



THE
DEPARTMENT OF
ENVIRONMENTAL
AFFAIRS

Report prepared by



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EXECUTIVE SUMMARY

In response to some of the issues that arose at the '10 years of EIA' conference held in 2008 the Department of Environmental Affairs has embarked on the development of an Environmental Impact Assessment and Management Strategy. As part of that strategy research was commissioned on nine subthemes with Public Participation as Subtheme 3.

Desktop research into existing processes (the status quo) was undertaken and the public participation elements identified. Of these regulations only exist for a Basic Assessment, Scoping & Environmental Impact Assessment and Environmental Management Framework. These formed the focus of the current work.

The views of 147 people from a variety of backgrounds and with a variety of interests in impact assessment participated in a survey. The status quo and the outcomes of the survey were analysed and compared with current best practice. This resulted in a series of recommendations which can be summarised as follows.

1. Require practitioners to follow the principles set out by IAIA (section 7.1).
2. Require practitioners to follow the criteria for best practice described by SAIEA (section 7.2).
3. Institute assessment of all public participation processes by both I&APs and practitioners using Petts' criteria (section 7.4.1).
4. Urgently review and update the Guidelines for Public Participation issued by the Department of Environmental Affairs.
5. Embark on a process of updating the Regulations.

CODES OF ETHICS GOVERNING THIS REPORT

The author, Rod Bulman of Phelamanga Projects, has signed the Code of Ethics of both IAIA and IAP2 and thereby bound himself to observe them.

1.1 IAIA Code of Ethics

- The member shall conduct professional activities, as far as possible, in accordance with emerging principles of sustainable development and the highest standards of environmental protection.
- The member shall at all times place the integrity of the natural environment and the health, safety and welfare of the human community above any commitment to sectional or private interests.
- The member shall be personally accountable for the validity of all data collected, analysis performed, or plans developed by the member, and for the scrutiny of all data collected, analyses performed, or plans developed under the member's direction.
- The member shall actively discourage misrepresentation or misuse of work the member has performed or that which was performed under the member's direction.
- The member shall ensure the incorporation of environmental protection and social or socio-economic impact considerations from the earliest stages of project design or policy development.
- The member shall not conduct professional activities in a manner involving dishonesty, fraud, deceit, misrepresentation or bias.
- The member shall not advertise or present the member's services in a manner that may bring discredit to the profession.

1.2 IAP2 Code of Ethics

1. **PURPOSE.** We support public participation as a process to make better decisions that incorporate the interests and concerns of all affected stakeholders and meet the needs of the decisions-making body.
2. **ROLE OF PRACTITIONER.** We will enhance the public's participation in the decision-making process and assist decision-makers in being responsive to the public's concerns and suggestions.
3. **TRUST.** We will undertake and encourage actions that build trust and credibility for the process among all the participants.
4. **DEFINING THE PUBLIC'S ROLE.** We will carefully consider and accurately portray the public's role in the decision-making process.
5. **OPENNESS.** We will encourage the disclosure of all information relevant to the public's understanding and evaluation of a decision.

6. ACCESS TO THE PROCESS. We will ensure that stakeholders have fair and equal access to the public participation process and the opportunity to influence decisions.
7. RESPECT FOR COMMUNITIES. We will avoid strategies that risk polarizing community interests or that appear to “divide and conquer.”
8. ADVOCACY. We will advocate for the public participation process and will not advocate for interest, party, or project outcome.
9. COMMITMENTS. We ensure that all commitments made to the public, including those by the decision-maker, are made in good faith.
10. SUPPORT OF THE PRACTICE. We will mentor new practitioners in the field and education decision-makers and the public about the value and use of public participation.

ACRONYMS AND ABBREVIATIONS

ACRONYM	DESCRIPTION
A, E & T	Awareness, Education and Training. This acronym embraces a learning continuum between awareness, training, and education. Awareness is often defined as to focus attention on the issue. Training describes transferring relevant and needed skills and competency. Education is the process of integrating all the required skills and competencies into a common body of knowledge; a multi-disciplinary study of concepts, issues, and principles.
BA	Basic Assessment is the level of environmental assessment applied to activities listed in the Listing Notice 1. These are smaller scale activities; the impacts of these activities are generally known and can be easily managed.
CRR	Comments and Responses Register is a register of all the comments of interested and affected parties and the responses given to them by the proponent and or consultants.
DEA	Department of Environmental Affairs of the Government of South Africa currently responsible for environmental affairs
DEAT	Department of Environmental Affairs and Tourism of the Government of South Africa formerly responsible for environmental affairs
DFA	Development Facilitation Act No. 67 of 1995, introduced extraordinary measures to facilitate and speed up the implementation of reconstruction and development programmes and projects in relation to land.
EAP	Environmental Impact Assessment Practitioner means the individual responsible for the planning, management and coordination of environmental impact assessments, strategic environmental assessments, environmental management plans or any other appropriate environmental instruments introduced through regulations.
EIA	Environmental Impact Assessment is an assessment of the possible impact--positive or negative--that a proposed project may have on the environment, together consisting of the natural, social and economic aspects.
EIAMS	Environmental Impact Assessment Management Strategy to address key concerns and constraints within the current environmental impact management system and will shape the manner in which impacts are managed in the future
EIM	Environmental Impact Management a systemic suite of tools by which the environment can be managed and impacts assessed and mitigated or managed. The National Environmental Management Act 107 of 1998 (as amended) seeks to regulate these.
IA	Impact Assessment. This term is used generically to indicate all forms of impact assessment. It is often interpreted narrowly to mean the Basic Assessment and the Scoping & Environmental Impact Report processes provided for in Government Notice R 543 (as corrected).

ACRONYM	DESCRIPTION
IAIAsa	International Association of Impact Assessment (South African affiliate): An association of professionals to advance the state of the art and science of impact assessment in applications ranging from local to global to develop international and local capability to anticipate, plan and manage the consequences of development to enhance the quality of life for all.
IAP2	International Association of Public Participation is an international association of members who seek to promote and improve the practice of public participation in relation to individuals, governments, institutions, and other entities that affect the public interest in nations throughout the world.
IEP	Integrated Environmental Programme is a sector plan required by municipalities in terms of the IDP process.
MEC	Member of the Executive Committee means the person appointed by the Premier of a province to be responsible for Environmental Affairs in the province concerned.
NEMA	National Environmental Management Act 107 of 1998 as amended
S&EIR	Scoping and Environmental Impact Report
SD	Sustainable Development: addresses the need to pursue and assess the key stated objective of increased economic growth via environmental integrity, social equity and economic development. Any higher growth is only acceptable if it puts South Africa on a higher development trajectory that ensures overall improvement in people's quality of life, and that protects our natural resource base for future generations.
SAIEA	Southern African Institute for Environmental Assessment is a non-profit Environmental Trust, whose mission is to support sustainable development in Southern Africa through promoting the effective and efficient use of Environmental Assessment as a planning tool.
SADC	Southern African Development Community is a multi-lateral organisation of states whose mission is to promote sustainable and equitable economic growth and socio-economic development through efficient productive systems, deeper co-operation and integration, good governance, and durable peace and security, so that the region emerges as a competitive and effective player in international relations and the world economy.
SDCEA	South Durban Community Environmental Alliance: The South Durban Community Environmental Alliance (SDCEA) organises across the historic racial divisions of its communities to speak out for environmental justice at local, national, and international levels.
SDF	Spatial Development Framework In terms of Section 26(e) of the Municipal Systems Act (Act 32 of 2000), every municipality is required to formulate a Spatial Development Framework as a part of its Integrated Development Plan (IDP). A Spatial Development Framework is required to describe in words and illustrations how the Municipality sees desirable future patterns of land use and development in its area of jurisdiction.

ACRONYM	DESCRIPTION
SEA	Strategic Environmental Assessment: a process to ensure that significant environmental effects arising from policies, plans and programmes are identified, assessed, mitigated, communicated to decision-makers, monitored and that opportunities for public involvement are provided. SEA has become an important instrument to help to achieve sustainable development in public planning and policy making.

2 SUBTHEME 3: PUBLIC PARTICIPATION

2.1 Problem Statement

The problem statement on the sub theme compiled by the PSC and addressed by this study is

To ensure effective, successful and fair public participation during environmental impact management processes

2.2 Objective

The objective set for the study is

To ensure effective, successful and fair public participation during the environmental impact assessment and management processes

2.3 Goals

The goals defined for this study are:

- Goal 1: To provide for effective and efficient procedures to ensure effective, successful and fair public participation during the environmental impact assessment and management processes;
- Goal 2: To provide for appropriate communication methods during the PP process;
- Goal 3: To ensure appropriate protection and inclusion of I&APs.

2.4 Deliverable

In the light of these goals the deliverable has been formulated as

Propose new or amended procedures to ensure an effective, successful and fair public participation process, propose appropriate communication methods and appropriate protection of I&APs and officials.

2.5 Tasks

The tasks undertaken included

1. Research existing public participation procedures, within existing organisational structures and procedures identified in Sub theme 1.
2. Identify and assess existing public participation procedures embedded within different Environmental Impact Assessment Tools that have been identified in Sub theme 9 and compare the effectiveness, success and fairness of each public participation procedure and protection of the I&APs and officials.

3. Identify existing problem areas in the public participation process on the effectiveness, success and fairness of the public participation procedure as well as fairness relating to the protection of communities. Problems with regard to notification, access to information, comprehension and time periods need to be identified specifically.
4. Investigate different communication methods in order to improve levels of understanding and adequate communication by means of reports.
5. Propose more effective, successful and fair public participation processes, also considering integration of public participation with other tools and processes identified under Sub theme 9 e.g. EMFs, SEAs, Integrated Development Plans, Spatial Development Frameworks, land use management and control procedures in order to ensure that the interests, needs and values of all I&APs are taken into account.
6. Propose a diversity of public participation for different scales, types or location of projects
7. Propose more efficient communication methods embedded in the public participation process which should take into consideration skills and capacity of I&APs.
8. Identify problem areas which may prevent implementation.

These tasks require consideration of all applicable procedures and legislation which may relate to Environmental Impact Management including focussing on the Promotion of Administrative Justice Act, 2000 and Promotion of Access to Information Act (2000).

2.6 Purpose of the Study

The purpose of this study is to compile a comprehensive report on the Sub theme: Public participation for input into the theme report on Government and Administration to be collated by the Theme Coordinating Committee.

3 BACKGROUND

3.1 Introduction

Decision making in the environmental area is required to take into account the requirements of various pieces of legislation. The foundation legislation is the Constitution (as amended) which provides at S 24 that:

- [e]veryone has the right-
- (a) to an environment that is not harmful to their health or well-being; and

- (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that-
 - (i) prevent pollution and ecological degradation;
 - (ii) promote conservation; and
 - (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development

The notion that people, the public, have a role to play in decisions that affect their life circumstances and particularly those aimed at promoting justifiable economic and social development is relatively new.

The proviso that economic development must be justifiable is also a recent development. During the 1970s the realisation that the development theories of the 1960s were not doing much to alleviate poverty gave rise to the need to reassess (Coetzee et al 2001). The critique of capitalism that First World countries had developed at the expense of Third World countries “led to a focus on basic needs and poverty alleviation through people centred approaches” (Wassermann 2001).

Wassermann suggests that there has arisen an underlying

postulate of participation, that is, the universal idea that the supposed beneficiaries of development interventions should control and own as many aspects of the interventions as possible *so that they may go it alone on the development route when expert assistance is withdrawn* [emphasis added] (Wassermann 2001: 172).

The difficulty with this view of participation is that, although it represents a major advance on previous approaches to development, the caveat shown in italics in the quote above continues to reinforce the view of poor people as the **subjects** of development. It assumes the independent existence of an outside group of (usually remote) experts who have the knowledge and wisdom, missing among local people, to discern the problem, its solution and the manner in which the solution is to be applied. For this reason a different participation paradigm is proposed.

3.2 Participation and Sustainability

Wassermann (2001) puts forward five contentious assumptions about participation by the community in development decisions, viz.

1. Communities consist of harmonious interest groups;
2. All communities members desire change;
3. All community members have the self-confidence to participate;
4. All community members may take free, democratic decisions; and
5. Community leaders necessarily serve community interests.

Having ‘demonstrated’ how inaccurate she believes these assumptions to be, she proceeds to propose that

[w]ith regard to poverty alleviation (income generating) projects, an approach is proposed in which less emphasis is placed on the amorphous masses that are referred to in the literature as a ‘community’, and more emphasis placed on the individual who displays personal initiative (2001: 177)

This prescription however falls into the neo-liberal trap of putting personal advantage ahead of communal benefit and proposes escape from poverty through winning the competition for resources, which is ultimately unsustainable. The key to appropriate public participation lies in its use as a tool for discerning narratives and counter-narratives and as a method of involving a range of community representatives, often characterised as ‘civil society’. In this way issues of sustainability can be examined and the appropriate development path shaped. This is especially relevant when scarce natural resources are in contention.

There is general consensus in the international society that development and environmental protection are interrelated. However, and despite some advancements, there has been an inadequate level of integration of environmental and social considerations into the mainstream economic decision making (Ryan 2001).

Careful management of the participation process can best counter the problems that Wassermann outlines, including the problem of the inadequate voice of the marginalised or disadvantaged members of a group. Techniques to promote better participation and the inclusion of minority voices are available. These techniques provide both participants and observers with reassurance that participation is more than just token.

