

6. LESOTHO

6.1 Constitutional Requirement for Environmental Protection in Lesotho

The mandate on the environment is derived from Section 36 of the Constitution of Lesotho, which states that:

*Lesotho shall adopt policies designed to protect and enhance the natural and cultural environment of Lesotho for the benefit of both present and future generations and shall endeavour to assure to all its citizens a sound and safe environment adequate for their health and well-being.*⁸⁴

Lesotho showed its commitment to the process of sound environmental planning in 1989 with the formulation of a National Environmental Action Plan (NEAP). The NEAP document provides for increased awareness of environmental concerns in sectoral planning and programming. Subsequent to the NEAP, the National Action Plan (NAP) to implement Agenda 21 was launched in May 1994. The aims of the NAP were to build on the foundations of the NEAP and incorporate sectoral priorities and national plans for implementing international conventions on biodiversity, climate change and desertification.

A national vision for Lesotho has been developed through a consultative process which further confirms the increasing pre-eminence of sustainable development in the country. The consultations are based on a commitment that:

*By 2020, Lesotho shall be a stable democracy, a united, prosperous nation at peace with itself and its neighbours. It shall have a healthy and well-developed human resource base. Its economy will be strong, its environment well managed, and its technology well established.*⁸⁵

The Government of Lesotho endorses and adheres to the internationally accepted principles of the 1972 Stockholm Declaration and the 1992 Rio Declaration as adopted by the United Nations conferences. It is also signatory to the following international environmental conventions: Convention on the Protection of Fauna and Flora; Convention on Fishing and Conservation of the Living Resources of the High Seas; Convention on Climate Change, Convention on Biological Diversity, and Montreal Protocol for the Protection of the Ozone Layer (see also Table 1.1 in Chapter 1 of this handbook). Lesotho will continue to accede to other relevant internationally acceptable protocols.⁸⁶

The Government of Lesotho further endorses and adheres to regionally accepted principles contained in the Southern Africa Development Community (SADC) Policy and Strategy for Environment and Sustainable Development, and the African Ministerial Conference on Environment (AMCEN), and other similar programmes (see also Chapter 1 of this handbook).

⁸⁴ Government of the Kingdom of Lesotho (1993). *The Constitution of Lesotho*. Government Printer, Maseru, Lesotho.

⁸⁵ Government of the Kingdom of Lesotho (2001). *Report of the First National Dialogue for the Development of a National Vision for Lesotho (Vision 2020)*. Government Printer, Maseru, Lesotho.

⁸⁶ Government of the Kingdom of Lesotho (1998). *National Environmental Policy for Lesotho*, Maseru.

6.2 Institutional and Administrative Structure for EIA in Lesotho

6.2.1 The National Environmental Secretariat

The National Environmental Secretariat (NES) was created in 1994 as a direct result of the recommendation made in the 1989 National Environmental Action Plan (NEAP) to establish an institutional framework for the management of environmental issues. Initially, the NES was established under the Prime Minister's Office as the main environmental coordinating institution.⁸⁷ Subsequently, NES fell under the Ministry of Environment, Gender and Youth Affairs and then moved in 2003 to the Ministry of Tourism, Environment and Culture. At present, the NES is responsible for administering EIA.⁸⁸ Figure 6.1 shows the organisational structure within which the EIA process is currently carried out in Lesotho. However, when the 2006 Environment Bill is passed by parliament, this structure may change (see section 6.2.2 below).

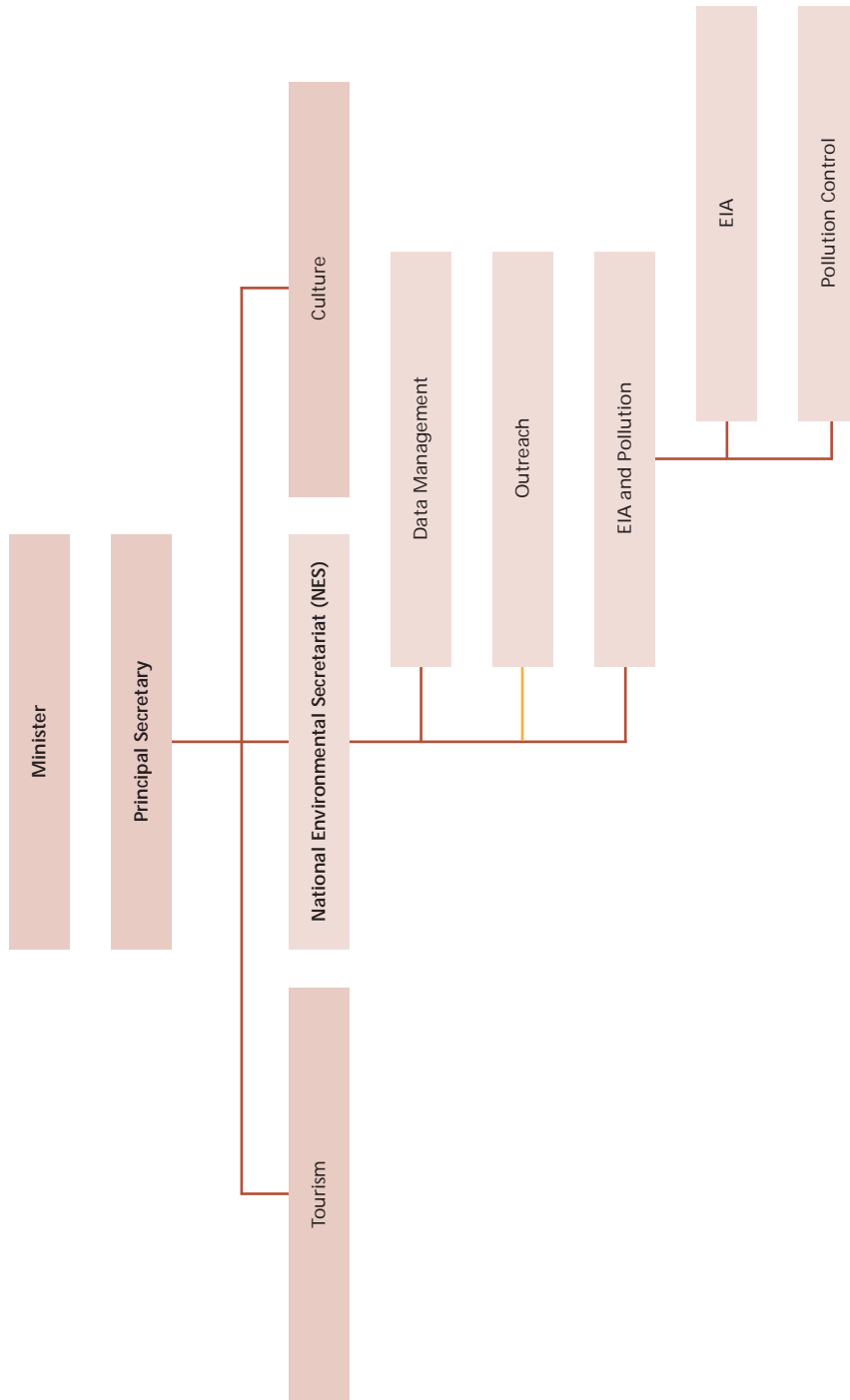
Within the government, the Ministry of Development Planning is responsible for coordinating development policy, programmes and projects for government-funded projects only. A Project Appraisal Committee, under the Ministry of Development Planning, reviews project proposals before their inclusion in the public sector investment programme. The committee's guidelines require EIAs for major projects. The government plans to institutionalise the Project Appraisal Committee so that its decisions will be enforceable by law. This would strengthen the consideration of environmental issues during project reviews.⁸⁹

⁸⁷ With the assistance of the United Nations Development Programme (UNDP).

