

National Social Infrastructure Guideline:

A guideline relating to the implementation of
the National Environmental Management Act



environmental affairs

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Environmental Affairs
REPUBLIC OF SOUTH AFRICA

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This guideline document was compiled by the Institute of Natural Resources NPC with specialist legal input from Smith Ndlovu & Summers Attorneys. In addition to the technical team, many stakeholders, too numerous to name contributed to the project by attending workshops, reviewing project documents and providing input on the issues and challenges that both applicants and regulating authorities face in undertaking or reviewing EIA applications related to social infrastructure. We are grateful to all participants for their valuable contributions.

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Chapter 3	Pre-application guidance and planning	C. Pringle & D. Cox
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Chapter 5	The Scoping and EIR Process - Public Participation Process	C. Pringle D. Cox
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Disclaimer

The information contained in this guideline is for general guidance only. The information is not intended to constitute legal advice but to serve as a decision support tool related to various legal frameworks that govern development social infrastructure projects. Whilst every effort has been made to ensure the accuracy of the information contained in the guideline, the content is naturally subject to change and as a result the accuracy is not guaranteed. The Institute of Natural Resources NPC, the Department of Environmental Affairs and other agencies do not accept responsibility in respect of any information or advice given in relation to or as a consequence of anything contained herein. In spite of the status of this guideline, its use does not in any way exempt the users to comply with all relevant legislation.

1 Introduction

1.1 Purpose and objectives of this Guideline

Since 1994, the government has been involved in numerous social infrastructure (SI) programmes to improve the provision of basic services and address the inequities of the past. The Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996) (Constitution) and the National Environmental Management Act, 1998 (Act No. 107 of 1998) (NEMA) require that service provision is balanced with environmental sustainability. To ensure the consideration of environmental sustainability, NEMA requires that SI projects that trigger the Environmental Impact Assessment (EIA) regulations are subjected to the associated process. This entails consideration of the impact of a development on all components of the environment including social, economic, cultural and biophysical aspects. It is also necessary to consider all other legislation and associated regulatory processes in arriving at a decision. Added to this is the need for an all-inclusive consultation process. No other regulatory process is as comprehensive. The EIA process is therefore time consuming and is itself subject to a variety of issues. These include the ineffectiveness of the Environmental Assessment Practitioners (EAP) responsible for running the EIA process, the inability of government to deal with the sheer administrative burden of reviewing, commenting and deciding on all applications, and poor coordination between different government departments who exercise functions over various aspects of the environment. The problem is compounded by the lack of understanding amongst public and private developers alike of the EIA process and the associated cost and time implications. The current levels of frustration with the EIA process are therefore understandable and have resulted in the EIA process being viewed as a hindrance by those responsible for implementing SI (primarily government departments).

The 2012 State of the Nation Address and provincial budget votes show that South Africa has increased the proportion of the national budget allocated to infrastructure to support a massive push to addressing infrastructure shortfalls in the next two to eight years. This will place added pressure on the EIA process and all role-players involved. While the ongoing development of Environmental Management Frameworks (EMF) and the development of other Integrated Environmental Management tools through the EIAMS process will reduce the burden on EIA, the benefits will only take effect in the longer term. This scenario heightens the need for guidelines to improve the efficiency and effectiveness of the EIA process in ensuring that SI development is sustainable.

It is within this context, that the Department of Environmental Affairs (DEA) commissioned the development of a guideline to improve the environmental sustainability of SI projects. The key objectives of the guideline include:

- To increase the understanding and capacity of role-players to implement and/or manage the EIA process.
- To provide a common understanding of the impacts of SI on the natural environment.
- To improve the general understanding of the legal framework governing environmental sustainability and the specific obligations of role-players in terms of the EIA process.
- To improve co-operative governance through better alignment of the EIA and other relevant regulatory processes.

The guideline is aimed predominantly at those involved in the delivery of SI. It does also have relevance to other role-players including competent authorities, other regulatory authorities, local government, contractors and developers, EIA practitioners and interested and affected parties.

1.2 Legal context and standing of this Guideline

Before considering the legal context, it is important to note that this guideline is not intended, in any way, to be a substitute for the provisions of NEMA, the EIA Regulations, the Specific Environmental Management Acts¹ (SEMAs), their Regulations or any other law. Importantly, it must be read in the light of NEMA, the EIA Regulations, the relevant SEMA and its Regulations.

The Constitution is the foundation of all law in the Republic. It is the supreme law and all other laws must be consistent with it.² Any law or conduct which contravenes provisions of the Constitution is invalid.³ Critically, obligations imposed by the Constitution must be fulfilled.⁴ Section 24 of the Constitution guarantees everyone the right to an environment that is not harmful to one's health or well-being. In addition, that right involves an obligation imposed on the State "to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures".⁵ Such measures must be designed to:

- Prevent pollution and ecological degradation;
- Promote conservation; and
- Secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.⁶

The State has a constitutional obligation to provide SI. Specifically, the State has an obligation to take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of:

- Everyone's right to have access to health care services;
- Everyone's right to have access to sufficient food and water;
- Everyone's right to have access to adequate housing; and
- Everyone's right to have access to social security.⁷

The Constitution also regulates the relationship between different organs of state. Among others, organs of state must co-operate with one another in mutual trust and good faith by co-ordinating their actions.⁸ The relevant provisions of the NEMA⁹ must be appreciated in the context of that obligation.

NEMA is a framework statute designed to give effect to section 24 of the Constitution. Its purpose includes providing "for co-operative environmental governance by establishing principles for decision-making on matters affecting the environment".¹⁰ NEMA gives powers to the Minister of Environmental Affairs to identify activities which may not

¹ In terms of section 1 of NEMA, the phrase "Specific Environmental Management Act" means:

- The Environment Conservation Act, 1989 (Act 73 of 1989);
- The National Water Act, 1998 (Act 36 of 1998);
- The National Environmental Management: Protected Areas Act, 2003 (Act 57 of 2003);
- The National Environmental Management: Biodiversity Act, 2004 (Act 10 of 2004);
- The National Environmental Management: Air Quality Act, 2004 (Act 39 of 2004);
- The National Environmental Management: Integrated Coastal Management Act, 2008 (Act 24 of 2008); or
- The National Environmental Management: Waste Act, 2008 (Act 59 of 2008).

The phrase also includes any regulation or other subordinate legislation made in terms of any of the SEMAs.

² Section 2 of the Constitution.

³ Section 2 of the Constitution.

⁴ Section 2 of the Constitution.

⁵ Section 24(b).

⁶ Section 24(b).

⁷ Sections 26 and 27 of the Constitution.






⁸ Section 41(1)(h)(iv).

⁹ 107 of 1998.

¹⁰ Long title of NEMA.

commence without environmental authorisation from the competent authority (CA) (the “listed activities”).¹¹ The Minister may also identify geographical areas in which specified activities may not commence without environmental authorisation from the CA or in which specified activities may be excluded from authorisation by the CA.¹²

The Minister has powers to make regulations laying down the procedure to be followed in applying for, the issuing of and monitoring compliance with environmental authorisations.¹³ On 18 June 2010, the Minister promulgated the following EIA Regulations:

- *Regulations made under NEMA – EIA Regulations* promulgated in Government Notice R982 in *Government Gazette* 38282 of 4 December 2014; 
- *Regulations made under NEMA – Listing Notice 1 of 2014: List of Activities and Competent Authorities identified in terms of section 24(2) and section 24(D), To follow procedure prescribed in Regulations 19 to 20 of the EIA Regulations* promulgated in Government Notice R983 in *Government Gazette* 38282 of 4 December 2014; 
- *Regulations made under NEMA – Listing Notice 2 of 2014: List of Activities and Competent Authorities identified in terms of section 24(2) and 24(D), To follow procedure prescribed in Regulations 2* ... @ k promulgated in Government Notice R984 in *Government Gazette* 38282 of 4 December 2014; 
- *Regulations made under NEMA– Listing Notice 3 of 201 : List of Activities and Competent Authorities identified in terms of sections 24(2) and 24(D), To follow procedure prescribed in Regulations 1* ... -@ k promulgated in Government Notice R985 in *Government Gazette* 38282 of 4 December 2014; 
- *Regulations made under NEMA – EMF Regulations* promulgated in Government Notice R547 in *Government Gazette* 33306 of 18 June 2010. 

All the above Regulations came into effect on 8 December 2014¹⁴ (with the exception of the Environmental Management Framework Regulations). These Regulations replaced the previous EIA Regulations which came into effect on 30 July 2010¹⁵ and 10 December 2010¹⁶

Listing Notices 1, 2 and 3 set out activities which require an environmental authorisation (EA) before they may commence. Many of these activities may be required in the construction of SI.

¹¹ Section 24(2).

¹² Section 24(2)(b) and (c).

¹³ Section 24(5)(a).






¹⁴ By virtue of Government Notice R982 in *Government Gazette* 38282 of 4 December 2014.

¹⁵ Government Notice R660 promulgated in *Government Gazette* 33411 of 30 July 2010.


¹⁶ Government Notice R1159 promulgated in *Government Gazette* 33842 of 10 December 2010.


1.3 How to use this Guideline

The SI guideline is an interactive document which has been constructed using hyperlinks. This enables a user to click on a 'link' to obtain more information about a particular subject. In this way a large amount of data is accessible however the user need only access that information which is relevant or of interest to them. The following icons have been used to depict different types of links:

	The information or 'i' buttons enable you to link to additional information, contacts and reports on a subject of interest.
	
PDF	The PDF icon allows you to access guideline documents or reports.
	The PDF icon enables you to access PDF copies of the relevant Acts. Please note that these are copies of original Acts and do not include any subsequent amendments.
	The "stakeholder" icon enables a user to access the contact details of stakeholders who should be consulted during the public participation exercise for different infrastructure projects.
	The "form" icon allows you to link to the various permitting processes detailed within the guideline.

As you move the mouse over these icons you will notice that the cursor pointer changes to a hand. If you left click when the hand appears, you will be able to access the associated document or information page. To return to the guideline document, close the information page by clicking on the small black cross in the top right corner of the screen.

The last chapter of the guideline provides information per infrastructure type per province in respect of trigger activities, stakeholders, impacts and authorisations. This information can be accessed by selecting the infrastructure type of choice in the introduction of this chapter. This will then display an information page relevant to that infrastructure type. The trigger activities can be accessed by clicking on the information icon  in the relevant province in the displayed map. This in turn provides a series of tables which indicates the activities that may be triggered for each infrastructure type. These tables are presented in a pdf document with different tabs for each of the three Listing Notices.

Similarly the stakeholder information can be accessed by clicking on the stakeholder icon  in the relevant province in the displayed map. This in turn provides a table which lists key national, provincial and local stakeholders with links to their respective contact details.

Information on the likely impacts and mitigation of the respective infrastructure types can be accessed by clicking on the "impacts and mitigation" diagram. This in turn links to a pdf document which outlines the different impacts and possible mitigation measures relevant to the selected infrastructure type.

While every effort has been made to ensure that the information contained in this guideline is accurate, the nature of the information is such that it is subject to change. The user is advised to contact the relevant Competent Authority to obtain the latest versions of all forms and ensure that the correct process is being followed.

2 Social Infrastructure projects and sustainability

2.1 Defining Social Infrastructure

Social infrastructure is critical to the development of sustainable communities. While the provision of housing, potable water and electricity are vital for meeting basic human needs, other services such as schools, transport and health care are important for ensuring the long-term satisfaction of residents. In combination, these infrastructure types create the framework within which residents can establish a locality-based community with opportunities for social and economic well-being. This in turn creates the foundation for a sustainable community.

The draft Infrastructure Development Bill defines infrastructure as *“installations, structures, facilities, systems, services, or processes”* which relate to various technical structures such as airports, ports and harbours, mines, power stations, industrial facilities, education institutions, health care services, roads and human settlements. However, it is important to differentiate between economic and social infrastructure. Economic infrastructure is defined as *“that part of an economy’s capital stock that produces services to facilitate economic production (e.g. electricity, roads and ports) or serves as inputs to production or is consumed by households (water, sanitation and electricity)”* (DBSA, 2006). In contrast, SI usually refers to *“services such as health, education and recreation that have both a direct and an indirect impact on the quality of life”* (DBSA, 2006). For the purpose of this guideline, large economic infrastructure such as airports, ports and harbours and mines have been excluded. Instead the guideline has focused on small human settlements and associated services and facilities. As such, a combination of the above definitions of economic and social infrastructure has been used in reference to the term social infrastructure used in this guideline. The following definition applies:

“Social infrastructure is that which is developed at a household or community scale, is intended for the delivery of basic services and which has a direct and/or indirect impact on the quality of life”

A distinction can also be made between urban and rural SI. The range of economic and social processes as well as government’s priorities, options and policies vary between these two contexts. SI developments are more likely to take place on land owned or held in trust by the state and as such may be more relevant to the urban and tribal areas as opposed to true rural environments. This spatial context is important when considering the likely impacts of the proposed development. For example, the construction of a power line in a rural setting is more likely to impact negatively on birds with high conservation value compared to the same development in an urban context. In contrast, the social impacts of this development in an urban area may be greater with the possible relocation of people to accommodate the new lines and potential health risk to people living under the lines.

Irrespective of this spatial context, there is need for a coherent planning approach and implementation of SI in both rural and urban settings. Consequently, the guideline is arranged into ten SI types which are applicable to both contexts. These infrastructure types are generally regarded as basic municipal services (DPLG, 2007) which facilitate social development and form the backbone of a community. They include:

- Housing
- Water supply
- Sanitation
- Electricity
- Refuse and waste disposal
- Roads and transport
- Health infrastructure
- Sports facilities
- Schools
- Welfare infrastructure

2.2 Strategic issues which impact SI projects

Historically, government expenditure has focussed on economic infrastructure rather than on SI, with the aim of generating employment. Experience shows that this was a misguided approach and that failure to concentrate on SI kept large portions of the population below the minimum living level and reduced their capacity to effectively participate in and contribute to economic growth. The failure of various infrastructure programmes to generate economic growth at the projected rates means that SI backlogs remain high today, to the point where they are the basis for on-going service delivery protests across the country.

In addition to the skewed focus on economic infrastructure, the delivery of SI has been hampered by a wide range of issues including corruption, political interference and lack of capacity in terms of funding, skills and human resources. Although, these issues have serious implications for the implementation and sustainability of SI projects, the measures required to address them are complex and beyond the ambit of this Guideline.

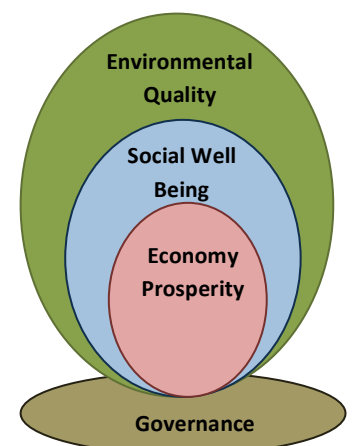
2.3 What is sustainability and what role does EIA play in achieving it?

Ecosystems provide a range of benefits or services to society such as air, water and food. These services are essential for human livelihoods and well-being. Despite the importance of these services, their supply is being compromised by the continuous degradation of our ecosystems. Government has highlighted the need to improve the provision of basic services and address the inequities of the past but stipulates that this needs to be done in a sustainable way. This requires that a balance is sought between development and the protection of our ecosystems and the services they deliver. The concept of sustainable development encompasses this thinking and provides an approach to development whereby resource use aims to meet human needs while simultaneously ensuring the sustainability of natural systems.

NEMA defines sustainable development as *“the integration of social, economic and environmental factors into planning, implementation and decision-making so as to ensure that development serves present and future generations”*. Social, economic and biophysical factors can be broadly defined as follows:

- **Social.** This refers to human systems and be defined at various levels including individual, household, community or other groupings (e.g. cultural or religious).
- **Economic.** These systems can take various forms and include different sectors (e.g. mining, agriculture, tourism, and manufacturing) at different scales ranging from large multinational companies to subsistence activities. Economic systems can be further categorised into formal and informal systems. Formal systems are represented by organised institutions with members and activities governed by policy and rules. Informal systems although they can be highly organised, operate through unstructured rules and processes.
- **Biophysical.** This refers to natural systems that comprise our natural capital or biodiversity. These include aquatic ecosystems (e.g. rivers, lakes and wetlands), terrestrial ecosystems (e.g. grasslands, forests and agriculture), and marine and coastal resources (e.g. beaches and estuaries).

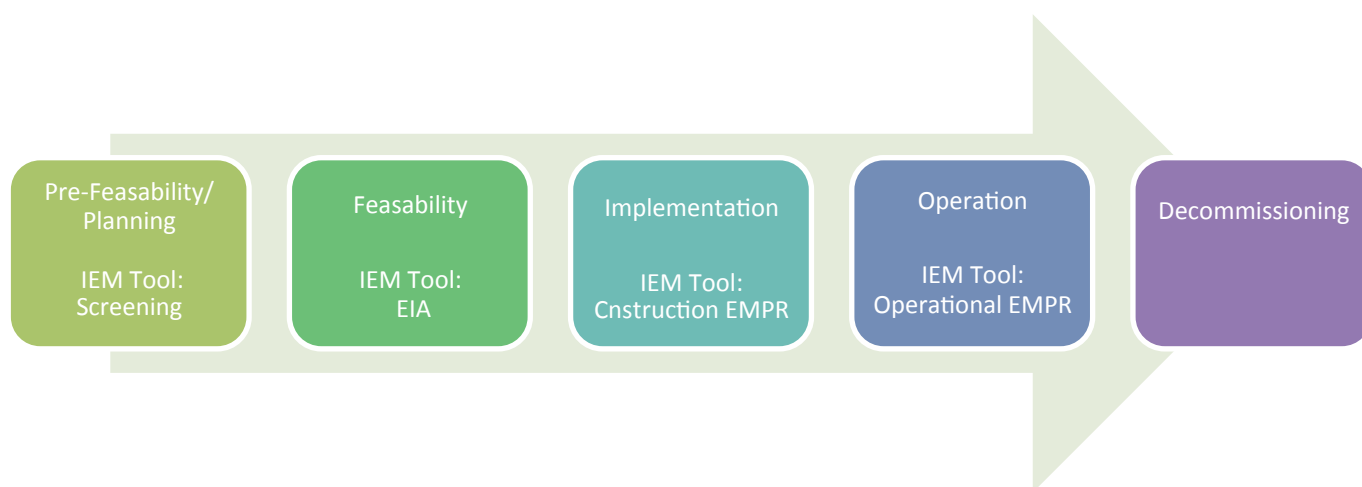
These three elements are generally regarded as the three pillars of sustainability and are not mutually exclusive but rather mutually reinforcing. For example, a healthy environment (environmental quality) is necessary for social well-being, which is a prerequisite for economic prosperity. An example of this in practice may be a tourism activity (economic system) which depends on the scenic beauty and tranquillity of a particular landscape (biophysical system). This tourism industry (formal economy) may in turn support local people selling crafts at the facility (informal economy). The natural system may also include a waterfall used for cultural or religious ceremonies (social/cultural value). The construction of a road or powerline through this area will therefore not only have a direct impact on the biophysical system, but will also have indirect consequences for the social, economic and cultural systems. Within the sustainability model, the economic, social and ecological systems are all integrated via the governance system, which holds all the other systems together through a legitimate regulatory framework.



Sustainable development can be achieved through the application of Integrated Environmental Management (IEM). IEM is a philosophy and set of principles (e.g. precautionary approach, polluter pays) supported by a range of environmental assessment and management tools aimed at promoting sustainable development. IEM provides a systematic approach for ensuring the inclusion of environmental considerations in decision-making at all stages of the activity life cycle (e.g. planning, feasibility, implementation/construction, operation or decommissioning). The aim of IEM is not to impede development but rather to provide a “way of thinking” and set of tools which can be used to improve a proposal or identify more environmentally acceptable ways of meeting the need and purpose of a proposal. IEM is therefore defined as “a holistic framework that can be embraced by all sectors of society for the assessment and management of environmental aspects and impacts associated with an activity for each stage of the activity life cycle, taking into consideration a broad definition of environment and with the overall aim of promoting sustainable development”¹⁸. In order to uphold the IEM principles and achieve sustainable development, the user should carefully select and combine a suite of tools. The choice of tools should be informed by the needs of the stakeholders and decision-makers, the hierarchy at which the activity is being undertaken (e.g. at a project level or strategic level) and the stage in the activity life cycle.

EIA is an important tool within the IEM toolbox. The purpose of an EIA is to provide decision-makers with sufficient information of the ensuing environmental impacts when deciding whether a project may proceed or not. EIA can be defined as “the process of collecting, organising, analysing, interpreting and communicating information that is relevant to the consideration of that application”. It provides a structured way of identifying and evaluating the likely environmental consequences of a proposed development. After predicting the likely environmental impacts, an EIA identifies alternative site or design measures to minimise these impacts and outlines ways to improve the environmental performance of a project.

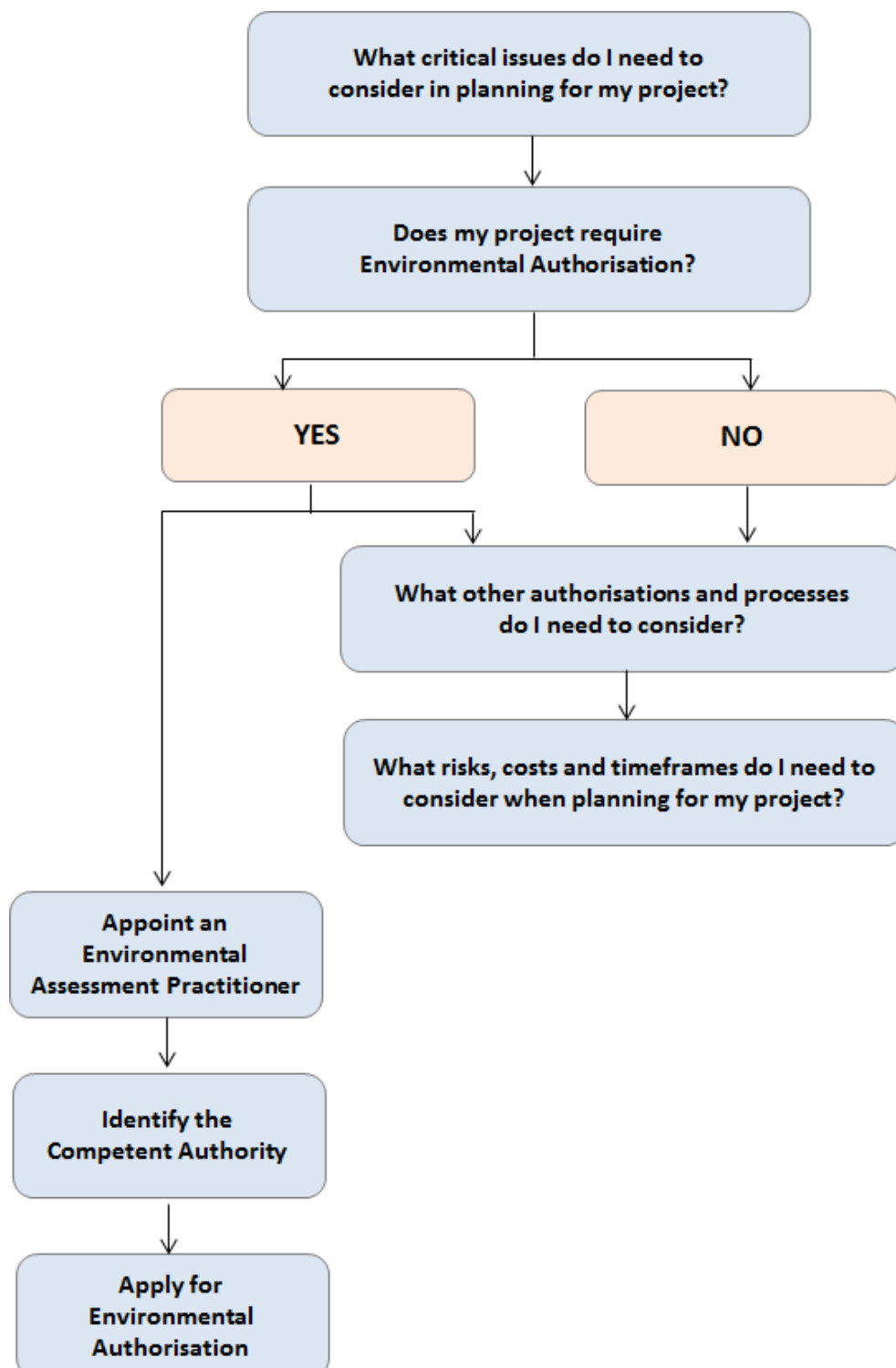
One of the major factors limiting the effectiveness of and positive contribution that EIA can make, is that issues of sustainability are only considered during an EIA, which usually commences once the planning phase has already been completed. This stems largely from EIA being the tool legislated in South Africa to assess development projects, and consequently developers traditionally only start considering the environmental impacts when they are legally bound to do so. However, in order to achieve sustainability it is necessary to combine a suite of IEM tools throughout all phases of the activity life cycle. In particular, the level of attention afforded to environmental aspects during the early stages of a project should be increased to ensure that the project approach is sustainable from the outset. So while this guideline focuses on the EIA process which is applied during the feasibility stage, some guidance is provided on how environmental aspects should be considered in other stages of the activity life cycle and what tools may be appropriate to do this. Only selected tools have however been discussed and further consideration should be given to the use of additional IEM tools. Effective application of these tools will improve the sustainability of SI projects.



¹⁷ DEAT (2004) Overview of Integrated Environmental Management, Integrated Environmental Management, Information Series 0, Department of Environmental Affairs and Tourism (DEAT), Pretoria.

3 Pre-application guidance and planning

Preliminary project planning should precede any development proposal. Planning helps to define the scope and extent of the project which in turn enables the consideration of other critical aspects such as whether the project is suitable to the local context and proposed location, what legal obligations should be met and what authorisations, permits or licences may be necessary. Importantly, the planning process should identify whether environmental authorisation (in terms of the EIA regulations) is required and if so, whether a Basic Assessment (BA) or Scoping and Environmental Impact Reporting (S&EIR) process should be followed. Project planning benefits the developer, the CA and other relevant authorities by avoiding projects that are clearly inappropriate from proceeding to detailed planning and initiation of an EIA and other regulatory processes. Alternatively, this information may provide for an amended project or a move to a more suitable site. It also assists in streamlining the various authorisation processes relevant to the proposed activity. If done properly, the planning phase assists in avoiding lengthy and costly delays and reduces the likelihood of objections and appeals.



3.1 What critical issues do I need to consider in the planning phase?

Is the project appropriate?

An initial step in the planning process is to review the acceptability of the project concept against available planning information such as the Integrated Development Plan, Spatial Development Framework, Land-use Management System as well as other specific sector plans and tools including Environmental Management Frameworks, Water Sector Plans, and Integrated Waste Management Plans. This information should provide the context for the proposed project and guide initial planning.

Has the project been planned in sufficient detail?

Detailed information is essential for determining whether the project requires environmental authorisation or not. Thresholds are built into the EIA listed activities which determine whether an activity requires environmental authorisation, and if so, what type of assessment should be undertaken. These thresholds may relate to a variety of project aspects such as the diameters of pipes and volumes of through flow, the width of roads, or the specific areas of the development footprint. The application for environmental authorisation needs to include all activities that will be triggered. If these are not included they cannot be authorised and amendments to the EA may need to be made later in the process. Alternatively, a new application will need to be submitted for activities that are not included upfront. Both scenarios will result in unnecessary delays and costs. Thus the level detail required in the planning phase needs to be sufficient to enable all listed activities to be determined. Such detail is also required to establish which activities may trigger licensing or permitting processes in terms of other Acts.

Have alternatives been adequately considered?

The impact assessment process requires that alternatives are considered. This allows flexibility in decision-making and enables the authorities to select a layout or site that will have the least impact on the environment. For example, where a particular site for a housing development is shown to be fatally flawed the inclusion of a feasible alternative will facilitate the project still taking place. If alternatives are not included, the process may be stalled while an alternative is found and defined to sufficient detail to enable a comparative assessment. Alternatives can take on various forms including sites, layout, design, and technology. Consideration should be given to all of these.

Has the full project scope been defined and integrated with other components and phases?

The lack of integrated planning across government sectors and spheres (local, provincial and national) has been raised as an issue that has significant implications for efficiency and sustainability. SI projects necessitate the implementation of dependent infrastructure. For example, a low cost housing project also requires the development of roads, the provision of water and electricity, and the implementation of an appropriate waste management system. Although these different components may be implemented in different phases, it is essential that they are considered simultaneously in the planning phase. This integrated planning should in turn feed into the EIA process particularly in respect of the consideration of alternatives and streamlining of the EIA process between the various agencies responsible for these different SI elements. For example, a borrow pit may be required for several components of the broader project and the selection of the most appropriate site should consider whether adequate material is available for all components or not. In this way, one borrow pit may only be used instead of two thereby minimising the impact on the environment. Such integration will also inform alignment of the EIA process for all components of a SI project.

Consideration of the above criteria facilitates the generation of sufficient information to enable more detailed questions to be answered. These include:

- Whether or not the project requires environmental authorisation.
- What other processes and authorisations should be considered and whether these can run concurrently with the EIA process or not.
- How long the environmental and other authorisation processes are likely to take.
- Whether sufficient budget is available to complete the project and whether the funding cycle is aligned to the expected project timeframes.

3.2 Does the project require Environmental Authorisation?

Determining whether your project requires environmental authorisation is a crucial phase of the environmental assessment process as it involves the identification of activities that may trigger this requirement. Failure to do so may lead to activities being undertaken illegally, which may cause delays during implementation. Once you have ascertained which process is required, it is vital that you take time to understand how the process works. This lack of understanding was highlighted as a major stumbling block to the implementation of SI projects.

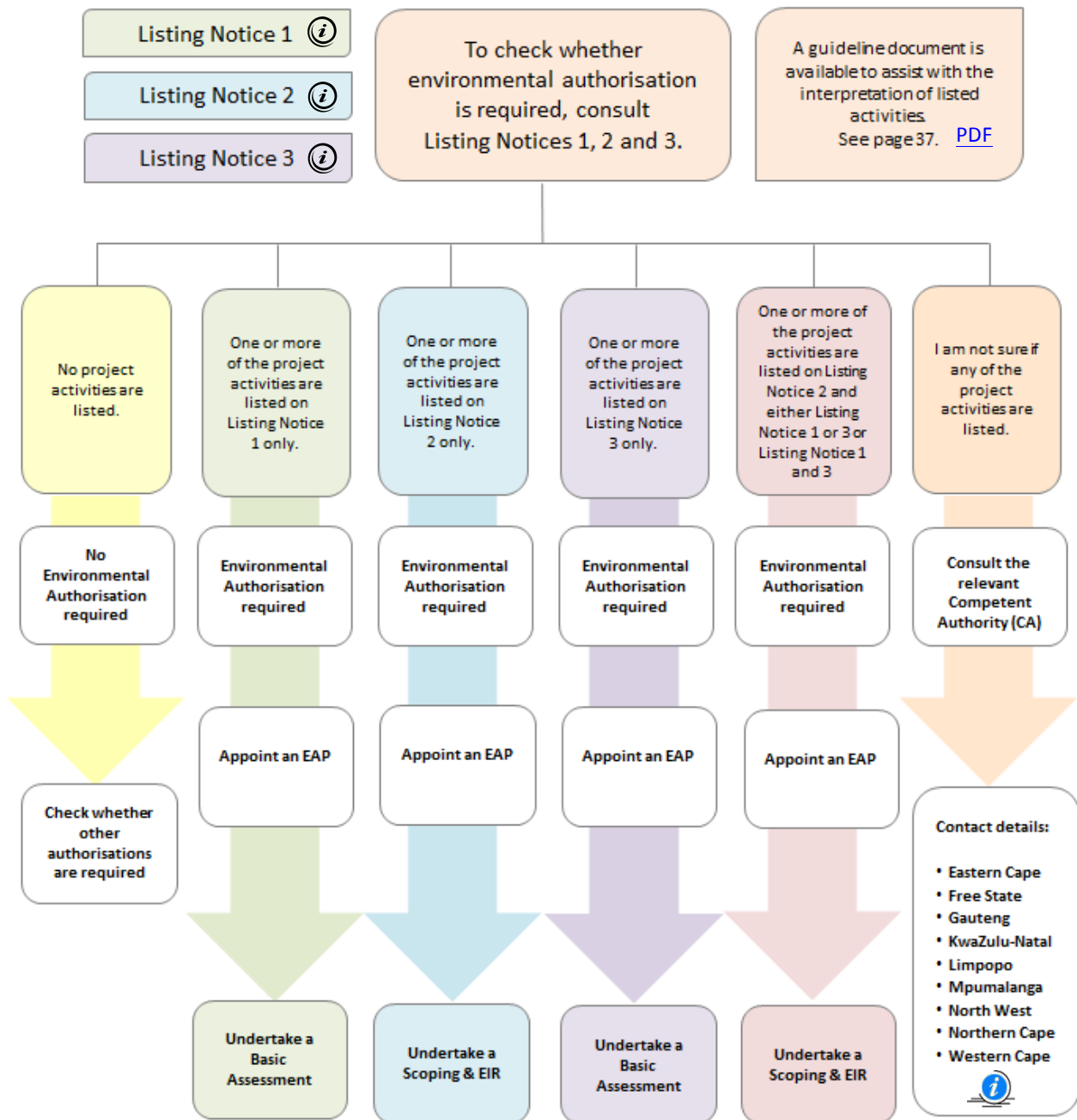
How do I determine the assessment process applicable to the application?

In order to determine whether your project requires environmental authorisation, the various Listing Notices must be consulted. If one or more project activities are included under:

- Listing Notice 1 or 3 then a Basic Assessment (BA) should be undertaken.
- Listing Notice 2 then a Scoping and Environmental Impact Reporting (S&EIR) process should be undertaken.
- Listing Notice 2 and either Listing Notice 1 or 3 or Listing Notice 1 and 3, then a single S&EIR process should be followed.

In deciding on the required process, consideration should also be given to any guidelines applicable to the activity or process, such as those prepared by the CA, as well as any advice from the CA. Effort has been directed at enhancing the EIA process for SI projects, and as a result it is possible to apply to switch from a S&EIR process to a BA. This will only be considered in specific cases and must be discussed with the relevant CA.

Deciding if a project requires Environmental Authorisation



3.4 Appointing an Environmental Assessment Practitioner

Depending on which listed activities are triggered, either a BA or a S&EIR process may be required to obtain environmental authorisation. Both these processes are run by an EAP. An EAP is an individual responsible for managing, planning, and co-ordinating various environmental management instruments such as EIAs, strategic environmental assessments and EMPRs. The EIA regulations require that an applicant appoint an EAP to conduct the BA or S&EIR process on the applicant's behalf. A critical role of the EAP is to ensure that all stakeholders participate fairly in the environmental assessment process and contribute equally to the outcome. The EAP is not allowed to promote the interests of the developer even though they are paying the EAP for their services. The only way to do achieve this is for the EAP to remain independent of any interests.

Section 17 of the Regulations set out the general requirements for EAPs which include that the EAP be independent and objective. In addition, the EAP must have expertise in conducting EIAs, including a thorough knowledge of any legislation and guidelines which may relate to the proposed activity. It is preferable to include environmental expertise in the conceptual/design phase as this will improve the environmental acceptability of the project and potentially avoid significant issues i.e. before the submission of the application. This involvement however must be handled in a manner that does not compromise the independence of the EAP. If at any stage the EAP is thought not to be independent, the CA may suspend the application and refuse to accept any reports from the EAP. The CA may also request the applicant, at his own cost, to appoint an independent person to review the work done by the EAP and furthermore could request that certain aspects of the work are redone.

The Environmental Assessment Practitioners Association of South Africa (EAPASA) is in the process of obtaining permission to require all EAPs practicing in terms of NEMA to be registered. The registration of EAPs has been proposed in an effort to uphold professional standards and provide some level of assurance about the quality of environmental assessment work. The official registration process will be phased-in over a period of between 18 months and 3 years. A list of registered EAPs should then be available at www.eapsa.co.za. Once this registration process has been established, the applicant could request the registration number of the EAP. This will help to ensure that the EAP is suitably qualified to undertake the required work.

In the meantime, an Interim Certification Board has been established and is responsible for compiling and updating a Register of certified EAPs. The Register provides the names and contact details of all certified EAPs, their qualifications and areas of key competence. It is important to note that at present anyone is able to register and thus simply contacting an EAP listed on the register does not necessarily guarantee the competence of the EAP. This register can be obtained from the Interim Certification Board Secretariat.

In order to identify a suitable EAP, the applicant should request a copy of the EAPs *Curriculum Vitae*, appropriate references as well as a company profile. It may also be advisable for the applicant to request a list of previous projects as well as examples of project reports. This will enable the applicant to check that the EAP has appropriate formal training, skills and competence in environmental practice. The applicant should also then follow up on the references to ensure that previous clients were satisfied with the work conducted by the EAP.

Once an appropriate EAP has been appointed, the applicant should meet with the EAP to discuss the relevant process. The applicant should request that the EAP provide them with a project programme which details each of the steps in the relevant process, the associated timeframes, documents and/or information that may be required in undertaking each of these steps, and the role and responsibility of the applicant in each of these steps.

Box 1. Key issues identified in respect of Environmental Assessment Practitioners

During preliminary consultation, several of the stakeholders highlighted the important role that the EAP plays and also noted that in many instances, EAPs are responsible for project delays. In some cases, EAPs are appointed who manage the process poorly and are often ignorant of the legislative requirements. The problem is exacerbated by the lack of accountability. Many of these EAPs submit inadequate and/or insufficient information to the competent authority thereby causing project delays. In some cases the implementing agent or developer appoints the EAP late in the process which also impacts negatively on project timeframes. It is therefore vital that an EAP with appropriate skills and expertise is appointed at the start of the proposed project to conduct the necessary assessment.

3.5 What other processes and authorisations do I need to consider?

Having considered the appropriateness of the project, undertaken detailed planning and established the need for environmental authorisation, it is necessary to identify the other Acts that may apply when undertaking a SI project. In many instances these Acts require that a licence or some other form of authorisation is obtained before the activity may commence. The other legislation that may apply can be categorised as follows:








- **Specific Environmental Management Acts (SEMAs)** – developed to give effect to the environmental rights enshrined in the Constitution and NEMA which act as the framework legislation.
- **Planning Legislation** – designed to ensure that land-use or development activities are appropriate. In most cases the planning legislation requires the applicant to show in support of the planning legislation that they will not degrade natural resources.
- **Other Acts** – These Acts, while not promulgated in terms of NEMA and therefore not classified as SEMAs, have protection and management of the environment as a focus and are in many cases likely to be triggered by SI projects.

Unlike the EIA which must consider the impact of all aspects of the project, authorisation required by these other Acts normally applies to a specific aspect or activity such as water use or waste management, and not the whole project. However, this specific activity may be fundamental to the rest of the project being implemented. An example of this is where a water use licence (WUL) is required for a road that involves a bridge across a river. If there is a delay in obtaining the WUL and the bridge cannot be constructed, it undermines the purpose of the main project. These other processes are therefore important to identify as early as possible. It is also important to understand the following about the relationship between the EIA and these other regulatory processes:

- Authorisation in terms of one Act does not exempt you from requiring authorisation in terms of another relevant Act.
- While the EIA process is often perceived to be the lengthiest of the different regulatory processes and to delay development, the time frames associated with other processes, notably, for securing a water use license are longer.
- Increasingly there are attempts to provide for alignment between regulatory process, particularly the EIA process, to increase the efficiency during the process and co-ordinated decision making. These may include:
 - Providing for authorisation in terms of one Act to account for another. Further information is included in the following text box. These mechanisms are unfortunately seldom utilised, but should nevertheless be explored.
 - Submitting the same information and even reports in support of applications for different authorisations, or
 - Forums and/or other mechanisms established between authorities to improve co-operative governance.

In view of the above, it is essential that the relevant authorities are contacted early in the process in order to understand what authorisations may be required, the process and associated time and financial implications, as well as options for alignment with other processes. The following table lists other regulatory processes that may be followed and examples of the types of activities that will trigger them. More detail regarding these processes is provided in Chapter 9.

Table 1. Other regulatory process that may apply to the proposed project

ACT	AUTHORISATION REQUIREMENT	
SEMAS		
National Environmental Management: Integrated Coastal Management Act	A lease is required where SI is proposed on coastal public property or the coastal protection zone. An application for an environmental authorisation in terms of NEMA may be refused if it falls within any of the categories set out in section 63(2) of the ICMA.	
National Environmental Management: Biodiversity Act	Threatened or Protected Species (TOPS) permit is required if SI is proposed in or may impact any TOPS identified and delineated in terms of the Act.	
National Environmental Management: Waste Act	A Waste Management Licence is required for any waste management activity listed in terms of Schedule 1 of the Act.	
National Environmental Management: Protected Areas Act	Approval from the responsible management authority if SI is proposed within a Protected Area.	
National Environmental Management: Air Quality Act	An Atmospheric Emission Licence (AEL) is required for any activities listed in terms of the regulations. The likelihood that an AEL would be required for SI projects is limited but should be considered.	
National Water Act	A water use licence (WUL) is required for a range (11) different water uses, of which several are likely to apply to various SI projects. Where more than one is required, an 'integrated WUL is required.	
PLANNING LEGISLATION		
Subdivision of Agricultural Land Act	Consent must be obtained from the Minister of Agriculture before agricultural land may be subdivided. It is therefore important to understand the land-use zoning.	
Physical Planning Act	Applies where the intended land-use falls within a controlled area, for purposes other than the intended use designated in terms of the Act. In such cases a permit is required before proceeding.	
National Building Regulations and Building Standards Act	Any person who wishes to construct a structure which falls within the meaning of the term "building" as defined in the Act must obtain written approval before commencing with the construction. This may relate to all types of infrastructure.	
Development Facilitation Act	Authorisation by the relevant municipality of land-use in terms of the Act.	
Province Specific Planning Legislation	<p>Depending on the province where social infrastructure is envisaged to be provided, the following legislation must be consulted:</p> <ul style="list-style-type: none"> (a) KwaZulu-Natal: Planning and Development Act. (b) Gauteng: Town-Planning and Townships Ordinance; Division of Land Ordinance; and Transvaal Board for the Development of Peri-Urban Areas Ordinance. (c) Western Cape: Land Use Planning Ordinance. (d) Eastern Cape: Land Use Planning Ordinance; and Ciskei Land Use Regulation Act. (e) Free State: Townships Ordinance. (f) Limpopo: Town Planning and Townships Ordinance; Transvaal Board for the Development of Peri-Urban Areas Ordinance; and Venda Proclamation. (g) Mpumalanga: Town Planning and Townships Ordinance; and KwaNdebele Town Planning Act. (h) North-West: Town Planning and Townships Ordinance; and Bophuthatswana Land Control Act. (i) Northern Cape: Northern Cape Planning Development Act 	
OTHER LAWS		
Mineral and Petroleum Resources Development Act	A mining permit is required where a borrow area is a necessary to obtain the material (stone, gravel, sand) required to construct a SI project – in particular roads and buildings.	
National Forests Act	A licence is required before it is possible to destroy protected tree species or impact the functioning of forest systems.	
Sea-shore Act	A lease is required if areas of the sea shore or coastal environment are to be used for SI projects.	
National Heritage Resources Act	Comment and recommendations are required from the relevant Heritage Resources Agency (national or provincial) if the NHRA is triggered. The likelihood of the wide range of heritage resources being impacted by SI projects is relatively high.	
Water Services Act	Authorisation to use water from a resource or facility is required from the Water Services Authority.	

3.6 What are the risks, costs and timeframes associated with the project?

Given the tight timeframes within which SI projects have to be planned and implemented the major risks and costs are associated with delays resulting from a failure to secure the necessary authorisations in time to implement the projects within the set timeframes. More specifically these risks and costs may be:

- Loss of funding due to projects not being implemented within a set timeframe. A secondary effect of this is that projects are halted mid-project with negative environmental impacts because the required management measures are not undertaken.
- Penalties, paid to contractors due to delays in commencement of work – or more likely where work is stopped mid process.
- Risk of fines where development proceeds without the required authorisations. This issue is complicated by the Intergovernmental Relations Framework Act, which aims to limit legal action between spheres of Government and departments. It stipulates a rigorous process involving various other steps to be taken before resorting to legal action. As a consequence limited action is ever taken.
- Costs for rehabilitation where development has proceeded illegally.
- Cost of duplication of consulting fees.

The loss of funding and payment of unnecessary costs and penalties could be eliminated if adequate consideration is given to the possible authorisations which may be required as part of the proposed project during the planning stage. In addition, consideration of these timeframes would ensure that budgets allocated to social infrastructure projects can be spent within the correct funding cycle. The possible time frames for the BA and S&EIR process are outlined in the tables below and should be considered as a minimum for the planning of SI projects. These timeframes only include decision-making timeframes by the CA and do not include inter alia public participation timeframes, or additional timeframes if further information is requested from the CA (e.g. if an application were to be rejected and resubmitted).

