IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case no.: 73278/15

In the matter between

EARTHLIFE AFRICA JOHANNESBURG	First Applicant
BIRDLIFE SOUTH AFRICA	Second Applicant
MINING AND JUSTICE COMMUNITY NETWORK OF SOUTH AFRICA	Third Applicant
ENDANGERED WILDLIFE TRUST	Fourth Applicant
FEDERATION FOR A SUSTAINABLE ENVIRONMENT	Fifth Applicant
GROUNDWORK	Sixth Applicant
ASSOCIATION FOR WATER AND RURAL DEVELOPMENT	Seventh Applicant
BENCH MARKS FOUNDATION	Eighth Applicant

and

MINISTER OF MINERAL RESOURCES	First Respondent
DIRECTOR-GENERAL: DEPARTMENT OF MINERAL RESOURCES	Second Respondent

MINISTER OF ENVIRONMENTAL AFFAIRS Third Respondent

MEC: DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT, LAND, AND ENVIRONMENTAL AFFAIRS MPUMALANGA

Fourth Respondent

ATHA-AFRICA VENTURES (PTY) LTD Fifth Respondent

NOTICE OF MOTION

KINDLY TAKE NOTICE that the Applicants intend to make application to the above Honourable Court on a date determined by the Registrar for an order in the following terms:

1. reviewing and setting aside the decision taken by the Minister of Mineral Resources reflected in a letter dated 14 April 2015 addressed to the Fifth Respondent;

2. reviewing and setting aside the decision taken by the Director-General: Department of Mineral Resources (DG) to grant a mining right to the Fifth Respondent as reflected in a letter dated 19 September 2014 addressed to the Fifth Respondent (the mining right), to the extent that the DG's decision was not replaced in its

entirety by the decision taken by the Minister of Mineral Resources referred to in 1 above;

3. remitting the Fifth Respondent's application for the mining right to the DG for reconsideration;

4. directing the DG not to decide the Fifth Respondent's application for the mining right unless and until the Fifth Respondent's environmental management programme has been approved in terms of the now repealed section 39(4)(a) of the Mineral and Petroleum Resources Development Act, 28 of 2002;

5. directing the DG not to decide the Fifth Respondent's application for the mining right unless and until environmental authorisation has been issued to the Fifth Respondent in terms of the National Environment Management Act, 107 of 1998;

6. alternatively to 5 above, directing the DG (or his delegate) to consult with the Department of Environmental Affairs before making a decision in respect of the Fifth Respondent's application for the mining right, and to have due regard to, and take into account, the views, comments, opinions and position of the Department of Environmental Affairs when making such a decision;

7. directing the DG (or his delegate) to consult with the Department of Water and Sanitation before making a decision in respect of the Fifth Respondent's application for the mining right, and to have due regard to, and take into account, the views, comments, opinions and position of the Department of Water and Sanitation when making such a decision;

8. directing the DG (or his delegate) to consult with the Mpumalanga Tourism and Parks Agency before making a decision in respect of the Fifth Respondent's application for the mining right, and to have due regard to, and take into account, the views, comments, opinions and position of the Mpumalanga Tourism and Parks Agency when making such a decision;

9. directing the DG (or his delegate), when deciding whether to grant the Fifth Respondent's application for a mining right to have due regard to, and consider, the status of certain of the properties which are the subject of the mining rights application as:-

9.1 a protected environment under NEMPAA;

9.2 a national freshwater ecosystem priority area under the Atlas of Freshwater Ecosystem Priority Areas endorsed by

the Department of Environmental Affairs and the Department of Water Affairs and Sanitation,

9.3 a critical terrestrial and aquatic biodiversity area under the Mpumalanga Biodiversity Conservation Plan endorsed by the MEC for Agriculture, Rural Development, Environmental Affairs and Tourism for Mpumalanga Province; and

9.4 an endangered ecosystem under the List of Ecosystems that are Threatened and in Need of Protection published by the Minister of Environmental Affairs under the National Environmental Management: Biodiversity Act No. 10 of 2004;

10. directing the DG (or his delegate), when deciding whether to grant the Fifth Respondent's application for a mining right, to have due regard to, and consider, the cumulative impacts of existing mining, and mining as proposed by the Fifth Respondent, on the Enkangala Drakensberg Strategic Water Source Area, including the catchment areas of the Pongola, Tugela and Vaal River Systems;

11. That the First and Second Respondents be ordered to pay the Applicants' costs, with those costs to be paid jointly and severally together with any of the respondents who oppose the relief sought in the application;

12. further and/or alternative relief.

TAKE NOTICE FURTHER that the affidavit of PHILLIPINE MAKOMA LEKALAKALA will be used in support of this application.

TAKE NOTICE FURTHER that the Applicants have appointed the address of Centre for Environmental Rights, care of its correspondent attorneys, DU PLESSIS AND KRUYSHAAR INCORPORATED, Suite No. 2, Route 21 Corporate Park, 118 Sovereign Drive, Irene, Pretoria as being the address at which they will accept notice and service of all process in these proceedings.

TAKE NOTICE FURTHER that the Respondents are called upon to show cause why the relief should not be granted.

TAKE NOTICE FURTHER that the First and Second Respondents are required to despatch within fifteen (15) days of receipt of this Notice of Motion to the Registrar of this Honourable Court the record of decision identified in paragraphs 1 and 2, together with such reasons as they may desire to give or are in law required to give, and to notify the Applicants that they have done so.

TAKE NOTICE FURTHER that the Applicants shall be entitled, within ten (10) days after the Registrar has made the Record available to them, to deliver a Notice and accompanying affidavit amending, adding to or varying the terms of this Notice of Motion and founding affidavit.

TAKE NOTICE FURTHER that any Respondent desiring to oppose this application, must:

1. within 15 (fifteen) days after receipt of this Notice of Motion, or if service is effected on a Respondent at a place more than 100 miles from the court, then within 21 (twenty-one) days after receipt of the Notice of Motion, or within 15 (fifteen) days after receipt any amendment to this Notice of Motion, deliver notice to the Applicants' attorneys of such intention to oppose and must in such notice appoint an address within 15 (fifteen) kilometres of the office of the Registrar at which it will accept notice and service of all process in these proceedings;

2. within 30 (thirty) days after the expiry of the time referred to in Uniform Rule 53(4) of the Uniform Rules of Court, deliver any affidavit it may desire to deliver in answer to the allegations made by the Applicants.

KINDLY PLACE THE MATTER ON THE ROLL FOR HEARING ACCORDINGLY.

DATED at PRETORIA this 9 day of SEPTEMBER 2015.

CENTRE FOR ENVIRONMENTAL RIGHTS
Applicants' Attorneys
2nd Floor, Springtime Studios
1 Scott Road
Observatory
Cape Town
Tel: 021 447 1647
Email: chorsfield@cer.org.za

Care of:
DU PLESSIS AND KRUYSHAAR INCORPORATED
Suite No. 2, Route 21 Corporate Park
118 Sovereign Drive
Irene
Pretoria
Tel: 0861 000 779
Fax: 086 548 0837
Email: kruyshaar@dupkruys.co.za
Ref: Rentia Kruyshaar

TO: **THE REGISTRAR**
GAUTENG HIGH COURT
PRETORIA

AND TO: **MINISTER OF MINERAL RESOURCES**
Block 2C, 4th Floor
Trevenna Campus
Corner of Francis Baard and Meintjies Streets
Sunnyside
PRETORIA
Fax: 012 444 3145
Email: pieter.alberts@dmr.gov.za
c/o THE STATE ATTORNEY
SALU Building
316 Thabo Sehume Street
PRETORIA
Tel: 012 309 1500
Fax: 012 309 1649

AND TO: **DIRECTOR GENERAL: DEPARTMENT OF MINERAL RESOURCES**
Department of Mineral Resources
Block 2C, 4th Floor
Trevenna Campus
Corner of Francis Baard and Meintjies Streets
Sunnyside
PRETORIA
Fax: 012 341 2228
Email: pieter.alberts@dmr.gov.za

AND TO: **MINISTER OF ENVIRONMENTAL AFFAIRS**
Cnr. Steve Biko and Soutpansberg Road
Environment House
473 Steve Biko
Arcadia
PRETORIA
Fax: 012 328 4254
Email: GRamutshila@environment.gov.za

c/o THE STATE ATTORNEY
SALU Building
316 Thabo Sehume Street
PRETORIA
Tel: 012 309 1500
Fax: 012 309 1649

AND TO: **MEC: AGRICULTURE, RURAL DEVELOPMENT, LAND AND ENVIRONMENTAL AFFAIRS MPUMALANGA PROVINCE**
7 Government Boulevard
Building 6, 2nd floor
Riverside Park
MBOMBELA (previously, Nelspruit)
Fax: 013 766 8437
Email: nndlanya@mpg.gov.za

AND TO: **ATHA-AFRICA VENTURES (PTY) LTD**
8th Floor, Sinosteel Plaza
159 Rivonia Road
SANDTON
Fax: 011 784 7467
Email: morgam.munsamy@athagroup.in

10

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case no.:

In the matter between

EARTHLIFE AFRICA JOHANNESBURG	First Applicant
BIRDLIFE SOUTH AFRICA	Second Applicant
MINING AND JUSTICE COMMUNITY NETWORK OF SOUTH AFRICA	Third Applicant
ENDANGERED WILDLIFE TRUST	Fourth Applicant
FEDERATION FOR A SUSTAINABLE ENVIRONMENT	Fifth Applicant
GROUNDWORK	Sixth Applicant
ASSOCIATION FOR WATER AND RURAL DEVELOPMENT	Seventh Applicant
BENCH MARKS FOUNDATION	Eighth Applicant

11

and

MINISTER OF MINERAL RESOURCES	First Respondent
DIRECTOR-GENERAL: DEPARTMENT OF MINERAL RESOURCES	Second Respondent
MINISTER OF ENVIRONMENTAL AFFAIRS	Third Respondent
MEC: DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT, LAND, AND ENVIRONMENTAL AFFAIRS MPUMALANGA	Fourth Respondent
ATHA-AFRICA VENTURES (PTY) LTD	Fifth Respondent

FOUNDING AFFIDAVIT

I, the undersigned –

PHILLIPINE MAKOMA LEKALAKALA

do hereby make oath and say that –

2 WW

1. I am an adult female employed as Senior Programmes Officer of the Sustainable Energy and Climate Change Partnership and Branch Co-ordinator of Earthlife Africa Johannesburg, a non-governmental organisation that challenges environmental degradation and aims to promote a culture of environmental awareness and sustainable development. ELA is a non-profit organisation in terms of the Non-Profit Organisations Act, with NPO number 004-159. Its offices are at 87 De Korte Street, 5th floor Heerengracht Building, Braamfontein, Johannesburg.

2. The facts and circumstances set out in this affidavit fall within my personal knowledge and belief, except where the context indicates otherwise, and are true and correct. Where I make submissions of a legal nature, I do so on the advice of the Applicants' legal representatives, which advice I believe to be true and correct.

3. I am duly authorised to depose hereto.

THE PARTIES

The Applicants

4. The First Applicant is **EARTHLIFE AFRICA JOHANNESBURG** (**EarthLife**), a non-profit organisation with NPO number 004-159. EarthLife challenges environmental degradation and aims to promote a culture of environmental awareness and sustainable development. It

ZWN

also seeks to improve the quality of life of vulnerable people in South Africa through assisting civil society to have greater impact on environmental governance by understanding and defending their constitutional rights, specifically those enshrined in section 24 of the Constitution of the Republic of South Africa. Its address is 5th Floor Hereengracht Building, 87 De Korte Street, Braamfontein, Johannesburg.

5. The Second Applicant is **BIRDLIFE SOUTH AFRICA,** a non-profit and public benefit organisation registered in terms of the laws of the Republic of South Africa with NPO registration number 001-298 NPO and PBO exemption number 930 004 518, with its head office at 239 Barkston Drive, Blairgowrie, Johannesburg. It is an independent nature conservation organisation with the mission to promote the enjoyment, conservation, study and understanding of wild birds and their habitats. BirdLife South Africa has over 6000 members in 32 bird clubs throughout South Africa. BirdLife South Africa is a partner in the Grasslands Programme, which is a partnership between government, non-governmental organisations and the private sector to mainstream biodiversity into the Grasslands Biome, with the intention to balance biodiversity conservation and development of protected areas in a production landscape.

6. The Third Applicant is **MINING AND ENVIRONMENTAL JUSTICE COMMUNITY NETWORK OF SOUTH AFRICA (MEJCON-SA),** a non-

2nd

14

profit voluntary organisation with its administrative address at c/o Centre for Environmental Rights, 2nd Floor, Springfield Studios, 1 Scott Street, Observatory, Cape Town. MEJCON-SA was constituted in October 2012 with the main objective of promoting and defending the environmental and human rights of communities that are both directly and indirectly affected by mining; and to ensure the sustainable use of mineral resources.

7. The Fourth Applicant is **ENDANGERED WILDLIFE TRUST (EWT),** a non-government non-profit organisation and a public benefit organisation with NPO Number 015-502 and PBO number 930 001777. EWT has its physical address at Building K2, Ardeer Road, Pinelands Office Park, Modderfontein, Gauteng. EWT is a fully accredited member of the Union of Conservation of Nature and is dedicated to conserving threatened species and ecosystems in southern Africa.

8. The Fifth Applicant is **FEDERATION FOR A SUSTAINABLE ENVIRONMENT (FSE),** a registered non-profit company with registration number 2007/033134/08 and NPO number 062986-NPO. FSE has its physical address at 8 Palladio, corner of Ryk Street and Roux Avenue, Beverley Gardens, Johannesburg. The FSE's main objective is promoting the ecological sustainability of development and the wise use of natural resources in South Africa.

2 WN

15

9. The Sixth Applicant is **GROUNDWORK,** a non-profit environmental justice service and developmental organisation with NPO number 045-235-NPO. GroundWork has its physical address at 6 Raven Street, Pietermaritzburg. GroundWork seeks to improve the quality of life of vulnerable people in South Africa, and increasingly in Southern Africa, through assisting civil society to have a greater impact on environmental governance. GroundWork places particular emphasis on assisting vulnerable and previously disadvantaged people who are most affected by environmental injustices.

10. The Seventh Applicant is **ASSOCIATION FOR WATER AND RURAL DEVELOPMENT (AWARD),** a non-profit organisation with company registration Number 98/03011/08 and non-profit organisation registration Number 006 – 821. Its physical address is at Number 14 Safari Junction, Hoedspruit, Limpopo. AWARD specialises in participatory, research-based project implementation aimed at addressing issues of sustainability, inequity, and poverty through building natural-resource management competence and sustainable water-based livelihoods. AWARD's vision is to contribute to a more sustainable world and in particular to a democratic South Africa where the principles of equity and sustainability are upheld and strengthened through building active civil society participation in wise water and biodiversity stewardship, management and governance.

2 WN

16

11. The Eighth Applicant is **BENCH MARKS FOUNDATION,** a non-profit, faith-based organisation owned by the churches in South Africa, with its physical address at 6th Floor, Khotso House, 62 Marshall Street, Marshalltown, Johannesburg, South Africa, 2017. The Bench Marks Foundation is committed to providing leadership and advocacy on issues regarding benchmarking of good corporate governance, ethical and socially responsible investment as well as linking people and institutions committed to these ideals. The vision of the Bench Marks Foundation is to promote corporate social responsibility and socially responsible investment.

The Respondents

12. The First Respondent is the **MINISTER OF MINERAL RESOURCES** (the Minerals Minister) of Building 2C, Trevenna Campus, 75 Meintjies Street, corner of Meintjies and Francis Baard Streets, Sunnyside, Pretoria. The Minerals Minister is cited by virtue of having taken a decision in terms of section 103(4)(b) of the Mineral and Petroleum Resources Development Act, 28 of 2002 (*MPRDA*) to amend a decision of the Director General: Department of Mineral Resources (acting under a power delegated by the Minerals Minister), to grant a mining right in terms of section 23 of the MPRDA, alternatively to withdraw the decision of the DG and to replace it with a fresh grant of the mining right in question in terms of section 23 of the MPRDA.

ZWN

17

13. The Minerals Minister is also cited as one of the two Cabinet Ministers whose written permission is required in terms of section 48(1)(b) of the National Environmental Management: Protected Areas Act, 57 of 2003 (*NEMPAA*) for a person to conduct commercial mining in a protected environment declared as such in terms of section 28 of NEMPAA.

14. The Second Respondent is the **DIRECTOR GENERAL: DEPARTMENT OF MINERAL RESOURCES** (*the DG*)(*the DMR*) of Building 2C, Trevenna Campus, 75 Meintjies Street, corner of Meintjies and Francis Baard Streets, Sunnyside, Pretoria. The DG is cited in his official capacity as the delegate of the Minister authorized to grant or refuse mining rights applications in terms of section 23 of the MPRDA, as provided for in the delegation of powers dated 12 May 2004 made in terms of sections 103(1) and (2) of the MPRDA.

15. The Third Respondent is the **MINISTER OF ENVIRONMENTAL AFFAIRS** of Environment House, 473 Steve Biko and Soutpansberg Road, Arcadia, Pretoria. The Minister of Environmental Affairs is cited by virtue of the interest she has in the application arising from her statutory duties and powers under NEMPAA, including but not limited to, her written permission also being required (i.e. in addition to that of the Minerals Minister) in terms of section 48(1)(b) of NEMPAA for a person to conduct commercial mining in a protected environment declared as such in terms of section 28 of NEMPAA.

ZWN

18

16. The Fourth Respondent is the **MEC: AGRICULTURE, RURAL DEVELOPMENT, LAND AND ENVIRONMENTAL AFFAIRS MPUMALANGA PROVINCE** of 7 Government Boulevard, Building 6, 2nd floor, Riverside Park, Extension 2, NELSPRUIT. The MEC is cited by virtue of the interest he has in the application arising from his powers to declare provincial protected areas in terms of NEMPAA and to withdraw such declarations.

17. The Fifth Respondent is **ATHA-AFRICA VENTURES (PTY) LTD** a private company registered in terms of the laws of South Africa, with registration number 2004/020746/07 and with its registered address at 8th Floor, Sinosteel Plaza, 159 Rivonia Road, Sandton, Johannesburg, (**AAV**).

INTRODUCTION AND NATURE OF THE APPLICATION

18. On 22 January 2014 the Member of the Executive Council for the Department of Economic Development and Tourism, Mpumalanga, acting in terms of section 28(1)(a)(i) and (b) of NEMPAA, by notice in the *Mpumalanga Provincial Gazette,* declared a number of areas as protected environments and assigned names to them, including the Mabola Protected Environment near Wakkerstroom in Mpumalanga (*the MPE*).

ZWN

19

19. The motivation for, and purpose of, declaring the MPE included protecting this environmentally sensitive, unique area which has irreplaceable biodiversity against coal mining.

20. A mere few months after declaration of the MPE, in a letter dated 19 September 2014, the DG notified AAV that, subject to conditions pertaining to the environment, it had been granted a right in terms of section 23(1) of the MPRDA to mine for coal in respect of a number of properties listed in the letter.

21. At least three of the properties over which the mining right was granted fall within the MPE, and a significant portion of the MPE is covered by the mining rights now held by AAV.

22. Furthermore, all but two of the properties fall within the Wakkerstroom Wet Grasslands Area (*the WWGA*), which is the subject of an application made by the Mpumalanga Tourism and Parks Agency (*MTPA*) to the Minerals Minister in terms of section 49 of the MPRDA. That application, a multi-stakeholder initiative to protect this area, asks the Minerals Minister to declare the WWGA as an area in which mining is prohibited due to its environmental significance and sensitivity. (See paragraphs 53 to 55 below.)

23. On 1 April 2015 the Applicants lodged an internal appeal in terms of section 96 of the MPRDA, read with Regulation 74 of the Regulations

20

to the MPRDA, against the DG's decision. The Minerals Minister is the appeal authority. A copy of the internal appeal is annexed marked "**PML1**".

24. In the light of the extreme environmental sensitivity of the area, the Applicants simultaneously lodged an application in terms of section 96(2) of the MPRDA requesting the Minerals Minister to suspend the mining right pending the outcome of the appeal.

25. Unbeknownst to the Applicants, within days of receiving notification of the grant of the mining right, AAV submitted a request to the DMR for two of the conditions pertaining to the environment to be amended on the basis that they were impossible to abide by, and posed a significant threat to the entire mining project.

26. In a letter dated 14 April 2015, after the internal appeal had already been lodged, the Minerals Minister notified AAV that in terms of section 103(4)(b) of the MPRDA he was thereby amending the decision made by the DG on 19 September 2014 to grant a mining right to AAV subject to the conditions contained in the "granting" letter. (The CER received this letter from the DMR on 22 May 2015 pursuant to the internal appeal process).

27. In those circumstances, the Applicants' attorneys sent a letter dated 26 June 2015 to the DMR's Directorate: Legal Services, notifying the DMR

21

that the Applicants intended to launch review proceedings against the Minerals Minister's decision and requesting that the internal appeal be held in abeyance pending the outcome of the review.

28. This is an application for judicial review in terms of the Promotion of Administrative Justice Act, 3 of 2000 (*PAJA*) of the Minerals Minister's decision.

29. The primary relief which the Applicants seek is the setting aside of the Minerals Minister's decision, as well as the decision of the DG taken on 19 September 2014 to grant the mining right to AAV to the extent that it was not replaced in its entirety by the Minerals Minister's decision. The Applicants also seek ancillary relief to ensure that, if the primary relief is granted, the defects in these decisions are remedied when the DG reconsiders AAV's application for a mining right.

STANDING

30. The Applicants have the necessary standing to bring this application in terms of section 38(d) of the Constitution of the Republic of South Africa, 1996 (*the Constitution*) and NEMA, which is the framework environmental legislation enacted to give effect to the environmental right in section 24 of the Constitution.

22

31. Sections 32(1)(d) and (e) of NEMA confer standing on any person or group of persons to seek appropriate relief in respect of NEMA or any provision of a specific environmental management act, or any other statutory provision concerned with the protection of the environment or the use of natural resources in the public interest and in the interests of protecting the environment.

32. The MPRDA was enacted, among other things, to give effect to section 24 of the Constitution by ensuring that the nation's mineral and petroleum resources are developed in an orderly and ecologically sustainable manner while promoting justifiable social and economic development.

33. As appears from the citation of the Applicants above, they are all civil society and community based organisations concerned with protection of the environment and sustainability in the public interest.

THE ENVIRONMENTAL SIGNIFICANCE AND LEGAL PROTECTION OF PROPERTIES IN RESPECT OF WHICH THE MINING RIGHT WAS GRANTED

The declaration of the MPE under NEMPAA

34. NEMPAA was enacted to protect, manage and conserve South Africa's biodiversity. Its objectives include, among other things, the declaration

23

and management of protected areas and effecting a national system of protected areas. The system of protected areas includes national parks, world heritage sites and marine protected areas. It also includes protected environments.

35. A protected environment may only be declared to meet the purposes specified in section 28(2) of NEMPAA. A public consultation process prescribed in NEMPAA must also be followed before a protected environment is declared.

36. The declaration of the MPE was the culmination of the multi-stakeholder Grasslands Programme, launched in 2008 as a partnership between government, non-governmental organisations and the private sector to mainstream biodiversity conservation into the Grassland Biome.

37. The Grassland Biome is one of 9 recognised biomes in South Africa, namely the Albany thicket, desert, forests, fynbos, grasslands, Indian Ocean coastal belt, Nama-Karoo, Savanna and Succulent Karoo biomes. Biomes are large ecological units characterised by dominant vegetation structure. Only 2% of South Africa's Grassland Biome was conserved in 2009.

38. The Programme was catalysed through an $8.3m investment from the Global Environment Facility, managed by the United Nations

ZNN

24

Development Programme and implemented by the South African National Biodiversity Institute (SANBI) and approximately 26 partner organisations.

39. Following the launch of the Grasslands Programme in 2008, SANBI, the MTPA and other partner organisations, including the World Wide Fund for Nature South Africa (*WWF SA*) and BirdLife South Africa, embarked on a process to attain legal protection for the most threatened Grassland Biomes in South Africa. The Wakkerstroom/Luneburg grasslands was identified by the various stakeholders as such a biome.

40. As most of the land comprising this biome is privately owned, it was decided that the declaration of a protected environment under NEMPAA in respect of this area would afford the best protection to that particular biome.

41. The land owners were consulted about a proposed declaration of a protected environment in respect of their land in a process that lasted roughly five years. Prospecting rights holders, including AAV, were also consulted. By 2013, all of the affected land owners had given their written consent for the declaration of the MPE. The proposed declaration was unsuccessfully opposed by AAV.

2 WN

25

42. Notices of intention to declare the MPE were published on 10 May 2013 and 9 August 2013.

43. The MTPA submitted a comprehensive motivation in support of the declaration of the proposed protected environment dated January 2013. A copy of the motivation is "Annexure 3" to the internal appeal.

44. The MTPA is established in terms of the Mpumalanga Tourism and Parks Agency Act of 2005, Act No. 5 of 2005 (MTPA Act). The entity came into existence on 1 April 2006 following the merger of the now defunct Mpumalanga Parks Board and Mpumalanga Tourism Authority.

45. Section 3 of the MTPA Act defines the Objective of the MTPA as follows: "To provide for the sustainable management and promotion of tourism and nature conservation in [Mpumalanga] and to ensure the sustainable utilisation of natural resources."

46. In terms of section 3(2)(a)-(d) of the MPTA Act, in pursuing its objects, the MTPA shall –

46.1 provide for effective management and conservation of bio-diversity and eco-systems within the Province;

46.2 develop and ensure effective management of protected areas;

46.3 foster, promote and sustainably develop and market tourism;

46.4 promote and create socio-economic growth and transformation within the tourism and conservation industry, thereby creating

ZWN

economic and employment opportunities for previously disadvantaged individuals and local communities in the Province.

47. The MPTA's motivation for the declaration of the MPE included the following:

47.1 The National Protected Areas Expansion Strategy 2008 (SANBI and DEAT – the then Department of Environmental Affairs and Tourism) identified the area of the proposed MPE as part of a larger area identified for the protected area expansion within the grassland biome. The main object of the National Protected Areas Expansion Strategy is to give effect to South Africa's obligations under the Convention of Biological Diversity 1992 (signed by South Africa on 4 June 1993 and ratified by it on 2 November 1995) to expand its protected areas network in order to achieve ecological sustainability and increased resilience to climate change.

47.2 The area has also been identified within the Mpumalanga Protected Areas Expansion Strategy as a priority area for protected areas expansion and contains vast un-fragmented grasslands and irreplaceable biodiversity features in terms of the Mpumalanga Biodiversity Conservation Plan 2006.

47.3 The area is also a critically important and high yielding water catchment.

27

47.4 The proposed MPE forms part of the broader project of the National Grasslands Programme, under the auspices of SANBI and DEA;

47.5 The MPE falls within an area listed in section 52 of the National Environmental Management: Biodiversity Act of 2004 as an endangered ecosystem – (The Wakkerstroom/Luneburg Grasslands Threatened Ecosystem).

48. In its motivation, the MTPA argued in favour of land use in the area that is compatible with biodiversity conservation, such as ecotourism and livestock farming. Coal mining was identified as a significant risk to the conservation of this critical biodiversity area.

49. After the consultation process, the MPE was declared under section 28 of NEMPAA by notice in the Province of Mpumalanga Provincial Gazette on 22 January 2014. A copy of the *Gazette* is "Annexure 2" to the internal appeal.

50. As appears from the notice pertaining to the MPE, the MPE comprises a total of 21 farms, including the following farms over which AAV's mining right was subsequently granted: Portion 1 of Kromhoek 93 HT (204.3073 hectares), Remainder of Kromhoek 93 HT (980.4206 hectares), Goedgevonden 95 HT (739.4455 hectares) and Remainder of Yzermyn 96 HT (826.1608 hectares).

28

51. The notice also lists the purposes of the declaration of the MPE, in accordance with the provisions of NEMPAA, as follows:-

51.1 to enable the owners of the land to take collective action to conserve biodiversity on their land and to seek legal recognition therefor;

51.2 to protect the area if the area is sensitive to development due to its biological diversity, natural characteristics, scenic and landscape value and the provision of environmental goods and services;

51.3 to protect a specific ecosystem and to ensure that the use of natural resources in the area is sustainable.

52. One of the ways in which NEMPAA affords such protection as described above is to place restrictions on activities in protected environments. In terms of section 48(1)(b), despite other legislation, no person may conduct commercial prospecting, mining, exploration, production or related activities in a protected environment without the written permission of the Minister of Environmental Affairs and the Minerals Minister.

APPLICATION BY MTPA TO MINERALS MINISTER TO PROHIBIT MINING IN THE WAKKERSTROOM WET GRASSLANDS AREA (WWGA) AND REPRESENTATIONS THAT ACTION HAS BEEN TAKEN TO PROHIBIT MINING

29

53. Three years before the MTPA published its notice of intention to declare the MPE, in April 2010, the MTPA submitted an application to the DMR in terms of section 49 of the MPRDA for the Minerals Minister to declare the WWGA as an area in which mining is prohibited.

54. In August 2011 the MTPA re-submitted the section 49 application. It contains a detailed analysis of the importance of the WWGA including that: -

54.1 the area is critically important from a water production perspective;

54.2 the area is largely classed as irreplaceable by the Mpumalanga Biodiversity Conservation Plan and thus crucial for the achievement of provincial and national conservation targets due to the biodiversity features located there;

54.3 the area is located in an endangered ecosystem; and

54.4 the area falls within provincial and national priority protected area expansion zones.

55. In the light of the above, the extremely high environmental significance and sensitivity of the MPE and the WWGA is evident. It is also abundantly clear that the MPE was declared to protect this area's unique and irreplaceable biodiversity.

56. After the application was submitted, on 31 August 2010, the then Minister of Mineral Resources imposed a moratorium on the granting of

30

all prospecting rights (GN R768 in GG 33511 of 31 August 2010). That moratorium was extended on 28 February 2011 for one month until 31 March 2011, except for Mpumalanga where the moratorium was extended to 30 September 2011 (GN R160 in GG34057 of 28 February 2011 as amended by GN R287 in GG 34171 of 31 March 2011).

57. At the time of the extension in February 2011, the then Minister of Mineral Resources was quoted as telling a media briefing on 8 February 2011 that the reason for not lifting the moratorium in Mpumalanga was that the DMR had "*challenges bigger than what we expected, so we will lift eight provinces, and Mpumalanga will continue... for two to three months before we lift the moratorium.*" According to the Minister, the biggest challenge in Mpumalanga was environmental matters, "*issues of ecology*". "*You find sensitive areas where rights have been granted,*" she was quoted as saying. "*We intend to address that matter, hence we are not going to lift the moratorium, so as to make sure that we respond to the challenges of nature. Unfortunately rights were granted, but we'll have to address those issues.*" She said her department was working closely with the Department of Environmental Affairs (DEA). A copy of the article is annexed marked "**PML2**".

58. The DMR's Annual Report for 2011/12 states that "*[t]he previous extension of the moratorium in Mpumalanga was due to the complex nature of environmental challenges in that province. It culminated in*

31

over 41 Rights that are located in Wakkerstroom and Chrissiesmeer being identified as those belonging to the category of environmentally sensitive areas and consequently action has been taken to prohibit mining within those areas." (our underlining). A copy of the front page of the annual report and the relevant extract are "Annexure 4" to the internal appeal.

59. This same statement was also relayed by the then Minister of Mineral Resources to the National Council of Provinces during her Budget Vote Speech for the DMR on 24 May 2012: "*Honourable members would recall that we had extended the moratorium in Mpumalanga due to the complex nature of environmental challenges in that province. This culminated in over 41 Rights that are located in Wakkerstroom and Chrissiesmeer being identified as those belonging to the category of environmentally sensitive areas. Consequently we have taken action to prohibit mining within these areas.*" A copy of the budget speech is "Annexure 5" to the internal appeal.

60. Accordingly, the environmental sensitivity of the Wakkerstroom area has been publicly recognised by a Cabinet Member responsible for minerals and representations have been made that, notwithstanding that rights have already been granted, action has been taken to prohibit mining in that area. That having been said, the DMR has not determined the MTPA's application in term of section 49 of the MPRDA.

32

AAV's MINING RIGHTS APPLICATION AND APPLICATION FOR ENVIRONMENTAL AUTHORISATION IN TERMS OF NEMA

61. The factual information below is drawn from AAV's AMENDED Environmental and Social Impact Assessment Report and Environmental and Social Management Programme ("*the Amended Final Report*"). The entire report is extremely voluminous. A copy will be made available to the court to the extent necessary.

62. AAV acquired coal prospecting rights to an area of 8,360 hectares comprising 12 farms in Mpumalanga. After exploration activities, a target area of approximately 2 500 hectares within the prospecting rights boundary was identified for mining extending over four of the twelve farms, namely Yzermyn 96 HT Portion 1, Kromhoek 93 HT, Goedgevonden 95 HT and a portion of Zoetvontein 94 HT.

63. AAV appointed WSP Environmental (Pty) Ltd (*WSP*) to undertake the scoping and environmental impact assessment phases in terms of the MPRDA and NEMA for the proposed mining project.

33

64. After the scoping phase, an environmental and social impact assessment process was followed and an Environmental and Social Impact Assessment Report and Environmental and Social Management Programme compiled for purposes of the requirements of both NEMA and the MPRDA.

65. Strong objections to the proposed mining project were raised from the outset from a number of parties. In a letter dated 29 August 2012 ("Annexure 8" to the internal appeal) (prior to the declaration of the MPE) the MPTA objected on the bases that:

65.1 the area in which AAV wants to mine is a proposed Protected Area under NEMPAA and that the final stage of the declaration was approaching;

65.2 the work of expanding the Protected Areas in Mpumalanga was part of the National Grassland Programme of 2008;

65.3 the area is classified as a sensitive area from a biodiversity conservation perspective, is identified as such in the Mpumalanga Biodiversity Corridor Plan and was endorsed by the Mpumalanga Provincial Cabinet in 2008;

65.4 the properties also form part of the area proposed for exclusion from mining in terms of section 49 of the MPRDA; and

65.5 the MTPA therefore objects to any mining activities within the Wakkerstroom Wet Grasslands Area.

66. On 27 September 2012, after receiving the Background Information Document for the proposed Yzermyn Underground Mine, WWF-SA wrote a letter of objection to the granting of AAV's proposed mining right application in respect of properties that fall within what is now the MPE. A copy of the letter is "Annexure 11" to the internal appeal. Its objections are on substantively the same grounds as those contained in MTPA's objections to the proposed mining project and MTPA's motivation for declaration of the MPE.

67. BirdLife South Africa (the Second Applicant) also opposed the mining right and in a series of correspondence concerning the draft scoping report, indicated that it did so on the basis, *inter alia*, in a letter dated 5 April 2013 annexed marked "**PML3**" that "*the application falls within the Grassland Important Bird Area (IBA). This IBA has been recognised by BirdLife South Africa and BirdLife International as both a national (SA125) and global (ZA016) IBA that is critical for the conservation of IUCM Red Data List (i.e. threatened) bird species, grassland endemic bird species and congregatory waterbirds."BirdLife also submitted that the "application is fatally flawed because it falls within a Threatened Ecosystem listed under s52(1)(a) of the National Environmental Management: Biodiversity Act... The Wakkerstroom/Luneburg Threatened Grassland Ecosystem is listed as Endangered, and therefore viewed as necessary to ensure protection of biodiversity, environmental stability and human well-being.*"

68. As appears from the document prepared by WSP annexed marked "**PML4**" the Endangered Wildlife Trust (the Fourth Applicant) also objected on the basis that the area is probably one of the best grassland/wetland areas and supplies a mass of water to surrounding areas and that it is a crime to even think of compromising this water / grass rich area.

69. Despite these fundamental objections, on 19 March 2013 AAV submitted a mining rights application for the mining of coal to the DMR in terms of section 22 of the MPRDA. The DMR notified AAV in a letter dated 25 April 2013 that the mining rights application had been accepted. A copy of the letter is attached marked "**PML5**".

70. In that letter, amongst other aspects, the DMR directed AAV in terms of section 22(4) of the MPRDA to submit six copies of a scoping report by 24 May 2013, to consult with interested and affected parties and submit six copies of the environmental management programme which includes the environmental impact assessment report in terms of section 39 of the MPRDA by 24 October 2013 and which programme must be compiled with the input of the public and must include a record as to the extent that the public participation informed the baseline environment and the potential impact assessment.

71. The final ESIA/ESMP report was submitted to the DMR on 18 October 2013 and to the DEA on 9 January 2014 ("*the Final Report*").

36

72. As appears from the attached letter dated 4 February 2014 marked "**PML6**", the DMR rejected the Final Report for fundamental, substantive reasons, the most important being as follows: "*This office does not support this application in its current form considering the preferred layout for the proposed infrastructure, in that the preferred layout is located within the sensitive environment. It is the view of this office that, the proposed project will result in unacceptable pollution, ecological degradation or damage to the environment, even though there are proposed mitigation measures*" (our emphasis). The DMR therefore recommended that AAV reassess the surface layout design in order to re-position the proposed infrastructure to an environment which is not sensitive and that upon the revision of the surface layout plan an EIA of the alternative location of the layout plan should be done.

73. Amongst other aspects, the DMR also drew AAV's attention to comments from the DWA which were attached, and directed AAV to address the comments and communicate the response to the DWA's Durban office. In that letter, pursuant to a consultation in terms of section 40 of the MPRDA, the DWA gave the DMR a detailed motivation for why it did not support the proposed mining development.

74. In terms of the former section 40 of the MPRDA, which still applies to the grant of AAV's mining right, the Minerals Minister is obliged to

consult with any State department which administers any law relating to matters affecting the environment when considering an environmental management programme submitted to the DMR for approval in terms of the MPRDA.

75. On 10 January 2014, after having been consulted by the DMR, the DWA addressed a letter to the Mpumalanga Regional Manager of the DMR. The DWA expressly stated in its letter that it did not support the proposed mining development.

76. The DWA's concerns about the draft environmental management programme for the proposed Yzermyn Underground Coal Mine included the following:

76.1 the location of the proposed mine in known sensitive habitats and environments as well as adjacent to the KwaMandlangampisi Protected Environment, "[t[he [DWA] notes the site location with great concern";

76.2 the impact of the mine on critical biodiversity sites is alarming even after mitigation is considered;

76.3 the projected impact of the dewatering of wetlands and pans through the abstraction of water from the identified boreholes is concerning;

76.4 the positioning of the adit (a horizontal passage from the surface of a mine) and the discard dump in wetlands constitutes "*a risk and a fatal flaw*;"

38

76.5 "... *no detailed wetland assessment was undertaken in the greater area to be impacted upon by the underground mining and associated cone of depression from the dewatering activities or groundwater contamination plume*," meaning that the precise impacts on wetlands in the mining area and those in the areas abutting the mining area have not been predicted (this is particularly relevant because of the "conditions" imposed by the DMR when granting the mining right);

76.6 the proposed mine will lead to a decline in water quality in the area, and is potentially prone to acid mine drainage decant after the closure of the mine;

76.7 at least 42% of the proposed mining area can be classified as "wetland;"

76.8 mining threatens the existing tourism sector in the area as well as potential growth in ecotourism in the region;

76.9 although the mine will create job opportunities, the majority of these job opportunities will be reserved for skilled workers from outside of the surrounding areas;

76.10 "... *the greatest fatal flaw of this site is situated within the National Freshwater Ecosystem Priority Area...*" and that it is predicted that mining will lead to the dewatering of subsurface water resources and the pollution of both surface and subsurface water resources that will "*extend to wetland [Freshwater Ecosystem Priority Areas] in the near vicinity*;" and

76.11 *"[a] number of threatened, endangered and vulnerable flora and fauna had proved to be solely dependent on the existence of the wetlands that seem to be threatened by the proposed mining activity" and that even the "... [s]lightest [of] changes in water quality and quantity are detrimental to the health of the aquatic biota."*

77. The DMR directed AAV, in terms of section 29 and 39(5) of the MPRDA, to address the aspects raised in the DMR's letter in the form of a revised EMP on or before 4 March 2014.

78. AAV appointed EcoPartners to address these aspects. According to EcoPartners, an "updated ESIA/ESMP report" was submitted to the DMR on 4 March 2014 which "*described and assessed the new surface layout proposed by Atha*" (page 32 of the Amended Final Report).

79. On 16 May 2014, and like the DMR, the DEA also rejected the Final Report. The DEA's letter is "Annexure 6" to the internal appeal. Copies were also sent to AAV, the Mpumalanga Department of Economic Development, Environment and Tourism and the DMR.

80. For the purpose of this application, the most important reasons for the DEA's rejection of the Final Report are as follows:-

80.1 "*The EIAR concludes that the preferred surface layout design not be considered for development, given the sensitivities*

40

pertaining to the site. It further recommends that an alternative layout design be considered and that this layout be reassessed to determine whether both environmental and socio-economic aspects can be accommodated. The Department agrees with this recommendation. Please confirm whether an alternative layout can be proposed, which will allow the proposed mine to coexist within this sensitive area, given the Department's concerns with regard to biodiversity..."

80.2 biodiversity concerns:

80.2.1 the EIAR did not consider the status of the ecosystem in terms of the Listed Ecosystems under the National Environmental Management: Biodiversity Act, No. 10 of 2004 (NEMBA);

80.2.2 the site is largely classified as irreplaceable in the Mpumalanga Biodiversity Conservation Plan. "Please be *advised that unless ground-truthing has been undertaken to prove that the development does not impact on the reason for the classification, this may constitute a fatal flaw."*

80.2.3 the area has a high occurrence of wetlands of very high ecological importance. This could be an indication that groundwater is very close to the surface and that any impact on the surface may be transferred to the groundwater, and *vice versa*;

80.2.4 in the National Freshwater Ecosystems Priority Areas maps, this area is classified as an NFEPA Priority Area, which means that it is critical for the sustained supply of potable water for downstream communities (The NFEPA system is described in the internal appeal). Dewatering of this area at the rates proposed in the study will lead to a lowering of the water table, which is likely to have a very high negative impact on biodiversity, food production and water provisioning to areas downstream. (The Wakkerstroom area was classified as a National Freshwater Ecosystem Priority Area (NFEPA) by the South African National Biodiversity Institute (*SANBI*) as part of the National Freshwater Ecosystem Project, funded by the Water Research Commission, the Council for Scientific and Industrial Research (*CSIR*), SANBI, the DWA and DEA.

The NFEPA Atlas[1] shows that the Wakkerstroom area is a priority wetland and river ecosystem. River Freshwater Ecosystem Priority Areas are river ecosystems that are still in relatively good ecological condition occurring in healthy catchments and should remain in relatively good condition to contribute to

[1] Nel, et al *Atlas of Freshwater Ecosystem Priority Areas in South Africa: Maps to Support Sustainable Development of Water Resources* (2011) (NFEPA Atlas) p.20.

42

national biodiversity goals and support sustainable use of water resources. The surrounding land and stream network need to be managed in a way that maintains the good condition of the river reach. Similarly, Freshwater Ecosystem Priority Wetlands and Wetland Clusters must be maintained if they are in good ecological condition and rehabilitated to the best attainable ecological condition if they are in a substandard ecological condition.[2])

80.2.5 due to the sensitivity of the aquatic ecosystems, the hydrological importance of the area and the potential significant impact of the proposed mine on these ecosystems mainly through the dewatering of the wetlands and pans in the area, the EIAR "cannot be considered without the identification of downstream water areas, the water users dependent on the water, and a quantification of the dewatering effect on economic activities downstream, including increase in droughts and floods";

80.2.6 the recommendation in the EIAR that additional ground and surface water studies be undertaken in order to adequately quantify the anticipated impacts of acid mine drainage from the proposed mine on the receiving environment is supported;

[2] NFEPA Atlas p.14.

80.2.7 the proposed mining area falls within an Important Bird and Biodiversity Area, declared as such by BirdLife International on account of its significance to the conservation of the world's birds and other nature, which hosts endangered and threatened endemic and other bird species; and

80.2.8 as the mining area borders on Protected Areas to the south and the east and some of the land parcels in the application are part of a declared protected environment, "... a mining licence (sic) cannot be granted without the express permission of the Minister of Environmental Affairs".

81. According to EcoPartners, after the DEA's rejection of the Final Report new specialist studies were commissioned to address the "concerns raised by DEA in the letter of 16 May 2014" and to assess the impact that the new surface layout design and location will have on the affected environment (page 24).

REQUEST TO MEC FOR GRANT OF MINING RIGHT WITH CONDITIONS

82. On 21 May 2014, a mere few days after the DEA rejected the Final Report, AAV addressed a letter to the MEC, Mpumalanga Provincial Government: Department of Economic Development, Environment and Tourism (MDEDET) entitled "*Request to provide AAV with guidance*

44

and information in respect of specific conditions to be included in AAV's EMP to be approved by the DMR, in order to ensure protection of the environment and the biodiversity within the declared Mabola and Extended Kwamanlangampisi Protected Environments within which AAV has applied for a mining right". A copy of the letter is annexed marked "**PML7**".

83. In the letter AAV requested the MEC to provide AAV with "*direction and guidance*" on the most appropriate channel, in MDEDET, to follow in order to obtain clarification on any specific environmental or specific mitigation conditions or guidelines of the MDEDET which AAV could include in the final EMP to be approved by the DMR.

GRANT OF THE MINING RIGHT AND THE IMPOSITION OF ENVIRONMENTAL CONDITIONS

84. The DG notified AAV in a letter dated 19 September 2014 that the mining right had been granted. A copy of the letter is "Annexure 14" to the internal appeal.

85. In the letter, the DG notified AAV that the Regional Manager would approve the relevant Environmental Management Programme and sign the right, that in terms of section 23(5) of the MPRDA, the mining right would come into effect on the date on which the Environmental Management Programme was approved and that the signed/executed

ZWN

45

mining right had to be lodged for registration at the Mineral and Petroleum Titles Registration office, Pretoria, within 30 days from the date of approval of the relevant environmental management programme.

86. The DG imposed a number of conditions pertaining to the environment, as reflected in paragraph 6 of the letter as follows:-

(i) "*the granting shall exclude any areas that constitute wetlands*";

(ii) "*surface mining or related activity, as well as erection/installation of surface infrastructure shall be prohibited from taking place in any area that constitute wetlands or is deemed to be a sensitive environment*";

(iii) "*the applicant shall formulate proper mitigation measures relative to the area in consultation with other stakeholders/authorities that administer matters affecting the environment at National and Provincial (Mpumalanga) level*"; and

(iv) "*a proper plan/map shall be submitted with a clear depiction of such exclusions as indicated on (1) above*".

"***NB**: The abovementioned conditions shall be fulfilled to the satisfaction of the Department before the right can be considered further for notarial execution.*"

AMENDMENT OF FINAL REPORT

46

87. On 16 September 2014 EcoPartners gave stakeholders notification of developments relating to the project, including that the DEA "reviewed the Final ESIA/ESMP report that was submitted in January 2014 and requested that additional information be addressed", that a new surface layout has been proposed and additional specialist studies were conducted and that the draft AMENDED Final Report was available for comment. Stakeholders were invited to provide comments by 27 October 2014. A copy of the notice is attached marked "**PML8**".

88. The MTPA also submitted objections to the draft Amended Final Report. Its letter dated 27 October 2014 is "Annexure 9" to the internal appeal. In this letter, the MTPA objected on the bases that:

88.1 the amended site layout plan, accompanied by additional specialist studies pertaining to the status of the impacted ecosystem and the impact of the mine on wetlands and stream flow, is inadequate, vague and therefore fundamentally flawed;

88.2 it is unlawful to mine in a protected environment without the written consent of the Minister of Environmental Affairs and Minister of Mineral Resources;

88.3 it is undesirable for coal mining to be conducted in the MPE;

88.4 the amended EIAR (i.e. the draft Amended Final Report) does not make adequate provision for the mitigation of future permanent modification and degradation of groundwater dependent ecosystems such as wetlands and springs in the proposed mining area;

47

88.5 it is not clear from the EIAR what effect subsidence will have on the topography, roads and underground water flows after mining;

88.6 the EIAR does not make provision for a sound rehabilitation plan for the forecasted post-mining acid mine drainage decant;

88.7 the alternative site layout plan for the discard dumpsite is inappropriate as it is situated in close proximity to a network of wetlands, seepage wetlands and partly within the "1km restricted zone" of a tributary of the Assegaai River, which river is classified as a Critical Biodiversity River in terms of the Mining and Biodiversity Guideline, 2013. (The development of the *Mining and Biodiversity Guideline: Mainstreaming Biodiversity Into The Mining Sector* was initiated by the Chamber of Mines and the South African Mining and Biodiversity Forum (SAMBF), in partnership with DEA and the DMR, and with technical input and coordination by the SANBI Grasslands Programme);

88.8 coal is an abundant resource in South Africa and can be mined in less ecologically sensitive areas; and

88.9 the impact of the mine, if not adequately mitigated, could have a devastating impact on affected vulnerable and endangered ecosystems.

ZWN

48

89. On 27 October 2014, WWF-SA also objected to the draft Amended Final Report. A copy of the letter is "Annexure 12" to the internal appeal. There are two significant aspects of the letter.

90. The first is the reference to a specialist report submitted by AAV's own consultant. According to WWF-SA, a report submitted by Natural Scientific Solutions CC to WSP for submission as part of the environmental impact assessment report to the DEA (which was rejected by the DEA) (NSS Report), states the following in the executive summary:

> *"Although the proposed surface infrastructure layout plan will comprise a small portion of the target mining area, the combined Baseline and Impact Assessments (sic) indicate that the [ATHA Yzermyn Coal Project] (sic) is fatally flawed,* ***and should be NO GO in terms of Biodiversity***. [our emphasis] *This is largely because the impact of the proposed underground mining on the supply of water to the surface water resources (due to de-watering activities) and the potential groundwater contamination. These aspects will have significant impact on aquatic and wetland ecosystem functioning and biodiversity in a far greater area than the underground mining area. This aspect of the mining project, alone, is in strong conflict with international, national and provincial legislation, policies and guidelines. A large number of CI* [Conservation Important] *species*

49

were detected, and most habitat in the proposed underground mining and surface infrastructure areas was assigned a Very High or High sensitivity. Most potential impacts of the mining operations had a HIGH overall significance rating, even with mitigation. Moreover, the cumulative impact of numerous mining applications in the study region are of serious concern..."

91. The second aspect is that WWF-SA was of the view that the mitigation measures proposed by EcoPartners in the draft Amended Final Report are inadequate to address the biodiversity issues raised in the NSS Report.

AAV'S REQUEST FOR AN AMENDMENT OF CERTAIN OF THE ENVIRONMENTAL CONDITIONS

92. According to AAV, it received notification of the grant of the mining right on 12 November 2014. It almost immediately addressed a letter to the Regional Manager: Mpumalanga Region DMR to amend certain of the environmental conditions which the DG had imposed when granting the mining right. A copy of that letter, dated 19 November 2014, is attached marked "**PML9**".

93. AAV sought to amend the following conditions:

93.1 The granting shall exclude any areas that constitutes wetlands (condition 6.(i));

93.2 surface mining or related activity, as well as erection/installation of surface infrastructure shall be prohibited from taking place in any area that constitute wetlands or is deemed to be a sensitive environment (condition 6(ii)).

94. Essentially, AAV's motivation for the amendments was that those conditions were "*impossible to abide by*".

95. In respect of condition 6(i), AAV contended that it "*poses a significant risk to the entire Yzermyn Underground Coal Project*". It requested the DMR to consider amending that condition as follows: "*the granting shall exclude surface areas for development of surface infrastructure outside Portion 1 of Yzermyn 96HT.*"

96. Portion 1 of Yzermyn 96HT does not fall within the MPE. It does, however, fall within the WWGA in respect of which there is an application pending in terms of section 49 of the MPRDA for mining to be prohibited in that area.

97. It is important to note that AAV's argument is NOT that because all the mining activities will be undertaken underground there will be no negative environmental impact on surface areas and wetlands. On the

contrary, it expressly acknowledges that there will be a disturbance to the wetlands and that mitigation will be required.

98. AAV baldy stated that it had already agreed to amend its Mine Works Programme in that the Residue Stockpile (Disposal Facility) will be removed from the plans, "*which will result in a mining project that will have no physical disturbance of channel valley wetlands and in addition the proposed disturbance to seep wetlands will be confined to the historically disturbed wetlands.*" Further, "*It is important to note that the mitigation measures proposed to enable the best functioning of the wetland will initially disturb the wetland, however, the future impact brought about by these mitigation measures will ultimately result in an improvement of the current functioning of the wetland.*"

99. AAV's argument in respect of condition 6(ii), appears to contradict its position in respect of condition 6(i). In respect of the latter, the impression is created that there will be no surface activity. Yet, in respect of the former, AAV's contention is that instead of surface mining and related activities being prohibited from taking place in any area that constitutes wetlands or is deemed to be a sensitive environment, it SHOULD be allowed to take place subject to AAV obtaining an exemption from having to comply with "certain provisions of" GNR 704 promulgated under the National Water Act, 36 of 1998. As AAV put it, "*In essence, AAV's request is that the Department of Mineral Resources consider granting AAV permission to disturb certain*

52

wetlands in line with the GN 704 Regulations under the National Water Act. This will entail AAV obtaining the necessary exemption from the DWA as custodian of the water resources of the country, prior to the commencement of any mining activity "

REQUESTS TO THE DMR AND AAV FOR INFORMATION PERTAINING TO THE GRANT OF THE MINING RIGHT

100. Registered interested and affected parties to the mining right application process, which included representatives of the Second and Fourth Applicants, were notified of the granting of the mining right on 23 January 2015 at a public participation meeting relating to the MTPA's proposed management plan for the MPE.

101. AAV refused to give any of the registered interested and affected parties copies of the DG's letter. There was no reference made to AAV having applied to the DMR for an amendment to conditions imposed by the DG.

102. On 23 February 2015, the CER addressed a letter to the Mpumalanga Regional Manager of the DMR Regional Manager) ("Annexure 14" to the internal appeal) in which the CER requested a copy of any letter from his office to AAV confirming that a mining right had been granted to AAV in respect of properties in the MPE.

53

103. The CER also enquired whether or not AAV had requested consent to mine in the MPE from the Minerals Minister in terms of section 48(1)(b) of NEMPAA. Finally, in the event that such a request had been made by AAV, the CER enquired what public participation was underway. The CER did not receive a response to this letter.

104. On 2 March 2015, the CER addressed an email to Mr Tripathi, a director of AAV, in which it requested a copy of a letter confirming that a mining right had been granted to AAV in respect of land in the MPE. A copy of this email is "Annexure "15" to the internal appeal. The CER did not receive a response to this email.

105. On 3 March 2015, the CER addressed an email to the Regional Manager reiterating its request for a copy of a letter confirming that a mining right had been granted to AAV in respect of land in the MPE. A copy of this email is "Annexure 16" to the internal appeal.

106. On 3 March 2015, the CER received a copy from the DMR of the letter notifying AAV of the grant of the mining right. It was sent to the CER attached to a blank email. A copy of that email is "Annexure 18" to the internal appeal. No mention was made in that correspondence of AAV's request for the conditions to be amended.

54

107. The CER has to date not received a reply to its enquiry to the Regional Manager whether or not AAV has requested consent to mine in the MPE in accordance with section 48(1)(b) of NEMPAA.

REQUESTS TO THE DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND DEPARTMENT OF WATER AND SANITATION FOR INFORMATION

108. On 23 February 2015, the CER addressed a letter to the Deputy Director-General: Biodiversity and Conservation of DEA in which it made a number of enquiries to ascertain whether the Minister of Environmental Affairs had received any requests for permission to be granted under section 28(1) of NEMPAA for AAV's proposed mine and whether she had been requested to comment more generally on AAV's mining rights application, including on the environmental management programme submitted by AAV in terms of the MPRDA attached to the mining right. A copy of the letter is attached marked "**PML10**".

109. On 26 February 2015, the CER received an email from the DEA, in which the DEA advised the CER that "... *queries related to the Protected Areas Act and authorisations that need to be obtained from the Minister to mine in the protected environment... should be directed to the D: Protected Areas for a response.*"

110. In this email, the DEA furthermore stated that it has received an application for environmental authorisation from AAV in respect of its

proposed Yzermyn project and that it expects that such application will be finalised in approximately 100 days. A copy of this email is "Annexure 17" to the internal appeal.

