

WESTERN CAPE POLICY ON PUBLIC PARTICIPATION

Draft 2 Version 2

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Western Cape Department of the Premier

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1. POLICY CONTEXT

1.1 Introduction

Governments around the world increasingly understand the significance of public participation in decision making processes. They appreciate the intrinsic and instrumental value of this principle in promoting and strengthening good governance and democratic ethos. The intrinsic value of public participation lies in increasing accountability and transparency, broadening the sphere in which citizens can make or influence decisions, building civic capacity and trust between government and the public. The instrumental value lies in the strengthening of the evidence base for policy making, the reduction of the implementation costs and the tapping of greater reservoirs of experience and creativity in the design and delivery of public services.¹

The Provincial Government of the Western Cape (PGWC) is committed to good governance and democratic principles. It understands that public participation is an essential ingredient for good governance in any democratic country. It believes that public participation is a means to improve 'democratic performance' i.e. the degree to which a government decision making process live up to democratic ethos. It understands that it cannot, on its own, find solutions to address the complex challenges facing the province. Thus, it believes that it can improve its 'policy performance' and the delivery thereon by working closely with citizens, communities, civil society organizations, interest groups, businesses and other stakeholders. This policy on public participation underscores the PGWC's commitment and belief.

1.2 Legal context

This policy signals the provincial government's intention to not only fulfil its constitutional obligation to facilitate public participation in its decision making processes, but to exceed it.

¹ OECD, "*Mind the Gap: Fostering open and inclusive policy making: An issue paper*", March 2008 (G)V/PGC/OPEN(2008)1

Public participation is one of the fundamental principles of our constitutional democracy. The Constitution of the Republic of South Africa, 1996 (Constitution) embraces both representative and participatory democracy. Firstly, it entrenches the right of citizens to elect (political rights in s19 of the Bill of Rights) their representatives into government (representative democracy). It also enshrines many other human rights in the Bill of Rights and imposes state obligations to facilitate participatory democracy. These include the right of access to information (s32); the right to equality (s9); right to have their dignity respected and protected (s10); the right to freedom of belief and opinion (s15); right to freedom of expression (s16); right to assembly, demonstration, picket and petition (s17); the right to education (s29) and the right to citizenship (s20).

There are various constitutional provisions mandating the provincial government to facilitate public participation. Section 195 of the Constitution sets out the values and principles governing public administration and states that “people’s needs must be responded to and the public must be encouraged to participate in policy making (s195(e)); public administration must be accountable (s195(f)) and transparency must be fostered by providing the public with timely, accessible and accurate information (s195(g)).” In addition, there are pieces of legislation requiring provincial departments to engage with the public and consult with interest groups and stakeholders on specific sectoral matters. See Annexure One – the comprehensive list of all legislatively required public participation performed by the PGWC.

The Constitutional Court has also reaffirmed that public participation is a cornerstone of our constitutional democracy. In giving meaning to the obligation to facilitate public participation (albeit in the context of the similar parliamentary obligation), the Court developed the minimum standard of reasonableness on public involvement. The Court ruled, in the main, that this obligation requires public engagements to be meaningful.² It said that the government **must go beyond formalistic compliance** with the requirement to engage the public to substantive compliance. The government must take reasonable steps not only have engagements but must make sure that the engagements are genuine and meaningful. It also stated the nature and importance of the decision will determine the need

² *Port Elizabeth Municipality v Various Occupiers* 2005 (1) SA 217 (CC), 2004 (12) BCLR 1268 (CC) (‘PE Municipality’); *Occupiers of 51 Olivia Road, Berea Township and 197 Main Street, Johannesburg v City of Johannesburg* 2008 (3) SA 208 (CC), 2008 (5) BCLR 475 (CC) (‘Olivia Road’); *Residents of Joe Slovo Community, Western Cape v Thubelisha Homes* [2009] ZACC 16, 2009 (9) BCLR 847 (CC) (‘Joe Slovo’).

for engagements. If the decision or policy has important and far-reaching consequences, the government must invest in facilitating public participation.

1.3 Current state of public participation in the Western Cape

The province does not have a comprehensive policy framework on public participation. However, it has various legislative and policy mechanisms governing the interface between the provincial government and the public and other constituencies as well as the other spheres of government. Certain provincial departments are required by certain sector specific laws to consult interest groups or engage the public on specific matters.

The Provincial Development Council (PDC) was originally developed to provide business, civil society and labour with a platform to participate in government policy making. A recent review of the PDC took the decision to dissolve the PDC.

The provincial government does undertake regular fora, all of which constitute a generic form of public participation: local government sphere by means of the Premier's Coordinating Forum and the Premier's Metro Coordinating Forum (with the City of Cape Town), both of which were established in terms of the Intergovernmental Relations Framework Act, and the public in general by means of the Premier's Heart FM radio show.

In the recent past, the provincial government engaged the public through izimbizos. However, these have been discontinued, except when the provincial government is invited to cooperate on a national government event in the province.

