

Comments regarding the  
Draft National Spatial Development Framework

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## **A) INTRODUCTION**

### ***About the Centre for Applied Legal Studies***

1. The Centre for Applied Legal Studies (“CALS”) welcomes the opportunity provide the Department of Rural Development and Land Reform and the Department of Panning Monitoring and Evaluation comments on the Draft National Spatial Development Framework 2019 (“Draft NSDF”).
2. CALS’ vision is a socially, economically and politically just society where repositories of power, including the state and the private sector, uphold human rights. CALS practices human rights law and social justice work with a specific focus on five intersecting programmatic areas, namely Basic Services, Business and Human Rights, Environmental Justice, Gender, and the Rule of Law. It does so in a way that makes creative use of the tools of research, advocacy and litigation, adopting an intersectional and gendered understanding of human rights violations.
3. CALS’ Environmental Justice Programme, in particular, works with mining-affected communities in addressing the environmental, social and economic impact of mining. A central focus of our work has been on understanding and providing input into local economic development and environmental spatial planning. We have published a series of research reports on the thematic areas of environmental management and extractives. Additionally, our head of programme wrote his PhD (Law) thesis on the integration of environmental management and spatial planning laws in areas subject to land-use conflicts.

4. These focused comments will draw on CALS' experience working on issues of environmental justice in the rural developmental landscape, in particular in relation to public participation and respect for constitutionally enshrined human rights.
5. These comments will be informed by and tested against eight fundamental parameters/elements rooted in and adapted from the respected landscape approach. These elements include the following: ecosystem-driven integration and multi-functionality; sectoral integration; scale and spatial awareness; co-operative governance; multi-stakeholder participation and collaboration; capacitation and continual learning; compatibility examination and analysis; and finally, transparent monitoring and access to information.

## **B) ECOSYSTEM-DRIVEN INTEGRATION AND MULTI-FUNCTIONALITY**

6. The concept of 'integration' can be broken up into two central facets, environmental and sectoral integration. From an ecological perspective, we understand that the environment does not operate in isolation but is rather a series of intricate and interconnected ecological systems that rely on each other to survive. The landscape approach adopts an ecosystem-driven and spatially explicit methodology in an attempt to reconcile the needs, preferences, and aspirations of multiple stakeholders.<sup>1</sup> Conservation, sustainability and equity are core elements of the NEMA recognised principle of Integrated Environmental Management (IEM), practically promoting the synthesis of these elements into developmental decision-making and the understanding of dynamic interconnected ecosystems.<sup>2</sup> IEM is thus a testament to an integrated understanding of how ecosystems operate and what is required to sustain a continuation of the various process needed in order to ensure sustainability.
7. This links with the understanding of sustainable multifunctional landscapes, which are 'created and managed to integrate human production and resource use into the ecological fabric of a landscape maintaining critical ecosystem function,

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<sup>1</sup> H Korn, K Bockmühl & R Schliep *Report of the European expert meeting in preparation of SBSTTA-15*, 26-28 September, 2011. Bonn, Germany: Bundesamt für Naturschutz; 2011.

<sup>2</sup> S2(4)(b) states that 'Environmental management must be integrated, acknowledging that all elements of the environment are linked and interrelated, and it must take into account the effects of decisions on all aspects of the environment and all people in the environment by pursuing the selection of the best practicable environmental option.' See F P Retief & LA Sandham 'Implementation of Integrated Environmental Management (IEM) as Part of Integrated Development Planning' (2001) 8 *Journal of Environmental Law and Policy* 77,79.

service flows and biodiversity retention'.<sup>3</sup> Ecosystem-driven integration and multi-functionality also assesses the conservation planning approach and the principles utilised as the basis for the planning tools. As an example, the thematic identifier would assess whether the conflict between conservation and development has been identified as a threat, and whether a pre-emptive approach to development is taken. When considering the "ecosystem-driven integration and multi-functionality" parameter in relation to the NSDF there appears to be a number of positive reflections, as well as some challenges.