⁸⁸ Motsamai, B, Keatimilwe, K, and Pomela, M (2003). Lesotho Chapter in '*EIA in Southern Africa*.' Southern African Institute for Environmental Assessment, Windhoek, Namibia.

⁸⁹ Op. Cit. Footnote 88.

Figure 6.1: Organisational Chart of the Ministry of Tourism, Environment and Culture



Parastatals such as the Lesotho Electricity Corporation and NGOs (e.g. the Lesotho Council for NGOs and the Lesotho Youth Federation) are also invited by NES to review projects.

6.2.2 Proposed Environmental Institutions

The Environment Bill of 2006 proposes a new institutional structure. Under the new arrangements, a National Environment Council (NEC), comprising several ministers, a wide cross-section of stakeholder representation, and chaired by the Minister responsible for the environment, will be established. The council will have responsibility for drafting environmental policy, harmonising policies, plans and activities of government departments and ensuring coordination among stakeholders engaged in environmental protection.⁹⁰ It will also have the power to review and approve environmental impact assessments.⁹¹

The Department of Environment (DoE) will be the executive arm of the council and the principal agency responsible for managing the environment. The DoE will replace the National Environmental Secretariat. While the DoE will be the sole legislated reviewer of EIAs, it may call upon a Technical Advisory Committee (TAC) to review and advise it on any environmental plans and EIAs for major projects and activities, as listed in the schedule of the Environment Bill of 2006. There are no legal provisions for decentralising or outsourcing the administration of the EIA process in Lesotho.

Provision has also been made in the Environment Bill for an Environmental Coordinating Committee (ECC), which will ensure that there is maximum cooperation and coordination among the line ministries and other organisations dealing with environmental protection and management.

Furthermore, it is envisaged that there will be a District Environmental Officer in every district tasked with promoting environmental awareness in the district and reporting on matters relating to the sustainable utilisation of natural resources.

The 2006 Environment Bill also makes provision for a tribunal that will hear appeals against decisions of the competent authority. It will have three members: a legal practitioner who shall chair the tribunal, an individual with a degree in environmental law, and a person with experience in environmental issues.

6.2.3 Roles and Responsibilities

National Environmental Secretariat

The functions of the National Environmental Secretariat (NES) are articulated in the National Environmental Policy, as follows:

⁹⁰ Other members are the Ministers of: Trade, Industry and Marketing; Agriculture; Public Works; Local Government; Development Planning; Health; Natural Resources; Forestry and Land Reclamation; Science and Technology; the Principal Secretary; Lesotho Council of Non-governmental Organisations (1); business community (1); Lesotho National Council of Women (1); a registered youth organisation (1); an environment expert (1); the Director of the NEC (who shall be Chairman).

⁹¹ Government of the Kingdom of Lesotho, 2006. Environment Bill 2006 (draft).

1. Serve as advisor to the Government of Lesotho on national environmental policies and on priorities of scientific and technological activities affecting the environment;
2. Author plans for the development and management of the environment and on the financial requirements for the implementation of such plans;
3. Serve as coordinator for all sectoral activities that affect the environment including NGOs and private organisations;
4. Promote cooperation in environmental management with similar bodies in other countries and with international bodies concerned with the protection of the environment;
5. Collect and make available through publications and other appropriate means and in cooperation with public and private organisations, basic scientific data and other information pertaining to pollution, degradation and environmental protection matters;
6. Establish such environmental criteria, guidelines, specifications or standards for the protection of the land, air, water, health and welfare of the population from environmental degradation;
7. Establish guidelines and procedures for industrial and agricultural activities in order to minimise environmental damage from such activities;
8. Establish guidelines/controls for the extraction of natural mineral resources, including sand and gravel;
9. Develop, promote, coordinate and support environmental monitoring programmes, research efforts, basic data and other environmental related data as appropriate;
10. Implement procedures for EIA;
11. Support training and technical assistance to staff and other bodies, private or public, concerning implementation of EIA, environmental criteria guidelines and standards and enforcement of the regulations and standards;
12. Maintain public education and awareness programmes to enhance public understanding of environmental management issues such as management of litter, water conservation and materials recycling;
13. Develop and promote such processes, methods, devices and materials as may be useful in carrying out the purposes and functions of the Authority. Special attention should be paid to supporting women's organisations;
14. Enhance cooperation among all tiers of government in environmental protection, planning, monitoring and enforcement;
15. Enter into contracts with public or private organisations and individuals for the purposes of executing and fulfilling functions and responsibilities of the Authority;
16. Make grants to suitable authorities and bodies with similar functions for demonstration and for such other purposes as may be determined appropriate to further the purposes and functions of the Authority;
17. Establish advisory committees or bodies composed of persons with relevant experience in the field of environmental management; and
18. Receive grants, gifts, or other property upon such terms as will enhance the functions of the Secretariat.

LESOTHO

In terms of EIA administration, the NES plays a proactive role in steering the EIA process. Its functions include:

- Meet with the developer at the conceptual stage of the project to discuss the legal and planning requirements, as well as the administrative process;
- Approve the choice of EIA consultant to be used by the developer based on qualifications and experience;
- Approve the public participation process proposed by the EIA consultant and/or developer;
- Attend any public meetings, if possible;
- Determine the need for a public hearing;
- Consider the outcome of a public hearing and reflect it in the record of decision on the project brief or ensure that all relevant issues are included in the terms of reference (ToR) for the EIA;
- Review and comment on the project brief and decide whether an EIA Licence can be issued on the strength of the project brief, or whether further information is required before a decision can be taken, or whether the study should proceed to an EIA;
- Approve the ToR for the EIA;
- Write an acknowledgement of acceptance of receipt of the EIS;
- Request additional information to supplement that found in the EIS;
- Consult with the line ministries relevant to the project and decide whether to approve the project and issue an EIA Licence or not;
- Attach terms and conditions to the EIA Licence and write a record of decision;
- Make any EIS documents available to the public;
- Conduct environmental monitoring in conjunction with the relevant line ministry; and
- Carry out environmental audits of project implementation and compliance.

Ministry Environmental Units

One of the key objectives of the National Environmental Policy (NEP) is to ensure that environmental considerations are incorporated at every level of decision-making during formulation, design, implementation and management of development programmes and projects. It also recognises that environmental problems are usually multi-dimensional, multi-disciplinary and intersectoral.

The NEP sets out several strategies to ensure that environmental issues are addressed and integrated in development planning across all relevant ministries. One such strategy is to set up environmental units (EUs) within the planning division of each ministry e.g. the departments of Rural Roads, Energy, Water Affairs, Mines and Energy, Land Survey and Physical Planning. These EUs have the following roles and responsibilities in relation to EIA:

- Identify environmental problems posed by Ministry sponsored projects;
- Ensure that remedial actions are taken;
- Prepare plans and supervise EIAs for Ministry projects;
- Assist with project review when necessary;
- Liaise with NES for the approval of the Environmental Impact Statement (EIS);
- Advise communities on particular aspects of environmental concerns within their particular sector;

- Monitor and conduct post-EIA audits of projects; and
- Participate in resource accounting and the preparation of the annual state of environment reports.

