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LESOTHO

CHAPTER 13: LESOTHO

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13 LESOTHO

13.1 Constitutional requirements for environmental protection in Lesotho

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

“Lesotho shall adopt policies designed to protect and enhance the natural and cultural environment of Lesotho for the benefit of both present and future generations and shall endeavour to assure to all its citizens a sound and safe environment adequate for their health and well-being.”¹

A National Vision for Lesotho (Vision 2020) has been developed through a consultative process which further confirms the increasing prominence of sustainable development in the country’s dialogue. Vision 2020 states 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

13.2 Institutional and administrative structure for environmental impact assessment in Lesotho

13.2.1 National Environmental Secretariat

In 1994, the National Environment Secretariat was created as a direct result of the recommendation made in the 1989 National Environmental Action Plan (see s. 13.3.1) to establish an institutional framework for the management of environmental issues. In terms of the Environment Act 2008, the National Environment Secretariat is now known as the Department of Environment (DoE) (see the next section).

13.2.2 Department of Environment

The DoE is the executive arm of the National Environment Council and the principal agency responsible for managing the environment and the environmental impact assessment (EIA) process. It falls under the Ministry of Tourism, Environment and Culture. While the DoE is the sole legislated reviewer of EIAs, the Director of the DoE may delegate any of his/her functions to a line ministry, a Technical Advisory Committee (assembled for specific project reviews) or any public officer.

¹ Kingdom of Lesotho, 1993. *The Constitution of Lesotho*. Maseru: Government Printer.

² Kingdom of Lesotho, 2001. *Report of the First National Dialogue for the Development of a National Vision for Lesotho (Vision 2020)*. Maseru: Government Printer.

13.2.3 Inter-sectoral cooperation

In theory, there are two institutional structures in Lesotho which aim to promote inter-sectoral cooperation: The National Environmental Council and the Environmental Coordinating Committee. The National Environment Council comprises several ministers and a wide cross-section of stakeholder representation. It is chaired by the Minister responsible for the environment. The Council is responsible for drafting environmental policy; harmonising policies, plans and activities of government departments; and ensuring coordination among stakeholders engaged in environmental protection.³

Provision has also been made in the Environment Act for an Environmental Coordinating Committee which will ensure maximum cooperation and coordination among the line ministries and other organisations dealing with environmental protection and management. It is further responsible for ensuring that information relating to environmental issues and the enforcement of environmental legislation and line ministry responsibilities in this regard are understood.

As of July 2019, neither the Environmental Coordinating Committee nor the Environment Council was functioning.

13.2.4 Roles and responsibilities Department of Environment (DoE)

The functions of the Director of the DoE include:

- Reviewing and approving Environmental Impact Statements (EISs);
- Identifying projects, policies, programmes and activities for which environmental assessments must be conducted;
- Monitoring and assessing projects and activities once implemented to ensure that they comply with stated environmental management objectives;

³ Other members are the Ministers of Tourism, Environment and Culture (Chairman); Trade, Industry and Marketing; Agriculture; Public Works; Local Government; Development Planning; Health and Social Welfare; Natural Resources; Forestry and Land Reclamation; and Science and Technology; the Principal Secretary; the Lesotho Council of Non-Governmental Organisations (one); the business community (one); the Lesotho National Council of Women (one); a registered youth organisation (one); and an environmental expert (one).