Table 1. Minimum decision-making timeframes required by Competent Authorities for the BA process

Decision and/or Action required by Authorities	Timeframes for BA process (days)
Acknowledge receipt and accept or reject application	14 days
Acknowledge receipt of BA Report	14 days
Review and accept or reject the BA Report	30 days
<i>Extension if decision-making timeframe is missed</i>	<i>60 days</i>
Grant or refuse authorisation	30 days
<i>Extension if decision-making timeframe is missed</i>	<i>60 days</i>
Notify applicant of decision	2 days
Total	210 days

Table 2. Minimum decision-making timeframes required by Competent Authorities for S&EIR process

Decision and/or Action required by Authorities	Timeframes for S&EIR process (days)
Acknowledge receipt and accept or reject application	14 days
Acknowledge receipt of the Scoping Report	14 days
Review and accept or reject the Scoping Report	30 days
<i>Extension if decision-making timeframe is missed</i>	<i>60 days</i>
Acknowledge receipt of the Environmental Impact Report	14 days
Review and accept or reject Environmental Impact Report	60 days
<i>Extension if decision-making timeframe is missed</i>	<i>60 days</i>
Grant or refuse authorisation	45 days
<i>Extension if decision-making timeframe is missed</i>	<i>60 days</i>
Notify applicant of decision	2 days
Total	359 days

Other authorisations, permits or licences may also be required as part of the proposed project and failure to identify these and align the timing and scope of investigations with the EIA process will likely lead to delays. NEMA does not stipulate when an applicant may institute any other application process i.e. other processes may commence before, during or after an application process in terms of NEMA. Notwithstanding the above, in sections 24K and 24L, NEMA does provide for integrated environmental decision-making for multiple application processing where at least one of those is a NEMA decision-making process. The options are listed below with the CA being responsible for deciding which option is applied.

a) The Default Option

In terms of this option, the application process in terms of the Regulations may proceed before, parallel or after the application process in terms of a SEMA or another law. In the end, the applicable legal requirements are approached in a manner which emphasises the differences between those requirements.

b) The co-ordination option

The distinctive feature of this option is that the CA consults with another organ of state responsible for administering the legislation relating to any aspect of a listed or specified activity which also requires an environmental authorisation in terms of NEMA. The purpose of the consultation is “to co-ordinate the respective requirements of such legislation and to avoid duplication.”

c) The agreement option

Regarding this option, the CA enters into a written agreement with an organ of state responsible for administering the legislation relating to any other aspect of a listed or specified activity that also requires an environmental authorisation in terms of NEMA. The purpose of that agreement is to avoid duplication “in the submission of information or the carrying out of a process relating to any aspect of an activity” which also requires an environmental authorisation in terms of NEMA.

d) The joint exercise option

In terms of this option, the CA and another organ of state which has the power to grant approval or refusal for a listed activity or specified activity may exercise their respective powers jointly. The CA and that other organ of state may issue separate authorisations or an integrated environmental authorisation.

e) The “regards” option

There are two components of this option. The first component relates to the CA to regard its environmental authorisation as a sufficient basis for the granting or refusal of an authorisation, a permit or a licence under a SEMA if that specific SEMA is also administered by the CA. The second component relates to the power of the CA to regard an authorisation issued in terms of any other legislation as an environmental authorisation. The power of the CA, in this regard, is limited by the proviso that such authorisation must (have been) issued in terms of legislation which meets all the requirements stipulated in section 24(4)(a) of NEMA and, where applicable, section 24(4)(b) of NEMA.

Depending on which of the alignment options is pursued one of the following options could be followed to facilitate intergovernmental co-ordination.

- An ideal situation is an authority's meeting where agreement is reached regarding mechanisms for alignment. The outcomes of this meeting must be documented and circulated to all as the blue print for the alignment of processes going forward. If possible this should include a site visit so that project can be considered in context and specific requirements relating to a particular site can be identified.
- It is often difficult to organise a co-ordinated meeting with all departments. In such cases, individual meetings can be held with each department and a summary of the agreed alignment sent to all for verification/endorsement.

These different application options have implications for the timeframes of SI projects and must be considered in the planning phase. Table 3 outlines the timeframes and possible alignment of the permits and licences (most likely to be required as part of SI developments) with the EIA process. However, it is vital that the applicant discuss these timeframes with the CA during the planning phase to ensure that the correct application option is exercised.

Table 3. Timeframes of other permitting processes and their possible alignment with the EIA process

Permit or Licence	Timeframe	Alignment with the EIA process
Heritage Resources Development permit	EIA Timeframes	The time frames generally align with the EIA process. The Heritage Impact Assessment will form part of EIA documentation and there should also be overlap in the public participation process.
Heritage Permit	No set time frames (Approx. 1-3 months)	This permit is required before aspects of construction that will impact heritage resources can proceed. Obtaining this permit is therefore likely to be a condition of the EA.
Mining permit	No set timeframe.	The permit authorises the mining activity only e.g. extracting material from the borrow pit. It does however not authorise ancillary activities required to undertake mining such as new access roads which may require authorisation under the EIA regulations. An EA may therefore be required for such ancillary activities before the mining can proceed. There should be alignment between the MPRDA and EIA process in terms of: <ul style="list-style-type: none"> - Specialist information, - Public participation process. - Environmental assessment reporting. - Environmental management plan.
Threatened or Protected Species permit	No set time frames (Approx. 3 months)	The specialist work required for the TOPS permit should form part of the broader assessment undertaken by the botanist/vegetation ecologist for the EIA process. Securing the TOPS permit prior to commencement of the activity is likely to be a condition of the EA.
Water use licence	Undefined	A WUL is probably the most required of all licences other than the EIA in the case of SI projects. It is also the process which takes the longest to secure a licence. Options exist for alignment in terms of: <ul style="list-style-type: none"> - Consultation process. - Information (specialist studies). - Decision making (conditions).
Waste Management Licence	EIA timeframes	The options for co-ordination with EIA process include: <ul style="list-style-type: none"> - Consultation process. - Information (specialist studies).
Forest and Protected Tree Species Licence	Approx. 3 months	A permit will only be granted after the EA even if a decision is made beforehand.
Atmospheric Emission Licence	EIA timeframes	Options for co-ordination with EIA in terms of: <ul style="list-style-type: none"> - Consultation process. - Information (specialist studies) - Timeframes (noting that AEL will only be issued after EA).

3.7 Identifying the relevant Competent Authority

Section 1 of NEMA defines the CA as the organ of state charged by the Act with evaluating the environmental impact of an activity, and where appropriate, granting or refusing an EA in respect of that activity. The CA performs an administrative function in terms of registering the application, considering all documentation, and making a decision on whether the proposed activity may proceed or not. The CA also provides guidance on the relevant legislation and associated information sources such as guidelines and policies that should be considered as part of the process. The listing notices indicate the CA for each listed activity.

In most instances, the MEC responsible for environmental affairs in each of the provinces is designated as the CA. Applications for the commencement of listed activities should therefore be submitted to the associated provincial Departments.

However, in some cases, the Minister of Environmental Affairs is designated as the CA and the National Department of Environmental Affairs should be contacted. These cases are detailed in Sections 24C(2) and Section 41 of the Act and include:

- If the activity has implications for international environmental commitments or relations.
- If the activity will take place within an area protected by means of an international environmental instrument, other than any area falling within the sea-shore or within 150 meters seawards from the high water mark, whichever is the greater; a conservancy; a protected natural environment; a proclaimed private nature reserve; a natural heritage site; the buffer zone or transitional area of a biosphere reserve; or the buffer zone or transitional area of a world heritage site.
- If the activity has a development footprint that falls within the boundaries of more than one province or traverses international boundaries.
- When the activity is to be undertaken by a national department, a provincial department responsible for environmental affairs or a statutory body (excluding any municipality) performing an exclusive competence of the national sphere of government e.g. Eskom.
- If the activity is situated within a national proclaimed protected area or other conservation area under control of a national authority.

The requirement to obtain an environmental authorisation for an activity which constitutes prospecting, mining, exploration or production has not come into effect yet. However, in all likelihood, once this requirement comes into effect, the Minister of Mineral Resources will be designated as the CA.

Regarding licences, permits or authorisations required by laws other than NEMA or a SEMA, each of those laws specifies a CA for the activities it regulates. It is possible for certain projects to require environmental authorisations from different CAs depending on the circumstances. It is also possible for certain projects to require, in addition to an environmental authorisation, a licence or permission in terms of another law. A CA responsible for that licence or permission would be specified in the relevant law.

The names and contact details for the CA in respect of environmental authorisation (in terms of NEMA) for each of the Provincial Departments as well as the National Department are detailed in the information links below.

Contact details for Competent Authorities (in terms of NEMA)

Eastern Cape	• Department of Economic Development and Environmental Affairs	
Free State	• Department of Economic Development, Tourism and Environmental Affairs	
Gauteng	• Department of Agriculture and Rural Development	
KwaZulu-Natal	• Department of Agriculture and Environmental Affairs	
Limpopo	• Department of Economic Development, Environment and Tourism	
Mpumalanga	• Department of Economic Development, Environment and Tourism	
North West	• Department of Agriculture, Conservation and Environment	
Northern Cape	• Department of Environment and Nature Conservation	
Western Cape	• Department of Environmental Affairs and Development Planning	
National	• Department of Environmental Affairs	

3.8 Applying for Environmental Authorisation

Having identified the activities for which environmental authorisation is required and the relevant process to be followed, the environmental assessment process can commence. In many cases, the EIA is viewed as a lengthy process as the applicant has not yet made the necessary decisions before commencing the process. It is vital that the applicant seek guidance from the EAP to ensure that all necessary information is available prior to submitting an application. In this way, unnecessary delays can be avoided. The first step in the environmental assessment process entails the submission of an application form.

Box 1. Key issues identified in respect of applications

The environmental assessment process commences with the submission of an application form. Often these applications contain minimal or incorrect information and the applications have to be returned for corrections. In other instances, the applications are submitted late. This creates delays from the outset of the project which can easily be overcome if the application is completed fully and submitted on time.

Where do I obtain an application form?

An application form must always be submitted before undertaking an environmental authorisation process. Application forms can be accessed from the adjacent links. Applications forms vary between the different provinces and may also be updated from time to time. It is therefore vital that you contact the relevant CA to ensure that you obtain the correct application form.

Regulation 50 provides for an exemption which releases an applicant from their obligations in terms of all or part of the EIA process. An exemption will only be granted if the CA considers that there are good grounds to do so. The applicant should discuss the possibility of an exemption with the CA before submitting an application. If the CA agrees that an exemption is feasible then an application for exemption should be made in writing to the relevant CA and should include the following:

- an explanation of the reasons for the application;
- any applicable supporting documents; and
- the prescribed application fee, if any.


Application for exemption may still require a public participation process as set out in Regulation 51. The required process should also be discussed with the relevant CA.

How do I prepare and submit the application?

The applicant or the EAP may prepare the application form. The application must:

- be made on the official application form (see above)
- be properly completed and contain the correct information
- be accompanied by the prescribed application fee
- take into account any guideline applicable to the submission of applications.

The Regulations requires that an EAP is appointed to manage the BA or Scoping and EIR process. The EAP is required to complete a declaration of interest which must be submitted together with the application. The declaration of interest

Application for Environmental Authorisation	Declaration of Interest Forms for completion by EAP
Eastern Cape 	Eastern Cape 
Free State 	Free State 
Gauteng 	Gauteng 
KwaZulu-Natal 	KwaZulu-Natal 
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Mpumalanga 	Mpumalanga 
North West 	North West 
Northern Cape 	Northern Cape 
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requires the EAP to declare that he is independent and does not have any vested interest in the project. If at any stage, the independence of the EAP is called into question, then the Competent Authority may suspend the application, refuse to accept any reports from the EAP, request the applicant to appoint an independent person to review the work done by the EAP and may also require certain aspects of the work to be redone. These measures have considerable time and cost implications to the applicant.

Links to the relevant “Declaration of Interest” forms are provided above. In addition, if the applicant is not the owner or person in control of the land on which the activity is to be undertaken, the applicant must provide written notice of the proposed activity to the owner or person in control of the land. A copy of this written notice must be submitted with the application.

In addition to the declaration of interest by the EAP, other information may also need to be submitted with the application. For example, the Western Cape require the submission of a project programme which outlines the timeframes associated with the proposed project. This is useful in that it enables the CA to explore opportunities to streamline the project. It is advisable that the applicant contact the CA to ensure that all required documents are included with the submission of the application.

Regulation 14 enables the submission of combined applications. In the case where more than one activity requires authorisation and all the activities form part of the same development, a single application should be submitted. For example, if you wish to undertake a low cost housing development but also need to develop a large landfill site and waste water treatment works associated with this development, then all the activities can be considered together on one application form. If the activities are to be undertaken at different locations within the area of jurisdiction of the CA, then separate applications are generally required. However, the CA may, at the written request of the applicant, grant permission for the submission of a single application where the applicant undertakes more than one activity of the same type at different locations within the area of jurisdiction of the same CA.

The submission of a single application has a number of benefits. Firstly, it enables a consolidated process to be conducted, including a public participation process, which provides a significant cost saving to the applicant. It also facilitates the assessment of the cumulative impacts of the development. In addition, the CA only has to review one set of documents thereby streamlining the process.

Once the application form has been completed, it is advisable for the applicant to go through the form with the EAP to ensure that the information is accurate. It is important to remember that although the EAP is appointed to carry out the EIA work, the ultimate responsibility to ensure that the information is correct and that the relevant laws are complied with rests with the applicant in respect of their project. The application should then be submitted to the relevant CA (see the section on “Identifying the CA” for contact details).

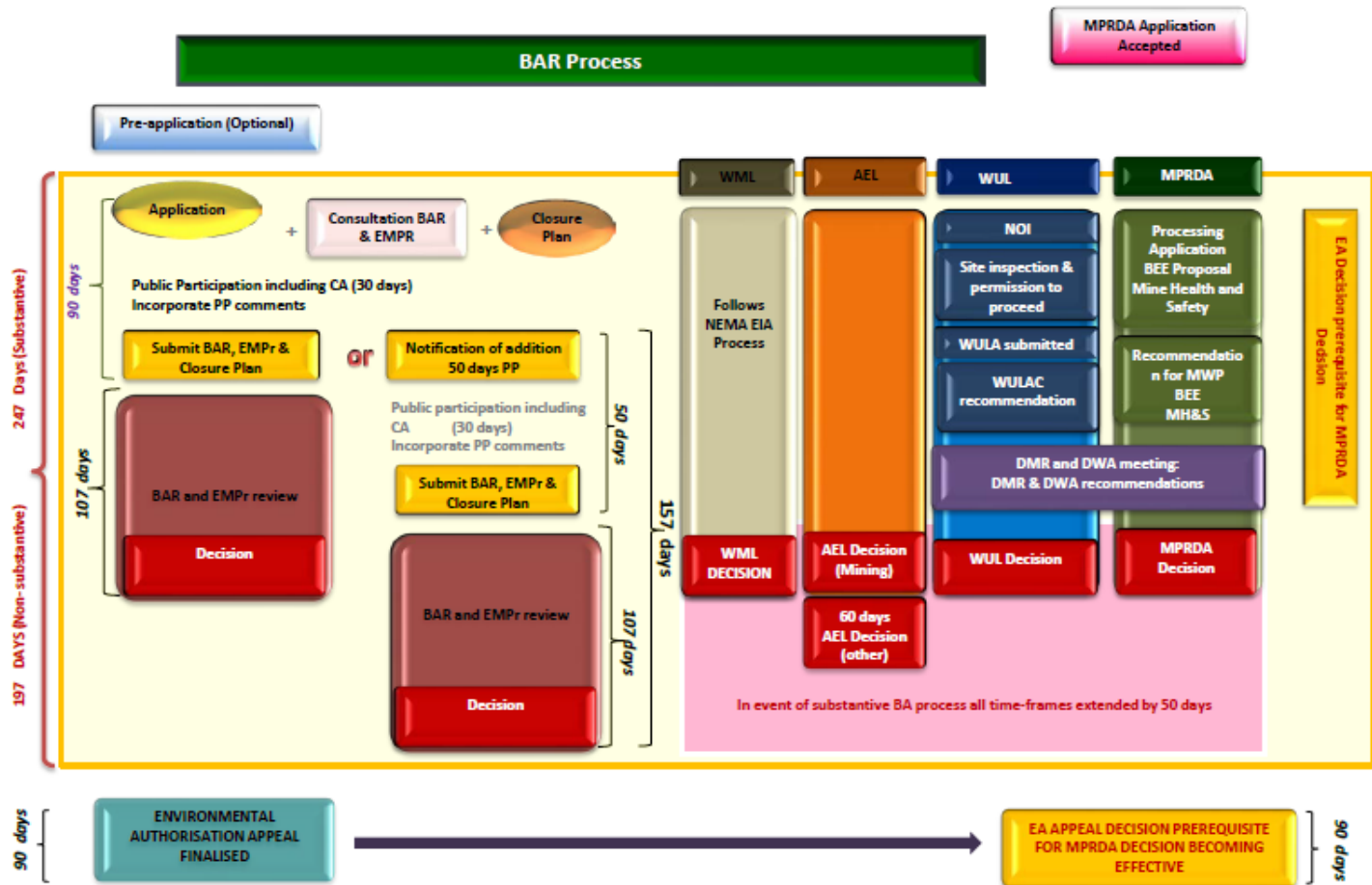
What happens after I have submitted the application?

Regulation 13 requires the CA to check the application to ensure that it has been properly completed on the appropriate application form and that it contains all the relevant information and associated documents. The CA must within 14 days of receiving the application, acknowledge receipt of the application and accept or reject the application (in writing). Any application that has been rejected may be corrected and re-submitted. If the applicant has not heard from the CA within 14 days, they should follow up with the CA, either directly or via their appointed EAP, to gauge where their application is in the process.

Regulation 67 stipulates that an application lapses, if the applicant, after having submitted the application fails, for a period of six months, to comply with a requirement in terms of the Regulations. It is therefore essential that once the CA has accepted the application, that the applicant commence with the appropriate process. The lapsing of applications is not desirable as it is costly for the applicant, delays the project and creates unnecessary work for the CA.

4 The Basic Assessment Report Process

The BA process should be undertaken for project activities that are included under Listing Notices 1 and 3. Impacts of these activities are more generally known and can often be mitigated or easily managed. The BA process is generally shorter and less onerous than the S&EIR process. The BA process must follow the procedure as prescribed in Regulations 19 to 20. The following diagram outlines the steps that should be followed in undertaking a BA process. Additional information on each of the steps can be accessed by clicking on the associated information links.



("% Submitting an application

For BA applications, the applicant or EAP must submit an application form, including a declaration of interest by the EAP, to the CA before conducting a BA.

"& Applying for Environmental Authorisation

Having identified the activities for which environmental authorisation is required and the relevant process to be followed, the environmental assessment process can commence. In many cases, the EIA is viewed as a lengthy process as the applicant has not yet made the necessary decisions before commencing the process. It is vital that the applicant seek guidance from the EAP to ensure that all necessary information is available prior to submitting an application. In this way, unnecessary delays can be avoided. The first step in the environmental assessment process entails the submission of an application form.

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Regulation 67 stipulates that an application lapses, if the applicant, after having submitted the application fails, for a period of six months, to comply with a requirement in terms of the Regulations. It is therefore essential that once the CA has accepted the application, that the applicant commence with the appropriate process. The lapsing of applications is not desirable as it is costly for the applicant, delays the project and creates unnecessary work for the CA.

(" 'Public participation

One of the general objectives of integrated environmental management set out in Section 23(2) of NEMA is to ensure the “adequate and appropriate opportunity for public participation in decisions that may affect the environment”. To provide for effective involvement, the Public Participation Process (PPP) must ensure the participation of vulnerable and disadvantaged persons and also that “people have the opportunity to develop the understanding, skills and capacity to achieve equitable and effective participation”. Public participation is therefore central to the EIA process. It runs throughout each phase and the outputs have significant bearing on the issues and alternatives considered in the assessment. An ineffective PPP can result in delays or failure of the EIA process. These issues affecting the PPP are discussed in more detail in Box 1 and guidance on how to overcome them has been provided in this section.

Box 1. Key Issues affecting the efficiency and effectiveness of the Public Participation Process

Time and budgetary pressures, particularly in respect of SI projects, often result in only the minimum legal requirements of PPP being undertaken. The consequence of this is often delays, frustrated I&APs and even appeal on procedural grounds where essential activities have not been completed. The most common issues affecting the PPP process are discussed in more detail below.

- Lack of participation

Lack of participation by interested and affected parties in the Public Participation Process often arises from a failure by the EAP, at the outset of the project, to establish a comprehensive understanding of the socio-economic systems that will be affected. The full range of I&APs are consequently not engaged early in the process which in turn requires that certain aspects of the process are repeated. This causes frustration and often results in delays. In the case of SI, the failure to identify and involve other service departments and local government, who are responsible for the construction and management of different infrastructure types, has been identified as a critical issue. This failure leads to either negative impacts on different infrastructure types (e.g. a water pipeline project digging up telecommunication cables), or loss of opportunities to improve planning (e.g. registering a new servitude when one could be shared).

- Inappropriate/inconsistent consultation methods

Different consultation methods are required in different social contexts. These methods should account for different languages, varying levels of access to technology (e.g. e-mail and internet), different levels of understanding of technical information, diverse social structures and protocols, and different political contexts. The need for on-going communication (even just to advise that there is a delay in terms of timeframes, and why) and consistency in the mechanisms and who is engaged are basic factors that are often not met.

- Community involvement in the process

Most SI projects are directed at improving the lives of impoverished communities. In most cases, the community as a whole will benefit from improved service delivery. However, in certain instances, some members of the community may be negatively impacted by the proposed project. For example the construction of a road in a rural area may result in the destruction of certain plants which are used by natural healers. Early and effective involvement of community members is therefore key in effective SI planning.

- Abuse of the Process by I&APs


Where I&APs oppose a development, they may attempt to frustrate the process by disrupting consultation activities and raising irrelevant issues. Alternatively some I&APs may try to use the process to further their own agenda, or oppose an application on the basis of financial competition. The EIA regulations have established requirements that aim to address such abuse and should be adhered to by EAPs.

- Inadequate public participation process

Public meetings are a common mechanism for consultation as many people can be engaged in a single event and there is the opportunity for all stakeholders to hear and understand each other's views. Such meetings have their limitations, as minorities or sections of a community often do not participate effectively. For example, a “community” may include various sub groupings such as traditional healers, women, cattle or water committees, youth and the elderly. All these sub-groups have different and sometimes conflicting needs. It is often necessary to meet with these different groups separately to understand their issues. This cannot be achieved in a public or general community meeting.

- Comments from stakeholders

In some cases, the EAP fails to adequately understand and respond to comments raised by I&APs. This usually stems from inadequate engagement and a failure by the EAP to gain clarity on the issues raised. For example, if an I&AP raises a concern about pollution, are they referring to the generation of dust during construction or fumes from traffic once a road is in place?

Chapter six of the EIA regulations governs the undertaking of the PPP, of which regulation 54 (2) requires that the person running the PPP take into account all applicable guidelines. Accordingly, the person responsible for managing the public participation process must consider the official guideline published by the DEA. It is important to note, that the current document does not intend to replace the official guideline, but rather to draw on and add value to the guidance given in the official guideline. The current document is also directed specifically at SI projects. A copy of the official guideline can be accessed through the following link. 

Chapter six of the EIA regulations applies to both the BA and the S&EIR process. It details specific requirements which must be met and which constitute the minimum legal requirement. However, the context for each development project is different and affects different people and natural systems in different ways. These impacts depend on the nature, scale and types of output from the project as well as the sensitivity of the affected social and natural systems, and the links between them. Guidance is therefore provided on how to:

- Improve the efficiency and accuracy with which the minimum legal requirements are met, but also to
- Develop and run a PPP that is appropriate to the specific context of each project.

Scoping for Public Participation

Running an effective PPP requires that it is designed in line with the range of different I&APs and the variation between them in terms of technical understanding, language, access to types of communication and so on. This requires that the person running the PPP establish a comprehensive understanding of potential I&APs as early as possible in the process. This is best achieved through a scoping process. While not a legal requirement it is a relatively simple undertaking and will assist in avoiding many of the issues that commonly cause delays in the PPP. Establishing an understanding of who may be impacted requires that the following aspects are considered:

- **Spatial influence of the project**

The impacts of a project change in relation to the distance from the project site. As indicated in Figure 1, people living immediately adjacent to a project site will be directly impacted by construction impacts of noise and dust. For SI projects these impacts are commonly only felt at local level and not further away.

- **Nature of the impact**

There are direct impacts, such as the loss of topsoil which reduces the productive capacity of land. A secondary impact would be siltation of dams downstream. One needs to consider the knock on (secondary) effects of the obvious impacts as they may affect different stakeholders.

- **Impacts associated with different phases of the project**

Impacts vary with the project life cycle. In the case of a power line, the visual impact on an important cultural site is only felt once the power line is in place i.e. in the operational phase. Similarly, the impact on traffic volumes from the development of a large housing project in a suburb will only be felt once the project is completed and the housing is inhabited.

- **Types of impact**

Certain I&APs will be directly impacted by a project, while others may be affected by secondary impacts. As an example, a reduction in water quality from sewage disposal from a large housing development may negatively impact a tourism activity downstream that relies on good quality water.

- **Different components of the receiving environment**

Consideration should be given to I&APs associated with each component of the receiving environment, these being the social, cultural, economic, biophysical environments. It needs to be considered whether there are sensitive natural features (protected areas, nest sites, threatened habitats), social facilities (schools, hospitals, recreational areas/sites) or cultural sites (graveyards, ancestral, historic sites, archaeological features) that will be impacted by different impacts in different phase within the spatial influence of the project.

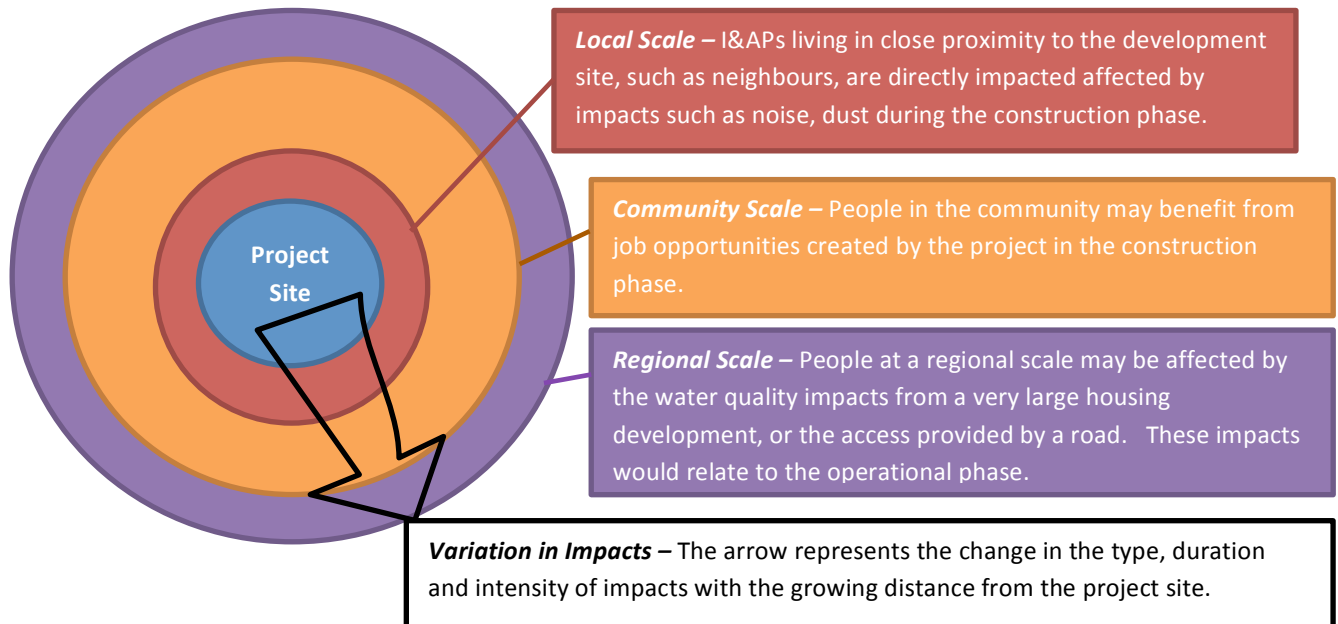


Figure 1. Aspects to consider in identifying the range if I&APs

By reviewing the likely impacts of the project against maps (indicating the location) and information for the area (indicating the sensitivity) of the environmental components it is possible to get an understanding of the different I&APs who should be included in the PPP. The examples of given in Table 5 below are not exhaustive but are included to provide an idea of the range of stakeholders who may be relevant depending on the project context. These I&APs can then be identified and included in the I&AP database from the outset. There are also specific IA&Ps that the EIA regulations require the EAP to consult. These are government agencies responsible for other regulatory processes such as Water Affairs (water use licence), Agriculture (CARA permit), Conservation Agencies (TOPS permits), Local Government (Planning authorisation). The sooner these “essential I&APs” and appropriate contacts for each are identified the better as they will often have set processes that govern how the EAP should interact with them, which will inform the manner and structure of the PPP. This includes information requirements.

Table 1. Examples of types of different I&APs per environmental component

Environmental Component	Potential Types of I&APs
Biophysical	<ul style="list-style-type: none"> - NGOs. - Conservancies. - Protected area managers. - Conservation agencies.
Social	<ul style="list-style-type: none"> - Individuals. - Households. - Traditional authorities. - Civic associations – clubs, associations, ratepayers.
Cultural	<ul style="list-style-type: none"> - Religious groups. - Heritage sites - managers. - Heritage Resources agencies. - Indigenous Communities.
Economic	<ul style="list-style-type: none"> - Organisations representing economic sectors – tourism, agriculture, mining. - Associations (chamber of business).

The above steps in the PPP scoping process is supplemented by:

- Engaging the CA who should have a good understanding of the I&APs in the area, what methods work best for consultation, what publications are used.
- Reviewing the process and outcomes of other EIAs run in an area to access information on I&APs and methods employed.
- Meeting with the Ward councillors to understand the social context including structures, existing forums and acceptable methods for engagement. The lack of understanding among ward councillors regarding the purpose and structure of the EIA process is a major challenge given the importance of community level participation for SI projects. The EAP should include additional time and budget for working with the councillors to ensure the level of understanding is appropriate for ensuring effective participation and inputs.

Undertaking scoping assists in designing the PPP correctly for the local context, thereby ensuring that the correct I&APs are engaged in the most efficient and appropriate way possible from the outset. It helps the EA to plan the PPP so that they meet the legal requirements discussed below, but also get the most out of the process by using the most appropriate mediums for notifying/advertising the project, circulating information and obtaining comment. This process also aids I&APs feeling part of the process from the outset and contributing positively, rather than being alienated through limited engagement in which case there is often opposition to the process and project. The remainder of the section covers the PPP activities and steps required in the regulations. Guidance is provided [in brackets] on how to improve the way these are undertaken.

Box 2. Options for Exemption

It is important to note upfront that because NEMA requires public information and participation for every application; it is therefore **NOT POSSIBLE** to apply for **COMPLETE EXEMPTION** from having to undertake Public Participation. It is however **possible to apply for exemption from or deviation from the legal requirements for certain aspects** of the PPP. This is done via a formal process and it is suggested recommended that the CA is consulted to establish the likelihood of the request being accepted.

Notifying Interested and Affected Parties

The PPP commences once an application has been submitted, with the first step being the notification of I&APs. The regulations require that notification is undertaken through three formal activities. These include a) notice board; b) written notification to a set list of I&APs; c) a public notice placed in local/regional newspaper, or government gazette. It is through this combination of mechanisms that the project is advertised and the EAP is able to establish their I&AP database. It is necessary that the application number is included in all forms of communication with I&APs throughout the process, starting with the initial notification and BID.

Details of the legal requirements pertaining to these mechanisms and additional guidance is provided below, along with insight into other options and tools, such as the background information document (BID), websites and radio adverts. While not a legal requirement, these are very useful mechanisms for generating understanding about the project, the process and how I&APs can engage. The options used depend on the

a) Notice Board

A notice board should be fixed at an 'eye catching' place (such as the entrance of the proposed and any alternative sites), for the duration of the process. [Notices are commonly laminated or placed in sites which afford some level of protection from the weather. To increase awareness, notices should also be placed at other public sites in the area such as libraries, post offices, local supermarkets and pension pay points.] The notice board must meet the minimum size (60cm x 42cm) and must provide the following information:

- (i) That an application for environmental authorisation has been submitted to the CA.
- (ii) Whether the BA or full EIA process is being applied to the application.

- (iii) A description of the project that provides an understating of all the elements of the project. For example, if a tourism development is proposed, it should indicate the full range of complimentary activities to the accommodation such as 4x4 trails, golf course as these may have impacts of their own. Similarly a new industrial complex may require a new major access road. The location and layout of the various elements and boundaries of the properties involved should be indicated on the notice i.e. it must include a map.
- (iv) Where further information on the activity or the application can be obtained.
- (v) The manner in which I&APs can submit comments and the contact details of the person to whom they should be submitted.

b) Written Notification

The Regulations require that the following I&APs are sent written notice:

- (vi) The owner or person in control of the land, if they are not the applicant
- (vii) The occupiers of the proposed and any alternative sites
- (viii) Owners or occupiers of the land adjacent to the proposed or alternative sites
- (ix) The councillor of the ward within which the proposed or alternative sites are located, and any organisation of ratepayers in these areas. [In addition to ratepayers, there are often a range of different civic organisations that will have interest in projects such a chamber of commerce, or business. It is good practice to meet with the ward councillor at the outset to establish:
 - What organisations exist, their contact details, and
 - Whether communication will be best achieved by engaging directly with these organisations, or via the councillor's office,
 - Suitable venues for meetings and what are the usual/acceptable times in the community for holding public meetings should also be established].
- (x) The relevant municipality

[There may be several departments within a municipality that will need to comment on an application - particularly larger municipalities and metros. These include technical departments that deal with roads, water, sanitation and those concerned with health, safety and security and community liaison. It is important that all relevant sections are included. Some municipalities have a single contact and processes set up to co-ordinate involvement in EIAs. Where this is not the case the EAP will need to ensure that they engage all relevant departments directly.]
- (xi) Any organ of state having jurisdiction in respect of any aspect of the activity

These include organs of state from which authorisation is required in terms of other legislation. Guidance is provided in section 8 of this document for each of the different types of SI.
- (xii) Or any other party as required by the CA

[The relevant authority (DEA or provincial department) will have a good understanding of the I&APs within their jurisdiction and in relation to type of project being considered. The EAP or public participation specialist should consult the case officer to get insights into the relevant I&APs. The case officer can also direct them to other EAPs who have worked in the area who will have databases of stakeholders for similar projects].

c) Placing an advert in:


- (i) One local newspaper [There are a growing number of free publications that cover very localised areas linked to residential areas or communities. These are often well read and a very good medium for notifying local communities of SI projects], or
- (ii) Any official Gazette that is published for the purposes of providing public notices in respect of the EIA regulations. [No such gazette exists as yet].
- (iii) Placing and advert in at least one provincial or national newspaper if the activity has or may have an impact that extends beyond the boundaries of the metropolitan or local municipality [Because no gazette exists for these purposes, adverts must be placed in provincial newspapers where the impact will extend beyond the borders of the municipality -DEA 2010].

d) *Other Mechanisms*

It is useful and common practice to include a Background Information Document (BID) with the written notice required above. The BID is normally no more than 4 pages and provides basic information about the project including nature and range of associated activities, the purpose, who the applicant is and the location (including maps and a layout plan at the proposed and any alternative sites) – it effectively expands the information provided in the site notice. An important objective of the site notice and BID is to help potential I&APs to consider whether they are interested in the project. It should also indicate clearly how they can participate in the process in terms of opportunities to attend meetings, receive documents throughout the process and submit comments. The EAP can also use the BID to obtain information about I&APs that will assist them in running an appropriate and efficient PPP. This is done by asking the reader of the notice or BID to confirm their preferred time for public meetings or medium for review of documentation (electronic or hardcopy), and request that they circulate the BID to other I&APs who they consider may be interested or affected. Importantly, it should also indicate the responsibility of I&APs when engaging in the process and the difference between I&APs and ‘registered I&APs’ (explained later in this section).

Other mechanisms used to advertise the project, register I&APs and obtain initial comment are:

- Open Days – were the EAP make themselves available at locations accessible to the public – such as schools and town halls, and have a range of information and large scale maps available for people to review and ask questions. The open days can be advertised in the written notification, notice boards newspaper advertisements.
- Radio adverts – these are used in areas where there is limited access to print media and electronic mediums such as email and the internet.
- Websites: It is also useful for projects where the large majority of I&APs have access to the internet to establish a project website. This provides a very useful mechanism for the transfer of information and cuts down on the volumes of hardcopy material that is generated as I&APs can download, and the logistical issues of distributing information where there are a large number of spatially fragmented I&APs .

Contact details for regional, provincial and national newspapers in South Africa can be accessed at the adjacent link. 

The regulations require that proof of notification is provided to the CA for each aspect of notification. This includes copies original copies of the newspaper adverts, photos of the site notices which show the detail and the context within which the notice was displayed (GPS points would also be useful), and copies of all other documentation such as the BID, written notification and the list of people that it was sent to. Further guidance is provided by the DEA (2010) on what form this proof should take in respect of each type of notice. In addition the Applicant must consult with the relevant Provincial Guidelines for the specific requirements in terms of proof of notification.

It worth noting again at this point, that the regulations set out the minimum requirements for public participation and in many cases just following the minimum requirements will not be adequate. A robust public participation process is a worthwhile investment, which if done according to best practice (rather than just the minimum legal requirement) then the PPP will contribute significantly to the sustainability of the project (e.g. reduced delays due to stakeholder concerns not being considered or adequately addressed). As an example, other forms of notification may be necessary. A thorough scoping process will assist in running an effective and efficient PPP.

Register of Interested and Affected Parties

Regulation 55 requires an EAP to open and maintain a register which contains the names, contact details and addresses of all persons who have submitted written comments or attended meetings,

- a) all persons who have, after the completion of the PPP, asked the EAP for their names to be placed on the register, and
- b) all organs of state which have jurisdiction in respect of the activity.

The EAP is required to make the register available to anyone who requests access to it. This regulation is best adhered to by developing an I&AP database in an electronic format. MS excel and other database software is often used for this purposes. Some EAPs and particularly specialist public participation practitioners have developed specific software to run the process. Use of such systems indicates a level of experience and competency in running the PPP as it requires very good organisation and management of stakeholder information and engagement. In addition to basic contact information, the following information can be recorded in the database:

- Method through which the I&AP requested registration (email, fax, telephone and post). This assists the EAP in maintaining a record of I&AP engagement and compiling the final PPP documentation. The date of registration should also be recorded so that it is clear when the person entered the process.
- Whether the I&AP attended public and /or other meetings.
- Date of correspondence and whether it was in response to written notification, provided as comment on the draft report or input made at a public meeting.
- What medium was used to respond to comments submitted by I&APs were dealt with. For example, through e-mail or in the formal comments and response document.

A well maintained database with a chronological record of participation by each I&AP and links to the related documentation assists in meeting the reporting requirements for the PPP. It also assists the EAP to check that they have responded to all input received. For the applicant, who can and should request to review the database at any time, it provides a tool for checking that the EAP is responding to all I&AP queries in an appropriate and timeously manner.

Box 3. Distinguishing Between I&APs and Registered I&APs

The regulations distinguish between these two as defined below:

- I&APs include a) any person or group of persons or organisation interested in or affected by an activity; and b) any organ of state that may have jurisdiction over any aspect of the activity.
- Registered I&APs – means any I&AP whose name is recorded in the register opened for that application. Relevant organs of state are automatically included as registered I&APs.

Only registered I&APs will be notified of:

- The availability of reports and other written submissions made to the CA by the applicant, and be entitled to comment on these reports,
- The outcome of the application, the reasons for the decision, and that an appeal may be lodged against the decision,
- The applicant's intention to appeal the decision, together with an indication of where and for what period the appeal submission will be available for

Given the above, it is important in the initial consultation to make I&APs aware that they need to be registered in order to be able to participate as above and to then confirm whether I&APs wish to be registered.

Commenting - submitting, recording and responding

Regulation 56 states that all registered I&APs are entitled to comment, in writing, on all submissions including draft reports made to the CA. A registered I&AP may comment provided that:

- a) Comments are submitted within:
 - (i) The timeframes set, or approved by the CA.
 - (ii) Any extension of a timeframe agreed to by the applicant or EAP.
- b) A copy of comments submitted directly to the CA is also provided to the EAP.
- c) The I&AP discloses any direct business, financial, personal or other interest which that party may have in the approval or refusal of the application.

Before an EAP submits a final report they must have given registered I&APs access to, and an opportunity to comment on all reports produced in terms of the regulations including the specialist reports and the PPP report (which is important for I&APs to verify that their input has been considered and responded to).

The regulations also require that:

- **Draft versions** of any reports are submitted to the CA before providing registered I&APs an opportunity to comment. Importantly, as per 56 (3), I&APs must be notified of and have the opportunity to comment on any amendments made to draft reports.
- Registered I&APs must **submit comments** on any **draft reports to the EAP** who needs to record receipt of the comments.
- Registered I&APs must **submit comments** on any **final reports to the CA** and provide a copy to the applicant or EAP.
- The CA is required to request any state department that administers a law relating to the matter affecting the environment to comment within 40 days, and 60 days in the case of waste management activities contemplated under the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008) on which the relevant Minister must concur and issue an EA in terms of that Act. While not a legal requirement, I&APs other than state departments are also usually given 40 days to comment.
- Where state departments fail to provide comment within the 40 and 60 day periods, it will be regarded that there are no comment. The EAP is responsible for ensuring that all comments received are recorded and copies are attached to the report.

A minimum of 40 days must be allowed for registered I&APs, including all relevant state departments to make representations on draft BA Reports, draft Scoping Reports and draft EIA Reports¹. These 40 days must be read as 60 days in a case of waste management activities. It should be noted that:

- Applicants may make draft reports available on first notification of all I&APs. In such instances the notice to I&APs must also clearly indicate that a draft report is available for comment and indicate when, where and for how long the report will be available for comment.
- Days mean calendar days.
- The period of 15 December to 2 January must be excluded from the reckoning of days, and the period extended by the number of days falling within this period.
- When a timeframe includes a public holiday, the time frame must be extended by the number of public holidays occurring within the period.

The activities and time frames should be included in the overall project and specific PPP plan developed by the EAP at the outset, based on the scoping undertaken upfront. Such a project plan provides the basis against which the applicant can monitor the EAPs progress and should be a requirement of the applicant from the EAP. The EAP should provide regular/monthly updates on progress against the project programme and inform the applicant where issues are affecting the programme and proposed steps for dealing with these – particularly where they have budgetary implications (for example, where an I&AP requests additional meetings or a department requires additional specialist investigation).

There are a variety of mechanisms for I&APs to present information to and provide I&APs with an opportunity to comment. This includes public, focus group or one-on-one meetings, written comment and open days. In most instances a mix of mechanisms is necessary to account for the variation in technical understanding, knowledge, logistics and spatial orientation amongst the range of I&APs. The selection of mechanisms is informed by the understanding of the I&APs established in the PPP scoping process.

It is worth understanding the benefits and limitations of different methods for engagement. A standard method is public meetings. They are often held because they enable the engagement of a wide range of stakeholders in one event. However large public meetings are not always appropriate because they may be dominated by stronger, empowered I&APs with a result that less vocal and informed I&APs are marginalised. In the case of SI projects it is

¹ These 40 days must be read as 60 days in a case of waste management activities

always important to engage local communities, who are often both the beneficiaries and negatively impacted. Again, a single 'community meeting' may be inappropriate because it may be dominated by powerful members of the community. Communities comprise of sub groupings that may include among others; traditional healers, livestock and water committees, women and youth. Depending on the nature of the project these groups will be affected in different ways and it may be important to meet with them separately. The EAP needs to select appropriate mechanisms based on their experience of what is appropriate for different I&APs. Such engagement will invariably require a level of capacity building and need to be run in the appropriate language to ensure the understanding is transferred.

The EAP must ensure that comments of I&APs, including those made at public meetings are attached to the BA or EIA reports that are submitted to the CA in a formal comments and response document (C&RD). Where a person wishes to comment but is unable to due to factors such as a lack of skills to read or write reasonable alternatives methods of recording comments must be provided for.

The ***C&RD is an essential and important component of the PPP and the EIA documentation*** as it summarises the issues raised and how they have been dealt with. It is as important for the applicant as it is for the I&APs, because it shows how the EAP has responded to the queries received. Where EAPs respond in a superficial manner and do not either take the time to understand or reply appropriately, the risk to the applicant is that this will alienate and frustrate I&APs, with the potential for delays. The responses vary from providing additional information, to amending the report or amending the way in which I&APs are engaged. Applicants should therefore review the C&R carefully before it is finalised to ensure they are happy that the EAP has responded appropriately. It also provides the applicant with insight about people's perceptions about the project. . It is also common that several queries are of technical natures which require a response for the applicants development team e.g. engineer. In view of the discussion above, a good EAP will insist on a review by the applicant.

