



Tuvalu

ENVIRONMENT PROTECTION (ENVIRONMENTAL IMPACT ASSESSMENT) REGULATIONS 2014



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MADE UNDER SECTION 39 OF THE ENVIRONMENT PROTECTION ACT 2008

[Commencement: 4 February 2014]

1 Citation

This Regulation may be cited as the Environment Protection (Environmental Impact Assessment) Regulations 2014.

2 Interpretation

(1) In these Regulations, unless the context otherwise requires –

“**Director**” means the Director of Environment;

“**development activity**” means any new project (including extensions and additions to an existing project) undertaken in the private or government sectors, which requires any licence or other government approval or which is of a nature as stated in Schedule 1;

“**Environmental Assessment Task Force**” and “**Task Force**” mean a task force established under regulation 17;

“**full assessment**” means a full environment impact assessment required by the Minister under regulation 11 and to be undertaken in accordance with the requirements of Parts VI and Part V;

“**landowner**”, in respect of a registered interest, means the person in whose name the interest is registered, and concerning customary land, means the person or

persons regarded as the owner or owners of the land according to existing customary usage;

“**major project**” means any project involving development activities which is of a nature stated in Schedule 1 and which the Department reports is likely to have significant impacts on the environment;

“**Minister**” means the Minister responsible for the Environment;

“**the Ministry**” means the Ministry of Foreign Affairs, Trade, Tourism, Environment and Labour

“**mitigation**” includes —

- (a) avoiding an impact by not taking a particular course of action as part of development;
- (b) minimising an impact by limiting the scale of the action or changing the method of carrying out an action;
- (c) rectifying an impact by repairing, rehabilitating, or restoring the affected environment;
- (d) reducing or eliminating an impact over time by conservation and maintenance action regarding development activities; or
- (e) compensating for the impact by replacing or providing substitutes for the resources or environment;

“**pollutant**” means any solid, liquid or gaseous substances or energy present in such concentrating as may be, or tend to be, injurious to the environment or human health;

“**preliminary report**” means a preliminary environment assessment report required for all development activities and to be undertaken in accordance with the requirements of Part II;

“**premises**” means residential, commercial, industrial or other premises of any kind and includes land or sea based, air or space launch or landing facility;

“**prescribed form**” means a form prescribed by these Regulations, or in the absence of any relevant regulations, a form approved for any purpose under these regulations by the Minister;

“**Principal Act**” means the *Environment Protection Act 2008*;

“**proponent**” means the person who owns the proposed development and who must comply with the provisions of these regulations in relation to the proposed development.

(2) The meanings given to terms in the Principal Act shall apply to those terms in these regulations, unless the context otherwise requires.

PART I - FORMS OF ASSESSMENT

3 Forms of environment impact assessment

- (1) The procedures for undertaking environment impact assessment shall be —
 - (a) a preliminary environmental assessment report; and
 - (b) a full environment impact assessment.
- (2) A preliminary environmental assessment report shall be prepared in accordance with regulation 8 for all developments which require environment impact assessment under these regulations.
- (3) A full environment impact assessment may be required by the Minister for any development activity relating to a major project that a preliminary report indicates is likely to have a significant adverse impact on the environment.
- (4) The Minister shall consider each preliminary report and the recommendations provided in relation to the preliminary report by the Department, and may require a full assessment.
- (5) A requirement under this regulation shall be notified in writing to the proponent of the development activity.
- (6) Nothing in this regulation shall prevent the Director and a proponent from agreeing that a full assessment is required for a major project at any time prior to or during the preparation of a preliminary report.

4 Minister to determine whether a full assessment is required

- (1) Consistent with these Regulations, the Minister shall determine whether a full assessment is required for any development activity.
- (2) The Minister shall have regard to a report prepared by the Department in relation to any preliminary report which shall indicate the effect that the development activity is likely to have on —
 - (a) any ecosystems of importance, especially those supporting habitats of rare, threatened, or endangered species of flora or fauna;
 - (b) any areas, landscapes, and structures of aesthetic, archaeological, cultural, historical, recreational, scenic or scientific value;
 - (c) any land, water, sites, fishing grounds, or physical or cultural resources (or interests associated with such matters) which are part of the environment or heritage of the people of Tuvalu, and which contribute to their well-being;
 - (d) the social and the economic well-being of communities in Tuvalu; and
 - (e) whether any project is likely to —

- (i) result in, or increase pollution;
- (ii) result in the occurrence, or increase the chances of occurrence, of natural hazards such as soil erosion, flooding, tidal or sea wave inundation;
- (iii) result in the generation of wastes or hazardous substances;
- (iv) result in the introduction of species of types that might adversely affect the environment and biodiversity;
- (v) have features, the environmental effects of which are not certain, and the potential impact of which is such as to warrant further investigation;
- (vi) result in the allocation or depletion of any natural and physical resources in a way or at a rate that will prevent the renewal by natural processes of the resources, or will not enable an orderly transition to other materials; or
- (vi) whether utility services are available and adequate for the major project and resultant activities.

