

A bridge to far

By Ian Cox

I suspect most of us have seen Richard Attenborough's masterpiece by this name.

Less will remember the dialogue that gave the film its title.

Toward the end of the film Major General Roy Urquart, dirty and exhausted from the heat of battle, meets the immaculately dressed, behind the lines commander, Lieutenant-General Frederick Browning who justifies the debacle that was Arnhem and his role in it with the lie "Market garden was 90% successful" "But as you know, I thought we tried to go a bridge to far".

As perfect a critique of the dishonesty of power as ever made it onto the big screen.

We are witnessing another case of a "bridge too far" in the environmental space where the conservationists who control South Africa's environmental authorities and many of its research institutes are finally facing the consequences of trying to reach a bridge too far.

One could say that the trout fight was marked the beginning of when the tide of battle began to shift, when the conservationists and their rapid and multi-faceted onslaught on the rule of law began lose the initiative and falter.

Yes Market Garden was aimed at speedily defeating the fascist foe that was Nazi Germany, so one is dealing with a reversal of roles in this instance. But at a technical level, the tactical realities and the outcome are comparable. The tide of battle has shifted inexorably and it would be wise of environmental authorities to retreat, take stock of their position and change their modus operandi.

There are many signs of this. On the legal front important cases have, or are in the process of being lost. At a political level questions are being asked which environmental authorities are unable to answer truthfully. People are beginning to see environmental authorities for what there are and are fighting back. The limited resources environmental authorities are increasingly being deployed to defend the indefensible. This is prejudicing delivery on key mandates and that lack of delivery is becoming increasingly obvious. Officials within these departments are beginning to question the wisdom of what their bosses are doing. Real scientists who uphold the rigour of scientific method are becoming increasingly concerned by the sloppy, opinion based pseudo-science that is often deployed to justify government's actions.

These realities came to a head recently when the Department of Environmental affairs tried to undo the years of work that have gone into mapping the whereabouts of trout so that they will not be declared invasive in areas where they already exist.

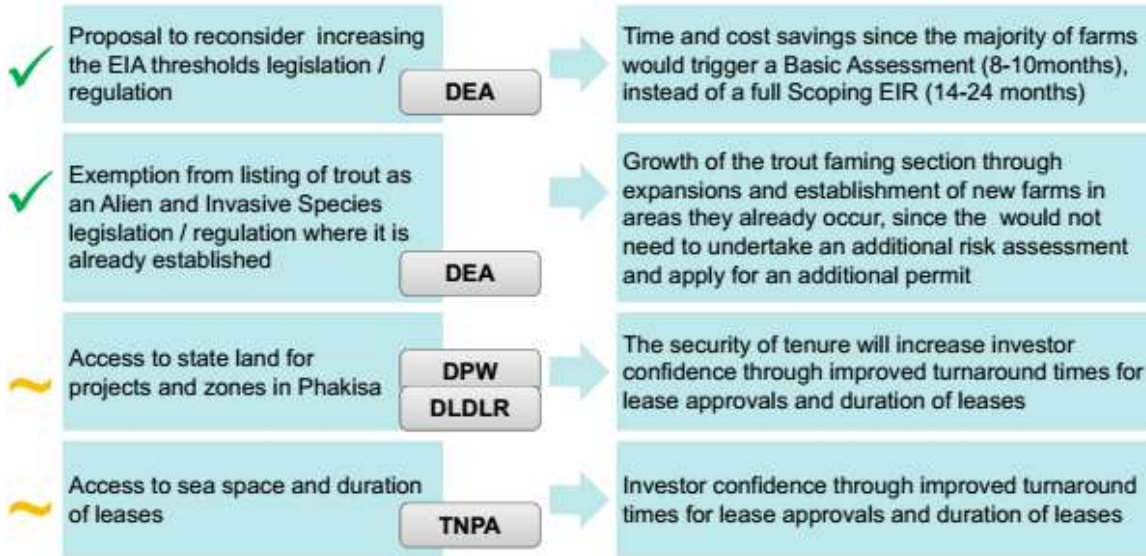
That this must be so has been part of government policy since August 2015 when as much was agreed at Phakisa.

