



# Centre for Environmental Rights

## Advancing Environmental Rights in South Africa

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11 December 2018

Dear Honourable Shongwe

### **PROVINCIAL NOTICE NO. 127 IN PROVINCIAL GAZETTE NO. 2975 DATED 12 OCTOBER 2018: OBJECTION BY COALITION OF EIGHT CIVIL SOCIETY ORGANISATIONS AGAINST EXCLUSION OF PROPERTIES FROM THE EXISTING MABOLA PROTECTED ENVIRONMENT**

1. This is an objection in terms of section 33(2)(a) of the National Environmental Management: Protected Areas Act 57 of 2003 ('Protected Areas Act') by a coalition of eight non-profit civil society organisations ('the Coalition') against the Honourable MEC for Agriculture, Rural Development, Land and Environmental Affairs' proposed exclusion of the properties Portion 1 of Kromhoek 93HT, Remainder of Kromhoek 93HT, Goedgevonden 95HT and Remainder of Yzermyn 96HT ('the Proposed Exclusion' and 'the Properties Proposed to be Excluded') from the Mabola Protected Environment ('MPE').<sup>1</sup> The Honourable MEC's Notice of Intention to exclude the Properties was published in Provincial Notice no. 127 in Provincial Gazette no. 2975 dated 12 October 2018 ('the Exclusion Notice').
2. The Coalition comprises the Mining and Environmental Justice Community Network of South Africa, groundWork, Earthlife Africa Johannesburg, the Association for Water and Rural Development (AWARD), the

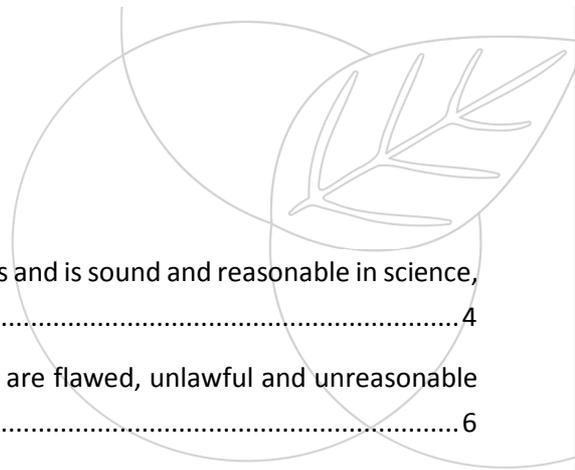
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<sup>1</sup> An instructive figure of the MPE which labels, amongst others, the Properties Proposed to be Excluded is annexed marked 'A'.

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Bench Marks Foundation, the Endangered Wildlife Trust, the Federation for a Sustainable Environment and Birdlife South Africa, and is represented herein by the Centre for Environmental Rights NPC.

3. The MPE was declared on 22 January 2014 by the then Mpumalanga MEC for Economic Development, Environment and Tourism, Ms YN Phosa, in Provincial Notice no. 20 in Provincial Gazette no. 2251 in terms of the Protected Areas Act. In that Notice, the Honourable MEC Phosa provided that the purpose of the declaration of the MPE was to:
  - 3.1. *'enable the owners of the land to take collective action to conserve biodiversity on their land and to seek legal recognition therefor'* (section 28(2)(b) of the Protected Areas Act);
  - 3.2. *'protect the area if the area is sensitive to development due to its biological diversity, natural characteristics, scenic and landscape value, and the provision of environmental goods and services'* (section 28(2)(c)(i), (ii), (iv) and (v));
  - 3.3. *'protect a specific ecosystem'* (section 28(2)(d)); and
  - 3.4. *'ensure that the use of natural resources in the area is sustainable'* (section 28(2)(e)).
4. In the Exclusion Notice, Honourable MEC Shongwe's stated purpose of the Proposed Exclusion is:
  1. *To ensure balance towards use of natural resources for socio-economic benefits of all the citizens / community of Pixley Ka Seme Local Municipality and the country, while promoting environmental protection and sustainability;*
  2. *To ensure/ promote economic growth of the country and the community of the area;*
  3. *To promote co-existence of mining activities and conservation within the area on the properties...'*
5. It is evident from the following that the underlying purpose of the Proposed Exclusion is to facilitate the development of Atha-Africa Ventures (Pty) Ltd's proposed Yzermyn underground coal mine ('Atha' and 'the proposed Yzermyn mine'):
  - 5.1. The Properties Proposed to be Excluded are precisely the properties in respect of which Atha sought (and unlawfully obtained) permission to mine in the MPE from the Ministers of Environmental Affairs and Mineral Resources in terms of section 48(1)(b) of the Protected Areas Act (which permission was set aside by the High Court in *Mining and Environmental Justice Community Network of South Africa and 7 Others v Minister of Environmental Affairs and 4 Others*);
  - 5.2. Honourable MEC Shongwe's third stated purpose for the Proposed Exclusion, reproduced in paragraph 4 above, is to *'promote co-existence of mining activities and conservation within the area on the properties...'* (our emphasis). This could only mean the proposed Yzermyn mine.
6. What follows are the Coalition's Grounds of Objection to the Proposed Exclusion.



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**A. The purpose of the declaration of the Mabola Protected Environment was and is sound and reasonable in science, policy and law**

7. The area now comprising the MPE – including the Properties Proposed to be Excluded – has been determined by scientific research, and recognised in the policies and planning of a number of government departments and agencies, to be an important biodiversity and water source area since at least 2006:

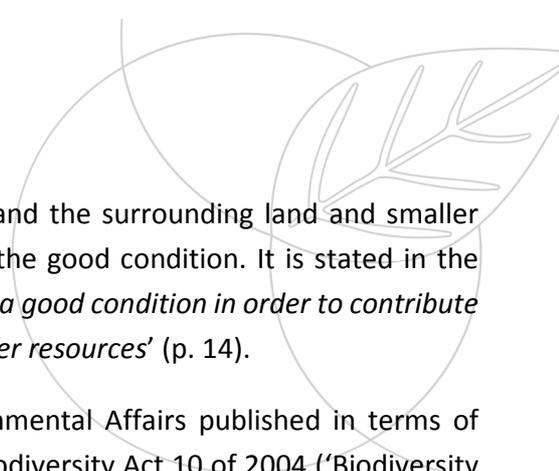
7.1. The Mpumalanga Tourism and Park Agency's ('MPTA') 2006 Mpumalanga Biodiversity Conservation Plan ('MBCP') classified the area as an 'Irreplaceable' Critical Biodiversity Area from an aquatic perspective and largely as 'Irreplaceable', 'Highly Significant' or 'Important & Necessary' Critical Biodiversity Areas from a terrestrial perspective. The MBCP applied 'Systematic Biodiversity Planning' to identify the smallest possible (or, in other words, the most efficient) area to meet biodiversity targets (pp. 22-3). 'Irreplaceable' Critical Biodiversity Areas are classified as such because there are no other areas that can provide the same biodiversity features, i.e. the biodiversity is truly unique (p. 23). Under the heading '*What is Biodiversity and why should we be Concerned about it?*', the MBCP explains that:

*'the term biodiversity refers to ... plants and animals, ecosystems and landscapes, and the ecological and evolutionary processes that allow these ... to persist over time. ... Keeping our biodiversity intact is ... vital for ensuring ongoing provision of ecosystem services such as production of clean water through good catchment management, prevention of erosion, carbon storage (to counteract global warming), and clean air. Loss of biodiversity puts aspects of our ... life at risk, and reduces socio-economic options for future generations.'* (p. 2)

7.2. In 2008 the multi-stakeholder Grasslands Programme was established to protect South Africa's grasslands. The Programme was financed through an \$8.3 million investment from the Global Environment Facility, managed by the United Nations Development Programme. The stakeholders included the Departments of Environment Affairs & Tourism and Water Affairs & Forestry (as they were titled at that time) and the South African National Biodiversity Institute ('SANBI'). One of the focus areas of the Grasslands Programme was the area that now comprises the MPE.

