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From good intentions to legal requirements: the role of the ESMP

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Overview

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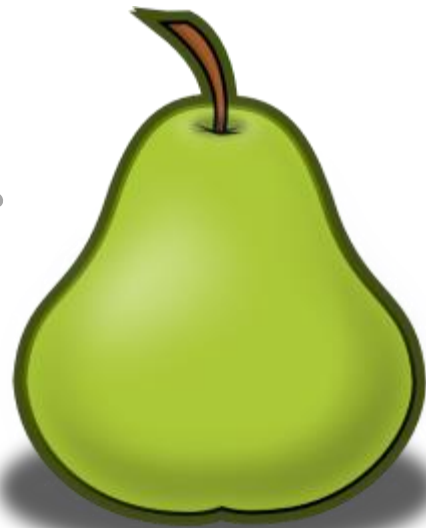
- ▶ The role of the ESMP
- ▶ Problem statement
- ▶ What makes a good ESMP?
- ▶ Translating the ESMP into licence/permit conditions
- ▶ Using the ESMP as a basis for follow-up

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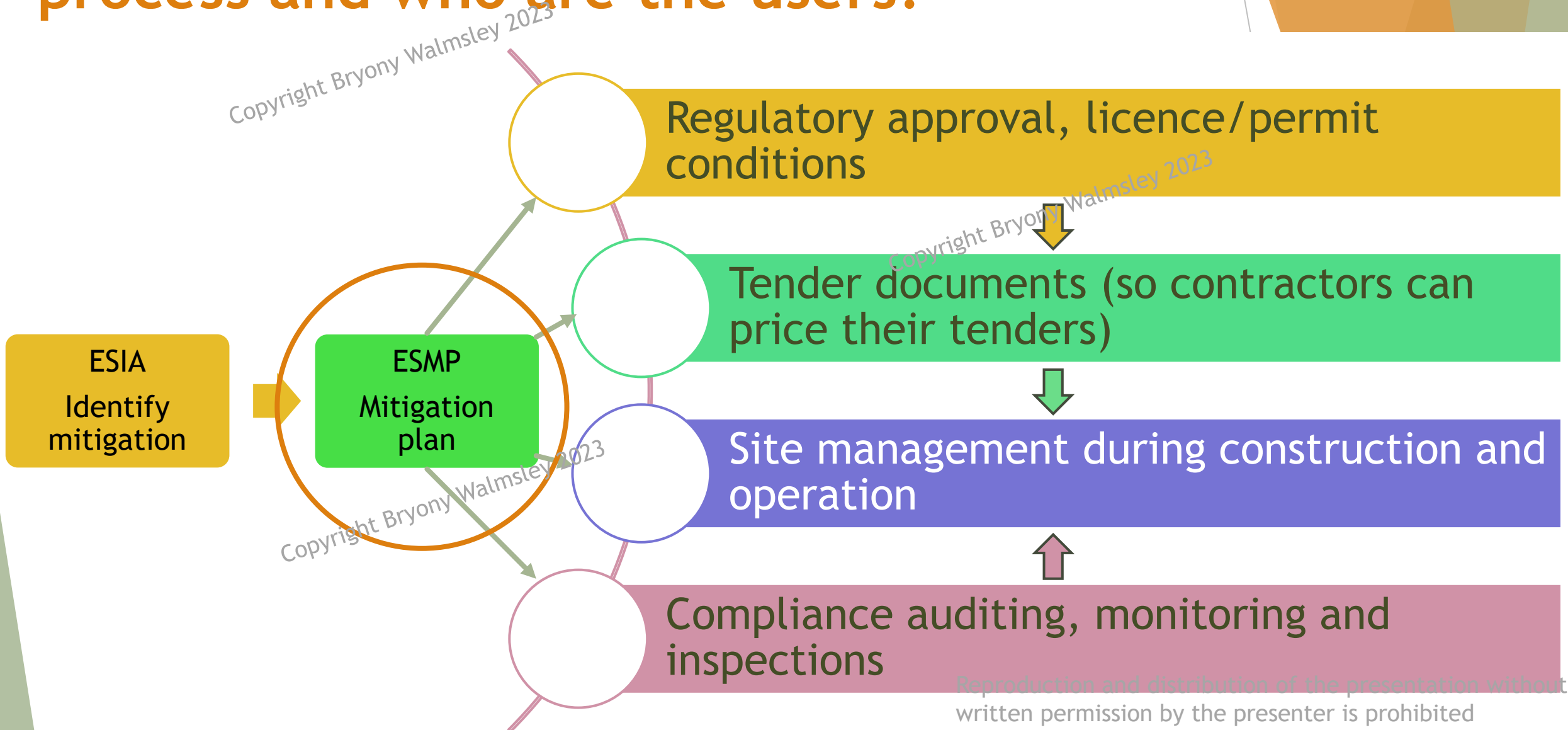
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What happens after the ESIA?

