



**Directorate : Environmental Management  
EIA Guideline Series**

**INFORMATION DOCUMENT ON REQUIREMENTS WITH RESPECT  
TO THE EIA REGULATIONS**

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**INTRODUCTION**

Environmental Impact Assessment ("EIA") is internationally recognised as a process of evaluating the consequences of development. EIA is the recognised tool for assessing the environmental consequences of development before it takes place. It is international best practice to undertake the EIA process as early in the planning of projects as is possible, recognising that preliminary project information is required in order to undertake the assessment (i.e. there needs to be basis on which to assess impacts).

The Minister of Environmental Affairs and Development Planning is the competent authority with respect to authorising projects in the Western Cape in terms of the EIA Regulations promulgated under the Environment Conservation Act, Act 73 of 1989, ("the ECA") (Government Notice No R1183 published on 5 September 1997), as amended. The Minister has delegated this function to the Head of the Department of Environmental Affairs and Development Planning, ("DEA&DP"), who has in turn delegated it to the Chief Director: Environmental Affairs.

Various steps need to be fulfilled for development projects or proposals to which the EIA Regulations apply. The purpose of this letter is to set out DEA&DP's requirements in this regard to ensure that applicants provide the correct information in accordance therewith so as to avoid unnecessary delays in the consideration of EIA applications.

**1. General Requirements in relation to the EIA Regulations**

- **An EIA application must be made for any development proposal/project that falls within the description of one or more of the activities listed in Schedule 1 of the EIA Regulations (GN No R1182 of 5 September 1997, as amended), (hereinafter referred to as "Listed Activities").**  
This Schedule provides the List of Activities, identified by the Minister of Environmental Affairs

and Tourism in terms of section 21 of the ECA which may have a significant detrimental impact on the environment.

- **Development proposals/projects to which the EIA Regulations apply (i.e. which appear in Schedule 1 of the EIA Regulations) are prohibited until an authorisation from DEA&DP is obtained.** This means that the development proposal/project may not commence prior to an authorisation being issued. Should a developer commence with a Listed Activity prior to it being authorised by DEA&DP, if at all, DEA&DP will consider referring the matter for prosecution in terms of section 29(4) of the ECA. DEA&DP has recently successfully had Caltex (Pty) Ltd prosecuted for undertaking Listed Activities prior to authorisation having been granted in terms of section 22 of the ECA.
- **DEA&DP is not obliged to authorise each development proposal/project for which an application is submitted, even if it meets all the requirements of the EIA Regulations.** This is due to the fact that the DEA&DP's decision-making role is discretionary which means that it must apply its mind to all the information related to each application in making a decision. Whilst the nature and extent of environmental impacts (natural and social environment) are central to the decision-making process, the principles of reasonableness and fairness also apply in the decision-making process. DEA&DP also needs to ensure compliance with section 24(7) of the National Environmental Management Act 107 of 1998, ("NEMA") where applicable. It must further ensure that it applies the principles contained in section 2 of NEMA and gives effect thereto by properly applying its mind to the decision by appropriately balancing all rights and principles relevant to the decision.
- **In general, DEA&DP only exempts applicants from certain provisions of the EIA Regulations** (e.g. appointment of an independent environmental consultant). Such exemptions will only be considered where there are no significant environmental impacts involved
- **The applicant must submit a motivation report with the application, if an exemption from certain provisions of the EIA Regulations is being sought.** It should be noted that DEA&DP is unlikely to grant an exemption from such provisions for development proposals/projects that are large-scale and/or where there are potential environmental concerns. (The receiving environment is considered and the sensitivity and/or the significance of the receiving environment, is taken into account.) Stated differently, DEA&DP may approve an application for exemption from certain provisions of the EIA Regulations for small-scale projects proposed in an environment that is not sensitive.
- **The EIA Regulations do not make provision for the issuing of blanket authorisations/exemptions for projects that are of a similar scale and nature.** They also do not make provision for class applications (i.e. one application for several projects that are the same).
- **The EIA Regulations set out the requirements for the EIA process.** Essentially the process involves two components, namely, Scoping and Environmental Impact Assessment. In this regard it should be noted that it is not acceptable to collapse these steps into one, because the EIA Regulations specifically require that certain activities be undertaken in respect of each of the

stages of the process in the prescribed sequence. In addition, the scoping report and the Environmental Impact Report (EIR) must be separate documents and may not be submitted to DEA&DP simultaneously. The scoping report and the Plan of Study for EIA must be accepted by DEA&DP prior to submission of the EIR. Please note that **DEA&DP will refuse to accept documents from applicants if they are not submitted and approved in the order in which they are required in terms of the EIA process.** For example, DEA&DP will not accept a Plan of Study for EIR prior to having approved the Scoping Report. Any documents submitted in such a fashion will be disregarded by DEA&DP.

