

**ESCARPMENT ENVIRONMENT PROTECTION
GROUP (EEPOG)**

An ASSOCIATION

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REF: 20111028 GROENVLEI WPB EMPR OBJECTION.

Date: 28 October 2011

The Regional Manager
Department of Minerals and Energy
Mpumalanga Province
Private Bag X7279
Witbank
1035
Fax 013 690 2390 / 656 6238

Objection in terms of the Mineral and Petroleum Resources Development Act , 2002 (Act 28 of 2002) (“MPRDA”) to the application for a mining right and approval of the EMPR by: *William Patrick Bower Propriety Limited* on the Farm: *Portions 6 and 23 of Groenvlei 353 JT and Portion 12 of Lakenvlei 355 JT*

District of: *Belfast*

DME reference number: *MP30/5/1/2/2/505 MR*

Sir,

With reference to the above Mining right and EMPR authorisation application, we wish to object to the granting thereof. We are also lodging this objection on behalf of the Wonderfontein Community Association (WCA) Our previous submissions have to be read with this submission.

Summary

Non compliance with the MPRDA (s23(1)(g))

1. Time frames-
 - 1.1. consultation for EMPR
 - 1.2. scoping report consultation
2. Non compliance with the content requirements of the EMPR (s39)
 - 2.1. Baseline data
 - 2.2. Socio-economic conditions
 - 2.3. Jobs
3. Mining will result in unacceptable pollution, ecological degradation or damage to the environment
4. The granting of such right will not further the objects referred to in section 2(d) and (f) and in accordance with the charter contemplated in section 100 and the prescribed social and labour plan.
5. The financing plan is not compatible with the intended mining operation and the duration thereof
6. The sustainability of the proposed mining operation was not investigated, assessed and proven, taking into account all of the disadvantages and advantages over the lifecycle of the mine impacts.

We draw your attention to the following legal requirement:

S23(3) The Minister must refuse to grant a mining right if the application does not meet all the requirements referred to in subsection (1).

The applicant is in non compliance of the MPRDA (s 23(1)(g))

1. Non compliance with the time frames specified in the MPRDA

s 22(4) If the Regional Manager accepts the application, the Regional Manager must, within 14 days from the date of acceptance, notify the applicant in writing—

(a) to conduct an environmental impact assessment and submit an environmental management programme for approval in terms of section 39, and

(b) to notify and consult with interested and affected parties within 180 days from the date of the notice.

39. (1) Every person who has applied for a mining right in terms of section 22 must conduct an environmental impact assessment and submit an environmental management programme within 180 days of the date on which he or she is notified by the Regional Manager to do so

1.1. Consultation on the EMPR

1.1.1. The mining right was accepted on the 4th of March 2011 and the consultation was to be concluded by the 5th of September 2011. We were given access to the final draft EMPR only after the 5th of September 2011 and the consultation was thus not concluded by the 5th of September 2011.

1.1.2. The consequence of this is that the other state departments are given access to an EMPR without the comment of the IAP's thereon and this is a fatal flaw and unfair, unreasonable and unlawful in terms of the Promotion of Administrative Justice Act (PAJA).

1.1.3. The comments and input from the other state departments , which will form the basis of a decision by the decision maker is thus fatally compromised in that the input of the IAP's are not before them and

they cannot consider the input in making their decision and formulating their comments to the DMR.

1.1.4. The applicant did not meet this requirement and therefore the application must fail

1.2. **Consultation Scoping report**

In terms of regulation 49 a **scoping report** must be submitted within 30 days after acceptance of the mining rights application. It must contain the views and concerns of the public

1.2.1. In an email to me , Menco, the consultants state that:

-----Original Message-----

From: Johan Maré [mailto:johan@menco.co.za]

Sent: 18 March 2011 07:04 AM

To: 'Koos Pretorius'

Subject: Acceptance letter: WPB Colliery

Hi Koos,

Herewith the copy of the first page of the acceptance letter as provided by William. The Scoping Report will be circulated after the public meeting and will be discussed at a future meeting still to be scheduled. Given the timeframes provided by the DMR it will not be possible to meet with the expectations of all stakeholders pertaining to commenting on the Scoping Report prior to submission. At best issues as raised by stakeholders on 30 March will be incorporated into the Scoping document as part of the extent of work to be covered by specialist investigations.

