

RESPONDING STATEMENT SUBMITTED BY ATHA AFRICA VENTURES (PTY) LTD.

(THE APPLICANT / RESPONDENT)

IN THE MATTER OF AN APPEAL SUBMITTED BY

EARTHLIFE AFRICA JOHANNESBURG	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	SIXTH APPELLANT
ASSOCIATION FOR WATER AND RURAL DEVELOPMENT	SEVENTH APPELLANT
BENCH MARKS FOUNDATION	EIGHTH APPELLANT

Directed to:

MEMBER OF THE EXECUTIVE COUNCIL: AGRICULTURE, RURAL DEVELOPMENT, LAND AND ENVIRONMENTAL AFFAIRS, MPUMALANGA

Copied to:

MINISTER OF ENVIRONMENTAL AFFAIRS

AGAINST THE DECISION OF

THE MPUMALANGA DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT, LAND AND ENVIRONMENTAL AFFAIRS TO GRANT AN ENVIRONMENTAL AUTHORIZATION AS APPLIED FOR BY ATHA AFRICA VENTURES (PTY) LTD., FOR THE PROPOSED DEVELOPMENT OF THE YZERMYN UNDERGROUND COAL MINE, MAGISTERIAL DISTRICT OF WAKKERSTROOM: MPUMALANGA PROVINCE.

(ITO ENVIRONMENTAL AUTHORISATION REFERENCE NUMBER: 17/2/3/GS-131)

APPLICANT'S RESPONDING STATEMENT
IN TERMS OF REGULATION 63(1) OF
THE ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS, 2010 GN R543

1. INTRODUCTION

- 1.1. This is a Responding Statement in response to the Appeal filed by the eight Appellants as aforementioned (“the Appellants”) in the above matter on the 19th Of August 2016.
- 1.2. The Appellants’ Appeal; was submitted in response to the Mpumalanga Department Of Agriculture, Rural Development, Land And Environmental Affairs (“MDARDLA” or the “Department”) decision to grant an Environmental Authorization as applied for by Atha Africa Ventures (Pty) Ltd. (“AAV”; “Atha” or the “Applicant”), for the proposed development of the Yzermyn Underground Coal Mine (“YUCM” or the “Project”), Magisterial District of Wakkerstroom, Mpumalanga Province, under Authorisation reference number 17/2/3/GS-131).
- 1.3. In accordance with regulation 63(1) of the National Environmental Management Act, 1998 (NEMA) Environmental Impact Assessment Regulations, 2010 (“EIA Regulations, 2010”), the Applicant herein responds to the Grounds of Appeal submitted by the Appellants as set out below.
- 1.4. Insofar as the Applicant omits to respond to any submissions made by the Appellants, it must be inferred that the Applicant disputes such submissions – unless the context would indicate otherwise – and that it stands by its original submissions, as made in the Environmental Impact Assessment Report.

2. REQUEST FOR CONDONATION, IF REQUIRED

- 2.1. In the event that it is found the Applicant was late in filling its Responding Statement – which is denied - the Applicant hereby requests condonation for the late filing of the Answering Statement in terms of Regulation 62(3) of the EIA Regulations, 2010.
- 2.2. The Applicant submits that it would be in the interests of fair and reasonable natural justice that condonation be granted if so required, as dismissing the Responding Statement on a technical point, especially since this Responding Statement is complex and involves issues of significant importance for the Applicant and the competent authority.

2.3. The Applicant had to obtain expert scientific assistance, as well as legal assistance in order to submit the Responding Statement, at a considerable cost and a dismissal of the Responding Statement would certainly amount to a significant disregard of the fundamental rights of Applicant.

2.4. If indeed relevant, it is therefore submitted that the explanation for a delay in submission of the Responding Statement is reasonable, and that the Responding Statement was filed as soon as was reasonably possible. There was no wilful disregard on the Appellant's part for the legislated time period for submitting the Responding Statement.

3. POINT IN LIMINE: LATE FILING OF APPEAL

3.1. It is respectfully submitted that the Appellant's legal representatives, i.e. the Centre for Environmental Rights ("CER") failed to lodge this Appeal within the prescribed time period allowed under Regulation 62(1) of the Environmental Impact Assessment Regulations 543 of 18 June 2010 ("the NEMA EIA Regulation 2010" or "EIA Regulations, 2010"), promulgated under sections 24(5), 24M and 44 of the National Environmental Management Act, Act No. 107 of 1998 ("NEMA"), read with section 43 of the NEMA.

3.2. Furthermore, it is submitted that the CER omitted to request an extension of time and the honourable MEC's condonation for the late lodgement of the Appeal, and in addition, failed to provide any reason for the late lodgement of the Appeal.

3.3. Consequential to CER's omission to request an extension and or condonation from the honourable MEC, the honourable MEC did not in writing, extend the period within which the Appeal could be lodged, as required in regulation 60(2) of the NEMA EIA Regulations, 2010.

3.4. In light of the abovementioned, it is the Applicant's sincere request that the honourable MEC dismiss the Appellant's Appeal based on the late lodgement of the Appeal by the CER, without the CER requesting a time extension and or condonation for the late lodgement

4. APPLICANT'S RESPONDING STATEMENTS TO THE APPELLANT'S GROUND OF APPEAL

4.1. **AD PARAGRAPH 1:**

4.1.1. In its Appeal the Appellants conclude that "This is an appeal against an environmental authorization granted by the Chief Director: Environmental Affairs, Mpumalanga on 7 June 2016 to Atha Africa Ventures (Pty) Ltd ('Atha') in respect of the Yzermyn underground coal mine near Wakkerstroom ('the EA'). Atha is a subsidiary of the Atha Group, India, which is a prominent stakeholder in the Indian mining industry whose business includes coal imports".

4.1.2. **AAV RESPONSE:**

4.1.2.1. The Atha Group is a diverse international conglomerate with business interests in Iron-Ore Mining, Coal Mining, Steel Production, Power and Renewable Energy. The Company imports coal for its DRI operations in India.

4.1.2.2. The Atha Group's Atha-Africa Ventures (Pty) Ltd.'s ("AAV") decision to invest in the mining sector in South Africa was a direct result flowing from the outcome of the Department of Trade & Industry (DTI), in conjunction with the High Commission of South Africa for India's, Export Marketing & Investment Assistance (EMIA) Scheme, which in turn was the inter-governmental co-operation platform which organized the International Trade Initiative-India 2011 (March 28-31, 2011 in Mumbai & New Delhi). This initiative was aimed at developing export markets for South African products & services and to specifically invite new Foreign Direct Investment into South Africa.

4.1.2.3. Bolstered by the Free Trade Agreements, BRICS and other Bilateral Agreements, The International Trade Initiative – India, invited Indian companies to participate and invest in six specific sectors in South Africa, including the Mining and Beneficiation sector.

4.1.2.4. It is important to note that the underlying principle of creating such investments opportunities between the two countries was to directly

contribute to socio-economic upliftment through mutually beneficial commercial opportunities.

4.1.2.5. Atha-Africa Ventures (Pty) Ltd (“AAV / Atha”) is a duly registered company under the laws of South Africa and is the proponent of the Yzermyn Underground Coal Mine (“YUCM”). Till date Atha’s Foreign Direct Investment (“FDI”) contribution into the South African economy, is approximately USD 45 million, and it is expected that an additional USD 100 million in FDI will be spent in South Africa in respect of the development and operation of the YUCM Project.

4.2. **AD PARAGRAPHS 2 TO 9:**

4.2.1. The abovementioned paragraphs in the Appeal introduce various Parties, in their capacity as Interested and Affected Parties (“I&AP’s), as Appellants to this matter. The following eight Parties are cited, in paragraphs 2 to 8, as Appellants: Earthlife Africa Johannesburg; Birdlife South Africa, Mining and Environmental Justice Community Network of South Africa (MEJCN); Endangered Wildlife Trust (EWT), Federation for a Sustainable Environment (FSE), GroundWork, Association for Water and Rural Development (AWARD) and the Bench Marks Foundation (BMF).

4.2.2. **AAV RESPONSE:**

4.2.2.1. It is extremely important to note that *only three* of the abovementioned Appellants actually registered and took part in the Environmental Impact Assessment (“EIA”) Process’s Public Participation Process that was undertaken by the Applicant, in fulfilment of the provisions of sections 54 to 56 of the Environmental Impact Assessment Regulations 543 of 18 June 2010, promulgated under sections 24(5), 24M and 44 of the National Environmental Management Act, 1998 (Act No. 107 of 1998 (“NEMA”).

4.2.2.2. Regulation 55(1) of the EIA Regulations 543 of 2010, provides that an Environmental Assessment Practitioner (“EAP”), managing an EIA application must open and maintain a register which contains the names, contact details

and addresses of:- (a) all persons who, as a consequence of the public participation process conducted in respect of that application in terms of regulation 54, have submitted written comments or attended meetings with the applicant or EAP; (b) all persons who, after completion of the public participation process referred to in paragraph (a), have requested the applicant or the EAP managing the application, in writing, for their names to be placed on the register; and (c) all organs of state which have jurisdiction in respect of the activity to which the application relates.

- 4.2.2.3. Regulation 55(2) further provides that an EAP managing an application must give access to the register to any person who submits a request for access to the register in writing.
- 4.2.2.4. It is AAV's submission that only Birdlife South Africa, Endangered Wildlife Trust (EWT) and the Federation for a Sustainable Environment (FSE) actually registered as I&AP's during the EIA's Public Participation Process. As registered I&AP's each one of the three Appellants were afforded the opportunity to review and comment on all the information provided, throughout the EIA Process and all their respective information was also included in the EIA reports submitted to the MDARDLA.
- 4.2.2.5. It is further important to note that of the three registered I&AP's, only Birdlife South Africa provided the Applicant with comments on the amended EIA Report ("EIAR"), which comments were considered, responded to and incorporated into the Report (refer to the comments and response tables in the EIAR).
- 4.2.2.6. Neither the EWT nor the FSE, as registered I&AP's responded or disputed the amended EIAR, when they were provided with the opportunity.
- 4.2.2.7. It is AAV's respectful submission that as far as the locus standi and validity of Earthlife Africa Johannesburg; Mining and Environmental Justice Community Network of South Africa (MEJCN); GroundWork; Association for Water and Rural Development (AWARD) and the Bench Marks Foundation (BME), as Appellants in this matter, are concerned, these parties should NOT be

allowed to enter any Appeal in respect of this matter, solely because they never registered and took part as I&AP's in the EIA Public Participation Process.

4.2.2.8. Furthermore, it is respectfully submitted that section 43(1) of the NEMA provides that "Any ***affected*** person may appeal to the Minister / MEC against a decision taken by any person acting under a power delegated by the Minister / MEC under this Act.

4.2.2.9. It is important to note that the CER were also a registered I&AP, but at no point commented or took part in the EIA Public Participation Process. It is our opinion, that for the CER to register as an I&AP in order to receive all the documents, for the sole purpose HOWEVER, to not to submit any comments, but to introduce new evidence such as the Susie Brownlie Opinion in the Appeal stage of the process, is in direct contravention of the Guideline on Administration of Appeals, as the Appellants and the CER, did not explain why the information (i.e. Susie Brownlie Opinion) was not made available throughout the process even though they were registered I&APs.

4.2.2.10. AAV's contention is that a party, who has not registered as an I&AP and who did not take part in the comprehensive EIA Public Participation Process in order to raise any concerns or highlight any reasons, now feel that they are affected by the proposed Project, when they, either at any stage prior to the granting of the Environmental Authorisation, or even prior to the lodgement of this Appeal, did not request the Applicant to be registered as an I&AP, and therefore in our opinion, ***SHOULD NOT*** be allowed to enter any Appeal in respect of this matter.

4.3. **AD PARAGRAPH 10:**

4.3.1. The Appellants' contention is that "Each of the appellants has juristic personality. They comprise both registered non-profit conservation organizations and communities affected by mining in South Africa. Their objectives include environmental conservation but also advancing the rights of those who are most vulnerable to the effects of environmental degradation. Many of them have the express objective of

protecting not only the environment, but the people who depend on it for their livelihoods”.

4.3.2. **AAV RESPONSE:**

4.3.2.1. It is AAV’s submission that whilst the Appellants, refers to the “rights of those who are most vulnerable to the effects of environmental degradation”, it is respectfully submitted that the Appellants have failed to fully appreciate the concept of “Sustainable Development”, especially within the historically intended context thereof.

4.3.2.2. The concept of sustainable development, in which present generations manage their development needs in a way which does not prevent future generations from doing the same, has become a cornerstone of modern thinking. It is therefore more than possible to maintain a balance between the economic needs on a local, provincial and national level, as well as the environmental protection and conservation of a valuable biodiversity area.

4.3.2.3. Even in instances in respect of the mining and utilisation of non-renewable resources, it has been widely demonstrated that mining projects, which are managed in an environmentally responsible manner can be significant socio-economic engines of the communities in which they are located.

4.3.2.4. It is furthermore, increasingly accepted that the important contribution of mining is directly linked to the conversion of mineral endowment into other enhanced forms of sustainable societal and economic development.

4.3.2.5. The Appellants have failed to grasp that the decision makers within the MDARDLEA, when assessing the merits of granting the Environmental Authorization to YUCM, took into account **ALL** the underlying Sustainable Development principles of Section 24(b)(iii) and Section 2 of the NEMA, which resulted in the issuing of an Environmental Authorisation, however subject to very rigorous compliance conditions.

4.3.2.6. The Appellants’ unreasonable insistence to over concentrate on the environmental aspects (notwithstanding the fact that the proposed

environmental impact mitigation measures proposed by the Applicant's specialists, were found to be acceptable and reasonable to the Department)

the seemingly disregard of the obvious socio-economic benefits considerations, are to say the least a very narrow, ambiguous and arbitral approach, as supposed to taking a sectoral approach that assumes that each sector, Environment, Economy and Society, is a unified entity.

4.3.2.7. The Appellants' ill understanding of the holistic and practical application of the principles of Sustainable Development (which aims to overcome barriers between the three pillars of Sustainable Development), have resulted in the Appellants decision to appeal the Environmental Authorization of a mining development which has the potential to uplift the very people the Appellants intend to keep in perpetual poverty, thus directly going against the intent of the rules of natural justice, the internationally accepted principles governing the concept of Sustainable Development and more importantly, section 10 of the Constitution of the Republic of South Africa, which enshrines the right of every South African to lead a life of dignity:- There is no dignity in poverty!

4.3.2.8. It is respectfully submitted that the Appeal as lodged by the Appellants is, therefore, neither about "protecting the environment", nor about advancing the "rights of the people" affected by proposed mining project.

4.3.2.9. The inclusion of non-registered I&AP's as Appellants, and the apathy of the registered I&AP's, who although appealing the Environmental Authorisation, deliberately chose not to respond to the amended EIAR, suspiciously substantiates the impression that the primary purpose of this Appeal appears not only to furnish the Honorable MEC with a misrepresentation of the correct and actual facts but also to frustrate the Applicant in exercising their right to mine duly granted to them in pursuance of the Section 2 of the MPRDA by the Department of Mineral Resources, and consequential granting of an Environmental Authorization and a Water Use License.

4.3.2.10. We respectfully reiterate that this approach by the Appellants, undoubtedly as advised by the CER, is indicative of the Appellants' and CER's apparent indifference to the relevant competent authorities' statutory mandate to

accept, assess statutory required application criteria and to make an objective, fair and informed decision. In our view this is done deliberately, and most importantly, in doing so, the Appellants and CER purports to assume the role of Interested & Affected Party, Specialist, Regulator and Adjudicator, not only in relation the YUCM Project but all proposed mining activities in the Mpumalanga Province.

4.3.2.11. It is our sincere submission that the positive spill-over effects, of a responsible underground mining project, as opposed to an opencast mining project, as committed to by AAV, on the local and even regional communities, will be an automatic and valuable contributor to Local Economic Development Programmes (“LEDP”) and instruments which can positively transform the surrounding communities and ensuring that the local population benefits from the mine and share in the growth potential it creates for the local economy.

4.3.2.12. AAV’s commitment to successfully implement LEDP’s will guarantee a co-existing, positive relationship between the mine and the community. If the mine furthermore clearly demonstrates its commitment to implement potential environmental impact mitigation measures, the relationship between the environment, the community and the mine, will constitute a real-life scenario of the practical application of the principles of Sustainable Development within the context of sustainable rural development, which in turn will almost certainly result in an area that is, in terms of job creation, development of micro, small and medium sized enterprises, stable safety and security circumstances, a catalyst for further development within the region and the Province.

4.3.2.13. It is in light of the abovementioned approach from AAV, that we respectfully emphasise the need to have an appropriate balance between the understandable concern for the environment and the responsible extraction of minerals and their utilisation and other natural resources for broad-based socio-economic development as one solution for the urgent war on poverty.

4.3.2.14. In terms of the Constitution: Section 24 declares as basic human right:
Everyone has the right a. to an environment that is not harmful to their health or well-being; and b. to have the environment protected, for the benefit of

present and future generations, through reasonable legislative and other measures that i. prevent pollution and ecological degradation; ii. promote conservation; and iii. secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

4.3.2.15. In this regard AAV have applied for the required legal instruments, committed to the mitigation required to minimise pollution and ecological degradation as per the legislative measures, committed to conservation efforts in their EMP and contributed significantly to the body of science describing the study area. Most importantly AAV found a mechanism to **promote** justifiable economic and social development through ecologically sustainable development and use of natural resources.

4.3.2.16. In this regard, the constitution is clear in its determination that it does not merely “tolerate” or “allow” economic development, but that it seeks to promote this venture.

4.4. **AD PARAGRAPH 11 – GROUNDS OF APPEAL**

4.4.1. **Ad paragraph 11.1 (FIRST GROUND OF APPEAL):** “The EA does not authorise, and the Environmental Impact Assessment Report upon which it is based (‘the EIAR’) did not assess, all of the activities triggered by the project which are listed in the Environmental Impact Assessment Regulations Listing Notices 1, 2 and 3 of 2010 (Notices 544, 545 and 546 published in Government Gazette 33306 on 18 June 2010) (‘the NEMA 2010 Listing Notices’), more specifically:

4.4.1.1. The construction of facilities or infrastructure for the generation of electricity where the electricity output is more than 10 megawatts but less than 20 megawatts (activity 1(i) in Listing Notice 1 of 2010); and

4.4.1.2. The infilling or depositing of any material of more than 5 cubic metres into, or the dredging, excavation, removal or moving of soil, sand, shells, shell grit, pebbles or rock from a watercourse (activity 18(i) in Listing Notice 1 of 2010) – in relation to the underground workings of the mine”.

4.4.2. **AAV'S RESPONSE TO THE FIRST GROUND OF APPEAL:**

4.4.2.1. Please refer to AAV's point by point response contained in Section C of this Response Statement Document.

--0--

4.4.3. **Ad paragraph 11.2 (SECOND GROUND OF APPEAL):** *"The Minister of Environmental Affairs ('the Minister') was and remains the competent authority in respect of this application in terms of section 24C(2)(a) of the National Environmental Management Act 107 of 1998 ('NEMA') as it read at the relevant time, and the Chief Director acted without lawful authority when he granted the EA under authority delegated by the MEC"*

4.4.4. **AAV'S RESPONSE TO THE SECOND GROUND OF APPEAL:**

4.4.4.1. Please refer to AAV's point by point response contained in Section C of this Response Statement Document.

--0--

4.4.5. **Ad paragraph 11.3 (THIRD GROUND OF APPEAL):** *"The EIAR does not (as it was required to in terms of sections 2(4)(a)(viii), 2(4)(c) and 2(4)(i) of NEMA) contain a proper and objective assessment of the negative impacts of the project on people's environmental rights; and fails to identify that the adverse impacts of the project are likely to be distributed as to unfairly discriminate against poor rural communities in the area who are dependent on the existing natural resources for a livelihood."*

4.4.6. **AAV'S RESPONSE TO THE THIRD GROUND OF APPEAL:**

4.4.6.1. Please refer to AAV's point by point response contained in Section C (attached as Appendix A) of this Response Statement Document.

--0--

4.4.7. **Ad paragraph 11.4 (FOURTH GROUND OF APPEAL):** “The EIAR does not contain all of the information necessary for the competent authority to consider the application and to reach a decision (regulation 31(2) of the NEMA 2010 Regulations); and the EA does not take into consideration all relevant factors including that a risk-averse and cautious approach must be applied (section 2(4)(a)(vii) of NEMA.”

4.4.8. **AAV’S RESPONSE TO THE FOURTH GROUND OF APPEAL:**

4.4.8.1. Please refer to AAV’s point by point response contained in Section C of this Response Statement Document.

--0--

4.4.9. **Ad paragraph 11.5 (FIFTH GROUND OF APPEAL):** “The EA was granted in the face of material concerns on the part of other organs of state with a direct regulatory interest in the project, including the Minister and Department of Environmental Affairs (‘the DEA’), and the Department of Water Affairs (‘DWA’) as it then was, and without any apparent engagement with them, thereby undermining the constitutional principles of co-operative governance and integrated decision-making, and infringing sections 2(4)(l), 240(1)(c), 240(2) and 240(3) of NEMA.”

4.4.10. **AAV’S RESPONSE TO THE FIFTH GROUND OF APPEAL:**

4.4.10.1. This subjective statement is blatantly incorrect. There is no evidence supporting this ambiguous assumption. To the contrary, this application was so transparent and subjected to inter-departmental communication and collaboration, that it is ridiculous to argue that the departments did not liaise. It is highly unlikely that any department would authorise any development without verifying that the "concerns" and or comments from the other departments, has been addressed. To this effect the Department of Water Affairs (“DWS”) has approved a Water Use Licence (“WUL”) and the Department of Mineral Resources (“DMR”) has approved a Mining Right to the Applicant, clearly indicating that the concerns and or comments

raised by their various competent authority counterparts were addressed by the Applicant.

--0--

4.4.11. **Ad paragraph 11.6 (SIXTH GROUND OF APPEAL):** “The EIAR does not comply with several requirements of regulation 31(2) of the NEMA 2010 Regulations, including by focusing inappropriately on the direct ‘footprint’ impacts of the project and ignoring wider landscape, indirect and cumulative impacts.”

4.4.12. **AAV’S RESPONSE TO THE SIXTH GROUND OF APPEAL:**

4.4.12.1. **This statement is incorrect. Please refer to AAV’s point by point response contained in Section C of this Response Statement Document.**

--0--

4.4.13. **Ad paragraph 11.7 (SEVENTH GROUND OF APPEAL):** “The EIAR does not accurately summarise findings and recommendations contained in specialist reports as it was required to have done in terms of regulation 31(2)(j) of the NEMA 2010 Regulations.”

4.4.14. **AAV’S RESPONSE TO THE SEVENTH GROUND OF APPEAL:**

4.4.14.1. **This Statement is incorrect. Please refer to AAV’s point by point response contained in Section C of this Response Statement Document.**

--0--

4.4.15. **Ad paragraph 11.8 (EIGHT GROUND OF APPEAL):** “ In light of demonstrably material omissions and misstatements contained in the EIAR, the appellants are concerned that EcoPartners lacked either the expertise or the objectivity or both such attributes which are required of an EAP in terms of the NEMA 2010 Regulations (regulation 17(a), (b) and (c)).”

4.4.16. **AAV'S RESPONSE TO THE EIGHT GROUND OF APPEAL:**

4.4.16.1. This is an absolutely absurd, biased and insulting allegation aimed at defaming the independent, excellent reputation of the Applicant's Independent Assessment Practitioner ("EAP"), i.e. EcoPartners and the various internationally recognised specialists appointed by the Applicant as independent environmental management practitioners and/or specialists in their respective fields of expertise.

4.4.16.2. We challenge the Appellants', who employed the services of only a single consultant, to undertake a desktop review on more than two years of specialists in-put and without being on site at all, to proof their baseless and mala fide allegations.