8. First, the concepts of ecosystems, ecological footprints, ecological infrastructure and ecosystem services are appropriately defined, and are satisfactorily recognised with relationships between these concepts clearly identified. Of particular importance is that the framework of sustainable development is recognised within this context. The only clarity that is required is whether the version of sustainable development that is recognised as a pillar of this framework is "ecologically" sustainable development, in line with s24 of the constitution. This conception of sustainable development was affirmed by the Constitutional Court in *The Constitutional Court in Fuel Retailers Association of Southern Africa v Director-General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province and Others*<sup>4</sup> Securing ecologically sustainable development recognises the priority of the environmental element of sustainable development. Therefore, in an oft-cited passage, the court stated that the social and economic elements of development cannot be achieved 'on a deteriorating environmental base.'<sup>5</sup>
9. Second, the recognition of strategic water source areas and stressed catchments is particularly important in light of the recent Mabola judgment<sup>6</sup> which outlined the importance of strategic water resource areas, the role they play and the threat they are currently under. These areas have a raised status and must be recognised as important not only for their contribution to ecological stability but also for human-centred development.

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<sup>3</sup> P J O'Farrell & P M L Anderson 'Sustainable multifunctional landscapes: a review to implementation' (2010) 2 *Environmental Sustainability* 59. Also see H Wiggering et al 'The Concept of Multifunctionality in Sustainable Land Development' in K Helming & H Wiggering (eds) *Sustainable Development of Multifunctional Landscapes* (2003) 5.

<sup>4</sup> 2007 (10) BCLR 1059 (CC).

<sup>5</sup> *Ibid* at para 44.

<sup>6</sup> *Mining and Environmental Justice Community Network of South Africa and Others v Minister of Environmental Affairs and Others* (50779/2017) [2018] ZAGPPHC 807; [2019] 1 All SA 491 (GP) (8 November 2018).

10. Third, the effect of climate change is included within the concept of waters scarce regions. Additionally, the linkage between climate capability, resilience and threshold assessments is commendable. This is particularly important when connecting land and its utility, both in the environmental sense but also the social and transformative sense. Ecosystem services and functional ecological infrastructure is well respected within the Draft NSDF. That being said, new coal-fired power station builds are identified in the Draft NSDF as part of the country's developmental and energy landscape. These builds are enormous climate and water risks yet these industries are still being approved and supported by the state. This indicates that there is a fundamental conflict in the proposed developmental growth path advocated for in the Draft NSDF. Limited natural resources such as clean water and air does not fall within the logic of a highly industrialised economy based on mineral extraction, coal fired power and high atmospheric pollutants.
11. The high level detail given to climate change issues and causes seems to focus on describing the status quo. What is of particular interest is the recognition of the projected rise in temperatures between 1 and 4 degrees Celsius. This movement does not, however, recognise the imperative of keeping temperature increases below 1,5 degrees. This type of approach will significantly impact South Africa's international and national obligations to mitigate and adapt to climate change. The disjuncture between South Africa signing the Paris Agreement on Climate Change, which is aimed at reducing GHG emissions, and the further investment in fossil fuel infrastructure with significant new GHG emissions is not one that can be reasonably justified.
12. It is difficult to understand how the state can justify building further coal-fired power stations and mines, when there are a host of cheaper alternative renewable energy sources available.<sup>7</sup> We are, thus, concerned whether worst case scenarios have been forecast for the impacts of a 3 percent climate shift.
13. Finally, it seems that the Draft NSDF identifies many issues but does not elaborate on how these issues will be addressed. Given the challenges that often accompany spatial planning and environmental management, such as co-operative governance breakdowns, capacity limitations, lack of broad-based

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<sup>7</sup> The justifications for keeping existing coal mines open in order to preserve the jobs of workers does not apply with the same force to opening new coal mines.

participation and favouring of vested extractives industry interests in decision-making, more guidance is necessary.

