



**WESTERN CAPE DEPARTMENT OF ENVIRONMENT AND CULTURAL  
AFFAIRS AND SPORT  
WESKAAPSE DEPARTEMENT OMGEWING- EN KULTUURSAKE EN SPORT**

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**Directorate : Environmental Management**

**EIA Guideline Series**

**GUIDELINE FOR THE PUBLIC PARTICIPATION  
FOR THE EIA PROCESS**

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The guideline relates to the administration of the Environmental Impact Assessment Regulations (hereafter referred to as the EIA Regulations). It has been developed to assist the Directorate : Environmental Management in fulfilling its role and function with respect to the EIA Regulations.

**OBJECTIVES**

- To provide clarity on the Directorate's requirements with respect to public participation for the EIA process.
- To give effect to the Bill of Rights set out in Chapter 2 of the Constitution (Act 108 of 1996), particularly those in Section 184 (3) which covers socio-economic rights including that pertaining to the environment.
- To give effect to relevant Sections of the National Environment Management Act, Act 107 of 1998 (NEMA):

- Section 23(c) of NEMA which requires that the effects of activities on the environment receive adequate attention before actions are taken in connection with them. Public participation is recognised as being an important mechanism for assessing the social impacts of development;
- Section 24(1) of NEMA which requires that the environmental impact of any activity that needs authorisation by an organ of state, must be considered prior to the implementation of that activity.

## **DEFINITIONS**

1. *An interested and affected party* means any person or group of persons concerned with or affected by the activity (EIA Regulations No R1183).
2. *The EIA process* means all the activities that need to be fulfilled in terms of the EIA Regulations, the DEA&T EIA Guideline document (dated April 1998) and the Section 24 of the National Environmental Management Act. Hence the EIA process encompasses the application stage (required for all Listed Activities as per Schedule 1 of the EIA Regulations), the scoping stage (if required by the Directorate) and the EIA stage (if required by the Directorate).

## **PREAMBLE**

The EIA regulations promulgated under Sections 21 and 26 of the Environment Conservation Act, Act 73 of 1989 (Government notices R1182, R1183 and R1184) published in the Government Gazette No. 18261 of 5 September 1997) make provision for public participation in the EIA process. These relevant requirements are as follows:

- The applicant is responsible for the public participation process such that it is undertaken in a manner that allows reasonable opportunity for all interested and affected parties, including government institutions, to participate in all the relevant procedures stipulated in the regulations.
- Information on the public participation process must be included in the scoping report - "an appendix containing a description of the public participation process followed, including a list of interested parties and their comments" (Section 6).

Additional details regarding the public participation process are given in the DEA&T Guideline document on the EIA Regulations (dated April 1998). This guideline document specifies the following:

- That the relevant authority must ensure that provision has been made for sufficient consultation with interested and affected parties when reviewing the Plan of Study for Scoping (Section 3.2.2.2)

- That a description of the public participation process be provided in the scoping report which may include:
  - The process whereby interested and affected parties were identified;
  - The opportunities provided for public participation;
  - The issues, concerns and comments raised by interested and affected parties;

Furthermore, the National Environmental Management Act, Act 107 of 1998 (NEMA) has been promulgated subsequent to the EIA Regulations. This means that the principles of this Act also need to be taken into account in the public participation process. In terms of NEMA the following principles apply:

- The participation of all interested and affected parties in environmental governance must be promoted, and all people must have the opportunity to develop the understanding, skills and capacity necessary for achieving equitable and effective participation, and participation by vulnerable and disadvantaged persons must be ensured.
- Decisions must take into account the interests, needs and values of all interested and affected parties, and this includes recognising all forms of knowledge, including traditional and ordinary knowledge.
- Community well-being and empowerment must be promoted through environmental education, the raising of environmental awareness, the sharing of knowledge and experience and other appropriate means.