5 Exempt development activities

(1) The following development activities are exempt from the requirements under these regulations to undertake either form of environment impact assessment —

- (a) the construction, maintenance, renovation or extension of residences in residential or island areas, and of churches, which conform to all legal requirements relating to the standards of building construction; and
- (b) routine maintenance of public infrastructure including roads, airstrips, seawalls and pathways.

PART II - GENERAL PROVISIONS RELATING TO APPLICATIONS AND PRELIMINARY REPORTS

6 Notification and applications

(1) All persons proposing to undertake any development activity to which these regulations apply must, prior to the commencement of the activity –

- (a) notify the Department of the proposed activity; and
- (b) apply for a development consent under these regulations.

(2) All notifications and applications under sub-regulation (1) shall be in the prescribed form and shall be accompanied by a fee of \$500 for Foreign Donor Projects and \$200 for Local Funded Projects.

7 Requirements applying to preliminary reports

(1) The proponent shall prepare and submit (at his or her own cost) a preliminary report, which shall be in accordance with the requirements stated in regulation 8.

(2) The report shall be prepared and submitted within a timeframe agreed to between the proponent and the Director.

8 Content of Preliminary Environmental Assessment Reports –

(1) Each preliminary report shall be submitted to the Director in accordance with —

- (a) any EIA guideline issued by the Department; and/or
- (b) any form specified or provided by the Department; and/or
- (c) any direction made in writing by the Director.

(2) Unless otherwise directed by the Director in writing, a preliminary report shall contain the following particulars —

- (a) a brief description of the development proposal;
- (b) a brief description of the area to be affected and the nature of the proposed change to the area (including a location map and site plan);
- (c) a brief justification for the development proposal;
- (d) an assessment of all reasonably foreseeable adverse and positive impacts, including long-term and short-term, primary and secondary consequences;
- (e) an indication of possible alternatives to mitigate any identified adverse impacts; and
- (f) an indication of measures that the proponent intends to take to mitigate or avoid identified adverse impacts.

9 Review of preliminary reports

(1) The Department shall review, or cause to be reviewed, each preliminary report submitted to the Director in accordance with these regulations.

(2) The Director may refer a preliminary report to the Task Force for review.

(3) The Department shall prepare a written review report to be considered in accordance with these regulations, together with other relevant material before a decision on any development consent application is made.

10 Approval based on preliminary report

(1) The Minister may give approval to any development activity based upon a preliminary report –

- (a) which has complied with the requirements of regulation 8; and
- (b) which the Department has confirmed will not cause any significant adverse impact to the environment.

(2) An approval given under this regulation shall be in writing under the hand of the Minister or the Director (acting on the authority of the Minister), and may impose conditions determined by the Department to minimise any adverse impacts to the environment.

11 Requirement for full environment impact assessment

(1) After considering a preliminary report and the recommendation given by the Department, the Minister may give notice in writing to the proponent that a full assessment is required in accordance with Part IV.

PART III - FULL ENVIRONMENT IMPACT ASSESSMENTS

12 Requirements applying to full assessments

(1) The requirements under this regulation shall apply to all development activities which the Minister has determined require a full assessment in accordance with these regulations.

(2) A full assessment shall be submitted in accordance with —

- (a) any relevant guidelines issued by the Department;
- (b) any form specified or provided by the Department; and
- (c) any direction made in writing by the Director.

(3) Unless otherwise directed by the Director in writing, a full assessment shall contain the following particulars —

- (a) a summary of the development proposal and its consequences, including —
 - (i) a statement of all major conclusions;
 - (ii) an outline of any issues that are controversial;
 - (iii) an outline of issues that remain to be resolved;
 - (iv) an outline of the preferred choice among any alternatives; and
 - (v) details of any proposals to mitigate significant adverse impacts.

