
ANNEXURE D

Terms of Reference for Livelihood
Restoration Plan (Resettlement Action
Plan)

Umkomaas Regional Sewage Treatment
Plant

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1. INTRODUCTION

The eThekweni Water and Sanitation (EWS) Branch of the eThekweni Metropolitan Municipality intends to contract a Concessionaire to design, finance, construct, operate and maintain two new sewage treatment plants (STPs) at uMdloti and uMkhomazi as a Public Private Partnership (PPP). This agreement is expected to be in place for twenty (20) to thirty (30) years. For planning purposes, the maximum term of thirty (30) years is utilised and assumed to be between 2023 to 2053. The ultimate objective of this project is for the EWS to improve levels of service and to increase the availability and reliability of water resources in the Municipality. The IFC advisory services has engaged Royal HaskoningDHV (Pty) Ltd (Royal HaskoningDHV) as consultant to provide Technical, Environmental and Social (TES) advisory services in preparation for the bidding process for the PPP, including an Environmental and Social Scoping Report.

The project entails the following components:

- New Umkomaas STP designed to a provisional plant capacity of 11Ml/d,
- Construction of Raw Sewage Conveyance Systems to collect the sewage at the existing main outfall sewers, located at the old STPs, and convey this to the new STP. The following two (2) Sewage Conveyance Systems are proposed:
 - i. Craigieburn STP to new regional Umkomaas STP; and
 - ii. Old Umkomaas STP to new regional Umkomaas STP.
- Sludge Handling and Beneficiation plant within the new regional STP to treat sludge generated by wastewater treatment process,
- A Treated Effluent Pipeline (TEP) to the South African Pulp and Paper Industries (SAPPI) as the off taker plus a bypass discharge to the uMkhomazi River,
- Combined Heat and Power (Biogas) facility, and
- The establishment of a construction camp/s (on or off the new proposed STP site).

The new Umkomaas STP will replace the following existing plants that will need to be decommissioned once the new works is fully operational:

- Old Umkomaas STP, and
- Craigieburn STP.

The Concession Agreement for the project defines that responsibilities for land and servitude acquisition will be shared between the Municipality and the Concessionaire. Roles and responsibilities have been defined as follow:

- the Municipality shall compensate Project Affected People (PAPs) in accordance with the applicable South African laws for claims or costs arising directly from their displacement,
- the Concessionaire will be responsible for the identification of supplementary measures required for the project to be compliant with IFC PS5, along with their implementation This will include the will preparation of a Livelihood Restoration Plan (LRP) or Resettlement Action Plan (RAP) in line with PS5,
- the Concessionaire shall provide oversight and support to the Municipality to implement measures in line with the Laws, and implement supplementary measures as defined by the LRP (or RAP), including monitoring and evaluation.

2. SCOPE AND OBJECTIVE

The present Terms of Reference (TOR) sets out the minimum requirements for the Livelihood Restoration Plan (or in case any physical displacement would happen, for the Resettlement Action Plan which would cover both physical and economic displacements), to be developed as part of the ESIA process for the Umkomaas STP project, in line with IFC Performance Standard 5 (PS5).

The LRP (or RAP) shall:

- (i) comply with IFC Performance Standard 5 and address economic displacement (and/or physical) for land to be acquired or servitudes to be registered for the Project that could not be avoided or minimized through the application of the Mitigation Hierarchy;
- (ii) include the entitlements for economically (and potentially physically) displaced persons who (i) have formal legal rights to the land or assets they occupy or use; (ii) do not have formal legal rights to land or assets, but have a claim to land that is recognized or recognizable under national law; or (iii) have no recognizable legal right or claim to the land or assets they occupy or use. The census will establish the status of the displaced persons provided under applicable Laws and regulations, and the supplementary measures (e.g. replacement costs for lost assets, livelihood restoration, assistance to vulnerable groups) to fully satisfy the requirements of the E&S Standards; and
- (iii) identify the financial and implementation responsibilities of the parties for the defines entitlements/measures (Concessionaire, the Municipality, and other relevant agencies).