6.3 Policy and Legal Framework for EIA

6.3.1 National Environmental Policy, 1998

The overall goal of the National Environmental Policy is to achieve sustainable livelihoods and development for Lesotho. The objectives of the policy are:

1. To secure for all Basotho a high quality environment to enhance their health and well-being.
2. To raise public awareness and promote understanding of essential causal linkages between development and environment, and to ensure that environmental awareness is treated as an integral part of education at all levels.
3. To use and conserve the environment and natural resources for the benefit of present and future generations, taking into account the rate of population growth and productivity of the available resources.
4. To conserve the Basotho cultural heritage and utilise it for the benefit of the present and future generations.
5. To encourage and facilitate individual, NGO, community, religious organisations, and business community participation in environmental management.
6. To halt environmental degradation, and to restore, maintain and enhance the ecosystems and ecological processes essential for the functioning of the biosphere and to preserve biological diversity.
7. To implement the principle of optimum sustainable yield in the use of natural resources and ecosystems.
8. To foster community management and revenue sharing from sustainable utilisation of natural resources on customary and public land.
9. To put in place comprehensive environmental regulatory measures to stimulate sustainable economic and social development. Such development will be complemented by social and economic incentives to influence positive behaviour towards environment.
10. To set up comprehensive programmes of resource inventorying and accounting, complemented by regular and accurate environmental assessment, monitoring, and dissemination of information to all sectors of society.
11. To ensure that the true and total costs of environmental use and abuse are borne by the user, i.e. the "polluter pays" principle.
12. To enact and implement a land tenure policy which enhances sustainable natural resource management.
13. To empower women to play a key role in natural resource use and management activities.
14. To cooperate in good faith with other countries in the Southern Africa Development Community (SADC) region, in Africa, and with international

organisations and agencies to achieve optimal use of trans-boundary shared natural resources and effective prevention or abatement of trans-boundary environmental impacts.⁹²

This environmental policy relates directly to Lesotho's national development priorities. It focuses on the social and economic dimensions, the management and conservation of natural resources, and the promotion of community participation.

One of the key strategies to achieve the integration of environment and development into decision-making and to achieve sustainable development is to develop a system and guidelines for Environmental Impact Assessment (EIA) audits, monitoring, and evaluation so that adverse environmental impacts can be eliminated or mitigated and environmental benefits enhanced.

The guiding principles for EIA, audits and monitoring are set out in section 4.22 of the NEP:

1. EIAs are deemed necessary to ensure that public and business sector development options are environmentally sound and sustainable and that any environmental consequences are recognised early and taken into account in project designs.
2. EIAs will consider not only biophysical impacts but will also address environmental impacts in terms of existing social, economic, political and cultural conditions.
3. Environmental mitigation plans will be required for all activities where the EIA has determined a negative environmental threshold.
4. Environmental audits, including inspections, record-keeping and monitoring will be required for activities as determined by the mitigation plans or otherwise.
5. Environmental impact assessments and statements shall be made public and public comments on them invited and taken into consideration.
6. EIA procedures should be cost-effective, appropriate, reasonable and commensurate with the size, scope and relative impacts of the project or programme in question.

The strategies identified in the NEP to implement the principles set out above, include:

1. Developing guidelines and set standards for EIAs.
2. Notifying, by Government Gazette, the types and sizes of projects for which EIA may be required.
3. Requiring that any person, private or public organisation, desiring to develop a project for which an Environmental Impact Assessment may be required must submit a project brief.
4. Prescribing guidelines and regulations concerning the preparation of Environmental impact statements, audits, monitoring and evaluation.
5. Reviewing environmental impact statements and taking necessary actions to ensure that no projects proceed that may cause significant and irreparable damage to the environment.

⁹² National Environmental Policy for Lesotho, 1998.

6.3.2 Environment Act, No 15 of 2001

The Environment Act, No 15 of 2001 was never formally gazetted, but all government institutions and environmental practitioners in Lesotho have been operating within this legislation. Now there is a new Environment Bill before parliament which is similar in scope to the 2001 Act, but strengthens certain elements such as actions to be taken with regard to spills and environmental emergencies and the institutional arrangements (see section 6.2.2 above).

Until the Environment Bill, 2006 is formally gazetted, the procedural, institutional and legal structures will continue to operate under the 2001 Act as described in the following sections.

The aim of the Environment Act, No 15 of 2001 is to provide a framework environmental law for the implementation of the national environment policy. The Environment Act is founded on the following principles of environmental management, as set out in Part II, section 3(2) of the Act:

- (a) To assure every person living in Lesotho the fundamental right to a clean and healthy environment;
- (b) To ensure that sustainable development is achieved through the sound management of the environment;
- (c) To use and conserve the environment and natural resources of the Basotho Nation for the benefit of both present and future generations, taking into account the rate of population growth and the productivity of available resources;
- (d) To maintain stable and functioning relations between the living and non-living parts of the environment through preserving biological diversity and respecting the principle of optimum sustainable yields in the use of natural resources;
- (e) To reclaim lost ecosystems where possible and reverse the degradation of natural resources;
- (f) To publish data on environmental quality and natural resources;
- (g) To encourage participation by the people of Lesotho in the development of policies, plans and processes for the management of the environment;
- (h) To ensure that waste generation is minimised and safely disposed;
- (i) To prevent any interference with the climate and adverse disturbances of the atmosphere and take compensatory measures for any unavoidable interference;
- (j) To take measures to preserve the cultural heritage of the Basotho Nation for the benefit of both present and future generations;
- (k) To establish adequate environmental protection standards and monitor changes in environmental quality;
- (l) To require prior environmental impact assessment of proposed projects or activities which are likely to have adverse effects on the environment or natural resources;
- (m) To ensure that environmental awareness is treated as an integral part of education at all levels;
- (n) To ensure that the cost of environmental abuse or impairment are borne by the polluter; and

- (o) To promote cooperation with other governments and relevant national, international and regional organisations and other bodies concerned with the protection of the environment.

In addition to the principles listed above, the Act has the following parts:

Part III	Institutional Arrangements
Part IV	Environmental Planning
Part V	Environmental Impact Assessment, Audits and Monitoring
Part VI	Environmental Quality Standards
Part VII	Pollution Control
Part VIII	Environmental management
Part IX	Environmental Restoration Order
Part X	Inspection, Analysis and Record
Part XI	International Environmental Conventions
Part XII	Information, Education and Public Awareness
Part XIII	Financial Provisions
Part XIV	Environmental Tribunal
Part XV	Offences
Part XVI	Miscellaneous

Part V is the section of most relevance to EIA practice and covers the following aspects:

s. 27	Types of projects for which an EIA is required
s. 28	Submission of a project brief
s. 29	EIA studies and statements
s. 30	Review of environmental impact statements
s. 31	Environmental monitoring
s. 32	Environmental audits
s. 33	EIA licence and record of decision
s. 34	Submission of EIA report after issue of an EIA licence
s. 35	Transfer of EIA licence.

The EIA procedures to be followed are set out in detail in section 6.4 below.