## **STRUCTURE OF THE GUIDELINE**

The guideline is structured as follows:

- **Section 1** which deals with the roles and responsibilities of the respective parties (proponent, consultant, relevant authority and interested and affected parties) in the public participation process.
- **Section 2** which describes public participation requirements for the respective stages of the EIA process.
- **Section 3** which covers the advertising requirements.

## 1 Roles and Responsibilities

The roles and responsibilities given below relate specifically to the public participation process.

### Applicant/proponent

1. The applicant is responsible for ensuring that public participation is undertaken. This means that the applicant is obliged to include public participation in the brief to the environmental consultant.
2. The applicant is responsible for enabling an adequate public participation process in terms of the project timeframe and milestones as well as in terms of financial provision.

### Consultant

3. The consultant is responsible for ensuring that the public participation process meets the requirements of the EIA Regulations. The DEA&T EIA Guideline document (dated April 1998) must also be considered in undertaking the public participation process, as well as the principles of NEMA.
4. The consultant is responsible for planning and implementing a public participation process that allows reasonable opportunity for interested and affected Parties (I&APs):
  - To raise environmental issues and concerns;
  - To provide input into the public participation process and into the scope of the EIA;
  - To provide feedback/comment on documentation relating to the proposal (note that this does not imply public *approval* of the process, but rather an opportunity to comment and raise issues and concerns); and
  - To provide the opportunity for I&APs to contribute to the information base on the environment through their knowledge of local conditions. Such input could range from anecdotal evidence on the biophysical (e.g. observations about flooding patterns) to knowledge of local customs and traditions.
5. The consultant is responsible for ensuring that appropriate participation measures are put in place to deal with the range of cultural and language requirements of interested and affected parties.
6. The consultant is responsible for placing the concerns, input and comments from I&APs on record. This need not involve the taking of detailed minutes, but a comprehensive and fair record of public input must be included in scoping reports and Environmental Impact Reports. Copies of written submissions from I&APs must be submitted to the Directorate with the scoping report (e.g. in an Appendix).

7. The consultant is responsible for ensuring that the issues raised by I&APs are addressed in the EIA process in an objective manner. Where issues are not addressed the reasons for this must be provided.
8. The consultant is responsible for providing clear information about the public participation process, their role, commenting opportunities during the process and timeframes.
9. During the process consultants must be objective information professionals. They must not play the role of a service professional acting in the interest of the investors or client.

### **Relevant environmental authority**

10. The key responsibility of the relevant authority is that of decision-making which must be based on the consideration of all relevant factors.
11. The authority is responsible for reviewing the public participation process that is proposed in the Plan of Study for Scoping. This review must be aimed at establishing that adequate measures are being proposed in relation to the following:
  - Identification of I&APs parties;
  - Opportunities for consultation with I&APs throughout the process;
  - Provision for language and cultural requirements of I&APs.
12. The relevant authority is responsible for taking the outputs from the public participation process into account in the decision-making process:
  - Concerns raised by I&APs about environmental impact;
  - Concerns raised by I&APs about the EIA process itself;
  - Local knowledge about environmental conditions and impacts.
13. The relevant authority is responsible for showing how the outputs from the public participation process have been taken into account in the decision-making process. This must be included as part of the "Record of Decision".
14. The relevant authority is responsible for making informed decisions about development proposals which are in the interests of the environment as reflected in the principles of the National Environmental Management Act (NEMA) and the policy and strategic objectives of the Department of Environmental and Cultural Affairs and Sport.

15. The relevant authority is responsible for making decisions in an objective and independent manner. This means that decisions cannot be made on the basis of individual interests – all factors and impacts must be taken into account.

### **Interested and Affected Parties (I&APs)**

Interested and affected parties may elect to participate in an EIA process. This is a matter of free choice.

