

07 February 2025

LEM Reference No: LEM-A0729-04-2024

DMRE Reference No.: KZN 30/5/1/3/2/11146 PR

Attention: Ms Janice Tooley

All rise Attorneys For Climate and Environmental Justice

2ND Floor offices, 29° South, 7 Umsinsi Junction

Dube City, Dube Trade Port, LA Mercy

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South Africa

Dear Ms Janice Tooley

RE: YENGO RESOURCES (PTY) LTD APPLICATION FOR ENVIRONMENTAL AUTHORISATION FOR THE AMENDMENT OF PROSPECTING RIGHT ON THE FARM XIMBA NO 16506, ULUNDI LOCAL MUNICIPALITY, KWAZULU-NATAL: KZN 30/5/1/2/1146PR- COMMENTS ON DRAFT BASIC ASSESSMENT REPORT (5 DECEMBER 2024)

Comment 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.

Response 1

The comment is noted and will form part of the competent authority decision-making.

Comment 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 prosecuting 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.

Response 2

The comment is noted and will form part of the competent authority decision-making.

Comment 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.

Response 3

It should be noted that Licebo Environmental and Mining (LEM) has been appointed as the Independent Environmental Assessment Practitioner by Yengo Resources (Pty) Ltd (Yengo) to undertake the Environmental Authorisation (EA) Amendment process in accordance with the Environmental Impact Assessment (EIA) Regulations 2014. This process will involve updating the prospecting right's Basic Assessment Report (BAR) and Environmental Management Programme Report (EMPr) from non-invasive to invasive activities, such as the drilling of exploration boreholes. As part of this process, LEM will assess and address the potential environmental, socio-economic, and cultural heritage impacts, ensuring that appropriate mitigation measures are identified and implemented. This will involve comprehensive consultation and the identification of any significant impacts, in line with the requirements of the amended legislation.

Comment 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:

Response 4

The focus of the Environmental Authorisation (EA) amendment process is based on prospecting activities that aim to identify and evaluate coal deposits within the proposed study area which might have a

potential link for future mining. However, it should be noted that the prospecting phase itself is a separate activity from full-scale mining and is subject to its regulatory framework and environmental assessment process. The scope of this assessment will be confined to the immediate environmental and socio-economic impacts of prospecting activities, including those identified during the drilling of exploration boreholes. Should Yengo wish to lead to the next phase of mining development after prospecting activities have been undertaken, a more detailed and separate Environmental Impact Assessment will be conducted in accordance with the appropriate regulatory requirements at that time.

Comment 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;

Response 4.1

The comment is noted. Yengo Resources (Pty) Ltd (Yengo) intends to prospect the area to evaluate the presence of coal reserves. It is important to note that the primary focus of the prospecting activity will be on exploration and not on altering the current land use or significantly impacting the well-being of the local communities. The proposed prospecting activities are designed to have minimal interference with the daily life and existing land uses of the communities in the area. In terms of social, economic, and cultural impacts, the current prospecting activities will have limited direct benefits to the community. Hence the environmental management measures outlined in the Environmental Management Programme (EMPr) and the Environmental Authorisation (EA) must be implemented rigorously during prospecting to ensure that any potential impacts on the local communities' health, land use, and natural resources are minimized. These management plans will also be updated should future mining activities take place, ensuring a more comprehensive approach to mitigating any potential adverse effects.

Comment 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;

Response 4.2

The main focus of the prospecting right application is intended to evaluate the area for coal and once the application commences it will be Yengo's/appointed drilling contractor to ensure the prospecting activities undertaken do not restrict or impede existing land uses or future development opportunities for the community hence an independent Environmental Control Officer (ECO) should be appointed to ensure that the activities undertaken on the area does not implicate the land use and ensure that the EA and EMPr conditions are followed accordingly.

Comment 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;

Response 4.3

A wetland impact assessment was undertaken as part of application process to identify any protected areas within the study area and surroundings to ensure that the proposed prospecting does not negatively affect the biodiversity value of these protected areas or interfere with the socio-economic benefits they generate.

Comment 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;

Response 4.4

The critical importance of water resources to the local communities, agriculture, and ecosystems in the region, including the protection of the iSimangaliso World Heritage Site, which is a globally significant area for biodiversity and conservation is acknowledged hence a Hydrological Impact Assessment and Heritage Impact Assessment was undertaken to evaluate potential risks and appropriate mitigation measures to be undertaken based on the risks identified.

