

**PUBLIC PARTICIPATION GUIDE: HOW TO MEANINGFULLY ENGAGE IN PROSPECTING/MINING
PERMIT AND RIGHT APPLICATIONS**

PREPARED BY:

Nuleaf Planning and Environmental (Pty) Ltd



PREPARED FOR:



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EIA Specialist Company:	Nuleaf Planning and Environmental (Pty) Ltd 8A Trevor Street, Murrayfield, Pretoria, 0184
Report compiled by:	Bryony van Niekerk Tel: 074 818 9788 Email: bryony@nuleafsa.co.za Expertise: BSc Hons. EMA EAPASA Reg no: 2019/655
Report reviewed by:	Peter Velcich Tel: 082 442 0220 Email: peter@nuleafsa.co.za Tosca de Villiers Tel: 072 478 8856 Email: tosca@nuleafsa.co.za Expertise: MLARCH EAPASA Reg no: 2019/1582 SACLAP Reg. no: 20421

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GLOSSARY OF TERMS

Competent Authority:	The organ of state charged by NEMA with evaluating the environmental impact of an activity, and where appropriate, granting or refusing an environmental authorisation in respect of that activity.
Environmental authorisation:	The authorisation by a competent authority of a listed activity or specified activity in terms of NEMA.
Environmental Impact:	An Impact or Environmental Impact is the degree of change to the environment, whether desirable or undesirable, that will result from the effect of a defined activity. An Impact may be the direct or indirect consequence of the activity and may be simple or cumulative in nature.
Environmental Impact Assessment:	Systematic process of identifying, assessing, and reporting environmental impacts associated with an activity and includes basic assessment and S&EIR
Environmental Management Programme:	A legally binding working document, which stipulates environmental and socio-economic mitigation measures that, must be implemented by several responsible parties throughout the duration of the proposed project.
Registered EAP:	Environmental assessment practitioner registered with an appointed authority (EAPASA) contemplated in section 24H of the Act.

ABBREVIATIONS

BA:	Basic Assessment
BAR:	Basic Assessment Report
CA:	Competent Authority
CBA:	Critical Biodiversity Area
CMP:	Construction Management Plan
DFFE:	National Department of Forestry, Fisheries and Environment
DMRE:	National Department of Mineral Resources and Energy
DWS:	South African National Department of Water and Sanitation
EA:	Environmental Authorisation
EAPASA:	Environmental Assessment Practitioner Association of South Africa:
ECO:	Environmental Control Officer
EIA:	Environmental Impact Assessment
EIR:	Environmental Impact Report
EMPr:	Environmental Management Programme
EMS:	Environmental Management System
EO:	Environmental Officer
I&AP:	Interested and Affected Party
IEM:	Integrated Environmental Management
NEMA:	National Environmental Management Act, Act No. 107 of 1998
NEMPAA:	National Environmental Management: Protected Areas Act, Act No. 57 of 2003
NPAES:	National Protected Area Expansion strategy
OMP:	Operational Management Plan
SAHRA:	South African Heritage Resources Agency
UNESCO:	United Nations Educational, Scientific and Cultural Organization

1. INTRODUCTION

This guide aims to highlight the environmental impact assessment process and ways in which interested and affected parties, as well as local communities and landowners can meaningfully engage in the public participation process in prospecting and mining right applications. Additionally, this guide aims to give communities the tools they need to understand the laws that governs the impact assessments, mining processes and to how to protect their rights.

2. MINING RIGHTS AND PERMITS

The National Department of Mineral Resources and Energy (DMRE) is the competent authority (CA) for all prospecting and mining applications. This means that DMRE is the decision-making authority when it comes to granting or denying environmental authorisation. All applications in terms of prospecting and mining permits/rights are submitted to the DMRE.

However, the National Department of Forestry, Fisheries and Environment (DFFE) is the competent authority for all appeals submitted in terms of these prospecting/mining applications.

