



Department of Forestry, Fisheries and the Environment (DFFE) The Director-General  
Environment House  
473 Steve Biko Road  
Arcadia  
Attention: Dr Dee Fischer  
By Email: [dfischer@dffe.gov.za](mailto:dfischer@dffe.gov.za)

15 May 2023

Dear Dr Fischer

**SAWEA COMMENTS ON GOVERNMENT NOTICE (GN) 3286: CONSULTATION ON THE INTENTION TO EXCLUDE IDENTIFIED ACTIVITIES ASSOCIATED WITH THE DEVELOPMENT AND EXPANSION OF BATTERY STORAGE FACILITIES FROM THE REQUIREMENT TO OBTAIN AN ENVIRONMENTAL AUTHORISATION BASED ON THE BATTERY STORAGE EXCLUSION NORM**

The draft Gazette (GN 3308:) issued under Section 24(2) (d) of the National Environmental Management Act (NEMA), circulated to SAWEA for comment on 14 April 2023, (herein after referred to as “the draft Norm”) has reference.

SAWEA is committed to the promotion of an environmentally sustainable and responsible energy industry in South Africa, and we support the development of well-informed legislation and policy to ensure a consistent and responsible approach to the assessment, construction, monitoring and management of renewable energy development in the country. SAWEA further supports the promotion of renewable power in large- and small-scale applications in South Africa as a least cost option and as a direct contribution to the achievement of national development and climate change objectives.

SAWEA requests that the Department of Forestry, Fisheries and Environment (DFFE) remain mindful of the limitations arising from this draft Norm as well as any future planned Norms / Gazettes, in the context of our collective need to secure immediate sustainable, low-carbon energy environment for South Africa.

The SAWEA Environmental Working Group has reviewed the draft Norm and wish to submit the comments and queries below in response to the document.

## GENERAL COMMENTS

1. The draft Battery Exclusion proposes the exclusion of NEMA listed activities associated with battery storage facilities based on compliance with a Norm entitled “Norm for the Exclusion of the Development and Expansion of Battery Storage Facilities in Low and Medium Sensitivity Area” in terms of Section 24(2)(d) of NEMA.
2. In general, and from the perspective of a developer, the proposed Exclusion is straightforward to implement, prescribes pragmatic sensitivity verification requirements, and has the potential to significantly fast-track battery storage development throughout South Africa. We therefore believe that in general, the proposed exclusion should be supported by the industry.
3. The six-year applicability period of the registration in terms of the Norm is supported.
4. The requirement for specialists to comment on cumulative impacts and to include a statement of environmental acceptability of cumulative impacts is supported.
5. Targeted stakeholder engagement as a component of the Norm is supported.
6. Paragraph 4 of preamble: “The environmental sensitivities related to “medium” and “low” for specific environmental themes are applicable to this Norm” should read: “Areas **verified** to be of “low” and “medium” environmental sensitivity for specific environmental themes are applicable to this Norm”. Although, in certain circumstances linear infrastructure can be placed in areas of “high” and “very high” sensitivity in terms of the Norm, and therefore it should be considered as to whether this sentence contradicts the Schedule and whether it is required at all.

## SPECIFIC COMMENTS

### **1. Definitions**

1. The definition of “pre-negotiation” and the requirement for “confirmation of pre-negotiation with landowners” in Section 6.2.5 is vague, and it is suggested that Section 6.2.5 be amended to reflect that confirmation of pre-negotiation with landowners is demonstrated “in the form of an in-principal agreement of the infrastructure routing”.
2. The definition of “watercourse” as reflected in the draft exclusion<sup>1</sup> is contradictory – a “river” is a “natural channel in which water flows regularly or intermittently”. It is possible that the DFFE seek to allow the development of Battery Storage Facilities in ephemeral systems in terms of the Exclusion and that this is a typo (i.e., the definition should read a “natural channel in which water flows regularly or intermittently”). Notwithstanding, should the Department of Fisheries, Forestry and the Environment (DFFE) seek to

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<sup>1</sup> ““Watercourse” when related to an identified activity in the context of this exclusion means only a reference to a natural channel in which water flows regularly or intermittently **and does not include a river**, spring, wetland, pan, lake or dam.”

preclude application of the Battery Exclusion in wetlands and at springs this restriction should be included in Section 2 of the Exclusion (Scope of the Exclusion) so as to prevent confusion with the EIA Regulations definition of a “watercourse”.