- **The EIA Regulations make provision for the relevant authority to make a decision at two points in the EIA process**, namely, either at the end of scoping (i.e. upon acceptance of the scoping report) or at the end of the EIA stage (i.e. upon acceptance of the final Environmental Impact Report – “EIR”).
- **In terms of the DEA&DP application process, the application form and scoping checklist may be completed by the applicant** (NOTE: This application process is described in Section 2.1 of this document). The applicant **must** also sign the declaration on the application form. It has come to DEA&DP’s attention on a number of occasions, that application forms and checklists are completed by persons other than the applicant or independent consultant. Further, the person whose contact details are given as being that of the applicant, are not in fact, that of the person intending to undertake an activity listed in terms of section 21 of the ECA, (“listed activity”). This is unacceptable to DEA&DP for the reasons as set out hereinbelow:

- It is quite clear from the requirements of the EIA Regulations, that the details of the person, (including juristic persons) who intends undertaking a listed activity must be on the application form and not anyone else’s. If it is not the applicant’s details that are given, the person whose details are given must be able to prove that they are mandated to act on behalf of the applicant. The effect of this would be that anything that that person does or does not do as an agent of the applicant, will be imputed to the applicant, especially in so far as compliance with the ECA and the EIA Regulations is concerned. If the applicant is not the landowner, the applicant must be able to provide proof that the landowner has authorised/will allow the particular activity to take place on his/her/it’s land.
- It is also clear that where someone’s details are filled in as being that of the applicant but are not acting as the real applicant’s agent, the following will be consequences thereof:

**That person will be seen to be the applicant and therefore has all the responsibilities as stated in the EIA Regulations**

This therefore includes the responsibility for undertaking public participation. Therefore, if the public participation is inadequate or nonexistent, then on notice to “the applicant” DEA&DP will regard the application to be withdrawn if the problem is not immediately attended to by the applicant after having been made aware of it by DEA&DP.

Another example is the responsibility to indemnify the relevant authority. If any liability arises from the content of a report, procedure or any action for which “the applicant” or the consultant is responsible, DEA&DP will look to “the applicant” for recovery of any damages that may occur as a result of any such liability.

**That person will be the person whom DEA&DP will lay charges against in the event of a contravention of the conditions of an authorisation, should the matter be referred to the Director: Public Prosecutions**

An example here would be non-compliance with the following condition:

***“The applicant must, within five calendar days of the date of issue of this Record of Decision...inform the relevant local authority as well as all interested and affected parties, (“I & AP’s”) registered during the Scoping and Impact Assessment processes, of the outcome of this application and, if requested, provide copies of this Record of Decision within a reasonable time before expiry of the thirty day appeal period...”***

Contravention of this condition is considered by DEA&DP to be a serious offence in light of the fact that the effect of the non-compliance is that the rights of Interested and Affected Parties, (“I&AP’s”) to appeal against a decision to the Minister may effectively be removed by the applicant. In these cases, DEA&DP will refer such contraventions for prosecution and will further consider withdrawing the authorisation in terms of section 22(4) of the ECA.

Another very important reason for the correct applicant’s details to be filled in is due to the requirements of Regulation 4(3)(d), where the real applicant is in fact a statutory body. If DEA&DP unwittingly considers the application without referring it to the National Department as required by this regulation, the decision will be *ultra vires*.

It is clear from the above, what the consequences are if the incorrect details are given for the applicant. DEA&DP therefore strongly cautions you to ensure that the correct details are given.

- **The EIA Regulations require scoping and the EIA to be undertaken by an independent environmental consultant.** In this regard the following is applicable:
  - The applicant may apply for exemption from appointing an independent environmental consultant. A motivation report must be submitted to DEA&DP for approval. It must be noted, however, that such approval is unlikely if the project is large-scale and/or is proposed in a sensitive environment.