2.1. Stages of mining



Figure 1: Stages of mining

Table 1: Stages of mining (Legal Resources Centre. 2016. A Practical Guide for Mining-Affected Communities)

Prospecting Right	Mining Permit	Mining Right
Allows the holder to survey or investigate an area for the purpose of identifying a probable mineral deposit.	Allows the holder to conduct small-scale mining operations in an area that does not exceed 1.5 hectares.	Allows the holder to mine minerals within a certain area.
The right is valid for up to 5 years, but may be renewed once for an additional 3 years.	The permit is valid for the period specified on the permit not exceeding a period of 2 years but may be renewed for 3 times for up to one year each time.	The right is valid for specified period of up to 30 years
Typically basic assessment process	Typically basic assessment process	Typically a Full scoping and EIR
		Financial and other provisions compatible with the mining operation for environmental management and social and labour plan have to be made.

It is important to note that these different mining activities can only be undertaken if the mining company/applicant has been granted permission/authorisation from the CA.

3. ENVIRONMENTAL IMPACT ASSESSMENT PROCESS

An environmental impact assessment (EIA) is a public consultative process which is used to identify, predict and assess the potential environmental impacts (both positive and negative) of a proposed development on the receiving environment. The main purpose is to inform the decision-making process by clearly presenting adequate data. In basic terms, it is a step-by-step process used to determine how a development will affect or change the receiving environment.

The National Environmental Management Act, 1998 (Act No. 107 of 1998) (NEMA) is the framework legislation for environmental management in South Africa.

EIAs are a legislated tool (legal requirement) under the promulgation of the Environmental Impact Assessment Regulations, 2014 as amended in terms of NEMA. Within these EIA Regulations are Listing Notice 1 (GN 327), Listing Notice 2 (GN 325) and Listing Notice 3 (GN 324).

These Listing Notices list all activities that will trigger the need to conduct either a basic assessment (BA) or a full scoping and EIR (FS&EIR) process:

- Listing Notices 1 & 3 require only a basic assessment
- Listing Notice 2 requires a full scoping and EIR process
- Listing Notice 1 and 2 activities refer to the type of development (aquaculture, renewable energy, services etc) while Listing Notice 3 is based on the geographic location and is specific to the province

It is important to note that a BA is NOT a simplified or 'lesser' version of the FS&EIR process. Both processes set out to assess the impacts of a development on the environment and seek to obtain environmental authorization.

In a BA, the issues and impacts are generally known with relative certainty and the risks are manageable. The scoping process is incorporated into the assessment report. However, in the FS&EIR, the impacts are generally not known and there is a higher degree of uncertainty and therefore a separate scoping report is undertaken. During this scoping phase, all impacts are identified, alternatives are considered and stakeholders are engaged. The scoping report then informs the EIR phase.

Both a BA and FS&EIR have to undergo the following:

- Full public participation process
- Consideration of alternatives
- Motivation for need and desirability
- Status quo of the receiving environment
- Specialist studies
- Impacts and risks identified including the nature, significance, extent, duration, and probability of said impacts
- Compilation of an environmental management programme
- Environmental impact statement

3.1. Basic Assessment Process

- An independent **Environmental Assessment Practitioner (EAP)** must undertake the process on behalf of the applicant to ensure objectivity.
- The EAP must conduct a **Public Participation Process**, and afford any and all persons interested and /or affected by the proposed development an opportunity to register and participate in the process. A **30-day registration period** is allowed for, as well as, an opportunity to ask questions, submit concerns etc.
- The EAP must submit an **Application for Environmental Authorisation** along with the **Draft Basic Assessment Report (BAR)**, inclusive of specialist reports and a draft Environmental Management Programme (EMPr), which describes both the project and the environment and assesses the anticipated impact of the project on the

environment, and makes recommendations in terms of mitigation and management to the Competent Authority, which in this case of all prospecting/mining permits and rights is the DMRE.