Even during the lab process, several issues faced by the industry were resolved

✓ Done
 ~ In Progress

Key Outcomes from the Aquaculture Lab:

Impact on sector:



Yet DEA’s latest [proposed regulations](#) and maps ignore this both in trying to declare trout invasive in areas where they indisputably occur and by trying to reintroduce their original invasive species regulations through the back door of managing trout as alien.

Both attempts induce a profound sense of shock, not just because of the blatant disregard for government policy but also because they ignore the laws in terms of which the measures are ostensibly being introduced. There is nothing particularly new in this. Large chunks of existing environmental regulation and even legislation are blatantly unlawful. What is even worse this has not come about by inadvertence or incompetence. In many cases the contraventions have been deliberate. It is a case of officials believing that they will be able to overcome the illegality of their actions by the abusive use of power.

I spoke of this in [written representations](#) I submitted to the Department of Environmental Affairs. The points I raised in my letter are not technically difficult or controversial. They speak to the application of principles that law students learn in their first year at university. They are the steel in the foundation that is the rule of law.

I was not able to attend the meeting that took place in Pretoria to discuss this proposed new law. The various organisations that represent the Trout value chain decided not to attend because they had not been supplied the information they are legally entitled to, in order to consult. DEA routinely seeks to pervert the principles of participatory democracy that underpin the Bill of rights. They have got away with it in the past either because the public have believed the lies that have been fed to them or believe that they are powerless to fight back. That is not the case anymore. The playground bully boy tactics of DEA and other environmental authorities are increasingly being challenged.

This all begs the question why. This is a question I have pondered in this newsletter before with less than satisfactory outcomes. Yes DEA and other environmental authorities mistakenly believed the trout value chain

was a soft target which would enable them to claim an easy victory. But the underlying conflict is more profound than this.

I think we are seeing a clash, not just in this country, between humanist ideologies and beliefs on the one hand and conservationist ideologies and beliefs on the other. Both are broad churches that house belief systems that range from what one would call fascist or statist at one extreme to liberal, even libertarian, at the other.

The conservationists control the environmental agenda in government. Moreover the community of officials, scientists and consultants who make up that group in South Africa trend more to the fascist and statist view in their thinking.

The Constitution, on the other hand, is profoundly humanist in its thinking. Moreover it espouses the kind of humanism that calls on people of diverse cultures, races and beliefs to find middle ground, united in their diversity committed to building a country that sustainably delivers human health and wellbeing. It follows therefor that the Constitution acknowledges the broad range of the divide whatever it may be, but requires South Africans to find and build upon a shared unity that overcomes those divisions through the recognition of our common but individual right to freedom and dignity. This is the essence of the constitutional project.

Conservationists, like many other South Africans, have seen in the Constitution only what they want to see. They have failed to grasp the full import of its message. Thus there is a tendency to emphasise the conservationist aspects of the environmental right while ignoring that the overriding purpose of the right which is to protect human health and wellbeing by inter alia “securing ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.” This is why the overriding principle in our law is that: “Environmental management must place people and their needs at the forefront of its concern, and serve their physical, psychological, developmental, cultural and social interests equitably”.

They have got away with this for as long as they have because it is the inclination of environmental authorities and the tendency of business to make a deal rather than confront the differences in their positions. The result has been unprincipled law making over the decades which have ignored the core purpose of the environmental right and environmental management in favour of what is becoming an increasing unstable system that protects the powerful while bullying the weak.

Transformation which is a key component of environmental management has suffered as a result. The Constitution and South Africa’s democratic project have been compromised by an unprincipled process that has inevitable led to a hardening of positions rather than the common ground the Constitution requires all South Africans to strive for.

Just like corruption and the rule of law are ultimately incompatible so too are we seeing an increasing instability in environmental management systems due to what has been a long standing practice of ignoring the law.

It is a case of striving to reach a bridge to far.
