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# NAMIBIA

# CHAPTER 18: NAMIBIA

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## **18 NAMIBIA**

### **18.1 Constitutional requirements for environmental protection in Namibia**

Since 1990, the government has adopted a number of policies that promote sustainable development. Most of these have their roots in the two clauses of the Namibian Constitution.<sup>1</sup> Article 91(c) defines the functions of the Ombudsman to include:

*“... the duty to investigate complaints concerning the over-utilisation of living natural resources, the irrational exploitation of non-renewable resources, the degradation and destruction of ecosystems and failure to protect the beauty and character of Namibia ...”*

Article 95(l) commits the state to actively promoting and maintaining the welfare of the people by adopting policies aimed at the:

*“... maintenance of ecosystems, essential ecological processes and biological diversity of Namibia and utilisation of living natural resources on a sustainable basis for the benefit of all Namibians, both present and future ...”*

### **18.2 Institutional and administrative structure for environmental impact assessment in Namibia**

#### **18.2.1 Ministry of Environment and Tourism**

The Ministry of Environment and Tourism (MET) was established in 1990 and is responsible for safeguarding Namibia's environmental resources. Since then, MET has implemented far-reaching policy and legislative reforms in the environmental sphere in an attempt to alleviate many of the constraints that the environment places upon people and vice versa. These reforms were also aimed at encouraging various innovative, collaborative partnerships between important players in the environmental field, such as ministries with environmental interests within their areas of jurisdiction, non-governmental organisations, community-based organisations and donor agencies of various countries.

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<sup>1</sup> Republic of Namibia, 1990. *The Constitution of the Republic of Namibia*. Windhoek: Government of Namibia.

The mission of the MET is to maintain and rehabilitate essential ecological processes and life support systems, to conserve biological diversity, and to ensure that the utilisation of natural resources is sustainable for the benefit of all Namibians, both present and future, as well as the international community, as provided for in the Constitution.<sup>2</sup>

The Ministry has three Departments, each with its own sub-departments (known as directorates or divisions):

- Department of Tourism, Planning and Administration:
  - Directorate of Administration, Finance and Human Resources;
  - Directorate of Planning and Technical Services; and
  - Directorate of Tourism and Gaming.
- Department of Environmental Affairs:
  - Division of Environmental Assessment, Waste Management and Pollution Control, and Inspections;
  - Division of Environmental Information and Natural Resource Economics; and
  - Division of Multilateral Environmental Agreements.
- Department of Natural Resources Management:
  - Directorate of Wildlife and National Parks; and
  - Directorate of Scientific Services.

### **18.2.2 Department of Environmental Affairs**

Currently, environmental impact assessments (EIAs) are guided and reviewed by the Department of Environmental Affairs (DEA) in the MET. The DEA has broad environmental responsibilities, including overseeing Namibia's compliance with various United Nations conventions and the implementation of a variety of programmes related to these conventions. The DEA is also in charge of pollution control and waste management, and overall coordination of environmental issues within the Namibian government.

The Environmental Management Act (EMA), No. 7 of 2007 of February 2012 makes provision for the creation of an Office of the Environmental Commissioner and a broader committee to be known as the Sustainable Development Advisory Council, both of which were appointed at the same time as the promulgation of the EIA Regulations. Their respective roles are summarised below.

### **18.2.3 Environmental Commissioner**

The Environmental Commissioner performs the following functions:

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<sup>2</sup> [www.met.gov.na](http://www.met.gov.na)

- Advises organs of state on the preparation of environmental plans;
- Receives and records applications for Environmental Clearance Certificates (ECCs), and determines whether a listed activity requires an assessment;
- Determines the scope, procedure and methods of an assessment and then reviews the environmental impact assessment (EIA) report;
- Issues ECCs;
- Maintains a register of environmental assessments undertaken and the ECCs issued; and
- Conducts inspections for monitoring compliance.

#### **18.2.4 Sustainable Development Advisory Council**

The main task of the Sustainable Development Advisory Council is to promote cooperation and coordination between organs of state, non-governmental organisations, community-based organisations, the private sector and funding agencies on environmental issues relating to sustainable development. It also advises the Minister on the following:

- The development of a policy and strategy for the management, protection and use of the environment;
- The conservation of biological diversity, access to genetic resources in Namibia, and the use of components of the environment in a way and at a rate that does not lead to the long-term decline of the environment, thereby maintaining its potential to meet the needs and aspirations of present and future generations;
- Appropriate methods of monitoring compliance; and
- The need for, and initiation or amendment of, legislation on matters relating to the environment.

### **18.3 Policy and legal framework for EIA**

#### **18.3.1 General environmental policies**

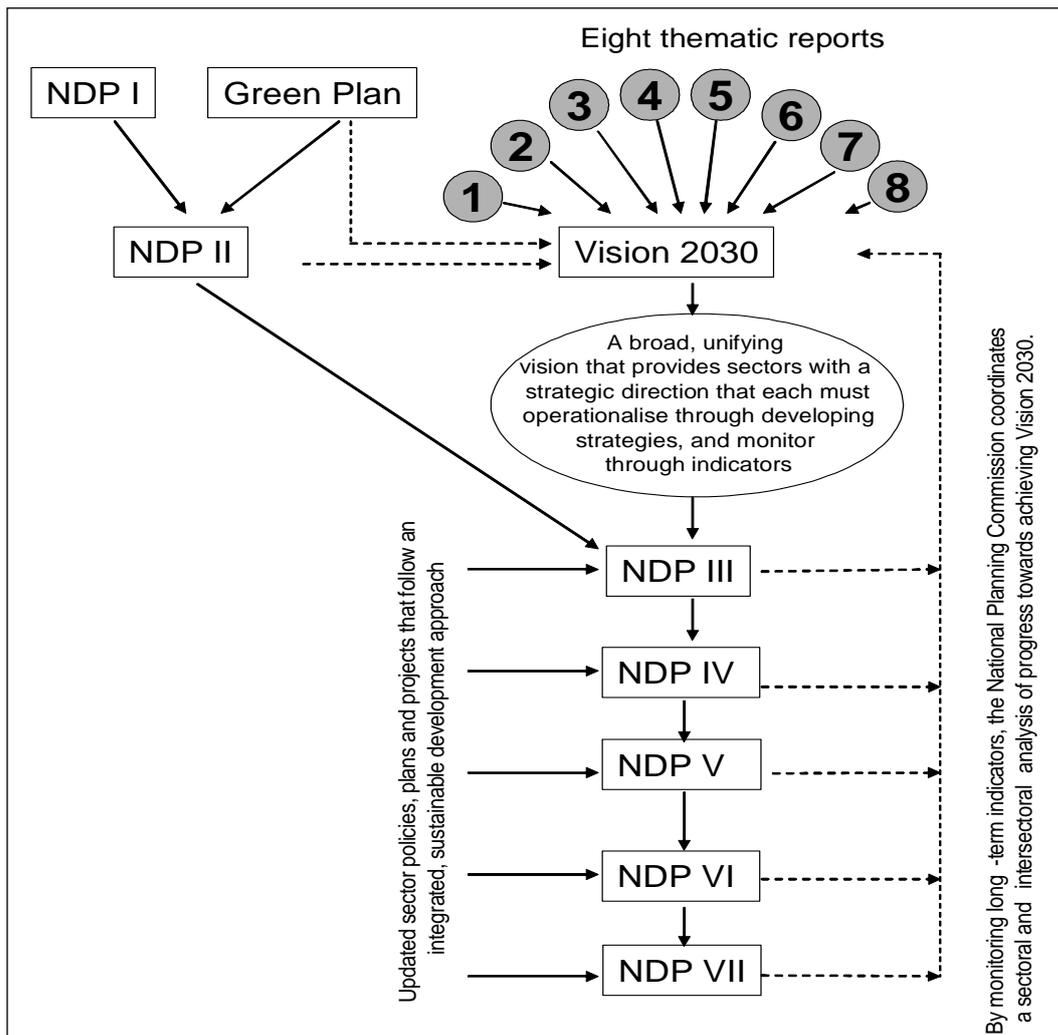
In 1992, *Namibia's Green Plan* was drafted by the newly created MET and presented at the United Nations Conference on Environment and Development in Rio de Janeiro.<sup>3</sup> This document analysed the main environmental challenges facing Namibia and specified actions required to address them. Following on from the Green Plan, the MET formulated 'Namibia's 12-Point Plan for Integrated and Sustainable Environmental Management', a strategic