16. IA&Ps are responsible for choosing whether to take the opportunity to participate in the public participation process.
17. I&APs may choose to comment, provide information and other input that will be of value to the EIA process.
18. I&APs are not responsible for making decisions about a development, that is, they are not decision-makers.
19. I&APs can influence the outcome of the EIA process (e.g. change in project layout or design) or the outcome of the decision about a project through taking part in the public participation process.
20. IA&Ps are responsible for providing input into the EIA process as agreed in the context of the EIA process timeframe/programme.
21. I&APs are responsible for raising concerns about the project and/or the EIA process timeously (i.e. in accordance with the agreed EIA programme).
22. Representatives of organisations are responsible for keeping their membership informed about meetings held, issues discussed, findings reported (i.e. the outcome of the respective stages of the EIA process).

#### **1.1 Extent of public participation**

As a basic principle, the level of public participation should be based on the extent of the envisaged impact (not extent of development). The following criteria should be considered in determining the *extent of impact*:

- Ecological / Biophysical attributes
- Social Issues
- The extent of visual sensitivity or visual exposure.
- Cumulative impacts.

As a guideline to the *level of public participation* that should be required (based on the extent of impacts), the following norms could be used:

**Table 1 : Guidelines for determining the level of public participation**

<b>Extent of Impact</b>	<b>Description of the Extent of Impacts</b>	<b>Level of advertising</b>	<b>Possible Participation mechanisms</b>
National/ International	Impacts of international and/or national significance	<ul style="list-style-type: none"> <li>• National newspapers and Government Gazette</li> <li>• Web site, if available</li> </ul>	<ul style="list-style-type: none"> <li>• Public meetings</li> <li>• Conference</li> <li>• Open Day</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>
Regional	Impacts effecting a number of towns or more than one local authority area.	<ul style="list-style-type: none"> <li>• Regional and local town newspapers.</li> <li>• Notice on site</li> <li>• Notice in libraries and/or community halls</li> <li>• Web site if available.</li> </ul>	<ul style="list-style-type: none"> <li>• Public meetings</li> <li>• Open days</li> <li>• Workshops/focus groups</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. NGOs/CBOs, parliamentary Standing Committees)</li> </ul>

<b>Extent of Impact</b>	<b>Description of the Extent of Impacts</b>	<b>Level of advertising</b>	<b>Possible Participation mechanisms</b>
Local	Limited to a local authority area.	<ul style="list-style-type: none"> <li>• Local newspapers/radio programmes.</li> <li>• Written notice to neighbours as well as others with user rights on site and property.</li> <li>• Notice on site and/or community notice board where appropriate.</li> <li>• Web site if available.</li> </ul>	<ul style="list-style-type: none"> <li>• Public meetings</li> <li>• Open days</li> <li>• Workshops and/or focus groups</li> <li>• Press releases</li> <li>• Questionnaires or opinion surveys</li> </ul>
Area	Limited to a localised area within a town (e.g. a suburb) or rural area (e.g. an agricultural area extending over several properties).	<ul style="list-style-type: none"> <li>• Local and community newspapers/radio programmes.</li> <li>• Written notice to neighbours as well as others with user rights on site and property.</li> <li>• Written notice to local community and environmental organisations.</li> <li>• Notice on site.</li> <li>• Notice on community notice board where appropriate.</li> </ul>	<ul style="list-style-type: none"> <li>• Public meetings</li> <li>• Open days</li> <li>• Workshops and/or focus groups</li> <li>• Interviews or discussions with NGOs and CBOs</li> </ul>
Site specific (In situ)	Limited to an individual property	<ul style="list-style-type: none"> <li>• Written notice to neighbours as well as other parties that may have rights of use.</li> <li>• Notice on site optional.</li> <li>• Notice in community newspaper.</li> </ul>	<ul style="list-style-type: none"> <li>• Workshop/meetings with neighbours, local CBOs and NGOs.</li> </ul>

1. A range of participation mechanisms have been identified in the above table. The public participation consultant must select or develop additional mechanisms as deemed appropriate to the project. This means that DECAS does not expect every mechanism to be applied in all circumstances.

