3 Pre-application guidance and planning

Preliminary project planning should precede any development proposal. Planning helps to define the scope and extent of the project which in turn enables the consideration of other critical aspects such as whether the project is suitable to the local context and proposed location, what legal obligations should be met and what authorisations, permits or licences may be necessary. Importantly, the planning process should identify whether environmental authorisation (in terms of the EIA regulations) is required and if so, whether a Basic Assessment (BA) or Scoping and Environmental Impact Reporting (S&EIR) process should be followed. Project planning benefits the developer, the CA and other relevant authorities by avoiding projects that are clearly inappropriate from proceeding to detailed planning and initiation of an EIA and other regulatory processes. Alternatively, this information may provide for an amended project or a move to a more suitable site. It also assists in streamlining the various authorisation processes relevant to the proposed activity. If done properly, the planning phase assists in avoiding lengthy and costly delays and reduces the likelihood of objections and appeals.
3.1 What critical issues do I need to consider in the planning phase?

*Is the project appropriate?*
An initial step in the planning process is to review the acceptability of the project concept against available planning information such as the Integrated Development Plan, Spatial Development Framework, Land-use Management System as well as other specific sector plans and tools including Environmental Management Frameworks, Water Sector Plans, and Integrated Waste Management Plans. This information should provide the context for the proposed project and guide initial planning.

*Has the project been planned in sufficient detail?*
Detailed information is essential for determining whether the project requires environmental authorisation or not. Thresholds are built into the EIA listed activities which determine whether an activity requires environmental authorisation, and if so, what type of assessment should be undertaken. These thresholds may relate to a variety of project aspects such as the diameters of pipes and volumes of through flow, the width of roads, or the specific areas of the development footprint. The application for environmental authorisation needs to include all activities that will be triggered. If these are not included they cannot be authorised and amendments to the EA may need to be made later in the process. Alternatively, a new application will need to be submitted for activities that are not included upfront. Both scenarios will result in unnecessary delays and costs. Thus the level detail required in the planning phase needs to be sufficient to enable all listed activities to be determined. Such detail is also required to establish which activities may trigger licensing or permitting processes in terms of other Acts.

*Have alternatives been adequately considered?*
The impact assessment process requires that alternatives are considered. This allows flexibility in decision-making and enables the authorities to select a layout or site that will have the least impact on the environment. For example, where a particular site for a housing development is shown to be fatally flawed the inclusion of a feasible alternative will facilitate the project still taking place. If alternatives are not included, the process may be stalled while an alternative is found and defined to sufficient detail to enable a comparative assessment. Alternatives can take on various forms including sites, layout, design, and technology. Consideration should be given to all of these.

*Has the full project scope been defined and integrated with other components and phases?*
The lack of integrated planning across government sectors and spheres (local, provincial and national) has been raised as an issue that has significant implications for efficiency and sustainability. SI projects necessitate the implementation of dependent infrastructure. For example, a low cost housing project also requires the development of roads, the provision of water and electricity, and the implementation of an appropriate waste management system. Although these different components may be implemented in different phases, it is essential that they are considered simultaneously in the planning phase. This integrated planning should in turn feed into the EIA process particularly in respect of the consideration of alternatives and streamlining of the EIA process between the various agencies responsible for these different SI elements. For example, a borrow pit may be required for several components of the broader project and the selection of the most appropriate site should consider whether adequate material is available for all components or not. In this way, one borrow pit may only be used instead of two thereby minimising the impact on the environment. Such integration will also inform alignment of the EIA process for all components of a SI project.

Consideration of the above criteria facilitates the generation of sufficient information to enable more detailed questions to be answered. These include:

- Whether or not the project requires environmental authorisation.
- What other processes and authorisations should be considered and whether these can run concurrently with the EIA process or not.
- How long the environmental and other authorisation processes are likely to take.
- Whether sufficient budget is available to complete the project and whether the funding cycle is aligned to the expected project timeframes.
3.2 Does the project require Environmental Authorisation?

Determining whether your project requires environmental authorisation is a crucial phase of the environmental assessment process as it involves the identification of activities that may trigger this requirement. Failure to do so may lead to activities being undertaken illegally, which may cause delays during implementation. Once you have ascertained which process is required, it is vital that you take time to understand how the process works. This lack of understanding was highlighted as a major stumbling block to the implementation of SI projects.

How do I determine the assessment process applicable to the application?