7.3. In March 2009 the National Protected Area Expansion Strategy ('NPAES') was approved by the national government for implementation. The NPAES identified the vast majority of the area that now comprises the MPE as a priority area for inclusion as a protected area in terms of the Protected Areas Act. In July 2009 the MPTA published the Mpumalanga Protected Area Expansion Strategy in terms of which the vast majority of the area now comprising the MPE was identified as a *'priority 1 area'* (the highest priority category) for protected area expansion.

7.4. In August 2011 the Water Research Commission, the Council for Scientific and Industrial Research ('CSIR'), SANBI, the Department of Water Affairs (as it was then titled) and the Department of Environmental Affairs published the Atlas of National Freshwater Ecosystem Priority Areas in South Africa ('NFEP Atlas'). The area now comprising the MPE is a 'B ecological category' National Freshwater Ecosystem Priority Area 'River and Associated Sub-Quaternary Catchment'. This means, in terms of the NFEP Atlas, that the river (being the Assegaai River) and associated sub-quaternary catchment (which

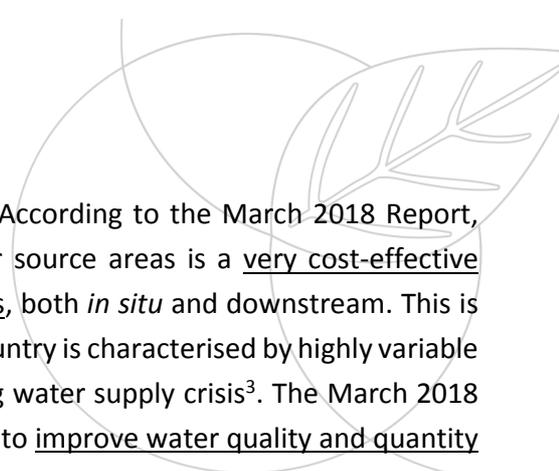


includes the MPE) is currently in a good ecological condition, and the surrounding land and smaller stream network need to be managed in a way that maintains the good condition. It is stated in the NFEPA Atlas that this *'status indicates that they should remain in a good condition in order to contribute to national biodiversity goals and support sustainable use of water resources'* (p. 14).

- 7.5. On 9 December 2011 the then Minister of Water and Environmental Affairs published in terms of section 52(1)(a) of the National Environmental Management: Biodiversity Act 10 of 2004 ('Biodiversity Act') a national list of ecosystems that are threatened and in need of protection (GN 1002 in GG 34809 dated 9 December 2011). The Wakkerstroom/Luneburg Grasslands (MP11), which includes the area now comprising the MPE, was listed as an endangered ecosystem.
- 7.6. In March 2013, the CSIR completed the Strategic Water Source Areas Report for the World Wide Fund for Nature South Africa ('WWF-SA'). Part of the area now comprising the MPE was identified as the Enkangala Drakensberg Strategic Water Source Area.
- 7.7. On 22 May 2013 the Mining and Biodiversity Guideline: Mainstreaming Biodiversity into the Mining Sector was published by the Department of Environmental Affairs, the Department of Mineral Resources, the Chamber of Mines, the South African Mining and Biodiversity Forum and SANBI. The area now comprising the MPE was identified as a 'Category B' area, meaning that it is of the 'Highest biodiversity importance' and is at the 'Highest Risk for mining', and is '*viewed as necessary to ensure the protection of biodiversity, environmental sustainability, and human well-being*' (p. 29).
- 7.8. In the context of this government-facilitated research and these government policies and planning, on 22 January 2014, the MPE was declared. It is clear that the purpose of the declaration of the MPE, quoted in paragraph 3 above, was and is sound and reasonable in science, policy and law<sup>2</sup>.
8. Following the Strategic Water Source Areas Report referred to in paragraph 7.6 above, in April 2015 the Water Research Commission initiated a 3-year project led by the CSIR with the aim of building on the Strategic Water Source Area work. A project reference group, which included scientific experts, senior planners and policy-makers within the Department of Water and Sanitation, Department of Environmental Affairs, SANBI, Water Research Commission and SANParks, guided the work and assessed progress. In terms of the Project Report dated March 2018, the entire MPE, including the Properties Proposed to be Excluded, is part of the now-expanded Enkangala Drakensberg Strategic Water Source Area.
9. Strategic Water Source Areas are nationally important areas of land because they either (1) supply a disproportionately large quantity of surface water runoff in relation to their size; or (2) have high groundwater recharge; or both (March 2018 Report p. 28). In short, the project defines the Strategic Water Source Areas

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<sup>2</sup> The relevant and applicable law includes, amongst others, the Objectives of the Protected Areas Act (section 2); the national environmental management principles in section 2 of the National Environmental Management Act 107 of 1998 ('NEMA') (read with section 5(1)(a) of the Protected Areas Act and the definition of 'sustainable development in section 1 of NEMA'); the requirement in section 6 of the Protected Areas Act that same must be read, interpreted and applied in conjunction with the Biodiversity Act; the Purpose of Protected Areas (section 17 of the Protected Areas Act); and the Constitution of the Republic of South Africa, 1996.



the 10% of South Africa's land area that provides 50% of its water. According to the March 2018 Report, international experience shows that managing and protecting water source areas is a very cost-effective means of delivering a continued supply of good quality water to users, both *in situ* and downstream. This is extremely relevant in the South African context: firstly, because the country is characterised by highly variable climate and rainfall; and secondly because South Africa has a looming water supply crisis<sup>3</sup>. The March 2018 Report finds that managing Strategic Water Source Areas is a key way to improve water quality and quantity to meet increasing water demands. (All March 2018 Report p. 28.)

10. The strategic importance of the MPE, including the Properties Proposed to be Excluded, has in fact intensified since the declaration, in January 2014, of the MPE due to South Africa's increased water insecurity, and the increasing imperative to facilitate South Africa's resilience/adaption to and mitigation of climate change. The Coalition reiterates, therefore, that the purpose of the declaration of the MPE was and still is sound and reasonable in science, policy and law.

**B. Honourable MEC Shongwe's stated purposes of the proposed exclusion are flawed, unlawful and unreasonable in science, policy and law**

11. In this Part, the Coalition sets out the bases on which Honourable MEC Shongwe's stated purposes of the Proposed Exclusion (as repeated below) are flawed, unlawful and unreasonable in science, policy and law:

- '1. To ensure balance towards use of natural resources for socio-economic benefits of all the citizens / community of Pixley Ka Seme Local Municipality and the country, while promoting environmental protection and sustainability;*
- 2. To ensure/ promote economic growth of the country and the community of the area;*
- 3. To promote co- existence of mining activities and conservation within the area on the properties...'*

**B.1. Honourable MEC Shongwe's third stated purpose, being the co-existence of mining and the conservation of biodiversity and water resources within the Properties Proposed to be Excluded, is not possible**

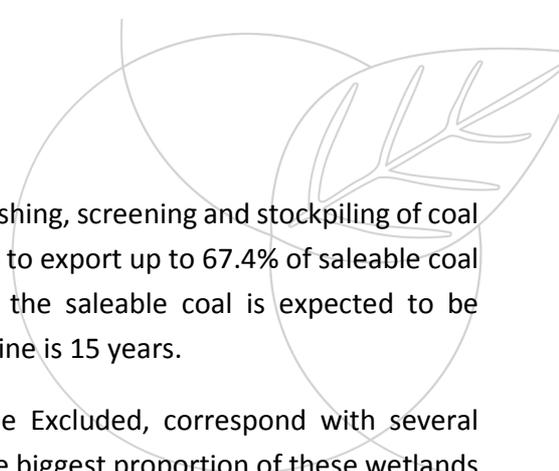
12. As explained in paragraph 5 above, it is evident that the underlying purpose of the Proposed Exclusion is to facilitate the development of Atha's proposed Yzermyn underground coal mine.