111. The email from the DEA to the CER dated 26 February 2015 was copied to various officials in the DEA. No further response has been received to the CER's letter of 23 February 2015 from the DEA.

112. The CER also corresponded with the DWS. On 24 February 2015, the CER addressed an email to the DWS requesting a copy of a water use licence (WUL) application made by AAV to the DWS in respect to its proposed Yzermyn project, alternatively, and in the event that AAV has issued a WUL to AAV in respect of its proposed Yzermyn project, a copy of the relevant WUL. A copy of this email is attached as "**PML11**."

113. On 11 March 2015, the DWS responded to the CER's letter of 25 February 2015. In this letter, the DWS advised the CER that it is *"... required to request the information related to this matter via the Deputy Chief Information Officer: Chief Director Legal Services – Mr. Puseletso Loselo, in accordance with the prescribed format, stipulated in the Promotion of Access to Information Act 2, of 2000 (PAIA)."* A copy of the letter is annexed marked "**PML12**".

THE INTERNAL APPEAL AND APPLICATION FOR SUSPENSION OF THE MINING RIGHT

56

114. The Applicants dispatched their notice of appeal contemplated in section 96 of the MPRDA on 30 March 2015, together with an application for the suspension of the mining right pending the outcome of the appeal.

115. A copy of the appeal and application was sent by speed services to the DMR's legal services department on the same day and delivered to its offices on 1 April 2015. Copies were also served on the Minister, the DG and AAV. Copies of service affidavits evidencing this are attached as "**PML12**" and "**PML13**".

116. On 2 April 2015, the CER received acknowledgement of receipt of the notice of appeal and application for suspension from the DMR. A copy of this acknowledgement of receipt is attached as "**PML14**".

117. The grounds of appeal were that:-

117.1 all available evidence, including a report submitted as part of AAV's application for environmental authorisation indicate that the mining will result in unacceptable pollution, ecological degradation or damage to the environment, therefore in conflict with the peremptory requirement of section 23(1)(d) of the MPRDA. The NSS report by a consultant appointed by AAV recommended that the area should be declared "no go" for

57

mining, because of the impacts of mining on biodiversity and on the supply of water to the surface water resources;

117.2 that the mining right is in respect of properties that fall within the Mabola Protected Environment, but that the written permission of the Minister of Environmental Affairs and the Minister of Mineral Resources in terms of section 48(1)(b) of NEMPAA to conduct commercial mining in the Mabola Protected Environment had not been obtained, or sought (as far as the Appellants could establish);

117.3 that the mining right is in respect of properties that:

117.3.1 are classified as of "irreplaceable" biodiversity value in the Mpumalanga Biodiversity Conservation Plan's terrestrial biodiversity assessment (terrestrial assessment) in the Mpumalanga Biodiversity Conservation Plan of 2006;

117.3.2 form part of the Wakkerstroom/Luneburg Grasslands Threatened Ecosystem, listed as an endangered ecosystem in the National List of Ecosystems that are Threatened and in Need of Protection published in terms of NEMBA;

117.3.3 fall within a National Freshwater Ecosystem Priority Area and a Strategic Water Source Area, determined by the SANBI as part of the National Freshwater Ecosystem Project, funded by the

58

Water Research Commission, CSIR, SANBI, the Department of Water Affairs (now the Department of Water and Sanitation) and DEA;

117.3.4 are identified in the National Protected Areas Expansion Strategy (2008) as an area that requires urgent legal protection;

117.3.5 that, in 2013, a comprehensive application was submitted by the MTPA, at the invitation of the DMR's Regional Manager for Mpumalanga, to the Minister of Mineral Resources in terms of section 49 of the MPRDA to declare the Wakkerstroom Wetland Area as an area in which mining is prohibited;

117.3.6 that the then Minister of Mineral Resources advised the National Council of Provinces in May 2012 that steps have been taken to prohibit mining in Wakkerstroom;

117.3.7 the express objection to the granting of the right by the Department of Water and Sanitation;

117.3.8 the express objection to the granting of the right by the MTPA;

117.3.9 the rejection by the DEA of AAV's final environmental impact assessment report (EIAR) in its first application for an environmental authorisation; and

S9

117.3.10 ongoing and repeated objections from civil society organisations, including members of the multi-stakeholder Grassland Programme such as WWF SA and BirdLife South Africa.

117.4 The mining right was granted subject to a number of conditions pertaining to the environment, which conditions are unlawful, vague and unenforceable.

117.5 Furthermore, granting the mining right contravenes several National Environmental Management Principles (NEMPs) arising from section 2 of the NEMA. It is also in conflict with NEMPAA and the Constitutional duty to promote conservation through reasonable legislative and other measures in a number of respects:-

117.5.1 the grant of the mining right completely undermines the declaration of the MPE in terms of NEMPAA. The purposes of the declaration of the MPE will not be able to be achieved if coal mining takes place in the MPE;

117.5.2 the written permission of the Ministers of Environmental Affairs and Mineral Resources have not been obtained, or as far as the Applicants are able to establish , in terms of NEMPAA for the grant of the mining right; and

117.5.3 it will result in protected area expansion targets not being met.

117.6 The grant of the mining right is also in conflict with stated national policy in relation to mining in Mpumalanga. The former Minister of Mineral Resources and the DMR have stated publicly (as outlined in paragraphs 56 to 59 above) that steps have been taken to prohibit mining in the highly environmentally sensitive area of Mpumalanga.

117.7 On the available information placed before the DMR, the requirement in section 23(1)(d) of the MPRDA that a mining right will only be granted if the mining will not result in unacceptable pollution, ecological degradation or damage to the environment could not possibly have been met.

117.8 In the light of all the applicable environmental legislative provisions, government policies and adopted plans in respect of the Mabola Protected Environment, mining policy with regard to this area, and the environmental factors outlined above, the grant of the mining right is unlawful, irrational and unreasonable and relevant considerations were clearly not taken into account.

PAIA REQUESTS SUBSEQUENT TO LODGING OF THE INTERNAL APPEAL

118. After the lodging of the appeal, the CER made various requests for access to information in terms of the PAIA.

119. On 16 April 2015, on behalf of the Fifth Applicant, the CER submitted a PAIA request to the DMR in which it sought copies of

119.1 AAV's application for a mining right;

119.2 a record of mitigation measures as contemplated by condition 6(iii) of the DG's letter notifying AAV of the grant of the mining right;

119.3 a plan/map depicting the wetlands excluded from the grant of the mining right as contemplated by condition 6(iv) of the DG's letter;

119.4 the executed mining right;

119.5 the approved environmental management programme (EMPR), or the draft EMPR if it had not been approved;

119.6 records showing the approved financial provision made in terms of section 41 of the MPRDA, alternatively in terms of section 24P of the NEMA;

119.7 the approved social and labour plan (SLP) alternatively, a copy of the draft SLP submitted by AAV to DMR for approval;

119.8 the approved mining works programme , alternatively a copy of the draft mining works programme;

119.9 any correspondence between AAV and the DMR and/or Minister of Mineral Resources contemplated by section 48(1)(b) of the NEMPAA; and

119.10 all correspondence between the DMR and AAV and between the DMR and the DEA and/or the DWS regarding AAV's proposed Yzermyn Project.

62

120. After numerous requests by the CER for DMR to take a decision on the request, the CER received a letter from the DMR on 29 May 2015 advising the CER that its PAIA request had been partially granted.

121. Access to the following documents was refused by the DMR on the grounds in sections 36(1) and 44(1) of PAIA: the financial provision documents, the mining works programme or draft mining works programme, correspondence between AAV and the DMR and/or the Minister contemplated by section 48(1)(b) of the NEMPAA and all correspondence between the DMR and AAV and between the DMR and the DEA and/or the DES regarding AAV's proposed Yzermyn Project.

122. The DMR has to date been unable to supply copies of any of the documents in respect of which access was granted to the CER due to an apparent office relocation in the Mpumalanga region. On 21 July 2015, the Fifth Applicant lodged an internal appeal against the refusal by the DMR to grant it access to records showing the approved financial provision made in terms of section 41 of the MPRDA, alternatively in terms of section 24P of the NEMA; a copy of the approved mining works programme , alternatively a copy of the draft mining works programme; and copies of any correspondence between

2WN

AAV and the DMR and/or Minister of Mineral Resources contemplated by section 48(1)(b) of the NEMPAA.

123. On 16 April 2015, on behalf of the Fifth Applicant, the CER also submitted a PAIA request to the DEA. It requested the following records:

123.1 The amended EIAR submitted by AAV to the DEA following rejection of AAV's initial EIAR as per DEA's letter dated 16 May 2014 ("Annexure 6" to the internal appeal);

123.2 Any approved environmental authorisation issued to AAV;

123.3 Any correspondence between AAV and the DEA and/or Minster of Environmental Affairs contemplated by section 48(1)(b) of the National Environmental Management: Protected Areas Act, 2003; and

123.4 All correspondence between the DEA and AAV and between the DEA and DMR and/or the Department of Water and Sanitation regarding AAV's proposed Yzermyn project.

124. The DEA refused the request as follows:-

124.1 Access to the amended EIAR submitted by AAV to DEA and correspondence between DEA and AAV regarding the proposed project was denied on the grounds that the record contains: "*an opinion, advice, or report prepared for the purpose of assisting to formulate a policy or take a decision in the exercise of a power or the performance of a duty...and the*

ZNN

64

disclosure could reasonably be expected to frustrate the deliberative process...".;

124.2 Access to any approved environmental authorisation and any correspondence between AAV and DEA as contemplated in NEMPAA was denied on the grounds that "*the Department has no records herein*".

125. This response appears to indicate that at the time of the taking of the Minerals Minister's decision, the DEA had not yet granted AAV's application for an EA, and that no written permission had been sought or given by the Minister of Environmental Affairs under NEMPAA.

126. A PAIA request was also submitted to DWS requesting a copy of a water use licence application, alternatively the WUL if it had already been issued as well as all correspondence between the DWS and AAV and between the DWS and the DEA and/or the DMR regarding AAV's proposed Yzermyn Project.

127. DWS granted the PAIA request but supplied incomplete records. DWS provided the CER with an incomplete copy of AAV's water use licence application, which included the first 46 pages of AAV's draft integrated water and waste management plan (IWWMP) and appendices "K" (Farm Owner's Agreements) and "L" (Mitigation Measures). DWS further supplied the CER with copies of fragments of both AAV's Stakeholder Consultation Report and its Amended Environmental

ZWN

Impact Assessment Report notification. The former report was submitted to DEA as part of AAV's original EIAR and both of these reports were submitted to DEA as part of AAV's amended EIAR.

128. The fragments include sections of attendance registers, sections of records of meetings between AAV and interested and affected parties as well as incomplete copies of correspondence between interested and affected parties and AAV pertaining to AAV's mining right and environmental authorisation applications.

129. Moreover, the DWS supplied the CER with limited copies of correspondence between itself and AAV pertaining to AAV's water use licence application. The most recent correspondence reveals that at 22 June 2015, AAV's water use licence application remained incomplete for outstanding information, notwithstanding a prior request by AAV for an extension. The DWS granted a final extension to AAV to submit the outstanding information to it by 28 August 2015.

130. While no aspect of the PAIA request was refused, the records supplied by DWS exclude any correspondence between DWS and, for example, DMR, forming part of the multi-stakeholder process during the scoping phase or following submission of AAV's application for a mining right on 19 March 2013.

CORRESPONDENCE TO THE MINERALS MINISTER

ZWN

66

131. On 2 April 2015 the CER sent a letter to the Minerals Minister on behalf of the appellants in the internal appeal. A copy of the letter is annexed marked "**PML16**".

132. The important aspects of the letter are the following:-

132.1 The appellants expressly alerted the Minerals Minister to the fact that an internal appeal had been lodged against the grant of the mining right to AAV to conduct underground coal mining in the MPE, declared as such under section 28 of NEMPAA, and that the appellants seek the setting aside of the grant of the mining right in its entirety, including a number of vague and unlawful conditions pertaining to the environment which were imposed when the mining right was granted.

132.2 The Minerals Minister's attention was drawn to the fact that one of the primary motivations for the declaration of the MPE was to protect this truly unique and irreplaceable area from coal mining.

132.3 Furthermore, the Minerals Minister was notified that, given the extreme environmental sensitivity of the area, the appellants had simultaneously with the internal appeal lodged an application for the suspension of the mining right pending the outcome of the appeal.

132.4 The appellants pointed out that one of the grounds of appeal is that the mining right was granted notwithstanding that, as far as

the appellants have been able to establish, the written permission of the Minister of Environmental Affairs and the Minerals Minister in terms of section 48(1)(b) of NEMPAA to conduct commercial mining in the MPE had not been obtained, or sought;

132.5 A copy of a letter sent to the Minister of Environmental Affairs by the CER was enclosed in which that minister was requested not to take any steps to consider or evaluate any such application as may be made by AAV for the minister's written permission to conduct commercial mining in the MPE pending the final determination of whether the grant of the mining right to AAV was lawful and the appellants made the same request to the Minerals Minister.

132.6 The appellants expressly requested the Minerals Minister to consider and determine the appellants' application for suspension of the mining right pending the final determination of whether the grant of the mining right to AAV was lawful.

THE MINERALS MINISTER'S DECISION

133. The Minerals Minister sent a response to AAV's request of 19 November 2014 for an amendment of the environmental conditions

68

imposed by the DG in a letter dated 14 April 2015. A copy of the letter is attached marked "**PML17**".

134. He advised AAV that, in terms of section 103(4)(b) of the MPRDA, he was "hereby amending" the decision made by the DG on 19 September 2014 to grant the mining right to AAV subject to the conditions contained in the granting letter.

135. Paragraph 2 of the letter reads as follows: "*This therefore serves to inform you that your above mentioned application for a mining right to mine **Coal** in respect of the abovementioned properties has been granted in terms of section 23(1) of the abovementioned Act. The Regional Office will prepare the final copies of the right to be signed*".

136. The letter then goes on to reproduce the entire contents of the DG's "*granting letter*" of 19 September 2014 save (in addition to minor changes in respect of the number of copies of the final mining works programme and Social and Labour Plan) as follows:-

136.1 All the environmental conditions in paragraph 6 of the DG's letter have been removed;

136.2 The following has been added:-

"7. *Finally, noting the provisions of section 23(6) of the Act (i.e. the MPRDA), the following shall also be applica*ble:

(i) You may not commence with mining operations prior to the obtaining of a Water License from the Department of Water Affairs;

ZNN

(ii) *You may not commence with mining operations prior to the obtaining of an environmental authorization from the Department of Environmental Affairs*; and

(iii) *You must comply with all other related legislations before the commencement of mining*".

137. As appears from the above, the letter from the Minerals Minister is ambiguous. On the one hand, the letter reflects that the Minerals Minister is amending the decision taken by the DG. However, the letter does not contain a description of any amendments. Instead, one is left to infer what those amendments might be by comparing the DG's "granting" letter and the Minerals Minister's letter.

138. On the other hand, there are indications in the letter that the Minerals Minister "amended" the DG's decision by in reality withdrawing it in its entirety (or simply withdrew it) and replacing it with a fresh grant of a mining right in terms of section 23(1) of the MPRDA. As already mentioned above, the letter also refers in paragraph 2 to a right being granted and substantially reproduces all the standard aspects contained in a "granting letter: when the DG grants mining rights. A footer to the letter, on all but the first page, reflects "*Withdrawal of decision of Director-General:Mineral Resources to amend paragraphs 6(i) and 6(ii) of the granting letter Atha-Africa Ventures (Pty) Ltd Mining Right...*".

139. The MPRDA does not make provision for an internal appeal against the decision of the Minerals Minister. The Applicants' only remedy is,

2WN

70

accordingly, to launch review proceedings in terms of PAJA in respect of the Minerals Minister's decision.

THE SUSPENSION OF THE INTERNAL APPEAL PROCESS

140. On 12 May 2015, the Legal Services Department of the DMR addressed a letter to CER enclosing "comments" on the appeal as submitted by AAV and affording the appellants an opportunity to comment on these documents within 21 days of receipt, whereafter the DMR would proceed with the facilitation of the appeal. A copy of the letter is attached marked "**PML18**".

141. The DMR also advised the CER that the reasons for the decision from the Regional Manager remain outstanding and that the CER will be provided with a copy of these reasons as soon as the Legal Services Chief Directorate is in receipt thereof.

142. The "comments" from AAV consisted of a letter dated 24 April 2015 addressed to the Chief Director Legal Services: DMR, together with two annexures. A copy of the letter is attached marked "**PML19**".

143. The first annexure is the letter dated 19 November 2014 sent to the Regional Manager: Mpumalanga Region by AAV requesting the amendment of certain of the conditions imposed by the DG when the mining right was granted to AAV (PML7 hereto). The second annexure

ZWN

71

is the letter dated 14 April 2015 sent to AAV by the Minerals Minister (PML15 hereto).

144. In respect of the appeal process, AAV requested the DMR to inform the CER that what it referred to as "*the Second (FINAL) Granting Letter*" was issued to AAV on 14 April 2015, and as a result "*the First Granting Letter*" became "*null and void*" and that "*Naturally following from the annulment of the First Granting Letter, no appeal can be entertained by the DMR in respect of the First Granting Letter.*"

145. The CER sent a response to the DMR on behalf of the appellants in a letter dated 26 June 2015, a copy of which is attached marked "**PML20**".

146. The CER advised the DMR that in the light of the Minerals Minister's decision the appellants' instructions were to launch review proceedings in the High Court against the decision of the Minerals Minister and that, in the circumstances, the appellants requested that the appeal be suspended pending the outcome of the review proceedings.

GROUNDS OF REVIEW

147. As outlined above, the Minerals Minister's decision is ambiguous. The first possibility is that the Minerals Minister simply amended the DG's decision to grant the mining right to AAV by removing the

72

environmental conditions imposed by the DG (paragraph 6 of the DG's letter) and inserting new conditions. For the reasons outlined below, the effect of such an amendment is so material that it is manifestly clear that the DG would not have granted the mining right at all, alternatively could not possibly have lawfully granted the mining right in the terms set out in the amendment. To that extent, it was therefore not legally permissible for the Minerals Minister to effect those amendments to the DG's grant of the mining right.

Unlawfulness: mining right must be refused if the mining will result in unacceptable pollution, ecological degradation or damage to the environment.

148. The Applicants' principal ground of review is that the Minerals Minister's decision is unlawful. In terms of section 23(1)(d), read with 23(3), of the MPRDA an application for a mining right must be refused if the mining will result in unacceptable pollution, ecological degradation or damage to the environment.

The DG's decision

149. As outlined in detail above, all the information and evidence submitted to the DMR prior to the grant of the mining right by the DG to AAV overwhelmingly established that the proposed mining activities, which cover a substantial portion of the MPE, and fall within the WWGA, will

73

result in unacceptable ecological degradation or damage to the environment.

150. It is common cause between the DEA, the DWA, the MTPA and civil society organisations with established expertise, such as WWF-SA and the Applicants, that the area in respect of which the mining is to take place is unique, sensitive and has irreplaceable biodiversity and water resources of immense importance to South Africa's future water security.

151. The clear and consistent position articulated to the DMR by relevant role-players during the course of the consideration of the mining right application was that, in this particular protected area, mining should not be permitted to take place at all.

152. The Applicants emphasise the following aspects outlined above:

152.1 On 10 January 2014, pursuant to a consultation in terms of section 40 of the MPRDA, the DWA addressed a letter to the Mpumalanga Regional Manager of the DMR in which it expressly stated that it did not support the proposed mining development ("Annexure 7" to the internal appeal). The DWA gave detailed reasons which reflect that the DWA was of the opinion that the proposed mine would result in environmental damage which is not capable of being mitigated. Furthermore, the DWA emphasised the extent of the proposed mining area

74

which constitutes wetland, that the greatest fatal flaw of this site is that it is situated within a designated National Freshwater Ecosystem Priority Area and that it is predicted that mining will lead to the dewatering of subsurface water resources and the pollution of both surface and subsurface water resources;

152.2 On 4 February 2014, the DMR rejected the Final Report on the basis that *the proposed project will result in unacceptable pollution, ecological degradation or damage to the environment, even though there are proposed mitigation measures*.";

152.3 In the same letter, the DMR directed AAV to address the DWA's concerns outlined in its letter dated 10 January 2014;

152.4 On 16 May 2014, the DEA notified AAV that it had rejected AAV's EIAR (i.e. the Final Report). A copy of that letter was sent to the DMR. The DEA gave detailed reasons for the rejection of the EIAR reflecting that the proposed mining would cause unacceptable environmental damage and degradation.

153. At the time that the DG granted the mining right, EcoPartners had not yet published the draft AMENDED Final Report for public comment which was specially required by both the DMR and the DEA to assess whether it was at all possible for mining to go ahead.

75

154. Key aspects of the surface layout and assessment of impacts on the wetland had also not been finalised. This included that a "detailed delineation" of the wetland boundaries within the proposed surface infrastructure was only undertaken by Scientific Aquatic Services on 7 November 2014 and their opinion in respect thereof provided on 9 December 2014 (Appendix H4 to the Amended Final Report).

Developments after the DG's decision

155. As mentioned above, EcoPartners only published the draft Amended Final Report for public comment in October 2014 (i.e. after the DG had already granted the mining right).

156. The MTPA and WWF-SA provided detailed objections to the draft Amended Final Report in their respective letters of 27 October 2014 and 27 October 2014 (see paragraphs 88 to 91 above).

157. The Applicants emphasise that it is evident from these objections that both the MTPA and WWF-SA were of the view that AAV had not adequately addressed the shortcomings in the Final Report which had been rejected by both the DMR and the DEA.

158. Those letters refer to initial studies done by Natural Scientific Services CC on behalf of AAV and submitted to WSP which reflects in its executive summary that the proposed Yzermyn mine should be a NO

76

GO in terms of biodiversity because of the impact of the proposed underground mining on the supply of water to the surface water resources (due to the de-watering activities) and the potential groundwater contamination (see page 1 of "Annexure 12" to the internal appeal).

159. It appears from the letters that AAV amended its proposal, including with new mitigation measures. In respect of the wetland assessment, AAV seemingly relied on further specialist studies by Scientific Aquatic Services. According to the MTPA, those studies with regards to the new above ground infrastructure and study site are flawed in that the information provided on the biodiversity sensitivities is very vague, contradictory and incomprehensive (paragraph 2, "Annexure 9" to the internal appeal).

160. WWF-SA also disputed the new proposed mitigation measures on the basis that Natural Scientific Solutions CC and interested and affected parties had provided ample evidence as to why the project should not go ahead.

161. As outlined above, on 19 November 2014, AAV requested an amendment to the conditions imposed by the DG. This request in and of itself reflects that the mining will result in unacceptable environmental degradation or damage to the environment:-

2WN

77

161.1 AAV objected to the condition that the granting shall exclude any area that constitutes wetlands;

161.2 it concedes that there will be disruption and disturbance of wetlands; and

161.3 its bald averments in respect of mitigation measures are not supported by any of the evidence, including the high level of biodiversity which is classified as irreplaceable within the Mpumalanga Biodiversity Conservation Plan.

The Minerals Minister's decision

162. The Applicants are not aware of what information was placed before the Minister when he took the decision.

163. By that stage, the Applicants had already lodged their internal appeal to be decided by the Minister in which they outlined all the evidence referred to above that the mining right should not have been granted by the DG, including that the requirement of section 23(1)(d) had not been met.

164. The Applicants had also alerted the Minerals Minister in the letter addressed by the CER on 2 April 2015 of the extreme environmental sensitivity of the area and that his permission was also required in terms of NEMPAA for mining to take place in the MPE.

ZWN

78

165. There is no reference in the correspondence from AAV to the DMR requesting an amendment to the conditions imposed by the DG and AAV's letter dated 24 April 2015 to the Amended Final Report. It appears as if the Amended Final Report may well not have been submitted to the DMR and hence would not have been before the Minerals Minister when he took his decision. The Applicants will deal with this aspect to the extent necessary in a supplementary founding affidavit after the rule 53 record is filed.

166. Suffice to say at this stage that the Amended Final Report includes two different options for the surface infrastructure layout: a "most viable alternative" and a "preferred alternative/best environmental option". In the most viable alternative "*the total wetland area being disturbed by the main surface infrastructure was reduced from 24.27 ha in the old layout alternative to 14.1 hectare in the most viable layout*" (page 65).

167. In the best environmental option, the main surface infrastructure was further reduced to 12.10 hectares. This entails removal of the discard dump (residue stockpile), removal of the wash plant and replacement of the infrastructure surrounding the adit (page 70).

168. If the applicants are correct (as I submit they are) in contending that the DG's decision to grant a mining right was unlawful because, despite the environmental conditions imposed by him, he could not reasonably have satisfied himself that the requirements of section 23(1)(d) of the

79

MPRDA had been satisfied, then it follows as a matter of course that the Minister's decision to replace the DG's decision with one which removes the environmental conditions imposed by the DG must, *a fortiori*, be unlawful.

169. The conditions imposed by the Minerals Minister are self-evidently not sufficient to meet the requirement that the mining will not result in unacceptable pollution, ecological degradation or damage to the environment.

170. If the Minerals Minister in fact withdrew the grant of the mining right by the DG and took a fresh decision to grant the mining right, the requirement that the mining will not result in unacceptable pollution, ecological degradation or damage to the environment will still not have been met.

171. The Applicants emphasise that it appears from the Minerals Minister's letter that at the time that he took his decision, the environmental management programme had not yet been approved by the Regional Manager. Environmental authorisation has not yet been obtained under NEMA, nor has a water use licence been issued under the NWA.

172. In terms of section 23(1)(d), read with 23(3), of the MPRDA an application for a mining right must be refused if the mining will result in unacceptable pollution, ecological degradation or damage to the

80

environment. In the light of all of the above, the Minerals Minister's decision falls to be reviewed on the basis that it is unlawful as provided in sections 6(2)(b) (a mandatory and material procedure or condition was not complied with), 6(2)(f)(i) (the decision contravenes the law and is not authorised by the empowering provision) and 6(2(i) (the action is otherwise unlawful) of PAJA.

Minerals Minister's decision materially influenced by an error of law and failure to have regard to relevant considerations

173. The Minerals Minister's decision was materially influenced by an error of law in that he failed to appreciate that when amending or substituting the DG's decision (as the case may be as outlined above), he was obliged to satisfy himself that the amended or substituted decision met the requirements of section 23(1)(d) of the MPRDA.

174. In consequence, the Minerals Minister also failed to have regard to relevant information placed before the DG which related to the environmental consequences of granting a mining right at all, or granting a mining right without the conditions imposed by the Minister.

175. The Minerals Minister's decision therefore also falls to be reviewed on the grounds in sections 6(2)(d) and 6(2)(3)(iii) of PAJA.

81

Failure to have regard to NEMPAA was irrational and unreasonable and resulted in a failure to take into account relevant considerations

176. As outlined above, the MPE was declared in January 2014 and, in terms of section 48(1)(b) of NEMPAA, no person may conduct commercial mining in a declared protected environment without the written permission of both the Minister of Environmental Affairs and the Minerals Minister.

177. NEMPAA does not specify when such written permission should be sought or obtained.

178. It is not clear whether AAV has sought such permission from either or both Ministers. In the Amended Final Report AAV is reflected as "currently" being in the process of obtaining permission from both Ministers for a "section 48(3) authorization" which is described as the ministers being empowered to prescribe conditions under which those activities may continue in order to reduce or eliminate the impact of those activities on the environment. On the other hand, the Amended Final Report also states that AAV submitted a motivation for the withdrawal of the declaration of part of the MPE under section 29 of NEMPAA.

179. In their responses to PAIA requests for any correspondence between AAV and the respective ministers pertaining to section 48(1)(b) of the

82

NEMPAA, the DMR and the DEA stated that they have no such records.

180. Given all the information before the DG pertaining to the requirement of written permission under NEMPAA, the contents of the internal appeal which addressed this aspect fully, and the CER's 2 April 2015 letter to the Minerals Minister expressly further alerting the Minister to the requirement that his written permission is required for a person to conduct commercial mining in an MPE, the complete absence of any reference to NEMPAA in the Minerals Minister's notification to AAV of his decision is striking.

181. That is particularly so because the Minerals Minister expressly provided that, noting the provisions of 23(6) of the MPRDA, AAV may not commence with mining operations prior to the obtaining of a water use licence from the DWS and an environmental authorisation from the DEA.

182. On the face of it, the Minerals Minister's seeming complete lack of regard to the fact that his permission is required for commercial mining to take place in the MPE is irrational, unreasonable and is also a failure to take into account relevant considerations.

183. For all the reasons given above, the requirement in section 23(1)(d) of the MPRDA that the mining will not result in unacceptable pollution, ecological degradation or damage to the environment was not met.

184. Accordingly, in the circumstances of this particular mining right application, it would have been rational and reasonable for the Minerals Minister to make a decision under NEMPAA at the same time as he amended the grant of the mining right (alternatively granted the mining right afresh) : -

184.1 The MPE was declared for a number of purposes, including to protect this unique, sensitive area with irreplaceable biodiversity.

184.2 All the evidence shows that coal mining in the MPE and WWGA would cause irreparable environmental damage and degradation which cannot be mitigated.

184.3 If coal mining were to be permitted in the MPE, this would defeat the purpose of the declaration in its entirety.

185. In the circumstances, the Minerals Minister's decision also falls to be reviewed on the basis of a number of grounds in section 6 of PAJA including that it is irrational (section 6(f)(ii)), unreasonable (section 6(2)(h) and relevant considerations were not taken into account (section 6(2)(e)(iii)).

84

Minerals Minister's decision was irrational and unreasonable and resulted in a further failure to take into account relevant considerations

186. Given all the aspects referred to above including: -

186.1 the common cause extreme environmental sensitivity of the MPE and the WWGA;

186.2 that the extent of the proposed mining activity will cover a significant portion of the MPE and will fall in the WWGA;

186.3 that all the evidence shows that the proposed coal mine will cause degradation and damage that cannot be remediated;

186.4 the rejection of the Final Report by the DEA and the DMR, the DWA/DWS's objection to the mine, the MTPA's objections and objections from non-state bodies to the grant of the mining right;

the Minerals Minister's decision also falls to be reviewed on the grounds that it is irrational (section 6(2)(f) of PAJA), and unreasonable (section 6(2)(h) of PAJA) and failed to take into account relevant considerations (section 6(2)(e)(iii)) of PAJA.

RELIEF SOUGHT

187. The primary relief which the Applicants seek is the setting aside of the Minerals Minister's decision and, to the extent that it survived the Minerals Minister's decision, the DG's decision to grant the mining right to AAV.

85

188. The Applicants also seek ancillary relief to ensure that the defects in the Minerals Minister's decision and the DG's decision are cured if AAV's mining rights application is remitted to the DG to take a fresh decision.

189. Broadly, the Applicants seek the following:-

189.1 an order directing the DG not to decide AAV's mining rights application unless and until AAV's environmental management programme has been approved in terms of the now repealed section 39(4)(a) of the MPRDA;

189.2 an order directing the DG not to decide AAV's mining rights application unless and until an environmental authorisation has been issued to AAV in terms of NEMA. In terms of the amendments introduyced by the MPRDA Amendment Act, 49 of 2008, section 23(1)(d) has been amended to provide that the Minister must grant a mining right if the mining will not result in unacceptable pollution, ecological degradation or damage to the environment *and an environmental authorisation is issued* (our emphasis). Whilst the amendment does not apply to AAV's mining rights application which was submitted to the DMR before the amendment came into effect, it is submitted that it is appropriate in this instance for the DG not to grant a mining right to AAV unless and until an environmental authorisation is

86

issued. As outlined above, AAV already submitted the AMENDED Final Report to the DEA early this year and on 26 February 2015 the DEA advised the CER that the application would be decided within 100 days;

189.3 various orders to ensure that consultation takes place with state departments and organs of state which administer laws relating to matters affecting the environment, namely the DEA (if the relief described in 189.1 is not granted), the DWS and the MTPA and that the DG or his delegate have due regard to, and take into account the views, comments, opinions and positions of those organs of state before the decision is taken whether to grant the mining right. To the extent that the DMR may have consulted with the DWA and the DEA before the DG first granted the mining right, there is a need for further consultation in the light of the AMENDED Final Report, including but not limited to, the seemingly contradictory expert reports of NSS and Scientific Aquatic Services in respect of biodiversity and the wetlands;

189.4 an order directing the DG (or his delegate), when deciding whether to grant AAV's application for a mining right, to have due regard to, and consider, the status of certain of the properties which are the subject of the mining rights application as:-

189.4.1 a protected environment under NEMPAA;

87

189.4.2 a national freshwater ecosystem priority area under the Atlas of Freshwater Ecosystem Priority Areas endorsed by the Department of Environmental Affairs and the Department of Water and Sanitation;

189.4.3 a critical terrestrial and aquatic biodiversity area under the Mpumalanga Biodiversity Conservation Plan endorsed by the MEC for Agriculture, Rural Development, Environmental Affairs and Tourism for Mpumalanga Province; and

189.4.4 an endangered ecosystem under the List of Ecosystems that are Threatened and in Need of Protection published by the Minister of Environmental Affairs under the National Environmental Management: Biodiversity Act No. 10 of 2004;

189.5 an order directing the DG (or his delegate), when deciding whether to grant AAV's application for a mining right to have due regard to, and consider, the cumulative impacts of existing mining, and mining as proposed by AAV, on the Enkangala Drakensberg Strategic Water Source Area, including the catchment areas of the Pongola, Tugela and Vaal River Systems;

88

190. In respect of the relief dealing with Strategic Water Source Areas, we emphasise the following: -

190.1 "Water source areas (WSAs) provide a disproportionate amount of run-off to the rest of the catchment. South Africa's water source areas are generally found in the highest parts of the landscape that receive the most rainfall. Downstream users and ecosystems are dependent on the healthy functioning of these areas to sustain good quality water supplies. South Africa's WSAs can be grouped into 21 areas. The dominant land cover is natural vegetation cover (63%), often because slope and altitude have prevented more intense development. Fifteen per cent of the area is cultivated and 13% is under plantation. Three per cent is degraded land, mainly in the Eastern Cape. Less than 1% of water source areas are currently mined; however, 70% of the areas in Mpumalanga are under either a prospecting or mining license and this is cause for particular concern. The overlap of coal deposits and water source areas is also less than 1% of all WSAs, but it is significant in the Enkangala Drakensberg and the Mfolozi headwaters. Only 16% of the WSAs are formally protected as nature reserves or parks. The highest protection is found in the Western Cape with the Kougaberg, Swartberg and Grootwinterhoek areas having more than 70% formal protection. Water source areas in the Eastern Cape and Maloti Drakensberg, the Enkangala Drakensberg, the Mfolozi

89

headwaters and the Soutpansberg have very low or no protection. South Africa's WSAs can be further divided into those of local importance and those of national importance. Five WSAs are of local importance, but have limited downstream dependents and impact. These are mainly on the coast in the Western Cape and KZN. The 16 nationally important WSAs form the headwaters of major river systems which supply significant downstream areas and/or the economy, including inter-basin transfers. These are South Africa's strategic WSAs. Disrupting water supply from these 16 strategic WSAs would effectively turn off the taps to our economy and seriously impact our food and water security."[3]

190.2 "Strategic water source areas can be regarded as natural 'water factories', supporting growth and development needs that are often a far distance away. Deterioration of water quality and quantity in these areas can have a disproportionately large negative effect on the functioning of downstream ecosystems and the overall sustainability of growth and development in the regions they support (Viviroli et al. 2007). Appropriate management of these areas, which often occupy only a small

[3] *An Introduction to South Africa's Water Source Areas*, WWF-SA, 2013, pp14 (http://awsassets.wwf.org.za/downloads/wwf_sa_watersource_area10_lo.pdf)

90

fraction of the land surface area, can greatly support downstream sustainability of water quality and quantity."[4]

COSTS

[4] *South Africa's Strategic Water Source Areas,* CSIR (March 2013) (http://bgis.sanbi.org/NFEPA/Report%20on%20Strategic%20Water%20Source%20Areas_FINAL.pdf)

2nr

91

191. Sections 32(2) and (3) of NEMA address the issue of costs awards within the context of environmental litigation, and provides that a court may decide not to award costs against unsuccessful litigants who are acting in the public interest or to protect the environment and who had made due efforts to use other means for obtaining the relief. These provisions state that:

> (2) *A court may decide not to award costs against a person, or group of persons which fails to secure the relief in respect of any breach or threatened breach of any provision including a principle of this Act or any other statutory provision concerned with the protection of the environment or the use of natural resources if the court is of the opinion that the person or group of persons acted reasonably out of a concern for the public interest or in the interest of protecting the environment and had made due efforts to use other means reasonably available for obtaining the relief sought.*
>
> (3) *Where a person or group of persons secures the relief sought in respect of any breach or threatened breach of any provision of this Act or any other statutory provision concerned with the protection of the environment, a court may on application—*
>
> *(a) award costs on an appropriate scale to any person or persons entitled to practise as advocate or attorney in the Republic who*

92

provided free legal assistance or representation to such person or group in the preparation for or conduct of the proceedings; and

(b) *order that the party against whom the relief is granted pay to the person or group concerned any reasonable costs incurred by such person or group in the investigation of the matter and its preparation for the proceedings."*

192. In bringing these proceedings, the Applicants are acting in the public interest and to protect the environment by promoting environmental decision-making that complies with the MPRDA and promotes the objects of and principles set out in NEMA. The Applicants have made due efforts to use other means for obtaining the relief, including exhausting internal remedies through the internal appeal under the MPRDA. Accordingly, even if the Applicants are unsuccessful, costs should not be awarded against them.

CONCLUSION

193. I respectfully submit that a proper case is made out for the relief sought and I accordingly pray for an order in terms of the notice of motion to which this affidavit is attached.

93

Phillipine Makoma Lekalakala.

PHILLIPINE MAKOMA LEKALAKALA

I certify that:

1. the deponent acknowledged to me that –
   (a) s/he knows and understands the contents of this declaration;
   (b) s/he has no objection to taking the prescribed oath;
   (c) s/he considers the prescribed oath to be binding on her/his conscience;
2. the deponent thereafter uttered the words "I swear that the contents of this declaration are true, so help me God";
3. the deponent signed this declaration in my presence at the address set out hereunder on 7 **SEPTEMBER 2015**.

Commissioner of oaths

WAYNE NCUBE
Ex Officio Commissioner of Oaths
Practising Attorney
Lawyers for Human Rights
4th Floor, Heerengracht Building
87 De Korte Street, Braamfontein
Johannesburg, 2001
Tel: 011 339 1960 Fax: 011 339 2665

"PML1"

94

NOTICE OF APPEAL IN TERMS OF SECTION 96(1) OF THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT ACT, 2002

EARTHLIFE AFRICA	FIRST APPELLANT
BIRDLIFE SOUTH AFRICA	SECOND APPELLANT
MINING AND ENVIRONMENTAL JUSTICE NETWORK OF SOUTH AFRICA	THIRD APPELLANT
ENDANGERED WILDLIFE TRUST	FOURTH APPELLANT
FEDERATION FOR A SUSTAINABLE ENVIRONMENT	FIFTH APPELLANT
GROUNDWORK	SIXTH APPELLANT
ASSOCIATION FOR WATER AND RURAL DEVELOPMENT	SEVENTH APPELLANT
BENCH MARKS FOUNDATION	EIGHT APPELLANT

IN RE:

DIRECTOR-GENERAL: DEPARTMENT OF MINERAL REOURCES	DECISON-MAKER
ATHA-AFRICA VENTURES (PTY) LTD	RIGHT HOLDER

NOTICE OF APPEAL AGAINST THE GRANT OF MINING RIGHT MP30/5/1/2/2/1/0069MR TO ATHA-AFRICA VENTURES (PTY) LTD IN RESPECT OF PROPERTIES IN THE MAGISTERIAL DISTRICT OF WAKKERSTROOM

AND

REQUEST FOR THE SUSPENSION OF THE GRANT OF THE AFORESAID MINING RIGHT PENDING THE OUTCOME OF THE APPEAL

INTRODUCTION

1. On 22 January 2014 the Member of the Executive Council for the Department of Economic Development and Tourism, Mpumalanga, gave notice in terms of section 28(1)(a)(i) and (b) of the National Environmental Management: Protected Areas Act, 2003 ("*NEMPAA*") of the declaration of a number of protected environments, including the Mabola Protected Environment near Wakkerstroom in Mpumalanga ("*the Mabola Protected Environment*"). One of the express motivations for the declaration of the Mabola Protected Environment was to protect this unique, irreplaceable and threatened grassland area from coal mining.

2. On 19 September 2014 the Director-General of the Department of Mineral Resources ("*DMR*") granted a mining right to Atha-Africa Ventures (Pty) Ltd ("*AAV*") in terms of section 23(1) of the Mineral and Petroleum Resources Development Act, 2002 ("*MPRDA*") for the proposed Yzermyn underground coal mine over the properties Goedgevonden 95HT, Kromhoek 93HT, Yzermyn 96HT and Zoetfontein 94 HT ("*the mining right*").

3. The properties fall within the Mabola Protected Environment and all but two of them fall within the Wakkerstroom Wetlands Area.

4. The mining right was granted notwithstanding:-

   4.1. that all available evidence, including a report submitted as part of AAV's application for environmental authorisation , indicate that the mining will result in unacceptable pollution, ecological degradation or damage to the environment, contrary to the peremptory requirement of section 23(1)(d) of the MPRDA. The report by a consultant appointed by AAV recommended

that the area should be declared "no go" for mining, because of the impacts of mining on biodiversity and on the supply of water to the surface water resources;

4.2. that the mining right is in respect of properties that fall within the Mabola Protected Environment, but that the written permission of the Minister of Environmental Affairs and the Minister of Mineral Resources in terms of section 48(1)(b) of NEMPAA to conduct commercial mining in the Mabola Protected Environment had not been obtained, or sought (as far as the Appellants can establish);

4.3. that the mining right is in respect of properties that:

4.3.1. are classified as of "irreplaceable" biodiversity value in the terrestrial biodiversity assessment contained in the Mpumalanga Biodiversity Conservation Plan of 2006; [1]

4.3.2. form part of the Wakkerstroom/Luneburg Grasslands Threatened Ecosystem, listed as an endangered ecosystem in the National List of Ecosystems that are Threatened and in Need of Protection published in terms of the National Environmental Management: Biodiversity Act, No. 10 of 2004 ("*NEMBA*");

4.3.3. fall within a National Freshwater Ecosystem Priority Area and a Strategic Water Source Area, determined by the South African National Biodiversity Institute ("*SANBI*") as part of the National

[1] Available at http://bgis.sanbi.org/MBCP/biodiversityAssessment.asp#Wakkerstroom (last viewed on 22 February 2015) .

Freshwater Ecosystem Project, funded by the Water Research Commission, the Council for Scientific and Industrial Research ("*CSIR*"), SANBI, the Department of Water Affairs (now the Department of Water and Sanitation) and DEA;

4.3.4. are identified in the National Protected Areas Expansion Strategy (2008) as an area that requires urgent legal protection;

4.4. that, in August 2011 , a comprehensive application was submitted by the Mpumalanga Tourism and Parks Agency ("*MTPA*") to the DMR in terms of section 49 of the MPRDA to declare the Wakkerstroom Wet Grasslands area ("*the WWG area*") as an area in which mining is prohibited ("*the section 49 application*");

4.5. that the Regional Officer of the DMR visited the WWG area and acknowledged that the section 49 application has merit due to the hydrological and environmental sensitivity of the area;

4.6. that the Minister of Mineral Resources advised the National Council of Provinces in May 2012 that steps have been taken to prohibit mining in Wakkerstroom;

4.7. the express objection to the granting of the right by the Department of Water and Sanitation;

4.8. the express objection to the granting of the right by the MTPA;

4.9. the rejection by the Department of Environmental Affairs of AAV's final environmental impact assessment report (EIAR) in its first application for an environmental authorisation (AAV has since submitted a second application for an environmental authorisation to DEA); and

4.10. ongoing and repeated objections from civil society organisations, including members of the multi-stakeholder Grassland Programme such as WWF South Africa and BirdLife South Africa.

5. The mining right was granted subject to a number of conditions pertaining to the environment, which conditions are unlawful, vague and unenforceable.

6. Accordingly, the parties hereby appeal against the grant of the mining right in terms of section 96 of the MPRDA, read with Regulation 74 of the Regulations to the MPRDA.

7. The mining right should be set aside in its entirety and, given the extreme environmental sensitivity of the area, the mining right must be suspended pending the outcome of the appeal.

THE PARTIES

8. There are eight appellants.

9. **EARTHLIFE AFRICA JOHANNESBURG** is a non-profit organisation with NPO number 004-159. EarthLife challenges environmental degradation and aims to promote a culture of environmental awareness and sustainable development. It also

seeks to improve the quality of life of vulnerable people in South Africa through assisting civil society to have greater impact on environmental governance by understanding and defending their constitutional rights, specifically those enshrined in section 24 of the Constitution. Its address is 5th Floor Hereengracht Building, 87 De Korte Street, Braamfontein, Johannesburg

10. **BIRDLIFE SOUTH AFRICA** is a non-profit and public benefit organisation registered in terms of the laws of the Republic of South Africa with NPO registration number 001-298 NPO and PBO exemption number 930 004 518, with its head office at 239 Barkston Drive, Blairgowrie, Johannesburg. It is an independent nature conservation organisation with the mission to promote the enjoyment, conservation, study and understanding of wild birds and their habitats. BirdLife South Africa has over 6000 members in 32 bird clubs throughout South Africa. BirdLife South Africa is a partner in the Grasslands Programme, which is a partnership between government, non-governmental organisations and the private sector to mainstream biodiversity into the Grasslands Biome, with the intention to balance biodiversity conservation and development of protected areas in a production landscape.

11. The **MINING AND ENVIRONMENTAL JUSTICE COMMUNITY NETWORK OF SOUTH AFRICA (MEJCON-SA)** a non-profit voluntary organisation with its administrative address at c/o Centre for Environmental Rights, 2nd Floor, Springfield Studios, 1 Scott Street, Observatory, Cape Town. MEJCON-SA was constituted in October 2012 with the main objective of promoting and defending the environmental and human rights of communities that are both directly and indirectly affected by mining; and to ensure the sustainable use of mineral resources.

12. The **ENDANGERED WILDLIFE TRUST (EWT)** is a non-government non-profit organisation and a public benefit organisation with NPO Number 015-502 and PBO

number 930 001777, EWT has its physical address at Building K2, Ardeer Road, Pinelands Office Park, Modderfontein, Gauteng. EWT is a fully accredited member of the Union of Conservation of Nature and is dedicated to conserving threatened species and ecosystems in southern Africa.

13. **FEDERATION FOR A SUSTAINABLE ENVIRONMENT (FSE)** is a registered non-profit company with registration number 2007/033134/08 and NPO number 062986-NPO. FSE has its physical address at 8 Palladio, corner of Ryk Street and Roux Avenue, Beverley Gardens, Johannesburg. The FSE's main objective is promoting the ecological sustainability of development and the wise use of natural resources in South Africa.

14. **GROUNDWORK** is a non-profit environmental justice service and developmental organisation with NPO number 045-235-NPO. groundWork has its physical address at 6 Raven Street, Pietermaritzburg. groundWork seeks to improve the quality of life of vulnerable people in South Africa, and increasingly in Southern Africa, through assisting civil society to have a greater impact on environmental governance. groundWork places particular emphasis on assisting vulnerable and previously disadvantaged people who are most affected by environmental injustices.

15. The **ASSOCIATION FOR WATER AND RURAL DEVELOPMENT (AWARD)** is a non-profit organisation with company registration Number 98/03011/08 and non-profit organisation registration Number 006 – 821. Its physical address: Number 14 Safari Junction, Hoedspruit, Limpopo. AWARD specialises in participatory, research-based project implementation aimed at addressing issues of sustainability, inequity, and poverty through building natural-resource management competence and sustainable water-based livelihoods. AWARD's vision is to contribute to a more sustainable world and in particular to a democratic South Africa where the principles of equity and

sustainability are upheld and strengthened through building active civil society participation in wise water and biodiversity stewardship, management and governance.

16. The **BENCH MARKS FOUNDATION** is a non-profit, faith-based organisation owned by the churches in South Africa, with its physical address at 6th Floor, Khotso House, 62 Marshall Street, Marshalltown, Johannesburg, South Africa, 2017. The Bench Marks Foundation is committed to providing leadership and advocacy on issues regarding benchmarking of good corporate governance, ethical and socially responsible investment as well as linking people and institutions committed to these ideals. The vision of the Bench Marks Foundation is to promote corporate social responsibility and socially responsible investment.

17. The Appellants are represented by the Centre for Environmental Rights ("*CER*"). CER is a law clinic accredited by the Law Society of the Cape of Good Hope, and operates from premises at Springtime Studios, 1 Scott Road, Observatory, Cape Town.

18. The **DMR** is the government department responsible for, *inter-alia*, processing mining right applications by mining companies. The Minister of Mineral Resources is authorised to grant or refuse mining right applications in terms of section 23(1) of the MPRDA. The Director-General of the DMR is the authorised delegatee of the Minister of Mineral Resources as described in the DMR's delegation of powers dated 12 May 2004 in terms of section 103(1) and (2) of the MPRDA.

19. **ATHA-AFRICA VENTURES (PTY) LTD (AAV)** is a private company registered in terms of the laws of South Africa, with registration number 2004/020746/07 and with its registered address at 8th Floor, Sinosteel Plaza, 159 Rivonia Road, Sandton. The Companies and Intellectual Property Commission records of AAV is attached as "**1**."

THE MABOLA PROTECTED ENVIRONMENT

The declaration under NEMPAA

20. The Mabola Protected Environment was declared under section 28 of NEMPAA on 22 January 2014. That Act prescribes the purposes for which a protected environment may be declared and a public consultation process to be followed before a protected environment is declared.

21. Notices of intention to declare the Mabola Protected Environment were published on 10 May 2013 and 9 August 2013 and, after public consultation, the declaration was made on 22 January 2014. A copy of the notice in the Government Gazette giving notice of this declaration is attached, marked "**2**"("*the Protected Environment notice*").

22. As appears from the Protected Environment notice, the purposes of the declaration, in accordance with the provisions of NEMPAA, are as follows:-

22.1. to enable the owners of the land to take collective action to conserve biodiversity on their land and to seek legal recognition therefor;

22.2. to protect the area if the area is sensitive to development due to its biological diversity, natural characteristics, scenic and landscape value and the provision of environmental goods and services;

22.3. to protect a specific ecosystem and to ensure that the use of natural resources in the area is sustainable.

23. Factors and motivations supporting the declaration of the Mabola Protected Environment to give effect to those purposes are outlined below. Copies of the documents, or relevant extracts, referred to below will be made available upon request.

24. As part of the declaration process, the MTPA submitted a comprehensive motivation in support of the declaration of the Protected Environment dated January 2013. A copy is attached marked "**3**". In this motivation, the MTPA summarised the ecological and hydrological importance of the area and argued in favour of land use in the area that is compatible with biodiversity conservation, such as ecotourism and livestock farming. It identified coal mining as a significant risk to the conservation of this critical biodiversity area.

Wakkerstroom Area identified as requiring urgent and priority protection in government adopted protected area plans

25. The South African government has a duty in terms of section 24(b)(ii) of the Constitution of the Republic of South Africa, 1996 to protected the environment for the benefit of present and future generations through reasonable legislative and other measures that promote conservation.

26. One such legislative measure was the enactment of NEMPAA. "Reasonable other measures" would include the declaration of protected areas in terms of NEMPAA in accordance with a strategy, or strategies.

27. The Wakkerstroom/Luneburg area is identified in the National Protected Areas Expansion Strategy (2008)("*the Expansion Strategy*") as an area that requires urgent legal protection. The Expansion Strategy was commissioned by Department of Environmental Affairs and Tourism (DEAT) (now Department of Environmental

Affairs (DEA)) and endorsed for implementation by statutory role-players including national conservation agency South African National Parks, and provincial conservation agencies such as MTPA.

28. The Expansion Strategy provides that "[t]he Mpumalanga Mesic Grasslands focus area... represents opportunities to conserve poorly protected grassland and bushveld vegetation types as well as whole river reaches and threatened river types. It was also identified as a national priority in the Grasslands systematic biodiversity plan."[2]

29. It also requires the development and adoption of area specific protected area plans. In terms of that plan, the Mpumalanga Protected Areas Expansion Strategy (2009), the Wakkerstroom/Luneburg area is a "priority 1" area.[3]

Irreplaceable biodiversity value of the Wakkerstroom area recognised in Mpumalanga government conservation plan

30. The Mpumalanga Biodiversity Conservation Plan of 2006 (MBCP)[4] was developed by the MTPA and the Mpumalanga Department of Agriculture and Land Administration to guide conservation and land use decisions in support of sustainable development in Mpumalanga.

31. The MBCP is founded on an extensive biodiversity database compiled over the last 21 years by the Province's conservation biologists.

---

[2] Government of South Africa *National Protected Areas Expansion Strategy* (2008) pp.27-28.
[3] Mpumalanga Tourism and Parks Agency *Mpumalanga Protected Areas Expansion Strategy* (2009) pp.20-21.
[4] Available at http://bgis.sanbi.org/MBCP/biodiversityAssessment.asp (last viewed on 2 March 2015).

32. The Wakkerstroom area is classified in the MBCP's terrestrial biodiversity assessment[5] (terrestrial assessment) as of "irreplaceable" biodiversity value.

33. Irreplaceable ecosystems, comprising a mere 2.4% of Mpumalanga Province, are described in this plan as follows:

> "***Irreplaceable:*** *Irreplaceable areas are those of highest biodiversity value outside the formal PA network. They support unique biodiversity features, such as endangered species or rare habitat patches that do not occur anywhere else in the province. These features have already been so reduced by loss of natural habitat, that 100% of what remains must be protected to achieve biodiversity targets. All land in this category must be managed for biodiversity conservation to meet the targets set. All development must be strictly controlled in line with biodiversity conservation objectives.*" (own underlining).

34. The terrestrial assessment furthermore identifies this area as a "focus area," the importance of conserving which is described as follows:

> "***Value****: important sub-catchment; grassland and forest vegetation types; important grassland patch; threatened plant species; golden mole; blue and wattled crane nest sites; endemic grassland birds.* ***These highveld grasslands are amongst the most threatened.***
>
> ***Pressures****:* ***coal mining****; timber plantations; agriculture; alien plant invasion*" (own emphasis).

35. The MBCP Aquatic assessment[6] (aquatic assessment) also suggests that the Wakkerstroom / Luneburg area is of irreplaceable biodiversity value.

---

[5] Available at http://bgis.sanbi.org/MBCP/biodiversityAssessment.asp#Wakkerstroom (last viewed on 22 February 2015) .
[6] Available at http://bgis.sanbi.org/MBCP/aquaticBiodiversity.asp (last viewed on 22 February 2015).

Collective multi-stakeholder action to conserve biodiversity and give legal protection to the Grassland Biome

36. The multi-stakeholder Grasslands Programme was launched in 2008 as a partnership between government, non-governmental organisations and the private sector to mainstream biodiversity into the Grassland Biome, with the intention of balancing biodiversity conservation and development imperatives in a production landscape. The Programme was catalysed through an $8.3 m investment from the Global Environment Facility, managed by the United Nations Development Programme and implemented by SANBI and approximately 26 partner organisations.

37. Following the launch of the Grasslands Programme in 2008, SANBI, the MTPA and other partner organisations, including the World Wide Fund for Nature South Africa (WWF), BirdLife South Africa and the Endangered Wildlife Trust, embarked on a process to attain legal protection for the most threatened Grassland Biomes in South Africa. The Wakkerstroom/Luneburg grasslands was identified by the various stakeholders as such a biome.

38. As most of the land comprising this biome is privately owned, it was decided that the declaration of a protected environment under NEMPAA in respect of this area would afford the best protection to that particular Biome.

39. The land owners were consulted about a proposed declaration of a protected environment in respect of their land in a process that lasted roughly five years. By 2013, all of the affected land owners had given their written consent for the declaration of the Mabola Protected Environment.

40. The declaration of the Mabola Protected Environment therefore gives effect to the purpose in section 28(2)(b) of NEMPAA to enable the owners of the land to take collective action to conserve biodiversity on their land and to seek legal recognition therefor.

