REALIZING SOUTH AFRICA'S CONTRIBUTION TO THE GLOBAL BIODIVERSITY FRAMEWORK'S AREA-BASED TARGETS — THE POTENTIAL IMPACT OF NEW SCREENING TRENDS LINKED TO STRATEGIC INFRASTRUCTURE PROJECTS, CORRIDORS AND ZONES

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South Africa supported the adoption of the Convention on Biological Diversity's Kunming-Montreal Global Biodiversity Framework in December 2022. Area-based conservation measures form the focus of its Target 3, which calls on countries to ensure that at least 30 per cent of their territory of high biodiversity value is effectively conserved and managed in protected areas and other effective area-based conservation measures by 2030. South Africa will need to more than triple its current land coverage within these areas in the next six years to achieve this target, and it has mapped priority focus areas for expansion to enable it to do so. The government is concurrently seeking to facilitate the roll-out of certain strategic infrastructure projects ('SIPs') linked to renewable energy, electricity grid and gas pipeline infrastructure within certain identified strategic infrastructure corridors and zones. Heavy reliance is placed on environmental impact assessment ('EIA') screening processes to subject activities linked to these SIPs undertaken in these corridors and zones to fast-track EIA approval processes or exclusions. Overlaying the maps depicting land of high biodiversity value, which is vital for achieving Target 3, with those outlining the strategic infrastructure corridors and zones, highlights potential conflict. This article critically analyses whether the new screening processes and associated tweaks to the general EIA and approval process linked to the SIPs have the potential to manage and mitigate these potential conflicts. The analysis highlights several challenges linked both to their foundation (including reliance on strategic environmental assessments and screening tools) and the array of procedural safeguards embedded within them. Cumulatively, these challenges hold the potential to undermine South Africa's efforts to realize Target 3.

Area-based conservation measures – strategic environmental assessment – environmental impact assessment screening – strategic infrastructure projects, corridors and zones

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I INTRODUCTION

The South African government supported the adoption of the Kunming-Montreal Global Biodiversity Framework[1] ('Global Biodiversity Framework') at the Convention on Biological Diversity's[2] Conference of the Parties ('COP') XV held in December 2022. The Global Biodiversity Framework, effectively the global communities' long-term biodiversity plan, envisions a world 'living in harmony with nature' and is founded on four broad goals and 23 action-orientated targets outlining urgent action required by 2030.[3] Area-based conservation measures form the focus of Target 3, which calls on countries to ensure that at least 30 per cent of terrestrial, inland water, and coastal and marine areas of high biodiversity value are effectively conserved and managed through ecologically representative, well-connected and equitably governed systems of protected areas[4] ('PAs') and other effective area-based conservation measures[5] ('OECMs') by 2030.[6] This is commonly known as the 30x30 Target. Key international focus has been placed on these area-based measures given their recognised role in conserving biodiversity, promoting options for climate mitigation and adaptation, and aiding in realizing the United Nation's Sustainable Development Goals.[7]

[1] CBD/COP 15 Decision XV/4 of 19 December 2022.

[2] 31 International Legal Materials 818 (1992).

[3] Global Biodiversity Framework op cit note 1 at 8–13.

[4] A protected area is defined as a 'clearly defined geographical space, recognised, dedicated and managed, through legal or other effective means, to achieve the long–term conservation of nature with associated ecosystem services and cultural values' (Nigel Dudley (ed) *Guidelines for Applying Protected Area Management Categories* (2008) with Sue Stolton, Peter Shadie & Nigel Dudley *IUCN–WCPA Best Practice Guidance on Recognising Protected Areas and Assigning Management Categories and Governance Types* (2013) 8–9).

[5] An OECM is defined as a 'geographically defined area other than a protected area, which is governed and managed in ways that achieve positive and sustained long-term outcomes for the in situ conservation of biodiversity, with associated ecosystem functions and services and where applicable, cultural, spiritual, socio-economic, and other locally relevant values' (International Union for the Conservation of Nature ('IUCN')/World Commission on Protected Areas ('WCPA') Task Force on OECMs *Recognising and Reporting Other Effective Area-based Conservation Measures* (2018) 3). The core difference between an OECM and a protected area is that the primary management objective of the former need not be the in situ conservation of biodiversity.

[6] Global Biodiversity Framework op cit note 1 at 9.

[7] See generally Nigel Dudley & Sue Stolton *Leaving Space for Nature — The Critical Role of Area-Based Conservation* (2020) 79–114; Nigel Dudley et al 'Protected areas and the sustainable development goals' (2017) 23 *PARKS: The International Journal of Protected Areas and Conservation* 9 at 9–12; United Nations Environment Programme, World Conservation Monitoring Centre & IUCN *Protected Planet Report* (2016); Lucas N Joppa, Jonathan E Baillie & John G Robinson (eds) *Protected Areas: Are They Safeguarding Biodiversity?* (2016); Sue Stolton & Nigel Dudley 'Values and benefits of protected areas' in Graham Worboys et al (eds) *Protected*

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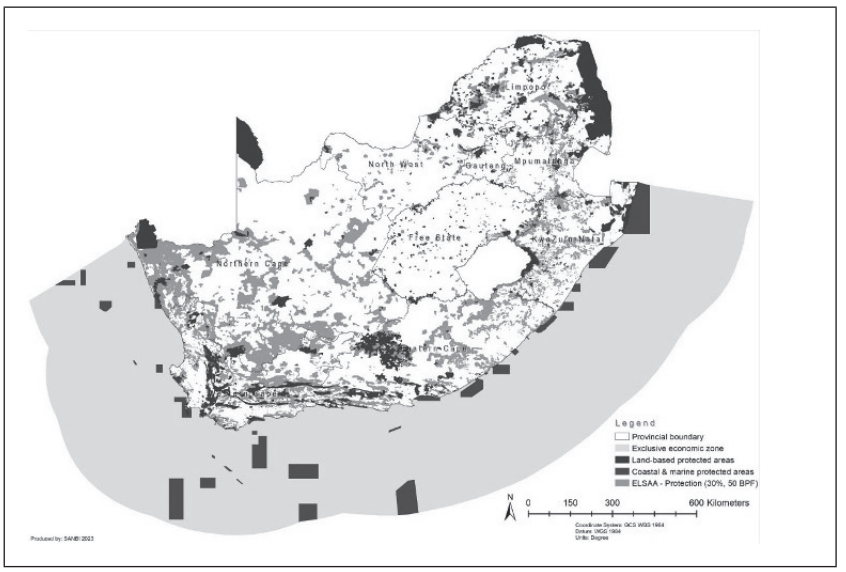

Map 1: Existing PAs and priority focus areas for future inclusion in area-based conservation initiatives

A survey of the World Database on Protected Areas ('WPDA')[8] highlights that South Africa will need to almost triple its current land coverage within PAs and OECMs in the next six years to achieve the 30x30 Target.[9] This is a mammoth task, with its realization influenced by an array of key environmental laws[10] relevant both to giving domestic effect to the country's international commitments (such as those under the Global Biodiversity Framework's Area-based Target 3) and to realizing the

Area Governance and Management (2015) 145 at 145–68; Nigel Dudley et al (eds) *Natural Solutions: Protected Areas Helping People Cope with Climate Change* (2010); and CBD Secretariat *Protected Areas in Today's World: Their Values and Benefits for the Welfare of the Planet* (2008).

[8] Available at *https://www.protectedplanet.net/country/ZAF*, accessed on 20 February 2024.

[9] Ibid. The WDPA currently reflects that only 16.21 per cent of South Africa's terrestrial and inland areas are conserved within PAs and OECMs. This percentage is, however, artificially inflated as it includes all terrestrial areas included within the country's ten biosphere reserves as OECMs, notwithstanding these areas not having been formally assessed to determine whether they comply with the OECM criteria developed by the IUCN/WCPA Task Force on OECMs *Recognising and Reporting Other Effective Area-Based Conservation Measures* op cit note 5). Removing these yet to be formally validated OECMs from the coverage determination reduces the country's actual terrestrial coverage to 9.28 per cent.

[10] The most relevant of these in the context of this article are the National Environmental Management Act 107 of 1998, the National Environmental Management: Protected Areas Act 57 of 2003 and the National Environmental Management: Biodiversity Act 10 of 2004.

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environmental right enshrined in the Constitution.[11] The government has undertaken extensive efforts to identify land of high biodiversity value for potential future inclusion within PAs and OECMs. These efforts include the development of important strategic policy frameworks,[12] spatial datasets and scientific mapping enterprises,[13] which have resulted in the preparation and release of maps such as that above (Map 1), clearly depicting the location of existing PAs (reflected in black) and priority focus areas identified for future inclusion in PAs and OECMs (those reflected in light grey).

