Mapping of Provincial and Municipal Permitting and Authorisation Processes for IPP Projects in the Eastern Cape

NOVEMBER 2013
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Prepared by
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Date 29 November 2013

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- The project developers of renewable energy projects in the Eastern Cape who provided us with valuable input with regards to the IPP permitting and authorisation process

Disclaimer

In many instances this document reflects the experiences of independent power producers. Although these views are important, they do not necessarily represent those of GIZ, DEDEAT and/or Africoast.
Mapping of Provincial and Municipal Permitting and Authorisation Processes for IPP Projects in the Eastern Cape

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<td>BBBEE</td>
<td>Broad Based Black Economic Empowerment</td>
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<td>Budget Planning Alignment Team</td>
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<td>Department of Agriculture, Forestry &amp; Fisheries</td>
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<td>SEA</td>
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<td>SPLUMA</td>
<td>Spatial Planning and Land Use Management Act</td>
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<td>TLC</td>
<td>Traditional Local Council</td>
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1. Introduction

1.1 Background to Study

In 2010 DEDEAT, in partnership with the East London Industrial Development Zone (IDZ), commissioned the development of a Sustainable Energy Strategy for the Eastern Cape, which was completed and adopted by the Eastern Cape Provincial Government in 2012. Energy, particularly energy from clean, renewable resources, is a foundational component for economic development, social equity, and environmental quality within the Eastern Cape (EC). Furthermore, green energy is noted as an important priority in the Provincial Industrial Development Strategy (2010). The aim of the Sustainable Energy Strategy is to facilitate the start of establishing local renewable energy capacity for the Eastern Cape Province, which will result in increased job creation in the province, both directly and indirectly, while at the same time lowering the contribution to the emissions of greenhouse gasses by the province, in line with the Eastern Cape Climate Change Response Strategy. In doing so it is anticipated that the strategy will strengthen local production of renewable energy and other energy related components.

In 2011 the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), in support of the South African Department of Energy (DoE), commissioned the Mapping of Authorisation Processes for Renewable Energy Projects under the DoE's Renewable Energy Independent Power Producer Procurement Programme (REI4P). The study focused on describing the authorisation processes and providing feedback and input from IPPs on the process, as well as on the establishment of an Independent Power Producer (IPP) Help Desk. The REI4P was published in August 2011 and will result in the awarding of Power Purchase Agreements (PPAs) for projects with an overall capacity of 3,725MW to be installed by the end of 2016. The projects are selected based on qualitative criteria such as job creation, skills development and local content, as well as the fixed price offered by the bidder. Provision is currently being made for five consecutive bidding rounds over the five year period from 2011 to 2015.

The Eastern Cape Provincial Government has subsequently set themselves on the path of developing the most enabling provincial environment for sustainable energy investment and implementation in the country, with part of their vision being the encouragement of renewable energy production and sector development within the province. One of the first steps that the provincial government, through the DEDEAT, has taken towards achieving this vision was the commissioning of the Eastern Cape Sustainable Energy Baseline Study in 2012 in order to provide a provincial overview of the sustainable energy situation. This aids to assist all stakeholders within the province, both private and public, with information on how to engage sustainable energy initiatives and developments.

The REI4P provides an ideal opportunity for effecting the above-mentioned mission and vision of the Eastern Cape Provincial Government. GIZ subsequently commissioned the current follow-on study i.e. the Mapping of Provincial and Municipal Permitting and Authorisation Processes for IPP Projects in the Eastern Cape. The aim of the study is to identify those permitting and authorisation processes relevant to provincial departments and/or municipalities, identify the stumbling blocks within these processes, and provide support and guidelines for relevant provincial and municipal role-players to effectively engage in the REI4P permitting/authorisation processes.

1.2 Scope of Study

The project team, along with GIZ and DEDEAT, recognises that the scope for this study has the potential to be vast. In light of the short time frames for the study, and in order to ensure a study that will add value to the growth of the renewable energy (RE) sector within the Eastern Cape, it was agreed that the study will focus on:

a) Providing municipalities and provincial departments within the Eastern Cape with an overview of the entire REI4P;
b) Unpacking how renewable energy should fit into strategic planning processes; and
c) Identifying where and how provincial departments and municipalities can and should play a role.

1.3 Methodology

For the purpose of the scoping exercise the project team primarily used the following:

- Outcomes of three key studies i.e.-
  - Mapping of authorisation processes for renewable energy projects, the previous GIZ study done by PDG;
  - The Sustainable Energy Strategy for the Eastern Cape, done by Ballenden Robb; and
  - The Eastern Cape Sustainable Energy Baseline Study, done by Urban Dynamics.
- In-house experience with four REI4P projects, supplemented with discussions with, and input from four other project IPPs, as well as reports and presentations done on various aspects of the REI4P.
- Specialist input into the strategic planning and land use management components by Setplan PE.
- Specialist input into sketching the legal framework for the REI4P and provincial departments and municipalities’ role in it.
- Informal consultation with two local and two district municipalities, as well as one metropolitan municipality.
1.4 Report Structure

The report comprises of six key components:

- **Chapter 1**: Introduction
- **Chapter 2**: Legal Context of the REI4P
- **Chapter 3**: Strategic Planning Processes
- **Chapter 4**: Mapping of Permitting and Authorisation Processes
- **Chapter 5**: Removal of Barriers - Provincial and Municipal Interventions
- **Chapter 6**: Lessons Learned During Rounds I, II & III of the REI4P
- **Chapter 7**: Removal of Barriers: Interventions

2. Legal Context of the REI4P

On 19 December 2010 the Minister of Energy in the National Government of the Republic of South Africa, in consultation with the National Energy Regulator of South Africa (NERSA) and acting in accordance with her powers under section 34(1) of the Electricity Regulation Act 4 of 2006, determined that renewable energy generation capacity must be procured in order to contribute towards energy security and to facilitate the achievement of renewable energy targets set for the Republic of South Africa. In furtherance of that determination, the Minister published the Electricity Regulations on New Generation Capacity (GNR. 399 in Government Gazette No. 34262 (dated 04 May 2011)), under which the Renewable Energy Independent Power Producer Programme (REI4P) was published. REI4P governs the manner in which energy generation projects harnessing naturally occurring non-applicable sources of energy, such as solar, wind, biomass, hydro, tidal, wave, ocean current and geothermal would be rolled out. On 3 August 2011 the Minister invited qualifications and proposals from Independent Power Producers (IPPs) for new generation capacity under the REI4P.

The REI4P straddles various spheres of government, both national and provincial, including (for example) the Departments of Energy, Environmental Affairs, Mineral Resources and National Treasury. The seamless implementation of the REI4P requires keen co-operation between the various spheres of government so that the new generation capacity targets can be met.

The principles and mandate for co-operative government are found in Section 41 (1) (h) of the Constitution of the Republic of South Africa which provides that organs of state must:

- co-operate with one another in mutual trust and good faith by
  1. fostering friendly relations;
  2. assisting and supporting one another;
  3. informing one another of, and consulting one another on, matters of common interest;
  4. co-ordinating their actions and legislation with one another;
  5. adhering to agreed procedures; and
  6. avoiding legal proceedings against one another.

Co-operative governance is thus a constitutional imperative obliging all spheres of government to support the REI4P.

The Constitution furthermore places the responsibility for the provision of services squarely within the mandate of local government. Section 152 (1) reads as follows:

The objects of local government are -

- to provide democratic and accountable government for local communities;
- to ensure the provision of services to communities in a sustainable manner;
- to promote social and economic development;
- to promote a safe and healthy environment; and
- to encourage the involvement of communities and community organisations in the matters of local government.

With Section 152 (2) going on to state that:

“A municipality must strive, within its financial and administrative capacity, to achieve the objects set out in subsection (1).”

Section 154 (1) of the Constitution states that:

“The national government and provincial governments, by legislative and other measures, must support and strengthen
the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions.”

The comprehensive provisions in the REI4P Request for Proposals (RFP) ensure the economic development obligations and legislation such as the Broad Based Black Economic Empowerment (BBBEE) Act (suitably adapted to allow for an extended meaning of local communities), together with the Preferential Procurement Act and the like are adhered to by IPPs. Similarly, projects must be developed in accordance with, and strict adherence to, requirements as set out in all relevant legislation such as the National Environmental Management Act (NEMA), the Minerals and Petroleum Resources Development Act (MPRDA), and the National Heritage Resources Act to ensure that the REI4P is rolled out in a socially and environmentally progressive manner. These matters are thus generally dealt with and disposed of through national organs of state or mechanisms identified in the RFP itself and therefore do, as a general rule, call for co-operation from provincial or local government. This study is confined to the role that provincial government and local authorities play, or can play, in ensuring the REI4P objectives are expediently attained. It will therefore focus on the permitting and authorisation processes which provincial departments or municipalities can influence, and not on processes that fall completely outside their sphere of influence.

2.1 MFMA Implications in terms of the REI4P

The Municipal Finance Management Act, 56 of 2003 (MFMA)\(^5\) and the implication thereof in terms of the REI4P, has been highlighted as a specific concern to municipalities, in particular section 33. The MFMA regulates, amongst other matters, the procurement of goods and services by a municipality as well as the disposal of its capital assets in a manner which is consistent with the imperatives of the Constitution.

A common misconception is that any contract that runs for longer than three years may only be concluded after following the procedures, including a public participation process and engagement with other organs of state. The section however only requires such a process if the proposed contract imposes “financial obligations” beyond the aforesaid period. Thus, for example, a municipality may conclude a long term distribution agreement with a generator for the use of its network provided it does not give rise to financial obligations (i.e. the positive incurrence of a cost or expense).

In light of the fact that the municipality does not purchase the energy generated under the REI4P, this provision in the MFMA is not applicable. A municipality’s electrical network may therefore be used to wheel the energy from an IPP to the system operator’s delivery point, as this does not fall within the compass of the procurement of goods and services; hence the MFMA is not triggered and may be ignored.

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<td>Electricity Regulation Act, 4 of 2006</td>
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<td>GNRCR 399 of 4 May 2011, Government Gazette 34262</td>
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3. Strategic Planning Processes

3.1 Legal Framework for Spatial Planning and Land Use Management

Planning has always been divided into two broad categories i.e. the strategic or forward planning and the land use management or planning control component of planning.

The different tools for these two planning functions are Structure Plans/Spatial Development Frameworks and Zoning Schemes. The forward planning tool is indicative of the future land uses that would be desirable. The zoning scheme is a record of existing land use rights that vest in a portion of land.

On 5 August 2013, the Spatial Planning and Land Use Management Act 16 of 2013\(^6\) was assented to by the President but as yet has not come into operation. This Act provides a planning framework for National, Provincial and Municipal Spatial Development Frameworks as well as for single, wall to wall schemes in municipalities.

The status quo of the policy and legislated environment applicable to the Eastern Cape Province is set out below. The status quo will be discussed according to the hierarchy of plans applicable to the different spheres of government, the
Figure 1: Planning framework as per the Spatial Planning and Land Use Management Act
3.2 Strategic Planning at National Government

National development plans have been formulated on a high strategic level. The two key plans are the National Development Plan of 2011, and the National Spatial Perspective of 2006.

3.2.1 The National Development Plan 2011

The National Development Plan\(^1\) sets out Vision 2030 for South Africa. It was prepared by the National Planning Commission and published on 11 November 2011. The National Planning Commission is not a government department, but consist of 26 people appointed by the President to advise on issues impacting long-term development. The vision is to eliminate poverty and reduce inequality by 2030.

