

4 ADMINISTRATIVE FRAMEWORK

4.1 INTRODUCTION

This section provides an overview of legislation, guidelines and information documents that have informed the scope and content of this report and the approach to the EIA process.

4.2 ENVIRONMENTAL AUTHORISATION LEGISLATIVE PROCESS

The Environmental Authorisation process in South Africa is governed by NEMA (No. 107 of 1998) as amended and the Environmental Impact Assessment (EIA) Regulations of 2014 promulgated under NEMA. The relevance of this legislation is summarised below.

4.2.1 NEMA Environmental Authorisation

Chapter 5 of NEMA, as amended, outlines the general objectives and implementation of Integrated Environmental Management. This provides a framework for the integration of environmental issues into the planning, design, decision-making and implementation of plans and development proposals that are likely to have a detrimental effect on the environment. Whilst Section 23 sets out the basic objectives and principles of the IEM procedure, Section 24 sets out how these objectives and principles are to be accomplished.

Regulations governing the environmental authorisation process have been promulgated in terms of NEMA and include the following:

- Environmental Impact Assessment Regulations (GNR R982/2014);
- Environmental Impact Assessment Regulations Listing Notice 1 (GNR 983/2014);
- Environmental Impact Assessment Regulations Listing Notice 2 (GNR 984/2014); and
- Environmental Impact Assessment Regulations Listing Notice 3 (GNR 985/2014).

Activities that trigger GNR 983 and GNR 985 require a Basic Assessment Report (BAR) process to be undertaken, whereas activities identified in terms of GNR 984 will require a full Scoping and Environmental Impact Report (S&EIR) process. GNR 982 sets out the general procedure to follow when conducting either a BAR or S&EIR process.

Numerous trigger activities have been identified for this Project in terms of all the listing notices. In instances where all the listing notices are triggered (as in this Project), GNR 984 requirements will take precedent and the Project will be

subject to a full S&EIR process prior to commencement of any of the associated activities.

Based on communications held with the Department of Environmental Affairs and meetings with the Department of Mineral Resources it has been indicated that the competent authority for this project will be the Department of Mineral Resources as the Project is located within the mining right and will supply the mine with power.

In terms of these Regulations, an *Environmental Authorisation* is required before a developer can undertake any activity listed. The Project triggers the following Activities:

Listing Notice 1 GN R.983 (Dec 2014 as amended April 2017):

Activity 11 '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'

Activity 12 'The development of –

(ii) infrastructure or structures with a physical footprint of 100 square metres or more;

where such development occurs –

(a) within a watercourse;

(c) if no development setback exists, within 32 metres of a watercourse, measured from the edge of a watercourse; –'

Activity 28 "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) will occur inside an urban area, where the total land to be developed is bigger than 5 hectares; or

(ii) will occur outside an urban area, where the total land to be developed is bigger than 1 hectare;

excluding where such land has already been developed for residential, mixed, retail, commercial, industrial or institutional purposes."

Activity 47 "The expansion of facilities or infrastructure for the transmission and distribution of electricity where the expanded capacity will exceed 275 kilovolts and the development footprint will increase."

Listing Notice 2 GN R.984 (Dec 2014 as amended April 2017):

- *Activity 1 "The development of facilities or infrastructure for the generation of electricity from a renewable resource where the electricity output is 20 megawatts*

or more, excluding where such development of facilities or infrastructure is for photovoltaic installations and occurs –
(a) within an urban area; or
(b) on existing infrastructure.”

- Activity 15 *“The clearance of an area of 20 hectares or more of indigenous vegetation, excluding where such clearance of indigenous vegetation is required for- (i) the undertaking of a linear activity; or (ii) maintenance purposes undertaken in accordance with a maintenance management plan”*

Listing Notice 3 GN R.985 (Dec 2014 as amended April 2017):

- Activity 18 *“The widening of a road by more than 4 metres, or the lengthening of a road by more than 1 kilometre.*
(c) Gauteng
(iv) Sites identified as Critical Biodiversity Areas (CBA’s) or Ecological Support Areas (ESAs) in the Gauteng Conservation Plan or bioregional plans.”

Therefore and full Scoping and EIA process is required for the Project.

4.2.2 Consolidated Permitting Requirements

Due to nature of the Project, a suite of environmental legislation will be applicable. In order to meet the various legislative requirements, ERM intends to run a single integrated EIA process, which will also meet the requirements in terms of the following laws:

- National Environmental Management: Waste Act (No. 59 of 2008) (NEMWA);
- National Environmental Management: Biodiversity Act (No. 10 of 2004) (NEMBA); and
- National Heritage Resources Act (No. 25 of 1999).

