



**Western Cape  
Government**

Environmental Affairs and  
Development Planning

**BETTER TOGETHER.**



## **EIA & HIA OPERATIONAL AGREEMENT BETWEEN DEA&DP & HWC:**

**WORKSHOP WITH THE ASSOCIATION OF PROFESSIONAL HERITAGE  
PRACTITIONERS (APHP) & THE INTERNATIONAL ASSOCIATION FOR  
IMPACT ASSESSMENT SOUTH AFRICAN AFFILIATE (IAIASa).**

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5 April 2016

# Agenda/Programme

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- Legislative context for integration of EIAs & HIAs
- 2014 Agreement between DEA&DP & HWC & why the need for a new Agreement
- The One Environmental System, 2014 NEMA EIA Regulations & Listing Notices
- 2015 Operational Agreement between DEA&DP & HWC
- Operational Challenges
- Discussion

# Legislative Context for the integration of EIAs & HIAs

# National Heritage Resources Act, 1999 (Act No. 25 of 1999): Heritage Impact Assessments (HIAs)

## Section 38(1) of the NHRA: Heritage resources management

- (1) Subject to the provisions of subsections (7), (8) & (9), any person who **intends to undertake a development categorised as** –
- (a) the construction of a road, wall, powerline, pipeline, canal or other similar form of linear development or barrier exceeding 300m in length;
  - (b) the construction of a bridge or similar structure exceeding 50m in length;
  - (c) any development or other activity which will change the character of a site -
    - (i) exceeding 5 000m<sup>2</sup> in extent; or
    - (ii) Involving three or more existing erven or subdivisions thereof; or
    - (iii) involving three or more erven or divisions thereof which have been consolidated within the past five years; or
  - (iv) the costs of which will exceed a sum set in terms of regulations by SAHRA or a provincial heritage resources authority;
  - (d) the re-zoning of a site exceeding 10 000m<sup>2</sup> in extent; or
  - (e) any other category of development provided for in regulations by SAHRA or a provincial heritage resources authority,

**must** at the very earliest stages of initiating such a development, **notify the responsible heritage resources authority** & furnish it with details regarding the location, nature & extent of the proposed development.

# National Heritage Resources Act, 1999 (Act No. 25 of 1999): Heritage Impact Assessments (HIAs)

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## Section 38 of the NHRA: Continue...

- (2) The responsible heritage resources authority must, within 14 days of receipt of a notification in terms of subsection (1) –
- (a) if there is reason to believe that heritage resources will be affected by such development, notify the person who intends to undertake the development to submit an **impact assessment report**. Such report must be compiled at the cost of the person proposing the development, by a person or persons approved by the responsible heritage resources authority with relevant qualifications and experience and professional standing in heritage resources management; **or**
- (b) **notify the person concerned that this section does not apply.**
- (3) The responsible heritage resources authority **must specify the information to be provided** in a report required in terms of subsection (2)(a) [...]

# National Heritage Resources Act, 1999 (Act No. 25 of 1999): Heritage Impact Assessments (HIAs)

## Section 38 of the NHRA: Continue...

- (4) The report must be considered timeously by the **responsible heritage resources** authority which **must**, after consultation with the person proposing the development, **decide** -
- (a) **whether or not the development may proceed**;
  - (b) **any limitations or conditions** to be applied to the development;
  - (c) what general **protections** in terms of this Act apply, and what formal **protections** may be applied, to such heritage resources;
  - (d) whether **compensatory action** is required in respect of any heritage resources damaged or destroyed as a result of the development; and
  - (e) whether the **appointment of specialists is required as a condition of approval** of the proposal.
- (5) A provincial heritage resources authority shall not make any decision under subsection (4) with respect to any development which **impacts on a heritage resource protected at national level** unless it has **consulted SAHRA**.
- (6) The applicant **may appeal** against the decision of the provincial heritage resources authority to the MEC [...]
- (7) The **provisions of this section do not apply** to a development described in subsection (1) affecting any **heritage resource formally protected by SAHRA** unless the authority concerned decides otherwise.

