



the federation for a sustainable environment

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

FOR ATTENTION: MR JONATHAN VAN DER WOUW
E-MAIL: jonathan@resources.co.za

Dear Mr van der Wouw,

DRAFT BASIC ASSESSMENT REPORT AND ENVIRONMENTAL MANAGEMENT PROGRAMME REPORT SUBMITTED FOR ENVIRONMENTAL AUTHORIZATIONS IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 AND THE NATIONAL ENVIRONMENTAL MANAGEMENT WASTE ACT, 2008 IN RESPECT OF LISTED ACTIVITIES THAT HAVE BEEN TRIGGERED BY APPLICATIONS IN TERMS OF THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT ACT, 2002 (MPRDA) (AS AMENDED)

NAME OF APPLICANT: Made to Last (Pty) Ltd

FILE REFERENCE NUMBER SAMRAD: NC 30/5/1/1/3/2/1/12591 PR

PREFATORY

I, write on behalf of the Federation for a Sustainable Environment. (FSE)¹.

¹ 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.

I refer to the abovementioned application.

We infer from the DBAR that your client proposes to prospect for all minerals (Code: All) (Type: UN), iron, (Code: Fe) (Type B) and iron bearing minerals, including hematite, goethite, specularite and limonite, and manganese (Code: Mn) (Type: B), and manganese bearing minerals.

We furthermore infer that the prospecting activities will take place in the form of both non-invasive and invasive prospecting activities over the three-year period within Portion 0 (RE) of the Farm Nelskop 292 within the Joe Morolong Local Municipality and the John Taolo Gaetsewe District Municipality, Northern Cape Province

The FSE hereby requests to be registered as an interested and affected party.

LINKAGE BETWEEN PROSPECTING AND MINING

The application classification for the project, in terms of the Draft Background Assessment Report (DBAR) is: “*Mining => Prospecting Rights*”. Page 18 of the DBAR confirms that “*Prospecting and related activities seek to progress mining sector development*”.

This linkage between prospecting and mining ought to be acknowledged and recognised in the decision by the Department of Mineral Resources and Energy.

Prospecting is defined in the Mineral and Petroleum Resources Development Act, 28 of 2002 as “*the intentional searching for any mineral by means of any method that disturbs the surface or subsurface of the earth*”. The objective of this intentional searching, in the case under consideration, for iron and manganese bearing minerals, is to mine.

No prospecting activity will be undertaken unless there is a reasonable prospect that the prospecting will result in mining. It is therefore necessary for the decision-makers to consider this application in the light of possible future mining activities and not in isolation and divorced from the future impacts of mining.

ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS OF JUNE 2021

The entitlements, which flow from a prospecting right, are far-reaching. The holder of a prospecting right is entitled:

- To enter the land to which the right relates together with his or her employees;
- To bring onto that land any plant, machinery or equipment;
- To build, construct or lay down any surface or underground infrastructure which may be required for the purposes of prospecting or mining;

- To prospect or mine for his or her own account on or under the land and to remove and dispose of any mineral found;
- Subject to the NWA, to use water from any natural spring, lake, river or stream situated on or flowing through the land; and
- To carry out any other activity incidental to prospecting provided this does not contravene the provisions of the MPRDA.²

In terms of the recent EIA Regulations (June 2021):

- An application for an environmental authorisation may only be submitted after an application for a right or permit has been accepted by the relevant regional manager in terms of the MPRDA.
- Written consent from the landowner/s or person/s in control of the land on which the mining or prospecting activity is to be undertaken must now be obtained.

The FSE hereby requests the EAP to confirm whether the abovementioned requirements of the 2021 EIA Regulations have been complied with in the prospecting application under consideration, and if complied with, the FSE respectfully requests copies of the acceptance letter by the regional manager and consent letters from the relevant landowner/s and person/s in control of the land.