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<sup>3</sup> Republic of Namibia, 1994a. *Namibia's Green Plan*. Windhoek: Directorate of Environmental Affairs, Ministry of Environment and Tourism.

document that set out the most important areas that needed to be developed to place Namibia on a sustainable development path.<sup>4</sup> These included:

- The need for policy formulation and debate;
- Legislative reform; and
- The identification of important programmes for gathering critical environmental information, spearheading new approaches for natural resource management, and developing local capacity.



**Figure 18.1: Schematic representation of the links between National Development Plans, the Green Plan and Vision 2030**

<sup>4</sup> Republic of Namibia, 1994b. *Namibia's 12-point plan for integrated and sustainable environmental management*. Windhoek: Directorate of Environmental Affairs, Ministry of Environment and Tourism.

Based on the foundation laid by the Green Plan, an effort was made to incorporate environmental and sustainable development issues and options into Namibia's National Development Plans (NDPs), which run for a period of five years each. In addition, Vision 2030, which was formulated in 2001/02, aims to guide the country's development plans from NDP II through to NDP VII (see Figure 18.1), while providing direction to government ministries, the private sector, non-governmental organisations and local authorities.<sup>5</sup> Vision 2030 fully embraces the idea of sustainable development. For the natural resource sector, it states:

*“The nation shall develop its natural capital for the benefit of its social, economic and ecological well-being by adopting strategies that: promote the sustainable, equitable and efficient use of natural resources; maximise Namibia's comparative advantages; and reduce all inappropriate resource use practices. However, natural resources alone cannot sustain Namibia's long-term development, and the nation must diversify its economy and livelihood strategies.”*

### **18.3.2 Environmental Assessment Policy**

A lengthy process of stakeholder consultation, begun in 1992, was followed during the development of Namibia's Environmental Assessment Policy<sup>6</sup> which was approved by Cabinet August 1994.

Namibia's Environmental Assessment Policy recognises that EIAs seek to ensure that the environmental consequences of development projects and policies are considered, understood and incorporated into the planning process. The term 'environment' is broadly interpreted to include biophysical, social, economic, cultural, historical and political components.

The Policy seeks to achieve sustainable development and in keeping with this recognises various concepts supporting this aim. The need to conserve biological diversity and the sustainable management of living natural resources is explicitly stated along with efficient use of resources, pollution prevention and management and community health. Cross-cutting issues which are not explicitly addressed in the Policy include gender, climate change, resettlement and community safety.

The Policy defines the required steps for an EIA, the required contents of an EIA report, the need for post-implementation monitoring, and the system of appeals. All these aspects have

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<sup>5</sup> NPC (National Planning Commission), 2001a. *Namibia Vision 2030 project: Technical report on inequalities and social welfare*. Unpublished report prepared for the NPC by the Social Impact Assessment and Policy Analysis Corporation (SIAPAC) Namibia.

<sup>6</sup> MET (Ministry of Environment and Tourism), 1995. *Environmental Assessment Policy*. Windhoek: Directorate of Environmental Affairs.

since been taken up in the subsequent Environmental Management Act (EMA) and the accompanying Regulations, which were drafted in response to the Environmental Assessment Policy.

### **18.3.3 National Policy on Climate Change for Namibia**

Namibia's climate can be characterised as hot and dry with unpredictable rainfall. Furthermore, a significant proportion of Namibia's economic activity is reliant on natural resources, which in turn are sensitive to changes in climatic conditions. Therefore, Namibia is vulnerable to the effects of climate change.

Namibia's Climate Change Policy of 2011 aims to address the climate change challenge by exploring adaptation and mitigation approaches relevant to various sectors at all levels (local to national).

One of the five objectives for achieving the aforementioned aim is to develop and implement appropriate strategies and actions that will reduce the vulnerability of various sectors to the effects of climate change. Nineteen (19) sector-specific strategies have been devised in keeping with the aforementioned objective. These are:

- Sustainable access to water
- Food security and sustainable resource base
- Agriculture
- Forestry
- Biodiversity and ecosystem services
- Human health and wellbeing
- Fisheries and marine resources
- Infrastructure
- Sustainable energy and low carbon development
- Education, training, capacity building and institutional strengthening
- Research and information needs
- Public awareness, participation and access to information
- Disaster reduction and risk management
- Financial resource allocation, mobilisation and management
- International cooperation and networking
- Technology development and transfer
- Policy and legislative development
- Gender issues and child welfare
- Vulnerable groups

The policy commits the state to make funds available to implement the policy and monitor its implementation by tracking existing indicators and new indicators specific to the Policy.

#### **18.3.4 Environmental Management Act, No. 7 of 2007**

The EMA defines EIA as a process of identifying, predicting and evaluating the significant effects of activities on the environment, as well as the risks and consequences of activities and their alternatives and options for mitigation, with a view to minimising negative impacts, maximising benefits, and promoting compliance with the principles of environmental management.<sup>7</sup>

Furthermore, the Act stresses the integrated nature of an EIA. It defines the term 'environment' as the complex of natural and anthropogenic factors and elements that are mutually interrelated and affect the ecological equilibrium and the quality of life, including land, water and air; all organic and inorganic material; all living organisms; as well as various components of the human environment. These include the landscape and the natural, cultural, historical, aesthetic, economic and social heritage and values. Thus, the Act does not foresee separate assessments for ecological, social, health or cultural components.

