To: THE DEPARTMENT OF ENVIRONMENTAL AFFAIRS

MR Z HASSAM

Director Appeals and Legal Reviews

In the matter between

groundWorks	**First Appellant**
South Durban Community Environmental Alliance	**Second Appellant**

and

CHIEF DIRECTOR: INTEGRATED ENVIRONMENTAL AUTHORISATIONS, DEPARTMENT OF ENVIRONMENTAL AFFAIRS	**First Respondent**
COLENSO POWER (PTY) LTD	**Second Respondent**

RESPONSE TO THE APPEAL IN TERMS OF SECTION 43 OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 AND THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT: NATIONAL APPEAL REGULATIONS, 2014 AGAINST THE INTEGRATED ENVIRONMENTAL AUTHORISATION ISSUED TO COLENSO POWER (PTY) LTD FOR THE ESTABLISHMENT OF THE 1050MW COLENSO COAL-FIRED POWER STATION AND ASSOCIATED INFRASTRUCTURE NEAR COLENSO, KWAZULU-NATAL PROVINCE – DEA REFERENCE 14/12/16/3/3/3/201

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1. Introduction

1.1 We act on behalf of Colenso Power (Pty) Ltd (**"Colenso, the Second Respondent or our Client"**). Our Client is the holder of an integrated environmental authorisation ("**IEA**") issued by the Department of Environmental Affairs ("**DEA or First Respondent**").

1.2 On 5 February 2016, Colenso was granted an IEA to construct the 1050MW coal-fired Colenso power station and associated infrastructure ("**The Project**") by the DEA

1.3 The Integrated Environmental Authorisation (reference 14/12/16/3/3/3/201) is attached hereto as Annexure "**A**" ("**the Colenso IEA**").

1.4 On 1 March 2016 the Centre for Environmental Rights ("**CER**") on behalf of groundWorks and South Durban Community Environmental Alliance ("**the Appellants**") lodged an appeal against the Colenso IEA. A copy of the Appeal is attached as Annexure "**B**".

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

2.1 The appeal is to follow the procedures set out in the 2014 NEMA Appeal Regulations ("**the Appeal Regulations**") published under Government Notice No R 993 of 8 December 2014; as such IEA was applied for in March 2015.

2.2 As the appeal process is to be followed in terms of the Appeal Regulations, Regulation 4 states that 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*** (*own emphasis)* 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. 1 March 2016).

3. Objection to the incorrect filing of the Appeal

3.1 In order to lodge a valid response to an appeal in terms of Regulation 5 of the Appeal Regulations:

"the applicant, the decision maker, interested and affected parties and organs of state must submit their responding statement, if any, to the appeal authority and the appellant within 20 days from the date of receipt of the appeal submission."

3.2 Further, in terms of the Guidelines on Administration of Appeals ("**the Guideline Regulations**") as published by the DEA, Regulation 8 states that:

"8.1 The responding statement must also be captured in the Appeal and Response Form, which will be provided by the appeal administrator and will have captured the summarised grounds of appeal. The Responding Statement will need to address each ground of appeal as reflected in the Appeal and Response Form.

8.2 No new information submitted in the responding statement will be considered by the appeal authority."

3.3 In regards to the above requirements of the Guideline Regulations, the Second Respondent received the following instruction from the DEA in an e-mail dated 7 March 2016:

"Kindly note that our Department advised the Appellant (CER) that they may submit their appeal in any format, which was also provided to the Applicant. Your client is therefore also advised that they may submit their responding statements in any format."

3.4 In this regard the Second Respondent has, despite the consented deviation by the DEA, decided to comply with the Regulations as set out above on the basis that these Regulations are legal requirements and the Second Respondent is bound to comply with the Regulations and the legal requirements. The Second Respondent has thus responded to the summary of grounds of appeal in the form required by the regulation and attached this supporting document to the form in order to fully respond to the appeal in its entirety. The appeal administrator has not, as required by regulation, sent a response form with the summary of appeals completed to the Second Respondent and therefore the Second Respondent has had to complete the form in its personal capacity.

3.5 Further, in order to lodge a valid appeal in terms of Regulation 4(1), the Appellant must submit the appeal to the administrator, and a copy of the appeal to the Applicant, ***any registered interested and affected party*** *(own emphasis)* and ***any organ of state*** with interest in the matter within 20 days from:

'(a) the date that the notification of the decision for an application for an environmental authorisation or a waste management licence was sent to the registered interested and affected parties by the applicant; or

(b) the date that the notification of the decision was sent to the applicant by the competent authority, issuing authority or licensing authority, in the case of decisions other than those referred to in paragraph (a).'

3.6 As is prescribed by the Appeal Regulations, any registered interested and affected parties ("I&APs") and any organ of state with an interest in the matter is to be notified of the Appeal. The Appellants have not duly complied with the requirement to notify any registered I&APs and any organ of state with a matter in the interest and thus the Appeal is fatally defective.

3.7 In accordance with Regulation 4(2) of the Appeal Regulations:

'An appeal submission must be-

(a) submitted in writing in the form obtainable from the appeal administrator; and

(b) accompanied by-

(i) a statement setting out the grounds of appeal;

(ii) supporting documentation which is referred to in the appeal submission; and a statement, including supporting documentation, by the appellant to confirm compliance with regulation 4(1) of these Regulations.'

3.8 Further, in accordance with the Guideline Regulations, Regulation 5(2) states:

"An appeal submission must be submitted in writing in the form of the appeal questionnaire annexed to this guideline as "Annexure A" and accompanied by:

- *a completed Appeal and Response Form setting out the grounds of the appeal,*
- *supporting documentation that is referred to in the appeal which did not form part of the documentation considered when the original decision was made, and*
- *a statement by the appellant to confirm compliance with regulation 4(1)."*

3.9 In this regard, CER has submitted an appeal that does not comply with Regulation 4(2) of the Appeal Regulations as well as Regulation 5(2) of the Guideline Regulations, as the Appellants have not submitted the appeal in the prescribed form. The Appellants stated in their covering letter to their appeal as follows:

> *"We have been advised by the Appeal Administrator (Mr Ziyaad Hassam) that the appellants are at liberty to submit an appeal in any format, provided that it complies with the legislated requirements. Accordingly, and given the nature and extent of the appeal, the appellants' grounds of appeal are set out in the attached document marked Annexure A, and not in the abovementioned questionnaire and appeal and response form."*

3.10 Further, in the Appeal the Appellants claim that *"a statement confirming compliance with regulation 4(1) is contained in the cover letter*…" On this point, the Second Respondent, is of the opinion that the Appellants appeal is fatally flawed.

3.11 The Second Respondent therefore submits that the appeal administrator does not have the authority to allow the deviation from the prescribed form for an appeal. The form for appeal and response forms are specifically regulated for and is thus prescribed by law. Deviation from regulation should not be authorised in any form and it is the duty of the appeal administrator and the DEA to ensure that regulations published to ensure the integrity of a process are complied with in their entirety.

3.12 Colenso therefore requests that the Appeal be dismissed due to the fact that the Appeal was not submitted in the correct manner and form as required and further it was not brought to the attention of certain parties as required. This in itself makes the appeal an

inadequate and incomplete appeal and on those grounds should be dismissed.

3.13 Alternatively, should the DEA not dismiss the appeal on the grounds of being filed incorrectly, Colenso further objects to the Contents of the Appeal as is further described below.

4. **Objection to the content of the Appeal**

4.1 Colenso further objects to the content of the Appeal on the grounds that the issues raised in the appeal have been dealt with before (primarily as part of the EIA process) and as such no new issues have been raised in the Appeal.

4.2 Further, Colenso is of the opinion that this Appeal has been lodged in a vexatious manner, merely to evidence the Appellants opposition to new coal-fired power stations, does not sufficiently relate to the facts of the Colenso Project and thus believes the Appeal must be dismissed in its entirety.

5. Response to Issues raised in the Appellants' Appeal

5.1 Ad Paragraphs 1-2 The Appellants make reference to the appeal to DEA, the authorisation granted in terms of section 24L of the National Environmental Management Act 108 of 1998 ("NEMA"), The NEMA Environmental Impact Assessment Regulations, 2014 ("the EIA Regulations 2014"), waste management activities under section 20 of the National Environmental Management: Waste Act 2008 ("NEMWA") and the establishment of a 1050 megawatt ("MW") independent coal-fired power station and associated infrastructure near Colenso in KwaZulu-Natal, South Africa ("the Project"). The Second Respondent notes all the references made

by the Appellants. The Appellants further make reference to the matter of judicial review under the Promotion of Administrative Justice Act, 2000 ("PAJA").

5.2 Ad Paragraphs 3-5 The Appellants make reference to the Authorisation and that should the Appeal succeed the Authorisation be set aside. The Second Respondent notes the submissions and the response follows hereunder.

5.3 Ad Paragraphs 6 – 8 introduction

5.3.1 Ad Paragraph 6 The Appellants state that the Appeal is lodged in terms of section 43(1) of NEMA and make reference to the days required for notification to registered I&APs. Second Respondent's Response: Legal reference is noted. This application can only follow the regulations as promulgated; it does not have the capacity to question the procedural fairness and constitutional validity of the appeal procedures. It falls outside of the jurisdiction of the appeal procedure.

5.3.2 Ad Paragraph 7 The Appellants make reference to regulation 4(2)(a) regarding the requirement that an appeal be submitted in the written form obtainable from the appeal administrator. The Appellants further make reference to regulation 4(1) of the Appeal Regulations regarding the requirement to submit an appeal to the appeal administrator, and a copy to the applicant, any registered and affected party and organ of state with an interest in the matter. Second Respondent's Response: The legal requirement is noted and reference to such was made above. The Appellants did not supply evidence in support of the fact that they have submitted the appeal to any registered I&AP with

an interest in the matter within 20 days from the date that the notification of the authorisation was sent to I&APs by the Applicant. The statement confirming compliance with regulation 4(1) as contained in the cover letter omitted the confirmation that the appeal was submitted to any registered I&AP with an interest in the matter within 20 days from the date that the notification of the authorisation sent to I&APs by the Applicant. Specifically, the Appellants ignored and therefore failed to inform more than 1150 of the 1195 registered I&APs. Furthermore, it is the Second Respondent's view that on this basis alone the Appellants' appeal application contravenes the legal requirements of an appeal to be accepted by the DEA in terms of the regulations.

5.3.3 Ad Paragraph 8 The Appellants make reference to the suspension of an environmental authorisation in terms of section 43(7). The Second Respondent notes the reference.

5.4 Ad Paragraphs 9-14: Parties

5.4.1 Ad Paragraph 9-10 The Appellants make reference to the description of the First Appellant, an environmental justice organisation that allegedly works with South African communities. The Second Appellant is an environmental justice and non-profit organisation in KwaZulu-Natal. Description of First Appellant noted. Second Respondent's Response: It is contested that the First Appellant (an environmental justice organisation) seeks to improve the quality of life of vulnerable people in South and Southern Africa through assisting civil society to have a greater impact on environmental governance. It is

submitted that there may be far greater assistance towards environmental governance if civil society was enabled to improve the quality of life of vulnerable people in South and Southern Africa, by implementing development projects and economic growth opportunities.

5.4.2 Ad Paragraph 11: The Appellants allege that they have legal standing to enforce environmental laws in terms of NEMA section 33 in that they act *(c) in the interest of or on behalf of a group or class of persons whose interests are affected; (d) in the public interest; and (e) in the interests of protecting the environment."* The First Appellant is a registered I&AP in respect of the application for the Authorisation. Second Respondent's Response: It is disputed that the Appellants act in terms of Section 33 of NEMA, as section 33 refers to private prosecution. The Appellants have not instituted and conducted a prosecution in respect of any breach or threatened breach of any duty. The Appellants have made the incorrect reference to establish legal standing, as such should have been done under section 32 of NEMA which allows for legal standing to enforce environmental laws. Therefore, the Appellants have not proved that they have legal standing in this matter. It is confirmed that the First Appellant is a registered I&AP for the Colenso Power EA Application and that comments from the First Appellant were received during the Public Participation Process.

5.4.3 Ad Paragraph 12: The Appellants refer to support of certain organisations by way of letters of confirmation. Second Respondent's Response: Support of the appeal submission by the entities mentioned is noted.

5.4.4 Ad Paragraph 13-14 The Appellants describe the First Respondents and Second Respondent. The Appellants make reference to an article in which a shareholder of Colenso is quoted. Further, the Appellants make reference to Colenso requesting finance from the Infrastructure Investment Programme for South Africa. Second Respondent's Response: Description is noted. Sources of finance are irrelevant to the determination of environmental impacts.

5.5 Ad Paragraph 15 – 18 Grounds of Appeal

5.5.1 Ad paragraph 15 The Appellants claim that the First Respondent has failed to comply with the requirements for authorisation of environmental and waste management activities under NEMA and NEMWA. Second Respondent's Response: The Appellants submission is disputed as the evidence indicates that the First Respondent complied with the legal requirements set out under NEMA and NEMWA as will be dealt with in detail below.

5.5.1.1 Ad paragraph 15.1The Appellants claim that the First Respondent has failed to apply the principles upheld by NEMA section 2 ("the NEMA Principles") that *inter alia* serve as guidelines by reference to which any organ of state must exercise any function when taking any decision in terms of NEMA or other laws concerning the protection of the environment. The Appellants claim the principles contravened by the First Respondent include:

5.5.1.1.1 Ad Paragraph 15.1.1 The Appellants allege that the Authorisation does not comprise environmental management that places people and their needs at

the forefront of its concern. Second Respondent's Response: The environmental management as provided for in the environmental management program places people and their needs at the forefront of its concern, and serves their physical, psychological, developmental, cultural and social interests equitably.

5.5.1.1.2 Ad Paragraph 15.1.2 The Appellants allege that the Project is not socially, environmentally and economically sustainable. Second Respondent's Response: Each of the factors were considered and ample evidence is available to show, including avoidance of pollution - removing the ash dump and only maintaining an ash stockpile; disturbance and degradation - the area considered was significantly disturbed already; minimisation and remedied through the many mitigation measures provided; the responsible and equitable use and exploitation of non-renewable resources - energy to be fed into the National grid with the associated social development requirements; and the adoption of a risk-averse and cautionary approach as coal fired power stations are the only infrastructure that could provide base load electricity.

5.5.1.1.3 Ad Paragraphs 15.1.3 The Appellants allege that the Applicant failed to account for the "Polluter Pays Principle". Second Respondent's Response: It is clear that not only was the "Polluter Pays Principle" considered, but the mechanism and cost has already been established, as the legislation to enforce carbon tax is in the process of being

implemented. In this regard the National Treasury stated that "*an environmentally effective and efficient carbon tax should aim for broad coverage, with minimum exemptions and exclusions for different GHGs and sectors, and applied at a rate equivalent to the marginal social damage costs. … In this context, the government proposes that a carbon tax be introduced at R120 per ton (t)*".

5.5.1.2 Ad Paragraph 15.1.4 The Appellants allege that the Project does not allow for the integration of environmental management so as to pursue the "*best practicable environmental option".* Second Respondent's Response: This application is an integrated application under integrated environmental management with intergovernmental co-ordination and harmonisation of environmentally-related policies, legislation and actions. The Second Respondent has complied with the law in its compilation and submission of the various specialist studies in the EIA process. The Second Respondent therefore believes that there is no violation of Section 2(4)(b) of the NEMA.

5.5.1.2.1 Ad Paragraph 15.1.5 The Appellants allege that the Project does not pursue environmental justice. Second Respondent's Response: The Second Respondent has pursued environmental justice in order to prevent unfair discrimination, in particular against vulnerable and disadvantaged people; by considering the development of a coal-fired power station that will *inter alia* ensure energy supply to communities previously disadvantaged

and discriminated against by ensuring an increase in coal-fired electricity baseload.

5.5.1.2.2 Ad Paragraph 15.1.6 The Appellants allege that it was not reached following the participation of all I&APs. Second Respondent's Response: The participation of I&APs was done in accordance with the legal requirements. The process is detailed hereunder. The principle states: "participation of all interested and affected parties in environmental governance must be promoted, and all people must have the opportunity to develop the understanding, skills and capacity necessary for achieving equitable and effective participation, and participation by vulnerable and disadvantaged persons must be ensured." The claim made by the Appellants does not refer to the applicable principle.

5.5.1.2.3 Ad Paragraph 15.1.7 The Appellants allege that the Project does not discharge all environmentally-related global and international responsibilities in the national interest. Second Respondent's Response: The national interest for South Africa is defined in the National Development Strategy, supplying energy is critical as part of development. Further, coal fired power stations form part of the development plans in terms of the state's responsibility in the national interest.

5.5.1.2.4 Ad Paragraph 15.1.8 The Appellants allege that the Authorisation fails to hold the environment in public trust. Second Respondent's Response: The consideration of the environment is clearly made as part of the assessment. The environmental impact recommendation statement found: "After

careful assessment of the risks posed to the heritage, biodiversity and especially the air quality and visual character of the area and the feedback from the public participation process, it is the EAP's recommendation that the impacts associated with the preferred alternative could effectively be managed and mitigated. It is stated that the benefit to the socio-economic development and the positive impacts of electricity supply acts in the nation's interest, provided the mitigation measures specified are implemented and maintained."

5.5.1.2.5 Ad Paragraph 15.1.9 The Appellants allege that the Project and associated environmental studies do not afford specific attention to the management and planning procedure of sensitive, vulnerable, highly dynamic or stressed ecosystems. Second Respondent's Response: There was no evidence provided by the Appellants that there are sensitive, vulnerable, highly dynamic or stressed ecosystems (such as wetlands), on the preferred site. The required assessments were carried out and all authorisations were granted. Further, none of the specialist findings that related to sensitive, vulnerable, highly dynamic or stressed ecosystems were contested by the Appellant.

5.5.1.3 Ad Paragraph 15.2 The Appellants claim that the First Respondent has failed to comply with the obligations under NEMA section 24O(1) and to account for all relevant factors. Second Respondent's Response: NEMA section 24O(1)(b) states: "If the Minister…considers an application for an

environmental authorisation, the Minister…must take into account all relevant factors, which may include:…".This clearly indicates that there is a discretionary clause in law and the minister can decide which factors are relevant to the environmental authorisation. The appellants did not provide any evidence in relation to the relevance of any of the below mentioned factors. The First Respondent failed to take into account the following in particular:

5.5.1.3.1 Ad Paragraph 15.2.1 In terms of NEMA section 24O(1)(b)(i). The pollution, environmental impacts or environmental degradation *"likely to be caused if the application is approved."* Second Respondent's Response: The First Respondent did consider the relevant factors with regards to potential pollution, environmental impacts or environmental degradation with regards to environmental management plan as specified in the authorisation.

5.5.1.3.2 Ad Paragraph 15.2.2 In terms of NEMA section 24O1 (b)(ii). The measures to prevent, control or mitigate any environmental impacts or degradation. Second Respondents Response: The First Respondent did consider the relevant factors with regards to measures to prevent, control, abate or mitigate any pollution, substantially-detrimental environmental impacts or environmental degradation with regards to the monitoring and auditing requirements specified in the Authorisation.

5.5.1.3.3 Ad Paragraph 15.2.3: In terms of section 24O(1)(b)(iii). The Applicant's ability to implement mitigation measures and to comply with any

conditions in relation to the authorisation. Second Respondent's Responses: The First Respondent did consider the relevant factors with regards to the Applicant's ability to implement mitigation measures and to comply with any conditions in relation to the Authorisation and it is clearly stated in the conditions specified in the Authorisation.

