

5. LEGISLATIVE CONTEXT

5.1. Introduction

This section of the Final Environmental Impact Report details applicable legal provisions and the legal context for the EIA. It provides a review of relevant legislation and regulations, which are applicable to (or have implications for) the proposed project.

One of the main foci of this section is on the provisions of the National Environmental Management Act (NEMA). NEMA is the primary South African legislation governing the requirements for environmental impact assessment. In the context of the Tabor 400kV Powerline EIA, the provisions of NEMA and the associated EIA Regulations (regarding scoping and EIA) are of fundamental relevance.

5.2. National Environmental Management Act

Section 24(2)(a) of the NEMA entitles the Minister to identify activities which may not commence without environmental authorisation from the competent authority. These activities were published in a Government Notice (i.e. GN No. R. 544 and GN No. R. 545) in the Government Gazette on 18 June 2010, together with a third Government Notice (GN No. R. 543) on regulations for the administration of EIAs.

The NEMA regulations identify two separate administrative processes for EIAs, depending on the nature of the activity. A Basic Assessment process is required for those activities that are considered to have a low detrimental impact on the environment. A full Scoping/EIA is required for those activities that are considered to have a medium to high detrimental impact on the environment.

The activities associated with this project include the following:

Relevant Government notice:	Activity No	Description of listed activity:
No. R. 544 Listing Notice 1 August 2010	10	The construction of facilities or 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 kV <i>This activity takes into account any existing distribution infrastructure that may be disturbed and subsequently reinstated during the construction of the larger 400 kV power</i>

		<p>line. The figure below is an example of the existing distribution infrastructure along the proposed alternatives.</p> 
	<p>23</p>	<p>The transformation of undeveloped, vacant or derelict land to (ii) residential, retail, commercial, recreational, industrial or institutional use, outside an urban area and where the total area to be transformed is bigger than 1 hectare but less than 20 hectares</p> <p><i>This activity takes into account the expansion of the authorized Bokmakirie Distribution substation to include the proposed new transmission line from Tabor and Boruthu Substations. The expansion area will be approximately 6 hectares and is situated with an undeveloped area currently utilised for game farming. The figure below shows the type of vegetation clearing involved in expanding a substation.</i></p> 
	<p>38</p>	<p>The expansion of facilities for the transmission and distribution of electricity where the expanded capacity will exceed 275 kilovolts and the development footprint will increase.</p> <p><i>This activity takes into account the expansion of the authorized Bokmakirie Distribution substation to include the proposed new transmission line from Tabor and Boruthu Substations. The expansion area will be approximately 25 hectares and is situated with an undeveloped area currently</i></p>

		<p><i>utilised for game farming (such as that depicted in the figure below).</i></p> 
<p>No. R. 545 Listing Notice 2 August 2010</p>	<p>8</p>	<p>The construction of facilities or infrastructure for the transmission and distribution of electricity with a capacity of 275 kilovolts or more, outside and urban area or industrial complex</p> <p><i>This activity takes into account the construction and subsequent maintenance of the proposed 400 kV Tabor – Nzhelele Powerline. The figures below provide an example of two of the potential tower types that may be constructed.</i></p> 
	<p>15</p>	<p>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><i>This activity takes into account the construction and subsequent maintenance of the proposed 400 kV Tabor – Nzhelele Powerline. The footprint of the disturbed area is approximately 550 ha due to the clearance of a 55m wide servitude. In addition to the powerline servitude, the area required for the immediate and future expansion of the Bokmakirie (Nzhelele) substation is 25 hectares.</i></p>

No. R. 546 Listing Notice 3 August 2010	3	The construction of masts or towers of any material used for telecommunication broadcasting or radio transmission purposes where the mast (a) is to be placed on a site not previously use for this purpose, and (b) will exceed 15 meters in height <i>The activity takes into account the potential establishment of communication towers at the new substation site at Nzhelele. This activity is taking place in close proximity to the Nzhelele Nature Reserve.</i>
	4	The construction of a road wider than 4 meters with a reserve of less than 13.5 meters <i>This activity takes into account the need to establish two formal access roads. One road is required to access the Nzhelele substation and the other along the alignment of the existing 132kV powerline as it traverses the farms Vlakfontein and Clydesdale. This activity is taking place in close proximity to the Soutpansburg Conservancy which has been identified to form part of the National Protected Area Expansion Strategy.</i>



5.3. General Legislative Overview

Various pieces of legislation are applicable to this project. A review of the relevant legislation was undertaken in order to identify any legal issues related to the proposed project. Applicable environmental legislation, which must be considered by Eskom during the implementation of the proposed project, is summarised in **Table 5.1** below.

