



SIAM – 2, C - 4 Component  
**Environmental, Risk and  
Resource Management**

**SIAM-2 EIA Regulations  
Brief Report: Field Visit Samoa**

7 – 11 November 2005

Prepared for  
**Ministry of Natural Resources,  
Environment and Meteorology**

by David Hill, Hill Young Cooper Ltd for  
**BECA International Consultants Ltd.**



Ministry of Resource Management, Environment and Meteorology  
Private Bag  
Apia  
SAMOA

21 November 2005

Our Ref: 6060030/100

**Attention: Vitaoa Peleiupu Fuatai**

Dear Sir:

**RE: SIAM -2, C- 4:Environmental, Risks and Resource Management Services Report**

Please find enclosed David Hill's brief Report on his visit to Samoa 7-11 November

Yours faithfully



Ted Wells

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# Report

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## Purpose of Visit

The purpose of this initial, short visit was to establish contact with the initiating department, the Planning and Urban Management Agency (“PUMA”), Ministry of Works, Transport and Infrastructure and determine:

1. The extent of the current requirement for EIA under legislation;
2. The extent to which this had changed since the project was approved;
3. The nature of any Regulations required;
4. The extent of any overlap with any other department / ministry having EIA responsibilities.

Meetings were held with PUMA staff (Taulealeausumai La'avasa Malua and Mr Jude Kohlhase), the SIAM-2 project manager in country (Mr Ted Wells), and a local lawyer (Mr Ming Leung Wai).

Meetings with key Ministry of Natural Resources, Environment and Meteorology staff were not practical as it was Environmental Awareness week.

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## Current Requirements

PUMA operates under its own statute, the Planning and Urban Management Act 2004. That Act contains specific provisions for requesting an EIA as part of the development consent application process, provides for EIA regulations, and makes it one of the matters that are to be taken into consideration when determining an application.

The PUMAct 2004 does not make EIA mandatory, nor does it provide a separate administrative or decision-making process for EIA. In that regard the draft EIA Regulations, the “Lands, Surveys and Environment (Environmental Impact Assessment) Regulations 1998”, are unsuitable as they:

1. Were drafted under the Lands, Surveys, and Environment Act 1989 (“the LS&EAct 1989);
2. Provide for administrative and decision-making processes that are outside of PUMA’s powers;
3. Apply to a different statutory definition of “environment”;
4. Apply criteria for inclusion and assessment based on the specific definition of “environment”.

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## Extent of change

Since the SIAM-2 Project was approved PUMA has not only become a separate department with its own statute, it has also been relocated to a separate ministry, i.e. from the Ministry of Natural Resources and Environment (“MNRE”) to the Ministry of Works, Transport and Industry (“MWTI”). The net effect of this is to make both the Chief Executive and the Minister different “people”.

At the same time, no amendment has yet been made to the LS&E Act 1989, so the EIA provisions of that Act are unchanged. That Act, presumably, is the one that the SIAM-2 EIA Regulation component was initially designed to implement, even though the function has, or appears to have been, transferred to PUMA (although there appears to be no formal decision on record other than a Memorandum relating to the use of draft Codes of Practice for government works).

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## Nature of Regulations

The PUMA Act 2004 requires any EIA to be prepared in accordance with written specifications from PUMA (s42(2)). As such this does not require regulation, although the power of regulation is provided for EIA under s105, which includes the following:

- (d) the form of development applications;*
- (e) the documents and information required to accompany development applications, including documents that will assist the Agency in assessing the environmental effects of development;*
- (j) the form of statements of environmental effects and environmental impact assessments;*
- (k) the documents and information required to accompany statements of environmental effects and environmental impact statements;*
- (r) the factors to be taken into account when consideration is being given to the likely impact of a development on the environment;*
- (s) the preparation, contents, form and submission of environmental impact assessments;*
- (t) the making of environmental impact assessments available for public comment;*
- (u) the methods of examination of environmental impact assessments and representations made with respect to activities to which any such statements relate.*

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## Overlaps

As indicated above, MNRE still has EIA powers and functions. While there is talk about transferring the function into one agency there is no obvious indication that this is likely in the short term.

## Next Steps

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### Options

At a quickly-assembled seminar on the afternoon of 2<sup>nd</sup> November I put three options for progressing the EIA Regulations under PUMAct 2004:

1. No Regulation; rely on internal guideline and varying this in writing on a project-by-project basis as required.
2. Minimal regulation setting out form and content only because the EIA is not a distinct approval process, rather part only of the development consent application.
3. Full regulation and separate submission and evaluation process – not provided under PUMA and therefore not supported

The consensus of the meeting was that the second option was preferred. I expressed the view that while this was practicable, I saw some potential difficulty in persuading the Attorney-General to put before Parliament a Regulation that wasn't really necessary (even though it is listed as a matter for which Regulations may be made).

The matter of EIA Regulations for the LS&EAct 1989 was left unresolved with an indication that on my next visit in the new year I would pick this up directly with MNRE.