The EMA is in line with modern legislative trends, including:

- Adherence to the polluter pays principle;
- The inherent need to incorporate adequate provisions to achieve 'reduction-at-source' in the areas of pollution control and waste management;
- The need to consider alternatives and to avoid or minimise negative impacts wherever possible;
- The costs of EIAs being borne by the proponent, who is also responsible for ensuring that the EIA and the EIA report are of an acceptable standard;
- The need for a binding agreement between the proponent and government, based on the recommendations contained in the EIA report, that specifies how the environmental issues will be dealt with in project implementation; and
- The need for public participation in the EIA process.

The list of activities requiring an EIA in Part VII of the EMA is a guide, as the Minister may amend this list, and the Environmental Commissioner may decide that an activity requires an EIA based on its expected environmental impacts even if the activity is not listed (Part VIII, section 32(1)(b)). The activities requiring an EIA are listed in detail in Appendix 18-1, under the following category headings:

- Energy generation, transmission and storage activities;
- Waste management, treatment, handling and disposal activities;

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<sup>7</sup> Part I, section 1 of the EMA.

- Mining and quarrying activities;
- Forestry activities;
- Land use and development activities;
- Tourism development activities;
- Agriculture and aquaculture activities;
- Water resource developments;
- Hazardous substance treatment, handling and storage;
- Infrastructure
- Other activities.<sup>8</sup>

The EMA is in the process of being revised. Consultations were held in 2016 to gather public input on the proposed revisions. The amendments to the EMA are currently being considered by the Ministry of Environment and Tourism.

### **18.3.5 Regulations**

The promulgation of the EMA's EIA Regulations (Government Gazette No. 4878, Government Notice No. 30) in February 2012 marked the implementation of the EMA. The Regulations specify the process requirements for undertaking assessments of projects (EIA), developing environmental management plans (EMPs), decision making with respect to applications for Environmental Clearance Certificates, and how to appeal the decisions taken by the Environmental Commissioner.

In addition, they provide, inter alia, detail on the requirements for the contents of the EIA report and for public participation (stakeholder consultation).

The EIA Regulations are in the process of being revised. Consultations were held in 2016 to gather public input on the proposed revisions. The amendments to the EIA Regulations are currently being considered by the Ministry of Environment and Tourism.

### **18.3.6 Permits and licences**

Before a proponent can commence with an activity listed in GN No. 29 of GG No. 4878 (screening list) (see Appendix 18-1 for the list), s/he must obtain an **Environmental Clearance Certificate (ECC)**.

However, the ECC from the Environmental Commissioner is not blanket permission to implement the project. The proponent is still required to obtain a sectoral licence or permit,

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<sup>8</sup> List of activities that may not be undertaken without Environmental Clearance Certificate: Environmental Management Act, 2007 (Government Gazette No. 4878, Government Notice No. 29).

depending on the nature of the envisaged project. For example, a mine will still need a **Mining Licence** from the Ministry of Mines and Energy, a **Water Abstraction Permit** from the Department of Water Affairs and a **Water Discharge Permit** if it will be releasing wastewater into any aspect of the environment. In most cases, sector ministries first consult the EIA report before considering the proponent's applications for permits.

### 18.3.7 Penalties

The Regulations state that any person who:

- knowingly provides false or misleading information in any document submitted in terms of the Act to the Environmental Commissioner:
- knowingly and without the consent of the Environmental Commissioner –
  - makes or causes to be made any entry on a document;
  - destroys or defaces any document; or
  - alters or causes to be altered any entry on a document.

commits an offence is liable on summary conviction to a fine not exceeding N\$100,000, to imprisonment for a term not exceeding ten years, or to both.

### 18.3.8 Fees

The EIA Regulations require fees to be paid to the competent authority before an application for an ECC, ECC amendment, or ECC transfer, or appeal application is considered. The fees payable are laid out in Table 18.1.

The EMA makes provision for the government to insist that an EIA report is sent for external review at the cost of the proponent (Section 45). The government may invoke this option if it is understaffed or if the nature of the project requires skills and knowledge not available within its own ranks. The Environmental Commissioner has formally (invoked Section 45 of the EMA) requested external reviews on several occasions since the promulgation of the EIA Regulations in 2012 (e.g. for the marine phosphate proposal).

External reviews have been happening informally (i.e. commissioned internally by proponents and not at the request of the Environmental Commissioner) for the past two decades already. A major reason for such reviews is to satisfy the requirements of international lender organisations such as the International Finance Corporation (IFC). Furthermore, experience over the past 14 years has shown that some proponents are willing to pay for the costs of external review, in the belief that such reviews enhance the quality of their EIAs and thus reduce administrative delays.

**Table 18.1: Fees for consideration of EIA reports**

Fee payable for	Fees payable N\$
Issue of ECC	300
Application for amendment of environmental clearance certificate	300
Application for transfer of environmental clearance certificate	1,000
Appeal application	1,000

### 18.3.9 Guidelines

A number of guidelines have been compiled to help improve EIA practice in Namibia. A few of these guidelines are available online. These include:

- Bush thinning (2017)<sup>9</sup>
- Reporting Guideline for Environmental Assessment (2015)
- Draft EIA and EMP procedural guideline (2008)<sup>10</sup>
- Irrigation (2000)
- Mining (1999)
- Water sector projects (2000).

### 18.3.10 Environmental standards

The drinking water guidelines are not standards, as no publication in the Government Gazette of Namibia exists to that effect. However, the Cabinet of the Transitional Government for National Unity adopted the existing South African Guidelines (461/85). These took effect from 1 April 1988 under the signature of the then Secretary for Water Affairs. After independence, the Government of the Republic of Namibia decided that, in the interim, the existing Guidelines will continue to be valid and remain in use until a proper study has been conducted and new standards have been formulated (Article 140 of Act No. 1 of 1990).<sup>11</sup> The standards that are in use are shown in Tables 18.1 to 18.4.

**Table 18.2: Determinants with aesthetic or physical implications for drinking water**

Determinant	Units	Maximum allowable limits for groups			
		A	B	C	D <sup>2</sup>
Colour	mg/l Pt	20			
Conductivity	mS/m at 25°C	150	300	400	400
Total hardness	mg/l CaCO <sub>3</sub>	300	650	1,300	1,300
Turbidity	NTU <sup>4</sup>	1	5	10	10
Chloride	mg/l Cl	250	600	1,200	1,200
Chlorine (free)	mg/l Cl	0.1 – 5.0	0.1 – 5.0	0.1 – 5.0	0.1 – 5.0
Fluoride	mg/l F	1.5	2.0	3.0	3.0

<sup>9</sup> <http://www.agrinamibia.com.na/wp-content/uploads/2018/04/GIZ-deBushing-Bush-Harvesting-Guidelines-2017.pdf>

<sup>10</sup> [http://www.the-eis.com/data/literature/DRAFT%20PROCEDURES%20AND%20GUIDELINES%20FOR%20EIA%20and%20EMP\\_2008.pdf](http://www.the-eis.com/data/literature/DRAFT%20PROCEDURES%20AND%20GUIDELINES%20FOR%20EIA%20and%20EMP_2008.pdf)

<sup>11</sup> [www.mawrd.gov.na](http://www.mawrd.gov.na)

Determinant	Units	Maximum allowable limits for groups			
		A	B	C	D <sup>2</sup>
Sulphate	mg/l SO <sub>4</sub>	200	600	1,200	1,200
Copper	mg/l Cu	500	1,000	2,000	2,000
Nitrate	mg/l N	10	20	40	40
Hydrogen sulphide	µg/l H <sub>2</sub> S	100	300	600	600
Iron	µg/l Fe	100	1,000	2,000	2,000
Manganese	µg/l Mn	50	1,000	2,000	2,000
Zinc	mg/l Zn	1	5	10	10
pH <sup>5</sup>	unit	6.0 – 9.0	5.5 – 9.5	4.0 – 11.0	4.0 – 11.0

Group A: Water with an excellent quality

Group B: Water with acceptable quality

Group C: Water with low health risk

Group D: Water with a high health risk, or water unsuitable for human consumption.

