



ALLRISE

Attorneys for climate and environmental justice

2nd Floor Offices, 29th South, 7 Umsinsi Junction, Dube
City
Dube Trade Port, La Mercy, KwaZulu-Natal, South Africa
Tel : +(27) 32 814 0240
Mobile : +27 (0)61 226 6868
Email: info@allrise.org.za
Web : www.allrise.org.za

Ms Caroline Munyai
Tshifcor Investment & Resources (Pty) Ltd
By Email: caroline@tshifcor.co.za

19 August 2024

Dear Ms Munyai,

**RE: JINDAL IRON ORE (PTY) LTD – MELMOTH IRON ORE PROJECT
(KZN30/5/1/2/2/10130 MR): COMMENTS ON THE DRAFT SCOPING REPORT**

1. All Rise represents the following clients:
 - 1.1. South Durban Community Environmental Alliance (“SDCEA”),
 - 1.2. the Nkwaleni Water User Association (“NWUA”); and
 - 1.3. the Nkwalini and Surrounds Supporting Sustainable Rural Development community organisation (“NSSSRD”).
2. We hereby submit comment on the application for environmental authorisation and waste management licence; Scoping process; and draft Scoping Report of July 2024 (“draft Scoping Report”) prepared by Tshifcor Investment and Resources (Pty) Ltd (“TCIR”) under the following headings:
 - 2.1. Lapsed and unlawful application for environmental authorisation and waste management licence.
 - 2.2. Inadequate public participation.
 - 2.3. Misleading, omitted and information.
 - 2.4. Flawed draft Scoping Report and plan of study for EIA.
 - 2.5. Resubmission of issues raised previously.

3. Lapsed and unlawful application for environmental authorisation and waste management licence

- 3.1. The Regional Manager: KwaZulu Natal Region of the Department of Mineral Resources in paragraph 4 of his letter dated 19 March 2024 accepting the mining right application required that “[a]ll submission timeframes [for the Scoping and EIA reports] are effective from the dates of this acceptance letter.”
- 3.2. The deadline for submission of the Scoping Report was thus 7 May 2024, 44 days from the date of acceptance letter, excluding public holidays as prescribed by Regulation 21 (1) read with Regulation 3(5).
- 3.3. In terms of Regulation 45 of the EIA Regulations, 2014 (as amended), the application has lapsed as the applicant has failed to meet the prescribed timeframe.
- 3.4. For this reason, any Scoping activities conducted after the 7 May 2024 are considered null and void, including the distribution of the draft Scoping Report of July 2024 for comment. For Jindal’s process to be lawful, it must submit a new application for environmental authorisation and start the Scoping process afresh.
- 3.5. The applicant’s disregard for prescribed timeframes is evident from the start. Its submission of a new application for environmental authorisation and waste management licence on or about 22 February 2024 was unlawful.
- 3.6. Regulation 46 prohibits an applicant from submitting an application “*which is substantially similar to a previous application which has been refused unless the appeal on such refusal has been finalised or the time period for the submission of such appeal has lapsed*”.
- 3.7. Jindal’s previous application under Ref. no. KZN/30/5/1/2/2/10108MR was refused and notification of this decision was given to Interested and Affected parties (I&APs) on 9 February 2024. Thus, the appeal period only lapsed on 29 February 2024, making any submission of a new application prior to 1 March 2024 unlawful.

4. Inadequate public participation

- 4.1. There are a number of flaws in the public participation process preceding and during Scoping that constitute unfair procedure. These mainly relate to 1) the failure to identify and notify I&APs and 2), failure to disclose all material information in the draft Scoping Report, for the reasons set out below.

