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## GENERAL NOTICE

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### NOTICE 657 OF 2006

PROPOSED GUIDELINES AS PART OF THE IMPLEMENTATION OF ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS IN TERMS OF SECTION 24(5) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT No. 107 OF 1998) AS AMENDED

The guidelines on Environmental Management Frameworks and Public Participation are hereby published for comment.

Interested parties are requested to submit comments in connection with the proposed regulations within 30 days from the date of publication of this notice. Comments must be submitted to the Director: EIM Systems and Tools: Department of Environmental Affairs and Tourism, Private Bag X447, Pretoria, 0001 by not later than 19 June 2006.

Department of Environmental Affairs and Tourism

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# **Guideline 4:**

# **Public Participation**

## **in support of the EIA Regulations, 2005**

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**May 2006**



Department of Environmental Affairs and Tourism

**Principal authors:**

Dr David de Waal and Mr Jan Perold (Mawatsan)

**Project coordinator:**

Amanda Britz (DEAT)

**Departmental review:**

Wynand Fourie, Amanda Britz , Anben Pillay , Danie Smit , Johan Benadé and Coenrad Agenbach

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**Enquiries and comments:**

All enquiries and comments should be addressed to:

The Chief Director: Environmental Impact Management

Department of Environmental Affairs and Tourism

Private Bag X447

Pretoria

0001 South Africa

## GUIDELINE 4: PUBLIC PARTICIPATION

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### **Abbreviations**

BID	Background information document
EAP	Environmental assessment practitioner
EIA	Environmental impact assessment
EMF	Environmental management framework
EMP	Environmental management plan
I&APs	Interested and affected parties
NEMA	National Environmental Management Act, 1998 (Act No. 107 of 1998)

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**1. INTRODUCTION**

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In April 2006 the Minister of Environmental Affairs and Tourism passed regulations<sup>1</sup> in terms of Chapter 5 of the National Environmental Management Act, 1998 (Act No. 107 of 1998) ("NEMA"). The regulations replace the environmental impact assessment (EIA) regulations that were promulgated in terms of the Environment Conservation Act, 1989 (Act No. 73 of 1989) in 1997 and introduce new provisions regarding environmental management frameworks.

To assist the relevant role-players in understanding what is required of them and what their role may be, the Department of Environmental Affairs and Tourism has produced a set of guidelines. These guidelines are intended to be guides only and should be read in conjunction with NEMA and the regulations. They are not intended to be a substitute for the provisions of NEMA or the regulations in any way.

The guidelines form part of the department's Integrated Environmental Management Guideline Series and consist of four parts, namely:

- ❖ Guideline 3: General guide to the EIA Regulations
- ❖ Guideline 4: Public participation
- ❖ Guideline 5: Assessment of alternatives and impacts and alternatives
- ❖ Guideline 6: Environmental management frameworks

Guideline 4, provides information and guidance for applicants, authorities and interested and affected parties (I&APs) on the public participation requirements of the regulations as described in Chapter 7 of the EIA regulations. It provides guidance on the benefits of public participation, the minimum legal requirements for public participation processes, the generic steps of a public participation process, guidelines for planning a public participation process and a description of the roles and responsibilities of the various role-players.

This guideline is a general user's guideline, providing guidance on the regulations and interpretations thereof.

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<sup>1</sup> EIA Regulations, 2005, Integrated Environmental Management Guideline Series



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**2. WHY IS PUBLIC PARTICIPATION NECESSARY?**

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Public participation is one of the most important aspects of the environmental authorisation process. Public participation is the only requirement for which exemption cannot be given, unless no rights are affected by an application.

This stems from the requirement that people have a right to be informed about potential decisions that may affect them and that they must be afforded an opportunity to influence those decisions. Effective public participation also improves the ability of the competent authority to make informed decisions and result in improved decision-making as the views of all parties are considered.

The public participation process:

- ❖ provides an opportunity for interested and affected parties (I&APs) to obtain clear, accurate and comprehensible information about the proposed activity, its alternatives or the decision and the environmental impacts thereof;
- ❖ provides I&APs with an opportunity to indicate their viewpoints, issues and concerns regarding the activity, alternatives and/or the decision;
- ❖ provides I&APs with the opportunity of suggesting ways of avoiding, reducing or mitigating negative impacts of an activity and for enhancing positive impacts;
- ❖ enables an applicant to incorporate the needs, preferences and values of affected parties into the activity;
- ❖ provides opportunities to avoid and resolve disputes and reconcile conflicting interests; and
- ❖ enhances transparency and accountability in decision-making.

Public participation therefore allows interested and affected parties the opportunity to give their viewpoints, and influence the process and the decisions of the competent authority.

**3. UNDERSTANDING THE PUBLIC PARTICIPATION REQUIREMENTS OF THE REGULATIONS**

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The regulations address three core aspects in respect of public participation. Firstly, the regulations indicate when public participation is required. Secondly, the regulations specify who is required to fulfil various roles and responsibilities in respect of public

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participation. Thirdly, the regulations indicate the minimum requirements of a public participation process.

**3.1 DEFINING PUBLIC PARTICIPATION**

The regulations define:

- ❖ the **public participation process** as a process in which potential interested and affected parties are given an opportunity to comment on, or raise issues relevant to, specific matters;
- ❖ an **EAP** as an environmental assessment practitioner;
- ❖ an **I&AP** as:
  - any person, group of persons or organisation interested in or affected by an activity contemplated in an application; or
  - any organ of state that may have jurisdiction over any aspect of the activity.
- ❖ **registered I&APs** as all persons who, as a consequence of the public participation have
  - submitted written comments or attended meetings with the applicant or EAP;
  - have requested the applicant or the EAP managing the application, in writing, for their names to be placed on the register; and
  - all organs of state which have jurisdiction in respect of the activity to which the application relates.
- ❖ an **applicant** as a person who has submitted or intends to submit an application;
- ❖ an **application** as an application for –
  - an environmental authorisation;
  - an amendment to an environmental authorisation; or
  - an exemption from a provision of these Regulations.
- ❖ **“independent”**, in relation to an EAP or a person compiling a specialist report or undertaking a specialised process or appointed as a member of an appeal panel, that:
  - such EAP or person has no business, financial, personal or other interest in the activity, application or appeal in respect of which that EAP or person is appointed in terms of these Regulations other than fair remuneration for work performed in connection with that activity, application or appeal; or
  - there are no circumstances that may compromise the objectivity of that EAP or person in performing such work.

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- ❖ ***“plan of study for environmental impact assessment”*** as a document which forms part of a scoping report and sets out how an environmental impact assessment must be conducted.

**3.2 WHEN IS PUBLIC PARTICIPATION REQUIRED?**

The regulations require public participation to be undertaken in the case of:

- ❖ environmental authorisations (whether this is done by means of a basic assessment or scoping and environmental impact assessment (EIA) process;
- ❖ an amendment to an environmental authorisation on application by the holder of the authorisation;
- ❖ an amendment to an environmental authorisation on the initiative of the competent authority;
- ❖ a withdrawal of an environmental authorisation by the competent authority;
- ❖ exemptions from provisions of these regulations;
- ❖ the compilation of an environmental management framework (EMF); and
- ❖ appeals lodged against decision in terms of Chapter 7 of the regulations.

The requirements for each of these applications are discussed in more detail below.

**3.2.1 Environmental authorisation*****a) Applications subject to basic assessment***

For applications subject to basic assessment (as set out in Chapter 3, part 2 of the regulations) the EAP must conduct as a minimum a public participation process as set out in regulation 56 before submission of the application. In this regard:

- ❖ All I&APs (including the competent authority and any organ of state which has jurisdiction on any aspect of the activity) must be notified of the application;
- ❖ information containing the relevant facts in respect of the application is made available to I&APs;
- ❖ I&APs are provided with a reasonable opportunity to comment on an application (regulation 58); and
- ❖ In addition, the EAP must open and maintain a register of all interested and affected parties as set out in regulation 57. Included in this register must be all the organs of state with jurisdiction over the activity to which the application applies as well as all persons who have attended meetings, provided comments in writing or asked to be registered as an I&AP.