3.2.2 The National Spatial Perspective 2006

The National Spatial Perspective was prepared by the Policy Co-ordination and Advice Services of the Presidency. The National Spatial Development Perspective (NSDP) is a major achievement in the continued drive by the State to eradicate the damage wrought by decades of colonial and apartheid manipulation of settlement patterns and economic activity in

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\(^{1}\) National Planning Commission, 2011
South Africa.
Following on from the 2003 NSDP, the NSDP 2006\(^8\) is not only an update of the original perspective, it also provides a framework for a far more focused intervention by the State for equitable and sustainable development. It represents a key instrument in the State's drive towards ensuring greater economic growth, buoyant and sustained job creation and the eradication of poverty. The NSDP 2006 demonstrates the urgency of the kind of space economy we require if we are to achieve our objective of a better life for all. The perspective identifies key localities throughout the Republic whose growth and development performances are crucial to the attainment of our national objectives.

The NSDP 2006 also represents a major achievement in intergovernmental collaboration, being the outcome of intense engagements between national government and provincial and municipal structures. With the technical support provided by a range of specialists from research institutes and academia, this document reflects advanced mapping and spatial-analysis techniques. The original NSDP, which was approved by Cabinet in January 2003, is an overarching framework to encourage interaction and coordination between departments and spheres of government. It provides the methodological tools and principles to make government decisions, on infrastructure investment and development spending, more focused.

The NSDP 2006 further provides a framework for deliberating the future of the national space economy and recommends mechanisms to bring about optimum alignment between infrastructure investment and development programmes within localities. It is not a national development plan, nor does it predetermine what should happen where, when and how. Instead, it utilises principles and the notions of need and potential as a common backdrop against which investment and spending decisions should be considered and made. In addition, while the NSDP provides an initial interpretation of the potential of different localities and sectors, this is not a definitive measure. Provincial Growth and Development Strategies (PGDSs) and Integrated Development Plans (IDPs) will need to provide a more rigorous assessment of potential by combining the NSDP’s initial interpretation with local knowledge and research. Through a process of interaction and dialogue, these provincial and municipal planning instruments will then define each locality's development potential in terms of the six stated categories of development potential.

### 3.3 Strategic Planning at Provincial Government

#### 3.3.1 PGDP 2004 - 2014

In the Eastern Cape, the Office of the Premier developed the Provincial Growth and Development Plan (PGDP) 2004-2014. The PGDP provides the EC with a guiding framework in their efforts to roll back the frontiers of poverty and facilitate economic growth. This 2004-2014 Strategy Framework was the product of joint deliberations by all of the provincial social partners and constitutes a consensus position on the growth and development path for the next ten years.

The strategic objectives contained in this Strategy Framework document guided the province in developing sectoral strategies and programmes to launch the Provincial Growth and Development Plan.

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The PGDP is based on six pillars as indicated in Figure 3 above. It should be noted that the PGDP makes no provision for environmental protection as a key pillar to the provincial growth and development planning. The incorporation of renewable energy projects in the province would be accommodated under the infrastructure and manufacturing pillars of the PGDP. This is further outlined in the Provincial Industrial Development Strategy (2010) and Implementation Plan (2012).

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\(^8\) National Spatial Development Perspective, 2011
\(^6\) Office of the Premier
3.3.2 Eastern Cape Provincial Spatial Development Plan 2010

The Eastern Cape Provincial Spatial Development Plan (PSDP) was prepared during 2010. The reviewed PSDP is intended to provide an indicative planning tool for all spheres of government, whereby the Provincial Growth and Development Plan, municipal IDPs and the National Spatial Development Perspectives, inform the identification of development potential and priorities in government infrastructure investment and development spending within their respective areas of focus.

The Department of Local Government and Traditional Affairs (DLGTA) accordingly resolved to review the Eastern Cape Provincial Spatial Development Plan (PSDP). The key objective of the review process is “to prepare an interactive Provincial Spatial Development Plan in a consultative approach that would result in a plan that sets out a broad framework for investment in a spatially oriented approach to give effect to the successful implementation of the PGDP”.

The PSDP is aligned to the PGDP, but adds an additional pillar to the provincial planning, i.e. the Environmental Pillar. A section on renewable energy is incorporated into the PSDP under the Infrastructure Pillar and identifies “cleaner energy” and the establishment of wind, solar and other renewable energy projects as an opportunity for the Eastern Cape Province.

3.3.3 Outline of Provincial Planning Processes

3.3.3.1 The PGDP as it relates to Municipalities

District municipalities have endorsed the PGDP as the framework for growth and development for their own areas, and have committed themselves to aligning their Integrated Development Plans (IDPs) to the PGDP priorities and programmes. Already most of the approved IDPs are reflecting the strategic interventions proposed in the PGDP. The Executive Council has approved a proposal to restructure the centre of government with the aim to strengthen it to drive, coordinate and monitor the implementation of the PGDP. A Planning, Co-ordinating and Monitoring Unit (PCMU), headed by a Deputy Director-General, will be established in the Office of the Premier to co-ordinate planning and implementation. The PCMU will be responsible for the co-ordination and synchronisation of the programmes and activities of provincial departments with each other, and with those of district municipalities and national departments and parastatals in order to achieve the objectives of the PGDP. The PCMU will also be responsible for the monitoring and evaluation of the progress and impact of the PGDP, and for on-going revision and improvement of the plan itself. In addition, the PCMU will be tasked to develop and enhance the strategic planning capacity of provincial departments to ensure implementation of the PGDP Programmes and achievement of PGDP targets.
3.3.3.2 Preparation of the PSDP

The review of the Provincial Spatial Development Plan involved all stakeholders in a consultative process as far as possible and ensured buy-in of the process and the product at all levels across all spheres of governance and other affected parties. This involved a series of meetings at provincial and district levels to ensure consensus on the development issues and priority areas for action and to establish roles and responsibilities. The process was facilitated with background material, including the 2003 Provincial Spatial Development Plan. A key stakeholder engagement, which enabled input into this draft document, was the stakeholder conference held during May 2010.

3.4 Strategic Planning at Local Government

The key strategic planning documents relevant to Municipalities are the Integrated Development Plans and the spatial representation of the IDP in the form of a Spatial Development Framework.

Each local authority is required to prepare its own IDP as per the requirements set out in the Systems Act 32 of 2000 (and annual reviews such IDP in conjunction with the preparation of the Municipal budget.)

To understand the role and purpose of the IDP at local level and the integration with other spheres of government’s planning processes, the next section will touch on the transformation of municipalities after 1994 and the new role of municipalities.

3.4.1 The Transformation Process in South Africa and the New Role for Local Authorities

Local government in South Africa entered a new era with the adoption of the 1996 Constitution. The Constitution introduced, for the first time in our history, a wall-to-wall local government system by providing that municipalities ‘be established for the whole of the territory of the Republic’.

One of the major innovations of the 1996 Constitution was the elevation of local government to a sphere of government, firmly establishing local government’s autonomy. A municipality now has the right to govern, on its own initiative, the local government affairs of its community. This means that while national and provincial governments may supervise the functioning of local government, this must be done without encroaching on the institutional integrity of local government. The Constitution further allocates the functional areas of local government competency in Schedules 4B and 5B.

The Constitution introduced three categories of local government:

- Single-tier Category A municipalities; and
- Two-tier local government in Category B and C municipalities where a Category C municipality shares jurisdiction with a number of Category B municipalities. A metropolitan municipality has exclusive municipal executive and legislative authority in its area.

Currently the developmental mandate of local government is effected through metropolitan municipalities in the eight largest urbanised and industrialised centres in the country. They are charged with addressing the key challenges outlined in the White Paper on Local Government, namely the legacy of urban apartheid by establishing a basis for equitable and inclusive metropolitan governance and development. They have legislative competence over all the areas listed in Schedules 4B and 5B.

Outside the metropolitan areas, the local government mandate is pursued by two-tier local government: 228 local municipalities grouped into 44 district municipalities, sharing the functional competencies listed in Schedules 4B and 5B. The allocation of responsibilities between the two tiers of local government is prescribed by the Municipal Structures Act of 1998, which must take into account the need to provide municipal services in an equitable and sustainable manner. The Structures Act (as adjusted by MECs) does so by allocating district municipalities’ functions including those not listed falling in the purview of local municipalities.

Given the fact that poverty is experienced locally, municipalities are confronted daily with the consequences of apartheid. As a result, a large part of the burden of addressing this falls upon local government, as it is the provider of primary services which are essential to the dignity of all who live in its area of jurisdiction. Thus, local government is the key site of delivery and development and is central to the entire transformative project of the new South Africa. It is therefore a key mandate of local government (with the support of provincial and national government) to eliminate the disparities and disadvantages that are a consequence of the policies of the past and to ensure, as rapidly as possible, the upgrading of services in the previously disadvantaged areas so that equal services will be provided to all residents.
3.4.2 Local Authorities/Municipalities as Planning Authority in terms of the SA Constitution (108 of 1996)

The planning mandate of municipalities is given in the following sections of the Constitution:

Schedule 4 of the Constitution: Functional areas of concurrent national and provincial legislative competence include regional planning and rural development. Municipal planning is a local government matter.

Section 153 of the Constitution: 108 of 1996 determines that a municipality must structure and manage its administration, budgeting and planning processes to give priority to the basic needs of the community and to participate in national and provincial development programmes.

Section 154 of the Constitution: Determines that national and provincial governments by legislative and other measures must support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions.

3.4.3 White paper on Local Government 1998 and Integrated Development Planning

The White Paper is considered to be a comprehensive policy to give effect to the new constitutional vision of local government, with developmental local government as its cornerstone. The White Paper addressed integrated development planning as a tool for developmental local government.11

Municipalities face immense challenges in developing sustainable settlements which meet the needs and improve the quality of life of local communities. To meet these challenges, municipalities will need to understand the various dynamics operating within their area, develop a concrete vision for the area, and strategies for realising and financing that vision in partnership with other stakeholders.

Integrated development planning is a process through which a municipality can establish a development plan for the short, medium and long-term. In effect integrated development plans are planning and strategic frameworks to help municipalities fulfill their developmental mandate:

- They enable municipalities to align their financial and institutional resources behind agreed policy objectives and programmes.
- They are a vital tool to ensure the integration of local government activities with other spheres of development planning at provincial, national and international levels, by serving as a basis for communication and interaction.
- They serve as a basis for engagement between local government and the citizenry at the local level, and with various stakeholders and interest groups. Participatory and accountable government only has meaning if it is related to concrete issues, plans and resource allocations.
- They enable municipalities to weigh up their obligations and systematically prioritise programmes and resource allocations. In a context of great inequalities, Integrated Development Plans serve as a framework for municipalities to prioritise their actions around meeting urgent needs, while maintaining the overall economic, municipal and social infrastructure already in place.
- They assist municipalities to focus on the environmental sustainability of their delivery and development strategies. Sustainable development delivers basic social and economic services to all, without threatening the viability of the ecological and community systems upon which these services depend.
- They help municipalities to develop a holistic strategy for poverty alleviation. Poverty is not just about low household income. It includes other aspects of deprivation such as a lack of assets to help households cope with shocks and stresses, a lack of the resources or contacts necessary to secure political advantage, a lack of access to education, health care and emergency services, and the lack of safe, secure, and adequately sized housing with basic services.