The main objectives of the LRP are to:

- Assist all affected people to improve or at least to restore their livelihoods, incomes and living standards.
- Support affected people with reaching alternative sustainable employment and developing income-generating opportunities, taking into consideration their skills, knowledge, education, aptitudes and preferences.
- Undertake a fully participatory process, engaging eligible affected people in the design, implementation and monitoring of the Livelihood Restoration Plan (LRP).

3. CURRENT LAND USE

According to the findings of the E&S scoping carried out as part of the TES advisory services in 2021, there are no structures (residential or other) found on the proposed land for the plant site and for the preliminary pipelines routing (it is to be noted that ground conditions may have changed since the time of the study). It is however to be noted that the pipelines routing is yet to be finalized: initial routing alternatives were identified with the aim to avoid and reduce impacts on existing land use, and further refinement is expected during the next stages of the design. This shall be carried out in line with the project's contractual requirements to *"apply the Mitigation Hierarchy when defining the routing of the Raw Sewage Conveyance Systems and the Reuse Water Supply Pipeline and any new or upgraded access roads, as the case may be. The Concessionaire shall focus on avoidance and, if not possible, minimization of impacts on people (physical and economic displacement) and on biodiversity. Any residual impacts shall be compensated and/or offset as per E&S Standards"*.

Further details on existing land use as found at scoping stage are as follow (see maps in Annex):

Site: The land itself is registered to Sappi Saiccor and is currently not utilised. Sappi is the owner of the farm Canonbrae No 16713. EWS wished to acquire Portion A of the farm Canonbrae No 16713 in extent of approximately 4 hectares for the site; and the Remainder of the farm Canonbrae No 16713 in extent of 1

hectares for a 6-meter-wide servitude. Both are for public purposes. EWS will also utilise Sappi's outfall pipe (6.5 kms into sea) for the discharge of treated effluent.

There is a current historical land claim pending for land in which the designated portions fall into. The claim has been in process for over 20 years. The Umnini community is the claimant.

EWS has a Land valuation policy that is applied to potential land takes. As such, whether the land will in future fall under expropriation (as per the Expropriation Act of 1963, Sect 25 (3) of SA Constitution) or restitution (as per the Restitution of Land Rights Act, Act 22 of 1994), the compensation value will be the same. EWS will be responsible for all transfer and registration costs.

Sappi (as the current owner) has an existing claim gazetted against it in terms of the Restitution of the Land Rights Act 22 of 1994, as amended. The reference number is KRN6/2/2/E/47/0/0/41.

Pipeline: The pipeline routing will follow the existing servitudes as far as possible. There is a possibility that private landowners will be impacted by a permanent land take and where portions of a servitude will need to be declared. The confirmed routing is not known at this stage, as such, private impacted landowners have not been identified at this point.

4. INSTRUCTIONS FOR THE ASSIGNMENT

i) Project Management

The consultant is to appoint a project manager with extensive experience in preparing a RAP/LRP that meets requirements of the host country and applicable international standards. The project manager will be responsible for the day-to-day implementation of the RAP/LRP work, including regular updates to the client and timely delivery of the final products.

ii) Planning Principles, Objectives and Applicable Requirements.

- Identify national and regional land-acquisition and resettlement legal requirements, permitting procedures, and compensation eligibilities.
- Provide a concise statement of principles and objectives that govern livelihood restoration, including IFC PS5 requirements.
- Identify gaps between the above two and state project land-acquisition resettlement strategies to bridge gaps.

Relevant IFC PS5 objectives:

- To avoid, and when avoidance is not possible, minimize displacement by exploring alternative project designs.
- To avoid forced eviction.
- To anticipate and avoid, or where avoidance is not possible, minimize adverse social and economic impacts from land acquisition or restrictions on land use by (i) providing compensation for loss of assets at replacement cost and (ii) ensuring that resettlement activities are implemented with appropriate disclosure of information, consultation, and the informed participation of those affected.
- To improve, or restore, the livelihoods and standards of living of displaced persons.

iii) Project impacts

- Identify types of project land use.

