



environmental affairs

Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA

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DEA Reference: 14/12/16/3/3/2/837

Enquiries: Mr Herman Alberts

Telephone: (012) 399 9371 **E-mail:** HALberts@environment.gov.za

Mr Mitchell Hodgson
Scatec Solar SA 330 (Pty) Ltd
Unit 109B, The Foundry
75 Prestwich Street
Green Point
CAPE TOWN
8005

Telephone Number: (087) 702 5868
E-mail Address: Mitchell.hodgson@scatecsolar.com

PER EMAIL / MAIL

Dear Mr Hodgson

REFUSAL OF ENVIRONMENTAL AUTHORISATION IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT 107 OF 1998) FOR THE 75 MW KENHARDT PV1 SOLAR PHOTOVOLTAIC FACILITY ON THE REMAINING EXTENT OF ONDER RUGZEER FARM 168, NORTH-EAST OF KENHARDT, NORTHERN CAPE PROVINCE

With reference to the above application, please be advised that the Department has decided to refuse authorisation. The Environmental Authorisation (EA) and reasons for the decision are attached herewith.

In terms of Regulation 4(2) of the Environmental Impact Assessment Regulations, 2014 (the Regulations), you are instructed to notify all registered interested and affected parties, in writing and within 14 (fourteen) days of the date of the EA, of the Department's decision in respect of your application as well as the provisions regarding the submission of appeals that are contained in the Regulations.

Your attention is drawn to Chapter 2 of Government Notice No. R.993, which prescribes the appeal procedure to be followed. An appellant must submit an appeal to the appeal administrator, and a copy of the appeal to the applicant, any registered interested and affected party and any organ of state with interest in the matter within 20 days from the date that the notification of the decision was sent to the registered interested and affected parties by the applicant.

By post: Private Bag X447,
Pretoria, 0001; or

By hand: Environment House
473 Steve Biko,
Arcadia,
Pretoria, 0083

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If the applicant wishes to lodge an appeal, it must also serve a copy of the notice of intention to appeal on all registered interested and affected parties as well as a notice indicating where, and for what period, the appeal submission will be available for inspection, should you intend to submit an appeal.

Appeals must be submitted in writing to:

Mr Z Hassam, Director: Appeals and Legal Review, of this Department at the above mentioned addresses. Mr Hassam can also be contacted at:

Tel: (012) 399 9356

Email: Appealsdirector@environment.gov.za

Please note that in terms of section 43(7) of the National Environmental Management Act, 1998, an appeal under section 43 of that Act will suspend the environmental authorisation or any provision or condition attached thereto. In the instance where an appeal is lodged, you may not commence with the activity until such time that the appeal is finalised.

For guidance on appeals submitted to the Minister in terms of NEMA and the SEMAs, please find a copy of the guideline on the administration of appeals on the Department's website: (https://www.environment.gov.za/documents/forms#legal_authorisations).

Kindly include a copy of this document with the letter of notification to interested and affected parties.

Yours faithfully



Mr Sabelo Malaza
Chief Director: Integrated Environmental Authorisations
Department of Environmental Affairs

Date: 04/08/2016

cc:	Mr Mitchell Hodgson	Scatec Solar SA 330 (Pty) Ltd	E-mail: Mitchell.hodgson@scatecsolar.com
	Ms A Yahphi	Northern Cape: DENC	E-mail: nyaphi@ncpg.gov.za
	HT Scheepers	!Kheis Local Municipality	E-mail: eresascheepers@vodamail.co.za
	Mr Z Hassam	Appeals Authority (DEA)	E-mail: AppealsDirectorate@environment.gov.za



environmental affairs

Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA

Refusal of Environmental Authorisation

In terms of Regulation 24(1)(b) of the Environmental Impact Assessment Regulations, 2014

The 75 MW Kenhardt PV1 Solar Photovoltaic Facility on the Remaining Extent of Onder Rugzeer Farm
168, north-east of Kenhardt, Northern Cape Province

ZF Mgcawu District Municipality

Application Reference Number:	<i>14/12/16/3/3/2/837</i>
Applicant:	<i>Scatec Solar SA 330 (Pty) Ltd</i>
Location of activity:	<i>Remaining Extent of Onder Rugzeer Farm, No 168 !Kheis Local Municipality ZF Mgcawu District Municipality Northern Cape Province</i>

Decision

The Department is satisfied, on the basis of information available to it, that the applicant should not be authorised to undertake the activity specified below.

Details regarding the basis on which the Department reached this decision are set out in Annexure 1.