Regards

JM

083 389 6617

1.2.2. In the ***GUIDELINE FOR THE COMPILATION OF A SCOPING REPORT*** as published by the DMR it is stated (own emphasis)

The scoping report contemplated in Regulation 49 is founded on the principle of consultation with interested and affected parties.

which consultation process and its result is an integral part of the fairness process. The decision to grant a mining right cannot be fair if the administrator did not have full regard to precisely what happened during the consultation process in order to determine whether the consultation was sufficient to render the grant of the application procedurally fair.

.....This entails the communities being informed and consulted on any mining activities applied for by mining companies in their area

1.2.3. As is shown above this did not happen and the process is thus fatally flawed and unfair and the application must fail.

2. Non compliance with the content requirements of an EMPR (s39)

s 39(3) of the MPRDA states that an applicant who prepares an environmental management programme or an environmental management plan must—

(a) establish baseline information concerning the affected environment to determine protection, remedial measures and environmental management objectives;

(b) investigate, assess and evaluate the impact of his or her proposed prospecting or mining operations on—

(i) the environment;

(ii) the socio-economic conditions of any person who might be directly affected by the prospecting or mining operation

As to the requirement the impact on the socio-economic conditions we wish to state the following

2.1. **Baseline information** was not established as to the current conditions in the area. This is dealt with by other objectors and we wish for this objection to be read together with theirs. We will not address them again in this objection.

- 2.1.1. .There is no study that investigates what the impact will be on the other socio- economic activities – mainly tourism and agricultural orientated, that already active around the site.
- 2.1.2. There is an **Environmental Management Framework (EMF)** applicable to this area that shows that agriculture and conservation as the land uses identified. Whether there is an old mine or not, is thus not applicable in the argument of the need and desirability of the project. That old mine was taken into consideration during the identifying of the land uses in the EMF.
- 2.1.3. The new mine will have a hugely negative impact on the existing tourism and agricultural operations, simply due to the fact that opencast coal mining and eco-tourism is not compatible. If the applicant was of the opinion that they are, there should have been an in depth investigation of this with the required, by law, comparative assessment of all of the advantages and disadvantages of the different land uses and combination of land uses. This was not done.
- 2.1.4. The coal reserve size should also be put into context. The application is for 1.935 million tons to be mined over a period of 5 years. That is an average of 400 000 tons per annum. That will make **up 0.25 % of Eskom's coal requirement** (160M tons/annum) and **0.14 % of t5he country's coal production** (at 280 m tons)
- 2.1.5. The above must be viewed against the fact that the areas that are as sensitive as this area from a biodiversity point of view is only 2.5 % (irreplaceable) of Mpumalanga's surface area according to the C-Plan and the fact that the high potential soils are needed for food security and they are being destroyed by mining at a huge rate.
- 2.1.6. The eco tourism land use option is compatible with both of the other land uses and not with coal mining that will sterilise the other land use options.

2.1.7. Both the high potential soils and highly sensitive areas are very limited in extent. This compared to the vast coal reserves of the country that will last for hundreds of years at current extraction. To mine the areas of high potential soils needed for food security and successful Agri-BEE, and the highly sensitive areas of irreparability and highly significance on a priority basis is not in accordance with the principles of NEMA. These are, inter alia, sustainability, alternatives of resource, best practicable ecological option (BPEO), etc.

2.1.8. To allow this to be done without even an investigation of the cumulative impact of even this small mine on the above will be fatal error.

2.2 The impact on potential job losses and jobs not being created at the tourism sites adjacent to this proposed project was also not investigated and assessed.

2.2.1 It is true that we have a huge unemployment problem in our community. That does not mean that any job creation, for 5 years only, must be allowed. The impact of that on the opportunity for other job creation opportunities associated with other lands uses must be investigated. This was simply not done.

2.2.2 What is also not clear is how many jobs will be created from the communities around the mine that are unemployed, or from Emakhazeni. This information should be in the Social and Labour Plan (SLP) . We have not been granted access to that document. This is another fatal flaw.

