



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: 14/12/16/3/3/1/2632

Enquiries: Mr Wayne Hector

Telephone: (012) 399 9404, **E-mail:** Whector@dffe.gov.za

Mr Thomas Condesse
FE Red Sands (Pty) Ltd
60 Hennie Winterbach
PANORAMA
7500

Telephone Number: 084 548 4264
Email Address: thomas.condesse@energyteam.co.za
millard.kotze@energyteam.co.za

PER EMAIL / MAIL

Dear Mr Condesse

ENVIRONMENTAL AUTHORISATION IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, ACT NO. 107 OF 1998, AS AMENDED: FOR THE PROPOSED CONSTRUCTION OF THE RED SANDS SOLAR EAST SOLAR ENERGY FACILITY (SEF) AND ASSOCIATED INFRASTRUCTURE ON THE REMAINING EXTENT OF THE FARM DONKERDUISPRAAT 95, NORTHERN CAPE 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 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.

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.

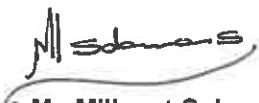
By email: appeals@dffe.gov.za

By hand: Environment House
473 Steve Biko Road
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.dffe.gov.za/documents/forms#legal> authorisations or request a copy of the documents at appeals@dffe.gov.za.

Yours faithfully



Ms Millicent Solomons
Acting Chief Director: Integrated Environmental Authorisations
Department of Forestry, Fisheries and the Environment
Date: 31/03/2023.

cc:	Bryan Fisher	Northern Cape DAERDLF	Email: bfisher@ncpg.gov.za
	Mr Deon Magerman	Nama Khoi Local Municipality	Email: deon.magerman@namakhoi.gov.za
	Ms M Kleinbooi	Nama Khoi Local Municipality	Email: monique.kleinbooi@namakhoi.gov.za
	Marvin Ryan Grimett	Enviro-Insight CC	Email: marvin.grimett@gmail.com
		Enviro-Insight CC	Email: ronell@enviro-insight.co.za



forestry, fisheries & the environment

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 CONSTRUCTION OF THE RED SANDS SOLAR EAST SOLAR ENERGY FACILITY (SEF) AND
ASSOCIATED INFRASTRUCTURE ON THE REMAINING EXTENT OF THE FARM DONKERDUISPRAAT 95,
NORTHERN CAPE PROVINCE

NAMAKWA DISTRICT MUNICIPALITY

Authorisation register number:	14/12/16/3/3/1/2632
Last amended:	First issue
Holder of authorisation:	FE Red Sands (Pty) Ltd
Location of activity:	Located near Aggeneys and Pofadder towns on the Remaining Extent of Farm Donkerduispraat 95, Ward 4 within the Nama-Khoi Local Municipality; Namakwa District Municipality, Northern Cape Province.

This 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 Competent Authority is satisfied, based on 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 Department hereby refuses the application for Environmental Authorisation to –

FE Red Sands (Pty) Ltd

with the following contact details –

Mr Thomas Condesse
FE Red Sands (Pty) Ltd
60 Hennie Winterbach Street

PANORAMA

7500

Telephone Number: 084 548 4264

Email Address: thomas.condesse@energyteam.co.za

millard.kotze@energyteam.co.za

Not to undertake the following activities (hereafter referred to as “the activity”) indicated in Listing Notice 1, Listing Notice 2 and Listing Notice 3 of the EIA Regulations, 2014 as amended:

Activity number	Activity description
<u>Listing Notice 1</u>	
<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></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>Underground cables for the transmission of electricity generated by the turbines to the onsite switching station.</p> <p>“The EAP understands this activity to be purely for the underground cabling and mentions in the CRR that the generic EMPR will accompany the grid application. However, this is incorrect as the GNR 435 stipulates clearly that a generic EMPR must accompany the report if Activity 11 or 47 are triggered”.</p>
<p><u>Listing Notice 1 Item 12:</u></p> <p><i>“The development of—</i></p> <p><i>(ii) infrastructure or structures with a physical footprint of 100 square metres or more;</i></p> <p><i>where such development occurs—</i></p> <p><i>(a) within a watercourse;</i></p> <p><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 turbines and associated infrastructure including access roads and laydown areas during the construction phase. The final placement of all infrastructure will be refined during the process and avoid the watercourse and indicated buffer as far as possible.</p> <p>However, this is specifically for the “Red Sands Solar East”. This description is wrong.</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 storage occurs in containers with a combined capacity of 80 cubic meters or more but not exceeding 500 cubic meters.”</i></p>	<p>Storage of fuel, oil and other chemicals on site could trigger this activity. At present the volumes are not known but once information is available on the construction and operational phases of the project can the exact quantity be provided.</p>