- Identify project activities/components causing involuntary resettlement (including restriction of land access).
- Define the alternatives to avoid and minimize involuntary resettlement.
- Assess types of impacts direct and indirect, permanent and temporary.
- Prepare impact tables that detail each category of affected land, assets, and persons.
- Document project resettlement minimization processes and outcomes.

iv) *Identification of affected persons and community*

Identify project-affected persons and communities through field surveys and provide a summary of relevant household-level socio-economic baseline for affected households (HH):

- **A census** to enumerate all affected persons and register them according to location to determine who will be eligible for compensation and assistance, and discourage ineligible persons, such as opportunistic settlers, from claiming benefits.
- **An inventory** of lost and affected assets at the household, enterprise, and community level.
- **Socioeconomic surveys and studies** of all affected persons (including seasonal, migrant, and host communities as relevant) in order to understand their socioeconomic profile, livelihoods and standards of living, land tenure and transfer system, types of existing land use and local production systems, use of natural resources, patterns of social interaction, social services and public infrastructure, and to identify vulnerable affected people, skills base and opportunities for employment of local people or for the use of local supplies and services; and opportunities to use the project to contribute to local sustainable development initiatives. Include robust relevant baseline, including identification of vulnerable people and measurement of various typical indicators that will become the basis of ongoing monitoring (see proposed indicators under M&E section below).
- **Analysis of surveys and studies** to establish compensation parameters, to design appropriate income and livelihood restoration and sustainable development initiatives, and to identify baseline monitoring indicators.

v) *Stakeholder engagement and public disclosure focused on the involuntary resettlement*

In coordination with EWS and the Concessionaire, undertake consultation and disclosure activities associated with involuntary resettlement planning. Map stakeholders (affected households, local/national authorities, relevant community-based organization, NGOs, among others) and develop specific strategies of engagement throughout the RAP/LRP process. All livelihood restoration measures will be developed in consultation with affected households and in collaboration with experts¹ in developing and implementing projects in their respective field. The process of stakeholder engagement shall be free, transparent, and culturally appropriated. Disclosure of relevant information and participation of affected households should continue during the planning, implementation, monitoring, and evaluation on ongoing basis to achieve outcomes that are consistent with the objectives of IFC PS5. Households should be able to make informed decisions about the livelihood restoration options.

Communicate early and repeatedly to affected persons that the livelihood restoration measures are there to make them self-sufficient and that those measures will not continue indefinitely. Disclosure requirements, list of stakeholders identified, process followed (meetings, focus groups etc.) for engagement, issues raised and responses provided, grievances and plan for ongoing engagement throughout the entire process will be listed in this section.

vi) *Eligibility criteria and compensation*

¹ This may include experts in training and skills development, agricultural, animal husbandry, artisanal skills etc.

- **Establish criteria for determining the eligibility of affected households** for compensation and other livelihood restoration assistance, including relevant cut-off dates. Eligibility criteria must be advantageous to women and other vulnerable groups, including those without legal title to assets. The eligibility criteria will be disclosed to affected communities and other project stakeholder as part of the Stakeholder Engagement activities. Feedback from the disclosure process will be used in the delivery of compensation and or livelihood restoration.
- **Prepare an entitlements matrix listing all likely impacts to identify:**
 - All categories of affected persons.
 - All types of loss associated with each category, and
 - All types of compensation. Livelihood restoration, and assistance to which each category is entitled.
- **Prepare standards for compensation and livelihood restoration:** Describe the methods used to determine compensation rates for assets lost, including land and compensation provided to date. In case of pending compensation, explain how their payment will be ensured. Develop a set of livelihood restoration measures that are appropriate to the local context and can be accessed easily by affected households. Each affected household is to be provided with various options, with the number of options per household to be determined by the level of impact and vulnerability. Describe in detail the different livelihood restoration measures to be implemented (e.g. cash², technical assistance, land-for-land, employment, etc) for different type of impacts and needs of affected HHs (e.g. vulnerable HH), preferably summarized in tabular form.
- In case the project gives rise to physical displacement, prepare options for relocation (as relevant) and income restoration: These will build on the existing social, economic and cultural parameters both of displaced persons and of host communities. Provide for relocation costs, lost income, and income support during transition. Where appropriate, prepare relocation plans including selection and preparation of relocation sites. Make provisions for landownership, tenure and transfer, and access to resources.
- **Make special provision for vulnerable groups**

