

THE NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY

**ENVIRONMENTAL IMPACT ASSESSMENT PUBLIC
HEARINGS GUIDELINES, 1999**

Issued pursuant to the

NATIONAL ENVIRONMENT STATUTE, NO. 4 OF 1995 AND ENVIRONMENT
IMPACT ASSESSMENT REGULATIONS S.I. NO. 13 OF 1998

IN EXERCISE of the powers conferred on the Authority by sub-section (8) of section 20 of the Statute, the following guidelines shall be used in conducting public hearings on any environmental impact assessment.

Citation

1. These Guidelines may be cited as the **Environmental Impact Assessment Public Hearing Guidelines, 1999** and shall come into effect on the 1st June, 1999.

Definitions

2. In these regulations unless the context otherwise requires-

"Authority" means the National Environmental Management Authority established under Section 5 of the Statute;

"developer" has the same meaning as assigned to it under section 2 of the Statute and includes, for the purpose of these guidelines, any person who proposes to undertake a new project or to repair, extend or maintain an existing project which falls within the projects provided for in the Third Schedule to the Statute.

"Executive Director" means the Executive Director appointed under section 12 of the Statute and includes, for the purpose of these guidelines, any person who has been authorized by the Executive Director to act on his behalf or has been delegated to perform the functions of the Authority under subsection (2) of section 7 of the Statute.

"formal presentation" means a written presentation by an interested party who has registered for the public hearing;

"informal presentation" means an oral presentation by an interested party who has registered for the public hearing;

"interested party" means a person with an interest in or is affected by the subject matter of a hearing and who has registered for the public hearing;

"lead agency" means any ministry, department, parastatal agency, Local Government system or public officer in which or whom any law vests functions of control or management of any segment of the environment;

"presiding officer" means the person designated by the lead agency in consultation with the Executive Director to preside over a public hearing;

"public record" includes any correspondence, documents, submissions, transcript, exhibits, excluding confidential business information, filed with the lead agency or the Authority after an environmental impact statement is referred to the Authority;

"regulations" means the Environmental Impact Assessment Regulations S.I. No. 13 of 1998 made under the National Environment Statute, 1998;

"Statute" means the National Environment Statute, No 4 of 1995.

3 *Purpose of a public hearing*

The purpose of a public hearing under these Guidelines shall be to-

- (a) guide the conduct of the hearings in the environmental impact assessment process especially in seeking questions and answers respecting a project under review;
- (b) provide for public input in the environmental impact assessment review process and receive submissions and comments from any interested party;
- © find out the validity of the predictions made in environmental impact study; and
- (d) seek information to assist the Executive Director to arrive at a fair and just decision and promote good governance in the environmental impact assessment process.

4 *General format of public hearings*

- (1) All public hearings shall be held in public and be accessible to the public with no exclusion other than those provided under these guidelines.
- (2) All public hearing processes shall be non-judicial, informal and conducted in a non-adversarial manner.
- (3) A public hearing before a presiding officer is not required to follow the strict rules of law, procedure and evidence required by a court of law but should follow the principles of natural justice.
- (4) All public hearings before a presiding officer shall be conducted in a structured manner so as to permit a fair and just examination of all information and matters relevant for the hearing.
- (5) Any person may present his or her case to the presiding officer in the form of written submission.
- (6) In addition, any person may present his or her case in person to the presiding officer.
- (7) Any person may be represented by legal counsel at the hearing.
- (8) No frivolous and vexatious matter or presentation which may lead to abuse of the public hearing or the environmental impact assessment process shall be entertained.

5 *The Presiding Officer*

- (1) The presiding officer shall conduct a hearing in accordance with the procedure established by the Regulations and these Guidelines.
- (2) The presiding officer shall at all times be or act impartially.
- (3) The presiding officer so appointed to preside over a public hearing shall not be an employee or have direct interest in the activities of the developer, the lead agency or the Authority.
- (4) Subject to these Guidelines, prior to the public hearing, a presiding officer shall not communicate in private with anyone except to the lead agency, the Executive Director about any substantive issues under consideration for the hearing.
- (5) The lead agency and the Authority shall provide a Secretary and other person (s) to assist in the recording of the proceedings and preparation of the report.
- (6) The presiding officer may consult or ask questions from participants during the public hearing for purposes of clarity.
- (7) All inquiries concerning the public hearing process shall be directed to the Executive Director and the lead agency.
- (8) The presiding officer shall have power to order any person, who in his/her opinion, is presenting a frivolous, vexatious or abusing the due process of the hearing, to leave the meeting room or stop making a presentation.
- (9) The Executive Director shall maintain a file containing all correspondence, documents and submissions respecting a project after an environmental impact statement is referred to the Authority.
- (10) The Executive Director may, upon request, make copies of material in the file available to anyone and may require any person requesting the same to pay reasonable costs in connection with the photocopying or duplicating.