In this context, public participation is one of the keys to better sustainable development governance at the international – as well as the national – level. Opening the political processes and institutions to the participation and monitoring of civil society, will strengthen the presence of underrepresented interests and concerns within the decision making process, enhancing the possibilities of environment and development integration and, overall, improving international governance (Ryan 2001).

3.3 Environmental decision making as policy

Policy is defined by Pressman and Wildavsky (1973) who view “policy as a hypothesis containing initial conditions and predicted consequences. If X is done at time t1, then Y will result at time t2” (1973: xiv), i.e. describing policy as the causal link between the two conditions. This definition fits neatly into the purpose of environmental decision making, which can be regarded as gathering information about the current situation and then make a prediction about what will happen over time if certain actions are undertaken. To this extent the research around policy processes is relevant to this study.

3.3.1 Policy space

An important function of the participatory process is the way in which it opens up space for alternative views to be heard.

Participatory processes can provide a means by which 'policy space' (Grindle and Thomas 1991) can be levered open for the emergence of alternative interpretation of 'needs', and with this, alternative policy solutions. Yet processes geared at simply asking people for their views on social policy issues can serve to produce 'echoes' of the dominant discourses, rather than alternative framings of policy issues. The role of deliberative and critically reflective knowledge generation processes becomes crucial in *enabling citizens to analyse and articulate their own concerns*, which may lie beyond the frames of reference of pervasive policy discourses (Cornwall and Gaventa 2001: 14; emphasis added).

Cornwall and Gaventa's contention that the process should go beyond providing 'echoes' of the dominant discourse requires a further analytic tool to expand our understanding of the policy process outlined by Kingdon (1995). This tool could be Roe's narrative policy analysis (Roe 1994).

One of the difficulties of the public participation process is that policy makers are often constrained by their own interpretation of, and concern with, "their political interests and the policy networks they are part of ... [and] by the frames of reference within which the particular policy issue is interpreted" (Cornwall and Gaventa 2001: 14).

In contrast to this, in the context of this study the concern is with the evidence that comes from the stories told by the poor who are ostensibly the 'subjects' of environmental decision making. This methodology was adopted precisely because the decision makers are not in a position to assess the impact of their decisions, whereas those most affected by the decisions have first hand experience.

This approach also privileges peoples' interpretations of their experiences, ... [it] prioritizes the assumption that narrative is a way of knowing: People use stories to draw knowledge explicitly from their lived experience (Dodge, Ospina and Foldy 2005: 292).

3.4 Participation and Democracy

A further important influence on the decision making process is that of interest groups. In this connection a distinction is often made between elite and democratic forms of participation. Elite participation usually consists of people outside of government who are granted a "role in decision-making because they possess professional expertise that is needed by decision makers" (Fiorino 1996: 194). In a democratic form of participation "people take part as citizens, not as experts or interest advocates" (*op cit*: 195). The two forms presuppose the existence of very different types of interest groups.

One of the motives for democratic participation is to make government decisions more legitimate. However it has been suggested that

the more government agencies try to make their decisions legitimate by relying on scientific advice and analysis without the benefit of democratic participation, the wider will be the gap between the expectations of citizens and their ability to influence decisions. As that participation gap widens confidence in democratic institutions and addresses they make will decline (Fiorino 1996: 197).

One reason advanced for the importance of public participation is its contribution to the furtherance of democracy. So, for example, van der Zwiep (1994) contends that:

In a democratic society openness, and therefore, public participation are of major importance. They guarantee that the decision making process of the government is checked and thus prevent arbitrary rule.

The extent to which people feel able to, and actually do take part in decision-making about society and the environment is widely felt to be an important measure of the “health” of a democratic society. It reflects the strength of political and social institutions.

The importance of debating alternatives in a public forum, and especially debate that can influence decision making, is reflected by Furedi (undated) who argues that it is vital to explore alternatives, otherwise

[h]umanity is forced to acquiesce to a worldview that former British Prime Minister Margaret Thatcher aptly described as TINA - There is No Alternative. If there is no alternative to the status quo, the notion that we can control the future at all ceases to apply. Instead, it is assumed that all we can do is try to limit the damage that is threatened by a destructive system.

In a world governed by TINA, politics can have little meaning. Without alternatives, debate becomes empty posturing about trivial matters.

Participation theorists however, are critical of what they regard as an elite democracy theory and especially of its basis in group pluralism, pointing out that this approach assumes that everybody will have an opportunity to participate. This in turn, begs the question of the form of participation or the form of democracy that prevails. Mansbridge, for example, distinguishes ‘adversarial democracy’ (based on self-interest, secret voting and majority rule) from ‘unitary democracy’ (based on common interests, the search for consensus and face-to-face contact)” (cited by Fiorino 1996: 199).

The supporters of group pluralism believed that public policy is the “equilibrium reached in the struggle among competing group interests at a given moment” (Majone 1998: 610). The general consensus was that “all active and legitimate groups in society would be able to make

themselves heard at some stage in the process” (Majone 1998: 612). This view has been contested, and the new emphasis on efficiency and rational policy-making has given rise to the view that policy credibility can be gained through public participation. For example Majone suggests that “unanimous agreement, freely reached, guarantees that the solution is the Pareto-efficient”¹ (1998: 619). In other words Majone is suggesting that a credible policy, obtained through optimal public participation, will create a situation where no one person can gain any more except at the expense of another. The difficulty with this description is that it assumes that public participation and policy-making are zero-sum games². The essence of democratic participation in policy-making is that the game is positive-sum, and I propose to show that, by using the critical discourse analysis proposed by Roe (1994), it is possible to take account of the different viewpoints, in effect making it a positive-sum game.

3.5 The participatory ideal

Fiorino has described a participatory ideal, which includes the following

- allows for the direct participation of amateurs;
- enables citizens to participate with administrators and experts on a more equal basis;
- creates a structure for face-to-face interaction over time; and
- allows citizens to share in decision-making (Fiorino 1996: 200).

Given the existence of this participatory ideal, it is important to distinguish what forms of democratic participation are appropriate at which stages of policy development. Participation is possible at three stages of policy-making: “(1) setting the policy agenda; (2) developing the frameworks used to make policy choices; and (3) making policy choices” (Fiorino 1996: 203).

Majone has advanced the view that policy making has become dominated by the imperatives of efficiency, which he describes as “the process by which the diffuse, ill-organised, broadly encompassing interests sometimes succeed in overcoming particularistic and well-organised interests” (Majone 1998: 620). To this extent it is going to be important to examine the mechanisms and the effects by which these interests interact with each other in the policy-making process.

¹ Maurice Allais offers a neat description of Pareto-efficiency, or a Pareto-optimal position, as an allocation between alternatives where there is an “absence of distributable surplus” (e.g. Allais 1943, p.610).

² A zero-sum game is a game in which one player’s winnings equal the other player’s losses (McCain 2002).

3.6 Expert vs. popular participation

When considering the type of participation, especially in the formulation of policy, a number of factors have to be taken into account. These include: quantity or quality and sampling, going to scale, how much participation is required, time factors and, frequently, the need to reinvigorate the process (UNDP 2000). Each of these factors is in fact a decision on whether participation is to be by experts or by individuals. Expert participation favours quality over quantity, smaller numbers within a shorter timeframe. ‘Expert’ participation does not always mean technical expertise; in many cases the expertise is the necessary skill to understand the policy process and participate in it.

The classification of participation into expert and individual is problematic, as it does not allow for a gradation of expertise, suggesting that participants are either ‘experts’ or ‘lay’ people. In the policy process a number of non-governmental organisations (NGOs), or other organs of civil society, can become involved. These groups are characterised by their voluntary nature and are not often regarded as expert in the sense described above. However they frequently possess a great deal of knowledge that goes beyond that of the ‘man in the street’ in their particular field of interest. I will therefore use the following expanded schema.

Table 1: Classification of types of participation

Type of participation	Characteristics
Expert	Individuals or groups with specific technical expertise, including professional associations.
Civil society	Voluntary groups, or associations, of concerned citizens with a specific interest in the topic, but who are not necessarily formally qualified in the policy area.
Individuals	Individuals, who have an interest, but are not organised or specifically qualified, except as an interested and affected party.

(from Bulman 2002: 17)

3.7 Forms and Mechanisms

The methods used by organs of civil society to participate in the decision making process and the mechanisms open to them are summarised in the following table, adapted from that presented by the Regional Environmental Center (sic) for Central and Eastern Europe.

Table 2: Methods and mechanisms of public participation

Development of policies	
Methods	Mechanisms
<ul style="list-style-type: none"> • Public/NGOs participate in the development of 	Right to Know

<p>national programmes</p> <ul style="list-style-type: none"> • Public/NGOs participate in the development of international programmes • Public/NGOs participate in the development of political party programmes • Public/NGOs take the initiative in proposing policies • Public/NGOs participate in the impact assessment of proposed developments • Advisory committee(s), including representatives of public, are established • Ombudsman acts as public advocate • Public/NGOs conduct demonstrations, write-in campaigns, etc. 	<ul style="list-style-type: none"> • Disclosure to the public of information about proposed and finalized plans • Dissemination of information about opportunities for participation • Media coverage <p>Right to be Heard</p> <ul style="list-style-type: none"> • Legal right to comment on proposed policies (including adequate notice and time to comment) • Legal right to submit policy proposals to the government • Legal right to public hearings on proposed policies <p>Right to Affect Decisions</p> <ul style="list-style-type: none"> • Requirement that comments of the public/ombudsman/ advisory committee are incorporated into/seriously considered in the final policy • Requirement that decision makers provide reasoned basis for decisions and respond to comments • Advisory committees represent public in the policymaking • Ombudsman represents the public in policymaking • Right of appeal if the right to participate is denied
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Adapted from Nagy et al. 1994.

In Table 2 the participants are described as the public and/or NGOs. This is a limiting description as there is a wide variety of types of civil society groupings that legitimately are involved. These include Community Based Organisations (CBOs), Faith Based Organisations (FBOs), cultural organisations, and in some cases gender based organisations. In addition groups that represent traditional leadership structures should also be included. In short any grouping of citizens should legitimately be seen as participants.

4 STATUS QUO

4.1 Legislative Requirements in South Africa

Besides the specific requirements imposed by various legislation certain overarching principles and roles have been identified.

4.1.1 Role of public participation³

In South Africa public participation is described as a process that is used to provide sufficient and accessible information to any I&AP in an objective manner to

- assist them to identify issues of concern,
- identify alternatives,
- suggest opportunities to reduce potentially positive impacts, and
- verify that issues and the inputs have been captured and addressed during the assessment process.

The public participation process provides members of the public with the opportunity to suggest ways of avoiding and reducing negative impacts of an activity and for enhancing positive impacts. It also enables the applicant to incorporate the needs, preferences and values of affected parties into the activity.

Public participation enhances transparency and accountability into decision-making. This provides an opportunity for all I&APs to obtain clear, accurate information about the proposed activity, the alternatives and the environmental impacts. I&AP s will also get an opportunity to indicate their views, points, issues and concerns regarding the activity, alternatives and the decision made.

The Public Participation Guideline in support of the EIA regulations published in 2006, states that public participation is one of the most important aspects of the environmental authorisation process. Every one has a right to be informed about decisions that affect them and that they must be offered an opportunity to have an influence to those decisions made. An effective Public Participation also improves the ability of the competent authority to make well-informed decisions.

4.1.2 Principles of public participation⁴

The following principles of the public participation process have been identified⁵.

Involvement of all the stakeholders: All the stakeholders are to be involved in all the initiatives.

³ Basterfield; Hadi; Makara M. (ed) 2007; Marzuki 2009

⁴; Brooklyn National Lab; Makara M. (ed) 2007

⁵ Makara M. (ed) 2007

Awareness creation: Creating awareness in communities will result in an empowered society.

Good quality feed back to and from the stakeholders: Flow of information in the public participation process is important, as it will establish trust and assurance among stakeholders.

Monitoring and evaluation: Monitoring and evaluation will minimise mistakes and risks to the process both in the present and the future by applying lessons learnt from past experiences.

Accessibility of information: These will enable effective public participation by supporting stakeholders to be well informed and more knowledgeable. Also timely access to information is required in order for the public to participate effectively. The information should be accessible in terms of the language and terminology to build capacity understanding and knowledge of stakeholders and the way stakeholders will make meaningful contributions. Materials should be easily obtained, copies should be available in an appropriate language and stakeholders should be supported in distributing it to the public.

Transparency: An open, honest and equitable approach to public participation encourages trust and can help to show that the decision is fair.

Integration: Best practice in public participation brings together public issues, technical assessment and a consideration of local and traditional knowledge.

Continuity in participation: Participation of the role players throughout the initiative is important to ensure continuity in participation.

4.1.3 Centrality of public participation

The central role of public participation in environmental decision making is summarised and highlighted in the diagrams shown in Figure 1 and Figure 2.