6.3.3 Regulations

The EIA Regulations are still in draft form, but EIA practice in Lesotho adheres to the provisions of the Environment Act and the EIA Guidelines (see section 6.3.7 below).

No other regulations relating to, for example, noise, effluent, air quality etc. have been formulated, but provision has been made in the 2006 Bill for regulations to be made.

6.3.4 Permits and Licences

Section 33(1) of the Environment Act states that no person shall operate, execute or carry out a project or activity specified in the Schedule (see Appendix 6-1) without an *Environmental Impact Assessment Licence* issued by NES. In issuing a licence, the environmental authority must issue a Record of Decision (RoD), which should include:

- (a) The decision of the Authority;

- (b) Key factors of that decision including responses to material issues raised by any person during the environmental impact assessment process;
- (c) The date of the decision;
- (d) A copy of the environmental impact assessment licence if issued; and
- (e) Information with respect to the right of any person to seek reconsideration of the decision of the Authority and how such reconsideration may be sought (s. 33(3) of the Act).

If after an EIA Licence has been issued, there is a substantial change to the project or a significant environmental threat materialises which was not envisaged at the time of the EIA, the NES can request the developer to submit a new EIS (s. 34 of the Act).

An EIA Licence can be transferred to another party but only if it is in respect of the same project that was originally authorised (s. 35 of the Act).

Other environmental permits and licences required in terms of the Environment Act are listed in Table 6.1.

Table 6.1: Environmental Permits and Licences

Act, Regulation or Byelaw	Permit or Licence	Requirements	Implementing Agency
s. 48 of Environment Act	Effluent Licence	Licence to discharge effluent into the sewage system Validity: 1 year. Fee: as prescribed	NES
s. 52 of Environment Act	Pollution Licence	Licence to emit any gas, dust or smoke, or any other atmospheric pollutant in excess of the prescribed standards. Validity: 1 year. Fee: as prescribed	NES
s. 56 of Environment Act	Noise Permit	Permit to allow excessive emission of noise (in excess of the noise emission standards) Validity: to be specified Fees: as prescribed	NES
s. 57 of Environment Act	Ionising Radiation Licence	Licence to import, process, mine, export, possess, transport, use or dispose of radioactive materials or other sources of dangerous radiation Validity: 1 year. Fee: as prescribed	NES
s. 77 of Environment Act	Waste Licence	Licence required to own or operate a waste disposal site or plant, other than domestic waste; generate, store, handle, transport or dispose hazardous waste Validity: 1 year. Fee: as prescribed	NES
Mines and Minerals Act, 1966	Mining (or Quarrying) Licence	An EIA is a prerequisite for obtaining mining rights.	Ministry of Natural Resources
Municipal by-laws	Building Permit	Have to have fulfilled all environmental requirements and include the EIA Licence in the application for a permit	Municipalities and Ministry of Local Government

6.3.5 Penalties

Part XV of the Environment Act sets out the penalties for non-compliance with any of the provisions of the Environment Act. Section 114 sets out those penalties for non-compliance with any of the EIA provisions, as follows:

114. Any person who:

- (a) Fails to submit a project brief contrary to section 28;
- (b) Fails to prepare an environmental impact statement contrary to sections 29 and 34;
- (c) Fraudulently makes a false statement on an environmental impact statement submitted under section 29, commits an offence and is liable on conviction, to imprisonment for a period not exceeding 10 years or to a fine not exceeding M100, 000 or to both.

Where the offence has been committed by corporations and partnerships, the provisions of section 119 shall apply.

6.3.6 Fees

At present there are no prescribed fees for EIA review by NES.

6.3.7 Guidelines

The Lesotho Environmental Authority (LEA) issued draft Guidelines for Environmental Impact Assessment in Lesotho in 2002. These set out the steps to be taken in carrying out the EIA process and are summarised in section 6.4 below.

The purpose of these draft guidelines is to facilitate participation in and compliance with Lesotho's Environmental Impact Assessment requirements mainly by project developers. They are designed to help to integrate environmental concerns and economic development from the earliest stages of project development as required in both Lesotho's National Environment Policy (1998) and Environment Act 2001. They are applicable to all types of projects, whether initiated by the public sector (government ministries) or the private sector, for which EIA is or may be required.⁹³

Sectoral guidelines (specific guidelines for special types of projects or industries such as urban infrastructure, dams, roads, or mining) have been compiled to support the Lesotho Environmental Authority in their reviewing and decision-making. It is expected that, as experience with EIA grows in Lesotho, relevant changes may be made to bring them into line with evolving good practices and new or changing conditions specific to Lesotho.⁹⁴

6.3.8 Environmental Standards

The Environment Act makes provision for environmental standards to be set for water quality, air quality, waste, soil quality, noise, ionizing and other radiation, noxious smells and any other environmental parameters as the

⁹³ Government of Lesotho (2002). *Draft Guidelines for Environmental Impact Assessment in Lesotho*. Lesotho Environmental Authority, Ministry of Tourism, Culture and Environment, Maseru.

⁹⁴ Op. cit. Footnote 92.

authorities may determine in future. Currently air quality and water quality standards for industrial effluent and portable water have been drafted and are being used as working documents. They will only become law once the Environment Bill 2006 has been gazetted. The draft water quality standards are presented below in Tables 6.2 and 6.3. In the absence of local standards, developers should refer to World Health Organization, World Bank and/or donor country standards.

Table 6.2: Draft Industrial Effluent Discharge Standards, Lesotho

Determinant	Unit	Recommended Limit	Maximum Permissible Limit	Crisis Limit
Colour	mg/l Pt	20	NS	NS
Electrical conductivity	mS/m (25°C)	70	300	400
Odour	Ton	1	5	10
Oxygen dissolved	% saturation	70% min	30% min	10% min
PH	pH unit	6.0 – 9.0	5.5 – 9.5	4.0/>11.0
Taste	TTN	1	5	10
Temperature	°C	25°C max	40°C max	40°C max
Turbidity	NTU	1.0	5.0	10.0
Chloride	mg/l Cl	250	600	1200
Chlorine, free residual	mg/l Cl	0.2 – 0.5	<0.2 - <5.0	-
Ammonia	mg/l N	1.0	2.0	4.0
Calcium	mg/l Ca	150	200	400
Fluoride	mg/l F	1.0	1.5	3.0
Hardness	mg/l CaCO ₃	300 max	650 max	1300 max
Lithium	mg/l Li	2.5	5.0	10.0
Magnesium	mg/l Mg	70	100	200
Nitrate	mg/l N	6.0	10.0	20.0
Potassium	mg/l K	200	400	800
Sodium	mg/l Na	100	400	800
Aluminium	µg/l Al	150	500	1 000
Antimony	µg/l Sb	50	100	200
Arsenic	µg/l As	100	300	600
Barium	µg/l Ba	500	1000	2 000
Beryllium	µg/l Be	2	5	10
Bismuth	µg/l Bi	250	500	1 000
Boron	µg/l B	500	2 000	4 000
Bromide	µg/l Br	1 000	3 000	6 000
Cadmium	µg/l Cd	10	20	40
Cerium	µg/l Ce	1 000	2 000	4 000
Chromium	µg/l Cr	100	200	400
Cobalt	µg/l Co	250	500	1 000

