

REFLECTIONS ON SUSTAINABLE DEVELOPMENT

TO A MOUSE

On turning her up in her nest with the plough, November 1785

*Wee, sleekit, cow'rin', tim'rous beastie,
O what a panic's in thy breastie!
Thee need na start awa sae hasty,
Wi' bickering brattle!
I wad be laith to rin an' chase thee,
Wi' murdering pattle!*

*I'm truly sorry man's dominion
Has broken Nature's social union,
An' justifies that ill opinion,
Which makes thee startle
At me, thy poor earth-born companion,
An' fellow mortal.*

Robbie Burns

It was hugely disappointing for me that I had to bow out of the IAIA conference last year due to other commitments. And when I enquired about the conference, I was even more disappointed to hear that the prevailing sentiment was that we as Environmental Assessment practitioners are not making a great deal of headway in advancing sustainable development.

I generally find that the conference gets me quite revved up and ready to tackle the domain with new ideas, so it left me feeling pretty flat to think about the almost 'air of resignation' that we are not doing what we have to, to make sustainable development a reality.

Over the last several years, I have been asked to define just exactly what is meant by 'sustainable development' – this because of the multiple definitions that exist. I don't think that we as EA practitioners have showered ourselves in glory by allowing, as we have, the proliferation of definitions of sustainable development. Poor old Gro and her commission, I think they must have spent so much time and energy coming up with the definition they did, only to find that everyone and their dogs have now come up with other definitions. I am struck too by the fact that there appears to be a need for people to define sustainable development in a manner that works for them. Try as I might,

I cannot really understand that requirement.

As I see it, there are two ways of defining sustainable development. We can define it in an absolute sense, as Gro Brundtland did, or we can define it in a relative sense – that is, relative to the practical constraints we face in making it happen. I have a feeling that many of the definitions that are out there have been developed in the latter sense – that is, we would love sustainable development to be our maxim but we are stuck with this pesky problem of the cost of treating our effluent. The most insidious aspect of this type of definition is the misconception that sustainable development is about 'balancing' economic development with social development and impacts on the natural environment. In this light, the concept of sustainable development runs the risk of becoming an excuse for growing the economy without really getting serious about social development and environmental conservation.

More insidious still is the assumption that businesses that grow have a direct, positive effect on economic growth and that this somehow translates into a better life for all. The relationship is simply not that simple and it is alarming to see evidence of the concept of sustainable development being used to justify the growth of individual businesses while

'trading off' the costs of social development and environmental protection.

There is a good analogy, I think, to this set of circumstances and it lies in the air quality guidelines that were developed originally by the Department of Health when it was the custodian of the Atmospheric Pollution Prevention Act. The guidelines were an attempt to capture two quite different objectives. The first objective was one of protecting human health and the environment, while the second was to accommodate the difficulty of meeting the first objective. The result was a single number that tried to combine both objectives and which ended up pleasing and serving nobody. Thankfully, the Air Quality Management Bill contains the recognition that air quality standards must be specified at concentrations where they are unambiguously protective of human health and the environment. Dealing with the practical difficulties of meeting the standards is a different process entirely.

My concern is that if we continue to define and redefine sustainable development, we will rapidly forget what it is all about – if we have not done so already. Gro's commission said it best in my book "*development which meets the needs of the present without compromising the ability of future generations to meet their*

own needs". What it implies is that sustainable development in an absolute sense requires eliminating poverty and protecting and conserving the natural environment by using only renewable resources to drive the economy, without generating waste.

"Impossible!!" I hear you say – and to some extent, I agree. However, let's not fall into the trap of presenting national or company economic growth as sustainable development, simply because it is development. In management speak, sustainable development is a BHAG (a big hairy audacious goal), something so daunting as to

make us all weak at the knees but all the while retaining our belief that we somehow have to make it a reality. The tragedy of our poor progress in achieving the ideals of sustainable development is not the poor progress itself, but how that poor progress is increasingly being presented as a manifestation of sustainable development. I also am not convinced that the progress is as poor as some may perceive. We, most certainly, do have a long way to go and we urgently need to find ways of accelerating our current efforts. But, the real problem with spin doctoring the concept of

sustainable development is that any progress made in effecting development that is (more) sustainable, becomes so lacking in credibility that it is not perceived as progress at all. Sustainable development is a journey that may well have no final destination – so it's a very long way off. Let's not discredit the progress we are making in that journey by pretending that it is just around the corner.

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FROM A CAT

"Would you tell me, please, which way I ought to go from here?"

"That depends a good deal on where you want to get to," said the Cat.

"I don't much care where –" said Alice.

"Then it doesn't matter which way you go," said the Cat.

" – so long as I get *somewhere*." Alice added as an explanation.

"Oh you're sure to do that," said the Cat.....

From *Alice in Wonderland* by Lewis Carroll

I share Sean O'Beirne's frustrations regarding the amount of energy that has been devoted to developing definitions of sustainable development (SD) and the fact that pragmatism is increasingly 'dressed up' as SD. I am also driven to distraction by the ambiguous use of terminology, with everything from *sustainable aviation* to *sustainable zoos* featuring in the literature. Is this shorthand for referring to the activity's contribution to SD, continued existence into the future or both?