6 *Public hearing locations*

- (1) The presiding officer may hold a hearing in various locations in the country depending on the location, nature of the project and the cost involved in holding the public hearing.
- (2) The public hearing should most probably be held at a venue convenient and accessible to those persons who are most likely to be affected by the project.
- (3) Where possible, at least one session of the public hearing shall be held, if in the opinion of the presiding officer it is practical to do so, in the community located nearest to the site of the proposed project.
- (4) Where sessions of the public hearing are held in a number of locations, the presiding officer may, in order to prevent undue repetition of evidence, decide that the official transcript of evidence previously presented at a different location shall be considered part of the evidence at a subsequent location.

7 *Notice of public hearing*

- (1) All public hearings shall be advertised through radio and print media, so as to notify persons most affected by the project and other interested parties to attend or make presentations.
- (2) The form of notice of public hearing shall be prescribed by the lead agency in consultation with the Executive Director and shall include the time, place and purpose or subject of the hearing.
- (3) Unless directed otherwise by the Executive Director, the notice for a public hearing shall be issued no later than twenty one days before the hearing is to commence.
- (4) A notice of public hearing shall be published -
 - (a) once a week for two weeks in a newspaper having country-wide coverage;
 - (b) once a week for two weeks in a newspaper having general circulation in the locality where the proposed project is to be located.
 - © twice in the last week on a radio station having coverage in the district(s) most affected by the project before the hearing takes place.
- (5) The Executive Director may serve a notice of a public hearing upon any person, body or organization by ordinary mail and may invite any person, body or organization to make a presentation at the hearing.
- (6) The lead agency may post a notice of public hearing in a public building located in the district of the proposed project.
- (7) Service of any notice of public hearing given in respect of a matter before the presiding officer shall be evidenced by an affidavit filed by the lead agency setting out when and how service was effected.

8 *Pre-public hearing meetings*

- (1) The presiding officer may, arrange in advance of any public hearing a meeting (s) with the Executive Director, the lead agency, the developer and other interested parties to explain the rules of procedure for the public hearing; to identify participants, to define the issues, to estimate the length of hearing, to identify possible witnesses or experts, to finalize agendas and schedules or to discuss any other matter that the presiding officer may consider appropriate.
- (2) The meeting(s) mentioned in subsection (1) shall be held at least three days before the public hearing.
- (3) The presiding officer shall have the discretion to determine which persons shall be given notice to attend the meeting (s) mentioned in subsection (1).

9 *On site visits*

- (1) The presiding officer may, in consultation with the lead agency and the Executive Director, request one or more meetings with the developer prior to the hearing for the purpose of visiting or inspecting the project under review.
- (2) Where the site of the project under review is visited or inspected, the presiding officer shall record the visit or inspection including the date, time and identity of persons in attendance.

10 *Interested parties*

- (1) Any person with an interest in or affected by the subject matter of a hearing may contact the lead agency or the Executive Director not less than three

days before the hearing is to commence to request a time period to appear personally or by legal counsel at the hearing.

- (2) To facilitate the expeditious conduct of the public hearing, submissions to the presiding officer may be in writing where possible.
- (3) Every interested party shall be asked by the presiding officer whether that person intends to make a formal or informal presentation to the public hearing.
- (4) The presiding officer may direct that copies of any submissions be delivered to any person or persons having interest in and affected by the subject matter of the hearing and may require any person to pay reasonable costs in connection with the photocopying or duplicating the documents.

11 *Journals, studies or reports*

- (1) To facilitate the expeditious conduct of a hearing, a person wishing to submit to the presiding officer written material including journals, studies and reports shall submit copies of the same to the lead agency or the presiding officer either before or during the public hearing.
- (2) Written material described in sub-section (1) shall form part of the public record.
- (3) Where written materials are submitted in accordance with this section, any oral presentation in relation to that material shall be limited to highlighting essential features of the material and responding to questions on the material.

12 *Summonses*

- (1) A summons to a witness or a summons for production of documents or things may be issued under the signature of the Executive Director.
- (2) A summons to a witness may be in Form "A" and a summons to produce documents or things may be in Form "B" to these Guidelines.

13 *Oath/Affirmation*

- (1) The presiding officer may require any person who wishes to give evidence to do so on oath or affirmation if in his/her opinion the giving of such evidence on oath or affirmation will lead to a fair and just conduct of the proceedings of the hearing.
- (2) An oath or affirmation by a person at a hearing shall be administered by the presiding officer.