National Freshwater Ecosystem Priority Area and Strategic Water Source Area

41. The Wakkerstroom area has been classified as a National Freshwater Ecosystem Priority Area (NFEPA) by the South African National Biodiversity Institute ("*SANBI*") as part of the National Freshwater Ecosystem Project, funded by the Water Research Commission, the Council for Scientific and Industrial Research ("*CSIR*"), SANBI, the Department of Water Affairs (now the Department of Water and Sanitation) and DEA.

42. The NFEPA Atlas[7] shows that the Wakkerstroom area is a priority wetland and river ecosystem. River Freshwater Ecosystem Priority Areas are rivers that are still in relatively good ecological condition occurring in healthy catchments and should remain in relatively good condition to contribute to national biodiversity goals and support sustainable use of water resources. The surrounding land and stream network need to be managed in a way that maintains the good condition of the river reach. Similarly, Freshwater Ecosystem Priority Wetlands and Wetland Clusters must be maintained if they are in good ecological condition and rehabilitated to the best attainable ecological condition if they are in a substandard ecological condition.[8]

43. More recently, the Wakkerstroom area has been classified as a "Strategic Water Source Area"[9] (SWSA), which was also determined by the National Freshwater

[7] Nel, et al *Atlas of Freshwater Ecosystem Priority Areas in South Africa: Maps to Support Sustainable Development of Water Resources* (2011) (NFEPA Atlas) p.20.
[8] NFEPA Atlas p.14.
[9] Available at http://bgis.sanbi.org/NFEPA/SWSAmap.asp (last viewed on 22 February 2015) .

Ecosystem Priority Area Project by CSIR through co-funding from a Project for Ecosystem Services funded by the World Bank established Global Environmental Facility and WWF. SWSAs *"...* **are those areas that supply a disproportionate amount of mean annual runoff to a geographical region of interest. These areas are important because they have the potential to contribute significantly to overall water quality and supply, supporting growth and development needs that are often a far distance away.**" These areas make up 8% of the land area across South Africa, Lesotho and Swaziland, but provide 50% of the water in these countries.

44. Deterioration of water quality and quantity in these areas can have a disproportionately large negative effect on the functioning of downstream ecosystems and the overall sustainability of growth and development in the regions they support.

45. They therefore need to be appropriately managed, by, inter alia, "... *maintaining healthy functioning riparian zones and wetlands; ensuring good agricultural management leads to soil conservation that supports the water cycle; avoiding activities that reduce stream flow (e.g. irrigated agriculture and forestry plantations) and where this is not possible ensuring careful regulation of these activities; minimising ground water abstraction; clearing invasive alien plants; [and] restoring the hydrological functioning of degraded landscapes.*"

Listed as endangered ecosystem on list published in terms of the National Environmental Management: Biodiversity Act

46. The Wakkerstroom/Luneburg Grasslands Threatened Ecosystem[10] is listed as an "endangered ecosystem" in the National List of Ecosystems that are Threatened and in Need of Protection published by the Minister of Environmental Affairs in terms of NEMBA in Government Gazette No. 34809 as Notice 1002 on 9 December 2011 (Listed Ecosystems). Endangered ecosystems are "... **ecosystems that have undergone degradation of ecological structure, function or composition as a result of human intervention, although they are not critically endangered ecosystems.**"[11] The purposes of listing ecosystems are to "**conserve a representative sample of all components of biodiversity (genes, species, and ecosystems)... and to ensure the continuing functioning of ecological and evolutionary processes that allow biodiversity to persist over time.**"[12] According to these Regulations, only 2% of the original range of this ecosystem remains[13] and it is marked by "**very high irreplaceability.**"[14] This ecosystem hosts a myriad of threatened or protected species, three threatened vegetation types and important subcatchments, pans and wetlands.[15]

Important status in local Integrated Development Plans

Gert Sibande District Municipality Integrated Development Plan

47. The area in question falls within the Gert Sibande District Municipality. The Spatial Development Plan (SDP) for this municipality states that the "**sensitive upper**

[10] National List of Ecosystems that are Threatened and in Need of Protection published in Government Gazette No. 34809 as Notice 1002 on 9 December 2011 (Listed Ecosystems Regulations) p.302.
[11] Ibid p.21.
[12] Ibid p.17.
[13] Ibid p.301.
[14] Ibid p.36
[15] Ibid p.302.

catchments and wetlands in the Wakkerstroom area"[16] **"... must be actively protected, managed and enhanced so as to ensure that they are not degraded by mining, forestry, agricultural and human settlement activities."**[17] According to the SDP, compatible economic activities, including forestry and tourism related activities, must be allowed to continue in these areas.[18]

Dr Pixley Ka Isaka Seme Local Municipality Integrated Development Plan – Environmental Management Framework

48. The area in question also falls within the Dr Pixley Ka Isaka Seme Local Municipality (PKISLM). Under the heading, "Environmental Management Framework" in this municipality's Integrated Development Plan (IDP),[19] it is stated that the municipal area is "**characterised by many wetlands and pan systems, and is an important water catchment area. Many endemic and threatened grass species occur in the area and of particular significance are the areas around Wakkerstroom and Luneburg... The PKISLM is also strategically important because it contains the sources of three river systems, including an important source of water for the Gauteng region.**"[20]

CONFLICT WITH STATED NATIONAL GOVERNMENT POLICIES ON MINING IN MPUMALANGA

49. The decision to grant the mining right is in conflict with stated national government policies on mining in Mpumalanga.

---

[16] Available at http://www.gsibande.gov.za/index.php?option=com_docman&Itemid=69 (last viewed on 16 March 2015) p.117.
[17] p. 118.
[18] p 118.
[19] Available at http://cgta.mpg.gov.za/IDP/GertSibande2013-14/Seme2013-14.pdf (last viewed on 16 March 2015) pp. 328-330.
[20] p.328.

111

50. In April 2010, the MPTA submitted an application to the DMR in terms of section 49 of the MPRDA to declare the Wakkerstroom Wet Grasslands area as an area in which mining is prohibited ("*the section 49 application*");

51. On 31 August 2010, the Minister of Mineral Resources imposed a moratorium on the granting of all prospecting rights (GN R768 in GG33511 of 31 August 2010). That moratorium was extended on 28 February 2011 for one month until 15 April 2011, except for Mpumalanga where the moratorium was extended to 30 September 2011 (GN R160 in GG34057 of 28 February 2011 as amended by GN R287 in GG34171 of 31 March 2011).

52. At the time of the extension in February 2011,, Minister of Mineral Resources Susan Shabangu was quoted as telling a media briefing on 8 February 2011 that the reason for not lifting the moratorium in Mpumalanga was that the DMR had "challenges bigger than what we expected, so we will lift eight provinces, and Mpumalanga will continue... for two to three months before we lift the moratorium." According to the Minister, the biggest challenge in Mpumalanga was environmental matters, "issues of ecology". "You find sensitive areas where rights have been granted," she was quoted as saying. "We intend to address that matter, hence we are not going to lift the moratorium, so as to make sure that we respond to the challenges of nature. Unfortunately rights were granted, but we'll have to address those issues." She said her department was working closely with the department of environmental affairs."[21]

[21] http://www.iol.co.za/business/news/mine-rights-moratorium-to-be-lifted-1.1023216

53. In August 2011 the MTPA re-submitted the section 49 application. The first application was mislaid. The section 49 application contained a detailed analysis of the importance of the WWG including that: -

53.1. the area is critically important from a water production perspective;

53.2. the area is largely classed as irreplaceable by the MBCP and thus crucial for the achievement of provincial and national conservation targets due to the biodiversity features located there;

53.3. the area is located in an endangered ecosystem; and

53.4. the area falls within provincial and national priority Protected Area expansion zones (as reflected on Map 1 of Annexure 11)

54. The DMR's Annual Report for 2011/12 states that "[t]he previous extension of the moratorium in Mpumalanga was due to the complex nature of environmental challenges in that province. It culminated in over 41 Rights that are located in Wakkerstroom and Chrissiesmeer being identified as those belonging to the category of environmentally sensitive areas and consequently action has been taken to prohibit mining within those areas."[22] (our underlining). A copy of the front page of the annual report and the relevant extract are annexed marked "**4**".

55. This same statement was also relayed by the Minister of Mineral Resources to the National Council of Provinces during her Budget Vote Speech for the DMR on 24 May 2012:[23] "**Honourable members would recall that we had extended the moratorium**

[22] Department of Mineral Resources *Annual Report* 2011/12 p.18
[23] Minister Susan Shabangu Budget Vote Speech 2012 p.3.

in Mpumalanga due to the complex nature of environmental challenges in that province. This culminated in over 41 Rights that are located in Wakkerstroom and Chrissiesmeer being identified as those belonging to the category of environmentally sensitive areas. Consequently we have taken action to prohibit mining within these areas." A copy of the budget speech is annexed marked "**5**".

56. The Regional Officer of the DMR has visited the WWG area and acknowledged that the section 49 application has merit due to the hydrological and environmental sensitivity of the area.

57. As at date hereof, to the Appellants' knowledge, the Minister of Mineral Resources has not yet made the requested declaration under section 49 of the MPRDA.

OBJECTIONS BY OTHER ORGANS OF STATE TO AAV'S MINING RIGHTS APPLICATION

Department of Environmental Affairs

58. On 27 September 2012, AAV's environmental assessment practitioner (EAP) submitted an application for environmental authorisation for various activities listed in the Listing Notices published under the National Environmental Management Act, 1998 (NEMA) that the mine intends to conduct.

59. On 16 May 2014, the DEA addressed a letter to AAV's EAP in which it stated that it rejects AAV's environmental impact assessment report (EIAR). Copies of this letter, attached marked "**6**," were also sent to AAV, the Mpumalanga Department of Economic Development, Environment and Tourism **and the DMR**.

60. The most important reasons for the rejection of the EIAR for the purpose of this appeal are:

60.1. AAV failed to propose an alternative layout plan for the mine that would allow the mine to coexist with the sensitive environment; and

60.2. biodiversity concerns:

60.2.1. the EIAR did not consider the status of the ecosystem in terms of the Listed Ecosystems under NEMBA;

60.2.2. unless a ground-truthing study suggests that the proposed mining area is not a critical biodiversity site, as it is classified in terms of the MBCP, the EIAR is fatally flawed;

60.2.3. due to the sensitivity of the aquatic ecosystems, the hydrological importance of the area and the potential significant impact of the proposed mine on these ecosystems mainly through the dewatering of the wetlands and pans in the area, the EIAR "cannot be considered without the identification of downstream water areas, the water users dependent on the water, and a quantification of the dewatering effect on economic activities downstream, including increase in droughts and floods";

60.2.4. the recommendation in the EIAR that additional ground and surface water studies be undertaken in order to adequately quantify the anticipated impacts of acid mine drainage from the proposed mine on the receiving environment is supported;

60.2.5. the proposed mining area falls within an Important Bird Area which hosts endangered and threatened endemic and other bird species; and

60.2.6. as the mining area borders on Protected Areas to the south and the east and some of the land parcels in the application are part of a declared protected environment, "... **a mining licence (sic) cannot be granted without the express permission of the Minister of Environmental Affairs**" (own emphasis).

61. As far as the appellants are aware, an amended final EIAR was submitted to the DEA in or about October 2014 (after the mining right had already been granted) and, at the time of the lodging of this appeal, AAV's application for environmental authorisation is still pending.

Department of Water Affairs (now Department of Water and Sanitation)

62. In terms of the former section 40 of the MPRDA, [24] the Minister is enjoined to consult with any State department which administers any law relating to matters affecting the environment when considering an environmental management programme submitted for approval.

63. After having been consulted by the DMR, the Department of Water Affairs (as it was then) (DWA) addressed a letter to the Mpumalanga Regional Manager of the DMR on

[24] This section has been repealed by the Mineral and Petroleum Resources Development Amendment Act, 2008 (MPRDAA), but it is still applicable for the purposes of AAV's mining right application as the application was lodged prior to the commencement of the MPRDAA.

10 January 2014. The DWA expressly stated in the letter that it **did not support** the proposed mining development. A copy of this letter is attached as "**7**."

64. The DWA's concerns concerning the draft environmental management programme for the proposed Yzermyn Underground Coal Mine included the following:

64.1. the location of the proposed mine in known sensitive habitats and environments as well as adjacent to the KwaMandlangampisi Protected Environment, "[t[he [DWA] notes the site location with great concern";

64.2. **the impact of the mine on critical biodiversity sites is alarming even after mitigation is considered (own emphasis)**;

64.3. the projected impact of the dewatering of wetlands and pans through the abstraction of water from the identified boreholes is concerning;

64.4. the positioning of the adit and the discard dump in wetlands constitutes a "**a risk and a fatal flaw**;"

64.5. "... **no detailed wetland assessment was undertaken in the greater area to be impacted upon by the underground mining and associated cone of depression from the dewatering activities or groundwater contamination plume**," meaning that the precise impacts on wetlands in the mining area and abutting the mining have not been predicted (this is particularly relevant because of the "conditions" imposed by the DMR when granting the mining right);

64.6. the proposed mine will lead to decline in water quality in the area, and is potentially prone to acid mine drainage decant after the closure of the mine;

64.7. at least 42% of the proposed mining area can be classified as "wetland;"

64.8. mining threatens the existing tourism sector in the area as well as potential growth in ecotourism in the regions;

64.9. although the mine will create job opportunities, the majority of these job opportunities will be reserved for skilled workers from outside of the surrounding areas;

64.10. "... **the greatest fatal flaw of this site is situated within the National Freshwater Ecosystem Priority Area...**" and that it is predicted that mining will lead to the dewatering of subsurface water resources and the pollution of both surface and subsurface water resources that will "**extend to wetland FEPAs in the near vicinity**;" and

64.11. "[a] number of threatened, endangered and vulnerable flora and fauna had proved to be solely dependent on the existence of the wetlands that seem to be threatened by the proposed mining activity" and that even the "... [s]lightest [of] changes in water quality and quantity are detrimental to the health of the aquatic biota."

Mpumalanga Tourism and Parks Agency

65. The MTPA is established in terms of the Mpumalanga Tourism and Parks Agency Act of 2005, Act No. 5 of 2005. The entity came into existence on 1 April 2006 following

the merger of the now defunct Mpumalanga Parks Board and Mpumalanga Tourism Authority. Section 3 of the MTPA Act defines the Objective of the Agency as follows: "**To provide for the sustainable management and promotion of tourism and nature conservation in the Province and to ensure the sustainable utilisation of natural resources**."

66. In pursuing its objects, the Agency shall –

66.1. provide for effective management and conservation of bio-diversity and eco-systems within the Province;

66.2. develop and ensure effective management of protected areas;

66.3. foster, promote and sustainably develop and market tourism;

66.4. promote and create socio-economic growth and transformation within the tourism and conservation industry, thereby creating economic and employment opportunities for previously disadvantaged individuals and local communities in the Province.

67. The MTPA objected to the granting of the mining right. Its letter dated 29 August 2012 is attached marked "**8**".

68. The MTPA objected on the bases that:

68.1. the area in which AAV wants to mine is a proposed Protected Area under NEMPAA and that the final stage of the declaration was approaching,

68.2. the work of expanding the Protected Areas in Mpumalanga was part of the National Grassland Programme of 2008;

68.3. the area is classified as a sensitive area from a biodiversity conservation perspective, is identified as such in the MBCP and was endorsed by the Mpumalanga Provincial Cabinet in 2008;

68.4. the properties also form part of the area proposed for exclusion from mining in terms of section 49 of the MPRDA; and

68.5. the MTPA therefore objects to any mining activities within the Wakkerstroom Wet Grasslands Area.

69. The MTPA also objected to the granting of environmental authorisation in respect of the proposed Yzermyn mine. Its letter dated 27 October 2014 is attached, marked "**9**."

70. In this letter, the MTPA objected on the bases that:

70.1. the amended site layout plan, accompanied by additional specialist studies pertaining to the status of the impacted ecosystem and the impact of the mine on wetlands and stream flow, is inadequate, vague and therefore fundamentally flawed;

70.2. it is unlawful to mine in a protected environment without the written consent of the Minister of Environmental Affairs and Minister of Mineral Resources;

70.3. it is undesirable for coal mining to be conducted in the Mabola Protected Environment;

70.4. the environmental impact assessment report (EIAR) accompanying the environmental authorisation application does not make adequate provision for the mitigation of future permanent modification and degradation of groundwater dependent ecosystems such as wetlands and springs in the proposed mining area;

70.5. it is not clear from the EIAR what effect subsidence will have on the topography, roads and underground water flows after mining;

70.6. the EIAR does not make provision for a sound rehabilitation plan for the forecasted post-mining acid mine drainage decant;

70.7. the alternative site layout plan for the discard dumpsite is inappropriate as it is situated in close proximity to a network of wetlands, seepage wetlands and partly within the "1km restricted zone" of a tributary of the Assegaai River, which river is classified as a Critical Biodiversity River in terms of the Mining and Biodiversity Guideline, 2013. (The development of the *Mining and Biodiversity Guideline: Mainstreaming Biodiversity Into The Mining Sector* was initiated by the Chamber of Mines and the South African Mining and Biodiversity Forum (SAMBF), in partnership with DEA and the DMR, and with technical input and coordination by the SANBI Grasslands Programme);

70.8. coal is an abundant resource in South Africa and can be mined in less ecologically sensitive areas; and

70.9. the impact of the mine, if not adequately mitigated, could have a devastating impact on affected vulnerable and endangered ecosystems.

71. On 3 March 2015, the MTPA submitted comments on the amended final environmental impact assessment report submitted by AAV in furtherance of its application for environmental authorisation to AAV's EAP. These comments are in the form of a letter and is attached marked "**10**."

72. In this letter the MTPA made the following submissions to DEA:

72.1. the declaration of the Mabola Protected Environment is an important step towards conserving an important biodiversity area and therefore for reaching biodiversity goals in Mpumalanga;

72.2. coal mining is not a desired land use in the Mabola Protected Environment, and is not compatible with biodiversity conservation;

72.3. the baseline environmental study is fundamentally flawed;

72.4. the EIAR lacks a detailed cost analysis of the required post-mining water treatment, sourcing water for irrigation and wetland rehabilitation;

72.5. AAV has already contravened the environmental legislative provisions by boring drill holes in wetlands during the prospecting phase; and

72.6. there is no way in which agriculture, conservation, tourism and coal mining can co-exist in the Mabola Protected Environment.

OBJECTIONS FROM NON-STATE PARTIES TO AAV'S APPLICATION FOR A MINING RIGHT AND ENVIRONMENTAL AUTHORISATION

73. Strong written objections were raised during the course of the consultation process in respect of the mining right and environmental authorisations by WWF-SA.

74. On 27 September 2012, after receiving the Background Information Document for the proposed Yzermyn Underground Mine, WWF-SA wrote a letter of objection to AAV's EAP to the granting of its client's proposed mining right application in respect of properties that fall within what is now the Mabola Protected Environment. A copy of the letter is attached marked "**11**".

75. When the objection was lodged, a process was already underway to declare the Mabola Protected Environment.

76. The grounds of objection included:-

76.1. the area affected by the mining rights application falls within a key Protected Area expansion zone for WWF's work as the WWF-SA Enkangala Grassland project and SANBI grassland programme in partnership with MTPA;

76.2. portions of the area fall within national and provincial Protected Area expansion zones (as depicted on Map 1 of the letter) ;

76.3. all of the affected areas are located in an irreplaceable aquatic biodiversity area for Mpumalanga province;

Annexure 11

123

WWF South Africa
World Wide Fund For Nature

Reg. No: 003-226 NPO
VAT NO: 4820122481
Web: www.wwf.org.za

Head Office:
Boundary Terraces,
Bridge House 1st Floor,
Mariendahl Lane,
NEWLANDS, 7700

P O Box 23273,
CLAREMONT, 7735

Tel: +27 21 657 6600
Fax: 086 535 9433

Gauteng Office:
Ground Floor
President Place
1 Hood Avenue
ROSEBANK 2196
Postnet Suite 436
Private Bag X9
BENMORE 2010
Tel: +27 11 447 1213
Fax: +27 11 447 0365

WWF *for a living planet®*

Attention: Lizelle Prosch/Brent Holme
WSP Environment & Energy South Africa
WSP House, Bryanston Place, 199 Bryanston Drive, Bryanston, 2191
Tel: +27 11 361 1389
Fax: +27 86 532 8685
Mobile: +27 83 518 2386
Email: Brent.Holme@WSPGroup.co.za
/ Lizelle.Prosch@WSPGroup.co.za
Date: 27th September 2012

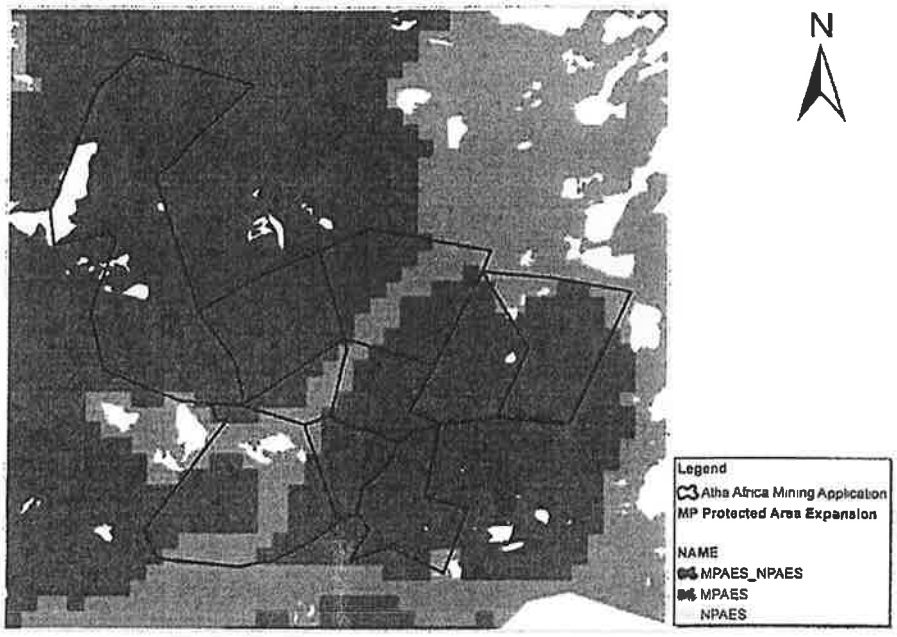
Dear Lizelle and Brent,

Re: Objection to Mining Rights Application by Atha Africa Ventures (PTY) LTD for proposed Yzermyn Underground coal mine located approximately 20kms from Wakkerstroom in the Pixley Ka Seme local municipality

1. Thank you for all previous emails and informal communications in which you supplied us with the Background Information Document (BID) on your client's (Atha Africa Ventures (PTY) LTD – hereafter referred to as "Atha") application for a mining right within the affected area. As already indicated in our email and verbal responses to you, there are serious and substantial concerns about the sensitivity of the area in which your client proposes to mine for coal. ***We hereby lodge our strong objection to Atha's mining right application on numerous grounds as recorded below.***

2. The area affected by your clients application fall within a key protected area expansion zone for our work as the WWF-SA Enkangala Grassland Project and SANBI grassland programme in partnership with Mpumalanga Tourism and Parks Agency (MTPA) . In addition, portions of the area fall within National and Provincial Protected Area expansion zones (see Map 1 depicting the provincial and national protected area expansion zones). ***Atha's mining right application is thus opposed on the grounds that it will prevent provincial and national protected area expansion targets from being achieved should consent be granted by the DMR.***

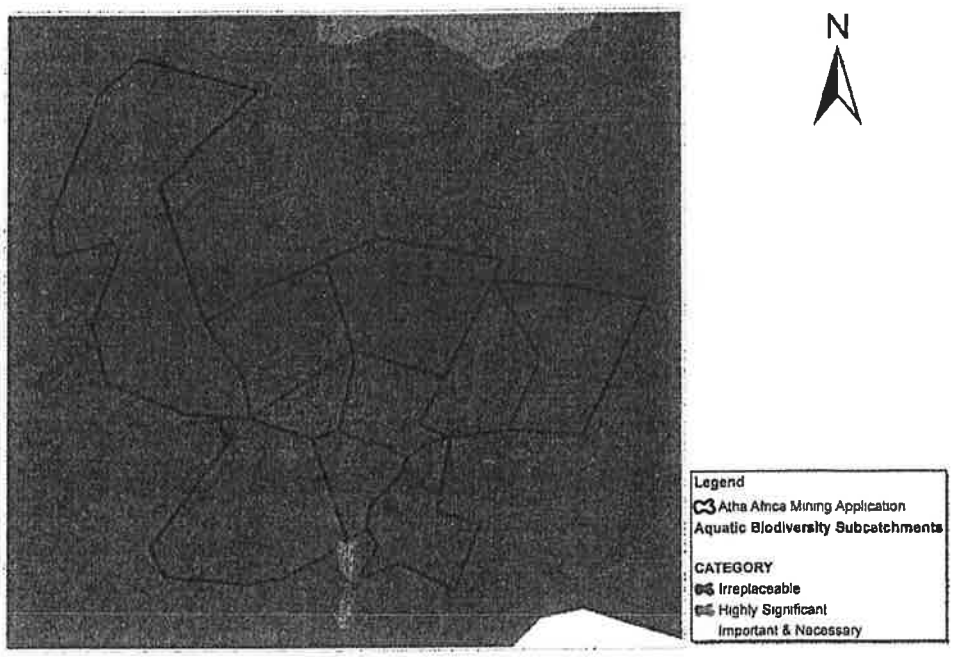
124



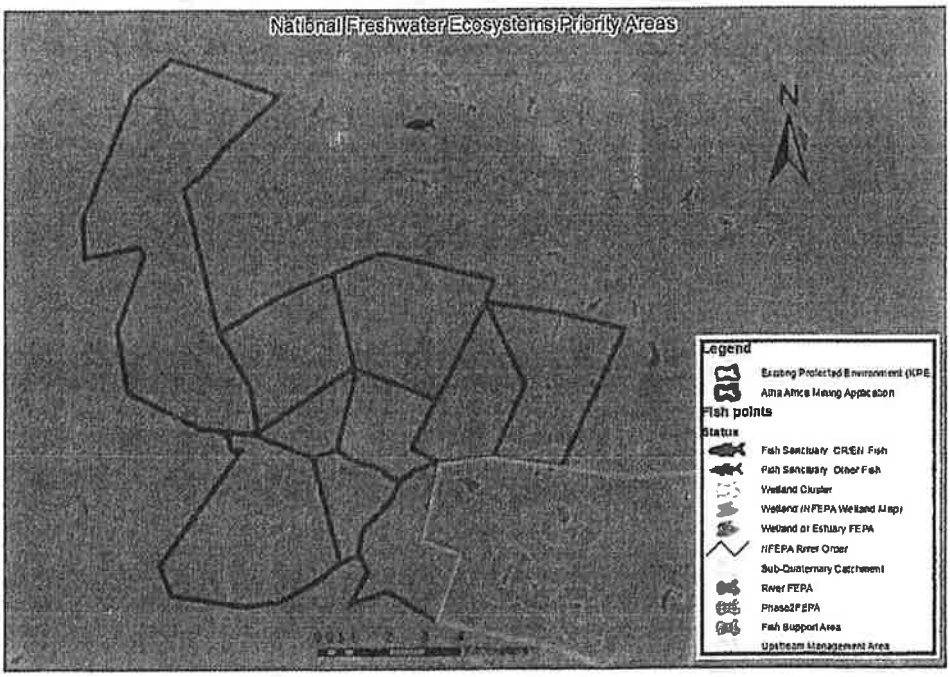
Map 1 depicting provincial and national protected area expansion zones

3. All of the affected properties are located in an irreplaceable aquatic biodiversity area for Mpumalanga Province. Should any form of coal mining be pursued, it will have extremely negative impacts on this important water production area. Additionally, the Atha properties are located in a National Freshwater Ecosystem Priority Area (NFEPA) and any form of mining in such an area is considered inappropriate and of severe consequence to sustained ecosystem functioning (See map 2 depicting provincial aquatic biodiversity importance and map 3 depicting NFEPA's). ***Atha's mining right application is thus opposed due to serious aquatic and hydrological sensitivities.***

125



Map 2 depicting provincial aquatic biodiversity importance

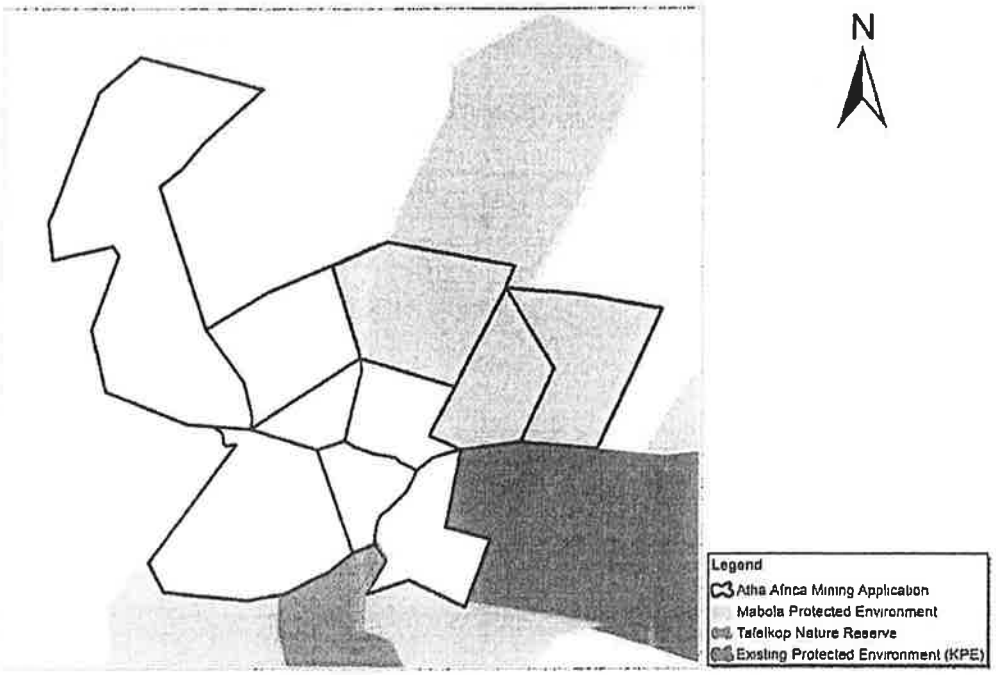


Map 3 depicting NFEPA's

4. Map 4 (below) depicts the position of your clients mining right application in relation to the existing and proclaimed Kwamandlangampisi Protected Environment (KPE) and also illustrates

126

the location of the proposed Mabola Protected Environment (MPE) and Tafelkop Nature Reserve (TNR). ***Any mining activity adjacent to the KPE is hereby opposed due to the obvious environmental impacts such activities would have on the adjacent existing and proposed protected areas.*** All documentation in this regard has been supplied to you as consultants and we request that you draw specific attention to such documentation to be included as part of this objection to the DMR.



Map 4 depicting location of Atha mining right application in relation to
the Kwamandlangampisi Protected Environment (KPE) and proposed protected environments/nature reserves

5. As mentioned in our discussions with you and your client, we indicated that the properties fall within the proposed Wakkerstroom Wet Grasslands section 49 exclusion zone which has been lodged with the DMR. See map 5 showing the exclusion zone in relation to Atha's mining interests. A visit from the DMR regional officer earlier this year resulted in the regional manager conceding that the section 49 application was legitimate due to the obvious hydrological and environmental importance of the area. The DMR Mpumalanga regional office has thus lodged the WWG section 49 application with the Minister for processing and consideration.

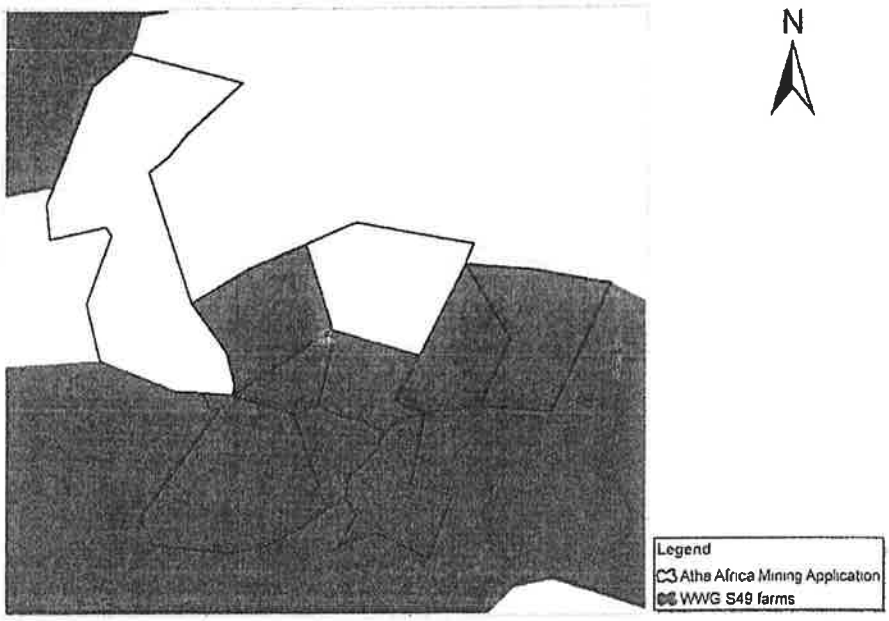
   T he reasons for the WWG section 49 submission are numerous but in summary:

   a) The area is critically important from a water production perspective

127

b) The area is largely classed as irreplaceable by the MBCP and thus crucial for the achievement of provincial and national conservation targets due to the biodiversity features located there
c) The area is located in endangered and vulnerable threatened ecosystems (in terms of NEM:BA)
d) The area falls within provincial and national priority protected area expansion zones

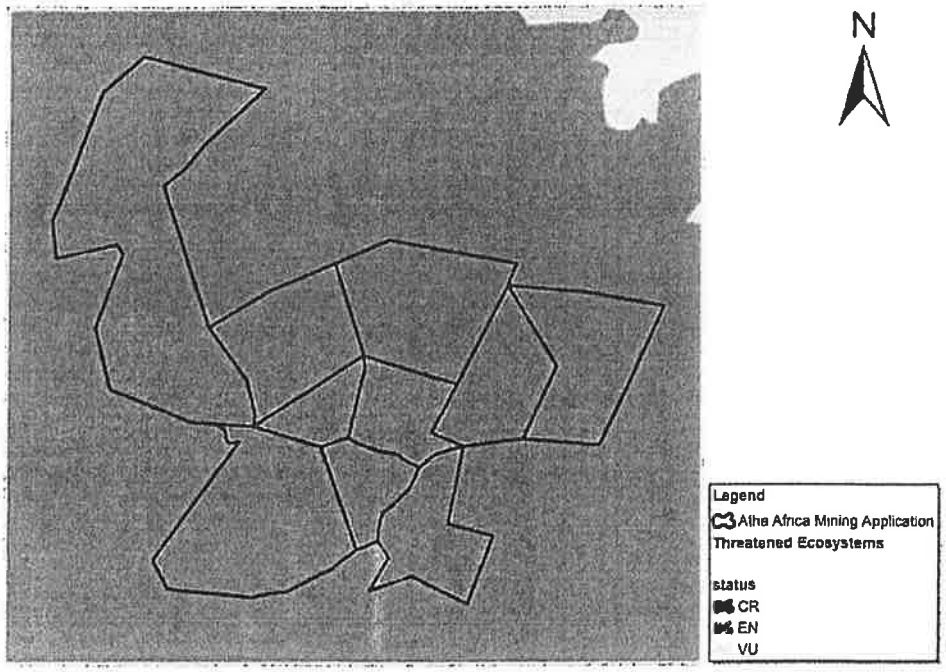
We thus object to your clients application within this proposed section 49 area and remind the DMR of their acknowledgement that the area is highly sensitive from a hydrological and biodiversity perspective. All this information has been supplied to yourselves as consultants representing the interests of your client. We request that you draw the DMR's attention to the WWG S49 submission and that all documentation provided to you in this regard be included as part of this objection to the DMR.



Map 5 showing portions of proposed Wakkerstroom Wetland Grass Section 49 exclusion zone in relation to Atha's mining right application

6. Atha's mining application additionally falls within areas that are classed as threatened ecosystems, more specifically "endangered". See map 6 depicting the location of Atha's interests in the context of these endangered systems. ***We thus object to Atha's application within this endangered system due to the obvious negative impact their mining activities would have on such sensitive areas.***

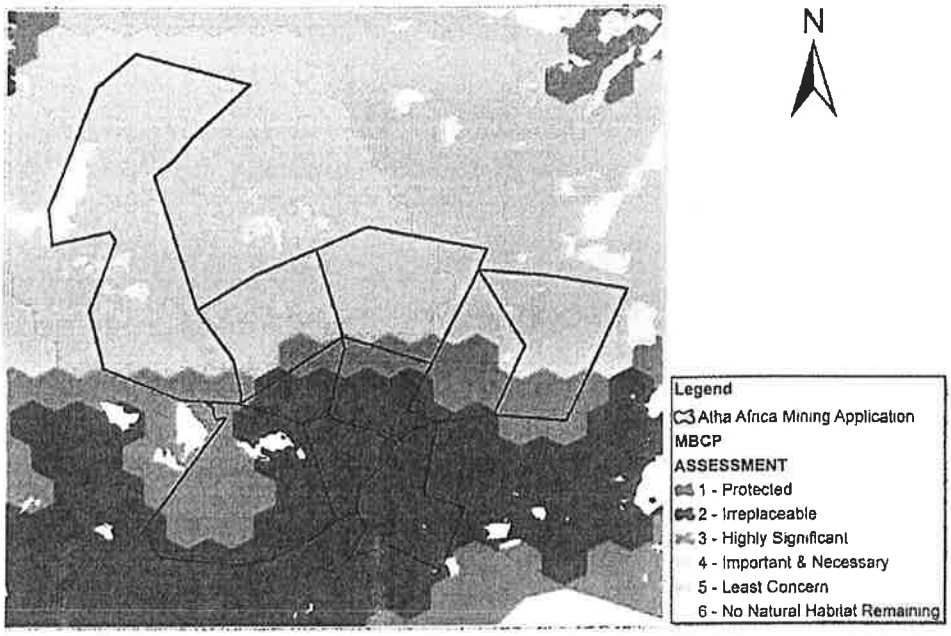
128



Map 6 illustrating location of Atha's application within endangered threatened ecosystems

7. Additionally, and as mentioned in paragraph 5, the area affected by Atha's application is classed as largely irreplaceable, highly significant and important and necessary by Mpumalanga Tourism and Parks Agency (MTPA) in their Mpumalanga Biodiversity Conservation Plan (MBCP). See map 7 illustrating this fact. Such classification was confirmed during field assessments conducted for the Mabola and Tafelkop Protected Environment and Nature Reserve submission development to the MEC. The relevant documents have been provided to you as consultants in the Mabola motivation document which we request be included as part of this objection. ***We thus object to Atha's mining application which will negatively affect these sensitive terrestrial biodiversity of these areas should they be granted a mining right and thus prevent the achievement of provincial conservation targets.***

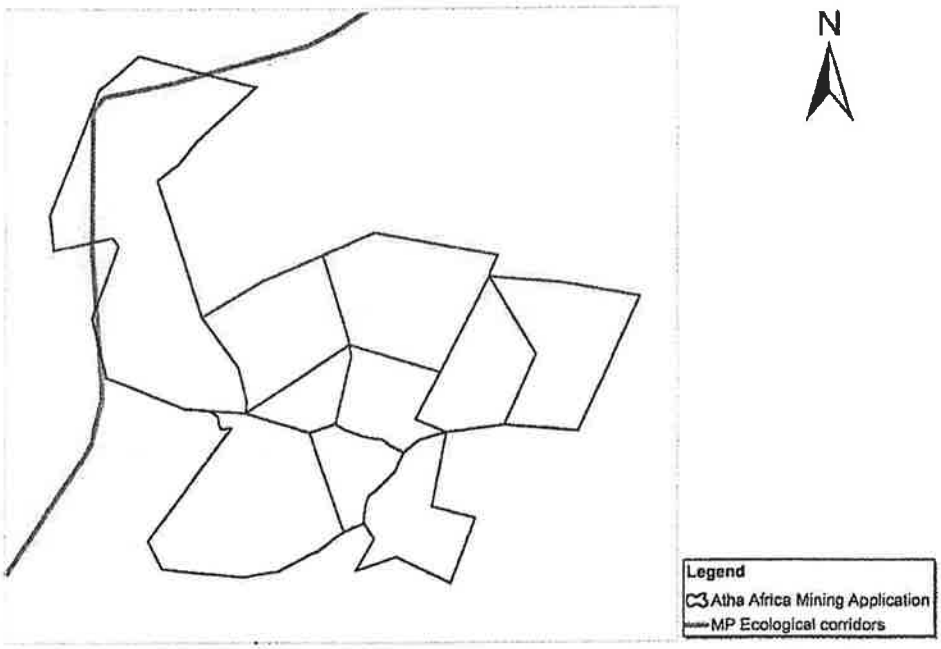
129



Map 7 illustrating Atha's application in the context of MTPA's MBCP

8. Finally, we draw attention to the fact that Atha's North Western portion of their application falls within an important ecological corridor. Should Atha be granted a mining right in this area, their activities could impact on the functionality of this corridor and thus have an additional negative impact over and above those already outlined in paragraphs 2 – 7. ***We thus again object to their application on the basis that it falls within an ecological corridor.*** See map 8 illustrating the proximity of Atha's interests in relation to said ecological corridor.

130



Map 8 depicting Atha's mining interests in relation to Ecological Corridors

9. We therefore lodge our objection over any mining right application within this sensitive area for reasons explained in paragraphs 2 – 8. We remind the regional office of the DMR that it has already indicated support for the WWG section 49 exclusion submission which affects the area targeted by Atha's application. Additionally, the regional office has visited the area and indicated that it is indeed a valid application due to environmental sensitivities. The Honourable Minister Susan Shabangu stated in her recent budget speech that sensitive areas such as Wakkerstroom should be protected from mining due to obvious environmental sensitivities. This application falls within the Wakkerstroom area and besides defying the intentions of the minister, will directly impact upon the area and the broader environment should mining be allowed to proceed. By Atha's own admission, they are a new mining concern entering the coal market. We thus have additional reservations about their ability to address our concerns and effectively implement a mining operation that will not severely impact the sensitive area in which they are seeking such rights. ***We thus object in the strongest terms to Atha's mining right application and request the following:***

   a) ***Detailed responses to each and every concern as highlighted within the body of this letter by Atha indicating how they will mitigate / address and avoid the impacts their proposed operations will have.***
   b) ***A detailed cost accounting of the financial resources that will be used for such proposed mitigation***

Once we have reviewed their responses, we request the right to respond again with our concerns should we feel that they have not been adequately addressed. We again emphasize that we are in no way supportive of any mining in the affected area and thus reiterate our strongest objection.

We request this letter be included in its entirety along with all relevant documentation as our initial objection to this mining right application.

Yours sincerely

Angus Burns
:: Manager: WWF-SA Grasslands Programme ::
P O Box 21106, Newcastle, 2940
Tel: +27 034 318 6158
Mobile: +27 084 400 1234
Fax: +27 086 517 4073
Skype: decarabia1
Email: aburns@wwf.org.za / egtproject@mweb.co.za
Web: www.wwf.org.za

WWF ***for a living planet®***

Annexure 12

132

WWF South Africa
World Wide Fund For Nature

Reg. No: 003-226 NPO
VAT NO: 4820122481
Web: www.wwf.org.za

Head Office:
Boundary Terraces,
Bridge House 1st Floor,
Mariendahl Lane,
NEWLANDS, 7700

P O Box 23273,
CLAREMONT, 7735

Tel: +27 21 657 6600
Fax: 086 535 9433

Gauteng Office:
Ground Floor
President Place
1 Hood Avenue
ROSEBANK 2196
Postnet Suite 436
Private Bag X9
BENMORE 2010
Tel: +27 11 447 1213
Fax: +27 11 447 0365

WWF *for a living planet®*

To: Eumari Vosloo
EcoPartners
177 Weltevreden Road
BERARIO
Johannesburg
2195
Tel: 011 431 2251 / 2291
Fax: 086 664 2908
www.ecopartners.co.za
Date: 27th October 2014

Dear Eumari,

Re: Objection to Mining Rights Application by Atha Africa Ventures (PTY) LTD for proposed Yzermyn Underground coal mine located in the Pixley Ka Seme local municipality (Ref: 14/12/16/3/3/2/693)

Thank you for all previous emails and communications in which you supplied us with the amended ESIA/ESMP for your client's (Atha Africa Ventures (PTY) LTD – hereafter referred to as "Atha") application for a mining right within the affected area. There are serious and substantial concerns about the sensitivity of the area in which your client proposes to mine for coal. ***We hereby again lodge our strong objection to Atha's mining right application on numerous grounds as recorded below.***

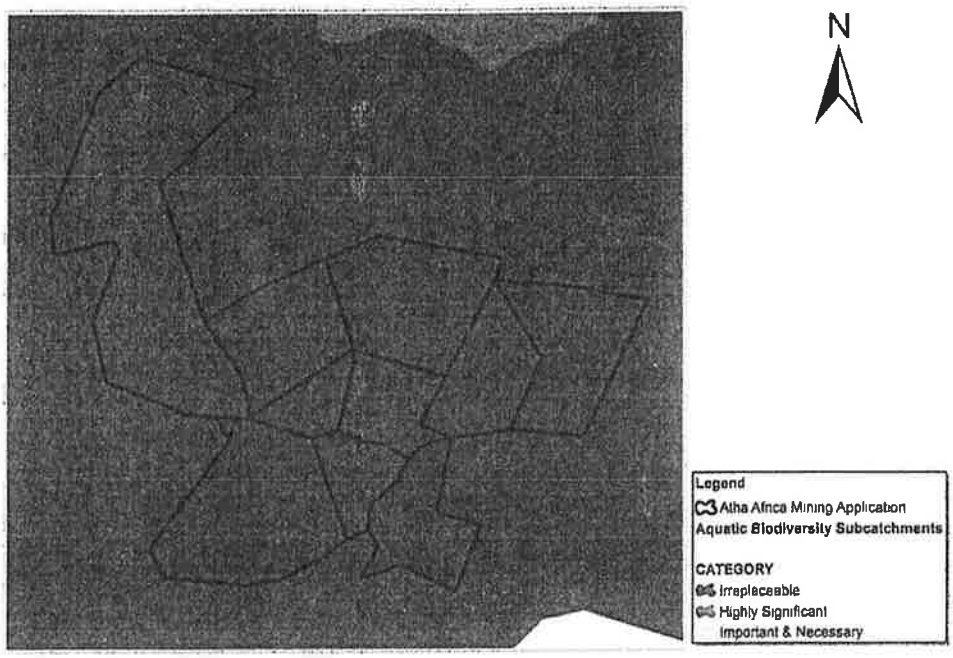
We also include an extract from the executive summary of a report supplied to Atha on the 13th September 2013 by Natural Scientific Solutions CC and circulated for general comment (see attached copy of the report in email). The summary explicitly states that the proposed Yzermyn mine should "**be NO GO in terms of Biodiversity because of the impact of the proposed underground mining on the supply of water to the surface water resources (due to the de-watering activities) and the potential groundwater contamination. These aspects will have a significant impact on aquatic and wetland ecosystem functioning and biodiversity in a far greater area than the underground mining area. This aspect of the mining project, alone, is in strong conflict with international, national and provincial legislation, policies and guidelines. A high number of CI species were detected, and most habitat in the proposed underground mining and surface infrastructure areas was assigned a Very High or High sensitivity. Most potential impacts of the mining operation had a HIGH overall significance rating, even with mitigation. Moreover, the cumulative impacts of numerous mining applications in the study region are of serious concern.**" Reference: Page V from Natural Scientific Solutions CC report. The report executive summary goes further to add: "**Even**

though NSS recommends that the project is a NO GO from a Biodiversity perspective, mitigation measures have been discussed should the project go ahead." It is on the basis of the original mitigation measures submitted to the DEA that the application was justifiably rejected and has now reappeared with new proposed mitigation measures submitted by yourselves on behalf of Atha. We dispute and thus reject the mitigation measures and amendments proposed by yourselves on the basis that Natural Scientific Solutions CC along with ourselves as IAP's have provided ample evidence as to why the proposed Yzermyn should not be supported and therefore not go ahead. Altering proposed approaches and methods in an attempt to facilitate a positive decision from DEA for your client does not address the central issues of sensitivity as identified by the Natural Scientific Solutions CC report and ourselves. ***We therefore reiterate our objection to your clients proposed mine and support DEA in their rejection of the original ESIA/ESMP. We furthermore urge DEA to reject the amended version for reasons as already expressed and in addition for the following reasons:***

1. The area affected by your clients application fall within a key protected area expansion zone for our work as the WWF-SA Enkangala Grassland Project and SANBI grassland programme in partnership with Mpumalanga Tourism and Parks Agency (MTPA) . In addition, portions of the area fall within National and Provincial Protected Area expansion zones (see Map 1 depicting the provincial and national protected area expansion zones). ***Atha's mining right application is thus opposed on the grounds that it will prevent or hinder provincial and national protected area expansion targets from being achieved should consent be granted by the DMR and DEA.***

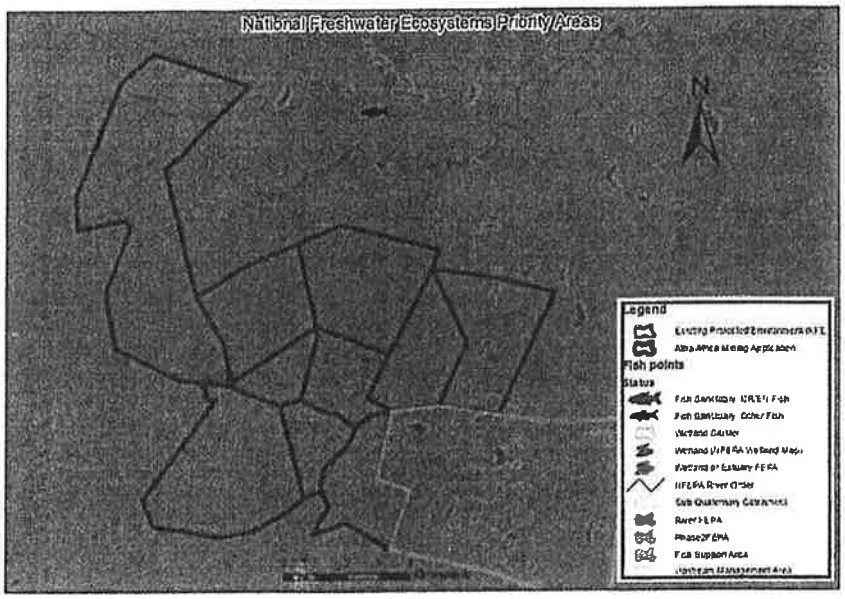
Map 1 depicting provincial and national protected area expansion zones

2. All of the affected properties are located in an irreplaceable aquatic biodiversity area for Mpumalanga Province. Should any form of coal mining be pursued, it will have extremely negative impacts on this important water production area (as highlighted in the Natural Scientific Solutions CC report). Additionally, the Atha affected properties are located in a National Freshwater Ecosystem Priority Area (NFEPA) and any form of mining in such an area is considered inappropriate and of severe consequence to sustained ecosystem functioning (See map 2 depicting provincial aquatic biodiversity importance and map 3 depicting NFEPA's). ***Atha's mining right application is thus opposed due to serious aquatic and hydrological sensitivities that cannot be mitigated.***



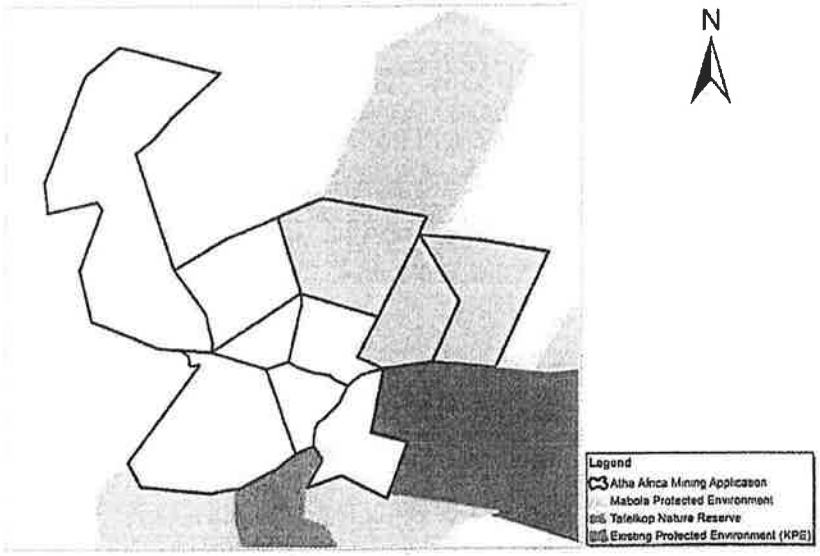
Map 2 depicting provincial aquatic biodiversity importance

135



Map 3 depicting NFEPA's

3. Map 4 (below) depicts the position of your clients mining right application in relation to the Kwamandlangampisi Protected Environment (KPE) and also illustrates the location of the Mabola Protected Environment (MPE) and Tafelkop Nature Reserve (TNR). ***Any mining activity adjacent to the KPE and within the Mabola PE and Tafelkop NR is hereby opposed due to the obvious environmental impacts such activities would have on existing protected areas.***



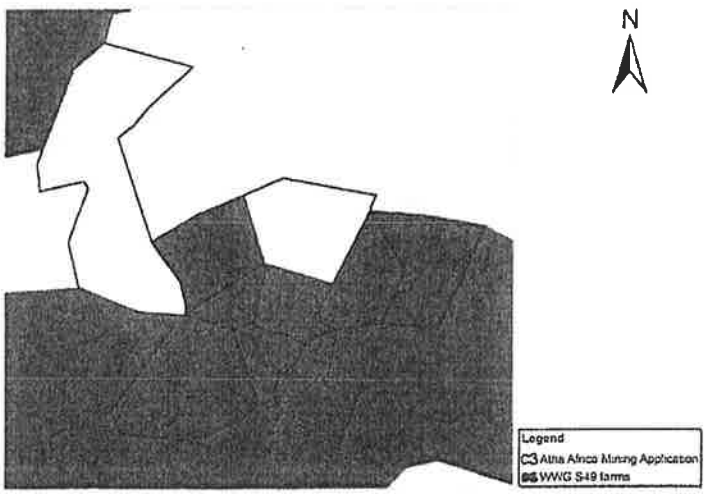
Map 4 depicting location of Atha mining right application in relation to
the Kwamandlangampisi Protected Environment (KPE) and Mabola protected environments/ TafelKop nature reserves

136

4. The properties fall within the proposed Wakkerstroom Wet Grasslands section 49 exclusion zone which has been lodged with the DMR. See map 5 showing the exclusion zone in relation to Atha's mining interests. A visit from the DMR regional officer in 2013 resulted in the regional manager conceding that the section 49 application was legitimate due to the obvious hydrological and environmental importance of the area. The DMR Mpumalanga regional office has thus lodged the WWG section 49 application with the Minister for processing and consideration.