2.2.3 According to the Guidelines on the SLP, as published by the DMR, it is stated that (own emphasis)

MINE COMMUNITY DEVELOPMENT

The primary objective of mine community development is to meaningfully contribute towards community development, both

in terms of size and impact, in keeping with the principles of the social license to operate.

The Mine or Production Operation must consult and co-operate in the formulation and review of the Integrated Development Plan (IDP)s of the mine communities. The mine or production operation must furthermore consult with other economic development frameworks like Provincial Growth and Development Strategy (PGDS), National Spatial Development Strategy (NSDS), National Priorities and any other relevant stakeholders.

The Mine or Production Operation must, through consultation with communities and relevant authorities provide a plan. The plan should be in line with the IDP's of the mine community.

2.2.4 It is impossible for the community to evaluate and address the issues of concern relating to the above without access to the SLP. It is also impossible to identify the issues and solutions, that is required to draft the SLP without the input of the local communities.

2.2.5 This is yet another fatal flaw- both in terms of consultation and investigation and assessment of impacts ,as well as the time frames which must be kept..

2.3 In summary;

2.3.1 There is no need for this small coal reserve in this highly sensitive biodiversity area to be mined.

2.3.2 The option that this is the only reserve of WPB to mine must be evaluated within the above context. Nothing prevents him from applying for other coal reserves in less sensitive areas. He chose not to.

2.3.3 The economic evaluation excludes the long term post closure cost of the water and loss of biodiversity and high potential soils.

2.3.4 *From the above it is clear that there is no desirability for the project.*

This is a project whereby the economic wealth of an individual must be measured against the socio-economic wealth of a much larger community and area.

2.3.5 *The application does not meet the requirements of the MPRDA and must fail.*

3 Mining will result in unacceptable pollution, ecological degradation or damage to the environment

3.1 Land capability

3.1.1 The impact of opencast coal mining on the land capability of the high potential soils is well known and documented.

3.1.2 The post closure land use has to be sustainable and be economically viable. This is not the case here. The area will be underlain with groundwater that is not suitable for any use (according to the groundwater report) and the land capability post closure was not calculated.

3.1.3 From experience of rehabilitated areas we know that this land capability is not sustainable, and there are no measures put forward in this EMPR to provide any evidence that this will not again be the case here. In view of the precautionary principle the unsustainable land capability has to be considered as the most predictable option.

3.1.4 The above is not in line with sustainable development and the requirements of the MPRDA as is stated in regulation 56(d) and (e). the application must fail

3.2 Post Closure water impacts

The geohydrological study states the following on page 68. We shall discuss each of the mitigation recommendations

3.2.1 *In conclusion, the following measures are recommended:*

*All mined areas should be flooded as soon as possible to bar oxygen (air) from reacting with remaining pyrite*16.

Comment – this is not possible since the slope of the mine is such that the mine will decant long before the upper areas are flooded. Nothing can be done about this factual topography.

3.2.2 *Mining should remove all coal from the opencasts and as little as possible should be left.*

Where will this be left as no provision for this was made in the EMPRR No discard dumps are being applied for to be left after closure. According to the regulations of the MPRDA discard dumps may not be placed anywhere.

3.2.3 *The final backfilled opencast topography should be engineered such that runoff is directed away from the opencast areas.*

This can be done but will not address the water falling on the mine. How subsidence will be addressed post mining was also not taken into consideration.

3.2.4 *The final layer (just below the topsoil cover) should be as clayey as possible and compacted if feasible, to reduce recharge to the opencasts.*

Nowhere in the soil study is this clay layer identified, quantified or a plan in place for it to be stored separately for use later on.

3.2.5 *Leaving a final void in the opencast areas must be investigated. Once final rehabilitation plans are available, it will be essential to model this option.*

This is unacceptable and is directly opposed to the principles in the National Water Resource Strategy of reuse and recycle . In the Best Practice Guidelines on mine closure it is stated that

P9 : An understanding is required that mine closure is not about greening, but rather long-term pollution control and risk/hazard management. This

involves consideration of a range of issues, and a range of possible management strategies.

