

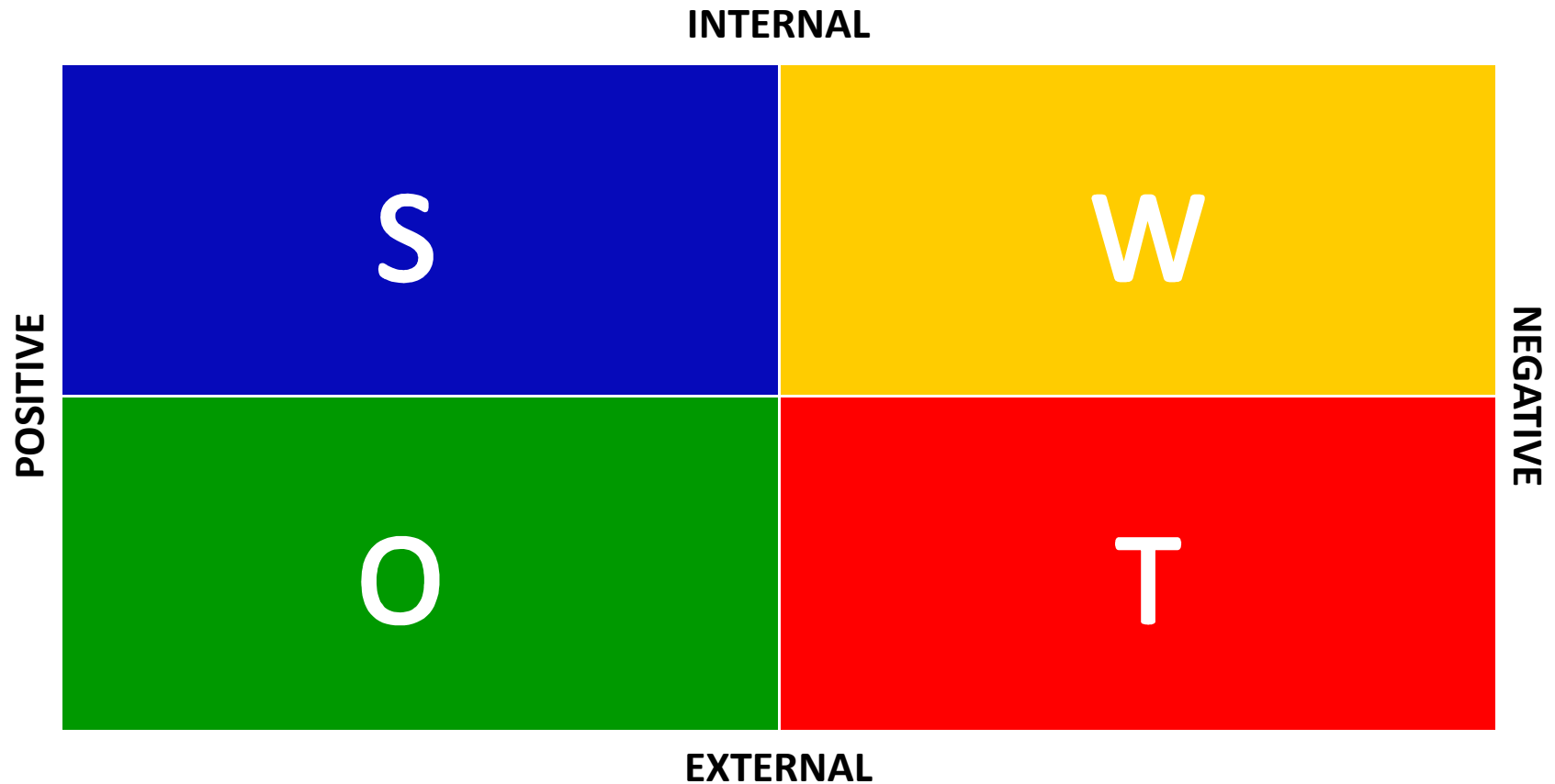
EMA AND THE EIA REGULATIONS

Legal Issues

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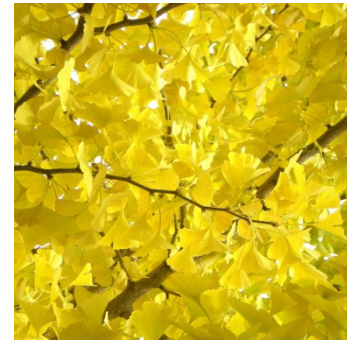
INTRODUCTION



