



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: 14/12/16/3/3/2/2298

Enquiries: Ms Trisha Pillay

Telephone: (012) 399 9406 **E-mail:** TPillay@dfpe.gov.za

Ms Deidre Herbst
Eskom Holdings SOC Ltd
PO Box 1091
JOHANNESBURG
2001

Telephone number: (011) 800 3501
Email Address: Deidre.Herbst@eskom.co.za

PER E-MAIL

Dear Ms Herbst

ENVIRONMENTAL AUTHORISATION IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, ACT NO. 107 OF 1998, AS AMENDED: FOR THE ESTABLISHMENT OF A SOLAR PHOTOVOLTAIC (PV) ENERGY FACILITY, BATTERY ENERGY STORAGE SYSTEM (BESS) FACILITIES AND ASSOCIATED INFRASTRUCTURE AT THE KOMATI POWER STATION IN THE STEVE TSHWETE LOCAL MUNICIPALITY, MPUMALANGA 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 fourteen (14) 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 stipulate 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 abuse or compromise your personal information in any way.

Your attention is drawn to Chapter 2 of 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 prescribes 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.

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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 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
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.dffe.gov.za/documents/forms#legal_authorisations or request a copy of the documents at appeals@dffe.gov.za.

Yours faithfully



Mr Sabelo Malaza
Chief Director: Integrated Environmental Authorisations
Department of Forestry, Fisheries and the Environment
Date: 11/10/2023

cc:	Ashlea Strong	WSP Group Africa (Pty) Ltd	Email: Ashlea.strong@wsp.com
	Sindisiwe Mbuyane	Mpumalanga Department of Agriculture, Rural Development, Land and Environmental Affairs (MDARDLEA)	Email: mbuyanesb@mpg.gov.za
	Angel Masia	Steve Tshwete Local Municipality	Email: angelm@stlm.gov.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 ESTABLISHMENT OF A SOLAR PHOTOVOLTAIC (PV) ENERGY FACILITY, BATTERY ENERGY STORAGE SYSTEM (BESS) FACILITIES AND ASSOCIATED INFRASTRUCTURE AT THE KOMATI POWER STATION IN THE STEVE TSHWETE LOCAL MUNICIPALITY, MPUMALANGA PROVINCE

Nkangala District Municipality

Authorisation register number:	<i>14/12/16/3/3/2/2298</i>
Last amended:	<i>First issue</i>
Holder of authorisation:	<i>Eskom Holdings SOC Ltd</i>
Location of activity:	<i>Portion 0 (Remaining Extent) of the Farm Komati Power Station 56 IS; Steve Tshwete Local Municipality; Nkangala District Municipality; and Mpumalanga Province.</i>

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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 –

ESKOM HOLDINGS SOC LTD

with the following contact details –

Ms Deidre Herbst
Eskom Holdings SOC Ltd
PO Box 1091
JOHANNESBURG
2001

Tel number: 011 800 3501
Email Address: Deidre.Herbst@eskom.co.za

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

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></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>The Komati Solar PV facility will require more than 33kV but less than 275kV powerline boards (to evacuate power to the grid) and to the BESS facilities. The transmission lines are outside of the urban edge.</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>Internal access roads will be required for access to the facility. The physical footprint of internal access roads and electrical cabling required to connect the various components of the facilities will either traverse the delineated watercourses on site or be located within 32m of the outer extent of the delineated watercourses on site. The access roads will fall within the Solar PV development areas.</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 metres or more but not exceeding 500 cubic metres.”</i></p>	<p>The BESS facilities will potentially result in the handling of between 80m³ and 500m³ of dangerous goods. This activity will only be applicable if the BESS facilities are assembled on site. This is currently unknown. The facility will also require storage and handling of dangerous goods, including fuel, cement and chemical storage onsite, that will be greater than 80m³ but not exceeding 500m³.</p>
<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 a watercourse.”</i></p>	<p>The infrastructure, with specific reference to access roads and the grid infrastructure, will require the removal of soil more than 10m³ from a watercourse.</p>