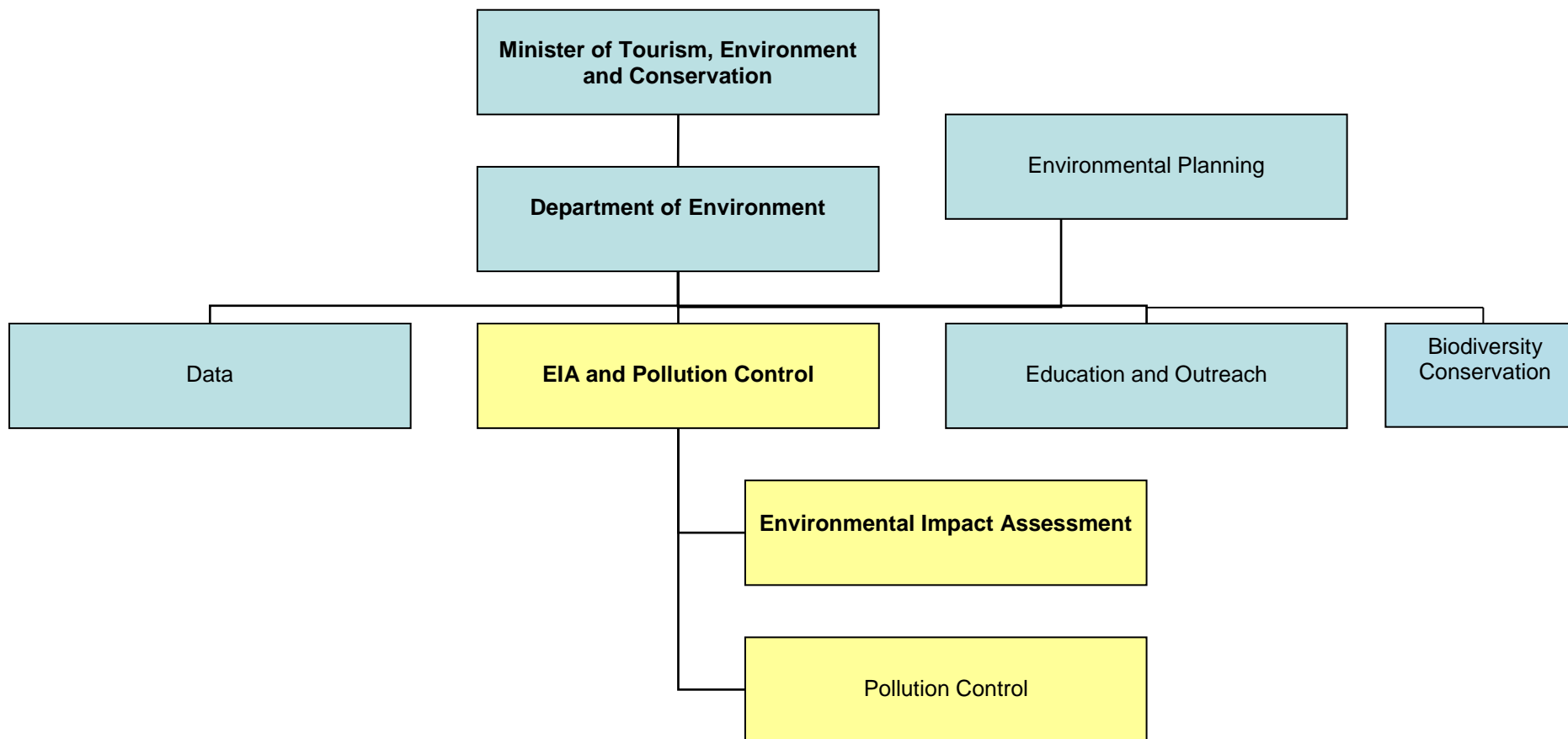


Figure 13.1: Organisational chart of the Department of Environment

- Establishing environmental criteria, standards and guidelines; and
- Establishing guidelines and procedures for industry in order to minimise environmental damage.

Under the Act, some of these duties can be delegated to line ministries or public officers (see below).

District Environment Officer

A public officer, known as the District Environment Officer will form part of each District Development Coordinating Committee and will be responsible for:

- Advising the Committee on all relevant environmental matters;
- Reporting to the Director on all matters relating to environmental protection, conservation and the sustainable use of natural resources in the district; and
- Promoting environmental awareness in the district.

Line ministry environmental units

The Environmental Act of 2008 requires each line ministry to establish an environmental unit. Each unit is responsible for the following (relating to EIA) within its ministry:

- Assuring compliance of that ministry with the Environment Act of 2008;
- Supervising the enforcement of any national environmental standards, guidelines, notices, orders and directives issued under environmental legislation;
- Conducting monitoring, testing and analysis to ensure compliance with environmental legislation; and
- Providing assistance to the DoE for reviewing relevant EIAs.

13.3 Policy and legal framework for EIA

13.3.1 National Environmental Action Plan

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.

13.3.2 National Environmental Policy, 1998

The National Environmental Policy (NEP) of 1998 evolved from the 1989 NEAP. The overall goal of the NEP is to achieve sustainable livelihoods and development for Lesotho. The objectives of the policy are as follows:

1. Secure for all Basotho a high quality of environment to enhance their health and wellbeing;
2. Raise public awareness and promote understanding of essential causal linkages between development and the environment, and ensure that environmental awareness is treated as an integral part of education at all levels;
3. 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. Conserve the Basotho cultural heritage and utilise it for the benefit of the present and future generations.;
5. Encourage and facilitate the participation of individuals, non-governmental organisations, communities, religious organisations and the business community in environmental management;
6. Halt environmental degradation; restore, maintain and enhance the ecosystems and ecological processes essential for the functioning of the biosphere; and preserve biological diversity
7. Implement the principle of optimum sustainable yield in the use of natural resources and ecosystems;
8. Foster community management and revenue sharing from the sustainable utilisation of natural resources on customary and public land;
9. 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 the environment;
10. 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. Ensure that the true and total costs of environmental use and abuse are borne by the user, i.e. the polluter pays principle;
12. Enact and implement a land tenure policy that enhances sustainable natural resource management;
13. Empower women to play a key role in natural resource use and management activities; and
14. Cooperate in good faith with other countries in the SADC region and in Africa, and with international organisations and agencies to achieve optimal use of

transboundary shared natural resources and effective prevention or abatement of transboundary environmental impacts.⁴

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 main strategies for integrating the environment and development into decision-making and achieving sustainable development is to develop a system and guidelines for EIAs, 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 National Environmental Policy are as follows:

1. EIAs are deemed necessary to ensure that development options for the public and business sector are environmentally sound and sustainable, and that any environmental consequences are recognised early and considered in project design;
2. EIAs will not only consider 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, recordkeeping and monitoring will be required for activities as determined by the mitigation plans or otherwise;
5. Draft EIA reports shall be made available for public comment and any comments received must be taken into consideration in the final EIA report; and
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 National Environmental Policy to implement the principles set out above include the following:

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;
3. Require any person or private or public organisation desiring to develop a project for which an EIA may be required, to submit a Project Brief ;

⁴ National Environmental Policy for Lesotho, 1998.

4. Prescribe guidelines and regulations concerning the preparation of EIAs, audits, monitoring and evaluation; and
5. Review EIAs and take the necessary actions to ensure that no projects proceed that may cause significant and irreparable damage to the environment.

Environmental concerns regarding resettlement are not explicitly addressed in the Policy.

13.3.3 National Climate Change Policy

The National Climate Change Policy was published in 2017. Lesotho's weather patterns are highly variable owing to its location on the plateau of the southern African sub-continent, the influences from both cold and warm ocean currents on either side of the Continent and the inter-play between the global sub-tropical high pressure and inter-tropical convergence zone. Lesotho is therefore vulnerable to climate change.

The policy vision is *“to build climate change resilience and low-carbon pathways including a prosperous sustainable economy and environment in Lesotho”*. The policy puts forward three objectives by which to achieve the aforementioned vision. These are as follows:

1. Promote climate-resilient, social, economic and environmental development that is compatible with, and mainstreamed into, national development planning and national budget-setting processes;
2. Explore low-carbon development opportunities nationally and internationally in order to promote the sustainable use of resources; and
3. Strengthen a framework that: promotes efficient climate change governance; strong international cooperation; capacity building; research and systematic observations; clean technology development, transfer and use; education, training and public awareness; and financing, in a way that also benefits the most vulnerable through the implementation arrangements to be defined in the strategy.