In order to determine whether your project requires environmental authorisation, the various Listing Notices must be consulted. If one or more project activities are included under:

- Listing Notice 1 or 3 then a Basic Assessment (BA) should be undertaken.
- Listing Notice 2 then a Scoping and Environmental Impact Reporting (S&EIR) process should be undertaken.
- Listing Notice 2 and either Listing Notice 1 or 3 or Listing Notice 1 and 3, then a single S&EIR process should be followed.

In deciding on the required process, consideration should also be given to any guidelines applicable to the activity or process, such as those prepared by the CA, as well as any advice from the CA. Effort has been directed at enhancing the EIA process for SI projects, and as a result it is possible to apply to switch from a S&EIR process to a BA. This will only be considered in specific cases and must be discussed with the relevant CA.
Deciding if a project requires Environmental Authorisation

- Listing Notice 1
- Listing Notice 2
- Listing Notice 3

To check whether environmental authorisation is required, consult Listing Notices 1, 2 and 3.

A guideline document is available to assist with the interpretation of listed activities. See page 57.

- No project activities are listed. No Environmental Authorisation required.
- One or more of the project activities are listed on Listing Notice 1 only. Environmental Authorisation required.
- One or more of the project activities are listed on Listing Notice 2 only. Environmental Authorisation required.
- One or more of the project activities are listed on Listing Notice 3 only. Environmental Authorisation required.
- One or more of the project activities are listed on Listing Notice 2 and either Listing Notice 1 or 3 or Listing Notice 1 and 3. Environmental Authorisation required.
- I am not sure if any of the project activities are listed. Consult the relevant Competent Authority (CA).

Check whether other authorisations are required.

- Appoint an EAP
- Appoint an EAP
- Appoint an EAP
- Appoint an EAP

- Undertake a Basic Assessment
- Undertake a Scoping & EIR
- Undertake a Basic Assessment
- Undertake a Scoping & EIR

Contact details:
- Eastern Cape
- Free State
- Gauteng
- KwaZulu-Natal
- Limpopo
- Mpumalanga
- North West
- Northern Cape
- Western Cape
3.4 Appointing an Environmental Assessment Practitioner

Depending on which listed activities are triggered, either a BA or a S&EIR process may be required to obtain environmental authorisation. Both these processes are run by an EAP. An EAP is an individual responsible for managing, planning, and co-ordinating various environmental management instruments such as EIAs, strategic environmental assessments and EMPRs. The EIA regulations require that an applicant appoint an EAP to conduct the BA or S&EIR process on the applicant’s behalf. A critical role of the EAP is to ensure that all stakeholders participate fairly in the environmental assessment process and contribute equally to the outcome. The EAP is not allowed to promote the interests of the developer even though they are paying the EAP for their services. The only way to do achieve this is for the EAP to remain independent of any interests.

Section 17 of the Regulations set out the general requirements for EAPs which include that the EAP be independent and objective. In addition, the EAP must have expertise in conducting EIAs, including a thorough knowledge of any legislation and guidelines which may relate to the proposed activity. It is preferable to include environmental expertise in the conceptual/design phase as this will improve the environmental acceptability of the project and potentially avoid significant issues i.e. before the submission of the application. This involvement however must be handled in a manner that does not compromise the independence of the EAP. If at any stage the EAP is thought not to be independent, the CA may suspend the application and refuse to accept any reports from the EAP. The CA may also request the applicant, at his own cost, to appoint an independent person to review the work done by the EAP and furthermore could request that certain aspects of the work are redone.

The Environmental Assessment Practitioners Association of South Africa (EAPASA) is in the process of obtaining permission to require all EAPs practicing in terms of NEMA to be registered. The registration of EAPs has been proposed in an effort to uphold professional standards and provide some level of assurance about the quality of environmental assessment work. The official registration process will be phased-in over a period of between 18 months and 3 years. A list of registered EAPs should then be available at www.eapsa.co.za. Once this registration process has been established, the applicant could request the registration number of the EAP. This will help to ensure that the EAP is suitably qualified to undertake the required work.

In the meantime, an Interim Certification Board has been established and is responsible for compiling and updating a Register of certified EAPs. The Register provides the names and contact details of all certified EAPs, their qualifications and areas of key competence. It is important to note that at present anyone is able to register and thus simply contacting an EAP listed on the register does not necessarily guarantee the competence of the EAP. This register can be obtained from the Interim Certification Board Secretariat.