- (b) a description of the development proposal (including any phasing or sequencing of activities), a statement of its underlying purpose, and the long-term and short-term objectives sought by the proponent.
- (c) further details of the description of the development proposal, including —
 - (i) a general description of the proposal's technical, economic, and environmental characteristics, taking into consideration current engineering and supporting utility / infrastructural data;
 - (ii) the precise location and boundaries of the proposal shown on a detailed map; and
 - (iii) a justification of the rationale for the proposal including such supporting information as is appropriate.
- (d) a review of the environmental impacts of the development proposal and any practical alternatives to the proposal, and in this section the proponent shall —
 - (i) review and evaluate all reasonable alternatives, including locations and methods, and the alternative of no action;
 - (ii) identify the proponent's preferred alternative or alternatives;
 - (iii) identify appropriate mitigation measures to minimise any significant environmental impacts arising from the preferred alternative; and
 - (iv) identify any significant environmental impacts that cannot be avoided.
- (e) a description of the affected environment, including —
 - (i) a description of the local environment in the vicinity of the proposal as it exists before commencement of the proposal;
 - (ii) a description of potential cumulative impacts that might arise in conjunction with other activities in the location;
 - (iii) a review and evaluation of possible conflicts or inconsistencies between the development proposal and relevant applicable objectives of national, regional or local land use and marine / coastal plans and policies.
- (f) analysis of the environmental consequences of the development proposal which may include the following —
 - (i) a review of direct and indirect environmental effects, their significance, and risks;
 - (ii) a consideration of cumulative environmental impacts;
 - (iii) a consideration of the environmental effects of alternative;
 - (iv) an assessment of the likely need for additional infrastructure, including energy and public utilities;

(v) an assessment of impacts on the area's physical locality and amenity (including visual quality), its historic and cultural resources, and the design of the built environment;

(vi) an assessment of social impacts on the local population and its uses of the land;

(vii) an assessment of the implications of the use of potential environmental pollutants;

(viii) a review of options proposed to mitigate adverse environmental impacts;

(xi) a description of any unavoidable adverse environmental impacts, including any permanent change in the physical, biological, social or cultural characteristics of the affected environment or in the possible future use of that environment;

(xii) an analysis of the costs and benefits that may result from the development proposal;

the identification of any irreversible or irretrievable commitments of resources required for the development proposal; and

(f) a list of all persons who prepared the EIA, their qualifications, and organisations and persons who were consulted.

(3) Where an environmental impact assessment has completed under the law of a foreign country, the Minister may determine that any report prepared in relation to such an assessment is sufficient to fulfil the requirements of this regulation.

13. Baseline and Compliance Monitoring Schedule

(1) In addition to the requirements stated in regulation 12, all full assessments shall be accompanied by a Schedule outlining a programme of baseline and compliance monitoring which must be appropriate to the scale of the proposed activity.

(2) The Schedule shall outline the baseline monitoring proposed to be undertaken and any subsequent monitoring (and with what frequency and method) that it is intended shall be undertaken against the baseline.

14. Full assessment reports to be reviewed by the Department

(1) All full assessment reports shall be submitted to the Director who shall arrange for a review of the report to be undertaken by –

(a) the Department; or

(b) an external reviewed in accordance with regulation 15.

(2) The Director may require that a proponent provides an further information in relation to a report or a full assessment, or any verification of any matter stated in a full assessment report.

15. External review may be undertaken

(1) The Department may determine that it does not possess, or has not currently available to it, the necessary specialist skills to appropriately review a full assessment, or any specific parts of a full assessment.

(2) In the circumstances stated in sub-regulation (1) the Department may identify a suitable external reviewer and commission a report from that person or company.

(3) Prior to commissioning any report under subsection (1), the Department shall seek to make an agreement with the proponent in relation to the payment of the costs of the review by the proponent.

(4) If the proponent does not agree to an external review as proposed by the Department, and fails to provide an alternative option to the satisfaction of the Department, the development application shall be deemed to be suspended until such time as this matter is resolved to the satisfaction of the Director.

16. Public Consultations

(1) The Director may determine that public consultations are required in relation to a full assessment.

(2) The Director shall advise the proponent in writing of any determination under sub-regulation (1) within 2 weeks of receiving the full assessment report.

(3) The Director shall advise the proponent of the full details of the proposed public consultation process, and the reasons for that determination.

(4) All public consultations proposed under this regulation shall be consistent with any relevant Department guidelines, and shall be completed before a decision is taken on the development application under these regulations.

(5) The Director may require that the costs of any required consultations be paid or reimbursed by the proponent, and a decision to approve a full assessment report may be withheld until such costs are paid.

