



ALLRISE

Attorneys for climate and environmental justice

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Mr Ralph Repinga

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31 January 2025

Dear Mr Repinga,

RE: YENGO RESOURCES (PTY) LTD - APPLICATION FOR ENVIRONMENTAL AUTHORITY FOR THE AMENDMENT OF PROSPECTING RIGHT – FARM XIMBA NO. 16506, ULUNDI LOCAL MUNICIPALITY, KWAZULU-NATAL: KZN30/5/1/2/11146PR – COMMENTS ON DRAFT BASIC ASSESSMENT REPORT (5 DECEMBER 2024)

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”)** and **Mining Affected Communities United in Action (“MACUA”)** in the aforementioned application.
2. Both parties were registered Interested and Affected Parties and participated in the Basic Assessment process for the 2022 application for environmental authorisation for a prospecting right. They again participate in this Basic Assessment process for an application for environmental authorisation for an amendment of the prospecting right and hereby submit comments on the draft Basic Assessment Report of 5 December 2024, inclusive of the Environmental Management Programme (“EMPR”) and specialist reports (“draft BAR”) by 31 January 2025, the extended deadline agreed to by Licebo Environmental and Mining (Pty) Limited.
3. While prospecting itself is not full-scale mining and typically has fewer, more localised and less significant impacts than mining, it is still an activity that has the potential to cause significant negative impacts on the environment, socio-economic conditions and cultural heritage which need to be identified, assessed, mitigated and consulted on. Hence, its listing as an activity requiring environmental authorisation and the need to follow a prescribed basic assessment process.

4. Notwithstanding its smaller impact, prospecting cannot be assessed in a vacuum. Its whole purpose is to identify and evaluate coal deposits for future mining which, by its very nature, has significant adverse impacts. In many cases, these impacts cannot be avoided, and difficult, if not impossible to even minimise or remedy. Thus, the need and desirability of Yengo's prospecting cannot be separated from the need and desirability of Yengo's future coal mine, and coal mining in general, which will have undeniable and unacceptable adverse impacts, not only locally in the immediate geographic area, but also the region, nationally and potentially globally. These include impacts on:
 - 4.1. the social, economic and cultural well-being and health of local and neighbouring rural communities who have a high dependence on the natural environment;
 - 4.2. on community land use rights as Yengo's right will restrict and foreclose on other land use and future development alternatives the community may want to pursue;
 - 4.3. the adjacent protected areas (viz. Hluhluwe Imfolozi Park and Opathe Game Reserve) and their contribution to biodiversity targets and socio-economic benefits, including employment;
 - 4.4. water resources, including the downstream water users, not least of which are other communities, agro-based industry and the iSimangaliso World Heritage Site;
 - 4.5. cumulative impacts, which must also be properly predicted and assessed as Yengo is one of many mineral rights holders in the region; and
 - 4.6. climate change through the contribution of greenhouse emissions as well as the effect on the resilience of people and the natural environment in response to climate change;
5. In view of the above issues (each of which must be addressed by way of response by the EAP), and having perused said report and related documentation, we provide further and more detailed comment on:
 - 5.1. the legitimacy, competency and compliance of the Environmental Assessment Practitioners ("EAP" or "EAPs") in conducting the Basic Assessment and preparing the draft BAR (**PART A**);
 - 5.2. the adequacy of the draft BAR in identifying, assessing and mitigating adverse impacts associated with Yengo's proposed prospecting (**PART B**);

- 5.3. the adequacy of public participation process in identifying, assessing and mitigating adverse impacts associated with Yengo's proposed prospecting (**PART C**); and
- 5.4. the need and desirability of prospecting in context of its purpose to pave the way for full-scale mining in a geographic area that is already heavily mined (**PART D**).

