

Section 1: Background and Introduction

1.1 Background and Introduction

In April 2005, the Minister of Environmental Affairs and Tourism indicated in a speech that the owners and users of inland 4x4 recreational driving tracks should move towards better regulated and more equitable practices, as the activities of some irresponsible 4x4 vehicle and track owners are damaging sensitive sections of South Africa's inland environment.

The Minister indicated that the National Off-Road Workshop, planned by industry for October 2005, was a pleasing indication that the sector was prepared to take its responsibilities seriously.

He did however go on to say that “ *a grading system for 4x4 tracks, including environmental grading, and the creation of a representative industry body would be positive steps. However regulations will still be required and if there are not concrete proposals forthcoming from the industry within the next 6 months, Government will have to issue these unilaterally although this would not be our first choice*”.

A transcription of a letter from the Minister in March 2005, to Mr Jan Joubert is included below.

Geagte Mnr Jan H Joubert

MOONTLIKE REGULERING VAN 4X4s IN BINNELANDSE GEBIEDE

U vorige skrywes en verskeie gesprekke met amptenare van die Departement en Ministerie verwys.

Die minister het al by meer as een geleentheid sy kommer uitgespreek oor die omgewingsimpak van 4x4 aktiwiteite buite die kussones. Die eerste keuse is dat die bedryf homself reguleer deur 'n raamwerk daar te stel om verantwoordelike en volhoubare 4x4 aktiwiteite te verseker. Een voorvereise hiervoor sal wees dat die bedryf homself organiseer in 'n verteenwoordigende liggaam of liggame wat hieroor met die Regering in vennootskap kan gaan. Dit sal die regering se voorkeur wees om nie eensydig regulasies uit te reik nie.

Gegee die skade wat tans in sommige gebiede deur 4x4 aktiwiteite aangerig word, het hierdie saak vir ons 'n bepaalde dringendheid wat ons binne 5 of 6 maande tot finaliteit wil bring.

Die Departement van Omgewingsake en Toerisme is in beginsel bereid om inisiatiewe in

hierdie verband te steun deur ons kundigheid daarby in te ploeg en ons verbind tot verdere gesprekke oor die verwysingsraamwerk en beoogde uitkomste van die proses wat u voorstel. Totdat daar duidelikheid is oor laasgenoemde sal dit moeilik wees om formeel so 'n privaat-inisiatief te onderskryf.

Ons Departement is egter meer as bereid om verder met u in gesprek te tree tydens die beplanning van u proses en om dan verder oor deelname of onderskrywing te besin.

Kontak asseblief vir Me Joanne Yawitch op die volgende kontaknommer: 012-310 3665

Vriendelike groete

ADV. HELEN VENTER
HOOF: MINISTERIE
30 MAR 2005

Heeding these warnings, the National Off-Road Workshop was held from the 18th to 20th October 2005 in George. This was attended by 60 representatives from the off-road industry as well as 5 senior government officials.

During the course of the workshop, and in subsequent meetings it was agreed that a mechanism and legal framework needs to developed in order to prevent avoidable and manage unavoidable detrimental impacts to the environment and prohibit recreational off-road driving in sensitive areas except on a registered trail by a licensed driver in a permitted vehicle. The concept of a licensed driver in a permitted vehicle was later changed to driver competency.

Four key focus areas that need to be addressed to ensure a sustainable off-road sector in South Africa, were identified, viz:

- Sensitive areas;
- Driver competency;
- Off-road guiding and tourism development; and
- Trails and tracks.

The National Off-Road Workshop gave rise to the National Off-Road Workgroup (“**NOW**” – “**the Client**”), which acts as a steering committee to drive the formulation of a self-regulation strategy and implementation framework. In addition, NOW will also be involved in setting up the process for the establishment of a representative body for the entire off-road sector. This representative body will ultimately:

1. Act as representative of the off-road sector in its dealings with regulatory agencies;
2. Regulate the off-road sector going forward – so that there is broad consensus within the off-road sector and between the sector and with government (on the basis that it will be in the best interests of the majority of 4x4 users and providers of facilities, that

- the concept of self-regulation by the off-road sector is maximised and government intervention is kept to a minimum); and
3. Represent the off-road sector in the negotiation of and ultimate signature of an Environmental Management Cooperation Agreement (“**EMCA**”), if required or appropriate, between the off-road sector and the Minister of Environmental Affairs and Tourism and which will give substance to the objectives.

