

15 March 2021

Dear Stakeholder and Interested & Affected Party,

**UPILANGA PHOTOVOLTAIC (PV) ONE DEVELOPMENT AND ASSOCIATED INFRASTRUCTURE NEAR
UPINGTON, NORTHERN CAPE PROVINCE
(DEFF Reference No.: 14/12/16/3/3/1/2218)**

NOTIFICATION OF REFUSAL OF ENVIRONMENTAL AUTHORISATION

Envelo Capital Projects (Pty) Ltd submitted an application for Environmental Authorisation (EA) to the Department of Environment, Forestry and Fisheries¹ (DEFF) for the development of a 100MW solar photovoltaic (PV) facility on Portion 3 of the Farm Matjesrivier 41 and Lot 944, located near Upington Dawid Kruiper Local Municipality, ZF Mgcawu District Municipality, Northern Cape Province.

The Applicant hereby notifies all registered interested and affected parties, as instructed by the decision issued by the Department on 26 February 2021, and in terms of Regulation 4(2) of the Environmental Impact Assessment Regulations, 2014, as amended, of the outcome of the Application for Environmental Authorisation. The Department has refused the Environmental Authorisation for the above-mentioned project.

NOTICE OF APPEAL PROCESS

As an interested and affected party, your attention is drawn to Chapter 2, Regulation 4(2) of Government Notice No. 993, which prescribes the appeal procedure to be followed. Should you wish to appeal the decision, or any part of the decision, by the Department, you must submit your 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 registered interested and affected parties by the applicant (i.e. Monday, 15 March 2021).

¹ Previously known as the Department of Environmental Affairs (DEA)

Appeals must be submitted, in writing, on the prescribed form to:

The Director: Appeals and Legal Review
Department of Environment, Forestry and Fisheries

By e-mail: appeals@environment.gov.za

By hand: Environmental House, 473 Steve Biko Street, Arcadia, Pretoria, 0083
or

By post: Private Bag X447, Pretoria, 0001

To obtain the prescribed appeal form and for guidance on the submission of appeals, please visit the DEFF's website at: https://www.environment.gov.za/documents/forms#legal_authorisations or request a copy of the documents at appealsdirector@environment.gov.za

A copy of the appeal Regulations is included with this notification letter.

Please note that **appeals should be submitted to the DEFF and not to the consultant** (Savannah Environmental).

Kind regards,



Nicolene Venter

Public Participation and Social Consultant

Document Attached: Environmental Authorisation
National Appeals Regulations, 2014
National Appeal Amendment Regulations, 2015



environment, forestry & fisheries

Department:
Environment, Forestry and Fisheries
REPUBLIC OF SOUTH AFRICA

Private Bag X 447· PRETORIA · 0001· Environment House ·473 Steve Biko Road, Arcadia· PRETORIA

DEFF Reference: 14/12/16/3/3/1/2218

Enquiries: Ms Thabile Sangweni

Telephone: (012) 399 9409 E-mail: TSangweni@environment.gov.za

Mr Pancho Ndebele
Emvelo Capital Projects (Pty) Ltd
Private Bag X9
BENMORE
2196

Telephone Number: (010) 593 0440
Email Address: Pancho@emvelo.co.za

PER E-MAIL / MAIL

Dear Mr Ndebele

APPLICATION FOR ENVIRONMENTAL AUTHORISATION IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998: GN R. 982/983/985 FOR THE 100MW UPILANGA PV1 SOLAR ENERGY FACILITY AND ITS ASSOCIATED INFRASTRUCTURE NEAR UPINGTON WITHIN THE DAWID KRUIPER LOCAL MUNICIPALITY IN THE 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, as amended (the EIA Regulations), you are instructed to notify all registered interested and affected parties, in writing and within 14 (fourteen) days of the date of the decision, of the decision as well as the provisions regarding the submission of appeals that are contained in the Regulations.

In terms of the Promotion of Administrative Justice Act, Act No. 3 of 2000, you are entitled to the right to fair, lawful and reasonable administrative action; and to written reasons for administrative action that affects you negatively. Further your attention is drawn to the provisions of the Protection of Personal Information Act, Act No. 4 of 2013 which stipulates that the Department should conduct itself in a responsible manner when collecting, processing, storing and sharing an individual or another entity's personal information by holding the Department accountable should the Department abuses or compromises your personal information in any way.

Your attention is drawn to Chapter 2 of the National Environmental Management Act, Act No. 107 of 1998 National Appeal Regulations published under Government Notice R993 in Government Gazette No. 38303 dated 08 December 2014 (National Appeal Regulations, 2014), which prescribe the appeal procedure to be followed. Kindly include a copy of this document (National Appeal Regulations, 2014) with the letter of notification to interested and affected parties in this matter.