Public Participation - Basic Assessment

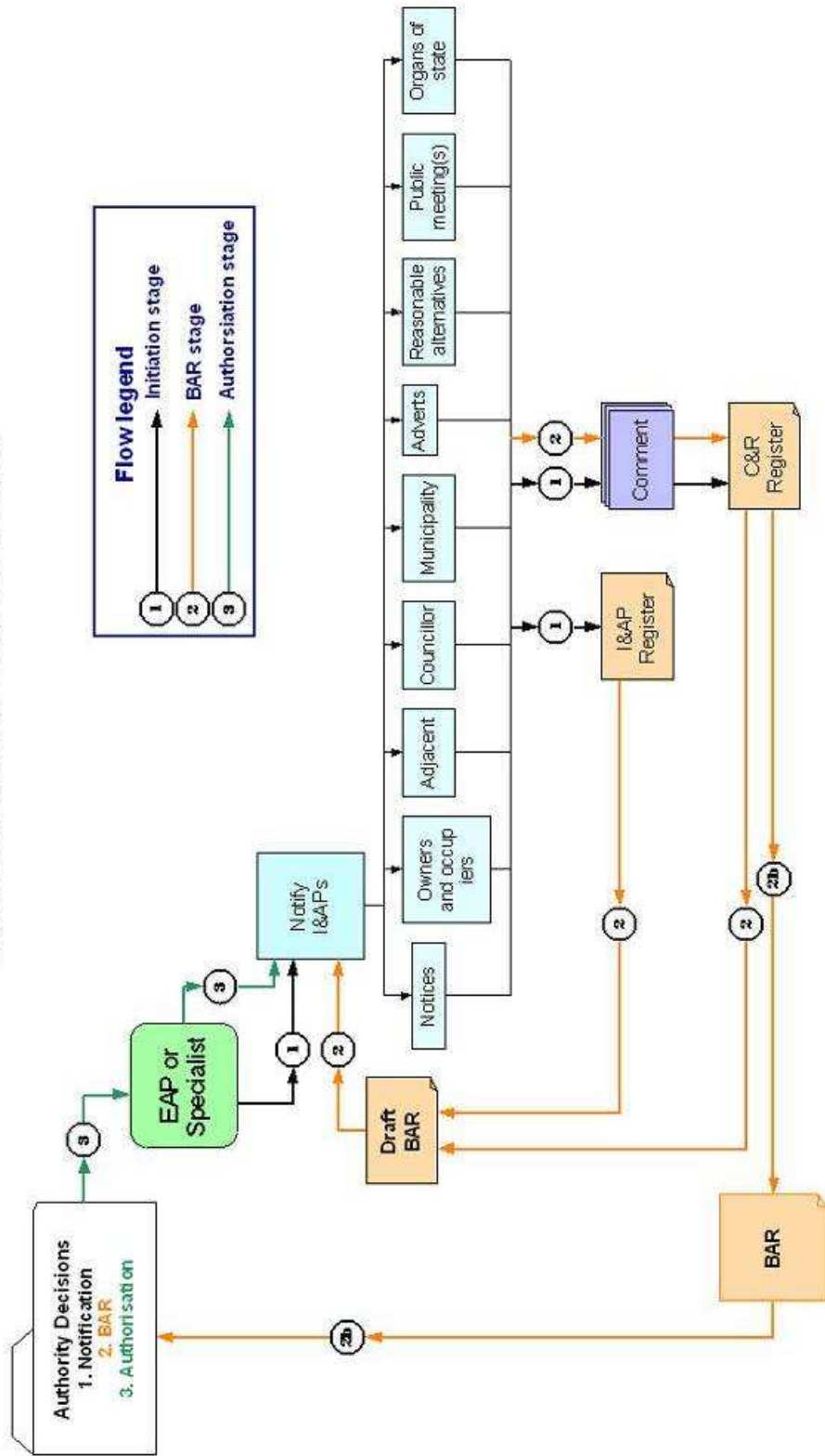
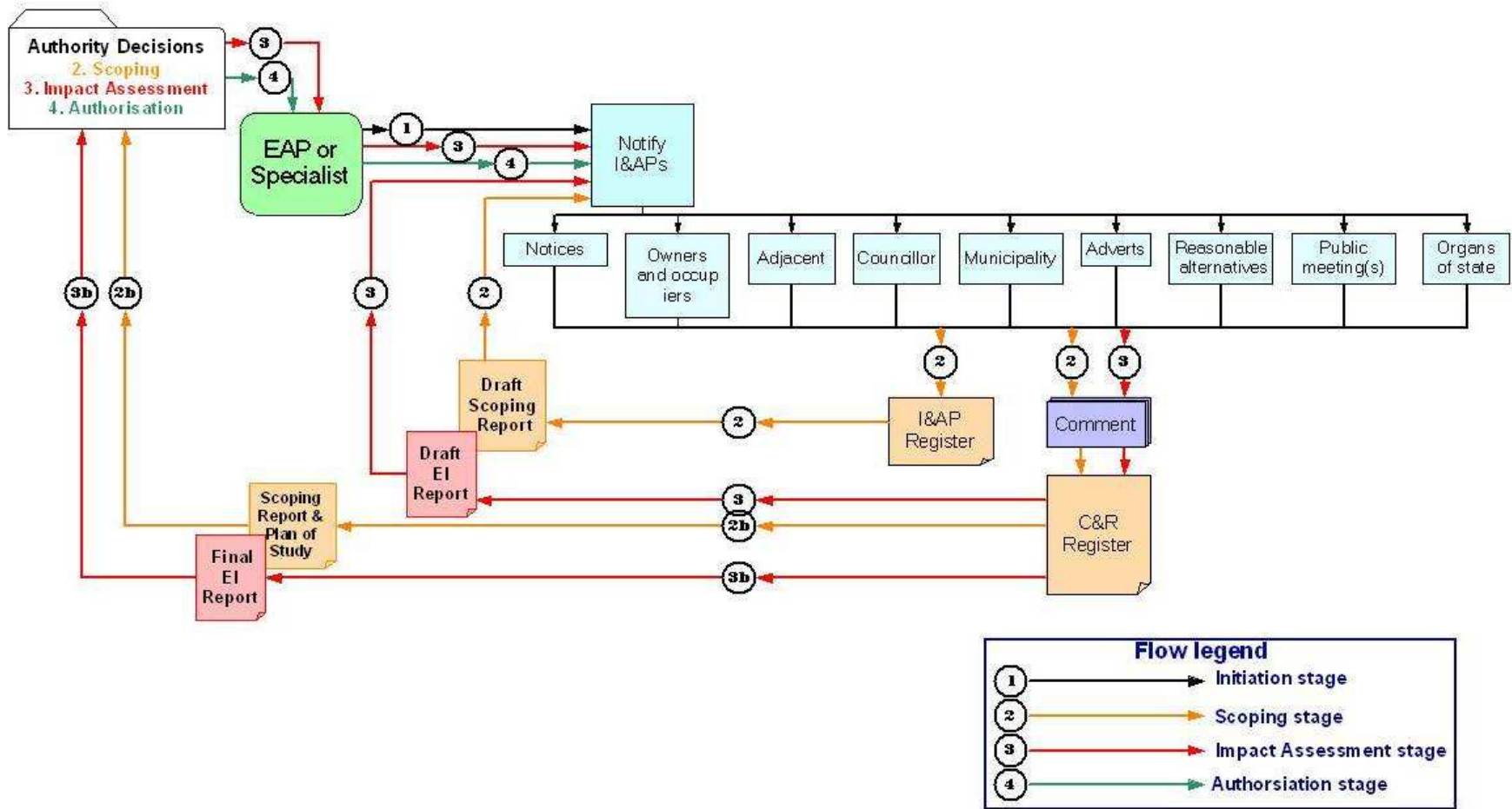


Figure 1: Diagrammatic representation of role of I&APs in a Basic Assessment process

Public Participation - Scoping & Impact Report



in a Scoping and Environmental Impact Report process

4.2 EIA Regulations 2010: National Environmental Management Act (NEMA)

The new Environmental Impact Assessment (EIA) regulations 2010 framed in terms of the National Environmental Management Act as amended provide some guidance on the conduct of public participation processes, but this is generally limited to providing for when public participation is required. The only detail specified concerns the forms of notification and the keeping of registers of I&APs and their issues and comments⁶.

4.2.1 Notification

In particular Regulation 54 deals with means of notifying I&APs, Regulation 55 and 56 deal with the keeping of a register of I&APs and their rights to access and comment on reports. Regulation 57 provides for the keeping of a register of comments and responses. It does make reference to making alternative arrangements for those who may be hampered by “(i) a lack of skills to read or write; (ii) disability; or (iii) any other disadvantage” (Reg 57.(2)).

The need to notify I&APs is clearly of paramount importance and the regulations require that proof of public participation must be submitted to the department. This includes proof of the placing of notice boards, advertisements, notices sent to those specified in Reg 54.(2)(b) and other methods of notifying of I&APs. Notices are to be sent to:

- Owners and occupants of the site of the proposed activity;
- Owners and occupants of land adjacent to the site of the proposed activity;
- The municipal councillor for the area in which the proposed activity will take place;
- Any ratepayers associations in the area;
- The municipality;
- Any organ of state having jurisdiction in respect of any aspect of the activity; and
- Any other party as required by the competent authority.

Placing newspaper advertisements is required and the content of these and the notices is specified.

However the regulations do not specify how this proof should be made. The Guidelines suggest that a copy of the newspaper advertisement that was placed, which indicates the name of the newspaper and the date of publication should be provided and a site map showing where the site

⁶ See for example Regs 22.(2)(f), 21.(8)(h), 31.(2)(e), 39.(3)(a), 44.(1), 46.(4) et seq,

notices were placed including photographs showing the notice on site. The guidelines also suggest that a list of all the mails that were sent should also be available, showing all the names of persons the mail was sent to, with the address of that person, and the date the mail was sent. For all hand deliveries of information to I&APs, signatures and the name of the person who received the information together with the address of the person must be included in the register.

4.2.2 Registers

4.2.2.1 Register of interested and affected parties

The current regulations require that a register of I&APs is kept in which is recorded the names, contact details and addresses of all those who have submitted comments or attended meetings those who have requested registration and the organs of state with jurisdiction.⁷

4.2.2.2 Register of comments and responses

A Comments and Responses Register (CRR) is also required in which are recorded all comments made by I&APs and the responses made to these. It is implied that the comments should be written although reference is also made to attaching records of all meetings. It is assumed that these records will include an adequate record of the verbal comments made at these meetings.⁸

4.2.3 Access to and commenting on reports

Provision is also made for all registered I&APs to have access to these comments and responses and to comment on any written submissions as well as to comment on any reports.⁹

The provisions outlined above are intended to ensure that everyone has sufficient opportunity to engage in the IA process and to engage with the opinions and assessments made by the EAP and specialists.

4.3 EMF Regulations 2010: National Environmental Management Act (NEMA)

The regulations issued by the Department of Environmental Affairs (DEA 2010) regarding public participation in an Environmental Management Framework (EMF) require that a draft EMF must be made available to the public for comment. I&APs involvement must be invited by means of

⁷ Regulation 55

⁸ Regulation 57

⁹ Regulation 56

advertisements in a local newspaper, and other appropriate ways of notifying I&APs. Appropriate steps need to be taken to ensure that reasonable means have been implemented to engage with I&APs who are illiterate, disabled or have any other constraints to participation. A comment and responses report needs to be prepared for the EMF report to be complete.

An EMF can differ in context and in size from one area to another. The requirements of the regulations should therefore be regarded as a minimum requirement and in most cases; it will be necessary to conduct a broader public participation process that takes place during the entire development of the EMF. The three main goals of the public participation process in the development of EMF are, first to inform all I&APs about an EMF process and what the objectives are. Secondly is to provide an opportunity for inputs from I&APs, and give the stakeholders and I&APs an opportunity to comment about the EMF. Lastly is to give feedback to I&APs with the opportunity for them to respond. This will enable flow of information between the authorities and the public, being the stakeholders and I&APs.

4.3.1 Phases in an EMF

There are different phases of public participation in an EMF; with the emphasis being to distribute information about the EMF and gather information to guide its development. These are discussed below.

4.3.1.1 Phase 1: Preparation

The first phase is the preparation phase, this phase involves meeting with the authorities that have jurisdiction in the study area. A preliminary compilation of all the necessary documents for the public participation process is made. These documents include a Background Information Document (BID) about the EMF approach and process, BIDs should be distributed to I&APs in languages appropriate for the area. A project advertisement should be prepared and placed in the local newspaper to inform the public about the development of the EMF, how they can become involved in the process, and the details about public meetings to be held. Invitations to the community to attend open days and public meetings should also be distributed and/or published.

4.3.1.2 Phase Two: Stakeholder consultation

The stakeholder consultation process focuses on the interaction with I&APs. This is to ensure that I&APs are afforded sufficient opportunity for engagement in the EMF development. The extent of consultation will greatly depend on the extent and the sensitivity of the specific EMF.

For a large scale or regional EMF, an extensive consultation process will be required at various levels. The approach to consultation should be flexible and the levels of literacy should influence the approach in engagement. The effective approach to consultation includes preparation, an open day, focused group and subject specialist meeting and interviews with local leaders and councillors.

I&APs should be engaged on an ongoing basis to ensure that they are informed of the project progress and that they are able to communicate issues and concerns to the project team. These issues and comments should be captured in the Public Participation Report (PPR) that forms part of the draft EMF. The PPR must include the description of the strategy and the process followed, the list of the registered I&APs. Minutes and all the comments during the Public Participation Process should also be included.