Activity number	Activity description
<p><u>Listing Notice 1 Item 19:</u></p> <p><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</i></p> <p><i>(i) a watercourse."</i></p>	<p>The construction or upgrades of roads (especially low-level crossings) and the construction of underground cables across drainage lines.</p>
<p><u>Listing Notice 1 Item 24:</u></p> <p><i>"The development of a road—</i></p> <p><i>(ii) with a reserve wider than 13,5 meters, or where no reserve exists where the road is wider than 8 metres."</i></p>	<p>Roads are required throughout the construction and operational stages of the project. During the construction phase, roads will be approximately 12m wide for the delivery of turbine parts and other equipment, and approximately 8m wide during the operational phase for maintenance purposes.</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>(ii) will occur outside an urban area, where the total land to be developed is bigger than 1 hectare."</i></p>	<p>The current land use on the proposed property on which the project is proposed is agriculture.</p>
<p><u>Listing Notice 1 Item 56:</u></p> <p><i>"The widening of a road by more than 6m, or lengthening of a road by more than 1km-</i></p> <p><i>(ii) where no reserve exists, where the existing road is wider than 8 metres."</i></p>	<p>The widening of portions of existing roads or the lengthening of roads will be required to accommodate the logistical construction requirements to access the site and associated infrastructure.</p>
<p><u>Listing Notice 2</u></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 Red Sands Solar West will consist of up to 36 turbines with a capacity of up to 7.5MW each,</p>

Activity number	Activity description
	depending on the available technology at the time of construction.
<p><u>Listing Notice 2 Item 15:</u> <i>“The clearance of an area of 20 hectares or more of indigenous vegetation,”</i></p>	<p>The total area to be cleared is expected to be greater than 20ha. This includes turbine placement, roads, and other permanent infrastructure. During the construction phase, some areas will be cleared for the laydown, storage and assembly areas which will be rehabilitated post construction.</p>
<p><u>Listing Notice 3</u></p>	
<p><u>Listing Notice 3 Item 4</u> The development of a road wider than 4 metres with a reserve less than 13,5 metres. g. Northern Cape ii. Outside urban areas: (ee) Critical biodiversity areas as identified in systematic biodiversity plans adopted by the competent authority or in bioregional plans;</p>	<p>A CBA runs through the study area and it is likely that roads will be constructed within this area, even if just crossings. Roads will also be rehabilitated after the construction phase, where applicable.</p>
<p><u>Listing Notice 3 Item 10</u> 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. g. Northern Cape ii. Areas within a watercourse or wetland; or within 100 metres from the edge of a watercourse or wetland; iii. Outside urban areas: (ee) Critical biodiversity areas as identified in systematic biodiversity plans adopted by the competent authority or in bioregional plans;</p>	<p>A CBA runs through the study area and wetlands or watercourse is present throughout the study area. The exact location of the storage and handling of dangerous goods are not yet known, but the necessary precaution will be taken and where possible these areas will be avoided. It is possible that this activity may become redundant after the necessary steps have been taken.</p>

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Activity number	Activity description
<p><u>Listing Notice 3 Item 18:</u></p> <p>The widening of a road by more than 4 metres, or the lengthening of a road by more than 1 kilometre.</p> <p>g. Northern Cape</p> <p>ii. Outside urban areas:</p> <p>(ee) Critical biodiversity areas as identified in systematic biodiversity plans adopted by the competent authority or in bioregional plans;</p> <p>(ii) Areas within a watercourse or wetland; or within 100 metres from the edge of a watercourse or wetland</p>	<p>Upgrades of existing roads are likely to take place within the CBA and a watercourse. The exact roads for upgrade are currently unknown.</p>

as described in the Basic Assessment Report (BAR) dated January 2023 at:

21-digit Surveyor General code: C05300000000009500000.

