



## PUBLIC PARTICIPATION GUIDELINE IN TERMS OF NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS

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### **REFERENCING**

When referencing this document it should be cited as follows:  
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### **PREFACE**

This guideline must be read together with the NEMA, the EIA Regulations, the relevant SEMA(s) and its Regulations and is not intended to be a substitute for the provisions of the NEMA, the SEMAs or the Regulations, in any way.

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## ABBREVIATIONS

<b>BA</b>	Basic Assessment
<b>BAR</b>	Basic Assessment Report
<b>CA</b>	Competent Authority
<b>DEA</b>	Department of Environmental Affairs
<b>EA</b>	Environmental Authorisation
<b>EAP</b>	Environmental Assessment Practitioner
<b>EAR</b>	Environmental Audit Report
<b>EIA</b>	Environmental impact assessment
<b>EIAR</b>	Environmental Impact assessment report
<b>EMPr</b>	Environmental management programme
<b>I&amp;APs</b>	Interested and/or affected parties
<b>NEMA</b>	National Environmental Management Act, 1998 (Act 107 of 1998)
<b>PP</b>	Public Participation
<b>PPP</b>	Public Participation Process
<b>RI&amp;AP</b>	registered interested and affected parties
<b>S &amp; EIR</b>	Scoping and environmental impact assessment report

## DEFINITIONS

“**applicant**” means a person who has submitted an application for an environmental authorisation to the competent authority and has paid the prescribed fee;

“**application**” means an application for an –

- (a) environmental authorisation in terms of environmental impact assessment regulations;
- (b) amendment to an environmental authorisation in terms of environmental impact assessment regulations;
- (c) amendment to an environmental management programme in terms of environmental impact assessment regulations; or
- (d) amendment of a closure plan in terms of environmental assessment regulations;

“**Public participation process**” in relation to the assessment of the environmental impact of any application for an environmental authorisation, is defined in terms of National Environmental Management Act, 1998 (Act 107 of 1998) (NEMA) as a process by which potential interested and affected parties are given opportunity to comment on, or raise issues relevant to, the application;

“**registered interested and affected party**” in relation to an application, means an interested and affected party whose name is recorded in the register opened for that application in terms of environmental impact assessment regulations;

“**the Act**” means the National Environmental Management Act.

## **1. INTRODUCTION AND LEGAL BACKGROUND**

According to Section (2)(4)(f) and (o) of the Act,

- the participation of all interested and affected parties (I&APs) in environmental governance must be promoted and all people must have the opportunity to develop the understanding, skills and capacity necessary for achieving equitable and effective participation, and participation by vulnerable and disadvantaged persons must be ensured, and
- the environment is held in public trust for the people, the beneficial use of environmental resources must serve the public interest and the environment must be protected as the people's common heritage.

In order to give effect to the above sections, it is essential to ensure that there is adequate and appropriate opportunity for public participation (PP) in decisions that may affect the environment. Section 24(1A) (c) of the Act allows for this participation by requiring that the person conducting PP comply with any regulated procedure related to public consultation and information gathering through the public participation process (PPP).

Further to this, the Act requires that the person conducting a PPP must take into account any relevant guidelines applicable to PP as contemplated in section 24J of the Act. This guideline has been developed in order to assist the proponents or applicants, registered interested and affected parties (RI&APs) and environmental assessment practitioners (EAPs) to understand what is required of them and how to comprehensively undertake a PPP.

This guideline is a revised version of the PP guideline that was published in 2010. It provides information and guidance for proponents or applicants, RI&APs, competent authorities and EAPs on the PP requirements of the Act. It further provides information on the characteristics of a vigorous and inclusive PPP.

## **2. CHARACTERISTICS OF A COMPREHENSIVE PUBLIC PARTICIPATION**

At a minimum, the PPP undertaken must allow for the following:

- to provide for the opportunity for all role players including potential and RI&APs, EAPs, state departments, organs of state, and the competent authority (CA) to obtain clear, accurate and understandable information about the environmental impacts of the proposed activity or implications of a decision;
- to provide for role- players to voice their support, concerns and questions regarding the project, application or decision;

- to provide the opportunity for role-players to suggest ways for reducing or mitigating any negative impacts of the project and for enhancing its positive impacts;
- to enable the person conducting PP to incorporate the needs, preferences and values of potential or RI&AP's into its proposed development that becomes the subject of an application for an environmental authorization (EA);
- to provide opportunities for clearing up misunderstandings about technical issues, resolving disputes and reconciling conflicting interests;
- to encourage transparency and accountability in decision-making;
- to contribute toward maintaining a healthy, vibrant democracy; and
- to give effect to the requirement for procedural fairness of administrative action as contained in the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).