vii) *Grievance mechanism*

Develop a grievance and disputes redress mechanism. The process shall clearly describe how affected persons will seek redress for grievances with the Concessionaire and/or relevant Public Entities regarding any aspect of the RAP/LRP. The process should give special attention to women and members of vulnerable groups to ensure they have equal access to grievance redress procedures.

viii) *Implementation arrangement*

Prepare a timeframe and implementation schedule for all activities under the land acquisition and involuntary resettlement process and in conjunction with the agreed implementation schedule for project components, showing how affected person will be informed, engaged, compensated, and monitored until livelihood is deemed restored. The arrangement shall include the organizational responsibilities for implementation

² Cash compensation by itself is seldom an effective livelihood restoration measures, especially in the case of vulnerable HH. It is recommended to complement such compensation with additional assistance or in-kind measures that are more sustainable.

including any interface with relevant authorities and mechanisms to ensure gaps between national legislation and IFC PS5 are bridged. The implementation arrangement shall also ensure that, before taking acquisition of the land or any other activities that may cause impact on affected persons, the relevant aspects of the LRP/RAP have been implemented, including that compensation and support has been made available before affected persons experience the impacts.

ix) *Monitoring, evaluation and reporting*

- a) Prepare a M&E and reporting plan, identifying the responsibilities, timeframe, and key indicators. This will include ongoing monitoring by the consultant and key agencies, supplemented, as needed, by an independent evaluation. Specify the timeframe for monitoring and reporting. The plan shall include ongoing M&E and a Completion Audit. The Completion Audit can be conducted after all entitlements have been delivered and should provide evidence that livelihoods have been restored or otherwise define specific additional measures to address any remaining gaps.

Include management of change steps, in case monitoring indicates that LRP measures are not being effective.

Define M&E indicators that:

- Reflect sustainable outcomes (not inputs or outputs);
- Are measurable;
- Are validated through consultation with project affected people;
- Include gender considerations;
- Require information that can be produced/gathered through reasonable effort and cost; and
- Track "livelihood restoration" as the recovery of multidimensional, aggregate household livelihood strategies.

Note: the Livelihood Restoration Plan (LRP) will be considered complete when the adverse impacts of resettlement have been addressed in a manner that is consistent with the relevant plan as well as the objectives of Performance Standard 5

x) *Budget*

Prepare a budget. Identify all land-acquisition and resettlement costs. Prepare budgetary allocation and timing. Specify sources of funding and approval process. Prepare an annual budget estimate for resettlement by major category expenditure.