- 4.2. Jindal and its appointed consultants TCIR have not met the minimum requirements prescribed by Regulation 41 of the EIA Regulations, 2014 (as amended) to notify in writing all landowners and lawful occupiers within and adjacent to the proposed mining right area (North Block and South Block) and associated infrastructure footprint. The majority of these affected parties have NOT been identified and notified in writing about the application and opportunity to comment on the draft Scoping Report.
- 4.3. We also doubt that TCIR has identified and notified every State department that administers a law relating to a matter affecting the environment relevant to the application for an environmental authorisation and all organs of state which have jurisdiction in respect of the activity to which the application relates. For example, we know that the provincial conservation authority, Ezemvelo KZN Wildlife was not notified and only found out about the application and draft Scoping Report through a third party.
- 4.4. We have also had several I&APs contact our offices to say that although they were registered I&APs in the previous EIA process and submitted comments and attended meetings, they have not been notified and have had to contact TCIR themselves. This situation was the same for All Rise and its clients. It is not unreasonable to deduce then that there may be many other I&APs who are yet to be notified.
- 4.5. It is clear that TCIR has not utilized the database of registered I&APs from the previous application and EIA process. At first Ms Munyai said she had used the SLR database but after sending the first communication “to some of the previously registered IAPs” via email messages which bounced, they “decided not to entirely rely on the database and rely more on IAPs coming forward to register on the current application as per call made through our site notices and adverts” .
- 4.6. In this regard, it should also be noted that some of the site notices only went up in the communities well after the comment period commenced on 10 July 2024 and the only advertisement, we know of was placed in the Newcastle Advertiser, a community newspaper in a town more than 260 km north of the proposed mining operations.
- 4.7. Moreover, when pressed further for a more transparent answer about the use of the database of I&APs who had registered in the previous EIA process, Ms Munyai conceded that she did not have a copy of the SLR database and was unable to give a reason for this.
- 4.8. Thus, it is clear that the identification and notification of I&APs for the current application and Scoping process is wholly defective. This despite Jindal having had more than 10 years and three different sets of consultants since it initiated the first EIA process in

2013, second process in 2021 – 2023 and third process earlier this year, to develop a comprehensive database of I&APs.

- 4.9. Despite lack of public participation being one of the reasons the competent authority refused the previous application, Jindal is getting worse and not better in its attempts to meaningfully consult with I&APs and seemingly has no intention of doing so.
- 4.10. For a multi-billion Rand project such as the MIOP, Jindal has invested shockingly little in consultation with the people whose rights will be adversely and irreversibly affected, now and intergenerationally. Worse so, Jindal's proposed mining project has caused division in the affected communities. This has resulted in increasing levels of violence and intimidation since the project first started. This year alone there have been two assassinations and one attempted assassination. Despite repeated requests for measures to be taken to address conflict, Jindal and TCIR have proceeded with the EIA process anyway, recklessly putting more lives in danger.
- 4.11. The other reasons the public participation process on the draft Scoping Report was inadequate was because:
 - 4.11.1. The online copy of the draft Scoping Report was only available online on 15 August 2024 and not when the comment period commenced on the 10 July 2024. I personally attempted to download a copy on the 13 and 14 July 2024 having heard from one of our client's members that they had heard the Scoping process had started. There was no active link to the document, and this appears only to have been rectified on Monday, 15 July 2024. Thus, the report was not available to I&APs for the full 30 day comment period.
 - 4.11.2. TCIR failed to provide a summary of the draft Scoping Report in isiZulu. When a copy of a summary of the draft Scoping Report in isiZulu was requested, only a copy of the BID in isiZulu was provided. This is not a valid substitute for a copy of the Scoping Report summary.
 - 4.11.3. No public meetings have been held in during the Scoping process as were indicated in the BID. In response to a request for the dates of these promised meetings, a meeting was offered to All Rise and its clients' representatives. Our clients have subsequently requested public meetings at accessible venues and although the dates and venues are still being arranged, any such meetings will only be held long after the Scoping comment period has closed and thus too late to inform Scoping and the plan of study for the EIA.

- 4.11.4. As will be explained in sections below, the draft Scoping Report does not disclose all material information necessary for I&APs to provide meaningful comment.
- 4.12. The failure to adequately identify and notify all I&APs and disclose all material information at Scoping renders the opportunity provided to participate inadequate, ineffective, inequitable, unreasonable and unmeaningful. This is the second reason that the application for environmental authorisation and waste management licence should be rejected.