A. LEGITIMACY, COMPETENCY AND COMPLIANCE OF THE EAPS

- 6. Regulation 1(2) of the EIA Regulations, 2014 states that “[a]ny reference in these Regulations to an environmental assessment practitioner will, from a date determined by the Minister by notice in the Gazette, be deemed to be a reference to a registered environmental assessment practitioner, as defined”. The date determined by the Minister was 8 August 2022.
- 7. Further, Regulation 14(1) of the S24H Registration Authority Regulations prohibits any person other than a registered EAP from performing tasks in connection with an application for an environmental authorisation, such tasks including the investigation, assessment and preparation of a basic assessment report and EMPR. The only exception is a registered candidate EAP acting under the supervision of a registered EAP (Regulation 14(6)). It is a criminal offence for a person to contravene Regulation 14.
- 8. On the second page of the draft BAR, Mr Vuyo Ubisi is cited as the “report compiler” and yet there is no evidence to support that he is either a registered EAP or a registered candidate EAP. His unlawfulness in preparing the draft BAR is not remedied by the fact that Mr Ralph Repinga (cited as one of the report reviewers) is a registered EAP. On this basis alone, the draft BAR and EMPR should be rejected by the competent authority.
- 9. In addition to legitimacy, the competency and compliance of the EAPs are also questioned as there are instances of non-compliance with the legal requirements prescribed by Regulation 13 of the EIA Regulations, 2014, specifically sub regulations (1)(b), (1)(c) and (1)(d) which require that an EAP must:
 - 9.1. have expertise in conducting environmental impact assessments, including knowledge of the Act, these Regulations and any guidelines that have relevance to the proposed activity;
 - 9.2. ensure compliance with these Regulations;

9.3. perform the work relating to the application in an objective manner, even if this results in views and findings that are not favourable to the application.

10. Key instances of the EAPs' non-compliance include:

- 10.1. Lack of knowledge of relevant guidelines, and/or failure to apply the relevant guidelines, most notably the Need and Desirability Guideline, 2017 and the Public Participation Guideline, 2017;
- 10.2. Failure to provide any of the notification documents in isiZulu which is the mother-tongue of the affected community residents (more on this under Part C).
- 10.3. Failure to comply with Regulation 19(1)(a) by omitting the plans, report and calculations contemplated in the Financial Provisioning Regulations.
- 10.4. Failure to comply with all the BAR reporting requirements prescribed in Appendix 1 of the EIA Regulations, 2014, by for example:
 - 10.4.1. not providing a plan which locates the proposed activity or activities applied for as well as associated structures and infrastructure at an appropriate scale for each borehole site (only a generic plan is provided in Figure 3 ("The drill site layout plan").
 - 10.4.2. not identifying all legislation, policies, plans, guidelines, spatial tools, municipal development planning frameworks, and instruments that are applicable to this activity; and setting out how the proposed activity complies with and responds to the all the applicable legislation and policy context, plans, guidelines, tools frameworks, and instruments as required for the description of all the policy and legislative context within which the development is proposed.
 - 10.4.3. not providing a proper description of the social, economic, heritage and cultural aspects specific to the affected community.
- 10.5. Failure to perform the work objectively is especially evident in Section 4 of the draft BAR which contains the needs and desirability of the project (more on this under Part B). In Section 4, the EAP is clearly biased towards the applicant with little or no regard for the environment or the community.

11. On the basis of the above submissions, the competent authority should suspend the application and issue a directive in terms of Regulation 14 to redo the Basic Assessment process, alternatively refuse environmental authorisation.
12. Many of the flaws identify above also speak to the inadequacy of the draft BAR further detailed in Part B.

B. INADEQUACY OF THE DRAFT BAR

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.

13. As a general statement, we find that the draft BAR:

- 13.1. is full of inconsistencies between the mitigation measures used in the assessment tables in the draft BAR, the various specialist recommendations and the EMPr;
- 13.2. contains numerous cut and pastes of sections from clearly what must be other project reports - this brings the integrity of the basic assessment into question;
- 13.3. contains illegible maps - it is impossible to read the legends / keys on most of the figures contained in the draft BAR and many of the figures used to show the different environmental attributes and sensitivities do not include the position of the prospecting activities and access roads;
- 13.4. underestimates the extent of impacts associated with the new access roads that are required (many of the specialist reports state that only existing access roads will be used and therefore, cannot have assessed the impacts of the roads and tracks that need to be constructed or widened);
- 13.5. omits a number of key sections, reports, plans and calculations which are mandatory reporting requirements (as already mentioned under Part A); and
- 13.6. findings are based on mathematically flawed impact assessment methodology.