In order to identify a suitable EAP, the applicant should request a copy of the EAPs Curriculum Vitae, appropriate references as well as a company profile. It may also be advisable for the applicant to request a list of previous projects as well as examples of project reports. This will enable the applicant to check that the EAP has appropriate formal training, skills and competence in environmental practice. The applicant should also then follow up on the references to ensure that previous clients were satisfied with the work conducted by the EAP.

Once an appropriate EAP has been appointed, the applicant should meet with the EAP to discuss the relevant process. The applicant should request that the EAP provide them with a project programme which details each of the steps in the relevant process, the associated timeframes, documents and/or information that may be required in undertaking each of these steps, and the role and responsibility of the applicant in each of these steps.

**Box 1. Key issues identified in respect of Environmental Assessment Practitioners**

During preliminary consultation, several of the stakeholders highlighted the important role that the EAP plays and also noted that in many instances, EAPs are responsible for project delays. In some cases, EAPs are appointed who manage the process poorly and are often ignorant of the legislative requirements. The problem is exacerbated by the lack of accountability. Many of these EAPs submit inadequate and/or insufficient information to the competent authority thereby causing project delays. In some cases the implementing agent or developer appoints the EAP late in the process which also impacts negatively on project timeframes. It is therefore vital that an EAP with appropriate skills and expertise is appointed at the start of the proposed project to conduct the necessary assessment.
3.5 What other processes and authorisations do I need to consider?

Having considered the appropriateness of the project, undertaken detailed planning and established the need for environmental authorisation, it is necessary to identify the other Acts that may apply when undertaking a SI project. In many instances these Acts require that a licence or some other form of authorisation is obtained before the activity may commence. The other legislation that may apply can be categorised as follows:

- **Specific Environmental Management Acts (SEMAs)** – developed to give effect to the environmental rights enshrined in the Constitution and NEMA which act as the framework legislation.
- **Planning Legislation** – designed to ensure that land-use or development activities are appropriate. In most cases the planning legislation requires the applicant to show in support of the planning legislation that they will not degrade natural resources.
- **Other Acts** – These Acts, while not promulgated in terms of NEMA and therefore not classified as SEMAs, have protection and management of the environment as a focus and are in many cases likely to be triggered by SI projects.

Unlike the EIA which must consider the impact of all aspects of the project, authorisation required by these other Acts normally applies to a specific aspect or activity such as water use or waste management, and not the whole project. However, this specific activity may be fundamental to the rest of the project being implemented. An example of this is where a water use licence (WUL) is required for a road that involves a bridge across a river. If there is a delay in obtaining the WUL and the bridge cannot be constructed, it undermines the purpose of the main project. These other processes are therefore important to identify as early as possible. It is also important to understand the following about the relationship between the EIA and these other regulatory processes:

- Authorisation in terms of one Act does not exempt you from requiring authorisation in terms of another relevant Act.
- While the EIA process is often perceived to be the lengthiest of the different regulatory processes and to delay development, the time frames associated with other processes, notably, for securing a water use license are longer.
- Increasingly there are attempts to provide for alignment between regulatory process, particularly the EIA process, to increase the efficiency during the process and co-ordinated decision making. These may include:
  - Providing for authorisation in terms of one Act to account for another. Further information is included in the following text box. These mechanisms are unfortunately seldom utilised, but should nevertheless be explored.
  - Submitting the same information and even reports in support of applications for different authorisations, or
  - Forums and/or other mechanisms established between authorities to improve co-operative governance.

In view of the above, it is essential that the relevant authorities are contacted early in the process in order to understand what authorisations may be required, the process and associated time and financial implications, as well as options for alignment with other processes. The following table lists other regulatory processes that may be followed and examples of the types of activities that will trigger them. More detail regarding these processes is provided in Chapter 9.
**AUTHORISATION REQUIREMENT**

**A licence is required before it is possible to destroy protected tree species or impact the Authorisation by the relevant municipality of land-use in terms of the Act.**

A lease is required if areas of the sea shore or coastal environment are to be used for SI projects.

A Waste Management Licence is required for any waste management activity listed in terms of Schedule 1 of the Act.

Approval from the responsible management authority if SI is proposed within a Protected Area.

An Atmospheric Emission Licence (AEL) is required for any activities listed in terms of the regulations. The likelihood that an AEL would be required for SI projects is limited but should be considered.

A water use licence (WUL) is required for a range (11) different water uses, of which several are likely to apply to various SI projects. Where more than one is required, an ‘integrated WUL is required.

