



Tonga

**ENVIRONMENTAL IMPACT
ASSESSMENT REGULATIONS 2010**



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Arrangement of Regulations

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ENVIRONMENTAL IMPACT ASSESSMENT ACT 2003

IN EXERCISE of the powers conferred by section 24 of the Environmental Impact Assessment Act 2003, the Minister of Environment with the consent of Cabinet makes the following Regulations —

PART I - PRELIMINARY

1 Short Title

These Regulations may be cited as the Environmental Impact Assessment Regulations 2010.

2 Interpretation

- (1) In these Regulations -
“**Act**” means the Environmental Impact Assessment Act 2003; and
“**Secretariat**” means the Secretariat of the Environmental Assessment Committee.
- (2) The terms and phrases defined in the Act shall be given the same meaning in these Regulations, unless the context requires otherwise.

3 Forms and Fees

- (1) The forms set out in Schedule 1, are hereby prescribed for the purposes of the Act and these Regulations.
- (2) The fees set out in Schedule 2, are hereby prescribed for the purposes of the Act and these Regulations.

- (3) Where the Act or these Regulations require a development application to be referred to a Determining Authority, the Minister, considering the advice of the Secretariat, may require additional copies of the development application, the environmental impact assessment, and any supporting documents to be lodged so that reference can be made.

PART II - ENVIRONMENTAL IMPACT ASSESSMENT PROCEDURES

4 Application for environment impact assessment

The process of environmental impact assessment shall be applied to all major projects so classified under Part III of the Act.

5 Assessment to be appropriate

The process of assessment shall be appropriate for the activity taking into account the scale and intensity of the proposed activity and its anticipated environmental impacts.

6 Process established

All Major Project assessment shall follow a process of notification, environmental impact assessment, review, final decision with or without conditions.

7 Assessments to be written

All assessments of environmental impact shall be undertaken by the proponent and shall be submitted to the Minister in written form together with a copy of the form for development application.

8 Notification

All development activities proposed shall be notified to the Minister or, in the case of a license issued by another Determining Authority, to that Authority for referral, as necessary, to the Minister, prior to any project-related work or activity commencing, or any decision being made to approve such an activity.

9 Form 1 of Schedule 1 to be used

Notification shall be in accordance with Form 1 of the Schedule 1 and include such information as is necessary for the Minister, acting upon the advice of the Secretariat, to determine whether any environmental impact assessment is necessary under the Act.

10 Additional Information Required

The Minister shall, within 30 working days of receipt of notification of a development application, and after consideration of advice from the Secretariat and any other agency relevant to the proposal, by notice in writing to the proponent, notify the proponent, and the Determining Authority, where it applies, of the requirement to conduct environmental impact assessment or the need to furnish additional information in relation to the proposed development, being information which is, in the Minister's view, essential to the determination of the proposal under section 8(2) of the Act.

11 Project to proceed if no environmental impact assessment advised

Where the Minister has not advised the proponent, and the Determining Authority in writing within 30 working days of receipt of notice that an environmental impact assessment is required, or has not indicated to the proponent that an extension of time for further consideration of the development application applies, then the Proponent may assume that no environmental impact assessment is required and, subject to gaining all other necessary approvals, the activity may commence.

12 Consideration

The factors to be taken into account by the Minister and the Secretariat when considering the likely impact of an activity upon the environment shall include whether that activity may cause:

- (a) any environmental impact upon a community;
- (b) any transformation of a locality;
- (c) any environmental impact upon the ecosystems of a community;
- (d) any diminution of the aesthetic, recreational, scientific or other environmental quality or value of a locality;
- (e) any effect upon a locality, place or building having aesthetic, archaeological, architectural, cultural, historical, scientific, social significance or any other special value for present or future generations;
- (f) any endangering of any species of flora or fauna;
- (g) any long-term effects upon the environment;
- (h) any degradation of the quality of the environment;
- (i) any risk to the safety of the environment;
- (j) any curtailing of the beneficial uses of the environment;
- (k) any pollution of the environment;
- (l) any environmental problems associated with the disposal of waste;

- (m) any increased demands upon resources, natural or otherwise, which are, or likely to become, in short supply;
- (n) any effect upon the supply of electricity, water, waste collection services, telephone or other services;
- (o) any increase in the amount or duration of traffic generated by either the construction of the development or by its consequent use; and
- (p) any cumulative effect with any other existing or likely future activities.