2. Any deviation from the above-mentioned guidelines must be motivated.
3. In addition to the above, the public participation consultant must ensuring the following:
  - That the language needs of the participants are addressed through providing translation services;
  - That provision is made for illiterate participants.

## **1.2 Notification and Commenting periods**

1. The comment period closing date must be clearly stipulated in an advert.
2. A 10 day (working days) notification period is the accepted norm for a public meeting.
3. Commenting periods must be clearly indicated – a 21-day period from notification is the accepted norm.

## **2 Stages of the EIA Process**

The public participation process, including advertising must be discussed with and accepted by the relevant environmental authority.

### **2.1 Application and Initial Scoping**

1. The proponent is responsible for completing an application form and scoping checklist when initiating an application in terms of the EIA Regulations. At this stage of the process, the proponent is expected to have informed neighbours and relevant authorities about the project. This information must be provided in the checklist.
2. In the event that the Directorate considers that an authorisation may be appropriate, on the basis of the checklist, the Directorate may nonetheless require that the proponent advertise this fact before granting the final Record of Decision to this effect.
3. The Directorate will make every effort to facilitate the streamlining of the advertising process where other legislation (e.g. land use rezoning) requires advertising. This will only be possible in the case of projects where an authorization on the basis of the checklist is being considered.

### **2.2 Scoping**

1. The public participation process must be described in the Plan of Study for Scoping in accordance with the Directorate's guideline on the contents for the Plan of Study for Scoping of June 2001.
2. Public participation in the scoping process must include the following, as a minimum:

- Identification of I&APs and notification to these parties about the proposed project. This must include the placement of an advertisement in the local media in accordance with the guidelines given in the DEA&T Guideline Document on the EIA Regulations dated April 1998. Other methods of notification can also be used such as placing notices in community halls and local libraries, displaying a notice board on the site, and notifying local community and other organisations in the area.
  - An opportunity for I&APs to put forward their concerns through any one or combination of the following or any other appropriate means:
    - Written submissions
    - Meetings/workshops
    - Open days
  - An opportunity for I&APs to provide information or knowledge that may contribute to the EIA process.
  - An opportunity for I&APs to comment on the scoping report.
3. The information on the public participation process that is provided in the scoping report must meet the specifications of the national Department of Environmental Affairs and Tourism (DEA&T) Guideline Document on the EIA Regulations dated April 1998.
  4. When a draft scoping report is substantially revised (new issues or changed proposals) as a result of public comment the revised draft should be made available for public comment before submission to the Directorate. The accepted norm for commenting periods will apply. The revised draft scoping report together with the comments from I&APs must be submitted to the Directorate.

### **2.3 EIA**

1. The public participation process must continue into the EIA phase for those projects that progress to this stage. This means that public participation does not end with scoping.
2. Public participation in the EIA phase must include at least the following:
  - Feedback to I&APs on the findings of the EIA as research progresses (e.g. as the results of specialist studies become available);
  - An opportunity for I&APs to query and/or comment on the findings;
  - Feedback to I&APs on their comments and queries and how these are being addressed;

- An opportunity for I&APs to comment on the draft Environmental Impact Report.
3. A record of public involvement must be included in the Environmental Impact Report. This must detail the manner in which the issues and concerns of I&APs have been addressed, including a description of changes in the project design and mitigation measures that have been recommended in response to public concerns.