13.3.4 Environment Act, No. 10 of 2008

The aim of the Environment Act, No. 10 of 2008 is to provide a framework environmental law for the implementation of the National Environment Policy. The Environment Act is founded on 16 principles of environmental management as set out in Part II, section 3(2) of the Act. The principles that apply in the context of this report include the following:

- a) Assure every person living in Lesotho the fundamental right to a clean and healthy environment;
- b) Ensure that sustainable development is achieved through the sound management of the environment;
- c) Encourage participation by the people of Lesotho in the development of policies, plans and processes for the management of the environment;

- d) Require prior EIA of proposed projects or activities that are likely to have adverse effects on the environment or natural resources;
- e) Ensure that environmental awareness is treated as an integral part of education at all levels;
- f) Ensure that the costs of environmental abuse or impairment are borne by the polluter; and
- g) Promote cooperation with other governments and relevant national, international and regional organisations and other bodies concerned with the protection of the environment.

As can be seen from point d) above, the Act provides for an EIA to be conducted prior to project authorisation and for compliance auditing to be undertaken during and after construction to monitor the effects of the activity on the environment.

The Environment Act defines the term ‘environment’ as *“the physical factors of the surroundings of the human beings (sic) including land, water, atmosphere, climate, sound, odour, taste, biological factors of animals and plants and the social factors of aesthetics and includes both natural and built environment”*. Thus the term does not include humans *per se*, merely their surroundings and aesthetic factors.⁵ In spite of this rather limited definition, section 21(5)(j) of the Act states that an EIA report should include the social, economic and cultural effects of the project on people and society.

However, the National Environmental Policy (section 4.22(2)) and the EIA Guidelines define the term ‘environment’ more broadly as follows:

*“The physical, biological, social, economic, cultural, historical and political factors of the surroundings of human beings, including land, water, atmosphere, climate, sound, odour, taste and the biological factors of flora and fauna. It includes both the natural and built environments. It also includes human health and welfare. Alternatively, the external circumstances, conditions and objects that affect the existence and development of an individual, organism or group. These circumstances include biophysical, social, economic, historical, cultural and political aspects.”*⁶

This latter definition is far more encompassing than that of the Act and specifically refers to human health and welfare. While this is more in line with generally accepted definitions of the term ‘environment’, the Act and not the Guidelines is the legal document.

The EIA procedures to be followed are set out in detail in section 13.4.

⁵ Aesthetic factors include aspects of perceived environmental quality, e.g. a beautiful view.

⁶ DoE (Department of Environment), 2009. *Guidelines for environmental impact assessment in Lesotho*. Maseru: DoE.

13.3.5 Regulations and guidelines

While section 113 of the Act allows the Minister to make regulations on, *inter alia*, EIAs, no regulations to this effect have yet been made. However, EIA Guidelines were drafted in 2002 and formalised in 2009. The Guidelines for Environmental Impact Assessment in Lesotho (2009) set out the steps to be taken in carrying out the EIA process and the DoE uses this document in reviewing EIA reports and process. Care should be taken when using these Guidelines because some changes in EIA procedures were introduced with the Environment Act of 2008, which were not reflected in the 2009 Guidelines. Furthermore, the relevant clauses of the Act referred to in the 2009 Guidelines have not been updated to the 2008 Act, and there are some discrepancies between the Guidelines and the Act.

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 DoE in its reviewing and decision-making.

13.3.6 Permits and licences

Section 25(1) of the Environment Act of 2008 states that no person shall operate, execute or carry out a project or activity specified in the First Schedule (see Appendix 13-1) without an EIA Licence issued by the DoE. In issuing a licence, the environmental authority must issue a Record of Decision which may include:

- (a) The decision of the Director of the DoE;
- (b) Key factors that influenced the decision, including responses to material issues raised by any person during the EIA process;
- (c) The date of the decision;
- (d) A copy of the EIA Licence, if issued;
- (e) Information on the right of any person to seek reconsideration of the decision of the Director and how such reconsideration may be sought (section 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 that was not envisaged at the time of the EIA, the Director of the DoE can request the developer to submit a new EIS (section 26 of the Act). Failure to comply with the direction issued in this regard may result in a fine of M5000, two years' imprisonment, or both and the cancellation of the EIA Licence.

An EIA Licence can be transferred to another party only in respect of the same project that was originally authorised (section 27 of the Act).

Other environmental permits and licences required in terms of the Environment Act are listed in Table 13.1.

Table 13.1: Environmental permits and licences

| Act, Regulation or Bylaw | Permit or licence | Requirements | Penalty for non-compliance | Implementing agency |
|-----------------------------------|-------------------------------|--|--|---|
| Section 40 of the Environment Act | Effluent Licence | Licence to discharge effluent into the sewage system Validity: 1 year Fee: As prescribed | M5 000 fine, 2 years' imprisonment, or both. Cancellation of licence. | DoE |
| Section 44 of the 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 | M10 000, 3 years' imprisonment, or both. Cancellation of licence. | DoE |
| Section 47 of the Environment Act | Noise Permit | Permit to allow excessive emission of noise (in excess of the noise emission standards) Validity: Not specified Fee: As prescribed | M5 000 fine, 2 years' imprisonment, or both. Cancellation of licence. | DoE |
| Section 49 of the 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 | M5 000 fine, 2 years' imprisonment, or both. Cancellation of licence. | DoE |
| Section 76 of the Environment Act | Waste Licence | Licence to own or operate a waste disposal site or plant, other than domestic waste, generate, store, handle, transport or dispose of hazardous waste Validity: 1 year Fee: As prescribed | M5 000 fine, 2 years' imprisonment, or both. Cancellation of licence. | DoE |
| Mines and Minerals Act, 2005 | Mining (or Quarrying) Licence | EIA a prerequisite for obtaining mining rights | | Ministry of Mining |
| Municipal bylaws | Building Permit | Have to fulfil all environmental requirements and include the EIA Licence in the application for a permit | | Municipalities and Ministry of Local Government and Chieftainship |

13.3.7 Offences and penalties

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

Any person who:

- (a) Fails to submit a Project Brief, contrary to section 28;
- (b) Fails to prepare an EIS, contrary to sections 29 and 34; or

(c) Fraudulently makes a false statement on an EIS submitted under section 29, commits an offence and is liable, on conviction, to imprisonment for a period not exceeding ten years, or to a fine not exceeding M100 000, or to both.