## C) SECTORAL INTEGRATION OF PLANNING INSTRUMENTS

14. From a sectoral perspective, integration comprises of social, spatial, environmental, economic and functional integration, in other words, integration across sectors.<sup>8</sup> The integration of all planning instruments is crucial to holistic and aligned development. The spatial planning and environmental framework has numerous tools, such as IDPs and EMFs. In order to operate efficiently, alignment and integration of the tools is crucial. Unaligned tools have the potential to confuse mandates and cause conflict that frustrates developmental planning and keeps communities from much-needed benefit, exposing natural resources to developmental threats.
15. This element has a strong connection to co-operative governance but is distinct in that it is not only about inter-governmental cooperation but the alignment of policy and planning tools which are at the heart of integrated development planning. Sectoral integration, while not expressly identified as an established core concept in South African law, is covered by the principle of 'good administration' referenced in SPLUMA.<sup>9</sup> Practically, this thematic identifier will assess whether other sectoral or environmental plans (such as EMFs, bioregional plans, IDPs and SDFs) are recognised and have been used in the construction of the plan under assessment.
16. While the NSDF recognises the challenges involved in bringing about the necessary changes in planning, budgeting and implementation in and between the three spheres of government, it is also very clear as to their importance in contributing to the joint crafting of the country's desired and shared future. A few important questions arise. First, why has this national framework taken so long, when other spheres have had to have these frameworks for more than a decade? Second, have the other (provincial and district) SDFs and the local IDPs been consulted in developing the Draft NSDF? If so, what is the conceived relationship between these frameworks and how have they informed the common path set out in the Draft NSDF?

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<sup>8</sup> L Mandy Sectoral Integration and Meta-Governance: Lessons Beyond The 'Spatial Planning' Agenda in England (2014) 85 *The Town Planning Review* 37.

<sup>9</sup> S 7 (e)(i) of SPLUMA states that 'the principle of good administration requires that all spheres of government ensure an integrated approach to land-use and land development that is guided by the land-use management systems embodied in the act'.

17. A particular concern is the frequent lack of alignment in practice between these three instruments which are all drafted by different people/consultants. The NSDF does not acknowledge and provide mechanisms or guidance to mitigate the risk of fragmentation that comes with the likelihood that those responsible for the respective instruments will have differing ideas of development.
18. The Draft NSDF goes into some detail about old and new mining developments under “Mining and Energy Production Areas and Supportive Infrastructure” in terms of the environmental and socio-economic aspects. There could be a suggestion of including such requirements or conditions in the required plans, for example in EMPs and SLPs.
19. Effective alignment also requires clarity of legal status of and relationships between plans. Existing instruments such as EMFs are marred by uncertainty regarding legal status. The Draft NSDF would benefit from a clear section on the legal status of the NSDF in relation to other SDFs and the IDP.
20. There is a claim that protected areas are well-connected and secure in the NSDF. This is not the status quo with many protected areas under threat, particularly in their buffer zones when prospecting and mining rights are being accepted by the DMR. It is noticeable that when discussing national protected areas, no buffer zones are mentioned. This is in spite of the significant confusion and contestation regarding the buffer zone of the Mapungubwe Cultural Landscape World Heritage Site which has exposed South Africa to the risk of the site being delisted by UNESCO. Has the DMR consulted on this plan, given the impact of its decisions on protected areas?
21. Finally, significant time and resources has gone into the development of other environmentally-focused spatial planning tools. Have these tools been considered in the development of the NSDF e.g. EMFs, bioregional plans, C-Plans, buffer zone assessments etc. These tools also have developed associated land use guidelines informed by stringent scientific assessment which could be of value.