4.4.16.3. Apart from Birdlife Africa, it is our respectful submission that NONE of the Appellants, and especially the CER, took part or gave comments in the EIA process as registered I&AP's and or environmental specialists, hence it is our contention that this malicious assumption is made for a single reason, and that is to deliberately sensationalize and disseminate, defaming, incorrect and or ambiguous information in the hope that the Honorable MEC will act on this blatant misrepresentation, whilst as a fact, very detailed and comprehensive, scientifically based, assessment processes were undertaken by experienced and / or registered independent specialists, in respect of the Environmental Authorization Application, the Mining Right Application and the Water Use License Application.

4.4.16.4. **Please also refer to AAV's point by point response contained in Section C**

--0--

4.4.17. **Ad paragraph 11.9 (NINTH GROUND OF APPEAL):** "The EMPr which forms part of the EIAR does not meet the requirements of section 24N of NEMA and regulation 33 of the NEMA 2010 regulations."

4.4.18. **AAV'S RESPONSE TO THE NINTH GROUND OF APPEAL:**

4.4.18.1. This subjective statement is blatantly incorrect. There is no evidence supporting this ambiguous assumption. To the contrary, the Environmental Authorisation addresses this point as one of the conditions for authorization. Please refer to AAV's point by point response contained in Section C of this Response Statement Document.

--0--

4.4.19. **Ad paragraph 11.10 (TENTH GROUND OF APPEAL):** *"The EA, being based on the EIAR suffers from the same defects which the EIAR does."*

4.4.20. **AAV'S RESPONSE TO THE TENTH GROUND OF APPEAL:**

4.4.20.1. Please refer to AAV's point by point response contained in Section C of this Response Statement Document.

--0--

5. **PART A: THE YZERMYN UNDERGROUND COAL MINE IN OUTLINE**

5.1. **AD PARAGRAPHS 12 TO 14:** The abovementioned paragraphs of Part “A” of the Appeal contain an introduction of certain factual background relating to the Project.

5.2. **AAV RESPONSE:**

5.2.1. **Noted.**

5.3. **AD PARAGRAPHS 15 AND 16:** These paragraphs purports to be the Appellants’ interpretation of the Applicant’s intended mining operations and state as follows: “The extent of the underground workings is depicted in the ‘Biodiversity Baseline & Impact Assessment Report’ by Natural Scientific Services CC dated September 2013 (which is Appendix H1 to the EIAR) (‘the NSS biodiversity report’). A copy of the relevant figure is, for ease of reference, attached marked ‘A’. As appears from the figure, the area to be mined is divided into two parts– that which is to be mined in the first 15 years and that which may be mined after that.”.

5.4. Furthermore, it is alleged by the Appellants “that one of the problems with the EA is that it does not describe the project activities which correspond with the listed activities which are triggered by the project at all adequately. It is therefore not clear from the EA that it is in fact only the first phase of the underground mine which is the subject of authorization.”

5.5. **AAV RESPONSE:**

5.5.1. Please note that the extent of the underground mine and the possibilities for future assessment have been extensively addressed in the EIAR from p139-142. The extent of the underground workings is clearly depicted in the EIAR in Figure 6-1. This information was also made available to the Appellants. ***It is therefore unclear why the Appellants relied on an earlier, dated map.*** Furthermore, the scope of the project has changed to the "best environmental option" as depicted in the report.

5.5.2. In as far as the Appellants' allegation that the Project activities are not aligned with the EA and the various phases of the Project, AAV's response to this allegation is fully addressed in AD PARAGRAPH 49 of this document. However, it is important to note that the EIAR, on page 109, clearly specified that should any additional triggered activities be initiated that a new EIA process would be required.

5.5.3. It is thus quite clear that the information referred to and relied upon by the Appellants, in their Grounds of Appeal, is outdated. It is very important to note that the Appellants, who were registered I&AP's, have been provided with all the updated information. Despite this, the Appellants' rely on outdated information in the hope that the Honorable MEC will act on this blatant misrepresentation. In addition, the SAS and WSP reports also only refer to the underground mining area as provided for in the Application.

5.6. **AD PARAGRAPH 17:**

5.6.1. **Ad paragraph 17.1:** "The surface and underground areas of the mine coincide with several wetlands."

5.6.2. **AAV RESPONSE:**

5.6.2.1. The surface areas coincide with several wetlands as was declared in the report. Underground areas **cannot** coincide with a surface feature, as the one is underground and the other is on surface.

5.6.3. **Ad paragraph 17.2:** "The underground area to be mined in the first fifteen years (which is referred to in what follows as 'the underground area') falls within the Mabola Protected Environment which was declared as such on 22 January 2014 in terms of the National Environmental Management: Protected Areas Act 57 of 2003 – (EA p 22. Notice No. 20, Mpumalanga Provincial Gazette No. 2251, dated 22 January 2014. The project area also borders the Kwamandhlangampisi Protected Environment to the east)".

5.6.4. **AAV RESPONSE:**

5.6.4.1. The fact that the Project falls within the Mabolo Protected Environment was declared from the very beginning in the EIAR.

5.6.4.2. It is important to note that AAV was the holder of a valid Prospecting Rights since 17 August 2006, long before the Mabola Protected Environment was even considered.

5.6.4.3. Consideration must be given that the relevant Prospecting Rights grants AAV, the exclusive rights to apply for the relevant Mining Rights. AAV did indeed apply for the Mining Rights in March 2013. The Mining Rights Application was accepted by the Department of Mineral Resources on 25 April 2013.

5.6.4.4. The intention to declare the Mabola Protected Environment was only Gazetted on 10 May 2013 and included 5 of the 12 Farms applied for in the Mining Right. AAV opposed the declaration of the Protected Environment since the declaration would impose a significant encumbrance on AAV's existing real rights.

5.6.4.5. As a result, and based on AAV's consultation with the honourable MEC at that time, the Mpumalanga Tourism and Parks Agency ("MTPA"), including with two of the Appellants (Birdlife South Africa, and the Endangered Wildlife Trust (EWT), as registered I&AP's), one farm, i.e. Portion 1 of the Farm Yzermyn 96 HT was on the 22nd of January 2014, excluded in the Gazetted Declaration of the Mabola Protected Environment (Notice Number. 20, Mpumalanga Provincial Gazette No. 2251, dated 22 January 2014), in order to accommodate the surface infrastructure for the proposed underground mine.

5.6.4.6. As far as the Appellants' reference that the "project area also borders the Kwamandhlangampisi Protected Environment to the east", it is **VERY** important to note that the surface infrastructure of the Project does not fall within the Mabola

Protected Environment and that such surface infrastructure is kilometres away from the Kwamandhlangampisi Protected Environment area.

5.6.4.7. In light of the above-mentioned, it is our sincere belief that, taking into consideration that AAV had existing mineral rights over certain areas to be declared a Protected Environment, the honourable MEC at the time, considered it prudent to exclude the surface infrastructure area to afford AAV the opportunity to mine in the Mabola Protected Environment, subject to AAV applying for all relevant authorisations in the prescribed manner, and consequently actually being granted such authorisations.

5.6.5. **Ad paragraph 17.3:** *"The underground and surface areas of the mine will be located within the Wakkerstroom/Luneberg Grasslands which is classified as 'Endangered' in terms of the National Environmental Management: Biodiversity Act 10 of 2004 (NSS (Appendix H1) pp 204, 208)."*

5.6.6. **AAV RESPONSE:** This was declared in the EIAR. The relevant information is on p38 and p39. The Competent Authority and Registered I&AP had been afforded the opportunity to review and comment on all the information provided, throughout the project. The competent authority granted the EA based on information including the status of the grasslands, after their review and assessment there-of.

5.6.7. **Ad paragraph 17.4:** *"The underground area lies within 1 km of a DEA designated Freshwater Ecosystem Priority Area ('FEPA')"*.

5.6.8. **AAV RESPONSE:**

5.6.8.1. This was declared in the EIAR. Relevant information on p215 The Competent Authority and Registered I&AP had been afforded the opportunity to review and comment on all the information provided, throughout the project. The competent authority granted the EA based on information including the status of the FEPA, after their review and assessment there-of.

5.6.8.2. According to the FEPA Guideline Document referred to by the Appellants, any "Applications for mining and prospecting in FEPAs and associated sub-quaternary catchments should be subject to rigorous environmental and water assessment and authorization processes, as mining has a widespread and major negative impact on freshwater ecosystems, furthermore, the manual also provide a guideline for "Wetland Clusters" and propose that "A scientifically defensible distance for migration between wetlands should be tested using a variety of taxa (e.g. insects, wetland-dependent birds, frogs) and other ecological processes (e.g. wetland plant pollination processes). The uniform distance of 1 km used in delineating wetland clusters for NFEPA may also need to be different, depending on the region and its associated biota, and ecological and biophysical processes." (See Section 5.7.2 of the NFEPA Implementation Manual, in particular those aspects of the Ecosystem Management Guidelines in Chapter 6, which specifically relates to mining and prospecting).

5.6.8.3. What is important to take into consideration is that the NFEPA Implementation Manual is a guideline document and it is clear from the guideline manual that there is no explicit blanket prohibition of mining activities within a 1 km buffer of a NFEPA, but rather only a proposed guideline indication that "Applications for mining and prospecting in FEPAs and associated sub-quaternary catchments should be subject to rigorous environmental and water assessment and authorization processes".

5.6.8.4. Notwithstanding the fact that the NFEPA Implementation Manual is a only a guideline document, the Applicant adhered to the guideline document and also specifically instructed the relevant specialists to undertake rigorous environmental and water assessments, using scientifically defensible methods which are in line with the NFEPA Implementation Manual, for purposes of the EIA process. As a result, the applicant developed appropriate mitigation measures and in doing so will not have a widespread and major negative impact on the freshwater ecosystems identified. The EIAR addressed this from p325-393.

5.6.8.5. There is also absolutely no evidence to suggest that a rigorous assessment and authorization process was not followed by the relevant competent authorities concerned. To the contrary, there is ample evidence to suggest that a very rigorous assessment and authorization process was followed by the decision makers. The fact is; neither the Appellants nor their advisor the CER has a mandate to act as the Regulator, even though it is clear from their nonsensical allegations, they misguidedly think they have a mandate to play the role of an I&AP, EAP, specialist, official and ultimate regulatory decision maker, all at once.

5.6.9. **Ad paragraph 17.5:** *“The entire surface and underground areas of the mine fall within an area identified by the DEA in the Mining and Biodiversity Guideline, 2013 as having the ‘Highest Importance for Biodiversity’ and as being at the ‘Highest Risk’ from mining (NSS (Appendix H1) 211-212. The DEA Mining and Biodiversity Guideline, 2013)”*.

5.6.10. **AAV RESPONSE:**

5.6.10.1. This information was declared on p379 of the EAIR. The Competent Authority and Registered I&AP’s had been afforded the opportunity to review and comment on all the information provided throughout the Project application process. The competent authority granted the EA based on information including information reviewed and assessed in terms of the "Mining and Biodiversity Guideline".

5.6.10.2. It is our respectful submission that the Mining and Biodiversity Guideline, 2013, should be read within the context of applying the correct scale to each and every Project on a case by case, specific, basis and not within the constraints of an illogical and very wide interpretational basis.

5.6.10.3. The assumption by the Appellants that the Mining and Biodiversity Guideline, 2013, prohibits prospecting and or mining in so-called “High-Risks” areas, is blatantly incorrect and biasedly interpreted, since on p33 of the Guideline, it is provided that *“Alternatively, prospecting or mining may be*

deemed permissible, but within a clearly defined spatial area, provided that a particular method is used (e.g. underground rather than surface mining), or according to specific conditions with regard to mitigating impacts on biodiversity or ecosystem services. There may be a requirement to secure biodiversity offsets or other forms of compensation for curtailed ecosystem services where it is not possible to mitigate impacts.”

5.6.10.4. AAV has no intention to undertake opencast mining, and will implement various appropriate mitigation measures, as were found to be adequate and reasonable, and subsequently approved by the Environmental, Mining and Water Authorities. In addition, from the very beginning AAV shared its commitment to work hand in hand with the relevant competent authorities and NGO's to ensure a sustainable biodiversity protection and mining co-existing mining model that will be to the socio-economic benefit of the surrounding communities and the responsible management of potential environmental impacts.

5.6.11. **Ad paragraph 17.6:** “The surface infrastructure of the mine falls largely within an area designated in the Mpumalanga Biodiversity Sector Plan 2013 (‘the MBSP’) as being an ‘Optimal Critical Biodiversity Area’, while the underground workings of the mine fall largely within an area designated in the MBSP as being an ‘Irreplaceable Critical Biodiversity Area’).

5.6.12. **AAV RESPONSE:** This information is also reflected in the EIAR on p258. The Competent Authority and Registered I&AP had been afforded the opportunity to review and comment on all the information provided, throughout the Project. The competent authority granted the EA based on various specialist studies, and including a review and assessment of the "Mpumalanga Biodiversity Sector Plan 2013".

5.6.13. **AD PARAGRAPH 18:** “As appears from the EIAR, most of the coal produced by the mine will be exported”.

5.6.14. **AAV RESPONSE:** A significant quantity of coal will be available for the local market, as per p6 of the EIAR. It is worth noting, irrespective of the both of the likely

scenarios, local supply or export, that the ultimate beneficiary would be the Republic of South Africa. Either by means of new coal supplies to Eskom, perennially in need of quality coal for their power stations, or by way of direct and indirect foreign exchange earnings.

5.6.15. **Ad paragraphs 19 to 21:** These paragraphs deal with issues pertaining to local employment opportunities.

5.6.16. **AAV RESPONSE:**

5.6.16.1. It is respectfully submitted that the Appellants, in as far as their contentions in respect of local employment opportunities are concerned, quoted selectively while ignoring the broader picture. Our reading and the actual information indicates a very different scenario than that alleged by the Appellants. The information referred to was presented from p448 - p468 in the EIAR, in addition to the Annexure. The impacts were also assessed in the EIAR.

5.6.16.2. It is furthermore, respectfully submitted that is not the purpose of the EIAR, Environmental Management Programme ('the EMPr') to provide guarantees relating to local employment opportunities. However, AAV in the relevant mechanisms such as the Social and Labour Plan as provided for under AAV's obligations under its Mining Right, AAV has made various commitments relating to local employment opportunities as well as contributing to Local Economic Development.

5.6.16.3. The Appellants ambiguous insinuation that this Project will cause the community to become vulnerable, is a blatant fabrication and unfounded biased statement. This Project will in all probability provide the opportunity to the local community to become less vulnerable, than they currently are.

5.6.16.4. According to the EIAR p 452: "the historically disadvantaged communities (including Yzermyn Farm Community, Dirkiesdorp, eSizameleni) viewed the proposed Project as providing opportunities and development to the local

communities, through employment, skills development and infrastructure upgrades.

5.6.16.5. These communities, who directly fall within the area, where the mine is to be located, on more than one occasion expressed their support for the mining development, especially in light of the intention if AAV to locally source labour and other services and support local infrastructure development. Our reading informs us that the Appellants deliberately chose to quote selectively, while ignoring large parts of the Socio-Economic Study Report. The specialist's information has been incorporated in detail in this Report. Please refer to the following pages p454 to p460, p487, p517, p533, p564, p670 of the EIAR. The EMPR refer to it on p670.

5.6.17. **AD PARAGRAPHS 23:** *"By way of contrast, the EIAR reports that eco-tourism contributes materially to job-creation in the area and that if mitigation measures are not implemented, environmental impacts resulting from the proposed mine may degrade surrounding surface and groundwater sources resulting in a reduction of biodiversity in the area and a decline in eco-tourism".*

5.6.18. **AAV RESPONSE:**

5.6.18.1. The Appellants are blatantly inserting their own words to support their clearly biased interpretation. Their approach is questionable since the EIAR on p97 of the Socio-Economic Study, clearly states: *"It is anticipated that as Wakkerstroom is in close proximity to the proposed mine, and should the development continue, contractors and clients of the proposed mine may require accommodation within Wakkerstroom. This may have a positive effect on accommodation venues in the Wakkerstroom area and could result in an increase of tourism and associated job opportunities. If the suggested mitigation measures in the ESMP are not implemented, then environmental impacts resulting from the proposed mine may degrade the surrounding surface and groundwater sources, resulting in a potential reduction in biodiversity and potential decline in eco-tourism. Should the project not go*

ahead, existing employment opportunities pertaining to tourism will be retained but the additional semi-skilled employment opportunities around Dirkiesdorp will not be created”.

5.6.19. **AD PARAGRAPHS 24:** “The target area also supports agricultural employment opportunities. The farm on which the mine will be established is itself currently used for the commercial grazing of livestock (sheep and cattle). Several subsistence farmers have also made their home on the proposed mining site, which has good to excellent grazing capacity”.

5.6.20. **AAV RESPONSE:** The target area (22,4 ha) will be excluded from the grazing of livestock in terms of the current Mine Health and Safety legislation. Please note that the Appellant conveniently omitted to mention that the Report mentions that: “It should be noted that cattle grazing activities can continue within the target area excluding the surface infrastructure layout area, should the project be successful.”

5.6.21. **AD PARAGRAPHS 25:** “There are approximately eight homesteads situated on the proposed mining site which are occupied by low-income families with between eight and thirty people living in each homestead. The households generally rely on limited income from a single family member who works on the host farm, as well as on social grants. This community ‘is vulnerable from a livelihood perspective, as they do not have access to finances or other resources should their current income come to an end (i.e. farm work) or access to natural resources, such as water and grazing land, be prevented”.

5.6.22. **AAV RESPONSE:**

5.6.22.1. The Appellants ambiguous insinuation that this Project will cause the community to become vulnerable, is a blatant fabrication and unfounded biased statement. This Project will in all probability provide the opportunity to the local community to become less vulnerable, than they currently are.

5.6.22.2. The eight households mentioned will not lose their livelihood. The commercial farming sustaining them can, and will, continue while the mine is

operational and their access to grazing and water will not be impeded.

5.6.22.3. Furthermore, as reference to the larger community located around the mining area, according to the EIAR p 452, "the historically disadvantaged communities (including Yzermyn Farm Community, Dirkiesdorp, eSizameleni) viewed the proposed Project as providing opportunities and development to the local communities, through employment, skills development and infrastructure upgrades.

5.6.22.4. These communities, who directly fall within the area, were the mine is to be located, on more than one occasion expressed their support for the mining development, especially in light of the intention if AAV to locally source labour and other services and support local infrastructure development. Our reading informs us that the Appellants deliberately chose to quote selectively, while ignoring large parts of the Socio-Economic Study Report. The specialist's information has been incorporated in detail in this Report. Please refer to the following pages p454 to p460, p487, p517, p533, p564, p670 of the EIAR. The EMPR refer to it on p670.

5.6.23. **AD PARAGRAPHS 26:** "The EIAR does not assess with any precision what the likelihood of the loss of this livelihood is, or what the likelihood of loss of agricultural income and resources in the larger area may be should the mine have any adverse impact on the water sources used by commercial and subsistence farmers in the area".

5.6.24. **AAV RESPONSE:** The Appellants omission to read and interpreted the EIA documents and specialist reports is regrettable. The points raised by the Appellants above, were thoroughly addressed in various sections of the EIAR, such as p247, p462,p467-p468, p496,p500, p547, p565, p572, p696-697.

5.6.25. We respectfully submit that there is a difference between precision and accuracy. Precise actions are not always accurate. Precision refers to action being robustly repeatable, which the impact assessment methodology is.

5.6.26. **AD PARAGRAPHS 27:** "The EIAR records that water is sourced by farmers in the

area from springs (referred to locally as 'fontaine') which are used for both domestic and livestock watering purposes. There are twenty-three such springs in the project area. The springs are also a water source for the wetlands. According to the EIAR, a lowering of groundwater levels will have a negative impact on, among other things, the springs within the 'cone of depression' of the mine (which is a term used to describe an area of impact of the mine on groundwater levels described further below). A drawdown of more than 5m is expected to reduce or dry up springs. Moreover, possible 'decant' points (the points at which contaminated water from the mine void is likely to be release onto the surface post mine closure) are, apart from anything else, potentially connected to the springs."

5.6.27. **AAV RESPONSE:** This statement is biased and unsupported without the relevant scientific evidence to back-up the arbitrary statement. In contrast to the Appellants fact-less allegations, the Applicant undertook various specialist studies to determine the most probable impact on the water resources. The scientific studies found that there are 23 springs on the farms which are located within the target area constituting the Mining Right Area, and that there are 6 springs in the footprint of the underground mining area. See Figure 7.29; furthermore, page 317 illustrates the impact on the fountains, and from this it can be seen that at most 3 springs might be affected. Also, see Table 7-9, p 182-p183 of the EIAR.

5.6.28. It is important to note, that the EIAR at no point states that 23 springs will dry up due to the underground mining or the surface infrastructure. In fact, it was found that the there is no significant connection between the deep aquifer and the shallow aquifer, reducing the potential impact of the cone of depression significantly.

6. PART B: CHRONOLOGY OF KEY EVENTS

6.1.1. **AD PARAGRAPHS 28:** "On 9 January 2014 EcoPartners CC ('EcoPartners') submitted an Environmental and Social Impact Assessment Report to the DEA on behalf of Atha. This version of the EIAR is referred to in this appeal as 'the original EIAR'. As is explained in Part C.2 below, the Minister was (and remains) the correct competent authority in respect of this application."

6.1.2. **AAV RESPONSE:**

6.1.2.1. This statement is incorrect. EcoPartners did not submit an Environmental and Social Impact Assessment Report to the DEA on behalf of Atha. WSP submitted the Report to DEA. On page 12 of the EIAR it clearly states: "WSP has compiled an ESIA/ ESMP document in support of the abovementioned requirements. The final ESIA/ ESMP Report (EIAR) compiled by WSP was submitted to the Department of Environmental Affairs on 9 January 2014 and received on 13 January 2014."

6.1.2.2. According to section 24C (1) of the NEMA, which section provides for the procedure for identifying a competent authority, the Minister, or an MEC with the concurrence of the Minister, when listing or specifying activities in terms of section 24(2), must identify the competent authority responsible for granting environmental authorisations in respect of those activities.

6.1.2.3. It is therefore the responsibility of the Minister and an MEC to determine the competent authority, as was clearly executed by the department.

6.1.2.4. Subsection 24C(2) provides that the Minister must be identified as the competent authority in terms of subsection (1) if the activity will take place within an area identified in terms of section 24(2) (b) or (c) as a result of the obligations resting on the Republic in terms of any international environmental instrument, OTHER than any area falling within the sea-shore, a conservancy, a

protected natural environment, a proclaimed private nature reserve, a natural heritage site, or the buffer zone or transitional area of a biosphere reserve or a world heritage site.

6.1.2.5. Subsection 24C provides that the Minister and an MEC may agree that applications for environmental authorisations with regard to any activity or class of activities contemplated in subsection 24C(2) may be dealt with by the MEC.

6.1.2.6. In the instance of the YUCM Project, the EIA Application, was made to both the Minister and the MEC. However, the DEA delegated the decision-making mandate to the MEC based on their own judgement that the Environmental Impact Assessment Report did not trigger any EIA Listed Activities to be decided by the Minister.

