

## **5. LEGISLATIVE CONTEXT**

### **5.1. Introduction**

This section of the Draft Scoping Report includes applicable legal provisions and the legal context for the EIA process. It provides a review of relevant national legislation and regulations, which are applicable to (or have implications for) the proposed project in the Republic of South Africa.

One of the main foci of this section is on the provisions of the National Environmental Management Act (NEMA) and the National Environmental Management: Waste Act (NEMWA). NEMA is the primary South African legislation governing the requirements for environmental impact assessment. In the context of the Tutuka Continuous Ashing EIA, the provisions of NEMA, NEMWA and the associated EIA Regulations (regarding scoping and EIA) are of fundamental relevance.

Various pieces of legislation are applicable to this project. For the purposes of this scoping phase the relevant legislation has been listed below and the Acts which detail the relevant listed activities have been expanded on further. A more detailed legal review (including provincial and local policies and by-laws as well as international principles as required) will be conducted as part of the EIA Study in relation to the identified preferred site.

The following Acts are applicable to this project:

- The National Environmental Management: Waste Act No 59 of 2008;
- The National Environmental Management: Air Quality Act No 39 of 2004;
- National Water Act No 36 of 1998;
- GN R1179 (GG 16536 of 25 August 1995) – Hazardous Chemical Substances Regulations promulgated in terms of the Occupational Health and Safety Act No 85 of 1993;
- Hazardous Substances Act No 15 of 1973
- Constitution of South Africa, 1996 (with reference to noise)
- Explosives Act No 26 of 1956 and Regulation 1604 of 8 September 1972;
- National Environmental Management Act, No 107 of 1998 (with reference to noise and prevention of pollution)
- National Environmental Management: Biodiversity Act No 10 of 2004 (in respect of Fauna, Flora and National Heritage Resources)
- Conservation of Agricultural Resources Act No 43 of 1989 (in respect of Fauna, Flora and National Heritage Resources)
- National Forest Act No 84 of 1998 (in respect of protected trees)
- National Veld and Forest Fire Act No 101 of 1998

- National Heritage Resources Act No 25 of 1999
- Promotion of Access to Information Act No 2 of 2000 (in respect of record-keeping and interested and affected parties and monitoring of environmental impacts)

## 5.2. Legal Review

### 5.2.1. Atmospheric Pollution

Legislation	Specific compliance requirements	Legal commentary and recommended action
<b>National Environmental Management: Air Quality Act No 39 of 2004</b>	Section 32 – Control of dust	Prevention of nuisance by dust and measures for the control of dust. During the project, dust must be prevented by taking measures to control same. Current dust sources include vehicles and wind erosion.
	Section 35 – Control of offensive odours	Ensure that no offensive odours are emitted by any of the activities of Eskom during the project.
	<b>Diesel Vehicle Regulations</b> GN R 1651 (GG 4393 of 20 September 1974)	Eskom to ensure that no diesel driven vehicles to be used on any public roads if the noxious or offensive gases emitted by the engine of the vehicle is of a density greater than prescribed in this Regulation

### 5.2.2. Waste Management

Legislation	Specific compliance requirements	Legal commentary and recommended action
<b>National Environmental Management: Waste Act No 59 of 2008</b>	Section 16 - General duty in respect of waste management	Eskom (as a 'holder of waste') must take reasonable measures to avoid the generation of waste and the minimization of the toxicity and amounts of waste generated and also to reduce, recycle and recover waste. Waste must be disposed of in an environmentally sound manner. It must not cause a nuisance through noises, odour or visual impacts
	Section 17 - Reduction, re-use, recycling and recovery of waste	Any activity involving the reduction, re-use, recycling or recovery of waste must use less natural resources than the disposal of such waste and must be less harmful to the environment than the disposal of such waste.
	Section 20 - Consequences of listing waste management activities	If Eskom intends to undertake a waste management activity, it must be in accordance with the waste management license requirements for that activity. A waste management activity includes the generation, accumulation, storage, re-use, recycling and disposal of waste.
	Section 26 - Prohibition of unauthorised disposal	No person may dispose of waste in or on any land, waterbody or at any facility unless the disposal is authorised by law; or dispose of waste in a manner that is likely to cause pollution of the environment or harm to health and well-being.

