

# The Infrastructure Development Bill - Comments from EDD on public submissions

28 January 2014



economic  
development

Economic Development Department  
REPUBLIC OF SOUTH AFRICA



# The context

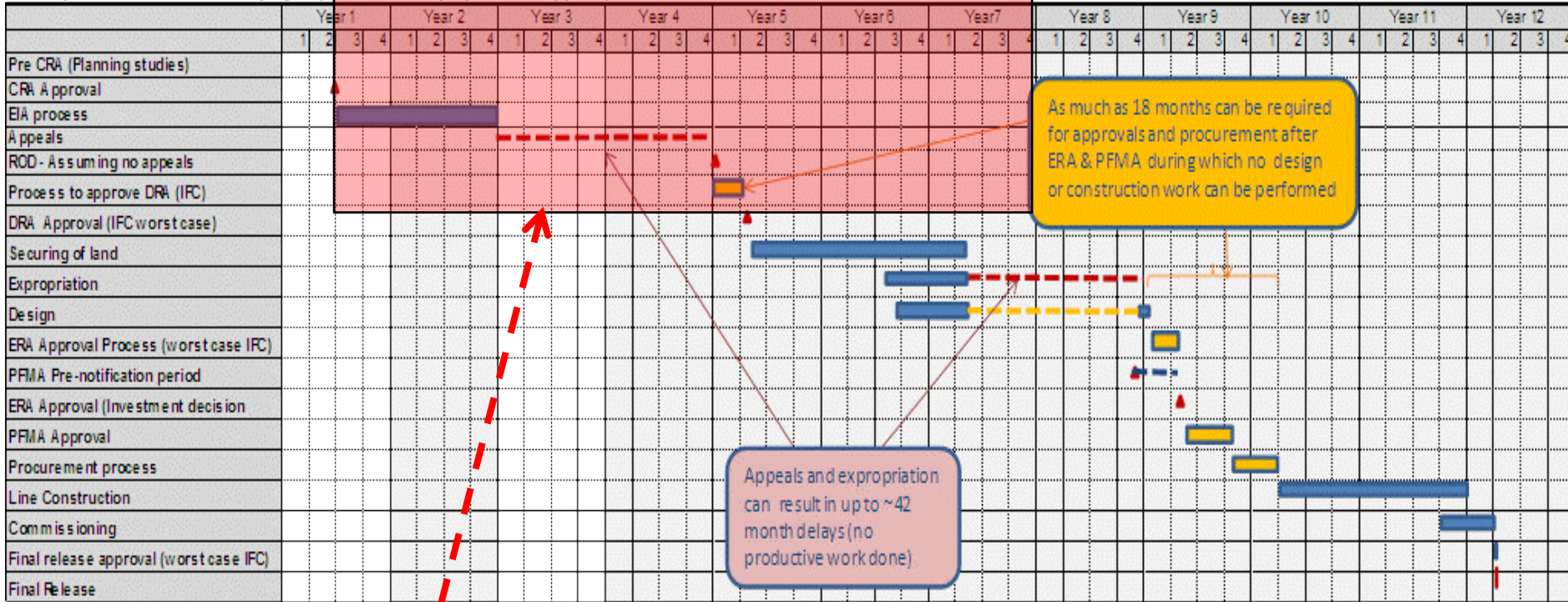
- In October 2010, infrastructure was identified as the key jobs driver whose development can support other jobs drivers such as mining and beneficiation, manufacturing, agriculture and agro-processing, tourism, the green economy and African regional integration.
- In July 2011, Cabinet established the Presidential Infrastructure Coordinating Commission (PICC)
- Work started immediately to identify obstacles to faster and more integrated delivery
- In February 2012, the President announced the National Infrastructure Plan in SONA. Implementation of infrastructure was speeded up.
- From April 2012, Strategic Integrated Projects were launched across the country
- In February 2013, the lessons of the first phase of implementation were set out in a Bill published for public comment
- Bill was tabled in Parliament in November 2013

# Why do we need this Bill?

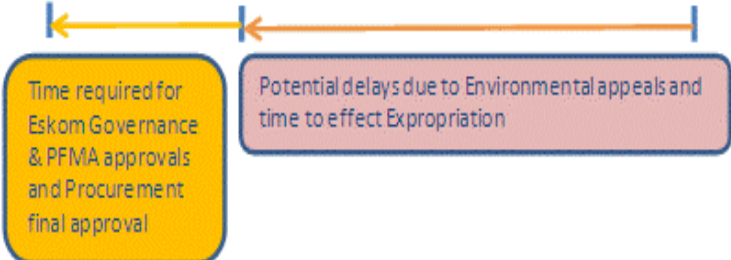
- Core infrastructure challenges: Inability to deliver on time and within budget
- Reasons were provided to the PC, and include:
  - lack of coordination across the three spheres
  - silos between national departments
  - lack of integration across the state
  - Project-holders don't provide the needed information to get licences and authorisations
  - projectholders don't plan the submission of applications
  - officials sit on decisions for long periods
  - litigation by lobbyists
  - corruption and delays in tenders
  - inability to identify strategic projects that can drive development and inclusive growth
- Experience since 2011 has shown the importance of the PICC in delivering infrastructure priorities by improving planning, coordination and monitoring

# Land : example of the challenge experienced in gaining access to land for infrastructure build today

Development timelines - Tx line project (Worst Case - Expropriation & appeals)



**EIA, appeals and expropriation can take up to 6,5 years**



# Core aims with legislation

- Empower the state to deliver to the needs of citizens
- Strengthen coordination and alignment across the state
- Avoid unnecessary grounds for litigation and legal review
- Speed up delivery

## HOWEVER

- Avoid adding all our policy goals into one piece of legislation
- Avoid new obligations when existing legislation adequately covers a matter