While the idea behind Integrated Development Plans is to build a comprehensive integrated plan, municipalities cannot plan everything in detail in the first year. Rather, integrated development plans should empower municipalities to prioritise and strategically focus their activities and resources. An attempt to plan too comprehensively may result in unrealistic plans that lack the human and financial resources for implementation. Integrated Development Plans should be viewed as incremental plans. In the annual process of review, new or changed priorities can be incorporated.

Integrated development planning is a normal and required municipal function - Integrated Development Plans are not “add-ons” and should not be “farmed out” to consultants. The development of Integrated Development Plans should be managed within municipalities, and provide a way of enhancing the strategic planning capacity of the administration, building organisational partnerships between management and labour, and enhancing synergy between line functions.

Two key and inter-linked action plans are required to move from objectives to delivery. The first is an institutional plan of action, the second a financial plan of action:

1. Institutional plans: Institutional plans, including human resource development strategies, are particularly important tools for municipalities during the transformation period. Institutional action plans are intended to assist municipalities in reorganising their administrations for improved delivery to communities.

11 Write Paper Working Committee, 1998
Financial plans: Integrated development planning should be linked to financial planning. A financial plan involves producing a medium-term (five-year) projection of capital and recurrent expenditure. This means incorporating municipal land development objectives and other strategies into the normal medium-term planning for capital and recurrent expenditure. Municipalities should also develop a plan for raising the revenue to support these strategies. The financial plan should show how the priorities in the budget change over the five-year period in order to achieve the goals set out in the Integrated Development Plan.

On the capital side, municipalities need to develop a coherent infrastructure investment plan which sets out how they will achieve infrastructure targets and mobilise public and private funding sources for this purpose.

The development of Integrated Development Plans and financial plans provides an opportunity for municipalities and other spheres of government to discuss and prioritise public investment in the area. Such governmental alignment could result in the production of a negotiated ‘public investment plan’ for an area which brings together the resource commitments of all spheres of government in relation to the Integrated Development Plan.

Municipalities should seek private investment to supplement the public funds available for capital expenditure. They can obtain assistance and advice on how to leverage private investment from the municipal infrastructure investment unit, which has been established for that purpose. Provincial governments should monitor the extent to which municipal budget priorities reflect the Integrated Development Plan, and use existing conditional grant mechanisms as incentives in this regard.

The medium-term financial plan forms a basis on which annual budgets can be drawn up. The following diagram shows the relationship between planning and budgeting.

<table>
<thead>
<tr>
<th>PLANNING</th>
<th>BUDGETING</th>
</tr>
</thead>
<tbody>
<tr>
<td>Long term (up to 25 years)</td>
<td>Vision</td>
</tr>
<tr>
<td>Medium term (up to 5 years)</td>
<td>Integrated Development Plan (including LDOs)</td>
</tr>
<tr>
<td>Short term (1 year)</td>
<td>Key projects (Annual Action Plan)</td>
</tr>
<tr>
<td></td>
<td>Financial Plan (including infrastructure investment plan on capital side)</td>
</tr>
<tr>
<td></td>
<td>Annual budget</td>
</tr>
</tbody>
</table>

Figure 5: Relationship between planning and budgeting at local level

3.4.4 National and Provincial Allocations to Municipalities in terms of the MFMA, 2003

The MFMA requires municipalities to promote co-operative government and require national and provincial government to ensure that intergovernmental funding and allocations for municipalities are certain and predictable.

3.4.5 Outline of the Municipal Integrated Development Planning Process

The process to be followed in the preparation of an IDP is set out in Section 29(1) of the Municipal Systems Act. The preparation must take place in accordance with a predetermined programme specifying time frames for the different steps, also referred to as a process plan. Also, the local community needs to be consulted and needs to participate in the drafting of the IDP; organs of state and other role players also need to be consulted on the drafting of the IDP.

The main steps in producing an Integrated Development Plan are:

- **Phase 1**: Analysis. An assessment of the current social, economic and environmental reality in the municipal area - the current reality. A determination of community needs through close consultation.
- **Phase 2**: Developing a vision for development in the area. An audit of available resources, skills and capacities. the prioritisation of these needs in order of urgency and long-term importance.
- **Phase 3**: Objectives, strategies and project proposals
- **Phase 4**: The development of integrated frameworks and goals to meet these needs. The formulation of strategies to achieve the goals within specific time frames.
- **Phase 5**: Financial plan and approval of IDP and budget
- **Phase 6**: The implementation of projects and programmes to achieve key goals. The use of monitoring tools to measure impact and performance.

3.4.6 Outline of the Municipal Spatial Development Planning Process

There are currently two guideline documents available that map out the SDF preparation process i.e. the Department of Rural Development and Land Reform’s (DRDLR) SDF Guideline, and the SDF guidelines as per the Eastern Cape Spatial Development Plan Toolkit.
The DRDLR guideline describes the phases as follows:

- **Phase 1: Start-Up Phase:** Define the scope of work; prepare a project plan which will inform the inception report for the project; establishment of a steering committee comprising of the councillor responsible for spatial planning, the municipal manager, the head of the planning department, the IDP manager and provincial department for planning as well as a joint technical committee.

- **Phase 2: Issues and Vision:** First round of the public participation process and integration with the IDP cycle. Sector specific engagements should take place. Once all issues are raised, a spatial vision statement is to be prepared based on the outcomes of the workshops. It is critical that other government agencies/departments take part in order to understand the planning initiatives that will impact on the SDF and have access to the latest base information that will be used in the status quo analysis. The issues of the vision to be presented to Council and the consensus to be reached, need to be addressed.

- **Phase 3: Spatial Analysis and Synthesis:** The implications of the findings on the SDF of Phase 1 and 2 need to be unpacked. The legal and policy context has already been investigated. Implications on neighbouring municipalities have been summarised and illustrated. Summary of existing sector plans and implications on the SDF have been complete. Analysis of the status quo information to be completed and relevant information To be mapped. Synthesis of the findings.

- **Phase 4: Draft SDF:** Identify spatial tools and concepts such as nodes and corridors. Proposals and strategies to address settlement restructuring. Formulate a conceptual framework based on the spatial implications and imperatives of the vision and the issues. Complex issues require scenario planning and another round of public participation. SDF proposals should address spatial budget, densification and urban edges and include guidelines for settlement plans at local level.

- **Phase 5: Achieving Support for Draft SDF:** Engagement with abutting municipalities, government departments, private stakeholders, political support and public input.

- **Phase 6: Finalisation and Approval:** Assessment of input received. Deciding on amendments to be made to the SDF and keeping a record of amendments. Endorsement by municipal and other government departments. Political approval by the Council and provincial approval by the MEC for Local Government.

- **Phase 7: Implementation:** Three main aspects of the implementation of the SDF include using the SDF to guide municipal decision making in directing the location of capital projects, drawing up policies and incentives to facilitate the implementation of the SDF by various stakeholders and development control (land use management) for land use applications. Revision of sector plans should also occur if not aligned with the direction given by the SDF.

The Eastern Cape Spatial Development Plan Toolkit defines the SDF preparation process as follows:

- **Phase 1:** Analysis: Situation analysis, opportunities and issues
- **Phase 2:** Philosophy, objectives and strategies: Develop spatial vision and development strategies
- **Phase 3:** SDF: Proposals, scenarios, guidelines and project proposals
- **Phase 4:** Implementation plan: Estimates costs and resource requirements
- **Phase 5:** Project Plans
- **Phase 6:** Approval

### 3.4.7 Relationship between the IDP and the SDF

The SDF is the spatial representation of the IDP. The SDF is not a sector plan appended to the IDP; it shows how the implementation of the IDP should happen in space.

The preparation of the IDP and SDF should ideally be an integrated process, to ensure alignment and to avoid duplication in public consultation and participation processes. Figure 6 below illustrates the public participation as part of the preparation process.

Both the IDP and SDF require the integration of sector plans within the IDP and SDF. Sector plans that form part of the core components of an IDP are:
- Disaster Management Plan
- Financial Plan

Sector plans required by other legislation are:
- Environmental Management Plan (NEMA 107 of 1998)
- Waster Services Development Plan (National Water Act 36 of 1998)
- Transportation Plan (National Land Transportation Transition Act No 22 of 2000)
- Housing Plan or Human Settlements Plan (National Housing Act 107 of 1997)
3.4.8 Integrating The Renewable Energy Industry into Municipal Planning

The section about municipal planning in this report highlights the fact that local authorities or municipalities are planning authorities, that they are responsible for integrated development planning and that all spheres of government should encourage integrated development planning at local level to ensure that communities benefit, duplication is avoided and limited resources are allocated to the most appropriate need or priority areas.

The integrated development planning process is the appropriate vehicle/mechanism for the RE industry to use to ensure that their agenda of rolling out RE projects in the Eastern Cape takes place, is supported, and that capacity is available. The RE industry will have to take note of the correct entry points into the IDP planning process to ensure that this strategic priority area of encouraging the production of alternative forms of energy receive the necessary visibility in all municipal plans, and also receive the appropriate allocation in terms of municipal and other resources.

Figure 6 below shows the entry points for the various sector departments into the IDP and SDF planning processes for the integration of RE considerations.

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**Figure 6: Integrating RE consideration into IDP and SDF processes**

1. The SDF phase should be completed prior to the start of the IDP cycle (i.e. towards the end of the previous financial year, i.e. June) so that the spatial planning process can commence with the IDP process (municipal financial year starts 1 July).
2. The SDF spatial analysis should feed back into the IDP to complete the analysis. Both IDP and SDF analysis should end with clear indications of needs, opportunities and constraints.
3. The Spatial Development Concept flows from the spatial strategies as the spatially referenced representation of those strategies and long term development vision. Spatially indicate the long term vision of land uses in the municipality including conservation areas, agriculture areas, tourism corridors and areas for RE projects. Eliminate “no-go” areas.
4. Spatial Development Strategies and Spatial Development Concepts are included in the IDP as part of the spatial strategy for the IDP.
5. Spatially indicate the long term vision of land uses in the municipality including conservation areas, agriculture areas, tourism corridors and areas for RE projects. Eliminate “no-go” areas.
6. Capital Investment Framework together with the Spatial Development Concept must influence the operational plans of different departments. Municipal HR capacity to be addressed under Operational Plans. Sector departments to support municipalities e.g. shared services budgets at DMs.
7. Based on needs and opportunities, as well as the political mandate, the IDP should formulate development objectives and priorities as well as strategies to address those objectives and priorities.
8. Spatial Development Strategies and Spatial Development Concepts are included in the IDP as part of the spatial strategy for the IDP.
9. IDP comprehensive situational analysis to include alignment with the PGDP, PSDP and all sector plans (Electricity, LED & RE).
10. SDF should not conduct its own comprehensive analysis, but should build on the IDP analysis by doing spatial interpretation of the IDP analysis and additional spatial contextual analysis. Add spatial RE info to SDF Map RE Sector Plans in the SDF.
11. IDP development objectives, priorities and strategies inform spatial objectives and strategies.
12. IDP comprehensive situational analysis to include alignment with the PGDP, PSDP and all sector plans (Electricity, LED & RE).
13. SDF should not conduct its own comprehensive analysis, but should build on the IDP analysis by doing spatial interpretation of the IDP analysis and additional spatial contextual analysis. Add spatial RE info to SDF Map RE Sector Plans in the SDF.
Figure 7: Land Use Authorisation Process for the REI4P (also see table 9).

