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FOR ATTENTION: MR REUBEN MASENYA
E-Mail: Reuben.Masenya@dmre.gov.za

COMMENTS ON THE DRAFT NATIONAL MINE CLOSURE STRATEGY

Dear Sir,

The following comments are submitted – with diffidence - on behalf of the Federation for Sustainable Environment (FSE). 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.

PREFATORY

While the FSE welcomes the publication by the Department of Mineral Resources and Energy (DMRE) of its Draft National Mine Closure Strategy. We do however have concerns about the strategy from a number of different perspectives. Our comments are as follows:

We respectfully submit that we would like to see a "*pro-active*" approach to the sustainable closure of mines rather than the current regimes which are, in our opinion, very much premised on a reactive approach. To be clear:

a) We understand that this is a strategy document and not a draft policy, but as such, it is vital that this strategy reflects the foundations of the future policy and that our concerns and those of other stakeholders are then taken into account when the policy is drafted;

b) We accept that the National Mine Closure Strategy 2020 seeks to proactively address the question of a socially and environmentally sustainable post-mining economy for mining dependent communities;

c) We applaud this ambition, but have significant concerns about the implementation and enforcement of the resulting policy given the track record of implementation the previous mine closure strategies;

d) We are equally concerned that any loopholes in the policy or abuse of the policy as we have witnessed in a number of recent cases of disastrous mine closures are firmly dealt with and closed;

e) The Strategy is silent on the apportionment of liability including the retrospectivity of the polluter pays principle; and

f) While we understand that the focus of the Mine Closure Strategy 2020 is on the mitigation of the social impacts of mine closure, this should not be at the expense of the standards of rehabilitation that are mandatory in terms of current legislation and regulation, but are complementary and supplementary to these existing standards.

g) The Strategy informs us that "*non-mining utilisation of mining lands for economic programmes must be planned for as an integral element of a mine's life cycle*". Reference is made in the Strategy to agricultural projects, self-generation of energy by mining companies including biomass and development of enterprises in the tourism sector.

h) With reference to the Witwatersrand gold fields, the FSE supports the use of new land forms as carbon sinks facilitated by the growth of low-water demand and high root-biomass crops, tourism, industrial sites, lined landfills, graveyards, sewage sludge disposal and land-farming;

i) However, the FSE considers residential townships, edible crop production including household food gardens (with the potential risks of bioaccumulation of metals, including uranium) and livestock grazing, to be high risk end land-uses for the footprints of gold tailings storage facilities and areas within the aqueous or aerial zone of influence of gold tailings storage facilities and metallurgical plants; and

j) Failure by the regulators and industry to agree on suitable soft end land-uses and buffer zones could exacerbate liabilities for closing mines by resulting in subsequent land-uses that are sub-economic or risky.

IN SUBSTANTIATION OF OUR POINTS:

1. The Failure to Publish and Implement the 2008 Regional Mine Closure Strategy

1.1. The delay in the finalisation and publication of the DME's 2008 Regional Mine Closure Strategies for the Witwatersrand gold fields (West Rand-, East Rand-, Far West Rand-, Central Rand and KOSH gold fields) has resulted in significant ecological degradation and pollution;

1.2. This has resulted in the externalisation of costs and impacts to the State, neighbouring mines, a mute environment, future generations and financially beleaguered municipalities; and

1.3. We refer in this regard specifically to the business rescue procedures and liquidation of mining companies such as the Grootvlei Mine, the Blyvooruitzicht Gold Mining Company, Shiva Mine, the Mintails Group of Companies, Central Rand Gold, etc.

The Draft National Mine Closure Strategy informs us that "*formal mine closure legislation was only promulgated for the first time with section 43 of the MPRDA, 28 of 2002 as amended and the Mine Health and Safety Act, 29 of 1996*".

2. Inadequate Implementation and Enforcement of Current Policy and Regulation

2.1. After the effluxion of more than twenty years, notwithstanding the promulgation of formal mine closure legislation in 2002, the implementation and enforcement of the current MPRD Regulations[1], which prescribe the requirements to obtain a closure certificate, remain weak.

A strategy exists in vain if the implementation of its resultant policy cannot be enforced. The Draft National Mine Closure Strategy ought to have teeth to ensure that the objectives of the Strategy are realised and that the Strategy achieves the desired outcome.

2.2. The Draft National Mine Closure Strategy recommends that the submission of the mine closure plans should become a precondition to the granting of a mining licence, as part of a mine EMP or EIA.

