

**IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MIDDELBURG
(LOCAL SEAT)**

Case No: 1344/2020

In the matter between:

**MINING AND ENVIRONMENTAL JUSTICE
COMMUNITY NETWORK OR SOUTH AFRICA**

First Applicant

GROUNDWORK

Second Applicant

BIRDLIFE SOUTH AFRICA

Third Applicant

ENDANGERED WILDLIFE TRUST

Fourth Applicant

FEDERATION FOR A SUSTAINABLE ENVIRONMENT

Fifth Applicant

**ASSOCIATION FOR WATER AND RURAL
DEVELOPMENT**

Sixth Applicant

BENCHMARKS FOUNDATION

Seventh Applicant

and

**GERT SIBANDE DISTRICT JOINT MUNICIPAL
PLANNING TRIBUNAL**

First Respondent

**DR PIXLEY KA ISAKA SEME LOCAL MUNICIPALITY
MUNICIPAL APPEAL AUTHORITY**

Third Respondent

ATHA-AFRICA VENTURES (PTY) LTD

Third Respondent

**MEC FOR AGRICULTURE, LAND REFORM
AND RURAL DEVELOPMENT**

Fourth Respondent

**THE MABOLA PROTECTED ENVIRONMENT
LANDOWNERS ASSOCIATION**

Fifth Respondent

THIRD RESPONDENT'S HEADS OF ARGUMENT

Introduction

1. The Third Respondent filed a Notice of Intention to Oppose, however, has not filed an Answering Affidavit. As a result, it appears it was excluded from the Case Management Meeting between the parties and was not involved in setting the deadlines and agreeing the date for the hearing of the matter, and was not consulted thereon.
2. The Third Respondent still intends to participate in these proceedings, and will argue the issues, which are primarily questions of law and disputes of fact, based on the affidavits already before the Court, as well as common cause facts between the parties. For this, it is submitted that no Answering Affidavit by it is required at this stage, and to the extent that the Court deems it necessary, affidavits can be filed in due course.
3. The Third Respondent submits that notwithstanding the lengthy Founding Affidavit, no case has been made out for a review and setting aside of the First and Second Respondents decision to change the status of the zoning from agricultural to mining, and on the papers before the Court, the application should be dismissed.
4. Alternatively, the Third Respondent recommends that this matter be stayed, pending the outcome of what can be referred to as the "main issue" applications, and in this regard, it supports the counterapplication of the First and Second Respondents for this reason.

5. As will be set out in the history of the litigation below, this current application is one of many which the Applicants have launched as a strategy to litigation, to frustrate and delay the commencement of the mine. If the Applicants are successful in any of their applications, this entire application will become moot, as if the right to mine is overturned by any court, the need for the rezoning from agricultural to mining falls away.
6. With respect, the rezoning of one property is the side show to the main events, the main events being the following:
 - 6.1. The appeal and review launched by the Applicants, under separate case numbers, in Pretoria High Court, to set aside the decision of the Water Tribunal, to grant a Water Use Licence to the Third Respondent for the purpose of mining. Without the water use licence, no mining activity can take place. Case numbers A155/2019 and 86261/2019 respectively.
 - 6.2. The review by the Applicants in the High Court Pretoria against the decision of the Minister of Environmental Affairs and Mineral Resources to grant a mining right to the Third Respondent under case number 73278/2015. If the Applicants are successful with this review and the mining rights are set aside, it would render the application for rezoning moot.
 - 6.3. The review by the Applicants in the High Court Mbombela to review the decision of the Minister of Environmental Affairs and Mineral Resources to grant environmental authorisation to the Third Respondent under case number 1390/2018. Without environmental authorisation, the mine cannot start and would render the rezoning requirements moot.
7. The environmental issues around this mine have always primarily been focused on water issues and the alleged risk to the water sources in the area, and the alleged risks have been considered by the various Ministries, the Department's appointed experts, and the Water Tribunal and has been debated *ad nauseum*. The Applicants continue to argue environmental concerns and risks, notwithstanding that these

issues have been debated and resolved in other forums, and now expect this Court to wade through thousands of pages of annexures and to present argument on the same environmental risks, in the hope that they will get different results from different Judges, and in so doing scupper the proposed mine.

8. This Court would be better placed to make a determination of the zoning issues once the main events have been determined and argued before the Courts, and in the circumstances, it makes sense to suspend these proceedings as proposed by the First and Second Respondents in their counterapplication.

General Observations

9. The Third Respondent holds the mining rights to the mine in question, Yzermyn, and has been attempting to establish and start mining process for almost 10 years.
10. The Third Respondent has been frustrated every step of the way by the Applicants' constant and ongoing legal challenges, on multiple fronts and in multiple Courts.
11. The current application by the Applicants, to review the decision of the First and Second Respondents, to rezone one farm from agricultural to mining, must be seen within this context, namely, that it is a strategy of litigation aimed at preventing mining at all costs, by what is generally referred to as the Green Lobby's agenda, to do away with coal mining in totality. The various NGO's which make up the Applicants, all fall under this umbrella, and they are all represented by the same law clinic, and speak with one voice, and clearly work together in pursuit of this agenda. They are part of a larger international consortium of NGO's, aimed at fighting environmental issues, and one of these issues is the eradication of coal mining worldwide. Whilst their intentions may be noble, they are limited to issues on their agenda, and their approach is not balanced, nor in the interests of the local communities most affected by the mine.
12. The Applicants file voluminous affidavits, together with numerous documents, in which the Green Lobby's views and opinions are presented as facts, and the real

gripe is that the First and Second Respondents, did not agree with their one-sided approach, and to try and find a more nuanced and balanced approach, which reflects the interests of the community most affected by the proposed mine.