BEST PRACTICABLE ENVIRONMENTAL OPTION (BPEO)

In terms of Chapter 2(4)(b) of the NEMA, *“environmental management must be integrated, acknowledging that all elements of the environment are linked and interrelated and it must take into account the effects of decisions on all aspects of the environment and all people in the environment by pursuing the selection of the **best practicable environmental option.**”*

The “best practicable environmental option” is defined as the *“option that provides the most benefit or causes the least damage to the environment as a whole, at a cost acceptable to society, in the long term as well as in the short term.”*

In order to determine whether the proposed prospecting and its “after comer” – mining – is the best practicable environmental option, the Applicant and its EAP must demonstrate whether prospecting and its successor – mining - is the optimal land use, whether it is in the national interest for iron and manganese minerals to be mined in this particular area and whether the significance of unavoidable impacts on biodiversity, Freshwater Ecosystem Priority Areas, areas of very high environmental sensitivity and protected areas are justified. It is important that a risk averse and cautious approach is adopted.

According to the DBAR:

² Section 5(3) MPRDA.

- In terms of the Northern Cape Nature Conservation Act (No. 9 of 2009) (NCNCA), the following NEMBA Threatened or Protected Species-listed are characteristic of the ecosystem and may occur:
 - Aardvark (*Orycteropus afer*),
 - Bat-eared Fox (*Otocyon megalotis*)
 - Cape Fox (*Vulpes chama*)
 - The South African Python (*Python natalensis*)
 - The arachnid species *Harpactira* spp. and *Pterinochilus* spp.
- In terms of the Northern Cape CBA Map (2016) the PR application area is classified as protected.
- In terms of the site sensitivity verification assessment, the aquatic biodiversity and terrestrial biodiversity have very high environmental sensitivity.
- In terms of the National Water Act (36 of 1998) the PR application area falls within a river Freshwater Ecosystem Priority Area (FEPA) quinary catchment and an Upstream Management Area (FEPA sub catchment) of the Kuruman River, which is classified as a Class B – largely natural FEPA river, making the sensitivity of the Aquatic Biodiversity theme very high.
- In terms of the NEMA: Protected Areas Act (57 of 2003) the project area is situated within the 5 km buffer of a protected area and include:
 - Tswalu Kalahari Nature Reserve - which is approximately 4 km to the south west.
 - Several properties adjacent to the PR application area, which are incorporated into the Tswalu Kalahari Reserve protected area in terms of the NEMA: Protected Areas Act.
- The PR application area falls within the Eastern Kalahari Bushveld National Protected Areas Expansion Strategy (NPAES; 2010).
- In terms of the National Forest Act (84 of 1998), the following tree species within the prospecting area are nationally protected:
 - *Senegalia mellifera*,
 - *Terminalia sericea*, and
 - *Boscia albitrunca*

In the light of the abovementioned protected, highest biodiversity and sensitivity status of the prospecting area, prospecting should only be authorised 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 there 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 prospecting (and its successor – mining) compared with other reasonable/feasible alternative land uses (e.g. conservation, tourism, farming, etc.) is undertaken as a necessary component of the environmental assessment, to show that prospecting (and its successor – 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 prospecting (and its successor – mining) on biodiversity including Aquatic Biodiversity, the largely natural Kuruman River and ecosystem services to show 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.

The balancing of the negative environmental impacts versus the alleged short term social benefits and the economic advantages can only be assessed if the loss to the environment is evaluated.

This appraisal ought to be conducted with the guidance of *inter alia* the Mining and Biodiversity Guideline and the taking into consideration of the opportunity costs.

This includes an assessment of the opportunity costs, e.g.:

- Understanding the value of the foregone opportunity/opportunities;
- 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.

Applying the “opportunity cost” principle would change the question being asked, namely, by placing a positive duty upon the decisionmakers to consider if the proposed prospecting will constitute the best use of the resources (i.e. the best practicable environmental option).

It is the FSE's considered opinion that the importance of the biodiversity and sensitivity features in the prospecting area and the associated conservation and tourism features is sufficiently high to prohibit prospecting in this area.

NATIONAL ENVIRONMENTAL MANAGEMENT: PROTECTED AREAS ACT, 57 of 2003

This prospecting application must be considered not only in the context of the BPEO but also in the context of the National Environmental Management: Protected Areas Act, 57 of 2003 (NEM:PAA).

In terms of section 48 of the NEM:PAA “*despite other legislation, no person may conduct commercial prospecting or mining activities in a protected environment without the written permission of the Minister and the Cabinet member responsible for Minerals and Energy...*”

Section 48 provides a list of when a prospecting or mining activity is not allowed to be undertaken. The list in NEMPAA is as follows:

- In a special nature reserve, national park, or nature reserve;
- In a protected environment without the written permission of the minister and the cabinet member responsible for mining and energy affairs; or
- In a protected area referred to in section 9(b), (c) or (d).

