The Role of Approving Authorities for EIA under the Environment Management Act

Fiji Environmental Law Association
Case Study 1: IMEL & the “Naiqasiqasi”
Case Study 1: Cleaning
Case Study 1: Painting
Case Study 1: In Lami Town Foreshore
An **approving authority** is a Ministry, department, statutory authority, or person authorised under a written law to approve a development proposal.

**Question:** Who is authorized by Law to approve a development activity or undertaking?

- Town Planning Act
- Forest Decree
- Rivers and Streams Act
- i-Taukei Land Trust Act
- Crown Lands Act
- Mining Act
- State Land Act
- Ports Fiji Company Ltd
- Maritime Authority of Fiji
Key Terms [s 2 EMA]

- **PROPONENT** - person or body that proposes to carry out a development activity or is the owner or person having charge, management or control of the development activity or undertaking and includes a Ministry Department or Authority carrying out.

- **Development Proposal** - Proposal for a development activity or undertaking submitted to an approving authority for approval under a written law.

- **Development Activity or Undertaking** means any activity or undertaking likely to alter the physical nature of the land in any way and includes the construction of buildings or works, the deposits of wastes or other materials from outfalls, vessels or by other means, the removal of sand, coral, shells, natural vegetation, sea grass or other substances, dredging filling, land reclamation, mining or drilling for minerals, but does not include fishing.
Role of Approving Authorities & EIA

SCREEN THE PROPOSAL & APPLY TEST!

**Test**: Is the development proposal likely to cause significant environment or resource management impact? S.27(1).

**STEP 1**: Is this a development proposal under EMA?

**Question**: What if the Developer is also the Approving Authority?
Step 2 : What is significant environmental or resource management impact?

An impact on the environment either in the context of the setting of the development proposal or in the context of the intensity of the proposed development’s effect on the environment.... [ s 2 EMA]
Significant Environment & Resource Management Impact

The degree to which the public health and safety are affected
Significant Environment & Resource Management Impact

The degree to which the unique characteristics of the geographic areas are affected.
Significant Environment & Resource Management Impact

The degree to which effects on the environment are likely to involve controversy
Significant Environment & Resource Management Impact

The degree to which unique and unknown risks are taken
Significant Environment & Resource Management Impact

The degree to which a precedent for future action is created
Significant Environment & Resource Management Impact

The potential for cumulative environmental impacts
Significant Environment & Resource Management Impact

The degree to which the natural functioning of the ecosystem is likely to be inhibit
Significant Environment & Resource Management Impact

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
Significant Environment & Resource Management Impact

The degree to which fish and wildlife resources of ecological, commercial subsistence and recreational importance are jeopardised.
Significant Environment & Resource Management Impact

The extent to which one aspect of use of a resource may conflict or is contrary with another aspect of that resource
Approving Authorities and EMA

Determination & Next Steps

- Any determination whether likely or unlikely is to be submitted to the EIA Administrator
- If final determination is likely - consult schedules.

Schedule 2

Part 1

- EIA must be conducted by the EIA Administrator

Part 3

- EIA Can be approved by the Approving Authority

Schedule 2 part 3

- EIA may not be required
Summary of Procedure

Step 1: Screening: Role of Approving Authority

Is proposal likely to cause significant environmental impact?

- YES – the DP requires EIA
- NO – EIA not required

Which authority must process the DP?

- EIA Administrator for review

Schedule 2 Part 1

Proposal that could:
- Erode beach, coast, foreshore
- Pollute water resource
- Pollute the air
- Degrade agricultural land
- Alter natural processes
- Damage an ecosystem

Dept of Environment

Schedule 2 Part 2

Proposal that might:
- Endanger public health
- Harm cultural resources; or
- Is Civic/cultural development
- Is general commercial
- Is general industrial
- Is <11 residential lots

Approving authority

Schedule 2 Part 3

Proposal that is:
- Construction family home
- Traditional village structure
- Emergency measures

EIA Administrator -> EIA?
Approving Authorities & EMA

Determination & Next Steps [s 27(5)-(8)]

- Wait until EIA process completed before:
  - Considering application for DP; or
  - Exercising any power, duty, function or responsibility that will permit DP to be commenced.
- If AA has conducted EIA process, send to EIA Administrator:
  - Assessed EIA report; and
  - Results of the review of the EIA report
- If EIA Administrator has called in the EIA report – submit EIA report.
Approving Authorities & EMA

Determination & Next Steps.

If a development proposal is subject to an EIA process, the approving authority MUST NOT approve the proposal or exercise any power, duty, function or responsibility that will permit the activity or undertaking to be carried out unless the EIA Report has been approved. s.27 (5).
Approving Authorities & EMA

Other Steps

**Step 2  Scoping: TOR**
- Define Terms of Reference
- Processing Authority:
  - Must inspect the site
  - May take samples
  - May consult proponent, expert, etc
  - May require public meeting(s)
  - May involve public
- Processing Authority approves TOR
  - Defines parameters of Study
  - Indicates environmental issues

**Step 3  EIA Report**
- EIA Study by registered consultant
  - Address TOR
  - Comprehensive report of possible impacts
  - Propose mitigation measures
  - Summarise results of public consultation
  - EIA Report available to public

Promoting Sustainable Natural Resource Management through Law
Approving Authorities & EMA

Other Steps

**Step 4  EIA Review**
- Director DoE directs whether Review Committee or Consultant
- Authority appoints EIA Review Consultant/Committee
- Public Review meetings to be held
- At least one meeting near site
- Consultant/Committee reports to Authority with recommendations

**Step 5  EIA Decision**
- Processing Authority must consider:
  - Nature & scope of development
  - Significance of any impacts
  - Feasibility of mitigation measures
  - Public concerns
- Processing Authority Review Report
- Processing Authority may:
  - approve with/without conditions
  - Not approve (reasons)
  - Recommend additional studies
Scheduled Acts

EMA

Scheduled Acts e.g. Town Planning Act

Director Environment can appoint lay persons to prosecute EMA or Scheduled Acts- s11(3)(c)

Environment Inspectors have Powers to conduct examinations and enquiries to ensure Scheduled Act Compliance s. 19(1)(a)

Hinder/Obstruction of Inspector a Criminal Offence. Inspectors can issue improvement notice to Government agency to comply with Act s. 21(1)

Civil Proceedings by any person to compel Authority to perform duty s. 54(1)
Approving Authorities & EMA

Determination & Next Steps

Unlawful Development without EIA S.43(1)

- Fine up to $750,000
- Imprisonment up to 10 years
- Stop Order s. 43(2)
Thank You For Your Attention!