



GUIDELINE ON NEED AND

DESIRABILITY

NEED AND DESIRABILITY

The concept of “desirability” in the land use planning context, may be defined as the degree of acceptability of the land use(s) on the land units concerned.

WHAT IS “NEED AND DESIRABILITY”?

While the concept of need and desirability relates to the *type* of development being proposed, essentially, the concept of need and desirability can be explained in terms of the general meaning of its two components in which *need* refers to *time* and *desirability* to *place* – i.e. is this the right time and is it the right place for locating the type of land-use/activity being proposed? Need and desirability can be equated to *wise use of land* – i.e. the question of what is the most sustainable use of land.

In light of the above, the need and desirability of an application must be addressed and in detail answering *inter alia* the following questions:

NEED ('timing'):

- Question 1:** Is the land use (associated with the activity being applied for) considered within the timeframe intended by the existing approved Spatial Development Framework (SDF) agreed to by the relevant authority? (i.e. is the proposed development in line with the projects and programmes identified as priorities within the credible IDP).
- Question 2:** Should development, or if applicable, expansion of the town/area concerned in terms of this land use (associated with the activity being applied for) occur here at this point in time?
- Question 3:** Does the community/area need the activity and the associated land use concerned (is it a societal priority)? This refers to the strategic as well as local level (e.g. development is a national priority, but within a specific local context it could be inappropriate).
- Question 4:** Are the necessary services with adequate capacity currently available (at the time of application), or must additional capacity be created to cater for the development?
- Question 5:** Is this development provided for in the infrastructure planning of the municipality, and if not what will the implication be on the infrastructure planning of the municipality (priority and placement of services and opportunity costs)?
- Question 6:** Is this project part of a national programme to address an issue of national concern or importance?

DESIRABILITY ('placing'):

- Question 7:** Is the development the best practicable option for this land/site?
- Question 8:** Would the approval of this application compromise the integrity of the existing approved and credible municipal IDP and SDF as agreed to by the relevant authorities.
- Question 9:** Would the approval of this application compromise the integrity of the existing environmental management priorities for the area (e.g. as defined in EMFs), and if so, can it be justified in terms of sustainability considerations?
- Question 10:** Do location factors favour this land use (associated with the activity applied for) at this place? (this relates to the contextualisation of the proposed land use on this site within its broader context).
- Question 11:** How will the activity or the land use associated with the activity applied for, impact on sensitive natural and cultural areas (built and rural/natural environment)?
- Question 12:** How will the development impact on people's health and wellbeing (e.g. in terms of noise, odours, visual character and sense of place, etc)?
- Question 13:** Will the proposed activity or the land use associated with the activity applied for, result in unacceptable opportunity costs?
- Question 14:** Will the proposed land use result in unacceptable cumulative impacts?

BASIS OF REFUSAL OF APPLICATIONS IN TERMS OF LAND USE ORDINANCE (LUPO)

Basis of refusal of applications and particulars applicable at granting thereof in terms of LUPO (15 of 1985) –

- 1) Any application under Chapter II or III shall be refused solely on the basis of a lack of desirability of the contemplated utilisation of land concerned or on the basis of its effect on existing rights concerned (except any alleged right to protection against trade competition.
- 2) Where an application is not refused by virtue of the matters referred to the above regard shall be had, in considering relevant particulars, to only the safety and welfare of the members of the community concerned, the preservation of the natural and developed environment concerned or the effect of the application on existing rights concerned (with the exemption of any alleged right to protection against trade competition.

Section 36 of the *Land Use Planning Ordinance (Ordinance 15 of 1985)* requires that an application be assessed on the basis of the **desirability** of the proposed development and the impact it might have on any existing rights (except any alleged right to protection against trade competition). Defined as the degree of acceptability of the proposed development on the land unit(s) concerned, desirability of the proposal should be discussed in terms of the following:

- Subject site's suitability for proposed development in terms of location, accessibility and physical characteristics.
- Consistency with higher order policy and planning frameworks.
- Conservation worthiness of existing buildings, structures, vegetation and other natural features.
- Compatibility of proposed development / land use(s) with character and existing spatial structure of surrounding area.
- Access to subject premises and possible traffic problems.
- Cost and availability of required services and infrastructure.
- External visual impact of proposed development, as well as internal aesthetical aspects.
- Any potential disruption of / damage to environment or **public nuisance** as a result of proposed development / land use(s).
- Potential of application site for alternative uses / development

Financial Viability

Financial viability must also be considered within the context of justifiable economic development, measured against the broader societal short-term and long-term needs. While the financial viability considerations of the applicant might therefore indicate if a development is "do-able", the "need and desirability" will be determined by considering the broader community's needs and interests as reflected in a credible IDP, SDF and EMF for the area. While the importance of job creation and economic growth for South Africa cannot be denied, the Constitution calls for *justifiable* economic development. The specific needs of the broader community must therefore be considered together with the opportunity costs and distributional consequences in order to determine whether or not the application is "justified", will contribute to environmental justice and social justice; in other words to ensure that the development will be socially, economically and environmentally sustainable.

THE STATUTORY CONTEXT FOR THE CONSIDERATION OF NEED AND DESIRABILITY IN TERMS OF NEMA

With regard to having to consider need and desirability, the definition of "*evaluation*" must also be noted. NEMA defines "*evaluation*" as "*the process of ascertaining the relative importance or significance of information, in the light of people's values, preferences and judgements, in order to make a decision.*"

In order to properly interpret the requirement in terms of the NEMA EIA Regulations to consider "need and desirability", it is necessary to turn to the National Environmental

Management Principles in terms of NEMA which serve as a guide for the interpretation, administration and implementation of NEMA and the NEMA EIA regulations²⁴. With regard to the issue of “need”, it is important to note that this “need” is not the same as the “general purpose and requirements” of the activity. While the “general purpose and requirements” of the activity might to some extent relate to the specific requirements, intentions and reasons that the applicant has for proposing the specific activity, **the “need” relates to the interests and needs of the broader public**. In this regard the National Environmental Management Principles²⁵ specifically *inter alia* require that environmental management must:

- **“place people and their needs at the forefront of its concern”** and equitably serve their interests;
- *“be integrated, acknowledging that all elements of the environment are linked and interrelated, and it must take into account the effects of decisions on all aspects of the environment and all people in the environment by pursuing the selection of the best practicable environmental option;*
- pursue environmental justice *“so that adverse environmental impacts shall not be distributed in such a manner as to unfairly discriminate against any person”*; and
- ensure that decisions take **“into account the interests, needs and values of all interested and affected parties”**;
- with the environment to be *“held in public trust for the people, the beneficial use of environmental resources must serve the public interest and the environment must be protected as the people’s common heritage”*.

The consideration of “need and desirability” in EIA decision-making therefore requires the consideration of the strategic context of the development **proposal along with the broader societal needs and the public interest**. The government decision-makers, together with the environmental assessment practitioners and planners, are therefore accountable to the public **and must serve their social, economic and ecological needs equitably**. This requires a long-term approach to decision-making in order to ensure that limits are not exceeded and that the proposed actions of individuals are measured against the long-term public interest.

Sustainable development therefore calls for the simultaneous achievement of the *triple bottom-line*, in a manner that fully acknowledges the interdependent relationship between the different spheres of the environment.