



Mr Patrick Malibe  
Municipal Manager  
Dr Pixley Ka Isaka Seme Local Municipality  
Corner Dr Nelson Mandela Drive and Adelaide Tambo Street  
Volksrust

By email: [faith@pixleykaseme.gov.za](mailto:faith@pixleykaseme.gov.za)

cc. Mr Skhumbuzo Makhubo  
Senior Town Planner  
Dr Pixley Ka Isaka Seme Local Municipality  
[skhumbuzom@pixleykaseme.gov.za](mailto:skhumbuzom@pixleykaseme.gov.za)

Mr Bandile Sithebe  
Town Planner  
Dr Pixley Ka Isaka Seme Local Municipality  
[bandilesthebe@gmail.com](mailto:bandilesthebe@gmail.com)

Mr Morgam Munsamy  
Atha-Africa Ventures (Pty) Ltd  
[morgam.munsamy@athagroup.in](mailto:morgam.munsamy@athagroup.in)

25 January 2017

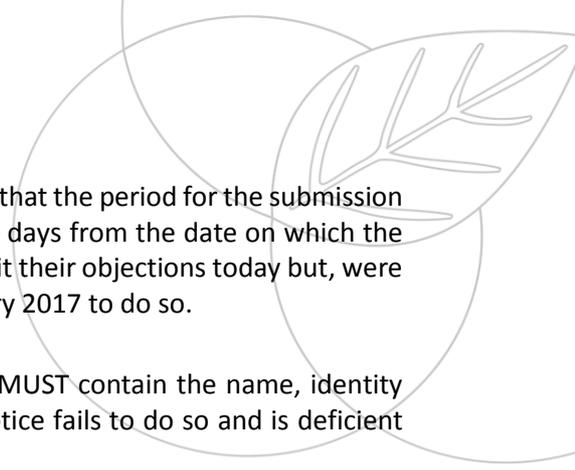
**URGENT**

Dear Mr Malibe

**APPLICATION FOR AMENDMENT OF THE RELEVANT TOWN-PLANNING SCHEME AND IN TERMS OF SECTION 66 OF AN APPLICABLE PIXLEY KA SEME MUNICIPAL PLANNING LAND USE BY-LAW AND IN TERMS OF THE SPATIAL PLANNING AND LAND USE MANAGEMENT ACT 16 OF 2013 (SPLUMA) FOR THE REZONING OF PORTION 1 OF THE FARM YZERMYN 96 HT**

1. We address you at the instance of EarthLife Africa Johannesburg, BirdLife South Africa, the Mining and Environmental Justice Community Network of South Africa, the Endangered Wildlife Trust, the Federation for a Sustainable Environment, the Bench Marks Foundation, the Association for Water and Rural Development (AWARD) and groundWork.
2. Reference is made to the attached Notice in the Volksrust Recorder dated 6 January 2017.
3. The Notice states that *"ANY PERSON, WHO WISHES TO OBJECT TO THE APPLICATION OR SUBMIT REPRESENTATIONS IN RESPECT THEREOF, MUST LODGE THE SAME IN WRITING TO THE ABOVE MENTIONED ADDRESS WITHIN THE PRESCRIBED [sic] NOTICE DATES"* and *"THE ADVERTISEMENT WILL BE THERE FOR A PERIOD OF 21 DAYS FROM 28th OF DECEMBER 2016 TO 25TH OF JANUARY 2017"*. These statements, and accordingly the Notice, are in conflict with section 100(h) of the Spatial Planning and Land Use Management (Splum) By-Law for: Chief Albert Luthuli, Dipaleseng, Dr Pixley Ka Isaka Seme,

2<sup>nd</sup> Floor, Springtime Studios,  
1 Scott Road, Observatory, 7925  
Cape Town, South Africa  
Tel 021 447 1647, Fax 086 730 9098  
Email [info@cer.org.za](mailto:info@cer.org.za), [www.cer.org.za](http://www.cer.org.za)

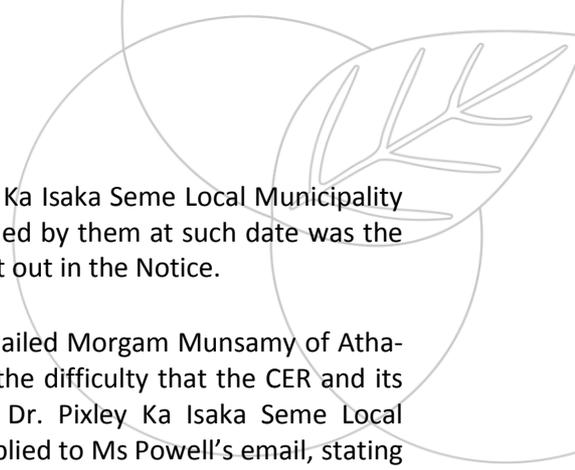


Lekwa, Mkhondo and Msukaligwa Local Municipalities<sup>1</sup> which provides that the period for the submission of comments or objections on an application must not be less than 30 days from the date on which the notice was given. Our clients are therefore not, in law, obliged to submit their objections today but, were the notice valid (which we dispute), would have at least until 7 February 2017 to do so.