The CA has the authority to request additional information and investigation. Such requests are often based on a review of the C&R, where it is easiest for the CA to assess whether the EAP has dealt with comments effectively and appropriately. Comments can relate to process e.g. a request for additional consultation, or content e.g. more information regarding an impact and even a request for additional specialist investigations. It may require that the EAP consult their specialist and/or even the CA to be clear on a response relating to technical issues.

Notifying I&APs of the Departments decision

The applicant must, within 12 days of the date of the decision on the application, notify all registered I&APs of the following:

- The outcome of the application ,
- The reasons for the decision,
- The opportunity to appeal the decision,
- The manner in which they can access the decision.

This should be done via written notice. The applicant is also required to advertise the decision and the opportunity to access and appeal the decision via a public notice placed in the same newspapers that have been used throughout the process.

(" (' Preparing the Basic Assessment Report











Basic Assessment Report templates

The EAP managing the process is responsible for preparing the BA Report. This Report must follow the format prescribed by the CA. Most provinces have prepared a template which should be used. These templates can be accessed from the adjacent links.

Contents of the Basic Assessment Report

The Regulations require that a BA Report contain all the information which is necessary for the CA to consider the application and reach a decision. This information includes:

- Details and expertise of the EAP who prepared the report
- A description of the proposed activity
- A description and map of the property on which the activity is to be undertaken or if it is a linear activity then a description of the route
- A description of the environment that may be affected by the proposed activity and the manner in which the various aspects of the environment (physical, biological, cultural, economic and cultural) may be impacted.
- All legislation and guidelines that have been considered in the preparation of the report
- Details of the public participation process that has been conducted including:
 - the steps taken to notify I&APs
 - proof of noticeboards, advertisements and notices notifying I&APs
 - a list of all persons, organisations and organs of state who were registered as I&APs in relation to the application
 - A summary of the issues raised by the I&APs and the responses of the EAP
- A description of the need and desirability of the proposed activity
- A description of feasible and reasonable alternatives
- Consideration of the significance of any environmental impacts including an assessment and description of the nature, extent, duration and probability of the impact as well as the degree to which it can be reversed or mitigated. Cumulative impacts must also be considered.
- Any environmental management and mitigation measures proposed by the EAP
- Any inputs and recommendations made by specialists
- A draft EMPR
- A description of any assumptions, uncertainties and gaps in knowledge
- A reasoned opinion as to whether the activity should be authorised or not
- Any representations or comments received in respect of the BA Report
- The minutes of any meetings held by the EAP with I&APs and other role-players which record the views of the participants and the associated responses of the EAP
- Any specific information required by the CA

Basic Assessment Report templates	
Eastern Cape	
Free State	
Gauteng	
KwaZulu-Natal	
Limpopo	
Mpumalanga	
North West	
Northern Cape	
Western Cape	
National	

In addition, a BA Report must consider any other relevant guidelines and/or departmental policies, environmental management instruments and other decision-making instruments that have been developed or adopted by the CA.

Box 1. Key issues affecting the completion and submission of BA Reports

A number of issues associated with BA reports which cause delays to SI projects have been identified. The most critical issue relates to the submission of BA reports which are either incomplete or do not contain sufficient information to enable the authorities to adequately assess the proposed development. It is vital that the applicant provide the EAP with comprehensive information about the proposed activity and equally, that the EAP include detailed information in respect of the receiving environment, impacts, management and mitigation as well as proposed alternatives. If the required information is insufficient, the report has to be returned to the applicant for the inclusion of this information. This causes unnecessary delays to the project.

(") 'Submission and review of the Basic Assessment Report

Submitting the BA Report

The EAP managing the process is responsible for submitting the BA Report to the CA. The submission must include at least 5 copies of:

- The BA Report
- Any representations and comments received in connection with the application or BA Report
- The minutes of any meetings held by the EAP with I&APs and other role-players which record the views of the participants and the associated responses of the EAP

What happens after the BA Report has been submitted?

Once the BA Report has been submitted, the CA has 14 days to acknowledge receipt of the report and a further 30 days to either accept or reject it. In the case where the activity applied for is a disposal site, the Department will have 60 days to accept or reject a report. If the report is rejected, then the CA must request the EAP to:


- Submit additional information
- Submit a report on any specialised study or process as deemed necessary by the CA
- Suggest, consider or comment on feasible and reasonable alternatives
- Undertake a S&EIR

Any BA Report which has been rejected may be amended and re-submitted for re-consideration by the CA.

The CA must within 30 days of accepting the BA Report (or within 30 days of the lapsing of the 60 day extension period) either grant or refuse the authorisation in respect of all or part of the activity. Once a decision has been reached, the CA must notify the applicant and give reasons for the decision within 2 days. The applicant, in turn, must notify all registered I&APs of the outcome and reasons for the decision within 12 days. Such notification must also be placed by way of a notice in the relevant newspaper (as used in the public participation process).

(* Environmental authorisations

Undertaking a BA or S&EIR process does not automatically mean that authorisation for the development will be granted. The CA has the right not to authorise a development but must provide reasons for such a decision. The CA may also only authorise certain aspects of the development. If the CA decides to grant authorisation to the project, then an EA is issued in the name of the applicant. In making the decision on the application, the CA will consider:

- Whether the activity complies with NEMA, the Regulations and all other applicable legislation. This includes the principles of NEMA, a description of which is available at the following link. 
- What the environmental impacts are likely to be if the application is granted or refused.
- What measures could be implemented to mitigate any environmental impacts.
- Whether the applicant is able to implement these mitigation measures and comply with the conditions imposed on the project.
- What reasonable modifications could be made to the activity to minimise any negative impacts.
- Any other relevant information contained in the reports or documents submitted to the CA.
- Any comments obtained from other organs of state that have jurisdiction over any aspect of the activity.
- Any relevant national and/or provincial policies.

Part 4 of the Environmental Impact Regulations outline the content of EAs and specify that the authorisation must include the following information:

- The name, address and telephone number of the person to whom the authorisation is issued.
- A description of the activity which is authorised.
- A description of the property on which the activity is to be undertaken as well as the location of the activity on the property.
- The conditions subject to which the activity may be undertaken including the period for which the EA is valid; the requirements for management, monitoring and reporting the impacts of the activity throughout the lifecycle of the activity; and the transfer of rights and obligations if there is a change of ownership in the property on which the activity is taking place.
- Where appropriate, the EA may also indicate the manner in which and when the CA may approve the EMPR and the manner and frequency with which the EMP will be amended or updated.

The EA may also:

- Stipulate that the activity may not commence before specific conditions are met.
- Require the holder of the authorisation to provide reports to the CA, at specified intervals, indicating the extent to which the conditions of authorisation are being met; providing details and reasons for any non-compliance; and describing any actions taken to mitigate the non-compliance.
- Require the holder of the authorisation to provide the CA, at specified intervals, with environmental audit reports on the impacts of the activity on the environment.
- Where applicable, require the holder of the authorisation to provide the CA with proof of compliance with the applicable requirements regarding closure.
- Include any other condition that the CA considers necessary for the protection of the environment.

It is important that the applicant thoroughly review the EA and check that they are able to comply with the conditions therein. If the applicant is unable to comply with the EA, due to technical, financial or other reasons, then they should consider an appeal. The applicant must not proceed with construction if they know that they are unable to comply with the EA. The costs of delays once the project has commenced (construction penalties and or fines) may be far greater than those associated with the delay due to an appeal.

Box 1. Key issues in respect of Environmental Authorisations


Two key issues were identified by stakeholders during preliminary consultation in respect of EAs. It was noted that a significant number of EAs are allowed to lapse by SI developers, even if a commencement period of four years is stipulated. This problem was attributed to the extremely low capacity in local authorities rather than as a result of problems with the EIA process. Many municipalities do not even have the capacity to manage their own land-use functions such as land-use and subdivisions let alone comply with additional regulatory requirements. This issue is a serious obstacle to the implementation of SI projects.

The second issue relates to the non-compliance with the conditions of the EA. In some cases, implementing agents simply proceed without authorisation while in other cases Environmental Control Officers fail to debrief construction teams about the terms of EAs. This in turn leads to a Section 24G application and even stronger enforcement actions which causes serious delays to SI projects., In addition, the situation can and often does lead to very strong social and political pressures. Such cases could be avoided if the environmental assessment process was properly adhered to.

("+ 'Specialist studies

Preparing for specialist studies

Specialist studies are a key component of EIAs and provide valuable information which assists the CA to make a decision on whether the proposed development may proceed or not. The EAP managing the process should consider a number of key aspects to ensure that quality information is obtained from specialist studies. These include:


- Drafting and clarifying the Terms of Reference. The following link provides a model "Terms of Reference" for specialist input. 
- Outlining the approach to the specialist study.
- Defining the reporting requirements for the specialist.
- Selecting the right specialist.
- Ensuring interdisciplinary interaction between specialists.
- Review of the study by the right reviewer.

It is important to note that specialist studies may also delay the timeframes of a project as sampling may need to be undertaken at specific times of the year. For example, it may only be possible to sample vegetation during the flowering season. It is therefore important that the applicant discuss the potential need for specialist input at the outset of the project to ensure that adequate time is built in to the planning process.

Types of specialist studies

The EAP may request a range of specialist studies depending on the nature and location of the proposed development. Specialist studies may relate to various subjects including:











- Socio-economic
- Biodiversity
- Air quality
- Visual and aesthetic
- Hydrology
- Heritage

A number of guidelines in respect of these subjects can be accessed at the following link. 

Contents of specialist studies

The Regulations require that a specialist report include the following information:

- Details and expertise of the person who prepared the report.
- A declaration that the person is independent.
- An indication of the scope and purpose of the report.
- Description of the methodology adopted in preparing the report.
- Description of any assumptions or data gaps.
- Description of the findings and their potential implications for the proposed activity. These should also consider any alternatives.
- Recommendations for any mitigation measures that should be considered by the applicant and the CA.
- A description of the consultation process that was undertaken during the course of the study.
- A summary and copies of any comments received during consultation.
- Any other information requested by the CA.

Details of specialists and Declaration of Interest	
Eastern Cape	
Free State	
Gauteng	
KwaZulu-Natal	
Limpopo	
Mpumalanga	
North West	
Northern Cape	
Western Cape	
National	

(" , ' Amendments

The Regulations do enable EAs to be amended and sets out a specific process which should be followed to do this. If the amendment is likely to be substantive, then an additional public participation process will be required. Although in some instances amendments may be necessary, they are generally not desirable as they add additional costs and delays to the process. Many amendments could be avoided if the initial information included in the reports is correct.

The CA or the holder of the EA may initiate an amendment to the EA. There are a variety of ways in which the EA may be amended including:

- Attaching an additional condition or requirement.
- Substituting, removing or changing a condition or requirement.
- Updating or changing any detail on the authorisation.
- Correcting a technical or editorial error.

Amendment of authorisations by applicant











The holder of the authorisation may apply at any time to the CA for an amendment to the authorisation. Such applications will be considered where there has been a change in circumstances from the time when the authorisation was granted; there has been a change of ownership; or any detail within the authorisation requires amending, adding, substituting, correcting, removing or updating. The application must be submitted in writing and be accompanied by the motivation for the amendment.

The CA has 14 days to acknowledge receipt of the application and a further 30 days to make a decision on the application if there are no-substantive amendments or if the environment or the rights or interests of other parties are not likely to be adversely affected. If this is not the case, the CA may require the applicant to undertake a public participation process and/or to conduct specific investigations or assessments. The CA is then required to make a decision on the application within 30 days of this process being completed.

Amendment of authorisations on initiative of the CA

The relevant CA may also amend an EA on their own initiative in order to prevent deterioration of the environment; to achieve prescribed environmental standards; or to accommodate demands brought about by impacts on socio-economic circumstances where the demands are in the public interest. If the CA intends amending an authorisation, then they must notify the holder in writing of the proposed amendment and give the holder an opportunity to submit representations regarding the proposed amendment. An additional public participation exercise will need to be conducted unless the amendment is considered not to be substantive.

Within 30 days of completing this process, the CA must reach a decision as to whether to amend the authorisation or not. If the decision is to amend the authorisation, then the CA must issue an amendment to the authorisation either by way of a new authorisation or an addendum to the existing authorisation. Once the CA has reached a decision, they must notify and provide reasons to the holder within 2 days and interested and affected parties within 12 days.

Forms to amend Environmental Authorisations	
Eastern Cape	
Free State	
Gauteng	
KwaZulu-Natal	
Limpopo	
Mpumalanga	
North West	
Northern Cape	
Western Cape	
National	

Amending Environmental Management Programmes

An EMPR may be amended either through an application by the holder of an EA or on the own initiative of the CA. Such amendments may be desirable or necessary in order to:

- Prevent environmental deterioration.
- Achieve prescribed environmental standards.
- Accommodate demands brought about by impacts on socio-economic circumstances where the demands are in the public interest.
- Ensure compliance with the conditions of EA.
- Assess the continued appropriateness and adequacy of the EMPR.
- Address any conflict between the EMPR and principles set out in NEMA.

If the CA initiates the amendment of an EMPR they must first notify the holder of the proposed amendment and give the holder of the authorisation an opportunity to submit representations regarding the proposed amendments. If necessary, they may also need to conduct a public participation exercise.

If the holder of an authorisation wishes to amend an EMPR, they must submit an application to the relevant CA, who in turn must acknowledge receipt of the application within 14 days. The holder may be required to conduct a public participation exercise. Within 30 days of receiving all information, the CA must either refuse the application or approve the application by issuing an addendum to the relevant authorisation. Once the CA has reached a decision, the applicant must notify and provide reasons for the amendment to any interested and affected parties within 12 days. Similarly, if the CA initiated the amendment, then they must notify and provide reasons for the amendment to the holder within 2 days and to interested and affected parties within 12 days.

("- 'Suspensions

The CA has the ability to suspend an EA. Such suspension may occur if:

- There are reasonable grounds for believing that the contravention or non-compliance with a condition is causing harm to the environment.
- Suspension is necessary to prevent deterioration of the environment.
- A condition of the authorisation has been contravened or is not being complied with.
- The authorisation was obtained through fraudulent means or misrepresentation or non-disclosure of material information.
- The activity has permanently or indefinitely been discontinued.
- Unforeseen circumstances lead to potential significant detrimental effects on the environment or on human rights.

If the CA considers the suspension of an authorisation, they must notify the holder of the proposed suspension and give the holder of the authorisation an opportunity to submit representations regarding the proposed suspension. Once the CA has reached a decision regarding the proposed suspension, they must notify the holder of the decision and provide reasons.

("%\$ 'The appeal process

A person affected by a decision in terms of the EIA regulations may appeal against the decision. No appeal is available however if the decision was taken by the Minister or the MEC themselves in their capacity as the CA. The person who wishes to appeal against the decision must submit a notice of intention to appeal with the Minister, MEC or delegated organ of state within 20 days after the date of the decision. If the appellant is the applicant, they must provide all registered interested and affected parties with the following information within 10 days of lodging the notice:

- A copy of the notice of intention to appeal
- A notice indicating the day on which the appeal will be lodged and where and for what period the appeal submission will be available for inspection.

If the appellant is a person other than the applicant, they need to provide the same information to the applicant only, within 10 days of lodging the notice.

The appeal must be submitted in writing within 30 days after the lapsing of the 20 day period provided for the submission of the intention to appeal. The appeal must take into account any guidelines applicable to appeals and be accompanied by the following information:

- A statement setting out the grounds of appeal
- Supporting documentation which is referred to in the appeal
- A statement by the appellant that the holder/interested and affected parties have been provided with the notices listed above as well as copies of these notices
- The prescribed appeal fee.

The Minister, MEC or designated organ of state must acknowledge receipt of the appeal within 10 days of receiving it.

The person or organ of state that receives a notice of appeal may submit a responding statement within 30 days from the date that the appeal was lodged. Within 10 days of lodging the responding statement, they must serve a copy of the statement on the appellant. If the responding statement introduces new information which was not previously dealt with, the appellant may submit an answering statement to such new information to the Minister, MEC or designated organ of state within 30 days of being served a copy of the responding statement. Within 10 days of submitting the answering statement, the appellant must serve a copy of the new information on the respondent.

If the Minister, MEC or designated organ of state appoints an appeal panel, they must provide the panel with written instructions regarding:

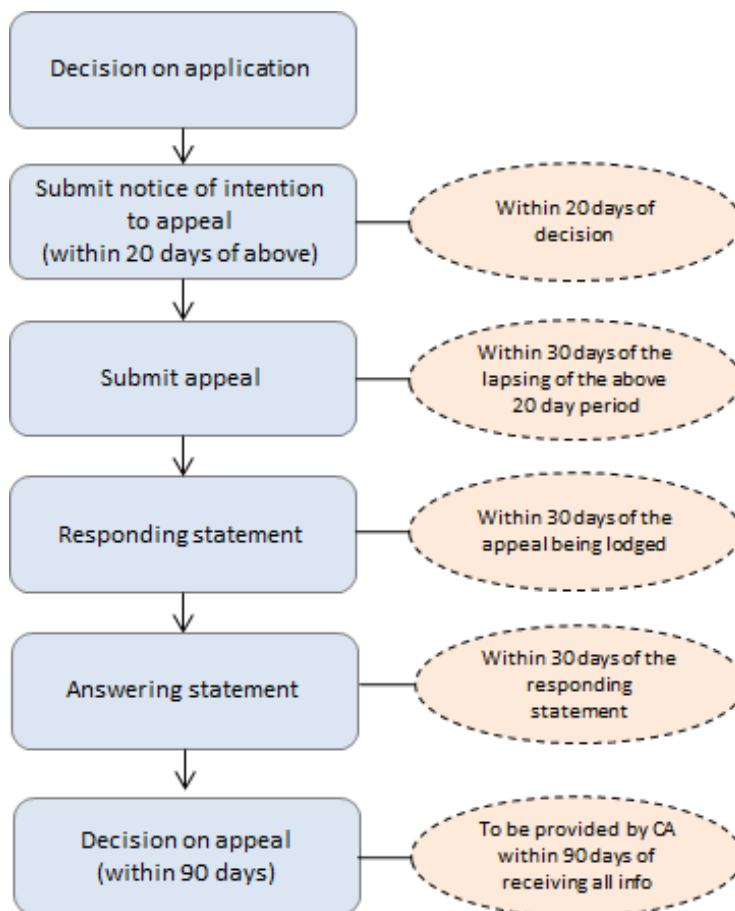
- The issues in respect of which the panel must make recommendations
- The period within which the recommendations must be submitted.

These recommendations must then be submitted in writing to the Minister or MEC.

Notice of intent to lodge an Appeal	Submission of appeal forms
Eastern Cape 	Eastern Cape 
Free State 	Free State 
Gauteng 	Gauteng 
KwaZulu-Natal 	KwaZulu-Natal 
Limpopo 	Limpopo 
Mpumalanga 	Mpumalanga 
North West 	North West 
Northern Cape 	Northern Cape 
Western Cape 	Western Cape 
National 	National 

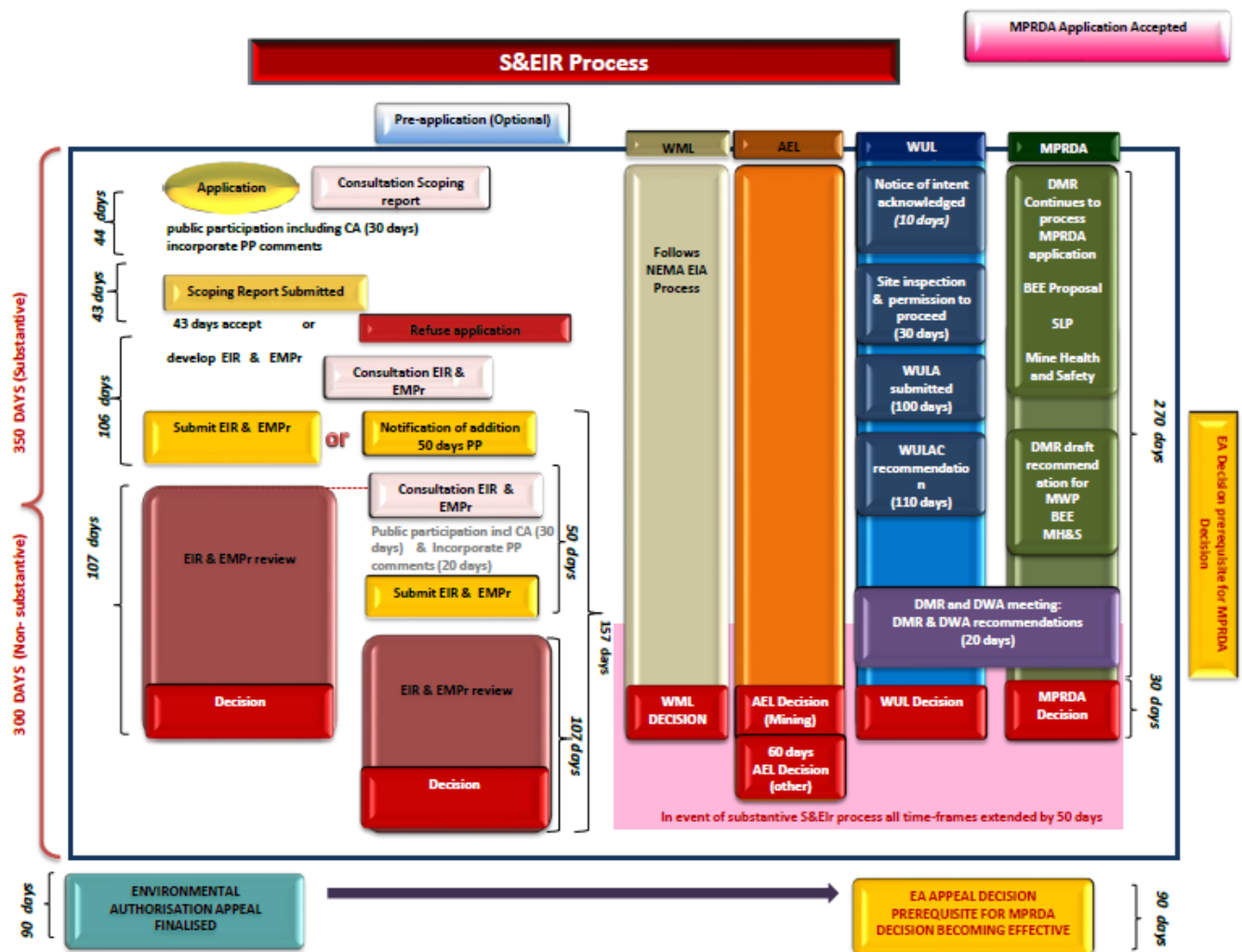
The Minister, MEC or CA must reach a decision on an appeal within 90 days of receipt of all information. Once a decision has been reached, the Minister, MEC or CA must notify and provide reasons for the decision to the appellant and each respondent within 10 days.

The appeal process is summarised in the diagram below.



5 The Scoping and Environmental Impact Reporting Process

An S&EIR process must be undertaken for any activity included on Listing Notice 2. These activities are typically large scale or significant polluting activities. As a result, the full range of potential impacts must be established through a scoping exercise prior to them being assessed. The S&EIR process must follow the procedure as prescribed in Regulations 21 to 24. It is important to note that even if the activity is included in Listing Notice 2, the applicant may apply in writing to the CA to undertake a BA rather an S&EIR. The following diagram outlines the steps that should be followed in undertaking a S&EIR process. Additional information on each of the steps can be accessed by clicking on the associated information links.



5.1 Applying for Environmental Authorisation

Having identified the activities for which environmental authorisation is required and the relevant process to be followed, the environmental assessment process can commence. In many cases, the EIA is viewed as a lengthy process as the applicant has not yet made the necessary decisions before commencing the process. It is vital that the applicant seek guidance from the EAP to ensure that all necessary information is available prior to submitting an application. In this way, unnecessary delays can be avoided. The first step in the environmental assessment process entails the submission of an application form.

Box 1. Key issues identified in respect of applications

The environmental assessment process commences with the submission of an application form. Often these applications contain minimal or incorrect information and the applications have to be returned for corrections. In other instances, the applications are submitted late. This creates delays from the outset of the project which can easily be overcome if the application is completed fully and submitted on time.

Where do I obtain an application form?

An application form must always be submitted before undertaking an environmental authorisation process. Application forms can be accessed from the adjacent links. Applications forms vary between the different provinces and may also be updated from time to time. It is therefore vital that you contact the relevant CA to ensure that you obtain the correct application form.

Regulation 50 provides for an exemption which releases an applicant from their obligations in terms of all or part of the EIA process. An exemption will only be granted if the CA considers that there are good grounds to do so. The applicant should discuss the possibility of an exemption with the CA before submitting an application. If the CA agrees that an exemption is feasible then an application for exemption should be made in writing to the relevant CA and should include the following:

- an explanation of the reasons for the application;
- any applicable supporting documents; and
- the prescribed application fee, if any.

Application for exemption may still require a public participation process as set out in Regulation 51. The required process should also be discussed with the relevant CA.

How do I prepare and submit the application?

The applicant or the EAP may prepare the application form. The application must:

- be made on the official application form (see above)
- be properly completed and contain the correct information
- be accompanied by the prescribed application fee
- take into account any guideline applicable to the submission of applications.

The Regulations requires that an EAP is appointed to manage the BA or Scoping and EIR process. The EAP is required to complete a declaration of interest which must be submitted together with the application. The declaration of interest

Application for Environmental Authorisation	Declaration of Interest Forms for completion by EAP
Eastern Cape 	Eastern Cape 
Free State 	Free State 
Gauteng 	Gauteng 
KwaZulu-Natal 	KwaZulu-Natal 
Limpopo 	Limpopo 
Mpumalanga 	Mpumalanga 
North West 	North West 
Northern Cape 	Northern Cape 
Western Cape 	Western Cape 
National 	National 

requires the EAP to declare that he is independent and does not have any vested interest in the project. If at any stage, the independence of the EAP is called into question, then the Competent Authority may suspend the application, refuse to accept any reports from the EAP, request the applicant to appoint an independent person to review the work done by the EAP and may also require certain aspects of the work to be redone. These measures have considerable time and cost implications to the applicant.

Links to the relevant “Declaration of Interest” forms are provided above. In addition, if the applicant is not the owner or person in control of the land on which the activity is to be undertaken, the applicant must provide written notice of the proposed activity to the owner or person in control of the land. A copy of this written notice must be submitted with the application.

In addition to the declaration of interest by the EAP, other information may also need to be submitted with the application. For example, the Western Cape require the submission of a project programme which outlines the timeframes associated with the proposed project. This is useful in that it enables the CA to explore opportunities to streamline the project. It is advisable that the applicant contact the CA to ensure that all required documents are included with the submission of the application.

Regulation 14 enables the submission of combined applications. In the case where more than one activity requires authorisation and all the activities form part of the same development, a single application should be submitted. For example, if you wish to undertake a low cost housing development but also need to develop a large landfill site and waste water treatment works associated with this development, then all the activities can be considered together on one application form. If the activities are to be undertaken at different locations within the area of jurisdiction of the CA, then separate applications are generally required. However, the CA may, at the written request of the applicant, grant permission for the submission of a single application where the applicant undertakes more than one activity of the same type at different locations within the area of jurisdiction of the same CA.

The submission of a single application has a number of benefits. Firstly, it enables a consolidated process to be conducted, including a public participation process, which provides a significant cost saving to the applicant. It also facilitates the assessment of the cumulative impacts of the development. In addition, the CA only has to review one set of documents thereby streamlining the process.

Once the application form has been completed, it is advisable for the applicant to go through the form with the EAP to ensure that the information is accurate. It is important to remember that although the EAP is appointed to carry out the EIA work, the ultimate responsibility to ensure that the information is correct and that the relevant laws are complied with rests with the applicant in respect of their project. The application should then be submitted to the relevant CA (see the section on “Identifying the CA” for contact details).

What happens after I have submitted the application?

Regulation 13 requires the CA to check the application to ensure that it has been properly completed on the appropriate application form and that it contains all the relevant information and associated documents. The CA must within 14 days of receiving the application, acknowledge receipt of the application and accept or reject the application (in writing). Any application that has been rejected may be corrected and re-submitted. If the applicant has not heard from the CA within 14 days, they should follow up with the CA, either directly or via their appointed EAP, to gauge where their application is in the process.

Regulation 67 stipulates that an application lapses, if the applicant, after having submitted the application fails, for a period of six months, to comply with a requirement in terms of the Regulations. It is therefore essential that once the CA has accepted the application, that the applicant commence with the appropriate process. The lapsing of applications is not desirable as it is costly for the applicant, delays the project and creates unnecessary work for the CA.

5.2 Public participation

One of the general objectives of integrated environmental management set out in Section 23(2) of NEMA is to ensure the “adequate and appropriate opportunity for public participation in decisions that may affect the environment”. To provide for effective involvement, the Public Participation Process (PPP) must ensure the participation of vulnerable and disadvantaged persons and also that “people have the opportunity to develop the understanding, skills and capacity to achieve equitable and effective participation”. Public participation is therefore central to the EIA process. It runs throughout each phase and the outputs have significant bearing on the issues and alternatives considered in the assessment. An ineffective PPP can result in delays or failure of the EIA process. These issues affecting the PPP are discussed in more detail in Box 1 and guidance on how to overcome them has been provided in this section.

Box 1. Key Issues affecting the efficiency and effectiveness of the Public Participation Process

Time and budgetary pressures, particularly in respect of SI projects, often result in only the minimum legal requirements of PPP being undertaken. The consequence of this is often delays, frustrated I&APs and even appeal on procedural grounds where essential activities have not been completed. The most common issues affecting the PPP process are discussed in more detail below.

- Lack of participation

Lack of participation by interested and affected parties in the Public Participation Process often arises from a failure by the EAP, at the outset of the project, to establish a comprehensive understanding of the socio-economic systems that will be affected. The full range of I&APs are consequently not engaged early in the process which in turn requires that certain aspects of the process are repeated. This causes frustration and often results in delays. In the case of SI, the failure to identify and involve other service departments and local government, who are responsible for the construction and management of different infrastructure types, has been identified as a critical issue. This failure leads to either negative impacts on different infrastructure types (e.g. a water pipeline project digging up telecommunication cables), or loss of opportunities to improve planning (e.g. registering a new servitude when one could be shared).

- Inappropriate/inconsistent consultation methods

Different consultation methods are required in different social contexts. These methods should account for different languages, varying levels of access to technology (e.g. e-mail and internet), different levels of understanding of technical information, diverse social structures and protocols, and different political contexts. The need for on-going communication (even just to advise that there is a delay in terms of timeframes, and why) and consistency in the mechanisms and who is engaged are basic factors that are often not met.

- Community involvement in the process

Most SI projects are directed at improving the lives of impoverished communities. In most cases, the community as a whole will benefit from improved service delivery. However, in certain instances, some members of the community may be negatively impacted by the proposed project. For example the construction of a road in a rural area may result in the destruction of certain plants which are used by natural healers. Early and effective involvement of community members is therefore key in effective SI planning.

- Abuse of the Process by I&APs


Where I&APs oppose a development, they may attempt to frustrate the process by disrupting consultation activities and raising irrelevant issues. Alternatively some I&APs may try to use the process to further their own agenda, or oppose an application on the basis of financial competition. The EIA regulations have established requirements that aim to address such abuse and should be adhered to by EAPs.

- Inadequate public participation process

Public meetings are a common mechanism for consultation as many people can be engaged in a single event and there is the opportunity for all stakeholders to hear and understand each other's views. Such meetings have their limitations, as minorities or sections of a community often do not participate effectively. For example, a “community” may include various sub groupings such as traditional healers, women, cattle or water committees, youth and the elderly. All these sub-groups have different and sometimes conflicting needs. It is often necessary to meet with these different groups separately to understand their issues. This cannot be achieved in a public or general community meeting.

- Comments from stakeholders

In some cases, the EAP fails to adequately understand and respond to comments raised by I&APs. This usually stems from inadequate engagement and a failure by the EAP to gain clarity on the issues raised. For example, if an I&AP raises a concern about pollution, are they referring to the generation of dust during construction or fumes from traffic once a road is in place?

Chapter six of the EIA regulations governs the undertaking of the PPP, of which regulation 54 (2) requires that the person running the PPP take into account all applicable guidelines. Accordingly, the person responsible for managing the public participation process must consider the official guideline published by the DEA. It is important to note, that the current document does not intend to replace the official guideline, but rather to draw on and add value to the guidance given in the official guideline. The current document is also directed specifically at SI projects. A copy of the official guideline can be accessed through the following link. 

Chapter six of the EIA regulations applies to both the BA and the S&EIR process. It details specific requirements which must be met and which constitute the minimum legal requirement. However, the context for each development project is different and affects different people and natural systems in different ways. These impacts depend on the nature, scale and types of output from the project as well as the sensitivity of the affected social and natural systems, and the links between them. Guidance is therefore provided on how to:

- Improve the efficiency and accuracy with which the minimum legal requirements are met, but also to
- Develop and run a PPP that is appropriate to the specific context of each project.

Scoping for Public Participation

Running an effective PPP requires that it is designed in line with the range of different I&APs and the variation between them in terms of technical understanding, language, access to types of communication and so on. This requires that the person running the PPP establish a comprehensive understanding of potential I&APs as early as possible in the process. This is best achieved through a scoping process. While not a legal requirement it is a relatively simple undertaking and will assist in avoiding many of the issues that commonly cause delays in the PPP. Establishing an understanding of who may be impacted requires that the following aspects are considered:

- **Spatial influence of the project**

The impacts of a project change in relation to the distance from the project site. As indicated in Figure 1, people living immediately adjacent to a project site will be directly impacted by construction impacts of noise and dust. For SI projects these impacts are commonly only felt at local level and not further away.

- **Nature of the impact**

There are direct impacts, such as the loss of topsoil which reduces the productive capacity of land. A secondary impact would be siltation of dams downstream. One needs to consider the knock on (secondary) effects of the obvious impacts as they may affect different stakeholders.

- **Impacts associated with different phases of the project**

Impacts vary with the project life cycle. In the case of a power line, the visual impact on an important cultural site is only felt once the power line is in place i.e. in the operational phase. Similarly, the impact on traffic volumes from the development of a large housing project in a suburb will only be felt once the project is completed and the housing is inhabited.

- **Types of impact**

Certain I&APs will be directly impacted by a project, while others may be affected by secondary impacts. As an example, a reduction in water quality from sewage disposal from a large housing development may negatively impact a tourism activity downstream that relies on good quality water.

- **Different components of the receiving environment**

Consideration should be given to I&APs associated with each component of the receiving environment, these being the social, cultural, economic, biophysical environments. It needs to be considered whether there are sensitive natural features (protected areas, nest sites, threatened habitats), social facilities (schools, hospitals, recreational areas/sites) or cultural sites (graveyards, ancestral, historic sites, archaeological features) that will be impacted by different impacts in different phase within the spatial influence of the project.

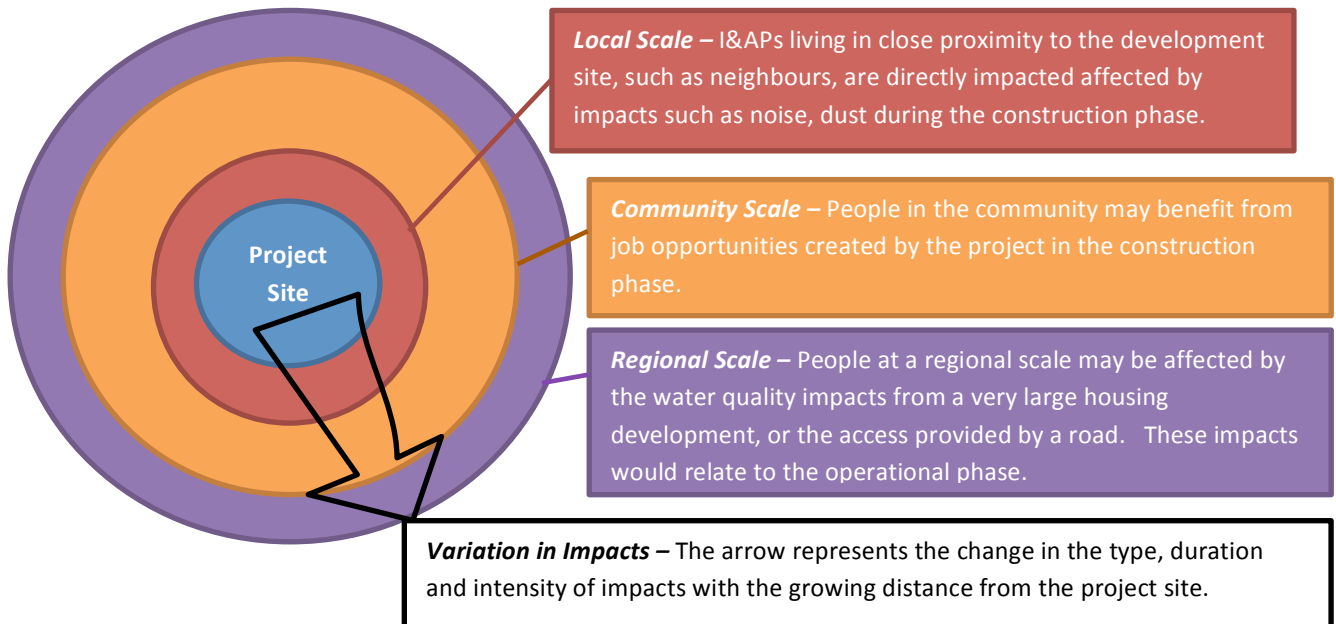


Figure 1. Aspects to consider in identifying the range if I&APs

By reviewing the likely impacts of the project against maps (indicating the location) and information for the area (indicating the sensitivity) of the environmental components it is possible to get an understanding of the different I&APs who should be included in the PPP. The examples of given in Table 5 below are not exhaustive but are included to provide an idea of the range of stakeholders who may be relevant depending on the project context. These I&APs can then be identified and included in the I&AP database from the outset. There are also specific IA&Ps that the EIA regulations require the EAP to consult. These are government agencies responsible for other regulatory processes such as Water Affairs (water use licence), Agriculture (CARA permit), Conservation Agencies (TOPS permits), Local Government (Planning authorisation). The sooner these “essential I&APs” and appropriate contacts for each are identified the better as they will often have set processes that govern how the EAP should interact with them, which will inform the manner and structure of the PPP. This includes information requirements.

Table 1. Examples of types of different I&APs per environmental component

Environmental Component	Potential Types of I&APs
Biophysical	<ul style="list-style-type: none"> - NGOs. - Conservancies. - Protected area managers. - Conservation agencies.
Social	<ul style="list-style-type: none"> - Individuals. - Households. - Traditional authorities. - Civic associations – clubs, associations, ratepayers.
Cultural	<ul style="list-style-type: none"> - Religious groups. - Heritage sites - managers. - Heritage Resources agencies. - Indigenous Communities.
Economic	<ul style="list-style-type: none"> - Organisations representing economic sectors – tourism, agriculture, mining. - Associations (chamber of business).

The above steps in the PPP scoping process is supplemented by:

- Engaging the CA who should have a good understanding of the I&APs in the area, what methods work best for consultation, what publications are used.
- Reviewing the process and outcomes of other EIAs run in an area to access information on I&APs and methods employed.
- Meeting with the Ward councillors to understand the social context including structures, existing forums and acceptable methods for engagement. The lack of understanding among ward councillors regarding the purpose and structure of the EIA process is a major challenge given the importance of community level participation for SI projects. The EAP should include additional time and budget for working with the councillors to ensure the level of understanding is appropriate for ensuring effective participation and inputs.

Undertaking scoping assists in designing the PPP correctly for the local context, thereby ensuring that the correct I&APs are engaged in the most efficient and appropriate way possible from the outset. It helps the EA to plan the PPP so that they meet the legal requirements discussed below, but also get the most out of the process by using the most appropriate mediums for notifying/advertising the project, circulating information and obtaining comment. This process also aids I&APs feeling part of the process from the outset and contributing positively, rather than being alienated through limited engagement in which case there is often opposition to the process and project. The remainder of the section covers the PPP activities and steps required in the regulations. Guidance is provided [in brackets] on how to improve the way these are undertaken.

Box 2. Options for Exemption

It is important to note upfront that because NEMA requires public information and participation for every application; it is therefore **NOT POSSIBLE** to apply for **COMPLETE EXEMPTION** from having to undertake Public Participation. It is however **possible to apply for exemption from or deviation from the legal requirements for certain aspects** of the PPP. This is done via a formal process and it is suggested recommended that the CA is consulted to establish the likelihood of the request being accepted.

Notifying Interested and Affected Parties

The PPP commences once an application has been submitted, with the first step being the notification of I&APs. The regulations require that notification is undertaken through three formal activities. These include a) notice board; b) written notification to a set list of I&APs; c) a public notice placed in local/regional newspaper, or government gazette. It is through this combination of mechanisms that the project is advertised and the EAP is able to establish their I&AP database. It is necessary that the application number is included in all forms of communication with I&APs throughout the process, starting with the initial notification and BID.

Details of the legal requirements pertaining to these mechanisms and additional guidance is provided below, along with insight into other options and tools, such as the background information document (BID), websites and radio adverts. While not a legal requirement, these are very useful mechanisms for generating understanding about the project, the process and how I&APs can engage. The options used depend on the

a) Notice Board

A notice board should be fixed at an 'eye catching' place (such as the entrance of the proposed and any alternative sites), for the duration of the process. [Notices are commonly laminated or placed in sites which afford some level of protection from the weather. To increase awareness, notices should also be placed at other public sites in the area such as libraries, post offices, local supermarkets and pension pay points.] The notice board must meet the minimum size (60cm x 42cm) and must provide the following information:

- (i) That an application for environmental authorisation has been submitted to the CA.
- (ii) Whether the BA or full EIA process is being applied to the application.

- (iii) A description of the project that provides an understating of all the elements of the project. For example, if a tourism development is proposed, it should indicate the full range of complimentary activities to the accommodation such as 4x4 trails, golf course as these may have impacts of their own. Similarly a new industrial complex may require a new major access road. The location and layout of the various elements and boundaries of the properties involved should be indicated on the notice i.e. it must include a map.
- (iv) Where further information on the activity or the application can be obtained.
- (v) The manner in which I&APs can submit comments and the contact details of the person to whom they should be submitted.

b) Written Notification

The Regulations require that the following I&APs are sent written notice:

- (vi) The owner or person in control of the land, if they are not the applicant
- (vii) The occupiers of the proposed and any alternative sites
- (viii) Owners or occupiers of the land adjacent to the proposed or alternative sites
- (ix) The councillor of the ward within which the proposed or alternative sites are located, and any organisation of ratepayers in these areas. [In addition to ratepayers, there are often a range of different civic organisations that will have interest in projects such a chamber of commerce, or business. It is good practice to meet with the ward councillor at the outset to establish:
 - What organisations exist, their contact details, and
 - Whether communication will be best achieved by engaging directly with these organisations, or via the councillor's office,
 - Suitable venues for meetings and what are the usual/acceptable times in the community for holding public meetings should also be established].
- (x) The relevant municipality

[There may be several departments within a municipality that will need to comment on an application - particularly larger municipalities and metros. These include technical departments that deal with roads, water, sanitation and those concerned with health, safety and security and community liaison. It is important that all relevant sections are included. Some municipalities have a single contact and processes set up to co-ordinate involvement in EIAs. Where this is not the case the EAP will need to ensure that they engage all relevant departments directly.]
- (xi) Any organ of state having jurisdiction in respect of any aspect of the activity

These include organs of state from which authorisation is required in terms of other legislation. Guidance is provided in section 8 of this document for each of the different types of SI.
- (xii) Or any other party as required by the CA

[The relevant authority (DEA or provincial department) will have a good understanding of the I&APs within their jurisdiction and in relation to type of project being considered. The EAP or public participation specialist should consult the case officer to get insights into the relevant I&APs. The case officer can also direct them to other EAPs who have worked in the area who will have databases of stakeholders for similar projects].

c) Placing an advert in:

- (i) One local newspaper [There are a growing number of free publications that cover very localised areas linked to residential areas or communities. These are often well read and a very good medium for notifying local communities of SI projects], or
- (ii) Any official Gazette that is published for the purposes of providing public notices in respect of the EIA regulations. [No such gazette exists as yet].
- (iii) Placing and advert in at least one provincial or national newspaper if the activity has or may have an impact that extends beyond the boundaries of the metropolitan or local municipality [Because no gazette exists for these purposes, adverts must be placed in provincial newspapers where the impact will extend beyond the borders of the municipality -DEA 2010].

d) Other Mechanisms

It is useful and common practice to include a Background Information Document (BID) with the written notice required above. The BID is normally no more than 4 pages and provides basic information about the project including nature and range of associated activities, the purpose, who the applicant is and the location (including maps and a layout plan at the proposed and any alternative sites) – it effectively and expansion of the information provided in the site notice. An important objective of the site notice and BID is to help potential I&APs to consider whether they are interested in the project. It should also indicate clearly how they can participate in the process in terms of opportunities to attend meetings, receive documents throughout the process and submit comments. The EAP can also use the BID to obtain information about I&APs that will assist them in running an appropriate and efficient PPP. This is done by asking the reader of the notice or BID to confirm their preferred time for public meetings or medium for review of documentation (electronic or hardcopy), and request that they circulate the BID to other I&APs who they consider may be interested or affected. Importantly, it should also indicate the responsibility of I&APs when engaging in the process and the difference between I&APs and ‘registered I&APs’ (explained later in this section).

