



CITY OF CAPE TOWN | ISIXEKO SASEKAPA | STAD KAAPSTAD

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BRIEFING DOCUMENT FOR ENVIRONMENTAL ASSESSMENT PRACTITIONERS (EAPs)

Environmental Resource Management Department
City of Cape Town

January 2010

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Procedures for obtaining City of Cape Town comment on Environmental Impact Assessment and Mining and Prospecting Applications

January 2010

1. BACKGROUND TO AND PURPOSE OF THIS DOCUMENT

1.1 Background

In terms of the Environmental Impact Assessment (EIA) Regulations promulgated in terms of the National Environmental Management Act (Act No. 107 of 1998) (NEMA), the City Of Cape Town as an ‘Organ of State’ is automatically a registered interested and affected party (I&AP) and entitled to comment on environmental assessment processes of interest to it. Obtaining comment from the City Of Cape Town on environmental assessment applications can, however, be a complex process and if not done correctly may contribute to delays in Environmental Assessment (EA) completion. For the city officials, having to deal with many applications coming in for comment, all with their own deadlines, also poses its challenges. At present, requests for comment are frequently sent to the wrong district office, or are sent to the city manager – who then forwards them onto the Environmental Resource Management (ERM) department (Environmental Management Systems Branch) – who then need to redirect the request for comment to the appropriate district official (Environmental & Heritage Management Branch¹). These unnecessary delays often result in the correct official only receiving the request for comment a few days before the deadline.

1.2 Purpose

This guideline has been compiled to inform Environmental Assessment Practitioners of the correct and most effective and efficient approach to obtaining timeous City comment on Environmental Assessment (EA) documentation.

1.3 Structure

Section 2 sets out the key principles relevant to commenting processes in the City Of Cape Town.

Section 3 (summarised in Addendum 2), sets out the commenting requirements.

¹ See Addendum 1 for a summarised outline of the various branches in the Environmental Resource Management Department.

2. KEY INFORMATION AND PRINCIPLES THAT RELATE TO CITY OF CAPE TOWN OFFICIAL'S DELEGATIONS TO COMMENT

It is important for all EAPs to understand the following:

2.1 The City is an authority (or 'Organ of State') and is entitled to comment on applications for environmental authorisation.

As an authority and 'Organ of State', the City must be consulted about any project, process or programme that may affect it.² The NEMA EIA Regulations specifically state that all organs of state's names must be recorded in the register of interested and affected parties that must be consulted with during the EIA process. The City therefore does not have to formally register as an Interested & Affected Party (I&AP) in order to participate in commenting processes. Thus when EAPs are appointed to undertake any Environmental Assessment (EA) process on land within the City boundary or on land which may have some impact on or be of interest to the City, then the EAPs must automatically include the City on its register of I&APs.

2.2 Delegated authority is needed to submit City comment

The City is a legal entity (juristic person) and can only speak with one voice. Any comment that purports to represent the City's view must be made in terms of an appropriate delegation.

City officials are delegated to perform certain functions. Authority to comment on environmental applications, in terms of NEMA, is delegated to the Director: Environmental Resource Management. He has sub-delegated the relevant functions to city officials of the Environmental & Heritage Resources Management Branch in the 8 planning and administrative districts of the City. (Details on these officials and their areas of jurisdiction are given in Addendum 1).

Delegations to submit comment on applications submitted in terms of the Minerals & Petroleum Resources Development Act is also given to the Director: ERM and sub-delegated to the district officials.

General contact details for the city are as follows:

Environmental Resource Management Department
P O Box 16548
Vlaeberg, 8018

Web:

<http://www.capetown.gov.za/en/environmentalresourcemanagement/Pages/default.aspx>

Tel: 021 487 2200 (Director)

² NEMA S24 (4) (a) (v) states that '...all organs of state in all spheres of government that may have jurisdiction over any aspect of the activity,' (should be provided) 'with a reasonable opportunity to participate in those information and participation procedures'. The NEMA EIA Regulations also specifically state that all organs of state's names must be recorded in the register of interested and affected parties that must be consulted with during the EIA process

Fax: 021 487 2578
Email: enviro@capetown.gov.za

2.3 Submission of an Integrated City comment

An integrated City comment is essential due to the diversity of issues that need to be addressed by decision makers. An integrated City comment is one that includes comment from several different departments within the City whose operations may affect, or be affected by the proposed development. Input from relevant departments will depend on the type, scale and location of the proposed activity, but it is the delegated official's responsibility to integrate the comment from these departments. The official assigned to compiling the integrated comment will identify which departments should make comment on the NEMA or MPRDA application, with the assistance of the EAP when necessary.

