

APPLICABLE LEGISLATION

Table 1: Applicable Legislation, Policies and/or Guidelines associated with the proposed development

Legislation	Applicable Requirements	Relevant Authority	Compliance Requirements
National Legislation			
Constitution of the Republic of South Africa (No. 108 of 1996)	<p>In terms of Section 24, the State has an obligation to give effect to the environmental right. The environmental right states that:</p> <p><i>“Everyone has the right –</i></p> <ul style="list-style-type: none"> » <i>To an environment that is not harmful to their health or well-being, and</i> » <i>To have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that:</i> <ul style="list-style-type: none"> * <i>Prevent pollution and ecological degradation,</i> * <i>Promote conservation, and</i> * <i>Secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.”</i> 	Applicable to all authorities	There are no permitting requirements associated with this Act. The application of the Environmental Right however implies that environmental impacts associated with proposed development are considered separately and cumulatively. It is also important to note that the “right to an environment” clause includes the notion that justifiable economic and social development should be promoted, through the use of natural resources and ecologically sustainable development.
National Environmental Management Act (No 107 of 1998) (NEMA)	<p>The 2014 EIA Regulations have been promulgated in terms of Chapter 5 of NEMA. Listed activities which may not commence without EA are identified within the Listing Notices (GNR 327, GNR 325 and GNR 324) which form part of these Regulations (GNR 326).</p> <p>In terms of Section 24(1) of NEMA, the potential impact on the environment associated with these listed activities must be assessed and reported on to the competent authority charged by NEMA with granting of the relevant environmental authorisation.</p>	<p>DEFF – Competent Authority</p> <p>Northern Cape Department of Agriculture, Environmental Affairs, Rural Development and Land Reform – Commenting Authority</p>	The listed activities triggered by the proposed project have been identified and are assessed within the BA process for the BESS and associated infrastructure. The BA process will culminate in the submission of a final BA Report to the competent authority in support of the Application for Environmental Authorisation.

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	A Basic Assessment Process is required to be undertaken for the proposed project.		
National Environmental Management Act (No 107 of 1998) (NEMA)	<p>In terms of the "Duty of Care and Remediation of Environmental Damage" provision in Section 28(1) of NEMA every person who causes, has caused or may cause significant pollution or degradation of the environment must take reasonable measures to prevent such pollution or degradation from occurring, continuing or recurring, or, in so far as such harm to the environment is authorised by law or cannot reasonably be avoided or stopped, to minimise and rectify such pollution or degradation of the environment.</p> <p>In terms of NEMA, it is the legal duty of a project proponent to consider a project holistically, and to consider the cumulative effect of a variety of impacts.</p>	<p>DEFF</p> <p>Northern Cape Department of Agriculture, Environmental Affairs, Rural Development and Land Reform</p>	While no permitting or licensing requirements arise directly by virtue of the proposed BESS and associated infrastructure, this section finds application through the consideration of potential cumulative, direct, and indirect impacts.
Environment Conservation Act (No. 73 of 1989) (ECA)	<p>The Noise Control Regulations in terms of Section 25 of the ECA contain regulations applicable for the control of noise in the Provinces of Limpopo, North West, Mpumalanga, Northern Cape, Eastern Cape, and KwaZulu-Natal Provinces.</p> <p>The Noise Control Regulations cover the powers of a local authority, general prohibitions, prohibitions of disturbing noise, prohibitions of noise nuisance, use of measuring instruments, exemptions, attachments, and penalties.</p> <p>In terms of the Noise Control Regulations, no person shall make, produce or cause a disturbing noise, or allow it to be made, produced or caused by any person, machine, device or apparatus or any combination thereof (Regulation 04).</p>	<p>DEFF</p> <p>Northern Cape Department of Agriculture, Environmental Affairs, Rural development and Land Reform</p> <p>Karoo Hoogland Local Municipality</p>	Minor construction noise is associated with the construction phase of the project. Considering the location of the BESS and associated infrastructure in relation to residential areas and provided that appropriate mitigation measures are implemented, construction noise is unlikely to present a significant intrusion to the local community. Additionally, a noise compliance statement conducted by a noise specialist indicated noise impact of a low significance on all potential Noise-Sensitive Developments (NSD).
Minerals and Petroleum Resources Development Act (No. 28 of 2002) (MPRDA)	In accordance with the provisions of the MPRDA a mining permit is required in accordance with Section 27(6) of the Act	DMRE	Any person who wishes to apply for a mining permit in accordance with Section 27(6) must simultaneously apply for an Environmental