6.1.3. **AD PARAGRAPHS 29:** *“The original EIAR included several specialist studies which either concluded that the project should not proceed or which raised areas of serious concern.”*

6.1.4. **AAV RESPONSE:** ***The critical point to consider is that the reports also indicated that if certain interventions, mitigations and recommendations were adopted then the concerns could be addressed. These interventions, mitigations and recommendations influenced the decision of the Applicant that resulted in a change of scope, and ultimately the acceptance of all the proposed specialist studies and their recommendations, by all the competent authorities, i.e. DEA, DWS, DMR, MDARDLA and the MTPA.***

6.1.5. **AD PARAGRAPHS 30:** *“One of these was the NSS biodiversity report first referred to in paragraph 15 above. The NSS biodiversity report, which also forms part of an amended EIAR which was subsequently provided to the MEC for decision, was commissioned by WSP Environmental (Pty) Ltd (‘WSP’). WSP was at that stage the Environmental Assessment Practitioner. At some stage after this WSP was replaced by EcoPartners although the reason for that does not appear from anywhere in the EIAR”.*

6.1.6. **AAV RESPONSE:** On page 12 of the EIAR it clearly states: "WSP has compiled an ESIA/ ESMP document in support of the abovementioned requirements. The final ESIA/ ESMP Report (EIAR) compiled by WSP was submitted to the Department of Environmental Affairs on 9 January 2014 and received on 13 January 2014."

6.1.7. **AD PARAGRAPHS 31:** *"The NSS biodiversity report contains the following findings, among others:*

6.1.7.1. **Ad paragraph 31.1:** *"Numerous headwater and mountain streams flow from the study area into rivers that drain into the Assegaai river"*

6.1.7.2. **AAV RESPONSE:** This information was reflected and addressed in the EIAR on p175. The Competent Authority and Registered I&AP's were afforded the opportunity to review and comment on all the information provided, throughout the EIA process. Furthermore, the competent authority granted the EA, having considered the information relating to the "rivers that drain into the Assegaai River".

6.1.7.3. **Ad paragraph 31.2:** *"The mine is situated in Rutherford & Westfall's (1994) Grassland Biome which has extremely high biodiversity, second only to the Fynbos Biome".*

6.1.7.4. **AAV RESPONSE:** This information was reflected and addressed in the EIAR on p192. The Competent Authority and Registered I&AP's were afforded the opportunity to review and comment on all the information provided, throughout the EIA process. Furthermore, the competent authority granted the EA, having considered the information relating to the "grassland biome".

6.1.7.5. **Ad paragraph 31.3:** *"Six floral species at a high risk of extinction in the wild were found by NSS in the study area, and 30 species which are listed as Protected Species under the Mpumalanga Conservation Act 10 of 1998,*

have been found during surveys of the mining area”.

6.1.7.6. **AAV RESPONSE:** The Appellants misquoted this section of the EIAR. The conservation important species found in the study area was indicated on p51 and p52 of the NSS Report. There were only 5 CI floral species found of which only 1 occur in the area that might be impacted on by the surface infrastructure.

6.1.7.7. During the desktop assessment, it was found that "Six floral CIS are listed for the four topographical maps wherein the Prospecting Area is situated." Further to this only one of these species are located in the area of potential surface disturbance: Portion 1 of the Farm Yzermyn 96 HT, see p 51 and p52 of the NSS Report (Appendix H).

6.1.7.8. More importantly, this information was reflected in the EIAR and addressed on p192. The Competent Authority and Registered I&AP's were afforded the opportunity to review and comment on all the information provided, throughout the EIA process. Furthermore, the competent authority granted the EA, having considered the information relating to the "conservation important species".

6.1.7.9. **Ad paragraph 31.4 and 31.5:** “Twenty one Conservation Important (‘CI’) mammals have been recorded previously in the proposed mining area, and eight CI mammal species, including one Endangered and five Near Threatened species, were found there by NSS; Eighteen CI bird species have been recorded in or near the proposed mining area, and NSS observed five CI species during surveys related to the project”.

6.1.7.10. **AAV RESPONSE:** The text provided by the specialist, and which the Appellants are referring to stated: “Of these, 21 species have been recorded in the QDS’s wherein the AYCP is situated (Friedmann & Daly, 2004; MTPA pers comm. 2013). NSS detected eight CI mammal species in the AYCP study area”.

6.1.7.11. The Appellants misquoted this section of the EIAR. The relevant

conservation important species found in the study area was indicated on p108 and p109 of the NSS Report. There were no CI mammal species found in the area that will be impacted on by the surface infrastructure.

6.1.7.12. The surface infrastructure that potentially may remove small parts of the habitat for the birds, must be considered separate from the larger area as the impacts on these are different. The conservation important faunal species found on the target area, were listed in the EIAR, this includes birds on p201.

6.1.7.13. More importantly, this information was reflected and addressed in the EIAR. The Competent Authority and Registered I&AP's were afforded the opportunity to review and comment on all the information provided, throughout the EIA process. Furthermore, the competent authority granted the EA, having considered the information relating to the "conservation important species".

6.1.7.14. **Ad paragraph 31.6:** "Several globally, nationally or provincially Near Threatened reptiles and frogs are also likely to occur at the site"

6.1.7.15. **AAV RESPONSE:** The Reptiles and Frogs were addressed in the EIAR p199 and 200. The actual statement in the specialist report was: "at least seven CI reptile species **MAY** occur in the AYCP study area (Table 4-3). These include one provincially Vulnerable and six globally or provincially Near Threatened species."

6.1.7.16. More importantly, this information was reflected and addressed in the EIAR. The Competent Authority and Registered I&AP's were afforded the opportunity to review and comment on all the information provided, throughout the EIA process. Furthermore, the competent authority granted the EA, having considered the information relating to the "conservation important species".

6.1.7.17. **Ad paragraph 31.7:** "There are three types of inland wetland in the study area, namely rivers, channelled valley bottom systems (which is a valley-bottom wetland with a river channel running through it) and seeps (which are wetland areas on sloping land dominated by unidirectional movement of water - a visual

depiction of the wetlands is, for ease of reference, attached marked 'B'.

6.1.7.18. **AAV RESPONSE:** The Appellants' statement relies on an incorrect figure "B". The figure attached marked as B (this was on p195), does not provide a reference to the three types of wetlands, the reference to the 3 wetland types is found on p188 of the NSS Report. A better figure representing the wetland types is on p380 of the EIAR.

6.1.7.19. This information is also reflected and addressed in the EIAR from p205-p210. The Competent Authority and Registered I&AP's were afforded the opportunity to review and comment on all the information provided, throughout the EIA process. Furthermore, the competent authority granted the EA, having considered the information relating to "wetlands".

6.1.7.20. **Ad paragraph 31.8:** "The wetlands are also fed from springs and shallow groundwater from higher topography to the south of the surface infrastructure area".

6.1.7.21. **AAV RESPONSE:** This was raised and addressed in the EIAR on p206, and then addressed in the EIAR from p325 - p393.

6.1.7.22. **Ad paragraph 31.9:** "There are several springs within the proposed underground mining area and two more just beyond it. The image is based on a previous surface infrastructure layout and still shows the position of a discard area. Although the surface area infrastructure has since been changed, and there will be no discard dump, the image is still useful because of the degree of overlap between the former and current surface layouts".

6.1.7.23. **AAV RESPONSE:** The Appellant in this statement confirming their understanding that the lay-out and the scope of the project changed, however, relies on an outdated diagram, even after they have acknowledged that they are aware of the scope and project changes. Figure 8-17 on p 308 of the EIAR, better illustrates the location of springs associated with the underground mining area. This is included as Appendix B.

6.1.7.24. **Ad paragraph 31.10:** "The existing impacts on the wetlands caused by, among other things, stands of alien invasive species and cattle tracks is very limited and minor in extent".

6.1.7.25. **AAV RESPONSE:** Reference to the impacts on the potential area for surface infrastructure, is addressed on p391 of the EIAR, which provides that: "A detailed delineation was undertaken by SAS on the 7th of November 2014 for the area within the infrastructure footprint. The investigation was undertaken to clearly delineate the wetland edge within the infrastructure footprint area so that the preferred infrastructure layout can be amended to minimise the impact on the wetlands. At the time of delineation, it became evident that the wetland resources within the proposed surface infrastructure are of limited ecological importance and sensitivity and are highly disturbed. The following key observations were made by SAS:

6.1.7.25..1. The wetlands in the vicinity of the proposed surface infrastructure are best defined as hillslope seeps which are highly marginal and due to the nature of the wetlands forming a temporary wetland/moist grassland mosaic. The variation from the surrounding terrestrial areas is extremely limited and no significant niche habitat is created. The importance of these hillslope seepage wetlands from a floral and faunal habitat conservation point of view is therefore considered extremely limited.

6.1.7.25..2. The wetland resources in the vicinity of the proposed surface infrastructure have been significantly disturbed due to historical tilling and crop cultivation as well as grazing and seasonal fires. These impacts have affected the vegetation community and soil profiles and no vegetation communities of significant conservation importance were observed. The loss of these vegetation and habitat resources within the proposed infrastructure area is therefore not considered significant at any spatial scale.

6.1.7.25..3. In areas in the vicinity of the surface infrastructure berms and canals have been developed to drain water from some areas and divert water in others for historical cultivation purposes. These developments have altered natural drainage and further complicate the definition of true wetland areas within the proposed surface infrastructure footprint which has led to a significant loss or change in wetland habitat, eco-service provision and a reduced eco-status of the wetland resources.

6.1.7.25..4. The wetlands in the area form part of two extensive wetland resources, referred to as the western wetland and the eastern wetland. From calculations of the wetland loss it can be concluded that 0.0724 ha of the Eastern Wetland and 2.79 ha on the Western Wetland will be impacted on by the revised surface infrastructure layout.

6.1.7.25..5. Based on this observation it is evident that negligible direct loss of the degraded wetland resources will occur in relation to the extent of the greater wetland resources within the Mining Right Area.

6.1.7.25..6. Based on the observations presented above SAS concluded that the impact on the wetland resources will be limited to the footprint of the proposed surface infrastructure and the immediate surrounds. Due to the degraded nature of the wetlands the limited Ecological Importance and Sensitivity and the low level of eco-service provision of the wetlands to be directly affected the significance of this impact is considered very low and will not significantly affect local, regional, provincial or national conservation initiatives for wetlands, floral species conservation, faunal species conservation and aquatic resource conservation, provided that all mitigation measures presented in the EIA/EMP and associated specialist studies are strictly adhered to.

6.1.7.25..7. The farmers follow a non-scientifically verified burning program.

The site was being set alight during one of the SAS surveys, where we had to physically move around the fire to get the work done. That cannot be regarded as an insignificant impact and is destroying habitat for the Rudd's Lark.

6.1.7.26. This information is also reflected and addressed in the EIAR from p205-p210. The Competent Authority and Registered I&AP's were afforded the opportunity to review and comment on all the information provided, throughout the EIA process. Furthermore, the competent authority granted the EA, having considered the information relating to "wetlands".

6.1.7.27. **Ad paragraph 31.11:** "The wetlands have a 'VERY HIGH' Ecological Importance and Sensitivity ('EIS') including because of the Mabola Protected Environment, the current integrity of the site and the numerous CI species identified;

6.1.7.28. **AAV RESPONSE:** The Mabola Protected Environment does not occur on the area where the surface disturbance is authorised. The EIS of the Wetland Flat system was calculated at 1.6, placing it in a Category C (moderately modified), p363 of the EIAR. The current integrity of the site has been described on p393 of the EIAR. The numerous CI species identified on the footprint of the surface disturbance include 1 floral species and 1 bird species. The footprint of surface disturbance was altered significantly. This reduced the direct impacts on wetlands from 24,2 ha to 14,1 ha as indicated on p65 of the EIAR.

6.1.7.29. **Ad paragraph 31.12:** "Underground mining will take place within 1 km of an identified NFEPA (first referred to in 17.4 above)". In this regard the NSS records: '[t]he greatest concern ...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 seepage from the mine workings ...' and '[B]oth the cone of depression and the groundwater contamination plume extend to the wetland FEPA's in the near vicinity".

6.1.7.30. **AAV RESPONSE:** This concern was specifically addressed with the new geohydrological assessment carried out by Delta H (Delta H; Witthüser, K; Geohydrological Assessment, 2014). Please note p 316 in the EIAR states that: "Due to the limited hydraulic connectivity between the shallow weathered and deeper fractured Karoo aquifers, the cone of dewatering is expectedly far more pronounced in the actually mined, deeper fractured aquifer. The cone of dewatering in the shallow aquifer will preferentially expand along structural discontinuities like faults, which provide groundwater pathways between the two aquifer systems. Due to its generally lower permeability, the cone of dewatering in the fractured aquifer is steeper, whereas the higher permeability of the weathered aquifer results in a wider, but shallower cone." It is clear from Figure 8.19 on p317 of the EIAR that dewatering activities does not extend to the FEPAs in the near vicinity. Included as Appendix C.

6.1.7.31. Final EIAR records on page 337 "An encroachment into the required 1 km buffer around adjacent wetland FEPAs. In accordance with the FEPA guideline documents, no mining is to take place within a 1 km buffer of any wetland/riverine FEPA (Driver et al. 2011)".

6.1.7.32. According to the FEPA Guideline Document referred to by the Appellants, any "Applications for mining and prospecting in FEPAs and associated sub-quaternary catchments should be subject to rigorous environmental and water assessment and authorization processes, as mining has a widespread and major negative impact on freshwater ecosystems, furthermore, the manual also provide a guideline for "Wetland Clusters" and propose that "A scientifically defensible distance for migration between wetlands should be tested using a variety of taxa (e.g. insects, wetland-dependent birds, frogs) and other ecological processes (e.g. wetland plant pollination processes). The uniform distance of 1 km used in delineating wetland clusters for NFEPA may also need to be different, depending on the region and its associated biota, and ecological and biophysical processes." (See Section 5.7.2 of the NFEPA Implementation Manual, in particular those aspects of the Ecosystem Management Guidelines in Chapter 6, which specifically relates to mining and prospecting).

6.1.7.33. What is important to take into consideration is that the NFEPA Implementation Manual is a guideline document and it is clear from the guideline manual that there is no explicit blanket prohibition of mining activities within a 1 km buffer of a NFEPA, but rather only a proposed guideline indication that "Applications for mining and prospecting in FEPAs and associated sub-quaternary catchments should be subject to rigorous environmental and water assessment and authorization processes".

6.1.7.34. Notwithstanding the fact that the NFEPA Implementation Manual is a only a guideline document, the Applicant adhered to the guideline document and also specifically instructed the relevant specialists to undertake rigorous environmental and water assessments, using scientifically defensible methods which are in line with the NFEPA Implementation Manual, for purposes of the EIA process. As a result the applicant developed appropriate mitigation measures and in doing so will not have a widespread and major negative impact on the freshwater ecosystems identified. The EIAR addressed this from p325-393.

6.1.7.35. There is also absolutely no evidence to suggest that a rigorous assessment and authorization process was not followed by the relevant competent authorities concerned. To the contrary, there is ample evidence to suggest that a very rigorous assessment and authorization process was followed by the decision makers. The fact is; neither the Appellants nor their advisor the CER has a mandate to act as the Regulator, even though it is clear from their nonsensical allegations, they misguidedly think they have a mandate to play the role of an I&AP, EAP, specialist, official and ultimate regulatory decision maker, all at once.

6.1.7.36. **Ad paragraph 31.13:** "The entire surface and underground workings of the mine fall within an area which has been identified by the DEA in the Mining and Biodiversity Guideline, 2013 (first referred to in paragraph 17.5 above) as having the 'Highest Importance for Biodiversity' and as being at the 'Highest Risk' from mining' meaning that the area is viewed 'as necessary to ensure the protection of biodiversity, environmental sustainability, and human well-being'".

- 6.1.7.37. **AAV RESPONSE:** This statement is a repetition of paragraph 17.4. Accordingly, same was addressed in AAV's response to paragraph 17.4
- 6.1.7.38. **Ad paragraph 31.14:** "The mine will fall within an Important Bird Area ('IBA') identified by BirdLife International, which is considered to be 'one of the most important IBAs in Africa and ...vital for the conservation of a number of locally- and globally-threatened bird species, as well as the conservation of other fauna and flora'.
- 6.1.7.39. **AAV RESPONSE:** The Important Bird Area ('IBA') identified by BirdLife International was specified on p224-p226 of the Final EIAR. This was submitted to the competent authority and formed part of the decision-making process.
- 6.1.7.40. **Ad paragraph 31.15:** "The surface infrastructure of the mine falls largely within an area designated in the MBSP (first referred to in paragraph 17.6 above) as being an 'Optimal Critical Biodiversity Area.'"
- 6.1.7.41. **AAV RESPONSE:** See response to paragraph 17.6. The Optimal Critical Biodiversity Area was recorded in the Final EIAR on p222 and p223. This was submitted to the competent authority and formed part of the decision-making process.
- 6.1.7.42. **Ad paragraph 31.16:** "All of the wetlands on the site are regarded as having Very High sensitivity – they are 'largely fed by groundwater from the perched, shallow weathered and deeper, fractured aquifers, and are, therefore, sensitive to changes in groundwater levels and water quality'"
- 6.1.7.43. **AAV RESPONSE:** This statement by the Appellant is based on pure speculation and assumptions. The Applicant undertook various scientific assessments and the findings and recommendations resultant therefrom were submitted in the EIAR and in turn also furnished to the Appellants for their comments, as part of the EIA Public Participation Process. The updated assumptions were never disputed by the Appellants.

6.1.7.44. The groundwater model concluded that seep wetlands to be fed by localised perched aquifers. New investigations by SAS indicated the wetlands around the surface infrastructure to have been ploughed before; therefore, not to be regarded as being sensitive. See p393 of the EIAR.

6.1.7.45. The information was further refined by research, in the hydrogeological model specified on p311 of the EIAR the specialist explained the principle of “Localised perched aquifer systems within the colluvium or on weathered siltstone” to be considered in the context of “associated water levels due to infiltrating rainwater perched on (shallow) low permeability layers are generally shallow, with lateral flow on the layer potentially feeding seasonal hillside seeps and springs to the south of the adit and plant site. The localised and perched nature of this aquifer system disconnects it from hydraulic impacts related to the proposed underground mine and the perched aquifer system therefore neglected in the assessment.” In essence the rainwater found on perched aquifers found on "clay lenses", feeding the hillside seep wetlands.

6.1.7.46. **Ad paragraph 31.17:** “Buffer zones for wetlands are ineffectual because the loss of wetlands will be due to the decline in water input, namely the dewatering of the shallow and fractured deep aquifers (in other words, they will be affected by the underground workings of the mine).”

6.1.7.47. **AAV RESPONSE:** This statement by the Appellant is based on pure speculation and assumptions. The Applicant undertook various scientific assessments and the findings and recommendations resultant therefrom were submitted in the EIAR and in turn also furnished to the Appellants for their comments, as part of the EIA Public Participation Process. The updated assumptions were never disputed by the Appellants.

6.1.7.48. The groundwater model concluded that seep wetlands to be fed by localised perched aquifers. New investigations by SAS indicated the wetlands around the surface infrastructure to have been ploughed before; therefore not to be regarded as being sensitive. See p393 of the EIAR.

6.1.7.49. **Ad paragraph 31.18:** *"The project 'will impact on wetlands, fed by the shallow aquifer, within an area of approximately 5.398 ha and wetlands, fed by springs sourced in the deeper aquifer, within an area of approximately 7.977ha', '[t]he possibilities for offsets, of this extent within the same catchment, are unlikely' and since the project is at the head of the W51A quaternary catchment of the Assegaai River and will impact on water resources downstream, 'no wetland could be offset to the same value and ecological state...as those that would be lost"*

6.1.7.50. **AAV RESPONSE:** The EIAR states that the impact on wetlands due to surface infrastructure is 14,1 ha of which 4,4 ha has not been disturbed by ploughing. It therefore reduces the wetland offset targets from thousands of ha to less than 10. The impact on wetlands to the drawdown has thus been reduced significantly, please see p317 of the EIAR.

6.1.7.51. The groundwater model view the seep wetlands to be fed by localised perched aquifers. New investigations by SAS indicated the wetlands around the surface infrastructure to have been ploughed before; therefore, not sensitive. See p393 of the EIAR.

6.1.7.52. The offset impact is explained on p372 of the EIAR. The EMPR address offsets on p618 of the EIAR, potential offsets need to be discussed with the relevant conservation entities.

6.1.7.53. **Ad paragraph 31.19:** *"The direct loss of wetland seeps and paving of the plant area will cause '[a] change in the water distribution and retention patterns of downstream wetlands"*

6.1.7.54. **AAV RESPONSE:** The impact on the seep wetlands was reduced significantly. The change in water distribution and retention was addressed on p336 of the final EIAR. This was submitted to the competent authority and formed part of the decision-making process.

6.1.7.55. **Ad paragraph 31.20:** *“The main recommended mitigation measure is to avoid all areas of Very High and High sensitivity – ‘This would make the project a No Go as almost the entire undermining area is rated as having a Very High or High sensitivity’”*

6.1.7.56. **AAV RESPONSE:** The recommended mitigation measure is to avoid all areas of Very High and High sensitivity, the project scope was therefore changed to avoid areas with very high sensitivity, in order to mitigate effectively. The surface layout area has been significantly reduced from 80.0 ha to 22.4 ha and wash plant and discard facility have been removed to reduce the impact on biodiversity loss of the study area.

6.1.7.57. **Ad paragraph 31.21:** *“As appears from the groundwater model (which is described below), groundwater levels in the shallow aquifer may be lowered by up to 10 m in the southern section of the underground workings of the mine where mining will be deepest, whilst the deeper aquifer will be lowered up to 55 m during years 11 to 16 of mining”*

6.1.7.58. **AAV RESPONSE:** Delta H (Delta H; Witthüser, K; Geohydrological Assessment, 2014) developed a conceptual model to simulate two free water tables in the two aquifers on top of each other (as observed in nature) and does not represented the differences in hydraulic heads of the aquifers based on their geodetic height differences (which, in combination with the pressure and negligible velocity head, makes up the measured or simulated hydraulic head in a saturated aquifer).

6.1.7.59. Delta H considers the simulation of unsaturated flow processes a prerequisite for the representation of shallow flow systems (including surface seepages) and associated impacts in the weathered aquifer. It is for this reason that the simulated cones of dewatering in the weathered and fractured aquifer have a distinctively different shape in the model by Delta H, whereas the simulated drawdown figures for the weathered and fractured aquifer in the saturated flow model by WSP mimic each other.

6.1.7.60. **Ad paragraph 31.22:** *“This lowering in groundwater levels ‘will have a negative impact on all wetlands fed by the shallow aquifer and the springs within the cone of depression. These springs are one of the main sources of water for the wetlands in the area...”*

6.1.7.61. **AAV RESPONSE:** The EIAR states that the impact on wetlands due to surface infrastructure is 14,1 ha, of which 4,4 ha has not been disturbed by ploughing. It therefore reduces the wetland offset targets from thousands of ha to less than 10. The impact on wetlands to the drawdown has thus been reduced significantly; please see p317 of the EIAR.

6.1.7.62. The springs only feed valley bottom wetlands and streams in that area. To state that “the springs are one of the main sources of water for the wetlands in the area” is incorrect.

6.1.7.63. The assumptions on which NSS based their findings and recommendations, was further refined to better reflect the environmental conditions on site.

6.1.7.64. The groundwater model view the seep wetlands to be fed by localised perched aquifers. New investigations by SAS indicated the wetlands around the surface infrastructure to have been ploughed before; therefore, not sensitive. See p393 of the EIAR.

6.1.7.65. **Ad paragraph 31.23:** *“The ‘decrease in water input to the wetlands within the study area and surrounds, and the resultant reduction in flow, and potential drying up of wetlands will have a HIGH significance on Biodiversity as a minimum of 40% of the underground mining area and surface infrastructure footprint area constitutes wetland habitat”*

6.1.7.66. **AAV RESPONSE:** This comment relied on by the appellant is based on a series of assumptions that was further refined through scientific assessment. NSS did not developed its own water model and thus relied on previous assumptions, made by a different entity, which left their conclusions vulnerable.