4.3.1.3 Phase Three: Public review and report writing

The last phase involves the finalisation of the EMF development process and Public Participation Process. The EMF must be made available for public review, and all the comments must be integrated into the final report, which will be submitted to the authorities for final review. The final document should also be made available to the public in an accessible location such as public libraries, and also in an appropriate format, that is easy to understand. If the EMF report is very large it might be difficult to provide multiple copies for everyone, therefore a full electronic version should be made available for those who have access to internet.

4.4 SEA: National Environmental Management Act (NEMA)

Strategic Environmental Assessment (SEA) refers to the process that integrates sustainability consideration into the formulation, assessment and implementation of Policies, Plans and Programmes also known as PPP. The PPP are then tied in with the project in the EIA process. EIA is applied at project level where the SEA's main focus is at the level of policies, programmes and plans. An SEA helps to identify and addresses potential areas of conflict between PPP early on in the formulation of new PPP. It also enables stakeholder engagement which includes a public participation process. NGOs, government departments, institutions and the public are the stakeholders, and they must be included at a strategic level in the planning and policy making processes.

The use of SEA and many other SEA tools are prompted in policy and framework legislation. NEMA chapter 5 makes provision for the development of procedures for the assessment of PPP,

for the SEA to be successful. Effective stakeholder involvement is important. It requires commitment from a variety of stakeholders such as the public, I&APs, community representatives and NGOs. Stakeholders' participation in the SEA process may be difficult. It is therefore reasonable that stakeholder engagement is initially undertaken by a group of representatives such as the authorities and community based organisations (CBOs) who form a steering committee to coordinate the participation of a wider group of stakeholders. It is recommended that the stakeholders be divided into two groups to ensure effective participation.

The first group being the key stakeholders, these stakeholders will receive all the documents during the SEA process, and they will attend all the meetings and workshops to provide a constructive input into the process. The second group will then be general stakeholders; they will also receive all documentation so that they will also be well informed of the SEA process and be able to comment when necessary. Stakeholder engagement should be undertaken not only during the scoping phase but throughout the entire SEA process. Specialist skills in the communication, facilitation and engagement are required, because if it is not done properly, the public may feel frustrated, and this may result in reluctance to contribute to yet another process.

Common techniques used to ensure effective Public Participation and consultation in an SEA process include:

- Public meetings
- Printed materials such as the BIDs
- Media adverts and articles
- Radio and TV interviews
- WEB information
- Small meetings
- Focus group discussion
- Workshops
- Interviews .

4.4.1 The levels of public participation for an effective SEA

The levels can be summarised as follows:

- **Involvement and consultation:** This could be a formal or informal dialogue to identify issues of concerns through focus group discussion and workshops.

- **Extended involvement** : Participants must be able to contribute to the formation of a plan and influence a decision through group discussion or forums
- **Information feedback**: This involves the provision of information with a request for feedback to supplement knowledge and gain a better understanding of issues, through surveys, displays and adverts.

4.5 Overlap with Mineral and Petroleum Resources Development Act Regulations

Part III, Regulations 47 to 62 of the 2004 Mineral and Petroleum Resources Development Act (MPRDA) Regulations make provision for Environmental Reports to be conducted in specific circumstances. An Environmental Report is referred to as a Scoping Report and as an Environmental Impact Assessment Report. In particular the contents of environmental impact assessment reports are detailed in S 50 (1) and include:

d) a comparative assessment of the identified land use and development alternatives and their potential environmental, *social and cultural impacts*;

and

f) details of the *engagement process of interested and affected persons* followed during the course of the assessment and an indication of how the issues raised by interested and affected persons have been addressed (emphasis added).¹⁰

Clearly there is an intention for public participation to form part of the processes. This is provided for in the Mineral and Petroleum Resources Development Act, 2002 Chapter 4 - Mineral and Environmental Regulation at S 38A. Environmental authorisations, where it is stated that

1) The Minister is the responsible authority for implementing environmental provisions in terms of the National Environmental Management Act, 1998 (Act No. 107 of 1998) as it relates to prospecting, mining, exploration, production or activities incidental thereto on a prospecting, mining, exploration or production area.

2) An environmental authorisation issued by the Minister shall be a condition prior to the issuing of a permit or the granting of a right in terms of this Act.

¹⁰ Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002); Mineral and Petroleum Resources Development Regulations. Department of Minerals and Energy, Government Notice No. R. 527 of 23 April 2004

The issue that arises from this is the overlapping responsibilities of the Ministers for Environmental Affairs and for Mineral Resources. The tensions caused by this are outside the scope of this report except where the public participation process is concerned.

In the 2010 EIA Regulations a similar overlapping is demonstrated for example in Regulation 6 which provides for “[c]onsultation between competent authority and State departments administering a law relating to a matter affecting the environment”. In the subsections it becomes quite clear that the mandated consultation will most often be with the Department of Mineral resources and its structures. It should be noted that apart from the references in S 50 (1) of the MPRDA Regulations noted above and the reciprocal provisions of the 2010 EIA regulations there are apparently no other legislated prescriptions for public participation.

The MPRDA Regulations makes provision for an Environmental Risk Report, which presumably requires an assessment (see for example Regulation 60), but there is no requirement for a public participation process.

4.6 Other processes

However there are a number of other processes that imply environmental decision making or have an impact on Integrated Environmental Management. Some of the most obvious are described below. These are presented in no particular order.

4.6.1 Integrated Development Planning (IDP)

All municipalities in South Africa are required to prepare IDP, for their areas in terms of the Municipal Systems Act, 2000 (Act no 32 of 2000). Integrated Development Planning (IDP) is considered to be one of the processes whereby sustainability can be addressed at a local level. In the process of preparing an IDP stakeholder involvement is very crucial. The Act stipulates that when the municipalities are preparing their IDP they must consult local communities on the development needs and priorities. The local community must participate in the drafting of the IDP, and traditional authorities and other role players must be identified and consulted on the drafting of the IDP. Consultation and participation are considered key principles of an IDP.

4.6.2 Development Facilitation Act No. 67 of 1995

The Development Facilitation Act (DFA) introduced measures to facilitate and speed up the implementation of the Reconstruction and Development Programme and projects in relation to land; and in so doing to lay down general principles governing land development throughout the

Republic. The Development Facilitation Act provided for general principles governing land development nationally. The general principles for land development state that policy, administrative practice and law should promote both efficient and integrated land development:

promote land development which is within the fiscal, institutional and administrative means of the Republic;

promote the establishment of viable communities;

promote sustained protection of the environment;

meet the basic needs of all citizens in an affordable way; and

ensure the safe utilisation of land.¹¹

Regulation 31 of the Regulations promulgated under the Act provides that the land development applicant must include in his or her application an Environmental Scoping Report, which will include a report on the public participation process that was used, prepared in accordance with the environmental impact assessment guidelines or other requirements which are from time to time issued or amended by the National Department of Environmental Affairs and Tourism (DFA Regulation 31). It is important to note that in addition to the Development Facilitation Act, at provincial and local government level, policies, provincial legislation, ordinances and by-laws regulate land development planning processes.

4.6.3 Spatial Development Framework

A Spatial Development Framework (SDF) is a framework that forms part of the Integrated Development plan and Strategic Environmental Assessment (SEA), which is required by all municipalities. The SDF is a useful tool that is used to manage and monitor developments in cities. It helps investors assess what they are buying and where development opportunities exist in municipal areas. The SEA can be used to assess the application by investors and property developers, and guide changes in land uses and public investment in infrastructure. An SDF indicates both to the public (land owners) and to municipalities (councillors and the officials) where certain activities are not allowed and where curtailed land uses are permitted.

Municipalities must ensure integrated land development and mixed land use areas that will make it easier for people to live closer to economic opportunities and work places, and they must

¹¹ DFA 1995 S 3.(1)(h)

ensure that urban sprawl is avoided. Public participation and stakeholder involvement that includes the general public is very important in the planning process. This can be achieved through steering committee meetings and workshops. General community meetings must also be arranged for communication to the broader stakeholders within the area.

4.6.4 Conservation Planning (CP)

Public participation is not required in a Conservation Planning exercise, however it should be noted that where CP is included in an SDF, EMF or SEA it will be included on the public participation process.

Including CP in the IDP process will also be beneficial, especially if the IDP is truly participatory in its development and compilation.

4.6.5 Ecological Risk Assessment (ERA)

Ecological Risk Assessment is a tool that “evaluates the likelihood that adverse ecological effects may occur or are occurring as a result of one or more stressors”

Risk management is the process of “implementing specific actions in response to the risk”. The ERA framework can be integrated with the generic environmental impact assessment (EIA) procedure. There is an overlap in the basic principles of the generic EIA procedure and the ERA framework. This overlap leads to the ERA being scrutinised in the public participation process and the risks being communicated to I&APs.

The two processes are complementary in that the EIA addresses all the identified issues in a specific development, whereas the ERA is a structured approach to dealing with ecological impacts. Because the ERA is based on the general principles of risk assessment, the approach is already relevant at the planning stage, where potential risks are identified. The risk-based approach followed in an ERA ensures that the process is rigorous and scientifically sound.

4.6.6 Cumulative Effects Assessment (CEA)

Cumulative Effects Assessment is the process of systematically analysing and assessing cumulative environmental change. The purpose of CEA is to ensure that the full range of consequences of actions is considered. Cumulative impacts can occur over different temporal and spatial scales by interacting, combining and compounding so that the overall effect often exceeds the simple sum of previous effects. The spatial scale can be local, regional or global,

whilst the frequency or temporal scale includes past, present and future impacts on a specific environment or region. Cumulative effects can simply be defined as the total impact that a series of developments, either present, past or future, will have on the environment within a specific region over a particular period of time.

There are two ways in which cumulative effects can be assessed. These are the application of CEA as an independent and stand-alone process; or the assessment of cumulative effects could be incorporated as part of existing environmental assessments (e.g. as part of the EIA or SEA process).

There is no requirement for public participation to be included in a CEA however where it forms part of an EIA or SEA it will be scrutinised in the public participation processes associated with those tools.

4.6.7 Life Cycle Assessment (LCA)

Life Cycle Assessment (LCA) is the calculation and evaluation of the environmentally relevant inputs and outputs and the potential environmental impacts of the life cycle of a product, material or service (SABS ISO, 1998). Environmental inputs and outputs refer to demand for natural resources and to emissions and solid waste.

The life cycle consists of the technical system of processes and transport routes used at, or needed for, raw materials extraction, production, use and after use (waste management or recycling). LCA is sometimes called a "cradle-to-grave" assessment.

LCA has no legal standing in South Africa. However, the tool has been proposed by DEAT as a means to ensure that the NEMA Chapter 1 principles are considered in decision making.

During the analysis phase the public participation process can provide insight on the dynamics and causes of priority issues. During the project phase it could indicate the environmental implications of certain proposed developments. The input from I&APs can guide the prioritising of projects in terms of environmental protection and pollution prevention.

There is no legislated provision for public participation, but it is potentially very important both for the quality of the final product and for the level of acceptance by I&APs.

4.6.8 Cost Benefit Analysis (CBA)

Cost Benefit Analysis (CBA) is a tool used either to rank projects or to choose the most appropriate option. The ranking or decision is based on expected economic costs and benefits. The rule is that a project should be undertaken if lifetime expected benefits exceeds all expected costs.

In a perfect world, the market would ensure that land, labour and capital were allocated in a way that would maximize both profits, and the welfare of society. Ours is an imperfect world, but Social CBA is a tool that allows the analyst to mimic the welfare optimising behaviour of the market.

Social CBA is used to appraise the social merit of projects or policies. The projects may be public or private, and the analysis is typically used to inform public decision makers. This type of CBA is the form typically used in EIAs. As such it is of importance in the public participation process.

4.6.9 Environmental Management Plan (EMP)

The EMP provides a description of the methods and procedures for mitigating and monitoring impacts. The EMP also contains environmental objectives and targets which the project proponent or developer needs to achieve in order to reduce or eliminate negative impacts. The EMP document can be used throughout the project life cycle. It should be regularly updated to remain aligned with the project as it progresses from construction to operation and, finally to decommissioning.

An EMP will typically contain:

- Summary of Impacts
- Description of mitigation measures
- Description of monitoring programme
- Institutional arrangements where responsibilities for mitigation and monitoring actions are clearly defined
- Legal enforceability
- Implementation schedule and reporting procedures
- Cost estimates.

From the point of view of I&APs the benefits of including the EMP as part of an EIA are important for a number of reasons. These have been summarised as

- Encouraging applicants to be more systematic and explicit in the design and development of mitigation measures and the intended means of implementation;
- Encouraging authorities to check the practicality and likelihood of implementation of mitigation and monitoring measures;
- Ensuring that the mitigation measures are properly incorporated into the project design and contract documentation after authorisation is granted;
- Encouraging the project proponent to meet the requirements of the EMP which now form the basis for the conditions attached to authorisation of the project; and
- Forcing the project proponent to internalise environmental impacts that would otherwise become a social cost.

4.6.10 Ecological Footprint

The Ecological Footprint is a resource management tool that measures how much land and water area a human population requires to produce the resources it consumes and to absorb its wastes under prevailing technology. However there is currently no legal mandate for Ecological Footprinting in South Africa. It is a resource accounting and management tool that potentially could add great value to the IDP and other tools by addressing underlying sustainability questions.