5. Misleading, and omitted and information

All section and page references pertain to the draft Scoping Report except where otherwise stated.

- 5.1. The heading of the draft Scoping Report itself is misleading. The draft Scoping Report is not part of the water use licence application (WULA) under the National Water Act, 1998.
- 5.2. TCIR states on page i of the Executive Summary and page 1 that Jindal has applied for a water use licence. However, when a copy was requested, Ms Munyai stated that “the WULA application will only be applied at a later stage based on the outcomes of the EIA”.
- 5.3. There are numerous statements made in the Executive Summary and in the main body of the report that are false and misleading, not only contradicting the specialist findings in the previous EIA but also the DMRE’s reasons for refusing the previous applications. Examples of these statements include the following:
- 5.3.1. “Due to the widespread occurrence of the same vegetation types over a large area in the vicinity of the preferred site, the conservation importance of the vegetation on the site is regarded as low” (page ii of the Executive Summary and elsewhere in the report).
- 5.3.2. “There are currently no impacts on wetlands systems, this is because the entire site is not sitting on these systems” (page ii of the Executive Summary and elsewhere in the report).
- 5.3.3. “It is possible to conclude that the existing conditions on the existing road network within the Jindal Iron Ore project from a road capacity perspective current impacts have allowed significance and that no mitigating measures are required. From a road safety perspective, apart from point D, over all the other intersections and relevant

road sections investigated have a low significance and no mitigating measures are required (page ii of the Executive Summary and elsewhere in the main body of the report”).

5.3.4. “No involuntary relocation is foreseen” (page 131). Surely the opposition to the proposed MIOP in many of the communities is a clear signal that people do not want to be relocated.

5.3.5. “Jindal Iron Ore Mine is planning to relocate the 100 village houses within the project area to a newly proposed land purchased which will be built with all the Municipal service (Roads, Water, Sewage, electricity, Graveyard etc.).” (Table 4-24, page 110). The previous EIA identified approximately 350 families who would need to be relocated for the first phase of the project. Further, there is no mention of how many more hundred families will need to be relocated as the mine moves westwards in the South Block and into the North Block.

5.4. Examples of omitted information include:

5.4.1. There is no Appendix G containing the Specialist studies.

5.4.2. There are no references to sources of information, including plans, reports, policies, and specialist studies despite very technical findings being presented by the EAP.

5.4.3. TCIR has not fully declared its interests in the MIOP.

5.4.4. There is insufficient technical information about the MIOP.

5.4.5. There is no information on the extended South Block area which includes the new position of the processing plant, as well as the TSF and associated infrastructure, especially in terms of climate, air quality, water, soil, land use and land capability (despite this being a highly productive commercial agriculture), and socio-economics.

5.4.6. There is no information on the multiple traditional authority areas that will be affected. There is also inadequate mention of all the affected municipalities and the issues raised by I&APs in the previous EIA process. Collectively I&APs spent hundreds of hours reviewing reports, attending meetings and submitting comments. The current draft Report is completely silent on these comments.

5.4.7. Other key sections that are missing or inadequately drafted are described under the section of the draft Scoping Report below.

5.5. Examples of inconsistent information include:

- 5.5.1. The size of the open pit area in Table 2-3 (page 9) given as 284 ha does not correlate with the dimensions of the pits in Figure 10 (page 10) estimated to be 4 000m by 1 000m, therefore closer to 400 ha. The total footprint area is also less than what is stated in the latest Mining Work Programme.
- 5.5.2. The lack of distinction between the extent and duration of the 27 566 ha mining right area and that of the first mining operation of 1 630 ha / 1 591 ha.
- 5.5.3. Not all key project information in the Mining Work Programme has been included or is consistent with the information, in the draft Scoping Report.