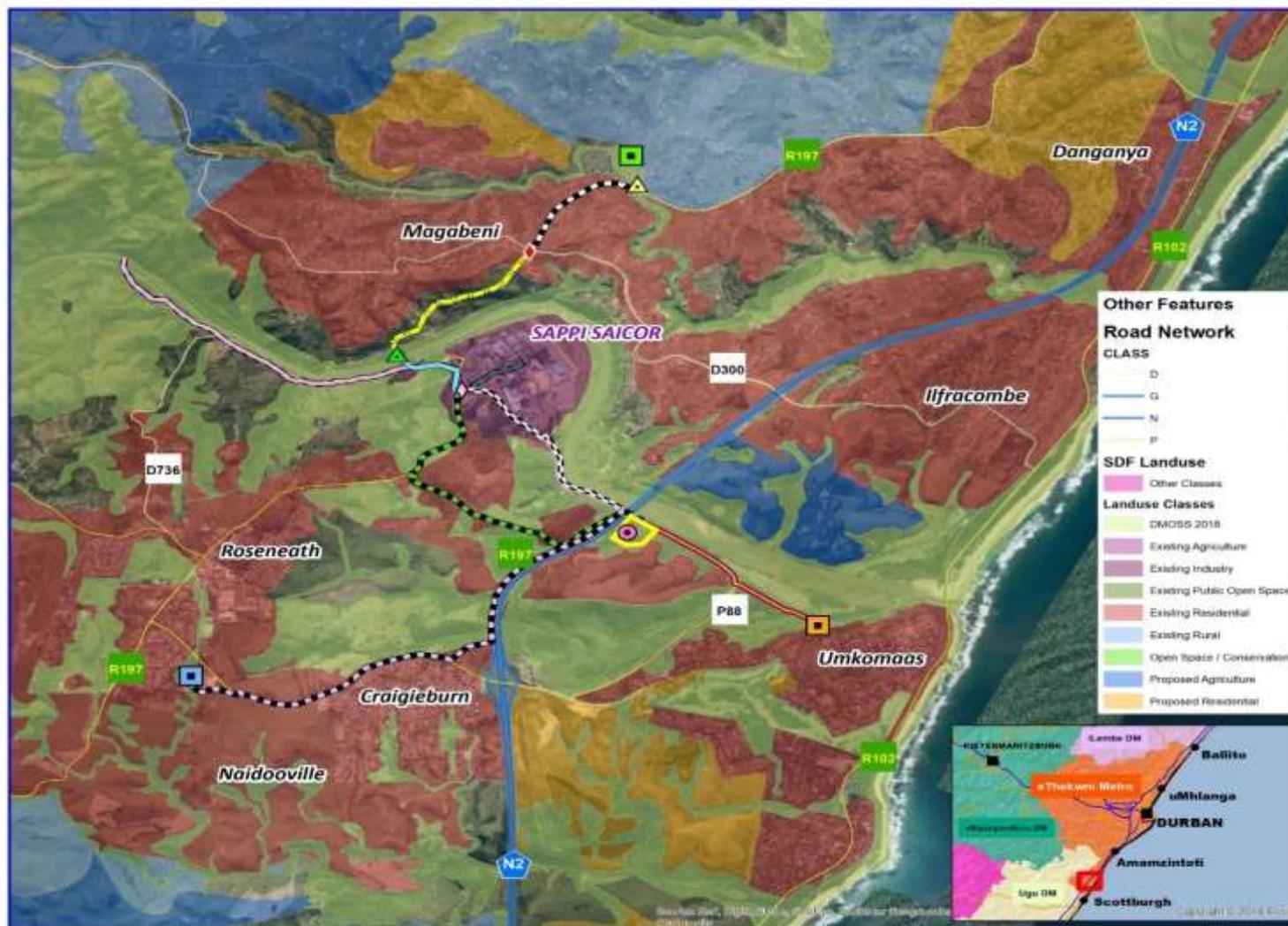
5. Annexes

1. Maps
2. Livelihood restoration indicator examples
3. Completion Audit Outline

ANNEX 1: MAPS OF SITE AND PRELIMINARY PIPELINE ROUTINGS (extracts from Environmental and Social Scoping Report)



Figure 5-1: Proposed site land



Environmental and Social Scoping process for the uMkhomazi Waste Water Treatment Plant

ENVIRONMENTAL & SOCIAL SCOPING PROCESS

Landuse

Legend

Treated Effluent Discharge Pipelines Alternatives

- Alternative Treated Effluent Pipeline - New WWTW to Umkomaas River
- Treated Effluent Pipeline - extend to SAPPY SAICOR
- Alternative Treated Effluent Pipeline - New WWTW to Umkomaas River