Other mechanisms used to advertise the project, register I&APs and obtain initial comment are:

- Open Days – were the EAP make themselves available at locations accessible to the public – such as schools and town halls, and have a range of information and large scale maps available for people to review and ask questions. The open days can be advertised in the written notification, notice boards newspaper advertisements.
- Radio adverts – these are used in areas where there is limited access to print media and electronic mediums such as email and the internet.
- Websites: It is also useful for projects where the large majority of I&APs have access to the internet to establish a project website. This provides a very useful mechanism for the transfer of information and cuts down on the volumes of hardcopy material that is generated as I&APs can download, and the logistical issues of distributing information where there are a large number of spatially fragmented I&APs .

Contact details for regional, provincial and national newspapers in South Africa can be accessed at the adjacent link.



The regulations require that proof of notification is provided to the CA for each aspect of notification. This includes copies original copies of the newspaper adverts, photos of the site notices which show the detail and the context within which the notice was displayed (GPS points would also be useful), and copies of all other documentation such as the BID, written notification and the list of people that it was sent to. Further guidance is provided by the DEA (2010) on what form this proof should take in respect of each type of notice. In addition the Applicant must consult with the relevant Provincial Guidelines for the specific requirements in terms of proof of notification.

It worth noting again at this point, that the regulations set out the minimum requirements for public participation and in many cases just following the minimum requirements will not be adequate. A robust public participation process is a worthwhile investment, which if done according to best practice (rather than just the minimum legal requirement) then the PPP will contribute significantly to the sustainability of the project (e.g. reduced delays due to stakeholder concerns not being considered or adequately addressed). As an example, other forms of notification may be necessary. A thorough scoping process will assist in running an effective and efficient PPP.

Register of Interested and Affected Parties

Regulation 55 requires an EAP to open and maintain a register which contains the names, contact details and addresses of all persons who have submitted written comments or attended meetings,

- a) all persons who have, after the completion of the PPP, asked the EAP for their names to be placed on the register, and
- b) all organs of state which have jurisdiction in respect of the activity.

The EAP is required to make the register available to anyone who requests access to it. This regulation is best adhered to by developing an I&AP database in an electronic format. MS excel and other database software is often used for this purposes. Some EAPs and particularly specialist public participation practitioners have developed specific software to run the process. Use of such systems indicates a level of experience and competency in running the PPP as it requires very good organisation and management of stakeholder information and engagement. In addition to basic contact information, the following information can be recorded in the database:

- Method through which the I&AP requested registration (email, fax, telephone and post). This assists the EAP in maintaining a record of I&AP engagement and compiling the final PPP documentation. The date of registration should also be recorded so that it is clear when the person entered the process.
- Whether the I&AP attended public and /or other meetings.
- Date of correspondence and whether it was in response to written notification, provided as comment on the draft report or input made at a public meeting.
- What medium was used to respond to comments submitted by I&APs were dealt with. For example, through e-mail or in the formal comments and response document.

A well maintained database with a chronological record of participation by each I&AP and links to the related documentation assists in meeting the reporting requirements for the PPP. It also assists the EAP to check that they have responded to all input received. For the applicant, who can and should request to review the database at any time, it provides a tool for checking that the EAP is responding to all I&AP queries in an appropriate and timeously manner.

Box 3. Distinguishing Between I&APs and Registered I&APs

The regulations distinguish between these two as defined below:

- I&APs include a) any person or group of persons or organisation interested in or affected by an activity; and b) any organ of state that may have jurisdiction over any aspect of the activity.
- Registered I&APs – means any I&AP whose name is recorded in the register opened for that application. Relevant organs of state are automatically included as registered I&APs.

Only registered I&APs will be notified of:

- The availability of reports and other written submissions made to the CA by the applicant, and be entitled to comment on these reports,
- The outcome of the application, the reasons for the decision, and that an appeal may be lodged against the decision,
- The applicant's intention to appeal the decision, together with an indication of where and for what period the appeal submission will be available for

Given the above, it is important in the initial consultation to make I&APs aware that they need to be registered in order to be able to participate as above and to then confirm whether I&APs wish to be registered.

Commenting - submitting, recording and responding

Regulation 56 states that all registered I&APs are entitled to comment, in writing, on all submissions including draft reports made to the CA. A registered I&AP may comment provided that:

- a) Comments are submitted within:
 - (i) The timeframes set, or approved by the CA.
 - (ii) Any extension of a timeframe agreed to by the applicant or EAP.
- b) A copy of comments submitted directly to the CA is also provided to the EAP.
- c) The I&AP discloses any direct business, financial, personal or other interest which that party may have in the approval or refusal of the application.

Before an EAP submits a final report they must have given registered I&APs access to, and an opportunity to comment on all reports produced in terms of the regulations including the specialist reports and the PPP report (which is important for I&APs to verify that their input has been considered and responded to).

The regulations also require that:

- **Draft versions** of any reports are submitted to the CA before providing registered I&APs an opportunity to comment. Importantly, as per 56 (3), I&APs must be notified of and have the opportunity to comment on any amendments made to draft reports.
- Registered I&APs must **submit comments** on any **draft reports to the EAP** who needs to record receipt of the comments.
- Registered I&APs must **submit comments** on any **final reports to the CA** and provide a copy to the applicant or EAP.
- The CA is required to request any state department that administers a law relating to the matter affecting the environment to comment within 40 days, and 60 days in the case of waste management activities contemplated under the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008) on which the relevant Minister must concur and issue an EA in terms of that Act. While not a legal requirement, I&APs other than state departments are also usually given 40 days to comment.
- Where state departments fail to provide comment within the 40 and 60 day periods, it will be regarded that there are no comment. The EAP is responsible for ensuring that all comments received are recorded and copies are attached to the report.

A minimum of 40 days must be allowed for registered I&APs, including all relevant state departments to make representations on draft BA Reports, draft Scoping Reports and draft EIA Reports¹. These 40 days must be read as 60 days in a case of waste management activities. It should be noted that:

- Applicants may make draft reports available on first notification of all I&APs. In such instances the notice to I&APs must also clearly indicate that a draft report is available for comment and indicate when, where and for how long the report will be available for comment.
- Days mean calendar days.
- The period of 15 December to 2 January must be excluded from the reckoning of days, and the period extended by the number of days falling within this period.
- When a timeframe includes a public holiday, the time frame must be extended by the number of public holidays occurring within the period.

The activities and time frames should be included in the overall project and specific PPP plan developed by the EAP at the outset, based on the scoping undertaken upfront. Such a project plan provides the basis against which the applicant can monitor the EAPs progress and should be a requirement of the applicant from the EAP. The EAP should provide regular/monthly updates on progress against the project programme and inform the applicant where issues are affecting the programme and proposed steps for dealing with these – particularly where they have budgetary implications (for example, where an I&AP requests additional meetings or a department requires additional specialist investigation).

There are a variety of mechanisms for I&APs to present information to and provide I&APs with an opportunity to comment. This includes public, focus group or one-on-one meetings, written comment and open days. In most instances a mix of mechanisms is necessary to account for the variation in technical understanding, knowledge, logistics and spatial orientation amongst the range of I&APs. The selection of mechanisms is informed by the understanding of the I&APs established in the PPP scoping process.

It is worth understanding the benefits and limitations of different methods for engagement. A standard method is public meetings. They are often held because they enable the engagement of a wide range of stakeholders in one event. However large public meetings are not always appropriate because they may be dominated by stronger, empowered I&APs with a result that less vocal and informed I&APs are marginalised. In the case of SI projects it is

¹These 40 days must be read as 60 days in a case of waste management activities

always important to engage local communities, who are often both the beneficiaries and negatively impacted. Again, a single 'community meeting' may be inappropriate because it may be dominated by powerful members of the community. Communities comprise of sub groupings that may include among others; traditional healers, livestock and water committees, women and youth. Depending on the nature of the project these groups will be affected in different ways and it may be important to meet with them separately. The EAP needs to select appropriate mechanisms based on their experience of what is appropriate for different I&APs. Such engagement will invariably require a level of capacity building and need to be run in the appropriate language to ensure the understanding is transferred.

The EAP must ensure that comments of I&APs, including those made at public meetings are attached to the BA or EIA reports that are submitted to the CA in a formal comments and response document (C&RD). Where a person wishes to comment but is unable to due to factors such as a lack of skills to read or write reasonable alternatives methods of recording comments must be provided for.

The ***C&RD is an essential and important component of the PPP and the EIA documentation*** as it summarises the issues raised and how they have been dealt with. It is as important for the applicant as it is for the I&APs, because it shows how the EAP has responded to the queries received. Where EAPs respond in a superficial manner and do not either take the time to understand or reply appropriately, the risk to the applicant is that this will alienate and frustrate I&APs, with the potential for delays. The responses vary from providing additional information, to amending the report or amending the way in which I&APs are engaged. Applicants should therefore review the C&R carefully before it is finalised to ensure they are happy that the EAP has responded appropriately. It also provides the applicant with insight about people's perceptions about the project. . It is also common that several queries are of technical natures which require a response for the applicants development team e.g. engineer. In view of the discussion above, a good EAP will insist on a review by the applicant.

The CA has the authority to request additional information and investigation. Such requests are often based on a review of the C&R, where it is easiest for the CA to assess whether the EAP has dealt with comments effectively and appropriately. Comments can relate to process e.g. a request for additional consultation, or content e.g. more information regarding an impact and even a request for additional specialist investigations. It may require that the EAP consult their specialist and/or even the CA to be clear on a response relating to technical issues.

Notifying I&APs of the Departments decision

The applicant must, within 12 days of the date of the decision on the application, notify all registered I&APs of the following:

- The outcome of the application ,
- The reasons for the decision,
- The opportunity to appeal the decision,
- The manner in which they can access the decision.

This should be done via written notice. The applicant is also required to advertise the decision and the opportunity to access and appeal the decision via a public notice placed in the same newspapers that have been used throughout the process.

5.3 Preparing the Scoping Report

A Scoping Report must be prepared by the EAP managing the process. The Scoping process commences at the start of the environmental assessment process and focuses on a broad range of issues. The Scoping Report must provide sufficient information to facilitate an understanding of these issues.

Contents of the Scoping Report

The Regulations stipulate that the Scoping Report must include the following:

- Details and expertise of the EAP who prepared the report.
- A description of the proposed activity.
- A description of feasible and reasonable alternatives including the advantages and disadvantages that the proposed activity and the alternatives may have on the environment.
- A description of the property on which the activity is to be undertaken and the location of the activity. If it is a linear activity then a description of the route should be detailed.
- A description of the environment that may be affected by the proposed activity and the manner in which the various aspects of the environment may be impacted.
- All legislation and guidelines that have been considered in the preparation of the report.
- A description of environmental issues and potential impacts, including cumulative impacts that have been identified.
- Details of the public participation process that has been conducted including:
 - the steps taken to notify I&APs.
 - proof of noticeboards, advertisements and notices notifying I&APs.
 - a list of all persons, organisations and organs of state who were registered as I&APs in relation to the application.
 - a summary of the issues raised by the I&APs and the responses of the EAP.
- A description of the need and desirability of the proposed activity.
- A description of any identified alternatives and the advantages and disadvantages that these and the proposed activity may have on the environment and community.
- Any representations or comments received in respect of the Scoping Report.
- The minutes of any meetings held by the EAP with I&APs and other role-players which record the views of the participants and the associated responses of the EAP.
- A plan of study for EIA which includes:
 - A description of the tasks to be undertaken as part of the EIA process including any specialist studies.
 - An indication of the stages at which the CA will be consulted.
 - A description of the proposed method of assessing the environmental issues and alternatives.
 - Particulars of the Public Participation Process that will be conducted during the EIA process.
- Any specific information required by the CA.

In addition, a Scoping Report must consider any other relevant guidelines.

5.4 Submission and consideration of the Scoping Report

Submitting the Scoping Report

The EAP managing the process is responsible for submitting the Scoping Report to the CA. The submission must include at least 5 copies of the Scoping Report together with:

- Any representations and comments received in connection with the application or the Scoping Report.
- The minutes of any meetings held by the EAP with I&APs and other role-players which record the views of the participants and the associated responses of the EAP.

Consideration of the Scoping Report

Once the Scoping Report has been submitted, the CA must acknowledge receipt of the report within 14 days. The CA then has a further 30 days to consider the report and in writing:

- Accept the report and advise the EAP to proceed with the tasks set out in the Plan of Study.
- Request the EAP to make amendments to the report.
- Reject the report if it does not contain the required information or consider the relevant guideline documents.

A Scoping Report which has been rejected may be amended and re-submitted for re-consideration by the CA.

5.5 Preparing and submitting the Environmental Impact Assessment Report

Once the Scoping Report has been accepted, the EAP may proceed with the tasks set out in the Plan of Study for EIA. The outcomes of these tasks must be detailed in an Environmental Impact Assessment Report (EIR). The EIR is a written document which forms the basis of the decision-making process. It enables the relevant authority to make an informed decision by providing useful, reliable and sufficient information and outlining the environmental consequences of approving a project. It also provides alternatives to the proposed project and details measures for reducing the impact of the project by imposing mitigation measures. The EIR is also an important tool for communicating with stakeholders. It assists I&APs in understanding what the impacts of the proposed development are likely to be and also helps the applicant to manage these impacts. The EIR should be prepared within the broad framework of “sustainable development” and should give a clear indication of how the proposed development may contribute to or hamper sustainable development.

The EIR must contain sufficient information to enable the CA to reach an informed decision. Although the detail contained in the EIR will differ depending on the scale, complexity and likely impacts of a project, the Regulations require that the EIR include the following information:

Contents of EIR

- Details and expertise of the EAP who prepared the report.
- A detailed description of the proposed activity.
- A description of the property on which the activity is to be undertaken and the location of the activity. If it is a linear activity then a description of the route should be detailed.
- A description of the environment that may be affected by the proposed activity and the manner in which the various aspects of the environment (physical, biological, cultural, economic and cultural) may be impacted.
- Details of the public participation process that has been conducted including:
 - Steps taken in accordance with the Plan of Study.
 - A list of all persons, organisations and organs of state who were registered as I&APs in relation to the application.
 - A summary of the comments received and issues raised by the I&APs and the responses of the EAP.
 - Copies of the representations and comments received from the registered I&APs.
- A description of the need and desirability of the proposed activity.
- A description of identified potential alternatives including the advantages and disadvantages that the proposed activity and the alternatives may have on the environment.
- An indication of the methodology used in determining the significance of potential environmental impacts.
- A description and comparative assessment of all alternatives identified during the EIA process.
- A summary of the findings and recommendations of any specialist report.
- Consideration of the significance of any environmental impacts identified including an assessment and description of the nature, extent, duration and probability of the impact as well as the degree to which it can be reversed or mitigated. Cumulative impacts must also be considered.
- A description of any assumptions, uncertainties and gaps in knowledge.
- A reasoned opinion as to whether the activity should be authorised or not.
- An environmental impact statement which contains:
 - A summary of the key findings of the EIA.
 - A comparative assessment of the proposed activity and identified alternatives.
 - A draft Environmental Management Programme (EMPR)
 - Copies of specialist reports.
 - Any other specific information required by the CA.

The EAP is ultimately responsible for preparing the EIR however an interdisciplinary team of specialists usually contribute to the EIR. Further information on specialist studies can be accessed at the link below. Stakeholders may also influence the scope, contents and quality of the EIR through participation in the process and review of the documentation.

The EIR provides the basis for the preparation of an EMPR. The EMPR sets out a plan or programme to mitigate, manage and monitor environmental impacts associated with a proposed project. The EIR should therefore contain sufficient detail on the prediction, assessment and evaluation of impacts as well as mitigation and enhancement measures to ensure sound management.

Submitting the EIR

On completion of the EIR, the EAP must submit at least five copies of the EIR to the CA. Where applicable, these should be submitted within the timeframes stipulated by the CA.

Consideration of the EIR

The CA must acknowledge receipt of the EIR within 14 days. Thereafter the CA has 60 days to consider the report and in writing:

- Accept the report
- Reject the report if it does not contain the required information or consider the relevant guideline documents.
- Notify the applicant that the report has been referred for specialist review
- Request the applicant to make amendments to the report

An EIR which has been rejected may be amended and re-submitted for re-consideration by the CA.

The CA must within 45 days of accepting the EIR, or if the report was referred for specialist review, then within 45 days of the findings of the specialist reviewer (or within 30 days of the lapsing of the 60 day extension period) either grant or refuse the authorisation in respect of all or part of the activity. Once a decision has been reached, the CA must notify the applicant and give reasons for the decision within 2 days. The applicant, in turn, must notify all registered I&APs of the outcome and reasons for the decision within 12 days. Such notification must also be placed by way of a notice in the relevant newspaper (as used in the public participation process).

If the CA decides to grant authorisation, then they must comply with specific requirements in respect of the issuing and drafting of EAs.


Box 1. Key issues affecting the completion and submission of Scoping and Environmental Impact Assessment Reports

The lack of information included in both Scoping Reports and EIRs is a major issue which delays the implementation of SI projects. Some reports do not contain adequate information to enable the authorities to make a decision on the application while others are simply incomplete. It is vital that the applicant has a detailed project plan and that he provides this information to the EAP for inclusion in the reports. Similarly, the EAP must ensure that the assessment is thorough and that all the required information is provided to the authorities. This will ensure that the report does not need to be returned and in so doing, avoid unnecessary project delays.

) ") "% Specialist studies

Preparing for specialist studies

Specialist studies are a key component of EIAs and provide valuable information which assists the CA to make a decision on whether the proposed development may proceed or not. The EAP managing the process should consider a number of key aspects to ensure that quality information is obtained from specialist studies. These include:


- Drafting and clarifying the Terms of Reference. The following link provides a model “Terms of Reference” for specialist input. 
- Outlining the approach to the specialist study.
- Defining the reporting requirements for the specialist.
- Selecting the right specialist.
- Ensuring interdisciplinary interaction between specialists.
- Review of the study by the right reviewer.

It is important to note that specialist studies may also delay the timeframes of a project as sampling may need to be undertaken at specific times of the year. For example, it may only be possible to sample vegetation during the flowering season. It is therefore important that the applicant discuss the potential need for specialist input at the outset of the project to ensure that adequate time is built in to the planning process.

Types of specialist studies

The EAP may request a range of specialist studies depending on the nature and location of the proposed development. Specialist studies may relate to various subjects including:











- Socio-economic
- Biodiversity
- Air quality
- Visual and aesthetic
- Hydrology
- Heritage

A number of guidelines in respect of these subjects can be accessed at the following link. 

Contents of specialist studies

The Regulations require that a specialist report include the following information:

- Details and expertise of the person who prepared the report.
- A declaration that the person is independent.
- An indication of the scope and purpose of the report.
- Description of the methodology adopted in preparing the report.
- Description of any assumptions or data gaps.
- Description of the findings and their potential implications for the proposed activity. These should also consider any alternatives.
- Recommendations for any mitigation measures that should be considered by the applicant and the CA.
- A description of the consultation process that was undertaken during the course of the study.
- A summary and copies of any comments received during consultation.
- Any other information requested by the CA.

Details of specialists and Declaration of Interest	
Eastern Cape	
Free State	
Gauteng	
KwaZulu-Natal	
Limpopo	
Mpumalanga	
North West	
Northern Cape	
Western Cape	
National	

5.5.2 Environmental Management Programme


An EMPR is an important tool which gives assurance that the applicant has made suitable provision for the mitigation of possible environmental impacts associated with the project. The EMPR is a document which sets out environmental objectives and targets that the applicant must achieve in order to minimise negative impacts. For example, if there is an impact which can be mitigated, the EMPR must indicate an appropriate mitigation measure as well as how it will be reported that the mitigation measure has been implemented. It also outlines roles and responsibilities, timescales and costs of mitigation. The EMPR provides a link between the impacts predicted and the mitigation measures identified in the S&EIR process. The EMPR is implemented throughout the construction, operation and decommissioning phases of the project.

The Regulations require that the EMPR include the following information:

- Details and expertise of the person who prepared the report.
- Information on any proposed management or mitigation measures that will be taken to address environmental impacts at all phases of the project. For example, if earth moving during the construction phase is likely to cause the sedimentation of watercourses then an appropriate mitigation measure may be to establish sediment traps and appropriate contours. Further guidance on impacts and mitigation measures relevant to different infrastructure types can be accessed in Chapter 10.
- The aspects of the activity that are covered by the EMPR.
- The persons who will be responsible for implementation of the mitigation measures.
- The proposed mechanisms for monitoring compliance and reporting thereon.
- Measures to rehabilitate the environment affected by the undertaking of any listed activity.
- The manner in which it intends to:
 - Modify, remedy, control or stop any action, activity or process which causes pollution or environmental degradation.
 - Remedy the cause of pollution or degradation.
 - Comply with any prescribed environmental management standards or practices or applicable provisions of the Act.
- Time periods within which the mitigation measures must be implemented.
- The process for managing any environmental damage, pollution, pumping and treatment of extraneous water or ecological degradation as a result of undertaking a listed activity.
- An environmental awareness plan describing the manner in which the applicant intends to inform his staff of any environmental risk resulting from their work and how these risks must be dealt with to avoid pollution or degradation of the environment.
- Where appropriate, closure plans including closure objectives.

5.6 Environmental authorisations

Undertaking a BA or S&EIR process does not automatically mean that authorisation for the development will be granted. The CA has the right not to authorise a development but must provide reasons for such a decision. The CA may also only authorise certain aspects of the development. If the CA decides to grant authorisation to the project, then an EA is issued in the name of the applicant. In making the decision on the application, the CA will consider:

- Whether the activity complies with NEMA, the Regulations and all other applicable legislation. This includes the principles of NEMA, a description of which is available at the following link. 
- What the environmental impacts are likely to be if the application is granted or refused.
- What measures could be implemented to mitigate any environmental impacts.
- Whether the applicant is able to implement these mitigation measures and comply with the conditions imposed on the project.
- What reasonable modifications could be made to the activity to minimise any negative impacts.
- Any other relevant information contained in the reports or documents submitted to the CA.
- Any comments obtained from other organs of state that have jurisdiction over any aspect of the activity.
- Any relevant national and/or provincial policies.

Part 4 of the Environmental Impact Regulations outline the content of EAs and specify that the authorisation must include the following information:

- The name, address and telephone number of the person to whom the authorisation is issued.
- A description of the activity which is authorised.
- A description of the property on which the activity is to be undertaken as well as the location of the activity on the property.
- The conditions subject to which the activity may be undertaken including the period for which the EA is valid; the requirements for management, monitoring and reporting the impacts of the activity throughout the lifecycle of the activity; and the transfer of rights and obligations if there is a change of ownership in the property on which the activity is taking place.
- Where appropriate, the EA may also indicate the manner in which and when the CA may approve the EMPR and the manner and frequency with which the EMP will be amended or updated.

The EA may also:

- Stipulate that the activity may not commence before specific conditions are met.
- Require the holder of the authorisation to provide reports to the CA, at specified intervals, indicating the extent to which the conditions of authorisation are being met; providing details and reasons for any non-compliance; and describing any actions taken to mitigate the non-compliance.
- Require the holder of the authorisation to provide the CA, at specified intervals, with environmental audit reports on the impacts of the activity on the environment.
- Where applicable, require the holder of the authorisation to provide the CA with proof of compliance with the applicable requirements regarding closure.
- Include any other condition that the CA considers necessary for the protection of the environment.

It is important that the applicant thoroughly review the EA and check that they are able to comply with the conditions therein. If the applicant is unable to comply with the EA, due to technical, financial or other reasons, then they should consider an appeal. The applicant must not proceed with construction if they know that they are unable to comply with the EA. The costs of delays once the project has commenced (construction penalties and or fines) may be far greater than those associated with the delay due to an appeal.

Box 1. Key issues in respect of Environmental Authorisations

Two key issues were identified by stakeholders during preliminary consultation in respect of EAs. It was noted that a significant number of EAs are allowed to lapse by SI developers, even if a commencement period of four years is stipulated. This problem was attributed to the extremely low capacity in local authorities rather than as a result of problems with the EIA process. Many municipalities do not even have the capacity to manage their own land-use functions such as land-use and subdivisions let alone comply with additional regulatory requirements. This issue is a serious obstacle to the implementation of SI projects.

The second issue relates to the non-compliance with the conditions of the EA. In some cases, implementing agents simply proceed without authorisation while in other cases Environmental Control Officers fail to debrief construction teams about the terms of EAs. This in turn leads to a Section 24G application and even stronger enforcement actions which causes serious delays to SI projects., In addition, the situation can and often does lead to very strong social and political pressures. Such cases could be avoided if the environmental assessment process was properly adhered to.

5.7 Amendments

The Regulations do enable EAs to be amended and sets out a specific process which should be followed to do this. If the amendment is likely to be substantive, then an additional public participation process will be required. Although in some instances amendments may be necessary, they are generally not desirable as they add additional costs and delays to the process. Many amendments could be avoided if the initial information included in the reports is correct.

The CA or the holder of the EA may initiate an amendment to the EA. There are a variety of ways in which the EA may be amended including:

- Attaching an additional condition or requirement.
- Substituting, removing or changing a condition or requirement.
- Updating or changing any detail on the authorisation.
- Correcting a technical or editorial error.

Amendment of authorisations by applicant

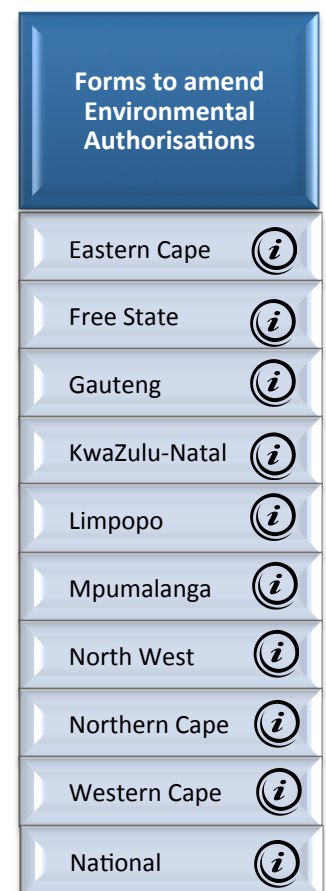
The holder of the authorisation may apply at any time to the CA for an amendment to the authorisation. Such applications will be considered where there has been a change in circumstances from the time when the authorisation was granted; there has been a change of ownership; or any detail within the authorisation requires amending, adding, substituting, correcting, removing or updating. The application must be submitted in writing and be accompanied by the motivation for the amendment.

The CA has 14 days to acknowledge receipt of the application and a further 30 days to make a decision on the application if there are no-substantive amendments or if the environment or the rights or interests of other parties are not likely to be adversely affected. If this is not the case, the CA may require the applicant to undertake a public participation process and/or to conduct specific investigations or assessments. The CA is then required to make a decision on the application within 30 days of this process being completed.

Amendment of authorisations on initiative of the CA

The relevant CA may also amend an EA on their own initiative in order to prevent deterioration of the environment; to achieve prescribed environmental standards; or to accommodate demands brought about by impacts on socio-economic circumstances where the demands are in the public interest. If the CA intends amending an authorisation, then they must notify the holder in writing of the proposed amendment and give the holder an opportunity to submit representations regarding the proposed amendment. An additional public participation exercise will need to be conducted unless the amendment is considered not to be substantive.

Within 30 days of completing this process, the CA must reach a decision as to whether to amend the authorisation or not. If the decision is to amend the authorisation, then the CA must issue an amendment to the authorisation either by way of a new authorisation or an addendum to the existing authorisation. Once the CA has reached a decision, they must notify and provide reasons to the holder within 2 days and interested and affected parties within 12 days.



Amending Environmental Management Programmes

An EMPR may be amended either through an application by the holder of an EA or on the own initiative of the CA. Such amendments may be desirable or necessary in order to:

- Prevent environmental deterioration.
- Achieve prescribed environmental standards.
- Accommodate demands brought about by impacts on socio-economic circumstances where the demands are in the public interest.
- Ensure compliance with the conditions of EA.
- Assess the continued appropriateness and adequacy of the EMPR.
- Address any conflict between the EMPR and principles set out in NEMA.

If the CA initiates the amendment of an EMPR they must first notify the holder of the proposed amendment and give the holder of the authorisation an opportunity to submit representations regarding the proposed amendments. If necessary, they may also need to conduct a public participation exercise.

If the holder of an authorisation wishes to amend an EMPR, they must submit an application to the relevant CA, who in turn must acknowledge receipt of the application within 14 days. The holder may be required to conduct a public participation exercise. Within 30 days of receiving all information, the CA must either refuse the application or approve the application by issuing an addendum to the relevant authorisation. Once the CA has reached a decision, the applicant must notify and provide reasons for the amendment to any interested and affected parties within 12 days. Similarly, if the CA initiated the amendment, then they must notify and provide reasons for the amendment to the holder within 2 days and to interested and affected parties within 12 days.

5.8 The appeal process

A person affected by a decision in terms of the EIA regulations may appeal against the decision. No appeal is available however if the decision was taken by the Minister or the MEC themselves in their capacity as the CA. The person who wishes to appeal against the decision must submit a notice of intention to appeal with the Minister, MEC or delegated organ of state within 20 days after the date of the decision. If the appellant is the applicant, they must provide all registered interested and affected parties with the following information within 10 days of lodging the notice:

- A copy of the notice of intention to appeal
- A notice indicating the day on which the appeal will be lodged and where and for what period the appeal submission will be available for inspection.

If the appellant is a person other than the applicant, they need to provide the same information to the applicant only, within 10 days of lodging the notice.

The appeal must be submitted in writing within 30 days after the lapsing of the 20 day period provided for the submission of the intention to appeal. The appeal must take into account any guidelines applicable to appeals and be accompanied by the following information:

- A statement setting out the grounds of appeal
- Supporting documentation which is referred to in the appeal
- A statement by the appellant that the holder/interested and affected parties have been provided with the notices listed above as well as copies of these notices
- The prescribed appeal fee.



The Minister, MEC or designated organ of state must acknowledge receipt of the appeal within 10 days of receiving it.

The person or organ of state that receives a notice of appeal may submit a responding statement within 30 days from the date that the appeal was lodged. Within 10 days of lodging the responding statement, they must serve a copy of the statement on the appellant. If the responding statement introduces new information which was not previously dealt with, the appellant may submit an answering statement to such new information to the Minister, MEC or designated organ of state within 30 days of being served a copy of the responding statement. Within 10 days of submitting the answering statement, the appellant must serve a copy of the new information on the respondent.

If the Minister, MEC or designated organ of state appoints an appeal panel, they must provide the panel with written instructions regarding:

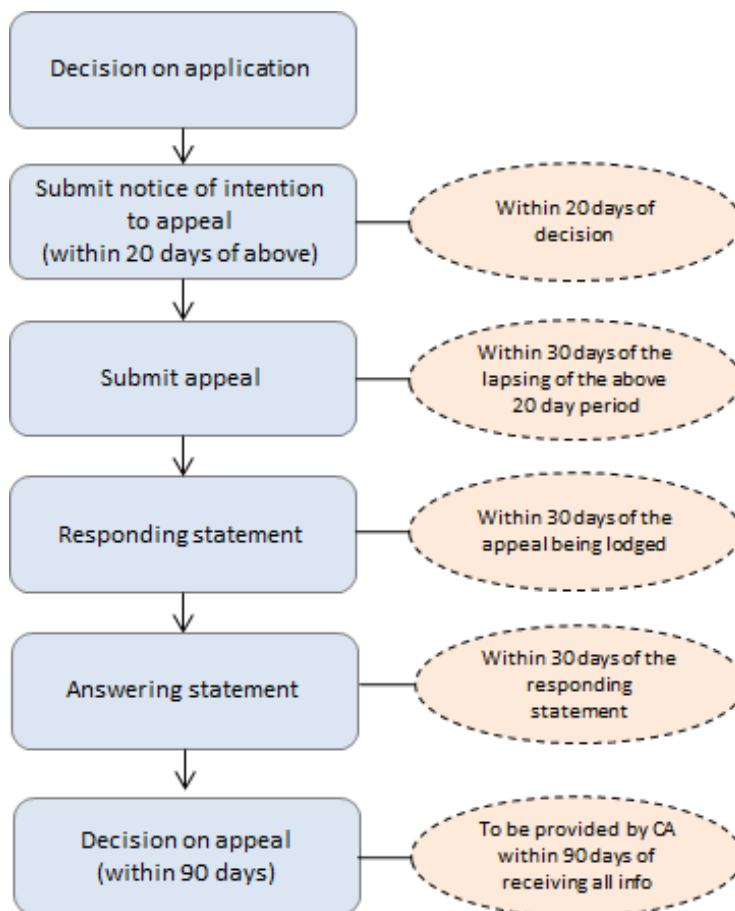
- The issues in respect of which the panel must make recommendations
- The period within which the recommendations must be submitted.

These recommendations must then be submitted in writing to the Minister or MEC.

Notice of intent to lodge an Appeal	Submission of appeal forms
Eastern Cape 	Eastern Cape 
Free State 	Free State 
Gauteng 	Gauteng 
KwaZulu-Natal 	KwaZulu-Natal 
Limpopo 	Limpopo 
Mpumalanga 	Mpumalanga 
North West 	North West 
Northern Cape 	Northern Cape 
Western Cape 	Western Cape 
National 	National 

The Minister, MEC or CA must reach a decision on an appeal within 90 days of receipt of all information. Once a decision has been reached, the Minister, MEC or CA must notify and provide reasons for the decision to the appellant and each respondent within 10 days.

The appeal process is summarised in the diagram below.



5.9 Suspensions

The CA has the ability to suspend an EA. Such suspension may occur if:

- There are reasonable grounds for believing that the contravention or non-compliance with a condition is causing harm to the environment.
- Suspension is necessary to prevent deterioration of the environment.
- A condition of the authorisation has been contravened or is not being complied with.
- The authorisation was obtained through fraudulent means or misrepresentation or non-disclosure of material information.
- The activity has permanently or indefinitely been discontinued.
- Unforeseen circumstances lead to potential significant detrimental effects on the environment or on human rights.

If the CA considers the suspension of an authorisation, they must notify the holder of the proposed suspension and give the holder of the authorisation an opportunity to submit representations regarding the proposed suspension. Once the CA has reached a decision regarding the proposed suspension, they must notify the holder of the decision and provide reasons.

6 Implementation of SI projects

In many instances EIA is considered a process which ends with the issuing of decision which provides the basis to proceed with construction. An EA is however not simply a yes or no answer to an application. An EA includes conditions of authorisation and an associated EMPR. These outputs are designed to give effect to a positive decision by including management and mitigation measures considered necessary to ensure that the project is implemented and operated sustainably. The EMPR is required to account for impacts throughout the construction, operational and decommissioning phases of the project. In addition, the EMPR must include any prescribed environmental management standards or practices. What this means is that the **responsibilities of the applicant do not end with the decision**. The poor implementation of the EA and EMPR undermine the purpose and value of the EIA process. Furthermore, because the EA is a legal instrument failure to comply with the EA conditions or implement the EMPR may not only result in irreversible harm to the environment but also have the following risks for the applicant:

- Fines and/or jail sentences.
- Payment of penalties to contractors resulting from work being halted.
- Costs for rehabilitating environmental damage and/or compensation for harm.

The following common issues result in a failure to effectively comply with the EA and implement the EMPR:

- ***Impractical or unachievable conditions***

Owing to time pressures, applicants generally start with construction as soon as possible without having considered the EA or EMPR in detail. In many cases, projects commence and are later halted or directives are issued for non-compliance because a certain condition is not being met. The inability to meet a condition is often known before commencement but the applicant has not read and understood the implications of the conditions or the EMPR. If the applicant is unable to comply with the conditions or implement mitigation measures provided in the EMPR there is a risk once the project commences that they will either need to request an amendment of the Conditions of the EA or the EMPR. This will likely necessitate additional investigation and public consultation which would cause delays once construction is underway, with significant additional costs to the applicant. It is more efficient and appropriate for the applicant to appeal a decision or aspects thereof, rather than to proceed and deal with such issues at a later stage. It is therefore essential that the applicant thoroughly considers the EA, the conditions thereof and the EMPR.

- ***Failure to define and assign roles and responsibilities***

Environmental management is a shared responsibility between the applicant and their contractors. The CA and other regulatory agencies also have a role to play.

- Failure to appoint an Environmental Control Officer (ECO), and often only after construction has commenced.
- Failure to establish responsibility for monitoring and reporting processes which need to be undertaken by a variety of staff and co-ordinated by the environmental officer.
- All contractors and their sub-contractors have the potential to cause damage or contravene conditions. In the case of SI projects the contractors are often small scale operators with limited awareness and understanding of environmental management.

- ***Structures and management processes***

It is often necessary to establish mitigation structures, such as sediment traps prior to commencing with construction. Failure to do this results in non-compliance and also damage which may require costly rehabilitation measures. Similarly, management processes, such as for solid waste are not put in place before construction commences.

It is therefore advisable that the following steps and actions are taken to ensure that life after the EIA does not negatively impact the project:

- Include a broad estimate for costs of environmental management in the initial project budgeting. These can be based on experience from previous projects.
- Include the draft EMPR in the tender documents to the contractors so that they budget accordingly.
- Include performance clauses related to environmental requirements in the contract so that environmental performance is linked to financial return.
- Review the EA thoroughly to check for conditions which cannot be complied with. These should be appealed rather than simply proceeding because the costs of delays once the project has commenced (construction penalties and or fines) may be far greater than those associated with the delay.

7 Roles and responsibilities of role-players

Environmental assessment involves all role-players who may have an interest in the proposed activity. Each of these role-players has specific responsibilities within the EIA process. In many cases, these responsibilities are strictly defined in the regulations and there are legal implications if the role-players do not operate as required in the law. In order for the EIA process to proceed efficiently, it is vital that all role-players have an understanding of what is required of them. In addition, the applicant should familiarise themselves with the responsibilities of all role-players and ensure that these responsibilities are adequately undertaken. A description of the responsibilities relevant to each role-player are provided in the sub-topics.

Environmental Assessment Practitioner

An EAP is an individual responsible for managing, planning, and co-ordinating various environmental management instruments such as EIAs, SEAs and EMPRs. The Regulations require that an applicant appoint an EAP to conduct the BA or S&EIR process on the applicant's behalf. The EAP is central to the running of an efficient process which delivers the information required by the CA to make an informed decision. A critical role of the EAP is to ensure that all stakeholders participate fairly in the environmental assessment process and contribute equally to the outcome. The EAP is not allowed to promote the interests of the developer even though they are paying the EAP for their services. The only way to do achieve this is for the EAP to remain independent of any interests. Section 17 of the Regulations set out the general requirements of an EAP. These include that the EAP:

- Be independent
- Have expertise in conducting EIAs
- Perform the work in an objective manner
- Have knowledge of, and comply with, all legislation and guidelines relevant to the proposed activity.

In addition, the EAP is required to fulfil the following responsibilities:

- Determine the level of assessment applicable to the proposed activity
- Prepare and submit the application to the relevant CA
- Conduct at least a basic public participation process including:
 - Arranging the necessary public participation activities including notifying all Interested and Affected Parties of the proposed project via notice boards, advertisements and written notice as prescribed in the Regulations.
 - Providing all I&APs with sufficient information to enable them to participate
 - Keeping a register of all I&APs, their associated details and any inputs they have made
 - Preparing the minutes of any meetings held which accurately records the views of the participants, together with any responses to those representations, comments and views.
 - Ensuring that the I&APs are afforded sufficient time to participate and comment
 - Considering all objectives and representations received from I&APs
 - Notifying I&APs of the CAs decision, associated reasons for the decision, and that an appeal may be lodged against the decision.
- Compile the relevant reports
- Submit the required documentation to the CA
- Upon request from the CA, amend the reports or provide additional information.

Contractors

Contractors have a role to play in implementing at least the construction phase component of the EMPR. In order for them to fulfil this role, the applicant needs to adequately transfer and entrench the requirements of the EMPR with the contractor. This can be achieved through contract conditions and related performance clauses. It may also be necessary to provide training. The contractor is obliged to transfer responsibility to and take responsibility for any sub-contractors that they employ during the construction of an SI project.

Interested and Affected Parties

An Interested and Affected Party (I&AP) is defined as any person or organisation interested in or affected by an operation or listed activity, and any organ of state who may have jurisdiction over any aspect of the operation or activity. A registered I&AP is a person who is formally registered in terms of the EIA process. Interested and Affected parties may perform the following roles:

- Identify issues and ensure that local knowledge and values are understood
- Comment on any reports associated with the application within the specified or agreed timeframes
- Send copies of any comment to the applicant or EAP if the comments are submitted directly to the Competent Authority
- Disclose any interest they may have in the application being granted or refused
- Where applicable, appeal a final decision.

Applicant

Section 1 of NEMA defines an applicant as a person who has submitted or intends to submit an application for an environmental authorisation. The applicant in the case of SI is often one of the three spheres of government. Given the local scale at which municipalities operate and their mandate to plan and implement basic services, most of their projects tend to fall within the realms of SI. The applicant is required to fulfil the following responsibilities:

- Appoint an EAP to manage the Basic Assessment or S&EIR process.
- Provide the EAP with a clear and precise proposal, based on existing information, of the purpose and need for the proposed activity, and information that will help the EAP determine the level of assessment required.
- Provide the EAP and Competent Authority with access to all information relevant to the proposed activity and ensure that this information is truthful and accurate.
- Pay any costs or fees applicable to the application.

It is important to note that the applicant is ultimately responsible for ensuring that all laws relevant to the respective activity are complied with. It is therefore important that the applicant monitor the progress of the application and check the respective reports.

Local Government

The core mandate of local government is service delivery at the local level. Municipalities are consequently responsible for the development of a substantial portion of social infrastructure in South Africa i.e. they are very often the applicant. In addition to their potential role as the applicant, local government have further responsibilities in terms of SI development and the EIA process. These include the following:

- Municipalities should interact closely with provincial and national government who initiate social infrastructure projects in their area of jurisdiction.
- Municipalities are responsible for Local Economic Development which requires that they engage with developers and comment on the acceptability and relevance of almost all development projects.
- Municipalities have the power to influence development activities through planning tools such as SDFs and LUMS, as well as through the drafting of bylaws. In commenting on an application, municipal officials should ensure that these planning tools and laws are considered in the application.

Competent Authority

The Competent Authority is defined in terms of Section 1 of NEMA as “the organ of state charged by the Act with evaluating with the environmental impact of an activity and where appropriate, granting or refusing an environmental authorisation in respect of that activity”. In most cases, the MEC responsible for environmental affairs in a province is the CA where the application is province specific. The Minister of Environmental Affairs is the CA for all applications being processed by the national department. However the Minister or MEC may also delegate certain responsibilities to officials within their departments. The CA is required to fulfil the following responsibilities:

- Make decisions on applications for environmental authorisation in accordance with the EIA Regulations.
- Where inadequate or insufficient information has been provided, request additional information or specialist studies.
- Provide the applicant or EAP with access to any guidelines, departmental policies, decision-making instruments and information that is relevant to the application.
- Advise the applicant or EAP of the nature and extent of any processes that must be following in order to comply with NEMA and the EIA Regulations.
- Prepare any minutes of meetings held between the CA and the EAP or applicant.
- Consult with any State department that administers a law relating to a matter affecting the environment relevant to the application and consider any associated comments.
- Consider the need and desirability of the activity.
- Comply with the specified timeframes.
- Notify the applicant of the CAs decision, associated reasons for the decision, and that an appeal may be lodged against the decision.
- Keep a register of all applications received and decisions in respect of all environmental authorisations.
- Where applicable, consider and respond to appeals.
- May amend or suspend an environmental authorisation.
- Give reasonable assistance to a person who is unable to comply with the Regulations as a result of illiteracy, disability, or any other disadvantage.

Other Regulatory Authorities

Regulatory authorities refer to authorities who are involved in issuing permits, approvals or authorisations which may be relevant to the project. These authorities have an important role to play and can assist in streamlining the EIA process by:

- Providing timeous access to the EAP to any relevant information collected by their department.
- Providing constructive comment on the application to the EAP and CA within the requested timeframes.
- Drafting comment in a constructive manner that they can be adapted or incorporated as conditions of the environmental authorisation.
- Attending authorities' site visits and meetings which are designed to achieve co-ordination between the EIA and other relevant regulatory processes.

8 Legal obligations and applicable legislation

There is an overwhelming array of acts and regulations that govern both the environment and SI. These range from the Constitution (which contains the environmental right) to national statutes, provincial legislation and local bylaws. The complexity of the legislation poses a significant challenge to the implementation of SI. This chapter aims to address this challenge by providing an overview of the various national statutes which may be relevant to both the environment and the provision of SI.

These statutes may be categorised as follows:

- Legislation which gives effect to sections 32 and 33 of the Constitution.
- NEMA.
- SEMAs.
- Other laws that are concerned with the protection or management or assessment or protection of natural systems, such as the National Forest Act.
- Planning legislation.