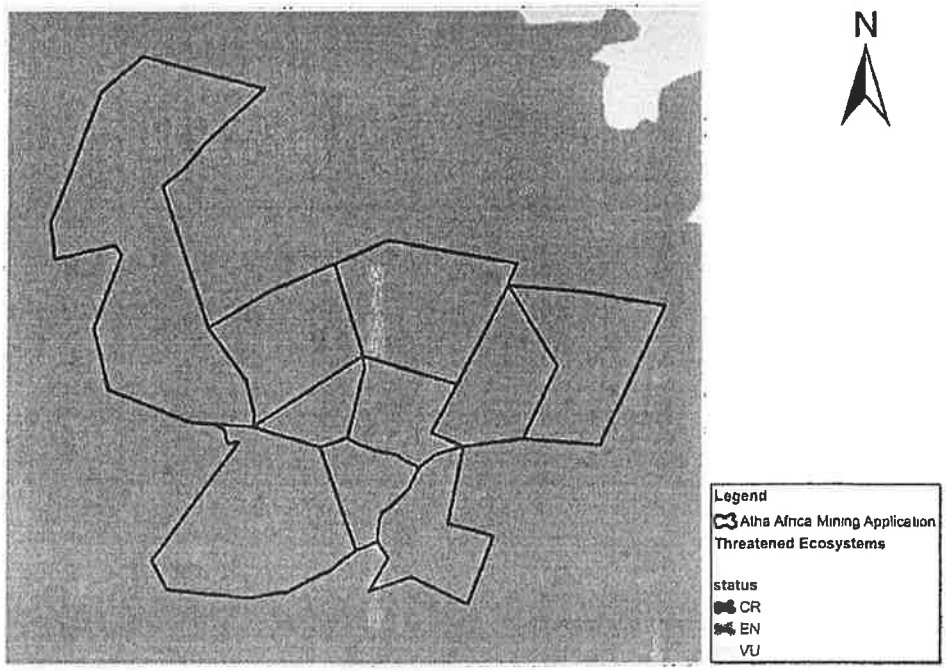
   T he reasons for the WWG section 49 submission are numerous but in summary:
   a) The area is critically important from a water production perspective
   b) The area is largely classed as irreplaceable by the MBCP and thus crucial for the achievement of provincial and national conservation targets due to the biodiversity features located there
   c) The area is located in endangered and vulnerable threatened ecosystems (in terms of NEM:BA)
   d) The area falls within provincial and national priority protected area expansion zones

   We thus object to your clients application within this proposed section 49 area and remind the DMR of their acknowledgement that the area is highly sensitive from a hydrological and biodiversity perspective. All this information has been supplied to your client and previous consultants representing the interests of your client. We request that you draw the DMR's attention to the WWG S49 submission and furthermore point out that the reasons for the S49 submission echo the sensitivities identified in the Natural Scientific Solutions CC report.



Map 5 showing portions of proposed Wakkerstroom Wetland Grass Section 49 exclusion zone in relation to Atha's mining right application

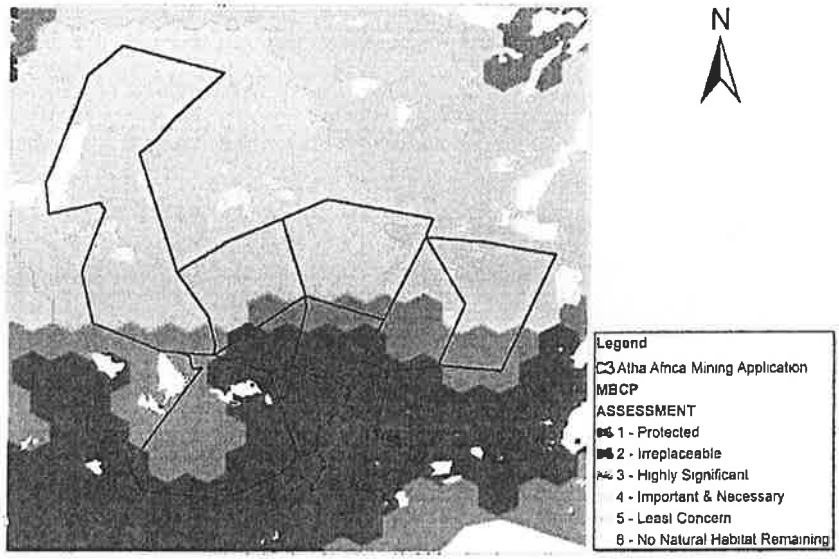
5. Atha's mining application additionally falls within areas that are classed as threatened ecosystems, more specifically "endangered". See map 6 depicting the location of Atha's interests in the context of these endangered systems. ***We thus object to Atha's application within this endangered system due to the obvious negative impact their mining activities would have on such sensitive areas.***



Map 6 illustrating location of Atha's application within endangered threatened ecosystems

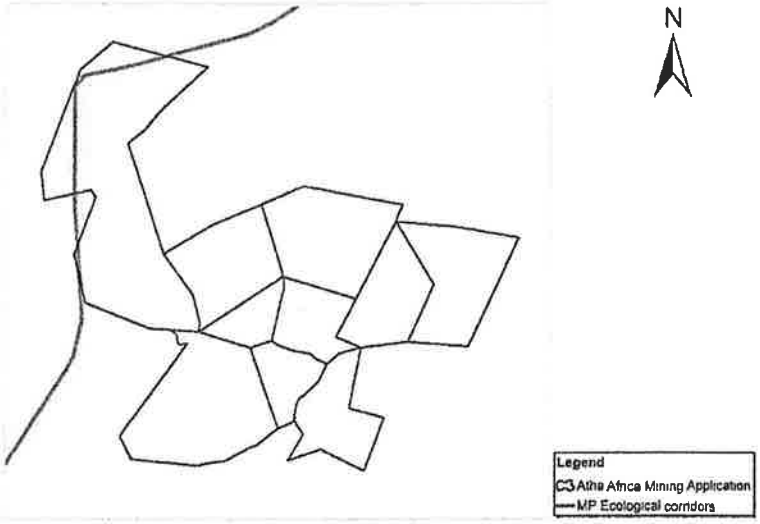
6. Additionally, and as mentioned in paragraph 5, the area affected by Atha's application is classed as largely irreplaceable, highly significant and important and necessary by Mpumalanga Tourism and Parks Agency (MTPA) in their Mpumalanga Biodiversity Conservation Plan (MBCP). See map 7 illustrating this fact. Such classification was confirmed during field assessments conducted for the Mabola and Tafelkop Protected Environment and Nature Reserve submission development to the MEC prior to their declaration in 2013 and furthermore supports the sensitivity assertions made by Natural Scientific Solutions CC in their report. The relevant documents have been provided to Atha. ***We thus object to Atha's mining application which will negatively affect these sensitive terrestrial biodiversity of these areas should they be granted a mining right and thus prevent the achievement of provincial conservation targets.***

138



Map 7 illustrating Atha's application in the context of MTPA's MBCP

7. We draw attention to the fact that Atha's North Western portion of their application falls within an important ecological corridor. Should Atha be granted a mining right in this area, their activities could impact on the functionality of this corridor and thus have an additional negative impact over and above those already outlined in preceding paragraphs. ***We thus again object to their application on the basis that it falls within an ecological corridor.*** See map 8 illustrating the proximity of Atha's interests in relation to said ecological corridor.



Map 8 depicting Atha's mining interests in relation to Ecological Corridors

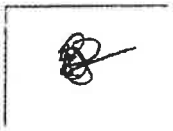
139

8. We therefore lodge our objection to any mining right application within this sensitive area for reasons thus explained. We remind the regional office of the DMR (and alert DEA to the fact) that it has already indicated support for the WWG section 49 exclusion submission which affects the area targeted by Atha's application and that the areas falls within a declared Protected Environment. Additionally, the DMR regional office has visited the area and indicated that it is indeed a valid application due to environmental sensitivities. The Honourable Minister Susan Shabangu stated in her 2012 budget speech that sensitive areas such as Wakkerstroom should be protected from mining due to obvious environmental sensitivities. This application falls within the Wakkerstroom area and besides defying the intentions of the minister, will directly impact upon the area and the broader environment should mining be allowed to proceed. By Atha's own admission, they are a new mining concern entering the coal market. We thus have additional reservations about their ability to address our concerns and effectively implement a mining operation that will not severely impact the sensitive area in which they are seeking such rights. ***We thus object in the strongest terms to Atha's amended mining right application.***

9. We disagree with Eco Partners support for the proposed Yzermyn mine and furthermore question the accuracy of the assertion that such a mine would be in the "national interest". The approach taken by Eco Partners appears to be subjective and an attempt to influence the DEA in favour of the client (Atha) when the balance of evidence (as supplied by ourselves, other IAP's and Natural Scientific Solutions CC) suggests the proposed Yzermyn should not be supported. Supporting the development of a mine in such a sensitive location is certainly contrary to the national interest given the relative short-term gain that might be realised from such a proposed mine versus the long-term legacy issues commonly associated with land use activities that are incompatible with biodiversity and attendant water and food security. ***WWF-SA thus rejects the amendments proposed by Eco Partners on behalf of Atha and reiterates our objection to the proposed mine.***

We request this letter be included in its entirety along with all relevant documentation as our initial objection to this mining right application.

Yours sincerely



Angus Burns
:: Manager: WWF-SA Grasslands Programme ::

140

P O Box 21106, Newcastle, 2940
Tel: +27 034 318 6158
Mobile: +27 084 400 1234
Fax: +27 086 517 4073
Skype: decarabia1
Email: aburns@wwf.org.za / egtproject@mweb.co.za
Web: www.wwf.org.za

WWF ***for a living planet®***

Annexure 13

141

mineral resources

Department:
Mineral Resources
REPUBLIC OF SOUTH AFRICA

Private Bag X 7279, Witbank, 1035. Tel: (013) 656 1448' Fax (013) 656 0932
Province Building, Cnr Botha & Paul Kruger Street, 1035
From: Directorate: Mineral Regulation Mpumalanga Region
Enquries: LUCKY MUGAGADELI,Reference NO. MP30/5/1/2/2/10059MR
Subdirectoarte: Mineral Laws

REGISTERED MAIL

The Directors
Atha-Africa ventures (Pty) Ltd
P O Box 1569
SANDTON
2157

Fax: (011) 784 7467

Gentlemen/Ladies

APPLICATION FOR A MINING RIGHT IN TERMS OF SECTION 22 OF THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT ACT, 2002 (ACT 28 OF 2002): BLOEMHOF 92 HT, GOEDGEVONDEN 95 HT, KROMHOEK 93 HT, PORTION 1 OF FARM NAUWGEVONDEN 110 HT, PAARDEKOP 109 HT, UITZICHT 108 HT, PORTION 2 AND THE REMAINING EXTENT OF THE FARM VAN DER WALTSPOORT 81 HT, VIRGINIA 91 HT, WAALHOEK 87 HT, PORTION 1 AND THE REMAINING EXTENT OF THE FARM YZERMYN 96 HT AND ZOETFONTEIN 94 HT, MAGISTERIAL DISTRICT OF WAKKERSTROOM.

1. This serves to inform you that your abovementioned application for a mining right to mine for Coal in respect of the abovementioned property has been granted in terms of Section 23(1) of the abovementioned Act. The Regional Office will prepare the final copies of the right to be signed.

2. Take note that the Regional Manager will approve the relevant Environmental Management Programme and sign the right.

3. Further note that in terms of Section 23(5) of the Act, the mining right comes into effect on the date on which the Environmental Management

Programme is approved. In terms of section 25(2) (b) mining activities must commence within one year of the effective date.

4. In light of the afore-going, you are requested to:

   4.1 Ensure that all outstanding matters regarding your application are finalised and that relevant documents are submitted to the Regional Office no later than 30 days prior to the date mentioned in paragraph 2 above, which outstanding matters include the submission of:

      a. Financial provision provided before execution
      b. the particulars of your authorised representative who will sign the right,
      c. the particulars of the public notary, before whom the right must be signed,
      d. six copies of the final mining work programme,
      e. diagram prepared by a surveyor **(6 (six) originals)** in accordance with the requirements of the Mining Titles Registration Act and which shall indicate the following:

         i. the north point;
         ii. the scale to which the plan has been drawn;
         iii. the name, number registration division and portion of the farm or farms on which the relevant area is situated;
         iv. the shape of the relevant are in relation to the farm boundaries and co-ordinates points;
         v. the region in which the relevant farm is situated and;
         vi. be certified, approved signed and dated by the professional land surveyor, unless the Director General otherwise indicates.
         vii. Three (3) copies of the Social and Labour Plan.

   4.2 Please make arrangements for the public notary, authorized representative (s) of your company and a witness to be present and attend the signing of the mining right once the aforesaid outstanding matters are verified and an execution date has been finalized by this Office.

5. Note further that in terms of section 25(2)(a), the signed/executed mining right must be lodged for registration at the Mineral and Petroleum titles Registration office, Pretoria, within 30 days as from the date of approval of the relevant environmental management programme.

6. The following shall also be noted:

   (i) The granting shall exclude any areas that constitutes wetlands.

   (ii) Surface mining or related activity, as well as erection/installation of surface infrastructure shall be prohibited from taking place in any area that constitute wetlands or is deemed to be a sensitive environment.

   (iii) The applicant shall formulate proper mitigation measures relative to the area in consultation with all the other stakeholders/authorities that administer matters affecting the environment at National and Provincial (Mpumalanga) level.

   (iv) A proper plan/map shall be submitted with a clear depiction of such exclusions as indicated on (1) above.

   NB: The abovementioned conditions shall be fulfilled to the satisfaction of the Department before the right can be considered further for notarial execution.

7. Failure to comply may result in the withdrawal, suspension or cancellation of the right in question.

Yours faithfully

DR THIBEDI RAMONTJA
DIRECTOR GENERAL
DEPARTMENT OF MINERAL RESOURCES
DATE: 19/11/2014

Annexure 14

144

Centre *for* Environmental Rights
Advancing Environmental Rights in South Africa

Aubrey Tshivhandekano
Regional Manager: Mpumalanga
Department of Mineral Resources
eMalahleni
1035
By email: Aubrey.Tshivhandekano@dmr.gov.za

cc: Lydia Mapopa
Department of Mineral Resources: Mpumalanga
By email: Lydia.Maphopha@dmr.gov.za

Your ref: MP 30/5/1/2/2/10069 MR
Our ref: CH/MT
Date: 23 February 2015

URGENT

Dear Mr Tshivhandekano

MINING RIGHT APPLICATION MP 30/5/1/2/2/10069
GRANTING OF MINING RIGHT TO ATHA-AFRICA VENTURES (PTY) LTD IN RESPECT OF PROPERTIES IN THE MABOLA PROTECTED ENVIRONMENT

1. The Centre for Environmental Rights is a non-profit organisation and law clinic established to advance environmental rights in South Africa. One of our areas of work, which we regard as central to realisation of section 24 of the Constitution, is the protection and defence of protected areas and areas of critical biodiversity and hydrological value and sensitivity. The Centre also works closely with numerous other civil society organisations concerned with ensuring transparency, accountability and environmental compliance in the mining sector. This includes WWF South Africa and BirdLife South Africa who have worked for the protection of the broader grasslands area in Mpumalanga, KwaZulu-Natal and Free State for many years, as well as the Mining and Environmental Justice Community Network for South Africa.

2. For these reasons, we supported the declaration of the Mabola Protected Environment under the National Environmental Management: Protected Areas Act, 2003 (NEMPAA) by the Mpumalanga MEC in January 2014.

3. It appears from recent media reports and other sources that, since that declaration, the Department of Mineral Resources has granted a mining right to Atha-Africa Ventures (Pty) Ltd (AAV) in respect of a mining area that falls within the Mabola Protected Environment. **Please, as a matter of urgency, provide us with any letter from your office to the AAV confirming that a mining right has been granted to it in terms of section 23 of the Mineral and Petroleum Resources Development Act, 2002 in respect of properties in the Mabola Protected Environment.**

4. It further appears that AAV intends pursuing the exercise of those rights despite the provisions of section 48 of NEMPAA. Section 48(1)(b) of NEMPAA provides, in relevant part, as follows:

[illegible]

(1) Despite other legislation, no person may conduct commercial... mining... or related activities

(b) in a protected environment without the written consent of the Minister [of Environmental Affairs] and the Cabinet member responsible for mineral and energy affairs..."

5. Has the DMR requested the written consent envisaged in this section from the Minister of Environmental Affairs and the Minister of Mineral Resources? If so, we urgently need copies of this request and any responses from the Minister of Environmental Affairs, the Minister of Mineral Resources and/or the Department of Environmental Affairs.

6. If the DMR still intends to make such request of the Ministers, a reasonable public participation process is required in terms of the Promotion of Administrative Justice Act, 2000, which Act sets out the obligations relating to procedural fairness in administrative decision-making. Should the Ministers have been requested to consent to the undertaking of mining or related activities in the Mabola Protected Environment, kindly advise us of the public participation process underway.

7. Kindly let us have your response to this letter by no later than 25 February 2015.

Yours sincerely
CENTRE FOR ENVIRONMENTAL RIGHTS

per:

Catherine Horsfield
Attorney
Programme Head: Mining
Direct email: chorsfield@cer.org.za

Annexure 15

146

Marthán Theart

From: Marthán Theart
Sent: 02 March 2015 01:25 PM
To: 'Praveer Tripathi'
Cc: 'EcoPartners'
Subject: Proposed Yzermyn Underground Coal Mine

Dear Mr Tripathi

I refer to the email from Ms Baartjes to me below.

We have been trying to access documents relevant to Atha-Africa Ventures' (Pty) Ltd (AAV) mining right application relating to its proposed Yzermyn project near Wakkerstroom in Mpumalanga. As we were under the impression that EcoPartners was AAV's environmental consultant in the mining right application, these documents were requested from EcoPartners. Ms Baartjes' email below is a reply to my request.

In a newspaper article, published in the Mail and Guardian on 30 January 2015, it was stated that AAV's mining right application for the proposed Yzermyn project was granted. We have requested "a copy of a letter from the Department of Mineral Resources (DMR) to AAV notifying AAV that the right was granted" from the DMR, but they have not answered our request. If it is correct that this mining right has been granted, would you please send me a copy of the letter from the DMR to AAV confirming this? We require this as a matter of some urgency. We also require a whole range of further documentation, which we will formally request from AAV at a later stage.

We await your reply

Yours sincerely

Marthán Theart
Attorney
Centre for Environmental Rights NPC
A non-profit company with registration number 2009/020736/08,
PBO No. 930032226, NPO No. 075-863; , VAT No. 4770260653
and a Law Clinic registered with the Law Society of the Cape of Good Hope
2nd Floor, Springtime Studios, 1 Scott Road, Observatory 7925, Cape Town, South Africa
Tel 021 447 1647 Fax 086 730 9098
mtheart@cer.org.za
www.cer.org.za www.facebook.com/CentreEnvironmentalRights

Centre *for*
Environmental Rights
Advancing Environmental Rights in South Africa

Newsflash: The Centre runs an Environmental Rights Clinic on the first Friday of every month. See if you, your community or your organisation qualify for a free Clinic consultation and book an appointment at http://cer.org.za/about/accessing-cer-services/

From: Charlaine Baartjes [mailto:charlaine@ecopartners.co.za]
Sent: 27 February 2015 08:13 PM
To: Marthán Theart

147

Cc: 'Praveer Tripathi'
Subject: RE: You have been registered at www.ecopartners.co.za

Dear Marthán

These documents are not uploaded on the EcoPartners website, as the information you request was submitted more than two years ago to the DMR after a public participation process that was done by WSP.

The information that is available on our website is related to the updated information requested by DEA in relation to listed activities triggered under NEMA. Please note that it was still under the 2010 regs, as it was an update of information requested and the continuation of an application process.

We request that you to contact the applicant directly for any other information, Mr Praveer Tripathi on 011-784 1885 or on his email, copied here.

Thank you

Charlaine Baartjes
Managing Director
EcoPartners
Tel: 011 431 2251
Tel: 084 5155 840
Fax: 086 628 5060
www.ecopartners.co.za

Annexure 16

148

Marthán Theart

From:	Marthán Theart
Sent:	03 March 2015 02:33 PM
To:	'Aubrey Tshivhandekano'
Cc:	'martha.mokonyane@dmr.gov.za'; 'Seapei Sekgetho'; Juanita du Plessis (Juanita.duPlessis@dmr.gov.za)
Subject:	Mining right application: MP 30/5/1/2/2/10069 MR
Attachments:	150223 Letter to DMR re Mabola Protected Environment.pdf

Dear Mr Tshivhandekano

On 23 February 2015, we sent you a letter requesting that you provide us "with any letter from your office to [Atha-Africa Ventures (Pty) Ltd] confirming that a mining right has been granted to it in terms of section 23 of the Mineral and Petroleum Resources Development Act, 2002 in respect of properties in the Mabola Protected Environment" by no later than the close of business on 25 February 2015. We have not received a reply from you. A copy of this letter is attached for your ease of reference.

Please, as a matter of urgency, provide us with a copy of this letter.

Marthán Theart
Attorney
Centre for Environmental Rights NPC
A non-profit company with registration number 2009/020736/08,
PBO No. 930032226, NPO No. 075-863; , VAT No. 4770260653
and a Law Clinic registered with the Law Society of the Cape of Good Hope
2nd Floor, Springtime Studios, 1 Scott Road, Observatory 7925, Cape Town, South Africa
Tel 021 447 1647 Fax 086 730 9098
mtheart@cer.org.za
www.cer.org.za www.facebook.com/CentreEnvironmentalRights

Centre *for*
Environmental Rights
Advancing Environmental Rights in South Africa

Newsflash: The Centre runs an Environmental Rights Clinic on the first Friday of every month. See if you, your community or your organisation qualify for a free Clinic consultation and book an appointment at http://cer.org.za/about/accessing-cer-services/

Annexure 17

149

Marthán Theart

From: Melissa Fourie
Sent: 26 February 2015 12:03 PM
To: Catherine Horsfield; Marthán Theart; Coriaan De Villiers
Subject: Fwd: Proposed Yzermyn Underground Coal Mine in the Mabola Protected Envi

-------- Original message --------
From: Milicent Solomons
Date:26/02/2015 11:50 (GMT+02:00)
To: Wilma Lutsch
Cc: Melissa Fourie ,Fiona Grimett ,Humbu Mafumo ,Ishaam Abader ,Jones Muleso Kharika ,Karl Naude ,Sabelo Malaza ,Pumeza Skepe ,Skumsa Mancotywa ,Siboniso Mbense
Subject: Re: Proposed Yzermyn Underground Coal Mine in the Mabola Protected Envi

Dear Wilma

Your email below refers; please note that the queries related to the Protected Areas Act and authorisations that need to be obtained from the Minister to mine in the protected environment. We do not deal with these matters and it should be directed to the D: Protected Areas for a response.

We currently have one in-process application for environmental authorisation and the amended Final EIR was only received in February 2015. The decision has not yet been made and is only due in approx 100 days. This query relates to an already obtained Mining Permit.

Kind regards

Milicent

>>> Wilma Lutsch 02/25/15 4:08 PM >>>
Dear Millicent

The attached letter was received from Mellissa Fourie, Executive Director of the Centre for Environmental Rights, requesting a response to a number of questions regarding the granting of a mining right to Atha-Africa Ventures in respect of a mining area that falls within the Mabola Protected Environment.

After investigations in this regard, it became apparent that your section dealt with this matter at a previous occasion, and therefore a friendly request to respond as a matter of urgency to Ms Fourie, as she has to lodge an appeal against the granting of a mining right.

Please also find a response to a media query in this regard for your information.

Kind regards

Wilma Lutsch
Director: Biodiversity Conservation
Department of Environmental Affairs
Tel 012 3998827

150

Cell: 082 657 2322
E-mail: wlutsch@environment.gov.za

Annexure 18

151

Marthán Theart

From:	Seapei Sekgetho <Seapei.Sekgetho@dmr.gov.za>
Sent:	03 March 2015 03:24 PM
To:	Marthán Theart
Subject:	FW: Message from KMBT_363
Attachments:	SKMBT_36315030315100.pdf

From: Lucky Mugagadeli
Sent: Tuesday, March 03, 2015 3:22 PM
To: Seapei Sekgetho; Lydia Maphopha; Ntshele Phasha
Subject: FW: Message from KMBT_363

From: scan@itec.co.za [mailto:scan@itec.co.za]
Sent: 03 March 2015 03:11 PM
To: Lucky Mugagadeli
Subject: Message from KMBT_363

mineral resources
Department
Mineral Resources
REPUBLIC OF SOUTH AFRICA

Private Bag X 7279, Witbank, 1035, Tel: (013) 656 1448 Fax: (013) 656 0932
Province Building, Cnr Botha & Paul Kruger Street, 1035
From: Directorate: Mineral Regulation, Mpumalanga Region
Enquiries: LUCKY MUGAGADELI,Reference NO: MP30/5/1/2/2/10069MR
Subdirectoarte: Mineral Laws

REGISTERED MAIL

The Directors
Atha-Africa ventures (Pty) Ltd
P O Box 1569
SANDTON
2157

Fax: (011) 784 7467

Gentlemen/Ladies

APPLICATION FOR A MINING RIGHT IN TERMS OF SECTION 22 OF THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT ACT, 2002 (ACT 28 OF 2002): BLOEMHOF 92 HT, GOEDGEVONDEN 95 HT, KROMHOEK 93 HT, PORTION 1 OF FARM NAUWGEVONDEN 110 HT, PAARDEKOP 109 HT, UITZICHT 108 HT, PORTION 2 AND THE REMAINING EXTENT OF THE FARM VAN DER WALTSPOORT 81 HT, VIRGINIA 91 HT, WAALHOEK 87 HT, PORTION 1 AND THE REMAINING EXTENT OF THE FARM YZERMYN 96 HT AND ZOETFONTEIN 94 HT, MAGISTERIAL DISTRICT OF WAKKERSTROOM.

1. This serves to inform you that your abovementioned application for a mining right to mine for Coal in respect of the abovementioned property has been granted in terms of Section 23(1) of the abovementioned Act. The Regional Office will prepare the final copies of the right to be signed.

2. Take note that the Regional Manager will approve the relevant Environmental Management Programme and sign the right.

3. Further note that in terms of Section 23(5) of the Act, the mining right comes into effect on the date on which the Environmental Management

Programme is approved. In terms of section 25(2) (b) mining activities must commence within one year of the effective date.

4. In light of the afore-going, you are requested to:

4.1 Ensure that all outstanding matters regarding your application are finalised and that relevant documents are submitted to the Regional Office no later than 30 days prior to the date mentioned in paragraph 2 above, which outstanding matters include the submission of:

a. Financial provision provided before execution
b. the particulars of your authorised representative who will sign the right,
c. the particulars of the public notary, before whom the right must be signed,
d. six copies of the final mining work programme,
e. diagram prepared by a surveyor **(6 (six) originals)** in accordance with the requirements of the Mining Titles Registration Act and which shall indicate the following:

i. the north point;
ii. the scale to which the plan has been drawn;
iii. the name, number registration division and portion of the farm or farms on which the relevant area is situated;
iv. the shape of the relevant are in relation to the farm boundaries and co-ordinates points;
v. the region in which the relevant farm is situated and;
vi. be certified, approved signed and dated by the professional land surveyor, unless the Director General otherwise indicates.
vii. Three (3) copies of the Social and Labour Plan.

4.2 Please make arrangements for the public notary, authorized representative (s) of your company and a witness to be present and attend the signing of the mining right once the aforesaid outstanding matters are verified and an execution date has been finalized by this Office.

5. Note further that in terms of section 25(2)(a), the signed/executed mining right must be lodged for registration at the Mineral and Petroleum titles Registration office, Pretoria, within 30 days as from the date of approval of the relevant environmental management programme.

6. The following shall also be noted:

   (i) The granting shall exclude any areas that constitutes wetlands.

   (ii) Surface mining or related activity, as well as erection/installation of surface infrastructure shall be prohibited from taking place in any area that constitute wetlands or is deemed to be a sensitive environment.

   (iii) The applicant shall formulate proper mitigation measures relative to the area in consultation with all the other stakeholders/authorities that administer matters affecting the environment at National and Provincial (Mpumalanga) level.

   (iv) A proper plan/map shall be submitted with a clear depiction of such exclusions as indicated on (1) above.

   NB: The abovementioned conditions shall be fulfilled to the satisfaction of the Department before the right can be considered further for notarial execution.

7. Failure to comply may result in the withdrawal, suspension or cancellation of the right in question.

Yours faithfully

DR THIBEDI RAMONTJA
DIRECTOR GENERAL
DEPARTMENT OF MINERAL RESOURCES
DATE: 13/11/2014

155

Marilyn Budow

From: Anjuli Leila Maistry
Sent: Monday, September 07, 2015 9:54 AM
To: Marilyn Budow
Subject: gilbert

From: Mohammed Hassim [mailto:Mohammed.Hassim@dha.gov.za]
Sent: 27 August 2015 08:09 AM
To: Anjuli Leila Maistry
Cc: Karl Slothnielsen
Subject: Re: Concerns over fraudulent rejections

Hello Anjuli

I have reported back to the Chairperson of SCRA about the meaningful discussions we had at the meeting on Monday.

What was of particular concern to SCRA was the mention that RSDO's or other persons in the department who could possibly be fraudulently endorsing decisions on behalf of SCRA.

Could you kindly inform us in which office was this observed so that SCRA could best try to remedy the situation?

Regards

Muhammad Hassim (Adv)

Member: SCRA

0837864636

>>> Anjuli Leila Maistry <Anjuli@lhr.org.za> 2015/08/12 09:26 AM >>>
Dear Sirs

We note that we have not had a response to this email. We have attached the initial correspondence addressed to you for your ease of reference.

BUSINESS REPORT

Mine rights moratorium to be lifted

February 6 2011 at 05:50pm

Comment on this story

The six-month moratorium on new prospecting applications would be lifted next month in all provinces but Mpumalanga, Mineral Resources Minister Susan Shabangu said on Tuesday.

Susan Shabangu will head a brand-new department, within the presidency, dedicated to women. Photo: Leon Nicholas.

The moratorium was imposed at the beginning of September last year to allow her department to conduct a full audit of all mining and prospecting licences granted since 2004.

"We are not going to lift Mpumalanga," she told a media briefing at an African mining conference in Cape Town.

"We've got challenges bigger than what we expected, so we will lift eight provinces, and Mpumalanga will continue... for two to three months before we lift the moratorium."

The biggest challenge in Mpumalanga was environmental matters, "issues of ecology".

"You find sensitive areas where rights have been granted," she said.

"We intend to address that matter, hence we are not going to lift the moratorium, so as to make sure that we respond to the challenges of nature.

"Unfortunately rights were granted, but we'll have to address those issues."

She said her department was working closely with the department of environmental affairs.

"The minister of environment 1/8and I 3/8, we are big buddies, so there's no way we can fight," she said.

The departments were discussing the possibility of an integrated licensing system, in which both departments, and water affairs, worked together.

The imposition of the moratorium followed growing concern over allocations under the Mineral and Petroleum Resources Development Act (MPRDA).

Shabangu said the department discovered during the audit that a number of applications had been granted even though the companies concerned were not fully compliant.

They were mining without environmental plans, or on the basis of incomplete applications.

A number had been served with notices that they would have to shut down.

She said that where the department had discovered gross negligence on the part of its officials in granting licences, it had taken disciplinary action.

It had suspended some employees who might have been involved in tampering with information as the audit was being conducted.

At the time the moratorium was imposed, there was a backlog of 26,000 applications.

The backlog had been reduced, but she would not say by how much.

Mineral resources director general Sandile Nogxina said the moratorium imposed on September 1 would expire on March 1.

However the minister would decide on the actual date for lifting it, which would be "thereabouts".

Earlier, addressing the conference, Shabangu told delegates that of the 26,000 applications, cases of double granting or rights discovered to date amounted to 122.

She said the audit revealed that despite a huge number of prospecting rights issued since the promulgation of the MPRDA, there had not been a "reciprocal exploration activity" in the country.

"It appears that there is another wave of rights hoarding which may compel me to consider the "use-it or lose-it" provision imbued in legislation," she said.

To this end, over 800 notices in terms of the MPRDA's sections 47 - which allows her to give notice of suspension of rights - and 93 orders for suspension of operations had been issued. - Sapa

Most Viewed | Most Commented

- 'Critical sectors are in crisis'
- Marikana's traders face grim times
- Hiking rates on current contracts 'il ...
- Hout Bay's fishmeal factory faces clo ...
- Donald Trump's legacy of luxury

Poll

Mining industry
Can the mining industry be saved?
Yes, but only with drastic action now
No, it's too far gone

- Govt seeks to save mining industry

Join us

Pictures

Pics: Deep Fried creative flair
August 14 2015

"PML3"

157

mineral resources
Department:
Mineral Resources
REPUBLIC OF SOUTH AFRICA
Private Bag X7279, Witbank, 1035, Tel: 013 653 0500, Fax 013 690 3288
Province Building, Cnr Botha Avenue & Paul Kruger Street, Witbank, 1035
From: Directorate: Mineral Regulation: Mpumalanga Region
Enquiries: Mrs J du Plessis **Ref:** MP 30/5/1/1/2/10069 MR
Subdirectorate: Mineral Laws

Registered Mail

The Directors
Atha – Africa Ventures (Pty) Limited
P O Box 1569
SANDTON
2157

Fax No. 011 784 7467

Attention: Morgam Munsamy

Gentlemen/Ladies

ACCEPTANCE OF AN APPLICATION FOR A MINING RIGHT IN TERMS OF SECTION 22 OF THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT ACT, 2002 (ACT 28 OF 2002): THE FARMS BLOEMHOF 92 HT, GOEDGEVONDEN 95 HT, KROMHOEK 93 HT, PORTION 1 OF THE FARM NAUWGEVONDEN 110 HT, PAARDEKOP 109 HT, UITZICHT 108 HT, VAN DER WALTSPOORT 81 HT, VIRGINIA 91 HT, WAAIHOEK 87 HT, YZERMYN 96 HT AND ZOETFONTEIN 94 HT, MAGISTERIAL DISTRICT OF WAKKERSTROOM.

1. This is to inform you that your abovementioned application for the mining of **Coal** in terms of Section 22 of the Mineral and Petroleum Resources Development Act, 2002 (Act 28 of 2002) has been accepted.

2. In terms of Section 22(4) of the MPRDA you are therefore required to:

   (a) submit six (6) copies of a scoping report on or before 24 **May 2013**,

158

(b) consult with interested and affected parties and submit six (6) copies of the environmental management programme which includes the environmental impact assessment report in terms of section 39 of the Act on or before 24 **October 2013**; which programme must be compiled with the input of the public, and must include a record as to the extent that the public participation informed the baseline environment and the potential impact assessment.

(c) notify in writing and consult with the landowner or lawful occupier, the surrounding community members, any other affected party and submit the result of such consultation to this office on or before 24 **June 2013.**

3. You are further, in terms of Sections 29 and 39(5) of the MPRD Act, directed to compile the Environmental Management Programme in accordance with the standard directive attached hereto as **Annexure A.**

4. You are further requested in terms of section 17(4) of the Act to give effect to the object referred to in section 2(d) of the Act. In this regard you are required to submit by no later than 24 **May 2013**, the following documents:

4.1. duly signed shareholders agreements;
4.2. share certificates and shareholder's registers;
4.3. articles and memorandum of association of the company;
4.4. details relating to funding (all relevant agreements); and
4.5. any other agreement or documents relating to the agreement.

5. Kindly take note that our system could only print the application form which you have submitted on line. Therefore you are herewith requested to submit proof that the documents were submitted on line and you have to submit hard copies of the following documents **within 14 days from the date of this letter**: -

(a) Details of the land or area (the regulation 2.2 plan);
(b) Two copies of the Mining Work Programme
(c) Proof of the financial and technical competence;
(d) Detailed financing plan as contemplated in regulation 11(g);
(e) Provide a list of existing rights which are held by you
(f) Two copies of the Social and Labour Plan;
(g) A certified copy of your valid Prospecting Right;
(h) A certified copy of the certificate to commence business; and
(i) A copy of Resolution, if acting in a representative capacity.

159

Further note that failure to submit the documents as requested and failure to adhere to the timeframes as stipulated above amounts to non-compliance with the provision of the Act and will therefore lead to your application being processed for refusal without further notification to you.

Yours faithfully

.....
REGIONAL MANAGER:
MPUMALANGA REGION
DATE: 25 April 2013

"PML4"

160

mineral resources
Department:
Mineral Resources
REPUBLIC OF SOUTH AFRICA

Private Bag X7279, Witbank, 1035, Tel: (013) 653 0500, Fax (013) 690 3288
Province Building, Cnr Botha Avenue & Paul Kruger Street, Witbank, 1035

Enquiries: Mr. M.C. Montsha **Ref No:** MP 30/5/1/2/3/2/1/10069 EM
Sub-directorate: Mine Environmental Management

REGISTERED MAIL
The Directors
Atha-Africa Ventures (Pty) Ltd
P.O Box 1569
SANDTON
2157

Dear Sir/ Madam

DIRECTIVE IN TERMS OF SECTION 29 AND 39(5) OF THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT ACT, 2002 (ACT 28 OF 2002) IN RESPECT OF MINING ACTIVITIES TO BE CONDUCTED ON THE FARMS BLOEMHOF 92 HT, GOEDGEVONDEN 95 HT, KROMHOEK 93 HT PORTION 1 OF THE FARM NAUWGEVONDEN 110HT, THE FARMS PAARDEKOP 109 HT, UITZICHT 108 HT, PORTION 2 AND THE EXTENT OF THE FARM VAN DER WALTSPOORT 81 HT, THE FARM VIRGINIA 91 HT, PORTION 1 AND THE REMAINING EXTENT OF THE FARM YZERMYN 96 HT AND THE FARM ZOETFONTEIN 94 HT, SITUATED WITHIN THE MAGISTERIAL DISTRICT OF WAKKERSTROOM.

Your EMP submitted in respect of the above mentioned application cannot be considered compliant with the approval criteria as set out in Section 39(4)a of the Act, in that:-

a) This office does not support this application in its current form considering the preferred layout for the proposed infrastructure, in that the preferred location is located within the sensitive environment. It is the view of this office that, the proposed project will result in an unacceptable pollution, ecological degradation or damage to the environment; even though there are proposed mitigating measures. It is therefore recommended that you reassess the surface layout design in order to re-position the proposed infrastructure to an environment which is not sensitive. Furthermore, upon the revision of the surface layout plan, an environmental impact assessment of the alternative location of the layout plan should be done.

b) The environmental emergencies and remediation plan provided in the EMP cannot be considered acceptable in that it does not provide procedures for the remediation of the environmental related emergencies that might arise during the operation of the mine as a result of the proposed mining activities.

c) The rehabilitation plan provided in the EMP cannot be considered in its current form in that, it is generic and does not focus on the different components at the mine. As such you are directed to provide a rehabilitation plan with detailed methods to decommission each mining component and proposed mitigation or management strategy to avoid, minimize and manage residual or latent impacts. The aforesaid plan must also describe the final and future landuse of which must conform to the surrounding areas.

d) The EMP does not provide the cost for capacity to rehabilitate and manage the negative impacts on the environment. As such you are directed to the cost for capacity to rehabilitate and manage the negative impacts on the environment; such costs should be cross referenced with the proposed mitigation measures.

e) Page 477 of the EMP indicate that the company will establish, implement and maintain a procedure to monitor, measure, on a regular basis, the key characteristics of the operation that may have significant environmental impacts, however the EMP does not provide the list of aspects that will be monitored, frequency as well as the plan which shows the monitoring points.

f) The EMP indicate that post closure the workings will decant, however it does not provide measures to manage the decant.

g) Your attention is also drawn to the attached comments from DWA. You are directed to address the comments and the response must be communicated with DWA, Durban office.

In view of the foregoing, you are herewith in terms of the provisions of Sections 29 and 39 (5) of Act (Act No.28 of 2002) directed to address the above in a form of a revised the EMP and submit 2 revised EMP on or before 04 **March 2014**.

Should you require any further clarity regarding the above, do not hesitate to contact the above-mentioned person at the contact details provided.

Yours faithfully

REGIONAL MANAGER
MPUMALANGA REGION
DATE: 04/02/2014

2nd

"PML5"

162

ATHA GROUP

ATHA-AFRICA VENTURES (Pty) Ltd

Registration No. 2004/020746/07

8th Floor, Sinosteel Plaza, 159 Rivonia Road, Morningside, Sandton, 2144
Tel: +27 11 784-1885
Fax: +27 11 784- 7467
Email:morgam.munsamy@athagroup.in

THE HONOURABLE MEMBER OF THE EXECUTIVE COUNCIL: MRS Y N PHOSA (MPL)
MPUMALANGA PROVINCIAL GOVERNMENT:
DEPARTMENT OF ECONOMIC DEVELOPMENT, ENVIRONMENT and TOURISM ("MDEDET")
PRIVATE BAG X11215
NELSPRUIT
1200

PER HAND DELIVERY **21 MAY 2014**

PER E-MAIL: cdias@mpg.gov.za : ATTENTION: MR J. SIKHOSANA

Dear Honourable MEC,

RE: REQUEST TO PROVIDE ATHA-AFRICA VENTURES (AAV) WITH GUIDANCE AND INFORMATION IN RESPECT OF ANY SPECIFIC CONDITIONS TO BE INCLUDED IN AAV'S ENVIRONMENTAL MANAGEMENT PROGRAMME, TO BE APPROVED BY THE DMR, IN ORDER TO ENSURE THE PROTECTION OF THE ENVIRONMENT AND THE BIODIVERSITY WITHIN THE DECLARED MABOLA AND EXTENDED KWAMANLANGAMPISI PROTECTED ENVIRONMENTS; WITHIN WHICH AAV HAS APPLIED FOR A MINING RIGHT

Your letter dated the 31st of March 2014 has reference. As per our ongoing correspondence and interaction with your Office (Office of the MEC) and the Mpumalanga Department of Economic Development, Environment and Tourism ("MDEDET") in respect of this matter, you are well aware that Atha-Africa Ventures ("AAV") submitted a Mining Right Application ("the application") to the relevant Regional Manager of the Department of Mineral Resources ("DMR").

The Mining Right Application was submitted on 19th March 2013 in respect of a Mining Right Area which partially falls within the Declared Mabola and expanded Kwamandlangampisi Protected Environments, as gazetted on the 22nd of January 2014 in Government Gazette number 2251, Notices 21 and 22 of 2014 ("the Declarations").

In your letters dated 24 December 2013 and 31 January 2014 you confirmed that the Farm Yzermyn 96 HT, which also falls within the relevant Mining Area, was excluded from the abovementioned Declared Protected Areas, and furthermore, that subject to the Mining Right being granted by the DMR, there will not necessarily be an absolute prohibition of mining in the relevant declared areas.

ATHA GROUP

ATHA-AFRICA VENTURES (Pty) Ltd

Registration No. 2004/020746/07

8th Floor, Sinosteel Plaza, 159 Rivonia Road, Morningside, Sandton, 2144
Tel: +27 11 784-1885
Fax: +27 11 784- 7467
Email:morgam.munsamy@athagroup.in

However, if AAV's Mining Right Application is successful, AAV's mining activities in the region will be subject to strict/stringent environmental conditions.

Honourable MEC, you also concluded that should AAV's Mining Right be granted, your Office and the MDEDET "*will work very closely with AAV to ensure a balance towards preserving the environment, ensuring reasonable maximum profits and contributing to the socio-economy of the affected communities through AAV's encouraging Social and Labour Plan which is more than welcomed, for working together we can do more*".

Cognisant of the above-mentioned obligation on AAV to ensure the protection of the environment and the biodiversity located within the proposed Mining Right Area, which are also located within the declared Mabola and extended Kwamanlangampisi Protected Environments, AAV is adamant to use its best endeavours to fulfil its obligation to protect the environment and the biodiversity as an ethical and responsible mining company.

As a proactive, cautionary approach, AAV has opted to include any specific environmental and or specific mitigation conditions or guidelines of the MDEDET in the Environmental Management Programme, as part of the Mining Right Application, to be approved by the DMR.
It is our sincere belief that the inclusion of any specific conditions which MDEDET may impose on AAV's mining activities in the region, even though such environmental conditions will be strict/stringent, must also be enshrined in the Environmental Management Programme, approved under the Mining Right Application.

AAV has been interacting with the DMR on a continuous basis regarding any clarification in respect of the Mining Right Application as well as the submission of any additional information which the DMR requested in furtherance of the Regional Manager's assessment and finalisation of a recommendation to the National Deputy Director General: Mineral Regulation and Administration (Northern Regions).

In order to amplify AAV's goodwill to assist the MDEDET in its environmental and biodiversity conservation plans in Mpumalanga, AAV is desirous to also include any specific environmental and or specific mitigation conditions or guidelines of the MDEDET in the final Environmental Management Programme, to be approved by the DMR.

ATHA GROUP

ATHA-AFRICA VENTURES (Pty) Ltd

Registration No. 2004/020746/07

8th Floor, Sinosteel Plaza, 159 Rivonia Road, Morningside, Sandton, 2144
Tel: +27 11 784-1885
Fax: +27 11 784- 7467
Email:morgam.munsamy@athagroup.in

In light of the above-mentioned, AAV herewith requests the honourable MEC to provide us with direction and or guidance on the most appropriate channel, in MDEDET, to follow in order to obtain clarification on any specific environmental and or specific mitigation conditions or guidelines of the MDEDET, which AAV can include in the final Environmental Management Programme, to be approved by the DMR.

We sincerely believe that the requested information will be of great assistance to the DMR, in its final review and adjudication of the Mining Right Application, since the relevant information will provide the DMR with an opportunity to make an informed decision based on all relevant facts.

We trust that you will find the above in order and eagerly await your response. Kindly acknowledge receipt of this letter.

Yours Faithfully,

M Munsamy
Director
ATHA-AFRICA VENTURES (PTY) LTD.

CC: The Regional Manager –Mpumalanga Department of Mineral Resources:-

Mr A Tshivhandekano (Aubrey.Tshivhandekano@dmr.gov.za)

CC: The Deputy Director General: Mineral Regulation: Mr Joel Raphela:-

(Joel.Raphela@dmr.gov.za)

"PML6"

165

1. Written Notification Letter:

EcoPartners

• PO Box 73513 Fairland 2030 • 177 Witkoppen Road, HERARD, 2195 Tel: (011) 431 2251
• Cell: (084) 5155 040 • Fax: (086) 539 6127
• Email: chantalm@ecopartners.co.za • Noah@ecopartners.co.za
• VAT: 4120254984

16 September 2014

Dear Stakeholder

RE: Proposed Yzermyn Underground Coal Mine Project, Mpumalanga (Ref: 14/12/16/3/3/2/693)

Herewith notification on the following developments relating to the abovementioned project.

- The Department of Environmental Affairs reviewed the Final EIA/EMP report that was submitted in January 2014 and requested that additional information be addressed
- EcoPartners is *now* the appointed independent Environmental Assessment Practitioner for the project.
- Please note that the project reference number has been changed from 14/12/16/3/3/2/65 to 14/12/16/3/3/2/693
- A new surface layout has been proposed and additional specialists studies were conducted
- The Amended Environmental Impact Assessment Report is available for comments at:
  - Piet Retief Public Library 10 Retief Street, Piet Retief, 2380;
  - Volksrust Public Library Joubert Street, Volksrust, 2470;
  - Driekoedorp Medical Centre / Thembisa Trust Offices; and
  - www.ecopartners.co.za

You are invited to provide your comments on the amended EIR. Please ensure that your comments reach us before or on 27 October 2014.

You can send us your comments by using one of the following methods:

Email: aiman@ecopartners.co.za
Fax: 086 539 6127
Postal address: P.O. Box 73513, Fairland, 2030

To access the documents on our website, you need to register.

- Click on the text: Documents for Public Review under Website Links
- Then: Click on the section ***Request access to the Member Section*** below and complete your details.
- We will send you your username and password details shortly.
- Once you receive your username and password you again click on **Documents for Public Review** and fill in your username and password. You will be taken to the member only page. Select ***Yzermyn Underground Coal Mine*** and the page with the documents will open and you will be able to download the documents.

PML7

166

ANNEXURE - 1

ATHA GROUP

ATHA-AFRICA VENTURES (Pty) Ltd

Registration No. 2004/020746/07

8th Floor, Sinosteel Plaza, 159 Rivonia Road, Morningside, Sandton, 2144
Tel: +27 11 784-1885
Fax: +27 11 784- 7467

The Regional Manager: Mpumalanga Region
Department of Mineral Resources
Private Bag X 7279
Emalahleni
1035

Date: 19 November, 2014

PER FAX: 013 690 3288
PER EMAIL: Aubrey.Tshivhandekano@dmr.gov.za
PER HAND DELIVERY

FOR ATTENTION: MR. A TSHIVHANDEKANO

Dear Sir,

YOUR REFERENCE: MP 30/5/1/2/2/10069 MR

RE: GRANTING OF A MINING RIGHT IN TERMS OF SECTION 22 OF THE MINERALS AND PETROLEUM RESOURCE DEVELOPMENT ACT, ACT 28 OF 2002 ON THE FARMS BLOEMHOF 92 HT, GOEDGEVONDEN 95 HT, KROMHOEK 93 HT, PORTION 1 OF NAAUWGEVONDEN 110 HT, PAARDEKOP 109 HT, REMAINDER OF VAN DER WALTSPOORT 81 HT, VIRGINIA 91 HT, PORTION 1 OF YZERMYN 96 HT, REMAINDER OF YZERMYN 95 HT AND ZOETFONTEIN 94 HT SITUATED IN THE MAGISTERIAL DISTRICT OF WAKKERSTROOM: MPUMALANGA PROVINCE.

The correspondence letters received by Atha Africa Ventures Proprietary Limited ("AAV") from the Department of Mineral Resources ("DMR"), dated 12 November 2014, regarding the granting of a Mining Right to AAV in respect of the abovementioned Properties, refer:

As per your letter dated 12 November 2014, AAV would like to extend our sincere appreciation for the opportunity to approach you regarding our request to give consideration to this motivation letter to amend the current conditions attached to the Mining Right in order for AAV to be in a position to execute the long awaited mining right.

As a starting point, AAV is committed to adhere to all conditions listed in the Granting Letter annexed to the letter dated 12 November, 2014 ("the Granting Letter"), except for some of the conditions imposed under paragraph 6 of the Granting Letter.

In the ensuing paragraphs AAV will provide you with our bonafide and best endeavours to motivate why certain of the current conditions, notably the conditions imposed under paragraphs 6(i) and 6(ii) of the Granting Letter, are impossible to abide by if AAV must adhere to the strict interpretation of the wording used in the relevant paragraphs.

Our sincere request is that you give due consideration to amending the current paragraphs 6(i) and 6(ii) conditions of the Granting Letter, based on the following motivation:

ATHA GROUP

ATHA-AFRICA VENTURES (Pty) Ltd

Registration No. 2004/020746/07

8th Floor, Sinosteel Plaza, 159 Rivonia Road, Morningside, Sandton, 2144
Tel: +27 11 784-1885
Fax: +27 11 784- 7467

1. Paragraph 6 (i) of the Granting Letter dated 19 September 2014, as attached to your letter dated 12 November 2014 :

1.1 Paragraph 6(i) provides that *"The granting shall exclude any areas that constitute wetlands."* It is our sincere submission that the current wording is ambiguous and, as it stands, poses a significant risk to the entire Yzermyn Underground Coal Project ("YUCP"), since the wording as it currently stands, fails to recognise that the total of YUCP's mining process, in our opinion, must be regarded as a three dimensional activity.

1.2 *A total exclusion, as proposed by the current wording: "The granting shall exclude any areas that constitute wetlands"* can be interpreted to mean that mining and infrastructure activities are prohibited in all surface areas within and in close proximity to wetlands, as well as a total prohibition of any mining activities in the underground portion of the Yzermyn Project, where there are surface wetlands. It may also be noted that the entire YUCP is consisting of underground mining of coal by Bord & Pillar mining method, and thus will have no surface mining as well as zero subsidence.

1.3 It is important to note that during the extensive assessment of the impacts that the proposed mining activities might pose on the area, especially consideration to the risk that the mining development might pose to the wetland areas, it was found that the impact of the proposed mining activities, which will take place in an already, previously disturbed wetland area, falls within the boundaries of recognised guidelines and that the proposed mitigation measures will in fact result in, initial further disruption, but eventually an improvement of the already disturbed wetlands after closure.

1.4 It is also important to note that during the assessment process of the Mining Rights application of the applicant, the Mabola Protected Environment was declared and that as part of the declaration process, Portion 1 of Yzermyn 96 HT was excluded from the Mabola Protected Environment.

1.5 It is our submission that the MEC: MDEDET's (as ultimate regulatory custodian of the environment in Mpumalanga) decision to exclude Portion 1 of Yzermyn 96 HT from the intended declaration of the Mabola Protected Environment in its entirety, for purposes of all relevant above-ground infrastructure of the mine, must be taken into consideration.

1.6 In light of the abovementioned we request that the Department of Mineral Resources consider AAV's proposed amendment of paragraph 6(i) to read that *"the granting shall exclude surface areas for development of surface infrastructure outside Portion 1 of Yzermyn 96 HT"*.

1.7 As a token of our commitment to implement the best practical environmental mitigation measures, AAV has already agreed to amend its Mine Works Programme

ATHA GROUP

ATHA-AFRICA VENTURES (Pty) Ltd

Registration No. 2004/020746/07

8th Floor, Sinosteel Plaza, 159 Rivonia Road, Morningside, Sandton, 2144
Tel: +27 11 784-1885
Fax: +27 11 784- 7467

in that the Residue Stockpile (Disposal Facility) will be removed from the plans, which will result in a mining project that will have no physical disturbance of channel valley wetlands, and in addition the proposed disturbance to seep wetlands will be confined to the historically disturbed wetlands. It is important to note that the mitigation measures proposed to enable the best functioning of the wetland will initially disturb the wetland, however, *the future impact brought about by these mitigation measures, will ultimately result in an improvement of the current functioning of the wetland*

2. **Paragraph 6 (ii) of the Granting Letter dated 19 September 2014, as attached to your letter dated 12 November 2014:**

2.1 Paragraph 6(ii) states that *"Surface mining or related activity, as well as erection installation of surface infrastructure shall be prohibited from taking place in any area that constitute wetlands or is deemed to be a sensitive environment."*

2.2 One of the statutory compliance requirements that AAV needs to adhere to is compliance with Government Notice Regulation 704, promulgated (4 June 1999) under the National Water Act, Act 36 of 1998 (this Regulation is specific to the use of water or impact on water resources by mining activities).

2.3 Since it is AAV's submission, supported by its wetland specialist, that the wetland area to be disturbed is small in comparison with the larger wetland area for the catchment. In addition to that, a large portion of these wetlands have been previously disturbed by agriculture, having been ploughed, and therefore are not pristine. AAV intends to submit an application, based on the findings of our specialists, to the Department of Water and Sanitation to exempt AAV from having to comply with certain provisions of GNR 704 promulgated under the National Water Act, Act 36 of 1998.

2.4 In order for AAV to legally operate the proposed Yzermyn Mining Project, AAV shall endeavor to obtain all the necessary approvals and or exemptions provided for under GNR 704, from the Department of Water and Sanitation as custodian of the water resources of the country, prior to commencement of any mining operations on the relevant mining area.

2.5 In light of the above mentioned, it is proposed that the current wording of paragraph 6(ii) of the Granting Letter be amended to read as follow: *"Surface mining or related activities, as well as the construction, erection or installation of surface infrastructure shall be subject to the applicant (AAV) obtaining the required exemption and/or any other approvals to comply with the relevant provisions of GNR 704, promulgated under the National Water Act, Act 36 of 1998, from the Department of Water and Sanitation."*

2.6 In essence, AAV's request is that the Department of Mineral Resources considers granting AAV permission to disturb certain wetlands in line with the GN 704

ATHA GROUP

ATHA-AFRICA VENTURES (Pty) Ltd

Registration No. 2004/020746/07

8th Floor, Sinosteel Plaza, 160 Rivonia Road, Morningside, Sandton, 2144
Tel: +27 11 784-1885
Fax: +27 11 784- 7462

Regulations under the National Water Act. This will entail AAV obtaining the necessary exemption from Department of Water and Sanitation as custodian of the water resources of the country, prior to commencement of any mining activity.

3. Request to consider proposed environmental mitigation measures together with the potential socio-economic impact of the Yzermyn Underground Mining Project

3.1 In addition to the abovementioned environmental mitigation motivation, it is important to AAV to confirm that we are not only committed to be a responsible miner who will implement effective mitigation measures to manage any potential impact on the environment, but that we are also committed to create real and definite socio economic benefit to the region, as well as the South African national interest in driving the sustainable development agenda.

3.2 We also want to reiterate our submission that AAV is committed to be a potentially valuable partner to the Mpumulanga Provincial Government as well as, in assisting the Province to fulfil the mandate and objectives of the Wakkerstroom Biodiversity Site ("WBS"), within the context of the Millennium Development goals, National Development Plan, Comprehensive Rural Development Programme, Anti-Poverty Strategy and local LED programmes, which provides a platform for "rural" provinces such as Mpumalanga, the opportunities to participate fully in the economic, social and political life of the country.

3.3 AAV's proposed approach is to work together with your Department and all other relevant Departments, to develop a sustainable co-existence model between mining and conservation, undertaking a combined radical revision of past strategies, take the success stories from these past strategies and introduce a strengthened, long term mutually benefitting sustainability strategy and action plan which, through innovative linkages, will be aligned with national, provincial and local government biodiversity and sustainable development planning priorities.

