

A Snapshot of the Public Participation Process in Environmental Impact Assessment

The purpose of Environmental Impact Assessments (EIAs) is not merely to assess the impact of a development on the environment. EIA also facilitates improved decision making by the competent authority, tasked with either granting or refusing an environmental authorisation for a development to proceed. The EIA Regulations promulgated under section 24 of the National Environmental Management Act 107 of 1998 (NEMA),¹ sets out the minimum requirements regarding public participation by interested and affected parties (I&APs). In terms of the new regime, the public participation process is one of the first steps in an application process, not only facilitating the provision of just administrative action by an organ of state but also allowing the applicant of the environmental authorisation to take advantage of the information that I&APs may contribute concerning local knowledge, impacts and alternatives of the proposed development.

Notice must be given to all I&APs of any project which has been listed as an "identified activity" in terms of section 24(2)(a) and (d) of NEMA, which may not commence without an environmental authorisation from the competent authority. An investigation and assessment of potential impacts must be undertaken and communicated to I&APs, including:

- The owners or occupiers of land adjacent to the site where the activity is or is to be undertaken or to any alternative site;
- The owners and occupiers of land within 100 meters of the boundary of the site or alternative site who are or may be directly affected by the activity;
- The municipal councillor of the ward in which the site or alternative site is situated and any organisation of ratepayers that represents the community in the area;
- The municipality which has jurisdiction in the area, and any organ of state having jurisdiction in respect of any aspect of the activity.

The new EIA Regulations impose additional obligations on the person conducting a public participation process in that advertisements must be placed in a provincial or national newspaper if the activity will have an impact that extends beyond the boundaries of the metropolitan area in which it will be undertaken. A register of I&APs must be maintained and the names and addresses of all persons who have submitted written comments or attended meetings with the applicant or environmental assessment practitioner (EAP) or have requested in

¹ These Regulations were published in GNR 385, 386 and 387 in *GG 28753* dated 21 April 2006 and came into force on 3 July 2006, replacing the EIA Regulations made under the Environment Conservation Act 73 of 1989 (ECA).

writing that their names be placed on the register after the public participation process is completed, must be included. The names and addresses of all organs of state which have jurisdiction over the proposed development must also be reflected.

Importantly, I&APs are entitled to comment in writing on all written submissions made to the competent authority provided that comments are submitted within the approved timeframes. I&APs must now disclose any direct business, financial, personal or other interests in the proposed development, whereas this was not previously the case. In terms of the new Regulations, I&APs do not only accrue rights but the additional requirement of disclosure also confers responsibilities on I&APs, which should contribute to more accountable public participation.

The need to place limits on the period provided for the receipt of inputs by I&APs was highlighted in the recently decided case of *Muckleneuk/Lukasrand Property Owners and Residents Association (MLPORA) v the MEC: Department of Agriculture, Conservation and Environment, Gauteng Provincial Government and others*.² MLPORA, dissatisfied with the MEC's decision to dismiss its appeal against the Record of Decision for the Gautrain Project, took the matter on review arguing *inter alia* that the public participation process should have been extended beyond the investigative stage into the adjudicative phase. The Court ruled that the Regulations do not provide for unlimited time to make submissions. The judgment indicated that MLPORA were only entitled to provide inputs and comments in the investigative phase during the EIA process. Thereafter the independent consultant should collate the information and views of I&APs and submit the final Environmental Impact Report to the competent authority for decision-making (the adjudicative phase). Further comments from I&APs should not be entertained in the adjudicative stage. It is submitted that this principle is equally applicable to the new EIA regime.

In terms of the new EIA Regulations, affected I&APs who wish to lodge an appeal must now give notice of intention to appeal to the Minister or MEC within 10 days after they have received notification of the outcome of the decision and must submit appeals to the relevant department within 30 days of the lodging of the notice of intention to appeal. The respondent in the appeal proceeding may then submit a responding statement within 30 days from the date the appeal submission was first made available for inspection. Should the respondent introduce any new information not dealt with in the appeal submission of the appellant, the appellant is entitled to submit an answering statement within 30 days. Once the final decision has been made by the Minister or MEC, both the appellant and respondent must be notified of the decision. Reasons for the

² Decision of the Full Bench of the TPD, Case no. 28192/04, handed down on 30 August 2006.

appeal decision in writing need only be furnished to any affected party on written request.

It is clear that both I&APs and applicants will need to scrutinize the provisions of the new EIA Regulations carefully since the provisions are far more detailed and complex than the previous regulations under the ECA.

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