



Environment (Development Consent and Environmental Impact Assessment) Regulations 2017

No: 2017/01

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Schedule 1

Information to be provided in application for development consent

Schedule 2

Activities for which development consent always required

Schedule 3

Activities for which development consent not required

Pursuant to sections 11 and 46 of the Environment Act 2015, Cabinet makes the following regulations –

1 Title
These regulations are the Environment (Development Consent and Environmental Impact Assessment) Regulations 2017.

2 Commencement
These regulations come into force on the day after the date on which they are made in accordance with Article 13 of the Constitution.

3 Interpretation

(1) In these regulations, **Act** means the Environment Act 2015.

(2) **Department, development consent, Director, environment, environmental impact assessment, Minister,** and any other term or expression that is defined in the Act and used, but not defined, in these regulations has the same meaning as in the Act.

Applications for development consent

4 Application for development consent

(1) An application for development consent for an activity must be made to the Department.

(2) An application must –

- (a) contain the information specified in Schedule 1 (in such detail that corresponds with the scale and significance of the effects that the activity may have on the environment); and
- (b) be accompanied by a statement, signed by the applicant (or person authorised to sign on behalf of the applicant) to the effect that the information provided is true and correct; and
- (c) be accompanied by the application fee of \$50.

5 Advertising new applications

(1) The Director must advertise all new applications for development consent seeking any objections to the proposed development.

(2) Public notice of the advertisement is to be made over local radio and local television informing the public of:

- (a) The name of the person seeking development consent;
- (b) The nature of the development; and
- (c) The location of the development as stated in the application.

(3) Any objections shall be in writing and delivered to the Director within 10 working days of the notice being published, or broadcast.

(4) No objection shall be considered if not received within the 10 working days specified in subsection (3).

Environmental impact assessments and decisions on applications

6 Initial environmental impact assessment

- (1) The Department must carry out an initial environmental impact assessment for an activity to which an application made in accordance with regulation 4 relates.
- (2) The assessment must be based on the information contained in the application. However, the Department may request further information from the applicant if the Director considers on reasonable grounds that the information is incomplete or inadequate for the purposes of making a decision on the application.
- (3) The applicant must pay all the reasonable costs of the Department for carrying out the assessment.

7 Decision on application

- (1) The Department or the Minister may make any 1 of the following decisions in relation to an application made in accordance with regulation 4:
 - (a) grant development consent for the activity;
 - (b) grant development consent subject to 1 or more specified conditions;
 - (c) refuse to grant development consent;
 - (d) require the applicant to consult specified persons, or the public generally, before making a decision on the application;
 - (e) require a full environmental impact assessment to be carried out.
- (2) The Director may, in relation to an application made in accordance with regulation 4, —
 - (a) make any 1 of the decisions specified in subclause (1)(a) to (d);
 - (b) require that a full environmental impact assessment to be carried, in which case a decision on the application must be made by the Department or the Minister in accordance with regulation 10.
- (3) The Director must inform the applicant, in writing, of his or her decision.

8 Matters Director must take into account

When making a decision under regulation 6, the Director must take into account —

- (a) the effect of the activity on the water lens; and
- (b) any relevant environmental standard or standards; and
- (c) any relevant general or specific objectives of government policy (for example, any coastal policy or national strategic plan); and
- (d) any relevant reports of other departments or public authorities; and

- (e) if applicable, the results of any consultation required under regulation 6(1)(d); and
- (f) any effect on those in the neighbourhood and, if relevant, the wider community; and
- (g) any physical effect on the locality, including any landscape and visual effects; and
- (h) any effect on ecosystems, including effects on plants or animals and any physical disturbance of habitats in the vicinity; and
- (i) any effect on natural and physical resources having aesthetic, recreational, scientific, historical, spiritual, or cultural, or other special value for present or future generations; and
- (j) any discharge of contaminants into the environment, including any unreasonable emission of noise and options for the treatment and disposal of contaminants; and
- (k) any risk to the neighbourhood, the wider community, or the environment through natural hazards or the use of hazardous substances or hazardous installations; and
- (l) any objections received under regulation 5; and
- (m) any effect on or risk to the national security of Niue or its reputation.

9 Director may consult persons, departments, and others

When making a decision under regulation 6, the Director must consult any person, department or other public authority, or organisation with a legitimate interest in the matter having regard to the activity to which the application relates.