WEAKNESSES

1. No explicit –

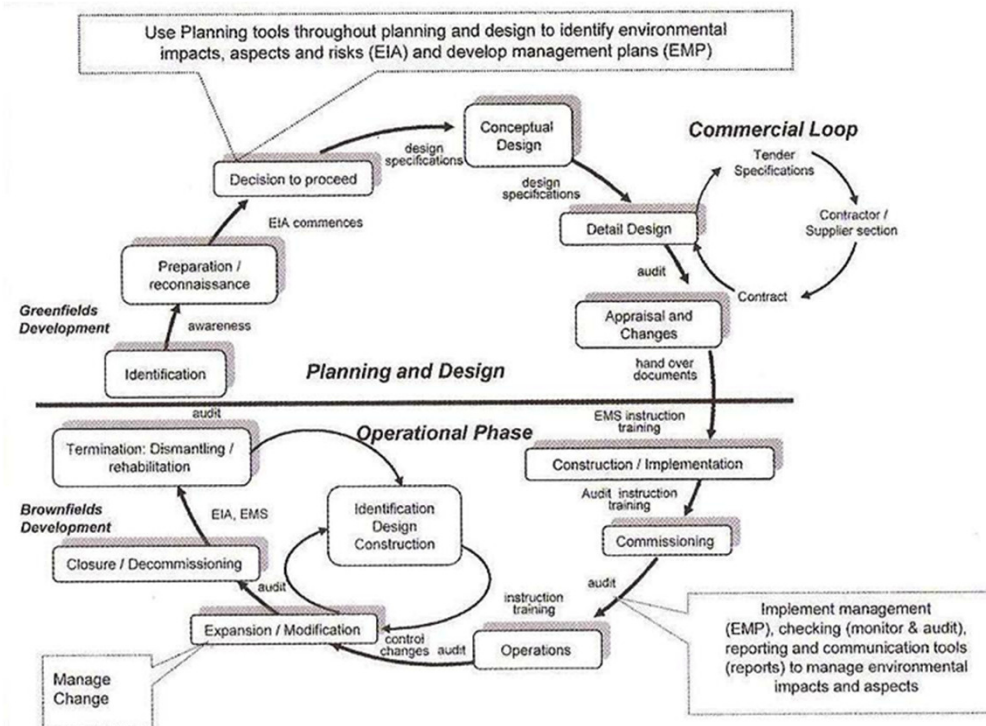
- environmental right
- environmental obligation