13. The community is represented by the Voice, a community organisation who initially intervened, but have not filed an Answering Affidavit. They simply lack the funds for attorneys and Counsel and are now reliant on the other Respondents to be the voice of opposition. It is, however, abundantly clear from previous litigation (and is not contested by the Applicants), that the 9000 inhabitants of the local municipality are in strong support of the mine, and vigorously opposed to the Green Lobby's interference therein, which has in effect deprived them of jobs and socio-economic opportunities and retains them in a state of perpetual poverty.
14. The Applicants see no problem in trying to present as a fact its own opinions, and allege expert opinions or articles by experts, which are completely irrelevant to the direct issues at hand, and it is respectfully submitted need not be considered at all by this Court, in determining the narrow aspect of whether the First and Second Respondents decision should be reviewed.
15. There are five farms over which mining rights have been granted.
16. Four of the farms in question are all pieces of land in which the proposed mines activities will be below the surface, and not above ground. Underground mining of the nature contemplated in the proposed mine, has a substantially less impact on the environment and/or biodiversity in the area, and will have little, if any, effect on the above ground water sources, and grasslands. The mine is going to be hundreds of metres below the surface.
17. These four farms are not the subject matter of this litigation, and all four farms are currently **excluded** from the Mbombela Protected Environment (MPE), although this exclusion is the subject of a legal challenge by the Applicants in the High Court Mpumalanga Division, Mbombela, Main Seat under case number 1322/2021. This matter was previously enrolled for hearing on the 24th October 2023, however the

Applicants requested a postponement, and the matter has now been enrolled for the 16th April 2024.

18. Above the surface of the proposed land, is uninhabited grassland used mostly for grazing. It is almost uninhabited, save for one homestead of 8 houses, and there will be no impact on the local inhabitants.
19. Portion 1 of the Farm Yzermyn 96 HT is the subject matter of this application, as it is this farm which the First and Second Respondents rezoned from agricultural to mining. This is a result of the fact that it is only on this farm that the above surface activities of the mine will take place, on 22.4 hectares only of the farm. This farm is also **excluded** from the MPE, and its exclusion is not currently the subject of a legal challenge.
20. The effects of the underground mining on the water sources in the area, which is the main environmental concern raised by the Applicants in various forums, has been debated at length by multiple experts, before a panel of experts at the Water Tribunal, over a 10-day hearing.
21. It is the Water Tribunal who considered the evidence of all the experts, as well as all the reports and opinions (some of which are now again attached to the Founding Affidavit and presented as facts), and it is for this reason that the Water Tribunal's decision is critical for this Court to understand the issues in the correct context, and to read the summary and views of each expert opinion, contained in its decision.
22. Accordingly, the Third Respondent annexes the Water Tribunal decision to its Heads of Argument marked "**A**". it is submitted that this is a public document by the body entrusted to determine the risks to the water sources in the area and it is critical that this court have regard thereto. The decision has always been in the possession of the Applicants and is referred to in their affidavits, and there is no prejudice to it being made available to this Court at this stage and should have been attached to their affidavits.

23. Once this Court has considered the Water Tribunal decision in totality, it will be better able to understand the background, the history, the legislative framework, and the issues at stake in respect of environmental concerns. It is evident from this decision that the Applicants have grossly exaggerated the effects of mining on the water sources, and incorrectly present as a probability, the mere possibility that there will be a negative impact to the water sources, and also fail to mention the mitigation factors which have been built into the water use licence to prevent any such possibility.
24. The Water Tribunal also sums up the views various experts who testify before it both for and against the proposed mine, and it is submitted that the Applicants contentions and selective reference to only parts of the evidence and reports will be debunked by a mere reading of the tribunals judgment, and will greatly assist this court in determining the matter.
25. The decision of the Water Tribunal has also been taken on appeal by the Applicants and was argued in the Pretoria High Court on the 18th and 19th October 2022 under case number A155/2019, before the Honourable Justice Nyathi and Madam Justice Baloyi-Mere. The Court has handed down judgment, and I similarly attach herewith the judgment of the Pretoria High Court marked “**B**”. The court rejected the Applicants submissions and upheld the Water Tribunals decision.
26. Similarly, this judgment is in the possession of the Applicants, and having regard to the length of time it has taken since the filing of the Founding Affidavit, it is submitted that the Court should be updated as to what the current situation is, and that the submissions in these Heads of Argument, are sufficient for this purposes, and affidavits need not be filed. To the extent necessary, the Third Respondent can supply an affidavit with these updates, should the Court deem it necessary.
27. It is in Pretoria Court that, again ,the expert evidence and reports were debated, and it is certainly not the place of this Court hearing this review, to now start delving again into expert evidence, or replacing the decisions of the experts appointed to adjudicate, i.e. the Water Tribunal, with its own opinions and/or determinations, in

relation to possible environmental impacts of the mine to the water sources in the area.

28. The Water tribunal is a body of experts on water, environmental, and legal issues which held extensive hearings over 10 days, and consider over 21 expert reports, including those attached to the Applicants affidavit.
29. The record is extensive, over 5000 pages, and because the Applicants are unhappy with the outcome, they are now trying to reargue the exact same issues before this court. A reading of the tribunal judgement makes it clear the concerns to the environment and the water sources was extensively considered, in particular dewatering, decant and acid mine drainage. The alarmist approached of Applicants was debunked and the expert reports of appellant rejected.
30. The Applicants are now appealing the decision of the Pretoria High Court to the Supreme Court of Appeal (SCA). The current position is that leave to appeal was refused, whereafter a petition was filed to the SCA for leave to appeal on or about the 24 August 2023, and a decision is currently being awaited from the SCA.
31. The Third Respondent submits that the final outcome of this appeal to the SCA will have a material impact on the current matter, and the current matter should not be argued until the Water Tribunal appeal has been finally determined for the following reasons:
 - 31.1. The Water Tribunal heard the various expert evidence and conducted the hearings in relation to the various water source areas, and the effect on strategic water source areas. It is a body of experts, more suitably qualified to consider these issues and heard extensive evidence and considered all the various reports, including the various reports now submitted and argued by the Applicants to make out a case for review.
 - 31.2. The Applicants have argued that the First and Second Respondents failed to consider their submissions and reports in this matter, including the Brownlie Review, the Dennis Review, and various others, which they submitted to the

Tribunal, yet they fail to advise this Court, firstly, that the Tribunal rejected their expert evidence and, secondly, their own experts confirmed that mining could commence with adequate mitigation measures in place and ,thirdly, in their appeal to the Pretoria High Court, the Applicants distanced themselves from their own experts, and sought to base their position on the Third Respondent's reports alone, as having insufficient evidence as to the impact the mine will have on the water sources in the area.

