



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: 14/12/16/3/3/2/2075

Enquiries: Herman Alberts

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Mr Eugene Marais
South Africa Mainstream Renewable Power Developments (Pty) Ltd
PO Box 45063
CLAREMONT
7800

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

PER EMAIL

Dear Mr Marais

APPLICATION FOR ENVIRONMENTAL AUTHORISATION IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, ACT NO. 107 OF 1998, AS AMENDED FOR THE 150MW SCAFELL SOLAR PV FACILITY, 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@ddfe.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: 10/03/2022.

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 Arnott	SLR Consulting Africa (South Africa) (Pty) Ltd	E-mail: namott@slrconsulting.com



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

Record of Refusal

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

The 150MW Scafell Solar PV Facility, Free State Province

Fezile Dabi District Municipality

Application Register Number:	14/12/16/3/3/2/2075
Applicant:	South Africa Mainstream Renewable Power Developments (Pty) Ltd
Location of activity:	Portion 3 of Farm Willow Grange No. 246 Ngwathe Local Municipality Fezile Dabi District Municipality Free State province

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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

Telephone Number: (021) 657 4045

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, 2 and 3 of the EIA Regulations, 2014 as amended:

Activity number	Activity description
<p><u>Listing Notice 1, Item 11:</u></p> <p><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 kV or more.</i></p>	<p>The solar PV facility will require the construction and operation of internal distribution electrical infrastructure which is required to connect the Scafell Solar PV Facility components internally and to the IPP portion of the onsite substation. The IPP portion of the onsite substation will be rated as 33/132kV and the internal cabling will be up to 33kV.</p>
<p><u>Listing Notice 1, Item 12:</u></p> <p><i>The development of infrastructure or structures with a physical footprint of 100 square metres or more where such development occurs within a watercourse or within 32 m of a watercourse</i></p>	<p>It is possible that access roads or other associated infrastructure would need to cross a watercourses/drainage line located on the project site.</p>
<p><u>Listing Notice 1, Item 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 good occurs in containers with a combined storage capacity of 80 cubic metres or more but not exceeding 500 cubic metres.</i></p>	<p>The proposed project would require the storage and handling of dangerous good which could include, fuels (i.e., diesel or petrol for the operation of machinery and equipment, etc), lubricants and materials for the BESS. The storage capacity for the dangerous goods for the proposed project is not anticipated to exceed 500 cubic metres.</p>
<p><u>Listing Notice 1, Item 19:</u></p> <p><i>The infilling or depositing of any material of more than 90 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>It is possible that access roads or other associated infrastructure would need to cross a watercourse/drainage line located on the project site.</p>

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<p><u>Listing Notice 1, Item 24:</u></p> <p><i>The development of a road where the road is wider than 8 metres.</i></p>	<p>The proposed project would require the development of access roads with a width of up to 12m and internal access roads with a width of up to 5m. The access roads would be constructed during the construction phase of the proposed project.</p>
<p><u>Listing Notice 1, Item 28:</u></p> <p><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:</i></p> <p><i>(i) will occur inside an urban area, where the total land to be developed is bigger than 5 hectares; or</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>The proposed project would be established on land previously used for agriculture on or after 01 April 1998 and the total area required for the proposed development is in excess of 1ha.</p>
<p><u>Listing Notice 1, Item 56:</u></p> <p><i>The widening of a road by more than 6 m, or the lengthening of a road by more than 1 km –</i></p> <p><i>(i) where the existing reserve is wider than 13.5 m; or</i></p> <p><i>(ii) where no reserve exists, where the existing road is wider than 8 m.</i></p>	<p>The proposed project would require the widening of existing roads (for which there is no road reserve) up to 12m. The access roads would be constructed during the construction phase of the proposed project.</p>
<p><u>Listing Notice 2, Item 1</u></p> <p><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>The proposed project will have a generating capacity of up to 150MWac.</p>
<p><u>Listing Notice 2, Item 15</u></p> <p><i>The clearance of an area of 20 hectares or more of indigenous vegetation</i></p>	<p>The construction of the proposed project will require the clearance of 292ha.</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>(l) outside urban areas,</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 main access road with a width of up to 12m and internal access roads with a width of up to 5m. 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 10</u></p> <p><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 metres in</i></p> <p><i>(b) the Free State Province,</i></p> <p><i>(l) outside an urban area,</i></p> <p><i>(ee) within a critical biodiversity areas as identified in systematic biodiversity plans adopted by the competent authority or in bioregional plans and</i></p> <p><i>(hh) areas within a wetland.</i></p>	<p>The proposed project will require the development of storage and operation facilities for dangerous substances with a capacity exceeding 80 cubic metres in the Free State Province, within 100m from the edge of a watercourse within an area considered to be a CBA 2 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 in</i></p> <p><i>(b) the Free State Province,</i></p> <p><i>(ll) within a critical biodiversity area identified in bioregional plans and</i></p> <p><i>(lv) areas within a wetland.</i></p>	<p>The proposed project will require the clearance of up to 292ha of indigenous vegetation within the project site, and within 100m from the edge of a wetland. The project site partly falls within a CBA 2 area 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>(ll) infrastructure or structures with a physical footprint of 10 square metres or more where such development</i></p> <p><i>(c) occurs within 32 m from edge of a watercourse,</i></p> <p><i>(b) in the Free State Province,</i></p>	<p>The proposed project will require the development of infrastructure with a footprint in excess of 10m² within 32m from the edge of a watercourse. The project site falls partly within a CBA 2 area identified in terms of the Free State Biodiversity Plan (2015).</p>