2.3. This recommendation is, however, not new and was included in Regulation 56 of the MPRD Regulations, which prescribes the principles of mine closure as follows:

[1] A holder of a mining right or permit must apply for a closure certificate in terms of the MPRD Regulations upon lapsing or abandonment of his right/permit; cessation of mining operations, or relinquishment of any portion of land to which right/permit/permission relates. Within 180 days from these situations occurring, the holder must complete and submit a prescribed closing plan, including an environmental risk report, to the DMRE Regional Manager. Only after the Chief Inspector and DWS confirmed in writing that provisions have been complied with pertaining to health and safety; management of potential pollution to water resources; may a closure certificate be issued; and may the financial contribution / part thereof be returned.

"In accordance with applicable legislative requirements for mine closure, the holder of a prospecting right, mining right, retention permit or mining permit must ensure that-

(a) the closure of a prospecting or mining operation incorporates a process which must start at the commencement of the operation and continue throughout the life of the operations".

(e) the land is rehabilitated, as far as is practicable, to its natural state, or to a predetermined and agreed standard or land use with conforms with the concept of sustainable development.

2.4. Notwithstanding the abovementioned Regulations, mining rights and permits were granted by the DMRE to mining companies with closure plans which are at best plans for interim stabilisation (such as sloping, grassing/re-vegetation, phytoremediation, stockpiling for road building material) or sub-economical future land use (such as wilderness status or open space).

2.5. The endpoint of closure must incorporate the concept of sustainable sequential land use (with associated use of other resources connected with such sequential land use, for example water use) and since they are the ultimate recipients of potential, ongoing and historical pollution and the potential future land users, interested and affected parties must be involved in the agreements regarding future land use of affected areas and thus in the decisions regarding the establishment of objectives for such future land use, as well as in discussing the alternatives for engineering interventions, where decision regarding such options will affect the future land use.

3. SAHRC's Directives pursuant to its National Hearing on the Underlying Socio-Economic Challenges in Mining Affected Communities

3.1. The National Mine Closure Strategy is specifically directed towards the mitigation of the devastating socio-economic impacts that accompany mine closure;

3.2. In this regard, the findings and directives of the SAHRC pursuant to its 2016 National Hearing on the Underlying Socio-Economic Challenges in Mining Affected Communities have distinct relevance;

3.3. The Commission found that "*…the DMR has not taken adequate steps to secure financial provision for rehabilitating damage to the environment and water resources and there is an immediate need for all EIAs and EMPs to clearly detail land quality and potential post closure land uses. Licences should not be granted where long-term sustainable land use cannot be guaranteed."*

3.4. In addition, the Commission directed the DMR to:

a) "*…amend the content guidelines for EIAs and EMPs to include comprehensive information on the quality of land and sustainable options for potential post-closure land use.*"

b) *"… consider legislative reform to address the gaps in partial and full mine closures. Specifically, the DMR must: a. Provide clarity on the process for closure, including all processes followed by the Department prior to issuing of closure certificates, such as the need to ensure community participation, and monies set aside; b. Provide a detailed list of all mines under "care and maintenance". The list should include monitoring measures undertaken by the Department; and c. Consider the establishment of a trust account where mining companies deposit funds, which the state can access to remedy water and other impacts caused by un-rehabilitated, abandoned or derelict mines."*

c) *"…together with relevant stakeholders, develop a Regional Master Plan aimed at addressing environment rehabilitation and the remediation of derelict and ownerless mines. The Plan should specifically refer to legacy issues such as acid mine drainage and illegal miners, as well as sites with potential nuclear contamination and must include timelines and funding mechanisms."*

3.5. Since the FSE was a member of the Section 11 Advisory Committee of the SAHRC, we strongly recommend the implementation of the above-mentioned directives along with the finalisation of the National Mine Closure Strategy.

4. The Strategy and its resulting policy must address the serious loopholes in current policy, legislation and regulation

4.1. The Draft National Mine Closure Strategy ("the Strategy") refers to temporary closure or care and maintenance as "*a loophole for avoiding expensive closure programmes*." There are many other loopholes that mining companies use for avoiding closure.