- 31.3. Notwithstanding, that this is the factual position, the Applicants in this matter try to present only their own expert reports as factual, they fail to provide to the Court all the reports or the record of the Water Tribunal hearings, and present the already debunked theories of their own experts as facts to this Court, and in the circumstances it may be best to await to see if the SCA will interfere with the water tribunals decision.
32. The Third Respondent secured, over a lengthy period of time, the necessary statutory authorisations to mine, at great cost, only to be frustrated by the legal challenged mounted which have prohibited it from mining.
33. The Third Respondent reiterates in general the following:
 - 33.1. The fact that a decision goes against a party, or they disagree with the decisions, is not a ground for review.
 - 33.2. The local impact, especially the impact to the local water sources, has been wholly debunked by the decision of the Water Tribunal, and the rejection of the expert reports utilised.
 - 33.3. Dewatering and acid mine drainage were fully dealt with in the Water Tribunal decision, and are dealt with through mitigation measures, in the event that they occur. There are restrictions attached to the Water Use Licence to mitigate any effect to the environment.

- 33.4. The alleged local impact and the quotation from various reports has already dealt with by the Water Tribunal, and now the Appeal Court, and it is clear that this is merely another attempt by the Applicants to argue the same issues over and over again, in different Courts, and they are merely forum hopping.
- 33.5. The socio-economic impacts have been dealt with in a socio-economic study, and the attitude adopted by the Applicants that there will be little socio-economic benefits to the local community is merely another indication of their bias and on-sided approach. There are hundreds of jobs at stake and huge upside to the community if the mine goes ahead, and the Third Respondents socio-economic plans were approved by the various departments, as part of the mining right process. The Third Respondent also had to guarantee certain projects for the locals to improve their socio-economic condition. Whilst the First and Second Respondents were clearly cognisant of the positive socio-economic factors in making his decision, and has an obligation to consider same, the Applicant attempts to create a misleading impression because they have no regard to this issue.
- 33.6. It must also be born in mind that all the various government departments and their Ministers, had long before the First and Second Respondents decision, already approved the mining project on the proposed land, and had conducted their own investigations and studies into the mine, including its environmental impact.
- 33.7. What is presented as science, policy and law, is not in fact the case and the Applicants are misleading the Court.
- 33.8. As already alluded to above, the Green Lobby has a specific agenda, and utilises its own so-called opinions and articles by its paid-for consultants, and submits same as science, and expects the Court to now wade through thousands of pages of evidence.
- 33.9. The scientific evidence has already been dealt with by the Water Tribunal, who heard the evidence and listened to the various experts, and considered over

21 reports on this issue. It is for this reason that the Third Respondent submits that the following:

- 33.9.1. This Court on review, cannot, and should not, allow this hearing to evolve into another attempt by the Applicants to argue what they say is the scientific facts.
- 33.9.2. This Court, on review, is not authorised or qualified, without hearing expert evidence and testimony, to deal with scientific evidence in a proper manner.
- 33.9.3. 3 experts appointed in terms of the legislative framework, to deal with the scientific evidence, namely the Water Tribunal members, have already heard the arguments, and gave a comprehensive and rationale judgment therein in their decision dated 22 May 2019.
- 33.9.4. The Applicants have taken the Water Tribunal on appeal and review, and are attempting to reargue the scientific evidence in these forums. The appeal has already been argued over 2 days, and the decision was against the Applicants, and the Applicant's Advocates argued in this forum, why they submitted, the scientific evidence was wrong, and placed the identical reports as in this review application, before the appeal court.
- 33.9.5. The Applicants are arguing the same points over and over again, in as many forums as possible, in the hope that one Court will find in their favour, and in so doing, scupper the entire mining project 10 years in the making. They are forum hopping, and it is an abuse.
- 33.9.6. The First and Second Respondents are not better placed than a panel of water experts to consider the science.
- 33.9.7. The science doesn't support the submissions made by the Applicant.
- 33.9.8. The science is not site specific; it is desktop studies.
- 33.9.9. The main environmental concerns, being dewatering and acid mine drainage, is discussed in detail in the Water Tribunals decision and dealt with appropriately, these issues are not new scientific issues, and South Africa as a mining country, has developed mitigating factors to deal with any possible contamination of water sources.

- 33.9.10. The Water Use Licence has extensive mechanism built into it, to ensure no contamination, mitigation measures are put in place, and inspections and reports done on an ongoing basis.
34. The mine is the only hope for the poor people in the area to secure jobs, and it is for this reason that there was a petition from 8500 local members of the community demanding that the mine be allowed to continue. The Green Lobby can ignore this and exaggerate and sometimes fabricate the alleged negative effects to the environment, but the local municipalities and the local communities are fully aware that this is not in their interests and is merely a narrow lobby group advancing a national agenda to eradicate coal mining, and they are not in support thereof.
35. The exaggerated inconvenience to 30 people in 8 homesteads on a surface area of 1200 hectares is once again an indication of the Green Lobby's agenda. The social development plan is selectively quoted, where the reality on the ground is that the area is grassland, uninhabited, and there will be zero impact from mining activities deep below the ground for the homesteads and families that occupy this area. To the extent that there is any impact, mitigation factors have been built into the socio-economic plan.

History of the litigation

36. In order for the Court to understand better why it is submitted that this current review is an abuse, it is necessary to briefly set out a history of the current litigation on the same issues, now before different forums and Courts.
- 36.1. In 2017, the Applicants secured an interdict before the Honourable Justice Davis on the basis of the identical argument before this court, which interdict prohibited the commencement of mining activities, pending certain legal challenges being launched.

- 36.2. In 2021, the Applicants approached the Court for a further interdict, which was also heard by Justice Davis, who granted an interdict pending the outcome of certain legal further challenges.
 - 36.3. The Applicant launched in 2018, under case number 1390/2018, a judicial review application of the environmental authorization granted to the Third Respondent, which application is scheduled to be heard in the Mpumalanga Division of the High Court, Mbombela.
 - 36.4. The Applicants launched in 2019, under case number 155/2019, an appeal on the decision handed down by the Water Tribunal, which Appeal was heard in the Pretoria High Court in October 2022, and dismissed. An application for leave to appeal was then launched and also dismissed in July 2023. The Applicants have now launched a petition to the Supreme Court of Appeal seeking permission to appeal further to the SCA.
 - 36.5. The Applicants launched in 2019, under case number 86261/2019, a judicial review application of a water-use license granted to Atha, which was launched out of High Court, Pretoria.
 - 36.6. The Applicants launched in 2020, under case number 1344/2020, an application for a judicial review of the decision to grant Atha land use planning approval for mining, in respect of land where Atha seeks to establish surface infrastructure for its proposed coal mine (This is the current matter).
 - 36.7. The Applicants launched in 2021, under case number 1322/2021, an application for a judicial review of the decision by the MEC for Agriculture, Rural Development, Land and Environmental Affairs to exclude certain properties from Mabola Protected Environment (MPE), in the High Court, Mpumalanga in Mbombela, which is scheduled for argument in April 2024.
37. This current review is in terms of Promotion of Administrative Justice Act 3 of 2000 (PAJA), and whilst the Applicant attempts to expand its grounds, it is respectfully submitted, that there are no real grounds as contemplated in PAJA to review the First and Second Respondents decision. I will deal with each of the grounds separately below.

