



A Guide to Effective Engagement in Environmental Impact Assessment Processes

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Abbreviations

BAR:	Basic Assessment Report
BID:	Background Information Document
DFFE:	Department of Forestry, Fisheries, and the Environment
DMRE:	Department of Minerals and Energy
DoL:	Department of Labour
EAP:	Environmental Assessment Practitioner
EAPASA:	Environmental Assessment Practitioners Association of South Africa
EIA:	Environmental Impact Assessment
EIR:	Environmental Impact Report
EMF:	Environmental Management Framework
EMPr:	Environmental Management Programme
FAQ:	Frequently asked questions
IAIA:	International Association for Impact Assessment
I&APs:	Interested and affected parties
MPRDA:	Minerals and Petroleum Resources Development Act
NEMA:	National Environmental Management Act
NGO:	Non-Government Organisation
NPO:	Non-Profit Organisation
SDF:	Spatial Development Framework
SACNASP:	South Africa Council for Natural Scientific Professions
SANBI:	South African National Botanical Institute

Introduction

This Guideline has been drafted by BirdLife South Africa's Policy and Advocacy Team to assist bird clubs, members, and anyone else who is interested in how to effectively participate in Environmental Impact Assessment (EIA) processes. It provides an overview of why participation in EIA processes is important, relevant legal requirements, and what one ought to expect from a well-managed public engagement process. The Guideline is one of three documents you may find useful. The other two (also available on BirdLife South Africa's website) are:

- The EIA Checklist for Public Engagement
- Frequently Asked Questions about the EIA process.

BirdLife South Africa does not have the resources to review and comment on EIAs for every development proposal that may affect important bird species or habitats. Our intention in producing these guidelines is to capacitate our members to comment on and be involved in EIAs in the areas where they live. In this way members can assist in a solution orientated approach to ensuring that important habitats for birds are not damaged or destroyed by development projects.

The meaning and importance of public participation

The involvement of people in decisions that affect their well-being and livelihoods is core to any democratic form of governance. In the context of environmental impact assessment (EIA), the intention behind such involvement is to inform members of the public about a proposed development and engage them in identifying potential problems and opportunities. The results of the public engagement process must be considered in deciding whether a project should be allowed, and what measures should be put in place to protect the environment.

The "public", in respect of the EIA process, includes any individual or group of individuals, organisations or entities with an interest in the outcome of a decision. Another word that may be used to refer to members of the public in the EIA process, is "stakeholder". A stakeholder may be affected, either directly or indirectly, by decision outcomes. Public participation can, therefore, be defined as:

The involvement of individuals and groups that are interested in, and/or positively or negatively affected by a proposed intervention (project, plan, policy or programme)

(King et al, 2019).

Whilst the need for and extent of public consultation is governed by minimum requirements in law, it is also critical for companies to earn what is termed a 'social licence to operate'. Consultation activities undertaken at the EIA stage can lay the foundation for ongoing relations between companies and communities, determining whether future interactions will be constructive, and mutually beneficial, or beleaguered by strife, complaints and antagonism. A poorly designed and badly managed consultation process erodes trust, undermines the potential for a company to gain a social licence to operate, and can be a reason to appeal against the approval of a development proposal.

The legal framework for public participation

South Africa's National Environmental Management Act (NEMA) (107 of 1998) affords everyone a right to be informed about and participate in decisions that affect the environment. The Act specifically requires that anyone who is interested in or affected by a decision, must be given an opportunity to influence those decisions. Public participation is, therefore, a mandatory requirement of the EIA process. No permits may be issued, or projects authorised in terms of NEMA, unless there has been consultation with the affected members of the public. There is also no legal avenue by which a project proponent can be exempted from the requirement to undertake a public participation process (PPP) for the purposes of an EIA authorisation and any associated permit application processes. The approach to the PPP must be guided by the principles and procedural requirements that are set out in relevant South African laws. These include the Constitution, national laws and statutes, and specific regulations in terms of these laws and statutes.

The Constitution

Included in the Bill of Rights in the South African Constitution is section 24 referring to the environment. Accordingly, all persons in South Africa have a *fundamental right* to an

environment that is not detrimental to their health or well being. The same section imposes a *duty* on government to protect the environment for the benefit of present and future generations through "reasonable legislative and other measures". Section 24 specifies that these measures must be aimed at:

- preventing pollution and ecological degradation
- promoting conservation
- securing ecologically sustainable development and use of natural resources, while promoting justifiable economic and social development.

There are several other important Constitutional rights, relevant to PPP in the EIA process, including:

- Right of access to information (section 32 of the Bill of Rights)
- Right to fair administrative action (section 33 of the Bill of Rights)
- Right to protest (section 17 of the Bill of Rights)
- Right of access to the courts (section 34 of the Bill of Rights).

The National Environmental Management Act

Chapter 1 of the NEMA includes a set of principles that are intended to support the section 24 Environmental Right in the Constitution and guide environmental decisions. These principles include the following:

- The environment is held by government in public trust, it must be protected as our common heritage, and use of environmental resources must serve the public interest.
- Negative impacts on the environment and on people's environmental rights must be anticipated and prevented, and only if they cannot be prevented, should they be minimised or remedied.
- Environmental management must place people and their needs at the forefront of its concern, and serve their physical, psychological, developmental, cultural and social interests.
- A risk averse and cautious approach must be applied, which takes into account the limits of current knowledge about the consequences of decisions and actions.
- Participation of all interested and affected parties must be promoted and all people must have the opportunity to develop the understanding, skills, and capacity necessary for achieving equitable and effective participation.