However, I do not believe that the absence of a universally accepted definition of SD is the main obstacle to enhancing the role EIA plays in advancing SD. A greater obstacle is our lack of success at translating the general 'motherhood and apple pie'

intentions, underlying the definitions, into tangible objectives. In the absence of clear objectives, the role of EIA is limited to trying to demonstrate that things will be better than they might have been, but the fact that things will be better does not necessarily mean that they will be good enough to progress towards SD. To be able to measure progress towards SD we first of all need to establish where or, at the very least, in which direction SD is located. Otherwise we might as well follow the Cheshire Cat's advice.

The development of SD objectives is far from straightforward. EIA practitioners' hands are often tied by the fact that SD objectives for a particular location cannot sensibly be developed from the perspective of a single project. The objectives must take

cognisance of the behaviour of the 'system' as a whole and this opens the door for another perennial IAIA conference favourite – SEA! In South Africa, the IDP process holds the potential to avoid time spent wondering in the 'SEA wilderness', assuming the many capacity constraints can be overcome.

So my view is: let's not spend too much more time trying to develop (or debate) SD definitions and rather focus our efforts on figuring out the specifics of what actually needs to be achieved and, most importantly, let's then get on with actually doing it.

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Deadline for IAIAAsa National Premium Award entries

The closing date for entries for the 2005 IAIAAsa National Premium Award is 30 June 2005. The annual award is presented for excellence in sustainable development, through the application of the principles of Integrated Environmental Management. Three recent award winners have been the Hillside Aluminium Smelter Expansion (2002), the Skorpion Zinc Project (2003), and the Sasol Natural Gas Resettlement programme (2004).

Contact *Glaudin Kruger* at the IAIAAsa Secretariat for information on the entry procedure.

Tel: (053) 621 1174. Email: kruger@kruger-associates.com

OF CATS AND MICE

A comment on Sean's and Theo's reflections on sustainable development and the emergence of an alternative model

There are two themes common to the articles by Sean and Theo. The first, not surprisingly, relates to the elusiveness of a definition of sustainable development and the resultant confusion in terminology. The second, and as elusive a theme, has to do with measuring progress towards sustainability.

The problem of definition and terminology – that a commonality of understanding of the concept is lacking – is not new or exclusive to the sustainability debate. I've been in the field for long enough to remember the excitement when the World Conservation Strategy (WCS) saw the light of day in 1980, when the human element was first included in the ecological equation and the link between economics and environment became apparent. The three objectives of the strategy were the maintenance of essential ecological processes and life support systems, the preservation of genetic diversity, and the sustainable utilisation of species and ecosystems. This was stirring stuff and allowed us to move away from species conservation and into the more sustainable systems approach – that is, managing ecosystems and not individual species.

The WCS was followed by Brundtland's World Commission on Environment and Development in the late 1980s, which first articulated the concept of our present actions not compromising the ability of future generations to meet their needs. While an evolution in definition might be evident between the 1970s and the present, it strikes me that the

fundamental concept remains intact. A simplistic analogy might be the universal laws which are espoused in different ways by the world's various monotheistic religions. They all really come down to the same few things. Fact is, as far as moral prescripts are concerned, those universal laws continue to be broken and, as far as the ecological health of our planet is concerned, future generations' interests continue to be eroded.

So rather than getting stuck on defining the beast, maybe it's more important to look at measuring progress towards achieving sustainability. As Theo puts it... "figuring out the specifics of what actually needs to be achieved".

Well and good. However, it's at this point that I come somewhat unstuck and Sean alludes to the same concern – namely, that in the economic sphere a growing business is assumed to be a good thing. I have to question whether capitalism and the free market, what I believe is termed the neo-liberal economic model, is in fact compatible with the fundamentals of sustainability. Considering that this model is being applied pretty much world-wide – advocated as it is by the G8 nations and global banking and financial institutions, and that it is essentially underpinned by the imperative of continued economic growth – do the Malthusian principles of finite carrying capacities and limits to growth have no relevance? Bear in mind that ecosystems function in a cyclical fashion, whereas anthropogenic economic systems are linear.

If continued economic growth is to remain the only game in town, it is probably because

the accepted wisdom on sustainable development at present – widely represented graphically by the three symmetrically overlapping circles – affords equal stature to each of the three spheres of economics, socio-politics and ecology.

But wait! The World Conservation Strategy stressed the maintenance of ecosystems as the primary imperative. Maybe the evolution of the definition over the years has camouflaged an insidious change in the concept of sustainability. Maybe, in fact, the three spheres – the triple bottom line – should not enjoy equity.