38. The Green Lobby will disagree with any decision that doesn't fit within their agenda, and they exaggerate the so-called negative impact of mining, whilst completely ignoring or overlooking mitigation factors, guaranteed and in place, as well as the positive benefits of mining, including the positive socio-economic impact to the local community, and the inflow of billions of rands of revenue to the country.
39. There are already alternative mechanisms in place to deal with the consideration of the science, including in particular the Water Tribunal, and the Department of Environmental Affairs own experts. This Court cannot replace these experts or substitute their opinions, for that of its own. None of the science prohibits mining, and it is legislation and government policy to allow mining, with adequate and proper mitigation factors in place. Government policy is not supportive of a complete ban of coal mining, as is demanded by the Green Lobby, not even in a protected area.
40. None of the environmental acts relied on, have a prohibition against mining, and all of government legislation is aimed at ongoing mining activity with adequate and appropriate mitigation factors in place. The First and Second Respondents decision is in line with policy and the science, and is not reviewable on this ground.
41. NEMA calls for avoidance to environmental harm, where possible, failing which the harm must be minimized, and finally any harm must be remedied. The third respondents plans and submissions are based entirely around this principle and it is for this reason that the mine has been approved at all 3 levels of government.
42. The precautionary principle, as developed by the case law, does not impose a ban on mining.
43. The *Fuel Retailers Association v Director General Environmental Management* case¹, simply insists on adequate precautionary measures in the case of scientific uncertainty, and the application of the best science available.

¹ *Fuel Retailers Association of Southern Africa v Director-General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province and Others* 2007 (6) SA 4 (CC)

44. The *Fuel Retailers* case and the precautionary principle was debated at length by the Water Tribunal, and the Applicants version of how they interpret it was wholly rejected. It was then again debated and discussed in the appeal to the Pretoria High Court, and Third Respondent's submissions accepted.
45. The current review is now the latest attempt by the Applicants to argue that this principle properly interpreted should have dissuaded the first and second respondents from their decision, when in fact the opposite is applicable, they properly applied the principle, and found a way to allow the mine to proceed in the interests of social development, knowing full well that the mitigation measures proposed and accepted by the Water Tribunal, was already applying the best scientific methodology to the issue.
46. In *Fuel Retailers*, the Constitutional Court endorsed these two principles:

[50] At the heart of the Rio Declaration are Principles 3 and 4. Principle 3 provides that "[t]he right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations." Principle 4 provides that "[i]n order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it." The idea that development and environmental protection must be reconciled is central to the concept of sustainable development. At the core of this Principle is the principle of integration of environmental protection and socio-economic development."

47. The concept of "**sustainable development**" is further refined in Section 1(1) of the NEMA² to mean integration of social, economic and environmental factors into planning, implementation and decision-making so as to ensure that development serves present and future generations.³

² National Environmental Management Act No 107 of 1998.

³ See Section 1(1) of NEMA; *Fuel Retailers Association of Southern Africa v Director-General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province and Others* 2007 (6) SA 4 (CC) par [44]-[70]

48. Accordingly, this concept deals specifically with the manner in which decisions are to be taken and is thus primarily process-based and not outcome based – the rationale is that by looking after the process, the desired outcome should follow so that, in context of the anthropocentric environmental management system established by NEMA, a “*sustainable development*” is one where the planning, implementation and decision-making processes for that development are informed by taking into account and by “*integrating*” those social, economic and environmental factors: a balance can and must be achieved between social, economic and environmental factors so that the integration of these factors contemplates an exercise of reconciliation to find a balance between them.⁴
49. Section 2(4)(a)(vii) of the NEMA provides that sustainable development requires the consideration of all relevant factors, including the factor 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; this consideration which is identified in NEMA as a relevant factor to be taken into account when applying the principle of sustainable development, is the one that the Applicant chose to label the precautionary principle.
50. An analysis of the South African version of the precautionary principle as enacted in Section 2(4)(a)(vii) of the NEMA shows the following:
- 50.1. Firstly, the context in which the precautionary principle operates, is within the immediate context of the principle of sustainable development and not within the wider context of environmental management systems.

⁴ In *Fuel Retailers Association of Southern Africa v Director-General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province and Others* 2007 (6) SA 4 (CC) par [61] the Constitutional Court expressed this legal principle as follows (underlining for emphasis):

“[61] Construed in the light of Section 24 of the Constitution, NEMA therefore requires the integration of environmental protection and economic and social development. It requires that the interests of the environment be balanced with socio-economic interests. Thus, whenever a development which may have a significant impact on the environment is planned, it envisages that there will always be a need to weigh considerations of development, as underpinned by the right to socio-economic development, against environmental considerations, as underpinned by the right to environmental protection. In this sense, it contemplates that environmental decisions will achieve a balance between environmental and socio-economic developmental considerations through the concept of sustainable development.”

- 50.2. Secondly, what is called for, is a risk-averse and cautious approach to be applied in the integrated process of considering all the relevant social, economic and environmental factors as called for by the sustainable development principle. Such an approach is, in simplified terms, the venerable and pragmatic approach to rather err on the side of caution when considering whether a development is sustainable from an ecological, socio and economic perspective (requiring a holistic instead of a blinkered view).
- 50.3. Thirdly, this approach is to be applied in a manner which takes into account the limits of current knowledge about the consequences of decisions and actions: in other words, this approach does not require full scientific certainty about such consequences; in fact, if full scientific certainty was available in a particular instance there would be no risk to avoid or need for caution.⁵
51. In practice the precise scope and ambit of the precautionary principle is contentious and different meanings have been attributed thereto in academic and theoretical debates raging over this principle.
52. Principle 15 of the Rio Declaration reads as follows:

"In order to protect the environment, the precautionary approach shall be widely applied by the States according to their capabilities. Where there are threats or serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation."⁶

Accordingly, the precautionary approach is not directed at the desirability of development but at the desirability of mitigation measures: the very premise of this

⁵ See *R (on the application of British American Tobacco UK Ltd and Others) v Secretary of State for Health* [2017] 2 All ER 691 (CA) para [222]

⁶ Underlining for emphasis

principle is that a decision was taken to proceed with a development and to introduce cost-effective measures despite the lack of “*full scientific certainty*.”⁷

53. Consequently, the precautionary principle in the International Environmental Law was never a so-called “*zero standard*”, requiring full scientific certainty before any development is allowed to proceed or calling for a zero-risk approach.
54. In *Fuel Retailers*⁸ the Constitutional Court stated as follows (underlining added for emphasis):

“The precautionary principle required these authorities to insist on adequate precautionary measures to safeguard against the contamination of underground water, this principle is applicable where due to unavailable scientific knowledge there is uncertainty as to the future impact of the proposed development. Water is a precious commodity; it is a natural resource that must be protected for the benefit of the present and future generations.”