The government is simultaneously seeking to facilitate the roll-out of certain strategic infrastructure, most notably renewable energy infrastructure ('REI'), electricity grid infrastructure ('EGI') and gas pipeline infrastructure ('GPI') within certain identified corridors and zones. Strategic infrastructure of this nature is essential to enable the country to overcome the current energy security crisis. The Infrastructure Development Act[14] ('IDA'), which dates back a decade, was specifically introduced to identify, facilitate, expedite and unblock any approval processes under any legislation linked to the implementation of defined strategic integrated projects ('SIPs').[15] In addition to outlining key institutions tasked with facilitating the above objective,[16] the Act sets out the process to identify new SIPs[17] and recognise existing SIPs.[18] The latter include the following, which are all clearly linked to overcoming the current energy crisis: SIP 8 (Green energy in support of the South African economy), SIP 9 (Electricity generation to support socio-economic development), and SIP 10 (Electricity transmission and distribution for all). The IDA prescribes that should an environmental impact assessment ('EIA') and associated environmental authorisation ('EA') be required for any SIP, it should be undertaken in terms of the process set out in the National Environmental Management Act[19] ('NEMA'), but then outlines

[11] Section 24 of the Constitution of the Republic of South Africa, 1996.

[12] The most recent of these are: *White Paper on Conservation and Sustainable Use of South Africa's Biodiversity* (GN 3537 *GG* 48786 of 14 June 2023); *National Biodiversity Framework 2019–2024* (GN 2386 *GG* 46738 of 19 August 2022); South African National Biodiversity Institute *National Biodiversity Assessment 2018* (2019); Department of Forestry, Fisheries and the Environment ('DFFE') *National Protected Areas Expansion Strategy* 2018 (2019); and Department of Environmental Affairs ('DEA') *National Biodiversity Strategy and Action Plan 2015–2025* (2016).

[13] These include: 'Biodiversity GIS' available at *http://bgis.sanbi.org/*, accessed on 20 February 2024; and 'Action mapping for essential life support areas' available at *https://csl.gis.unbc.ca/SouthAfrica_ELSA/*, accessed on 20 February 2024.

[14] Act 23 of 2014.

[15] Section 2 of the IDA.

[16] Parts 2 and 4 of the IDA.

[17] Part 3 read with sched 1 of the IDA.

[18] Section 22 read with sched 3 of the IDA.

[19] Act 107 of 1998.

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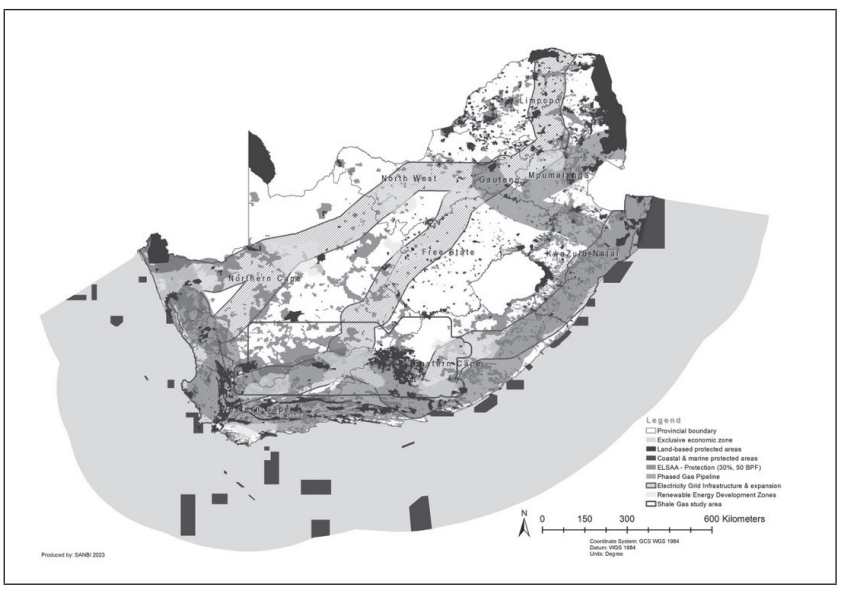
its own process and set of time-frames that may not be exceeded in any such process.[20]

Projects falling within SIPs 8–10 have formed the focus of much recent regulatory activity under NEMA, which directly seeks to identify, facilitate, expedite and unblock the EIA and EA process governing them.[21] Heavy reliance is placed on new EIA screening approaches prescribed under the Act to identify activities linked to SIPs 8–10 and subject them to fast-track approval processes or exclusions. These new EIA screening approaches are in turn informed by a range of strategic environmental assessments ('SEAs') linked to SIPs 8–10[22] through which various strategic infrastructure corridors and zones have been identified for the roll out of SIPs 8–10. These corridors and zones are depicted in Map 2 below.



Map 2: Gas pipeline corridors, electricity grid infrastructure corridors and renewable energy development zones

[20] Part 5 read with sched 2 of the IDA.

[21] These are too numerous to list here but they are each unpacked in detail in parts II and III.

[22] These include: DEA Strategic Environmental Assessment for Wind and Solar Photovoltaic Energy in South Africa (2015) ('SEA REI (Phase 1)'); DEA Strategic Environmental Assessment for Electricity Grid Infrastructure in South Africa (2016) ('SEA EGI (Phase 1)'); DFFE Strategic Environmental Assessment for Wind and Solar Photovoltaic Energy in South Africa – Phase 2 (2019) ('SEA REI (Phase 2)'); DFFE Strategic Environmental Assessment for the Expansion of Electricity Grid Infrastructure Corridors in South Africa (2019) ('SEA EGI (Phase 2)'); and DFFE Strategic Environmental Assessment for the Development of a Phased Gas Pipeline Network in South Africa (2019) ('SEA GPI').

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A brief survey of the two maps above highlights a stark reality. Many of the areas currently constituting PAs and priority focus areas identified for future inclusion in PAs and OECMs (grey areas on Map 1) overlap with the strategic infrastructure corridors and zones earmarked for future potential large-scale and high-impact SIPs, including electricity transmission and distribution lines, substations, renewable energy infrastructure and gas pipelines (the superimposed grey areas on Map 2). This poses a clear potential conflict between two key strategic government imperatives: promoting domestic energy security and meeting the country's international area-based conservation targets under the Global Biodiversity Framework. The question that arises is whether the new EIA screening approaches aimed at facilitating the implementation of the above SIPs within these identified corridors and zones through fast-track permitting and exclusion procedures contain the necessary safeguards to ensure that they do not undermine the country's ability to meet its obligations under Target 3 of the Global Biodiversity Framework, especially where these SIPs are constructed in areas of high conservation value such as existing PAs and priority focus areas identified for future inclusion in PAs and OECMs ('priority focus areas for expansion'). This is the question the article seeks to address.

The article is divided into three main parts. Part II provides a brief overview of the history and evolution of EIA screening in South Africa to set the necessary context. Part III aims to unpack the new approaches to EIA screening that have emerged in the last five years, identifying and explaining two main trends linked to SIPs undertaken within identified strategic infrastructure corridors and zones, namely the use of fast-track EIA processes and reduced decision-making time-frames, and the use of web-based screening tools, standards and exclusions. It is acknowledged that six additional screening trends may be identifiable within the plethora of recent notices and regulations published under NEMA. These are briefly mentioned in part I, which sets out the broad regulatory context, but as their scope is not limited to SIPs 8–10 undertaken within the abovementioned strategic infrastructure corridors and zones, they are excluded from the ambit of this article. Part IV moves to critique the two main trends linked to SIPs undertaken within these strategic infrastructure corridors and zones to determine whether they contain the necessary safeguards to ensure that they do not undermine the country's ability to meet its obligations under Target 3 of the Global Biodiversity Framework, especially where these SIPs are constructed in areas of high conservation value, specifically existing PAs and priority focus areas for expansion.

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II THE HISTORIC EVOLUTION OF EIA SCREENING IN SOUTH AFRICA

EIA is defined as 'a process of identifying, predicting, evaluating and mitigating the biophysical, social, and other relevant aspects of proposed projects and physical activities prior to major decisions and commitments being made'.[23] Its broad purpose is fourfold: to promote good decision-making by ensuring that all relevant information is placed before the decision-maker; to facilitate effective development through informing the choice of location and design of the activity, building relations with key stakeholders, identifying long-term risks associated with the proposed activity and adopting measures to mitigate these risks; to provide a vehicle for public consultation and participation; and, ultimately, to realize the ideal of sustainable development through hopefully ensuring the balanced consideration of social, economic and environmental impacts in both the initial design and subsequent formal approval process.[24]

Screening forms an integral first component of an EIA process, determining which activities are governed by the overall EIA process and to which specific form of EIA they should be subjected.[25] It determines the number of activities governed by the EIA process, thereby narrowing the application of the process to those activities that may cause significant impacts or whose potential impacts are unknown.[26] It has been recognised that a screening process that is too rigorous may subject too many activities with insignificant impacts to the EIA process, clog the regulatory system, cause capacity constraints and delay development.[27] The opposite is equally true. Implementing too lax a screening process while lessening the load on the regulatory system, alleviating capacity constraints and

[23] Bruce Sadler 'International study of the effectiveness of Environmental Impact Assessment. Environmental Assessment in a changing world: Evaluating practice to improve performance' (1996) 13, available at *https://unece.org/DAM/env/eia/documents/StudyEffectivenessEA.pdf*, accessed on 22 February 2024.

