

In the matter between

EARTHLIFE AFRICA, JOHANNESBURG

Appellant

and

**CHIEF DIRECTOR: INTEGRATED ENVIRONMENTAL
AUTHORISATIONS, DEPARTMENT OF
ENVIRONMENTAL AFFAIRS**

First Respondent

NEWSHELF 1282 (PTY) LTD

Second Respondent

RESPONSE TO THE APPEAL SUBMITTED BY THE CENTRE FOR ENVIRONMENTAL RIGHTS ON BEHALF OF EARTHLIFE AFRICA PURSUANT TO SECTION 43(2) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT 108 OF 1998 AGAINST THE ENVIRONMENTAL AUTHORISATION ISSUED TO NEWSHELF 1282 (PTY) LTD FOR THE PROPOSED 1200MW COAL-FIRED THABAMETSI POWER STATION- APPEAL ON 11 MAY 2015 - DEA REFERENCE 14/12/16/3/3/3/40

1. Introduction

1.1 On 25 February 2015, Newshelf 1282 (Pty) Ltd ("**Newshelf, the Second Respondent or our client**") was granted an environmental authorisation to construct the 1200MW coal-fired Thabametsi power station ("**The Thabametsi Project**") by the Department of Environmental Affairs ("**DEA or the First Respondent**").

1.2 The Environmental Authorisation (reference 14/12/16/3/3/3/40) is attached hereto as Annexure "**A**" ("**the Thabametsi EA**").

1.3 On 9 April 2015 the Centre for Environmental Rights ("**CER**") on behalf of Earthlife Africa, Johannesburg ("**the Appellant**") gave Notice of its intention to lodge an appeal against the Thabametsi EA. A copy of the Notice of Intention to Appeal is attached as Annexure "**B**". On 11 May 2015, CER lodged its appeal against the Thabametsi EA. A copy of the Appeal is attached as Annexure "**C**".

2. Background to the lodging of the Appeal and the Second Respondents Responding Statement

2.1 The DEA, as the appeal authority, has directed the parties to follow the procedures as per the Chapter 7 of the NEMA EIA Regulations, 2010 Regulations 60 – 63 of GNR 543. ("**the 2010 NEMA EIA Regulations**"). We note further that Government Gazette No 385559 GNR 597 of 12 March 2015 states that Regulation 10 of the National Appeal Regulations, 2014 published under Government Notice No R 993 of 8 December 2014 is amended as follows:

"3 Regulation 10 of the Principal Regulations is hereby amended

(a) *By the substitution for sub-regulation (2) of the following sub-regulation:*

“(2) An appeal lodged after 8 December 2014 against a decision taken –

(a) In relation to a waste management license or integrated in terms of the National Environmental Management: Waste Act, 2008 (Act 59 of 2008) which followed the processes in the regulations referred to in paragraph (b) and (c)

(b) In terms of the Environmental Impact Assessment Regulations, 2006; or

(c) In terms of the Environmental Impact Assessment Regulations, 2010

Must despite the repeal of the regulations referred to in paragraphs (b) and (c) be dispensed with in terms of the Environmental Impact Assessment Regulations, 2010, as if those regulations have not been repealed: Provided in the instance where a decision was taken after 8 December 2014, but prior to the publication of the National Appeal Amendment Regulations, 2015 and the applicant was informed in such decision to follow a different appeal process than the process indicated in sub-regulation (2), the appeal process indicated in such decision must be followed, unless otherwise informed by the relevant appeal authority”

2.2 The DEA is *de facto* therefore following the appeal process as per the 2010 NEMA EIA Regulations and we refer to these regulations as the relevant Regulations for the processing of this Appeal.

2.3 The DEA made it clear that Thabametsi EA dated 25 February 2015 would be processed in terms of Chapter 7 of the EIA Regulations, 2010 and that the Thabametsi EA Amendment dated 17 March

2015 (“**the Thabametsi EA Amendment**”) would be processed in terms of Chapter 2 of the National Appeals Regulations 2014. This response is therefore submitted in terms of Regulation 63 of the 2010 EIA Regulations.