Comment 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

Response 4.5

The cumulative impacts were addressed accordingly in section 16 of the Final BAR as well as the mitigation measures thereof.

Comment 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;

Response 4.6

The importance of addressing climate change and its associated risks in the context of all development activities. While prospecting is a relatively low-impact activity compared to full-scale mining, it is essential to consider its potential contribution to greenhouse gas emissions and its interactions with climate change-related challenge. Prospecting activities may interact with existing climate change vulnerabilities, such as changes in rainfall patterns, increased temperatures, and impacts on biodiversity. Measures to enhance resilience, such as adaptive management strategies, will be proposed if necessary.

Comment 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:

Response 5

The comment is noted.

Comment 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**);

Response 5.1

The comment is noted. LEM as the appointed independent (EAP) for this project confirm that it has been in operation since 2015 and consist of fully accredited, experienced, and registered members with the relevant authorities, in compliance with the requirements of the National Environmental Management Act (NEMA) and the Environmental Impact Assessment (EIA) Regulations. Our qualifications and experience are in line with the legal and professional standards required to undertake environmental assessments and ensure the integrity of the process.

Comment 5.2

the adequacy of the draft BAR in identifying, assessing and mitigating adverse impacts associated with Yengo’s proposed prospecting (**PART B**);

Response 5.2

It should be noted the importance of thoroughly identifying and assessing potential impacts, as well as ensuring that appropriate and effective mitigation measures are undertaken with regards to the proposed prospecting right application. In preparing the Draft BAR (Part B), LEM followed the guidelines and requirements set out in the Environmental Impact Assessment (EIA) Regulations and undertook a comprehensive evaluation of the potential environmental, social, and economic impacts of the proposed prospecting activities.

Comment 5.3

the adequacy of public participation process in identifying, assessing and mitigating adverse impacts associated with Yengo’s proposed prospecting (**PART C**); and

Response 5.3

The public participation process is a key component of the Environmental Impact Assessment (EIA) process, of which LEM ensured that it is committed to ensuring that it is inclusive, transparent, and complies with the requirements set out in the EIA Regulations.

Comment 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**).

Response 5.4

The client is aware the geographic area consists of the mining operations. It is important to recognize that prospecting is a preliminary phase aimed at determining the presence and viability of mineral resources. The proposed environmental impacts that will be triggered by the proposed project will be controlled, and mitigated as stipulated in part B of the BAR, EMPr. While the prospecting activities may lead to the consideration of future mining, the client will not constitute a commitment to mining operations. The prospecting phase allows for a more detailed assessment of the resource, which would then inform decisions on whether to proceed with a full-scale mining application.

LEGITIMACY, COMPETENCY AND COMPLIANCE OF THE EAPS

Comment 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.

Response 6

The comment is noted. The Environmental Assessment Practitioner (EAP) responsible for this project is duly registered with the relevant professional body, as required by the EIA Regulations and the Ministerial notice. All activities undertaken as part of this assessment, including the preparation of the Basic Assessment Report (BAR) and the Environmental Management Programme (EMPr), have been carried out in full compliance with these requirements.

Comment 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 offense for a person to contravene Regulation 14.

Response 7

The Environmental Assessment Practitioner (EAP) overseeing this project is duly registered in accordance with the requirements set forth in the EIA Regulations and the S24H Registration Authority

Regulations. All tasks associated with the preparation of the BAR and EMPr have been undertaken by the registered EAP, in full compliance with these regulations. In instances where assistance from candidate EAPs may have been involved, such work has been conducted under the direct supervision of the registered EAP, ensuring full compliance with Regulation 14(6).

Comment 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.

Response 8

The error has been rectified and corrected, Mr Vuyo Ubisi has been acting as the assistant compiler of the BAR and EMPr. The registered and registered candidate EAP has been updated on the report as the report compiler and a reviewer as required in terms of regulation 14 of section 24h of the National Environmental Management Act (Act 107 of 1996) (NEMA) as amended (GNR 849).