- Participation by vulnerable and disadvantaged persons must be ensured.
- People's capacity to be involved in EIAs must be developed if it does not exist.

The principles form the basis of legitimate expectations on the part of members of the public to be proactively consulted and be given fair and reasonable opportunity to participate in the EIA. If a decision is implemented that has negative environmental or social consequences, and affected individuals or communities have not been adequately consulted, the final decision is can be challenged in the courts.

In addition to NEMA and the EIA requirements, licences and permits must also be applied for in terms of several laws that govern specific resources or activities. These include, among other things, water use, air emissions, change in land-use, waste generation/disposal, activities in protected areas and the coastal zone, exploration and mining, and heritage resources. Applications must be undertaken separately but concurrently with the EIA process. Public consultation is a cross-cutting requirement: it is a basic principle of fair administrative processes and decision-making. Consequently, the principles listed above apply to all environmental decision-making processes. See Box 1 for a list of key statutes relevant to environmental protection.

Box 1: Important statutes for environmental protection

- National Environmental Management Act, 107 of 1998
- National Water Act, 36 of 1998
- National Environmental Management: Waste Act, 59 of 2008 (Waste Act)
- National Environmental Management: Air Quality Act, 39 of 2004 (Air Quality Act)
- National Environmental Management: Biodiversity Act, 10 of 2004 (Biodiversity Act)
- National Environmental Management: Integrated Coastal Management Act, 24 of 2008 (Coastal Management Act)
- National Environmental Management: Protected Areas Act, 57 of 2003 (Protected Areas Act).
- Water Services Act, 108 of 1997;
- National Forests Act, 84 of 1998;
- National Heritage Resources Act, 25 of 1999;
- Marine Living Resources Act, 18 of 1998;
- Mineral and Petroleum Resources Development Act, 28 of 2002
- Spatial Planning and Land-Use Management Act, 16 of 2013

The EIA Regulations

Section 24 of NEMA allocates responsibility to the DFFE to identify a list of activities that could have a detrimental affect on the environment and require authorisation. These activities are divided into two categories:

- Activities that require a Basic Assessment
- Activities that require Scoping and an Environmental Impact Report

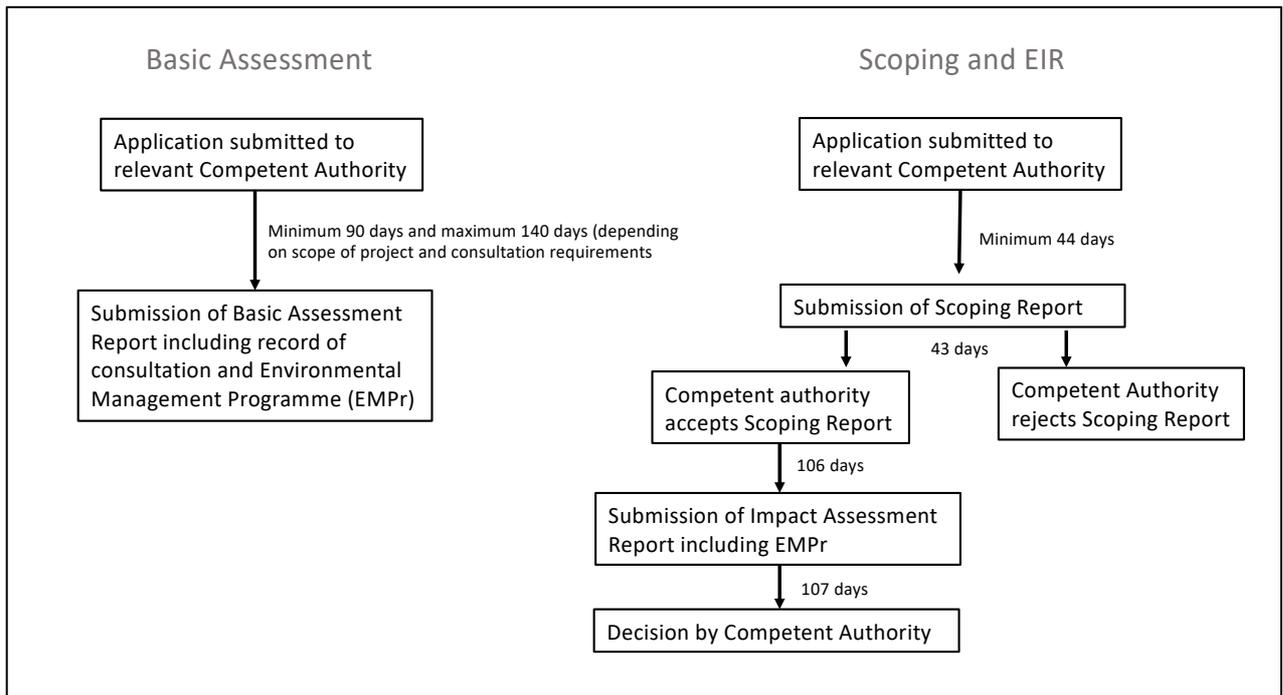
The key distinctions between the two groupings of activities are listed in the table below.