Failure to provide a full and accurate description of the physical activities that form part of prospecting

14. The prospecting activities are not fully described, notably:
 - 14.1. the width of new access roads;
 - 14.2. the need to widen existing roads and to what extent - many of the existing access roads are rudimentary tracks which will require some widening and levelling to enable the heavy vehicles and equipment access;
 - 14.3. a proper description of “trenching” and the associated dimensions of trenching;
 - 14.4. the quantity of water needed for dust suppression;
 - 14.5. the true depth of drilling as it differs in different sections of the reports (300m v 500m);
 - 14.6. the reference to “wider” and “denser” grid surveys when only 10 boreholes are disclosed in the draft BAR.
 - 14.7. the distance from the prospecting sites to structures (for example, BH2 is closer to homesteads than the 500m buffer stipulated in the draft BAR and EMPR).

Need and desirability: biased and incomplete motivation

15. 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.
16. The EAP has not applied the Section 24J Need and Desirability Guidelines, 2017 but used instead the defunct 2009 guideline prepared by the Western Cape provincial Department of Environmental Affairs and Development Planning (“DEA&DP”) in respect of the long repealed 2006 EIA Regulations.
17. The motivation provided in Section 4 appears to be based on the positive impacts related to actual mining operations and not prospecting, whereas the negative impacts pertain only to prospecting. This incongruity in scope creates the impression that the positive impacts outweigh the negative impacts and is thus both biased and misleading.
18. There is also no discussion in the BAR about the compatibility of the project or the mining in terms of Ezemvelo KZN Wildlife’s protected area and biodiversity planning. Applying the S24J

Need and Desirability Guideline would ensure that the compatibility with these, and other national, provincial and regional plans, is also assessed.

19. What also needs to be considered, is why more prospecting is required when ZAC undertook prospecting in the same area previously. Please can Yengo and the EAP address this issue and respond as to why that data cannot be accessed. If so, it could avoid further damage to the environment and the community. Please can Yengo and the EAP also disclose if Yengo has already accessed that data, and if so, did it show poor quality coal resources and/or low yields. (Kindly be reminded that disclosure of material information by the applicant and the EAP to I&APs and the competent authority in an EIA process is mandatory, and that it is a criminal offence not to do so).

Incorrect and inadequate description of environmental attributes in Section 8 of the draft BAR

20. The social and economic attributes are not sufficiently described. The reliance on census data for the Ulundi Local Municipality as a whole to describe the socio-economic environment, demographics and geographic setting of the affected community is unfitting.
21. There is no meaningful description of the communities that will be affected by the proposed activities in Section 8 of the draft BAR or anywhere else in the report, in terms of population density, spatial distribution, culture, and livelihoods, including their strong reliance on the natural resources in the area.
22. Apart from a cursory mention of the Hluhluwe-Imfolozi Park and Ophathe Game reserve, there is no assessment of how these neighbouring protected areas will be impacted, nor how other private or community conservation areas and corridors as well as planned expansions and joint initiatives will be affected.
23. There is no description of the other mining operations, current and planned in the region.
24. The depth of aquifers is not provided and therefore, it is impossible to verify the statements made in the draft BAR and geohydrological specialist report that groundwater will not be impacted by drilling.

Flawed identification and assessment of impacts

25. As a result of not having identified and described all the project activities and environmental attributes adequately and accurately, Sections 9 to 20 and 22 in the draft BAR that record the

findings of the basic assessment and EAP's recommendations, cannot not be relied upon to make an informed decision.

