



# Centre for Environmental Rights

## Advancing Environmental Rights in South Africa



Mr Rhulani Mthombeni  
Environmental Impact Management: Department of  
Economic Development Environment and Tourism,  
Limpopo  
By Email: [mthombeniRV@ledet.gov.za](mailto:mthombeniRV@ledet.gov.za)  
[MongweV@ledet.gov.za](mailto:MongweV@ledet.gov.za)  
[NkosiMD@ledet.gov.za](mailto:NkosiMD@ledet.gov.za)  
[MokgokongRT@ledet.gov.za](mailto:MokgokongRT@ledet.gov.za)

Copied to:

Mr Richard Zitha  
Head of Special Economic Zone: Limpopo Economic  
Development Agency  
By Email: [Richard.Zitha@lieda.co.za](mailto:Richard.Zitha@lieda.co.za)  
[Laurence.Fenn@lieda.co.za](mailto:Laurence.Fenn@lieda.co.za)

Mr Ronaldo Retief  
Environmental Assessment Practitioner  
Deltabec  
By Email: [sez@Deltabec.com](mailto:sez@Deltabec.com)  
[ronaldor@ncc-group.co.za](mailto:ronaldor@ncc-group.co.za)  
[cilliers.vandermerwe@deltabec.com](mailto:cilliers.vandermerwe@deltabec.com)

Your ref: 12/1/9/2-V79  
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27 May 2021

Dear Mr Mthombeni

### **ENVIRONMENTAL IMPACT ASSESSMENT FOR THE PROPOSED METALLURGICAL CLUSTER OF THE MUSINA-MAKHADO SPECIAL ECONOMIC ZONE**

1. We write on behalf of our clients, Earthlife Africa,<sup>1</sup> groundWork,<sup>2</sup> and Mining and Environmental Justice Community Network of South Africa (MEJCON-SA)<sup>3</sup> who are registered interested and affected parties (I&AP) in relation to the Musina-Makhado Special Economic Zone (hereinafter referred to as the "MMSEZ Project") environmental impact assessment (EIA).
2. We refer to your letter to the Environmental Assessment Practitioner (EAP) for the MMSEZ Project dated 4 March 2021<sup>4</sup> in which you advised that there is insufficient information in the Final Environmental Impact Report (FEIR) to make an informed decision; and that the Limpopo Economic Development Agency (LEDA) cannot proceed with the project until gaps have been addressed and your department has reached a decision. Further, your letter advised that the EAP should develop a further plan of action (with timelines) to address the following gaps:

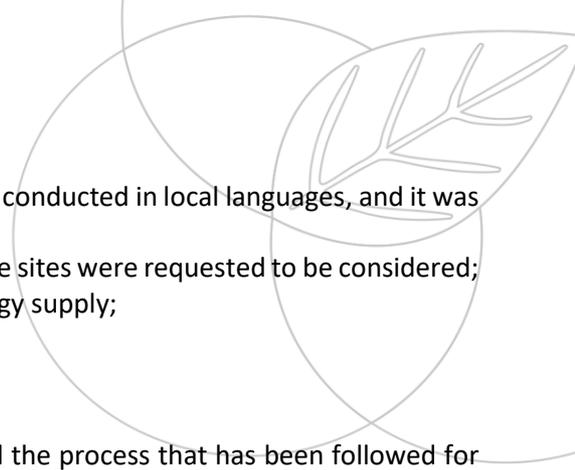
<sup>1</sup> <http://earthlife.org.za/>.

<sup>2</sup> groundWork is a non-profit environmental justice campaigning organisation working primarily in South Africa, in the areas of Climate & Energy Justice, Coal, Environmental Health, Waste, Environmental Justice Education and Environmental Justice Information. <http://www.groundwork.org.za/>.

<sup>3</sup> The Mining and Environmental Justice Community Network of South Africa (MEJCON-SA) is a network of communities, community-based organisations and community members whose environmental and human rights are affected, directly or indirectly, by mining and mining-related activities. <https://mejcon.org.za/>

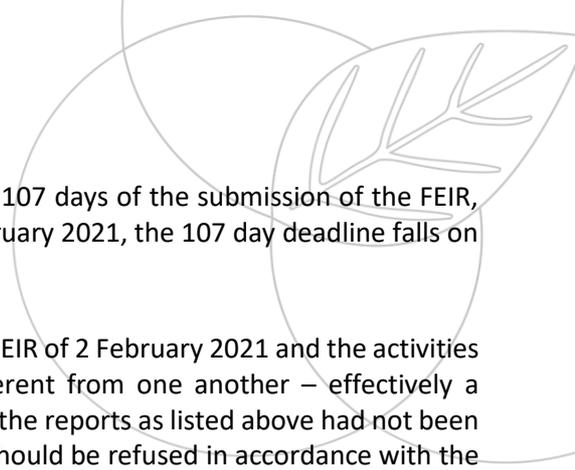
<sup>4</sup> <https://deltabec.com/wp-content/P17102/2-V79%20-%20Comments%20on%20the%20EIAR.pdf>