6.1.7.67. The revised study by Delta H saw same building a water model that indicated that the shallow and the deep aquifers are not significantly connected. There is a marked difference between the initial and final drawdown models. Both were provided in the final EIAR and the difference explained. The Delta H model, based on revised surface layout compared on p65 of the EIAR. The surface layout area has been significantly reduced from 80.0 ha to 22.4 ha and the wash plant & discard facility have been removed to reduce the impact on biodiversity loss in the study area. The direct impact on wetlands due to surface activity is only around 3 to 4 ha, see p392 of the EIAR.

6.1.7.68. **Ad paragraph 31.24:** "The loss or deterioration of wetlands 'will extend into the wetland FEPAs within the mine lease area and the wetland FEPAs and Wetland Clusters in the immediate surrounds'"

6.1.7.69. **AAV RESPONSE:** The specialist and scientific evidence submitted by the Applicant, indicate that the drawdown and indirect impacts does not reach any of the FEPAs, see p317 of the EIAR.

6.1.7.70. According to the FEPA Guideline Document referred to by the Appellants, any "Applications for mining and prospecting in FEPAs and associated sub-quaternary catchments should be subject to rigorous environmental and water assessment and authorization processes, as mining has a widespread and major negative impact on freshwater ecosystems, furthermore, the manual also provide a guideline for "Wetland Clusters" and propose that "A scientifically defensible distance for migration between wetlands should be tested using a variety of taxa (e.g. insects, wetland-dependent birds, frogs) and other ecological processes (e.g. wetland plant pollination processes). The uniform distance of 1 km used in delineating wetland clusters for NFEPA may also need to be different, depending on the region and its associated biota, and ecological and biophysical processes." (See Section 5.7.2 of the NFEPA Implementation Manual, in particular those aspects of the Ecosystem Management Guidelines in Chapter 6, which specifically relates to mining and prospecting).

- 6.1.7.71. What is important to take into consideration is that the NFEPA Implementation Manual is a guideline document and it is clear from the guideline manual that there is no explicit blanket prohibition of mining activities within a 1 km buffer of a NFEPA, but rather only a proposed guideline indication that "Applications for mining and prospecting in FEPAs and associated sub-quaternary catchments should be subject to rigorous environmental and water assessment and authorization processes".
- 6.1.7.72. Notwithstanding the fact that the NFEPA Implementation Manual is only a guideline document, the Applicant adhered to the guideline document and also specifically instructed the relevant specialists to undertake rigorous environmental and water assessments, using scientifically defensible methods which are in line with the NFEPA Implementation Manual, for purposes of the EIA process. As a result, the applicant developed appropriate mitigation measures and in doing so will not have a widespread and major negative impact on the freshwater ecosystems identified. The EIAR addressed this from p325-393.
- 6.1.7.73. **Ad paragraph 31.25:** "Approximately 42% of the vegetation communities identified within the surface infrastructure footprint and 40% within the mine lease area are moisture dependent...If the dewatering activities have a major effect on the wetland systems identified, these vegetation communities and the potential CI species found within these habitats will be affected and may change in structure in the long term"
- 6.1.7.74. **AAV RESPONSE:** As indicated before, the extent of the impact on water dependent systems, is significantly reduced, considering the new hydrogeological model. In addition, it is important to note that the bulk of the surface infrastructure is located on previously disturbed wetlands.
- 6.1.7.75. **Ad paragraph 31.26:** "Due to the 'HIGH and long-term (if not irreversible)' status of the impact of the mine on water inputs 'in an area far exceeding the study area, the project should be a NO GO".

6.1.7.76. **AAV RESPONSE:** This statement is entirely biased and unfounded. The Applicant has clearly shown through various specialist and or scientific studies as provided for in the EIAR, and specifically the groundwater report that there will only be slightly impacted areas outside the target area - the major draw down only occurs in the direct vicinity of the mining, and only close to the intrusions. All mitigation measures proposed by the specialists were assessed by the various decision makers and found to be adequate thus resulting in the granting of an Environmental Authorisation, Mining Right and Water Use License!

6.1.7.77. It is a fact that the NSS did not consider the updated specialist study information, since all of the NSS's concerns, BASED ON OUTDATED INFORMATION, that led them to believe that this is a NO-GO project, were addressed and qualified on the basis that adequate and effective mitigation measures have been approved by the relevant competent authorities. Given the considerable commitment in respect of the implementation of adequate environmental mitigation measures as well as the high-level socio-economic impact of the proposed Project, it is ridiculous to propose that this is Project is a NO-GO option, especially in light of the fact that the NSS based its findings on outdated groundwater reports and different lay-out plans than the updated information that were made available to the authorities and I&AP's, and which ultimately were accepted by the competent authorities.

6.1.7.78. **Ad paragraph 31.27:** "As regards potential acid mine drainage ('AMD') once groundwater levels have recovered (20 to 50 years after mining ceases), 'AMD represents the most severe impact of coal mining on water resources...The elevated location of the mine will lead to drainage of contaminated water away from the mine. Since the ...mine will be located in the headwaters of the Assegaai River...it will threaten more than one water resource and thus users ...in the lower catchment"

6.1.7.79. **AAV RESPONSE:** This issue has been addressed in the final EIAR on p 341. This information was submitted to the competent authority and formed part of the decision-making process.

6.1.7.80. In addition, the on-site historic mine and other mines in the same formation in the larger area has shown virtually no AMD associated with the mining excavations. The onsite historical mine waste also shows no AMD. The Major risk for AMD in the Utrecht coal seams lies with discard from washing of coal, and this has been engineered out of the project.

6.1.7.81. **Ad paragraph 31.28:** “Contamination of groundwater will impact on surface water quality downstream”

6.1.7.82. **AAV RESPONSE:** The water treatment measures committed to by the Applicant, as the final phase of mitigation and rehabilitation is reached, will ensure that the surface water leaving the site is clean. The volume of water to be treated will be reduced by pre-grouting, based on cover drilling to reduce major inflows into the mine. Monitoring data during the operational phase will be used to validate the groundwater model regularly and more accurately predict future water inflows, which can then be planned for and mitigated.

6.1.7.83. **Ad paragraph 31.29:** “The project ‘is fatally flawed, and should be NO GO in terms of Biodiversity. This is largely because of the impact of the proposed underground mining on the supply of water to the surface water resources (due to the dewatering 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. These and other aspects of the mining project are in strong conflict with international, national and provincial legislation, policies and guidelines...Most potential impacts of the mining operation had a HIGH overall significance rating, even with mitigation”

6.1.7.84. **AAV RESPONSE:** Please refer to our response under paragraph 31.26. The Appellants’, undoubtedly, as advised by the CER, continuous exertion to generalize this Project, omitting to take actual scientific and geographical important information into account and most importantly purporting to assume the role of Interested & Affected Party, Specialist, Regulator and Adjudicator, not only in relation the YUCM Project but all proposed mining activities in the Mpumalanga

Province, is indicative of the Appellants' and especially the CER's apparent indifference to the relevant competent authorities' statutory mandate to accept, assess statutory required application criteria and to make an objective, fair and informed decision.

6.1.7.85. The impact of the proposed underground mining on the supply of water to the surface water resources (due to the dewatering activities) and the potential groundwater contamination has largely been redefined due to the altered hydrogeological assessment and refining of the model.

6.1.7.86. All mitigation measures proposed by the specialists were assessed by the various decision makers and found to be adequate thus resulting in the granting of an Environmental Authorisation, Mining Right and Water Use License.

6.1.7.87. Given the considerable commitment in respect of the implementation of adequate environmental mitigation measures as well as the high-level socio-economic impact of the proposed Project, it is ridiculous to propose that this is Project is a NO-GO!

6.1.8. **AD PARAGRAPH 32:** *"In short, the biodiversity specialist concluded categorically that the project should not be allowed to proceed at all"*

6.1.9. **AAV RESPONSE:**

6.1.9.1. The Applicant strongly disagrees with the Appellants ill-informed and purposefully prejudiced statement. The Applicant presented more than adequate information in the EIAR, at great expense to ensure that the information provided to the decision maker was supported by scientific evidence. Updated and or supplementary information was furnished to the various authorities on request. Such information included an updated ground water model specifically aimed at assisting the competent authority to make an informed decision.

6.1.9.2. In stark contrast, the Appellants employed two consultants to review the Applicant's scientists and specialist reports, in a generalised desk top review manner without even been to the site.

6.1.9.3. The Applicant followed three different processes, and within each process had to fulfill all the statutory requirements as well as any additional requirements. In this context, a thorough assessment of the impact of the underground mine on the area's biodiversity was conducted, and also amplified through additional specialist studies. All three of these authorization application processes met all the statutory procedural and other compliance requirements, each were thoroughly assessed by the relevant Authorities and ultimately adjudicated on an informed, transparent and objective basis.

6.1.10. **AD PARAGRAPH 33:** "The biodiversity specialist relied in part in reaching this conclusion on a 'Specialist Study: Geohydrology Impact Assessment' by WSP (Adam Smith) dated 3 September 2013 ('the WSP groundwater assessment'). This report formed part of the original EIAR which was placed before the Minister. It does not however form part of the EIAR which was submitted to the MEC for decision by the Chief Director. A copy of the WSP groundwater assessment is therefore attached marked 'E'"

6.1.11. **AAV RESPONSE:**

6.1.11.1. Delta H developed the conceptual model to simulate two free water tables in the two aquifers on top of each other (as observed in nature) and does not represented the differences in hydraulic heads of the aquifers based on their geodetic height differences (which, in combination with the pressure and negligible velocity head, makes up the measured or simulated hydraulic head in a saturated aquifer). Delta H considers the simulation of unsaturated flow processes a prerequisite for the representation of shallow flow systems (including surface seepages) and associated impacts in the weathered aquifer.

6.1.11.2. It is for this reason that the simulated cones of dewatering in the weathered and fractured aquifer have a distinctively different shape in the

model by Delta H, whereas the simulated drawdown figures for the weathered and fractured aquifer in the saturated flow model by WSP mimic each other. The WSP groundwater assessment was therefore replaced as a model of interpretation.

6.1.12. **AD PARAGRAPH 34:** *“The WSP groundwater assessment contains the drawdown cones which were relied upon in the NSS biodiversity report (referred to in paragraph 31.21 above)”*

6.1.13. **AAV RESPONSE:**

6.1.13.1. The Delta H model simulated reduction of the water table in the shallow aquifer that might reduce the groundwater contribution to wetlands and springs, it might not affect the general functioning thereof if the systems are largely driven by interflow and/or perched local aquifers. Simulated zones of dewatering in the shallow aquifer can therefore not directly be equated to the “drying up” of wetlands or springs.

6.1.13.2. To overcome these unknowns and challenges, it is proposed to adopt an adaptive management and mitigation strategy for potentially affected wetlands. Should continuous monitoring of the wetland integrity identifies impacts; these will be mitigated by means of measures captured in the EIAR.

6.1.13.3. The WSP groundwater assessment also reported that *‘long-term oxidisation of sulphide minerals exposed in the walls, roof and floor of the mine workings may lead to acid mine drainage’*. Although the assessment concluded that significant movement of contamination from the mining area is only likely to occur 30 to 50 years after mine closure, two model scenarios used in this assessment only referred to *“potentially contaminated”* and not actual contamination risks.

6.1.13.4. In any event, the scope of the project changed and there will be no discard facility on the Mining Right Area, hence there will therefore not be a risk of "potentially contaminated groundwater from the discard facility flowing into

the Mawandlane River and the tributary of the Assagaai River", regardless of which model is used.

6.1.13.5. The above-mentioned aspect was addressed in the final EIAR on p 341. This was submitted to the competent authority and formed part of the decision-making process.

6.1.14. **AD PARAGRAPH 35:** "On 16 May 2014 the DEA rejected the original EIAR as containing insufficient information. *In relation to several key aspects of concern and highlighted numerous issues which it required to be addressed in an amended EIAR. The DEA required the following:*

6.1.14.1. **Ad paragraph 35.1:** "Confirmation as to whether an alternative layout could be proposed, which would 'allow the proposed mine to coexist within this sensitive area, given the Department's concerns with regards to biodiversity'"

6.1.14.2. **AAV RESPONSE:**

6.1.14.2..1. The Appellants are referencing and commenting on an outdated report that was amended with amplified scientific information to reflect the changes in the scope of the project. The Appellants that were registered I&AP's were furnished with the updated EIAR and did not provide any comments. It is unclear why the Appellants insists on referencing the incorrect documents. In our opinion the Appellants advisor CER, is deliberately trying to mislead the honourable MEC with dubious and ambiguous statements such as this one.

6.1.14.2..2. Nevertheless, the information included in the final EIAR: Alternatives in terms of layout are discussed in section 4.3 (Surface Layout); section 4.5 (Discard Dump) and section 4.12 (Best Environmental Option) of the final EIAR.

6.1.14.3. **Ad paragraph 35.2:** "An amendment to the EIAR to include a new layout plan and an 'update [of] the specialist studies to include for the assessment of the new alternative layout plan'"

6.1.14.4. **AAV RESPONSE:** The information was included in the final EIAR under section 4.3 (Surface Layout), section 4.5 (Discard Dump), section 4.12 (Best Environmental Option); *and* specialist Studies (Conceptual Stormwater Management Plan - Section 8.6 Appendix E; Geohydrological Model- Section 8.7 - Appendix F; Biodiversity & Wetland Assessment: Discard Dump - Section 8.9- Appendix H-2; Wetland Ecological Assessment -Section 8.10 Appendix H-3; Palaeontological Assessment-Section 8.12- Appendix I-3; Phase 1 Heritage Assessment-Section 8.11 - Appendix I-1 (Discard dump area); Appendix I-2 (Target area); Visual Assessment-Section 8.13 Appendix J-2; Air Quality Assessment-Section 8.14 Appendix K; Downstream Water Uses-Section 7.9.1 - Appendix N-2

6.1.14.5. **Ad paragraph 35.3:** "[G]round-truthing' to prove that the development does not impact on the reason for the classification of the site as 'Irreplaceable' in the Mpumalanga Biodiversity Conservation Plan – The DEA noted that this may constitute a fatal flaw"

6.1.14.6. **AAV RESPONSE:** It is important to note that although the DEA noted in 2014, that this may be a fatal flaw, the DEA subsequently granted the EA based on the assessment of all the additional information submitted by the Applicant.

6.1.14.7. The information was included in the final EIAR stating that in terms of the Mpumalanga Biodiversity Conservation Plan Handbook (2007), the area targeted for the surface infrastructure development is classified as "Important & Necessary". Discussed in Section 7.16.7 and presented in Figure 7-50. (EIAR)

6.1.14.8. **Ad paragraph 35.4:** "An assessment of the interrelatedness of impacts on ground and surface water – The DEA observed in this regard that 'the area has a high occurrence of wetlands of very high ecological importance'"

6.1.14.9. **AAV RESPONSE:** The location of the site in a National Freshwater Ecosystem Priority Area (NFEPA) was identified and described in Sections 7.9.2. and 7.16.3 and presented in Figures 7-46 and 8-31, of the final EIAR. An additional Wetland

study was conducted by Scientific Aquatic Services (Appendix H-3). The study also described the location of the site in terms of the NFEPA. The sub WMA is considered a Fish FEPA (Figure 7 of SAS report). Impacts of dewatering assessed by the relevant Specialist are also presented in Tables 10-3 to 10-7. In addition, a new Groundwater study was undertaken and a new groundwater model was developed that resulted in a more appropriate modelling code that clearly indicated the lack of interrelatedness between the wetlands and groundwater impacts. This new information was made available but not considered by the Appellants.

6.1.14.10. **Ad paragraph 35.5:** *“The ‘identification of downstream water areas, water users dependent on the water, and a quantification of the dewatering effect on economic activities downstream, including increase in droughts and floods’ - The DEA observed in this regard that the area is classified as an NFEPA ‘which means that it is critical for the sustained supply of potable water for downstream communities’ and that ‘[d]ewatering 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”*

6.1.14.11. **AAV RESPONSE:** The Appellants is yet again imposing their own biased and ambiguous interpretation on the process requirements. In this case they introduce the concept of "quantification", whilst the department requested a "qualification". To qualify something means to attribute a specified quality to something; describe something; to classify something. To quantify something means to describe or measure the quantity; to determine the measure (size, number). The work was conducted and provided to the competent authority for their consideration and decision making. It was addressed in the Final EIAR as follows: New Geohydrological study was conducted by Delta H (Appendix F); Dewatering impacts were assessed by Specialist and presented in Tables 10-3 to 10-7. In addition, Downstream Water Uses were identified in Appendix N-2. The water uses are discussed in Section 7.9.1 and presented in Table 7-5 and Figure 7-25.

6.1.14.12. **Ad paragraph 35.6:** “Additional ground and surface water studies in order to adequately quantify the anticipated impacts of Acid Mine Drainage resulting from the underground workings of the mine”

6.1.14.13. **AAV RESPONSE:** This was addressed in the final EIAR in: the New Geohydrological study, conducted by Delta H (Appendix F). The findings are described in Section 8.7 and presented in Figures 8-20 to 8-22. The impacts were assessed by the Specialist and also in Tables 10-3 to 10-8. Please refer page 342 (EIAR)

6.1.14.14. **Ad paragraph 35.7:** “Proper consideration of the ‘Critically Endangered and southern African endemic Rudd’s Lark’ and the fact that ‘[a]pproximately 85% of the global population of Rudd’s Lark is confined to the grasslands within a 50 km radius around Wakkerstroom’ - The DEA observed in this regard that the application falls within the Grassland Important Bird Area (‘IBA’) and that ‘[t]his IBA has been recognized 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”

6.1.14.15. **AAV RESPONSE:** The matter of Rudd's Lark was addressed in the following way as part of the final EIAR: It was identified in Table 7-22. The species was not seen during any site visit, nor during several biodiversity assessments at different times of the year, nor recorded as sightings by the broader community. Please refer SAS biodiversity appendix H2. The NSS report indicates the possible occurrence in table 4-2 (Section C) and table 2-1 (Section F). The matter of the IBA was addressed in the final EIAR as follows: The location of the site in an Important Bird Area is discussed in Section 7.16.10 and presented in Figure 7-53 and Table 7-22. Rudd's Lark will not occur on the site, since its habitat is tall moribund grass, which the farmers burn down in an unscientifically determined burning schedule.

- 6.1.14.16. **Ad paragraph 35.8:** “Consideration of the facts that [t]he 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’ and that a mining licence cannot be issued without the express permission of the Minister”
- 6.1.14.17. **AAV RESPONSE:** This was addressed in the final EIAR stating that "Atha is currently also in the process of applying for authorization in terms of Sections 48(1),(3) of the National Environmental Management (NEMPA).
- 6.1.14.18. **Ad paragraph 35.9:** “An assessment of ‘all associated infrastructure required for the mine’ and a discussion of all listed activities including ‘the pipelines required for the transportation of water and dangerous goods, reservoirs, and any culverts/bridges required for the access roads’”
- 6.1.14.19. **AAV RESPONSE:** This was addressed in the final EIAR by providing: New specialist studies conducted in respect of the Best Environmental Option: alternative layout devoid of wash plant and discard facility and discard dump location. According to the Preferred Option - no road diversion is required - Section 4.7.3
- 6.1.14.20. **Ad paragraph 35.10:** “A geotechnical study/specialist opinion in order to address the issue of mine stability and the potential for subsidence”
- 6.1.14.21. **AAV RESPONSE:** This was addressed by means of including a Specialist opinion in terms of the geotechnical study included in Appendix C-3. The bord and pillar mining method is a mining method where there is no secondary extraction (pillar) thus there will be no subsidence.
- 6.1.14.22. **Ad paragraph 35.11:** “An assessment 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’ – the DEA noted in this regard 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 station”

6.1.14.23. **AAV RESPONSE:** This activity was removed from the EIAR, due to the "Best Environmental Option". The requirement needed by the applicant is sufficient to supply the life of mine power needs of the Project, and is less than 10 MVA, thus less than the trigger of the relevant listed activity sufficient to supply the life of mine power needs

6.1.15. **AD PARAGRAPH 36:** “The DEA therefore recorded expressly that it required substantially more information in order for it to be in a position to decide whether the proposed mine should be authorised’

6.1.16. **AAV RESPONSE:** This request is within the mandate of the regulator and was responded to point for point and reflected as such in the "Roadmap" provided in the front of the report. The “Roadmap” as presented in the report is attached for ease of reference as Appendix D.

6.1.17. **AD PARAGRAPH 37:** “Although EcoPartners and Atha went about obtaining certain further specialist reports in order to meet the requirements of the DEA, the reports and amended EIAR which were eventually submitted to the Chief Director do not address any of the concerns raised by the DEA. This is explained in detail in the report ‘Review of Environmental Impact Assessment Report & Environmental Management Programme, and Environmental Authorization, for Yzermyn underground coal project’ dated 17 August 2016 by Susie Brownlie which is attached marked ‘F’ (‘the Brownlie review’). The Brownlie review forms an integral part of this Appeal.”

6.1.18. **AAV RESPONSE:** This request is within the mandate of the regulator and was responded to point by point and reflected as such in the "Roadmap" provided in the front of the report. (Please refer to Appendix D)

6.1.19. It is respectfully submitted that this case is a highly complex case that has seen more than 3 years of assessment, scientific and specialist studies. The scientists and specialists appointed by the Applicant to undertake independent assessments were all suitably qualified and experienced to undertake the said studies and or assessments. The specialists were consulted and commissioned based on their respective fields of expertise. Assessed the integration of the impacts in consultation with one another, so as to hear from the specialist field of practice directly, rather than relying on a report. These fields of expertise included Environmental Management Practitioners, Environmental Scientists, Geo-hydrologists, Wetland and Aquatic Eco-systems specialists, Geologists, Ecologists, Socio-Economic Development specialists, Land Use experts, various Engineers, Public Participation specialists, lawyers etc.

6.1.20. All of the abovementioned specialists and or experts are seasoned practitioners with many, many years of experience behind them. The point that we want to make is that at the end of the day all these experts as well as three different competent authorities, concurred that this Project can go ahead based on the information provided by the Applicant and their specialists / experts and the competent authorities' assessment that adequate mitigation measures have been proposed to mitigate any impacts on the environment by the underground mining operation.

6.1.21. Notwithstanding the above, the Applicant is faced with an Appeal that purports to have been lodged by eight Appellants, of which only three were actually registered I&AP's, however, only peripherally involved in the EIA process, with very few comments emanating from these 3 Appellants (all of which have been addressed during the EIA process) and five other Appellants that we are not quite sure how they got involved in this Appeal without having been part of the EIA process at all.

6.1.22. Then there is the CER, appointed as the legal representative of the eight Appellants, who has a vigorous and self-proclaimed bias against almost any mining activity, but especially coal mining activities. Who, in public, insults and questions decision makers across the board, entice the public and the media with fabricated, defaming stories to sensationalise their role as so-called crusader for the vulnerable

and the poor, whilst along knowing that almost everything they purport as being a fact is indeed either a misguided interpretation of the law or a deliberate misrepresentation of the facts that are based on scientific evidence.

6.1.23. The Appellants, undoubtedly on the advice of the CER, appointed an Environmental Scientist, Ms Susie Brownlie, to review the EIAR as well as the large volume of scientific and specialist reports. We can only assume that the CER, in appointing Ms Brownlie, was of the opinion that Ms Brownlie was an expert in all of the abovementioned fields of expertise. As far we could gather, Ms Brownlie is very experienced in general environmental management measures as well as certain specialist areas. However, we failed to procure any information indicating that Ms Brownlie is an engineer, geologist, geo-hydrologist, wetland and or aquatic specialist, socio-economist or legal expert, let alone an expert in these fields.