4.6.11 Integrated Environmental Programme (IEP)

An Integrated Environmental Programme (IEP) is most often prepared as a sector plan within a municipal IDP. The need to integrate environmental considerations in a council's planning is required in terms of the National Environmental Management Act (NEMA) S 16.(4)(a). A municipal IEP consists of two components:

- The Strategic Environmental Assessment which is issues and strategy based; and
- The Environmental Management Plan which is more spatial and area specific in context.

IEP's are a pro-active management tool used to ensure sustainability at strategic (planning and implementation) level. An IEP aims to integrate natural environmental concerns into the planning process at the same level at which social, economic and institutional considerations are addressed. The IEP serves as a tool for the practical translation of the idea of sustainability into programmes and projects in the IDP process.

This management tool does not make specific provision for public participation; however a robust public participation process would enhance the value of the IEP and its level of acceptance.

4.6.12 Standards

South Africa's national environmental management legislation allows the delegation of lawmaking powers to the Minister and Provincial MECs, including that of setting "norms" and "standards" that contribute to the achievement of aims of legislation are neither new nor novel. Examples of such norms and standards include, for instance, the setting of tariffs for water services in terms of S 10(1) of the Water Services Act, 108 of 1997 as promulgated in July 2001; National norms and standards for the management of elephants in South Africa which were also promulgated in terms of S 9 of the National Environmental Management: Biodiversity Act, 10 of 2004 in February 2008.

4.6.12.1 The National Environmental Management Act, 107 of 1998

Section 24(10) of the National Environmental Management Act, 107 of 1998 ("NEMA") (effective as from 1 May 2009) allows for the development by the Minister (or Provincial MECs) of norms and standards for activities or any parts or combinations of such activities that may commence without environmental authorisation in terms of the Act. The Minister may also prescribe the use of developed or adopted norms and standards in order to meet the objectives of the Act, prescribe reporting and monitoring requirements and prescribe procedures and criteria to be used by the competent authority for the monitoring of such activities in order to determine compliance with the prescribed norms and standards.¹²

4.6.12.2 The National Environmental Management: Waste Act, 59 of 2008

The National Environmental Management: Waste Act, 59 of 2008 (the "Waste Act") also allows norms and standards to be set.

4.6.12.3 Role of public participation in norms and standards

Rabie and Cameron¹³ believe that

[s]cience and technological innovation have a significant impact on norms and standards, as have *societal perceptions, values and priorities*. In this regard it is insightful to bear in mind the standard of "best practicable environmental option" entailing the option that provides the most benefit or causes the least damage to the environment as a whole, *at a cost acceptable to society*, in the long term as well as in the short term (emphasis added).

¹² Rabie and Cameron. 2009.

¹³ op cit

Norms and standards are therefore inherently subjective in a number of ways, but are often not subjected to a public participation process, although it is acknowledged that the case of the norms and standards for “elephant culling” created a great deal of public debate and was the subject of numerous submissions.

5 DATA GATHERING

5.1 Perceptions of Public Participation

In order to more fully explore the levels of public participation in the processes described above and to elicit comment on their effectiveness/efficiency and fairness a questionnaire was devised and tested before being administered to a variety of respondents. The questionnaire as administered is shown in Annexure 2: Questionnaire.

5.2 Sample

Respondents fell into the following groups.

Table 3: Classification of questionnaire respondents

Group	Description	Characteristics	Sample size
A	Persons with an interest in EIA practice and process as demonstrated by their registration for the 10 years of Environmental Impact Assessment (EIA) in South Africa Conference held on 24-25 November 2008 at the Lord Charles Hotel, Somerset West.	<ul style="list-style-type: none"> • Relatively affluent • Skilled • Demographically diverse 	110 self-selected ¹⁴ (n = 598)
B	Persons whose lives have been influenced by environmental decisions.	<ul style="list-style-type: none"> • Semi-rural • Very poor • Marginalised • Largely unemployed • Demographically homogenous 	19 random (n=approx 3 000) ¹⁵
C		<ul style="list-style-type: none"> • Urban • Poor • Marginalised • High unemployment • Demographically diverse 	20 with some pre-selection ¹⁶

¹⁴ The 568 conference attendees were all invited to participate. 110 chose to respond.

¹⁵ In a survey conducted in 2009 it was estimated that there were 548 dwellings in the community.

¹⁶ The sample selection was taken from those members of the SDCEA affiliates who chose to respond to an invitation to participate in the survey.

5.3 Survey outcomes

The details of the survey outcomes are shown in Annexure 3: Survey outcomes. The outcomes are discussed in 6 below.

6 ANALYSIS

6.1 Respondent categories

Respondents were sorted into the following self-selected categories (see also Section 6.2.7 below):

Category	Abbreviation
Interested and Affected Party; member of the public	I&APs
Decision making Authority (national provincial or municipal)	Auth
Environmental Assessment Practitioner	EAP
Persons who chose not to disclose their affiliation or category	Unknown
Specialist Assessment practitioner	Specialist
Non Governmental Organisations, Community Based Organisations, Faith Based Organisations, or other special interest groups	Civil Society
Lecturers and researchers	Academic
Proponents and developers	Developer
Other Authorities e.g. Parastatals and bulk service providers	Other Auth
Journalists and reporters	Media

6.2 Analysis of data

The data gathered is shown in full in Section Annexure 3: Survey outcomes. The responses are discussed in detail below.

6.2.1 Question 1: Do you think environmental decision making processes should include a public participation element?

The initial question was designed to establish the need for public participation in environmental decision making. Ninety-nine percent of the respondents believed it to be necessary. The two who did not agree were from the Decision making Authority category. There is overwhelming support for public participation in the environmental decision making process.

Table 4: Responses to Question 1 - Need for public participation

	I&APs	Auth	EAP	Unknown	Specialist	Civil Society	Academic	Developer	Other Auth	Media	Total	%
Yes	32	29	22	20	18	7	7	6	2	2	145	99%
No	0	2	0	0	0	0	0	0	0	0	2	1%

6.2.2 Question 2: What are the reasons for your response to Question 1

The responses to this question (shown in Table 5) clearly indicate that the public are able to contribute significantly to the decision making process by providing local knowledge and new ideas and solutions to environmental dilemmas. The promotion of democratic practices is also highly prized by the respondents.

Table 5: Responses to Question 2: Reasons for supporting public participation in environmental decision making

	I&APs	Auth	EAP	Unknown	Specialist	Civil Society	Academic	Developer	Other Auth	Media	Total	%
Allows other voices to be heard	28	25	14	14	12	7	7	3	1	1	112	76%
Taps into local knowledge	26	25	16	11	12	6	6	6	0	2	110	75%
Public a source of innovative ideas/solutions	20	24	11	11	10	6	6	2	0	1	91	62%
Promotes decisions based on collective wisdom	25	22	12	13	12	7	7	5	1	2	106	72%
Provides mechanism for information sharing and collecting	18	24	17	11	13	7	7	5	1	2	105	71%

6.2.3 Question 3: What do you see as the outcome of public participation?

Respondents were given a series of choices based on typical perception reported by both practitioners and I&APs. This provided a more quantified assessment of the accuracy of these perceptions. The number of responses shown in Table 6 are of those who chose “Strongly Agree” or “Agree” that the public participation process led to the outcomes listed.

Respondents overwhelmingly believe that public participation

- Provides information on local customs needs and preference;
- Leads to better informed responses;
- Ensures all those potentially affected are informed;
- Provides a mechanism to protect environmental rights; and
- Promotes transparency.

Some I&APs report that the process leads to unnecessary confrontation between the developer and the community. However this perception must be interpreted in the light of assertions about a lack of transparency and trust in developers, proponents and EAPs and should be treated with caution.

Table 6: Responses to Question 3: Outcomes of public participation

	I&APs	Auth	EAP	Unknown	Specialist	Civil Society	Academic	Developer	Other Auth	Media	Total	%
Provides information local customs, needs, preferences	29	28	15	14	12	5	5	6	2	2	118	80%
Full disclosure which leads to better informed responses	28	28	15	10	11	5	4	4	2	2	109	74%
Restricts job creation opportunities	8	1	0	1	0	1	0	0	0	0	11	7%
Ensures all those potentially affected are informed	31	29	19	15	16	6	5	5	1	2	129	88%
Provides a mechanism to protect environmental rights	28	31	18	17	14	5	6	6	2	2	129	88%
Leads to unnecessary confrontation between developer and community	15	6	6	8	5	1	0	1	0	0	42	29%
Promotes transparency	28	31	21	15	15	5	6	5	2	2	130	88%
Prolongs the authorisation process	18	11	12	9	7	0	4	2	1	1	65	44%
Provides competitors with useful commercial information	21	12	5	6	6	0	2	1	0	1	54	37%

6.2.4 Question 4: What makes for best practice in public participation?

A variety of responses were received to this open ended question. These were classified and sorted. The outcomes are shown in Table 7. The practices most requested support by I&APs are

for appropriate language and clear information. The term appropriate language has to be understood to mean both appropriate to the home language of the participants in the public participation process and appropriate in terms of the level of technical experience and vocabulary required to understand the communication.

There is also a relatively large number requesting that independent facilitators are appointed. The term independent facilitator is first used in responses to this question, however it used apparently inter-changeably with the term specialist or independent public participation practitioner.

The most often expressed request was for increased transparency by all role players: the EAP, the proponent, the authorities, and interest groups.

Table 7: Responses to Question 4: Best practice in public participation

	I&APs	Auth	EAP	Unknown	Specialist	Civil Society	Academic	Developer	Other Auth	Media	Total	%
Accuracy	2										2	2%
Appropriate language	7	1	1		1						10	10%
Capacity building		3	1			1					5	5%
Clear information	6										6	6%
Communication		4			3		1		1		9	9%
Engagement		4		1	1	1	1			1	9	9%
Feedback	3		3		1						7	7%
Inclusivity	2		4		1		1	1			9	9%
Independent facilitator	2	2	1		2	1	1	2	1		12	12%
Integrity		3						1			4	4%
Notification		2		1							3	3%
Transparency	2	7	2	3	5	3	2	1		1	26	25%

6.2.5 Question 5: Rating processes for effectiveness, fairness and protection of I&APs

Environmental decision making involves more than just those regulated in terms of the NEMA Regulations as discussed in Section 4.6 above. Respondents were given an opportunity to rate the process most often encountered in terms of their effectiveness, fairness and protection of I&APs. The responses shown in Table 8 record the number of respondents who indicated that the process listed was “Excellent” or “Moderate[ly]” effective, fair and protective of I&APs.

Unsurprisingly the decision making authorities indicated that the decision making processes are relatively good on all three counts. Generally speaking the Basic Assessment and the Scoping & EIR processes were perceived more favourably than an EMF. This is most probably due to the relatively few EMFs conducted compared to BA and S&EIR processes.

Table 8: Responses Question 5: Rating processes in terms of effectiveness, fairness and protection of I&APs

	I&APs	Auth	EAP	Unknown	Specialist	Civil Society	Academic	Developer	Other Auth	Media	Total	%
BA: Effectiveness	20	23	17	2	7	1	5	4	2	1	82	56%
BA: Fairness	17	18	19	1	6	3	4	4	2	0	74	50%
BA: Protection of I&APs	19	14	15	1	5	0	3	4	2	0	63	43%
S&EIR: Effectiveness	15	25	20	2	12	5	5	5	1	1	91	62%
S&EIR: Fairness	12	19	19	0	8	2	5	5	1	0	71	48%
S&EIR: Protection of I&APs	17	16	15	2	9	2	5	5	1	0	72	49%
EMF: Effectiveness	15	20	8	2	7	2	5	3	0	1	63	43%
EMF: Fairness	13	20	9	2	8	1	4	3	0	0	60	41%
EMF: Protection of I&APs	15	17	5	2	6	2	4	3	0	0	54	37%

6.2.6 Question 6: What would improve the effectiveness of public participation in these processes?

These suggested methodologies listed in Table 9 have frequently been proposed by a variety of role players. Respondents were asked to express their preferences in order to gauge the degree of support they have. The responses shown seem to indicate that language is a major issue.

This is apparent from the support for meetings being conducted in more than one language, i.e. the language of the practitioner and that spoken by the majority of the participants. Equally striking is the support for an Executive Summary of any report being provided in plain language that either avoids technical terms or explains them clearly.

There is also significant support for workshops rather than meetings to present proposals, exchange information and gather comments on the proposed development.

There is also support across the board for peer review of reports by community approved specialists funded by the proponent.

Table 9: Responses to Question 6: Suggested improvements to the public participation process

	I&APs	Auth	EAP	Unknown	Specialist	Civil Society	Academic	Developer	Other Auth	Media	Total	%
Standard notification methods	24	22	14	2	8	6	5	3	1	2	87	59%
Multi-lingual meetings	31	25	15	4	13	5	6	6	2	2	109	74%
Representation by CBO only	17	5	8	2	7	2	2	1	0	0	44	30%
Extended time frames for comment	25	9	2	3	4	4	3	0	1	2	53	36%
Public participation by specialist	25	22	9	4	10	4	7	5	2	1	89	61%
Executive Summaries in plain language	32	28	21	4	17	6	7	6	2	2	125	85%
Workshops rather than meetings	31	21	12	4	16	5	6	4	2	1	102	69%
Peer review by community specialists	28	22	8	4	11	6	7	3	2	0	91	62%
State funded defence for SLAPP suits	26	13	5	4	7	6	5	1	2	1	70	48%

6.2.7 Question 7: Respondent categories

Respondents were asked to select the category that best described them. Provision was made for a category to be written in. These written-in categories were sorted and added to those listed. Table 10 shows the distribution of respondents by category.