4.2. The Strategy is silent on the loopholes regarding business rescue procedures and liquidation.

The Parliamentary Portfolio Committee's (PPC) position on Shiva Uranium (Pty) Lt and Mintails Mining SA (Pty) Ltd is testament to this. Pursuant to the Parliamentary Portfolio Committee (PPC) on Mineral Resources and Energy's oversight visit to Shiva Uranium (Pty) and Mintails Mining SA (Pty) Ltd in 2018, the PPC found[2]:

a) "It is clear that some mining companies are still operating without adequate financial provision for repairing damage caused to the environment by mining

[2] Ref. 22 November 2018: ANNOUNCEMENTS, TABLINGS AND COMMITTEE REPORTS NO 174–2018. No 174—2018, FIFTH SESSION, PARLIAMENT. Pages 39 – 53

activities, if they suddenly close. Neither Shiva Uranium (Pty) Ltd and Mintails Mining SA (Pty) Ltd has saved all the money they were supposed to set aside under the law to pay for environmental rehabilitation. The shortfalls are R36.6-million for Shiva and R460-million for Mintails;

b) *"The state will inherit these liabilities if the mines are finally liquidated;*

c) *"The DMR has failed to implement effectively and carry out the intentions of Parliament to ensure that all mines rehabilitate the damage they cause;*

d) *"Changes to the mining law were made by Parliament after 2002 to ensure that in mining, as elsewhere, the polluter must pay. The new laws have not proven effective in avoiding this situation where the state and the taxpayer still ends up paying for the environmental harm caused by minin;.*

e) *"There is a lack of clarity on the rules for the Department of Mineral Resources when it comes to Business Rescue Practitioners. It seems there is non-application of the law resulting in a free for all;*

f) *"The DMR allowed Mintails to operate between 2012 and 2018, despite the fact that the Department had never approved the environmental management plans of the mine and had never issued the company with a mining right under the la;.*

g) *"There is a huge regulatory gap regarding the financial provision of environmental rehabilitation of a mine during the process of business rescue; and.*

h) *"There is a lack of standardization by the DMR on how to relax environmental obligations of a mine* ***during the business rescue stage."*** (Emphasis added.)

4.3. The PPC made the following recommendations:

a) "The DMR must identify clearly and specifically the gaps between mining, insolvency and company law that have led to this ongoing situation, where the polluter does not pay, it is the state that ends up paying.

b) "DMR should get specific legal opinion on these complex issues.

c) "The DMR must report to the Committee in Parliament on what it will do [or needs to do] differently in future to ensure that this situation does not continue.

d) "DMR must report on what efforts they have made to hold directors and shareholders of Shiva and Mintails liable for the environmental debts of these failed ventures.

e) *"The DMR must actively ensure that the licensing of mines goes with responsibility and accountability.*

f) ***"The DMR should further explore the regulatory gaps resulting from the business rescue process and come up with regulations that will ensure full environmental compliance during the period when a mine is experiencing financial distress.***

g) ***"The DMR should design and implement standardized approaches when dealing with the relaxation of environmental financial provisions for mines that are undergoing business rescue process."*** (Emphasis added.)

5. The lack of articulation between the closure requirements in the MPRDA and the process for winding up companies as set out in chapter 14 of the Companies Act, 1973.

Of relevance here are the loopholes, which Prof Tracy Humby of the School of Law, University of the Witwatersrand highlighted in her treatise titled "Facilitating dereliction? How the South African legal regulatory framework enables mining companies to circumvent closure duties."

5.1. The treatise refers to the lack of articulation between the closure requirements in the MPRDA and the process for winding up companies as set out in chapter 14 of the Companies Act, 1973. Chapter 14 establishes a process whereby insolvent companies are placed under the custodianship of a liquidator who manages the fair and equitable allocation of the company's property amongst its various creditors;

5.2. The MPRDA places no specific obligation on the court to determine whether a company applying for a provisional liquidation order has applied for a closure certificate, ensured the transfer of environmental liabilities, or actually topped up any shortfall of funds in the chosen vehicle for financial provision. This lack of specificity is exacerbated by the narrow notice requirements, as chapter 14 requires only that employees, trade unions and SARS should be notified of a company's intention to initiate winding up proceedings (s 346A Companies Act, 1971);

5.3. The duties and potential liability of the liquidator during the liminal phase between the granting of the provisional and final winding-up orders are unclear. It is uncertain, for instance, whether the liquidator is obliged to apply for a closure certificate where the company itself has failed to do so, or whether the liquidator(s) would be responsible for environmental damage occurring during the liquidation phase.

5.4. It is not clear whether the financial provision for rehabilitation already "made" would be regarded as an asset of the company available for distribution to the creditors.

5.5. The public interest in rehabilitation, specifically to ensure that the state and communities do not assume a disproportionate share of the environmental risks, should however be enough to justify the pre-liquidation settlement of the financial provision for environmental rehabilitation; i.e. it should be part of the court order granting provisional liquidation. However, there is no clear obligation in law vesting in mining companies to do this.