**AUTHORISATION PROCESSES**

1. Sale / lease agreement
2. Permission from land owner
   - 2.1. Private land: Power of attorney, or Company resolution
   - 2.2. State-owned land: Registered (consent from DPW), Unregistered (consent from community through IPILRA 31 of 1996)
3. Copy of title deed
4. Bond holder’s consent (± 2 weeks)
5. Restrictive title deed conditions?
   - Yes
   - No
6. Removal through court (± 2 weeks)
7. Removal through DLGTA (± 2 weeks)
8. Conveyancer Certificate (1 week)
9. DEA Record of Decision (± 6-18 months)
10. Subdivision of farm or long lease?
    - Yes
    - No
11. Act 70 of 1970 application (± 6-12 months)
13. Dept of Mineral Resources (Section 53) (± 3-6 months)
14. Provincial roads: DRPW approval or comment (± 2 weeks)
15. National Roads: SANRAL approval or comment (± 3-6 months)
16. Other

**SECURING OF RIGHTS**

- MEC / Premier
- Applicant / Objectors
- Building Control Officer
- Council
- Applicant / Town Planning
- Municipality
- DoE: Financial Close
- DoE: Renewable Energy Bid

**SECURING OF LAND**

- Land Owner
- Sale / lease agreement
- Permission from land owner
- Copy of title deed
- Consent from bank
- Conveyancer certificate (Act 84 of 1967)
- DEA Record of Decision (NEMA)
- Dept of Agriculture (Act 70 of 1970)
- Heritage approval / comment (Act 25 of 1999)
- Dept of Mineral Resources (Section 53)
- Provincial roads: DRPW approval or comment
- National Roads: SANRAL approval or comment
- Other

**DECISION**

- Municipality: Planning Authority
- Planning Decision: Planning Authority
- Land use rights
- Applicant / Objectors: response to objections
- Corporation / Town Planning: recommendations / report
- End

**APPLICATION**

- Applicant
- Building Control Officer
- MEC / Premier
- Applicant / Objectors
- Council
- Municipal Planning Authority
- DoE: Renewable Energy Bid
- DoE: Financial Close
3.4.9 Land Use Management at Municipal Government

There are currently four pieces of land use legislations applicable to Land Use Management in the Eastern Cape. These are the:

- Land Use Planning Ordinance 15 of 1985;
- Black Communities Development Act 4 of 1984;
- Transkei Townships Ordinance 33 of 1934; and the

3.4.9.1 The Land Use Planning Ordinance 15 of 1985

The process to follow in terms of Section 8 Scheme Regulations in terms of the Land Use Planning Ordinance 15 of 1985: The rezoning of Agricultural Zone 1 land to Special Zone: Renewable Energy Project (to be defined i.e. wind, solar etc). These regulations are applicable to most of the rural areas of the Eastern Cape Province, which formed part of the former Cape Province. Legislation related to former homelands is addressed below.

3.4.9.2 Black Communities Development Act 4 of 1984

Even though the Black Communities Development Act 4 of 1984 has been repealed, a number of former black townships still have scheme regulations in terms of this Act which has not been replaced with new scheme regulations. Once wall to wall zoning schemes per Municipality have been prepared, the Eastern Cape Province will have to resolve the application of the Land Use Planning Ordinance 15 of 1985 in the Act 4 areas. A uniform, legal solution for the entire province must be obtained as was undertaken in the Western Cape.

3.4.9.3 The Transkei Townships Ordinance 33 of 1934

There is effectively one standard zoning scheme (in terms of Ordinance 33 of 1934) which applies to most towns in the Transkei (inside the former “TLC” town boundaries). Mthatha has its own zoning scheme. The Development Facilitation Act 67 of 1995 (DFA) made it possible in the past to apply for land use rights or change thereof, although the Constitutional Court on 17 June 2010 declared the provisions of Chapters V and VI, providing for the consideration and determination of land use applications by development tribunals, to be unconstitutional. In the Transkei (outside towns) there is very little land which is not “communal state land”. SPLUMA will, from its operative date, repeal the DFA in its entirety.

On privately owned farms, if there are any, it would be appropriate to follow the NEMA process for listed activities but that falls outside the province of land use management. There is no legal mechanism to allow rezoning, consent or departure. There is a vacuum in land use mechanisms in the rural, former Transkei although under the Constitution it could be argued that as the land is not subjected and identifiable to land use restrictions, it could be used for any purpose, save as restricted by applicable legislation such as NEMA and the Subdivision of Agricultural Land Act.

On “communal state land” it is important to follow the NEMA process and then the procedures in terms of the Interim Protection of Informal Land Rights Act 31 of 1996 (IPILRA). A “community resolution” must be obtained to allow the activity. The process entails three steps:

- The notification of the community of the process through the placement of notices, radio announcements and other means of notifying the community.
- A pre-resolution meeting.
- A formal resolution meeting attended by officials of the Department of Rural Development and Land Reform.

This process can take between one to two months. Once a community resolution has been obtained, it must be submitted to the relevant Transkei Municipality as part of the land use application for a change in land use. (Townships Board deals with Transkei matters). New scheme regulations were prepared to replace the scheme regulations applicable to the former homelands (the Transkei Townships Ordinance 33 of 1934). These new regulations are currently with the MEC for approval and are not enforced.

3.4.9.4 The Ciskei Land Use Regulations Act 15 of 1987

Even though the Land Use Regulations Act 15 of 1987 (LURA) made provision for zoning schemes, there has never been a scheme applicable in the Ciskei areas (except for Bhisho, which has its own scheme). On the farms in the Ciskei, application must be made for “approval of land use rights for renewable energy installation” to Ciskei municipalities.

Ciskei does have cadastral information for erven and farms as a result of survey work undertaken in the past. Title deeds in the town indicate land uses on erven.

An application process to a Ciskei Municipality for a change in land use rights to use land for a RE project is still required even if there are no schemes in place. This process can take between six to 12 months and will go to the
Land Use Planning Board in Bisho for a decision. The new draft scheme regulations make provision for consent to allow renewable energy installations on farms. These are not yet in place yet.

4. Mapping of Permitting and Authorisation Processes

4.1 Scope of Detailed Mapping Exercise

The scope of the detailed mapping exercise has been confined to the following:

1. Processes where obstacles were experienced by IPPs; and
2. Processes where a provincial department or municipality is either the -
   a. competent authority,
   b. gatekeeper, or
   c. can play an enabling role.

4.2 Methodology

The mapping process was performed using a combination of desktop research, informal consultations with municipalities, formal consultations with IPPs (the results of which has been summarised and discussed in Section 6 of this report), and in-house experience. The previous GIZ study done by PDG served as the starting blocks for the mapping exercise.

4.3 Relationship between REI4P Custodians and Enablers

In terms of the REI4P there are four main entities that are intricately involved with steering and managing the process from inception, through the 20 year lifespan of approved projects to the decommissioning of projects i.e. the national Department of Energy (DoE), National Treasury, the National Energy Regulator of South Africa (NERSA), and ESKOM. In terms of the REI4P the relationship between these entities are set out in Figure 8.

4.4 The REI4P Permitting and Authorisation Processes

The REI4P comprises six distinct stages, as set out in Figure 9, while Figure 10 provides an overview of the entire REI4P in terms of the required permits/authorisations/approvals.

The two critical periods for projects are between the publishing of the Request For Proposals (RFP) and bid submission, and between the announcement of the preferred bidders and financial close. Financial close is reached once a project is selected as a preferred bidder and entails the signing of the Implementation and Power Purchase Agreements. It is during these two periods that relevant provincial departments and municipalities can support the development of these renewable energy projects. Apart from permitting, they could also assist with the associated economic development and job creation opportunities.
### 4.4.1 Individual Permitting and Authorisation Processes

This section contains the detailed information with regards to each of the processes relevant to either a municipality or a provincial department, or a combination of both. The lightly-shaded tables are those processes over which IPPs have raised concern about the municipalities, and whether intervention is required. The darkly-shaded tables are the other processes relevant to either a municipality or provincial department, or a combination thereof. The following processes have been omitted from this section as they fall entirely within the ambit of a national department or body:

1. Approval from the South African Civil Aviation Authority (SACAA);
2. Approval from the Department of Mineral Resources in terms of Section 53 of the Mineral and Petroleum Resources Development Act;
3. Water Use Licence from the Department of Water Affairs;
4. Approval from the South African National Roads Agency (SANRAL) for any road works, or traversal rights/wayleaves for crossing of any national roads; and
5. Generation Licence from NERSA.

#### 4.4.1.1 Bid Submission

The first major milestone in the REI4P process is the bid submission, which is generally around mid-August every year and roughly about six months after the publishing of the RFP by the DoE. In order for an IPP's Bid to be considered compliant it has to submit, amongst others, the following documentation:

- Environmental authorisation;
- Land / Resource use arrangements with municipality;
- Grid connection (Cost Estimate Letter);
- Atmospheric Emissions Licence;
- Waste Management Licence;
- Written confirmation of water availability; and
- Proof of application of all other permits/authorisations.

The individual processes are detailed in the sub-sections below.

#### 4.4.1.1.1 Environmental Authorisation in terms of the National Environmental Management Act 62 of 2008

<table>
<thead>
<tr>
<th>Competent authority</th>
<th>DEA Role: Receive and evaluate application, and grant authorisation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Enabling authority</td>
<td>DEDEAT Role: The provincial department is mandated with supporting renewable energy within the province, to take a facilitating role and follow up on the progress of applications linked to REI4P projects.</td>
</tr>
</tbody>
</table>

**Impacts on the following applications**

- Land use authorisation
- S53 approval
- Waste Management Licence
- Air Emissions Licence
- Biodiversity consents
- Water Use Licence Application
- Agricultural consents

**Key issues**

- Lack of co-ordination between various government departments from which approvals or comments are required in order to obtain an environmental authorisation.
- Difficulty in following up on progress.

**Solutions**

- REI4P projects have been identified, nationally, as strategically important developments, with DEA agreeing to prioritise the related applications for environmental authorisations. DEDEAT to take on the responsibility of supporting the development of RE projects within the Eastern Cape through follow-up on the progress of applications. Use both Min-MEC Political and Technical.

#### 4.4.1.1.2 Land/Resource Use Arrangements with the Municipality

<table>
<thead>
<tr>
<th>Competent authority</th>
<th>Metropolitan / Local Municipality Role: Enter into partnership with private developer.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gatekeeper / Enabling authority</td>
<td>None</td>
</tr>
</tbody>
</table>

**Impacts on the following applications**

- Section 53 from the DMR
- Eskom Grid Connection
- Land Use Authorisation

**Key issues**

- PFMA/MFMA
- Lack of clear guidance from National Treasury and the DoE regarding: the exemption from PPP process

**Solutions**

- Due to the costs related to the establishments of PPP, it is highly unlikely that there will be any REI4P projects that will require a PPP; nevertheless Treasury should be approached to provide a PPP template.