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	<p>where a mineral in question is to be mined, including the mining of materials from a borrow pit.</p> <p>Section 53 of the MPRDA states that any person who intends to use the surface of any land in any way which may be contrary to any object of the Act, or which is likely to impede any such object must apply to the Minister for approval in the prescribed manner.</p>		<p>Authorisation in terms of NEMA. No borrow pits are expected to be required for the construction of the BESS and associated infrastructure, and as a result a mining permit or EA is not required to be obtained.</p> <p>In terms of Section 53 of the MPRDA, approval is required from the Minister of Mineral Resources to ensure that the proposed BESS and associated infrastructure does not sterilise a mineral resource that might be present within the project site.</p>
<p>National Environmental Management: Air Quality Act (No. 39 of 2004) (NEM:AQA)</p>	<p>The National Dust Control Regulations (GNR 827) published under Section 32 of NEM:AQA prescribe the general measures for the control of dust in all areas, and provide a standard for acceptable dustfall rates for residential and non-residential areas.</p> <p>In accordance with the Regulations (GNR 827) any person who conducts any activity in such a way as to give rise to dust in quantities and concentrations that may exceed the dustfall standard set out in Regulation 03 must, upon receipt of a notice from the air quality officer, implement a dustfall monitoring programme.</p> <p>Any person who has exceeded the dustfall standard set out in Regulation 03 must, within three months after submission of the dustfall monitoring report, develop and submit a dust management plan to the air quality officer for approval.</p>	<p>Northern Cape Department of Agriculture, Environmental Affairs, Rural Development and Land Reform</p> <p>Namakwa District Municipality (DC6)</p>	<p>In the event that the construction of the BESS and associated infrastructure results in the generation of excessive levels of dust, the possibility could exist that a dustfall monitoring programme would be required for the project, in which case dustfall monitoring results from the dustfall monitoring programme would need to be included in a dust monitoring report, and a dust management plan would need to be developed. However, with mitigation measures implemented, construction of the BESS and associated infrastructure is not anticipated to result in significant dust generation or the requirement of a dust monitoring programme.</p>
<p>National Heritage Resources Act (No. 25 of 1999) (NHRA)</p>	<p>Section 07 of the NHRA stipulates assessment criteria and categories of heritage resources according to their significance.</p>	<p>South African Heritage Resources Agency</p>	<p>A Desktop Heritage Impact Assessment (HIA) has been undertaken as part of the BA process (refer to Appendix E of this BA Report). The HIA</p>