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The basic assessment report must also describe the public participation process that was followed. Aspects to be addressed include:

- ❖ the steps that were taken to notify potential I&APs of the proposed application;
- ❖ the proof that the posters, advertisements and notices notifying potential I&APs of the proposed application have been displayed, placed or given;
- ❖ a list of all persons, organisations and organs of state that were identified and registered as I&APs in terms of regulation 57; and
- ❖ a summary of the issues raised by I&APs, the date of receipt and the response of the environmental assessment practitioner (EAP) to those issues.

All registered I&APs must be provided with a reasonable opportunity to comment in writing on the basic assessment report before the basic assessment report is submitted to the competent authority.

When the application is submitted to the competent authority, it must be accompanied by various pieces of information, as indicated in regulation 59. Amongst these are:

- ❖ copies of any representations, objections and comments received in connection with the application or the basic assessment report;
- ❖ copies of the minutes of meetings held by the EAP with all I&APs which record the view of the participants; and
- ❖ any responses by the EAP to those representations, objections and comments and views.

**b) Applications subject to scoping**

In contrast to the basic assessment process where the public participation process is required prior to the submission of the application, an EAP managing the application subject to scoping, must conduct, as a minimum, the public participation process indicated in regulation 56 after an application has been submitted. In addition, a register of I&APs must be opened and maintained in accordance with regulation 57.

Regulation 56 specifies broadly that:

- ❖ notice of the application is given to all I&APs;
- ❖ information containing the relevant facts in respect of the application is made available to I&APs; and
- ❖ I&APs are provided with a reasonable opportunity to comment on the application.

The scoping report must describe the public participation process that was followed. The following particulars must be included:

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- ❖ the steps that were taken to notify potential I&APs of the application;
- ❖ the proof that the posters, advertisements and notices notifying potential I&APs of the proposed application have been displayed, placed or given;
- ❖ a list of all persons, organisations and organs of state that were identified and registered as I&APs in terms of regulation 57. In practice, all I&APs initially identified should be considered as registered I&APs. Those that responded should be added to the list of registered I&APs.
- ❖ a summary of the issues raised by I&APs, the date of receipt and the EAP's response to those issues.

In addition, the scoping report must include a plan of study for the environmental impact assessment which must contain a description of the public participation process that will be conducted during the EIA process.

All registered I&APs must be given an opportunity to comment in writing on the scoping report before the scoping report is submitted to the competent authority.

When the scoping report is submitted to the competent authority, it must be accompanied by:

- ❖ copies of any representations, objections and comments received in connection with the application or the scoping report;
- ❖ copies of the minutes of meetings held by the EAP with all I&APs which record the view of the participants; and
- ❖ any responses by the EAP to those representations, objections and comments and views.

**c) EIA**

Chapter 3, part 3 of the regulations specifies that, if a competent authority accepts a scoping report and advises the EAP to proceed with the tasks contemplated in the plan of study for the EIA, the EAP must conduct the public participation process that has been set out in the plan of study for EIA. After all the "process", investigation and assessment tasks in the plan of study have been completed, the EAP must compile an EIA report in respect of the proposed activity. The EIA report must describe the public participation process that was followed, including:

- ❖ the steps that were taken to notify potential I&APs of the application;
- ❖ copies of any posters, advertisements and notices (including mail drops) that were placed soliciting comments from potential I&APs;
- ❖ a list of all persons, organisations and organs of state that were registered as I&APs;

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- ❖ a summary of the issues raised by I&APs, the date of receipt and the EAP's response to those issues; and
- ❖ copies of all written representations, objections and comments submitted by I&APs.
- ❖ The EIA report must also contain an issues and response register of comments received from I&APs, indicating the date and response to all comments received.
- ❖ Once the competent authority has reached a decision, the applicant must inform the registered I&APs in writing of the decision and the reason for the decision within a timeframe determined by the competent authority. The registered I&APS must be informed of the fact that an appeal may be lodged against the decision in terms of Chapter 7 of the regulations.

### **3.2.2 Amendments on application by holders of environmental authorisations**

Chapter 4, part 1 of the regulations specifies that, if the environment or the rights or interests of other parties are likely to be adversely affected, the competent authority must, before deciding on the application, request the holder of the authorisation to conduct a public participation process indicated in regulation 56 or any other public participation process that may be appropriate to the circumstances, to inform potential I&APs (including organs of state which have jurisdiction in respect of this activity) of the proposed amendment, provide information containing the relevant facts in respect of the application and provide I&APs with a reasonable opportunity to comment on the application.

In addition, a register of I&APs must be opened and maintained in accordance with regulation 57. This register must include all the organs of state with jurisdiction over the activity to which the application applies as well as all persons who have attended meetings, provided comments in writing or asked to be registered as an I&AP.

The applicant for the amendment of the environmental authorisation must then conduct the investigations and assessments requested by the competent authority, and compile reports on those investigations and assessments. All registered I&APs must be given an opportunity to submit comments on these reports. When the reports are submitted to the competent authority, they must be accompanied by the comments received from registered I&APs.

Once the competent authority has reached a decision, the holder of the authorisation must inform the registered I&APs in writing of the decision and the reason for the decision within a timeframe determined by the competent authority. The holder of the environmental authorisation must, at least, send a notification to all I&APs and allow for a 30 day comment period.

The registered I&APS must be informed of the fact that an appeal may be lodged against the decision in terms of Chapter 7 of the regulations.

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**3.2.3 Amendments on initiative of competent authority**

Chapter 4, part 2 of the regulations specifies that a competent authority may amend an environmental authorisation if it is necessary or desirable. In such a case, the competent authority must, before deciding on the application, conduct a public participation process indicated in regulation 56, or any other public participation process that may be appropriate to the circumstances, to inform potential I&APs (including organs of state which have jurisdiction in respect of this activity and the holder of the environmental authorisation) of the proposed amendment.

In addition, a register of I&APs must be opened and maintained. This register must include all the organs of state with jurisdiction over the activity to which the application applies as well as all persons who have attended meetings, provided comments in writing or asked to be registered as an I&AP, as indicated in regulation 57.

This public participation process must give an opportunity to the holder of the environmental authorisation and I&APs to submit written representations on the proposed amendment to the competent authority. The competent authority must, at least, send a notification to all I&APs and allow for a 30 day comment period.

The registered I&APs must be informed of the fact that an appeal may be lodged against the decision in terms of Chapter 7 of the regulations.

**3.2.4 Withdrawal of environmental authorisations**

Chapter 4, part 3 of the regulations specifies that, if a competent authority intends withdrawing an environmental authorisation, the competent authority must conduct an appropriate public participation process to bring the proposed withdrawal to the attention of I&APs (including relevant organs of state and the holder of the environmental authorisation).

This public participation process must give an opportunity to the holder of the environmental authorisation and other I&APs to submit written representations on the proposed withdrawal to the competent authority. The competent authority must, at least, send a notification to all I&APs and allow for a 30 day comment period.

**3.2.5 Exemptions from provisions of the regulations**

Chapter 5 specifies that exemption in respect of public participation requirements may only be granted if the rights or interests of other parties are not likely to be adversely affected by the granting of the application for exemption. Where the rights or interests of other parties are likely to be adversely affected, the competent authority must, before deciding on the application, request the applicant to conduct at least a public participation process (as per regulation 56) to inform potential I&APs (including organs of state which

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have jurisdiction in respect of this activity) of the exemption applied for. It must also provide information containing the relevant facts in respect of the application and provide I&APs with a reasonable opportunity to comment on the application for exemption.

In addition, a register of all interested and affected parties must be opened and maintained in accordance with regulation 57. This register must include all the organs of state with jurisdiction over the activity to which the exemption application applies as well as all persons who have attended meetings, provided comments in writing or asked to be registered as an I&AP.

Any comments received from I&APs following such a public participation process must be submitted to the competent authority. The applicant must at least send a notification to all I&APs and allow for a 30 day comment period.