Table 5.1: Summary of applicable environmental legislation

Legislation	Sections	Relates to	Applicability
The Constitution (Act No 108 of 1996)	Chapter 2	Bill of Rights.	
	Section 24	<p>Environmental rights.</p> <p><i>"Everyone has the right –</i></p> <p><i>(a) to an environment which is not harmful to their health or well-being; and</i></p> <p><i>(b) to have the environment protected for the benefit of present and future generations, through reasonable legislative and other measures that-</i></p> <p><i>i. prevent pollution and ecological degradation;</i></p> <p><i>ii. promote conservation; and</i></p> <p><i>iii. secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development"</i></p>	<p>This places a duty on Eskom to respect and protect people's human rights to an environment which is not detrimental to their health and well-being.</p> <p>Eskom must design, develop and implement appropriate measures to ensure compliance with this section and may not do anything which may compromise these rights. Please note that the reasonable legislative measures in this section refer to the authorities responsible for enforcing the relevant legislation. Therefore, if Eskom does not comply with the necessary legal provisions, any interested or affected party may approach a court to order such authority to enforce the law.</p>

Legislation	Sections	Relates to	Applicability
	Section 32	Right to access of information. the Constitution confers on every person the right of access to: <i>(a) any information held by the state; and</i> <i>(b) any information that is held by another person and that is required for the exercise or protection of any rights.</i>	This section implies that any person who feels that his environmental rights have been infringed, has the right to any information relating to Eskom's business and the impact thereof on the environment. This places a duty on Eskom to ensure that accurate records are kept of all significant environmental impacts.
	Section 41	The principles of co-operative governance and intergovernmental relations	These aspects are vital in obtaining the relevant permissions and authorisations to proceed with this project.

Legislation	Sections	Relates to	Applicability
<p>The Promotion of Administrative Justice Act (Act 3 of 2000)</p>	<p>-</p>	<p>The principal purpose of the Promotion of Administrative Justice Act ("PAJA") is "to give effect to the right to administrative action that is lawful, reasonable and procedurally fair and to the right to written reasons for administrative action as contemplated in section 33 of the Constitution... and to provide for matters incidental thereto."</p> <p>Administrative law governs the relationships between public bodies, and between public and private bodies and/or individuals. Because so many activities which affect the environment require authorisation from a public body, and environmental conflicts might arise from the exercise of administrative decision-making powers, administrative law principles are of particular relevance to environmental law generally, and specifically in the context of the environmental authorisation requirements stipulated by the provisions of section 24 of the NEMA read together with the EIA regulations.</p>	<p>The applicability of this Act is self-explanatory.</p>

Legislation	Sections	Relates to	Applicability
Promotion of Access to Information Act (Act 2 of 2000)	-	<p>The purpose of the Promotion of Access to Information Act ("PAIA") is "(t)o give effect to the constitutional right of access to any information held by the State and any information that is held by another person and that is required for the exercise or protection of any rights, and to provide for matters connected therewith."</p> <p>Under the Constitutional right of access to information, everyone has the right of access to all information held by the State, and any information held by non-State parties which is required for the exercise or protection of rights. This right prevails over statutory provisions that unreasonably limit disclosure of information.</p> <p>PAIA gives effect to the Constitutional right of access to information, and lays down detailed procedures in respect of access to the records of public and/or private bodies. Only in certain circumstances, laid down in PAIA, may access to information be refused</p>	As this Act gives effect to the Constitutional right of access to information, it implies that Eskom must keep accurate records and that any person may access those records should such person feel that his constitutional rights have been affected.

Legislation	Sections	Relates to	Applicability
National Environmental Management Act (No 107 of 1998)	Section 2	Defines the strategic environmental management goals and objectives of the government. Applies throughout the Republic to the actions of all organs of state that may significantly affect the environment.	The principles set out in this section apply throughout the Republic to the actions of all organs of state that may significantly affect the environment. Environmental management by Eskom must place people and their needs at the forefront of its concern, and serve their physical, psychological, developmental, cultural and social interests equitably.
	Section 24A & 24D & 24(5)	Listed activities and Regulations	Eskom are abiding by these sections by obtaining the appropriate authorisations to proceed with this project.

