

6.1 Constitutional Requirement for Environmental Protection in Lesotho

The mandate on 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.¹

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.²

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

¹ Government of the Kingdom of Lesotho (1993). *The Constitution of Lesotho*. Government Printer, Maseru, Lesotho.

² 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.

Layer (see also Table 1.1 in Chapter 1 of this Handbook). Lesotho will continue to accede to other relevant internationally acceptable protocols.³

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).

6.2 Institutional and Administrative Structure for EIA in Lesotho

6.2.1 Department of Environment

In 1994 the National Environment Secretariat (NES) was created 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.⁴ Subsequently, the NES fell under the Ministry of Environment, Gender and Youth Affairs and then moved in 2003 to the Ministry of Tourism, Environment and Culture. In terms of the new Environment Act, 2008, the former NES is now known as the Department of Environment (DoE) and this department is responsible for administering EIA. Figure 6.1 shows the organisational structure within which the EIA process is currently carried out in Lesotho.

The Department of Environment will be the executive arm of the National Environment Council (when it is formed) and the principal agency responsible for managing the environment. While the DoE will be the sole legislated reviewer of EIAs, the Director of the DoE may delegate any of his functions to a Line Ministry, the Technical Advisory Committee (TAC) (still to be formed) or any public officer.

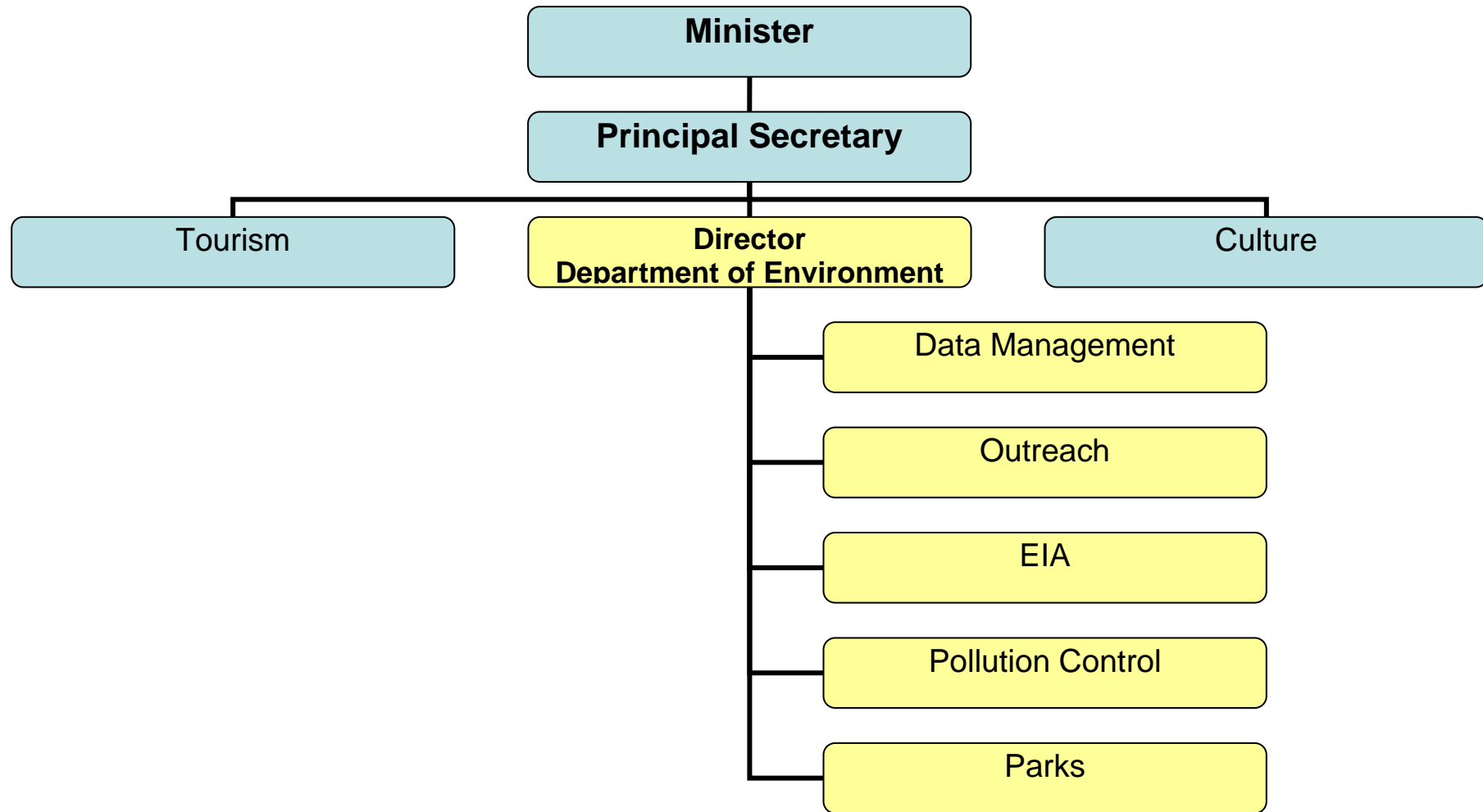
The functions of the Director of the DoE are listed in s. 10(1) of the Environment Act and may be summarised as follows:

- Propose and develop policies relating to environmental protection and management;
- Co-ordinate, monitor and supervise all sectoral activities and all environmental management programmes within DoE and other Line Ministries;
- Implement national environmental policy;

³ Government of the Kingdom of Lesotho (1998). National Environmental Policy for Lesotho, Maseru.

⁴ With the assistance of the United Nations Development Programme (UNDP).

FIGURE 6.1: ORGANISATIONAL CHART OF THE MINISTRY OF TOURISM, ENVIRONMENT AND CULTURE



- Ensure that environmental concerns are integrated into national planning through coordination with Line Ministries and other relevant bodies;
- Initiate legislation, standards and guidelines on the environment in accordance with the Act;
- Review and approve EIAs and EISs;
- Identify projects, activities, policies and programmes for which EIA must be undertaken;
- Undertake research and compile and disseminate environmental information;
- Promote public awareness on environmental management issues;
- Mobilise and monitor the use of resources for environmental management;
- Monitor and assess projects that are being carried out by relevant Line Ministries to ensure that the environment is not being damaged and that the environmental management objectives are being complied with;
- Publish and disseminate manuals, codes, standards and guidelines etc relating to environmental management and prevention or abatement of pollution.
- Render advice and technical support wherever possible to other bodies engaged in environmental and natural resources management;
- Prepare and publish every five years the Lesotho State of Environment Report;
- Promote and implement cooperation with bodies responsible for environmental management in other countries and other international organisations;
- Collect and make available basic scientific data relating to environmental matters;
- Establish such environmental criteria, guidelines, specifications or standards for the protection of the land, air, water, health and welfare of the population;
- Establish guidelines and procedures for industries, agriculture and other activities in order to minimise damage to the environment;
- Investigate reports of pollution;
- Coordinate actions in the event of an environmental emergency; and
- Carry out any other functions as may be required by the NEC or the Minister as provided for under the Environment Act, 2008.

In terms of EIA administration, the DoE plays a pro-active role in steering the EIA process. Its functions include:

- Approve the choice of EIA consultant to be used by the developer based on qualifications and experience;
- Invite comments from the public;
- Determine the need for a public hearing;

- 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;
- 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;
- Conduct environmental monitoring in conjunction with the relevant Line Ministry;
- Carry out environmental audits of project implementation and compliance.

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 (PAC), 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 PAC is a statutory body and its decisions are enforceable by law.

Environmental Units and the Role of Line Ministries

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 inter-sectoral.

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. This policy objective has been incorporated into s.15 of the Environment Act, 2008 which requires each Line Ministry to establish an environmental unit that will assume responsibility for ensuring compliance with the Act and which will liaise and coordinate with the Director on all relevant environmental matters. Any Line Ministry charged with the management of any segment of the environment must submit an annual report to the Director and should report any environmental contraventions relating to its sphere of responsibility.

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 DoE 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;
- Participate in resource accounting and the preparation of the annual state of environment reports.

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 DoE to review projects.

6.2.2 Proposed Environmental Institutions

The Environment Act of 2008 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 the responsibility for drafting environmental policy, harmonising policies, plans and activities of government departments and ensuring coordination among stakeholders engaged in environmental protection.⁵

Provision has also been made in the Environment Act for an Environmental Co-ordinating Committee (ECC), which will ensure that there is maximum co-operation and co-ordination among the Line Ministries and other organisations dealing with environmental protection and management.

There are no legal provisions for decentralisation or outsourcing the administration of the EIA process in Lesotho, but 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 Environment Act, 2008 also makes provision (in s.98) for an Environmental 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.

⁵ Other members are the Ministers of: Tourism, Environment and Culture (Chairman); 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).

6.2 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 of 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.⁶

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 design.
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. Develop guidelines and set standards for EIAs.
2. Notify, by Government Gazette, the types and sizes of projects for which EIA may be required.

⁶ National Environmental Policy for Lesotho, 1998

3. Require 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. Prescribe guidelines and regulations concerning the preparation of environmental impact statements, audits, monitoring and evaluation.
5. Review Environmental Impact Statements and take necessary actions to ensure that no projects proceed that may cause significant and irreparable damage to the environment.