Where the offence has been committed by corporations and partnerships, the provisions of section 119 shall apply. Additional penalties for non-compliance with any of the other permits or licences are listed in Table 13.1 above.

13.3.8 Fees

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

13.3.9 Environmental standards

The Environment Act makes provision for environmental standards to be set for water quality, air quality, waste, soil quality, noise, ionising and other radiation, noxious smells and any other environmental parameters as the authorities may determine in future. Currently, air quality standards and water quality standards for industrial effluent and potable water have been drafted and are being used as working documents. They have not yet been gazetted. The draft standards on water quality are presented in Table 13.2 and Table 13.3. In the absence of local standards, developers should refer to the World Health Organisation, the World Bank and/or donor country standards.

Table 13.2: Draft industrial effluent discharge standards

| Determinant | Unit | Recommended limit | Maximum permissible limit | Crisis limit |
|-------------------------|------------------------|-------------------|---------------------------|---------------|
| Colour | mg/l Pt | 20 | Not specified | Not specified |
| Electrical conductivity | mS/m (25°C) | 70 | 300 | 400 |
| Odour | Ton | 1 | 5 | 10 |
| Oxygen dissolved | % saturation | 70% min. | 30% min. | 10% min. |
| pH | pH unit | 6.0 – 9.0 | 5.5 – 9.5 | 4.0/>11.0 |
| Taste | TTN | 1 | 5 | 10 |
| Temperature | °C | 25°C max. | 40°C max. | 40°C max. |
| Turbidity | NTU | 1.0 | 5.0 | 10.0 |
| Chloride | mg/l Cl | 250 | 600 | 1200 |
| Chlorine, free residual | mg/l Cl | 0.2 – 0.5 | <0.2 – <5.0 | – |
| Ammonia | mg/l N | 1.0 | 2.0 | 4.0 |
| Calcium | mg/l Ca | 150 | 200 | 400 |
| Fluoride | mg/l F | 1.0 | 1.5 | 3.0 |
| Hardness | mg/l CaCO ₃ | 300 max. | 650 max. | 1 300 max. |
| Lithium | mg/l Li | 2.5 | 5.0 | 10.0 |
| Magnesium | mg/l Mg | 70 | 100 | 200 |
| Nitrate | mg/l N | 6.0 | 10.0 | 20.0 |
| Potassium | mg/l K | 200 | 400 | 800 |
| Sodium | mg/l Na | 100 | 400 | 800 |
| Aluminium | µg/l Al | 150 | 500 | 1 000 |
| Antimony | µg/l Sb | 50 | 100 | 200 |

| Determinant | Unit | Recommended limit | Maximum permissible limit | Crisis limit |
|---------------|---------|-------------------|---------------------------|--------------|
| Arsenic | µg/l As | 100 | 300 | 600 |
| Barium | µg/l Ba | 500 | 1 000 | 2 000 |
| Beryllium | µg/l Be | 2 | 5 | 10 |
| Bismuth | µg/l Bi | 250 | 500 | 1 000 |
| Boron | µg/l B | 500 | 2 000 | 4 000 |
| Bromide | µg/l Br | 1 000 | 3 000 | 6 000 |
| Cadmium | µg/l Cd | 10 | 20 | 40 |
| Cerium | µg/l Ce | 1 000 | 2 000 | 4 000 |
| Chromium | µg/l Cr | 100 | 200 | 400 |
| Cobalt | µg/l Co | 250 | 500 | 1 000 |
| Cyanide, free | µg/l CN | 200 | 300 | 600 |
| Gold | µg/l Au | 2 | 5 | 10 |
| Iodide | µg/l I | 500 | 1 000 | 2 000 |
| Lead | µg/l Pb | 50 | 100 | 200 |
| Mercury | µg/l Hg | 5 | 10 | 20 |
| Molybdenum | µg/l Mo | 50 | 100 | 200 |
| Nickel | µg/l Ni | 250 | 500 | 1 000 |
| Selenium | µg/l Se | 20 | 50 | 100 |
| Silver | µg/l Ag | 20 | 50 | 100 |
| Tellurium | µg/l Te | 2 | 5 | 10 |
| Thallium | µg/l Tl | 5 | 10 | 20 |
| Tin | µg/l Sn | 100 | 200 | 400 |
| Titanium | µg/l Ti | 100 | 5 000 | 1 000 |
| Tungsten | µg/l W | 100 | 5 000 | 1 000 |
| Uranium | µg/l U | 1 000 | 4 000 | 8 000 |
| Vanadium | µg/l V | 250 | 500 | 1 000 |

NTU: nephelometric turbidity units

TTN: threshold taste number

Table 13.3: Draft potable water standards

| Water quality constituent | Guideline for domestic use |
|---------------------------|----------------------------------|
| Algae | 0 – 5mg/l chlorophyll a |
| Aluminium | 0 – 0.15 mg/l |
| Coliphages | <1 per 100 ml |
| Dissolved organic carbon | 0 – 5 mg/l C |
| Electrical conductivity | 0 – 70 mS/m |
| Enteric viruses | <1 TCID ₅₀ /10 litres |
| Faecal coliforms | 0 per 100 ml |
| 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 <i>Giardia</i> cyst/10 litres |
| Total hardness | <100 mg/l CaCO ₃ |
| Turbidity | 0 – 1 NTU |

TCID: tissue culture infective dose; TON: threshold odour number; NTU: nephelometric turbidity unit