Activities refused

By virtue of the powers conferred on it by the National Environmental Management Act, 1998 (Act 107 of 1998) and the Environmental Impact Assessment Regulations, 2014 the Department hereby refuses Environmental Authorisation for –

SCATEC SOLAR SA 330 (PTY) LTD

with the following contact details –

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to undertake the following activities (hereafter referred to as "the activity") indicated in Regulations GN R. 983, GN R. 984 and GN R. 985:

Activity number	Activity description
<p><u>GN R. 983 Item 12:</u> <i>"The development of:</i> <i>(x) buildings exceeding 100 square metres in size;</i> <i>(xii) infrastructure or structures with a physical footprint of 100 square metres or more; where such development occurs-</i> <i>a) within a watercourse;</i> <i>b) in front of a development setback; or</i> <i>c) if no development setback exists, within 32 metres of a watercourse, measured from the edge of a watercourse;"</i></p>	<p>The proposed 75 MW Solar PV facility will entail the construction of building infrastructure and structures (such as the solar field, offices, workshop/warehouse, ablution facilities, operational and maintenance control centre, on-site substation, laydown area and security enclosures, as well as the widening of the access road etc.). Therefore, infrastructure associated with the proposed project may occur within the minor drainage lines or within 32 m of the edge of the minor (and major) drainage lines.</p>
<p><u>GN R. 983 Item 19:</u> <i>"The infilling or depositing of any material of more than 5m³ into, or the dredging, excavation, removal or moving of soil, sand, shells, shell grit, pebbles or rock of more than 5m³ from –</i> <i>(i) A watercourse..."</i></p>	<p>The proposed project may entail the excavation, removal and moving of more than 5m³ of soil, sand, pebbles or rock from the nearby watercourses. The proposed project may also entail the infilling of more than 5 m³ of material into the nearby watercourses.</p>
<p><u>GN R. 983 Item 28:</u> <i>"Residential, mixed, retail, commercial, industrial or institutional developments where such land was used for agriculture or afforestation on or after 01 April 1998 and where such development:</i> <i>(ii) will occur outside an urban area, where the total land to be developed is bigger than 1 hectare..."</i></p>	<p>The proposed project will take place on the Remaining Extent of Onder Rugzeer Farm 168, north-east of Kenhardt in the Northern Cape. It is understood that the land is currently used for agricultural purposes (mainly grazing).</p>
<p><u>GN R. 983 Item 56:</u> <i>"The widening of a road by more than 6 metres, or the lengthening of a road by more than 1 kilometre:</i></p>	<p>In terms of access, the proposed project site can be accessed via an existing gravel road and the</p>

<p><i>(i) where no reserve exists, where the existing road is wider than 8 metres...</i></p>	<p>existing Transnet Service Road (private). Both access routes will be considered and included in the proposed project. Discussions are being held with Transnet and the Project Applicant regarding the potential use of the Transnet Road and associated specific requirements. However, should the Transnet Service Road not be used for access, then the unnamed farm gravel road will be used. This farm road, however, will need to be upgraded and widened by more than 6 m (where required).</p>
<p><u>GN R. 984 Item 1:</u> <i>"The development of facilities or infrastructure for the generation of electricity from a renewable resource where the electricity output is 20 megawatts or more, excluding where such development of facilities or infrastructure is for photovoltaic installations and occurs within an urban area."</i></p>	<p>The proposed project will entail the construction of a 75 MW Solar PV facility (i.e. facility for the generation of electricity from a renewable resource). The proposed project will be constructed on the Remaining Extent of Onder Rugzeer Farm 168, approximately 80 km south of Upington and 30 km north-east of Kenhardt within the !Kheis Local Municipality, Northern Cape Province. Hence the proposed project will take place outside of an urban area.</p>
<p><u>GN R. 984 Item 15:</u> <i>"The clearance of an area of 20 hectares or more of indigenous vegetation..."</i></p>	<p>The proposed 75 MW solar PV facility (i.e. Kenhardt PV1) will have an estimated footprint of approximately 250 ha. The Kenhardt PV 1, PV 2 and PV 3 proposed projects will have a collective footprint of approximately 750 ha. As a result, more than 20 ha of indigenous vegetation could possibly be removed for the construction of the proposed Solar PV facility.</p>
<p><u>GN R. 985 Item 18:</u> <i>"The widening of a road by more than 4 metres, or the lengthening of a road by more than 1 kilometre."</i></p>	<p>In terms of access, the proposed project site can be accessed via an existing gravel road and the</p>