NOW has developed a Business Plan to guide their activities. This Business Plan has been approved by the Department of Environmental Affairs and Tourism (“**DEAT**”) and with DEAT’s financial assistance, guides and directs the development and implementation of the following objectives:

1. The adoption of a self-regulating strategy for the off-road sector;
2. The promulgation or publication of enabling legislation or regulations, should it be proven necessary;
3. The establishment of an EMCA between the off-road sector and government, if appropriate, to agree the implementation of the envisaged self-regulation mechanisms; and
4. Development and establishment of an off-road sector, which supports the globally accepted, triple bottom line development principles.

A joint Strategy Planning Workshop was held in May 2007 between representatives of NOW and DEAT, to reflect on the strategic significance of the off-road sector to South Africa and to put forward guidelines for the key focus areas that will be incorporated in the formulation of a self-management/self-regulation framework for the sector.

The specific objectives of the workshop were to:

1. Identify key drivers in the macro environment that can impact on the future shape and direction of the off-road sector in South Africa;
2. Re-affirm the shared vision and guiding values for a responsible off-road sector;
3. Re-affirm the key focus areas to be addressed to ensure a sustainable off-road Sector (sensitive areas, driver competency, 4-wheel-drive guiding, trails and tracks, tourism development and self-regulating structures/processes);
4. Identify key strategic priorities and self-management proposals for each of the key focus areas;
5. Propose parameters and practical guidelines for an integrated and responsible self-regulatory framework and process;
6. Agree on the critical success factors and the road ahead;
7. Establish a representative umbrella body to manage the process toward self-regulation;

8. Develop and submit a framework for an implementation strategy. This framework needs to identify all the tasks to be undertaken to derive a self-regulation implementation strategy and assign responsibilities and time frames to it;
9. Develop and promulgate / publish required legislative mechanisms for self-regulation (if required);
10. Develop and sign an Environmental Cooperation Agreement or Memorandum of Understanding between the Minister and the off-road sector around self-regulation, if required; and
11. Implement.

Grant Thornton, in consortium with Felehetsa Environmental, has been appointed to develop the self-regulation strategy and implementation framework.

This strategy will be in support of the following documents that will guide the strategy:

- NOW Terms of Reference;
- NOW Business Plan;
- NOW Web Forum (<http://www.now.org.za>);
- Minutes of the joint “clarification” workshop held between NOW, DEAT, Grant Thornton and Felehetsa Environmental on the 27th July 2007.

1.2 Overview of NOW and Other Stakeholders

There are 7 associations that formally constitute NOW, viz:

- National Association of Automobile Manufacturers of South Africa (“**NAAMSA**”);
- Association of Motorcycle Importers and Distributors (“**AMID**”);
- Southern African Vehicle Renting and Leasing Association (“**SAVRALA**”);
- Southern Africa Route Owners and Operators Forum (“**SAROOF**”);
- South African National Off-Road Trainers Association (“**SANOTA**”);
- 4-Wheel-Drive Guides Association of South Africa (“**4WDGSA**”); and
- Association of All-Wheel Drive Clubs of Southern Africa (“**AAWDC**”).

These associations are at varying degrees of development, with some being relatively new and un-formalised, while others have been in existence for many years, are well established and have a large membership base.

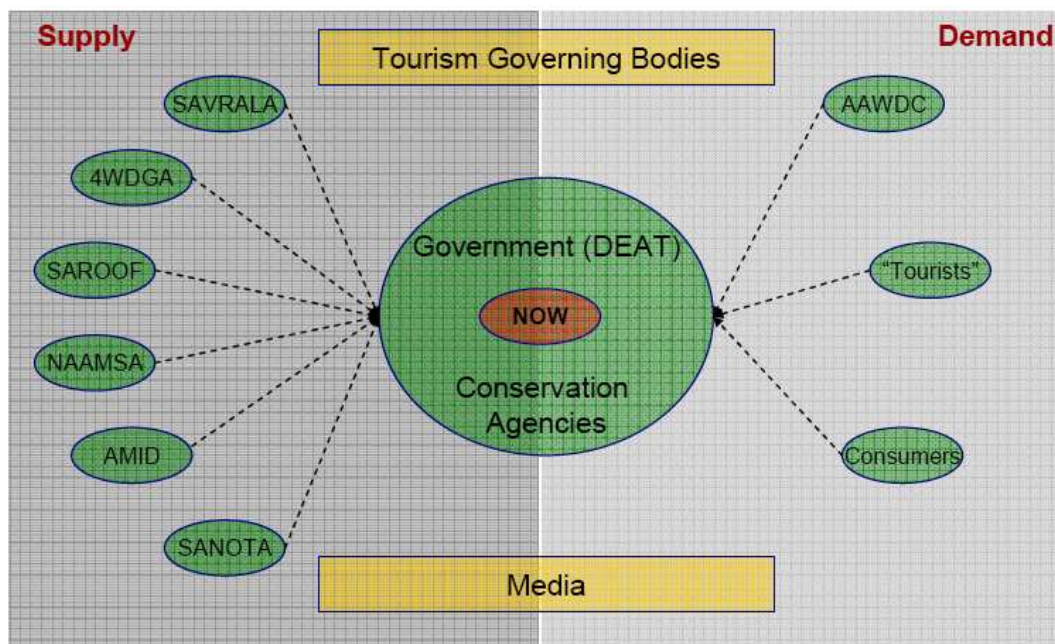
Other sector role players include:

- Media (printed etc.);
- Other clubs and umbrella bodies;

- Government (including DEAT, Department of Water Affairs and Forestry (“**DWAF**”), Department of Transport other relevant national government departments);
- Provinces;
- Industry associates e.g. insurance, Automobile Association (“**AA**”);
- Ancillary companies e.g. accessories;
- **Other Role Players:**
 - Tourism guiding associations;
 - Tourism associations e.g. Federated Hospitality Association of Southern Africa (“**FEDHASA**”), Tourism Business Council of South Africa (“**TBCSA**”), Southern African Tourism Services Association (“**SATSA**”) etc;
 - Tourism, Hospitality and Sport Education and Training Authority (“**THETA**”), South African Qualifications Authority (“**SAQA**”) and other relevant sector education and training authorities (“**SETAs**”);
 - Nature conservation agencies e.g. e.g. South African National Parks, Cape Nature, etc;
 - Non-governmental organisations (“**NGOs**”) e.g. World Wide Fund for Nature (“**WWF**”) etc;
 - Eskom;
 - Telkom;
 - Mining and agriculture sectors;
 - Off-road vehicle users;
 - Contributors e.g. forums (NOW website etc.);
 - Private landowners;
 - Neighbouring countries;
 - Metroserve; and
 - Mapping and geographic information system (“**GIS**”) e.g. Tracks4Africa.

Figure 1.1 provides an overview of the 4x4 industry in South Africa.

Figure 1.1: 4x4 Sector Stakeholders in South Africa



1.3 Deliverables and Phased Approach

1.3.1 Overview and Objectives

The primary focus of the Grant Thornton project is to develop a self-regulation and sustainable use strategy and implementation framework for the off-road sector in South Africa.

Self-regulation is defined as:

Self-Regulation

Self-Regulation is a term used to describe private governance systems where groups of organisations co-operate to set and meet standards.

The purpose of such systems may be to avoid government regulation or to enhance an industry's reputation where it is crucial to profits.

Source: Wikipedia

For the purposes of this exercise, off-road sector vehicles include 2-wheel, 3-wheel and 4-wheel vehicles, e.g:

- 2x4 and 4x4 motor vehicles;
- Quad bikes; and
- Motorbikes (e.g. trail bikes, off-road bikes and on-and-off road bikes).

The strategy will focus on off-road sector use under the following conditions:

- Inland (i.e. not beach)
- Recreational use on private, public and government-owned land
- In sensitive areas – will apply to recreational and other use

Key elements such as trail grading, driver competency, off-road tourist guiding etc. from the strategy could be expanded to general areas e.g. off-road use in non-sensitive areas.

Key deliverables of this strategy include developing standards, regulatory and compliancy requirements and guidelines for all role-players within the off-road sector.

Responsible and sustainable adventure- and eco-tourism are the main focus of the off-road sector.

The project includes 4 key outcomes, viz:

1. A holistic, effective and practical self-management/self-regulation and operating strategy for the off-road sector including implementation, management and monitoring mechanisms;
2. An implementation framework that will facilitate the adoption of a self-regulating strategy for the off-road sector;
3. Recommendations in terms of the promulgation or publication of enabling legislation, regulations and/or other compliancy enforcement mechanisms, should it be proven necessary; and
4. Recommendations for the establishment of an EMCA (or any other form of agreement), if required, between the sector and government towards implementation of the envisaged self-regulation mechanisms.