13.3.10 Certification of consultants

In terms of section 113(j) of the Environment Act of 2008, the Minister may make regulations to *'provide for the conduct and certification of environmental practitioners'*. To date, no regulations have been made, but the Environmental Assessment Practitioners' Association of Lesotho (EAPAL) has been established. EAPAL is a body through which professionals in the environmental field need to be registered in a database of environmental practitioners. A committee formed from members of the Association provides certification and registration to members of the association who qualify. Interested parties may apply to be an Ordinary Member or an Associate Member. The former category is for those who practice EIA, while the latter category encompasses those who may be peripherally involved, students and other interested parties.⁷

Any person may apply to the Secretary General of EAPAL to be registered as a member and must submit with the application the following documents:

- a. Certificates of all relevant qualifications;
- b. Certificates of any short courses attended;
- c. Curriculum Vitae in the format designed by the Association;
- d. Any other information as may be required
- e. Such registration fees as may be prescribed in the EAPAL Constitution and payment of the annual subscription fee for that year; and
- f. List of all Environmental Assessment projects undertaken.

Non-residents can be registered and certified when the Executive Committee is satisfied that the applicant:

- a. Has complied with the registration criteria;
- b. Holds a valid recognised certificate to practice as an environmental assessment practitioner from the association in their home country;
- c. There is a reciprocal recognition of EAPAL in that country, if applicable;
- d. Pays such fees as may be prescribed;
- e. Foreign practitioners shall partner with a local environmental assessment practitioner(s) for purposes of skills transfers where necessary.

In addition, the EIA must be undertaken by experts whose names and qualifications are approved by the DoE. There is no need under current legislation for the EA consultants to be independent of the proponent.

13.4 EIA procedural framework in Lesotho

⁷ Environmental Assessment Practitioners' Association of Lesotho Policy, June 2019

The steps to be taken in the EIA process are set out in detail in the draft EIA Guidelines for Lesotho referred to above. The procedures and steps are shown in Figure 13.2 and summarised below.

13.4.1 Screening

A list of types of projects and activities that are subject to EIA in terms of section 19(1) of the Environment Act of 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 as Appendix 13-1 of this Handbook.

It is strongly recommended that developers consult with the relevant line ministry or the 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 the identification of all the relevant legal, policy and administrative issues pertaining to the project.

13.4.2 Project Brief

Any person intending to initiate an activity listed in the Schedule⁸ is obliged to obtain an EIA Licence before commencing a development or construction. The first step in the application for an EIA Licence is the submission of a Project Brief, as prescribed in section 20(1).

The Project Brief submitted by the developer will form the basis for classifying projects as either projects or activities not requiring a full EIA (in which case they will be authorised to proceed by the issuance of an EIA Licence), or as projects or activities requiring a full EIA. Thus, the Project Brief is essentially a scoping document to allow the authorities to determine whether there is a need for a full EIA. Interestingly, the list of contents for a Project Brief contained in the Act does not include any reference to the need for public participation. However, the EIA Guidelines (see section 13.3.3) clearly state that the Project Brief should, at a minimum, include a list of the interested and affected parties or individuals identified and/or consulted, and also provides further guidance on the mode of public participation.

⁸ Note that this Schedule of projects and activities for which an EIA Licence is required may be amended from time to time by the Minister, on the recommendation of the DoE, by publication in the Government Gazette.

