



Centre for Environmental Rights

Advancing Environmental Rights in South Africa

The Director-General

Department of Forestry, Fisheries and the Environment

For the attention of:

Mr Simon Moganetsi

Environment House
473 Steve Biko Street
Arcadia
Pretoria
By email: Smoganetsi@environment.gov.za

Our ref: BA/NL
23 July 2021

Dear Director-General

COMMENTS ON THE INTENDED DRAFT GUIDELINE FOR CONSIDERATION OF CLIMATE CHANGE IMPLICATIONS IN APPLICATIONS FOR ENVIRONMENTAL AUTHORISATIONS, ATMOSPHERIC EMISSIONS LICENSES AND WASTE MANAGEMENT LICENCES

1. We address you on behalf of groundWork¹ and Earthlife Africa,² and represent the Life After Coal/Impilo Ngaphandle Kwamalahle Campaign (“the Campaign”),³ a joint campaign by Earthlife Africa, groundWork, and the Centre for Environmental Rights,⁴ in making these comments. The Campaign aims to discourage the development of new coal coal-fired power stations and mines; reduce emissions from existing coal infrastructure and encourage a coal phase-out; and enable a just transition to sustainable energy systems for the people.
2. We refer to the Consultation on Intention to Publish the Draft Guideline for Consideration of Climate Change Implications in Applications for Environmental Authorisations, Atmospheric Emissions Licenses and Waste Management Licenses (“the draft Guideline”) published on 25 June 2021 (GN 559 in Government Gazette 44761) for 30 days comment, with the stipulated comment deadline being 25 July 2021.
3. The draft Guideline is published in the context of a climate emergency – where the need to assess how proposed developments will contribute to, and be impacted by, climate change, is increasingly vital. It is within the next decade that the necessary steps must be taken to ensure against the worst effects of the climate crisis. President Ramaphosa has acknowledged climate change to be “*the most pressing issue of our time*”.⁵
4. We and our clients have long maintained that decision-making in environmental authorisation and licence processes must always be informed by climate considerations. By this we mean that, in assessing the impacts of

¹ See <http://www.groundwork.org.za/>

² See <http://earthlife.org.za/>

³ See <https://lifeaftercoal.org.za/>

⁴ See <https://cer.org.za/>

⁵ <https://www.gov.za/speeches/president-cyril-ramaphosa-virtual-leaders-summit-climate-22-apr-2021-0000>

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proposed activities, and **prior** to a decision being made by a competent authority, comprehensive consideration must be given to the full spectrum of climate impacts associated with an activity, this includes:

- 4.1. The greenhouse gas (GHG) emissions of proposed activities as well as the emissions of associated, upstream and downstream activities i.e. the full lifecycle, ancillary and cumulative GHG emissions of proposed activities as well as the costs of these emissions;
 - 4.2. The ways in which the proposed project activities might be impacted by climate change over their anticipated lifespan(s); and
 - 4.3. The ways and extent to which the project activities could exacerbate climate impacts in the area where the project is proposed. In other words the ways in which the project might impact upon climate resilience and adaptation efforts.
5. It goes without saying that where a project would have significant climate impacts that cannot be mitigated, either from an emissions perspective and/or through negative impacts for adaptation, then the proposed activities should be refused. This is one of the reasons why it is crucial that a decision-maker has access to a detailed assessment of the potential climate impacts of proposed activities to inform such a decision.
6. In the 2016 case filed against officials at the Department on behalf of our client, Earthlife Africa, we asked the Pretoria High Court to confirm that the law regulating environmental impact assessments (EIAs) – The National Environment Management Act, 1998 (“NEMA”) and EIA Regulations - required an assessment of the climate impacts of the proposed Thabametsi coal-fired power station before a decision could have been made to authorise that project. In March 2017, the judgment in that matter confirmed that *“the legislative and policy scheme and framework overwhelming support the conclusion that an assessment of climate change impacts and mitigating measures will be relevant factors in the environmental authorisation process, and that consideration of such will best be accomplished by means of a professionally researched climate change impact report.”*⁶
7. We also note and refer the Department to relevant best practice principles for Climate Change Impact Assessments, as set out by the International Association for Impact Assessments (IAIA).⁷ The IAIA recommends the following for the scope of climate impact assessments: *“As a first step in an IA (impact assessment), it is necessary to identify whether and how: i) The proposal will, directly or indirectly, increase or decrease greenhouse gas (GHG) emissions. ii) The proposal may be beneficially or adversely affected by, and vulnerable to, climate change either directly or indirectly. iii) Climate change may affect elements of the environment that are potentially affected by the proposal. iv) The proposal could be used to identify measures to mitigate and/or adapt to climate change. IA should explicitly address potentially significant effects in each area above, with the level of detail consistent with the potential significance of the effects”*.
8. It is against this background that we make these comments on the draft Guideline.
9. We submit below our comments on the draft Guideline, in the following format:
- 9.1. general and overarching comments and concerns in relation to the draft Guideline;
 - 9.2. more detailed comments on, and recommended changes to, specific provisions of the draft Guideline; and
 - 9.3. concluding remarks.