Consent must be obtained from the Minister of Agriculture before agricultural land may be subdivided. It is therefore important to understand the land-use zoning.

Applies where the intended land-use falls within a controlled area, for purposes other than the intended use designated in terms of the Act. In such cases a permit is required before proceeding.

Any person who wishes to construct a structure which falls within the meaning of the term “building” as defined in the Act must obtain written approval before commencing with the construction. This may relate to all types of infrastructure.

Authorisation by the relevant municipality of land-use in terms of the Act.

Depending on the province where social infrastructure is envisaged to be provided, the following legislation must be consulted:

(a) KwaZulu-Natal: Planning and Development Act.
(b) Gauteng: Town-Planning and Townships Ordinance; Division of Land Ordinance; and Transvaal Board for the Development of Peri-Urban Areas Ordinance.
(c) Western Cape: Land Use Planning Ordinance.
(d) Eastern Cape: Land Use Planning Ordinance; and Ciskei Land Use Regulation Act.
(e) Free State: Townships Ordinance.
(f) Limpopo: Town Planning and Townships Ordinance; Transvaal Board for the Development of Peri-Urban Areas Ordinance; and Venda Proclamation.
(g) Mpumalanga: Town Planning and Townships Ordinance; and Kwahidebele Town Planning Act.
(h) North-West: Town Planning and Townships Ordinance; and Bophuthatswana Land Control Act.
(i) Northern Cape: Northern Cape Planning Development Act

A mining permit is required where a borrow area is a necessary to obtain the material (stone, gravel, sand) required to construct a SI project – in particular roads and buildings.

A licence is required before it is possible to destroy protected tree species or impact the functioning of forest systems.

A lease is required if areas of the sea shore or coastal environment are to be used for SI projects.

Comment and recommendations are required from the relevant Heritage Resources Agency (national or provincial) if the NHRA is triggered. The likelihood of the wide range of heritage resources being impacted by SI projects is relatively high.

Authorisation to use water from a resource or facility is required from the Water Services Authority.

<table>
<thead>
<tr>
<th>ACT</th>
<th>SEMAS</th>
<th>PLANNING LEGISLATION</th>
<th>OTHER LAWS</th>
</tr>
</thead>
<tbody>
<tr>
<td>National Environmental Management: Integrated Coastal Management Act</td>
<td>A lease is required where SI is proposed on coastal public property or the coastal protection zone. An application for an environmental authorisation in terms of NEMA may be refused if it falls within any of the categories set out in section 63(2) of the ICMA.</td>
<td>National Environmental Management: Biodiversity Act</td>
<td>Threatened or Protected Species (TOPS) permit is required if SI is proposed in or may impact any TOPS identified and delineated in terms of the Act.</td>
</tr>
<tr>
<td>National Environmental Management: Waste Act</td>
<td>A Waste Management Licence is required for any waste management activity listed in terms of Schedule 1 of the Act.</td>
<td>National Environmental Management: Air Quality Act</td>
<td>An Atmospheric Emission Licence (AEL) is required for any activities listed in terms of the regulations. The likelihood that an AEL would be required for SI projects is limited but should be considered.</td>
</tr>
<tr>
<td>National Water Act</td>
<td>A water use licence (WUL) is required for a range (11) different water uses, of which several are likely to apply to various SI projects. Where more than one is required, an ‘integrated WUL is required.</td>
<td>Subdivision of Agricultural Land Act</td>
<td>Consent must be obtained from the Minister of Agriculture before agricultural land may be subdivided. It is therefore important to understand the land-use zoning.</td>
</tr>
<tr>
<td>Physical Planning Act</td>
<td>Applies where the intended land-use falls within a controlled area, for purposes other than the intended use designated in terms of the Act. In such cases a permit is required before proceeding.</td>
<td>National Building Regulations and Building Standards Act</td>
<td>Any person who wishes to construct a structure which falls within the meaning of the term “building” as defined in the Act must obtain written approval before commencing with the construction. This may relate to all types of infrastructure.</td>
</tr>
<tr>
<td>Development Facilitation Act</td>
<td>Authorisation by the relevant municipality of land-use in terms of the Act.</td>
<td>Province Specific Planning Legislation</td>
<td>Depending on the province where social infrastructure is envisaged to be provided, the following legislation must be consulted:</td>
</tr>
<tr>
<td>Mineral and Petroleum Resources Development Act</td>
<td>A mining permit is required where a borrow area is a necessary to obtain the material (stone, gravel, sand) required to construct a SI project – in particular roads and buildings.</td>
<td>National Forests Act</td>
<td>A licence is required before it is possible to destroy protected tree species or impact the functioning of forest systems.</td>
</tr>
<tr>
<td>Sea-shore Act</td>
<td>A lease is required if areas of the sea shore or coastal environment are to be used for SI projects.</td>
<td>National Heritage Resources Act</td>
<td>Comment and recommendations are required from the relevant Heritage Resources Agency (national or provincial) if the NHRA is triggered. The likelihood of the wide range of heritage resources being impacted by SI projects is relatively high.</td>
</tr>
<tr>
<td>Water Services Act</td>
<td>Authorisation to use water from a resource or facility is required from the Water Services Authority.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Table 1. Other regulatory process that may apply to the proposed project
### 3.6 What are the risks, costs and timeframes associated with the project?