**3.2.6 Compilation of environmental management frameworks**

Regulation 70 states that the process for developing an EMF must give I&APs an opportunity to provide input to, or comment on the contents of the proposed EMF by making the draft available for public inspection at a convenient place and inviting potential interested and affected parties (using newspaper advertisements and other appropriate mechanisms) to inspect the draft and submit representations, objections and comments in connection with the draft EMP.

**3.2.7 Appeals lodged against decisions in terms of Chapter 7 of the regulations****a) Appeals**

Decisions that are subject to an appeal to the Minister or MEC and were taken by an official or organ of state acting under delegation may be appealed by any person affected by such a decision. Any such appeal must be lodged with the Minister, if the Minister is the competent authority or the MEC, if the MEC is the competent authority for the activity in relation to which the decision was taken.

A person who wishes to appeal against the decision, must lodge a notice of intention to appeal with the Minister or MEC, as the case may be, within 10 days after that person has been notified of the decision. The Minister or MEC may, in writing, extend the period within which a notice of intention to appeal must be submitted.

If the appeal is launched by the applicant, the applicant must provide each registered interested and affected party with a copy of the notice of appeal, as well as a notice indicating where and for what period the appeal submission will be available for inspection by such person or organ of state. Where the appeal is by someone other than the applicant, the appellant must provide the applicant with such notice and information.



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An appeal must be submitted to the relevant department within 30 days of the lodging of the notice of intention to appeal. The Minister or MEC may, in writing, extend the period within which an appeal must be submitted.

***b) Responding statements***

Any I&AP or applicant who receives a notice of an appeal submission may submit to the Minister or MEC a responding statement within 30 days from the date the appeal submission was made available for inspection. Copies of the responding statement must be served on the appellant.

The Minister or MEC may, in writing, extend the period within which a responding statement must be served on the appellant.

***c) Answering statement***

If any new information that is not dealt with in the appeal submission of the appellant is introduced by the respondent, the appellant is entitled to submit an answering statement to such new information to the Minister or MEC within 30 days of receipt of the responding statement. The appellant must serve a copy of the answering statement on the respondent who submitted the new information.

The Minister or MEC may, in writing, extend the period within which an answering statement must be served on the appellant.

***d) Decision on appeals***

When the Minister or MEC has reached a final decision on an appeal, the appellant and each respondent must be notified in writing of the decision and the extent to which the decision appealed against is upheld or overturned. In addition, the reasons for the decision must be provided to the appellant or a respondent in writing, if the appellant or respondent request such information in writing.

**3.3 ROLES AND RESPONSIBILITIES**

This section sets out the roles and responsibilities of the applicant, EAP, I&APs and the competent authority in respect of public participation.

**3.3.1 The applicant**

The responsibilities of the applicant include providing the EAP with access to all available information regarding the application, whether such information is favourable to the applicant or not.

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The implications of the public participation process for the applicant are that the applicant should:

- ❖ not take final investment decisions before the public participation process has been completed, alternatively, if provisional investment decisions have already been taken, the applicant must be willing to take the risk that the project may not be authorised;
- ❖ not adopt a defensive attitude during interaction with I&APs; and
- ❖ have empathy and patience with I&APs who do not possess the relevant background knowledge.

**3.3.2 The EAP**

The environmental assessment practitioner (EAP) is required to:

- ❖ design the public participation process;
- ❖ organise all the required public participation activities;
- ❖ provide adequate time for public participation;
- ❖ communicate with I&APs in order to provide them with information to enable them to participate in a meaningful way;
- ❖ where necessary, build the capacity of and empower the I&APs;
- ❖ facilitate communication among I&APs;
- ❖ avoid, resolve and manage conflict;
- ❖ record and process the inputs of I&APs;
- ❖ ensure that I&APs' inputs are integrated into the reports which are communicated to the competent authority; and
- ❖ Ensure that summaries accurately reflect viewpoints of I&APs.

In order to accomplish these tasks, the EAP should:

- ❖ have an ability to unravel the real concerns behind I&APs' stated issues;
- ❖ have the ability to separate issues from personalities, cultural perspectives and emotions;
- ❖ have empathy towards all viewpoints; and
- ❖ prevent vociferous viewpoints from being the only ones that are heard.

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**3.3.3 Interested and affected parties**

Registered I&APs have the right to bring to the attention of the competent authority any issues that they believe may be of significance to the consideration of the application.

The rights of I&APs are qualified by certain obligations, namely:

- ❖ I&APs must ensure that their comments are submitted within the timeframes that have been approved or set by the competent authority, or within any extension of a timeframe agreed to by the applicant or EAP;
- ❖ a copy of comments submitted directly to the competent authority must be served on the applicant or EAP; and
- ❖ any direct business, financial, personal or other interest that they might have in the approval or refusal of the application must be disclosed.

The roles of I&APs in a public participation process usually include one or more of the following:

- ❖ assisting in the identification and prioritisation of issues that need to be investigated;
- ❖ making suggestions on alternatives and means of preventing, minimising and managing negative impacts and enhancing project benefits;
- ❖ assisting in or commenting on the development of mutually acceptable criteria for the evaluation of decision options;
- ❖ contributing information on public needs, values and expectations;
- ❖ contributing local and traditional knowledge; and
- ❖ verifying that their issues have been considered.

In order to participate effectively, I&APs should:

- ❖ become involved in the process as early as possible;
- ❖ register as I&APs;
- ❖ advise the EAP of other I&APs who should be consulted;
- ❖ contribute towards the design of the public participation process (including timeframes) to ensure that it is acceptable to all I&APs;
- ❖ follow the process once it has been accepted;
- ❖ read the material provided and actively seek to understand the issues involved;
- ❖ give timely responses to correspondence;
- ❖ be respectful and courteous towards other I&APs;
- ❖ refrain from making subjective, unfounded or ill-informed statements; and

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- ❖ recognise that the process is confined to issues that are directly relevant to the application.

**3.3.4 Competent authorities**

The responsibilities of the competent authority include:

- ❖ ensuring that due process was followed;
- ❖ actively listening to and considering all I&AP viewpoints;
- ❖ treating all I&APs and their inputs fairly;
- ❖ engaging in transparent and accountable decision-making; and
- ❖ giving reasons for the decision if requested to do so by a registered I&AP.

The competent authorities also have the mandate to make additional guidelines to further define the requirements of the regulations.

**3.4 THE MINIMUM REQUIREMENTS FOR PUBLIC PARTICIPATION**

Chapter 6 of the regulations sets out the minimum requirements for a public participation process. The main components of a public participation process are:

- ❖ notifying I&APs of the application and informing them of all relevant facts;
- ❖ keeping a register of the names and contact details of all I&APs;
- ❖ providing all I&APs with a reasonable opportunity to comment on the application; and
- ❖ reporting the comments made by I&APs and the applicant's responses to those comments to the competent authority.

Each of these components is described in greater detail below.

**3.4.1 Advertisement and notification**

According to regulation 56, the EAP must notify all I&APs of the application that is subjected to public participation. As a minimum the notification must be provided by means of three avenues: a site notice board, written notices to certain I&APs, and advertisements in newspapers and/or the official Gazette. Each of these mechanisms must at least contain the following information:

- ❖ details of the application;
- ❖ an indication that the application has been submitted or will be submitted to the competent authority;

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- ❖ in the case of an application for environmental authorisation, whether basic assessment or scoping procedures apply to the application;
- ❖ information on the nature and location of the activity;
- ❖ where further information on the application or activity can be obtained;
- ❖ specify reasonable timeframes for responses to advertisements;
- ❖ the manner in which representations on the application can be made; and
- ❖ the person to whom representations may be made.

**a) Site notice boards**

At least one site notice board must be fixed in a conspicuous place at the boundary or on the fence of the property where the activity is to be undertaken.

The site notice board must be of a size at least 60 cm by 42 cm and display the required information in lettering and in a format as may be determined by the competent authority.

**b) Written notices**

Written notice must at least be given to the I&APs indicated in the regulations, namely:

- ❖ owners and occupiers of land adjacent to the property where the activity is, or will be, undertaken;
- ❖ owners and occupiers of land within 100 metres of the boundary of the property, if they are (or may be) directly affected by the activity;
- ❖ the municipal councillor of the ward in which the property is situated;
- ❖ any organisation of ratepayers or conservancies that represents the community in the area.;
- ❖ the municipality which has jurisdiction in the area; and
- ❖ any organ of state which has jurisdiction in respect of any aspect of the activity.

