

## A BASIC GUIDE TO ENVIRONMENTAL IMPACT ASSESSMENT IN THE MAGALIESBERG BIOSPHERE

The **Magaliesberg Biosphere (MB)** consists of three zones:

The **core** zone which includes the Cradle of Humankind World Heritage Site (**COH**) as well as the Magaliesberg Protected Environment (**MPE**), both protected by legislation under the National Environmental Management : Protected Areas Act of 2003 (NEMPAA)

Some areas in the **buffer** zone are also formally protected by this Act, such as Nature Reserves.

The remainder of the **buffer** zone which surrounds or is adjacent to the core, consists mainly of informally protected areas, such as conservancies, which are managed for biodiversity and conservation through recognised agreements and partnerships.

The biosphere **transition** zone includes all other areas within the biosphere boundary.

Most developments in the MB must receive official **Environmental Authorization (EA)**, before development can commence. **EA** is awarded by the competent authority (government department) at the end of the **Environmental Impact Assessment (EIA)** process.

Under the National Environmental Management Act (NEMA) [Act 107 of 1998], the **EIA Regulations R346** regulate the **EIA** process. These regulations are amended from time to time.

An **Environmental Impact Practitioner (EAP)** is employed by the developer to apply for an **EA** and manage the **EIA** process. The EAP should be suitably qualified and experienced, and registered with the Environmental Assessment Practitioners Association of South Africa (EAPASA).

The type of activity or land-use, as well as its scale and location will determine whether an **EA** is needed, and if so, whether a **Full EIA** or a **Basic Assessment Report** process should be conducted.

**Listing notice 1** found in the EIA regulations; list the types of activities and scale of activities that would trigger a **Basic Assessment Report** process.

**Listing notice 2** found in the EIA regulations; list the types of activities and scale of activities that would trigger a **Scoping Report and EIA process**

**Listing notice 3** refers to activities in **specific locations** (often **protected areas**, such as the MB core and buffer) or areas defined as **sensitive for biodiversity/ conservation/ ecological support**, in national/provincial/ municipal spatial planning tools where a **Basic Assessment** is automatically required.

A single development may trigger a number of categories from any or all of the listing notices.

At the very least a development in the COH, MPE, or core and buffer areas of the biosphere, will trigger a **Basic Assessment**. In the biosphere transition zone, EIA will depend on the distance of the development site to the core

area, and whether other spatial plans apply to the site, such as whether the site falls within a **Critical Biodiversity Area** (see listing notice 3).

The competent authority receives all Environmental Assessment reports and is responsible for making decisions on applications and granting/refusing EA.

For all **mineral prospecting and mining Environmental Authorisations**, the competent Authority is the **Department of Mineral Resources** for the region in which the application occurs (DMR Gauteng or DMR NW region).

In addition, an **application for permission to prospect or mine in a “declared” Protected Environment**, the MPE, is a **separate process** from EA and Mining Right Applications. This application **requires the permission of two Ministers** (one for environmental affairs and the other for Mineral Resources) to allow commercial prospecting or mining activities in the MPE.

The competent authority for any development other than mining related, in a protected area (**COH, MPE, or biosphere core**) is the National Department of Environment, Forestry and Fisheries (**DAFF**).

The competent authority for development other than mining related, in the **buffer zone** that is outside of the COH or MPE in Gauteng, is the provincial authority - Department of Agriculture and Rural Development (**GDARD**).

The same applies in the **North West**, where the competent authority is the provincial authority - NW-Depart of Economic Development, Environment, Conservation & Tourism (**DEDECT**).

There may be **other statutory requirements** that may be applicable to the undertaking of an activity in conjunction with EA.

Some examples are:

- **change of land-use application** or **Township declaration** (Municipal Town Planning)
- **Water Use License Application**, National Water Act, 1998 (Act 36 of 1998). A person may only use water without a license if the water use is permissible under Schedule 1.
- **Waste License**, NEM Waste Management act (59 of 2008) and listed waste activities.

## PUBLIC PARTICIPATION PROCESS

**Chapter 6 of the EIA regulations** provide requirements and guidelines for **public participation (PP)** in the EIA process.

The public or any stakeholder is **entitled to register** as an **Interested and Affected Party (I&AP)** in all applications and **at any stage** of the process. Registration ensures that I&APs are kept abreast of all information and reports pertaining to the activity.

**I&APs are entitled to comment** on EIA and BA and WULA applications at the scoping stage, draft stage and final stage of the process. However there is a **limited time-period for comments** to be considered and included in reports. Time frames are stipulated on notices, and are **30 days** in most cases.

I&APs are permitted to comment on **applications** and **Environmental Management Plans (EMPs)** that accompany applications: on the ability of the EAP to conduct an objective process; the substance of the application, EMP and specialist reports; the suitability of the activity and its scale to the location in relation to spatial plans and development guidelines; I&APs can bring attention to any impact pertaining to the activity that the reports have not adequately considered, including **cumulative impacts**.

The **EAP and competent authority** are **required to consider** all relevant spatial planning and enviro tools used to determine landuse in relation to environmental and biodiversity features.

The competent authority may:

- Refuse or Grant EA
- Request that a basic assessment is subject to a full EIA.

The EA (Record of Decision) may be appealed, it may be withdrawn, it may be suspended or it may be amended.

If you are notified of a pending EIA application, contact the EAP and register as an I&AP, and **copy the MB in the mail**, so we can also register. The same applies if you see a notification attached to a fence or post for EIA application or town-planning notice for change of land-use, or any other statutory requirement notice.

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## APPEAL PROCESS

Within NEMA EIA regulations, any person has the right to **lodge an appeal** against the EA decision, in terms of the National Appeal regulations 2014, within 20 days from notification of the EA to the applicant or I&APs. I&APs or EAPs or applicants have opportunity to appeal the decision of the competent authority.

The outcome of an appeal decision can be challenged by a **Judicial Review**. The review process falls outside of Environmental Law and must be **lodged by an attorney**.

## UNLAWFUL ACTIVITIES AND DEVELOPMENTS

The commencement of construction, including the clearing of land, for an activity that should have been subject to EA, but has not applied the EIA process, is unlawful. The offender must submit a **rectification of unlawful commencement of activity in terms of section 24G of NEMA**, to the Minister or MEC concerned, who may issue a directive to apply an EIA process, and then make the EA decision based on it.

**If you see signs of building, or land clearing, where no notification, or public participation has taken place, it is important to find some contact information (developer, land-owner, EAP, farm portion) and send this to the competent authority, Provincial EIA officials, Municipal planning officials and the MB, who may assist to assess whether an EIA and section 24G Rectification is applicable.**