Some respondents chose not to select a category and these are shown as “Unknown”. As the survey was anonymous there is no reliable way of inferring into which category these people might fit.

Table 10: Responses to Question 7: Respondent categories

I&APs	Auth	EAP	Unknown	Specialist	Civil Society	Academic	Developer	Other Auth	Media	Total	%
32	31	22	20	18	7	7	6	2	2	147	100%

6.2.8 Question 8: Rating different methods of communication about public participation

Traditionally public participation has involved having public meetings. These have been advertised and information about projects given to potential I&APs by means of newspaper advertisements, notices sent by post or in the form of flyers. More recently emails and SMS has been used.

Many role players have experienced frustration at the poor response to these methods of communicating and this question was intended to establish the most appropriate methods of communication.

Table 11 shows the responses that rated a method “Very good” or “Good”. While public meetings scored the highest of the methods listed, especially among I&APs, there is no highly preferred method reported. For I&APs radio announcements and notices delivered to their door (post and flyers) rank high.

It is interesting to note that despite the prevalence of cell phones the use of SMS was rated among the two least preferred methods of communication.

Table 11: Responses to Question 8: Methods of communication

	I&APs	Auth	EAP	Unknown	Specialist	Civil Society	Academic	Developer	Other Auth	Media	Total	%
Newspaper advertisement	13	4	15	2	11	5	5	4	1	1	61	41%
Posted notices	18	3	13	2	14	2	4	5	1	0	62	42%
Flyers	17	3	7	1	13	4	3	2	2	0	52	35%
Public meeting	21	3	13	2	12	7	4	4	1	2	69	47%
Radio announcement	20	3	7	1	12	2	5	2	2	2	56	38%
SMS	8	5	9	1	9	3	5	3	1	1	45	31%
Email	1	5	17	1	12	6	5	4	2	0	53	36%
Telephone	12	1	10	1	1	2	3	1	0	0	31	21%

6.2.9 Question 9: Biggest frustration in participating in the environmental assessment process

Respondents were offered a series of often expressed frustrations and asked to indicate which of these applied to their experiences. In Table 12 the “Strongly agree” or “Agree” responses were rated and are shown as a combined score. The table summarises these responses.

The most frustration was expressed at the perception that in many processes one ‘voice’ appears to dominate. It seems that for many people reports reflect a one sided view. This could be that of the proponent, a specialist an authority or even a specific interest group in civil society. This is sometimes expressed as a plea for more ‘balance’ in the reports of environmental assessments.

Table 12: responses to Question 9: Biggest frustrations

	I&APs	Auth	EAP	Unknown	Specialist	Civil Society	Academic	Developer	Other Auth	Media	Total	%
Timeframes too short	22	11	1	2	4	5	2	0	1	0	48	33%
Timeframes too extended	19	6	9	2	5	0	3	3	0	1	48	33%
Late notification	24	19	8	2	9	3	6	3	1	1	76	52%
Technical language	25	20	10	2	12	5	3	4	2	1	84	57%
Lack of contact with EAP	20	14	4	3	7	6	5	3	1	1	64	44%
Reports not easy to get	26	19	6	1	10	7	5	3	2	2	81	55%
One 'voice' dominates	25	21	12	2	12	5	6	5	2	1	91	62%
Evasive answers	24	18	8	2	9	6	0	3	1	0	71	48%

6.2.10 Question 10: Measures to improve the process and the degree of participation by the public in environmental decision making

The measures proposed covered a great variety of issues. The suggestions were collated and categorised. Those issues that were not germane to public participation were discarded. Those that remained were reviewed to determine which were new, i.e. not already raised in responses to the preceding questions, or offered a new perspective.

The areas where improvements were desired are listed below in alphabetic order.

6.2.10.1 Alternatives

It was suggested that stakeholders should be actively canvassed regarding alternatives (presumably all alternatives) and that any report should document that these investigations were undertaken.

6.2.10.2 Capacity building

A significant number of respondents suggested that capacity building among all types of I&AP was a high priority. It was felt that a better understanding of the process and of the rights and responsibilities of all the roleplayers would lead to better informed participation and better decision making.

6.2.10.3 Competence and ethics

Equally strongly expressed was the need for more stringent requirements of competence and ethical behaviour by EAPs and other roleplayers. Although some unscrupulous practitioners were singled out unethical behaviour and incompetence by decision makers was also noted.

6.2.10.4 Independence

The issue of independence was frequently raised. Most respondents believe that an EAP or other practitioner would be independent if they were paid from a state administered fund and not by the proponent. Others took a more nuanced view and believed that independence could not be judged on financial grounds only, but required peer review of reports and findings.

6.2.10.5 Inclusivity

The issue of inclusivity is of paramount importance. The question of stakeholder fatigue was raised, especially by community organisations that are frequently invited to participate in public participation processes. The desire to be included was counterbalanced by the sheer volume of applications being considered and the cost of participation.

6.2.10.6 Meetings

Among the comments made regarding meetings was the desire for meetings to be at times convenient to the community. Determining the most convenient time is often difficult, as there are competing programmes and rhythms for different people. Some prefer not to attend meetings in the evenings, while others cannot attend during working hours. Weekends are often problematic due to sporting and religious commitments.

6.2.10.7 Methodology

Many respondents suggested improvements in the methodology employed, especially by EAPs who they regarded as lacking in social skills. These ranged from using local people as facilitators to ensure that local language preferences were catered for.

6.2.10.8 Mediation

The possibility of using mediation or other alternative conflict resolution methods was raised by several respondents. This would entail a change of mindset for the public participation practitioner or EAP. Currently their task is regarded as being that of a recorder or reporter of issues and the technical/scientific information regarding the issues and leaving the decision up to the authority.. Acting as a mediator would require actively seeking resolution of conflicting desires or points of view.

6.2.10.9 Notification and communication

The use of appropriate methods of communication was forcefully and frequently mentioned. While there were few specific suggestions apart from that of language the dominant request was for innovative communication methods that are appropriate to the relevant community.

6.2.10.10 Political influence

Several respondents reported their suspicions that decisions were influenced by political pressure, which overrode community concerns. While this issue cannot be remedied by measures recommended here it is crucial that it be addressed. Political interference or pressure to influence an outcome or decision undermines the public's confidence and trust in the validity of the public participation process.

6.2.10.11 Public participation specialist

There was a noticeable number of suggestions that public participation processes should be undertaken by a specialist, or at least by an EAP with some training in social science or an understanding of community dynamics. The underlying attitude to public participation should be of making it as easy as possible for as many voices to be heard as possible. It was suggested that a public participation specialist might have more skills and techniques to achieve this than others. This issue also has strong links to the question of competence and ethics.

6.2.10.12 Regulator competence

Regulator competence embraces a variety of complaints, rather than specific suggestions for improvement. Recasting these it appears that the dominant narrative is concern that persons in positions that require them to make decisions may not be equipped by training or experience to do so. This results in delays, inappropriate decisions and expensive, time-consuming appeals.

6.2.10.13 Time periods

Although time periods were enquired about in the survey the outcomes were ambiguous. Within the identified categories of respondents there was no consensus about whether these should be longer or shorter. However what does become clear is that there is uncertainty about the appropriate periods to be allowed for various public participation processes such as notices of meetings or other events and comment periods.

6.2.10.14 Timing

Respondents also complained about the timing of public participation processes, blaming proponents, authorities and EAPs alike. Suggestions included engagement with communities regarding the appropriate times to commence public participation processes and when to schedule particular events so that each community's unique rhythms and timetables are observed.

6.2.10.15 Screening and flexibility

It was suggested that the large number of processes that require some form of public participation has become a burden on civil society and I&APs. To alleviate this a suggestion was made that a form of screening be introduced to identify only those for which public participation would be meaningful and could make a contribution. Examples of extensive and time-consuming public participation in proposals for development in brown fields areas were cited as unnecessary. Along with this it was suggested that some flexibility be introduced in terms of which appropriate public participation processes would be agreed between the authority, the proponent, the EAP and the community leadership.

7 BEST PRACTICE IN PUBLIC PARTICIPATION

This section outlines best practice in public participation as described by a variety of authors, international and Southern Africa. The purpose is to highlight the tools and approaches that are readily available to improve and strengthen public participation in South Africa.

7.1 IAIA Best Practice

The ideal, or 'best practice', in public participation for impact assessment proposed by André et al is in terms of tiers. They label these as Basic and Operational (with a third, Developing Guidelines, which is not relevant here).

Basic Principles apply to all stages of PP in IA processes from strategic to operational levels. It is important to recognize that these levels are interdependent and, in some cases, may conflict. A balanced approach is critical when applying the PP Principles to ensure that IA fulfils its purpose and is carried out in what would constitute best practice. Operating Principles describe how the Basic Principles should be applied to the main steps and activities of the IA processes.¹⁷

The principles are stated as follows.¹⁸

7.1.1 Basic Principles

- **Adapted to the context** – Understanding and appreciating the social institutions, values, and culture of the communities in the project area; and respecting the historical, cultural, environmental, political and social backgrounds of the communities which are affected by a proposal.
- **Informative and proactive** – Recognizing that the public has a right to be informed early and in a meaningful way in proposals which may affect their lives or livelihoods. Increased interest and motivation to participate occur by diffusing simple and understandable information to the affected and interested public.
- **Adaptive and communicative** – Recognizing that the public is heterogeneous according to their demographics, knowledge, power, values and interests. The rules of effective communication among people, in the respect of all individuals and parties, should be followed.
- **Inclusive and equitable** – Ensuring that all interests, including those non-represented or underrepresented are respected regarding the distribution of impacts, compensation and benefits. The participation or defence of the interests of less represented groups including indigenous peoples, women, children, elderly and poor people should be encouraged. Equity between present and future generations in a perspective of sustainability should be promoted.

¹⁷ André et al 2006, 3.

¹⁸ Op. cit.

- **Educative** – Contributing to a mutual respect and understanding of all IA stakeholders with respect to their values, interests, rights and obligations.
- **Cooperative** – Promoting cooperation, convergence and consensus-building rather than confrontation. Engaging conflicting perspectives and values as well as trying to reach a general acceptance of the proposal toward a decision that promotes and supports sustainable development should be pursued.
- **Imputable** – Improving the proposal under study, taking into account the results of the PP process; including reporting and feedback to stakeholders about the results of the PP process, especially how their inputs have contributed to decision-making.

7.1.2 Operating Principles

With respect to the Basic Principles previously identified, public participation should be:

- **Initiated early and sustained** – The public should be involved early (before major decisions are made) and regularly in the IA process. This builds trust among participants, gives more time for PP, improves community analysis, improves screening and scoping of the IA, increases opportunities to modify the proposal in regards to the comments and opinions gathered during the PP process, reduces the risk of rumours, and improves the public image of the proponent. It can also give the regulator more confidence in the approval decision they must make.
- **Well planned and focused on negotiable issues** – All IA stakeholders should know the aims, rules, organization, procedure and expected outcomes of the PP process undertaken. This will improve the credibility of the process for all involved. Because consensus is not always feasible, PP should emphasise understanding and respect for the values and interests of participants, and focus on negotiable issues relevant to decision making.
- **Supportive to participants** – The public should be supported in their will to participate through an adequate diffusion of information on the proposal and on the PP process, and a just and equitable access to funding or financial assistance. Capacity-building, facilitation and assistance should also be provided particularly for groups who don't have the capacity to participate and in regions where there is no culture of PP, or where local culture may inhibit PP.
- **Tiered and optimised** – A PP program should occur at the most appropriate level of decision-making (e.g., at the policy, plan, program or project level) for a proposal. The

public should be invited to participate regularly, with emphasis on appropriate time for involvement. Because PP is resource consuming (human, financial, time) for all the IA stakeholders, PP optimisation in time and space will ensure more willing participation.

- **Open and transparent** – People who are affected by a proposal and are interested in participating, whatever their ethnic origin, gender and income, should have access to all relevant information. This information should be accessible to laypersons required for the evaluation of a proposal (e.g., terms of reference, report and summary). Laypersons should be able to participate in relevant workshops, meetings and hearings related to the IA process. Information and facilitation for such participation should be provided.
- **Context-oriented** – Because many communities have their own formal and informal rules for public access to resources, conflict resolution and governance, PP should be adapted to the social organization of the impacted communities, including the cultural, social, economic and political dimensions. This shows respect for the affected community and may improve public confidence of the process and its outcomes.
- **Credible and rigorous** – PP should adhere to established ethics, professional behaviour and moral obligations. Facilitation of PP by a neutral facilitator in its formal or traditional sense improves impartiality of the process as well as justice and equity in the right to information. It also increases the confidence of the public to express their opinions and also to reduce tensions, the risk of conflicts among participants, and opportunities for corruption. In a formal context, the adoption of a code of ethics is encouraged.

There is a large degree of overlap between these principles and those described by the Southern African Institute for Environmental Assessment (SAIEA) quoted below.

7.2 SAIEA Best Practice

SAIEA have developed the following set of principles that articulate best practice for public participation in an environmental assessment process¹⁹.

- **Adding Value:** The process must add value to the assessment exercise, and not merely provide the appearance of participation;
- **Inclusivity:** The process must include all relevant stakeholders;

¹⁹ SAIEA 2004

- **Accessibility:** The process must be conducted in a way that will give stakeholders easy access to participation;
- **Transparency:** The process must be transparent with fair and equitable access to information for all stakeholders;
- **Fairness:** The process must ensure that all stakeholders are treated in a fair and unbiased way;
- **Accountability:** The process must ensure that all involved are accountable for their behaviour and actions;
- **Co-operation:** The process should seek to manage conflict and promote the public interest;
- **Equity and Justice:** The process should be designed so as to redress social inequity and injustice;
- **Capacity Development:** The process should acknowledge the capacity limitations of stakeholders and seek ways to constructively address these;
- **Flexibility:** The process should be designed and implemented in a way that is flexible and can accommodate process changes;
- **Co-ordinated:** The process should be implemented in a rational and co-ordinated fashion; and,
- **Constant Improvement:** The process should build on lessons from previous activity, and be reflected on to develop lessons for future activity.²⁰

These principles of best practice together with the analysis described in Section 6 form the basis for the recommendations outlined in the next section.

7.3 IAP2 Core values

The International Association for Public Participation (IAP2) have developed a set of Core Values for the Practice of Public Participation. In presenting the Core Values, the organisation described them as being

developed over a two year period with broad international input to identify those aspects of public participation which cross national, cultural, and religious boundaries. The purpose of

²⁰ Commonground. 2004.

these core values is to help make better decisions which reflect the interests and concerns of potentially affected people and entities²¹.

These Core Values are as follows

- Public participation is based on the belief that those who are affected by a decision have a right to be involved in the decision-making process.
- Public participation includes the promise that the public's contribution will influence the decision.
- Public participation promotes sustainable decisions by recognizing and communicating the needs and interests of all participants, including decision makers.
- Public participation seeks out and facilitates the involvement of those potentially affected by or interested in a decision.
- Public participation seeks input from participants in designing how they participate.
- Public participation provides participants with the information they need to participate in a meaningful way.
- Public participation communicates to participants how their input affected the decision.

7.4 Assessment of process

In the following sections the criteria for assessing a participatory process and the nature of the analytic technique used in this report are offered. This is intended to provide an example of how the public participation process can be assessed by all the participants: proponent, authorities, EAP and specialists, and I&APs.

7.4.1 Criteria for Assessing a Process

In evaluating a participatory process a number of issues, or evaluation criteria, have evolved. Petts (2001)²² has produced the following criteria for assessing a process. He suggests the questions shown in Table 14 are posed.

If a process meets these criteria it:

- Ensures that the participants are representative of the full range of people potentially affected and that barriers, which may bias representation, are minimised.

²¹ IAP2 2007.

²² Petts, J. 2001.

- Allows participants to contribute to the agenda and influence the procedures and moderation method.
- Enables participants to engage in dialogue, and promote mutual understanding of values and concerns.
- Ensures that dissent and differences are engaged and understood.
- Ensures that 'experts' are challenged and that participants have access to the information and knowledge to enable them to do this critically.
- Reduces misunderstanding and ensures that the authenticity of claims is discussed and examined.
- Makes a difference to participants, e.g. allows for development of ideas, learning and new ways of looking at a problem.
- Enables consensus about recommendations and/or preferred decisions to be achieved.
- Makes a difference to decisions and provides outcomes which are of public benefit.
- Ensures that the process is transparent and open to those not directly involved but potentially affected.

8 SYNTHESIS: PROPOSALS

Issues and problems with public participation have been raised in the course of this research, at the 10 years of EIA Conference, in interaction with the Subtheme task team, and at the Theme Coordinating Committee. These have been captured as best as possible and are reflected in the following sections in which methods of addressing the issues are discussed and some time frames suggested.

The quickest and simplest way to address some of the shortcomings of the public participation process is to update the Guidelines and for the national and provincial environmental authorities to insist that they are followed. Other remedies will require more time consuming amendments to both the Regulations and to policy.

The issues are listed, in alphabetic order, together with the recommendations, instruments and timeframes:

Table 13: Proposed remedies to improve public participation

Issue	Recommendation	Instruments	
		Short-term	Long-term
<p>1. Assessment of each public participation process</p> <p>The complaints about the conduct of public participation processes are valid in certain cases.</p>	<p>It is recommended that to address this each public participation process is assessed using the criteria suggested by Petts (2001)²³. (see section 7.4.1)</p>	Guideline	
<p>2. Access to information</p> <p>Access to information, reports, and the process itself is often problematic for I&APs.</p>	<p>To remedy this it is recommended that all</p> <ul style="list-style-type: none"> • preliminary information, e.g. BIDs, are written in plain language and available in the majority language of the area,. • reports are supplemented by an Executive Summary in plain language in the majority language of the area that is made freely available to all I&APs, • all reports are made available in full at convenient places identified by the community, • all reports are presented at feedback workshops with I&APs. 	Guideline	
<p>3. Alternatives</p> <p>The exploration of alternatives is often neglected.</p>	<p>Any public participation process for environmental purposes must actively canvass proposals for alternative sites, uses of the land, and processes. These must be documented and assessed with the same rigour as the original proposal.</p>	Guideline	
<p>4. Capacity building</p> <p>Proposals are often presented in a manner that does not promote a clear understanding of the proposed development and the environmental implications.</p>	<p>Workshops for I&APs should be held at the at the commencement of any environmental assessment to explore what the associated public participation process can achieve, what its limitations are and the methods of engagement agreed upon.</p> <p>EAPs and public participation practitioners could also be granted Continuing Professional development points in return for providing assistance with capacity building workshops for civil society.</p>	Guideline	
<p>5. Competence</p> <p>There is a commonly held</p>	<p>The competence of those undertaking public participation should be verified by membership of a recognised professional association.</p>	Guideline	Regulation

²³ Petts, J. 2001.

Issue	Recommendation	Instruments	
view that public participation is often undertaken by those with scientific expertise but without the required public participation skills.	Registration as an EAP with EAPASA does not of itself indicate competence in public participation.		
<p>6. Ethics</p> <p>It is impossible to legislate for ethics, however it is possible to require adherence to a Code of Ethics.</p>	All persons undertaking public participation should be required to explicitly bind themselves to a Code of Conduct and a Code of Ethics.	Guideline	Regulation
<p>7. Independence</p> <p>The independence of EAPs and public participation practitioners cannot be guaranteed by financial criteria only. The best way to improve independence is to make provision for peer review on demand.</p>	<p>The independence of EAPs and public participation practitioners cannot be guaranteed by financial criteria only. The best way to improve independence is to make provision for peer review on demand.</p> <p>It is recommended that this be implemented in two ways:</p> <p>a) Voluntary</p> <p>Any practitioner should be entitled to include peer review of their report(s) and underlying activities as part of their terms of appointment.</p> <p>b) Required</p> <p>On request by a stakeholder to the EAP or relevant authority any practitioner's report(s) or activities should be peer reviewed by a person acceptable to all parties.</p>	Guideline	Regulation
<p>8. Inclusivity</p> <p>A number of exclusionary practices have been mentioned. These are often unthinking and unconscious and have to be confronted. They include insensitive choice of</p> <ul style="list-style-type: none"> • language and technical terminology in documents such as BIDs, notices and advertisements, • venues for meetings that are remote from places where I&APs live, 	It is recommended that all public participation processes should include preliminary engagement with the affected community to jointly plan the public participation process.	Guideline	

Issue	Recommendation	Instruments	
<ul style="list-style-type: none"> times for meetings and events that clash with community timetables. 			
<p>9. Meetings</p> <p>Meetings are often unproductive ways of achieving meaningful public participation.</p>	<p>Some of the barriers to be effective engagement in meetings can be remedied by</p> <ul style="list-style-type: none"> planning meetings in conjunction with local community members or leaders, conducting meetings and other events either in the majority language of the area or with ready translation, conducting workshops rather than meetings, using local people as facilitators and/or translators at meetings, using easily accessible venues in communities. 	Guidelines	
<p>10. Methodology</p> <p>Some of the shortcomings in the methodology followed in current public participation processes stems from a lack of understanding of the nature of the affected communities.</p>	<p>It is recommended that before any process is undertaken or planned a preliminary social probe is undertaken. This should be used to ascertain the</p> <ul style="list-style-type: none"> predominant language in the community or area, the governance structures in the area, the names and contact details of the leadership, both civic and traditional if applicable, the names and contact details of any organs of civil society (established NGOs and CBOs) in the community or area. <p>This information should then be used to guide the development of a Public Participation Plan for the project in conjunction with the leadership and identified organs of civil society.</p>	Guideline	
<p>11. Mediation</p> <p>Mediation and alternative conflict resolution mechanisms could possibly be used, especially in situations where feelings are running high.</p> <p>The use of mediation and conciliation is provided for</p>	<p>It is recommended that alternative dispute resolution techniques should be used with caution and only to develop mutually acceptable</p> <ul style="list-style-type: none"> public participation processes for the assessment of the proposed development, goals and outcomes for the assessment process, goals and outcomes for the community's 	Guideline	

Issue	Recommendation	Instruments	
<p>in NEMA S 17.</p> <p>However it is important that these techniques are not used in an attempt to mask flaws in the process or the proposed development. Neither should they be used to “sell” a particular development to the community.</p>	<p>desired state of the environment.,</p> <ul style="list-style-type: none"> • mitigation measures. 		
<p>12. Notification and communication</p> <p>The often erratic and apparently selective methods of communication are often troublesome.</p>	<p>It is recommended that flaws in notification and communication practices are remedied by a few fairly easily applied requirements.</p> <ul style="list-style-type: none"> • Use of appropriate language medium. • Avoidance of technical language unless absolutely necessary and then accompanied by an explanation in plain language. • Using appropriate media, such as local radio, local community newspapers. • Communicating at regular intervals to keep I&APs abreast of developments. • Using community structures to disseminate information. 	Guideline	
<p>13. Principles</p> <p>There is a perception that the practice of public participation is not governed by any principles.</p>	<p>Both the basic principles and operating principles of best practice in public participation outlined by IAIA and SAIEA’s Best Practice (see sections 7.1 and 7.2) should be adopted and rigorously applied.</p>	Guideline	
<p>14. Public participation specialist</p> <p>Public participation is becoming increasingly problematic for all concerned.</p>	<p>Given the difficulties experienced by some I&APs as discussed above it is recommended that a public participation specialist is appointed in the same way as other specialists are appointed to provide an EAP with relevant services.</p>	Guideline	
<p>15. Regulator competence</p> <p>There is no quick fix for the shortage of capacity in the environmental departments in all three spheres of government. However the recommendations</p>	<p>The competence of those reviewing public participation should be verified by membership of a recognised professional association. Registration as an EAP with EAPASA does not of itself indicate competence in public participation.</p>		Policy

Issue	Recommendation	Instruments	
regarding competence and ethics outlined above are equally applicable to government officials.			
<p>16. Time frames and timing</p> <p>There is confusion over the time periods to be observed particularly by I&APs, EAPs and proponents.</p>	To remedy this it is recommended that the time periods for all processes other than those already stipulated in the regulations are negotiated at the commencement of an assessment by the authority, the proponent, representatives of civil society and the consultant team.	Guideline	
<p>17. Screening and flexibility</p> <p>The issue of screening and flexibility is an issue that requires a great deal more discussion and investigation.</p>	It is recommended that this is undertaken as part of a more comprehensive review of the environmental legislation.	Guideline	Regulation

8.1 Summary of proposals

The proposals outlined above can be summarised as follows.

1. Require practitioners to follow the principles set out by IAIA (section 7.1).
2. Require practitioners to follow the criteria for best practice described by SAIEA (section 7.2).
3. Institute assessment of all public participation processes by both I&APs and practitioners using Petts' criteria (section 7.4.1).
4. Urgently review and update the Guidelines for Public Participation issued by the Department of Environmental Affairs.
5. Embark on a process of updating the Regulations.

9 RISKS

The recommendations outlined above are not risk free. Public participation deals in subjective data and material, unlike 'hard science' which deals in objective data and material. It is therefore not possible to guarantee that any of the recommended remedies will succeed in eliminating all flaws. However this author believes the remedies will go a long way towards creating more trust and confidence among I&APs.

10 CONCLUSION

The research reported here revealed a number of shortcomings in public participation as experienced by a variety of roleplayers. The flaws can be addressed by means of more specific rules and regulations (command and control methods) but the majority of the problems do not lie with the current requirements. Rather the problems are with the competence of those who carry out the public participation and the manner in which it is conducted.

The recommendations made in Section 8 above are aimed at improving the way in which public participation is conducted and setting competence standards. There are a number of immediately available instruments: the SAIEA Code of Best Practice, the IAIA Principles and the IAP2 Core Values documents and Petts' criteria for assessing a participatory process. The current 2010 EIA Regulations make it mandatory for Guidelines to be observed. It is therefore a simple matter for the Guidelines to be reviewed and redrafted to include these instruments.

11 ASSESSMENT OF THE PROCESS REPORTED HERE

A self assessment of the process undertaken in compiling this report using Petts' criteria is shown in Table 14. This has been done in order to illustrate the use of such a checklist.

