



"The Voice Community Representative Council"

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Date: 06 March. 2018

TO:

MEC for Agriculture, Rural Development, Land and Environmental Affairs: Mr VusiShongwe
Mpumalanga Provincial Government
No. 7 Government Boulevard
Building No. 6, 1 & 2nd Floor
Riverside Park
Extension 2
Nelspruit
1200

BY HAND

Dear Honorable MEC,

RE: MOTIVATION AND PETITION TO REMOVE CERTAIN FARMS FROM THE MABOLA PROTECTED ENVIRONMENT BY INVOKING SEC 29(B) OF THE NATIONAL ENVIRONMENT MANAGEMENT: PROTECTED AREAS ACT OF 2003

1. "The Voice Community Representative Council" is a Non-Profit Organisation based out of Volksrust and represents the majority of the Communities in the Dr. Pixley Ka IsakaSeme Municipality.
2. **HISTORICAL FACTS ABOUT THE DECLARATION OF MABOLA PROTECTED ENVIRONMENT**

We, the community of DrPixleyKalsakaSeme Local Municipality, as far back as in January 2014, voiced our objection, as a directly affected party, against the declaration of the Mabola Protected Environment. Our interpretation of the facts relating to the declaration is as follows:

- 2.1. On 10 May 2013, after the Atha-Africa Ventures' mining right application had already been accepted by the Department of Mineral Resources, the MEC of the Mpumalanga Department of Economic Development, Environment and Tourism (MDEDET) published a notice of intention to declare three protected areas, including the Mabola Protected Environment, which then comprised some 22 immovable properties, in the Mpumalanga Provincial Gazette.
- 2.2. As indicated in the notice of intention, the Mabola Protected Environment initially included all five of the immovable properties that form part of the Yzermyn underground coal mine. Importantly, in terms of the initial proposal, Portion 1 of the farm Yzermyn 96 HT would be included in the declaration of the Mabola Protected Environment.
- 2.3. The MEC's attention was drawn to certain site-specific features and characteristics of the proposed Yzermyn underground coal mine, including several social, economic and environmental aspects (in line with sustainable development and South African environmental legislation).
- 2.4. We, representing the community members, vehemently objected to this declaration as we feared that it would exclude all development needed to uplift us from impoverishment.
- 2.5. In summary, at a public participation meeting held in Volksrust in July 2013, more than 5,000 members of our affected community motivated that the proposed mining area would not affect the area's biological diversity and natural characteristics, as well as the scientific, cultural, historic, archaeological, geologic, scenic and landscape value, as well as the provision of environmental goods and services.
- 2.6. On 9 August 2013, the MEC published a second notice of intention to declare the three protected areas, presumably to rectify the procedural and/or legal flaws in the objection letter of 4 July 2013.
- 2.7. On 16 August 2013, the community learned that Atha-Africa Ventures would enter into a negotiated settlement with the Mpumalanga Tourism and Parks Agency, the WWF, BirdLife South Africa and other NGOs to ensure co-existence of mining and the establishment of a protected area.
- 2.8. Nevertheless, the community sent 55 letters of objection to the MEC:MDEDET, supported by over 9,000 signatures, objecting to the declaration of the Mabola Protected Environment.
- 2.9. In the meantime, the community was informed by the Mpumalanga Tourism and Parks Agency and its partners that, in a meeting on 10 September 2013, it was agreed in principle that Atha-Africa Ventures and the community would withdraw their objections to the proposed declaration of the Mabola Protected Environment on condition that the declaration would not negatively impact the mining right application for the proposed Yzermyn underground coal mine.

- 2.10. The community was also informed that drafts of the proposed co-operation agreement were being exchanged between the mining company and the environmental NGOs as well as the Mpumalanga Tourism and Parks Agency.
- 2.11. The mining company informed us, the community, that a resolution had been reached, at the meeting of 10 September 2013, for mining and environmental protection to co-exist.
- 2.12. The community welcomed the proposed co-operation agreement as a solution that would enable the withdrawal of the community's objections to the proposed declaration of the Mabola Protected Environment.
- 2.13. It is understood that the negotiations stalled when the Mpumalanga Tourism and Parks Agency and the environmental NGOs were unwilling to concede to the exclusion of all five of the immovable properties falling within the mining area of the proposed Yzermyn underground coal mine. The MTPA wanted the actual impact area of some 100ha to be clearly defined in the agreement, and questioned the mining company's concerns about additional environmental restrictions that would apply when the proposed Mabola Protected Environment had been declared.
- 2.14. It is important to note that all mining activities in respect of the four immovable properties, falling within the declared Mabola Protected Environment, will take place underground while the actual impact area, where all the surface infrastructure will be located, will cover some 22.4ha on Portion 1 of the farm Yzermyn 96 HT, which was ultimately excluded from the protected environment.
- 2.15. Negotiations regarding the immovable properties to be excluded from the proposed Mabola Protected Environment continued by way of e-mails. The community learned that the mining company had received an e-mail from Mr. Brian Morris, of the Mpumalanga Tourism and Parks Agency, on 5 November 2013, with reference to a discussion with the WWF, BirdLife South Africa and the Endangered Wildlife Trust, stating:
- 2.15.1. *"The partners and ourselves are also not clear why all five should be excluded, since the EMP and mine plan is clear about the footprint area (100ha) and therefore the potential conflict as well as the more onerous EIA provisions should not be an issue as all activities above ground would be limited to the defined impact area. We are also of the opinion that we are prepared to make a massive concession in negotiating an agreement to allow mining in such a critical biodiversity and water producing area. Mining within such a sensitive area does come with inherent risks and liabilities and we can agree to negotiate on the basis that the liabilities could include possible additional restrictions and limitations with regard to mining, only then can the two – mining and biodiversity – co-exist".*
- 2.16. The stance of this e-mail is in stark contrast to the position adopted by the NGOs, particularly with regard to the alleged unacceptable pollution, ecological degradation or damage to the environment due to mining activities, and the impossibility of mitigation and remediation of such degradation or damage.

