

ENVIRONMENTAL IMPACT ASSESSMENT

INTRODUCTION

This fact sheet was produced by the Environmental Law Association to provide a plain language introduction to environmental impact assessment (EIA) procedures under the *Environment Management Act 2005*.

ENVIRONMENTAL IMPACT ASSESSMENT

Environmental impact assessment (EIA) is a process used to identify the environmental, social and economic impacts of proposed developments. EIA can be used to identify options for reducing the impacts of proposed developments, and provides information for the public and government decision-makers.

OVERVIEW OF THE EIA PROCESS

The *Environment Management Act* ('the Act') establishes a mandatory EIA process for most development proposals that require approval from government. Unlawful development is a serious offence, with penalties up to 10 years in prison and/or \$750,000.¹

The key stages in the EIA process under the *Environment Management Act* are:

1. **screening** to determine whether EIA is required;
2. **scoping** to determine the scope of the EIA report;
3. preparation of the **EIA report** by the proponent;
4. **review** of the EIA report by the processing authority; and
5. **decision** on the development proposal, including conditions.²

The *Environment Management Act* requires EIA of a wide range of development activities, including, but not limited to:

- tourism development
- commercial and industrial development
- logging and sawmilling operations
- mining and mineral exploration
- quarries and gravel extraction
- coastal land reclamation.

STEP 1 | SCREENING

The purpose of the screening stage is to determine whether a development proposal requires environmental impact assessment.

The key steps in the screening process are illustrated in **Figure 1**.

When is screening required?

Screening is required when:

- a person proposes to carry out an activity or undertaking;
- that activity or undertaking is likely to alter the physical nature of any land; and
- the activity or undertaking requires approval from a government authority.³

For example, a proposal to log a native forest will require screening because:

- it will alter the physical nature of the land, by removing trees and disturbing soil; and
- requires a licence, issued by the Forest Department under the *Forest Decree*.⁴