- Once complete, the Draft BAR will be circulated to all registered I&APs who are entitled to submit written comments in respect thereof. **A 30-day comment period** is allowed for in terms of Regulation 40 (1) of the 2014 EIA Regulations.
- Once all comments from registered I&APs have been addressed, the EAP will submit the **Final BAR** to the Competent Authority for consideration.
- The Competent Authority is then required to make a decision on the application for Environmental Authorisation (i.e. either positive or negative).
- Once the Competent Authority has made a decision on the Final BAR, the EAP must communicate the outcome thereof to all I&APs who registered during the Public Participation Process within 14 days from receiving the decision.
- I&AP's have the right to **Appeal** against the decision of the Competent Authority should they feel the need to do so, in which case, the DFFE will review and reconsider the application. The appeal process is regulated in terms of the 2014 National Appeal Regulations published in terms of GN R993 on 8 December 2014 under NEMA.

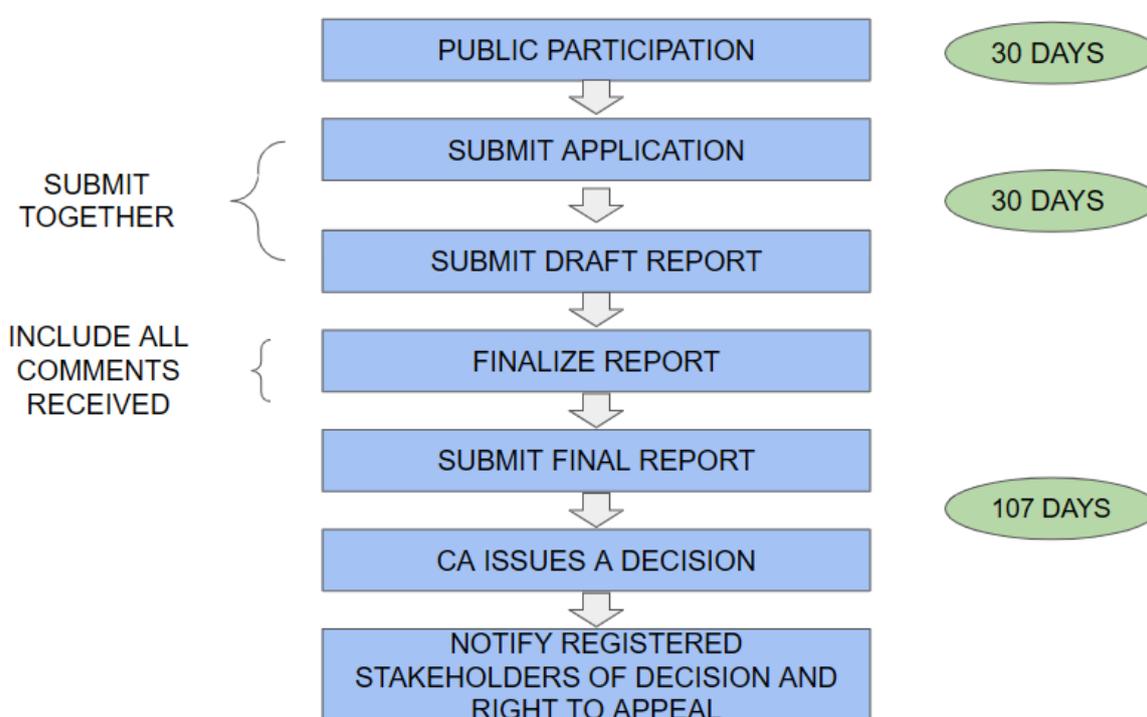


Figure 2: Basic Assessment Process

3.2. Full Scoping and EIR Process

- An independent **Environmental Assessment Practitioner (EAP)** must undertake the process on behalf of the applicant to ensure objectivity.
- The EAP must conduct a **Public Participation Process**, and afford any and all persons interested and /or affected by the proposed development an opportunity to register and participate in the process. **A 30-day registration period** is allowed for, as well as, an opportunity to ask questions, submit concerns etc.
- The EAP must submit an **Application for Environmental Authorisation** along with the **Draft Scoping Report**, to the Competent Authority, which in this case of all prospecting/mining permits and rights is the DMRE.
- Once complete, the Draft Scoping report will be circulated to all registered I&APs who are entitled to submit written comments in respect thereof. **A 30-day comment period** is allowed for in terms of Regulation 40 (1) of the 2014 EIA Regulations.
- Once all comments from registered I&APs have been addressed, the EAP will submit the **Final Scoping Report** to the Competent Authority for consideration.

