

***Impacts of new legislation on
getting borrow pit approvals
and the resultant time delays***

Road Pavement Forum

CSIR

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BACKGROUND

The Provincial Government of the Western Cape (PGWC) Department of Transport and Public Works, appointed consultants to identify material sources for roads projects and to facilitate compliance with the applicable environmental legislation.

Initially the Scope included sourcing suitable materials for District Municipal regravelling programs and compiling Environmental Management Programmes (EMProgs) as the basis for seeking authorisation from DMR

➤ HISTORIC APPROACH

Simple Agreement with the land owner
(often left as unrehabilitated scars!)

➤ POST 2006

Started following a process

Preparation of **EMProgs** as per the
Mineral and Petroleum Resources Development Act
(**MPRDA**) (Act 28 of 2002) and Government Gazette No.
26501 of June 2004.

AND NOW.....

3 ACTS & ORDINANCES

- **Minerals and Petroleum Resources Development Act (M&PRDA)**
Act 28 of 2002
- **National Environmental Management Act (NEMA)**
Act 107 of 1998
- **Land Use Planning Ordinance (LUPO)**
Ord. 15 of 1985

SEVERE PENALTIES

NEMA

Up to R 5 million

Up to 10 years imprisonment

Or both

Plus the cost of rehabilitation



Don't shoot !

I'm just the messenger !



➤ EMProg

EMProgs include

- Description of the **receiving environment**
- Environmental and **risk assessment**
- Land Owner **consultation** and Public Participation
- **Mine Plans showing phasing** and rehabilitation plans
- **Specialist Heritage studies** – including archaeology and palaeontology) for approval by Heritage in accordance with Section 38 of the National Heritage Resources Act (Act 25 of 1999)
- **Alternative pits**

1. Engineering Geologist

Desk Study, Field Reconnaissance, Select possible sites
Land owner consent

2. Environmental Practitioner

Enviro screening for visual impact, water courses, risk assess etc

3. Botanist, Prelim Heritage Assessments

4. Heritage Specialists

Full Heritage assessment (including Archaeologist and
Palaentologist), if required

5. Engineering Geologist

Only now can proceed with field sampling at acceptable sites,
lab testing, reporting

6. Surveys and Mine Plans

Pit development plan showing phased operations and rehabilitation plans

7. Environmental Practitioner

Prepares EMProg

8. Environmental Practitioner

Land owner participation and Public Participation (30 days)

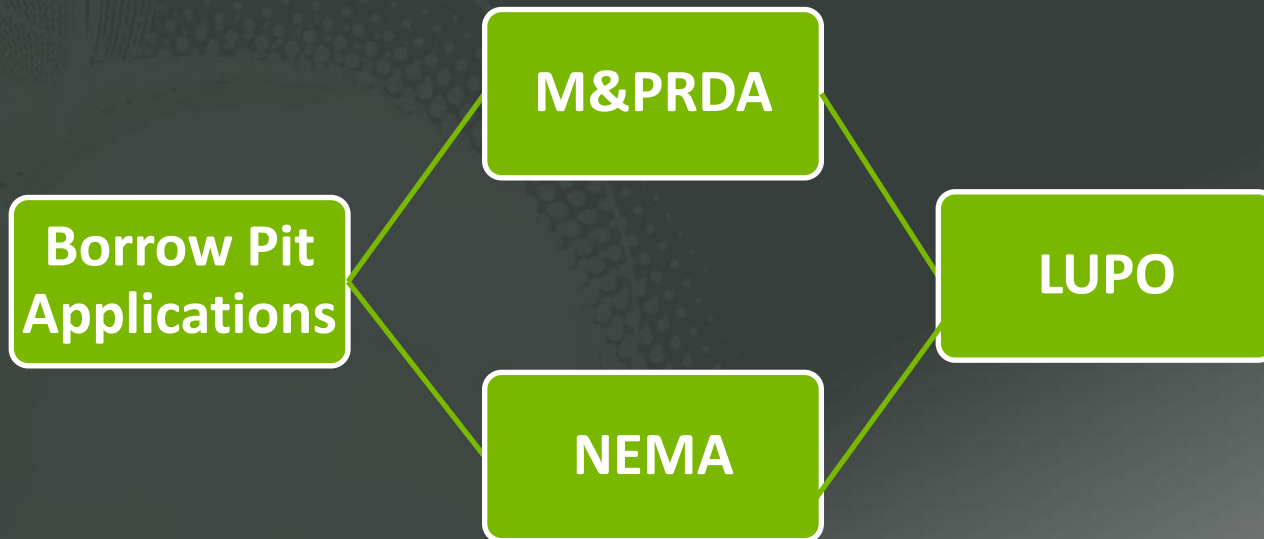
9. Environmental Practitioner

Submit EMProg to DMR

10. If DMR decision favourable Lodge financial guarantee/deposit

DMR DECISION

57 to 81 WEEKS LATER



THE PROPONENT OF COMPLEXITY



THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

aurecon

Maccsand vs. City of Cape Town (23 September 2011)