13 Secretariat advice may be sought

- (1) In completing the impact assessment, the Proponent may seek the assistance of the Secretariat in determining what degree of assessment shall be undertaken.
- (2) The Minister's written advice in such matters shall be final.

14 Secretariat guidelines to be used for minor projects

Where the Secretariat has prepared guidelines for minor projects assessment, these shall be used to complement matters outlined in the Schedule 1.

15 Major Project Assessment process to be thorough

A Major Project assessment shall involve a thorough assessment of environmental impacts and be determined by the appropriate Determining Authority taking into account environmental recommendations of the Committee.

16 Form 3 and environmental study to be used for Major Project assessment

The environmental impact assessment for projects which require Major Project assessment under sections 7 and 9 of the Act shall be in general accordance with Form 3 of the Schedule 1 and shall comprise a written Environmental Study which will:

- (a) fully describe the proposed development activity;
- (b) fully describe the existing environment that is likely to be affected by the proposed development;
- (c) present a justification of the proposed development activity in terms of environmental, economic, cultural and social considerations;
- (d) identify, describe and analyse the potential direct and indirect physical, biological, social, cultural and economic impacts of the development activity for both construction and operational phases of the development;

- (e) detail any measures to be taken to protect the environment and to avoid, reduce or otherwise mitigate any potential adverse effects of the development;
- (f) evaluate and describe any feasible alternative activities, including locations, for achieving the objectives of the development;
- (g) evaluate and describe the implications and consequences of not undertaking the proposed development;
- (h) identify, describe and analyse the possible cumulative effects upon components of the environment with other existing or likely future development activities; and,
- (i) assess the way in which the project accords with the current Government of Tonga Development Plan, declared Government of Tonga environmental policy, and any international environmental policies, agreements, conventions or treaties to which the Government of Tonga is, or is considering becoming, a signatory.

17 Secretariat's guidance shall be sought

- (1) In completing the Environmental Study, the Proponent shall seek the guidance of the Secretariat in determining how much assessment shall be undertaken.
- (2) The Director's advice in such matters shall be final.

18 Certification of environmental study

An Environmental Study that is submitted for environmental impact assessment review shall bear a certificate by the person preparing the study to the effect that it has been prepared in accordance with regulations 16 and 17.

19 Secretariat's guidelines to be used for major projects

Where the Secretariat has prepared guidelines for Major Project assessment these shall be used to complement matters outlined in the Schedule 1.

20 Committee to review and recommend

The Committee shall review the application, environmental assessments, Secretariat report, and any additional relevant reports provided to it before making its recommendations to the appropriate Determining Authority.

21 Structure of recommendation

The recommendation to the appropriate Determining Authority shall state:

- (a) whether to approve, reject, defer or modify the development application;

- (b) the reasons for that recommendation; and
- (c) any conditions that shall be attached to any approval.

22 Adoption by quorum

The recommendations shall be formally adopted by a majority of the Committee present.

23 Report by Committee

The Committee, in relation to any Major Development Project, shall prepare an Assessment Review Report of its examination and consideration of the environmental study, as required under section 14 of the Act.

24 Copies of Committee report to be free of charge

Individual copies of the Committee Assessment Review Report shall be furnished free of charge to the proponent and the Determining Authority.

25 Certification of approval

Written advice from the Minister to the proponent or the Determining Authority shall constitute certification of completion of the environmental impact assessment process for a development activity under section 16 of the Act.

26 Information to be correct

An applicant or proponent for any development activity shall not make any application or furnish any document in respect of any development activity under the terms of these regulations knowing:

- (a) it is false in any material particular; or
- (b) that it contains information that is materially misleading in the form or context in which it appears.

27 Change in circumstances

Any change in circumstances which has the effect of rendering any such information false, incomplete or misleading shall be notified immediately to the Minister who shall refer the matter to the Committee.

28 Minister may impose further conditions

Where a matter is referred to the Committee pursuant to regulation 27, the Committee may recommend that the Minister imposes such further conditions as are appropriate, and the procedures outlined in regulations 5 to 26 shall apply as if this was the original application.

29 Committee may cancel certification

Where the information notified pursuant to regulation 8 is of such ecological significance that, were it known at the time, the project would not have been approved, the Committee shall determine whether the certification under regulation 25 should be cancelled and whether the development activity should cease while a new application under the terms of the Act is prepared and considered, or whether the approval for the activity should be cancelled by the Determining Authority and environmental restoration undertaken at the cost of the proponent.