26. Further, and as discussed in more detail further down in this section, cumulative impacts have not been properly identified or assessed.
27. No source is cited or basis provided for the quantitative ratings methodology presented in Section 9 and the respective specialist reports, which we submit is in any event, mathematically flawed. Please cite the source of the impact assessment methodology used for the basic assessment. Please also explain why the ordinal numbers (i.e. those used to represent classes such as probability, scale, duration etc) have been used in formulae as if they are cardinal numbers).
28. Please explain what are "*the positive social impacts associated with the project*" that form the basis of the EAP's reasoning in Section 20.1 of the draft BAR that the project be authorised. Here, and elsewhere in the report (particularly Section 4 Need and Desirability), the positive impacts appear to be related to actual mining operations and not prospecting, whereas the negative impacts pertain only to prospecting. This incongruity in scope creates the impression that the positive impacts outweigh the negative impacts and is thus biased and misleading.

Failure to properly identify and assess cumulative impacts

29. It is clear from Section 16 that the EAPs have not applied their minds in meeting this reporting obligation. The most concerning fact is that under air quality cumulative impacts, they refer to the "HPA", which is the Highveld Priority Area declared by the Minister of environmental affairs, and located in Mpumalanga and Gauteng. It has no bearing on the project whatsoever. This is clearly a result of "cut and paste".
30. Another obvious flaw is the failure to mention the past, current, and future mining-related operations in the region and their associated cumulative impacts. The prospecting activities proposed by Yengo thus cannot be assessed or evaluated in isolation to :
 - 30.1. 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.

- 30.2. 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.
- 30.3. The other current prospecting applications by Imvukuzane Resources (Pty) Ltd (“Imvukuzane”) in the Mthethwa Traditional Authority area, located on the southeastern side of the Hluhluwe-iMfolozi Park.
- 30.4. The previous prospecting activities already conducted by ZAC in the same area that Yengo is now proposing to prospect.
- 30.5. The mining rights held by Mbila Resources (Pty) Ltd for the Msebe Opencast Anthracite Mine and Mbila Underground Mine both east of Nongoma, also in the Zululand District Municipal area.

31. Other cumulative impacts not mentioned are the contribution to existing erosion problems in the area, and the potential sedimentation of water courses.

Inadequate financial provision and rehabilitation planning

- 32. The draft BAR does not annex any plans, report or calculations and therefore, does not comply with the Financial Provisioning Regulations, 2015 (as amended) read with Regulation 19(1)(a) of the EIA Regulations.
- 33. The size of the area that needs to be rehabilitated for the access roads has been underestimated. If the combined length of the roads is 900m, then the area cannot be 900m² – the access roads cannot be only 1m in width.
- 34. There is no provision for a rehabilitation specialist in the financial provision costings.
- 35. The draft BAR and EMPr also do not include proper rehabilitation objectives as required and the rehabilitation steps are not sufficiently detailed – a proper rehabilitation plan is required.
- 36. The current provision of R247 221.94 is considered to be inadequate based on the deficiencies mentioned, as well as the remoteness and extent of the areas to be rehabilitated and the duration of post-closure monitoring which is needed. If rehabilitation is not done properly, Yengo’s prospecting activities will result in similar scars on the landscape that were left by previous prospecting efforts.

Environmental Management Programme (EMPr)