# What the Bill does

- Establishes the PICC in law with structures to ensure capacity to plan for national priorities through the National Infrastructure Plan
  - Ensures that SIPs included in the Plan are supported consistently across the State, with no unnecessary regulatory delays
  - Provides a platform to ensure the greatest possible developmental impact from public investment, but does not seek to duplicate other laws through standards or specific programmes
- Main areas of debate are around:
    - How to enforce national priorities
    - How to reduce delays in regulatory decisions
  - The Bill is about establishing an effective state planning and delivery system, not regulating the private sector's own projects

# Council

Led by President

Ministers, Premiers, Metro Mayors, SALGA

## SIP chair

Minister

Chairs executive authorities in SIP

Oversees steering committee

## PICC Manco

Ministers, Premiers, Mayors,  
Salga

Regular meetings to oversee  
and lead process

## SIP Forum of Executive Authorities

Executive authorities in SIP

Ensure political leadership

## Secretariat

Ministers and Deputy Ministers

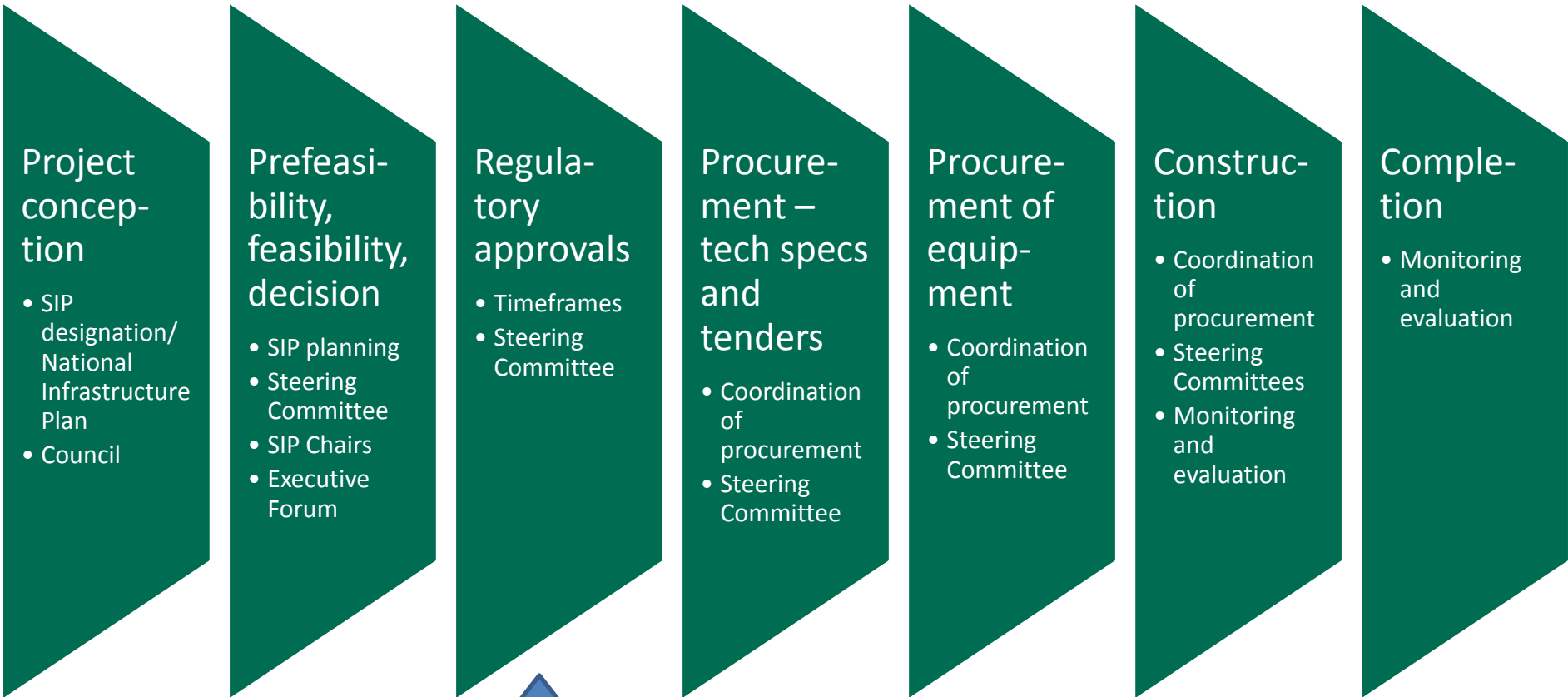
## Steering committee

- Chaired by SIP coordinator
- Relevant departments and agencies
- Prioritisation, strategic planning, coordination, unblocking

## Accounting officers/authorities

- Responsible for each project
- No change in accounting responsibilities

# The project pipeline and the PICC



Schedule  
2



- About 30 written inputs received as 13 January 2014, from
  - Interested individuals
  - COSATU
  - BUSA, BLSA and SACCI, and some individual companies
  - SAICE and individual engineers
  - Disabled people
  - State-owned enterprise and their employees
  - Environmental NGOs
  - Western Cape
  - SALGA
- Following the hearings, additional inputs received with responses to specific questions
- Almost all agree on the need to improve infrastructure delivery and in particular to institutionalise the PICC so as to enhance planning and coordination

# Scope for changes based on submissions

- Well-founded constitutional concerns
- Changes that improve the capacity of all three spheres of the state to implement in a coordinated manner, expeditiously and with required developmental impact
- Technical amendments that improve the Bill
- Language improvements to make provisions clearer to the ordinary reader
- Changes that address ambiguity or lack of clarity that would contribute to grounds for disputes, legal action or project uncertainty