4. The same Splum By-Law prescribes in section 100(a) that the Notice MUST contain the name, identity number, physical address and contact details of the applicant. The Notice fails to do so and is deficient and invalid for this reason.
5. In addition, Splum By-Law prescribes in section 100(e) that the Notice MUST state the contact details of the relevant municipal employee. The Notice fails to do so and is deficient and invalid for this reason.
6. In circumstances where the Notice is invalid, the application must be re-advertised and lie for a fresh and proper period for inspection. We specifically reserve our clients' rights in this regard.
7. Notwithstanding the non-compliance with the law above, we in any event hereby record our clients' strong objection to the scheme amendment and/rezoning application to which the Notice relates. Our clients reserve their rights to submit detailed objections in due course. They are not able to do so at this time, because access to the application has been refused, as set out below:-
  - a. As per the Notice, we communicated with the Office of the Municipal Manager (located at the above-mentioned address) for access to the rezoning application as well as the following documentation:
    - i. a properly dated zoning certificate for portion 1 of the farm Yzermyn 96 HT (for which we have already paid the required access fees); and
    - ii. the relevant town-planning scheme and the scheme regulations.
  - b. On Thursday, 12 January 2017, Mr Mauritz De Bruin, of the Endangered Wildlife Trust (EWT), attended at the Dr. Pixley Ka Isaka Seme Local Municipality library, town planning office and main municipal office and requested access to the application. Mr De Bruin was informed that the application was not available for inspection. Instead, the town planning office gave Mr De Bruin a contact telephone number for Uphondolwendlovu Town Planners (Pty) Ltd (Uphondolwendlovu).
  - c. Mr De Bruin telephoned Uphondolwendlovu and left a voice message requesting that they contact him. They did not do so.
  - d. Ms Catherine Horsfield, of the Centre for Environmental Rights (CER) also telephoned Uphondolwendlovu. The number rang but was cancelled without the option of voicemail.
  - e. On Friday, 13 January 2017, Mr De Bruin attended at the Dr. Pixley Ka Isaka Seme Local Municipality town planning office and requested access to the application. The officials at Municipality instead provided him with the Environmental Impact Assessment Report and Environmental Management Programme ("EIAR/EMPR") for a proposed coal mine on, *inter alia*, portion 1 of the farm Yzermyn 96 HT. The applicant for the EIA application was Atha-Africa Ventures (Pty) Ltd.
  - f. Mr Marthán Theart, of the CER, telephonically contacted Mr Bandile Sithebe, a Town Planner in the Dr. Pixley Ka Isaka Seme Local Municipality and requested a properly dated zoning certificate for portion 1 of the farm Yzermyn 96 HT (for which the CER had already paid the required access fees) and the relevant town-planning scheme and the scheme regulations. Mr Sithebe agreed to upload the documents to Dropbox and provide a link to Mr Theart. To date he has not done so.

---

<sup>1</sup> Proclamation No. 8 of 22 April 2016 of the Mpumalanga Provincial Gazette No. 2683