Basic Assessment Process	Scoping and EIR
Relative small-scale activities Anticipated to have familiar and more easily managed impacts Activities anticipated to be less complex Shorter and simpler EIA process prescribed	Larger, more intensive activities Anticipated to have more severe and significant impacts Activities anticipated to be more complex Longer and more detailed EIA process prescribed divided into two distinct phases: Scoping (issues identification) and EIA (issued investigation)

More than one activity can apply to a single development project and all applicable activities must be covered in an EIA application. A development or project proposal can be 'upgraded' from a Basic Assessment to a Scoping/EIR. This may be deemed necessary where the development, albeit relatively small, is proposed in a particularly sensitive area, or if a project/technology is potentially harmful or controversial. Important to not is that it is not permissible that an activity requiring a Scoping/EIR can be 'downgraded'.

The Basic Assessment process for smaller and less impactful developments is intended to be quicker and provide a lower level of detail about the environmental impacts, compared to the Scoping and EIR process.

An overview of the stages and timescales is provided below and a more detailed description of the key steps in the Basic Assessment and Scoping and EIA processes is included on page 12 to 16 of this guideline.



Key role players

There are a range of people and entities that are involved in EIA, in either a formal or informal capacity. Defined roles (as described in NEMA) are allocated to the Applicant, Competent Authorities, Environmental Assessment Practitioners (EAPs), and Interested and Affected Parties (I&APs).

The Applicant

The applicant refers to the person or entity that intends to undertake an activity listed in the EIA Regulations. Authorisation is applied for in the name of the applicant and any permit/licence is granted to the applicant. An authorisation can be transferred to another person or entity, but only with express permission from the Competent Authority. If there is a change in ownership of a project, an application must be made in terms of section 24E of NEMA requesting an amendment to the application to reflect the change in ownership. This ensures that the subsequent holder of an environmental authorisation is bound by the conditions set out in the authorisation.

Competent Authorities

The organ of state allocated the task of evaluating the environmental impact of an activity, and deciding whether to authorise the activity, is called the *Competent Authority*. The schedules to the South Africa Constitution categorise the “Environment” as a competency which ought to be jointly administered by national and provincial government. In line with this categorisation, most decisions are allocated to the provincial departments responsible for the environment. The current titles of these departments are listed in the table below.

Province	Department responsible for environmental affairs
KwaZulu Natal	Department of Agriculture, Environmental Affairs and Rural Development
Limpopo	Department of Economic Development, Environment and Tourism
Mpumalanga	Department of Economic Development, Environment and Tourism
Northern Province	Department of Environmental Affairs and Nature Conservation
North West	Department of Economic Development, Environment, Conservation and Tourism
Eastern Cape	Department of Economic Development and Environmental Affairs
Western Cape	Department of Environmental Affairs and Development Planning
Gauteng	Department of Agriculture and Rural Development
Free State	Department of Economic Development, Tourism and Environmental Affairs

Each provincial department employs a number of case officers to review EIA applications and draft records of decision. Competent Authorities are civil servants and should be available to members of the public to deal with specific queries or complaints.

Notwithstanding that most EIA decisions are made by the provincial Competent Authorities, the National Department of Forestry, Fisheries and the Environment (DFFE) still has an important role to play, in respect of the following:

- Overseeing the respective provincial departments and guiding these departments in how to implement the environmental laws

- Taking decisions at a national level when activities have national/international significance, or when they span provincial boundaries

In addition to the DFFE and provincial competent authorities, there are other departments and government institutions that take decisions that affect the environment, either in terms of specific environmental management statutes (as listed in Box 1) or other relevant statutes, regulations or by-laws. These will include, among others, the following:

- Department of Water and Sanitation (DWS);
- Department of Mineral Resources and Energy (DMRE)
- South African Heritage Resources Agency (SAHRA);
- Department of Agriculture (DoA)
- South African National Biodiversity Institute (SANBI)
- South African National Parks (SANParks)
- South African Maritime Safety Authority (SAMSA)
- South African Civil Aviation Authority (CAA)
- Metropolitan, district and local municipalities (responsible for planning, air pollution permits and implementing local/district by-laws).

It is important that all responsible authorities are consulted as part of the EIA process, and that any related permits are applied for in conjunction with the EIA authorisation. As indicated previously, these authorities are also civil servants and should be contactable by members of the public who may have relevant queries or concerns.

Environmental Assessment Practitioners

An applicant or project developer usually appoints an Environmental Assessment Practitioner (EAP) to undertake the EIA. An EAP is an external consultant who is registered with the Environmental Assessment Practitioners Association of South Africa (EAPASA). The role of the EAP as well as grounds for disqualification are clearly set out in Regulations 13 and 14 of the EIA Regulations (see link in Resources section). Accordingly the EAP must be suitably qualified, and may not withhold any relevant information from members of the public or the Competent Authority

Work on an application can be undertaken by someone other than a registered EAP, but any final outputs still need to be reviewed and signed off by a registered EAP. A list of registered EAPs is available on EAPASA's website (see link in Resources section). Here you can also

access the "Rule Book" for EAPs which prescribes the duties of the EAP and the moral/ethical codes that practitioners must uphold. If an EAP is clearly not abiding by the law or the EAPASA rules, a complaint can be laid against that EAP with EAPASA. In addition, if the Competent Authority can also be notified if you suspect that an EAP is not complying with the EIA Regulations. In such instances the Competent Authority is legally obliged, in terms of Regulation 14, to investigate the allegation promptly.

