



Pocket guide to Environmental Impact Assessments

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Ryana Johnson



*Rhodes Restoration
Research Group*

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Introduction

People depend on benefits from nature (ecosystem services) for many things. These include fresh water, pollination, natural pest control, climate regulation and soil production. These natural resources also form the basis of biodiversity, which provides the support structure for all living organisms.

Sustainable development ideally means that people can live healthy lives that do not directly or indirectly destroy the natural environment. It is acknowledged that because people and the environment are connected, development must take account of likely impacts on the environment, and people must seek to preserve and protect natural systems, upon which they are dependent.

The purpose and limitations of this guide

This pocket guide is intended to be used as an introductory document to help familiarise you with the Environmental Impact Assessment legislation in the Eastern Cape. It is intended to be a place to start and a helpful guide to where to find more information. It is not a comprehensive document and does not contain all aspects of national, provincial and local legislation that relate to Environmental Impact Assessments.

This guide contains website addresses to current legislation (2023), but it is important to remember that legislation is constantly being updated and that one should always look for the most recent legislation on a given subject.

About the author

Ryana Johnson is an Environmental Scientist. Her work involves people who depend on natural resources for their livelihoods and finding ways to support them to do this sustainably.

Thanks to Sandy van der Waal for reviewing this guide. Sandy is a registered Environmental Assessment Practitioner who has worked in the field for 14 years.

What is an Environmental Impact Assessment (EIA)?

An EIA is the process of applying for Environmental Authorisation that examines a proposed development according to specific criteria, based on its potential impacts on the social, economic and/or ecological environment.

What is the purpose of EIA legislation?

The National Environmental Management Act (NEMA - Act 107 of 1998) intends to protect our right to a healthy and safe environment. Section 5 of NEMA contains legislation to promote sustainable human development activities that are in keeping with this right, and that are designed to minimise damage to the environment and preserve important and unique natural resources.

EIAs are unique in that they do not prescribe environmental outcomes. They require decision makers to account for environmental values in their decisions, and to justify those decisions in the light of detailed environmental studies and public comments on the potential environmental impacts. Therefore, EIAs are intended as a tool to assist us to develop sustainably, rather than a tool to impede development.

What kind of activity might require an EIA?

Dams It is likely that the construction of any dam will require authorisation from Environmental Affairs. Dams usually also trigger Water Use License Applications (WULAs).

Roads For example to a newly cleared field/grazing land area. The cleared area might be 'small' but the access road could trigger an assessment.

Houses Even for a small house, the clearing of bush and movement of soil may trigger an assessment and this is more likely if it is in close proximity to a water course. Activities on a riverside plot fall within the riparian zone, and will likely trigger an assessment.

Clearing land Land clearing is not just a bulldozer making a field. Cumulative clearing of a pipeline from one house to another might trigger an assessment, or clearing for a power line, general earthworks, or an embankment or retention wall.

Renovations Secondary infrastructure may trigger an EIA, as well as landscaping or transporting material on a new road. Treehouses, conservancy tanks or soak-aways of more than 5 cubic meters in proximity to a watercourse will require an assessment.

Riverside/seaside activities These include putting up a fixed or floating jetty on a river or seaside plot.

Tourism Modifications to properties for the purpose of accommodating people may also trigger an assessment.

Who may conduct an EIA?

Legally, only a registered Environmental Assessment Practitioner (EAP) may conduct an EIA. EAPs must be registered with the Environmental Assessment Practitioners Association of South Africa (EAPASA). The EAPASA website (www.eapasa.org) has a list of currently registered EAPs which you can consult to confirm their registration.

What is the process?

1. The first step in the EIA is to describe the proposed activity and establish if any proposed activities are listed in any of the NEMA Listing Notice/s, and what kind of assessment the activity triggers. It is recommended that you consult a registered EAP to assist with this step.

The Listing Notices comprise activities for which an Environmental Approval (EA) must be obtained.

- **Listing Notice 1** sets out activities of smaller scales and impacts with more limited probable reach, and prescribes a basic assessment process (see below).
 - **Listing Notice 2** contains larger scale activities with wider reach, which require that a scoping process and an environmental impact assessment process (see below) be undertaken.
 - **Listing Notice 3** sets out activities relating to geographical areas, and provides for the basic assessment process where an activity falls within a geographically sensitive area (such as a development within a protected area).
2. If the activity does not trigger any of the Listing Notices, then the activity proceeds in accordance with all other relevant laws.
 3. If any of the Listing Notices is triggered, then a registered EAP must begin the relevant application process.