The various Departments existing public participation efforts are outlined, in detail, in Annexure One.

1.4 Challenges

The first challenge is that all of these efforts are piecemeal. They result in random and uncoordinated engagements with the public and constituencies because they are derived from separate legislative and policy mandates or, indeed, from ad-hoc management decisions.

Secondly, there is no integration and readily available comprehensive information on how effective, efficient and responsive the provincial government is to the public.

Therefore, through this policy, the provincial government will introduce a coordinated, managed and evaluated approach to achieving meaningful public participation and consultation (whilst continuing with the levels of consultation and public participation required by specific national legislation).

1.5 Definitions

In terms of this policy:

Public participation is an open, accountable and inclusive process through which individual citizens, community and interest groups, and other stakeholders can exchange views, make or influence the decisions that affect their lives.

The **Public must** include: individual citizens, community groups, stakeholders and interest groups.

Community groups are people defined by common ties or interests such as geographic boundaries, language, ethnicity, age, gender, sexuality or disability etc

Stakeholders and interest groups are people or organisations that will be affected by the outcome of the decision

2. POLICY FRAMEWORK

2.1 Purpose

The main purpose of the policy is to provide for **opportunities** for meaningful public participation and engagement to improve provincial laws, policies and service delivery in the province.

2.2 Scope and application

The policy develops the standards and sets out the ways and means of how that objective will be achieved. These norms and standards will be applied on a case by case basis when the provincial government engages with the public and constituencies on developing provincial legislation, policy and strategy, and implementing, monitoring and evaluating policies and projects as well as when evaluating the quality of the delivery of services.

This policy will however not apply to public participation processes where national (sectoral) legislation prescribes the norms and standards to be used for those processes. Where these legislated norms and standards do not exist and where they are below those set by this policy, the provincial government may apply this policy to effectively and efficiently execute sectorally legislated public participation.

2.3 Principles

The provincial government subscribes to the "Values for the Practice of Public Participation", developed by the International Association for Public Participation:

- Public participation is based on the belief that those who are affected by a decision have a right to be involved in the decision-making process.
- Public participation includes the promise that the public's contribution will influence the decision.
- Public participation promotes sustainable decisions by recognizing and communicating the needs and interests of all participants, including decision makers.
- Public participation seeks out and facilitates the involvement of those potentially affected by or interested in a decision.

- Public participation seeks input from participants in designing how they participate.
- Public participation provides participants with the information they need to participate in a meaningful way.
- Public participation communicates to participants how their input affected the decision.

2.4 Policy standards

This policy develops a set of three norms and standards - the relevant one in each specific case must be adhered to by the provincial government in that particular engagement with the public:

- a) Public Participation - the gold standard
- b) Consultation - the silver standard
- c) Informing and sharing - the bronze standard

Annexure One prescribes the relevant standard for each legislatively required public participation activity performed by the PGWC and denotes any required exceptions to the policy standards.

These are discussed in detail below.

2.4.1 Public Participation - the gold standard

The gold standard is applicable when the provincial government engages the public on the strategic objectives of the provincial government.

- a) *The relevant people or groups must be informed of the process:* The provincial government should ensure sufficient communication is employed and information provided so that all relevant people or groups know and understand that they can participate in the process.
- b) *Participants must be given the choice and opportunity to take part in the process:* The provincial government should do everything in its power and within available

resources to ensure that the relevant people or groups can engage in the process if they choose to do so.

- c) *The process of participation must be engaging and meaningful.* The provincial government will provide the necessary procedures to ensure that the engagement is not a tick-box exercise but that the engagement is value for money and invaluable for both the provincial government and the public. It will ensure that public's contribution is properly considered so as to influence the final decision or outcome.
- d) *Feedback must be given to the participants afterwards:* Once the provincial government has made a decision incorporating the public's contribution, it will go back to the public to give feedback on the decision taken and whether or not the contribution was used.

2.4.2 The silver standard – consulting the public and selected groups

The silver standard is the required minimum standard for legislation and key statutory processes and other major projects and initiatives. This standard is less extensive but still seeks to engage with the public to elicit their views. However feedback will not explicitly be provided.

- a) *The relevant people or groups must be informed of the process:* The provincial government should ensure sufficient communication is employed and information provided so that all relevant people or groups know and understand that they can participate in the process.
- b) *Participants must be given the choice and opportunity to take part in the process:* The provincial government should do everything in its power and within available resources to ensure that the relevant people or groups can engage in the process if they choose to do so.
- c) *The process of participation must be engaging and meaningful:* The provincial government will provide the necessary procedures to ensure that the public's contribution is properly considered so as to influence the final decision or outcome.
- d) *Feedback will not be given to the participants afterwards.*

2.4.3 The bronze standard – information sharing

The bronze standard is the minimum standard for required for any statutory processes or public engagements. This standard has been reduced to only provide the public with information pertaining to proposed provincial actions.

