



STAKEHOLDER CONSULTATION WORKSHOP

on the draft

SECTION 19 (2) RULES AND PRINCIPLES

DATE: 21 JANUARY 2004

VENUE: WINDHOEK COUNTRY CLUB

TIME: 8H30

ORGANSIED BY: ROAD FUND ADMINISTRATION

LIST OF ATTENDANTS		
NAME	ORGANISATION	
1	André P. Müller	Walvis Bay Local Authority
2	Eckard Demasius	Swakopmund Local Authority
3	S. Alcoch	Luderitz
4	J. Diergaardt	Luderitz
5	J. A. /Urib	Outjo
6	S. S. Gawiseb	Khorixas Local Authority
7	R. I. Hartzenberg	Gibeon Y. C.
8	J. Jordaan	Okahandja Municipality
9	R. Alugodhi	Okahandja Municipality
10	G. Seydack	Road Fund Administration, Manager: Programme Management
11	J. L. De Kock	City of Windhoek Municipality
12	J. A. Calitz	Gobabis Municipality
13	T. L. Gioni	Otjiwarongo Municipality
14	J. S. De Kock	City of Windhoek Municipality
15	S. K. Mwaningange	Eenhana Town Council
16	P. Nghiwilepo	Municipality of Mariental
17	D. E. Egumbo	Ongwediva
18	J. Brandt	Leonardville Village Council
19	H. Böck	Gochas
20	A. B. Loftie-Eaton	Road Fund Administration, Engineer
21	Mary Hansen	Road Fund Administration, Manager: Support Services
22	Shakespeare Masiza	Road Fund Administration, Chief Executive Officer

LIST OF ABBREVIATIONS	
DTC	Driver Testing Centres
DFID	Department of International Development
e.g.	Example
i.e.	In other words
MoF	Ministry of Finance
MWTC	MWTC
NAMPOL	Namibian Police
N\$	Namibian Dollar
NATIS	Namibian Traffic Information System
PMS	Pavement Management System
RA	Roads Authority
RCC	Roads Contractor Company
RFA	Road Fund Administration
TRRL	Transport and Road Research Laboratory
UNAM	University of Namibia
VTC	Vehicle Testing Centres

Welcoming and Introduction

1. The workshop was opened by Mr. Loftie-Eaton who welcomed all stakeholders, where after he handed the floor to Adv. Shakespeare Masiza, who in turn explained to participants that the purpose of the workshop was to see to what extent improvements could be made to the draft Section 19 (2) Rules and Principles. He further noted that this discussion was long overdue and highlighted the importance of the proposed budgeting procedures to be discussed. He also requested participants to add depth to the discussions as in future all budgets would have to be submitted in line with the Section 19 (2) Rules and Principles.

Presentation on Rules and Principles (Introduction to discussions)

2. Mr. Loftie-Eaton presented the participants with the Road Fund Administration's (RFA) responsibilities and the draft Rules and Principles, noting that the discussions would centre on Sections 17 (1) (c), (d), (e) (f) and (g) of the RFA Act. He then reminded participants that the main purpose of the discussion was to consult with stakeholders on the draft Rules and Principles and informed the workshop that the format would be similar to that of the workshop held on the RFA Business Plan.

Discussion and formulation of recommendations to RFA on the Rules and Principles relating to the operation of TRAFFIC INFORMATION SYSTEMS

3. Mr. Günter Seydack informed the workshop that the RFA Act allows for the Traffic Information Systems as a general concept. However the responsibility lies with the Minister of Works, Transport and Communication, who has the prerogative to appoint bodies to manage the Traffic Information System. At present the Roads Authority (RA), operating NATIS, is the only such appointed body. He further reiterated that economic efficiency (i.e. the benefits to road users must exceed what road users pay)

is the primary concern of all the Rules and Principles and the determination of funding for projects would be made accordingly.

Discussion and formulation of recommendations to RFA on the Rules and Principles relating to the operation of ROAD RESEARCH STUDIES

4. Mr. Günter Seydack continued the discussion by informing the workshop that applications for road research studies will only be considered from approved authorities. In this event organisations / institutions can approach the RFA and request to be awarded approved authority status, where after they can apply for funding to conduct road research studies. In principle, funding determinations for road research studies would be based on economic efficiency; however, in view of the difficulty in proving the economic efficiency of road research studies, organisations should aim to give an indication of how road users will benefit in the long-term. The RFA would then be able to make a determination for the funding of such road research studies subject to the provisions contained in Section 17 (2) of the RFA Act.

