

APPENDIX A:
SERVITUDE NEGOTIATION AND THE EIA PROCESS

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Transmission lines are constructed and operated within a servitude (55 m wide for 400 kV lines) that is established along the entire length of the line. Within this servitude, Eskom Transmission have certain rights and controls that support the safe and effective operation of the line.

The process of achieving the servitude agreement is referred to as the Servitude Negotiation Process, or just the negotiation process. The negotiation process is undertaken directly by Eskom Transmission. The following important points relating to the negotiation process should be noted:

- Servitude negotiation is a private matter between Eskom Transmission and the appropriate landowner.
- The negotiation process involves a number of stages (see below), and culminates in the “signing” of a servitude. Here Eskom Transmission enters into a legal agreement with the landowner.
- The agreements will detail such aspects as the exact location and extent of the servitude, and access arrangements and maintenance responsibilities, as well as any specific landowner requirements.
- Compensation measures are agreed in each case.
- The negotiation process may take place at any time in the planning of a new line.
- This process must be completed (i.e. the agreement must be signed) with the relevant landowner before construction starts on that property.
- The negotiation process is independent of the EIA process.

The EIA process has become important in the initial planning and route selection of new Transmission lines. For this reason, it is usually preferable that the negotiation process begins after the EIA has been completed. At this stage there is greater confidence in the route to be adopted, and it would be supported by environmental authorisation. However, it may be required that the negotiation process begins earlier, and may begin before, or run in parallel with the EIA process. This may be due to tight timeframes for the commissioning of the new line, knowledge of local conditions and constraints, etc. Eskom Transmission has a right to engage with any landowner at any time, though they do so at risk if environmental authorisation has not been awarded.

1. The Negotiation Process

The national Eskom Transmission office is responsible for the negotiation process for all new Transmission lines. The negotiation process can be extensive, often running into years on the longer lines. It is, therefore, critical that the process is correctly programmed and incorporated into the planning of a new line. The negotiation process involves the following steps:

- i. Initial meeting with the landowner.
- ii. The signing of an “option” to secure a servitude (this indicates that the owner will accept that the line will cross his property, subject to conditions to be finalised in the negotiation of the servitude agreement). An option is valid for one year.
- iii. Once the route is confirmed (i.e. options are signed with the upstream and downstream landowners), the servitude agreement will be finalised with the individual landowners. This agreement will set out the conditions for the establishment and operation of the servitude, and will be site-specific (as different landowners may have different requirements). Compensation payments are made when the servitude is registered at the Deeds office.
- iv. Once construction is complete and the land rehabilitated to the landowners satisfaction, the landowner signs a “Final Release” certificate. Until the “Final Release” certificate has been signed, Eskom Transmission remains liable for the condition of the land.
- v. Once the clearance certificate is signed, the responsibility for the line and servitude is handed over to the regional Eskom Transmission office.

2. Servitude Maintenance Responsibilities

The management of a Transmission line servitude is dependent on the details and conditions of the agreement between the landowner and Eskom Transmission, and are therefore site-specific. These may, therefore, vary from location to location. However, it is common that there is a dual responsibility for the maintenance of the servitude:

- Eskom Transmission will be responsible for the tower structures, access roads (including erosion and rutting), watercourse crossings, and gates and fences relating to servitude access.
- The landowner will retain responsibility for the maintenance of the land and land use within the servitude (e.g. cropping activities, veld management, etc.).

Exceptions to the above may arise where, for example:

- Dual use is made of the access roads and gates.
- Specific land use limitations are set by Eskom Transmission within the servitude which directly affect the landowner (e.g. forestry).

Notwithstanding initial compensation for such circumstances, different maintenance agreements may be entered into between the landowner and Eskom Transmission. For example, responsibilities for access road maintenance may rest with the landowner (instead of Eskom Transmission), or vegetation control responsibilities may rest with Eskom Transmission in the second instance. Maintenance responsibilities are, ultimately, clearly set out in the servitude agreement.

3. Rezoning Procedure for the Ikaros Substation Site

The entire 36 ha site required for the proposed new Ikaros Substation will be acquired by Eskom Transmission prior to construction. At the proposed Ikaros Substation site, the zoning restrictions applicable to the land (“*Agricultural*”) will have to be amended to accommodate the substation infrastructure. In this regard, the following application procedures must be followed in terms of ruling legislation:

- An application in terms of the Division of Land Act 70/70, read with the Division of Land Ordinance 20 of 1986 with a view to subdividing and consolidating the component land portions to create the site assembly for the substation site. On approval of such applications, a land surveyor will have to attend to the appropriate survey thereof and the registration of the relevant diagrams in the offices of the Surveyor General. This process, if uncontested, will probably take in the order of 6 months to finalise from date of appointment of the Town Planning Consultants to attend the various applications.
- In parallel to the applications for subdivision, it will be necessary to apply to the local authority for the amendment of the relevant Town Planning Scheme via the rezoning of the new site assembly as described in the preceding section. The application will be submitted in terms of the Town Planning and Townships Ordinance 15 of 1986 and will probably take in the order of 4 to 6 months to finalise from date of appointment.