



ALL RISE

Attorneys for climate and environmental justice

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06 June 2022

Dear Mr Maselesele,

RE: YENGO RESOURCES (PTY) LTD - APPLICATION FOR ENVIRONMENTAL AUTHORISATION - PROSPECTING RIGHT AND RELATED INFRASTRUCTURAL ACTIVITIES – FARM XIMBA NO. 16506, ULUNDI LOCAL MUNICIPALITY, KWAZULU-NATAL: KZN30/5/1/2/11146PR – COMMENTS ON DRAFT BASIC ASSESSMENT REPORT

1. All Rise Attorneys for Climate and Environmental Justice (All Rise) is a non-profit organisation and registered law clinic. We represent the **Global Environmental Trust (“GET”)**, **Mining Affected Communities United in Action (“MACUA”)**, and the **South African Conservation Fund** in the aforementioned application.
2. All parties have registered as Interested and Affected Parties and were provided with a copy of the draft Basic Assessment Report (“draft BAR”) on 6 May 2022 for comment.
3. In perusing said report and related documentation, we have identified a number of non-conformances with the Environmental Impact Assessment Regulations, 2014 (as amended) (“EIA Regulations”) which we have submitted to the competent authority in terms of Regulation 14(2) and await the Department’s response. Should we be correct in our allegations, at best, the draft BAR will need to be externally reviewed by an independent Environmental Assessment Practitioner (“EAP”) and at worst, the whole basic assessment process redone. Either way, it is our understanding that the public participation activities will need to be redone.
Please find attached a copy of the letter to the DMRE (Annexure 1).
4. Notwithstanding the alleged non-compliance with the EIA Regulations, we hereby submit comments on the draft BAR under a number of headings and for ease of reference, provide

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section and page references in the draft BAR, Environmental Management Programme (“EMPr), Application for Environmental Authorisation and Screening Report.

5. The reason that our clients are concerned about the applicant’s proposed prospecting activity and feel compelled to submit these comments, is that they have direct knowledge of the large-scale harm that coal mining has already caused and is causing on the environment and local communities in the region.
6. It is our experience that the decisions made by government are too often blinkered by the promise of employment and other socio-economic benefits without weighing these benefits up against the significant adverse impacts and long-term costs borne by the affected communities.
7. Coal mining repeatedly forecloses on alternative, more sustainable land uses; undermines biodiversity conservation efforts; impacts heavily on water resources; strips people of their land rights; destroys subsistence-based livelihoods and cultural heritage; causes division in the community; and erodes people’s right to an environment that is not harmful to their health or well-being – a right afforded to them by Section 24 of the Constitution, 1996.
8. The prospecting activities proposed by Yengo Resources thus cannot be assessed or evaluated in isolation to the:
 - 8.1. The current and future mining operations of the Zululand Anthracite Colliery (“ZAC”) located north and south of Yengo’s proposed prospecting area, and which fall in the five traditional authority areas of Zungu, Matheni, Mlaba, Mandlakazi and Ximba; the iMfolozi catchment; and on the northern and western boundaries of the Hluhluwe-iMfolozi Park.
 - 8.2. The current and future Somkhele mining operations of Tendele Coal Mining (Pty) Ltd in the Mpukunyoni Traditional Authority area; the iMfolozi and other catchments; and on the eastern boundary of the Hluhluwe-iMfolozi Park.
 - 8.3. The other current prospecting applications by Imvukuzane Resources (Pty) Ltd (“Imvukuzane”)¹ in the Mthethwa Traditional Authority area and Tendele Coal Mining (Pty) Ltd in the Mpukunyoni Traditional authority, located on the eastern boundaries of the Hluhluwe-iMfolozi Park.
 - 8.4. The previous prospecting activities already conducted by ZAC in the same area that Yengo

¹ One of the directors for Imvukuzane Resources (Pty) Ltd is also the Managing Director of ZAC.

is now proposing to prospect; by Ibutho Legacy (Pty) Ltd in the same prospecting area that Imvukuzane is now proposing to prospect; and by Tendele in the same area for which it is again applying for a prospecting right.