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	<p>Section 35 of the NHRA provides for the protection of all archaeological and palaeontological sites, and meteorites.</p> <p>Section 36 of the NHRA provides for the conservation and care of cemeteries and graves by SAHRA where this is not the responsibility of any other authority.</p> <p>Section 38 of the NHRA lists activities which require developers or any person who intends to undertake a listed activity to notify the responsible heritage resources authority and furnish it with details regarding the location, nature, and extent of the proposed development.</p> <p>Section 44 of the NHRA requires the compilation of a Conservation Management Plan as well as a permit from SAHRA for the presentation of archaeological sites as part of tourism attraction.</p>	<p>Ngwao Boswa Kapa Bokone (NBKB)</p>	<p>considers impacts on both archaeology, heritage and palaeontology.</p> <p>Based on the information available from heritage assessments previously conducted in the area proposed for development, the proposed development of the BESS within the Great Karoo WEF is unlikely to negatively impact on significant archaeological, built environment and palaeontological heritage as long as the recommendations from the previous studies are implemented. From a heritage perspective, the proposed BESS can be located anywhere within the 500m area assessed in this screening assessment.</p> <p>Should a heritage resource be impacted upon, a permit may be required from SAHRA or Ngwao Boswa Kapa Bokone (NBKB) in accordance with Section 48 of the NHRA, and the SAHRA Permit Regulations (GNR 668).</p>
<p>National Environmental Management: Biodiversity Act (No. 10 of 2004) (NEM:BA)</p>	<p>Section 53 of NEM:BA provides for the MEC / Minister to identify any process or activity in such a listed ecosystem as a threatening process.</p> <p>Three government notices have been published in terms of Section 56(1) of NEM:BA as follows:</p> <ul style="list-style-type: none"> » Commencement of TOPS Regulations, 2007 (GNR 150). » Lists of critically endangered, vulnerable and protected species (GNR 151). » TOPS Regulations (GNR 152). 	<p>DEFF Northern Cape Department of Agriculture, Environmental Affairs, Rural Development and Land Reform</p>	<p>Under NEM:BA, a permit would be required for any activity that is of a nature that may negatively impact on the survival of a listed protected species.</p> <p>Please refer to the Ecological Impact Assessment (Appendix D) for further details on all required permits.</p>

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	<p>It provides for listing threatened or protected ecosystems, in one of four categories: critically endangered (CR), endangered (EN), and vulnerable (VU) or protected. The first national list of threatened terrestrial ecosystems has been gazetted, together with supporting information on the listing process including the purpose and rationale for listing ecosystems, the criteria used to identify listed ecosystems, the implications of listing ecosystems, and summary statistics and national maps of listed ecosystems (NEM:BA: National list of ecosystems that are threatened and in need of protection, (Government Gazette 37596, GNR 324), 29 April 2014).</p>		
<p>National Environmental Management: Biodiversity Act (No. 10 of 2004) (NEM:BA)</p>	<p>Chapter 5 of NEM:BA pertains to alien and invasive species, and states that a person may not carry out a restricted activity involving a specimen of an alien species without a permit issued in terms of Chapter 7 of NEM:BA, and that a permit may only be issued after a prescribed assessment of risks and potential impacts on biodiversity is carried out.</p> <p>Applicable, and exempted alien and invasive species are contained within the Alien and Invasive Species List (GNR 864).</p>	<p>DEFF Northern Cape Department of Agriculture, Environmental Affairs, Rural Development and Land Reform</p>	<p>Restricted Activities and the respective requirements applicable to persons in control of different categories of listed invasive species are contained within the Alien and Invasive Species Regulations (GNR 598) published under NEM:BA, together with the requirements of the Risk Assessment to be undertaken.</p> <p>Please refer to the Ecological Impact Assessment (Appendix D) for further details.</p> <p>The EMPr (Appendix H) does make provision for mitigation measures for alien vegetation present within the BESS footprint.</p>
<p>Conservation of Agricultural Resources Act (No. 43 of 1983) (CARA)</p>	<p>Section 05 of CARA provides for the prohibition of the spreading of weeds.</p>	<p>Department of Agriculture, Land Reform and Rural Development</p>	<p>CARA will find application throughout the life cycle of the project. In this regard, soil erosion prevention and soil conservation strategies need to be developed and implemented. In</p>