---

12 The experiences expressed in the key issues sections, although relevant, do not necessarily represent those of GIZ, DEDEAT or Africoast. Furthermore it is noted that some institutions may have resolved some of these issues subsequent to the preparation of this document.
4.4.1.3 Grid Connection: Cost Estimate Letter
Table 4: Grid connection cost estimate letter

<table>
<thead>
<tr>
<th>Competent authority</th>
<th>ESKOM / Local Municipality / Metropolitan Municipality</th>
</tr>
</thead>
<tbody>
<tr>
<td>Role</td>
<td>Receive request, and issue letter notifying IPP of the cost of connecting into the grid.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Gatekeeper / Enabling authority</th>
<th>DEDEAT (enabling authority)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Role</td>
<td>The provincial department is mandated with supporting renewable energy within the province, to take a facilitating role and follow up on the progress of applications linked to REI4P projects through the Provincial Energy Forum and the Eastern Cape Department of Public Enterprises Joint Structures.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Impacts on the following applications</th>
<th>None</th>
</tr>
</thead>
</table>

| Key issues | • The costs provided in the letter may not be accurate.  
• Lack of co-ordination between transmission and distribution with regards to responses to IPPs.  
• Local municipalities don’t always know the exact requirements for connection into the grid by an independent generation facility. |

| Solutions | • DEDEAT to motivate for a consolidated decision from ESKOM – use Provincial Energy Forum and Eastern Cape Department of Public Enterprises Joint Structures.  
• DEDEAT to ensure capacity building in this regard, particularly for departments dealing with electricity infrastructure within local municipalities, through the SALGA structures. |

4.4.1.4 Atmospheric Emissions Licence in terms of the National Environmental Management: Air Quality Act 39 of 2004
Table 5: Atmospheric Emissions Licence

<table>
<thead>
<tr>
<th>Competent authority</th>
<th>Metropolitan Municipality / District Municipality / DEDEAT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Role</td>
<td>Licencing authority – receive, evaluate and issue licence once the project has received its environmental authorisa- tions.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Gatekeeper / Enabling authority</th>
<th>DEDEAT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Role</td>
<td>The provincial department is mandated with supporting renewable energy within the province, and the authority to whom may be delegated as the licencing authority in the case where the municipality cannot fulfil this role, to take a facilitating role and follow up on the progress of applications linked to REI4P projects. Make use of both Muni-MEC Political and Technical: and other IGR structures.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Impacts on the following applications</th>
<th>None</th>
</tr>
</thead>
</table>

| Key issues | None |

4.4.1.5 Waste Management Licence in terms of the National Environmental Management: Waste Act 59 of 2008
Table 6: Waste Management Licence

<table>
<thead>
<tr>
<th>Competent authority</th>
<th>DEDEAT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Role</td>
<td>Licencing authority – receive, evaluate and issue licence once the project has received its environmental authorisa- tions.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Gatekeeper / Enabling authority</th>
<th>None</th>
</tr>
</thead>
<tbody>
<tr>
<td>Impacts on the following applications</td>
<td>None</td>
</tr>
</tbody>
</table>

| Key issues | None |

4.4.1.6 Written Confirmation of Water Availability in terms of the Water Services Act 108 of 1997
Table 7: Written confirmation of water availability

<table>
<thead>
<tr>
<th>Competent authority</th>
<th>DWA / Water Services Provider</th>
</tr>
</thead>
<tbody>
<tr>
<td>Role</td>
<td>Receive requests for confirmation of water availability, assess water availability, and provide confirmation.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Gatekeeper / Enabling authority</th>
<th>DEDEAT (enabling authority)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Role</td>
<td>The provincial department is mandated with supporting renewable energy within the province, to take a facilitating role and follow up on the progress of applications linked to REI4P projects through both Muni-MEC Political and Technical.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Impacts on the following applications</th>
<th>None</th>
</tr>
</thead>
</table>

| Key issues | None |

4.4.1.7 Proof of Application for Authorisations
In order to submit a bid, an IPP will need to include proof that they have applied for the following permits/authorisations:

- Land Use Authorisation
- Agricultural Consents
- Biodiversity Consents
- Heritage Approval
- Water Use Licence Approval
- Approval in terms of Section 53 in terms of the Mineral Petroleum Resources Development Act (MPRDA)
- Building Plan Approval
- Site Development Plan Approval
- Roads Approvals
- Traversal Rights / Wayleave Approvals
Table 8: Proof of applications

<table>
<thead>
<tr>
<th>Competent authority</th>
<th>As per individual process</th>
</tr>
</thead>
<tbody>
<tr>
<td>Role: Municipality or Provincial Department receive application and provide proof of submission.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Gatekeeper / Enabling authority</th>
<th>As per individual process.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Role: Municipality or Provincial Department receive application and provide proof of submission.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Impacts on the following applications</th>
<th>None</th>
</tr>
</thead>
<tbody>
<tr>
<td>Key issues</td>
<td>Delays in responses from relevant authority</td>
</tr>
<tr>
<td>Solutions</td>
<td>Municipality or Provincial department to provide applicant with proof of submission of their application.</td>
</tr>
</tbody>
</table>

4.4.1.2 Financial Close

The second major milestone in the REI4P process is the reaching of financial close, which is generally towards the end of July every year and roughly about nine months after the announcement of the preferred bidders (refer to Figure 9 and Figure 10). In order for the project to reach financial close and continue to construction, an IPP has to submit, amongst others, the following documentation:

- Land Use Authorisation
- Agricultural Consents (SALA, CARA, NFA)
- Biodiversity Consents (NEMBA, Provincial Ordinances)
- Heritage Authority Consent
- Water Use Licence / Confirmation of Water Use Allocation
- Building Plan Approval
- Site Development Plan Approval
- Roads Approval (SANRAL, DRPW)
- Traversal Rights (SANRAL, ESKOM, Municipality, DRPW, Transnet)
- Grid Connection Agreement

The individual processes are detailed in the sub-sections below.

4.4.1.2.1 Land Use Authorisation

Table 9: Land use authorisation

<table>
<thead>
<tr>
<th>Competent authority</th>
<th>Municipality (local or metropolitan)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Role: Receive application, advertise notice of the application, receive and respond to objections, submit a recommendation/item to Council, and reject application/award land use rights based on Council’s decision.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Gatekeeper / Enabling authority</th>
<th>DLGTA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Role: Ensure that renewable energy is included in provincial spatial and development plans, ensuring that these are informed by both national and local planning, and providing guidance to municipalities with regards to the inclusion of renewable energy into their planning.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Impacts on the following applications</th>
<th>Building plan approval</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Site development plan approval</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Prerequisites</th>
<th>ROD from DEDEAT</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Comment from SANRAL on National Roads</td>
</tr>
<tr>
<td></td>
<td>Comment from DRPW on Provincial Roads</td>
</tr>
<tr>
<td></td>
<td>Comment from the Department of Agriculture, Forestry &amp; Fisheries (DAFF) in terms of the Sub-Division of Agricultural Land Act 70 of 1970 (SALA) only applies to subdivision of agricultural land or lease longer than ten years</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Key issues</th>
<th>Legislation mechanism</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No predictable timeframe</td>
</tr>
<tr>
<td></td>
<td>Municipal capacity</td>
</tr>
<tr>
<td></td>
<td>Communal land issues</td>
</tr>
<tr>
<td></td>
<td>Poor site selection due to lack of accurate spatial data/guidance as it is either not available or municipalities do not release it</td>
</tr>
<tr>
<td></td>
<td>Land claim issues</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Solutions</th>
<th>DEDEAT and the DLGTA to provide guidance and assistance to municipalities in terms of the approval of renewable energy developments from a spatial planning perspective</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>DEDEAT to ensure that national policy and programmes are interpreted and highlight local implications</td>
</tr>
<tr>
<td></td>
<td>DEDEAT, through the Provincial Energy Forum, Muni-MEC Political and Technical, to ensure that the necessary information is fed through to local government</td>
</tr>
</tbody>
</table>

Below (refer to Figure 7 on page 18) is the generic land use application process for a RE project on a farm or rural area in the Eastern Cape. For the purposes of this example the following is relevant:

- The map is for a generic rezoning process e.g. Land Use Planning Ordinance 15 of 1985 (LUPO). The rural areas in the Eastern Cape most likely fall under Section 8 Scheme Regulations in terms of LUPO. For these scheme regulations, the most appropriate mechanism is a rezoning from Agriculture Zone 1 to Special Zone: Renewable Energy Installation (to be defined). Rezoning/land use application/authorisation would be applicable irrespective of scale even if only one wind turbine is erected.
- The land use mechanism (i.e. subdivision, rezoning, departure or consent) would be determined by the applicable scheme regulations and the case specific circumstances at each municipality.
• The differences between municipalities and the applicable delegated authority is not indicated.
• This generic process is not applicable in the former homelands. The former Transkei and Ciskei are addressed in the report dealing with strategic planning.
• The mapping of the authorisation process and duration of the process is determined by the technical and administrative human resource capacity per municipality.

Comments for Figure 10 regarding the land use application mapping process:
• The starting date for the land use planning process is to be included once the other processes numbered 1 to 11, are completed.
• A land use process at the municipality can take between four to six months if there are no capacity issues at the municipality.
• Capacity issues at the municipality includes administration, receiving of applications, advertising applications, report writing, technical recommendations and processes for decision making.
• DEDEAT to target municipalities where RE projects have high potential for establishment.

4.4.1.2.2 Agricultural Consents

Approval i.t.o. the Subdivision of Agricultural Land Act 70 of 1970 (SALA)

Table 10: SALA Approval

<table>
<thead>
<tr>
<th>Competent authority</th>
<th>Role: All applications are therefore submitted to, assessed by, and receive an authorisation from the national department.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gatekeeper / Enabling authority</td>
<td>Department of Rural Development and Agrarian Reform (DRDAR) Role: Placing projects of provincial interest on the national agenda through both Min-MEC Political and Technical.</td>
</tr>
<tr>
<td>Impacts on the following applications</td>
<td>Land use authorisation</td>
</tr>
<tr>
<td>Key issues</td>
<td>Especially problematic in the case of wind farms</td>
</tr>
</tbody>
</table>
| Solutions | 1. Premier to facilitate RE projects during the mandatory consultation by the Minister of Agriculture.  
2. Schedule 11, Volume 1, Part 1 of the RFP provides guidelines on the evaluation and review of applications pertaining to wind farming on agricultural land.  
3. Develop technology-specific guidelines for officials to facilitate the approval process (for example; DAFF’s guidelines for the assessment and review of applications for wind farming on agricultural land). |

Approval i.t.o. the Conservation of Agricultural Resources Act 43 of 1983 (CARA)

Table 11: CARA Approval

<table>
<thead>
<tr>
<th>Competent authority</th>
<th>Role: Receive applications and issue approval/rejection notifications.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gatekeeper / Enabling authority</td>
<td>None</td>
</tr>
<tr>
<td>Impacts on the following applications</td>
<td>None</td>
</tr>
<tr>
<td>Key issues</td>
<td>None</td>
</tr>
</tbody>
</table>

Approval i.t.o. the National Forest Act 84 of 1998 (NFA)

Table 12: NFA Approval

<table>
<thead>
<tr>
<th>Competent Authority</th>
<th>Role: All applications are therefore submitted to, assessed by, and receive an authorisation from the national department.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gatekeeper / Enabling authority</td>
<td>Department of Rural Development and Agrarian Reform (DRDAR) Role: Placing projects of provincial interest on national agenda through both Min-MEC Political and Technical.</td>
</tr>
<tr>
<td>Impacts on the following applications</td>
<td>None</td>
</tr>
<tr>
<td>Key issues</td>
<td>None</td>
</tr>
</tbody>
</table>

4.4.1.2.3 Biodiversity Consents

Approval i.t.o. the National Environmental Management: Biodiversity Act 10 of 2004 (NEMBA)