- 8.5. The mining rights held by Mbila Resources (Pty) Ltd² for the Msebe Opencast Anthracite Mine and Mbila Underground Mine both east of Nongoma, also in the Zululand District Municipal area.

Please note that in submitting the following comments on the draft BAR, we have concentrated only on what we consider to be its most significant failings. Failure to submit comments on all other sections does not mean that we agree with the contents thereof. If the main issues are addressed, these other sections will in any event require substantive amendment.

Failure to identify and assess cumulative impacts

9. The failure to mention in the draft BAR, the aforementioned past, current, and future mining-related operations in the region and their associated cumulative impacts is in direct contravention to the reporting requirements prescribed by the EIA Regulations and is the first submission we make in respect of the inadequacies of the draft BAR.

Listed activities

10. It is unclear as to why the EAP has listed Activity 21³ of the EIA Regulations Listing Notice 1 of 2014 (“Listing Notice 1”) in Table 2, Section 1.6 (page 18 of the draft BAR) as it does not appear to be relevant to the project described in the draft BAR. The last bullet on page 19 of the draft BAR also refers to Activity 21.
11. Notably, Activity 21 is not included in the application for environmental authorisation (dated 11 August 2021) which only lists Activity 20 of Listing Notice 1.
12. ***Please confirm if the applicant is applying for a mining permit as well as a prospecting right. If yes, please provide further information. If not, the inclusion of Activity 21 reflects poorly on the accuracy of the draft BAR and/or the expertise of the EAP.***

² Two of the directors of Mbila Resources (Pty) Ltd are also the managing and financial directors of Petmin, which owns Tendele Coal Mining (Pty) Ltd.

³ **Listing Notice 1, Activity 21:** Any activity including the operation of that activity which requires a mining permit in terms of section 27 of the Mineral and Petroleum Resources Development Act, as well as any other applicable activity as contained in this Listing Notice or in Listing Notice 3 of 2014, required to exercise the mining permit.

13. It is evident from Table 2 of the draft BAR as well as the description of the proposed activity/activities in Section 2, that in total, the combined footprint (and potentially the area of indigenous vegetation⁴ that will need to be cleared) is at least 585m², made up of:
 - 13.1. 480m² (access roads);
 - 13.2. 5m² (for the water sumps – 5 x 1m² each); and
 - 13.3. 100m² (construction camp)
14. It is therefore questionable as to why it is stated in Section 2.1.10 (page 19 of the draft BAR) that there will be “*minimal or no clearing of vegetation in the area*”. Based on the information in Table 2 and looking at the relevant Google images, it would appear that potentially 585m² of vegetation may need to be cleared.
15. If this is the case, Activity 12⁵ in the EIA Regulations Listing Notice 3 of 2014 (“Listing Notice 3”) will also be triggered due the presence of sensitive conservation areas within the prospecting area, as evidenced in the Screening Report (page 32). However, there is no mention of this in the draft BAR. ***If Activity 12 is not triggered please can the EAP explain why.***

Unacceptable siting of borehole locations and misleading statements in the draft BAR and public participation process

16. In section 7.1.1.7 (page 38 of the draft BAR), it is stated that no activities will be conducted within 100m from a powerline. However, Borehole XM04 is located within 100m of a powerline. This submission is supported by the Google Earth image on which we have plotted the co-ordinates for XM04⁶, attached hereto as **Annexure 2**.
17. In sections 7.1.1.8 (page 39) and 7.1.1.9 (page 41) of the draft BAR and section 1.8 of Appendix B (page 120), it is stated that there will be no activities near any household within a

⁴ “**Indigenous vegetation**” is defined in the Listing Notices as “*vegetation consisting of indigenous plant species occurring naturally in an area, regardless of the level of alien infestation and where the topsoil has not been lawfully disturbed during the preceding ten years*”.