Given the tight timeframes within which SI projects have to be planned and implemented the major risks and costs are associated with delays resulting from a failure to secure the necessary authorisations in time to implement the projects within the set timeframes. More specifically these risks and costs may be:

- Loss of funding due to projects not being implemented within a set timeframe. A secondary effect of this is that projects are halted mid-project with negative environmental impacts because the required management measures are not undertaken.
- Penalties, paid to contractors due to delays in commencement of work – or more likely where work is stopped mid process.
- Risk of fines where development proceeds without the required authorisations. This issue is complicated by the Intergovernmental Relations Framework Act, which aims to limit legal action between spheres of Government and departments. It stipulates a rigorous process involving various other steps to be taken before resorting to legal action. As a consequence limited action is ever taken.
- Costs for rehabilitation where development has proceeded illegally.
- Cost of duplication of consulting fees.

The loss of funding and payment of unnecessary costs and penalties could be eliminated if adequate consideration is given to the possible authorisations which may be required as part of the proposed project during the planning stage. In addition, consideration of these timeframes would ensure that budgets allocated to social infrastructure projects can be spent within the correct funding cycle. The possible time frames for the BA and S&EIR process are outlined in the tables below and should be considered as a minimum for the planning of SI projects. These timeframes only include decision-making timeframes by the CA and do not include inter alia public participation timeframes, or additional timeframes if further information is requested from the CA (e.g. if an application were to be rejected and resubmitted).
### Table 1. Minimum decision-making timeframes required by Competent Authorities for the BA process

<table>
<thead>
<tr>
<th>Decision and/or Action required by Authorities</th>
<th>Timeframes for BA process (days)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acknowledge receipt and accept or reject application</td>
<td>14 days</td>
</tr>
<tr>
<td>Acknowledge receipt of BA Report</td>
<td>14 days</td>
</tr>
<tr>
<td>Review and accept or reject the BA Report</td>
<td>30 days</td>
</tr>
<tr>
<td>Extension if decision-making timeframe is missed</td>
<td>60 days</td>
</tr>
<tr>
<td>Grant or refuse authorisation</td>
<td>30 days</td>
</tr>
<tr>
<td>Extension if decision-making timeframe is missed</td>
<td>60 days</td>
</tr>
<tr>
<td>Notify applicant of decision</td>
<td>2 days</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>210 days</strong></td>
</tr>
</tbody>
</table>

### Table 2. Minimum decision-making timeframes required by Competent Authorities for S&EIR process

<table>
<thead>
<tr>
<th>Decision and/or Action required by Authorities</th>
<th>Timeframes for S&amp;EIR process (days)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acknowledge receipt and accept or reject application</td>
<td>14 days</td>
</tr>
<tr>
<td>Acknowledge receipt of the Scoping Report</td>
<td>14 days</td>
</tr>
<tr>
<td>Review and accept or reject the Scoping Report</td>
<td>30 days</td>
</tr>
<tr>
<td>Extension if decision-making timeframe is missed</td>
<td>60 days</td>
</tr>
<tr>
<td>Acknowledge receipt of the Environmental Impact Report</td>
<td>14 days</td>
</tr>
<tr>
<td>Review and accept or reject Environmental Impact Report</td>
<td>60 days</td>
</tr>
<tr>
<td>Extension if decision-making timeframe is missed</td>
<td>60 days</td>
</tr>
<tr>
<td>Grant or refuse authorisation</td>
<td>45 days</td>
</tr>
<tr>
<td>Extension if decision-making timeframe is missed</td>
<td>60 days</td>
</tr>
<tr>
<td>Notify applicant of decision</td>
<td>2 days</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>359 days</strong></td>
</tr>
</tbody>
</table>
Other authorisations, permits or licences may also be required as part of the proposed project and failure to identify these and align the timing and scope of investigations with the EIA process will likely lead to delays. NEMA does not stipulate when an applicant may institute any other application process i.e. other processes may commence before, during or after an application process in terms of NEMA. Notwithstanding the above, in sections 24K and 24L, NEMA does provide for integrated environmental decision-making for multiple application processing where at least one of those is a NEMA decision-making process. The options are listed below with the CA being responsible for deciding which option is applied.