5.5.1.3.4 Ad Paragraph 15.2.4: In terms of section 24O1(b)(iv). Feasible and reasonable alternatives that may minimise environmental harm. Second Respondent's Response: The First Respondent did consider the relevant factors with regards feasible and reasonable alternatives, modifications or changes to the activity that may minimise environmental harm in that the preferred alternative was authorised.

5.5.1.3.5 Ad Paragraph 15.2.5 In terms of section 24O(1)(b)(vi) Information contained in the application form and other documents submitted under NEMA to the competent authority regarding the Application. Second Respondent's Response: The First Respondent did consider the relevant factors with regard to information contained in the application form, reports, comments, representations and other documents submitted under NEMA to the competent authority regarding the Application, as the Department did request further information.

5.5.1.3.6 Ad Paragraph 15.2.6. In terms of section 24O(1)(b)(viii). Any guideline, departmental policies and environmental management

instruments and any other information in the possession of the competent authority relevant to the Application. Second Respondent's Response: The First Respondent did consider the relevant factors with regards to any guidelines, departmental policies, and environmental management instruments and any other information in the possession of the competent authority relevant to the Application.

5.5.1.4 Ad Paragraph 15.3 The Appellants claim the First Respondent has failed to comply with NEMA section 24(4) by *inter alia* failing to ensure the following with regard to the Application. The Second Respondent's Response: The Appellants do not provide any evidence to show that the First Respondent has failed to comply with NEMA section 24(4).

5.5.1.4.1 Ad Paragraph 15.3.1 "*that the findings and recommendations flowing from an investigation, the general objectives of integrated environmental management laid down in this Act and the principles of environmental management set out in section 2 are taken into account in any decision made by an organ of state in relation to any proposed policy, programme, process, plan or project*"; The Second Respondent's Response: The First Respondent did comply with section 24(2)(a)(ii) of NEMA.

5.5.1.4.2 Ad Paragraph 15.3.2 "*the investigation of the potential consequences for or impacts on the environment of the activity and assessment of the significance of those potential consequences or impacts;"* Second Respondent's Response: The

First Respondent did comply with section 24(4)(a)(iv) of NEMA.

5.5.1.4.3 Ad Paragraph 15.3.3 "*adequate public information and participation procedures with the reasonable opportunity for the public to participate in such procedures."* Second Respondent's Response: The First Respondent did comply with section 24(2)(a)(v) of NEMA.

5.5.1.5 Ad Paragraph 15.4 The Appellants claim that the First Respondent has failed to comply with regulation 18 of the EIA Regulations, 2014 which required that when considering an application the competent authority has regard to the NEMA sections 24O and 24(4). Further, the Appellants claim that the First Respondent has failed to comply with Appendix 3 of the EIA Regulations, 2014 which set out the minimum requirements for an EIR and states that it must contain an assessment of each identified potentially significant impact and risk. Second Respondent's Response: The First Respondent has complied with regulation 18 of the EIA Regulations, 2014 which requires that, when considering an application, the competent authority has regard to NEMA sections 24O and 24(4) - *"the need for and desirability of the undertaking of the proposed activity, any guideline published in terms of section 24J of the Act and any minimum information requirements for the application*". Appendix 3 to the EIA Regulations, 2014 sets out the minimum requirements for an environmental impact report (EIR) and states that it must contain an assessment of each identified potentially significant impact and risk.

5.5.2 Ad Paragraph 16 The Appellants claim that the Authorisation falls to be set aside because it comprises an unreasonable and unjustifiable limitation of the constitutional right to the environment as well as to the protection of this right. Further, the constitutional right to access of information and just administrative action. Second Respondent's Response: The constitutional right to an environment not harmful to health or well-being and to have the environment protected for the benefit of present and future generations through reasonable and other legislative measures, must be protected and secured by sustainable development, i.e.: development that secures ecologically sustainable development and use of natural resources while promoting justifiable economic and social development. A proper energy mix a component of which is baseload energy comprises such sustainable development.

5.5.3 Ad Paragraph 17 The Appellants claim that the Authorisation is vague and unenforceable and there are grounds for judicial review under the PAJA because the Authorisation comprises administrative action.*:*

5.5.3.1 Ad Paragraph 17.1-17.6 Grounds for Appeal noted and point wise responded to further on.

5.6 Ad Paragraphs 18 – 22: The Project Description

5.6.1 Ad Paragraph 18 Project description noted.

5.6.1.1 Ad Paragraph 18.1 Project description noted. Further, the Appellants fail to mention that Project was in response to the Integrated Resource Plan ("**IRP**") and subsequent Coal Baseload Independent Power Producer Programme ("**CBIPPP**").

5.6.1.2 Ad Paragraph 18.2 The Appellants refer to a coal stockpile in the description of the infrastructure of the Project. Second Respondent's Response: The coal stockpile ("staging area") does not form part of this application as it will fall under a separate application process.

5.6.1.3 Ad. Paragraph 18.3 The Appellants have stated with regards to the description of the Project, that an ash storage facility with a stipulated footprint of approximately 9 hectares to store only a limited amount of the ash that will be generated from the power station. However, the total ash arising from the power plant over its projected life would require an ash dump with a footprint of 70 hectares. The FEIR states that the ash is to be re-used through the development of a brick-making facility. The exact planned use for the ash, is however, not clear from the FEIR which states that ash "*could be disposed on ash-dams near the power station or alternatively removed from the site where it can be used (e.g. brick making or road building). Disposal could be either hydraulic or via conveyor belt / rail-veyor system*" (own emphasis). This should have been clarified in the FEIR, as each possible use for ash will have its own environmental and health impacts. Second Respondent's Response: The ash stockpile and the brick-making facility are a mitigation and social development activity and will be located within the Farm Schurfde Poort 1147 GS - Portion 1 as indicated on the Waste Management Licence Application submitted. The preferred alternative clearly defines the recycling of the ash as a listed activity applied for. The reduction of the pollution source term will reduce

all potential impacts that were assessed as part of the specialist studies. It is the first in South Africa to take the bold step of combining mitigation with direct social development. Instead of having a large ash dump the Applicant is making full use of the ash in the most environmentally sustainable manner.

5.6.1.4 Ad Paragraph 18.4 -19 The Appellants have made reference to the description of the project. Project description noted.

5.6.2 Ad Paragraph 20 The Appellants have raised concerns regarding the proposed mine that will be developed to supply one third of the coal needed to supply the Project and the fact that the mine has yet to obtain the necessary authorisations in terms of the MPRDA and NEMA. Second Respondent's Response: It is confirmed that the mine development will require authorisation and that the DMR will be the competent authority for this application.

5.6.3 Ad Paragraph 21 The Appellants dispute that the Thukela river is a reliable water source, given the current drought and the fact that the water supply from this river is already beyond its available capacity, as addressed in further detail below. Second Respondent's Response: It is confirmed that any mine development will require authorisation and that the DMR will be the competent authority. Any water use associated with a mine development in the area will require authorisation from DWS. It is therefore submitted with respect that issues related to water use and licensing should form part of the water use licence application and should not form part of this Appeal.

5.6.4 Ad Paragraph 22 The Appellants have claimed that it is the nature of the Project location, when considered with the

characteristics of the Project that gives rise to many of the grounds for appeal against the Authorisation. In this regard it is alleged by the Appellants that, the Project falls within an area of critical water shortage, hydrological and biodiversity sensitivity. The sensitive nature of this environment and the environmental implications that arise pursuant to the Project are more comprehensively detailed below. Second Respondent's Response: The impacts of any future mine development on the area and on water quality and quantity was not the primary focus of this authorisation process and will be studied as part of the water use licensing process which will be overseen by the DWS.

5.7 Ad Paragraph 23 – 33 Location; Hydrologically-sensitive area.

5.7.1 Ad Paragraph 23 The Appellants claim that the area is classified as a Freshwater Ecosystem Priority Area ("FEPA"). FEPAs are strategic spatial priorities for conserving freshwater ecosystems and supporting sustainable use of water resources. National Freshwater Ecosystem Priority Areas project ("NFEPA") was developed by the South African National Biodiversity Institute ("SANBI"), Council for Scientific and Industrial Research ("CSIR"), National Research Fund ("NRF"), the South African Institute for Aquatic Biodiversity ("SAIAB"), Water Research Commission, the World Wide Fund for Nature ("WWF"), SANParks, Department of Water and Sanitation (DWS), and the Department of Environmental Affairs to provide strategic spatial priorities for conserving South Africa's freshwater ecosystems and supporting sustainable use of water resources. Second Respondent's Response: The impact of the Project was assessed with great care by the environmental assessment practitioner and according to the assessments, there is no indication that the gaps in the studies that were declared are significant, nor

that there are any impacts that could not be mitigated appropriately. A section of the proposed site falls within the sub-quaternary catchment of a FEPA river. The sole and dominant surface freshwater body on site is an artificial man-made dam; the preferred site excluded this facility. The man-made freshwater dam was formed as a result of a natural depression in the soil that has been reinforced by a support wall made from compacted top soil. To the west of the dam is a small seepage area. The seepage is a non-perennial drainage line which is defined as one that does not flow or hold water continuously throughout the year. The drainage line that feeds into the dam flows down two areas on the eastern border of the dam and is both seasonal and non-perennial and flows during the rainy summer months, the main period of precipitation in the KwaZulu-Natal province. During winter, dry and/or drought periods however, the streams that feed into the dam run dry. The wetlands on the sites are all artificial wetlands with no FEPA Status. Therefore the environmental impact assessment studies concluded that it is not a hydrologically sensitive area. Furthermore, the environmental impact assessment studies concluded that the area has low biodiversity and is not linked to other freshwater systems and appears rather isolated.

5.7.2 Ad Paragraph 24 The Appellants make reference to a statement in the FEIR referring to the intended water that will be abstracted from the weir via a pipeline and it makes reference to raw water being supplied to the power station. Second Respondent's Response: The quote is noted and the issue regarding ash dumps and water courses is dealt with in detail below.

5.7.3 Ad Paragraph 25 The Appellants claim that the Thukela River plays a pivotal role in socio-economic health of both KZN and Gauteng and make reference to the communities depending on this water resource. The Appellants further make reference to the potential harm to the river. Second Respondent's Response: The importance of the Thukela River is not disputed. Specialist assessments indicate that the water quality will not be compromised by the development of the power station and associated infrastructure. Further to this it is within the jurisdiction of the DWS to decide whether to issue a water use licence for the Project, based on the assessed impacts.

5.7.4 Ad Paragraph 26 The Appellants refer to the recent severe drought in KZN. The Appellants accordingly call upon the Minister to give adequate consideration to the recent drought and based on this to stop the Project. Second Respondent's Response: The impact of the recent drought is not disputed. Specialist assessments indicate that the water quality will not be compromised and DWS confirmed in May 2015 there should be water available in the catchment for the power station project. Further to this it is within the jurisdiction of the DWS to decide whether to issue a water use licence for the Project, based on the assessed impacts.

5.7.5 Ad Paragraph 27 The Appellants claim that the ash dump is close to certain water courses and the boundary crosses the river and the buffer zone. Second Respondent's Response: The Storm Water Assessment was done for an ash dump of 70 ha. The preferred alternative is a stockpile of 9 ha stockpile. No impact on the Thukela River is expected. Further to this it is within the jurisdiction of the DWS to

decide whether to issue a water use licence for the Project, based on the assessed impacts.

5.7.6 Ad Paragraph 28 The Appellants claim that FEIR fails to take into account the proximity of the site to the Thukela river and the potential for impacts from runoff water, or the fact that water for the Project's proposed water storage facility will have to be obtained from an external; water source, namely the Thukela River. Second Respondent's Response: During the Storm Water Assessment it was found that the 100m buffer will always exceed the 1:100 year 24 hour flood line for this section of the river near the proposed infrastructure. Consequently, smaller rivers and tributaries were only assessed for 100m buffer zones and these are accepted as worst case scenario. Attached hereto as Annexure "**E**" Figure 3 where the preferred alternative is superimposed on the image to illustrate the preferred option in relation to the power station & ash dump location accessed by the storm water specialist. Further to this it is within the jurisdiction of the DWS.

5.7.7 Ad Paragraph 29 The Appellants claim that the project will have significant implication on both the water quantity and quality in the area, adding to the already strained water resource. The Appellants further claim that the amounts determined in the FEIR are incorrect and that the true water demand of the project will be much higher. Further, the Appellants claim that there is no explanation in the FEIR of the prospects of successfully obtaining a water allocation and water use licence for the use of water required by the Project and that such water use will significantly limit the access and use of the water by the public. Second Respondent's Response: Specialist assessments indicate

that the water quality will not be compromised by the development of the power station and associated infrastructure. DWS is the competent authority in relation to water uses and a WULA will be submitted. Initial communication with DWS indicated that sufficient water will be available for the Project.

5.7.8 Ad Paragraph 30 The Appellants make reference to the hydrological sensitivity of the Thukela River. The opinion is noted.

5.7.9 Ad Paragraph 31-33 The Appellants claim that South Africa does not have the capacity or resources for a project such as this. Second Respondent's Response: DWS is the competent authority for the authorisation for water uses. A WULA will be submitted to the DWS for consideration by the DWS.

5.8. Ad Paragraphs 34-36: Location: Biodiversity Implications

5.8.1 Ad Paragraph 34 The Appellants claim that both the FEPA and non-FEPA wetland have been identified on the proposed site. Second Respondent's Response: There are no wetlands or rivers with a FEPA status on the preferred site, please refer to statement made in paragraph 23 above.

5.8.2 Ad Paragraph 35. The Appellants make reference to the Letter from Ezemvelo KZN Wildlife attached to the Draft Environmental Impact Report and the fact that it highlights the concerns over potential negative impacts of the proposed Project:

5.8.2.1 Ad Paragraph 35.1 The Project could result in degradation of wetland. Second Respondent's Response: There are no wetlands or rivers with a FEPA status on the preferred site as referred to in

paragraph 23 above. The proposed power station and associated infrastructure does not result in the degradation of wetland habitats. These were potential impacts that were assessed, mitigated and found to be addressed.

5.8.2.2 Ad Paragraph 35.2 The proposed mine foot print falls within a NFEPA fish sanctuary. Second Respondent's Response: The impact of the mine will be assessed during a separate application process. Cumulative impacts that the Power Station may pose will be assessed at that time.

5.8.2.3 Ad Paragraph 35.3 The Red Data Book listed South African Python and Grey Crowned Crane which are both vulnerable, are modelled to occur on the Project site. Second Respondent's Response: None of the Red Data Species or any sign that indicates the occurrence of such species has been observed. These species require a habitat in order to live there; the habitat in this area is significantly degraded.

5.8.3 Ad Paragraph 36 The Appellants claim that the Thukela water management area has the highest density of freshwater ecosystem priority areas in the country and that this is a result of fish species distribution as well as different types of river and wetland ecosystems in the areas. Second Respondent's Response: The importance of the Thukela water management area is not denied. There are no wetlands or rivers with a FEPA status on site.

5.9 Ad Paragraph 37 – 39 Location; Biodiversity Implications *Impacts on wetlands*

5.9.1 Ad Paragraphs 37 The Appellants make reference to the water resources in the area being of strategic importance to the region and as such the ecosystems and wetlands surrounding the project areas are in need of protection. Second Respondent's Response: The strategic importance of the Thukela catchment is not disputed. The preferred site is located more than 100 m from all drainage lines. It is not expected that the power station will affect the water quality of the Thukela River. The specialists found that the power station will not impact on any NFEPA wetlands.

5.9.2 Ad Paragraph 38 The Appellants claim that the Project has a potential impact upon the surrounding wetlands and that the lack of an adequate assessment of this in the FEIR is of great concern. Second Respondent Response: The Groundwater Assessment was done for an ash dump of 70 ha. The preferred alternative is a stockpile of 9 ha stockpile. Even with the 70 ha dump the impact was considered medium. An image where the preferred alternative was superimposed over the predicted groundwater impact is attached as Annexure "**F**".

5.9.3 Ad Paragraph 39 The Appellants make mention of mitigation measures in respect of the wetlands mentioned in the FEIR and claim that the measures are inadequate to ensure adequate mitigation of the Project's impacts on groundwater and nearby wetlands. Second Respondent's Response: Opinion noted. There are no nearby NFEPA wetlands and no evidence has been provided to the contrary. It is submitted that these allegations and further allegations presented in the appeal by the Appellants have not been sufficiently substantiated with proper evidence.

5.10 Ad Paragraphs 40-42: Location: Biodiversity Implications *Impacts on Fauna and Flora*

5.10.1 Ad Paragraph 40 The Appellants claim that the FEIR acknowledges the loss to fauna and flora and yet has very limited mitigation measures. Second Respondent's Response: The site of the proposed development is of relatively low conservation and biodiversity value, as evidenced by high levels of disturbance and various signs of human-mediated transformation/degradation. There is no known mechanism to generate soil.

5.10.2 Ad Paragraph 41 The Appellants make reference to the International Union for Conservation of Nature and the Red Data species likely to be impacted. Second Respondent's Response: As stated in the FEIR, there is no predicted impact on Red Data species.

5.10.3 Ad Paragraph 42 The Appellants claim that the fact the Red Data species have not been observed at a given time should not be an indicator that the Project will not impact on these species' already declining habitat. Further, the Appellants claim that it cannot be said that the proposed development would not have a significant impact on the biodiversity and the FEIR shows a lack of understanding of the ecological impacts. Second Respondent's Response: Noted. However, the almost total lack of species that are generally readily observed may be construed as a conclusive indicator that the integrity of the fauna life in the area is very low. The habitat for Red Data species needs to be available for them to reside there. The habitat on the proposed site is significantly degraded. The vegetation in the area is also significantly degraded.

5.11 Ad Paragraph 43 – 46 Location: Land Ownership and Heritage

5.11.1 Ad Paragraph 43 The Appellants make reference to the FEIR and that the owners of the land demarcated for the proposed power station and some auxiliary infrastructure have indicated that the relocation would not be a desirable option for the people residing on these land parcels. Second Respondent's Response: The results of the survey were not limited to the (Farm Schurfde Poort 1147 – Remainder).

5.11.2 Ad Paragraph 44 The Appellants have claimed that the residents of the community of the proposed project site have advised the Appellants that Schurfde Poort 1147 was subject to a successful land claim under the Restitution of Land Rights Act, 1994 and that the property is now held in trust. Further, the Appellants claim that this is erroneously reflected in the FEIR. Further, the Appellants claim that certain land claimants have not consented to the land being used for the proposed project and further contest the land ownership reflected in the FEIR and their interests in respect of the land. Further, the Appellants question whether the requirements of regulation 42 of the EIA regulations were complied with. Second Respondent's Response: This is contested and it is not clear from the Appellants submissions which table in the FEIR (referring to land ownership) is being referred to. The land claims were finalised in 2009. There are therefore no known existing land claimants. The written permission of the current land owners of the alternative sites was finalised on 4th July 2014. Proof of this was submitted in the original application. Since that time the Applicant and the landowners have enjoyed close and cooperative working relations, as is evidenced by the letter from the Chairman of the land owners community trust representing the land owners, and further letters of support from various entities

attached as Annexure "**C**" The landowners completely support the proposed development in all respects especially since they will benefit directly from the social and economic developments that are targeted to roll out. This is further evidenced by the letter received from the Mayor's office of the Umtshezi Municipality attached hereto as Annexure "**D**".

