

APPLICATION FOR A BASIC ASSESSMENT AND AN INTEGRATED WATER USE LICENCE FOR THE PROPOSED RAW WATER PIPELINES TO SUPPLY THE KIPOWER IPP POWER PLANT AND DELMAS COAL

Background Information Document (BID)

Reference Numbers: NEAS: DEA/EIA/001727/2013. DEA: 14/12/16/3/3/854

PURPOSE OF THIS DOCUMENT

The Promotion of Access to Information Act (PAIA, Act No. 2 of 2000) gives 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.

According to the National Environmental Management Act (NEMA, Act No. 107 of 1998) and the National Water Act (NWA, Act No. 36 of 1998), any person contemplating undertaking an activity as listed in GNR 544 and 546 of the NEMA or Section 21 of the NWA must involve interested and affected parties (I&APs) when undertaking a Basic Assessment (BA) and Integrated Water Use Licence Application (IWULA) process respectively.

The purpose of this Background Information Document (BID) is to inform Interested and Affected Parties (I&APs) about KiPower (Pty) Ltd's applications for authorisation for the proposed raw water pipelines to supply the KiPower Independent Power Producer (IPP) Power Plant and Delmas Coal.

INTRODUCTION

The Constitution of the Republic of South Africa (Act No. 108 of 1996) enshrines every person's right to an environment that is not harmful to their health or well-being. The Constitution requires that the environment must be protected for the benefit of present and future generations through reasonable legislative and other measures that among other things, secure ecologically sustainable development and the use of natural resources while promoting justifiable economic and social development. Water is an essential resource required in all aspects of life, including development. The multiplicity of roles and economic value of water are recognised in both the National Water Act (NWA, Act No. 36 of 1998) and the Water for Growth and Development Framework (WfGD).

Although coal-generated electricity is a secondary form of energy, created from coal and steam, it is still the most popular and widely used form of energy. What is significant to note is the interdependence between water and energy in the production of electricity. For example, the production of electricity from a coal-fired power station is a function of heated water, which is subsequently transformed into superheated steam. The steam is used to rotate a large turbine connected to a rotating magnet that converts mechanical energy into electrical energy (electricity), which is then further increased via transformers into high voltage electric power. The electricity produced is used to power equipment that distributes water to where it is required for the production of goods and services.

Members of the public are invited to register as I&APs and to comment on the application process by completing and returning the enclosed comment sheet to:

Public participation:

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PROJECT OVERVIEW

The Applicant

The applicant for the Environmental Authorisation (EA) and Water Use Licence (WUL) to construct the proposed raw water pipelines to supply the KiPower Independent Power Producer (IPP) Power Plant and Delmas Coal is KiPower (Pty) Ltd. KiPower is a subsidiary of Kuyasa Mining, which also owns the Delmas Coal and Ikhwezi Colliery. These two mines are located approximately 20 kilometres south-east of Delmas in the Mpumalanga Province.

Over 95% of South Africa's electricity and about 60% of the total electricity consumed in the African continent is supplied by Eskom. Government pronounced that future power generation capacity be divided between Eskom (70%) and IPPs (30%), and that Eskom be the single buyer of power from IPPs in South Africa. In line with government policy, KiPower is proposing to establish a 4 x 150 megawatt (MW) power plant in close proximity to Delmas Coal, which will supply coal to the power plant.

Proposed pipelines

Should the application for EA and the WUL be successful, the proposed pipelines will traverse multiple jurisdictions and require compliance with several sets of regulations. These jurisdictions are Gauteng Province and Mpumalanga Province and the respective municipalities.

One of the proposed pipelines will connect into an existing Rand Water pipeline south of Devon, which is located in Lesedi Local Municipality in the jurisdiction of the Sedibeng District Municipality in the Gauteng Province. The pipeline will then run northwards to the proposed KiPower Plant south of Delmas (see map).

Additional pipelines are proposed to transport water from Samquar and Blommeland located north-west and north of the KiPower Plant respectively. The two additional sources of water are located in the Victor Khanye Local Municipality which falls under the jurisdiction of Nkangala District Municipality in the Mpumalanga Province. Water from Rand Water will be used to secure a constant supply of water, but the other two sources are the primary sources.

LEGAL REQUIREMENTS

In order to receive an EA, a BA process conducted simultaneously with an IWULA process has to be undertaken. The two processes are a requirement in terms of the NEMA and the new EIA regulations (Government Notice Regulation {GNR} 543 to 546, published in June 2010) as well as the NWA.