6.3.2 Environment Act, No 15 of 2001

The original Environment Act, (No 15 of 2001) was never formally gazetted, but all government institutions and environmental practitioners in Lesotho operated within this legislation up until the proclamation of the new Environment Act, 2008 on 5th December 2008⁷. The new Act is similar in scope to the 2001 law, but strengthens certain elements such as actions to be taken with regard to spills and environmental emergencies and the institutional arrangements.

6.3.3 Environment Act, 2008

The aim of the Environment Act, 2008 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;

⁷ Published in Supplement No 1 to Gazette No 80 of 5th December 2008.

- (h) to ensure that waste generation is minimised and safely disposed of;
- (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 co-operation with other governments and relevant national, international and regional organisations and other bodies concerned with the protection of the environment; and
- (p) to ensure that appropriate measures are taken to prevent soil erosion.

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, Audit and Monitoring
Part VI	Environmental Quality Standards
Part VII	Pollution Control
Part VIII	Spill and Environmental Emergency
Part IX	Environmental Management
Part X	Environmental Restoration Notice and Order
Part XI	Inspection, Analysis and Record
Part XII	International Environmental Conventions
Part XIII	Information, Education and Public Awareness
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. 19 Types of projects for which an EIA is required
- s. 20 Submission of a project brief
- s. 21 EIA studies and statements

- s. 22 Review of environmental impact statements
- s. 23 Environmental monitoring
- s. 24 Environmental audits
- s. 25 EIA licence and record of decision
- s. 26 Submission of EIA report after issue of an EIA licence
- s. 27 Transfer of EIA licence

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

6.3.4 Regulations

The EIA Regulations are still in draft, but EIA practice in Lesotho adheres to the provisions of the Environment Act, 2008 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 2008 Act for regulations to be made.

6.3.5 Permits and Licences

Section 25(1) of the Environment Act states that no person shall operate, execute or carry out a project or activity specified in Part A of the First Schedule (see Appendix 6-1) without an **Environmental Impact Assessment Licence** issued by DoE. In issuing a licence, the environmental authority must issue a Record of Decision (RoD), which should include:

- (a) the decision of the Director;
- (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;
- (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. 25(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 Director can request the developer to submit a new EIS (s. 26 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. 27 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. 40(3) of Environment Act	Effluent Licence	Licence to discharge effluent into the sewage system Validity: 1 year Fee: as prescribed	DoE
s. 44(1) 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	DoE
s. 48(1) of Environment Act	Noise Permit (an exemption from s.47(1))	Permit to allow excessive emission of noise (in excess of the noise emission standards) Validity: to be specified Fees: as prescribed	DoE
s. 49(1) 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	DoE
s. 76 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	DoE
Mines and Minerals Act, 1966	Mining (or Quarrying) Licence	An EIA is a prerequisite for obtaining mining rights	Ministry of Natural Resources
Municipal byelaws	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

6.3.6 Penalties

Part XV of the Environment Act sets out the penalties for non-compliance with any of the provisions of the Environment Act. Section 103 sets out those penalties for non-compliance with any of the EIA provisions, as follows:

103. Any person who:

- (a) fails to submit a project brief contrary to section 20;
- (b) fails to prepare an environmental impact statement contrary to sections 21 and 25;
- (c) fraudulently makes a false statement on an environmental impact statement submitted under section 21,

commits an offence and is liable on conviction, to imprisonment for a period not less than three years or to a fine not exceeding M10,000 or to both.

Where the offence has been committed by corporations and partnerships, the provisions of section 107 shall apply.

6.3.7 Fees

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

6.3.8 Guidelines

In 2002, the then Lesotho Environmental Authority (LEA) issued draft **Guidelines for Environmental Impact Assessment in Lesotho**. These set out the steps to be taken in carrying out the EIA process but care should be taken because some changes in EIA procedure were introduced with the new Environment Act, 2008.

The purpose of the 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 2008. 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.⁸

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.⁹

6.3.9 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 authorities may determine in future. Currently air quality and water quality standards for industrial effluent and potable water have been drafted

⁸ Government of Lesotho (2002). *Draft Guidelines for Environmental Impact Assessment in Lesotho*. Lesotho Environmental Authority, Ministry of Tourism, Culture and Environment, Maseru.

