KWAZULU-NATAL PROVINCE
ECONOMIC DEVELOPMENT, TOURISM
AND ENVIRONMENTAL AFFAIRS
REPUBLIC OF SOUTH AFRICA

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IAIAsa KZN INFORMATION SESSION: UNPACKING BIODIVERSITY OFFSETS IN KZN

Biodiversity Offsetting Guideline Implementation in KwaZulu-Natal

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Introduction and Outline

- Implementation of the Biodiversity Offset guideline
- Applying the mitigation hierarchy
- Offset justification
- Information needed for decision making
- Offset Report and Management plan

Implementation of the Guidelines for biodiversity offsets

- KwaZulu-Natal has been one the earliest developers of biodiversity offset guidelines in South Africa
- Ezemvelo KZN Wildlife (EKZNW) produced an offset guideline in 2013 and this has guided biodiversity offsets in KZN
- The provincial guideline aligns with the Business and Biodiversity Offset Programme (BBOP) and other biodiversity offset principles used internationally
- Supplemented with a "*Minimum Requirements for Biodiversity Offsets in KwaZulu Natal*" in 2019 to promote measurable conservation outcomes
- To a large extent these guidelines are now largely superseded by the National Biodiversity Offset Guideline issued under section 24J of NEMA – however the EKZNW guidelines still provide a local context
- KZN is now also looking to develop proactive biodiversity schemes (Biodiversity Banking)

National Biodiversity Offset Guideline

- The National Biodiversity Offset Guideline **is a Section 24J NEMA Implementation Guideline** - Provides guidance on the administration of the EIA Regulations in the context of biodiversity offsets

- The guideline applies to terrestrial and aquatic ecosystems - not marine or estuarine – although principles and approach can give guidance

- The National Biodiversity Offset Guideline (GN No. 3569 of 23 June 2023) available to download at: https://www.dffe.gov.za/sites/default/files/legislation/2023-09/nema_nationalbiodiversityoffsetguideline_g48841gon3569.pdf

The National Biodiversity Offset Guideline defines a biodiversity offset to mean:

"*A measurable outcome of compliance with a formal requirement contained in an environmental authorisation to implement an intervention that has the purpose of counterbalancing the residual negative impacts of an activity, or activities, on biodiversity, through increased protection and appropriate management, after every effort has been made to avoid and minimise impacts, and rehabilitate affected areas*"

National Biodiversity Offset Guideline

- Core purpose of the Guideline is to:

1. Indicate when biodiversity offsets are required

- Gives guidance up-front when it is likely that a biodiversity offset will required based on significant of impact on biodiversity

2. Lay down basic principles

- Sets down key principles of biodiversity offsets that should be followed in considering and designing offsets, based on recognised best practice

3. Guide consistent offset practice in the EIA process

- How biodiversity offset assessments and considerations should undertaken and aligned with the EIA process
- Provides a framework of offset ratio's based on ecosystem threat status

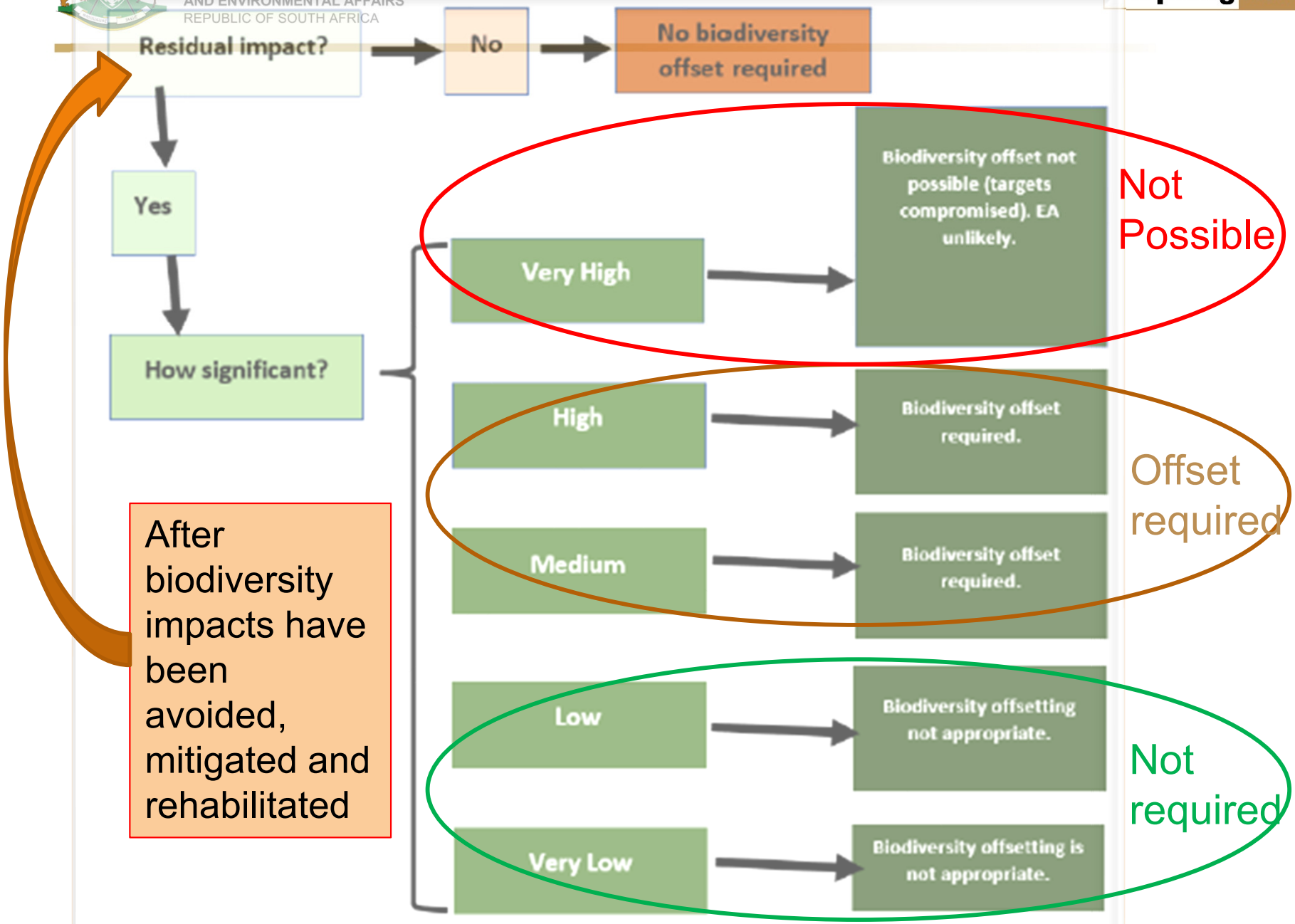

Figure 2 Flow diagram: When is a biodiversity offset required?

Applying the Biodiversity offset Guideline in an EIA

- The Section 24J Biodiversity Offset Guideline **MUST** have been considered in the EIA decision making process (section 24O(1)(b)(viii))
- As an EAP the Guideline and its application/implications to the EIA process must be made known to the applicant and raised for discussion in the Pre-application meeting
- Applications for EA **MUST** reflect (in detail) how the guideline was considered in the application assessment
- While the guideline does allow flexibility in terms of offset targets, approaches and application – but there **MUST** be supporting justification for deviation
- Biodiversity offset feasibility and suitability assessments **should be preferably be undertaken prior to the lodging of a formal application** for environmental authorisation

Guideline Use in the EIA Phases

Pre-application phase

No steps required, but the applicant must instruct a specialist to conduct a preliminary assessment of whether a biodiversity offset is likely to be required.

If a biodiversity offset is likely to be required, the specialist may be instructed to draft a Biodiversity Offset Report.

EIA phase

EAP/CA/I&AP/specialist identifies whether a biodiversity offset is required.

The EAP and the specialist(s) prepare a Biodiversity Offset Report.

The Biodiversity Offset Report is submitted to the CA together with the BA/EIA Report.

Decision-making phase

CA takes a decision to grant an EA, subject to the condition that a biodiversity offset is implemented.

The EA specifies what the offset requirements are and requires the EA holder to identify and secure a site that meets those requirements and to pay for the management of the offset for 30 years.

Post authorisation phase

The EA holder identifies a biodiversity offset site and secures that site.

The EA holder instructs a specialist to prepare Biodiversity Management Plan for the site.

The EA holder enters into a Biodiversity Offset Implementation Agreement with an implementing party to implement the Biodiversity Management Plan.

Implementation of the Guidelines: Mitigation Hierarchy

- We must apply the mitigation hierarchy – Avoid, Reduce, Rehabilitate, Offset – with offsetting being the final option where other measures leave a residual impact

- Biodiversity offsets may only be considered as the last option in the mitigation hierarchy
- Biodiversity offsets should only be considered acceptable where there is justifiable and substantive socio-economic gain
- The availability of offsetting may create a perverse incentive to bypass mitigation, with developers looking at proceeding by simply paying for the offset cost
- Limits exist to what can be offset; some loss of biodiversity (e.g. extinction) cannot be offset or compensated for

Information needed for decision making

- When a Biodiversity Offset is necessary to cater for residual biodiversity impacts and there is justifiable reasoning, there must be -
- a **clear understanding** of –
  - the quantum biodiversity offset target required (expected residual loss X appropriate offset ratio's);
  - the availability and suitability of biodiversity offset areas to address the residual loss target; and
  - the feasibility and viability of obtaining those offsets areas

- There must be a **high degree of surety that the offsets being proposed will be effective and feasible** in achieving the objectives (i.e. land owner agreements / property purchase agreements / conservation trust establishment and funding)

- **Use Precaution**: If there is low certainty about the consequences of doing something, it is better to avoid taking any risks that could lead to irreplaceable loss of biodiversity or significant environmental degradation

Decisions for biodiversity offsets

- Biodiversity offsets must be designed and implemented in the public interest – not the best interest of an applicant or client
- Offsets are not a “one-size-fits-all” and need to be tailor-made for specific circumstances
- While “like-for-like” offset principles should be pursued – room may be made for trade-offs or innovative approaches where the biodiversity benefit is shown to be greater than the loss
- Larger, landscape scale offset initiatives are considered more effective than small piece-meal offsets

"Trade-off's" in Decision making

- A "**Trading-up**" approach may seek a higher conservation priority elsewhere, but this may involve trading one type of biodiversity for another
- There are **limits to trade-offs** and should **only permissible in exceptional cases** with "significant reasons of overriding public interest"
- Trade-offs must account for risks, uncertainties, and time lags
- Biodiversity offset decision must be based on the best available science and be the best practical environmental option

Biodiversity Offset report

- Specify the desired **biodiversity offset outcomes and objectives/targets** – identify residual impact; establish appropriate targets/objectives; identify offset candidate sites; identify site risks and priorities; establish estimated costs of establishment, management and monitoring
- Clearly indicate the **Applicant being responsible for funding** for the establishment and ongoing maintenance (min 30 years) of the biodiversity offsets
- Stipulate the proposed **financial mechanism or guarantee that will be established** to cover the establishment and long-term management and monitoring costs
- Preferably provide **landowner agreements** for identified offset sites or alternatively **financial guarantees** for the implementation
- Specify **how the offset site will be legally protected** for the long term, preferably in perpetuity (min. of 30 years management costs) e.g. Protected Areas, or registering a conservation servitude
- Proposed the **governance structure** to oversee the establishment and ongoing management/monitoring of the offset
- Include clear **responsibilities and timeframes for completing actions**

Offset Implementation

Before commencing the listed activity the following is required in most instances:

- Establishment of **Conservation Trust or similar** for offset fund management and auditing to achieve offset objectives
- Finalisation of **land owner agreements and/or sale agreements**
- Enter into a legally binding **Biodiversity Offset Implementation Agreement** with a suitable implementing partner, such as a conservation authority or a qualified non-profit organisation (for implementation and monitoring)
- The submission and approval of a detailed **Biodiversity Offset Management Plan (BOMP)** for specific offset sites

THANK YOU

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