6.1.24. Yet, notwithstanding the above mentioned absence of suitable qualifications and or experience, Ms Brownlie produced a review report that questions almost all the scientific findings and or recommendations of the Applicant's expert scientists and or specialists. The conclusions being drawn from a desktop review of the documents in a limited time period and without her having been on site or liaising with the relevant competent authorities who were ultimately part and parcel of the process and granted the EA and other authorisations.

6.1.25. We are not certain, whether Ms Brownlie was appointed as an independent reviewer or in the capacity of an "internal resource". What we do know is that given the limited amount of time to review such an enormous amount of documents and thereafter to formulate an informed expert opinion in respect of all the highly complex factors relevant to this Project, without having been involved at all in the matter, or having been to site or soliciting the advice of other scientists and or specialists in respect of those expert areas, such as surface water, where Ms. Brownlie would not be that well acquainted to, within the given timeframe, would have been a gigantic task, if not an impossible task.

6.1.26. Yet, the Applicant has been furnished with what the CER believes is an expert opinion, on all relevant specialist and or scientific matters concerned, emanating from the review of all relevant documents submitted by the Applicant to the relevant authorities.

6.1.27. Honourable MEC, it is respectfully submitted that the Appellants and specifically their legal representative, the CER has grossly underestimated the intelligence and diligence of the Applicant, its specialists and scientists and ultimately the decision makers. This is to say the least, an insult and a direct attack on the capabilities of the officials in your Department, ourselves and the team of specialist and experts.

6.1.28. In light of the abovementioned, the opinion of the specialist appointed by the Appellant (Appellant's specialist), and relied on by the Appellants is noted, but disputed in the strongest possible manner. It is specifically noted that the communication to the department regarding the point by point response (Roadmap) to the department's concerns was not at all considered by the Appellant's specialist.

6.1.29. The Appellant's specialist who questions the interpretation and conclusions drawn by the independent environmental consultant, and therefore by implication the Applicant's specialists, did not have sight of the Project area, but more tellingly, she states that time constraints presented limitations to the level of detail of her review, which is being relied on by the Appellants. Importantly though, the Appellant's specialist does acknowledge that the competent environment authority was given the volume of material comprising the documentation submitted, to make an informed decision.

6.1.30. In light of the abovementioned, we respectfully request the honourable MEC to dismiss the Brownlie Opinion in its entirety.

6.1.31. **AD PARAGRAPH 38:** *"A striking feature of the specialist reports which EcoPartners obtained in order to address the DEA's concerns is that none of them was obtained from the specialists whose reports had been included as part of the original EIAR*

(despite the DEA having envisaged an 'update' of specialist reports). Instead, new specialists were appointed, or in some cases EcoPartners simply did the work itself. In one instance, Atha (the applicant for authorization) purports to provide specialist input (as regards the important issue of the status of the fountains first referred to in paragraph 27 above)".

6.1.32. **AAV RESPONSE:** This statement is factually incorrect and aimed at creating uncertainty. The Appellants are blatantly inserting their own words to support their clearly biased interpretation, this approach is highly questionable. The Appellants omission to read and interpret the EIA documents and specialist reports in an objective manner is regrettable.

6.1.33. A total of 8 specialists were used to update the reports mentioned by the Appellants. Only 2 new specialists were appointed, the other 6 updated their reports. EcoPartners did the clarification of the downstream users. The Applicant did not provide any specialist input. The only action taken by the Applicant was a survey to ascertain which of the springs had water, since the farmers would not allow anyone else to enter their property. There is no need for specialist skills to be able to see if water is flowing from the springs or not.

6.1.34. The regulator did not request a report on the impacts on downstream users. The insertion of additional words or the re-interpretation to create a different request from the regulator is noted with concern. The regulator requested an update of the EIAR, i.e.: "...this application cannot be considered without the identification of the downstream water areas, the water users depend on the water, and a qualification of the dewatering effect on the economic activities downstream, including increase in droughts and floods. This information needs to be included in the amendment EIAR."

6.1.35. There is ample evidence to suggest that a very rigorous assessment and authorization process was followed by the decision makers. The fact is; neither the Appellants nor their advisor the CER has a mandate to act as the Regulator, even though it is clear from their nonsensical allegations, they misguidedly think they have a mandate to play the role of an I&AP, EAP, specialist, official and ultimate regulatory decision maker, all at once.

6.1.36. **AD PARAGRAPH 39:** *It is also worth noting in this regard that the authors of the NSS biodiversity report were concerned enough to take the unusual step of registering as a registered interested and affected party in order to provide further input, and the further input which NSS did provide on 27 October 2014 was in unequivocal terms. NSS said among other things (having reviewed a further groundwater assessment obtained by EcoPartners, to which we turn below) that the impact of the post closure decant of the mine alone could not justify the short-term economic gains of the mine."*

6.1.37. **AAV RESPONSE:** This statement is factually incorrect and aimed at creating uncertainty. The Appellants are blatantly inserting their own words to support their clearly biased interpretation, this approach is highly questionable. As was the case with each and every registered I&AP, during the Public Participation Process, the NSS was provided the opportunity to provide input, and they did comment, which comments was included in the EIAR, together with the comments of all other I&AP's.

6.1.38. The Appellants omission to read and interpreted the EIA documents and specialist reports in an objective manner, and not in reliance of hearsay and speculation, is regretted. The updated model was reviewed by NSS and their comment on the revised model was: *"This impact, together with the impact of the decant, should both make the project unfeasible if not mitigated efficiently. In our opinion, this impact alone, cannot justify the short-term economic gains of the AYCP"*. The mitigation measures were pointed out in the response recorded in the final EIAR.

6.1.39. **AD PARAGRAPH 40:** *"The groundwater assessment which NSS referred to in its letter of 27 October 2014, is a groundwater assessment by Delta H dated August 2014 (Appendix F) ('the Delta H groundwater assessment'). The Delta H groundwater assessment was one of the reports which EcoPartners obtained in an attempt to allay the DEA's concerns."*

6.1.40. **AAV RESPONSE:** The Delta H report updated the WSP report based on the review done by Delta H on 2 October 2013, and numerous references are made to the WSP information in the Delta H report. The objective was to update the information

with the 72 hour pump tests data, to include the groundwater monitoring done by the applicant since the WSP report was compiled. This was done to better understand the interconnectivity between the shallow and deep aquifers based on the results seen at the old mining adits and clarifying the potential source of water that created the seep wetlands. The modelling code used by WSP was MODFLOW, which is not the best for modelling vertical gradients and broken rock aquifers, consequentially the more accurate SPRING model was used for the 3D modelling undertaken by Delta H.

6.1.41. **AD PARAGRAPH 41:** *“The Delta H groundwater assessment however substantially confirmed the findings of the WSP groundwater assessment. More particularly the groundwater model used by Delta H produced a very similar drawdown cone to that modelled by WSP (see in this regard the report by Ingrid Dennis ‘Review of the groundwater documentation related to the proposed Yzermyn Colliery’ dated August 2016 which is attached marked ‘G’ and which also forms part of this appeal). The Delta H groundwater assessment went further by concluding that the mine was likely to decant post-closure”*

6.1.42. **AAV RESPONSE:** The Appellants omission to read and interpreted the EIA documents and specialist reports in an objective manner, and not in reliance of hearsay and speculation, is regretted. The Delta H report provided a better understanding of the system within the limited information available. Different modelling codes were used, which is more applicable to the aquifer interaction to be modelled and as a result the interconnectivity was more accurately modelled. It concluded that the significant impacts were very limited (see page 54 describing the expected impact to be minor to moderate). The Applicant will pre-grout any zones of inflow intersected, and will actively treat and discharge excess water from the construction phase already and continue after closure (sub-surface discharge into filter drains) to further mitigate impacts. The EIAR never disputes the fact that decant will happen.

6.1.43. **AD PARAGRAPH 42:** *“There was therefore nothing contained in the Delta H groundwater assessment which would have warranted changing the findings contained in the NSS biodiversity report”*

6.1.44. **AAV RESPONSE:** This statement is factually incorrect and aimed at creating uncertainty. The Appellants are blatantly inserting their own words to support their clearly biased interpretation, and this approach is highly questionable. As was the case with each and every registered I&AP, during the Public Participation Process, the NSS was provided the opportunity to provide input, and they did comment, which comments was included in the EIAR, together with the comments of all other I&AP's.

6.1.45. However, there is no prohibition in the EIA Regulations to undertake a peer review of another specialists finding in order to obtain a balanced outcome, especially when it is a significant Project such as this one.

6.1.46. NSS considered a significantly connected aquifer model, based on the WSP report, whereas the Delta H model indicated there was very limited connectivity between the shallow and deep aquifers and that the seep wetlands on site can possibly be attributed to perched aquifers on impermeable layers (clay lenses was observed in profile pits). The conclusions derived by NSS were therefore premised on information that was different.

6.1.47. The findings of the NSS report were not amended, and it was also not discarded - it was still attached as an appendix and discussed. Its findings were placed in a new perspective using the evidence of the site-specific conditions. The statements made by NSS do not refer to the existence of perched aquifers supporting the seep wetlands. NSS also acknowledges that the impacts are localised (p243, Section G: Impact assessment). The Dry season water supply by the springs is limited since a number of the springs are dry in winter (further corroborating the quick rainfall recharge of very shallow perched aquifers theory).

6.1.48. The Appellants chose to ignore this relevant information and rather chose to insert their own biased interpretation. The Appellants omission to read and interpreted the EIA documents and specialist reports in an objective manner, and not in reliance of hearsay and speculation, is regretted.

6.1.49. **AD PARAGRAPH 43:** “EcoPartners also included in the EIA two other new reports, being: A report by Scientific Aquatic Services C (‘SAS’) ‘Wetland Ecological Assessment as part of the Environmental Assessment and Authorization Process for the proposed Yzermine Coal Mining Project’ dated June, August 2014 (‘the SAS 2014 report’); and A wetland delineation ‘report’ (which is in fact a letter) by SAS dated 9 December 2014”

6.1.50. **AAV RESPONSE:** As mentioned before, EcoPartners commissioned the update of all the specialist reports. The purpose of the letter by SAS was to specifically inform the EAP of the specific outlines of the wetlands to be directly impacted by the surface infrastructure. It was done to also comply with requirements from DWS. Due to the ploughed fields in the area, it was very difficult to delineate the outline without specifically drilling and mapping it, using the occurrence of mottled soils on site to determine the exact location of wetlands. These outlines were used to ensure the infrastructure would be placed in areas that least impact on wetlands. Both of the documents form part of Appendix H. It also obtained an ecological assessment from SAS pertaining to a revised proposed discard dump, which has been rendered irrelevant because there will be no discard dump.

6.1.51. **AD PARAGRAPH 44:** “As is explained by Brownlie, neither of these reports comprises an update of the impacts of the revised surface infrastructure associated with the Best Environmental Option. We pause here to explain that the Best Environmental Option was conceived of by Atha and EcoPartners after the rejection of the EIA by the DEA on 16 May 2014. Although it is not clear from the EIA, it appears that this option involves a slight reconfiguration of the surface infrastructure of the mine and the abandonment of the idea that coal would be treated at the site, which means that there will be no discard pile. The underground aspect of the mining operations however remain the same”

6.1.52. **AAV RESPONSE:** The Appellants and their specialist, who only undertook a desktop review, chose to ignore the actual correct and factual relevant information and rather chose to insert their own biased interpretation. The Appellants omission to read and interpret the EIA documents and specialist reports in an objective manner, and not in reliance of hearsay and speculation, is regretted.

6.1.53. The updated specialist reports reflect a reduction of impacts in various ways, most significantly reducing the footprint from 80 to 22,4ha. The "Best Environmental option", also referred to as the Best Practicable Environmental Option or the Best Practical Environmental Option is a recognised concept in environmental management. The "Best Environment Option" was the alternative selected after several specialists reviewed several alternatives as reflected in the EIAR. The project layout alternatives were assessed by EcoPartners after ATHA requested alternatives from their design engineers. The changes from the previous report were clearly indicated in the EIAR.

6.1.54. **AD PARAGRAPH 45:** *"Apart from not dealing with the surface impact of the Best Environmental Option, neither of the SAS reports challenge in any way the findings contained in the WSP groundwater assessment (as confirmed and expanded upon by Delta H) and the NSS biodiversity report pertaining to the likely effects of the underground portion of the mine on the surrounding environment including wetlands and the biodiversity associated with them."*

6.1.55. **AAV RESPONSE:** This statement is factually incorrect and aimed at creating uncertainty. The Appellants are blatantly inserting their own words to support their clearly biased interpretation, and this approach is highly questionable. The reports were compiled to refine the Applicant's understanding of the system. The perched aquifers were never clearly described by WSP or NSS. The Study by SAS was to specifically look at the surface infrastructure site and very accurately delineate the wetlands, which enabled the applicant to redesign the surface lay-out and reduce the impacts on the wetlands significantly. The SAS report did verify the exact locations of the FEPAs and indicated much less probability of potential impact on these. The SAS reports provides for a more accurate location of the wetlands previously delineated by NSS, and where necessary amended the wetlands as required by DWS, in the bigger mining area. The NSS report assumed the total drying out of the wetlands, which is proven to be unlikely, based on on-site observation of the existing adits; the perched aquifers identified; and, the overlay of the draw down cone on the wetlands.

6.1.56. **AD PARAGRAPH 46:** *"In summary, the EIA which was submitted to the Chief Director and upon which the EA is based, suffers from two fundamental defects (apart from the others described under the individual grounds of appeal below): It does not contain the updated information requested by the DEA, including updated assessments of the effect of the project on wetlands and biodiversity; and to the extent that it does contain new input from specialists which is of any scientific value, that input buttresses the findings of the biodiversity specialist in the original EIA" and "In fact the SAS 2014 report reiterated that the proposed project 'is located within an extremely sensitive area containing extensive wetlands which are presently in very good condition' and that 'it is the opinion of the ecologists that the project is regarded as having extremely high impacts...' SAS 2014 p vi"*

6.1.57. **AAV RESPONSE:** The so-called defects referred to by the Appellants are unfounded and rely on the Appellants determination to use dated information and erroneous assumptions to prove a pre-determined and biased position. To the contrary, there is ample evidence to suggest that a very rigorous assessment process was followed by the Applicant as well as a very rigorous authorization process followed by the decision makers.

6.1.58. The Appellants reference to the SAS report is deliberately taken out of context. This comment relates to the discard dump, which was taken out of the EIA and avoided in the end based on the evidence provided. The discard dump was thus removed in the best environmental option. Furthermore, the Appellants reference to extremely sensitive areas is misguided since even if an area constitutes an extremely sensitive area, it does not necessarily render such system an automatic No Go area. What is of importance is that a proper assessment of all the impacts, in line with the principles of Sustainable Development is undertaken, to ascertain if there is any argument for a coexistence model on a specific case by case basis.

6.1.59. The updated information was detailed in a "roadmap" that was submitted to the competent authority and all I&APs. However, although it is very clear that the Appellant and their specialist, did not review or consider this very relevant information, it is uncertain why purported experts would have omitted to do so, unless the factual information was simply not what they wanted to hear. However, this is mere speculation.

6.1.60. The initial specialist studies never took into account that large areas of the surface infrastructure footprint was previously ploughed and evidence of that was visible during field assessment, but never mentioned. This was further verified with historical aerial photographs and is mentioned by SAS. The findings of the biodiversity specialist, relied on by the Appellant, has been devalued, due to the limitation that they were reliant on assumptions made by another specialist (which were subsequently found to have been incorrect). The findings of the Delta H hydrogeological impact assessment and mitigation plans were fundamental in the wetland impact assessment undertaken by SAS and the impact significance ratings provided.

6.1.61. We fail to see how the Appellants' desktop review and opinion could have come to any other conclusion without actually being on site to assess the issues on the ground. This is exactly what the Applicant's specialists did. Real ground-proofing and site specific assessment, rather than to rely on subjective unsupported soapbox commentary and interpretation and a superficial desktop review.

6.1.62. The fact is; neither the Appellants nor their advisor, the CER, has a mandate to act as the Regulator, even though it is clear from their nonsensical allegations, they misguidedly think they have a mandate to play the role of an I&AP, EAP, specialist, official and ultimate regulatory decision maker, all at once.

6.1.63. **AD PARAGRAPH 47:** "On 7 June 2017 however, the Chief Director granted Atha environmental authorization".

6.1.64. **AAV RESPONSE:** The environmental authorization was granted on 7 June 2016.

7. PART C: GROUNDS OF APPEAL

AAV RESPONSE: Point by point response to Part C: Grounds of Appeal - paragraphs 48 to 117 of the Appeal.

Ref nr	Doc ref	Grounds of appeal (CER)	Grounds of appeal response (AAV)
C.1 Listed activities not authorised (first ground of appeal)			
48	Part C	The appellants first ground of appeal is that the EA does not authorise all of the activities which are triggered by the proposed project.	Addressed point by point
49	Part C	In particular, the following further activities should have been authorised for the project as proposed to proceed lawfully, which were not:	Addressed point by point
49,1	Part C	<i>The construction of facilities or infrastructure for the generation of electricity where the electricity output is more than 10 megawatts but less than 20 megawatts'</i> (activity 1(i) in Listing Notice 1 of 2010); and	This activity was removed due to the "best environmental option". The requirement needed by the applicant is less than 10 MVA, this is therefore less than the listed activity. This is explained in the EIAR p109.
49,2	Part C	<i>The infilling or depositing of any material of more than 5 cubic metres into, or the dredging, excavation, removal or moving of soil, sand, shells, shell grit, pebbles or rock from a watercourse'</i> (activity 18(i) in Listing Notice 1 of 2010) - While this activity was authorised as far as the surface infrastructure is concerned, it was not authorised in relation to the underground workings of the mine ⁶⁸ .	The definition is contained in the National Water Act. The definition of watercourse which includes a wetland, refers to surface features. Surface features were applied for and assessed in this process. The appellants are attempting to conflate surface activities with underground features, when the definition is clear.
	Foot Note	⁶⁸ EA p 5	Noted
50	Part C	In the application submitted to the DEA by EcoPartners on behalf of Atha, one of the activities in respect of which authorisation was sought was the one described in paragraph 49.1 above ⁶⁹ . The description of the project activity was described as follows: <i>'[t]he proposed mine will install generators and the combined electricity output will be more than 10 megawatts but less than 20 megawatts'</i> .	EcoPartners facilitated the application to the DEA, the application was not done "on behalf of", that assumes a pre-destined outcome. This was no longer needed as the project scope changed.
	Foot Note	⁶⁹ Application form (Appendix B3) p 8	Noted

Ref nr	Doc ref	Grounds of appeal (CER)	Grounds of appeal response (AAV)
51	Part C	The EIAR says that ' <i>Based on the mining operation, surface layout and product handing information, Mindset calculated Total Power Demand to be approximately 10.3 MVA. It has been noted that power will be supplied by six onsite diesel fed generators which will have the capacity to generate approximately 12 MVA...'</i> ⁷⁰ . This information has not been updated by any specialist report.	No longer required, as less than 10 MVA electricity is required because there is no discard dump or washing plant.
	Foot Note	⁷⁰ EAIR p 89	Noted
52	Part C	Since 12 MVA comprises 12MW, the generation of this amount of electricity by generators triggers activity 1(i) in Listing Notice 1 of 2010. The activity ought therefore to have been authorised in the EA.	The Power Factor (PF) has to also be 1 for this to hold. The report though indicates the PF is 0.8 and so 12 MVA has a rating of 9.6 MW. The appellant is incorrect in this calculation though.
53	Part C	As regards the activity in paragraph 49.2 above, it is clear from the EIAR that the surface and underground areas of the mine coincide with large areas of wetland ⁷¹ .	Surface infrastructure was applied for. It would be however pertinent to know as to how does para 49.2 correlate with this section. Further the wetland impact assessments have been discussed for entire mining area in the specialist study.
	Foot Note	⁷¹ NSS (Appendix H1) p 195	Noted
54	Part C	A ' <i>watercourse</i> ' is defined in Listing Notice 1 of 2013 as meaning ' <i>a wetland</i> ' among other things.	The definition is contained in the National Water Act. The definition of watercourse which includes a wetland, refers to surface features. The wetland characteristics appear in the vegetation, any surface water and in the soil profile which may extend down several metres in thickness although the effective depth of a wetland soil is typically the rooting zone of grasses (typically 500mm). Surface features were applied for and assessed in this process.
55	Part C	The underground workings of the mine will therefore involve the excavation, removal or moving of soil, sand, pebbles or rock from a watercourse.	This is contested. The definition of wetland can only manifest on surface. The underground mine includes a box cut and a decline to reach coal seams, the surface infrastructure is placed mostly devoid of seep wetlands. The seep wetlands were disturbed due to historical tilling.
56	Part C	The failure of the EA to authorise these activities amounts to material non-compliance with regulation 27(1)(b) of the NEMA 2010 Regulations.	An updated application form was requested after the submission of the report as the listed activities changed, triggering the transitional arrangements.

Ref nr	Doc ref	Grounds of appeal (CER)	Grounds of appeal response (AAV)
57	Part C	More importantly it means that the impacts of at least two critical activities which are triggered by the proposed project have not been assessed in the EIAR and that Atha would be acting unlawfully if it were to commence with the project in these circumstances.	The appellant is relying on an incorrect understanding of the application process and are trying to dictate to the regulator how they would prefer the regulator to approach the application.
C.2 Incorrect competent authority (second ground of appeal)			
58	Part C	The appellants' second ground of appeal is that the MEC is not the competent authority in respect of the listed activities triggered by the project and that the Chief Director therefore acted without lawful authority when he granted the EA under authority delegated by the MEC.	Response to paragraphs 58 to 60: According to section 24C(1) of the NEMA, which section provides for the procedure for identifying a competent authority, the Minister, or an MEC with the concurrence of the Minister, when listing or specifying activities in terms of section 24(2), must identify the competent authority responsible for granting environmental authorisations in respect of those activities. It is therefore the responsibility of the Minister and an MEC to determine the competent authority, as was clearly executed by the department. Subsection 24C(2) provides that the Minister must be identified as the competent authority in terms of subsection (1) if the activity will take place within an area identified in terms of section 24(2) (b) or (c) as a result of the obligations resting on the Republic in terms of any international environmental instrument, OTHER than any area falling within the sea-shore, a conservancy, a protected natural environment, a proclaimed private nature reserve, a natural heritage site, or the buffer zone or transitional area of a biosphere reserve or a world heritage site. Subsection 24C provides that the Minister and an MEC may agree that applications for environmental authorisations with regard to any activity or class of activities contemplated in subsection 24C(2) may be dealt with by the MEC. In the instance of the YUCM Project, the EIA Application, was made to both the Minister and the MEC. However, the DEA
59	Part C	The competent authority is in fact the Minister because several of the listed activities which are triggered by the proposed mine have implications for international environmental commitments or relations.	
60	Part C	Section 24C(2)(a) of NEMA provided at the time that the application was made to the DEA on 8 June 2013 that the Minister must be identified as the competent authority in terms of subsection (1) if the activity <i>'has implications for international environmental commitments or relations'</i> .	