Pt: platinum units

NTU: nephelometric turbidity units

The pH limits of each group exclude the limits of the previous group.

**Table 18.3: Inorganic determinants for drinking water**

Determinant	Units	Limits for groups (see Note 1 on Table 18.2)			
		A	B	C	D
Aluminium	µg/l Al	150	500	1,000	1,000
Ammonia	mg/l N	1	2	4	4
Antimony	µg/l Sb	50	100	200	200
Arsenic	µg/l As	100	300	600	600
Barium	µg/l Ba	500	1,000	2,000	2,000
Beryllium	µg/l Be	2	5	10	10
Bismuth	µg/l Bi	250	500	1,000	1,000
Boron	µg/l B	500	2,000	4,000	4,000
Bromine	µg/l Br	1,000	3,000	6,000	6,000
Cadmium	µg/l Cd	10	20	40	40
Calcium	mg/l Ca	150	200	400	400
Calcium	mg/l CaCO <sub>3</sub>	375	500	1,000	1,000
Cerium	µg/l Ce	1,000	2,000	4,000	4,000
Chromium	µg/l Cr	100	200	400	400
Cobalt	µg/l Co	250	500	1,000	1,000
Cyanide (free)	µg/l CN	200	300	600	600
Gold	µg/l Au	2	5	10	10
Iodine	µg/l I	500	1,000	2,000	2,000
Lead	µg/l Pb	50	100	200	200
Lithium	µg/l Li	2,500	5,000	10,000	10,000
Magnesium	mg/l Mg	70	100	200	200
Magnesium	mg/l CaCO <sub>3</sub>	290	420	840	840
Mercury	µg/l Hg	5	10	20	20
Molybdenum	µg/l Mo	50	100	200	200
Nickel	µg/l Ni	250	500	1,000	1,000
Phosphate	mg/l P	1	See note below		
Potassium	mg/l K	200	400	800	800
Selenium	µg/l Se	20	50	100	100
Silver	µg/l Ag	20	50	100	100
Sodium	mg/l Na	100	400	800	800
Tellurium	µg/l Te	2	5	10	10

Determinant	Units	Limits for groups (see Note 1 on Table 18.2)			
		A	B	C	D
Thallium	µg/l Tl	5	10	20	20
Tin	µg/l Sn	100	200	400	400
Titanium	µg/l Ti	100	500	1,000	1,000
Tungsten	µg/l W	100	500	1,000	1,000
Uranium	µg/l U	1,000	4,000	8,000	8,000
Vanadium	µg/l V	250	500	1,000	1,000

Note: The general guideline for a concentration level to be aimed at is 1 mg/l as P. But in many cases, this may be difficult to achieve technically. For this reason, the Department will allow a phosphate concentration level of up to 5 mg/l as P in water intended for human consumption.

**Table 18.4: Bacteriological determinants for drinking water**

Determinant	Limits for groups <sup>1</sup>			
	A <sup>2</sup>	B <sup>2</sup>	C	D
Standard plate counts per 1 ml	100	1 000	10 000	10 000
Total coliform counts per 100 ml	0	10	100	100
Faecal coliform counts per 100 ml	0	5	50	50
<i>Escherichia coli</i> counts per 100 ml	0	0	10	10

1. All values greater than the figure indicated
2. In 95% of samples

**Table 18.5: General standards for waste or effluent water discharge into the environment**

Determinants	Units	Maximum allowable levels
Arsenic	mg/l As	0.5
Biological oxygen demand	–	–
Boron	mg/l B	1.0
Chemical oxygen demand	mg/l O	75
Chlorine (residual)	mg/l Cl <sub>2</sub>	0.1
Chromium, hexavalent	µg/l Cr(VI)	50
Chromium, total	µg/l Cr	500
Copper	mg/l Cu	1.0
Cyanide	µg/l CN	500
Dissolved oxygen	%	At least 75% saturation <sup>1</sup>
Detergents, surfactants, tensides	mg/l as MBAS <sup>2</sup>	0.5
Fats, oil and grease	mg/l	2.5 (gravimetric method)
Fluoride	mg/l F	1.0
Free and saline ammonia	mg/l N	10
Lead	mg/l Pb	1.0
Absorbed oxygen	mg/l O	10
pH	units	5.5 – 9.5
Phenolic compounds	µg/l as phenol	100
Phosphate	mg/l P	1.0 <sup>3</sup>
Sodium	mg/l Na	Not more than 90 mg/l > influent
Sulphide	mg/l S	1.0
Temperature	°C	35
Total dissolved solids	mg/l	Not more than 500 mg/l > influent
Total suspended solids	mg/l	25
Typical faecal coliforms	Per 100ml	0
Zinc	mg/l	5.0

1. In Windhoek, the saturation level is approximately 9 mg/l O<sub>2</sub>.

2. The methylene blue active substances (MBAS) test does not cover all surface active compounds and, therefore, the limit given is only a guideline.
3. See note on phosphate attached to Table 18.3.

There are no ambient air quality or emission standards for Namibia, nor any specific standards for noise. Readers are referred to the World Health Organisation standards.

### **18.3.11 Certification of environmental consultants**

Currently, there is no requirement for environmental assessment practitioners to be certified or registered to practice in Namibia. However, the government is interested in establishing a certification system for environmental assessment practitioners, and has held a workshop with interested parties to discuss the need for such a system. It is expected that the establishment of a certification system will be considered in the near future. A voluntary association, known as the Environmental Assessment Professionals Association of Namibia (EAPAN) was established in 2012 and represents the largest non-state body of environmental assessment practitioners. EAPAN exists to promote international best practice and develop capacity in all forms of EA in Namibia<sup>12</sup>.

The EMA does not require the EIA consultants to be independent of the proponent.

## **18.4 EIA procedural framework in Namibia**

The steps required to conduct an EIA are outlined in the following subsections and shown schematically in Figure 18.2.

### **18.4.1 EIA Registration**

The EIA Regulations (GG No. 4878 GN No. 30) stipulate that before submitting an application for an ECC, the proponent must determine if the activity for which the application is made is a listed activity (i.e. included in GN No. 29 of GG No. 4878 – see Appendix 18-1). The proponent may seek assistance from the Environmental Commissioner for this task. If the activity is a listed activity the proponent must submit an application for an ECC, using Form 1 of Annexure 1 to the EIA Regulations to the competent authority (i.e. ministry under whose jurisdiction the project is proposed).