⁶ para 91, judgment at <https://cer.org.za/wp-content/uploads/2017/03/Judgment-Earthlife-Thabametsi-Final-06-03-2017.pdf>

⁷ Available at <https://www.iaia.org/uploads/pdf/SP8.pdf>.

General comments on the Draft Guideline

10. We welcome the draft Guideline published by the Department of Forestry, Fisheries and Environment (“DFFE”). The Guideline should facilitate increased certainty and encourage best practice in ensuring comprehensive consideration of climate impacts to inform decision-making in environmental authorisation and licensing processes. This is crucial in ensuring that the intensifying climate crisis is adequately considered and responded to. We urge the DFFE to publish this Guideline as soon as possible, and recommend that our comments and suggested amendments are incorporated into the final Guideline. While many of the provisions in the draft are welcomed, there are a number of provisions which we and our clients deem to be insufficient to adequately respond to the climate crisis, foster climate justice and to meet the legal requirements of NEMA and the Constitution of the Republic of South Africa, 1996 (“the Constitution”).

Concerns with NDCs as a benchmark

11. A point of major concern is the prescribed analysis of *“how the development’s estimated GHG emissions will impact on South Africa’s GHG emission trajectory and its ability to maintain its nationally determined contributions under the Paris Agreement”* (Clause 9.3.5 Impacts or Findings). A development’s estimated GHG emissions must be aligned with an emissions limit that places South Africa on a trajectory for a safe climate and protects people from the impacts of the climate crisis – this is not necessarily synonymous with the NDC. We contend that NDCs are not an adequate benchmark against which an activity’s impacts should be assessed in terms of climate change mitigation.

12. Whilst purporting to be based on sound scientific modelling, along with the prescribed approaches of *“highest possible ambition”* and *“common but differentiated responsibility”* in the Paris Agreement,⁸ South Africa’s NDCs are ultimately the outcome of the discretion of the executive arm of the state, and not necessarily a reliable indicator of a safe emission reduction pathway. There is a large gap between emissions allowed under NDCs and emission reductions required to meet the fundamental climate goal of the Paris Agreement.⁹ South Africa’s overriding legal and international obligations, against which climate impacts of activities must be assessed, are the following:

12.1. commitments made in terms of the Paris Agreement, being *“[h]olding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels”*;¹⁰

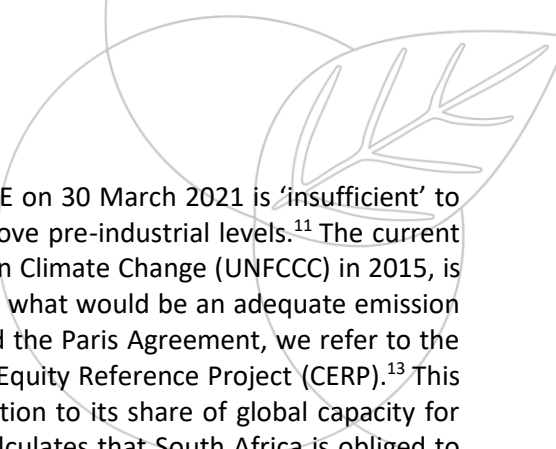
12.2. Section 24 of the Constitution, which guarantees a right to an environment not harmful to health and wellbeing. It follows that this includes a right to be protected from the harmful effects of the climate crisis – and therefore an obligation to ensure that GHG emissions are reduced within South Africa’s fair share to limit global average temperature increase; and