2.4 Comments coordinated and submitted from the ERMD offices

Important: *Comments should be submitted from the appropriate Environment & Heritage Management Branch (E & HM) office and be signed off by the relevant Head or principal staff member (Environmental and Heritage Management Branch). EAPs must therefore always first contact the Head of the Environmental & Heritage Management Branch of the district in which the project is to take place (see the map in Addendum 1).*

The head office Environmental Management Systems (EMS) Branch will coordinate comment in exceptional cases, such as applications for environmental authorisation for nuclear facilities or other major projects of a city wide and strategic nature. The Heads (E&HM) will guide the EAP as to when the EMS Branch needs to coordinate comment.

2.5 Comments submitted by City officials must be in line with City policy

City officials will provide comments that are in line with City policy, by-laws and spatial plans.

2.6 Officials participation in and input to public meetings and/or site visits

Officials should be invited to public meetings and/or site visits that would assist them to understand the nature of the proposed project and the issues of concern. Participation in such meetings is at the discretion of the official. In accordance with the requirements of the EIA Regulations, input made by the official during the course of these meetings must be noted and taken into consideration during the course of the assessment, but official City comment is only made once the official is requested to compile an integrated comment on a written BA or Scoping or EIA report.

2.7 Early input of City Officials

The general principle that applies, is that early identification and consultation of the relevant Head and assigned District official in the E&HM Branch of ERMD is

appropriate. Such consultation may take place before the initiation of any formal EIA process. This approach may assist with timeous identification of possible problem areas or issues and also enable the official to identify, and if necessary, alert other departments which may need to submit comment. As a minimum, the Head and assigned official should be alerted as soon as possible to the fact that an application will be submitted for comment, and the anticipated timeframes for the public and authority involvement process.

It should be noted that no City official should be expected to give any ruling on the triggering or not of the NEMA Regulations or of any indication of the likely outcome of any NEMA process.

2.8 Commenting periods

The regulations allow for a 40 day comment period on draft Basic Assessment or draft Scoping or draft EIA reports. If the City does not receive the documents on the day of notification, a request for an extension to the comment period may be made.

2.9 The role and function of Councillors, Sub Councils, Portfolio committees and the Mayoral Committee

As authority to comment on environmental applications, in terms of NEMA and the MPRDA, is delegated to the Director: Environmental Resource Management, comments made by Councillors or Sub-Councils do not represent the mandated City view, unless authorised to do so by Council. Councillors, sub council and committee members are however, at liberty to make comments in their personal capacity. These comments should be treated in the same way as any other comment made by a member of the public.

In exceptional cases, the Director: ERMD may elect to refer any matter to a political structure for a decision (section 61 of the Municipal Systems Act). This would be appropriate in cases where the proposed activity would have strategic, long term implications for the CCT area which justify political consideration of the issues. For example, City comment on the proposed construction of additional nuclear power facilities and storage of nuclear waste at Koeberg has long term implications which involve political consideration.

2.10 Comment by City departments on City applications

City departments may comment on City applications. The various departments' comments will be integrated by the assigned District official. (See also sections 2.1 and 2.3).

Further detail on commenting processes is given in the following section.

3. PROCESS TO OBTAIN COMMENT FROM CITY OFFICIALS ON NEMA APPLICATIONS FOR ENVIRONMENTAL AUTHORISATION

A summary of the process is shown in Addendum 2. The headings a) – g) (below) correspond to those in the Addendum.

Preparation Stage

a) Contact Environmental & Heritage Head

The appropriate official to comment on an application will be identified by the Head of the district concerned. Therefore, the first task of the EAP is to contact the relevant Head, alert them to the fact that an application is coming in for comment and request identification of the district official who will be responsible for compiling the integrated comment. The request to the Head may be made by phone when possible (staff are not always in their offices), but must always be backed up with an email request to facilitate tracking and further correspondence.

b) Contact assigned District Official

The official should be alerted to the nature and location of the forthcoming application for comment and given an indication of the anticipated project timing and milestones, particularly those relating to commenting deadlines. At this preparatory stage, the official may be able to alert the EAP as to sources of information (city officials and documents/maps, policies or plans) that will be of particular relevance to the application. The official will, in most cases, be able to assist the EAP in identifying the appropriate people to consult. The official may also be able to identify particular ‘red flag’ issues that may need to be taken into account in the preparation of the application and any Background Information Documents. The official may also give the EAP an indication of the number and format of reports that will be needed to enable timeous integrated city comment.