Comment 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:

Response 9

The comment is noted. Regulation 13(1)(b) of the EIA Regulation 2014 as amended states that The EAP must be independent, objective, and unbiased in conducting the assessment. Mr. Ralph Repinga is the appointed independent EAP. All tasks undertaken as part of the assessment were carried out with full regard to the impartiality of the findings and recommendations. Regulation 13(1)(c) of EIA Regulation as amended 2014 states that The EAP must ensure that the required public participation process is conducted in a transparent and effective manner. LEM has followed the prescribed processes for public participation as outlined in the EIA Regulations. This has included public notices, direct communication with stakeholders, and providing opportunities for community and public input. All stakeholder comments received have been duly considered and incorporated into the assessment process, ensuring transparency and meaningful engagement. Regulation 13(1)(d) of the EIA Regulation 2014 as amended states that the EAP must ensure that the final report (including the BAR and EMPr) is a true reflection of the issues raised during the assessment and that all impacts have been assessed and addressed. We can confirm that the draft BAR and EMPr have been prepared in full compliance with the regulatory

requirements. All issues raised during the assessment process, including those raised during the public participation process, have been captured and addressed through the identification of potential impacts and proposed mitigation measures.

Comment 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;

Response 9.1

LEM as the appointed EAP is fully qualified and experienced in conducting environmental assessments in accordance with the requirements set forth by the Act and the associated EIA Regulations. LEM has extensive experience in environmental assessments and is a registered EAP with a proven track record of successfully completing assessments for a wide range of projects. He is well-versed in the provisions of the National Environmental Management Act (NEMA), the EIA Regulations (2014), and the relevant guidelines applicable to the proposed prospecting activity.

Comment 9.2

ensure compliance with these Regulations;

Response 9.2

LEM main focus is to ensure compliance with these Regulations.

Comment 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.

Response 9.3

The comment is noted. LEM as the independent EAP overseeing this assessment and is committed to conducting the work in an objective and unbiased manner. The assessment has been approached to provide an accurate, transparent, and comprehensive evaluation of all potential environmental, social, and economic impacts, including any that may be adverse.

Comment 10

Key instances of the EAPs' non-compliance include:

Response 10

The comment is noted. The compilation and undertaking of the BAR and EMPr conducted in terms of the regulation 13 of the EIA Regulations, 2014 as amended as well as the DMRE SAMRAD online system to ensure EAP compliance.

Comment 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;

Response 10.1

The comment is noted. The compilation and undertaking of the BAR and EMPr conducted in terms of the EIA Regulations, 2014 as amended, the Need and Desirability Guideline, 2017 as well as the Public Participation Guideline, 2017 were followed as required to ensure appropriate report is compiled.

Comment 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).

Response 10.2

It should be noted that most documentation provided to the attendees of the public meeting was handed out documentation written in isiZulu and some were sent upon request.

Comment 10.3

Failure to comply with Regulation 19(1)(a) by omitting the plans, report and calculations contemplated in the Financial Provisioning Regulations.

Response 10.3

The comment is noted. Regulation 19(1)(a) of the EIA Regulation 2014 as amended stated the need for financial provisioning and associated documentation which was attached as part of Appendix 7 Financial Provision which included a detailed cost breakdown of the Financial provision.

Comment 10.4

Failure to comply with all the BAR reporting requirements prescribed in Appendix 1 of the EIA Regulations, 2014, by for example:

Response 10.4

The comment is noted.

Comment 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").

Response 10.4.1

It should be noted that Appendix 2 consisted of a locality map of the proposed area and also in the BAR Figure 1 displays the locality map of the project area. Figure 3 displays the drill site layout plan and Figure

4,5,6,7,and 8 consist of direct images taken from each borehole area precisely of which the coordinates are provided in Table 4. Figure 9 displays the full project area and locations of the boreholes.

Comment 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.

Response 10.4.2

The comment is noted. The compilation of the BAR and EMPr all legislation, policies, plans, guidelines, spatial tools, municipal development planning frameworks, and instruments were respectively considered and incorporated into the BAR under Policy and Legislation Context.

Comment 10.4.3

not providing a proper description of the social, economic, heritage, and cultural aspects specific to the affected community.

Response 10.4.3

The comment is noted. Based on the proposed project the social, economic, heritage and cultural aspects were considered in the BAR as it was addressed based on the magnitude of the proposed project as to how it will impact the aspects respectively.

Comment 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.

Response 10.5

The Section 4.1, 4.2, 4.3 and 4.4 of the BAR outlined the mitigation measures to be encountered on social, environmental and health and safety consideration as well as the benefits of the local community. An EAP was not biased on the evidence-based evaluation of the proposed activity, ensuring that all relevant impacts, including those on the environment and local communities, are thoroughly assessed and adequately addressed.

Comment 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.

Response 11

The comment is noted.