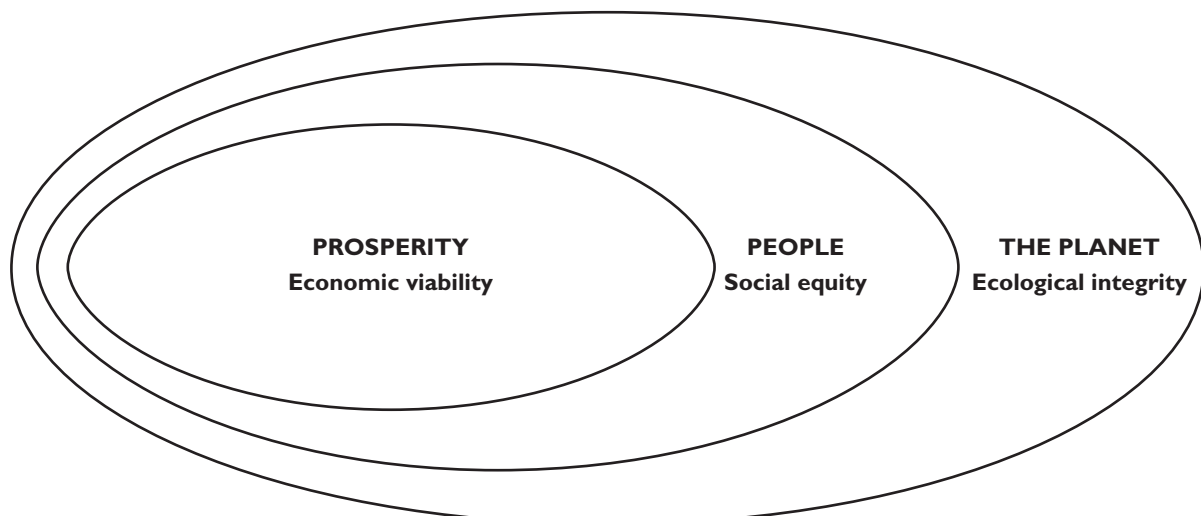
With these vaguely heretic thoughts in mind, I was pleased to come across a new model of sustainable development, recently. Represented graphically, it clearly reflects the primacy of the planet's ecological functionality, with the economic and socio-political spheres embedded within it, as seen in the figure below.

I'm not sure who came up with the bright idea but Johan Hattingh of the Centre for Applied Ethics at Stellenbosch University and Mark Gordon of the Western Cape's Department of Environmental Affairs and Development Planning have both been promoting it.

Can this model provide a way forward for a better understanding and more equitable application of sustainable development? I think it's worth considering.

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An alternative model of sustainable development



With acknowledgements to the National Strategic Vision from the MSTF for the Environment (MinMec) and the Western Cape PSDF.

RECENT LEGAL DEVELOPMENTS IN ENVIRONMENTAL ASSESSMENT LAW

An aid or a hindrance to sustainable development in South Africa?

Sustainable development in South African law

The advent of democracy in South Africa just over a decade ago saw the simultaneous embracing of the notion of sustainable development articulated in the environmental right in our Constitution. It obliges the state to protect the environment:

“...for the benefit of present and future generations, through legislative and other measures that...secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.”

The sustainable development baton was taken up soon thereafter in the *White Paper on an Environmental Management Policy for South Africa* which culminated in the National Environmental Management Act 107 of 1998 (NEMA). This embraced sustainable development in a number of ways: defining “sustainable development”, stipulating that “development must be socially, environmentally and economically sustainable”, and harnessing the concept by laying down a set of bed-rock national environmental principles in Chapter 1 which, “...apply throughout the Republic to the actions of all organs of state that may significantly affect the environment...” (own emphasis), thereby imposing it on all other legislation and thus infusing the notion into all sectors of South Africa’s economy.

Sustainable development is also referred to in sectoral legislation including the Marine Living Resources Act, the National Water Act, the Mineral and Petroleum Resources Development Act, which significantly includes a definition of sustainable development in the mining context, the National Environmental Management: Biodiversity Act, the Local Government: Municipal Systems Act, 32 of 2000, which also refers to and defines “environmentally sustainable”.

South Africa has therefore followed progressive international trends, pioneered by the World Commission on Environment and Development (the Brundtland Commission), convened by the United Nations General Assembly in 1983 which described sustainable development as:

“...development that meets the needs of the present without compromising the ability of future generations to meet their own needs. It contains within it two key concepts:

- the concept of “needs”, in particular the essential needs of the world’s poor, to which overriding priority should be given; and
- the idea of limitations imposed by the state of technology and social organisation on the environment’s ability to meet present and future needs.”

Environmental assessment legislation in South Africa

It is generally accepted that environmental assessment is essentially a planning tool which seeks to incorporate not only environmental (ecological) factors into developmental decision-making but also socio-economic considerations, particularly the alleviation of poverty. Environmental assessment thus embraces the three pillars of sustainable development – conservation of the natural environment, economic development and social upliftment – alluded to above, under one umbrella. As such it is a key tool, if not the pivotal instrument, in the hands of decision-makers to ensure the achievement of this global ideal.

The environmental assessment procedure received legislative impetus with the enactment of Chapter V (Sections 21 to 23) of the Environment Conservation Act 73 of 1989 and was further developed in NEMA, which sensibly did not tinker with this legislative basis for environmental assessment but complemented it in different ways, including the incorporation of a principle that “*the social, economic and environmental impacts of activities, including disadvantages and benefits, must be considered, assessed and evaluated, and decisions must be appropriate in the light of such consideration and assessment*”.