c) Consult line departments if necessary

It is usually necessary for the EAP or applicant to contact city line / service departments to obtain information about service and infrastructure capacity as this information needs to be included in Notices of Intent, Basic Assessment reports and Scoping and EIA applications. Points to note are given below:

- Provide the line departments with the necessary information. The project proponent/applicant and the EAP need to ensure they are well prepared and informed prior to consulting city line departments and have identified all feasible project alternatives, and the issues that may be associated with them. The applicant must ensure that the city is provided with whatever technical information is needed to assess the potential implications for city services and infrastructure. The EAP and proponent must obtain and provide as much relevant project data as possible. A clear map of the proposed site and region must be supplied to the line department officials, together with the erf number and Surveyor General’s Code. Where appropriate, photographs (surface and/or aerial) should also be supplied.

- Status of line department comment. It should be noted that any input by the officials at this stage does NOT constitute approval or support of the project, and should be regarded as preliminary – as further information may come to light during the course of the EA process that may change the project description or alternatives and thus the possible impact on city services and infrastructure. If the project also has to go through a LUPO application, the officials will have to assess the project again at a more detailed level, and it is only at this stage that the merits of the application will become clear.
- What if there are conflicting opinions between the departments?

A commenting protocol has been compiled to guide Environmental Resource Management staff, as well as other City line departments on the processes to follow when commenting on NEMA or MPRDA applications. In the City commenting protocol, processes have been suggested to deal with situations where there are conflicts of opinion between departments. The E&HM official who is responsible for compiling the integrated comment, will manage the process of addressing situations where there are conflicting comments. The EAP should however also facilitate the process of obtaining a final integrated negotiated comment from the City.

- What if planning officials refuse to comment on the EA as they are obliged to comment and assess when the application goes through the LUPO process?

Planning officials should not refuse to comment on EA applications. It is however important to recognise that planning officials will not be in a position to comment on the merits of the case if they still have to process a LUPO application. They should however raise issues to be addressed during the EIA process and provide technical and factual input regarding the planning for the area in question. It must be remembered that over and above providing comments to the EAP, the City officials are at the same time providing comments to the DEA&DP in terms of City's co-operative governance mandates in terms of the Constitution (inter alia, Section 41 of Chapter 3 of the Constitution refers). EAPs should therefore ensure that the EA process plan identifies all opportunities for integrating the EA and LUPO processes, as much as this is possible. If this is done, roles and responsibilities in terms of what types of comment can be submitted when, can be determined and agreed on early in the process.

The commenting protocol, compiled for ERM staff as well as other line departments, recommends that Spatial Planning and Land Use Management staff are alerted early to applications that will also have to proceed through a LUPO application. The E&HM official will, when necessary, consult with Land Use Management staff about the implications of the proposed project. It is also essential that Land Use Management staff are timeously informed about the findings and recommendations of the draft Basic or Scoping/EI assessment as the recommendations may have implications for land use or urban form. The competent authority frequently includes EA recommendations in conditions associated with the Environmental Authorisation which the City Of Cape Town then has to adhere to. If the conditions are contrary to land use or planning policy,

this can present problems. Thus the E&HM official and the EAP must ensure that any recommendations made in the EIA are consistent with city policy and feasible in terms of implementation. As a minimum, Land Use Management staff should be able to comment on draft EIAs in this respect – even if they cannot give an opinion on the overall acceptability of the application until it goes through the formal LUPO process.

d) *Consult assigned official about the number of reports required.*

The EAP must contact the district official and ask how many paper copies of the report are required. Unless the district official indicates differently, a minimum of 2 bound paper copies must be supplied. All diagrams, maps or figures that are meant to be in colour, must be given in colour. A photocopied black and white version of a colour map/diagram is not acceptable and may contribute to delays in the officials commenting on the documents. A rewritable CD or DVD must also be supplied with all reports and maps thereon. If the EAPs have a website, an electronic copy of the report must be placed on the website and the link address must be given to the district official. When placing the document onto the website, the EAPs must try, as far as possible, to divide the document into manageable portions to facilitate easy downloading. If the reports are emailed to the district official, the EAPs must bear in mind that the city's network will not accept emails of 2MB or greater without a delay. They will only be sent to the official at off peak hours overnight. The provision of a website address does not replace the requirement for the EAP to produce the minimum hard copies and DVD.