Comment 12

Many of the flaws identify above also speak to the inadequacy of the draft BAR further detailed in Part B.

Response 12

The comment is noted.

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.

Comment 13

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

Response 13

The comment is noted.

Comment 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;

Response 13.1

The comment is noted. The necessary adjustments have been made in the BAR in accordance with the specialist recommendations.

Comment 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;

Response 13.2

The EAP did conduct a thorough desktop study of the proposed study area and supplemented the information with relevant data from previous studies and reports where applicable. Hence LEM

understands the importance of ensuring transparency and clarity in the BAR. We will review the report to ensure that all content is appropriately referenced and accurately attributed to its sources. LEM has reviewed the document to ensure that all content is appropriately referenced, and any sections that may appear to be 'cut and paste' will be carefully examined to ensure they are properly attributed and contribute to the clarity and credibility of the assessment.

Comment 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;

Response 13.3

LEM made efforts to ensure that all maps and figures were legible, with particular attention given to the clarity of legends/keys. However, we acknowledge that some of the photo images of the study area do not include legends/keys as the images were taken on site.

Comment 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);

Response 13.4

The comment is noted. While existing roads will be used to access the borehole 1, 2, 4, 7, 9, and 10, and temporary roads and tracks will be created to gain access to borehole 3, 5, and 8 which will the EMPr consist of mitigation measures to be undertaken to minimize potential impacts on the area and the rehabilitation costs have been set aside to rehabilitate the roads and tracks constructed.

Comment 13.5

omits a number of key sections, reports, plans, and calculations which are mandatory reporting requirements (as already mentioned under Part A); and

Response 13.5

The comment is noted.

Comment 13.6

findings are based on mathematically flawed impact assessment methodology.

Response 13.6

The comment is noted. The methodology employed was carefully selected to provide a comprehensive and accurate evaluation of the potential impacts associated with the proposed project.

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

Comment 14

The prospecting activities are not fully described, notably:

Response 14

The comment is noted. The BAR consists of a detailed description of the scope of the proposed overall activities to be undertaken which indicates that the invasive prospecting activities will be conducted as prescribed in the Prospecting Works Programme (PWP). The application will follow a phased approach, where the prospecting work program will be divided into several sequential phases. Vegetation will be cleared at the borehole locations within the application area. Minor access tracks will be created to access the proposed borehole sites where there are no existing roads. At the end of each phase, there will be a brief period of compiling and evaluating results. The results will not only determine whether prospecting proceeds, but also the manner in which it will go forward. The applicant will only action the next phase of prospecting, once satisfied with the results obtained in the previous phases.

Comment 14.1

the width of new access roads;

Response 14.1

The width of the new access road will be 3m in size and 300m long.

Comment 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;

Response 14

The comment is noted. The exact extent of the widening and levelling will be determined based on the specific requirements of the project and the condition of the existing roads.

Comment 14.3

a proper description of “trenching” and the associated dimensions of trenching;

Response 14

The comment is noted. The trenches will be 1 meter deep and 0.3 meters wide.

Comment 14.4

the quantity of water needed for dust suppression;

Response 14

Water that will be used for drilling and dust suppression activities will be sourced from the Ulundi local municipality

Comment 14.5

the true depth of drilling as it differs in different sections of the reports (300m v 500m);

Response 14

The comment is noted. regarding the reported depth of drilling, with some sections mentioning 300m and others 500m. After reviewing the reports, the proposed maximum depth of drilling is 500m which has been rectified accordingly in the Final BAR and EMPR.

Comment 14.6

the reference to “wider” and “denser” grid surveys when only 10 boreholes are disclosed in the draft BAR.

Response 14

The distance from one borehole to another is insignificant when positioning them. The proposed boreholes are positioned in relation of the protected areas (such as Critical Biodiversity Areas, Ecological Support Areas, National Freshwater Protected Areas, wetlands and other natural areas).

Comment 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).

Response 14

The comment is noted. The location of Borehole 2 (BH2) has been carefully considered. Borehole 2 is indeed situated approximately 500 meters away from the nearest homesteads, as stipulated in the BAR.

Need and desirability: biased and incomplete motivation

Comment 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 by South Africa, in terms of international agreements to reduce the extraction and use of fossil fuels.

Response 15

Note that during the prospecting activities, the coal is only extracted as a sample to be taken to the lab for testing. If the coal is found to be environmentally safe and economically viable, only then will the coal be extracted. The samples of coal that will be used for lab purposes will not have a high magnitude enough to induce climate change.

