

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 conservation 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.

https://egis.environment.gov.za/protected_areas_register protected and conservation areas map

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) or areas defined as **Critical Biodiversity Areas (CBAs) or Ecological Support Areas (ESAs)** in national/provincial/municipal planning and environmental instruments, where a **Basic Assessment** is automatically required.

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

At the very least a development in the COH, MPE, (**core areas of the biosphere**) will trigger a **Basic Assessment**.

For biosphere buffer and transition zones, EIA will depend on the **proximity** of the development footprint **to the core area**, if it falls within a CBA, if **+300m² of indigenous vegetation is cleared**, if the activity footprint is within **100m of a watercourse** or triggers an activity on any of the **listing notices**.

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 & Energy** for the region in which the application occurs (DMRE 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, = biosphere core**) is the National Department of Environment, (**DFFE**).

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 Rural Development & Environment (**GDARDE**).

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

There may be **other statutory requirements** that may apply to the undertaking of an activity in conjunction with EA. These must be applied for simultaneously. 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 about the activity.

I&APs are entitled to one consultation period of **30 days for Basic Assessments, 30 days for EIA scoping phase and 30 days for EIA phase**. WULA applications allow 30 days, and usually, land planning processes allow 60 days.

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

The **EAP and competent authority** are **required to consider** all relevant environmental instruments used to guide land use in relation to environmental and biodiversity features.

The competent authority may:

- Refuse or Grant Enviro Authorisation 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 (which includes a copy of the decision), to registered 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 fine, a directive to apply an EIA process, and then make the EA decision based on it.

If you see signs of activity, land clearing, damage to water sources, where no notification, or public participation has taken place, pls find information (developer, landowner, farm portion) and **report this** to the MB /competent authority/ DWS/Municipal planning officials who can assess **whether a directive or compliance notice should be issued**.