# National Heritage Resources Act, 1999 (Act No. 25 of 1999): Heritage Impact Assessments (HIAs)

## Section 38 of the NHRA: Continue...

- (8) The **provisions of this section do not apply** to a development as described in subsection (1) **if an evaluation of the impact** of such development on heritage resources is **required in terms of the Environment Conservation Act**, 1989 (Act No. 73 of 1989), or the integrated environmental management guidelines issued by the Department of Environment Affairs and Tourism, **or the Minerals Act**, 1991 (Act No. 50 of 1991), **or any other legislation: Provided that the consenting authority must ensure that the evaluation fulfils the requirements of the relevant heritage resources authority in terms of subsection (3)**, and any comments and recommendations of the relevant heritage resources authority **with regard to such development have been taken into account prior** to the granting of the consent.
- (9) The **provincial heritage resources authority**, with the approval of the MEC, **may**, by notice in the Provincial Gazette, **exempt** from the requirements of this section any place specified in the notice.
- (10) **Any person who has complied with the decision of a provincial heritage resources authority in subsection (4) or of the MEC in terms of subsection (6) or other requirements referred to in subsection (8), must be exempted from compliance with all other protections in terms of this Part**, but any existing heritage agreements made in terms of section 42 must continue to apply.

# EIA & HIA: In other words...

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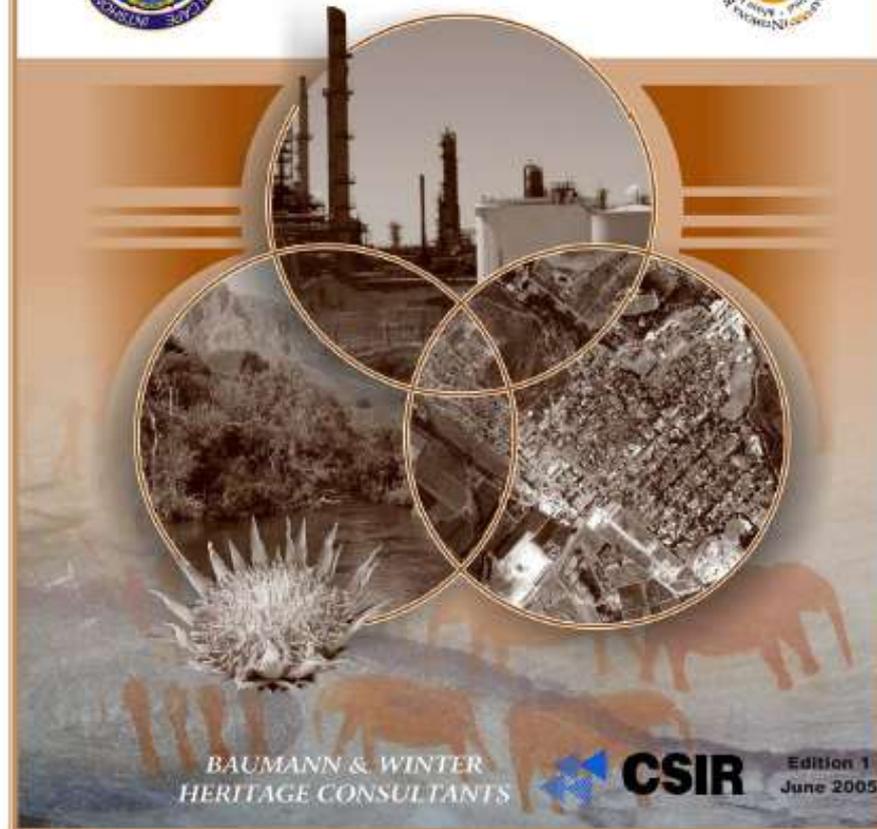
**If a NEMA EIA required (Section 38(8)):**

- **any requirement for a HIA is still determined by HWC, but**
- **the HIA must be integrated into the NEMA EIA process; &**
- **ultimately the Competent Authority i.t.o. NEMA must:**
  - **ensure that the HIA fulfils the requirements of the HIA, &**
  - **any comments & recommendations by HWC with regard to such development must be taken into account prior to the granting of the consent.**