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<p>(a) In Northern Cape province: (ii) outside urban areas and (ii) Areas on the watercourse side of the development setback line or within 100 metres from the edge of a watercourse where no such setback line has been determined."</p>	<p>existing Transnet Service Road (private). Both access routes will be considered and included in the proposed project. Discussions are being held with Transnet and the Project Applicant regarding the potential use of the Transnet Road and associated specific requirements. However, should the Transnet Service Road not be used for access, then the unnamed farm gravel road will be used. This farm road, however, will need to be upgraded and widened by more than 6 m (where required).</p>
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as described in the final Environmental Impact Assessment Report (EIAr) dated April 2016 at:

21 SG Code:

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- for the 75 MW Kenhardt PV1 Solar Photovoltaic Facility on the Remaining Extent of Onder Rugzeer Farm 168, north-east of Kenhardt, Northern Cape Province, hereafter referred to as "the property".

The infrastructure associated with this facility includes:

- Solar field;
- Building infrastructure;
- 132 kV overhead transmission line (which will be subject to a separate Basic Assessment Process, referred to as Kenhardt PV1 – Transmission Line);
- Associated electrical infrastructure at the Eskom Nieuwehoop Substation (including but not limited to an additional feeder bay, Busbars, transformer bay and extension to the platform at the substation) (which will be subject to a separate Basic Assessment Process, referred to as Kenhardt PV1 – Transmission Line);
- On-site substation;
- 33 kV internal transmission lines/underground cables;
- Underground low voltage cables or cable trays;
- Access roads and internal gravel roads;
- Fencing;

- Panel maintenance and cleaning area;
- Stormwater channels;
- Water pipelines; and,
- Temporary work area during the construction phase (i.e. laydown area).

Legislative Requirements

Scope of authorisation

1. Authorisation is refused for the 75 MW Kenhardt PV1 Solar Photovoltaic Facility on the Remaining Extent of Onder Rugzeer Farm 168, north-east of Kenhardt in the Northern Cape Province.

Notification of authorisation and right to appeal

2. The holder of the authorisation must notify every registered interested and affected party, in writing and within 14 (fourteen) calendar days of the date of this environmental authorisation, of the decision to refuse the activity.
3. The notification referred to must –
 - 3.1. specify the date on which the authorisation was issued;
 - 3.2. inform the interested and affected party of the appeal procedure provided for in the National Appeal Regulations, 2014;
 - 3.3. advise the interested and affected party that a copy of the authorisation will be furnished on request; and
 - 3.4. give the reasons of the competent authority for the decision.
4. The holder of the authorisation must publish a notice –
 - 4.1. informing interested and affected parties of the decision;
 - 4.2. informing interested and affected parties where the decision can be accessed; and
 - 4.3. drawing the attention of interested and affected parties to the fact that an appeal may be lodged against this decision in terms of the National Appeal Regulations, 2014.
5. A shapefile of the refused preferred development layout/footprint must be submitted to this Department within two months from the date of this decision. The shapefile must be created using the Hartebeesthoek 94 Datum and the data should be in Decimal Degree Format using the WGS 84 Spheroid. The shapefile must include at a minimum the following extensions i.e. .shp; .shx; .dbf; .prj; and, .xml (Metadata file). If specific symbology was assigned to the file, then the .avl and/or the .lyr file must also be included. Data

must be mapped at a scale of 1:10 000 (please specify if an alternative scale was used). The metadata must include a description of the base data used for digitizing. The shapefile must be submitted in a zip file using the EIA application reference number as the title. The shape file must be submitted to:

Postal Address:

Department of Environmental Affairs
Private Bag X447
Pretoria
0001

Physical address:

Department of Environmental Affairs
Environment House
473 Steve Biko Road,
Arcadia,
Pretoria

For Attention: Mr Muhammad Essop
Integrated Environmental Authorisations
Strategic Infrastructure Developments
Telephone Number: (012) 399 9406
Email Address: MEssop@environment.gov.za

Date of refusal of environmental authorisation: 04/08/2016


Mr Sabelo Malaza

Chief Director: Integrated Environmental Authorisations
Department of Environmental Affairs

Annexure 1: Reasons for Decision

1. Information considered in making the decision

In reaching its decision, the Department took, *inter alia*, the following into consideration -

- a) The information contained in the application form submitted on 02 October 2015 and acknowledged by the Department on 23 October 2016;
- b) The information contained in the Environmental Impact Assessment Report (EIAR) dated April 2016 and received by this Department on 18 April 2016;
- c) The comments received during the Scoping and EIA phases of the application and submitted as part of the EIAR dated April 2016;
- d) Mitigation measures as proposed in the EIAR dated April 2016 and the EMPr submitted as part of the EIAR dated April 2016.
- e) Specialist studies submitted as part of the EIAR dated April 2016 and received by this Department on 18 April 2016; and
- f) The objectives and requirements of relevant legislation, policies and guidelines, including section 2 of the National Environmental Management Act, 1998 (Act 107 of 1998).