5.11.3 Ad Paragraph 45 The Appellants make reference to the EIA Regulations 2014 and the need for written consent from the owner of the land or person in control of the land on which the activity is to take place. The Appellants claim that the written consent did not appear to be with the FEIR and appendices. Second Respondent's Response: Written consent from the trusts (the landowners) was included in the Scoping report. The land claims were finalised in 2009. The written permission of the land owners was acquired on 4th July 2014. Proof of this was submitted in the original application. Since that time the Applicant and the landowners have enjoyed close and cooperative working relations. The landowners completely support the proposed development in all respects especially since they will benefit directly from the social and economic developments that are targeted to roll out.

5.11.4 Ad Paragraph 46 The Appellants claim that the community members do not wish to relocate due to heritage reasons and such is not addressed in the FEIR. Second Respondent's Response: The issue on the possible graves was assessed. A meeting was held and the location of the graves was pointed out. The graves are not located on land identified for the development of the Project footprint.

Relevant information pertaining to this was included in the FEIR.

5.12 Ad Paragraph 47 Objections Submitted in respect of project

5.12.1 Ad Paragraph 47 The Appellants make reference to comments during the EIA process and claim that the EAP failed to account for these comments in any material way as part of public participation process, and thus the failure of the EA to address them adequately. Second Respondent's Response: All comments were considered and Responses to all comments are included in Comments & Response Table (Appendix C to FSR as required by Regulation 21(2)(d) of the 2014 EIA Regulations.)

5.12.1.1 Ad Paragraph 47.1 The Appellants claim that on 10 May 2015 the First Appellants submitted its comments on the draft scoping report ("DSR"). Second Respondent's Response: Submission of comments on the DSR by First Appellant confirmed. Note that the comments were not submitted within the 30 day Public Participation period but were submitted late. Despite the late submission the comments were considered and included in the final scoping report ("FSR").

5.12.1.2 Ad Paragraph 47.2 The Appellants claim that with regard to the FSR that the First Appellant's comments on the DSR could not have been adequately considered, given the short period of 9 days from date of submission until the FSR was submitted. Further, the Appellants claim that this is in breach of the EIA Regulations 2014, paragraph 2(h)(iii) of Appendix 3, which requires the scoping report contain a full description of the process followed to reach the

proposed preferred activity including summary of the issues raised by the I&AP. Second Respondent Response: All comments were considered and responses to all comments are included in Comments & Response Table (Appendix C to FSR) as required by Regulation 21(2)(d) and by paragraph 2(h)(iii) of Appendix 2 of the 2014 EIA Regulations.

5.12.1.3 Ad Paragraph 47.3 The Appellants claim that the First Appellant and numerous other community members attended the public consultation meeting and that there were various flaws with the process that give the Appellants reason to dispute the validity of the process conducted. Second Respondent's Response: Attendance at the public meeting and objections raised at the meeting is confirmed and reflected in the Meeting Minutes (Appendix N of the FEIR).

5.12.1.4 Ad Paragraph 47.4 The Appellants claim that the draft EIR ("DIER") failed to take into account the First Appellant's comments on the draft. Second Respondent's Response: All comments on the DSR were considered and Responses to all comments are included in Comments & Response Table (Appendix C to FSR & Appendix N of DEIR) as required by Regulation 21(2)(d) and by paragraph 2(h)(iii) of Appendix 2 of the 2014 EIA Regulations.

5.12.1.5 Ad Paragraph 47.5 Submission of comments on DEIR by First Appellants confirmed. Second Respondent's Response: Comments were included in the comments and Response table and responded to line for line.

5.12.1.6 Ad Paragraph 47.6 The Appellants claim that when I&APs were notified of the publication of the DEIR for comment, the I&APs were also afforded a period of 60

days to submit objections to the issuing of the WUL. The EAP advised that this was in terms of section 41(4) of the National Water Act, 1998 ("NWA"). Further, the Appellants claim that the WULA had not yet been made available and it has still not been made available for consideration. The First Appellant objects to the interpretation of section 41(4) of the NWA. Second Respondent's Response: The WULA is a separate process in which DWS is the competent authority. The comment relates to the WUL process and should be directed at DWS.

5.12.1.7 Ad Paragraph 47.7 The Appellants claim that the recommendations and concerns set out in the First Appellant's comments on the DEIR and DSR were not taken into consideration or addressed. Further, the Appellants claim that the FEIR was virtually unchanged from the DEIR. Second Respondent's Response: All comments on the DEIR were considered and responses to all comments are included in Comments & Response Table (Appendix N of DEIR) as required by paragraph 3(h)(iii) of Appendix 3 of the 2014 EIA Regulations. Comments were included in the comments and Response table and responded to line for line.

5.12.1.8 Ad Paragraph 47.8 Submission of comments on FEIR from CER on behalf of First Appellant confirmed. Second Respondent's Response: Comments were included in the Comments and Response table and responded to line for line.

5.12.1.9 Ad Paragraph 47.9 The Appellants make reference to publication of the atmospheric emission licence application (AELA) for a period of 28 days for comment and that comments were submitted by the

First Appellants. Second Respondent's Response: Publication of AEL application to registered I&APs on 16 November 2015 confirmed. Two other newspaper notices were placed: one in the Daily Sun of 18 November 2015 and one in Eyethu Uthukela Newspaper on the 20th of November 2015. Submission of comments on AEL from CER on behalf of First Appellant is confirmed. Comments were included in the Comments and Response table and responded to line for line.

5.12.1.10 Ad Paragraph 47.10 The Appellants claim that the authorisation was issued despite the failure of the EIA Process to respond to concerns raised by the First Appellants in the comments it submitted. Further, the Appellants claim that the Authorisation made no reference to and appears to reflect little rational connection to these concerns. Second Respondent's Response: Opinion noted. Every comment was responded to, line for line. These concerns were considered.

5.13 Ad Paragraph 48- 52: Legislative Framework: Environmental Authorisations

5.13.1 Ad Paragraph 48-50: The Appellants make reference to the authorisation permitting the undertaking of environmental activities under the EIA Regulations, 2014 as well as waste management activities. The Appellants refer to NEMA and its principles whereby the Second Respondent agrees and notes the references.

5.13.2 Ad Paragraph 51 The Appellants refer to the further environmental legislation to be complied with, namely NEMAQA and NWA and that the provisions licensing provided for in this legislation be fully complied with. Further,

the Appellants claim that while such compliance may not fall directly within the ambit of the Authorisation, the ELA process required the full description and assessment of all aspects of the Project necessary to make a proper assessment regarding the cumulative impacts on all environmental components. Second Response's Response: The Authorisation was required in terms of activities listed under Section 24 of NEMA (i.e. Activities listed in Listing Notice 1 - 3 of the 2014 EIA Regulations) and Section 19(1) of NEMWA (i.e. Waste Management Activities GN 921 of 2013). Note that DWS is the competent authority for the authorisation of water uses.

5.13.3 Ad Paragraph 52 Legal reference is noted.

5.14 Ad Paragraph 53-56 Legislative Framework: Environmental Authorisations *Objections to the Appeal Regulations and the EIA Regulations, 2014*

5.14.1 Ad Paragraph 53 The Appellants make reference to the time periods in terms of the Appeal Regulations. Second Respondent's Response: Opinion noted. This is not for the Second Respondent to respond to. Further, it is outside of the jurisdiction of this application to decide whether the Appeal Regulations time frames are adequate.

5.14.2 Ad Paragraph 54-56 The Appellants make further comments regarding the Appeal Regulations. Second Respondent's Response: Not for Applicant to respond.

5.15 Ad paragraph 57 – 68 Legislative Framework: Environmental Authorisations *Objections to the Scoping Phase in respect of the Project*

5.15.1 Ad Paragraph 57 The Appellants claim that the scoping phase for the Project was not conducted in accordance with the requirements of the EIA Regulations, as the specialist studies were informed by the FSR, since they were commissioned prior to the acceptance of the FSR by the DEA. Second Respondent's Response: It is noted that the Specialist studies were commissioned prior to the acceptance of the Scoping Report and Plan of Study for the EIA. The Studies were commissioned based on the details provided in the Plan of Study for EIA. The comments on the Plan of Study for EIA received from I&APs were considered and all (except for the health impact assessment) were executed and included in the DEIR. Note that additional requirements from DEA were also assessed and included in the DEIR. It is the opinion of EAP that the assessments can be executed to consider more than what the minimum requirements in law expect. To spend more time in the field and assess the impacts over a longer time ensure more effective environmental considerations. It is furthermore important to revisit the scope of specialists once comments are received. All of this was done. The final terms of reference is published in every specialist report. Thus it is Second Respondents opinion that not only did the EIA comply with the minimum requirements of the law but it significantly exceeded such minimum requirements.

5.15.2 Ad Paragraph 58 The Appellants claim that the FEIR did not contain the prescribed information and assessment in terms of the EIA Regulations, 2014. Second Respondent's Response: Opinion noted, evidence indicates otherwise.

5.16 Ad Paragraph 59-61: Further Authorisations required

5.16.1 Ad Paragraph 59 The Appellants make reference to further licence and approvals needed for the project including:

5.16.1.1 Ad Paragraph 59.1 Further EAs in respect of the construction of power lines, rail siding to convey coal and the establishment of the coal mine, according to the FEIR form part of the Project. Second Respondent's Response: The FEIR stated the Colenso mine's specialist studies will be done concurrently with the power station's specialist studies. These approvals, where required will be applied for in due course to the competent authority.

5.16.1.2 Ad Paragraph 59.2 An AEL under NEMAQA. Second Respondent's Response: The AEL application relevant to activities at the proposed power station was submitted to DEA.

5.16.1.3 Ad Paragraph 59.3 A WUL to be issued by DWS: Second Respondent Response: Noted, as indicated above such application will be made to the DWS.

5.16.1.4 Ad Paragraph 59.4 An authorisation in terms of the National Heritage Resources Act, 1999 to be issued by South African Heritage Resources Agency ("SAHRIS"). Second Respondent's Response: An application has been made on SAHRIS by the Second Respondent.

5.16.1.5 Ad Paragraph 59.5 A licence from NERSA. Second Respondent's Response: The IPP bid process details the licensing aspects from NERSA. It is separate from the EIA Process. An Application will be made to NERSA at the appropriate time in accordance with CBIPPP.

5.16.1.6 Ad Paragraph 59.6- 59.7 Noted. Approval of rezoning and further additional licences to be issued by the

South Africa National Roads Agency Limited and TRANSNET. Second Respondent's Response: Agreed, such applications will be made to the relevant competent authority.

5.16.2 Ad Paragraph 60 Quote from FEIR is noted.

5.16.3 Ad Paragraph 61 Noted.

5.17 Ad Paragraph 62-68: Water Use Licence

5.17.1 Ad Paragraph 62: The Appellants claim that the WULA has not been made available to the I&APs for consideration and comment even though the EAP invited I&APs to submit written objections on the WUL. Second Respondent's Response: The WULA is a separate process in which DWS is the competent authority. The comment relates to the WUL process and should be directed at DWS.

5.17.2 Ad Paragraph 63 The Appellants claim that the WULA application process is not being implemented in accordance with NWA, numerous guidelines and guidance notes or PAJA. Second Respondent's Response: The WULA is a separate process in which DWS is the competent authority. The comment relates to the WUL process and should be directed at DWS. As stated all legal requirements will be complied with. In this respect and particularly regarding PPP, the following processes were undertaken:

1. Public notice was given as required in section 41(4)(a) - newspaper adverts - The Citizen on the 30 June 2015 & Ladysmith Gazette on 3 July 2015

2. Registered I&APs were also notified in the notification sent to them on 28 August 2015 - S41(4)(b).

3. In both notifications 60 days were given to object to the WULA - S41 (4) (a) (ii).

4. All registered I&APs will be given 30 days to comment on the WULA document once it is ready - S41 (4) (b).

5. Thirty days are the recommended period for comments in terms of the 2014 EIA Regulations. The Regulations are a draft in that Notice 126 of 2015 is titled "DRAFT REGULATIONS REGARDING THE PROCEDURAL REQUIREMENTS FOR LICENCE APPLICATIONS IN TERMS OF SECTION 26(1) (k) OF THE NATIONAL WATER ACT, 1998 (ACT NO. 36 of 1998)".

5.17.2.1 Ad Paragraph 63.1-63.2: The Appellants claim that the First Appellant's and other I&AP's comments on the water-related issues in the DEIR cannot be regarded as adequate public participation in the WULA process. Further, the Appellants claim that without access to the WULA, the notices published in terms section 41 of the NWA cannot enable meaningful submissions to be made by I&APS. Second Respondent's Response: The WULA is a separate process in which DWS is the competent authority. The comment relates to the WUL process and should be directed at DWS. The WULA will have its own Public Participation Process.

5.17.3 Ad Paragraph 64 The Appellants claim that given the significant gaps in the water impact assessments contained in the DEIR and in the FEIR, the Appellants would not have been in a position to make a meaningful submission on the WULA based on the information in the DEIR alone. Second Respondents Response: Opinion noted. THE DEIR and

FEIR are not expected to act as a WULA It is an EIA. They are two distinct processes.

5.17.4 Ad Paragraphs 65-68: The Appellants addressed the above issues with the Minister of Water and Sanitation. Further the Appellants claim that the EAP advised that the WULA would be made available for comment towards the end of September 2015 however it was not. Further the Appellants claim that granting a WUL without adequate public participation would be to the contrary of the NWA Objectives. Second Respondent's Response: The WULA is a separate process in which DWS is the competent authority. The comment relates to the WUL process and should be directed at DWS. The WULA will have its own Public Participation Process.

5.18 Ad Paragraph 69-73: The Atmospheric Emissions Licence

5.18.1 Ad Paragraph 69 The Appellants make reference to the comments on the AELA and that the primary objections were that the AELA does not comply with the requirements of Chapter 5 of the NEMAQA and would not enable the licensing authority to meets it obligations under section 39 and 40 of NEMAQA. Second Respondent's Response: The comments and EAP Responses were submitted to the Department.

5.18.1.1 Ad Paragraph 69.1 The Appellants claim the AELA fails to provide for and is not based on the applicable minimum emissions standard of Government Notice 893 of 22 November 2013 published under section 21 of NEMAQA with which the Project will be legally required to comply. Second Respondent's Response: The AEL is based on the SA MES and does take this

into account. Please refer to Table 4.2 Listed Activities. The Project will be required to comply with the new MES for the specified listed activities.

5.18.1.2 Ad Paragraph 69.2 The Appellants claim that the AELA is based on incomplete and unreliable information and there are significant gaps and areas where no information is viable or provided. Second Respondent's Response: Noted. The AEL application form was compiled with information that was available at the time. Gaps in knowledge were declared, recommendations were made and conditions proposed.

5.18.2 Ad Paragraphs 70 - 72 The Appellants make reference to NEMAQA section 21(1)(a), 40(3) and 43(7) and the Second Respondent notes the Legal requirement.

5.18.3 Ad Paragraph 73 The Appellants claim that they reserve their rights to challenge any AEL granted in respect of the project. Second Respondent's Response: Noted.

5.19 Ad Paragraph 74 – 97: Integrated Resource Plan for Electricity

5.19.1 Ad paragraph 74 The Appellants claim that the Applicant relies on the Integrated Resource Plan for Electricity 2010-2030 ("**IRP**") of the Department of Energy a fundamental basis for its argument. Second Respondents Response: It is submitted that the IRP remains a policy cornerstone for the current CBIPPP, and the invitation to tender which were produced in terms thereof.

5.19.2 Ad Paragraph 75 Quote from FEIR is noted

5.19.3 Ad Paragraph 76 The Appellants claim that the fundamental reliance on the IRP is misplaced and legally incorrect and the IRP does not comprise an application for EA and therefore has not been subject to an EIA process under NEMA. Further the reliance on the IRP cannot be relied upon as proof of reliance with the EIA requirements. Further, the test for need and desirability test is set out in NEMA, regardless of submissions of IRP. Second Respondent's Response: The IRP was 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 noted 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.

5.19.4 Ad Paragraph 77 The Appellants claim that the Applicant confuses the demand for electricity with the imperative this electricity be coal-based. Second Respondent's Response Opinion noted. The IRP refers specifically to coal based electricity.

5.19.5 Ad Paragraph 78 The Appellants claim that the Applicant's references to the requirements in the IRP are misleading and outdated. Further, the Appellants claim that the IRP remains the official government plan for new generation capacity until it is replaced in full by the IRP Update Report. Second Respondent's Response: It is confirmed that the IRP 2010 is currently the official government plan for new electricity generation capacity.

5.19.6 Ad Paragraph 79 The Appellants refer to IRP Update Report. Second Respondent's Response It is also noted that this document is not an official government plan.

5.19.7 Ad Paragraphs 80-81 The Appellants make reference to the new coal-fired power generation outlined in the IRP Update Report for 2010. Second Respondent's Response: It is also noted that this document is not an official government plan.

5.19.8 Ad Paragraph 82 - 84 Appellant's opinion regarding the revival of the IRP process and the new IRP in line with COP21 as well as reference to the KwaZulu-Natal Growth and Development Plan (2013) is noted. Second Respondent's Response: DEA did review and authorised the site specific proposal.

5.19.9 Ad Paragraph 85 Appellants claim that the need and desirability of the coal fired power station was not assessed. Second Respondent's Response: The Need and Desirability of the development of the coal fired power station was assessed as part of the EIA.

5.19.10 Ad Paragraph 86 The Appellants opinion regarding need and desirability of coal fired power stations is noted. Second Respondent's Response: The Need and Desirability of the development of the coal fire power station was assessed, specifically in that coal-fired power stations will feed electricity into the National Grid.

5.19.11 Ad Paragraph 87 The Appellants made reference to case law that claims the balance between socio-economic interests and environmental interests. Second Respondent's Response: A socio-economic assessment was conducted for the development of the proposed power station and associated infrastructure. The application was made in accordance with the 2014 EIA Regulations and submitted to the National Department of Environmental Affairs. The Need and Desirability of the development of the coal fire power station was assessed according to the legal requirements.

5.19.12 Ad Paragraph 88 The Appellants claim that the need and desirability of this project must be independently considered for the environmental assessment, the assessments cannot simply adopt the need as articulated in the IRP. Second Respondent's Response: The Need and Desirability of the development of the coal fire power station was assessed. Need and Desirability (Chapter 4 of FEIR) was assessed in terms of:

4.1 THE NEED IN SOUTH AFRICA

4.2 ECONOMIC GROWTH AND DEVELOPMENT

4.3 SMALL BUSINESS OPPORTUNITIES

4.4 EMPLOYMENT

4.5 ENVIRONMENTAL IMPACT

4.6 POVERTY ABATEMENT

4.7 COST OF ENERGY

4.8 REHABILITATION CAPACITY

4.9 WASTE RECYCLING

4.10 EMPLOYEE HEALTH AND SAFETY

4.11 COMMUNITY STANCE ON THE PROJECT

5.19.13 Ad Paragraph 89-92 The Appellants make reference to the IRP and the Minister of Energy announcing determination regarding the expansion of electricity generation capacity by IPPs and the equivalent base loads. The Appellants goes on further to explain the electricity produces through IPP and explains the CBIPPP. The Appellants explains the process and the submissions and deadlines. The Appellants further explains the pending introduction of carbon tax. Second Respondent's Response: Noted, the Project is in response to the CBIPPP and is based on Government Policy.