12.3. The provisions of NEMA, which include the national environmental management principles in section 2 of NEMA, such as ensuring that a risk-averse and cautious approach is applied, which takes into account the limits of current knowledge about the consequences of decisions and actions, as well as recognising that global and international responsibilities relating to the environment must be discharged in the national interest - these are binding on organs of state; and section 28 of NEMA, which provides for a duty of care on all persons to prevent pollution or degradation of the environment.

⁸ Article 4.3 of the Paris Agreement

⁹ See See: Roelfsema, M., van Soest, H. L., Harmsen, M., van Vuuren, D. P., Bertram, C., den Elzen, M., ... & Vishwanathan, S. S. (2020). Taking stock of national climate policies to evaluate implementation of the Paris Agreement. *Nature communications*, 11(1), 1-12.

¹⁰ Article 2(a) of the Paris Agreement

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13. According to Climate Action Tracker, the draft NDC update issued by DFFE on 30 March 2021 is ‘insufficient’ to meet the Paris Agreement goal of limiting warming to well below 2°C above pre-industrial levels.¹¹ The current governing NDC, submitted to the United Nation Framework Convention on Climate Change (UNFCCC) in 2015, is defined as ‘highly insufficient’ by Climate Action Tracker.¹² In determining what would be an adequate emission reduction benchmark, aligned with the requirements of domestic law and the Paris Agreement, we refer to the fair share emissions trajectory for South Africa calculated by the Climate Equity Reference Project (CERP).¹³ This methodology defines a country’s fair share of the global effort in proportion to its share of global capacity for addressing the problem and historic responsibility for causing it. CERP calculates that South Africa is obliged to reduce its emissions to the range 274 - 401 MtCO₂eq by 2030 to be aligned with a 1.5°C trajectory. This amount includes emissions from land use, land-use change and forestry (LULUCF).
14. While we recognise the Paris Agreement’s primary goal of limiting global warming to “*well below*” 2°C, we submit that the Agreement’s strong encouragement of aiming to limit this warming to below 1.5°C should be the focus of South Africa’s climate change response policies and mechanisms, in order to avoid catastrophic climate impacts. We know from the Intergovernmental Panel on Climate Change (IPCC) Special Report on Global Warming of 1.5°C¹⁴ of 2018 that climate change risks are significantly lowered by limiting warming to 1.5°C. We also know that Southern Africa is heating at twice the global average rate¹⁵ and will be facing catastrophic impacts in inadequate climate change mitigation scenarios.
15. With the above in mind, South Africa – as well as the rest of the world – must be strongly focussed on aspiring to a 1.5°C warming increase limit (as a maximum), both in its domestic climate change response policies and mechanisms, and its international diplomacy and advocacy in this regard. This is the benchmark that project proponents and decision-makers must – at the very least – consider emissions and climate impacts against, in environmental impact assessment and licence processes. An approach that is less ambitious than this, is in contravention of section 24 of the Constitution as well as the principles and provisions of NEMA. It follows therefore that the draft Guideline should also have this aspiration referenced in order that climate change considerations are measured against the safest known and generally accepted achievable standard, being a 1.5°C warming limit.
16. We further contend that the draft Guideline should be worded in such a way that if evolving scientific modelling or findings demonstrate that safe limits of warming are found to be even lower than is currently generally accepted, that these new limits become the benchmarks against which impacts are measured and evaluated. The overriding considerations in assessing the extent and severity of climate impacts must always be the latest science on climate change read with the legal obligations under NEMA, the Constitution and the Paris Agreement. This is in line with the IAIA Climate Change Impact Assessment Best Practice Principles referred to above, where it states that “*information about climate change is rapidly developing. Any assessment should use the latest, most credible scientific information and climate change projections*”.
17. A further concerning aspect of utilising the NDCs as a benchmark, is that these targets are only revised every five years. We have seen that the science around climate change and its impacts is a rapidly evolving field of knowledge, and have also observed a trend that safety limits and anticipated impact trajectories become increasingly more stringent as new scientific data become available. It is therefore plausible that South Africa’s already weak and inadequate NDCs effectively become outdated and increasingly insufficient during the five year period of their validity. Evaluating activities’ impacts against relatively static NDCs that may well have no correlation to emission limits required for a safe climate, could result in authorisations or licences being granted even when it is patently clear that their development is not aligned with the evolving science and GHG emission

