

5. LEGISLATIVE CONTEXT

5.1. Introduction

This section of the Final Scoping Report details applicable legal provisions and the legal context for the EIA. It provides a preliminary 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 focus 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 new proposed Weskusfleur substation 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:

Indicate the number and date of the relevant notice:	Activity No (s) (in terms of the relevant notice) :	Describe each listed activity as per project description!:
No. R. 544 Listing Notice 1 August 2010	9(i) and (ii)	The construction of infrastructure which exceeds 1000m in length for the transportation of storm water may be required with an internal diameter of 0.36 metres or more; or with a peak throughput of 120 litres per second or more for the proposed substation and associated infrastructure. <i>The relevance for any of the above mentioned items will be confirmed during the Environmental Impact Assessment Process.</i>

	10(i)	The construction of a 132kV substation and associated infrastructure which may include the shifting, deviation, reroute, bypass, redirecting and construction of new turn-in transmission lines outside an urban area for the transmission and distribution of electricity.
	11(i), (ii), (vi), (x) and (xi)	The construction of canals, channels, bulk storm water outlet structures, buildings exceeding 50 square meters in size; or infrastructure or structures covering 50 square metres or more within watercourse or within 32 metres of a water course might be required for the substation infrastructure. <i>The relevance for any of the abovementioned items will be confirmed during the Environmental Impact Assessment Process.</i>
	13	The construction of facilities for the storage and handling of dangerous good (80 to 500 cubic metres). During construction transformer oil may be stored on site before pumped into transformers. Fuel and other substances to be used during construction may need to be stored on-site.
	18(i)	The development of the substation may require the excavation, removal or moving of soil from a watercourse. <i>The relevance of this activity will be confirmed during the Environmental Impact Assessment Process.</i>
	23(ii)	The substation and its associated infrastructure will be outside an urban in an area which is currently undeveloped. The land will be transformed industrial use over an area of <20 ha. <i>The relevance of this activity will be confirmed during the Environmental Impact Assessment Process as the final footprint size is still to be confirmed.</i>
	27(ii) 38	The decommissioning of the existing substation infrastructure >132kV. The expansion of current substation and transmission infrastructure as part of the proposed substation and associated infrastructure might be required.
No. R. 545 Listing Notice 2 August 2010	8	The construction of a 400kV substation and associated infrastructure which may include the shifting, deviation, bypass, reroute, redirecting and construction of new turn-in transmission lines and/or new lines for outage requirements outside an urban area for the transmission and distribution of electricity.
	15	The substation and its associated infrastructure will be on land which is currently undeveloped. The land will be transformed industrial use over an area of >20 ha. <i>The relevance of this activity will be confirmed during the Environmental Impact Assessment Process as the final footprint size is still to be confirmed.</i>
No.R. 546 Listing Notice 3 August 2010	3(d)(ii)	The construction of masts or towers outside an urban area for telecommunication broadcasting or radio transmission exceeding 15 metres on an area not previously used for this may be required as part of the substation and its associated infrastructure.
	4(d)(ii)	The construction of a road wider than 4 meters with a reserve of less than 13.5 meters outside an urban area as part of the substation and its associated infrastructure.
	13(a)	The construction of the substation and associated infrastructure may result in the clearance of an area of 1 hectare or more of vegetation where 75% or more of the vegetation cover is indigenous within a critical biodiversity area and ecological support area as identified in systematic biodiversity plans adopted by the competent authority.

	14(i)	The construction of the substation and associated infrastructure may result in the clearance of an area of 5 hectare or more of vegetation where 75% or more of the vegetation cover is indigenous outside an urban area.
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5.3. General Legislative Overview

Various pieces of legislation are applicable to this project. A limited scoping 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. A full legal review will be conducted as part of the EIA Study.