Developing the strategy and implementation framework includes the following elements:

- Research of existing policy and legislative provisions associated with the desired outcomes;
- Identification of gaps in the national and provincial policy, legislation, ordinances and regulations;
- National and international benchmarking in terms of legal regulation and self-regulation of this or similar sectors;

- Consultation with stakeholders, government and other identified (and agreed) role players;
- Development of a comprehensive strategy;
- Development of key issues to be covered by legislation if required;
- Recommendations on the establishment of a regulatory body/bodies including roles, functions and mandate, and the process to establish such a body;
- Compliance reporting and monitoring strategy;
- Development of incentives and disincentives, including socio-economic and business opportunities within incentives; and
- Development of the agreement between the off-road sector and the Minister if required.

1.3.2 Phased Approach to the Project

Based on the project requirements, a 4-phased approach is being followed.

The four phases include:

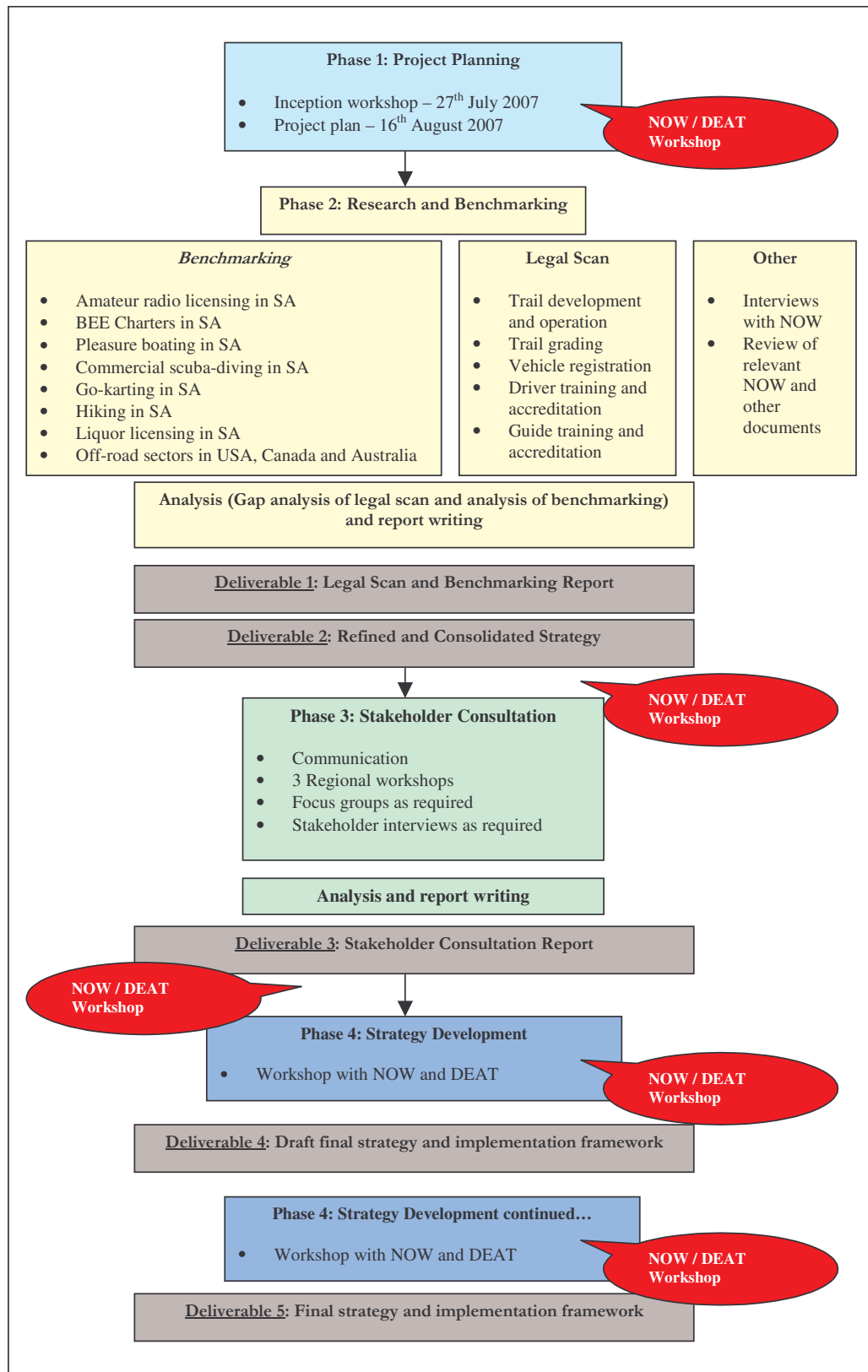
- Phase 1: Project Inception and Planning;
- **Phase 2: Research and Benchmarking;**
- Phase 3: Stakeholder Consultation; and
- Phase 4: Strategy and Implementation Framework Development.