As a result of these legislative developments, the environmental impact assessment procedure has been successfully used in virtually all sectors of the South Africa economy for well over a decade. Recent legislative developments in this regard, however, give rise to concern.

Amendment of section 24 of NEMA

The NEMA Amendment Act 8 of 2004 replaces section 24 by a new section which hinges around the notion of “environmental authorisation”. This authorisation requirement previously triggered EIA either because an activity was listed or because it met the orthodox formula that it was an activity “...that may significantly affect the environment...”. The new section 24 regime does away with the latter formula and relies solely on a list system. It doesn’t envisage one or two lists but at least three in respect of:

- activities identified by the Minister or the relevant MEC;
- specified activities in certain geographical areas, some of these specified activities may be excluded however from this requirement;
- individual or generic existing activities which may have a detrimental effect on the environment and in respect of which an application for an environmental authorisation must be made to an existing authority.

The reference to “specified”, “individual”, and “generic” activities creates somewhat of a legal clutter, which is not only unnecessary but will severely detract from the need to simplify and streamline the EIA procedures for both the developers and the authorities charged with their administration and enforcement. A further bureaucratic burden is that the Minister and relevant MEC may compile information and maps that specify environmental attributes “in particular geographical areas, including the severity, extent, inter-relationship and significance of such attributes which must be taken into account by every competent authority”.

The draft January 2005 regulations

The coming into effect of the 2004 NEMA Amendment Act was followed shortly by the publication of draft regulations. These lengthy and detailed regulations comprise 9 chapters. Their application pivots around the identification of activities and geographic areas in Chapter 4, which provides for activities to be identified that require screening and that require environmental impact assessment, and the identification of geographic areas in which specified activities require environmental authorisation.

A curious issue is that, although the general objectives of integrated environmental management set out in section 23 of the NEMA very clearly include the assessment of “socio-economic conditions”, no mention is made of this in the regulations. This flies in the face of one of the NEMA principles discussed above, namely that “the social, economic and environmental impacts of activities, including disadvantages and benefits, must be considered, assessed and evaluated, and decisions must be appropriate in the light of such consideration and assessment”. Social considerations are one of the essential components of the environmental assessment procedure and sustainable development generally. A country with income disparities like South Africa can ill afford to ignore socio-economic consequences in the environmental authorisation process.

Analysis

In the January 2005 Newsletter of the IAIA, the IAIA President pointed out that there is widespread scepticism about whether impact assessments are contributing to better decisions or to sustainable development. It is essential, therefore, that impact assessments provide answers to those questions which are central to sustainable development and do not lose sight of the purpose of EA. A recent article (2004) by the International Institute for Environment and Development (IIED), looks at

best practice EA for sustainability ('sustainability assessment'). It emphasises that EA is needed at both the strategic and project level, with links between these two levels. It also underlines the importance of: initiating EA at the outset of plans, programmes or projects, looking at indirect and cumulative effects, considering alternatives, recognising uncertainties and applying caution, and the need for explicit rules and rationale for trade-offs in decision-making. Many of these key considerations are lost sight of in the regulations.

More specifically we need to ask ourselves:

1. *Is there a clear decision-making framework for sustainable development?*

The objective and focus of EA should be to ensure consistency of proposed activities with the NEMA principles. To make EIA effective, however, the NEMA principles need to be translated into an operational framework with clear objectives, goals and targets. As they stand, the NEMA principles provide broad guidance only, not substantive direction. Clearer criteria or rules or rationale for making trade-offs are needed. The regulations highlight some principles but omit others altogether. The precautionary principle needs to be embraced in the regulations. Potential key issues in EA, such as impacts on access to environmental resources, benefits, services to meet basic needs and ensure well-being, health and safety, or associated hazards or risks, are dealt with peripherally in the draft.

2. *Does the new regime address the sound application of environmental assessment at both strategic and project levels, enabling cumulative impacts to be addressed?*

It appears not – in that, environmental assessment will only apply to projects. SEA is referred to as a "specialised process", apparently within EIA. This is not only inappropriate but effectively restricts the need for EIA to those listed activities only – that is, potentially significant impacts of activities that aren't listed, or whose listing could be interpreted to exclude a specific impact, would fall outside the EIA net. By being too prescriptive, we fall into the trap of excluding that which is not specifically mentioned.

By removing the requirement to examine cumulative impacts, the NEMA Amendment Act seems to signal that SEA is not important? Curiously, draft regulations ask for cumulative impacts to be assessed without there being any requirement in section 24 to do so. It is asking for the impossible to demand cumulative impacts at EIA rather than SEA level. In so doing, South Africa is going against international trends which recognise a tiered EA system.

3. *Are there reliable triggers for EIA, focused on potentially significant effects?*

The NEMA Amendment Act removes the two-pronged safety section and the internationally accepted catch-all net approach of "any activity which may have a significant effect on the environment...". Relying on a complicated set of lists makes it anything but clear... It is predicted that if these regulations are enacted in their current form, they will create administrative and legal

confusion for both those charged with their administration and developers wanting to carry out their legitimate activities.