55. To err on the side of caution means to insist on mitigation measures, despite uncertainty and not to veto development because of uncertainty.
56. It is respectfully submitted that the First and Second Respondents correctly applied the precautionary principle when arriving at his decision. The precautionary principle, correctly applied, allows for the mining which provides for the socio-economic welfare and development of the area, which in turn is at the heart of sustainable development, whilst at the same time, ensuring that mitigation measures are in place so that any possible impact to the environment is minimised and mitigated. The Applicants misinterpret or misuse the precautionary principle as an excuse to try and stop all coal mining activity, and their argument that there is some risk to the environment, and therefore the only logical decision is that no

⁷ See Sands & Peel *Principles of International Environmental Law* (2012) 217-228; Glazewski *Environmental Law in South Africa* (2005) 18.

⁸ *Fuel Retailers Association of Southern Africa v Director-General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province and Others* 2007 (6) SA 4 (CC) par [98]

mining should take place, is certainly not a proper interpretation of the precautionary principle nor government policy.

57. To argue that there will be extremely limited social and economic benefits to the local communities, smacks of ignorance and arrogance, and is certainly not the view of the local communities themselves, nor the First and Second Respondents.
58. The disconnect of the Applicants to the so-called communities they purport to represent, is evident, and they exaggerate and inflate the so-called negative impact of the mine, in complete disregard to the actual science and the Water Tribunal's findings.
59. The mine proposed at least 576 jobs as a starting point, but this would escalate as the mine grows, and in addition, it generates revenue into the area and micro-businesses, which flourish, surrounding the mine. The socio-economic studies presented to the various forums, indicated that in an impoverished area, one job and family income is supporting approximately 10 people. The impact to a largely impoverished and unemployed community is massive, and the start of mining in the area would have changed for the better the entire socio-economic activities in the area.
60. The Applicants will go to any length and cost to stop this mine, but have not provided one alternative source of employment for the locals, nor one cent towards their socio-economic upliftment. This is not their problem.
61. They simply nit-pick and try and pick holes in the socio-economic plan, whilst offering no alternative solutions. It is little wonder that the First and Second Respondent's did not follow their position nor approach.
62. The Applicants, as part of the Green Lobby, have a narrow agenda, and job creation is not on the agenda. Their only agenda is to stop the mine, and they underplay the importance of the mine, economically to the region, whilst at the same time exaggerating the alleged risks of the mine to future generations, and the picture they paint is neither scientific, nor true, nor a ground for review.

63. There is nothing in any international law or international conventions, which prohibits the First and Second Respondents from making the decision they did, or make same subject to review.
64. The effects on the wetland have been grossly exaggerated and wholly debunked by the experts who submitted reports to the Water Tribunal, and it is for this reason that the Tribunal rejected the Applicant's experts.
65. The Court is reminded that the mine will be deep underground, and will have no impact on the surface water, alternatively any impact will be mitigated with appropriate mitigation measures (recycling plants and other mitigation measures referred to in the Water Tribunal decision).
66. Similarly, the surface above the ground remains unaltered, and underground mining will have no effect on local fauna and flora or surface water. The Water Tribunal decision discusses at length, the two separate water tables in the area, and that the shallower water table will not be affected by mining activity, which takes place below the second water table.

Strategic Importance for Biodiversity

67. The Applicants Founding Affidavit and Heads of Argument makes much of the issue of the strategic importance for biodiversity of the farm which has been rezoned.
68. It is submitted that this is mostly hyperbole, and a gross exaggeration, and in this regard, the Court is alerted to the following:
 - 68.1. The farm does not currently fall in a strategic water source area;
 - 68.2. The expert reports were analysed, and evidence given before the Water Tribunal, and it was concluded that there would be no wide ranging or extensive impact on the environment in the area;

- 68.3. All experts agreed, even those of the Applicant, that the mine could proceed with adequate mitigation measures in place.

The Mabola Protected Environment (MPE)

69. The Applicants confirm that the farm **does not** fall within the MPE, but rather outside. The fact that it borders the MPE does not create a case that it is within a protected environment, or requires any special considerations.
70. There is absolutely no prohibition against mining, even within a protected environment. This is not government policy, nor legislation, and all that is required is additional permits from the Minister and/or MEC, if mining rights are applied for within a protected environment.
71. Having regard to the fact that the farm in question is not within this protected area, no such permission was required, and the First and Second Respondents were fully within their right to grant the rezoning.
72. There is no government policy that certain areas are no go areas, and each decision is site specific.
73. The Applicants have submitted thousands of pages of documents and research, and high-level desktop studies, all of which merely emphasize the need to protect certain environments, however, none of which expressly prohibit mining in these areas.
74. The MPE constitutes millions of hectares of land which has been declared part of the MPE. The zoning in relation to the farm in question is for only 22 hectares of the farm to be used for the surface infrastructure for an underground mine, and it will have no impact on the millions of hectares within the MPE.
75. The Applicants are already fighting a different case before the Mbombela Main Seat, on the decision by the MEC to exclude the other four farms from the MPE. This farm in question was never included in the MPE, and accordingly the utilisation of the MPE as a ground for review is ill-conceived.

The proposed underground coal mine

76. The coal mine will extend underground onto the other 4 properties, and because it is 1.2km below surface, there is no need for a rezoning application. Because it is underground, there will also no impact on the surface and the biodiversity will remain unaffected.

Uthaka's application for land use change

77. The Applicants objected to the land change in 2018, and were clearly participants in the process from this point onwards.
78. The Applicants are merely aggrieved that the decision did not go in their favour, and this does not constitute a ground for a review.
79. There was not only correspondence exchanged, but public participation for the process.