5.19.14 Ad Paragraph 93 The Appellants claim that it is imputed that any call for bid submissions as part of the CBIPPP provides clear evidence of the need and desirability of the Project. Second Respondents Response: The elements used to determine the need & desirability for this application is described above at paragraph 88.

5.19.14.1 Ad paragraph 93.1-93.3 The Appellants base its above claim on the fact that power allocation in the CBIPPP RFP is limited, the government has acknowledged the high environmental costs of coal-fired power; tenders are awarded following the competitive process, which is not subject to the EIA Process. As such the existence of the CBIPPP RFP cannot be equated with the need and desirability of all

projects that bid for the award of power allocation. Second Respondent's Response: This does not prohibit the construction of coal fired power stations. And the elements used to determine the need and desirability for this application have been noted previously.

5.19.15 Ad Paragraph 94-95 The Appellants make reference to bid Responses required and that the FEIR fails to provide material evidence of the financial feasibility of the Project in substantiation of its economic desirability, and for purposes of the requisite bank guarantees as required. Second Respondent's Response: Requirement noted although applicability to Environmental Authorisation application is unclear. The application was made under section 24 NEMA. The 2014 EIA Regulations do not require that bank guarantee to be included in the Impact Assessment Reports.

5.19.16 Ad Paragraph 96-96.5 The Appellants make reference to the Legal Qualification Criteria of the RFP and state that a project must, in order for a bid to be considered, have an EA; a written confirmation of a water allocation for all water consumption, fully developed integrated WULA, which is ready for submission and processing; written confirmation from the DWS that the IWULA or WULA is fully developed and a waste management licence. Second Respondent noted these requirements.

5.19.17 Ad Paragraph 97 The Appellants make reference to the Second CBIPPP bidding round to which the Appellants intends to participate. The Appellants claim that because of the need to qualify for the submission in the bid the Applicants have conducted the EIA process in haste and

without proper assessment of the impacts. Second Respondent's Response: Opinion noted. The application was managed according to the 2014 legal requirements, within the timeframes provided for under these regulations.

5.20 Ad Paragraph 98- 99:Factors giving rise to grounds of appeal

5.20.1 Ad Paragraph 98 The Appellants claim that the grounds of appeal arise because the First Respondent's decision to grant the Authorisation contravenes the following;

5.20.1.1 Ad Paragraph 98.1 The NEMA Principles. Second Respondent's Response: In the Second Respondent's opinion, these Principles were not contravened but since this does not relate to the conduct of the Second Respondent, no detailed response is provided.

5.20.1.2 Ad Paragraph 98.2 Obligations under NEMA section 24O(1). Second Respondents Response: Reference to NEMA Section 24O(1) noted. NEMA section 24O(1)(b) states: "If the Minister…considers an application for an environmental authorisation, the Minister…must take into account all relevant factors, which may include:…".This clearly indicates that there is a discretionary clause in law and the Minister can decide which factors are relevant to the environmental authorisation. The Appellants did not provide any evidence in relation to the relevance of any of the below mentioned factors.

5.20.1.3 Ad Paragraph 98.3 NEMA section 24(2). Second Respondent's Response: Opinion noted. The statement is contested as (i) the NEMA Principles and the objectives of integrated environmental management are taken into account, (ii) the activity's potential environmental impacts are properly

assessed; and (iii) there are adequate public information and participation procedures.

5.20.1.4 Ad Paragraph 98.4 The requirements under the EIA Regulations 2014. Second Respondent's Response: The Need and Desirability of the development of the coal fire power station was assessed as dealt with in paragraph 88. . The application was made under section 24 NEMA. The 2014 EIA Regulations do not require that a bank guarantee must be included in the Impact Assessment Reports.

5.20.1.5 Ad Paragraph 98.5 The constitutional rights to an environment. Second Respondent's Response: The constitutional right to an environment not harmful to health or well-being and to have the environment protected for the benefit of present and future generations through reasonable and other legislative measures, that secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development. Attention is drawn to the terminology "*that secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development."*

5.20.2 Ad Paragraph 99: The Appellants claim that the contravention of such requirements arises from a number of overlapping factors and the consequent unlawfulness if the authorisation also entails its incorporations of condition that are vague an unenforceable, as well as it being subject to review under PAJA. Second Respondent's Response: Opinion noted. It is contested that the application is unlawful

for the reasons as set out above and for the reasons responded to on the entire claim of unlawfulness.

5.21 Ad Paragraph 100 – 105: First Ground of Appeal: The First Respondent's Failure to Apply the NEMA Principles *Environmental Management and Sustainable Development*

5.21.1 Ad Paragraph 100 The Appellants make reference to section 2(2), Section 2(3) and section 2(4) of NEMA. Second Respondent's Response: NEMA section 2(2) dealt with above. Please refer to paragraph 15 above where this is dealt with in detail.

5.21.2 Ad Paragraph 101 The Appellants claim that the EIA process has been conducted without the consideration for the significant environmental and human health impacts of the Project. Second Respondent's Response: The environmental and socio-economic impacts of the proposed development were assessed. For the proposed development to have a health impact the contaminant (CO2 / dust) must reach the community. At this point there can be a buffer zone established that will prevent the health impacts, because the people are too far from the impact.

5.21.3 Ad Paragraph 102 The Appellants refer to the Cost Benefit Analysis ("**CBA"**). Second Respondent's Response: The benefit stipulated by CBA is confirmed.

5.21.4 Ad Paragraph 103 The Appellants claim that any claim benefited must be weighed against the harmful impacts on the environment. Second Respondent notes this opinion.

5.21.5 Ad Paragraph 104 The Appellants claim that the project is not socially, environmentally or economically sustainable as it would:

5.21.5.1 Ad Paragraph 104.1 Negatively impacts the health of communities living in the vicinity. Second Respondent's Response: More importantly the focus on health impact needs to move towards the removal of household air pollution rather than ambient air pollution. Note the WHO statistics. In Africa the Household Air Pollution (HAP) death rate per 100 000 is 3 times the Ambient Air Pollution (AAP) death rate. See information attached. In this regard if there is electricity in the houses that remove the need for household air pollution, the health impact of communities living in the vicinity of the coal fired power station may even be reduced.

5.21.5.2 Ad Paragraph 104.2 Exacerbate the atmospheric emissions of pollutants. Second Respondent's Response: Note that the site is located in an area with little to no industrial activities. It is hardly possible to exacerbate atmospheric emissions. The only current major impact on air pollution is the emissions from household burning of fuel (coal, wood) and very limited travel on gravel roads. Currently, South African law does not regulate Mercury emissions. However, it is estimated (see "MERCURY EMISSIONS FROM COAL-FIRED POWER STATIONS IN SOUTH AFRICA" – Belinda Roos, 2011) that the full battery of abatement technologies that are to be employed in the project will reduce any trace mercury emissions by 90%.

5.21.5.3 Ad Paragraph 104.3 Result in additional medical and other expenses being incurred by affected communities and the state. Second Respondent's Response: The focus here is addressed above in paragraph 104.1.

5.21.5.4 Ad Paragraph 104.4 Irreparably impact upon the limited and scarce water resources in the area. Second Respondent's Response: Specialist assessments indicate that the water quality will not be compromised. DWS is the competent authority for the authorisation of water uses. A WUL will be submitted.

5.21.5.5 Ad Paragraph 104.5 Result in relatively few employment opportunities during the operational phase of the project, for only a limited period of time and predominantly only for the construction of the project. Second Respondent's Response: The Second Respondent disputes this allegation. In an area where unemployment ranges from 35% - 58%, any employment opportunity is significant. Although direct employment opportunities during the final steady state operational phase will be limited, indirect and induced employment opportunities will be created. Refer Table 9-24 of the FEIR.

5.21.5.6 Ad Paragraph 104.6 Negatively impact on the economy in the medium to long-term, given the global trends towards divestment from coal to other fossil-fuels and towards investment in renewable energy sources. Second Respondent's Response: The socio-economic study indicates that, on a national level, the project will assist government in its goal of job creation and uplifting of previously disadvantaged and marginalised communities. More importantly, however, it will contribute towards national energy

security, which is vital for the country's economy. Energy security is more important than the global trend of divestment. The negative impact on the economy in the medium to long-term is therefore contested.

5.21.6 Ad Paragraph 105 noted

5.22 Ad Paragraph 106:Social and Economic Misperceptions and Inaccuracies in the FEIR

5.22.1 Ad Paragraph 106.1 The Appellants claim that its primary concerns with the FEIR are that the, Socio-Economic Impact Assessment, the CBA and consequently the FEIR, are based on incorrect data as well as outdated misrepresentations on economic development. Second Respondent's Response: Opinion noted. It is important to note that the Socio-Economic Impact Assessment used real data derived from the site, rather than trends or research conducted elsewhere. The CBA focused on the comparative requirements as specified by law.

5.22.1.1 Ad Paragraph 106.1.1 The Appellants claim that the above documents fail to take into account the factual circumstances surrounding poverty, health and well-being in South Africa. Second Respondent's Response: Opinion noted. The factual circumstances surrounding poverty, health and well-being in South Africa is taken into account as part of the Socio-Economic Impact Assessment. The Appellants have not provided any evidence as required in terms of the Appeal Regulations.

5.22.1.2 Ad Paragraph 106.1.2 South Africa's future energy needs and the economic and environmental need,

and international movement, towards divestment from fossil fuels. Second Respondent's Response: During COP21 developing countries wanted the developed world to take greater responsibility for climate actions, guilty as they are for emitting almost all of the greenhouse gases from about 1850 to the 1980s. They wanted provisions of the agreement to reflect the principle of 'common but differentiated responsibilities' (CBDR) enshrined in the UN Framework Convention on Climate Change (UNFCCC) of 1992. The Paris Agreement invokes the CBDR principle four times. - See more at: http://indianexpress.com/article/explained/climate-conference-no-big-losers-in-paris-heres-how-everyone-won-something/#sthash.NtQUqOOV.dpuf

5.22.1.3 Ad Paragraph 106.1.3 The fact that South Africa's resources, such as water, are not infinite. Second Respondent's Response: DWS is the competent authority for the authorisation of water uses. A WULA will be submitted. The impact on water was significantly reduced through mitigation.

5.22.1.4 Ad Paragraph 106.1.4 The increasingly important role and contribution of renewable energy to South Africa's economy, as well as contribution to health and well-being of our people. Second Respondent's Response: Renewable energy was considered as part of the CBA. It may in future contribute towards base load but could not in the near term provide a base load solution. It is for this reason that South Africa, like other countries, pursues a mix of energy sources. This assessment focussed on the impact of a coal fired power station, as was the legal requirement.

5.22.2 Ad Paragraph 106.2 The Appellants claim that it is repeatedly, and incorrectly, stated that in the FEIR, CBA and SEIA that wind and solar electricity are “substantially” more expensive than coal-generated electricity. Further, that the information is based on outdated and incorrect information. The Appellants further claim that the CBA does not take into account the external costs of coal-fired power generation and the impacts of mines. Second Respondent’s Response: The Appellants have not proved these claims nor have they bought any contrary evidence to the statements made by the Second Respondent. Opinion noted.

5.22.3 Ad Paragraph 106.3 The Appellants claim that the decision to grant the Authorisation also completely disregards recent international movements and market developments, which have resulted in declining price in renewable energy and an increasing price in coal-fired power generation. Second Respondent’s Response: International trends are relevant to the extent that it has a long history of renewable energy use. In South Africa, the REIPPP 1 and 2 awards were at R2.31kWh, much closer to Eskom’s current peak rate. It is only the later awards, to be built further in the future, and with much higher risk funding, that suggest lower tariffs could come if Eskom passes the savings on to customers. The issue of declining renewable energy costs are also dealt with in other comments here.

5.22.4 Ad Paragraph 106.4 The Appellants make reference to the FEIR and claim that peoples access to electricity depends on being connected to the grid or on local generation at household level and hence the project has no component to extend the grid to people without access. Further, the FEIR does not indicate that it intends providing electricity below market value to community who are unable to afford it. Second Respondent’s Response: The home solar systems

referred to are not complete electricity solutions to a household. They contribute to only a part of households' requirements. It is correct that this project will not develop a distribution system to households. It is not permitted to do so at this time. The project will supply the national grid, managed by Eskom, who then distributes it to municipalities, households and businesses. Electricity generated at this project can be transmitted to communities wider than Colenso. The remainder of the comment is noted.

5.22.5 Ad Paragraph 106.5 The Appellants claim cola-powered electricity is not cheaper and that the Second Respondent's claim that it is, is without foundation. Second Respondent notes the opinion and the argument has been dealt with in detail.

5.22.6 Ad Paragraph 106.6 The Appellants make reference to the FEIR regarding the additional supply of electricity to offset the demand premiums. The Appellants claim that such "positive impacts" rarely materialise. Further, the Appellants claim that the in terms of the evidence of the current property prevailing in the area, did little to improve the well-being of the surrounding communities and economy in the areas. Therefore the Appellants claim that it is not shown how this particular project will be any different. Second Respondent's Response: Linking the current poverty in the area to the closing of the Colenso Power Station in 1985 is not reasonable. The allegation fails to take into account the exit of business from the immediate area over the last 10 years. The remainder of the comment is noted.

5.22.7 Ad Paragraph 106.7 The Appellants claim that the CBA indicated there will be only 10% local spend on maintenance for the project and this contradicts any claim regarding the Project's aims for boosting the local economy, as this small percentage is unlikely to have a material impact on the

economy. Second Respondent's Response: This section was not interpreted correctly by the Appellant. The subsequent claim therefore made is also not correct. The comment is otherwise noted.

5.22.8 Ad Paragraph 106.8 The Appellants make reference to the CBA regarding "coal sales by new coals mines". The Appellants object to the e reliance on a supposition of the future existence of more mines. Second Respondent's Response: The opinion is noted. The new mines can range from establishing new mines, expanding existing mines and even re-opening closed mines. It is not within the scope of the CBA to examine sales agreements while the authorisation process is not yet completed. The comment is otherwise noted.

5.22.9 Ad Paragraph 106.9 The Appellants claim that based on the Applicant's own CBA report, it is shown that solar power would provide more employment opportunities than coal-fired power. Second Respondent Response: The input for jobs does not consider economy of scale. For example, a 50MW solar plant in Upington employs 50 people. The model scales this up to 1050 workers for 1050MW, and does not reduce this for scale. The comment of the model outputs is correct and was presented that way. The ability to provide employment was only one of the four criteria analysed in the MCA.

5.22.10 Ad Paragraph 106.10 The Appellants claim that the FEIR fails to take into account the fact that the establishment of another coal-fired power station is not a feasible solution to South Africa's current and even future energy needs. Second Respondent's Response: Opinion noted. Need and Desirability criteria used discussed above in paragraph 88.

5.22.11 Ad Paragraph 106.11 Citation noted

5.22.12 Ad Paragraph 106.12 The Appellant makes reference to the reports by the International Monetary Fund and the Organisation for Economic Co-Operation and Development. Second Respondent's Response: Note that South Africa is not in the same position as developed countries. SA still has people without energy and jobs. SA needs coal to accelerate its economic development. Not developing the power plant will have a greater negative impact. In terms of mineral sales, coal contributed 27% to sales in 2014, followed by PGMs (21%), iron ore (16%) and gold (13%) [1]. South Africa is the fourth largest coal producer in the world, according to the South Africa Yearbook 2013/14, published by Government Communications. 28% of South African coal production is exported. With an estimated 116 years of proven coal reserves remaining. [2] The mineral is set to remain a valuable resource for South Africa's economy for as long as demand remains. [1] Stats SA: Mining: Production and sales (P2041), April 2015 [2] Stats SA: Environmental economic accounts compendium.

5.22.13 Ad Paragraph 106.13 The Appellants claim that the proposed project and associated mine will have cumulative, irreparable and long-term impacts on the grasslands, soil and water resources in the area. Further, the Appellants claim that when the project is finished the surrounding community will be left worse off due to the pollution, destruction of ecosystems and loss of income. Previous cases have shown that rehabilitation is rarely carried out effectively and no specific provision is made for rehabilitation requirements in the FEIR or in the Authorisation. Second Respondent's Response: The impact of the proposed power station was assessed. Linking the current poverty in the area to the closing of the Colenso Power Station in 1985 is not reasonable. Opinion noted.

5.23 Ad Paragraph 107: The Global External Costs Associated with the Social Costs of the project's Atmospheric Pollution, Greenhouse Gas Emission and Impacts of Water

5.23.1 Ad Paragraph 107.1 The Appellants claim that despite the Applicant's proposals for including abatement technology, such as a baghouse system and the use of anthracite coal, as means to mitigate the Project's atmospheric emissions, it does admit that there will be certain point-source impacts of the proposed coal station on the atmosphere. However the Applicant fails to realise and address the nature of these effects. Second Respondent's Response: The exact control efficiencies for the abatement equipment were not known because a supplier for the abatement equipment was not yet chosen. The Applicant intends to use the IFC guidelines and South African requirements to assist in reducing possible emissions. Thus the aim is to achieve the minimum control efficiencies as recommended by the IFC guidelines. Achieving these control efficiencies will help the power station to meet the SA MES. Therefore the abatement equipment that will achieve those control efficiencies, as given in the AEL and recommended in the IFC guidelines, needs to be installed. Mitigation of impacts was provided.

5.23.2 Ad Paragraph 107.2-107.3 Appellants view on climate change noted. Second Respondent's Response: It should be borne in mind that as a developing country and non-Annexure I party to the Kyoto Protocol there is no legal obligation on South Africa to reduce GHG emissions and therefore no national legislation has been promulgated to this effect either. In addition and from a scientist's point of view, there is still considerable uncertainly that man-made CO_2 causes significant global warming. See more at:

http://www.friendsofscience.org/index.php?id=3#sthash.J1PFPl1F.dpuf

5.23.3 Ad Paragraph 107.4 The Appellants claim that it is crucial for a proper assessment of sustainability in compliance with NEMA, that the EIA Process quantitatively estimates the 'social cost' of the project's GHG emissions as well as the emissions of further pollutants and the impacts of the Project on South Africa's water sources. Second Respondent's Response: The Project requirements did not include or assess the other direct emissions as this was not a GHG inventory and report, but an AQIA. The Air Quality reports therefore focussed on the key GHG source being coal burning. If one were to include all the GHG direct sources, a GHG inventory and report should be conducted once the Project is in operation. The specialist did recommend in the report that a GHG inventory should be conducted (Section 8.2 where the specialist "a full GHG inventory and report will need to be compiled on an annual basis once operations commence and activity data is available".

5.23.4 Ad Paragraph 107.5 The Appellants claim that not only does the CBA incorrectly calculate the total CO_2 emissions of the Project but the Applicant completely neglects to estimate the social cost of the Project's Co_2 emissions. Second Respondent's Response: The potential GHG emissions were calculated. The total that was supplied in the report is correct for the assumption of 80% plant availability. Actual GHG inventory and emissions can only be determined once the site is operational. The recommendations for a greenhouse gas inventory are included.

5.23.5 Ad Paragraph 107.6 The Applicant make reference to a report titled "Health Impacts and Social Costs of Eskom's Proposed Non-compliance with South Africa's Air Emission Standards," Second Respondent's Response: More

importantly the focus on health impact needs to move towards the removal of household air pollution rather than ambient air pollution. Note the WHO statistics. In Africa the Household Air Pollution (HAP) death rate per 100 000 is 3 times the Ambient Air Pollution (AAP) death rate.

