



the federation for a sustainable environment

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Postnet Suite #113, Private Bag X153, Bryanston, 2021

Dear Mr Singo

BACKGROUND INFORMATION DOCUMENT FOR COAL, PSEUDOCOAL & TORBORNITE MINING RIGHT APPLICATION, INTEGRATED WATER USE LICENSE APPLICATION AND ENVIRONMENTAL AUTHORISATION, ALL PORTIONS (EXCLUDING PORTION 46, 74, & 90) OF THE FARM TENBOSCH 162 JU, ALL PORTIONS (EXCLUDING PORTION 01) OF THE FARM VYEBOOM 414 JU, ALL PORTIONS OF THE FARM TURFBULT 593 JU AND ALL PORTIONS OF THE FARM TECKLENBURG'S RANCH 548 JU, IN THE MAGISTERIAL DISTRICT OF BARBERTON, MPUMALANGA PROVINCE.

#### ADDITIONAL COMMENTS

We consider it relevant to refer the Applicant and the decision makers to the South African Human Rights Commission's (SAHRC) findings and directives pursuant to its *National Hearing on the Underlying Socio-Economic Impacts of Mining-Affected Communities in South Africa* since the abovementioned mining application and integrated water use license application falls within a sensitive area, that is, within an area which is surrounded with different types of wetlands and the Crocodile River with tributaries, as well as in close proximity to the National Kruger Park and Mozambique, which through trans-boundary water systems and obligations shares the water with South Africa.

The SAHRC directed that:

- *"In relation to existing mining licence applications in sensitive and protected areas, the DMR (and DEA) are directed to immediately issue public notices of such applications and convene extensive public participation, including local communities, prior to the granting of such licences. The DEA and DMR are directed thereafter to report to the SAHRC on the number and particulars of applications received, the manner in which consultations are conducted, a list and details of objections lodged, the number of applications approved, as well as the conditions under which licences have been granted.*
- *The DEA (together with the DWS) are directed to take definitive steps to ensure legal protection of our water source areas through inter alia, the use of section 24(2A) of NEMA,*

*the inclusion of specific provision that provides that the Minister of Water and Sanitation has the powers to restrict or prohibit the grant of water use licences in water source areas alongside the use of a host of legal tools including section 26(g) of the Regulations of the National water Act, section 49 of the MPRDA management tools in terms of the Conservation of Agricultural Resources Act, 43 of 1983 and SPLUMA, environmental Management Frameworks, and any further tools available. A further provision that should be applicable, includes declarations in terms of the National Environmental Management: Biodiversity Act, 10 of 2004, of water source areas as threatened ecosystems”.*

I, behalf of the Federation for a Sustainable Environment (FSE), hereby request to be registered as an Interested and Affected party.

The FSE is a federation of community based civil society organisations committed to the realisation of the constitutional right to an environment that is not harmful to health or well-being, and to having the environment sustainably managed and protected for future generations. Their mission is specifically focussed on addressing the adverse impacts of mining and industrial activities on the lives and livelihoods of vulnerable and disadvantaged communities who live and work near South Africa’s mines and industries.

We respectfully request electronic copies of the EIA, EMPR and Specialist Studies or an electronic link to the information. Please furthermore confirm the date upon which the commenting period will prescribe.

Our interest in this matter is motivated by the fact that the FSE is a member of the Section 11 Advisory Committee of the South African Human Rights Commission (SAHRC) to monitor and assess the implementation of the recommendations and directives arising out of the Commission’s National Hearing on the Underlying Socio-economic Challenges of Mining-affected Communities in South Africa; and a member of inter alia:

- Study Steering Committee (SSC): Development of the Limpopo Water Management (WMA) Area North Reconciliation Strategy (2017)
- Member of the Water and Sanitation Sector Leadership Group
- Steering Committee: National Environmental Impact Assessment and Management Framework (Department of Environmental Affairs)
- Regional Steering Committee of the Catchment Management Agency for the Vaal River (Department of Water Affairs - DWS.)
- Implementation Task Team: Remediation Action Plan for the Wonderfonteinspruit Catchment Area (NNR and DWS)
- DWS’ study steering committee on the Feasibility Study for a Long Term Solution to Address the Acid Mine Drainage Associated with the East, Central And West Rand Underground Mining Basins
- DWS’ Expert Steering Committee for the Resource Quality Objective Determination Study for the Upper and Lower Vaal Water Management Area
- DWS’ Steering Committee for the Classification of Significant Water Resources in the Upper, Middle and Lower Vaal Water Management Areas (Department of Water Affairs)
- DWS’ Steering Committee on the Classification of significant water resources in the Mokolo and Matlabas catchments: Limpopo Water Management Area and Crocodile (West) and Marico WMA: WP 10506
- Strategy Steering Committee (SSC) for the DWS’ Crocodile West water Supply System Reconciliation Strategy (Directorate: National Water Resource Planning)
- SSC for the DWS’ Vaal River System Reconciliation Strategy Study