- *A risk-based approach includes a cradle to grave assessment on waste or waste streams, that is, from the point where they are generated, to their final disposal or reuse.*

P11: *Financial provision for construction, operation and maintenance of post-closure water management measures where required and for as long as predicted to be required; and*

P14 *The primary technical factors that need to be considered when planning mine closure and post closure in the broader environmental context are, amongst others:*

Land use plan *which is directly interlinked with water management issues insofar as **water is required to support the intended land use** and the land use itself may have an impact on the water resource;*

Regional interconnections *and need for regional closure strategies is a key consideration in many of the country's large mining regions for the coal, gold and platinum industries in particular and where such interactions exist, mine closure plans must be consistent with an overarching regional closure strategy;*

- ***Cumulative impacts*** *from a number of sources within the same zone of impact could be an important consideration within a single mine where it refers to multiple source terms, or alternatively it could apply to the consideration of the cumulative effects of different mines;*

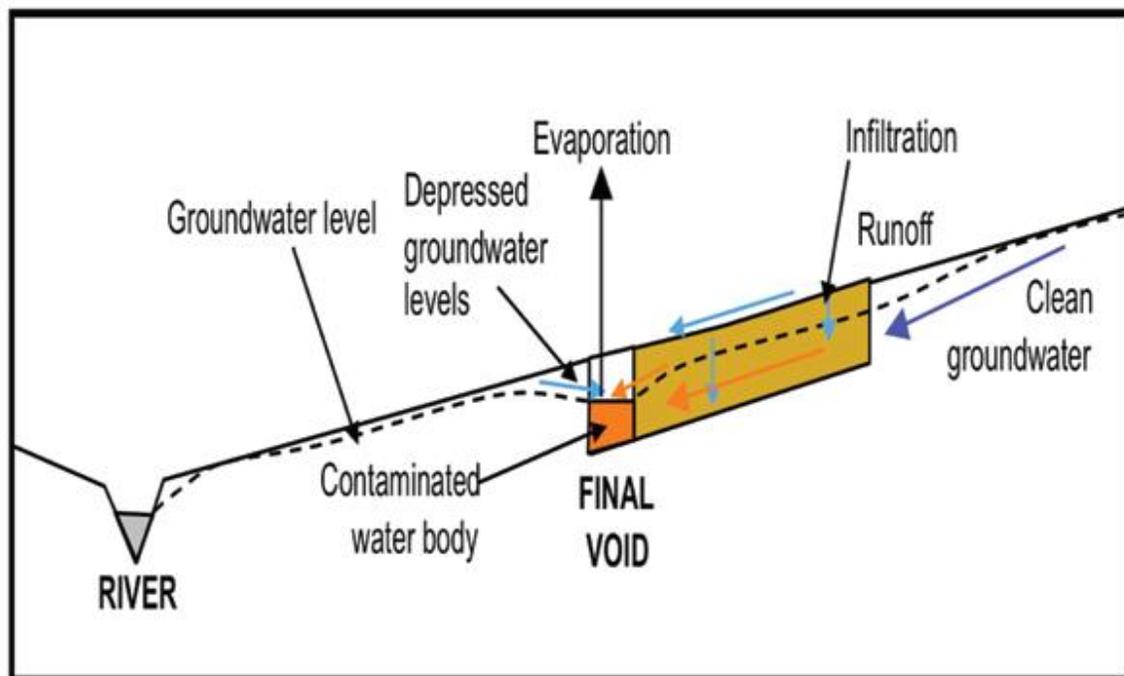
- ***Sustainable development*** *issues are fundamental to mine closure and apply to land use plans, social and labour plans and integrated water management plans insofar as these plans must all be sustainable over the long term beyond mine closure;*

While each mine site is unique, the following mining features (amongst others) do typically have a long term impact potential and the default assumption that would be applied is that they are deemed to have a potential significant impact on the water resource until it is proven otherwise:

- Accumulation and evaporation of water in final voids

(see Figure 3.2)

Figure 3.2: Typical water management considerations for closed final void



This is exactly what is being planned and nowhere is the subsequent pollution from the final voids addressed at all. This is a fatal flaw.

