



# Centre for Environmental Rights

## Advancing Environmental Rights in South Africa

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Copied to

### RV Mthombeni

Control Management Officer: Environmental Impact Manager  
Limpopo Department of Economic Development, Environment and Tourism  
By email: [mthombeniRV@ledet.gov.za](mailto:mthombeniRV@ledet.gov.za)

4 September 2019

Dear Sir

#### **FORMAL REQUEST TO SUBMIT COMMENTS ON THE FINAL SCOPING ASSESSMENT REPORT OF THE PROPOSED MUSINA- MAKHADO SPECIAL ECONOMIC ZONE, LOCATED WITHIN THE VHEMBE DISTRICT MUNICIPALITY OF THE LIMPOPO PROVINCE**

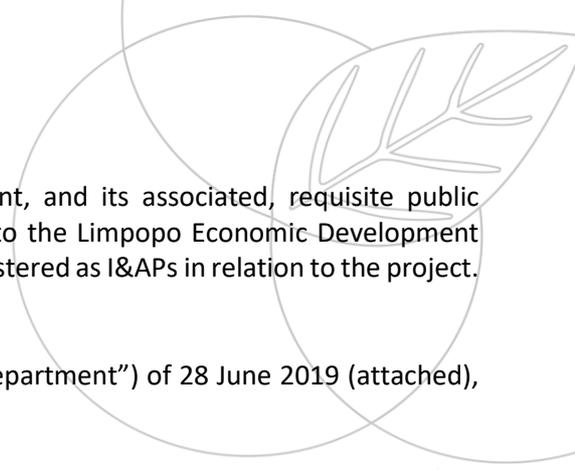
1. We address you as the Centre for Environmental Rights<sup>1</sup> on behalf of our clients groundWork<sup>2</sup> and Earthlife Africa<sup>3</sup> – who have particular interest and expertise in environmental justice issues, and a long-standing history of working with, and representing, the interests of historically disadvantaged communities within the Limpopo Province.
2. We write to you with reference to the Musina-Makhado Special Economic Zone (“the project”) that was designated by the Minister of Trade and Industry, and proposed for the Vhembe District Municipality, in 2016, and with reference to the environmental impact assessment (EIA) process for the project, in respect of which we and our clients are registered interested and affected parties (I&APs).
3. We record up front, our objection to the inadequate public participation process followed in relation to the EIA thus far, and to the final scoping report for the project, and our client’s rights in this regard are fully reserved.

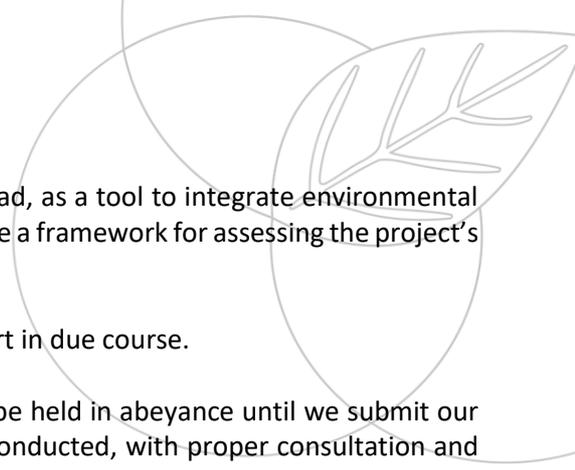
<sup>1</sup> The Centre for Environmental Rights is a non-profit organisation of activist lawyers who help communities and civil society organisations in South Africa realise our constitutional right to a healthy environment, by advocating and litigating for environmental justice. See more information at: [www.cer.org.za](http://www.cer.org.za)

<sup>2</sup> groundWork is a non-profit environmental justice service and developmental organisation working primarily in Southern Africa in the areas of Climate & Energy Justice, Coal, Environmental Health, Global Green and Healthy Hospitals, and Waste. See more information at [www.groundwork.org.za](http://www.groundwork.org.za)