### **18.4.2 Screening and Scoping**

Screening is the process of classifying a proposal to determine the level at which environmental assessment will be carried out. After registration of the application for an ECC, the proponent is required to appoint an Environmental Assessment Practitioner (EAP) and proceed with the scoping phase of the EIA (Figure 18.2). Scoping is defined as a consultative

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<sup>12</sup> <http://eapan.org/about-us>

procedure that culminates in the determination of the extent of, and approach to an EIA. It is an early and open process for determining the scope of issues related to the proposed activity. Public consultation forms a significant part of the scoping phase and there are specific requirements in this regard.

The main requirements, as stipulated in the EIA Regulations, include giving notice to all potential interested and affected parties (I&APs), within a **21-day period**, through the following means:

- Giving written notice to affected property owners, local, traditional and regional authorities and any organ of state that may have jurisdiction with respect to the proposed activity;
- Publishing of a notice in two widely circulated newspapers for two consecutive weeks; and
- Displaying an A2 notice board near the affected site.

The proponent's appointed EAP is required to identify all impacts, their potential effects and the significance thereof. Based on this information the proponent is responsible for determining whether further investigation is required or not. If further investigation is required, the proponent is responsible for drafting a plan of study or Terms of Reference (ToR). The ToR should include, among other matters, the specialists to be appointed and the study methods to be utilised. This information should be recorded as part of the scoping report and submitted to the Environmental Commissioner. The Commissioner, based on his/her consideration of the scoping report, is required to decide whether the report is adequate for decision making and if so, decide if a detailed assessment is required or not. If a detailed assessment is required the Commissioner "*must determine the scope, procedures and methods for the assessment*" (Reg. 14). In this way the burden of inquiry pertaining to the scoping decision is placed on the proponent's appointed EAP as opposed to the Environmental Commissioner, however, responsibility for the scoping decision lies with the Commissioner. The Commissioner is required to respond regarding the need for further detail investigations within **14 days** of receiving the scoping report. There are three possible responses:

1. The scoping report does not comply with the requirements for scoping and the inadequacies should be addressed and resubmitted;
2. The scoping report complies with the relevant requirements, no further investigations are required and an ECC is granted (the Commissioner is required to notify the proponent within **seven days** of making this decision); and

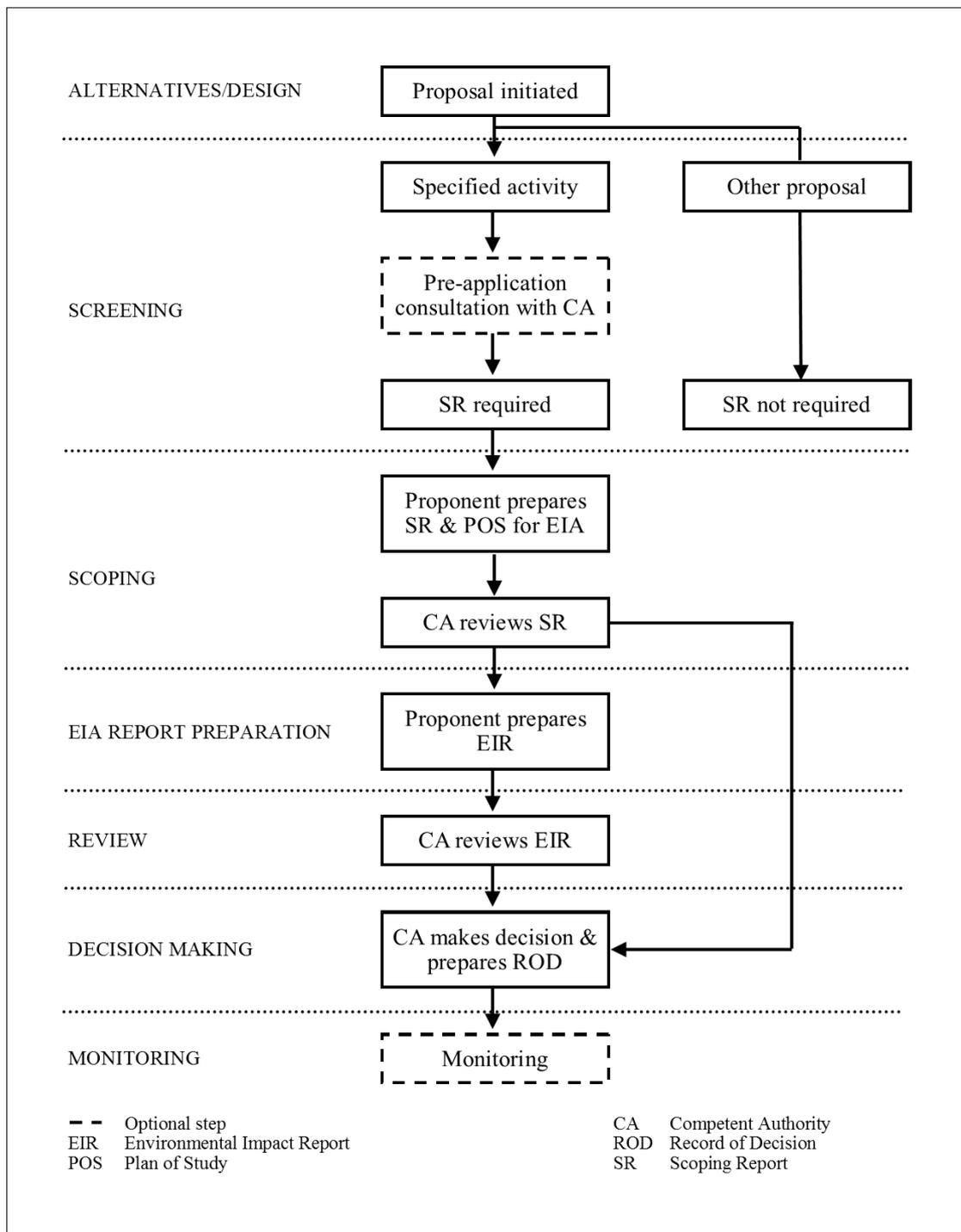


Figure 18.2: EIA process flowchart for Namibia<sup>13</sup>

<sup>13</sup> Husselmann, S. 2016. Environmental Impact Assessment in Namibia: The Effectiveness of the System and its Implementation in Practice. Unpublished thesis.

3. The scoping report complies with the relevant requirements, but detailed investigations are required as prescribed in the ToR (with or without amendments to the ToR). The Commissioner is required to notify the proponent within **seven days** of making this decision.

The EIA Regulations specify report content requirements for both scoping and detailed assessment reports. Both reports are required to contain the following information:

- Curriculum vitae of EAP/report author(s);
- Description of the activity;
- Description of the affected environment;
- Statement of the activity's purpose and need;
- Description of feasible and reasonable alternatives, their advantages and disadvantages and an assessment of impacts associated with identified alternatives;
- Description of the extent to which impacts could be addressed by the adoption of mitigation measures mitigation.