- ▶ Authority review and approval
- ▶ Bank categorisation, appraisal and loan approval
- ▶ Transition period (tenders, award of contract, project start-up stage)
- ▶ ESMP implementation and compliance auditing



Where does the ESMP fit into the process and who are the users?



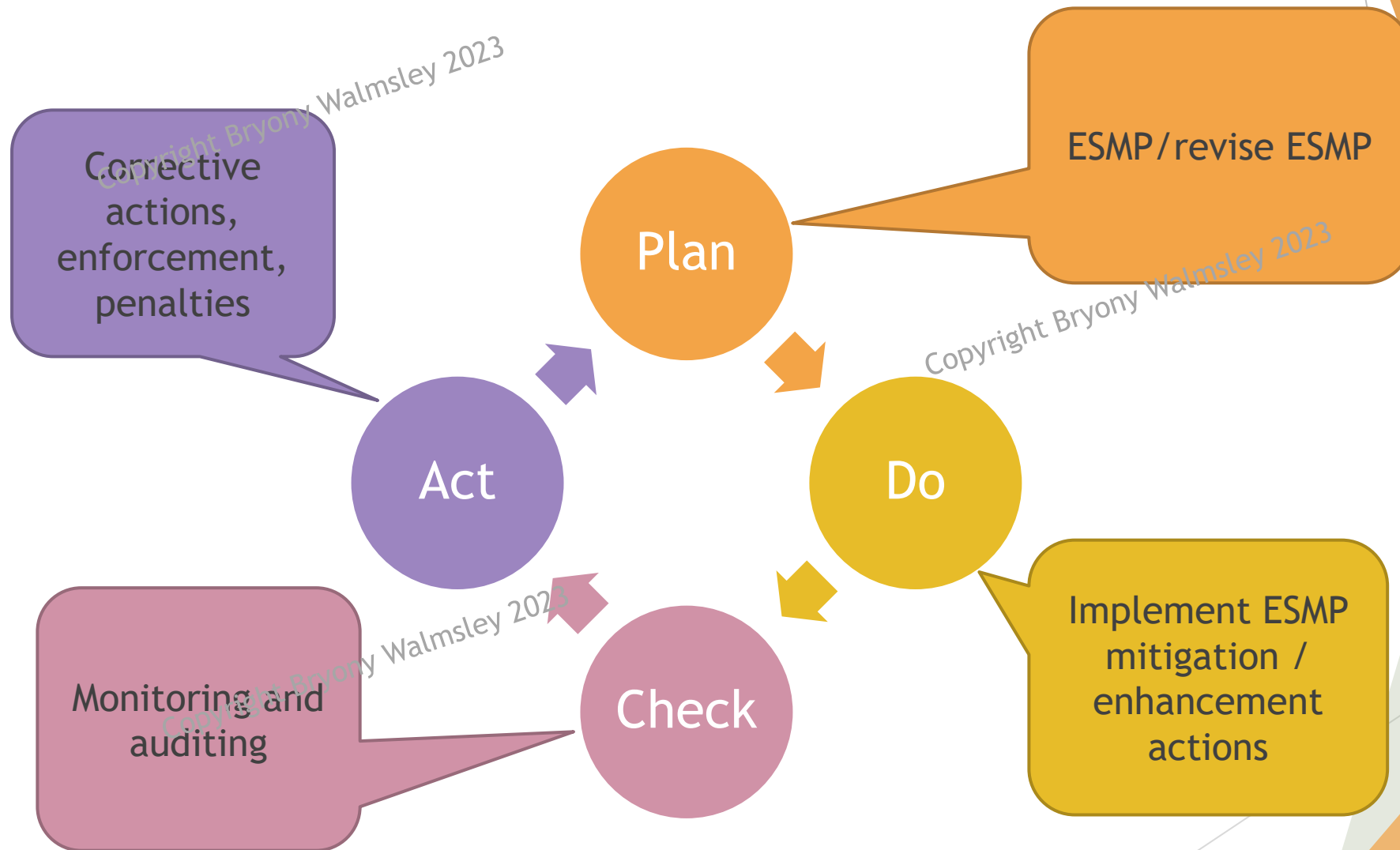
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The ESMP translates good intentions into ACTIONS

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Plan - Do - Check - Act Model



Problem statement

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- ▶ Too often...
 - ▶ Mitigation plans are vague, generalised statements of intent, so...
 - ▶ They cannot be used to price tenders
 - ▶ They cannot be used on site as a guide to what needs to be done
 - ▶ They cannot be used as a permit condition because there are too many legal loopholes
 - ▶ Monitoring is confused with mitigation
 - ▶ ESMP is not included in tenders; implementation is not audited
 - ▶ The ESMP is so large and cumbersome it becomes unusable
 - ▶ Responsibility for implementation is assigned to several different organisations
 - ▶ Mitigation measures are clustered by environmental factor and not work area...