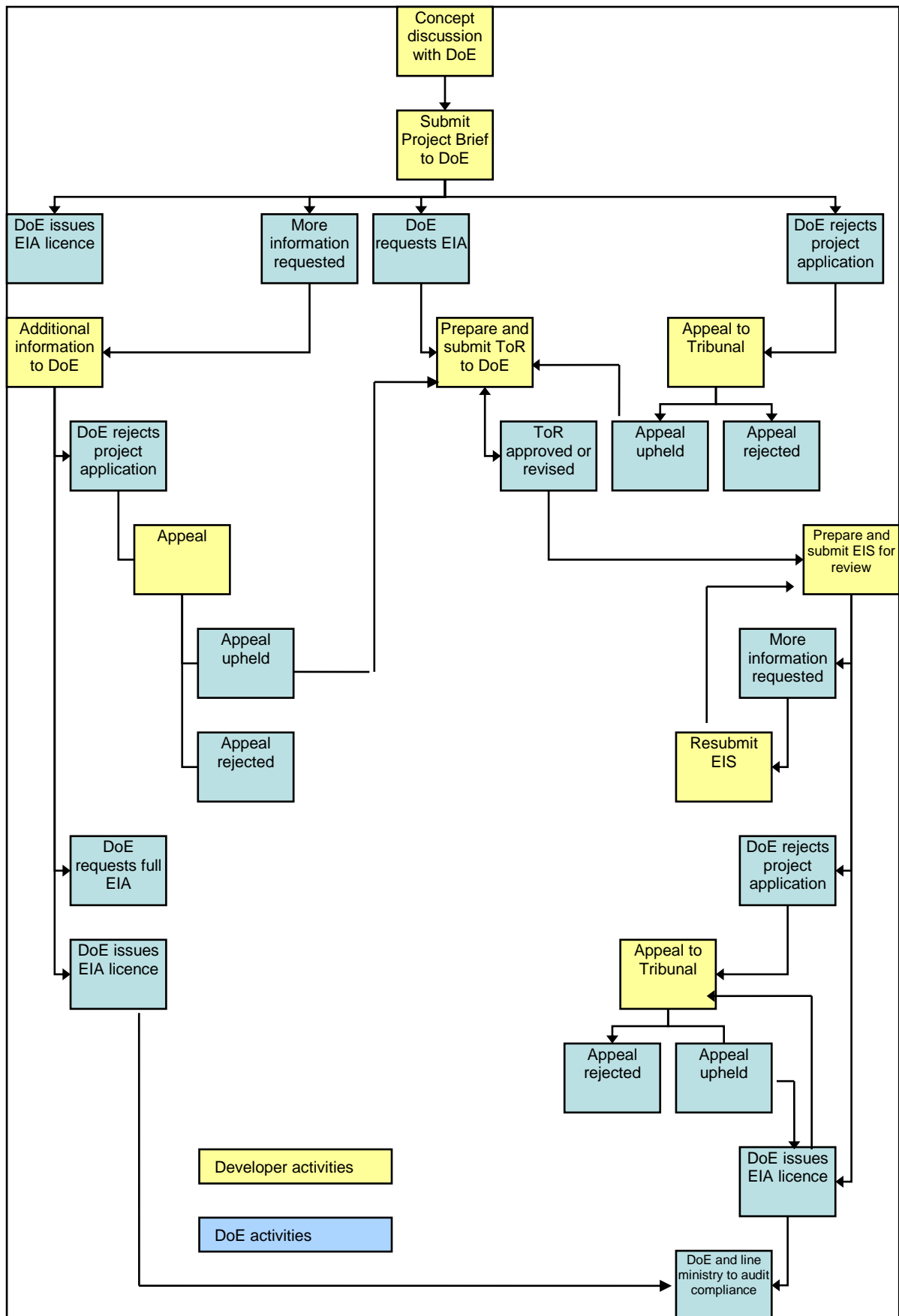


Figure 13.2: EIA process

In terms of section 20(1) of the Act, the Project Brief must at a minimum state the following:

- (a) The nature of the project;
- (b) The activities to be undertaken;
- (c) The possible products or by-products anticipated and their environmental consequences;
- (d) The number of people the project is likely to employ;
- (e) The area of land, air or water that may be affected;
- (f) Any other matters that may be prescribed; and
- (g) Any other matters as the Director may, in writing, require from the developer or any other person whom the Director reasonably believes has information relating to the project.

Once the Director has received and reviewed the Project Brief, s/he may make one of four decisions (see Figure 13.2):

- Request further information from the developer or project proponent.
- Approve the project with conditions as appropriate.
- Invite written and oral comments from the public and, where necessary, consult the affected community, if the Director is of the view that the proposed project could have a significant impact on the environment.
- Request an EIA to be conducted.

13.4.3 Environmental Impact Statement

Once the Project Brief has been undertaken, submitted and reviewed, the proponent may be asked to undertake an EIS. This has to be done by experts approved by the Director after consultation with the relevant line ministry (section 21(7)). The costs of conducting the EIS are borne by the developer and the report must include the following:

- a) A detailed description of the project and its activities;
- b) A description of the environment that may potentially be affected, including specific information necessary for identifying and assessing the environmental effects of the proposed project;
- c) A description of the technology, method and processes to 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, and 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, such as methodology, survey techniques and modelling parameters;
- i) An identification of gaps in knowledge and uncertainties encountered in completing the EIS;
- j) The social, economic and cultural effects of the development or project;
- k) The irreversible and irretrievable commitment of resources that 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 that may be required; and
- 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.

13.4.4 Submission and review of the EIS

The Director will study the EIS in consultation with the responsible line ministry. If it is complete in both form and content, s/he will 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. This is not considered best practice and any project requiring funding from an international development finance institution (e.g. the World Bank or the Development Bank of Southern Africa), an Equator Principles bank (e.g. Nedbank or HSBC) or a development aid institution (e.g. the Millennium Challenge Corporation or the United Nations Development Programme (UNDP)) would need a full public consultation process.

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

The EIA Licence may contain terms and conditions necessary to mitigate negative impacts and promote sound environmental management practices. The terms and conditions will be set in accordance with planning, policy, legal and administrative requirements. These will be clearly specified in the EIA Licence. The Record of Decision (of approval or rejection) must include:

- The decision of the Director;
- Key factors that influenced the decision, including responses to material issues raised by any person during the EIA process;
- The date of the decision;
- A copy of the EIA Licence (if issued); and
- Information with respect to the right of any person to seek reconsideration of the decision by the Director and how such reconsideration may be sought.

The Act makes provision for the Director of the DoE to use external reviewers to assess EIAs. This modality is already being used in a limited way by the Department, with recent examples including the Polihali Dam and Associated Infrastructure EIAs and the Lesotho Lowlands Bulk Water Supply Schemes Zones 2/3 and 6/7 EIAs. However, it could be used more extensively as a bridging tool until greater capacity is established within the DoE.

13.4.5 Appeals

Anyone aggrieved by a decision made by the DoE may, within 30 days of being informed of that decision, request in writing that the DoE reconsiders its decision. The request for appeal must set forth clear reasons for this request (section 25(5)).

The option for appeal is open to both the developer and the general public to present arguments, reasons or grounds as to why the decision, in the opinion of the complainant, is not correct or why the conditions should be amended.

The Director must, within 30 days of receipt of a request for reconsideration, issue a Record of Decision affirming, modifying or reversing its earlier decision. Submission of an administrative request for reconsideration is a prerequisite for taking a judicial appeal to the Environmental Tribunal or even further.

In terms of section 100 of the Environment Act, if the complainant is still not satisfied after receiving a response from the DoE on the reconsideration of the decision, an appeal could be forwarded to the Environmental Tribunal within 21 days of the date of the decision of reconsideration. The appeal shall be a written notice, stating the grounds upon which the appeal is based. It must be forwarded to the secretary of the Environmental Tribunal. If the complainant is aggrieved by the decision of the Environmental Tribunal, s/he may appeal to the High Court within 30 days from the date of the decision of the Tribunal.

Section 98(1) of the Environmental Act of 2008 prescribes the establishment of an Environmental Tribunal. It consists of a senior legal practitioner, a legal practitioner with

environmental knowledge, and a non-legal environmental expert. The Tribunal considers appeals based on the following:

- Issuing or refusing any licence under the Environmental Act;
- Imposing or failing to impose any condition, limitation or restriction contained within a licence;
- Revoking, suspending or implementing a variation to a licence; or
- Imposing a restoration order for environmental damage.

