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Attention: Mr. LB Tshabalala  
Municipality Manager  
Registrar: Municipal Appeal Tribunal  
Dr. Pixley Ka Isaka Seme Local Municipality

Dear Sir

**NOTICE TO OPPOSE AN APPEAL IN TERMS OF SECTION 144 OF THE CHIEF ALBERT LUTHULI, DIPALESENG, DR PIXLEY KA ISAKA SEME, LEKWA, MKHONDO AND MSUKALIGWA MUNICIPAL BY-LAW ON SPATIAL PLANNING AND LAND USE MANAGEMENT, 2016 (the LUM By-law”), AS LODGED BY THE CENTRE FOR ENVIRONMENTAL RIGHTS ON BEHALF OF INTER ALIA EARTH LIFE JOHANNESBURG AND WERKSMANS ATTORNEYS, REPRESENTING THE PIKKIE UYS TRUST/EXECUTOR: ESTATE PWB UYS AND THYS UYS TRUST**

**WITH REGARD TO A LAND DEVELOPMENT APPLICATION IN TERMS OF SECTION 26(4) OF SPATIAL PLANNING AND LAND USE MANAGEMENT ACT, 2013 (SPLUMA) AND SECTIONS 30(2) AND 66 OF THE CHIEF ALBERT LUTHULI, DIPALESENG, DR PIXLEY KA ISAKA SEME, LEKWA, MKHONDO AND MSUKALIGWA MUNICIPAL BY-LAW ON SPATIAL PLANNING AND LAND USE MANAGEMENT, 2016 (the LUM By-law”) WITH REGARD TO PORTION 1 OF THE FARM YZERMYN 96 IT, MPUMALANGA PROVINCE, AS APPROVED UNDER RESOLUTION OF THE GERT SIBANDE DISTRICT JOINT MUNICIPAL PLANNING TRIBUNAL**

CENTRE FOR ENVIRONMENTAL RIGHTS  
(REPRESENTING EARTH LIFE AFRICA  
JOHANNESBURG AND OTHERS)

FIRST APPELLANT

WERKSMANS ATTORNEYS  
(REPRESENTING PIKKIE UYS TRUST AND OTHERS)

SECOND APPELLANT

GERT SIBANDE DISTRICT JOINT MUNICIPAL PLANNING  
TRIBUNAL

FIRST RESPONDENT

ATHA-AFRICA VENTURES (PTY) LTD REPRESENTED BY  
THE PRACTICE GROUP (PTY) LTD

SECOND RESPONDENT

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NOTICE TO OPPOSE APPEAL(S)

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## 1. INTRODUCTION

1.1 This document serves as a notice to oppose the appeals lodged by the First and Second Appellants in this matter, as envisaged in terms of Section 144 of the LUM By-Law, and has been lodged within 21 days of receipt of the Notices of Appeal lodged on 2 July 2019 and 3 July 2019 respectively by the aforesaid appellants.

1.2 This notice furthermore confirms that the whole of the notices of appeal aforesaid are opposed, for the reasons as set out below. It is therefore confirmed that the relief sought by the appellants are opposed in full.

1.3 It is furthermore confirmed that the Second Respondent does not oppose any conditions of approval imposed by the Joint Municipal Planning Tribunal.

## **2. GROUNDS FOR OPPOSING APPEALS**

2.1 The appeals allege that the Second Respondent has no locus standi in this matter, given that the Second Respondent is not the land owner.

2.2 The letter by the Dr. Pixley Ka Isaka Seme Local Municipality (the "Local Municipality") dated 30 November 2018, addressed to the parties on record, was not a formal decision for the approval or dismissal of the application by the relevant Tribunal. The letter merely stated that the application had been removed from the list of applications to be considered by the Gert Sibande District Joint Municipal Planning Tribunal (JMPT). This was later corrected and reversed by the Municipality.

2.3 Following the issuing of the said letter, the Locus Standi of the Second Respondent was confirmed and accepted by the Municipality, and in light thereof the land development application (application) was referred to the JMPT for determination on 29 April 2019.

2.4 In light of the above, there can be no argument that the JMPT was authorised to take a decision on the application, and the resolution by the JMPT dated 28 May 2019 therefore remains valid.

2.5 It is confirmed that all objections received with regard to the application, were placed on record at the Municipality and the Second Respondent answered same in writing. It is submitted that the objections formed part of the submission to the JMPT and that such objections and the Second Respondent response were in fact considered by the JMPT. There is no requirement, in terms of the LUM By-Law, to invite parties (including objectors) to a hearing. This is clear from Section 149 of the LUM By-Law. As such it cannot be claimed that the objections on record were not considered by the JMPT prior to issuing its decision.