6. Flawed draft Scoping Report and plan of study for EIA

- 6.1. The draft Scoping Report does not comply with the minimum reporting requirements prescribed in Appendix 2 of the EIA Regulations for the reasons set out below.
- 6.2. The executive summary is not a summary of the contents of the draft Scoping Report as it should be but rather a very inadequate and incomplete description of the receiving environment.
- 6.3. The locality maps (Figure 2-1 and Figure 2-3) do not sufficiently show all main geographic features in the region, including municipality boundaries, traditional authority areas, town of Eshowe, protected areas, smaller provincial roads and water courses. They also do not show the 500m blasting zone.
- 6.4. Despite Jindal having been refused its previous application due to all the gaps inter alia in the specialist studies, the same challenges as a result of denied access persist in the new application. For this reason, the Scoping Report has not been able to provide the necessary description of receiving natural, socio-economic and cultural environment ("baseline conditions").
- 6.5. It would appear that no additional specialist work has been conducted for the North Block and for the new extended section of the South Block including the tailing storage facilities and associated infrastructure.
- 6.6. The draft Scoping Report downplays the irreversible and significantly high adverse impacts that the MIOP will have on water supply and quality, biodiversity, livelihoods, food security, employment, the formal and informal economies, arable soils, climate

change adaptation and resilience, and community structures and culture, not only for present generation but intergenerationally.

- 6.7. There is a lack of identification and assessment of cumulative impacts and residual risks.
- 6.8. In respect of alternatives (pages 21; 116 - 117):
 - 6.8.1. The alternatives do not address the findings of the DMRE in its record of decision for the previous application nor are all feasible and reasonable alternatives identified.
 - 6.8.2. Adequate reasons for not pursuing underground mining as an alternative are not provided.
 - 6.8.3. The description of the “No-Project” option is biased and thus flawed.
 - 6.8.4. Table 6-1 ranking alternatives is flawed and unsupported and does not meet the reporting requirements of Appendix 2 of the EIA Regulations.
 - 6.8.5. Recommendations made on mining costs only are not consistent with NEMA, the EIA Regulations and the S4J Guidelines.
 - 6.8.6. Reasons given for not considering alternative sites are insufficient.
 - 6.8.7. The sites and infrastructure layout presented in Figure 2-3 do not represent the best overall option for the reasons provided above.
- 6.9. The section on Policy and Legislative Context is severely lacking. Not only does it leave out key pieces of national legislation and provisions pertaining to climate change, greenhouse gas emissions, noise, blasting, waste management, emergencies, and biodiversity but there is no mention of provincial and municipal legislation, plans and policies. Key national plans and policies are also not mentioned.
- 6.10. The Need and Desirability section is biased and omits to reflect on society’s perspective and the anticipated adverse impacts. It is also severely lacking because it fails to apply the Section 24J Need and Desirability Guidelines.
- 6.11. We do not accept the plan of study for Scoping because:
 - 6.11.1. It does not fully identify all necessary specialist studies. It only provides for eight studies whereas many more studies were conducted for the previous EIA application.

- 6.11.2. Not all specialist studies identified in the Screening Tool report have been included.
- 6.11.3. The terms of reference for the specialist studies that have been proposed do not meet the prescribed protocols for the respective themes.
- 6.11.4. The current list of specialist studies and their respective terms of reference do not address the issues already raised by I&APs in the previous EIA.
- 6.11.5. The current list of specialist studies and their respective terms of reference do not address the flaws identified by the DMRE in its record of decision for rejecting the previous application.
- 6.11.6. There is no mention of the financial provision plans, reports or calculations required as per the Financial Provisioning Regulations, 2015 (as amended) and which need to be submitted with the EIA Report.
- 6.11.7. The proposed impact assessment methodology is mathematically flawed. Further, no source of authority has been provided to support it as a robust and scientifically sound method.
- 6.11.8. The plan of study is vague in its description of the public participation activities for the EIA phase making it difficult for I&APs to comment on its acceptability.
- 6.11.9. A comment period of merely 30 days for a large complex project such as the MIOP which will require a highly complex and voluminous EIA report, EMPr and specialist studies is insufficient. A comment period of at least 60 days is required.
- 6.11.10. There is no provision for the EAP and specialists to consult with I&APs in person and in their home language to verify the specialist findings and reach agreement on the avoidance, mitigation and offset measures.
- 6.12. Collectively I&APs spent hundreds of hours reviewing reports, attending meetings and submitting comments in the previous EIA process. The current draft Scoping Report is completely silent on these comments and have not included them as issues and impacts. Combined with a lack of I&AP notification and a flawed report, the purpose of Scoping cannot be fulfilled.
- 6.13. For the reasons set out above, the draft Scoping Report is flawed to the extent that any acceptance of the final report following this version without further consultation, will be