Comment 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.

Response 16

The Section 24J of the Needs and Desirability Guidelines, 2017 was rectified and considered when updating the Final BAR and EMPr.

Comment 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 incongruency in scope creates the impression that the positive impacts outweigh the negative impacts and is thus both biased and misleading.

Response 17

Considering that the proposed project is a prospecting project with less magnitude of impact on the environment, especially since all the high sensitivity ranking specialists were conducted according to the outcome of the Environmental Screening Report the potential impacts can be mitigated. These identified impacts and mitigation measures are identified by specialists.

Comment 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.

Response 18

The compatibility of the project was discussed on the Needs and Desirability. Ezemvelo was notified about the project, and they sent comments and recommendations which were addressed and considered for this application comment is noted.

Comment 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 offense not to do so).

Response 19

Yengo holds a prospecting right for non-invasive activities, which limits the ability to drill within the area. However, Yengo has been utilizing available geological data from previous prospecting activities, including borehole data from the Zungu tribe area up to the ZAC mining area. Unfortunately, the necessary borehole data for the Mlaba tribal area was not accessible, which led to the amendment of Yengo's approved prospecting right area. This amendment was required to allow drilling and further data collection on the location of coal resources in this area. Yengo has reviewed the available historical data, but due to the limitations in the data, additional prospecting activities are needed to gather more detailed and current information to assess the quality and quantity of the coal resources. The decision to proceed with further prospecting was made to ensure that the project meets the necessary geological, environmental, and regulatory requirements. Regarding the disclosure of information, LEM is obligated to provide accurate and material information to Interested and Affected Parties (I&APs) and the competent authority in accordance with the EIA regulations.

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

Comment 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.

Response 20

the comment is noted. The census data used in the report is the most current and comprehensive for the Ulundi Local Municipality, we acknowledge that it may not fully capture the unique socio-economic characteristics of the specific community impacted by the proposed activities. In addition to the census data, we have also referred to the Integrated Development Plan (IDP) of Ulundi Local Municipality, which provides additional context about local development priorities and socio-economic conditions.

Comment 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.

Response 21

The comment is noted. The need for a more comprehensive description of the communities that will be affected by the proposed activities, particularly in terms of population density, spatial distribution, culture, livelihoods, and their reliance on natural resources within the affected area is included in the Final BAR and EMPr respectively.

Comment 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.

Response 22

The comment is noted. Appendix 10, the Biodiversity Impact Assessment report, includes a detailed evaluation of the potential impacts on the study area and neighboring protected areas such as the Hluhluwe-Imfolozi Park and Ophathe Game Reserve. It also contains a risk assessment of these areas and provides recommendations for mitigating any adverse effects on the biodiversity of the impacted regions.

Comment 23

There is no description of the other mining operations, current and planned in the region.

Response 23

The comment is noted.

Comment 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.

Response 24

It is not easy to provide the depth of the aquifers since the client has not undertaken the drilling activity yet and also identified how deep will the proposed commodities to be prospected for will be.

Flawed identification and assessment of impacts

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

Response 25

Section 9 of the BAR consists of the activities that will be taking place as part of the pre-construction/ planning, construction, operational, decommissioning and closure phase of the project. Section 20 of the BAR consists of reasons why the activity should be authorised or not, and Section 22 consists of the financial provision which will be used for the rehabilitation of the proposed project. The EAPs recommendations are based on the results of the specialist studies that were conducted, focusing on the impacts and mitigation measures as well as the benefits from the projects.

Comment 26

Further, and as discussed in more detail further down in this section, cumulative impacts have not been properly identified or assessed.

Response 26

The cumulative impact was properly identified, considering that the proposed project is a prospecting project with less magnitude of impact on the environment, especially since all the high sensitivity ranking specialists were conducted according to the outcome of the Environmental Screening Report. The cumulative impact can be seen in Section 16 of the BAR.

Comment 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).

Response 27

The comment is noted. The final BAR and EMPr has been rectified according.

Comment 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 incongruency in scope creates the impression that the positive impacts outweigh the negative impacts and is thus biased and misleading.

Response 28

The comment is noted. It is important to clarify that prospecting activities are the initial phase of exploring the potential for mineral extraction. In this case, the primary purpose of the prospecting activities is to assess whether coal is present in sufficient quantities and quality to justify future mining operations. The positive impacts that prospecting activities have on social impacts refer to potential mining operations and their associated benefits for the affected communities and surrounding area.

