environmental affairs
Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA

Private Bag X 447· PRETORIA · 0001· Environment House · 473 Steve Biko Road · Arcadia · PRETORIA
Tel (+ 27 12) 399 9372

NEAS Reference: DEA/EIA/0002385/2014
DEA Reference: 14/12/16/3/3/2/678
Enquiries: Ms Sindiswa Dlomo
Telephone: 012-399-9390 **E-mail:** Sdlomo@environment.gov.za

Mr Menard Mugumo
Department of Water and Sanitation
Private Bag X313
PRETORIA
0001

Tel: (012) 336-6838
E-mail: Mugumom@dwa.gov.za

Dear Mr Mugumo

APPLICATION FOR ENVIRONMENTAL AUTHORISATION IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998: GN R. 543/544/546: PROPOSED CONSTRUCTION OF THE MZIMVUBU WATER PROJECT: ELECTRICITY GENERATION AND ASSOCIATED INFRASTRUCTURE.

With reference to the above application, please be advised that the Department has decided to accept the final EIAr and also grant environmental authorisation. The environmental authorisation (EA) and reasons for the decision are attached herewith.

In terms of regulation 10(2) of the Environmental Impact Assessment Regulations, 2010 (the Regulations), you are instructed to notify all registered interested and affected parties, in writing and within 12 (twelve) days of the date of the EA, of the Department's decision in respect of your application as well as the provisions regarding the submission of appeals that are contained in the Regulations.

Your attention is drawn to Chapter 7 of the Regulations, which prescribes the appeal procedure to be followed. This procedure is summarised in the attached document. Kindly include a copy of this document with the letter of notification to interested and affected parties.

Should the applicant or any other party wish to appeal any aspect of the decision a notice of intention to appeal must be lodged by all prospective appellants with the Minister, within 20 days of the date of the EA, by means of one of the following methods:

By post: Private Bag X447,
Pretoria, 0001; or
By hand: Environment House
473 Steve Biko,
Arcadia,
Pretoria, 0083

If the applicant wishes to lodge an appeal, it must also serve a copy of the notice of intention to appeal on all registered interested and affected parties as well as a notice indicating where, and for what period, the appeal submission will be available for inspection, should you intend to submit an appeal.

Appeals must be submitted in writing to:

Mr Z Hassam Director: Appeals and Legal Review, of this Department at the above mentioned addresses or fax number. Mr Hassam can also be contacted at:

Tel: (012) 399 9356
Email: AppealsDirectorate@environment.gov.za

The authorised activities shall not commence within twenty (20) days of the date of signature of the environmental authorisation. Further, please note that in terms of section 43(7) of the National Environmental Management Act, 1998, an appeal under section 43 of that Act 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.

Yours sincerely

Mr Sabelo Malaza
Chief Director: Integrated Environmental Authorisations
Department of Environmental Affairs
Date: 17/04/2015

CC:	Ms L Muruvan	ILISO Consultancy (Pty) Ltd	Tel: 012-685-0900	Email: Lea@iliso.com
	Mr A Mfenyana	Provincial DEAET	Tel: 043-605-7011	Email: albert.mfenyana@deaet.ecape.gov.za
	Mr MZ Silinga	Alfred Nzo District Municipality	Tel: 039-254-5009	Email: ngqokom@andm.gov.za
	Mr ZA Williams	Joe Gqabi District Municipality	Tel: 045-979-3006	Email: mm@jgdm.gov.za
	Mr N Hlazo	OR Tambo District Municipality	Tel: 074-501-6407	Email: ayandaw@ortambodm.org.za

APPEALS PROCEDURE IN TERMS OF CHAPTER 7 OF THE NEMA EIA REGULATIONS, 2010 (THE REGULATIONS) AS PER GN R. 543 OF 2010 TO BE FOLLOWED BY THE APPLICANT AND INTERESTED AND AFFECTED PARTIES UPON RECEIPT OF NOTIFICATION OF AN ENVIRONMENTAL AUTHORISATION (EA)

APPLICANT	INTERESTED AND AFFECTED PARTIES (IAPs)
1. Receive EA from the relevant Competent Authority (the Department of Environmental Affairs [DEA]).	1. Receive EA from Applicant/Consultant.
2. Within 12 days of date of the EA notify all IAPs of the EA and draw their attention to their right to appeal against the EA in terms of Chapter 7 of the Regulations.	2. N/A.
3. If you want to appeal against the EA, submit a notice of intention to appeal within 20 days of the date of the EA with the Minister of Environmental Affairs (the Minister).	3. If you want to appeal against the EA, submit a notice of intention to appeal within 20 days of the date of the EA with the Minister of Environmental Affairs (the Minister).
4. After having submitted your notice of intention to appeal to the Minister, provide each registered IAP with a copy of the notice of intention to appeal within 10 days of lodging the notice.	4. After having submitted your notice of intention to appeal to the Minister, provide the applicant with a copy of the notice of intention to appeal within 10 days of lodging the notice.
5. The Applicant must also serve on each IAP: • a notice indicating where and for what period the appeal submission will be available for inspection.	5. Appellant must also serve on the Applicant within 10 days of lodging the notice, • a notice indicating where and for what period the appeal submission will be available for inspection by the applicant.
6. The appeal must be submitted in writing to the Minister within 30 days after the lapsing of the period of 20 days provided for the lodging of the notice of intention to appeal.	6. The appeal must be submitted to the Minister within 30 days after the lapsing of the period of 20 days provided for the lodging of the notice of intention to appeal.
7. Any IAP who received a notice of intention to appeal may submit a responding statement to that appeal to the Minister within 30 days from the date that the appeal submission was lodged with the Minister.	7. An Applicant who received notice of intention to may submit a responding statement to the appeal to the Minister within 30 days from the date that the appeal submission was lodged with the Minister.

NOTES:

1. **An appeal must be:-**
   a) submitted in writing;
   b) accompanied by:
   - a statement setting out the grounds of appeal;
   - supporting documentation which is referred to in the appeal; and
   - a statement that the appellant has complied with regulation 62 (2) or (3) together with copies of the notices referred to in regulation 62.

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REPUBLIC OF SOUTH AFRICA

Environmental Authorisation

In terms of regulation 36 of the Environmental Impact Assessment Regulations, 2010

The construction of the Mzimvubu Water Project: Electricity Generation and associated infrastructure

OR Tambo and Joe Gqabi District Municipalities

Authorisation register number:	*14/12/16/3/3/2/678*
NEAS reference number:	*DEA/EIA/0002385/2014*
Last amended:	*First issue*
Holder of authorisation:	*Department of Water and Sanitation*
Location of activity:	*EASTERN CAPE PROVINCE: Within the Alfred Nzo, Elundini, Mhlonto, Nyandeni, Ntabankulu, and Umzimvubu Local Municipalities.*

This environmental 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.

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Decision

The Department is satisfied, on the basis of information available to it and subject to compliance with the conditions of this environmental authorisation, that the applicant should be authorised to undertake the activities specified below.

Non-compliance with a condition of this authorisation may result in criminal prosecution or other actions provided for in the National Environmental Management Act, 1998 and the EIA regulations.

Details regarding the basis on which the Department reached this decision are set out in Annexure 1.

Activities authorised

By virtue of the powers conferred on it by the National Environmental Management Act, 1998 (Act No.107 of 1998) and the Environmental Impact Assessment (EIA) Regulations, 2010 the Department hereby authorises –

DEPARTMENT OF WATER AND SANITATION

with the following contact details –

Mr Menard Mugumo
Department of Water and Sanitation
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PRETORIA
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Tel: (012) 336-6838
Fax: (012) 336-7399
Cell: (082) 804-5162
E-mail: Mugumom@dwa.gov.za

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to undertake the following activities (hereafter referred to as "the activity") indicated in Listing Notice 1, Listing Notice 2 and Listing Notice 3 (GN R. 544, 545 & 546):

Listed activities	**Activity/Project description**
GN R. 544 Item 10: *The construction of facilities and infrastructure for the transmission and distribution of electricity –* *Outside urban areas or industrial complexes with a capacity of more than 33 but less than 275 kilovolts…."*	The construction of a 132kv overhead power line from the hydropower plants at Ntabelanga Dam and Lalini Dam to the existing Eskom electricity grid. The construction of step-up transformers and a substation to transmit and distribute the electricity generated.
GN R.545 Item 1: *The construction of facilities or infrastructure for the generation of electricity where the electricity output is 20 megawatts or more.*	The hydropower plant at Ntabelanga Dam will generate an average of 2.1 MW and the plant at Lalini Dam will generate up to 30 MW average output. Combined scheme output is an average of 32 MW or up to 180 MW peaking power.
GN R. 546 Item 13: *The clearance of an area of 1 hectare or more of vegetation where 75% or more of the vegetative cover constitutes indigenous vegetation, except where such removal of vegetation is required for:* *(1) the undertaking of a process or activity included in the list of waste management activities published in terms of section 19 of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008), in which case the activity is regarded to be excluded from this list.* *(2) the undertaking of a linear activity falling below the thresholds mentioned in Listing Notice 1 in terms of GN No. 544 of 2010.* ***(a)** Critical biodiversity areas and ecological support areas as identified in systematic biodiversity plans adopted by the competent authority.*	Vegetation clearance for construction of the two dams and associated infrastructure and borrow areas within Critical biodiversity areas.

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Listed activities	Activity/Project description

as described in the final Environmental Impact Assessment (EIAr) dated February 2015 at:

Power line from

Alternative	Latitude	Longitude
Main Lalini power line (Mid-point)	31° 19'41.1"	28° 56' 12.2"
Main Lalini power line (at HEP end)	31° 17'57.6"	28° 59'15.9"
Main Lalini power line (connection to existing 132Kv)	31° 20' 56.7"	28° 52'16.8"

Hydro Energy Power Plants

Lalini Dam HEP – Small Plant	31° 16'10"	28° 55'41.9"
Lalini Dam HEP – Main Plant	31° 17' 54"	28° 59'11.7"
Ntabelanga Dam Small HEP – Centroid	31° 7'14.8"	28° 40'25.1"

- for the construction the Mzimvubu Water Project: Electricity Generation and Distribution infrastructure and associated infrastructure, within the Alfred Nzo, Elundini, Mhlontlo, Nyandeni, Ntabankulu, and Umzimvubu Local Municipalities, in the Eastern Cape Province, hereafter referred to as "the property".

The infrastructure associated with this facility includes:

- Pipeline and tunnel at the approved Lalini Dam;
- Generation of hydro power and feeding of this power into the existing Eskom grid; and
- A 13km power line from the Lalini Dam Tunnel outlet (Hydropower plant).

Conditions of this Environmental Authorisation

Scope of authorisation

1. The preferred power line route (Alternative 3) realigned and the small hydro energy power plant at Lalini, small hydropower plant at Ntabelanga Dam generating between 0.75 MW and 5MW (average 2.1 MW) and main hydropower plant at Lalini Dam with installed capacity of 37.5MW is approved as per the above-mentioned geographic coordinates.
2. Authorisation of the activity is subject to the conditions contained in this environmental authorisation, which form part of the environmental authorisation and are binding on the holder of the authorisation.
3. The holder of the authorisation is responsible for ensuring compliance with the conditions contained in this environmental authorisation. This includes any person acting on the holder's behalf, including but not limited to, an agent, servant, contractor, sub-contractor, employee, consultant or person rendering a service to the holder of the authorisation.
4. The activities authorised may only be carried out at the property as described above.
5. Any changes to, or deviations from, the project description set out in this environmental authorisation must be approved, in writing, by the Department before such changes or deviations may be effected. In assessing whether to grant such approval or not, the Department may request such information as it deems necessary to evaluate the significance and impacts of such changes or deviations and it may be necessary for the holder of the authorisation to apply for further environmental authorisation in terms of the regulations.
6. This activity must commence within a period of five (05) years from the date of issue of this environmental authorisation. If commencement of the activity does not occur within that period, the authorisation lapses and a new application for environmental authorisation must be made in order for the activity to be undertaken.
7. Commencement with one activity listed in terms of this environmental authorisation constitutes commencement of all authorised activities.
8. The holder of an environmental authorisation must apply for an amendment of environmental authorisation with the competent authority for any alienation, transfer or change of ownership rights in the property on which the activity is to take place.

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Notification of authorisation and right to appeal

9. The holder of the authorisation must notify every registered interested and affected party, in writing and within 12 (twelve) calendar days of the date of this environmental authorisation, of the decision to authorise the activity.
10. The notification referred to must –
    10.1. specify the date on which the authorisation was issued;
    10.2. inform the interested and affected party of the appeal procedure provided for in Chapter 7 of the Environmental Impact Assessment Regulations, 2010;
    10.3. advise the interested and affected party that a copy of the authorisation will be furnished on request; and
    10.4. give the reasons of the competent authority for the decision.
11. The holder of the authorisation must publish a notice –
    11.1. informing interested and affected parties of the decision;
    11.2. informing interested and affected parties where the decision can be accessed; and
    11.3. drawing the attention of interested and affected parties to the fact that an appeal may be lodged against this decision in the newspaper(s) contemplated and used in terms of regulation 54(2)(c) and (d) and which newspaper was used for the placing of advertisements as part of the public participation process.

Management of the activity

12. The Environmental Management Programme (EMPr) submitted as part of Application for EA must be amended and submitted to the Department for written approval prior to commencement of the activity. The recommendations and mitigation measures recorded in the EIAr dated February 2015 must be incorporated as part of the EMPr. Once approved, the EMPr must be implemented and adhered to.

Monitoring

13. The holder of the authorisation must appoint a qualified, experienced and independent Environmental Control Officer (ECO) for the construction phase of the development that will have the responsibility to ensure that the mitigation/rehabilitation measures and recommendations

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referred to in this authorisation are implemented and to ensure compliance with the provisions of the approved EMPr.

13.1. The ECO must be appointed before commencement of any authorised activities.

13.2. Once appointed, the name and contact details of the ECO must be submitted to the *Director: Compliance Monitoring* of the Department.

13.3. The ECO must keep record of all activities on site, problems identified, transgressions noted and a task schedule of tasks undertaken by the ECO.

13.4. The ECO must remain employed until all rehabilitation measures, as required for implementation due to construction damage, are completed and the site is ready for operation.

13.5. Records relating to monitoring and auditing must be kept on site and made available for inspection to any relevant and competent authority in respect of this development.

Recording and reporting to the Department

14. All documentation e.g. audit/monitoring/compliance reports and notifications, required to be submitted to the Department in terms of this environmental authorisation, must be submitted to the *Director: Compliance Monitoring* of the Department.
15. The holder of the authorisation must submit an environmental audit report to the Department within 30 days of completion of the construction phase (i.e. within 30 days of site handover) and within 30 days of completion of rehabilitation activities.
16. The environmental audit report must indicate the date of the audit, the name of the auditor and the outcome of the audit in terms of compliance with the environmental authorisation conditions as well as the requirements of the approved EMPr.
17. Records relating to monitoring and auditing must be kept on site and made available for inspection to any relevant and competent authority in respect of this development.

Commencement of the activity

18. The authorised activity must not commence within twenty (20) days of the date of signature of the environmental authorisation.

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Notification to authorities

19. A written notification of commencement must be given to the Department no later than fourteen (14) days prior to the commencement of the activity. Commencement for the purposes of this condition includes site preparation. The notice must include a date on which it is anticipated that the activity will commence, as well as a reference number. This notification period may coincide with the notice of intent to appeal period.

Operation of the activity

20. A written notification of operation must be given to the Department no later than fourteen (14) days prior to the commencement of the activity operational phase.

Site closure and decommissioning

21. Should the activity ever cease or become redundant, the holder of the authorisation must undertake the required actions as prescribed by legislation at the time and comply with all relevant legal requirements administered by any relevant and competent authority at that time.

Specific conditions

22. An ecological specialist must be commissioned to perform a final walkthrough of the site once the final route alignment and tower positions have been identified. The specialist must cover buffer identification, no-go areas and fine scale mapping of the distribution of protected trees in the approved corridor. This specialist report must be submitted to the Department for approval (as part of the amended EMPr) prior to construction.
23. The Ecological Water Requirement (EWR) defined for the Tsitsa system must be maintained at all times.
24. Search, Rescue and transplantation of protected species along the power line route must be undertaken prior to commencement of construction activities and during the correct season as per the recommendations of the specialist.
25. No areas falling outside of the study area must be cleared for construction and/ or construction related purposes.

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26. All stockpiles must be well managed and have measures such as berms and hessian sheets implemented to prevent erosion and sedimentation.
27. No activities will be allowed to encroach into a water resource without a water use authorisation being in place from the Department of Water Affairs.
28. The holder of the authorisation must obtain a wayleave from the Department of Public Transport Roads and Works prior to commencement of construction.
29. Anti-collision devices such as bird flappers must be installed where power lines cross avifaunal corridors, as recommended by the avifaunal specialist. The input of an avifaunal specialist must be obtained for the fitting of the anti-collision devices onto specific sections of the line once the exact positions of the towers have been surveyed and pegged.
30. A permit must be obtained from the relevant nature conservation agency for the removal or destruction of indigenous protected or endangered plant or animal species.
31. Copies of all permits obtained and required for the construction and implementation of the approve development, must be submitted to this Department prior to the respective phase for record keeping.
32. No exotic plants may be used for rehabilitation purposes. Only indigenous plants of the area may be utilised.
33. Liaison with land owners/farm managers is to be done prior to construction in order to provide sufficient time for them to plan agricultural activities. If possible, construction should be scheduled to take place within the post-harvest, pre planting season, when fields are lying fallow.
34. Vegetation clearing must be kept to an absolute minimum. Mitigation measures must be implemented to reduce the risk of erosion and the invasion of alien species.
35. Construction must include design measures that allow surface and subsurface movement of water along drainage lines so as not to impede natural surface and subsurface flows. Drainage measures must promote the dissipation of storm water run-off.
36. An integrated waste management approach must be implemented that is based on waste minimisation and must incorporate reduction, recycling, re-use and disposal where appropriate. Any solid waste shall be disposed of at a landfill licensed in terms of section 20 (b) of the National Environment Management Waste Act, 2008 (Act No.59 of 2008).

General

37. A copy of this environmental authorisation and the approved EMPr must be kept at the property where the activity will be undertaken. The environmental authorisation and approved EMPr must be

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produced to any authorised official of the Department who requests to see it and must be made available for inspection by any employee or agent of the holder of the authorisation who undertakes work at the property.

38. National government, provincial government, local authorities or committees appointed in terms of the conditions of this environmental authorisation or any other public authority shall not be held responsible for any damages or losses suffered by the holder of the authorisation or his/her successor in title in any instance where construction or operation subsequent to construction be temporarily or permanently stopped for reasons of non-compliance by the holder of the authorisation with the conditions of authorisation as set out in this document or any other subsequent document emanating from these conditions of authorisation.

Date of environmental authorisation: 17/06/2015

Mr Sabelo Malaza

Chief Director: Integrated Environmental Authorisations

Department of Environmental Affairs

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 information contained in the final EIAr dated February 2015;
b) The comments received from the Department of Water and Sanitation, Eastern Cape COGTA: Spatial Planning Directorate, NEPSA Energy, University of Fort Hare, Eastern Cape Economic Development, Environmental Affairs and Tourism and interested and affected parties as included in the EIAr dated February 2015 and Appendix B dated April 2015;
c) Mitigation measures as proposed in the final EIAr dated February 2015 and the EMPr;
d) The information contained in the specialist studies contained within the final EIAr dated February 2015;
e) Findings of the site visit conducted on 12 March 2014 and
f) The objectives and requirements of relevant legislation, policies and guidelines, including section 2 of the National Environmental Management Act, 1998 (Act No.107 of 1998).

2. Key factors considered in making the decision

All information presented to the Department was taken into account 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 findings of all the specialist studies conducted and their recommended mitigation measures.
b) The need for this project stems from the fact that the Mzimvubu River catchment in the Eastern Cape of South Africa is within one of the poorest and least developed regions of the country. Development of the area to accelerate the social and economic upliftment of the people was therefore identified as one of the priority initiatives of the Eastern Cape Provincial Government.
c) The final EIAr dated February 2015 identified all legislation and guidelines that have been considered in the preparation of the final EIAr dated February 2015.

d) The methodology used in assessing the potential impacts identified in the final EIAr dated February 2015 and the specialist studies have been adequately indicated.

e) A sufficient public participation process was undertaken and the applicant has satisfied the minimum requirements as prescribed in the EIA Regulations, 2010 for public involvement.

3. Findings

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

a) The identification and assessment of impacts is detailed in the final EIAr dated February 2015 and sufficient assessment of the key identified issues and impacts has been completed.

b) The procedure followed for impact assessment is adequate for the decision-making process.

c) The proposed mitigation of impacts identified and assessed adequately curtails the identified impacts.

d) The information contained in the final EIAr dated February 2015 is accurate and credible.

e) EMPr measures for the pre-construction, construction and rehabilitation phases of the development were proposed and included in the final EIAr and will be implemented to manage the identified environmental impacts during the construction process.

In view of the above, the Department is satisfied that, subject to compliance with the conditions contained in the environmental authorisation, the authorised activities will not conflict with the general objectives of integrated environmental management laid down in Chapter 5 of the National Environmental Management Act, 1998 and that any potentially detrimental environmental impacts resulting from the authorised activities can be mitigated to acceptable levels. The environmental authorisation is accordingly granted.

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