Specialists

EAPs are usually generalists who ought to have good organisational skills and a thorough understanding of EIA procedures and associated public participation requirements. When it comes to impacts on specific species, or impacts related to a particular aspect of a project/technology, subject experts or specialists must be appointed by the EAP to draft a separate report.

According to the list of definitions in the EIA Regulations, a specialist is "a person that is generally recognised within the scientific community as having the capability of undertaking, in conformance with generally recognised scientific principles". A natural scientist doing work that will feed into an EIA must be registered as a Professional Natural Scientist (PrSciNat) with the South African Council for Natural Scientific Professions (SACNASP), and have a registration number. A list of registered natural scientists is available on SACNASP's website (see link in Resources section).

The identification and scope of the specialist studies ought to be guided by the public participation process. Another important requirement for specialists in the natural sciences is to adhere to the Protocols gazetted by the DFFE (see link in Resources section), and the Guidelines published by the South African National Biodiversity Institute (SANBI) and available on their website (see link in Resources section). These protocols refer to the Screening Tool which is described in Box 2.

Depending on the size of the project and sensitivity of the affected environment, there may be just one or two, or dozens of specialist studies. These may range across various branches of ecology, economics, aesthetics, heritage, sociology, archaeology, geophysics and seismicity, ground- and surface water, health and safety, toxicology, atmospheric science, marine science, or any other feature of the environment that may be affected by the proposal.

Box 2: The Screening Tool

The Screening Tool is an online GIS database of spatial environmental information. The tool allows one to input details about the type of project and its location. The Tool then generates maps depicting the environmental sensitivities of the site. There are nine main themes, including:

- Agriculture
- Avifauna
- Biodiversity (includes Plant Species, Animal Species, Aquatic and Terrestrial)
- Noise
- Defence
- Civil Aviation

For each environmental theme, the site is scored as either *Very High* sensitivity, *High* sensitivity, *Medium* sensitivity, or *Low* sensitivity. The sensitivity reports have links to relevant specialist “protocols”. For example, if the plant species theme has a *Very High* or a *High* sensitivity, a specialist needs to compile a Terrestrial Plant Species Specialist Assessment Report. If the plant species theme has a *Medium* sensitivity rating, then a *Medium* Sensitivity Species of Conservation Concern Confirmation report is required. If the Plant Species theme is *Low* sensitivity, then a Terrestrial Plant Species Compliance Statement is required. The protocols indicate the type of specialist that should be responsible for producing the reports and the minimum requirements for report content. The tool also identifies areas of special interest - industrial development zones, protected areas, critical biodiversity areas, or areas designated as sensitive in municipal EMFs or bio-regional plans.

An EAP is required to apply the screening tool, and generate the relevant maps and associated reports, for every project that requires an environmental authorisation. Important to note that use of the web-based screening tool does not replace the need for EAPs and specialists to also visit the site for the purpose of “ground-truthing”. Each of the protocols linked to the tool prescribes that the appointed specialist/experts go to the site and either confirm or modify the sensitivity rating generated by the tool. The tool is, therefore, intended to guide the environmental sensitivities for a development, rather than provide a definitive representation of actual site conditions.

Use of the screening tool is not limited to EAPs. Anyone with a smart device and access to the internet can go to DFFE’s website and access the tool. The associated protocols are also on the DFFE website (see Resources section for links to these websites)

Interested and affected parties

An interested and affected party (I&AP) is any person, group or persons or organisation interested in or affected by an activity. The questions that should guide an EAP in deciding who to inform about a project include the following:

- Who may be directly affected?
- Who may be indirectly affected (spatially or temporally)?
- Whose activities/interests may be affected?
- Which organisations represent the interests of non-human species/ characteristics of a development site?
- Who may have knowledge or expertise relevant to the application?
- Who may be vulnerable or under-represented?