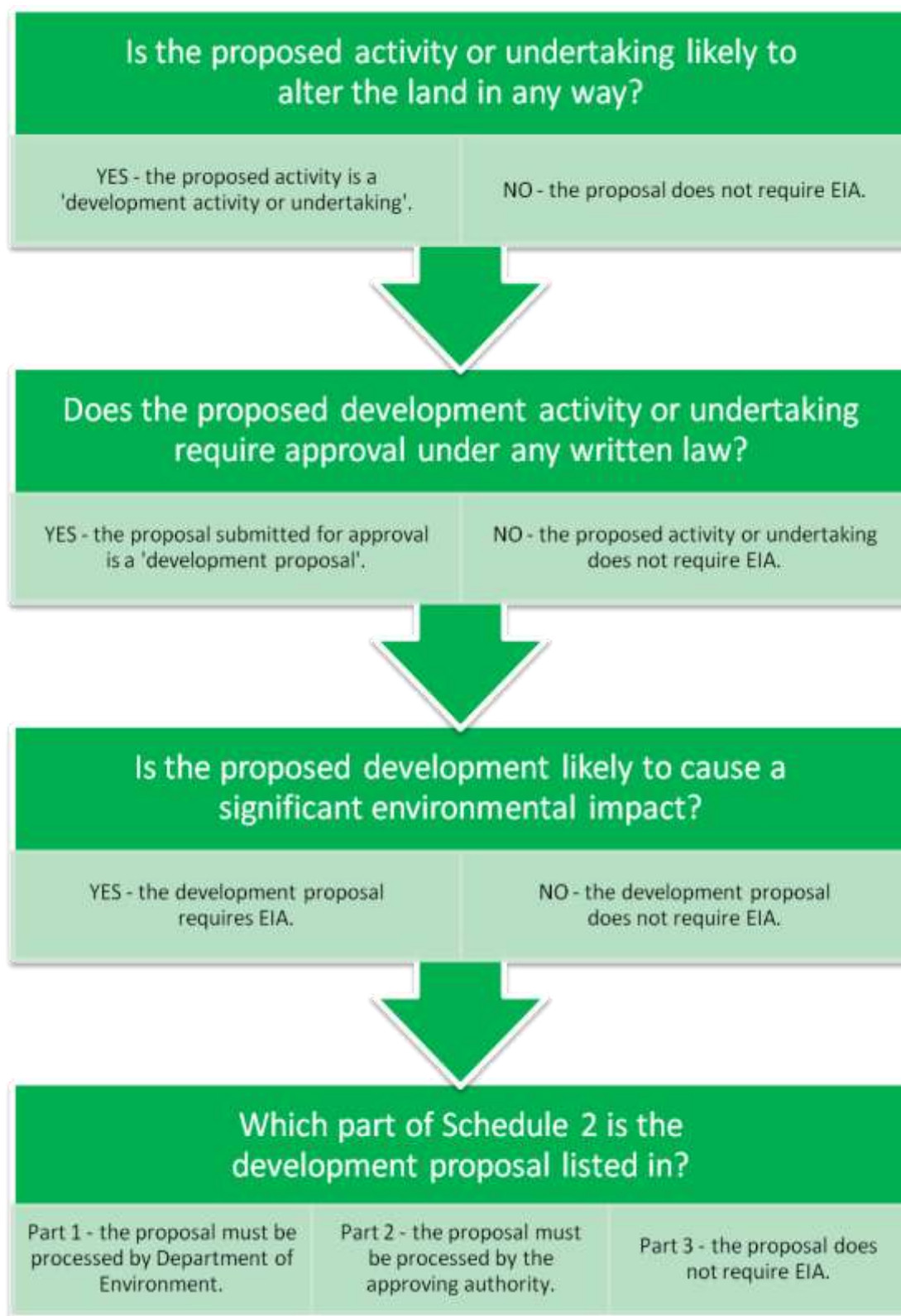


Figure 1. Key steps in the screening process.

How does the screening process start?

Before undertaking any work that will alter the physical nature of the land, the person proposing the development (**'proponent'**) must submit an EIA **screening application**.⁵

The application must be submitted to the government authority that is legally authorised to approve the development proposal (**'approving authority'**).⁶

Which agencies are approving authorities?

An **approving authority** is any public authority or person authorised under a written law to approve a development proposal.

Examples of approving authorities include:

- town and city councils
- rural local authorities
- Department of Lands
- Department of Forests
- Department of Mineral Resources
- Native Land Trust Board.

Town councils, city councils and rural local authorities are authorised to grant planning permission for development within a town planning area under the *Town Planning Act*.

The Department of Lands has the power to issue leases and licences for development activities on public land (including foreshore development) under the *Crown Lands Act*.

The Forest Department has the power to issue timber licences under the *Forest Decree*.

The Department of Mineral Resources has the power to issue mineral exploration and mining licences under the *Mining Act*.

The Native Land Trust Board has the power to issue leases and licences for development activities on native land under the *Native Lands Trust Act*.

What is the role of the approving authority?

Upon receiving a screening application, the approving authority must determine whether the proposed activity is likely to cause a **significant environmental impact**.

If the approving authority determines that the proposal is likely to cause a significant impact, the proposal **must** go through the EIA process.

If the approving authority determines that the proposal does require EIA, no government authority may issue an approval in relation to the proposal until the EIA process is complete and an EIA approval has been issued.⁷

How does the authority decide whether the proposal will have a significant impact?

In determining whether a proposed activity is likely to cause a **significant environmental impact**, the approving authority must consider:

- the context and intensity of the impacts;
- the degree to which public health and safety are affected;
- the degree to which functioning of ecosystems is likely to be inhibited;
- the degree to which a cultural, traditional, natural, scientific or historic resource may be threatened;
- the potential threat to the existence of protected and endangered species or their critical habitat;
- the degree to which important fish and wildlife resources are jeopardised;
- the degree to which the unique characteristics of the area are affected;
- the degree to which the impacts of the proposal are likely to involve controversy;

- the degree to which unique or unknown risks are taken;
- the potential for cumulative impacts, and the degree to which a precedent for future action is created;
- the extent to which the proposed use of a resource may conflict with another use of that resource.⁸

Which authority will be responsible for processing the EIA application?