***B.1.1. Background to the proposed Yzermyn mine***

13. The mine which Atha proposes to construct is an underground coal mine located on the properties Goedgevonden 95HT; Portion 1 of Kromhoek 93HT; Remainder of Kromhoek 93HT; Portion 1 of Yzermyn 96HT and Zoetfontein 94HT. See the figure annexed as Annexure A.

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<sup>3</sup> - With 98% of its surface water already developed, demand outstripping supply in most catchments, and a growing water quality problem. The 2015-2016 drought in the summer rainfall areas and current drought in the winter rainfall areas (2014/15 onwards) have highlighted the vulnerability of South Africa's water supplies (all March 2018 Report p. 28).

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14. The proposed Yzermyn mine operations will involve the extraction, crushing, screening and stockpiling of coal product, and the transportation of coal product for sale. Atha expects to export up to 67.4% of saleable coal product via Richards Bay Coal Terminal<sup>4</sup>. The remaining 32.6% of the saleable coal is expected to be transported to supply Eskom power stations<sup>5</sup>. The estimated life of mine is 15 years.
15. The proposed mine area, as well as the Properties Proposed to be Excluded, correspond with several wetlands. As will be evidenced in paragraphs 42 to 44 below, by far the biggest proportion of these wetlands are unmodified, natural wetlands.
16. Furthermore, there are numerous headwater and mountain streams in the proposed mine area (as well as the Properties Proposed to be Excluded), including the perennial Mkusaze and Mawandlane Rivers, which flow into larger streams that drain into the Assegaai River<sup>6</sup>. As stated in paragraph 7.4 above, the Assegaai River is a 'B ecological category' National Freshwater Ecosystem Priority Area river i.e. it is currently in a good condition. The Assegaai River, in turn, flows into the Heyshope Dam, from which water is diverted into the Vaal Water Supply System via inter-basin transfer. The Vaal Water Supply System supplies water to, amongst others, South Africa's economic hub, Gauteng. Downstream of the Heyshope Dam, the Assegaai River flows into the Usutu River. The Usutu River flows through Swaziland and, after joining the Pongola River, flows into Mozambique, where it is known as the Maputo River. Accordingly, the health of the Usutu River System is also relevant to South Africa's international obligations to Swaziland and Mozambique.
17. From a water supply perspective, it is significant that the proposed mine area is the headwaters of water-generating streams and rivers. The entire downstream section of a river benefits from healthy headwaters because the ecology of the headwaters, especially the wetlands, ensures the quality of the water in the whole system more than any other part of river system. Safeguarding the ecology of headwater areas is accordingly a priority measure to safeguard clean water supplies.
18. In this regard, the present quality of the surface and groundwater in the proposed mine area was monitored by the environmental specialists who conducted Atha's environmental impact assessment process, and was determined to be good with very little anthropogenic impacts<sup>7</sup>.

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<sup>4</sup> *AMENDED Environmental and Social Impact Assessment Report and Environmental and Social Management Programme - Yzermyn Underground Coal Mine* (DEA Reference – 14/12/16/3/3/2/693; dated January 2015) p. 4 [This report was compiled by the environmental assessment practitioner appointed to manage Atha's environmental impact assessment process for the proposed Yzermyn mine].

<sup>5</sup> This project proposes roughly the inverse of the national average of 7:3 split of local use to export and suggests that the project is not aimed at ensuring local energy security.

<sup>6</sup> *Atha Yzermyn Coal Project: Biodiversity Baseline & Impact Assessment Report (Section D: Aquatic Assessment)* Compiled by: Natural Scientific Services CC (dated September 2013) p. 140-1 [This report was commissioned by the environmental assessment practitioner appointed to manage Atha's environmental impact assessment process for the proposed Yzermyn mine].

<sup>7</sup> *Yzermyn Underground Coal Mine - Numerical Groundwater Model Report* Compiled by: delta h Water Systems Modelling (dated August 2014) ('the delta h Report') p. 9; *Atha's Integrated Water and Waste Management Plan for Yzermyn Underground Coal Mine* (dated March 2015, Revised August 2015) ('Atha's IWWMP') p. 3

### B.1.2. Anticipated environmental impacts of the proposed Yzermyn mine

19. Three significant environmental impacts are anticipated to result from the mining activities of the proposed Yzermyn mine:

19.1. The **dewatering of aquifers** caused by groundwater flowing into the underground mine voids and being pumped out during the operational phase of the mine, which would result in a decline in the pre-mining groundwater levels in the aquifers above and adjacent to the mine workings, thereby affecting surface water bodies which are groundwater fed. The hydrogeological (groundwater) specialist appointed as part of Atha's own environmental impact assessment explained in its report that *'The ensuing cone of dewatering due to mine inflows will capture groundwater, which would have otherwise contributed to spring discharges, leakages along hill slopes, wetlands, river baseflow or to deep regional groundwater flow'*<sup>8</sup> (our emphasis). As regards the effect of the dewatering of the aquifers on the wetlands, the wetland ecologist appointed as part of Atha's environmental impact assessment found that the dewatering of the aquifers will result in the *'dewatering of wetland habitat downgradient of [the] mining activities, leading to loss of water within wetland habitat and altered hydrological patterns'* and the *'formation of [a] groundwater cone of dewatering, leading to reduced recharge of wetland resources'*<sup>9</sup> (our emphasis). **The wetland ecologist found that this would have 'HIGH' impacts on the study-area wetlands both unmitigated and with mitigation**<sup>10</sup>.

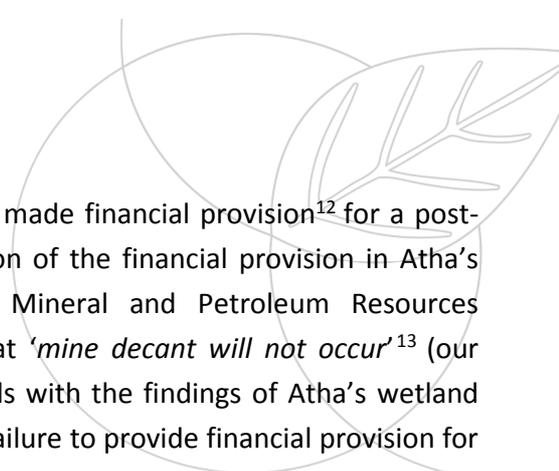
19.2. The **second impact** of the mine would, without mitigation, be **'decant' of contaminated water post-closure of the mine**. This is the process by which water which has flooded into the underground mine void after operations have ceased and pumping out has stopped, flows to the surface and 'daylights' at decant point/s. The water which discharges is likely to be contaminated by virtue of its contact with the underground mine workings. The wetland ecologist appointed as part of Atha's environmental impact assessment found that *'the [project] is located within an extremely sensitive area containing extensive wetlands which are presently in a largely natural condition. ... The potential for post-closure decant of water from the underground mine void via the adit and/or unsealed exploration boreholes (Delta H, 2014) is of particular concern, as this will have a long term effect on surface water quality of not only on the wetlands within the study area, but also on aquatic resources within the greater catchment with special mention of the Assegaai River. Should it be considered economically feasible to treat the decant water post-closure until water quality stabilizes, which could take many decades, to pre-mining water quality standards in such a way as to support the post closure land use, which is envisaged to be protected wilderness, the project would be considered feasible, although the impacts on the wetland*

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<sup>8</sup> The delta h Report p. vi

<sup>9</sup> *Wetland Ecological Assessment as part of the Environmental Assessment and Authorisation process for the Proposed Yzermyn Coal Mining Project near Dirkiesdorp, Mpumalanga Province* Compiled by: Scientific Aquatic Services CC (dated June 2014, revised May 2015) ('SAS CC Report') p. 98

<sup>10</sup> SAS CC Report p. 99-100



resources would remain high<sup>11</sup> (our emphasis). Atha has not made financial provision<sup>12</sup> for a post-closure water treatment plant – rather, the itemised calculation of the financial provision in Atha’s Environmental Management Programme (in terms of the Mineral and Petroleum Resources Development Act 28 of 2002) was calculated on the basis that ‘mine decant will not occur’<sup>13</sup> (our emphasis). The proposition that decant will not occur is at odds with the findings of Atha’s wetland ecologist, quoted above; and is wholly incorrect. Due to Atha’s failure to provide financial provision for water treatment post-closure, there is no evidence that it would be ‘economically feasible to treat the decant water post-closure until water quality stabilizes, which could take many decades’. The legacy of mining in South Africa<sup>14</sup> is that, in the absence of secured, adequate financial provision held by or in favour of the State, environmental liabilities left behind by mining companies fall on the State, and therefore taxpayers. Furthermore, Atha’s failure to provide adequate financial provision is simply unlawful.

