



# Centre for Environmental Rights

Advancing Environmental Rights in South Africa

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Our ref: CER/RH/NL  
23 February 2018

Dear Sirs

### DOCUMENTATION FOR MITIGATION PATHWAYS AND ADDITIONAL CLIMATE MITIGATION AND ADAPTATION DOCUMENTS/PROJECTS

1. We address you as the Centre for Environmental Rights (CER), a firm of activist lawyers who help communities and civil society organisations in South Africa realise our Constitutional right to a healthy environment by advocating and litigating for environmental justice.
2. We refer to the following documents (collectively referred to as “the Pathways documents”), which were, on 2 February 2018, made available for comment (initially) by 28 February 2018, and then by 23 February 2018:
  - 2.1. overview of the approach to developing the pathways – to provide background information on the project for National Climate Change Committee (NCCC) members;
  - 2.2. the Draft Alternative Emissions Pathways report; and
  - 2.3. the Greenhouse Gas Emissions Pathways Inception report - to provide background information on the project for NCCC members.
3. We point out that we only became aware of the Pathways documents last week and we have not had adequate time to consider or comment on them. We have also had no opportunity to take instructions from any of our clients on them.
4. Furthermore it is not clear to us how these documents are intended to fit into, and be aligned with, South Africa’s climate change response policy and proposed and existing legislation, which seeks to regulate climate change mitigation and adaptation.
5. The inception report of the Pathways documents states, “*the outcomes of this work are not expected to be translated directly into greenhouse gas mitigation policy. The intention is to subject the projected greenhouse gas*

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*emissions pathways to further scrutiny, specifically in terms of their socio-economic implications.*<sup>1</sup> It is not clear, from this however, what the ultimate plans and intentions for the Pathways documents are, nor is the significance of the Pathways documents (i.e. the extent to which these documents might influence, or have a bearing on law and policy) made clear.

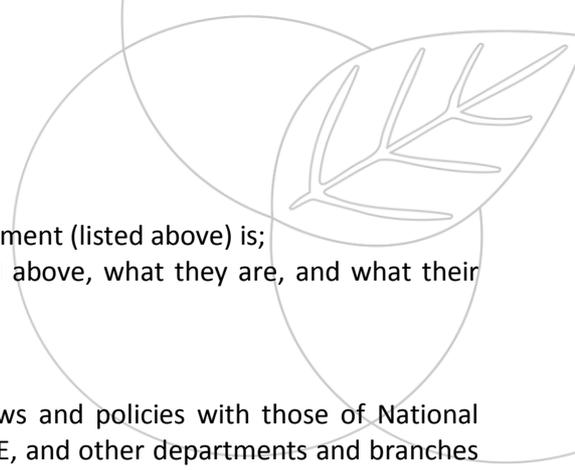
6. In the past year, we have seen numerous documents emerging for comment in relation to climate change mitigation and adaptation. It seems that they have been drafted and prepared by different consultants but on the instruction of the Department of Environmental Affairs (“the Department”). Some of these include:
  - 6.1. the “Proposed content for a climate change response legal framework”, May 2017;
  - 6.2. the “development of South Africa’s post-2020 climate change mitigation system”, final draft report of July 2017;
  - 6.3. the “Briefing document on the climate change mitigation policies and measures (PAMS) approach and methodology”, of August 2017;
  - 6.4. the draft “National Climate Change Adaptation Strategy” of October 2017;<sup>2</sup> and
  - 6.5. the Pathways documents.
7. These are only the documents of which we are aware – and we note, from a “workplan” circulated to NCCCC members in 2016, that there are other elements and documents being worked on by the Department and other governmental departments such as Treasury and the Department of Energy (DoE) (in relation to the draft base case and assumptions of the Integrated Resource Plan for Electricity (IRP) and draft Integrated Energy Plan (IEP), which were published for comment in November 2016, for example).
8. We also note that a further draft Carbon Tax Bill was published for comment by Treasury in December 2017, following on an initial draft of November 2015.
9. Given capacity constraints and the high volume of documents for comment – including the technical and voluminous nature of their contents - we have not been in a position to adequately consider and submit written comments on all of the above documents. It is also not clear whether, and if so, when further opportunities to comment on any of these documents will be given to interested and affected parties. Furthermore, and importantly, it is not clear to us what the overall strategy and intention of the Department is in relation to all of these documents, and how they are supposed to be utilised and aligned with one another.
10. While we have no objection to the Department commissioning a multi-faceted research process in relation to climate change mitigation and adaptation, and while we commend the Department for embarking on a stakeholder engagement process in relation to these projects and documents, it is vital that the findings and information be properly utilised and that the intended purpose and plan for this process and the individual projects is clear to **all** stakeholders (to enable meaningful participation, including as required in terms of the Promotion of Access to Information Act, 2000), including other branches of government.
11. We submit that, in the interests of ensuring mitigation and adaptation systems that adequately and effectively seek to mitigate and adapt to climate change and to ensure that the South African government meets its international as well as constitutional obligations, a clear, transparent and aligned climate mitigation and adaptation system and plan are required, wherein all departments and branches of government work together and all climate policies are adequately aligned.
12. In light of this, we ask that the Department to advise:

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<sup>1</sup> P1, Introduction, Inception report.

<sup>2</sup> Available at

[https://www.environment.gov.za/sites/default/files/reports/nationalclimate\\_changeadaptation\\_strategyforcomment\\_nccas.pdf](https://www.environment.gov.za/sites/default/files/reports/nationalclimate_changeadaptation_strategyforcomment_nccas.pdf).



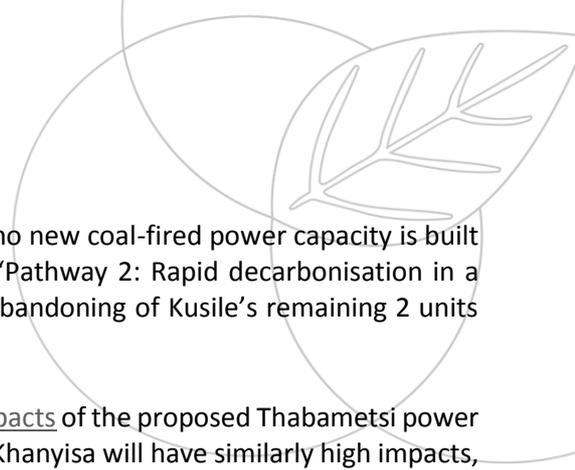
- 12.1. what the ultimate intended outcome and purpose for each document (listed above) is;
  - 12.2. whether there are other documents and/or projects not listed above, what they are, and what their ultimate intended outcomes and purposes are;
  - 12.3. how these will all be aligned and “speak to” one another;
  - 12.4. what the envisaged timeframes for the various documents are;
  - 12.5. how the Department plans to align its plans and intended laws and policies with those of National Treasury (responsible for implementing the carbon tax), the DoE, and other departments and branches of government currently working on projects relevant for climate change mitigation and/or adaptation;
  - 12.6. in particular, what is the relationship and difference between the PAMs, the Pathways documents and the post-2020 mitigation system, and how do all of the above documents (and other documents or projects being worked on) fit in with the post-2020 climate change mitigation system; and
  - 12.7. which documents or components of each project are still outstanding and what still needs to be done in respect of each of the above documents and any other climate change related projects being run by the Department?
13. We ask that the Department explain and demonstrate how all of these components are going to be pulled together to ensure a successful and implementable climate mitigation and adaptation system, and what the envisaged timeframes and deadlines are. This will also place us and our clients, in a much better position to understand, consider and comment on any future climate change documents and projects. The need for transparency and meaningful consultation in relation to these essential documents cannot be overstated.
14. We note, with great concern, the response we received from you on 21 February 2018 in relation to our queries regarding the implementation and interpretation of the National Greenhouse Gas Reporting Regulations and the Pollution Prevention Plan Regulations, where it was stated that the pollution prevention plans of Sasol, Eskom and ArcelorMittal contain confidential information and therefore the Department cannot share these documents. While we do not intend to respond in detail to the contents of your letter, we place on record that this approach is unacceptable, and severely prejudices the rights of stakeholders to gain access to crucial information, which is in the public interest. If the implementation of GHG mitigation measures is not transparent and open, the entire mitigation system will be severely undermined and compromised.
15. While we are not currently in a position to comment on the Pathways document, we do wish to note and emphasise that any modelling of proposed scenarios **must** take into account and be based on current research, electricity prices and technological progress in the energy planning field. In this regard, we wish to draw your attention to a study conducted by Meridian Economics in conjunction with (and based on modeling of) the Council for Scientific and Industrial Research (CSIR), which recommends that the last 2 units of the Eskom Kusile coal-fired power station (currently under construction) be abandoned – this would save about R4 747million, and still enable us to meet demand.<sup>3</sup> The further estimates show that decommissioning Grootvlei, Hendrina and Komati power stations **and** avoiding the completion of Kusile units 5 and 6 could giving rise to a financial saving in the region of R15 – 17 billion without affecting security of supply.<sup>4</sup> These costs exclude the consideration of any externalities.
16. The Meridian study also finds that in a 34 year, least cost optimised, power system operation and expansion plan, **no new coal-fired power capacity is built after Kusile**. It states, *“new coal and nuclear plants are simply no longer competitive. When new capacity is required, demand is met at lowest cost primarily from new solar PV and wind”* (emphasis added).<sup>5</sup> In this instance, the CSIR modelling demonstrates that demand can be met at **least cost** without **any** new coal, including the preferred bidders under the Coal Baseload Independent Power Producer Procurement Programme, first bid window, Thabametsi and Khanyisa.