[24] John Glasson & Riki Therivel *Introduction to Environmental Impact Assessment* 5 ed (2019) 7.

[25] See generally on screening Christopher Wood 'Screening and scoping' in Norman Lee & Clive George (eds) *Environmental Assessment in Developing and Transitional Countries* (2000) 72–7; Glasson & Therivel ibid at 86–7. See generally on screening in South Africa Michael Lambrecht, Merle Sowman & Kirsten Day 'South Africa's screening tool: A preliminary study of how users perceive its accuracy and utility' (2023) 41 *Impact Assessment and Project Appraisal* 102; Dirk P Cilliers et al 'The validity of spatial data-based EIA screening decisions' (2022) 93 *Environmental Impact Assessment Review* 1; and Francois Retief, Coert N J Welman & Luke Sandham 'Performance of environmental impact assessment (EIA) screening in South Africa: A comparative analysis between 1997 and 2006 EIA regimes' (2011) 93 *South African Geographical Journal* 154.

[26] Glasson & Therivel ibid at 4.

[27] Retief, Welman & Sandham op cit note 25 at 155–6.

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promoting development may result in activities with significant potential impacts falling outside the EIA process, possibly undermining the entire rationale for introducing an EIA process.[28] Accordingly, any screening process should aim to balance these two extremes carefully.

South African legislators have systematically sought to refine the country's general EIA process over the past few decades, specifically the screening approaches embedded within it, to improve its efficacy and achieve the careful balance mentioned above. This systematic refinement can be divided into four broad eras.[29] Each is characterised by key revisions to the country's framework legislation governing EIA.

The first era, commencing in September 1997, saw the introduction of South Africa's earliest legislation governing EIA, the Environment Conservation Act[30] ('ECA') read together with its EIA Regulations.[31] Anyone wishing to commence with a listed activity[32] was required, before doing so, to undertake an EIA in compliance with the prescribed procedure.[33] The approach to screening during this era was rather blunt. It only provided a brief national list of activities, focused largely on the nature of the activities as opposed to their proposed location, and provided a single form of EIA procedure. Some nuance was introduced in this era through NEMA, when it commenced on 29 January 1999, as it accorded authorities a general discretion to require an EIA where any person undertook an activity requiring authorisation or permission by law that potentially affected the environment significantly.[34]

The second era was heralded by the repeal of the ECA's EIA Regulations,[35] wholesale amendments to chap 5 of NEMA,[36] and the introduction of NEMA's EIA Regulations in July 2006.[37] Screening

[28] Ibid.

[29] For a thorough critique of the approach to EIA screening during the first three eras (or what they term 'regimes'), see Retief, Welman & Sandham op cit note 25 at 154–67. For a broad overview of the development and a critique of South Africa's EIA regime see Michael Kidd, Francois Retief & Reece Alberts 'Integrated environmental assessment and management' in N D King, H A Strydom & F P Retief (eds) *Environmental Management in South Africa* 3 ed (2018) 1215–33, 1227–43 and 1264–76.

[30] Act 73 of 1989.

[31] GNR 1182–1184 *GG* 18261 of 5 September 1997.

[32] These listed activities were set out in GNR 1182 *GG* 18261 of 5 September 1997.

[33] The procedure was set out in GNR 1183 *GG* 18261 of 5 September 1997.

[34] Section 24(1) of NEMA (prior to its amendment by the National Environmental Management Amendment Act 8 of 2004).

[35] Repealed in terms of GN 615–616 *GG* 28938 of 23 June 2006.

[36] Effected through the National Environmental Management Amendment Act 8 of 2004.

[37] GNR 385–387 *GG* 28753 of 28 April 2006. These regulations formally commenced on 3 July 2006 (GNR 612–614 *GG* 28938 of 23 June 2006).

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during this era was similarly predominantly based on a listing approach, with one key distinction being that NEMA's EIA Regulations made provision for two different national lists of activities[38] and two associated different EIA procedures, namely basic assessment ('BA') and scoping and environmental impact assessment report ('S&EIR').[39] While the principal focus of the lists was on the nature and scale of the activities as opposed to their proposed location, the screening trigger in a limited number of listed activities expressly related to the impact of these activities on biodiversity conservation generally.[40] The broad discretion accorded to authorities under NEMA in the first era fell away owing to the above amendments.

The third era commenced in August 2010 with further amendments to chap 5 of NEMA,[41] accompanied by a new set of EIA Regulations published under the Act.[42] The approach to screening during this era was very similar to that in the second era, making provision, however, for three different lists of activities: a national list of activities subject to the BA process; a national list of activities subject to the S&EIR process; and a provincial list of activities requiring a BA.[43] Again, while the principal focus of the national lists was on the nature and scale of the activities as opposed to their proposed location, the screening trigger in a limited number of nationally listed activities expressly related to the impact of these activities on biodiversity conservation generally.[44] In stark contrast, the provincial list of activities specifically focused on both the nature and scale of the activity and its proposed location, with the latter incorporating numerous references to various biodiversity and area-based conservation plans,

[38] Activities triggering the need for basic assessment (BA) were set out in GN 386 *GG* 28753 of 21 April 2006. Activities triggering the need for scoping and an environmental impact assessment report (S&EIR) were set out in GN 387 *GG* 28753 of 21 April 2006.

[39] The two different assessment procedures were set out in GN 385 *GG* 28753 of 21 April 2006.

[40] See for example items 5, 12, and 20–2 in GN 386 *GG* 28753 of 21 April 2006 and item 10 in GN 387 *GG* 28753 of 21 April 2006.

[41] Effected through the National Environmental Management Amendment Act 62 of 2008, which generally commenced on 1 May 2009 (GN 27 *GG* 32156 of 24 April 2009).

[42] GNR 543–546 *GG* 33306 of 18 June 2010. These regulations, which repealed those operating in the second era, formally commenced on 2 August 2010 (GNR 661–664 *GG* 33411 of 30 July 2010).

[43] The national list of activities triggering the need for BA were set out in GN 544 *GG* 33306 of 18 June 2010, as amended. The national list of activities triggering the need for S&EIR were set out in GN 545 *GG* 33306 of 18 June 2010, as amended. The provincial list of activities triggering the need for BA were set out in GN 546 *GG* 33306 of 18 June 2010. The two different assessment procedures were set out in GN 543 *GG* 33306 of 18 June 2010.

[44] See for example items 17, 25 and 26 in GN 544 *GG* 33306 of 18 June 2010, as amended.

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including: the National Protected Areas Expansion Strategy ('NPAES'); sensitive areas identified in environmental management frameworks ('EMFs');[45] sites/areas identified in an international convention; critical biodiversity areas identified in systematic biodiversity plans or bioregional plans; core areas in biosphere reserves; buffer zones to various types of PAs; and areas zoned for conservation purposes.[46] This reflected the apparent increasing recognition of the importance of also focusing on the proposed location of the activity and the value of biodiversity and area-based conservation plans linked to these proposed locations as screening triggers. While the revisions to the EIA screening process led to a reduction in the number of applications requiring consideration, commentators at the time argued for additional screening interventions to address capacity constraints further and unclog the EIA system.[47] Those proposed included increased reliance on location sensitivity considerations (reflected, for instance, in EMFs) and the use of norms and standards for screening out certain types of infrastructure developments and activities with well-known and generic impacts.[48]

While the fourth era could effectively be regarded as ongoing, it commenced in December 2014 with yet a further series of amendments to chap 5 of NEMA[49] and a new set of EIA Regulations published under the Act.[50] It initially followed the pattern of the third era, with three different lists of activities: a national list of activities subject to BA, a national list of activities subject to S&EIR, and a provincial list of activities requiring BA.[51] In addition, while the national lists predominantly focused on the

[45] Approved in terms of the EMF Regulations (GN 547 *GG* 33306 of 18 June 2010) introduced during this second era.

[46] References to these biodiversity and area-based conservation plans are littered throughout.

[47] See generally Retief, Welman & Sandham op cit note 25 at 154–71.

[48] Ibid at 167.

[49] Effected through the National Environmental Management Laws Second Amendment Act 30 of 2013, which generally commenced on 18 December 2013, the date the Act was published in the *Government Gazette* (Vol 582 *GG* 37170 of 13 December 2013). Further amendments were effected through the National Environmental Laws Amendment Act 2 of 2022, the relevant EIA provisions of which commenced on 30 June 2023 (Proc 125 *GG* 48869 of 30 June 2023).

[50] GNR 982–985 *GG* 38282 of 4 December 2014, as amended. These regulations, which repealed those operating in the third era, formally commenced on 8 December 2014 (this was so prescribed in each of the regulations themselves).

