

CHAPTER FOUR: ENVIRONMENTAL IMPACT ASSESSMENT PROCESS AND PUBLIC PARTICIPATION

4.1 INTRODUCTION

The following chapter of the report provides an overview of the EIA process for the proposed development with particular attention to the steps in the Scoping Process and public participation component of the EIA.

4.2 LEGAL CONTEXT FOR THIS EIA

Section 24(1) of NEMA provides as follows:

"In order to give effect to the general objectives of integrated environmental management laid down in this Chapter, the potential impact of the environment of listed activities must be considered, investigated, assessed and reported on to the competent authority charged by this Act with granting the relevant environmental authorization."

The reference to "listed activities" in section 24 of NEMAA relates to the NEMA EIA regulations, 2010 as amended, and published in Government Notice R 543, 544, 545 and 546 on the 18 June 2010 in Government Gazette 33306, which requires either Basic Assessment, or full Scoping and Environmental Impact Assessment is undertaken prior to commencement of any activities on site. The project requires a full Scoping and Environmental Impact Assessment in order to obtain Environmental Authorization for activities listed in GN R 544, 545 and 546, for which the decision-making authority is the Provincial Department of Economic Development, Environmental Affairs and Tourism (DEDEAT).

All the activities that require environmental authorization are specifically referred to in the application form prepared and submitted to the Department of Economic Development, Environmental Affairs and Tourism (DEDEAT) on the 7 February 2012, attached as Appendix B of this report. Acknowledgement of receipt of the application dated 28 March 2012 was received and project reference number ECm1/LN2/M/12-22 was assigned to this application (included in Appendix B of this report). The following table indicates the listed activities as contained in the application.

Table 4.1 Listed activities according to GN R 545 in terms of the NEMA EIA regulation, 2010

Listing Notice 2: Full Scoping and EIA	
Activity Number	Project Component
15. <i>The physical alteration of undeveloped, vacant or derelict land for residential, retail, commercial, recreational, industrial or institutional use where the total area to be transformed is 20 hectares or more.</i>	The applicant intends to transform approximately 20 hectares of undeveloped land for residential use.

Table 4.2 Listed activities according to GN R 544 in terms of the NEMA EIA regulation, 2010

Listing Notice 1: Basic Assessment	
Activity Number	Project Component
11. <i>The construction of:</i> (iv) <i>infrastructure or structures covering 50 square</i>	Based on aerial imagery for the site, the proposed development does not require construction in or near

<i>metres or more where such construction occurs within a watercourse or within 32 metres of a watercourse, measured from the edge of a watercourse, excluding where such construction will occur behind the development setback line.</i>	any watercourses. However the potential presence and location of such features on the site will be confirmed during the EIA process.
<i>18. The infilling or depositing of any material of more than 5 cubic metres into, or the dredging, excavation, removal or moving of soil, sand, shells, shell grit, pebbles or rock of more than 5 cubic metres from: (i) a watercourse;</i>	Based on aerial imagery for the site, the proposed development does not require construction in or near any watercourses. However the potential presence and location of such features on the site will be confirmed during the EIA process.

Table 4.3 Listed activities according to GN R 546 in terms of the NEMA EIA regulation, 2010

Listing Notice 3: Basic Assessment	
Activity Number	Project Component
<i>14. The clearance of an area of 5 hectares or more of vegetation where 75% or more of the vegetative cover constitutes indigenous vegetation, ... (a) In Eastern Cape...: i. All areas outside urban areas.</i>	The vegetation proposed for clearing will exceed 5 ha and is predominantly indigenous as defined in the Regulations. The site is located outside an urban area.

A precautionary approach has been followed in completing the above table of Listed Activities, in that if there is any doubt at this stage of the project planning whether or not an activity is included in the project design, then the activity is listed. This list may be refined during the course of the EIA.

The EIA process is a planning, design and decision making tool which needs to show the responsible authority, DEDEAT, and the project proponent, Billy Enslin, what the consequences of their choices will be in biophysical, social and economic terms. As such it identifies potential impacts that the project may have on the environment as well as identifying potential constraints the environment may place on the development. The EIA makes recommendations to mitigate potentially negative impacts and maximize potentially positive impacts associated with the project.