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	<p>Regulation 15 of GNR 1048 published under CARA provides for the classification of categories of weeds and invader plants, and restrictions in terms of where these species may occur.</p> <p>Regulation 15E of GNR 1048 published under CARA provides requirement and methods to implement control measures for different categories of alien and invasive plant species.</p>		<p>addition, weed control and management measures must be included into the EMPr.</p>
<p>National Veld and Forest Fire Act (No. 101 of 1998) (NVFFA)</p>	<p>Chapter 4 of the NVFFA places a duty on owners to prepare and maintain firebreaks, the procedure in this regard, and the role of adjoining owners and the fire protection association. Provision is also made for the making of firebreaks on the international boundary of the Republic of South Africa. The applicant must ensure that firebreaks are wide and long enough to have a reasonable chance of preventing a veldfire from spreading to or from neighbouring land, it does not cause soil erosion, and it is reasonably free of inflammable material capable of carrying a veldfire across it.</p> <p>Chapter 5 of the Act places a duty on all owners to acquire equipment and have available personnel to fight fires. Every owner on whose land a veldfire may start or burn or from whose land it may spread must have such equipment, protective clothing and trained personnel for extinguishing fires, and ensure that in his or her absence responsible persons are present on or near his or her land who, in the event of fire, will extinguish the fire or assist in doing so, and take all reasonable steps to alert the owners of adjoining land and the relevant fire protection association, if any.</p>	<p>DEFF</p>	<p>While no permitting or licensing requirements arise from this legislation, this Act will be applicable during the construction and operation of the BESS and associated infrastructure, in terms of the preparation and maintenance of firebreaks (if/as applicable), and the need to provide appropriate equipment and personnel for firefighting purposes.</p>
<p>Hazardous Substances Act (No. 15 of 1973) (HAS)</p>	<p>This Act regulates the control of substances that may cause injury, or ill health, or death due to their toxic, corrosive, irritant, strongly sensitising or inflammable nature or the generation of pressure thereby in certain instances and for the control of</p>	<p>Department of Health</p>	<p>It is necessary to identify and list all Group I, II, III, and IV hazardous substances that may present with the development of the BESS and associated infrastructure and in what</p>

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	<p>certain electronic products. To provide for the rating of such substances or products in relation to the degree of danger, to provide for the prohibition and control of the importation, manufacture, sale, use, operation, modification, disposal or dumping of such substances and products.</p> <ul style="list-style-type: none"> » Group I and II: Any substance or mixture of a substance that might by reason of its toxic, corrosive etc., nature or because it generates pressure through decomposition, heat or other means, cause extreme risk of injury etc., can be declared as Group I or Group II substance » Group IV: any electronic product, and » Group V: any radioactive material. <p>The use, conveyance, or storage of any hazardous substance (such as distillate fuel) is prohibited without an appropriate license being in force.</p>		<p>operational context they are used, stored or handled. If applicable, a license would be required to be obtained from the Department of Health.</p>
<p>National Environmental Management: Waste Act (No. 59 of 2008) (NEM:WA)</p>	<p>The Minister may by notice in the Gazette publish a list of waste management activities that have, or are likely to have, a detrimental effect on the environment.</p> <p>The Minister may amend the list by –</p> <ul style="list-style-type: none"> » Adding other waste management activities to the list. » Removing waste management activities from the list. » Making other changes to the particulars on the list. <p>In terms of the Regulations published in terms of NEM:WA (GNR 912), a BA or EIA is required to be undertaken for identified listed activities.</p>	<p>DEFF – Hazardous Waste</p> <p>Northern Cape Department of Agriculture, Environmental Affairs, Rural Development and Land Reform – general waste</p>	<p>No listed waste activities are triggered by the BESS and associated infrastructure and therefore no Waste Management License is required to be obtained. General and hazardous waste handling, storage and disposal will be required during construction and operation of the BESS and associated infrastructure. The National Norms and Standards for the Storage of Waste (GNR 926) published under Section 7(1)(c) of NEM:WA will need to be considered in this regard, if applicable.</p>