[51] The national list of activities triggering the need for BA are set out in GN 983 *GG* 38282 of 4 December 2014, as amended. The national list of activities triggering the need for S&EIR are set out in GN 984 *GG* 38282 of 4 December 2014, as amended. The provincial list of activities triggering the need for BA are set out in GN 985 *GG* 38282 of 4 December 2014, as amended. The two different assessment procedures are set out in GNR 982 *GG* 38282 of 4 December 2014, as amended.

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nature and scale of the listed activities, the provincial list also focused on the proposed location, incorporating numerous references to the same range of biodiversity and area-based conservation plans referred to above in the context of the third era.

This is, however, where the similarities come to an end. Since 2016, the government has experimented with several new approaches to screening through a complex puzzle comprising numerous notices and regulations published under NEMA. These seem to draw on some of the suggestions commentators proposed in the context of the third era. The new screening approaches principally make use of the provisions of NEMA that enable the Minister of Forestry, Fisheries and the Environment to exclude all listed activities from the EIA requirements where they take place within geographical areas specified in environmental management instruments ('EMIs');[52] to exclude specified listed activities from the EIA requirements where they comply with prescribed norms and standards;[53] to exclude specified activities from the EIA requirements where these activities are identified through an EMI;[54] and to alter the standard EIA process to create fast-track approval processes for certain specified activities.[55]

This complex puzzle of notices and regulations relating predominantly to the relevant provisions in NEMA is somewhat difficult to put together. On careful reflection, the puzzle pieces appear to be able to be grouped into eight piles, reflective of eight new screening trends, some of which have been finalised and some of which are still subject to ongoing public consultation. The first trend adopts standards for certain activities and then excludes project proponents from needing to comply with the EIA requirements and secure EA on condition that they comply with the relevant activity standard.[56] The second trend publishes EMFs, adopts standards linked to them, and then excludes project proponents from needing to comply with the EIA requirements and secure EA on the condition that

[52] Section 24(2)*(c)* of NEMA.
[53] Section 24(2)*(d)* of NEMA.
[54] Section 24(2)*(e)* of NEMA.
[55] Section 24(5)*(a)* and *(b)* of NEMA.
[56] This trend is reflected in the following notices: Proposed Activities Identified in terms of Section 24(2)*(d)* of NEMA that may be Excluded from the Requirement to Obtain an Environmental Authorisation but that must Comply with the Standards for Land-Based Abalone Aquaculture (GN 504 *GG* 39971 of 6 May 2016); Proposed Activities Identified in terms of Section 24(2) of NEMA that may be Excluded from the Requirement to Obtain an Environmental Authorisation but that must Comply with the Dangerous Goods Standard, 2016 (GN 891 *GG* 40188 of 6 August 2016); and Consultation on the Development and Adoption of the KwaZulu-Natal Provincial Watercourse Infrastructure Standard and Associated Excluded Activities and Proposed Exclusion of Activities from the Requirement to Obtain an Environmental Authorisation (GN 4362 *GG* 50108 of 9 February 2024).

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they comply with the relevant EMF standard.[57] The third trend adopts integrated environmental management plans for projects as an EMI. Then, it excludes project proponents undertaking activities falling within the project's remit from needing to comply with the EIA requirements and secure EA on condition that they comply with the relevant plan.[58] The fourth trend develops generic environmental management programmes ('EMPrs'), adopts these as EMIs and then excludes project proponents undertaking activities covered by the generic EMPr from needing to comply with the EIA requirements and secure EA on condition that they comply with the relevant generic EMPr.[59] The fifth trend adopts norms for certain activities. Then, it excludes project proponents from needing to comply with the EIA requirements and secure EA on condition that they comply with the relevant activity norm.[60] The sixth trend adopts national

[57] This trend is reflected in the following notices: Adoption of the Gauteng Provincial EMF Standard and Exclusion of Associated Activities from the Requirement to Obtain an Environmental Authorisation in terms of Section 24(2)*(d)* and Section 24(10)*(a)* and *(d)* of NEMA (GN 164 *GG* 41473 of 2 March 2018); and Consultation on the Proposed Adoption of the Sandveld EMF Standard, 2023, and the Proposed Exclusion of Activities Related to the Clearance of Indigenous Vegetation in the EIA Listing Notices 1–3 (GN 4277 *GG* 50041 of 26 January 2024).

[58] This trend is reflected in the following notice: Notice of Adoption of an EMI and Exclusion in terms of Section 24(2)(*e*) of NEMA of Phase 1 of the Square Kilometre Array from the Requirement to Obtain an Environmental Authorisation (GN 436 *GG* 42323 of 22 March 2019, as amended).

[59] This trend is reflected in the following notices: Adoption of Generic EMPr for the Working for Ecosystems Projects and the Exclusion of these Projects from the Requirement to Obtain an Environmental Authorisation (GN 105 *GG* 44173 of 5 February 2021); Adoption of Generic EMPr for the Working for Water Projects and the Exclusion of these Projects from the Requirement to Obtain an Environmental Authorisation (GN 106 *GG* 44173 of 5 February 2021); Adoption of Generic EMPr for the Working for Wetlands Projects and the Exclusion of these Projects from the Requirement to Obtain an Environmental Authorisation (GN 107 *GG* 44173 of 5 February 2021); Adoption of Generic EMPr for Land Care Projects and the Exclusion of these Projects from the Requirement to Obtain an Environmental Authorisation (GN 276 *GG* 44341 of 29 March 2021); and Adoption of Generic EMPr for Development Projects in the Atlantis Urban Area and the Exclusion of these Projects from the Requirement to Obtain an Environmental Authorisation (GN 2001 *GG* 46208 of 7 April 2022).

[60] Different draft versions of this trend have been published in various notices over the past two years with the most recent version reflected in the following notices: Consultation on the Intention to Adopt the Solar Exclusion Norm and Exclude the Development and Expansion of Solar Photovoltaic Facilities from the Requirement to Obtain an Environmental Authorisation (GN 4121 *GG* 49788 of 30 November 2023); and Consultation of the Intention to Adopt the Battery Storage Exclusion Norm and Exclude Identified Activities Associated with the Development and Expansion of Battery Storage Facilities from the Requirement to Obtain an Environmental Authorisation (GN 4120 *GG* 49788 of 30 November 2023).

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park management plans and associated generic EMPrs as EMIs. Then, it excludes project proponents undertaking certain activities that align with the management plan from needing to comply with the EIA requirements and secure EA on condition that they comply with the generic EMPr.[61] The seventh trend identifies corridors and zones and introduces fast-track EIA and approval processes for certain types of large-scale infrastructure developed within them. The final trend, linked to certain types of large-scale infrastructure developed within these identified corridors and zones, uses web-based screening tools and standards to exclude project proponents from needing to comply with the EIA requirements and secure EA on the condition that they comply with the relevant standard.

III UNPACKING THE RELEVANT EIA SCREENING TRENDS

The last two screening trends identified above are integrally linked to SIPs 8–10, the various SEAs undertaken to inform their roll-out, and the strategic infrastructure corridors and zones referred to in the introduction to this article. Some of the notices and regulations relating to these two screening trends are general, and some relate specifically to SIP 8, SIP 9 and SIP 10. Although this part of the puzzle only forms a small component of the broader puzzle referred to above, it is complex in its own right. What follows is an attempt to unpack these two trends and the array of notices and regulations relating to them, simply and logically.

(a) Fast-track EIA processes and reduced decision-making time-frames

Examples of this trend span SIPs 8–10, and its foundation is linked to a range of SEAs undertaken to inform the implementation of these SIPs.[62] One of the key outcomes of these SEAs was the identification of certain zones or corridors in which these SIPs should be promoted. The SEA EGI (Phase 1) and SEA EGI (Phase 2) outlined the five initial and two extended strategic electricity transmission and distribution corridors. The SEA REI (Phase 1) and SEA REI (Phase 2) identified the renewable energy development zones (REDZ) 1–8 and 9–11, respectively. Finally, the SEA GPI mapped the nine strategic gas pipeline corridors. Having mapped these strategic infrastructure corridors and zones, the government published a range of notices, effectively creating a fast-track EIA and approval process for any related projects undertaken within them.

[61] This trend is reflected in the following notice applicable to the Kruger National Park: Notice of Intention to Adopt EMIs for the Purpose of Excluding in terms of Section 24(2)*(c)* and *(e)* of NEMA, Identified Activities from the Requirement to Obtain an Environmental Authorisation (GN 4386 *GG* 50138 of 16 February 2024).

[62] See note 22 above for list of these SEAs.