Phase 1 is complete, and included:

- Meeting with the Client (workshop on the 27th July 2007) to:
 - Ascertain the project scope;
 - Agree upon the format of all reports as well as other reporting mechanisms e.g. progress reports etc;
 - Set and agree upon workshop and meeting dates; and
 - Agree upon report delivery dates.
- Preparing and submitting a project plan to the Client including the proposed work plan and agreed upon deliverables and time frames.

This report deals with Phase 2 only.

Figure 1.2: Phased Approach to the Project



1.4 Methodology for Phases 1 & 2: Project Planning and Research & Benchmarking

1.4.1 Introduction

Phase 2 includes two key areas of research, viz:

- Legal scan; and
- Benchmarking.

1.4.2 Legal Scan

We completed a **legal scan** of the applicable legal authorisation and process requirements that apply to the off-road sector so that potential existing legal requirements can be understood and used / enforced as required, and all legal gaps can be identified.

It must be noted that although legal gaps have been identified, the off-road strategy does not necessarily address all gaps, as in some cases addressing the gaps is not necessary and will not benefit the off-road sector. Rather, all legal gaps have been highlighted with some addressed in the strategy, while others have been flagged possibly for future interventions.

A legal scan is an essential component of the process, as it identifies all of the applicable legislation, including national and provincial legislation, regulations and local bylaws, which may or may not apply to the off-road sector.

The legal scan focused on authorisation requirements that are applicable to off-road use. It covered areas such as environmental, development planning, passenger transport, vehicle and driver licensing, tourism grading, guide accreditation and training accreditation in order to gain a full understanding of its applicability to the off-road sector.

The following key areas were covered:

- Trail development and operation;
- Trail grading;
- Vehicle registration;
- Driver training and accreditation; and
- Guide training and accreditation.

Against the existing regulatory environment and taking into account the desired outcomes, we conducted a gap analysis indicating possible areas where the national and

provincial legislation falls short in terms of ensuring appropriate activity and behaviour in the off-road sector.

We also reviewed all existing documentation developed by, and submissions made to, NOW or to any of the stakeholder groupings represented in NOW, including all submissions and papers developed, records of strategy sessions and workshops, codes of conduct formulated or in the process of being formulated etc. Relevant policy and strategy documents (e.g. Western Cape documentation) were also reviewed.

1.4.3 Benchmarking

We conducted a **benchmarking exercise** of legal regulation and self-regulation in the off-road sector and other sectors, elsewhere in the world and in South Africa.

We believe that it is important to include regulated and self-regulated systems, as there are key learnings from both, and by including possible legislation in the outcomes, NOW is considering using legal elements to achieve its strategy.

In terms of international benchmarking of off-road sectors, we researched and analysed the regulation of the off-road sectors in the following countries:

- United States of America (“**USA**”);
- Australia;
- Canada; and
- United Kingdom (“**UK**”).

Please note that these off-road sectors are not all self-regulated, however we feel that it is important to consider what is being done internationally.

In terms of national benchmarking, we researched and analysed the following sectors in South Africa:

- Black economic empowerment (“**BEE**”) charters;
- “Pleasure” boating;
- Scuba-diving;
- Go-karting;
- Hiking; and
- Liquor licensing.

The following regulatory bodies were investigated to determine their roles & functions, how they were created etc:

- SARL – amateur radio licensing;
- South African Stud Book And Animal Improvement Association (“**SA Stud Book**”);
- Advertising Standards Authority of South Africa (“**ASA**”); and
- Broadcasting Complaints Commission of South Africa (“**BCCSA**”).

Amateur radio licensing and BEE charters were included at the Client’s recommendation, based on their assertion that these are the only two examples of self-regulation in South Africa.

The remaining sectors were included to provide information on the extent to which, and how other sectors are regulated.

In addition, as accreditation of trails / tracks, guides and trainers is to be considered, a discussion of accreditation is also included.

The legal scan and benchmarking exercise will provide input into the development of preliminary recommendations of the types of self-regulatory interventions that can be implemented to address the NOW strategy.