<p><u>Listing Notice 1, Item 24:</u></p> <p><i>“The development of a road– (ii) with a reserve wider the 13.5 metres, or where no reserve exists where the road is wider than 8 metres.”</i></p>	<p>The access roads for the Solar facility will be 8m wide.</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 plan is to install 100MW of Solar PV and 150MW of BESS. The total extent of the solar generating facilities is 140ha and will require the clearance of indigenous vegetation of more than 20ha.</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 total extent of the solar generating facilities is 140ha and will require the clearance of indigenous vegetation of more than 20ha.</p>
<p><u>Listing Notice 3, Item 4:</u></p> <p><i>“The development of a road wider than 4 metres with a reserve less than 13,5 metres f. Mpumalanga i. Outside urban areas (ee) Critical biodiversity areas as identified in systematic biodiversity plans adopted by the competent authority or in bioregional plans.”</i></p>	<p>The access roads for the solar facility will potentially be less than 13.5m wide within a Critical Biodiversity Area (CBA).</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. f. Mpumalanga i. Outside urban areas (ee) Critical biodiversity areas as identified in systematic biodiversity plans adopted by the competent authority or in bioregional plans.”</i></p>	<p>The BESS facilities will potentially result in the handling of between 80m³ and 500m³ of dangerous goods. This activity will only be applicable if the BESS facilities are assembled on site. This is currently unknown. The facility will also require storage and handling of dangerous goods, including fuel, cement, and chemical storage onsite, that will be greater than 80m³ but not exceeding 500m³.</p>

<p><u>Listing Notice 3, Item 12:</u></p> <p><i>"The clearance of an area of 300 square metres or more of indigenous vegetation.</i></p> <p><i>f. Mpumalanga</i></p> <p><i>ii. Within critical biodiversity areas identified in bioregional plans."</i></p>	<p>The total footprint to be cleared is 140ha and will require the clearance of indigenous vegetation of more than 200 000m².</p>

as described in the Environmental Impact Assessment Report (EIAR) dated August 2023 at:

Property Details and 21-SG Digit Number:

Farm Description	21-SG Digit Number
Portion 0 (Remaining Extent) of the Farm Komati Power Station 56 IS	T0IS0000000005600000

Coordinate Points of the Cadastral Land Parcel:

Point	Longitude	Latitude
AF	22° 25' 30.549" E	31° 54' 31.383" S
A	26° 5'32.63"S	29°26'56.39"E
B	26° 5'31.98"S	29°27'19.25"E
C	26° 5'27.31"S	29°27'29.45"E
D	26° 5'20.81"S	29°28'0.56"E
E	26° 5'18.53"S	29°28'1.16"E
F	26° 5'15.18"S	29°28'11.86"E
G	26° 5'9.26"S	29°28'9.70"E
H	26° 5'2.93"S	29°28'18.46"E
I	26° 5'12.68"S	29°28'24.99"E
J	26° 5'15.96"S	29°28'32.44"E
K	26° 5'41.52"S	29°28'46.33"E
L	26° 5'41.41"S	29°28'57.23"E
M	26° 5'51.86"S	29°28'51.96"E
N	26° 6'2.02"S	29°28'57.44"E
O	26° 6'19.20"S	29°28'34.65"E

P	26° 6'44.32"S	29° 28'25.28"E
Q	26° 6'40.71"S	29° 28'12.64"E
R	26° 6'36.83"S	29° 27'7.56"E

Solar PV Facility Outer Point Coordinates- Solar PV Site A:

Point	Longitude	Latitude
A1	26° 6'5.31"S	29° 27'30.76"E
A2	26° 6'17.89"S	29° 27'5.38"E
A3	26° 6'34.41"S	29° 27'8.05"E
A4	26° 6'36.69"S	29° 27'15.15"E
A5	26° 6'38.86"S	29° 27'55.22"E
A6	26° 6'21.30"S	29° 27'56.25"E
A7	26° 6'15.50"S	29° 27'52.78"E
A8	26° 6'12.67"S	29° 27'48.93"E
A9	26° 6'12.40"S	29° 27'40.35"E
A10	26° 6'12.76"S	29° 27'36.36"E
A11	26° 6'16.81"S	29° 28'10.77"E
A12	26° 6'31.14"S	29° 28'1.99"E
A13	26° 6'35.00"S	29° 28'3.48"E
A14	26° 6'39.43"S	29° 28'9.30"E
A15	26° 6'39.48"S	29° 28'12.50"E
A16	26° 6'35.92"S	29° 28'11.90"E
A17	26° 6'29.40"S	29° 28'18.32"E
A18	26° 6'18.08"S	29° 28'13.47"E

Solar PV Facility Outer Point Coordinates- Solar PV Site B:

Point	Longitude	Latitude
B1	26° 5'34.09"S	29° 26'57.90"E
B2	26° 5'37.67"S	29° 26'58.53"E
B3	26° 5'46.25"S	29° 26'59.82"E
B4	26° 5'52.86"S	29° 27'1.17"E
B5	26° 5'52.80"S	29° 27'2.85"E
B6	26° 5'55.26"S	29° 27'3.49"E

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B7	26° 5'55.20"S	29°27'3.99"E
B8	26° 5'56.16"S	29°27'4.16"E
B9	26° 5'56.11"S	29°27'4.54"E
B10	26° 5'48.30"S	29°27'2.90"E
B11	26° 5'47.14"S	29°27'3.68"E
B12	26° 5'36.17"S	29°27'25.98"E
B13	26° 5'28.92"S	29°27'38.16"E
B14	26° 5'26.51"S	29°27'37.45"E
B15	26° 5'27.14"S	29°27'32.93"E
B16	26° 5'33.32"S	29°27'19.83"E

BESS Outer Point Coordinates:

BESS A		
Point	Longitude	Latitude
A1	26° 5' 28.940" S	29° 28' 4.556" E
A2	26° 5' 29.278" S	29° 28' 4.601" E
A3	26° 5' 30.136" S	29° 28' 6.897" E
A4	26° 5' 25.806" S	29° 28' 9.032" E
A5	26° 5' 24.683" S	29° 28' 6.080" E
A6	26° 5' 24.115" S	29° 28' 6.315" E
A7	26° 5' 22.795" S	29° 28' 2.181" E
A8	26° 5' 27.799" S	29° 28' 1.020" E
BESS B		
Point	Longitude	Latitude
B1	26° 5' 29.716" S	29° 28' 0.362" E
B2	26° 5' 32.343" S	29° 27' 57.965" E
B3	26° 5' 37.012" S	29° 28' 4.558" E
B4	26° 5' 32.221" S	29° 28' 6.833" E
BESS C		
Point	Longitude	Latitude
C1	26° 5' 26.976" S	29° 28' 35.163" E
C2	26° 5' 32.953" S	29° 28' 31.934" E
C3	26° 5' 34.286" S	29° 28' 36.220" E

C4	26° 5' 31.363" S	29° 28' 38.189" E
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Powerline Bend Point Coordinates:

Point	Longitude	Latitude
A	26° 6' 32.959" S	29° 27' 7.084" E
B	26° 6' 24.899" S	29° 27' 13.580" E
C	26° 5' 46.581" S	29° 28' 2.793" E
D	26° 5' 41.212" S	29° 28' 2.948" E
E	26° 5' 33.428" S	29° 28' 7.008" E
F	26° 5' 29.880" S	29° 27' 57.943" E
G	26° 5' 21.659" S	29° 27' 56.067" E
H	26° 5' 40.725" S	29° 28' 25.472" E
I	26° 5' 41.257" S	29° 28' 30.237" E
J	26° 5' 39.317" S	29° 28' 31.766" E
K	26° 5' 37.895" S	29° 28' 30.630" E
L	26° 5' 36.078" S	29° 28' 30.983" E
M	26° 5' 42.586" S	29° 28' 46.903" E
N	26° 5' 34.071" S	29° 28' 32.614" E
O	26° 5' 35.088" S	29° 28' 34.089" E
P	26° 5' 34.286" S	29° 28' 36.220" E
Q	26° 5' 29.651" S	29° 28' 38.580" E
R	26° 5' 15.099" S	29° 28' 30.518" E
S	26° 6' 37.674" S	29° 27' 10.522" E
T	26° 6' 27.679" S	29° 27' 16.352" E
U	26° 5' 49.659" S	29° 28' 6.596" E
V	26° 5' 35.332" S	29° 28' 16.522" E
W	26° 5' 38.833" S	29° 28' 26.527" E
X	26° 5' 42.591" S	29° 28' 28.326" E
Y	26° 5' 48.385" S	29° 28' 42.998" E
Z	26° 5' 41.518" S	29° 28' 46.324" E

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Substation Outer Point Coordinates:

Substation 1		
Point	Longitude	Latitude
SN1	26° 5' 27.122" S	29° 27' 33.533" E
SN2	26° 5' 26.331" S	29° 27' 37.452" E
SN3	26° 5' 27.794" S	29° 27' 37.798" E
SN4	26° 5' 28.467" S	29° 27' 33.826" E
Substation 2		
Point	Longitude	Latitude
SN5	26° 6' 6.286" S	29° 27' 29.397" E
SN6	26° 6' 5.502" S	29° 27' 30.884" E
SN7	26° 6' 8.140" S	29° 27' 32.908" E
SN8	26° 6' 9.042" S	29° 27' 31.369" E

- for the establishment of a Solar Photovoltaic (PV) Energy Facility, Battery Energy Storage System (BESS) facilities and associated infrastructure at the Komati Power Station in THE Steve Tshwete Local Municipality, Mpumalanga Province, hereafter referred to as "the property."

The key components/infrastructure will include the following:

a) Solar Energy Facility (100MW):

- Solar modules will be elevated above the ground and will be mounted on either fixed tilt systems or tracking system.
- Solar Farm A:
 - Extent: 115ha;
 - AC Capacity: Up to 70MW
 - DC Capacity: Up to 84MW
- Solar Farm B:
 - Extent: 25ha
 - AC Capacity: Up to 30MW
 - DC Capacity: Up to 36MW

b) Grid Connection (i.e., powerlines):

- Point of connection of solar panels will be to the Komati High Voltage (HV) yard.
- Power routed via a medium voltage overhead line (OHL) or underground cabling.

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- Servitude of powerlines:
 - Between 36 and 40m
 - Area will be approximately 26ha

c) Site Substations:

- Up to two on-site solar substations adjacent to Eskom switching stations that will connect to the approved Nuweveld Collector substation.
- Maximum height of 12m and will include a high voltage gantry within a 150m x 75m substation yard.
- Each of the solar sites will be equipped with collector substations.
- Infrastructure associated with the substations includes:
 - O&M buildings housing the control and communication equipment.
 - Access road infrastructure within the substation sites
 - Site substations and collector substations

d) Battery Energy Storage System (BESS):

- Three BESS facilities
- Footprints: Range from 2ha up to 6ha
- BESS capacity: 150 MW with four hours standby time
- Lithium battery technologies, such as Lithium Iron Phosphate, Lithium Nickel Manganese Cobalt Oxides or Vanadium Redox flow technologies are being considered.

e) Associated Infrastructure.

- Access roads;
- Perimeter roads;
- Below ground electrical cables;
- Above ground overhead lines;
- Meteorological Station;
- Operations and Maintenance (O&M) Building including control room, server room, security equipment room, offices, boardroom, kitchen, and ablution facilities);
- Spares Warehouse and Workshop;
- Hazardous Chemical Store;
- Security Building;
- Parking areas and roads;
- Temporary laydown areas;
- Temporary concrete batching plant;
- Construction camps and temporary laydown areas; and

- Onsite substations.