Discussion and formulation of recommendations to RFA on the Rules and Principles relating to the operation of DRIVER TESTING CENTRES (DTC) AND VEHICLE TESTING STATIONS (VTS)

5. Pertaining to the operation of DTC and VTS, Mr. Günter Seydack informed the workshop that this responsibility lies within the portfolio of the Minister of Works, Transport and Communication. Any funding for such functions from the Road Fund would have to be approved by the Minister of Finance. These functions being the responsibility of the Minister of Works, Transport and Communication, he can assign to the RA part or all of the income received by the latter from the performance of these functions, with Government's policy being that these functions should in principle be self-sustaining. The RFA, with the approval of the Minister of Finance,

had made a small budgetary provision in 2003/04 for approximately N\$300,000.00, based on the assumption that benefits would spill over to the road users.

6. Mr. Günter Seydack concluded his discussion of the above three operations and stated that although useful to know, the Section 19 (2) Rules and Principles pertaining to the functions as discussed might not be of direct importance to the local authorities. He nevertheless would appreciate it, if participants wanted to provide the RFA with comments and / or inputs.
7. Mr André P. Müller from the Walvis Bay Local Authority then informed the workshop that the documents they received for the deliberations of today, does not cover the discussion by Mr Günter Seydack then responded by stating that the local authorities were managing these centres and according to these operations were not sent to them as the RFA did not want to waste their time with excessive reading materials that did not have a direct bearing on them. However if anyone was interested the RFA would gladly send them copies of the documentation. They should forward a written request to the RFA's office.
8. Mr André P. Müller then responded by stating that some of the local authorities do in fact manage DTC and VTS, with Windhoek being the only exception. As such the local authorities are major role players. Mr. Günter Seydack then informed participants that the RFA was not aware of the fact that the local authorities were managing these centres and according to his knowledge NAMPOL and RA were the only approved authorities in this regard. Mr Günter Seydack continued by informing the meeting that no other body approached the RFA to become approved authorities, however there is scope for them to become approved authorities under the direction from the Minister of Works, Transport and Communication. He then reiterated that the RFA would forward copies of the respective documents to them and urged them to return written comments to the RFA.

9. Ms J. S. De Kock from the City of Windhoek Municipality raised concerns with the whole concept of “stakeholder status” especially in relation to road research studies, and reminded the workshop that this aspect was raised previously at the business plan workshop (2003) and thus expressed surprise that it was still not addressed. Mr Günter Seydack responded by enquiring from the workshop as to whether local authorities would operate as road research centres and stated that there is a distinction between operating as a road research centre and appointing a consultant to undertake the road research studies. He further explained that if local authorities wanted to undertake road research studies, they could appoint a consultant to do the Actual research on their behalf and determine whether such funding could be accommodated within the road maintenance budget. He then explained the stakeholder issue by using the example of UNAM – if for example UNAM identifies the need for road research studies and want to become a research centre for this purpose, they can apply to the RFA for an approved authority status. If this status is attained, they would qualify for funding and be regarded as a stakeholder with regard to road research studies.
10. Mr André P. Müller noted that because there is a difference in understanding of the term “road research”, it is impossible to discuss the matter and make recommendations. In response Mr Günter Seydack then reiterated the distinction between local authorities wanting to have road research studies undertaken for them, and local authorities wanting to become approved authorities for operating road research centres. He continued by informing the workshop that if local authorities identified a need for road research studies, the RFA would consider including funding for this in its budget, provided such research would benefit the type of urban road maintenance that is co-funded by the RFA. In relation to this discussion on the distinction, Mr Loftie-Eaton added that since the documents relating to the first three points of discussion were not distributed to local authorities, it would be sent to them as soon as possible. In addition he informed the workshop that there was a difference between road research studies and feasibility studies, where after he read out the definition of road research as defined in the draft Rules and Principles of Road Research Studies.