10 Full environmental impact assessment

- (1) This regulation applies if a full environmental impact assessment for an activity is required by the Director under regulation 6(1)(e).
- (2) The assessment must be carried out –
 - (a) by or under the direction of the Director (for example, by 1 or more employees in the Department); or
 - (b) by a person or persons acting with the Director's consent under subclause (3).
- (3) For the purposes of subclause (2)(b), the Director may consent to the assessment being carried out by a person or persons on behalf of the applicant who is or are, in the opinion of the Director, suitably qualified to do so.
- (4) The assessment must be a report that –
 - (a) summarises the information required for the purposes of the initial assessment, including the principal conclusions of that assessment; and

- (b) sets out any significant controversial issues relating to the activity (for example, if the activity will result in the depletion of a non-renewable resource or interference with an ecosystem containing rare or endangered plants or animals); and
 - (c) sets out any issues that remain to be resolved in relation to the activity; and
 - (d) includes the technical, scientific, or other information specified by the Director, in writing, to the applicant; and
 - (e) includes the results of any consultation that the Director requires the applicant, in writing, to undertake.
- (5) The applicant must pay all the reasonable costs of the Department in relation to an assessment carried out under this regulation.

11 Decision on application

- (1) The Department or the Minister, when making a decision on whether to grant or refuse development consent for an activity for which a full environmental impact assessment is required, must take into account –
- (a) the matters set out in regulation 7; and
 - (b) the views of the Director formed for the purposes of regulation 7 in relation to those matters; and
 - (c) if applicable, the results of any consultation required under regulation 9(4)(e).
- (2) The Department or the Minister, as the case may be, may do any 1 of the following in relation the application:
- (a) grant development consent:
 - (b) grant development consent subject to 1 or more specified conditions:
 - (c) refuse to grant development consent.
- (3) The Director must inform the applicant, in writing, of the decision.

12 Conditions of development consent

- (1) For the purposes of regulations 6(1)(b) and 10(2)(b), the decision-maker may impose any conditions on the granting of consent that he or she considers on reasonable grounds are necessary for the protection of the environment.
- (2) Without limiting subclause (1), the decision-maker may impose conditions requiring –
- (a) monitoring of an activity, whether –
 - (i) on-going or during a development phase of the activity; or
 - (ii) by the Department or a person acting for the consent holder;or
 - (b) the payment of a bond.

- (3) Any monitoring costs incurred by the Department are payable by the consent holder.

Activities for which development consent always required

13 Activities for which development consent always required

- (1) The activities set out in Schedule 2 are activities for the purposes of section 7(1)(a)(ii) of the Act that must not be started or continued without development consent.
- (2) To avoid doubt, nothing in subclause (1) limits or affects any other environmental standard that prescribes activities as being those that must not be started or continued without development consent.

Activities exempt from requirement for development consent

14 Activities for which development consent not required

- (1) The activities set out in Schedule 3 are expressly authorised activities for the purposes of section 10(1)(b) of the Act and development consent is not required to carry on the activity.
- (2) To avoid doubt, nothing in subclause (1) limits or affects any other environmental standard that prescribes an activity or activities as being those that do not require development consent for the carrying out of the activity or activities.

Offences

15 Offences

- (1) A person commits an offence if the person provides information for the purposes of being granted a development consent knowing that the information is false or misleading in any material particular.
- (2) A person convicted of an offence against subclause (1) is liable to, —
- (a) if an individual, a fine not exceeding 100 penalty units or a term of imprisonment not exceeding 12 months, or both; and
- (b) if a body corporate, a fine not exceeding 500 penalty units.

Schedule 1
Information to be provided in application for development consent

- 1 The name of the applicant.
- 2 The telephone number, address for contact and, if different, address for service of the applicant.
- 3 The particulars, including name and designation, of the contact person for the applicant, if different to the applicant.
- 4 The names and addresses of the owner and occupier of the land to which the application relates (if different to the applicant).
- 5 The location of the activity (described as it is commonly known and in a way that will enable it to be easily identified (for example, the street address, the legal description, the name of any relevant stream, river, or other water body to which the application relates, proximity to any well-known landmark, or its grid reference (if known))).
- 6 A description of the activity.
- 7 A map identifying the site and any area potentially affected by the activity.
- 8 A description of any possible alternative locations or methods for carrying out the activity.
- 9 An assessment of the actual or potential effect on the environment of the activity (whether adverse, positive, direct, or indirect).
- 10 If the activity includes the use of hazardous substances and installations, an assessment of any risks to the environment that are likely to arise from their use.
- 11 If the activity includes the discharge of any contaminant, a description of—
 - (a) the nature of the discharge and the sensitivity of the proposed receiving environment to adverse effects; and
 - (b) any possible alternative methods of discharge, including into any other receiving environment.
- 12 A description of the mitigation measures to be undertaken to help prevent or reduce actual or potential effects (including, if relevant, any safeguards or contingency plans).
- 13 Identification of the persons affected by the proposal (including any individuals or groups that exercise customary rights or traditions at the proposed location of the activity), the consultation undertaken, if any, and any response to the views of those consulted.*
- 14 If the scale or significance of the activity's effects are such that monitoring is required, a description of how those effects would be monitored and by whom.