Should any person wish to lodge an appeal against this decision, he/she must submit the 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; or the date that the notification of the decision was sent to the applicant by the Department, whichever is applicable.

Appeals must be submitted in writing in the prescribed form to:

The Director: Appeals and Legal Review of this Department at the below mentioned addresses.

By email: appeals@environment.gov.za;

By hand: Environment House
473 Steve Biko
Arcadia
Pretoria
0083; or

By post: Private Bag X447
Pretoria
0001

Please note that in terms of Section 43(7) of the National Environmental Management Act, Act No. 107 of 1998, as amended, the lodging of an appeal 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.

To obtain the prescribed appeal form and for guidance on the submission of appeals, please visit the Department's website at https://www.environment.gov.za/documents/forms#legal_authorisations or request a copy of the documents at appeals@environment.gov.za.

Yours faithfully



Mr Sabelo Malaza
Chief Director: Integrated Environmental Authorisations
Department of Environment, Forestry and Fisheries

Date: 08/03/2021

cc:	J Thomas	Savannah Environmental (Pty) Ltd	Email: joanne@savannahsa.com
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environment, forestry & fisheries

Department:
Environment, Forestry and Fisheries
REPUBLIC OF SOUTH AFRICA

Refusal of Environmental Authorisation

In terms of Regulation 20(1)(b) of the Environmental Impact Assessment Regulations, 2014,
as amended

The construction of the 100MW Uphilanga PV1 Solar Energy Facility and its associated infrastructure
near Upington within the Dawid Kruiper Local Municipality in the Northern Cape Province

ZF Mgcawu District Municipality

Authorisation register number:	<i>14/12/16/3/3/1/2218</i>
Last amended:	<i>First issue</i>
Holder of authorisation:	<i>Emvelo Capital Projects (Pty) Ltd</i>
Location of activity:	<i>Portion 3 of the farm Matjesrivier 41 Lot 944 within the Karos Settlement Dawid Kruiper Local Municipality ZF Mgcawu District Municipality Northern Cape Province</i>

This environmental authorisation does not negate the holder of the authorisation's responsibility to comply with any other statutory requirements that may be applicable to the undertaking of the activity.

Decision

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

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

Activities refused

By virtue of the powers conferred on it by the National Environmental Management Act, Act No. 107 of 1998, as amended and the Environmental Impact Assessment Regulations, 2014, as amended, the Department hereby refuses Environmental Authorisation to –

EMVELO CAPITAL PROJECTS (PTY) LTD

with the following contact details –

Mr Pancho Ndebele

Emvelo Capital Projects (Pty) Ltd

Private Bag X9

BENMORE

2196

Telephone Number: (010) 593 0440

Cellphone Number: 074 349 4336

Email Address: Pancho@emvelo.co.za

not to undertake the following activities (hereafter referred to as "the activity"):

Activity number	Activity description
<p><u>Listing Notice 1, Activity 11:</u></p> <p><i>"The development of facilities or infrastructure for the transmission and distribution of electricity-</i></p> <p><i>(i) outside urban areas or industrial complexes with a capacity of more than 33 but less than 275 kilovolts."</i></p>	<p>Upilanga PV1 will require the construction and operation of an on-site step up facility to convert power from Direct Current (DC) to Alternating Current (AC) and step up the electricity current from 11kV to 132kV that will connect to the on-site substation at authorised site.</p>
<p><u>Listing Notice 1, Activity 12:</u></p> <p><i>"The development of</i></p> <p><i>(ii) infrastructure or structures with a physical footprint of 100 square meters or more; where such development occurs</i></p> <p><i>(a) within a watercourse or</i></p> <p><i>(c) within 32 meters of a watercourse, measured from the edge of a watercourse."</i></p>	<p>The development of Upilanga PV1 will require the construction of infrastructure with a physical footprint of ~350ha, part of which will be within and within 32m of ephemeral watercourses identified within the development footprint.</p>
<p><u>Listing Notice 1, Activity 14:</u></p> <p><i>"The development and related operation of facilities or infrastructure, for the storage, or for the storage and handling, of a dangerous good, where such storage occurs in containers with a combined capacity of 80 cubic meters or more, but not exceeding 500 cubic meters."</i></p>	<p>The development and operation of Upilanga PV1 will require the storage of up to 80 cubic metres of dangerous goods, which will include flammable and combustible liquids such as oils associated with the on-site facility substation transformers, lubricants and solvents.</p>
<p><u>Listing Notice 1, Activity 19:</u></p> <p><i>"The infilling or depositing of any material of more than 10m³ into, or the dredging, excavation, removal or moving of soil, sand, shells, shell grit, pebbles or rock from a watercourse."</i></p>	<p>The development of Upilanga PV1 will require the removal or moving of soil within a watercourse during the construction of the solar PV facility. Ephemeral watercourses have been identified within the development footprint and the removal or moving of ~10m³ of soil will be required.</p>