2.4 To the extent that the process in terms of the National Appeal Regulations, 2014 should have been followed, then in terms of Regulation 4 of the National Appeal Regulations, 2014, an appellant must submit an appeal to the appeal administrator, and a copy of the appeal to the applicant, any registered interested and affected party and any organ of state with an interest in the matter within 20 days from the date that the notification of the decision was sent to the applicant by the competent authority (i.e. 17 March 2015). The Appellant was therefore required to submit the appeal to the appeals administrator by 13 April 2015. The appeal submitted by the Appellant was submitted on 11 May 2015 – it was not submitted within the required timeframes for the Thabametsi EA or the Thabametsi EA Amendment.

3. Objection to the late filing of the Appeal

3.1 In terms of (Regulation 60(1)) of the 2010 EIA Regulations, in order to lodge a valid appeal, a party (the Appellant) must, within 20 days of the decision, submit a Notice of Intention to appeal to the Minister or MEC. The Appellant’s Notice of Intention to Appeal therefore should have been submitted by 17 March 2015. The Appellant’s Notice of Intention to Appeal was only submitted to the DEA on 9 April 2015.

3.2 As is prescribed by the 2010 EIA Regulations, I&APs (including the Appellant) were notified of the Thabametsi EA as well as the provisions regarding the submission of appeals on 9 March 2015. A

copy of the Thabametsi Project distribution notice is attached as Annexure "D".

3.3 Even if the Appellant claims that the intention of the legislation is that the Notice of Intention to Appeal is only due within 20 days of the date on which the appellant is made aware of the decision, then the Notice of Intention to Appeal was due by 30 March 2015. Even on this basis, the Notice of Intention to Appeal was not submitted timeously by the Appellant.

3.4 The Appellant was therefore late with the submission of its Notice of Intention to Appeal to the DEA and did not request condonation for the late submission thereof or attempt to provide a reason therefore. Newshel therefore objects to the late submission of the Notice of Intention to Appeal.

3.5 In accordance with Regulation 62 of the 2010 EIA Regulations, the Appellant is required to submit its appeal in writing to the Minister within 30 days of the submission of the Notice of Intention to Appeal. In accordance with the above, the Appellant was late with the submission of its appeal, as it should have been submitted to the Minister by 20 April 2015 (i.e. within 30 days of the date for submission of the Notice of Intention to Appeal, calculated from the date of the Thabametsi Environmental Authorisation) or, at the very latest by 30 April 2015 (i.e.: within 30 days of the date for submission of the Notice of Intention to Appeal, calculated from the date that the Thabametsi Environmental Authorisation was sent to I&APs). The appeal was only submitted to the DEA on 11 May 2015.

3.6 The late submission of the Notice of Intention to Appeal and the late submission of the Appeal are not trivial in the context of the Thabametsi Project. It is in fact highly prejudicial to Newshel in that

Newshef must achieve financial closure in the Thabametsi Project by March 2016 and thus the timeous processing of and receipt of environmental authorisations for the Thabametsi project is critical. When no Notice of Intention to Appeal was received within the prescribed time period (i.e. 20 days from 25 February i.e. by 17 March 2015) Newshef and the project investors correctly assumed that no valid appeals could be lodged against the Thabametsi EA.

3.7 Newshef therefore requests that the Appeal be dismissed due to the fact that the Notice of Intention to Appeal and the Appeal were not submitted timeously as required, there was no application for condonation for late submission thereof submitted by the Appellant and the matter is now highly prejudicial to Newshef.

3.8 Moreover, should the DEA determine that the Appellant may request condonation for the late submission of the Notice of Intention to Appeal and the Appeal itself, then Newshef reserves the right to respond to such a request for condonation.

4. Objection to the content of the Appeal

4.1 Newshef further objects to the content of the Appeal.

4.2 The Appellant has attempted to appeal the entire Thabametsi EA, despite having created the impression and having been instructed by the DEA that only the conditions of the Thabametsi EA Amendment (dated 17 March 2015) could be appealed. The DEA stated in e-mail correspondence to the Appellant dated 10 April 2015, the following:

*"We acknowledge receipt of your notice of intention to appeal against **amendment** of the abovementioned proposed project."*

4.3 This is also highly prejudicial to Newshelf as the Appellant effectively "turns back the clock" and attacks the Thabametsi EA, without providing any explanation as to why it is entitled to do so. In addition due to the fact that the Appellant did not submit a Notice of Intention to Appeal the Thabametsi EA, Newshelf was not able to object to the late submission thereof and reserves its rights in this regard.