14 *Presentation by the developer*

- (1) The developer shall provide at the hearing a person or group of persons who are knowledgeable of the project and who are available to answer questions which are directed to the developer.
- (2) The presiding officer shall grant a reasonable amount of time to the developer to present highlights and to address environmental issues raised in the environmental impact assessment statement.
- (3) The presiding officer shall permit questioning of the developer by any interested party.

15 *Presentations by interested party*

- (1) An interested party who has requested to make formal presentations shall make presentations following the initial presentation by the developer.
- (2) An interested party who has requested to make informal presentations shall make them after those persons who are to make formal presentations.
- (3) Before commencing a presentation, the interested party shall provide to the hearing the name, address and affiliation, if any, of the interested party.
- (4) The presiding officer shall permit evidence to be given by a number of interested parties sitting as a group provided the presiding officer is satisfied that in the particular case the tendering of evidence in this manner will result in a just and fair hearing.
- (5) An interested party making a presentation to the presiding officer shall limit presentations to a duration of ten minutes.
- (6) Any person who wishes to use more than ten minutes is requested to give prior notice to the presiding officer who may consider the request.
- (7) The presiding officer may limit or extend the duration of a presentation at a hearing.
- (8) The presiding officer may, in consultation with the lead agency and the Executive Director permit questioning of an interested party by the developer or other persons.

16 *Written questions*

- (1) Where written questions are submitted to the lead agency or the presiding officer to be answered by the developer prior to the public hearing, the developer shall provide written answers to the same provided the questions have been submitted sufficiently in advance of the date of the public hearing.
- (2) Any written questions and written response under this section shall become part of the public record.

17 *Questions in general*

- (1) Every question at the hearing shall be directed to the presiding officer who may invite the appropriate person to respond to the question.
- (2) The presiding officer may exclude any intervention or question which, in his/her opinion of the presiding officer, is outside the terms of the presiding officer as mandated by the Regulations or is needlessly repetitive in nature.
- (3) The presiding officer may limit the questions asked and may limit persons in presenting arguments and submissions.
- (4) Questions addressed to a group of persons presented by the developer or an interested party may be directed to a specific member or the group, if available.
- (5) Where a question is directed to a specific member and that person is unable to answer due to lack of knowledge, the presiding officer may permit another member of the group to provide the answer.
- (6) If the interested party or the developer is unable to answer the question without further consultation or research, the interested party or developer shall provide an undertaking to provide an answer on or before the close of the public hearing or, if this is not possible, not later than seven days after the close of the public hearing whereupon the lead agency shall provide the response to the person who asked the question or to any other person upon request.

18 *Open forum*

- (1) After the completion of presentation, questions to the developer and of formal and informal presentations and questions by the interested parties, the presiding officer may, time permitting, allow presentations or questions from other persons in attendance at the public hearing.
- (2) Presentations or questions and responses under subsection (1) shall form part of the public record.

19 *Final response by developer*

Before the close of the public hearing, the developer shall be given an opportunity to reply to any question or matter or presentation for purposes of clarifying an issue or factual corrections which has been the subject of discussion by the interested parties.

20 *Summarising of the proceedings*

At the conclusion of the public hearing and for the benefit of the public, the presiding officer shall make an overview presentation of the issues, responses raised to those attending the public hearing without making conclusions.

21 *Transcript of hearing*

- (1) The presiding officer shall maintain a record of all testimony presented at a public hearing.
- (2) The presiding officer shall ensure that a draft copy of the transcript is made available at the head office of the Authority and to the lead agency's office.
- (3) The presiding officer shall make a final ruling on any dispute as to the contents of the transcript after which it shall become part of the public record.
- (4) Final transcripts of the public hearing shall be made available to the public within a reasonable time period and the Executive Director may require any person requesting a copy of the same to pay reasonable costs in connection with the photocopying or duplication.
- (5) Copies of the final transcript shall be available for scrutiny at the head office of the lead agency and the Authority.

22 *Written argument/submissions*

- (1) Any participant at the public hearing may within five days of the close of the hearing present written arguments and submissions through the lead agency to the presiding officer.
- (2) Copies of any written arguments or written submissions shall become part of the public record and the Executive Director shall make these available upon request and may require the payment of reasonable costs in connection with the photocopying or duplication.

23 *Adjournments/extensions*

- (1) Subject to sub-section (2), the presiding officer may in consultation with the lead agency adjourn a hearing from time to time, may reopen a hearing and may grant such extensions of time as he/she deems proper.
- (2) No hearing shall be re-opened after the report of the presiding officer has been submitted to the lead agency and the Authority.