a) The Default Option
In terms of this option, the application process in terms of the Regulations may proceed before, parallel or after the application process in terms of a SEMA or another law. In the end, the applicable legal requirements are approached in a manner which emphasises the differences between those requirements.

b) The co-ordination option
The distinctive feature of this option is that the CA consults with another organ of state responsible for administering the legislation relating to any aspect of a listed or specified activity which also requires an environmental authorisation in terms of NEMA. The purpose of the consultation is “to co-ordinate the respective requirements of such legislation and to avoid duplication.”

c) The agreement option
Regarding this option, the CA enters into a written agreement with an organ of state responsible for administering the legislation relating to any other aspect of a listed or specified activity that also requires an environmental authorisation in terms of NEMA. The purpose of that agreement is to avoid duplication “in the submission of information or the carrying out of a process relating to any aspect of an activity” which also requires an environmental authorisation in terms of NEMA.

d) The joint exercise option
In terms of this option, the CA and another organ of state which has the power to grant approval or refusal for a listed activity or specified activity may exercise their respective powers jointly. The CA and that other organ of state may issue separate authorisations or an integrated environmental authorisation.

e) The “regards” option
There are two components of this option. The first component relates to the CA to regard its environmental authorisation as a sufficient basis for the granting or refusal of an authorisation, a permit or a licence under a SEMA if that specific SEMA is also administered by the CA. The second component relates to the power of the CA to regard an authorisation issued in terms of any other legislation as an environmental authorisation. The power of the CA, in this regard, is limited by the proviso that such authorisation must (have been) issued in terms of legislation which meets all the requirements stipulated in section 24(4)(a) of NEMA and, where applicable, section 24(4)(b) of NEMA.
Depending on which of the alignment options is pursued one of the following options could be followed to facilitate intergovernmental co-ordination.

- An ideal situation is an authority’s meeting where agreement is reached regarding mechanisms for alignment. The outcomes of this meeting must be documented and circulated to all as the blue print for the alignment of processes going forward. If possible this should include a site visit so that project can be considered in context and specific requirements relating to a particular site can be identified.

- It is often difficult to organise a co-ordinated meeting with all departments. In such cases, individual meetings can be held with each department and a summary of the agreed alignment sent to all for verification/endorsement.

These different application options have implications for the timeframes of SI projects and must be considered in the planning phase. Table 3 outlines the timeframes and possible alignment of the permits and licences (most likely to be required as part of SI developments) with the EIA process. However, it is vital that the applicant discuss these timeframes with the CA during the planning phase to ensure that the correct application option is exercised.
<table>
<thead>
<tr>
<th>Permit or Licence</th>
<th>Timeframe</th>
<th>Alignment with the EIA process</th>
</tr>
</thead>
<tbody>
<tr>
<td>Heritage Resources Development permit</td>
<td>EIA Timeframes</td>
<td>The time frames generally align with the EIA process. The Heritage Impact Assessment will form part of EIA documentation and there should also be overlap in the public participation process.</td>
</tr>
<tr>
<td>Heritage Permit</td>
<td>No set time frames (Approx. 1-3 months)</td>
<td>This permit is required before aspects of construction that will impact heritage resources can proceed. Obtaining this permit is therefore likely to be a condition of the EA.</td>
</tr>
</tbody>
</table>
| Mining permit                                | No set timeframe.                 | The permit authorises the mining activity only e.g. extracting material from the borrow pit. It does however not authorise ancillary activities required to undertake mining such as new access roads which may require authorisation under the EIA regulations. An EA may therefore be required for such ancillary activities before the mining can proceed. There should be alignment between the MPRDA and EIA process in terms of:
- Specialist information,
- Public participation process.
- Environmental assessment reporting.
- Environmental management plan.                                                                                      |
| Threatened or Protected Species permit       | No set time frames (Approx. 3 months) | The specialist work required for the TOPS permit should form part of the broader assessment undertaken by the botanist/vegetation ecologist for the EIA process. Securing the TOPS permit prior to commencement of the activity is likely to be a condition of the EA.                                                                                         |
| Water use licence                            | Undefined                          | A WUL is probably the most required of all licences other than the EIA in the case of SI projects. It is also the process which takes the longest to secure a licence. Options exist for alignment in terms of:
- Consultation process.
- Information (specialist studies).
- Decision making (conditions).                                                                                           |
| Waste Management Licence                     | EIA timeframes                     | The options for co-ordination with EIA process include:
- Consultation process.
- Information (specialist studies).                                                                                       |
| Forest and Protected Tree Species Licence    | Approx. 3 months                   | A permit will only be granted after the EA even if a decision is made beforehand.                                                                                                                                                                                                                                                                           |
| Atmospheric Emission Licence                 | EIA timeframes                     | Options for co-ordination with EIA in terms of:
- Consultation process.
- Information (specialist studies)
- Timeframes (noting that AEL will only be issued after EA).                                                                 |
3.7 Identifying the relevant Competent Authority