Table 13: NEMBA Approval

<table>
<thead>
<tr>
<th>Competent authority</th>
<th>Role: Receive applications and issue approval/rejection notifications.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gatekeeper / Enabling authority</td>
<td>None</td>
</tr>
<tr>
<td>Impacts on the following applications</td>
<td>Environmental authorisation</td>
</tr>
<tr>
<td>Key issues</td>
<td>None</td>
</tr>
</tbody>
</table>
### Approval i.t.o. the Eastern Cape Nature and Environmental Conservation Ordinance 19 of 1974

**Table 14: Provincial Biodiversity Ordinance Consent**

<table>
<thead>
<tr>
<th>Competent Authority</th>
<th>Role: Receive application and issue approval/rejection notifications.</th>
</tr>
</thead>
<tbody>
<tr>
<td>DEDEAT</td>
<td></td>
</tr>
</tbody>
</table>

**Gatekeeper / Enabling authority:** None

**Impacts on the following applications:** None

**Key issues:** None

---

**4.4.1.2.4 Heritage approval in terms of National Heritage Resources Act 25 of 1999**

**Table 15: Heritage Consent / Approval**

<table>
<thead>
<tr>
<th>Competent Authority</th>
<th>Role: Consent with regards to Grade I heritage resources.</th>
</tr>
</thead>
<tbody>
<tr>
<td>South African Heritage Resources Agency (SAHRA)</td>
<td>Receives, approves applications and assess whether it is a Grade I or II heritage resource; forward applications with regards to Grade I resources on to SAHRA; provides consent with regards to Grade II heritage resources.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Role:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Epic Cape Provincial Heritage Resources Agency (ECPHRA)</td>
<td></td>
</tr>
</tbody>
</table>

**Gatekeeper / Enabling authority:** None

**Impacts on the following applications:** None

**Key issues:** None

**Solutions:** MEC to motivate to Premier’s Office for action to ensure the improved functioning of the provincial Heritage Resources Agency

---

**4.4.1.2.5 Building Plan Approval**

**Table 16: Building Plan Approval**

<table>
<thead>
<tr>
<th>Competent Authority</th>
<th>Role: Approval of building plans</th>
</tr>
</thead>
<tbody>
<tr>
<td>Metropolitan / Local Municipality</td>
<td></td>
</tr>
</tbody>
</table>

**Gatekeeper / Enabling authority:** District Municipality (in the case of a local municipality)

**Impacts on the following applications:** None

**Key issues:** None

**Solutions:** Understanding by officials that there is no way around this

---

**4.4.1.2.6 Site Development Plan Approval**

**Table 17: Site Development Plan Approval**

<table>
<thead>
<tr>
<th>Competent authority</th>
<th>Role: Assessment and approval of plans</th>
</tr>
</thead>
<tbody>
<tr>
<td>Metropolitan / Local Municipality</td>
<td></td>
</tr>
</tbody>
</table>

**Gatekeeper / Enabling authority:** District Municipality (in case of local municipalities)

**Impacts on the following applications:** None

**Key issues:** None

**Solutions:** Understanding by officials that there is no way around this

---

**4.4.1.2.7 Roads Approvals**

**Table 18: Roads Approvals**

<table>
<thead>
<tr>
<th>Competent authority</th>
<th>Role: To follow up on applications through the Eastern Cape-Department of Public Enterprises Joint Structures and Muni-MEC Technical</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transnet – Rail</td>
<td></td>
</tr>
<tr>
<td>ESKOM – Electrical servitudes</td>
<td></td>
</tr>
<tr>
<td>SANRAL – National Roads</td>
<td></td>
</tr>
<tr>
<td>DPWP – Provincial Roads</td>
<td></td>
</tr>
<tr>
<td>Municipality – Local access routes</td>
<td></td>
</tr>
</tbody>
</table>

**Gatekeeper / Enabling authority:** DEDEAT

**Impacts on the following applications:** None

**Key issues:** None

**Solutions:** Use existing forums
- EC & Dept. of Public Enterprises Joint Structures
- Muni-MEC Technical
- DEDEAT & Transnet joint structure
4.4.1.2.8 Traversal Rights / Wayleaves

Table 19: Traversal Rights / Wayleaves

<table>
<thead>
<tr>
<th>Competent Authority</th>
<th>Transnet – Rail</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>ESKOM – Electrical servitudes</td>
</tr>
<tr>
<td></td>
<td>SANRAL – National roads</td>
</tr>
<tr>
<td></td>
<td>DRPW – Provincial roads</td>
</tr>
<tr>
<td></td>
<td>Municipality – Local access routes</td>
</tr>
</tbody>
</table>

Gatekeeper / Enabling authority: DEDEAT
Role: To follow up on applications through the Eastern Cape-Department of Public Enterprises Joint Structures and Muni-MEC Technical

Impacts on the following applications: None

Key issues:
- Interactions with Transnet are cumbersome; difficult to get a response from people
- The IPPs have the choice to do self-build or Eskom build. If they do Eskom build, this will be the responsibility of Eskom provincial and will take a long time. In most cases you need to do a basic assessment for the substation and grid route. Negotiations with land owners can cause delays.

Solutions:
- Use existing forums
  - EC & Dept. Public Enterprises Joint Structures
  - Provincial Energy Forum
  - DEDEAT & Transnet joint structure

4.4.1.2.9 Grid Connection

Table 20: Grid Connection

<table>
<thead>
<tr>
<th>Competent Authority</th>
<th>ESKOM / Local Municipality / Metropolitan Municipality</th>
</tr>
</thead>
<tbody>
<tr>
<td>Role: Receiving of request, and issuing of connection agreement</td>
<td></td>
</tr>
</tbody>
</table>

Gatekeeper / Enabling authority: DEDEAT
Role: To follow up on applications through the Eastern Cape-Department of Public Enterprises Joint Structures and Provincial Energy Forum

Impacts on the following applications: None

Key issues:
- This is one of the applications most IPPs complain about as it causes a lot of costly delays for projects. The key issues mentioned include:
  - Not being able to get accurate cost estimate letters and realistic timelines
  - Not getting accurate scopes from Eskom
- No provincial department or municipality is able to influence/facilitate the process

Solutions:
- Use existing forums
  - EC & Dept. Public Enterprises Joint Structures
  - Muni-MEC Technical and other IGR structures

4.4.1.3 Construction

Before construction of a generation facility, approved under the REI4P, any landfill gas or biogas project will require an approval to construct and operate a Major Hazard Installation. All projects might require amendments to permits, authorisations and consents. In order to start construction the IPP has to submit, amongst others, the following documentation:

1. Major Hazard Installation Consent
2. Amendments to Permits/Authorisations/Approvals

4.4.1.3.1 Major Hazard Installation

Table 21: Major Hazard Installation

<table>
<thead>
<tr>
<th>Competent authority</th>
<th>Local Municipality</th>
</tr>
</thead>
</table>

Gatekeeper / Enabling authority: None

Impacts on the following applications: None

Key issues: None

4.4.1.3.2 Amendments to Permits/Authorisations/Consents

Table 22: Amendments to Permits/Authorisations/Consents

<table>
<thead>
<tr>
<th>Competent authority</th>
<th>As per individual process</th>
</tr>
</thead>
<tbody>
<tr>
<td>Role: Municipality or Provincial department receives application and provide proof of submission.</td>
<td></td>
</tr>
</tbody>
</table>

Gatekeeper / Enabling authority: As per individual process.

Impacts on the following applications: None

Key issues:
- Delays in responses from relevant authority

Solutions:
- Municipality or Provincial department to provide applicant with proof of submission of their application.
4.4.2 Relationship between the six stages of the REI4P and the individual permitting and authorisation processes

Figure 10 provides an overview of all the individual permitting and authorisation processes required by the REI4P, in relation to its six stages. An A1 copy of the diagram has been included at the end of the report as Annexure A.
To be considered for selection as a preferred bidder all the permits and authorisations listed under “Bid Submission” (Table 23) will need to be in place by the time a bid gets submitted; to reach financial close all permits and authorisation listed under “Financial Close” (Table 23) will need to be in place. The checklist version of Table 23 has been included as Annexure B to this report.

Table 23: Permits/Authorisations required per each stage of the REI4P

<table>
<thead>
<tr>
<th>Permit / Authorisation</th>
<th>Relevant projects</th>
<th>Possible role of Provincial or Municipal entity</th>
<th>Typical deadlines</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Bid Submission</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Environmental Authorisation</td>
<td>All</td>
<td>DEA-DEDEAT Intergovernmental Relations / Renewable Energy</td>
<td>2 months prior to bid submission</td>
</tr>
<tr>
<td>Aviation Consent</td>
<td>Wind; Solar Photovoltaic (PV); Concentrated Solar Power (CSP)</td>
<td>CAA: Air Navigation Services</td>
<td>2 months prior to bid submission</td>
</tr>
<tr>
<td>Land/Resources Use Agreement with Municipality</td>
<td>Where relevant</td>
<td>Local / District / Metropolitan Municipality: Planning department</td>
<td>2 months prior to bid submission</td>
</tr>
<tr>
<td>Grid Connection Cost Estimate Letter</td>
<td>All</td>
<td>Local / Metropolitan Municipality: Infrastructure department DEDEAT: Intergovernmental Relations / Renewable Energy</td>
<td>2 months prior to bid submission</td>
</tr>
<tr>
<td>Atmospheric Emissions Licence (AEL)</td>
<td>Biomass; Biogas</td>
<td>Metropolitan / District Municipality: Air quality department DEDEAT: Environmental Impact Management / Environmental Quality Management</td>
<td>2 months prior to bid submission</td>
</tr>
<tr>
<td>Waste Management Licence (WML)</td>
<td>Biomass; Biogas; Landfill Gas</td>
<td>DEDEAT: Regional Director - Environmental Impact Assessment / Environmental Quality Management Unit</td>
<td>2 months prior to bid submission</td>
</tr>
<tr>
<td>Written Confirmation of Water Availability</td>
<td>All</td>
<td>Local / Metropolitan / District Municipality (as Water Services Provider): Infrastructure department DEDEAT: Intergovernmental Relations / Renewable Energy</td>
<td>2 months prior to bid submission</td>
</tr>
<tr>
<td>• Proof of application for Land Use Authorisation</td>
<td></td>
<td>Local / Metropolitan / District Municipality: Planning department</td>
<td>2 months prior to bid submission</td>
</tr>
<tr>
<td>• Proof of application for Agricultural Consents</td>
<td>All</td>
<td>DROAR: Regional Manager - Infrastructure Development &amp; Farmer Support Unit</td>
<td>2 months prior to bid submission</td>
</tr>
<tr>
<td>• Proof of application for Biodiversity Consents</td>
<td>All</td>
<td>DEDEAT: Regional Director - Biodiversity &amp; Coastal Management Unit</td>
<td>2 months prior to bid submission</td>
</tr>
<tr>
<td>• Proof of application for Heritage Approval</td>
<td>All</td>
<td>ECPHRA</td>
<td>2 months prior to bid submission</td>
</tr>
<tr>
<td>• Proof of application for Water Use Licence Application</td>
<td>All</td>
<td>DWA: Eastern Cape Regional Office</td>
<td>2 months prior to bid submission</td>
</tr>
<tr>
<td><strong>Financial Close</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Land Use Authorisation</td>
<td>All</td>
<td>Local / Metropolitan / District Municipality: Planning department DLGTA: Developmental Local Government DLGTA: Strategic Management / Communication Information Office</td>
<td>2 months prior to financial close</td>
</tr>
<tr>
<td>Dept. Mineral Resources SS3 Approval</td>
<td>All</td>
<td>DMR: Regional Manager Eastern Cape</td>
<td>2 months prior to financial close</td>
</tr>
<tr>
<td>Agricultural Consents</td>
<td></td>
<td>2 months prior to financial close</td>
<td></td>
</tr>
<tr>
<td>Subdivision of Agricultural Land Act (SALA) Consent</td>
<td>All</td>
<td>DROAR: Regional Manager</td>
<td>2 months prior to financial close</td>
</tr>
<tr>
<td>Conservation of Agricultural Resources Act (CARA) Consent</td>
<td>All</td>
<td>DROAR: Regional Manager</td>
<td>2 months prior to financial close</td>
</tr>
<tr>
<td>National Forest Act (NFA) Consent</td>
<td>All</td>
<td>DROAR: Regional Manager</td>
<td>2 months prior to financial close</td>
</tr>
<tr>
<td>Biodiversity Consents</td>
<td></td>
<td>2 months prior to financial close</td>
<td></td>
</tr>
<tr>
<td>National Environmental Management: Biodiversity Act (NEMBA) Consent</td>
<td>All</td>
<td>DEDEAT: Regional Director - Biodiversity &amp; Coastal Management Unit</td>
<td>2 months prior to financial close</td>
</tr>
<tr>
<td>EC Nature and Environmental Conservation Ordinance (19 of 1974) Consent</td>
<td>All</td>
<td>DEDEAT: Regional Director - Biodiversity &amp; Coastal Management Unit</td>
<td>2 months prior to financial close</td>
</tr>
<tr>
<td>Heritage Approval</td>
<td>All</td>
<td>ECPHRA</td>
<td>2 months prior to financial close</td>
</tr>
</tbody>
</table>
### Water Use Licence
- **All**
- DWA: Eastern Cape Regional Office
- 2 months prior to financial close