# Challenges from submissions – and the risks

- Add more objectives and instruments for evaluating projects
  - Proposals would dilute the core aim of the Bill, which is to empower the State to implement priority infrastructure projects
- Formalise structures and procedures more
  - Would add rigidities and grounds for continual challenges of process
- Add consultation and stakeholders to structures
  - Consultation is provided for in respect of regulatory issues but the focus of the Bill is to improve the speed and impact of implementation
- Provide open-ended and potentially unnecessary lengthy periods for processes, on environmental grounds
  - Bill recognises the importance of EIAs and the framework of NEMA and provides for a timeframe within which the necessary environmental considerations need to be completed
- Alignment across the State presented as inherently unconstitutional
  - All spheres are involved at national PICC and SIP levels
  - The Bill simply requires coordination of decisions, and does not take away decisions of any sphere

# The Constitutional issues

- Careful consideration has been given to ensure the Bill passes constitutional muster. Amendments are proposed by EDD to the Bill to further strengthen the constitutionality of the Bill and to take account of valid concerns.
  - The PICC works primarily by setting up forums to facilitate engagement and alignment across the State
  - The potential for regulating or constraining provinces or municipalities inappropriately is offset by a proposed new requirement that any powers in the Bill be exercised in accordance with the Constitution, particularly functional competencies of different spheres
  - On tenders, the Bill only empowers a Minister designated by the PICC to “request” the relevant accounting authority to go out to tender in order to support greater efficiency and coordination around tendering
  - On consultation, the possibility of extending timelines where there are valid reasons ensures Constitutional requirements are met
  - Environmental considerations are given due weight and further amendments are made to address concerns around public consultation

# Significant changes supported

1. To address constitutional concerns relating to encroachment on the powers of different provinces and municipalities, the Bill should explicitly provide that Ministerial and Commission powers must be exercised in accordance with the Constitution and the functional competencies of of all three spheres.
  - A new clause 2(2) will be proposed that will address concerns in relation among others to clauses 8, 17 and 21.
2. To address confusion in some public submissions between the leading structure of the Presidential Infrastructure Coordinating Commission (PICC) and the Commission as a body consisting of a hierarchy of structures:
  - It is proposed that the leading structure be called the Council of the PICC, rather than “the Commission”
  - This requires amendments throughout the document to change the word “Commission” to “Council” where referring only to the leading structure.
3. To address concerns that private-sector infrastructure may, inappropriately, be included within the Bill and the SIPs, it is proposed that projects that are not public infrastructure should fall under SIPs only with the consent of the owner

# Significant changes supported (2)

4. To address concerns regarding the implementation of the provisions on expropriation of land for infrastructure:
  - EDD supports relying on the 1975 Act, as several submissions proposed, with appropriate modifications
  - Expropriation on behalf of an organ of state should be with its concurrence
5. To address concerns regarding timeframes for public consultation:
  - Amendments are proposed that provide the power to the relevant executive authority to agree to an extension of the timelines for consultation and to inform the PICC of such extension
  - The wording on Schedule 2 is improved for clarity
6. To address concerns regarding the regulations to be issued in terms of the Act:
  - The Minister should be empowered to set targets and guidelines as well as to regulate to implement the Act.
7. To address concerns about the definition of SIPs and provide clarity on the existing SIPs
  - A third schedule should be added as well as a saving and transitional clause in order to maintain the 18 existing SIPs

# 1. Definitions

- This clause provides definitions of terms that may be obscure or have a particular meaning in the Bill, and gives a short version of phrases.
- It should not provide definitions of terms that are well known and do not have a specific meaning for this Bill.

Amendments that are supported:

- Change the definition of "applicant" to make it clear that it is an applicant to a relevant authority responsible for authorisations
- Add a definition of "Council" to distinguish the Council of the Commission as the lead structure led by the Presidency from the structures of the Commission as a whole
- Add a definition of "local industrialisation" as meaning procurement by the State or its agencies or contractors of locally produced goods or services for an infrastructure project.
- Add a definition of "public infrastructure" to include (a) infrastructure owned by the state (b) Public-Private Partnerships (PPPs) and (c) concessioned infrastructure
- Add a definition of "State" as comprising all organs of the State and any body established by statute
- Provide for the PICC Council to add to installations set out in Schedule 1
- Add to the definition of " **this Act**" includes any regulation, guidelines or target made or issued in terms of this Act

## Proposals that are **not supported**:

- Define “sustainable development” – see discussion below
- Define “decent work” – The concept of “decent work” should not be defined through this Bill
  - There is no precise legal expression of the concept that has been agreed with the social partners at Nedlac. The ILO definition is for broad policy purposes, not litigation.
- Define “one-stop-shop,” “economic inclusiveness,” “economic equality” and “social cohesion” – The meaning of these terms in the Bill does not differ from commonly accepted meaning, and is not likely to lead to undesirable ambiguity.
- Include a preamble and a provision relating to conflicts with other laws - A preamble would not assist as the purpose of the Bill is clearly set out in the Objects clause. Current advice is that a conflicts clause is not required as the Act seeks to promote the effective implementation of other Acts and efficient decision-making, and clearly states that this Bill’s timeframes prevail.



## 2. Objects

This clause spells out what the Bill is trying to achieve, as a broad guide to interpretation.

- Amendments to Objects of the Bill that are proposed:
  - The National Infrastructure Plan as a specific output of the PICC;
  - Facilitation of authorisations, which would help clarify the aims of the Bill;
  - Generally to unblock infrastructure projects; and
  - A requirement that any person exercising a power in terms of the Act must do so in a manner that is consistent with the Constitution.
- The phrase “operation” of infrastructure should be used rather than “utilisation” of infrastructure throughout the Bill

## 2. Objects

This clause spells out what the Bill is trying to achieve, as a broad guide to interpretation.