Report content requirements specific to the scoping report include: the identification of applicable legislation/permits, an environmental management plan (EMP), details of consultation process (evidence of how potential I&APs were notified) including issues raised by I&APs and responses by EAP. The EMP should include among other requirements information on proposed management and mitigation measures to address the impacts identified during the scoping phase and should set out objectives for environmental rehabilitation and closure. Pollution prevention and management are specifically required as well. The definition of an EMP in the Regulations includes impact monitoring.

### **18.4.3 Preparation of EIA Report**

Report content requirements specific to the assessment report include, methodology for determining impact significance, comparative assessment of alternatives, description of uncertainties and assumptions and a non-technical summary.

Labour and working conditions, gender, climate change, resettlement, community health and safety, cultural heritage, biodiversity conservation, sustainable living natural resources management, and resource efficiency, are not specifically required to be included in either the scoping or EIA reports. Pollution prevention and management are specifically required as part of the EMP.

#### 18.4.4 Review of EIA reports

The EIA regulations require that both scoping and detailed assessment reports are circulated to I&APs before submission to the Commissioner as part of the public consultation process. The EIA Regulations require that all written comments by I&APs (submitted during scoping phase public consultation, or on public review of reports) be recorded, including any responses by the EAP, but do not explicitly require that proponents or their EAPs respond to such comments. In some cases, the EIA report may be subject to a public hearing (Section 36 of the EMA), while Section 45 of the EMA makes provision for the Environmental Commissioner to appoint an external reviewer in the event of potential controversy in which a high level of objectivity is required. In this instance the EMA entitles the government to recover the costs of external review from the proponent.

The EIA report must be reviewed before the Environmental Commissioner can take a decision regarding an application for an ECC (Figure 18.2). Usually, the Commissioner will confer with the national ministry under whose jurisdiction the project is proposed. The Commissioner is required to keep a record of the authorisation decision taken, including reasons for decisions. However, the regulations do not define any criteria upon which these decisions are to be taken, nor are there any guidelines on this matter. The Commissioner is required to notify the proponent of his/her decision in writing (including reasons). In practice reasons are only provided for negative decisions (i.e. refusals). Furthermore, the EMA requires that the record of decision be made available to the public for review upon request.

After reviewing the EIA report, within **seven days**, the Environmental Commissioner should:

- Grant the application and issue an ECC to the proponent; and
- Refuse the application and provide the proponent with reasons for the refusal.

Article 38 of the EMA requires that the Record of Decision be kept in the prescribed form set out in Regulation 27 and be made available for public inspection at the Office of the Environmental Commissioner. An ECC is valid for a maximum of three years.

#### 18.4.5 Appeals

Provision is made in sections 50 and 51 of the Act for a simple appeal process. In terms of this process, any person can appeal a decision taken by the Environmental Commissioner to the Minister of Environment and Tourism, and if this does not resolve the issue, a decision by the Minister can be appealed in the High Court.

#### **18.4.6 Environmental auditing**

Environmental auditing is not yet common practice in Namibia, though a few audits have been done. Most audits have been because of a property transfer (e.g. a mine), where the new owners require specific information on the extent to which they are liable for environmental impacts that have occurred or are likely to occur in the future. Most audits have been conducted by independent consultants. Neither the Act nor the EIA Regulations specify the need for audits.

#### **18.4.7 Inspections and monitoring**

The EIA Regulations do not specify the need for environmental monitoring by the proponent. However, the need for monitoring could be implied from the requirement to compile an EMP.

Section 17 of Part V of the EMA empowers the Environmental Commissioner to conduct inspections to monitor compliance with the EMA and with conditions stipulated in the ECC. The Environmental Commissioner may be assisted in this task by Environmental Officers (who could be consultants appointed specifically in this role) and/or the police. This provision provides a way of overcoming capacity constraints in MET. Post-implementation monitoring subsequent to the promulgation of the EIA Regulations is undertaken more frequently than prior to this date. However, capacity constraints are still a concern and not all projects are monitored. Controversial projects tend to receive more attention in this regard.

If monitoring and/or inspections reveal that a developer is not abiding by the conditions of the ECC or has contravened the EMA, the Environmental Commissioner has the power to suspend or cancel the ECC for a period s/he may determine. The ECC can be reinstated once the Environmental Commissioner is satisfied that the person concerned has rectified the failure that led to the suspension.

#### **18.4.8 Strategic environmental assessment**

Given that government agencies are the main institutions likely to initiate the development of a policy, plan or programme, they are obligated to appoint a qualified environmental assessment practitioner to determine whether a policy, plan or programme is likely to have significant environmental effects. As is the case with project-level EIA, public consultation is required and a strategic environmental assessment (SEA) report must be compiled. This is evaluated by the Office of the Environmental Commissioner (with or without specialist support) and a clearance is issued or denied, as the case may be.

Draft SEA regulations were compiled and were subject to thorough public consultation in 2016. The draft SEA Regulations are currently being considered by the Ministry of Environment and Tourism. In spite of this delay a number of SEAs and strategic land

planning studies have been done in Namibia for a variety of sectors such as mining, agriculture, conservation and shared water systems.

### 18.4.9 Trans-boundary impacts

Namibia lies on the west coast of Africa and is part of the Southern African Development Community. The country is bounded on the west by the Atlantic Ocean and shares a northern border with Angola and Zambia. Botswana lies to the east and the Orange River in the south forms the border with South Africa. The far eastern tip of the country touches Zimbabwe at the point in the Zambezi River where four countries meet (Zimbabwe, Zambia, Botswana and Namibia). Although there are no explicit requirements in the EMA or the EIA Regulations to consider trans-boundary impacts in an EIA, Namibia is a signatory to several trans-boundary agreements which require sharing of information e.g. Orange-Senqu River Commission, the Okavango Commission, the Benguela Current Commission, the Permanent Joint Technical Commissions with Angola (Kunene River) and South Africa (Orange River), as well as some trans-frontier conservation initiatives such as the Kavango-Zambezi Trans-frontier Conservation Area.

## 18.5 Other relevant environmental legislation in Namibia

A number of sector laws in Namibia are relevant to EIA. The following table provides a summary of the relevant sector legislation.

