, advice and extension services. In addition, financial assistance has to be provided to the communities.

## **2.3 Related Forestry policy**

### **4.3.1 Forestry development protocols**

The purpose of this document is to provide guidelines that will ensure that the principle contained in Section 3(3)(c)(vii) of the NFA is upheld in supporting forestry development in general and with regard to the application of afforestation licenses in particular. The document does this by outlining the procedures and requirements necessary to ensure that:

All members of communities or homesteads that receive afforestation licenses are properly represented and adequately consulted and informed in all decisions regarding the forest development project and will equitably benefit from all the forestry operations.

Any forestry agreement between the community or homestead and a private sector partner will not significantly dilute the community/homestead benefit of the licence in favour of such a partner.

#### **4.3.2 Forestry 2030 roadmap**

The Department of Water Affairs and Forestry as a custodian of forestry resources in South Africa is responsible for the promotion of the sustainable management of the country's forest resources for the benefit of the nation. The National Forests Act, 1998 (Act No 84 of 1998) promotes sustainable forest management based on the principles of sustainable development and therefore ensures the integration of ecological, social and economic values, in consultation with local communities and other stakeholders.

The forestry resource base, i.e. natural (indigenous) forests, commercial plantations and woodlands, is spread over some of the poorest areas in South Africa and therefore plays a significant role in terms of poverty eradication, through job creation, supply of basic needs and acting as a safety-net.

The commercial forestry sector is globally competitive, but it is not adequately transformed and operates within a highly regulated environment which is currently affecting its ability to reach its full potential.

The conclusion and signing of the Forest Sector Transformation Charter and the recognition of forestry as one of the potential growth sectors in South Africa by the Department of Trade and Industry have created a need for strong partnerships between Government and other stakeholders, including industry with a view to sustainably grow and transform the forestry sector.

In order to benefit from these opportunities, the Department together with its stakeholders developed a strategy document that maps the path the sector will embark on over the next 20 years to realise its potential to contribute to government objectives.

The document reflects on the current policy and legislative framework that provide the mandate for the Department of Water Affairs and Forestry in relation to Forestry; highlight key challenges that impede the growth and transformation of the sector; and present strategic interventions to be taken by the Department and the industry to realise the sectors potential to contribute to sustainable development.

The Roadmap reflects the new vision for the forestry sector, principles and eight strategic objectives as well as targets and actions to achieve these objectives. In summary, the strategic objectives cover the expansion of the forest estate; improvement of quality of life through forestry; conservation of forest biological diversity; improvement of skills, awareness raising and information sharing; enhanced and streamlined regulatory environment; securing timber supply; institutional and financial arrangements; establishment of a knowledge-based forest enterprise; and international relations.

Please refer to section 3.5.3 as well (SEA for Water Management Area 12)

#### **2.4 National Veld and Forest Fire Act, No 101 of 1998**

The purpose of this Act is to prevent and combat veld, forest and mountain fires throughout the Republic.

The Act provides for a variety of institutions, methods and practices for achieving the purpose. This includes the formation and operation of fire protection associations comprised of land owners and users. Land owners also have a duty to prepare and maintain fire breaks according to local specified times and climatic conditions.

#### **4.5 Mountain Catchment Areas Act 63 of 1970**

To provide for the conservation, use, management and control of land situated in mountain catchment areas, and to provide for matters incidental thereto. This includes duties relating to the prevention of soil erosion, the protection and the treatment of the natural vegetation and the destruction of vegetation which is, in the opinion of the relevant Minister, intruding vegetation; and any other matter which he considers necessary or expedient for the achievement of the objects of this Act in respect of such land.

The Water Act, Forests Act, Veld & Fire Act and other NEMA legislation give more detail to this legislation.

#### **4.6 Minerals and Petroleum Resources Development 28 of 2002**

To make provision for equitable access to and sustainable development of the nation's mineral and petroleum resources; and to provide for matters connected therewith. It should be noted that mineral ownership is vested in the state, despite the ownership situation of the land.