LESOTHO

Determinant	Unit	Recommended Limit	Maximum Permissible Limit	Crisis Limit
Cyanide, free	µg/l CN	200	300	600
Gold	µg/l Au	2	5	10
Iodide	µg/l I	500	1000	2 000
Lead	µg/l Pb	50	100	200
Mercury	µg/l Hg	5	10	20
Molybdenum	µg/l Mo	50	100	200
Nickel	µg/l Ni	250	500	1 000
Selenium	µg/l Se	20	50	100
Silver	µg/l Ag	20	50	100
Tellurium	µg/l Te	2	5	10
Thallium	µg/l Tl	5	10	20
Tin	µg/l Sn	100	200	400
Titanium	µg/l Ti	100	5000	1 000
Tungsten	µg/l W	100	5000	1 000
Uranium	µg/l U	1000	4000	8 000
Vanadium	µg/l V	250	500	1 000

Table 6.3: Draft Potable Water Standards, Lesotho

Water Quality Constituent	Guideline for Domestic Use
Algae	0 – 5mg/l chlorophyll a
Aluminium	0 – 0.15mg/l
Coliphages	<1 per 100 ml
DOC	0 – 5mg/l C
Electrical Conductivity	0 – 70mS/m
Enteric Viruses	<1 TCID 50/10l
Faecal Coliforms	0 per 100ml
Fluoride	0 – 1.0 mg/l
Iron	0 – 0.1 mg/l
Manganese	0 – 0.05 mg/l
Mercury	0 – 0.0005 mg/l
Nitrate/Nitrite	0 – 6 mg/l N
Odour	TON = 1
pH	6.0-9.0
Protozoan Parasites	<1 Giardia cyst/10l
Total Hardness	< 100 mg/l CaCO ₃
Turbidity	0 –1 NTU

6.3.9 Certification of Consultants

In terms of Section 113(j) of the Environment Bill 2006, the Minister may make regulations to “provide for the conduct and certification of environmental practitioners.”⁹⁵ In anticipation of the Bill being enacted in 2007, NES has embarked on a consultative programme leading to the establishment of a national certification scheme for environmental assessment practitioners (EAPs). The scheme will mean that only certified EAPs will be able to undertake EIAs in Lesotho, but it is likely to be reciprocal i.e. recognising certified consultants from other countries. The date of establishment is expected to be in 2007, but depends on the enactment of the Environment Bill 2006.

In the meantime, the environmental impact study must be undertaken by experts whose names and qualifications are approved by NES. Information on the minimum requirements for lead EIA consultants is available through the NES website or can be obtained on request directly from the NES Library. The approval of the lead consultant will be based upon the ToRs for the EIS.

6.4 EIA Procedural Framework in Lesotho

The steps to be taken in the EIA process are set out in detail in the draft EIA Guidelines for EIA in Lesotho referred to above. The procedures and steps are shown in Figure 6.2 and are summarised below. Please note that the procedures may change slightly once the Environment Bill 2006 is promulgated. In the meantime, the process described below is in place.

6.4.1 Screening

A list of types of projects and activities that are subject to EIA in terms of Section 27(1) of the Environment Act, 2001 is set out in the Schedule to that Act. Hence the first step in determining whether a project or activity is subject to EIA is to consult the Schedule, attached in Appendix 6-1 of this Handbook.

[EA Sec. 33(1) & EA Sec. 28(1)]

Any person intending to initiate an activity listed in the Schedule is obliged to apply for an EIA Licence, before commencing a development or construction. It is a legal requirement to proceed with the development activity only after receipt of an EIA Licence. The first step in the application of an EIA Licence is the submission of a project brief as outlined in section 6.4.2.

Not all projects and activities that are on the Schedule⁹⁶ will require a full Environmental Impact Study (EIS). In practice, only a relatively small percentage is likely to do so. The Project Brief submitted by the developer will set the basis for classifying projects as either projects or activities not requiring a full EIS (in which case they will be authorised to proceed by issuance of an EIA Licence), or as projects or activities requiring a full EIS.

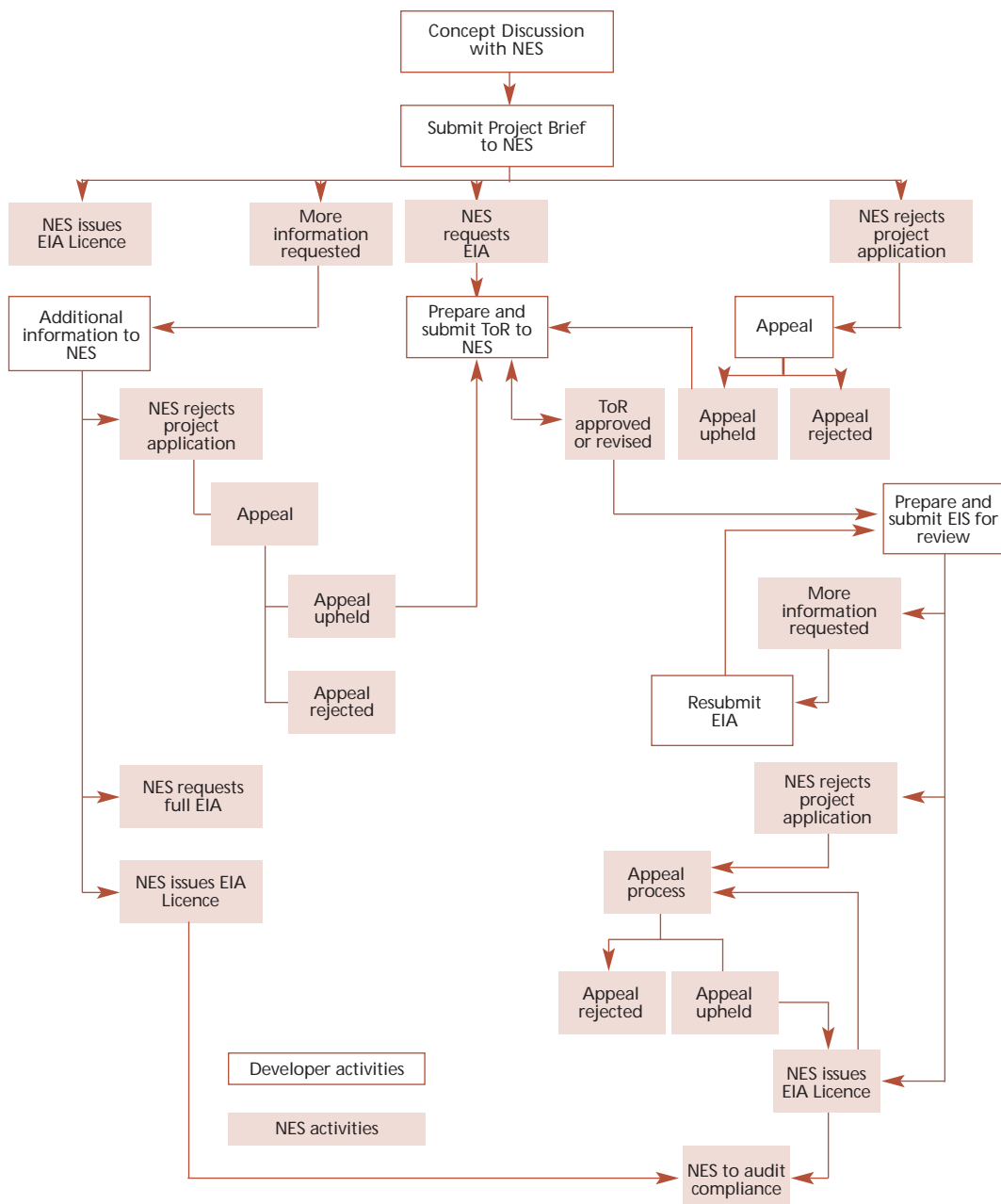
⁹⁵ Government of the Kingdom of Lesotho, 2006. Environment Bill, 2006.