# GUIDELINE FOR INVOLVING HERITAGE SPECIALISTS IN EIA PROCESSES



PROVINCIAL GOVERNMENT OF THE WESTERN CAPE:  
DEPARTMENT OF ENVIRONMENTAL AFFAIRS  
AND DEVELOPMENT PLANNING



BAUMANN & WINTER  
HERITAGE CONSULTANTS



Edition 1  
June 2005

# 2014 Agreement between DEA&DP & HWC

# 2014 OPERATIONAL AGREEMENT BETWEEN HWC & DEA&DP



- HWC & DEA&DP in 2014 formulated an Operational Agreement of how to better coordinate HIAs & EIAs in the Western Cape.
- Detailed Gantt Charts developed for the integrated processes to be followed.
- Agreement came into effect in July 2014 & expired in Dec 2014.

# The “One Environmental System”

# “One Environmental System”

● Amendments have been made to:

- **National Environmental Management Act** (Act No. 107 of 1998),
- **Mineral & Petroleum Resources Development Act** (Act No. 28 of 2002),
- **NEM: Air Quality Act** (Act No. 39 of 2004),
- **NEM: Waste Act** (Act No. 59 of 2004), &
- **National Water Act** (Act No. 36 of 1998),

to give effect to “**One Environmental System**” for SA.

The date of effect of the last of the amended provisions was **7 December 2014**.

# “One Environmental System” (2):

## Section 163A of NWA & Section 50A of NEMA refer.

The Minister responsible for Environmental Affairs, the Minister responsible for Mineral Resources & the Minister responsible for Water and Sanitation agreed on “**One Environmental System**”, whereby:

- all environment related aspects will be regulated through one environmental system (Note: heritage aspects was always integrated with the EIA processes i.t.o. Section 38(8) of the National Heritage Resources Act (Act No. 25 of 1999).)
- all environmental provisions have be repealed from the MPRDA;
- the Minister for Environmental Affairs sets the regulatory framework & norms & standards, & that the Minister for Mineral Resources are the Competent Authority i.t.o. NEMA & the Licensing Authority i.t.o. NEMWA as far as it relates to prospecting, exploration, mining or operations;
- the Minister for Environmental Affairs is the appeal authority i.t.o. decisions issued by the Minister for Mineral Resources i.t.o. NEMA;
- **timeframes are fixed & synchronised for the consideration & issuing of the decisions** i.t.o. the respective legislation.

# “One Environmental System” (3): Section 41(5) of the NWA

## ● In terms of Section 5A of the MPRDA:

No person may prospect for or remove, mine, conduct technical co-operation operations, reconnaissance operations, explore for and produce any mineral or petroleum or commence with any work incidental thereto on any area **without—**  
(a) **an environmental authorisation**; [...]

## ● In terms of Section 41(5) of the NWA:

The Minister **must align and integrate** the process for consideration of a water use license with the timeframes and processes applicable to applications for-

- (a) licences, permits or rights for prospecting, exploration, mining and production in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002); and
- (b) environmental authorisations in terms of the National Environmental Management Act, 1998 (Act No. 107 of 1998) or any specific environmental management act.

# 2014 NEMA Regulations

# 2014 Regulations & Listing Notices

- Not repealed or replaced:
  - EMF Regulations (GN No. R. 547 of 18 June 2010)
  - Fee Regulations (GN No. 141 & 142 of 28 Feb 2014) (amended: GN No. R. 43 & R. 44 of 23 Jan 2015)
- The 2014 Regulations & Listing Notices, which repealed & replaced the 2010 EIA Regulations & Listing Notices, consist of:
  - EIA Regulations (GN No. R. 982 of 4 Dec 2014)
  - Listing Notice 1 (GN No. R. 983 of 4 Dec 2014)
  - Listing Notice 2 (GN No. R. 984 of 4 Dec 2014)
  - Listing Notice 3 (GN No. R. 985 of 4 Dec 2014)
  - National Exemption Regulations (GN No. R. 994 of 8 Dec 2014)
  - National Appeal Regulations (GN No. R. 993 of 8 Dec 2014)
- Not yet promulgated or replaced:
  - Financial Provision Regulations (draft Regs: GN No. 940 on 31 Oct 2014)

# Fixed & Synchronised Timeframes

# 2014 NEMA EIA Regulations: timeframes

- **“receipt”** means receipt on the date indicated—
  - (a) on a receipt form if the application or document was hand delivered or sent via registered mail;
  - (b) in an automated or computer generated acknowledgment of receipt;
  - (c) on an acknowledgement in writing from the CA as the date of receipt if the application or document was sent via ordinary mail; or
  - (d) on an automated or computer generated proof of transmission in the case of a facsimile message.
  