3.4 Atha-Africa Ventures believes that its own Mining and Integrated Development Planning Process is clearly aligned with the National and Provincial Development Plans, in that the AAV's Planning Process seeks to invest in the mining, manufacturing/ beneficiation and energy sectors, which AAV believes place the Mpumalanga Province and National economy on a positive growth path.

3.5 We also believe that our approach is aligned with government's advocacy to promote Public, Private Partnerships (PPP) as a strategy to kick start and support development in social and economic service delivery programmes in line with the ideal of delivering a better life for all South Africans.

3.6 In light of the abovementioned we sincerely believe that allowing AAV to operate within the framework of the proposed amended conditions of paragraph 6(i) and 6(ii) of the Granting Letter, AAV will be in a position to responsibly mine the

ATHA GROUP

ATHA-AFRICA VENTURES (Pty) Ltd

Registration No. 2004/020746/07

8th Floor, Sinosteel Plaza, 159 Rivonia Road, Morningside, Sandton, 2144
Tel: +27 11 784-1885
Fax: +27 11 784- 7467

proposed 104 million total in situ tons of proven coal resource in Yzermyn underground coal mine project. AAV planned to spend initial capital of approximately 950 Million Rands on the YUCP project. Approximately 12.94 billion Rands out of the revenue generated from the YUCP project during first the 10 years of the project operation will be spent under various heads (logistics, mining services, contractors etc) within the Republic of South Africa.

3.7 As a direct result, the mine will create an estimated 550 direct job opportunities, ensure a development income spent in South Africa exceeding R 1 billion Rand, ensure a regional income stream to the National and Provincial Government in respect of Royalties, Rates and Taxes, as well as ensuring that socio-economic growth opportunities are provided to the regional SLP commitments that will cater for skills development programmes, training and Local Economic Development Projects.

3.8 It is a fact that the lifestyles of ordinary people in the area will be improved as disposable income will become more available. This specific mining environment is a complex system requiring a multitude of skills and the opportunity for the creation of contractors to support those skills around the mine.

AAV accepts that by granting AAV a Mining Right, the Yzermyn project is supported by the DMR and that the wording of Paragraphs 6(i) and 6(ii) may have been done in an effort to protect the environment and not to frustrate the applicant and stopping the development. However, we sincerely hope that you will review our proposed amendments to the above mentioned paragraphs favourably, in order to reach a mutually acceptable, reasonable and practically implementable set of conditions.

We trust that you will find the above in order and look forward to a sympathetic consideration of our motivation to revise the paragraph 6(i) and 6(ii) of the Grant Letter.

Yours sincerely,

PRAVEER TRIPATHI
SR. VICE PRESIDENT
072 804 8250
praveer.tripathi@athagroup.in

"PML 8"

171

Centre *for* Environmental Rights
Advancing Environmental Rights in South Africa

Ms Skumsa Mancotywa
Acting Deputy Director-General: Biodiversity and Conservation
Department of Environmental Affairs
Pretoria
0001
By email: smancotywa@environment.gov.za

cc Mr Simon Malete
Administrative Support
Biodiversity and Conservation
Department of Environmental Affairs
By email: smalete@environment.gov.za

Your ref: Ms Mancotywa
Our ref: MF/CH/MT
Date: 23 February 2015

URGENT

Dear Ms Mancotywa

THE PROPOSED YZERMYN UNDERGROUND COAL MINE IN THE MABOLA PROTECTED ENVIRONMENT

1. The Centre for Environmental Rights is a non-profit organisation and law clinic established to advance environmental rights in South Africa. One of our areas of work, which we regard as central to realisation of section 24 of the Constitution, is the protection and defence of protected areas and areas of critical biodiversity and hydrological value and sensitivity. The Centre also works closely with numerous other civil society organisations concerned with ensuring transparency, accountability and environmental compliance in the mining sector. This includes WWF South Africa and BirdLife South Africa who have worked for the protection of the broader grasslands area in Mpumalanga, KwaZulu-Natal and Free State for many years, as well as the Mining and Environmental Justice Community Network for South Africa.

2. For these reasons, we supported the declaration of the Mabola Protected Environment under the National Environmental Management: Protected Areas Act (NEMPAA) by the Mpumalanga MEC in January 2014.

3. It now appears from media reports and other sources that, since that declaration, the Mpumalanga Regional Manager for the Department of Mineral Resources (DMR) has granted a mining right to Atha-Africa Ventures (Pty) Ltd (AAV) in respect of a mining area that falls within the Mabola Protected Environment. It further appears that AAV intends pursuing the exercise of those rights despite the provisions of section 48 of NEMPAA.

4. We urgently need to confirm the following with you:

   4.1. Has the Minister or the Department of Environmental Affairs (DEA) received any request from the Minister of Mineral Resources, DMR or AAV for the Minister of Environmental Affairs' written permission to mine

2nd Floor, Springtime Studios,
1 Scott Road, Observatory, 7925
Cape Town, South Africa
Tel: 021 447 1647, Fax: 086 730 9058
Email: info@cer.org.za, www.cer.org.za

inside the Mabola Protected Environment in terms of NEMPAA's section 48? If so, we urgently need copies of such a request and any response from the Minister or DEA.

4.2. If not, has the Minister of Environmental Affairs or DEA received any other request from the Minister of Mineral Resources, the DMR or AAV in relation to AAV's proposed activities inside the Mabola Protected Environment? This includes a request to comment on the environmental management programme attached to the mining right referred to above. If so, we urgently need copies of such correspondence between AAV and/or the Minister of Mineral Resources, the DMR, and the Minister of Environmental Affairs and/or DEA.

4.3. If the Minister of Environmental Affairs is considering any request for permission to mine inside the Mabola Protected Environment in terms of NEMPAA, please advise what public participation process has been initiated or is being contemplated to ensure compliance with the requirements of NEMPAA, NEMA and the Promotion of Administrative Justice Act, 2000?

4.4. Has the Minister of Environmental Affairs or DEA received any notification from the Mpumalanga MEC or the Mpumalanga Department of Agriculture, Rural Development, Land and Environmental Affairs regarding an intention or any steps taken to withdraw the declaration of the Mabola Protected Environment or to exclude part of the Mabola Protected Environment under section 29 of NEMPAA? If so, we urgently need copies of such correspondence.

5. As there is a short and limited time period for lodging an appeal against the granting of a mining right inside the Mabola Protected Environment, please could you assist us with this information as a matter of great urgency, and no later than 25 February 2015.

Yours sincerely
CENTRE FOR ENVIRONMENTAL RIGHTS

per:

Melissa Fourie
Executive Director
Direct email: mfourie@cer.org.za

"PML 9"

173

Ayesha Motala

From: Ayesha Motala
Sent: 24 February 2015 04:02 PM
To: 'GumaF@dwa.gov.za'; 'MatisoM@dwa.gov.za'; 'Centralp@dwa.gov.za'
Cc: 'Mdakanep@dwa.gov.za'
Subject: Atha-Africa Ventures (Pty) Ltd - Application for Water Use Licence for Yzermyn Mine in Mabola Protected Environment

Importance: High

Dear Mr Guma, Ms Matiso and Ms Diedricks,

The Centre for Environmental Rights (CER) is a non-profit organisation and law clinic established in 2009. Our vision is a South Africa where every person's Constitutional right to an environment that is not harmful to health or well-being, and to have the environment protected for future generations, is fully realised. Our mission is to advance the realisation of environmental rights as guaranteed in the South African Constitution by providing support and legal representation to civil society organisations and communities who wish to protect their environmental rights, and by engaging in legal research, advocacy and litigation to achieve strategic change.

Thus, we supported the declaration of the Mabola Protected Environment (MPE) under the National Environmental Management: Protected Areas Act (NEMPAA) by the Mpumalanga MEC during 2014. However, media reports have indicated that Atha-Africa Ventures (Pty) Ltd has been granted a mining right by the Mpumalanga Regional Manager for the Department of Mineral Resources, which falls within the MPE and is near Wakkerstroom. It also appears that Atha-Africa Ventures intends to pursue exercising that right regardless of Section 48 of NEMPAA.

We therefore urgently require the following information please:-

1. A copy of any application by Atha-Africa Ventures (Pty) Ltd to the Department of Water and Sanitation for a water use licence for the Yzermyn mine; and
2. A copy of the approved water use licence, if one has been approved.

Kindly note that as this is a matter of urgency, if a response is provided as soon as reasonably possible, it would be of great assistance.

Thank you.

Kind regards,

Ayesha Motala
Candidate Attorney
Centre for Environmental Rights NPC
A non-profit organisation with registration number 2009/020736/08
PBO No. 930032226, NPO No. 075-863, VAT No. 4770260653
and a Law Clinic registered with the Law Society of the Cape of Good Hope
2nd Floor, Springtime Studios, 1 Scott Road, Observatory 7925, Cape Town, South Africa
Tel: 021 447 1647 Fax: 086 730 9098
Email: amotala@cer.org.za
Web: www.cer.org.za and follow us on Facebook: www.facebook.com/CentreEnvironmentalRights

"PML10"

174

water & sanitation

Department:
Water and Sanitation
REPUBLIC OF SOUTH AFRICA

Enquiries: AB Singh
Telephone: 012 336 7532
Reference: D16371

Me. A Motala
Centre for Environmental Rights NPC
2nd Floor, Springtime Studios
1 Scott Road
OBSERVATORY
7925

Dear Me. Motala

ATHA-AFRICA VENTURES (PTY) LTD – APPLICATION FOR A WATER USE LICENCE FOR YZERMYN MINE IN MABOLA PROTECTED ENVIRONMENT

The above matter refers.

Please be informed that you are required to request the information related to this matter via the Deputy Chief Information Officer: Chief Director Legal Services – Mr. Puseletso Loselo, in accordance with the prescribed format, stipulated in the Promotion of Access to Information Act, 2000 (Act 2 of 2000).

I trust that you will find the above in order.

Yours sincerely

Ms M Diedricks
DIRECTOR- GENERAL
Letter signed by: Mr. AB Singh
DEPUTY DIRECTOR-GENERAL: WSR
DATE: 11/3/2013

"PML11"

175

APPEAL IN TERMS OF SECTION 96(1) OF THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT ACT, 2002

EARTHLIFE AFRICA	FIRST APPELLANT
BIRDLIFE SOUTH AFRICA	SECOND APPELLANT
MINING AND ENVIRONMENTAL JUSTICE NETWORK OF SOUTH AFRICA	THIRD APPELLANT
ENDANGERED WILDLIFE TRUST	FOURTH APPELLANT
FEDERATION FOR A SUSTAINABLE ENVIRONMENT	FIFTH APPELLANT
GROUNDWORK	SIXTH APPELLANT
ASSOCIATION FOR WATER AND RURAL DEVELOPMENT	SEVENTH APPELLANT
BENCH MARKS FOUNDATION	EIGHTH APPELLANT
IN RE:	
DIRECTOR-GENERAL: DEPARTMENT OF MINERAL REOURCES	DECISON-MAKER
ATHA-AFRICA VENTURES (PTY) LTD	RIGHT HOLDER

AFFIDAVIT OF SERVICE

MPS
A-1
2nd

I, the undersigned,

Mbali Baduza

do hereby make oath and say that:

1. I am an adult employed as a candidate attorney by Lawyers for Humans Rights of Kutlwanong Democracy Centre, 357 Visagie Street, Pretoria. I am duly authorised to depose to this affidavit.

2. The facts deposed to in this affidavit are within my personal knowledge, unless otherwise stated or indicated by the context, and are, to the best of my belief, true and correct.

3. On the 01 day of April 2015, and on behalf of the Centre for Environmental Rights, of 2nd Floor, Springtime Studios, 1 Scott Road, Observatory, Cape Town, attorneys for the Appellants herein, I delivered the internal appeal in this matter to the Minister of Mineral Resources and to the Director General, Department of Mineral Resources at Block 2C, 4th Floor, Trevenna Campus, Corner of Francis Baard and Meintjies Streets, Sunnyside, Pretoria.

4. I attach, marked "**CA1**", a copy of page 43 of the internal appeal reflecting the signatures and stamps of for the Minister of Mineral Resources and the Director General, Department of Mineral Resources respectively.

M.P.B

Name: Mbali Badu29

I hereby certify that the deponent declares that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at **PRETORIA** on this 01 day of APRIL 2015 and the Regulations contained in Government Notice R1258 of 21 July 1972, as amended, have been complied herewith.

COMMISSIONER OF OATHS

ARTHUR SINGINI
Commissioner of Oaths Practising Attorney
GWANANGURA SINGINI ATTORNEYS
357 VISAGIE STREET, PRETORIA
TEL: 012 771 6066 CELL: 083 958 5983
E-mail: arthur@gsattlaw.co.za

CA1

178

SIGNED at **CAPE TOWN** on this the **30TH** day of **MARCH 2015** for and on behalf of the appellants

CENTRE FOR ENVIRONMENTAL RIGHTS
Attorneys for the appellants
Second Floor, Springfield Studios
1 Scott Road
Observatory
Cape Town
7925
Tel: 021 447 1647
Fax: 086 730 9098
Email: chorsfield@cer.org.za
Ref: Catherine Horsfield

TO: HONOURABLE MININSTER NGOAKO RAMATLHODI
MINISTER OF MINERAL RESOURCES
Block 2C, 4th Floor
Trevenna Campus
Corner of Francis Baard and Meintjies Streets
Sunnyside
Pretoria
Attention: Messrs Pieter Alberts and Johan Nieman
Legal services
Department of Mineral Resources
By courier

RECEIVED BY THE DIRECTORATE
DATE 1-4-2015 TIME 14:35
SIGNATURE

AND TO: DIRECTOR-GENERAL
Department of Mineral Resources
Block 2C, 4th Floor
Trevenna Campus
Corner of Francis Baard and Meintjies Streets
Sunnyside
Pretoria
Reference: Dr Thibedi Ramontja
By courier

RECEIVED BY THE DIRECTORATE
DATE 1-4-2015 TIME 14:35
SIGNATURE

AND TO: ATHA-AFRICA VENTURES (PTY) LTD
8th Floor, Sinosteel Plaza
159 Rivonia Road
Sandton
Reference: Mr Praveer Tripathi
By courier

"PM12"

179

APPEAL IN TERMS OF SECTION 96(1) OF THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT ACT, 2002

EARTHLIFE AFRICA	FIRST APPELLANT
BIRDLIFE SOUTH AFRICA	SECOND APPELLANT
MINING AND ENVIRONMENTAL JUSTICE NETWORK OF SOUTH AFRICA	THIRD APPELLANT
ENDANGERED WILDLIFE TRUST	FOURTH APPELLANT
FEDERATION FOR A SUSTAINABLE ENVIRONMENT	FIFTH APPELLANT
GROUNDWORK	SIXTH APPELLANT
ASSOCIATION FOR WATER AND RURAL DEVELOPMENT	SEVENTH APPELLANT
BENCH MARKS FOUNDATION	EIGHTH APPELLANT
IN RE:	
DIRECTOR-GENERAL: DEPARTMENT OF MINERAL REOURCES	DECISON-MAKER
ATHA-AFRICA VENTURES (PTY) LTD	RIGHT HOLDER

AFFIDAVIT OF SERVICE

I, the undersigned,

K·T·S
JKL

JESSICA KAYE LAWRENCE

do hereby make oath and say that:

1. I am an adult candidate attorney employed as such by Lawyers for Humans Rights of 4th Floor Heerengracht Building, 87 De Korte Street corner Melle Street, Braamfontein. I am duly authorised to depose to this affidavit.

2. The facts deposed to in this affidavit are within my personal knowledge, unless otherwise stated or indicated by the context, and are, to the best of my belief, true and correct.

3. On the 1 day of APRIL 2015, and on behalf of the Centre for Environmental Rights, of 2nd Floor, Springtime Studios, 1 Scott Road, Observatory, Cape Town, attorneys for the Appellants herein, I delivered a copy of the internal appeal in this matter to **ATHA-AFRICA VENTURES (PTY) LTD** at its registered address at 8th Floor, Sinosteel Plaza, 159 Rivonia Road, Sandton.

4. As I did not have the woman at the front desk sign and date the documents denoting that she had received them on behalf of Atha-Africa Ventures on 1 April 2015, I called her later that day. I asked her to send proof that she had indeed received the documents on behalf of Atha-Africa Ventures on 1 April 2015.

5. I attach, marked "**JL1**", a copy of page 43 of the internal appeal reflecting the signature confirming receipt on behalf of Atha-Africa Ventures (Pty) Ltd on 1 April 2015.

K.T.S
JKL
2nd

JESSICA KAYE LAWRENCE

I hereby certify that the deponent declares that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at **JOHANNESBURG** on this 2nd day of APRIL **2015** and the Regulations contained in Government Notice R1258 of 21 July 1972, as amended, have been complied herewith.

KABELO SEDUPANE
COMMISSIONER OF OATHS
Non-Practicing Attorney- Corruption Watch
8th Floor, Heerengracht Building
87 De Korte Street, Braamfontein
Johannesburg

COMMISSIONER OF OATHS

182
JL1

SIGNED at CAPE TOWN on this the 30TH day of MARCH 2015 for and on behalf of the appellants

CENTRE FOR ENVIRONMENTAL RIGHTS
Attorneys for the appellants
Second Floor, Springfield Studios
1 Scott Road
Observatory
Cape Town
7925
Tel: 021 447 1647
Fax: 086 730 9098
Email: chorsfield@cer.org.za
Ref: Catherine Horsfield

TO: HONOURABLE MININSTER NGOAKO RAMATLHODI
MINISTER OF MINERAL RESOURCES
Block 2C, 4th Floor
Trevenna Campus
Corner of Francis Baard and Meintjies Streets
Sunnyside
Pretoria
Attention: Messrs Pieter Alberts and Johan Nieman
Legal services
Department of Mineral Resources
By courier

AND TO: DIRECTOR-GENERAL
Department of Mineral Resources
Block 2C, 4th Floor
Trevenna Campus
Corner of Francis Baard and Meintjies Streets
Sunnyside
Pretoria
Reference: Dr Thibedi Ramontja
By courier

AND TO: ATHA-AFRICA VENTURES (PTY) LTD
8th Floor, Sinosteel Plaza
159 Rivonia Road
Sandton
Reference: Mr Praveer Tripathi
By courier

183

Jessica Lawrence

From:	Constance Maswuba [maswuba.constance@yahoo.com]
Sent:	01 April 2015 01:10 PM
To:	Jessica Lawrence
Subject:	CONFIRMATION OF DOCUMENT
Attachments:	20150401125653.pdf

Hi,

please find attached document confirmation as requested

regards
Constance

K·T·S
JKL

"PML13"

184

DMR 10

mineral resources

Department:
Mineral Resources
REPUBLIC OF SOUTH AFRICA

Pretoria
Private Bag X59, Arcadia, 0007, Trevenna Campus, 70 Meintjie Street, Sunnyside
Tel: (012) 444-3285, Fax: 086 7100933, E-mail: audrey.rallou@dmr.gov.za, Ref: 9/2/4/3/333

From: Chief Directorate: Legal Services Enquiries: Audrey Rallou

Centre for Environmental Rights
2nd Floor Springtime Studios
1 Scott Road
Observatory
CAPE TOWN
7925

Your Ref.: CH/MT

02 April 2015

Dear Sir,

RE: NOTICE OF APPEAL AGAINST THE GRANT OF MINING RIGHT MP30/5/1/2/2/10069MR TO ATHA-AFRICA VENTURES (PTY) LTD IN RESPECT OF PROPERTIES IN THE MAGISTERIAL DISTRICT OF WAKKERSTROOM, MPUMALANGA REQUEST FOR THE SUSPENSION OF THE GRANT OF THE AFORESAID MINING RIGHT PENDING THE OUTCOME OF THE APPEAL

Receipt of your appeal dated 30 March 2015 together with proof of payment is hereby acknowledged.

Please note that your appeal is receiving attention and for further information do not hesitate to contact the office.

Yours faithfully,

DIRECTOR-GENERAL
MINERAL RESOURCES

"PML 14"

185

Centre *for* Environmental Rights
Advancing Environmental Rights in South Africa

The Honourable Minister Ngoako Ramatlhodi
Minister of Mineral Resources
Department of Mineral Resources
Block 2C, 4th Floor
Trevenna Campus
Corner of Francis Baard and Meintjies Streets
Sunnyside
Pretoria

By email: Kefilwe.Chibogo@dmr.gov.za
By fax: 012 461 0859

Your ref: MP30/5/1/2/2/10069MR
Our ref: CH/MT
2 April 2015

URGENT

Dear Minister Ramatlhodi

APPEAL AGAINST THE GRANT OF MINING RIGHT TO ATHA-VENTURES (PTY) LTD

APPLICATION FOR SUSPENSION OF THE MINING RIGHT PENDING THE OUTCOME OF THE APPEAL

REQUEST TO NOT CONSIDER, EVALUATE OR DECIDE ANY REQUEST FOR WRITTEN PERMISSION IN TERMS OF SECTION 48(1)(b) OF THE NATIONAL ENVIRONMENT MANAGEMENT PROTECTED AREAS ACT TO CONDUCT COMMERCIAL MINING IN THE MABOLA PROTECTED ENVIRONMENT PENDING FINAL DETERMINATION OF THE APPEAL

1. On 1 April 2015, eight civil society and community organisations, represented by the Centre for Environmental Rights, submitted an appeal against the grant of a mining right to Atha-Africa Ventures (Pty) Ltd (Atha) to conduct underground coal mining in the Mabola Protected Environment declared as such under section 28 of the National Environmental Management: Protected Areas Act, 57 of 2004 (NEMPAA).

2. The eight organisations are: Earthlife Africa, Johannesburg, Birdlife South Africa, the Mining and Environmental Justice Community Network of South Africa, the Endangered Wildlife Trust, Federation for a Sustainable Environment, Bench Marks Foundation, Association for Water and Rural Development (AWARD) and groundWork.

3. One of the primary motivations for the declaration of the Mabola Protected Environmentwas to protect this unique and irreplaceable area from the detrimental environmental risks and impacts of coal mining.

3rd Floor, Springtime Studios,
1 Scott Road, Observatory, 7925
Cape Town, South Africa
Tel 021 [illegible] Fax 086 730 9098
Email info@cer.org.za www.cer.org.za

4. In the internal appeal under the MPRDA, the appellants seek the setting aside of the grant of the mining right in its entirety, including a number of vague and unlawful conditions pertaining to the environment which were imposed when the mining right was granted.

5. Given the extreme environmental sensitivity of the area, the appellants simultaneously lodged an application for the suspension of the mining right pending the outcome of the appeal.

6. One of the grounds of appeal is that the mining right was granted notwithstanding that, as far as the appellants have been able to establish, the written permission of the Minister of Environmental Affairs and the Minister of Mineral Resources in terms of section 48(1)(b) of NEMPAA to conduct commercial mining in the Mabola Protected Environment has not been obtained, or sought.

7. The appellants have addressed a letter to the Minister of Environmental Affairs requesting that, pending the final determination of whether the grant of the mining right to Atha was lawful, the Minister not take any steps to consider, evaluate or decide any such application as may be made by Atha for that Minister's written permission to conduct commercial mining in the Mabola Protected Environment. A copy of that letter to the Minister of Environmental Affairs is attached.

8. The appellants hereby make the same request to the Minister of Mineral Resources.

9. Furthermore, the appellants expressly request the Minister of Mineral Resources to consider and determine the appellants' application for suspension of the mining right pending the final determination of whether the grant of the mining right to Atha was lawful.

10. The appellants expressly reserve the right to approach the High Court at any stage should it become necessary to take urgent steps to protect this unique, irreplaceable and highly environmentally sensitive area.

Yours faithfully
CENTRE FOR ENVIRONMENTAL RIGHTS

per:

Melissa Fourie
Executive Director
Direct email: mfourie@cer.org.za

"PML16"

187

DMR 10

DMR 10

mineral resources
Department:
Mineral Resources
REPUBLIC OF SOUTH AFRICA

Pretoria
Private Bag X69, Arcadia, 0007, Trevenna Campus, 70 Meintje Street, Sunnyside
Tel: (012) 444-3285, Fax: 086 710 0933, E-mail: audrey.ratlou@dmr.gov.za, Ref: 9/2/4/3/333

From: Chief Directorate: Legal Services **Enquiries:** Audrey Ratlou

Centre for Environmental Rights
2nd Floor Springtime Studios
1 Scott Road
Observatory
CAPE TOWN
7925

Ref.: CH/MT

12 May 2015

Dear Sir,

RE: NOTICE OF APPEAL AGAINST THE GRANT OF MINING RIGHT MP30/5/1/2/2/10069MR TO ATHA-AFRICA VENTURES (PTY) LTD IN RESPECT OF PROPERTIES IN THE MAGISTERIAL DISTRICT OF WAKKERSTROOM, MPUMALANGA REQUEST FOR THE SUSPENSION OF THE GRANT OF THE AFORESAID MINING RIGHT PENDING THE OUTCOME OF THE APPEAL

The above matter refers.

Attached hereto please find the comments on the appeal as submitted by Atha-Africa Ventures (Pty) Ltd.

You are afforded the opportunity to comment on these documents within 21 days of receipt hereof.

Your detailed responses are kindly anticipated within the abovementioned period, and on receipt of this notice, alternatively failing to reply, this office will proceed with the facilitation of the appeal based exclusively on the documentation in our possession and without further notice.

2nd

Please be advised that the reasons from the Regional Manager remain outstanding. Those will be provided to you once this office receives same.

Yours faithfully,

pp
DIRECTOR-GENERAL
MINERAL RESOURCES

2nd

"PML 15"

189

ANNEXURE - 2

MINISTER
MINERAL RESOURCES
REPUBLIC OF SOUTH AFRICA

Enquiries: L Mugagadeli
Ref No: MP 30/5/1/2/2/10069MR

REGISTERED MAIL

The Directors
Atha-Africa Ventures (Pty) Ltd
P O Box 1569
SANDTON
2157

Fax No. (011) 784 7467

Gentlemen/Ladies

APPLICATION FOR A MINING RIGHT IN TERMS OF SECTION 22 OF THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT ACT, 2002 (ACT 28 OF 2002); IN RESPECT OF THE FARMS BLOEMHOF 92 HT, GOEDEGEVONDEN 95 HT, KROMHOEK 93 HT, PORTION 1 OF THE FARM NAUWGEVONDEN 110 HT, PAARDEKOP 109 HT, UITZICHT 108 HT, PORTION 2 AND THE REMAINING EXTENT OF THE FARM VAN DER WALTSPOORT 81 HT, VIRGINIA 91 HT, WAALHOEK 87 HT, PORTION 1 AND THE REMAINING EXTENT OF THE FARM YZERMYN 96 HT AND ZOETFONTEIN 94 HT SITUATED IN THE MAGISTERIAL DISTRICT OF WAKKERSTROOM.

1. After careful consideration, I, Ngoako Abel Ramatlhodi, Minister of Mineral Resources, in terms of section 103(4)(b) of the Act, hereby amend the decision made by the Director-General on 19 September 2014, to grant a mining right to you subject to the conditions contained in the granting letter.

2. This therefore serves to inform you that your abovementioned application for a mining right to mine Coal in respect of the abovementioned properties has been granted in terms of section 23(1)

PML

of the abovementioned Act. The Regional Office will prepare the final copies of the right to be signed.

3. Take note that the Regional Manager will approve the relevant Environmental Management Programme and sign the right.

4. Further note that in terms of Section 23(5) of the Act, the mining right comes into effect on the date on which the Environmental Management Programme is approved. In terms of Section 25(2) (b) mining activities must commence within one year of the effective date.

5. In light of the afore-going, you are requested to:

4.1. Ensure that all outstanding matters regarding your application are finalized and that relevant documents are submitted to the Regional Office no later than 30 days prior to the date mentioned in paragraph 2 above, which outstanding matters include the submission of:

(a) financial provision be provided before execution
(b) the particulars of your authorized representative who will sign the right,
(c) the particulars of the public notary, before whom the right must be signed,
(d) two (2) copies of the final mining work programme,
(e) A diagram prepared by a surveyor **6 (six) originals** in accordance with the requirements of the Mining Titles Registration Act and which shall indicate-
  (i) the north point;
  (ii) the scale to which the plan has been drawn;

(iii) the name, number registration division and portion of the farm or farms on which the relevant area is situated;

(iv) the shape of the relevant area in relation to the farm boundaries and co-ordinates points;

(v) the region in which the relevant farm is situated and;

(vi) be certified, approved signed and dated by the professional land surveyor, unless the Director General otherwise indicates.

(vii) two (2) copies of the Social and Labour Plan

4.2. Please make arrangements for the public notary, authorized representative(s) of your company and a witness to be present and attend the signing of the mining right once the aforesaid outstanding matters are verified and an execution date has been finalized by this Office.

6. Note further that in terms of Section 25(2)(a), the signed/executed mining right must be lodged for registration at the Mineral and Petroleum Titles Registration Office, Pretoria, within 30 days as from the date of approval of the relevant environmental management program.

7. Finally, noting the provisions of section 23(6) of the Act, the following shall also be applicable:

(i) You may not commence with mining operations prior to the obtaining of a Water License from the Department of Water Affairs;

(ii) You may not commence with mining operations prior to the obtaining an of Environmental Authorization from the Department of Environmental Affairs; and

(iii)You must comply with all other related legislations before the commencement of mining.

8. Failure to comply may result in the withdrawal, suspension or cancellation of the right in question.

Yours faithfully

ADV N A RAMATLHODI
MINISTER
MINERAL RESOURCES
DATE: 14/04/2015

"PML17"

193

ATHA GROUP

ATHA-AFRICA VENTURES (Pty)Ltd

Registration No. 2004/020746/07

8th Floor, Sinosteel Plaza, 159 Rivonia Road, Morningside, Sandton, 2144
Tel: +27 11 784-1885
Fax: +27 11 784- 7467

Date: 24 April, 2015

THE CHIEF DIRECTOR: LEGAL SERVICES
Department of Mineral Resources
Private Bag X 59
Arcadia
0007

FOR ATTENTION: Mrs Audrey Ratlou

PER E-MAIL: audrey.ratlou@dmr.gov.za

Dear Madam,

RE: RESPONSE TO THE NOTICE OF APPEAL AND REQUEST TO SUSPEND THE MINING RIGHT PENDING THE OUTCOME OF THE APPEAL, SUBMITTED BY CER IN RESPECT OF THE GRANTING OF A MINING RIGHT (MP30/5/1/2/2/10069MR) TO AAV ON VARIOUS PROPERTIES SITUATED IN THE MAGISTERIAL DISTRICT OF WAKKERSTROOM: MPUMALANGA PROVINCE.

The recent meeting between yourself and representatives of Africa Ventures Proprietary Limited ("AAV"), as well as the letter signed by the Director General: Department of Mineral Resources ("DMR"), dated 02 April 2015, but only received by Atha Africa Ventures Proprietary Limited ("AAV"), on the 20th of April 2015, in respect of the abovementioned matter, refer.

As per our discussion with you on the 21st of April 2015, we informed you that AAV cannot submit a formal response (as per your request of 2 April 2015) to the Notice of Appeal and request to suspend the Mining Right pending the outcome of the Appeal, submitted by the Centre for Environmental Rights ("CER") in respect of the granting of a Mining Right (MP 30/5/1/2/2/10069 MR) to AAV for the following reasons:

1. On 12 November 2014, AAV received a letter from the Regional Manager: Mpumalanga Region, DMR, with an attached letter dated 19 September 2014 ("the First Granting Letter"), signed by the Director-General: Department of Mineral Resources, granting, subject to certain conditions, a Mining Right to AAV.
2. The First Granting Letter, provided that the Director-General could be approached by AAV, should AAV have any queries regarding the conditions relevant to the granting of the Mining Right, and if affirmative, subsequently required any amendment to such conditions.

2nd

ATHA GROUP

ATHA-AFRICA VENTURES (Pty)Ltd

Registration No. 2004/020746/07

8th Floor, Sinosteel Plaza, 159 Rivonia Road, Morningside, Sandton, 2144
Tel: +27 11 784-1865
Fax: +27 11 784- 7467

3. On the 19th of November 2014, AAV sent a formal request, including a detailed motivation, to amend the conditions of the First Granting Letter, to the DMR. (Please find attached hereto the relevant motivation letter as **Annexure – 1**).

4. As a starting point to the above-mentioned letter, AAV expressed its commitment to adhere to all conditions listed in the First Granting Letter, except for some of the conditions imposed under paragraph 6 of the First Granting Letter.

5. In the ensuing paragraphs of the relevant letter, AAV provided the DMR with a detailed motivation as to why certain of the conditions in the First Granting Letter, notably the conditions imposed under paragraphs6(i) and 6(ii) of this Letter, would be impossible to abide by, should AAV be forced to adhere to the strict interpretation of the wording used in the relevant paragraphs.

6. Following the motivation, AAV requested the DMR to give due consideration to amending paragraphs 6(i) and 6(ii)of the conditions in the First Granting Letter.

7. Subsequent to the submission of the abovementioned *"request for amendment of the conditions of the First Granting Letter"*, AAV was informed that the Regional Manager, after given his due considering to the relevant request for amendment of the conditions, forwarded his recommendation to the Director-General's office for review and further recommendation, and thereafter the Director-General forwarded the final recommendation to the Minister for the final consideration and decision.

8. AAV only received a response to AAV's initial *"request for amendment of the conditions of the First Granting Letter"*, on the 14th of April 2015, via a letter from the Office of the Minister: Mineral Resources, which letter ("the Second Granting Letter") stated that, after due consideration, the Honourable Minister decided to amend the conditions of the First Granting Letter, which ultimately resulted in the issuing of the Second Granting Letter. (Please find attached hereto the "the second granting letter" as **Annexure – 2**).

9. On the 20th of April 2015, via Post Office Mail, AAV received a letter (signed on the 2nd of April 2015) from the Director General: Department of Mineral Resources ("DMR"), informing AAV that the CER had submitted a Notice of Appeal and request to suspend the Mining Right pending the outcome of the Appeal ("the Notice"), in respect of the granting of a Mining Right (MP 30/5/1/2/2/10069 MR) to AAV (i.e. the Notice was submitted in terms of the First Granting Letter).

ATHA GROUP

ATHA-AFRICA VENTURES (Pty)Ltd

Registration No. 2004/020746/07

8th Floor, Sinosteel Plaza, 159 Rivonia Road, Morningside, Sandton, 2144
Tel: +27 11 784-1885
Fax: +27 11 784- 7467

10. AAV immediately convened a meeting with you, Mrs Ratlou, (the meeting of 21st April 2015) to inform you that AAV submitted its *"request for amendment of the conditions of the First Granting Letter"* as far back as 19 November 2014. Furthermore, AAV once informed by you of the Notice submitted by CER, immediately engaged with you.

11. In light of the above-mentioned, AAV herewith, formally request that the relevant office within the DMR, informs the CER that the Second (FINAL) Granting Letter was issued to AAV on the 14th of April 2015, and as a result the First Granting Letter became *Null and Void*. Naturally following from the annulment of the First Granting Letter, no Appeals can be entertained by the DMR in respect of the First Granting Letter.

We trust that you will find the above in order and look forward to your acknowledgement of receipt of this letter and any reply, should you have any further inquiries.

Yours sincerely,

MORGAM MUNSAMY
DIRECTOR
ATHA-AFRICA VENTURES (PTY) LTD.
Cell: 083 655 5362
Email: morgam.munsamy@athagroup.in

"PML 18"

196

Centre *for* Environmental Rights

Ms Audrey Ratlou
Legal Services Department
Department of Mineral Resources
Trevenna Campus
70 Meintjie Street
Sunnyside
PRETORIA
0007

By email: Audrey.Ratlou@dmr.org.za
By fax: 086 71000 933

And to: Mr Johan Nieman
Legal Services Department
Department of Mineral Resources

By email: Abraham.Nieman@dmr.org.za

Your ref: 9/2/4/3/333
Our ref: CH/MT
26 June 2015

Dear Ms Ratlou

INTERNAL APPEAL AGAINST THE GRANT OF MINING RIGHT(MP30/5/1/1/1/10069MR) TO ATHA-AFRICA VENTURES (PTY) LTD IN RESPECT OF PROPERTIES IN THE MAGISTERIAL DISTRICT OF WAKKERSTROOM, MPUMALANGA / REQUEST FOR THE SUSPENSION OF THE GRANT OF THE AFORESAID MINING RIGHT PENDING THE OUTCOME OF THE APPEAL
APPEAL NO. 9/2/4/3/333

We refer to the internal appeal lodged by the Centre for Environmental Rights (*CER*) on behalf of a number of civil society and community organisations on 1 April 2015 against the grant of a mining right to Atha-Africa Ventures (Pty) Limited (*AAV*) for the proposed Yzermyn underground coal mine over properties situate in the Mabola Protected Environment and the Wakkerstroom Wetlands Area.

1. On Friday 22 May 2015 the Department of Mineral Resources (*DMR*) sent the CER a letter dated 12 May 2015, a copy of which is attached, marked "A", enclosing "*comments on the appeal as submitted by Atha-Africa Ventures (Pty) Ltd.*" and affording our clients an opportunity to comment on these documents.

2. The comments constitute a letter dated 24 April 2015, together with two annexures, sent by AAV to the Chief Director: Legal Services: DMR in which it submits that it "*cannot submit a formal response*" to the appeal and application for suspension. A copy of the letter is attached, marked "B".

3. It appears from the comments that on 19 November 2014 AAV submitted a request addressed to the DMR's Regional Manager: Mpumalanga Region for the amendment of conditions 6(i) and 6(ii) imposed when the mining right was granted by the Director-General (*DG*) on 19 September 2014. The request is annexure 1 to AAV's letter.

4. On 14 April 2015, the Minister of Mineral Resources (*the Minister*) sent a letter addressed to the directors of AAV in response to the request for an amendment of the conditions. The Minister's letter is annexure 2 to AAV's letter (*the Minister's letter*).

5. In the final paragraph of the letter of 24 April 2015, AAV requests the DMR to inform the CER that the "*Second (FINAL) Granting Letter was issued to AAV on the 14th of April 2015, and as a result the First Granting Letter became Null and Void. Naturally following from the annulment of the First Granting Letter, no appeals can be entertained by the DMR in respect of the First Granting Letter.*"

6. AAV's contentions are flawed. It is incorrect to refer to either of the two letters as "*granting letters*". A "*granting letter*" does not constitute the actual administrative decision in terms of which a mining right is granted. Such a letter is merely the means by which the decision which was taken is communicated to the applicant. The initial decision taken by the DG to grant the mining right to AAV is evidenced by the approval by the DG of the recommendation made to him by the various officials within the DMR.

7. Nevertheless, it appears from the contents of the Minister's letter that the Minister withdrew the decision made by the DG and took a fresh decision to grant the mining right to AAV. Our clients' instructions are to launch review proceedings in the High Court against that decision of the Minister.

8. In the circumstances, our clients request that the appeal be suspended pending the outcome of the review proceedings. In the event that the appeal proceeds after the determination of the review, our clients' rights to supplement its appeal submissions are reserved, including but not limited to, incorporating any aspects arising from the review and the furnishing of reasons for the grant of the right by the DG which remain outstanding.

Yours sincerely
CENTRE FOR ENVIRONMENTAL RIGHTS

per:

Catherine Horsfield
Attorney
Programme Head: Mining
Direct email: chorsfield@cer.org.za

76.4. should **any form of coal mining** (own emphasis) be pursued, it will have extremely negative impacts on this important water production area and any form of mining in such an area is considered inappropriate and of severe consequence to sustained ecosystem functioning;

76.5. , the MTPA submitted an application to the DMR for the Minister to prohibit mining in this area in the national interest in terms of section 49 of the MPRDA including because the area:

76.5.1. is critically important from a water production perspective;

76.5.2. is largely classed as irreplaceable by the MBCP and thus crucial for the achievement of provincial and national conservation targets due to the biodiversity features located there;

76.5.3. is located in endangered and vulnerable threatened ecosystems (in terms of the Biodiversity Act);

76.5.4. falls within provincial and national priority Protected Area expansion zones.

76.6. The mining application falls within areas classified as endangered and is classified as largely irreplaceable, highly significant and important and necessary by MTPA in the MBCP. The north western corridor of the mining application falls within an important ecological corridor.

77. On 27 October 2014, WWF-SA addressed a letter to AAV's EAP objecting to the granting of its client's environmental authorisation application under the National

Environmental Management Act, 1998 (NEMA). A copy of the letter is attached, marked "**12**."

78. WWF-SA objected on the bases that:

78.1. In a specialist report submitted by Natural Scientific Solutions CC to AAV's EAP for submission as part of the environmental impact assessment report to the Department of Environmental Affairs (NSS Report), the following is stated in the executive summary:

> *"Although the proposed surface infrastructure layout plan will comprise a small portion of the target mining area, the combined Baseline and Impact Assessments (sic) indicate that the [ATHA Yzermyn Coal Project] (sic) is fatally flawed,* ***and should be NO GO in terms of Biodiversity*** .[our emphasis] *This is largely because the impact of the proposed underground mining on the supply of water to the surface water resources (due to de-watering activities) and the potential groundwater contamination. These aspects will have significant impact on aquatic and wetland ecosystem functioning and biodiversity in a far greater area than the underground mining area. This aspect of the mining project, alone, is in strong conflict with international, national and provincial legislation, policies and guidelines. A large number of CI* [Conservation Important] *species were detected, and most habitat in the proposed underground mining and surface infrastructure areas was assigned a Very High or High sensitivity. Most potential impacts of the mining operations had a HIGH overall significance rating, even with mitigation. Moreover, the cumulative impact of numerous mining applications in the study region are of serious concern..."*

78.2. the DEA justifiably rejected AAV's initial application for environmental authorisation;

78.3. the mitigation measures proposed by AAV's EAP in the revised EIR are inadequate to address the biodiversity issues raised in the NSS Report;

78.4. the proposed mine will "... prevent or hinder provincial and national Protected Area expansion targets from being achieved..." if it is allowed to go ahead;

78.5. the mining area is characterised by "serious aquatic and hydrological sensitivities that cannot be mitigated;"

78.6. the proposed mining project will impact on the Protected Environment as well as two other adjacent Protected Areas, i.e. the Kwamandlangampisi Protected Environment and the Tafelkop Nature Reserve;

78.7. the proposed mining area falls within the proposed Wakkerstroom Wet Grassland Section 49 Exclusion Zone;

78.8. the ecosystem is classed as "endangered" in the Listed Ecosystems Regulations;

78.9. the mining area is classified as irreplaceable in terms of the MBCP's terrestrial biodiversity assessment;

78.10. the north-western portion of the proposed mining area falls within an important ecological corridor and may well impact negatively on the functioning of this ecological corridor;

78.11. the granting of the mining right was in clear contravention of mining policy; and

78.12. the project is not "in the national interest" as suggested by AAV's EAP – it is not in the national interest to sacrifice South Africa's natural heritage, water security and food security for a relatively short-term economic gain.

THE GRANT OF THE MINING RIGHT

79. Despite all the substantive objections from state and non-state bodies described above, the mining right was granted on 19 September 2014. A copy of the letter from the DMR advising AAV that it has been granted mining right is attached marked "**13**". In an apparent attempt not to completely ignore environmental considerations in the face of the strong opposition to the granting of the right, a number of conditions were imposed:-

79.1. the granting shall exclude any areas that excludes wetlands;

79.2. surface mining or related activity, as well as erection/installation of surface infrastructure shall be prohibited from taking place in any area that constitute wetlands or is deemed to be a sensitive environment;

79.3. the applicant shall formulate proper mitigation measures relative to the area in consultation with other stakeholders/authorities that administer matters affecting the environment at National and Provincial (Mpumalanga) level;

79.4. a proper plan/map shall be submitted with a clear depiction of such exclusions;

80. Those conditions are fundamentally flawed for the following reasons:-

80.1. they are premised upon mitigation of environmental impacts of the proposed mine being possible in circumstances where all the evidence before the DMR was that mining should be prohibited in the area;

80.2. the mining right and its conditions are not subject to the written consent of the Ministers of Environmental Affairs and Mineral Resources being obtained under NEMPAA for mining in the Mabola Protected Area;

80.3. the conditions are irrational and not rationally connected to the purpose for which the right was apparently granted: practically the whole area is "sensitive" – that is precisely why it was declared a protected area under NEMPAA. The sensitivity includes that it is a strategic water resource;

80.4. they are so vague as to be practically unenforceable.

LODGING OF THE APPEAL

81. The CER became aware that a mining right may have been granted to AAV. It took numerous steps to find out whether a mining right had in fact been granted and to obtain further relevant information such as whether the environmental management programme has been approved. Copies of the letters which it sent are attached marked "**14**," "**15**" and "**16**."

82. On 23 February 2015, the CER sent a letter to the DEA enquiring whether or not AAV has requested or applied for written permission from the Minister of Environmental Affairs in terms of section 48(1)(b) of NEMPAA and whether or not AAV has been

granted environmental authorisation for the proposed Yzermyn Underground Coal Mine.

83. The response from the DEA, dated 25 February 2015, is attached marked "**17**". According to that response, an environmental authorisation has not yet been obtained. It, however, remains unclear whether or not AAV has requested/applied for written permission from the Minister of Environmental Affairs in terms of section 48(1)(b) of NEMPAA.

84. On 3 March 2015, the CER received confirmation of the right granted in the form of a blank email from the DMR to which a copy of a letter from the DMR to AAV was attached. In that letter, the DMR notified AAV that its mining right had been granted subject to conditions (i.e. annexure 13). A copy of this email and letter is attached as "**18**."

85. The Appellants all first became aware of the grant of the mining right, as confirmed by the DMR, after the DMR's correspondence to the CER of 3 March 2015 (i.e. annexure 18).

86. The Appellants reserve their rights to supplement and/or vary this appeal if further relevant information is received.

GROUNDS OF APPEAL

87. The evidence set out above supports the following grounds of appeal against the granting of a mining right to AAV in respect of the properties:

87.1. all available evidence, including a report submitted as part of AAV's application for environmental authorisation, indicate that the mining will result in unacceptable pollution, ecological degradation or damage to the environment, contrary to the peremptory requirement of section 23(1)(d) of the MPRDA. The report by a consultant appointed by AAV recommended that the area should be declared "no go" for mining, because of the impacts of mining on biodiversity and on the supply of water to the surface water resources;

87.2. that the mining right is in respect of properties that fall within the Mabola Protected Environment, but that the written permission of the Minister of Environmental Affairs and the Minister of Mineral Resources in terms of section 48(1)(b) of NEMPAA to conduct commercial mining in the Mabola Protected Environment had not been obtained, or sought (as far as the Appellants can establish);

87.3. that the mining right is in respect of properties that:

87.3.1. are classified as of "irreplaceable" biodiversity value in the MBCP's terrestrial biodiversity assessment (terrestrial assessment) in the Mpumalanga Biodiversity Conservation Plan of 2006;

87.3.2. form part of the Wakkerstroom/Luneburg Grasslands Threatened Ecosystem, listed as an endangered ecosystem in the National List of Ecosystems that are Threatened and in Need of Protection published in terms of the National Environmental Management: Biodiversity Act, No. 10 of 2004 ("NEMBA");

87.3.3. fall within a National Freshwater Ecosystem Priority Area and a Strategic Water Source Area, determined by the South African National Biodiversity Institute ("SANBI") as part of the National Freshwater Ecosystem Project, funded by the Water Research Commission, the Council for Scientific and Industrial Research ("CSIR"), SANBI, the Department of Water Affairs (now the Department of Water and Sanitation) and DEA;

87.3.4. are identified in the National Protected Areas Expansion Strategy (2008) as an area that requires urgent legal protection;

87.3.5. that, in 2013, a comprehensive application was submitted by the Mpumalanga Tourism and Parks Agency ("MTPA"), at the invitation of the DMR's Regional Manager for Mpumalanga, to the Minister of Mineral Resources in terms of section 49 of the MPRDA to declare the Wakkerstroom Wetland Area as an area in which mining is prohibited;

87.3.6. that the Minister of Mineral Resources advised the National Council of Provinces in May 2012 that steps have been taken to prohibit mining in Wakkerstroom;

87.3.7. the express objection to the granting of the right by the Department of Water and Sanitation;

87.3.8. the express objection to the granting of the right by the MTPA;

87.3.9. the rejection by the Department of Environmental Affairs of AAV's final environmental impact assessment report (EIAR) in its first application

for an environmental authorisation (AAV has since submitted a second application for an environmental authorisation to DEA); and

87.3.10. ongoing and repeated objections from civil society organisations, including members of the multi-stakeholder Grassland Programme such as WWF South Africa and BirdLife South Africa.

88. The mining right was granted subject to a number of conditions pertaining to the environment, which conditions are unlawful, vague and unenforceable.

89. Furthermore, granting the mining right contravenes several National Environmental Management Principles (NEMPs) arising from section 2 of the National Evnironmental Management Act, 1998 (NEMA). In terms of section 2(b) of NEMA, NEMPs "serve as guidelines by reference to which any organ of state must exercise any function when taking any decision in terms of [NEMA] or any statutory provision concerning the protection of the environment." The NEMPs could not have been considered by the DMR when it took its decision to grant a mining right to AAV. The following NEMPs are of particular importance to this decision:

89.1. Sustainable development requires the consideration of all relevant factors including the following:[25]

89.1.1. That the disturbance of ecosystem and loss of biological diversity are avoided, or, where they cannot be altogether avoided, are minimised and remedied;[26]

[25] Section 2(4)(a) of NEMA.
[26] Section 2(4)(a)(i) of NEMA.

89.1.2. That pollution and degradation of the environment are avoided, or, where they cannot be altogether avoided, are minimised and remedied;[27] and

89.1.3. that a risk-averse and cautious approach is applied, which takes into account the current knowledge about the consequences of decisions and actions;[28]

89.2. the social, economic and environmental impacts of the activities, including disadvantages and benefits, must be considered, assessed and evaluated, and decisions must be appropriate in the light of such consideration and assessment;[29]

89.3. decisions must be taken in an open and transparent manner, and access to information must be provided in accordance with the law;[30]

89.4. there must be intergovernmental co-ordination and harmonisation of policies, legislation and actions relating to the environment;[31]

89.5. global and international responsibilities relating to the environment must be discharged in the national interest;[32]

[27] Section 2(4)(a)(ii) of NEMA.
[28] Section 2(4)(a)(vii) of NEMA.
[29] Section 2(4)(i) of NEMA.
[30] Section 2(4)k) of NEMA
[31] Section 2(4)(l) of NEMA.
[32] Section 2(4)(n) of NEMA.

89.6. the environment is held in public trust for the people, the beneficial use of environmental resources must serve the public interest and the environment must be protected as the people's common heritage;[33] and

89.7. sensitive, vulnerable, highly dynamic or stressed ecosystems such as coastal shores, estuaries, wetlands, and similar systems require attention in management and planning procedures, especially where they are subject to significant human resource usage and development pressure.[34]

90. It is also in conflict with NEMPAA and the Constitutional duty to promote conservation through reasonable legislative and other measures in a number of respects:-

90.1. the grant of the mining right completely undermines the declaration of the Mabola Protected Environment in terms of NEMPAA. The purposes of the declaration of the Mabola Protected Environment will not be able to be achieved if coal mining takes place in the Mabola Protected Environment;

90.2. the written permission of the Minister of Environmental Affairs and Mineral Resources have not been obtained in terms of NEMPAA for the grant of the mining right; and

90.3. it will result in protected area expansion targets not being met.

91. The grant of the mining right is also in conflict with stated national policy in relation to mining in Mpumalanga. The Minister of Mineral Resources and the DMR have stated

[33] Section 2(4)(o) of NEMA.
[34] Section 2(4)(r) of NEMA.

publicly (as outlined in paragraphs 52, 54 and 55 above) that steps have been taken to prohibit mining in the highly environmentally sensitive area of Mpumalanga.

92. On the available information placed before the DMR, the requirement in section 23(1)(d) of the MPRDA that a mining right will only be granted if the mining will not result in unacceptable pollution, ecological degradation or damage to the environment could not possibly have been met.

93. In the light of all the applicable environmental legislative provisions, government policies and adopted plans in respect of the Mabola Protected Environment, mining policy with regard to this area, and the environmental factors outlined above, the grant of the mining right is unlawful, irrational and unreasonable and relevant considerations were clearly not taken into account.

APPLICATION FOR THE SUSPENSION OF THE MINING RIGHT

94. An appeal in terms of section 96(1) of the MPRDA does not suspend the decision being appealed against.

95. Section 96(2) of the MPRDA vests the power in the appeal authority to suspend such a decision pending the outcome of the appeal.

96. The Appellants hereby formally lodge an application for the suspension of AAV's mining right pending the outcome of the appeal.

97. To the extent necessary, the contents of the appeal (together with the annexures) are expressly incorporated into this application for the suspension of AAV's mining right.

98. The evidence which was before the DMR when it granted AAV's mining right overwhelmingly establishes that the properties over which the mining right has been granted are extremely environmentally sensitive and irreplaceable. The properties fall within the Mabola Protected Environment declared as such under NEMPAA and all but two of them fall within the Wakkerstroom Wet Grasslands Area which is the subject of a pending application in terms of section 49 of the MPRDA to prohibit mining in that area.

99. When the mining right was granted to AAV, a number of conditions were imposed which reflect that the DMR acknowledges that the area is environmentally sensitive (as reflected in annexure "**13")**.

100. There will be no irreparable harm to AAV if the mining right is suspended pending the outcome of the appeal. Any harm which it may suffer would be purely financial.

101. In contrast, if AAV commences mining in this extremely environmentally sensitive area pending the outcome of the appeal, there will be irreparable harm and damage. The area is truly unique, irreplaceable and threatened.

CONCLUSION

102. In the circumstances, the grant of the mining right should be set aside in its entirety and suspended pending the outcome of the appeal.

SIGNED at **CAPE TOWN** on this the **30TH day of MARCH 2015** for and on behalf of the appellants

CENTRE FOR ENVIRONMENTAL RIGHTS
Attorneys for the appellants
Second Floor, Springfield Studios
1 Scott Road
Observatory
Cape Town
7925
Tel: 021 447 1647
Fax: 086 730 9098
Email: chorsfield@cer.org.za
Ref: Catherine Horsfield

TO: HONOURABLE MININSTER NGOAKO RAMATLHODI
MINISTER OF MINERAL RESOURCES
Block 2C, 4th Floor
Trevenna Campus
Corner of Francis Baard and Meintjies Streets
Sunnyside
Pretoria
Attention: Messrs Pieter Alberts and Johan Nieman
Legal services
Department of Mineral Resources
By courier

AND TO: DIRECTOR-GENERAL
Department of Mineral Resources
Block 2C, 4th Floor
Trevenna Campus
Corner of Francis Baard and Meintjies Streets
Sunnyside
Pretoria
Reference: Dr Thibedi Ramontja
By courier

AND TO: ATHA-AFRICA VENTURES (PTY) LTD
8th Floor, Sinosteel Plaza
159 Rivonia Road
Sandton
Reference: Mr Praveer Tripathi
By courier

Annexure 1

212

Unit B4, Arden Grove, Montague Gardens
Tel: +27 86 044 4930, Fax: +27 21 556 4127
Website: http://www.searchworks.co.za

ATHA-AFRICA VENTURES

CIPC Company

Search Information

Summary

Search Type	CIPC COMPANY
Search Description	ATHA-AFRICA VENTURES
Reference	MARTHAN
Date	21/02/2015

Company Information

Summary

Name	ATHA-AFRICA VENTURES
Type	PRIVATE COMPANY (PTY) LTD
Status	IN BUSINESS
Registration Number	2004/020746/07
Registration Date	26/07/2004

Active Director(s)

Director Name	ID Number	Director Status	Appointment Date
GAURAV ATHA	8211060000000	ACTIVE	15/12/2011
VISHAL ATHA	8211170000000	ACTIVE	15/12/2011
MORGAMBARY MUNSAMY	6205135088085	ACTIVE	15/12/2011

Resigned Director(s)

Director Name	ID Number	Director Status	Appointment Date
BHARAT ATHA	8605270000000	RESIGNED	30/03/2012
HEMEN BHAGAWATI	6412010000000	RESIGNED	16/07/2012
WENDY IRENE FAYE EDWARDS	4708130122082	RESIGNED	08/08/2006
CHRISTIAN GOUWS	5908285147004	RESIGNED	26/07/2004
ANGUS JAMES MACKENZIE	3801075059087	RESIGNED	12/03/2008
SAVANNAH NONHLANHLA MAZIYA	6802200330086	RESIGNED	26/07/2004
EUGENE PRETORIUS	5209115154082	RESIGNED	12/03/2008
STATUCOR	-	RESIGNED	15/12/2011
STATUCOR	-	RESIGNED	15/12/2011
VISHAL KUMAR VITHLANI	8212010000000	RESIGNED	16/07/2012
WBHO CONSTRUCTION (PTY) LTD	-	RESIGNED	25/05/2010
MICHAEL STANLEY WYLIE	4910155075084	RESIGNED	12/03/2008

Deceased Director(s)

Director Name	ID Number	Director Status	Appointment Date
No information available.			