## D) SCALE AND SPATIAL AWARENESS

22. Having a strong land-use planning foundation for development allows analysis and subsequent decision-making to take place within a regionally specific and spatially aware perspective. Sensitivity analysis is dependent on the scale of the assessment and the detailed information given to decision-makers, thus all information regarding ecological and social sensitivity, as well as economic opportunity, must be spatially represented to provide decision-makers and the public with all available information. The SPLUMA required SDF embodies the requirement to be spatially aware within the appropriate scale, this gives the term a recognisable legal grounding.
23. The landscape approach is by its very nature a regionally specific approach, therefore a landscape-scale is appropriate in responding to a series of ecosystem processes, conservation objectives and land-uses. This is core to applying a holistic and cumulative perspective to impact on a regional scale. The assessment of the scale and spatial awareness characteristics of an environmental or spatial plan will consider whether the plan is regionally focused and whether the elements' scales are presented consistently or at all.
24. At the outset it must be recognised that the manner in which spatial divisions along racial lines are understood and addressed is evident and commendable. Understanding the spatial legacy and resultant inequalities that exist will go some way to finding sustainable solutions to the current land tenure and locality issues. Our comment would be to possibly add illustrations of where new low cost developments would be located and how the corridors of connection will operate in bridging the divide between middle class and marginalised communities.
25. The NSDF offers an opportunity to offer a picture of the potential and challenges of certain areas, outlining where developmental goals could conflict. Spatial overlays can be used as tools to illustrate these characteristics. Whilst many of the spatial mapping tools provided in the NSDF give a representation of the countries protected areas, transitory corridors and other useful information, what could prove useful is having an overlay of mineral potential, overlaid with sensitivity mapping. Given the increasingly pervasive conflicts between mining and protecting ecosystems and communities' environmental rights, one would expect to see a detailed map that overlays these important characteristics. This is however not present.

26. Included in such overlays could include protected area expansion plans, buffer zones as well as heritage mapping. While there is recognition of the cultural dimension to the physical environment including ecosystems services this does not translate into concrete tools for decision-makers. Heritage sensitivity mapping is, for example, absent.
27. Spatial analysis and mapping needs to be more focused as the scale of the SDF makes local issues indistinguishable, granted the very nature of the NSDF is national, this comment would be moot should the drafting team have aligned the NSDF with other provincial, district and local SDFs.
28. Finally, land claims can potentially result in successful land claimants with differing visions of what the land should be used for. It is therefore a factor that must be incorporated into any spatial planning framework. We would recommend providing more guidance on this issue, one suggestion would be to provide for a land use tracker which has spatial overlays of land claims and the other characteristics addressed in this framework.

## **E) CO-OPERATIVE GOVERNANCE**

29. The development and conservation sectors have a multitude of stakeholders and numerous departments at various levels of government that must fulfil their parallel obligations in environmental and developmental areas.<sup>10</sup> This tiered structure of governance relies on open and transparent engagement between the various spheres, each respecting each other's mandate. This often leads to unconsidered development being pursued in sensitive areas.<sup>11</sup> All levels of government need to co-operate in support of the overarching constitutional mandate of community service and support. This cannot be achieved without regular communication and close collaboration. While having multiple decision-

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<sup>10</sup> S2(4)(l-m) of NEMA states that 'there must be intergovernmental co-ordination and harmonisation of policies, legislation and actions relating to the environment; actual or potential conflicts of interest between organs of state should be resolved through conflict resolution procedures.' See S40 & S41(1) of the Constitution. Also see *City of Johannesburg Metropolitan Municipality v Gauteng Development Tribunal and others* 2010 (6) SA 182 (CC).

<sup>11</sup> J van Wyk 'Planning in All Its (Dis)Guises: Spheres of Government, Functional Areas and Authority' (2012) 15 *Potchefstroom Electronic Law Journal* 5.



making bodies in overlapping functional areas has caused numerous conflicts,<sup>12</sup> this multi-level approach allows for collective decision-making.<sup>13</sup>