Table 5.1: Summary of applicable national environmental legislation

Legislation	Sections	Relates to
The Constitution (Act No 108 of 1996)	Chapter 2	Bill of Rights.
	Section 24	Environmental rights. <i>"Everyone has the right –</i> <i>(a) to an environment which is not harmful to their health or well-being; and</i> <i>(b) to have the environment protected for the benefit of present and future generations, through reasonable legislative and other measures that-</i> <i>i. prevent pollution and ecological degradation;</i> <i>ii. promote conservation; and</i> <i>iii. secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development"</i>
	Section 25	Rights in property.
	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>
	Section 41	The principles of co-operative governance and intergovernmental relations

Legislation	Sections	Relates to
The Promotion of Administrative Justice Act (Act 3 of 2000)	-	<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>

Legislation	Sections	Relates to
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>
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.
	Section 24(a) &(d) &24(5)	Listed activities and Regulations
	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.

Legislation	Sections	Relates to
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 Act1, 998; 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
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
National Environmental Management: Protected Areas Act No 31 of 2004	-	To amend the National Environmental Management: Protected Areas Act, 2003, to provide for the application of that Act in relation to national parks and marine protected areas; and to provide for matters connected therewith
Environment Conservation Act (No 73 of 1989)	Section 2	General policy.
	Section 16	Provides for the setting aside of Protected Natural Environments (PNEs). Any construction activities within the PNE require the consent of the PNE management advisory committee and the Premier of the relevant province.
	Sections 19 and 19A	Prevention of littering by employees and subcontractors during construction and the maintenance phases of the proposed project.
The Conservation of Agricultural Resources Act (No 43 of 1983)	Section 6	Implementation of control measures for alien and invasive plant species.

Legislation	Sections	Relates to
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, disturbed, damaged, 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
National Water Act No 36 of 1998	Section 19	Prevention and remedying effects of pollution 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.
	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	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)	Sections 26-27	Control of fuels.
	Section 32	Control of dust.
	Section 8	General duties of employers to their employees.

Legislation	Sections	Relates to
	Section 9	General duties of employers and self employed persons to persons other than their employees.
	Sections 3 to 10	Control of the use of registered pesticides, herbicides (weed killers) and fertilisers. Special precautions must be taken to prevent workers from being exposed to chemical substances in this regard.
	Section 98	Identification of any specially protected or rare and endangered species. If these are to be affected by the proposed project, a permit from the Director General, Nature Conservation should be obtained prior to removal.
	Schedule 11	Prohibits the picking of all indigenous plants on public roads and nature reserves without a permit.
National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008)	-	The purpose of this Act is to reform the law regulating waste management in order to protect health and the environment by providing for the licensing and control of waste management activities. The Act provides listed activities requiring a waste license.
Occupational Health and Safety Act (No 85 of 1993)	Section 8	General duties of employers to their employees.
	Section 9	General duties of employers and self employed persons to persons other than their employees.
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 fertilisers. Special precautions must be taken to prevent workers from being exposed to chemical substances in this regard.
All relevant Provincial regulations, Municipal bylaws and ordinances –will be discussed in more detail in the full legal review to be undertaken during the EIA phase of the project.		

Table 5.2: Summary of applicable provincial environmental legislation

Legislation	Provisions & Applicability
Cape Standard Sanitary Regulations PN 527 of 25 July 1952	In the event that any septic tanks need to be constructed in the course of the implementation of this project, these regulations should be adhered to.
Cape Local Authorities Standard water	These regulations relate to plumbing work and

Regulations PN 504 of 19 June 1953	water supply. With any development of infrastructure, this will be applicable.
Cape Land Use Planning Ordinance no 15 of 1985	Issues such as land use and zoning are regulated in terms of this Ordinance.
PN 1050 of 5 December 1988	In the event of any subdivision or rezoning of land, these regulations will apply.
Cape Municipal Ordinance no 20 of 1974	These Ordinance sets out the procedures of acquiring immovable property and rights.
Cape Nature and Environmental Conservation Ordinance no 19 of 1974	In terms of this Ordinance the following is matters are regulated: <ul style="list-style-type: none"> • Protection of flora; • Establishment of provincial nature reserves; • Establishment of local nature reserves; and • Protection of fish in inland waters which basically relates to pollution of inland waters.
Western Cape Planning and Development Act no 7 of 1999	This Act regulates the following: <ul style="list-style-type: none"> • Land use restrictions and rezoning; and • Subdivision. This will be applicable to any planning and land development related activities and serves to guide the administration of any spatial plans, policies, etc. Application made in terms of this Ordinance must include a floodline certificate indicating whether the land or any portion is or is not subject to a 1 in 50 year floodline.