In the past, the environmental assessment procedure was triggered by a stipulated list of activities (September 1997 regulations) but section 24 acted as a discretionary catch-all, in that it also stipulated that activities which may have a significant effect on the environment, beyond that list, could require an EIA. Clearly, not all activities can be brought under the list system. One reason is that the same activity in location X may have a completely different consequence in location Y.

4. *Is there clear and appropriate scope for environmental assessment to inform decisions on sustainable development?*

Critically, there is no mention of biological resources or biodiversity, both of which, it is increasingly being realised, are the enabling condition for sustainable development, since they underpin our ecosystem services on which human well-being largely depends.

Moreover, the thresholds for differentiating between activities requiring screening and those requiring an EIA are in many cases highly questionable, if not nonsensical. The draft envisages thresholds, like the storage of 250 tons of coal, more than 20 guests accommodated overnight, or the transformation or removal of indigenous vegetation in excess of 3 hectares, playing a major role in determining the process, level of participation and reporting requirements for an activity. The nature of the receiving environment in these instances would in all probability play a major role in determining the likelihood of significant impacts – the threshold approach simply encourages a 'death by a thousand cuts' outcome. Since these categories effectively screen activities to some extent, it would be more effective to proceed straight to scoping to determine which, if any, issues and associated impacts would need to be investigated in more detail in an EIA.

5. *Will the requirements of EA in terms of new draft regulations ensure that the right information is given to decision-makers to promote sustainable development?*

The process proposed in the draft regulations is confusing and over-emphasises the need to provide reams of information, without making provision for analysis and interpretation of the information for the decision-maker, and its implications for sustainable development. Conversely, it can be asked whether there is sufficient provision for key information as exemplified in the recent case of *Biowatch v Registrar of Genetic Modification*. In this case, the applicant NGO had to undertake costly legal procedures to obtain access to risk assessment reports containing basic information on the consequences of releasing genetically modified crops into the agricultural sector. Without clear and crisp information in the EIA report – such as on risks involving the potential for irreversible impacts or loss of irreplaceable resources – decision-makers would not be fully informed with regard to the probable implications of the proposed activity.

6. *Is the emphasis on proactive and early attention to environmental effects and alternatives?*

Clearly not, as the regulations endorse a largely reactive, 'end of pipe' approach to EIA. For example, there is no requirement in the scoping or EIA report to evaluate the consistency of the proposed activity with laws, policies, plans or programmes of relevance to the context of the EIA – a central issue in positive, proactive planning for sustainable development which should be undertaken at project inception.

7. *Is there effective integration and streamlining for efficiency with other relevant laws?*

A NEMA principle stipulates that "there must be intergovernmental co-ordination and harmonisation of policies, legislation and actions relating to the environment". But a concern is that there are no links with planning and land use legislation, which is moving towards strategic level assessment

8. *Is there sufficient capacity to take decisions based on EIA which would promote sustainable development?*

It is widely recognised that the environmental authorities responsible for EIA administration at all levels do not have sufficient capacity and many officials lack the appropriate experience – the proposed expansion of the scope of activities for which authorisation will be required is thus of concern. There is currently no legal requirement for EIA practitioners to be certified – EIA reports are frequently sub-standard and provide an unreliable basis for decision-making. Reviews of these reports, often also by EIA practitioners who are not certified and/or by relatively inexperienced officials, contribute to scepticism about decision-making for sustainable development.

Conclusions

The good news in South Africa is that we have put environmental issues squarely on the constitutional and legislative map. But in so doing, we must ask ourselves whether we have not lost sight of the overall sustainable development landscape and objectives through creating a legislative 'jungle' in which we can no longer see the key indicator 'trees' that require protection and nurturing. The draft EA regulations should be re-visited to focus on getting the key questions right: ensuring that EA genuinely investigates the sustainability of projects and proposals; promotes sound environmental and professional judgment; ensures that irreversible actions are not carried out; and, ultimately, acknowledges the interconnectivity of all components of ecosystems.

An over-zealous legislative approach to environmental assessment is unbecoming to a country like South Africa with its developing and developed country characteristics which require simple, quick and efficient EIA procedures, as a key part of its new and emerging democracy.

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*I am indebted to Susie Brownlie for stimulating discussion and my understanding of recent developments in environmental assessment legislation.



Introduction

Several legal developments have occurred since the last update. For many, the most significant is the publication of a second draft of the proposed new Environmental Impact Assessment regulations under the *National Environmental Management Act*, 107 of 1998. Other significant events have included the decision by the Minister of Environmental Affairs to uphold the appeals against the N2 Wild Coast Toll Road authorisation, and the Cape High Court judgement setting aside an authorisation for the Koeberg pebble bed reactor.

Health and safety

The Department of Health has published regulations under the *Foodstuffs, Cosmetics and Disinfectants Act*, 54 of 1972, regarding tolerance for toxins produced by fungus in foodstuffs (in GN R1145 of 8 October 2004); objects in foodstuffs intended for children (in GN R1144 of 8 October 2004) and the labeling of alcoholic beverages (in GN R109 of 11 February 2005).

