



forestry, fisheries & the environment

Department:
Forestry, Fisheries and the Environment
REPUBLIC OF SOUTH AFRICA

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

DFFE Reference: 14/12/16/3/3/1/2432
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Mr Eugene Marals
South Africa Mainstream Renewable Power Developments (Pty) Ltd
PO Box 45063
CLAREMONT
7800

Telephone Number: (021) 657 4045
Email Address: eugene.marals@mainstreamrp.com

PER EMAIL

Dear Mr Marals

APPLICATION FOR ENVIRONMENTAL AUTHORISATION IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, ACT NO. 107 OF 1998, AS AMENDED: FOR THE DAMLAAGTE SOLAR PV FACILITY GRID CONNECTION, FREE STATE PROVINCE

With reference to the above application, please be advised that the Competent Authority has decided to refuse the application for Environmental Authorisation. The reasons for this refusal are contained in the Record of Refusal, of which a copy is attached hereto.

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 fourteen (14) days of the date of the Record of Refusal, of the Competent Authority's decision as well as the provisions regarding the submission of appeals that are contained in the EIA Regulations.

In terms of the Promotion of Administrative Justice Act, 2000 (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, 2013 (Act No. 4 of 2013) which stipulates that the Competent Authority should conduct itself in a responsible manner when collecting, processing, storing and sharing an individual or another entity's personal information by holding the Competent Authority accountable should the Competent Authority abuses or compromises your personal information in any way.

Your attention is drawn to Chapter 2 of the National Environmental Management Act, 1998 (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.

MS.

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 twenty (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 Competent Authority, 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: appealsdirector@dfpe.gov.za;

By hand: Environment House
473 Steve Biko
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 Department's website at https://www.environment.gov.za/documents/forms#legal_authorisations or request a copy of the documents at appealsdirector@environment.gov.za.

Yours faithfully



Ms Millicent Solomons
Acting Chief Director: Integrated Environmental Authorisations
Department of Forestry, Fisheries and the Environment
Date: 14/03/2022

cc:	Stuart Heather-Clark	SLR Consulting Africa (South Africa) (Pty) Ltd	E-mail: shclark@slrconsulting.com
	Bruce Kannemeyer	Ngwathe Local Municipality	E-mail: mm@ngwathe.co.za
	Nicholas Amott	SLR Consulting Africa (South Africa) (Pty) Ltd	E-mail: namott@slrconsulting.com



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Department:
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Record of Refusal

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

The Damlaagte Solar PV Facility grid connection, Free State Province

Fezile Dabi District Municipality

Application Register Number:	<i>14/12/16/3/3/1/2432</i>
Applicant	<i>South Africa Mainstream Renewable Power Developments (Pty) Ltd</i>
Location of activity:	<i>Remaining Extent of Farm Damlaagte No. 229 Portion 3 of Farm Willow Grange No. 246 Remaining Extent of Farm Scafell No. 448 Ngwathe Local Municipality Free State Province</i>

Decision

The Competent Authority 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 Competent Authority reached this decision are set out in Annexure 1 to this Record of Refusal.

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 Competent Authority hereby refuses the application for Environmental Authorisation to –

SOUTH AFRICA MAINSTREAM RENEWABLE POWER DEVELOPMENTS (PTY) LTD

with the following contact details –

Mr Eugene Marais

PO Box 45063

CLAREMONT

7800

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Cell phone Number: (073) 871 5781

Email Address: eugene.marais@mainstreamrp.com

not to undertake the following activities (hereafter referred to as "the activity") indicated in Listing Notice 1 and Listing Notice 3 of the EIA Regulations, 2014 as amended:

Activity number	Activity description
<p><u>Listing Notice 1, Item 11:</u> <i>"The development of facilities or infrastructure for the transmission and distribution of electricity— (i) outside urban areas or industrial complexes with a capacity of more than 33 but less than 275 kilovolts".</i></p>	<p>The proposed project will require the construction and operation of a 33/132kV switching station and an overhead double circuit transmission line of up to 132kV. This infrastructure will facilitate the connection between the proposed 150MWac Damlaagte Solar PV Facility and the Eskom Scaffell MTS.</p>
<p><u>Listing Notice 1, Item 19:</u> <i>"The infilling or depositing of any material of more than 10 cubic metres into, or the dredging, excavation, removal or moving of soil, sand, shells, shell grit, pebbles, or rock of more than 10 cubic metres from a watercourse".</i></p>	<p>Internal access roads and electrical cabling required to connect the various PV facility infrastructure and components will collectively require the excavation, infilling or removal of soil exceeding 10m³ (exact values to be determined following layout finalisation).</p>
<p><u>Listing Notice 1, Item 24</u> <i>"The development of a road where the road is wider than 8 metres".</i></p>	<p>The development of the 33/132kV switching station will require the clearance of indigenous vegetation in excess of 1ha.</p>
<p><u>Listing Notice 1, Item 27</u> <i>"The clearance of an area of 1 hectares or more, but less than 20 hectares of indigenous vegetation, except where such clearance of indigenous vegetation is required for – (i) the undertaking of a linear activity; or maintenance purposes undertaken in accordance with a maintenance management plan".</i></p>	<p>The development of the 33/132kV switching station will require the clearance of an area in excess of 1ha.</p>
<p><u>Listing Notice 1, Item 28</u> <i>"Residential, mixed, retail, commercial, industrial, or institutional developments where such land was used</i></p>	<p>The proposed project will be established on land previously used for agricultural on or after 01 April</p>