- Reg 3(2): For any action contemplated i.t.o. these Regulations for which a timeframe is prescribed, the period of 15 December to 5 January must be excluded in the reckoning of days.
  
- Reg 3(3): Unless justified by exceptional circumstances, as agreed to by the CA, the proponent & applicant must refrain from conducting any public participation process during the period of 15 December to 5 January.

# 2014 NEMA EIA Regulations: timeframes (2)

- Any public participation process must be conducted for a period of at least 30 days. [Reg 3(8)] Where a CA is requested by an applicant to comment i.t.o. the 2014 EIA Regs, such CA must submit its comments within 30 days. [Reg7(5)]
- Reg 3(4): When a State department is requested to comment i.t.o. these Regulations, such State department must submit its comments in writing within 30 days from the date on which it was requested to submit comments & if such State department fails to submit comments within such 30 days, it will be regarded that such State department has no comments. [Section 24O(3) of NEMA amended accordingly.]
- Reg 3(6): The CA must acknowledge receipt of all applications & documents contemplated in regulations 16, 19, 21, 23, 29, 31 & 34 within 10 days of receipt thereof. [Application, BAR, SR, EIR, Amendment Part 1, Amendment Part 2, & Audit Report]

# 2014 NEMA EIA Regulations: timeframes (3)

- **BA process to be concluded within 197 or 247 days**
  - to submit a Basic Assessment Report: 90 or 140 days from receipt of application
  - to decide on BA application: 107 days from receipt of BAR
- **S&EIR process to be concluded within 300 or 350 days**
  - to submit a Scoping Report: 44 days from receipt of application
  - to decide on a Scoping Report: 43 days from receipt of SR
  - to submit an Environmental Impact Assessment Report: 106 or 156 days from acceptance of the Scoping Report
  - to decide on S&EIR application: 107 days of receipt of the EIAR
- **Additional 50 days** to submit a BAR or EIAR (option not available i.t.o. SR): Reg 19(1)(b) & 23(1)(b): a notification in writing that the BAR/EIAR will be submitted within 140 /156 days of receipt of the application/acceptance of the SR as significant changes have been made or significant new info has been added to the BAR/EIAR, & the revised BAR/EIAR will be subjected to another PPP of at least 30 days.

# 2014 NEMA EIA Regulations: timeframes (4)

- A NEMA EA, a Waste Management Licence, an Atmospheric Emission Licence that relate to a mining activity, & a Water Use Licence must all be issued within the 107 day timeframe.

Note: No separate Heritage decision i.t.o. the NHRA issued, but integrated into the NEMA EA.

- If an Atmospheric Emission Licence does not relate to a mining activity, it must be issued within 60 days after the issuing of the NEMA EA.
- A permit may only be issued or a right only granted i.t.o. the MPRDA once a NEMA EA has been issued.

# 2014 NEMA EIA Regulations: timeframes (5)

- Reg 45: **An application** i.t.o. the 2014 EIA Regulations **lapses**, & a CA will deem the application as having lapsed, **if the applicant fails to meet any of the timeframes** prescribed i.t.o. the 2014 EIA Regulations, unless extension has been granted i.t.o. regulation 3(7).
- Reg 3(7): In the event where the scope of work must be expanded based on the outcome of an assessment done in accordance with the 2014 EIA Regulations, **which outcome could not be anticipated prior to the undertaking of the assessment, or in the event where exceptional circumstances** can be demonstrated, the CA **may, prior to the lapsing of the relevant prescribed timeframe**, in writing, **extend the relevant prescribed timeframe** & agree with the applicant on the length of such extension.