⁹ Op. cit. Footnote 3.

and are being used as working documents. They will become law now that the Environment Act 2008 has been gazetted. The draft water quality standards are presented below in Tables 6.2 and 6.3. In the absence of local standards for other pollutants, developers should refer to World Health Organisation, 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 CaCO3	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	1000
Antimony	µg/l Sb	50	100	200
Arsenic	µg/l As	100	300	600
Barium	µg/l Ba	500	1000	2000
Beryllium	µg/l Be	2	5	10
Bismuth	µg/l Bi	250	500	1000
Boron	µg/l B	500	2000	4000
Bromide	µg/l Br	1000	3000	6000
Cadmium	µg/l Cd	10	20	40
Cerium	µg/l Ce	1000	2000	4000
Chromium	µg/l Cr	100	200	400
Cobalt	µg/l Co	250	500	1000
Cyanide, free	µg/l CN	200	300	600
Gold	µg/l Au	2	5	10
Iodide	µg/l I	500	1000	2000
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	1000
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

Determinant	Unit	Recommended Limit	Maximum Permissible Limit	Crisis Limit
Tin	µg/l Sn	100	200	400
Titanium	µg/l Ti	100	5000	1000
Tungsten	µg/l W	100	5000	1000
Uranium	µg/l U	1000	4000	8000
Vanadium	µg/l V	250	500	1000

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 /10 litres
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/10 litres
Total Hardness	< 100 mg/l CaCO ₃
Turbidity	0 –1 NTU

6.3.10 Certification of Consultants

In terms of Section 113(j) of the Environment Act, 2008, the Minister may make regulations to “provide for the conduct and certification of environmental practitioners.”¹⁰ In anticipation of the Bill being enacted, the then NES embarked on a consultative programme in 2007 regarding the establishment of a national registration and 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 2010/11.

In the meantime, the environmental impact study must be undertaken by experts whose names and qualifications are approved by DoE. Information on the minimum requirements for the lead EIA consultant is available through DoE’s web page or can be obtained on request

¹⁰ Government of the Kingdom of Lesotho, 2006. Environment Act, 2008.

directly from the DoE Library. The approval of the lead consultant will be based upon the Terms of Reference 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.

6.4.1 Screening

A list of types of projects and activities that are subject to EIA in terms of Section 19(1) of the Environment Act, 2008 is set out in Part A of the First 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.

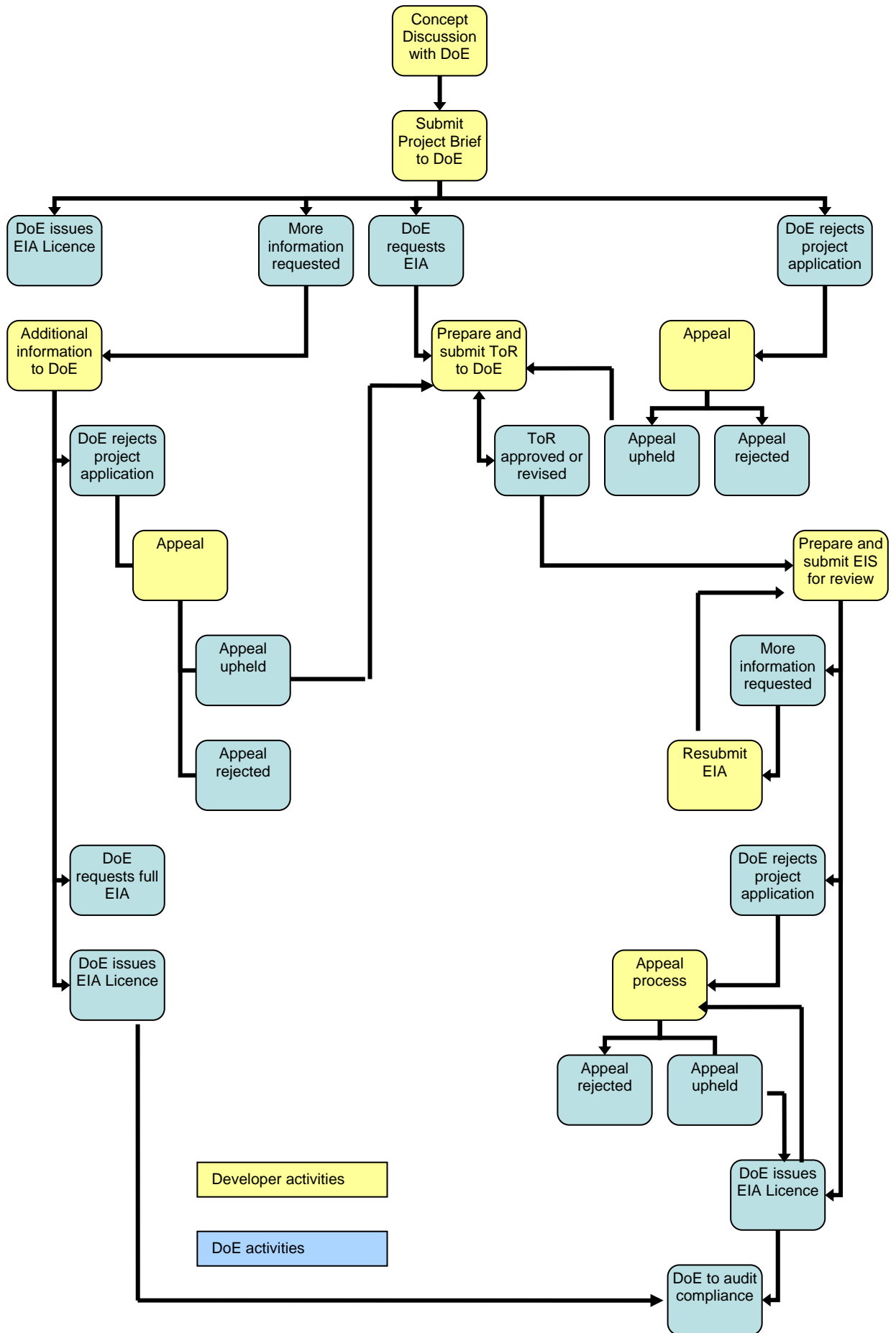
Any person intending to initiate an activity listed in the Schedule is obliged to apply for an EIA licence, before commencing a development or construction. It is a legal requirement that the developer can only proceed with the development activity **after** receipt of an EIA Licence. The first step in the application of an EIA Licence is the submission of a project brief as prescribed in s.20(1) and outlined in section 6.4.2 below.