It may be useful to include a background information document (BID) with the notice which provides additional information to that which must be contained in the notice or which can be distributed to public places such as libraries and community halls. Information which can be included in the BID is:

- ❖ a more detailed description of the proposed project, accompanied by a map showing its location;
- ❖ the need and desirability of the proposed activity;
- ❖ an explanation of the process that will be followed;

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- ❖ the environmental evaluations that will be conducted as part of the application for authorisation;
- ❖ the time schedule for the environmental assessment;
- ❖ the role of I&APs;
- ❖ how and when decisions will be made, and by whom; and
- ❖ the name and contact details of the EAP or PPF.

This information should be presented in non-technical language and should be between 5 and 7 pages long.

The BID should include a loose reply sheet that I&APs can use to indicate whether they wish to remain on the mailing list, raise initial issues of concern, make suggestions for enhanced benefits, comment on the proposed public participation process and indicate preferred languages.

A BID is always needed. In some case more than a BID may be required. The extent of literacy of the recipients of the notice and BID should be borne in mind when determining whether additional measures to a BID must be taken.

**c) Advertisements**

The number of advertisements that must be placed depends on the scale of the impacts expected to arise from the activity. In all cases, an advertisement must be placed in at least one local newspaper. However, if the activity has (or may have) an impact that extends beyond the boundaries of the metropolitan or local municipality, an advertisement must also be placed in at least one provincial or national newspaper.

In addition to the placing of an advertisement in a local and/or provincial or national newspaper, it may be placed in an official Gazette that is published specifically for the purpose of providing public notice of applications or other submissions.

The following principles should be followed to ensure effective advertising:

- ❖ the language used by the I&APs should be taken into account when selecting a newspaper;
- ❖ the advertisements should be placed prominently and not hidden in the legal or any other section of the paper; and
- ❖ the greater the sensitivity of the project, the larger and more prominent the advertisements should be.

For projects with high sensitivity, newspaper advertisements can be supplemented with press releases. Care should be taken, however, to ensure that press releases convey the correct information, as newspaper editors might edit them to increase their

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newsworthiness. Where I&APs include rural or historically disadvantaged communities, the project and public participation process should be announced on an appropriate local radio station in a local language or even use of a town crier.

If the project is highly sensitive or controversial, directly affected parties (such as adjacent landowners) should be contacted or be visited in person before letters are sent out and announcements made in the media.

**3.4.2 Registration of interested and affected parties**

According to regulation 57, an applicant and/or EAP managing an application must open and maintain a register containing the names and addresses of:

- ❖ all persons who have submitted written comments or attended meetings as part of the public participation process;
- ❖ all persons who have submitted written requests to the applicant to have their names placed on the register after completion of the public participation process; and
- ❖ all organs of state that have jurisdiction in respect of the activity to which the application relates.

Persons whose details are included in this register are referred to as "registered I&APs."

The regulations specify that any person who submits a written request for access to the register must be given such access.

**3.4.3 Access and opportunity to comment on submissions**

As per regulation 58, the EAP must ensure that registered I&APs have access to all written submissions made to the competent authority by the applicant or EAP. These may include:

- ❖ basic assessment reports;
- ❖ scoping reports;
- ❖ specialist reports and reports on specialised processes;
- ❖ environmental impact assessment reports;
- ❖ draft environmental management plans; and
- ❖ reports prepared as part of other applications in terms of the regulations.

In addition, regulation 58 also specifies that registered I&APs must also have an opportunity to comment in writing on these documents before they are submitted to the competent authority. In cases where a final report by a specialist reviewer contains

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substantive information that has not previously been made available, registered I&APs also have the right to comment on that final report.

Comments may be solicited from I&APs in various ways. These include written submissions, telephonic consultation, public meetings, open days, individual or small-group consultation, or multi-stakeholder workshops, or combinations thereof. Each of these is described in greater detail below.

**a) *Written submissions***

Issues are often received in writing, either on the reply sheet accompanying the BID or in separate letters.

**b) *Telephonic consultation***

Responses may be elicited telephonically from key I&APs. However, this should only be done once I&APs have had time to read the BID. In order to ensure that issues have been accurately recorded during telephone interviews, a summary of the issues should be sent to I&APs via e-mail, fax or post for verification.

**c) *Public meetings***

Public meetings enable I&APs to hear one another's ideas and suggestions, and to enter into dialogue with one another. This creates opportunities for joint fact-finding and convergence in viewpoints between different sectors of society, thus making it possible to review and improve decision-making processes.

**d) *Open days***

Public meetings suffer from two distinct shortcomings. Firstly, they are not very effective in conveying technical information about a project. This drawback is especially pronounced in the case of previously disadvantaged communities. Secondly, they have the potential to engender conflict among participants and to degenerate into "venting sessions" about long-standing disputes unrelated to the project. In order to circumvent these difficulties, open days may be held to provide I&APs with information about a proposed activity and to provide them with the opportunity to submit comments.

**e) *Individual or small-group consultation***

Particularly for sensitive projects, it is recommended that a public meeting be preceded by separate consultations with various sectors of society. Such consultations can be conducted individually or in small groups. This approach has several advantages:

- ❖ it gives an advance indication of sensitive or contentious issues;



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- ❖ it gives I&APs a chance to raise issues or divulge information that they would be reluctant to discuss at a public meeting; and
- ❖ if I&APs are resentful or mistrustful of the applicant or authorities, individual or small-group consultation gives them the opportunity to voice their anger and mistrust.

When engaging in individual or small-group consultation, however, care should be taken to ensure that this is not perceived as a “divide and rule” tactic.

**f) Multi-stakeholder workshops**

A multi-stakeholder workshop combines elements of public meetings and small-group consultation. It involves getting together between 15 and 25 representatives of various sectors of society. Attendance of such a workshop is usually by invitation only, but the invitation list is compiled on the basis of suggestions made by I&APs themselves. Should an uninvited person turn up at the workshop, however, they should not be turned away. Such workshops are useful in cases where the project has a large number of I&APs from various sectors of society, if the project is complex or sensitive, or if it involves a large number of issues.

**3.4.4 Reporting on comments and responses**

If a written comment from a registered I&AP is received by the EAP within the agreed timeframe, that comment must accompany the report when it is submitted to the competent authority. Regulation 59 specifies the manner in which the EAP managing an application must record comments by I&APs. In most instances, such comments must be incorporated into the contents of reports submitted to the competent authority. However, if a report has been amended and is being resubmitted by the EAP, comments by I&APs may be attached to the report without further amendment to the report itself.

As was mentioned previously, a basic assessment report, scoping report or EIA report must include a summary of the issues raised by I&APs, the date of receipt and the EAP's response to those issues. This summary may take the form of an issues and response report. A suggested format of the issues and response report is to compile a table with four columns: one describing the issues, one noting the date on which the issue was raised, one identifying the I&AP(s) who raised the various issues, and one indicating how the issues will be (or have been) dealt with. It should be categorised in terms of the disciplines required for conducting the specialist investigations. An example of an issues and response report is set out below.

**Table 3.1 Example of an issues and response report**

ISSUE RAISED	DATE	COMMENTATOR	RESPONSE
The proposed project should result in job creation,	3 May 2005 Open Day	Ds. A.M. van Wyk	Comment noted. The project is expected to employ approximately 2200 people while in

## GUIDELINE 4: PUBLIC PARTICIPATION

especially in the historically disadvantaged communities.			operation. Although some people with more technical skills may be brought in from other areas, the activity will try to source as many employees from the local area as possible.
Local labour should be given preference over people from outside the community when the project starts to employ people.	3 May 2005 Open Day	Dr. P. Mkebe	The project will try to source as many employees from the local area as possible. This will be included as a condition in the EMP.
Job creation resulting from the proposed project will have a positive impact on the community.	3 May 2005 Open Day	Mrs. E. Naidoo	Comment noted.
Old Town is an old town and unemployment rates are very high. The proposed development would have a positive impact on the surrounding communities if jobs were created.	3 May 2005 Open Day	Mrs. C.E.G. Mokoena	Comment noted. The project is expected to employ approximately 2200 people while in operation. Although some people with more technical skills may be brought in from other areas, the mine will try to source as many employees from the Old Town area as possible.
The project area has significant natural areas and the impact on biodiversity may be high especially since it is known that several Red Data species occur in the area	3 May 2005 Open Day	Mr. K. Pieters	An ecological assessment of the site is currently underway and special attention is being given to the identification of Red Data species. The outcome of the assessment will be taken into account in the assessment of potential project impacts.
Etc.			