5.4. Regulatory Hierarchy

At *National* Level, the main regulatory agencies are:

- Department of Energy: This department is responsible for policy relating to all energy forms, including renewable energy, and is responsible for forming and approving the IRP (Integrated Resource Plan for Electricity).

- National Energy Regulator of South Africa (NERSA): This body is responsible for regulating all aspects of the electricity sector.
- Department of Environmental Affairs (DEA): This Department is responsible for environmental policy and is the controlling authority in terms of NEMA and the EIA Regulations. DEA is the competent authority for this project, and charged with granting the relevant environmental authorisation.
- Department of Transport and Public Works: This department is responsible for roads and the granting of exemption permits for the conveyance of abnormal loads on public roads.
- Department of Transport - Civil Aviation Authority: This department is responsible for aircraft movements and radar, which are aspects that influence substation and transmission line development location and planning.
- The South African Heritage Resources Agency (SAHRA): The National Heritage Resources Act (Act No 25 of 1999) and the associated provincial regulations provides legislative protection for listed or proclaimed sites, such as urban conservation areas, nature reserves and proclaimed scenic routes.
- South African National Roads Agency Limited (SANRAL): This department is responsible for all National road routes.
- Department of Agriculture: This department is responsible for agriculture and fishery matters.
- Western Cape – Department of Water Affairs (WC DWA). This department is the permitting authority for water use and crossings.

At *Provincial* Level, the main regulatory agencies are:

- Western Cape – Department of Environment and Development Planning (DEA&DP). This department is the commenting authority for this project.
- Department of Transport and Public Works, Western Cape. This department is responsible for roads and the granting of exemption permits for the conveyance of abnormal loads on public roads.
- Western Cape – Cape Nature This department is the statutory custodian of biodiversity in the Western Cape and commenting authority concerning potential impacts on biodiversity.
- Western Cape – Heritage Western Cape

At *Local* Level the local and municipal authorities are the principal regulatory authorities responsible for planning, land use and the environment. The proposed project falls within the City of Cape Town Metropolitan Municipality.

- In terms of the Municipal Systems Act (Act No 32 of 2000) it is compulsory for all municipalities to go through an Integrated Development Planning (IDP) process to

prepare a five-year strategic development plan for the area under their control.

- Bioregional planning involves the identification of priority areas for conservation and their placement within a planning framework of core, buffer and transition areas. These could include reference to visual and scenic resources and the identification of areas of special significance, together with visual guidelines for the area covered by these plans.
- By-laws and policies have been formulated by local authorities to protect visual and aesthetic resources relating to urban edge lines, scenic drives, special areas, signage, communication masts, etc.

5.5. Other applicable Policy and Guidelines

- Management of Stormwater Impacts Policy (CoCT)
- Stormwater Management on Slopes Adjacent to Natural Area (CoCT)
- Stormwater Management Planning and Design Guidelines for New Developments (CoCT)
- Provincial Spatial Development Framework (DEA&DP)
- Guideline on public participation (August 2013 DEA&DP)
- Guideline on alternatives (August 2013 DEA&DP)
- Guidelines for involving specialists in EIA processes (including Heritage, Biodiversity, Visual & Aesthetic, EMP) DEA&DP
- Guideline on Need and Desirability (August 2013) DEA&DP

5.6. National Policy and Planning Context

5.6.1. 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.

5.6.2. 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.

5.6.3. 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.

5.6.4. 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.