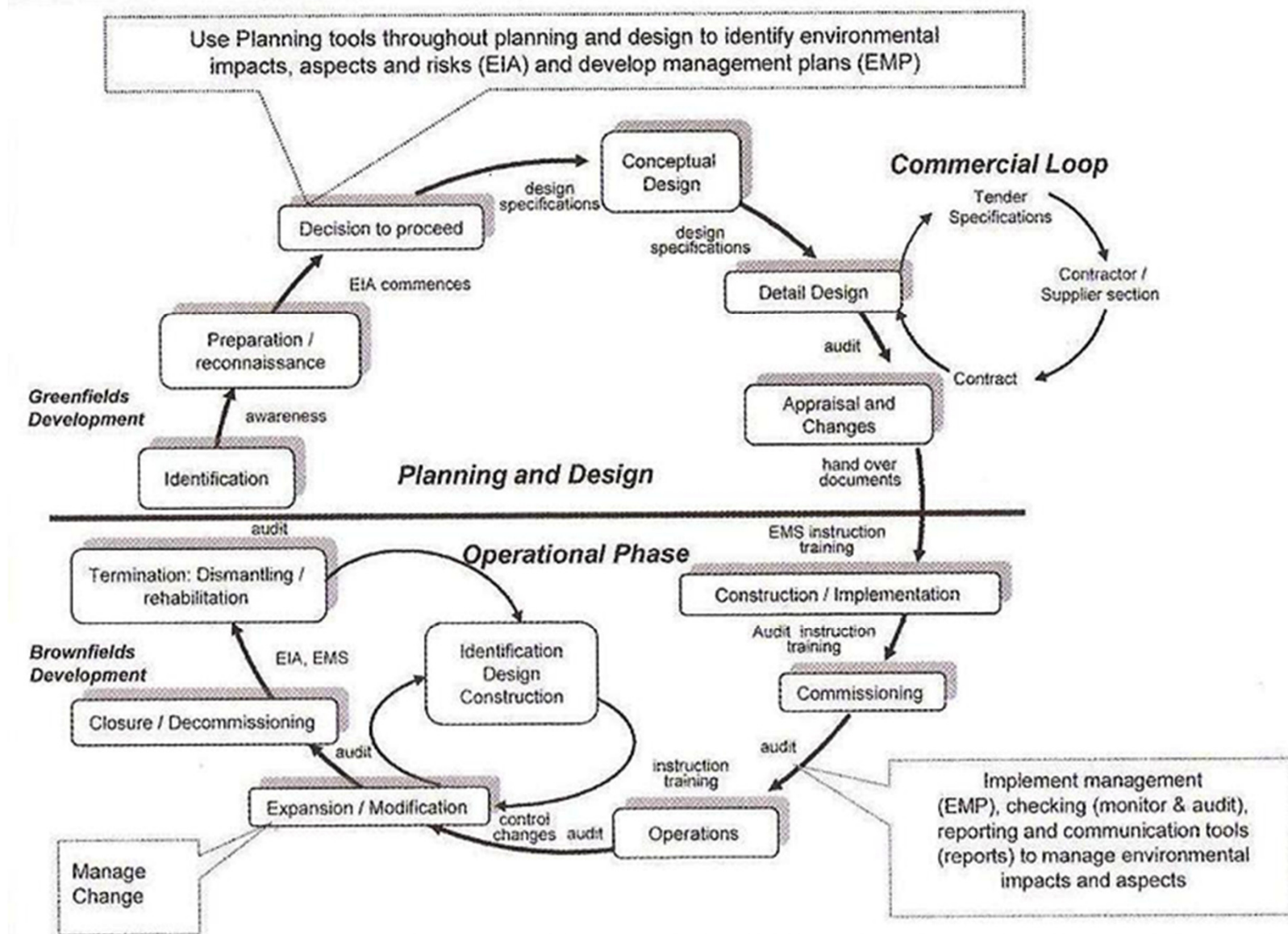


WEAKNESSES

2. Environmental management principles (s 3)

- no provision for project life cycle analysis





Nel and Kotzé in Strydom and King (eds) *Fuggle and Rabie's Environmental Management in SA* 15

WEAKNESSES

3. Sustainable Development Advisory Committee (Part IV)

- Only advisory
- EMB – Sustainable Development Commission

WEAKNESSES

4. Access to environmental information (s 47)

- Only public sector
- Not civil society



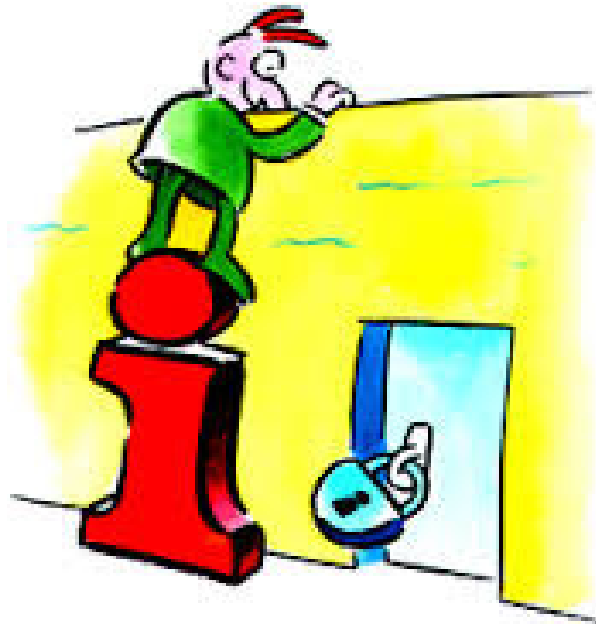
THREAT

1. Vague wording

- i.e. Reg 4(a) “EAP must have ... knowledge of and experience in conducting assessments, ... the Act, regulations and guidelines ”

THREAT

2. Lack of access to environmental information



THREAT

3. 100% legal compliance impossible
 - ISO 14001



THREAT

4. Legal uncertainty

- Time periods
- Contradictory procedures
- Conditions in ECC
- Lack of criteria to grant or refuse ECC
- Prospecting & exploration
- Existing authorisations



THREAT

STRICT TIME PERIODS

- Effect of non-compliance



THREAT

CONTRADICTORY PROCEDURES - ACT VS REGS

- Regulations cannot regulate beyond the ambit of the Act or deviate from the Act
- Ultra vires



THREAT

CONDITIONS IN ECC

- Conditions
- Clearance = conditional
- Example:

“In view of the risks and environmental sensitivity of the area, the MET reserves the rights to attach further regulatory conditions during the operational phase of the project.

From this perspective, we issue the clearance with the following condition: all key stakeholders, including Regional and Local Authorities concerned, must be properly consulted and their consent taken into account prior to any exploration activities.”

THREAT

LACK OF CRITERIA TO GRANT OR REFUSE ECC

- section 33(2)(b)(iv)



THREAT

PROSPECTING & EXPLORATION

- EMA vs Minerals Act
- lack of consistency
- scoping + EMP OR EIA + EMP?
- in- or outside protected area?