30. Spatial planning and environmental management are two distinct sectors whose considerations are 'inseparably connected' and must be factored into developmental decision-making across all spheres of government. In order to minimise conflict and limit any ultra vires decision-making between role-players, appropriate and efficient inter-governmental relations and structures are needed to cater from the cross-sphere decision-making between these two closely related areas. For this to be fulfilled there is a requirement for there to be institutional structures in place to ensure co-operation between state role-players.
31. The tasks involved in environmental spatial planning under the Draft NSDF seem to be vast and varied. The NDSF states that municipalities will have to focus far more on their land use management functions on protecting such valuable areas of national significance, and promote compatible and productive uses that contribute to environmental management and restoration goals. This type of capability is currently not present in the majority of municipalities which suffer from persistent capacity, resource and skills constraints. the challenges of municipalities in particular but the state more broadly in relation to governance, resources, capacity and skill constraints are widely-acknowledged. We suggest that plans be made for an inter-governmental transfer of skills and capacity from other more well-resourced departments to fill the current local government void. Municipalities would also require additional funds from treasury to effectively manage and fulfil these responsibilities.
32. The current state of local government has led to a significant loss of trust and legitimacy in the eyes of the people, coupled with a deficit of political will, are key constraints on this crucial endeavour. The NSDF places significant responsibility at the door of municipalities. How does the NSDF plan to address this trust deficit? Moreover, what are the short-term initiatives that can be out in place to get buy-in from communities.

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<sup>12</sup> In *City of Johannesburg Metropolitan Municipality*, it was held that areas such as housing and agriculture requires co-operation due to the far reaching ramifications. The court has recognised local government's role in protecting the environment, establishing that municipalities have a constitutional obligation to promote 'ecologically sustainable development.' Also see *Le Sueur and Another v Ethekwini Municipality and Others* ZAKZPHC 6 (2013) para 12.

<sup>13</sup> The Intergovernmental Relations Framework Act No. 13 of 2005 establishes a framework for the national government, provincial governments and local governments to promote and facilitate intergovernmental relations.

33. Another challenge relates to the DMR's readiness to issue mining and prospecting rights in sensitive areas and the frequent lack of accountability of mining companies for pollution. This gives rise to the question as to whether the DMR was involved in this process.
34. Another challenge that needs to be tackled are issues of just transition and livelihoods. Measures to prevent the fall-out in terms of jobs tied to polluting mining and industrial activities that are distractive of the ecosystem will have to be done. This requires job creation in ecologically less damaging sectors to be planned for well in advance of mine closures, and to be actively and adequately provided for. Who is responsible for the mediation of these interests and alignment in order to realise a just transition to a low carbon economy that does not further disempower workers and communities?
35. Perhaps the most serious limitation of the Draft NSDF is that it does not clearly identify concrete barriers to the implementation of the desired integrated planning, nor offer some standards, guidelines or mechanisms for addressing these challenges, nor expressly identify the co-operation that will be required in relation to factors beyond the Department's control.
36. The fulfilment of the NSDF objectives would require significant alignment between all spheres of government, as well as intra and inter-departmental collaboration. This is currently not the case. There is a significant overlap between spheres of government competencies. The NSDF does not, in our opinion, go far enough in identifying specific roles and responsibilities of state spheres and departments. Although the Intergovernmental Relations Act would apply, the NSDF should recognise that inter-state conflicts are inevitable and processes must be clear on what occurs when there is a conflict, both between parties but also between different SDFs and other relevant planning instruments. Guidance on the latter conflict is particularly important as the NSDF will not perfectly align with all other SDFs.
37. The Draft NSDF states that mining companies must be held accountable to clean up what they polluted, and regulations in this regard must be rigorously enforced. Was the DMR involved in this process of developing the NSDF? Again, the DMR would be a key intergovernmental stakeholder in rehabilitation and remediation as they are the competent authority and have access to the financial provision.
38. The NSDF claims that mediation of the fall-out in terms of jobs tied to polluting mining and industrial activities that are distractive of the ecosystem will have to

be done, and job creation in ecologically less damaging sectors planned for well in advance of mine closures, and actively and adequately provided for. With regards to this insertion, which role-players would conduct this mediation? Have the Unions been involved in this process?