The impinged decisions

80. To refer to the Tribunal and Appeal Authorities decisions as simplistic, is derogatory.
81. It is clear from the correspondence and the record that great attention was given to this matter and all considerations made.

The land use change approval has lapsed.

82. This allegation is an afterthought raised in the Replying Affidavit for the first time.
83. The lapsing of a permit for non-payment of a fee is an issue between the First, Second and Third Respondents only, and the Applicants have no right to interfere therein, nor to demand information thereon.

84. As the case is made only in reply, the parties have not responded thereto, nor is there a need to do so.
85. If, as the Applicants contend, the rezoning has lapsed for lack of payment, then the need for this application become moot ,and they should not be persisting therewith. They are approbating and reprobating.
86. The absence of proof to their satisfaction of a payment does not constitute a ground for a review, and if they didn't receive a response, they should have made application for access to information, prior to launching this application.

Ground 1 for Review – The Tribunal and Appeal Authority failed to refer the application to the Minister of Agriculture, in terms of Section 52 of SPLUMA

87. A referral in terms of Section 52 to the Minister is only required where there is a material impact on:
 - 87.1. Matters within the exclusive functional area of the national sphere in terms of the Constitution. It is submitted that the rezoning of one farm from agricultural to mining does not fall within the parameters of this section.
 - 87.2. Strategic National policy objectives, principles or priorities, including food security, international relations and cooperation, defence and economic unity. It is submitted that no case has been made for a referral in terms of this section.
 - 87.3. Land use for a purpose which falls within the functional sphere of government. It is submitted that the rezoning of 22 hectares of a farm in Mpumalanga does not fit this criterion.
 - 87.4. May be prejudicial to the economic health or security interests of one or more provinces, or the Republic as a whole. It is submitted that no such case has been made out for this criterion.
 - 87.5. May impede the effective performance of the functions by one or more municipalities or provinces relating to matters within their functional area of

legislative competence. It is submitted that no case has been made out for this criterion.

88. The only case made out by the Applicants is that the farm is in an area near to water sources, and they contend is of biodiverse significance. This doesn't per se elevate the rezoning to the level required for a referral to the Minister in terms of Section 52.
89. In addition, this Court must consider that the appropriate forum to deal with the water issue is the Water Tribunal, and it is the Water Tribunal who heard extensive evidence on the risks to the water sources, and put pay to the exaggerated and sometimes fabricated alarmist submissions made by the Applicants and their experts. There would be no reason why this Court or the First and Second Respondents should digress from the Water Tribunal in this regard.
90. It is not Section 52 of SPLUMA that is applicable, but rather Section 30, which provides that where an activity requiring authorisation in terms of this Act is also regulated in terms of another law, the relevant municipality or organ of state empowered to authorise the activity, in terms of the other law, may exercise their respective powers jointly, by issuing (a) separate authorisations or (b) an integrated authorisation.
91. Section 30(3) provides that the relevant municipality may regard any authorisation in terms of any other legislation that meets all the requirements set out in this Act, or in provincial legislation, as an authorisation in terms of this Act.
92. Having regard to Section 30(3) it is submitted that the First and Second Respondents had regard to the separate authorisations, for the proposed mine, already issued by the various Ministries, as sufficient authorisation for compliance with the Act, and there was no need to submit to the Minister in terms of Section 52.
93. By this stage, the following Ministers had already approved the mine:
 - 93.1. The Minister of Mineral Resources;
 - 93.2. The Minister of Water and Sanitation;

93.3. The Minister of Environmental Affairs.

94. The mine had been approved from separate authorisations from a multi layered level of government, and the First and Second Respondents were perfectly entitled to align their decisions to other departments, as competent authorities, in terms of Section 30.
95. The area in question is not pristine land which has never been mined. The farm is in fact called “Yzermyn” for a reason, namely there was previous coal mining thereon, and the entire area is replete with coal mines, including coal mines in the immediate vicinity of the proposed mine.
96. All potential risks of the mine were adequately assessed, and the Water Tribunal has already determined that there is no risk to the water sources in the area.

Town planners’ recommendation

97. The town planners’ recommendations are exactly that, namely recommendations and are not binding on the First and Second Respondents, and no legal obligation to follow same.
98. The recommendations were in any event changed to recommend approval without referral. Without supporting affidavits from the town planner, the Applicants cannot speak on his behalf or speculate as to his reasons why there was a change to his recommendations.
99. At the end of the day, and even if the Tribunal got it wrong or made an incorrect decision (which is denied), this doesn’t constitute a ground for a review. Reviews are limited to PAJA, and government departments are entitled to make decisions which are wrong, or which are disagreed with by one side or another.

The Tribunal hearing was procedurally unfair.

100. The Third Respondent is entitled to participate and made submissions. The Applicants clearly participated and made written submissions.

101. The public participation was advertised.

102. The First and Second Respondents appear to have complied with all the requirements of notification and public participation.

Ground 2 – The Tribunal and Municipal Appeal Authority failed to comply with the criteria under Section 53 of the SPLUMA by-law.

103. The non-compliance with the bylaws is denied.

104. It is clear that a public participation process was followed, and the requisite notices given through advertisements in various publications.

105. It is also clear that the Applicants participated in the process and made written submissions.

106. Although the proposed coal mine extends over other farms, the impact on the surface extends only to the farm in question, and limited to 22 hectares, and the Tribunal did not need to consider a rezoning of the other 4 farms, as they will continue to be used above surface for agricultural purposes.

107. The Tribunal also considered all the relevant factors for the proposed rezoning, and also the fact that the various impacts to the environment and the water sources, had been extensively consulted on and considered by other departments.

108. The Tribunal was also cognisant of the fact that the proposed mine will create job opportunities in the First and Second Respondents districts, and would have a positive social impact.