The *Health Care Waste Management Draft Bill* has been published for comment in the Western Cape (in PN255 of 9 December 2004). The objects of the Bill include preventing the degradation of the environment, promoting sustainable development and ensuring the responsible management of health care waste within the province. Regulations have been made under the *Agricultural Product Standards Act*, 119 of 1990, regarding the grading, packing and marking of canned fruit intended for sale in South Africa (GN R135 of 18 February 2005).

The Minister of Labour has amended the regulations under the *Compensation for Occupational Injuries and Diseases Act*, 130 of 1993 (in GN R120 of 28 January 2005), regarding the calculation of earnings, allowances and pensions payable as well as compensation payable to assessors. In addition, the Department of Labour has published a circular instruction regarding compensation for upper respiratory tract disorders that are work-related (in GN R119 of 28 January 2005) and a circular instruction regarding compensation for work-aggravated asthma (in GN R336 of 25 February 2005).

In the mining sector, the Minister of Minerals and Energy has inserted additional provisions into the Mine Health and Safety Regulations made under the *Mine Health and Safety Act*, 29 of 1996, regarding surveying, mapping and mine plans (in GN R1304 of 12 November 2004) and regarding protection of surface and the workings (in GN R1323 of 12 November 2004). Certain of the provisions in the Mine Health and Safety Regulations have also been repealed (GN R1305 of 12 November 2004). Declarations of work in the national interest have also been published in relation to the Two Rivers Platinum Mine (GN R92 of 4 February 2005), Leeuwpan Coal Mine (GN R96 of 4 February 2005) and Cullinan Diamond Mine (GN R136 of 18 February 2005).

Environment

General

The *National Environmental Management Amendment Act*, 8 of 2004, was brought into operation by proclamation on 7 January 2005. Initially, the incorrect Act was cited in the proclamation (see GN R63 in GG 27142 of 24 December 2004). However, this was subsequently rectified (R 1 in GG 27161 of 6 January 2005). The *National Environmental Management Amendment Act* significantly amends section 24 of the *National Environmental Management Act*, 1998, and sets the groundwork for Environmental Impact Assessments to be conducted under the latter. The *Amendment Act* also provides for the registration of environmental assessment practitioners.

A second draft of proposed regulations for the EIA and environmental authorisation process was published for comment under section 24(5) of the *National Environmental Management Act*, 1998 (GN 12 in GG 27163 of 14 January 2005). These regulations must be read with the *National Environmental Management Amendment Act*. Ultimately, Environmental Impact Assessment will be regulated under the *National Environmental Management Act*, 1998, as amended, and not, as is currently the position, under the *Environment Conservation Act*, 73 of 1989 and its regulations.

The Control of the Use of Vehicles in the Coastal Zone regulations which were published under section 44 of the *National Environmental Management Act*, 1998, have been amended to allow for easier permitting and authorisation. (These regulations are commonly referred to as the Off-road Vehicle Regulations.) Guidelines on the implementation of these regulations have also been published (GN R1426 in GG 27066 of 7 December 2004). Minor corrections, which appear to be largely insignificant, have subsequently been made to these regulations (GN R71 in GG 27213 of 28 January 2005).

The Minister has, under the *National Environmental Management: Biodiversity Act*, 10 of 2004, published for comment national norms and standards accompanied by draft regulations for the keeping and hunting of large predators, which include cheetah, spotted and brown hyena, wild dog, lion and leopard (GN R72 in GG 27214 of 28 January 2005). Draft lists of threatened and protected species have also been published for comment in terms of section 56(1) of the *Biodiversity Act* (GN R151 in GG 27306 of 18 February 2005). The identified species are divided into endangered, critically endangered, vulnerable, and protected species.

Draft regulations providing for the establishment of a designated national authority for the clean development mechanism under the Kyoto Protocol have been published for comment (GN R1478 in GG 27142 of 24 December 2004).

A Disaster Drought Assistance Scheme for Agricultural Water Supply to Stock/Game Farmers and a Drought Disaster Relief Scheme of 2004/2005 for Fodder Supply and Fodder Transportation have been respectively declared under the *Conservation of Agricultural Resources Act*, 43 of 1983, for certain districts in the provinces of the Republic of South Africa (GN R 20 and R21, respectively in GG 27157 of 14 January 2005).

The *Minerals and Energy Laws Amendment Bill* that deals with issues concerning mining titles and the Deeds Registry Act has been tabled in Parliament.

Waste

The Western Cape has published the *Health Care Waste Management Draft Bill* for comment (PN 255 in PG 6192 of 9 December 2004).

Water

The *National Water Resource Strategy*, which was approved by Cabinet on 1 September 2004, has been released under section 5(1) of the *National Water Act*, 36 of 1998, for public comment (GN R65 in GG 27199 of 28 January 2005).

The *Water Services Act*, 108 of 1997, has been amended to allow Water Boards to perform certain activities outside of the Republic of South Africa (GN R130 in GG 27273 of 11 February 2005).