### **3. WHEN PUBLIC PARTICIPATION MUST BE UNDERTAKEN**

The following section provides guidance as to when PP must be undertaken -

- Before the submission of an application for EA, but the relevant CA and potential and RI &APs *must*, irrespective of whether or not any PP took place prior to the submission of the application, for at least a period of 30 days still be provided with an opportunity to comment on reports and plans after the submission of an application for EA.
- Additional PP may be required where significant changes have been made or significant new information has been added to the basic assessment report (BAR), scoping and environmental impact report (S & EIR), environmental management program (EMPr) or, where applicable, a closure plan, which changes or information was not contained in the reports or plans consulted on during the initial PPP, for a period of at least 30 days.
- Additional PP may be required if an amendment of an EA results in a change to the scope of a valid EA, (where such change will result in an increased level or nature of impact ) and such level or nature of impact was not assessed and included or taken into consideration during the initial EA.
- When a holder submits an environmental audit report (EAR) to the CA, they must also submit recommendations to amend the EMPr or closure plan, in order to rectify the shortcomings (i.e. insufficient mitigation of environmental impacts or insufficient levels of compliance with the EA or EMPr and where applicable the closure plan) identified in the EAR. Such recommendations must have been subjected to a PPP. In addition to this, the holder of EA must notify all potential and RI&APs of the submission of the EAR to the CA, within 7 days of the date of such submission and make such report immediately available to anyone on request and on a publicly accessible website, where the holder has such a website.
- When a holder of the EA intends to amend impact management outcomes, EMPr objectives or closure

plan objectives, the holder must invite comments on the proposed amendments to the impact management outcomes of the EMP or amendments to the closure objectives of the closure plan from potentially and RI&APs, including the CA for a period of 30 days.

- Also, in the event where the EAP or specialist has declared that he/she is not independent, the proponent or applicant must appoint another EAP or specialist to externally review all work undertaken by the EAP or specialist prior to conducting any PPP.

The person conducting PP is required in terms of environmental legislation to provide the CA and RI &APs with reasonable opportunity to participate in PPP information gathering and participation procedures. As such, it is required that unless justified by exceptional circumstances, as agreed to by the CA, the person conducting PP must refrain from conducting any PPP during the period of 15 December to 5 January.

PPP in this context includes, amongst others, placing a notice board, giving written notice, placing an advertisement, information sharing, holding public meetings etc.

Legislation provides that PP may occur before the submission of an application for an EA. Legislation does not prescribe exactly when such pre-application PP may take place before the submission of an application for an EA. For example, it is not indicated whether it would be acceptable for a person to conduct public participation 3 years prior to the submission of an application. In cases such as these, since there is no prescribed time frame, it is left up to the discretion of the applicant and competent authority to decide when such pre-application PP may take place, but it must be noted that the PPP must be undertaken at a time or time period that enables *all* RI&APs an opportunity to comment and should there be any doubt by the applicant, EAP or the CA that all RI&APs have not been given such opportunity, then there can be consideration of redoing or restarting the PPP.

#### **4. NOTIFICATION**

All potential and I&APs have a right to be informed early and in an informative and proactive way regarding proposals that may affect their lives or livelihoods. Early communication can aim to build trust among participants, allow more time for public participation, and improve community analysis and increases opportunities to modify the proposal in regards to the comments and information gathered during the PPP.

The level of public participation must be at a minimum be informed by –

- the scale of anticipated impacts of the proposed project;
- the sensitivity of the affected environment and the degree of controversy of the project; and
- the characteristics of the potentially affected parties.



Notification of a proposal to all I&APs may be given through a number of methods including fixing of notice boards, providing written notice, placing advertisements etc.

The type of method used must be an effective method of communication .i.e notice boards must be of appropriate size, it must be placed in areas that are considered to be visible. Advertisements must be placed in newspapers that will easily reach the intended audiences considering jurisdictions and boundaries within which the proposal or application falls and or will have an impact or interest.

The person conducting PP has the discretion to state in the notice, notice board or advertisement, the manner in which representations on relevant documents should be made since the circumstances of each proposal is different, the nature and state of potential and RI&APs or public sensitivity of the project should determine which PP mechanisms is most appropriate to use. For example-

- where potential and RI&APs include historically disadvantaged communities, or people with special needs (e.g. a lack of skills to read or write), public meetings should be considered;
- since legislation do not stipulate what language must be used when placing an advertisement, the person conducting PP must exercise insight and discretion and ensure that the language used allows for the facilitation of a PPP where all potential and RI&APs are provided with a reasonable opportunity to comment on an application and participate without unnecessary difficulty during the PPP; and
- although legislation allows for the person conducting a PPP the discretion regarding the notice period to give to the public for a public meeting, the person is however required to ensure that adequate notice prior to the meeting is given to ensure that PP is meaningful. It is also important to note that the person conducting PP is not obliged by law to wait for a reference number prior to conducting a PPP (including placing an advertisement or holding a public meeting).