19.3. Atha’s documents indicate that it intends to allow the mine void to fill passively over the 45 years, predicted by its hydrogeological specialist, in which this is anticipated to occur (i.e. there is no provision made for active flooding of the mine void by Atha).<sup>15</sup> This gives rise to the **third main impact of the mine**: namely, that allowing the void to fill passively will lead to **groundwater contamination emanating from the mine void**. This impact is rated as ‘High (Unacceptable)’ in Atha’s *Integrated Water and Waste Management Plan*<sup>16</sup>, and furthermore Atha has not provided any proposed mitigation measures to endeavour to address this impact – indeed, Atha did not even commission its hydrogeological specialist to compile a geochemical flow/transport model (i.e. a simulation of the underground contaminant plume from the mine workings).

### B.1.3. Conclusion under this Part

20. It is evident from Atha’s specialists’ own assessments that the proposed Yzermyn mining activities will result in ‘HIGH’ impacts on ground- and surface-water resources; including, downstream of the proposed mine, on the Assegaa River which is a ‘good condition’ National Freshwater Ecosystem Priority Area River. This includes water quantity impacts (reduction in river baseflow), as well as water quality impacts (water contamination). Atha’s own specialists also anticipate the occurrence of an unmitigated groundwater contamination plume emanating from the mine void. It is anticipated by Atha’s own specialists that these water quantity and quality impacts would consequently dewater and contaminate wetlands and springs in the area, and associated biodiversity.

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<sup>11</sup> SAS CC Report p. 105-6

<sup>12</sup> Financial provision is security that mining rights holders are legally required to put up for the rehabilitation of environmental damage caused by mining.

<sup>13</sup> Atha’s Environmental Management Programme (dated March 2014) p. 534

<sup>14</sup> In particular the enormous (and underfunded) problem of Acid Mine Drainage, and the large number of derelict and ownerless (D&O) mines.

<sup>15</sup> The delta h Report p. 68

<sup>16</sup> p. 210

21. On the basis of these anticipated impacts, the co-existence of:

21.1. the proposed Yzermyn mine; and

21.2. the conservation of the **irreplaceable** and **endangered** biodiversity and **strategic** water resources, as described in paragraphs 7 to 9 above,

within the Properties Proposed to be Excluded is simply not possible.

22. To the contrary, if the proposed Yzermyn mine is permitted to proceed, the irreplaceable and endangered biodiversity and strategic water resources will be 'highly' negatively impacted.

B.2. Honourable MEC Shongwe's first and second stated purposes: 'to ensure balance towards use of natural resources for socio-economic benefits of all the citizens / community of Pixley Ka Seme Local Municipality and the country, while promoting environmental protection and sustainability' and 'to ensure/promote economic growth of the country and the community of the area'

*B.2.1. The relevant and applicable law*

23. The Bill of Rights is the cornerstone of democracy in South Africa. It enshrines the rights to equality (section 9), dignity (section 10), life (section 11), environment (section 24), and sufficient food and water (section 27(1)(b)), amongst others, and:

23.1. The state, including the Honourable MEC Shongwe, must respect, protect, promote and fulfil the rights in the Bill of Rights (section 7(2) of the Constitution); and

23.2. The Bill of Rights applies to all law (including section 29(b) of the Protected Areas Act in terms of which the Honourable MEC intends to make the Proposed Exclusion), and binds the legislature, the executive, the judiciary and all organs of state (including the Honourable MEC) (section 8(1) of the Constitution).

24. Section 24 of the Constitution provides that, '*everyone has the right-*

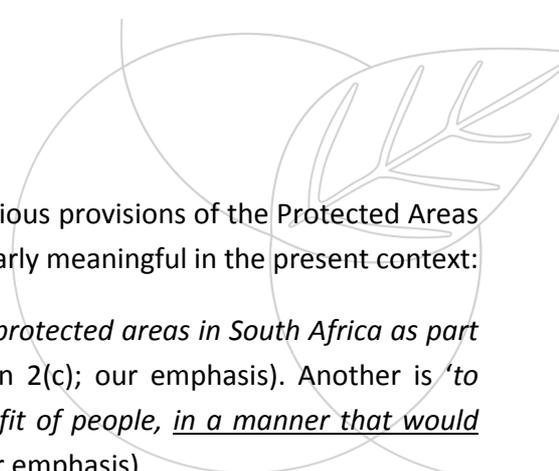
*(a) to an environment that is not harmful to health or wellbeing; and*

*(b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that-*

*(i) prevent pollution and ecological degradation;*

*(ii) promote conservation; and*

*(iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development'.*



25. One such legislative measure is the Protected Areas Act. Although various provisions of the Protected Areas Act are relevant and applicable<sup>17</sup>, the following provisions are particularly meaningful in the present context:

25.1. One listed objective of the Act is *'to effect a national system of protected areas in South Africa as part of a strategy to manage and conserve its biodiversity'* (section 2(c); our emphasis). Another is *'to promote sustainable utilisation of protected areas for the benefit of people, in a manner that would preserve the ecological character of such areas'* (section 2(e); our emphasis).

25.2. Section 3 provides that, in fulfilling the rights contained in section 24 of the Constitution, the State through the organs of state implementing legislation applicable to protected areas (which includes you, the MEC, in the present instance) must-

25.2.1. act as the trustee of protected areas in South Africa; and

25.2.2. implement this Act in partnership with the people to achieve the progressive realisation of those rights.

25.3. In terms of section 17, the purpose of the declaration of areas as protected areas include: *'to assist in ensuring the sustained supply of environmental goods and services'* (section 17(g)); *'to provide for the sustainable use of natural and biological resources'* (section 17(h)); and *'to manage the interrelationship between natural environmental biodiversity, human settlement and economic development'* (section 17(j)).

25.4. In terms of section 5(1), the Protected Areas Act must be interpreted and applied in accordance with the national environmental management principles in the National Environmental Management Act 107 of 1998 ('NEMA') and read with the applicable provisions of NEMA.

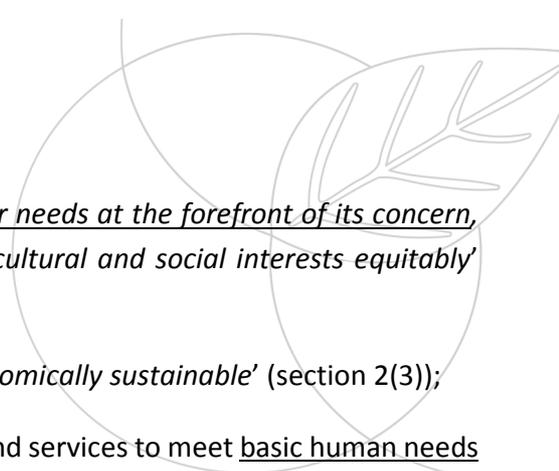
26. The provisions of NEMA of present relevance and application include:

26.1. The definition of 'sustainable development' as *'the integration of social, economic and environmental factors into planning, implementation and decision-making so as to ensure that development serves present and future generations'* (section 1).