- Other proposals to add objectives are not supported since
  - The Bill aims to provide a broad framework for the delivery of infrastructure, not to set standards (which are covered in other laws)
  - Adding objectives that are not central to the Bill may give rise to unnecessary litigation
  - Proposals for amendment to the Bill that are not supported therefore include setting standards for basic services or require universal access; ensuring counter-cyclical construction plans; supporting localisation (already include support for local industrialisation); supporting environmental sustainability or justice; and using the term decent work rather than “employment”

# 3. Structures and composition of the PICC

- This clause mandates that the PICC remain in its current form with its existing structures and composition.
- It does not provide a detailed discussion of the legal constitution of the PICC in order to maintain its flexibility and agility.
- To the list of PICC structures in clause 3(2), the addition of “a Council” as a new 3(2)(a) is supported.
  - This would help distinguish the leading structure of the PICC (President, cabinet members, all Premiers and specified local government) from the set of structures that constitute the PICC as a whole.
  - By extension, Clause 3(3) would then read, “The Council of the Commission has the following members...” with similar changes throughout the rest of the Clause and the Bill, except where the word “Commission” was used to refer to the structures of the Commission as a group.
- EDD supports amending Clause 3(6) to enable the Council to determine procedures for all of its sub-structures and for the work of the Commission.

### 3. Structures and composition of the PICC (2)

- Other proposals **not** supported because they would make the Council less able to carry out its core functions, include:
  - The Council should be smaller – Reducing its size would undermine the Council’s ability to bring together executive authorities from across the three spheres and different functions
  - The Council should include State-owned Companies (SOCs) – Council includes only executive authorities; membership could lead to mandating challenges for SOCs, which are in any case included in SIP Steering Committees
  - The Bill should permit members to send alternates if they cannot attend – It is important to retain the Council as a body of decision-makers at executive authority level
  - The Bill should define a quorum – The size of the quorum and other procedural matters will be determined by the Council itself under clause 3(6), based on its needs.

## 4. Functions of the Council

The clause lays out the functions of the Commission, including

- developing and maintaining the national infrastructure plan;
- designation of priorities and in that context SIPs;
- ensuring coordination to support SIPs across the state; and
- securing the greatest possible developmental impact from infrastructure development.

- Some submissions argued that the relationship between the Council and the Manco should be clarified.
- It is proposed that clause 4(m) should address the functions on addressing blockages explicitly
- The clause 6(3)(b)(viii) and (ix) address the power of the Council to delegate functions to the Manco and Secretariat

## 4. Functions of the Council (2)

- Proposals that are **not** supported, based on our experience of what is required, include:
  - Trying to delineate the functions of structures in more detail
  - Narrowing the Council functions to only oversee the SIPs
  - Restricting the Council to coordinating the evaluation and identification of needs, rather than performing those functions itself – this would undermine a core Council value-add
  - Should define procedures for developing National Infrastructure Plan – the Council has the power to set its own functions and procedures
  - Change wording on foreign strategic partners. This clause relates principally to foreign governments, so changes would constrain foreign policy
- Concerns that Council functions may intrude on the functions of municipalities are addressed with proposed amendment to the objects

# 5. Expropriation of land

The clause gives the Commission the capacity to expropriate land in order to implement a SIP, in compliance with the Constitution and relevant legislation.

Several submissions argued that the clause in the Bill currently was unclear, especially about the relevance of the Expropriation Act now in force (Act 63 of 1975). Following consideration of the concerns, it is proposed that the entire clause be redrafted as follows.

1. *The provisions of the Expropriation Act, 63 of 1975 are applicable to any expropriation in terms of this section.*
2. For the purposes of implementing a strategic integrated project, the Commission may expropriate land or any right in, over or in respect of land in terms of the Expropriation Act, 1975 (Act No. 63 of 1975) and, subject to the provisions of this section, the provisions of the Expropriation Act, 1975 apply to any expropriation in terms of this Act.
3. *The Council may only expropriate land or any right in, over or in respect of land after consultation with the organ of state in whose favour the expropriation is to be made.*
4. *Notwithstanding the provisions of the Expropriation Act, an expropriation in terms of sub-section (1), may be effected –*
  - a. *in the public interest;*
  - b. *by the Commission or, at its request, by the Minister of Public Works or by such other Minister as may be determined by the Commission*

## 5. Expropriation of land (2)

- A number of other submissions were made on this clause that are **not** supported because they are not needed or could make the Bill less effective.
- A submission proposed that the clause should include timeframes for expropriation.
  - This might be desirable, but would require substantially more research.
  - It is proposed that timeframes be effected through the new expropriation bill, which will then take over from this Bill.
- It was argued that expropriation should have to align with local land use planning. This is already required through the Constitution and the Spatial Land Use Management Act.
- A submission recommended that compensation be provided to neighbouring properties that lose value as a result of changes in the use of the land, for instance to install heavy equipment or public transport.
  - This is not a core function of the Commission, is not confined to infrastructure and should not be put in the Bill



# 6. Management Committee

- The Management Committee consists of members of the Commission, as designated by the President, who would be able to meet more regularly than the full Commission and give effect to Commission decisions, including overseeing the Secretariat.
- It plays a critical role as an operational structure for the Council, which can only meet relatively infrequently since it is chaired by the President, while including all three spheres

Proposals that are supported are:

- Specify that Manco must report regularly to the Council.
- Manco should “support” the Council, rather than “assist” it
- Manco to report to the Commission.

The following proposals are not supported:

- The Manco is redundant and should be eliminated – Experience has demonstrated its importance
- Limit the Council to approvals only, giving all its other functions to Manco – Council is a more inclusive body and should retain its wide powers and may delegate these to Manco.