24 *Legal counsel*

The presiding officer, after consultation with the Executive Director and the lead agency, may arrange for the attendance and assistance of legal counsel during a hearing to advise the presiding officer on any matter pertaining to the public hearing and provide liaison with the parties and their counsel.

25 *Media coverage*

- (1) Subject to these guidelines and any other terms and conditions stipulated by the presiding officer, radio and television recording of the hearings shall be permitted by the presiding officer.
- (2) After the public hearing has commenced, photographic lights, audio equipment and cameras shall be left on fixed mounts and be positioned unobstructive locations and should not be moved when the hearings is in progress.
- (3) Media personnel shall not move about while the public hearing is in progress so as to distract the hearing.
- (4) Any media interviews of participants or presiding officer shall be conducted at breaks in the public hearing or outside the hearing room in a manner that will not interfere with the hearing.
- (5) The presiding officer may disallow the video taping or recording of all or portions of the hearing if, in the opinion of the presiding officer, such coverage would inhibit specific witnesses or disrupt the hearing process.

26 *Presiding Officer's report*

- (1) After the conclusion of the public hearing, the presiding officer shall make a report containing the views presented, factual findings and recommendations in accordance with the Regulations.
- (2) The presiding officer may determine the style and format of the report to be submitted to the lead agency and the Authority.
- (3) All reports shall be dated and bear the signature of the presiding officer.
- (4) The report shall contain the names of all witnesses or other persons, bodies or organizations who have made contributions, presentations and attended to the hearings.
- (5) A bibliography shall be prepared of all documents and written materials submitted or referred to in the public hearings.
- (6) The report submitted by the presiding officer to the lead agency and the Authority remaining confidential but shall be made public after the Executive Director has made a decision in accordance with the Regulations.
- (7) Copies of the report of the presiding officer shall be made available to the public at a reasonable cost.

27 *Permanent record*

The lead agency and the Authority shall keep on record or permanent file at their head offices a copy of all documents forming part of the public record respecting a public hearing, a copy of the report of the hearing provided under the Regulations and the decision of the Executive Director.

28 *Conduct of public hearings where the lead agency is the developer*

- (1) The provisions of these Guidelines notwithstanding, where the lead agency is the developer of a project, all proceedings of the public hearing shall be conducted by the Authority.
- (2) Where sub-section (1) is applied, the Executive Director shall appoint the presiding officer and carry out the duties of the lead agency.

ISSUED UNDER THE HAND OF THE EXECUTIVE DIRECTOR

Signed

The Executive Director of the Authority
1st June, 1999

ANNEXES

Form "A"

THE NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY

ENVIRONMENTAL IMPACT ASSESSMENT PUBLIC HEARINGS GUIDELINES, 1999

Issued pursuant to the

NATIONAL ENVIRONMENT STATUTE, NO. 4 OF 1995 AND ENVIRONMENT IMPACT ASSESSMENT REGULATIONS S.I. NO. 13 OF 1998

IN THE MATTER OF A PUBLIC HEARING before the National Environment Management Authority pursuant to the provisions of the National Environment Statute, 1995 and the Environmental Impact Assessment Regulations, 1998.

SUMMONS

TO: _____

ADDRESS: _____

You are required to attend before the presiding officer of a public hearing on
on the _____ day of _____ 19____, at _____ o'clock in the fore/after noon, and so on from day to day until the matter is heard to give evidence
pertaining to:
(describe the nature of the hearing as set out in Notice of Public Hearing)

Dated at _____, this ____ day of _____, 19__

Signed _____

Executive Director
National Environment Management Authority

Form "B"

THE NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY

ENVIRONMENTAL IMPACT ASSESSMENT HEARINGS
GUIDELINES, 1999

Issued pursuant to the

NATIONAL ENVIRONMENT STATUTE, NO. 4 OF 1995 AND ENVIRONMENT
IMPACT ASSESSMENT REGULATIONS S.I. NO. 13 OF 1998

IN THE MATTER OF A PUBLIC HEARING before the National Environment Management Authority pursuant to the provisions of the National Environment Statute No 4 of 1995 and the Environmental Impact Assessment Regulations, 1998.

SUMMONS TO PRODUCE DOCUMENTS

TO: _____

ADDRESS: _____

Take notice that you are hereby required to produce and show to the presiding officer at a public hearing to be held at _____, in the District of _____, on the _____ day of _____, 19__ all books, letters and other writings and documents in your custody, possession or power containing any entry, memorandum or minute relating to the matter in question at this hearing in particular the following:
(describe the nature of the hearing as set out in Notice of Public Hearing)

Dated at _____ this _____ day of _____, 19__

Signed _____
Executive Director
National Environment Management Authority