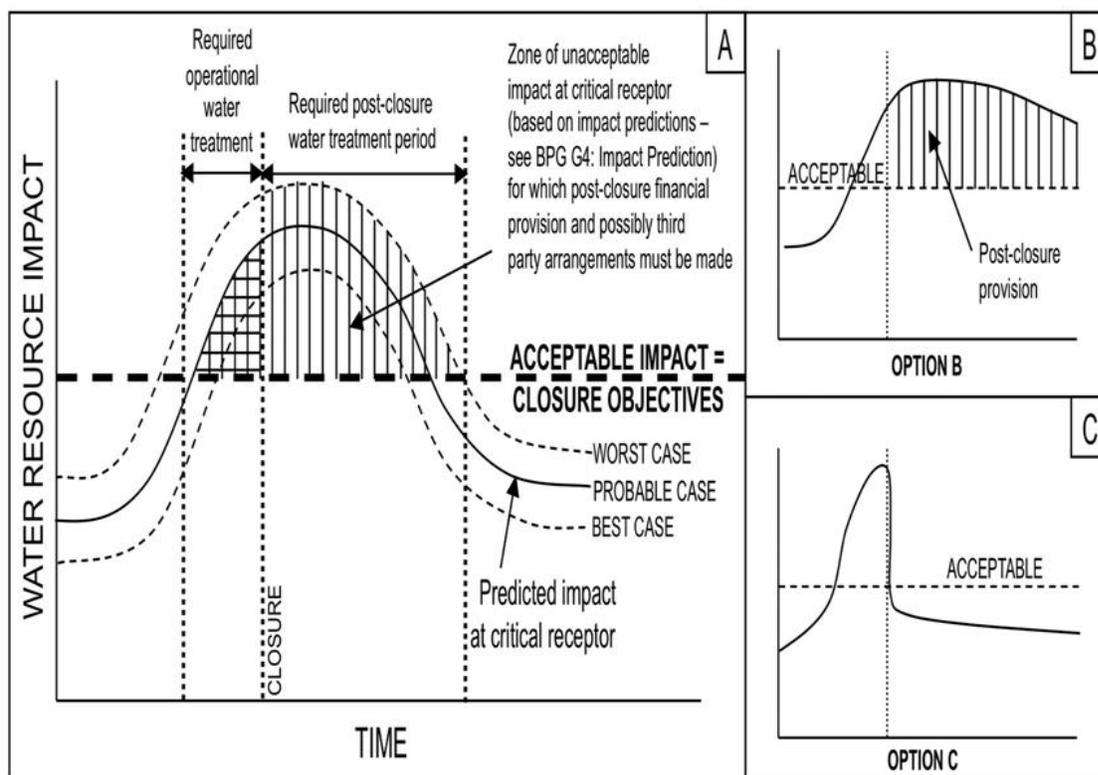
On page 25 of the BPG it is stated:

1) Closure objectives for a conceptual mine closure plan: this applies to all mine closure plans for mining operations where intended closure is 5 years or longer into the future. Due to the fact that there is an ever-increasing demand on water as an increasingly scarce resource to supply future populations and development with water, the approach that DWAF will take with regard to setting mine closure objectives for a timeframe greater than 5 years into the future, is to stipulate zero residual impact. This implies that all future point and diffuse pollution sources will need to be managed such that zero residual impact is achieved and that all off-site impacts and migration of

contaminants that occurred during the mine's operational phase will need to be fully remediated in line with DWAF's water management hierarchy – see

BPG H1: Integrated Mine Water Management.

On p 35 of the BPG:



Option B is exactly what will happen. The impact will continue if all of the water is not treated and financial provision is not made for this. The closure plan of voids are also not sustainable and does not meet the requirements of the MPRDA or the DWAE guidelines as stated above and therefore cannot be considered since the land use post rehabilitation will not be sustainable or even economical it will be acid pits dotted all over the landscape.

The mine's income will stop but the expenses will continue. It therefore means that the water mitigation will not be able to be met and the only option is for the final voids to be left and that has been shown above to be in clear contravention of sustainable post rehabilitation land use as

is prescribed in the MPRDA as well as in the DWEA best practise guidelines..