Not all projects and activities that are on the Schedule¹¹ 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.

It is strongly recommended that developers should consult with the relevant line ministry or DoE 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.

¹¹ 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 DoE, by publication in the Government Gazette.

FIGURE 6.2: EIA PROCESS



6.4.2 Project Brief

If the proposed project or activity is listed in Part A of the First Schedule, an EIA Licence is applicable, and the developer must prepare a document called a **Project Brief** (s. 20(1)). The document must be submitted to DoE and the relevant Line Ministry 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 DoE for approval. DoE is currently in the process of establishing a registration and certification scheme for environmental consultants in Lesotho. This would mean that only certified consultants would be able to undertake the required environmental studies (see s. 6.3.10).

In terms of s. 20(1) of the Act, the Project Brief (PB) must as a minimum, state the following:

1. The nature of the project.
2. The activities proposed to be undertaken.
3. The area(s) of air, land or water that may be affected by the activity.
4. The possible products or by-products anticipated and their environmental consequences.
5. The number of people the project is likely to employ, in both the construction and operations phases.
6. Any other matters that may be prescribed.
7. Any other matters as the Director may require from the Developer, before or after he has submitted the PB.

One of the key differences between the 2001 Act and the 2008 Act is that the need for public consultation has been removed from the Project Brief process. This is not best practice and any project requiring funding from any of the international development finance institutions (e.g. World Bank, IFC, Development Bank of Southern Africa) or any of the Equator Principle banks (e.g. Nedbank, Barclays) will require a full public consultation process at the Project Brief stage.

6.4.3 Review of Project Brief

The developer must submit 15 copies of the Project Brief to DoE, who 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 DoE to make a decision. DoE can only make a decision when all relevant and needed information is provided by the developer or his/her consultant. The Director will make one of three decisions as per s.19 of the Act:

- If the project is unlikely to have a significant impact on the environment, the project will be approved with any conditions as may be required;
- If the Director is of the view that the project is likely to have a significant impact on the environment, he may invite written or oral comments from the public and may consult the affected community;
- He may decide, in consultation with the relevant Line Ministry that an EIA needs to be undertaken because the project is likely to have a significant impact on the environment.¹²

6.4.4 Prepare Environmental Impact Statement (EIS)

The Environmental Impact Statement is to be undertaken by experts whose names and qualifications have been approved by the Director after consultation with the relevant Line Ministry (s. 21(7))¹³. The costs of conducting the EIS must be borne by the developer and the EIS report shall as a minimum, include the following:

- a) detailed description of the project and its activities;
- b) a description of the potentially affected environment, including specific information necessary for identifying and assessing the environmental effects of the proposed project;
- c) a description of the technology, method and processes that shall be used in the implementation of the project, including the 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 of the project;
- f) an identification and description of measures proposed for eliminating, minimising or mitigating the anticipated adverse effects of the project on the environment;
- g) an indication of whether the environment of any other state or area beyond the limits of national jurisdiction is likely to be affected and the mitigating measures to be undertaken;
- h) a brief description of how the information in the EIS report has been generated i.e. methodology, survey techniques, modelling parameters etc;

¹² The full list may be found in s.21(5) of the Act.

¹³ NOTE: Fraudulently making a false statement in an EIS can result in imprisonment for no less than 3 years and/or a fine of up to M10,000 (EA Sec. 103).