- The South African Human Rights Commission’s Section 5 Advisory Committee on Mining and Acid Mine Drainage

The FSE is furthermore part of an NGO Coalition opposing Atha Africa’s application for a Coal Mine within the Mabola area near Wakkerstroom, which is part of the Enkangala Drakensberg Strategic Water Source Area, which constitutes the headwaters of several critically important rivers, including the Vaal. Mabola is part of one of 21 strategic water resource areas, which together form the catchments for 50% of the country’s freshwater supply.

From a superficial reading of the BID we infer that:

- The applicant is: Manzolwandle Investment (Pty) Ltd Company;
- The application is for an open cast coal mine;
- The life of mine is 30 years;
- There are different types of wetlands and the Crocodile River with tributaries (Ngweti) around the mining area;
- The mining area is adjacent to the National Kruger Park.

Our preliminary comments, grounded upon the information in the BID and in the absence of having access to the EIA/EMPR and Specialist Reports, are as follows:

1. Since the mining area is surrounded with different types of wetlands and the Crocodile River with tributaries, as well as in close proximity to the National Kruger Park (where in terms of Section 48 of the National Environmental Management: Protected Areas Act (NEMPAA) , “despite other legislation” ... “no person may conduct commercial prospecting”) and Mozambique (that through trans-boundary water systems and obligations shares the water with South Africa), protection of the ecological infrastructure of this area is crucial.
2. The protection of wetlands and river systems should be of high priority and critical since, in terms of the National Water and Sanitation Master Plan:
  - a. Fifty-seven percent of river ecosystem types are threatened. 65% of main rivers are threatened including 46% critically endangered.
  - b. High water yield areas constitute only 4% of South Africa’s surface area and are the water factories of the country. Currently only 18% of them have any form of formal protection.
  - c. 65% of wetland ecosystem types are threatened making wetlands the most threatened of all ecosystems. 71% of them are not being protected at all. Wetlands are exceptionally high value ecosystems that make up only a small fraction of the surface area of the country.
3. This matter furthermore resolves around the issue of mining in an area of highest biodiversity importance in terms of the Mining and Biodiversity Guideline. River and Wetland Freshwater Ecosystem Priority Areas (FEPAs) and a 1 km buffer around these FEPAs are categorised as highest biodiversity important areas with the highest risk for mining in terms of the above Guideline.

4. This Application must therefore be dealt with in accordance with the Mining Biodiversity Guideline and especially in the evaluation of the Best Practicable Environmental Option (BPEO) and where other highly sensitive areas have already been impacted upon.
5. The balancing of the negative environmental impacts versus the alleged short term social benefits (which have not accrued in the last period of mining to the local communities) and the economic advantages can only be assessed if the loss to the environment and the long term impacts upon the surface and groundwater are evaluated. This appraisal ought to be conducted with the guidance of the Mining Biodiversity Guideline and the taking into consideration of the opportunity costs, and the Regulations for the Financial Provisions for Prospecting, Exploration, Mining and Production Operations (2015) and the proposed Regulations pertaining to Financial Provisioning for the Rehabilitation and Remediation of Environmental Damage Caused by Reconnaissance, Prospecting, Exploration, Mining or Production Operations (17 May 2019), which includes financial provisioning for:
  - a. “progressive rehabilitation and remediation
  - b. rehabilitation, remediation, decommissioning and closure activities; and
  - c. remediation and management of residual and latent environmental damage including the ongoing pumping and treatment of polluted or extraneous water where relevant”.
- 6.

Since coal mines are categorised by the DWS’s Mine Water Management Policy as “Category A” Mines or acid producing mines, this Application calls for the determination of the costs for the pumping and treatment of Acid Mine Drainage not only during the life of mine, but also the post-closure pumping and treatment, which may continue for many years after closure. Sufficient financial provision ought to be made by the Applicant in order for the costs not to be externalised to the State, downstream water users and future generations.