### Building Plan Approval
- **All**
- Local / Metropolitan / District Municipality: Building Inspectorate
- 2 months prior to financial close

### Site Development Plan Approval
- **All**
- Local / Metropolitan / District Municipality: Planning department
- 2 months prior to financial close

### Roads Approvals
- **All**
- 2 months prior to financial close

### SA National Roads Agency (SANRAL)
- Where relevant
- SANRAL: Operations & Maintenance
- 2 months prior to financial close

### Dept. Roads & Public Works (DRPW)
- Where relevant
- DRPW: District Roads Engineer
- 2 months prior to financial close

### Traversal rights / Wayleaves
- **All**
- 2 months prior to financial close

### SA National Roads Agency (SANRAL)
- Where relevant
- SANRAL: Southern Region
- 2 months prior to financial close

### Dept. Roads & Public Works (DRPW)
- Where relevant
- DRPW: District Roads Engineer
- 2 months prior to financial close

### ESKOM
- Where relevant
- DEDEAT: Intergovernmental Relations / Renewable Energy
- 2 months prior to financial close

### Transnet
- Where relevant
- DEDEAT: Intergovernmental Relations / Renewable Energy
- 2 months prior to financial close

### Municipal
- Where relevant
- Local / Metropolitan Municipality: Infrastructure departments
- 2 months prior to financial close

### Grid Connection
- **All**
- Local / Metropolitan Municipality: Infrastructure department
- DEDEAT: Intergovernmental Relations / Renewable Energy
- 2 months prior to financial close

### Generation Licence
- **All**
- 2 months prior to financial close

### Construction – Commercial Operation Date (Cod)

### Major Hazard Installation Registration
- Biomass; Biogas; Landfill Gas
- Local / Metropolitan Municipality: Environmental Health department
- As soon as possible

### Amendments to any permits/authorisations/consents
- Where relevant
- All of the above
- As soon as possible

### 4.4.3 Small Projects IPP Procurement Programme (SPIPPPPO)

On 21 August 2013 the DoE released the Small Projects IPP Procurement Programme (SPIPPPPO) with the intention of promoting RE projects between 1 MW and 5 MW. The process has been amended slightly in comparison to the REI4P, in that there are now two bid stages. Stage 1 is now more of a selection process, of which preferred bidders are then allowed to proceed to Stage 2. In Stage 2 bidders are required to submit their completed projects as per bid requirements.

The intention of the staged submission process is to reduce the amount of work and permitting required by bidders before they have reached preferred bidder status. The underlying permitting and submission process, however, still remains unchanged. The DoE has eased the submission process in that if you submit in the First Round Stage 1 bid and are selected as a preferred bidder, you need not necessarily submit in the First Round Stage 2 bid, but can submit in later rounds. This eases the severe pressure to obtain permits in time especially since the time frame between each First Stage bids is less than six months, which may not always be sufficient time to obtain all permits.

It is still early stages in the SPIPP, though the competition is likely to be as fierce as in the RIEPPP bidding windows. Given that no announcements have been made to date, there is currently only speculation as to how competitive and successful the SPIPP will be.

5. **Municipal/Provincial Capacity**

The capacity constraints in local municipalities are two-fold i.e. shortage of sufficient human resources and lack of experience of officials with regards to renewable energy projects and the REI4P process. This is a trend found in many local municipalities.

At the district municipal level the issues vary from the need for political support and the active involvement of politicians in promoting renewable energy within the districts, to lack of experience with regards to renewable energy projects and the REI4P process.
Dealing with capacity constraints within municipalities in the Eastern Cape will require a concerted support effort from both provincial and national government. Capacity support is discussed below:

A) ADDITIONAL RESOURCES (BOTH FINANCIAL AND HUMAN)

In the majority of local municipalities in the Eastern Cape, municipalities have limited human resources, and even more limited funding due to high poverty levels within their communities. In order to effectively deal with an increasing number of additional responsibilities imposed upon them by national or provincial programmes, additional resources are required. Section 35 of the Local Government: Municipal Finance Management Act 56 of 2009 states that -

(35) National and provincial departments and public entities must –

a) in their fiscal and financial relations with the local sphere of government promote co-operative government in accordance with Chapter 3 of the Constitution;

b) promptly meet their financial commitments towards municipalities;

c) provide timely information and assistance to municipalities to enable municipalities-

   (i) to plan properly, including developing and revising their integrated development plans; and
   
   (ii) to prepare their budgets in accordance with the processes set out in Chapter 4 of this Act; and

   d) comply with the Public Finance Management Act, the annual Division of Revenue Act and the Intergovernmental Fiscal Relations Act, 1997 (Act No. 97 of 1997), to the extent that these Acts regulate intergovernmental relations with the local sphere of government.13

In light of the Eastern Cape Province’s mission “To develop the most enabling provincial environment for sustainable energy investment and implementation in the country.”14 it is critical for the provincial government, through DEDEAT as the custodians of the Sustainable Energy Strategy, to support human resource capacity development with regards to facilitating renewable energy, especially within the planning and infrastructure departments of municipalities.

B) FLOW OF INFORMATION FROM NATIONAL, THROUGH PROVINCIAL AND TO DISTRICT MUNICIPALITIES, TO LOCAL MUNICIPALITIES, AND THE ALIGNMENT OF PLANNING IN ALL THREE TIERS OF GOVERNMENT

Firstly, national and provincial government have a constitutional mandate, affected through, amongst others, the Local Government: Municipal Systems Act of 200015, to ensure that they assist and capacitate municipalities in order to effectively and efficiently fulfil their functions and mandates. This becomes of vital importance where national and provincial initiatives require interventions and actions from municipalities over-and-above their normal responsibilities.

As it is, local municipalities often face capacity constraints and are not able to interpret national and provincial policies, plans and programmes in order to fulfil their role within these.

Secondly, local government is responsible for planning and governance within its area of jurisdiction. Any policy, plan and programme, and the implementation thereof, impacts on the planning and governance of a municipality. In order for national and provincial policies, plans and programmes to be effectively and efficiently implemented locally, they need to be integrated into local planning and budgets, especially when a municipality is operating on limited resources.

Thirdly, the communication channels between the various tiers of government, and between district and local municipalities, need to be maintained and used properly. Provincial governments have been tasked with providing specific guidance to metropolitan, district and local municipalities in terms of provincial strategies (derived from national policies, plans, and programmes). District municipalities have been tasked with coordinating development and service delivery within their districts and the local municipalities.

National and provincial departments have to ensure that their policies, plans and programmes are interpreted and incorporated into the annual integrated development planning process of district municipalities to ensure that these are included in the planning processes of the local municipalities within their respective districts.

C) FUNCTIONAL, EFFECTIVE RELATIONSHIP BETWEEN THE EASTERN CAPE PROVINCIAL GOVERNMENT (AS A COLLECTIVE), DISTRICT MUNICIPALITIES AND THEIR LOCAL MUNICIPALITIES – THE SHARED SERVICES MODEL IS A GOOD TOOL THAT IS SELDOM USED

Given the challenges of municipal service delivery in the face of limited financial and human resources, functional inter-governmental and inter-municipal relationships are vital. In order to optimise available human and financial resources, SALGA Eastern Cape, as organised local government, in alignment with the Local Government: Municipal Systems Act of 200016, should facilitate mutual assistance and sharing of resources among municipalities within the Province.

In order to optimise available human and financial resources, SALGA Eastern Cape, as organised local government and in alignment with the Local Government: Municipal Systems Act of 200017, should facilitate the co-operation,
mutual assistance and sharing of resources among municipalities within the Eastern Cape. These are, however, long-term interventions.

How the capacity constraints are resolved, with the specific view of encouraging the location of REI4P projects within the Eastern Cape is largely dictated by the short timeframes in terms of the selection of projects, as can be seen in Table 24. Solutions to deal with capacity constraints thus need to be short-term in nature, simple and quick to implement. The Eastern Cape Sustainable Energy Strategy (DEDEAT, 2012) includes a comprehensive set of recommendations, which includes long-term, short-term and strategic interventions. Interventions in general will be discussed in the next section dealing with the removal of barriers.

Table 24: Bid Submissions

<table>
<thead>
<tr>
<th>Bid Submission Round</th>
<th>Bid Submission Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>4 November 2011</td>
</tr>
<tr>
<td>2</td>
<td>5 March 2012</td>
</tr>
<tr>
<td>3</td>
<td>19 August 2013</td>
</tr>
<tr>
<td>4</td>
<td>18 August 2014</td>
</tr>
<tr>
<td>5</td>
<td>2015 – exact date to be confirmed</td>
</tr>
</tbody>
</table>

6. Lessons Learned During Rounds I, II & III of the REI4P

Since the announcement of the REI4P in August 2011 by the DoE there have been large learning curves for all IPPs and government departments involved in the various permitting and authorisation processes. The majority of permits and authorisations have been obtained in time for both the bid date and financial close, but not without significant effort and last-minute agitation.

IPPs accept the fact that there are permitting and authorisation processes, and that these are complex at times. Most, however, raised major concerns about the time factor, and the disparity between the various levels of government and government departments.

A core part of this study entailed the gathering of input from six IPPs that were either selected as preferred bidders in rounds one and two, or had submitted bids in round three. All of the IPPs have projects located within the Eastern Cape. The information supplied was based on the IPPs experiences with the regulatory processes at provincial and municipal (both district and local) levels within the Eastern Cape.

All feedback was collated to reserve IPP anonymity.