Details of the permitting requirements from these laws are provided in *Table 4.1*.

Table 4.1 Consolidated Permitting Requirements

Law / Regulation	Responsible Party	Description
The Republic of South Africa Constitution Act (Act No. 108 of 1996) (“the Constitution”)	The Constitutional Court	The environmental right contained in Section 24 of the Constitution provides that everyone is entitled to an environment that is not harmful to his or her well-being.
National Environmental Management Act (Act No. 107 of 1998) (NEMA)	Competent Authority (DEA)	NEMA establishes the principles for decision-making on matters affecting the environment. Section 2 of the Act sets out the National Environmental Management principles which apply to the actions of organs of state that may significantly affect the environment. Furthermore, Section 28(1) states that “every person who causes or may cause significant pollution or degradation of the environment must take reasonable measures to prevent such pollution or degradation from occurring, continuing or recurring”. If such pollution or degradation cannot be prevented then appropriate measures must be taken to minimise or rectify such pollution or degradation. The applicant has the responsibility to ensure that the proposed activity and EIA process conform to the principles of NEMA.
National Environmental Management: Biodiversity Act (Act No. 10 of 2004) (NEM: BA)	DEA	The NEM:BA aims to conserve and manage the country’s biodiversity via protecting species and ecosystems, specifically those which are threatened or considered to be critically endangered. It also serves to regulate the management of alien vegetation. In terms of NEM:BA a list of endangered, critically endangered, vulnerable, and protected species has been promulgated (Section 6, Table 3 of the Act), which calls for an EIA process, should any of the listed species be identified on the site and need to be removed. An ecological impact assessment, comprising a wetland assessment, floral assessment and faunal assessment, has been undertaken to determine if any listed species are located on the proposed site.
National Environmental Management Waste Act (No. 59 of 2008)	The Provincial MEC is the competent authority for all applications involving general waste, while the National DEA administers applications involving hazardous waste.	Section 19 of NEMWA provides for the listing of waste management activities that have, or are likely to have a detrimental effect on the environment. In accordance with this, GN 921 of 29 November 2013 lists waste management activities for which a waste management licence (WML) is required in terms of Section 20 of the Act. Furthermore, it classifies each of the waste management activities into different categories, with more onerous provisions assigned for activities that are regarded as being more detrimental to the

Law / Regulation	Responsible Party	Description
		environment. In this regard, 'Category A' activities require a NEMA BAR process to be conducted prior to commencement. 'Category B' activities require a full S&EIR process to be conducted, while 'Category C' activities are wholly exempt from the WML permitting process, as long as they show compliance with a set of prescribed standards. A Waste Management Licence (WML) is not expected to be applicable for this Project given the small quantities of waste generated, the fact that only temporary storage of general waste and hazardous waste is expected and the fact that no general or hazardous waste is expected to be treated on site.
National Water Act (Act No. 36 of 1998) (NWA)	Department of Water and Sanitation (DWS)	The NWA provides for the sustainable and equitable use and protection of water resources. It is founded on the principle that the National Government has overall responsibility for and authority over water resource management, including the equitable allocation and beneficial use of water in the public interest, and that a person can only be entitled to use water if the use is permissible under the NWA. Section 21 of the NWA specifies the water uses which require authorisation from the DWS in terms of the NWA before they may commence. South Deep will apply for Water Use Licences or General Authorisation registrations required in terms of the Section 21 of the NWA itself.
Conservation of Agricultural Resources Act (Act No. 43 of 1983) (CARA)	Department of Agriculture	The CARA makes provision for the conservation of agricultural resources through limiting the sub-division of agricultural land, maintaining the production potential of land, combating and preventing erosion, preventing the weakening or destruction of water sources, protecting vegetation, and combating weeds and invader plants. As such, as part of the EIA process, recommendations should be made to ensure that measures are implemented to maintain the agricultural production of land (if possible).
National Heritage Resources Act(Act No. 25 of1999) (NHRA)	South African Heritage Resources Agency (SAHRA)	In terms of the NHRA, any person who intends to undertake "any development which will change the character of a site exceeding 5,000 m ² in extent, or involving three or more existing erven or subdivisions thereof", "the construction of a road powerline, pipeline exceeding 300 m in length" or "the rezoning of site larger than 10,000 m ² in extent..." must at the very earliest stages of initiating the development notify the responsible heritage resources