Environmental legal framework

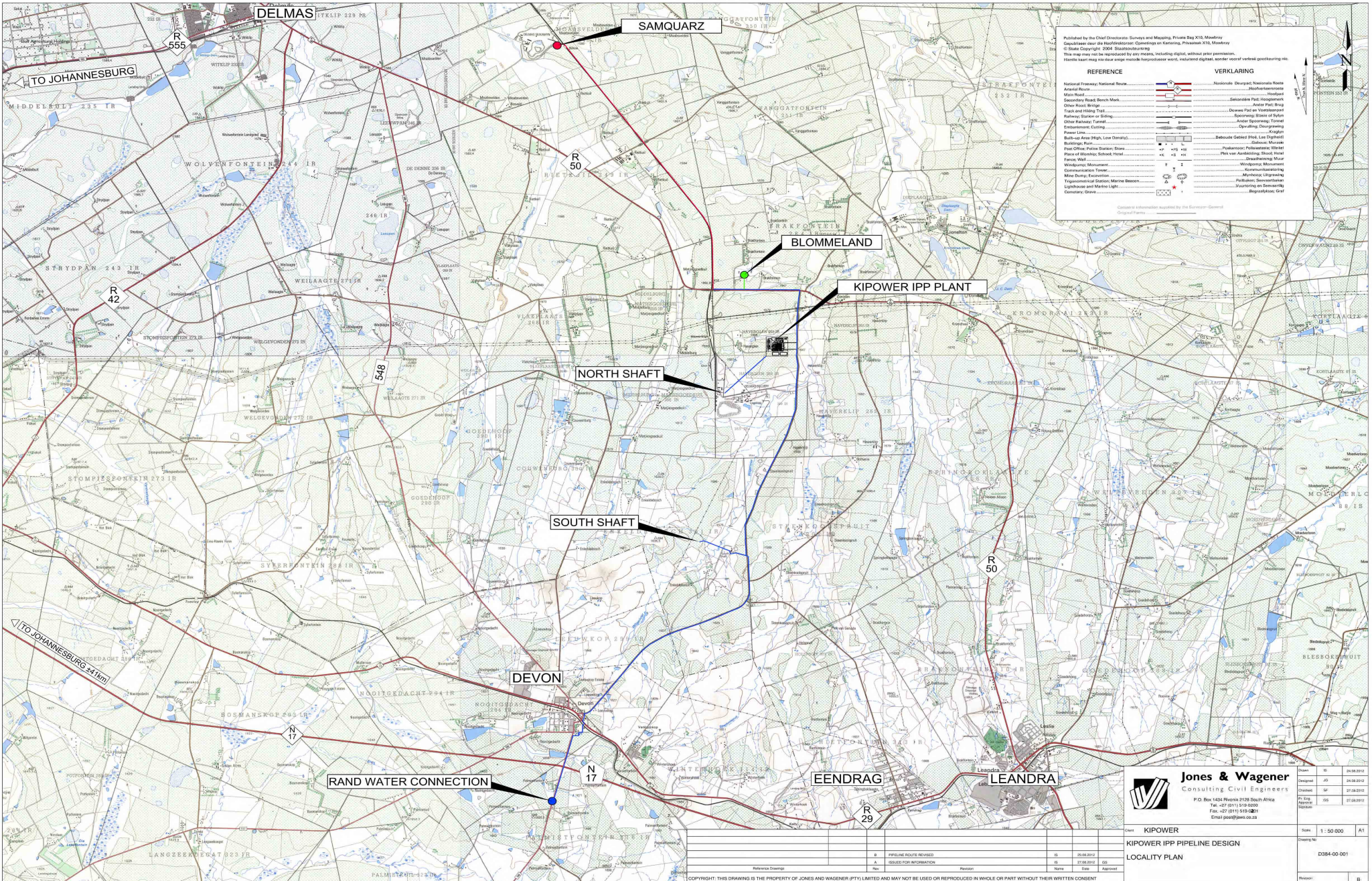
The NEMA is South Africa's overarching environmental law and it provides environmental principles that apply throughout the country to the actions of all organisations that may significantly affect the environment and serves as the general framework within which environmental management and implementation plans must be formulated.

One of the principles contained in the NEMA requires that the social, economic and

environmental impacts of activities, including disadvantages and benefits must be considered, assessed and evaluated, and decisions must be appropriate in regard to such consideration and assessment.