It is important at this juncture that the first listed prohibition. i.e. “*in special nature reserve, national park or nature reserve*” be considered.

In terms of section 12 – a protected area that was reserved or protected in terms of provincial legislation is entitled to be regarded as a nature reserve or protected environment for the purposes of NEMPAA. We refer in this regard to:

- The Northern Cape CBA Map (2016)
- Eastern Kalahari Bushveld National Protected Areas Expansion Strategy (2010)

In terms of this first prohibition – special nature reserve, national park or nature reserve (as declared by the NEMPAA or other Acts) cannot be mined or prospected on AND there is no qualification to allow the Applicant to ask for permission.

NEMPAA binds all organs of states (s4(2)) and trumps other legislation in the event of a conflict concerning the management or development of protected areas (s7(1)(a)).

We furthermore refer to Case Law (please note this is not a close list), namely Barberton Mine Case – SCA – [http://wessalowveld.co.za/wp-content/uploads/2017/03/BARBERTON MINES-CASE-JUDGEMENT.pdf](http://wessalowveld.co.za/wp-content/uploads/2017/03/BARBERTON_MINES-CASE-JUDGEMENT.pdf)

SENSE OF PLACE

The DBAR informs us that the prospecting area is situated within the 5 km buffer of a protected area and includes:

- o The Tswalu Kalahari Nature Reserve - which is approximately 4 km to the south west.
- o Several properties adjacent to the PR application area, which are incorporated into the Tswalu Kalahari Reserve protected area in terms of the NEMA: Protected Areas Act.

Tswalu Kalahari Reserve is South Africa's largest private wildlife sanctuary, covering an area of over 100 000 hectares and is regarded as one of Africa's last wildness areas and probably one of the largest relatively undisturbed arid savannas in Africa. According to the book titled "South Africa's Wild Gems – Magnificent Jewels of Nature" *"this vast and astonishing landscape is the ancestral home of the San people and a place where conservation has become a priority."*

The Reserve's sense of place is described as follows by Duncan MacFadyen: *"Clear night skies, pristine landscapes and desert adapted fauna and flora all combine to make Tswalu a spiritual experience that only the unique Kalahari can create. Perhaps this spirituality is induced by the wide open spaces and remoteness, the sense of an ancient land the lack of human activity and the vision of brick-red, rolling sand-dunes, dotted with camel thorn trees."*

And, *"...the Kalahari is unique, and besides the rich diversity of game and bird species, the remoteness attracts people to the area."*

It is part of our law that the potential impact of development on the sense of place of an area must be considered. In the case of *Director: Mineral Development Gauteng Region and another v. Save the Vaal Environment and others 1999 (2) SA 709 (SCA)* at 715C, the Supreme Court of Appeal with regards to a proposed mine on a wetland next to the Vaal River, identified as an environmental concern the *"...predicted constant noise, light, dust and water pollution resulting from the proposed strip mine will totally destroy the 'sense of place' of the wetland and the associated Cloudy Creek. Thus, the spiritual, aesthetic and therapeutic qualities associated with this area will also be eliminated"*.

This finding by the court established sense of place, as an environmental concern that can be impacted upon by development that should be considered accordingly.

With reference to the proposed prospecting application under consideration, the Tswalu Kalahari Reserve has a unique identity of place with features which are not only scarce but the only ones of their kind. A quality of such a place invariably is its delicateness and the ease with which it can be destroyed.