¹¹ <https://climateactiontracker.org/climate-target-update-tracker/south-africa/>

¹² <https://climateactiontracker.org/countries/south-africa/>

¹³ <https://cerp.org.za/wp-content/uploads/2021/05/NDC-vs-fair-share-memo-v04-corrected-version.pdf>

¹⁴ <https://www.ipcc.ch/sr15/>

¹⁵ Francois Engelbrecht et al 2015 Environ. Res. Lett. 10 085004 (<https://iopscience.iop.org/article/10.1088/1748-9326/10/8/085004/pdf>)

thresholds for a safe climate. We address specific wording relating to the issue of referencing NDCs, as described above, in the next section of this submission.

The need for an assessment and calculation of the external climate costs of a proposed project

18. We urge that the draft Guideline makes provision for an assessment of a project's external costs associated with climate change impacts. It is well established that environmental and climate impacts of activities impose external cost burdens which are generally not paid for by the project proponent – despite the NEMA section 2 principle that requires, *inter alia*, that the costs of remedying pollution, environmental degradation and consequent adverse health effects must be paid for by those responsible for harming the environment. Examples of such impacts include impacts on GDP, biodiversity, net agricultural productivity, water availability, human health, ecosystem services, damage to property and infrastructure and more. Section 240 of NEMA requires that all relevant factors are taken into account by a decision-maker when considering an application for environmental authorisation, and we contend that the social costs of GHG emitting activities clearly constitute a relevant factor.
19. In this regard, we refer to the USA's social cost of carbon protocol (SCC)¹⁶ for assessing climate impacts, which is intended to be a comprehensive estimate of climate change damages. Although the SCC does not currently include all of the relevant damages, it is a useful method for estimating the damages associated with even a small increase in CO₂ emissions - conventionally one metric ton - in a given year, and represents the value of damages avoided for a small emission reduction (i.e. the benefit of a CO₂ reduction).
20. As such we motivate for the social cost of carbon, or an equivalent methodology which quantifies external climate related costs of an activity, to be included in the draft Guideline. We will address specific wording relating to the issue of external and social costs of carbon emissions, as described above, in the next section of this submission.

The need for climate impact assessment guidance to be extended to other licensing processes

21. While we note that the draft Guideline applies to licence processes within the DFFE's mandate, we point out that for the sake of consistency – and given the broad scope of climate impacts in general – this guideline should be adopted for, and also apply to, the water use licensing process, and arguably also to a much broader array of government decision-making and licensing processes, including electricity generation licences by the National Energy Regulator and scheduled trade permitting by local governments.
22. In this regard we draw your attention to an appeal decision of the Water Tribunal in 2020,¹⁷ which confirmed that climate change considerations must be comprehensively applied to water use license processes.¹⁸ We contend that this is essential jurisprudence when considering that South Africa is a water scarce country, and water security is one of our main climate change risk areas.

The need for consideration of the full spectrum of climate impacts and alternatives

23. It is essential that the draft Guideline provides for assessment of full lifecycle GHG emissions and the full footprint of a project – not just the climate impacts of activities in isolation. A cumulative impact assessment approach accords with the nature of climate change impacts and is supported by the Environmental Impact Assessment Regulations, 2014. The IAIA Best Practice Principles recommend, in this regard, *“using a life-cycle approach ... [including] any effects of the proposal on carbon sinks. The estimate of the proposal's net emissions requires careful examination of estimated emissions with and without the proposal”* and *“[t]he effects on climate change of any*

¹⁶ The protocol was developed by a working group of USA federal agencies, including the U.S. Department of Agriculture. See <https://www3.epa.gov/climatechange/Downloads/EPAactivities/scc-fact-sheet.pdf>.