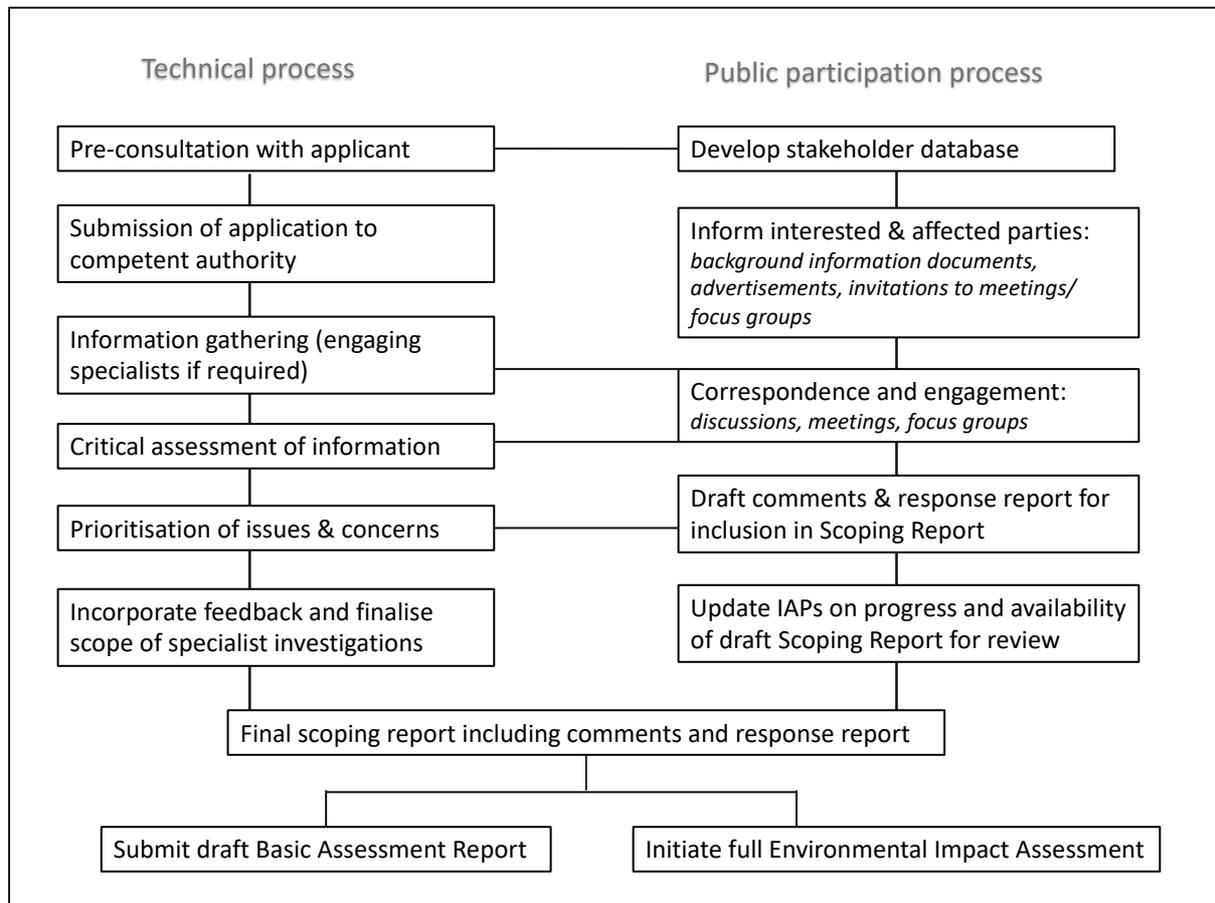
The EIA Regulations distinguish registered I&APs as those who register their interest with the EAP, ideally as early as possible in the process. Once an I&AP is registered, there is greater onus on the EAP to inform and involve them in the application process. There should be no cut-off time by which anyone registers as an I&AP. Any member of the public is entitled to receive information at any time, even if not registered.

The EIA process

Every EIA must include the following generic procedures/stages:

- *Screening*: to identify the scope and level of detail of the assessment (with the aid of the Screening Tool - see Box 2 above).
- *Scoping*: to consult with interested and affected parties in order to identify issues and concerns
- *Investigating*: to gather more information about the potential impacts
- *Assessing*: to determine and evaluate the significance of the impacts
- *Reporting*: to feedback to the I&APs and the Competent Authorities on the findings of the investigation and assessment
- *Decision-making*: to decide on whether authorisation should be issued based on the reports submitted and to convey the conditions of the authorisation.

Whilst public participation should be a feature of the entire process, most of the consultation activities take place as part of the Scoping stage of an EIA. The diagram below illustrates the relationship between the technical process and the public participation process.



The following tabular summary lists the detailed steps and timing for a Basic Assessment and for a Scoping and EIR, as specified in the EIA Regulations.

Basic Assessment (BA)	
Prescribed timeframe	Minimum: 197 days Maximum: 247 days (50 additional days if a BA report needs to be revised and redistributed).
Screening of the application	The appointed EAP must apply the DFFE GIS based screening tool which gives a preliminary overview of sensitive features on a site. The screening report must be downloaded and included in the application to the Competent Authority.

Basic Assessment (BA)	
Submission of the application	The EAP must complete an application form, including relevant screening reports, and submit it to the Competent Authority who then has 10 days to review the application and allocate a case officer and reference number.
Involvement of I&APs	The application must be advertised according to the requirements in the Regulations and a register of I&APs must be created.
Public consultation	Appropriate consultation activities to be undertaken. These must include advertising and may include a meeting/workshop/open day. The issues raised during public consultation should guide and focus the impact assessment on issues that are relevant and important to stakeholders.
Identification and assessment of potential impacts	The impact identification and assessment process must be conducted following standard protocols contained in the EIA Regulations (Regulation 19 and Appendix 1) and associated Guidelines available under the documents tab on DFFE's website (see Resource section for link). Specialist/expert studies may or may not be required depending on the location and types of issues associated with the project. Identification of issues is aided by input from I&APs, and the application of the Screening Tool (see Box 2). If outcomes of the Screening Tool indicates a sensitive area/species, this must be verified/ground-truthed, and the requisite specialist studies must follow the requirements of the DFFE Species Protocols and the SANBI Guideline (see Resources section). Any deviations from this prescribed process must be justified in writing to the Competent Authority, and such justification must also be made available to I&APs.
Making the draft BA report available for comment	A draft BA report must be made available to all registered I&APs for a 30-day comment period (which may not include public holidays or take place over the festive season). The EAP must respond to comments raised and make amendments to the report as required.
Finalisation and submission of the BA report	Once a draft BA Report has been finalised, it must be submitted to the authorities within 90 days after the application was made. The final report must include a comprehensive record of the public participation process including a record of comments/concerns and how these were addressed in the final version of the report. Failure to submit within 90 days invalidates the application.
Review of the BA report	The case officer (Competent Authority), who must also be registered with EAPASA, must acknowledge receipt of the BA report, following which they have 107 days to review the report. If corrections are required, 50 extra days may be added to the timeframe for the report to be revised and redistributed.
Issuing of a decision	Within 5 days of having reached a decision the case officer must notify the applicant and provide reasons for the decision. The applicant must also be notified of their right to appeal a decision.
Informing I&APs of a decision	Within 14 days of a decision, I&APs must be informed by the EAP of the outcome of the decision, including details on how to appeal.