15. Any other information that the Department deems relevant and necessary.

*To avoid doubt, paragraph 13 obliges an applicant to identify the persons affected by the proposal, but does not oblige the applicant to consult with any person or create any ground for expecting that the applicant will consult with any person.

Schedule 2

Activities for which development consent always required

Note: Department is checking this list. For example, whether quarantine services should be included.

Food industries

Commercial fruit processing, bottling, and canning
Commercial brewing or distilling
Operation of an abattoir
Commercial food processing requiring packaging
Commercial bottling of water

Non-metallic industries and processes

Lime production
Brick or tile manufacture
Extraction of minerals
Commercial extraction of aggregates, stones, shingle, sand, reef mud, or beach rock
Industries requiring the use of radio-active materials
Cement manufacture

Wood industries

Commercial manufacturing of paper, pulp, and any other wood products

Marine produce and products

Commercial fish processing (including sessile marine animals)
Commercial marine food collection, processing, or farming
Commercial fishing in Niuean marine areas

Chemical industries

Fertiliser production or use

Tourism

Operation of a resort, hotel, motel, guesthouse, or other premises for commercial gain
Use of land or buildings, or both, as a golf course
Use of land or buildings, or both, as a recreational park

Agricultural, horticultural, and other land-based industries

Livestock development
Commercial animal schemes
Commercial agricultural development schemes
Commercial horticultural development schemes

Irrigation and water supply schemes
Logging operations
Timber milling or treatment
Removal of primary or secondary forest or primary vegetation
Removal of trees or other natural vegetation in other areas of more than half an acre

Public Works

Landfills
Infrastructure developments
Recycling or collection stations
Soil erosion control activities
Desalination plants
Reservoir developments
Airport developments
Causeways
Drainage or disposal systems
Dredging or quarrying
Mining (whether terrestrial or marine)
Watershed management
Water bore drilling
Wastewater and sanitation schemes
Boat channels
Ports or harbours
Electricity generation stations and facilities
Marinas (pontoons, jetties, piers, dry storage, and moorings) for more than 5 vessels

Activities relating to Non-native species and Living Modified Organisms

Importation, development, processing, use, manufacture, propagation and sale
Introduction of non-native species

Village Development

Settlement and resettlement projects
Sea track projects
Evacuation centres
Heritage projects and declaration sites

Other

Industrial estates
Multiple-unit housing
Petroleum storage
Human waste disposal systems other than those relating to a private home in a residential area

Schedule 3
Activities for which development consent not required

- 1 Construction, maintenance, renovation, or extension of a private home in a residential area.
- 2 Routine maintenance of public infrastructure, including maintenance of roads, tracks, sea tracks, pathways, the airstrip, electricity generators, electricity supply lines, and the water supply network.
- 3 Scrub or bush clearing in relation to a private home, but only if the clearing is no greater than 1 acre (0.405 hectares).
- 4 Scrub or bush clearing in relation to a bush garden, but only if –
 - (a) the total amount of clearing in any 12-month period is less than or equal to 5 acres (2.023 hectares); and
 - (b) either –
 - (i) the land to be cleared is not or is not within a tapu area; or
 - (ii) the land to be cleared is in a tapu area with partial protection and clearing the land will not breach any conditions of its protection.

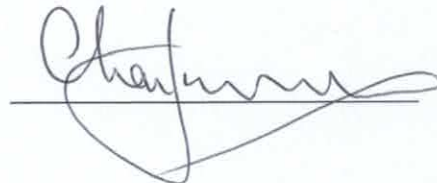
Approved by the Cabinet of Ministers at the Cabinet Chambers, Fale Fono,
Alofi, this

28 day of March 2017.

Signed by Hon. Sir Toke Tufukia Talagi
Premier



Countersigned by Charlene Funaki
Clerk to Cabinet



These regulations are administered by the Environment Department
These regulations were made on the 28 day of March 2017.