26.2. The National Environmental Management Principles in section 2 of NEMA, which *'serve as guidelines by reference to which [the Honourable MEC] must exercise any function when taking [his] decision in terms of [section 29(b), read with section 33(4), of the Protected Areas Act]'* (section 2(1)(c)) and *'guide the interpretation, administration and implementation of [the Protected Areas Act, including section 29(b)]'* (section 2(1)(e)). These include, amongst others, that:

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<sup>17</sup> See further footnote 2 above.

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- 26.2.1. *'Environmental management must place people and their needs at the forefront of its concern, and serve their physical, psychological, developmental, cultural and social interests equitably' (section 2(2); our emphasis);*
- 26.2.2. *'Development must be socially, environmentally and economically sustainable' (section 2(3));*
- 26.2.3. *'Equitable access to environmental resources, benefits and services to meet basic human needs and ensure human well-being must be pursued and special measures may be taken to ensure access thereto by categories of persons disadvantaged by unfair discrimination' (section 2(4)(d); our emphasis).*

### *B.2.2. South Africa's National Development Plan 2030*

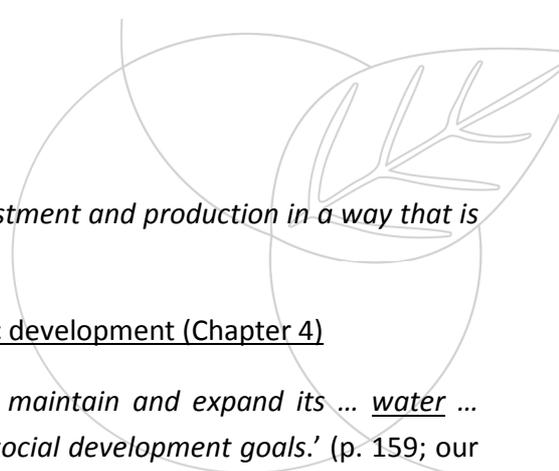
27. South Africa's *National Development Plan 2030: Our Future – make it work* ('NDP') is the blueprint for South Africa's national commitment to eliminate poverty and reduce inequality by 2030. *'Eighteen years into democracy, South Africa remains a highly unequal society where too many people live in poverty and too few work'* (p. 24). The NDP states further: *'To eliminate poverty and reduce inequality, the economy must grow faster and in ways that benefit all South Africans'* (p. 24). The NDP sets out objectives and actions under 13 themes, which include, amongst others: Economy and Employment (Chapter 3), Economic infrastructure (Chapter 4), Environmental sustainability and resilience (Chapter 5), and Inclusive rural economy (Chapter 6).
28. The 'Overview' section of the NDP pertinently examines *'Building environmental sustainability and resilience'* as follows:

*'Since the late 19<sup>th</sup> century, South Africa has exploited its mineral wealth with little or no regard for the environment. Changes are needed to protect the natural environment while allowing the country to benefit from its mineral deposits. In addition to significant non-renewable mineral wealth, the country's natural resources include its adjacent oceans, soil, water, biodiversity, sunshine and a long coastline. From an environmental perspective South Africa faces several related challenges, some of which are in conflict. The country needs to:*

- *Protect the natural environment in all respects, leaving subsequent generations with at least an endowment of at least equal value.*
- *Enhance the resilience of people and the economy to climate change.*
- *Extract mineral wealth to generate the resources to raise living standards, skills and infrastructure in a sustainable manner.*
- *Reduce greenhouse gas emissions and improve energy efficiency.' (pp. 47-8; our emphasis)*

#### *28.1. Economy and Employment (Chapter 3)*

- 28.1.1. The NDP recognises that South Africa is a dry country with limited fresh water resources and that we will have to find ways of using water more sensibly (p. 113).



28.1.2. The NPD states that *'It is urgent to stimulate mining investment and production in a way that is environmentally sound...'* (p. 146).

28.2. Economic infrastructure – the foundation of social and economic development (Chapter 4)

28.2.1. A 'key point' in this Chapter is: *'South Africa needs to maintain and expand its ... water ... infrastructure in order to support economic growth and social development goals.'* (p. 159; our emphasis)

28.2.2. Under the heading *'Water Resources and Services'*, the NDP states: *'Water is a strategic resource critical for social and economic development and there is growing concern about the potential impact of water-related risks. South Africa ranks low – 128<sup>th</sup> of 132 countries – in Yale University's Environmental Performance Index. This is attributed, in part, to the poor state of its water ecosystems. South Africa also ranks 148<sup>th</sup> out of 180 countries in terms of water availability per capita, according to the 2012 World Water Development Report. Since South Africa is already a water-scarce country, greater attention will have to be paid to its management and use. ... By 2030, it is envisaged that effective management of water and the services derived from it will support a strong economy and a healthy environment. The country's development will reflect an understanding of available water resources and effective water planning that cuts across different economic sectors and spheres of government.'* (p. 177; our emphasis)

28.2.3. The NDP recognises the National Water Resource Strategy as the key 'statutory public process' for water-resource management, including to identify priority areas for intervention (pp. 178-9).

28.3. Ensuring environmental sustainability and an equitable transition to a low-carbon economy (Chapter 5)

28.3.1. In preface to Chapter 5, the 'Overview' section of the NDP speaks specifically of Climate Change:

*'Emissions of carbon dioxide and other greenhouse gases are changing the earth's climate, potentially imposing a significant global cost that will fall disproportionately on the poor. Rising temperatures, more erratic rainfall and extreme weather events are likely to take a heavy toll on Africa, with an increased spread of tropical diseases and growing losses (human and financial) from droughts and flooding. Climate change has the potential to reduce food production and the availability of potable water, with consequences for migration patterns and levels of conflict. South Africa is not only a contributor to greenhouse gas emissions – it is also particularly vulnerable to the effects of climate change on health, livelihoods, water and food, with a disproportionate impact on the poor, especially women and children. While adapting to these changes, industries and households have to reduce their negative impact on the environment. This will require far-reaching changes to the way people live and work.'* (p. 33; our emphasis)

28.3.2. *'Proposed interventions and planning imperatives'* include that the Department of Environmental Affairs and SANBI should implement the protected areas expansion strategy (p. 202).



28.3.3. *'The maintenance of ecosystem services such as those providing food and clean water, regulating climate and disease, supporting crop pollination and nutrient cycles, and delivering cultural benefits such as recreational opportunities, is fundamental to achieving South Africa's social and economic development objectives.'* (p. 201)

#### 28.4. An integrated and inclusive rural economy (Chapter 6)

28.4.1. The NDP regards 'agricultural development' as a 'key point' to achieve greater 'social, economic and political opportunities' for rural communities (p. 217). '*The driving force behind this will be an expansion of irrigated agriculture, supplemented by dry-land production where feasible*' (p. 218).

#### B.2.3. Analysis under this Part

29. The mining that the Honourable MEC seeks to facilitate with the Proposed Exclusion is by no means the only natural resource available in the MPE, including the Properties Proposed to be Excluded. To the contrary, the extensive scientific research and government policy and planning detailed in paragraphs 7 to 9 above evidences and recognises that the MPE, including the Properties Proposed to be Excluded, contain **irreplaceable and endangered biodiversity and strategic water resources**. The significance of 'environmental infrastructure' and 'ecosystem services' to South Africa's 'Development Plan to 2030' is recognised in the NDP as follows: '*Water is a strategic resource critical for social and economic development*<sup>18</sup> and '*The maintenance of ecosystem services such as those providing food and clean water, regulating climate and disease, supporting crop pollination and nutrient cycles, and delivering cultural benefits such as recreational opportunities, is fundamental to achieving South Africa's social and economic development objectives.*<sup>19</sup>

30. The NDP recognises the National Water Resource Strategy as the key 'statutory public process' for water-resource management, including to identify priority areas for intervention.<sup>20</sup> The Department of Water Affairs' *National Water Resource Strategy* (June 2013; Second Edition) recognises that '*South Africa has implemented steps to mitigate the developmental pressures on the water resource, such as the development of National Freshwater Ecosystem Priority Areas*' (p. 37) and furthermore:

*'Development pressures mean it is not always possible to keep all water ecosystems in good ecological condition. However, to support the health and sustainability of water ecosystems and thus the provision of water-related ecosystem services, a certain proportion of water ecosystems need to be maintained in good ecological condition. It is best to identify these water ecosystems systematically and proactively, in the most efficient configuration, based on the best available science. South Africa has done this in the form of maps of National Freshwater Ecosystem Priority Areas (NFEPAs), which identify strategic spatial*

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<sup>18</sup> See paragraph 28.2.2 above.