<p><i>for agriculture, game farming, equestrian purposes, or afforestation on or after 01 April 1998 and where such development:</i></p> <p><i>(ii) will occur outside an urban area, where the total land to be developed is bigger than 1 hectare".</i></p>	<p>1998. The total footprint of the switching station for the proposed project is in excess of 1ha.</p>
<p><u>Listing Notice 3, Item 4</u></p> <p><i>"The development of a road wider than 4 metres within a reserve of less than 13.5 metres within</i></p> <p><i>(b) the Free State Province,</i></p> <p><i>(i) outside urban areas, and</i></p> <p><i>(ee) within critical biodiversity areas as identified in systematic biodiversity plans adopted by the competent authority or in bioregional plans."</i></p>	<p>The proposed project will require the construction of a road with a width of up to 12m. The project site is located within a CBA 2 area identified in terms of the Free State Biodiversity Plan (2015).</p>
<p><u>Listing Notice 3, Item 12</u></p> <p><i>"The clearance of area of 300 square metres or more of indigenous vegetation where such clearance of indigenous vegetation except where such clearance of indigenous vegetation is required for maintenance purposes undertaken in accordance with a maintenance management plan."</i></p> <p><i>b. Free State</i></p> <p><i>ii. Within critical biodiversity areas identified in bioregional plans;</i></p>	<p>The proposed project will require the clearance of an area with indigenous vegetation in excess of 300m² for the placement of foundations for pylons for the overhead transmission line. Thus, this section of the grid connection corridor to be cleared falls within a CBA 2 in the Free State Province, identified in terms of the Free State Biodiversity Plan (2015).</p>
<p><u>Listing Notice 3, Item 14</u></p> <p><i>"The development of –</i></p> <p><i>(ii) infrastructure or structures with a physical footprint of 10 square metres or more; where such development occurs –</i></p> <p><i>d) within 32 metres of a watercourse, measured from the edge of a watercourse".</i></p> <p><i>b. Free State</i></p> <p><i>i. Outside urban areas:</i></p>	<p>The proposed project may require the placement of infrastructure of 10m² or more, within 32m of a watercourse within a CBA 2 area in the Free State Province, identified in terms of the Free State Biodiversity Plan (2015).</p>

<p>(ff) Critical biodiversity areas or ecosystem service areas as identified in systematic biodiversity plans adopted by the competent authority or in bioregional plans;</p>	
<p>Listing Notice 3, Item 18 <i>"The widening of a road by more than 4 metres, or the lengthening of a road by more than 1 kilometre."</i> b. Free State <i>i. Outside urban areas:</i> (ee) Critical biodiversity areas as identified in systematic biodiversity plans adopted by the competent authority or in bioregional plans;</p>	<p>The proposed project will require the widening of existing roads to a width of up to 12m during the construction phase. It may be that the upgrades to the roads will be undertaken within existing roads that fall within CBA 2 area as identified by the Free State Biodiversity Plan (2015).</p>

as described in the Basic Assessment Report (BAR) dated October 2021 at:

Coordinates for Corridor Alternative 1 (Preferred):

	Latitude	Longitude
1	26°47'57.10"S	27°37'35.06"E
2	26°48'14.38"S	27°38'16.36"E
3	26°48'33.89"S	27°38'13.50"E
4	26°48'36.83"S	27°38'25.18"E
5	26°48'44.88"S	27°38'29.42"E
6	26°48'55.14"S	27°38'11.01"E
7	26°48'43.36"S	27°38'2.63"E

Coordinates for the switching station:

	Latitude	Longitude
	26°48'1.16"S	27°37'40.55"E

SG 21 Digit Code:

F	0	2	5	0	0	0	0	0	0	0	0	0	2	2	9	0	0	0	0	0
F	0	2	5	0	0	0	0	0	0	0	0	0	2	4	6	0	0	0	0	3
F	0	2	5	0	0	0	0	0	0	0	0	0	4	4	8	0	0	0	0	0

- for the Damlaagte Solar PV Facility grid connection in the Free State Province, hereafter referred to as "the property".

The project will include the following:

- Double-circuit overhead transmission line with a capacity of up to 132kV; and
- A switching station with a capacity of up to 33/132kV.