Commenting Stage

e) *Submit documents for comment to the assigned district official*

The EAP must submit the copies of the BA or Scoping or EIA report directly to the assigned district official for comment.

The EAP must request acknowledgement of receipt or confirm telephonically with the official that the report has been received. As for all reports, it is necessary to ensure that it is absolutely clear as to

- The nature and stage of the application
- The location of the proposed project (Erf numbers and SG21 code)
- Deadlines for comment.
- How and to whom comment must be submitted.
- In addition, the EAP must identify which line departments – and the specific individuals involved – have been consulted in any way about the project. This information will assist the official to ensure that these officials are given the opportunity to comment on the BA or Scoping or EIA report.

f) *If requested, arrange and/or participate in supplementary information exchange initiatives*

The EAP may be requested (by the district official) to participate in information sharing meetings about the project. They may also be requested to arrange a site visit

for key officials. These meetings will help to ensure an informed and timeous comment. Each project will differ in its requirements.

Importance of submitting all required information timeously: As the official has to obtain comment from a variety of departments, and also possibly arrange meetings with these departments to discuss the application, it is essential that the BA or Scoping or EIA reports for city comment reach the district official as soon as possible. If there is any missing information or the documents reach the official only a few days after the start of the public/authority commenting period, the city may need to request an extension to enable collection and collation of the relevant comment. The start of the comment period will, in this situation, be regarded as the day on which the missing information / documents are received by the district official in the city.

Once all comments from City officials have been received, the district E&HM official will compile an integrated comment. The original comments from the individual line departments may be attached to the integrated comment.

The official will endeavour to obtain comments from all relevant departments, but there are occasions when comment is not obtained for a variety of reasons. The official will make it clear, in the integrated comment given to the EAP, as to which departments have and have not commented. If a critical line department has not commented, the district official may decide to escalate the request for comment to director level or higher.

g) *Acknowledge receipt of the comments*

It is essential that the EAPs acknowledge receipt of the City's comments. Acknowledgement of receipt may be in the form of an email, fax or letter for the attention of the relevant official indicated as the contact person on the City's comment. Fax or letter are however, more consistently reliable. This applies to comments submitted in terms of both NEMA and the MPRDA.

4. PROCEDURES FOR OBTAINING CITY COMMENT ON MINING OR PROSPECTING APPLICATIONS IN TERMS OF THE MINERALS & PETROLEUM RESOURCES DEVELOPMENT ACT.

Decision-making on mining in terms of the Mineral and Petroleum Resources Development Act (Act No.28 of 2002 (MPRDA) is the responsibility of the Department of Minerals Resources. It is however, also a legislative requirement that the prospecting or mining company comply with LUPO. Activities associated with prospecting or mining may also require authorisation in terms of the NEMA EIA Regulations.

The principals and procedures outlined in section 2.1 – 2.8 are also applicable to city comment on prospecting or mining applications.

The Department of Minerals Resources has been requested by the City, to send mining application documents requiring comment within the CCT area to the ERMD: **Environmental Management Systems (EMS) Branch** (see contact details in

Addendum 1). The EMS branch is thus the contact point for the Department of Mineral Resources.