<sup>19</sup> See paragraph 28.3.3 above.

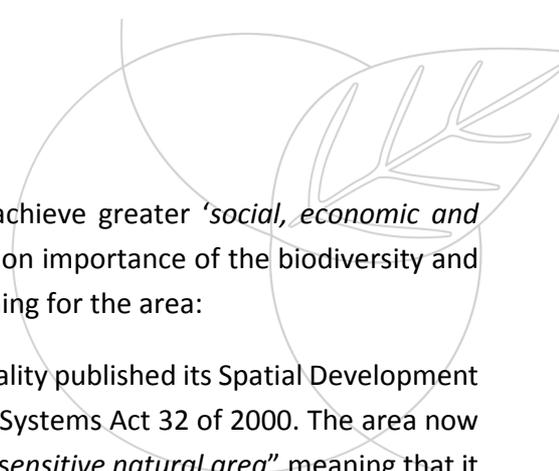
<sup>20</sup> See paragraph 28.2.3 above.

priorities for conserving water ecosystems and supporting the sustainable use of water resources.' (p. 37; our emphasis)

31. The *National Water Resource Strategy* also recognises the Strategic Water Source Areas as '*strategic national assets at the highest level in all sectors*' and that they should '*all enjoy legal protection that allows land to be managed in a way that does not significantly undermine their role as key water sources.*' (p. 44)
32. Read with paragraphs 3 and 7 above, it is evident that the MPE was declared to protect/conserve and ensure the sustainable use of the irreplaceable and endangered biodiversity and strategic water resources therein while promoting justifiable economic and social development. **Indeed, these biodiversity and water resources – and not the coal resources that Atha proposes to mine – are the acutely valuable, indeed 'irreplaceable', natural resources that must be carefully managed in order to respect, protect, promote and fulfil, amongst others, sections 24 and 27(1)(b) of the Constitution, and eliminate poverty and reduce inequality by 2030.**
33. There is no basis, in this legal and policy context, for the Honourable MEC's Proposed Exclusion.
34. Moreover, the March 2018 Strategic Water Source Areas report<sup>21</sup> investigated the spatial overlap between the Strategic Water Source Areas (SWSAs) and coal fields and found that there are extensive coal reserves (including in the coal field targeted by Atha's proposed Yzermyn mine) which do not overlap with SWSAs (p. 155). **Indeed, unlike the biodiversity and water resources the coal resources are 'replaceable' in that they can easily be mined elsewhere.** The report included the following findings (pp. 156-7):
- 34.1. '*Nationally, the total area of the overlap between the coalfields and the SWSAs is about 10 007 km<sup>2</sup> which is equivalent to just 8% of the total area of the coalfields. .... there is potentially a large amount of coal that could be mined instead of ... opening new mines, in those SWSAs which ... could be adversely affected by further mining.*' (our emphasis); and
- 34.2. In particular, the extent of overlap between the Enkangala Drakensberg SWSA and the Utrecht coal field, within which Atha intends to mine, is only 15.5% (Table 49).
35. The NDP seeks the implementation of the protected areas expansion strategy (see paragraph 28.3.2 above). A mere 8.9% of South Africa's land area constitutes protected areas. The Departments of Environmental Affairs and Water and Sanitation, SANBI and the CSIR, amongst many others, are dedicatedly working to expand South Africa's protected area network to preserve South Africans' environmental infrastructure and services and to meet Outcome 10's agreed targets. The Proposed Exclusion will, if it proceeds, undermine South Africa's existing protected area network and make a mockery of South Africa's dedicated efforts at protected area expansion.

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<sup>21</sup> See paragraphs 8 and 9 above.



36. The NDP regards agricultural development as the driving force to achieve greater 'social, economic and political opportunities' for rural communities. This, and the conservation importance of the biodiversity and water resources, is affirmed in the local and district government planning for the area:

36.1. On 30 November 2010 the Dr Pixley Ka Isaka Seme Local Municipality published its Spatial Development Framework ('SDF') in terms of the Local Government: Municipal Systems Act 32 of 2000. The area now comprising the proposed mine area is identified in the SDF as a "sensitive natural area" meaning that it "should be considered as protected and development proposed in the area should be directed by the different environmentally sensitive aspects as described in the environmental section of the SDF. Furthermore the abundance of conservation and protected areas should also be utilised as part of the natural environment to promote the economy and tourism in the municipal area by developing the areas to attract tourists and promote the attractiveness of the municipality" (p. 172). The environmental section of the SDF states that:

36.1.1. Operational mines pose a significant threat to underground water quality (p. 71);

36.1.2. "The spreading of coal mining activities in the Wakkerstroom area is of concern as this area is of high conservation value to the extensive wetlands found there. Mining would seriously threaten the integrity of the wetlands and other habitats" (p. 76-77);

36.1.3. "The high value of properly functioning ecosystems particularly in terms of water services provides an economic justification for their protection and restoration" (pp.79-80);

36.1.4. "One of the key regulating ecosystem services provided by [the] grasslands area [is] associated with the water environment given the areas importance at the headwater of three major [Water Management areas]... Numerous wetlands ...are centres of biodiversity, act as carbon sinks and are paramount to the hydrological functioning of drainage systems. The services provide water security for the area and also play a critical role as a "water factory" area with national importance for water security..." (pp.79-80);

36.1.5. "The available evidence and observation of the situation in other mining areas indicates a high risk of significant unmitigated cumulative impacts from intensive mining" (pp.79-80); and

36.1.6. "The consideration of land use changes ideally needs to take climate change implications into account given the importance of the ecosystem services that natural habitats provide in both mitigating and adapting to the impacts of climate change. In essence, natural vegetation is the optimum from a greenhouse gas emissions perspective followed by forestry (which has potentially negative biodiversity and water use implications), agriculture (which can result in relatively low emissions if well managed) and mining (which essentially extracts concentrated carbon in the form of coal from the earth for burning and release into the atmosphere while also releasing methane gas embedded in the coal seam which has a global warming potential that is roughly 20 times greater than that of carbon dioxide per volume). In addition, while management practices have a significant potential to reduce emissions for agriculture, their potential in the case of coal mining is low given current technologies." (p. 81)

36.2. In November 2014, the Gert Sibande District Municipality published its 2014 SDF in which it reiterated statements in an earlier SDF about the importance of conserving the wetlands and grasslands in the Wakkerstroom area, and stated that:

36.2.1. “[O]wing to their crucial role in maintaining the ecological integrity in the area” and in “hydrological management, flood attenuation and water quality maintenance”, the grasslands and wetlands in the Wakkerstroom region “have a high conservation value and should be protected at all cost” (p. 112);

36.2.2. “[H]ence, to ensure the optimal protection and sustainable utilisation of the District’s natural environmental resources and areas of high biodiversity value, the SDF proposes that the environmental heritage and conservation areas, biodiversity hotspots and ecological corridors should be treated as a special Biodiversity Management Zone to be actively protected, managed and enhanced, so as to ensure that these are not degraded by mining, forestry, agricultural and human settlement activities” (p. 113); and

36.2.3. The “sensitive upper catchments and wetlands of the Wakkerstroom area” should be “legally protected” (p. 113).

36.3. On 21 February 2012, the then MEC published by notice in the Mpumalanga Gazette an Environmental Management Framework (“EMF”) for the Local Municipality in terms of sections 24(5) and 44 of NEMA and the Environmental Management Framework Regulations, 2010. The Environmental Management Zones figure published with the EMF shows that the proposed mine area falls within a “Zone 1: Conservation” Environmental Management Zone. In terms of the EMF, “Mining, dumping, dredging and prospecting” is an “undesirable type of activity” and should “not [be] allowed at all” in a Zone 1: Conservation area (p. 88).