- 2.17. The negotiations were thus stalled by the NGOs and the community was informed that the MEC had constituted an appeal panel to consider all objections and representations with regard to the declaration of the proposed Mabola Protected Environment. The community was invited to make an oral representation of its objections and did so on 28 November 2013.
- 2.18. The outcome of the appeal hearing is recorded in a letter of 24 December 2013 (Marked herein as Annexure – 1). Details of this letter from the MEC:MDEDET include the following:
- 2.18.1. On page 3, it is recorded that the Mpumalanga Tourism and Parks Agency, established by MDEDET, is responsible for environmental affairs as its implementing agent. Brian Morris and the Mpumalanga Tourism and Parks Agency therefore speak on behalf of the provincial government.
- 2.18.2. On page 6, it is recorded that:
- 2.18.2.1. a. the MEC:MDEDET acknowledged the receipt of 55 letters of objection, supported by 9,000 signatures, petitioning against the declaration; and
- 2.18.2.2. b. the greater community feared the declaration as *“having the potential of ensuring that the current negative socio-economic problems within the community prevail in that, among other things, poverty will worsen, jobs will not be created... and infrastructure will remain a dream”*.
- 2.18.3. On page 8-9, the MEC:MDEDET draws the community's attention to Section 48 of the National Environmental Management: Protected Areas Act (NEM:PAA), which *“provides that mining activities may continue to take place, however only with the permission of the Minister who shall in turn provide conditions under which such mining may take place. This will ensure that there is harmony between development and environmental protection... which the community clearly comprehends”*.
- 2.18.4. It is abundantly clear that the MEC's decision was based on the concept of sustainable development as contained in the law (with its three social, economic and environmental pillars to achieve balance) within the context of the system of anthropogenic environmental management in terms of the National Environmental Management Act.
- 2.18.5. Furthermore on page 9, the MEC states, in response to the community's submission that the proposed declaration of a protected environment would conflict with mining operations, *“The whole purpose of the Declaration of the WBS as a protected environment is not to prohibit mining but to give WBS a protected environment status in order to better regulate environmentally deleterious activities... in terms of the existing law, NEM:PAA and its specific Section 48 (2), mining and prospecting activities in the MPE will therefore not be prohibited, but may only be permitted with the Minister's consent... having also taken into consideration peculiar facts relating to portions which are subject of the intended declaration and in particular of the proposed Yzermyn mine and in particular Yzermyn 96 HT portion 1 and comprising 193.83*

hectares of the affected areas... I am willing to exclude the latter mentioned property as the intended above ground infrastructure of the mine, should the mining permit be granted and all other authorisations and permission granted, will be located on this property”.

- 2.19. Despite MDEDET’s stance, the NGOs adopted the position that the declaration of the Mabola Protected Environment was in itself sufficient to show that any mining activities (even underground) would result in unacceptable pollution, ecological degradation or damage to the environment and/or the impossibility of mitigation and remediation of such degradation or damage. All of the measures that have been put in place to ensure that these mining activities will take place in an environmentally sustainable manner and/or will be a form of sustainable development have been ignored in the NGOs’ attack on the mine.
- 2.20. On 22 January 2014, the Mabola Protected Environment was declared in terms of Section 28(1)(a)(i) and (b) of NEM:PAA, as published in Provincial Notice 20 of 2014, Mpumalanga Provincial Gazette Extraordinary No 2251 (Marked herein as Annexure – 2). The declared purpose for this declaration is stated as follows:
- 2.20.1. to enable the owners of the land to take collective action to conserve biodiversity and to seek legal recognition;
 - 2.20.2. to protect the area if biological diversity, natural characteristics, scenic and landscape value, and the provision of environmental goods and services are sensitive;
 - 2.20.3. to protect a specific ecosystem; and
 - 2.20.4. to ensure that the use of natural resources is sustainable.
- 2.21. The community draws attention to the abovementioned points because the NGOs have claimed that the declaration was intended specifically to protect the environment and “irreplaceable biodiversity” against coal mining activities, and because the area is the source of “three important rivers”. This is not stated in the abovementioned Provincial Notice 20 of 2014 and is contradicted by the history of interaction between the MEC and the community concerning this matter.
- 2.22. The entire Mabola Protected Environment includes 21 farms covering a total area of approximately 8,578.929 hectares. Only four of the mining properties are included in the Mabola Protected Environment, namely Portion 1 and the remaining extent of the farm Kromhoek 93 HT, the farm Goedgevonden 95 HT, and the remaining extent of the farm Yzermyn 96 HT.
- 2.23. It needs to be emphasized that underground mining will only be conducted on the abovementioned four farms and that there will be no surface infrastructure on any of these four immovable properties. Surface infrastructure for the Yzermyn underground coal mine will be on Portion 1 of the farm Yzermyn 96 HT, which has been excluded from the protected environment by the MEC to accommodate the mining operations planned by Atha-Africa Ventures.