2.6 The Locus Standi of the Second Respondent was proven to the JMPT, and on such basis the application was considered and approved accordingly. In this regard, note must be taken of the provisions of Section 45(1)(a) of the Spatial Planning and Land Use Management Act, 2013 (SPLUMA), which identifies different categories of land development applicants. The JMPT found that the

Second Respondent qualified as a land development applicant. The authorisation of the registered land owner was thus not required. The grounds of appeal of both the First and Second Appellants are narrowly focussed on this aspect. It is submitted that the appellants have erred in incorrectly interpreting the provisions of Section 45(1) of the Spatial Planning and Land Use Management Act, 2013 (SPLUMA). In the result, the appeals fall to be set aside.

- 2.7 With regard to the subject property, it is confirmed that a Mining Right was granted with regard to the property by the National Department of Mineral Recourses (an “organ of state”). Ownership of a real right vests in the Second Respondent.
- 2.8 In Section 45 of SPLUMA, the identity of a land development applicant, alludes to a number of sub-categories. There are two categories of bona fide land development applicants as provided for in SPLUMA, which may pertain to an application to sanction the use of land for mining purposes, namely:
- The registered owner of land (as defined in) or any authorised agent acting for such owner as per Section 45(1)(a) and (b) of SPLUMA; and
  - A person to whom the land concerned has been made available for development in writing by an organ of state or such person’s duly authorised agent, as per Section 45(1)(c) of SPLUMA.
- 2.9 It often occurs that the holder of a mining right or mining permit contemplated in the Mineral and Petroleum Resources Development Act, 2002, is not the registered land owner. Also, the land owner is often unlikely to appoint the holder of the mining right as his/her agent contemplated in Section 45(1)(b) of SPLUMA. It follows that, under such circumstances, the holder of a mining right may potentially be precluded from applying to a municipality to acquire land use rights to sanction the mining operation.
- 2.10 This is legally untenable and it require of the affected municipality to adhere to Sections 45(1)a) and (c) of SPLUMA and to acknowledge the holder of a mining right (or mining permit) as a valid land development applicant. The proper analysis of Section 45(1)(a) with reference to the definitions in SPLUMA indicated that:
1. Section 1(1) of SPLUMA defines “owner” as “the person registered in the deeds registry as the owner of land, or who is the beneficial owner in law.”
  2. The recognised deed registries in South Africa are:
    - The Deeds Office established in terms of s1(1) of the Deeds Registries Act 47 of 1937; and

- The Mineral and Petroleum Titles Registration Office established in terms of s2 (1) of the Mining Titles Registration Act 16 of 1967 (as amended), being the office for the registration of all mineral and petroleum titles and all other rights, deeds and documents.
- 2.11 Land is defined in section 1(1) of SPLUMA to mean “any erf, agricultural holding or farm portion, and includes any improvement or building on the land and any real right in the land”. Real rights in land could typically be registered servitudes, usufructs, mortgages, or long leases. A registered mining right also constitutes a real right, not only to the mineral recourse but also to the land to which the right pertains.
- 2.12 The holder of a mining right, being the “owner” of “land” as defined in SPLUMA, can therefore also lodge a land development application to the municipality. Further, a person to whom land concerned has been made available for development in writing by an organ of state (i.e. the Department of Mineral Recourses) can also submit a land development application in terms of Section 45(1)(c) of SPLUMA.
1. The “development” of land must be interpreted in accordance with the definition of “land development” in section 1(1) of SPLUMA and would entail the erection of buildings or structures on land, the change of the use of land, or any deviation from the land use permitted in terms of the applicable land use scheme.
  2. In terms of Sections 5 and 27 of the MPRDA the holder of a mining right or mining permit, is granted the right to enter into the land to which the rights relates and to build, contrast and lay down buildings and infrastructure as may be required for purposes of mining. The grant of a mining right permit therefore effectively means that the land has been made available to the holder of such right for development by the Department of Mineral Resources, being an organ of state.
- 2.13 The holder of a mining right or mining permit, being a person to whom the land concerned has been made available for development in writing by an organ of state, can therefore also submit a land development application to the municipality.
- 2.14 The above serves as a summary of the grounds of the second Respondent in opposing the appeals, and the Second Respondent reserves the right to elaborate on such grounds, should a hearing be held by the MAT.
- 2.15 Although not prescribed in terms of the provisions of the LUM By-Law, the application form of the Local Municipality, for submission of a notice of appeal, requires that a total record of the proceedings before the JMPT be provided by the “respondent”. In this regard we note that the JMPT is also a respondent, and that a request was sent to the JMPT to make the full record of its meeting held on 29 April 2019 available.

- 2.16 Unfortunately, the Second Respondent is not in possession of the full record of the meeting of the JMPT.
- 2.17 In conclusion the Second Respondent submits that the relief sought from the MAT is to dismiss both appeals of the First and Second Appellants in their entirety and that the resolution by the JMPT, dated 28 May 2019 be upheld.

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**Prepared by the Practice Group (Pty) Ltd**  
**On behalf of ATHA-AFRICA VENTURES (PTY) LTD**