5.23.6 Ad Paragraph 107.7-107.8 The Appellants make reference to a statement made by the EAP regarding "externalised costs" and the Second Respondent notes the opinion.

5.23.7 Ad Paragraph 107.9 The Appellants submit that the First Respondent's decision to grant the Authorisation is in breach of the NEMA Principles as in these circumstances the environmental costs would exceed the economic principles. Further, the Appellants claim that the First Respondent is in contravention of its obligation *inter alia* to account for all relevant factors required by NEMA as in terms of Section 24O(1)(b). Second Respondent's Response: Second Respondent notes the submission and the Second Respondent has not been provided with proof of such submission.

5.24 Ad Paragraph 108: Health Impacts of coal-fired power stations

5.24.1 Ad Paragraph 108.1 – 108.2 The Appellants make reference to a recent report on health impacts and social costs of coal-fired power stations and claim that the report further evidences that, in addition to the detrimental health impacts of the Project, additional expenses are incurred by people living close to the proximity to power stations. The Appellants claim that these residents are generally low-income settlements which will give rise to further impacts on their physical, psychological, developmental, cultural and social interests. Second Respondent's Response: Reference noted and dealt with above in paragraph 104.1.

5.24.2 Ad Paragraph 108.3-108.4 The Appellants claim that the Authorisation further contravenes section 24(4)(c) of the NEMA Principles, which requires the pursuit of environmental justice. Further, the Appellants claim that section 2(4)(o) has been contravened, which requires the environment to be held in a public trust. The Appellants allege that various reports about the health effects of coal all depict that the residents in the vicinity of coal-fired power stations experience a disproportional burden of negative health impacts. Second Respondent's Response: This power station will be built according to the latest mitigation requirements. It can therefore not be compared with current data. More importantly the focus on health impact needs to move towards the removal of household air pollution rather than ambient air pollution. Further, refer above to paragraph 104.1.

5.25 Ad Paragraphs 109-113 First Ground of Appeal: The First Respondent's Failure to Apply the NEMA Principles *Integrated Environmental Management*

5.25.1 Ad Paragraph 109-111 The Appellants make reference to the NEMA sections and claim that the EIA process requires description of all aspects necessary to make a proper assessment regarding the cumulative and integrated impacts on all environmental components to ensure compliance with NEMA. Second Respondent's Response: The Second Respondent notes the submissions of the Appellants and has complied with the requirements mentioned to as set out in the original application and further in this appeal.

5.25.2 Ad Paragraph 112 The Appellants claim that the First Respondent failed to account for a number of relevant

considerations as part of the integrated environmental assessment which includes the lack of sufficient data and substantial gaps of information in the further EAs in respect of construction and connection of Eskom power lines in respect of the Project and the transportation of the coal to and from the staging area and Project site. Second Respondent's Response: Opinion noted. The rail siding, staging area, grid connections and mine development will be subject to separate Environmental Authorisation a process was stated in the application and FEIR. These considerations are either applications through different applicants or different competent authorities; it could not be done simultaneously.

5.25.3 Ad Paragraph 113 The Appellants claim that a proper consideration of all relevant considerations as part of an integrated environmental assessment would result in the conclusion that the Project falls short of being the best practicable environmental option due to its particularly polluting nature and the significant air quality, hydrological and biodiversity sensitivity of the location of the Project. Second Respondent's Response: The Best Environmental Option (Preferred Alternative) for the application was described.

5.26 Ad Paragraph 114-116 First Ground of Appeal: The First Respondent's Failure to Apply the NEMA Principles *Polluter Pays Principle*

5.26.1 Ad Paragraph 114 The Appellants make reference to section 2(4)(p) of NEMA and the Polluter Pays Principle. The Second Respondent notes the legal requirement but as above, this principle was considered.

5.26.2 Ad Paragraph 115 The Appellants claim that the previous Eskom power station that existed in the Project site left the area unrehabilitated. Second Respondent's Response: This reference is not applicable to this application and thus is not for the response of the Second Respondent.

5.26.3 Ad Paragraph 116 The Appellants make reference to the impact of coal-fired power stations and the impact upon the health of those living in proximity to them. Second Respondent's Response: Second Respondent has dealt with this allegation above. Further, it is not common cause that coal-fired power stations impact significantly upon the health of those living in proximity to them. This power station will be functioning under the new power station requirements, reducing the risk to air quality significantly. One of the biggest point sources of air pollution will be eliminated by re-using the ash, reducing the risk to air quality, the less contaminants that enter the system the less likely the impacts.

5.26.4 Ad Paragraph 117 The Appellants restate the recent position of KZN with regards to the drought and claim that there is limited water availability in the area. The Appellants further claim how the situation will worsen with climate change and impact on the health and well-being of the communities located in the area. Second Respondent's Response: The recent drought in KZN is acknowledged and has been dealt with in the response above. Further, the cycling climatic conditions are well documented.

5.26.5 Ad Paragraph 118.1 The Appellants indicate that the Polluter Pays Principle is relevant because the cost of remedying

pollution is the responsibility of the Applicant and First Respondent. Second Respondent's Response: It is noted that there are specific legal requirements to abide by, to which the applicant committed to adhere to.

5.26.6 Ad Paragraph 118.2 The Appellants claim that the conditions in respect of the Authorisation fail to account for the adverse effects which will inevitably result pursuant to the undertaking of the authorised activities. Second Respondent's Response: This opinion is contested. It is noted that there are specific legal requirements to abide by, to which the Applicant committed to adhere to and to which these allegation have been dealt with in the original application and further within this response.

5.27 Ad Paragraph 119: Conditions in respect of the Authorisation

5.27.1 Ad Paragraph 119.1 The Appellants claim that the First Respondent has contravened the Polluter Pays Principle in granting the Authorisation without adequate provision made for or consideration being given to *inter alia* the significant water shortage in the area, the inevitable health impacts on those living in proximity to the Project, and the resultant expenses that these people will incur as a result of the anticipated impacts upon their health and well-being. Second Respondent's Response: For the proposed development to have a health impact the contaminant (CO_2/ Nox / dust) must reach the community. This has been answered earlier. Specialist assessments indicate that the water quality will not be compromised. DWS is the competent authority for the authorisation of water uses. A WULA will be submitted to the DWS.

5.27.2 Ad Paragraph 119.2

5.27.2.1 Ad Paragraph 119.2.1 The Appellants claim that the conditions imposed in the Authorisation are vague and insufficient for the reasons that Condition 61 fails to take into account the impacts of climate change. Second Respondent's Response: The condition contains specifics in that: *"to divert and drain from the site in a legal manner, all runoff water … which could be expected as a result of the maximum precipitation".* The loss of absorbent substances creates runoff water that must be diverted and drained from the site in a legal manner. DWS is the competent authority for the authorisation of water related issues. A WUL will be submitted.

5.27.2.2 Ad Paragraph 119.2.2 The Appellants claim that in terms of Condition 64.5 it is unclear what would classify as "little erosion" and how this condition will be monitored and enforced. Second Respondent's Response: The site was checked to determine whether any erosion may occur and if it occurs whether mitigatory action may be taken. This is however not applicable for Second Respondent to respond to.

5.27.2.3 Ad Paragraph 119.2.3 This is not applicable for Second Respondent to respond to.

5.27.2.4 Ad Paragraph 119.2.4 The Appellants refers to Condition 73.1 and that the "*Holder of Environmental Authorisation must monitor upstream and downstream water quality…"* and claim that while the Appellants strongly support monitoring of the upstream and downstream water quality, this conditions vague as it neglects to specify the monitoring methods to be used and that such monitoring should be conducted monthly. Second Respondent's Response: Evidence

indicates otherwise. DWS is the competent authority for the authorisation of water related issues. A WULA will be submitted.

5.27.2.5 Ad Paragraph 119.2.5 The Appellants make reference to Condition 74.2.2 regarding the inspections of liners. Second Respondent's Response: It is important to remain practical in setting conditions; conditions that cannot be monitored practically cannot be implemented. DWS is the competent authority for the authorisation of water related issues. A WULA will be submitted.

5.27.2.6 Ad Paragraph 119.2.6 The Appellants make reference to Condition 77.1 regarding the diverting of runoff water. The Appellants claim that this condition is ambiguous as it is unclear how the water can be drained from the site. Second Respondent's Response: There will be runoff water generated on site and off site, these need to be managed separately. DWS is the competent authority for the authorisation of water related issues. A WULA will be submitted.

5.27.2.7 Ad Paragraph 119.2.7 The Appellants refer to Condition 77.2 regarding uncontaminated runoff diversion. The Appellants claim that this condition implies that the Applicant is authorised to contaminate runoff water. Second Respondent's Response: Water generated on site is likely to be contaminated and needs to be managed through the water treatment plant before it is re-used on site. DWS is the competent authority for the authorisation of water related issues. A WULA will be submitted.

5.27.2.8 Ad Paragraph 119.2.8 The Appellants make reference to Condition 78 regarding dust suppression methods. The Appellants claim that this condition implies that the exceedances of the national air quality standards are acknowledged and authorised. Further, the Appellants claim that the First Respondent should not have effectively authorised a contravention of the law in the Authorisation condition. Second Respondent's Response: Dust suppression measures are not limited to water. DWS is the competent authority for the authorisation of water related issues. A WULA will be submitted.

5.27.2.9 Ad Paragraph 119.2.9 The Appellants make reference to Condition 79 regarding abatement equipment installed at the plant. The Appellants claim that it is not clear what would qualify as the "the most efficient abatement equipment" and this requirement is therefore too vague and will be impossible to enforce. The Appellants make further reference to wording in the condition which states 'when MES are exceeded' and the Appellants claim that this wording presupposes non-compliance with the MES by the Applicant and effectively authorises non-compliance. Second Respondent's Response: This is not for the Second Respondent to respond.

5.27.2.10 Ad Paragraph 119.2.10 The Appellants make reference to Conditions 72.3 and 80.3 regarding air quality monitoring and groundwater monitoring prior to operation in to order to determine baseline. This is not for the response of the Second Respondent.

5.27.2.11 Ad Paragraph 119.2.11 The Appellants make reference to Condition 72.6 which states that the holder of the environmental authorisation must ensure

that the outstanding geophysical survey is submitted to the Chief Director: Integrated Environmental Authorisation prior to the construction of the site. The Appellants claim that it is unlawful that the Authorisation should have been granted with certain assessments outstanding. The FEIR is incomplete and should be amended to reflect the outcome of the survey. Further, the Appellants claim that an amended FEIR should have been made available to the registered I&APs for comment, which have been deprived of the rights to consider and comment on the survey. Second Respondent's Response: The geophysical report in the FSR provides all the necessary environmental impact details for the EIA. There were no fatal flaws identified on the site and such has been indicated in the report. The outstanding geophysical work is in relation to the piling and other engineering requirements that will be needed for the construction on the actual construction site. This work is conducted immediately prior to final civil engineering design.

5.27.2.12 Ad Paragraph 119.2.12-119.2.13 The Appellants claim that the conditions should include a requirement to monitor the quality of extraction boreholes identified in the area. The Appellants further claim that a further shortcoming of the conditions is that they fail to provide for any objective and independent monitoring. Second Respondent's Response: The opinion of the Appellants is noted. Adequate checks and balances form part of the Authorisation, as it requests both internal and external auditing.

5.28 Ad paragraph 120 – 127 The First Respondent's Failure to Apply the NEMA Principles *Precautionary Principle*

5.28.1 Ad Paragraph 120 The Appellants submit that the First Respondent has failed to apply the Precautionary Principle required by NEMA. Second Respondent notes the submission. With regards to health, this is not a legal requirement. Second Respondent's Response: The pathways that could contribute to health issues, water and air were adequately addressed. The extent of available water resources is not the jurisdiction of the DEA; DWS is the competent authority in this instance. Climate change is not a legal requirement and as such the Second Respondent is not required to comply with any standards in this regard.

5.28.2 Ad Paragraph 121 The Appellants make reference to a statement in the FEIR regarding that the power station is designed according to the "new plant" specifications for air quality. Second Respondent confirms the statement in FEIR.

5.28.3 Ad Paragraph 122 The Appellants dispute that failing to implement the Project will have worse impacts on people's health and climate change than implementing the Project. Further, the Appellants claim that it cannot be determined that electricity generated from this Project will be provided to any of the communities affected by the Project. Further, the Appellants claim that the Project has no component to extend the grid or provide subsided electricity. Second Respondent's Response: Note the WHO statistics addressed at paragraph 104.1.

5.28.4 Ad Paragraph 123 The Appellants make reference to scientific research which shows that the energy sector is responsible for the largest share of South Africa's GHG emission and that such projects pose a significant threat in

the form of climate change. Second Respondent's Response: The Second Respondent noted the research and continues to stand by the fact that GHG emissions are not regulated in South Africa and as South Africa is a "developing country" it is not bound to any emissions outcomes in this regard. The impact of coal-fired power stations is not disregarded but it is taken in light of the international understanding that South Africa is not bound to these obligations in order to allow for the development of an developing nation. Further, the science behind climate change has been challenged and in such the impact of greenhouse gases on global warming is still controversial. From a scientific point of view it is worth noting that there is still considerable uncertainty around the science of climate change. For instance, in a 1996 report by the UN on global warming, two statements were deleted from the final draft that had been approved and accepted by a panel of scientists. : 1) "None of the studies cited above has shown clear evidence that we can attribute the observed climate changes to increases in greenhouse gases." 2) "No study to date has positively attributed all or part of the climate change to man–made causes" To the present day there is still no scientific proof that man-made CO_2 causes significant global warming. See more at:

http://www.friendsofscience.org/index.php?id=3#sthash.J1PFPl1F.dpuf

The reality is that almost every aspect of climate science is the subject of vigorous debate.

5.28.5 Ad Paragraph 124 The Appellants claim that the FEIR neglects to assess numerous material and integral; issues pertaining to the Project, which include:

5.28.5.1 Ad Paragraph 124.1 The location and route of the electrical connection to the grid and the cumulative impacts that this will have. Second Respondent's Response: The scope of this application was clearly defined. The location and route of the Grid Connection will be decided by ESKOM. The findings of this study (14/12/16/3/3/3/201) will inform the process that will be required for the grid connection.

5.28.5.2 Ad Paragraph 124.2 The source of two-thirds of the coal required by the Project. Second Respondent's Response: Anthracite coal will be sourced from existing mines in the province (Newcastle area) as stated in the FEIR. The proposed power station will only use coal that can be used in the station in accordance with the specifications of the coal required.

5.28.5.3 Ad Paragraph 124.3 The Capacity of the existing rail infrastructure to transport coal to the preferred staging area, and to assess the associated environmental impacts. Second Respondent's Response: The scope of this application was clearly defined. The capacity of the rail infrastructure will form part of TRANSNET's studies.

5.28.5.4 Ad Paragraph 124.4 -124.7 The potential air quality impact of the proposed staging area, including and offloading operations, where the coal will be stockpiled and the potential PM emissions that will result from limestone storage and handling. Ad Paragraph 124.5: A sufficiently detailed map of Staging Area 1, or the necessary detailed of the design of the staging facilities. Ad Paragraph 124.6: The potential impacts of the proposed staging area on water resources. Ad Paragraph 124.7: The potential

impacts of the staging area on human health. Second Respondent's Response: The scope of this application was clearly defined. It is not possible to do the assessment relating to the staging area now. The Second Respondent is aware that TRANSNET will not embark on assessments regarding the staging area prior to some indication that such staging area will be required. From a practical and financial point of view it is submitted that it is unreasonable to expect TRANSNET to spend money before there is at least some indication that the staging area will be required.

5.28.5.5 Ad Paragraph 124.8 The potential air quality impacts of the construction and subsequent operation of any proposed new roads and/or rail-veyor systems as well as vehicle dust entrainment. Second Respondent's Response: The Air Quality Impacts were assessed in the original application and compliance with the requirements as set out in NEMAQA have been addressed in this response.

5.28.5.6 Ad paragraph 124.9 The potential noise impacts associated with staging area operation and associated rail-veyor systems. Second Respondent's Response: Possible noise impacts of staging area operations and the associated rail-veyor system were assessed, to determine possible cumulative impacts.

5.28.5.7 Ad Paragraph 124.10 The potential impacts of FGD processed on the water sources. Second Respondent's Response: The flue gas desulphurisation (FGD) processes were considered.

5.28.5.8 Ad Paragraph 124.11 Options and assessments of the impacts for the transportation of the ash from the ash dump to subsequent destinations. Second

Respondent's Response: The ash will not be transported off site. The ash will be used in a brick making facility.

5.28.5.9 Ad Paragraph 124.12 A proper analysis of the viability and potential use for the ash stored at the ash dump, including the viability of it being sold and utilised for brick manufacturing and alternative uses or storage areas for the ash in the event that it cannot be utilized for brick manufacturing. The Appellants claim that the allocated size of the ash dump will not be sufficient if the ash is not utilized for brick manufacturing, and this has grave implications for water and air pollution. Second Respondent's Response: The viability of a brick making facility was considered.

5.28.6 Ad Paragraph 125 The Appellants claim that a substantial oversight of the EIA for the Project and by the First Respondent is the failure to assess and account for the impacts associated with having to source 2 million tons of coal per year for the Project. The Appellants make further reference to the transporting of such coal and claim that fugitive coal dust emissions from these operations will impact heavily on the surrounding areas, including sensitive residential/commercial areas and agricultural land. Second Respondent's Response: The scope of this application was clearly defined. It is not possible to do the assessment relating to the staging area now. Dealt with above at paragraph 124.4.

5.28.7 Ad Paragraph 126 The Appellants claim that the Precautionary Principle dictates that the First Respondent

should have required further assessment of the above, as well as:

5.28.7.1 Ad Paragraph 126.1 A proper investigation of the water sources to be used for the Project. The Appellants claim that the investigation was vague and there were contradictory description contained in the FEIR. Second Respondent's Response: DWS is the competent authority for the authorisation of water uses. A WULA will be submitted.

5.28.7.2 Ad Paragraph 126.2 Detailed health impact studies to be conducted in respect of the impacts on communities living within close proximity to the Project with regard to air quality and water resources. Second Respondent's Response: An Air Quality Assessment was conducted. In order for the health of communities to be affected the contaminants (Dust/SOx/Nox) must reach the community in specified concentrations and exposures. Specialist assessments indicate that the water quality will not be compromised.

5.28.7.3 Ad Paragraph 126.3 Detailed climate impact studies to be conducted to assess the impacts of climate change on the water resources apparently available for the Project, as well as social costs of the Project's GHG emissions and impacts of the Project on GHG emissions and in respect of adaption to a changed climate. Second Respondent's Response: DWS is the competent authority for the authorisation of water uses. A WULA will be submitted.

5.28.8 Ad Paragraph 127 The Appellants claim that the First Respondent's failure to adequately consider the full air quality, water, health, climate change and other impacts of the Project. Second Respondent's Response: Second

Respondent notes the opinion but refers to the submissions made above where all of these issued were addressed as required by the law.