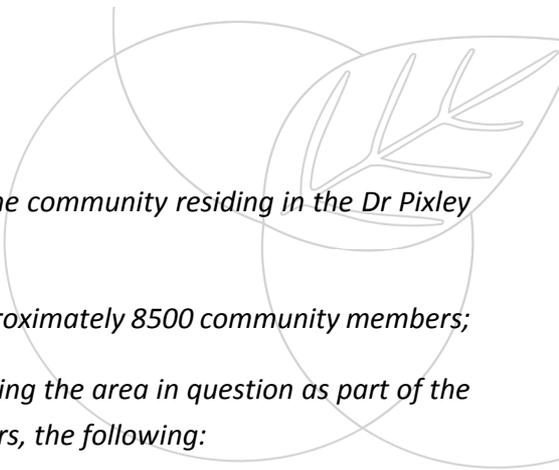
37. There is, therefore, no basis in science, law, policy or the applicable local and district government planning for your Proposed Exclusion. It is flawed, unlawful and unreasonable.

38. Furthermore, excluding the Properties Proposed to be Excluded, which lie in the middle of the MPE, would compromise the viability of the MPE as a whole.

**C. The Honourable MEC’s stated ‘rationale’ for the Exclusion Notice in the High Court case of Mining and Environmental Justice Community Network of South Africa**

39. During the hearing of the *Mining and Environmental Justice Community Network of South Africa* case, the Honourable MEC – on 16 October 2018 – deposed to an affidavit relating to the Proposed Exclusion. In this affidavit, the Honourable MEC stated his ‘rationale’ for the Exclusion Notice to include:

*‘In around March 2018, we received a memorandum dated 6 March 2018 from an organisation called the “Voice Community Representative Council” (“the VCRC”). According to the memorandum ... it was indicated that:*

- 
- 10.1. *The VCRC is based in Volksrust and represents the majority of the community residing in the Dr Pixley Ka Isaka Seme Municipality;*
  - 10.2. *The memorandum was accompanied by a petition signed by approximately 8500 community members;*
  - 10.3. *The community has serious concerns about the impact of declaring the area in question as part of the MPE. These concerns were complex and included, amongst others, the following:*
    - 10.3.1. *The procedure followed by my predecessor in declaring the area a (sic) protected was flawed and there was insufficient consultation with the affected communities;*
    - 10.3.2. *The four farms in question had a history of coal mining;*
    - 10.3.3. *The management plan for the MPE has never been finalised and approved notwithstanding the passage of five years since the declaration of the area in question as protected areas. Thus the farmers were flouting the very purpose for conservation;*
    - 10.3.4. *The area is severely disturbed from past farming activities; and*
    - 10.3.5. *The past five years there has been a development freeze bringing no benefits to the community. This has had a devastating impact on the impoverished community; and*
    - 10.3.6. *There was a desperate (sic) create employment in the area.'*

40. In what follows, the Coalition will address aspects of this stated rationale that require correction.

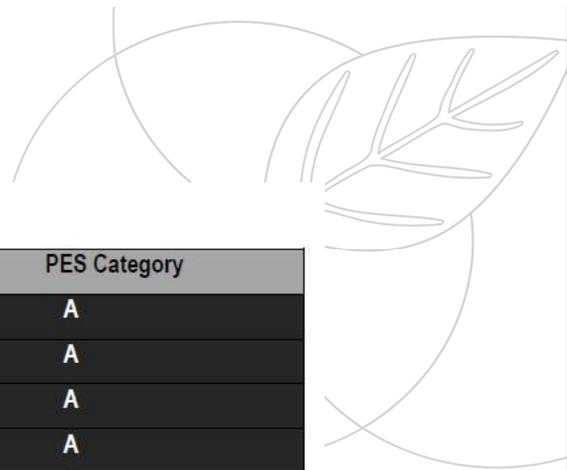
C.1. The Properties Proposed to be Excluded are not severely disturbed from past farming or mining activities

41. The Properties Proposed to be Excluded correspond with several wetlands. These are depicted on three diagrams annexed marked 'B', 'C' and 'D' which are extracted from:

41.1. Annexure B: *Atha's Integrated Water and Waste Management Plan for Yzermyn Underground Coal Mine* (dated March 2015, Revised August 2015); and

41.2. Annexures C and D: *The Scientific Aquatic Services CC ('SAS CC') Wetland Ecological Assessment*.

42. Pursuant to the environmental impact assessment process for the proposed Yzermyn mine, Atha's environmental assessment practitioner commissioned SAS CC to conduct a *Wetland Ecological Assessment* (dated June 2014, revised May 2015) of the wetland resources in the proposed mine area, including on the Properties Proposed to be Excluded. The *Wetland Ecological Assessment* summarises the Present Ecological State ('PES') of the wetlands as follows (p. 65):



**Table 15: Summary of the PES of the wetland systems.**

Wetland System	Overall Score	PES Category
Wetland 1	0.2	A
Wetland 2	0.6	A
Wetland 3	0.9	A
Wetland 4	0.6	A
Hillslope Seeps	0.9	A
Wetland S1	2.0	C
Wetland S2	2.1	C
Wetland S11	1.1	B
CVB 5	1.1	B

43. These categories mean the following:<sup>22</sup>

43.1. PES Category A wetlands are *'Unmodified, natural wetlands'*;

43.2. PES Category B wetlands are *'Largely natural with few modifications. A slight change in ecosystem processes is discernible and a small loss of natural habitats and biota may have taken place'*; and

43.3. PES Category C wetlands are *'Moderately modified. A moderate change in ecosystem processes and loss of natural habitats has taken place by the natural habitat remains largely intact'*.

44. It is clear that only wetlands S1 and S2, which are almost exclusively located on the property Portion 1 of Yzermyn 96HT (see Annexures B and D) – which is not one of the Properties Proposed to be Excluded, fall below Category B. By far the biggest proportion of the wetlands fall under Category A PES. In other words, by far the biggest proportion of the wetlands are unmodified, natural wetlands.<sup>23</sup>

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<sup>22</sup> SAS CC Wetland Ecological Assessment Report p. 25.

<sup>23</sup> Kindly note SAS CC's statement on p. 65: *'Due to the relatively undisturbed nature of the study area, the wetland systems identified within the study area were calculated to be in a PES Category A (natural, unmodified). Modifications that have impacted the wetlands are on a localised scale, or of a relatively minor nature, and are thus not deemed to have had a noticeable effect on the overall "health" of the wetland systems. However, wetland resources located within the lower lying, more accessible areas within the study area have undergone impacts such as grazing and trampling by domestic livestock, development of farm roads and bridges, and subsistence cultivation. In this regard specific mention is made of the increased impact on the hillslope seepage wetlands which show signs of historical agriculture in many areas while the valley bottom wetland areas seem less disturbed. Therefore, although the WET-Health [i.e. PES] assessments show that Wetland Systems 1-4 are deemed to be in a PES Category A, the methodology does not make allowances for all on-site observations of significance and therefore it is the opinion of the ecologists that whilst wetland resources located in the higher altitude, less inaccessible areas are likely to be in a PES Category A, the wetland resources in the lower-lying areas have undergone a greater degree of modification and are therefore more likely to be a PES Category B or potentially Category C depending on site-specific impacts.'* It is important to note that the *'less disturbed'* valley bottom wetlands are more ecologically important than the slope seepage wetlands because they are associated with stream/river channels and provide a supply of water (SAS CC Wetland Ecological Assessment pp. 21 and 71).