	Section 45 - Application for waste management licenses	This section sets out the provisions regarding the application for waste management licenses
	<b>R718 of 2009 (GG 32368 of 03/07/2009)</b>	This regulation lists the waste management activities that have, or are likely to have a detrimental effect on the environment.
	Regulation 2 – General	It must be noted that Eskom may not undertake or conduct a waste management activity listed in this schedule unless a license is issued in respect of that activity.
	Category A	The following listed Activities apply: Activity 19: The expansion of facilities of or changes to existing facilities for any process or activity, which requires an amendment of an existing permit or license or a new permit or license in terms of legislation governing the release of pollution, effluent or waste
	Category B	The following listed activities apply: Activity 9: The disposal of any quantity of hazardous waste to land Activity 11: The construction of facilities for activities listed in Category B of this schedule (not in isolation to associated activity)

### 5.2.3. Hazardous Substances

Legislation	Specific compliance requirements	Legal commentary and recommended action
<b>Occupational Health and Safety Act No 85 of 1993</b>	GN R1179 (GG 16536 of 25 August 1995 – Hazardous Chemical Substances Regulations	These regulations contain provisions regarding the handling of hazardous substances and are mainly aimed at the occupational hygiene side thereof, including the assessment of potential exposure, medical surveillance, PPE, etc. Eskom use fuels, oils, solvents, etc and these regulations need to be taken cognizance of in terms of the transport, storage, handling and disposal thereof.
<b>Hazardous Substances Act No 15 of 1973</b>	Various sections of this Act apply	Eskom must identify the various groups of hazardous substances which will be used in terms of the extension of the ash disposal infrastructure. These substances should then be classed in terms of SANS10228 to ensure that they are stored properly and that the MSDS's are in place in the event of a spill

<b>Explosives Act No 26 of 1956 and R1604 of September 1972</b>	Various sections of this Act will apply in respect of the use, handling, transport, storage and disposal of explosives.	Various sections of this Act and the regulations will apply in the event that blasting will take place in the construction of the ash disposal facility and associated infrastructure.
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**5.2.4. Water Consumption and Disposal**

<b>Legislation</b>	<b>Specific compliance requirements</b>	<b>Legal commentary and recommended action</b>
<b>National Water Act No 36 of 1998</b>	Section 19 – Prevention and remedying effects of pollution	<p>This section places a duty on Eskom to establish whether any of its activities caused, causes or may cause pollution to a water resource. In order to do this, monitoring of water must be done on a regular basis. If any such pollution or possible pollution has been identified, reasonable measures must be taken to prevent the continuation or recurrence thereof. The effectiveness thereof must be monitored and if such pollution is not prevented, other measures must be investigated.</p> <p>Measures must also be taken for any future activities which may cause pollution to water resources.</p> <p>The CMA has been given extensive powers in prevention or remedying the effects of pollution of water resources and may recover their costs in any action, which could become quite significant.</p> <p>The ash disposal facility must be constructed in such a way as to ensure that maintenance can be performed to ensure that there are no leakages. Water quality must also be monitored to ensure no pollution to the environment in the event of leakages.</p>
	Section 20 - Control of emergency incidents	Eskom needs to identify the possibility of any substances used which may cause significant pollution of water resources during an accident or incident. Management procedures need to be implemented to prevent such accident or incident
	Section 21(c) - Impeding or diverting the flow of water in a <u>watercourse</u> ; and Section 21(i) – Altering the bed, banks, course or characteristics of a <u>watercourse</u>	Although Eskom have an existing water use license, it will have to be amended by the addition of an application in terms of sections 21(c) and 21(i) due to the presence of wetlands on the preferred site