¹⁷ TRUSTEES OF THE GROUNDWORK TRUST vs ACTING DIRECTOR-GENERAL: DEPARTMENT OF WATER AND SANITATION and ACWA POWER, KHANYISA THERMAL POWER STATION (RF) PTY LTD - WT02/18/MP

¹⁸ <https://cer.org.za/news/water-tribunal-says-all-new-water-licences-must-take-climate-change-into-consideration>

single proposal may appear insignificant, but may not be when added to numerous other past, current and future projects. GHG emissions should therefore also be considered at a level (typically policy, program or plan) that addresses the cumulative effects of groups of communities or individual projects”.¹⁹

24. Climate change impact assessments must also consider issues of equity, particularly in South Africa where inequality and poverty remain among of our most pressing concerns, and given that we know that economically and socially vulnerable persons and communities tend to bear the brunt of climate change impacts. The IAIA Best Practice Principles addresses equity by stating that, *“Consideration of different socio-cultural and socio-economic vulnerabilities and adaptive capacities within societal groups is an important component of [impact assessments]. For example, climate change can affect men’s and women’s roles and activities in agriculture, water management, land tenure and livelihoods in new, unplanned ways. Gender issues related to climate change should therefore be assessed and measures identified to lessen inequities. Particular attention should also be paid to potentially disproportionate adverse effects on poor populations in drought, flood prone and coastal areas subject to potential climate change impacts.*
25. In assessing a proposed activity’s climate impacts, and in considering alternatives as required by NEMA and the EIA Regulations, this should include an identification of reasonable alternatives to emissions-intensive projects that can better help advance South Africa’s progress towards its climate obligations.

The need for stronger language to discourage deviations from the Guideline

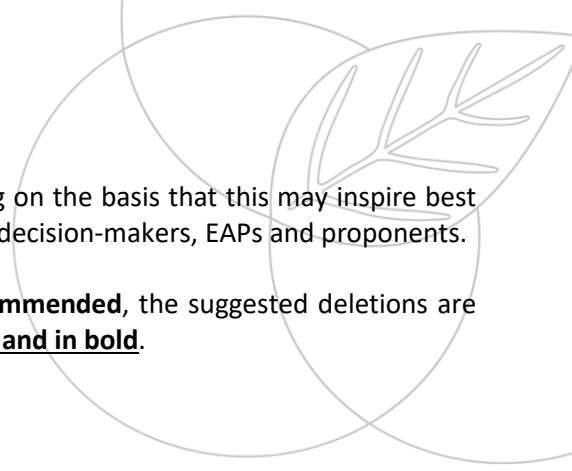
26. We accept that the draft Guideline is intended to provide guidance on the consideration of climate change impacts, and is not prescriptive in the manner that legislation is. We do however contend that it should discourage deviation as far as possible. This contention is motivated by our experience that developers, environmental assessment practitioners (“EAPs”) and decision-makers tend, in practice, to demonstrate insufficient commitment to meaningfully address, minimise or avoid climate change impacts – and often have an interest in refraining from comprehensively assessing and disclosing climate impacts, where the outcomes of those assessments are generally not favourable to a project proceeding.
27. While this aspect falls outside of the ambit of commenting on the draft Guideline, we use this opportunity to recommend that the EIA Regulations be amended to require compliance with this and any further guidelines for assessing climate change impacts, and/or to make express provision for the comprehensive assessment of climate impacts, due to the urgent and important nature of addressing climate change impacts and proper planning in the context of the climate crisis. The EIA Regulations currently require that *“any report, plan or document submitted as part of an application must - ... (c) take into account any applicable government policies and plans, guidelines, environmental management instruments and other decision making instruments that have been adopted by the competent authority in respect of the application process or the kind of activity which is the subject of the application and indicate how the relevant information has been considered, incorporated and utilised”*²⁰ and that a scoping report must explain how the proposed activity complies with and responds to the legislation and policy context, plans, guidelines, tools frameworks, and instruments. This wording should be strengthened and the EIA Regulations in general adapted to be more aligned with the needs for a more holistic environmental impact assessment process that is appropriate for the context of the climate crisis. The same applies to the other licensing processes as provided for in the draft Guideline and under NEMA.