- A Declaration of Independence must be completed by the independent environmental consultant. This document is available as an annexure to the application form and scoping checklist. In the event of the environmental consultant being employed by a company that is providing other professional services (e.g. engineering design), this must be declared in the Declaration of Independence. It is advisable to include information on how the consulting company facilitates interaction between its departments to ensure the independence of its environmental consultants. DEA&DP will evaluate this on a case-by-case basis and will advise the applicant if there are any problems in this regard.
- Any means, on the part of the applicant, to link the performance, of the consultant to the success of the application (i.e. the authorisation of the proposed project by DEA&DP) will serve to render the independence of the environmental consultant null and void. This includes payment of fees (all or part thereof), commission or shares.

## 2. Requirements for the Scoping Process

The main purpose of the scoping process is to determine whether there are any environmental issues that are of concern and which may therefore require further investigation, including the question of reasonable alternatives for the project. **Scoping is aimed at determining the scope of work or terms of reference for the Environmental Impact Assessment.**

As has been previously mentioned, the Listed Activities (as per Schedule 1) in the EIA Regulations do not take account of the scale or extent of development. This means that an application must be submitted to DEA&DP for any project that is included in Schedule 1 of the EIA Regulations. In recognition of the fact that there are projects which are small-scale and/or which are proposed in areas where the environmental impacts are unlikely to be significant (i.e. the environment in which the project will be located is not sensitive), DEA&DP has developed a scoping checklist to enable it to authorise such projects, where appropriate, thereby avoiding unnecessary environmental investigations and costs, and speeding up the decision-making process. The scoping process is made up of the following steps:

- Application and initial scoping
- Detailed scoping process

Given that the scoping process is concerned with identifying environmental concerns in relation to a proposed development and not the assessment of these concerns, the focus in the scoping phase should be on information gathering. DEA&DP therefore expects the independent environmental consultant to consult sources of information that will enable the environmental issues associated with the project to be identified in a comprehensive manner. The sources of information that DEA&DP would expect to be covered in the scoping process include:

- Discussion/consultation with relevant roleplayers such as government departments and other interested and affected parties (e.g. community organisations, environmental non-government organisations) to obtain input on issues of concern (i.e. public participation process);
- Review of existing environmental information and databases (e.g. published articles/scientific papers, environmental sensitivity maps, aerial photographs, geological maps);
- Discussions/consultation of relevant experts to confirm whether a particular issue is likely to be of concern or not. This could also involve the review of case studies of similar development projects.

In summary, whereas **scoping** activities typically draws on existing information sources and consultation with relevant parties, the **EIA** involves primary research in the form of specialist investigations, analysis/interpretation of information, assessment of the significance of impacts, the identification of measures to overcome or mitigate negative environmental impacts and enhance benefits and the assessment of the likely effectiveness of such mitigation measures.

## 2.1. Application and initial scoping

DEA&DP's standard application form and scoping checklist must be completed for any proposed development or project that is a Listed Activity.

- **The application form and scoping checklist must be completed in a comprehensive manner.** This is to provide DEA&DP with sufficient information to decide whether to authorise (or refuse) the project at this stage or not. All sections of the checklist must be covered and where a question is not relevant to the application, should be indicated as such. Section 24(7) of NEMA requires that procedures for the investigation, assessment and communication of the potential impact of activities must, as a minimum, ensure reporting on gaps in knowledge, the adequacy of predictive methods and underlying assumptions, and uncertainties encountered in compiling the required information.
- **There must be an adequate description of the environment that will be affected by the proposed activity, should it be authorised.** In other words, the project description must be complete and adequate to allow for the identification of all pertinent issues in scoping or specialist assessments. All issues must be specifically incorporated into the terms of reference for the specialists. If the description is incomplete or inadequate, the application will be returned to the applicant for amendment.
- **The precise current legal status of the property on which the activity is proposed, must be described.** This must include an accurate description of the boundaries, ownership and any rights or duties relevant to the property. An objective description of the extent to which the proposed development and rezoning (if applicable) is compatible with all policies and plans, whether they be national, provincial or local, must be included in the application form.