Ref nr	Doc ref	Grounds of appeal (CER)	Grounds of appeal response (AAV)
			delegated the decision-making mandate to the MEC based on their own judgement that the Environmental Impact Assessment Report did not trigger any EIA Listed Activities to be decided by the Minister.
61	Part C	These would include activities which have implications for, among other things, South Africa's obligations under the United Nations Framework Convention on Climate Change ⁷² . The Minister has recently confirmed ⁷³ that she is by virtue of these obligations the competent authority when it comes to authorising NEMA listed activities which relate to the national government's Integrated Resource Plan pertaining to electricity supply. The authorisation of a project which has significant implications for electricity supply falls within this category. It is to be noted in this regard that the EIAR states explicitly that ' <i>[n]egotiations will continue with Eskom regarding the power supply to the site</i> ⁷⁴ .	This Project did not trigger any EIA listed activities in respect of electricity generation or supply to the Project.
	Foot Note	⁷² See the memorandum dated 19 August 2016 prepared by the Centre for Environmental Rights for purposes of this appeal ('the CER GHG memorandum') for a detailed discussion of South Africa's international and domestic law commitments as regards reducing greenhouse gas emissions (Annexure H to this appeal) (paras 6-18)	Appellant to provide factual proof of actual relevance to this Project.
	Foot Note	⁷³ GN 779 in GG 40110 dated 1 July 2016	Appellant to provide factual proof of actual relevance to this Project.
	Foot Note	⁷⁴ Although the EIAR says that should a substation and power lines be agreed, Atha will be required to undertake a separate EIA process, the DEA expressly required on 16 May 2014 that the question of electricity supply should be resolved in the EIAR to avoid incremental decision making	This Project did not trigger any EIA listed activities in respect of electricity generation or supply to the Project.

Ref nr	Doc ref	Grounds of appeal (CER)	Grounds of appeal response (AAV)
62	Part C	The project also has implications for climate change in that underground coal mining has itself been shown to be a large contributor of greenhouse gas emissions, particularly methane gas, because ventilation causes significant quantities of methane to be pumped into the atmosphere. This is explained in a memorandum dated August 2016 prepared by the Centre for Environmental Rights for purposes of this appeal ('the CER GHG memorandum'), a copy of which is attached marked 'H'. The CER GHG memorandum forms part of this appeal.	There is no legal requirement to assess GHG in terms of EIA in 2010 regulations. The CER GHG memorandum therefore bears no relevance as far as this EA and its appeal is concerned.
63	Part C	Further under this head, several of the authorised activities have implications for the Convention on Wetlands of International Importance; the Convention on the Conservation of Migratory Species of Wild Animals; and the Convention on Biological Diversity, each of which has been acceded to by South Africa ⁷⁵ .	No legal requirement to address, as there is no RAMSAR wetland on site. The nearest RAMSAR wetland is Seekoeivlei Nature Reserve in the Free State Province, located approximately 70 km south west of the study area. Therefore, it is highly unlikely that the proposed mining activities will impact on this specific RAMSAR site, this was addressed on p 375 in the EIAR.
	Foot Note	⁷⁵ See for instance activities 11, 18, 26 (First Listing Notice, 2013) and 4, 12, 13, 16 and 19 (Third Listing Notice, 2013) all of which are authorised in the EA	No legal requirement to address, as there is no RAMSAR wetland on site.
64	Part C	The Minister is therefore the lawful competent authority in terms of NEMA in relation to this application and the Chief Director acted without lawful authority when he granted the EA. Any decision which the MEC might take to uphold the EA would be reviewable in terms of the Promotion of Administrative Justice Act 3 of 2000 ('PAJA') as being unauthorised and unconstitutional.	Please see response to paragraphs 58 to 60.
65	Part C	Finally under this head, we note that there is no explanation contained in the record for why the application was removed from the remit of the Minister and submitted instead to the provincial department for decision. That this was done is especially concerning since the DEA had clearly engaged with the application and the original EIAR and had found it to be wanting. The DEA evidently expected that any amended/updated EIAR would come back to it to be assessed against the letter of 16 May 2014. There is no evidence of an amended application	The report was submitted January 2015. Any changes since then will not be recorded in the report.

Ref nr	Doc ref	Grounds of appeal (CER)	Grounds of appeal response (AAV)
		form having been submitted (in which the activities to be authorised have changed) and no evidence of an agreement between the MEC and the Minister in terms of section 24C(3) of NEMA agreeing that the former should decide the application.	
C.3 The failure to take into account the effect of the project on people in the environment (third ground of appeal)			
66	Part C	The Brownlie review contains a detailed analysis of how the socioeconomic impacts of the proposed project have been dealt with in the EIAR. Brownlie's assessment is that ' <i>[t]he socioeconomic impacts of the proposed project are not addressed in a balanced and objective way, and fail to incorporate relevant findings of the socioeconomic specialist report (Appendix O). The assessment of these impacts, and conclusions drawn by EcoPartners, are thus highly questionable.</i> ' ⁷⁶	The evidence indicates otherwise, this has been addressed in various ways and through various parts of the EIAR, such as p246 to 259
	Foot Note	⁷⁶ Brownlie 16-17	Brownlie has been on the advisory panel for an I&AP to the project, opposing the process. This calls into question her independence and highlights her bias in this regard, as she may be tempted to influence the outcome to a predetermined result (as was demonstrated). Her close relationship with the I&AP, here the attorneys for the appellants, compromise the independence required for as an expert in this matter.
67	Part C	Brownlie points out, among other things, that:	Noted
67,1	Part C	<i>The EIAR (8.16.4.5) notes that the return of the local economy to agriculture and tourism is likely to take up to 10 years (or longer depending on the degree of impact of the mine on the local physical environment) (p. 468)';</i>	Noted
67,2	Part C	<i>[T]he main livelihoods prior to mining - agriculture and tourism - may be significantly negatively affected; eco-tourism has created about 400 jobs in the Wakkerstroom region (4.13.7 of the EIAR, p.97) and "The Wakkerstroom and surrounding</i>	Noted

Ref nr	Doc ref	Grounds of appeal (CER)	Grounds of appeal response (AAV)
		<i>conservation areas are significant townscapes with a strong future natural based tourist industry" (7.18.2, p. 242)';</i>	
67,3	Part C	<i>Impacts of mining on tourism to the wider area and associated economic factors, income generation and employment have not been adequately assessed. Numerous sections in the EIAR refer to the moderate to high potential for expansion of tourism and recreation in the affected area, as well as the diversity of natural resources and aesthetic attributes of the area that serve as the foundation for this sector to grow (e.g.8.10.3.3, 8.16.3.5, 8.16.4.5) ... (p. 466 of the EIAR)'; and</i>	It is clear from the references to the EIAR that it was addressed.
67,4	Part C	<i>The potential influx of labour and job seekers, with associated negative impacts (8.16.3.4, p. 455; 8.16.4.2, p. 457-8; 8.16.4.3, pp. 462, 465, 466-468) is inadequately assessed: most communities and local municipalities expressed concern regarding the potential influx of job seekers and labour into the area, which could affect accessibility to social and basic services, specifically healthcare, housing, water and sanitation, sense of place and social conflict'.</i>	It is clear from the references to the EIAR that it was addressed.
68	Part C	The failure of the EIAR to report objectively and fully on the possible effects of the proposed project on people living in the area has the consequence that the Chief Director was not in a position to take into account the effects of the project on all people in the environment as he was required to do in terms of NEMA.	The references used by Brownlie as excerpts of the EIAR shows that the effects of the people living in the area was discussed and the Chief director therefore was in a position to take into account the effects of the project on all people in the environment as he was required to do in terms of NEMA.
69	Part C	The information which <i>is</i> contained in the specialist studies suggests furthermore that the greatest environmental impact of the mine is likely to be felt mainly by vulnerable and disadvantaged persons in the area, namely subsistence farmers and poor rural communities who depend on the natural soil and water resources in the area to sustain themselves.	The impact on the natural soil and the water resources was assessed by specialists and found to be limited to the site. Subsistence farmers and poor rural communities who depend on the natural soil and water resources in the area to sustain themselves, are not on the site.

Ref nr	Doc ref	Grounds of appeal (CER)	Grounds of appeal response (AAV)
70	Part C	If the EA were to be upheld by the MEC it would be a decision which is in direct conflict with section 2(4)(c) of NEMA which provides that ' <i>[e]nvironmental justice must be pursued so that adverse environmental impacts shall not be distributed in such a manner as to unfairly discriminate against any person, particularly vulnerable and disadvantaged people</i> '. Whereas the negative impact of the project will be borne by poor communities in the area, the wealth of the natural resource removed from the ground will accrue predominantly to a foreign corporation and its shareholders.	There are several mechanisms in law to ensure that the people of South Africa are compensated for the use of their mineral endowment. The remainder of this xenophobic as well as possibly racist comment, presented for the appellants is noted.
71	Part C	Any such decision would also be in conflict with:	Contested
71,1	Part C	Section 2(4)(i) of NEMA which provides that ' <i>[t]he social, economic and environmental impacts of activities, including disadvantages and benefits, must be considered, assessed and evaluated, and decisions must be appropriate in the light of such consideration and assessment</i> '; and	It is contested that the EA is in conflict with 'Section 2(4)(i) of NEMA as "[t]he social, economic and environmental impacts of activities, including disadvantages and benefits, was considered, assessed and evaluated, and decisions was appropriate in the light of such consideration and assessment";
71,2	Part C	Section 2(4)(viii) of NEMA which requires that negative impacts on the environment and on people's environmental rights be anticipated and prevented and only where they cannot be altogether prevented, minimised and remedied.	It is contested that the EA is in conflict with 'Section 2(4)(viii) of NEMA as "negative impacts on the environment and on people's environmental rights were anticipated and prevented and only where they cannot be altogether prevented, minimised and remedied.";
C.4 The absence of information necessary for the competent authority to reach a decision (fourth ground of appeal)			
72	Part C	The DEA expressly required that certain crucial gaps in information which were evident from the original EIAR should be filled, and that an amended EIAR with updated specialist reports should be submitted.	An amended EIAR was submitted with amended specialist reports. Great effort was taken to indicate the difference between the original and the amended report and the specialist reports were updated to reflect the changes. This was indicated in a "roadmap" to assist the authority with the reference to specific changes requested. The "roadmap" is a table that has the specific reference to every comment provided in the DEA response letter on the left and the location of where it was addressed in the report, on the right.

Ref nr	Doc ref	Grounds of appeal (CER)	Grounds of appeal response (AAV)
73	Part C	The Brownlie Review contains a detailed analysis of each of the areas of concern raised by the DEA and the extent to which the specific requirements contained in the DEA letter have been met and concludes that none of them has been adequately dealt with ⁷⁷ . In particular Brownlie makes the following observations, among several others:	The appellants are relying on the appellant's specialists, with their bias, and want their appellant's specialist to perform the role of the regulator and pass judgement on the legal requirement, as if their appellant's specialist is that regulator. The conflict and bias of their appellant's specialist has been described elsewhere and should not be relied on by the competent authority as an independent view of the requirements of law.
	Foot Note	⁷⁷ Brownlie pp 3-11	Noted
73,1	Part C	In an attempt to address the DEA's request for information about the possible impacts on downstream users and economic activities, EcoPartners itself (lacking the necessary expertise and experience of a specialist in this area) prepared a report which is ' <i>demonstrably unacceptable</i> ' - ' <i>it lacks rigour and a systematic analysis</i> ' and ' <i>makes a number of vague and wholly inadequate and inconclusive statements</i> ' ⁷⁸ ;	This was not requested as a specialist report, instead the requirements from the competent authority were clear, an unbiased reading would show that the issues raised by the competent authority were addressed. The appellants are relying on their appellant's specialist who is inserting their own meaning to achieve a pre-determined outcome.
	Foot Note	⁷⁸ Brownlie pp 4-5	Noted
73,2	Part C	No additional surface water studies were undertaken to quantify the acid mine drainage (AMD) impacts and/ or their rigorous management - despite SAS itself confirming that' <i>...should the project proceed it will have a very high impact on the wetland ecology of the local area. The potential for post-closure decant of water from the underground mine void via the adit and/or unsealed exploration boreholes (Delta H, 2014) is of particular concern, as this will have a long term effect on surface water quality of not only on (sic) the wetlands within the study area, but also on aquatic resources within the greater catchment with special mention of the Assegaai River</i> ' (p. vi) ⁷⁹ ;	Surface hydrology was also re-done for the new layout, but not the whole catchment, since there is an overall reduction in impact on the larger catchment. New Geohydrological study was conducted by Delta H (Appendix F). The findings are described in Section 8.7 and presented in Figures 8-20 to 8-22. The impacts were assessed by the Specialist and also in Tables 10-3 to 10-8. It was clear from these assessments and a site visit to the historic mine on the property where water samples were collected and assessed and reported on in the EIAR, that the risk of AMD is limited, quantification to the levels of confidence available was done. This alarmist comment by the appellant's specialist appears premised on an assumption that AMD is already present on the property and can be quantified with confidence.

Ref nr	Doc ref	Grounds of appeal (CER)	Grounds of appeal response (AAV)
			<p>The SAS report eludes to the mitigation requirements for treatment of decant water. Treatment/management can take place in several forms. During workshops held impact mitigation measures were discussed among the project professional team and it was determined that through starving the underground workings of oxygen rich air through cutting it off from the surface and by plugging the adit at closure the risk of AMD is greatly reduced. This was regarded by SAS as being a significant mitigation measure to reduce the risk of impact to the receiving environment.</p>
	Foot Note	<p>79 Brownlie p 6. Brownlie points out further that <i>'Of utmost concern is the fact that the EIAR (7.10.5.1) (p. 188) refers only to the discard dump in discussion of AMD potential. This is an unacceptably narrow view of the potential contamination source linked to coal mining (p6)'</i></p>	<p>This is not true. The evidence indicates otherwise. A new Geohydrological study was conducted by Delta H (Appendix F). The findings is described in Section 8.7 and presented in Figures 8-20 to 8-22. The impacts were assessed by the Specialist and also in Tables 10-3 to 10-8. The appellant's specialist relies on a dated report that based its findings on incorrect assumptions, as evidence of their view. The appellant's specialist does not acknowledge that the updated study influenced the mitigation measures, which also addressed AMD. More importantly the requirements on water have been addressed through the WULA.</p> <p>Water treatment during operation and post closure was the most significant mitigation measure, even in the original submission.</p>

Ref nr	Doc ref	Grounds of appeal (CER)	Grounds of appeal response (AAV)
73,3	Part C	Although the DEA requested that a geotechnical specialist study be included in the revised EIAR to address the issue of mine stability and the potential for subsidence (subsidence is a probable feature of underground coal mining which leaves voids that may collapse and cause the earth surface to subside), there is no mention or assessment of the risk of subsidence in Appendix C3 (the updated Geotechnical Study) ⁸⁰ ;	The appellant's specialist acknowledges that this is not her area of expertise and so this reading was overlooked in the appendices. The appellant's specialist inserting of terminology to create a different meaning shows the bias being deployed by the applicant's specialist. Conventional board and pillar underground mining methods will be used, involves drill and blast, and continuous miner operations. The pillars will be 6m wide and to the mining height. No pillar extraction is planned. The dolerite sill intruded into the area is furthermore expected to increase the strength of the overburden material. Thus, the risk of subsidence is, therefore, considered to be low. Refer page no 326 (EIAR) The historical mining adits further confirm the stated risk for subsidence that was submitted is correct.
	Foot Note	⁸⁰ Brownlie p 8	Noted
73,4	Part C	The EIAR fails to assess cumulative impacts adequately and to evaluate their potential significance reliably ⁸¹ including the cumulative impacts that would result from a combination of the mine and other mines in the area including the Loskop Coal Mine which also falls within the Mabola Protected Environment ⁸² ; and	The regulator is not prescriptive in that there is a single way in which cumulative impacts must be assessed, but that it must be assessed. The appellant's specialist relied on by the appellants is attempting to put forward their own interpretation of what the regulator must approve. This is not lawful and the appellant's specialist is trying to insert their views as representing the views of the regulator. The cumulative assessment for the project is shown at page no. 574 (EIAR)
	Foot Note	⁸¹ A cumulative impact is defined in NEMA as ' <i>the impact of an activity that in itself may not be significant, but may become significant when added to the existing and potential impacts eventuating from similar or diverse activities or undertakings in the area.</i> ' According to the NEMA 2010 EIA Regulations, potentially significant cumulative impacts must be assessed (31)(2)(1)(i)).	Noted

Ref nr	Doc ref	Grounds of appeal (CER)	Grounds of appeal response (AAV)
	Foot Note	82 Brownlie p9. In this regard see also the vast areas in the immediate vicinity of the mine in respect of which mining applications were pending when the NSS compiled its report (NSS biodiversity report p 268)	It is the opinion of the appellant's specialist that potential impacts of potential activities must be assessed. The appellant's specialist relied on by the appellants is attempting to put forward their own interpretation of what the regulator must approve. This is not lawful and the appellant's specialist is trying to insert their views as representing the views of the regulator.
73,5	Part C	There has been no adequate ground-truthing undertaken to prove that the development does not impact on the reason for the 'irreplaceability' classification of the area by the MBSP, which the DEA suggested may constitute a fatal flaw ⁸³ .	The appellant's specialist is trying to elevate their subjective view as to the adequacy of the ground-truthing in the area. This is not lawful and the appellant's specialist is trying to insert their views of what is adequate and trying to pass these off as representing the views of the regulator. The detail biodiversity study was under taken by specialist and submitted to the concerned department. please refer appendix H2,H3,H4
	Foot Note	83 Brownlie 9	Noted
74	Part C	Regulation 31(2) of the 2010 regulations provides that ' <i>[a]n environmental impact assessment report must contain all information that is necessary for the competent authority to consider the application and to reach a decision</i> '.	Noted
75	Part C	Section 2(4)(a)(vii) provides that ' <i>[s]ustainable development requires the consideration of all relevant factors including ...that a risk-averse and cautious approach is applied, which takes into account the limits of current knowledge about the consequences of decisions and actions</i> '.	Noted
76	Part C	It is clear from the Brownlie review that information which the competent authority considered was necessary for it to consider the application and to reach a decision did not form part of the EIAR at the time that the Chief Director took the decision.	It is ironic that the appellant's specialist did not even consider the roadmap which indicates the requested changes, or if she considered it, then raised her biased opinion as to the adequacy thereof. It cannot be clear from the appellant's specialist's review, because by their own admission: "Time constraints presented limitations to the level of detail of this review, particularly given the volume of material comprising the documentation submitted to the competent

Ref nr	Doc ref	Grounds of appeal (CER)	Grounds of appeal response (AAV)
			environmental authority in applying for environmental authorisation." This opinion is therefore speculative as she provides input on issues that she does not have direct knowledge of.
77	Part C	There are also several other key gaps in information which would need to have been filled before a decision could properly and lawfully have been taken. These are described in detail in the Brownlie review (pages 18-21). One of these includes the risk of downstream flooding and damage to infrastructure (which was in fact also an issue which had concerned the DEA and which it had wanted assessed). The original EIAR had recorded that:	The appellant's specialist is relying on dated information, and comparing the risks of previous infrastructure designs with the impacts of updated infrastructure designs.
	Part C	<i>...should the dewatering volumes be discharged to Catchment 19 as is proposed, this will increase the flood risk to downstream infrastructure'⁸⁴ and 'With regards to the impacts of the dewatering volumes on the downstream infrastructure associated with Catchment 19, two road bridges are located across the watercourse adjacent to and at a distance of 5 km northeast of the proposed mine. In addition a farm house is located in close proximity to this watercourse 5 km northeast of the proposed mine. The increase in flow volumes as a result of dewatering to this watercourse, should this option be followed is expected to alter the flood risk to the associated infrastructure.'⁸⁵</i>	This was reported in the roadmap and the final EIAR, this infrastructure will no longer be part of the updated design. A sober reading of 8.5.3.1 with 8.5.4.1, will illustrate that the flood risk was evaluated and found to be insignificant.
	Foot Note	84 EIAR para 8.5.4.1	Noted
	Foot Note	85 EIAR para 6.5.3.1	There is no such paragraph
78	Part C	No assessment was however conducted relating to this threat.	The risk of flooding is insignificant as stated in section. 8.5.3.1
79	Part C	Lastly, and importantly under this head, although EcoPartners identified that methane gas may be produced as a result of the coal extraction activities, without mitigation ⁸⁶ , the EIAR failed to assess or	The requirement for assessment of greenhouse gas emissions was only published in 2015. This impact will have to be addressed through the National Environmental Management: Air Quality

Ref nr	Doc ref	Grounds of appeal (CER)	Grounds of appeal response (AAV)
		address this impact at all.	Act.
	Foot Note	86 EIAR p 495	Noted
80	Part C	As appears in greater detail from the CER GHG memorandum, a greenhouse gases ('GHG') emissions assessment should have included two categories of emissions: (1) direct emissions associated with the production of coal and (2) reasonably foreseeable indirect or 'downstream' emissions that occur as a result of the transportation, processing and end use of that coal (e.g. coal-fired power plant combustion). The latter category should have included mining and processing, transportation, and use/combustion - often referred to as the coal life-cycle. The reasons and motivation for this are set out in detail in the CER GHG memorandum ⁸⁷ . The EIAR did not however include any GHG emissions assessment.	The appellants are attempting to put forward their own interpretation of what the regulator must regulate. This is not lawful and the appellant is trying to insert their views as representing the views of the regulator. The requirement for assessment of greenhouse gas emissions was only published in 2015. This impact will have to be addressed through the National Environmental Management: Air Quality Act.
	Foot Note	⁸⁷ CER GHG memorandum	This memorandum is not the law of South Africa and is drafted by the attorneys of the appellant to substantiate the appellants view. Further to this including information in this memorandum that occurred past the date of submission, under regulations applicable outside of the transitional arrangements is disingenuous.
81	Part C	Where the MEC to confirm the EA on appeal in the face of these significant gaps in information, the decision would be reviewable on this ground alone.	It is the view of the appellants that not bowing to their attorney's memorandum is sufficient grounds to take a decision not favourable to them on review.
C.5 The failure to ensure integrated decision making and to consult with other organs of state			
82	Part C	Section 2(4)(1) of NEMA provides that <i>'[t]here must be intergovernmental co-ordination and harmonisation of policies, legislation and actions relating to the environment'</i> .	Noted
83	Part C	Section 24O(1)(c) provides that a competent authority must take into account the comments of any organ of state charged with the administration of any law which relates to the activity in question.	Noted
84	Part C	Section 24O(2) provides that the competent authority must consult with every State department that administers a law relating to a matter affecting the environment when	Noted

Ref nr	Doc ref	Grounds of appeal (CER)	Grounds of appeal response (AAV)
		it considers an application for environmental authorisation.	
85	Part C	In the present instance, even if the MEC has been identified correctly as the competent authority it is very difficult to understand how he might approve an EA which is based essentially on the same information which the Minister's delegated authority rejected as being entirely deficient and in the face of the material concerns which the DEA has raised.	The appellants are making allegations devoid of evidence that the proper channels were not followed. It is also important to note that the two applications were materially different. To suggest that they are essentially the same is devoid of truth, the evidence clearly indicates otherwise. It seems that the appellants did not familiarise themselves with the different sets of documents.
86	Part C	The appellants have no reason to believe that the DEA was consulted by the MEC or Chief Director before the EA was granted. There is no record of the written comment required in terms of section 240(3).	The appellants also have no reason to believe that the competent authority did not consult. Subsection 3 states: "A State department consulted in terms of subsection (2) must submit comment within 40 days from the date on which the Minister, Minister of Minerals and Energy, MEC or identified competent authority requests such State department in writing to submit comment". The appellants are trying to write their own law by specifying how the comment must be made.
87	Part C	The duty of the MEC to coordinate his actions with the national department and the Minister is strengthened by the fact that it is the Minister who must ultimately grant written permission for Atha to undertake mining activities in the Mabola Protected Environment in terms of section 48 of the Protected Areas Act.	The appellants also have no reason to believe that the competent authority did not coordinate his actions with the national department and the Minister.
88	Part C	Furthermore, two other national organs of state, namely the Department of Water Affairs (as it then was) and Department of Mineral Resources raised serious concerns with Atha's application ⁸⁸ . Although the Chief Director claims to have considered these comments, there does not appear to be any reasonable or rational basis on which the Chief Director could have granted the EA in the face of them.	These issues were addressed through different processes, not the EIAR, each department have their own mechanism to deal with their concerns.
	Foot Note	⁸⁸ These are included as part of Appendix B to the EIAR and are summarised by Brownlie p 2	Noted. This also shows that the EAP communicated information that might not be in favour of the application, clearly showing independence and objectivity.