The Listing Notices are freely available online (<https://www.gov.za/document>). You can also contact the competent authority directly, and they will be able to provide information about what authorisation you will require.

Role players in the EIA process

A simple project may involve only a few role players, or a project may be very complex and require input from a wide variety of people and organisations. The EIA process will involve:

- The development team (proponent, contractor, land owner, shareholders)
- The EIA team (EAP, specialists)
- The stakeholders (organs of state, local municipality, relevant government departments such as transport, health, heritage resources, etc.)
- Interested and affected parties (neighbours, local school/s, adjacent land owners, town residents etc.)
- The NEMA competent authority (see below)

Who approves the EIA?

The competent authority means an authority with the powers to issue or refuse environmental authorisation. Depending on the nature and the location of the proposed activity, the NEMA competent authority can be:

- the Minister of the National Department of Forestry, Fisheries and the Environment,
- an MEC of the relevant environmental authority in the province (in the Eastern Cape this is the Department of Economic Development, Environmental Affairs and Tourism - DEDEAT)

Basic Assessments (BAs)

For projects in Listing notices 1 and 3, the BA process is required. The EAP begins by submitting an application to the relevant competent authority and notifying the relevant government departments and interested and affected parties (I& APs).

The Basic Assessment process includes:

- Consideration of potential environmental impacts of a proposed activity
- Decision on which specialist studies to include (heritage impact studies, geotechnical studies or social impact studies, for example)
- An assessment of possible mitigation measures
- Public notice and participation

The EAP prepares a Basic Assessment Report and gives all registered interested and affected parties an opportunity to comment on the report before submitting it to the competent authority. The assessment of impacts and specification of mitigation measures will be included in the report. This gives the competent authority information to use in their decision making process.

The competent authority will then

- approve the application with conditions
- refuse the application with reasons

Scoping and EIA

These processes are conducted together, and are required for development activities in Listing Notice 2.

Scoping

The scoping process identifies relevant policies, legislation and issues that are likely to be of most importance during the EIA, and eliminates those that are of little concern. Scoping ensures that EIA studies are focused on the significant impacts and risks, and that time and money are not wasted on unnecessary investigations.

Scoping is completed when the detailed terms of reference for the EIA have been specified and a detailed plan of study has been developed, which is submitted with the scoping report. The scoping report describes the proposed project, the intended location and alternative locations, identifies the possible impacts of the proposed development and any specialist reports that will be necessary. Once the scoping report is approved by the competent authority, the EIA process begins.

Environmental Impact Assessment

This process provides detailed information about the environmental impacts, mitigation and closure outcomes, as well as the residual risks of the proposed activity.

The objective of the EIA process is to:

- Show how the proposed activity complies with and responds to the policy and legislative context
- Provide public notice and invite public participation
- Describe the need and desirability of the proposed activity
- Determine the nature, significance, extent, duration and probability of the environmental impacts occurring, whether positive or negative
- Describe the degree which the negative impacts can be reversed, whether they may cause irreplaceable loss of resources, and whether they can be avoided, managed and mitigated.

The final product of this process is the Environmental Impact Report. This report comprehensively examines the issues and impacts identified in the scoping report. The final report must contain an Environmental Management Plan that sets forth

the applicant/developer's proposals for managing possible impacts and risks of the project.

Environmental Management Programme/Plan

The Environmental Management Programme/Plan includes all proposed mitigation measures to reduce harmful impacts and amplify positive impacts that have been identified. It also describes monitoring actions to the identified impacts and risks. The plan is set to a timeline with specific responsibilities assigned and follow-up actions defined for specific actors in the process. The plan contains proposals for managing all impacts of the activity, through all stages from design to decommissioning.

Specialist studies

These are carried out by specialists in specific fields and are determined based on specific site characteristics. They are often commissioned on issues such as heritage, social impacts, vegetation, fresh water systems, noise impact and health. For example, a development next to a river may require an aquatic study.

Public participation in EIA processes

In terms of NEMA, public participation forms an integral part of each EIA process. The Public Participation Process (PPP) provides people who may be (or have been) affected by the development with an opportunity to comment and to raise issues of concern about the project, or to make suggestions that may result in enhanced benefits for the project. Comments and issues raised during the PPP will be captured included in an Issues and Responses Trail (IRT). The EAP is responsible for engaging with I&APs and providing details or addressing concerns. The IRT is included in the final versions of the reports, which will be submitted to the competent authority.