If the proposed activity is likely to have a significant environmental effect, the proposal must be processed by either:

- the approving authority; or
- the Department of Environment.

To decide which authority will be responsible for processing the proposal (**‘processing authority’**), the approving authority must refer to the list of development types in **Schedule 2** of the Act:

- if the proposal is listed in **Schedule 2, Part 1**, the approving authority must send the proposal to the Department of Environment;
- if the proposal is listed in **Schedule 2, Part 2**, the approving authority must process the proposal itself; and
- if the proposal is listed in **Schedule 2, Part 3**, it may be exempt from the EIA process.⁹

Which development types must be processed by the Department of Environment?

The development types that must be processed by the Department of Environment (Schedule 2, Part 1) are listed in full in **Text Box 1**.

If the approving authority issues an EIA approval for any of these activities, instead of sending the proposal to the Department of Environment, the approval may be challenged in court.

ENVIRONMENT MANAGEMENT ACT 2005 **SCHEDULE 2, PART 1**

The following development proposals **must** be processed by the Department of Environment:

- airport;
- hotel or tourist resort;
- mining or mineral processing;
- dam, hydro-electric scheme or irrigation project;
- heavy or noxious industrial development;
- commercial logging or saw milling;
- landfill, marine outfall or waste treatment plant;
- dredging or excavating a river bed;
- residential subdivision for more than 10 lots;
- a proposal that could:
 - cause erosion of the coast, beach or foreshore;
 - pollute of any water resource;
 - contaminate or degrade agricultural land;
 - alter the natural processes of the sea;
 - introduce of harmful pollutants to the air;
 - jeopardize the continued existence of any protected, rare, threatened or endangered species, its critical habitat or nesting grounds;
 - deplete populations of migratory species;
 - harm or destroy designated or proposed protected areas including, but not limited to, any area designated by a written law;
 - destroy or damage an ecosystem of national importance;
 - result in the introduction of genetically modified organisms or invasive species;
 - lead to depletion of non-renewable resources;
 - contravene established customary controls over the use of natural resources;
 - result in trans-boundary movement of waste;
- a proposal that is:
 - controversial from an environmental standpoint;
 - not supported for environmental or resource management reasons by a significant number of representatives from the local community, local government, churches and other groups;
- a proposal financed by an international or local development finance institution and which requires an EIA as a condition of the finance.

Text Box 1. Development types that must be processed by the Department of Environment.

Which development types may be exempt from the EIA process?

The development types that may be exempt from EIA (Schedule 2, Part 3) are limited to:

- construction or extension of a family home;
- construction of traditional village structures;
- emergency measures to prevent loss of life, property damage or environmental harm.

KEY POINTS – SCREENING OF DEVELOPMENTS

The purpose of the **screening stage** is to determine whether a development proposal requires environmental impact assessment.

If a person proposes to carry out an activity that is likely to alter the physical nature of the land, and that activity requires approval from a public authority, that person must submit a **screening application** to the approving authority.

The approving authority must first decide whether the proposed development is likely to cause a **significant impact** on the environment.

If the approving authority determines that the development proposal is likely to have a significant impact on the environment, the development must not be approved without EIA.

To decide which authority will be responsible for processing the proposal ('processing authority'), refer to Schedule 2 of the Act:

- Part 1 lists development types that must be processed by Department of Environment.
- Part 2 lists development types that must be processed by the approving authority.
- Part 3 lists development types that may be exempt from the EIA process.

STEP 2 | SCOPING

The purpose of the scoping stage is to define the **terms of reference** of the EIA study. During the scoping stage, the processing authority must **inspect** the proposed site, and may take **samples** from the site and **consult** with the proponent or any agency or person with relevant knowledge or expertise.¹⁰

The key steps in the scoping stage are illustrated in **Figure 2** below.

Are there public participation opportunities during the scoping stage?