## F) MULTI-STAKEHOLDER COLLABORATION AND PARTICIPATION

39. Participation is the driver behind democratic decision-making and a central facet to inclusive local growth. For successful management to work there needs to be an understanding of impact and opportunity.<sup>14</sup> Spatial planning and environmental impacts have a far-reaching impact on people's lives. How the local community and other interested parties are involved in the environmental and developmental management of a landscape is crucial to successful collective understanding and the creation of a social licence to operate.<sup>15</sup> Moreover, understanding the way in which stakeholders relate to the environment and the appreciation of internal spatial relationships<sup>16</sup> supports inclusive and sustainable impact management.<sup>17</sup>

40. An important aspect of meaningful participation is the ability to access the information that presents details of the project and the receiving environment.<sup>18</sup> The area of transparency is far more complex than just being able to access information; rather, it involves the manner in which decisions are taken and the resultant accountability of the state and developers.<sup>19</sup> The elements of access to information and transparency are so critical to the fulfilment of a meaningful participation process that they are afforded their own element.<sup>20</sup>

41. The NSDF claims that multi-stakeholder forums were established in order to facilitate a dialogue to discuss the formulation of the NSDF. Who specifically was part of this forum? How were the participants selected? Was there an open public call? The Draft NSDF does not explain whether there was a public call (beyond

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<sup>14</sup> 2(a)(iv) & S2(4)(f) of NEMA.

<sup>15</sup> K Moffat et al 'The Social Licence to Operate: A Critical Review' (2016) 89 *Journal of Forest Research* 481.

<sup>16</sup> 'Internal spatial relationships' refers to the relationships that exist between stakeholders which reside in the same region, this proximity means that such stakeholders share important natural resources and have an individual and cumulative impact of such resources. See 4.5.4 above.

<sup>17</sup> 2(a)(iv) & S2(4)(g) of NEMA.

<sup>18</sup> S2(4)(k) of NEMA. Also see S32 of the Constitution.

<sup>19</sup> S195 of the Constitution.

<sup>20</sup> To be discussed below at 5.3.8.

government) and, if so, how was the public notified of opportunities to become involved in the process.

42. Although SDF construction can be quite technical, communities have valuable inputs to give regarding the developmental landscape of their area/region. We also understand the SDF would be the spatial component of the connected development plan, in this case the NDP, which was thoroughly consulted upon, but a similar process would be preferred and advised here.

## **G) CAPACITATION OF STAKEHOLDERS**

43. Appropriate educational initiatives must be pursued in order to include communities in the development of the local economy, giving support to local economic development and environmental sustainability. Meaningful engagement relies directly on these initiatives to support and empower communities to engage with complex information on an equal footing to other stakeholders.<sup>21</sup> Environmental law, science and developmental planning are technical fields and without capacitation and skills development people may not be able to truly and meaningfully participate. Having a clear and concise plan on how natural resources will be shared and how the community can be involved must be a requirement of any collective management legal instrument or environmental tool, such as IDPs and bioregional plans. This will be assessed through examining the number and extent of the initiatives in place to ensue skills transfer and capacitation.

44. This point relates to the above point “F” which discusses participation and inclusion. The technical nature of spatial planning requires significant capacitation in order to garner meaningful involvement from the general populace, otherwise the consultation process becomes one of engaging with experts in the area and not the citizens who might be affected by the content of the plan.

45. A helpful suggestion could be to run national capacitation workshops to enable the broader public to engage in the formulation of the plan. One might find that having such workshops could also have the effect of improving the NDP process from an inclusion point of view.

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<sup>21</sup> S2(4)(h) of NEMA.

## H) COMPATIBILITY EXAMINATION AND ANALYSIS

46. Accurate compatibility examination and analysis constitutes the central pillar of understanding the receiving environment. It enables responsive, informed and appropriate decision-making based on the characteristics and thresholds of the ecosystems and species within the landscape. Environmentally sustainable land-use planning relies on the accuracy of data and the incorporation of ecosystem understanding and thresholds analysis to propose ecologically-compatible production practices.<sup>22</sup> Without detailed spatial information, the trade-offs that realise sustainable development cannot be negotiated.<sup>23</sup> The assessment of the compatibility examination and analysis identifier examines the nature and consistency of the sensitivity analysis methodology adopted in the tools.