How much public participation a project involves is usually related to the size of the project, the number of people potentially affected and sometimes the type of project. For example, PPP for a residential building on a riverside plot in a residential suburb may involve the neighbours and the local municipality who will be responsible for oversight of building regulations and local bylaws. PPP for a proposed new dam on a river may involve local, provincial and national government departments, local residents, businesses, farmers, and interest groups from the entire river catchment area and beyond.

How long does it take?

For each part of the EIA process, NEMA specifies the amount of time required for the competent authority to receive and review the application, as well as for lodging appeals. For basic assessments, the process can take several months, and usually less than a year. For scoping and EIA processes, it can take more than a year to complete the process.

Bear in mind that environmental authorisations are valid for a specified length of time, so planning the design and construction phases of the activity alongside the timeline of the application is important.

How much does it cost and who pays for the EIA?

Costs are normally carried by the proponent of the development - that is, the individual or organisation who wants to conduct the development activity. Although this may be the owner of the property, sometimes the proponent is not the owner. For example, a mining company may make an application on land that belongs to someone else, to mine mineral resources that belong to the State.

The proponent pays for the application, but this does not mean that the application will automatically be approved in their favour. Although the proponent pays the EAP, the EAP is required to make recommendations to the competent authority on the basis of the overall merit, lawfulness and appropriateness of the proposed activity in the specific context.

The costs depend on how complex the application is and how many expert assessments as well as additional applications under other legislation are needed (see below for a list of potentially relevant legislation). An experienced EAP will be able to give you a quote upfront, which you may want to compare with other practitioners. There may be additional costs involved if new information comes to light during the process, such as the discovery of rare or threatened species, fossils, historical sites or other unexpected findings.

What happens if no EIA is conducted?

If the development would legally require an Environmental Authorisation, but goes ahead without the correct assessment and approval, the competent authority may

- issue a notice to cease the activity,
- they may issue a fine,
- and/or they may require the completion of a Section 24 G application. This involves a retrospective assessment according to the relevant Listing Notice.

Legislation which may be relevant to the EIA process

This section outlines some of the national legislation that can be relevant to EIA processes, but it is not exhaustive. Provincial and local municipal laws are also relevant. Remember that laws are sometimes amended, and you should check for these amendments when you are considering a development.

National Water Act (Act 36 of 1998)

This act is the primary legislation for the control, management and use of water resources. It contains rules about the way that the water resource (surface and ground water) is protected, used, developed, conserved, managed and controlled. Section 21 of the NWA sets out water uses that may require registration or licencing in terms of the Act. This includes the impacts on the banks and flow characteristics of a watercourse,

For example: building a dam or weir, pumping water for irrigation, or bush clearing near the river which results in increased water runoff. According to the National Water Act Section 21c and 21i, a risk assessment must be undertaken for developments within the regulated area of watercourses in order to determine the requirement for a Water Use Licence (moderate to high-risk results post mitigation) or General Authorisation (low risk post mitigation).

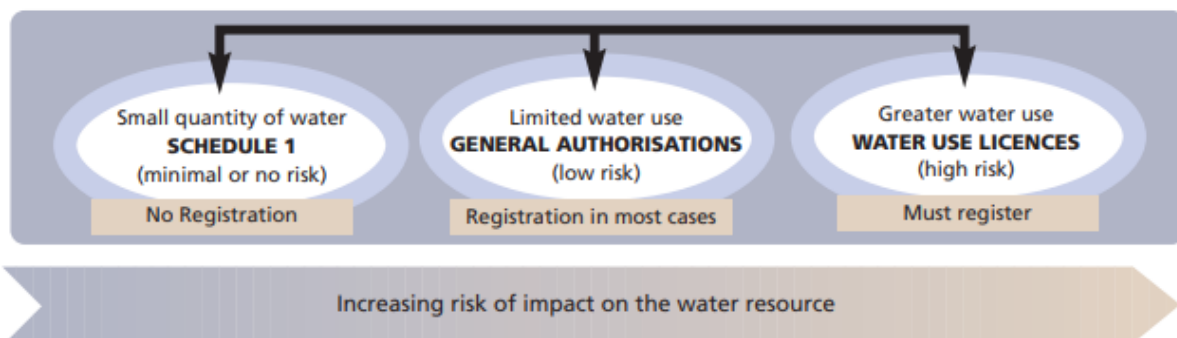


Figure 1. The 3 types of water use authorisation

Source: NWA guide

Conservation of Agricultural Resources Act (Act 43 of 1983)

This act often applies in conjunction with NEMA in the agricultural development context. This act provides for control over the utilization of the natural agricultural resources of the country. It also promotes the conservation of soil, water sources and vegetation, and directs combating of weeds and invader plants.