Ref nr	Doc ref	Grounds of appeal (CER)	Grounds of appeal response (AAV)
89	Part C	Lastly under this head it would appear that the South African Heritage Resources Agency has not been provided with an opportunity to comment on the revised surface layout of the mine and has not been furnished with a detailed Heritage Conservation Management Plan which it expressly required when it commented on the original EIAR on 6 October 2014. This is so despite the presence of more than site of cultural heritage significance within the existing surface layout plan including a Late Iron Age site of Medium significance ⁸⁹ .	The revised surface lay-out was commented on as the report used refer to the July 2014 report commissioned by Eco partners. The updated report included in Appendix I of the EIAR was commissioned by EcoPartners, which SAHRA has given the letter for. The HMP is pending full authorisation. SAHRA has given its final comment on HIA & PIA. Refer Appendix B8.
	Foot Note	⁸⁹ Letter dated 6 October 2014 from SAHRA to WSP (included in Appendix B) read with EIAR p 234	Noted
C.6 Non-compliance with the regulatory requirements of an EIAR (fifth ground of appeal)			
90	Part C	NEMA and the 2010 Regulations contain detailed requirements with which an EIAR must comply, including that it must contain:	Noted
90,1	Part C	A detailed description of the proposed activity (regulation 31(2)(b));	Noted
90,2	Part C	A description of the property on which the activity is to be undertaken and the location of the activity on the property (regulation 31(2) (c));	Noted
90,3	Part C	A description of the environment that may be affected by the activity and the manner in which the physical, biological, social economic and cultural aspects of the environment may be affected by the proposed activity (regulation 31(2)(d));	Noted
90,4	Part C	A description of the need and desirability of the proposed project (regulation 31(2)(f);	Noted
90,5	Part C	A description of and comparative assessment of all alternatives identified during the environmental impact assessment process (regulation 31(2)(i));	Noted
90,6	Part C	A description of the environment issues that were identified during the environmental impact assessment process, an assessment of the significance of each issue and an indication of the extent to which the issue could be addressed by the adoption of mitigation measures (regulation 31(2)(k)); and	Noted

Ref nr	Doc ref	Grounds of appeal (CER)	Grounds of appeal response (AAV)
90,7	Part C	An assessment of each identified potentially significant impact, including (i) cumulative impacts; (ii) the nature of the impact; (iii) the extent and duration of the impact; (iv) the probability of the impact occurring; (v) the degree to which the impact can be reversed; (vi) the degree to which the impact may cause irreplaceable loss of resources; and (vii) the degree to which the impact can be mitigated (regulation 31(2)(1)).	Noted
91	Part C	As appears from the Brownlie review, the EIAR falls far short of these requirements. Brownlie notes the following things, among others, in this regard:	
91,1	Part C	The 'Best Environmental Option' is presented as the new preferred alternative, but a consolidated description of the specific components constituting this option is not given ⁹⁰ ;	The regulator specify that a detailed description must be given of the activities. The appellants are trying to write their own law by specifying how the description must be made. The best environmental option has been dealt with in various place in EIAR
	Foot Note	⁹⁰ Brownlie p 12	Noted
91,2	Part C	The impacts of this option (comprising all of its specific components) are also not distinctly assessed - changes in water requirements, water balance, impacts on surface water and groundwater flows and quality, dependent ecosystems and biodiversity, as well as downstream water users are not adequately addressed ⁹¹ ;	The appellants reliance on the appellant's specialist's opinion regarding the assessment of impacts results in them not considering that two separate impact assessment tables were done, including one for the Best environmental option. This can be found in chapter 10 of the EIAR.
	Foot Note	⁹¹ Brownlie p 12	Noted
91,3	Part C	The EIAR focuses inappropriately on the direct 'footprint' impacts and ignores wider landscape, indirect and cumulative impacts ⁹² ;	The EIAR does address indirect impacts, cumulative impacts and the wider landscape. These were not ignored as claimed by the appellant's specialist. The appellant's specialist's opinion of inappropriate focus could stem from not reading the entire EIAR, which she admitted to.
	Foot Note	⁹² Brownlie p 12	Noted

Ref nr	Doc ref	Grounds of appeal (CER)	Grounds of appeal response (AAV)
91,4	Part C	There is confusion between different project alternatives in the specialist reports, most of which were finalised before the 'Best Environmental Option' was proposed ⁹³ ;	It is regrettable that the appellant's specialist was confused. The EAIR is a progressive document, based on I & AP and DEA comments, it was amended and Updated with additional Specialist studies. The specialist reports were updated with the new infrastructure requirements, as required by the DEA. This was made available to the competent authority and the registered I&APs.
	Foot Note	⁹³ Brownlie p 12. Brownlie notes that specialist studies have not been updated to predict and assess impacts of the 'Best Environmental Option'; many of these studies continue to assess impacts on water resources with the coal discard dump and washing plant in place, leading to a lack of clarity on the potential significance of the 'best environmental option' impacts and their mitigation. For example, the EIAR (8.7) notes that, Due to the changes in layout and position of the discard dump (residue stockpile), a new geohydrological assessment was required (p. 306). However, the results presented in the EIAR reflect geohydrological assessment based on e.g. seepage from the discard dump post closure. Without a reliable prediction of impacts on biodiversity and water resources, the effectiveness of proposed mitigation measures in reducing these impacts is questionable.	The appellant's specialist, by own admission is not a specialist in the range of specialist studies provided, which could contribute to her confusion and lack of clarity, when the specialist reports are reviewed in isolation. Reliable predictions of impacts were provided; the proposed mitigation measures will therefore reduce these impacts.
91,5	Part C	The need for and desirability of the proposed mine was inadequately assessed and based on incorrect and outdated information ⁹⁴ (in this regard the appellants also refer to a memorandum dated August 2016 prepared by Earthjustice, United States non-profit environmental law organization, for purposes of this appeal relating to the current status of the international coal market. A copy of the memorandum is attached marked 'I' and forms part of this appeal);	The EIAR was submitted January 2015, the information provided from United States-based Earth Justice is not produced by an expert in the field, and also does not capture the reality of the South African coal market well. Note that the mining of Coal is still the largest GDP producer in Mpumalanga, contributing significantly to the economy of the region. The information captured in this report is presented after the submission of the EIAR, to reason that the EIAR should have considered this information is disingenuous.
	Foot Note	⁹⁴ Brownlie pp 25-26	Noted

Ref nr	Doc ref	Grounds of appeal (CER)	Grounds of appeal response (AAV)
91,6	Part C	While the impacts rating table contained in the EIAR looks to some extent at reversibility in terms of the duration of impacts, explicit statements regarding the degree to which impacts can be reversed are missing from the EIAR - this omission is serious because impacts that are irreversible may, depending on the value of the affected environment and unless they can be adequately remedied through replacement or substitution of affected resources, constitute an unacceptable impact that is in conflict with the objective of ecologically sustainable development ⁹⁵ ;	By the appellant's specialist's own admission, the reversibility has been addressed. The appellants are trying to write their own law by specifying how reversibility must be addressed.
	Foot Note	⁹⁵ Brownlie 26	Noted
91,7	Part C	The EIAR fails to address explicitly the degree to which the impacts of the proposed mine may cause irreplaceable loss of resources, as required in the name 2010 EIA Regulations (31(2)(1)(vi)) - Loss of irreplaceable resources would constitute an unacceptable impact that is in direct conflict with the objective of 'ecologically sustainable development' as required by the Constitution of South Africa ⁹⁶ ;	By the appellant's specialist's own admission, the reversibility has been addressed. The appellants are trying to write their own law by specifying how reversibility must be addressed.
	Foot Note	⁹⁶ Brownlie 27	Noted
91,8	Part C	The proposed mitigation measures give no assurance of effective minimisation or remedy of significant negative impacts - A number of residual impacts of medium-high or high significance remain ⁹⁷ suggesting that contrary to claims in the EIAR (and environmental authorisation); it is improbable that development of this area could be mitigated to ensure ecologically sustainable development and/ or justifiable social and economic development ⁹⁸ .	The opinion of the appellant's specialist relied on by the appellants is noted and disputed. The impacts were assessed, mitigation was provided, the reliance on dated reports with outdated lay-out plans and their associated impacts compound the incorrect understanding of the project activities. There is no medium-high category. The impacts were rated before mitigation. Mitigation measures are proposed and the reduction of the impacts can therefore be assured. It is therefore disputed that it is improbable.
	Foot Note	⁹⁷ For example Tables 10-7 and 10-8 in the EIAR (pp 555-573)	Noted
	Foot Note	⁹⁸ Brownlie pp 12-13	Noted
92	Part C	The various failures of the EIAR in this regard have as a consequence that it does not meet the requirements of NEMA and the 2010 Regulations. This non-compliance	Addressed point for point. It is clear that the appellants want to write their own law and perform the role of the regulator. There is no non-compliance with the law.

Ref nr	Doc ref	Grounds of appeal (CER)	Grounds of appeal response (AAV)
		is material with the result that any decision to uphold the EA based on the EIAR would be reviewable on this ground as well.	It is the view of the appellants that not bowing to their appellant's specialist's flawed opinion is sufficient grounds to take a decision not favourable to them on review.
C.7 The EIAR must contain a summary of the findings and recommendations of specialist reports (sixth ground of appeal)			
93	Part C	Brownlie reports that ' <i>[t]here is a major disconnect between the recognition by specialists of the significance of the biodiversity and water resources components...and of likely risks and impacts of the proposed mine on these components, and the findings and conclusions presented in the EIAR</i> ⁹⁹ ,	The appellant's specialist relied on a dated report (First Submission) with a different scope to reason that the information is not aligned.
	Foot Note	⁹⁹ Brownlie p 13	Noted
94	Part C	Some examples of this include the following:	Noted
C.7.1 Absence of sensitive species			
95	Part C	The EIAR contains the following statement as regards what the specialist studies say about the presence or absence of sensitive species: ' <i>The specialist studies conducted found none of the sensitive species of mammals, butterflies, amphibians, reptiles or plants likely to be associated with these ecosystems. It is likely that these ecosystems do not support the biodiversity that is typical of the area as these ecosystems are no longer in their pristine condition.</i> ' (p. 7).	The appellant's specialist relied on a dated report with a different scope to reason that the information is not aligned. Further to this the biodiversity assessment of the specialists record the information and with closer inspection of the surface disturbance areas, the conservation important species were not identified on the area where surface disturbance is likely to occur. See p 393 of EIAR.
96	Part C	That is entirely irreconcilable with the findings of the NSS biodiversity report ¹⁰⁰ .	The appellant's specialist relied on a dated report with a different scope to reason that the information is not aligned. Further to this the biodiversity assessment of the specialists record the information and with closer inspection of the surface disturbance areas, the conservation important species were not identified on the area where surface disturbance is likely to occur.
	Foot Note	¹⁰⁰ See also Brownlie 13-14	The errors and assumptions in this section are noted.
C.7.2 Impacts associated with water quantity and quality			

Ref nr	Doc ref	Grounds of appeal (CER)	Grounds of appeal response (AAV)
97	Part C	The EIAR contains the following statement as regards impacts associated with water quantity and quality. ' <i>...there might be 15 years of impacts associated with water quantity and limited impacts on water quality, provided the mitigation of impacts on water quality, provided the mitigation of impacts are implemented.</i> ' (p. 7)	This wording does not appear on p 7 of the EIAR or anywhere in the report.
98	Part C	This statement is inaccurate and misrepresents the groundwater and hydrological specialists' findings that:	
98,1	Part C	It will take around 45 years for the mine voids to be completely flooded once active dewatering is stopped. Thereafter, decant <i>via</i> the adit (or mine entrance) and/or unsealed exploration boreholes in the vicinity is likely to occur. The potential post-closure impacts of decant from the underground mine voids on the groundwater quality are ' <i>highly likely</i> ', long term, and may extend from local to regional scales, depending on the effectiveness of mitigation (Delta H groundwater assessment p 69).	The Delta H report improved on the understanding of the system within the limited information available. Different modelling codes were used, which is more applicable to the aquifer interaction to be modelled and the interconnectivity was more accurately modelled. It concluded that the significant impacts were mostly limited to the site (see page 54 describing the expected impact to be minor to moderate). The applicant will pre-grout any zones of inflow intersected, will actively treat and discharge excess water from the construction phase already and continue after closure (sub-surface discharge into filter drains) to further mitigate impacts. The EIAR never dispute the fact that decant will happen.
98,2	Part C	Due to the ' HIGH and long-term (if not irreversible) ' status of the impact of the mine on water inputs 'in an area far exceeding the study area, the project should be a NO GO's (NSS biodiversity review p 253). NSS stated explicitly that ' <i>This is largely 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. These and other aspects of the mining project are in strong conflict with international , national and provincial legislation, policies and guidelines</i> ' (p. 269).	The impact of the proposed underground mining on the supply of water to the surface water resources (due to the dewatering activities) and the potential groundwater contamination has largely been redefined due to the altered hydrogeological assessment and refining of the model. The updated model was reviewed by NSS and their comment on the revised model was: "This impact, together with the impact of the decant, should both make the project unfeasible if not mitigated efficiently. In our opinion, this impact alone, cannot justify the short-term economic gains of the AYCP". The mitigation measures were pointed out in the response recorded in the final EIAR.

Ref nr	Doc ref	Grounds of appeal (CER)	Grounds of appeal response (AAV)
98,3	Part C	<i>Most potential impacts of the mining operation [have] a HIGH overall significance rating, even with mitigation.</i> 'NSS biodiversity assessment p 269).	See above
C.7.3 Impact on the fish population			
99	Part C	The EIAR says that <i>'The most significant feature in terms of the freshwater priority area is the habitat for fish. As this is the origin of the system, it is unlikely that it will have a significant impact on the fish population.'</i> (pp. 7-8)	This was indicated in the NSS report. Migration route/breeding and feeding site for wetland species, was rated as very low, p200.
100	Part C	Apart from the fact that the negative impacts on FEPA's will have far wider consequences than just for fish populations, according to the NSS biodiversity report, reduced flow will hinder fish migration and could negatively affect three species of Conservation Importance which have been sampled in the Assegai River catchment. If the flows in these systems change, these species will be lost in these rivers (8.8.4.2)(p.339). Moreover, changes in water quality conditions could lead to species loss (8.8.4.3)(p. 343). These impacts would undoubtedly be significant.	The impact of the proposed underground mining on the supply of water to the surface water resources (due to the dewatering activities) and the potential groundwater contamination has largely been redefined due to the altered hydrogeological assessment and refining of the model. The updated model was reviewed by NSS and their comment on the revised model was: "This impact, together with the impact of the decant, should both make the project unfeasible if not mitigated efficiently. In our opinion, this impact alone, cannot justify the short-term economic gains of the AYCP". The mitigation measures were pointed out in the response recorded in the final EIAR.
C.7.4 Impacts on watercourse ecology due to changes in flow and water quality			
101	Part C	The EIAR says that <i>'The potential impact to the watercourse ecology due to <u>changes in flow</u>...has a <u>High</u> environmental significance. This is <u>reduced to Low Medium should mitigation measures be implemented</u>...The operations are expected to lead to a decrease in the <u>water quality</u>, expected to have a <u>High</u> environmental significance, <u>reduced to Medium High should suitable mitigation measures be implemented</u>.'</i> (p. 298) (emphasis provided)	Noted
102	Part C	This contradicts the NSS biodiversity report which assigned the following significance ratings to these impacts:	

Ref nr	Doc ref	Grounds of appeal (CER)	Grounds of appeal response (AAV)
102,1	Part C	Impacts on habitat and loss of species are <u>High</u> , but <u>could be reduced to Medium-High with mitigation</u> ;	The impact of the proposed underground mining on the supply of water to the surface water resources (due to the dewatering activities) and the potential groundwater contamination has largely been redefined due to the altered hydrogeological assessment and refining of the model. The updated model was reviewed by NSS and their comment on the revised model was: "This impact, together with the impact of the decant, should both make the project unfeasible if not mitigated efficiently. In our opinion, this impact alone, cannot justify the short-term economic gains of the AYCP". The mitigation measures were pointed out in the response recorded in the final EIAR.
102,2	Part C	Decline in water inputs and water quality, leading to deterioration in present ecological state and functionality - are <u>High before and after mitigation</u> (NSS biodiversity report (Appendix H1) Table 4.1 (p. 238))	See above. The mitigation measures are proposed to reduce the impact on the ecological state and functionality and to minimize impacts.

C.7.5 Impacts of AMD

103	Part C	The EIAR says that ' <i>d]uring the decommissioning and closure phases, the environmental impacts can be summarised as follows: ...the decrease in the water quality is expected to have a Medium environmental significance, reduced to Low Medium should mitigation measures be implemented.</i> ' (p. 298)	Noted. It is also noted that there is mention by the appellant that the impacts post mitigation has been assessed.
104	Part C	But the impact significance of AMD, the direct cause of a decrease in water quality, has not been assessed in any of the specialist studies (WSP groundwater assessment) (p. 19).	This has been addressed in the final EIAR on p 341. This was submitted to the competent authority and formed part of the decision-making process.

C.7.6 Socio-economic impacts

105	Part C	The EIAR fails to incorporate several key findings to incorporate several key findings contained in the socio-economic specialist report as appears in greater detail from the Brownlie review (pp 16 to 17).	Key socio economics impacts were recorded in the report. The appellant's specialist reference numerous references to EIAR which does record the key findings of Appendix O
-----	--------	---	--

C.7.7 FEPA Wetlands

106	Part C	The EIAR states that ' <i>The NFEPA database does not indicate any wetlands on or adjacent to the study area...</i> ' (p. 359).	The study area (surface infrastructure area) does not contain a NFEPA wetland, there are also none within a 100m buffer from the surface infrastructure area.
107	Part C	This overlooks the following findings	

Ref nr	Doc ref	Grounds of appeal (CER)	Grounds of appeal response (AAV)
		contained in specialist reports:	
107,1	Part C	The Assegaai River into which drainage from the site will flow is a FEPA river (NSS Biodiversity report (Appendix H1) p 260);	It was stated the Assegaai River is a FEPA river in the report. Please refer page no 173 to 178 EIAR
107,2	Part C	<i>...The greatest concern regarding the FEPA's 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 seepage from the mine workings and discard facility (WSP, 2013). Both the cone of depression and the groundwater contamination plume, extend to the wetland FEPA's in the near vicinity.'</i> (NSS Biodiversity report (Appendix H1) p 209);	This was recorded in the report
107,3	Part C	The loss or deterioration of wetlands on the proposed mining site could, depending on the drawdown cone, extend beyond the study area into the wetland FEPAs within the mine lease and the wetland Feta's and Wetland Clusters in the immediate surrounds (NSS Biodiversity report (Appendix H1) p 246);	<p>The evidence indicate that the drawdown and indirect impacts does not reach any of the FEPAs, see p317 of the EIAR. According to the FEPA guideline document referred to:</p> <p><i>"Wetland clusters: A scientifically defensible distance for migration between wetlands should be tested using a variety of taxa (e.g. insects, wetland-dependent birds, frogs) and other ecological processes (e.g. wetland plant pollination processes). The uniform distance of 1 km used in delineating wetland clusters for NFEPA may also need to be different, <u>depending on the region and its associated biota, and ecological and biophysical processes.</u>"</i></p> <p>The relevant specialists have done rigorous environmental and water assessments, using scientifically defensible methods for this authorisation process. As a result, the applicant developed appropriate mitigation measures and in doing so will not have a widespread and major negative impact on the freshwater ecosystems identified. The EIAR addressed this from p325-393.</p>
107,4	Part C	There are <i>'six wetlands within the north-east portion of the study area'</i> which are considered to be in PES Category A/B condition (natural or good) and are classified as Wetland FEPAs (Appendix H3, p. iv).	This study area considers an area much larger than the surface infrastructure area.

Ref nr	Doc ref	Grounds of appeal (CER)	Grounds of appeal response (AAV)
C.7.8 Conclusion under this head			
108	Part C	To the extent that the EIAR does not accurately summarise findings and recommendations contained in specialist reports, which we submit is to a material extent, it does not comply with regulation 31(2)(j) of the NEMA 2010 Regulations and any decision by the MEC based on the EIAR would be vulnerable on this ground as well.	These were addressed on a point for point basis throughout the response.