1.5 Structure of this Report

This report is divided into 10 sections, viz:

- **Section 1** – Background and Introduction;
- **Section 2** – Overview of the Off-Sector Issues;
- **Section 3** – Legal Scan of Applicable South African Legislation – Trail Development and Operation;
- **Section 4** – Legal Scan of Applicable South African Legislation – Trail Grading and Registration;
- **Section 5** – Legal Scan of Applicable South African Legislation – Vehicle Registration and Licensing;
- **Section 6** – Legal Scan of Applicable South African Legislation – Driver Licensing and Training;
- **Section 7** – Legal Scan of Applicable South African Legislation – Guide Registration and Training;
- **Section 8** – Benchmarking of International Off-Road Sectors;
- **Section 9** – Benchmarking of the Regulation of Various Sectors in South Africa; and
- **Section 10** – Conclusion.

1.6 Abbreviations and Terminology

The following abbreviations and terminology have been used in the course of this report:

4WDGSA	4-Wheel-Drive Guides Association of South Africa
AA	Automobile Association
AAWDC	Association of All-Wheel Drive Clubs of Southern Africa
AMID	Association of Motorcycle Importers and Distributors
APPA	Atmospheric Pollution Prevention Act, Act 45 of 1965
ASA	Advertising Standards Authority of South Africa
ATV	All Terrain Vehicle
BCC	Broadcasting Complaints Commission of South Africa
BEE	Black Economic Empowerment
BLM	Bureau of Land Management
CBD	Convention on Biological Diversity
CEC	Committee for Environmental Co-ordination
CIK	Commission Internationale de Karting
COP	Conference of the Parties
dB	Decibel
DEAT	Department of Environmental Affairs and Tourism
DTI	Department of Trade and Industry
DWAF	Department of Water Affairs and Forestry
EIA	Environmental Impact Assessment
EMCA	Environmental Management Cooperation Agreement
FEDHASA	Federated Hospitality Association of Southern Africa
FIA	Federation Internationale de l'Automobile
FIM	Federation Internationale de Motocyclisme
FTTSA	Fair Trade in Tourism South Africa
GIS	Geographic Information System
ICASA	Independent Communication Authority of South Africa
MEC	Member of the Executive Council
MERSETA	Manufacturing, Engineering and Related Services Education Training Authority
MINMEC	Minister and MEC Committee for Environmental Affairs and Tourism
MOU	Memorandum of Understanding
MSA	Motorsport South Africa
NAAMSA	National Association of Automobile Manufacturers of South Africa
NAB	National Association of Broadcasters
NBSAP	National Biodiversity Strategy and Action Plan
NEMA	National Environmental Management Act, Act 107 of 1998
NEMAQA	National Environmental Management: Air Quality Act (Act 39 of 2004)
NEMBA	National Environmental Management: Biodiversity Act, Act 10 of 2004
NGO	Non-Governmental Organisation

NLA	National Liquor Authority
NOW	National Off-Road Workgroup
NQF	National Qualification Framework
NWA	National Water Act, Act 36 of 1998
OHM	Off-Highway Motorcycle
OHV	Off-Highway Vehicle
ORV	Off-Road Vehicle
PADI	Professional Association of Diving Instructors
PSA	Proudly South Africa
RMP	Resource Management Plan
RPL	Recognition of Prior Learning
SABS	South African Bureau of Standards
SAHRA	South African Heritage Resource Agency
SAHTOA	Southern African Hiking trails Ownership Association
SAMSA	South African Maritime Safety Authority
SANAS	South African National Accreditation System
SANBI	South African National Biodiversity Institute
SANOTA	South African National Off-Road Trainers Association
SAPS	South African Police Service
SAQA	South African Qualifications Authority
SARL	South African Radio League
SAROOF	Southern Africa Route Owners and Operators Forum
SASCOC	South African Sports Confederation and Olympic Committee
SA Stud Book	South African Stud Book And Animal Improvement Association
SATSA	Southern African Tourism Services Association
SAVRALA	Southern African Vehicle Renting and Leasing Association
SETA	Sector Education and Training Authority
SGB	Standards Generating Body
TBCSA	Tourism Business Council of South Africa
TEP	Tourism Enterprise Programme
TETA	Transport Education Training Authority
TGCSA	Tourism Grading Council of South Africa
The Authority	Independent Broadcasting Authority
The Code	The Code of Advertising Practice
The Client	NOW
THETA	Tourism, Hospitality and Sport Education and Training Authority
UK	United Kingdom
USA	United States of America
VA	Verification Agent
WIETA	Wine Industry Ethical Trade Association
WWF	World Wide Fund for Nature