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Name of Prospective Appellant:
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Date: 29 March 2017

The Minister of Environmental Affairs
Private Bag X313
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For attention:

Mr Ziyaad Hassam

Director: Appeals and Legal Review, Department of Environmental Affairs

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NOTICE OF INTENTION TO APPEAL AGAINST THE INTEGRATED ENVIRONMENTAL AUTHORISATION ISSUED IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 AND THE ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS, 2010 FOR THE ESTABLISHMENT OF A 600MW COAL-FIRED POWER STATION AND ASSOCIATED INFRASTRUCTURE – IPP KHANYISA POWER STATION NEAR EMALAHLENI, MPUMULANGA PROVINCE.

We address you on behalf of our client, groundWork.

We hereby give notice of our client's intention to appeal against the above integrated Environmental Authorisation issued by the Department of Environmental Affairs to ACWA Power Khanyisa Thermal Power Station (RF) (Pty) Limited ("ACWA"). The particulars of which are as follows:

Reference number: 12/12/20/2067

Name of project: 450MW (amended to 600MW) Khanyisa coal-fired power station and associated infrastructure – IPP Khanyisa power station near Emalahleni, Mpumalanga Province

Date of issue of authorisation: 31 October 2013

Date of issue of amendments of authorisation: 28 July 2015 (increase in capacity and road realignment); 25 February 2016 (road realignment); and 2 February 2017 (change in applicant name and farm names)

We acknowledge that this notice of appeal is submitted outside the 20-day period stipulated in regulation 60(1) of the Environmental Impact Assessment Regulations, 2010 under the National Environmental Management Act, 1998 (NEMA) (“EIA Regulations, 2010”).

We submit that there is good cause for an extension, in terms of regulation 60(4) of NEMA, on the basis of the recent judgment in *Earthlife Africa Johannesburg v Minister of Environmental Affairs and Others*, case no 65662/16 (“the *Thabametsi* judgment”). We will address the reasons for this extension in greater detail in our submissions on appeal. In brief, these reasons are as follows:

1. On 8 March 2017, the Gauteng Provincial Division of the High Court delivered the *Thabametsi* judgment. This judgment held, for the first time in our law, that climate change impacts must be comprehensively assessed as part of an environmental impact assessment (EIA) for proposed developments with potentially significant climate change impacts, such as the Khanyisa power station.
2. There was no comprehensive assessment of the climate change impacts of the Khanyisa power station. ACWA did not adequately assess the climate change impacts of the proposed power station and the Department of Environmental Affairs did not give adequate consideration to the project’s climate change impacts, as it is required to do under section 24O(1)(b) of NEMA.
3. The *Thabametsi* judgment holds that such omissions are unlawful. This appeal affords the Minister of Environmental Affairs (“Minister”) an opportunity to address this unlawfulness in considering this appeal.
4. It would also be unfair to allow the Khanyisa coal-fired power station to proceed without requiring a climate change impact assessment. Khanyisa and Thabametsi are the only proposed coal-fired power stations that have been granted preferred bidder status under the Coal Baseload Independent Power Producer Procurement Programme. Thabametsi has now been required to conduct and submit for approval, a climate change impact assessment. The *Thabametsi* judgment rightly requires the Minister to consider these impacts before reaching a decision on whether to uphold Thabametsi’s environmental

authorisation. Khanyisa should now be subjected to substantially similar conditions and legal requirements to ensure consistency and fair treatment.

5. This notice of appeal is delivered within 20 days of the *Thabametsi* judgment.
6. Moreover, while the delay in delivering this notice is regretted, it must be considered in light of the fact that the Khanyisa power station will be operational until at least the year 2060. In those circumstances, it is plainly appropriate and necessary to extend the period for the filing of the appeal to ensure that the power station is not constructed without climate change impacts first being comprehensively assessed, as the High Court has now held is required.

Furthermore, since Khanyisa's environmental authorisation (EA) was issued in 2013, the circumstances around international climate change commitments;¹ air and water impacts in the project area; and the communities residing in the area have changed substantially. Public interest dictates that these changed circumstances be considered on appeal, particularly in light of the fact that the Khanyisa power station will be operational until at least the year 2060.

Therefore, we hereby request an extension for the late filing of this notice of intention to appeal in terms of regulation 60(4). This notice is lodged within 20 days of the *Thabametsi* judgment, and the appeal will be submitted within 30 days from the date of delivering this notice.

We confirm that we will, within 10 days of the lodging of this notice, provide the applicant with a copy of this notice. In relation to the regulation 60(3) requirements of the EIA Regulations, 2010 to inform the applicant where and for what period the appeal submission will be available for inspection by the applicant, we will furnish the applicant directly with a copy of our appeal submissions, thereby rendering it unnecessary to give notice of the time and place for an inspection of the appeal submissions.

Yours faithfully



The Centre for Environmental Rights

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¹ South Africa ratified the Paris Agreement on Climate Change in November 2016.