C.8 EAP to have the requisite expertise and objectivity			
109	Part C	The appellants have been unable to establish that either Charlaine Baartjes (the founder and managing director of EcoPartners) or San Oosthuizen are professionally registered with the South African Council for Natural Scientific Professions as they are required to be in terms of sections 18(2) and 20(1) of the South African Natural Scientific Professions Act 27 of 2003 before they may act as paid Environmental Assessment Practitioners.	The appellant has not familiarised themselves completely with the law that they or their appellant's specialist are relying on. The law relied on does not address Environmental Assessment Practitioners at all, as it does not include environmental management within its scope. Environmental management is not a natural science. Further to this as according to the notice as published in the government gazette, environmental management is not a natural science field of practice in the act relied on here. Consulting regarding environment management does not require registration through SACNASP. The EAPs main function is the implementation of the National Environmental Management Act. There are numerous EAPs who are not registered with SACNASP and the appellant's specialist relied on by the appellant also employs EAPs, for commercial gain, who are not registered with SACNASP, nor would be able to be registered by SACNASP. If the approach used here by the appellant's specialist and the appellant is accepted, then it must be recorded that this has been done in bad faith or unethically by the appellant's specialist. The appellant's specialist relied on by CER

Ref nr	Doc ref	Grounds of appeal (CER)	Grounds of appeal response (AAV)
			<p>for this has not declared their own conflict in this regard and the appellant's specialist has possibly contravened more than one principle in the SACNASP code of conduct that governs her, but not the EAP. This further illustrates the bias of the appellant and the appellant's specialist that they rely on and are thus not approaching the MEC with clean hands.</p>
110	Part C	<p>In light of the material omissions and misstatements contained in the EIAR, the appellants are concerned that EcoPartners lacks either the expertise or the objectivity or both such attributes which are required of an EAP in terms of the NEMA 2010 regulations (regulation 17(a), (b) and (c)).</p>	<p>This is the view of the appellant and is not based on any objective facts, in fact it further illustrates the conformation bias and selective bias, their perception was based on selective reading of the documentation to confirm a preselected outcome. It is the EAPs view that the process was conducted in an objective manner and without bias. This is confirmed by the open-mindedness adopted when dealing with speculation, fact and opinion. The EAP, without hesitation, commissioned further studies from several specialists in their field of practice. The EAP did not outright reject earlier studies and made all the information available to the registered I & APs and the competent authority. The EAP did not withhold views and findings not favourable to applicant, in fact all these were reviewed, considered and responded to on in the documents submitted. The appellant and the appellant's specialist that they relied on acknowledge that the documents were voluminous, but were submitted to the competent authority, showing full disclosure. A sober reading without bias</p>

Ref nr	Doc ref	Grounds of appeal (CER)	Grounds of appeal response (AAV)
			would show that the EAP fully complied with regulation 17.
111	Part C	The appellants formally request that this appeal and the supporting documents be taken as notice in terms of regulation 18(2) of the 2010 NEMA Regulations to the MEC of suspected non-compliance by the EAP with regulation 17.	The appellants and appellants' specialists that they rely on have demonstrated their bias throughout the process. The EAP not bowing to their bias, but considering and responding to their concerns in each instance has demonstrated that it has performed in terms of regulation 17.
112	Part C	EcoPartner's lack of objectivity is, the appellants submit, clear from the Brownlie review. This in itself would render any decision by the MEC to confirm the authorisation on the strength of the EIAR reviewable. It goes without saying that non-compliance by the EAP with a statutory registration requirement would have the same effect.	It is the EAPs view that the process was conducted in an objective manner and without bias. This is confirmed by the open-mindedness adopted when dealing with speculation, fact and opinion. The EAP, without hesitation, commissioned further studies from several specialists in their field of practice. The EAP did not outright reject earlier studies and made all the information available to the registered I& APs and the competent authority. The EAP did not withhold views and findings not favourable to applicant, in fact all these were reviewed, considered and responded to on in the documents submitted. The appellant and the appellant's specialist that they relied on acknowledge that the documents were voluminous, but were submitted to the competent authority, showing full disclosure. A sober reading without bias would show that the EAP fully complied with regulation 17. The appellant's specialist relied on by CER to develop the Brownlie review has already admitted to limitations in her review. To make up for this it appears that the review relied on by CER it-self has opinion and speculation built into it such as this comment. The appellant's specialist relied on by CER admits that she is not an expert in the wide scope of the documents presented to her. This just compounds the shortcomings in her review and multiplies the bias. Additional information was supplied to the appellant in a summary of where to find the information in the report was included. The "DEA requirements Roadmap", indicated where in the report these issues were addressed. The appellant's specialist

Ref nr	Doc ref	Grounds of appeal (CER)	Grounds of appeal response (AAV)
			did not even make an effort to review these, each of these are listed as it was made available in the EIAR, and so continued to perpetuate her incorrect view that the information was not addressed by the EIAR.
C.9 Non-compliance of the Environmental Management Programme with the NEMA 2010 Regulations			
113	Part C	The requirements of an EMPr are contained in section 24N of NEMA and in regulation 33 of the NEMA 2010 regulations.	Noted
114	Part C	The EMPr which was submitted to the Chief Director did not meet the requirements of these provisions ¹⁰¹ .	The appellants are relying on the appellant's specialist's subjective description and understanding of the requirements of law. In particular, the appellant's specialist is prescribing how they prefer the competent authority should execute its regulatory function. An objective assessment of the legal requirements will confirm compliance to the requirements of law.
	Foot Note	¹⁰¹ Brownlie pp 29-31 and see p 35 para ©	Noted
C.10 Non-compliance of the EA with the NEMA 2010 Regulations			
115	Part C	The EA is based on a fundamentally flawed EIAR with the result that it also does not meet the relevant requirements of NEMA and the NEMA 2010 Regulations ¹⁰² .	The appellants are relying on their subjective description and understanding of the requirements of law. In particular, how they prefer the competent authority should execute its regulatory function. An objective assessment of the legal requirements will confirm compliance to the requirements of law.
	Foot Note	¹⁰² See Brownlie pp 31-37	Noted
116	Part C	More particularly the EA does not specify the activities which have been authorised. Crucially, although at least one of the listed activities pertains to the underground workings of the mine, the EA does not contain a description of the extent of the underground area to be mined (as it is required to do in terms of regulations 37(1)(b) and (c)).	The appellants are trying to impose a meaning into the regulations which is not there to achieve an outcome that is favourable to their objectives. At the time of application mining applications were approved through the MPRDA and the DMR and Environmental listed activities were applied through the competent authority of the environmental department. All the activities applied for relates to the above ground infrastructure. The application for mining activities followed a different process.
117	Part C	As regards the question of whether the	It is clear throughout the appeal that the

Ref nr	Doc ref	Grounds of appeal (CER)	Grounds of appeal response (AAV)
		<p>project should proceed at all, the Chief Director was not placed in a position to assess with any degree of accuracy the implications of the proposed project on the environment and the people who depend upon it. He was presented with an incoherent and internally contradictory report which demonstrably lacks objectivity. He was also not furnished with any of the detailed and crucial information which the Minister's delegated authority had identified as being missing and had requested be furnished before environmental authorisation could be granted.</p>	<p>only grounds the appellant used to substantiate their argument was based on regulation they interpret in their favour, or deliberately misinterpret to their benefit in order to achieve a pre-determined outcome. Their reliance on dated information and incorrect analysis of scientific principles compounded the perceived lack of information. The appellant's specialist opinion that the appellants relied on is not admissible to any court and therefore not be used as an independent review of the information. The appellant's specialist they relied on was demonstrably biased, provided hearsay and at numerous points tried to write into law her own views and prescribed ideas as if she was the regulator. As a connected party to the attorneys and appellants the independence of the opinions, even though addressed above, reinforces the appellant and her own bias.</p>

8. CONCLUSION

8.1. It is Atha Africa Ventures' sincere belief that the proposed Yzermyn Underground Coal Mining Project will be a critical catalyst for development of a very poor area and will certainly contribute towards the immediate local, provincial and national interests, as the benefits of development in this area far outweigh the agricultural and or tourism initiatives of already transformed brownfield areas.

8.2. The Applicants response to the Appellants' Grounds of Appeal has clearly shown that all environmental related concerns were adequately addressed in the EIAR and very extensive liaison process with the relevant competent authorities.

8.3. The Appellant has clearly shown in the EIAR that the proposed Project will be effectively and sustainably developed without risking the provision of environmental goods and services. Furthermore, the extensive specialist studies and additional supporting

information and motivations relevant to the Project and broader area, provided to the competent authority, clearly concludes that the natural resources can be sustainably used and protected, provided the mitigation measures are effectively implemented.

8.4. Atha Africa Ventures' proposed approach is to work together with the Honourable MEC's Department to implement a sustainable co-existence model between mining and conservation, undertaking a combined radical revision of past political unjust strategies based on the principle of exclusion, take the success stories from these past in-equitable 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.

8.5. The Appellants', undoubtedly, as advised by the CER, continuous exertion to generalize this Project, omitting to take actual scientific and geographical important information into account and most importantly purporting to assume the role of Interested & Affected Party, Specialist, Regulator and Adjudicator, not only in relation the YUCM Project but all proposed mining activities in the Mpumalanga Province, is indicative of the Appellants' and especially the CER's apparent indifference to the relevant competent authorities' statutory mandate to accept, assess statutory required application criteria and to make an objective, fair and informed decision.

8.6. The Appellants appointed two environmental scientists, Ms Susie Brownlie as an expert reviewer of the EIAR and all the specialist and or scientific studies / reports and Ms Ingrid Dennis as an expert reviewer of the groundwater models, and also to provide the Appellants with their expert opinion. Ms Susie Brownlie took part in the EIA process as advisor to some of the I&AP's, placing a question mark over her independence to provide an unbiased opinion based on actual and correct facts.

8.7. This consultant, as an environmental scientist criticized and questioned the interpretation and conclusions drawn by the Applicant's independent environment consultant, and therefore by implication the Applicant's specialists, i.e. her peers, without having been to site or soliciting the advice of other scientists and or specialists in respect of the complex

issues. It is specifically telling that she misinterpreted the ground water expert / geo-hydrologist in respect of the highly complex ground water issues and associated mitigation measures, and assumed that the two water models are inherently the same and that the NSS report therefore stand.

8.8. More tellingly, the consultant states that time constraints presented limitations to the level of detail of her desktop review, which is being relied on by the Appellants. It is our respectful submission that the consultant appointed by the Appellants and the CER provided a rushed, biased and preconceived opinion that, to say the least, poses a serious question regarding her independence. In light of the abovementioned, we respectfully request the Honourable MEC to dismiss the Brownlie Opinion in its entirety.

8.9. We respectfully submit that the Appellants as advised by the CER, are in our view, deliberately sensationalizing and disseminating incorrect and or ambiguous information in the hope that the Honorable MEC will act on this blatant misrepresentation, whilst as a fact, very detailed and comprehensive, scientifically based, assessment processes were undertaken in respect of the Environmental Authorization Application, the Mining Right Application and the Water Use License Application.

8.10. All three of these authorization application processes met all the statutory procedural and other compliance requirements, each were thoroughly assessed by the relevant Authorities and ultimately adjudicated on an informed, transparent and objective basis.

8.11. In the circumstances presented as response to the grounds of Appeal, and in light of the many technical and scientific fatal flaws, and biased, unfounded assumptions presented in the Appellants Grounds of Appeal, the Applicant reiterates its request that the Appellants' Appeal be dismissed and that the Environmental Authorisation for the Project be granted as per the original positive Environmental Authorisation.

8.12. In the alternative, should the Honorable MEC deem it appropriate to guide him to make a more informed decision, the Applicant will support a hearing before an appropriately constituted Appeal Panel, prior to a final decision being reached by the honorable MEC.

8.13. In the event that it is found that the Applicant's Responding Statement in respect of the Appeal was submitted out of time – which is disputed – the Applicant requests that condonation as requested in paragraph 2 above, be granted.

8.14. Atha, extends a hand to the Honourable MEC and the Mpumalanga Province in putting our Provinces' people first, whilst committing to be a partner of the Province in developing a tangible and pro-active social and economic growth platform, whilst contributing to agri-commercial, tourism and conservation initiatives. We are committed to a Provincial development process that is transparent, inclusive and pro-active so that we can all take collective responsibility of our successes and imperfections.

DATED AT JOHANNESBURG ON THIS THE 3RD DAY OF OCTOBER 2016



OBO: Atha-Africa Ventures (Pty) Ltd
(The Applicant)
For Attention: Mr Morgam Munsumay
8th Floor, Sinosteel Plaza
159 Rivonia Road
Morningside, Sandton
2144
morgam.munsamy@athagroup.in

TO: The Honourable Member of the Executive Council:

Mr. Vusumuzi Shongwe (MPL)

Mpumalanga Provincial Government:

Department of Agriculture, Rural Development, Land and Environmental Affairs

Nelspruit

1200

Reference: Authorisation Register Number: 17/2/3/GS-131

Per Urgent E-Mail: uismail@mpg.gov.za; nndlanya@mpg.gov.za; pnntuli@mpg.gov.za

TO: THE CENTRE FOR ENVIRONMENTAL RIGHTS

Appellants' Attorneys

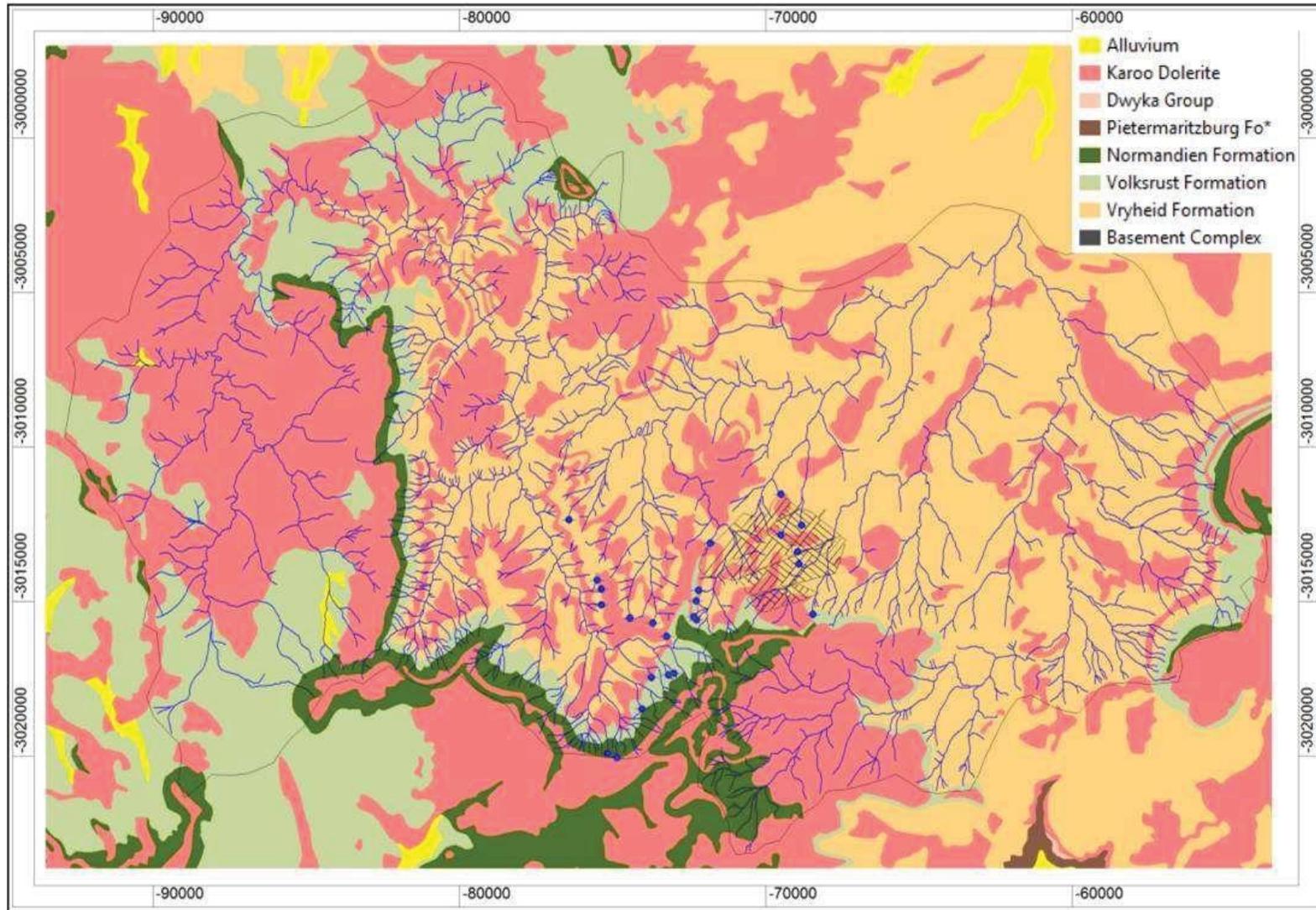
Ref: Catherine Horsfield/Suzanne Powell

2nd Floor, Springtime Studios
1 Scott Road, Observatory
Cape Town
8000

Per Urgent E-Mail: chorsfield@cer.org.za / spowell@cer.org.za

ANNEXURE "B"

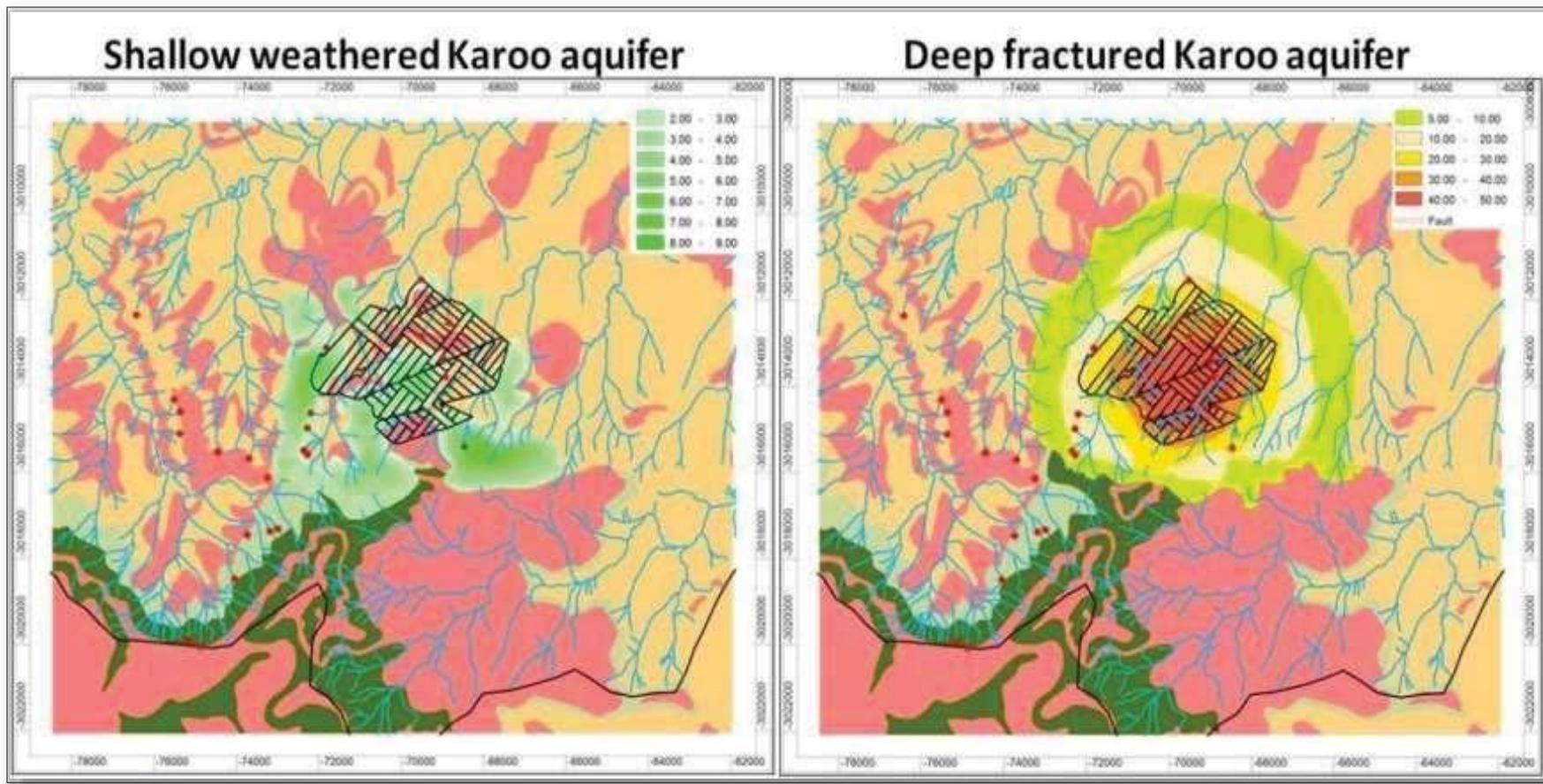
Figure 8-17: Regional geological setting of the Yzermyn Underground Coal Mine (mapped springs indicated as blue circles)



Source: Delta H, Numerical Groundwater Model Report, 2014

ANNEXURE "C"

Figure 8-19: Simulated groundwater table drawdown



Source: Delta H, Numerical Groundwater Model Report, 2014

ANNEXURE "D"

DOCUMENT ROADMAP

DEA Letter - 16 May 2014	Addressed in:
LAYOUT ALTERNATIVES	
a) The EIAR concludes that the preferred surface layout design not to 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 the 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.	Alternatives in terms of layout are discussed in: Section 4.3 (Surface layout) Section 4.5 (Discard dump) Section 4.12 (Best Environmental Option)
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.	Section 4.3 (Surface layout) Section 4.5 (Discard dump) Section 4.12 (Best Environmental Option) Specialist Studies: <i>Conceptual Stormwater Management Plan</i> - Section 8.6 Appendix E <i>Geohydrological Model</i> - Section 8.7 Appendix F <i>Biodiversity & Wetland Assessment: Discard Dump</i> -Section 8.9 Appendix H-2 <i>Wetland Ecological Assessment</i> -Section 8.10 Appendix H-3 <i>Palaeontological Assessment</i> -Section 8.12 Appendix I-3 <i>Phase 1 Heritage Assessment</i> -Section 8.11 Appendix I-1 (Discard dump area); Appendix I-2 (Target area) <i>Visual Assessment</i> -Section 8.13 Appendix J-2 <i>Air Quality Assessment</i> -Section 8.14 Appendix K <i>Downstream Water Uses</i> -Section 7.9.1 Appendix N-2
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).	The alternative regarding the mine layout and discard dump is discussed in Sections 4.3, 4.5 and 4.12 and is presented in Figures 4-5 to 4-10 (surface layout) and Figures 4-14 to 4-17 (discard dump) and in Figures 4-21 & 4-22 and Figure 5-1 (best environmental option). Amount of vegetation to be cleared discussed in Section 5.3.4 indicated in Tables 5-1 & 5-2 and presented in Figures 5-2 and 5-3. No-Go Map available in Section 11 Figure 11-1.
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 Paulpieterburg 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 MEMBA-listed ecosystems.	Ecosystem Status discussed in Section 3.1.4, Section 7.16.4 and presented in Figure 7-48 and Table 7-14. Vegetation Units discussed in Section 7.12.2
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.	In terms of the Mpumalanga Biodiversity Conservation Plan Handbook (2007), the area targeted for the surface infrastructure development is classified as "Important & Necessary". Discussed in Section 7.16.7 and presented in Figure 7-50.

DEA Letter - 16 May 2014	Addressed in:
<p>f) The area has a high occurrence of wetlands of very high ecological importance. This could be an indication that the 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.</p>	<p>The location of the site in a National Freshwater Ecosystem Priority Area (NFEPA) was identified and described in Sections 7.9.2. and 7.16.3 and presented in Figures 7-46 and 8-31. Additional Wetland study was conducted by Scientific Aquatic Services (Appendix H-3). The study also described the location of the site in terms of the NFEPA. The subWMA is considered a Fish FEPA (Figure 7 of SAS report). Impacts of dewatering assessed by Specialist and is also presented in Tables 10-3 to 10-7.</p>
<p>g) The mine cannot operate without the dewatering activities. In the light of the above, this application cannot be considered without the identification of the downstream water areas, the water users depend on the water, and a qualification of the dewatering effect on the economic activities downstream, including increase in droughts and floods. This information needs to be included in the amendment EIAR.</p>	<p>New Geohydrological study was conducted by Delta H (Appendix F). Dewatering impacts were assessed by Specialist and is also presented in Tables 10-3 to 10-7. Downstream Water Uses were identified - Appendix N2. The water uses are discussed in Section 7.9.1 and presented in Table 7-5 and Figure 7-25.</p>
<p>h) The EIAR states that there may be potential for Acid Mine Drainage resulting from the Alfred Seam. It recommends that additional studies in the amended EIAR, investigating the potential impact of AMD.</p>	<p>New Geohydrological study was conducted by Delta H (Appendix F). The findings is described in Section 8.7 and presented in Figures 8-20 to 8-22. The impacts were assessed by the Specialist and also in Tables 10-3 to 10-8.</p>
<p>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 water birds.</p>	<p>The location of the site in an Important Bird Area is discussed in Section 7.16.10 and presented in Figure 753 and Table 7-22.</p>
<p>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 (Heteromirafra ruddi). Approximately 85% of the global population of Rudd's Lark is confined to the grasslands within a 50km radius around Wakkerstroom.</p>	<p>Rudd's Lark identified in Table 7-22; The species was not seen during any site visit. The NSS report indicates the possible occurrence in table 4-2 (Section C) and table 2-1 (Section F).</p>
<p>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.</p>	<p>Atha is currently also in the process of applying for authorisation in terms of Section 48(3) of NEMBA (2004).</p>
ADDITIONAL REQUIREMENTS	
<p>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. lay down / 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.</p>	<p>New specialist studies conducted for alternative layout and discard dump location. According to Preferred Option - no road diversion required - Section 4.7.3</p>
<p>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).</p>	<p>Listed activities in terms of GN R 544, 545 and 546 discussed in Section 3.1.3 and presented in Tables 3-2 to 3-4. Traffic study was conducted (Appendix D) Road alternatives described in Section 4.5 and 4.7. Project description given in Section 5.</p>
<p>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).</p>	<p>Specialist opinion in terms of geotechnical study included in Appendix C-3.</p>

DEA Letter - 16 May 2014	Addressed in:
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 future approval of additional power lines or power stations.	Specialist opinion in terms of power generation included in Appendix C-4.
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.	Cumulative impacts described in Section 10.3. Cumulative impacts presented in Figure 18-2. and 18-3.
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.	Contact details of commenting authorities are presented in Section 9 and Table 9-4
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.	EMP updated and presented in Section 11 and Table 11-2. Expertise of person - Section 11.2 No-Go Map 11-1
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 Department)	Declarations of independence included in Appendix A-2.
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.	Interim and Final comments from SAHRA included in Appendix B-4.
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 and the department of Agriculture Forestry and Fishery must be consulted for further inputs.	Details on public participation process described in Section 9.12. Evidence Provided in Appendix G-2