109. The Tribunal also considered that the rezoning is consistent with government policy to develop the area, including new mining initiatives, and that the rezoning is consistent with existing laws, not inconsistent therewith.
110. There is no evidence that the Tribunal or Appeal authority failed to consider relevant frameworks and policies set up by government, and it is again reiterated that it is not government policy to outlaw coal mining, nor to make any area a no go area for mining.
111. The Applicants are making up frameworks and policies which simply do not exist and are presenting their own opinions as government policy, when in fact government policy is the opposite.
112. The mine in question does not fall within the MPE, and accordingly, it would be misguided to argue that special consideration must be made to this area.
113. The Tribunal clearly did consider the opinions of other departments and the rights of the communities. It is highlighted that the communities support the mine, and not the conduct of the Applicants, and submitted a petition signed by 8500 members, in support of the mine.
114. The fact that there is no mention of a specific issue in the Tribunal records, does not mean that the issue was not considered, and the Tribunal clearly asked the questions as to which departments supported the application, and received the correct response in this regard, and was cognisant that the various departments tasked with investigating water and environmental issues had green lighted the project.
115. Once again, Section 30 of SPLUMA is of application, and the Tribunal had every right to regard the approvals by the various departments, as sufficient grounds and authority in terms of SPLUMA , and its bye laws.

Third Ground of Review – The Tribunal and Authority failed to take environmental considerations into account.

116. The First and Second Respondents clearly considered this issue, and was clearly guided by the other departments in this regard, especially having regard to the expert evidence that is required.
117. For the Tribunal to defer environmental matters to other departments, more skilled to deal with them, is with respect the appropriate way to deal with the matter, and is accordance with Section 30 of SPLUMA. The environmental issues were clearly discussed, and the First and Second Respondents were satisfied that environmental concerns had been adequately addressed.
118. The principles of NEMA were clearly applied, and the environmental issues have been considered by a number of ministries in this case.
119. The Applicants fundamental problem is that they have exaggerated and fabricated the so-called environmental concerns, as they are intent on stopping this project at any costs, and they will simply not accept that government bodies and tribunals have different considerations, and apply a more balanced approach.
120. Sustainable development and the needs of the poor need also be considered.
121. The farm is not within a critically important area for biodiversity and national water supply, and is not within the MPE nor a SWSA.
122. There is no ground for review on this issue.

Fourth Ground of Review – The Tribunal and Municipal Appeal Authority Misdirected Themselves by Engaging in Incremental Decision Making

123. There is no ground for review under this heading.
124. The rezoning is limited to the subject property.
125. All 5 properties are outside of the MPE.

126. There is no need for rezoning of the 4 other farms, as the land use will not change above surface.
127. The decision making is not incremental, nor was the matter taken lightly. The issues were debated at Tribunal stage and at the Appeal, and it is clear that every consideration was given to the matter as required by SPLUMA and/or NEMA.
128. There is simply no ground for review on this basis.

Preliminary Points Raised by First Respondent

Locus standi

129. The make-up and membership of the various Applicants remains opaque.
130. They certainly don't speak on behalf of the local community, nor the public in whose interests they purport to be acting.
131. The 8500 community members simply wish to have jobs and a better life, and are trapped in indentured poverty.
132. The Applicants are merely narrow-minded self interest groups who don't operate from or live anywhere near the mine or in the municipal area.
133. The Third Respondent supports the First Respondent's counter-application on this issue.

Non joinder of parties with a substantial interest

134. On the Applicants version, the rezoning is of a national interest and affects various provinces.
135. The Third Respondent doesn't support this theory, and it is clearly pie in the sky.

136. Be that as it may, on the Applicants version they should have cited as the following parties to the proceedings:

136.1. The Local Community c/o the Voice;

136.2. The Premiers of Mpumalanga, Kwa-Zulu Natal and Gauteng;

136.3. The MEC's of Mpumalanga, Kwa-Zulu Natal and Gauteng.

137. In the circumstances, there is clearly a material non-joinder of these parties.

138. The Third Respondent accordingly supports the First Respondents Counter Application in this regard.

No pending litigation between the same parties

139. There is no pending litigation between the same parties on the issue of the rezoning of the farm.

140. This notwithstanding, there is pending litigation on substantially the same issues in 4 other Courts, and there is an ongoing and repetitive argument on the alleged adverse environmental effects of the mine, which are the cornerstone and underpin all the legal challenges to the mine.

141. The environmental concerns based on the same reports has been raised over and over again by the Applicants in the various forums as mentioned above.

142. In all the applications, the identical tactic is used, namely, to exaggerate and fabricate environmental concerns, and to flood the court with irrelevant documentation and reports.

143. This is a tactic of litigation, to try and argue the environmental concerns in as many courts as possible, in the hope that if one Judge is against them, another Judge may find in their favour. It is forum hopping and abuse of litigation.

144. Ultimately, the Applicant hopes to place the same dispute before various Tribunals with equal competency, to prevent an end to the dispute authoritatively, and therefore create confusion and try and get different decisions.
145. It is for this reason that the Respondents submit that this Court should not be sucked into the fight at this stage, and allow time for the determination of the main disputes as set out above.
146. Ultimately, environmental concerns are being argued, surround the issue of water security, and it is submitted that the Water Tribunal should have the ultimate authority, and is best placed to consider the issues, and it has already rendered judgment on this issue which has been upheld by the Pretoria High Court.
147. There seems to be no reason why this Court should interfere with this decision, or have a rehearing of environmental matters, under the umbrella of a rezoning issue and the matter is *res judicata*.
148. Without considering all the expert evidence (not the selectively quoted reports of the Applicants only) and without hearing the evidence, this Court cannot be better placed to determine the issues, and frankly, should stay out of the fray.

Principle of subsidiarity

149. There are no constitutional issues involved in this case. Ultimately, it is a rezoning application ,which it is submitted the Court should not interfere with.
150. The Applicants wish to make out a constitutional issue or a national issue of importance, however, it is submitted that none exist.
151. Reviews under PAJA are limited, and none of the grounds of review fall within the grounds allow by PAJA.

The Tribunal's counterapplication

152. The Third Respondent supports the First Respondent's counterapplication for the reasons already set out above.
153. If the Applicants are successful in any of the main applications, the rezoning issue will become moot, and this entire application will not need to be proceeded with.

Costs

154. The Applicants litigate as non-profit organisations in the public interest, and are protected by the Bio-watch principle, which recognises that costs orders should not be granted against NPO's purportedly acting in the public interest.
155. With the Bio-watch principle firmly in our law, and the Third Respondent subscribing thereto, the Applicant can litigate safely in the knowledge that even if unsuccessful, there will be no cost implications to it.
156. The Third Respondent is not afforded such a similar luxury, and whilst they are innocent parties to the litigation, and not the direct subject matter thereon, they are forced to oppose in order to protect their interests, and thereby incur substantial costs in doing so.
157. As this is public interest litigation, and the Third Respondent can never be deemed to be at fault and is obliged to oppose, it should also be afforded a similar protection, and no cost order should be granted against the Third Respondent, even if unsuccessful.
158. In addition, the Applicants attorneys, the Centre for Environmental Rights (CER), are a legal clinic who do not charge their clients, the Applicants, for the work they perform on their behalf.
159. In the circumstances, it is inappropriate for them to seek cost orders as an additional tactic to try and dissuade the Third Respondent from opposing their application. They launch review after review, without the risk of a cost order, whilst at the same

time seek to penalise the Third Respondent with adverse costs orders, and the Court should not countenance this tactic and should certainly not allow for any costs orders to be granted against the Third Respondent, even if the Applicants are successful with their relief sought.