1. The SCA held that **the MPRDA does not concern itself with land use planning** and the Minister, when she considers the grant of a mining permit, does not, and may not, **take into account a municipality's integrated development plan or its scheme regulations.**

As a result, the **MPRDA does not provide a surrogate municipal planning function in place of LUPO** and does not purport to do so. **Its concern is mining, not municipal planning.**

Reference: http://www.justice.gov.za/sca/judgments/sca_2011/sca2011-141ms.pdf



THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

aurecon

Maccsand vs. City of Cape Town (23 September 2011)

2. LUPO thus operates **alongside** the MPRDA with the result that once a person has been granted a mining right in terms of s 23 of the MPRDA he or she will **still not be able to commence mining operations in terms of that right unless LUPO allows for that use of the land in question.**
3. The SCA held that even though a great deal of NEMA has been incorporated into the MPRDA, this **did not have the effect of ousting the obligation placed on Maccsand by s 24 of NEMA to obtain environmental authorisations where its mining activities involved listed activities.**

Reference: http://www.justice.gov.za/sca/judgments/sca_2011/sca2011-141ms.pdf

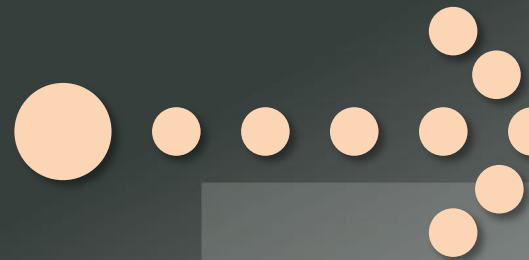
M&PRDA



NEMA



LUPO



LEGISLATIVE IMPERATIVES

OBJECTIVE

Repair or Maintain
Gravel Roads

MEANS

Create new or enlarge existing
Borrow Pits

LEGISLATION

**Minerals and Petroleum
Resources Development
Act (M&PRDA)**

National Environmental
Management Act
(NEMA)

Land Use Planning
Ordinance (LUPO)

APPLICABLE
SECTION(S)

Section 106 (2)

LN (GN546) 12, 13

Section 8 (±7)

REQUIREMENT

**Environmental
Management Programme
(EMProg)**

Basic Assessment
Report (BAR)

Rezoning (LUPO)
Application

COMPARATIVE: PROCESSES INVOLVED

PROCESS

EMProg

- Environmental Description
- Impact Assessment
- Alternatives
- Financial Provision
- Environmental Monitoring Plan
- Public Participation
- Specialist Studies

BAR

- Project Description
- Alternatives
- Environmental Management Plan
- Public Participation
- Specialist Studies

LUPO

- Engage Municipal Planners
- Conduct site visit
- Specialist Studies
- Submit Application
- Comment Period
- LUPO Decision
- Appeal Period

- Botany
- Agriculture (soil)
- Heritage
 - Palaeontology
 - Archaeology

MAGNITUDE & SCALE OF “THE PROBLEM”


Case Study:

PGWC has some 300 + pits in the pipeline in an effort to secure, timeously strategic material sources for future projects, maintenance and emergency works e.g. flood damages

The onerous approvals process and large number of materials sources required by Road Authorities' is resulting in a paralysis of maintenance activities.

Road Authorities' mandate to maintain a safe road network is being jeopardised.

CHALLENGES

1. **Roads Authorities need material** for maintenance.
Unable to operate legally!
2. Legislation and **“triggers”** are not appropriate for project pits
3. Processes causing **extensive delays** to Road Authority Maintenance Programs (roads become unsafe).
4. **Cost** of pit approval process (sampling, planning, enviro) has become excessive
(MPRDA + NEMA + LUPO  R400k+ per pit!).

CHALLENGES

5. Demand for **Landowner Engagement** being overplayed.
6. Securing **reliable and credible specialists** is not straightforward owing to geographic scale.
7. **Legislative bodies not assisting to find easier, appropriate solutions**, but often appear to be making approvals as difficult as possible.
8. Same legislation not being enforced uniformly across RSA

Way forward?

Industry needs to **understand the current legislation**

Industry needs to engage with DMR and DEADP to find and agree appropriate approach to enable Roads Authorities to perform efficiently

RPF needs to urgently form a **task team from industry** to raise concerns with DMR and DEADP

It's an uphill battle



.....but we'll get there!



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