The processing authority may, if it considers it appropriate, require the proponent to hold one or more **public scoping meetings**. Public notice of the meeting must be given by the proponent at least seven days before the meeting on radio, television and newspaper.¹¹

What issues must be addressed in the terms of reference?

The terms of reference must be approved by the processing authority. They must clearly define the parameters of the EIA study and indicate the environmental issues that need to be dealt with in the EIA report.¹²

STEP 3 | EIA REPORT

The proponent must arrange for an **EIA study** to be conducted by a **registered consultant**, based on the approved terms of reference.

The proponent must conduct at least one **public consultation** during the EIA study.¹³

What is the purpose of the EIA report?

The **EIA report** must provide a comprehensive report of the potential environmental impacts of the proposal, and suggest measures to mitigate these impacts. The EIA report must be prepared by a registered EIA consultant.¹⁴

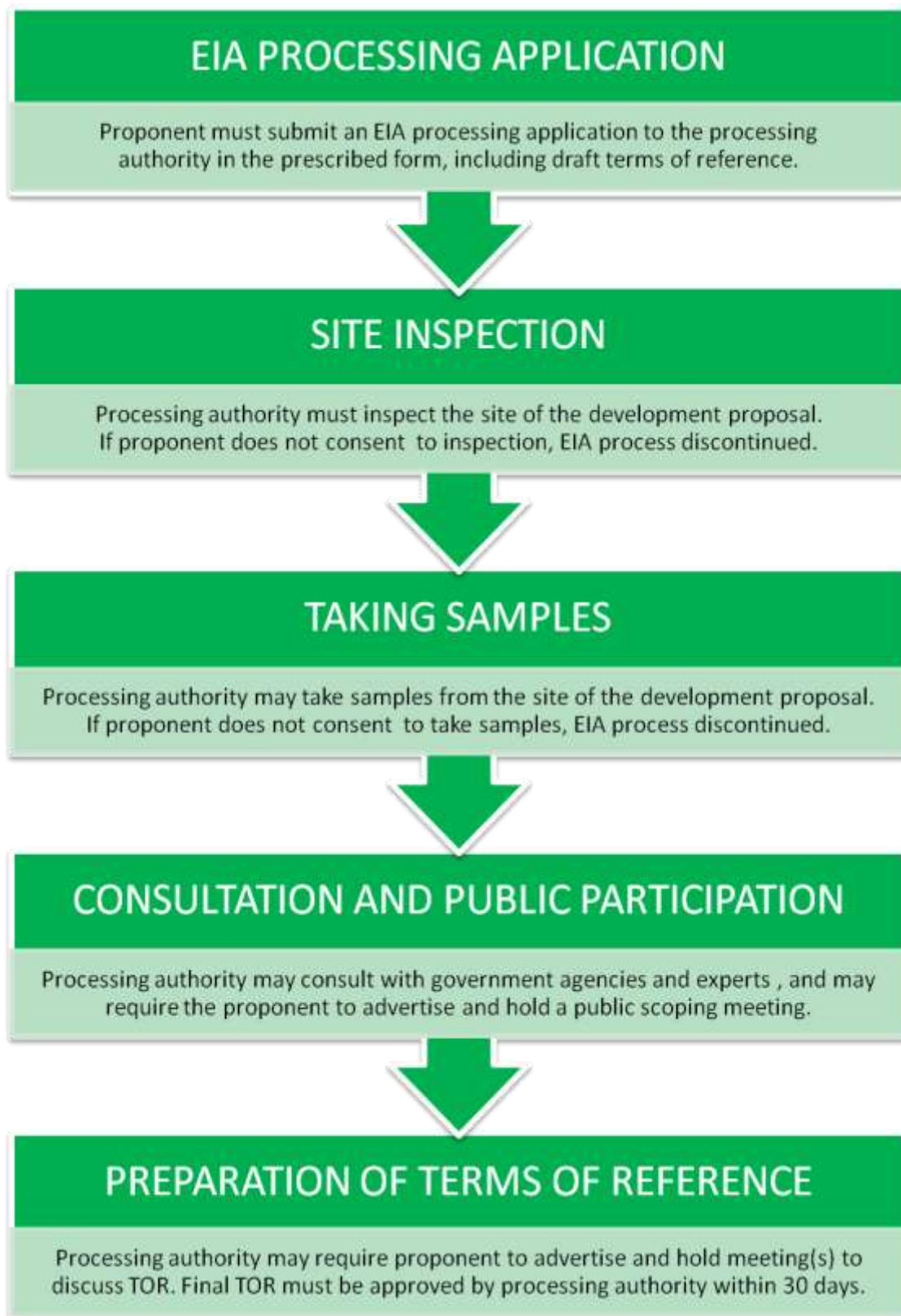


Figure 2. Key steps in the scoping process.

What content must be included in the EIA report?

The EIA report must:

- describe the purpose and scope of the proposed development;
- describe the environmental setting of the proposed development site;
- describe the possible environmental impacts of the proposed development;
- consider technically and economically appropriate alternatives, including the option of taking no action;
- describe any proposed mitigation actions to reduce or avoid adverse impacts;
- summarise the results of public consultations held on the proposal;
- make recommendations on preferred development alternatives, mitigation measures and monitoring; and
- address any other matter(s) specified in the approved terms of reference.¹⁵

What are the public notification requirements for the EIA report?

Once the EIA report has been submitted, the processing authority must make the report available for inspection by the public.

The processing authority may give public notice of the publication by radio, television and newspaper. In the case of proposals that require processing by the Department of Environment, this requirement is mandatory.

The public notice must set out the locality and nature of the development, how the public can comment on the report, and the time limit for submission of comments (28 days).¹⁶

STEP 4 | EIA REVIEW

Once the EIA report has been submitted, the processing authority must appoint an EIA **review consultant** or **review committee**.¹⁷

Are there public consultation requirements during the review stage?