5. Response to Issues raised in the Appellant's Appeal

5.1 Ad paragraphs 3, 4 and 5 of the Appeal- locus standi of the Appellant

5.1.1 Ad Paragraph 4- the Second Respondent admits that the appellant is a registered I&AP.

5.1.2 Ad Paragraph 6 – The Appellant has requested Newshelf's registration number and registered address. Newshelf's registration number is 2011/011416/07 and its registered address is at Block E, Lincolnwood Office Park, 6-10 Woodlands Drive, Woodmead, Gauteng, 2080.

5.2 Ad Paragraphs 7 - 12: Background to the Project-

5.2.1 Ad Paragraph 7: Our client admits that the Thabametsi Project was in response to the Integrated Resource Plan

("IRP") and subsequent Coal Baseload Independent Power Producer Programme ("CBIPPP").

5.2.2 Ad Paragraph 8: Noted, no comment.

5.2.3 Ad Paragraph 9: The Appellant alleges that project capacity of 1200MW exceeds the CBIPPP capacity limit of 600MW. Second Respondent's Response: The EIA contemplates a 1200MW plant but only 600MW of the Thabametsi Project will be submitted in response to the RFP issued by the Department of Energy, South Africa ("DoE") for coal base-load power projects.

5.2.4 Ad Paragraph 10: The location of the Thabametsi Project in respect of the Medupi and Matimba power stations and its location in the Limpopo Coal, Energy and Petrochemical Cluster, the Lephalale Local Municipality Industrial Corridor and Waterberg coalfields is well known and is common cause. Second Respondent's Response The Thabametsi Project was first identified and initially developed by Exxaro. In 2012, the Thabametsi Project was transferred to the current developers.

5.3 Ad Paragraphs 13 – 17: Background to the Project: Water Sources within the Project Site Area:

5.3.1 Ad paragraphs 13- 17 Appellant claims that:

5.3.1.1 Waterberg is a water-stressed area, with Lephalale in particular suffering from a water deficit; and

5.3.1.2 Phase 1 and 2 of Marico-Crocodile Water Augmentation Project ("MCWAP"). The EIA for

MCWAP 2 has not yet been completed, therefore deadline of 2020 for water supply cannot be met.

Second Respondent's Response: As per the FEIR: The Project will source its water from the Mokolo Crocodile Water Augmentation Project ("MCWAP") Phase 2 which is scheduled for completion by 2019/20. Should the Thabametsi Project require water earlier than this date for the construction and early production, the water will be sourced from Exxaro Resources who has an allocation for MCWAP Phase 1 (MCWAP-1) E (Refer to Appendix R of the FEIR).

5.4 Ad Paragraphs 18 – 24: Background to the Thabametsi Project - Air Quality within the Project Site Area:

- 5.4.1 The Appellant claims that the site falls within the Waterberg Bojanala Priority Area ("WBPA"), as such it is a priority air quality area where development such as the Thabametsi coal fired station will exceed ambient air quality standards and which in turn may cause significant negative impact on air quality in the area. Second Respondent's Response: An air quality and health risk specialist study was undertaken as part of the EIA (refer to Appendix E of the FEIR). The study was undertaken by uMoya-NILU and is referenced as: "uMoya-NILU (2013): Air quality and health risk specialist study for the EIA for the Proposed Thabametsi Coal-Fired Power Station near Lephalale, Limpopo Province, Report No. uMN059-2013, November 2013." The air quality specialist study concluded that the potential impacts of the project would be low for all potential pollutants. However, it is concluded that cumulative impacts may be significant and

would need to be managed in line with the requirements of the Waterberg Priority Area AQMP.

5.4.2 The Appellant refers to the draft air quality management plan (“AQMP”) for the WBPA and decision making should be informed by research based on the WBPA. Second Respondent's Response: The EIA acknowledges the location of the site within the WBPA, bringing this information to the attention of the decision-making authority.