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## 4. GUIDANCE ON THE SCOPE AND EXTENT OF A PUBLIC PARTICIPATION PROCESS

This section provides guidance on deciding about the appropriate scope and extent of the public participation process. Issues that are discussed include criteria for decision-making and selection of the most appropriate:

- ❖ scope of a public participation process;
- ❖ levels of advertising and notification; and
- ❖ review of timeframes.

### 4.1 DECIDING ON THE SCOPE OF A PUBLIC PARTICIPATION PROCESS

As a basic point of departure, the scope of public participation should be based on the extent of the envisaged impact and not on the extent of development. The minimum requirements set out in the previous sections will not necessarily be sufficient for all applications. This is because the circumstances of each application are different, and it may be necessary in some situations to incorporate additional activities in the public participation process.

Table 4.1 below indicates the aspects to be considered as guidance in determining the desired scope of the public participation process:

**Table 4.1 Issues to consider when assessing the required scope of a public participation process**

Aspect	(Y/N)
1. Is the project a greenfields development (a new development in a previously undisturbed area)?	
2. Does the area already suffer from socio-economic problems (e.g. job losses) or environmental problems (e.g. pollution), and is the project likely to exacerbate these?	
3. Is the project expected to have a wide variety of impacts (e.g. socio-economic as well as environmental)?	
4. Are there widespread public concerns about the potential negative impacts of the project?	
5. Is there a high degree of conflict among I&APs?	
6. Does the applicant have little credibility and trust in the eyes of most I&APs?	
7. Has the applicant or government neglected previous problems in the project area?	
8. Will the project impact on land that has belonged to the same family for several generations?	

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<b>Aspect</b>	<b>(Y/N)</b>
9. Does the project have the potential to create unrealistic expectations (e.g. that a new factory would create a large number of jobs)?	
10. Has very little previous public participation taken place in the area?	
11. Did previous public participation processes in the area result in mistrust, fears and unmet expectations?	
12. Are there very few, if any, existing organisational structures (e.g. local environmental and water forums) that can represent I&APs?	
13. Do most I&APs have limited education and background knowledge?	
14. Is the area characterised by high social diversity (in terms of socio-economic status, language or culture)?	
15. Were people in the area victims of unfair expropriations or relocation in the past?	
16. Have there been retrenchments or downscaling in the area in the recent past?	
<b>TOTAL:</b>	

As a broad guideline, the number of yes responses in the above table may serve as an indication of the required scope of the public participation process. Although not a definite categorisation of the anticipated scope of a project, the following may be used as a broad guideline in determining the required scope of the public participation process.

<b>Total number of yes responses</b>	<b>Recommended scope of the public participation process</b>
6-16	Extended
1-5	Intermediate
None	Focussed

However, the level of advertising/notification indicated in Section 4.2. must be applied irrespective of the indicated scope of the public participation process.

**Table 4.2 Guidelines for scope of a public participation process**

<b>Scope of the public participation process</b>	<b>Possible Participation mechanisms</b>
Extended	<ul style="list-style-type: none"> <li>• Meetings with relevant government authorities, including national, provincial and local government.</li> <li>• Public meetings</li> <li>• Open days</li> <li>• Multi stakeholder meetings</li> <li>• Focus group meetings</li> <li>• Meetings with individuals</li> <li>• Press releases</li> <li>• Questionnaires or opinion surveys</li> <li>• Information desk or infoline (help line)</li> <li>• Meetings/workshops with constituencies (e.g. National Standing Committees, national</li> </ul>

## GUIDELINE 4: PUBLIC PARTICIPATION

Scope of the public participation process	Possible Participation mechanisms
	NGOs/CBOs) <ul style="list-style-type: none"> <li>• Conferences (where appropriate)</li> <li>• Capacity building process where appropriate</li> </ul>
Intermediate	<ul style="list-style-type: none"> <li>• Meetings with relevant government authorities, including national, provincial and local government.</li> <li>• Public meeting</li> <li>• Open day</li> <li>• Multi stakeholder meeting</li> <li>• Focus group meetings</li> <li>• Meetings with individuals</li> <li>• Press releases</li> <li>• Questionnaires or opinion surveys</li> <li>• Information desk or infoline (help line)</li> <li>• Meetings/workshops with constituencies (e.g. National Standing Committees, national NGOs/CBOs)</li> </ul>
Focussed	<ul style="list-style-type: none"> <li>• Meetings with relevant government authorities, including national, provincial and local government.</li> <li>• Workshop/meetings with neighbours, local CBOs and NGOs.</li> <li>• Focus group meetings</li> </ul>

In addition to the above, care must be taken to ensure that:

- ❖ the language needs of the participants are addressed; and
- ❖ provision is made for illiterate participants.

A range of participation mechanisms have been identified in the above table. It is not expected that the full scope of suggested mechanism should be used, but rather that a realistic selection be made, based upon the specific nature and impact of the proposed activity.

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## 4.2 DECIDING ON THE LEVEL OF ADVERTISING AND NOTIFICATION FOR A PUBLIC PARTICIPATION PROCESS

**Table 4.3 Issues to consider when assessing the level of advertising for a public participation process**

<i>Extent of anticipated impacts</i>	<b>Minimum Level of Advertising</b>
Specific: The impacts of the project are limited to a specific localised area within a town or rural area.	<ul style="list-style-type: none"> <li>• Advertisement in one local newspaper or Gazette.</li> <li>• One site notice board.</li> <li>• Web site, if available.</li> <li>• Written notices to immediate neighbours, ward councillor, local community organisations, municipality and relevant organs of state.</li> <li>• Background Information Document enclosed with written notices.</li> <li>• Other community based means, as relevant.</li> </ul>
Local: The impacts of the project are limited to the boundaries of the local municipality.	<ul style="list-style-type: none"> <li>• Advertisement in one local newspaper or Gazette.</li> <li>• One site notice board.</li> <li>• Web site, if available.</li> <li>• Written notices to immediate neighbours, ward councillor, local community organisations, municipality and relevant organs of state.</li> <li>• Background Information Document enclosed with written notices, also placed in 2 to 3 public places such as libraries, community centres, etc, in the municipal area.</li> <li>• Other community based means, as relevant.</li> </ul>

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<b>Extent of anticipated impacts</b>	<b>Minimum Level of Advertising</b>
Regional: The impacts of the project are likely to affect a number of towns or more than one municipality.	<ul style="list-style-type: none"> <li>• At minimum, an advertisement in one local and one regional newspaper or Gazette.</li> <li>• On site notice boards, and/or at public access points.</li> <li>• Radio stations.</li> <li>• Web site, if available.</li> <li>• Written notices to immediate neighbours, ward councillor, local community organisations, municipality and relevant organs of state.</li> <li>• Background Information Document enclosed with written notices, also placed in 3 to 6 public places such as libraries, community centres, etc, in the anticipated impact area.</li> <li>• Other community based means, as relevant.</li> </ul>
National/Cross-boundary: The impacts of the project are likely to have international or national significance?	<ul style="list-style-type: none"> <li>• At minimum, an advertisement in one regional paper in each relevant region and a national newspaper or Gazette.</li> <li>• On site notice boards, and/or at public access points.</li> <li>• Radio stations.</li> <li>• Web site, if available.</li> <li>• Written notices to I&amp;APs.</li> <li>• Background Information Document enclosed with written notices.</li> <li>• Multiple media releases</li> </ul>

### 4.3 TIME REQUIRED FOR COMMENT

The table below provides an approximate guide with regard to the extent of time that should be allocated for obtaining formal public comment on various documents. The time allowable time periods should commence on the date that I&APs are likely to *receive* the documents, not from the date on which they are dispatched.