- 2.24. The community feels deceived by the environmental NGOs who appear to be advancing their own agendas and have consistently misinformed us during and after the declaration process. The environmental NGOs would serve the environment and the nation better by ensuring that development projects achieve socio-economic transformation with respect to the environment, as authorised.

3. ALMOST 5 YEARS OF DEVELOPMENTAL FREEZE

- 3.1. Since January 2014 when the Mabola Protected Environment was gazetted, there has been a developmental freeze in the community. The benefits which would have accrued from the development of the mine to the community have remained frozen. The most devastating impacts of the declaration to the local community have been:

3.1.1. No new jobs have been created;

3.1.2. No activities prescribed in the Social and Labour Plan of the proposed mine has happened;

3.1.3. No skills development in the community could take place;

3.1.4. No creation of black owned SMME's and other businesses happened;

3.1.5. No LED projects were funded by the mine as the mine development has been blocked by NGO's using Mabola Protected Environment as a pretext.

- 3.2. Consequentially, it is easy to gauge the very negative impact on the community as a result of the unreasonable blocking of mining activities due to the protected status given on certain farms.

4. INTEGRATED DEVELOPMENT PLANS (IDP) FROM TWO CONSECUTIVE YEARS FOR THE DR PIXLEY KA ISAKA SEME MUNICIPALITY

- 4.1. For the benefit of the Honourable MEC, the issue that needs priority attention is best summarised in these two quotes from the Integrated Development Plans (IDP) from two consecutive years for the Dr PixleykalsakaSeme Municipality:

4.1.1. In the IDP of Dr PixleykalsakaSeme Municipality 2012-2016 it states:

4.1.1.1. "There has been evidence that the municipality's jurisdiction is underlain by coal, which could be a solution to the growing poverty and as such should it be explored."

4.1.2. In the IDP of Dr PixleykalsakaSeme Municipality 2013-2014:

4.1.2.1. "Dr Pixley ka Isaka Seme is home to some of the country's richest wetlands, it also has a huge unique environment that is not only sensitive but a unique

Biodiversity. The challenge is maintaining a balance between the economic needs and environmental protection and conservation. The municipality's lakes and streams form tributaries that feed water to Vaal River system that sustain and supply the country's economic hub with water (i.e. Gauteng)."

- 4.2. It is in order to maintain this delicate balance between the environment and socio-economic co-existence, that we urge the Honourable MEC to de-proclaim certain farms from the MPE to allow for developmental aspirations of the people of this community.

5. MABOLA PROTECTED ENVIRONMENT LANDOWNERS ASSOCIATION

- 5.1. We would like to draw the attention of the Honourable MEC to the Mabola Protected Environment Landowners Association (MPELA) which was assigned to be the Management Authority of the MPE in terms of section 38 (2) (b) of the NEM:PAA as per the gazette notification no. 2251 dated 22 January 2014, notice 20 of 2014.
- 5.2. Section 39(2) of the Protected Areas Act, Act 57 of 2003, provides that in the preparation of a management plan (i.e. for a Protected Environment), the management authority assigned (i.e. the Mabola Protected Environment – Landowners Association (MPE-LA), must within 12 months of the assignment, submit a management plan for the protected area to the MEC for approval.
- 5.3. Furthermore, section 39(3) provides that when preparing a management plan for a protected area, the management authority concerned *MUST consult municipalities, other organs of state, local communities and other affected parties which have an interest in the area.*
- 5.4. Furthermore, section 39(4) provides that a management plan *MUST* take into account any applicable aspects of the integrated development plan of the municipality in which the protected area is situated (i.e. if a municipality's IDP / LED Programmes provide for the inclusion of Social and Labour Plan contributions from a mining activities in the area, that should have been considered by the MTPA during an open and transparent consultation process).
- 5.5. Furthermore, section 40(1) of the PAA provides for the management criteria when preparing a management plan. This criteria includes that the management plan must take into account all relevant acts, including the National Environmental Management Act and any other applicable national legislation such as the MPRDA.
- 5.6. It is noted that the MTPA failed to submit a management plan to the MEC for approval, within the stipulated 12 month period since the declaration of the Mabola Protected Environment, clearly showing that the management plan is being developed outside of the legislated time frames.

5.7. Till date the Draft Management Plant prepared by MPELA has not been tested by a wide Public Participation and therefore has not been approved even after more than 4 years of the declaration of MPE.