5.4.3 Ad Paragraphs 22 and 23 The Appellant alleges that there will be an increase in air pollution associated with energy based projects and coal mining in the district. Second Respondent's Response: The Air Quality and Health Risk Specialist Study which formed part of the FEIR considered these issues in detail. Mitigatory measures are proposed in The Air Quality and Health Risk Specialist Study and the study concludes that the risk index for exposure to air pollutants associated with the Thabametsi Project is low.

5.4.4 Ad Paragraph 24 The Appellant states that an additional coal-fired station with its significant harmful atmospheric emissions will be contrary to the AQMP for the WBPA. Second Respondent's Response: The purpose of the AQMP developed for the WBPA is to provide a management framework to address effects from emissions in the area (industrial and domestic) in the priority area as required in terms of Sections 16 and 19 of the NEM:AQA. The intention of the management plan is not to restrict development but to manage such development to minimise impacts on air quality.

5.5 Ad Paragraphs 25 – 35 : Background to the Project - Environmental Assessment Process:

- 5.5.1 Ad Paragraph 25 The Appellant alleges that the Thabametsi Project was in fact a previous Exxaro project. Second Respondent's Response: The Thabametsi Project was first identified and initially developed by Exxaro. In 2012, the Thabametsi Project was transferred to the current developers. There are no restrictions in the EIA regulations against such transfers.
- 5.5.2 Ad Paragraph 26: The Appellant queries Newshelf shareholding. Second Respondent's Response: Newshelf is currently 100% owned by GDF Suez Energy International Global Developments BV which forms part of the Engie Group.
- 5.5.3 Ad Paragraph 27: The Appellant refers to the fact that Engie is focussing on social progress and preservation of natural resources. Second Respondent's Response: It is admitted that Engie does take account of social progress and preservation of natural resources when conducting its activities.
- 5.5.4 Ad Paragraph 29. We confirm that Savannah Environmental is the independent environmental consultancy appointed to undertake the EIA.
- 5.5.5 Ad Paragraph 30. We confirm that the Thabametsi EA is an integrated EA in terms of the 2010 NEMA EIA Regulations, read with the 2013 NEM:WA Regulations, thereby serving as a WML in terms of the NEM:WA.

5.5.6 Ad Paragraph 31 the Appellant claims that it only became aware of the application for the Thabametsi Project on publication of the draft EIA. Thus it was not given access to the Scoping Report.

Second Respondent's Response: I&AP's were registered on the Thabametsi Project's database in terms of Regulation 54(2) of the NEMA EIA Regulations, 2010. Members of the public were provided with numerous opportunities to register on the project's database from the outset of the EIA process. Advertisements announcing the EIA process and inviting members of the public to register as I&AP's for the Thabametsi Project were placed in "The Star" newspaper on 19 July 2012 and the "Mogol Pos" newspaper on 24 July 2012. Advertisements announcing the availability of the draft Scoping Report were placed in "The Star", "Mogol Pos" and "Ntshebele Rural Rhythm" newspapers on 23 October 2012. The availability of the draft EIA Report was advertised in "The Star" newspaper on 14 March 2014, the "Ntshebele Rural Rhythm" newspaper on 20 March 2014 and the "Mogol Pos" newspaper on 21 March 2014. There was no request from the Appellant for a copy of the Scoping Report. Dominique Doyle of the Appellant submitted comments on the DEIR during the public review period (in a letter dated 23 April 2014). Dominique Doyle was subsequently registered as an I&AP on the Thabametsi Project's database representing the Appellant.

5.5.7 Ad Paragraph 32 The Appellant alleges that it made submissions on the Draft EIA on 23 April 2014 and that such comments were ignored, which included:

5.5.7.1 lack of clarity of water supply;

5.5.7.2 sourcing of water and water treatment should not be left to the operational phase;

5.5.7.3 no alternatives in EIA to ash disposal such as backfilling;

5.5.7.4 the EIA failed to address environmental impacts such as cumulative impacts of the projects;

Second Respondent's Response: The Appellant submitted comments on the DEIR on 23 April 2014, during the public review period of the DEIR. Detailed responses to The Appellant's comments were provided in Table 2 (page 105) of the Comments and Responses Report (Refer to Appendix D2 of the FEIR) which was submitted to the DEA. A letter notifying registered I&APs of the availability of the FEIR was sent to registered I&APs (including the Appellant) on 06 May 2014. The issues raised by the Appellant were responded to in the FEIR (refer to Table 2 [page 105] of Appendix D2 of the FEIR).