5.29 Ad Paragraph 128 – 138 The First Respondent's Failure to Apply the NEMA Principles *Public Participation*

5.29.1 Ad Paragraph 128 The Appellants make reference to the NEMA requirements regarding public participation and that a decision such as the Authorisation must be reached following the participation and account being taken of the interests, needs and values of all I&APs. Second Respondent's Response: A comprehensive I&AP Process was embarked on in accordance with the legal requirements. Numerous comments reflecting the interest needs and values of the I&APS were received and is included in Appendix N of the FEIR.

5.29.2 Ad Paragraph 129 The Appellants make reference to the public participation procedures conducted in respect of the Project and claim that the First Respondent submitted in both the DEIR and FEIR comments and raises the following concerns:

5.29.2.1 Ad Paragraph 129.1 Those advertisements were only published in English language newspapers, which exclude a majority of community members. The Appellants further claim that the mere knowledge of the existence of the project, by the community, does not mean that the community members have been adequately informed regarding the Project. Second Respondent's Response: The local community was informed by people rather than the newspaper, in their mother tongue. Note that a notification in Zulu was

placed for the AEL application. No response was received to this notification. There is clear evidence indicated by the hundreds of community residents that attended the public participation meeting held in Colenso that the method utilised to inform the communities, i.e. by people, proved more effective. Compliance with the legal requirements was proven.

5.29.2.2 Ad Paragraph 129.2 Public meetings were not conducted properly as community member were unable to participate effectively due to the fact that the hall was large and slides of the PowerPoint presentation were not easily visible, the sound system was not loud enough to be audible, translations from English were intermittent and inconsistent, many slides were only presented in English, and the distinction between the mining application and this Project was not made clear, nor was the extent of the potential impacts of the Project made clear, and the emphasis of the meeting was placed on job creation and economic development. Second Respondent's Response: The 2014 EIA Regulations do not require public meetings. Note that a public meeting was held in Colenso as stated by the Appellants. Due to the large number of I&AP registered a big hall was required for the meeting. The EAP apologizes for the sound problems but is satisfied that this was sorted out at the meeting when Mrs. Baartjes took over the presentation. All slides were presented in both English and Zulu. In order to ensure that all concerns from I&APS were heard the EAP team (including the translators) stayed behind and answered and heard comments from those I&APs that felt they still had concerns after the meeting was adjourned. The

Meeting was scheduled until 16H00 but the EAP only left at 18h20. The EAP did not advertise the meeting as an opportunity to apply for jobs and clearly stated the intent of the meeting at the start so that everybody knew what the objective of the meeting was. In the meeting it was asked to the attendees if they understood the potential environmental impacts and if such impacts were explained properly, this answer was indicated by a show of hands,, Specific questions relating to explanation were asked, including if the attendees felt that it was said in a way that they could understand. (Slide number 70). Most of the attendees raised their hands. Pictures of the response are attached hereto as Annexure "**G**".

5.29.2.3 Ad Paragraph 129.3 Failing to make provision for advertisements in Zulu and failing to take adequate measures to ensure meaningful participation by all I&APs during the meeting is inconsistent with NEMA section 2(f). The Appellants claim that attendance does not demonstrate compliance with the legal requirements in relations to public participation. Second Respondent's Response: The Second Respondent is aware of the importance of the public participation procedures and requirements as set out in NEMA. The Second Respondent more than adequately complied with the procedures regarding public participation as set out in NEMA and ensured that meaningful participation was adhered to as abovementioned. The measure of public participation procedures by the Appellants does not take into account the various forms of relating information, face-to-face between the Second Respondent's and the registered I&APs as well as the continual

insurance of understanding of the potential impacts of the Project. The Second Respondent has complied with the requirement and in such has discharged its obligations in this regard. The actual comments and attendance numbers have all been adequately documented in accordance with the legal requirements. The appropriateness of the activities used in this regard is a matter of opinion. The compliance with the public participation procedures is abundantly clear from the letters of support referred to above and attached hereto as Annexure "**C**" and "**D**".

5.29.3 Ad Paragraph 130-131 The Appellants claim that the specialist studies for the EIA were not informed of the scoping phase for the Project. DEA accepted the scoping report on 7 July 2015 and by 25 July 2015 the public participation meeting was held. The Appellants claim that it is evident that the specialist studies were commissioned prior to acceptance of the FSR, and that the Applicant has no intention of considering any public input on the DSR or FSR. Further, the Appellants make reference to the EIA Regulations 2014 and the purpose of the scoping phase. The Appellants claim that the terms of reference for these studies should not have been finalised before the public was given its input in this regard. Second Respondent's Response: It is noted that the Specialist studies were commissioned prior to the acceptance of the Scoping Report and Plan of Study for the EIA. The Studies were commissioned based on the details provided in the Plan of Study for EIA. The comments on the Plan of Study for EIA received from I&APs were considered and all (except for the health impact assessment) were executed and included in the DEIR. Note that additional requirements from DEA were also assessed and

included in the DEIR. It is the opinion of EAP that the assessments can be executed to consider more than what the minimum requirements in law expect. To spend more time in the field and assess the impacts over a longer time ensures more effective environmental considerations. It is furthermore important to revisit the scope of specialists once comments are received as was done in this instance. The final terms of reference were published in every specialist report. This process does not violate any requirements under NEMA and in such the Second Respondent discharged their obligation regarding public participation upon complying with all set out requirements. The Second Respondent is conscious of the importance of the public participation process and ensured that inclusion of all public input into the DSR and FSR. Therefore, the Second Respondent has complied with all requirements and therefore such cannot be qualified as unlawful.

5.29.4 Ad Paragraph 132 The Appellants make reference to comments from EAP regarding the specialist studies and Second Respondent confirms such comments.

5.29.5 Ad Paragraph 133 The Appellants make reference to regulation 21 of the EIA Regulations read with Appendix 2 which states that a scoping report must include a summary of the issues raised by the I&APs and the number of days for conducting an a study and assessing environmental impacts. The Appellants claim that that the fact that the EAP commissioned the specialist studies without public input is in conflict with the EIA regulations and PAJA. Second Respondent's Response: Sufficient time was available to amend the terms of reference for the specialist studies, should such request been received and considered applicable. No such requests, apart for a health impact assessment and GHG quantification were received. The

need for a health impact assessment was considered and based on the location and baseline description for the proposed site not deemed necessary. The quantification of the GHG was included in the Air Quality Assessment with recommendations. As such it was not included in the Scoping and Plan of Study for EIA. The competent authority approved the Plan of Study and requested additional assessments (bats, birds and CBA). Therefore, the Second Respondent complied with the required EIA Regulations and conducted such assessment as approved and requested.

5.29.6 Ad Paragraph 134 The Appellants make reference to the Authorisation regarding the statement that the Department took consideration of commends from I&APs included in EAIR dated October 2015. The Appellants disputes that the comments were taken into account. The Appellants claim that the First Respondent would have been made aware of significant errors and gaps of information in the FEIR and would have not granted the Authorisation. Second Respondent's Response: It is reiterated that the required inputs and comments from I&APs were included and ascertained in the manner required by the Regulations, The Second Respondent complied with requests and requirements as abovementioned and therefore discharged its obligation in this regard. The Second Respondent denies that the Authorisation would not have been granted and that the "significant gaps of information" the Appellants refer to have not been evidenced in this regard.

5.29.7 Ad Paragraph 135 The Appellants claim that the reference to the comment process and objections by the First Appellants (paragraph 47) demonstrates the failure of the Applicant and

the First Respondent to give any consideration to the comments submitted by the First Appellants. Second Respondent's Response: All comments were considered and responded to. Evidence is presented in the comments & response register attached as Appendix C to the Draft & final Scoping Reports.

5.29.8 Ad Paragraph 136 The Appellants object to the timeframes prescribed by the EIA Regulations 2014. The Appellants claim that the timeframes are a severe hindrance to effective impact assessment as well as public participation and constitute an infringement of the NEMA and PAJA requirements. Second Respondent's Response: The application was made in terms of the 2014 EIA Regulations. This comment is not for the Second Respondent to respond to.

5.29.9 Ad Paragraph 137-138 The Appellants claim that the I&APs have not been afforded proper opportunity to comment. Further, The Appellants claim that the FEIR and appendices are no longer on the EAP's website and this hinders the rights of any I&APs who wish to consider the Authorisation in conjunction with the FEIR and appendices particularly for submitting appeals against the Authorisation. Second Respondent's Response: Public Participation periods stipulated in the 2014 EIA Regulations were adhered to.

5.30 Ad Paragraph 139-159 The First Respondent's Failure to Apply the NEMA Principles *The discharge of Global and International Responsibilities in Relation to the Environment in the National Interest*

5.30.1 Ad Paragraph 139-139.5 The Appellants claim that it is proven that climate change impacts upon water resources, air quality, weather patterns, human health, biodiversity and marine fisheries. Second Respondent's Response: The science regarding climate change is highly controversial and to date there is contradictory evidence as to the proof that man made CO_2 causes significant global warming.

5.30.2 Ad Paragraph 140 The Appellants make reference to the fact that South Africa is a signatory to the United Nations Framework Convention on Climate Change and the Kyoto Protocol. Second Respondent's Response: The Second Respondent acknowledges that SA is a signatory to UN Framework Convention on Climate Change and Kyoto Protocol but as is stated above as a developing country and non annexure I party there are no legally binding obligations on South Africa or its citizens to reduce GHG's.

5.30.3 Ad Paragraph 141 The Appellants make reference to the fact that South Africa does not have any set emissions reduction obligations under the Kyoto Protocol. Second Respondent's Responses: The admission by the Appellants that South Africa does not have any legally binding obligations to reduce GHG confirms that the arguments where the Appellants refer to climate change and the impacts of the Project on climate change have no basis or legal standing in this regard and that such admission that South Africa is not bound nationally or internationally to reduce such GHG cripples the Appellants arguments in their entirety where the basis of their argument is the effect on climate change. Therefore the Appeal to the Project, on these grounds, is void in its entirety.

5.30.4 Ad paragraph 142 The Appellants make reference to the Intended Nationally Determined Contribution (“INDC”) and the National Development Plan (“NDP”). Second Respondent’s Response: The reliance on the INDC and NDP is misplaced and legally incorrect. The NDP and INDC do not comprise of any binding legal obligations and the Second Respondent is therefore not bound to such policy documents.

5.30.5 Ad Paragraph 143-144 The Appellants make reference to Article 4 and 13(7) of the Paris agreement. Second Respondent’s Response: Reference to Article 4 of the Paris Agreement is noted. It is unclear how this proposed project would infringe on the government's commitment to report in terms of Article 4. Further, it is reiterated that South Africa is not legally bound and the agreements referred to by the Appellants do not have legal standing with regards to the Project.

5.30.6 Ad Paragraph 145 -146 The Appellants make reference to parties to the Paris Agreement and the obligation to commit to new INDCs every 5 years. The Appellants claim that should South Africa wish to comply with the obligations in the Agreement then authorising a 1050 MW coal-fired power station contradicts this commitment. Second Respondent’s Response: Authorising a 1050MW coal-fired power station is in line with the Paris commitment. In terms of the Paris agreement South Africa must adhere to its "country objectives" (nationally determined contributions), which in this case is the official IRP 2010. This requires the country to facilitate the construction of coal fired power stations.

5.30.7 Ad Paragraph 147 The Appellants make reference to fact that the State must ensure that its actions, laws and decision making coincide with its intentions to address climate change and to take into account its international obligations. Second Respondent's Response: The Appellants reliance on such is unfounded on the basis that such agreements are not legally binding and South Africa is not in a position to impose legally binding commitments. The Appellants fundamental reliance on this Agreement is flawed in its entirety and does should not be regarded as a lawful or valid appeal against the Project.

5.30.8 Ad Paragraph 148 The Appellants claim that South Africa is one of the world's largest contributors to global climate change and that CO_2 emissions should be reserved for agriculture. Second Respondent's Response: The Appellants have not provided evidence to these allegations, as required in terms of the Appeal Regulations.

5.30.9 Ad paragraph 149 The Appellants make reference to National legislation recognising the need to curb GHG emissions and address climate change. Second Respondent's Response: The Appellants reliance and referral on draft legislation does not create an obligation on the Second Respondent at this point and in such the Appellants is evidencing the lack of obligations. National legislation available at the moment does not require the Second Respondent to go beyond its means in curbing climate change and the Second Respondent is bound by the enacted legislation. Therefore, GHG emissions were calculated in light of such legislation. The Appellants cannot

create legal obligations and cannot enforce any obligation on the Second Respondent regarding climate change. It is not the responsibility of the Second Respondent to enforce such presumed obligations.

5.30.10 Ad paragraph 150-152 The Appellants make reference to the White Paper and claim that as a national policy document, and it should direct decision-making of the First Respondent in respect of authorisations for any developments. Second Respondent's Response: The White Paper does not constitute binding legislation but is a guideline policy only. As South Africa is a non-annexure I Party to the Kyoto Protocol there are no legally binding obligations placed on South Africa to reduce GHG Emissions. There are also no obligations in South African law to consider climate change issues in the EIA process. This notwithstanding, the issue of Climate Change was considered in the Air Quality Assessment and Risk Study.

5.30.11 Ad Paragraph 153-153.5 The Appellants make reference to the fact that assessing climate change is not in fact part of the EIA process and offers such inclusion. Second Respondent's Response: The Second Respondent is not legally bound in terms of the EIA process to conduct a climate change impact assessment report and as such the Appellants cannot appeal on grounds where the Second Respondent has not failed to comply with requirements that do not exist in law.

5.30.12 Ad Paragraph 154-157 The Appellants make reference to water availability, climate change, the Long Term Adaption Scenarios and The White Paper. Second Respondent's

Response: Issue has been dealt with above at paragraph 150.

5.30.13 Ad Paragraph 158 The Appellants claim that the Project will have significant implication on both the water quantity and quality in the area. The Appellants claim that the FEIR fails to factor in additional water requirements of the project such as FGD and therefore the actual water demand requirements will be much higher. Second Respondent's Response: The water consumption requirements will be more clearly defined when the Water Use License is applied for. Estimates were provided and the FGD system does also use water. The amount of water used might still change in final design. Current indication of 700000 m3/a water required for the planned first phase of construction and eventually increasing to 2.1 million m3/a for the 1050 MW plant, is an estimate calculated at +/- 25% and is also in line with the latest industry best practices.

5.30.14 Ad Paragraph 159 The Appellants claim that the failure to consider climate change implications shows a lack of policy coherence. Second Respondent's Response: There is currently no legal requirement to assess climate change as part of the EIA authorisation process. The legal requirements that do exist were adhered to.

5.31 Ad Paragraph 160 -162 Second Ground of appeal: The Respondent's failure to comply with the NEMA section 24O(1)

5.31.1 Ad Paragraph 160-162 The Appellants make reference to section 24O of NEMA and the requirement of the competent authority to account for all relevant factors. The Appellants submit that the environmental impacts of the proposed project were not assessed adequately. Second

Respondent's Response: It is not for the Applicant to respond to these allegations as they are addressed to the DEA.

5.32 Ad Paragraph 163-166 Second Ground of appeal: The Respondent's failure to comply with the NEMA section 24O(1) *Failure of the First Respondent to consider any pollution, environmental impacts or environmental degradation likely to be caused if the application is approved or refused*

5.32.1 Ad Paragraph 163 The Appellants claim that there are significant gaps of information in the FEIR and a lack of adequate assessment of the impacts of the Project and that the First Respondent could not have been in a position to discharge the obligation to take into account the certain factors. Second Respondent's Response: The EIA was conducted in Accordance with the 2014 EIA Regulations. The FEIR contain the information required in Appendix 3 and 4 of the Regulations (Please refer to the roadmap included in the FEIR).

5.32.2 Ad Paragraph 164 The Appellants claim that the FEIIR failed to adequately assess the cumulative impacts of the Project, the proposed mine and associated infrastructure on the following:

5.32.2.1 Ad Paragraph 164.1 Water resources. Second Respondent's Response: As dealt with above at paragraph 38. A Specialist assessment indicates that water quality will not be compromised. Groundwater Assessment was done for an ash dump of 70 ha. The preferred alternative is a stockpile of 9 ha stockpile. Even with the 70 ha dump the impact was considered medium. An image where the preferred alternative

was superimposed over the predicted groundwater impact is attached as Annexure "**F**".

5.32.2.2 Ad Paragraph 164.2 Air Quality. Second Respondent's Response: Air Quality Impacts were assessed.

5.32.2.3 Ad Paragraph 164.3 Human Health. Second Respondent's Response: The plan of study for scoping was accepted without the health assessment. The DEIR therefore does not have the health assessment included. The pathways were assessed and found not to be problematic.

5.32.2.4 Ad Paragraph 164.4 Climate Change. Second Respondent's Response: Currently there is no legal requirement to assess climate change as part of the EIA authorisation process.

5.32.3 Ad Paragraph 165 The Appellants claim that the failure to adequately assess the impacts arises mainly from the substantial lack of data on which to base assessments. Second Respondent's Response: It is a requirement of law to declare gaps and uncertainties, if there is any evidence to indicate that these gaps and uncertainties inadequately assess the impacts it should have been provided during the public participation process. No evidence was submitted to indicate a fatal flaw.

5.33 Ad Paragraph 167 Failure to Assess Water Impacts of the Project

5.33.1 Ad Paragraph 167.1 The Appellants claim that the FEIR fails to assess the effect of the proposed project on the vital water resources in the area. As:

5.33.1.1 Ad Paragraph 167.1.1 Large-scale water needed by coal-based power generation will be drawn from an overburden source. Second Respondent's Response: DWS is the competent authority for the authorisation of water uses. A WULA will be submitted.

5.33.1.2 Ad Paragraph 167.1.2 Surface water, fresh water and ground water assessments show significant omissions and discrepancies. Second Respondent's Response: The Second Respondent disagrees, as indicated above full legal compliance was achieved. The mine has not been built yet and therefore cumulative impact cannot be assessed. More detailed studies regarding water resources may be undertaken as part of the WULA for DWS.

5.33.2 Ad paragraph 167.2 The Appellants make reference to Figure 3 of the Surface Water Assessment. The Appellants claim that the close proximity of the power plant and ash dump to natural catchment has the potential to affect the aquatic ecosystems. Second Respondent's Response: As dealt with at paragraph 28. During the Storm Water Assessment it was found that the 100m buffer will always exceed the 1:100 year 24 hour flood line for this section of the river near the proposed infrastructure. Consequently, smaller rivers and tributaries were only assessed for 100m buffer zones and these are accepted as worst case scenario. Figure 3 where the preferred alternative is superimposed on the image to illustrate the preferred option in relation to the power station & ash dump location accessed by the storm water specialist. Attached hereto as Annexure "**E**".

5.33.3 Ad Paragraph 167.3 The Appellants make reference to a statement by the EAP in the FEIR that the Project will not impact upon the Thukela River or any wetlands. The

Appellants claim that this is incorrect as it contradicts the pollution plume for surface and groundwater. Second Respondent's Response: Dealt with above at paragraph 38 and repeated at paragraph 164.1.

5.33.4 Ad Paragraph 167.4 The Appellants claim that the SWA omits significant information and lacks sufficient data, such as evaporation data and rainfall data, as well as the details concerning the following hereunder. Second Respondent's Response: Evaporation data for SA is limited. Evaporation is measured at dams and mostly stations that are operated by DWS provide such data. The SWA used what is available and only very basic statistics were performed on the data.