	GN No 1198 of 18 December 2009 – General Authorisation in terms of section 39 of the National Water Act, 1998 in terms of section 21(c) and (i) for the purpose of rehabilitating a wetland for conservation purposes	“altering the bed, banks, course or characteristics of a watercourse” means any change affecting the resource quality within the riparian habitat or 1:100 year floodline, whichever is the greater distance at the date of commencement of this notice”
	GN No 1199 of 18 December 2009 – Replacement of General Authorisation in terms of section 39 of the National Water Act, 1998	This notice does not apply to the use of water in terms of section 21(c) and (i) for the rehabilitation of a wetland. The notice also does not apply to the use of water in terms of section 21(c) and (i) within a 500 metre radius from the boundary of any wetland

### 5.2.5. Noise

Legislation	Specific compliance requirements	Legal commentary and recommended action
<b>Constitution of South Africa, 1996</b>	Section 24 – Everybody has the right to an environment that is not harmful to their health or well-being.	Eskom must ensure that noise levels are minimized and where it cannot be minimized that the correct PPE is provided. A survey should be conducted to establish if any disturbing noises are caused by the activities of Eskom.
<b>National Environmental Management: Air Quality Act No 39 of 2004</b>	Section 34 – Control of noise	Ensure that no noise pollution exists. The Minister may prescribe national standards for the control of noise, either in general or by specified machinery or activities or in specified places or areas or for determining a definition of noise and the maximum levels of noise. When controlling noise the provincial and local spheres of government are bound by any prescribed national standards. Eskom to note this in the construction phase.

### 5.2.6. Fauna, Flora and National Heritage Resources

Legislation	Specific compliance requirements	Legal commentary and recommended action
This section of the review is inserted only for information purposes. The assumption is made that specialist studies had already covered these aspects		
<b>National Environmental Management: Biodiversity Act No 10 of 2004</b>	Section 56 – Listing of species that are threatened or in need of national protection	Ensure that no species which are listed as threatened or in need of protection occur on site.
	Section 69 – Duty of care relating to alien species	Ensure that no alien species are established on site

	Section 75 - Control and eradication of listed invasive species	Once a survey has been conducted to establish if there are listed invasive species and they do occur on site, they must be controlled and eradicated.
	Section 5 – Prohibition of the spreading of weeds	Ensure that weeds are not spread on site
	GN R. 1048 (GG 9238 of 25 May 1984) Regulation 15 – Declared weeds and invader plants	A survey should be conducted to establish which weeds and invader plants occur on site. Steps should then be taken to control and/or eradicate weeds as provided for in these regulations.
<b>Conservation of Agricultural Resources Act No 43 of 1989</b>	Section 12 – Declaration of trees as protected R1080 of 2008(GG 31482 of 3 October 2008) – Notice of list of protected trees	A survey should be conducted to verify if there are any protected trees on site and if there are, it should be noted that these trees may not be cut, damaged, destroyed, etc for the purpose of clearing any areas on site
<b>National Forest Act No 84 of 1998</b>		The effect of this declaration is that in terms of section 15(1) of the National Forests Act, 1998, no person may cut, disturb, damage or destroy any protected tree or possess, collect, remove, transport, export, purchase, sell, donate or in any other manner acquire or dispose of any protected tree or any forest product derived from a protected tree, except under a license granted by the Minister to an applicant and subject to such period and conditions as may be stipulated
<b>National Veld and Forest Fire Act No 101 of 1998</b>	Section 12 – Duty to prepare and maintain fire breaks	Note that fire breaks need to be prepared and maintained.
	Section 17 – Readiness for fire fighting	Eskom to ensure that firefighting equipment is serviced and maintained on a regular basis
<b>National Heritage Resources Act No 25 of 1999</b>	Section 36 – Burial grounds and graves	Graves should be identified

### 5.2.7. Planning of New Activities

Legislation	Specific compliance requirements	Legal commentary and recommended action
<b>National Environmental Management Act No 107 of 1998</b>	Regulation 544 of 2010 (GG 33306 of 18 June 2010) – Listing notice 1: List of activities and competent authorities identified in terms of section 24(2) and 24D	These regulations set out the activities and competent authorities. The activities listed in Appendix 1 may not commence without an environmental authorisation from the competent authority.
	Regulation 3 – Identified activities and competent authorities	Activity 9: The construction of facilities or infrastructure exceeding 1000 meters in length for the bulk transportation of water, sewage or storm