- **The scoping process does require public participation.** Information in this regard **must** be provided in the scoping checklist (Section I), where the minimum requirement is to obtain input from immediate neighbours with regard to the proposed development. In addition, the applicant is advised to consult other relevant authorities to which an application for approval/authorisation/permit needs to be made. This information must be provided in Section II of the checklist with relevant correspondence attached in an Appendix. It is required that for the applicant to confirm the requirements of other relevant authorities, rather than to fill in this Section on the basis of his/her perceptions, previous experience or “understanding” of their requirements.
- Where an independent consultant has been appointed to complete the application form and scoping checklist and the consultant and applicant are of the view that authorisation of the project on the basis of the application form and scoping checklist is unlikely, the Plan of Study for Scoping may be submitted with the application form and scoping checklist. The EIA Regulations do not preclude submission of the Plan of Study for Scoping with the application form and scoping checklist.
- In cases where it is considered that authorisation on the basis of the application form and scoping checklist is likely, consultants and applicants are advised to submit any relevant supplementary information, including location maps, that will assist DEA&DP to make this decision. Such information may include published technical papers, preliminary baseline studies (e.g. record of observations from an initial site visit), a summary of findings from environmental investigations conducted in close proximity to the site, case studies of similar developments which demonstrate the success of proposed mitigation measures and/or notes from discussions/interviews with local authorities, conservation organisations or agricultural extension officers. It must be noted that this supplementary information does not include that which would typically form part of the EIR. Relevant supplementary information therefore means information:
  - That serves to confirm that there are no significant environmental issues associated with the project; and/or
  - That serves to confirm, based on relevant case studies or baseline information, that environmental impacts are small scale and can be readily mitigated through appropriate design measures and/or the implementation of environmental management measures during construction and operation of the project.
- Where there is uncertainty about DEA&DP’s requirements (e.g. it is not clear whether additional scoping activities will be needed or not), a meeting to clarify the situation should be arranged with the relevant Environmental Officer. Please note that it is preferable to submit the application form and scoping checklist in advance (at least two weeks) of any discussion about DEA&DP’s requirements for the scoping process, to enable the Environmental Officer to familiarise himself/herself with the application.

- The only circumstances under which DEA&DP will accept incomplete information in the scoping checklist is where it is clear that a full scoping process and Environmental Impact Assessment (“EIA”) will be required. In such instances, DEA&DP recognises that the key purpose of the application form and scoping checklist will be to provide initial information on the project and to register the application with DEA&DP. If this is the case, this must be made clear in a covering letter to DEA&DP, accompanying the application form and scoping checklist. Accordingly, DEA&DP will expect the applicant to have already appointed an independent environmental consultant.

DEA&DP will review the information in the application form and scoping checklist. This process could include a meeting with the applicant and representatives from other relevant regulatory authorities. A decision will then be made by DEA&DP, which will be one of the following:

- *Authorisation of the activity* : DEA&DP will determine whether the information provided in the checklist is deemed to fulfil the requirements of a final scoping report. A Record of Decision either authorising or refusing the activity will be issued. This decision will be based on the nature and scale of the activity and/or sensitivity of the environment. In the case of an authorisation being granted, the Record of Decision will have attached Conditions of Authorisation covering environmental requirements for the implementation of the project. These conditions are legally binding and breach of any of the conditions is regarded as an offence in terms of section 29(4) of the ECA, for which prosecution may be initiated.
- *Request that additional scoping activities be undertaken* : This will involve formal notification from DEA&DP to the applicant to this effect and will most likely require the submission of a Plan of Study for Scoping.

## 2.2. Detailed Scoping

In cases where DEA&DP requires a full scoping process (i.e. the application form and scoping checklist is not deemed to fulfill the requirements of a final scoping report), the following must be undertaken:

- **A Plan of Study for Scoping must be prepared in accordance with the DEA&DP guideline for such documents.** The Plan of Study for Scoping must be prepared by an independent environmental consultant. A Declaration of Independence must be signed by the consultant, unless the applicant elected to appoint an environmental consultant to prepare the application form and checklist, in which case the Declaration of Independence will already have been submitted.
- It is not necessary to obtain input from DEA&DP on the scoping activities and timeframe during the preparation of the Plan of Study for Scoping – consultation with interested and affected parties at this stage is at the discretion of the independent environmental consultant.