C.2. The Petition is of little, if any, relevance to the Exclusion Notice presently before the Honourable MEC

45. Annexed marked 'E' are the first two pages of the lengthy document that ostensibly constitutes the petition referred to in paragraph 10.2 of the MEC's affidavit quoted above. The Coalition makes the following remarks regarding the petition:

45.1. The first page annexed is ostensibly a letter from the Executive Secretary to the CEO of the MTPA dated 30 August 2013 acknowledging receipt, from the Volksrust Community, of '590 forms for the Objects to Proclamation of Government Gazette (sic) 2159, re-issued'.

45.2. The second page annexed is the first of many subsequent pages under the same header, which we annex representatively for convenience. The header reads as follows and is then followed by a table providing 18 rows of handwritten personal details and signatures:

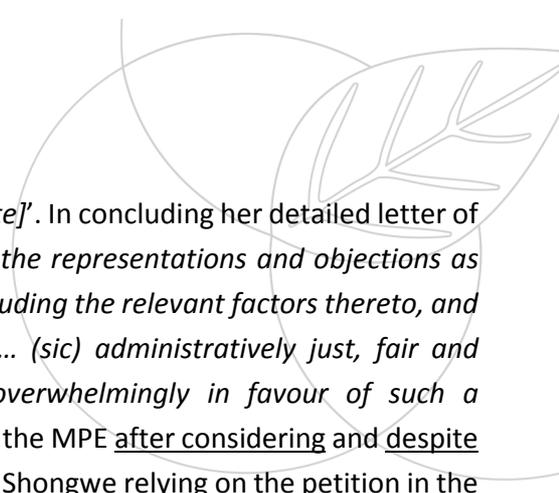
*'The community of Pixley Ka Seme and the surrounding areas (Amersfort, Daggakraal, Mabola, Perdekop, Volksrust and Wakkerstroom) is notified that there are people who want our government to proclaim the environment in the listed areas as sensitive. If this proclamation succeeds, our socio-economic problems will prevail, poverty will worsen, jobs will not be created and infrastructure development will be a dream! Say no to PROCLAMATION GAZETTE NO 2169. To be an agent of positive community activist, petition by including your name and signing below.'*

45.3. Provincial Notice no. 157 in Provincial Gazette no. 2169 dated 10 May 2013 is annexed marked 'F'. It constitutes Notice, in terms of section 33(1) of the Protected Areas Act, of the then Honourable MEC Phosa's intention to declare, amongst others, the MPE. It is therefore apparent the 'approximately 8500'-signature petition pertained to the Honourable MEC Phosa's intention to declare, amongst others, the MPE – and does not pertain to the present MEC Shongwe's intention to exclude stated properties from the MPE. Three further observations arise in this regard:

45.3.1. The petition is dated not later than 30 August 2013, and is therefore so outdated as to be of little, if any, relevance to the present Exclusion Notice; and

45.3.2. On the face of the petition, it was signed in affirmation of the opinion that *'If this proclamation succeeds, our socio-economic problems will prevail, poverty will worsen, jobs will not be created and infrastructure development will be a dream!'* Part B.2 above extensively discusses the social, socio-economic and economic benefits of the various natural resources available on the Properties Proposed to be Excluded, including water, biodiversity and coal reserves – and from this discussion it is clear that the opinion expressed here is simplistic to the extent of being false; and

45.3.3. Annexed marked 'G' is a letter from Honourable MEC Phosa to the 'Community of Pixley Isaka Seme' dated 24 December 2013. This letter served to communicate MEC Phosa's decision to declare the MPE following the public participation process which occurred in terms of section 33 of the Protected Areas Act. In paragraph 3 on page 6, MEC Phosa recorded that *'I have also taken note that the letters referred herein are also supported by 9000 signatures petitioning against*



*the declaration of the WBS [Wakkerstroom Biodiversity Site]'. In concluding her detailed letter of 9 pages, MEC Phosa stated: 'I have carefully considered the representations and objections as raised by the Community of the Pixley Isaka Seme and including the relevant factors thereto, and I am confident that my intention to declare the MPE ... (sic) administratively just, fair and reasonable. Moreover, the relevant factors operate overwhelmingly in favour of such a declaration'. MEC Phosa therefore determined to declare the MPE after considering and despite the petition. This weighs heavily against Honourable MEC Shongwe relying on the petition in the present Exclusion Notice process.*

45.4. In conclusion of the above, the Coalition submits that the petition is of little, if any, relevance to the present Exclusion Notice.

### C.3. The procedure followed by MEC Phosa in declaring the MPE was not flawed and there was sufficient consultation with the affected communities

46. The letter annexed as Annexure G was, as stated above, addressed by Honourable MEC Phosa to the 'Community of Pixley Isaka Seme' (on 24 December 2013) to communicate her decision to declare the MPE following the public participation process which occurred in terms of section 33 of the Protected Areas Act. The letter provides the following details regarding this public participation process:

46.1. Notice in terms of section 33(1)(a) was given in Provincial Notice no. 157 in Provincial Gazette no. 2169 on 10 May 2013; and in 'a subsequent amendment Notice', being Provincial Notice no. 275 in Provincial Gazette no. 2197 dated 9 August 2013, which 'contained sufficient information so as to enable members of the public to submit meaningful representations and/or objections' as required by section 33(2)(b) of the Protected Areas Act (pp. 1 and 5).

46.2. That the stated 'Community of Pixley Isaka Seme' was afforded an opportunity to submit extensive representations and/or objections is evident from its stated 8500/9000-signature petition (pp. 1 and 6).

46.3. MEC Phosa, in terms of section 33(3) of the Protected Areas Act, appointed 'a Panel to assist [her] in giving due consideration as required in terms of section 33(4) [of the Protected Areas Act]' and 'the Panel so appointed ... provided [her] with their Report' (pp. 1-2).

46.4. MEC Phosa stated that '[she had] since given due consideration to the Report, [the Community of Pixley Isaka Seme's] representations and [the Community of Pixley Isaka Seme's] objections' (p. 2).

46.5. In paragraph 3 on page 6, MEC Phosa recorded that '*I do state that total of **55 letters** were received mainly from Community Members of Pixley Isaka Seme comprising mainly members from the Amersfoort, Daggakraal, Mabola, Perdekop, Volkrust and Wakkerstroom areas. ... I have also taken note that the letters referred herein are also supported by **9000 signatures** petitioning against the declaration of the WBS [Wakkerstroom Biodiversity Site]'*.

46.6. On page 7 MEC Phosa stated: '***I have therefore carefully considered the view of your written presentation and objections and also the report of the Panel and hereby wish to respond as follows:*** ...'. MEC Phosa continued on pages 7 and 8 to respond substantively.

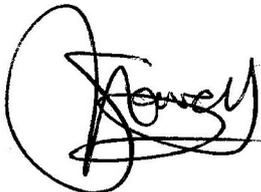
47. The aforesaid provides strong evidence that the procedure followed by MEC Phosa in declaring the MPE was not flawed and that there was sufficient consultation with the affected communities.

48. Moreover, any parties aggrieved by the procedure followed by MEC Phosa in declaring the MPE could have timeously launched judicial review proceedings to assert and endeavour to vindicate their allegedly aggrieved rights. To the best of our knowledge, no such proceedings were brought. To then, almost 5 years later, raise an alleged flawed procedure in the declaration of the MPE as a reason for the exercise of the MEC's powers in terms of section 29(b) of the Protected Areas Act to exclude select properties from the MPE is itself irregular and appears improper - (if, hypothetically, the procedure followed by MEC Phosa was flawed, how would this be remedied by the exclusion of only a select few properties from the MPE?).

**The Coalition therefore submits that, on the basis of its Grounds of Objection herein, the Honourable MEC should determine not to proceed with the Proposed Exclusion.**

Yours sincerely

**CENTRE FOR ENVIRONMENTAL RIGHTS**

A handwritten signature in black ink, appearing to read 'Suzanne Powell', enclosed within a hand-drawn circle.

per:

**Suzanne Powell**  
**Attorney**

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