Further comments and recommended changes to the provisions of the Draft Guideline

28. In this section we address certain sections of the draft Guideline - under the headings for the sections in which the provisions appear in the draft Guideline - addressing further items of concern and recommending certain changes.

¹⁹ See <https://www.iaia.org/uploads/pdf/SP8.pdf> under “Greenhouse Gas Emissions” and “Cumulative Effects”.

²⁰ Regulation 16(3)



In some instances, we recommend expanding upon the existing wording on the basis that this may inspire best practice and more holistic approaches to climate impact assessments by decision-makers, EAPs and proponents.

29. Please note that where changes to the draft Guideline's text are recommended, the suggested deletions are within **[square brackets in bold]** and suggested additions are **underlined and in bold**.

DEFINITIONS

30. The definitions for the terms "**Carbon Sink**" and "**Carbon Footprint**" appear to have been switched, and corrected definitions must be applied to each term.

3: PURPOSE AND APPLICABILITY

31. We recommend that the language of the Guideline be strengthened in terms of its application and applicability and that it discourage deviation from the Guideline, as described in paragraph 26 above.

32. In light of the above comments, we propose the highlighted addition to the following sub-clause

"iii: What will this guideline not do?"

...

"This guidelines does not replace the value of practical experience gained though coordinating, being responsible for and/or reviewing specialist inputs. The guideline must not be prescriptive and inflexible, but deviation from the guideline should only be permissible if reasonable and for good and scientifically sound cause. Such deviation should be transparent and highlighted for public participation processes and in reports for interested and affected parties. It is intended to provide best practice guidance...."

5. GENERIC PRINCIPLES FOR INVOLVING CLIMATE CHANGE SPECIALISTS IN EIA PROCESSES

33. In our experience, developers and EAPs seldom meaningfully meet the intention and requirements of NEMA when it comes to public participation in environmental decision-making. While we commend the recognition of the principle of ensuring that findings are informed by local and indigenous knowledge and experience, we contend that it is necessary to ensure that such knowledge and experience is ascertained through inclusive and thorough public participation.

34. The IAIA best practice principle on transparency and stakeholder participation states that *"all people who are potentially affected by the proposal and interested in participating in the assessment process should be able to understand how climate change has been addressed. In addition, authorities that have a policy interest in the proposal need to be engaged. Each aspect of the IA (impact assessment), based on the principles outlined above from scoping through decision-making and plans for follow-up, should be communicated and explained in clear, easy to-read language, and the relevant documents should be readily accessible to those interested."*²¹ The nature of the vulnerability experienced by certain groups results in these affected parties often not having access to information about proposed activities, insufficient means to participate easily in public participation processes and difficulty in understanding assessment related information that may be highly technical, or presented in unfamiliar languages. The Guideline must therefore encourage and enable a high degree of care and diligence when EAPs and decision-makers gather information and consider the impacts on vulnerable parties

35. In light of the above comments, we propose the highlighted addition to the following clause:

"The following generic principles apply to the involvement of specialists in EIA process and underpin this guideline:

²¹ IAIA Climate Change Impact Assessment International Best Practice Principles at <https://www.iaia.org/uploads/pdf/SP8.pdf>.

...