4.2.1 Legislation and Guidelines Pertinent to this EIA

The scope and content of this Draft Scoping Report has been informed by the following legislation, guidelines and information series documents:

- National Environmental Management Act (NEMA)(Act 107 of 1998) (As amended)
- National Heritage Resources Act (NHRA) (Act 25 of 1999)
- National Water Act (Act 36 of 1998)
- Municipal Systems Act (Act 32 of 2000)
- EIA Regulations published under Chapter 5 of the NEMA on 18 June 2010 (GN 544 and GN R 546 in Government Gazette 33306)
- Guidelines published in terms of the NEMA EIA Regulations, in particular:
 - Guideline 3: General Guide to Environmental Impact Regulations, 2006 (DEAT, June 2006)
 - Guideline 4: Public Participation in support of the Environmental Impact Assessment Regulations, 2006 (DEAT, May 2006)
 - Guideline 5: Assessment of alternatives and impacts in support of the Environmental Impact Assessment Regulations, 2006 (DEAT, June 2006)

- Integrated Environmental Management Information Series (Booklets 0 to 21) published by DEAT over the period 2002 to 2005.

4.3 OVERVIEW OF THE EIA PROCESS

In terms of the above a full Scoping and Environmental Impact Assessment is being undertaken as guided by the procedure described in regulations 26 to 35 of the 2010 EIA regulations promulgated in terms of Section 24(5) of the Act. The main stages in the EIA process and the estimated schedule are provided in the table below.

Table 4.4 Proposed EIA Schedule

Activity	Date
Submit notification to Authorities and Application Form	March 2012
Compile Draft Scoping Report and POS for EIA	April 2012
Public Review of Draft Scoping Report	May 2012
Amend and Submit Final Scoping Report and POS for EIA	Early July 2012
Initiate specialist studies in parallel to approval for POS for EIA	July 2012
Compile Draft Environmental Assessment	September 2012
Public Review of the Draft Environmental Impact Assessment	October 2012
Compile Final EIA and EMPr and submit to Authorities	November 2012
Authority Decision making period and appeals	Early 2013

4.3.1 Principles for Scoping and Public Participation

The Scoping and EIA process is being driven by a stakeholder engagement process that will include inputs from affected organs of state, interested and affected parties (I&APs), specialists and the project proponent.

Guideline 4 on “Public Participation in support of the EIA Regulations”, published by DEAT in May 2006, states that public participation is one of the most important aspects of the environmental authorisation process. This stems from the requirement that people have a right to be informed about potential decisions that may affect them and that they must be afforded an opportunity to influence those decisions. Effective public participation also improves the ability of the competent authority to make informed decisions and results in improved decision-making as the view of all parties are considered (DEAT, 2006: pg 9).

An effective public participation process could therefore result in stakeholders working together to produce better decisions than if they had worked independently. The DEAT (2006) Guideline on Public Participation further notes that:

“The public participation process:

- Provides an opportunity for interested and affected parties (I&APs) to obtain clear, accurate and comprehensive information about the proposed activity, its alternatives or the decision and the environmental impacts thereof;
- Provides I&APs with an opportunity to indicate their viewpoints, issues and concerns regarding the activity, alternatives and /or the decision;
- Provides I&APs with the opportunity of suggesting ways of avoiding, reducing or mitigating negative impacts of an activity and for enhancing positive impacts;

- Enables the applicant to incorporate the needs, preferences and values of affected parties into the activity;
- Provides opportunities to avoid and resolve disputes and reconcile conflicting interests; and
- Enhances transparency and accountability in decision making.”

Public participation is a process and vehicle to provide sufficient and accessible information to I&APs in an objective manner to assist I&APs to identify issues of concern, to identify alternatives, to suggest opportunities to reduce potentially negative or enhance potentially positive impacts, and to verify that issues and/or inputs have been captured and addressed during the assessment process.

The NEMA EIA regulations, 2010, section 54, further notes:

- (e) using reasonable alternative methods, as agreed to by the competent authority, in those instances where a person is desiring of but unable to participate in the process due to –*
 - (i) illiteracy;*
 - (ii) disability; or*
 - (iii) any other disadvantage*

The EAP is currently not aware of participants that desire to, but are unable to participate in the process for the reasons listed. However the Ward Councillor representing the area (Cllr Knoetze) has been notified of the project in order to ensure that the local community are represented in the EIA process. While none are currently planned, one-on-one meetings with the councillor and community representatives will be held upon request.