- The scoping activities and timeframe attached to these must be discussed with interested and affected parties. This means that this matter must be included in the background information document and/or on the agenda for the first workshops and meetings with interested and affected parties that are held at the start of the public participation process.
- If adjustments to the scoping process are required as a result of feedback from interested and affected parties, DEA&DP must be advised in writing of these changes. As a general principle, reducing the amount of public participation is not considered acceptable as in all likelihood, interested and affected parties will have an expectation that, at the very least, the activities set out in the background information document will be undertaken.
- Interested and affected parties (including relevant authorities) must be given an opportunity to comment on the draft scoping report. A reasonable comment period must be allowed and recommended timeframes in this regard are provided in the Department's "Guideline for Public Participation for the EIA Process."
- **Please note that since other relevant authorities are regarded as interested and affected parties, it is up to the applicant to ensure that any comment is obtained from any other relevant authority, for example, the SAHRA (South African Heritage Resources Agency).**
- The final scoping report must include at least the following information, and must be a true and accurate reflection of the facts, not selective or written in a manner that disguises the true facts, or the real sentiments of the IAP's :
  - A list of interested and affected parties;
  - A copy of the advertisement and any background information provided to interested and affected parties;
  - Description of public participation activities (meetings, workshops etc.);
  - Details of the issues and concerns raised during the public participation process;
  - Details of responses that have been provided to interested and affected parties on these issues;
  - A record of the discussion with interested and affected parties (e.g. minutes);
  - A brief description of the environmental setting for the proposed project, together with any information that serves to clarify the nature of environmental issues and concerns (i.e. descriptive information, not analysis and assessment of data);
  - Details of information that has been used to identify potential issues and concerns associated with the project (e.g. published articles, discussions with experts/specialists);
  - Where relevant, details of mitigation measures/solutions that already exist within the project plan/design and which address specific issues or concerns with the result that no further investigation of this issue or concern is required;

- Details of the issues and concerns that require additional investigation (i.e. that will be the subject of an Environmental Impact Assessment);
  - Details of the project alternatives that will be evaluated in the EIA;
  - A record of the comments received on the draft scoping report where these are substantive in nature (i.e. they relate to the content of the report);
  - Recommendations regarding the next steps or the “way forward” with respect to completion of the EIA process for the project. These recommendations must focus on the activities that need to be completed in the context of the EIA process (i.e. to be undertaken by the independent environmental consultant) and should not comment on the nature of the decision that DEA&DP should make.
- The EIA Regulations do not preclude the commissioning of specialist studies during the scoping phase and DEA&DP recognises that it may be appropriate to do so under certain circumstances. Should the independent environmental consultant deem it to be necessary to initiate specialist studies at this stage, particularly to collect baseline information (e.g. due to seasonal criteria or the time period required to investigate the issue), this must be indicated in the scoping report. The list of studies and the scope of each must be provided. The findings of specialist studies in terms of assessment (e.g. significance of impacts, effectiveness of mitigation measures) must be recorded in the EIR and not the scoping report.
  - **The commissioning of specialist studies in parallel with the scoping phase must not be used as a means of limiting the scope of the EIA or to collapse scoping and EIA into one phase.** In other words, if additional issues that require investigation come to light during the scoping phase, these must be incorporated into the scope of the EIA.

Depending on the outcome of the scoping process, an Environmental Impact Assessment may be required. DEA&DP will advise the applicant accordingly. It is likely, however, that a project that has progressed to the stage of a detailed scoping process will require an EIA. Furthermore, **the need for an EIA is not dependent on the number of issues and concerns** associated with the project. Rather, the requirement for an EIA will be determined on the basis of **whether there are issues and concerns** (i.e. potential impacts) that require investigation and assessment in order to establish the consequences of the proposed development/project. DEA&DP recognises that the EIA process is **iterative** and that additional issues and concerns can come to light during the course of the EIA. DEA&DP’s approach is that, in the context of the precautionary principle, these issues/concerns must be investigated. If there is doubt regarding their validity or relevance to the project, an explanation as to why these issues/concerns have not been investigated or the requirements of section 24(7) of NEMA, where applicable, must be given. It is advisable to have this view confirmed by an appropriate expert.

### 3. Requirements for the EIR

The EIA phase is focussed on assessing the impacts of the proposed development, both positive and negative impacts. In addition, measures to solve or reduce (i.e. mitigate) negative impacts and to enhance benefits must be evaluated.

- A Plan of Study for EIA must be compiled and submitted to DEA&DP for acceptance at the start of the EIA stage. The Plan of Study for EIA describes how the EIA process will be conducted, including specialist studies, assessment methodology, ongoing public participation activities and the programme of activities.
- A mechanism for providing feedback to interested and affected parties (including the relevant authorities) on findings must be incorporated into the EIA.
- Interested and affected parties (including relevant authorities) must be given an opportunity to comment on the draft EIR. A reasonable comment period must be allowed and recommended timeframes in this regard are provided in the DEA&DP “Guideline for Public Participation for the EIA Process.”
- The project alternatives must be assessed to an equal level of detail during the EIA. In this regard, DEA&DP requires that reasonable alternatives are considered. This means that alternatives that have the potential to be implemented should be investigated. The reasons for considering one of the alternatives as the “preferred alternative” must be clearly described. It is not considered to be good EIA practice, in DEA&DP’s view, to select an alternative for assessment, that is impractical or that is unacceptable to the developer/applicant as a means of proving or demonstrating the suitability of the preferred alternative.
- The project alternatives must be practical and realistic (i.e. have the potential to be implemented). It is not considered to be good professional practice to generate alternatives purely for the purposes of meeting the requirements of the EIA Regulations. The “no go” option should be included in the definition of “reasonable” alternatives, particularly in the case of new developments. In the case of upgrading projects, the “no go” option may not be feasible, in which case an explanation in this regard must be provided.
- If there are no feasible alternatives, it is preferable to apply for exemption from this provision in the EIA Regulations. A motivation report in this regard must accompany the exemption request.
- The final EIR must include at least the following information:
  - Description of the project, particularly those elements of the project that could cause an environmental impact;
  - Description of the environmental setting for the proposed project (site and surroundings), with the focus on those elements or features of the environment which are of concern;