⁹⁶ NOTE: This Schedule of projects and activities for which EIA licence is required may be amended from time to time by the Minister, on the recommendation of LEA, by publication in the Government Gazette.

LESOTHO

It is strongly recommended that developers should consult with the relevant line ministry or NES at the outset of project planning and design in order to ensure that the scope of the EIA investigation is commensurate with the scale, nature and location of the project. An additional benefit of holding these informal discussions is to identify all the relevant legal, policy and administrative issues pertaining to the project.

Figure 6.2: EIA Process



6.4.2 Project Brief

[EA Sec. 27(1)]

If the proposed project or activity is listed in the Schedule, an EIA Licence is applicable, and the developer must prepare a document called a Project Brief. The document must be submitted to NES so that the project or activity can be assessed according to the Act and other relevant regulations.

If the developer wishes to appoint an environmental consultant to carry out the work, it will be necessary to forward the name(s) and qualifications of the consulting team to NES for approval. NES is currently investigating the need to institute a certification scheme for environmental consultants in Lesotho. This would mean that only certified consultants would be able to undertake the required environmental studies.

In terms of s. 28(1) of the Act, the Project Brief must as a minimum, state the following:

1. The purpose, nature, location and scope of the project.
2. The activities or operations proposed to be undertaken and a preliminary design (including site, technology, construction and operation procedures and handling of waste).
3. Location map of the project site (1:50.000) and detailed map of site (1:4000).
4. The key planning, policy, legal and administrative requirements – for example, in addition to the EIA Licence, what other permits will be required? Consultation with NES can help to identify all these issues and see section 6.3.4 of this Handbook.
5. The area(s) of air, land, water and ecosystems that may be affected by the activity.
6. The conditions and the sensitivity of the land, air, water and ecosystems that may be affected.
7. Anything of cultural or historic value that may be affected.
8. Anticipated impacts of the project/activity on the natural and human environment.
9. The possible products or by-products anticipated and their environmental consequences.
10. The number of people the project is likely to employ, in both the construction and operations phases.
11. Alternatives to the project – it is important that a wide range of the most feasible and practicable project alternatives are identified at this very early stage in the licensing process.
12. Interested and affected parties/individuals identified and/or consulted.
13. Environmental issues identified – this should include any other issues associated with the project/activity that have not been included in the above points. These may be issues identified by communities, individuals or organisations during the consultation process, and will have various levels of significance. These issues should be addressed briefly in the PB.
14. Key elements of an environmental management and mitigation plan.
15. Your recommendation as to whether a formal environmental impact study is required or not.

16. A draft notice for publication in national and local newspapers describing the project and disclosing where and when the Project Brief is available for public review.

Further, the following should be borne in mind:

Policy, legal and administrative requirements. These are very important because they determine the planning framework within which the proposal must be developed. It is important at this stage to pay attention and justify the proposal in accordance with the National Development Plan (NDP), District Development Plans (DDP) and the Integrated National land Use Plan (INLUP), as well as any applicable international conventions e.g. the Convention on Biodiversity (see also Table 1.1 in Section 1 of this Handbook).⁹⁷

Interested and affected parties (I&APs). The first stage is to identify the interested and affected parties. However, for certain proposals there is no clearly definable group of I&APs. In these instances, the most effective approach is to notify the public through advertisements in the press or other media. In Lesotho this will have to be handled on a case by case basis, taking into account issues of language, education, and accessibility.⁹⁸

Identification of significant issues. The issues may either be definable impacts (e.g. air pollution), the cause of an impact (e.g. blasting at a quarry) or a generally expressed concern (e.g. relocation or social disruption of rural communities) which need to be translated into specific impacts to be investigated. In some cases, issues identified by I&APs may prove to be inaccurate or insignificant. Bearing in mind that the purpose of the PB or the EIS is to focus on relevant issues, it is important to eliminate insignificant issues from the investigation at the outset. Once a broad range of issues have been identified, it will be necessary to evaluate them and highlight significant issues for investigation and assessment. There are various methods, techniques (e. g. rating or ranking) or criteria (e.g. comparing with Water Quality Standards) that could be used to assist the developer or his consultant to determine whether issues are significant and thus require examination.

Arguments and documentation that a particular issue is or is not significant is sometimes difficult, and it may not always be possible to reach consensus on whether 'perceived' issues/impacts are significant during consultation with I&APs. It is thus important that the consultant or study team provide a brief explanation in the Environmental Impact Statement as to why certain issues have been determined as being significant/insignificant and were thus eliminated/included from/in the study.

Alternatives. These must be considered from the very outset, as they can change the nature, design, allocation or direction of a project at an early stage. It is in evaluating alternatives that fundamental issues of sustainability can be addressed and communities can articulate their values and visions. This process provides a basis for choice among options available to the

⁹⁷ Op. Cit. Footnote 92.

⁹⁸ Op. Cit. Footnote 92.

decision-makers. In all assessments of alternatives, the decision-makers must be provided with information that enables them to choose the most acceptable alternative by making trade-offs between biophysical, social, economic, historical, cultural and political factors. The no-action (no-go) alternative must also be examined.

6.4.3 Public Participation and Access to Information

The developer must ensure that all I&APs, including affected communities are invited to comment on the PB and the Environmental Impact Study, if the latter has been required by NES. The PB should include a detailed description of the public participation process undertaken during the Project Brief stage, as well as proposals for further consultation during the EIA.

In particular, the method of notifying rural and disadvantaged communities of proposals and opportunities to participate needs special consideration. Relevant authorities as well as local councils and NGOs should be consulted on how to identify I&APs. The onus is on the developer to ensure that all interested and affected parties have been informed about the proposal and their input sought. Notification does not necessarily mean that the proponent needs the permission of the interested and affected parties, but failure to involve neighbours and other I&APs at an early stage can cause serious delays and problems later.

[EA Sec. 30(1)(d)]

If NES deems it necessary, a public hearing inviting all I&APs must be held within the vicinity of the proposed project. The developer may decide in any case to hold a public meeting to enable I&APs to express their issues and concerns on the proposed project. In the latter instance, the developer must inform NES about the holding of such hearing, the venue, date and time, who has been invited and how the I&APs were invited/informed. The developer must ensure that he/she invites NES and relevant EU's to such a hearing. Invitations must be sent or published by the developer *30 days* prior to the date of the hearing.

The developer must appoint an appropriate facilitator for the public hearing and the facilitator (or his/her secretary) must compile all relevant questions and requests presented at the meeting and submit written conclusions of the meeting to NES not later than *14 working days* after the holding of the meeting.

NES will then consider the outcome of the hearing and will reflect all relevant issues and concerns in its decision-making and records of decision.

Note that the developer is expected to bear all costs related to the above mentioned public participation process including advertising in newspapers, printing of posters, broadcasting, issuing invitations to public hearings and costs related to facility rentals etc.