4.4 SCOPING PROCESS

This Scoping process is planned and conducted in a manner that is intended to provide sufficient information to enable the authorities to reach a decision regarding the scope of issues to be addressed in the EIA, and in particular to convey the range of specialist studies that will be included as part of the Environmental Impact Assessment phase of the EIA, as well as the approach to these specialist studies. Within this context, the objectives of this Scoping process are to:

- Identify and inform a broad range of stakeholders about the proposed development;
- Clarify the scope and nature of the proposed activities and the alternatives being considered;
- Conduct an open, participatory and transparent approach and facilitate the inclusion of stakeholders' concerns in the decision-making process;
- Identify and document the key issues to be addressed in the forthcoming Environmental Assessment Phase of the EIA, through a process of broad-based consultation with stakeholders;
- Ensure due consideration of alternative options in regard to the proposed development, including the “No development” option.

This section provides an overview of the tasks that were undertaken in the Scoping Phase, with a particular emphasis on providing a clear record of the public participation process followed.

Task 1: I&AP identification, registration and database maintenance

Drawing on experience in the local area, an initial database of I&APs was developed for the Scoping process, this included the identification of and notification to surrounding landowners. Surrounding landowners were identified through a site visit followed up by telephonic confirmation where required, and a Windeed search. Each I&AP so identified was provided with a notification letter, a background information document, and a comment form. At the start of the EIA process the database contained **22 I&APs** which were proactively identified before the initiation of the process. On 9 March 2012 written notification of the Scoping and EIA process was sent to all I&APs on the project database via Letter 1. Included with the correspondence was a Background Information Document on the project, a Comment Form and a Locality map. Appendix F contains copies of correspondence sent to I&APs.

A 30 day comment period was allowed for I&APs to register their interest on the project database and raise issues for inclusion in the Draft Scoping Report. This period extended from 9 March to 11 April 2012.

While I&APs were encouraged to register their interest in the project from the start of the process, following the public announcements (see Step 2 below), the identification and registration of I&APs will be ongoing for the duration of the study. The following provides an overview of I&APs registered on the project database from the outset of the process:

- Local Government Departments (NMBM Infrastructure & Engineering: Water, NMBM Infrastructure & Engineering: Electricity: Municipal Manager, Environmental Office)
- Provincial Government Departments (DEDEAT, DAFF, DWA, SAHRA)
- Surrounding Landowners
- Ward Councillor, Ward 40

Appendix E of this report contains copies of the comment received from I&APs. The database has been updated to indicate interaction with I&APs and is attached as Appendix D. At the time of release of the Draft Scoping Report **23 I&APs were registered** on the project database.

It must be noted that while not required by the regulations, those I&APs identified at the outset of the Scoping Process will remain on the project database and will be kept informed of all opportunities to comment and will only be removed from the database by request. To date no I&APs have requested to be removed from the project database.

In terms of the electronic database, I&AP details will be regularly captured and automatically updated as and when information is distributed to or received from I&APs. This ongoing and up-to-date record of communication will be an important component of the public participation process to reflect the interaction with I&APs throughout the process.

Task 2: Announcement of Scoping Process and Public Participation

In order to notify and inform the public of the proposed project and invite members of the public to register as I&APs, the project and EIA process was announced as follows:

- Advertisements in one local newspaper:
 - The Herald, 9 March 2012
- Notice Board on site

- A notice board announcing the EIA process and providing the contact details for the project and EIA process was placed at the entrance to the site.
- Letter 1 to I&APs: Notice of the EIA Process
 - Letter 1 to I&APs included a Background Information Document (BID), locality map and comment form.
- Website
 - The BID and comment form for the project were placed on the following website www.publicprocess.co.za

A 30 day registration period was provided during this first step in the public participation process. Appendix C contains copies of the site notice board and newspaper advertisement placed. Appendix F contains copies of correspondence sent to I&APs.

Task 3: Authority Consultation

All public participation documentation will be sent to the decision-making authorities (Provincial DEDEAT) as well as other affected organs of state (DWA, SAHRA, NMBM, DWA, DAFF) included on the I&AP database. Input from authorities will be included in the Issues and Responses Trail for the Scoping and EIA process.

In order to initiate the EIA process, notification of the process, as well as an application form was submitted to the Department of Economic Development, Environmental Affairs and Tourism (DEDEAT) on 7 March 2012, attached as Appendix B(1) of this report. Acknowledgement of receipt of the application was received on **28 March 2012** from DEDEAT, and project reference number **ECm1/LN2/M/12-22** was assigned to this application (included in Appendix B of this report).