- Description of public participation activities (meetings, workshops etc.) that have taken place during the EIA;
  - A true and accurate record of the discussion with interested and affected parties (e.g. minutes);
  - Information on the manner in which issues and concerns raised in the scoping process have been addressed in the EIA (i.e. issues tracking);
  - Results/findings of the specialist studies;
  - A description of the methodology and criteria applied in assessing the significance of impacts;
  - A record of the results of the assessment of impacts (if they are significant and the level of significance);
  - Information on the mitigation measures (including alternative measures that may be applicable) to deal with negative impacts and to enhance positive impacts;
  - Details on the effectiveness of proposed mitigation measures (i.e. assessment of impacts with and without mitigation measures);
  - Details on the acceptability of mitigation measures to the proponent (particularly where there are alternative measures that may have varying cost implications) and an explanation for any preferences in this regard.
- Please note that the EIR should not be the independent consultant's interpretation of the specialist studies, but rather should accurately reflect the findings/conclusions of the specialist studies.

#### **4. Appeal Procedure**

Once the Record of Decision has been issued by DEA&DP, it is the responsibility of the applicant to advise interested and affected parties (i.e. those individuals and organisations that were registered as an interested and affected party in the scoping process) that the Record of Decision has been issued and that they may request copies of the Record of Decision from the applicant. The independent environmental consultant or the applicant must confirm that the applicant/it has undertaken this task in accordance with the relevant condition of the Record of Decision.

It has recently come to DEA&DP's attention that the above-mentioned condition is not being complied with in all cases. DEA&DP hereby would like to warn applicants that breach of a condition of a Record of Decision is an offence in terms of section 29(4) of the ECA for which prosecution may be initiated. DEA&DP views breach of such a condition as being very serious in light of the fact that the effect of the breach is to effectively deny the interested and affected parties the opportunity to appeal against the decision.

It must be noted that all appeals must be lodged with the Minister. Any queries regarding the progress on a particular appeal must be addressed to the Minister's office.

## 5. Concluding Remarks

There are a number of issues relating to the EIA process that DEA&DP views as being of critical importance:

- The role of the EIA process is to provide information that can be used to make informed decisions. DEA&DP has the decision-making role and in this regard is legally obliged to “apply the mind” when making a decision.
- Information must be presented in an objective and neutral manner. The language used in documents and reports should not reflect a “pro” or “anti” development stance, except where the views of interested and affected parties are being recorded/recorded.
- Information that is unbiased, factually correct, clearly presented and comprehensive will serve to avoid delays in the EIA process. Conversely, incomplete information and biased information compromises DEA&DP’s ability to make an informed decision and will therefore cause delays through queries and requests by DEA&DP for clarification.
- It is the consultant’s job to obtain and evaluate all relevant information and present it in a way that makes it easy for DEA&DP to make a decision, in other words, the pros and cons of a development should be clear and independently verifiable.
- DEA&DP cannot incrementally authorise a proposed development. This means that it cannot authorise a development subject to further environmental impact assessments being required, unless they relate to an activity that is totally independent of the proposed activity. DEA&DP can also not authorise an activity which is dependant on future authorisation of a further activity. This view has been expressed by the Cape High Court and is further substantiated by the requirements of the National Environmental Management Act 107 of 1998, (“NEMA”).
- In most cases, the requirements of section 24(7) of NEMA must also be complied with when a proposed activity is being assessed in terms of the EIA Regulations. This is due to the requirements of section 24 of NEMA which state that where an activity requires authorisation or permission in terms of any law, and may significantly affect the environment, cultural heritage or socio-economic conditions, the provisions of section 24(7) must be complied with.

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