⁵ Listing Notice 3, Activity 12: the clearance of an area of 300 square metres or more of indigenous vegetation within any critically endangered or endangered ecosystem listed in terms of section 52 of the NEMBA.

⁶ Co-ordinates for XOM4: Lat: -28.335414S; Long: 31.575439E (as per the Prospecting Work Programme) and consistent with Figures 4 and 5 in Appendix A of the draft BAR (page 115 – 116).

distance of 100m. This commitment was also made at the public meeting held on 5 October 2021 (see page 135 of Appendix B of the draft BAR).

18. However, Borehole XM01 is sited within a homestead and within 100m of at least two other homesteads; Borehole XM02 is located within 100m of two homesteads; and Borehole XM03 is approximately 50m from a homestead. These submissions are supported by the Google Earth images on which we have plotted the co-ordinates for XM01⁷, XM02⁸ and XM03⁹ respectively, attached hereto as **Annexures 3, 4 and 5**.
19. As graves are typically located within or near homesteads, it is also likely Boreholes XM01, XM02 and XM03 are also within 100m of graves, contrary to the statement made in section 7.1.1.7 of the draft BAR (page 38) and the commitment made at the public meeting held on 5 October 2021 (see page 135 of Appendix B of the draft BAR).
20. It is thus submitted that four of the five proposed boreholes have not been adequately or accurately described, assessed or mitigated in respect of their close proximity to homesteads, graves, and powerlines.
21. There is also no evidence that the lawful occupiers of the land in question or Eskom have been consulted (see submissions made under heading “Inadequate public participation” (paragraphs 41 to 49)).

Incorrect identification, application (or failure to apply) relevant legislation, guidelines and prescribed protocols

22. There is no mention of the National Environmental Management: Waste Act, 2008 in Section 3 of the draft BAR (page 20) which is relevant to the waste that is anticipated to be generated by the proposed prospecting activities, and stored and disposed of, as described in Section 2.1.7 on page 19 and elsewhere in the draft BAR.
23. The statement in Table 3 that “*no aspects of the project could be identified that triggers the NEM:BA*” is most likely incorrect. There are likely to be threatened and protected species and ecosystems, as well as invasive species, that are regulated by the National Environmental

⁷ Co-ordinates for XOM1: Lat: -28.363374S; Long: 31.476085E (as per the Prospecting Work Programme) and consistent with Figures 4 and 5 in Appendix A of the draft BAR (page 115 – 116).

⁸ Co-ordinates for XOM2: Lat: -28.296762S; Long: 31. 551708E (as per the Prospecting Work Programme) and consistent with Figures 4 and 5 in Appendix A of the draft BAR (page 115 – 116).

⁹ Co-ordinates for XOM3: Lat: -28.312183S; Long: 31.672705E (as per the Prospecting Work Programme) and consistent with Figures 4 and 5 in Appendix A of the draft BAR (page 115 – 116).

Management: Biodiversity Act, 2004 (NEMBA). Notably, the Screening Report identifies three sensitive plant species in the area (page 31 of the Screening Report).

24. There is no reference to the Conservation of Agricultural Resources Act, 1983 which regulates *inter alia* declared weeds and invader plants, and soil erosion.
25. It is also incorrect in Section 3 to state that “*no aspects of the project could be identified that triggers the NHRA*”. The National Heritage Resources Act, 1998 provides for the protection and management of heritage resources which include *inter alia* graves, archaeological artefacts and sites, and palaeontological resources. As the four of the five drilling sites are within or in close proximity to homesteads (see paragraph 19 above) and the area is rated as having very high palaeontological sensitivity (as identified on page 30 of the Screening Report), it is possible that there may be heritage resources that are uncovered during drilling and road construction. If so, the prescribed permitting process will need to be followed, preceded by specialist studies (as discussed in paragraphs 31 to 36 below).
26. The statement made in Section 7.1.1.6 (page 37 of the draft BAR) that “[a]ccording to the *Mining and Biodiversity Guidelines (2013)*, the project area is not classed as being of significant biodiversity importance and does not represent a risk to mining” is incorrect. This is because a significant part of the prospecting area contains areas of high biodiversity importance falling within Categories B, C and D contained in the Guidelines.
27. There is no evidence in the draft BAR that the EAP has applied the Section 24J Public Participation Guidelines, 2017 or the Need and Desirability Guidelines, 2017 in conducting the basic assessment process. Regulation 13(1)(b) read with Regulation 18 of the EIA Regulations requires an EAP to apply these guidelines.
28. There is no mention of the KwaZulu-Natal conservation legislation, specifically in relation to permitting requirements for protected species.
29. There is no evidence that the EAP applied the various screening tool protocols gazetted in 2020¹⁰. The effect of this is discussed under the heading “Lack of specialist studies” in paragraphs 31 to 36.