- i) an identification of gaps in knowledge and uncertainties which were encountered in completing the EIS;
- j) the social, economic and cultural effects of the development/project;
- k) the irreversible and irretrievable commitment of resources which will be used by the project if it is implemented in the manner proposed by the developer;
- l) a comprehensive mitigation plan, which includes a description of the mitigation measures that will be implemented in order to prevent, reduce or otherwise manage the environmental effects of the project, an indication of how these measures will be implemented and any other information which may be required;
- m) Any other matters that the Minister may prescribe.

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

As noted for the Project Brief above, the new Environment Act does not require the EIA consultants to carry out any public consultation and include the findings of such processes in the EIA report. This does not reflect best practice and as noted in s.6.4.2, most funding agencies would require that a full public consultation process is carried out as part of the EIA.

6.4.5 Submission and Review of EIS

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

On the basis of the EIS, the Director will, in consultation with the Line Ministry, study the EIS and if it is complete in both form and content, invite public comments on the EIS in general, or specifically invite those persons who will most likely be affected by the project to make comments. The Director may also decide to hold a public hearing for the affected parties. As mentioned above, this would not be deemed to be an acceptable public consultation process because it is done after the EIA has been completed.

The EIA Licence may contain terms and conditions appropriate and necessary to mitigate negative impacts and promote sustainable development and 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 Director, in either issuing or refusing to issue a licence, will issue a record of decision (RoD) which shall include:

- The Director's decision;

- Key factors of that decision including responses to material issues raised by any interested or affected party during the EIA process;
- The date of the decision;
- A copy of the EIA licence (if issued);
- Methods of redress if the applicant is aggrieved by the decision.

The EIA Licence will include a period of validity¹⁴. Further 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 DoE officers.

No licensing authority shall issue a licence or permit for a listed project or activity for which an EIA is required, unless that project/activity already has an EIA licence.¹⁵

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

6.4.6 Strategic Environmental Assessment

A Strategic Environmental Assessment (SEA) is required for any Bill, regulation, policy, programme or plan that could have a significant impact on the environment (see Part B of the First Schedule). The processes, procedures, roles, responsibilities and content relating to the compilation and submission of an SEA are not elaborated upon in the Environmental Act.

6.4.7 Appeals

Any person may, when aggrieved by a decision made by DoE, **within thirty (30) days** of being informed of that decision, request in writing that DoE reconsider its decision. The request for appeal shall set forth clear reasons for this request (s. 25(5) and 25(6)).

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.

DoE must, **within thirty (30) days** of receipt of a request for reconsideration, issue a decision affirming, modifying, or reversing its earlier decision. Such decision shall become part of the RoD.

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

¹⁴ i.e. 5-10 years depending of the impact and nature of the project

¹⁵ S. 25(4) of the Act.

of the date of the decision of reconsideration as per the requirements of s.100(1). 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.

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.

Table 6.4: Other Potentially Applicable Sectoral Requirements¹⁶

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 DoE	Water Resources Act, No 2 of 1978 Water Resources Regulations, 1980. Environment Act, 2008	Relates to the prevention of pollution. The Act makes provision for the management of effluent and the development of standards for effluent discharges. S. 40(3) states that an Effluent Discharge Licence is required, which is valid for 1 year. An unspecified fee is required for this permit.
Air	DoE and relevant Line Ministry	Environment Act, 2008	The Act provides for DoE to establish criteria for measurement of air quality, establish standards for ambient air quality, occupational air quality and emissions. s. 44(1) states that an Air Pollution Licence is required, which is valid for one year. An unspecified fee is required for this Licence.

¹⁶ Source: Motsamai, B, Keatimilwe, K, and Pomela, M (2003). Lesotho Chapter in 'EIA in Southern Africa.' Southern African Institute for Environmental Assessment, Windhoek, Namibia.

Environmental Component	Responsible Agency	Title and Date of Legislation	Purpose
Noise	DoE and relevant Line Ministry	Environment Act, 2008	The Act makes provision for DoE 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. 48(1) allows for an exemption (noise permit) to be granted from the provisions of s. 47(1).
Waste	DoE and relevant Lines Ministry	Environment Act, 2008	The DoE is the overall authority for the management and control of all waste, including hazardous waste. In terms of s. 76 of the Act, a Waste Licence is required to generate, store, handle or transport any hazardous wastes
Energy	DoE Dept of Energy Lesotho Electricity Corporation	Environment Act, 2008	s.64 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	DoE and Ministry of Local Government	Environment Act, 2008 Town and Country Planning Act, 11 of 1980	s.70 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	DoE and relevant Line Ministries Lesotho Highlands Development Authority	Environment Act, 2008 Protection of Fresh Water Fish Proclamation, 45 of 1951, and Fresh Water Fish Regulations (HCN 112/1951) Lesotho Highlands Development Order, 23 of 1986	s. 61-62 governs the protection and management of riverbanks, rivers, wetlands, lakes and lakeshores. Explosives, chemicals, poisonous or injurious substances, wire and cane are prohibited in fresh water resources. Protection and avoidance of injury to fisheries
Forestry	Ministry of Forestry and Land Reclamation	Forest Act, No 11 of 1978 Environment Act, 2008 Forest Regulation LN	Controls the harvesting of wood and clearance of forests. s.63 relates to measures to protect and manage all forests in Lesotho.