Raw Sewage Transmission Pipelines - Gravity Fed Proposed Pipelines:

- Craigieburn Discharge SH1 to Umkomaas WWTW
- Existing Craigieburn WWTW To New Umkomaas WWTW
- Magabeni Sub Pump Discharge SH1 to P10-2

Raw Sewage Pipelines - Pressure-fed Rising Mains Proposed Pipelines:

- Magabeni Sub Rising Main 1
- Magabeni Sub Rising Main 2
- Umkomaas Rising Main 1 From UM to New WWTW

Discharge Manholes

- Magabeni Discharge SH 1
- Magabeni Discharge SH 2

Proposed Pump Stations

- Magabeni Pump Station 1
- Magabeni Pump Station 2

Existing WWTWs

- Existing Craigieburn WWTW
- Existing Magabeni WWTW to be continued
- Existing Umkomaas WWTW
- Proposed Umkomaas WWTW
- Proposed Umkomaas WWTW SW

Other Features

Road Network

CLASS

- D
- G
- N
- P

SDF Landuse

- Other Classes

Landuse Classes

- DMOSS 2018
- Existing Agriculture
- Existing Industry
- Existing Public Open Space
- Existing Residential
- Existing Rural
- Open Space / Conservation
- Proposed Agriculture
- Proposed Residential

Scale 1:30,000

Date: 28 February 2021
Created by: Paul de Gooijer
Revised by: 6028126

Data Sources:
 GIS
 eThekweni Municipality
 eThekweni DfP

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Figure 5-2: Umkomaas land use map