¹⁰ GN 320 in *Government Gazette* 43110 of 20 March 2020 and GN 1150 *Government Gazette* 43855 of 30 October 2020.

30. Although there is reference to the Financial Provisioning Regulations, 2015 in Section 24 of the draft BAR (page 71), the EAP has not actually applied these regulations. Regulation 19(1)(a) of the EIA Regulations explicitly requires that BAR that is made available for comment as well as the final version submitted to the Department, must include “*the plans, report and calculations contemplated in the Financial Provisioning Regulations*”.

Lack of specialist studies

31. As mentioned in paragraph 29 above, there is no evidence that the EAP applied the various mandatory screening tool protocols gazetted in 2020 required for the numerous specialist assessments that were identified in the Screening Report (page 22) for inclusion in the basic assessment. These are:

- 31.1. Agricultural Impact Assessment.
- 31.2. Archaeological and cultural heritage impact assessment.
- 31.3. Palaeontology Impact Assessment.
- 31.4. Terrestrial Biodiversity Impact Assessment.
- 31.5. Aquatic Biodiversity Impact Assessment.
- 31.6. Noise Impact Assessment.
- 31.7. Radioactivity Impact Assessment.
- 31.8. Plant Species Assessment.
- 31.9. Animal Species Assessment.
- 31.10. Terrestrial Biodiversity Specialist.

32. For each of these specialist assessments, the respective assessment protocols that need to be applied to the basic assessment process are also listed in the Screening Report (pages 22 to 23). These are:

- 32.1. Site sensitivity verification requirements where a specialist assessment is required but no specific assessment protocol has been prescribed.
- 32.2. Protocol for the specialist assessment and minimum report content requirements for environmental impacts on agricultural resources.
- 32.3. Protocol for the specialist assessment and minimum report content requirements for environmental impacts on terrestrial biodiversity.

- 32.4. Protocol for the specialist assessment and minimum report content requirements for environmental impacts on aquatic biodiversity.
 - 32.5. Protocol for specialist assessment and minimum report content requirements for noise impacts.
 - 32.6. Protocol for the specialist assessment and minimum report content requirements for environmental impacts on terrestrial plant species.
 - 32.7. Protocol for the specialist assessment and minimum report content requirements for environmental impacts on terrestrial animal species.
33. These protocols all require a two-step approach, starting with site sensitivity verification, which is prescribed in most of the protocols as follows:

2. SITE SENSITIVITY VERIFICATION AND MINIMUM REPORT CONTENT REQUIREMENTS

Prior to commencing with a specialist assessment, the current use of the land and the environmental sensitivity of the site under consideration, identified by the screening tool, must be confirmed by undertaking a site sensitivity verification.