5.6. Ad Paragraphs 36 – 39: Background to the Project - Status of Other Authorisation Processes:

5.6.1 Ad Paragraph 36. The Appellant alleges that due to the fact that the Thabametsi Project and associated activities are governed by specific environmental legislation (NEMWA and NEMAQA), Newshelf must comply with these licensing processes in addition to those prescribed by NEMA. Second Respondent's Response: As detailed in the EIA Report, the provisions of all relevant legislation will be required to be adhered to (refer to Section 5.4). At this stage, there is only provision for an integrated licensing process to be followed for a NEMA Authorisation and Waste License. Therefore, separate processes are required to be followed for additional permits/licenses which may be required for the project. As detailed in the EIA, these include, inter alia, an AEL, WUL,

biodiversity permit and potentially a heritage permit. The EIA and Environmental Authorisation are required to be submitted to the relevant authority in support of these applications.

5.6.2 Ad Paragraph 37 The Appellant alleges that an integrated environmental authorisation may be issued in terms of the NEMA under section 24L1(1) and (2) only if “*the relevant provisions of NEMA and the other law or specific environmental management Act have been complied with*”.

Second Respondent’s Response: As is indicated below, the Thabametsi Project will apply for and achieve full compliance with other specific environmental management Acts.

5.6.3 Ad Paragraph 38 The Appellant alleges that Newshelf is required to obtain a Water Use Licence in terms of the National Water Act and an atmospheric emissions licence (AEL) in terms of the NEMAQA. Second Respondent’s Response: The requirement for these licenses is included within the EIA. The water use license application (WULA) is in process. I&APs will be notified of the public review period for the draft Integrated Water and Waste Management Plan (IWWMP) and the draft WULA when these documents are available.

5.6.4 Ad Paragraph 38 The Appellant alleges that despite requests, it was not included in the AEL, WML and WUL processes. Second Respondent’s Response: The WML process has been completed (together with the NEMA application). The Appellant commented on this application in the EIA phase. The AEL and WUL permitting processes are in process. I&APs will be notified of the availability of these

documents as they become available. The EIA (including all comments received during the EIA process) and Environmental Authorisation are required to be submitted to the relevant authority in support of these applications.

5.7 Ad Paragraph 40 Background to the Project – Water Use Licence (WUL) :

5.7.1 Ad Paragraph 40.1- 40.4 The Appellant makes various allegations regarding the WUL process, the main contention seemingly being that the WUL should have been made available for public comment and that the Appellant should have been included in the process. Second Respondent's Response: The WUL application process is still to be undertaken. I&APs will be notified of the availability of draft IWMMP & WULA as and when these become available.

5.7.2 Ad Paragraph 40.5 The Appellant alleges that given the serious water constraints in the area and other water related concerns highlighted in the appeal, the issuing of WUL - related authorisations would be contrary to the National Water Act objectives of ensuring that the nations water resources are protected, used, managed, developed and conserved and controlled in a way that promotes equity and sustainable development. Second Respondent's Response: As is stated above, the WUL process is still ongoing under the auspices of the DWS and in terms of this a public participation process will be undertaken prior to the submission of the documentation to DWS. All relevant information as required by the WUL process will be submitted to the DWS by the consultants. DWS is then obliged to consider such information in the course of adjudicating whether a WUL should be issued for the Project.

5.8 Ad Paragraph 41: Background to the Project – Atmospheric Emissions Licence (AEL)

5.8.1 Ad Paragraph 41.2. The Appellant alleges that in terms of Section 40(3) of the AQA no AEL may be granted whilst the appeal against the Thabametsi EA is pending. Second Respondent's Response: The AEL application will be updated and finalised only if the proposed Thabametsi Project is awarded preferred bidder status by the DoE. I&APs will be afforded an opportunity to comment on the final application to the AEL.