5.8. The only time a public participation was called for on 19 February 2015, the minutes of the meeting for the same reflect the sentiments of the MPELA (Marked herein as Annexure – 3). The Item 6 (e) from the Minutes is quoted below:

5.8.1. 6. (e) Oubaas Malan (OM) advised that nothing accrues to the farmers from government, the Mabola Protected Environment Landowners Association want to preserve the land and water for their children and grandchildren.

5.9. That particular admission by the Chairperson of the MPELA, in our opinion, represents the entire selfish purpose of the motivation to declare MPE by the entrenched minority farmers at the expense of the overwhelming majority of the impoverished community.

6. MPELA'S CHAIRPERSON'S OWN COAL MINE WITHIN MPE

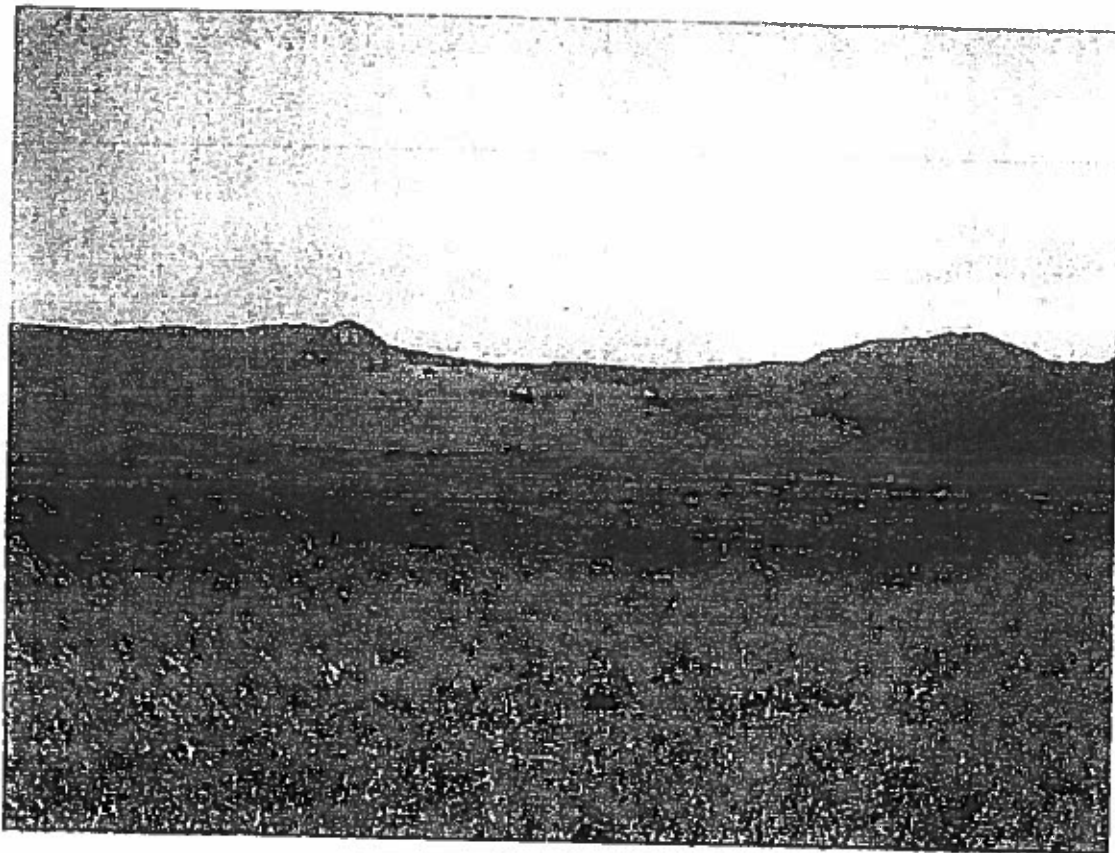
6.1. It is an ironical fact that the Chairperson of the MPELA, Mr. Oubaas Malan, is the owner of the Farms Loskop 105 HT (Portion 4 and the RE) which is included in the MPE. These same farms have an operating coal mine which has been under production since much before the MPE as well as after MPE.

6.2. Why would an existing coal mine farm be included in a Protected Environment? The mere inclusion suggests not everything was scientifically assessed during the declaration process.

6.3. The same MPELA Chairperson benefits from the proceeds of the Loskop mine but has failed to either provide benefits to the community at large through the implementation of the Social and Labour Plans, or any other LED initiatives. The Loskop mine has benefited and continues to benefit only the Chairperson of MPELA.