3.2.6 *Intercepting decant by a downstream trench is also an option to investigate. If this option is chosen, the model will have to be updated well before mine closure to a monthly transient model.*

This is not what is being applied for and there is no financial provision for this. The long term cost of this must be quantified otherwise there will not be funds available at the end of mining to pay for this option at the end of the life of the mine.

3.2.7 *It is recommended that the south-eastern extremity of the open cast should not be mined as to prevent/manage decant (Figure 22). This could be reconsidered once further ABA analyses are done. If it is found that the coal seams are not acid generating the impacts are not of water quality but of quantity.*

This is not what is being applied for and it will in any event just make the mitigation easier, but not take it away. Whether or not AMD occurs or not is not relevant – polluting will happen if the salt concentration increases – with or without acidification of the water. That has to be mitigated

3.2.8 *Surface water monitoring of the streams will be essential.*

It is unclear how this will have any mitigatory impact.

3.2.9 *Quarterly groundwater sampling must be done to establish a database of plume movement trends, to aid eventual mine closure, as mentioned in section 11.*

According to the regulation 56 of the MPRDA the mining plan must incorporate a process for closure which starts at the commencement of the mining and continues on. The closure plan can thus not be left for later on.

3.2.10 □ *It is strongly suggested that this model is being updated during the operational stage of the mine to investigate alternative options to mitigate the potential decant. This should be done in close cooperation with mining personnel to ensure that the best practical solution not exceeding reasonable costs is implemented. (BATNEEC)*

3.2.10.1 This approach is not lawful anymore in the current legislative environment. As is stated above (regulation 56) the closure must be part the mine plan . The plan can change during the life of the mine, but there must be a sustainable quantified plan in place prior to mining commencing. That is a legal requirement.

3.2.10.2 The objectives of the MPRDA (section 2) is, inter alia, to give effect to section 24 of the Constitution, which contains the provision that legislative and other measures must be reasonable, and must clearly distinguish between pollution and sustainability. In this context section 37(1) of the MPRDA state explicitly that the environmental management principles set out in section 2 of NEMA apply to all prospecting and mining operations and serve as guidelines for the interpretation, administration and implementation of the environmental requirements of MPRDA. MPRDA section 37(2): “Any prospecting or mining operation must be conducted in accordance with generally accepted principles

of sustainable development by integrating social, economic and environmental factors into the planning and implementation of prospecting and mining projects in order to ensure that exploitation of mineral resources serves present and future generations.”

- 3.2.10.3 Compliance to legal requirements during the planning and operational phases of the project life cycle would thus denote the minimum required “reasonable measures” for pollution prevention and pro-active remediation.
- 3.2.10.4 The environmental management principles set out in section 2 of the NEMA are well known, and include concepts such as the Precautionary Approach, the Polluter Pays Principle, Duty of Care and Pollution Prevention, Principles of Participation, Transparency and Democracy, the consideration of alternatives to select the Best Practicable Environmental Option (BPEO) that will ensure development and use within the Carrying Capacity of Resources. These principles are however not always well understood from the perspective of their practical implications.
- 3.2.10.4.1 For example, since the MPRDA commits to the NEMA principles, this implies that the BATNEEC approach can no longer be followed when determining “reasonable measures” since NEMA does not refer to BATNEEC, but incorporates the BPEO approach in section 2.
- 3.2.10.4.2 NEMA defines “best practicable environmental option” to mean the option that provides the most benefit or causes the least damage to the environment as a whole, at a

cost acceptable to society, in the long term as well as in the short term.