procedurally unfair. These flaws cannot be corrected without starting the Scoping process afresh.

7. Resubmission of issued raised previously

- 7.1. We hereby submit the comments date 11 September 2023 made in the previous EIA process (attached hereto as **Annexure “A”**) for consideration in the current application.
- 7.2. Although these comments were made on the 2023 draft EIA Report as part of the previous application for environmental authorisation, most remain highly relevant to the current EIA process. In summary:
 - 7.2.1. The Mhlathuze catchment is overallocated, and there is no prospect of supply for the Project without severely impacting current water users.
 - 7.2.2. Vast areas of agricultural land (commercial and small-scale farming) will be destroyed impacting on food security, jobs and the local and regional economy (formal and informal).
 - 7.2.3. Vast areas of ecological importance and several red data species and protected species will be destroyed.
 - 7.2.4. Aspects integral to the mining operation need to be properly assessed including the tailings storage facility and transport infrastructure). Proper consideration needs to be given to cumulative impacts.
 - 7.2.5. Public participation to date has been inadequate. The current Scoping process has not addressed many of our previous concerns as already explained in Section 4 above.
 - 7.2.6. Gaps in previous specialist studies need to be addressed, including studies on groundwater; terrestrial biodiversity; wetland and aquatic ecology; cultural heritage; and financial provision.
 - 7.2.7. Impacts previously excluded need to be adequately assessed and addressed in the current EIA process. These include socio-economic impacts and jobs; increased demand on a constrained service delivery system; resettlement impacts; impacts on agriculture; impacts on tourism, and climate change (emissions as well as adaptation and resilience).

- 7.3. As a minimum, we expect the issues raised in this previous submission, in particular Part II thereof, to be included in the draft Scoping Report, with an indication of how these issues will be addressed by specialists in the EIA phase.
- 7.4. As already stated, these comments, together with all the other comments raised by I&APs should have been used to form the basis of the current draft Scoping Report. They were not. As the mining area has been increased by approximately 28 % and now includes the TSF and associated infrastructure, even more issues are likely to be raised once a proper Scoping process has been undertaken.
- 7.5. Please note that the resubmission of these issues does not constitute our full set of issues, and we reserve our rights to comment on any other Scoping Report that follows the current version, in final form or draft.

8. Conclusion

- 8.1. It is clear from our comments in this submission that the competent authority cannot accept a Scoping Report founded on firstly, a lapsed and unlawful application, and secondly, on a procedurally flawed Scoping process, in terms of both public participation and the draft Scoping Report.
- 8.2. We thus call on the competent authority to reject the application for environmental authorisation and waste management licence.
- 8.3. Not only have Jindal and TCIR wasted I&APs' time and financial resources by their deplorable effort, but they also continue to put people's lives in danger. Prior to submitting another new application, we call on the competent authority to intervene and ensure that the conflict on the ground is first resolved. We also call on the competent authority and Jindal to accept people's right to say no to the MIOP.
- 8.4. Should Jindal and TCIR proceed to submit a final Scoping Report to the DMPR despite the aforementioned defects, we hereby reserve our right to comment on the Final Scoping Report and public participation process directly to the DMPR.
- 8.5. Please also see our previous comments attached from the previous EIA process as part of our submission to this Scoping report. This is because there is clear overlap in the objections we have to this Scoping report as we had in the previous EIA process.

Yours sincerely,

Janice Tooley

(Sent by email and therefore not signed)