- The Competent Authority is then required to make a decision on the Scoping report and either accept or deny it.
- Should the Final Scoping Report be accepted, the EAP will then submit the **Draft Environmental Impact Report (EIR)**, inclusive of specialist reports and a draft Environmental Management Programme (EMPr), which describes both the project and the environment and assesses the anticipated impact of the project on the environment, and makes recommendations in terms of mitigation and management to the Competent Authority.
- Once complete, the Draft EIR will be circulated to all registered I&APs who are entitled to submit written comments in respect thereof. **A 30-day comment period** is allowed for in terms of Regulation 40 (1) of the 2014 EIA Regulations.
- Once all comments from registered I&APs have been addressed, the EAP will submit the **Final EIR** to the Competent Authority for consideration.
- The Competent Authority is then required to make a decision on the application for Environmental Authorisation (i.e. either positive or negative).
- Once the Competent Authority has made a decision on the Final EIR, the EAP must communicate the outcome thereof to all I&APs who registered during the Public Participation Process within 14 days from receiving the decision.
- I&AP's have the right to **Appeal** against the decision of the Competent Authority should they feel the need to do so, in which case, the DFFE will review and reconsider the application. The appeal process is regulated in terms of the 2014 National Appeal Regulations published in terms of GN R993 on 8 December 2014 under NEMA.