Auditor(s)

Auditor Name	Profession Code	Status	Start Date
BDO SOUTH AFRICA INCORPORATED	CA	RESIGN	01/01/2010
BDO SPENCER STEWARD JHB INC	CA	NAME CHANGE	03/12/2009
DE VOS RICHARDS	CA	RESIGN	25/10/2006
DE VOS RICHARDS	CA	RESIGN	07/04/2005
IAPA JOHANNESBURG CHARTERED ACCOUNTANTS (SA)	SAICA	CURRENT	-
MALHERBE LOURENS	CA	RESIGN	-

2nd

Company Information

Summary	
Name	ATHA-AFRICA VENTURES
Short Name	-
Type	PRIVATE COMPANY (PTY) LTD
Tax Number	9585368154
Short Type	(PTY) LTD
Registration Number	2004/020746/07
CIPC Company Act Type	COMPANY (REGISTERED ACCORDING TO OLD CO ACT)
Type Date	26/07/2004
Old Registration No.	-
Registration Date	26/07/2004
Translated Name	-
Start Date	26/07/2004
Status	IN BUSINESS
Principal Description	CONTRACT MINING AND MINING INVESTMENTS AND SERVICES
Status Date	-
Details Withdrawn From Public	NO
Standard Industrial Classification	MINING OF COAL AND LIGNITE
Financial Year End	MARCH
Financial Effective Date	26/07/2004
Country of Origin	-
Country	-
Authorised Capital	-
ɔgion	GAUTENG
Issued Capital	-
Authorised Shares	-
Form Received Date	-
Issued Shares	-
Date on Form	-
Conversion Number	-
Registered Address	8TH FLOOR SINOSTEEL PLAZA, 159 RIVONIA ROAD, MORNINGSIDE, SANDTON, 2146
Postal Address	P.O. BOX 1569, SUNNINGHILL, 2157

Director(s)

Director 1 of 15	
Type	DIRECTOR
Status	RESIGNED
First Name	BHARAT
Surname	ATHA
ID Number	6605270000000
Gender	FEMALE
Date of Birth	27/05/1966
Age	28
⁻ppointment Date	30/03/2012
ɹsignation Date	12/06/2014
Member Contribution	0%
Member Size	0%
Residential Address	P O GUA KUTCHI COLONY DIST. SINGBHUM, JHARKHAND 833 213, INDIA, 0000
Postal Address	8TH FLOOR, 91 A/1, PARK STREET, KOLKATA 700016, 0000

Director(s) (continued)

Director 2 of 15

Type	DIRECTOR
Status	ACTIVE
First Name	GAURAV
Surname	ATHA
ID Number	8211060000000
Gender	FEMALE
Date of Birth	06/11/1982
Age	32
Appointment Date	15/12/2011
Resignation Date	15/12/2011
Member Contribution	0%
Member Size	0%
Residential Address	PO GUA , KUTCHI COLONY DIST, DIST : SINGBHUM, JHARKHAND 833 213, INDIA, 0000
Postal Address	6TH FLOOR, 91 A/1, PARK STREET, KOLKATA 700016, 0000

Director 3 of 15

Type	DIRECTOR
Status	ACTIVE
First Name	VISHAL
Surname	ATHA
ID Number	8211170000000
Gender	FEMALE
Date of Birth	17/11/1982
Age	32
Appointment Date	15/12/2011
Resignation Date	15/12/2011
Member Contribution	0%
Member Size	0%
Residential Address	16 , SARAT BOSE ROAD, KOLKATA, 700 020, 0000
Postal Address	6TH FLOOR, 91 A/1, PARK STREET, KOLKATA 700016, 0000

Director 4 of 15

Type	DIRECTOR
Status	RESIGNED
First Name	HEMEN
Surname	BHAGAWATI
ID Number	6412010000000
Gender	FEMALE
Date of Birth	01/12/1964
Age	50
Appointment Date	18/07/2012
Resignation Date	18/07/2012
Member Contribution	0%
Member Size	0%
Residential Address	6TH FLOOR 91 A/1 PARK STREET, KOLKATA, 700016, 0000
Postal Address	6TH FLOOR 91 A/1 PARK STREET, KOLKATA, 700016, 0000

~~2015~~

215

Director(s) (continued)

Director 5 of 15

Type	DIRECTOR
Status	RESIGNED
First Name	WENDY IRENE FAYE
Surname	EDWARDS
ID Number	4708130122082
Gender	FEMALE
Date of Birth	13/08/1947
Age	67
Appointment Date	08/06/2006
Resignation Date	15/12/2011
Member Contribution	0%
Member Size	0%
Residential Address	1309 DOONSIDE, LEICESTER ROAD, BEDFORDVIEW, 2007
Postal Address	P O BOX 87756, HOUGHTON, 2041

Director 6 of 15

Type	DIRECTOR
Status	RESIGNED
First Name	CHRISTIAN
Surname	GOUWS
ID Number	5908285147004
Gender	MALE
ate of Birth	28/08/1959
Age	55
Appointment Date	26/07/2004
Resignation Date	26/07/2004
Member Contribution	0%
Member Size	0%
Residential Address	329 ANCHELLA STREET, FAERIE GLEN, 0043
Postal Address	P O BOX 35465, MENLO PARK, 0102

Director 7 of 15

Type	DIRECTOR
Status	RESIGNED
First Name	ANGUS JAMES
Surname	MACKENZIE
ID Number	3801075059087
Gender	MALE
Date of Birth	07/01/1939
Age	77
Appointment Date	12/03/2008
Resignation Date	15/12/2011
lember Contribution	0%
lember Size	0%
Residential Address	51 FOURTH STREET, HYDE PARK, SANDTON, 2196
Postal Address	P O BOX 531, BERGVLEI, 2012

Director(s) (continued)

Director 8 of 15

Type	DIRECTOR
Status	RESIGNED
First Name	SAVANNAH NONHLANHLA
Surname	MAZIYA
ID Number	6802290330086
Gender	FEMALE
Date of Birth	29/02/1968
Age	46
Appointment Date	26/07/2004
Resignation Date	15/12/2011
Member Contribution	0%
Member Size	0%
Residential Address	HOUSE 51A, 86 - 4TH ROAD, HYDE PARK, 2196
Postal Address	P O BOX 41922, CRAIGHALL, 2024

Director 9 of 15

Type	DIRECTOR
Status	ACTIVE
First Name	MORGAMBARY
Surname	MUNSAMY
ID Number	6205135088085
Gender	MALE
Date of Birth	13/05/1962
Age	52
Appointment Date	15/12/2011
Resignation Date	15/12/2011
Member Contribution	0%
Member Size	0%
Residential Address	7 TANA PLACE, SUNNINGHILL, 2157
Postal Address	P O BOX 1569, SUNNINGHILL, 1569

Director 10 of 15

Type	DIRECTOR
Status	RESIGNED
First Name	EUGENE
Surname	PRETORIUS
ID Number	5209115154082
Gender	MALE
Date of Birth	11/09/1952
Age	62
Appointment Date	12/03/2008
Resignation Date	15/12/2011
Member Contribution	0%
Member Size	0%
Residential Address	20 SNYDERBERG STREET, AERORAND, MIDDELBURG, 1050
Postal Address	P O BOX 1146, MIDDELBURG, 1050

Director(s) (continued)

Director 11 of 15	
Type	SECRETARY COMPANY/CLOSE CORPORATION
Status	RESIGNED
First Name	-
Surname	STATUCOR
ID Number	-
Gender	-
Date of Birth	-
Age	-
Appointment Date	15/12/2011
Resignation Date	24/06/2013
Member Contribution	0%
Member Size	0%
Residential Address	-
Postal Address	P O BOX 531, BERGVLEI, 2012
Director 12 of 15	
Type	SECRETARY COMPANY/CLOSE CORPORATION
Status	RESIGNED
First Name	-
Surname	STATUCOR
ID Number	-
Gender	-
ate of Birth	-
Age	-
Appointment Date	15/12/2011
Resignation Date	24/06/2013
Member Contribution	0%
Member Size	0%
Residential Address	53 ANDRIES STREE, WYNBERG, 2090
Postal Address	P O BOX 531, BERGVLEI, 2012
Director 13 of 15	
Type	DIRECTOR
Status	RESIGNED
First Name	VISHAL KUMAR
Surname	VITHLANI
ID Number	8212010000000
Gender	FEMALE
Date of Birth	01/12/1982
Age	32
Appointment Date	18/07/2012
Resignation Date	18/07/2012
Member Contribution	0%
Member Size	0%
Residential Address	MATESHWARI, 6NAVUG SOC, NR GAYATRI DAIRY, RAMESHWAR CHOWK, RAJKOT , 360001, 0000
Postal Address	AVANI SIGNATURE 6TH FLOOR, 91A/1 PARK STREET, KOLKATA, 700016, 0000

Change History (continued)

History 41 of 81

Effective Date	20/10/2011
Change Type	REGISTERED ADDRESS CHANGE
Memo	53 ANDRIES STREETWYNBERG2090

History 42 of 81

Effective Date	26/07/2011
Change Type	CANCELLATION OF DEREGISTRATION PROCESS
Memo	ANNUAL RETURN NON COMPLIANCE - CANCELLATION OF DEREGISTRATION

History 43 of 81

Effective Date	17/08/2010
Change Type	REGISTERED ADDRESS CHANGE
Memo	53 ANDRIES STREETWYNBERG 2090

History 44 of 81

Effective Date	17/08/2010
Change Type	POSTAL ADDRESS CHANGE
Memo	PO BOX 531BERGVLEI 2012

History 45 of 81

Effective Date	30/06/2010
Change Type	CHANGE OF BOOK YEAR
Memo	2

History 46 of 81

Effective Date	25/05/2010
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	SURNAME=WBHO CONSTRUCTION (PTY) LTD FULL FORENAMES=NATIONALITY=SOUTH AFRICARSA RESIDENT=DATE OF APPOINTMENT=25 MAY 2010PROFESSION=DESIGNATION=SECRETARY (COMPANIES AND CC"S)RESIDENTIAL ADDRESS53 ANDRIES STREEWYNBERG 2090BUSINESS ADDRESS53 ANDRIES STREET 53

History 47 of 81

Effective Date	01/01/2010
Change Type	AUDITOR/ACC OFFICER CHANGE
Memo	BDO SPENCER STEWARD JHB INC13 WELLINGTON ROADPARKTOWN2193PRIVATE BAG X60500HOUGHTON2198STATUS : NAME CHANGE

History 48 of 81

Effective Date	01/01/2010
Change Type	AUDITOR/ACC OFFICER CHANGE
Memo	BDO SOUTH AFRICA INCORPORATED13 WELLINGTON ROADPARKTOWN2193PRIVATE BAG X60500HOUGHTON2198STATUS : CURRENT

History 49 of 81

Effective Date	03/12/2009
Change Type	AUDITOR/ACC OFFICER CHANGE
Memo	BDO SPENCER STEWARD JHB INC13 WELLINGTON ROADPARKTOWN2193PRIVATE BAG X60500HOUGHTON2198STATUS : ADDRESS CHANGE

History 50 of 81

Effective Date	03/12/2009
Change Type	AUDITOR/ACC OFFICER CHANGE
Memo	-

History 51 of 81

Effective Date	20/05/2008
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	SURNAME=MAZIYAFULL FORENAMES=SAVANNAH NONHLANHLAID NO=6802290230086STATUS :ACTIVENATURE OF CHANGE=ADDRESS UPDATE

Change History (continued)

History 52 of 81

Effective Date	18/04/2008
Change Type	REGISTERED ADDRESS CHANGE
Memo	CLEARVIEW OFFICE PARKUNIT 12A - BLOCK CWILHELMINA AVENUECONSTANTIA KLOOF1709

History 53 of 81

Effective Date	18/04/2008
Change Type	POSTAL ADDRESS CHANGE
Memo	PO BOX 6910WESTGATE1734

History 54 of 81

Effective Date	14/03/2008
Change Type	AUDITOR/ACC OFFICER CHANGE
Memo	CHANGE RECORDNAME: = DE VOS RICHARDSSTATUS: = CURRENT

History 55 of 81

Effective Date	14/03/2008
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	CHANGE RECORDSURNAME: = MAZIYAFIRST NAMES: = SAVANNAH NONHLANHLASTATUS: = ACTIVE

History 56 of 81

Effective Date	14/03/2008
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	CHANGE RECORDSURNAME: = EDWARDSFIRST NAMES: = WENDY IRENE FAYESTATUS: = ACTIVE

History 57 of 81

Effective Date	14/03/2008
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	CHANGE RECORDSURNAME: = WYLIEFIRST NAMES: = MICHAEL STANLEYSTATUS: = ACTIVE

History 58 of 81

Effective Date	14/03/2008
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	CHANGE RECORDSURNAME: = MACKENZIEFIRST NAMES: = ANGUS JAMESSTATUS: = ACTIVE

History 59 of 81

Effective Date	14/03/2008
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	CHANGE RECORDSURNAME: = PRETORIUSFIRST NAMES: = EUGENESTATUS: = ACTIVE

History 60 of 81

Effective Date	13/03/2008
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	SURNAME=WYLIEFULL FORENAMES=MICHAEL STANLEYID NO=4910155075084STATUS :ACTIVENATURE OF CHANGE=NEW APPOINTMENT

History 61 of 81

Effective Date	13/03/2008
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	SURNAME=MACKENZIEFULL FORENAMES=ANGUS JAMESID NO=3801075059087STATUS :ACTIVENATURE OF CHANGE=NEW APPOINTMENT

History 62 of 81

Effective Date	13/03/2008
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	SURNAME=PRETORIUSFULL FORENAMES=EUGENEID NO=5209115154082STATUS :ACTIVENATURE OF CHANGE=NEW APPOINTMENT

220

Change History (continued)

History 63 of 81

Effective Date	19/03/2007
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	SURNAME=MAZIYAFULL FORENAMES=SAVANNAH NONHLANHLAID NO=6802290330086STATUS :ACTIVENATURE OF CHANGE=NO CHANGE

History 64 of 81

Effective Date	19/03/2007
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	SURNAME=EDWARDSFULL FORENAMES=WENDY IRENE FAYEID NO=4708130122082STATUS :ACTIVENATURE OF CHANGE=NO CHANGE

History 65 of 81

Effective Date	22/09/2006
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	SURNAME=MAZIYAFULL FORENAMES=SAVANNAH NONHLANHLAID NO=6802290330086STATUS :ACTIVENATURE OF CHANGE=ADDRESS

History 66 of 81

Effective Date	22/09/2006
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	SURNAME=EDWARDSFULL FORENAMES=WENDY IRENE FAYEID NO=4708130122082STATUS :ACTIVENATURE OF CHANGE=APPOINTED

story 67 of 81

effective Date	28/07/2006
Change Type	NAME CHANGE
Memo	BUNENGI MINING AND CONSTRUCTION

History 68 of 81

Effective Date	28/07/2006
Change Type	NATURE OF BUSINESS CHANGE
Memo	25

History 69 of 81

Effective Date	18/11/2005
Change Type	REGISTERED ADDRESS CHANGE
Memo	PANORAMA OFFICE ESTATE-UNIT3KUDU STREETALLENS NEK1737

History 70 of 81

Effective Date	18/11/2005
Change Type	POSTAL ADDRESS CHANGE
Memo	PO BOX 6910WESTGATE1734

History 71 of 81

ffective Date	25/10/2005
Change Type	AUDITOR/ACC OFFICER CHANGE
Memo	PO BOX 6910WESTGATE1734STATUS : ADDRESS CHANGE

History 72 of 81

Effective Date	07/04/2005
Change Type	AUDITOR/ACC OFFICER CHANGE
Memo	DE VOS RICHARDSREPORTED MATERIAL IRREGULARITY ON : STATUS : RESIGN

History 73 of 81

Effective Date	07/04/2005
Change Type	AUDITOR/ACC OFFICER CHANGE
Memo	P O BOX 6910WESTGATE1734STATUS : ADDRESS CHANGE

Change History (continued)

History 74 of 81

Effective Date	07/04/2005
Change Type	AUDITOR/ACC OFFICER CHANGE
Memo	-

History 75 of 81

Effective Date	10/03/2005
Change Type	NAME CHANGE
Memo	GOLDEN POND TRADING 187

History 76 of 81

Effective Date	10/03/2005
Change Type	NATURE OF BUSINESS CHANGE
Memo	62

History 77 of 81

Effective Date	10/10/2004
Change Type	POSTAL ADDRESS CHANGE
Memo	P O BOX 35465MENLO PARK0102

History 78 of 81

Effective Date	10/10/2004
Change Type	REGISTERED ADDRESS CHANGE
Memo	287 LYNNWOOD ROADMENLO APRK0081

History 79 of 81

Effective Date	26/07/2004
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	CHANGE RECORDSURNAME = GOUWSFIRST NAMES = CHRISTIANSTATUS = RESIGNED

History 80 of 81

Effective Date	26/07/2004
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	ADD RECORDSURNAME = MAZIYA FIRST NAMES = SAVANNAH NONHLANHLASTATUS = ACTIVE

History 81 of 81

Effective Date	-
Change Type	AUDITOR/ACC OFFICER CHANGE
Memo	BDO SOUTH AFRICA INCORPORATED13 WELLINGTON ROADPARKTOWNJOHANNESBURG2193PRIVATE BAG X60500HOUGHTON2198STATUS : ADDRESS CHANGE

Report Information

Date of Information	21/02/2015
Print Date	21/02/2015
Generated By	MARTHAN THEART
Reference	MARTHAN
Report Type	CIPC COMPANY

21/02/2015 10:33:36

Annexure 2

223

THE PROVINCE OF MPUMALANGA
DIE PROVINSIE MPUMALANGA

Provincial Gazette Extraordinary
Buitengewone Provinsiale Koerant

(Registered as a newspaper) • (As 'n nuusblad geregistreer)

Vol. 21 NELSPRUIT, 22 JANUARY JANUARIE 2014 No. 2251

02251
9771682451008

400133—A

2251—1

224

CONTENTS • INHOUD

No.		Page No.	Gazette No.
	GENERAL NOTICES		
19	National Environmental Management: Protected Areas Act (57/2003): Declaration of the Chrissiesmeer Protected Environment	3	2251
20	do.: Declaration of the Mabola Protected Environment	9	2251
21	do.: Declaration of an area as part of the Kwamandlangampisi Protected Environment	11	2251
22	do.: Declaration of the Tafelkop Nature Reserve	13	2251
23	do.: Declaration of the Mndawe Trust Protected Environment	15	2251

225

GENERAL NOTICES

NOTICE 19 OF 2014

MPUMALANGA TOURISM AND PARKS AGENCY

DECLARATION OF THE CHRISSIESMEER PROTECTED ENVIRONMENT IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT: PROTECTED AREAS ACT, 2003 (ACT NO. 57 of 2003) (AS AMENDED)

Notice is hereby given by the Member of the Executive Council (MEC) for the Department of Economic Development, Environment and Tourism in Mpumalanga Province, Mrs. Y.N. Phosa, in terms of Section 28 (1)(a)(i) and (b) of the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003) (as amended) of the declaration of the **CHRISSIESMEER PROTECTED ENVIRONMENT**, located in the Chief Albert Luthuli Local Municipality and the Msukaligwa Local Municipality on the properties, the boundaries of which are as indicated in the Schedule hereto.

The purpose for the declaration of the Chrissiesmeer Protected Environment is as follows:

- To enable the owners of the land to take collective action to conserve biodiversity on their land and to seek legal recognition therefor (28)(2)(b);
- To protect the area if the area is sensitive to development due to its biological diversity, natural characteristics, scenic and landscape value and the provision of environmental goods and services (28)(2)(c)(i)(ii)(iv)(v);
- To protect a specific ecosystem (28)(2)(d)
- To ensure that the use of natural resources in the area is sustainable (28)(2)(e);

The Chrissiesmeer Protected Environment Landowners Association is, in terms of Section 38 (2) (b), assigned as the Management Authority of the Chrissiesmeer Protected Environment.

SCHEDULE: Description of the Chrissiesmeer Protected Environment

Property Description		Size	Title deed number
Farm Name	Ptn		
Appeldoorn 38 IT	R	385.4394	T31304/1966
Appeldoorn 38 IT	10	385.1814	T10647/1983
Appeldoorn 38 IT	4	297.4169	T10647/1983
Appeldoorn 38 IT	R/2	297.4131	T89780/1996
Bellevue 76 IT	2	511.6751	T28381/1996
Bellevue 76 IT	1	694.2934	T46360/1997
Bellevue 76 IT	R/3	513.9061	T3655/1996 T10719/2009
Bellevue 76 IT	4	202.7057	T44765/1995
Borderland 63 IT	R	215.5634	T9223/1986
Borderland 63 IT	1	65.0964	T59967/1980
Bothwell 90 IT	R/1	570.062	T33372/1975
Bothwell 90 IT	6	142.1815	T36846/1980
Bothwell 90 IT	5	85.6532	T63959/1990
Bothwell 90 IT	R	463.5645	T3569/1985
Bothwell 90 IT	R/8	268.0811	T152783/2001
Coalbank 129 IT	2	429.6967	T48334/1984
Coalbank 129 IT	4	428.269	T46676/1980
Coalbank 129 IT	5	428.2901	T46676/1980

De Goedverwachting 57 IT	3	291.1095	T101299/2004
Driefontein 114 IT	3	199.5722	T70804/2006
Driefontein 114 IT	4	157.088	T28775/2005
Driefontein 114 IT	10	171.3093	T70804/2006
Driefontein 114 IT	11	3.2281	T70804/2006
Driefontein 114 IT	5	251.9003	T52242/2007
Driefontein 114 IT	R/2	547.0637	T121828/1999
Driefontein 114 IT	6	251.7619	T52241/2007
Driefontein 114 IT	8	170.6283	T121727/1999 T121828/1999
Driefontein 114 IT	7	251.7533	T101525/1995
Driefontein 114 IT	9	81.3191	T101524/1995
Driefontein 114 IT	R	290.6512	T121827/1998
Edenvale 100 IT	R/1	520.9863	T19474/2008
Elandsfontein 34 IT	2	50.9323	T9223/1986
Fairview 62 IT	R/1	624.3504	T5295/1980
Fairview 62 IT	2	342.6128	T5295/1980
Fairview 62 IT	R	1006.4265	T52619/2006
Florence 78 IT	2	186.3685	T23496/1980
Florence 78 IT	3	454.0933	T117387/2001
Florence 78 IT	6	428.244	T137675/2001
Florence 78 IT	R/4	139.8888	T63959/1990
Florence 78 IT	7	282.6556	T63959/1990
Florence 78 IT	R	428.2923	T54985/1981
Florence 78 IT	1	510.7044	T38993/1989
Gemsbokheuwel 87 IT	R/1	351.6592	T66166/2002
Gemsbokheuwel 87 IT	R/2	129.9517	T68765/1988
Gemsbokheuwel 87 IT	4	101.2525	T68765/1988
Gemsbokheuwel 87 IT	R/5	129.9971	T56496/2002
Gemsbokheuwel 87 IT	6	342.6485	T68765/1988
Gemsbokheuwel 87 IT	7	866.542	T56496/2002
Gemsbokheuwel 87 IT	8	130.4212	T56496/2002
Gemsbokheuwel 87 IT	9	130.3601	T68765/1988
Gemsbokheuwel 87 IT	R	517.607	T13471/1966
Glentyan 64 IT	7	101.7613	T9395/1981
Glentyan 64 IT	R	230.2485	T24250/1995
Glentyan 64 IT	5	72.5313	T24250/1995
Glentyan 64 IT	R/1	205.5362	T20107/1992
Glentyan 64 IT	2	217.2796	T22833/1980
Glentyan 64 IT	4	211.3652	T22833/1980
Glentyan 64 IT	3	204.1197	T142959/1999
Glentyan 64 IT	8	230.2458	T16136/1996
Goedehoop 103 IT	R/1	198.002	T26903/1983
Goedehoop 103 IT	6	104.5633	T29945/2002
Goedehoop 103 IT	7	209.1269	T13812/1988
Goedehoop 103 IT	2	197.0024	T8100/2012
Goedehoop 103 IT	5	161.8845	T131556/1998

227

Goedehoop 103 IT	9	789.6099	T4545/2009
Goedehoop 103 IT	R	262.554	T8100/2012
Goedehoop 103 IT	3	505.3539	T2130/2013
Goedehoop 106 IT	R/1	540.0482	T70805/2006
Goedverwachting 81 IT	7	169.744	T6547/1995
Goedverwachting 81 IT	14	309.2081	T42277/2005
Grasdal 94 IT	1	1198.6109	T1364/2009
Hamilton 99 IT	R	317.545	T115310/1996
Hamilton 99 IT	R/2	172.1629	T9187/2008
Hamilton 99 IT	6	403.2139	T9187/2008
Harwar 58 IT	R	533.8605	T139127/2002
Harwar 58 IT	1	770.8788	T115540/2006
Iona 77 IT	R/6	254.5099	T15850/2008
Iona 77 IT	8	254.5097	T15849/2008
Iona 77 IT	9	254.5097	T15851/2008
Iona 77 IT	5	600.1426	T15848/2008
Iona 77 IT	R /1	207.3209	T9184/2008
Iona 77 IT	3	274.6655	T9184/2008
Iona 77 IT	4	149.8945	T9184/2008
Joubertsfontein 138 IT	R/1	339.7572	T48334/1984
Joubertsfontein 138 IT	R	724.2534	T23211/1980
Kelvinside 95 IT	5	411.478	T23401/1991
Kelvinside 95 IT	R/10	42.8266	T26735/1983
Kelvinside 95 IT	11	171.6538	T23401/1991
Kelvinside 95 IT	12	42.8266	T79358/2000
Knockdhu 93 IT	3	171.3064	T54084/2002
Knockdhu 93 IT	R/5	191.8677	T118810/2006
Knockdhu 93 IT	6	282.5271	T54084/2002
Knockdhu 93 IT	10	33.3789	T118812/2006
Knockdhu 93 IT	11	171.353	T118812/2006
Knockdhu 93 IT	14	227.5536	T65814/2003
Knockdhu 93 IT	R/1	428.266	T160344/2004
Knockdhu 93 IT	12	164.6582	T160344/2004
Knockdhu 93 IT	R	48.4807	T65815/2003
Knockdhu 93 IT	8	119.461	T65815/2003
Knockdhu 93 IT	R/9	171.263	T65815/2003
Knockdhu 93 IT	13	236.6836	T65815/2003
Lake Banagher 102 IT	4	355.8957	T19474/2008
Lake Banagher 102 IT	6	342.6118	T19474/2008
Lake Banagher 102 IT	R/1	342.6068	T2130/2013
Lake Banagher 102 IT	3	513.9201	T2130/2013
Lake Banagher 102 IT	5	342.6121	T2130/2013
Lake Chrissie 92 IT	2	228.0516	T81526/2002
Lake Chrissie 92 IT	4	228.0516	T81526/2002
Lake Chrissie 92 IT	7	114.0273	T81526/2002

228

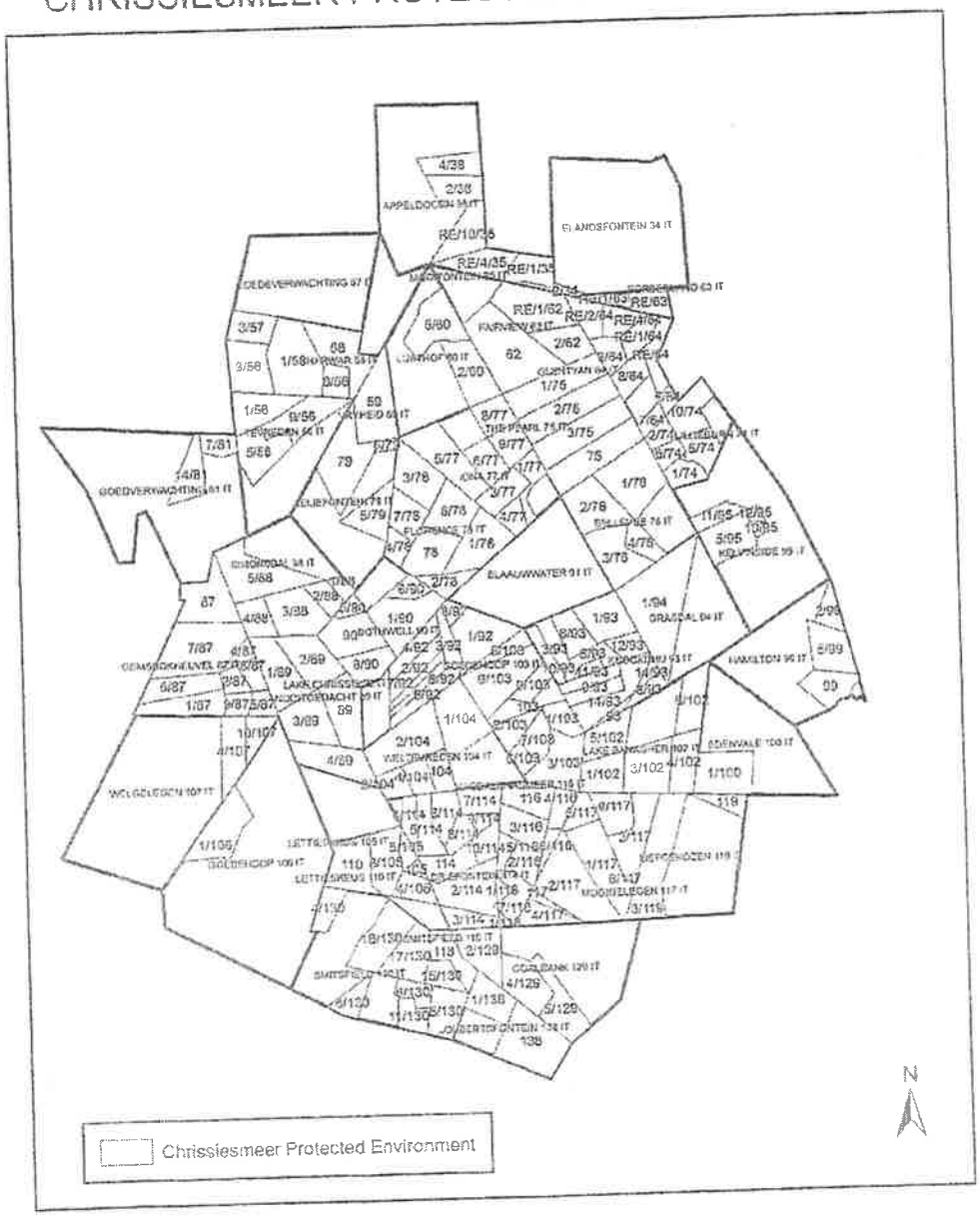
Lake Chrissie 92 IT	8	85,6532	T12628/2011
Lake Chrissie 92 IT	R/1	523.4482	T131556/1998
Lake Chrissie 92 IT	3	171.3064	T16851/2008
Lake Chrissie 92 IT	5	228.0516	T16852/2008
Lake Chrissie 92 IT	R/6	114.0244	T16852/2008
Leliefontein 79 IT	6	54.6529	T30809/1977
Leliefontein 79 IT	5	346.747	T18867/1992
Leliefontein 79 IT	R	667.3021	T15096/1983
Lettieskeus 105 IT	5	94.6739	T28775/2005
Lettieskeus 105 IT	R	43.5874	T121827/1999
Lettieskeus 105 IT	3	228.0359	T26382/1997
Lettieskeus 105 IT	4	197.2908	T26382/1997
Lettieskeus 105 IT	8	392.0831	T26382/1997
Lettieskeus 110 IT	0	464.476	T80908/2003
Liefgekozen 119 IT	R	152.4242	T6912/1994
Liefgekozen 119 IT	3	806.8531	T142383/2004
Lillieburn 74 IT	R/2	128.477	T9395/1981
Lillieburn 74 IT	R/5	241.1269	T9395/1981
Lillieburn 74 IT	6	128.4812	T9395/1981
Lillieburn 74 IT	10	342.6116	T9396/1981
Lillieburn 74 IT	R/1	183.8674	T9395/1981
Lusthof 60 IT	2	487.1687	T57141/1997
Lusthof 60 IT	5	513.9167	T18352/2008
Magdalenasmeer 116 IT	R/1	89.5634	T70804/2006
Magdalenasmeer 116 IT	R/2	214.4215	T70804/2006
Magdalenasmeer 116 IT	5	103.6389	T70804/2006
Magdalenasmeer 116 IT	7	225.7317	T70804/2006
Magdalenasmeer 116 IT	3	318.1674	T12825/1995
Magdalenasmeer 116 IT	R	318.1873	T121827/1999
Magdalenasmeer 116 IT	R/4	171.0052	T155493/2002
Magdalenasmeer 116 IT	6	85.5076	T69825/1991
Mooifontein 35 IT	4	328.9093	T14137/1999
Mooifontein 35 IT	R/1	278.5755	T112091/2005
Mooigelegen 117 IT	4	203.9974	T70804/2006
Mooigelegen 117 IT	R	61.7245	T70804/2006
Mooigelegen 117 IT	R/1	632.9771	T155492/2002
Mooigelegen 117 IT	2	806.8531	T69825/1991
Mooigelegen 117 IT	R/3	489.508	T142383/2004
Mooigelegen 117 IT	5	173.876	T155493/2002
Mooigelegen 117 IT	6	1.7131	T155492/2002
Mooigelegen 117 IT	9	315.632	T142383/2004
Nooitgedacht 89 IT	1	511.4781	T16487/2008
Nooitgedacht 89 IT	R	479.1112	T6077/2009
Nooitgedacht 89 IT	2	479.1112	T45107/1974
Nooitgedacht 89 IT	3	479.114	T33622/1973
Nooitgedacht 89 IT	4	479.1112	T33621/1973
Simonsdal 88 IT	3	513.9263	T5881/2008

229

Simonsdal 88 IT	5	700.132	T5882/2008
Simonsdal 88 IT	1	85.6532	T63959/1990
Simonsdal 88 IT	2	171.3064	T63959/1990
Simonsdal 88 IT	4	256.9596	T22654/1966
Smitfield 130 IT	17	398.2107	T101526/1995
Smitfield 130 IT	R/6	164.023	T111250/1996
Smitsfield 118IT	0	285.4696	T48334/1984
Smitsfield 130 IT	R	518.1233	T26382/1997
Smitsfield 130 IT	4	197.4335	T26382/1997
Smitsfield 130 IT	18	518.1234	T26382/1997
Smitsfield 130 IT	5	348.1774	T101527/1995
Smitsfield 130 IT	11	184.1544	T101527/1995
Smitsfield 130 IT	15	194.2598	T111250/1996
Smitsfield 130 IT	R/8	176.9295	T101524/1995
Tevreden 56 IT	8	187.859	T139127/2002
Tevreden 56 IT	3	479.7692	T101299/2004
Tevreden 56 IT	R/1	417.5265	T13468/1966
Tevreden 56 IT	R/5	428.266	T12810/1975
Tevreden 56 IT	9	428.2731	T12811/1975
The Pearl 75 IT	1	608.6459	T60591/1997
The Pearl 75 IT	2	607.581	T152612/2005
The Pearl 75 IT	3	606.5146	T63101/1997
The Pearl 75 IT	R	605.4239	T46360/1997
Vryheid 59 IT	0	612.6431	T30809/1977
Welgelegen 107 IT	R/4	376.5159	T94734/1998
Welgelegen 107 IT	10	188.2598	T94734/1998
Weltevreden 104 IT	R	189.7733	T61669/2006
Weltevreden 104 IT	4	173.9559	T61669/2006
Weltevreden 104 IT	2	676.1463	T28775/2005
Weltevreden 104 IT	3	173.9988	T28775/2005
Weltevreden 104 IT	R/1	606.9395	T29943/2002

230

CHRISSIESMEER PROTECTED ENVIRONMENT



231

NOTICE 20 OF 2014

MPUMALANGA TOURISM AND PARKS AGENCY

DECLARATION OF THE MABOLA PROTECTED ENVIRONMENT IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT: PROTECTED AREAS ACT, 2003 (ACT NO. 57 of 2003) (AS AMENDED)

Notice is hereby given by the Member of the Executive Council (MEC) for the Department of Economic Development, Environment and Tourism in Mpumalanga Province, Mrs. Y.N. Phosa, in terms of Section 28 (1)(a)(i) and (b) of the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003) (as amended) of the declaration of the **MABOLA PROTECTED ENVIRONMENT**, located in the Pixley ka Seme Local Municipality on the properties, the boundaries of which are as indicated in the Schedule hereto.

The purpose for the declaration of the Mabola Protected Environment is as follows:

- To enable the owners of the land to take collective action to conserve biodiversity on their land and to seek legal recognition therefor (28)(2)(b);
- To protect the area if the area is sensitive to development due to its biological diversity, natural characteristics, scenic and landscape value and the provision of environmental goods and services (28)(2)(c)(i)(ii)(iv)(v);
- To protect a specific ecosystem (28)(2)(d)
- To ensure that the use of natural resources in the area is sustainable (28)(2)(e);

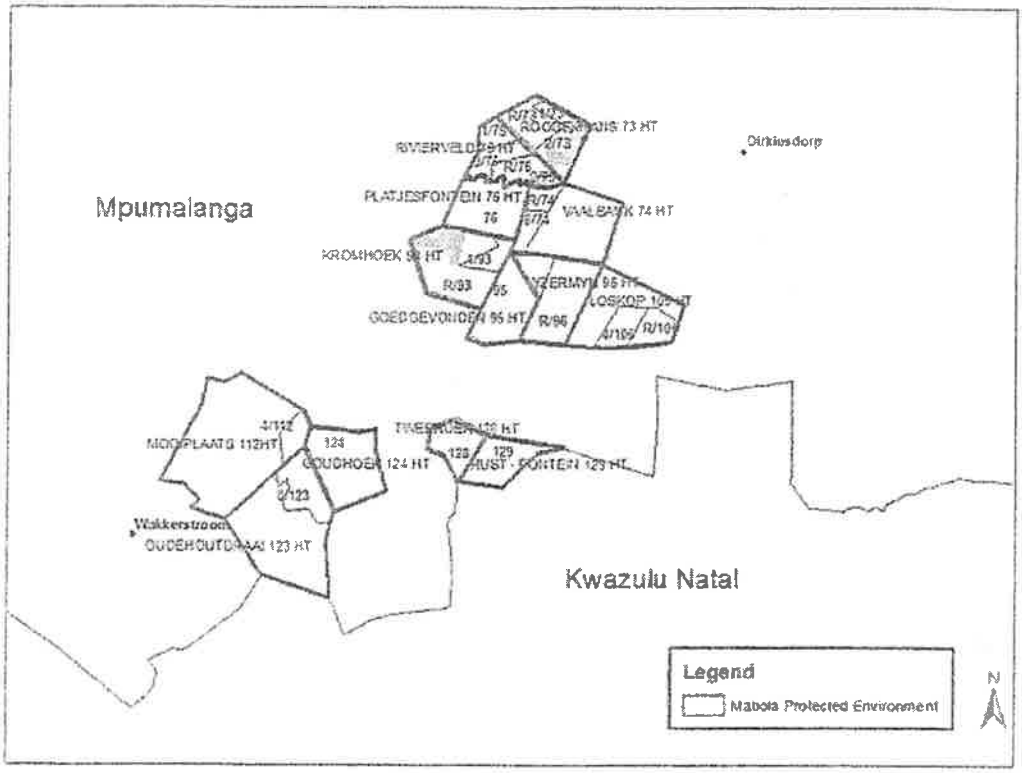
The Mabola Protected Environment Landowners Association is, in terms of Section 38 (2) (b), assigned as the Management Authority of the Mabola Protected Environment.

SCHEDULE: Description of the Mabola Protected Environment

Property Description	Title Deed No.	Size (ha)
Tweehoek 128 HT	T15244/1982	401.0126
Rust-fontein 129 HT	T15244/1982	550.0191
Portion 4 (a ptn of ptn 2) of Mooiplaats 112 HT	T17640/2006	209.6503
Remainder of Roodekrans 73 HT	T73729/1994	346.3515
Portion 1 of Roodekrans 73 HT	T73729/1994	131.9430
Portion 1 of Rivierveld 75 HT	T73729/1994	181.6131
Portion 3 of Rivierveld 75 HT	T73729/1994	238.6201
Portion 1 of Kromhoek 93 HT	T73729/1994	204.3073
Portion 2 of Roodekrans 73 HT	T22958/1969	313.3651
Remainder of Vaalbank 74 HT	T22956/1969	151.9488
Remainder of Rivierveld75 HT	T13749/1967	251.4366
Portion 2 of Rivierveld 75 HT	T22957/1969	54.7826
Remainder of Kromhoek 93 HT	T25588/1975	980.4206
Portion 8 of Vaalbank 74 HT	T22955/1969	151.9488
Goedgevonden 95 HT	T138593/2002	739.4455
Remainder of Yzermyn 96 HT	T36706/1984	826.1608
Platjesfontein 76 HT	T20591/1974	810.0351
Portion 4 of Loskop 105 HT	T10781/2012	259.9675
Remainder of Loskop 105 HT	T10781/2012	259.3989
Portion 8 of Oudehoutdraai 123 HT	T17066/1978	526.4819
Goud-hoek 124 HT	T110274/1998	989.3195

232

MABOLA PROTECTED ENVIRONMENT



NOTICE 21 OF 2014

MPUMALANGA TOURISM AND PARKS AGENCY

DECLARATION OF AN AREA AS PART OF THE KWAMANDLANGAMPISI PROTECTED ENVIRONMENT IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT: PROTECTED AREAS ACT, 2003 (ACT NO. 57 of 2003) (AS AMENDED)

Notice is hereby given by the Member of the Executive Council (MEC) for the Department of Economic Development, Environment and Tourism in Mpumalanga Province, Ms. Y.N. Phosa, in terms of Section 28 (1)(a)(ii) and (b) of the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003) (as amended) of the declaration of the areas as defined in the Schedule hereto to be part of the existing Kwamandlangampisi Protected Environment.

The purpose for the declaration of the Kwamandlangampisi Protected Environment is as follows:

- To enable the owners of the land to take collective action to conserve biodiversity on their land and to seek legal recognition therefor (28)(2)(b);
- To protect the area if the area is sensitive to development due to its biological diversity, natural characteristics, scenic and landscape value and the provision of environmental goods and services (28)(2)(c)(i)(ii)(iv)(v);
- To protect a specific ecosystem (28)(2)(d);
- To ensure that the use of natural resources in the area is sustainable (28)(2)(e).

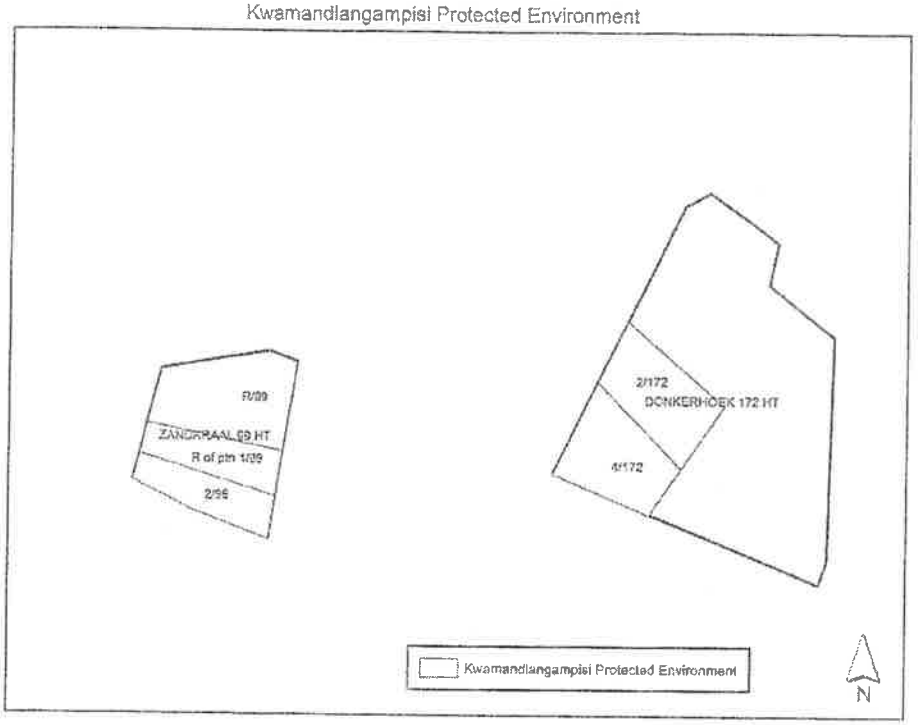
The Kwamandlangampisi Protected Environment Landowners Association is in terms of Section 38 (2) (b) assigned as the Management Authority of the Kwamandlangampisi Protected Environment.

SCHEDULE: Description of the Expanded Kwamandlangampisi Protected Environment

1. The Remainder of the farm Zaandkraal, No. 99, Situated in the Pixley ka Seme Local Municipality, Division of HT, Mpumalanga Province; In extent 859,2686 hectares; Title No. T56137/2005.
2. Portion 1 of the farm Zaandkraal, No. 99, Situated in the Pixley ka Seme Local Municipality, Division of HT, Mpumalanga Province; In extent 429,9335 hectares; Title No. T73729/1994.
3. Portion 2 of the farm Zaandrkraal 99, Situated in the Pixley ka Seme Local Municipality, Division of HT, Mpumalanga Province; In extent 429,6336 hectares; Title No. T14635/2005
4. Portion 4 of the farm Donkerhoek, No. 172, Situated in the Mkhondo Local Municipality, Division of HT, Mpumalanga Province; In extent 687,9158 hectares; Title No. T54902/1984.
5. Portion 2 of the farm Donkerhoek, No. 172, Situated in the Mkhondo Local Municipality, Division of HT, Mpumalanga Province; In extent 687,9158 hectares; Title No. T54900/1984.

234

Kwamandlangampisi Protected Environment



235

NOTICE 22 OF 2014

MPUMALANGA TOURISM AND PARKS AGENCY

DECLARATION OF THE TAFELKOP NATURE RESERVE IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT: PROTECTED AREAS ACT, 2003 (ACT NO. 57 of 2003) (AS AMENDED)

Notice is hereby given by the Member of the Executive Council (MEC) for the Department of Economic Development, Environment and Tourism in Mpumalanga Province, Mrs. Y.N. Phosa, in terms of Section 23 (1) (a) (i) and (b) of the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003) (as amended) of the declaration of the **TAFELKOP NATURE RESERVE** on the area defined in the Schedule hereto.

The purpose of the declaration of the Tafelkop Nature Reserve is as follows:

- To protect the area if the area has significant natural features or biodiversity (23)(2)(b)(i); and is in need of long-term protection for the maintenance of its biodiversity (23)(2)(b)(iii)

Mr. Izak Johannes Pringle is in terms of Section 38 (2) (a) assigned as the Management Authority of the Tafelkop Nature Reserve.

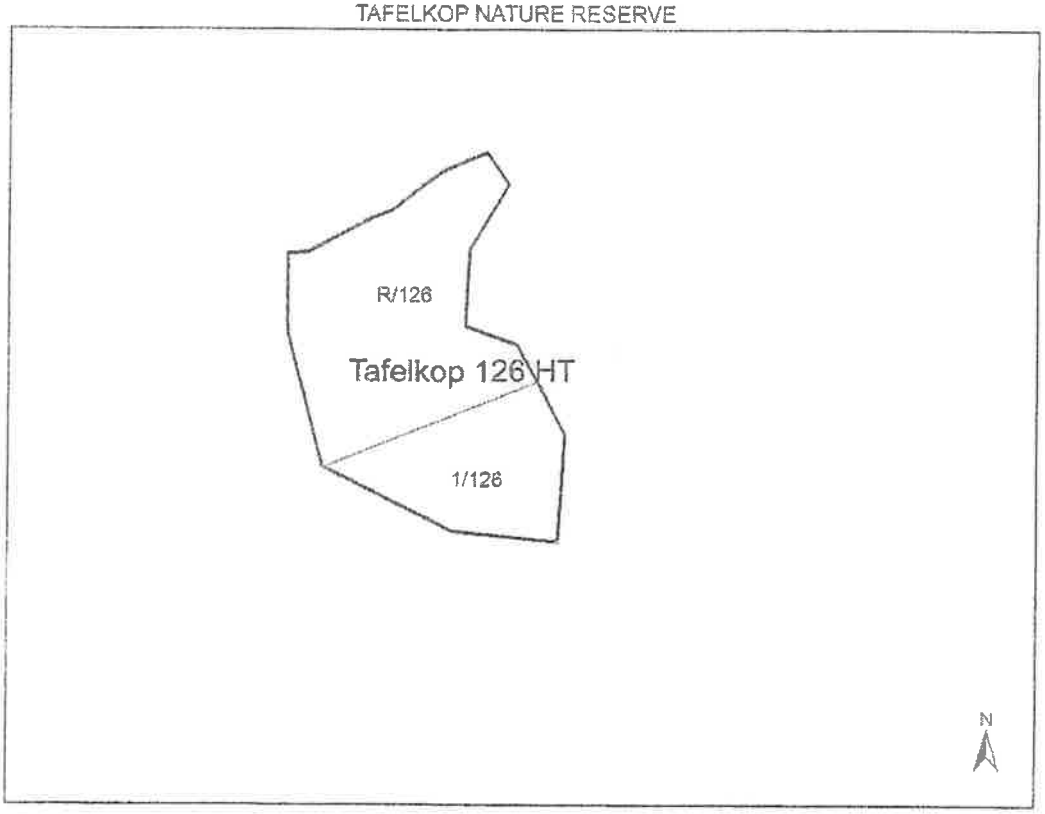
SCHEDULE: Description of the Tafelkop Nature Reserve

1. Remainder of the farm TAFELKOP 126, Division of HT, Mpumalanga Province; In extent: 805.7168 (Eight Zero Five comma Seven One Six Eight) Hectares; Held by Title Deed No. T000131361/2001

2. Portion 1 of the farm TAFELKOP 126, Division of HT, Mpumalanga Province; In extent: 402.8555 (Four Zero Two comma Eight Five Five Five) Hectares; Held by Title Deed No. T000131361/2001

236

TAFELKOP NATURE RESERVE



237

NOTICE 23 OF 2014

MPUMALANGA TOURISM AND PARKS AGENCY

DECLARATION OF THE MNDAWE TRUST PROTECTED ENVIRONMENT IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT: PROTECTED AREAS ACT, 2003 (ACT NO. 57 of 2003) (AS AMENDED)

Notice is hereby given by the Member of the Executive Council (MEC) for the Department of Economic Development, Environment and Tourism in Mpumalanga Province, Mrs. Y.N. Phosa, in terms of Section 28 (1)(a)(i) and (b) of the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003) (as amended) of the declaration of the **MNDAWE TRUST PROTECTED ENVIRONMENT**, located in the Thaba Chweu Local Municipality on the properties, the boundaries of which are as indicated in the Schedule hereto.

The purpose for the declaration of the Mndawe Trust Protected Environment is as follows:

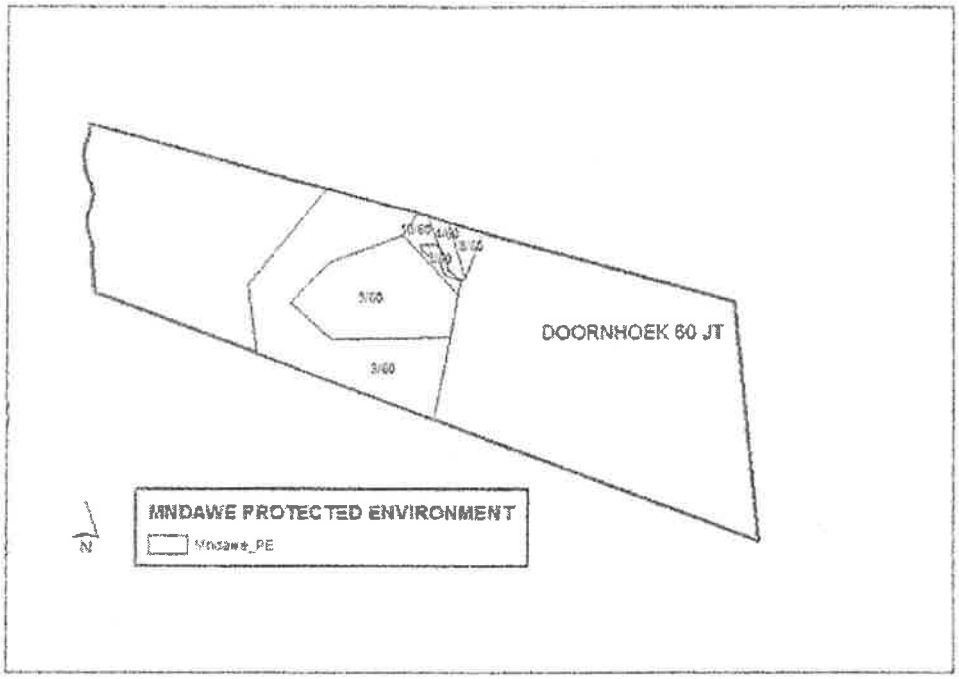
- To enable the owners of the land to take collective action to conserve biodiversity on their land and to seek legal recognition therefor (28)(2)(b);
- To ensure that the use of natural resources in the area is sustainable (28)(2)(e);

The Mndawe Trust is, in terms of Section 38 (2) (b), assigned as the Management Authority of the Mndawe Trust Protected Environment.

SCHEDULE: Description of the Mndawe Trust Protected Environment

Property Description	Title Deed No.	Size (ha)
Portion 2 of the farm DOORNHOEK 60;Division of JT; Mpumalanga Province	T45477/2007	9,6203
Portion 3 of the farm DOORNHOEK 60;Division of JT; Mpumalanga Province	T45477/2007	466,2606
Portion 4 of the farm DOORNHOEK 60;Division of JT; Mpumalanga Province	T45477/2007	21,4133
Portion 8 of the farm DOORNHOEK 60;Division of JT; Mpumalanga Province	T45477/2007	21,4133
Portion 9 of the farm DOORNHOEK 60;Division of JT; Mpumalanga Province	T45477/2007	286,3569
Portion 10 of the farm DOORNHOEK 60;Division of JT; Mpumalanga Province	T45477/2007	21,4133

238



Printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001. Tel. (012) 334-4507, 334-4511, 334-4509, 334-4515
Also available at the **Provincial Legislature: Mpumalanga**, Private Bag X11289, Room 114, Civic Centre Building, Nel Street, Nelspruit, 1200. Tel. (01311) 5-2133
Gedruk deur en verkrygbaar by die Staatsdrukker, Bosmanstraat, Privaat Sak X85, Pretoria, 0001. Tel. (012) 334-4507, 334-4511, 334-4509, 334-4515
Ook verkrygbaar by die **Provinsiale Wetgewer: Mpumalanga**, Privaat Sak X11289, Kamer 114, Burgersentrum, Nelstraat, Nelspruit, 1200. Tel. (01311) 5-2133

This gazette is also available free online at www.gpwonline.co.za

Annexure 3

MOTIVATION FOR THE DECLARATION OF THE MABOLA PROTECTED ENVIRONMENT IN SOUTHERN MPUMALANGA IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT: PROTECTED AREAS ACT

JANUARY 2013

240

TABLE OF CONTENTS

		Page
	Table of Contents	2
	Acronyms	3
1.	Purpose	4
2.	Background	4-5
3.	Legal Context	5-6
4.	Description of the Mabola Protected Environment	6
5.	Biological and Ecological Significance of the Mabola Protected Environment	7
5.1	Terrestrial Biodiversity Significance	7-8
5.2	Aquatic Biodiversity Significance	9
5.3	Mpumalanga Protected Area Expansion Strategy	10
5.4	Listed and Threatened Ecosystems	11
6	Consultation and Public Participation	12
7	Reasons for Declaration as a Protected Environment	13
8	Conclusion	13
	References	14
	Appendix 1: Description of Properties	15
	Appendix 2: MBCP Query	16

ACRONYM	DEFINITION
DEA	Department of Environmental Affairs (formerly the Department of Environmental Affairs and Tourism
DEAT	Department of Environmental Affairs and Tourism (former department now known as the Department of Environmental Affairs)
DEDET	Department of Economic Development, Environment and Tourism
IDP	Integrated Development Plan
MBCP	Mpumalanga Biodiversity Conservation Plan
MEC	Member of Executive Council responsible for protected areas (in the case of Mpumalanga this is the MEC for the Department of Economic Development, Environment and Tourism)
MPAES	Mpumalanga Protected Area Expansion Strategy
MTPA	Mpumalanga Tourism and Parks Agency
NEM:BA	National Environmental Management: Biodiversity Act (10 of 2004)
NEM:PAA	National Environmental Management: Protected Areas Act (57 of 2003)
NPAES	National Protected Area Expansion Strategy
SANBI	South African National Biodiversity Institute (a parastatal of DEA)
WWF-SA	World Wide Fund for Nature - South Africa

242

1. Purpose

The National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003) ("the Act") makes provision for the declaration of various types of protected areas, one of which is a Protected Environment. The Act has as one of its aims the protection and conservation of ecologically viable areas representative of South Africa's biological diversity and its natural landscapes and seascapes.