All laws must be read within the context of the Constitution. In particular, the provisions of NEMA must be appreciated in the light of everyone's constitutional right to administrative action that is lawful, reasonable and procedurally fair.¹⁹ A decision to grant or refuse an environmental authorisation, permit or licence qualifies as administrative action in terms of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000) ("PAJA"). Accordingly, such decisions may be reviewed and set aside on the grounds of judicial review set out in PAJA.

An overview of each of the statutes, within the above categories, and their relevance to the provision of SI and the environment can be accessed by clicking on the information links on the diagram below. Further guidance on the relevance of these Acts to different infrastructure types is provided in Chapter 10. It is important to note that any legislation applicable to a proposed activity should be identified during the planning phase (See Chapter 4). This will ensure that the applicant does not inadvertently contravene any law and also that adequate provision is made (in respect of time and budget) for any other authorisations that may be required.

Please note that the list of legislation provided here does not constitute a comprehensive list of all laws applicable to SI. Furthermore, copies of the Acts provided here do not include any amendments to these Acts. A thorough interrogation of the legislation is therefore still necessary to identify all applicable laws and ensure that your responsibilities and obligations in terms of these laws have been met.

¹⁹ Section 33 of the Constitution.

8.1 The Constitution and Legislation which gives effect to Sections 32 and 33

The Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996)



The Constitution is the supreme law of the Republic of South Africa. Statutes must therefore be in line with the Constitution. Where there is a conflict between the Constitution and any other law, the latter is invalid.

The provision of social infrastructure is an obligation imposed (on the State) in the Constitution. In Chapter 2 of the Constitution the State is obliged to take reasonable measures, within available resources, to achieve the progressive realisation of:

- Everyone's right to have access to healthcare services;
- Everyone's right to have access to sufficient food and water;
- Everyone's right to have access to adequate housing; and
- Everyone's right to have access to social security.

In addition to the above, the Constitution guarantees everyone the right to an environment that is not harmful to one's health or well-being.¹ That right includes an obligation imposed on the State to have the environment protected for the benefit of present and future generations.² In *Director: Mineral Development, Gauteng Region and Sasol Mining (Pty) Ltd v Save the Vaal Environment and Others*³ the Supreme Court of Appeal held that:

*"Our Constitution, by including environmental rights as fundamental justiciable human rights, by necessary implication requires that environmental considerations be accorded appropriate recognition and respect in the administrative processes in our country."*⁴

The above passage reinforces the importance of ensuring that, while the State discharges its constitutional obligation to provide social infrastructure, it must accord appropriate recognition and respect to environmental considerations. Importantly, owing to the fact that while some organs of state may be implementing laws designed to give effect to section 24 of the Constitution other organs of state may be taking steps in order to discharge the constitutional obligation to provide social infrastructure, the provisions of Chapter 3 of the Constitution are critical. Chapter 3 of the Constitution sets out principles of co-operative governance and those principles include obligations to organs of state to:

- Respect the constitutional status, institutions, powers and functions of other organs of state;
- Not assume any power or function except that conferred in terms of the Constitution;
- Exercise their powers and perform their functions in a manner that does not encroach on the integrity of other organs of state; and
- Co-operate with one another in mutual trust and good faith.⁵

Organs of state which seek to discharge their obligations relating to the provision of social infrastructure must act within the ambit of section 41(1) of the Constitution when seeking authorisations, permits or licences from other organs of state which are charged with implementing laws designed to give effect to section 24 of the Constitution. At all relevant times, it must be remembered that the environmental right set out in section 24 of the Constitution is a fundamental right which must be promoted and protected along with other fundamental rights. In *Kaunda and Others v President of the Republic of South Africa and Others*⁶ the Constitutional Court held that:

¹ Section 24.

² In order to give effect to the environmental right, the State is obliged to take reasonable legislative and other measures.

³ 1999 (2) SA 709 (SCA).

⁴ Paragraph 20.

⁵ Section 41(1).

⁶ 2005 (4) SA 235 (CC).

“It is this commitment to the promotion and protection of fundamental rights that binds us and defines us as a nation and which must discipline our government and inform the duty which it owes to its nationals. This commitment ‘must be demonstrated by the State in everything that it does’.”⁷

The laws that are discussed below must be understood in the context of the commitment that the State has to promote and protect fundamental rights including the environmental right.

Promotion of Access to Information Act, 2000 (Act No. 2 of 2000)



The purpose of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000) (PAIA) is to give effect to section 32 of the Constitution. Among others, this section provides for a constitutional right of everyone to have access to information held by the State. The PAIA is fundamental to ensuring transparency and accountability in the way the State operates. Any information in the possession of CAs which informs a decision on whether or not to grant a licence, permission or environmental authorisation may be requested in terms of the PAIA. The PAIA provides:

- How requests for access to information must be lodged;
- How such requests must be considered;
- Circumstances in which a request may be granted or refused; and
- Remedies available after a decision has been made where access to information is refused.

Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000)



The Parliament passed the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000) (PAJA) in order to give effect to section 33 of the Constitution. It applies to all administrative decisions which fall within the ambit of its section 1. The requirements set out in section 1 are as follows:

- There must be a decision taken or a failure to take a decision;
- The organ of state making a decision (or failing to make a decision) must be exercising power in terms of the Constitution or legislation;
- The decision or failure to take a decision must affect adversely the rights of any person;
- The decision or failure to take a decision must have a direct, external legal effect; and
- The decision or failure to take a decision must not fall within the exceptions set out in section 1 of PAJA.

A decision or a failure to take a decision on whether or not to grant an environmental authorisation, a permit or a licence falls within section 1 of PAJA. CAs are therefore obliged to take into account the provisions of PAJA when making decisions. PAJA sets out grounds on which a person may institute proceedings for the judicial review⁸ of an administrative decision.⁹ Those grounds include where:

- The decision was unlawful or unconstitutional;
- The decision was procedurally unfair;
- The decision was materially influenced by an error of law; or
- The decision is not authorised by the empowering provision.

A person who wishes to institute judicial review proceedings has an obligation to exhaust internal remedies before instituting judicial review. The most common internal remedy comprises an opportunity to lodge an internal appeal against a decision taken by a decision-maker in the first instance. For example, in terms of NEMA, a person may appeal to the Minister where that person is dissatisfied with a decision taken by an official of the Department of Environmental Affairs where such an official is acting on powers delegated by the Minister.¹⁰ In order to ascertain whether or not there are internal remedies which must be exhausted before approaching the High Court, the person concerned must have regard to the empowering legislation in terms of which the decision in question was made.

⁷ Paragraph 159.

⁸ Judicial review refers to the review and setting aside of an administrative decision by the High Court with jurisdiction on the matter.

⁹ Section 6.

¹⁰ Section 43.

8.2 NEMA

National Environmental Management Act, 1998 (Act No. 107 of 1998)



NEMA is the primary statute designed to give effect to section 24 of the Constitution. It came into effect in January 1999 and, since then, has been amended extensively.

The purpose of NEMA includes the provision of co-operative environmental governance by establishing principles for decision-making on matters which affect the environment. Measures included in NEMA and designed to give effect to its purpose include the following. Firstly, NEMA sets out national environmental management principles which apply to “the actions of all organs of state that may significantly affect the environment”.¹ Those principles:

- Apply alongside all other appropriate and relevant considerations;
- Serve as the general framework within which environmental management and implementation plans must be formulated;
- Serve as guidelines by reference to which any organ of state must exercise any function when taking any decision in terms of NEMA or any law concerned with the protection of the environment; and
- Guide the interpretation, administration and implementation of NEMA and any other law concerned with the protection or management of the environment.²

At the heart of the national environmental management principles is the concept of sustainable development which is defined as “the integration of social, economic and environmental factors into planning, implementation and decision-making so as to ensure that development serves present and future generations”.³ The national environmental management principles provide that:

- Environmental management must place people and their needs at the forefront of its concern and must serve their physical, psychological, developmental, cultural and social interests equitably.⁴
- Development must be socially, environmentally and economically sustainable.⁵
- Sustainable development requires the consideration of all relevant factors.⁶

Secondly, NEMA gives powers to the national Minister of Environmental Affairs (or the Member of the Executive Council responsible for environmental affairs in a province) to identify activities which may not commence without an EA from the CA. The Minister may also identify geographical areas in which specified activities may not commence without an EA from the CA or in which specified activities may be excluded from authorisation by the CA. Where an activity requires an environmental authorisation before commencement, in terms of section 24F of NEMA, anyone who commences that activity without an environmental authorisation or fails to comply with the conditions applicable to an environmental authorisation is committing an offence and, upon conviction, may be liable to a fine not exceeding R5 million or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment. Crucially, section 38 of NEMA provides that NEMA is binding on the State (except insofar as any criminal liability is concerned).

The Minister promulgated the NEMA EIA Regulations on 4 December 2014. These Regulations comprise:

¹ Section 2(1).

² Section 2(1).

³ Sections 1 and 2 of NEMA.

⁴ Section 2(2).

⁵ Section 2(3).

⁶ Section 2(4).

- Listing Notice 1 of 2014 (GNR 983) – which set out activities which require a BA before an EA may be issued;
- Listing Notice 2 of 2014 (GNR 984) – which set out activities that require a S&EIR process before an EA may be issued;
- Listing Notice 3 of 2014 (GNR 985) – which set out activities which, in certain geographical areas, require a BA before they may be authorised;
- The EIA Regulations – which set out the detail on regulation of impact assessments; and

It must be noted that the EMF Regulations have not been amended since 2006. The Minister only made amendments to Listing Notices 1, 2, and 3 as set out above. Activities set out in Listing Notices 1, 2 and 3 may be required to be undertaken in the context of provision or construction of social infrastructure. Where that is the case, an EA must be obtained in terms of section 24 of NEMA before the commencement of construction. Importantly, in terms of NEMA read with the EIA Regulations, the Minister or the Member of the Executive Council responsible for environmental affairs in a province may delegate powers to make decisions on applications for EAs to the Department⁷ or to an official in the Department. Where such powers have been delegated, a decision made by the relevant official or the Department may be subject to an appeal by a person who is aggrieved by a decision made by the Department or the official. An appeal may be lodged with the Minister or the MEC depending on who delegated the powers in question. After considering an appeal, the Minister or the Member of the Executive Council may confirm, vary or set aside the decision made by the delegated official or Department⁸.

Thirdly, NEMA provides for the duty of care and remediation of environmental damage. This duty is set out in section 28 of NEMA and is imposed on every person “who causes, has caused or may cause significant pollution or degradation of the environment”⁹. It involves the taking of reasonable measures:

- To prevent pollution or degradation from occurring, continuing or recurring; or
- (Insofar as such harm to the environment is authorised by law or cannot reasonably be avoided or stopped) to minimise and rectify such pollution or degradation of the environment.

A person who fails to take the reasonable measures required in terms of section 28(1) may be compelled to take those measures by the Director-General of the Department of Environmental Affairs or a provincial head of a Department responsible for environmental affairs in a particular province.¹⁰ Steps may also be taken in order to discharge the duty of care and to recover the costs of doing so from the person who failed to discharge that duty¹¹.

Where a duty of care arises in the context of construction of SI projects, the persons responsible must ensure that that duty is discharged.

⁷ The national or provincial Department of Environmental Affairs.

⁸ Section 43 of NEMA.

⁹ Section 28(1).

¹⁰ Section 28(4).

¹¹ Section 28(7), (8), (9), (10) and (11).

8.3 SEMAs



National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008)

The National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008) (ICMA) is a SEMA which regulates integrated coastal management within the context of NEMA. Its purpose includes:

- To establish integrated coastal and estuarine management;
- To promote the conservation of the coastal environment;
- To ensure that development and the use of natural resources within the coastal zone are socially and economically justifiable and ecologically sustainable;
- To determine the coastal zone;
- To preserve, protect, extend and enhance the status of coastal public property; and
- To give effect to the Republic's obligations in terms of international law regarding coastal management and the marine environment.¹

In the ICMA the following measures are included in order to achieve its purpose.

- (a) The State is declared as a trustee of coastal public property.² The concept of "coastal public property" is used to describe a very wide geographical area which includes coastal waters, parts of the sea-shore and admiralty reserve owned by the State. Closely related to that concept is the concept of the "coastal protection zone" which refers to a zone "established for enabling the use of land that is adjacent to coastal public property or that plays a significant role in a coastal ecosystem to be managed, regulated or restricted", among others, in order to:
 - Protect the ecological integrity, natural character and the economic, social and aesthetic value of coastal public property; and
 - Protect people, property and economic activities from risks arising from dynamic coastal processes.³
- (b) No occupation, construction or erection of any building, road, barrier or structure on or in the coastal public property may occur without a coastal lease awarded by the national Minister of Environmental Affairs.^{4 5}
- (c) The ICMA provides for the regulation of coastal activities. The latter relates to listed activities or specified activities (in terms of NEMA) envisaged to take place in the coastal zone. Section 63 of the ICMA provides relevant factors which must be taken into account when the CA considers granting an EA to those activities.⁶ Importantly, the ICMA also prohibit the CA to issue an EA if the development or activity for which authorisation

¹ Long title and section 2 of the ICMA.

² Section 12.

³ Section 17 of the ICMA.

⁴ As an exception to this prohibition, the ICMA does allow temporary occupation of the coastal public property in certain circumstances. The exception is provided for in section 67 of the ICMA.

⁵ Section 65 which sets out this prohibition has not yet taken effect.

⁶ Those factors are:

- (a) The representations made by the applicant and by interested and affected parties;
- (b) The extent to which the applicant has in the past complied with similar authorisations;
- (c) Where the coastal public property, the coastal protection zone or coastal access land will be affected, if so, the extent to which the proposed development or activity is consistent with the purpose for establishing and protecting those areas;
- (d) The estuarine management plans, coastal management programmes and coastal management objectives applicable in the area;
- (e) The socio-economic impact of the activity is authorised or not authorised;
- (f) The likely impact of the proposed activity on the coastal environment, including the cumulative effect of its impact together with those of existing activities;
- (g) The likely impact of coastal environmental processes on the proposed activity; and
- (h) The objects of the ICMA.

is sought falls within any of the categories set out in section 63(2) of the ICMA.⁷ The CA in such circumstances may refer the application for consideration by the Minister who may grant an EA if doing so is in the interests of the whole community.⁸

The measures included in the ICMA may affect the provision of SI in the following manner. Firstly, those measures may be relevant where the provision of SI would take place on coastal public property or the coastal protection zone. Where applicable, the organ of state which envisages the construction of SI would require a lease before proceeding with the construction. Secondly, owing to the application of section 63 of the ICMA, an application for an EA in terms of NEMA may be refused if it falls within any of the categories set out in section 63(2) of the ICMA.

National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004)



The purpose of the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004) (NEM:BA) is:

- To provide for the management and conservation of the biodiversity within the framework of NEMA;
- To provide for the protection of ecosystems and specifies those that warrant national protection; and
- To establish the South African National Biodiversity Institute.⁹

The NEM:BA provides for the following:

- (a) The South African National Biodiversity Institute is established and its functions include provision of advice on matters relating to biodiversity to organs of state.¹⁰
- (b) As part of integrated and co-ordinated biodiversity planning, the NEM:BA provides for the preparation and adoption of various policies.¹¹
- (c) The Minister may publish lists of threatened species and threatened ecosystems, respectively, in need of protection.¹² Once a species has been listed as a threatened or protected species, restricted activities may not be undertaken in relation to those species without a permit. Restricted activities include:
 - Having in possession or exercising physical control over any specimen of a listed threatened or protected species;
 - Gathering, collecting or plucking any specimen of a listed threatened or protected species;
 - Picking parts of, or cutting, chopping off, uprooting, damaging or destroying, any specimen of a listed threatened or protected species;¹³ and
 - Conveying, moving or otherwise translocating any specimen of a listed, threatened or protected species.¹⁴

Any type of SI on an area with threatened species and ecosystems may be affected by the provisions of the NEM:BA.

⁷ Such categories are where the development or activity for which authorisation is sought:

- (a) Is situated within the coastal public property and is inconsistent with the objective of conserving and enhancing coastal public property for the benefit of current and future generations;
- (b) Is situated within the coastal protection zone and is inconsistent with the purpose for which a coastal protection zone is established in terms of the ICMA;
- (c) Is situated within coastal access land and is inconsistent with the purpose for which coastal access land is designated;
- (d) Is likely to cause irreversible or long-term adverse effects to any aspect of the coastal environment that cannot satisfactorily be mitigated;
- (e) Is likely to be significantly damaged or prejudiced by dynamic coastal processes;
- (f) Would substantially prejudice the achievement of any coastal management objective; or
- (g) Would be contrary to the interests of the whole community.

⁸ Section 63 read with section 64.

⁹ Long title of the Biodiversity Act.

¹⁰ Sections 10 and 11(1)(c).

¹¹ Those policies include the national biodiversity framework, the bioregions and bioregional plans and the biodiversity management plans.

¹² Chapter 4 of the Biodiversity Act.

¹³ Section 57(1).

¹⁴ Section 1.

Acting in terms of section 52 of the NEM:BA, the Minister published a *National List of Ecosystems that are Threatened and in Need of Protection* in *Government Gazette* No. 34809 on 9 December 2011. The primary purpose of the listing of ecosystems that are threatened and in need of protection is:

- (With regard to threatened ecosystems) To reduce the rate of extinction of ecosystems and species;
- (With regard to protected ecosystems) To preserve witness sites of exceptionally high conservation value; and
- (To both threatened and protected ecosystems) To enable or facilitate proactive management of these ecosystems.

In addition to the above, the secondary purpose is, to play a symbolic and awareness-raising role. Crucially, the list of threatened ecosystems is specifically relevant to Activity 12 of Listing Notice 3 as that activity comprises:

“The clearance of an area of 300 square metres or more of vegetation where 75% or more of the vegetative cover constitutes indigenous vegetation ... Within any critically endangered or endangered ecosystem listed in terms of section 52 of NEMBA or prior to the publication of such a list, within an area that has been identified as critically endangered in National Spatial Biodiversity Assessment 2004 ...”.

Regarding Activity 12 of Listing Notice 3, it is important to note that, an environmental authorisation is required if the vegetative cover which is going to be cleared comprises (at least) 75% indigenous vegetation and the area to be cleared is at least 300 square metres. Importantly, the Minister published *Lists of Critically Endangered, Endangered, Vulnerable and Protected Species* in Government Notice R151 of 23 February 2007 (as amended).¹⁵

Any type of SI on an area with threatened species and ecosystems may be affected by the provisions of the NEM:BA.

The National Water Act, 1998 (Act No. 36 of 1998)



The National Water Act, 1998 (Act No. 36 of 1998) (NWA) seeks to ensure that the Republic’s water resources are protected, used, developed, conserved, managed and controlled in a manner which takes into account relevant factors such as the meeting of the basic human needs of present and future generations.¹⁶ Other factors include:

- Promoting equitable access to water;
- Redressing the results of past racial and gender discrimination;
- Promoting the efficient, sustainable and beneficial use of water in the public interest; and
- Facilitating social and economic development.¹⁷

The following measures are included in the NWA:

- (a) It clarifies what is regarded as a water use in terms of the NWA. In terms of section 21, water use includes:
- Taking water from a water resource;¹⁸
 - Storing water;
 - Impeding or diverting the flow of water in a watercourse; and
 - Altering the bed, banks, cause or characteristics of a watercourse.

¹⁵ *Government Gazette* 29657 of 23 February 2007 as amended by Government Notice R1187 promulgated in *Government Gazette* 30568 of 14 December 2007.

¹⁶ Section 2.

¹⁷ Section 2.

¹⁸ Water resource is defined as including a watercourse, surface water, estuary, or aquifer. On the other hand, watercourse is defined as:

(a) A river or spring;

(b) A natural channel in which water flows regularly or intermittently;

(c) A wetland, lake or dam into which, or from which water flows; and

(d) Any collection of water which the Minister may, by notice in the *Government Gazette*, declare to be a watercourse, and a reference to a watercourse includes, where relevant, its bed and banks.

- (b) No person may engage in a water use without a licence unless such use fall within certain exceptions set out in the NWA.¹⁹

The construction of SI may involve certain water uses and, as a result, the organ of state which undertakes those water uses must obtain a water licence unless its use falls within one of the exceptions set out in the NWA.

National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008)



The purpose of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008) (NEM:WA) includes to protect health, well-being and the environment by providing reasonable measures.²⁰

The following measures are included in the Act:

- (a) A holder of waste has a general duty to take all reasonable measures to avoid the generation of waste.²¹
- (b) The Minister responsible for Environmental Affairs in the national government has power to publish a list of waste management activities that have, or are likely to have, a detrimental effect on the environment.²² No person may commence, undertake or conduct such activities unless that person has a waste management licence (if such a licence is required) or complies with certain stipulated requirements or standards.²³

The Minister has promulgated the *List of Waste Management Activities that have, or are likely to have a Detrimental Effect on the Environment*²⁴ which include the construction of facilities and the treatment of effluent, wastewater or sewage with an annual throughput capacity of more than 2000 cubic metres but less than 15000 cubic metres.²⁵

Construction of SI relating to wastewater and sewage treatment plants would require compliance with the Act.

National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003)



The purpose of the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003) (NEM:PAA) includes to provide for the protection and conservation of ecologically viable areas representative of South Africa's biological diversity.²⁶ Section 17 provides that the purpose of declaring areas as protected areas include:

- (a) To preserve the ecological integrity of those areas;
- (b) To conserve biodiversity in those areas;
- (c) To protect areas representative of all ecosystems, habitats and species naturally occurring in South Africa;
and
- (d) To protect an area which is vulnerable or ecologically sensitive.

The following measures are included in the Act:

- (a) The State is declared as a trustee of protected areas.²⁷
- (b) It prescribes the system of protected areas in South Africa as consisting four main categories.²⁸ These categories are:
- Special nature reserves, national parks, nature reserves and protected areas;
 - World heritage sites;
 - Marine protected areas;

¹⁹ Section 22.

²⁰ Section 2.

²¹ Section 16(1)(a).

²² Section 19(1).

²³ Section 19(3) read with section 20.

²⁴ Government Notice 718 in *Government Gazette* 32368 of 3 July 2009.

²⁵ Activities 11 and 18.

²⁶ Long title.

²⁷ Section 3.

²⁸ Section 9.

- Specially protected forest areas, forest nature reserves and forest wilderness areas declared in terms of the National Forests Act; and
 - Mountain catchment areas declared in terms of the Mountain Catchment Areas Act.²⁹
- (c) The Minister is obliged to maintain the Register of Protected Areas.³⁰
- (d) No development or construction may take place in a protected area without prior written approval of the responsible management authority.³¹

Any SI envisaged in a protected area would require approval from the responsible management authority.

National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004)



The purpose of the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004) (NEM:AQA) includes to reform the law relating to air quality and to provide for national norms and standards regulating air quality monitoring, management and control in the Republic of South Africa.³² The object of that Act includes to give effect to section 24 of the Constitution.³³

The NEM:AQA establishes a licence insisting and imposes an obligation on metropolitan and district municipalities to implement that system. The following features are central to that system. Firstly, the Minister of Environmental Affairs (or a Member of the Executive Council responsible for the portfolio of environmental affairs in a province) may publish a list of activities which he or she reasonably believes have or may have a significant detrimental effect on the environment.³⁴ Secondly, once an activity has been listed, no person may undertake such an activity without a provisional Atmospheric Emissions Licence (AEL) or an AEL.³⁵

The Minister published a list of activities which require a licence for undertaking in Government Notice 248 in *Government Gazette* 33064 of 21 March 2010 and titled, *List of Activities which result in atmospheric emissions which have or may have a significant detrimental effect on the environment, including health, social conditions, economic conditions, ecological conditions or cultural heritage*. Accordingly, any infrastructure development which requires the undertaking of activities listed in terms of the NEM:AQA would require a licence in terms of that Act.

²⁹ 63 of 1970.

³⁰ Section 10.

³¹ Section 50.

³² Long title.

³³ Section 2.

³⁴ Section 21(1).

³⁵ Section 22.

8.4 Other Laws

Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002)



The purpose of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002) (MPRDA) is to provide for equitable access to and sustainable development of the mineral and petroleum resources.¹ The Act prohibits mining of minerals without a permit issued in terms of section 27(6). The term “mineral” is defined as including sand, stone, rock, gravel, clay, soil and other minerals occurring in residue stockpiles or in residue deposits.² On the other hand, mining is defined as meaning:

“... any operation or activity for the purposes of winning any mineral on, in or under the earth, water or any residue deposit, whether by underground or open working or otherwise and includes any operation or activity incidental thereto.”³

The construction of gravel roads requires the mining of minerals to surface the roads. Accordingly, such mining must be preceded by the organ of state involved obtaining a permit in terms of section 27(6) of the Act.

National Forests Act, 1998 (Act No 84 of 1998)



The purpose of the National Forests Act, 1998 (Act No. 84 of 1998) (National Forests Act) includes to promote the sustainable management and development of forests for the benefit of all South Africans.⁴

The following measures are included in the Act:

- (a) The Minister responsible for forestry in the national government has a number of responsibilities. Those responsibilities include commissioning research which promotes the objectives of forest policy.⁵
- (b) Indigenous trees found in a natural forest are protected by prohibiting certain activities without a licence or an exemption issued in terms of the Act.⁶ The prohibited activities include cutting, disturbing, damaging or destroying any indigenous tree in a natural forest.
- (c) The Minister may declare a forest (or part of it) as a protected area.⁷ Once declared as such, no person may cut, disturb, damage or destroy any forest produce or remove such produce from a protected area except in terms of section 10 of the Act.
- (d) The Minister also has a power to protect:
 - A particular tree;
 - A particular group of trees;
 - A particular woodland; or
 - Trees belonging to a particular species.⁸
- (e) A licence or an exemption in terms of the Act is required before any person may cut, disturb, damage or destroy any protected tree.⁹

The National Forests Act is applicable to any SI where the provision of that infrastructure would involve interference with protected areas or protected trees.

-
- ¹ Long title of the Act.
 - ² Section 1.
 - ³ Section 1.
 - ⁴ Section 1.
 - ⁵ Section 5.
 - ⁶ Section 7.
 - ⁷ Section 8(1).
 - ⁸ Section 12.
 - ⁹ Section 15.

Sea-shore Act, 1935 (Act No. 21 of 1935)



The purpose of the Sea-shore Act, 1935 (Act No. 21 of 1935) (Sea-shore Act) is to declare the State President to be the owner of the sea-shore and the sea within the territorial waters of the Republic of South Africa.¹⁰

The Sea-shore Act provides the following:

- (a) It defines the sea-shore and the sea.¹¹
- (b) The Minister of Transport has powers to let any portion of the sea and the sea-shore for the purposes set out in section 3 of the Act.¹²
- (c) The Minister may also authorise the use of any portion of the sea-shore and the sea “for Government purposes”.¹³

Any infrastructure envisaged in the sea or the sea-shore would require authorisation from the Minister.

National Heritage Resources Act, 1999 (Act No. 25 of 1999)



The purpose of the National Heritage Resources Act, 1999 (Act No. 25 of 1999) (NHRA) is to introduce an integrated and interactive system for the management of the national heritage resources. A heritage resource is defined in section 1 as “any place or object of cultural significance”. As such a heritage resource may also refer to a natural object such as a tree.

The NHRA provides for the following:

- (a) It declares a national estate by providing that:
“... those heritage resources of South Africa which are of cultural significance or other special value for the present community and for future generations must be considered part of the national estate and fall within the sphere of operations of heritage resources authorities.”¹⁴
- (b) The South African Heritage Resources Agency (SAHRA) is established whose duty is to co-ordinate the identification and management of the national estate. The role and responsibilities between SAHRA and other heritage authorities is clarified. For instance, SAHRA may declare a place to be a national heritage site while a provincial heritage resources authority may declare a provincial heritage site.¹⁵
- (c) Once a heritage site has been declared, no person may destroy, damage, deface, excavate, alter, remove from its original position, subdivide or change the planning status of that site without a permit issued by the heritage resources authority responsible for the protection of such a site.¹⁶
- (d) Burial grounds and graves are protected by SAHRA where it is not the responsibility of any other authority to protect them.¹⁷ A permit is required where a person wants to damage or alter certain graves or burial grounds.¹⁸ Importantly, section 36(6) provides that:
“Subject to the provision of any other law, any person who in the course of development or any other activity discovers the location of a grave, the existence of which was previously unknown, must immediately cease such activity and report the discovery to the responsible heritage resources authority.”

▪ ¹⁰ Long title.

▪ ¹¹ The sea-shore is defined as “the water and the land between the low-water mark and the high-water mark” and the sea is defined as “the water and the bed of the sea below the low-water mark and within the territorial waters of the Republic, including the water and the bed of any tidal river and of any tidal lagoon”.

▪ ¹² Those purposes include:

- The construction of infrastructure;
- “The carrying out of any work of public utility”; and
- The carrying out of any work which in the opinion of the Minister serves a necessary or useful purpose.

▪ ¹³ Section 5.

▪ ¹⁴ Section 3(1).

▪ ¹⁵ Section 27.

▪ ¹⁶ Section 27(18).

▪ ¹⁷ Section 36(1).

▪ ¹⁸ Section 36(3).

- (e) Structures older than 60 years are protected by prohibiting their altering or demolition without a permit issued by the relevant provincial heritage resources authority.¹⁹
- (f) In certain circumstances, the following categories of development must be preceded by notification to and authorisation from the responsible heritage resources authority:
 - The construction of a road, wall, powerline, pipeline, canal or other similar form of linear development or barrier exceeding 300 metres in length;
 - The construction of a bridge or similar structure exceeding 50 metres in length;
 - Any development or other activity which will change the character of a site–
 - (i) Exceeding 5000 square metres in extent; or
 - (ii) Involving 3 or more existing erven or subdivisions thereof; or
 - (iii) Involving 3 or more erven or divisions thereof which have been consolidated within the past 5 years;
 - (iv) The costs of which will exceed an amount stipulated by SAHRA or a provincial heritage authority;
 - (v) The re-zoning of a site exceeding 10000 square metres in extent; or
 - (vi) Any other category of development stipulated by SAHRA or a provincial heritage resources authority.²⁰

The exclusions referred to in (f) above include a development required to be assessed in terms of the Environment Conservation Act 73 of 1989, the predecessor to NEMA. Accordingly, developments assessed in terms of NEMA fall within the ambit of the exclusions. While section 38 does not apply to the exclusions, section 38(8) provides that the CA must ensure that the assessment process complies with the requirements of the relevant heritage resources authority and that any comments and recommendations of that authority are taken into account prior to the decision being made on whether or not the development may proceed.

Any SI development which falls within the ambit of the developments described above and/or which involves an impact on heritage resources must comply with the requirements of the NHRA.

Water Services Act, 1997 (Act No. 108 of 1997)



The purpose of the Water Services Act, 1997 (Act No 108 of 1997) (Water Services Act) includes:

- To provide for the rights of access to basic water supply and basic sanitation; and
- To provide for water services development plans.²¹

The Water Services Act gives everyone a right to access to basic water supply and basic sanitation and imposes an obligation to water services authorities to give effect to those rights.²²

In terms of section 6 of the Water Services Act, no person may use water services from a source other than a water services provider nominated by the water services authority having jurisdiction in the area in question unless that water services authority has issued approval for that use. In addition, the Act also regulates what it refers to as “industrial use” of water. Industrial use includes the use of water for mining, construction or any related purpose.²³ In terms of section 7 of that Act, no person may obtain water for industrial use from any source other than the distribution system of a water services provider nominated by the water services authority having jurisdiction in the area in question unless the water services authority has issued approval. Importantly, no person may operate as a water services provider without the approval of the water services authority having jurisdiction in the area in question.²⁴

▪ ¹⁹ Section 34(1).

▪ ²⁰ Section 38.

▪ ²¹ Long title and section 2.

▪ ²² Section 3.

▪ ²³ Section 1.

▪ ²⁴ Section 22(1).

8.5 Planning legislation

Planning legislation comprises those laws which regulate the use of land. Among others, those laws provide for the following:

- (a) The development and adoption of zoning schemes;
- (b) The subdivision of parcels of land;
- (c) The consolidation of parcels of land (into one subdivision);
- (d) The facilitation of appropriate development; and
- (e) The regulation of land-use changes for instance from one type of zoning to another.

Given that the use of land is also regulated by environmental laws, there is an overlap of planning legislation and environmental legislation. The White Paper on Spatial Planning and Land Use Management¹ (the “White Paper”) noted this overlap as follows:

“Most types of land development require a number of different permissions from different authorities. The two in which there is the most overlap are the rezoning permission and the consent in terms of the Environmental Impact Assessment requirements of the Environment Conservation Act. This overlap leads to a situation in which an applicant has to apply to two separate authorities for permission to use or develop land. In practice many of the requirements of the two processes are very similar and this can lead to an expensive duplication of efforts. Also, it can result in each authority giving a different decision, leading to institutional conflict and a bewildered public.”²

Planning legislation comprises national legislation, provincial legislation and by-laws. Recently enacted, Spatial Planning and Land Use Management Act (SPLUMA) (Act NO. 16 of 2013) is the supreme planning legislation in South Africa. It aims to provide for inclusive developmental, equitable and efficient spatial planning at the different spheres of government. It repeals the DFA of 1995 and Physical Planning Act below. The following are examples of other national planning legislation.

Subdivision of Agricultural Land Act, 1970 (Act No. 70 of 1970)



The Subdivision of Agricultural Land Act, 1970 (Act No 70 of 1970) provides that a consent must be obtained from the Minister of Agriculture before agricultural land may be subdivided.³ The Act applies irrespective of the nature of the proposed development provided that such development requires the subdivision of agricultural land.

Physical Planning Act, 1967 (Act No. 88 of 1967)



The purpose of the Physical Planning Act, 1967 (Act No 88 of 1967)(Physical Planning Act) is:

- To promote co-ordinated environment planning;
- To promote the utilisation of the Republic’s resources;
- To provide for control of the zoning and subdivision of land for industrial purposes;
- To provide for the reservation of land for use of specific purposes;
- To provide for the establishment of controlled areas; and
- To provide for restrictions upon the subdivision and use of land in controlled areas.⁴

The Act has been emasculated by various amendments. For instance, sections 6A and 6B which provide for the issuing of Guide Plans have been repealed. However, while that means that no new Guide Plans may be approved in terms of the Act historical Guide Plans are still relevant. For instance, in *Antoy Investments v Rand Water Board*⁵ the Court held that: “The development of the Vaal River Barrage Area was regulated by a Guide Plan issued under the Physical Planning Act 88 of 1967. In the Plan a so-called 1975 control floodline of the Vaal River was proclaimed. Development below this line was prohibited save for the consent of the Rand Water Board ... In terms of paragraph 2.2 [of the Guide Plan], no habitable

¹ July 2001.

² Section 1.2.

³ Section 6.

⁴ Long title.

⁵ [2008] ZASCA 10.

buildings or structures, toilets, french drains, conservancy or septic tanks, sewerage pumping installations or sewerage works are permitted below the flood control line, except with the written consent of the Board. In terms of section 29(3) of the Development Facilitation Act, 67 of 1995, the Guide Plan with the exception of Annexure C was withdrawn as a statutory document with effect from 25 December 1996.”⁶

The provisions of the Act which remain are those relating to the establishment and disestablishment of controlled areas. Once an area is declared as a controlled area⁷ it must be used for:

- A purpose for which it was being used immediately prior to being declared; or
- The purpose for which it was declared as a controlled area.⁸

Where a person intends to use land which falls within a controlled area for purposes other than the purposes set out above that person must apply for a permit in terms of section 8 of the Act. The provisions of this Act are applicable to any type of social infrastructure provided that it is envisaged to be constructed within a controlled area.

National Building Regulations and Building Standards Act, 1977 (Act No. 103 of 1977)



The purpose of the National Building Regulations and Building Standards Act, 1977 (Act No 103 of 1977) is to provide for uniformity in the law relating to the erection of buildings in the areas of jurisdiction of local authorities and to provide for prescribing of building standards.⁹ The historic importance of the reference to areas of jurisdiction of local authorities relates to the fact that, in the apartheid era, certain areas such as the so-called homelands fell outside the jurisdiction of local authorities.

The Act provides for the following:

- a. It defines the term “building” widely as including any structure erected or used for or in connection with the rendering of any service.¹⁰ It also includes any bridge or any other structure connected to it.¹¹
- b. In terms of section 4, no person may erect any building without the prior written approval of the local authority responsible for the area where the building is to be situated. The local authority grants approval if it is satisfied that the application in question complies with the requirements of the Act and any other applicable law.¹²
- c. The Minister¹³ may promulgate national building regulations.¹⁴

Any person who wishes to construct a structure which falls within the meaning of the term “building” as defined in the Act must obtain written approval before commencing with the construction. This may relate to all types of infrastructure.

Development Facilitation Act, 1995 (Act No. 67 of 1995)



The White Paper noted the following regarding the Development Facilitation Act, 1995 (Act No. 67 of 1995)(DFA):

“The only post-1994 planning law enacted by Parliament is the Development Facilitation Act, the DFA. The DFA was promulgated as an interim measure to breach the gap between the old apartheid era planning laws and a new planning system reflecting the needs and priorities of the democratic South Africa. The Act, however, did not wipe the slate clean with the result that the national and provincial laws relating to planning promulgated before 1994 are still in existence.

The DFA thus operates parallel to the existing laws, until such time as they are replaced, as proposed by this White Paper.”¹⁵

⁶ Paragraphs 1 and 8.

⁷ By the Minister responsible.

⁸ Section 6.

⁹ Long title.

¹⁰ Section 1.

¹¹ Section 1.

¹² Section 7.

¹³ Of Economic Affairs and Technology.

¹⁴ Section 17.

The primary objects of the Act are:

- To facilitate and expedite the implementation of the reconstruction and development programmes and projects by introducing extraordinary measures;
- To lay down general principles regulating all land developments, irrespective of whether the development is undertaken in terms of the Act or some other law; and
- To establish development tribunals (in all provinces) with powers to determine land development applications.¹⁶

Section 33 of the Act regulates the determination of land development applications by tribunals established in terms of the Act. The powers of such tribunals are wide. They include the power to exclude the operation of laws in regard to land forming the subject-matter of a land development application. The Constitutional Court has found that certain provisions of the Act, including section 33, are unconstitutional.¹⁷ The constitutional decision in which those sections were set aside was the *City of Johannesburg Metropolitan Municipality v Gauteng Development Tribunal and Others*.¹⁸ The result is that planning decisions which in the past were made by development tribunals established in terms of the Act are now made by Municipalities in terms of provincial legislation.

Provincial planning legislation

Depending on the province where social infrastructure is envisaged to be provided, the following legislation must be consulted:

- (a) KwaZulu-Natal: Planning and Development Act.¹⁹
- (b) Gauteng: Town-Planning and Townships Ordinance;²⁰ Division of Land Ordinance;²¹ and Transvaal Board for the Development of Peri-Urban Areas Ordinance.²²
- (c) Western Cape: Land Use Planning Ordinance.²³
- (d) Eastern Cape: Land Use Planning Ordinance;²⁴ and Ciskei Land Use Regulation Act.²⁵
- (e) Free State: Townships Ordinance.²⁶
- (f) Limpopo: Town Planning and Townships Ordinance;²⁷ Transvaal Board for the Development of Peri-Urban Areas Ordinance;²⁸ and Venda Proclamation.²⁹
- (g) Mpumalanga: Town Planning and Townships Ordinance;³⁰ and KwaNdebele Town Planning Act.³¹
- (h) North-West: Town Planning and Townships Ordinance;³² and Bophuthatswana Land Control Act.³³
- (i) Northern Cape: Northern Cape Planning Development Act.³⁴

¹⁵ Section 1.2.

¹⁶ Long title and section 2.

¹⁷ The court set aside Chapters IV and V.

¹⁸ 2010 (6) SA 182 CC.

¹⁹ 6 of 2008.

²⁰ 15 of 1986.

²¹ 20 of 1986.

²² 20 of 1943.

²³ 15 of 1985.

²⁴ 15 of 1985.

²⁵ 15 of 1987.

²⁶ 9 of 1969.

²⁷ 15 of 1986.

²⁸ 20 of 1943.

²⁹ 45 of 1990.

³⁰ 15 of 1986.

³¹ 10 of 1992.

³² 15 of 1986.

³³ 39 of 1979.

³⁴ 7 of 1998.

9 Other authorisations

In addition to environmental authorisation in terms of the EIA regulations, the implementation of SI may also require a range of other environmental authorisations²⁰ in terms of a SEMA. This may pose a challenge since all necessary authorisations, approvals, permits or licences must be obtained before the activity may commence. The need for an authorisation, approval, permit or licence is dependent on the location of the activity and the medium that is likely to be affected e.g. heritage resources, biodiversity, water or waste. For example, disturbance of a wetland or river course requires both a water use licence under the National Water Act, 1998 (Act No. 36 of 1998), and environmental authorisation under the EIA regulations. This in turn requires the submission of appropriate applications to the respective authorities.

There is also often confusion about whether an EA (in terms of the EIA process) should precede the application for another authorisation, approval, permit or licence, or whether the application processes can run concurrently. Section 24L of NEMA does provide for the alignment of environmental authorisations and other authorisations, approvals, permits or licences. It also sets out measures to avoid duplication of requirements by enabling organs of state to exercise their respective powers jointly and to issue integrated environmental authorisations. Furthermore, it allows a CA to regard an authorisation issued in terms of any law as an authorisation in terms of NEMA provided certain requirements are met. Finally, it enables a CA to regard its environmental authorisation as a sufficient basis for granting or refusing its authorisation in terms of a SEMA.

It is vital that the applicant identify during the planning phase which authorisations, approvals, permits or licences may be required when undertaking his proposed activity (See Chapter 4). Any possible alignment of the environmental authorisation process (in terms of the EIA regulations) with the other required processes can then be discussed with the respective CAs. This will help to reduce any duplication of work and thereby avoid unnecessary costs and delays.

Guidance on the respective processes that should be followed in applying for selected authorisations, permits or licences which may be applicable to SI projects can be accessed by clicking on the information links below. Further guidance on which of these authorisations, permits or licences may be applicable to different infrastructure types is available in Chapter 10.

²⁰ In terms of section 1 of NEMA, an environmental authorisation is defined as “the authorisation by a competent authority of a listed activity or specified activity in terms of this Act, and includes a similar authorisation contemplated in a Specific Environmental Management Act”.

9.1 Development and Heritage permits



Background

The National Heritage Resources Act, 1999 (Act No. 25 of 1999)(NHRA) aims to identify, manage, protect and conserve South Africa's heritage resources and section 38 of the Act is concerned with the protection of heritage resources. Heritage Resources which are defined as follows in the NHRA:


- Archaeological
 - a) material remains resulting from human activity which are in a state of disuse and are in or on land and which are older than 100 years, including artefacts, human and hominid remains and artificial features and structures; and
 - b) rock art, being any form of painting, engraving or other graphic representation on a fixed rock surface or loose rock or stone, which was executed by human agency and which is older than 100 years, including any area within 10m of such representation.

- Palaeontology and Meteorites
Fossilised remains or fossil trace of animals or plants which lived in the geological past, other than fossil fuels or fossiliferous rock intended for industrial use, and any site which contains such fossilised remains.

- Built Environment
Historical buildings often represent our history and culture. The NHRA requires that no person may alter or demolish any structure or part of a structure which is older than 60 years without a permit issued by the relevant provincial heritage resources authority.

- Burial Grounds and Graves
Graves and other public objects and places of commemoration form part of South Africa's heritage. They are also tangible and symbolic reminders of individual, family and community histories of bereavement. The NHRA also requires that they are conserved for future generations.

SI projects invariably require the clearing of land and renovation of old buildings. As a result there is always a risk that they may impact one of the various types of heritage resources described above.

National Heritage Resources Act, 1999 (Act No.25 of 1999) 


Responsibilities for Heritage Resources Management

Responsibility for managing different components of the range of heritage resources and commenting on applications varies between the National Heritage Resources Agency (SAHRA) and the Provincial Heritage Resource Authorities (PHRAs) as follows:

- The Western Cape, Eastern Cape and KwaZulu-Natal PHRAs deal with all aspects of heritage.
- The PHRAs in the other provinces (North-West, Limpopo, Mpumalanga, Northern Cape, Free-State and Gauteng) comment only on applications relating to the built environment. SAHRA is responsible for other heritage resources in these six provinces.

SAHRIS Website (www.sahra.org.za/sahris)

It should be noted that SAHRA has developed the South African Heritage Resources Information System (SAHRIS). The website is designed for among other purposes, to handle the NHRA and EIA processes relating to heritage resources. Guidance on the use of the web system the facility can be obtained from the following link. It should be noted that certain provinces have not yet started using SAHRIS. Even where SAHRIS is being used, the province specific forms are still relevant and are uploaded at relevant points in the process onto SAHRIS. It is therefore advisable to contact the relevant HRA as early in the process as possible to establish what system they are utilising.

Guidelines to SAHRIS 

Application process

There are two processes through which heritage resources are considered. These being authorisation in terms of the (NHRA) or through the NEMA EIA regulations listed activities. The application process differs between these, as does the role played by the National and Provincial HRAs.