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In 2018, large-scale EGI to be constructed in any of the five initial strategic electricity transmission and distribution corridors was 'downgraded' from needing to follow the S&EIR process to merely following the BA process.[63] In addition, the time frame for decision-makers considering the BA report to determine whether to grant an EA was reduced from 107 to 57 days. The following year, a Generic EMPr Relevant to an Application for Substation and Overhead Electricity Transmission and Distribution Infrastructure and Expansion of Overhead Electricity Transmission and Distribution Infrastructure which Require an Environmental Authorisation ('Generic EGI EMPr') was published. Applicants seeking to undertake projects of this nature were required to use it in the context of their applications.[64] This same fast-track EIA and approval process was extended in 2021 to projects undertaken in the two expanded strategic electricity transmission and distribution corridors.[65]

Similarly, in 2018, large-scale REI projects, especially linked to wind and solar photovoltaic energy undertaken in REDZ 1–8, were 'downgraded' from the S&EIR to the BA process with a reduced decision-making time frame of 57 days.[66] This same fast-track EIA and approval process was extended to projects of this nature undertaken in REDZ 9–11[67] and

[63] This was affected through Notice of Identification in Terms of Section 24(5)*(a)* and *(b)* of NEMA, of the Procedure to be Followed in Applying for the Environmental Authorisation for Large-Scale Electricity Transmission and Distribution Activities When Occurring in Geographical Areas of Strategic Importance (GN 113 *GG* 41445 of 16 February 2018). The procedure was slightly amended in 2022 in terms of GN 2716 *GG* 47448 of 4 November 2022.

[64] This Generic EGI EMPr was published in GN 435 *GG* 42323 of 22 March 2019.

[65] This extension was provided for in Identification in terms of Sections 24(3), 24(5)*(a)* and 24(5)*(b)* of NEMA of Expanded Geographical Areas of Strategic Importance for the Development of Electricity Transmission and Distribution Infrastructure and of Procedures to be followed when Applying for or Deciding on Environmental Authorisations for Large Scale Electricity Transmission and Distribution Development Activities When Occurring in Geographical Areas of Strategic Importance (GN 1637 *GG* 45690 of 24 December 2021).

[66] This was affected through Notice of Identification in Terms of Section 24(5)*(a)* and *(b)* of NEMA, of the Procedure to be Followed in Applying for the Environmental Authorisation for Large-Scale Wind and Solar Photovoltaic Energy Development Activities When Occurring in Geographical Areas of Strategic Importance (GN 114 *GG* 41445 of 16 February 2018). The procedure was slightly amended in 2021 in terms of GN 1617 *GG* 45649 of 17 December 2021.

[67] This extension was provided for in Identification of Procedures to be Followed When Applying for or Deciding on an Environmental Authorisation Application for Large-Scale Wind and Solar Photovoltaic Facilities When Occurring in Renewable Energy Development Zones (GN 142 *GG* 44191 of 26 February 2021).

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EGI occurring in REDZ 1–11[68] in 2021, with the addition of two requirements in respect of the latter: the applicant had to negotiate a route for the infrastructure with relevant landowners and submit it to the authorities as part of the application. The Generic EGI EMPr referred to above applied to applications of this nature. Interestingly, unlike in the context of large-scale EGI, no generic EMPr was introduced for large-scale REI (wind and solar photovoltaic energy) undertaken in REDZ 1–11.

The final SIP to follow this trend was that relating to GPI. Having formally gazetted the nine strategic gas pipeline corridors in 2021,[69] the government proceeded to replicate the screening trend evident in the context of large-scale EGI by prescribing a 'Generic EMPr for the Development and Expansion of Gas Transmission Pipeline Infrastructure'[70] ('Generic GPI EMPr') and indicating that projects of this nature only need to be subject to the BA process with reduced decision-making time-frames.[71]

(b) Web-based screening, standards and exclusions

The ambit of this second trend is limited to SIP 10, focusing on the development and expansion of powerlines and substations. It is similarly informed by the SEA EGI (Phase 1) and SEA EGI (Phase 2),[72] which outlined the five initial and two extended strategic electricity transmission and distribution corridors that were subsequently formally recognised by way of notices published under NEMA in 2018[73] and 2021,[74] respectively.

[68] This extension was provided for in Identification of Procedures to be Followed When Applying for or Deciding on an Environmental Authorisation Application for the Development of Electricity Transmission and Distribution Infrastructure When Occurring in Renewable Energy Development Zones (GN 145 *GG* 44191 of 26 February 2021).

[69] These were reflected in Identification of Geographical Areas Important for the Development of Strategic Gas Pipeline Corridors (GN 143 *GG* 44191 of 26 February 2021).

[70] This *Generic GPI EMPr* was published in GN 373 *GG* 44481 of 23 April 2021.

[71] This was effected through Procedures to be Followed When Applying for or Deciding on an Environmental Authorisation for the Development or Expansion of Gas Transmission Pipeline Infrastructure When Occurring in Strategic Gas Pipeline Corridors (GN 411 *GG* 44551 of 7 May 2021).

[72] See note 22 above for full references to these SEAs.

[73] These were reflected in Notice of Identification in Terms of Section 24(5)*(a)* and *(b)* of NEMA, of the Procedure to be Followed in Applying for the Environmental Authorisation for Large-Scale Electricity Transmission and Distribution Activities When Occurring in Geographical Areas of Strategic Importance (GN 113 *GG* 41445 of 16 February 2018).

[74] These were reflected in Identification in terms of Sections 24(3), 24(5)*(a)* and 24(5)*(b)* of NEMA of Expanded Geographical Areas of Strategic Importance for the Development of Electricity Transmission and Distribution Infrastructure and of Procedures to be followed when Applying for or Deciding on Environmental Authorisations for Large Scale Electricity Transmission and Distribution

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Alongside the formal recognition of these strategic corridors, the government gave legal standing to the National Web-based Environmental Screening Tool ('Screening Tool') it had developed by requiring all applicants for EAs, preceded by either a BA or S&EIR procedure, to submit a report generated by it along with their application.[75] The Screening Tool is a geographically based web-enabled application comprising layers of pre-populated geographic information systems ('GIS') spatial data. It allows any applicant for an EA to screen the proposed site for environmental sensitivity.[76] The report generated by the Screening Tool provides a sensitivity rating for the proposed site ranging from low to very high.

Thereafter, again informed by the abovementioned SEAs, the government adopted, in terms of s 24(10) of NEMA,[77] the 'Standard for the Development and Expansion of Power Lines and Substations within Identified Geographical Areas' ('EGI Standard').[78] Simultaneously, the government formally excluded all listed activities directly relating to the development of this EGI, including any other listed activities necessary for realizing such infrastructure, from the EIA requirements to the need for an EA.[79] Three key prerequisites were prescribed in the exclusion notice: the Screening Tool must indicate a low/medium sensitivity rating for the site where the infrastructure is to be constructed; the greater part of the infrastructure must be situated within a strategic electricity transmission and distribution corridor; and the activity must comply with the above EGI Standard.[80] The EGI Standard itself contains various additional requirements, including various procedural requirements (such as the preparation of an 'environmental sensitivity report' to test the veracity of the outcome of the Screening Tool's low/medium rating and a registration process),[81] and mandatory compliance with the Generic EGI EMPr.[82]

Development Activities When Occurring in Geographical Areas of Strategic Importance (GN 1637 *GG* 45690 of 24 December 2021).

[75] This was provided for in Notice of Requirement to Submit a Report Generated by the National Web-Based Environmental Screening Tool (GN 960 *GG* 42561 of 5 July 2019).

[76] The Screening Tool is available at *https://screening.environment.gov.za/screeningtool/#/pages/welcome*.

[77] Adoption of Standard for the Development and Expansion of Power Lines and Substations within Identified Geographical Areas and the Exclusion of this Infrastructure from the Requirement to Obtain an Environmental Authorisation (GN 2313 *GG* 47095 of 27 July 2022).

[78] DFFE Standard for the Development and Expansion of Power Lines and Substations within Identified Geographical Areas (2022), available at *https://egis.environment.gov.za/egi*, accessed on 20 February 2024.

[79] The exclusion was provided for in Adoption of EGI Standard Notice op cit note 77 paras 3–6.

[80] Ibid.

[81] EGI Standard op cit note 78 ch 2.

[82] Ibid ch 1 para 1.5.