Basic Assessment (BA)

The tight timeframe for the Basic Assessment process means that the EAP and other members of the project team should plan ahead, before to the submission of the application. There is no legal impediment to consultation and assessment activities being initiated prior to the submission of the formal application, particularly if longer times are required to engage stakeholders, or specialist work needs to be undertaken over more than one season.

Scoping and EIR

Prescribed timeframe	<p>Minimum: 300 days</p> <p>Maximum: 350 days (50 additional days if a S&EIR report needs to be revised and redistributed)</p>
Screening of the application	<p>The appointed EAP must apply the DFFE GIS based screening tool which gives a preliminary overview of sensitive features on a site. The screening verification report must be downloaded and included with the application. As per the Basic Assessment requirements, if outcomes of the Screening Tool indicates a sensitive area/species, this must be verified/ground-truthed, and the scope of work for requisite specialist studies must be described, following the requirements of the DFFE Species Protocols and the SANBI Guideline (see Resources section). Any deviations from this prescribed process must be justified in writing to the Competent Authority, and such justification must also be made available to I&APs.</p>
Submission of the application	<p>The EAP must complete a comprehensive application form, including relevant screening reports, and submit it to the Competent Authority who then has 10 days to review the application and allocate a case officer and a reference number.</p>
Involvement of I&APs	<p>The application must be advertised according to the requirements in the Regulations and a register of I&APs must be created.</p>
Public consultation	<p>Appropriate consultation activities to be undertaken. These must include advertising and should include a meeting/workshop/open day/small group meetings/house visits/one-on-one discussions.</p>
Preparation of the draft Scoping Report	<p>The Scoping Report must be prepared based on the contents specified in Appendix 2 of the EIA Regulations. These include:</p> <ul style="list-style-type: none"> • Investigation of alternatives for achieving the objectives of the proposed activity, including the no-go alternative. • Ensuring that all significant issues raised during the public participation process, identified in the screening process, sites visits and consultation with specialists have been identified, recorded and agreed.

Scoping and EIR	
	<ul style="list-style-type: none"> • The roles and responsibilities of specialists in the process have been clarified and terms of reference agreed. • All participants have agreed on the process to be followed. • A plan of study for the EIA has been devised and agreed.
Making the draft Scoping report available for comment	The draft Scoping report, including the plan of study for EIA, must be made available to all registered I&APs for a 30-day comment period (which may not include public holidays or take place over the festive season, unless exemption for this requirement has been granted by the Competent Authority).
Finalisation and submission of the Scoping report	Once a draft Scoping report has been finalised, it must be submitted to the authorities within 44 days after the application was made. The final report must include a comprehensive record of the public participation process including a record of comments/concerns and how these will be taken forward in the EIA. The plan of study for the EIA must also be included as well as the identification and timing for concurrent permit applications.
Review of the report	The case officer has 43 days after receipt of the report to review the contents and accept or decline the report. The process may move forward to the EIA phase only if the Scoping Report is approved. If not approved, a new application must be submitted.
Assessment of potential impacts	The assessment must be conducted following standard protocols contained in the EIA Regulations (Appendix 3) and associated Guidelines available under the documents tab on DFFE's website (see Resources section) Specialists should be involved, given that a S&EIR refers to larger and more impactful types of developments. The specialist studies must adhere to the scope of work approved in the Scoping Report. Such scope of work must be based on the Species Protocols and Guidelines (see Resource section) where relevant for natural sciences, and best practice guidelines and requirements for social sciences. An Environmental Management Programme (EMPr) must be developed and included in the report.
Providing feedback and making the draft EIR available for comment	The draft EIR report must be made available to all registered I&APs for no less than 30 days. At this stage of the process, a feedback meeting or workshop is generally held to explain to stakeholders how their issues have been addressed, and the outcome of the assessment of impacts.
Finalisation and submission of the EIR	The EIR must be finalised and submitted to the Competent Authority within 106 days after the Scoping Report has been finalised. The case officer must acknowledge receipt of the report within 10 days.
Review of the BA report	The case officer, who must also be registered with EAPASA, has 107 days to review the report. If corrections are required, 50 extra days may be added to the timeframe for the report to be revised and redistributed.

Scoping and EIR	
Issuing of a decision	Within 5 days of having reached a decision the case officer must notify the applicant and provide reasons for the decision. The applicant must also be notified of their right to appeal a decision.
Informing I&APs of a decision	Within 14 days of a decision, I&APs must be informed by the EAP of the outcome of the decision, including details on how to appeal.
Within the 300 day timeframe, other permit applications should also be undertaken. The onus is on both the EAP and Competent Authority to ensure that relevant local, provincial and national authorities are consulted about the process, and are made aware of the timeframes for other licences.	