Layout	Latitude (S)	Longitude (E)
A	29°29'2.61"S	18°46'33.95"E
B	29°31'52.40"S	18°46'51.94"E
C	29°31'31.64"S	18°46'14.49"E
D	29°31'16.79"S	18°46'22.83"E
E	29°31'5.03"S	18°46'1.58"E
F	29°30'39.56"S	18°45'57.82"E
G	29°30'30.44"S	18°46'10.46"E
H	29°29'56.21"S	18°45'40.30"E
I	29°30'7.62"S	18°45'27.24"E
J	29°30'3.14"S	18°45'22.74"E
K	29°29'49.27"S	18°45'34.35"E
L	29°29'45.88"S	18°45'29.22"E
M	29°29'39.11"S	18°45'35.07"E
N	29°29'46.64"S	18°45'47.76"E
O	29°29'39.11"S	18°45'55.71"E
P	29°29'19.83"S	18°45'23.60"E
PV Area 1	29°29'24.81"S	18°46'20.17"E
PV Area 2	29°30'51.89"S	18°46'7.83"E
BESS 1	29°29'42.59"S	18°45'36.48"E
1.78ha		
BESS 2	29°29'45.45"S	18°45'33.75"E

1.94ha		
Laydown Area	29°29'59.94"S	18°45'28.96"E
5ha		
O&M Area	29°29'52.46"S	18°45'35.20"E
1.14ha		
Onsite Substation 1	29°29'46.32"S	18°45'42.54"E
2ha		
Onsite Substation 2	29°29'49.46"S	18°45'39.65"E
2.11ha		
29°30'42.78"S	18°44'28.61"E	
Accommodation	12.9ha	

for the construction of the FE Red Sands Solar East (240mw) and associated infrastructure on the remaining extent of the Farm Donkerduispraat 95, Northern Cape province.

The components of the SEF and associated infrastructure are as follows:

- PV panels will have a generation capacity of up to **240MW** (depending on the available technology at the time),
- PV Panel Mounting System,
- Onsite substation/s of 100mX100m (33/132kV) to facilitate the connection between the SEF and Aggeneys substation,
- Battery Energy Storage System (BESS),
- Cabling between PV panels, to be laid underground,
- Internal/ access roads (up to 10m in width) linking the PV panels rows and other infrastructure on the site,
- Permanent workshop area and office for control, maintenance and storage, and
- Temporary laydown areas during the construction phase (which will be rehabilitated).

Legislative Requirements

Refusal of the application

1. The application for Environmental Authorisation is **refused** for the construction of the 240MW FE Red Sands Solar EAST and associated infrastructure on the remaining extent of the Farm Donkerduispraat 95, in the Nama-Khoi Local Municipality within the Northern Cape 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 for Environmental Authorisation: 31/03/2023.



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 Department took, *inter alia*, the following into consideration -

- a) The listed activities as applied for in the amended application form received on 04 November 2022.
- b) The information contained in the BAR dated January 2023.
- c) The comments received from interested and affected parties as included in the BAR dated January 2023.
- d) Mitigation measures as proposed in the BAR dated January 2023.
- e) The information contained in the specialist studies contained within the appendices of the BAR dated January 2023 and as appears below:

Study	Specialist	Date
Terrestrial Biodiversity Assessment	Enviro-Insight CC	Version 1 – September 2022 and Version 2 – January 2023
Preconstruction Avifaunal Assessment	Enviro-Insight CC - Sam Laurence (Pr. Sci. Nat.)	January 2023
Freshwater Biodiversity and Watercourse Delineation	Tate Environmental Specialist Services (TESS)	August 2022
Agriculture Compliance Statement	Johann Lanz	January 2023
Heritage Impact Assessment	Jaco van der Walt from Beyond Heritage	January 2023
Social Impact Assessment	Tony Barbour and Schalk van der Merwe	October 2022
Transport Impact Assessment	Christoff Krogscheepers, Pr. Eng - Innovative Transport Solutions	January 2023

- 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.

All information presented to the Department was considered 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 information contained in the application form; the final BAR dated January 2023.
- b) The findings of all the specialist studies conducted and their recommended mitigation measures.
- c) The comments received by various I&APs and the responses thereto as contained in Appendix E of the BAR.
- d) The comments provided by the Chief Directorate: Integrated Environmental Authorisations on the draft BAR on the 28 November 2022, respectively.