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IV A CRITIQUE OF RELEVANT EIA SCREENING TRENDS

As should be evident from the overview above, the government has, in the fourth era, placed heavy reliance on screening to identify, facilitate, expedite and unblock the EIA and approval processes for SIPs 8–10 proposed to be undertaken within identified strategic infrastructure corridors and zones. One question that immediately arises is whether introducing these screening trends through a complex web of numerous intersecting notices and regulations is readily accessible and understandable to the regulated community that is subject to them. However, the prudence of this scattered and complex approach to law-making is not the key focus of this article. The narrower question addressed below is whether the two new screening trends achieve the necessary balance identified in the introduction to this article — that is, between rigour and laxity — especially where the strategic infrastructure corridors, zones or projects linked to their operation overlap with areas of high biodiversity value identified as strategically important to enable the country to meet its commitments under Target 3 of the Global Biodiversity Framework. Do they contain the necessary safeguards to ensure that the fast-track EIA process, and the reduced decision-making time frames and exclusions they provide, will not undermine these core international biodiversity commitments? Will they rectify or perpetuate the historic trend in South Africa of low-quality biodiversity inputs into the EIA process generally,[83] and weak substantive EIA reports in the context of PAs specifically.[84]

(a) Fast-track EIA processes and reduced decision-making time-frames

This first trend is informed by several SEAs commissioned and published by the government since 2015. South Africa has a fairly long history of SEA practice, dating back to the mid-1990s,[85] with the form and purpose of the SEAs ranging from 're-active assessment instruments (strongly linked to its EIA roots)' to 'more proactive instruments aligned and integrated

[83] For an overview of this trend and the potential reasons for it see Felicity Swanepoel et al 'Explanations for the quality of biodiversity inputs to environmental impact assessment in areas with high biodiversity value' (2019) 21 *Journal of Environmental Assessment Policy and Managemen*t 1; Trevor Hallatt, Francois Retief & Luke Sandham 'The quality of biodiversity inputs to EIA in areas with high biodiversity value — Experience from the Cape Floristic Region, South Africa' (2015) 17 *Journal of Environmental Assessment Policy and Management* 1.

[84] For an analysis of this see Reece Alberts et al 'Environmental impact assessment (EIA) effectiveness in protected areas' (2021) 39 *Impact Assessment and Project Appraisal* 290.

[85] F Retief, C Jones & S Jay 'The status and extent of strategic environmental assessment in South Africa, 1996–2003' (2007) 89 *South African Geographical Journal* 44 at 44.

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with planning processes'.[86] In the context of this screening trend, the form and purpose of the SEAs appear to be more of the latter category, given that all the SEAs in question seek to create strategic frameworks for proactively informing which particular areas are most suitable for particular types of infrastructure and streamlining the EIA process. Some even go further by outlining proposed generic EMPrs.[87] Whilst the SEAs are very lengthy and detailed, and are informed by numerous specialist assessments, they adopt a wide perspective to provide a vision and overall framework informing the roll-out of certain strategic infrastructure. They do not contain high levels of detail on specific locations and site-specific impacts or sensitivities, as their scope is nationally focused and their scale broad. A comprehensive analysis of the detailed content and merit of the five relevant SEAs is simply not feasible in the context of this article, as they are all hundreds of pages in length. Furthermore, there is, unfortunately, little available academic commentary from which to draw that focuses on these 'recent' SEAs, given their relative contemporaneity.[88] Notwithstanding this drawback, some key common components of these SEAs and contemporary academic analysis of them relevant to the focus of this article can be highlighted.

[86] Lydia Cape et al 'Exploring pluralism — Different stakeholder views of the expected and realised value of strategic environmental assessment' (2018) 69 *Environmental Impact Assessment Review* 32 at 33. See further on different SEA approaches Delmarie Fischer, Paul Lochner & Harold Annegarn 'Evaluating the effectiveness of strategic environmental assessment to facilitate renewable energy planning and improved decision-making: A South African case study' (2020) 38 *Impact Assessment and Project Appraisal* 28 at 30–1; Bram Noble & Kelechi Nwanekezie 'Conceptualising strategic environmental assessment: Principles, approaches and research directions' (2017) 62 *Environmental Impact Assessment Review* 165; and Delmarie Fischer *Strategic Environmental Assessment (SEA) Supporting the Transition to Renewable Energy in South Africa* (PhD thesis, University of Johannesburg, 2017) 161–72.

[87] See specifically SEA EGI (Phase 1) op cit note 22, parts 5A and 5G; and SEA REI (Phase 2) op cit note 22, part 5.

[88] While several studies have been undertaken in South Africa to consider the effectiveness of SEAs, their utility in the current context is rather limited as they predominately focus on SEAs undertaken prior to those informing the roll out of the SIPs forming the focus of this article. See for example Saphira Patel & Thierry Giordano 'Environmental assessments for the greening of public infrastructure in South Africa' (2014) 31 *Development Southern Africa* 721; Francois Retief, Carys Jones & Stephen Jay 'The emperor's new clothes — Reflections on strategic environmental assessment (SEA) practice in South Africa' (2008) 28 *Environmental Impact Assessment Review* 504; Francois Retief 'Effectiveness of strategic environmental assessment (SEA) in South Africa' (2007) 9 *Journal of Environmental Assessment Policy and Management* 83; Retief, Jones & Jay op cit note 85 at 44–54; Nigel Rossouw et al 'Development of strategic environmental assessment in South Africa' (2000) 18 *Impact Assessment and Project Appraisal* 217.

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These SEAs have been central in identifying the legislated strategic infrastructure corridors and zones where certain large-scale infrastructure projects will be promoted. In determining the size and location of these corridors and zones, all the SEAs identify and map environmental constraints according to sensitivity levels (very high, high, medium, and low). The apparent aim of mapping these constraints is to inform the demarcation of the strategic infrastructure corridors and zones, with areas of very high and high sensitivity ideally being avoided. Land falling within existing PAs is generally considered highly sensitive in the SEAs. Priority focus areas for expansion identified by reference to the NPAES[89] are generally identified as being of only medium sensitivity. Why the latter are not generally reflected as being of higher sensitivity is puzzling, given that the government has specifically earmarked them as priority focus areas for expansion.

Scrutiny of the maps reflecting the location of the strategic infrastructure corridors and zones (such as Map 2 above) reflects clear overlaps between these and existing PAs and priority focus areas for expansion. As highlighted by one commentator following a review of the SEAs relevant to REI in particular, but undertaken before the implementation of the associated fast-track EIA and decision-making processes, the SEAs promote planning for, improved decision-making and the sustainability of large-scale renewable energy infrastructure projects by 'identifying energy corridors, encouraging development in areas that represent the best use of resources and directing development away from highly sensitive environments, thereby implementing the impact mitigation hierarchy'.[90] However, the overlaps described above seem directly at odds with some of these objectives. They may indicate the pluralistic nature of different stakeholders' views of SEA in South Africa. In a recent domestic study of different stakeholders' expectations of SEA generally and views on the SEA Renewable Energy (Phase 1) in particular, some deemed the latter's content too 'generalised' and its demarcation of the REDZ as too 'politically driven'.[91] Perhaps its content, and that of the other relevant SEAs, reflects skewed alignment with the interests and expectations of the government and developers (which apparently view their expected value in a more technocratic light as a tool to expedite and reduce the cost of the approval process), as opposed to those of the environmental NGOs and

[89] All the SEAs underpinning this trend predated the publication of the NPAES op cit note 12. The information they contain is therefore drawn from outdated versions, including Government of South Africa *National Protected Areas Expansion Strategy of South Africa* (2008); DEA *National Protected Areas Expansion Strategy of South Africa* (2016).

[90] Fischer op cit note 86 at 226.

[91] Cape et al op cit note 86 at 37.

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local communities (which apparently view their expected value to include filling in knowledge gaps, identifying suitable areas for development and no-go areas).[92]

In more recent reviews of SEA practice in SA generally, including the SEAs relevant to REI and EGI, some commentators have highlighted improvements in both their procedural and substantive effectiveness.[93] However, critique has been levelled at their success in aligning government policy and promoting integrated decision-making.[94] That the SEAs and associated notices do not automatically exclude all existing PAs and priority focus areas for expansion from the strategic infrastructure corridors and zones seems to reflect policy misalignment. This misalignment poses potential long-term implications for biodiversity conservation generally and the government's realization of its commitments under the Global Biodiversity Framework. Constructing large-scale infrastructure within existing PAs may well undermine their foundational management objectives. This may lead either to the need to de-proclaim them or, if possible, to withdraw the areas impacted by the construction of the large-scale infrastructure project from their boundaries. Furthermore, constructing large-scale infrastructure within priority focus areas for expansion may undermine the potential for these areas to be declared as PAs or recognised as OECMs in the future, undermining efforts to realize the 30x30 Target.

This is not to say that, in some circumstances, the construction of large-scale infrastructure in existing PAs and priority focus areas for expansion may prove to be necessary. However, in such instances, do the scale of this strategic infrastructure, the scope of potential impacts, and the competing strategic importance and sensitivity of such areas not logically warrant adherence to the most rigorous form of assessment and decision-making process provided for in NEMA — the S&EIR procedure? While the proponents of this screening trend may argue that the information in the SEAs, Assessment Protocols[95] and (where relevant) generic statutory EMPrs[96] provide project proponents and decision-makers with an

[92] Ibid at 32–41.

[93] See generally Francois Retief, Carli Steenkamp & Reece Alberts 'Strategic environmental assessment (SEA) in South Africa — A road not taken' in Thomas B Fischer & Ainhoa Gonzalez (eds) *Handbook on Strategic Environmental Assessment* (2021) 349; Fischer, Lochner & Annegarn op cit note 86.

[94] Retief et al ibid at 358–9.