5.6. Finally, one of the most serious consequences of the winding up procedure is that the company ceases to exist as a legal person. The environmental obligations specified in the MPRDA are linked to the "holder" of a prospecting or mining right, and this in turn is defined with reference to a "person". If no "person" legally exists these obligations by extension cannot be enforced.

5.7. Government departments charged with the custodianship of mineral resources or the protection of the environment are not required to be notified and in practice are frequently caught on the back foot, becoming aware of a company's pending liquidation after a winding-up order has already been granted by a court.

6. The Biggest Loophole: Pass the Parcel

The most common practice for mining companies avoiding their mine closure commitments is that of selling mines close to closure on to less well-resourced companies who will relieve them of the responsibility and liability of dealing with the problems of closure. This "pass-the-parcel" approach to the custodianship of the closure plan, where the mines inevitably end up in the hands of the weakest companies who neither have the resources, will or intention to manage closure responsibly, seriously undermines the value and integrity of the forward planning approach to mine closure.

This must be directly addressed in this strategy. Measures should include:

6.1. Liability for pollution, ecological degradation, the pumping and treatment of extraneous water, and latent and residual impacts, as well as the obligation to apply for a closure certificate, vests in the last holder of the right, in all likelihood the least well-resourced and most precarious corporate entity; and

6.2. If mining companies transfer liability to these delinquent companies, responsibility for closure should revert to the selling company. This should deter mining companies from indiscriminately passing on their liabilities.

7. The use of complex corporate structures to obfuscate responsibility for closure

In addition to legally transferring a mining right with written ministerial consent, listed mining companies currently have the option of exiting a liability escalating venture by changing the controlling interest of the corporate entity holding the right. There is no state oversight of this process at present.

7.1. The bankruptcy case of the Mintails Group of Companies provides an excellent example of the abovementioned practice, leaving the State and the local communities around the mines with the burden of uncovered post-mining environmental rehabilitation costs.

7.2. The Report by Stichting Onderzoek Multinationale Ondernemingen (Centre for Research on Multinational Corporations) (www.mindthegap.ngo) explains:

7.3. Mintails S.A. (Mintails), a fully-owned subsidiary of Mintails Limited (MLI), held three mining rights in South Africa – West Wits Mining, Minerals and Mining Reclamation, and Mogale Gold. In the 2010s, Mintails was granted these mining rights by the Department of Mineral Resources (DMR), subject to adequate provision for environmental rehabilitation liability. However, the mining rights were never fully issued, as Mintails failed to provide multiple financial and social provisions.[3]

7.4. Despite the lack of a valid mining licence, Mintails was allowed to continue mining operations, amid numerous documented complaints of environmental contraventions.[4] After several statutory notices from DMR, in which the department asked Mintails to comply with environmental regulations and to provide adequate remedy for the damages it had caused, the Director General of DMR directed Mintails to provide a quarter of all the due costs in October 2014. The company was required to submit a six-month payment plan to provide the remaining sum.[5] Unable to raise this money, Mintails filed for business rescue a year later.[6]

7.5. Several actions by MLI and Mintails resulted in diminished environmental liability. First, Mintails hired two consultants who provided substantially downgraded estimates of the company's liability for the environmental harms originating from its mining activities.[7]

7.6. In the midst of a business rescue, MLI divested itself from Mintails by proceeding to spin-off its South African subsidiary.[8] MLI was then renamed Orminex

[3] South African National Assembly, "Report of the Portfolio Committee on Mineral Resources on its oversight visit North West and Gauteng on the 13-14 September 2018, dated 07 November 2018", Announcements, Tablings and Committee Reports (Cape Town: Parliament of the Republic of South Africa, 2018), 22-52, https://dc.sourceafrica.net/documents/118553-Portfolio-Committee-on-Mineral-Resources-Final.html (accessed November 4, 2019).

[4] Gauteng Regional Head Office of the Department of Water and Sanitation of the Republic of South Africa, "Compliance Inspection for Mintails Mining SA Ltd: Mogale Gold," December 18, 2014, https://dc.sourceafrica.net/documents/118409-DWS-Inspection-Report.html (accessed November 4, 2019); Mariette Liefferink and Lucien Limacher, "Presentation to the Government Task Team on Mintails' Alleged Environmental Contraventions," April 19, 2018, https://s3-eu-west-1.amazonaws.com/s3.sourceafrica.net/documents/118408/LRC-FSE-GTT-PRESENTATION-MINTAILS.pdf (accessed November 4, 2019).