**Table 4.4 Time periods for public comment on documents**

<b>Activity</b>	<b>Guide to time period for public review</b>	<b>Notes</b>
Comment on initial notification and BID	4 calendar weeks	Depending on the sensitivity of the process and whether the BID will be followed by a more detailed information document.

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Comment on draft basic assessment report	4 calendar weeks	Depending on the sensitivity of the process and the complexity of the project.
Comment on the draft scoping report	4-6 calendar weeks	Depending on the sensitivity of the process and the complexity of the project.
Comment on the draft EIA report	4-6 calendar weeks	Depending on the sensitivity of the process and the complexity of the project.



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**GUIDELINE 4: PUBLIC PARTICIPATION**

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**5. CONCLUSION**

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This document is intended to be a guideline only, and should be read in conjunction with NEMA and the regulations. It is not intended to be a substitute for the provisions of NEMA or the regulations in any way.

Throughout this guideline, reference is made to specific requirements. In many cases these indicate minimum requirements. It is stressed that it is not the intention that these minimum requirements should be interpreted as the norm. Rather, the intention is that the public participation process will be sufficiently realistic and comprehensive to address the realities of the application.

At all times, decision about the scope of the public participation process should be guided by whether or not it provides I&APs with sufficient information and opportunities to enable constructive contributions that will allow responsible authorities to make appropriate environmental decisions. Care should be taken to ensure that there is an alignment between the scope of the public participation process and the potential impact of a proposed application. Decision about scope should be realistic, balanced and aligned with the realities of the application.

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**6. USEFUL REFERENCE SOURCES**

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# **Guideline 6: Environmental Management Frameworks**

**in support of the Environmental Impact  
Assessment Regulations, 2006**

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**May 2006**



Department of Environmental Affairs and Tourism

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**GUIDELINE 6: ENVIRONMENTAL MANAGEMENT FRAMEWORKS**

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**Principal authors:**

Paul Claassen (Environomics), Jenny Hall (environmental counsel cc) and David de Waal (Mawatsan)

**Project coordinator:**

Amanda Britz (DEAT)

**Departmental review:**

Wynand Fourie , Amanda Britz , Anben Pillay, Danie Smit, Johan Benadé and Coenrad Agenbach

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**Enquiries and comments:**

All enquiries and comments should be addressed to:

The Chief Director: Environmental Impact Management

Department of Environmental Affairs and Tourism

Private Bag X447

Pretoria

0001 South Africa

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## **Abbreviations**

BID	Background information document
EAP	Environmental assessment practitioner
EIA	Environmental impact assessment
EMF	Environmental management framework
GIS	Geographic information system
I&APs	Interested and affected parties
NEMA	National Environmental Management Act, 1998 (Act No. 107 of 1998)

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**GUIDELINE 6: ENVIRONMENTAL MANAGEMENT FRAMEWORKS**

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**1. INTRODUCTION**

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In April 2006 the Minister of Environmental Affairs and Tourism passed regulations<sup>1</sup> in terms of Chapter 5 of the National Environmental Management Act, 1998 (Act No. 107 of 1998) (NEMA). The regulations replace the environmental impact assessment regulations which were promulgated in terms of the Environment Conservation Act, 1989 (Act No. 73 of 1989) in 1997 and introduce new provisions regarding environmental management frameworks.

The Department of Environmental Affairs and Tourism (DEAT) has produced a series of guidelines to assist potential applicants and interested and affected parties (I&APS) to understand what is required of them and what their role may be. The guidelines are intended to be guides only and should be read in conjunction with NEMA and the regulations. They are not intended to be a substitute for the provisions of NEMA or the regulations in any way.

The guidelines form part of the department's Integrated Environmental Management Guideline Series and consists of four parts, namely –

- Guideline 3: General guide to the EIA Regulations
- Guideline 4: Public participation
- Guideline 5: Assessment of alternatives and impacts
- Guideline 6: Environmental management frameworks

This guideline provides an introduction to the compilation of environmental management frameworks (EMFs) that are described in Chapter 8 of the EIA Regulations.

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<sup>1</sup> Environmental Impact Assessment Regulations, 2006

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**2. PURPOSE AND OBJECTIVES**

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**2.1 PURPOSE OF EMFS**

Chapter 8 of the regulations provides that the Minister or MEC, with concurrence of the Minister, may initiate an environmental management framework (EMF) for an area. EMFs that are adopted by the Minister or MEC must be taken into account in the consideration of applications for environmental authorisation in or affecting the areas to which the EMF applies. In practice it is foreseen that EMFs will mostly be joint initiatives between provincial departments and local authorities that act within the mandates of the MECs. It is also likely that the formulation of EMFs will in most cases be contracted out to teams of specialists.

EMFs that have been adopted can therefore be used to facilitate the compilation and consideration of applications for environmental authorisation in terms of the regulations. In this regard –

- ❖ EMFs provide applicants with an early indication of the areas in which it would be potentially appropriate to undertake an activity;
- ❖ co-operative government is facilitated through the identification of different regulatory responsibilities and recommending mechanisms for addressing the needs of the relevant authorities; and
- ❖ the competent authority has information which will guide decision-making.

In addition to the above, EMFs can have indirect uses. Firstly, EMFs can be used as a basis for the Minister or MEC to identify areas where environmental authorisation will be required for certain additional listed activities or where the undertaking of certain activities may be excluded from requiring environmental authorisation. Secondly, EMFs can be used as mechanisms for the co-ordinated management of information about an area.

**2.2 OBJECTIVES**

The objectives of an EMF should be to:



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- ❖ support the process of delineating geographical areas within which additional specified activities are to be identified in terms of NEMA;
- ❖ support the process of delineating geographical areas within which activities listed in terms of NEMA may be excluded by identifying areas that are not sensitive to the potential impacts of such activities;
- ❖ support informed and integrated decision-making by making significant and detailed information about an area available before activity proposals are generated;
- ❖ contribute to environmentally sustainable development by anticipating potential impacts and by providing early warnings in respect of thresholds, limits and cumulative impacts; and
- ❖ support the undertaking of environmental impact assessments in the area by indicating the scope of potential impacts and information needs that may be necessary for environmental impact assessments.

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**3. PRINCIPLES AND CONTEXT**

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**3.1 GUIDING PRINCIPLES FOR EMFS**

The following principles should be applied in the development of an EMF:

- ❖ the EMF should be customised to the context of the area;
- ❖ the EMF should be undertaken with reference to environmental goals and priorities;
- ❖ the EMF should encourage sustainable development;
- ❖ the scope of the EMF should be comprehensive enough to provide assistance to all levels and types of environmental and planning decision-making in the area ;
- ❖ the EMF should place specific focus on the issues and information that matter in decision-making in the area;
- ❖ ecological, social, health and other aspects that are relevant in the area should be reflected in the EMF;
- ❖ the EMF should be clear and easy to understand;
- ❖ the process of developing the EMF should provide for an appropriate level of public participation; and
- ❖ the process of developing the EMF should be carried out fairly, impartially and professionally, having regard to legal and policy requirements as well as guidelines applicable to the area.

**3.2 DETERMINATION OF THE CONTEXT OF AN EMF**

With regard to the context within which an EMF is developed it must be noted that, although the content of an EMF is prescribed in the regulations, the nature of each EMF will be determined by the context of the area for which it is done and the contents of each EMF will vary accordingly. The context is often determined by a range of factors, including the following:

- ❖ the types and nature of environmental attributes;
- ❖ the types of development pressures experienced;
- ❖ the status of conservation of sensitive elements; and

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- ❖ the need for cooperative government.

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**4. PROCESS OF FORMULATING AN EMF**

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**4.1 GETTING STARTED**

At the start of the process of formulating an EMF, the competent authority acting on behalf of the Minister or MEC should:

- ❖ indicate key aspects or requirements that should be contained in the EMF;
- ❖ determine the required level of detail;
- ❖ specify any policy objectives that should be incorporated in the EMF; and
- ❖ indicate minimum requirements for public consultation and liaison with authorities.