The following motivation provides supporting information and documentation for the declaration of the Mabola Protected Environment, located within the South-Eastern part of the Mpumalanga Province within the Pixley ka Seme Local municipality.

2. Background

The National Protected Area Expansion Strategy (SANBI & DEAT, 2008) identifies the area of the proposed Mabola Protected Environment as part of a larger area identified for protected area expansion within the grassland biome.

The area has also been identified within the Mpumalanga Protected Area Expansion Strategy (MTPA, 2009) as an important zone for protected area expansion and contains vast un-fragmented grasslands and irreplaceable biodiversity features in terms of the Mpumalanga Biodiversity Conservation Plan (MTPA, 2006).

The area is also a critically important and high yielding water catchment. Most of the properties are close or adjacent to the declared KwaMandlangampisi Protected Environment (KPE) and are strategically positioned to link and form a corridor with other properties to the KPE.

The vision is to develop the area for eco-tourism development in line with the objectives contained within the IDP of the Pixley ka Seme Local Municipality.

The envisaged benefits of a broader expansion of protected areas within this region are a well managed natural environment and livestock farming sector and economic development and job creation through tourism, wildlife enterprises and rural recreational developments.

The proposed Protected Environment forms part of a broader project of the National Grasslands Programme, under the auspices of the South African National Biodiversity Institute (SANBI) and the Department of Environmental Affairs (DEA). The objectives of the programme are to demonstrate the mainstreaming of biodiversity conservation into the agriculture sector by securing the conservation of the area and by promoting agricultural and other land use practices that are compatible with biodiversity conservation. The ultimate objective is to ensure that grasslands conservation is ensured whilst livelihoods from livestock farming and tourism are maintained.

2MN

243

All of the major environmental NGO's are actively working within the Wakkerstroom region on account of the biodiversity significance of this area. This includes WWF-SA, Birdlife South Africa and the Endangered Wildlife Trust.

The Mpumalanga Tourism and Parks Agency (MTPA) together with WWF-SA has undertaken biodiversity site assessments for all of the properties proposed for inclusion within the Mabola Protected Environment in order to declare these properties as a Protected Environment in terms of the Act. Significant progress has been made in this regard and the landowners of these properties have consented in writing on the allocated category-Protected Environment. The MTPA, together with its partners SANBI and WWF-SA have over the previous year been in the process of engaging landowners within the proposed Mabola Protected Environment in order to prepare the necessary documentation for the declaration of the Protected Environment.

Recently, various prospecting permits have been granted within the area for torbanite on Kromhoek and Goedgevonden properties by Kangra and Bongani Mining. A mining right has also been granted around 2006 in Loskop property to Rodely Coal Mining, so the lower lying area (mining area) will be excluded from the Protected Environment. Prospecting has been done 30 – 40 years ago on some of the properties. Mining for torbanite will have serious consequences for the sustainability of the current livestock farming enterprises, water resources and sensitive wetlands within the area, as well as the current eco-tourism activities and the proposed nature conservation land use.

The MTPA has also met on various occasions with the Department of Minerals to request the rescinding of the respective prospecting permits on these areas in order to proceed with the declaration of the protected environment.

3. Legal Context

Section 28 (1) of the Protected Areas Act (Act 57 of 2003) *(hereafter referred to as the Act)* provides for the declaration of a defined area as a Protected Environment in order to:

'to enable owners of land to take collective action to conserve biodiversity in their land and to seek legal recognition (S.28 (2) (b))

'to ensure that the use of natural resources in the area is sustainable (S.28 (2) (e))

The area defined in this motivation for declaration as a Protected Environment has been identified by the Mpumalanga Tourism and Parks Agency (MTPA) for declaration as a Protected Environment in terms of Section 28 of the Act.

The Minister or MEC may by Notice in the Gazette declare any area specified in the Notice as a Protected Environment (S 28 (1) (a) (i)).

244

A Notice to declare an area as a Protected Environment in respect of private land may be issued if the owner has requested or consented to a declaration as contemplated in terms of the act (S 28 (3)).

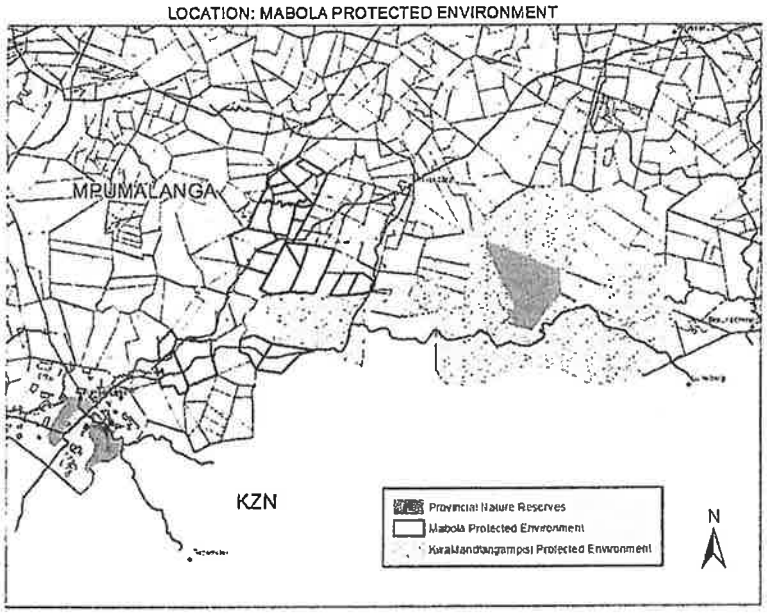
The MEC must also give the owner notice in writing in terms of Section 33 of the Act of the intention to declare the area a Protected Environment and must provide for a period of representations or objections within a prescribed period of the intended declaration.

4. Description of the Mabola Protected Environment

The Mabola Protected Environment is located within Southern Mpumalanga; primarily within the Pixley ka Seme local municipality (Figure 1).The Northern boundary is located to the north of the R 543 between Piet Retief and Wakkerstroom. The southern boundary is the Mpumalanga - KZN provincial boundary.

The proposed Protected Environment comprises of 22 properties of a total size of 8 772 hectares. The properties proposed for inclusion within the Protected Environment are described in Appendix 1.

Figure 1: Location of the Mabola Protected Environment



245

5. Biodiversity and Ecological Significance of the Mabola Protected Environment

A broad view of southern Mpumalanga shows that it is widely recognised as the site of some of the most sensitive and unique biodiversity in the country. The area is acknowledged as having high biodiversity irreplaceable within the Mpumalanga Biodiversity Conservation Plan. The National Spatial Biodiversity Assessment (Driver et. al. 2005) also identifies the area as important for biodiversity conservation and the National Protected Areas Expansion Strategy (SANBI & DEAT 2008) as well as the Mpumalanga Protected Area Expansion Strategy (MTPA, 2009) identifies the area as important for protected area expansion on account of the largely un-fragmented and intact grassland ecosystem.

5.1 Terrestrial Biodiversity significance

The properties within the proposed Protected Environment are categorised as 22% Irreplaceable, 24% Highly Significant and about 40% as Important and Necessary within the Mpumalanga Biodiversity Conservation Plan (figure 2).

This implies that quantifiable targets for the conservation of specific terrestrial biodiversity features for the province cannot be met within any other land other than within the protected environment.

The key biodiversity features driving the high irreplaceability of the area are due to the presence of threatened species, the summit escarpment, large montane grassland patch, important forest patches, critical water sub-catchments and an expansion of existing formal protected areas within the region, namely the KwaMandlangampisi Protected Environment and the Paardeplaats Nature Reserve.

The area is important in meeting targets for various biodiversity features within the MBCP (Appendix 2). The proposed protected environment will significantly conserve two important vegetation types, namely the Wakkerstroom montane grasslands and Paulpietersburg moist grassland, both of which are poorly represented in protected areas.

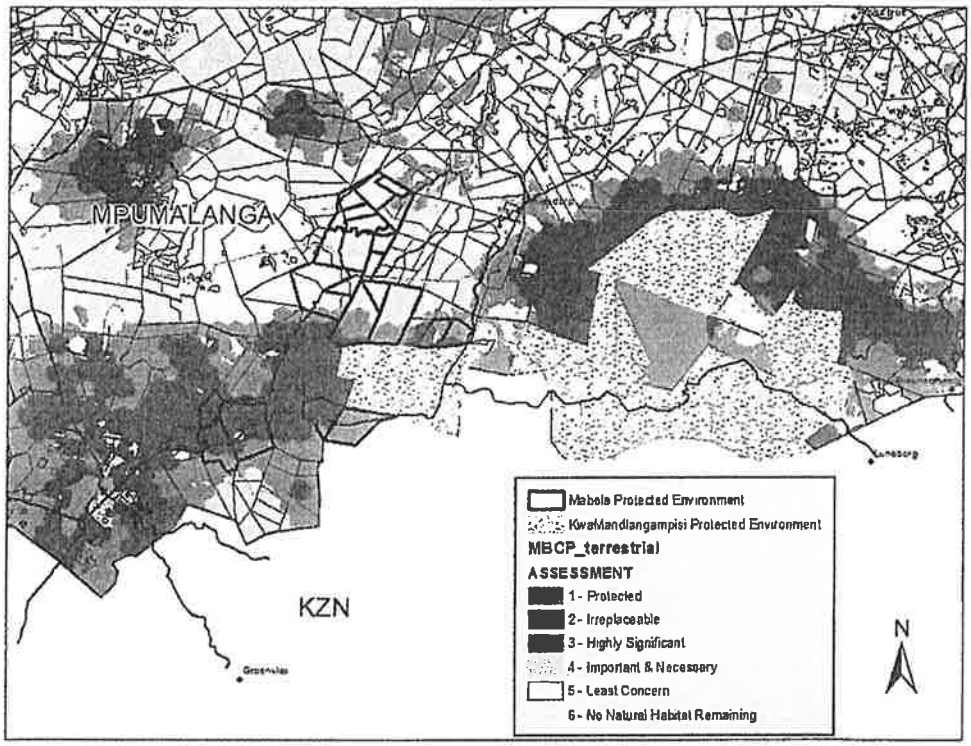
Species of conservation concern occurring within the area include all three species of cranes occurring in South Africa, namely the Blue Crane (*Anthropoides paradiseus),* the Wattled Crane (*Grus carunculatus*) and the Grey Crowned Crane (*Balearica regulorum*). The Wattled Crane is classified as endangered and the Blue Crane is endemic to South Africa. A large and viable population of Oribi (*Ourebia ouribi*) also occurs on these properties.

The properties contribute the following towards conservation targets within the Mpumalanga Biodiversity Conservation Plan:

Name	Target (ha)	Current % of Target Protected	Protected Status	Hectares	Proportion of Target (%)
Northern KZN Misltbelt Forest	2054	206.092	Poorly Protected	59	2.88
Wakkerstroom Montane Grassland	60839	2845.101	Hardly Protected	4917	8.08
Eastern Highveld Grassland	298223	2065.088	Hardly Protected	115	0.038
Paulpietersburg Moist Grassland	30924	975.835	Hardly Protected	2711	8.77

Figure 2: Terrestrial Biodiversity significance of the Mabola Protected Environment (Source: MTPA, 2006)

MBCP: MABOLA PROTECTED ENVIRONMENT



247

5.2 Aquatic Biodiversity Significance

The aquatic biodiversity significance of these properties includes some areas which are 84% irreplaceable and mostly highly significant according to the MBCP (figure 3).

This is due to the fact that the aquatic biodiversity targets have been selected in healthy sub-catchments of which this area qualifies. The area is also identified as important for water yield within the larger primary water catchment and as a freshwater ecosystem priority area.

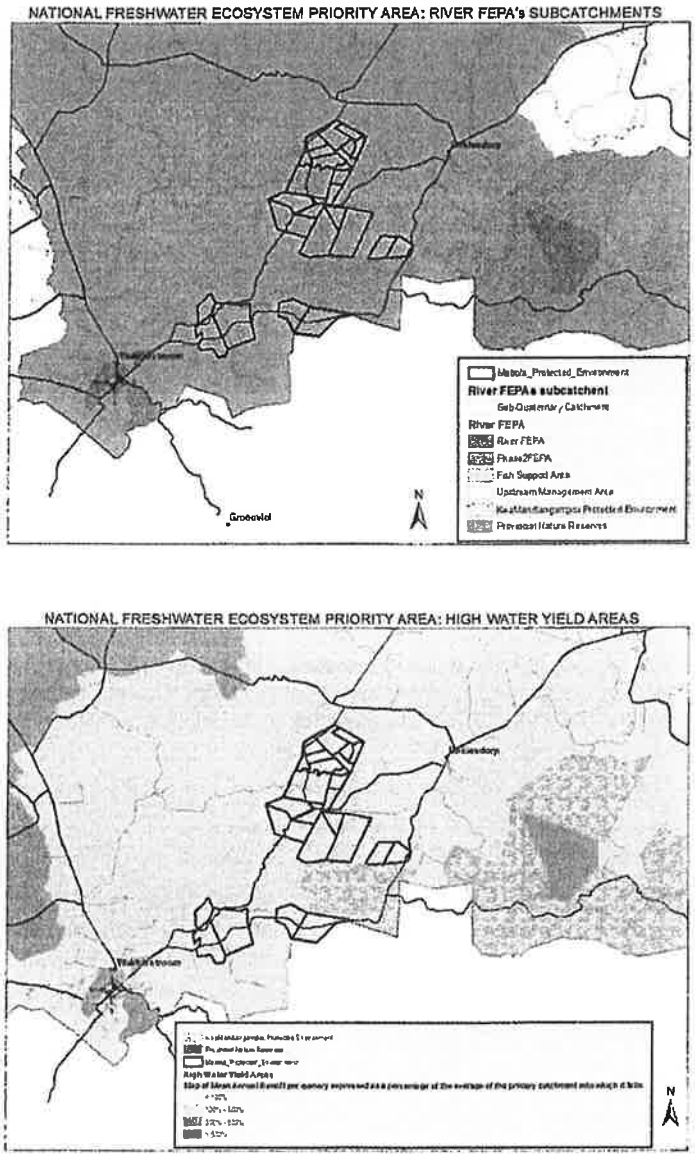


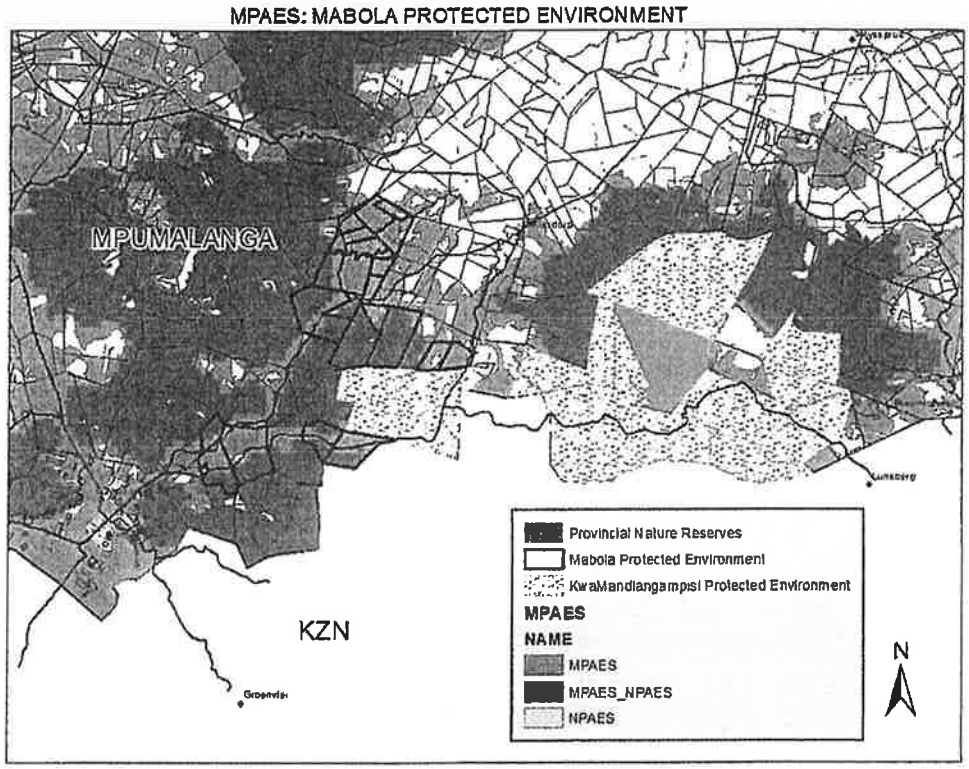
Figure 3: National Freshwater Ecosystem Priority Areas of Mabola Protected Environment (Source: WRC, 2011)

248

5.3 Mpumalanga Protected Area Expansion Strategy

The properties within the Mabola Protected Environment are identified as mainly priority 1 and priority 2 areas for protected area expansion within the Mpumalanga Protected Area Expansion Strategy (figure 4). These categories reflect the biodiversity significance of the area for the province in terms of the MBCP and the priorities for protected area expansion within the National Protected Area Expansion Strategy.

Figure 4: Priority for protected area expansion of the Mabola Protected Environment (Source: MTPA, 2009)



The relative proportion of the proposed PE towards Protected Area Expansion targets as per the MPAES is as follows:

Priority	Name	Hectares	Proportion of Total PE (%)
1	MPAES & NPAES	4808	56
2	MPAES	3703	43
3	NPAES	13	1

5.4 Listed and Threatened Ecosystems

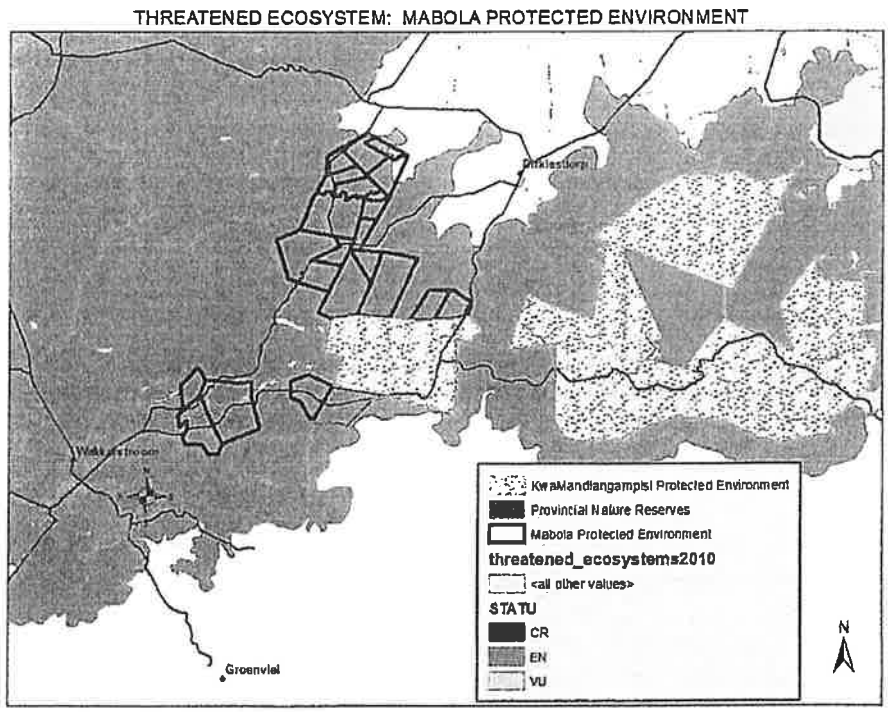
Section 51 of the National Environmental Management: Biodiversity Act (Act 10 of 2004) provides for the protection of ecosystems that are threatened or in need of protection to ensure the maintenance of their ecological integrity. In terms of Section 52 of the NEM:BA the Minister of DEA may publish in the gazette a national list of ecosystems that are threatened and in need of protection.

The Mabola Protected Environment falls within an area listed in terms of Section 52 of NEM: BA as an endangered ecosystem – (The Wakkerstroom/Luneburg Grasslands Threatened Ecosystem), thus being an ecosystem that has undergone degradation of ecological structure, function or composition as a result of human intervention, although not critically endangered.

The implications for development within these listed ecosystems are that more rigid measures are applied in order to receive environmental authorisations for specific development activities within the listed ecosystem.

From this perspective the Mabola Protected Environment will afford additional protection for this endangered ecosystem.

Figure 5: Locality of Mabola Protected Environment in relation to listed threatened ecosystems (DEA, 2011)



250

6. Consultation and Public Participation

To date all of the properties within the proposed Mabola Protected Environment have had on site biodiversity assessments in order to determine the conservation status and management issues to be addressed. All of the properties meet the requirements of the NEM:PAA for declaration as a Protected Environment.

Landowners have been consulted and engaged extensively on the process of the biodiversity assessments conducted on the various properties and in developing good management practices within the area.

All landowners within the proposed Mabola Protected Environment have provided written consents to have the respective properties declared as a Protected Environment.

The Pixley ka Seme Local Municipality is represented on the Luneburg-Wakkerstroom Agriculture and Conservation Project Task Team and the municipality is in support of the project. The Pixley ka Seme Local Municipality, in particular the IDP Manager, has been consulted on various occasions regarding the intention to declare the Protected Environment.

Further consultation is to be undertaken as part of the process as required in terms of the NEM:PAA. The MTPA will on behalf of the MEC initiate and conclude a public participation and consultation process required by section 32 and 33 of the Act, namely:

- Publish Notice of Intent to declare the PE in two national newspapers
- Publish Notice of Intent to declare the PE in the government gazette.
- Allow 60 days comments period
- Consider all representations and objections
- Consult the Minister (DEA) and all other national organs of state affected by the proposed declaration
- Consult the Pixley ka Seme Local Municipality.
- Consult all provincial organs of state affected by the proposed declaration.
- Consult any lawful occupier with a right in land in any part of the area affected.

All representations and / or objections to the proposed Mabola Protected Environment will be dealt with in accordance with the Act in the prescribed manner and will be submitted to the MEC for consideration.

References

a) Driver, A, Maze, K, Rouget, M, Lombard, AT, Nel, J, Turpie, JK, Cowling, RM, Desmet, P, Goodman, P, Harris, J, Jonas, Z, Reyers, B, Sink, K & Strauss, T. (2005). National Spatial Biodiversity Assessment 2004: Priorities for Biodiversity Conservation in South Africa. *Strelitzia* 17. SANBI. Pretoria.

b) Department of Environmental Affairs, Government Notice, Republic of South Africa (2011). National Environmental Biodiversity Act (10 of 2004): National list of ecosystems that are threatened and in need of protection.

c) Mpumalanga Tourism and Parks Agency (2006). *Mpumalanga Biodiversity Conservation Plan.* Unpublished Report, Mpumalanga Tourism and Parks Agency, Nelspruit.

d) Mpumalanga Tourism and Parks Agency (2009). Mpumalanga Protected Area Expansion Strategy. Unpublished Report. Mpumalanga Tourism and Parks Agency, Nelspruit.

e) SANBI & DEAT, (2008). *The National Protected Area Expansion Strategy, 2008-2012. A Framework for Implementation.* Unpublished Report, South African National Biodiversity Institute (SANBI) and the Department of Environmental Affairs and Tourism (DEAT). Pretoria.

252

Appendix 1: Description of properties of the proposed Mabola Protected Environment

Property Description	Title Deed No.	Owner Name	Size (ha)
Tweehoek 128 HT	T15244/1982	Oskar Heinrich Klingenberg	401.0126
Rust-fontein 129 HT	T15244/1982	Oskar Heinrich Klingenberg	550.0191
Ptn. 4 (a ptn of ptn 2) of Mooiplaats 112 HT	T17640/2008	Danie Zietsman Family Trust	209.8503
Remainder of Roodekrans 73 HT	T73729/1994	Thys Uys Trust	346.3515
Portion 1 of Roodekrans 73 HT	T73729/1994	Thys Uys Trust	131.943
Portion 1 of Rivierveld 75 HT	T73729/1994	Thys Uys Trust	181.6131
Portion 3 of Rivierveld 75 HT	T73729/1994	Thys Uys Trust	238.6201
Portion 1 of Kromhoek 93 HT	T73729/1994	Thys Uys Trust	204.3073
Ptn 2 of Roodekrans 73 HT	T22958/1969	Pierre Willian Bruwer Uys	313.3651
Remainder of Vaalbank 74 HT	T22956/1969	Pierre Willian Bruwer Uys	151.9488
Remainder of Rivierveld75 HT	T13749/1967	Pierre Willian Bruwer Uys	251.4366
Ptn 2 of Rivierveld 75 HT	T22957/1969	Pierre Willian Bruwer Uys	54.7826
Remainder of Kromhoek 93 HT	T25588/1975	Pierre Willian Bruwer Uys	980.4206
Ptn. 8 of Vaalbank 74 HT	T22955/1969	Pierre Willian Bruwer Uys	151.9488
Goedgevonden 95 HT	T138593/2002	Pierre Willian Bruwer Uys	739.4455
Ptn 1 of Yzermyn 96 HT	T138593/2002	Pierre Willian Bruwer Uys	193.8289
Remainder of Yzermyn 96 HT	T136706/1984	Stephanus Petrus Malan	826.1608
Platjesfontein 76 HT	T20591/1974	Pierre Willian Bruwer Uys	810.0351
ptn. 4 of Loskop 105 HT	T10781/2012	Oudezicht Trust	259.9675
Remainder of Loskop 105 HT	T10781/2012	Oudezicht Trust	259.8989
ptn. 8 of Oudehoutdraai 123 HT	T17066/1978	Stephanus Petrus Malan	526.4819
Goudhoek 124 Ht	T110274/1998	Danie Zietsman Family Trust	989.3195

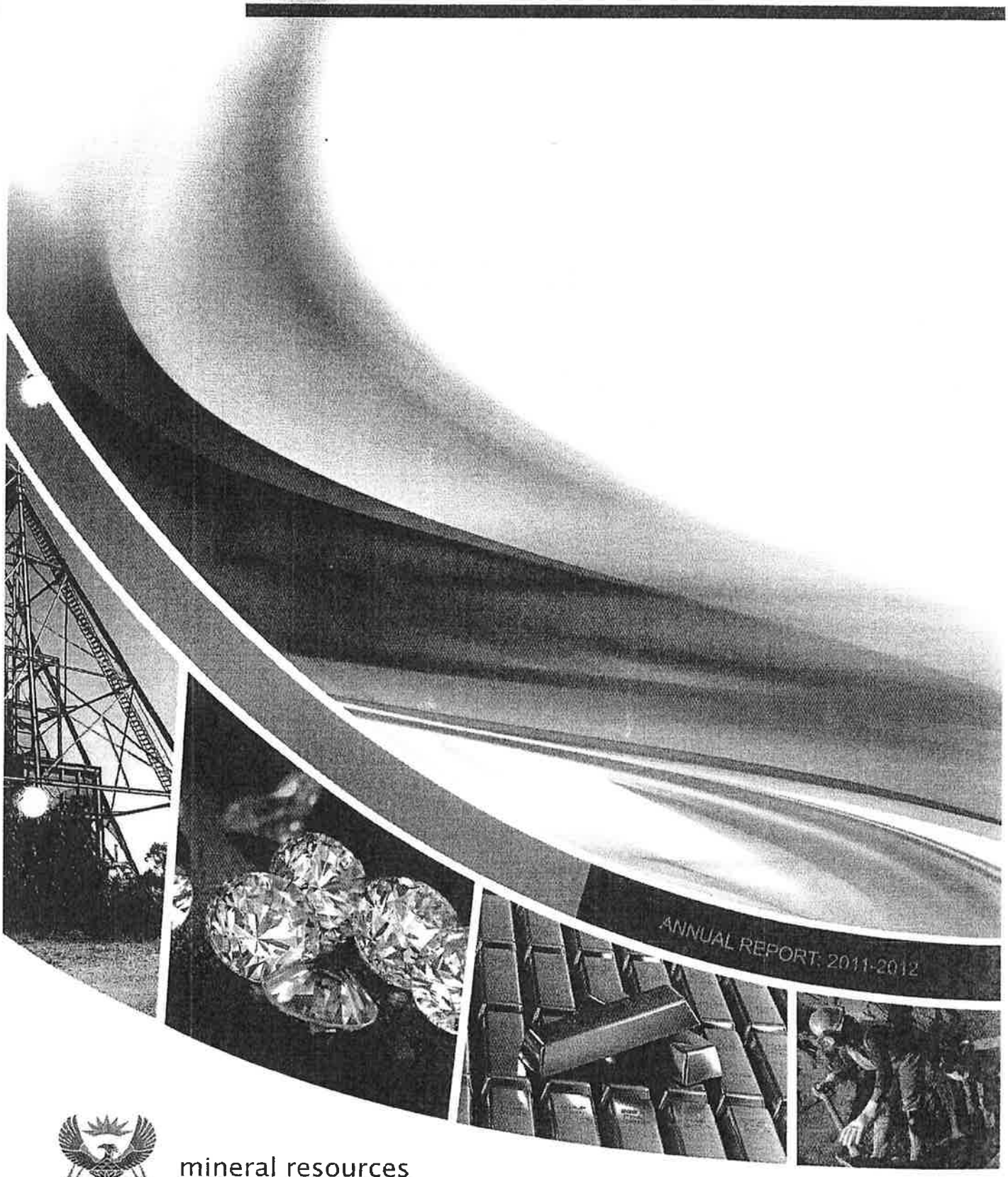
Appendix 2: MBCP Query for proposed Mabola Protected Environment

Type	Name	Target	Required	Selected available
Vegetation	Eastern Highveld Grassland	298223	296449	115
Vegetation	Paulpietersburg Moist Grassland	30924	30020	2711
Vegetation	Wakkerstroom Montane Grassland	60839	58742	4917
Vegetation	Northern KZN Misltbelt Forest	2054	1854	59
Mammal	Chrysospalax villosus	1324	0	2255
Mammal	Georychus capensis (yatesi)	2394	2261	893
Bird	Rudd's Lark known	47332	44571	1070
Bird	Rudd's Lark - modelled	161705	157847	1291
Bird	Wattled Crane (feeding)	94248	66556	2753
Bird	Botha's Lark - modelled	92964	92734	1960
Bird	Blue Korhaan - modelled	320000	316551	7340
Bird	Blue Crane (breeding)	80823	76896	951
Bird	Blue Crane (foraging)	506120	473313	2822
Bird	Grey Crowned Crane (foraging)	374696	353228	2884
Bird	Southern Bald Ibis (nesting)	7561	7319	51
Bird	Striped Flufftail - modelled	30429	0	4837
Bird	Yellowbreasted pipit (foraging)	101075	96881	2134
Bird	Yellowbreasted pipit - known farm	21928	19158	796
Frog	Bufo gariepensis nubicolus	480	0	648
Butterfly	Aloeides merces	520	520	76
Butterfly	Aloeides titei	5	4	2
Butterfly	Dingana alaedeus	5	5	2
Plant	Alepidea amatymbica var. amatymbica_mod	2246	0	102
Plant	Aloe modesta	5	3	1
Plant	Brachystema remotum mod	1090	0	1778
Plant	Eucomis montana	15	5	2
Plant	Gladiolus appendicu (wakkerstroom)mod	224	161	461
Plant	Watsonia latifolia	5	5	3
Process	Summit escarp one	61273	58695	4743
Process	Important forest patches	22330	10131	56
Process	Montane large grassland patch	10000	0	1464

Annexure 4

254

DEPARTMENT OF MINERAL RESOURCES



mineral resources

Department:
Mineral Resources
REPUBLIC OF SOUTH AFRICA

255

DEPARTMENT OF MINERAL RESOURCES

ANNUAL REPORT

2011/2012

Ms Susan Shabangu, MP
Minister of Mineral Resources

I have the honour of submitting the Annual Report of the Department of Mineral Resources for the period 1 April 2011 to 31 March 2012.

Dr Thibedi Ramontja
31 May 2012

Mining employees have heeded the call to test for TB and HIV in an endeavour to improve the management of these diseases as was noted by the number of people who tested on that day.

South African Mineral Resources Administration System (SAMRAD)

During April 2011 the Department launched the online mining licence application system, SAMRAD. To date well over 3 500 applications have been successfully lodged remotely through the Department's website. The system is designed to ensure transparency, reduce the margin of error and ensure a consistent systematic approach to evaluation of and decisions regarding the awarding of rights. The process of cleaning up system data aimed at migrating it into the new system has now been done. The Department is now giving priority to processing legitimate old order rights applications in the system and will ensure that conversions yield positive results.

The Department will continue to search for ways to upgrade the system to ensure that South Africa remains an attractive and competitive mining jurisdiction.

Integrated licensing system

A fragmented regulatory and mining licensing system has long been identified as one of the impediments to investments and therefore the competitiveness of the South African mining industry. The current timeframes for obtaining a mining right, water use licence and an environmental authorization are not aligned, which results in prolonged processes and unnecessary delays. As a result the DMR, and the Departments of Environment and Water Affairs are currently reviewing the regulatory framework in an effort to put in place an integrated licensing system. It is envisaged that the streamlined licensing process will ensure compliance by right holders with the various pieces of legislation, create certainty in the regulatory framework, expedite the licensing process and ultimately strengthen the constitutional imperative of security of tenure. The previous extension of the moratorium in Mpumalanga was due to the complex nature of environmental challenges in that province. It culminated in over 41 Rights that are located in Wakkerstroom and Chrissiesmeer being identified as those belonging to the category of environmentally sensitive areas and consequently action has been taken to prohibit mining within those areas.

Restriction on the Allocation of Lapsed Rights

At the Mining Indaba in February 2012 the Minister announced that the issue of rights that are either being revoked or are lapsing will be addressed. The announcement coincided with a notice in the Government Gazette of the previous day inviting submissions with regard to the intention to introduce a new system for the auctioning of rights. After due consideration the Minister decided to issue a proclamation in the Government Gazette to, forthwith, invite applications on revoked or lapsed rights, in accordance with rules that are aligned to the MPRDA.

Litigation cases and their impact on transformation

Whilst reaping the fruits of transformation brought about by the MPRDA, the Department is concerned that the recent court decision with regard to certain litigation matters will have the unintended consequence of reversing the gains of transformation in the mining industry. The Department has a historic obligation to ensure that transformation and competitiveness in the sector is not compromised.

Annexure 5

Published on *Parliamentary Monitoring Group | Parliament of South Africa monitored* (http://www.pmg.org.za)

Mineral Resources: Minister's Budget Vote Speech

Briefing Information

Date of Briefing: 10 May 2012

Summary:

Minister of the Department of Mineral Resources gave her Speech on the 10 May 2012

Honourable Chairperson,
Deputy Minister Oliphant
Honourable Fred Gona, Chairperson of the Portfolio Committee
Honourable Members,
May I begin by acknowledging the presence, in the public gallery, of 21 girl learners from disadvantaged communities. They, Honourable members, are beneficiaries of the Ministerial programme, supported by the mining industry, who are studying at various tertiary institutions.

We stand at the cusp of a new era in South Africa - one which sees, so clearly now, the resurgence of mining as a central force.

I am therefore honoured to present the budget of the department that is responsible for a sector so critical to our country's future. The fact is that the African National Congress has placed the mineral and energy complex right at the centre of its socio economic and political agenda. This is an appropriately far-sighted step as the organisation and movement I represent marks its centenary, committed as it is with even more vigour to change the lives of our people for the better.

We are, indeed, living in a season of marking centuries! Only a few years ago, our country's modern and large-scale mining industry itself celebrated its centenary. We were able to take pride in the progress made, despite some debilitating policies and practices rooted in history. This of course reminds us of another century, one we noted two years ago without celebration. It began with the formation of the old Union of South Africa in 1910. It was plagued from the outset by racist policies which rejected blacks in all walks of life until the people, under President Nelson Mandela, changed the course of our history in 1994.
But, over those decades, the nation inexorably grew economically despite the ravages of *apartheid.* We have thrown off injustice and strengthened our economy - and in doing such things we have shown our true greatness as a nation, for the entire world to see. The resulting unity of spirit, rooted in our diversity, is what gives us our real strength and drives us today in an advanced economy characterised by features of both the developed and underdeveloped worlds.

Budget allocation for 2012/2013
Today, we are tabling a budget of R1, 169 billion for the 2012/2013 financial year which represents an increase of R130 million from the previous budget of R1, 039 billion. This increase is largely earmarked for research and development in the minerals and mining industry through Mintek and the Council for Geoscience.

The budget is allocated as follows: R239 million for Administration, R154 million for Mine Health and Safety, R180 million for Mineral Regulation while a further R596 million is allocated to Mineral Policy and Promotion. Included in these figures is an amount of R560 million allocated for transfers and subsidies to departmental agencies, public and private enterprises. My department will continue to manage this allocation in line with good financial management principles as prescribed by the Public Finance Management Act (PFMA).

In the same spirit I am pleased to report that my department utilised 99.1 % of its allocated budget for the 2011/12 financial year. We have developed clearly targeted action plans to address matters raised in the audit of the previous financial year.

In response to the call by the President with regard to tightening Supply Chain Management Practices (SCM), the department has begun reviewing its procurement policies and procedures to ensure that the acquisition of goods and services continues to be done in a manner that is fair, equitable, transparent, competitive as well as cost effective.

Furthermore, the department has a process in place where annually all SCM practitioners sign a code of conduct. All Bid Committees have been appointed and are functioning effectively. The department has already begun the practice of vetting all SCM officials.
Underpinning it all is the fact that in 2011 the mining industry contributed 9.6 %to our country's Gross domestic product (GDP), more than 12 % to total fixed capital formation, more than 35 % to our total export revenue and employed 2.9 % of the country's economically active population, which currently stands at more than half a million direct jobs.

Furthermore, the sector contributes significantly to the country's corporate tax receipts. It is important to note that more than 60 % of the country's energy and more than 90 % of electricity generation is derived from activities associated with mining.

We are tabling this budget at a time when, influenced by our mining sector strategy, which is a product of the tripartism of Mining Industry Growth Development Employment Task Team (MIGDETT), we have an historic opportunity to rekindle the role of the mineral and energy complex in our economy in a quest to eliminate the evil triplets of poverty, unemployment and inequality which are stubbornly refusing to disappear from our landscape almost two decades after 1994.

The urgency of ensuring that we take advantage of the next wave of the commodities boom which will surely come was underscored when President Jacob Zuma announced massive infrastructure plans in his State of the Nation address. The projects promise solid progress ahead for our nation.

We are committed to working together with other state institutions on action plans to optimise the sector's extractive capacity, attraction of investment as well as maximising mining's job creation potential. The availability of more rail, port and water infrastructure necessary for mining will raise the level of mining, resulting in job creation and economic development, in various commodities including iron and manganese ore in the Northern Cape and coal from the Witbank and Waterberg coalfields in Mpumalanga and Limpopo respectively.

My department will by end of July 2012 release the Coal Resources and Reserves Study which is being led by the Council for Geoscience which reveals that the Waterberg region hosts a significant share of our country's remaining coal reserves. This is the first comprehensive assessment of South African coal resources and reserves since 1987.

The Mineral and Petroleum Resources Development Act (MPRDA)

The promulgation of the MPRDA in 2004 introduced a policy of equal access to South Africa's mineral resources which was previously the exclusive preserve of one racial group. The democratic mineral dispensation introduced the policy of socio-economic responsibility, which was to be achieved through the application of black economic empowerment policy by ensuring that the historically disadvantaged South Africans are brought into the mainstream of mining. However, challenges experienced in the implementation of these policies resulted in the need to review both the MPRDA. The objectives of the review are to:
provide for a detailed consultation process,
support the beneficiation strategy,
streamline the licensing process to avoid delays and inefficiencies,
provide for enhanced punitive measures,
improve the current construct of the Act and to remove ambiguities, and provide clarity on the mining of associated minerals.
The review of the Act however, does not seek to introduce any major policy shifts in respect of exploration and exploitation of South Africa's mineral resources. Accordingly, in our efforts of harmonising our legislation, the creation of synergies between the MPRDA and the MHSA becomes pivotal in ensuring that we create regulatory alignment.

Mineral Regulation

South African Mineral Resources Administration (SAMRAD)

Last year we launched our flagship online mining licence application system, SAMRAD. I am pleased to report that after initial teething problems associated with implementing a ground breaking system we have now entered a stage where system is rapidly gaining ground.

To date, we have well over 3 500 applications having been successfully lodged remotely through the department's website into a system designed to ensure that we achieve transparency, reduce the margin of error and ensure a consistent systematic approach to the evaluation and eventual decisions regarding the awarding of rights.

Honourable Members will recall that on this occasion, last year, we reported on a process of cleaning up our data with the intention of ensuring that we migrate it into the new system. This has now been done. Working together with the mining industry, we are now giving priority to processing legitimate old order rights applications that are our in our system. We are committed to ensuring that these conversions yield positive results.

The department will continue to search for ways to upgrade the system to ensure that we remain an attractive and

competitive mining jurisdiction. These improvements will include amongst others, the ability of the system to allow users ultimately to lodge various categories of reports online.

Integrated licensing system

A fragmented regulatory and mining licensing system has long been identified as one of the impediments to investments and therefore the competitiveness of the South African mining industry. The current timeframes for obtaining a mining right, water use licence and an environmental authorisation are not aligned, which results in prolonged processes and unnecessary delays.

As a result the Department of Mineral Resources (DMR), and the Departments of Environment and Water Affairs are currently reviewing the regulatory framework in an effort to put in place an integrated and streamlined licensing system which will not have a negative impact on the timeframes.

It is envisaged that the streamlined licensing process will ensure compliance by right holders with the various pieces of legislation, create certainty in the regulatory framework, expedite the licensing process and ultimately strengthen the constitutional imperative of security of tenure. This is in keeping with the principles of co-operative governance which dictate that government departments streamline their processes to promote seamless compliance with all relevant and applicable legislation.

Over and above this, I am pleased to announce that a task team reporting directly to the Minister of Water and Environmental Affairs and myself will deal with the issues that we have just outlined.

Honourable members would recall that we had extended the moratorium in Mpumalanga due to the complex nature of environmental challenges in that province. This culminated in over 41 Rights that are located in Wakkerstroom and Chrissiesmeer being identified as those belonging to the category of environmentally sensitive areas. Consequently we have taken action to prohibit mining within these areas.

The Pot – Auctioning of Rights

At the Mining Indaba I announced measures we intend taking to address the issue of the rights that are either being revoked or are lapsing. In February this year, I published a notice in the Government Gazette inviting submissions with regard to our intention to introduce a new system in the auctioning of rights.

I would like to thank all those who have made representations which, I must add, were not opposed to the system, but were instead offering suggestions on how we can address the technical aspects of the process itself.

After due consideration, I have decided to issue a proclamation in the Government Gazette which will invite applications on revoked or lapsed rights. In this regard, rules that are aligned with the MPRDA will be clearly spelt out in the Gazette. The first round of bidding would take place before the end of June 2012.

Litigation cases and its impact on transformation

Whilst reaping the fruits of transformation brought about by the MPRDA, as a department we are concerned that the recent court decision with regard to the matter certain litigation matters., which we are appealing, will have unintended consequences of reversing the gains of transformation in the mining industry. We have a historic obligation to do everything in our power to ensure that transformation and competitiveness of the sector are not compromised.

Transformation
Mining Charter
We call on the mining industry to implement fully all the provisions contained in the scorecard of the Mining Charter.
Audits that were conducted by my department have revealed that the level of compliance is not what it should be. Such as amongst others:
Low levels of implementation of Employment Equity by some mining companies.
Low level of women representation at senior management level especially in decision making structures.
Fronting especially by women who do it on behalf of men.
Companies that change approved Social Labour Plans (SLPs) without appropriate consent from the department and without consulting communities.
Suppliers of capital goods to the mining industry are mostly reluctant to transform and transfer skills to the Black Economic Empowerment (BEE) entities.
Rampant use of expired BEE verification certificates and fronting.

260

Procurement

Honourable members! Procurement is one of the critical pillars of the Mining Charter. In this regard, I am concerned about the manner in which the entire procurement value chain is being handled in the mining industry. It is disturbing that procurement benefits are being reduced for BEE entities that are limited to mundane and peripheral issues such as catering, cleaning and gardening services. And these entities are excluded from sustainable core activities such as capital goods, services (such as transport) as well as consumable goods.

Working together with the mining industry, we have an historic obligation to ensure that the historically disadvantaged South Africans play a key role in this regard.

SLP

Social Labour Plans are an essential instrument in the hands of the democratic state to ensure that communities benefit from mining operations.

It is an area where we have identified gaps in the proper alignment of identified projects with Integrated Development Plan (IDPs) and consultation with communities.

Sadly this is one of the areas that constitute conflict between communities and mining companies
I therefore call on the mining industry to embrace and implement these imperatives without equivocation as they will create harmony between the mining industry and communities.

We are keen to work with the mining industry in circumstances where voluntary compliance is both a moral and an ethical issue. This should be the case as all the mining companies profess to embrace the King III Code on Corporate Governance whose chapter six enjoins mining companies to comply with the law.

Rehabilitation

My department continues with the project to rehabilitate derelict and ownerless mines. Working together with Mintek we have reached agreements with communities on the implementation of the Heuningvlei project whose scope has been finalised. Taking this into account and building on the experience gained, projects for upcoming activities are expected to be concluded before the expiry of the current three year cycle.

In the year 2011/12, a total of 115 temporary jobs were created in the Northern Cape. It is anticipated that during 2012/13 there will be a further 260 temporary jobs, to include the and Limpopo Provinces, with the bulk of the jobs still being created in the Northern Cape.

My department has secured the services of an actuary to conduct the valuation of the liability associated with Derelict and Ownerless Mines as well as providing the necessary cash flow requirements for successful implementation of the programme. The work is almost completed and a report will be ready by the end of this month. We believe that this work will go a long way in informing our implementation plan and resource requirements going forward as well as improving the overall approach towards rehabilitation.

We will do this as we tackle the practice whereby some major companies are prone to selling off assets to junior mining companies which have huge environmental liabilities.

Beneficiation

In July last year, Cabinet adopted the beneficiation strategy which is central to our bid to ensure that the mineral and energy complex yields concrete benefits to our country and its people. It includes the overall toolbox of interventions at the government's disposal in support of value addition to minerals extracted in South Africa. We are currently in the process of fine tuning these tools for practical application in the industry. This will take the form of an implementation plan with clear actions for the identified commodity groups.

It will, however, align the Act with the recently approved beneficiation policy to ensure that the mining industry contributes to local value addition by making available the requisite mineral inputs to the local beneficiators. Working together with our State Owned entities such as Mintek and the Regulator, we are steaming ahead with various programmes to give effect to the Cabinet approved beneficiation strategy

In this regard, we have to continually seek, amongst others, that minerals such as platinum are able to find new opportunities and markets other than the traditional catalytic convertor market. We therefore welcome Anglo American Platinum's promotion of the centuries-old fuel technology, whose fuel cell locomotive was launched in Rustenburg yesterday. It was a pleasure to see this cutting-edge, green technology being rolled out in such a promising direction – one which is of special interest to mining.

This will include initiatives such as underground coal gasification in a bid to extract maximum value from our coal resources.

Beneficiation initiatives
We are also endowed with semi-precious and precious stones which we need to use to reconfigure the racial patterns to of the jewellery industry. This, amongst others, includes jewellery fabrication which seeks to increase the beneficiation thus leveraging maximum value from our mineral resources.

This value addition activity has the potential to create a new cadre of skilled entrepreneurs who will be real players in the industry, working together with the Department of Higher Education and Training through MINTEK and Further Education and Training (FET) colleges. My department plans to host a Jewellery Summit sometime this year, to engage stakeholders on how best to build on this window of opportunity.
Additionally, my department will work through the State Diamond Trader to ensure that HDSAs become part of the mainstream and contribute to the economic growth and job creation. We want to revisit the model that involves the State Diamond Trader and we recognise the shortcomings inherent in the current configuration. We will continue to search for ways to make it more efficient and enable it to carry out the mission for which it was founded.

In the meantime, the South African Diamond and Precious Metals Regulator (SADPMR) will strive to ensure that the historically disadvantaged South Africans benefit and utilise the licences for which they have been awarded. This will be done whilst tackling the rampant acts of fronting prevalent in this important area.

In the same vein, the Kimberley Process (KP) has elected South Africa as deputy chairperson of the process during the year 2012 and we will assume the chair in 2013. As founder members we accepted this honour as it coincides with the 10th anniversary of this initiative founded in the modest Tabernacle Church in Kimberley. This occasion as Chair gives us the opportunity to review the statutes and other founding documents in a bid to ensure that we meet the current challenges facing diamonds industry.

SOMCO
Subsequent to the Cabinet's decision to establish a state owned mining company and the endorsement of the African Exploration Mining and Finance Corporation (AEMFC) to operate as a nucleus for this entity, Cabinet further approved the model and the hiving off of African Exploration Mining and Finance Corporation from the Central Energy Fund's Group of Companies.

My department is working with the Department of Energy, the Central Energy Fund, the AEMFC itself, as well as the National Treasury to give effect to this decision so that the AEMFC can operate as a stand-alone public entity.
Honourable members you will recall that in the last Budget speech we announced that AEMFC had commenced with mining activities at its Vlakfontein mine and signed an offtake agreement with Eskom. Thus far the mine has produced 681 458 tonnes and sold over 468 554 tonnes of coal.

This crucial entity of the democratic state is about to undertake a second project which is now in the post-feasibility phase, and will, upon operation, produce 4.6 million tonnes of coal per annum over 33 years, creating almost 1 000 jobs.

Shale gas
Following Cabinet's decision last year to investigate the feasibility of shale gas in our country, and our subsequent decision to set up a task team to engage with this issue, we will by end of July table the report to cabinet for consideration.

Mine health and safety
The health and safety of mine workers in the mining industry remain of utmost importance to the Department of Mineral Resources. Workers in this industry have endured harsh working conditions ever since the birth of mining in South Africa, including living in overcrowded single-sex hostels, poor health and safety measures and the indignity of being separated from their loved ones for inordinate periods of time as a result of the ridiculous system of separate development.

Even to this day, 18 years after 1994, this sector's commitment to the health and safety of both the workers and communities resembles a curate's egg - good in parts, which means lacking overall. This must change. The inevitability of death, injury and disease must be rooted out. In addressing poor health and safety issues at mines, we have identified the need to review the Mine Health and Safety Act. This review will strengthen enforcement provisions, reinforce penalties and ensure alignment and harmonisation with the Mineral and Petroleum Resources Development Act, 2002 (MPRDA).

While we remain ceased with these challenges, we however recognise some improvement in the health and safety since intensifying the monitoring and enforcement measures. The enforcement measures have resulted in an 80% reduction in the number of deaths, from 15 in January to 3 during April 2012. This is the lowest ever recorded compared with other historical

monthly figures which were generally more than 11 deaths per month. It is also commendable and encouraging to note that some of the mining companies are now going for more than 6 to 18 months without fatalities. Amongst others, these are Lonmin, DRD, Coal of Africa, Kumba, Pan African Resources and Petra Diamonds.

Hon members, whilst we recognise improvement, we still experienced in 2011 a total of 123 fatalities, compared to 127 in 2010, which translates to about a 3% reduction. This year (2012) to date, figures show that fatalities in the mining industry have dropped by 9% - from 43 in the same period in 2011- to 39 in 2012.The number of mine injuries has reduced by 35% from 1 024 in 2011 to 668 in 2012. Major contributors to the accidents are gold and platinum mines. I call upon the mining industry to once more commit and internalise the to the value system of zero harm.

I am concerned with the safety of women in the mining industry. Mining companies are urged to implement measures aimed at protecting women miners. In this regard I commend the NUM for championing the just cause of safety of women miners.

As the DMR, we remain determined to apply Section 54 to ensure compliance, taking into account the self-regulatory framework of the mining industry.

I want to state categorically that it is mischievous to regard section 54 as the only contributor to the loss of production. This flies in the face of the reality that mine operational challenges, can contribute significantly to low production.

We have agreed with stakeholders to set up a task team comprising all relevant sector stakeholders to investigate the concerns raised in respect of the application of Section 54. The task team has finalised its investigation and has made recommendations for consideration by the Minister of Mineral Resources and other Mining Industry Growth, Development and Employment Task Team (MIGDETT) principals.

As I had promised last year, we have split the North West regional office into two separate offices. The split has resulted in the reduction of fatalities and injuries by 43% and 51% respectively in the Rustenburg area.

In November 2011, the Mine Health and Safety Council hosted a summit focusing on the attainment of the Occupational Health and Safety milestones as set out in 2003, which include the eradication of Silicosis, Noise Induced Hearing Loss, TB and HIV/AIDS. Silicosis continues to be the cause of premature retirement and death at our mines while tuberculosis (TB), exacerbated by HIV/AIDS, has proven to be a serious challenge for the industry. Noise Induced Hearing Loss (NIHL), resulting from exposure to high levels of noise in working places, is also a significant health hazard.

The commitments made during the summit on TB and HIV/AIDS were also informed by the National Institute of Occupational Health (NIOH) report which was commissioned by the Department of Mineral Resources.

Also, during the 2011 summit a commitment was also made to implement the Culture Transformation Framework (CTF). The framework pillars include the review of bonus incentives to ensure that zero harm is prioritised ahead of production; mine owners will lead by example in walking the zero harm talk; and the adoption of technology and leading practice for eliminating health and safety risks to mine employees.

The stakeholders are also committed to establish a Centre of Excellence to do research, capacity building and facilitate research implementation. Stakeholders committed themselves to the aforementioned in order to improve the industry's Health & Safety record.

The department recently participated in South Africa's 2012 world TB Day commemoration in Carletonville which was also addressed by Deputy President Motlanthe. I would like to commend Gold Fields for supporting this programme and call on other mining companies to do likewise.

There is still a great need to improve on the current skills capacity within the mining sector. To this end, the department is collaborating with the Department of Higher Education and Training (DHET) and our social partners through the Mining Qualifications Authority (MQA) to improve on skills development.

Some of the programmes include artisan development; improving women's participation in mining; developing black managers, fostering skills required to support Beneficiation Strategy; issuing bursaries annually at public Higher Education and Training institutions with mining and mineral related faculties; training Health and Safety Reps and Shop Stewards over five years using accredited institutions; and exploring ways of improving the percentage pass rate for various certificates of competency.

Although there has been significant progress in ensuring that the appropriate measures are taken to eliminate illegal mining, the problem is still of great concern. The department will continue collaborating with the relevant law enforcement agencies

263

and social partners to ensure that there is a national effort to combat illegal activities.

Conclusion

As I present this Budget, I would stress that we are working round the clock to build the capacity that is necessary in this department in all areas, including in the vital legal section which is involved so regularly and exhaustively in litigation. We are also building up our IT systems to improve efficiency and effectiveness of the department.

We are working on developing partnerships, between government and the private sector, as well as with communities and civil society generally. We are looking forward to participating in the Mining Lekgotla in collaboration with the Chamber of Mines in our drive to ensure that South Africa remains the preferred mining destination in Africa. It is only on a basis of sound partnership that our country, with mining confirmed in a leading role, will ensure success in the centuries to come.