Minimum requirements for public consultation

Chapter 6 of NEMA contains a list of *minimum* requirements that must be met during the public participation process. These are as follows:

- Noticeboards to be placed on site measuring at least 60cm by 42cm
- Written notice to be provided to key stakeholders
- Advertisements in the languages spoken in the area, in at least one local newspaper or an official gazette
- Consultation activities are not to be undertaken between 15 December and 5 January.
- Advertisement in one provincial or national newspaper, if the activity has an impact extending beyond the boundaries of the metro or municipality (local or district)

It is possible to simplify processes for certain developments by exempting these from some requirements when circumstances justify an exemption, for example:

- Exemption from erecting signboards announcing the EIA on sites that are remote, or inaccessible to public stakeholders;
- Exemption from not undertaking public participation activities during the December period when a development is proposed in a holiday destination where homeowners may be absent at other times of the year.

As indicated in the prior tabular summaries of detailed steps in the process, I&APs (including public stakeholders and other government departments) must be given a minimum of thirty days to comment on EIA reports (excluding public holidays and the period between 15 December and 5 January). The principle of co-operative governance contained in the

Constitution requires that any other permits that may be required (for example water use, waste disposal, heritage, air emissions, etc.) must be identified in the EIA and these application processes *must run concurrently*. Requirements for other permits are often indicative of priority issues for the EIA.

Many applicants, and some EAPs, make the mistake to think the minimum legal requirements for public participation (as listed above) will suffice for all types of projects. EAPs may also focus on the legal stipulations and discount the fundamental principles, listed on pages 3 - 4 of this Guide.

Box 4: Alternative ways to engage with I&APs

- Public gatherings (e.g.: public meetings or hearings)
- Open house (e.g., information/data displays, posters, brochures etc., at an accessible venue)
- Representative participation (e.g., focus group, citizens juries involving small groups of I&APs)
- Specialised processes (e.g., participatory rural appraisal, world cafes, deliberative forums, Samoan circles)
- Site inspections (e.g., tours, site visits, field trips)
- Electronic-assisted processes (e.g., polling, questionnaires)
- One-on-one engagement (e.g., individual meetings and interviews)
- Ongoing advisory groups (e.g., stakeholder agreement, Memorandums of understanding, social contracts)

Public consultation techniques

There are different ways that EAPs may use to engage with stakeholders, depending on the location and scale of the proposal, and the sensitivity of the affected environment. In this section of the Guide, the focus is on public meetings but there are several other techniques available to practitioners (see Box 3). There are pros and cons associated with different methods and it is up to the EAP to ensure that an appropriate method is used to ensure that the process is accessible, inclusive and transparent.

Written comments

Most often EAPs will invite I&APs to submit concerns, early in the process in response to a Background Information Document (BID). The BID ought to clearly convey the location of the proposed development, the associated activities and how the assessment process will be undertaken. It is advisable to respond at this stage with a written submission. There may be a form to complete but this should not inhibit you from sending a more comprehensive letter detailing your concerns. You may also write as often as you deem necessary, at different stages in the process. The EAP is obliged to respond and all correspondence must be included verbatim in the Scoping Report.

Your written commentary should be specific and evidence led. Avoid a NIMBY-type tone (not-in-my-backyard) and ensure that you engage with the issues in a constructive manner. If you are writing on behalf of an association or club, it is advisable to send the document, on a letterhead, as an attachment to an email. It is also possible to form a loose association of landowners and neighbours and submit a joint letter, which all involved must sign. Having made a written submission, you still ought to participate in public meetings (see below) or any other fora set up by the EAP, to acquire additional information on the one hand, but also as a means to make other stakeholders aware of your concerns and hear about their concerns.

Public meetings

A public meeting is a frequently used consultation technique in EIA processes for information sharing and gathering of issues and concerns during public participation.

Advantages of public meetings:

- Can include many people in one forum
- Everyone can hear other people's opinions and concerns
- One can be assured that everyone receives the same information from the EAP/applicant.

Disadvantages of public meetings:

- People can be excluded due to disabilities, age, gender, lack of transport, work schedules, language barriers and so forth
- Meetings may be dominated by louder individuals or disrupted by sectoral groupings
- Individual voices might not be heard, as people may be shy or reticent

- Women, elderly and the youth are often under-represented at public meetings
- The emphasis tends to be on a one-way flow of communication whereby much of the time is taken up by presentation of information, and too little time is allocated for questions and discussion
- Meetings can be long and arduous, particularly when the proceedings need to be translated in real time
- Minutes of public meetings included in Basic Assessment, Scoping or EIR reports are often “sanitised” – they do not capture the emotion, spirit or passion behind the conversations and interactions that take place at the meeting
- Often important interactions and engagements occur outside of the meeting venue or during the tea break, and these are not reflected in the formal record of proceedings.