NHRA Assessment Process

Section 38(1) of the NHRA requires that any person undertaking a development, which includes a listed activity, must notify the responsible heritage resources authority and provide them with details regarding the location, nature and extent of the proposed development. Listed activities include:

- (a) Linear developments (e.g. roads, walls, power lines, pipelines, canals) longer than 300m;
- (b) Construction of a bridge or similar structure exceeding 50m in length;
- (c) Proposed developments which will change the character of a site—
 - (i) exceeding 5000 m² in extent; or
 - (ii) involving three or more existing erven or subdivisions thereof; or
 - (iii) involving three or more erven or divisions thereof which have been consolidated within the past five years; or
 - (iv) the costs of which will exceed a sum set in terms of regulations by SAHRA or a provincial heritage resources authority;
- (d) The re-zoning of a site exceeding 10000 m² in extent; or
- (e) Any other category of development provided for in regulations by SAHRA or a provincial heritage resources authority,

Most of the social infrastructure projects will most likely trigger one of these activities in which case the applicant is expected to inform the SAHRA or the relevant PHRA at the earliest stage of the development of the intention to undertake an SI project.

The relevant HRA will then, within 14 days from receiving the information (s. 38(2)(a)), reply to the applicant explaining whether or not a heritage impact assessment is necessary and which components of a heritage impact assessment will be required: e.g. archaeology, palaeontology, living heritage, etc.

If the proposed development does not trigger any of the listed activities under section 38(1), the relevant authority will inform the applicant that from a heritage perspective there are no objections to the development.

Application in respect of a development permit can either run concurrently with the EIA process or independently at any stage as it is triggered by its own legislation. Where the process runs concurrently with the EIA process, then the Heritage Impact Assessment (HIA) would be included as a specialist study as part of the BA Report, or the Scoping and EIA Reports. In addition, heritage specific mitigation measures may be included as part of the EA.

NEMA EIA Process

It is however expected that most social infrastructure projects will be included in the activities listed in the EIA Regulations under which SAHRA and the PHRAs, are not a decision-making but a commenting authority. In this process, the heritage agencies should be notified of the development at the earliest stage. Where SAHRIS is being used, the applicant will create, as in the previous case, a new case on SAHRIS, filling in the same required fields as:

- Case Intro (Heritage Authority, Case Type, heritage Type)
- Case Header (Case Reference, Proposal Description, Date, Applicant, Consultant)
- Other Refs (if available from DEA)
- Location Info
- Attached Docs (the BID)

The HA will then reply to the document by either requesting a heritage impact assessment (HIA), with the specific components for it, or by exempting the applicant from undertaking one. If the HIA is requested, this is expected to be part of the specialists' assessments within the EIA process. A scoping heritage impact assessment may also be submitted with the scoping phase of the NEMA process if the applicant wishes to do so.

The Heritage Agency will comment on the HIA within the prescribed timeframe set out for the NEMA process. In the case of SAHRIS any document linked to the NEMA process (e.g. BAR or SR and/or EIA) must be timeously uploaded to SAHRIS to allow the HA time to comment on it.

In the comments the HA will make recommendations regarding the expected impact of the development over the identified heritage resources, if any. The following scenarios may apply:

- **No mitigation.** If no mitigation (Phase 2 HIA or exhumation of graves) is requested, then the HA will be satisfied with the implementation of the recommendations included in the final comment submitted to the EIA CA.
- **Monitoring.** If monitoring by a specialist is required during construction, a monitoring report at the end of the activities must be submitted to the HA for comment (this can be done through SAHRIS where it is being used).
- **Mitigation.** In the recommendations the HA may require that one or more sites be mitigated through excavation in the case of archaeological sites or relocation or exhumation of graves where such sites are impacted. This requires a heritage permit as discussed below.

Permission to Destroy Heritage Resources

A decision is required before any heritage resources, as defined in the NHRA are destroyed. Such a decision may be required of its own accord or in addition to an authorisation to proceed in terms of Section 38(1) of the NHRA. It may be the case that the proposed development does not trigger any listed activities, the responsible heritage resources authority has no objection to the development and an EA is issued in terms of the EIA regulations. However, should a developer come across any heritage resources, the development must be halted and the responsible heritage authority contacted immediately in order that a permit is obtained before potential impacts occur. A specialist must be appointed by the applicant to make the necessary application and undertake the associated work. The NHRA lists the following activities for which authorisation to destroy heritage resources are required:

National and provincial heritage sites

- No person may destroy, damage, deface, excavate, alter, remove from its original position, subdivide or change the planning status of any heritage site without a permit issued by the heritage resources authority responsible for the protection of such site.

Protected areas

- No person may damage, deface, excavate, alter, remove from its original position, subdivide or change the planning status of a provisionally protected place or object without a permit issued by a heritage resources authority or local authority responsible for the provisional protection.

Heritage objects

- No person may destroy, damage, disfigure or alter any heritage object, or disperse any collection which is listed in Part II of the register, without a permit issued by SAHRA.
- No person may carry out any work of restoration or repair of a heritage object, listed in Part II of the register of heritage objects, without a permit issued by a duly authorised representative of SAHRA.
- No person may export or attempt to export from South Africa any heritage object without a permit issued by SAHRA.

Structures

- No person may alter or demolish any structure or part of a structure which is older than 60 years without a permit issued by the relevant provincial heritage resources authority

Archaeology, palaeontology and meteorites

- No person may, without a permit issued by the responsible heritage resources authority—
 - destroy, damage, excavate, alter, deface or otherwise disturb any archaeological or paleontological site or any meteorite;
 - destroy, damage, excavate, remove from its original position, collect or own any archaeological or paleontological material or object or any meteorite;
 - trade in, sell for private gain, export or attempt to export from the Republic any category of archaeological or paleontological material or object, or any meteorite; or
 - bring onto or use at an archaeological or paleontological site any excavation equipment or any equipment which assist in the detection or recovery of metals or archaeological and paleontological material or objects, or use such equipment for the recovery of meteorites.

Burial grounds and graves






- No person may, without a permit issued by SAHRA or a provincial heritage resources authority—
 - destroy, damage, alter, exhume or remove from its original position or otherwise disturb the grave of a victim of conflict, or any burial ground or part thereof which contains such graves;
 - destroy, damage, alter, exhume, remove from its original position or otherwise disturb any grave or burial ground older than 60 years which is situated outside a formal cemetery administered by a local authority; or
 - bring onto or use at a burial ground or grave referred to in paragraph (a) or (b) any excavation equipment, or any equipment which assists in the detection or recovery of metals.

Application process for Heritage Permits


Where the need for a Heritage Permit has been identified, the relevant application process must be followed. These processes differ between provinces. In addition, different forms should be completed depending on which activity is triggered. These are outlined briefly below.

Activities that affect archaeology resources and burial and grave sites

The Eastern Cape has developed their own forms for both activities that will affect archaeology resources as well as burial and graves. The Western Cape has similarly developed forms for activities that will affect archaeology. SAHRA is still the authority which is responsible for graves older than 60 years and younger than 1500 in the Western Cape, although this will most likely change in the near future. These forms can be accessed from the adjacent links and should be submitted to the relevant provincial heritage authority.

Application forms for activities that will affect burial and grave sites		Application forms for activities that will affect archaeology resources	
Eastern Cape		Eastern Cape	
KwaZulu-Natal		KwaZulu-Natal	
		Western Cape	

KwaZulu-Natal has also developed their own forms for these activities. However, application for a permit in respect of these activities should be made online via the SAHRIS with the appropriate KZN form being uploaded when requested. Any queries however should be directed to the KZN Heritage Authority (AMAFA). The remainder of the provinces should apply for permits in respect of these activities via the SAHRIS website.

[National Guidelines to Archaeological permitting policy](#) 

Activities that affect the built environment

Different activities may affect the built environment in different ways. For example, it may be necessary to destroy a building or a new development may have aesthetic impacts which may negatively affect the environment. As a result, the various provinces have developed a range of forms for different activities that affect the built environment. Generic forms in respect of activities that will impact the built environment are available for KwaZulu-Natal, Eastern Cape, Western Cape and Gauteng. These can be accessed at the adjacent links. For the remainder of the provinces, the respective heritage resources agency (who deals with built environments) should be contacted to obtain the appropriate form.

Contacts

Contact details for the National Agency (SAHRA) and various PHRAs can be accessed from the following links.

Forms for activities that affect the Built Environment	
Free State	
Gauteng	
KwaZulu-Natal	
Western Cape	

Contacts for permits in respect of activities affecting archeology, burial and graves	
Eastern Cape	
Free State	
Gauteng	
KwaZulu-Natal	
Limpopo	
Mpumalanga	
North West	
Northern Cape	
Western Cape	
National	

Contacts for permits in respect of activities affecting the built environment	
Eastern Cape	
Free State	
Gauteng	
KwaZulu-Natal	
Limpopo	
Mpumalanga	
North West	
Northern Cape	
Western Cape	
National	



9.2 Mining permits




Background

A mining permit is a document issued by the Department of Mineral Resources which allows a person to undertake mining operations. In the case of social infrastructure, a mining permit is necessary for the development and operation of a borrow pit, which is utilised in the construction of roads. It is illegal for any person to mine without having obtained a mining permit.

The primary objective of mining permits is to control prospecting and mining with due consideration for health, safety and environmental management. A mining permit is not transferable and is valid for a specified period. This period is detailed on the permit and may not exceed two years. However, it may be renewed for three periods of no more than a year each.

A mining permit may only be issued if:

- the mineral in question can be mined optimally for two years
- the mining area does not exceed 1.5ha in extent.

Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002) 

Application process

An application for any right or permit under the Mineral Resources Petroleum Development Act, 2002 (Act No. 28 of 2002) may be submitted simultaneously with an application for an EA. The application process should be completed on the Department of Mineral Resources website using the South African Mineral Resources Administration System (SAMRAD). SAMRAD online can be accessed at <http://portal.samradonline.co.za/frms/login.aspx?ReturnUrl=%2fdefault.aspx>. The system requires a user to register before they are able to apply for any permits. The same process should be followed for applicants in all provinces.

In order to apply for a mining permit the online mining application form should be completed (New Application – Annexure F). This form requires the following information and details (further details of these requirements are detailed in the link below):

- Details of the land area
- Proof of financial and technical competence (This requires completion of the Financial and Technical Ability Report)
- Title deed or deeds in respect of land
- Details of the type and quantity of minerals to be removed
- Where applicable, a certified copy of the identity document, certificate of incorporation and/or certificate to commence business
- Copy of resolution, if acting in a representative capacity.

A Financial and Technical Ability Report should be completed as part of the application. The Department of Mineral Resources provide a template which should be followed in completing this report. Although the report should be completed online, an example can be accessed at the link below. This report requires the following information:

- Technical competence cost forecast including skills and quarterly expenditure
- Ability to manage and rehabilitate environmental impacts
- Financial competence including financial implications of the project and financing of the project
- Supporting information including capital cost estimates and operating costs

Once the Application Form, including the Financial and Technical Ability report, has been completed, the prescribed, non-refundable fee should be paid online. Government Departments are however exempt from this fee. The system will accept the application if all requirements have been met. Once your application has been accepted, the Regional Manager will

request you to submit an environmental management plan, using the relevant template. You will also be required to consult with the landowner and legal occupier of the land as well as any other affected party and to submit a written outcome of the consultation to the Regional Manager within 30 days using the relevant template. Once the Regional Manager has received all the relevant documentation, a mining permit will be issued. Although these templates should be completed online, examples can be accessed from the link below. In addition, the Department of Mineral Resources provides guideline documents for both Environmental Management Plans and stakeholder consultation. These guideline documents can also be accessed at the link below. It should also be noted that while mining as an activity still requires this specific authorisation, in the case of a borrow pit for a SI project, it forms an essential part of the project. In terms of best practice, there should be integration between the two processes in terms of consultation. This alignment is best achieved by the same EAP running both processes.

Alignment with the EIA Process

Many of the related activities required to be conducted for mining operations (such as the construction of pipelines or roads) may also require an EA under the NEMA EIA Regulations. It is therefore important to ensure that such ancillary activities are included in the EIA application form. The consultation and reporting can be aligned to inform decision making for both sets of legislation. This requires early engagement with both sets of authorities to define how this will take place. It is advised that the same EAP is used to run both the MPRDA and the NEMA EIA processes in order to facilitate alignment between them.

Contacts and Information

Contacts and the relevant forms, templates and guidelines are available from the following links.

- [New application – Annexure F](#) ⓘ
- [Financial and technical ability report](#) ⓘ
- [EM Plan for small scale mining](#) ⓘ
- [Report on results of consultation](#) ⓘ
- [EM Plan Guideline](#) ⓘ
- [Consultation Guideline](#) ⓘ

- Contacts in respect of Mining Permits**
- [Eastern Cape](#) ⓘ
 - [Free State](#) ⓘ
 - [Gauteng](#) ⓘ
 - [KwaZulu-Natal](#) ⓘ
 - [Limpopo](#) ⓘ
 - [Mpumalanga](#) ⓘ
 - [North West](#) ⓘ
 - [Northern Cape](#) ⓘ
 - [Western Cape](#) ⓘ



9.3 Threatened or Protected Species permits



Background

The purpose of the National Environmental Management: Biodiversity Act (Act No. 10 of 2004) (NEM:BA) is to among other things:

- Provide for the management and conservation of the biodiversity within the framework of NEMA;
- Provide for the protection of ecosystems and species that warrant national protection; and

In an effort to meet these objectives, a permit is required for any development activities which impact threatened or protected ecosystems and/or species. In this regard, a list of species which are threatened or protected as well as prohibited or restricted activities, have been published under NEMBA. Restricted activities include the following:

- hunting, catching, capturing or killing by any means, method or device whatsoever, including searching, pursuing, driving, lying in wait, luring, alluring, discharging a missile or injuring with intent to hunt, catch, capture or kill any such specimen;
- gathering, collecting or plucking;
- picking parts of, or cutting, chopping off, uprooting, damaging or destroying;
- importing into the Republic, including introducing from the sea;
- exporting from the Republic, including re-exporting from the Republic;
- having in possession or exercising physical control over;
- growing, breeding or in any other way propagating, or causing it to multiply;
- conveying, moving or otherwise translocating;
- selling or otherwise trading in, buying, receiving, giving, donating or accepting as a gift, or in any way acquiring or disposing of; or
- any other prescribed activity which involves a specimen of a TOPS.

Of further relevant to SI projects, is that the list of threatened ecosystems is directly relevant to Activity 12 in Listing Notice 3 of the EIA regulations. Activity 12 relates to the clearance of 300m² of more of vegetation, which will trigger a BA in the following geographical areas:

- within any critically endangered or endangered ecosystem listed in terms of Section 52 of the NEM:BA, or prior to the publication of such a list
- within an area that has been identified as critically endangered in the National Spatial Biodiversity Assessment 2004,
- within critical biodiversity areas identified in bioregional plans, within the littoral active zone or 100m inland from the high water mark of the sea or an estuary, whichever distance is the greater, excluding where such removal will occur behind the development setback line in urban areas.

A BA in terms of Listing Notice 3 is triggered only in those parts of critically endangered and endangered ecosystems where natural habitat remains. Because SI projects invariably result in the destruction of natural systems this activity may require inclusion on the EIA application.

Application process

The issuing authority for TOPS varies depending on the location of the proposed restricted activity and whether or not you are applying as an organ of state. Currently, if the restricted activity is to be undertaken in a marine Protected Area or if you are applying as an official of an organ of state (including SANParks, National Departments, Provincial Departments or local authorities) then an application should be submitted to DEA¹. If the restricted activity is to be carried out by a private individual, company or organisation, then the issuing authority would be the provincial conservation authority.

¹ The role of the DEA and all other issuing authorities is likely to change in future due to proposed changes to NEMBA.





Provincial and national departments qualify for a standing permit which enables them to carry out restricted activities on land under their jurisdiction. Ordinary permits are issued for any restricted activities not provided for in standing permits, or that involve once-off activities. Standing permits are valid for up to 48 months for national and provincial departments, including provincial conservation authorities, and for protected areas. All other standing permits are valid for 36 months. Ordinary permits are valid for up to 12 months. Details of the validity period of the permit will be detailed on the permit itself. The same application process should however be followed when applying for either a standing or an ordinary permit.

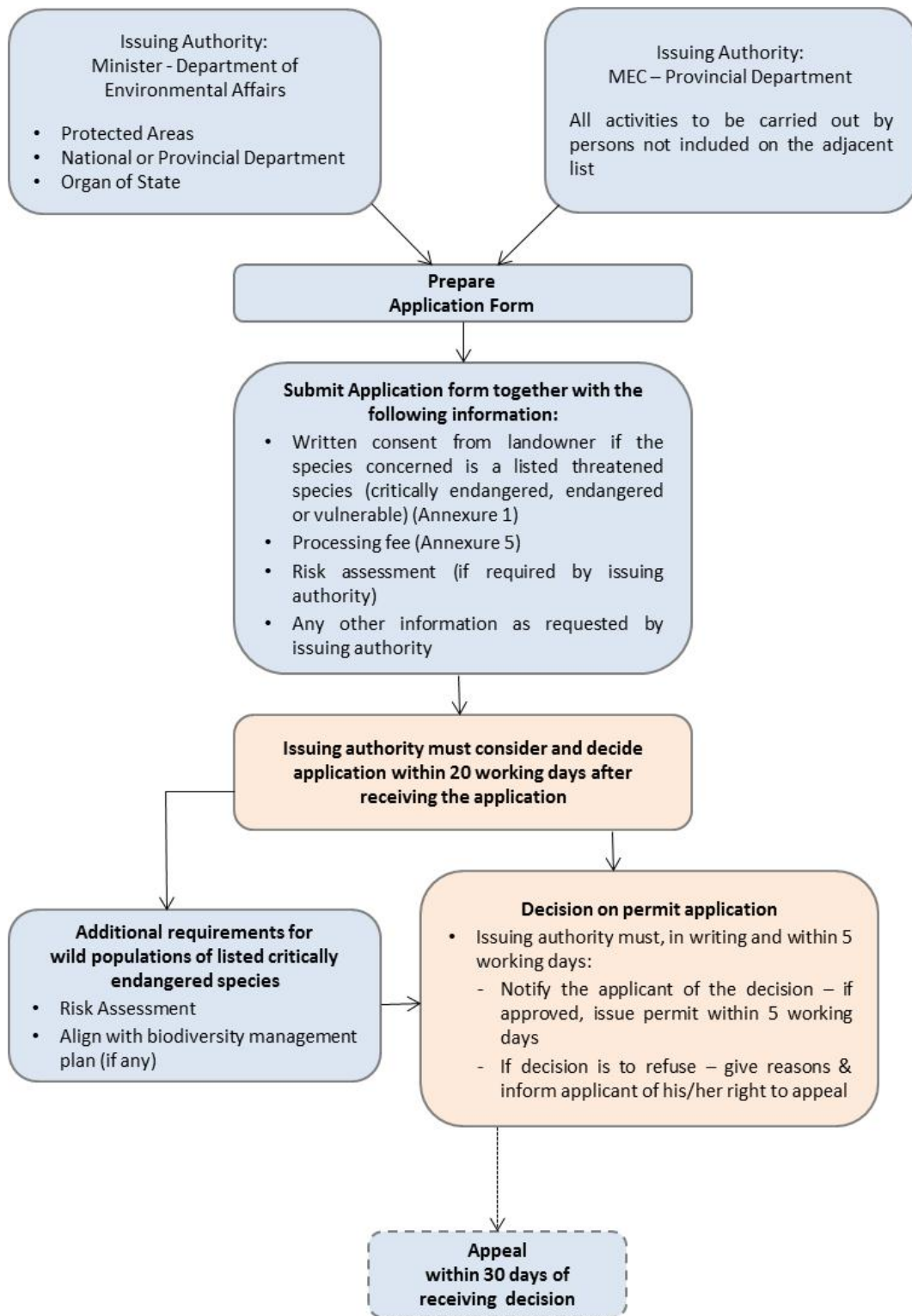
The application form should be completed and returned to the appropriate issuing authority together with the prescribed processing fee. The application form is included in Annexure 1 of the Regulations but can be accessed from the link below. The same application form is used for standing and ordinary permits, and includes tick boxes to confirm which type of permit is being applied for. The processing fee for standing permits is R1000 but varies for ordinary permits depending on the type of restricted activity. Application fees are detailed in Annexure 5 of the Regulations but can be accessed at the link below. If the restricted activity involves a critically endangered, endangered or vulnerable species, the applicant must also obtain the written permission from the land owner prior to submitting the application to the Issuing Authority. If the restricted activity involves a protected species, the applicant must obtain written permission from the land owner prior to the undertaking of the restricted activity. This written permission is not however required at the time of submitting the application. Details of listed species can be accessed at the link below. The issuing authority may also require a risk assessment to be undertaken and may also request additional information. A risk assessment is compulsory if the restricted activity involves a wild population of a critically endangered species (Regulation 11).

Once this application and supporting information has been submitted, the issuing authority has 20 working days to consider and decide upon the issuance of a permit. Where appropriate, an inspection must be done within 20 working days and any additional information must be requested within 14 working days of receiving the application. Once the additional information has been received, the issuing authority has 20 working days to consider and decide upon the application. The issuing authority must then notify the applicant, in writing, within 5 working days of making the decision and provide reasons if the permit is refused. The applicant may appeal the refusal of a permit within 30 days of becoming aware of the decision.

Contacts and information

Relevant forms, information and contacts can be accessed from the links below. It should be noted that the DEA are currently undertaking a substantial review of the TOPS regulations. Guidelines will only be updated once this process is finalised and consequently are not available here.

- [Application form](#) 
- [Processing fees - See Annexure 5](#) 
- [Details of listed species](#) 
- [Contacts in respect of TOPS Permits](#) 



9.4 General Authorisations and Water use licences



Background

The National Water Act, 1998 (Act No. 36 of 1998) (NWA) provides the Department of Water Affairs (DWA) with the mandate to protect, use, develop, conserve, manage and control the country's water resources in an integrated manner. The NWA therefore provides the legal basis upon which to develop tools and the means to effect this mandate. One of these tools is the authorisation of water use as defined in Chapter 4 of the NWA. A person may be authorised to use water:

- If the water use is permissible in terms of Schedule 1 of the NWA, or
- As a continuation of an existing lawful use, or
- If authorised by a General Authorisation, or
- If licensed to do so in terms of the NWA.

Schedule 1

Schedule 1 entitles a person to take water for reasonable domestic use in the person's household, for small gardening not for commercial purposes, for watering of animals household, for small gardening not for commercial purposes, for watering of animals grazing on the land, or for fire fighting. It also entitles a person to use water for recreational purposes. The schedule permits the storing and using of run-off from a roof. It also permits agreed discharge of waste or water containing waste into a conduit controlled by another person who is authorised to accept it and dispose of it.

Existing Lawful Use

A person may continue an existing lawful water use – a water use that was lawfully exercised in the two years before the commencement of the NWA on 1 October 1998 – subject to the conditions under which it was exercised. The Minister may declare a water use that was not exercised in the qualifying two-year period to be an existing lawful water use.

General Authorisations

Several GA's have been issued which set thresholds below which a licence is not required. These thresholds vary according to the situation in different water management areas (WMAs) and between catchments within these WMAs. It is obviously important to check the GA's because they may eliminate the need for a licence. It is however recommended that the regional DWA office is contacted to obtain guidance on the interpretation of the GA's for the area in question.

Water Use Licence

Where none of the above three situations apply, a water use licence is required for the following activities listed in terms of Section 21 of the Act:

- (a) Taking water from a water resource;
- (b) Storing water;
- (c) Impeding or diverting the flow of water in a watercourse;
- (d) Engaging in a stream flow reduction activity contemplated in section 36;
- (e) Engaging in a controlled activity identified as such in section 37(1) or declared under section 38(1);
- (f) Discharging waste or water containing waste into a water resource through a pipe, canal, sewer, sea outfall or other conduit;
- (g) Disposing of waste in a manner which may detrimentally impact on a water resource;
- (h) Disposing in any manner of water which contains waste from, or which has been heated in, any industrial or power generation process;
- (i) Altering the bed, banks, course or characteristics of a watercourse;
- (j) Removing, discharging or disposing of water found underground if it is necessary for the efficient continuation of an activity or for the safety of people; and
- (k) Using water for recreational purposes

Box 1. Water use licensing versus Registration

It should be noted that a water use needs to be registered. Registration is the process of officially notifying the Department of a water use and **registration differs from licensing**. Registration is required in terms of a Notice issued under the Registration Regulations (section 26(10)(c) of the NWA), or under a GA published in the Government Gazette. Water use is registered by completing the official forms obtainable from the Department. A registration certificate will be issued bearing the registration number as soon as the forms have been processed, after which a registration certificate will be issued. Registration and the issuing of registration certificates are free of charge. **A registration certificate is not an entitlement or an authorisation for a particular water use.** DWAF will inform the applicant whether a particular water use should be licensed. It is therefore the first step in the process and through which it will be determined whether a licence is necessary.

Application process

The DWA external guideline on water uses licensing aims to guide applicants through the process. This document can be accessed from the link below. In addition to this primary document, a series of guidelines have been developed for use when applying for specific uses. These guidelines need to be read in conjunction with the main guideline.

Water Use Licensing Guideline



Pre-Application Consultation

This is an essential step and should be undertaken as early as possible in order that the DWA regional officer can advise on amongst other issues:












- Defining the water use and which type of authorisation will be applicable, which will in turn dictate the approach that must be followed for the processing of the water use authorisation application
- Align with environmental authorisation processes (EIA/EMPR processes) as part of co-operative governance
- It is also important because certain investigations may require significant periods of time.

Applications

The latest water use licence application forms can be obtained from DWA National or Regional offices, or directly from the website at <http://www.dwaf.gov.za>. Applicant, property and ownership information must be provided on the forms detailed. Certified copies of ID documents, title deeds, power of attorney statements, and other documents indicated in the forms must also accompany the submission. The Applicant, property and ownership information forms differ for the following categories of users:

- (a) Individual,
- (b) Water Services Provider (including Water Boards)
- (c) Company, Business or Partnership; National or Provincial Government
- (d) Water User Association, including: Irrigation Boards; Subterranean Water Control Boards; Water Boards for Stock Watering; Settlement Boards; Water Conservation Boards

Specific application forms are then required for each of the section 21 uses (a-k). The application forms can be accessed from the following links:

Activity involved	Form
• Taking Water from a Water Resource	
• Storing Water	
• Impeding or Diverting the Flow of Water in a Watercourse	
• Engaging in a Stream Flow Reduction Activity	
• Engaging in a Controlled Activity: Irrigation of Any Land with Waste or Water Containing Waste	
• Discharging Waste or Water Containing Waste into a Water Resource through a Pipe, Canal, Sewer, Sea Outfall or Other Conduit	
• Disposing of Waste in a Manner which may Detrimentally Impact on a Water Resource	
• Disposing of Water which Contains Waste from, or which has been Heated in, any Industrial or Power Generation Process	
• Altering the Bed, Banks, Course or Characteristics of a Watercourse	
• Removing, Discharging or Disposing of Water Found Underground if it is Necessary for the Efficient Continuation of an Activity or for the Safety of People	
• Using Water for Recreational Purposes (not currently licensed)	

Information requirements

The water use authorisation application process follows one of two approaches:

- Non-waste-discharge related water uses (21 a, b, c, i, k)

A risk assessment is not required for these activities and the information requirements/checklists are detailed in the specific guidelines developed for each activity.

- Waste-discharge related water uses (Section 21 e, f, g, h) ¹

These water uses will be subject to a risk-based approach and assessment. Importantly, if the proposed water uses comprise an integrated water use licence application, which combines both non-waste-discharge and waste-discharge related water uses in a single application, then a risk assessment must be undertaken for all the uses. In the case of SI projects it should be noted that settlements (urban and dense rural) are one of five sectors that are considered to pose a risk. Depending in the level of risk either a Level 1 or Level 2 technical report will be required.

The application must be submitted with the following:

- Brief Application Report

Designed to speed up the process by giving a brief but concise overview of all aspects of the application, referring to the appropriate sections in the supporting documents for the further required detail summarising the various documents submitted with the application and how they relate to each other.

- Section 27 Motivation

This information is used by the DWAF official to be able to assess the application in terms of Departmental policies regarding equity, redress, and the economic empowerment of historically disadvantaged individuals. The specific information required is summarised in the guideline document.

- Application

The application forms must be accompanied by a brief application report, a map, the appropriate supporting documents, and the licence application fee.

¹ It should be noted that in terms of Category B Listed Waste Management Activities, - that GN718 is currently in a process of being amended and the activity under WWTW will be delisted and handled in terms of NEMA and the competent Authority will be the MEC.

Review

If the regional office decides that no further information, investigations, or further consultation of I&APs is required, the officials will at this time internally request a Reserve determination to be undertaken for the area affected by the licence application. This is because the Department cannot issue a licence without a reserve in place. It should be noted that if no environmental reserve has been established for the resource that will be impacted, this adds a significant additional cost and similarly has major timing implications.

When all the necessary information has been received, DWA will undertake a technical evaluation and assessment of the application following which the regional office will issue a draft licence containing the required conditions. This is sent to the Water Use Authorisation Assessment Advisory Committee (WUAAAC) which adjudicates on the application. If successful the applicant and I&APs will be advised after which they 30 days to appeal the decision. There are no set time frames for this process and it is in most instances the most lengthy regulatory process, particularly if a reserve determination has be undertaken. It also involves activities most likely to be triggered for SI projects. Early consultation with DWA is therefore essential to identify the need for and scope of the application.

Contacts

Application is made to the regional offices of DWA which are organised according to provinces. The relevant contact details can be accessed at the adjacent links.

Contacts in respect of Water Use Licences	
Eastern Cape	
Free State	
Gauteng	
KwaZulu-Natal	
Limpopo	
Mpumalanga	
North West	
Northern Cape	
Western Cape	



9.5 Waste management licences



Background

Certain Waste Management Activities may have a detrimental effect on the environment and human health. Consequently, no person may undertake or conduct a Waste Management Activity without a Waste Management Licence.

On 3 July 2009, a list of Waste Management Activities (GN 718) was published and categorised as follows:

Category A Listed Waste Management Activities	Category B Listed Waste Management Activities
<ul style="list-style-type: none"> ▪ Storage of waste ▪ Re-use, recycling and recovery ▪ Treatment of waste ▪ Disposal of waste ▪ Storage, treatment and processing of animal waste ▪ Construction, expansion or decommissioning of facilities and associated structures and infrastructure. 	<ul style="list-style-type: none"> ▪ Storage of hazardous waste ▪ Re-use, recycling and recovery of hazardous waste ▪ Treatment of hazardous waste, effluent, wastewater or sewage ▪ Disposal of hazardous waste on land or general waste where the area exceeds 200m² ▪ Construction of facilities and associated structures and infrastructure.

Details of listed waste management activities

The Minister of Water and Environmental Affairs is the licensing authority in respect of all activities listed in both categories pertaining to hazardous waste as well as the treatment of effluent, wastewater or sewage. Applications for a Waste Management Licence in respect of hazardous waste activities as well as the treatment of effluent, wastewater or sewage must therefore be submitted to DEA.

The Member of the Executive Council of a province who is responsible for waste management in the province “MEC” is the licensing authority in respect of all activities listed in both categories pertaining to general waste. Applications for a Waste Management Licence in respect of general waste activities must therefore be submitted to the relevant provincial department.

Application process

An application for a Waste Management Licence must be undertaken by an EAP. The application process varies depending on whether you are applying for a Category A or a Category B listed waste management activity. Applications in respect of Category A listed waste management activities require that the BA process is followed, as stipulated in the EIA regulations made under section 24(5) of NEMA. Applications in respect of Category B listed activities require that the S&EIR process of the EIA regulations is followed. Before either the BA or S&EIR processes commence, an application form for a Waste Management Licence should be submitted to the relevant issuing authority.

In some cases, the national department may be the licencing authority for a WML while the provincial department may be the CA for the environmental authorisations. In these cases copies of the BA Report or Scoping and EIA Reports should be submitted to both departments. These documents will be reviewed by both departments and separate decisions will be issued; one in respect of environmental authorisation and the other in terms of the Waste Management Licence. In cases where the National Department is the CA in terms of the environmental authorisation process as well as the licencing authority in respect of Waste Management Licences, then an integrated authorisation should be applied for. A single decision will then be issued in respect of the environmental authorisation and the Waste Management Licence.

The application forms for a Waste Management Licence vary slightly between provinces and National. It is the responsibility of the Applicant or EAP to ascertain whether they are applying to the correct licensing authority, and whether subsequent versions of the forms have been published or produced by the licensing authority. Applications in respect of new facilities as well as the expansion, decommissioning or closure of existing facilities usually require at least the following information:

- Name and contact details of the applicant, EAP and landowner
- Property location and co-ordinates
- The applicable waste management listed activities
- The applicable EIA listed activities
- The type of application i.e. whether the licence application is for the establishment of a new facility or for the expansion of an existing facility or for the decommissioning / closure of an existing facility?
- Description of the project and waste quantities
- Competence to undertake the waste management activity
- A declaration by the applicant
- A declaration by the EAP

The application must be accompanied by the following information:

- Locality map
- Site plan
- Project plan

All sections of the application form must be completed. Incomplete applications will not be processed and will result in delays. The application and supporting documentation must usually be submitted in hard copy to the relevant issuing authority. Some provinces require more than one copy of the application and supporting documentation. The applicant will be notified of any missing information in the acknowledgement letter that will be sent within 14 days of receipt of the application. Currently there is no prescribed application fee which should be paid with the submission however such application fees are scheduled to be introduced.

Once the application has been submitted to the relevant licensing authority, the relevant EIA process must be followed. It is important to note that the NEM:WA has additional requirements to that of the EIA Regulations particularly in the process of notifying the relevant and stipulated stakeholders. Where possible, these additional requirements should be integrated into the environmental assessment process. On completion of the environmental assessment process, a copy of the BA or EIA Report should be submitted to the licencing authority. Once these documents have been received, the licencing authority will review these documents and make a decision. Should a person wish to appeal the licence, the appellant must give notice to the Department of the intention to appeal by completing a Notice to Appeal Form, followed by the Appeal Form. Similarly, application can be made to the Department to amend or transfer the Waste Management Licence. The time frames and actions are designed to follow the EIA process.

Contacts and Forms

Relevant contacts and forms can be accessed from the adjacent links.

Application forms for a Waste Management Licence	
Eastern Cape	
Free State	
Gauteng	
KwaZulu-Natal	
Limpopo	
Mpumalanga	
North West	
Northern Cape	
Western Cape	
National	
Contacts in respect of Waste Management Licences	
Eastern Cape	
Free State	
Gauteng	
KwaZulu-Natal	
Limpopo	
Mpumalanga	
North West	
Northern Cape	
Western Cape	
National	

9.6 Forest and Protected tree species licences



Background

Two different types of licences may be issued in terms of the National Forests Act 84 of 1998. A forest licence may be issued in terms of Section 7 of the Act and deals with trees in a natural forest while a protected tree species licence may be issued in terms of Section 12 of the Act and deals specifically with listed protected tree species. A forest licence or protected tree species licence is required should you wish to undertake the following activities:

- Cut, disturb, damage or destroy a protected natural forest or tree species; or
- To possess, collect, remove, transport, export, purchase, sell, donate or in any other manner acquire or dispose of any tree, or any forest product derived from a natural forest or protected tree, or which was cut, disturbed, damaged or destroyed in a natural forest.

These activities relate to protected natural forests and tree species only. A list of protected tree species can be accessed at the link below. Non-protected tree species may be removed without a licence. A forest licence is also only applicable to indigenous tree species.

[List of protected tree species](#)



Application process

In order to obtain a forest or protected tree species licence, application to undertake the above-mentioned activities should be made to the responsible official in the relevant province. This entails completing and submitting the appropriate application form to the regional Department of Forestry office. Different application forms should be completed depending on whether you are applying for a forest licence or a protected tree species licence. The application forms are however the same for all provinces. An application can be made at any stage of the EIA process, but will only be issued after an EA has been issued. A licence can be refused despite authorisation, but this seldom happens.

Both application forms require that different parts of the application form be completed for different types of activities. For example, if you are applying for a forest licence and wish to cut, destroy, and/or remove forest trees to change the land use (e.g. convert forest to agriculture or infrastructure development) then sections A and D of the application form for a forest licence should be completed. All activities on both applications forms require as a minimum, the following general information:

- Name and contact details of the applicant
- Name and contact details of the landowner (where the landowner is not the applicant)
- Details of the property on which the trees are to be removed
- The period for which the licence is required.

[Licence Application form for Natural Forests](#)



[Licence Application form for Protected Tree Species](#)












Receipt of application is usually acknowledged within two weeks. Each application is then evaluated on merit (including site visits) before a decision is taken whether or not to issue a licence (with or without conditions). Such decisions must be in line with national policy and guidelines. Applicants can contact the regional office to follow-up on their application. If the applicant is not happy with a decision or conditions of a licence, then they may contact the regional office. If the issue remains unresolved, they could ultimately write to the Minister and put his/her case. Processing of the licence should not take more than 3 months, except if other processes or investigations complicate the matter (such as an EIA process that has to be completed). The applicant could also be requested to furnish more information.

An easy reference guide on Protected Trees Licence Applications has been prepared by the National Department of Agriculture and Forestry and Fisheries. This document can be accessed at the link below.

Easy Reference Guide on Protected Trees Licence Applications 

Contacts

Relevant contacts can be accessed from the adjacent links.

Contacts in respect of Forest Licences	
Eastern Cape	
Free State	
Gauteng	
KwaZulu-Natal	
Limpopo	
Mpumalanga	
North West	
Northern Cape	
Western Cape	



9.7 Atmospheric Emission Licences



Background

The purpose of the National Environmental Management: Air Quality Act, 2004 (No 39 of 2004) (NEM:AQA) is to “protect the environment by providing reasonable measures for the prevention of pollution and ecological degradation and for securing ecologically sustainable development”. Authorisation is required in order to operate any activity that appears on the national list, or anywhere in a province where the activity may be listed. In most cases SI projects are unlikely to involve the listed activities defined in the regulations that can be accessed from the following link, but they should be considered to make sure.

Application process

Applications are submitted to metropolitan and district municipalities, except where they have delegated this function to a provincial organ of state, or when a municipality applies for an AEL in which case a provincial organ of state is the licensing authority. The application must be accompanied by:

- the prescribed processing fee; and
- documentation and information as may be required by the licensing authority.

In terms of consultation, an applicant must take appropriate steps to bring the application to the attention of relevant organs of state, interested persons and the public. As a minimum, the Act requires that a notice must be published in at least two newspapers circulating in the area in which the listed activity applied for is or is to be carried out -

- describing the nature and purpose of the licence applied for;
- giving particulars of the listed activity, including the place where it is or is to be carried out;
- stating a reasonable period within which written representations on or objections to the application may be submitted, and the address or place where representations or objections must be submitted; and
- containing such other particulars as the licensing authority may require.

The application will be supported by a specialist Air quality Assessment Impact Assessment. The Act requires that this assessment considers: human health impacts; ambient air quality (individual and cumulative impact); point source emission standards and mitigation measures. The South African Air Quality Information System (SAAQIS) website also provides links to all available air quality management and monitoring plans and air quality monitoring data.

After a licensing authority has reached a decision in respect of a licence application, it must within 30 days -

- notify the applicant of the decision, and give written reasons if the application was unsuccessful;
- notify any persons who have objected to the application; and at the request of objectors, give written reasons for its decision or make public its reasons.

Timing and Alignment with the EIA Process

It should be noted that if accepted, **the authority first issues a provisional licence** to enable the commissioning of the listed activity. The holder of a provisional AEL is entitled to an AEL when the commissioned facility has been in full compliance with the conditions and requirements of the provisional AEL for a period of at least six months.

The contents of an AEL or provisional AEL must include, amongst others: the maximum allowed amount, volume, emission rate or concentration of pollutants that may be discharged into the atmosphere under normal working conditions, and under normal start-up, maintenance and shut-down conditions; any other operating requirements relating to atmospheric discharges, including non-point source.

Alignment of the EIA and AEL Process

The AEL authorising process is closely aligned with the EIA process so that the timing follows that of the EIA process. The EIA process is required to consider all potential environmental impacts, not only impacts of atmospheric emissions. The specialist Air Quality Impact Assessment is one of a number of possible specialist studies. Conceivably, the activity could result in significant impacts, other than those on the atmosphere, which could result in a negative decision in terms of the EIA regulations, thus negating the need for an AEL application.

The AEL licensing authority must take into account, amongst others, the pollution being or likely to be caused by that activity and the effect on the environment, including health, economic conditions, cultural heritage and ambient air quality. In order for the licensing authority to make his decision it is therefore necessary for the EIA process and specialist Air Quality Impact Assessment to have been completed prior to the consideration of an AEL application by the licensing authority. It is important that there only be one information gathering phase and this is most appropriately done during the EIA process. The authority reviews must be synchronized and there must be interaction between the relevant municipal and provincial authorities. Ideally, they should review the information jointly. It should also be noted in terms of co-ordination that Section 40(3) of NEM:AQA requires that the AEL decision must be made within 60 days after the EA decision.

The public participation requirements of the EIA process are also more comprehensive and may contribute meaningfully to the atmospheric emission licensing process if the two processes are aligned. By aligning the public participation of the two processes, it is clear that the interests of the public are served through the more comprehensive public participation requirements of the EIA process duplication of the public participation process is avoided; and the requirement to bring the AEL application to the attention of stakeholders can be limited to two newspaper advertisements in view of the extensive public participation that was undertaken as part of the EIA process.

The success of such an alignment of processes is contingent on intergovernmental cooperation and a robust and effective EIA process. What it means in terms of timing is that the AEL process mimics the EIA process.

Contacts and Application Forms

As AELs are dealt with at a District Municipality level and they have developed specific application forms these have not been provided for each. These contact details for the AEL authorising officer in each province, District Municipality or Metro can however be accessed from the SAAQIS website (<http://www.saaqis.org.za>) at the 'Search Air Quality Officials' tab on the front page.

As applications forms are specific to each province or district these need to be obtained from the respective authorising officer. Other useful documentation can be obtained off the SAAQIS website which is important for consideration, such as the Air Quality Management Plans for each district and actual data from monitoring stations within the area of interest. The national framework for air quality management was updated in 2012 and is out for review. It is also a useful document that outlines the purpose of the Act, roles and responsibilities and processes to be followed.



10 Undertaking EIA for SI projects

This Chapter enables an applicant to access information applicable to the infrastructure type that they are responsible for. This includes information in respect of trigger activities, stakeholders, impacts and other authorisations. It is important to note that while an application may be made in respect of one infrastructure type e.g. housing, other supporting infrastructure may also be required e.g. roads and water supply. It is therefore important that the relevant sections for both the primary and supporting infrastructure types are reviewed. Details on the following specific issues can be accessed by selecting the infrastructure type of choice and then clicking on the associated information links:

- ***What listed activities is my project likely to trigger?***

This section details any activity listed on each of Listing Notices 1, 2 and 3 which may be triggered by each infrastructure type in the respective provinces. This is a generic list, as information in respect of the scope, extent and location of the project is necessary to determine the exact activities which may be triggered. It is therefore important that the applicant discuss with the EAP and/or CA which specific activities may be triggered by the proposed project.

- ***Which key stakeholders should I consult during the Public Participation Process?***

This section details the key stakeholders which should be consulted during the public participation process for each of the infrastructure types within each of the provinces. The contact details for these stakeholders are also provided. As with the trigger activities, this is a generic list and a more detailed list of stakeholders should be developed once the scope, extent and location of the project is known. This detailed project information will not only inform which specific local stakeholders should be consulted but equally which provincial and national stakeholders may be interested in the project. For example, while provincial and local departments are always likely to be consulted in respect of SI projects, the extent to which National Departments should be involved in the consultation process will largely depend on the scale of the development. It is unlikely that many of the National Departments would need to be consulted in respect of very small infrastructure projects (e.g. the construction of a clinic). Nevertheless, their contact details have been provided here, and the CA should be consulted to establish the need for the inclusion of National Departments in the public participation process. In addition, the various authorities who issue other authorisations, permits or licences are dealt with under the section on “other authorisations which may be relevant to the project” and have not been included here. These authorities must also be contacted and where relevant, included in the consultation process.

- ***What impacts is my project likely to have on the receiving environment and how can I mitigate these?***

This section provides an overview of the likely impacts of each infrastructure type on the receiving environment as well as possible mitigation measures. For the purposes of this assessment, the environment has been categorised into three key components namely:

- Biophysical
- Socio-economic
- Cultural

It is important to note that the impacts of an activity will vary depending on the nature, scale and type of project as well as the sensitivity of the affected social and natural systems. Additional consideration will therefore need to be given to specific impacts within the context of the proposed development.