5.8.2 Ad Paragraph 41.3. The Appellant alleges that it was not notified of the Second Respondent's application for an AEL despite its status as an AEL and that Newshelf was obliged to notify all IAP's (including the Appellant, ELA/CER) in terms of S37(3)(a) of the NEMAQA. The Appellant further alleges that the AEL application was submitted to LEDET in July 2014 but that notification of the application was only received by the CER by e-mail from Savannah on 5 March 2015 where Newshelf advised that the AEL application would be advertised in local newspapers and that comments should be made within 14 days. CER disputes that 14 days is a "reasonable period" for comment as required in terms of section 38(3)(b)(iii) of the NEMAQA. Second Respondent's Response: An advertisement announcing the AEL was placed in "The Star" newspaper on 22 July 2014, the Mogol Pos on 25 July 2014 and the Ntshebele Rural Rhythm 25 July 2014. The AEL application will be updated and finalised only if the proposed Thabametsi Power Station project is awarded preferred bidder status by the Department of Energy (DoE). I&APs will be afforded an opportunity to comment on the final application to the AEL.

- 5.8.3 Ad Paragraph 41.6 - the Appellant further alleges that the requirement for the AEL was not included in the EIA for the Thabametsi Project. Second Respondent's Response: This is incorrect. The description of the Listed Activities (Section 5.1) states that an air emissions license would be required. In addition, the description of relevant legislation details the requirement for an AEL and details the reasons in this regard (refer to Table 5.2 in Section 5.4). The air quality impact assessment included within Appendix E also details the requirement for an AEL.
- 5.8.4 Ad Paragraph 41.7 – the Appellant alleges that according to information received from LEDET in an e-mail dated 24 April 2015, information obtained in the AEL application was insufficient and that the AEL is on hold pending receipt of further information. Second Respondent's Response: The AEL application will be finalised if the Thabametsi Project is awarded preferred bidder status by the DoE. The detailed designs required to complete the application will be provided at a later date and if the project is awarded preferred bidder status by the DoE.
- 5.8.5 Ad Paragraph 41.8 – the Appellant alleges that the AEL cannot be processed further while the EA appeal is pending and reserves its right to challenge the AEL if it is further processed while the EA appeal is pending. Second Respondent's Response: AEL application will be updated and finalised only if the proposed Thabametsi Project is awarded preferred bidder status by the DoE. I&APs will be afforded an opportunity to comment on the final application to the authorities.

5.9. Ad Paragraphs 42 - 50: The Decision :

5.9.1 Newshelf and its environmental consultant, Savannah Environmental, are of the opinion that they have followed the correct procedures in obtaining the EA, in advertising the EA and in responding to the ELA appeal. Newshelf will follow the amended Appeal Regulations (as published in Government Notice R205 in Government Gazette No 38559 of 12 March 2015) and as it has been directed to do so by the decision-maker in this instance, the DEA. As described above in paragraph 2, the amended appeal Regulations state that *'an appeal lodged after 8 December 2014 against a decision taken in terms of the EIA Regulations, 2010 must, despite the repeal of those regulations, be dispensed with in terms of the EIA Regulations, 2010 as if they had not been repealed, unless otherwise informed by the DEA'*. The DEA's amendment noted that the appeals on the amendment should be lodged in terms of the 2014 Regulations. Thus there was a degree of uncertainty as to which Regulations applied. Nevertheless, Newshelf has been directed to follow the EIA Regulations, 2010 by the decision-maker, which it is doing.

5.9.2 The further impact of these paragraphs are directed at the DEA and it is submitted that it is not appropriate for Newshelf to respond further to the issues raised by the Appellant in these paragraphs.

5.10 Ad Paragraphs 51 - 56: Amendment of the Authorisation

5.10.1 These paragraphs are directed primarily at the DEA and thus Newshelf has not responded in detail to the allegations made in these paragraphs, save to say that the amendment to the EA issued on 17 March 2015 was, in Newshelf's opinion, a

non-substantive amendment, made in order to bring the EA in line with current legislation.

5.11 Ad Paragraphs 57 – 63: Intention to Appeal

5.11.1 These paragraphs relate primarily to process issues relative to the appellant and DEA and thus Newshelf has not responded in detail to the allegations made in these paragraphs, save to say that Newshelf is of the opinion that the Appellants appeal falls to be rejected on two issues related to the amendment of the EA, the timing and the content of the Appellants appeal. These submissions are made in paragraphs 3 and 4 above and are therefore not repeated in this part of Newshelf's response.