The proponent must conduct public consultation on the EIA report, including at least one public **review meeting** held in the vicinity of the proposed development site.¹⁸

STEP 5 | EIA DECISION

The processing authority must produce a written report setting out its **decision** in relation to the development proposal within 35 days of the submission of the EIA report.

In examining a development proposal, the approving authority must take into account:

- the nature and scope of the development;
- the significance of any environmental or resource management impacts;
- feasible measures to prevent or mitigate any adverse environmental impacts;
- public concerns about the development.¹⁹

Consideration of these factors is mandatory. If the approving authority fails to consider these issues, its decision may be challenged in court.

The processing authority must inform the proponent of its decision within 7 days of the decision. The processing authority may:

- approve the proposal without conditions;
- approve the proposal with conditions;
- not approve the proposal; or
- recommend additional studies.

If the processing authority **does not approve** the proposal, the review report should set out the reasons for refusing the proposal.

If a proposal is **approved with conditions**, the conditions must be set out in the review report.²⁰

What conditions may be imposed on an approved proposal?

The processing authority has a broad discretion to impose conditions. For example, the conditions may:

- specify the location and manner in which particular activities are undertaken;
- require the monitoring and reporting of any environmental impacts;
- specify pollution emission limits;
- specify the manner and location of the disposal of substances;
- require studies to reduce the discharge of substances or energy;
- specify any procedures for cessation of operations and rehabilitation of land; or
- require the implementation of an environmental management plan.²¹

Breaching the conditions of an EIA approval is a serious offence, with a maximum penalty of \$250,000 and/or three years prison.²²

What is the effect of the EIA approval?

EIA approval does not constitute approval of the proposal under any other law. Once they have received EIA approval, the proponent must then apply for approval under any other law(s) relating to the proposal.

The key steps in the EIA report, review and decision stages are illustrated in **Figure 2** below.

How can I find out whether a development has EIA approval?

The *Environment Management Act* establishes a **public register** to facilitate access to environmental information.²³

This register must include all EIA approvals, and the conditions attached to them.