13.4.6 Monitoring and auditing

Sections 23 and 24 of the Act set out the tasks to be undertaken by the DoE and relevant line ministries to monitor and audit project sites, and the sanctions that can be taken in the event of non-compliance.

Even though the DoE, or the designated environmental unit in another line ministry is responsible for conducting compliance monitoring and auditing of projects for which it has issued an EIA Licence, very little follow-up work is actually conducted. At least one monitoring visit per year tends to be conducted for Category A projects, but few monitoring visits take place for Category B and C projects. The penalties for non-compliance with environmental management plans are set at such low levels and the likelihood of detection is so small that it encourages disregard for the law.

13.4.7 Strategic Environmental Assessment

Article 19(2) of the Act states that a strategic environmental assessment (SEA) must be undertaken for any bill, public policy, programme or plan that could have a significant impact on the environment (Part B of the First Schedule). However, to date there are no Regulations or guidelines on SEA procedures, processes, roles, responsibilities or contents of the SEA report.

13.4.8 Trans-boundary impacts

As a land-locked Kingdom surrounded by South Africa, Article 21(5)(g) of the Act specifies that the contents of an EIS must include an indication of whether the environment of any other State is likely to be affected by the proposed project and what mitigation measures are to be undertaken.

Furthermore, as a signatory to the Orange-Senqu River Commission (ORASECOM), Lesotho is required to advise the other basin States (South Africa, Namibia and Botswana) of any proposed projects which may affect water quality and quantity within the Senqu River catchment in Lesotho.

13.5 Other relevant environmental legislation in Lesotho

Environmental issues cut across a range of sectors, and numerous pieces of legislation in Lesotho 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 13.4.

Table 13.4: Other potentially applicable sectoral requirements

| Sector | Responsible agency | Title and date of legislation | Purpose |
|--------------------------|---|---|---|
| Water resources (use of) | Ministry of Water: Water and Sewerage Company Department of Water Affairs | Water Act, No. 15 of 2008 Water Resources Regulations, 1980 | This Act relates to the issuance of Water Use Permits. |
| Effluent (disposal) | Ministry of Water: Water and Sewerage Company DoE | Water Act, No. 15 of 2008 Water Resources Regulations, 1980 Environment Act, No. 10 of 2008 | This Act relates to the prevention of pollution. The Act makes provision for the management of effluent and the development of standards for effluent discharges. Section 40 states that an Effluent Discharge Licence is required, which is valid for one year. An unspecified fee is required for this permit. |
| Air | DoE and relevant line ministry | Environment Act, No. 10 of 2008 | The Act provides for the DoE to establish criteria for measurement of air quality and standards for ambient air quality, occupational air quality and emissions. Section 52 states that an Air Pollution Licence is required, which is valid for one year. An unspecified fee is required for this licence. |
| Noise | DoE and relevant line ministry | Environment Act, No. 10 of 2008 | The Act makes provision for the DoE to set minimum standards for noise emissions and vibration. It also makes provision for noise levels and noise emission standards to be established and applied at construction sites and certain industrial plants. Section 55 states that a Noise Permit is required. |
| Waste | DoE and relevant line ministry | Environment Act, No. 10 of 2008 | The National Environment Secretariat is the overall authority for the management and control of all waste, including hazardous waste. In terms of section 76 of the Act, a Waste Licence is required to generate, store, handle or transport |

| Sector | Responsible agency | Title and date of legislation | Purpose |
|------------------------------|---|--|---|
| | | | any hazardous wastes. |
| Energy | DoE Ministry of Energy and Meteorology: Department of Energy Lesotho Electricity Authority | Environment Act, No. 10 of 2008 | Section 64 of the Act relates to the conservation of energy and the promotion of renewable sources of energy through research and incentives. |
| Health | Ministry of Health | Public Health Order, No. 12 of 1970 | The Order prevents anything injurious to public health. |
| Planning and zoning | DoE and Ministry of Local Government and Chieftainship | Environment Act, No. 10 of 2008 | Section 70 relates to the development of a National Land Use Plan. |
| | | Town and Country Planning Act, No. 11 of 1980 | The Act 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 | Environment Act, No. 10 of 2008 | Sections 61–62 govern the protection and management of riverbanks, rivers, wetlands, lakes and lakeshores. |
| | | Protection of Fresh Water Fish Proclamation, No. 45 of 1951, and Fresh Water Fish Regulations (HCN 112/1951) | Explosives, chemicals, poisonous or injurious substances, wire etc., are prohibited in freshwater resources. |
| | Lesotho Highlands Development Authority | Lesotho Highlands Development Order, No. 23 of 1986 | The Order relates to the protection of and avoidance of injury to fisheries. |
| Forestry | Ministry of Forestry, Range and Soil Conservation | Forest Act, No. 11 of 1978 | The Act controls the harvesting of wood and clearance of forests. |
| | | Environment Act, No. 10 of 2008 | Section 63 relates to measures to protect and manage all forests in Lesotho. |
| | | Forest Regulation, LN 36 of 1980 | The Regulation controls forest cutting, grazing, squatting and the construction of buildings in forests. |
| Mining and mineral resources | Ministry of Mining: Department of Mines and Geology | Mines and Minerals Act No. 4 of 2005 | An EIA is a prerequisite for obtaining mining rights in terms of this Act. Section 58 contains all environmental obligations. |
| | | Minerals and Mining Policy, 2015 | |
| | | Precious Stones Order, No. 24 of 1970 | The Order controls the search for, extraction, mining and sale of gemstones. |
| | | Uranium and Thorium Control Proclamation, No. 33 of 1951 | The Proclamation controls the search for, mining of, disposing of, and export of uranium, thorium and allied natural radioactive substances. |