When attending a public meeting, it is important to remember that the EAP has the responsibility to consult but also empower people to participate. At public meetings, attendees should expect the following:

- That the meeting to be scheduled at a convenient time and accessible location
- To receive information in a language you understand and can communicate in
- That the impact assessment and public consultation process is clearly explained
- Information is clearly and succinctly presented in simple, accessible language and using maps, models and photos as is appropriate
- For there to be more than one meeting if issues are not resolved, or if there is poor attendance
- For meetings to start and end on time
- For there to be clear directions and signposting to the meeting venue
- That the applicant to be present and responsive to questions
- That the landowner (if different to the applicant) be present and responsive to questions
- That there is a commitment to address questions that cannot be answered at the meeting
- That the meeting is accurately recorded and that this record be made available to attendees and others who may not have been able to attend
- That the minutes of the meeting are circulated and included in the submissions to the authorities
- For there to be clear rules of engagement which promote respect, transparency and fairness
- For the focus to be on environmental and social issues associated with the project proposal

- For people with disabilities to be catered for
- For there to be a competent facilitator (which may not be the same person as the EAP)
- For both the facilitator and EAP (if not the same person) to be entirely independent, and for the project to be presented in a manner that is objective and not intended to garner support or tacit approval
- For information to be factual, not persuasive.

A comprehensive record of all meetings as well as written comments on draft reports must be included in the submission to the Competent Authority. The EAP is obliged to respond to all matters raised and record these response.

Other avenues by which to raise concerns

Notwithstanding the NEMA principles, and a comprehensive legal framework, there are inevitably some developers, practitioners and government decision-makers that do not conduct their affairs according to what is required, from either a lawful or ethical perspective. Whilst the EIA process is intended to be a fully transparent, empowering and consultative processes, public meetings and other engagement fora are sometimes poorly managed and inadequate. The complexity of laws that govern EIAs in South Africa and the associated public participation processes, may also proved inaccessible and difficult to understand for some stakeholders. Certain people or groups may be excluded from participating, even though they may hold important local knowledge and information.

If you are unhappy with the way an EIA is being managed, there are no stipulations in the laws or EIA Regulations that prohibits you from communicating directly with the decision-makers. This is regardless of whether your complaint is either substantive (you are worried about specific impacts) or process related (you are worried about how the EIA is being managed). The reference number for the application (that must be provided by the EAP) should be quoted when contacting the relevant Competent Authority. If you submit a written complaint, with evidence to back your grievance, the case officer is obliged to respond and investigate. You can also communicate with your local municipality, your councillor and active NGOs or CBOs in the area.

Social media is another avenue by which to express concerns and raise the profile of environmental/social issues. One must also take care, however, not to attack individuals or make defamatory remarks that can undermine your efforts. Remain constructive in your

dealings, remembering that the law does provide several avenues to ensure that EIA processes and the decisions they lead to are fair and accountable.

Finally, it is important to bear in mind that public participation does not start and end with the EIA process. It may take the form of various activities including:

- Requesting basic information about a proposed project or development at any time
- Making direct contact with the Applicant to raise concerns or argue for a negotiated solution
- Signing of petitions, launching campaigns, and staging peaceful protests/demonstrations
- Appealing a decision made by the Competent Authority
- Filing a court application against a decision
- Becoming involved in inspection and monitoring activities during the construction and/or operation phase.

You may engage in one or more of these activities – each of them is an important and legitimate avenue for your opinion to be heard and for you to make a difference.

Useful resources

Please see the EIA Checklist and Frequently Asked Questions for more information on the EIA process and how to engage: <https://www.birdlife.org.za/>. The following additional resources have been referred to in this Guideline and may be useful:

The EIA Regulations

Department of Forestry, Fisheries and the Environment. EIA Regulations in terms of NEMA: https://www.dffe.gov.za/sites/default/files/legislations/nema_eia2014regulations_g38282_0.pdf

The National Appeal Regulations

Department of Forestry, Fisheries and the Environment. National Appeal Regulations: https://www.dffe.gov.za/sites/default/files/legislations/nema107of1998_national_appeal_regulations_0.pdf

Guidelines relevant to Integrated Environmental Management and the EIA process

Department of Forestry, Fisheries and the Environment. Integrated Environmental Management Guideline Series:

https://www.dffe.gov.za/documents/strategies/integrated_environmentalmanagement_eim

The Screening Tool

Department of Forestry, Fisheries and the Environment Screening Tool:

<https://screening.environment.gov.za/screeningtool/#/pages/welcome>

The Screening Tool Protocols

Department of Forestry, Fisheries and the Environment procedures for the assessment and minimum criteria for reporting on identified environmental themes:

https://www.dffe.gov.za/sites/default/files/gazetted_notices/nema_criteteriathemeidentification_environmentalauthorisations_g43855gon1150.pdf

The 'Rule Book' for Environmental Assessment Practitioners

Environmental Assessment Practitioners Association of South Africa. Rule Book for EAPs and other information about the registration requirements for EIA practitioners:

<https://eapasa.org/site/documents/>

The Register of the South African Council for Natural Scientific Professions

South African Council for Natural Scientific Professions. Register of specialists in natural scientific fields: <https://www.sacnasp.org.za/scientists>

The Guideline for the Species Protocols

South African National Biodiversity Institute. Species assessment protocols and guidelines:

<https://www.sanbi.org/news/national-protocols-and-guidelines-standardise-requirements-for-specialist-studies-in-eias/>

The South African Heritage Resources Agency

Database of the South African Heritage Resources Agency: <https://www.sahra.org.za/sahris/>.