		<p>water (i) with an internal diameter of 0.36 meters or more or (ii) with a peak throughput of 120 litres per second or more</p> <p>Activity 11: The construction of infrastructure or structures covering 50 square metres or more where such construction occurs within a watercourse or within 32 metres of a watercourse, measured from the edge of a watercourse, excluding where such construction will occur behind the development setback line</p> <p>Activity 18: The infilling or depositing of any material of more than 5 cubic metres into, or the dredging, excavation, removal or moving of soil, sand, shells, shell grit, pebbles or rock or more than 5 cubic metres from a watercourse</p> <p>Activity 22: The construction of a road outside urban areas, with a reserve wider than 13,5 meters, or where no reserve exists where the road is wider than 8 meters.</p> <p>Activity 24: The transformation of land bigger than 1000 square metres in size, to residential, retail, commercial, industrial or institutional use, where, at the time of the coming into effect of this Schedule or thereafter such land was zoned open space, conservation or had an equivalent zoning</p> <p>Activity 28: The expansion of or changes to existing facilities for any process or activity where such expansion or changes to will result in the need for a permit or license in terms of national or provincial legislation governing the release of emissions or pollution, excluding where the facility, process or activity is 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 that Act will apply.</p> <p>Activity 37: The expansion of facilities or infrastructure for the bulk transportation of water, sewage or storm water where: (a) the facility or infrastructure is expanded by more than 1000 metres in length; or (b) where the throughput capacity of the facility or infrastructure will be increased by 10% or more-</p> <p>Activity 39: The expansion of canals, channels, bulk storm water outlet structures within a watercourse or within 32 metres of a watercourse, measured from the edge of a watercourse, where such expansion will</p>
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		<p>result in an increased development footprint but excluding where such expansion will occur behind the development setback line.</p> <p>Activity 40: The expansion of infrastructure by more than 50 square metres within a watercourse or within 32 metres of a watercourse, measured from the edge of a watercourse, but excluding where such expansion will occur behind the development setback line.</p> <p>Activity 47: The widening of a road by more than 6 meters or the lengthening of a road by more than 1 kilometre where no reserve exists, where the existing reserve is wider than 13,5 meters or where the existing road is wider than 8 meters.</p> <p>Activity 49: The expansion of facilities or infrastructure for the bulk transportation of dangerous goods in solid form, outside an industrial complex or zone, by an increased throughput capacity of 50 tons or more per day.</p>
<p><b>National Environmental Management Act No 107 of 1998</b></p>	<p>Regulation 545 of 2010 (GG 33306 of 18 June 2010) – Listing notice 2: List of activities and competent authorities identified in terms of sections 24(2) and 24D.</p>	<p>These regulations set out the activities and competent authorities. The activities identified in Appendix 1 may not commence without environmental authorization from the competent authority</p>
	<p>Regulation 3 – Identified activities and competent authorities</p>	<p>Activity 6: The construction of facilities or infrastructure for the bulk transportation of dangerous goods in solid form, outside an industrial complex, using funiculars or conveyors with a throughput capacity of more than 50 tons per day</p>
		<p>Activity 15: Physical alteration of undeveloped, vacant or derelict land for residential, retail, commercial, recreational, industrial or institutional use, where the total area to be transformed is 20 hectares or more</p>
		<p>Activity 26: Commencing of an activity, which requires an atmospheric emission license in terms of section 21 of the National Environmental Management: Air Quality Act 2004 (Act 39 of 2004), except where such commencement requires basic assessment in terms of Notice R544 of 2010</p>
<p><b>National Environmental Management Act No 107 of 1998</b></p>	<p>Regulation 546 of 2010 (GG 33306 of 18 June 2010) – Listing notice 3: List of activities and competent authorities identified in terms of sections 24(2) and 24D.</p>	<p>These regulations set out the activities and competent authorities. The activities identified in Appendix 1 may not commence without environmental authorization from the competent authority</p>