Failure to properly identify and assess cumulative impacts**Comment 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”.

Response 29

The comment is noted. It should be noted that the statement is rectified accordingly in the final BAR and EMPr.

Comment 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 :

Response 30

The comment is noted. It should be noted that the statement is rectified accordingly in the final BAR and EMPr.

Comment 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

Response 30.1

The comment is noted. It should be noted that the statement is rectified accordingly in the final BAR and EMPr.

Comment 30.2

The current and future Somkhele mining operations of Tendeke Coal Mining (Pty) Ltd in the Mpukonyoni Traditional Authority area; the iMfolozi and other catchments; and on the eastern boundary of the Hluhluwe-iMfolozi Park.

Response 30.2

The comment is noted. It should be noted that the statement is rectified accordingly in the final BAR and EMPr.

Comment 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.

Response 30.3

The comment is noted. It should be noted that the statement is rectified accordingly in the final BAR and EMPr.

Comment 30.4

The previous prospecting activities already conducted by ZAC in the same area that Yengo is now proposing to prospect.

Response 30.4

The comment is noted.

Comment 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.

Response 30.5

The comment is noted.

Comment 31

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

Response 31

The comment is noted.

Inadequate financial provision and rehabilitation planning

Comment 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.

Response 32

The BAR consists of the financial provision which will be used for rehabilitation that is calculated based on the proposed prospecting right area and that consists of a detailed cost breakdown as prescribed in the Guideline document for the evaluation of the quantum of closure-related financial provision by a mine.

Comment 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.

Response 33

The comment is noted. It should be noted that the main access roads exist on boreholes 1, 2, 4, 7, 9, and 10 and additional temporary roads will be created to gain access to boreholes 3, 5, 6, and 8 hence the provision for site access roads of 900m² (calculated based BH3-99m, BH5-191m, BH6-236, and BH8-380 m).

Comment 34

There is no provision for a rehabilitation specialist in the financial provision costings.

Response 34

The comment is noted.

Comment 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.

Response 35

The BAR consists of the borehole site rehabilitation that entails that once the borehole drilling is completed, the site needs to be rehabilitated before moving to the next borehole site, following these steps:

- Closing of the sumps.
- Removing barricade fence.
- Ensuring no loose object on the ground due to drilling process.
- Upon instruction by the mine responsible geologist:
 - Remove core once geologist has logged the borehole;
 - Remove casing once the geologist has wire-lined the hole;
 - Pour cement (mixed with water) to seal the hole from bottom up;
 - Cement is inserted to 1 metre below collar; and
 - The remaining 1 metre below collar is sealed/closed using top soil.

Comment 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.

Response 36

Refer to response 35. The rehabilitation is critical to prevent long-term environmental damage,

particularly considering the historical impacts of previous prospecting activities in the area. Yengo's proposed activities must not result in similar environmental scars. Hence the financial provision for rehabilitation and post-closure monitoring is R247 221.94. As per the Environmental Authorization (EA) and Environmental Management Programme (EMPr), an independent Environmental Control Officer (ECO) will be appointed to oversee the implementation of all environmental conditions and rehabilitation processes. The ECO will be responsible for ensuring compliance with the EA and EMPr, and monthly compliance reports will be compiled and submitted to the relevant authorities for review.

Environmental Management Programme (EMPr)

Comment 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.

Response 37

The comment is noted. It should be noted that the final BAR and EMPr has been amended and include the prescribed mitigation measures from the specialist reports.

Comment 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.

Response 38

The comment is noted. The EMPr will be rectified to be in accordance with Yengo's prospecting activities.

Comment 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.

Response 39

The comment is noted.

Comment 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.

Response 40

The comment is noted. It should be noted that the final BAR and EMPr has been amended accordingly.

Comment 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.

Response 41

The comment is noted.

Comment 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”*.

Response 42

The comment is noted. A desktop Archaeology study was undertaken as the screening indicated that the theme is low sensitivity hence there is no provision for an archaeologist to do a site inspection prior to and/or during site clearance however this statement has been rectified and included in the Final BAR and EMPr.

INADEQUACY OF THE PUBLIC PARTICIPATION PROCESS

Comment 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.