- *Ensure that findings are informed by local and indigenous knowledge and experience, **informed by meaningful, inclusive and effective public participation***

6. THE ROLE OF THE EAP

36. We contend that it is highly unlikely that any activities falling within the scope of this draft Guideline will not be impacted by climate change in some form or another, given the far-reaching impacts of climate change on the physical and social environment. We therefore contend that the Guideline should be strongly encouraging of the inclusion of potential climate change related risks in **all** EIA reports, regardless of whether or not a climate change assessment is deemed to be required. We discourage a narrow approach that only seeks to apply climate considerations to immediate emitting activities or to activities in isolation, without consideration of a project's full lifecycle and footprint.
37. We recommend – even in circumstances where no climate change impact assessment is undertaken - that the draft Guideline requires the consideration of a broad range of potential climate change impacts beyond physical impacts, and in particular the potential socio-economic, health and biodiversity impacts of climate change. While the existing wording, if interpreted correctly, is not inadequate, this draft Guideline can and should encourage decision-makers, EAPs and proponents to pursue best practice aligned with the NEMA principles. Expanded wording can facilitate this.
38. The draft Guideline vests considerable discretion in the competent authority and licensing authority to determine whether or not a proposed development would have significant climate change impacts and therefore require climate change specialist input. We caution that such decision-makers may not necessarily have the expertise to determine the full spectrum of potential climate impacts of proposed activities and to determine whether or not an assessment requires the input of a climate change specialist. For this reason we have recommended the addition stipulated in the final paragraph below.
39. In light of the above comments, we propose the highlighted amendments the following clause:

“Step 3: Determine if the issue falls within the scope of the EIA process

...

*Not all activities that require EA, WML or AEL will require climate change assessments. However, it must be kept in mind that some climate change impacts are cumulative in nature – even small amounts of GHG emissions may still contribute to global climate change. All EIA reports should **[preferably]** still include potential risks from climate change that could affect the development on the short, medium or long term.*

In the event where no climate change assessment is undertaken, the EIA report should contain the following:

...

- *An assessment of whether or not a specific development will likely be impacted by the **physical** effects of climate change, such as more severe and frequent floods, droughts, **increased air or water temperatures, heatwaves** and storm events; **or by socio-economic disruption/s caused by water and food supply disruptions, biodiversity loss, disease, climate migration or other climate related factors.***

...

Step 5: Assess potential impact associated with the proposed development including recommendations for management actions and monitoring programmes

...

Further to the above it must be noted that whilst the EAP as part of the EIA process will determine the need for involvement of a climate change specialist, the competent authority or licencing authority may be approached through a pre-application meeting to determine whether or not a proposed development would have significant climate change impacts and therefore require a climate change specialist input into the EIA process. **As this decision itself has significant consequences and requires sound knowledge and insight into the potential climate change impacts related to the development, the authority should avail itself of expert input, and ensure that its decision in this regard is based on sound scientific and other objective reasons.** This must be communicated to the EAP.”

7. THE ROLE AND TIMING OF SPECIALIST STUDY WITHIN THE EIA PROCESS

40. We contend that it is essential that development takes place within a framework of continuous assessment of, and alignment with, the latest and most credible information regarding emissions reduction imperatives necessary to ensure the attainment of the Paris Agreement goals, and compliance with Constitutional and legal obligations - limiting warming to no more than 1.5°C (referred to above in paragraphs 11 to 16). As such, it is necessary that proposed activities be evaluated against the latest generally recognised scientific information and modelling in this regard, recognising that existing policy and an applicable NDC do not necessarily meet the requisite legal standard to ensure safe and adequate decision-making on climate change.

41. In light of the above comments, we propose the highlighted amendments to the following clause:

“In deciding the approach and method to be employed, the following should be considered

...

- *The time and budget available; [and]*
- *Legal requirements and policy direction;*
- **Currently available and credible science and assessment of South Africa’s GHG emission inventory;**
- **South Africa’s current domestic and international obligations regarding emissions reduction; and**
- ...

9. EXTENT AND CONTENT OF CLIMATE CHANGE ASSESSMENTS

42. As motivated above in paragraphs 11 to 16, assessing a proposed activity’s impact on national and global mitigation imperatives against the NDC is not adequate.

43. We also reiterate (based on our comments in paragraphs 23 to 25 above) that the assessment of climate impacts of proposed activities must not consider those activities in isolation but must take the full spectrum of the activity and associated activities into account, and that consideration must be given to the costs of the climate impacts, in line with NEMA’s polluter pays principle (see paragraph 18 above).