2. Key factors considered in making the decision

A summary of the issues which, in the Department's view, were of the most significance is set out below-

- a) Compliance of the EIAR dated April 2016 and submitted on 18 April 2016; with Appendix 3 and Appendix 4 of GN R. 982 of 2014;
- b) The findings of all the specialist studies conducted and submitted as part of the EIAR dated April 2016 along with their recommended mitigation measures;
- c) The need for the proposed project and provision of electricity to the national grid in terms of the Renewable Energy Independent Power Producers Procurement Programme (REIPPPP) as required by the Department of Energy.
- d) Description of the environment that may be affected by the activity and the manner in which the physical, biological, social, economic and cultural aspects of the environment may be affected by the proposed activity;
- e) The location of the proposed development within the Karoo Central Astronomy Area and the significance of identified impacts to the Square Kilometre Array South Africa (SKA-SA).

- f) Concerns raised and comments provided by the SKA-SA on the findings of the RFI Emissions study dated April 2016 and submitted as part of the EIAr dated April 2016.
- g) The selection of location alternatives in terms of the EIA Regulations, 2014 and in relation to the specialist inputs.
- h) All legislation and guidelines that have been considered in the preparation of the EIAr dated April 2016.
- i) Compliance of the EIAr dated April 2016 and submitted on 18 April 2016; with Chapter 5 of GN R. 982 of 2014.
- j) The cumulative impacts the proposed development will have in the area due to other Renewable Energy Facilities being authorised.

3. Findings

After consideration of the information and factors listed above, the Department made the following findings -

- a) A sufficient public participation process was undertaken and the applicant has satisfied the minimum requirements as prescribed in the EIA Regulations, 2014 for public involvement.
- b) The procedures followed for impact assessment is deemed adequate for the decision-making process.
- c) Based on the summary of the Electromagnetic Interference Technical Report prepared by the CSIR, dated April 2016, the proposed Kenhardt PV1 facility would exceed protection levels toward the closest SKA telescope.
- d) The summary of the Electromagnetic Interference Technical Report prepared by the CSIR, dated April 2016 further indicates that between 20 and 40 dB of attenuation is achievable to mitigate the risk. However, SKA-SA indicated that the lower limit of this range would still be below what would be required to comply with the SKA protection requirements.
- e) Based on comments from the SKA-SA assuming all proposed mitigation measures are implemented and achieved, the expected attenuation for Kenhardt PV1 would pose a low to medium risk of detrimental impact.
- f) It must be noted that the final EIAr did not include the detailed EMI and RFI Report undertaken by MESA, but rather a summary of the Electromagnetic Interference Technical Report prepared by the CSIR.
- g) SKA – SA recommended that an appropriate EMC control plan should be developed to identify specific mitigation measures that will be implemented for Kenhardt PV1.
- h) SKA-SA further indicated that any medium or high risk would mean that, unless specific and detail mitigation measures are designed and implemented, it would be a fatal flaw.
- i) The summary of the Electromagnetic Interference Technical Report prepared by the CSIR, dated April 2016 concluded that it cannot guarantee the efficiency of proposed mitigation measures to comply with the required SKA-SA levels.

- j) The principles of the mitigation hierarchy has not been fully applied.
- k) No new alternative locations for the proposed PV facility and its associated infrastructure have been investigated, bearing in mind the concerns raised and recommendations made by the SKA-SA along with the findings of the RFI Emissions study.
- l) It should be noted that the Department authorised a total of approximately 231 photovoltaic solar facilities equivalent to 13378 MWs in the Northern Cape Province. There are also a number of renewable energy projects that have been authorised within the surrounding areas and are in less sensitive environments.
- m) The cumulative impacts of the already authorised projects in the area could potentially raise the impact ratings of these projects.
- n) Given the potential adverse threats posed by the project to the SKA-SA, the lack of assessment of new location alternatives and the limitations of the RFI study, the proposed development on the current site is not supported.

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 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 prevented altogether.