THREAT

EXISTING AUTHORISATIONS

- Section 57
- No predecessor to EMA = no such thing!



THREAT

DURATION

- Section 40
- No renewal!

STRENGTHS

1. Section 5 – Prohibition re waste



STRENGTHS

2. S 18 – Environmental officers



STRENGTHS

3. Section 45 – Appointment of external specialist



STRENGTHS

4. Regulation 11 – Consultation between organs of state

OPPORTUNITIES

1. Section 33(2)(b)(iv) – “may take into consideration principles of environmental management”

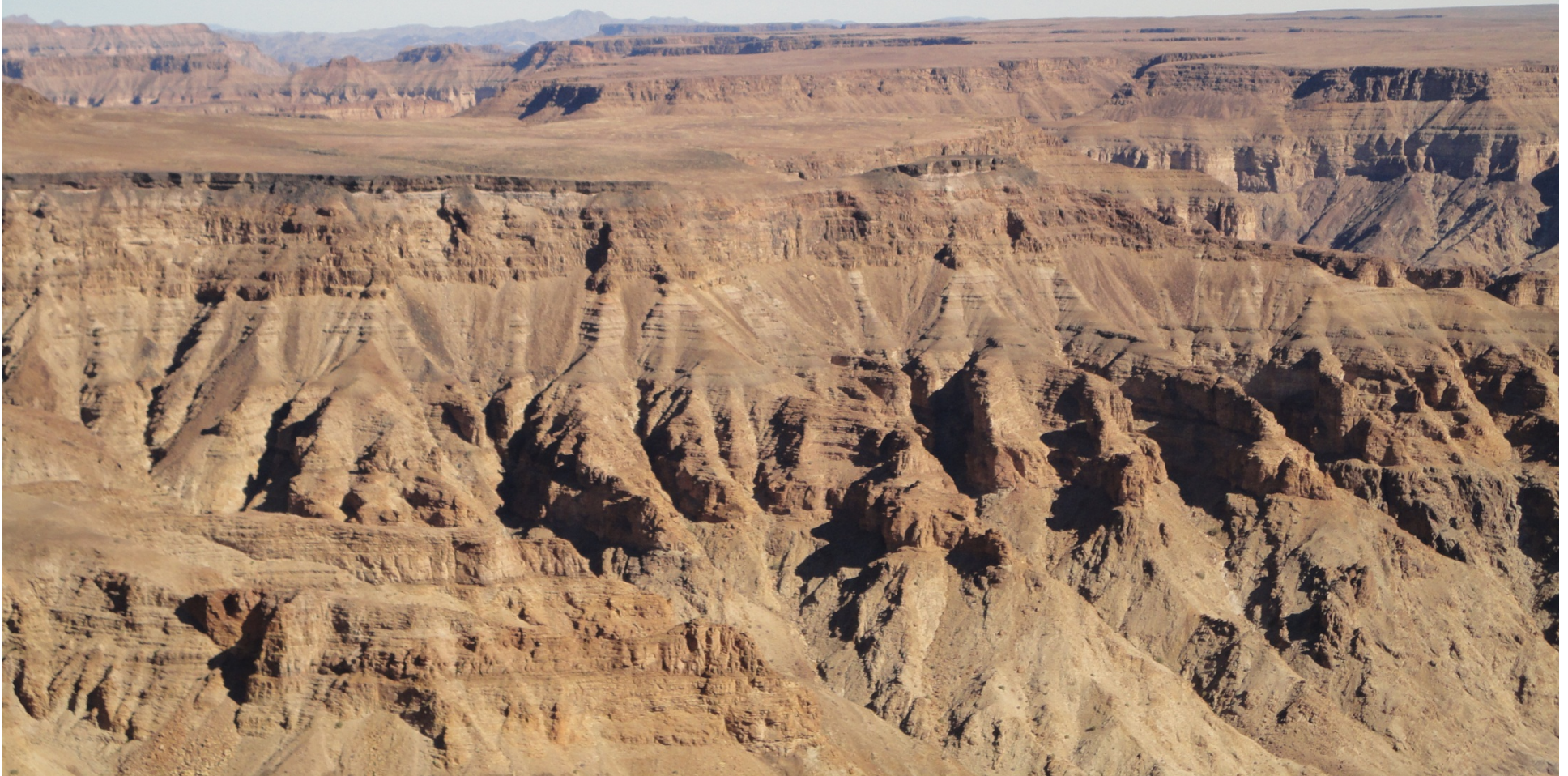
OPPORTUNITIES

2. Section 53 – Piercing the corporate veil





THANK YOU





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