[95] Procedures for the Assessment and Minimum Criteria for Reporting on Identified Environmental Themes published in GN 320 *GG* 43110 of 20 March 2020 (Agriculture, Avifauna, Biodiversity, Biodiversity, Noise, Defence, Civil Aviation); GN 1150 *GG* 43855 of 30 October 2020 (Terrestrial Animal and Plant Species); and GN 2718 *GG* 47448 of 4 November 2022 (Cape Vultures).

[96] This is reflected as 'where relevant' because, while mandatory compliance with formally adopted generic EMPrs has been provided for by way of government

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excellent base from which to work and deliberate respectively, it must be remembered that these are generic (accordingly broad in scale and content) and time-based (accordingly already outdated). Furthermore, even where provision is made for the mandatory application of generic EMPrs, these are rather thin in so far as they reflect competing area-based conservation imperatives. Those relevant to this screening trend contain no explicit reference on how to manage priority focus areas for expansion identified in the NPAES. Only one makes express reference to PAs, advocating for the application of the mitigation hierarchy in these areas when deciding upon the routing of the large-scale GPI and not clearing vegetation in them unless the vegetation gets in the way of the construction process.[97] However, this does not equate to precluding the construction of such infrastructure or the removal of vegetation in these PAs, even when doing so may undermine the very objective for which they were declared.

Given the above, perhaps it is unwise to rely on broad and generic documents as a basis to discount the need for project proponents to comply with the comprehensive S&EIR process where these projects are proposed in strategic infrastructure corridors and zones that overlap with current PAs and priority focus areas for expansion. Perhaps it is also unwise not to provide competent authorities with adequate time frames to properly apply their mind to what may be vast and complex issues. On the back of anecdotal accounts of already strained capacity,[98] providing competent authorities with a mere 57-day decision-making window may lead to superficial consideration and oversight, whereas the opposite appears preferable.

Finally, it is worth noting that several of the relevant SEAs underpinning this screening trend were developed before the publication of the latest version of NPAES,[99] which is now being amended to reflect South Africa's increased ambition to meet the 30x30 Target. Would it accordingly not be prudent for the DFFE to place the current fast-track EIA and approval processes embedded in this trend on hold until such time as the SEAs and the accompanying notices demarcating the strategic infrastructure corridors and zones are updated to reflect contemporary international and domestic conservation priorities? Any failure to do so may significantly jeopardise the country's ability to meet its commitments under Target 3 of the Global Biodiversity Framework.

notices for gas pipeline infrastructure, overhead electricity transmission and distribution infrastructure and substation infrastructure; this is not the case for renewable energy infrastructure where the proposed generic EMPr is only reflected in the non-statutory SEA.

[97] Generic EGI EMPr op cit note 64 at 24 and 43.

[98] Reece Alberts et al 'Three decades of EIA streamlining: Lessons from South Africa' (2023) 41 *Impact Assessment and Project Appraisal* 205 at 206.

[99] See note 89 above.

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(b) Web-based screening, standards and exclusions

There are two main triggers for the application of this second screening trend. First, the proposed SIP must be situated in a strategic infrastructure corridor. Secondly, the Screening Tool must indicate a medium or low sensitivity rating. When the Screening Tool was initially introduced, it sought to identify the sensitivities of a proposed site, orientate the focus of the assessment towards these, and highlight the types of specialist studies required to further understand these sensitivities.[100] Its purpose was not to determine whether or not an EIA was required.[101] Its apparent recent shift in purpose to a tool to exclude some large-scale listed activities from the standard EIA and approval process raises some potential concerns.

A recent study of user perceptions of the Screening Tool over the past few years, mainly of environmental assessment practitioners ('EAPs'), highlighted issues with the accuracy and reliability of the sensitivity ratings across a range of themes, notably including biodiversity.[102] The potential reasons for this included inaccuracies in and the relatively coarse scale of the spatial data incorporated in the Screening Tool.[103] Since questions have been raised about the accuracy and reliability of the sensitivity ratings that the Screening Tool generates, the merit of using it as a basis to exclude some listed activities from the standard EIA and approval process is debatable. It is again worth emphasising that these listed activities may be large-scale and linear, thereby potentially posing large-scale impacts across a vast area. It is also worth noting that the scope of this specific screening approach and its associated exclusion procedure extends not only to particular listed activities (ie developing and expanding power lines and substations) but any listed activity in any of the Listing Notices that is 'necessary for the realisation of such infrastructure', with the EGI Standard providing some additional clarity on what the latter comprise.[104]

If the Screening Tool does deliver accurate sensitivity ratings, would developing and expanding power lines and substations in PAs and priority focus areas for expansion not invariably trigger high or very high sensitivity ratings? If so, why are these areas not simply automatically excluded from the ambit of this exclusion even before the application of the Screening Tool, thereby creating clarity and improved policy alignment and precluding potentially skewed expectations on the part of project proponents that these areas may be open for the development of large-scale infrastructure without compliance with the standard EIA

[100] Lambrecht, Sowman & Day op cit note 25 at 104.
[101] Ibid.
[102] Ibid at 106–7.
[103] Cilliers et al op cit note 25 at 1–12.
[104] Adoption of EGI Standard Notice op cit note 77 para 6 read together with EGI Standard op cite note 78 para 1.3.

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and approval process?[105] These questions link back to the geographical scope of this second screening trend that is confined to activities of this nature undertaken in identified strategic infrastructure corridors. In so far as the location of these corridors were determined through a SEA process, the same critique noted above in the context of the first screening trend would be relevant here, too. Not automatically excluding PAs and priority focus areas for expansion from the ambit of this exclusion may directly contravene the mitigation hierarchy and precautionary approach, which are foundational principles informing the implementation of NEMA and its EIA regime.[106]

The use of screening tools incorporating spatial data in screening processes is not unique to South Africa, but commentators highlight the need to include procedural safeguards to overcome any potential inaccuracies in the data.[107] The advocates of this screening trend may argue that the procedural requirements embedded in the Adoption of the EGI Standard Notice and the EGI Standard itself provide the necessary safeguards to ensure that project proponents (working with their appointed EAP and specialists) will 'independently' verify the accuracy of the site sensitivity rating provided by the Screening Tool and determine and ensure the 'acceptability' of the impacts of EGI (including substations and other activities necessary for the realization of such infrastructure) on the environment without the need for competent authorities to apply their minds to the matter.[108] However, questions about reliance on a generic standard to provide for these safeguards may be raised.

Prescribing standards of this nature has been recognised as a useful approach to streamlining the EIA regime and improving efficiency, providing a form of self-regulation by project proponents and the EAP industry.[109] However, their adoption is commonly associated with small-scale and low-impact activities, where the impacts are generic and well-understood.[110] The nature of the infrastructure to which the EGI Standard applies is, in contrast, large-scale, often traversing many areas with varying

[105] Both the Adoption of EGI Standard Notice ibid para 6 and the EGI Standard ibid para 1.4 expressly state that the exclusion does not apply in respect of areas for which the environmental sensitivity for a relevant theme is initially high or very high or subsequently confirmed through a site verification process to be high or very high. But surely if the data sets relating to the location of existing PAs and priority focus areas for expansion are accurately recorded in the Screening Tool, this would always be the case.

[106] Section 2(4)*(a)*(i) and (vii) of NEMA.

[107] See Cilliers et al op cit note 25 at 1–2; and Lambrecht, Sowman & Day op cit note 25 at 103–104.

[108] EGI Standard op cit note 78 at 7.

[109] Alberts at al op cit note 98 at 207.

[110] Ibid.

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environmental sensitivities. Accordingly, relying on the use of a standard in this context seems debatable. Additional questions also arise about the form and nature of the procedural requirements reflected in the EGI Standard itself.

First, the project proponent must appoint an 'independent EAP' to co-ordinate the process of registering the proposed development in accordance with the EGI Standard.[111] Interestingly, no mention is made of 'registered EAPs' in the EGI Standard, namely those registered under the Section 24H Registration Authority Regulations.[112] If these 'independent EAPs' do not equate to 'registered EAPs', which appears to be the case, then many of the safeguards contained in the above regulations, which are aimed at ensuring their independence, are, worryingly, forgone.[113] This concern is exacerbated as the EGI Standard itself seems to place much discretion and responsibility in the hands of the EAPs. The appointed EAP, together with specialists they recommend for appointment by the project proponent, must do the following: determine a preliminary route and identify the proposed location of any substation; develop a database of stakeholders and IAPs; announce the proposed development by publishing a background information document ('BID') on the web and distributing a copy of it to those on the database for information; undertake the relevant site verification studies relating to the themes identified in the EGI Standard they deem necessary (the EAP appears to be accorded broad discretion here regarding what themes need to be verified and whether or not specialist input is needed); determine which areas of the proposed route require a walkthrough to assess their sensitivity (interestingly this does not seem to be required for the entire footprint of the infrastructure); compile the 'draft' environmental sensitivity report and distribute it for comment to those on the database; prepare a 'final' environmental sensitivity report including the final route; and notify those on the database where they can source the final report.[114] But for requiring the EAP to sign a declaration that they have acted independently and have the necessary expertise,[115]

[111] EGI Standard op cit note 78 ch 2 para 2.