11. Regarding the operation of NATIS, Mr Günter Seydack reminded the workshop that at present the Roads Authority is the only approved authority for this purpose, and as such they appoint the local authorities as agencies who are then paid according to the agency agreements that are in place between the Roads Authority and the respective local authorities.
12. The workshop thus agreed that a more valuable discussion could only be gauged in when all the documents have been distributed to the local authorities. Mr André P. Müller then commented that as agents of NATIS, they are experiencing problems and it would be of interest to arrange a round table meeting with the RA, RFA and the local authorities to address these issues. Mr Günter Seydack responded by reminding the workshop that this was a RA matter as it relates to NATIS, and as such it would be a good idea to have such a round table meeting and not discuss the matter immediately, especially in view of the fact that the RA was not represented at the workshop. The workshop thus agreed that such a meeting should be convened as soon as possible.
13. With respect to the Traffic Information Systems, Mr Günter Seydack informed the meeting that regulations had been written according to which, for administrative ease, all income collected by the RA is paid into the Road Fund, from where the operational expenses for NATIS are financed. The capital expenses of NATIS are financed by the Minister of Works, Transport and Communication.
14. Mr Loftie-Eaton then proposed to continue discussions on the issues within three smaller groups. However since only two RFA staff members were present who would be able to sit in on the groups, the workshop agreed to remain in the larger group.

Discussion and formulation of recommendations to RFA on the Rules and Principles relating to URBAN ROAD MAINTENANCE

15. One of the participants then wanted to know where the Rules and Principles fitted in with respect to the Procedures Agreements the RFA has in place with the local authorities. Mr Loftie-Eaton replied that it is an explicit requirement of the RFA Act that the Rules and Principles must be put in place.
16. Mr Günter Seydack added that the RFA Act stipulates that the RFA has to comply with the following:
- safety – pertaining to certain engineering standards that need to be maintained
 - efficiency – ensuring that the road users receive economic benefits from their funding
 - equity – ensuring that there is a minimum cross subsidisation by all road users.

To this effect complying with the principles of economic efficiency is extremely important, hence all must understand what it means and that it needs to be proven as this is an explicit requirement by the RFA Act. He continued by stating that the Rules and Principles interpret the economic efficiency principle of the Act in terms of “the means of economic analysis available today”. Since the Rules and Principles were not in place previously, the Procedures Agreements were put in place as an interim measure. He again emphasised the importance of the Rules and Principles as it serves as a guide on how to submit projects for funding and also is aimed at determining the amount of funding to be allocated based on economic efficiency in as far as this can be assessed with the available tools. In addition the Rules and Principles were aimed at generating a target to work towards, based on which the RFA could go back to the users and show them what the exact needs for funding by them were. He continued by cautioning that this could however not affect the manner in which funding currently took place, and that at the end of the day the road users need to get a clear picture of what they are going to be paying for. On the question of how the Rules and Principles would affect the current Procedures Agreements in place, he stated that the Procedures Agreements would likely become superfluous if the Rules and Principles cover all

aspects, and again reiterated that it was of utmost importance that the agreements could not be in conflict with the RFA Act, as it supersedes all.

17. Mr André P. Müller then informed the meeting that the RFA Act refers to “consultation” whereas the Procedures Agreements are “negotiated” and consequently wanted to know what the difference was. In response Mr. Arthur Loftie-Eaton stated the conditions of the Procedures Agreements were negotiated between the RFA and local authorities, while the Rules and Principles as required by the RFA Act are developed in consultation with the local authorities. He reminded the workshop that once the Rules and Principles were in place and fully understood by all, will it become clearer whether the Procedures Agreements are still needed or not.
18. Mr. T. L. Gioni from the Otjiwarongo Municipality then wanted to know whether the Procedures Agreements are still binding, to which Mr. Günter Seydack responded by saying that they were still legally binding documents. If however anything was in conflict with the Rules and Principles, it will become replaced by the Rules and Principles as the Rules and Principles are a clear requirement of the RFA Act. Mr André P. Müller then reminded the workshop that there are specific agreements with the various local authorities, as conditions within each local authority differ from the other. As such he wanted to know what effect the Rules and Principles had on these aspects of the agreements. In response Mr. Günter Seydack stated that the agreements were originally, in the absence of the Rules and Principles, stated as a precondition for funding. This would no longer apply, as funding would now be determined on the basis of the Rules and Principles. However, to the extent that the Agreements are not in conflict with the Rules and Principles, they should be maintained for the time being, not least because of dealing with aspects that are specific to certain local authorities.
19. Mr. Eckart Demasius from the Swakopmund Local Authority then informed the workshop that “economic efficiency” was not defined and wanted to know whether