<p><u>Listing Notice 1, Activity 24:</u> <i>"The development of a road (ii) with a reserve wider than 13.5 meters or where no reserve exists where the road is wider than 8 meters."</i></p>	<p>Upilanga PV1 will require the development of access roads (including internal access roads) with a width of between 4 and 10 meters.</p>
<p><u>Listing Notice 1, Activity 28:</u> <i>"Residential, mixed, retail, commercial, industrial, or institutional developments where such land was used for agriculture, game farming, equestrian purposes or afforestation on or after 01 April 1998 and where such development (ii) will occur outside an urban area, where the total land to be developed is bigger than 1 hectare."</i></p>	<p>Upilanga PV1 (considered to be industrial developments) will be constructed and operated on land used for agricultural purposes. The development area of the project is located outside of an urban area and the development footprint will have an extent of ~350ha.</p>
<p><u>Listing Notice 2, Activity 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."</i></p>	<p>Upilanga PV1 will make use of solar energy as a renewable energy resource and will have a contracted capacity of up to 100MW (AC).</p>
<p><u>Listing Notice 2, Activity 15:</u> <i>"The clearance of an area of 20 hectares or more of indigenous vegetation."</i></p>	<p>The project will require the clearance of an area of up to 350ha (equivalent to the development footprint) of vegetation. The project is proposed on a property where the predominant land use is grazing and comprises of indigenous vegetation. The project would therefore result in the clearance of an area of indigenous vegetation greater than 20ha in extent.</p>
<p><u>Listing Notice 1, Activity 10:</u> <i>"The development and related operation of facilities or infrastructure for the storage, or storage and handling of a dangerous good, where such storage occurs in containers with a combined capacity of 30 but not exceeding 80 cubic meters in the (g) Northern Cape"</i></p>	<p>Upilanga PV1 will require the storage and handling of dangerous goods for the construction and operation of the solar PV facility. Containers with a combined capacity of ~80m³ will be required. Ephemeral watercourses have been identified within the development footprint and</p>

<p>(ii) in areas within a watercourse or wetland; or within 100 meters from the edge of a watercourse or wetland; and (iii) outside urban areas."</p>	<p>storage of dangerous goods will be located within 100m of the watercourses.</p>
<p><u>Listing Notice 1, Activity 14:</u> "The development of (ii) infrastructure or structures with a physical footprint of 10 square meters or more, where such development occurs (a) within a watercourse, or (c) within 32 meters of a watercourse, measured from the edge of a watercourse, in (g) the Northern Cape, (ii) outside urban areas."</p>	<p>The development of Upilanga PV1 and associated infrastructure will require the construction of infrastructure with a physical footprint of ~350ha within and within 32m of ephemeral watercourses identified within the development footprint. The development area is located within the Northern Cape, outside urban areas.</p>

as described in the Basic Assessment Report (BAR) dated December 2020 at:

Corner coordinates of PV1	Latitude	Longitude
1	28°31'9.25"S	21°30'27.12"E
2	28°31'8.58"S	21°31'55.03"E
3	28°31'47.47"S	21°31'55.72"E
4	28°31'47.73"S	21°30'28.18"E

- for the 100MW Upilanga PV1 Solar Energy Facility and its associated infrastructure near Upington within the Dawid Kruiper Local Municipality in the Northern Cape Province, hereafter referred to as "the property".

The proposed Upilanga Solar Energy Facility will entail the following:

- Solar PV panels with a maximum height of 5m utilising single axis tracking; fixed axis tracking; dual axis tracking or fixed tilt mounting structures made of galvanised steel and aluminium;
- Grid alternatives using underground cables to connect to the on-site substations at authorised site and 1.4 and authorised grid connection to the Ilanga Substation;
- A step-up facility (transformer) to step up the electricity current from 11kV/22kV/33kV to 132kV;
- A temporary laydown area;

- Cabling between the panels, to be laid underground where practical, connecting the PV arrays to the inverter stations, O&M building and collector substation;
- An access road to the development area no more than 6m wide;
- Internal access roads within the PV panel array area with a maximum width of 4m;
- Perimeter security fencing around the development area; and,
- Operation and Maintenance buildings including a gate house and security building, control centre, offices, warehouses, a workshop and visitors centre.

Technical details of the proposed facility:

Component	Description/ Dimensions
Location of the site	Approximately 28km from Upington, Northern Cape Province
Export capacity	100MW
Preferred Site access	Via the existing N10 and via the existing unnamed tarred road to the existing Karoshoek CSP One facility. This unnamed road is to be extended by a ± 15 km long, ± 6 m wide tarred access road to the PV1 site or extended via a gravel access road to the PV1 site.