Legislative Requirements

Scope of authorisation

1. The application for Environmental Authorisation is refused for the Damlaagte Solar PV Facility grid connection, Free State Province, as described above.

Notification of refusal and right to appeal

2. The applicant must notify every registered Interested and affected party, of the Competent Authority's decision, in writing and within 14 (fourteen) calendar days of the date of this record of refusal.
3. The notification referred to must –
 - 3.1. specify the date on which the record of refusal 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 record of refusal will be furnished on request; and,
 - 3.4. give the reasons of the Competent Authority for the decision.

Date of refusal of the application for Environmental Authorisation: 14/03/2022.



Ms Milicent Solomons

Acting Chief Director: Integrated Environmental Authorisations

Department of Forestry, Fisheries and the Environment

Annexure 1: Reasons for Decision

1. Information considered in making the decision

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

- a) The listed activities as applied for in the application form received on 27 September 2021.
- b) The information contained in the BAR dated October 2021.
- c) Mitigation measures as proposed in the BAR and the EMPr dated October 2021.
- d) 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 Competent Authority was taken into account in the Competent Authority's consideration of the application. A summary of the issues which, in the Competent Authority's view, were of the most significance is set out below.

- a) The requirements for the contents of a BAR as outlined in Appendix 1 of the EIA Regulations, 2014 as amended.
- b) The findings of all the specialist studies conducted and their recommended mitigation measures and in particular the Biodiversity Impact Assessment Report dated June 2021.
- c) The comments provided by the Chief Directorate: Integrated Environmental Authorisations on the draft BAR dated 21 October 2021.
- d) The requirements as outlined in the Procedures for the Assessment and Minimum Criteria for Reporting in identified Environmental Themes in terms of Sections 24(5)(a) and (h) and 44 of the National Environmental Management Act, 1998, when applying for Environmental Authorisation, which were promulgated in Government Notice No. 320 of 20 March 2020 (i.e., "the Protocols") and in Government Notice No. 1150 of 30 October 2020 (i.e., protocols for terrestrial plant and animal species).

3. Findings

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

- a) The final BAR does not comply with the information and requirements outlined in the comments on the draft BAR provided by the Chief Directorate: Integrated Environmental Authorisations on 21 October 2021.

- b) The Biodiversity Impact Assessment Report focussed on the PV facility and not the grid connection.
- c) The Biodiversity Impact Assessment Report indicated that "according to the Free State Biodiversity Plan, the PV Facility is associated with areas classified as ESA1, ESA2 and "Other Areas".
- d) The activity descriptions in the application form and BAR indicate that "the project site is located within a CBA 2 area identified in terms of the Free State Biodiversity Plan (2015)".
- e) The SG 21 Digit Code in the application form and BAR is identical to those in the Scaffell PV Facility which the Biodiversity Specialist purported as falling within the CBA 2 area.
- f) The specialist states that the Damlaagte Facility does not cross any CBA's, but according to the listed activities applied for, and included in the BAR dated October 2021, 4 specified activities have CBA's classified as geographical areas.
- g) The map listed as Figure 9, on Page 18 of the "*BASILINE BIODIVERSITY ASSESSMENT AS PART OF THE ENVIRONMENTAL ASSESSMENT AND AUTHORISATION PROCESS FOR THE DEVELOPMENT OF THE SCAFELL CLUSTER, SOLAR PHOTOVOLTAIC FACILITY, FREE STATE PROVINCE*" dated February 2021 as well as Figure 7-7 on page 59 of the BAR dated October 2021 clearly shows that the preferred route of the powerline goes through a CBA. This is in conflict with the findings of the EAP and the specialist.
- h) The EAP and Applicant did not provide any detailed motivation or proof of an investigation for the exclusion of the requirement from the Biodiversity Impact Assessment Report that offsets should be investigated in the BAR dated October 2021.
- i) The offset requirements were not assessed in the BAR and seeing that this was not included as part of the reports for decision making, the Competent Authority 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.
- j) The Competent Authority is unsure if the offset would mitigate the impacts of the proposed development and bring the impacts into an acceptable level.
- k) Due to the inconsistencies between the application form, BAR and the Biodiversity Impact Assessment Report, 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 following opinion that the minimum requirements, specifically with regards to the Procedures for the Assessment and Minimum Criteria for Reporting Identified Environmental Themes in terms of Sections 24(5)(a) and (h) and 44 of the National Environmental Management Act, 1998, when applying for Environmental Authorisation, which were promulgated in Government Notice No. 320 of 20 March 2020 (i.e., "the Protocols") and in Government Notice No. 1150 of 30 October 2020 (i.e.,

protocols for terrestrial plant and animal species) were not met. Consequently, there is no sufficient, adequate and reliable basis upon which the statutory discretion of the Competent Authority can be exercised in favour of the applicant and therefore the application for Environmental Authorisation is refused.

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