(i) outside of an urban area,
(ff) within critical biodiversity areas as identified by systematic biodiversity plans.

as described in the Environmental Impact Assessment Report (EIAR) dated October 2021 at:

SG 21 Codes

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- for the 150MW Scafell Solar PV Facility in the Free State Province hereafter referred to as "the property".

The proposed project will include the following infrastructure:

Solar Arrays

- Monofacial/Bifacial and Fixed Tilt or Tracking Solar PV Panel Modules;
- Single Axis Tracking, Dual Axis Tracking or Fixed Axis Mounting System Technology;
- Underground Direct Current (DC) and Alternating Current (AC) cables of up to 33kV; and
- Centralised or String Inverter Stations and Power Transformers.

Building Infrastructure

- Operational Control Centre;
- Operation and Maintenance Area/Warehouse/Workshop/Control Centre and Office;
- Ablution Facilities;
- A Battery Energy Storage System (BESS) (i.e., solid state or redox flow batteries); and
- Substation Building.

Electrical Infrastructure

- A 33/132kV on-site IPP Substation (including associated equipment and infrastructure); and
- Underground cabling and overhead power lines (up to 33kV).

Associated Infrastructure

- A main access road to provide access to the project site with a width of up to 12m;
- Internal access roads with a width of up to 5m to provide access to the PV Panel Array;

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- Fencing and Lighting;
- Lightning Protection Infrastructure;
- Permanent Laydown Area;
- Temporary Construction Camp and Laydown Area;
- Telecommunication Infrastructure; and
- A 400m³ reservoir, water pipeline and stormwater channels.

Legislative Requirements

Refusal of the application

1. The application for Environmental Authorisation is refused for the 150MW Scafell Solar PV Facility in the 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 fourteen (14) 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: 10/03/2022.



Ms Millicent 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 23 June 2021.
- b) The information contained in the EIAr dated October 2021.
- c) The comments received from interested and affected parties as included in the EIAr dated October 2021.
- d) The information contained in the specialist studies contained within the appendices of the EIAr dated October 2021.
- e) 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 findings of all the specialist studies conducted and their recommended mitigation measures and in particular the Biodiversity Impact Assessment Report dated June 2021.
- b) The comments provided by the Chief Directorate: Integrated Environmental Authorisations on the draft EIAr dated October 2021.
- c) The Biodiversity Impact Assessment Report indicates that according to the 2015 Free State Biodiversity Plan, CBA2, ESA2 and ESA1 areas were identified within the Scafell Solar PV Facility.
- 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 EIA does not comply with the information and requirements outlined in the comments on the draft EIA provided by the Chief Directorate: Integrated Environmental Authorisations.
- b) The Biodiversity Impact Assessment Report indicates that biodiversity offset measures need to be investigated to mitigate the impacts associated with the loss of the CBA. The study further went on to state that the most appropriate method of impact mitigation is to exclude areas of high sensitivity.
- c) The EAP and/or 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 EIA dated October 2021.
- d) The preferred option proposed by the EAP is Option 1. But the recommendation of the EAP is that development is only permitted to proceed subject to the applicant engaging the relevant authority with regards to the implementation of appropriate mitigation measures that are in line with the mitigation hierarchy. The measures to be implemented, i.e., an off-site biodiversity offset must be deemed acceptable by the relevant authority and the applicant.
- e) The offset requirements was not assessed in the EIA 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.
- f) The Competent Authority is unsure if the offset would mitigate the impacts of the proposed development and bring the impacts into an acceptable level.
- g) The EIA 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 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) 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.