47. It is commendable that the NSDF recognises the notion of stressed catchments and the myth of water abundance. Critical to understanding these issues would be to discuss the determination of the national water reserve, or at least to mention that not all catchments have been thoroughly assessed and a reserve has not yet been determined for all areas. This seems to be a major issue within the South African water landscape, as currently we are unsure as to how much water we have and need to sustain human dependence and ecological systems.

48. Much is said regarding the greater quantification of our natural resource base in order to enable and enhance the sustainable use and protection of critical natural resources to create a clearer distinction between the ecological and economic value of natural resources. This is a powerful and necessary comment and has intrinsic linkages with resilience theory and the understanding of ecological thresholds. Our comment is one of clarity, how will this be done? Is this through the EIA process or rather to a collaborative SEA process?

## I) TRANSPARENT PARTICIPATORY MONITORING AND ACCESS TO INFORMATION

49. To facilitate a shared understanding of impacts and opportunities of development and conservation, information needs to be easily accessible and presented in an

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<sup>22</sup> See more on the importance of accurate environmental data in M E Haklay 'Public Access to Environmental Information: Past, Present and Future' (2003) 27 *Computers, Environment and Urban Systems* 163, 180.

<sup>23</sup> M Kosmus, I Renner & S Ullrich *Integrating Ecosystem Services into Development Planning* (2012) 66.

understandable manner.<sup>24</sup> The collection and analysis of accurate data is core to understanding the status quo of the receiving environment and developing a collectively agreed upon desired state. 'The operationalisation of good governance principles such as transparency and public participation depends largely on the degree of access that citizens have to government information.'<sup>25</sup>

50. From a positive perspective, the document can be found online on the departmental website and through a normal google search which is more accessible than some government documents. However, there are many communities impacted by environmental injustice who do not enjoy ready access to data. The lack of translation of the document (available only in English) also renders it inaccessible to many of the communities who will be most affected by land use decisions.
51. Other than the PMG notification it is unclear how far and wide the call for comment was sent and whether enough interest and comments will be garnered in order to legitimise the public participation / consultation process.
52. Finally, it is unclear as to how the implementation of the NSDF will be monitored and evaluated. The document requires more detail about how alignment of concrete planning and licensing decisions will be monitored for consistency with the framework and the impact of the framework will be assessed. A key component of this will be facilitating broad-based participation in highly technical processes, including through capacity building, translation and breaking down of information.

## J) CONCLUSION

53. The NSDF should be applauded for being based on transformative and sound spatial planning principles in relation to most of the criteria we have identified such as, among others, ecosystem-driven integration and multi-functionality, and scale and spatial awareness.
54. The NSDF could be enhanced by providing more guidance in resolving conflicting developmental paths, offering more practical guidance on resolving the social,

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<sup>24</sup> S 2(4)(k) of NEMA states that 'Decisions must be taken in an open and transparent manner, and access to information must be provided in accordance with the law.'

<sup>25</sup>D L Marais, M Quayle & J K Burns 'The Role of Access to Information in Enabling Transparency and Public Participation in Governance: A Case Study of Access to Policy Consultation Records in South Africa' (2017) 9 *African Journal of Public Affairs* 36.

institutional and political-economy barriers to integrated spatial planning, alignment with the critical 1.5-degree temperature increase target and addressing public participation and capacitation of the public meaningfully.

55. Thank you for providing the opportunity to provide input. For queries and further information, please contact Dr. Louis Snyman (Senior Attorney, Head: Environmental Justice) at [Louis.Snyman@wits.ac.za](mailto:Louis.Snyman@wits.ac.za) or 011 717 8629. CALS welcomes any opportunity for further engagement on the Draft NSDF.