National Heritage Resources Act (NHRA - Act No. 25 of 1999)

The NHRA provides for the protection and management of South Africa's heritage resources. These can include graves, historic buildings, archaeological sites and others.

For example, the proponent wants to build a shopping centre in a previously agricultural area: Section 38 of the NHRA notes that 'any person who intends to undertake a

development categorized as –(c) any development or other activity which will change the character of a site—(i) exceeding 5 000 m² in extent; or(d) the re-zoning of a site exceeding 10 000 m² in extent...must at the very early stages of initiating such a development, notify the responsible heritage resources authority and furnish it with details regarding the location, nature and extent of the proposed development.'

National Environmental Management: Protected Areas Act (Act 57 of 2003).

This act provides for the protection and conservation of ecologically viable areas representative of South Africa's biological diversity and its natural landscapes and seascapes. This very broad mandate includes national provincial and municipal protected areas as well as marine protected areas. It also makes provision for intergovernmental co-operation and public consultation in matters concerning protected areas.

National Environmental Management: Waste Act (Act 59 of 2008)

Waste management is a crucial issue for environmental health. This act regulates waste management, addresses the prevention of pollution, regulates waste disposal, directs the remediation of contaminated land, and other related issues.

The National Environment Management: Air Quality Act (Act 39 of 2004)

This act regulates air quality, addresses the prevention of air pollution, and makes provision for air quality monitoring while promoting sustainable development.

The National Environmental Management: Biodiversity Act (Act 10 of 2004)

This act intends to co-ordinate the sustainable use of South African indigenous biological resources, which are a crucial part of our long term survival. This includes management and conservation of biodiversity within the NEMA framework, protection of species and ecosystems of great importance, and other matters including equitable sharing of the benefits of bio-exploration.

The Disaster Management Act (Act 57 of 2002)

With the increasing risks and events associated with human induced climate change, this act increasingly intersects with development projects. It regulates disaster prevention and risk reduction activities as well as disaster response preparedness and policy.

The National Forests Act (Act 84 of 1998)

Deforestation is a global concern. This act provides for measures to control and remedy deforestation, and regulate the use of forest resources. It also provides for protection of tree species.

The National Veld and Forest Fire Act (Act 101 of 1998)

This act pertains to prevention and management of veld and forest fires (as opposed to structural and urban fires). It also addresses the implications and liability arising from veld and forest fires. It makes provision for fire prevention, controlled burning, firebreaks, fire fighting and other issues which may intersect with NEMA.

The Mountain Catchment Areas Act (Act 63 of 1970)

This act provides for the conservation, use, management and control of land situated in mountain catchment areas. Mountain catchments influence the water provision for areas that draw their water from the catchment. These can sometimes be very large, and very far from the catchment itself.

The Spatial Planning and Land Use Management Act (Act 16 of 2013)

This broad act relates to all aspects of land use and land use planning, and informs national, provincial and local laws relating to many spatial development matters. It is a key aspect of Scoping and EIA processes as it informs the policies, norms and standards for spatial development in South Africa.

Important contact information

Environmental Assessment Practitioners Association of South Africa

www.eapasa.org

admin2@eapasa.org

012 880 2154

Unit 19, Oxford Office Park, 3 Bauhinia Street, Highveld Techno Park, Centurion

Department of Economic Development, Environmental Affairs and Tourism

www.dedea.gov.za

Head Office: 043 605 7004/043 605 7007

Block 16, Business Village, Bhisho

District office contact numbers are available on the website

Department of Forestry, Fisheries and the Environment

www.dffe.gov.za

Head Office: 086 111 2468

callcentre@environment.gov.za

Environment House, Cnr. Steve Biko and Soutpansberg Road, 473 Steve Biko, Arcadia, Pretoria

You can explore all the national laws at: <https://www.gov.za/documents>