- 2.1. *The site sensitivity verification must be undertaken by an environmental assessment practitioner or a specialist.*
- 2.2. *The site sensitivity verification must be undertaken through the use of:*
 - (a) *a desk top analysis, using satellite imagery;*
 - (b) *a preliminary on-site inspection; and*
 - (c) *any other available and relevant information.*
- 2.3. *The outcome of the site sensitivity verification must be recorded in the form of a report that:*
 - (a) *confirms or disputes the current use of the land and the environmental sensitivity as identified by the screening tool, such as new developments or infrastructure, the change in vegetation cover or status etc.;*
 - (b) *contains a motivation and evidence (e.g. photographs) of either the verified or different use of the land and environmental sensitivity; and*
 - (c) *is submitted together with the relevant assessment report prepared in accordance with the requirements of the Environmental Impact Assessment Regulations.*

34. In addition, the Screening Report (page 22) specifically places the responsibility on the EAP to confirm the list of specialist studies identified in the Screening Report and to motivate in the assessment report, the reason for not including any of the identified specialist studies including the provision of photographic evidence of the footprint situation.
35. The EAP does attempt to provide this motivation somewhat in the draft BAR albeit not for all specialist studies, but where such motivation is provided, it falls short of the prescribed requirements in the following ways:

- 35.1. There is no photographic evidence provided in the draft BAR.
 - 35.2. The EAP is a qualified and registered geologist with nothing in his CV to indicate that he has the necessary expertise to pronounce on such matters such as ecological sensitivity, cultural heritage or vegetation.
 - 35.3. The claims that the drilling sites are more than 100m from houses and graves is not correct as already set out above under heading *"Unacceptable siting of borehole locations and misleading statements in the draft BAR and public participation process"* (paragraphs 16 to 21).
 - 35.4. The statement in Section 5.1 (page 22 of the draft BAR) that the prospecting area falls within a “*brownfields site*” is misleading and downplays the ecological, socio-economic and cultural sensitivities of the receiving environment. While South Africa has no legal definition of the term “*brownfields site*”, it is generally recognised as land in a built-up area that is infill land or premises where remedial action is required prior to redevelopment. It may also be vacant, derelict or contaminated land or land to which no specific land use is attributed.¹¹
 - 35.5. Further, looking at the Google earth imagery, and descriptions of land use in the draft BAR itself which is described as primarily rural residential and subsistence agriculture under customary land ownership, the prospecting area is by no means a “*brownfields site*”.
 - 35.6. The Screening Report provides sensitive plant unique numbers (“Sensitive species 191” and “Sensitive species 1076”) which requires the EAP or specialist to email SANBI to release the actual species names. There is no evidence that this requirement has been met by the EAP.
36. Section 15 (page 65 of the draft BAR) confirms that no specialist studies have been undertaken for this application. Thus, the statement in Section 16: Environmental Impact Statement (page 66 of the draft BAR) is incorrect to the extent that it claims to rely on specialist studies.

Based on the impact assessment conducted by the EAP and various specialists, the environmental impacts associated with the prospecting activities are expected to be localised and of low to medium significance, with one impact (impact on geology) remaining permanently low even if mitigation measures are implemented. Mitigation measures have been recommended by the EAP and specialists in order to eliminate and/or reduce environmental impacts. These mitigation measures and monitoring programmes have been

¹¹ Definition taken from “*Developing guidelines for brownfield development in South Africa*” L. Potts & C. E. Cloete, Department of Construction Economics, University of Pretoria South Africa. WIT Transactions on Ecology and The Environment, Vol 162, © 2012 WIT Press www.witpress.com, ISSN 1743-3541 (online).

included as commitment in the Environmental Management Programme. The Environmental Management Programme aims to present management measures that will eliminate, offset or reduce adverse environmental impacts, as well as to provide the framework for environmental monitoring. The primary purpose of the Environmental Management Programme is to ensure that negative environmental impacts of the proposed project are effectively managed within acceptable limits and that the positive impacts are enhanced.

Need and desirability: biased and incomplete motivation

37. There is no mention in Section 4 (need and desirability of the proposed activities) or elsewhere in the draft BAR, of the contribution of coal to climate change and the global commitments, including that made South Africa, in terms of international agreements to reduce the extraction and use of fossil fuels.
38. As already mentioned in paragraph 27 above, there is no evidence that the EAP applied the S24J Need and Desirability Guidelines, 2017.
39. There is also no discussion in the BAR about the compatibility of the project or the mining that may follow in terms of national, provincial or local government planning frameworks, including the municipal Integrated Development Plans, Spatial Development Plans and Ezemvelo KZN Wildlife's conservation plan.