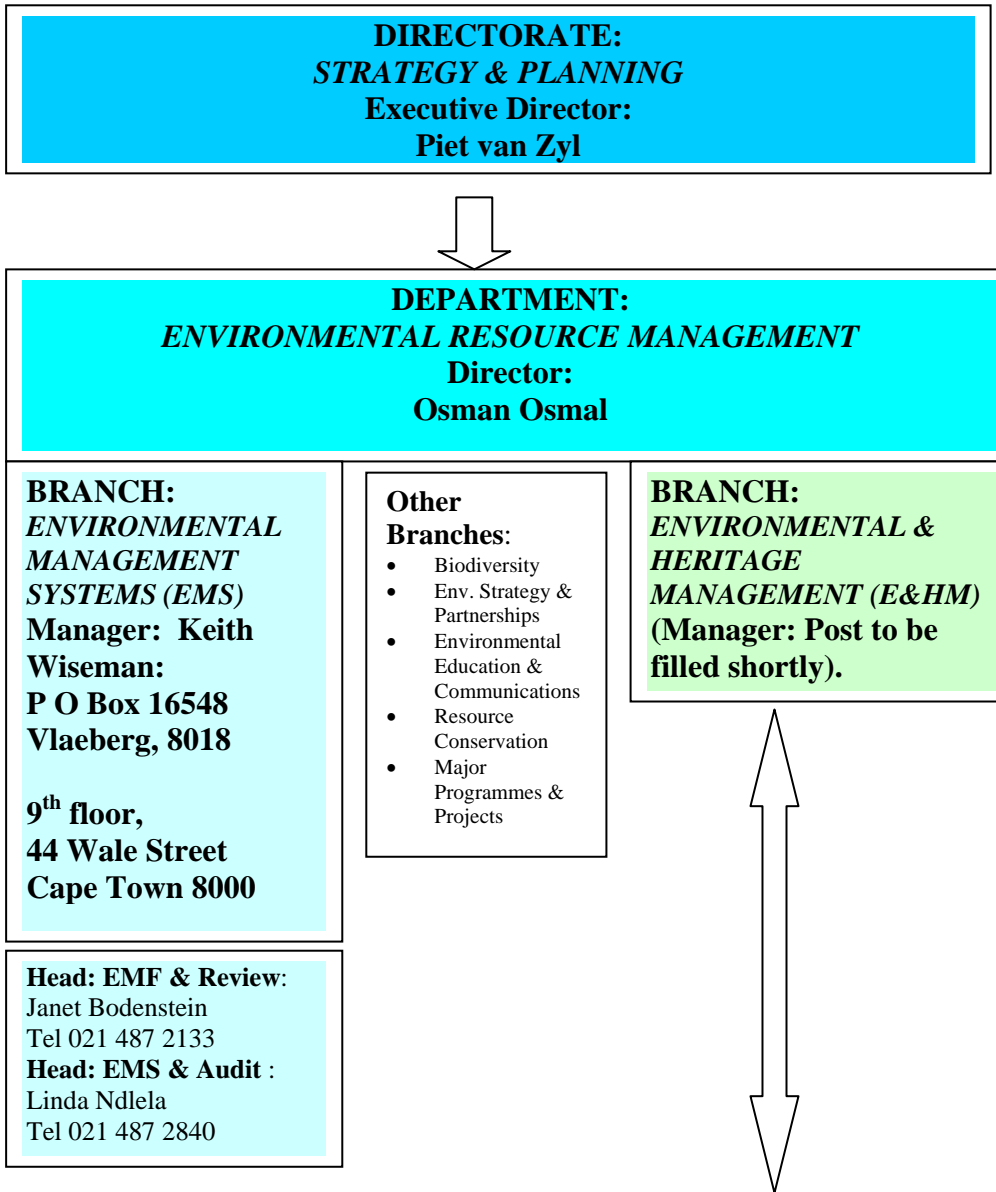
When the document arrives in the EMS Branch, the type of application is noted, its location is entered onto a GIS map and then the EMS official arranges collection of the documents by the relevant district E&HM official, who takes over the process of compiling an integrated comment. The process for compilation of an integrated comment is now the same as for a NEMA application. Once an integrated comment has been compiled by the relevant district E&HM official, it will be sent back directly to the EAP, the Department of Mineral Resources and copied to DEA&DP.

5. CONCLUSION

This guideline, together with the commenting protocol compiled for City staff, is intended to ensure a more efficient and effective process for obtaining comment on NEMA and MPRDA applications. Adherence to the guidelines will enable City staff and EAPs to work together and minimise unnecessary delays in the overall EIA process.

ADDENDUM 1

Simplified Environmental Resource Management Department Structure for purposes of informing Environmental Assessment Practitioners on procedures for obtaining City comment on NEMA and MPRDA applications



HEADS E& HM (see map for contact details)			
Districts A & D	Districts G & H	Districts E & F	Districts B & C
<p><i>Mark Callaghan</i> Mark.Callaghan@capetown.gov.za</p>	<p><i>Andy Greenwood</i> Andrew.Greenwood@capetown.gov.za</p>	<p><i>Azanne van Wyk</i> Azanne.vanWyk@capetown.gov.za</p>	<p><i>Pat Titmuss</i> Pat.Titmuss@capetown.gov.za</p>