7. FLOUTING OF CONSERVATION AIMS OF MPE BY FARMERS

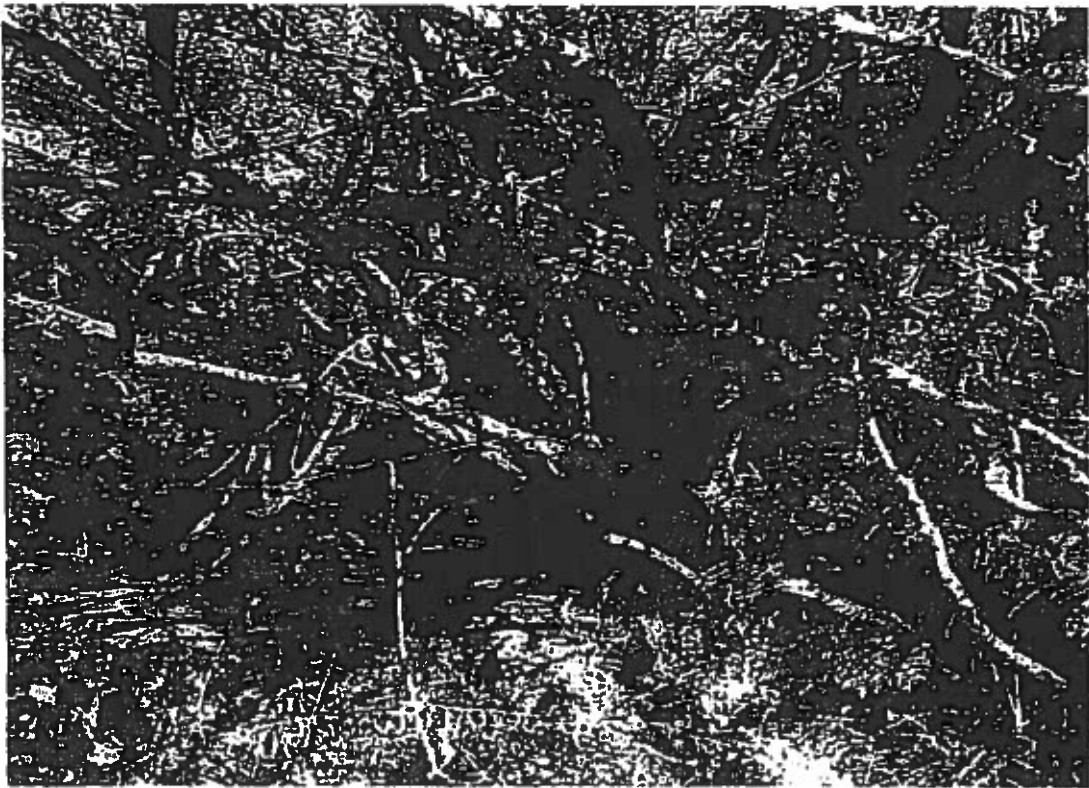
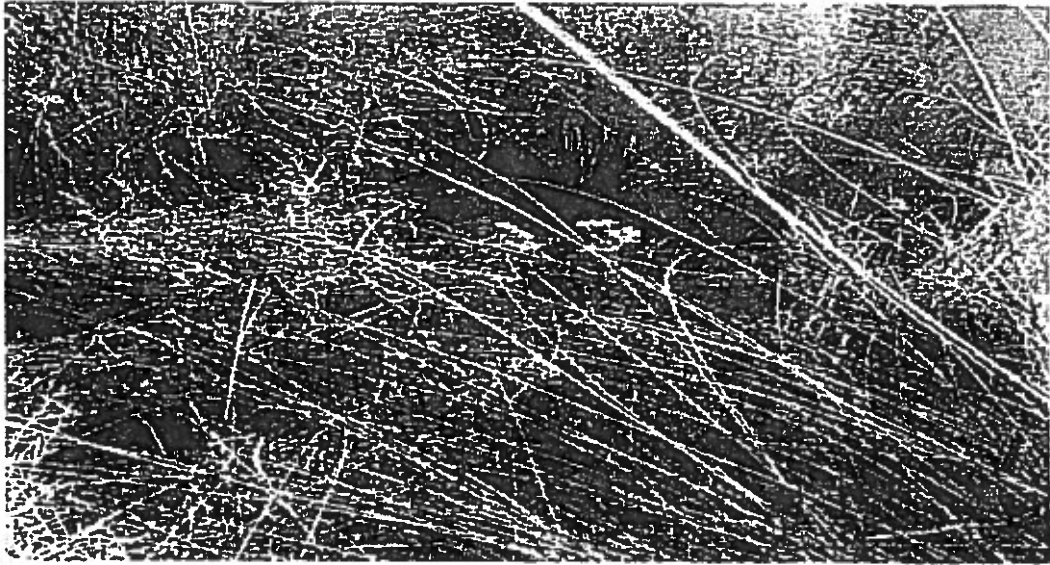
7.1. In our respectful opinion, the farmers procured the MPE declaration for the sole benefit to keep their farms secure for their future generations by freezing these farms in order to ensure that no development takes place and / or that no future land claims can be lodged. They have however been flouting the very purpose of the protected status given to these farms by continuing to indulge in unbridled grazing and uncontrolled burning.