Cape Town: 2<sup>nd</sup> Floor, Springtime Studios, 1 Scott Road, Observatory, 7925, South Africa  
Johannesburg: 2 Sherwood Road, Forest Town, Johannesburg, 2193, South Africa  
Tel 021 447 1647 (Cape Town)  
[www.cer.org.za](http://www.cer.org.za)

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- 2.1. There was insufficient public participation, as the meetings were not conducted in local languages, and it was directed that a focus group be established for public participation;
  - 2.2. No viable alternative sites were proposed in the FEIR, and alternative sites were requested to be considered;
  - 2.3. Insufficient details were provided in terms of water source and energy supply;
  - 2.4. No recommendation had been made by the EAP in the FEIR; and
  - 2.5. No summary of public participation had been provided.
3. The gaps identified above, are a fatal flaw to the MMSEZ Project EIA and the process that has been followed for this EIA to date, as both the National Environmental Management Act, 1998 (NEMA) and the Promotion of Administrative Justice Act, 2000 (which give effect to Constitutional rights<sup>5</sup>) demand that adequate public participation be conducted prior to administrative decisions being made that would impact on the public, particularly at the early stages of the EIA process. Further, the EIA Regulations under NEMA require that documents submitted in respect of the EIR should be subject to at least a 30 day consultation process.
  4. According to the EIA Guidelines under NEMA, the decision-maker may reject the EIA report because it does not contain the information required by the Regulations. The EIA Regulations under NEMA clearly require that an EIA must contain among others: details of the development footprint alternatives; an assessment of each identified potentially significant impact and risk, including cumulative impacts; a summary of the findings and recommendations of any specialist report; the final proposed alternatives which respond to the impact management measures, avoidance, and mitigation measures identified through the assessment; and any specific information that may be required by the competent authority.
  5. Given the fatal flaws in the EIA process as a result of material information being absent from the FEIR, this EIA should have been refused.
  6. Of further significant concern for our clients is the fact that the EIA process now appears to be continuing (despite the fact – as submitted above – that the EIA ought to have been refused and begun afresh) without key impact assessments being conducted, and without alternatives identified, and being made available for I&APs for consideration and comment. We note that public consultations have been arranged to purportedly address the changes to the FEIR, yet no new or even updated impact assessments have been made available.
  7. We strongly object to these serious gaps in the FEIR being allegedly addressed through mere further consultations without the new impact assessments being conducted and made available, as required by NEMA and the EIA Regulations. We are advised that during the 28 and 29 April 2021 public consultation at Musina and Makhado respectively, it was indicated, that the footprint of the project will now be reduced, there will be an additional buffer zone and many other changes, which require proper assessment by experts. Yet, as mentioned, a revised EIA as well as revised and new expert reports, have not been made available to the public prior to the latest round of public consultations, nor do we know when and whether new EIA reports will be made available for these changes, which effectively are tantamount to a new project requiring a new EIA.
  8. The public has been insufficiently informed during the public participation hearings, as technical reports require careful consideration and I&APs require access to the full facts and scope of impacts, in order for meaningful engagement to be possible. Furthermore, in terms of all expert reports and documents, particularly in relation to energy and water supply for the project, a proper assessment needs to be conducted, and these need to be subject to public participation.
  9. Furthermore, it was indicated by the EAP in an email to the I&APs on 15 March 2021 that an independent review was conducted in relation to the FEIR, and that a plan of action should be submitted by the EAP. The independent review and the plan of action should have been made public, and we request that these be forwarded to I&APs as soon as possible, and prior to any decision being made in relation to this project.

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<sup>5</sup> Sections 24 and 33 respectively.

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10. According to the EIA Regulations, 2014, the decision maker must within 107 days of the submission of the FEIR, grant or refuse the application.<sup>6</sup> As the EAP submitted the FIER on 1 February 2021, the 107 day deadline falls on 19 May 2021.
  11. Given that it appears that the MMSEZ Project initially put forward in the FEIR of 2 February 2021 and the activities that are now being proposed, will be significantly and materially different from one another – effectively a different project from what was initially proposed, and given that gaps in the reports as listed above had not been addressed by 19 May 2021, we respectfully submit that the application should be refused in accordance with the EIA Regulations and Guidelines.
  12. We and our clients object to any process which seeks to legitimise the flawed EIA through stop-gap measures, which do not support the objectives of NEMA and the Constitution, and which are not procedurally fair or in compliance with the requirements of NEMA.
  13. In light of the above, we request that you provide the records requested in paragraph 9 above as soon as possible and **by no later than 4 June 2021**, and we request that you provide us with clarity on the way forward for the MMSEZ EIA process and your decision in relation to the FEIR as set out above.

Yours faithfully

**CENTRE FOR ENVIRONMENTAL RIGHTS**

per:



**Michelle Koyama**

**Attorney**

Direct email: mkoyama@cer.org.za

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<sup>6</sup> Section 24(1) of the EIA Regulations, 2014.