3.2.10.4.3 In this context, the British Royal Commission on Environmental Pollution (Hawkins, 1996:12), states that “BPEO is the outcome of a systematic consultative and decision making process that emphasizes the protection of the environment across land, air and water and that establishes, for a given set of objectives, the option that provides the most benefit or least damage to the environment as a whole at acceptable cost in the short term as well as long term

3.2.10.5 The above implies that the determination of “reasonable measures” results from following a consultative process, where the BPEO is determined in the context of societal and economic expectations. The aspects to consider during such a process have been captured by Gilpin (1996:170) who defines “Integrated Environmental Management” as “a concept of care applied to localities, regions, catchments, natural resources, areas of high conservation value, individual premises, corporate enterprises, lifetime cycles, waste handling and disposal, cleaner processing and recycling systems, with the purpose of protecting the environment in the broadest sense, which involves the –

- Identification of objectives
- The adoption of appropriate mitigation measures
- The protection of ecosystems
- The enhancement of quality of life for those affected and
- The minimization of environmental costs

3.2.11 Therefore, since they are the ultimate recipients of potential, ongoing and historical pollution and the potential future land users,

the requirement of MPRD Regulation 62 entails that interested and affected parties must be involved in the agreements regarding future land use of affected areas and thus in the decisions regarding the establishment of objectives for such future land use, as well as in discussing the alternatives for engineering interventions, where decisions regarding such options will affect the future land use.

3.3 The above was not done and the applicant is in non compliance and must fail

4 The granting of such right will not further the objects referred to in section 2(d) and (f) and in accordance with the charter contemplated in section 100 and the prescribed social and labour plan.

4.1 Nowhere in the documents is it illustrated how the applicant will substantially and meaningfully expand opportunities for historically disadvantaged persons, including women, to enter the mineral and petroleum industries and to benefit from the exploitation of the nation's mineral and petroleum resources; A

4.2s stated before we have not had access to the SLP. We need to be able to comment on the SLP if this document is to be used as a basis for the decision.

4.3 Nowhere in the document is it illustrated how this project will promote employment and advance the social and economic welfare of all South Africans; Mention is made of job creation in the short term, but it is not specified how many will be generated for the local community, the Emakhazeni municipality , or how the job losses that will occur in the eco tourism and agricultural sector due to the mine will be mitigated. If this is in the SLP, then we must have access to it.

5 The financing plan is not compatible with the intended mining operation and the duration thereof

5.1 As has been shown above , the financial provision for the long term impacts, over the life cycle of the impact, is not catered for.

5.2 The financial provision therefore does not cater for the duration of the mining operation which will only cease once closure has been obtained. The mine will be responsible for the cost of all impacts up to then.

6 The sustainability of the proposed mining operation was not investigated, assessed and proven, taking into account all of the disadvantages and advantages over the lifecycle of the mine impacts.

6.1 What we have here is a mine, that will supply 0.25% of the coal requirement of Eskom, in a very sensitive biodiversity area, on high potential agricultural soil. The mine will not be able to rehabilitate the soils back to sustainable use and will have a negative environmental impact due to its post closure water related problems which are not addressed.

6.2 This negative impact must be weighed against the advantages of a few temporary jobs, but also job losses due to its existence in the area. There is no evidence of any other positive socio- economic impact of the mine.

6.3 The only advantage that will accrue is to WPB Colliery if it is not made to pay for the pollution post closure and the loss of agricultural potential. If it is made to pay – then this project will never get off the ground.

6.4 The only way this mine can be motivated is to motivate that:

6.4.1 One entity, WPB Colliery will get an economic advantage if the coal resource is mined. The coal resource of South Africa is vast and there are many other areas of coal deposits in the country, (basically unlimited resource). WPB Colliery however decided not to apply for other resources, but this resource.

6.4.2 Against the above is a very limited sensitive biodiversity, agricultural and water resources. They have to be sacrificed in favor of the WPB Colliery entity in order for them to get a financial advantage.

6.4.3 An exchange of limited resources for unlimited resources have to take place without any real benefit to society.

6.5 The above is contrary to the sustainability principle. In the Fuel Retailers Constitutional case the court held that:

61).....Thus, whenever a development which may have a significant impact on the environment is planned, it envisages that there will be a need to weigh considerations of development, as underpinned by the right to socio-economic development, against environmental considerations, as underpinned by the right to environmental protection. In this sense it contemplates that environmental decisions will achieve a balance between environmental and socio-economic developmental considerations through the concept of sustainability.

There is no such balance in this case and therefore the application must fail.

Regards

A handwritten signature in black ink, appearing to read 'Dr Koos Pretorius', written in a cursive style.

Dr Koos Pretorius