| Sector | Responsible agency | Title and date of legislation | Purpose |
|---|--|--|---|
| Wildlife and natural resources | Ministry of Agriculture and Food Security | Game Preservation Proclamation, No. 33 of 1951 | A licence is required for hunting certain species of mammal and bird. |
| | DoE | Environment Act, No. 10 of 2008 | Sections 65–67 relate to the conservation of biodiversity through in situ and ex situ conservation. |
| Agriculture | Ministry of Agriculture and Food Security | Weeds Eradication Act, No. 18 of 1969 | The Act contains obligations to eradicate noxious weeds or plants detrimental to agriculture. |
| | Ministry of Forestry, Range and Soil Conservation | Land Husbandry Act, No. 22 of 1969 | The Act relates to the management of land, soil conservation, the management of water resources, proper irrigation, and the prevention of poor agricultural practices. |
| | | Range Management and Grazing Control Regulations, LN 39 of 1980 | The Regulations relate to the prevention of overgrazing and the destruction of plants |
| Land | Ministry of Agriculture and Food Security | Land Act, No. 42 of 2010 Land Regulations, LN 15 of 1980 | The Act makes provision for compensation for relocation of people for purposes of development. |
| | Land Administration Authority | Land Administration Authority Act 2010 | The Act provides for the establishment of the Land Administration Authority as the main body responsible for land administration, land registration, cadastre, mapping and surveying. |
| Roads | Ministry of Public Works and Transport: Department of Rural Roads | Roads Act, No. 24 of 1969 | An EIA is required for a new road in terms of the Environment Act, No. 10 of 2008. |
| | | Road Traffic Act (No. 8 of 1981) | The Act provides for the registration of vehicles, use of vehicles on public roads and regulation of traffic. |
| Transmission | Lesotho Electricity Authority | Section 21 of the Environment Act, No. 10 of 2001 | An EIA is required for transmission lines. |
| Conservation | Ministry of Agriculture and Food Security | National Parks Act, No. 11 of 1975 | The Act 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, No. 10 of 2008 | This Act prohibits the destruction or damage to any historical monuments, fauna and flora, as well as removal from their habitat of Lesotho without permission. |
| | | National Heritage Resources Act (2012) | Extends legislative protection to living and intangible heritage and also informs the management measures required for dealing with heritage artefacts, chance finds, |

| Sector | Responsible agency | Title and date of legislation | Purpose |
|---|--|--|---|
| | | | ash heaps, and graves. |
| Industrial development | Ministry of Trade and Industry | Industrial Licensing Act, No. 10 of 2014 | The Act provides for the licensing of industrial enterprises. |
| Urban development and waste management | Ministry of Tourism, Environment and Culture | Sanitary Services and Refuse Removal Regulations, LN 36 of 1972 | |
| | Ministry of Water | Urban Sewerage Regulations, LN 1 of 1977 | |
| | Ministry of Local Government and Chieftainship | Urban Government Act, No. 3 of 1983 | |
| | | Local Administration Act, No. 13 of 1969 | |
| | | Lesotho Housing and Land Development Corporation Order, No. 12 of 1988 | |
| Labour employment and occupational health | Ministry of Labour and Employment | Labour Code Order of 1992, as amended 2006 | The Act makes provision for the amendment, consolidation and codification of the laws relating to employment. |

Appendix 13-1: List of prescribed projects

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

1. General:

- (a) Any activity out of character with its surroundings;
- (b) Any structure of a scale not in keeping with its surroundings; and
- (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;⁹
- (i) Buildings with a total floor space of 500 m² 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) Cableways and cable stations; and
- (i) Public transport mode transfer facilities.

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; and

⁹ The Act does not have a bullet (h)

- (e) Projects or activities affecting other water sources, such as groundwater, springs and wells.

5. Aerial spraying

6. Mining and mineral extraction, including quarrying and opencast 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; and
- (i) Base metals.

7. Forestry-related activities, including:

- (a) Clearance of forest areas;
- (b) Deforestation and afforestation;
- (c) Timber harvesting; and
- (d) Propagation of invasive alien species.

8. Agriculture, including:

- (a) Large-scale agriculture;
- (b) Use of agrochemicals;
- (c) Introduction of new crops, animals and management practices;
- (d) Manufacture, handling, storage and transport of hazardous waste, chemicals and pesticides and other agrochemicals;
- (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; and
- (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 and reduction;
- (i) Smelting and refining of ores or minerals;
- (j) Foundries;
- (k) Plants for the manufacture or assembly of motor vehicles;
- (l) Plants for the manufacture of textiles;
- (m) Industries producing or utilising 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; and
- (r) Bulk distribution facilities.

10. Energy and electric infrastructure including:

- (a) Electrical generation stations;
- (b) Electrical transmission lines;
- (c) Electrical substations;
- (d) Cableways and cableway stations; and
- (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; and
- (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; and
- (h) Any government policy on the use of natural resources.

13. Campsites 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 paleontological sites;
- (g) Graves and burial sites;
- (h) National gardens of remembrance;
- (i) Conservation areas;
- (j) Sites of conservation significance;
- (k) Meteorites; and
- (l) Lake areas.

17. Projects or activities that could affect any of the following areas or features that 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;
- (aa) Areas or sites of special social, cultural or historical interest; and
- (bb) Bird migration sites.

Part B of the First Schedule lists the following as requiring an impact assessment:

Any Bill, Regulation, public policy, programme or plan that could have a significant impact on the environment.

Acronyms

| | |
|--------------|--|
| DoE | Department of Environment |
| EAPAL | Environmental Assessment Practitioners' Association of Lesotho |
| EIA | environmental impact assessment |
| EIS | environmental impact statement |
| EMP | environmental management plan |
| LN | Legal Notice |
| M | Maluti |
| NAP | National Action Plan to Implement Agenda 21 |
| NEAP | National Environmental Action Plan |
| NEP | National Environmental Policy |
| SADC | Southern Africa Development Community |

Useful contacts

| Department | Ministry | Telephone | Fax | Website |
|---------------------------|--|------------------|----------------|--|
| Department of Environment | Ministry of Tourism, Environment and Culture | +266- 22 320 534 | +266-223-11139 | www.environment.gov.ls |