[5] South African National Assembly.

[6] Lake, David, "Business Rescue Plan: Mintails Mining SA Proprietary Limited", Mintails Gold SA Proprietary Limited and Mintails SA Randfontein Cluster Proprietary Limited (Johannesburg: Lake Strategic Solutions, 2016), 88., https://s3-eu-west-1.amazonaws.com/s3.sourceafrica.net/documents/118411/BUSINESS-RESCUE-PLAN-161213-MSARC-Amended.pdf (accessed November 4, 2019).

[7] South African National Assembly.

[8] The report by the Business Rescue Practitioner David Lake mentions a shift of interests from Paige Limited to Mvest Capital, while the news website Businesslive mentions Paige as the sole creditor after liquidation. See point 5 and 6 in: David Lake, "Notice in terms of sections 132(3), 141(2)(a)(i), 144(3)(a), 145(1)(a) and 146(a) of the companies act, 2008″, Lake Strategic Solutions, Johannesburg, August 1, 2018, p.

Limited,[9] completing what looks like a manoeuvre to avoid liability for the environmental reparations owed by Mintails.[10]

7.7. Mintails subsequently filed for liquidation during the summer of 2018,[11] leaving the State and the local communities around the mines with the financial burden to cover post-mining environmental rehabilitation costs, estimated at over R460 million (approx. 35 million US$).[12]

7.8. As multiple sources argue, this situation could have been foreseen as Mintails recognised that its activities could lead to bankruptcy.

7.9. The company nonetheless decided not to secure the funds it owed for environmental repairs.[13] **MLI's separation from its South African subsidiary Mintails can be interpreted as a sign that the company aimed to avoid liability for the environmental damages created by its subsidiary**.

7.10. Despite the South African Parliamentary Portfolio Committee recommending prosecution and civil suits on company directors and shareholders in their personal capacities so that some of the liability owed could be recovered, the National Prosecuting Authority has been silent on the matter to date.

7.11. Observers have mooted that this is unlikely to change in South Africa's mining-dependant environment.14 For this reason it needs to be strongly and directly addressed it this new strategy and its policy.

7.12. In an attempt to achieve environmental restoration, the FSE filed a lawsuit to compel relevant government departments to hold companies and directors in the Mintails group to account for the environmental restoration costs. The first hearing took place on the 12 August 2020. The matter is unopposed.[15]

2, https://dc.sourceafrica.net/documents/118415-180801-Notice-to-Affected-Parties-Mintails.html (accessed November 4, 2019) and Mark Olalde, "Mintails directors may face criminal charges", December 11, 2018, Businesslive, https://www.businesslive.co.za/bd/national/2018-12-11-mintails-directors-may-face-criminal-charges/ (accessed November 4, 2019).

[9] James Thackray, "Mintails Limited: Effectuation of Deed of Company Arrangement," HQ Advisory, June 6, 2017. (accessed November 4, 2019); Orminex Limited. "Orminex: 31 March 2018 Quarterly Report," March 31, 2018. https://orminex.com.au/re-listing-update-and-change-of-asx-code/. (accessed June 21, 2020).

[10] In its email reply responding to a request to review this case study, Orminex writes: "we purchased the listed entity [MLI] as a shell company and have never had any association with the South African subsidiary [Mintails South Africa] referred to in your recent email correspondence" (email dated 5 February 2020). The research team has not been able to verify this information, although Mintails' 2017 annual report, p.4, makes clear that MLI was recapitalised, possibly by new shareholders: https://orminex.com.au/category/annual-reports/

[11] Lake, David, "Notice in terms of sections 132(3), 141(2)(a)(i), 144(3)(a), 145(1)(a) and 146(a) of the Companies Act, 2008".

[12] Lake, David. "Notice in Terms of Sections 132(3), 141(2)(a)(i), 144(3)(a), 145(1)(a) and 146(a) of the Companies Act, 2008," 1 August 2018. https://dc.sourceafrica.net/documents/118415-180801-Notice-to-Affected-Parties-Mintails.html (accessed 21 June 2020).

[13] Bega; Olalde and Matikinca. "Directors targeted for Mintails mess," Oxpeckers Investigative Environmental Journalism, December 2018, https://oxpeckers.org/2018/12/mintails-directors -targeted/ (accessed 4 November 2019); Sheree Bega, "Illegal miners hit Mintails mine on West Rand," IOL News, 1 June 2019, https://www.iol.co.za/ saturday-star/watch-illegal-miners-hit-mintails-mine-on-west-rand-24637889 (accessed 4 November 2019).