The register or a copy of it must be made available for inspection and copying by the public at the offices of the Department of Environment during normal office hours.²⁴

CHALLENGING EIA DECISIONS

Any person who disagrees with the EIA decision may appeal to the Environment Tribunal within 21 days of the decision.²⁵

If a government agency issues an approval for a development activity or undertaking without completing the EIA process, the approval may be challenged in court.

Similarly, if an EIA approval is issued unlawfully (for example, if the approving authority fails to follow the correct process), the approval may be challenged in court.

If you are considering appealing or challenging an EIA decision, seek legal advice promptly, as delay may affect your legal rights.

COMPLIANCE AND ENFORCEMENT

The Department has broad powers to enforce the *Environment Management Act*, including the power to inspect premises, suspend or cancel approvals and issue notices.²⁶ Courts may impose fines and prison sentences, and may make orders, including remediation and compensation orders.²⁷

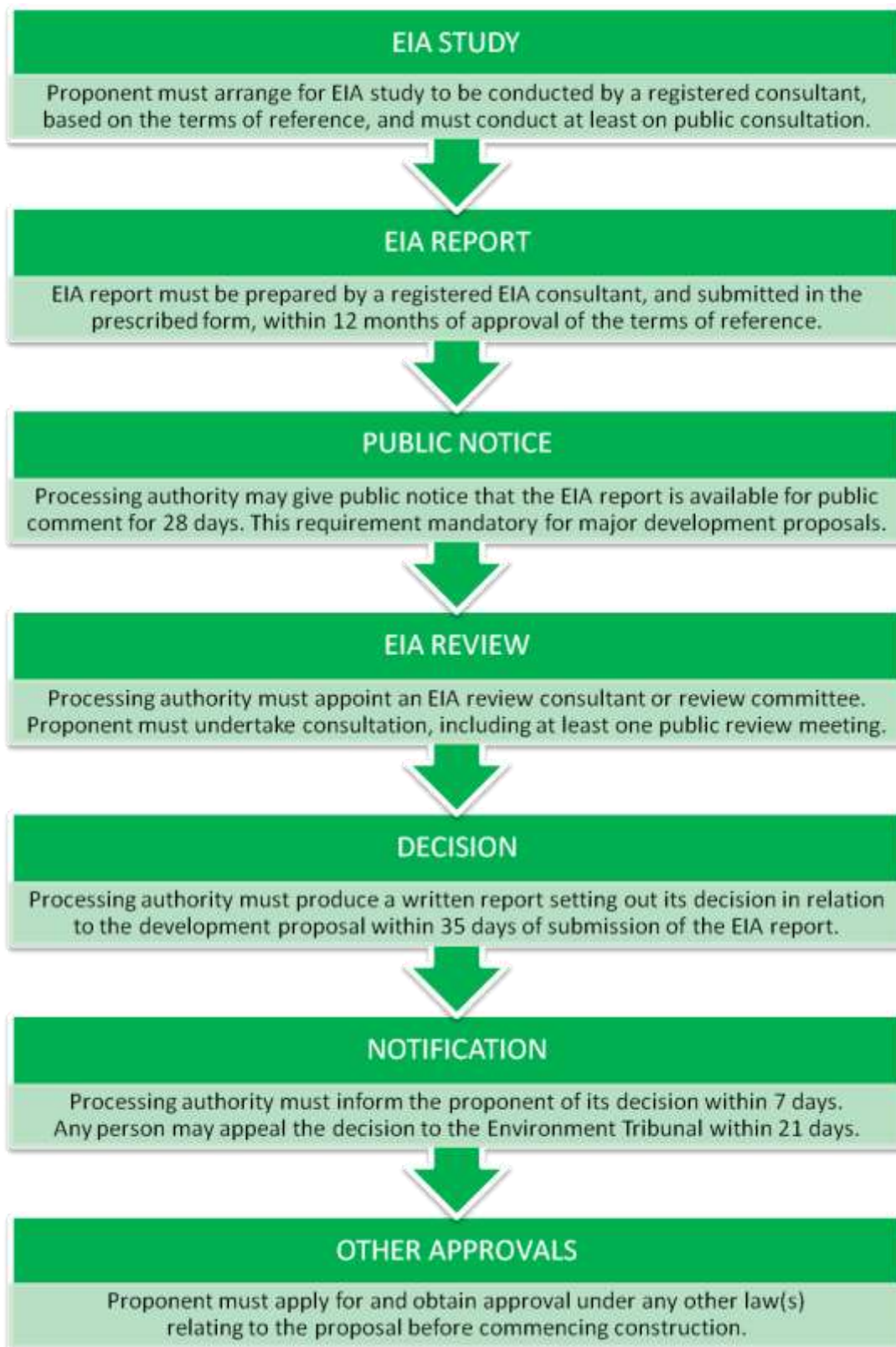


Figure 2. Key steps in the EIA study, review and decision stages.

REPORTING BREACHES

Members of the public can improve law enforcement by monitoring and reporting breaches of environmental laws, and advocating strict enforcement by government.

If you believe that development is taking place without EIA approval, or that the conditions of an EIA approval are being breached, **report** the incident to the Department of Environment, providing as much detail as possible.

For more information about reporting breaches, refer to **Fact Sheet 6: Responding to Breaches of Environmental Law**.

TAKE HOME MESSAGES

Environmental impact assessment (EIA) is an important tool for identifying and avoiding negative environmental impacts.

By understanding the EIA process, you can exercise your right to be involved in environmental decision-making.

You can participate in the EIA process by attending consultation meetings and making written submissions.

For more information about participating effectively in the EIA process, refer to **Fact Sheet 5 – Participating in Decision-Making**.