Legislation	Sections	Relates to	Applicability
	Section 28	The developer has a general duty to care for the environment and to institute such measures as may be needed to demonstrate such care.	<p>Eskom has a legal liability to assess if any of its activities is likely to cause pollution or degradation and if pollution or degradation is identified, take reasonable measures to prevent, minimise and rectify such pollution/degradation.</p> <p>Although the sources of such pollution are mostly controlled by other legislation, the duty to prevent, minimise and rectify is in terms of NEMA, 1998. Note the prescribed measures are only guidelines and if such measures do not prevent, minimise or rectify the pollution or degradation, other measures must be investigated and implemented.</p> <p>The failure to take reasonable measures, might lead thereto that the Department directs Eskom to report on the matter and to take prescribed measures within a specific time. Should Eskom fail to adhere to the directive, the Department (national or provincial) may take the measures themselves and recover the costs from Eskom.</p>

Legislation	Sections	Relates to	Applicability
National Environmental Management: Biodiversity Act No 10 of 2004	-	Provides 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	Eskom must ensure that by proceeding with the construction of the power line, the biodiversity in the area is not disturbed. The specialist reports on avifauna (regarding electrocutions, collisions, habitat destruction and disturbance during breeding), impacts on fauna, flora and social impacts, etc. These must be managed as per the Management Plan.
National Environmental Management: Protected Areas Act No 57 of 2003	-	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	Eskom must ensure that any protected areas identified in the surrounding areas are not detrimentally impacted. Any potential impacts must be managed as per the Management Plan.

Legislation	Sections	Relates to	Applicability
National Environmental Management: Waste Act (No 59 of 2008)	Section 16	Sets out the general duty in respect of waste management.	Eskom should do everything in its power to avoid the generation of waste and where such generation cannot be avoided, to minimise the toxicity and amounts of waste that are generated; reduce, re-use, recycle and recover waste, where waste must be disposed of, ensure that the waste is treated and disposed of in an environmentally sound manner, manage the waste in such a manner that it does not endanger health or the environment or cause a nuisance through noise, odour or visual impacts; prevent any employee or any person under his or her supervision from contravening this Act; and prevent the waste from being used for an unauthorised purpose.
	Section 26	Stipulates that no person may dispose of waste, or knowingly or negligently cause or permit waste to be disposed of, in or on any land, waterbody or at any facility unless the disposal of that waste 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.	Eskom must ensure that measures are put in place to prevent the unauthorised disposal of waste which may cause pollution, especially during the construction and maintenance phases of the powerline.

Legislation	Sections	Relates to	Applicability
	Section 27	States that no person may throw, drop, deposit, spill or in any other way discard any litter into or onto any public place, land, vacant erf, stream, watercourse, street or road, or on any place to which the general public has access, except in a container or a place specifically provided for that purpose.	Eskom must ensure that no littering takes place during the construction or operational phases. Workers must be trained in this respect and adequate bins should be provided for waste.
The Conservation of Agricultural Resources Act (No 43 of 1983)	Section 6 & R1048 of 25 May 1984	Implementation of control measures for alien and invasive plant species.	In disturbing the flora during the construction phase, there is the risk of invasion of alien species in the servitude. Eskom should ensure that this is managed.
National Heritage Resources Act (No 25 of 1999)	-	Provides general principles for governing heritage resources management throughout South Africa including national and provincial heritage sites, burial grounds and graves; archaeological and palaeontological sites, and public monuments and memorials	
National Forest Act No 84 of 1998	Section 15	No person is permitted to cut, disturb, damage, or destroy any protected tree or possess, collect, remove, transport, export, donate, purchase or sell or in any other manner dispose of any protected trees or any product from the forest which has been derived from a protected tree, provided that they have been granted a license to do so, by the Minister from the Department of Water Affairs and Forestry	Eskom to ensure that all relevant permits are in place in the event that any protected tree will be affected during the construction or maintenance phases of the powerline.