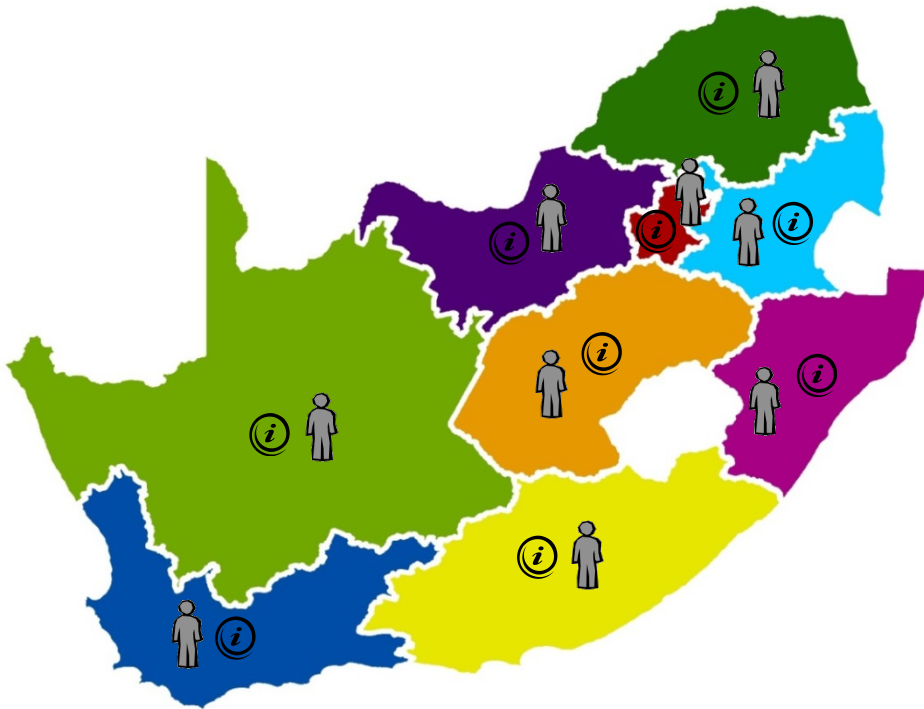
- ***What legal obligations and other authorisations may be relevant to my project?***

Information on authorisations which may be relevant to specific infrastructure types has also been provided. As with the impact information, many of these authorisations are site specific and thus an understanding of whether they may be required or not can usually only be made once the location of the proposed development is known. Nevertheless, those authorisations which could be triggered for each infrastructure type have been detailed in a table with links to additional information on the respective authorisation processes.

Please note that the information provided here is for guidance purposes only. It does not constitute a comprehensive list of all activities that may be triggered, all stakeholders that should be consulted, all impacts that may occur or all authorisations that may be required. A thorough interrogation of these aspects is still necessary to ensure that your responsibilities and obligations in terms of the relevant laws and regulations have been met.

Housing

Trigger activities and Key Stakeholders

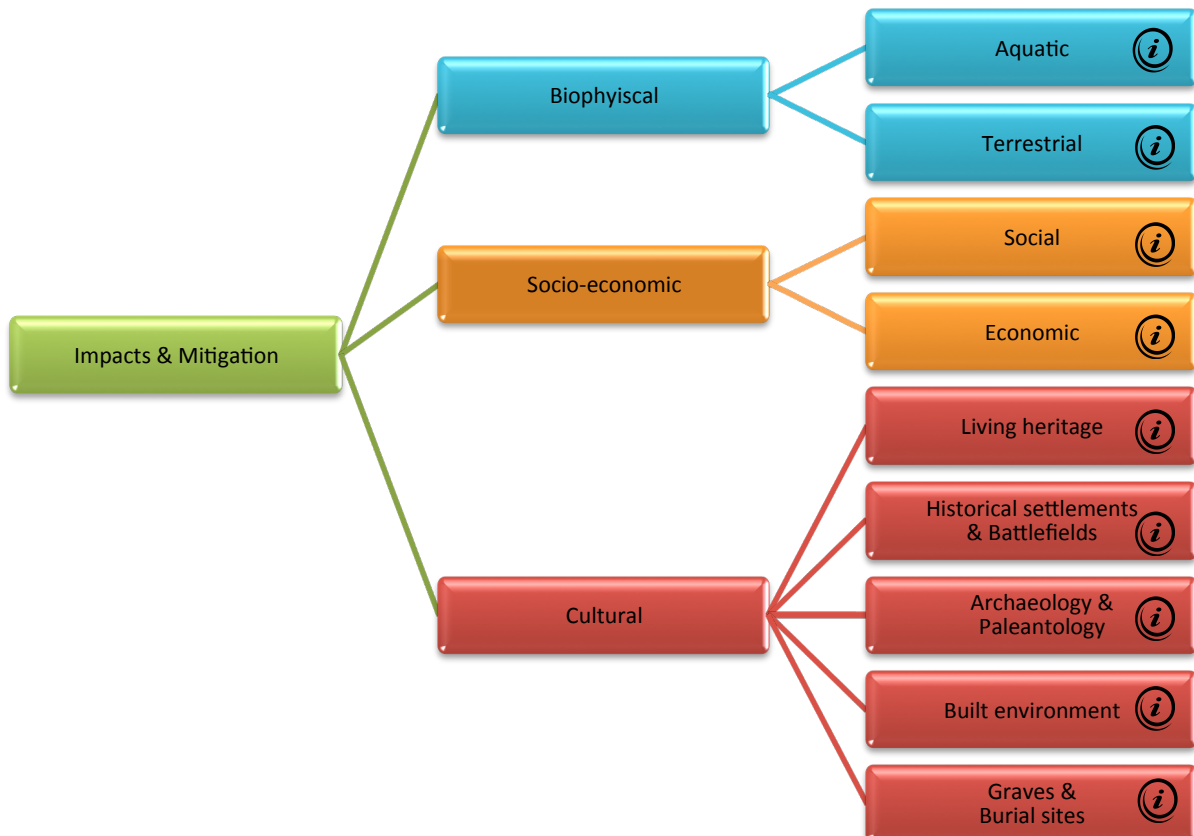


Activities that are likely to trigger a BA or S&EIR process for housing projects in each of the provinces can be accessed by clicking on the info icon on the adjacent map. ⓘ

Similarly, key stakeholders that should be consulted for housing projects in each of the provinces can be accessed by clicking on the stakeholder icon on the adjacent map. 👤

Impacts and Mitigation

Housing projects may impact different environments in different ways. Possible impacts, and associated mitigation measures for these impacts, can be identified by clicking on the info icons in the diagram below.

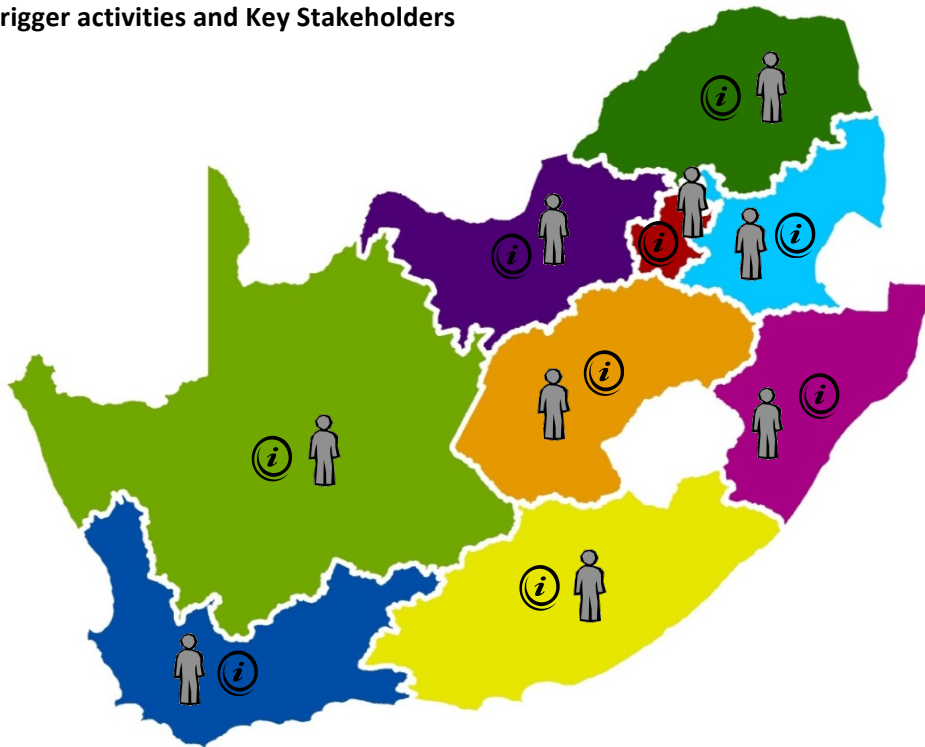


Other authorisations and legislation which may apply

Activity involved	Authorisation, permit or licence	
<ul style="list-style-type: none"> ▪ Listed activities in terms of NEMA. 	Environmental authorisation in terms of section 24 of NEMA.	
<ul style="list-style-type: none"> ▪ Erection of a structure or any use of the coastal public property. 	A lease in terms of the ICMA.	
<ul style="list-style-type: none"> ▪ Clearing of an area with listed threatened or protected species. 	Permit in terms of the NEM:BA.	
<ul style="list-style-type: none"> ▪ Taking water from a water resource ▪ Storing water ▪ Impeding or diverting the flow of water in a watercourse ▪ Discharging waste or water containing waste into a water resource ▪ Disposing of waste in a manner which may affect a water resource ▪ Building of houses or associated infrastructure in a manner that alters the bed, banks, the watercourse or characteristics of a watercourse 	Water use licence in terms of the NWA.	
<ul style="list-style-type: none"> ▪ The storage of general waste ▪ The disposal of general waste ▪ The temporary storage of hazardous waste ▪ The treatment of effluent, waste water or sewage 	Waste management licence in terms of the NEM:WA.	
<ul style="list-style-type: none"> ▪ Building houses or any housing infrastructure inside a protected area. 	A permit in terms of the NEM:PAA.	
<ul style="list-style-type: none"> ▪ Mining of gravel. 	Mining permit in terms of the MPRDA.	
<ul style="list-style-type: none"> ▪ Removing of any protected tree. 	A permit in terms of the National Forests Act.	
<ul style="list-style-type: none"> ▪ Disturbance or destruction of other heritage. 	Authorisation in terms of the NHRA.	
<ul style="list-style-type: none"> ▪ Use of water for construction or related purposes (unless the water is obtained from the distribution system of a water services provider properly nominated by the water services authority). ▪ Use of water other than from an authorised water services provider. 	A permit in terms of the Water Services Act.	
<ul style="list-style-type: none"> ▪ Building of houses or infrastructure in a manner which would require the subdivision of agricultural land. 	Consent in terms of the Subdivision of Agricultural Land Act.	
<ul style="list-style-type: none"> ▪ Rezoning of any parcel of land. ▪ Subdivision of any parcel of land. ▪ Consolidation of parcels of land. ▪ Any form of land-use change. 	Permit or approval in terms of provincial planning legislation.	
<ul style="list-style-type: none"> ▪ Erecting any buildings and related infrastructure which fall within the meaning of “building” as defined in the National Building Regulations and Building Standards Act 	Approval in terms of the National Building Regulations and Building Standards Act.	

Water supply

Trigger activities and Key Stakeholders

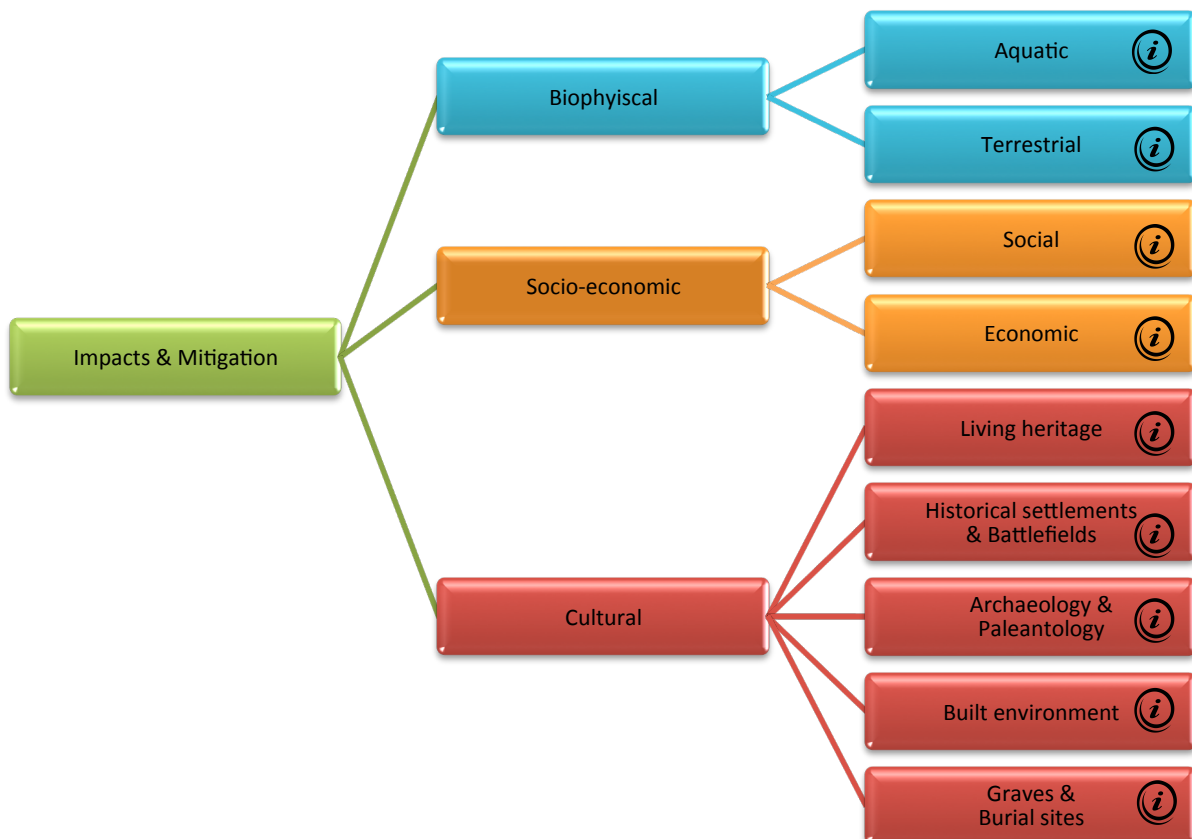


Activities that are likely to trigger a BA or S&EIR process for water supply projects in each of the provinces can be accessed by clicking on the info icon on the adjacent map.

Similarly, key stakeholders that should be consulted for water supply projects in each of the provinces can be accessed by clicking on the stakeholder icon on the adjacent map.

Impacts and Mitigation

Water supply projects may impact different environments in different ways. Possible impacts, and associated mitigation measures for these impacts, can be identified by clicking on the info icons in the diagram below.

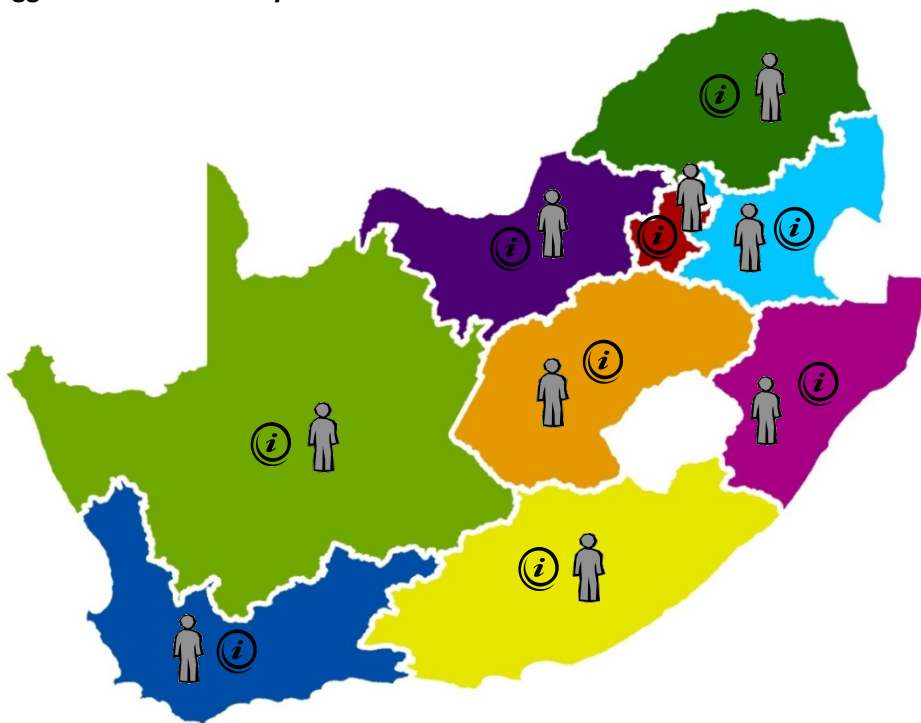


Other authorisations and legislation which may apply

Activity involved	Authorisation, permit or licence	
<ul style="list-style-type: none"> ▪ Listed activities in terms of NEMA. 	Environmental authorisation in terms of section 24 of NEMA.	
<ul style="list-style-type: none"> ▪ Erection of any pipes and associated infrastructure within the coastal public property. 	A lease in terms of the ICMA.	
<ul style="list-style-type: none"> ▪ Clearing of an area with listed threatened or protected species. 	Permit in terms of the NEM:BA.	
<ul style="list-style-type: none"> ▪ Taking water from a water resource ▪ Storing water ▪ Impeding or diverting the flow of water in a watercourse ▪ Building of infrastructure in a manner that alters the bed, banks, the watercourse or characteristics of a watercourse 	A water use licence in terms of the NWA.	
<ul style="list-style-type: none"> ▪ Erection of pipelines and associated infrastructure inside a protected area. 	A permit in terms of the NEM:PAA.	
<ul style="list-style-type: none"> ▪ Removal of any protected tree. 	A permit in terms of the National Forests Act.	
<ul style="list-style-type: none"> ▪ Erection of any infrastructure on the sea-shore or in the sea. 	Permission in terms of the Sea-shore Act.	
<ul style="list-style-type: none"> ▪ Disturbance or destruction of heritage resources. 	Authorisation in terms of the NHRA.	
<ul style="list-style-type: none"> ▪ Use of water for construction or related purposes (unless the water is obtained from the distribution system of a water services provider properly nominated by the water services authority). ▪ Use of water other than from an authorised water services provider. ▪ Operation as a water services provider. 	A permit in terms of the Water Services Act.	
<ul style="list-style-type: none"> ▪ Erecting any buildings and related infrastructure which fall within the meaning of “building” as defined in the National Building Regulations and Building Standards Act. 	Approval in terms of the National Building Regulations and Building Standards Act.	

Sanitation

Trigger activities and Key Stakeholders



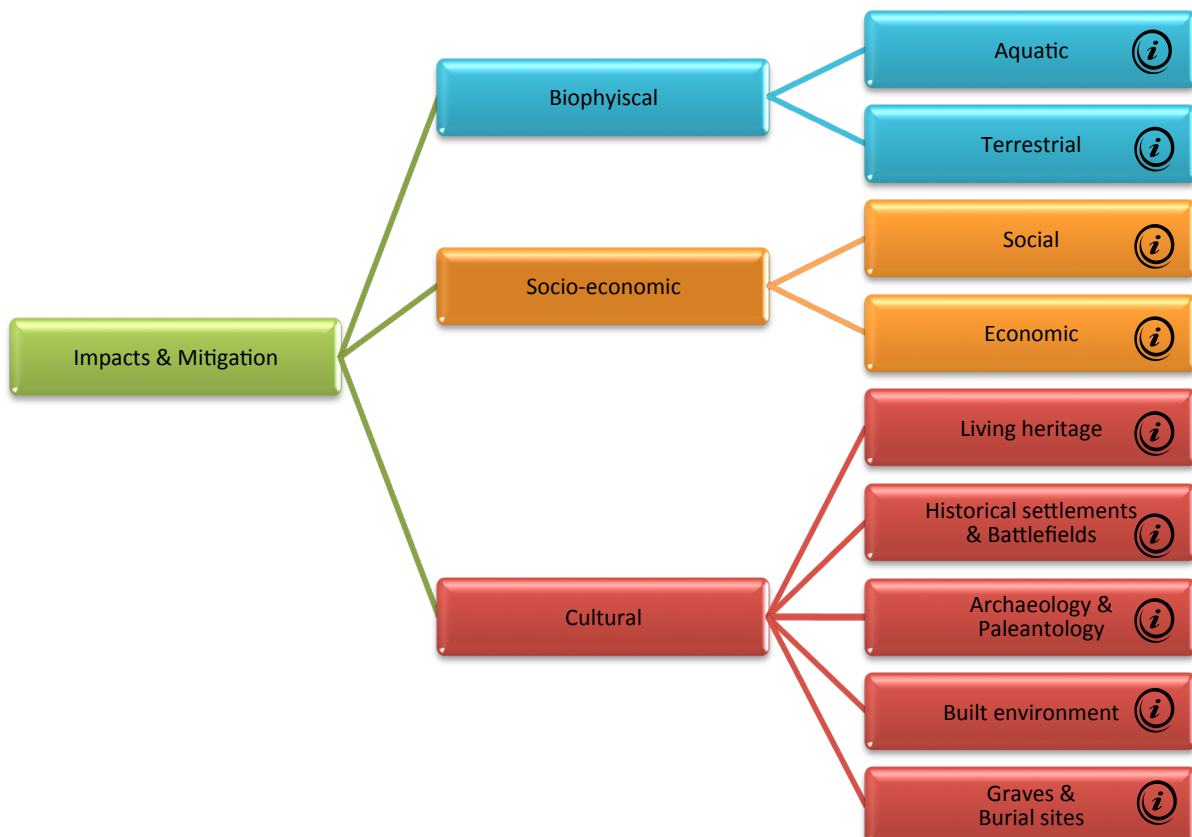
Activities that are likely to trigger a BA or S&EIR process for sanitation projects in each of the provinces can be accessed by clicking on the info icon on the adjacent map. (i)

Similarly, key stakeholders that should be consulted for sanitation projects in each of the provinces can be accessed by clicking on the stakeholder icon on the adjacent map.



Impacts and Mitigation

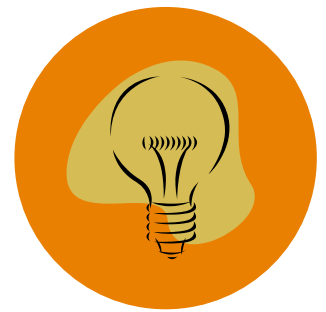
Sanitation projects may impact different environments in different ways. Possible impacts, and associated mitigation measures for these impacts, can be identified by clicking on the info icons in the diagram below.



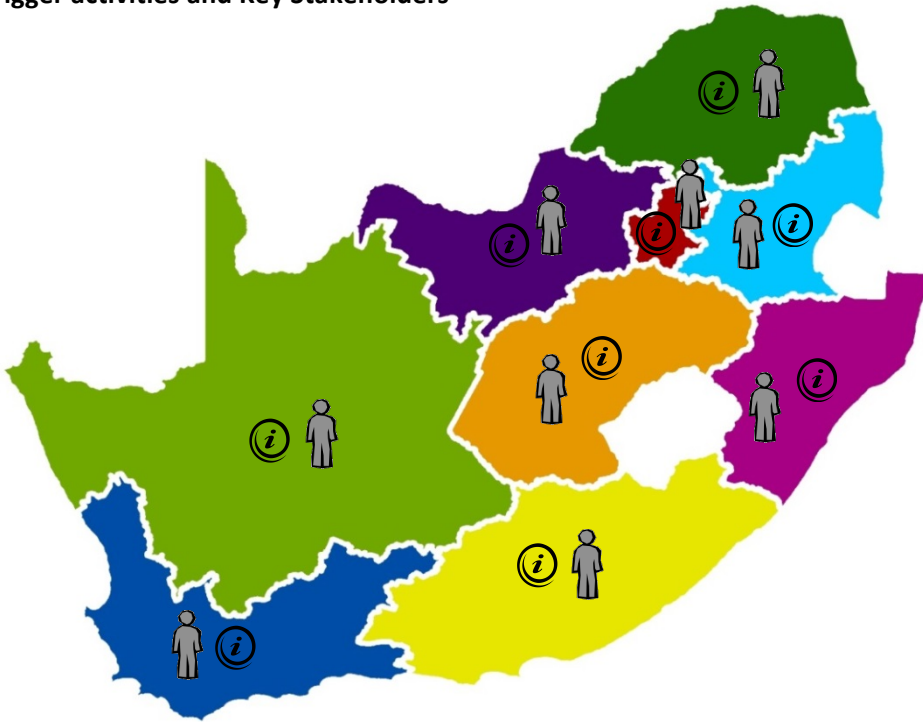
Other authorisations and legislation which may apply

Activity involved	Authorisation, permit or licence	
<ul style="list-style-type: none"> ▪ Listed activities in terms of NEMA. 	Environmental authorisation in terms of section 24 of NEMA.	
<ul style="list-style-type: none"> ▪ Erection of pipelines or any use of the coastal public property. 	A lease in terms of the ICMA.	
<ul style="list-style-type: none"> ▪ Clearing of an area with listed threatened or protected species. 	Permit in terms of the NEM:BA.	
<ul style="list-style-type: none"> ▪ Taking water from a water resource ▪ Discharging waste or water containing waste into a water resource ▪ Disposing of waste in a manner which may affect a water resource ▪ Building of infrastructure in a manner that alters the bed, banks, the watercourse or characteristics of a watercourse 	A water use licence in terms of the NWA.	
<ul style="list-style-type: none"> ▪ The treatment of effluent, waste water or sewage 	Waste management licence in terms of the NEM:WA.	
<ul style="list-style-type: none"> ▪ Erection of pipelines or any associated infrastructure within a protected area. 	A permit in terms of the NEM:PAA.	
<ul style="list-style-type: none"> ▪ Removal of any protected tree. 	A permit in terms of the National Forests Act.	
<ul style="list-style-type: none"> ▪ Erection of any pipelines or infrastructure on the sea-shore or in the sea. 	Permission in terms of the Sea-shore Act.	
<ul style="list-style-type: none"> ▪ Disturbance or destruction of heritage resources. 	Authorisation in terms of the NHRA.	
<ul style="list-style-type: none"> ▪ Use of water for construction or related purposes (unless the water is obtained from the distribution system of a water services provider properly nominated by the water services authority). ▪ Use of water other than from an authorised water services provider. ▪ Operation as a water services provider. 	A permit in terms of the Water Services Act.	
<ul style="list-style-type: none"> ▪ Erecting any buildings and related infrastructure which fall within the meaning of “building” as defined in the National Building Regulations and Building Standards Act. 	Approval in terms of the National Building Regulations and Building Standards Act.	

Electricity



Trigger activities and Key Stakeholders

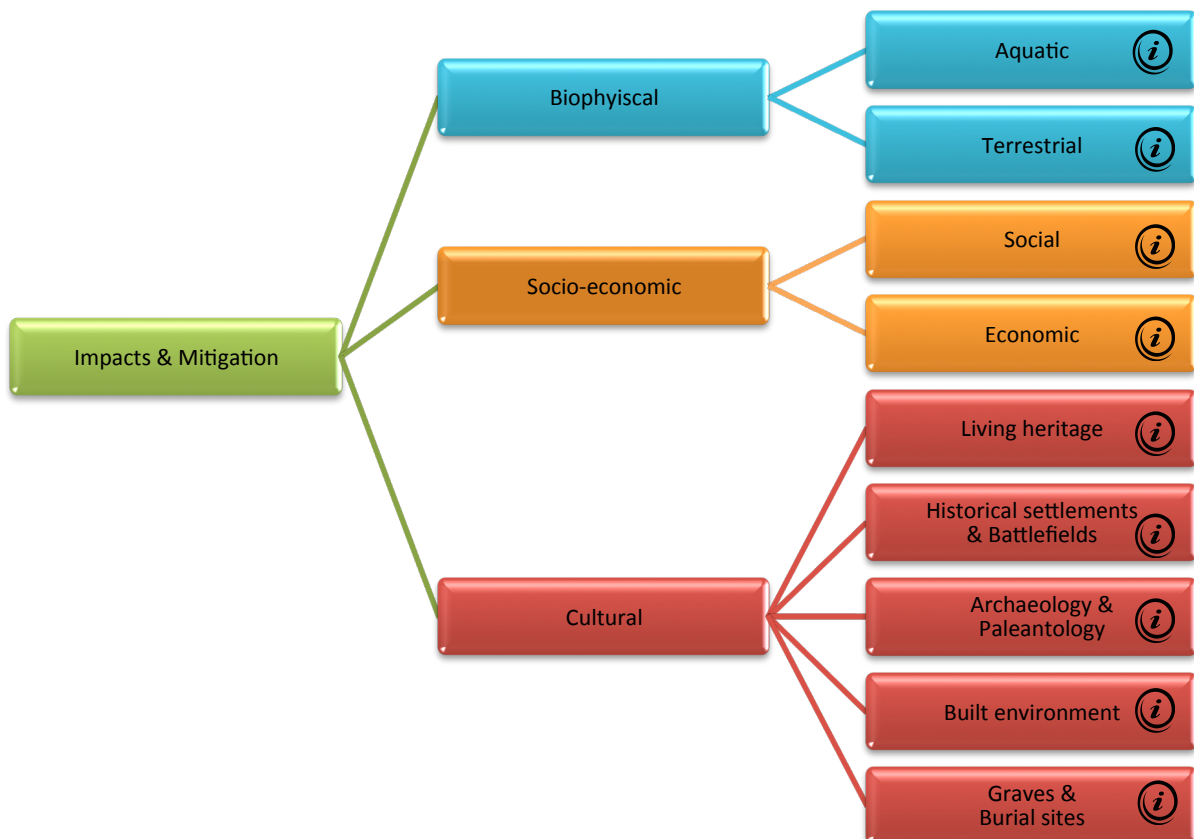


Activities that are likely to trigger a BA or S&EIR process for electricity projects in each of the provinces can be accessed by clicking on the info icon on the adjacent map. ⓘ

Similarly, key stakeholders that should be consulted for electricity projects in each of the provinces can be accessed by clicking on the stakeholder icon on the adjacent map. 👤

Impacts and Mitigation

Electricity projects may impact different environments in different ways. Possible impacts, and associated mitigation measures for these impacts, can be identified by clicking on the info icons in the diagram below.



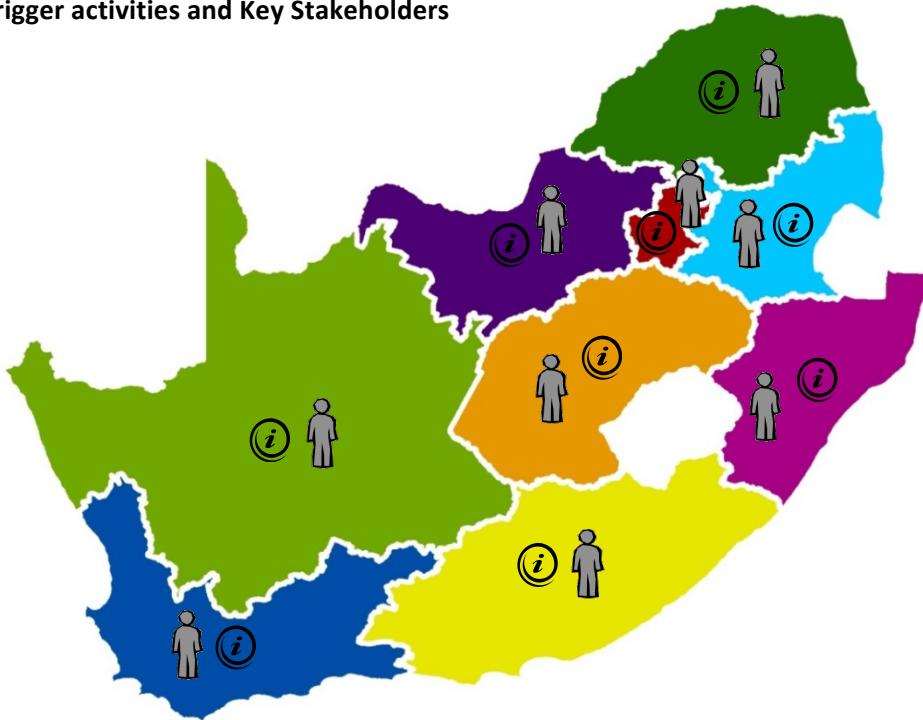
Other authorisations and legislation which may apply

Activity involved	Authorisation, permit or licence	
<ul style="list-style-type: none"> ▪ Listed activities in terms of NEMA. 	Environmental authorisation in terms of section 24 of NEMA.	
<ul style="list-style-type: none"> ▪ Erection of any power lines or substations on the coastal public property. 	A lease in terms of the ICMA.	
<ul style="list-style-type: none"> ▪ Clearing of an area with listed threatened or protected species. 	Permit in terms of the NEM:BA.	
<ul style="list-style-type: none"> ▪ Erection of any power lines or any substation inside a protected area. 	A permit in terms of the NEM:PAA.	
<ul style="list-style-type: none"> ▪ Removal of a protected tree. 	A permit in terms of the National Forests Act.	
<ul style="list-style-type: none"> ▪ Disturbance or destruction of other heritage resources. 	Authorisation in terms of the NHRA.	
<ul style="list-style-type: none"> ▪ Building of houses or infrastructure in a manner which would require the subdivision of agricultural land. 	Consent in terms of the Subdivision of Agricultural Land Act.	
<ul style="list-style-type: none"> ▪ Erecting any buildings and related infrastructure which fall within the meaning of “building” as defined in the National Building Regulations and Building Standards Act. 	Approval in terms of the National Building Regulations and Building Standards Act.	
<ul style="list-style-type: none"> ▪ Rezoning of any parcel of land. ▪ Subdivision of any parcel of land. ▪ Any form of land-use change. 	Permit or approval in terms of provincial planning legislation.	

Refuse and waste disposal



Trigger activities and Key Stakeholders

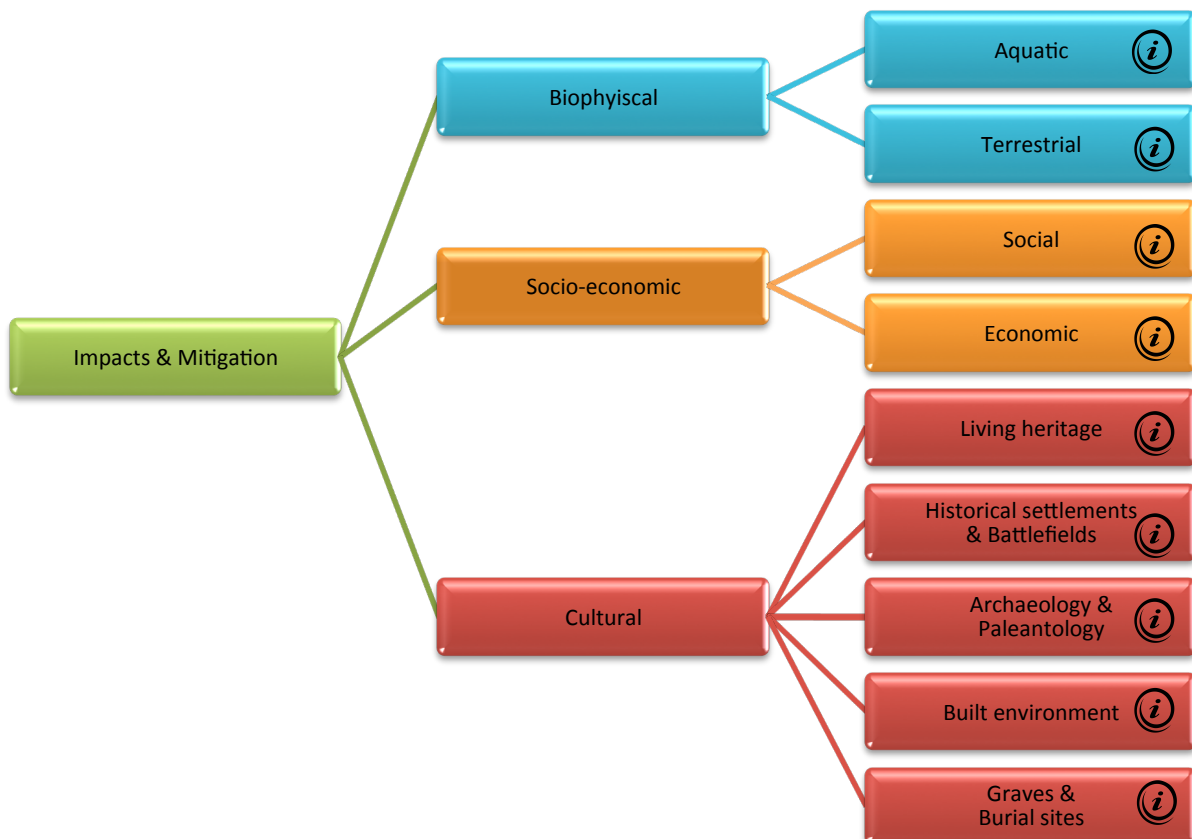


Activities that are likely to trigger a BA or S&EIR process for refuse and waste disposal projects in each of the provinces can be accessed by clicking on the info icon on the adjacent map. ⓘ

Similarly, key stakeholders that should be consulted for refuse and waste disposal projects in each of the provinces can be accessed by clicking on the stakeholder icon on the adjacent map. 👤

Impacts and Mitigation

Refuse and waste disposal projects may impact different environments in different ways. Possible impacts, and associated mitigation measures for these impacts, can be identified by clicking on the info icons in the diagram below.

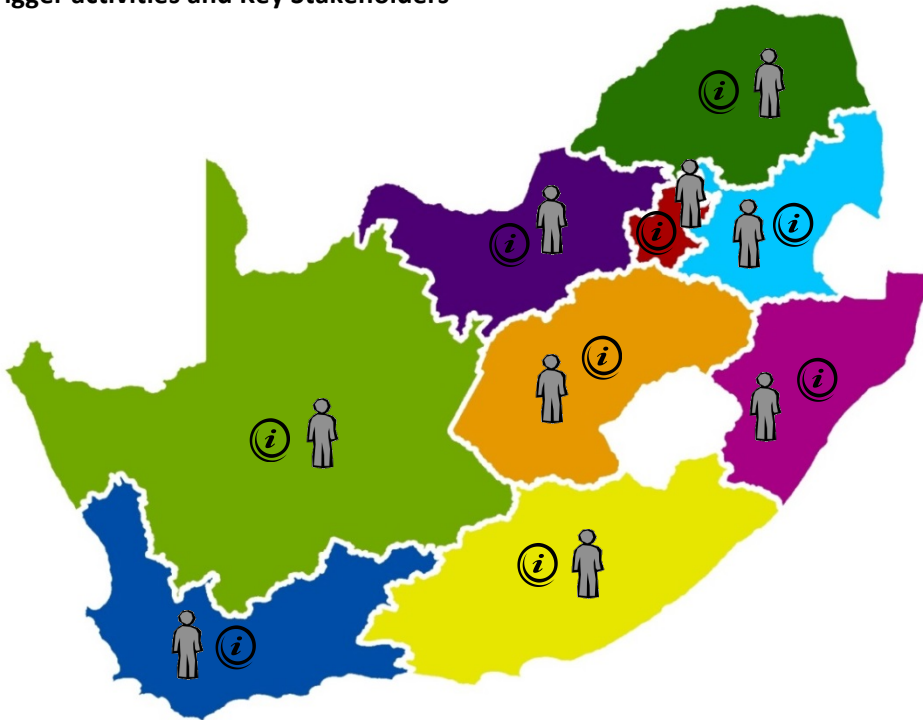



Other authorisations and legislation which may apply


Activity involved	Authorisation, permit or licence	
<ul style="list-style-type: none"> ▪ Listed activities in terms of NEMA. 	Environmental authorisation in terms of section 24 of NEMA.	
<ul style="list-style-type: none"> ▪ Erection of a structure or any use of the coastal public property. 	A lease in terms of the ICMA.	
<ul style="list-style-type: none"> ▪ Clearing of an area with listed threatened or protected species. 	Permit in terms of the NEM:BA.	
<ul style="list-style-type: none"> ▪ Disposal of waste in a manner which may affect a water resource 	Water use licence in terms of the NMA	
<ul style="list-style-type: none"> ▪ The storage of general waste ▪ The recycling or re-use of general waste ▪ The disposal of general waste ▪ The treatment of general waste ▪ The temporary storage of hazardous waste ▪ The construction, expansion or decommissioning of facilities and associated structure and infrastructure 	Waste management licence in terms of the NEM:WA.	
<ul style="list-style-type: none"> ▪ Building any infrastructure for waste disposal inside a protected area. 	A permit in terms of the NEM:PA	
<ul style="list-style-type: none"> ▪ Removal of any protected tree. 	A permit in terms of the National Forests Act.	
<ul style="list-style-type: none"> ▪ Altering or demolition of structures older than 60 years. ▪ Disturbance of graves and burial grounds. ▪ Building of any infrastructure in any manner which affects other heritage resources. 	Authorisation in terms of the NHPA.	
<ul style="list-style-type: none"> ▪ Building of any infrastructure in a manner which would require the subdivision of agricultural land. 	Consent in terms of the subdivision of Agricultural Land Act.	
<ul style="list-style-type: none"> ▪ Erecting any building and related infrastructure which fall within the meaning of “building” as defined in the National Building Regulations and Building Standards Act. 	Approval in terms of the National Building Regulations and Building Standards Act.	
<ul style="list-style-type: none"> ▪ Rezoning of any parcel of land. ▪ Subdivision of any parcel of land. ▪ Consolidation of parcels of land. ▪ Any form of land-use change. 	Permit or approval in terms of provincial planning legislation.	

Roads and transport

Trigger activities and Key Stakeholders

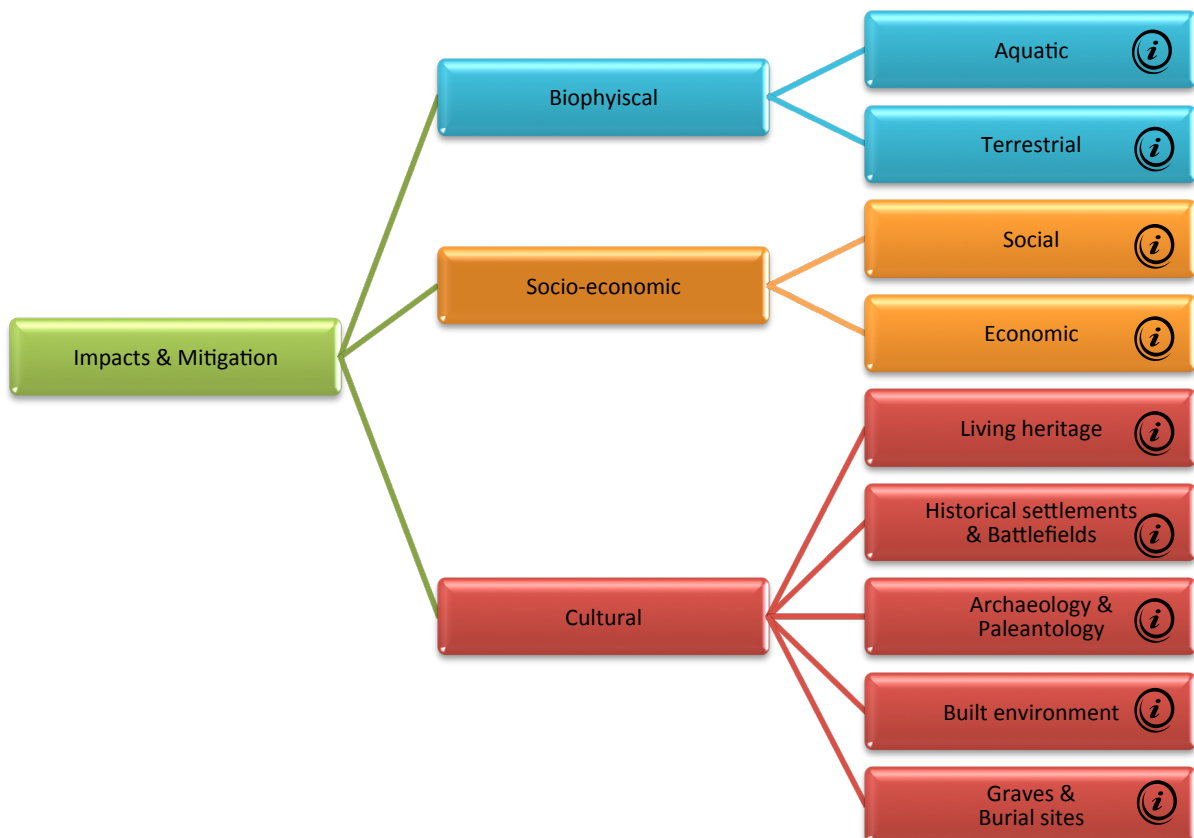


Activities that are likely to trigger a BA or S&EIR process for road and transport projects in each of the provinces can be accessed by clicking on the info icon on the adjacent map. 

Similarly, key stakeholders that should be consulted for road and transport projects in each of the provinces can be accessed by clicking on the stakeholder icon on the adjacent map. 

Impacts and Mitigation

Road and transport projects may impact different environments in different way mitigation measures for these impacts, can be identified by clicking on the info icons in the diagram below.