Consideration of alternatives

40. The motivation not to consider the no-go alternative in the assessment is not objective as it is biased towards the applicant. It does not consider the potential negative impacts of coal mining such as water pollution, land degradation and sterilisation, social upheaval, loss of livelihoods, psychological and health impacts, foreclosing on other more sustainable development opportunities and the contribution of coal as a fossil fuel to climate change.

Public participation process

41. Under the heading of Section 6 of the draft BAR, describing the public participation process followed (page 24), the following is stated:

*Describe the process undertaken to consult interested and affected parties including public meetings and one on one consultation. **NB the affected parties must be specifically consulted regardless of whether or not they attended public meetings. (Information to be provided to affected parties must include sufficient detail of the intended operation to enable them to assess what impact the activities will have on them or on the use of their land).***

42. Although it is stated on page 24 of the draft BAR that land occupiers were identified as I&APs, there is no evidence in the draft BAR that the individual residents who live and use the land that will be affected by the drilling activities have been consulted. It is also inadequate to list the “KwaXimba communities” as being the lawful occupiers of the land (page 120 of the draft BAR) or to rely solely on the fact that meetings were held in the community or consultation was had with the traditional authority – the affected parties must be **specifically consulted**.
43. It is also impossible for I&APs to know from the information provided to them, exactly where the drilling sites and access roads are located. Not even the co-ordinates are provided in the draft BAR and the maps that are provided only show dots on a very small-scale map (see Figures 4 and 5 on pages 115 and 116 of the draft BAR).
44. It is only by plotting the drilling sites co-ordinates that are listed in the Prospecting Works Programme, that we were able see exactly where these sites are located and how close four out of the five sites are to homesteads (**Annexures 2, 3, 4 and 5**). The land is also used for subsistence agriculture so impacts are not just limited to the residents of the affected homesteads; the affected parties could include other families as well.
45. Also, if only 5 drilling sites are required for prospecting, it should have been relatively easy to identify and consult with the affected occupants and any other people with land use rights.
46. There is no evidence of such consultation in the draft BAR and in fact, at the meeting held on 5 October 2021, one of the attendees requested “*to know the specific site where you will be drilling boreholes*” (Appendix B, page 141 of the draft BAR). One can also assume then on the basis of the question, that this information was not disclosed by the EAP at the meetings. Notably, there was no response to this request recorded in the minutes and no evidence that the location of the boreholes was pointed out to residents and other land users at a later stage.
47. It should also be noted that there is no evidence that the written reports were provided to the affected parties in their home language, isiZulu.
48. As such, people will likely wake up one morning to see the drilling equipment arrive on site. This therefore does not meet the threshold of appropriate or adequate public participation as required by NEMA, and for this reason alone, the application for environmental authorisation should be refused. Notably, the lack of consultation would not also meet the requirements for full and informed consent in terms of the Interim Protection of Informal land Rights Act, 1996.
49. Further, there is no evidence that the EAP consulted with Eskom, despite one of the drilling sites (XM04) being within 100m of a powerline (**Annexure 2**), and there is no evidence that

the EAP consulted with organs of state such as the provincial Departments of Agriculture and Transport. There is also no list of registered I&APs making it impossible to determine just how compliant or comprehensive the I&AP identification, notification and consultation process was.