Legislation	Sections	Relates to	Applicability
National Water Act No 36 of 1998	Section 19	<p>Prevention and remedying effects of pollution</p> <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. Measures must also be taken for any future activities which may cause pollution to water resources.</p>	<p>This section places a duty on Eskom to establish whether any of the activities during the construction or operational phases may cause pollution to a water resource. If any such pollution or possible pollution has been identified, reasonable measures must be taken to prevent the continuation or recurrence thereof.</p>

Legislation	Sections	Relates to	Applicability
	Section 20	<p>Control of emergency incidents</p> <p>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.</p>	<p>This obligation is imposed on the "responsible person" (in this instance Eskom) which is defined to include the person responsible for the incident, the owner of the substance involved in the incident, and the person in control of the substance at the time of the incident, as well as anybody with knowledge of the incident [Section 20(2)].</p> <p>Eskom is furthermore obliged to take all reasonable steps to contain and minimise the effects of the incident, undertake clean-up procedures, remedy the effects of the incident, and take such measures as the CMA may either verbally or in writing direct.</p>
	Section 21	Water uses requiring water use license applications. Eleven different water uses are listed in Section 21 (a) to (k)	
National Environmental Management: Air Quality Act (No 39 of 2004)	Section 32	Control of dust.	Eskom must ensure that measures are in place to minimize dust during the construction and operational phases. This will include dust from vehicles.

Legislation	Sections	Relates to	Applicability
	R1651 of 20 September 1974	No diesel driven vehicle used on a public road may emit any gases, when measured, reads higher than 70 (Hartridge B.P. – smoke meter and prescribed test method shall be used). These regulations place a prohibition on any person who uses, causes or permits a person to use such vehicles on a public road.	Eskom should ensure that all diesel driven vehicles are serviced regularly and maintained in such a way that they do not emit gases that are in contravention with this regulation.
Occupational Health and Safety Act (No 85 of 1993)	Section 8	General duties of employers to their employees.	In general this section places a duty on Eskom to provide and maintain, as far as is reasonably practicable, a working environment that is safe and without risk to the health of its employees.
	Section 9	General duties of employers and self employed persons to persons other than their employees.	Eskom must conduct its undertaking in such a manner as to ensure, as far as is reasonably practicable, that persons other than those in his employment who may be directly affected by his activities, are not thereby exposed to hazards to their health or safety
Fertilisers, Farm Feeds, Agricultural Remedies and Stock Remedies Act (No 36 of 1947)	Sections 3 to 10	Control of the use of registered pesticides, herbicides (weed killers) and fertilizers. Special precautions must be taken to prevent workers from being exposed to chemical substances in this regard.	Eskom must ensure that pesticides, herbicides, etc are only administered by a registered pest control operator in accordance with the provisions of this Act.

Legislation	Sections	Relates to	Applicability
Limpopo Environmental Management Act (No 7 of 2003)	Chapter 13 (sections 89-93)	These sections of this Act deal with the prohibition of littering, waste management, noise, vibration and shock.	As mentioned earlier in this document, Eskom must ensure that it's employees do not litter and that waste is disposed of responsibly. Measures to address noise, vibration and shock must be implemented, especially during the construction phase of the project.
Makhado Local Municipality: Environment: Inflammable liquids and substances By-law	Chapter 7	This by-law deals with the storage and transport of inflammable liquid substances.	Eskom must take cognizance of this by-law with respect to the use and storage of diesel and lubricants during this project.
Drainage By-laws LA. 78 dated 5 January 1994	The whole	These By-Laws deal with the disposal of sewerage and also industrial effluent.	Although these by-laws will not be directly applicable to the project as it is not located within the boundaries of a town, Eskom should take note

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.

5.4.5. National Protected Area Expansion Strategy

South Africa's protected area network currently falls far short of sustaining biodiversity and ecological processes. In this context, the goal of the National Protected Area Expansion Strategy (NPAES) is to achieve cost-effective protected area expansion for ecological sustainability and increased resilience to climate change. The NPAES highlights ways in which we can become more efficient and effective in allocating the scarce human and financial resources available for protected area expansion. It sets targets for protected area expansion, provides maps of the most important areas for protected area expansion, and makes recommendations on mechanisms for protected area expansion. The common set of targets and spatial priorities provided by the NPAES enable co-ordination between the many role players involved in protected area expansion.