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	<p>Any person who stores waste must at least take steps, unless otherwise provided by this Act, to ensure that:</p> <ul style="list-style-type: none"> » The containers in which any waste is stored, are intact and not corroded or in » Any other way rendered unfit for the safe storage of waste. » Adequate measures are taken to prevent accidental spillage or leaking. » The waste cannot be blown away. » Nuisances such as odour, visual impacts and breeding of vectors do not arise, and » Pollution of the environment and harm to health are prevented. 		
<p>National Road Traffic Act (No. 93 of 1996) (NRTA)</p>	<p>The technical recommendations for highways (TRH 11): "Draft Guidelines for Granting of Exemption Permits for the Conveyance of Abnormal Loads and for other Events on Public Roads" outline the rules and conditions which apply to the transport of abnormal loads and vehicles on public roads and the detailed procedures to be followed in applying for exemption permits are described and discussed.</p> <p>Legal axle load limits and the restrictions imposed on abnormally heavy loads are discussed in relation to the damaging effect on road pavements, bridges, and culverts.</p> <p>The general conditions, limitations, and escort requirements for abnormally dimensioned loads and vehicles are also discussed and reference is made to speed restrictions, power/mass ratio, mass distribution, and general operating conditions for abnormal loads and vehicles. Provision is also made for the granting of permits for all other exemptions from the</p>	<p>SANRAL – national roads Northern Cape DoT</p>	<p>An abnormal load / vehicle permit may be required to transport the various components to site for construction. These include route clearances and permits will be required for vehicles carrying abnormally heavy or abnormally dimensioned loads (transport vehicles exceeding the dimensional limitations (length) of 22m). Depending on the trailer configuration and height when loaded, some of the BESS and associated infrastructure components may not meet specified dimensional limitations (height and width) and will therefore require a permit.</p>

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	requirements of the National Road Traffic Act and the relevant Regulations.		
Provincial Policies / Legislation			
Northern Cape Nature Conservation Act (Act No. 9 of 2009)	<p>This Act provides for the sustainable utilisation of wild animals, aquatic biota and plants; provides for the implementation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora; provides for offences and penalties for contravention of the Act; provides for the appointment of nature conservators to implement the provisions of the Act; and provides for the issuing of permits and other authorisations. Amongst other regulations, the following may apply to the current project:</p> <ul style="list-style-type: none"> » Boundary fences may not be altered in such a way as to prevent wild animals from freely moving onto or off of a property; » Aquatic habitats may not be destroyed or damaged; » The owner of land upon which an invasive species is found (plant or animal) must take the necessary steps to eradicate or destroy such species; <p>The Act provides lists of protected species for the Province.</p>	Northern Cape Department of Agriculture, Environmental Affairs, Rural development and Land Reform	A collection/destruction permit must be obtained from Northern Cape Nature Conservation for the removal of any protected plant or animal species found on site.
GNR 805 of 29 May 2019 under the Astronomy Geographic Advantage Act, No. 21 of 2007	<p>These regulations apply to specified activities within the Sutherland Central Astronomy Advantage Area declared for optical astronomy purposes and related scientific endeavours.</p> <p>The restriction of the specified activities within the Sutherland Central Astronomy Advantage Area is intended to protect the optical astronomy observations carried out within the Sutherland Core Astronomy Advantage Area from a detrimental impact.</p>	Department of Science and Technology	All construction activities must be in accordance with these regulations, in particular by obtaining earthwork approval from the DST prior to construction commencing, and adherence of lighting types and levels on site to the minimum standards specified in the regulations.

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	<p>The regulation sets out minimum lighting levels for specified activities within the Sutherland Central Astronomy Advantage Area, including establishing a minimum acceptable night time brightness levels, as well as prescribed conditions for lighting activities and the nature of lighting used. In addition, dust and wind turbine conditions are provided within the Sutherland Central Astronomy Advantage Area. The regulation state that:</p> <p>(1) Unless authorised by the management authority, no person may allow any general area lighting and outdoor recreational lighting activities within the Sutherland Central Astronomy Advantage Area to cause the average night sky brightness stated in sub -regulation 3(2) to be exceeded within the Sutherland Core Astronomy Advantage Area.</p> <p>In addition to:</p> <p>5. Activities creating air pollution</p> <p>(1) Any person who intends to conduct any activity within the Sutherland Central Astronomy Advantage Area that may involve any earth works creating dust, must submit an application on the prescribed form (Annexure B), a copy of which can be obtained from the management authority, for approval by the management authority prior to commencing such activities.</p> <p>Fines of up to R 200 000.00 are determined for any intentional contravention of the regulations</p>		