# 7. Requirements for SIPs and SIP Chairs

- This clause lays down criteria for designating infrastructure projects or programmes as a SIP, and provides for the appointment of a lead Minister as chair of the SIP.
- Council may designate a SIP as part of the National Infrastructure Plan if
  - it comprises projects or programmes that fall within the definition of infrastructure as laid out in Schedule 1, and
  - it is important for national development and/or large in monetary terms.
- In practice, all SIPS will cover one or more of the categories of infrastructure listed in Schedule 1.
- If a project or programme is designated as a SIP, all state agencies should treat it as a priority, and it will receive support to ensure its timely implementation. Under the definition of a SIP in the definitions clause, a SIP may only include public infrastructure.
- The clause also provides that the Council appoint a Minister as chair of the SIP.
- The core functions of the chair are
  - to chair a forum of executive authorities involved in the SIP, and
  - in the process to ensure coordination of the relevant SIP and generally to provide leadership.
- The Chair is however
  - not responsible for practical implementation of the SIP, which falls to the SIP coordinator – typically an agency or department – and
  - does not chair the Steering Committee for the SIP, which is a technical body.

## SIP requirements and SIP chairs (2)

- To address concerns about the relationship between the SIP structures and privately owned projects, EDD supports adding clause 7(1)(c), which sets criteria for designation of SIPs, to indicate that a SIP may only include a project that is not part of public infrastructure with the consent of the project's owner.
- It is proposed that Council may amend Schedule 1 through notice in the Government Gazette
- It was proposed that clause 7(1)(a) refer to “one or more installation, structure, facility, system, service or process relating to public projects which cover any matter specified in Schedule 1,” in order to clarify that only public infrastructure would be included. It is proposed that the heading of Schedule 1 be modified instead.
- Due to typing errors, 7(1) (c) and 7(3) refer to a "strategic infrastructure project", rather than “strategic integrated project,” and should be amended.

## SIP requirements and SIP chairs (3)

- The following proposals reflect misunderstandings about the role of the SIP Chair, and are therefore **not** supported:
  - Functions of the Steering Committee in clauses 10 (c) to 10 (h), around establishment and functioning of the Steering Committee, should fall under the SIP Chair in clause 8 – the SIP Chair chairs the executive authorities’ forum, not the Steering Committee.
  - 7(4) refers to a “forum of Executive Authorities,” and its role, functions and membership should be clarified – The forum is a structure to ensure consultation, discussion and coordination amongst the various executive authorities who may be affected by or are responsible for parts of a SIP. There is no benefit in defining its functioning in greater detail. In addition, the nature of the forum may vary substantially depending on the nature of each SIP.

## 8. SIP designation and conflicts around infrastructure

- Provides that the Council designate or change the designation of a SIP by gazetting it
- The Council must then determine if some or all the projects in the SIP must go out to tender because of a lack of state capacity
- Clause 8(1) should provide for the Commission to amend the designation of a SIP
- If a tender is needed, the Council must designate a Minister to request the relevant accounting officers and accounting authorities to call for such tenders, in consultation with the relevant Ministers .
  - This clause aims to improve coordination in procurement for projects that require that a range of organs of the state issue tenders.
  - It is important to note that the Bill only provides that the Minister requests, rather than instructs, the relevant authorities, and that s/he may address the request to more than one authority, depending on the responsibilities for projects within the SIP.
- Finally, the Bill requires in 8(4)(a) that “every organ of state must ensure that its future planning or implementation of infrastructure or its future spatial planning and land use is not in conflict with any SIP” that has been designated by the Council.
- The Bill provides under Clause 8(4)(b) that this requirement only applies to infrastructure that falls within the ambit of a SIP, and under Clause 8(4)(c) that any conflict that arises should be resolved in terms of the relevant legislation.
- Again, the proposed change to the objects should ensure that these powers are not exercised in an unconstitutional fashion.

The following proposals are supported:

- The heading currently refers to a “conflict in infrastructure,” which is unclear. It is proposed that the heading be changed to ” “Designation and implementation of strategic integrated projects.”
- The clause on tenders could
  - permit the PICC to request accounting authorities to tender for only part of a SIP,
  - permit the PICC to use other forms of procurement where permitted by the PFMA, for instance in the case of a sole provider or services provided by a state agency, and

The following proposals are **not** supported.

- SIPs should be identified only through IDPs
  - SIPs must be of national importance and most involve several municipalities
  - In this context, IDPs (a) provide a way to identify priorities that could feed into the National Infrastructure Plan including through municipal representatives on PICC structures and (b) ensure sound plans for local elements of SIPs after they have been designated.
- Require advertisement in more than one national newspaper. Requirement is a minimum requirement, not a maximum or a standard.
- Only designate SIPs after a pre-feasibility study or approval by the relevant environmental authority
  - Individual projects within SIPs are subject to pre-feasibility studies and EIAs
  - the SIPs are not subject to this kind of assessment because they reflect broad national priorities by bringing together a number of individual projects
  - This Bill strikes the right balance between environmental rights and achievement of other socio-economic rights
- Define more precisely the criteria for “capacity to implement” a project.
  - This will vary greatly between different types of projects. A statutory definition creates an unnecessary rigidity. To the extent necessary, this can be managed through regulations or guidelines.

## Proposals or concerns that are **not** supported (continued)

- Bill may not empower a Minister to manage the tender for a project that falls within the competency of a local government.
  - The current Bill only mandates a Minister to request a tender be published, not to issue a tender, adjudicate it or manage the process.
- Bill should explicitly require tenders in line with the PFMA.
  - No specific clause is required to achieve this aim.
- The PICC is not empowered to procure, so it cannot manage a procurement process.
  - In Bill, the Commission does not procure the large projects.
- The clause on alignment should be removed because it constrains local and provincial planning.
  - Especially given the proposed change to the objects, this clause does not encroach on local or provincial constitutionally-entrenched powers
- Dispute settlement should be subject to provincial or municipal land-use legislation, not only national laws.
  - This could lead to multiple channels for dispute resolution.
- Bill should require projects to register with the CIDB. This is a requirement in existing legislation that already covers all projects within SIPs.