The Department of Water Affairs and Forestry has informally published draft regulations that the Minister intends to make under the *National Water Act* 1998, for the Use of Water for Recreational Purposes Generally and in respect of a Government Waterworks and surrounding State-owned Land

Air

The *National Environmental Management: Air Quality Act*, 39 of 2004, has recently been enacted (GN R163 in GG 27138 of 24 February 2005) but will only take effect on a date still to

be determined. This Act will repeal the *Atmospheric Pollution Prevention Act*, 45 of 1965. It requires the Minister to adopt a national framework for achieving the objects of the Act and also provides for the establishment of national, provincial and local ambient air quality and emission standards. Applications for the renewal of certificates issued under the *Atmospheric Pollution Prevention Act* must be made within the prescribed time period, failing which, the certificates will be deemed to have expired. Importantly, until ambient air quality standards have been established, the standards set out in Schedule 2 of the Act will apply.

Protected areas

The *National Environmental Management: Protected Areas Act*, 57 of 2003, has been amended by the *National Environmental Management: Protected Areas Amendment Act*, 31 of 2004, which is not yet in force. It ensures that the establishment and management of national parks and marine protected areas are now provided for under the *Protected Areas Act*, 2003.

In terms of the *Marine Living Resources Act*, 18 of 1998, proposed fees for scuba divers and scuba divers business permits within marine protected areas have been published (GN 261 in GG 27287 of 14 February 2005).

An Amendment Bill of the *World Heritage Convention Act*, 49 of 1999, has been published for comment (GN R57 in GG 27179 of 28 January 2005). The Amendment Bill seeks to

transfer the administration of the Act and Convention functions to the Department of Arts and Culture.

International law

On 16 February 2005, the *Kyoto Protocol* came into force, 90 days after Russia acceded to it. The protocol requires all developed country signatories to reduce their greenhouse gas emissions through a range of mechanisms and also encourages developing country signatories to adopt similar mechanisms.

Miscellaneous

Recent newsworthy events include the decision by the Minister of Environmental Affairs and Tourism on 9 December 2004 to uphold an appeal against the authorisation granted to SANRAL for the construction of the N2 Wild Coast Toll Road, on the basis that the environmental consultants did not meet the requirement for independence. Accordingly, the authorisation has been set aside. In addition, the South African National Biodiversity Institute, established under the *National Environmental Management: Biodiversity Act*, 10 of 2004, and which replaces the National Botanical Institute, has been launched. The National Environmental Advisory Forum, established by Chapter 2 of the *National Environmental Management Act*, 107 of 1998, has been put into motion with the naming of 15 members.

Case law

There are two noteworthy judgements, unreported at the time of writing. The first is *EarthLife Africa (Cape Town) versus Director-General: Department of Environmental Affairs and Tourism and Another* (Case No. 7653/2003) heard in the Cape Provincial Division. The application concerned the review of the decision by the Director-General to authorise the construction of a pebble bed modular nuclear reactor in Koeberg, Cape Town. The decision was set aside in a judgement delivered on 26 January 2005, primarily, on the procedural ground that interested parties (such as the applicant) had not had the opportunity to make submissions on the final version of the Environmental Impact Report submitted as part of the application for authorisation.

In *The Trustees for the time being of the Biowatch Trust versus The Registrar: Genetic Resources and Others* (Case No. 23005/2002), the applicant was granted access to information concerning the regulation of genetically modified organisms in a judgement handed down on 23 February 2005, on the basis of its constitutional right of access to information but subject to the protection of third party interests, where applicable, in accordance with the provisions of the *Promotion of Access to Information Act*, 2 of 2000.

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Legislating for Sustainability I Ith Annual Conference of the IAIAA

IAIAA's annual conference will take place at Thaba'Nchu Sun in the Free State Province from 29-31 August 2005. The theme of the conference is *Legislating for Sustainability*.

Environmental, heritage and planning legislation is being challenged to evolve in a manner which will encourage and support sustainable development in South Africa. It is this evolving legal context that is the foundation on which impact assessment is built. EA professionals need to work closely with government, sharing insights and understanding and engaging in debate concerning legal reforms. The conference provides the platform for such debate.

The conference sub-themes are the following:

- environmental law and practice: sharing the learning;
- fulfilling and co-ordinating environmental requirements (EIA, Protected Areas, Biodiversity, etc);
- understanding and promoting sustainable development;
- environmental law and policy challenges for SA's second decade of democracy;
- the role of environmental frameworks, SEAs, SDFs and IDPs in a sustainable future; and

- the challenge of co-ordinating resource utilisation (mining, marine resources, etc) and environmental legislation.

Dr Jan Glazewski will offer a one-day pre-conference training course on Sunday 28 August on the amendment of section 24 of NEMA and the new (draft) regulations. A two-day technical visit to Katse Dam in Lesotho is planned for the weekend of 27 and 28 August.

Delegates are encouraged to present papers, provide suggestions for discussion topics and display posters. The conference provides an opportunity for sponsors, industry and institutions to exhibit/showcase products and services or projects and programmes. There is an award for the best conference paper by a young person and all papers accepted for presentation at the conference, by a person younger than 25, will automatically be considered for the award.

The prestigious IAIAA Awards will be presented at the conference – both the Premium Award and the Best Conference Paper by a Young Person Award will be given at this Award ceremony.

*Further information is available on the website:
www.iaia.co.za*

Where does IAIAAs locate itself as an environmental association?