Finally I want to thank the staff of the DMR, so ably led by the Director General, who has taken the proverbial bull by the horns and has acquitted himself very well in his new role. The same goes for the Deputy Minister for his leadership and contribution to the second Budget. It is this same commendable spirit that must characterise the work of the department as we proceed to build a mining dispensation that is in harmony with the environment - and with communities, with whom we constantly seek to engage in consultation.

Hon members, I Thank You.

Source URL: http://www.pmg.org.za/node/32032

Annexure 6

264

environmental affairs

Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA

Private Bag X 447 · PRETORIA · 0001 · Fedsure Building · 315 Pretorius Street · PRETORIA
Tel (+ 27 12) 310 3911 · Fax (+ 2712) 322 2682

NEAS Reference: DEA/EIA/0001965/2013
DEA Reference: 14/12/16/3/3/3/85
Enquiries: Fiona Grimett
Telephone: 012-395-1793 Fax: 012-320-7539 E-mail: fgrimett@environment.gov.za

Ms Charlaine Baartjies
EcoPartners
PO Box 73513
FAIRLAND
2030

Fax No: 086 539 6127

PER FACSIMILE / MAIL

Dear Ms Baartjies

REJECTION OF THE ENIRONMENTAL IMPACT ASSESSMENT REPORT FOR THE PROPOSED YZERMYN UNDERGROUND COAL MINE NEAR WAKKERSTROOM, MPUMALANGA PROVINCE

The Final Environmental and Social Impact Assessment Report (EIAR) received on 09 January 2014, this Department's letter dated 26 March 2014, and the correspondence and amended application form for environmental authorisation received on 27 March 2014 refer.

The EIAR is hereby rejected by the Department in terms of regulation 34(2)(b) of the EIA Regulations, 2010. The EIAR must be amended to address the following issues.

Layout Alternatives

a) The EIAR concludes that the preferred surface layout design not be considered for development, given the sensitivities pertaining to the site. It further recommends that an alternative layout design be considered and that this layout be reassessed to determine whether both environmental and socio-economic aspects can be accommodated. The Department agrees with this recommendation. Please confirm whether an alternative layout can be proposed, which will allow the proposed mine to coexist within this sensitive area, given the Department's concerns with regards to biodiversity, outlined in point b) below.

b) Amend the EIAR to include the new layout plan and update the specialist studies to include for the assessment of the new alternative layout.

c) Please also include an updated layout map, showing the exact locations and footprints of the development and associated infrastructure and no-go/sensitive areas. Please also include in the report an indication of the amount of vegetation required to be cleared for the development (as per the new layout).

Biodiversity Concerns

The Department has identified a number of biodiversity concerns, which need to be taken into consideration and/or addressed in the EIAR:

d) The study area contains at least one ecosystem (Wakkerstroom/Luneburg Grasslands) listed in terms of the National Environmental Management Biodiversity Act, 2004 (NEMBA). It could also contain Paulpietersburg Moist Grassland, Eastern Temperate Freshwater Wetlands and Eastern Highveld Grassland, listed as Vulnerable. This was not identified in the biodiversity study, and is an omission that needs to be rectified. The biodiversity study only looked at Mucina and Rutherford classifications, not the NEMBA-listed ecosystems.

e) The site is largely classified as Irreplaceable in the Mpumalanga Biodiversity Conservation Plan. Please be advised that unless ground-truthing has been undertaken to prove that the development does not impact on the reason for the classification, this may constitute a fatal flaw.

f) The area has a high occurrence of wetlands of very high ecological importance. This could be an indication that groundwater is very close to the surface and that any impact on either may be transferred to the other. In the National Freshwater Priority Areas maps, this area is classified as an NFEPA Priority Area, which means that it is critical for the sustained supply of potable water for downstream communities. Dewatering of this area at the rates proposed in the study will lead to the lowering of the water table, which is likely to have a very high negative impact on biodiversity, food production and water provisioning to areas downstream.

g) The mine cannot operate without dewatering activities. In the light of the above, this application cannot be considered without the identification of the downstream water areas, the water users dependent on the water, and a quantification of the dewatering effect on the economic activities downstream, including increase in droughts and floods. This information needs to be included in the amended EIAR.

h) The EIAR states that there may be potential for Acid Mine Drainage resulting from the Alfred Seam. It recommends that additional ground and surface water studies be undertaken in order to adequately quantify the anticipated impacts from the proposed mine. The Department supports the recommendation for additional studies in the amended EIAR, investigating the potential impact of AMD.

i) This application falls within the Grassland Important Bird Area (IBA). This IBA has been recognised by BirdLife South Africa and BirdLife International as both a national (SA 125) and global (ZA 016) IBA that is critical for the conservation of IUCN Red Data List (i.e. threatened) bird species, grassland endemic bird species and congregatory waterbirds.

j) The list of Red Data bird species (in the EIAR) that potentially occur in the project area fails to include the regionally Critically Endangered and southern African endemic Rudd's Lark (Heteromirafraruddi). Approximately 85% of the global population of Rudd's Lark is confined to the grasslands within a 50 km radius around Wakkerstroom.

k) The study area is surrounded by protected areas to the south and east of the site, and some of the land parcels in the application are part of a declared Protected Environment. As such, please be advised that a mining license cannot be issued without the express permission of the Minister of Environmental Affairs.

Additional Requirements

a) The specialist studies do not appear to include an assessment of the alternative layout options and access routes identified in the EIAR. Page 273 of the EIAR further states that some of the associated infrastructure (e.g. laydown / construction areas, access roads and pipelines) required for the proposed mine were not assessed, as the final layout plan was not available at the time of completing certain of the specialist studies. Please ensure that all associated infrastructure required for the mine is assessed in the report and specialist studies. This includes the portion of the road that will need to be re-aligned for the new location of the discard dump. Also include an assessment of the shorter alternative access road proposed in the EIAR.

b) Please ensure that all listed activities, in terms of GN R. 544, 545 and 546, are discussed in the EIR, including the pipelines required for the transportation of water and dangerous goods, reservoirs, and any culverts/ bridges required for the access roads (provide a description of these activities).

c) Page 218 of the EIAR states that a geology/geotechnical specialist study was not required. This Department however requires that a geotechnical study / specialist opinion be included in the EIAR, in order to address the issue of mine stability and the potential for subsidence (as requested in the acceptance of FSR letter dated 9 October 2013).

d) Please address the issue of whether the generators alone are sufficient to supply power for the Life of Mine (LOM), or whether the viability of the mine is dependent on the future approval of an alternative power source. Please note that the Department does not support incremental decision making, should the viability of the mine depend upon the future approval of additional power lines or power stations.

e) The significance of the potential cumulative impacts has not been indicated in the report (Section 10.3 of the EIAR). Please provide an indication of cumulative impact significance.

f) The contact details (telephone, fax and email) of the commenting authorities must be included in the stakeholder database; as per Regulation 55(1) of GN R. 543. Please also include these details in the cover letter of the amended EIAR.

g) Ensure that the environmental management programme (EMPr) includes the details and expertise of the person who prepared the report, a description of the aspects of the activity covered by the EMPr (i.e. project description) including a layout map with no-go areas clearly identified, and an indication of the time periods within which the measures contemplated in the EMPr must be implemented, as per Regulation 33 of GN R. 543.

h) Declarations of independence forms for the specialists and an indication of the expertise of specialists must also be included in the report, as per Regulation 32(3)(a) and (b) of GN R. 543 (forms available from the Department).

i) The Department recommends further consultation with the South African Heritage Resource Agency (SAHRA), considering that the heritage impact study submitted to SAHRA was a pre-feasibility study and the layout of the mine was yet to be finalised at the time of consultation.

j) The applicant is hereby reminded to comply with the requirements of regulation 67 of GN R. 543, with regard to the time period allowed for complying with the requirements of the regulations, and GN R. 543(56) with regard to the allowance of a comment period for interested and affected parties (I&APs) on all reports submitted to the competent authority for decision-making. The amended EIAR must be made available to I&APs for comment. Both the Department of Water Affairs and the Department of Agriculture Forestry and Fishery must be consulted for further inputs.

The Department will further consider the application upon on receipt of the amended EIAR.

You are hereby reminded of Section 24F of the National Environmental Management Act, Act No 107 of 1998, as amended, that no activity may commence prior to an environmental authorisation being granted by the Department.

Yours faithfully

Mr Ishaam Abader
Deputy Director-General: Legal, Authorisations, Compliance & Enforcement
Department of Environmental Affairs
Letter signed by: Ms Milicent Solomons
Designation: Director: Integrated Environmental Authorisations
Date: 16/05/2014.

CC:

Mr Morgam Munsamy	Atha Africa Ventures (Pty) Ltd	Fax: 011 784 7467
Ms Nellisiwe Mlangeni	MDEDECT	Fax: 013 766 4614
Mrs J du Plessis	DMR	Fax: 013 690 3288

Annexure 7

268

water affairs
Department:
Water Affairs
REPUBLIC OF SOUTH AFRICA

P. O. Box 1018, Durban, 4000, 16 Field Street, Southern Life Building, Durban 4001
Tel: (031) 336 2700, Fax: (031) 304 8545 www.dwa.gov.za

Enq: N. Makwabasa
File: 16/2/7/W512/K3
Tel: 031-336 2610
Fax: 031- 305 9015
Email: makwabasan@dwa.gov.za

The Regional Manager
Private Bag x 7279
Emalahleni
1035

Attention: Mr M. C. Monisha

CONSULTATION IN TERMS OF SECTION 40 OF THE MINERAL AND RESOURCES DEVELOPMENT ACT 2002, (ACT 28 OF 2002) WITH REGARD TO THE ENVIRONMENTAL MANAGEMENT PROGRAMME FOR ATHA AFRICA VENTURES (PTY) LTD IN RESPECT OF FARMS BLOEMHOEF 92, HT, GOEDGEVONDEN 95 HT, KROMHOEK 93 HT, PORTION 1 OF FARM NAUWGEVONDEN 110 HT, FARM PAARDEKOP 109 HT, REMAINING EXTENT OF FARM VAN DER WAKSPOORT 81 HT, FARM VIRGINIA 91 HT, PORTION OF THE FARM YZERMYN 96 HT, REMAINING EXTENT OF THE FARM YZERMYN 96 HT AND FARM ZOETFONTEIN 94 HT, SITUATED IN THE MAGISTERIAL DISTRICT OF WAKKERSTROOM: MPUMALANGA REGION

Reference is made to the above mentioned document received by this office on the 31st October 2013, dated 21st October 2013, your reference: MP/30/5/1/2/3/2/1 (10068) EM. This Department has the following comments concerning to highlight:

1) Background and introduction states that "The applicant had acquired prospecting right to an area of 8060 hectares ... Following detailed exploration, a feasible target area was identified which comprised approximately 2,300 hectares." Paragraph 3 states that "It is anticipated that the mine will have a potential to produce 2,25 million tons of coal per annum, with an estimated life span of 15

2WW

years, with additional resources potentially available adjacent to the target area." It is thus not clear to this department if the adjacent area refers to the remainder of the prospected area or a new prospecting right shall be acquired outside of the already prospected area

2) Findings and Recommendations on page 24 and Section 13 on page 29 states that the proposed Ysterkyn Underground coal mine is located within known sensitive habitats and environments as well as adjacent to an existing protected environment, KwaMandaingempisi Protected Environment (KPE). The report further refers to the area being located within a threatened ecosystem (Wakkerstroom/ Lunsburg) which is considered endangered. The site itself comprises a number of farms that are proposed to be included in a separate protected environment (Mahoxa). This Department notes the site location with great concern.

3) Summary records that "Alternatively it is recommended that an additional site layout be identified prior to making a decision and assess whether the proposed mine can coexist." It is not clear to this department if this alternative site has been identified. If yes, maps attached to the submission do not reflect the site, if not, the site should have been identified and assessed so that a decision on the EMP is conducted based on the comparison of the sites and on the exact site that will have posed minimal risks to the environment.

4) Section 3.1.22.13 states that the target area is located approximately 800m from KwaMandaingempisi Protected Area (KPE). This department notes the location of the target area with great concern

5) Section 4.22.2 states that 'the preferred edit location will have an impact on the wetlands in the immediate area." The extent of the impacts on the wetland is not quantified. Furthermore the impacts raise concerns to this Department.

6) Section 4.3.1 which states that "Due to this rationale, the surface layout was confined to a preferred area covering an estimated 30 ha" is confusing and raising concerns when compared to the box on page 30 which states "please note that the EBIR is being undertaken for the area only. Within the target area, a surface infrastructure layout of approximately 80 ha will be required". Page 90 Section 5.1 records to say that the surface infrastructure area shall be more than 30 ha. What

had caused such a vast change in the surface area needed? What is therefore the exact surface area that is needed for the surface infrastructure?

7) The distance of the preferred site to the wetland is not specified.
8) This department is concerned that page 72 states that "it is further noted that the area on which the preferred surface layout is proposed is dominated by wetlands.
9) This section further reflects potential impacts on the Assegai River, noting that Assegai River is the headwater of the Heyshope Dam, which has its own sensitivities.
10) Section 4.5.1 reflects that a discard dump will impact on a wetland. This is a risk and a fatal flaw. Figure 4-10 further shows that all the considered alternative sites were within wetlands, and would thus impact negatively. The figure further shows that the preferred site of the discard dump is outside the vicinity of the prospecting area. Does the applicant have the property owner's consent to use this land? A similar question is imposed in relation to all the water uses in the prospecting area.

11) Section 4.8 does not quantify the transport requirements of the mine and the pressure it will exert on the roads. This is alarming particularly that there are wetlands and rivers traversed. Management of potential pollution from hauling trucks is not discussed.
12) Section 4.9 reflects that the wetlands maybe affected not only by pollution, but may also run a risk of being dried up due to the abstraction of water from the two identified boreholes.
13) Water Quality Assessment in section 8.6.2.3 is lacking. Given that the site is not yet operational one would expect that the average constituents of concerns are discussed and their expected impacts thereof.

14) Is there any expected decant of mine water post closure? If yes what are the anticipated quantities and impacts on the water resources?
15) Wetlands and Aquatic Ecology, page 282 reflects that a cut off berm will be installed around the plant area. The Department believes that this measure shall only prevent surface runoff to the wetlands and will exclude seepage.
16) Section 8.6.4.2 is concerning when stating that a decline in water inputs and resultant deterioration in PES and functionality "will be due to the dewatering

activities and will occur during the operational phase and post closure (20-50 years after mining ceases and the groundwater levels recover).

17) It is perturbing to learn that the surface water quality baseline and Impact Assessment were not available during the time of compiling the IA, as reflected on 8.8.4.3. This has an implication that there could be some impacts that would have been revealed by the report.

18) A number of critical environments and impacts as tabulated on Tables 10-2 to Table 10-4 are still alarming even after mitigation.

19) Page 490 section 18.2.3.4 Long Term Impact on Groundwater Quality states that "Available information suggests that sulphates concentrations in the base flow of Mewendilare River may rise to above 2000 mg/l in the long term unless proper mitigatory design is implemented". The report does not suggest what the proper mitigatory measures could be, moreover the report does not reflect what the concentration levels would be in the presence of mitigation.

20) The report further reflects that "In the vicinity of the underground workings, sulphates concentrations will exceed 2,500 mg/l, based on the information used. The plume may extend more than 2km down gradient of the mining operations, depending on the permeability of any preferential flow pathways". This is a concern to the department as this implies deterioration in water qualities of the water resources.

21) In light of the fact that this is a category A Mine, the statement on Page 159 of Section C: Faunal Assessment is not taken lightly by this department. The statement reads inter" As such, water quality will be an important component, especially considering the downstream NFEP, in the management of impacts relation to the proposed development.

22) The study limitation stating that "No detailed wetland assessment was undertaken in the greater area to be impacted upon by the underground mining and associated cone of depression from the dewatering activities or groundwater contamination plume" on Page 185 section 2.3 Section E: Wetland Assessment is a concern. This implies that the overall impacts on the site as a whole have not been predicted.

23) The above statement read in conjunction with the last paragraph on 3.2 page 191 of the section E: Wetland Assessment states that "The wetland extent within the

study area is approximately 180 ha, which equates to approximately 42% of the study area being wetland. The extent of wetlands within the greater underground mining area were delineated from a desktop perspective only, within the overall wetland extent (underground mining area and surface infrastructure footprint) being approximately 958 ha in extent, 40% of the area" is further disturbing and confusing. There is an implication that there is still a greater area of wetlands whose impacts have not been studied or predicted.

24) The applicant convincingly argues the need for job employment and economic development in the area. This department wishes to put in light that Section 4.8.1.3 states that "It is further understood that a high concentration of tourists (local, national and international) visit the area for the scenery, fishing, mountain biking, off-road trails and heritage aspects and , most importantly, birding. "These tourism attractions are undertaken in a sustainable manner and have buy in from surrounding farmers, residents of Wakkerstroom as well as other NGO's".

25) This department wishes that the above statement be read in conjunction with Section 4.11.7 impact on Tourism, page 89 which states that "It has been noted that approximately 400 jobs have been created as a result of eco-tourism in the Wakkerstroom area"

26) Table 7 of section 4.3 of the said Specialist Study reflects that the number of semi-skilled and discretionary decision making mine employee summary ranges from 208 to 417 within a three year period.

27) To bring emphasis to the above statements, the applicant's attention is further brought to Section 4.3 page 26 of the Specialist study Socio Economic which states that" It was noted however that the majority of the labour and employees are likely to come from outside the Area of Direct Influence due to lack of skills locally. Section 5.2.1 page 50 further reflects that "a number of opportunities may be sourced from the immediate area; however these are likely to be mainly unskilled, such as security and cleaning staff. And next paragraph states that, "Due to the limited number of unskilled, semi-skilled and skilled employment opportunities, the proposed mine will offer little or no economic benefit for the local area without skills development".

The greatest focal flow of this site is that it is situated within the National Freshwater Ecosystem Priority Areas. As page 208 section 2.6 Freshwater Ecosystem Priority Areas

Section F: Sensitivity Assessment states "The greatest concern regarding the FEPAs is the potential impact of the mine on the water resources as a result of underground water reduction due to de-watering activities and groundwater contamination due to sulphate seepages from the mine workings and discard facility. Both the zone of depression and the groundwater contamination plume, extend to wetland FEPA's in the near vicinity"

A number of threatened, vulnerable and endangered flora and fauna had proved to be solely dependent on the existence of the wetlands that seem to be threatened by the proposed mining activity

Slightest changes in water quality and quantity are detrimental to the health of the aquatic biota. Some species have been reported to only being able to survive within a very narrow range of environmental conditions.

In light of the concerns raised above, this department does not support the proposed mining development.

The Department wishes to make it clear that the opinions contained in this letter are made in the interest of responsible water resource management.

Should there are any queries please do not hesitate to contact this office.

Yours faithfully,

09/01/2014

MAKWABASA N (ENVIRONMENTAL OFFICER: CONTROL)

NMnm 1537

On behalf of

The Regional Head - KWAZULU-NATAL

Annexure 8

274

Mpumalanga
TOURISM AND PARKS AGENCY

Our ref: 11.44 Wakkerstroom Luneburg

29 August 2012

Ms. Lizelle Prosch
WSP Environment and Energy
Lizelle.Prosch@WSPGroup.co.za

Dear Ms. Prosch

RE: APPLICATION FOR ENVIRONMENTAL AUTHORISATION FOR THE PROPOSED YZERMYN UNDERGROUND COAL MINE (MP30/5/1/1/2/215PR) OVER THE PROPERTIES GOEDGEVONDEN 95HT, KROMHOEK 93HT, YZERMYN 96HT AND ZOETFONTEIN 94HT

Your application for environmental authorisation for the aforementioned Yzermyn Coal Mine has reference.

Please note that the MTPA has never been informed of the application for prospecting over the aforementioned properties and therefore the MTPA objects to the granting of these rights on the grounds that no consultation has taken place with the relevant authorities.

The area in question forms part of a larger area proposed to be declared as a Protected Environment under the National Environmental Management Protected Areas Act (57 of 2003) and considerable work, time and investment have been put into the process of engagement with landowners and other parties to have the area declared and is approaching the final stages of declaration.

The work of expanding the protected areas within this part of the province also forms part of a project initiated by the National Grasslands Programme in 2008 and with support from WWF-SA and therefore considerable investments have been made within this area by the respective organisations.

The area in question is classified as a sensitive area from a biodiversity conservation perspective and is identified as such within the Mpumalanga Biodiversity Conservation Plan (MTPA, 2006) which was endorsed by the Mpumalanga Provincial Cabinet in 2008.

Mpumalanga
TOURISM AND PARKS AGENCY

Furthermore, the properties in question also form part of a larger area proposed for exclusion from mining in terms of Section 49 of the Mineral and Petroleum Resources Development Act (Figure 1) and the proposal to have the area identified under Section 49 of the MPRDA was submitted to the DMR in 2011 on the following grounds:-

- The area is critically important from a water production perspective;
- The area is largely classed as irreplaceable within the MBCP and thus crucial for the achievement of provincial conservation targets;
- The area is listed as a threatened ecosystem in terms of the National Environmental Management: Biodiversity Act; and
- The area is identified as important for provincial and national protected area expansion.

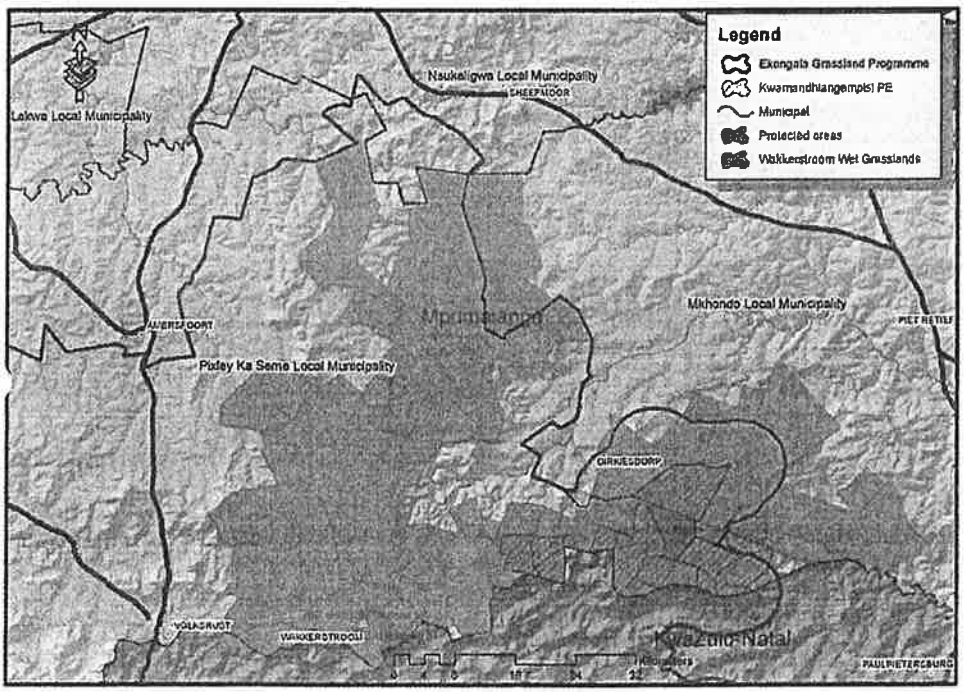


Figure 1: Extent of the Wakkerstroom Wet Grasslands proposed under Section 49 of the MPRDA.

276

Mpumalanga
TOURISM AND PARKS AGENCY

The MTPA therefore strongly object to any mining activities within the Wakkerstroom Wet Grasslands area.

The MTPA hereby registers as a stakeholder in the Environmental Authorisation process.

Please forward any correspondence in this regard to enviroteq@gmail.com or contact Mr. Brian Morris at 0845797979.

Yours sincerely,

Mr. B.E. Morris
SENIOR MANAGER
PROTECTED AREAS EXPANSION
MPUMALANGA TOURISM AND PARKS AGENCY

Cc: Mr. Fundisile Mketeni
Deputy Director-General: Biodiversity and Conservation
DEPARTMENT: ENVIRONMENT AFFAIRS
Private Bag X447
Pretoria
0001
Tel: (012) 310 3314/3315
fmketeni@environment.gov.za

Dr. G. Batchelor
Director: Environmental Impact Management
Department of Economic Development, Environment and Tourism
Gbatchelor@mpg.gov.za

Annexure 9

277

Mpumalanga
TOURISM AND PARKS AGENCY

Ref: LUA 14/1273
Unit: LUA /SS
Enquiries: F.N.Krige
E-mail: frans@MTPA.co.za
Tel/Fax: 013-2540279

Ms. Eumari

ECOPARTNERS
P.O. Box 73513
FAIRLAND
2030

Fax: 086 539 6127
E-mail: eumari@ecopartners.co.za
CC:

Dear Ms Eumari

SUBJECT: HEREWITH MTPA'S COMMENTS REGARDING THE APPLICATION FOR AN AMMENDED ENVIRONMENTAL IMPACT ASSESSMENT REPORT FOR THE PROPOSED YZERMYN UNDERGROUND COAL MINE PROJECT, BY ATHA-AFRICA VENTURES (PTY) LTD IN TERMS OF SECTION 40 OF THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT ACT 2002, (ACT 28 OF 2002) AND NEMA ACT, 1998 (ACT NO, 107 OF 1998) IN RESPECT OF THE TARGET FARMS YZERMYN 96 HT PORTION 1, KROMHOEK 93 HT, GOEDGEVONDEN 95 HT AND ZOETFONTEIN 94 HT, IN THE MAGISTERIAL DISTRICT OF PIET RETIEF, MPUMALANGA PROVINCE.

Your correspondence, reference DEA 14/12/16/3/3/2/693 of date 16 September 2014 has reference.

MTPA has an objection to the proposed Yzermyn underground mining operation, on above mentioned farms for the following reasons:

1. The Department of Environmental Affairs rejected the final EIAR for various reasons and requested that Atha –Africa Ventures should investigate an alternative site layout plan. Additional specialist studies with regards to the status of the ecosystem, the significance of potential cumulative impacts, on wetlands, through dewatering and the effect of this on the stream flow in terms of quantity and quality of water to the ecosystem and downstream water users.

   MTPA assessed this amended proposal and believe that the specialist studies done by Scientific Aquatic Services in December 2013 and June 2014 with regards to the new above ground infrastructure and study site is flawed in that the information provided on the biodiversity sensitivities is very vague contradictory and incomprehensive compared to the initial studies done by Natural Scientific Services in

June 2013 which were also inadequate and vague. The fauna and flora lists of conservation important species found on site is poor. On page 205 it is stated that none of the sensitive species of mammals, butterflies, amphibians, reptiles or plants associated with this ecosystems were found on the layout sites. With reference to a site visit by done by MTPA specialists in 2013 and the Terrestrial and Freshwater Biodiversity assessment summaries included below illustrates that Ecopartners has omitted significant biodiversity elements. MTPA cannot find proof that this amended EIAR has addressed all the required requests by the Department of Environmental Affairs and should be rejected again.

2. The mining proposal should be rejected on the grounds that it is not legal to mine in or under a Protected Environment. Protected Environments declared in terms of **Chapter 2 of the Protected Areas Act (NEM:PAA, NO 57 OF 2003) Mining prohibited or restricted – MPRDA (no 28 of 2002).** The majority of Atha-Africa Ventures target area lies in the declared Mabola Protected Environment. **(GAZETTED, NO. 2251 OF 22 JANUARY 2014).** The map indicated in the Atha- Africa EIAR report that indicate the extend of the Mabola Protected Environment on page 201 is wrong and misleading. Refer to MBSP map fig 1 and 2.

   If it is in the National Interest to mine in a South African Biodiversity priority area an application should be proposed to both National Ministers of DEA and DMR. Atha- Africa Ventures motivation for the withdrawal (De-proclamation) of a part of the Mabola Protected Environment for the sake of coal mining cannot be in the interest or contribute to the health of current and future South Africans.

3. The impacts associated with mine water inflows and described by Delta H Water Systems Modeling with regards to groundwater inflows (Dewatering) of the above ground water from wetlands and seepages and streams as well as aquifers located within the significant zone will occur during the life of the mine (15 years) and thereafter. It cannot be prevented. The sensitive groundwater dependant eco-systems , wetlands and springs with their associated biodiversity will thus be permanently modified and degraded. The report gives no indication on how this will be mitigated effectively. Wetland loss is evident.

4. The report is not clear on the effect that subsidence will have on the topography, roads and underground water flows after mining.

5. The report recommends that the post-closure Acid Mine Drainage decant water be treated until water quality stabilizes. This mitigation of such a devastating impact is very vague in that it does not Quantify the amount of decanting acid mine water nor does it highlights the fact that the water quality might not stabilize in the next hundred years. MTPA does not find a **sound rehabilitation plan** with regards to prevention of dewatering and loss of wetlands and prevention of AMD water back into the environment in this report.

6. The alternative site layout plan for the discard dumpsite and the above ground infrastructure is not acceptable. It lies within close proximity of a network of wetlands, seepage wetlands and partly within the 1km restricted zone of a Critical Biodiversity River. (Tributary of the Assegai river) (Mining and Biodiversity Guideline, 2013, SANBI et al.)

7. MTPA does not agree with the summary by EcoPartners with regards to the National Assets on page 6, 7 and 8 . It is a basic flaw. The Area is regarded as a high priority Biodiversity Conservation area and a

high risk area for mining. The impact on biodiversity due to the underground mine is not limited to the surface infrastructure and some depletion of water. If the cumulative effect of mining if not mitigated satisfactorily it can be devastating for an ecosystem. The report stated erroneously that the threatened terrestrial ecosystem status in this area is 'Vulnerable". The status of the ecosystems listed are Endangered. (MBSP, 2014),

8. The abundance of coal elsewhere in South Africa does not justify the mining of coal in such a high risk area. It is highly undesirable to degrade and pollute such a sensitive biodiversity area through coal mining and this should be prevented in order to adhere to Section 24 of this country's Constitution.

A summary of the protective legislative measures of the study site is provided in Table 1, below.

Table1. Legislative measures.

Biodiversity Status	Description	Applicable legislation
Farms listed in the Mabola Protected Environment. Por. 1 of Yzermyn 96 HT excluded but included in the Wakkerstroom Wet Grassland Protected Environment under the pending Section 49 MPRDA application.	Mabola declared In January 2014 Protected Environment see map in Appendix 1. Fig.1.	Protected Environments declared in terms of Chapter 2 of the Protected Areas Act (NEM:PAA, NO 57 OF 2003) Mining prohibited or restricted – MPRDA (no 28 of 2002)
Farms has Endangered Ecosystem status.	The farms lie within the Paulpietersburg Moist Grassland and Wakkerstroom Montane Grassland ecosystems, needs protection for maintaining ecological processes,Fig.2.	Endangered ecosystems is listed as threatened ecosystems in terms of Section 52 of the Biodiversity Act ,2004 Act no 10 of 2004.
Critical biodiversity areas (CBAs)	Large areas of these farms consist of CBA irreplaceable and CBA optimal areas, map in Appendix 1. Needs protection to meet biodiversity conservation targets. Fig. 3.	Protected in terms of the Biodiversity Act, NEMBA, in terms of sections 24(5) and 44 of NEMA regulations (R 547 of 2010).
Freshwater ecosystem CBA's	The CBA river has a recommended 1km buffer around it and the wetland clusters delineated with 100 m buffer zones. Required to meet biodiversity targets for freshwater ecosystems. Refer to freshwater assessment map in Appendix 1. Fig.	Not currently protected by law, but management and monitoring guided by several wetland guidelines. Mining in this area is out of place within the framework of national environmental management policies , norms and standards such as those laid out in

	4.	Section 48 (2) MPRDA

MTPA does not support this application on the grounds of the biodiversity richness and sensitivity of this mountain catchment area. This area has been identified as one of South Africa's few Biodiversity Priority areas where any form of mining should be avoided. The area is also listed as a SA Strategic water resource area. Degradation, pollution of water and loss of wetlands must be avoided. The MBSP maps in Appendix 1, is self explanatory with regards to the sensitive biodiversity areas both in terms of terrestrial and freshwater biodiversity assessments and formal protection measures.

MTPA does not support the change of land use of these farms.

Your co-operation is highly valued.

Kind Regards

.....

MR. B.MORRIS
ACTING GENERAL MANAGER BIODIVERSITY CONSERVATION
DATE: 27 | Oct | 2014

Appendix 1.

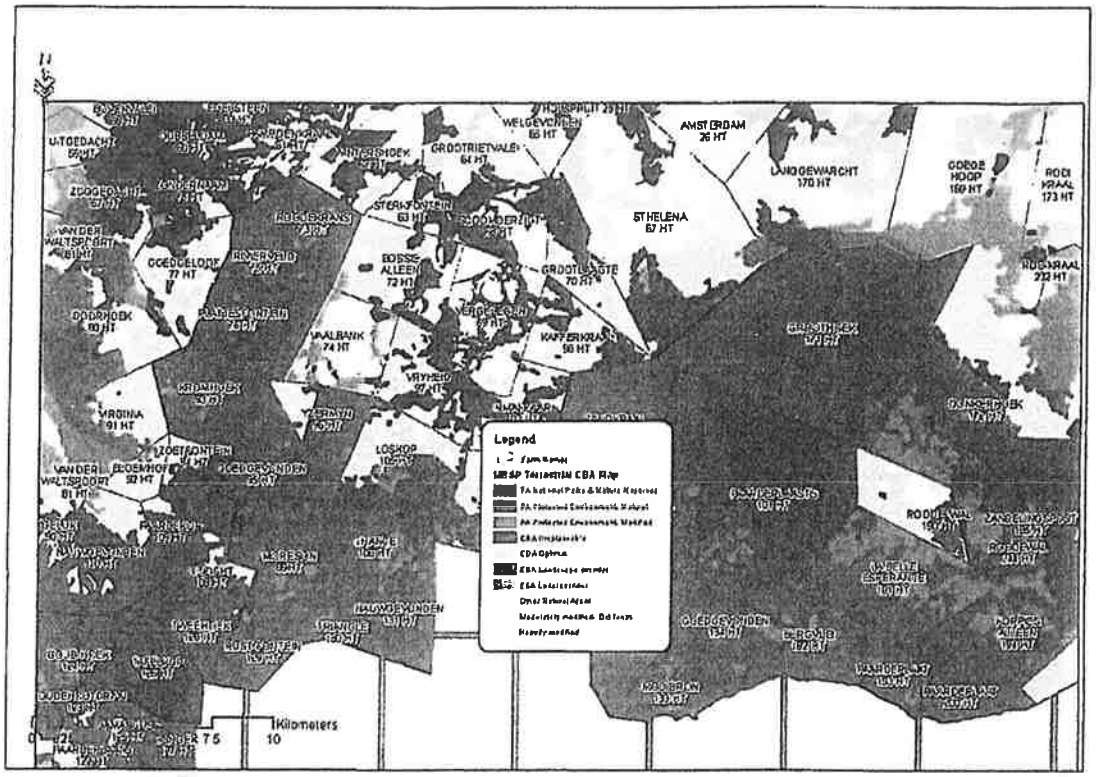


Fig1. MBSP map, current status of Protected Areas together with Terrestrial CBA.

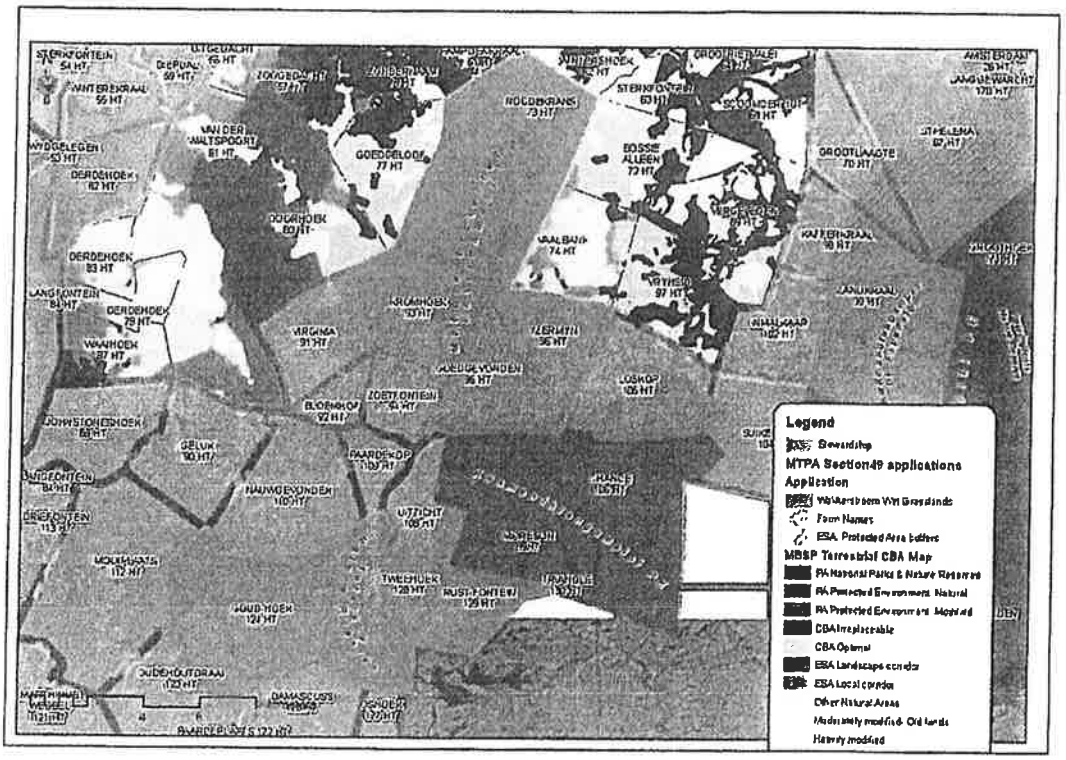


Fig 2. MBSP map, with declared PE's in relation with MTPA Sec 49 application and Stewardship site.

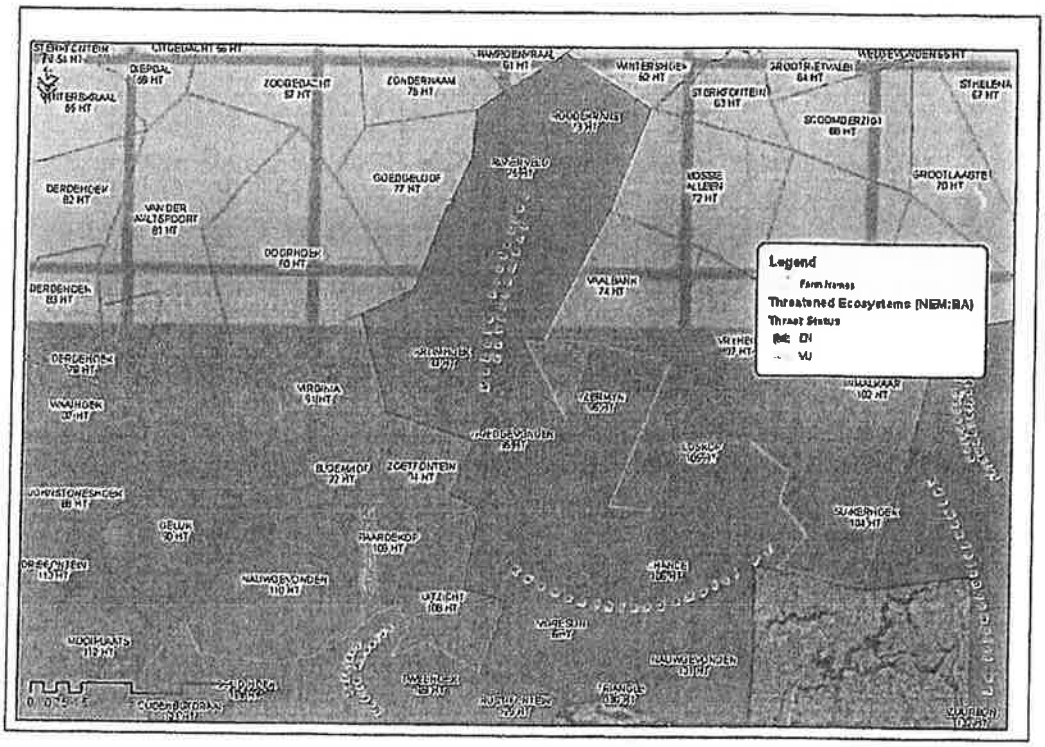


Fig.3. MBSP map , indicating the Endangered Threatened Ecosystems of this area.

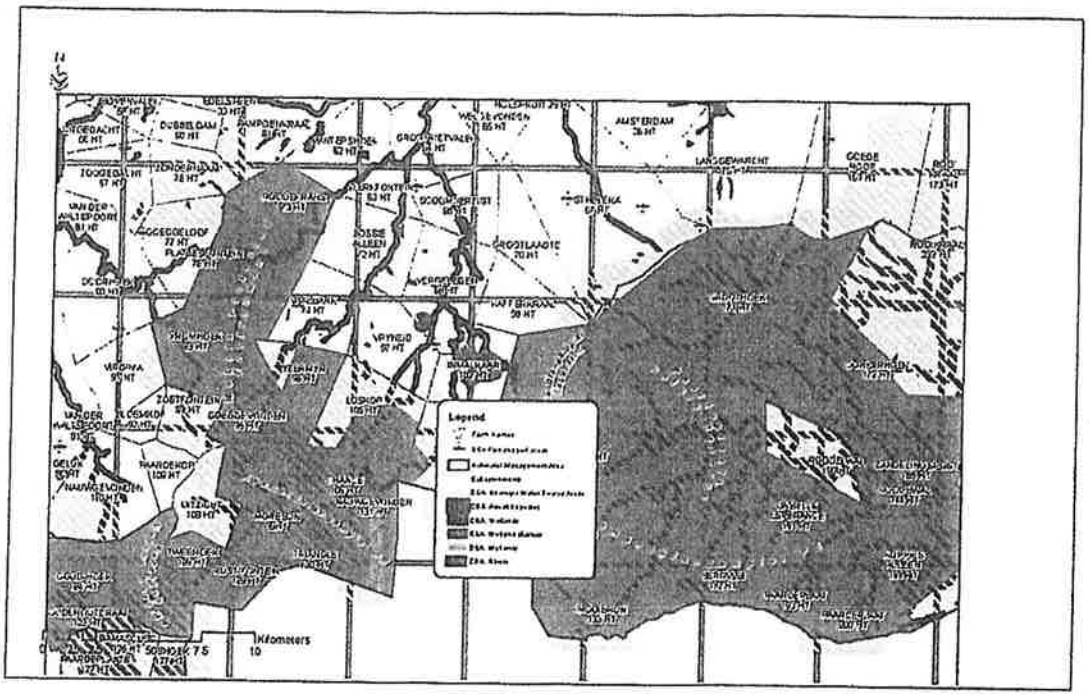


Fig. 4. MBSP map, freshwater assessment. Indicating a CBA River in portion 1 of Yzermyn 96 HT and CBA wetlands

285

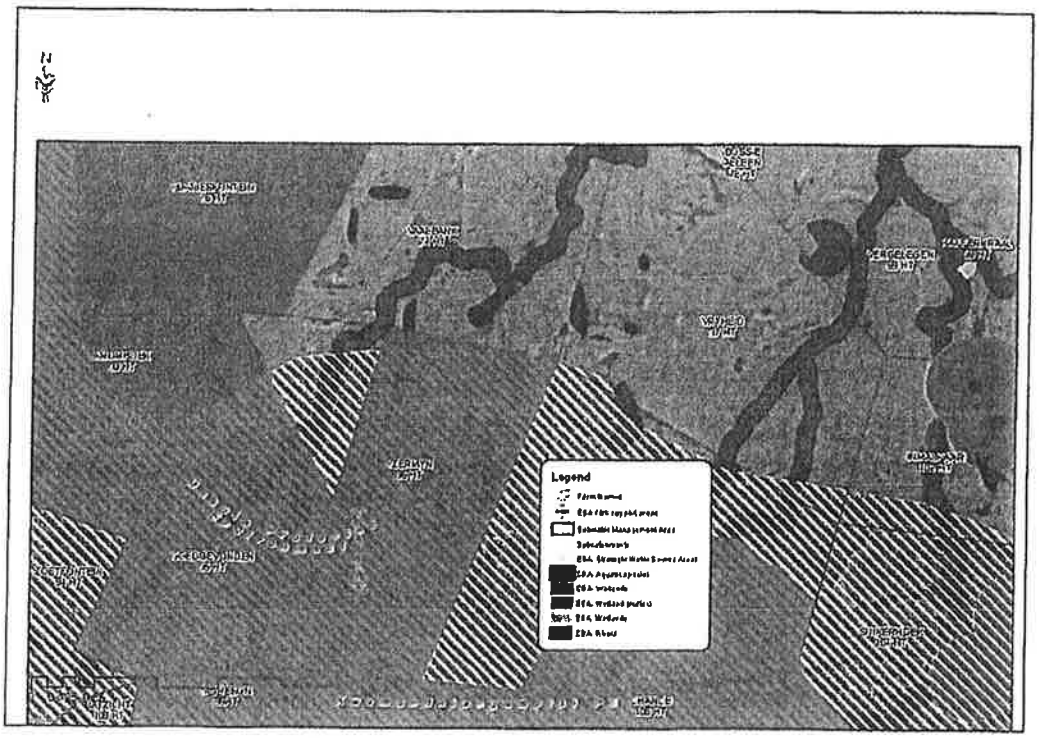


Fig 5. MBSP map showing the Ecological Support Area, strategic water source area and the CBA river that needs to have 1 kilometre restricted zones on both sides (Yzermyn 96 HT).

Private Bag X11338 Nelspruit, 1200, N4 National Road, Hall's Gateway, Mattafin
Tel: +27 (13) 759 5300/01 Fax: +27 (13) 755 3928
www.mpumalanga.com

Annexure 10

286

Mpumalanga
TOURISM AND PARKS AGENCY

Ref: LUA 15/1273
Unit: LUA /BSS
Enquiries: F.N.Krige
E-mail: frans@MTPA.co.za
Tel/Fax: 013-2540279

Ms. Fiona Grimett

Department Environmental Affairs
Private Bag X 447
Fedsure Building
Pretoria 0001

Fax: 012 322 2682
E-mail: fgrimett@environment.gov.za

Dear Ms. Grimett

HEREWITH MTPA'S COMMENTS OF THE FINAL ENVIRONMENTAL IMPACT REPORT WITH SPECIFIC REFERENCE TO THE YZERMYN UNDERGROUND COAL MINE. COMMENTS INCLUDE THOSE ON THE RISK ASSESSMENT DONE BY ECOPARTNERS FOR THE ATHA GROUP. WAKKERSTROOM, MPUMALANGA PROVINCE.

Ecopartners correspondence, reference 14/12/16/3/3/2/639 and NEAS reference DEA/EIA ooo1965/2013 of 10/02/2015 has reference.

The declaration of the Mabola Protected Environment in terms of the National Environmental Management: Protected Areas Act, 2003 (Act no .57 of 2003) (As amended) has been Gazetted on 22 January 2014 notice 20 of 2014 no 2251 by the MEC for the Department of Economic Development, Environment and Tourism in Mpumalanga. (Figure 1. MBSP, 2014)

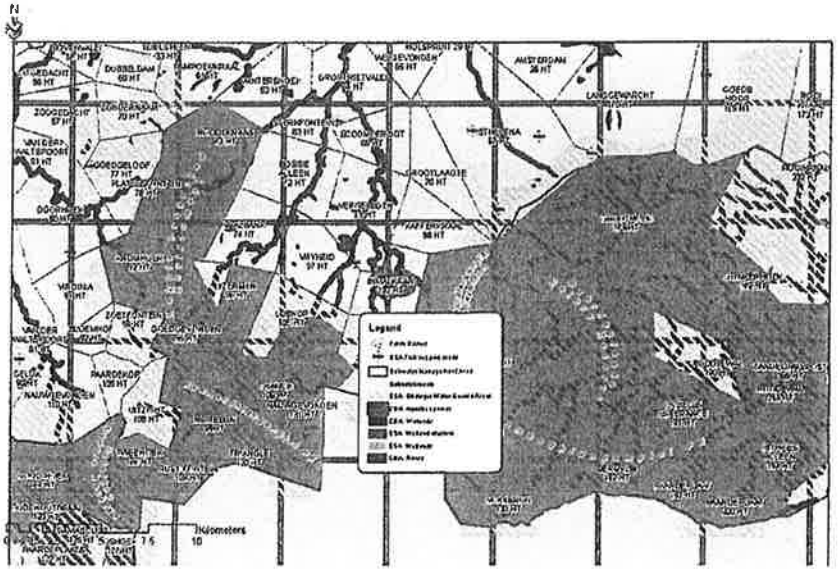


Fig. 1. Map indicating the Mabola Protected Environment in relation to Kwamandhlangampisi PE and Tafelkop Nature Reserve.

MTPA has before abovementioned declaration was in place applied in 2010 to the National Minister of Minerals and Energy through the Mpumalanga Regional Manager at RMDEC to considered it to Sterilize these marginalized minerals under Sec. 49 of the MPRDA in 2010, based on the 2004 National Spatial Biodiversity Assessment and to exclude those farms from future mining.

The National Protected Areas Expansion Strategy has since 2004 initiated a formal program in the Wakkerstroom area to formally protect this national biodiversity asset. Many applications for Prospecting and mining were turned down by the MTPA EIA Unit within this proposed Protected Environment . The Mpumalanga RM from DMR after consultation during a RMDEC sitting committed his office to put any new applications on hold until a ruling was made by the DMR Minister.

The Declaration of the Mabola Protected Environment was thus a milestone achieved with regards to Cooperative Governance and this specifically between Mining and Biodiversity.

The purpose for the declaration of Mabola Protected Environment is:

1. To enable the owners of the land to take collective action to conserve biodiversity on their land and to seek legal recognition therefore (28) (2) (b).

The Atha Group has no surface rights. Not even in portion 1 of Yzermyn 96 HT, (where they intend to place their above ground structures) that lies outside the Protected Environment but inside the MPRDA Sec 49 restricted area.

2. To protect the area if the area is sensitive to development due to its biological diversity , natural characteristics , scenic and landscape value and the provision of environmental goods and services (28)(2)(c)(i)(ii)(iv)(v);
   According to the Mpumalanga Biodiversity Sector Plan (2014) the study area is located in an area identified as Critical Biodiversity irreplaceable and CBA optimal areas and is those areas of highest biodiversity value outside formal protected areas. These land category areas must be managed for biodiversity conservation to meet the SANBI national targets set for grassland areas. The Aquatic Biodiversity assessment indicates an extensive network of Critical Biodiversity Rivers and Seepage wetlands which provide habitat for a rich variety of organisms and sustainable supply of clean water for thousands of humans downstream.

3. To protect a specific ecosystem (28)(2)(d) Endangered Wakkerstroom montane grassland.

4. To ensure that the use of natural resources in the area is sustainable (28)(2)(b).
   The final Atha EMIR for the proposed Coal Mining operation will permanently threaten approximately 4000 ha of the geology, degrade the soils, the grazing and wetland systems, the pollution plume and possible AMD decant will pollute the waters downstream and reduce the biodiversity status and desirability for future land uses in this currently high biodiversity and high sensitive area. The protected Area status will protect the ecosystem against such negative degradation and will ensure sustainable use over the long term.

   Very little of South Africa's grassland areas remain enact whilst there are many areas outside this designated Conservation area where Coal mining are permitted. Atha- Africa has the opportunity to apply to mine in many lower risk areas.

   The Atha/Ecopartners has recognized the Mining and Biodiversity Guidelines (2013) as a document that provides explicit direction in terms of where mining –related impacts are legally prohibited, where biodiversity priority areas may present high risks for mining and where biodiversity may limit the potential for mining but still persists to challenge the strategically planned and now proclaimed Biodiversity Protection areas.

   After assessing the Final EIR and specifically the Risk assessment report together with the mitigation proposals and mitigation costs the following shortcomings and basic flaws were detected.

a) Baseline Environmental studies:

1. The EcoPartners map on page 214, fig 7-43 Mabola Protected Environment is inaccurate and misleading. The Mabola Protected Environment is larger and linked to KwaMandlangimpisi Protected Environment. The EcoPartners reference to the MTPA application Section 49 under the MPRDA with regards to portion 1 of Yzermyn 96 HT and other farms during the comments and response report is inaccurate and misleading. MTPA did not publish the report nor did we supply Atha with the whole picture. It was handed over for DMR 's Minister to peruse.

2. The EMP from EcoPartners indicates that the hydrocensus with regards to wetlands were delineated through desktop studies and that most of the numerous fountains, critical wetland sources not at all assessed. In fact the report indicates that all the GPS data tabulated on pg 181 and 182 are false and fabricated. This is poor and unacceptable.

3. The water contribution of the affected wetlands to the critical biodiversity rivers and other streams were not quantified. Dry periods amount of water compared to the wet season were not calculated. The report stated that the fountains were not thoroughly assessed and amount of water they produced not measured. This information is critical to determine the effect of dewatering and to mitigate the dry out effect during the proposed mining period of 15 years. Data lacks critical information to determine the extent of mitigation measures.

4. Delta H's Groundwater model stated on page 53," Groundwater dependant eco-systems and yields of springs (water supply) located within the significant zone of dewatering of the shallow aquifer, limited to the site boundaries, could be negatively impacted and some may dry up during the life of mine"

5. The recommendation that the treated decant water post closure emanating from the treatment plant be discharged to the adjacent hillslope seepage wetlands making use of a spigot which then drains into a sand filter along the edge of the hillslope seepage wetland to allow for recharge of the hillslope wetland and ensure reaching the valley bottom wetland resource is further cleansed and contributes to the instream flow of the local drainage network **is very vague and might mislead** many readers. The Ecopartner report stated that the water treatment plant is proposed to treat decant water post closure. There are no indications of how the wetlands and fountains will be fed with clean water especially in the dry seasons from day 1 that dewatering occurs. This explanation of discharging treated water into the hillslopes post closure will be too late. The plan is not feasible and practical.

b) Cost analysis :

1. There are no indications of any specifications of such a treatment plant, if it will be neither a passive or active treatment plant nor the capacity thereof, details about brine management and pollution control dams.

2. The Question needs to be asked as to whom will fund the operation and maintance of the water treatment plant for the next hundred years that polluted water will decant.

3. A detailed cost analysis of the water irrigation system to prevent the dry out and destruction of wetlands and grassveld of the proposed 4000 ha mining footprint in the Mabola Protected Environment is required. These areas will be dewatered during the underground mining (Dewatered cone) from the start of underground mining operation. The quantification of the volume of clean water needed to mitigate this uncontrolled impact could have been informed if proper baseline studies were done. The cost determination to maintain this irrigation over the 15 year lifespan would have been possible.

4. The acknowledgement of Atha Africa-ventures of the implications of these mitigation measures at this scale needed in order to maintain this highly sensitive environment (High risk wetlands and fountains) would make this coal mining project a no go option. The whole mining target area is inundated with seepage wetlands and water recharge areas.

c) Prospecting programme:

MTPA has requested the applicant to produce a map indicating the prospecting borehole plan. The vague Prospecting borehole plan provided in the EIR indicates that Atha has bored drill holes in wetlands and wetland buffers which were not permitted.

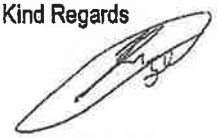
Recommendations:

Based on the environmental significance of the Study area and the marginal mineral deposits it is proposed that the most appropriate long-term investment that should be made within this Agricultural landscape is for biodiversity conservation and associated compatible land uses. MTPA does not foresee any way that Conservation, Tourism and Coal mining in this instance Atha-Africa can coexist. The Lease area borders on Legally Protected Areas, with the protected buffers where "Mining is Prohibited". The Final Atha-Africa Ventures Environmental Impact Assessment Report had a few basic flaws with regards to their impact assessment, mitigation methods and long term financial provision.

The MBSP indicates that many low risk areas surrounding these irreplaceable areas for mining does exist where mining and Agriculture might coexist if the strategic planning is done responsibly.

Taking all the factors into account MTPA does not support the change in land use of these farms. The Precautionary principle of Sustainable development should be the decision maker's best practical and socially responsible option.

Kind Regards



.....

MR. F.N.KRIGE
LAND USE ADVISORY UNIT
BIODIVERSITY SUPPORT SERVICES
MTPA
DATE: 3/03/2015

292

Private Bag X11338 Nelspruit, 1200, N4 National Road, Hall's Gateway, Mattafin
Tel: +27 (13) 759 5300/01 Fax: +27 (13) 755 3928
www.mpumalanga.com