Section 1 of NEMA defines the CA as the organ of state charged by the Act with evaluating the environmental impact of an activity, and where appropriate, granting or refusing an EA in respect of that activity. The CA performs an administrative function in terms of registering the application, considering all documentation, and making a decision on whether the proposed activity may proceed or not. The CA also provides guidance on the relevant legislation and associated information sources such as guidelines and policies that should be considered as part of the process. The listing notices indicate the CA for each listed activity.

In most instances, the MEC responsible for environmental affairs in each of the provinces is designated as the CA. Applications for the commencement of listed activities should therefore be submitted to the associated provincial Departments.

However, in some cases, the Minister of Environmental Affairs is designated as the CA and the National Department of Environmental Affairs should be contacted. These cases are detailed in Sections 24C(2) and Section 41 of the Act and include:

- If the activity has implications for international environmental commitments or relations.
- If the activity will take place within an area protected by means of an international environmental instrument, other than any area falling within the sea-shore or within 150 meters seawards from the high water mark, whichever is the greater; a conservancy; a protected natural environment; a proclaimed private nature reserve; a natural heritage site; the buffer zone or transitional area of a biosphere reserve; or the buffer zone or transitional area of a world heritage site.
- If the activity has a development footprint that falls within the boundaries of more than one province or traverses international boundaries.
- When the activity is to be undertaken by a national department, a provincial department responsible for environmental affairs or a statutory body (excluding any municipality) performing an exclusive competence of the national sphere of government e.g. Eskom.
- If the activity is situated within a national proclaimed protected area or other conservation area under control of a national authority.

The requirement to obtain an environmental authorisation for an activity which constitutes prospecting, mining, exploration or production has not come into effect yet. However, in all likelihood, once this requirement comes into effect, the Minister of Mineral Resources will be designated as the CA.

Regarding licences, permits or authorisations required by laws other than NEMA or a SEMA, each of those laws specifies a CA for the activities it regulates. It is possible for certain projects to require environmental authorisations from different CAs depending on the circumstances. It is also possible for certain projects to require, in addition to an environmental authorisation, a licence or permission in terms of another law. A CA responsible for that licence or permission would be specified in the relevant law.

The names and contact details for the CA in respect of environmental authorisation (in terms of NEMA) for each of the Provincial Departments as well as the National Department are detailed in the information links below.
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<tr>
<th>Province</th>
<th>Department</th>
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<tr>
<td>Eastern Cape</td>
<td>Department of Economic Development and Environmental Affairs</td>
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<tr>
<td>Free State</td>
<td>Department of Economic Development, Tourism and Environmental Affairs</td>
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<tr>
<td>Gauteng</td>
<td>Department of Agriculture and Rural Development</td>
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<tr>
<td>KwaZulu-Natal</td>
<td>Department of Agriculture and Environmental Affairs</td>
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<td>Limpopo</td>
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<td>Mpumalanga</td>
<td>Department of Economic Development, Environment and Tourism</td>
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<td>Western Cape</td>
<td>Department of Environmental Affairs and Development Planning</td>
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<td>National</td>
<td>Department of Environmental Affairs</td>
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3.8 Applying for Environmental Authorisation

Having identified the activities for which environmental authorisation is required and the relevant process to be followed, the environmental assessment process can commence. In many cases, the EIA is viewed as a lengthy process as the applicant has not yet made the necessary decisions before commencing the process. It is vital that the applicant seek guidance from the EAP to ensure that all necessary information is available prior to submitting an application. In this way, unnecessary delays can be avoided. The first step in the environmental assessment process entails the submission of an application form.