The concerns raised by IPPs regarding the REI4P permitting and authorisation processes can be summarised into the following areas:

1. Process timelines
2. Lack of clear guidelines
3. Eskom grid connection

6.1 Authorisation and Permitting Process Timelines

The first major stumbling block that all the IPPs highlighted is the lack of clear timeframes and deadlines to which permitting authorities must commit. Furthermore, where there are stipulated timelines for decision-making, there are many instances where the authorities do not comply with these timelines.

For example, there are instances where the stipulated timeframes for the various stages of the environmental authorisation process are not adhered to. In addition to this, any amendment to an application, be it the EIA itself or any of the specialist studies, can take the length of the full application process before a response is received. The same can be said for applications to the local and district municipalities. This is exacerbated by the fact that it is often difficult to access or communicate with the decision-makers for purposes of feedback. Timing is of the utmost importance for project planning as the DoE stipulated time frames for the REI4P are non-negotiable. IPPs suggest that an integrated process, such as the environmental authorisation process, could be used to incorporate several of the other permits in order to assist with project planning.
6.2 Guidelines

The second major stumbling block is the lack of robust guidelines for the more complex and linked authorisation processes such as land use authorisation and agricultural consent. Generic guidelines have been of limited help to IPPs. In addition, the generic guidelines have adopted a precautionary approach. These are also open to interpretation, leading to unsatisfactory permit applications which are rejected. The predominant example used is the SALA approval, where there are differences of opinion among DAFF officials and IPPs as to when it is required for certain projects. It is recommended that DAFF should provide a set of clear guidelines as to when SALA approval is required. In addition IPPs recommended that DAFF should issue guidelines in terms of LUPO and SDFs.

6.3 Eskom Grid Connection

The third stumbling block identified by IPPs relates to connection into the Eskom grid. In many cases Eskom is not able to supply the IPPs with accurate information, cost estimates and timelines. Eskom argues that they cannot guarantee that the information they provide the developer prior to their bid submission will remain unchanged. This is because they can only do their accurate planning once they know the number of projects that have been approved and their areas. The consequence of this conundrum is that changes in the cost estimates provided prior to the bid can have a significant impact on the viability of a project.

This is a challenge for which there is no immediate clear cut solution. IPPs have noted that there are more efficient and cheaper grid connections which are standard in both the United States and United Kingdom, but are not accepted by Eskom. IPPs recommended that Eskom should have their methodologies reviewed in order to improve and expedite their grid applications.

7. Removal of Barriers: Interventions

The recommendation made here in terms of interventions is a culmination of input from, and discussions with municipalities, preferred bidders during Bid Rounds I & II; IPPs that submitted bids in Round III; a review of the report on Positioning the Eastern Cape as the Epicentre for Renewable Energy in South Africa; the Eastern Cape Sustainable Energy Strategy; and the Eastern Cape Sustainable Energy Baseline Study.

7.1 INTERVENTION 1: Single point of contact for provincial departments, municipalities and IPPs

This intervention is a critical recommendation, and has also been recommended in both the report on Positioning the Eastern Cape as the Epicentre for Renewable Energy in South Africa and the Eastern Cape Sustainable Energy Strategy. There is a definite need for a central co-ordinating person/unit that can act as a single point of contact for provincial departments, municipalities and IPP’s with regards to any renewable energy project, but specifically to assist with smoothing out the REI4P permitting and authorisation processes within the Eastern Cape. As custodians of the Sustainable Energy Strategy for the Eastern Cape Province, DEDEAT has the mandate to promote the development of renewable energy projects within the Province. It therefore makes sense to locate such a person/unit within the renewable energy unit of DEDEAT.

The preferred bidders for Round III of the REI4P have recently been announced, which means that there are many preferred bidders that will need to get all the necessary permits and authorisations in place during the next six to nine months in order to achieve financial close by 30 July 2014. There are more potential Round IV bidders that need to have the necessary permits and authorisations in place during the next ten months in order to submit their bids by 18 August 2014. In light of the urgency in terms of facilitating these processes, this intervention becomes critical.

7.2 INTERVENTION 2: Interpretation of National Policies, Plans and Programmes

Municipalities are responsible for on-the-ground governance of most of South Africa, and for the implementation of national and provincial programmes and initiatives. Municipalities within the Eastern Cape are generally consumed by the challenge of alleviating poverty and delivering much needed basic services to their communities. Consequently they do not have much spare capacity to interpret or translate national and provincial programmes and processes into local requirements and action plans, let alone implement these.

Provincial Government, along with National Government, is bound by the Constitution to provide municipalities with the support and assistance required to ensure that they can fulfil their primary mandates and any additional responsibilities placed on them through national and provincial programmes.

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22 DBSA, 2011
23 DEDEAT, 2011
24 Constitution of the Republic of South Africa No. 108 of 1996
25 DBSA, 2011
The REI4P is a complex programme, with input and support required from provincial departments and municipalities. The programme furthermore has a major impact on municipalities’ areas of jurisdiction, municipal planning and service delivery. In light of this, immediate provincial support needs to be provided to municipalities in terms of setting provincial and municipal targets for renewable energy procurement, and developing an efficient enabling system for renewable energy decision making, including a strategic environmental assessment and municipal mechanisms for enabling appropriate zoning. This recommendation is already mentioned in the report on Positioning the Eastern Cape as the Epicentre of Renewable Energy in South Africa25.

7.3 INTERVENTION 3: REI4P Permits/Authorisation Process Flow Diagram

The permitting and authorisation process related to the REI4P has been summarised in a flow diagram, indicating where in the process the various permits and authorisations need to be. The flow diagram includes the basic action required by the relevant provincial department(s) and/or municipality. It is recommended that this be printed as posters and circulated to all municipalities and relevant provincial departments as a point of reference.

The process flow diagram poster has been included as Annexure A to this report.

7.4 INTERVENTION 4: Checklist for provincial departments and municipalities

In addition to the process flow diagram (as per Intervention 1 and Annexure A), and on request from the municipalities, a checklist was developed for provincial departments and municipalities to provide guidance in terms of actions required from provincial departments and municipalities. The checklist corresponds to the flow diagram. For each permit/authorisation, the checklist includes:

a) the projects for which the permit/authorisation is relevant (wind, solar photovoltaic, biogas etc.);

b) the responsible/enabling government role player; and

c) the primary action required by the relevant role player.

The checklist has been included as Annexure B to this report.

7.5 INTERVENTION 5: Provision of time frames and deadlines

Decision-making time frames have been highlighted as the major stumbling block in the permitting and authorisation process. Provincial departments and municipalities can significantly reduce the problem by providing applicants with clear time frames and a deadline for response. On receipt of an application or notification by applicants, the relevant official should understand the requirements and provide them with a deadline as to when they can anticipate a response.

In order to enable meaningful, accurate and thorough planning, permits, authorisations and approvals required in order to comply to bid criteria (refer to Figure 10 and Table 23) should be finalised two months prior to bid submission, i.e. approximately mid-June. Permits, authorisations and approvals required in order to reach financial close (refer to Figure 10 and Table 23) should be finalised two months prior to financial close i.e. approximately end of April.

7.6 INTERVENTION 6: Intergovernmental support

Due to the urgency in terms of the required provincial and municipal capacity to facilitate the location of REI4P projects within the Eastern Cape, it is recommended that key officials from each district municipality in the Province be taken through the entire REI4P process in order to be able to provide assistance to local municipalities within their districts as and when required.

A variation of this could be, through SALGA Eastern Cape, to establish agreements between local municipalities which have REI4P projects from Rounds I & II located in their areas of jurisdiction, to assist local municipalities that have to deal with such projects for the first time.

7.7 INTERVENTION 7: Provision of information

The need for provincial departments and municipalities to specify the information and documentation that they require for their respective permitting and authorisation processes has been highlighted by many of the IPPs.

An example of this is the approval required in terms of Section 53 of the Minerals Petroleum Resources Development Act. During Round I of the REI4P there were no guidelines, whereas by the time Round III was announced the Department of Mineral Resources (DMR) had drafted a list of information and supporting documents required when submitting an
application. This type of upfront specification of information required significantly reduces the need for time-consuming amendments and lengthy, drawn-out correspondence.

The Muni-MEC forums, as well as other intergovernmental relations (IGR) processes, provide a good platform for the Eastern Cape Provincial Government to share such information. SALGA Eastern Cape, as organised Local Government, should also play a facilitating role in this regard through their provincial working groups.

7.8 INTERVENTION 8: SALGA to Ensure Municipal Involvement in National Planning With Regards to the REI4P

The South African Local Government Association (SALGA) is an autonomous association of municipalities with a mandate derived from the Constitution of the Republic of South Africa. This mandate defines SALGA as the voice and sole representative of local government. SALGA interfaces with Parliament, the National Council of Provinces (NCOP), Cabinet as well as Provincial Legislatures26.

In order to improve communication between the relevant national departments, the Eastern Cape Provincial Government, and municipalities, it is recommended that SALGA Eastern Cape, in line with its mandate to represent municipalities within the province, take immediate steps to ensure that they establish clear lines of communication with regards to the REI4P in order to ensure that municipalities:

a) understand their responsibilities in terms of the process;

b) are able to provide input into the planning around and location of projects; and

c) are able to liaise with national and provincial departments if and when needed.

The Department of Local Government and Traditional Affairs, through both Muni-MEC Technical and Political, should ensure alignment between provincial and local planning.

7.9 INTERVENTION 9: Integration of Permitting/Authorisation Processes into the EIA process

The final recommendation by various IPPs is that permitting and authorisation should be integrated into a single process, using the EIA as the overarching framework. Such a holistic approach will ensure that all blanketed processes will be subjected to identical timelines, ensuring that they will be addressed early within the whole REI4P process.

In effect, blanketed authorities will be well informed and engaged early on in the process, enabling them to provide constructive comment. Such an approach can help alleviate the added pressure of insufficient government human resource capacity, as all levels of government are experiencing increased capacity of applications as forecasted by the Integrated Resource Plan (IRP).

It is therefore recommended that DEDEAT, through the Office of the Premier, motivates for the integration of permitting and authorisation processes into the EIA process.

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26 SALGA, 2011
Mapping of Provincial and Municipal Permitting and Authorisation Processes for IPP Projects in the Eastern Cape

November 2013

Works Cited


Please visit: www.greenenergy-ec.co.za for the following:

ANNEXURE A: REI4P Permitting and Authorisation Processes
ANNEXURE B: Checklist for Municipalities and Provincial Departments
Department of Economic Development and Environmental Affairs
Head Office and Regional Offices

- **Beacon Hill Office** - Tel: (043) 605 8000 / (043) 605 7058
  Hockey Close, King Williams Town

- **Amathole Regional Office** - Tel: (043) 707 4002
  Alderwood House, Palm Square Business Park, Beacon Bay, East London

- **Cacadu Regional Office** - Tel: (041) 508 5808 / 508 5800
  C/O Belmont Terrace & Castle Hill, Central, Port Elizabeth

- **Chris Hani Regional Office** - Tel: (045) 838 3983
  Old Royal Hotel Building, Cathcart Road, Queenstown

- **O.R. Tambo Regional Office** - Tel: (047) 531 1191
  Cnr. Owen & Leeds Street, Botha Sigcau Building, 5th Floor, Mthatha

- **Ukhahlamba Regional Office** - Tel: (051) 633 2901
  10 Smith Street, Aliwal North

- **Alfred Nzo Regional Office**
  Maluti College of Education, Maluti