5.12 Ad Paragraph 64: Grounds of Appeal – the DEA's alleged failure to Comply with Section 24 of the Constitution and Section 24O(1)(a) of NEMA

5.12.1 The Appellant's submissions in this paragraph are made directly against the DEA and its decision-making process that was applied in approving the Thabametsi EA. Newshelf has therefore not commented in detail on these issues. However many of the allegations overlap to some extent with issues that were within Newshelf's control and or the responsibility and/or its consultants and are therefore dealt with where relevant, in other parts of this response.

5.13 Ad Paragraph 65: Grounds of Appeal – First Ground of Appeal- The DEA's alleged Failure to Comply with Section 24 of the Constitution and Section 24O(1)(a) of NEMA -

5.13.1 Ad Paragraph 65.1: DEA's alleged failure to comply with the provisions of Section 2 of the NEMA

- 5.13.1.1 The Appellant's submissions are directed at the DEA and the decision making process that was applied in approving the Thabametsi EA. Newshelf has therefore not commented on these issues. However, Newshelf has commented on certain substantive issues related to the Thabametsi Project, as appropriate.
- 5.13.1.2 Ad paragraph 65.1.4 Allegation made by Appellant regarding air pollution and health issues i.e.: that atmospheric emissions from coal-fired power stations are currently causing an estimated 2 200 premature deaths per year due to exposure from fine particulate matter. Second Respondent's Response: The study to which the Appellant refers was not part of the EIA process or FEIR, thus Newshelf cannot comment directly on the content of the study. However The Air Quality and Health Risk Specialist Study which formed part of the FEIR considered these issues in detail. Mitigatory measures are proposed in The Air Quality and Health Risk Specialist Study and the study concludes that the risk index for exposure to air pollutants associated with the Thabametsi Project is low.
- 5.13.1.3 Ad paragraph 65.1.5: Appellant alleges that due to the detrimental health impacts indicated by the study referred to in Paragraph 65.1.4, the Thabametsi Project would give rise to a violation of Section 24 of the Constitution and to the NEMA principle in Section 2(4)(c) of environmental justice. Second Respondent's Response: The Air Quality and Health Risk Specialist Study was undertaken as part of the EIA process.

Newsshelf believes that this was done in accordance with the law and the study indicates that the health risk impact of air pollution is low. Accordingly, it is Newsshelf's view that the Project does not violate Section 24 of the Constitution or the principle of environmental justice in Section 2(4)(c) of NEMA.

- 5.13.1.4 Ad Paragraph 65.1.7, 65.1.8 Allegation made by the Appellant to the effect that the "positive effects of the project" referred to in the FEIR "rarely materialise" i.e.: "an increase in national electricity, economic development, job creation, increase in household income and government revenue". Second Respondent's Response: The positive impacts associated with increase in national electricity, economic development, job creation, increase in household income and government revenue will definitely occur as detailed in the socio-economic impact assessment. The Integrated Resource Plan (IRP) 2010-30, issued by the Department of Energy, and promulgated in March 2011. The primary objective of the IRP 2010 is to determine the long term electricity demand and detail how this demand should be met in terms of generating capacity, type, timing and cost. In order to meet the generation capacity expected to be required by 2030, the IRP includes a mix of generation technologies, including a nuclear fleet of 9.6 GW; 6.3 GW of coal; 17.8 GW of renewables; and 8.9 GW of other generation sources. Although it is agreed that the development of renewables will mitigate climate change concerns to a certain extent, the need for coal-based energy has been identified by the DoE in order to meet the

country's urgent base-load power needs. Therefore, on the basis of this policy, the DoE determined that the development of coal-fired power generation is required to address South Africa's energy security needs.