	<p>Regulation 3 – Identified activities and competent authorities.</p>	<p>Activity 4: The construction of a road wider than 4 meters with a reserve less than 13.5 meters outside urban areas, in:</p> <ul style="list-style-type: none"> <li>aa) A protected area identified in terms of NEMPAA, excluding conservancies;</li> <li>(bb) National Protected Area Expansion Strategy Focus areas;</li> <li>(dd) Sensitive areas as identified in an environmental management framework as contemplated in chapter 5 of the Act and as adopted by the competent authority;</li> <li>(ff) Critical biodiversity areas or ecosystem service areas as identified in systematic biodiversity plans adopted by the competent authority or in bioregional plans;</li> <li>(hh) Areas within 10 kilometers from national parks or world heritage Sites or 5 kilometers from any other protected area identified in terms of NEMPAA or from the core area of a biosphere reserve.</li> </ul> <p>Activity 16: The construction of infrastructure outside urban areas in sensitive areas covering 10 square meters or more where such construction occurs within a watercourse or within 32 meters of a watercourse, measured from the edge of a watercourse, excluding where such construction will occur behind the development setback line outside urban areas, in:</p> <ul style="list-style-type: none"> <li>(aa) A protected area identified in terms of NEMPAA, excluding conservancies;</li> <li>(bb) National Protected Area Expansion Strategy Focus areas;</li> <li>(dd) Sensitive areas as identified in an environmental management framework as contemplated in chapter 5 of the Act and as adopted by the competent authority;</li> <li>(ff) Critical biodiversity areas or ecosystem service areas as identified in systematic biodiversity plans adopted by the competent authority or in bioregional plans;</li> <li>(hh) Areas within 10 kilometers from national parks or world heritage Sites or 5 kilometers from any other protected area identified in terms of NEMPAA or from the core area of a biosphere reserve.</li> </ul> <p>Activity 19: The widening of a road by more than 4 meters or lengthening of a road by more than 1 kilometer, outside urban areas, in:</p>
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		<p>aa) A protected area identified in terms of NEMPAA, excluding conservancies;</p> <p>(bb) National Protected Area Expansion Strategy Focus areas;</p> <p>(dd) Sensitive areas as identified in an environmental management framework as contemplated in chapter 5 of the Act and as adopted by the competent authority;</p> <p>(ff) Critical biodiversity areas or ecosystem service areas as identified in systematic biodiversity plans adopted by the competent authority or in bioregional plans;</p> <p>(hh) Areas within 10 kilometers from national parks or world heritage Sites or 5 kilometers from any other protected area identified in terms of NEMPAA or from the core area of a biosphere reserve.</p> <p>Activity 24: The expansion of infrastructure where the infrastructure will be expanded by 10 square meters or more where such construction occurs within a watercourse or within 32 meters of a watercourse, measured from the edge of a watercourse, excluding where such construction will occur behind the development setback line outside urban areas, in:</p> <p>(aa) A protected area identified in terms of NEMPAA, excluding conservancies;</p> <p>(bb) National Protected Area Expansion Strategy Focus areas;</p> <p>(dd) Sensitive areas as identified in an environmental management framework as contemplated in chapter 5 of the Act and as adopted by the competent authority;</p> <p>(ff) Critical biodiversity areas or ecosystem service areas as identified in systematic biodiversity plans adopted by the competent authority or in bioregional plans;</p> <p>(hh) Areas within 10 kilometers from national parks or world heritage sites or 5 kilometers from any other protected area identified in terms of NEMPAA or from the core area of a biosphere reserve.</p>
<p><b>Minimum Requirements for waste disposal by landfill issued by the Department of Water Affairs and Forestry</b></p>	<p>4.4 Elimination of areas with inherent fatal flaws</p>	<p>It is a minimum requirement that no landfill site be developed in an area with an inherent fatal flaw. The situations set out in this document may represent fatal flaws in that they may prohibit the development of an environmentally or publicly acceptable waste disposal facility except at excessive costs and should be considered in electing a suitable site.</p>