5.33.4.1 Ad Paragraph 167.4.1 The water supply and total amount of water that the Project will require. The Appellants allege that the estimation of water usage is incorrect and based on the SWA the feedwater requirements are much higher. Second Respondent's Response: The 70t/h indicates the "make-up" water.

5.33.4.2 Ad Paragraph 167.4.2 The site of the water treatment plant. Second Respondent's Response: It is noted that the exact location for the water treatment plant, brine ponds for the WTP and Waste WTP are not stipulated, but the location has been identified for where the proposed power station should be built on the site. The water treatment plant, brine ponds for the WTP and Waste WTP will be constructed within the boundary of this area (see figure 6-10).

5.33.4.3 Ad Paragraph 167.4.3 The FGD requirements of the project. Second Respondent's Response: Dealt with above at paragraph 158.

5.33.4.4 AD Paragraph 167.4.4 Impacts of possible water run-off. Second Respondent's Response: As mentioned

the coal staging area will be subject to a separate process with TRANSNET.

5.33.4.5 Ad Paragraph 167.4.5 The water requirements for the implementation of the recommended dust suppression measures in the FEIR. Second Respondent's Response: The water balance does provide for dust suppression (103 759 m3/ annum – excess at PCD for power plant. Please refer Figure 2-8 of the FEIR.

5.33.4.6 Ad Paragraph 167.4.6 The rivers shown on the maps in SWA are not names or identified in any way. Second Respondent's Response: Ground trothing revealed non-perennial drainage lines that feeds the man-made dam during the rainy season, which are isolated and do not drain to the Thukela.

5.33.4.7 Ad Paragraph 167.4.7 The potential water and health impacts on downstream users of water have not been considered. Second Respondent's Response: Specialist assessments indicate that the water quality will not be compromised. DWS is the competent authority for the authorisation of water uses. A WULA will be submitted.

5.33.4.8 Ad Paragraph 167.4.8 The impacts that the mine will have on water sources. Second Respondent's Response: It is not a legal requirement for future cumulative impacts to be assessed. Further, the mine is not part of the project scope of this application. The DMR is the competent authority in this regard and a separate authorisation for the mine will be obtained in this regard.

5.33.5 Ad Paragraph 167.5 The Appellants claim that the Geohydrological Assessment ("GA") fails to adequately assess the groundwater impacts of the project including:

5.33.5.1 Ad Paragraph 167.5.1 The impacts of the proposed Project in constructed wetlands. Second Respondent's Response: There are no wetlands within the preferred alternative for the power station. Contamination of the groundwater through fuel storage is unlikely and was assessed by the groundwater specialist (refer Table 21 of GA).

5.33.5.2 Ad Paragraph 167.5.2 The potential impacts of the ash dump on groundwater and the lack of sufficient information regarding the seepage. Second Respondent's Response: The GA did assess the potential pollution from the ash dump. Note that the assessment was done for a 70 ha discard dump. The preferred alternative recommends a 9 ha stockpile.

5.33.6 Ad Paragraph 167.6 The Appellants make reference to the FEIR regarding the geohydrological report and the Second Respondent notes the reference.

5.33.7 AD paragraph 167.7 The Appellants claim that based on the information concerning the water impacts of the Project; it is evident that the GA and SWA in the FEIR do not constitute adequate assessments of the impact of the Project. Second Respondent's Response: Gaps and assumptions were clearly defined. Note that both the Storm Water Assessment and Groundwater Assessment were done for a 70 ha ash dump. The preferred alternative is for a 9 ha ash stockpile.

5.33.8 Ad Paragraph 167.8 The Appellants make reference to the recent KZN drought crisis and the FEIR not acknowledging the true state of affairs. Second Respondent's Response: Drought and water shortages have not been disregarded. Recycling of water is recommended to limit water abstraction. The Second Respondent has made reference to the recent drought and is fully aware of the sensitivity of

such. The Second Respondent has not disregarded the circumstances and in such has addressed these issues above. The ash dump is reduced to an ash stockpile reducing water consumption significantly.

5.33.9 Ad Paragraph 167.9 The Appellants make reference to the First Respondent, in that full consideration of the impacts should be given with regards to the surface and ground water resources, including wetlands. Second Respondent's Response: Impacts on surface and groundwater resources and wetlands were assessed. There are no FEPA wetlands on site. Specialist assessments also indicate that water quality will not be compromised. Mitigation measures (reduction of 70 ha dump to 9 ha stockpile, storm water infrastructure, re-use of water in the process, dry cooling, water monitoring, etc) are proposed.

5.33.10 Ad Paragraph 167.10 The Appellants claim that authorising a project with potential significant impact to water resources would constitute a contravention of the duty of cure in NEMA. Second Respondent's Response: The EAP has conducted Impact assessments and significance determined as required by Appendix 3 of the 2014 EIA Regulations (Please refer roadmap included in FEIR). Reference to duty of care is aimed at the First Respondent and thus not for the Second Respondent to respond to.

5.34 Ad Paragraph 168 The Failure to Assess the Air Quality Impacts of the Project

5.34.1 Ad Paragraph 168.1 The Appellants make reference to the Air Quality Impact Assessment ("AQIA") and claim that it does not have sufficient data. Further, the Appellants claim that the assessments fails to adequately assess the air quality impacts of the project by *inter alia:*

5.34.1.1 Ad Paragraph 168.1.1 Failing to determine an air quality baseline for the Project. Second Respondent's Response: The recommendation to assess the baseline air quality is included as a recommendation in the DEIR. (See Table 16). Note that the site is located in an area with little to no industrial activities. The only current major impact on air pollution is the emissions from household burning of fuel (coal, wood) and very limited travel on gravel roads.

5.34.1.2 Ad Paragraph 168.1.2 Failing to provide site specific or meteorological data for dispersion modelling. Second Respondent's Response: The specialists used the Ladysmith met data for AERMOD runs only (for Construction phase and TSP model runs only). The Ladysmith weather station is the closest weather station to the project site and also is positioned within the modelling domain of 50 x 50 km as required by the National dispersion modelling regulations. The station is also located approximately 22 - 25 km from the power station and mine not 29km. In the specialists opinion the data is suitable enough to predict meteorological patterns near the project site for TSP. Modelled MM5 data for the Colenso region was used for all other runs (PM and gases) within Calmet/Calpuff. The Air Quality specialist also compared the wind roses for the Ladysmith station and MM5 data, where it was found that the wind fields were very similar. Regardless of the data, none of the point sources was found to cause risk to neighbours above the legal requirements provided the mitigation measures are implemented.

5.34.1.3 Ad Paragraph 168.1.3 Failing to assess impacts of construction of the Project and/or rail-veyor systems

and subsequent operations of these facilities. Second Respondent's Response: Dust impact during construction was assessed and rated in Table 9-2 and subsequent operation in Table 9-4. Please note that the construction of roads and infrastructure is not a listed activity in terms of NEMAQA,

5.34.1.4 AD Paragraph 168.1.4 Failing to assess the air quality impacts of the coal stockpiling and transportation of coal associated with the Project. Second Respondent's Response: The scope of this application was clearly defined. The Air Quality Assessment did not include the staging area. The staging area will be subject to a separate authorisation process and associated Air Quality Assessment and AEL application.

5.34.1.5 Ad Paragraph 168.1.5 Relying purely on assumptions on control efficiencies for stack emissions. Second Respondent's Response: The exact control efficiencies for the abatement equipment were not known because a supplier for the abatement equipment was not yet chosen. The Applicant stated that they want to use the IFC guidelines to assist in reducing possible emissions. Thus the aim is to achieve the minimum control efficiencies as recommended by the IFC guidelines. Achieving these control efficiencies will help the power station to meet the SA MES. Therefore the abatement equipment that will achieve those control efficiencies, as given in the AEL and recommended in the IFC guidelines, needs to be installed.

5.34.1.6 Ad Paragraph 168.1.6 Failing to adequately assess the impacts of implementing FGD. Second

Respondent's Response: Noted. This is a mitigation measure.

5.34.1.7 Ad Paragraph 168.1.7 Failing to assess the impacts of mercury emissions, despite its harmful impacts. Second Respondent's Response: The plan of study for scoping was accepted as it was proposed. Currently, South African law does not regulate Mercury emissions. However, it is estimated (see "MERCURY EMISSIONS FROM COAL-FIRED POWER STATIONS IN SOUTH AFRICA" - Belinda Roos, 2011) that the full battery of abatement technologies that are to be employed in the project will reduce trace mercury emissions by 90%.

5.34.1.8 Ad Paragraph 168.1.8 Providing an incorrect total GHG emissions figure. Second Respondent's Response: The potential GHG emissions were calculated. As stated above at paragraph 107.5.

5.34.1.9 Ad Paragraph 168.1.9 Assessing the air quality impacts of only a fraction of the activities associated with the Project. Second Respondent's Response: The plan of study for scoping was accepted as it was proposed. The Air Quality specialist responded that they can only calculate and determine the emission rates with what is known and provided. The Air Quality specialist agrees that there are exclusions; they state that they did not fail to identify them as they clearly expressed their concern in this regard in the report. The Air Quality specialist agrees that they must be quantified and considered in the models and report.

5.34.1.10 Ad Paragraph 168.1.10 Failing to provide for and assess the impacts of the source of two-thirds of the

coal required at the full power station rate of 1050KW. Second Respondent's Response: Anthracite coal will be sourced from existing mines in the province (Newcastle area) as stated in the FEIR. The proposed power station will only use coal that can be used in the station in accordance with the specifications of the coal required.

5.34.2 AD Paragraph 168.2 The Appellants make reference to the estimate of dust emission rate from power plant to construction activities. Second Respondent's Response: The submission by the Appellants is correct. The emission rate should be 0.00010378g/s/m^2 (or 103.78g/s). The report has been corrected and resubmitted with corrections made.

5.34.3 Ad Paragraph 168.3 The Appellants claim that a flaw is that the stack emission rates of PM, NOx and SO_2 were calculated using US EPA emission factors without reference to the applicable South African MES. Second Respondent's Response: The MES cannot be used to calculate emission rates for proposed operations in an AQIA. Emission factors need to be used to calculate emission rates. When project specific emission rates are not available, then published emission factors need to be used. The use of international published emission factors such as the US EPA as a method is in line with the Regulations regarding air dispersion modelling in South Africa.

5.34.4 Ad Paragraph 168.4 The Appellants make reference to the AQIA and that it acknowledges that the information is incomplete. Second Respondent's Response The reference regarding the staging area and this issue has been dealt with above at paragraph 124.4 to 124.7.

5.34.5 Ad Paragraph 168.5 The Appellants make reference to the AQIA, dust fallout concentrations and the required specific

dust suppression measures. The Appellants claim that the AQIA acknowledges that the dust fall out concentrations will exceed the National Ambient Air Quality Standards ("NAAQS") and World Health Organisation (WHO) air quality guidelines. The Appellants claim that the AQIA and FIER should have addressed the best control measures to be incorporated to minimise emissions. Second Respondent's Response: The modelling was done based on the assumption that a 70 ha ash dump will be constructed. The preferable alternative is for the construction of a 9 ha ash stockpile which will significantly reduce the PM emissions.

5.35 Ad Paragraph 169: The FEIR fails to Assess the Health Impacts of the Project

5.35.1 Ad Paragraph 169.1 The Appellants allege that the FEIR fails to adequately assess the health impacts of the proposed project and its associated infrastructure, in that it fails to include a health assessment, and the health considerations which are included in the FEIR do not provide sufficient information to determine the following hereunder. Second Respondent's Response: Please note no health assessment was required as the Plan of Study for EIA was accepted without it. A Health Assessment Impact is not required in terms of the EIA Regulations 2014 and therefore the requirements of the 2014 EIA Regulations were adhered to. The FEIR therefore does not have the health assessment included.

5.35.1.1 Ad Paragraph 169.1.1 How many people are impacted by the pollution from the project. Second Respondent's Response: A socio-economic Assessment was conducted. Baseline socio-economic description is provided. It is not a specific requirement in terms of the 2014 EIA Regulations.

Therefore the Second Respondent is not legally obliged to provide this information.

5.35.1.2 Ad Paragraph 169.1.2-169.1.3 At what concentration people could be impacted. And what the health statistics are in the projected area. Second Respondent's Response: This is not a specific requirement in terms of the 2014 EIA Regulations. Therefore the Second Respondent is not legally obliged to provide this information.

5.35.2 Ad Paragraph 169.2 The Appellants claim that neither the FEIR nor the AQIA contains any information about the health impact of the project *vis-à-vis* higher ambient air levels of pollutants. Further the Appellants claim that such assessment was requested by the First Appellants. Second Respondent's Response: The air quality assessment was done for a 70 ha ash dump and dustfall emissions and PM10 and PM2.5 were modelled assuming no dust suppression. The reduction of the dump from 70 ha to 9 ha and the application of dust suppression measures (as recommended in the FEIR) will significantly reduce dustfall out and PM10 and PM2.5 emissions.

5.35.3 Ad Paragraph 169.3 The Appellants make reference to the health impacts known to be caused by coal-fired power stations (addressed at paragraph 107.6 and 108). Second Respondent's Response: The Appellants' attention is drawn to the impact of household air pollution and the detrimental impact that such household air pollution has compared that of ambient air pollution. Note the WHO statistics. In Africa the Household Air Pollution (HAP) death rate per 100 000 is 3 times the Ambient Air Pollution (AAP) death rate. Therefore, by ensuring the construction of a coal-fired power station this ensures more coal power baseload which

ensures that households are able to access electricity and are not prevalent to the impacts of household air pollution.

5.35.4 Ad Paragraph 169.4 The Appellants allege that the failure to conduct a health impact assessment for the project reveals a disregard for the Project's externalities. Second Respondent's Response: This is not a specific requirement in terms of the 2014 EIA Regulations. Therefore the Second Respondent is not legally obliged to provide this information. The need for a health impact assessment was considered and based on the location and baseline description for the proposed site not deemed necessary.

5.35.5 Ad Paragraph 169.5. The Appellants make reference to a report by Prof. Rajen Naidoo, attached to the DEIR whereby the comments confirm the lack of data on the current health status of the community. Second Respondent's Response: Prof Naidoo's report attached to the comments on DEIR is confirmed.

5.35.6 Ad Paragraph 169.6 The Appellants allege that the lack of a health study cannot be justified by the fact that the plan of study for scoping was accepted without the health assessment. Second Respondent's Response: The issue on the specialist assessments were responded to and the lack of legal requirements in this regard were addressed.

5.35.7 Ad Paragraph 169.7-169.8 The Appellants alleged that there is no baseline assessment of health and the potential impacts of the Project. Further the Appellants make reference to an example where a health assessment was conducted. Second Respondent's Response: Please note no health assessment was required as the Plan of Study for EIA was accepted without it. A Health Assessment Impact is not required in terms of the EIA Regulations 2014 and therefore the requirements of the 2014 EIA Regulations were adhered

to. The reference to another project is unfounded on the grounds that the projects are not similar and therefore a comparison is unfounded.

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5.35.8 Ad Paragraph 169.9 The Appellants make reference to the short and long-term health effects that the coefficients specified by the Committee on the Medical Effects of Air Pollutants ("COMEAP"). Second Respondent's Response: Your opinion is noted. The source of the coefficients used in the study seemed to be seven years old. The 2012 WHO statistics - In Africa the Household Air Pollution death rate per 100 000 is 3 times the Ambient Air Pollution death rate. In order for the impact to occur the impact of the specific activity must reach the receptor.

5.35.9 Ad Paragraph 169.10 The Appellants make reference to various international studies regarding the insufficient evidence to quantify the health effects of long term exposure to certain coefficients. Second Respondent's Response: For the proposed development to have a health impact the contaminant (CO_2/ Nox / PM10 and PM2.5) must reach the community.

5.36 Ad Paragraph 170 The Failure to Assess the Climate Change Impacts of the Project

5.36.1 Ad Paragraph 170.1 The Appellants claim that the FEITR fails to adequately assess the impacts of the Project on climate change in that it:

5.36.1.1 Ad Paragraph 170.1.1 States an incorrect total annual GHG emissions estimate. Second Respondent's Response: The potential GHG emissions were calculated. As stated above at paragraph 107.5.

5.36.1.2 Ad Paragraph 170.1.2 Fails to take into account consideration of the international stance on climate

change and national law and policy which necessitates the consideration of climate change. Second Respondent's Response: This is not a legal requirement.

5.36.1.3 Ad Paragraph 170.1.3 Fails to consider the impacts that the project will have on natural resources such as water and biodiversity. Second Respondent's Response: Specialist biodiversity, storm water and ground water studies were conducted and impacts assessed as required in Appendix 3 of the 2014 EIA Regulations.

5.36.2 Ad Paragraph 170.3 The Appellants claim that the incorrect estimate figures for the Projects GHG emissions are incorrect and result in the impacts of the Project being flawed. Second Respondent's Response: The potential GHG emissions were calculated. As stated above at paragraph 107.5.

5.36.3 Ad Paragraph 170.4 The Appellants make reference to the CBA and the four levers to reduce emissions. Further, the Appellants refer to the FEIR statement by the EAP regarding the use of better quality coal. Second Respondent's Response: Yes, the CBA does refer to the four levers. Reference to EAP's response is noted.

5.36.4 Ad Paragraph 170.5 The Appellants claim that irrespective of the quality of coal utilised or the abatement equipment installed the Project will still make a significant contribution to South Africa's GHG emissions. Second Respondent's Response: Elsewhere the Appellants quoted requirements of the CBIPPP RFP - "The CBIPPP RFP notes the government's cognisance of "the contribution of such power plants to global warming as a result of their greenhouse gas emissions" and the pending introduction of carbon tax "as

one of the range of mechanisms intended to support South Africa's international commitment to reducing greenhouse gas emissions."

5.36.5 Ad Paragraph 170.6 The Appellants claim that coal-fired power stations are known to be one of the largest contributors to SA's GHG. Further the Appellants claim that failure to adequately consider the environmental impacts that this Project will cause, on a local and global level, is a significant irregularity. Second Respondent's Response: GHG emissions were calculated as stated above at paragraph 107.5.

5.37 Ad Paragraph 171 Second Ground of Appeal: The Respondent's failure to comply with the NEMA section 24O(1) *Failure of the First Respondent to consider measures to prevent, control, abate or mitigate any pollution, substantially detrimental environmental impacts or environmental degradation and the Applicant's ability to implement mitigation measures and to comply with any conditions in relation to the Authorisation*

5.37.1 Ad Paragraph 171 The Appellants claim that the Authorisation and the FEIR stipulate only a few mitigation measures. Further, the Appellants claim that the ability for the Applicant to comply with such mitigation measures is doubtful for the reasons listed hereunder. Second Respondent's Response: Mitigation measures are presented in Section 16 of the FEIR as required by Appendix 4 of the 2014 EIA Regulations.

5.37.1.1 Ad Paragraph 171.1 The Mitigation measures proposed by the Applicant in the FEIR and Authorisation are limited and insufficiently detailed. Second Respondent's Response: Mitigation measures are not only contained in the EMP but in all

specialist studies and recommendations contained therein.

5.37.1.2 Ad Paragraph 171.2 The proposed 9 hectare ash dump will have exceeded its capacity within one year of the Project's operation, in the event that the ash is not used for brick-making or recycled. Second Respondent's Response: The cost implication of installing a liner for a 70 ha ash dump (see CBA) versus the operating of a brick-making facility clearly indicates the assessment of the operation. Effective usage of the bricks will become more critical when there is a greater demand in terms of community development.