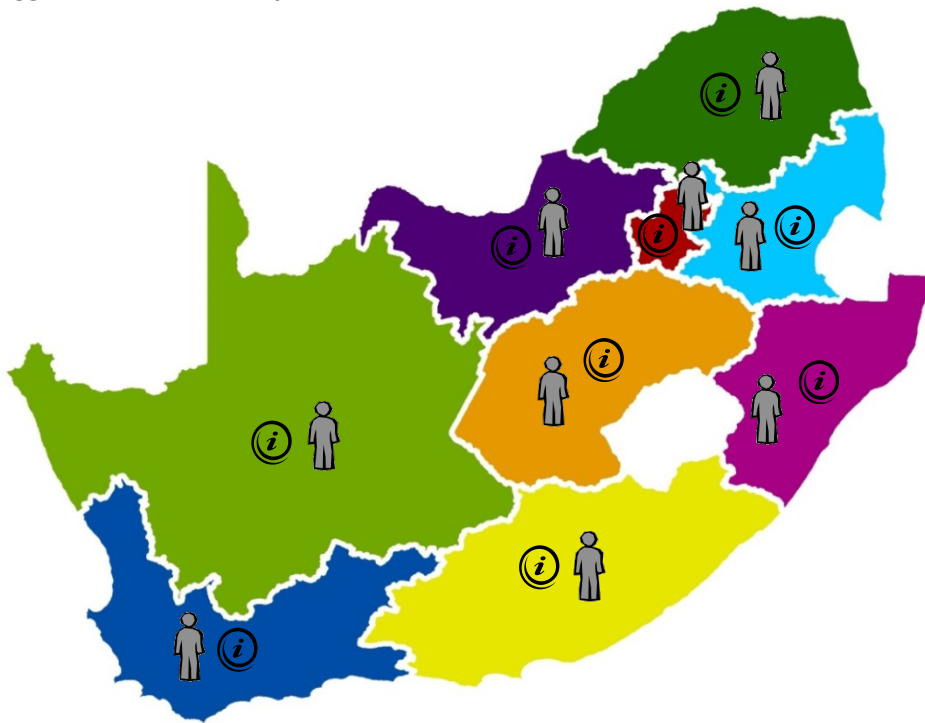
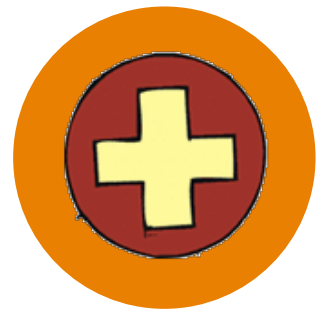


Other authorisations and legislation which may apply

Activity involved	Authorisation, permit or licence	
<ul style="list-style-type: none"> ▪ Listed activities in terms of NEMA. 	Environmental authorisation in terms of section 24 of NEMA.	
<ul style="list-style-type: none"> ▪ Construction of a road or associated infrastructure on the coastal public property. 	A lease in terms of the ICMA.	
<ul style="list-style-type: none"> ▪ Clearing of an area with listed threatened or protected species. 	Permit in terms of the NEM:BA.	
<ul style="list-style-type: none"> ▪ Construction of roads, bridges or associated infrastructure in a manner that involves water uses such as impeding or diverting the flow of water in a watercourse and altering the beds, banks of the watercourse or characteristics of a watercourse. 	Water use licence in terms of the NWA.	
<ul style="list-style-type: none"> ▪ Construction of roads or associated infrastructure inside a protected area. 	A permit in terms of the NEM:PAA.	
<ul style="list-style-type: none"> ▪ Mining of gravel. 	Mining permit in terms of the MPRDA.	
<ul style="list-style-type: none"> ▪ Removal of any protected trees. 	A permit in terms of the National Forests Act.	
<ul style="list-style-type: none"> ▪ Altering or demolition of structures older than 60 years. ▪ Disturbance of graves and burial grounds. ▪ Construction of any roads or associated infrastructure in any manner which affects other heritage resources or sites. 	Authorisation in terms of the NHRA.	
<ul style="list-style-type: none"> ▪ Use of water for construction or related purposes (unless the water is obtained from the distribution system of a water services provider properly nominated by the water services authority). ▪ Use of water other than from an authorised water services provider. 	A permit in terms of the Water Services Act.	
<ul style="list-style-type: none"> ▪ Construction of a road or associated infrastructure in a manner which would require the subdivision of agricultural land. 	Consent in terms of the Subdivision of Agricultural Land Act.	
<ul style="list-style-type: none"> ▪ Rezoning of any parcel of land. ▪ Subdivision of any parcel of land. ▪ Consolidation of parcels of land. ▪ Any form of land-use change. 	Permit or approval in terms of provincial planning legislation.	

Health Infrastructure

Trigger activities and Key Stakeholders

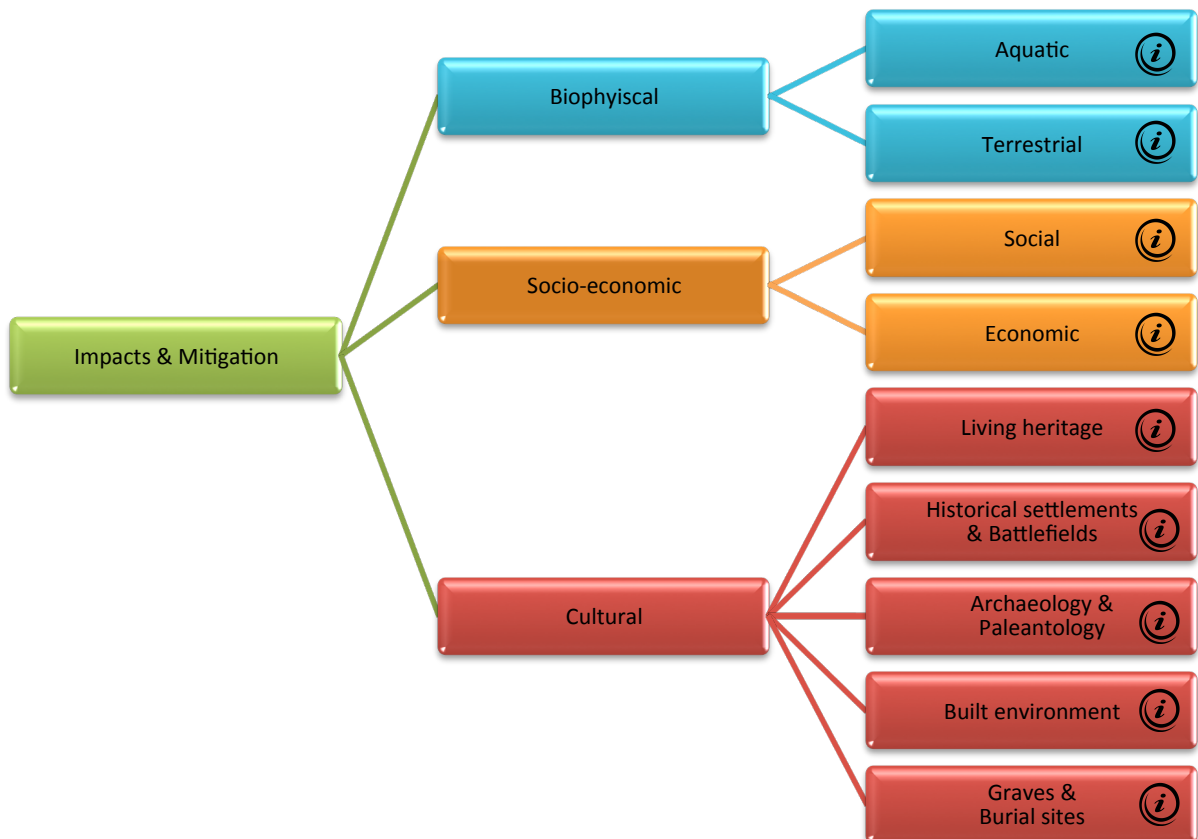


Activities that are likely to trigger a BA or S&EIR process for health infrastructure projects in each of the provinces can be accessed by clicking on the info icon on the adjacent map. (i)

Similarly, key stakeholders that should be consulted for health infrastructure projects in each of the provinces can be accessed by clicking on the stakeholder icon on the adjacent map. (person icon)

Impacts and Mitigation

Health infrastructure projects may impact different environments in different ways. Mitigation measures for these impacts, can be identified by clicking on the info icons in the diagram below.



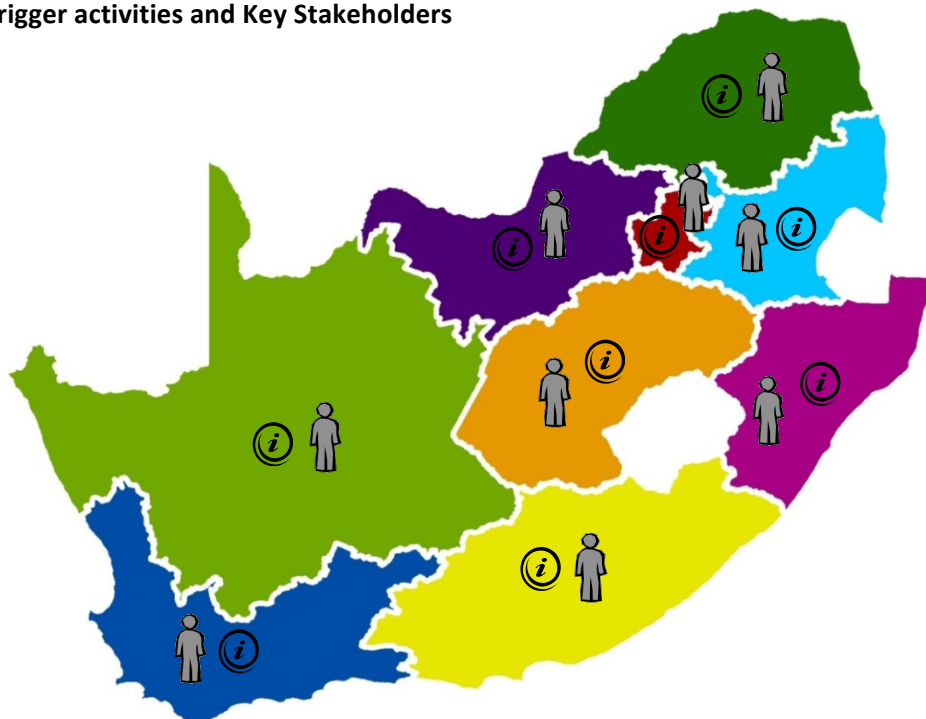
Other authorisations and legislation which may apply

Activity involved	Authorisation, permit or licence	
<ul style="list-style-type: none"> ▪ Listed activities in terms of NEMA. 	Environmental authorisation in terms of section 24 of NEMA.	
<ul style="list-style-type: none"> ▪ Erection of buildings, structures or any use of the coastal public property. 	A lease in terms of the ICMA.	
<ul style="list-style-type: none"> ▪ Clearing of an area with listed threatened or protected species. 	Permit in terms of the NEM:BA.	
<ul style="list-style-type: none"> ▪ Construction of buildings or associated infrastructure in a manner that alters the bed, banks, the watercourse or characteristics of a watercourse. 	Water use licence in terms of the NWA.	
<ul style="list-style-type: none"> ▪ Construction of any buildings or associated infrastructure inside a protected area. 	A permit in terms of the NEM:PAA.	
<ul style="list-style-type: none"> ▪ Removal of a protected tree. 	A permit in terms of the National Forests Act.	
<ul style="list-style-type: none"> ▪ Altering or demolition of structures older than 60 years. 	A heritage permit in terms of the NHRA.	
<ul style="list-style-type: none"> ▪ Disturbance of graves and burial grounds. 		
<ul style="list-style-type: none"> ▪ Building of any structures or infrastructure in any manner which affects heritage sites. 		
<ul style="list-style-type: none"> ▪ Use of water for construction or related purposes (unless the water is obtained from the distribution system of a water services provider properly nominated by the water services authority). 	A permit in terms of the Water Services Act.	
<ul style="list-style-type: none"> ▪ Use of water other than from an authorised water services provider. 		
<ul style="list-style-type: none"> ▪ Building of structures or infrastructure in a manner which would require the subdivision of agricultural land. 	Consent in terms of the Subdivision of Agricultural Land Act.	
<ul style="list-style-type: none"> ▪ Erection of any buildings, structures and related infrastructure which fall within the meaning of the term “building” as defined in the National Building Regulations and Building Standards Act. 	Approval in terms of the National Building Regulations and Building Standards Act.	
<ul style="list-style-type: none"> ▪ Rezoning of any parcel of land. 	Permit or approval in terms of provincial planning legislation.	
<ul style="list-style-type: none"> ▪ Subdivision of any parcel of land. 		
<ul style="list-style-type: none"> ▪ Consolidation of parcels of land. 		
<ul style="list-style-type: none"> ▪ Any form of land-use change. 		

Sports facilities



Trigger activities and Key Stakeholders

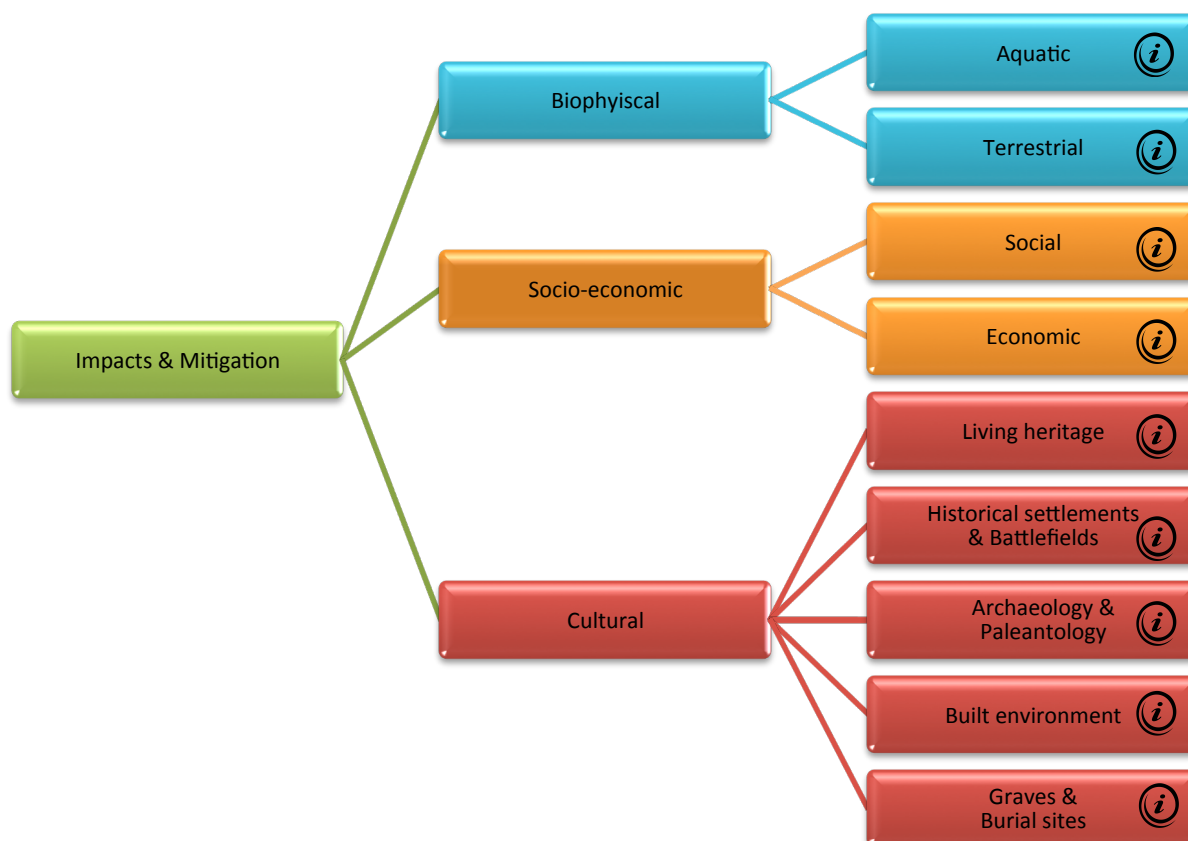


Activities that are likely to trigger a BA or S&EIR process for sports facilities projects in each of the provinces can be accessed by clicking on the info icon on the adjacent map.

Similarly, key stakeholders that should be consulted for sports facilities projects in each of the provinces can be accessed by clicking on the stakeholder icon on the adjacent map.

Impacts and Mitigation

Sports facilities projects may impact different environments in different ways. Possible impacts, and associated mitigation measures for these impacts, can be identified by clicking on the info icons in the diagram below.



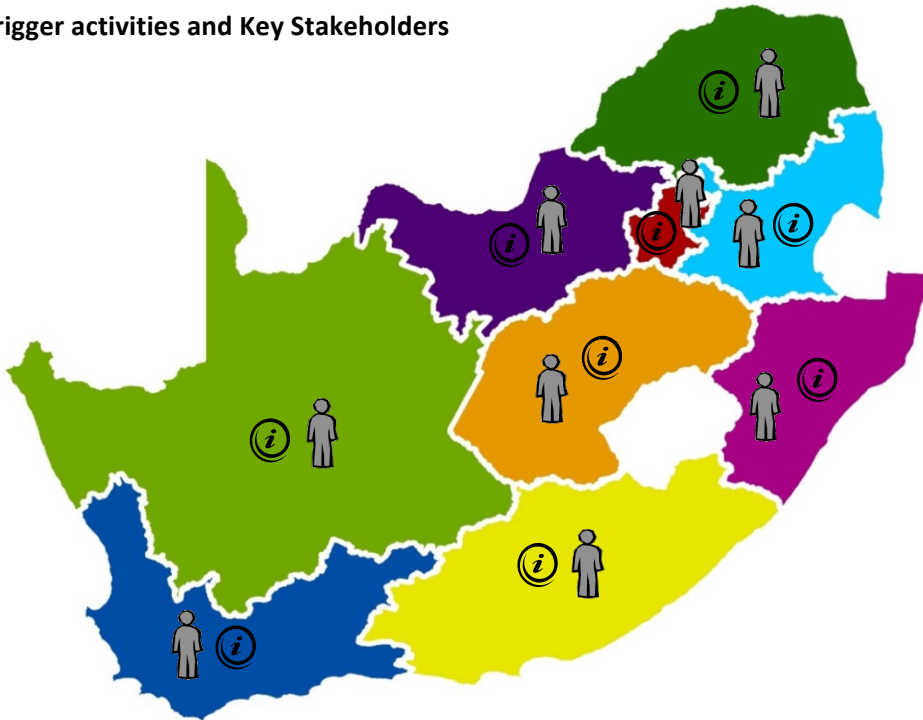
Other authorisations and legislation which may apply

Activity involved	Authorisation, permit or licence	
<ul style="list-style-type: none"> ▪ Listed activities in terms of NEMA. 	Environmental authorisation in terms of section 24 of NEMA.	
<ul style="list-style-type: none"> ▪ Erection of buildings, structures or any use of the coastal public property. 	A lease in terms of the ICMA.	
<ul style="list-style-type: none"> ▪ Clearing of an area with listed threatened or protected species. 	Permit in terms of the NEM:BA.	
<ul style="list-style-type: none"> ▪ Construction of buildings or associated infrastructure in a manner that alters the bed, banks, the watercourse or characteristics of a watercourse. 	Water use licence in terms of the NWA.	
<ul style="list-style-type: none"> ▪ Construction of any buildings or associated infrastructure inside a protected area. 	A permit in terms of the NEM:PAA.	
<ul style="list-style-type: none"> ▪ Removal of a protected tree. 	A permit in terms of the National Forests Act.	
<ul style="list-style-type: none"> ▪ Altering or demolition of structures older than 60 years. ▪ Disturbance of graves and burial grounds. ▪ Building of any structures or infrastructure in any manner which affects heritage sites. 	A heritage permit in terms of the NHRA.	
<ul style="list-style-type: none"> ▪ Use of water for construction or related purposes (unless the water is obtained from the distribution system of a water services provider properly nominated by the water services authority). ▪ Use of water other than from an authorised water services provider. 	A permit in terms of the Water Services Act.	
<ul style="list-style-type: none"> ▪ Building of structures or infrastructure in a manner which would require the subdivision of agricultural land. 	Consent in terms of the Subdivision of Agricultural Land Act.	
<ul style="list-style-type: none"> ▪ Erection of any buildings, structures and related infrastructure which fall within the meaning of the term “building” as defined in the National Building Regulations and Building Standards Act. 	Approval in terms of the National Building Regulations and Building Standards Act.	
<ul style="list-style-type: none"> ▪ Rezoning of any parcel of land. ▪ Subdivision of any parcel of land. ▪ Consolidation of parcels of land. ▪ Any form of land-use change. 	Permit or approval in terms of provincial planning legislation.	

Schools



Trigger activities and Key Stakeholders

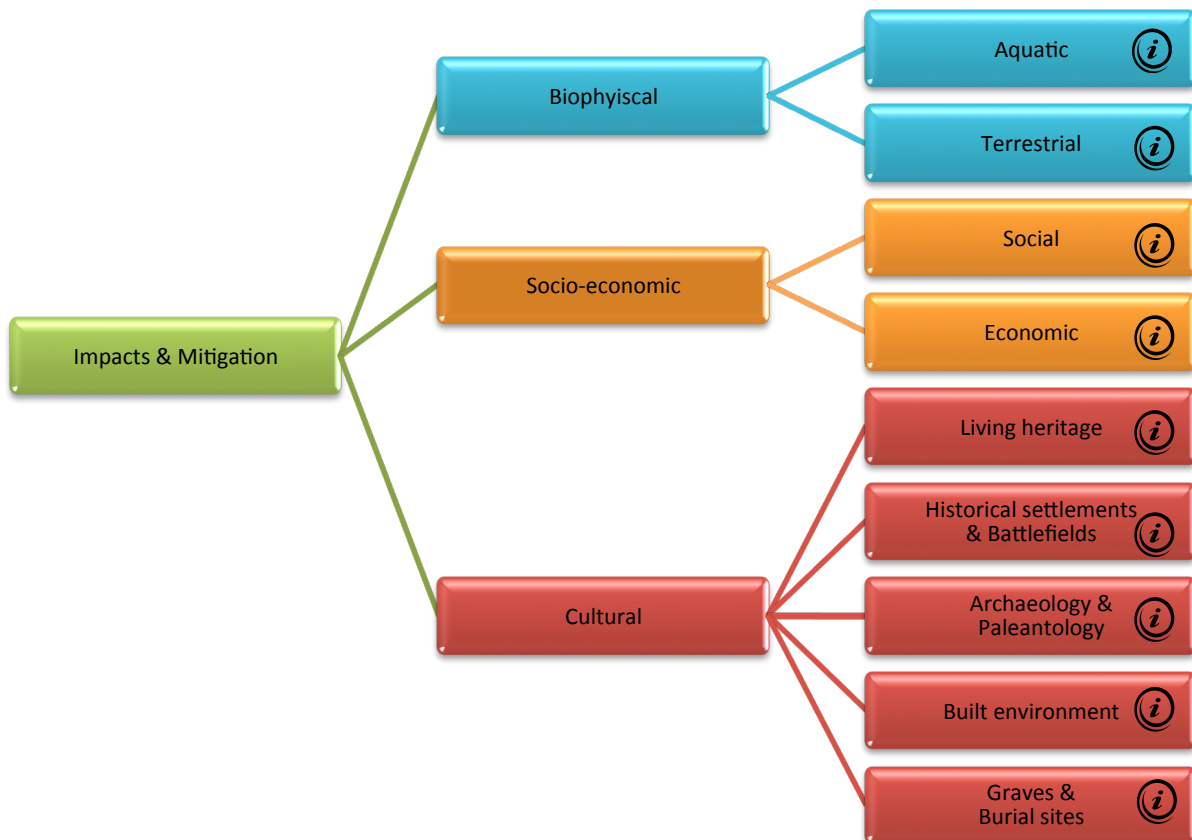


Activities that are likely to trigger a BA or S&EIR process for school infrastructure projects in each of the provinces can be accessed by clicking on the info icon on the adjacent map. ⓘ

Similarly, key stakeholders that should be consulted for school infrastructure projects in each of the provinces can be accessed by clicking on the stakeholder icon on the adjacent map. 👤

Impacts and Mitigation

School infrastructure projects may impact different environments in different ways. Possible impacts, and associated mitigation measures for these impacts, can be identified by clicking on the info icons in the diagram below.

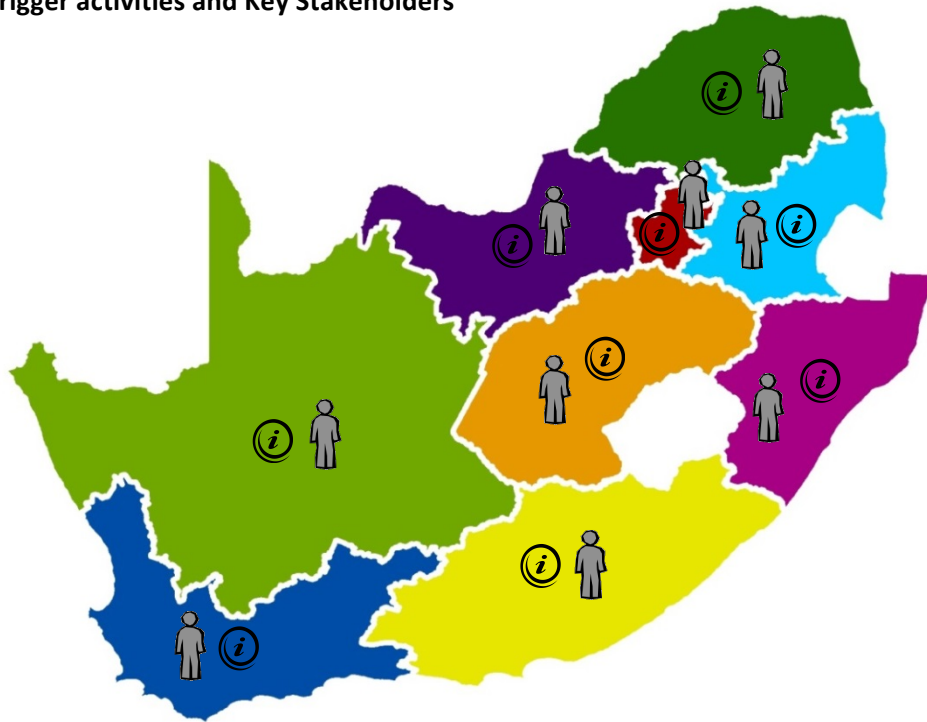
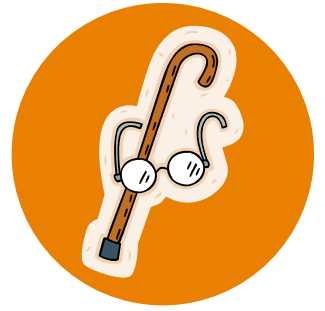



Other authorisations and legislation which may apply


Activity involved	Authorisation, permit or licence	
<ul style="list-style-type: none"> ▪ Listed activities in terms of NEMA. 	Environmental authorisation in terms of section 24 of NEMA.	
<ul style="list-style-type: none"> ▪ Erection of buildings, structures or any use of the coastal public property. 	A lease in terms of the ICMA.	
<ul style="list-style-type: none"> ▪ Clearing of an area with listed threatened or protected species. 	Permit in terms of the NEM:BA.	
<ul style="list-style-type: none"> ▪ Construction of buildings or associated infrastructure in a manner that alters the bed, banks, the watercourse or characteristics of a watercourse. ▪ Taking water from a water resource 	Water use licence in terms of the NWA.	
<ul style="list-style-type: none"> ▪ Construction of any buildings or associated infrastructure inside a protected area. 	A permit in terms of the NEM:PAA.	
<ul style="list-style-type: none"> ▪ Removal of a protected tree. 	A permit in terms of the National Forests Act.	
<ul style="list-style-type: none"> ▪ Altering or demolition of structures older than 60 years. ▪ Disturbance of graves and burial grounds. ▪ Building of any structures or infrastructure in any manner which affects heritage sites. 	A heritage permit in terms of the NHRA.	
<ul style="list-style-type: none"> ▪ Use of water for construction or related purposes (unless the water is obtained from the distribution system of a water services provider properly nominated by the water services authority). ▪ Use of water other than from an authorised water services provider. 	A permit in terms of the Water Services Act.	
<ul style="list-style-type: none"> ▪ Building of structures or infrastructure in a manner which would require the subdivision of agricultural land. 	Consent in terms of the Subdivision of Agricultural Land Act.	
<ul style="list-style-type: none"> ▪ Erection of any buildings, structures and related infrastructure which fall within the meaning of the term “building” as defined in the National Building Regulations and Building Standards Act. 	Approval in terms of the National Building Regulations and Building Standards Act.	
<ul style="list-style-type: none"> ▪ Rezoning of any parcel of land. ▪ Subdivision of any parcel of land. ▪ Consolidation of parcels of land. ▪ Any form of land-use change. 	Permit or approval in terms of provincial planning legislation.	

Welfare infrastructure

Trigger activities and Key Stakeholders

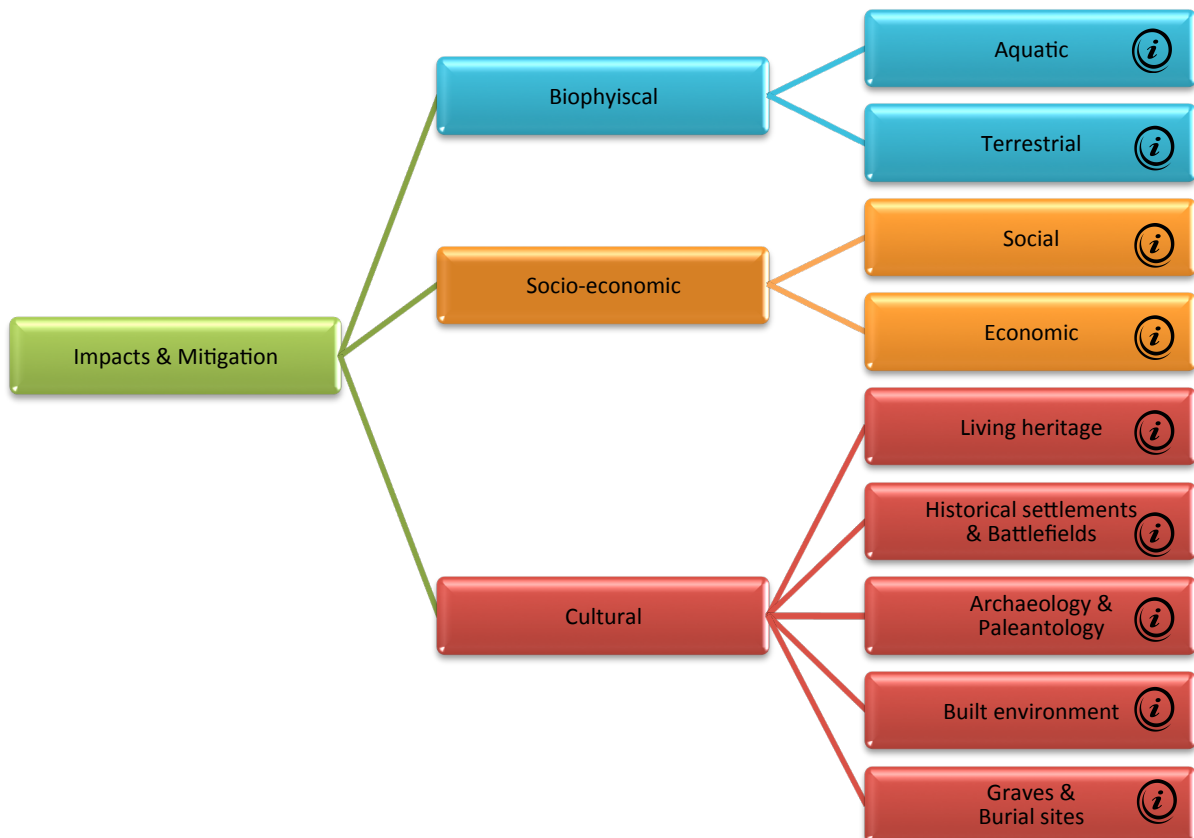


Activities that are likely to trigger a BA or S&EIR process for welfare infrastructure projects in each of the provinces can be accessed by clicking on the info icon on the adjacent map. 

Similarly, key stakeholders that should be consulted for welfare infrastructure projects in each of the provinces can be accessed by clicking on the stakeholder icon on the adjacent map. 

Impacts and Mitigation

Welfare infrastructure projects may impact different environments in different way mitigation measures for these impacts, can be identified by clicking on the info icons in the diagram below.



Other authorisations and legislation which may apply

Activity involved	Authorisation, permit or licence	
<ul style="list-style-type: none"> ▪ Listed activities in terms of NEMA. 	Environmental authorisation in terms of section 24 of NEMA.	
<ul style="list-style-type: none"> ▪ Erection of buildings, structures or any use of the coastal public property. 	A lease in terms of the ICMA.	
<ul style="list-style-type: none"> ▪ Clearing of an area with listed threatened or protected species. 	Permit in terms of the NEM:BA.	
<ul style="list-style-type: none"> ▪ Removal of a protected tree. 	A permit in terms of the National Forests Act.	
<ul style="list-style-type: none"> ▪ Altering or demolition of structures older than 60 years. ▪ Disturbance of graves and burial grounds. ▪ Building of any structures or infrastructure in any manner which affects heritage sites. 	A heritage permit in terms of the NHRA.	
<ul style="list-style-type: none"> ▪ Building of structures or infrastructure in a manner which would require the subdivision of agricultural land. 	Consent in terms of the Subdivision of Agricultural Land Act.	
<ul style="list-style-type: none"> ▪ Erection of any buildings, structures and related infrastructure which fall within the meaning of the term “building” as defined in the National Building Regulations and Building Standards Act. 	Approval in terms of the National Building Regulations and Building Standards Act.	
<ul style="list-style-type: none"> ▪ Rezoning of any parcel of land. ▪ Subdivision of any parcel of land. ▪ Consolidation of parcels of land. ▪ Any form of land-use change. 	Permit or approval in terms of provincial planning legislation.	

11 Other guideline documents

File type	Guideline or Report	Categories
PDF	BSSACU 16 Aug 2005 - Recommended terms of reference for the consideration of biodiversity in environmental assessment and decision-making	Biodiversity
PDF	CBBIA Guidance Document - Biodiversity, impact assessment and decision-making in southern Africa	Biodiversity
PDF	CBD - Voluntary guidelines on biodiversity-inclusive impact assessment	Biodiversity
PDF	DEA&DP EIA Guideline and Document Series 2013	EIA process
PDF	DEA&DP Guideline on Alternatives August 2010	EIA process
PDF	DEA&DP Guideline on Appeals August 2010	EIA process
PDF	DEA&DP Guideline on Exemptions August 2010	EIA process
PDF	DEA&DP Guideline on Need and Desirability August 2010	EIA process
PDF	DEA&DP Guideline on Public Participation August 2010	PPP
PDF	DEA&DP Guideline on Transitional Arrangements August 2010	EIA process
PDF	DEA&DP Information Document on Generic Terms of Reference for EAP's and Project Schedules August 2010	EIA process
PDF	DEA&DP NEMA EIA Guideline Series Feb 2007 - Involving social assessment specialists in EIA processes	Socio-economic
PDF	DEA&DP NEMA EIA Guideline Series June 2005 - Determining the scope of specialist involvement in EIA processes	EIA process
PDF	DEA&DP NEMA EIA Guideline Series June 2005 - Environmental Management Plans	EIA process
PDF	DEA&DP NEMA EIA Guideline Series June 2005 - Involving biodiversity specialists in EIA processes	Biodiversity
PDF	DEA&DP NEMA EIA Guideline Series June 2005 - Involving economists in EIA processes	Socio-economic
PDF	DEA&DP NEMA EIA Guideline Series June 2005 - Involving heritage specialists in EIA processes	Heritage
PDF	DEA&DP NEMA EIA Guideline Series June 2005 - Involving hydrogeologists in EIA processes	Hydrology
PDF	DEA&DP NEMA EIA Guideline Series June 2005 - Involving visual and aesthetic specialists in EIA processes	Visual and aesthetic
PDF	DEA&DP NEMA EIA Guideline Series June 2005 - Review of specialist input in EIA processes	EIA process
PDF	DEA&DP NEMA EIA Guideline Series November 2006 - Interpretation of the listed activities	EIA process
PDF	DEA&DP NEMA EIA Guideline Series September 2007 – Alternatives	EIA process
PDF	DEA&DP NEMA EIA Guideline Series September 2007 – Appeals	EIA process
PDF	DEA&DP NEMA EIA Guideline Series September 2007 - Public participation	PPP

File type	Guideline or Report	Categories
PDF	DEAT IEM Information Series No 11 - Alternatives in EIA	EIA process
PDF	DEAT IEM Information Series No 12 - Environmental Management Plans	EIA process
PDF	DEAT IEM Information Series No 13 - Review in EIA	EIA process
PDF	DEAT IEM Information Series No 15 - Environmental impact reporting	EIA process
PDF	DEAT IEM Information Series No 2 – Scoping	EIA process
PDF	DEAT IEM Information Series No 22 - Socio-economic impact assessment	Socio-economic
PDF	DEAT IEM Information Series No 3 - Stakeholder engagement	PPP
PDF	DEAT IEM Information Series No 4 - Specialist studies	EIA process
PDF	DEAT IEM Information Series No 5 - Impact significance	EIA process
PDF	DEAT IEM Information Series No 7 - Cumulative effects assessment	EIA process
PDF	DEAT Public Participation Guidelines as published in Government Gazette No 23354	PPP
PDF	IAIA Special publication Series No 3 - Biodiversity in impact assessment	Biodiversity
PDF	NEMA guideline on alternatives July 2006	EIA process
PDF	NEMA guideline on appeals July 2006	EIA process
PDF	NEMA guideline on Public Participation July 2006	PPP
PDF	Provincial urban edge guideline December 2005	EIA process
PDF	WC guide to emissions October 2005	Air quality

12 Glossary

Alternative

A different means of meeting the general purpose and requirements of the activity. Alternatives may relate to the property or location on which the activity is to be undertaken, the type, design or layout of the activity and the technology to be used or operational aspects of the activity. The option of not implementing the activity should also be considered as an alternative.

Applicant

The person or organisation who has submitted an application for environmental authorisation, exemption or amendments to environmental authorisation under the EIA regulations. The term may also relate to a person or organisation who has submitted an application for an approval, permit or licence required under a Specific Environmental Management Act.

Application

The process of applying for authorisations, approvals, permits or licences. An application in terms of the EIA regulations may relate to an application for environmental authorisation, an amendment to an environmental authorisation or environmental management programme or exemption from a provision in the EIA regulations.

Amendment

Any detail of an environmental authorisation or environmental management programme, which is added, substituted, corrected, removed or updated.

Archaeology

The study of the human past. Archaeological sites are places where people lived and left evidence of their presence in the form of artefacts, and other traces such as rock paintings or engravings, burials, fireplaces and structures.

Background Information Document

A document that provides information to Interested and affected parties about a proposed project. It should also inform I&APs about how to participate in the EIA process.

Basic Assessment

The process detailed in Regulation 21 to Regulation 25 which requires evaluating the possible environmental impacts of a proposed development prior to decision-making. The BA process is undertaken for smaller scale activities, listed in Listing Notice 1 and Listing Notice 3, that are considered less likely to have substantial impacts on the environment and, therefore, unlikely to require a full and detailed Environmental Impact Assessment.

Biophysical environment

The external factor or conditions (including physical and biological factors and the chemical interactions between them) that surround and affect an organism.

Built environment

Human-made surroundings that provide the setting for human activity.

Competent authority

The body or entity that fulfils the administrative function of registering, considering and approving (where applicable) all documentation related to an application. In respect of EIAs, the competent authority is the organ of state charged by NEMA with evaluating the environmental impact of an activity and, where appropriate, granting or refusing environmental authorisation for that activity.

Environment

The surroundings within which humans exist and that are made up of -

- i. the land, water and atmosphere of the earth;
- ii. micro-organisms, plant and animal life;
- iii. any part or combination of (i) and (ii) and the interrelationships among and between them; and
- iv. the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and well-being. This includes the economic, cultural, historical, and political circumstances, conditions and objects that affect the existence and development of an individual, organism or group.

Environmental Assessment Practitioner

The individual responsible for coordinating, managing and integrating various components of an environmental assessment or any other appropriate environmental instrument introduced through the regulations.

Environmental Authorisation

A written statement or record from the competent authority either permitting or refusing the commencement of a proposed activity. The authorization of a proposed project may be attached to specific conditions which must be complied with.

Environmental Impact Assessment

A systematic process of identifying, assessing and reporting environmental impacts associated with an activity and includes basic assessment and Scoping and Environmental Impact Reporting.

Environmental Management Programme

A plan or programme put into place that describes how activities that could have adverse effects on the environment, will be monitored, mitigated or controlled, with the aim of preventing long term environmental degradation.

Heritage resource

Any place or object of cultural significance. This may include any resource which has aesthetic, architectural, historical, scientific, social, spiritual, linguistic or technological value.

Independent

This term is used in relation to an Environmental Assessment Practitioner, person compiling a specialist report, or member of an appeal panel, and means that this person has no business, financial, personal or other interest in the activity, application or appeal that they have been appointed to assess.

Interested and affected parties

Any person, groups of persons, or organisation interested in or affected by an activity and any organ of state that may have jurisdiction over any aspect of the activity.

Linear activity

An activity that is undertaken across one or more properties and which affects the environment along the course of the activity in different ways. It may include railways, roads, funiculars, pipelines, conveyor belts, cableways, powerlines, fences, runways, aircraft landing strips, and telecommunication lines.

Living heritage

The intangible aspects of inherited culture, and may include cultural tradition; oral history; performance; ritual; popular memory; skills and techniques; indigenous knowledge systems; and the holistic approach to nature, society and social relationships.

Local government

The local, district and metropolitan municipalities in South Africa.

Mitigation

The implementation of practical measures to reduce adverse impacts or enhance beneficial impacts of an activity.

Palaeontology

The study of fossils including fossilised remains and fossil trace of plants and animals which lived in the geological past.

Public participation process

A process in which the public, including interested and affected parties, are given an opportunity to comment on, or raise issues or specific matters relevant to a proposed activity or project.

Scoping and Environmental Impact Reporting

The process detailed in Regulation 26 to Regulation 35 which requires evaluating the possible environmental impacts of a proposed development prior to decision-making. The S&EIR process must be undertaken for any activity listed on Listing Notice 2. These activities are typically large scale or significant polluting activities and consequently the full range of potential impacts must be established through a scoping exercise prior to the project being assessed.

Significant impact

An impact that by its magnitude, duration, intensity or probability of occurrence may have a notable effect on one or more aspects of the environment.

Social Infrastructure

Infrastructure that is developed at a household or community scale, is intended for the delivery of basic services and which has a direct and/or indirect impact on the quality of life.

Specific Environmental Management Acts

Acts that have been promulgated to deal with specific mediums of the environment. They include the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003), the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004), the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004), the National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008) and the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008).

Stakeholders

A subgroup of the public whose interests may be positively or negatively affected by a proposal or activity and/or who are concerned with a proposal or activity and its consequences. The term includes the applicant, authorities (both the competent authority and other authorities) and all interested and affected parties.

Sustainable development

The integration of social, economic and environmental factors into planning, implementation and decision-making so as to ensure that development serves present and future generations.

Trigger activities

An activity that is listed on Listing Notices 1, 2 or 3 of the EIA Regulations which will require that a Basic Assessment or Scoping and Environmental impact Reporting process is undertaken.

Acronyms

AEL	Atmospheric Emission Licence
BA	Basic Assessment
BID	Background Information Document
CA	Competent Authority
DEA	Department of Environmental Affairs
DFA	Development Facilitation Act, 1995 (Act No. 67 of 1995)
EA	Environmental Authorisation
EAP	Environmental Assessment Practitioner
EAPASA	Environmental Assessment Practitioners Association of South Africa
ECO	Environmental Control Officer
EIA	Environmental Impact Assessment
EIAMS	Environmental Impact Assessment Management Strategy
EIR	Environmental Impact Assessment Report
EMF	Environmental Management Framework
EMPR	Environmental Management Programme
I&APs	Interested and Affected Parties
ICMA	Integrated Coastal Management, 2008 (Act No. 26 of 2008)
IDP	Integrated Development Plan
MPRDA	Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002)
IEM	Integrated Environmental Management
NEMA	National Environmental Management Act, 1998 (Act No. 107 of 1998)
NEM:BA	National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004)
NEM:PAA	National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003)
NEM:WA	National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008)
NHRA	National Heritage Resources Act, 1999 (Act No. 25 of 1999)
NWA	National Water Act, 1998 (Act No. 36 of 1998)
PAIA	Promotion of Access to Information Act, 2000 (Act No. 2 of 2000)
PAJA	Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000)
PPP	Public Participation Process
PHRA	Provincial Heritage Resources Authority
S&EIR	Scoping and Environmental Impact Reporting
SAAQIS	South African Air Quality Information System
SAMRAD	South African Mineral Resources Administration System
SDF	Spatial Development Framework
SEMA	Specific Environmental Management Act
SI	Social Infrastructure
SAHRA	South African Heritage Resources Agency
TOPS	Threatened or Protected Species
WUL	Water Use Licence
WML	Waste Management Licence