**Table 18.5: Other potentially applicable sectoral requirements**

Sector	Primary agency	Title and date of document	Purpose
Water resources	Ministry of Agriculture, Water and Forestry	Water Resources Management Act, No. 11 of 2013	The Act provides for the management, development, protection, conservation and use of water resources, and established various regulatory and advisory institutions.
Air pollution and noise	Ministry of Health and Social Services	Atmospheric Pollution Prevention Ordinance, No. 11 of 1976	Air pollution is controlled primarily by this Ordinance, which deals with air pollution as it affects occupational health and safety issues if these are the subject of one of the conditions of a registration certificate issued under the Ordinance. It considers air pollution from point sources but does not address ambient air quality.
Waste management	MET and others	Pollution Control and Waste Management Bill (in preparation)	The purpose of this Bill is to regulate and prevent the discharge of pollutants to the air and water, and enable the country to fulfil its international obligations in this regard.  With respect to water pollution, the draft Bill forbids any person from discharging or disposing of pollutants into any water or watercourse without a Water Pollution Licence, aside from the discharge of domestic waste from a private dwelling or the discharge of pollutants or waste to a sewer or sewage

Sector	Primary agency	Title and date of document	Purpose
			<p>treatment works.</p> <p>The Bill requires that the application for a Water Pollution Licence must be accompanied by details of the activity to which the application relates, including the nature and location of the activity and its actual and potential effects on the environment. Members of the public must be given the opportunity to comment on all licence applications.</p> <p>The inspectors who will be appointed for the purposes of this Bill will have wide-ranging powers, including the power to enter and search any premises or vehicle without a warrant or court order, and to collect evidence as required.</p>
Health	Ministry of Health and Social Services	Public Health Act, No. 36 of 1919, with subsequent amendments	This Act is only relevant in as much as workers must be protected from harm, especially during construction.
Planning and zoning	National Planning Commission		The National Planning Commission is important because it theoretically coordinates all development in the country, especially capital projects. It does not issue authorisations or permits, but needs to be involved in decision-making processes.
Mining and mineral resources	Ministry of Mines and Energy	Minerals (Prospecting and Mining) Amendment Act, 2008	<p>This Act controls all mining activity in Namibia. Mineral rights are vested in the state, and companies or individuals are required to apply to the Ministry for licences to explore and mine mineral deposits.</p> <p>Following Cabinet approval and Parliament endorsement of the Minerals Policy of 2003, a new Minerals Bill is being prepared, which introduces requirements for financial guarantees for the reparation of environmental damage and the setting up of trust funds for rehabilitation after mine closure. Specification of these requirements will be contained in Regulations yet to be drafted. Penalties for non-compliance will also be included.</p>
Petroleum exploration and production	Ministry of Mines and Energy	Petroleum (Exploration and Production) Amendment Act, No. 11 of 1997, as amended	<p>The Act stipulates that all rights in relation to exploration for the production and disposal of petroleum vests in the state. The Act states in Article 12 that in considering a licence application, the Minister may require the applicant to carry out environmental impact studies. It provides for the issuing of licences for reconnaissance, exploration and production of petroleum and, in Article 71, for the control of environmental pollution caused by such activities.</p> <p>In accordance with the Act, a Petroleum Agreement is established between the Government of Namibia (Ministry of Mines and Energy) and the licence applicant. Clause 11 of such a Petroleum Agreement deals with environmental protection and binds the licence holder to all provisions contained in the Act, as well as to fairly stringent environmental requirements:</p>
Marine pollution	Ministry of Works, Transport and Communication	Prevention and Combating of Pollution of the Sea by Oil Act, 1981, and the	This Act provides a framework for the prevention and combating of pollution of the sea by oil and for determining liability in respect of loss or damage caused by the discharge of oil from ships, tankers or offshore installations. It is the enabling legislation for the International Convention for the

Sector	Primary agency	Title and date of document	Purpose
		Amendment Act, No. 24 of 1991	Prevention of Pollution from Ships (Marpol 73/78) signed and ratified by Namibia, but is limited to oil pollution.
Marine pollution	Namibia Port Authority	Namibian Ports Authority Act, No. 2 of 1994	In terms of this Act, the Namibian Ports Authority (Namport) is responsible for 'protecting the environment' within its demarcated area of control. Although open-ended, the Act does afford Namport the power to monitor and regulate activities within the ports and adjacent bays. However, there may be uncertainty about who is responsible for enforcing this, as the Ministry of Fisheries and Marine Resources has overall responsibility for all living marine resources, and the Ministry of Agriculture, Water and Rural Development has responsibility for water quality and marine pollution from land-based sources.
Conservation	MET	Nature Conservation Ordinance, 1975	This outdated Ordinance will be replaced by the Parks and Wildlife Bill, which includes provisions to declare protected areas and protect against alien species.  The new legislation will, inter alia, enable the proclamation of nature reserves and generally improve the conservation of biodiversity in Namibia.
Agriculture and forestry	Ministry of Agriculture, Water and Forestry	Forest Act, 2001 as amended (2005)	This Act enables the state to declare forest reserves, some which may be managed by communities. It also regulates the trade in forest products and has some reference to EIA requirements (mostly regarding de- or reforestation projects)
		Various policies and laws	The various policies and laws are sector-specific (e.g. pest control and livestock diseases).
Land and resettlement	Ministry of Lands Reform	Agricultural (Commercial) Land Reform Act, 1995	This Act enables the redistribution of freehold land to the previously disadvantaged under the willing seller, willing buyer principle. Problematic issues include the unclear definition and interpretation of 'underutilised' land and 'economic unit'.
		Communal Land Reform Act, 2002	The Act aims to improve the use of communal land and to reduce irregularities and constraints regarding livelihood strategies. Issues addressed are: <ul style="list-style-type: none"> <li>▪ Fencing (which is illegal);</li> <li>▪ Land degradation and impacts from prospecting, mining, roadworks and the use of water resources;</li> <li>▪ Allocation of land; and</li> <li>▪ Institutional arrangements.</li> </ul>
Fisheries	Ministry of Fisheries and Marine Resources	Marine Resources Act, 2000	The Act governs the exploitation and conservation of marine resources and specifies governance issues relating to the issuing of licences, etc. It is not strong on EIA issues.
		Inland Fisheries Resources Act, No. 1 of 2003	The Act governs the exploitation and conservation of freshwater resources and specifies governance issues relating to the issuing of licences, etc. It is not strong on EIA issues. The Act makes allowance for community-based management.
		Aquaculture Act, No. 18 of 2002	The Act promotes aquaculture but ignores the environmental impacts associated with fish farming (e.g. over-enrichment of water due to a build-up of fish faeces, and water pollution from harmful algal blooms) and how these would be prevented.
Roads	Ministry of Works and Transport	Roads Authority Act 17 of 1999	The Ministry is responsible for establishing and maintaining the national roads network. The Roads Authority is empowered by the Roads Authority Act to administrate matters pertaining to national roads.
		Roads Ordinance	The Roads Ordinance consolidates and amends the laws

Sector	Primary agency	Title and date of document	Purpose
		17 of 1972	relating to roads and related matters.
Transmission	Ministry of Mines and Energy	Electricity Act 4 of 2007	Establishes the Electricity Control Board and provides for its powers and functions
Archaeological, historical and cultural	Ministry of Education, Arts and Culture	National Monuments Act, No. 28 of 1969	The Act enables the proclamation of national monuments and protects archaeological sites.
		National Heritage Act, No. 27 of 2004	The Act extends the protection of archaeological and historical sites to private and communal land, and defines permit procedures regarding activities at such sites.
Local government	Ministry of Urban and Rural Development	Regional Councils Act, No. 22 of 1992, amended in Act No. 24 of 2000 Local Authorities Act, No. 23 of 1992 Traditional Authorities Act, 1995	Reference to these Acts is included because traditional and regional authorities have a say in how land is allocated. This has implications for an EIA process in that these structures must be consulted and the correct protocol must be followed.
Labour employment and occupational health	Ministry of Labour Industrial Relations & Employment Creation	Labour Act 11 of 2007 as amended (2012)	Makes provision for the establishment of the National Employment Service and imposes reporting and other obligations on certain employers and institutions.
		Regulations relating to the health and safety of employees at work (1997)	The health and safety regulations provide comprehensive provisions relating to occupational health and safety matters.