In some cases, you may be able to challenge EIA decisions in court. If you are considering legal action, seek legal advice.

You can promote compliance with the EIA process by reporting unlawful development and breaches of approval conditions.

USEFUL CONTACTS

Environmental Law Association
5 Ma'afu Street, Suva
331 9084

Department of Environment
90 Raojibhai Patel Street, Suva
Tel: 331 1699

Department of Town and Country Planning
Gladstone Road, Suva
Tel: 330 5336

Native Land Trust Board
431 Victoria Parade, Suva
Tel: 331 2733

¹ Environment Management Act 2005, s.43.

² Environment Management Act 2005, s.28.

³ Environment Management Act 2005, ss.2, 27

⁴ Forest Decree, s.8.

⁵ Environment Management (EIA Process) Regulations 2008, r.3.

⁶ Environment Management (EIA Process) Regulations, r.3.

Environment Management Act 2005, s.2.

⁷ Environment Management Act 2005, s.27.

⁸ Environment Management Act 2005, s.2.

⁹ Environment Management Act 2005, s.27.

¹⁰ Environment Management (EIA Process) Regulations, r.12.

¹¹ Environment Management (EIA Process) Regulations, r.18.

¹² Environment Management (EIA Process) Regulations, r.21.

¹³ Environment Management (EIA Process) Regulations, rr.22-3.

¹⁴ Environment Management (EIA Process) Regulations, r.24.

Environment Management Act 2005, s.28.

¹⁵ Environment Management (EIA Process) Regulations, r.25.

¹⁶ Environment Management (EIA Process) Regulations, r.28.

¹⁷ Environment Management Act 2005, s.30.

¹⁸ Environment Management (EIA Process) Regulations, r.30.

¹⁹ Environment Management Act 2005, s.27.

²⁰ Environment Management Act 2005, s.31. Environment

Management (EIA Process) Regulations, r.31.

²¹ Environment Management (EIA Process) Regulations, r.31.

²² Environment Management Act 2005, s.43.

²³ Environment Management Act 2005, s.17.

²⁴ Environment Management (EIA Process) Regulations, r.41.

²⁵ Environment Management Act 2005, s.31.

²⁶ Environment Management Act 2005, ss.19-21.

²⁷ Environment Management Act 2005, ss.42-45, 47.

DISCLAIMER: This fact sheet provides general information about the law, and is no substitute for legal advice relating to your particular situation. ELA accepts no responsibility for any loss resulting from reliance on the information provided in this fact sheet.

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