A scope of work (terms of reference) should then be established for the EMF which includes:

- ❖ the purpose of the EMF;
- ❖ information requirements;
- ❖ approaches to public participation;
- ❖ data assessment methodology; and
- ❖ the deliverables or end products that will be produced.

**4.2 GATHERING AND CAPTURING INFORMATION**

Information gathering is an activity that takes place throughout the formulation of an EMF. It is important for defining the:

- ❖ status quo of the area;
- ❖ desired state of environment in the area; and
- ❖ development pressures and trends in the area.

When planning how to produce an EMF, it is important to be systematic and make sure that information is gathered and captured correctly. The eventual quality and relevance of an EMF will to a large extent depend on:

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- ❖ the information included;
- ❖ the credibility of information sources; and
- ❖ the quality and detail of the information.

#### **4.2.1 Deciding on the information that should be included in the EMF**

A clear description of the context is necessary to ensure that appropriate information is captured. Not all information in the EMF is of the same importance. For example, some of the information will be used only to describe the area whilst other information will be used to define issues.

An information gathering matrix, which is informed by the context of the specific area and the information required, should be developed to define the information which should be included in the EMF. Discussion on the context has been set out above. With regards to the determination of requirements, the following must be taken into account:

- ❖ the environmental attributes that will be covered in the EMF;
- ❖ the kinds of activities that will be assessed in order to determine whether they could have a significant impact or not on the environmental attributes; and
- ❖ the level of detail that is necessary for specific assessments or evaluations in respect of specific activities or geographical areas by competent authorities.

The information matrix will usually include the following:

- ❖ the nature and types of information that is required;
- ❖ the required format of the information;
- ❖ the required scale and quality of the information;
- ❖ the intended approach to getting and capturing the information; and
- ❖ potential sources of information.

The competent authority should be consulted on the matrix to ensure that the information will also meet the competent authority's needs.

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**4.2.2 Information sources**

Information can be obtained from various sources including:

- ❖ municipal cadastral and zoning documents;
- ❖ aerial photography which should be used for surveys, ground truthing and intensification of information gathered from less accurate sources;
- ❖ information in the databases of government departments;
- ❖ Integrated Development Plans that are applicable to the area;
- ❖ Information gathered as part of other projects in the area;
- ❖ government policies;
- ❖ site/area surveys; and
- ❖ interviews with stakeholders, community leaders, experts and local historians.

**4.2.3 Information quality and detail**

In order to ensure that the end product is both practical and scientifically based, information should be translated into data categories (e.g. hydrology), which can consist of a number of data features (e.g. natural flood plain, flood dissipation areas, river course, sandbanks, wetlands etc.). Each of the features should then be described and its current status should be established.

The quality and efficacy of an EMF depends on the gathering of high quality baseline information. All data sources should accordingly be subjected to stringent quality controls and, in most cases, verified at the source to ensure that errors are not built into the EMF due to erroneous or sub-standard quality information. New research and high resolution data capture may be required to ensure that the quality of information is both adequate and appropriate to the project.

The level of detail required for spatial data capture, especially in respect of key environmental attributes, will normally vary from 1:1000 to 1:5000. Coarser data is unlikely to meet the requirements of the competent authorities. Spatial data capture requires up to date aerial photography and in some instances satellite remote sensing images.

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**4.3 PUBLIC PARTICIPATION****4.3.1 Process required by the regulations**

The regulations do not detail the public participation requirements or process that must be followed prior to the compilation of a draft EMF. The regulations do state that once a draft EMF has been compiled, the draft EMP must be subjected to a public participation process.

The regulations also do not provide more detail because of the differences in context that may occur from one area to another. The requirements of the regulations should therefore be regarded as minimum requirements and, in most instances, it will be necessary or preferable to conduct a broader public participation process that takes place during the entire development of the EMF. The remainder of this section provides detail on the undertaking of a broader public participation process.

**4.3.2 Phases in public participation**

The emphasis of public participation in the development of an EMF should be on getting inputs on existing practises and baseline situations and the determination of what the desired state of the environment should be in the area under consideration. The participation process will therefore usually have at least three goals, namely:

- ❖ to inform interested and affected parties (I&APs) of the EMF process and its objectives;
- ❖ to provide an opportunity for inputs from I&APs; and
- ❖ to give feedback to I&APs with the opportunity for them to respond.

To achieve these goals, public participation is normally conducted in phases. Each of the proposed phases is discussed below.

**4.3.3 Phase 1: Preparation**

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Phase 1 of the public participation entails:

- ❖ an initial meeting with the regulatory authorities that have jurisdiction in the area,
- ❖ the preliminary compilation of a database of potential I&APs, and
- ❖ the preparation of documentation that is necessary for the public participation process, which may include -
  - a Background Information Document (BID);
  - project advertisements to be published in local and regional newspapers;
  - flyers to be placed at publicly used spaces such as post offices and convenience stores; and
  - invitations to attend the initial open day and public meeting, as well as agendas for the meetings.

The aim of a BID is to provide accessible background information on the proposed EMF approach and process. The BID is distributed to the I&APs listed on the database. (The most appropriate language or languages to be used in the BID should be determined by the languages spoken in the area).

To allow the involvement of I&APs which have not been identified through the meeting with the regulatory authorities in the early stages of the process, newspaper advertisements should be placed which inform the public of the project, indicate how the public can become involved in the process and notify the public of the details of the open day and public meeting.

The invitations to attend the open day and public meeting, as well as the agendas should be prepared in advance to ensure input from all members of the project team regarding the information to be communicated to the public.

#### **4.3.4 Phase 2: Stakeholder consultation**

This phase of the participation process focuses on interaction with I&APs. It should include presentations, an open day combined with a public meeting and focused group meetings with organised groupings.



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The public open day and public meeting can be advertised in the newspapers, by means of flyers and I&APs on the database should receive personal invitations. The aim of the public open day is to provide I&APs with more information about the proposed EMF and to invite I&APs to provide inputs regarding their views on current practises and their desired state of the environment and development for the EMF area in respect of:

- ❖ desired land uses;
- ❖ open space networks;
- ❖ road networks (development corridors);
- ❖ geological constraints;
- ❖ protection of sensitive environmental attributes;
- ❖ agricultural resources;
- ❖ service provision/capacity; and
- ❖ bio-physical constraints.

Feedback on the progress of the project should also be provided during the public meeting. The minutes of the meeting should be distributed to I&APs that attended the meeting.

In addition to the open days, a structured interview process can also be used to identify issues, viewpoints, concerns and attitudes held by the various stakeholder categories in the area. These surveys must be of sufficient scope to be statistically acceptable and should include a realistic reflection of the stakeholder categories within the project area.

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. The issues, comments and concerns raised during Phase 2 should be captured in a public participation report which should form part of the draft EMF. The public participation report should consist of:

- ❖ a description of the process followed;
- ❖ a list of issues, comments and concerns raised during the public participation process;
- ❖ a list of the registered I&APs;
- ❖ conclusions and recommendations; and
- ❖ minutes of meetings and written comments received during the public participation process.

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**4.3.5 Phase 3: Public review and reporting phase**

Phase 3 consists of a public review period of the draft EMF Report and the finalisation of the public participation report as well as a feedback public meeting. All comments regarding the contents of the draft EMF report must be reflected in the final report which is submitted to the competent authority for approval and decision. Although appropriate timeframes may differ between different EMF projects, in general at least a 30 day review period should be provided.

Apart from soliciting written comments, a public meeting should also be arranged during the EMF review period, with the aim of explaining and discussing the preliminary findings of the EMF and obtaining inputs and comments on the draft EMF. Registered I&APs should be notified of the date, time and venue of the public meeting together with details on the availability of the EMF. Minutes of the feedback public meeting should be compiled and distributed to I&APs.

The public participation report can be finalised after the meetings.