Table 14: Assessment of the process

Criterion	Assessment	Score /5
1. Ensures that the participants are representative of the full range of people potentially affected and that barriers, which may bias representation, are minimised.	<i>Attempts were made to involve a range of people by: those who had indicated interest by registration for the 10 years of EIA Conference; a semi-rural community and an urban community. The shortcoming was that this was restricted to KZN.</i>	3
2. Allows participants to contribute to the agenda and influence the procedures and moderation method.	<i>This was not possible. The time frames, the original conception of the project as a desk top study and the dispersed nature of the study area all militated against this.</i>	1
3. Enables participants to engage in dialogue, and promote mutual understanding of values and concerns.	<i>A limited amount of dialogue was possible in the short interactions with the Subtheme task team and the Theme Coordinating Committee. These were very limited.</i>	2

Criterion	Assessment	Score /5
4. Ensures that dissent and differences are engaged and understood.	<i>Dissenting voices were heard in the responses to the survey questionnaire. Differences in points of view were evident. The issues raised were understood, but there was no opportunity for engagement.</i>	2
5. Ensures that 'experts' are challenged and that participants have access to the information and knowledge to enable them to do this critically.	<i>There has been no opportunity thus far for any challenge to the expert opinion expressed in this report. It is hoped that this may occur during the review period.</i>	2
6. Reduces misunderstanding and ensures that the authenticity of claims is discussed and examined.	<i>There has been no opportunity to examine or discuss the authenticity of the claims made beyond the limited engagement with the Subtheme Task Team and the Theme Coordinating Committee.</i>	1
7. Makes a difference to participants, e.g. allows for development of ideas, learning and new ways of looking at a problem.	<i>There is no direct evidence of this and it has not been assessed.</i>	n/a
8. Enables consensus about recommendations and/or preferred decisions to be achieved.	<i>It is still too early in the process to assess this.</i>	n/a
9. Makes a difference to decisions and provides outcomes which are of public benefit.	<i>It is still too early in the process to assess this.</i>	n/a
10. Ensures that the process is transparent and open to those not directly involved but potentially affected.	<i>The nature of the research conducted has prevented this from happening, except in the most limited way.</i>	1
AVERAGE		1.71

The average rating of 1.71 (overall score 12 out of a possible 35) or 34% indicates that the process has been poor in terms of the criteria for participatory processes.

12 PROFESSIONAL OPINION

My professional opinion is summarised as follows:

1. The process has yielded important reservations about the efficacy of public participation as it currently practised.
2. These can be remedied in large part by the adoption of existing Principles, Best Practice Criteria and Codes of Ethics or Conduct.
3. The current Guidelines for Public Participation should be revised and updated.
4. The provisions for public participation in the current Regulations should be reviewed.

April 2011

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ANNEXURE 1: LIST OF PARTICIPANTS

147 anonymous survey respondents

Members of the Subtheme Task Team

Members of the Theme Coordinating Committee

ANNEXURE 2: QUESTIONNAIRE

Perceptions of Public Participation

EIAMS SUBTHEME 3 - PUBLIC PARTICIPATION

Public participation is often misunderstood by the public and is often the least favourite activity of Environmental Practitioners. We are hoping to improve the way it is undertaken in South Africa.

As part of the EIAMS project the DEA has commissioned research into Public Participation (Sub theme 3).

This survey forms part of that research and the outcomes will help shape an understanding of the way public participation is being used, the difficulties experienced and how it can be improved.

THE QUESTIONS IN THIS SECTION EXPLORE OUR UNDERSTANDING OF PUBLIC PARTICIPATION PROCESSES

1. Do you think environmental decision making processes should include a public participation element?
Yes No

2. What are the reasons for your response to Question 1? Please tick as many as are appropriate and add any comments in the Other box.

Allows other voices to be heard	
Taps into local knowledge	
Public a source of innovative ideas/solutions	
Promotes decisions based on collective wisdom	
Provides mechanism for information sharing and collecting	
Other (please specify)	

3. What do you see as the outcome of public participation?

	Strongly agree	Agree	Undecided	Disagree	Strongly disagree
Provides information local customs, needs, preferences					
Full disclosure which leads to better informed responses					
Restricts job creation opportunities					
Ensures all those potentially affected are informed					
Provides a mechanism to protect environmental rights					
Leads to unnecessary confrontation between developer and community					
Promotes transparency					
Prolongs the authorisation process					
Provides competitors with useful commercial information					
Other (please specify)					

4. What makes for best practice in public participation?

**THESE QUESTIONS EXPLORE THE EFFECTIVENESS, SUCCESS, FAIRNESS AND PROTECTION OF I&APs
IN DIFFERENT ENVIRONMENTAL DECISION MAKING PROCESSES**

5. Please rate each of these processes for effectiveness, fairness and protection of I&APs using this scoring:
E = Excellent; **M** = Moderate; **F** = Fair; **W** = Weak; **P** = Poor

	Effectiveness	Fairness	Protection of I&APs
Basic Assessment (BA)			
Scoping and Environmental Impact Report (S&EIR) E			
Environmental Management Framework (EMF)			
Waste Management licensing			
Development Facilitation Act (DFA) applications			
Integrated Development Plans (IDP)			
Spatial Development Framework (SDF)			

6. What would improve the effectiveness of public participation in these processes?

	Yes	No	No opinion
Conducting workshops around proposals rather than meetings			
Allowing peer review of reports by community approved specialists			
Standard notification methods e.g. standard advert format in standard section of paper			
Public participation by a specialist			
Extended time frame for comments			
Providing an Executive Summary of reports in plain language			
Communities represented only through CBOs			
Set up state funded defence for I&APs being sued (SLAPP suits)			
Meetings conducted in more than one language			
Other (please specify)			

THE FOLLOWING QUESTIONS EXPLORE PROBLEMS AND LIMITATIONS

7. Please tell us which category describes you best (choose one only)

Member of the public (I&AP)	
Environmental Assessment Practitioner (EAP)	
Decision-making authority (eg government environmental department)	
Other authority (e.g. utility company)	
Specialist Environmental Professional	
Developer or proponent	
Environmental NGO, CBO or FBO	
Other (please specify)	

8. Please tick the rating you would give to each of the methods of communication about public participation listed below. If you would like to suggest other methods please list these in the 'Other' box at the end of this question.

	Very good	Good	OK	Poor	Very poor
Email					
Flyers					
Newspaper advertisement					
Posted notices					
Public meeting					
Radio announcement					
SMS					
Telephone					
Other (please specify)					

9. What is your biggest frustration in participating in the environmental assessment process?

	Strongly agree	Agree	Undecided	Disagree	Strongly disagree
Lack of contact with the Environmental Assessment Practitioner (EAP)					
Late notification					
Timeframes are too short					
Reports not easy to get					
Timeframes are too extended					
Evasive answers					
Technical language					
Lack of balance of opinion - one 'voice' dominates					
Other (please specify)					

THIS LAST SECTION EXPLORES OPTIONS FOR IMPROVING THE PROCESS

10. What would you like to see done to improve the process and improve the degree of participation by the public in environmental decision making?

THANKS FOR YOUR PARTICIPATION!

ANNEXURE 3: SURVEY OUTCOMES

The outcomes of the survey have been aggregated and the respondents categorised according to respondent category as shown in Table 15.

Table 15: Questionnaire responses per respondent category

	I&APs	Auth	EAP	Un-known	Specialist	Civil Society	Academic	Developer	Other Auth	Media	Total	%
Total number of respondents	32	31	22	20	18	7	7	6	2	2	147	100%
Q1	Should environmental decision making processes include a public participation element											
Yes	32	29	22	20	18	7	7	6	2	2	145	99%
No	0	2	0	0	0	0	0	0	0	0	2	1%
Q2	Reasons for response to Question 1											
Allows other voices to be heard	28	25	14	14	12	7	7	3	1	1	112	76%
Taps into local knowledge	26	25	16	11	12	6	6	6	0	2	110	75%
Public a source of innovative ideas/solutions	20	24	11	11	10	6	6	2	0	1	91	62%
Promotes decisions based on collective wisdom	25	22	12	13	12	7	7	5	1	2	106	72%
Provides mechanism for information sharing and collecting	18	24	17	11	13	7	7	5	1	2	105	71%
Other	12	13	6	3	4	4	3	2	0	0	47	32%

	I&APs	Auth	EAP	Un-known	Specialist	Civil Society	Academic	Developer	Other Auth	Media	Total	%
Q3	Agreed and Strongly agreed outcome of public participation											
Provides information local customs, needs, preferences	29	28	15	14	12	5	5	6	2	2	118	80%
Full disclosure which leads to better informed responses	28	28	15	10	11	5	4	4	2	2	109	74%
Restricts job creation opportunities	8	1	0	1	0	1	0	0	0	0	11	7%
Ensures all those potentially affected are informed	31	29	19	15	16	6	5	5	1	2	129	88%
Provides a mechanism to protect environmental rights	28	31	18	17	14	5	6	6	2	2	129	88%
Leads to unnecessary confrontation between developer and community	15	6	6	8	5	1	0	1	0	0	42	29%
Promotes transparency	28	31	21	15	15	5	6	5	2	2	130	88%
Prolongs the authorisation process	18	11	12	9	7	0	4	2	1	1	65	44%
Provides competitors with useful commercial information	21	12	5	6	6	0	2	1	0	1	54	37%
Q4	Best practice											
Accuracy	2										2	2%
Appropriate language	7	1	1		1						10	10%
Capacity building		3	1			1					5	5%

	I&APs	Auth	EAP	Un-known	Spe-cialist	Civil Society	Aca-demic	Devel oper	Other Auth	Media	Total	%
Clear information	6										6	6%
Communication		4			3		1		1		9	9%
Engagement		4		1	1	1	1			1	9	9%
Feedback	3		3		1						7	7%
Inclusivity	2		4		1		1	1			9	9%
Independent facilitator	2	2	1		2	1	1	2	1		12	12%
Integrity		3						1			4	4%
Notification		2		1							3	3%
Transparency	2	7	2	3	5	3	2	1		1	26	25%
Q5	Effectiveness, Fairness and Protection of I&APs (Excellent to moderate)											
BA - Effectiveness	20	23	17	2	7	1	5	4	2	1	82	56%
BA - Fairness	17	18	19	1	6	3	4	4	2	0	74	50%
BA - Protection of IAPs	19	14	15	1	5	0	3	4	2	0	63	43%
S&EIR - Effectiveness	15	25	20	2	12	5	5	5	1	1	91	62%
S&EIR - Fairness	12	19	19	0	8	2	5	5	1	0	71	48%
S&EIR - Protection of IAPs	17	16	15	2	9	2	5	5	1	0	72	49%
EMF - Effectiveness	15	20	8	2	7	2	5	3	0	1	63	43%
EMF - Fairness	13	20	9	2	8	1	4	3	0	0	60	41%
EMF - Protection of IAPs	15	17	5	2	6	2	4	3	0	0	54	37%
Q6	Measures to improve the effectiveness of public participation											
Standard notification methods	24	22	14	2	8	6	5	3	1	2	87	59%
Multi-lingual meetings	31	25	15	4	13	5	6	6	2	2	109	74%
Representation by CBO only	17	5	8	2	7	2	2	1	0	0	44	30%
Extended time frames for comments	25	9	2	3	4	4	3	0	1	2	53	36%

	I&APs	Auth	EAP	Un-known	Specialist	Civil Society	Academic	Developer	Other Auth	Media	Total	%
Public participation by a specialist	25	22	9	4	10	4	7	5	2	1	89	61%
Executive Summaries in plain language	32	28	21	4	17	6	7	6	2	2	125	85%
Workshops rather than meetings	31	21	12	4	16	5	6	4	2	1	102	69%
Peer review by community specialists	28	22	8	4	11	6	7	3	2	0	91	62%
State funded defence SLAPP suits	26	13	5	4	7	6	5	1	2	1	70	48%
Q7 Respondent category												
	I&APs	Auth	EAP	Unknown	Specialist	Civil Society	Academic	Developer	Other Auth	Media	Total	%
	32	31	22	20	18	7	7	6	2	2	147	100%
Q8 Very good and good methods of communication												
Newspaper advertisement	13	4	15	2	11	5	5	4	1	1	61	41%
Posted notices	18	3	13	2	14	2	4	5	1	0	62	42%
Flyers	17	3	7	1	13	4	3	2	2	0	52	35%
Public meeting	21	3	13	2	12	7	4	4	1	2	69	47%
Radio announcement	20	3	7	1	12	2	5	2	2	2	56	38%
SMS	8	5	9	1	9	3	5	3	1	1	45	31%
Email	1	5	17	1	12	6	5	4	2	0	53	36%
Telephone	12	1	10	1	1	2	3	1	0	0	31	21%
Q9 Biggest frustration in the environmental assessment process												
Timeframes too short	22	11	1	2	4	5	2	0	1	0	48	33%
Timeframes too extended	19	6	9	2	5	0	3	3	0	1	48	33%

	I&APs	Auth	EAP	Un-known	Specialist	Civil Society	Academic	Developer	Other Auth	Media	Total	%
Late notification	24	19	8	2	9	3	6	3	1	1	76	52%
Technical language	25	20	10	2	12	5	3	4	2	1	84	57%
Lack of contact with EAP	20	14	4	3	7	6	5	3	1	1	64	44%
Reports not easy to get	26	19	6	1	10	7	5	3	2	2	81	55%
One 'voice' dominates	25	21	12	2	12	5	6	5	2	1	91	62%
Evasive answers	24	18	8	2	9	6	0	3	1	0	71	48%