- a) *The relevant people or groups must be informed of the process:* The provincial government should ensure sufficient communication is employed and information provided so that all relevant people or groups know and understand that they can participate in the process.
- b) *Participants must be given the choice and opportunity to take part in the process:* The provincial government should do everything in its power and within available resources to ensure that the relevant people or groups can engage in the process if they choose to do so.

3. POLICY INTERVENTIONS

The provincial government will apply creative and appropriate techniques in a given case to facilitate meaningful engagement.

3.1 Techniques and methods for the implementation of the policy standards (the set of three norms and standards)

The Public Participation team, in consultation with the relevant Department, will prescribe at least one intervention (and appropriate frequency of that intervention if necessary) per step from the following menu:

(As the bronze and silver policy standards are sub-sets of the gold standard, the appropriate techniques in each step listed below are also applicable to the relevant policy standard)

Step 1: The relevant people or groups must be informed of the process:

- Commercial radio advertising
- Community radio advertising
- Television advertising

- Provincial newspaper advertising
- Cape Gateway portal
- Local newspaper advertising
- Email database invitations
- Cellphone database text messages (sms)
- Posters & bulletin boards
- Brochures & pamphlets
- Loud hailers
- Social media (facebook, twitter, etc.)

Step 2: *Participants must be given the opportunity to take part in the process:*

- Community Meetings
- Public Meetings
- Market / shopping centre gatherings
- Taxi rank / station gatherings
- Exhibitions & Roadshows
- Focus Groups
- Forums
- Panel discussions
- Interviews
- Industrial theatre
- Radio shows
- Mystery Shopping
- Polls & Ballots
- Surveys – telephonic, door-to-door, text message & online
- Workshops

Also, certain logistical assistance should be considered:

- Organizing transport for people to be at venues
- Organising meetings at appropriate times
- Providing toll-free sms and phone lines

Step 3: *The process of participation must be engaging and meaningful:*

- The process must be listening and recording orientated

Step 4: *Feedback must be given to the participants afterwards or at a later date:*

- Personal letters or emails
- Commercial radio advertising
- Community radio advertising
- Television advertising
- Provincial newspaper advertising
- Cape Gateway portal
- Local newspaper advertising
- Email database invitations
- Cellphone database text messages (sms)
- Posters & bulletin boards
- Brochures & pamphlets
- Loud hailers
- Social media (facebook, twitter, etc.)
- Community Meetings
- Public Meetings
- Market / shopping centre gatherings
- Taxi rank / station gatherings
- Exhibitions & Roadshows
- Radio shows

3.2 When initiating a project at a specific community

When a provincial department initiates a project at a particular location it will have to consult with the affected community and interested parties and give feedback on the aftermath of all engagements. The following steps must be following when initiating a project in a community

- Step 1: Conduct a situational analysis of all the affected persons and roleplayers within the specified community.
- Step 2: Integration of consultation. Provincial government should, if appropriate, partner where possible with the local and/or district authority when servicing that specific community.
- Step 3: Facilitate civil society to organise themselves and or by making use of effective existing community bodies.

- Step 4: Formulate the principles of engagement to guide instances where there may be contestation and resistance.
- Step 5: Elicit in principle approval from the community. Draw up a Memorandum of Agreement that sets out the agreed to terms and conditions with communities.

The Public Participation team, in consultation with the relevant Department, will prescribe the appropriate techniques or methods to be used for during steps 2, 3, 4 and 5 from the lists detailed in 3.1 above.

3.3 From Policy to Legislation

Policy precedes legislation. In general, policy is taken through Green Paper (draft policy) to White Paper (final policy) before a Bill is drafted. The Green Paper to White Paper process must follow the gold or silver standard above, as determined by the public participation team in consultation with the relevant Departmental heads, and the policy unit and legal services in the Department of the Premier.

The legislative process is lengthy and involves a number of procedural steps that must be followed. The Practical Guide to the Legislative Process should be consulted for the detailed processes to be followed.

4. ROLES AND RESPONSIBILITIES OF THE PROVINCIAL GOVERNMENT

A transversal Public Participation team will be created and report to the Head of Communications, branch Provincial Strategic Management .

Structure:

- Director
- 2 Deputy Directors
- 2 Assistant Directors
- 1 Personal Assistant

Budget:

- R7 500 000, 00

Responsibilities:

- Prescribing and evaluating the necessary and appropriate training for the relevant officials at the Provincial Training Academy.
- In consultation with the relevant Department, prescribing the appropriate policy standard required of every provincial government programme, plan, policy or delivery
- In consultation with the relevant Department, prescribing the appropriate intervention and appropriate frequency of that intervention per step for the prescribed policy standard
- Provide monitoring and objective qualitative and quantitative evaluation of all public participation and consultation undertaken by PGWC

While the Public Participation team will provide the necessary training, prescribe and evaluate this policy, the implementation of public participation is always the direct responsibility of each relevant department.