## **Appendix 18-1: List of activities that may not be undertaken without an Environmental Clearance Certificate**

### **Energy generation, transmission and storage activities**

- The construction of facilities for -
  - the generation of electricity;
  - the transmission and supply of electricity;
  - refining of gas, oil and petroleum products; and
  - nuclear reaction, including production, enrichments, processing, reprocessing, storage or disposal of nuclear fuels, radioactive products and waste.

### **Waste management, treatment, handling and disposal activities**

- The construction of facilities for waste sites, treatment of waste and disposal of waste;
- Any activity entailing a scheduled process referred to in the Atmospheric Pollution Prevention Ordinance, 1976;
- The import, processing, use and recycling, temporary storage, transit or export of waste.

### **Mining and quarrying activities**

- The construction of facilities for any process or activity which requires a licence, right or other form of authorisation, and the renewal of a licence, right or other form of authorisation, in terms of the Minerals (Prospecting and Mining) Act, 1992;
- Other forms of mining or extraction of any natural resources whether regulated by law or not;
- Resource extraction, manipulation, conservation and related activities;
- The extraction or processing of gas from natural and non-natural resources, including gas from landfill sites;
- The extraction of peat.

### **Forestry activities**

- The clearance of forest areas, deforestation, afforestation, timber harvesting or any other related activity that requires authorisation in term of the Forest Act, 2001 (Act No. 12 of 2001) or any other law.

### **Land use and development activities**

- The rezoning of land from -
  - residential use to industrial or commercial use;
  - light industrial use to heavy industrial use;
  - agricultural use to industrial use; and
  - use for nature conservation or zoned open space to any other land use.
- The establishment of land resettlement schemes;

- Construction of veterinary protected area or game proof and international boundary fences.

**Tourism development activities**

- The construction of resorts, lodges, hotels or other tourism and hospitality facilities.

**Agriculture and aquaculture activities**

- Construction of facilities for aquaculture production, including mariculture and algae farms where the structures are not situated within an aquaculture development zone declared in terms of the Aquaculture Act, 2002;
- The declaration of an area as an aquaculture development zone in terms of the Aquaculture Act, 2002;
- The genetic modification of any organism with the purpose of fundamentally changing the inherent characteristics of that organism;
- The import, processing and transit of genetically modified organisms;
- Pest control;
- The release of genetically modified organisms into the environment where an environmental assessment is required by law;
- The release of any organism outside its natural area of distribution that is to be used for biological pest control;
- The introduction of alien species into local ecosystems.

**Water resource developments**

- The abstraction of ground or surface water for industrial or commercial purposes;
- The abstraction of groundwater at a volume exceeding the threshold authorised in terms of a law relating to water resources;
- Any water abstraction from a river that forms an international boundary;
- Construction of canals and channels including the diversion of the normal flow of water in a riverbed and water transfer schemes between water catchments and impoundments;
- Construction of dams, reservoirs, levees and weirs;
- Construction of industrial and domestic wastewater treatment plants and related pipeline systems;
- Irrigation schemes for agriculture excluding domestic irrigation;
- Construction and other activities in water courses within flood lines;
- Construction and other activities within a catchment area;
- Reclamation of land from below or above the high-water mark of the sea or associated inland waters;
- Alteration of natural wetland systems;
- The release of brine back into the ocean by desalination plants.

**Hazardous substance treatment, handling and storage**

- The manufacturing, storage, handling or processing of a hazardous substance defined in the Hazardous Substances Ordinance, 1974;

- Any process or activity which requires a permit, licence or other form of authorisation, or the modification of or changes to existing facilities for any process or activity which requires an amendment of an existing permit, licence or authorisation or which requires a new permit, licence or authorisation in terms of a law governing the generation or release of emissions, pollution, effluent or waste;
- The bulk transportation of dangerous goods using pipeline, funiculars or conveyors with a throughout capacity of 50 tons or 50 cubic meters or more per day;
- The storage and handling of a dangerous goods, including petrol, diesel, liquid petroleum gas or paraffin, in containers with a combined capacity of more than 30 cubic meters at any one location;
- Construction of filling stations or any other facility for the underground and aboveground storage of dangerous goods, including petrol, diesel, liquid, petroleum, gas or paraffin.

### **Infrastructure**

- The construction of -
  - oil, water, gas and petrochemical and other bulk supply pipelines;
  - public roads;
  - railways and harbours;
  - airports and airfields;
  - any structure below the high water mark of the sea;
  - cableways;
  - communication networks including towers, telecommunication and marine telecommunication lines and cables;
  - motor vehicle and motorcycle racing and test tracks;
  - the outdoor racing sites of motor powered vehicles including -
    - motorcars;
    - trucks;
    - motorcycles;
    - quad bikes;
    - boats; and
    - jet skis;
- Masts of any material or type and of any height, including those used for telecommunication broadcasting and radio transmission, but excluding -
  - flag poles; and
  - (ii) lightning conductor poles.
- The route determination of roads and design of associated physical infrastructure where -
  - it is a public road;
  - the road reserve is wider than 30 meters; or
  - the road caters for more than one lane of traffic in both directions.

**Other activities**

- Construction of military demonstration and testing sites;
- Construction of cemeteries, camping, leisure and recreation sites.

## Acronyms

<b>DEA</b>	Department of Environmental Affairs
<b>EA</b>	Environmental Assessment
<b>EAP</b>	Environmental Assessment Practitioner
<b>EAPAN</b>	Environmental Assessment Practitioners Association of Namibia
<b>ECC</b>	Environmental Clearance Certificate
<b>EIA</b>	environmental impact assessment
<b>EMA</b>	Environmental Management Act
<b>EMP</b>	environmental management plan
<b>GG</b>	Government Gazette
<b>GN</b>	Government Notice
<b>I&amp;AP</b>	Interested and Affected Party
<b>MET</b>	Ministry of Environment and Tourism
<b>NDP</b>	National Development Plan
<b>NPC</b>	National Planning Commission
<b>N\$</b>	Namibian dollar
<b>SEA</b>	strategic environmental assessment
<b>ToR</b>	Terms of Reference

## Useful contacts

Department	Ministry	Telephone	Fax	Website
Department of Environmental Affairs	Ministry of Environment and Tourism	+264-61-284-2701	+264-61-229936	<a href="http://www.met.gov.na">www.met.gov.na</a>