5.37.1.3 Ad Paragraph 171.3 According to the FEIR, the risks set out in the reports such as the SWA are regarded as low when mitigation is implemented. Second Respondent's Response: Specialist assessments indicate that the water quality will not be compromised by the development of the proposed coal fired power station and associated infrastructure. Monitoring of water quality is therefore not required.

5.37.1.4 Ad Paragraph 171.4 The conditions intended as mitigation measures in the Authorisation are vague and lack sufficient detail and rigour to be adequately applied by the Applicant and monitored and enforced. Second Respondent's Response: This claim is aimed at the DEA and is therefore not for the Second Respondent to respond to.

5.38 Ad Paragraph 172-175 Second Ground of appeal: The Respondent's failure to comply with the NEMA section 24O(1) *The First Respondent's Failure to Account for Feasible and Reasonable Alternatives*

5.38.1 Ad Paragraph 172 The Appellants make reference to the proper investigation of alternatives as an integral component of EIA in terms of section 23 of NEMA. Second Respondent's Response: Legal reference is noted

5.38.2 Ad Paragraph 173 The Appellants claim that the EIA Regulations 2014 also require that an EIA consider alternatives. Second Respondent's Response: Reference to the requirement in EIA Regulations, 2014 noted. The consideration to alternatives was addressed above.

5.38.3 Ad Paragraph 174 The Appellants make reference to the Western Cape EIA Guideline to Alternatives, 2011. Second Respondent's Response: Reference to Western Cape EIA Guideline to Alternatives, 2011 is noted. The proposed development is situated in KZN.

5.38.4 Ad Paragraph 175 The Appellants make reference to the CBA and the FEIR purports to assess a base case, being the "no-go" option and three alternatives. Second Respondent's Response: The CBA report does state that low cost housing was selected as an alternative use of the size of the area (100ha) that could be permanently altered, viz. housing. Holding inputs the same (so using the 100ha land for a different purpose) make for an important basis of comparison. Projects that are socio-economic imperatives (such as housing and hospitals) are also projects that need to be considered in policy decisions, which this serves to assist. The need for low cost housing is widely reported across South Africa.

5.39 Ad Paragraph 176 The No-Go Alternative

5.39.1.1 Ad Paragraph 176.1- 176.2 The Appellants claim that the Applicant and the First Respondent are obliged to consider the "no-go alternative", which would be to

abandon implementation of the Project entirely, The Appellants claim that the Applicant asserts in the FEIR that the need for the project on a national scale has been determined in terms of the IRP 2010 and regarding the issue of “need and desirability” the Appellants disputes the contention by the Applicant regarding the “no-go” alternative. Second Respondent’s Response: The “no-go option” was considered in the FEIR. In this regard, the following was stated: The National Integrated Resource Plan (IRP) developed by the Department of Energy has identified the need for power generation from coal as part of the technology mix for power generation in the country in the next 20 years. The need for the project at a national scale has therefore been determined. The 'do nothing' option will, therefore, not address this national need and may result in the electricity demands in the country not being met in the short-term. This has serious short- to medium-term implications for socio-economic development in South Africa. Without the new proposed coal-fired power station near Colenso, an alternative means of generating an additional 1050 MW capacity would be required to be sought from another power generation source or a similar source in another area. However, there are sufficient coal reserves located in the KZN, and optimal grid connection opportunities at Colenso are available, not developing the project on the proposed site would see such an opportunity being lost. At a local level, the level of unemployment will remain the same and there will not be any transfer of skills to people in terms of the construction and operation of the power station. This power station is intended to be an IPP project to alleviate pressure on

Eskom's base-load power supply in the short- medium term through independent power generation. Without the implementation of this project, this will not be achieved, and the greater power supply in the country will be compromised in the near future. This has potentially significant negative impacts on economic growth and social well-being. In addition, limitations on electricity supply may impact the environment in general due to local air quality impacts due to use of low quality coal for domestic purposes, collection of wood from natural areas.

5.39.2 Ad Paragraph 176.3 The Appellants make reference to the CBA and FEIR not containing the "no-go" option analysis other than the lost benefits. Second Respondent's Response: The CBA did look at this project as it was required. It did not consider the response either negative or positive by other business, including mines, rail or power plant developers that can respond to the opportunity created by this project. The writer is conflating a separate project developed by a different entity almost 100 years ago. The remainder of the comment is noted.

5.40 Ad Paragraph 177 Renewable Energy as an Alternative

5.40.1 Ad Paragraph 177.1 The Appellants refer to a statement in the CBA regarding the three alternatives and the Appellants claim that the CBA alleges incorrectly that Solar Power Plant was flawed. Second Respondent's Response: The claim by the Appellant on this point takes the associated mine and fly ash dump into consideration with regards to the cumulative impacts. However, the associated mine does not form part of the project scope of this application and reference to a fly ash dump is not applicable as such dump will not be used.

Therefore, the cumulative component of the coal-fired power station excluding the mine and fly ash dump does not have a bigger footprint compared to that of the Solar Power Plant.

5.40.2 Ad Paragraph 177.2 The Appellants make reference to the CBA regarding the consideration of renewable energy as an alternative and possible land uses. The Appellants claim that the analysis has not taken into account or compared the impacts of the land uses for the proposed project and solar as an alternative. The Appellants refers to specifics hereunder. Second Respondent's Response: It is actually reported in the CBA that the solar farm development to generate the same output of electricity will negatively impact on the land as well. The comment is otherwise noted.

5.40.2.1 Ad Paragraph 177.2.1 The environmental footprint of coal-fired power station, and associated mine and fly ash dump which is much larger than that of a solar power plant. Second Respondent's Response: The claim by the Appellant on this point takes the associated mine and fly ash dump into consideration with regards to the cumulative impacts. However, the associated mine does not form part of the project scope of this Application and reference to a fly ash dump is not applicable as such dump will not be used. Solar plant material is also mined, if the mine is considered the mining of iron ore must also be considered for the solar plant.

5.40.2.2 Ad Paragraph 177.2.2 The CBA implies that the greater solar footprint means that a solar plant would require more land than the coal project. However, it does not take into account that a solar project would not leave a pollution legacy beyond the lifespan of the project. Second Respondent's Response: The CBA does not imply, it states that if a 1050MW solar farm is

developed it will require more than 100ha land. The comparison is in physical footprint versus output. A solar plant is not a zero-impact development and will have an environmental impact including on the biodiversity of the area where it is built. This project is to assess a coal powered power plant. The comment is otherwise noted.

5.40.2.3 Ad Paragraph 177.2.3 The Project power station impacts are compared with existing Eskom facilities, not with solar, hence the air emissions and water use and pollution issues are not assessed in terms of a comparison with solar power. Second Respondent's Response: The project is for a power station to complement a fleet of existing coal fired power stations already operating in South Africa. The comparison is therefore reasonable. There are no solar projects in South Africa at a similar scale. The comment is otherwise noted.

5.40.3 Ad Paragraph 177.3 The Appellants claim that this is therefore not an adequate or accurate assessment of renewable energy as an alternative to the Project. Further the Appellants claim that the selective use of data and unsupported opinions contained in the CBA cannot be substituted for comparisons of different technologies. The Appellants make reference to the Life Cycle Assessment ("LCA"). Second Respondent's Response: The methodology used was a CBA. In addition a Multi Criteria Analysis (MCA) was conducted. The LCA is not a suitable method. The LCA has the weakness of not being a useful decision making tool but does act as an information gathering tool (Asian Development Bank, 2013). LCA also does not provide information on non-environmental costs and benefits. The comment is otherwise noted.

5.40.4 Ad Paragraph 177.4 The Appellants claim that the project should be seen in context of the renewable energy procurement process and not confined to a narrow “business as usual” paradigm. Second Respondent’s Response: It is beyond the scope of the task to include the importation of photovoltaic cells. What is described by the Appellants is a Life Cycle Assessment which has fatal shortcomings that have been addressed elsewhere. The comment is otherwise noted.

5.40.5 Ad Paragraph 177.5 The Appellants dispute the Applicant’s contentions regarding renewable energy as an inadequate alternative to the Project and claim the following:

5.40.5.1 Ad Paragraph 177.5.1 The cost of energy from wind and solar are starting to approach the cost of energy from coal. The Second Respondent notes the opinion.

5.40.5.2 Ad Paragraph 177.5.2 The potential for job creation in the solar power industry is greater than for coal. Second Respondent’s Response: The input for jobs does not consider economy of scale. For example, a 50MW solar plant in Upington employs 50 people. The model scales this up to 1050 workers for 1050MW, and does not reduce this for scale. The comment of the model outputs is correct and was presented that way. The ability to provide employment was only one of the four criteria analysed in the MCA.

5.40.5.3 Ad Paragraph 177.5.3 The CBA gives an ‘electricity purchase’ price of R0.80 for coal sources power; this appears to be the price at which electricity is sold. The CBA further gives the ‘electricity purchase’ price of solar at R1.37, which is in fact such price but not the at which it is sold. This amount is derived from one of the Renewable Energy Independent Power Producer

Procurement Programme (“REIPPPP”) first round projects. The latest costs, in the fourth bidding round of the REIPPPP, are: Solar PV: R0.79/kWh; and wind: R0.61/kWh. Eskom’s present cost of production is about R0.67/kWh and rising. Second Respondent’s Response: The information of Eskom's production cost is appreciated. The pricing for solar is not as described here by the Appellants. Solar is priced according to existing supply agreements. The comparison with REIPPPP Window 4 prices only and in isolation of previous REIPPPP Windows is not useful or transparent. The comparison of margins is relevant and is addressed. The comment is otherwise noted.

5.40.5.4 Ad Paragraph 177.5.4-177.5.5 There is no reason why the alternative renewable energy project should be based in Colenso. Developers of renewable energy projects are using emerging technology for storage and distribution. Second Respondent notes this opinion.

5.40.5.5 Ad Paragraph 177.5.6 Various other reports have been published that’s show in some markets the costs of producing electricity from renewable energy is cheaper than coal or gas. Second Respondent’s Response: There are also other reasons for the decrease in renewable energy prices viz. the increasing use of government subsidies and guarantees for renewable power projects. Additionally, instead of opening the market to more operators, it has been found by closing down the operators in the renewable energy market in South Africa and letting fewer operators in also helps to drive down the price

(http://www.gsb.uct.ac.za/files/PPIAFReport.pdf). The emerging technology referred to also has an environmental impact. The intermittency problem is still not resolved and poses a risk to numerous economies which was mentioned in the DEIR (http://www.aweo.org/problemwithwind.html). The rising cost of fossil fuels is impacted by numerous variables including supply levels. We currently live in a $30/bbl environment, much different to the $100+/bbl environment of a few years ago. The comments are otherwise noted.

5.40.6 Ad Paragraph 177.6 The Appellants make reference to the reducing costs of producing electricity from renewable energy and bid prices for renewable energy decreasing. Second Respondent's Response: Renewable energy projects are often accounted without all its external costs included. To achieve these low prices the REIPPPP also had to concentrate the allocation into the hands of fewer companies, thereby reducing long term competition.

5.40.7 Ad Paragraph 177.7 The Appellants submit that the Applicant's assessment of renewable energy is based on incorrect information. And that the First Respondent should not have approved FEIR on this point. Second Respondent's Response: The Second Respondent had dealt with this allegation and has shown as abovementioned the assessment of solar power in line with all requirements and obligations. The Second Responded refutes the claim by the Appellants that the assessment was done on incorrect information and thus refutes the claim by the Appellants that the FEIR should not have been accepted. The Second Respondent made an assessment based on relevant information and came to a conclusion based on solid evidence.

5.40.8 Ad Paragraph 177.8 The Appellants claim that the findings of the FEIR and the CBA, and the decision of the First Respondent, would substantially different if the assessment had taken into account:

5.40.8.1 Ad Paragraph 177.8.1 South Africa's potential for solar and wind energy. Second Respondent's Response: The independence of the authorities referred to is uncertain. Renewable may one day contribute towards base load but could not in the near term provide a base load solution. It is for this reason that South Africa, like other countries, pursues a mix of energy sources. The comment is otherwise noted.

5.40.8.2 Ad Paragraph 177.8.2 The decrease in costs of renewable energy. Second Respondent's Response: The point does not address the level of subsidies required to commercialise. The claim regarding decease in costs has been addressed above.

5.40.8.3 Ad Paragraph 177.8.3 The short start up time for renewable energy plants such as wind, solar photovoltaic and concentrated solar power systems. Second Respondent's Response: Renewable energy power plants have significantly smaller electricity outputs and so it is expected that it would be faster to start-up.

5.40.8.4 Ad Paragraph 177.8.4 The sustainable and employment opportunities offered by renewable energy industry. Second Respondent's Response: This is considered speculative (http://www.sajs.co.za/sites/default/files/publications/pdf/Borel-Saladin_News%20and%20Views.pdf). There are reports that the jobs are estimates but the reality is that the manufacturing capacity in South Africa lags

too far behind to capture this potential. The manufacturing readiness level of South Africa was not considered in this study but for the green industry is not considered to be very high.

5.40.8.5 Ad Paragraph 177.8.5 The health benefits of renewable energy as compared to other energy sources. Second Respondent's Response: The comment assumes that supplying coal fired electricity directly into homes does not offer a health benefit, which is not correct. The health benefits of increasing coal-fired power electricity in South Africa have been assessed above.

5.40.8.6 Ad Paragraph 177.8.6 The benefits to the environment. Second Respondent's Response: The comment assumes that supplying coal fired electricity directly into homes and to businesses offers no positive impact on the environment, which has been demonstrated to not be the case.

5.40.8.7 Ad Paragraph 177.8.7 The LCA of both the proposed Project and a solar power plant in relation to health cost; associated mining and rehabilitation; pollution; and use of ecosystems good and services. Second Respondent's Response: The tool used was a CBA. In addition a Multi Criteria Analysis (MCA) was conducted. The LCA has the problem of not being a useful decision making tool but does act as an information gathering tool (Asian Development Bank, 2013). LCA also does not provide information on non-environmental costs and benefits. The comment is otherwise noted.

5.41 Ad Paragraph 178 Low Cost Housing as an Alternative

5.41.1 Ad Paragraph 178.1 The Appellants claim that insofar as low cost housing has been considered as an alternative that it is an inappropriate alternative. Second Respondent's Response: The CBA report does state that it was selected as an alternative use of the size of the area (100ha) that could be permanently altered, viz. housing. Holding inputs the same (so using the 100ha land for a different purpose) make for an important basis of comparison. Projects that are socio-economic imperatives (such as housing and hospitals) are also projects that need to be considered in policy decisions, which this serves to assist. The need for low cost housing is widely reported across South Africa. The comment is otherwise noted.

5.42 Ad Paragraphs 179-184 Second Ground of appeal: The Respondent's failure to comply with the NEMA section 24O(1) *Failure of the First Respondent to Consider Applicable Policies Relevant to the Application*

5.42.1 Ad Paragraphs 179-183 The Appellants make reference to the White Paper regarding climate change, GHG emissions, water scarcity and air quality. Second Respondent's Response: Dealt with above in paragraph 150.

5.42.2 Ad Paragraph 184 The White Paper is discussed in Section 3.2 of the FEIR. Section 24O(1)(b)(vii) requires competent authorities to take account of guidelines, departmental policies and decisions making instruments not implement blindly. Second Respondent's Response: Dealt with above at paragraph 150.

5.43 Ad Paragraph 185-186 Third Ground of Appeal: The First Respondent's Failure to Comply with NEMA section 24(4)

5.43.1 Ad Paragraph 185 -186 The Appellants make reference to section 24(4) of NEMA as well as the NEMA Principles and section 24O. Second Respondent's Response: The Second Respondent has complied with all requirements and obligations under NEMA as has been addressed above.

5.44 Ad Paragraph 187-189 Fourth Ground of Appeal: The First Respondent's Failure to Comply with the NEMA Regulations, 2014 *Assessment of Need and Desirability*

5.44.1 Ad Paragraph 187 The Appellants make reference to Regulation 18 of the EIA Regulations 2014 regarding the need for the competent authority to take into account section 24O, section 24(4) of NEMA as well as the DEA"s Guideline on Need and Desirability. Second Respondent's Response: The environmental and socio-economic impacts were assessed and the need and desirability were described in terms of these impacts as well. This issue has been explicitly dealt with above and the Second Respondent has addressed all the allegations by the Appellants.

5.44.2 Ad Paragraphs 188-189 The Appellants allege that the Applicant relies on the IRP as a basis for the need and desirability and general sustainability. Further the Appellants allege that the IRP cannot be used in this instance. Second Respondent's Response: This is incorrect. This issue has been raised above at paragraph 88 and the Second Respondent had dealt with these contentions in their entirety.

5.45 Ad Paragraph 190-194 Fourth Ground of Appeal: The First Respondent's Failure to Comply with the NEMA Regulations, 2014 *Assessment of all Cumulative Impacts*

5.45.1 Ad Paragraph 190-192.4 The Appellants make reference to the EIA Regulations, 2014 and the definition of cumulative

impact. The Appellants claim that the EIA process failed to include assessment of certain impacts including the cumulative effect of air emissions, effect on water quantity and quality, effect on wetlands, and the impacts associated with further EAs under the project. Second Respondent's Response: There are no wetlands with a FEPA status located on or close to the site. Further impacts were assessed and the required authorisations were obtained in this regard. It is not possible to comprehensively assess the impacts of the grid connections, rail siding and staging area. The exact location and extent of the areas will be determined by Eskom and TRANSNET. The inclusion of these areas into the project description and certain specialist studies were to ensure that cumulative impacts are considered.

5.45.2 Ad Paragraph 193 The Appellants claim that the First Respondent was under an obligation refuse the application regarding the assessment of cumulative impacts. Second Respondent's Response: These impacts were assessed and the Applicant has addressed the issues raised in the response above,

5.45.3 Ad Paragraph 194 The Appellants claim that where risks of cumulative impact are recognized, the First Respondent failed to attach significant weight to the impacts and should have required for more detailed investigation. Second Respondent's Response: Specialist assessments indicate that the water quality will not be compromised. DWS is the competent authority for the authorisation of water uses. A WUL will be submitted.

5.46 Ad Paragraph 195 Fifth Ground of Appeal: The First Respondent's Breach of Constitutional Requirements

5.46.1 Ad Paragraph 195 The Appellants claim that in failing to undertake a proper consideration of all environmental impacts and to require proper public participation the First Respondent has failed to ensure to the protection of the environment. Second Respondent's Response: Environmental impacts associated listed activities in terms of the development of the proposed coal fired power station and associated infrastructures were assessed and informed by specialist studies. A comprehensive public participation process was embarked on at the end of which the I&AP register stands at 1195 registered I&APs. The issues raised here have been comprehensively dealt with in the response above and he Second Respondent has shown that all requirements and obligations required under such process were complied with.

5.47 Ad Paragraph 196-199 Conclusion

5.47.1 Ad Paragraph 196-199 The Appellants therefore claim that the First Respondent's decision to authorise the Project is unlawful. The Appellants claim that the First Respondent's unlawful conduct should be reviewed in terms of PAJA. Second Respondent's Response: The Second Respondent complied with all the requirements under applicable legislation and adhered to any and all obligations under such law. The Second Respondent has shown beyond reasonable expectation that all assessments, processes and requirements were complied with and in such the Authorisation was required to be granted. The Second Respondent cannot respond to the allegations against the First Respondent.