### **3 Advertising**

1. The requirements of the DEA&T Guideline document dated April 1998 must be met with regard to advertising. These are set out in Section 3.2.1.4.
2. This Department may make exceptions to advertising criteria depending on the merits of individual cases. The applicant shall provide motivation for such exception in writing. This Department must document a record of decision relating to such exceptions.
3. An example of the elements and format of an advertisement is appended.
4. Newspaper advertisements should be placed where a reader would typically expect to find such notifications (e.g. in the classified section of the newspaper under an appropriate sub-section or in the main body of the newspaper).
5. Advertisements should be forwarded to local radio stations, particularly where there are no community newspapers or where the level of literacy is likely to be low.
6. The properties concerned shall also be designated in advertisements by their commonly used farm names or street addresses as well as their formal property numbers (when appropriate). The physical address of the property must also be given.
7. The size of advertisement/s on site should be at least 60cm long and 42cm wide with lettering being a minimum of 6mm in height and shall be placed so that they are easily accessible and visible to persons who pass by or use the site.
8. It is the responsibility of the applicant to, where possible, ensure that the on-site advertisement/s remain visible and legible from the time of the first advertisement in the newspaper/s, the beginning of the EIA process, until such time that the EIA process has been completed.
9. The costs of advertising are to be borne by the developer/proponent.
10. Evidence of appropriate advertising shall be provided in the Scoping Report.
11. Advertising can be combined with requirements for advertising under other legislation, provided that timing and nature of information in the advertisement is appropriate for all the legislation concerned. This can only be achieved where such advertising is not

directly related to the final/pending decision (i.e. raising objections against a pending decision as in the case of advertisements for rezoning). The reason for this is that advertising of the public participation process in terms of the EIA Regulations occurs at the start of the EIA process, not at the end. Consequently, it is likely that it will only be possible to streamline advertising processes where authorisation on the basis of the checklist is applicable.

12. Where advertising is combined, clear notice of the legislation in terms of which the advertisement is being placed must be given together with details of the timeframe for responses and where responses must be sent.

**ELEMENTS OF AN ADVERTISEMENT**

- Legislative requirement for advertising
- Nature of activity
- Location
- Size
- Proponent and contact person's telephone and postal address
- Details of proposed public meetings or related events
- Deadline date for receiving responses

21 days is the accepted norm for the time to allow for responses to the advertisements to be received. It could be longer if the impacts are substantial.

**PROPOSED STANDARD FORMAT FOR ADVERTISEMENT**

Notice is given in terms of Regulation 4(6) of the regulations published in Government Notice No. R1183 under Section 26 of the Environment Conservation Act (Act No. 73 of 1989), of intent to carry out the following activity:

- Description of proposed activity
- Location
- Extent (if appropriate)
- Name of Proponent
- Name of contact/consultant with telephone and postal details
- Date and details of intended public meetings (if appropriate)
- Closing date for responses from I&APs

In order to ensure that you are identified as an interested and/or affected party, please submit your name, contact information and interest in the matter to the contact person given above on or before *date*.

A suggested format for combined notice of rezoning/change of land use in terms of Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985) and Environmental Conservation Act, 1989 (Act 73 of 1989)

*Name\_of\_Local\_Authority:*

Notice No. *XX/199X*

Rezoning of Erf *XXX*, *Town\_name*

Notice is hereby given in terms of section *XX(XX)(x)* of Ordinance 15 of 1985 that the Council has received an application for the rezoning of erf/farm *XXX*, *Town\_name* from *current\_zonation* to *new\_zonation*.

Full particulars lie open for inspection during normal office hours in the office of the undersigned. Any objections must be lodged in writing with the undersigned within 21 days of this notice – *name surname*, Town Clerk, *Town\_name*

In addition:

Notice is given in terms of Regulation 4(6) of the Regulations published by Government Notice No. R1183 under Section 26 of the Environment Conservation Act, 1989 (Act No. 73 of 1989), of intent to carry out the above mentioned change in land use:

- The property is located at *Location\_of\_Property*
- The extent of the property is *XXX* ha
- The proponent is *name\_of\_proponent*
- The environmental consultant (if one has been appointed) who is contracted to prepare the application is *name\_of\_consultant*

The application that has been made in terms of Regulation 4(6) is available for inspection during normal office hours in the office of the undersigned. Any objections must be lodged in writing with the undersigned or with the environmental consultant within 21 days of this notice.