Response 43

The comment is noted. It should be noted that prior to the release of the draft BAR and EMPr site notices were placed in various areas around the affected communities, newspaper advertisement was published in the local newspaper, Background information documents were handed out to various ward councillors,

back to back communications were undertaken with regards to the tribal authority and to plan the public meetings held on the 17th of January 2025 at Ekantolo kwa-Mlaba and Sibani Sakhe Hall. Notification letters including BID were emailed to the departments, NGO's, and identified I&APs prior to the release of the Draft BAR and EMPr.

Comment 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 turn brings into question the identification and assessment of related impacts.

Response 44

It should be noted that the EAP, alongside Yengo, has been in active communication with the Traditional Authority and community members throughout the process, including a series of meetings held on the 17th of January 2025. These meetings were attended by both the Traditional Authority and community members to ensure that their concerns and input were captured, particularly regarding the socio-economic and cultural heritage aspects of the project area.

Comment 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.

Response 45

The comment is noted. The EAP worked with the tribal authority and local community leaders to identify the lawful occupiers within the proposed

Comment 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.

Response 46

The comment is noted.

Comment 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.

Response 47

The comment is noted. It should be noted that during the public meeting, all communication regarding the presentation and documents such as notification letters, BID, and presentation were made in isiZulu and handed out to the community respectively.

Comment 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.

Response 48

The comment is noted.

NEED AND DESIRABILITY

Comment 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.

Response 49

The comment is noted. It should be noted that the proposed activity to be undertaken by Yengo is exploration and to verify whether the area consists of viable coal.

Comment 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.

Response 50

The comment is noted. It should be noted that should Yengo wish to undertake mining in the proposed area the socio-economic and environmental benefits will be prioritised accordingly.

Comment 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.

Response 51

The comment is noted. However, it should be noted that the applied prospecting right application is for exploration and to verify whether the proposed area has viable minerals in the market.

Comment 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.

Response 52

The comment is noted.

Comment 53

The need and desirability of the proposed activities in the BAR also need 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.

Response 53

The comment is noted. It should be noted that it is included as part of the final BAR and EMPr.

Comment 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.

Response 54

The comment is noted.

CONCLUSION**Comment 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.

Response 55

The comment is noted. LEM has been appointed by Yengo Resources (Pty) Ltd as the independent Environmental Assessment Practitioner (EAP) to undertake the required Environmental Authorisation amendment process for the prospecting right application which indicated that Yengo followed Regulation 13 of the EIA Regulation 2014 as amended. LEM ensured that the prospecting right amendment was undertaken in accordance with the EIA Regulation 2014 as amended specifically Government Notice Regulation 983 as amended by Government Notice Regulation 327 Listing Notice in respect of Listed Activity 21D which involves the amendment of the prospecting right BAR and EMPr from non-invasive to

invasive activities which will include the drilling of exploration boreholes hence as LEM is the independent EAP Regulation 14 of the EIA Regulation 2014 as amended is not applicable as LEM has vast experience in conducting the Environmental Authorisation processes.

Comment 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.

Response 56

It should be noted that the prospecting right application was undertaken in accordance with the timeframes prescribed in Regulation 8 of the EIA Regulation 2014 as amended which states that any public participation process must be conducted for at least a period of 30 days which LEM adhered to and made the Draft BAR and EMPr available to the public for a period of 30 days which commenced on the 06th of December 2024 and ended on the 28th of January 2025 where I&APs were consulted and given a platform to raise their concerns which were addressed and incorporated into the Final BAR and EMPr that is submitted to the department on the 07th of February 2025 for the department to review make a decision based on the Final BAR, EMPr and the public participation process that has been undertaken.

Comment 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 to the Department, including the applicant's and EAP's response to the comments submitted herein and by other I&APs.

Response 57

It should be noted that the Final BAR and EMPr will be submitted to the Department of Mineral, Resources, and Energy on the 07th of February 2025 and the I&APs will be notified of the submission of the Final BAR and EMPr and made available to the public from the 07th of February 2025.

Comment 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.

Response 50

The comment is noted. Additional information in the Final BAR and EMPr will be made available to the public on the 07th of February 2025.

Comment 59

Kindly acknowledge receipt.

Response 59

The comment is noted.

Yours sincerely

Janice Tooley

(Sent by email and therefore unsigned)

Should you require any additional information, or have comments about the details of this request and application please contact: Ralph Repinga from **Licebo Environmental and Mining (Pty) Ltd** at:

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Yours faithfully



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For Licebo Environmental and Mining (Pty) Ltd