Where do I obtain an application form?

An application form must always be submitted before undertaking an environmental authorisation process. Application forms can be accessed from the adjacent links. Applications forms vary between the different provinces and may also be updated from time to time. It is therefore vital that you contact the relevant CA to ensure that you obtain the correct application form.

Regulation 50 provides for an exemption which releases an applicant from their obligations in terms of all or part of the EIA process. An exemption will only be granted if the CA considers that there are good grounds to do so. The applicant should discuss the possibility of an exemption with the CA before submitting an application. If the CA agrees that an exemption is feasible then an application for exemption should be made in writing to the relevant CA and should include the following:

- an explanation of the reasons for the application;
- any applicable supporting documents; and
- the prescribed application fee, if any.

Application for exemption may still require a public participation process as set out in Regulation 51. The required process should also be discussed with the relevant CA.

How do I prepare and submit the application?

The applicant or the EAP may prepare the application form. The application must:

- be made on the official application form (see above)
- be properly completed and contain the correct information
- be accompanied by the prescribed application fee
- take into account any guideline applicable to the submission of applications.

The Regulations requires that an EAP is appointed to manage the BA or Scoping and EIR process. The EAP is required to complete a declaration of interest which must be submitted together with the application. The declaration of interest
requires the EAP to declare that he is independent and does not have any vested interest in the project. If at any stage, the independence of the EAP is called into question, then the Competent Authority may suspend the application, refuse to accept any reports from the EAP, request the applicant to appoint an independent person to review the work done by the EAP and may also require certain aspects of the work to be redone. These measures have considerable time and cost implications to the applicant.

Links to the relevant “Declaration of Interest” forms are provided above. In addition, if the applicant is not the owner or person in control of the land on which the activity is to be undertaken, the applicant must provide written notice of the proposed activity to the owner or person in control of the land. A copy of this written notice must be submitted with the application.

In addition to the declaration of interest by the EAP, other information may also need to be submitted with the application. For example, the Western Cape require the submission of a project programme which outlines the timeframes associated with the proposed project. This is useful in that it enables the CA to explore opportunities to streamline the project. It is advisable that the applicant contact the CA to ensure that all required documents are included with the submission of the application.

Regulation 14 enables the submission of combined applications. In the case where more than one activity requires authorisation and all the activities form part of the same development, a single application should be submitted. For example, if you wish to undertake a low cost housing development but also need to develop a large landfill site and waste water treatment works associated with this development, then all the activities can be considered together on one application form. If the activities are to be undertaken at different locations within the area of jurisdiction of the CA, then separate applications are generally required. However, the CA may, at the written request of the applicant, grant permission for the submission of a single application where the applicant undertakes more than one activity of the same type at different locations within the area of jurisdiction of the same CA.

The submission of a single application has a number of benefits. Firstly, it enables a consolidated process to be conducted, including a public participation process, which provides a significant cost saving to the applicant. It also facilitates the assessment of the cumulative impacts of the development. In addition, the CA only has to review one set of documents thereby streamlining the process.

Once the application form has been completed, it is advisable for the applicant to go through the form with the EAP to ensure that the information is accurate. It is important to remember that although the EAP is appointed to carry out the EIA work, the ultimate responsibility to ensure that the information is correct and that the relevant laws are complied with rests with the applicant in respect of their project. The application should then be submitted to the relevant CA (see the section on “Identifying the CA” for contact details).

**What happens after I have submitted the application?**

Regulation 13 requires the CA to check the application to ensure that it has been properly completed on the appropriate application form and that it contains all the relevant information and associated documents. The CA must within 14 days of receiving the application, acknowledge receipt of the application and accept or reject the application (in writing). Any application that has been rejected may be corrected and re-submitted. If the applicant has not heard from the CA within 14 days, they should follow up with the CA, either directly or via their appointed EAP, to gauge where their application is in the process.

Regulation 67 stipulates that an application lapses, if the applicant, after having submitted the application fails, for a period of six months, to comply with a requirement in terms of the Regulations. It is therefore essential that once the CA has accepted the application, that the applicant commence with the appropriate process. The lapping of applications is not desirable as it is costly for the applicant, delays the project and creates unnecessary work for the CA.