The vision for IAIA is to be the leading global authority on best practice in environmental assessment, management and policy. IAIA serves as a forum for advancing best practice in impact assessment. Our activities include:

- developing processes for comprehensive and integrated impact assessment;
- improving assessment methods;
- promoting training and public understanding of the field;
- providing professional quality assurance; and
- sharing information networks, publications and professional meetings (*IAIAsa Handbook, 2004*).

The vision and activities described above are the ideals of IAIA International, of which we as the South African affiliate form a part. These ideals are what characterises and drives IAIAAsa. The question to ask is whether we as an association are collectively striving for and achieving the stated objectives we've set ourselves. I believe that individually our members are fulfilling the objectives of developing procedures, providing training and promoting public understanding. But if IAIAAsa were to measure itself against its stated objectives, the performance score would not be 100 %.

Where does IAIAAsa find itself or, in other words, where is it located as an association that should be constantly learning and progressing. I believe that IAIAAsa is currently a passive and reactive association.

Our main activities include: the annual conference, branch meetings and workshops (*see figure below*). IAIAAsa functions mainly as a networking organisation through the hosting of these activities. I believe that IAIAAsa needs to move beyond its current mode of operation to be able to achieve the laudable objectives, which it has set.

I would contend that there are two advanced stages of operation for an association such as IAIAAsa. These are the deliberative and knowledge-based stages (*see figure below*). The deliberative stage is one of being self-critical, where forums for debate on issues of principle are held. Deliberative processes are embarked upon where case studies are used to publicly debate and illustrate good/bad practice.

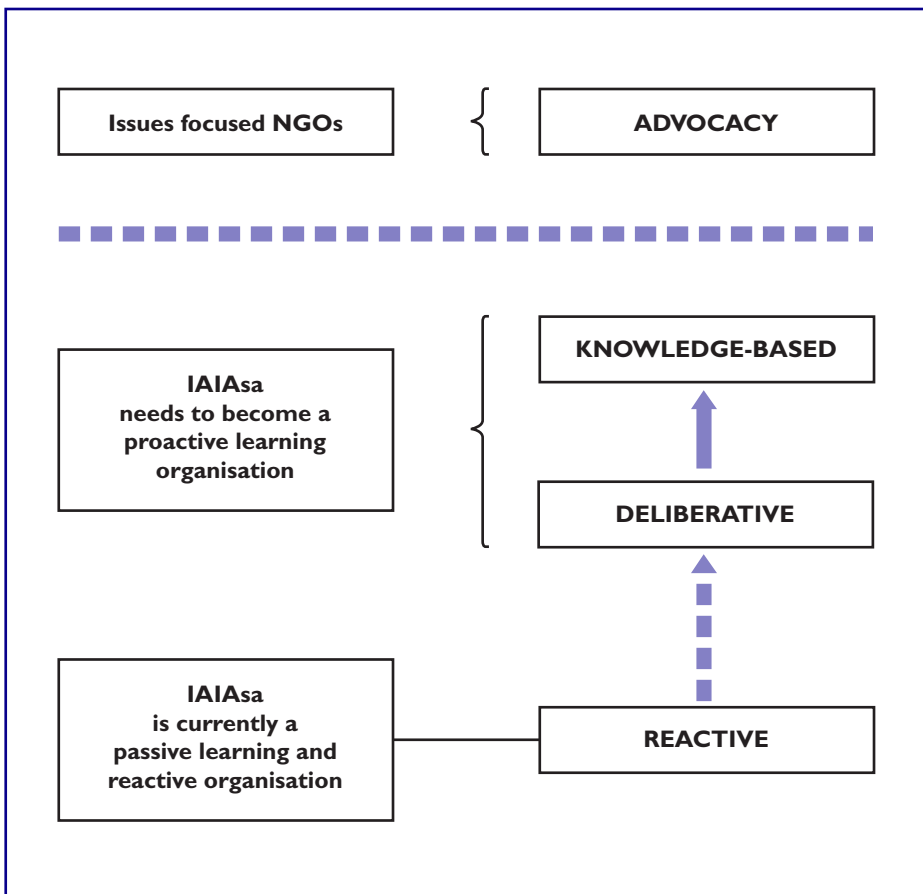
A further level of advancement would be to the knowledge-based stage of operation. At this level, structured learning and knowledge sharing occurs in a systematic manner. A common understanding of standards against which we should be measured is developed. There are

current IAIAAsa initiatives, which show that we have the drive and ability to operate at the level of a knowledge-based organisation. Examples of such initiatives include the production of the Code of Practice and the Handbook (further information on these initiatives will be published in later issues of the newsletter).

As a networking association, consisting of professionals from various disciplines, IAIAAsa can never move beyond these levels to becoming an advocacy organisation. Advocacy organisations, such as NGO's, take sides or develop positions and may even lobby for particular issues. As a membership based association with different interests, IAIAAsa can never become an advocacy-based organisation.

I believe that IAIAAsa needs to strive to become a proactive learning organisation, operating at more advanced levels than currently. We should become more self-critical of our practice, pro-actively advance the method and science of environmental assessment and also promote better public and media understanding of our field.

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