



## environmental affairs

Department:  
Environmental Affairs  
REPUBLIC OF SOUTH AFRICA

### **APPEAL QUESTIONNAIRE**

An electronic copy of this questionnaire may be obtained from:

Mr Z Hassam at telephone: 012 399 9356 or e-mail:

[AppealsDirectorate@environment.gov.za](mailto:AppealsDirectorate@environment.gov.za)

Once completed, this document must be forwarded to:

E-mail: [AppealsDirectorate@environment.gov.za](mailto:AppealsDirectorate@environment.gov.za)

Physical Address: Department of Environmental Affairs, 473 Steve Biko Road, Environment House, Arcadia, Pretoria, 0002

**Appellant's contact information:**

Name: FG Emvelo

Address: Private Bag X9

Benmore

2196

Phone: (011) 523 6299

Cell: \_\_\_\_\_

Email: pancho@emvelo.co.za \_\_\_\_\_

**Project information:**

Project name: 150 MW Ilanga Concentrated Solar Power Tower 7

Authorisation register number as on environmental authorisation:

14/12/16/3/3/905


Authorisation date as on environmental authorisation 25 November 2016

**IMPORTANT! Please note:**

- *The decision of the department is reflected in the letter of authorisation or rejection. The conditions of approval are contained in the environmental authorisation document, attached to the authorisation letter.*
- *The appeal must be accompanied by all relevant supporting documents or copies of these that are certified as true by a commissioner of oaths.*
- *The grounds of your appeal and the facts upon which they rest must be set out. You should formulate your objections or concerns as averments and not as questions about the project. Please therefore refrain from material or remarks that do not contribute to the merits of your appeal.*
- *To assist in this regard, the following questions are listed as a guideline only – more space may be used if necessary:*

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1. Are you lodging this appeal as an individual or on behalf of a community/organisation?

Individual	Community/ organisation  
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If on behalf of a community or organisation, please provide proof of mandate to do so.

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2. Is your appeal based on factors associated with the process that was followed by the applicant in obtaining authorisation?

Yes	No
	✓

Please provide reasons:

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3. Is your appeal based on factors associated with environmental impacts not taken into account by the department in refusing or authorising the application?

Yes	No
✓	

Please provide reasons:

Please see attached the cover letter as well a responses to the findings of th Department of Environmental Affairs

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4. Would you agree to the activity proceeding if your concerns can be addressed by rectifying the process or mitigating or eliminating the impacts of the activity?

Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
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Please provide reasons:

Please see attached the cover letter as well a responses to the findings of th Department of Environmental Affairs

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5. Are you fundamentally opposed to any development activity on the site?

Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
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Please provide reasons:

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6. Do you have an objection in principle against the development?

Yes	No
	<input checked="" type="checkbox"/>

Please provide reasons:

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7. Does your appeal contain any new information that was not submitted to the environmental consultant or department prior to the department's consideration of the application?

Yes	No
	<input checked="" type="checkbox"/>

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If the answer above is yes, please explain why it should be considered by the Minister and why it was not made available to the environmental consultant or department during the application process.

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**8. DECLARATION:**

I declare that the contents of this submission are to the best of my knowledge the truth and I regard this declaration as binding on my conscience.

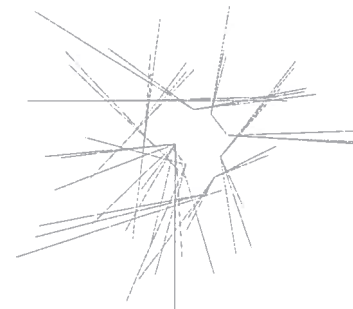
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**APPELLANT**

**DATE: 15.12.2016**

# WEBBER WENTZEL

in alliance with > Linklaters



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Your reference  
14/12/16/3/3/2/905

Our reference  
M Diemont

Date  
15 December 2016

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## **Appeal against the decision to refuse to grant environmental authorisation ("EA") for the 150MW Ilanga Concentrated Solar Power Tower 7 Solar Energy Facility (DEA Ref. 14/12/16/3/3/2/905)**

1. We are represent FG Emvelo (Pty) Ltd ("**the Appellant**") the developer of the 50MW Ilanga Concentrated Solar Power 3 Solar Energy Facility, located on portion 2 of the farm Matjiesriver 41 and portion 4 of the farm Trooilaps Pan 53, situated within the Khara Hais Local Municipality, Northern Cape Province ("**the Project**").
2. We are instructed to submit an appeal against the decision of Mr Sabela Malaza, Chief Director: Integrated Environmental Authorisations not to grant an environmental authorisation ("**EA**") for the Project ("**the decision**").
3. The appeal is lodged in terms of section 43 of the National Environmental Management Act 107 of 1998 ("**NEMA**"), read with section 4 the Appeal Regulations.<sup>1</sup>
4. At the outset, it is difficult to understand the reasons why the Department has refused to grant an EA for the Project in circumstances where all activities have been properly