**5.2.8. General Obligations**

<b>Legislation</b>	<b>Specific compliance requirements</b>	<b>Legal commentary and recommended action</b>
<b>National Environmental Management Act No 107 of 1998</b>	Section 28 – Duty of care and remediation of environmental damage	Employees must be informed and educated about the environmental risks of their work and the manner in which their tasks must be performed to avoid significant pollution. All potentially significant environmental impacts must be investigated, assessed and evaluated. Measures must be taken to cease, modify or control those acts, activities or processes that have been identified as potentially causing significant pollution.
<b>Promotion of Access to Information Act No 2 of 2000</b>	In terms of this Act any person may approach the courts for relief in the event that such person believes that his right to a clean and healthy environment has been affected. To this effect, such person shall be entitled to the records of the company allegedly causing the pollution.	To this effect Eskom must ensure that record keeping is accurate and that monitoring of all environmental impacts take place

### **5.3. Specific Legislation Highlighted through the Specialist Studies**

During the completion of the scoping phase specialist studies, a number of specialists highlighted and expanded on specific legislation relevant to their studies. This section highlights these as additional information over and above the above legal discussion.

#### **5.3.1. Heritage**

All archaeological and palaeontological sites, and meteorites are protected by the National Heritage Resources Act (Act no 25 of 1999) as stated in Section 35:

- Subject to the provisions of section 8, the protection of archaeological and palaeontological sites and material and meteorites is the responsibility of a provincial heritage resources authority: Provided that the protection of any wreck in the territorial waters and the maritime cultural zone shall be the responsibility of SAHRA.
- Subject to the provisions of subsection (8)(a), all archaeological objects, palaeontological material and meteorites are the property of the State. The responsible heritage authority must, on behalf of the State, at its discretion ensure that such objects are lodged with a museum or other public institution that has a collection policy acceptable to the heritage resources authority and may in so doing establish such terms and conditions as it sees fit for the conservation of such objects.
- Any person who discovers archaeological or palaeontological objects or material or a meteorite in the course of development or agricultural activity must immediately report the find to the responsible heritage resources authority, or to the nearest local authority offices or museum, which must immediately notify such heritage resources authority.
- No person may, without a permit issued by the responsible heritage resources authority-
  - destroy, damage, excavate, alter, deface or otherwise disturb any archaeological or palaeontological site or any meteorite;
  - destroy, damage, excavate, remove from its original position, collect or own any archaeological or palaeontological material or object or any meteorite;
  - trade in, sell for private gain, export or attempt to export from the Republic any category of archaeological or palaeontological material or object, or any meteorite; or
  - bring onto or use at an archaeological or palaeontological site any excavation equipment or any equipment which assist in the detection or recovery of metals or archaeological and palaeontological material or objects, or use such equipment for the recovery of meteorites.

In terms of cemeteries and graves the following (Section 36):

- Where it is not the responsibility of any other authority, SAHRA must conserve and generally care for burial grounds and graves protected in terms of this section, and it may make such arrangements for their conservation as it sees fit.
- SAHRA must identify and record the graves of victims of conflict and any other graves which it deems to be of cultural significance and may erect memorials associated with the grave referred to in subsection (1), and must maintain such memorials.
- No person may, without a permit issued by SAHRA or a provincial heritage resources authority-
  - destroy, damage, alter, exhume or remove from its original position or otherwise disturb the grave of a victim of conflict, or any burial ground or part thereof which contains such graves;
  - destroy, damage, alter, exhume, remove from its original position or otherwise disturb any grave or burial ground older than 60 years which is situated outside a formal cemetery administered by a local authority; or
  - bring onto or use at a burial ground or grave referred to in paragraph (a) or (b) any excavation equipment, or any equipment which assists in the detection or recovery of metals.
- SAHRA or a provincial heritage resources authority may not issue a permit for the destruction or damage of any burial ground or grave referred to in subsection (3)(a) unless it is satisfied that the applicant has made satisfactory arrangements for the exhumation and re-interment of the contents of such graves, at the cost of the applicant and in accordance with any regulations made by the responsible heritage resources authority.