Environmental Component	Responsible Agency	Title and Date of Legislation	Purpose
		36 of 1980	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.
Wildlife and Natural Resources	Ministry of Agriculture and Food Security, and DoE	Game Preservation Proclamation, No 33 of 1951 Environment Act, 2008	Licence required for hunting certain species of mammal and bird. s. 65-67 relate to the conservation of biodiversity through in-situ and ex-situ conservation.
Agriculture	Ministry of Agriculture and Food Security Ministry of Forestry and Land Reclamation	Weeds Eradication Act, 18 of 1969 Land Husbandry Act, 22 of 1969 Range Management and Grazing Control Regulations, LN39 of 1980	Obligations to eradicate noxious weeds or plants detrimental to agriculture. Relates to the management of land, soil conservation, management of water resources and proper irrigation, prevention of poor agricultural practices. 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,	An EIA is required for transmission lines.

Environmental Component	Responsible Agency	Title and Date of Legislation	Purpose
		2008	
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, 2008	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, Co-operatives, Trade and Marketing	Industrial Licensing Act, 27 of 1969	
Urban Development and Waste Management	Ministry of Tourism, Environment and Culture Ministry of Natural Resources Ministry of Local Government Ministry of Natural Resources Ministry of Local Government	Sanitary Services and Refuse Removal Regulations, LN 36 of 1972 Urban Sewerage Regulations, LN 1 of 1977 Urban Government Act, 3 of 1983 Local Administration Act, 13 of 1969 Lesotho Housing and Land Development Corporation Order, 12 of 1988	

APPENDIX 6-1

LIST OF PROJECTS AND ACTIVITIES FOR WHICH AN EIA IS REQUIRED

The types of projects and activities for which an **environmental impact assessment** is required are listed in **Part A** of the First Schedule attached to the Environment Act, 2008.

1. General:

- (a) any activity out of character with its surroundings;
- (b) any structure of a scale not in keeping with its surroundings;
- (c) major changes in land use.

2. Urban and Rural Development including:

- (a) designation of new urban areas;
- (b) establishment of industrial estates;
- (c) establishment or expansion of recreational areas;
- (d) establishment or expansion of recreational areas in mountain areas, national parks and game reserves;
- (e) rezoning;
- (f) shopping centres and complexes;
- (g) hotels and other tourist facilities.
- (i) buildings with a total floor space of 500m² or more;
- (j) declaration of development areas; and
- (k) other infrastructure (both urban and rural).

3. Transportation including:

- (a) major roads;
- (b) all roads in scenic, wooded or mountainous areas;
- (c) airports and airfields;
- (d) pipelines;
- (e) water transport activities;
- (f) bridges;
- (g) railways;
- (h) cable ways and cable stations;
- (i) public transport mode transfer facilities; and

4. Dams, rivers and water resources including:

- (a) reservoirs, levees, storage dams, barrages and weirs;
- (b) canals, channels, aqueducts, river diversions and water transfers;

- (c) flood control schemes;
- (d) pipelines and water reticulation systems;
- (e) projects or activities affecting other water sources such as ground water, springs and wells;

5. Aerial spraying.

6. Mining, mineral extraction including quarrying and open-cast extraction of:

- (a) precious stones, minerals and metals;
- (b) coal;
- (c) stone and slate;
- (d) aggregates, sand and gravel;
- (e) clay;
- (f) tunnelling.
- (g) diamonds;
- (h) limestone and dolomite;
- (i) base metals.

7. Forestry related activities including:

- (a) clearance of forest areas;
- (b) deforestation and afforestation;
- (c) timber harvesting;
- (d) propagation of invasive alien species.

8. Agriculture including:

- (a) large scale agriculture;
- (b) use of agro-chemicals;
- (c) introduction of new crops, animals and management practices;
- (d) manufacture, handling, storage and transport of hazardous waste, chemicals and pesticides and other agro-chemicals;
- (e) use of new pesticides;
- (f) mass commercial production of livestock and battery and feedlot farming installations;
- (g) release of any organism outside its natural area of distribution that is to be used for biological pest control;
- (h) genetic modification of organisms and release of such organisms;
- (i) large scale land reclamation.