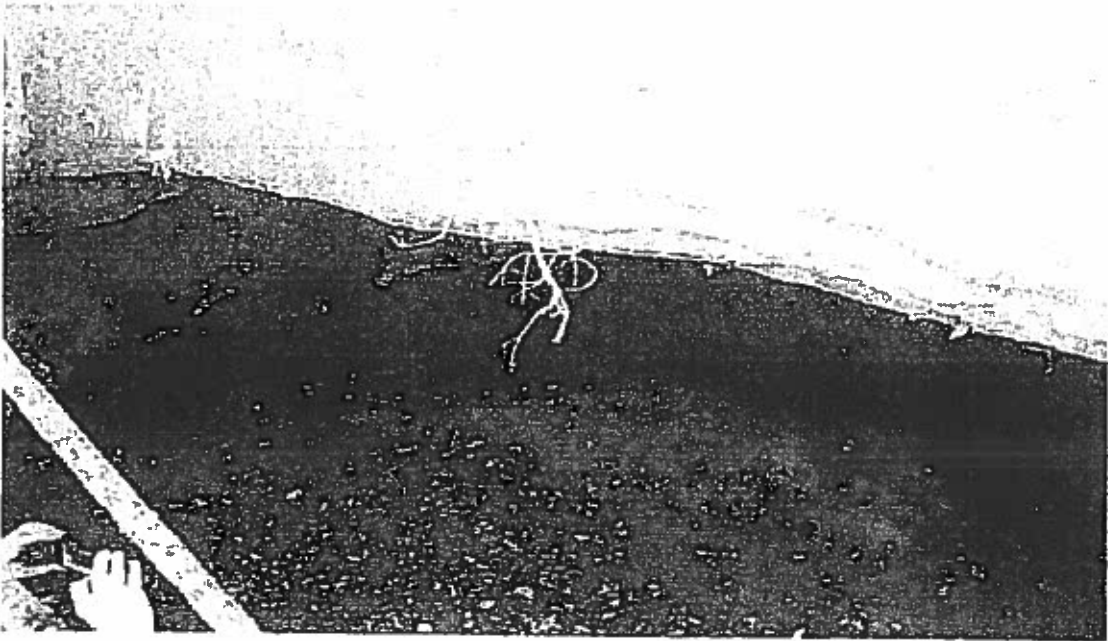


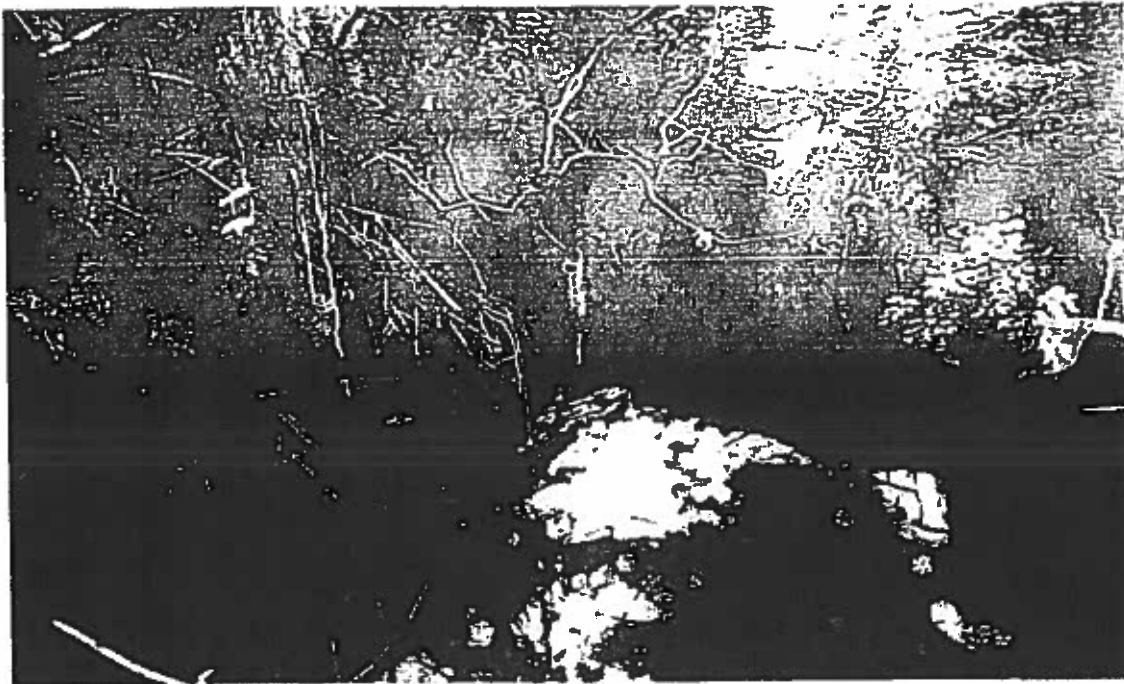
- 7.2. The above picture was taken on site on 24 October 2017 on the Farm Goedgevonden 95 HT which forms part of the Mabola Protected Environment.
- 7.3. The picture shows unmitigated and unscientific burning of the grassland by the farm owner which in terms of the NEM:PAA and its conservation aims, is antithetical.
- 7.4. This is just one such instance of the various transgressions by the farm owners when it comes to burning of grass without permission in the Mabola Protected Environment.

8. PROOF OF MANY HISTORICAL MINING ADITS IN MPE

- 8.1. The photos below, were taken in Farm Kroemhok in MPE on 27 July 2017 by a team of specialists who identified 16 historical coal mining adits in that farm alone.