Incorrect and inadequate description of environmental attributes in Section 7 of the draft BAR

50. The reliance on a very brief reference to the Ulundi Local Municipality and town of Ulundi (Section 7.1.1.1 – page 35) and the high-level description of South Africa (Section 7.1.1.7b – page 38) to describe the socio-economic environment, demographics and geographic setting is wholly inadequate, and in large part, irrelevant.
51. There is no meaningful description of the communities that will be affected by the proposed activities in Section 7 of the draft BAR or anywhere else in the report, in terms of population density, spatial distribution, and livelihoods, including their strong reliance on the natural resources in the area.
52. Apart from a cursory mention of the Mfolozi River, there is no description of the drainage lines, streams, rivers, dams, wetlands and aquifers within the prospecting area, especially water resources that are regarded as sensitive and fall within a National Freshwater Ecosystem Priority Area (“NFEPA”).
53. There is no description of the ecosystems and vegetation types in the prospecting area, including sensitive ones that are Critical Biodiversity areas (“CBAs”).
54. There is no description of the gradients of slopes in the prospecting area or the erosive nature of the local soils.
55. Limiting the identification of specific environmental features and infrastructure on site to 200m is unsubstantiated and insufficient. For example, there is no mention in the draft BAR of the adjacent protected areas of Hluhluwe-iMfolozi Park and Ophathe Game Reserve, or other private or community conservation areas and corridors as well as planned expansions and joint initiatives.
56. As already mentioned, there is no description of the provincial or municipal planning framework for the area; nor is there any description of the other mining operations, current and planned.

Flawed identification and assessment of impacts

57. As a result of not having identified and described the project activities and environmental attributes adequately or accurately, and the apparent lack of EIA expertise on the part of the

EAP, Sections 8 to 17 in the draft BAR that record the findings of the basic assessment should not be relied upon to make an informed decision.

58. Further, and as already submitted in paragraph 9, no cumulative impacts have been identified or assessed.
59. The use of quantitative ratings in Section 9 as a method to assess the impacts is mathematically flawed. Further, there is no description of how the rating is determined for rating the significance of impacts in Table 11 (page 49 of the draft BAR).
60. The positive impacts listed in the impact summary on Section 17 (page 68 of the draft BAR) appear to relate to actual mining operations and not prospecting, whereas the negative impacts pertain only to prospecting. This incongruency in scope creates the impression that the positive impacts outweigh the negative impacts and is thus misleading.

Environmental Management Programme (EMPr) and Financial provision

61. The EMPr does not properly identify impact management outcomes and link the impact management actions to these outcomes, as is required in Appendix 3 of the EIA Regulations.
62. As mitigation measures, the draft BAR and EMPr require that excavations only take place “within the confines of the corner co-ordinates given on the locality map”¹² and “within the designated area (coordinates on layout plan)”¹³. However, there is no such locality map, layout plan or coordinates in the draft BAR or EMPr. There is also no layout plan that demarcates the location or dimensions of the access roads.
63. The financial provision calculated does not comply with the Financial Provisioning Regulations, 2015 (as amended) nor is there any explanation or referencing of the methodology and rates used.
64. The items costed in the financial provision calculations do not match the mitigation and rehabilitation measures set out in the EMPr.
65. The draft BAR and EMPr also do not include the rehabilitation / closure objectives as required.

¹² Section 14 on page 60 of the draft BAR and Section 26.9 on page 82 of Appendix B: Environmental Management Programme of the draft BAR.

¹³ Section 26.11 on page 90 of Appendix B: Environmental Management Programme of the draft BAR.

Conclusion

66. Based on these submissions, which include flaws in the public participation process and incorrect and incomplete information in the draft BAR, together with the lack of compliance with Regulation 13(1) in respect of the EAP, it is our clients' submission that the competent authority cannot approve the current application for environmental authorisation.
67. If the applicant has any hope of succeeding with its prospecting application, it is our client's view that the whole process must start afresh and fully comply with the EIA Regulations and other applicable legislation and guidelines.
68. Should, however, the applicant proceed with its application and submit a final BAR to the Department, we request that you notify all I&APs and make a copy of the final BAR and related documentation available, including the applicant's / EAP's response to the comments submitted herein.
69. Kindly acknowledge receipt.

Yours sincerely

Janice Tooley

(Sent by email and therefore unsigned)