### **5.3.2. Biodiversity (including Surface water and avifauna)**

Legislative aspects of which cognisance were taken during the compilation of the biodiversity, surface water and avifauna reports are summarised, but not necessarily limited to, in **Table 5.1**.

**Table 5.1:** Legislation taken into account during biodiversity studies

<b>Biodiversity Act (No. 10 of 2004)</b>	To provide for the management and conservation of South Africa's biodiversity within the framework of the National Environmental Management Act 1998; the protection of species and ecosystems that warrant national protection; the sustainable use of indigenous biological resources; the fair and equitable sharing of benefits arising from bioprospecting involving indigenous biological resources; the establishment and functions of a South African National Biodiversity Institute; and for matters connected therewith.
<b>Conservation of Agricultural Resources Act 43 of 1983</b>	The conservation of soil, water resources and vegetation is promoted. Management plans to eradicate weeds and invader plants must be established to benefit the integrity of indigenous life.
<b>Constitution of the Republic of South Africa (Act 108 of 1996)</b>	The Bill of Rights, in the Constitution of South Africa (No. 108 of 1996), states that everyone has a right to a non-threatening environment and requires that reasonable measures be applied to protect the environment. This protection encompasses preventing pollution and promoting conservation and environmentally sustainable development. These principles are embraced in NEMA and given further expression.
<b>Convention on Biological Diversity, 1995</b>	International legally binding treaty with three main goals; conserve biological diversity (or biodiversity); ensure sustainable use of its components and the fair and equitable sharing of benefits arising from genetic resources.
<b>Convention on International Trade in Endangered Species of Wild Life and Fauna</b>	International agreement between governments, drafted because of a resolution adopted in 1963 at a meeting of members of the International Union for Conservation of Nature (IUCN). Its aim is to ensure that international trade in specimens of wild animals and plants does not threaten their survival and it accords varying degrees of protection to more than 33,000 species of animals and plants.
<b>Environmental Conservation Act (No. 73 of 1989)</b>	To provide for the effective protection and controlled utilization of the environment and for matters incidental thereto.
<b>Mineral and Petroleum Resources Development Act (Act No.28 of 2002) (MPRDA)</b>	Compilation of Environmental Impact Assessment (EIA) and Environmental Management Programme (Reports) (EMPR).
<b>Mpumalanga Environmental Management Act (Act No. 10 of 1998)</b>	-

<b>Mpumalanga Tourism and Parks Agency Act (Act No. 5 of 2005)</b>	To provide for the establishment of the Mpumalanga Tourism and Parks Agency and for the management thereof by a Board; to provide for the sustainable development and improvement of the tourism industry in Mpumalanga; to provide for conservation management of the natural resources of Mpumalanga; to confer powers and functions upon the Agency; to provide for the registration of certain persons and entities directly involved in tourism; to provide for transitional arrangements; and to provide for matters incidental thereto
<b>Mpumalanga Parks Board Act of 1995</b>	-
<b>National Veld &amp; Forest Fire Act (Act No. 101 of 1998)</b>	To prevent and combat veld, forest and mountain fires throughout the Republic, to provide for a variety of institutions, methods and practices for achieving the purpose.
<b>National Environmental Management Act (No. 107 of 1998)</b>	Requires adherence to the principles of Integrated Environmental Management (IEA) in order to ensure sustainable development, which, in turn, aims to ensure that environmental consequences of development proposals be understood and adequately considered during all stages of the project cycle and that negative aspects be resolved or mitigated and positive aspects enhanced.
<b>National Environmental Management: Biodiversity Act (Act No. 10 of 2004)</b>	To provide for matters relating to threatened or protected species regulations
<b>National Environmental Management Protected Areas Act (No. 57 of 2003)</b>	To provide for the protection and conservation of ecologically viable areas representative of South Africa's biological diversity and its natural landscapes and seascapes; for the establishment of a national register of all national, provincial and local protected areas; for the management of those areas in accordance with national norms and standards; for intergovernmental co-operation and public consultation in matters concerning protected areas; and for matters in connection therewith.
<b>White Paper on Conservation and Sustainable Use of South Africa's Biological Diversity (July 1997)</b>	Identifies a number of strategies to be developed to give effect to the specific policies, including the enhancement of the protected area network, development of specific strategies such as conservation and sustainable use of reptiles and amphibians. Promotes a "Prosperous, environmentally conscious nation, whose people are in harmonious co-existence with the natural environment, and which derives lasting benefits from the conservation and sustainable use of its rich biological diversity"