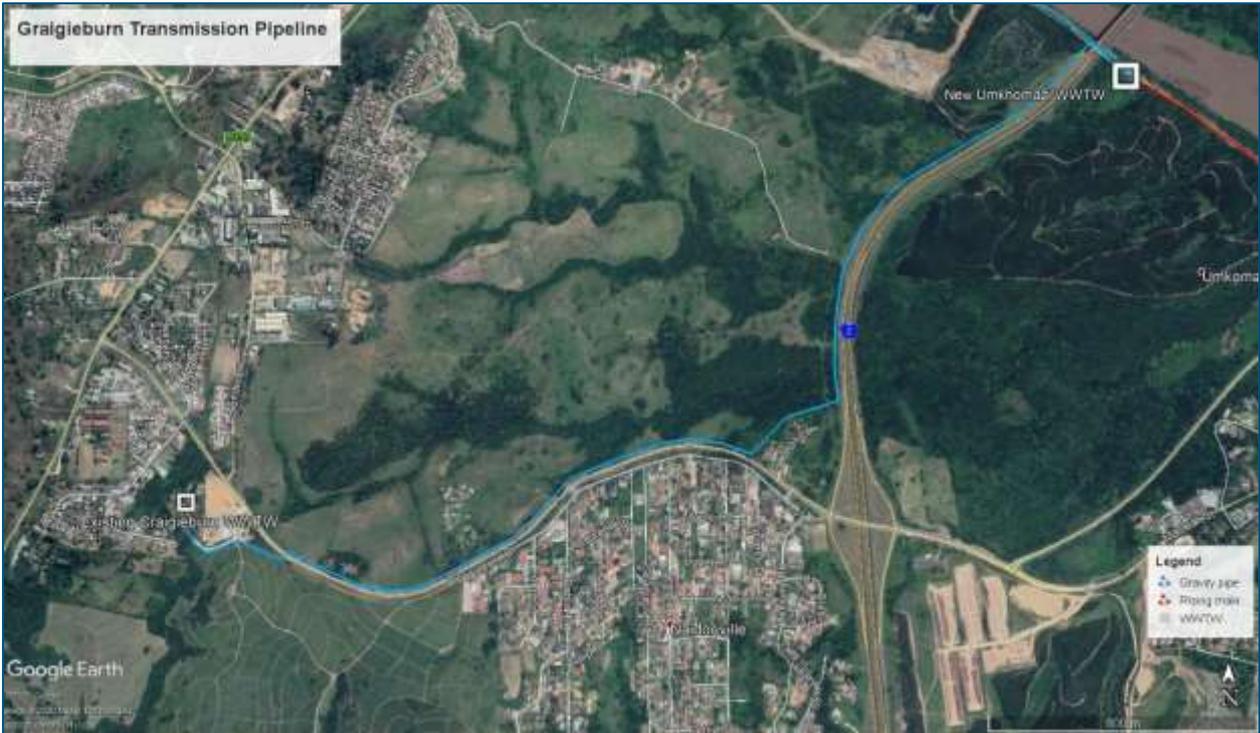


Figure 5-3: Craieburn transmission pipeline



Figure 5-4: Umkomaas transmission pipeline

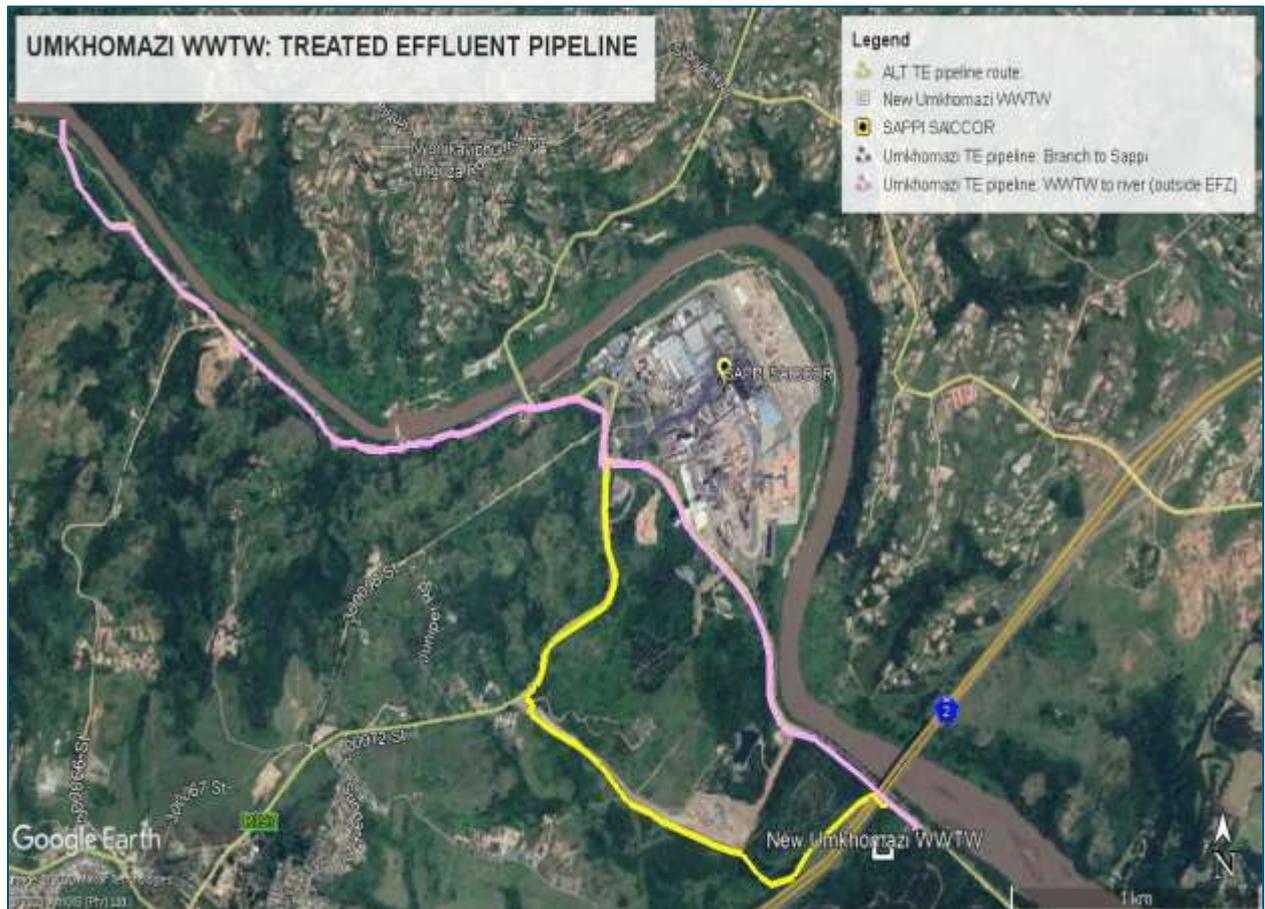


Figure 5-5: Umkhomazi Treated Effluent Pipeline (with the preferred alignment in pink and alternative alignment depicted in yellow)

ANNEX 2: LIVELIHOOD RESTORATION INDICATOR EXAMPLES

- Net income (adjusted for local inflation).
- Consumption/investment ratio.
- Self-rating by project affected people as to whether their ability to make a living has changed.
- Productive asset inventory.
- Luxury asset inventory.
- Food security data.
- Catch/effort ratios (in the case of fishermen).
- Crop output per area cultivated.
- Access to resources for subsistence and productive use (if applicable, binary indicators on availability, numeric on distance to the source): water, free fuel, wood, etc.; pasture land; areas for hunting/fishing/collecting.
- Access to infrastructure and public services: electricity (binary); education facilities (binary, distance); health facilities (binary, distance).
- Employment status: paid employment, self employment, and seasonal variation taken into account.
- Time use (to reflect potential change in time use patterns) for: self-subsistence activities; paid employment; and self employment/household production.

ANNEX 3. Completion Audit Table of Contents

1. *Executive Summary:* Concise summary of resettlement undertaken to date, need for any on-going resettlement, magnitude of displacement, activities undertaken, grievances and key issues addressed, outstanding and on-going monitoring and evaluation processes and key recommendations.
2. *Background:* A brief description of the monitoring process to date covering the project and impacted communities, magnitude of displacement, key resettlement and livelihood impacts, legal framework, eligibility criteria and entitlement framework, timing of the various components of physical and economic displacement undertaken, resettlement and/or livelihood restoration activities and compensation provided and major or outstanding issues or grievances.