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<sup>1</sup> GN R 993 as published in the Government Gazette 3803 of 8 December 2014

Csp 7 Cover Letter

**Partners in office at Cape Town:** RB Africa AR Bowley SJ Chong KM Colman JJ Daniels MA Diemont HJ du Preez AE Esterhuizen MJR Evans G Fitzmaurice C Gabriel S Hockey PM Holloway AV Ismail KA Jarvis S Jooste LA Kahn A Keyser CS Meyer LE Mostert RA Nelson Z Rawoot K Rew H Samsodien J Smit L Stein A Toefy PZ Vanda DM Visagie

**Senior Partner:** JC Els **Managing Partner:** SJ Hutton **Partners:** RB Africa NG Alp AE Bennett DHL Booysen AR Bowley MS Burger A Christie RS Coelho KM Colman KE Coster K Couzyn JH Davies JHB de Lange MA Diemont DA Dingley HJ du Preez CP du Toit AE Esterhuizen MJR Evans GA Fichardt JB Forman C Gabriel PD Grealy JM Harvey MH Hathorn S Hockey PM Holloway AV Ismail KA Jarvis S Jooste LA Kahn M Kennedy A Keyser L Marais S McCafferty MC McIntosh SI Meltzer SM Methula CS Meyer AJ Mills JA Milner D Milo VM Movshovich M Mtshali RA Nelson ZN Ntshona MB Nzimande N Paige AMT Pardini AS Parry GR Penfold NJA Robb DC Rudman JW Scholtz KE Shepherd AJ Simpson N Singh L Stein PS Stein LJ Swaine A Toefy PZ Vanda D Venter MG Versfeld TA Versfeld DM Visagie RH Wilson M Yudaken

**Chief Operating Officer:** SA Boyd

Webber Wentzel is associated with ALN



described and assessed and where no environmental fatal flaws have been identified. Moreover, the successful implementation of the Project will result in a significant capital investment in clean renewable energy that will directly benefit the local community and the Northern Cape Region as a whole. The implementation of renewable projects has resulted in local communities directly benefitting from those building and operating renewable energy projects, as local communities within 50km of the power plant must have ownership in the project. This means that local communities receive a portion of profits for the life span of the projects. The Project is in line with the government's strategic objectives of increasing investment and growth opportunities in the impoverished Northern Cape, as well the government's commitment to generate power through renewable energy.

5. The Paris Agreement, implemented under the United Nations Framework Convention on Climate Change, defines the global fight against climate change and sets out benchmarks on building a low carbon future, was ratified by South Africa on 2 November 2016. This will require an even faster rollout of renewable energy projects in South Africa. The 17,600MW allocated to solar energy in the draft 2016 Integrated Resource Plan is evidence of the government's commitment to this.
6. Each reason advanced in supporting the decision to refuse the EA is either misconceived, or is factually incorrect. In particular, it is alleged that there certain insufficiencies in the EIAR when, in fact, this is not the case at all. The only inferences that can be drawn from this is that the decision-maker did not properly consider the EIAR.
7. There are a number of mistakes of fact in the reasons provided for the decision. The Appellant believes that the Chief Director did not properly consider the EIAR and acted incorrectly in deciding to refuse the EA.
8. Each reason supporting the decision to refuse the EA is responded to separately and comprehensively in the Comments and Responses document. The Appellant wishes to emphasise the following:
  - 8.1 that it is clear from the specialist investigation reports that all identified impacts can be reduced to moderate to low significance with the implementation of appropriate mitigation. There are no impacts identified which could not be mitigated to an acceptable level;

- 8.2 any environmental impacts at the Project site are considered to be acceptable provided that the mitigation measures as outlined in the environmental management programme are adhered to; and
- 8.3 the Project will offset the localised environmental impacts at the site by the placement of infrastructure within lower sensitivity areas
9. We submit that on a proper consideration of the EIAR and the responses to the reasons for the decision not grant an EA as set out in the attached Comments and Responses document, that the Minister should uphold the appeal and grant the EA.

Yours faithfully

**WEBBER WENTZEL**

Marius Diemont

p.p. 