## 5.4. Policy and Planning Context

### 5.4.1. White Paper on the Energy Policy of the Republic of South Africa

The White Paper on the Energy Policy of the Republic of South Africa (The Energy Policy) was published by the Department of Minerals and Energy (DME) in December 1998.



The Energy Policy governs development within the energy sector in South Africa, and has five policy objectives which are as follows:

- Increased access to affordable energy services;
- Improved energy governance;
- Stimulating economic development;
- Managing energy related environmental and health impacts; and
- Securing supply through diversity.

In order to achieve a balance between energy demand and resource availability, the Energy Policy identifies the need to undertake an Integrated Energy Planning process, while also taking into account health, safety and environmental parameters. The need for the implementation of a National Integrated Resource Plan (NIRP) is also identified in the Energy Policy.

This approach would provide a long-term cost-effective recourse plan for meeting electricity demand that is consistent with reliable electricity supply and environmental, social and economic policies.

#### **5.4.2. Energy Security Master Plan – Electricity (2007-2025)**

The Electricity Security Master Plan was compiled by the DME in 2007. The plan addresses all aspects of the electricity sector including generation, transmission and distribution as well as Demand Side Management and energy efficiency initiatives for the period 2007-2025. The goals of the Master Plan are as follows:

- Supporting economic growth and development;
- Improving the reliability of electricity infrastructure;
- Providing a reasonably priced electricity supply;
- Ensuring the security of electricity supply as set by a security of supply standard;
- Diversifying the primary energy sources of electricity;
- Meeting the renewable energy targets as set in the Energy White Paper;
- Increasing access to affordable energy services;
- Reducing energy usage through energy efficiency interventions;
- Accelerating household universal access to electricity; and
- Clarifying some of the policy issues in the context of an evolving electricity sector.

The Master Plan also considers standards for ensuring security of supply. Three key recommendations within the Master Plan in this regard are as follows:

- The reliability standard for power generation should be the “1 day in 10 years” standard. This means only one day blackout in 10 years will be an acceptable standard. This is consistent with the reserve margin of 19% over time;
- For the transmission network, there must always be more than one transmission line to ensure that bulk transportation of power is not interrupted in the case of one line being out of service for Western Cape, Eastern Cape and KwaZulu Natal; and
- The level of investment in the maintenance and rehabilitation of transmission and distribution infrastructure should be regulated, in line with the objects of the Electricity Regulation Amendment Act No. 28 of 2007.

#### **5.4.3. National Spatial Biodiversity Assessment (“NSBA”)**

The NSBA establishes protection and conservation priority status for terrestrial, inland water, estuarine and marine ecosystems at a 1:250,000 scale nationally and suggested implementation options for priority areas. It provides the national context for development of biodiversity plans at the sub-national and local scale. For each vegetation type a defensible target has been determined, based on protecting 75% of species occurring in that vegetation type. Ecosystem status is thus based on the percentage of the original area remaining untransformed in relation to the biodiversity target, and a threshold for ecosystem functioning. Conservation priority areas indicate where there is a need for finer scale planning, expansion of the protected area system and integration of biodiversity-compatible development and resource management across the landscape and seascape, including on private and communal land.

#### **5.4.4. Draft National Strategy for Sustainable Development**

The (draft) National Strategy for Sustainable Development stems from Section 24 of the Constitution and particularly the phrase “secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.”

Although still in development, the final product is set to be used by government and stakeholders to enhance South Africa’s long term planning capacity. It would specifically influence national and provincial development strategies, such as the National Spatial Development Perspective, the Provincial Growth and Development Strategies and other cross-sectoral development programmes. The (draft) National Strategy notes that the nation’s biodiversity provides critical ecosystem services on which socio-economic systems depend.