3. *Review Objectives:* Outline of the main objectives of the resettlement and/or livelihood restoration plan and a summary of studies and activities undertaken in support of resettlement implementation and livelihood restoration (e.g., preliminary and on-going consultation, stakeholder mapping and census surveys, asset surveys, socio-economic baseline studies, participatory planning meetings, site selection studies, organizational structures for implementation), and assessment of the process and evaluation of the outcome (including any participatory monitoring and evaluation methodologies used).
4. *Key Findings:* Issues to be considered may include, among others:
 - Extent of public information and consultation in advance of land acquisition, and adequacy of ongoing consultation
 - Types of compensation provided and adequacy of that compensation (e.g., sufficient to cover replacement costs of lost assets, housing conditions, compensation/entitlements, income restoration and livelihood sustainability measures)
 - Level of participation of affected people in decisions regarding compensation rates, location of new resettlement sites and options for livelihood restoration
 - Effectiveness of livelihood restoration measures
 - Measures taken to protect (affected) vulnerable persons and groups
 - Adequacy of the grievance redress process and outcomes
 - Monitoring and evaluation process and outcomes.
5. *Conclusion and Key Recommendations/Corrective Actions:* Concise summary of conclusions and recommendations, and for any gaps or outstanding issues, provide a proposed time bound Corrective Action Plan with Key Actions, dedicated Human Resources, proposed Timeline for close-out and a Budget.