## 9. Secretariat of the Commission

- The Secretariat is appointed by the President and consists of the Minister, as chair of the Secretariat, and other Ministers or Deputy Ministers as determined by the President.
- One input proposed that the Secretariat should be chaired by the Minister of Public Works.
- The President is entitled under the Constitution to reassign responsibilities of one Minister to another Minister, so the matter is moot.

# 11. Purpose of Steering Committees

- The SIP Steering Committees are expected to manage the implementation of SIPs, including
  - identifying specific components where required, for instance in the case of the school-building SIP;
  - developing a project plan;
  - monitoring and evaluating progress, with regular reports to the Secretariat;
  - meeting with the SIP chair; and
  - generally providing a one-stop-shop for any matters relating to implementation of the SIP.
- The main concerns from submissions on this clause related to a lack of clarity about the relationship between the Steering Committee and the SIP Chair.
- A closer reading of the Bill, however, shows that these are in fact unambiguous, so no changes are required.

# 10. Functions of the Secretariat

- The Secretariat
    - appoints the Steering Committees for SIPs, with the coordinator of the Steering Committee, and oversees their functioning,
    - manages the day-to-day work of the Commission, and
    - provides regular reports to the Management Committee and the Commission.
  - Its members are executive authorities, who are expected to fill these functions in a leadership and policy capacity.
  - The definitions clause defines the SIP coordinator as “a person or agency designated by the Commission to coordinate and facilitate the implementation of a strategic integrated project.”
  - In practice, SIP coordinators have to date been state agencies such as Transnet or the IDC, or national departments such as DRDLR and DAFF.
- One submission proposed that the Secretariat’s functions should include approval of project plans developed by SIP Steering Committees (provided for in 11(c))
  - This is not necessary as the submission of these reports is a matter internal to the state and broad political coordination will take place on a regular basis

## 12. Appointment and composition of Steering Committees

- The clause provides that the SIPs' members may include representatives of relevant departments; a representative of the CIDB; and any other expert chosen by the Secretariat.
  - The SIP coordinator chairs the Steering Committee.
  - The members of the Steering Committee must have sufficient authority to take decisions or to get mandates.
  - The Steering Committee and its convenor do not act as accounting officers for the individual projects. That function is undertaken for specific projects by the responsible department or public agency.
  - The Secretariat can reconstitute or close down the Steering Committee.
  - The SIP Steering Committees that have already been set up will remain in place.
- EDD supports proposal that a reference to the “head of public entity” in 12(4) be changed to the accounting authority.
  - It was noted that the “head of a public entity” could mean the Chair of the Board, which was not the intent of this clause.

# Appointment and composition of Steering Committees (2)

Proposals that are **not** supported:

- SIP chair should undertake functions now allocated to the Secretariat such as appointing members to Steering Committees: Reflects a misunderstanding about the role of the SIP chair.
- Requirement that “a member of the steering committee must be available at all times to perform his or her functions as a member of the steering committee” implies they must be full-time members: The language means members must be available when required, not that they must work on the SIP full time.
- Steering Committee should provide direct representation for specific interest groups, eg disabled people; union representatives; or business representatives.
  - As a rule, Steering Committees support alignment across the state around SIPs, and is not a forum for stakeholders.
  - It would become unwieldy if all interest groups were represented.

# Appointment and composition of Steering Committees (3)

Proposals that are not supported (continued):

- The Bill should specify members' terms of office and delegations: The current system has proven flexible and responsive to changing conditions.
- Inclusion of officials from the Departments of Environmental Affairs could lead to challenges to decisions made under NEMA:
  - NEMA does not foresee that the entire Department of Environment should become a regulator that is entirely separated from the rest of government.
  - The Bill does not prescribe what the outcome of applications on under NEMA should be, but only ensures coordination across the state around the authorisation process.
- Clause 12(c) means an entire Steering Committee could be replaced and should be revised:
  - It might prove necessary to replace or substantially transform a Steering Committee as a SIP goes through implementation phases, leading to the involvement of different agencies over time.

# Appointment and composition of Steering Committees (4)

Proposals that are not supported (continued):

- It should be mandatory, not discretionary, to appoint officials from departments with expertise or representing any other relevant portfolio necessary for the SIP:
  - The current wording provides that all affected organs of the state may be involved. Executive Authorities will sit on the Council of the Commission and may thus request inclusion of officials where relevant. Prescribing composition may open the door to litigation on grounds that one relevant department was not involved.
  - Extending the required membership would add rigidity, could make committees unworkable, and could lead to unnecessary disputes about membership.

# 13. Disqualification and disclosure

- This clause requires that any holder of public office who belongs to a Steering Committee and who has or develops a financial interest in a SIP must disclose the fact and resign.
- If s/he has a family member or associate with a financial interest, s/he may not attend meetings where relevant issues are discussed.
- Her or his family members and associates may not develop business interests in a SIP.
- Any member who offends against these rules commits an offence and may face up to five years imprisonment and/or a fine.

Changes that are supported:

- Narrow definition of affected family members to those who are married, or live together in a relationship similar to a marriage, including under customary or religious law, and who are parents, children, siblings, aunts, uncles, grandparents and grandchildren, nieces and nephews.
- The reference to “permanent life partner” in clause 13(1)(b) be changed to “life partner.”
- Clause 13(3)(b) should be amended to clarify that employees of public entities are not intended to be precluded from membership by virtue of working for such entities.





## Disqualification and disclosure (2)

The following proposals are not supported:

- The same prohibition on conflict of interest should be considered for other structures of the PICC - the other structures consist of Ministers, who are bound by general rules on conflict of interest in any case and cannot be substituted by anyone else in their department.
- The sanctions are too low – Given that no wrong doing needs to be proven, the sanctions seem appropriate. In the case of actual fraud or corruption, the relevant law would come into play.
- The sanctions are too high, since the Steering Committee member might not know of a relative's interests – The sanctions provided are not a mandatory minimum but a maximum, and presumably extenuating circumstances would be taken into account where appropriate.