# 2014 NEMA EIA Regulations: timeframes (3)

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- **Regulation 7 of the 2014 NEMA EIA Regulations: Consultation between Competent Authority and Organs of State administering a law relating to a matter affecting the environment**

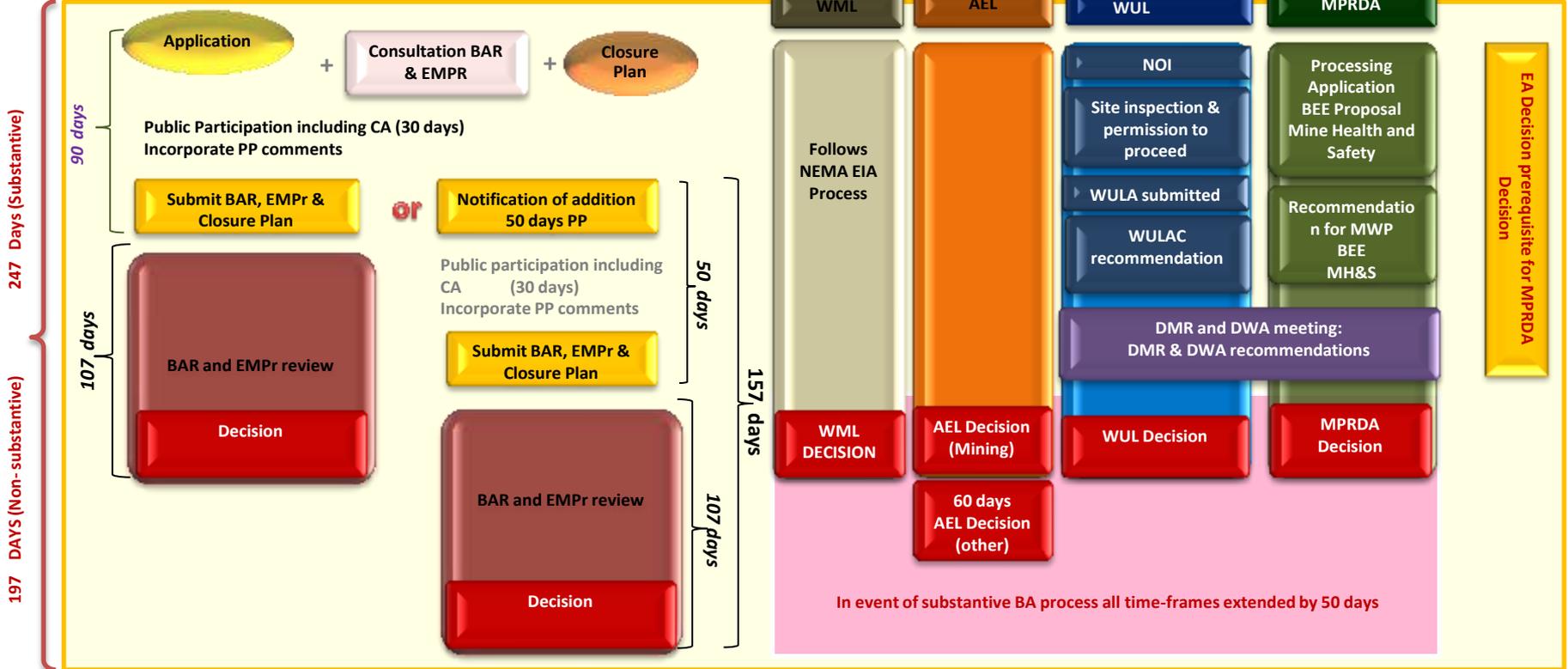
7. (1) Where an **agreement** has been reached in order to give effect to Chapter 3 of the Constitution of the Republic of South Africa, 1996 and sections 24(4)(a)(i), 24K and 24L of the Act, and where such agreement is applicable to an application, **such application must be dealt with in accordance with such agreement.**

# Process Diagrams

# BA Process

MPRDA Application Accepted

Pre-application (Optional)