Environmental Impact Assessment Regulations (GNR) 543, 544, 545 and 546 were promulgated under sections 24(5), 24M and 44 of the NEMA to give effect to the environmental principles through regulatory mechanisms by which public demands for environmental resources can be met.

GNR 544 of 2010 identifies activities that would require EA prior to commencement of those activities and to liaise with the competent authorities in terms of section 24(2) and 24D of the NEMA. In terms of GNR 544 of 2010, the following listed activities will be triggered:



REFERENSIE	VERKLARING
Houtloos Gebied, Nasionale Route	Natuurlike Doornik, Natuurlike Heide
Asfaltpad	Hoofwagterpad
Grasgebied	Grasgebied
Grasgebied met Heide	Grasgebied met Heide
Grasgebied met Heide en Veld	Grasgebied met Heide en Veld
Grasgebied met Heide en Veld (Anders)	Grasgebied met Heide en Veld (Anders)
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Client: KIPOWER	Scale: 1:50 000	Sheet: A1
KIPOWER IPP PIPELINE DESIGN		
LOCALITY PLAN	Drawing No:	D284-00-001
	Revision:	
	Author:	
	Checked:	
	Drawn:	


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Reference Drawings

B	PIPELINE ROUTE REVISION	IS	20/08/2012
A	ISSUED FOR INFORMATION	IS	27/08/2012
Rev		Rev	

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- Activity 9: The construction of facilities or infrastructure exceeding 1km in length for the bulk transportation of water with an internal diameter of 0.36 metres or a peak throughput of 120 litres per second outside a road reserve.
- Activity 11: The construction of bridges where such construction occurs within a watercourse or 32 metres of a watercourse, measured from the edge of the watercourse, excluding where such construction will occur behind the development setback line.
- 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 from a watercourse.

In terms of GNR 546 which lists activities and identifies competent authorities under section 24(2), 24(5) and 24D of the NEMA, the following listed activity will be triggered:

- Activity 13: The clearance of an area of 1 hectare or more of vegetation where 75% or more of the vegetation cover constitutes indigenous vegetation (a) critical biodiversity areas and ecological support areas as identified in systematic biodiversity plans adopted by the competent authorities.

Since the proposed pipelines will traverse two provinces, the Department of Environmental Affairs (DEA) will be the competent authority with the Gauteng Department of Agriculture and Rural Development (GDARD) and Mpumalanga Department of Economic Development,

Environment and Tourism (MDEDET) being commenting authorities.

Water use

As the application involves investigations for water supply by bringing in additional water from the Rand Water pipeline that runs between Springs and Devon, Samquar and Blommeland, the applicant requires a WUL. The issuing of WULs is regulated under the NWA. The purpose of the NWA is to ensure that the nation's water resources are protected, used, developed, conserved, managed and controlled in ways which take into account amongst other factors, the promotion of social and economic development.

Section 22(1)(b) of the NWA specifies that a person may only use water if the water use is authorised by a licence under the NWA. A person wanting to use water must apply to the relevant responsible authority for a WUL by undertaking an IWULA process in terms of Section 21 of the NWA. Activities triggering the IWULA process are:

- (a): Taking water from a resource;
- (c): Impeding or diverting the flow of water in a watercourse; and
- (i): Altering the bed, banks, course or characteristics of a watercourse.

Listed activities and water uses identified in terms of the NEMA and the NWA will be re-evaluated during the process as more information becomes available.

ENVIRONMENTAL AUTHORISATION PROCESS

KiPower appointed Jones & Wagener Consulting Civil Engineers as the independent Environmental Assessment Practitioner (EAP) to manage the BA and WUL application processes. The process that the EAP will conduct comprises a technical and public participation process that will run concurrently (Figure 1). A BA process is usually conducted for activities with a lower threshold than those activities triggered in the Scoping and Environmental Impact Reporting

(S&EIR) process. However, this does not mean that a BA is conducted in a less robust manner. The regulation makes it very clear that a BA report should contain all the information necessary for the competent authority to make a decision on the application. Information contained in the BA report will also be used by the Department of Water Affairs (DWA) as the competent authority in assessing and making a decision on the IWULA.