In summary, therefore, the public participation proposal contained in the Project Brief and/or the terms of reference for the EIA should contain the following information:

- Name of 3 popular local newspapers in which the PB or EIS will be advertised;
- Date(s) of advertising;
- Draft advert text;
- Date of public hearing, if required by NES or voluntarily proposed by the developer;
- Place of public hearing;
- Name of facilitator for the public hearing;
- List of invited authorities (EUs), communities, I&APs and other stakeholders;
- Date for when invitation will be sent out;
- Date for broadcasting, or any other means of invitation, if required by NES; and
- Location of posters, if required by NES.

Access to information

[EA Sec. 29.3] & [EA Sec. 95.1]

The developer shall be aware that the PB and EIS are documents which NES has an obligation to make open to any person who seeks information on the proposed project. However, a fee might have to be paid to receive such copy of a PB or an EIS or other documents.

NES will keep a record of each PB or EIS received and shall keep certain information confidential where circumstances require this. The developer must specifically outline in the PB or EIS which information should be kept confidential. The grounds for such confidentiality must be clearly stated, keeping in mind that the Environmental Impact Study must be open for public inspection.

6.4.4 Review of Project Brief

The developer must submit 15 copies of the Project Brief to NES. NES will then ensure that all relevant line ministries receive a copy of the PB for comments. The developer will be informed in writing on the expected duration of the processing of the application or if further information is required in order for NES to make a decision. NES can only make a decision when all relevant and needed information is provided by the developer or his/her consultant.

[EA Sec. 28(2)]

If NES is of the opinion that the information in the PB is inadequate, it may require the developer to submit further information in writing before it may make a decision.

[EA Sec. 28(4) & EA Sec. 29(1)]

If NES, after a review of the PB and after receiving comments from the relevant line ministries, is of the opinion that the project or described activity is likely to have a significant impact on the environment, it may require a full EIS to be undertaken.

[EA Sec. 30(1)(f)]

NES might, however, require redesign or even reject the project, meaning that no EIA Licence will be issued and hence commencement of the project will be considered a violation of relevant sections of the Environment Act, 2001.

6.4.5 Terms of Reference

[EA Sec. 29.6]

Terms of Reference (ToR) must be drafted by the developer or his/her lead consultant before initiation of the EIS. The ToRs must be approved by NES before the commencement of the process. The ToRs shall as a minimum include:

- Environmental issues of relevance (e.g. change of land use, impact on water bodies, air, soil and ground, socio-economy and cultural effects etc.);
- Consultant team and expertise (including approval of lead consultant and experts' CVs);
- Process of collecting data or other information, modelling or calculations;
- Public participation process (advertising, public hearing etc.); and
- Time frame and expected submission date for the Environmental Impact Statement.

6.4.6 Prepare Environmental Impact Statement (EIS)

[EA Sec. 29.5]

The Environmental Impact Statement⁹⁹ shall, as a minimum, include the following:

- a) Detailed description of the project and its activities;
- b) Potentially affected environment, including information needed for assessment of effects;
- c) Description of technology, methods and processes including main alternatives and reasons for declining to use those alternatives;
- d) Reasons for selecting the proposed site and rejecting alternatives;
- e) Environmental impacts including direct, indirect, cumulative, short- and long-term effects;
- f) Identification and description of mitigation measures, options for minimising or eliminating processes/activities with a detrimental environmental effect;
- g) Effects on the environment which are beyond the limits of national jurisdiction and a description of which mitigation measures will be undertaken;
- h) Brief description of how the information in this EIS report has been generated i.e. methodology, survey techniques, modelling parameters etc;
- i) Identification of gaps in knowledge and uncertainties encountered when completing the EIS;
- j) Social, economic and cultural effects of the development/project;
- k) Irreversible and irretrievable loss of resources involved in the development/project; and
- l) Any other matters that NES find relevant.

The EIS must provide an Environmental Management and Mitigation Plan (EMMP) which describes how the project will be implemented and the controls over the implementation, how mitigation measures will be implemented and

⁹⁹ NOTE: Fraudulently making a false statement in an EIS can result in imprisonment for up to 10 years and/or a fine of up to M100,000 (EA Sec. 114(c)).

how environmental restoration after construction will be carried out. The EMMP must also include details on how final rehabilitation of the environment on termination or decommissioning of the project will be undertaken.

The information in the EIS must be up-to-date and reflect all relevant aspects outlined above.

6.4.7 Submission and Review of EIS

The developer must submit 15 bound copies of the EIS report to NES for review. The report must be signed by the applicant/developer, assuring that all information stated in the report is correct.¹⁰⁰ The report should contain all relevant annexes, maps or photos. The applicant will receive a written acknowledgement from NES on receipt of the EIS.

[EA Sec. 30]

NES must consider the EIS and all comments made on it and decide whether the EIS contains sufficient information to make a decision to issue of an EIA Licence.

In the event that the EIS is not adequate, NES may require the developer to perform additional investigations, analysis or collect further information which may include further public participation. NES can only make a decision on the basis of an adequate and complete EIS. The new information or analysis shall be submitted as amendments to the original EIS.

[EA Sec. 33(2)]

On the basis of the EIS, NES will in consultation with the line ministry, decide whether to approve the project and issue an EIA Licence or not. NES will consider all relevant issues in the EIS, including comments brought forward during the public participation process.

The EIA licence may contain terms and conditions appropriate and necessary to mitigate negative impacts and promote sound environmental management practices. The terms and conditions will be set in accordance with planning, policy, legal and administrative requirements. These will be clearly specified in the EIA Licence. The EIA Licence consists of:

1. The licence (covering letter);
2. Record of decision (attachment to the above letter);
3. Terms and conditions (attachment to the above); and
4. EIA review report (attachment to the above).

The EIA Licence will include a period of validity specified by NES.¹⁰¹ Furthermore it will include a set of conditions or terms, which the responsible developer has to comply with. The conditions will have legal validity similar to an order. The fulfilment of the conditions will be controlled, audited or inspected regulated by NES officers.

¹⁰⁰ LEA shall approve completed surveys and collected scientific data or other background information, prior to completion of the Environmental Impact Study.

¹⁰¹ i.e. 5-10 years depending of the impact and nature of the project.

[EA Sec. 30(1)(g)]

Based on the EIS report and the public comments. NES might decide not to approve the development/activity as described in the EIS due to predicted significant and irreversible damage to the environment, and/or public concerns.

6.4.8 Appeals**[EA Sec. 33(6) & EA Sec. 33(7)]**

Any person may when aggrieved by a decision made by NES, *within thirty (30) days* of being informed of that decision, request in writing that NES reconsider its decision. The request for appeal shall set forth clear reasons for this request.

The option for appeal is both an option for the developer, but also for I&APs to present arguments, reasons or grounds as to why the decision, in the opinion of the complainant, is not right or that the conditions should be amended.

NES must, *within thirty (30) days* of receipt of a request for reconsideration, issue a record of decision affirming, modifying, or reversing its earlier decision. Submission of an administrative request for reconsideration is a prerequisite for taking a judicial appeal to the Environmental Tribunal or even further.

[EA Sec.111(2)(a)]

If the complainant after receiving response from NES on the reconsideration of the decision, is still not satisfied, an appeal could be forwarded to the Environmental Tribunal *within 21 days* of the date of the decision of reconsideration.