## 14. Functions of steering committees

- The clause lays out the functions of the Steering Committee, which include
  - identifying specific projects to implement a SIP and developing plans for them;
  - identifying opportunities for local industrialisation;
  - determining what authorisations are needed and ensuring they are applied for timeously; and
  - facilitating implementation of the SIP, with regular reports to the Secretariat. Individual Steering Committee members are expected to bring their expertise to bear.
- The Secretariat may issue guidelines to the Steering Committees on how to fulfil these functions.

# 14. Functions of steering committees (2)

The following proposals are supported.

- 14(1)(b) uses the term “localisation,” while the objects of the Bill refer to “local industrialisation.”
- Concerns that paragraphs 14(1)(c) to (e) imply that the Steering Committee could help manage privately owned projects can be addressed by the amendment under clause 7(1) that would ensure that privately owned projects are incorporated in a SIPs only with their owners’ consent.
- That clause 14(1)(c) provide that the Steering Committee should develop procurement plans for the SIP.
- That clause 14(1)(i) require that SIPs report on all phases of the SIP on a monthly basis and in addition on the request of the Secretariat.

It was also proposed that a mechanism should be developed for the public to propose projects to SIPs. It would not be desirable to add an amendment that places an obligation on an implementation structure to review unsolicited proposals, with the potential of court challenges. The PICC should remain focused on expeditious implementation of the national infrastructure plan.

# 15. Approvals, authorisations, licences, permissions and exemptions

- Clause 15 seeks to develop mechanisms to fast-track regulatory decisions for SIPs essentially by improving the quality of applications and accelerating communication around outcomes.
- This requirement responds to the fact that authorisations are often delayed by the failure to provide the required information in the first place. If a regulatory decision comes out negative, the relevant authority must inform the Steering Committee, which in turn must inform the Secretariat.

## Possible amendments

- Some submissions drew attention to the possibility that applications may be dependant on a prior authorisation. To address this, EDD is proposing a clause that will require that where an application is dependent on a prior authorisation, such application should be submitted at the earliest opportunity after such authorisation is obtained
- 15(1) provides that Steering Committees should “determine” regulatory decisions related to SIPs; it would be more appropriate and clearer to use “identify.”

# Approvals, authorisations, licences, permissions and exemptions (2)

The following proposals are not supported.

- A single point of submission for SIPs should be established for all submissions contemplated under 15(1) – This may not be lawful and could in itself become a bottleneck.
- The clause requiring officials to assist with applications may lead to an actual or apparent conflict of interest – As noted above, this argument is not well-founded.
- 15(4) provides that authorities must inform the Steering Committee if an application is turned down; it should be reworded to place the responsibility on the Steering Committee or applicant to request reasons for such refusal – The aim is to ensure that communication of a refusal takes place immediately.
- The Bill should provide detail on how the Steering Committee and/or the Secretariat will deal with a refusal – This cannot be determined in advance as cases will vary.

## 16. Steering Committees and procedures

The clause provides, first, that Steering Committees set their own procedures, and second, that the SIP Chair must provide them with accommodation, resourcing and secretarial support or, alternatively, ask EDD to do so.

The following changes are supported.

- A clause should be added to empower the Council to set the procedures for Steering Committees. The power of a Steering Committee to set its own procedures would then be made subject to the power of the Council.
- 16(2) and 14(1)(i) both require Steering Committees to submit reports to the Secretariat. The apparent duplication should be addressed.
- Clause 16(3)(a) refers to "the Economic Development Department". It is recommended that reference be made to the "Department", which is defined earlier as "the Economic Development Department".

# 17. Processes relating to SIPs

- The clause provides that processes related to regulatory decisions for a SIP should as far as possible run concurrently, and provides that “The processes set out in Schedule 2 provide a framework and guide for the implementation of any strategic integrated project, but the time-frames in Schedule 2 may not be exceeded.”
- Because the Bill relates to the internal organisation of the state, it was not seen as necessary or desirable to impose sanctions in support of Schedule 2; rather, it is a directive to state officials.

It is also proposed that a clause be included to protect a decision made in terms of this clause from challenge simply on the basis of being made outside of the required time period

- To ensure Constitutional requirements on consultation are met, it is proposed that executive authorities may extend the relevant timeframes if
  - They have been given valid reasons in writing, and
  - They inform the PICC within five days of the delay and the reasons for it.
- It was suggested that in order to reduce delays around consultation, the Bill could deem a comprehensive public consultation process required under any law to satisfy the public consultation process requirements of other laws applying to a SIP. This would accelerate processes but seems difficult in terms of the law.



## 17. Processes relating to SIPs (2)

A number of proposals are not supported.

- Timeframes may not be viable if there are appeals either internally or to the courts – The timeframes were agreed with the relevant authorities as providing sufficient time for internal appeals. The time frames would not apply in the case of an appeal to the courts.
  - Rather than amending Clause 17, it is recommended that Schedule 2 be worded to clarify that the current timeframes provide for internal appeals.
- Time frames should reflect the current process by DEA, Water Affairs and Mineral Resources to align their requirements
  - A central aim of the Bill is to bring in a single integrated framework that has been considered at Cabinet level by all relevant authorities and placed before Parliament for its consideration.
  - Such a timeline would supersede the separate timelines in other legislation and regulations.