The 'protected area expansion strategy' zones shown on **Figure 5.1** do not have any official protection status at present. It is, however, important to take note of The National Protected Area Expansion Strategy (NPAES), which has been formulated to achieve cost-effective protected area expansion for ecological sustainability and increased resilience to climate change. It sets targets for protected area expansion, provides maps of the most important areas for protected area expansion, and makes recommendations on mechanisms for protected area expansion.¹

¹ South African National Biodiversity Institute (SANBI).
<http://bgis.sanbi.org/protectedareas/NPAESinfo.asp>

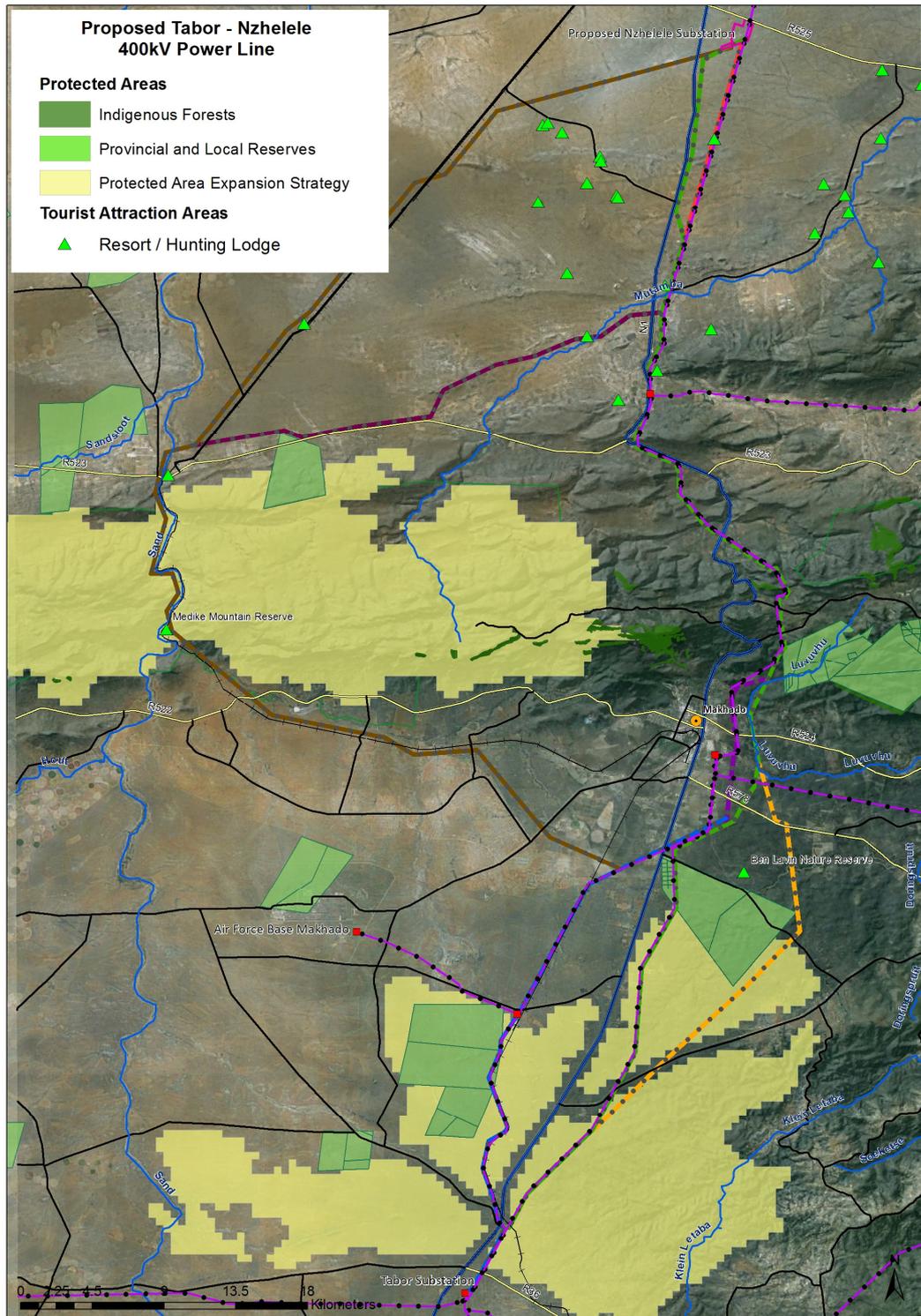


Figure 5.1: Map showing protected areas and private tourist facilities.