Task 4: Scoping and Identification of Issues

An important element of the Scoping process is to identify and evaluate issues raised during the Scoping Process for further evaluation in the environmental assessment phase of the EIA. In order to ensure a comprehensive range of issues are identified in the Scoping Process the following sources have been used for the identification of issues:

- Review of existing information
 - Regional Biodiversity Planning Documentation (STEP, ECBCP, NSBA (VegMap))
 - Technical Information provided by the applicant and project engineers
- Scoping of issues with I&APs
 - Issues and concerns raised via email and written correspondence
- Specialist site visits on 9 March 2012 to identify issues requiring further specialist assessment
- Scoping of issues with relevant authorities (DWA, DEDEAT, SAHRA, DAFF, NMBM)

An important element of the Scoping process is to evaluate the issues raised through the Scoping interactions with authorities, the public, the specialists on the EIA team and the project proponent. In accordance with the philosophy of Integrated Environmental Management, it is important to focus the EIA on the key issues.

To assist in the identification of key issues, a decision-making process is applied to the issues raised, based on the following criteria:

- Whether or not the issue falls within the scope and responsibility of this EIA

- Whether or not sufficient information is available to respond to the issue raised without further specialist investigation.

The Issues and Responses Trail below indicates the issues identified prior to the release of the Draft Scoping Report for review. Appendix E contains copies of the issues raised (via fax, email or written correspondence). In line with the criteria outlined above a response to the issue raised has been provided by the EIA team. The following provides a summary of the issues raised, the number in brackets, indicates the number of times a specific issue has been raised.

- Potential Traffic Impacts (1)

Table 4.5 Issues raised prior to the release of the Draft Scoping Report for review.

NO	ISSUES RAISED	COMMENTATOR	DATE	RESPONSE
1. Potential Traffic Impacts				
1.1	Access to provincial roads.	Marius Keyser, District Roads Engineer	22/03/2012, Faxed comment form	The opinion of a Traffic Specialist will be sought in the EIA process to address this concern.

Task 5: Review of the Draft Scoping Report (Current Stage in the Process)

At the time of the release of the DSR for review there were **23** I&APs registered on the project database. All I&APs on the database will be notified in writing via Letter 2 of the release of the Draft Scoping Report for a 30 day comment period, which will include an Executive Summary of the Draft Report as well as a comment form. A copy of the Draft Scoping Report will be placed on the project website www.publicprocess.co.za

The Draft Scoping Report has been prepared utilizing information from the following sources:

- Consultation with selected specialists
- Review of existing information
- I&AP consultation process

The following indicates the process for the distribution of information during the review period of the Draft Scoping Report:

- Report Distribution
 - It is proposed that affected organs of state are provided with a hard copy or CD version of the Draft Scoping Report
- A copy of the report will be placed on the following project website www.publicprocess.co.za
- Letter 2 to I&APs: All I&APs will be notified in writing of the 30 day comment period
- One on one meetings will be held as and when necessary with key I&APs upon request
- The Councillor for the area will be provided with a CD copy of the report.

The Draft Scoping Report includes the Plan of Study (POS) for EIA which outlines the next stage in the process and provides a Terms of Reference for specialist studies to be undertaken as part of the EIA process. The POS for EIA is subject to the approval of the authorities and may require

amendment. All issues and concerns raised by I&APs during the review of the Draft Scoping Report will be included in the Final Scoping Report.

Task 6: Final Scoping Report and Plan of Study for EIA

The Final Scoping Report, together with the Plan of Study for EIA, will be prepared for submission to the Provincial DEDEAT for their decision-making. All I&APs on the project database will be provided with written notification of the submission of the Final Scoping Report to the authorities for their decision making (Letter 3 to I&APs). Any additional comments on the Final Scoping Report are to be submitted directly to the relevant authorities, with a copy thereof sent to Public Process Consultants.

This step marks the end of the public participation process for the Scoping Phase of the EIA process. The next steps in the EIA process are outlined in Chapter Six of this report.

4.5 CONCLUDING REMARKS

Based on the comments received from I&APs it is recommended that a Traffic Specialist provide input in the EIA phase of the assessment with regards to access to Provincial Roads.