PART IV - ENVIRONMENTAL ASSESSMENT TASK FORCE

17. Establishment of an Environmental Assessment Task Force

(1) There is hereby established an Environmental Assessment Task Force which shall consist of —

- (a) the Permanent Secretary of the Ministry, who shall be Chairperson;
- (b) the Director of Environment (or a representative from the Department)
- (b) the Attorney General (or a representative from the Office of the Attorney General);
- (c) the Director of Health (or a representative from the Department of Health);
- (d) the Director of Planning (or a representative from the Department of Planning),
- (e) the Director of Rural Development (or a representative from the Department of Rural Development), and
- (f) one member appointed by the Director of Environment from the National Environment Council.

(2) The Task Force may co-opt persons as it considers necessary to assist in its deliberations.

(3) The secretariat for meetings of the Task Force shall be provided by the Department.

18. Referral to the Task Force

(1) All full assessment reports, together with the report of the review by the Department and a report of public consultations (if any) shall be referred to the Task Force for consideration.

19. Quorum for meetings of the Task Force

(1) A quorum for meetings of the Task Force shall be the Chairman and any 3 members.

(2) The Task Force may consider and decide on any matter before it by —

- (a) the sending of a circular resolution, supported by all relevant information in relation to each matter, to each member of the Task Force by post, facsimile or electronic means; and
- (b) each member notifying his or her decision by replying to the notification under paragraph (a)

(3) The procedures permitted by sub-regulation (2) may be used to obtain the views of one or more Task Force members who are not able to attend a meeting of the Task Force, and in such cases any member who responds in the required manner shall be counted as part of the quorum of the meeting of the Task Force.

20. Functions of the Task Force

(1) The Task Force shall –

- (a) review all reports of full assessments prepared and submitted in accordance with these regulation;
- (b) advise the Director if further information about any matter in a report is required;
- (c) advise the Director if verification of any matter in a report is desirable;
- (d) recommend that public consultation or further consultation be held in relation to the relevant development proposal; and
- (e) recommend the imposition of any conditions on any approval given to a development activity on the basis of a full assessment report.

21. Recommendations of the Task Force

(1) The Task Force shall review and recommend to the Minister –

- (a) whether an approval should be given to a proposed development on the basis of the report and other information and material submitted in accordance with these regulations; and
- (b) that certain conditions to be attached to any approval; and
- (c) the means by which the recommended conditions can be best implemented and enforced.

(2) The Task Force may recommend to the Minister that a proposed major project be refused permission to commence or continue due to the unacceptable environmental impacts of the potential or existing project.

PART V - APPROVALS AFTER FULL ASSESSMENT

22. Approval following full assessment

(1) The Minister may give approval to any development activity based upon a full assessment –

- (a) which has complied with the requirements of Part IV; and

(b) which the Task Force has reviewed in accordance with Part V.

(2) An approval given under this regulation shall be in writing under the hand of the Minister or the Director (acting on the authority of the Minister), and may impose conditions determined by the Minister to minimise any adverse impacts to the environment.

PART VI - ENFORCING DEVELOPMENT APPROVALS

23. Monitoring of development activities

(1) Environment officers may exercise of any of their powers to –

- (a) reject any development activity;
- (b) monitor the effects of any development activity on the environment; and
- (c) ensure that proponents comply with conditions imposed on any approval given under these regulations.

(2) To enforce any conditions applying to an approval given under this Act, environment officers may –

- (a) issue and serve a precautionary notice under section 12 of the Principal Act on a proponent, or any person apparently working on or associated with a relevant development activity;
- (b) advise the Minister to issue a Notice to Cease Activity under section 13 of the Principal Act on a proponent, or any person apparently working on or associated with a relevant development activity; or
- (c) prepare a report for the Director and recommend the suspension or cancellation of any approval given under these regulations.

24. Suspension or cancellation of an approval

(1) Upon receipt of a report under regulation 23(2)(c) the Director may recommend to the Minister that an approval given under these regulations be suspended on the grounds of non-compliance with any condition applying to the approval.

(2) A decision to suspend an approval shall be made in writing under the hand of the Minister, and shall be served on the proponent as soon as practicable.

(3) A proponent who is served with a suspension notice under sub-regulation (3) must prove to the satisfaction of the Minister that the relevant development activity is being carried out in accordance with each applicable condition within 14 days of the service of the suspension notice.

(4) The Minister may impose additional conditions in relation to any suspended approval before the Minister rescinds the suspension under this regulation.