Law / Regulation	Responsible Party	Description
		authority, namely SAHRA or the relevant provincial heritage agency. These agencies would, in turn, indicate whether or not a full Heritage Impact Assessment (HIA) would need to be undertaken. Section 38(8) of the NHRA specifically excludes the need for a separate HIA where the evaluation of the impact of a development on heritage resources is required in terms of an EIA process. It is anticipated that SAHRA or the Provincial Heritage Resources Agency of Gauteng (PHRAG), will review the heritage assessments and provide comments to the DMR, which would consider these comments in their final environmental decision. However, should a permit be required for the damaging or removal of specific heritage resources such as palaeontological or archaeological objects, a separate application for such destruction will be submitted to the relevant heritage agency for approval.
National Road Traffic Act(Act No. 93 of1996) (as amended) (NRTA)	Gauteng Department of Roads and Transport (Gautrans)	Certain vehicles and loads cannot be moved on public roads without exceeding the limitations in terms of the dimensions and/or mass as prescribed in the Regulations of the NRTA. Although abnormal loads are not anticipated, Gautrans will be provided with an opportunity to comment on the proposed project. Furthermore, Gautrans will be requested to comment on the proposed access points to the site, road reserves for potential future provincial roads that traverse the site.
Electricity Regulation Act (Act No. 4 of 2006) (as amended)	National Energy Regulator of South Africa(NERSA)	The Act provides a national regulatory framework for the electricity supply industry. The Act requires registration and licensing of anyone wanting to generate, transmit, reticulate, distribute, trade, or import and export electricity. South Deep Mine Intends on generating electricity for its mining operations.
Land Use Planning Act (Act No. of 2014) (LUPA)	Westonaria Municipality	The land parcels on which the proposed PV facility is planned are currently zoned as "Agricultural". Construction of the PV facility cannot occur until a) a rezoning application for the change in zoning/land use of the land is submitted to and approved by the Westonaria Municipality in terms of LUPA, or b) a Consent Use is granted by the Westonaria Municipality in terms of the Westonaria Town Planning Scheme.
The National Energy Act (Act No. 34 of 2008)	Department of Energy (DoE)	One of the objectives of this Act is to promote sustainable development of renewable energy infrastructure. The proposed project will contribute to this objective and generate energy from a

Law / Regulation	Responsible Party	Description
Spatial Planning and Land Use Management Act (SPLUMA) (Act 16 of 2013)	Department of Rural Development and Land Reform (DRDLR)	renewable resource. The Spatial Planning and Land Use Management Act 16 of 2013 (SPLUMA) is a national law that was passed by Parliament in 2013. The law gives the Department of Rural Development and Land Reform (DRDLR) the power to pass Regulations in terms of SPLUMA to provide additional detail on how the law should be implemented. The final version of these Regulations (Regulations in terms of SPLUMA GG 38594 GN R239) was published on 23 March 2015. The law came into effect on 1 July 2015, while a commencement date for the Regulations are yet to be published.
Minerals and Petroleum Resources Development Act (Act No 28 of 2002)	Department of Mineral Resources (DMR)	The Minerals and Petroleum Resources Development Act (Act No 28 of 2002) as amended may require South Deep to undertake a Section 102 application. This would require the submission of an application to the DMR and updating of documentation.

4.3 OTHER APPLICABLE LEGISLATION, POLICIES AND/OR GUIDELINES

4.3.1 National Legislation

National legislation relevant for the Project (in addition to those presented in preceding sections) is listed below.

- Environment Conservation Act (Act No 73 of 1989) – DEA;
- National Environmental Management: Air Quality Act (Act No 39 of 2004) – DEA;
- Occupational Health and Safety Act (73 of 1989);
- Noise Control Regulations under the Environmental Conservation Act (73 of 1989);
- National Forests Act (84 of 1998);
- National Veld and Forest Fire Act (Act 101 of 1998) - DAFF
- Hazardous Substances Act (Act No 15 of 1973);
- National Road Traffic Act (Act No 93 of 1996);
- Subdivision of Agricultural Land Act (70 of 1970); and
- Nature and Environmental Conservation Ordinance (19 of 1974).

Applicable provisions from these laws and regulations will be incorporated into the design and implementation of the Project.

4.3.2 International Requirements

As the project developer, Enel Green Power, will be seeking project finance from international lenders the Equator Principals and International Finance Corporation (IFC) Performance Standards and Environmental Health and Safety Guidelines will have bearing on the project. These are discussed in further detail in the sections below.

The Equator Principles

The Equator Principles (EPs) are a set of agreed principles by financial institutions to determine, assess and manage environmental and social risk in project financing. The EPs emphasise that lenders will seek to ensure that the Project is developed in a manner that is socially responsible and reflects sound environmental management practices.