3. Findings

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

- a) The Competent Authority advised the EAP during the comment period on the draft BAR to clearly identify and provide a final list of all applicable listed and specified activities and to include reference to the onsite substation.
- b) Furthermore, the Competent Authority advised that a Generic EMPr (GEMPr) was required to be submitted as the proposed development triggered Activity 11 of Listing Notice 1. Number 7 (page 3 of the comments) stated that:

"It is drawn to your attention that Substation and overhead electricity transmission and distribution infrastructure which trigger activity 11 or 47 of the Environmental Impact Assessment Regulations Listing Notice 1 of 2014, as amended, and any other listed and specified activities necessary for the realisation of such facilities, require the submission of a generic Environmental Management Programme as contemplated in Regulations 23(4)".

Please make note of Part B Section 2 of the GEMPr requirement which states that:

"This section must be submitted to the CA together with the final BAR or EIAR. The information submitted to the CA will be incomplete should a signed copy of Part B: section 2 not be submitted. Once approved, this Section forms part of the EMPr for the development and is legally binding."

Ensure that signed versions of the GEMPr for the substation are submitted with the final BAR. This is over and above the EMPr for the facility.

- c) Based on the Comments and Response report in Appendix of the Final BAR, the EAP responded regarding the listed activities and the GEMPr that
- 'Listed activities have been updated accordingly' and that,*
- 'The onsite substation will not be included in this application but will be included in the Grid line application';*
- and
- '(ii) The onsite substation and grid connection will be applied for in a separate application, the generic EMPr will be used for that Application.'*
- However, Activity 11 of Listing Notice 1, was not removed from the application form.
- d) The submission of the GEMPr is a legislative requirement in terms of GN No. 435 dated 22 March 2019 in instances where activity 11 of Listing Notice 1 of the EIA Regulations, 2014 as amended is triggered. As such, the GEMPr for overhead electricity transmission and distribution infrastructure as set out in Appendix 2 of GN No. 435, should have been included in the draft and final BARs.
- e) The Basic Assessment process was compromised as the applicant failed to comply with the requirements prescribed in terms of GN No. 435 dated 22 March 2019 regarding the submission of the GEMPr.

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

Private Bag X 447 Pretoria 0001, Environment House, 473 Steve Biko Road, Pretoria, 0002 Tel: +27 12 399 9000, Fax: +86 625 1042

Enquiries: Devinagie Bendeman Telephone: 012 399 9337 E-mail: vbendeman@dffe.gov.za

Ms. Milicent Solomons
Director: Priority Infrastructure Projects

Dear Ms. Solomons

APPOINTMENT AS CHIEF DIRECTOR: INTERGRATED ENVIRONMENTAL AUTHORISATIONS (ACTING), FROM 01 MARCH UNTIL 31 MARCH 2023

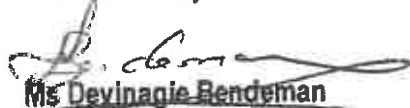
I hereby inform you that I have decided to appoint you as Acting Chief Director: Intergrated Environmental Authorisations from 01 March until 31 March 2023.

All correspondence and other documents that are usually signed by the Chief Director: Intergrated Environmental Authorisations during must be signed under Acting Chief Director: Intergrated Environmental Authorisations during the above-mentioned period.

Your appointment in the above acting position remains subject to the provisions of the Public Service Act, 1994 (Proclamation No. 103 of 1994), as amended, the Government Employees Pension Fund Act, 1996 (Proclamation No. 21 of 1998), the regulations promulgated under these Acts and relevant circulars.

In the execution of your duties and the exercising of the powers delegated to you, you will furthermore be subjected to the provisions of the Public Finance Management Act, compliance with the promotion of Access to Information Act, Promotion of Administrative Justice Act, the Minimum Information Security Standards, Departmental Policies and other applicable legislations with the Republic of South Africa. You are therefore advised to make yourself familiar with the provisions of the legislations and policies and the amendments thereof. (Copies of departmental policies can be obtained from the Human Resource Office).

Yours Sincerely


Ms. Devinagie Bendeman

Deputy Director-General: Regulatory Compliance and Sector Monitoring

Date: 22 February 2023



Batho pele - putting people first

The processing of personal information by the Department of Forestry, Fisheries and the Environment is done lawfully and not excessive to the purpose of processing in compliance with the POPI Act, any codes of conduct issued by the Information Regulator in terms of the POPI Act and / or relevant legislation providing appropriate security safeguards for the processing of personal information of others

ACKNOWLEDGEMENT

I ACCEPT / ~~DO NOT ACCEPT~~
appointment as Acting Chief Director:
Intergrated Environmental Authorisations

Signed: 

Date: 21/02/2023