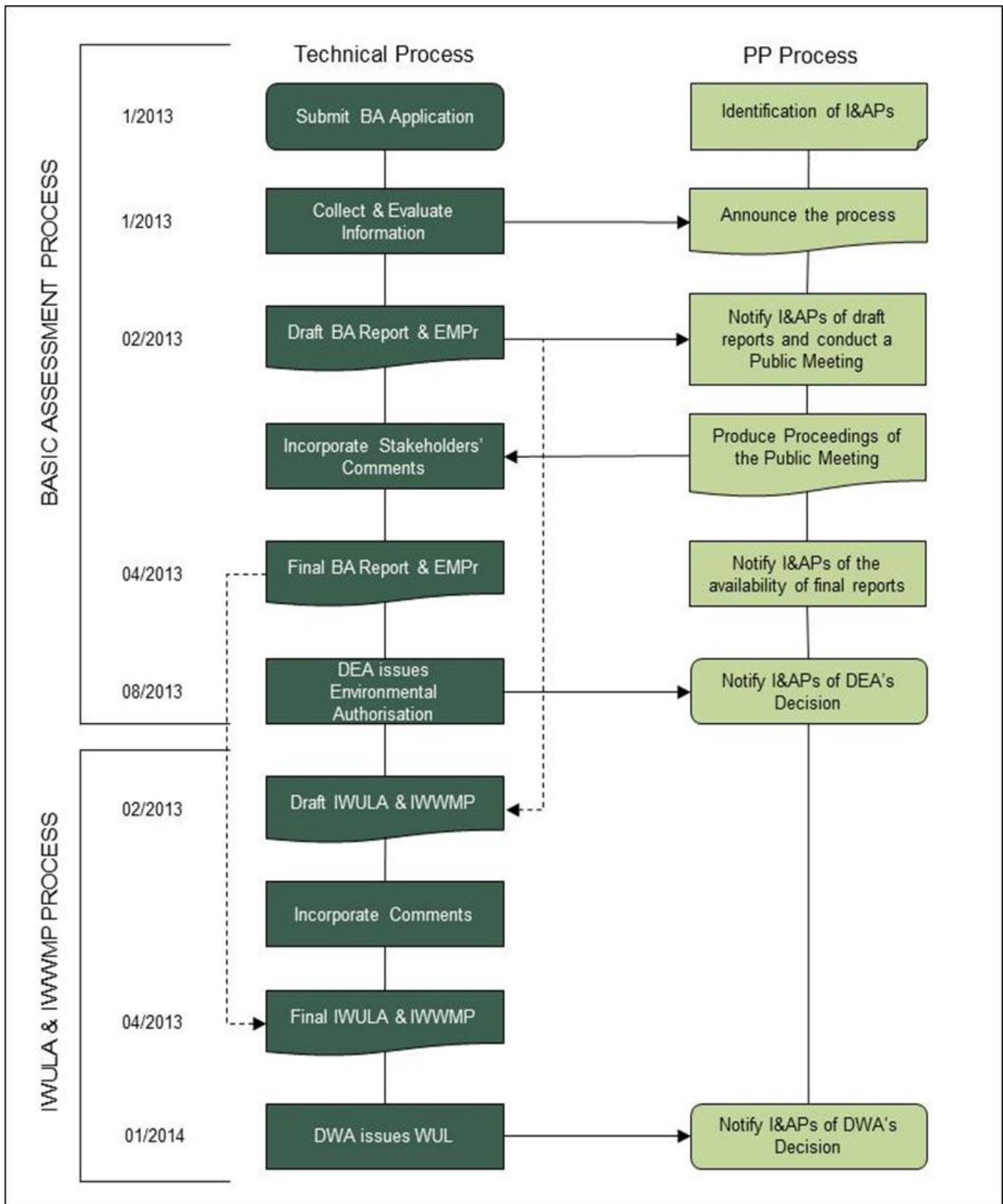


Figure 1. The BA and IWULA approach integrating the technical and public participation processes.

Technical process

The technical process that will be followed will integrate investigations for a BA and IWULA. The BA and IWULA will also be supported by an Environmental Management Programme (EMPr) in order to ensure that environmental management and monitoring measures are met. Technical activities that the EAP will undertake will include the following steps:

- Screening of alternative routes and water sources – Alternative sources of water that can be utilised to supply both the KiPower Plant and Delmas Coal will be investigated. Additionally pipeline routes will be identified at a high level and an effort will be made to ensure the routing is within existing servitudes or along existing linear structures where possible whilst keeping the length of the pipeline to a minimum.
- Fieldwork - Once a superficial preferred pipeline has been identified an initial round of fieldwork will be undertaken.
- Wayleave applications - In order to ensure the contractual feasibility of the project, wayleave applications will be done upfront so that fatally flawed areas can be identified early in the process.
- Preliminary designs - Preliminary designs with the level of detail required by the authorities will be drafted for the pipeline with specific emphasises on designs where pipelines cross rivers and wetlands.
- Specialist investigations - The following specialist studies will be undertaken: surface water, wetlands, aquatic and terrestrial ecology and heritage impact assessments.
- Report compilation - Information that has been gathered and the results of the specialist studies will be included in the BA and IWULA reports. The reports will also include background to the project; activities and water uses triggered; impacts identified; mitigation and management measures

proposed; and stakeholder consultation process followed as a minimum.

Public participation process

The NEMA requires that the participation of all I&APs in environmental governance must be promoted and all people must have the opportunity to develop the understanding and capacity necessary for effective and equitable participation.

Public participation is a cornerstone of democracy and its main purpose in an EIA is to afford I&APs the opportunity to participate in the application process in an open, transparent and honest manner. Objectives of the process in undertaking these applications are to:

- Provide I&APs with draft BA and IWULA Reports containing all relevant facts in respect of the applications in an objective manner so that they develop the understanding and capacity necessary to participate effectively and meaningfully.
- Ensure that I&APs are provided with the opportunity to comment on the final BA and IWULA reports before they are submitted to the relevant competent authorities.
- Advise I&APs about the DEA and DWA's decisions on the BA and IWULA respectively and provide them with information on where to lodge written objections, the time frames and the necessary particulars that the relevant competent authorities would require.

The public participation activities will be conducted in accordance with Chapter 6 (sections 54 – 57) of GNR No. 543 under the NEMA to support the technical process for both the BA and IWULA processes:

- Identify I&APs - The public participation practitioner will identify I&APs in the study area and compile a comprehensive stakeholder database that will contain representatives of all sectors of society in the project area, and beyond. The objective of this task is to afford all I&APs the opportunity

to become involved and participate in the BA and IWULA processes.

- Announce the application processes - The BA and IWULA application processes will be announced in various ways including the distribution of a BID (this document), advertising in local and regional newspapers and putting up notice boards along the pipeline route and in various areas in the project area. I&APs are encouraged to study the BID, provide comments on the Comment Sheet (attached) together with their contact details and send it to the public participation office.
- Public meeting – When the draft BA and IWULA reports are ready for public review, the public will be notified and informed about how to access the documents. Members of the general public will also be informed about and invited to a public meeting where the findings of the investigations and recommendations will be presented so that members of the public can comment on them.
- Meeting proceedings – Proceedings of the public meeting will be captured and submitted to the technical team to ensure that all issues of significance are considered in the final BA and IWULA reports. In addition, all comments made by I&APs will be included in a Comment and Response Report which will form part of the final BA and IWULA reports that will be submitted to the authorities. The regulations require that the final reports be made available for public comment.
- Decision making by responsible authorities – the DEA is the responsible competent

authority for the BA. As per GNR 543 of 2010, DEA must consult with every government organ that administers a law relating to a matter affecting the environment relevant to the application. This is in line with section 2(4)(l) of NEMA to ensure that there is intergovernmental co-ordination and harmonisation of policies, legislation and actions relating to the environment. After the GDARD and MDEDET have commented on the final BA report, the DEA will make a decision based on information contained in the BA report.

- Notification of I&APs of authorities' decision – The expected outcomes of the application process are an EA and a WUL. When DEA has completed assessing information contained in the final BA and EMP, and made a decision on the application, all I&APs on the database and also those who may request the information will be informed of the decision. Similarly, at a later stage in the process, when the DWA has reached a decision on whether or not to issue a WUL, I&APs will again be notified of this decision.

Both the NEMA and NWA require that after a responsible authority has reached a decision on a licence application, the applicant must be notified promptly. Thereafter, I&APs must be notified. Any person affected by the decision has the right to appeal the decision. In accordance with legislation and the applicable regulations, I&APs will be advised on where to submit appeals and the time frame within which to do so. I&APs will also be advised to provide grounds for an appeal as well as any supporting documentation necessary for the competent authority to consider the appeal.

Your participation in the applications for the Basic Assessment and Integrated Water Use Licence Application processes will be highly appreciated. After studying the background information document, share the information with colleagues, complete the enclosed Comment Sheet and return it to the Public Participation Office at the address provided on the first page.