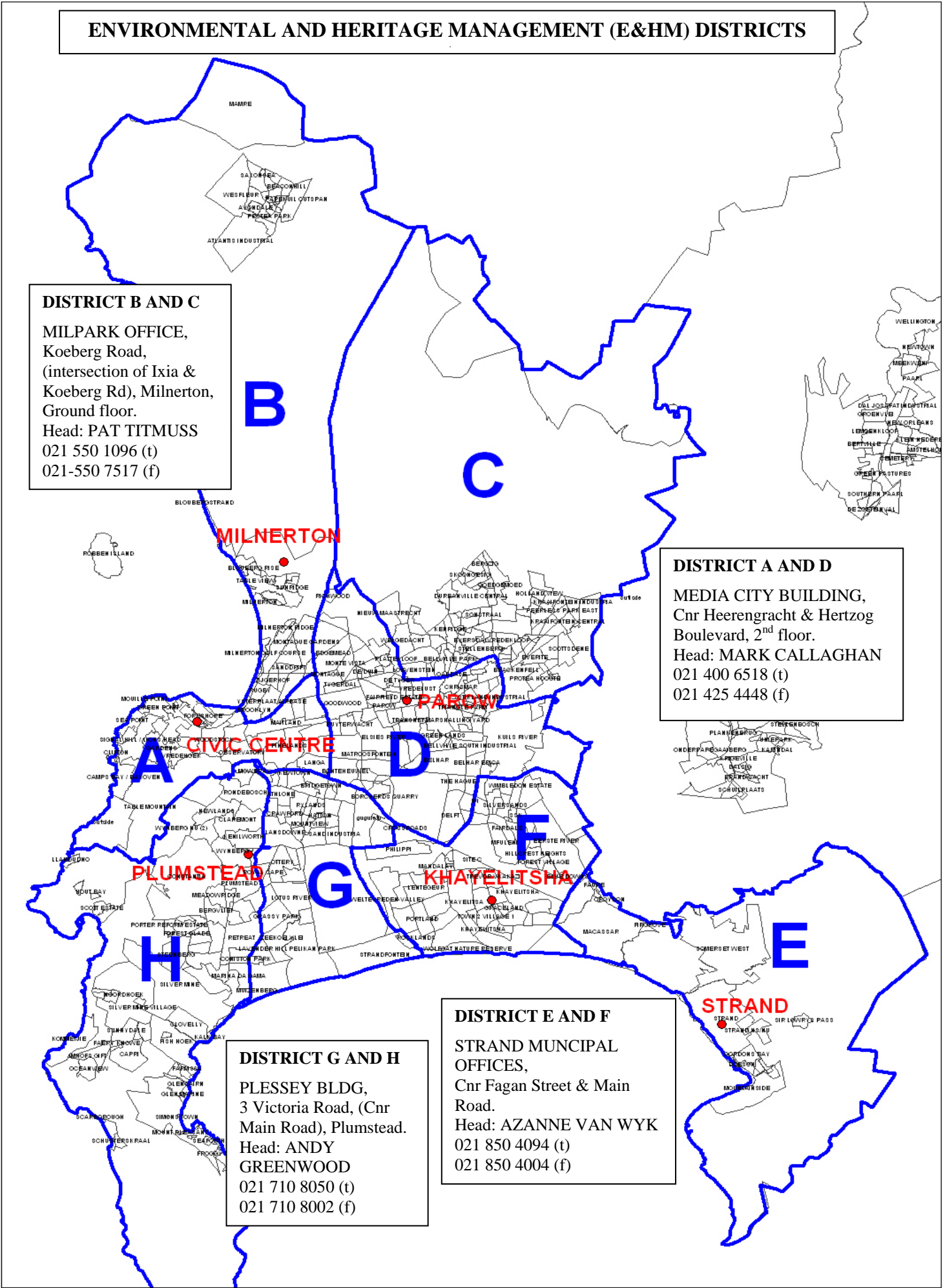
ENVIRONMENTAL AND HERITAGE MANAGEMENT (E&HM) DISTRICTS

DISTRICT B AND C
 MILPARK OFFICE,
 Koeberg Road,
 (intersection of Ixia &
 Koeberg Rd), Milnerton,
 Ground floor.
 Head: PAT TITMUSS
 021 550 1096 (t)
 021-550 7517 (f)

DISTRICT A AND D
 MEDIA CITY BUILDING,
 Cnr Heerengracht & Hertzog
 Boulevard, 2nd floor.
 Head: MARK CALLAGHAN
 021 400 6518 (t)
 021 425 4448 (f)