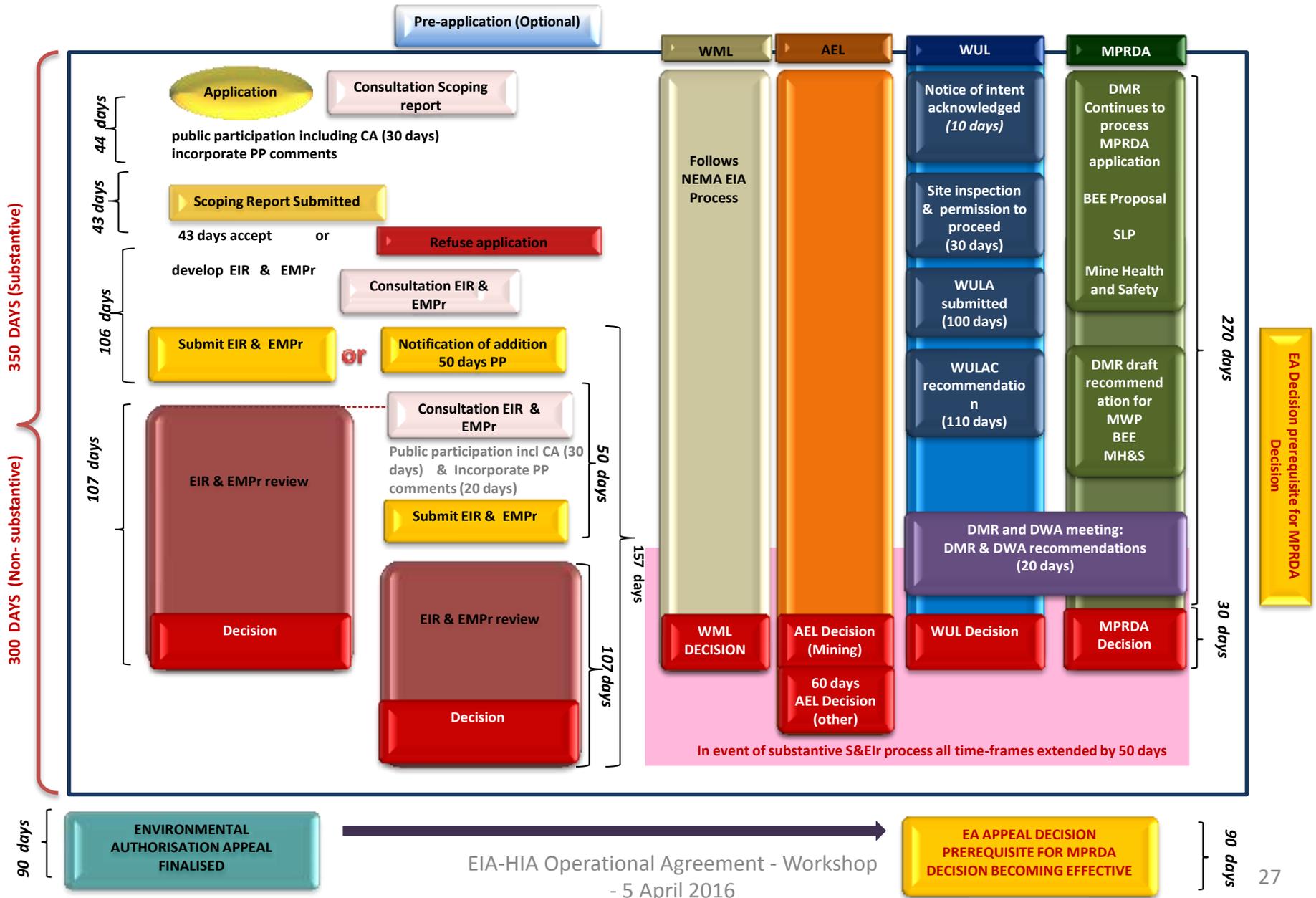


90 days  
ENVIRONMENTAL  
AUTHORISATION APPEAL  
FINALISED



90 days  
EA APPEAL DECISION PREREQUISITE  
FOR MPRDA DECISION BECOMING  
EFFECTIVE

# S&EIR Process



# 2015 Operational Agreement between DEA&DP & HWC

# Operational Challenges

# Discussion

# Thank you



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