9. Processing and manufacturing industries including:

- (a) brick and earthenware manufacture;

- (b) explosives or ammunition plants;
- (c) tanning and dressing of hides and skins;
- (d) abattoirs and meat processing plants;
- (e) brewing and malting;
- (f) food processing plants;
- (g) bulk grain-processing plants;
- (h) mineral, processing reduction of areas or minerals;
- (i) smelting and refining of ores or minerals;
- (j) foundries;
- (k) plants for the manufacture or assembling of motor vehicles;
- (l) plants for the manufacture of textiles;
- (m) industries producing or utilizing hazardous substances or materials;
- (n) industries producing, handling, treating or disposing of effluent;
- (o) industries emitting major atmospheric pollutants;
- (p) industries transporting or storing hazardous substances or other chemical products;
- (q) industrial installations for the bulk storage of fuel;
- (r) bulk distribution facilities.

10. Energy and electric infrastructure including:

- (a) electrical generation stations;
- (b) electrical transmission lines;
- (c) electrical substations;
- (d) cable ways and cable way stations.
- (e) nuclear installations.

11. Waste handling, storage, transport, treatment and disposal including

- (a) sites for solid waste disposal and wastewater treatment;
- (b) sites for hazardous waste disposal;
- (c) sewerage treatment and disposal works;
- (d) activities or practices that may produce offensive odours;
- (e) industrial effluent;
- (f) major atmospheric emissions;
- (g) transportation and storage of hazardous substances or waste;
- (h) recycling plants.

12. National conservation areas including:

- (a) creation of national parks and game reserves;
- (b) commercial exploitation of natural fauna and flora;
- (c) introduction of alien species of fauna and flora into ecosystems;
- (d) establishment of natural heritage sites;

- (e) formulation or modification of forest management policies;
- (f) formulation or modification of water catchment management policies;
- (g) policies for management of ecosystems, especially by use of fire;
- (h) any government policy on the use of natural resources.

13. Camp sites and hiking and ski trails developed for tourists.

14. Permanent racing and test tracks for cars and motorcycles.

15. Communication facilities, including telephone, television and radio transmission masts.

16. Projects or activities that could affect the following areas or features:

- (a) selected development areas;
- (b) protected natural environments, wilderness areas, nature reserves or national parks;
- (c) mountain catchment areas;
- (d) national monuments;
- (e) national heritage sites;
- (f) archaeological and palaeontological sites;
- (g) graves and burial sites;
- (h) national gardens of remembrance;
- (i) conservation areas;
- (j) sites of conservation significance;
- (k) meteorites;
- (l) lake areas.

17. Projects or activities that could affect any of the following areas or features which have been demarcated as such by central or local authority:

- (a) streams and river channels, and their banks;
- (b) floodplains and wetlands;
- (c) indigenous forests;
- (d) high potential agricultural land;
- (e) caves;
- (f) green belts or public open space in municipal areas;
- (g) buildings;
- (h) battle sites;
- (i) burial sites;
- (j) immovable property;
- (k) landscapes;
- (l) islands in rivers;

- (m) biotic assemblages and communities;
- (n) habitat of Red Data Book species;
- (o) architectural precincts;
- (p) aquifers and aquifer recharge areas;
- (q) areas with a high natural water table;
- (r) damaged land;
- (s) unstable soil;
- (t) natural resource areas (including minerals);
- (u) sites of geological significance;
- (v) geologically and geo technically unstable areas;
- (w) areas or sites of outstanding natural beauty;
- (x) scenic drives and panoramic views;
- (y) areas or sites of special scientific interest;
- (z) areas or sites of religious or spiritual significance;
- (za) areas or sites of special social, cultural or historical interest.
- (zb) bird migration sites.

Part B of the First Schedule identifies any Bill, regulation, public policy, programme or plan that could have a significant impact on the environment shall be subjected to a **Strategic Environmental Assessment (SEA)**.

ACRONYMS

CBO	Community-Based Organisation
DDP	District Development Plans
DoE	Department of Environment
EA	Environment Act 2001
EAP	Environmental Assessment Practitioner
ECC	Environment Co-ordinating Committee
EIA	Environmental Impact Assessment
EIS	Environmental Impact Statement or Study
EMMP	Environmental Management and Mitigation Plan
EU	Environmental Unit (Environmental Officer at Line Ministry)
I&APs	Interested and Affected Parties
INLUP	Integrated National Land Use Plan
LEA	Lesotho Environment Authority
MTCE	Ministry of Tourism, Culture and Environment
NAP	National Action Plan to Implement Agenda 21
NDP	National Development Plans
NEAP	National Environmental Action Plan
NEC	National Environment Council
NEP	National Environmental Policy
NES	National Environmental Secretariat
NGO	Non-Government Organisation
PAC	Project Appraisal Committee
PB	Project Brief
RoD	Record of Decision
SEA	Strategic Environmental Assessment
TAC	Technical Advisory Committee
TOR	Terms of Reference

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