37. The mitigation measures contained in the EMPr are not fully consistent with the mitigation measures presented in Table 16 in Section 12.1 of the main body of the draft BAR or some of the recommendations made by the specialists in their reports.
38. Further, it is clear that some of the mitigation measures in the EMPr do not apply to the Yengo's prospecting project and that the EMPr was drafted for another project and has not been sufficiently edited to make it fully fit this project.
39. It is not our job as I&APs to identify all these shortcomings and inconsistencies of the EMPr. This is the EAP's obligation and we, therefore, call on the EAP to correct the EMPr accordingly.
40. Another example is the frequency of environmental audit which is cited as once every three years in the main body of the draft BAR and every two years in the EMPr. We submit that for a project that is relatively short in duration (three to four years), an environmental audit in terms of Regulation 34 of the EIA Regulations is conducted annually by an independent environmental auditor until the disturbed sites are fully rehabilitated, with compliance monitoring done by an ECO monthly for the duration of the physical activities (construction of access roads, vegetation clearance, site preparation, drilling and rehabilitation), with biannual monitoring performed to check the effectiveness of rehabilitation once prospecting has been completed and the sites restored.
41. The EMPr should also include the requirement for site inspections by a vegetation specialist to identify plants and trees that either should be marked to ensure they are not damaged or species for which permits in terms of provincial conservation legislation or the National Forest Act will be required if they are to be cleared.
42. There is no provision for an archaeologist to do a site inspection prior to and/or during site clearance in case of heritage resources being discovered. This is especially important to add to the EMPr given that cultural heritage specialist study was only desktop, did not involve any field work and the specialist made the finding that the "*likelihood of cultural heritage resources (archaeological and/or historical sites, features and material) being present in the area is however high*".

C INADEQUACY OF THE PUBLIC PARTICIPATION PROCESS

43. The EAPs have made little effort, if any, to identify and consult with the affected community before they prepared the draft BAR and distributed it for comment. The lack of socio-economic issues in the reports is telling and it is clear that only a high-level desk-top approach was undertaken using census data at the local municipality level.
44. Apart from identifying the Ingonyama Trust Board as the registered landowner, it is evident from section 1.6 of the Consultation Report contained in Appendix 5 of the draft BAR that the EAPs did not even know the name of the Traditional Authority when preparing the draft BAR. This means they had not met with the traditional leadership, let alone the affected community members in order to understand and be able to describe the socio-economic and cultural heritage aspects of the receiving environment. No wonder the draft BAR is severely deficient in this regard, which in turns brings into question the identification and assessment of related impacts.
45. It also brings into question whether the lawful occupiers who will be affected by the proposed prospecting activities have been properly notified and consulted as is required by Chapter 6 of the EIA Regulations, 2014 and the Public Participation Guideline. The two meetings planned do not go guarantee that all the affected residents will be notified and consulted. It is inadequate to rely solely on the fact that a meeting will be held in the community and the traditional authority – the affected parties themselves must be specifically identified and consulted.
46. It is also extremely difficult for community members to know from the information provided to them, exactly where the drilling sites and access roads are located. The maps in the public documents and draft BAR only show dots on a very small-scale and in many cases, the maps are indistinct.
47. It should also be noted that there is no evidence that the notification and 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. Moreover, 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.

D. NEED AND DESIRABILITY

49. The reason that our clients are highly concerned about the applicant's proposed prospecting activities 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, and the rest of South Africa.
50. 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.
51. 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.
52. The prospecting activities proposed by Yengo thus cannot be assessed or evaluated in isolation to the full-scale mining operations which will follow prospecting. As already explained, the whole purpose of prospecting is to identify the coal reserves for future mining.
53. The need and desirability of the proposed activities in the BAR also needs to include the contribution of coal to climate change and how it affects the global commitments, including that made South Africa, in terms of international agreements to reduce the extraction and use of fossil fuels.
54. Further, the prospecting activities proposed by Yengo cannot be assessed or evaluated in isolation to the other current and future mining operations in region as discussed under "cumulative impacts" in Part B above.

CONCLUSION

55. 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) of the EIA Regulations and Regulation 14 of the S24H Registration

Authority Regulations in respect of the EAPs, it is our clients' submission that the competent authority cannot approve the current application for environmental authorisation.

56. If the applicant has any hope of succeeding with its prospecting application, it is our clients' view that the whole process must start afresh and fully comply with the EIA Regulations and other applicable legislation and guidelines. This includes redoing the public participation process.
57. 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 within five days of its submission the Department, including the applicant's and EAP's response to the comments submitted herein and by other I&APs.
58. It is also requested that the EAP provides an indication of any significant changes that have been made, or new information that has been added, to the final BAR.
59. Kindly acknowledge receipt.

Yours sincerely

Janice Tooley

(Sent by email and therefore unsigned)