The preamble in the Act in this regard includes:

RECOGNISING that minerals and petroleum are non-renewable natural resources;

ACKNOWLEDGING that South Africa's mineral and petroleum resources belong to

the nation and that the State is the custodian thereof;

AFFIRMING the State's obligation to protect the environment for the benefit of present and future generations, to ensure ecologically sustainable development of mineral and petroleum resources and to promote economic and social development;

RECOGNISING the need to promote local and rural development and the social upliftment of communities affected by mining;

REAFFIRMING the State's commitment to reform to bring about equitable access to South Africa's mineral and petroleum resources;

BEING COMMITTED to eradicating all forms of discriminatory practices in the mineral and petroleum industries;

CONSIDERING the State's obligation under the Constitution to take legislative and other measures to redress the results of past racial discrimination;

REAFFIRMING the State's commitment to guaranteeing security of tenure in respect

of prospecting and mining operations; and

EMPHASISING the need to create an internationally competitive and efficient

administrative and regulatory regime.



It must be noted that any extraction of any minerals and related materials, including building sand, road wearing course material, etc, must be done through permitting for such activities by the relevant organ of state, which in the District's case is DME with offices in Mthata and Port Elizabeth.

### ***Heritage legislation***

#### **5.1 National Heritage Resources Act No. 25 of 1999**

To introduce an integrated and interactive system for the management of the national heritage resources; to promote good government at all levels, and empower civil society to nurture and conserve their heritage resources so that they may be bequeathed to future generations; to lay down general principles for governing heritage resources management throughout the Republic; to introduce an integrated system for the identification, assessment and management of the heritage resources of South Africa; to establish the South African Heritage Resources Agency together with its Council to co-ordinate and promote the management of heritage resources at national level; to set norms and maintain essential national standards for the management of heritage resources in the Republic and to protect heritage resources of national significance; to control the export of nationally significant heritage objects and the import into the Republic of cultural property illegally exported from foreign countries; to enable the provinces to establish heritage authorities which must adopt powers to protect and manage certain categories of heritage resources; to provide for the protection and management of conservation-worthy places and areas by local authorities; and to provide for matters connected therewith.

This legislation aims to promote good management of the national estate, and to enable and encourage communities to nurture and conserve their legacy so that it may be bequeathed to future generations. Our heritage is unique and precious and it cannot be renewed. It helps us to define our cultural identity and therefore lies at the heart of our spiritual well-being and has the power to build our nation. It has the potential to affirm our diverse cultures, and in so doing shape our national character.

Our heritage celebrates our achievements and contributes to redressing past inequities.

It educates, it deepens our understanding of society and encourages us to empathise with the experience of others. It facilitates healing and material and symbolic restitution and it promotes new and previously neglected research into our rich oral traditions and customs.

The relevant authorities for such legislation are the provincial heritage agencies, which have a national body, SA Heritage Resources Agency. Heritage impact issues must be considered in any impact assessment or planning for infrastructural development.

### ***6. Development facilitation, planning and management***

#### **6.1 Municipal Systems Act 32 of 2000**

The Municipal System Act, promulgated in 2000, enshrined in law the principal planning tool of local government, namely, the Integrated Development Plan (IDP).

Chapter Five of the Municipal System Act describes the IDP as a single, inclusive and strategic plan for the development of a municipality that will be the principal strategic planning instrument which guides and informs all planning and development, and all decisions with regard to planning, management and development.

The key aspect of the Act is the requirement that every IDP include *guidelines for a land use management system for the municipality*.

The Land Use Master Plan will therefore fulfil the role of being a forward plan describing the intended nature of spatial development in a municipal area.

#### 6.2 Development Facilitation Act 67 of 1995

The Development Facilitation Act (DFA) (Act 67 of 1995) came in to force in December 1995 and as National legislation, applies through the country.

For the purpose of drafting the Matatiele Land Use Master Plan, the most important element of the DFA is the introduction of a normative (or principle-based) approach to planning – as opposed to the prevailing control – orientated approach. Chapter 1 of the Act provides **General Principles for Land Development and Conflict Resolution**.

These **General Principles** *spell out the norms and standards or directions required in terms of national law* of both spatial planning and development actions and, in so doing, place the onus on decision-makers responsible for land use and spatial development decisions to respond in a considered and creative manner to local development conditions.

Through its structure and provision, the DFA also clearly establishes that development planning is pre-eminently a public sector activity and requires planning authorities (specifically at local government level) to become positively involved in addressing the spatial development needs of their constituencies.

The General Principles for Land Development contained in the Development Facilitation Act include:

(a) Policy, administrative practice and laws should provide for urban and rural land development and should facilitate the development of formal and informal; existing and new settlements.

(b) Policy administrative practices and laws should discourage the illegal occupation of land with due of informal and development processes.