Technical details for the facility

Infrastructure	Footprint and Dimensions
Location of Site	37km from Middelburg, 43km from Bethal and 40km from Witbank in Ward 4 of the Steve Tshwete Local Municipality located within the Nkangala District Municipality in the Mpumalanga Province.
Solar Energy Facility	<p><u>Solar Farm A:</u></p> <ul style="list-style-type: none"> - Extent: 115ha - AC Capacity: Up to 70MW - DC Capacity: Up to 84MW <p><u>Solar Farm B:</u></p> <ul style="list-style-type: none"> - Extent: 25ha - AC Capacity: Up to 30MW - DC Capacity: Up to 36MW <p>Solar modules will be elevated above the ground and will be mounted on either fixed tilt systems or tracking system.</p>
Generating Capacity	Minimum of 100MW
Grid Connection (i.e. powerlines)	<ul style="list-style-type: none"> ➤ Point of connection of Solar Panels will be to the Komati High Voltage (HV) yard. ➤ Power routed via a medium voltage overhead power line (OHPL) or underground cabling. ➤ Servitude of powerlines: <ul style="list-style-type: none"> - Between 36 and 40m - Area will be approximately 26ha ➤ Substations: <ul style="list-style-type: none"> - Each of the Solar Sites will be equipped with collector substations. - Infrastructure associated with the substations would include Operations and Maintenance (O&M) buildings housing the control and communication equipment, access road infrastructure within the substation sites, site substations and collector substations. ➤ Site Access:

Infrastructure	Footprint and Dimensions
	<ul style="list-style-type: none"> - New access roads or tracks may be required to provide access to sections of the powerline route. - Access roads will be mostly a two-track gravel road under the OHPL to access pylons for construction and maintenance purposes.
Site Substation and BESS	<ul style="list-style-type: none"> ➤ Three BESS facilities ➤ Footprints: Range from 2 ha up to 6 ha. ➤ BESS capacity: 150 MW with four hours standby time. ➤ Lithium Battery Technologies, such as Lithium Iron Phosphate, Lithium Nickel Manganese Cobalt oxides or Vanadium Redox flow technologies are being considered
Associated infrastructure	<ul style="list-style-type: none"> ➤ Access roads; ➤ Perimeter roads; ➤ Below ground electrical cables; ➤ Above ground overhead lines ➤ Meteorological Station; ➤ O&M Building including control room, server room, security equipment room, offices, boardroom, kitchen, and ablution facilities); ➤ Spares Warehouse and Workshop; ➤ Hazardous Chemical Store; ➤ Security Building; ➤ Parking areas and roads; ➤ Temporary laydown areas; ➤ Temporary concrete batching plant ➤ Construction camps and temporary laydown areas; and ➤ Onsite substations.

Legislative Requirements

Refusal of the application

1. The application for Environmental Authorisation is refused for the of the up to 100MW Solar Photovoltaic (PV) Energy Facility, Battery Energy Storage System (BESS) facilities and associated infrastructure at the Komati Power Station in the Steve Tshwete Local Municipality, Mpumalanga 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: 11/10/2023



Mr Sabelo Malaza

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 amended application form received on 17 August 2023.
- b) The information contained in the final EIA dated August 2023.
- c) The comments and inputs received from interested and affected parties (I&APs) included in the final EIA dated August 2023.
- d) The information contained in the specialist studies contained within the appendices of the EIA dated August 2023 and as appears below:

Name	Company	Date
Avifauna Assessment	Volant Environmental	August 2023
Social Impact Assessment	WSP	April 2023
Palaeontological Impact Assessment: Phase 1 Field Study	Anton Pelsers Archaeological Consulting cc	May 2023
Heritage Impact Assessment Report	Apelsers Archaeological Consulting	June 2023
Visual Impact Assessment	LOGIS	May 2023
Traffic Impact Assessment	Innovative Transport Solutions	May 2023
Aquatic Biodiversity (Riparian and Wetland Systems) Specialist Assessment	WSP	August 2023
Terrestrial Biodiversity and Plant Species Specialist Assessment	Hawkhead Consulting	June 2023
Terrestrial Animal Species Assessment	Hawkhead Consulting	June 2023
Soil and Agricultural Potential Assessment: EIA Report	WSP	July 2023
Hydrogeological Investigation	WSP	May 2023
Desktop Noise Impact Assessment	WSP	May 2023
Desktop Air Quality Impact Assessment	WSP	No dated provided
Geotechnical Desktop Study	Eskom	July 2022