DISTRICT G AND H
 PLESSEY BLDG,
 3 Victoria Road, (Cnr
 Main Road), Plumstead.
 Head: ANDY
 GREENWOOD
 021 710 8050 (t)
 021 710 8002 (f)

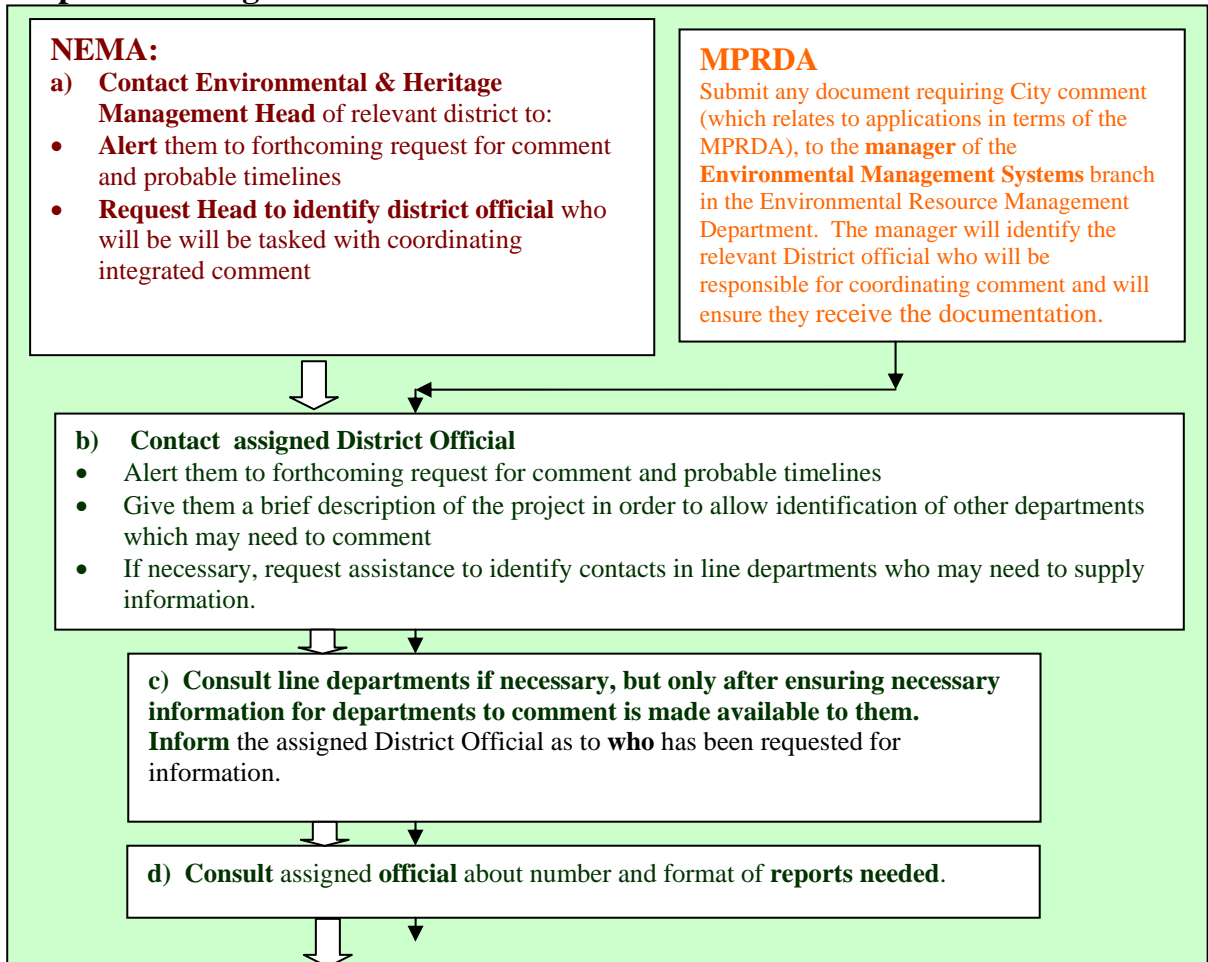
DISTRICT E AND F
 STRAND MUNICIPAL
 OFFICES,
 Cnr Fagan Street & Main
 Road.
 Head: AZANNE VAN WYK
 021 850 4094 (t)
 021 850 4004 (f)



ADDENDUM 2

Summary of the process to submit applications to CCT for comment

Preparation Stage



Commenting Stage