[EA Sec.111(2)(b)]

The appeal shall be a written notice, stating the grounds upon which the appeal is based and it must be forward to the secretary of the Environmental Tribunal.

[EA 111(3)]

If the complainant is aggrieved by the decision of the Environmental Tribunal he or she may appeal to the High Court *within 30 days* from the date of the decision of the Tribunal.

6.5 Other relevant Environmental Legislation in Lesotho

Environmental issues cut across a wide variety of sectors and, under the current situation, there are numerous pieces of legislation in Lesotho, which have a bearing on the environment and should be considered in EIA decision-making. The sectors, titles of the legislative instruments, the responsible agency and the purpose of the legislation are summarised in Table 6.4.

LESOTHO

Table 6.4: Other Potentially Applicable Sectoral Requirements¹⁰²

Environmental Component	Responsible Agency	Title and Date of Legislation	Purpose
Water Resources (use of)	Ministry of Natural Resources: Water and Sewerage Authority Dept of Water Affairs	Water Resources Act, No 2 of 1978 Water Resources Regulations, 1980	Relates to the issuance of water use permits.
Effluent (disposal)	Ministry of Natural Resources: Water and Sewerage Authority NES	Water Resources Act, No 2 of 1978 Water Resources Regulations, 1980. Environment Act, 15 of 2001	Relates to the prevention of pollution. The Act makes provision for the management of effluent and the development of standards for effluent discharges. S. 48 states that an Effluent Discharge Licence is required, which is valid for 1 year. An unspecified fee is required for this permit.
Air	NES and relevant line ministry	Environment Act, 15 of 2001	The Act provides for NES to establish criteria for measurement of air quality, establish standards for ambient air quality, occupational air quality and emissions. s. 52 states that an Air Pollution Licence is required, which is valid for one year. An unspecified fee is required for this licence.
Noise	NES and relevant line ministry	Environment Act, 15 of 2001	The Act makes provision for NES to set minimum standards for noise emissions and vibration into the environment. It also makes provision for noise levels and noise emission standards to be established and applied at construction sites and certain industrial plants. S. 55 states that a Noise Permit is required.
Waste	NES and relevant line ministry	Environment Act, 15 of 2001	The NES is the overall authority for the management and control of all waste, including hazardous waste. In terms of s. 77 of the Act, a Waste Licence is required to generate, store, handle or transport any hazardous wastes.

¹⁰² Source: Motsamai, B, Keatimilwe, K, and Pomela, M (2003). Lesotho Chapter in 'EIA in Southern Africa.' Southern African Institute for Environmental Assessment, Windhoek, Namibia.

LESOTHO

Environmental Component	Responsible Agency	Title and Date of Legislation	Purpose
Energy	NES Dept of Energy Lesotho Electricity Corporation	Environment Act, 15 of 2001	s.65 of the Act relates to the promotion of renewable sources of energy through research and incentives.
Health	Ministry of Health	Public Health Order, No 12 of 1970	Prevents anything injurious to public health.
Planning and Zoning	NES and Ministry of Local Government	Environment Act, 15 of 2001 Town and Country Planning Act, 11 of 1980	s.71 relates to the development of a National Land Use Plan. Provides for development plans to be drawn up for the orderly development of land and the preservation and improvement of amenities.
Aquatic Resources	NES and relevant line ministries	Environment Act, 15 of 2001 Protection of Fresh Water Fish Proclamation, 45 of 1951, and Fresh Water Fish Regulations (HCN 112/1951)	s. 62-63 governs the protection and management of river banks, rivers, wetlands, lakes and lakeshores. Explosives, chemicals, poisonous or injurious substances, wire and cane are prohibited in fresh water resources.
	Lesotho Highlands Development Authority	Lesotho Highlands Development Order, 23 of 1986	Protection and avoidance of injury to fisheries.
Forestry	Ministry of Forestry and Land Reclamation	Forest Act, No 11 of 1978 Environment Act, 15 of 2001 Forest Regulation LN 36 of 1980	Controls the harvesting of wood and clearance of forests. s.64 relates to measures to protect and manage all forests in Lesotho. Controls forest cutting, grazing, squatting and construction of buildings in forests.
Mining and Mineral Resources	Ministry of Natural Resources: Dept of Mines and Geology	Mines and Minerals Act, 1966 Mine Safety Act, 4 of 1981 Mining Rights Act, 43 of 1967 Precious Stones Order, 24 of 1970 Uranium and Thorium Control Proclamation, 33 of 1951	An EIA is a prerequisite for obtaining mining rights in terms of this Act. Health and safety at mines and the right to use mines. Controls use of water used in a mine. Controls the search for, extraction, mining and sale of gem stones. Controls the search for, mining of, disposing of, and exporting uranium, thorium and allied natural radioactive substances.

LESOTHO

Environmental Component	Responsible Agency	Title and Date of Legislation	Purpose
Wildlife and Natural Resources	Ministry of Agriculture and Food Security, and NES	Game Preservation Proclamation, No 33 of 1951	Licence required for hunting certain species of mammal and bird.
		Environment Act, 15 of 2001	s. 66-69 relates to the conservation of biodiversity through in-situ and ex-situ conservation.
Agriculture	Ministry of Agriculture and Food Security	Weeds Eradication Act, 18 of 1969	Obligations to eradicate noxious weeds or plants detrimental to agriculture.
	Ministry of Forestry and Land Reclamation	Land Husbandry Act, 22 of 1969	Relates to the management of land, soil conservation, management of water resources and proper irrigation, prevention of poor agricultural practices.
		Range Management and Grazing Control Regulations, LN39 of 1980	Prevention of overgrazing and destruction of plants.
Land	Ministry of Agriculture and Food Security Land Survey and Physical Planning Department	Land Act, No 17 of 1979 Land Regulations LN 15 of 1980	The Land Act makes provision for compensation in terms of relocation of people for the purposes of development.
Roads	Ministry of Public Works: Dept of Rural Roads	Roads Act, No 24 of 1969	An EIA would be required for a new road in terms of the Environment Act, 15 of 2001.
Transmission	Lesotho Electricity Corporation	s. 27 of the Environment Act, 15 of 2001	An EIA is required for transmission lines.
Conservation	Ministry of Agriculture and Food Security	National Parks Act, 11 of 1975	Provides for the establishment of national parks for the conservation of wild animals and fish life.
Archaeological, Historical and Cultural	Ministry of Tourism, Environment and Culture	Historical Monuments, Relics, Fauna and Flora Act, No 41 of 1967, and Environment Act, 15 of 2001	This Act prohibits the destruction or damage to any historical monuments, fauna and flora, as well as removal from its habitat of Lesotho without permissions.
Industrial Development	Ministry of Industry, Cooperatives, Trade and Marketing	Industrial Licensing Act, 27 of 1969	

LESOTHO

Environmental Component	Responsible Agency	Title and Date of Legislation	Purpose
Urban Development and Waste Management	Ministry of Tourism, Environment and Culture	Sanitary Services and Refuse Removal Regulations, LN 36 of 1972	
	Ministry of Natural Resources	Urban Sewerage Regulations, LN 1 of 1977	
	Ministry of Local Government	Urban Government Act, 3 of 1983	
	Ministry of Natural Resources	Local Administration Act, 13 of 1969	
	Ministry of Local Government	Lesotho Housing and Land Development Corporation Order, 12 of 1988	