(c) Policy, administrative practice and laws should promote efficient and integrated land development in that they:-

- promote the integrated of the social, economic, institutional and physical aspects of land development; - unified and integrated approach to planning.
- promote integrated land development in rural and urban areas in support of each other
- promote the availability of residential and employment opportunities in close proximity to or integrated to each other.
- Optimize the use of existing resources including such resources relating to agriculture. Land, mineral, bulk infrastructure, roads, transportation and social facilities.
- Promote a diverse combination of land uses, also at the level of individual erven or subdivisions of land.
- Discourage the phenomenon of “urban sprawl” in urban areas and contribute to the development of more compact towns and cities.
- Contribute to the correction of the historically distorted spatial patterns of settlement in the Republic and to the optimum use of existing infrastructure in excess of current needs and
- Encourage environmentally sustainable land development practices and processes.

(d) Policy, administrative practice and laws should promote sustainability land development at the required scale in that they should –

- promote land development which is within the fiscal, institutional and administrative means of the Republic.
- Promote the establish of viable communities
- Promote sustained protection of the environment
- Meet the basic needs of all citizens in an affordable way and
- Ensure the safe utilization of land by taking into consideration factors such as geological formations and hazardous undermined areas.

(e) Each proposed land development area should be judged on its own merits and no particular use of land, such as residential, commercial, conservational, industrial, community facilities , mining, agricultural or public use, should in advance or in general be regarded as being less important or desirable than any other use of land.

### **6.3 White Paper on Spatial Planning and Land Use Management**

The White Paper builds on the conceptual approach to land use and development embodied in the Development Facilitation Act and **entrenches the normative approach to spatial planning and use management.**

The normative approach to planning endorsed in the White Paper, is presented in the form of directive *principles* and *norms*.

Both the principles and norms are focused on and correlated to the field of spatial planning and land use, but need further actualization in specific, concrete contexts (i.e. *Land Use Master Plans*).

The purpose of a nominative approach is *'to ensure wise land use'*. Wise land use is inspired by humane considerations regarding the responsibility society and the state has to preserve the earth's natural assets for present and future generations in a sustainability and economic way. Wise land use is premised on the consideration that by rational planning of all uses of land in an integrated manner, it is possible to link social and economic development with environmental protection and enhancement, making the most efficient trade-offs, and minimizing conflicts.

### **6.4 Land Use Management Bill**

The Land Use Management Bill (draft of January 2006) is intended to replace the Physical Planning Acts and other land use and spatial planning Acts and Ordinances. The goal of the Bill (once enacted by Parliament) is to provide a legislative and policy framework that enables government, and especially local government, to formulate policies, plans and strategies for land use and land development that address, confront and resolve the spatial, social, economic, and environmental problems of the country.

It is anticipated that the forthcoming Land Use Management Bill and the Municipal System Act together will form a comprehensive framework for local authorities embarking on Integrated Development Planning. The Bill will also provide the framework necessary for the land development activities of all sectors and spheres of government and the private sector to properly planned, taking into account the overarching development needs of society.

The Land Use Management Bill therefore supports the provision of Section 26(e) of the Municipal Systems Act and confirms that Land Use Master Plans are to form the centre piece of forward planning in South Africa. The EMP can contribute directly to such a Master Plan, and should form an importance foundation for such a plan.

***General procedural, social and equity legislation***

Other legislation which can be considered for sustainable planning at local government level, but which is not deemed as relevant for the EMP:

- Criminal Procedures Act, No. 51 of 1977
- Disaster Management Act, No. 57 of 2002
- Fencing Act, No. 13 of 1963
- Fire Brigade Services Act, No. 99 of 1987
- Intergovernmental Relations Framework Act, No. 13 of 2005
- Local Government: Municipal Systems Act, No. 32 of 2000
- Local Government: Municipal Structures Act, No. 117 of 1998
- National Building Standards Act, No. 103 of 1977
- National Road Traffic Act, No. 93 of 1996
- Occupational Health and Safety Act No, No. 85 of 1993
- Local Government : Municipal Finance Management Act, No. 56 of 2003
- Public Finance Management Act, No. 1 of 1999
- Basic Conditions of Employment Act, No. 75 of 1997
- Compensation for Occupational Injuries and Diseases Act, No. 130 of 1993
- Employment Equity Act, No. 55 of 1998
- Labour Relations Act, No. 66 of 1995
- Occupational Health and Safety Act, No. 85 of 1993