- 
- g. On Monday, 16 January 2017, Mr De Bruin emailed the Dr. Pixley Ka Isaka Seme Local Municipality town planning office and recorded that the only document provided by them at such date was the EIAR/EMPR. He reiterated the request for the full application as set out in the Notice.
- h. On Tuesday, 17 January 2017, Ms Suzanne Powell, of the CER, emailed Morgam Munsamy of Atha-Africa Ventures (Atha), requesting the application and conveyed the difficulty that the CER and its agents had experienced in obtaining the application from the Dr. Pixley Ka Isaka Seme Local Municipality. On Thursday, 19 January 2017 Morgam Munsamy replied to Ms Powell's email, stating that the CER's information was incorrect and that the application could be viewed at the municipality. He did not supply a copy of the application.
- i. Mr Theart telephonically contacted Mr Sithebe and requested that he meet with Mr Nonkazimlo Mafa of EWT, at the Dr. Pixley Ka Isaka Seme Local Municipality town planning office to provide to him the following documents:
- i. the full application;
  - ii. the Spatial Development Framework for the Dr Pixley Ka Isaka Seme Local Municipality (SDF);
  - iii. the town-planning (or land use) scheme for the Wakkerstroom area and the applicable scheme regulations; and
  - iv. a properly dated zoning certificate for portion 1 of the farm Yzermyn 96 HT.
- Mr Sithebe agreed to meet with Mr Mafa and it was agreed that Messrs De Bruin and/or Mafa would contact Mr Sithebe to arrange a suitable meeting time.
- j. From Tuesday, 17 January 2017 to Thursday, 19 January 2017, the EWT telephoned Mr Sithebe on multiple occasions. None of the calls were answered.
- k. On Friday, 20 January 2017, Mr Theart telephonically contacted and emailed Mr Skhumbuzo Makhubo, Senior Town Planner, Dr. Pixley Ka Isaka Seme Local Municipality, and requested the following documents:
- i. the full rezoning application;
  - ii. the SDF;
  - iii. the town-planning (or land use) scheme and regulations; and
  - iv. a properly dated zoning certificate for portion 1 of the farm Yzermyn 96 HT.
- Mr Makhubo telephonically agreed to provide the documents. To date he has not done so.
- l. In the meantime, Mr Mafa attended at the Dr. Pixley Ka Isaka Seme Local Municipality town planning office and obtained a draft Spatial Development Framework (dated 30 November 2010) and various zoning and other maps for the Dr. Pixley Ka Isaka Seme Local Municipality.
- m. On Tuesday, 24 January 2017, correspondent attorneys instructed by the CER (Gerhard Botha, Frans Rabie Attorneys) attended at the address stated in the Notice for Uphondolwendlovu (1746 Station Street, Balfour, Mpumalanga); however, after a thorough search, found that the address does not exist. They further attended at the Dipaleseng Municipality town planning office and were informed by a Mr Jonas Nkhuta that the office of Uphondolwendlovu is no longer situated in Balfour and were given a contact number for Uphondolwendlovu.
- n. Ms Thobeka Gumede, of the CER, called the telephone number that was given and spoke to a Mr Sibonelo Kubheka from Uphondolwendlovu. Ms Gumede requested that Uphondolwendlovu email the application to the CER and explained the difficulty that the CER and their agents had experienced in obtaining the application from the Dr. Pixley Ka Isaka Seme Local Municipality. Mr Kubheka requested that the CER send their request by email to [uphondolwendlovutownplanners@gmail.com](mailto:uphondolwendlovutownplanners@gmail.com) which Ms Horsfield duly did. Mr Kubheka replied to Ms Horsfield's email, refusing to provide the application to the CER and requesting the CER to consult the Municipality.

- 
8. **Our clients hereby object** to the application for the Amendment of the relevant Town-Planning Scheme in terms of section 66 of Dr Pixley Ka Seme Municipal Planning Land Use By-Law and in terms of the Spatial Planning And Land Use Management Act 16 Of 2013, from agriculture to mining for the purpose of coal mining.
9. Failing to provide us with a copy of the application has made it impossible for our clients to fully and properly answer the proposed scheme amendment and/or rezoning application and to submit detailed objections in the time specified in the Notice. This is a contravention of their rights in terms the Promotion of Administrative Justice Act, 2000 and the Constitution of the Republic of South Africa, 1996.
10. We are accordingly instructed to demand, as we hereby do, that the following documentation be provided to us by email to [chorsfield@cer.org.za](mailto:chorsfield@cer.org.za) and [spowell@cer.org.za](mailto:spowell@cer.org.za) **before close of business on Friday, 27 January 2017:**
- i. the full rezoning application and/or scheme amendment application;
  - ii. the Spatial Development Framework for the Dr Pixley Ka Isaka Seme Local Municipality (SDF);
  - iii. the town-planning (or land use) scheme for the Wakkerstroom area and the applicable scheme regulations; and
  - iv. a properly dated zoning certificate for portion 1 of the farm Yzermyn 96 HT.
11. We record that the obstruction, delay and refusal to make the rezoning and/or scheme amendment application and ancillary documentation available to us and our clients is a violation of our clients' rights. Access to all of the information sought is demanded, as well as a reasonable period, of not less than 30 days from the date when access is given, to lodge an objection.
12. Should you fail to make the rezoning and/or scheme amendment application and ancillary documentation available, our clients will be compelled to seek, *inter alia*, a *mandamus* from the High Court to direct you to do so. Be advised that in any such litigation we are instructed to seek a punitive costs order against the Dr Pixley Ka Isaka Seme Local Municipality as well as Mr Makhubo and Mr Sithebe *de bonis propriis*.
13. We reserve our clients' rights both in respect of the defective notice and to object to the rezoning and/or scheme amendment application.

Yours sincerely

**CENTRE FOR ENVIRONMENTAL RIGHTS**

per:

**Attorney**

**Programme Head: Mining**

Direct email: [chorsfield@cer.org.za](mailto:chorsfield@cer.org.za)