44. We contend that the issue of stranded assets is a rapidly growing risk as economic viability, availability of financing and insurance, market acceptability, reputation and regulatory risk and other factors are becoming ever more influential.²² The impacts of assets becoming stranded are felt beyond the owners of such assets, as rehabilitation, decommissioning, job losses and other factors often result in costs to public funds and society at large. It is therefore worthwhile to expand on the definition of stranded assets to highlight to decision-makers, EAPs and proponents the risks in this regard.

45. Socio-economic and equity considerations, particularly in relation to groups and communities disproportionately affected by climate change impacts (such as women, children, the elderly, rural and poor communities), must be expressly provided for

²² [Climate Change 'Stranded Assets' Are a Long-Term Risk for Some Sovereigns \(fitchratings.com\)](https://www.fitchratings.com/news/climate-change-stranded-assets-are-a-long-term-risk-for-some-sovereigns)

46. In light of the above, we suggest the following amendments to the wording of this provision:

...

9.3.2 *Scope and purpose of the report*

- *An indication of the scope of, and the purpose for which, the report was prepared (this includes, where applicable distinguishing between pre-construction, construction, operational and decommissioning impacts). **[Reports must be limited to the scope of the listed or specified activity applied for.]***

...

9.3.5 *Impacts or findings*

...

- *A description of the potential impact on the surrounding environment, and implications for the proposed development;*
- ***A description of the surrounding social environment, including all communities and settlements, whether formal or informal, in order to ascertain the full scope of impacts, including disproportionate impacts on certain groups and to enable adequate and proactive public participation, to ensure that the needs of all affected parties are able to be engaged with and addressed;***

...

- *An analysis of how the development's estimated GHG emissions will impact on South Africa's GHG emissions **reduction** trajectory and its ability to maintain its **[nationally determined contributions] domestic and international obligations under the Paris Agreement, and whether the project is aligned with a fair share of emissions and mitigation pathways compatible with a 1.5°C warming limit, and/or the latest scientific conclusions on what constitutes a safe warming limit.***
- *The likelihood of the development becoming a stranded asset in future owing to **various** variable economic factors **including the economics** of renewable energy, likely stricter GHG emission **limits and other regulatory risks, market changes, reputational risk, lower water supplies and climate related physical risks** and other factors;*
- ***An assessment of the socio-economic and health impacts taking into account that climate change impacts are often most intensely experienced by certain groups and communities, including economically marginalised persons, women and participants in traditional and informal economies.***

.....

- *Details of the expected carbon footprint of the development including, but not limited to:*
 - a) *Identification of avoidance, management and mitigation measures (i.e. consideration of the Impact Mitigation Hierarchy for managing development related GHG emissions, **including full lifecycle emissions**);*
 - b) *Identification of the contribution the development could have towards climate change;*
 - c) ***Assessment of the external and social costs of climate change that would be brought about by the activity's climate impacts;***
 - d) *Consideration of the impacts that climate change could have on the development proposal; and*
 - e) *The inclusion of adaptation measure.*

Conclusion

47. We reiterate that we and our clients welcome the draft Guideline as a fundamental document that will go a long way to ensuring that climate change impacts are appropriately assessed and managed as part of environmental licence and decision-making processes, **provided that the final version is not diluted in any way.** We strongly discourage any regression or weakening of the provisions of the draft Guideline as currently worded.

48. We recommend that our comments and suggested amendments as set out above are incorporated into the final Guideline, in particular the recommendations that assessments are undertaken with reference to ensuring compatibility with mitigation pathways consistent with limiting warming to a maximum of 1.5°C above pre-industrial levels.

49. We also strongly recommend that this Guideline be finalised and published without delay – given the substantial delays in adopting this much-needed guidance since the Thabametsi judgment in 2017 and, more importantly, in light of the urgent present context of the climate crisis, necessitating a clear and comprehensive process for assessing climate impacts in and prior to environmental decision-making.

50. We also look forward to the urgent promulgation of the Climate Change Act to provide further, and much needed, legal certainty on the regulation of climate change in South Africa.

Yours faithfully

CENTRE FOR ENVIRONMENTAL RIGHTS



per:

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