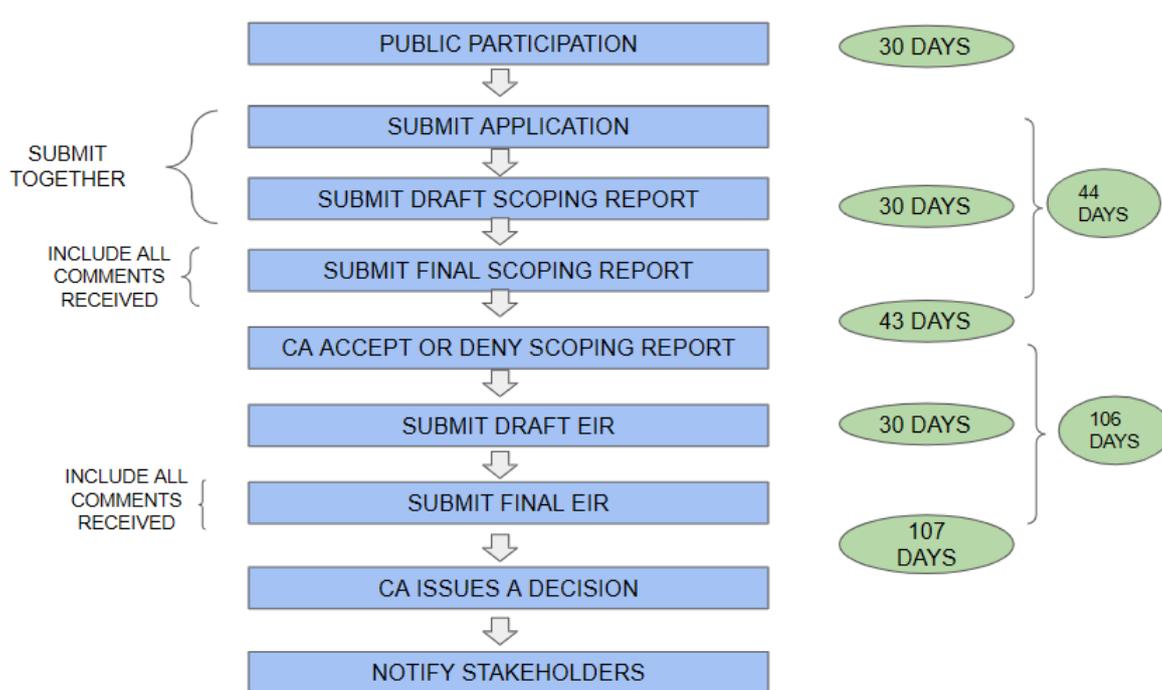


Figure 3: Full Scoping and EIR Process

4. HOW TO ENGAGE AS AN I&AP

During the EIA process, there are four (4) opportunities for you to engage as an Interested and Affected Party (I&AP):

- The initial advertising phase. EAPs are required to undertake an initial public consultation process whereby they state their intent to undertake the EIA process for a proposed project. EAPs must place an advertisement in a local newspaper, put up notice boards around the affected property, notify all adjacent landowners in writing. A 30-day registration period is mandatory.
- Draft Scoping phase (only applicable if it is a full scoping/EIR). A 30-day comment period is allowed for the public and the CA to comment on the draft report. The EAP is required to address ALL comments received in a comments and response report that is included in the final scoping report.

- Draft Basic assessment/ Draft EIR. A 30-day comment period is allowed for the public and the CA to comment on the draft report. The EAP is required to address ALL comments received in a comments and response report that is included in the final basic assessment/EIR report.
- Appeal. As a registered I&AP you have the right to appeal the decision issued by the CA. An appeal must be submitted to the Appeal Director within 20 days from the date of notification of the EA.

All comments must be submitted to the EAP who compiled the report, while an appeal must be submitted to the DFFE, the CA for appeals (these details must be included in the notification sent to you by the EAP).

It is important to note that you can register as an I&AP at any time during the EIA process. You are not restricted to the initial registration period. However, comments on the draft reports must be submitted during the 30-day comment period. The EAP is not required to address comments received outside of this period (though it is considered to be best practice).

4.1. What to look for in a report

The best way to get a decision overturned is to focus on the process followed. While it is important to make known your own personal objections, the CA cannot make an informed decision based purely on emotions and personal feelings.

Therefore, the best comments/appeals are ones based in fact, accompanied by the relevant section in NEMA that has not been met.

4.1.1. Content of the report

Appendix 1-6 of the EIA Regulations lists what must form part of a Full scoping/EIR and Basic assessment process, environmental management programmes and specialist reports.

Listing Notices 1-3 should also be consulted to determine if all activities that could be triggered have been listed in the report. The report should also provide detailed explanations on how these activities will be triggered. An example is as per the table below:

Table 2: Example of a triggered listing notice and detailed explanation as to how this activity will be triggered

Listed activity per Government Notice	Describe each listed activity as per project description
GNR 324: 12 (e) (ii) (iii)	<p>The clearance of an area of 300 square metres or more of indigenous vegetation in (e) Limpopo (ii) critical biodiversity areas (iii) on land zoned open space, conservation or had an equivalent zoning.</p> <p>A total of approximately 10 ha of indigenous vegetation will be cleared, inclusive of roads.</p> <p>The site is located within Limpopo Province, where majority of the reserve is classified as CBA 1 and 2.</p>

The DFFE developed a screening tool. This screening tool is a geographically based web-enabled application which allows a proponent intending to submit an application for environmental authorisation to screen their proposed site for any environmental sensitivity. Additionally, it identifies related exclusions and/ or specific requirements including specialist studies applicable to the proposed site and/or development, based on the national sector classification and the environmental sensitivity of the site. Should a listed specialist study not have been undertaken, the EAP must provide motivation as to why.

Should one or more of these aspects be missing from the report, then the process could potentially be flawed.

4.1.2. Public participation process

Public participation is a key requirement of the EIA process and is legislated under the EIA regulations of NEMA in GN326.