agreement could be reached on a definition so as to avoid misinterpretations. Mr. Günter Seydack responded by informing the workshop that economic efficiency is defined in Article 2 of the RFA Act; however, practical constraints on the determination of economic efficiency in different cases required that it be interpreted uniquely for each and every Rule and Principle. Mr. Eckard Demasius then wanted to know how proving economic efficiency would work in practice, and used the example of maintaining gravel roads. Mr. Günter Seydack then stated that in such an instance one needed to look at international best practice for estimating the maintenance needs of such roads, based among others on the traffic carried by the road, and based on this, a maintenance standard should be laid down and funding would be determined according to the standard and agreed costs of maintenance. This then basically would be accepted as a rule complying with the principle of having to achieve economic efficiency.

20. Ms. J. L. De Kock from the City of Windhoek Municipality then referred the workshop to Section 19.1 (a) (i) of the RFA Act, which refers to an economically efficient road sector and to Article 2 of the Rules and Principles, which also refers to economic efficiency, and wanted to know what was meant by it. Mr. Günter Seydack then stated that the underlying principle was that benefits to the road users must exceed the costs being paid by the road users. He continued by informing the workshop that Section 17 (2) of the RFA Act allows for flexibility in the determination of funding pertaining to certain functions as stated in this Section, in that agreed upon standards could be substituted for a strict economic analysis, where the latter is not feasible with currently available tools. However, the achievement of economic efficiency is an integral object of the RFA Act, and as such, all parties are expected to act in good faith to achieve this object.
21. Mr. Günter Seydack then reiterated that the basic principle underlying the Rules and Principles is that road users must get the best value for their money.

22. One of the workshop participants then wanted to know whether it was not possible to give the local authorities a broad guideline, as it is rather difficult for local authorities to prove economic efficiency, more especially for the smaller local authorities who do not have the technical capacities. Mr. Günter Seydack responded by informing the meeting that some municipalities have working PMS' and it can be used to determine what needs to be done, whereafter agreement can be reached on the rates. For those municipalities who do not have workable PMS', agreement must be reached on the standards and there is then a need to go back to the Procedures Agreements to see whether it contains clauses on standards. If they do contain standards, it needs to be reviewed to determine how more realistic it can be made. If the agreements do not contain clauses on standards, they then need to be developed and agreed upon. He continued by stating that economic analysis was based on costs and benefits, which may vary between projects and contractors used, and if strict economic analysis could be applied, this would supersede the use of standards and rates. One of the participants then responded by saying that many local authorities do not have the technical staff and wanted to know whether the N\$30 million available to local authorities could simply not be divided between the current 45 local authorities. Mr. Günter Seydack again re stated his earlier request for the workshop to come forward with proposed alternative wording, so that the layman can clearly understand what is meant by economic efficiency.
23. Mr. Arthur Loftie-Eaton then stated that while the Rules and Principles were still being finalised, it would be "business as usual" with the local authorities being required to submit budgets according the Procedures Agreements in place. These budgets would then be reviewed for funding by the RFA. In addition he stated that the Rules and Principles must be regarded as a long-term vision and reminded the workshop that in the absence of a long-term vision the RFA would have no idea of the amount of funding ultimately required for the achievement of economic efficiency. Therefore, there would be no justification for ever increasing funding above current levels.