By E&S
factor

- Air quality
- Biodiversity
- Community health
- Etc...

By work
area

- Workshop
- Concrete batch plant
- Quarry
- Dam construction

Each area foreman/manager is responsible for the implementation of mitigation in their area ->>
ACCOUNTABILITY

Poorly written mitigation measure	Re-stated to be more usable and auditable
Minimise disturbance	No construction activities shall take place outside of the demarcated areas (as shown on Map xx and indicated by GPS...) ✓✓✓
Engage most of the labour force people from the surrounding communities	Employ at least 80% of the workforce from the surrounding communities of [list the communities] ✓✓✓
Re-plant trees as much as practical to compensate for losses	<p>Xx trees of the species listed in Appendix A shall be planted in the areas identified in Figure xx at the numbers and spacing specified in the rehabilitation plan in Appendix A. ✓✓✓</p> <p>The contractor shall be responsible for a 2-year tree maintenance programme and no losses of more than 20% shall be tolerated. ✓✓✓</p>
Construct temporary toilets and ensure workers use them properly	<p>Provide one male and one female portable toilet in the field for every 10 workers. ✓✓✓</p> <p>Put up hygiene awareness signs and hold regular tool box talks on hygiene ✓✓✓</p>
Noisy operations shall be conducted at certain times of day	<p>In the following locations [list], construction activities shall only take place between 07h00 and 17h00 on weekdays, 07h00-13h00 on Saturdays and no construction work shall take place on Sundays. ✓✓✓</p> <p>Any exceptions to this must be applied for in writing and approved by the affected residents and land users. ✓✓✓</p>

ESMP to legal requirements

- ▶ The easiest way to ensure that the ESMP actions are implemented is to include a condition of approval in the project authorisation e.g.:
 - ▶ ***“Implement the ESMP”***
- ▶ This can be augmented by:
 - ▶ ***“The [environmental authority] reserves the right to enter into and inspect the construction site at any time in terms of Art. XXaa”***
- ▶ Or, as in some countries e.g. South Africa:
 - ▶ ***“The Proponent shall appoint an independent, registered consultant to audit compliance with the ESMP once per year for the duration of construction. The annual audit report shall be submitted to the [environmental authority] within 30 days of said audit.”***
- ▶ Another condition of approval could include:
 - ▶ ***“The approved ESMP shall be included in all documents sent to prospective tenderers”***

Use of ESMP to develop an audit protocol

Ref No.	Management objective	Mitigation action	KPI	Audit finding
1	Protection of sensitive biodiversity	No construction activities shall take place outside of the demarcated areas (as shown on Map xx and indicated by GPS...)	Barrier tape used to demarcate no-go area; No disturbance observed within no-go area	
2	Employment opportunities for locals	Employ at least 80% of the workforce from the surrounding communities of [list the communities]	Employment records show at least 80% of workforce are local	
3	Promote good hygiene	Provide one male and one female portable toilet in the field for every 10 workers. Put up hygiene awareness signs and hold regular tool box talks on hygiene	Observations; purchase records Hygiene posters visible; training records show at least one hygiene talk per 3 months	
4	Minimise noise pollution	In the following locations [list], construction activities shall only take place between 07h00 and 17h00 on weekdays, 07h00-13h00 on Saturdays and no construction work shall take place on Sundays. Any exceptions to this must be applied for in writing and approved by the affected residents and land users.	Noise monitoring shows sound limits not exceeded at nearest receptor; No complaints received; Records show approved work hours extensions.	

Conclusions

- ▶ ESMPs are critical to the implementation of projects (*in a manner that avoids and minimises environmental and social impacts*)
- ▶ There is scope for a major improvement in the way that ESMPs are prepared - especially the mitigation and monitoring plans so that they become usable frames of reference for:
 - ▶ Prospective tenderers
 - ▶ Site personnel
 - ▶ Compliance auditors
 - ▶ Regulatory permits and licences
- ▶ You need a rigorous ESMP in order to translate good intentions into legal requirements

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Thank you for your attention!

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