7. According to the Mining and Biodiversity Guideline the importance of the biodiversity features in these areas and the associated ecosystem services is sufficiently high to prohibit mining in these areas. Given the very high biodiversity importance, the said Guideline states that an EIA conducted in respect of such an area should include the strategic assessment of optimum, sustainable land-use for a particular area which should determine the significance of the impact on biodiversity. The EIA must take into account the environmental sensitivity of the area, the overall environmental and socio-economic costs and benefits of mining as well as the potential strategic importance of the minerals to the country.
8. The Guideline states that the EIA “needs to identify whether mining is the optimal land use, whether it is in the national interest for that deposit to be mined in that area and whether the significance of unavoidable impacts on biodiversity are justified. It is important that a risk averse and cautious approach is adopted. This implies strongly avoiding these biodiversity priority areas, given the importance of the receiving environment and the probability that the proposed activity would have significant negative impacts”.
9. When considering mining these biodiversity priority areas, the Guideline prescribes a set of filters that should be sequentially applied and "mining should only be considered if:
  - a) It can be clearly shown that the biodiversity priority area coincides with mineral or petroleum reserves that are strategically in the national interest to exploit.

- b) There are no alternative deposits or reserves that could be exploited in areas that are not biodiversity priority areas or less environmentally sensitive areas.
  - c) It can be demonstrated that they are spatial options in the landscape that could provide substitute areas of the same habitat conservation, to ensure that biodiversity targets would be met.
  - d) A full economic evaluation of mining compared with other reasonable/feasible alternative land uses, undertaken as a necessary component of the EIA, shows that mining would be the optimum sustainable land use in the proposed area.
  - e) A detailed assessment and evaluation of the potential direct, indirect and cumulative impacts of mining on biodiversity and ecosystem services shows that there would be no irreplaceable loss or irreversible deterioration, and that minimising, rehabilitating, and offsetting or fully compensating for probable residual impacts would be feasible and assured, taking into account associated risks and time lags.
  - f) A risk averse and cautious approach, taking into account the limits of current knowledge about the consequences of decisions and actions, can be demonstrated both in the assessment and evaluation of environmental impacts, and in the design of proposed mitigation and management measures.
10. The Guideline states further that: “The above filters should form the basis for deciding on whether or not, and how and where, to permit mining. This means that based on the significance of the impact, some authorisations may well not be granted. If granted, authorisation may set limits on allowed activities and impacts, and may specify biodiversity offsets that would be written into licence agreements and/or authorisations”.
11. The EIA/EMP therefore must be compiled so as to give effect to the Guideline and the decision maker must consider the Guideline in deciding whether or not to grant environmental authorisation.
12. The fact is that coal is plentiful on the Highveld it is overproduced and the sensitive environment is neither of the aforesaid. It is not possible to make an informed decision due to lack of information dealing specifically with the matters raised in the Mining Biodiversity Guideline. This includes an assessment of the opportunity costs, e.g.
- Understanding the value of the foregone opportunity
  - The achievement of the desired aim/goal for the specific area;
  - Optimising of positive impacts;
  - Minimising of negative impacts;
  - Equitable distribution of impacts; and
  - The maintenance of ecological integrity and environmental quality.
13. Applying the “opportunity cost” principle would change the question being asked, namely, by placing a positive duty upon the decision maker to consider if the proposed development will constitute the best use of the resources (i.e. the best practicable environmental option).
14. The decision maker must make a decision based upon the following premise:

- a) If we, as a country, are to mine all minerals (and in the case under consideration, coal) in the ground, then there should be no regard for the environment since all of South Africa, as a resource rich country, will in any event be mined.
  - b) If, however, not all minerals are to be mined and some will be left in the ground, then a decision on which areas to mine and the areas in which to leave the minerals in the ground, should be made.
15. It is our submission that the first scenario is not sustainable and thus not an option. The second scenario is of direct application in this application . The decision must reflect the guidelines in such a situation, as well as the lack of information before the decision maker in the documentation dealing with such a scenario.
16. The decision will have to balance the above-mentioned factors at the hand of the EIA Regulations and other guidelines, including the Mining Biodiversity Guideline as well as the National Development Plan's framework that by 2030 South Africa's transition to a low-carbon, climate resilient and sustainable economy and society will be well underway.
17. The reasons for the decision maker's decision will have to address these issues in detail in order to justify the decision.

SUBMITTED BY:

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