24. Ms. J. L. De Kock then wanted to know whether Article 2 of the Rules and Principles would be amended according to the workshop discussion of today. Mr Günter Seydack responded by saying that if the workshop participants were from a legal perspective not comfortable with the explanation he gave and they wanted to propose a change of a specific Article, it can be presented to the legal experts for their opinion. He reminded the workshop that they should not make the Articles too complicated, but to keep it simple and as it currently stands it allows for some flexibility. Another workshop participant then added that the Article was too complicated as it stands and somehow restrictive for local authorities. In response Mr Günter Seydack requested the workshop to come forward with a proposal for alternative wording of the Article, which would be forwarded to the legal experts for their advice. Ms. J. L. De Kock then stated that she would consider alternative wording and come back to the RFA on the matter. One of the workshop participants then stated that the wording that is eventually agreed upon should be very clear to all, as at present everyone does not have the same interpretation.
25. Another workshop participant then wanted to know why economic efficiency was not part of the definitions, especially in view of its extreme importance and it being the foundation for the Rules and Principles. He then wanted to know whether the definition of economic efficiency contained in Article 2 of the Rules and Principles could not be moved to the Section containing the definitions (Section 1), and further raised a concern that it appears that the RFA is pushing the burden of proof onto local authorities. Mr. Günter Seydack responded by stating that the Article under which the definition of economic efficiency is provided, would not make a substantial difference to how the Rules and Principles would be interpreted, and that the legal drafters probably had a formal reason for structuring the Rules and Principles the way they did. However, if it was regarded as a material concern to the workshop participants to have all definitions under the same heading, the RFA would refer this issue back to the legal drafters. One of the workshop participants then stated that they do not want an open definition or interpretation, as their successors will also end up having the same disagreement on economic efficiency. Mr. Günter Seydack again re-stated his

earlier request for the workshop to come forward with proposed alternative wording, so that the layman can clearly understand what is meant by economic efficiency.

26. Ms. J. L. De Kock then wanted to know why the words “shall apply principles as ...” is used in Section 3, as it is interpreted as having no choice and local authorities would have to apply and interpret the meaning in terms of Article 2. Mr. Günter Seydack responded by stating that the economic efficiency requirement could not be violated and that it should be read together with Section 17 (2). Another suggestion was then made by one of the workshop participants; that economic efficiency should be clearly defined but that the interpretation remain, accompanied by a list of requirements to be met. Mr. Arthur Loftie-Eaton then requested the workshop participants to come up with specific proposals in writing and agreed that the concerns raised by the workshop would be sent to the legal experts for their opinion.

27. Mr. Eckard Demasius then informed the workshop that he had sent a comment in writing to the RFA on projects and wanted clarity on whether it referred to ongoing projects as well. Mr. Arthur Loftie-Eaton responded by saying that it did not refer to ongoing projects but to projects that are undertaken within a specific period of time for specific purposes, which can include maintenance, e.g. resealing. In response Mr. Eckard Demasius wanted to know whether they could claim for settlement areas as well, to which Mr. Arthur Loftie-Eaton responded by reminding the workshop of the Procedures Agreement which states that only roads within demarcated local authority areas can be claimed for. As a follow up Mr. Eckard Demasius wanted to know whether this meant that they could claim for gravel roads leading to settlement areas. Mr. Arthur Loftie-Eaton responded by saying that the regional councils are responsible for the streets located within settlement areas and as such Section 1 (b) needs rewording, as an approved authority (i.e. a local authority) is not responsible.

Traffic related maintenance

28. One of the workshop participants then requested that the Rules and Principles make use of the definition of a “road” as defined by the Local Authority Act which is used by all local authorities, and not the definition as defined by the RFA Act. The reason being that the definition contained in the RFA Act does not include the kerb and kerb line, while the kerb actually protects the road surface. At present the costs covered by the road users only include the road surface; however the road users damage the kerbs and as such the cost of maintaining the kerbs is directly caused by the road users. In relation he mentioned the safety of pedestrians using the sidewalks, being separated by the kerbs.
29. Mr. Günter Seydack stated that in relation to traffic related maintenance and the consumption of road surfaces; the RFA is allowed to make a contribution to the road surface being used by the road users and this is not in any way related to how a road is defined. He then posed the following question to the workshop: Can a realistic case be built for funding the maintenance of kerbs, on the basis that road users cause wear and tear to them in the same way as to the road surface? He responded by saying that this is a grey area and thus we cannot say that the kerbs are damaged directly as a result of “normal” road use. The workshop thus agreed that the RFA would test this case scenario with the legal experts and provide participants with feedback.
30. Another workshop participant then wanted to know whether a case could be made for including sand clearing from a road surface under traffic related road maintenance. Mr. Günter Seydack responded by saying that if merits could try an alternative approach by appealing to the MoF for establishing a national emergency fund that would provide funding for addressing emergency situations. Another workshop participant referred to the schedule attached to the Rules and Principles and wanted to know whether only the items within the schedule would be considered as activities to be funded, or whether items outside the list would also be considered for funding. Mr. Günter Seydack responded by saying that the schedule was not a law as it is not provided for under the RFA Act. It reflects what has been agreed between the RFA and local authorities based on the interpretation of Section 17 (1) (c) of the RFA Act,

and as such is not arbitrary. However items agreed upon must not be in conflict with the RFA Act and they must be considered based on the interpretation of “traffic related”. The guiding principle should be whether any additions can be defended as traffic related maintenance. On the safety aspect, Mr. Günter Seydack stated that the Procedures Agreement specifically requires that it cannot be separated from other road aspects. However it was unclear on how safety fits in with traffic related maintenance.

31. On a question from one of the workshop participants on why sand removal from a road is not included under traffic related maintenance, Mr. Günter Seydack responded by saying that it used to be claimable in the past, but that a subsequent reconsideration of Section 17 (1) (c) of the RFA Act has led to the conclusion that sand removal from a road could not be read into the wording of the Act. Another workshop participant then stated that it was very difficult to relate everything back to traffic and consequently wanted to know how traffic related maintenance should be defined. Mr André P. Müller then added that he wanted to know whether street lights could also be included, as there is a minimum illumination requirement for streets, which directly relates to safety aspects, which is very expensive to maintain. Mr. Günter Seydack then referred the workshop to Section 17 (1) (e) of the RFA Act which provides for the RFA to make a specific contribution to road safety as provided for in the quoted Section; however, this does not mean that the RFA can also make a road safety contribution under Sections of the Act, where this is not specifically provided for. In conclusion he stated that the interpretation of “traffic related maintenance” adopted by the RFA need not be the only correct interpretation. In this regard, he has taken note of the alternative interpretation offered by the workshop, namely that traffic related maintenance should be regarded as all maintenance that is to the direct benefit of traffic using the road, which would then also include items such as kerbs, traffic lights, street lighting and sand removal. Since such an interpretation might be reasonable, the RFA would submit this to its legal advisers for an opinion, and communicate the advisers’ opinion to the workshop participants verbatim.

32. One of the workshop participants then wanted to know whether the local authorities, the RFA and its legal opinion on what can or cannot be included in the Schedule to the Rules and Principles. Mr. Günter Seydack stated that the maintenance activities to discuss all these legal concerns. In addition he wanted to know whether the RFA Act was superior to the Local Authority Act or vice versa, as at present it is possible. However one needed to look at the original issues discussed when the Act was developed, i.e. look at the reasoning. As a follow up one of the workshop participants then wanted to know whether the process could not be sped up, i.e. bypass the legal consultations and enquire from the minister directly why certain aspects were not included. Mr. Günter Seydack reiterated his earlier response, i.e. that as a first step, it would always be necessary to determine whether or not the interpretation of the Act is correct or not. One could not go ahead and ask for the Act to be amended before knowing that it has indeed been correctly interpreted in the first place. If it was correctly interpreted, then one could proceed to prove that the Act is inefficient, prior to approaching the minister for amending the Act.

Road signs

33. Ms. J. L. De Kock proposed that the traffic related maintenance schedule be extended to include sand removal and road signs. Mr. Günter Seydack responded by saying that the proposal would be forwarded to the legal experts to enquire whether these items are valid to be included and if they can be interpreted as traffic related road maintenance.
34. Mr. S. S. Gawiseb from the Khorixas Local Authority then wanted to know whether maintenance of roads in informal settlement areas, located within the boundaries of the local authorities, can also be claimed for. Mr. Arthur Loftie-Eaton responded by

answering “yes”, provided that the informal settlement is part of the local authority as defined in terms of the Local Authority Act.

35. One of the workshop participants then wanted to know whether it was not possible to arrange a consultative meeting with the local authorities, the RFA and its legal advisors to discuss all these legal concerns. In addition he wanted to know whether the RFA Act was superior to the Local Authority Act or vice versa, as at present it is causing confusion and misinterpretations. Mr. Günter Seydack then explained that the RFA Act was never meant to replace the previous subsidy system that was granted by the Ministry of Regional and Local Government and Housing. The RFA Act is completely silent on the granting of subsidies, and therefore there exists no basis for the presumption that subsidies should be paid from the Road Fund in the same way that they were previously paid by Government.
36. Mr. S. S. Gawiseb then informed the meeting that as a result of the good rains received, many town roads in Khorixas have been washed away and in relation wanted to know whether they could undertake the maintenance work and claim repayment from the RFA at a later stage, or whether they should first obtain relevant quotes and submit the request to the RFA. Mr. Arthur Loftie-Eaton responded by saying that any work undertaken in terms of the Procedures Agreement must be based on budgets submitted to the RFA. Mr. Günter Seydack added that the RFA can only pay according to its business plan; however if something of merit came up, the respective local authority could approach the RFA with a request for an additional funding determination and to amend its business plan accordingly.
37. Mr. Eckard Demasius then wanted to know whether Article 3 (4) (b), referring to the depreciation in the value of money over time, does not perhaps refer to inflation, as depreciation actually refers to currency exchange rates. He proposed that it should read “effect of inflation / statutory increases”. Mr. André P. Müller informed the

meeting that practically it was not feasible for local authorities to prepare capital construction budgets one year in advance. Mr. Günter Seydack responded by stating that the RFA will afford all local authorities the opportunity to provide inputs and at the same time the local authorities should feel free to approach the RFA on these matters.

38. Ms. J. L. De Kock then informed the meeting that the RFA Act/Rules and Principles gives the RFA authority to cut budgets without consultations and cautioned the workshop that this should be guarded against. She thus requested clarity, as it appeared to her that the RFA may deviate from the tariff schedule. One of the other workshop participants then wanted to know how the appropriate tariff could be determined and proposed that the RCC tariff be used, which is also negotiated annually, similar to that of the RFA's. Mr. Arthur Loftie-Eaton responded by saying that the tariffs are set in discussions such as this forum, as Article 8 makes provision for the revision of the Rules and Principles. Mr. Eckard Demasius then highlighted the need for a more robust consultation process, accompanied by more robust tariffs, as participants cannot just continue discussing this matter without coming to a definite conclusion as they needed to work. He proposed that the tariffs be at least that of the RCC, bearing in mind that some local authorities, by nature of their small sizes, are not even able to pay these rates.
39. Several workshop participants suggested that Article 8 should be amended such that the RFA “must”, and not “may”, consult with approved authorities when amending the Rules and Principles. Mr. Günter Seydack then reminded the workshop that such a wording would not stand legal scrutiny, as the Rules and Principles could bind the RFA to something, which the Act allows it to decide autonomously.
40. The workshop agreed that in Article 3 (4) the word “notwithstanding” should be replaced with “subject to”.

41. One of the participants then requested that the PMS's used by local authorities, and in Article 4 (b), and noted that Article 4 (1) should refer to sub-paragraph 3 and not 2. Mr. Günter Seydack then informed the meeting that the PMS was no longer a "cast in stone" requirement, but that the principles of economic efficiency needed to be complied with at all times. The participant raising the concern then proposed that PMS be taken out of the paragraph, to which Mr. Günter Seydack responded by saying that if some local authorities wanted to make use of PMS, they could, and as such the option should be made available to them, hence it should not be removed. Another participant then raised the concern that the operation of a PMS cannot be made subject to Article 4 (1) (e), as PMS's are not flexible enough to summarily incorporate into them "any other matter that the RFA may require from time to time". The workshop thus agreed that paragraph 4 needed to be revisited.

Submission of budgets

42. Mr. André P. Müller informed the meeting that practically it was not feasible for local authorities to prepare capital construction budgets one year in advance. Mr. Arthur Loftie-Eaton then reminded the workshop that the schedule is aimed at providing local authorities with a guide for budget development, as well as the fact that the RFA needed to submit a five year budget. One of the participants then wanted to know whether it was not possible to determine a global amount for road maintenance. Mr. Günter Seydack then responded by saying that certain maintenance standards needed to be developed and agreed upon, which must be auditable in the end. Thus it is not feasible to determine a global amount for all road maintenance.
43. Mr. Eckard Demasius then informed the workshop that in terms of the Local Authority Act their financial year runs from 1 July to 30 June on a one year basis, and that the politicians would not be in a position to develop 5 year budgets as required by the RFA Act. As such they provide estimates as supplied by their technicians in the budgets they submit to the RFA, which is based on PMS and certain engineering