The main objective of the public participation process (PPP) is to:

- Inform all stakeholders about the proposed project
- Provide stakeholders with the opportunity to comment on the proposed project and raise any issues or concerns that they may have
- To ensure that the EIA process is fair, transparent, and inclusive. It holds everyone accountable

Inadequate public participation is one of the major reasons for the CA to rule that the EIA process was flawed. EAPs often fail to meet the requirements as detailed in Chapter 6 of NEMA.

When reviewing the reports, take note of the following with regards to public participation:

- Was an advertisement placed in a local newspaper?
- Were adjacent landowners notified in writing about the proposed project?
- Were notice boards put up around the proposed site?
- Was an initial 30-day registration period allowed for?
- Was a 30-day comment period (excluding public holidays) allowed for on the draft report?
- Were all comments submitted addressed in a comments and response report in the final report?
- Were you notified of the CA decision within 14 days from receipt of the EA?

4.1.3. Environmental Assessment Practitioner

As of 8 August 2022, only **Registered** Environmental Assessment Practitioners (Registered EAP) (registered with EAPASA) may carry the primary responsibility of Environmental Impact Assessments and perform the following tasks:

- in connection with:
 - the Investigation, assessment and preparation of EIA reports and documents; or
 - the assessment, evaluation and consideration of EIA reports and documents in order to inform a decision;
- as contemplated in:
 - Chapter 5 of the National Environmental Management Act, 1998 (Act No. 107 of 1998) (NEMA) read with the EIA Regulations, 2014;
 - Regulation 14 of Section 24 H of NEMA; and
 - Chapter 5 of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008) (NEMWA) read with the EIA Regulations, 2014.

A Registered Candidate Environmental Assessment Practitioners (Candidate EAP) (person with an accredited degree but no relevant professional experience) may perform the above works under supervision of a Registered EAP.

A search can be conducted on EAPASA (link in the section below) via the Registered EAP database to determine whether or not the person responsible for the compilation of the report is in fact a registered EAP.

5. FREQUENTLY ASKED QUESTIONS

- *How can I protect my property against mining?*

The best way to protect your property against prospecting and mining is to have your property declared as a protected area, which in most cases would be as a Private Nature Reserve. Additionally, the government provides private land owners of protected areas with incentives and benefits as a 'reward' or compensation for efforts made by landowners to protect the

biodiversity and environmental value of their land for the good of the country. These include reductions on municipal rates and taxes and income tax deduction.

- *Who can register as an I&AP?*

Anyone can register as an I&AP. You do not need to be directly affected by the proposed activity or have any vested interest to participate in the process.

- *What if the EAP does not answer my emails/calls/address my comments?*

The EAP is required by law to acknowledge your comments and address them in the final report. Should this not be done, contact a representative from the appeals department at DFFE.

- *Can someone else submit comments on behalf of a community as a whole?*

Yes. The local community can enlist the professional help of a registered EAP to review all document and submit comments/appeals on their behalf.

6. RESOURCES

Some useful resources to consult when are as follows:

SANBI BGIS

Used to determine is the site is located within CBA, threatened ecosystems, near water courses, vegetation types etc

<https://bgis.sanbi.org/>

DFFE screening tool

DFFE screening tool is used to determine the sensitivity of the site. It also identifies which specialist studies need to be undertaken. Should a listed specialist study not be done, the EAP must motivate why.

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

EGIS

An online protected area data base. Used to determine all formally proclaimed protected areas.

https://egis.environment.gov.za/protected_and_conservation_areas_database

EAPASA Registered EAPs

List of Registered and Candidate EAPs. Only REGISTERED EAPs can hold the primary role of compiling the application, BAR and EMPr.

<https://registration.eapasa.org/registered-practitioners>

Environmental Management Acts and legislation

List of environmental acts and legislation within South Africa

<https://cer.org.za/virtual-library/legislation/national/environmental-framework/national-environmental-management-act-1998>

7. REFERENCES

Legal Resources Centre. 2016. *A Practical Guide for Mining-Affected Communities*.