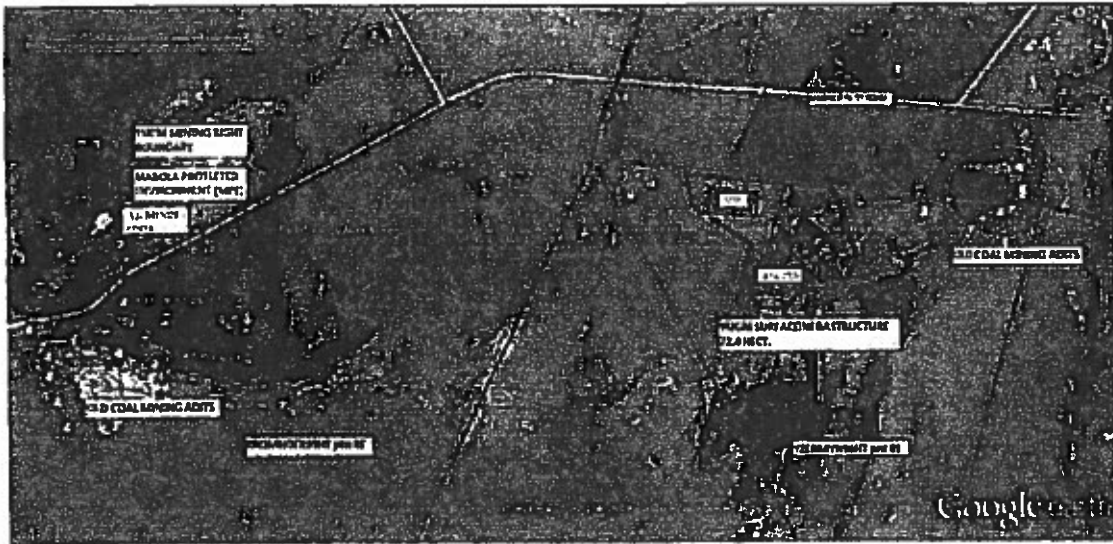
9.2 The photos below, were taken in Farm Kroemhok in MPE on 27 July 2017 by a team of specialists who identified 16 historical coal mining adits in that farm alone. Later on, a registered land surveyor, visited the site plotting the coordinates of each such adits within the Mabola Protected Environment.

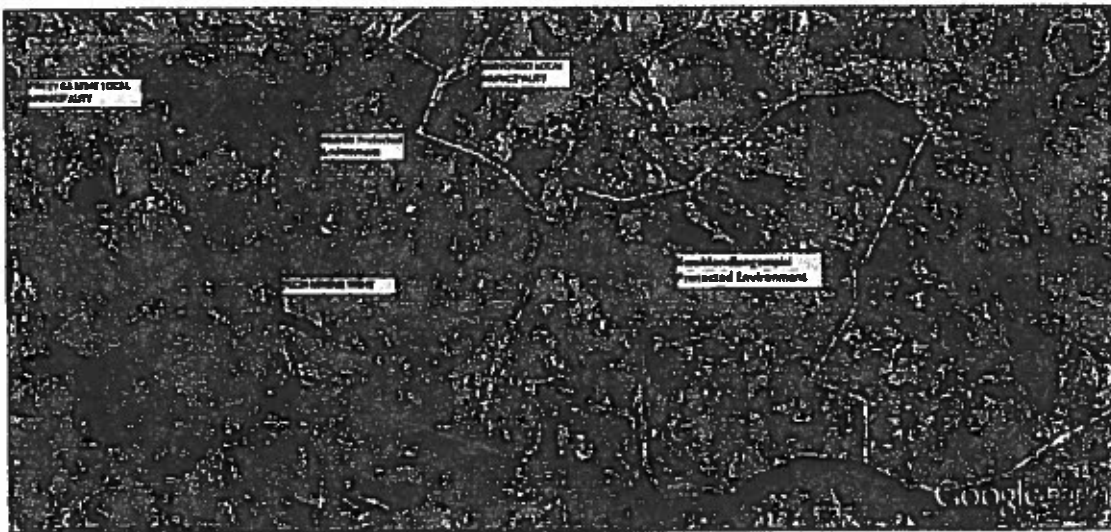
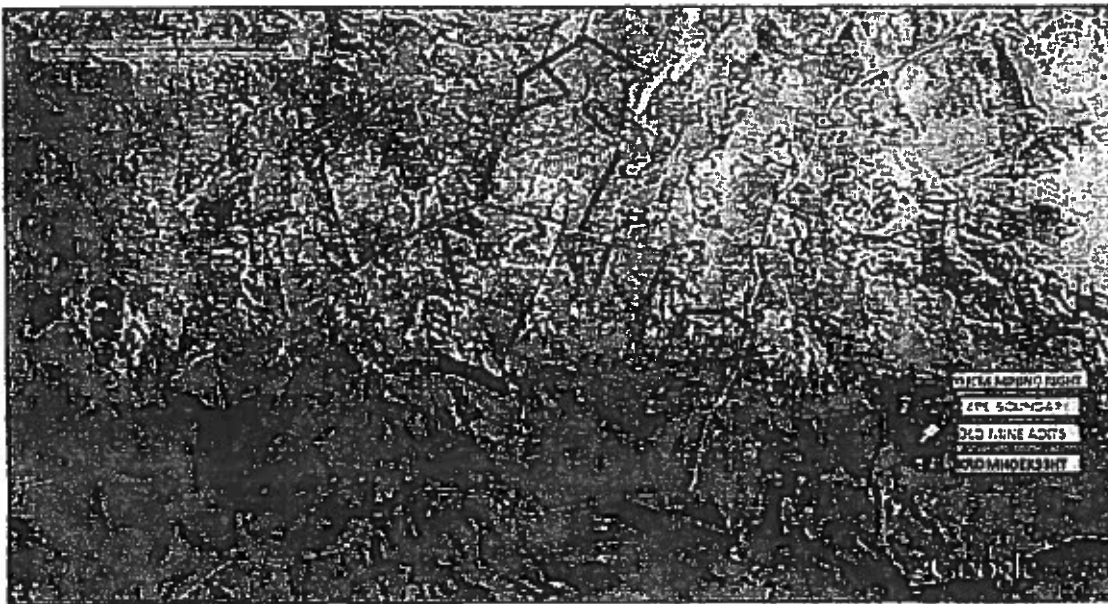
9.3 The list of adits and their coordinates are as under:

9.3.1	ADIT1	67097.844	3011597.898	1440.073	PTN;
9.3.2	ADIT2	67087.692	3011605.107	1439.317	PTN;
9.3.3	ADIT3	67081.387	3011686.199	1435.779	PTN;
9.3.4	ADIT4	67084.927	3011696.209	1434.946	PTN;
9.3.5	ADIT5	67080.123	3011716.806	1433.927	PTN;
9.3.6	ADIT6	67171.216	3011788.134	1434.130	PTN;
9.3.7	ADIT7	67241.626	3011809.002	1435.946	PTN;
9.3.8	ADIT9	70881.082	3012669.187	1557.034	PTN;
9.3.9	ADIT8	70920.869	3012570.754	1561.677	PTN;
9.3.10	ADIT10	70950.913	3012474.575	1564.982	PTN;
9.3.11	ADIT11	70956.499	3012399.898	1567.428	PTN;
9.3.12	ADIT12	70862.987	3012328.67	1565.658	PTN;

9.3.13	ADIT13	70694.978	3012381.094	1561.820	PTN;
9.3.14	ADIT15	70549.117	3012427.849	1555.697	PTN;
9.3.15	ADIT16	70499.028	3012447.205	1561.033	PTN;
9.3.16	ADIT14	70681.977	3012387.82	1562.644	PTN; and
9.3.17	VBANK	66646.52	3008364.36	1484.700	BCN

9.4 The various adit locations enumerated above were plotted on Google Earth and are shown as under:





9.5 IT IS HIGHLY LIKELY THAT THESE MINES BENEFITTED THE FARMERS AND THAT NO CLOSURE CERTIFICATE HAS BEEN OBTAINED BY THE DEPARTMENT OF MINERAL RESOURCES.

9.6 If no closure certificate was obtained, then these mines are technically still in operation and therefore these farms are not fit to be included in MPE.

9.7 We also attach a report dated February 2018 by Piet Smit on the same subject matter which scientifically assesses the historical mining activity in MPE and around MPE. (The same is marked as Annexure – 4.)

10 COMMUNITY NEEDS AND CONSERVATION

- 10.2 Honourable MEC, you are aware of the extreme poverty, lack of jobs and business opportunities in our community. The Community had in 2013 objected to the intent to declare MPE as it understood that this declaration was not meant to foster conservation, but to keep the farms frozen for the benefit of farm owners.
- 10.3 We have demonstrated through this motivation and petition that the farms which were included in MPE were first of all not a fit candidate for conservation, and secondly the surreptitious aim of inclusion of these farms under MPE was to freeze development especially mining development, and consequently socio-economic upliftment in a very poor community.
- 10.4 The community is in dire need of economic development which would provide them much needed jobs and help stimulate local economy by creation of SMME's and other businesses. The MPE in its more than 4 years existence has not created a single job for the community. On the contrary, the various NGO's who have used MPE as an excuse to delay the proposed mining and other activities have prevented the creation of 500 jobs which, if mining had happened, would already be created.

11 CONCLUSION

- 11.2 In view of the above highlighted facts, we strongly urge that the four farms included in the Yzermyn Mining Rights be undeclared and protected status removed from these farms by invoking section 29 of NEM:PAA of 2003. The farms to be considered for removal from the MPE are:
- 11.2.1 Portion 1 of the Farm Kromhoek 93 HT (204.31 Ha);
- 11.2.2 Remainder of the Farm Kromhoek 93 HT (980.43 Ha);
- 11.2.3 The Farm Goedgevonden 95 HT (739.45 Ha); and
- 11.2.4 Remainder of the Farm Yzermyn 96 HT (826.16 Ha).
- 11.3 We annex herewith a further petition signed by more than 8500 community members urging the same relief as sought by us in this letter.
- 11.4 We therefore humbly but ever hopeful request you to, at the earliest instance, initiate and oversee the process as provided for under section 29 of NEM:PAA..

We thank you in sincere anticipation.

Yours sincerely



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