(5) If the proponent does not satisfy the Minister as to compliance with each applicable condition within 14 days of service of a suspension notice then the relevant approval under this Act shall be cancelled.

25. Offences

(1) Any person who –

(a) undertakes any development activity which requires an approval under these regulations, without having an approval for that activity;

(b) undertakes any development activity in a manner which is in breach of any condition applying to that activity; or

(c) continues any development activity during the suspension of the applicable approval, or after its cancellation in accordance with regulation 24(5) –

commits an offence and shall be liable upon conviction to a fine not exceeding \$5,000, and an additional fine of \$500 for every day that the offence continues.

(2) The offences under sub-regulation (1) are in addition to any offence that may be applied under the Principal Act, but in relation to any instance of a breach the offender may only be charged with an offence under the Principal Act or these regulations.

SCHEDULE 1 - DEVELOPMENT ACTIVITIES

Any of the following activities shall be deemed to be development activities to which, subject to regulation 5, the provisions of these regulations may be applied —

1. Food industries including

- (a) fruit processing, bottling and canning
- (b) brewing, making and distillery works
- (c) abattoirs
- (d) other food processing requiring packaging

2. Iron and Steel Industries

3. Non Metallic Industries and Processes including:

- (a) lime production
- (b) brick and tile manufacture
- (c) extraction of minerals and mining
- (d) commercial extraction of aggregates stones or shingles, sand, reef mud and beach rock
- (e) radio-active related industries
- (f) manufacture of cement
- (g) plastic manufacturing and moulding

4. Leather, Paper, Textile and Wood Industries including:

- (a) leather tanning and processing
- (b) textile industry with dyeing facilities
- (c) carpet industry with chemical dyeing
- (d) manufacture of paper, pulp and other wood products

5. Fishing and Marine Industry

- (a) fish processing (including sessile marine animals),
- (b) seaweed farming,
- (c) land or marine foods processing or farming,
- (d) pet fishing licensing,
- (e) fishing ponds industries,
- (f) commercial fishing activities in Tuvalu seas waters
- (g) introduction to Tuvalu non-native (alien) species.

6. Chemical Industry including:

- (a) pesticide production and use
- (b) pharmaceutical production
- (c) fertiliser manufacture and use
- (d) oil refineries

7. Tourism Industry including:

- (a) hotels or guest houses
- (b) golf courses
- (c) recreational parks
- (d) tourism resorts or estates

8. Agricultural and Land Industries including:

- (a) livestock development
- (b) agricultural development schemes
- (c) irrigation and water supply schemes
- (d) logging operations
- (e) saw milling, all forms of timber milling and treatment, copra processing
- (f) the removal of trees (including mangroves) or natural vegetation of any area in excess of one-third of a hectare

9. Public Works Sector including:

- (a) landfills
- (b) infrastructure developments
- (c) major waste disposal plants including recycling and collection systems
- (d) soil erosion, beach erosion and siltation control
- (e) hydropower schemes, desalination plants
- (f) reservoir development
- (g) airport developments
- (h) causeways, drainage and disposal systems
- (i) dredging
- (j) watershed management
- (k) seawalls/land reclamation
- (l) boat channels
- (m) port and harbours
- (n) electricity generating stations
- (o) marinas (comprising pontoons, jetties, piers, dry storage, moorings) for more than 5 vessels

10. Genetically Modified Organisms

All importation, development, processing, use, manufacture, propagation and sale

11. Other

- (a) industrial estates
- (b) housing multiple units
- (c) settlement and resettlement schemes
- (d) storage and processing of petroleum

SCHEDULE 2 - NOTIFICATION AND APPLICATION FOR DEVELOPMENT APPROVAL

(Regulation 6)

Form 1

NOTIFICATION AND APPLICATION FOR DEVELOPMENT APPROVAL

To the Director of Environment

The proponent gives notice that it intends to undertake development activities and hereby gives notice of the proposed project and activities and applies for development approval in accordance with the *Environment Protection (Environment Impact Assessment) Regulations*.

Name of Proponent:

Address and contacts

of the Proponent:

Local agent in Tuvalu

(if proponent is not based

in Tuvalu):

Details of Proposed Project

Nature of project

Location of project

Expected duration of project

Name of contractors and sub —

contractors

The Proponent *intends/does not intend* to undertake a full environmental impact assessment.

The Proponent shall submit a preliminary environment impact assessment report by *(here specify the date for submission of the preliminary report)*

An application fee of \$500/\$200 accompanies this notification and application.

.....

SIGNATURE OR SEAL OF PROPONENT

Dated: