



DEA&DP Reference:16/2

CIRCULAR: DEA&DP NO 0012/2020

**TO: ALL PUBLIC AND PRIVATE SECTOR STAKEHOLDERS IN ENVIRONMENTAL
AUTHORISATION AND PERMITTING PROCESSES**

PERMITTED EIA AND RELATED LICENSING SERVICES AND PERMITTED SUPPORTING PROFESSIONAL SERVICES DURING COVID-19 LOCKDOWN ALERT LEVEL 4

1. On 15 March 2020 a National State of Disaster was declared in terms of COVID-19¹.
2. On 18 March 2020 Regulations were issued by the Minister of Cooperative Governance and Traditional Affairs in terms Section 27(2) of the Disaster Management Act, 2002 (Act No. 57 of 2002) regarding the steps necessary to prevent an escalation of the COVID-19 disaster or to alleviate, contain and minimise the effects of the COVID-19 Disaster ("*Original COVID-19 Disaster Management Regulations*").²
3. On 25 March 2020 amendments to the *Original COVID-19 Disaster Management Regulations* were published which put in place a Nation-Wide Lockdown for the period 27 March 2020 to 16 April 2020 ("*Original Lockdown Regulations*")³, which have since been extended.⁴

¹ Government Gazette No. 43096 of 15 March 2020 is available at:

http://www.gpwonline.co.za/Gazettes/Gazettes/43096_15-3_CoOperativeGovTradAff.pdf

² Government Notice No. 318 in Government Gazette No. 43107 of 18 March 2020 is available at:

https://www.gov.za/sites/default/files/gcis_document/202003/regulations.pdf

³ Government Notice No. R.398 in Government Gazette No. 43148 of 25 March 2020 is available at:

http://www.gpwonline.co.za/Gazettes/Gazettes/43148_25-3_COGTA.pdf

⁴ The COVID-19 Regulations, Directions and Guidelines published by National Government are available at:

<https://www.gov.za/coronavirus/guidelines>

4. On 25 March 2020 Directions were issued by the Minister of Cooperative Governance and Traditional Affairs in respect of Service Delivery and Business Continuity by Municipalities and Provinces in response to COVID-19 ("*Municipal and Provincial Directions*").⁵
5. On 31 March 2020 Directions were issued by the Minister of Forestry, Fisheries and Environment in respect of the undertaking and administration of Environmental Impact Assessment (EIA) and related processes during the Lockdown ("*EIA Directions*").⁶
6. On 29 April 2020 Directions were issued by the Minister of Labour in respect of COVID-19 Occupational Health and Safety Measures in Workplaces ("*OHS Directions*").⁷
7. On 29 April 2020 the Minister of Cooperative Governance and Traditional Affairs repealed and replaced the *Original COVID-19 Disaster Management Regulations* and the *Original Lockdown Regulations* with Regulations in respect of Lockdown Level 4 ("*29 April 2020 Lockdown Regulations*").⁸
8. In terms of the declared National Disaster it is important to note the provisions provided for in Section 30A of the National Environmental Management Act, 1998 (Act No. 107 of 1998) ("NEMA") in terms of "emergency situations", which are defined as "... a situation that has arisen suddenly that poses an imminent and serious threat to the environment, human life or property, including a 'disaster' as defined in Section 1 of the Disaster Management Act, 2002 (Act No. 57 of 2002), but does not include an incident referred to in Section 30 of this Act". If NEMA EIA Listed Activities are to be undertaken as part of steps to respond to an emergency situation, a Section 30A Directive may be issued to direct the person to undertake the steps necessary to address the emergency situation.
9. In terms of the *Original Lockdown Regulations* essential services had to continue to be provided by Government. In terms of the *Municipal and Provincial Directions*, essential/critical services had to continue, while in terms of non-critical services Government Departments had to put in place measures (e.g. remote working arrangements, etc.) to ensure the continuation of services during the lockdown, albeit at reduced capacity/limited capacity.

⁵ Government Notice No. R.399 in Government Gazette No. 43147 of 25 March 2020 is available at: <http://www.gov.za/documents/disaster-management-act-directions-address-prevent-and-combat-spread-coronavirus-covid-19>

⁶ Government Notice No. R.439 in Government Gazette No. 43190 of 31 March 2020 is available at: <https://www.gov.za/documents/disaster-management-act-environment-directions-measures-address-prevent-and-combat-spread>

⁷ Government Notice No. 479 in Government Gazette No. 43257 of 29 April 2020 is available at: <https://archive.opengazettes.org.za/archive/ZA/2020/government-gazette-7A-vol-658-no-43257-dated-2020-04-29.pdf>

⁸ Government Notice No. R.480 in Government Gazette No. 43258 of 29 April 2020 is available at: https://www.gov.za/sites/default/files/gcis_document/202004/43258ra11098gon480.pdf

10. The Western Cape Provincial Ministry for Local Government, Environmental Affairs and Development Planning, together with the Western Cape Provincial Department of Environmental Affairs and Development Planning ("DEA&DP"), put in place the necessary measures and have continued operations since the start of the COVID-19 Lockdown, albeit at reduced/limited capacity in certain respects.
11. In terms of the *EIA Directions* all prescribed timeframes affected by the Lockdown have been extended for the duration of the Lockdown. In addition, during the Lockdown, no new applications or appeals may be submitted and during the Lockdown the relevant authorities may not process applications or appeals. Direction 4.2 of the *EIA Directions*, however, provide that "Where any of the licencing authorities, competent authorities or appeal authorities affected by these Directions has publicly indicated that a different arrangement applies, such an arrangement will prevail over any arrangement indicated in these Directions."
12. In terms of the 29 April 2020 Lockdown Regulations:
 - 12.1 "Civil engineering for public works projects (including water, energy, sanitation";
 - 12.2 "Public works civil engineering and construction works";
 - 12.3 "Road and bridge projects, including local road repairs";
 - 12.4 "Construction and related services (including trades persons)" in terms of "Critical maintenance and repairs";
 - 12.5 "All telecommunication services and infrastructure";
 - 12.6 "Postal services and courier services for all permitted Alert Level 4 services";
 - 12.7 "Newspapers and broadcasting";
 - 12.8 "Production, manufacturing, supply, logistics, transport, delivery and critical maintenance and repairs of good and services (including components and equipment) required for the production or rendering of permitted goods and services";
 - 12.9 "**Licencing, "permitting"**, "Any other service designated by the Executive Authority, HODs, Heads of Courts, and Heads of other Chapter 9 Institutions", "Essential municipal services", and "peace officers" have been included as "Public Administration Government Services and other arms of the State"; and
 - 12.10 "**Other professional services** may operate only where work-from-home is not possible, and only **to support Alert Level 4 services**" (emphasis added);

are, amongst other services, included in Table 1 as permitted services which may during Lockdown Alert Level 4 be provided/operate and be obtained. These 29 April 2020 Lockdown Regulations came into effect on 1 May 2020.

13. The aforementioned services may, however, only be provided/operate on condition that all the applicable COVID-19 Health and Safety Regulations, Directions, measures and protocols are followed at all times, including the “*General measures to contain the spread of COVID-19*” set out in Regulation 5 of Chapter 2 of the *29 April 2020 Lockdown Regulations*, e.g. to wear a cloth face mask/appropriate item that covers the nose and mouth when in a public place; observance social/physical distancing requirements; a person may only leave his/her place of residence to perform an essential or permitted service, to go to work where a permit has been issued, to buy a permitted good, to obtain services that are allowed to operate; etc.;
14. As such, **during Lockdown Alert Level 4, which came into effect on 1 May 2020:**
- 14.1 to the extent not prohibited by the *29 April 2020 Lockdown Regulations* and other restrictions applicable or that may become applicable; and
- 14.2 on condition that all the applicable COVID-19 Health and Safety Regulations, Directions, measures and protocols are always followed;
- services may be provided and obtained by proponents, applicants, environmental assessment practitioners (“EAPs”), specialists, supporting professionals and officials in respect of, amongst other licensing and permitting services, the National Environmental Management Act, 1998 (Act No. 107 of 1998) (“NEMA”)⁹, the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008) (“NEMWA”), the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004) (“NEMAQA”)¹⁰, the Environmental Impact Assessment Regulations, 2014, the National Exemption Regulations (2014), the National Appeal Regulations (2014) and related processes.**
15. While Western Cape Provincial Minister Anton Bredell had intended to, in terms of Direction 4.2 of the *EIA Directions* and Regulations 9 and 16(3)(b) of the *EIA Regulations*, on 1 May 2020 (and with effect from that date) indicate arrangements to all Western Cape stakeholders regarding the undertaking and administration of the services mentioned in paragraph 14 above, the National Department of the Environment, Forestry and Fisheries (“DEFF”) requested DEA&DP not to do so yet, because DEFF was busy with a process to, in consultation with all the Competent and Licensing Authorities in the country, to propose amendments to/replacement of the *EIA Directions* of 31 March 2020. Due to this consultation process and the time required to obtain inputs from all the Competent and Licensing Authorities in the country, as well as DEFF Legal Services, there have been some delays in finalising the amendments to/replacement of the *EIA Directions* of 31 March 2020. It is understood from DEFF that the amendments to/replacement of the *EIA Directions* will only be published towards the end of next week.

⁹ Including in terms of Section 24G of NEMA.

¹⁰ Including in terms of Section 22A of NEMAQA.

16. While this delay is unfortunate, DEFF is applauded and supported in its efforts to, in consultation with all the Competent and Licensing Authorities in the country, provide amended/new directions in terms of the undertaking and administration of EIA and related processes across South Africa during Lockdown Alert Level 4.
17. In the interim, this Circular is issued to all DEA&DP stakeholders in order to provide some guidance on the provision of and the obtaining of services in terms of EIA and related processes during Lockdown Alert Level 4. This Circular must be read together with the applicable legislation (the *29 April 2020 Lockdown Regulations*, Directions issued in terms of the Disaster Management Act, etc.), and is not intended to be a substitute for the provisions of that legislation in any way. If there is a conflict between the content of this Circular and a provision in the legislation, then the provision in the legislation prevails. If there is any uncertainty about whether or not something is restricted or not or what should be done, the relevant Competent/Licensing Authority in DEA&DP (as noted in Paragraph 18.4) should be approached for guidance and/or confirmation.

PERMITTED EIA AND RELATED LICENSING SERVICES AND PERMITTED SUPPORTING PROFESSIONAL SERVICES DURING COVID-19 LOCKDOWN ALERT LEVEL 4

18. On condition that all the relevant COVID-19 Regulations and Directions are complied with, as well as all the relevant COVID-19 Health and Safety measures and protocols are followed at all times, including the “*General measures to contain the spread of COVID-19*” set out in Regulation 5 of Chapter 2 of the *29 April 2020 Lockdown Regulations*:

18.1	Submission of applications and appeals	Until the <i>EIA Directions</i> of 31 March 2020 are amended/replaced, no new applications nor new appeals may be submitted. (Note: The intention is for the proposed amended/replaced Directions to again allow that new application and appeals may be submitted.)
18.2	Processing of applications and appeals	Until the <i>EIA Directions</i> of 31 March 2020 are amended/replaced, the relevant Competent/Licensing Authority may not process applications nor appeals. (Note: The intention is for the proposed amended/replaced Directions to again allow that application and appeals may be processed.)
18.3	Extended timeframes	Until the <i>EIA Directions</i> of 31 March 2020 are amended/replaced, the timeframes are extended, or deemed to be extended, by the number of days of the duration of the lockdown period. (Note: The intention is for the proposed amended/replaced Directions to lift the extensions of the timeframes.)

18.4	Meeting with DEA&DP	<p>Unless part of a site visit, virtual meetings must be arranged via email with the relevant officials of DEA&DP as indicated below, or, if the case has already been assigned, via email to the relevant assigned case officer:</p> <ul style="list-style-type: none"> • Mr Zahir Toefy Director: Development Management Email: zahir.toefy@westerncape.gov.za Region 1: City of Cape Town and West Coast District Municipal area. Region 2: Cape Winelands District Municipal area and Overberg District Municipal area • Mr Gavin Benjamin Director: Development Management Email: gavin.benjamin@westerncape.gov.za Region 3: Garden Route District Municipal area and Central Karoo District Municipal area • Mr Eddie Hanekom Director: Waste Management Email: eddie.hanekom@westerncape.gov.za • Dr Joy Leaner Director: Air Quality Management Email: joy.leaner@westerncape.gov.za • Mr Marius Venter Environmental and Planning Appeals Co-ordinator Email: marius.venter@westerncape.gov.za • Adv Charmaine Maré / Ms Zaidah Toefy (Section 24G) Director: Environmental Governance Email: charmaine.mare@westerncape.gov.za / zaidah.toefy@westerncape.gov.za
18.5	Submission of Pre-Application correspondence to DEA&DP	<p>Notices of Intent to Apply and other Pre-Application correspondence must be submitted in electronic format (e-mail with pdf versions of letters and reports or, if too large to attach to an e-mail, to be made available via an electronic link accessible by DEA&DP) to the relevant DEA&DP official indicated above, or, if the case has already been allocated, to the relevant case officer).</p> <p>DEA&DP may, however, still require that a hard copy/copies of correspondence and original documents also be submitted to DEA&DP by a certain date.</p>
18.6	Meeting with the Proponent/Applicant/EAP/Specialist/other Professionals	<p>Unless part of a site visit, virtual meetings should be arranged.</p>

18.7	Site visits	<p>Site visits may be undertaken.</p> <p>(Note: In terms of Regulation 16 of the 29 April 2020 Lockdown Regulations a permit which corresponds with Form 2 of Annexure A must be obtained. Form 2 of Annexure A to the 29 April 2020 Lockdown Regulations indicate that the permit is to be issued by the Head of the Institution. The 29 April 2020 Lockdown Regulations defines "Institution" as "means any public or private institution, including a sole practitioner and any other business owned and operated by a single person, that is engaged in the supply or distribution of a good or service as set out in the Table 1, or which regulates such supply or distribution, including professional regulatory bodies designated in directions made in terms of regulation 4 of the Regulations". The 29 April 2020 Lockdown Regulations also defines "head of an institution" as "mean the accounting officer of a public institution and the chief executive officer or the equivalent of a chief executive officer of a private institution". I.e. the permit for an official must be issued by the Accounting Officer of the relevant public institution, while a permit for an EAP or Specialist or other Professional is to be issued by the chief executive officer or the equivalent of a chief executive officer of the private institution.)</p>
18.8	Public participation processes	<p>At all times it must be ensured that reasonable opportunity is provided for public participation. While the COVID-19 Lockdown is a unique circumstance, the specific circumstances in each case must be considered to determine what will be reasonable. If in the circumstances of a particular case additional measures to give notice to potential interested and affected parties and to allow for commenting on reports are available, such additional measures should be considered.</p> <p>With EIA and related permitting processes and supporting professional services being permitted services under Lockdown Alert Level 4, it should be possible for an EAP, Specialist and other Professionals to meet all the public participation requirements set out in Regulation 41 of the EIA Regulations (e.g. putting up site notices, etc.). To ensure that reasonable notice is given to potential and registered interested and affected parties ("I&APs"), DEA&DP should be approached with a proposed Public Participation Plan setting out all the public participation steps, including the additional measures, proposed. (Note: The intention in terms of the proposed amendments to/replacement of the EIA Directions of 31 March 2020 is to make the submission of a Public Participation Plan, to be agreed to by the relevant authority, compulsory.)</p>