## 2. Scope

1. Section 2 indicates that the Norm is only applicable to areas identified to be of “low” and “medium” sensitivity in terms of the Screening Tool for various themes. However, in an apparent contradiction, Section 4 of the Schedule makes allowance for areas identified to be of “high” and “Very High” sensitivity by the Screening Tool to be disputed by specialists for themes during site sensitivity verification. It is therefore suggested that Section 2 be reworded as follows: “... when developed in areas of “low” and/or “medium” environmental sensitivity as verified by specialists in terms of Section 4 as identified by the Screening Tool for the following themes as identified by the Screening Tool.”. Similarly, Section 5.1.1 should be reworded to indicate that the exclusion applies to “areas verified to be of “medium” and/or “low” environmental sensitivity and confirmed to be such by the site sensitivity verification inspection for the environmental themes...”, and Section 5.1.2 could then be removed altogether.

## 3. Activities

1. With reference to section 3 of GN 3308, specific activities are excluded and no allowance is made for any other applicable activities that could be necessary for the realisation of the battery storage facility. Only one Listing Notice (LN) 3 Activity is included however other LN 3 Activities could be applicable, for example Activity 10 of LN 3 could be applicable and if just triggered due to the location being within 10 kilometres of a national park the footprint of the battery storage facility could still likely be verified as “medium” or “low” sensitivity. It is recommended that allowance is made for any associated activities identified in LN 1, 2 or 3 necessary for the realization of the facility to also be excluded.

## 4. Site Sensitivity Verification

1. It is suggested that Footnote 5 be reworded as follows to remove possible ambiguity: “The site sensitivity verification to determine the presence or likely presence of species of conservation concern must be undertaken in accordance with the site verification requirements included in the Species Environmental Assessment Guidelines”.

## 5. Application of the exclusion

1. It is suggested that relevant wording in Sections 5.1.2.1 – 5.1.2.3 be reworded as follows to remove possible ambiguity: “~~environmental assessment practitioner or environmental scientist~~ and a) specialists and b) environmental assessment practitioner or environmental scientist confirm...”.



2. The Battery Exclusion makes allowance for linear infrastructure that "forms an integral part of such activity" located in areas of "High" and "Very High" sensitivity to be registered as part of the exclusion. While we note that specialists must confirm that these areas have been avoided as far as possible, and that specific mitigation should be recommended in these instances, we are of the opinion that specialists should be required to comment on the environmental acceptability/tolerability of this infrastructure when areas of "High" and "Very High" cannot be avoided.
3. With reference to section 5.1.2.2 of GN 3308, footnote 8 refers to the Generic EMPR relevant to an application for substations and overhead electricity transmission and distribution infrastructure and it is noted that it applies to this norm and must include aspects of the solar photovoltaic (PV) facility. This statement is incorrect as it should refer to including aspects of the battery storage facility.

## **6. Registration**

1. Apart from the general environmental controls identified in Appendix 10, does this also need to adhere to requirements in EIA regs?
2. With reference to section 6.2.6 of GN 3308, reference is made to a locality map showing the footprint including linear infrastructure overlaid on environmental sensitivities. Kindly confirm if this should be the verified environmental sensitivities or those identified in the screening tool.
3. Section 6.2.8 requires that "evidence of the public consultation process followed to bring the proposed registration process and the location at which the registration documents can be accessed to the attention of adjacent landowners and land occupiers as well as relevant environmental nongovernmental organisations, to be attached"; however, no public consultation process is stipulated in the Norm. While we view the requirement for focussed consultation to be positive, a simple Section should be included in the Norm stipulating that, the landowner/s, adjacent landowners and land occupiers as well as relevant environmental nongovernmental organisations must be afforded an opportunity to review and comment on the outcomes of the site sensitivity verification process only for a period of 14 days. Furthermore, Section 6.2.8 should be amended to include the requirement to submit comments received during the process with the registration..

## **7. Re-Registration**

1. With reference to section 7.5 of GN 3308, it is noted that when the change of ownership occurs after the finalization of the construction phase, a registration form and a locality map clearly identifying the portion transferred and remaining portion...to enable the issuing of a new registration number to the new owner of the portion of the facility transferred. This section assumes that there is a change of ownership of a portion of the registered facility after construction, however would a re-registration of the facility be



required if the ownership of the entire battery storage facility changed after completion of the construction phase and if so where is the process for this explained.

**Appendix 7:**

There should be separate EAP and Specialist Declarations – the specialists will not know the Act as the EAP should and the EAP will not know each specialist theme as the specialist should.