[112] GNR 849 *GG* 40154 of 22 July 2016, as amended.

[113] The Section 24H Registration Authority Regulations do not fill the void as they only generally apply to circumstances in which the project proponent requires an EA, which is not the case here (see reg 2A read with reg 14).

[114] EGI Standard op cit note 78 ch 2 paras 2–12.

[115] Ibid at appendices D and E. The declaration contained in appendix E asks the EAP to confirm that they 'have taken into account, to the extent possible, the matters listed in regulation 13 of the Environmental Impact Assessment Regulations, 2014 (as amended) when preparing the various reports and submitting the request for registration'. The manner in which this is phrased provides leeway to any EAP to sign this declaration, irrespective of whether they have complied with the array of requirements set out in reg 13. In the context of 'registered EAPs', compliance with these requirements is mandatory.

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all the other safeguards relating to 'registered EAPs' do not, concerningly, come into play.

Secondly, the standard public participation process outlined in NEMA's EIA Regulations[116] is significantly watered down. While the EGI Standard purports to prescribe compliance with the public participation process set out in the above regulations, it then simultaneously excludes compliance with the majority of its requirements given that they were designed for the BA and S&EIR process, and not the exclusion process set out in the EGI Standard itself.[117] All it appears to require is that the project proponent, working with their EAP, identify a database of possible stakeholders and interested and affected parties, provide them with a copy of the BID for their information, allow them a one-off 30-day period to comment on the 'draft' environmental sensitivity report and preliminary route, and provide them with a copy of the 'final' report and routing for their information.[118] Public participation is accordingly limited to a one-off 30-day period on only the 'draft' environmental sensitivity report. As some commentators have highlighted, one way potentially to overcome challenges associated with the accuracy of the Screening Tool's ratings is to draw on local knowledge through the public participation process.[119] Questions may be asked about whether providing a one-off opportunity to comment on only the 'draft' environmental sensitivity report adequately realizes this potential.

Thirdly, it is acknowledged that effort is made to create some clarity in the EGI Standard on basic content for the BID, various environmental themes that need to guide route selection and form the focus of any environmental sensitivity assessments undertaken by the EAP or appointed specialists, the format and content of specialist confirmation statements, and the content to be included in the environmental sensitivity report.[120] These include references to several ecological considerations.[121] However, the scope of these requirements is again vastly watered down from what would be required were the project proponent to proceed through the standard BA or S&EIR process. For instance, all the prescribed Assessment Protocols that would be applicable in the context of the first screening trend would not be of relevance here as they only relate to applications for EAs. In addition, the prescribed focus of the above requirements is predominantly 'on the site' of the proposed infrastructure and not on the

[116] GNR 1182 *GG* 38282 of 4 December 2014 (as amended), regs 41–4.
[117] EGI Standard op cit note 78 ch 2 para 3.
[118] Ibid ch 2 paras 4, 9 and 13.
[119] Cilliers et al op cit note 25 at 10.
[120] EGI Standard op cit note 78 ch 2 paras 6 and 10 read with appendices A and B.
[121] Ibid ch 2 paras 6 and 10; ch 3 and appendices A and B.

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broader surrounding environment. This seems misplaced, given both the scale of the proposed infrastructure and its broad potential impact on both the site and the broader surrounding environment. Finally, it must be re-emphasised that the preparation and co-ordination of the studies and reports is being undertaken seemingly by 'non-registered EAPs' appointed and paid for by the project proponents, raising potential concerns about ensuring professionalism and independence.

Fourthly, as in the context of the first screening trend, arguments to the effect that the exclusion and registration process is well informed by the relevant SEAs and Generic EGI EMPr[122] may again be questioned, given the generic and temporal nature of the information contained in these documents. Problems with the temporal nature of the information may be compounded by the fact that once the project is registered, the proponent has ten years to commence the activity.[123] Circumstances and priorities can significantly change in ten years.

All the above critiques may be exacerbated by the fact that this second screening trend envisages the competent authority largely divesting their control over the specific routing of these frequently large-scale EGI projects, the decision whether to allow them to take place and, if they are allowed, on what specific conditions. The choice to register the EGI appears to be purely procedural: has there been compliance with the broad generic procedural requirements set out in the EGI Standard? This may be why the competent authorities are accorded a mere 30 days to consider the registration request. The nature of the process and the limited decision-making time frame may accordingly undermine the ability of competent authorities to scrutinise properly the relevance and reliability of the information contained in the registration form prepared by non-registered EAPs. No provision is made for the imposition of conditions attached to the registration. No discretion is accorded to the competent authority on receipt of the registration form to divert the project proponent to either a BA or S&EIR process if they are dissatisfied with the information provided to them through the registration process. This appears at odds with some commentators' recent calls for flexibility and discretion to be embedded into the decision-making process where screening mechanisms rely on spatial information.[124]

While provision is made for the competent authority to refuse registration where the prescribed information is not provided,[125] this again appears to be a decision based more on the prescribed form than on the

[122] The EGI Standard ibid provides for the mandatory application of some components of the Generic EGI EMPr op cit note 64 ch 2 para 1.5.

[123] Ibid ch 2 para 18.

[124] Cilliers et al op cit note 25 at 9.

[125] EGI Standard op cit note 78 ch 2 para 16.

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substantive merit of the information provided. It is worth remembering that these are not small-scale activities with minimal and well-known impacts but are rather large-scale, often linear, projects spanning vast areas characterised by a diversity of site-specific sensitivities, deserving of careful consideration and the framing of tailored mitigation measures. What is also puzzling is that the EGI Standard specifically notes that the decision to register the project is subject to appeal.[126] Given the nature of the registration process and accompanying decision, this would seem to be more a case of potential review than appeal, raising questions about the merits of referring to appeal in this context.

V CONCLUSION

Shortly after the commencement of the IDA, one commentator, reflecting on the potential impact on NEMA's regulatory framework promoting integrated environmental management, lamented as follows:

> 'IEM and the principles in NEMA would advocate consideration of a range of issues, alternatives, public opinions, and trade-offs early in the planning phase of such projects. The IDA, however, advocates a caution to the wind approach in the face of service delivery and energy crises, massive unemployment and falling GDP growth rates.'[127]

The types of projects that this commentator was referring to include those forming the focus of this article, namely SIPs 8–10 linked to renewable energy, gas pipeline, and electricity transmission, distribution and storage infrastructure. These SIPs are vitally important in remedying the current energy crisis, growing the economy, and ultimately improving the lot of the South African population. NEMA's new screening approaches linked to SIPs 8–10 undertaken in strategic infrastructure corridors and zones clearly aim to facilitate, expedite and unblock the approval process relating to them, as dictated by the IDA.

However, this article has sought to analyse whether these new screening approaches achieve the desired balance between unwarranted rigour on the one hand and unjustified laxity on the other hand. In other words, do they realize the 'often well justified benefits of a streamlined EIA process without eroding some of the key benefits associated with the EIA process itself'?[128]

[126] Ibid ch 2 para 17. Specific reference is made here to an appeal in terms of the National Appeal Regulations (GN R993 *GG* 38303 of 8 December 2014, as amended).

[127] Kirsten Day *Integrated Environmental Management — Where is South Africa Headed Given Recent Developments Relating to NEMA and the Infrastructure Development Act* (LLM thesis, University of Cape Town, 2015) at 66.

[128] Alan Bond et al 'Impact assessment: Eroding benefits through streamlining?' (2014) 45 *Environmental Impact Assessment Review* 46.

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South Africa's ability to meet its obligations under Target 3 of the Global Biodiversity Framework formed the analytical context. Given the myriad essential benefits that PAs and OECMs provide, achieving the 30x30 Target would appear to merit equal domestic strategic weight compared to the speedy roll out of SIPs 8–10. The analysis of the new screening approaches highlighted several challenges linked both to their foundation (including reliance on SEAs and the Screening Tool) and the array of procedural safeguards embedded within them. These challenges are heightened by the clear overlap between the strategic infrastructure corridors and zones, current PAs and priority areas for expansion identified in the NPAES. If left unresolved, these challenges hold significant potential to undermine the government's ability to achieve the 30x30 Target and appear to reflect some tainting of NEMA's integrated environmental management regime with the IDA's 'caution to the wind approach'. This tainting may, if left unchecked, become an onslaught given two stark realities. First, this article has traversed only two of the eight screening trends introduced by the government in the last five years to streamline the EIA process for various, often large-scale activities, with the scope of application of many of these other trends being applicable across the whole of South Africa and not only within demarcated strategic infrastructure corridors and zones. Secondly, the potential remains for similar streamlined EIA processes to be implemented for the additional fifteen existing large-scale SIPs that the IDA identifies.

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