[14] South African National Assembly.

[15] The Federation for a Sustainable Environment. "FSE's Notice of Motion and Founding Affidavit: Mintails Group," September 6, 2019. https://www.fse.org.za/index.php/mining/item/703-fse-s-notice-of-motion-and-founding-affidavit-mintails-group (accessed June 21, 2020).; Bega, Sheree. "A Battle to Hold Mining Company Accountable." IOL News, February 26, 2020. https://www.iol.co.za/saturday-star/a-battle-to-hold-mining-company-accountable-19518065 (accessed June 21, 2020).

8. Apportionment of duties, responsibilities and liabilities for closure under the MPRDA and NWA

8.1. Apportionment of liability is provided for in NEMA and the NWA but not under the MPRDA, since the holder of the right or permit is deemed to be the responsible person.

8.2. We are informed that the Strategy has the following objectives, i*nter alia* ensuring that mines do not impact negatively on interconnected mines in a demarcated area. In the case of the Witwatersrand gold fields, it is necessary to recognise and apportion duties, responsibilities and liabilities for remediation and mine closure equitably and fairly.

To exemplify:

8.3. It is a well-known fact that the South African Government embarked on a policy in the 1960s of permitting the dewatering of dolomitic compartments within the Far West Rand gold fields "in the public interest and for public purposes, to facilitate the sale and optimal exploitation of gold reserves" and "it was foreseen that the dewatering of the compartments would inevitably result in the diminution and ultimate cessation of flow of public water". It was also foreseen that "the normal flows of the eyes"16 will be restored in time.

8.4. The dewatering policy resulted in the devastation of a productive agricultural community, accelerated ground movement, the destruction of the impervious barriers that separated the dolomitic compartments hydraulically and water pollution. The government at the time approved the policy of dewatering since mineral resources was considered of greater importance than continued agriculture and it was argued that "…the State is in the enviable position of getting a major share of gold mining profits (without sharing in the risk) consequently any reduction in profit due to increased working cost affects State income more than it affects shareholders income17."

8.5. Thus, government bears some responsibility for the impacts of re-watering since cessation of mining operations and the pumping of underground water will unavoidably result in the rewatering of the dewatered and partially dewatered compartments, and the restoration of pre-mining flow patterns and volumes of water, and the return of water systems to the natural pre-mining state.

8.6. The rewatering of the dewatered and partially dewatered compartments within the Far West Rand gold fields and the impacts of rewatering were not unforeseen. It was

[16] The Government's De-Watering Policy – The Expropriation Agreement concluded between the Government, the Association and Driefontein Consolidated Limited on 23 September 1997.
[17] WH Cable (1957) Department of Mines submission to the Interdepartmental Committee; JM Jordaan, JF Enslin, JP Kriel, AR Havemann, LE Kent and WH Cable (1960) Final Report on the Interdepartmental Committee on Dolomitic Mine Water: Far West Rand.

furthermore foreseen that the connections between mines and dolomitic compartments will ultimately control the flow of water once rewatering occurs.

8.7. The failure by the Strategy to consider crucial information in respect of the historical political and administrative arrangements will place an unequitable and unfair burden on some mining companies that apply for closure. Along the timeline, there have been many actors involved and a range of undertakings and liability partnerships that included government. There is a collective responsibility on all.

8.8. The NEMA has been amended to clarify that the duty to take reasonable measures to prevent significant pollution or degradation of the environment from occurring, continuing or recurring ("the duty of care") also applies to pollution and ecological degradation that occurred before NEMA commenced and that the "polluter pays principle" is retrospective. It is clearly the intention of the NEMA to hold polluters and other responsible parties liable for polluting activities and resultant contamination whenever it occurred, even if this was substantially prior to the implementation of the NEMA (in 1999) and the National Water Act (in 1998).

8.9. If more than one person is liable under the NWA, "the responsible authority must apportion the liability, but such apportionment does not relieve any of them of their joint and several liability for the full amount of the costs" (section 19(8)). Liability may also be apportioned in terms of NEMA section 28(11): If more than one person is liable, "…the liability must be apportioned among the persons concerned according to the degree to which each was responsible for the harm to the environment resulting from their respective failures to take the measures required."

We respectfully request permission to augment or refine our comments.

On behalf of: The Federation or A Sustainable Environment.

Mariette Liefferink.

Chief Executive Officer

23 June 2021.