These Principles have been adopted by a wide range of banks and lenders all over the world in order to manage the social and environmental risks associated with their potential investments. The Equator Principles III were adopted in June 2013 and are listed in *Box 2-1*.

The Equator Principles (III)

- Principle 1: Review and Categorisation;
- Principle 2: Environmental and Social Assessment;
- Principle 3: Applicable Social and Environmental Standards;
- Principle 4: Environmental and Social Management System and Equator Principles Action Plan;
- Principle 5: Stakeholder Engagement;
- Principle 6: Grievance Mechanism;
- Principle 7: Independent Review;
- Principle 8: Covenants;
- Principle 9: Independent Monitoring and Reporting; and
- Principle 10: Reporting and Transparency.

IFC Performance Standards

The IFC applies Performance Standards (see Box 4.2) to manage social and environmental risks and impacts and to enhance development opportunities in the private sector. The IFC PS may be applied by other financial institutions electing to apply them to projects in emerging markets.

The IFC Performance Standards (2012)

Together, the eight Performance Standards establish standards that a project is to meet throughout the life of an investment by IFC or other relevant financial institutions.

- **Performance Standard 1:** Assessment and Management of Environmental and Social Risks and Impacts
- **Performance Standard 2:** Labour and Working Conditions
- **Performance Standard 3:** Resource Efficiency and Pollution Prevention
- **Performance Standard 4:** Community Health, Safety and Security
- **Performance Standard 5:** Land Acquisition and Involuntary Resettlement
- **Performance Standard 6:** Biodiversity Conservation and Sustainable Management of Living Natural Resources
- **Performance Standard 7:** Indigenous People
- **Performance Standard 8:** Cultural Heritage

A summary of the relevant PS is provided in Table 4.2. The potentially relevant IFC PS have been highlighted.

IFC Environmental, Health and Safety Guidelines

The Environmental, Health and Safety (EHS) Guidelines are technical reference documents that address IFC's expectation regarding the industrial pollution management performance of projects. This information supports actions aimed at avoiding, minimising, and controlling EHS impacts during the construction, operation, and decommissioning phase of a project or facility.

In the context of the proposed project, the most relevant EHS Guidelines to be considered are:

- World Bank Group General EHS Guidelines (2007); and
- World Bank Group EHS Guidelines for Electric Power Transmission and Distribution (2007).

Note that guidelines on solar PV plant development are currently not available.

Table 4.2 Summary of the Performance Standards Relevant to the Project

Performance Standards	Objectives
<p>Performance Standard 1 – Assessment and Management of Environmental and Social Risks and Impacts</p> <p><i>Underscores the importance of managing social and environmental performance throughout the life of a project (any business activity that is subject to assessment and management).</i></p>	<p><i>Impact identification and assessment.</i> To identify and assess social and environmental impacts, both adverse and beneficial, in the project’s area of influence.</p> <p><i>Mitigation.</i> To avoid, or where avoidance is not possible, minimize, mitigate, or compensate for adverse impacts on workers, affected communities, and the environment.</p> <p><i>Stakeholder engagement.</i> To ensure that affected communities are appropriately engaged on issues that could potentially affect them.</p> <p><i>Effective management.</i> To promote improved social and environment performance of companies through the effective use of management systems.</p>
<p>Performance Standard 2 – Labour and Working Conditions</p> <p><i>Recognises that the pursuit of economic growth through employment creation and income generation should be balanced with protection for basic rights of workers.</i></p>	<p>To promote fair treatment, non-discrimination and equal opportunity of workers, and compliance with national labour and employment laws.</p> <p>To establish, maintain and improve the worker management relationship.</p> <p>To promote compliance with national employment and labour laws.</p> <p>To protect the workforce by addressing child labour and forced labour.</p> <p>To promote safe and healthy working conditions, and to protect and promote the health of workers.</p>
<p>Performance Standard 3 – Resource Efficiency and Pollution Prevention</p> <p><i>Recognises that increased industrial activity and urbanisation often generate increased levels of pollution to air, water, and land that may threaten people and the environment at the local, regional, and global level.</i></p>	<p>To avoid or minimise adverse impacts on human health and the environment by avoiding or minimising pollution from project activities.</p> <p>To promote more sustainable use of resources, including energy and water.</p> <p>To reduce project –related GHG emissions.</p>
<p>Performance Standard 4 – Community Health, Safety and Security</p> <p><i>Recognises that project activities, equipment, and infrastructure often bring</i></p>	<p>To anticipate and avoid adverse impacts on the health and safety of the Affected Community during the project life from both routine and non-routine circumstances.</p> <p>To ensure that the safeguarding of personnel and property is carried out in accordance with relevant</p>