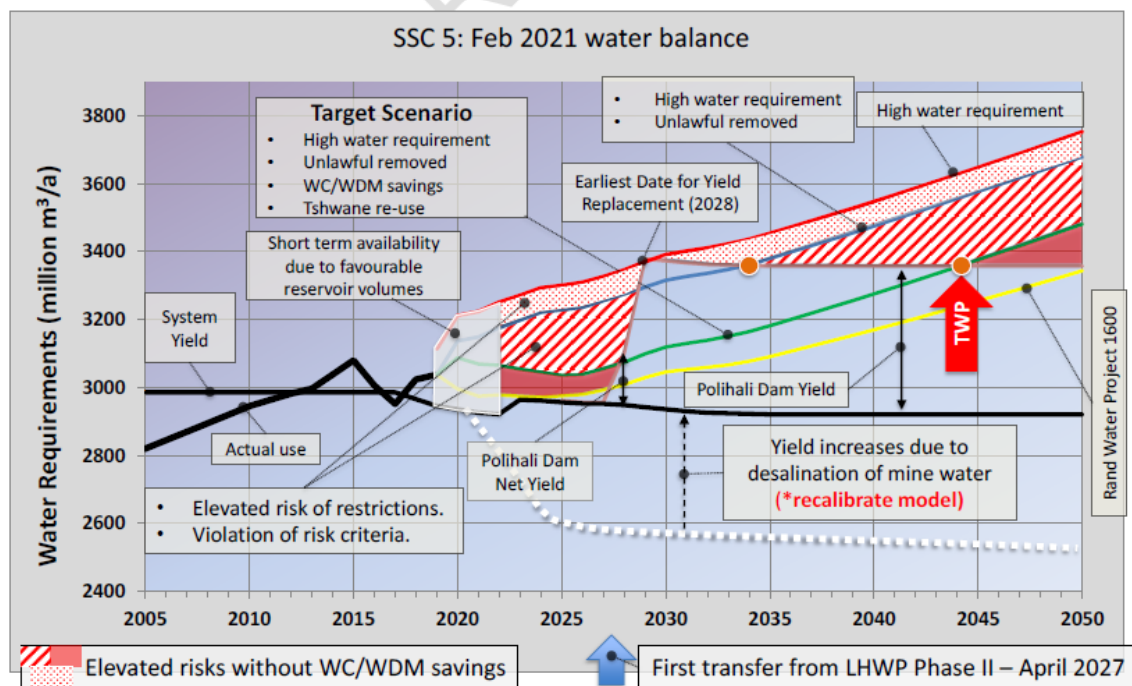
Adjacent land use forms and insensitive developments such as prospecting and mining will

have a definite influence on the Tswalu Kalahari Reserve’s sense of place and visual value. Furthermore, tourists and visitors to the Reserve are highly sensitive to any changes in the visual quality.

The fact that the proposed prospecting activities with its associated infrastructure, increased human activity and machinery, will take place within 4 km of the Reserve increases the negative influence on the visual value and sense of place of the Reserve.

THE RECONCILIATION STRATEGY OF THE INTEGRATED VAAL RIVER SYSTEM (MARCH 2021)

The prospecting area falls within the Lower Vaal, which forms part of the Integrated Vaal River System (IVRS) The subjoined graph shows the water balance within the IVRS.



The subjoined table shows the proposed interventions and the current status of the interventions.

Intervention	Summary of implementation progress
WCWDM	Limited progress made, some successes of Rand Water Project 1600, Impacts not yet seen on water balance, greater attention required, Municipalities to improve commitment of financial resources
Removal of unlawful Irrigation	Initially some progress made. Successful removal of 80 million m ³ of unlawful irrigation. Recent years have seen slow down of progress. Validation and Verification completion delaying further implementation. Northern Cape continuing with efforts, Free State and Gauteng committed to restarting process. Target to remove additional 75 million m ³ .

Intervention	Summary of implementation progress
Reuse of treated effluent and other discharges	Short Term AMD solution implemented. Long Term AMD solution requires further investigation. CoT reuse plans slowed down due to budget constraints. Overall Regional reuse feasibility investigation required. Ongoing links to Crocodile (West) Reconciliation Strategy implementation plans.
New Infrastructure construction	Implementation of LHWP Phase 2 delayed till earliest date of April 2027 for delivery. Yield replacement Dam in Orange River Feasibility Study started, still to be completed before best option determined. Earliest data for yield replacement set at 2028. Improved maintenance of existing transfer infrastructure required.

It is the FSE's considered opinion that the updated water requirements for the Lower Vaal, the current status of the intervention implementation and the hydrology of the Lower Vaal in terms of the IVRS Reconciliation Strategy ought to have been included in the assessment of the impacts of the prospecting application on the IVRS.

CONCLUSION

Grounded upon the abovementioned, the FSE objects to the authorisation of the proposed prospecting application.

Yours faithfully,

Mariette Liefferink.

CEO: FEDERATION FOR A SUSTAINABLE ENVIRONMENT.

20 December 2021.