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<sup>3</sup> Page v at [http://meridianeconomics.co.za/wp-content/uploads/2017/11/Eskoms-financial-crisis-and-the-viability-of-coalfired-power-in-SA\\_ME\\_20171115.pdf](http://meridianeconomics.co.za/wp-content/uploads/2017/11/Eskoms-financial-crisis-and-the-viability-of-coalfired-power-in-SA_ME_20171115.pdf).

<sup>4</sup> Page v at [http://meridianeconomics.co.za/wp-content/uploads/2017/11/Eskoms-financial-crisis-and-the-viability-of-coalfired-power-in-SA\\_ME\\_20171115.pdf](http://meridianeconomics.co.za/wp-content/uploads/2017/11/Eskoms-financial-crisis-and-the-viability-of-coalfired-power-in-SA_ME_20171115.pdf).

<sup>5</sup> P3, Executive Summary, Meridian study.

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17. The Pathways therefore at least need to provide for a scenario in which no new coal-fired power capacity is built and the 2 remaining units of Kusile are not completed. In particular, “Pathway 2: Rapid decarbonisation in a manufacturing and local beneficiation economy” must provide for the abandoning of Kusile’s remaining 2 units and all proposed new coal plants.
18. We draw your attention to the staggering and irreversibly high climate impacts of the proposed Thabametsi power station, which will be based in the Limpopo province. We anticipate that Khanyisa will have similarly high impacts, although no climate change impact assessment has been conducted. This is because there is no way to substantially and materially reduce the GHG emissions of a coal plant, short of implementing carbon capture and storage – which is neither technologically nor financially feasible for South Africa. All coal-fired power stations, by virtue of the nature of their existence will have significant and irreversible climate change impacts (this is also stated in Thabametsi’s climate change impact assessment<sup>6</sup>).
19. We have notified the Department that our clients, groundWork and Earthlife Africa Johannesburg, will be challenging the Minister’s latest decision to uphold the environmental authorisation for the Thabametsi coal plant in the High Court. Khanyisa’s environmental authorisation is already being challenged on review in the High Court by virtue of the failure to adequately assess the climate change impacts of the proposed power station.<sup>7</sup> Our clients are also challenging, and intend to further challenge, the additional licences and permits required by both power stations such as the atmospheric emission licences; water use licences and licences to generate electricity from the National Energy Regulator of South Africa (NERSA). These projects are being met with considerable civil society opposition because - apart from the significant and irreversible climate, water, air and health impacts - as indicated above the CSIR and Meridian research shows that, in fact, we do not need any new coal capacity in South Africa. South Africa’s electricity needs can be met much more cheaply (and with less health and environmental impacts) by renewable energy - this is technologically and financially favourable, without even considering the high external health and environmental costs of mining and burning coal.
20. We therefore see no reason why the Pathways documents should consider any new coal capacity (including the remaining units of Kusile) in the modelled scenarios. The documents should also consider the expedited decommissioning of other Eskom coal-fired power stations, and of other very high emitters of GHGs, like Sasol.
21. We look forward to receiving your response to the queries in paragraphs 12 and 13 above.
22. Kindly also keep us updated on any developments in relation to the Pathways documents and other relevant projects, and please contact us, should you have any queries.

Yours faithfully

**CENTRE FOR ENVIRONMENTAL RIGHTS**

per: 

**Nicole Loser**  
**Attorney**

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<sup>6</sup> The summary report is available at <https://cer.org.za/wp-content/uploads/2016/07/Thabametsi-Final-Summary-Report-Jun17.pdf>.

<sup>7</sup> In March 2017, the North Gauteng High Court confirmed that a climate change impact assessment is a necessary component of an environmental impact assessment for a proposed coal plant. See the judgment at <https://cer.org.za/wp-content/uploads/2017/03/Judgment-Earthlife-Thabametsi-Final-06-03-2017.pdf>.