Performance Standards	Objectives
<p><i>benefits to communities including employment, services, and opportunities for economic development.</i></p>	<p>human rights principles and in a manner that avoids or minimises risks to the Affected Communities.</p>
<p>Performance Standard 5 – Land Acquisition and Involuntary Resettlement</p> <p><i>Outlines that involuntary resettlement refers both to physical displacement (relocation or loss of shelter) and to economic displacement (loss of assets or access to assets that leads to loss of income sources or means of livelihood) as a result of project-related land acquisition</i></p>	<p>To avoid, and when avoidance is not possible, minimise displacement by exploring alternative project designs.</p> <p>To avoid forced eviction.</p> <p>To anticipate and avoid, or where avoidance is not possible, minimise adverse social and economic impacts from land acquisition or restrictions on land use by (i) providing compensation for loss of assets at replacement cost and (ii) ensuring that resettlement activities are implemented with appropriate disclosure of information, consultation and the informed participation of those affected.</p> <p>To improve, or restore, the livelihoods and standards of living of displaced persons.</p> <p>To improve living conditions among physically displaced persons through the provision of adequate housing with security of tenure at resettlement sites.</p> <p><i>On the basis of the site visits and stakeholder engagement undertaken to date, IFC PS 5 is not applicable as there is no land acquisition or resettlement required for this Project.</i></p>
<p>Performance Standard 6 – Biodiversity Conservation and Sustainable Management of Natural Resources</p> <p><i>Recognises that protecting and conserving biodiversity – the variety of life in all its forms, including genetic, species and ecosystem diversity – and its ability to change and evolve, is fundamental to sustainable development</i></p>	<p>To protect and conserve biodiversity.</p> <p>To maintain the benefits from ecosystem services.</p> <p>To promote the sustainable management of living natural resources through the adoption of practices that integrated conservation needs and development priorities.</p>
<p>Performance Standard 7 – Indigenous Peoples</p> <p><i>Recognises that Indigenous Peoples, as social groups with identities that are distinct from dominant groups in national societies, are often among the most marginalised and vulnerable segments of the population.</i></p>	<p>To ensure that the development process fosters full respect for the dignity, human rights, aspirations, cultures and natural resource-based livelihoods of Indigenous Peoples.</p> <p>To anticipate and avoid adverse impacts of projects on communities of Indigenous Peoples, or when avoidance is not feasible, to minimise, mitigate, or compensate for such impacts, and to provide opportunities for development benefits, in a culturally appropriate manner.</p> <p>To promote sustainable development benefits and opportunities for Indigenous Peoples in a culturally appropriate manner.</p> <p>To establish and maintain an ongoing relationship based on Informed Consultation and Participation (ICP) with the Indigenous Peoples affected by a project throughout the life of the project.</p> <p>To ensure the Free, Prior and Informed Consent (FPIC) of the Affected Communities of the IPs when the circumstances described in this Performance Standard are present.</p> <p>To respect and preserve the culture, knowledge and</p>

Performance Standards	Objectives
	<p>practices of Indigenous Peoples.</p> <p><i>On the basis of the site visits and stakeholder engagement undertaken to date, IFC PS 7 is not considered applicable as the project site is currently privately owned land and there will be no direct impact on any communities and /or social groups with identities that are distinct from dominant groups. Potential impacts to nearby communities will, however, be assessed.</i></p>
<p>Performance Standard 8 - Cultural Heritage</p> <p><i>Recognises the importance of cultural heritage for current and future generations. Consistent with the Convention Concerning the Protection of the World Cultural and Natural Heritage, this Performance Standard aims to ensure that clients protect cultural heritage in the course of their project activities.</i></p>	<p>PS 8 aims to protect the irreplaceable cultural heritage and to guide clients on protecting cultural heritage in the course of their business operations. In addition, the requirements of this PS on a project's use of cultural heritage are based in part on standards set by the Convention on Biological Diversity. PS 8 recognises the importance of cultural heritage with an objective to:</p> <ul style="list-style-type: none"> Protect cultural heritage from the adverse impacts of project activities and support its preservation; and Promote the equitable sharing of benefits from the use of cultural heritage in business activities. <p>The PS requires the Project Proponent to comply with relevant national law on the protection of cultural heritage, including national law implementing the host country's obligations under the Convention Concerning the Protection of the World Cultural and Natural Heritage and other relevant international law.</p> <p><i>On the basis of the site visits and stakeholder engagement undertaken to date, IFC PS 8 is not considered applicable as there was no indication from any communities or individuals that there were any areas of cultural heritage on the site. However, procedures will be put in place should any such cultural heritage sites be identified.</i></p>