**4.4 ASSESSMENT OF INFORMATION****4.4.1 Establishing the current situation**

An assessment of the status quo of the area should always form the point of departure for producing an EMF. The exact contents of the status quo section will depend on the specific requirements of the authorities and context of the area. In general, however, it should contain information on most of the following attributes:

- ❖ geology, including geological stability;
- ❖ geohydrology, including water quality, water quantity and irrigation potential;
- ❖ surface hydrology, including drainage systems, flow rates, water quality and ecological requirements;
- ❖ topography, including landscapes and visual character;
- ❖ soil, including erosion potential and agricultural potential;
- ❖ vegetation, including important habitats, threatened species and conservation potential;
- ❖ fauna, including threatened species and conservation potential;
- ❖ current use of land (not zoning) depicting the actual uses that occur on land in detail including illegal activities (where possible);

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- ❖ infrastructure and engineering services, including water provision, sanitation, transportation elements, electricity, solid waste disposal and telecommunication;
- ❖ current and potential sources of air pollution;
- ❖ current and potential sources of water pollution;
- ❖ current and potential sources of noise or other types of irritation;
- ❖ land which is undermined by mining activities;
- ❖ cultural and historic features, including archaeological sites, old buildings, important structures and sites associated with current use or past events and religious structures and sites;
- ❖ population characteristics, including spatial distribution, structure, income levels, age, gender, literacy and growth trends;
- ❖ economic characteristics, including employment sectors, economic drivers and growth sectors; and
- ❖ current laws, policies, plans and programmes that are applicable in the EMF area.

The status quo section should also address the interrelationships between the different attributes as well as the importance of the attributes in the context of the area. Issues and trends in respect of attributes should also be described, where appropriate.

#### **4.4.2 Defining the desired state of the environment**

It is important to define the desired state of the environment in order to establish a baseline for targeting the assessment. The "desired state" could for example include targets for:

- ❖ conservation of natural open space in the area;
- ❖ conservation of ridges;
- ❖ conservation of rare and endangered species;
- ❖ waste management;
- ❖ ambient air quality;
- ❖ energy use;
- ❖ river health;
- ❖ groundwater use and quality;
- ❖ access to the open space system;
- ❖ conservation of cultural and historical elements; and

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- ❖ rehabilitation or reuse of derelict land.

#### **4.4.3 Identifying development pressures and trends**

In order to establish what can realistically be achieved in the area in bridging the gap between the status quo and the desired state, it is also necessary to understand the development pressures and trends in the area. Development trends and pressures should be identified. These trends and pressures may come from a range of issues such as:

- ❖ population growth;
- ❖ population distribution;
- ❖ population structure (age and gender);
- ❖ income distribution;
- ❖ education and literacy;
- ❖ employment sectors;
- ❖ economic drivers;
- ❖ growth sectors; and
- ❖ development policies and plans.

#### **4.4.4 Establishing opportunities and constraints**

Opportunities and constraints for the EMF area should be established through the assessment of the status quo, desired state of environment and the development pressures and trends. Opportunities may include aspects such as:

- ❖ areas that can accommodate specific development growth demands with minimal environmental impact;
- ❖ sensitive environmental attributes that can be conserved within the current policy and budgetary capacities of the different spheres of government; and
- ❖ limits on pollution and waste generation that can be achieved without significant cost;

Examples of constraints include:

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- ❖ population growth trends that exceed the ability of the area to accommodate the anticipated additional housing demand in areas that are not environmentally sensitive;
- ❖ the location of good building sand in an area with a habitat for rare and endangered species; and
- ❖ low ambient air quality in an area where there is a high demand for industrial growth.

**4.5 SPECIFICATION OF THE END PRODUCTS****4.5.1 Management proposals and guidelines**

After the assessment of inputs from I&APs and information which has been gathered, management proposals and guidelines can be developed. These proposals and guidelines should be informed by the opportunities and constraints which have been identified and should aim to:

- ❖ maximise the opportunities to the benefit of both the environment and development in the area;
- ❖ manage the constraints of the area through interventions that seek to protect the environment against significant impacts while being sensitive to the social needs and aspirations in the area.

The management proposals and guidelines could contain some or all of the following, depending on the nature and context of the EMF:

- ❖ the conservation status of sensitive environmental attributes in the area;
- ❖ environmental management priorities (issues) in the area;
- ❖ the kinds of activities (listed and not listed in terms of section 24(2)(a) of NEMA) that would have a significant impact on attributes;
- ❖ the kinds of activities (listed in terms of section 24(2)(c) of NEMA) that would not have significant impacts on attributes; and
- ❖ the kinds of activities that are undesirable in the area or part of the area.
- ❖ policy guidelines in terms of the EIA regulations, 2005.

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**4.5.2 Implementation strategy**

Although not legally required, the inclusion of a proposed implementation strategy for the implementation of the EMF can add significant value to the EMF. A proposed strategy should address the following:

- ❖ linkages between planning and policy instruments and options for incorporating information contained in the EMF;
- ❖ approaches to co-operative government; and
- ❖ allocation of responsibilities between authorities to ensure desired outcomes.

**4.5.3 The EMF report**

In terms of the regulations, an EMF must contain the following:

- ❖ an identification of the area – whether by map or otherwise;
- ❖ a specification of the environmental attributes in the area, including sensitivity, extent, interrelationship and significance of the attributes;
- ❖ an identification of any parts in the area to which the attributes relate to;
- ❖ an indication of the conservation status of, and environmental management priorities, in the area;
- ❖ a description of the environmental priorities in the area;
- ❖ information on activities that would have a significant impact on those attributes and those that would not;
- ❖ information on activities that would be undesirable in the area or specific parts of the area; and
- ❖ any matters specified by the Minister or MEC.

It is recommended that for completeness, the EMF report should also contain the following (depending on the nature and context of the EMF):

- ❖ the terms of reference for the EMF;
- ❖ a description of how information was captured;
- ❖ a description of the public participation process including issues raised by I&APs;
- ❖ the desired state of the environment;
- ❖ development pressures and trends;

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- ❖ opportunities and constraints; and
- ❖ management proposals and guidelines; and

**4.5.4 The EMF in GIS format**

Most EMFs are generated for specific geographical areas and most of the information contained in EMFs can also be linked to the attributes in a spatial manner. It is therefore possible to also produce EMFs in a GIS format where the GIS system can be queried to provide quick answers to relatively complex questions.

An integrated GIS can often be developed as the main structural element in the production of an EMF around which the various inputs and outputs are centered. The GIS could also ensure that the results of the EMF continue to be useful provided that it is updated periodically in order to deliver an ongoing up to date input into the environmental management of the area.

The GIS can also be made available on a user-friendly GIS-viewer. The GIS-viewer can play an important role in the use and application of the EMF as it integrates two important components of the EMF, namely an integrated spatial data set and a database containing the description of spatial entities. Most importantly, it can also integrate the management proposals and guidelines that are applicable to specific areas.

The GIS-viewer could also contain a report function, which takes an image of a selected area from the GIS map, together with all the attribute data relating to that specific point, and prints it to a structured report that can be taken away and used for inclusion in other documents.

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**5. CONCLUSION**

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EMFs are strategic level decision support instruments that assist environmental impact assessment in the following ways:

- ❖ It provides detailed environmental information to all stakeholders;
- ❖ It indicates environmental management priorities and targets;
- ❖ It highlights opportunities and constraints;
- ❖ It helps to facilitate cooperative government;

EMFs work best in situations where there are significant development pressures in an area. Due to the requirement for high levels of detail in EMFs and the fact that the context of areas may differ according to environmental attributes and development pressures, it is important that the area covered by any one EMF is not too big. As a rough guide, an area of approximately 1 000km<sup>2</sup> can be regarded as an upper limit for the size of an area in which an EMF can be completed in a 12 month period (provided that high quality aerial photography and/or satellite images are readily available for the area).

EMFs should not conflict or be in competition with land use plans for an area but should rather be structured to also provide the necessary environmental inputs into such plans (including SDFs and IDPs). It may therefore be wise to link the update cycle of an EMF to that of other plans for the area. An update cycle of 5 years is recommended and in some instances, where there is adequate capacity, some of the data categories may even be updated continuously.