# 17. Processes relating to SIPs (3)

Further proposals that are not supported:

- Some submissions argued that the timeframes would not permit an adequate EIA with community consultation – the timeframes were carefully considered and in addition, amendments have been proposed to address the concern further.
- Just require each SIP to set timeframes subject to Council approval – This would undermine the message that time is of essence in implementing the SIPs and make oversight much more difficult.
- By limiting time for environmental assessments in particular, the Bill violates the Constitutional rights around the environment – The Bill strikes the right balance between rights on the environment and other socio-economic rights, including to health, education and other government services that require infrastructure investment. The regulation of the rights in legislation is proper and appropriate. Reducing unnecessary delays in environmental management processes, without changing the standards set in NEMA and other laws, is not unconstitutional.

# 18. Environmental assessments

- The clause provides that, “Whenever an environmental assessment is required in respect of an integrated strategic project such assessment must be done in terms of the National Environmental Management Act, 1998 (Act No. 107 of 1998), with specific reference to Chapter 5.” Chapter 5 of NEMA provides for environmental impact assessments but also for other environmental management instruments.

The following proposals are not supported.

- One submission argues that the clause as it stands ignores other Acts that require authorisations and would tend to move decisionmaking on the environment to the national level. More careful reading of the Bill makes it clear that the premise of this argument is inaccurate , since the Bill requires adherence to other legislation.
- One submission suggested that the clause should include water use authorisations and mining authorisations. The clause relates to any environmental assessments and would cover those suggested.

## 19. Reporting by Minister

- The Minister must provide progress reports on a monthly basis to the Council and Manco, in whatever form they require.
- No comments were received on this clause.

## 20. Delegation and assignment

- The clause provides that the Minister may delegate a power under the Bill to an official, except for the power to make regulations
- The heads of other organs of state may delegate powers to their representatives on Steering Committees, except for the power to make regulatory decisions.
- The following proposals are not supported.
  - Concerns were raised that, despite the limitations on delegations to members of steering committees, a conflict of interest could arise – The reasons for rejecting this concern are given above.
  - The Minister may want to delegate some regulatory powers to independent regulators – This is not an eventuality that should be covered by this Bill, which aims to establish the PICC and its structures, not change the powers or accountability of independent regulators.

# 21. Regulations, guidelines and targets

- The clause empowers the Minister, in consultation with the Commission, to regulate
  - any matter prescribed in the Act;
  - the monetary threshold for designating a SIP as provided in clause 7;
  - and “criteria” for implementation of a SIP, for instance around skills, BBEE, etc.
- The powers to regulate implementation by a SIP are constrained by existing legislation in these areas, and would relate only to how the relevant laws are interpreted in the course of implementing SIPs.
- It is proposed that clause 21 provide for guidelines and targets as well as regulations on matters covered in clause 21(1). It would provide a greater range of instruments to give effect to the Objects of the Bill
- The list of topics that can be regulated or guided should include local industrialisation.
- The matters included in clause 21(1) should be extended to transitional arrangements applicable to strategic integrated projects in existence immediately prior to the date of commencement of this Act.
- The proposed addition of transitional matters to clause 21(1) would be complemented by a new clause 22, which would provide for transitional arrangements.
  - It would provide that the existing SIPs are deemed to have been gazetted in terms of the Act with effect from the commencement date of the Act.
  - The existing transitional provision dealing with steering committees would be moved into this clause .

## 21. Regulations (2)

- Some submissions argued for a specific requirement that regulations be consulted before adoption.
  - Consultation is already required under PAJA, and need not be specified in the Bill.
- A submission argued that the Bill should clarify that the regulations will not change existing legislation, especially on BBBEE.
  - This is not required, since a regulation cannot change a law such as the BBBEE Act

## 22. Transitional arrangements and savings

- The purpose of the Bill is to give legal effect to already existing structures and practices. Legal advice has proposed that a clause dealing with transitional arrangements and savings is introduced to establish what already exists in terms of this legislation.

The proposed new clause 22 addresses continuity of the 18 SIPs which are listed in a new Schedule 3, and ensures continuity in the structures of SIP implementation.



## 22. Short title and commencement

- No comments were received on this clause.
- This clause would become Clause 23 if the proposal for a new clause 22 on transitional arrangements is adopted.

- The schedule lists the universe of projects that constitutes infrastructure as understood in the Bill.
- Since there is no commonly accepted definition of infrastructure in the sense used in economics, this kind of scope should be useful, if the difference between the scope of the Bill and SIPs can be better communicated.

## Possible amendments

- Clarify in the heading that SIPs would be selected from this list; the list does not constitute the contents of SIPs
- Substitute waste management infrastructure for waste management.
- Amend electricity transmission lines to electricity transmission and distribution
- Substitute sewage works for sewage works and sanitation
- Add public transport.

A proposal to add social infrastructure such as sports halls, cultural centres, police stations, refugee centres is not supported as it is covered by reference to human settlements and related infrastructure.

# Schedules 2 and (proposed) Schedule 3

- Schedule 2 lays down timeframes for key steps in the regulatory process, with a total of around 250 days
- Schedule 3 (new) would describe the existing 18 SIPs for purposes of the transition

Proposals that are supported:

- Improve the clarity of Schedule 2, identifying more clearly what triggers each timeframe and what brings them to a close
- Proposed Schedule 3 – the proposed list is based on the existing 18 SIPs

# Additional proposals

- It was proposed that a stakeholder forum should be established. This proposal is not supported, since it would change the aim of the Bill, which is essentially to enable government to establish structures to implement its infrastructure investment programme.
- SIPs should all utilise Life Cycle Analysis, triple bottom line reporting, and have an asset management plan – It is not appropriate to regulate in detail all the possible instruments used in managing SIPs, since the requirements of and capacity for different projects may vary substantially. The Minister may regulate some best-practice guidelines or even requirements, based on experience, over time; but including these requirements in the law may build in inflexibility and blockages.
- Some inputs proposed that the Bill should explicitly support PPPs. This seems unnecessary as the appropriateness of PPPs varies by project and the extent of resort depends on policy of the day.