Legislative Requirements

Scope of authorisation

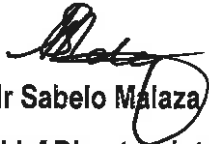
1. Authorisation is refused for the 100MW Upilanga PV1 Solar Energy Facility and its associated infrastructure near Upington within the Dawid Kruiper Local Municipality in the Northern Cape Province as described above.

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.

Date of refusal of environmental authorisation: 02/03/2021



Mr Sabelo Malaza

Chief Director: Integrated Environmental Authorisations

Department of Environment, Forestry and Fisheries

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 listed activities as applied for in the application form received on 03 August 2020.
- b) The information contained in the BAR dated December 2020.
- c) The comments received from the SAHRA, the Northern Cape Department of Agriculture, Environmental Affairs, Rural Development and Land Reform (NC DAEARD&LR), SARAO, SACAA, the Department of Water and Sanitation, Eskom and interested and affected parties as included in the BAR dated December 2020.
- d) The minutes of the meeting held between the NC DAEARD&LR, the Forestry Department, the EAP and the Ecologist on 11 November 2020 appended as Appendix C7 to the BAR dated December 2020.
- e) The information contained in the specialist studies contained within the appendices of the BAR dated December 2020 and as appears below:

Title	Prepared by	Date
Ecological Impact Assessment	3Foxes Biodiversity Solutions	April 2020
Ecological Impact And Offset Needs Analysis Study	3Foxes Biodiversity Solutions	October 2020
Avifauna Impact Assessment	3Foxes Biodiversity Solutions	July 2020
Aquatic Impact Assessment	EnviroSci (Pty) Ltd	June 2020
Soils and Agricultural Potential Assessment	ARC Institute for Soil, Climate and Water	January 2020
Heritage Impact Assessment	CTS Heritage	July 2020
Social Impact Assessment	Savannah Environmental	January 2020
Visual Impact Assessment	Logis	July 2020

- f) The Offset Analysis Study dated October 2020 and appended as Appendix D1 of the BAR dated December 2020.
- g) 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

All information presented to the Department was taken into account in the Department's consideration of the application. A summary of the issues which, in the Department's view, were of the most significance is set out below.

- a) The Offset Analysis Study dated October 2020 and appended as Appendix D1 of the BAR dated December 2020.
- b) The minutes of the meeting held between the NC DAEARD&LR, the Forestry Department, the EAP and the Ecologist on 11 November 2020 appended as Appendix C7 to the BAR dated December 2020.
- c) The comments by this Department on the draft BAR and amended draft BAR dated 31 August 2020 and 09 December 2020, respectively.

3. Findings

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

- a) This Department indicated in its comments that an offset plan must be included and attached as part of the BAR which is needed for decision making. This has not been complied with.
- b) The EAP has notified the Department in term of Regulation 19(1)(b) of the EIA Regulations, 2014 as amended and stated that comments were received from the DEFF and the DENC regarding the requirement for a Biodiversity Offset Plan. In order to address the comments and inputs associated with the inclusion of the offset plan, the BAR and Environmental Management Programme (EMPr) must be updated to reflect all necessary information and submitted for a further 30 days public participation review period to I&APs and stakeholders. The final BAR does not include the finalised offset study and in-principle agreements between the applicant and the relevant management authority.
- c) The recommendations of the EAP and the conditions to be included into the Environmental Authorisation does not satisfy the purpose of the EIA process, as most of the recommendations require that these be finalised post the issuance of the Environmental Authorisation, and before construction commences. Seeing that this was not included as part of the reports for decision making, this Department is not satisfied that the mitigation measures proposed as part of the assessment is sufficient to mitigate the impacts of the development, and is insufficient for decision making.
- d) This Department is not convinced that the offset proposed would mitigate the impacts of the proposed development and bring the impacts to an acceptable level.
- e) The Offset Analysis Study annexed as Appendix D1 to the BAR dated December 2020 does not constitute an offset plan as it does not answer questions that the offset plan seeks to answer for a decision to be

made i.e. detail the nature and extent of the offset, total loss of biodiversity vs net gain, where the loss will occur and where it will be replaced.

- f) Furthermore, the Offset Analysis Study reads like a proposal/draft with further discussions and agreements to be made.
- g) The final BAR does not contain legal agreements or at the very least, in-principle agreement letters between the applicant and the management authority that will manage the offset area as required and advised by this Department at the draft and amended draft BAR stages.
- h) The BAR in its current form is not adequate to make an informed decision on the abovementioned application.

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. The Environmental Authorisation is accordingly refused.