Direct tel: 021 431 7390

Email: [Marius.diemont@webberwentzel.com](mailto:Marius.diemont@webberwentzel.com)

**150MW ILANGA CONCENTRATED SOLAR POWER TOWER 7 SOLAR ENERGY FACILITY ON PORTION 2 OF THE FARM MATJIESRIVIER 41 AND PORTION 4 OF THE FARM TROOILAPS PAN 53 NEAR UPINGTON WITHIN THE KHEIS LOCAL MUNICIPALITY AND THE NORTHERN CAPE PROVINCE**

**DEA REF NO.: 14/12/16/3/3/2/905**

Reason for refusal	Response
<p>a) The cumulative impacts on protected species <i>Boscia albitrunca</i> and <i>Boscia foetida</i> is unacceptable. Further investigation into a possible offset agreement is required to reduce the ecological impacts to an acceptable level.</p>	<p>According to the ecological impact assessment, although the development would result in the loss of fairly large numbers of <i>Boscia</i>, this is not a rare or threatened tree species and the development would not compromise the local populations of this species which remains widespread in the area.</p> <p>Consultation between the developer and DAFF, as well as comments received on the EIA Report concluded that the proposed project on its own would most likely not trigger an offset but that a land offset would be required should several projects within the broader area be implemented. As detailed in the Comments and Responses Report, whether or not an offset would be required, would usually be evaluated by DAFF following the walk-through of the final approved development footprint and the establishment of how many individuals of protected trees would be impacted. The developer committed to the implementation of such a plan.</p> <p>This comment was raised by the DEA as part of the process and was responded to within the final EIA Report, detailing DAFF's requirements.</p>
<p>b) The hydrological impact assessment requested by the Department of Environmental Affairs: Strategic Infrastructure Developments Unit in their comments on the draft SR, acceptance of FSR and comments on the draft EIAr dated 29 February, 22 April 2016 and 08 August 2016, respectively was not undertaken.</p>	<p>A hydrology report indicating the impacts of the siting of the facility on hydrological features was included as Appendix Q of the FEIR. As indicated on the layout maps within Appendix P, the small drainage line which falls within the broader site is not impacted by the proposed infrastructure.</p>
<p>c) Mitigation for impacts on bats cannot be guaranteed.</p>	<p>Mitigation measures recommended are based on proven measures implemented internationally. On-going monitoring of the facility can inform adaptive mitigation if required. The conclusion of the bat impact study is that the risk of mortality as a result of interactions with the solar facility infrastructure (such as the ACC) is therefore considered to be low as there is little potential for bats to come into contact with heated surfaces and/or steam.</p>
<p>d) No alternative water sources have been identified and assessed.</p>	<p>Water source alternatives are discussed in Section 2.3.4 of the FEIR. The following is detailed in this section:</p>

Reason for refusal	Response
	<p><i>The following alternative water sources were considered:</i></p> <ul style="list-style-type: none"> <li>» <i>Piping water from the //Khara Hais Local Municipality;</i></li> <li>» <i>Abstraction from groundwater resources; or</i></li> <li>» <i>Abstraction from the Gariep River (Orange River).</i></li> </ul> <p><i>Following investigation of these water sources by the applicant, the following conclusions have been made:</i></p> <ul style="list-style-type: none"> <li>» <i>There are no municipal water pipelines within close proximity to the site. It would therefore be required that lengthy pipelines be constructed in order to provide water to the site. This alternative is not considered technically and economically feasible.</i></li> <li>» <i>As the area is arid in nature, groundwater supply is limited. Abstraction of this resource would most likely impact on the supply available to local users in the area as a result of the limited yield. This alternative is not considered to be feasible from a technical and environmental (social) perspective.</i></li> <li>» <i>The Department of Water and Sanitation (DWS) has been requested to provide an indication that water could be available from the Orange River for the project. This confirmation was still outstanding at the time of compiling this report. Based on previous correspondence with DWS, it is understood that power generation is considered to be a strategic priority and that water would therefore be made available for this purpose. Therefore the abstraction of water from the Orange River is considered a feasible alternative. A water supply pipeline is required to be constructed from the abstraction point to the facility, a distance of 21km. This infrastructure is assessed within a separate Basic Assessment process.</i></li> </ul> <p><i>The abstraction of water from the Orange River is therefore considered as the only feasible alternative.</i></p> <p>The above is reiterated in Chapter 8 of the FEIR.</p>
<p>e) No commitment or confirmation of the availability of water on the Gariep River from the Department of Water and Sanitation was provided.</p>	<p>Although no confirmation of water supply was provided by DWS at the time of submitting the FEIR, the report states <i>"Based on previous correspondence with DWS, it is understood that power generation is considered to be a strategic priority</i></p>