principles. Mr. André P. Müller then wanted to know whether the budget procedure could not be correlated with the claims procedure currently in place, in an attempt to slim down the process. He continued by stating that the 5 year budget according to the schedule cannot be approved by any council, as they do not have the mandate to do so. Mr. Günter Seydack responded by stating that the intention is not for local authorities to submit budgets based on arbitrary amounts, but rather budgets that local authorities would indeed be able to implement in a particular year. Mr. Eckard Demasius then responded by saying that local authorities can only submit budgets based on plans from 1 December until 30 June, as budgets submitted to the RFA as per requirement for the remaining period would not be council approved. Mr. Arthur Loftie-Eaton then stated that if it is agreed in principle that the budgets submitted are based on estimates, local authorities should realise that these estimates will be taken as a guideline for the 5 year plan. This implies that any items / events not accounted for in the estimates will not be funded by the RFA.

44. Ms. J. L. De Kock then referred the workshop back to the earlier discussion on budget cuts by the RFA, to which Mr. Günter Seydack responded that the RFA is committed to the first year of its business plan and as such it has a legal obligation to make these funds available. As a last resort an alternative avenue for funding would be to seek government guarantees for loans. However in the unlikely event of this not being successful, budgets might have to be cut. One of the workshop participants then requested that the RFA communicate its budget lines and guides to the local authorities, and in response Mr. Arthur Loftie-Eaton stated that in this regard the Business Plan was the best guide for local authorities.
45. Another workshop participant then referred to paragraph 6, wanting to know whether the referral to “transparency” needed to be in the Rules and Principles as it is already contained in the RFA Act. Mr. Günter Seydack responded that the query would be referred to the legal experts for their opinion and advised the workshop that if there were any additional matters of concern they should forward it in writing to the RFA.

46. Mr. André P. Müller then wanted to know whether the schedule could be amended to make it more practical and noted that amongst others, the maintenance of salt roads is not included.
47. SM concluded the morning's session by thanking everyone for the discussions that took place and requested that the workshop reconvene after the lunch break to determine the way forward.

The workshop reconvened at 14h20 with SM facilitating the session.

48. SM reminded the workshop that the aim of the forum was to highlight issues that are not being addressed by the Rules and Principles. In response one of the workshop participants stated that more clarity was needed on paragraph 3 (1). Mr. Günter Seydack responded by stating that the local authorities had a number of options to exercise in determining the economic efficiency of projects and these included PMS, employing a consultant to undertake feasibility studies and agreeing with the RFA on maintenance standards based on international engineering research.
49. Mr. André P. Müller then wanted to know whether the international standards referred to should not state Southern African standards, as that would be more appropriate. In addition he stated that the comments they forwarded to the RFA were not taking cognisance of the fact that the Rules and Principles were intended to replace the Procedures Agreements. As such he wanted to know whether the "door was still open" to forward additional comments to the RFA and in relation he also wanted to know to what extent their comments were acknowledged and taken care of. With respect to the issue raised on international standards, Mr. Günter Seydack responded by stating that it is more an issue of how the international research is being interpreted and noted that

many of these studies, such as by TRRL and DFID included countries located in Southern Africa.

50. Mr. Eckard Demasius then informed the workshop that according to the government procurement and distribution policy, local authorities have to seek tenders for work to be done. In an effort to correct the imbalances of the past, it is not always the lowest tender that receives the contract and in this regard the principle of economic efficiency is not considered. The workshop thus agreed that this issue needs to be incorporated into the interpretation of economic efficiency.

51. SM closed the workshop by inviting participants to communicate more with the RFA, as it was part of the much needed educational process. In this regard he introduced Mrs. Mary Hansen to the participants, who is the RFA's newly appointed Manager: Support Services and also the communication officer. He informed the workshop that in a case of absence of both Mr. Günter Seydack and Mr. Arthur Loftie-Eaton, participants should contact Mrs. Mary Hansen. Mr. André P. Müller then thanked the RFA for organising such a forum where issues of relevance could be discussed and stated that it was money spent on a worthy cause.

The workshop officially closed at 14h35.