Ultimately, mechanisms may be used for engagement or even notification purposes must suitably allow for engagement of all I&APs that may be illiterate or disabled or who may have any other disadvantage.

The mechanisms including the notification must be informative in that it provides enough detail to I&APs to get a fair understanding of the proposal. As such the notification must have the nature and location of the activity including the relevant listed and or specific activities. The aim should be to also diffuse simple and understandable information to I&APs that promotes engagement and interest.

#### 4.1 Identifying and approaching specific I&AP's

Over and above the placement of general notices on site or in the media inviting I&APs to participate in the application process, certain stakeholders should be specifically approached (organs of state, the owner or person in control of the land etc. are automatically regarded as I&AP's). The following means of identifying stakeholders should be used when appropriate:

- social profiles or probes provide a comprehensive summary of the key characteristics of the people of a community or area and can serve as a starting point for identifying stakeholders;
- brainstorming profiles or probes provide a comprehensive summary of the key characteristics of the people of a community or area and can serve as a starting point for identifying stakeholders;
- established lists and databases, held by consultancies, authorities or research institutions, may hold additional contact details of residents, non-government organisations, community based organisations or constituents; and
- network or chain referral systems according to which key stakeholders are asked to assist in identifying other stakeholders.

#### 4.2 Broadening participation, capacity building and special needs

Appropriate participation measures can be put in place to deal with the range of cultural and language requirements of RI&APs. The language used by the RI&APs must be taken into account when serving a notice and when selecting a newspaper.

**Note:** *Where environmental reporting is done in one of the three regional languages, executive summaries in the other two languages should be made available, on request.*

Where RI&APs include rural or historically disadvantaged communities or people with special needs (e.g. illiteracy, disability, or any other disadvantage), the following could, inter alia, be considered to facilitate their participation or overcome potential constraints:

- announcing the PPP on a local radio station in a local language, at an appropriate time (e.g. peak hours);
- using participatory rural appraisal and participatory learning and action approaches and techniques could be used to build the capacity of the I&APs to engage and participate more effectively;
- specific approaches to existing community structures, committees and leaders;
- holding public meetings at times and venues suitable to the community;
- holding separate meetings with vulnerable and marginalised groups; and
- appropriate access to information must be provided.

**Note:** *The use of the following PP mechanisms over and above the requirements should also be considered:*

- public meetings and open days;
- conferences;
- press releases;
- questionnaires or opinion surveys;
- information desks and/or info lines (helpline);
- web-based platforms/social media; and
- meetings/workshops with constituencies (e.g. national standing committees, non-government organisations / community based organisations).

### **4.3 Notifying RI&APs of the Department's Decision**

The applicant must, in writing, within 14 days of the date of the decision, notify all RI&APs of the outcome of the application the reasons for the decision and the manner in which they can access the decision, and draw their attention to the fact that an appeal may be lodged against the decision in terms of the national appeal regulations.

## **5. REGISTERED INTERESTED AND AFFECTED PARTIES**

### **5.1 Commenting periods and consultation with organs of state and state departments**

All organs of state which have jurisdiction in respect of the activity to which the application relates must comment on the reports within a period of 30 days (failing which they will be regarded as having no comment).

The CA or EAP must consult with every organ of state that administers a law relating to a matter affecting the environment relevant to that application for an environmental authorization when such competent authority considers the application and unless agreement to the contrary has been reached the EAP will be responsible for such consultation.

### **5.2 Access and opportunity to comment on reports and plans**

A RI&AP raising issues or commenting in writing on reports and plans submitted to the CA, must ensure that:

- (a) comments are submitted within the specified timeframes or any extension of a timeframe agreed to by the applicant or EAP;
- (b) comments must be submitted directly to the EAP; and
- (c) the RI&AP discloses any direct business, financial, personal or other interest which that

party may have in the approval or refusal of the application.

### 5.3 Comments of RI & APs to be recorded in reports and plans

Written comments on reports and plans submitted by RI&APs must be recorded in the reports and plans by the person conducting PP and such written comments, including responses to such comments and records of meetings should be attached to the reports and plans that are submitted to the CA.

**Note:** *reasonable alternative methods of recording comments must be provided to accommodate people who wish to, but cannot access written comments due to disability, lack of skills to read or write or any other disadvantage.*

### 5.4 Responding to comments

It is best practice that all comments received from RI&APs are acknowledged by the EAP, with the EAP indicating how the comments received will be responded to (even if just referring to the fact that a response will be contained in the “comments & response report”). Comments and responses must be recorded in the comments and response report that is submitted with the BAR or S&EIR reports.