160. In addition, the Biowatch principle is not absolute, and if the Court agrees with the respondents that the Applicants are abusing legal principles and forum shopping as part of a general strategy to halt the coal mine, they should not be afforded the protection of the Biowatch principle, and should be ordered to pay the Respondents costs if unsuccessful.

The legal position

161. The Court should consider the fundamental principles of review⁹ when considering the current matter in front of it, namely:

- 161.1. The appeal process deals with the correctness of a decision, not a review process.
- 161.2. The review process is limited to determining whether the outcome was arrived at in an acceptable fashion.
- 161.3. PAJA provides the framework and the gateway for review and protects the Constitutional right to lawful, reasonable and procedurally fair administrative action.
- 161.4. The requirements of lawfulness are at the heart of the review, namely that for a public official to exercise authority, they must have the lawful power to do so (which the First and Second Respondents clearly did).

⁹ See article Lauren Kohn and Hugh Corder, Judicial Regulation of Administrative Action
https://www.laurenkohn.co.za/wp-content/uploads/2015/12/Judicial_regulation_of_administrative_ac.pdf

- 161.5. Reasonableness to any administrative decision must be applied, and the Court has judicial oversight, however, must respect the doctrine of separation of powers, and the degree of interference is limited (there is no indication that the First and Second Respondents decision was not reasonable).
- 161.6. Procedural fairness is an important factor in considering the lawfulness of a decision, and there is no indication nor complaint that the First and Second Respondents did not follow the correct procedure when arriving at his decision.

What the Judge needs to read:

162. The Third Respondent submits that from its side, the learned Judge needs to read the affidavits filed before Court, but not the annexures. It is an abuse to expect the above Honourable Court to have to wade through hundreds of pages of annexures, which are barely referred to, if at all by the Applicants, and are attached for atmospherics, to create the impression that their own reports constitute government policy, or that there is something of national importance in a local municipality rezoning one farm, from agricultural to mining.
163. The Third Respondent submits that the Court should have regard to and read the Water Tribunal decision only, coupled with the Pretoria High Court's judgment which confirmed this decision.
164. The Third Respondent submits that none of the annexures to the Applicants affidavit are relevant and need to be considered.
165. In relation to the annexures to the Founding Affidavit, the Third Respondent submits as follows:
- 165.1. FA1 – The resolutions are noted, however the Applicants have still not provided details of who their members are and why they have locus standi in this matter.
- 165.2. FA2 – It is completely irrelevant as it is common cause the farm in question is excluded from the MPE.

- 165.3. FA3 – Completely irrelevant, and it is common cause that there are wetlands in the area where mining activity will take place, however, the Applicants fail to mention that the mine will be 1.2km below these wetlands, and will have little if any impact thereon. This was debated *ad nauseam* at the Water Tribunal.
- 165.4. FA4 – This is irrelevant. The farm in question is not one of the farms declared as part of the Charismere Protected Environment Area, nor the Mabola Protected Environment Area, nor the Kwamandlangampisi Protected Area, nor part of the Tafelkop Nature Reserve, nor part of the Mndawe Trust Protected Environment. What is evident from this document is that there are millions of hectares which has been declared as part of protected areas, yet the farm in question is not part of any of these protected areas, and the surface area of the proposed mine is in total 22.4 hectares. It is certainly not an issue of grave national importance as argued by the Applicants.
- 165.5. FA5 – This document is wholly irrelevant, did not constitute expert evidence and is authored by the Green Lobby, together with the tourism board. It is quoted extensively by the Applicants for atmospherics alone.
- 165.6. FA6 – This document is irrelevant and merely shows that the farm in question falls outside any protected area.
- 165.7. FA7 – This document is irrelevant and is incomplete.
- 165.8. FA8 – This document is irrelevant and can be ignored. The Colvin report was debated at length at the Tribunal and debunked in totality, and is in any event a general report and not site specific to the mine question, and the farm in question.
- 165.9. FA9 – This document is wholly irrelevant and is not site specific. The entire document is not provided.
- 165.10. FA10 – This is a map, and it is irrelevant.
- 165.11. FA11 – This is incomplete and is irrelevant.
- 165.12. FA12 – This is incomplete and is a general document, not site specific, and the Department of Environmental Affairs and Mineral Resources has in any event already approved the mine and granted it the necessary authorizations.
- 165.13. FA13 – This is part of the Third Respondents environmental and social impact assessment report, which was submitted as part of the multi-layered systems of permissions required. It is irrelevant, and to the extent that it is relevant, it is

only in respect of water levels and water quality and the socio-economic contributions to the local communities, and the Court can be referred to the relevant sections.

- 165.14. FA14 - This is a voluminous document, constituting some 151 pages, which is completely irrelevant, and provided for atmospherics alone. To the extent that any specific issue needs to be referred to, same can be done in argument.
- 165.15. FA15 – This is completely irrelevant and provided for atmospherics alone.
- 165.16. FA16 – This is completely irrelevant.
- 165.17. FA17 – This newspaper article is completely irrelevant.
- 165.18. FA18 – The Departments annual report is incomplete and completely irrelevant.
- 165.19. FA19 – These are simply maps of the area and are completely irrelevant.
- 165.20. FA20 to FA31 – The correspondence is noted, and irrelevant. In fact, it is indicative of the fact that the Applicants have been aware of the rezoning application since 2017.
- 165.21. FA32 to FA35 – These are noted.
- 165.22. FA36 to FA38 – These documents are incomplete and irrelevant. They were in fact rejected by the Water Tribunal.
- 165.23. FA39 and FA40 – These documents are incomplete and irrelevant.

Conclusion

- 166. In conclusion, the Third Respondent submits that the application for review should be dismissed, alternatively should be deferred in terms of the counterapplication.
- 167. There should be no order to costs, alternatively, Applicants ordered to pay the costs.

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