Reason for refusal	Response
	<p><i>and that water would therefore be made available for this purpose. Therefore the abstraction of water from the Orange River is considered a feasible alternative."</i></p> <p>Confirmation of water availability is only provided by DWS for projects bid into the REIPPPP process and not usually during the EIA process. Water availability would be confirmed as part of the Water Use License application process, prior to construction of the project.</p>
<p>f) Comments from Birdlife South Africa regarding the seasons in which the site visits for the avifaunal study were undertaken, the uncertainty regarding the prediction and mitigation of impacts, the avifaunal specialist's reliance of the priority species list drawn by the Birds and Wind Energy Specialist Group (given that these applications are CSP facilities) as well as the uncertainty regarding the effectiveness of proposed mitigation measures were not adequately addressed.</p>	<p><b><u>Timing of surveys:</u></b></p> <p>A motivation for the timing of the avifauna site visits undertaken is included within Appendix E-1 of the FEIR. This motivation is based on scientific evidence regarding the most appropriate timeframes to record avifaunal movements in the study area. As indicated, such visits were timed to:</p> <ul style="list-style-type: none"> <li>» capture the first breeding peak of resident arid-adapted birds in October-November</li> <li>» capture the influx of nomadic birds that arrive with the rains and breed 2-4 weeks later</li> </ul> <p>Undertaking the surveys in winter and summer as required by the DEA would have resulted in an under-estimation of the bird communities in the area.</p> <p><b><u>Selection of priority species:</u></b></p> <p>In the absence of information available on bird species vulnerable to collisions with CSP facilities (due to limited information in this regard in South Africa), the avifauna specialist used the data regarding birds vulnerable to collisions available from a verified source. According to the specialist report "We have used Birdlife South Africa's list and taken the top 100 species as the most likely to collide with power lines". There is no reference to the Birds and Wind Energy Specialist Group list of priority species.</p>
<p>In view of the above, the competent authority is of the opinion that the proposed listed activities will conflict with the general objectives of integrated environmental management as stipulated in Chapter 5 of the National Environmental Management Act, 1998 (Act No 107 of 1998) and that any potentially detrimental environmental impacts resulting from the listed activities may not be mitigated to acceptable levels and should therefore be</p>	<p>This statement is not supported by the reasons provided for the refusal. From the specialist investigations undertaken within the EIA process, it was concluded that all impacts can be reduced to acceptable levels with the implementation of appropriate mitigation. There are no impacts identified which could not be mitigated to an acceptable level. The report concluded the following in terms of costs and benefits of the project:</p>

Reason for refusal	Response
<p>prevented.</p>	<p><i>Environmental (natural environment, economic and social) costs can be expected to arise from the project proceeding. This could include:</i></p> <ul style="list-style-type: none"> <li>» <i>Direct loss of biodiversity, flora and fauna due to the clearing of land for the construction and utilisation of land for the Ilanga Tower 1 Facility (which is limited to the development footprint of 703ha). The cost of loss of biodiversity is expected to be limited as a result of the wide distribution of the affected vegetation type and the limited presence of species of conservation concern within the development area.</i></li> <li>» <i>Visual impacts associated with the CSP Facility. The cost of loss of visual quality to the area is expected to be low as a result of the location of the facility in relation to sensitive visual receptors, as well as the nature of the topography of the area.</i></li> <li>» <i>Change in land-use and loss of land available for agriculture on the development footprint. The cost in this regard is expected to be limited due to the limited footprint of the facility (less than 15% of the broader site), the low agricultural potential of the property and the fact that current agricultural activities can continue on the remainder of the property during construction and operation.</i></li> </ul> <p><i>These costs are expected to occur at a local and site level and are considered acceptable provided the mitigation measures as outlined in the EMPr are adhered to. No environmental fatal flaws associated with the proposed project have been identified.</i></p> <p><i>The positive implications of establishing the Ilanga CSP 7 Facility on the demarcated site include:</i></p> <ul style="list-style-type: none"> <li>» <i>The project will result in important socio-economic benefits at the local and regional scale through job creation, procurement of materials and provision of services and other associated downstream economic development (as detailed in Chapter 2 of this report). These will persist during the preconstruction, construction and operational phases of the project.</i></li> <li>» <i>The project is considered to be a suitable land use for the proposed site due to the low potential for commercial agriculture. Development of the facility will require the implementation of appropriate management actions which could</i></li> </ul>

Reason for refusal	Response
	<p><i>have positive impacts on the surrounding areas specifically in terms of alien vegetation and erosion management.</i></p> <ul style="list-style-type: none"> <li>» <i>The project contributes towards the Provincial and Local goals for the development of renewable energy as outlined in the respective SDFs and IDPs.</i></li> <li>» <i>The project is located within an area demarcated for solar development at a Provincial and Local scale, and is located within an area where a number of CSP facilities are already authorised (facilitating consolidation of similar infrastructure). The location is therefore considered desirable</i></li> <li>» <i>The project serves to diversify the economy and electricity generation mix of South Africa by addition of solar energy to the mix. As a result of the on-site storage associated with the project, it has the potential to provide extended periods of power (for 18 hours a day) to the grid. This will assist in stabilising the power supply during the periods of the day when this is required most.</i></li> </ul> <p><i>The benefits of the project are expected to occur at a national, regional and local level. As the costs to the environment at a site specific level have been largely limited through the appropriate placement of infrastructure on the site within lower sensitivity areas, the expected benefits of the project are expected to partially offset the localised environmental costs of the project.</i></p>