**Note:** *The EAP is responsible for ensuring that the issues raised by RI&APs are addressed in an objective manner. Where issues are not accepted, the reasons for this must be provided in the comments and response report.*

## 6 GUIDANCE ON THE LEVEL OF PUBLIC PARTICIPATION

The minimum requirements for public participation outlined in the EIA Regulations will not necessarily be sufficient for all applications. This is because the circumstances of each application are different, and it may be necessary in some situations to incorporate extra steps in the PPP. The table below provides guidance for deciding on the required level of PP.

Table 1: Level of public participation

<b>Scale of anticipated impacts:</b>	<b>Recommended Response</b>	
	<b>If “yes”</b>	<b>If “No”</b>
Are the impacts of the project likely to extend beyond the boundaries of the local municipality?	Formal Consultation with other affected municipalities should be carried out during the PPP.	No need to have a formal consultation with other municipalities during PPP. Minimum requirements for public participation in accordance to EIA
Are the impacts of the project likely to extend beyond the boundaries of the province?	Formal Consultation with other affected provinces should be carried out during the PPP.	No need to have a formal consultation with other provinces during PPP. Minimum requirements for public participation in accordance to EIA must be
Is the project a greenfields development (a new development in a previously undisturbed area)?	Extensive consultation with RI&APs might be required before a decision is taken on the project to in order to gather more information, and to ensure that there is minimal impact on the	Minimum requirements for public participation in accordance to EIA Regulations must be met.
Does the area already suffer from socio-economic problems (e.g. job losses) or environmental problems (e.g. pollution), and is the project likely to exacerbate these?	Extensive consultation with RI&APs within the area should be undertaken, to gather more information on both the socio-economic and environmental problems.	Minimum requirements for public participation in accordance to EIA Regulations must be met.
Is the project expected to have a wide variety of impacts (e.g. socio-economic and ecological)?	Thorough consultation needs to be conducted with RI&APs, in order to address variety of impacts.	Minimum requirements for public participation in accordance to EIA Regulations must be met.
<b>Public and environmental sensitivity of the project:</b>		
Are there widespread public concerns about the potential negative impacts of the project?	Broader consultation with all RI&APs will need to be undertaken.	Minimum requirements for public participation in accordance to EIA Regulations must be met.

Is there a high degree of conflict among RI&APs?	There might need to be more consultation to ensure that there is consensus reached among RI&APs.	Minimum requirements for public participation in accordance to EIA Regulations must be met.
Will the project impact on private land other than that of the applicant?	Consultation with the private land owner must be done, and all their concerns need to be addressed.	Minimum requirements for public participation in accordance to EIA Regulations must be met.
Does the project have the potential to create unrealistic expectations (e.g. that a new factory would create a large number of jobs)?	Thorough consultation that addresses the perceptions of unrealistic expectations needs to be carried out.	Minimum requirements for public participation in accordance to EIA Regulations must be met.
<b>Potentially affected parties:</b>		
Has very little previous public participation taken place in the area?	More thorough public participation should take place within the area, to ensure that all potential and RI&APs participate.	Minimum requirements for public participation in accordance to EIA Regulations must be met.
Did previous public participation processes in the area result in conflict?	Additional consultation might be needed to ensure that issues of conflict are addressed effectively.	Minimum requirements for public participation in accordance to EIA regulations must be met.
Are there existing organisational structures (e.g. local forums) that can represent I&APs?	Organizational structures might minimise conflict whilst maximising the participation.	Minimum requirements for public participation in accordance to EIA Regulations must be met.
Is the area characterised by high social diversity (i.t.o. socio-economic status, language or culture)?	Proper consultations that address language and cultural diversity should be promoted.	Minimum requirements for public participation in accordance to EIA Regulations must be met.

Were people in the area victims of unfair expropriations or relocation in the past?	PPP should be extensive and address any unfair practices that occurred in the past.	Minimum requirements for public participation in accordance to EIA Regulations must be met.
Is there a high level of unemployment in the area?	The PPP should ensure that there are no unrealistic expectations created due to the project. The consultation should ensure that any unrealistic expectations are adequately addressed before the project starts.	Minimum requirements for public participation in accordance to EIA Regulations must be met.
Do the RI&APs have special needs (e.g. a lack of skills to read or write, disability, etc)?	Consultation should include mechanisms that will ensure full participation by people with special needs.	Minimum requirements for public participation in accordance to EIA Regulations must be met. Minimum requirements for PP in accordance to the Act and must be met as well as best practices relating to PP.

## **7. CONCLUSION**

During the PPP access to all information that reasonably has or may have the potential to influence any decision with regard to an EA unless access to that information is protected by law is made available to RI& APs. PP is an important aspect in the EIA process as it gives RI&APs a platform to be informed about potential EA that may have an effect on them and to be afforded an opportunity to engage and provide input on matters that they interested in or affected by.

Effective PP also facilitates informed decision-making by the CA and may result in better decisions as the views of all parties are considered.