5.13.1.5 Ad Paragraph 65.1.9 read with Paragraph 65.1.6
Allegation made by Appellant regarding the fact that the Thabametsi Project is not socially, environmentally or economically sustainable and in contravention of S2(4) of the NEMA as it would:

5.13.1.5.1 Negatively impact on the health of the communities living in the area due to emissions associated with the project such as PM10, dust S02 and mercury and result in additional medical expenses being incurred by affected communities and the State; Second Respondent's Response:
An air quality and health risk specialist study was undertaken as part of the Environmental Impact Assessment (EIA) (refer to Appendix E of the FEIR). The study was undertaken by uMoya-NILU (air quality assessment) and CSIR (health impact assessment) and is referenced as: "*uMoya-NILU (2013): Air quality and health risk specialist study for the EIA for the Proposed Thabametsi Coal-Fired Power Station near Lephalale, Limpopo Province, Report No. uMN059-2013, November 2013.*" Included is a health risk assessment considering exposure to the air pollution predicted for the proposed power station (as modelled through the air quality impact assessment). It was concluded that the human health risk for development of acute and chronic adverse effects

from exposure to PM10 from the stack, stockpile and ash dump and SO2 and NO2 from the stacks is low at all three communities of concern (Lephalale, Onverwacht and Marapong) as well as at the other off-site sensitive receptor areas investigated.

5.13.1.5.2 Irreparably impact upon scarce water resources in the area (exacerbated by climate change); Second Respondent's Response: The Thabametsi Project will source its water from the Mokolo Crocodile Water Augmentation Project (MCWAP) Phase 2 which is scheduled for completion by 2019/20. Should the Thabametsi Project require water earlier than this date for the construction and early production, the water will be sourced from Exxaro Resources who has an allocation for MCWAP Phase 1 (MCWAP-1) (Refer to Appendix R of the FEIR).

5.13.1.5.3 Irreparably impact upon heritage and biodiversity resources on the site. Second Respondent's Response: Heritage Impact Assessment was undertaken in accordance with the requirements of the National Heritage Resources Act (refer to Appendix G of the FEIR). Two ruins and a grave site were identified on the power station development site. These sites were estimated to be younger than 60 years (based on the date on the grave headstone) and are therefore not considered to be of heritage significance. Potential impacts on a heritage site of significance (Nelsonskop) are associated with the proposed power line alternative 3, which passes in close proximity to this site. Specific management in this

area would be required to minimise the risk of any impacts on this area should this alternative be selected as the preferred option. Alternative 3 was however concluded to be the least preferred alternative for the power line in terms of all aspects. Power line Alternative 1 was recommended as the preferred alternative for implementation. No fatal flaws were identified in the heritage impact assessment study for the power station site. From an archaeological point of view there is no reason why the development should not proceed. A detailed biodiversity impact assessment was undertaken for the proposed project, considering both wet and dry seasons (refer to Appendix F of the FEIR). This study concluded that the expected loss of natural resources from the site and immediate surrounds because of the development will result in significant, but localised, impacts on the natural environment. While a significant impact is expected on the protected trees that occur on the site, the conservation status and regional abundance of these species are not expected to be affected on a local or regional scale. The overall impact to pans/wetland areas for the project would be considered to be low, as mitigation measures can be adopted in order to avoid pans/wetland areas. Similarly, animals could potentially be affected severely, but the mobility of most species that are of conservation concern, renders the probability of this impact unlikely. Impacts of a cumulative nature, although estimated to result in moderate and low significance, represent a continuous, low level

threat to biodiversity on a local and regional scale. The increase in industrial and mining activity in the region implies constant losses of natural habitat and species. This is exacerbated by the decline in environmental quality caused by peripheral and indirect impacts such as species invasion, degradation, contamination, disruption of ecological processes, habitat fragmentation and isolation. In conclusion, no specific impact was identified that would render the proposed development as an unacceptable threat to the biological environment or any specific aspect or species that are known to occur, or could potentially occur within the study area or required servitudes, provided that detailed, comprehensive and sensible environmental management principles are applied throughout the lifetime of the operation.

5.13.1.5.4 Result in relatively few employment opportunities and negatively impact on the economy in the medium to long term due to the global trend towards divestment in coal and other fossil fuels and towards renewable energy sources. Second Respondent's Response: The Integrated Resource Plan (IRP) 2010-30, issued by the Department of Energy, and promulgated in March 2011. The primary objective of the IRP 2010 is to determine the long term electricity demand and detail how this demand should be met in terms of generating capacity, type, timing and cost. In order to meet the generation capacity expected to be required by 2030, the IRP includes a mix of generation technologies, including a nuclear fleet of 9.6 GW;