		<p>Until the <i>EIA Directions</i> of 31 March 2020 are amended/replaced, the timeframes are extended, or deemed to be extended, by the number of days of the duration of the lockdown period. (Note: The intention is for the proposed amended/replaced Directions to lift the extensions of the timeframes.) As such, any notice to an I&AP of a commenting period, must indicate that while normally a commenting period of a minimum of 30 days must be provided, due to the extension of the timeframes provided by the <i>EIA Directions</i> of 31 March 2020, additional time for commenting will be provided for, that I&APs are, however, urged to please provide comments within a reasonable period, and that if the <i>EIA Directions</i> of 31 March 2020 are amended/replaced, a deadline by which comments must be provided will be communicated to the I&APs.</p>
18.9	Public Meetings and Open Days	<p>With most gatherings being banned in terms of the <i>29 April 2020 Lockdown Regulations</i>, in person public meetings and open days may not be held, but an EAP/Specialist could in the Public Participation Plan to be proposed to DEA&DP propose that virtual public meetings and virtual open days be held.</p>
18.10	Making copies of reports available for comment	<p>Reports may not be made available at places and premises closed to the public during the Lockdown. Hard copies of reports should also not be submitted to DEA&DP.</p> <p>Pre-application, Draft and Revised Reports must be made available to Registered I&APs (and DEA&DP via the relevant official indicated in Paragraph 18.4 above, or, if the case has already been allocated, to the relevant case officer) for comment in electronic format (e-mails with pdf versions of report attached to an e-mail or, if too large to attach to an e-mail, to be made available via an electronic link accessible by the Registered I&APs and DEA&DP).</p> <p>DEA&DP may, however, still require that a hard copy/copies of a reports, and original documents also be submitted to DEA&DP by a certain date.</p>
18.11	Submission of Final Reports to DEA&DP	<p>Until the <i>EIA Directions</i> of 31 March 2020 are amended/replaced, the DEA&DP may not process applications.</p> <p>(Note: The intention is for the proposed amended/replaced Directions to again allow that application and appeals may be processed.)</p>

		<p>An EAP could, however, arrange with the relevant DEA&DP official indicated in Paragraph 18.4 above, for the preliminary submission of a Final Report in electronic format (e-mail with pdf versions of report attached to an e-mail or, if too large to attach to an e-mail, to be made available via an electronic link accessible by DEA&DP). This will enable DEA&DP to start reviewing the Final Report. The timeframe for DEA&DP to review the Final Report and come to a decision will, however, only come into effect once the <i>EIA Directions</i> of 31 March 2020 are amended/replaced to lift the extension of the timeframes and to allow for DEA&DP to again process application.</p> <p>DEA&DP may, however, still require that a hard copy/copies of a report, and original documents also be submitted to DEA&DP by a certain date.</p>
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We thank you for your understanding in this regard, at an unprecedented time in the history of our country. We also want to reassure all our stakeholders that DEA&DP has a dual objective at this time: On the one hand, to comply with various prescripts of the COVID-19 State of Disaster Regulations and Directions, in terms of public health and safety, but on the other hand, to facilitate and enable the processes that will also start to put our Province on the slow and long road to economic recovery.

We therefore look forward to working with you in this regard and thank you for your cooperation. If you have any questions in this regard, please revert to the Colleagues noted in Paragraph 18.4 above.

Yours sincerely



PIET VAN ZYL
HEAD OF DEPARTMENT
ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING
WESTERN CAPE GOVERNMENT

DATE: 14 May 2020