<sup>3</sup> Earthlife Africa is a non-profit organisation that seeks to encourage and support individuals, businesses and industries to reduce pollution, minimise waste and protect natural resources. See more information at: [www.earthlife.org.za](http://www.earthlife.org.za)

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4. We and our clients, only became aware of the proposed development, and its associated, requisite public participation processes well after its designation in 2016. In an email to the Limpopo Economic Development Agency of 7 December 2018, we requested that we and our clients be registered as I&APs in relation to the project. A copy of this email is attached.
  5. In a subsequent email to the Department of Trade and Industry (“the Department”) of 28 June 2019 (attached), we requested, *inter alia*, that:
    - 5.1. we be provided with the contact details of the environmental assessment practitioner(s) appointed to conduct any EIAs in relation to any and all components of the proposed development;
    - 5.2. the Department confirms our registration as I&APs as requested in an earlier email of 7 December 2018; and
    - 5.3. we be advised of the current status of this project as well as its envisaged timelines.
  6. Following numerous follow ups, on 8 July 2019, we received confirmation from Delta Built Environmental Consultants (“Delta BEC”) of our registration as I&APs in relation to the project – almost 8 months after our initial request to be registered.
  7. On 9 July 2019, the CER requested further information in relation to the project’s developmental status and the extent of public participation that has been conducted to date. A copy of this correspondence is also attached. We record that no written response has been received in this regard and that only after following up on this matter telephonically, did Delta BEC confirm that the Scoping Report was already accepted by the Limpopo Department of Economic Development, Environment & Tourism (LEDET) on 31 March 2019.
  8. We subsequently became aware that a final scoping report for the project had been approved on 19 August 2019.
  9. Our clients were not made aware of this (despite our request to be registered as I&APs in December 2018) and were not given an opportunity to consider and comment on the scoping report. Had our clients been notified and made aware of any public participation process, they certainly would have done so.
  10. At the outset, we record that the scoping report appears to be wholly inadequate, particularly in relation to the following key areas:
    - 10.1. water supply, use and associated impacts;
    - 10.2. the viability, need and desirability of the proposed development;
    - 10.3. inadequate public participation and stakeholder engagement – as existing participation was limited and comprised of government officials, affected landowners and incorporated input from only two civil society organisations i.e. Anglo-American Platinum and the Greater Tubatse Local Municipality representatives;
    - 10.4. insufficient consideration of climate change impacts of the project – especially in light of the proposed 3 300 MW thermal power plant which will rely primarily on coal; and
    - 10.5. insufficient consideration of alternative options.
  11. Although we are in the process of considering the scoping report and taking instructions in this regard, in relation to the methodology and approach, we submit that:
    - 11.1. the reliance on scoping and EIA process in terms of the National Environmental Management Act: Impact Assessment Regulations is inappropriate – especially in light of the major uncertainties surrounding the project’s infrastructure needs, service provisions and proposed industrial scale; and

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- 11.2. a strategic environmental assessment should be carried out instead, as a tool to integrate environmental sustainability proactively into the planning of the SEZ and to provide a framework for assessing the project's sustainability.
12. We will submit our clients' more detailed objections on the scoping report in due course.
13. We write to reserve our clients' rights and request that the EIA process be held in abeyance until we submit our clients' comments on the scoping report; and the scoping phase be re-conducted, with proper consultation and public participation.
14. In light of the above, it is submitted that there can be no significant prejudice to LEDET or the project's proponents in granting us and our clients the opportunity to comment. By contrast, the prejudice to our clients and other I&APs if they are not afforded a reasonable opportunity to comment will be significant, given the extensive impacts of the proposed project.
15. In light of the above and in an effort to avoid us seeking alternative means of relief, it is proposed that we are afforded until **1 October 2019** to submit detailed comments on the project's final scoping report.
16. We look forward to your response.

Yours faithfully

**CENTRE FOR ENVIRONMENTAL RIGHTS**



per:

**Ruchir Naidoo**

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