30 Proponent to re-submit application

If a development activity is subject to cessation of work under regulation 29, the activity shall not proceed to continue until it has met the requirements of the Act as if it were a new development activity.

Made at Nuku'alofa this 20th day of October 2010.

Minister of Environment

SCHEDULE 1

FORM 1: DETERMINATION OF CATEGORY OF ASSESSMENT

Name:

Address:

Contact Officers of the Proponent:

Proponent Company:

(Official Use Only)

Project ID No.:

Requirement:

Minor Assessment (Form 2)

Major Assessment (Form 3)

The following information is to be included in the proposal to be submitted for assessment:

1. full description of the proposed activity/development and its costs.
2. location of the proposed activity and of any associated developments.
3. full description of the existing environment of the sites and their relationship to existing adjoining uses or habitation; in particular details of any significant physical, biological, social or cultural heritage items which may be affected by the proposed development or activity.
4. timing of design, construction and operation of the development.
5. estimated type, source and volume of any materials to be used in the construction and operation of the development; and proposed demand for utility services.
6. any plant or animal species to be introduced which are not native to Tonga.
7. any likely solid, liquid or gaseous emissions from the activity/development, whether or not totally contained upon site.
8. likely noise generated by the development, and assessment of likely increases in traffic flow.
9. employment likely to be generated by the activity/development, and contribution (if any) to the local or national economy.
10. assessment of anticipated environmental risks and impacts, and measures to be taken by the proponent to mitigate the same.

Please attach proposal to this form.

FORM 2: MINOR ENVIRONMENTAL IMPACT ASSESSMENT

Project ID No.:
Name of Project:
Contact Person:
Contact Number:

Additional information required:

This is to confirm that all required information has been lodged in accordance to the requirements of the Act.

Signature:
Print Name:
Determining Authority:

FORM 3: MAJOR ENVIRONMENTAL IMPACT ASSESSMENT

Project ID No.:
 Name of Project:
 Contact Person:
 Contact Number:

The written environmental study shall include the following:

1. Title, abstract and executive summary.
2. Description of the purpose and scope of the proposed development activity:
 - a) Purpose: What goals and objectives of society are served? Why is the project needed?
 - b) Direct benefits expected: products, services, jobs, return on investment
 - c) Location and extent of site boundaries and associated facilities at preferred site and other feasible sites (please provide map of area)
 - d) Technology to be used.
 - e) Local infrastructure required: roads, utilities, etc.
 - f) Inputs of capital, labour, natural resources.
 - g) Duration of construction period and operating life.
3. Present a justification of the proposed development activity in terms of environmental, economic, cultural and social considerations.
4. Identify, describe and analyse the potential direct and indirect physical, biological, social, cultural and economic impacts of the development activity for both construction and operational phases of the development.
5. Detail any measures to be taken to protect the environment and to avoid, reduce or otherwise mitigate any potential adverse effects of the development.
6. Evaluate and describe any feasible alternative activities, including locations, for achieving the objectives of the development.
7. Evaluate and describe the implications and consequences of not undertaking the proposed development.
8. Identify, describe and analyse the possible cumulative effects upon components of the environment with other existing or likely future development activities.
9. Public involvement.
10. Assess the way in which the project accords with the current Government of Tonga Development Plan, declared Government of Tonga environmental policy, and/or any international environmental policies, agreements, conventions or treaties to which the Government of Tonga is, or is considering becoming, a signatory.

This is to confirm that all required information has been lodged in accordance to the requirements of the Act.

Signature:
 Print Name:
 Determining Authority:

FORM 4: COMMITTEE RECOMMENDATIONS

Project ID No.:
Name of Project:
Contact Person:
Contact Number:

Final Environmental Study	Not Satisfactory
Conditions/Recommendations	Satisfactory

This is to confirm that all requirements have been met in accordance with the Act.

Signature:

Print Name:

Determining Authority:

SCHEDULE 2**FEES AND CHARGES**

The following charges may apply:

- 1 For all applications, a Registration Fee of \$10.00 shall apply, to accompany lodgement of the application.
- 2 For all applications requiring major project assessment, including all applications listed in the Schedule to the Act, an initial application fee of \$250.00 shall accompany the Environmental Study. Upon final scoping of the proposal the Minister shall require a final fee of 1% of the capital cost of the proposed activity/development.
- 3 Where the final fees levied exceed \$10,000, and where the proponent considers this fee to be unreasonable, the proponent may make application to the Committee for a reduction in the fees to be levied. The proponent shall meet the cost of any special meeting of the Committee to be held to consider such an application.