



IAIAsa 2017 PRE-CONFERENCE TRAINING COURSE 2

Trainers – Richard Summers, Sibonelo Ndlovu, Katherine Handley, Megan Donald



Richard Summers

Richard is a founding partner of Smith Ndlovu and Summers Attorneys, which is a boutique Environmental Law firm. Richard has specialised exclusively in all aspects of Environmental Law since 2004. He started his career as an Environmental Lawyer with Winstanley Smith & Cullinan, which was the largest specialist Environmental Law firm in South Africa at the time.

In 1998, and before qualifying as an attorney in South Africa, Richard worked in the Litigation Department of W.K. To & Co, a law firm based in Hong Kong. Thereafter Richard relocated to the UK and worked as a Paralegal at Norton Rose (now Norton Rose Fulbright) and Chadbourne & Parke, both leading City of London law firms. During his tenure at Norton Rose, Richard worked in the Banking & Finance Department assisting on projects advising sovereign entities on international financing transactions and loan facility agreements in the oil and gas sector.

Richard left Norton Rose to pursue his interest in Environmental Law, completing a one year full-time Master of Laws degree in Environmental Law at the School of Oriental and African Studies, University of London. He was awarded the degree of Master of Laws with Merit in 2001.

After obtaining his Masters degree, Richard returned to Cape Town to serve articles at Findlay & Tait (which later merged with Bowman Gilfillan Inc.), and to formally qualify as an attorney of the High Court of South Africa.

Professional Experience

Richard's practice areas include advising clients in both the private and public sectors on a range of regulatory compliance issues relating to environmental related regulatory requirements. Richard's core areas of expertise specifically include:

- Air quality management and Atmospheric Emission Licence applications under the National Environmental Management: Air Quality Act, 2004.
- EIA processes undertaken in terms of the EIA Regulations promulgated under the National Environmental Management Act, 1998.
- Land use planning regulatory requirements and approval processes.
- The development and implementation of biodiversity offset agreements.
- Heritage impact assessment processes regulated in terms of section 38 of the National Heritage Resources Act, 1999.
- The preparation of Heritage Management Agreements and Heritage Conservation Management Plans regulating the conservation, management and maintenance of significant heritage resources.
- Compliance audits and the preparation of the legal aspects of environmental management systems and operational requirements, including in connection with ISO 14001 certification.
- Environmental and Social Management Systems for renewable energy projects under the Department of Energy's (DOE) Independent Power Producer ("IPP") Procurement Programme (and in accordance with International Finance Corporation requirements).
- The remediation of hydrocarbon contaminated soils and groundwater.
- Waste management requirements in terms of the National Environmental Management: Waste Act, 2008.

Sibonelo Ndlovu

Sibonelo holds the BA (Law) (University of Durban-Westville), LLB (University of Natal), and LLM: Marine and Environmental Law (University of Cape Town) degrees. The capita selecta of the coursework for the LLM degree were marine resources law, South African environmental law, international environmental law, and advanced administrative law. His dissertation focused on ex post facto environmental impact assessment and environmental authorisations in South African law.

Sibonelo was admitted as an attorney in the Cape of Good Hope Provincial Division of the High Court in April 2003 and is an environmental lawyer who has been practising exclusively in this field since then. On 1 September 2006, Sibonelo, Nicholas Smith and Richard Summers founded Smith Ndlovu and Summers Attorneys.

Professional Experience

A sample of the work that Sibonelo has done in the past ten years includes the following: From June 2007 to date, Sibonelo has been part of the KwaZulu-Natal appeal panel which was established in terms of National Environmental Management Act 107 of 1998. The panel advises the KwaZulu-Natal Member of the Executive Council (MEC) responsible for environmental affairs on appeals lodged against decisions of the Head of the Department of Agriculture and Environmental Affairs.

In 2012, Sibonelo conducted research on the statutory framework for liability and redress in the context of genetically modified organisms. That project was commissioned by the national Department of Environmental Affairs in order to assist in the deliberations relating to whether or not the Republic of South Africa should sign or ratify the Cartagena Protocol on Biosafety.

Sibonelo has been involved in a number of capacity-building initiatives in the public and private sector in regard to strengthening an understanding of the links between Constitutional, administrative, legal, and environmental legal requirements, and the imperatives for environmental governance that those laws seek to underpin. The initiatives in which Sibonelo has been involved have been in four provinces, namely, KwaZulu-Natal, Western Cape, Gauteng and North West Provinces.

Sibonelo has provided various clients with environmental legal advice. These include corporate clients, NGOs, individuals and the public sector. He is currently advising a local authority on attempts to ensure that other organs of state which construct infrastructure within the jurisdiction of that local authority comply with the provisions of the National Environmental Management Act 107 of 1998 and environmental authorisations issued under that Act.

Sibonelo regularly provides memoranda of advice and opinions to environmental authorities, local authorities, developers and interested parties on the requirements imposed by the provisions of the National Environmental Management Act 107 of 1998.

Katherine Handley

Katherine Handley holds a Bachelor of Social Sciences (BSocSci) degree from Rhodes University, a Bachelor of Laws (LLB) degree and a Master of Laws degree (LLM) from the University of Cape Town. Katherine was chosen to be on the Dean's Merit List in respect of both her BSocSci and LLB degrees and is also a member of the Golden Key Society. She successfully completed her LLB and graduated in 2010, and obtained her LLM in Environmental Law in 2016, with distinction.

After being admitted as an attorney in 2014 and practicing in the fields of insolvency law and general commercial litigation, Katherine joined Smith Ndlovu & Summers Attorneys in June 2015, where she currently practices as an associate.

Professional Experience

Katherine's thesis, which she completed as part of her LLM degree, concerns a critical analysis of the alien and invasive species regulatory regime in South Africa, examining the various laws which govern this field through the lense of the IUCN Guidelines for the Prevention of Biodiversity Loss caused by Alien Invasive Species.

Since joining the firm, Katherine has been involved in a broad range of matters including advising clients on the provisions of the National Environmental Management Act 107 of 1998 (NEMA), and EIA regulations, the drafting and preparation of appeals in terms of NEMA and other relevant environmental legislation, assisting with the defence of criminal prosecutions for environmental crimes, providing advice regarding the designation of land as protected areas, and preparing appeals against and objections to land use planning applications. In addition thereto, Katherine has assisted in the preparation of numerous legal opinions on a range of environmental law-related topics.

Megan Donald

Megan Donald attended Stellenbosch University where she obtained a Bachelor of Theological Studies (BTS) and a Bachelor of Arts with Honours (BAHons) in English Studies (with distinction). Megan then completed her postgraduate Bachelor of Laws (LLB) and graduated in 2012. An article dealing with administrative law which she wrote during the course of her LLB was published in the *Responsa Meridiana* journal in 2012.

Megan then received a bursary from the Bradlow Foundation to complete her LLM thesis under the auspices of the Socio-Economic Rights and Administrative Justice Research Project at Stellenbosch University. She graduated with distinction in 2014.

Megan joined Smith Ndlovu & Summers Attorneys in 2015 to complete her articles of clerkship. She was admitted as an attorney of the High Court on 3 March 2017 and has since been employed with the firm as an Associate.

Professional Experience

Megan's LLM research dealt with constitutional law and environmental rights. Her LLM thesis is entitled "Advancing the constitutional goal of social justice through a teleological interpretation of key concepts in the environmental rights in section 24" and proposes an interpretation of environmental rights in the South African Constitution which is congruent with the Bill of Rights as a whole.

Since joining Smith Ndlovu & Summers Attorneys in February 2015, Megan has been involved in a range of matters including: drafting objections in terms of the Land Use Planning Ordinance 15 of 1985 and the City of Cape Town's Municipal Planning By-Law 2015; drafting comments and appeals in terms of the National Environmental Management Act and the associated Environmental Impact Assessment Regulations; researching and drafting opinions related to various aspects of the suite of environmental legislation in South Africa; and assisting with the preparation of health, safety and environment legal registers for clients.

Since 2016 Megan has also been a lecturer for the School of Public Leadership at Stellenbosch University where she presents the module 'Introduction to Environmental Law' to postgraduate students.

Course Details

Course title	Interpretation and application of the Environmental Impact Assessment Regulations, 2014 (as amended)
Level	Intermediate level
Pre-requisites for participants	<p>All participants should have a basic knowledge of the content and scope of the Environmental Impact Assessment Regulations, 2014 (as amended) (the EIA Regulations) in order to facilitate productive engagement during the training course.</p> <p>It is not necessary for participants to have experience in any particular sector, as the training course will be aimed at practitioners who work with the EIA Regulations in any capacity (including government officials, Environmental Assessment Practitioners (EAPs), lawyers, project managers).</p>
Language of delivery	English
Duration	1 day
Minimum and maximum number	15-50

Course Description

South Africa has one of the world's most progressive constitutions, which includes the right to an environment that is not harmful to health and well-being, and which must be protected for present and future generations. In fulfilment of this right, the National Environmental Management Act, 1998 creates mechanisms aimed at achieving integrated environmental management and establishing the decision-making systems through which this must occur, including EIA.

However, the ability of EIA (and environmental decision-making) to provide solutions to persistent social and economic problems, thus achieving sustainable development, is potentially marred by difficulties in interpreting and applying complex EIA Regulations, which are subject to frequent amendments.

This course draws on the practical difficulties experienced by EAPs with the interpretation and application of the EIA Regulations and associated Listing Notices with a view to promoting EIA 'best practice'. The course will provide a brief overview of the content of the EIA Regulations, with particular focus on the April 2017 amendments. Thereafter, the course will consider potentially problematic aspects and provisions of the Regulations, drawing on case studies where interpretation and implementation of the EIA Regulations has proven a challenge. This will involve firstly, presenting the problem, secondly, inviting practical input from participants, and thirdly, the presenter describing how the problem was addressed. By the end of the course, participants will have engaged with some of the more complex provisions of the EIA Regulations, and will come away with the knowledge of how to tackle those problems in future.

The course will not simply involve the presenters restating all the provisions of the EIA Regulations and Listing Notices – rather, it is aimed at highlighting the difficulties of interpretation and implementation of particular provisions with the aim of empowering participants on how to deal with such difficulties in future in order to ensure EIA ‘best practice’ in impact assessment.

The course will be presented at an intermediate level, and participants are expected to have a basic knowledge of the content and scope of the EIA Regulations (and associated Listing Notices).

Course Outline

15 August 2017		
Time	Topic	Presenter
08h00-08h30	Course registration	All
08h30-09h00	Welcome and introduction of all participants <ul style="list-style-type: none"> Names, organisations, country Expectations House Rules 	All
09h00-10h15	<p>Introduction:</p> <ul style="list-style-type: none"> Biographical sketch of the course presenters and their approach to the capacity-building initiative. EIA process, its role in Integrated Environmental Management, and its sources (the Constitution, the National Environmental Management Act, 1998, and the EIA Regulations) will be briefly discussed in order to contextualise the course. <p>What’s new:</p> <ul style="list-style-type: none"> The training will cover the contents of the 2014 EIA Regulations and the Listing Notices, which were amended on 7 April 2017. The emphasis of this discussion will be on the most significant changes brought about by the 2017 amendments and the implications thereof. The purpose of this section of the course is not to traverse (in detail) the contents of the EIA Regulations, but to highlight the processes contained therein, as well as various important aspects, again in order to contextualise the discussion surrounding difficulties of interpretation and application of the Regulations and Listing Notices. 	Richard Summers
11h15-11h30	TEA/COFFEE BREAK	
11h30 – 13h00	<p>After tea, the presentation and discussion will focus on:</p> <ul style="list-style-type: none"> The prescribed content of key EIA reports in the scoping and assessment phases: what <i>exactly</i> does the law require when compiling: 	All

	<ul style="list-style-type: none"> - Basic Assessment reports - Scoping reports - Environmental Impact Assessment reports - Environmental Management Programmes <ul style="list-style-type: none"> • An analysis of environmental impact assessment methodology which will include, inter alia: <ul style="list-style-type: none"> - Understanding the legal requirements related to reporting on cumulative impacts. - Unpacking the assessment of alternatives, including the scope and content of the requirement to assess alternatives. - The meaning and scope of need and desirability in impact assessments, including a discussion of integrated environmental management and the relationship between EIA and planning law. • An analysis of the timeframes in the EIA Regulations for report submission, including the practical effect of Regulation 23 (the wording of which gives rise to challenges regarding when an environmental impact report, together with specialist reports and an EMPr, must be submitted to the competent authority). • A discussion of timeframes and lapsing of applications in terms of the EIA Regulations, including the circumstances in which an application will lapse and the circumstances in which a prior-approved scoping report may be “banked” for later use. 	
13h00-13h45	LUNCH	
13h45 -15h00	<p>The focus of the presentation and discussion for this section of the course will be:</p> <ul style="list-style-type: none"> • An analysis of stakeholder engagement in the EIA process, including the basic legal requirements for public participation and engagements with interested and affected parties (IAPs) and a discussion of how stakeholder comments and concerns can be meaningfully and effectively incorporated into the EIA process. This section will include a brief discussion on case law which highlights the importance of adequate public participation in the EIA process. • The legal requirements in relation to amendments of environmental authorisations and environmental management programmes, including a discussion of the associated pitfalls and opportunities. • An analysis of the legal requirements related to changes in scope of listed activities, including a discussion of how 	All

	<p>changes to project scope can be managed during the EIA process, as well as in post-authorisation scenario.</p> <ul style="list-style-type: none"> • The legal regime in relation to appeals in terms of NEMA and the National Appeal Regulations Appeals, and a discussion of how appeals can be avoided. • A discussion of the applicable legal provisions related to ongoing environmental management, including the facilitation of compliance with the conditions of an environmental authorisation during the construction and operational phases of a project. 	
15h00-15h15	TEA/COFFEE BREAK	
15h15-16h00	<ul style="list-style-type: none"> • This section of the course will focus on two to three case studies regarding the topics discussed above. The scenario will be presented to participants, following which the presenters will afford the participants an opportunity to discuss how the scenario should best be addressed, before informing the participants as to how the scenario played out. • One or two (depending on the time available) participants will be provided with an opportunity to present a problem scenario, whereafter participants and presenters will have an opportunity to engage with the problem and provide their responses. 	All
16h00-17h00	Course evaluation and closure Certificates of attendance	

Description of the materials participants will receive

Each participant will receive, upon arrival:

- A notepad
- A CD containing: relevant legislation discussed during the course AND the lecture slides from the course

Provision for pre- and post-conference communication with participants

At least two of the presenters will be attending the IAAsa National Conference 2017, and participants are encouraged to approach the presenters during the Conference to further discuss the course content. Participants will already have been provided with the presenters' contact details, should they wish to engage with the presenters in future.