- 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 information contained in the amended application form, and the final EIAr dated August 2023.
- b) The information contained in the specialist studies as contained as Appendix H1 to Appendix H15 of the final EIAr dated August 2023.
- c) The comments received by various I&APs and the responses thereto as contained in the Comments and Response Report of the final EIAr dated August 2023.
- d) The comments provided by the Chief Directorate: Integrated Environmental Authorisations on the draft SR dated 01 March 2023, the acceptance of the SR dated 03 May 2023 and the comments made on the draft EIAr dated 02 August 2023.

3. Findings

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

- a) The addition of an Avifauna Study in the final EIAr is a significant new information that was not included in the final EIAr that was subjected to a public participation process.
- b) On page 373 of the final EIAr dated August 2023 that was submitted for decision making, the EAP stipulates ***“Due to the addition of the Avifauna Study (Appendix H.15) in the Final EIR, this report will be made available for public review from 18 August 2023 to 18 September 2023. All issues and comments submitted to WSP will be incorporated into the SER and submitted to the DFFE”*** for review and decision making. The Competent Authority should have been given an opportunity to provide comments on the new information that has been included in the EIAr prior to the submission of the final EIAr. Furthermore, it is unclear how all the comments were incorporated in the final EIAr as the final EIAr was submitted to the Competent Authority on 17 August 2023 for decision making. Therefore **the process followed is procedurally flawed** as the EAP should have used the provision of Regulation 23(1)(b) of the NEMA EIA Regulations, 2014, as amended, which states: *“The applicant must within 106 days of the acceptance of the scoping report submit to the competent authority – (b) a notification in writing that the*

documents contemplated in subregulation 1(a) will be submitted within 156 days of acceptance of the scoping report by the competent authority or where regulation 21(2) applies, within 156 days of receipt of the application by the competent authority, as significant changes have been made or significant new information has been added to the documents, which changes or information was not contained in the original documents consulted on during the initial public participation process contemplated in subregulation (1)(a), and that the revised documents contemplated in subregulation 1(a) will be subjected to another public participation process of at least 30 days”.

- c) The Competent Authority reiterated in its comments dated 02 August 2023, that should significant changes be made or significant new information be added to the report, then the EAP must use the provision of Regulation 23(1)(b) of the EIA Regulations 2014, as amended.

In view of the above, the Competent Authority is of the following opinion:

- i. The addition of an Avifauna Study in the EIAR dated August 2023 is considered new information that is significant.
- ii. The EAP stipulates that the additional information will be going out for public review from 18 August to 18 September 2023. Regulation 23(2) of the EIA Regulations 2014, as amended stipulates “23(2) *In the event where subregulation (1)(b) applies, the environmental impact assessment report inclusive of specialist reports, and EMPr, which reflects the incorporation of comments received, including any **comments of the competent authority**, must be submitted to the competent authority within 156 days of the acceptance of the scoping report by the competent authority.*” Therefore, the Competent Authority should have been afforded an opportunity to provide comments on the significant new information added to the EIAR prior to the submission of the final EIAR for decision making.
- iii. The public review of the additional information according to the EAP was from 18 August 2023 to 18 September 2023, the final EIAR was submitted to the Competent Authority for decision making on 17 August 2023, therefore the comments received on the additional information could not have been incorporated or addressed in the final EIAR as the report was submitted prior to the second round of public participation.
- iv. The overall process followed is procedurally flawed, as the correct provisions in the EIA Regulations 2014, as amended were not followed.

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.