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Dear Madam,

**OBJECTION TO THE APPLICATION FOR ESTABLISHMENT OF TOWNSHIP MUSINA-MAKHADO SPECIAL ECONOMIC ZONE EXTENSION 1 (“APPLICATION”).**

**1. THE OBJECTORS**

We confirm that we act on behalf of the following objectors:

- 1.1. The Vhembe Biosphere Reserve, a non-profit organisation and managing entity of the UNESCO-designated Vhembe Biosphere Reserve, that aims to balance the conservation of the area's uniquely bio-diverse environment, while simultaneously supporting and promoting much-needed sustainable development for its largely rural population.
- 1.2. Living Limpopo, a non-profit organisation based in Limpopo that advocates for sustainable development in the Vhembe District bioregion.
- 1.3. The Herd Reserve, part of the 12 000 hectare Greater Philip Herd Private Nature Reserve, and situated in the Vhembe Biosphere Reserve of Limpopo Province, South Africa, at the confluence of the Limpopo and Nzhelele rivers.
- 1.4. The Centre for Applied Legal Studies, a human rights organisation based at the University of Witwatersrand School of Law.
- 1.5. JL Du Preez & Sons CC, herein represented by Andre du Preez, registered owners of the farms Goosen MS530 and Pretorius MS531, located adjacent to the proposed Township MMSEZ.

## 2. POINTS IN LIMINE

- 2.1. The Municipality may not entertain an application that does not comply with the Spatial Development Framework (“SDF”).
  - 2.1.1. In terms of section 22(1) of the Spatial Planning and Land Use Management Act (“SPLUMA”), the Municipality may not entertain an application that does not comply with the SDF.
  - 2.1.2. SDFs guide the ‘overall spatial distribution of current and desirable land uses within a municipality to give effect to the vision, goals, and objectives of the municipal IDP’.<sup>1</sup> These frameworks must work in unison, pointing to the importance of alignment and cooperative governance.
  - 2.1.3. The Vhembe District Municipality’s SDF was prepared using the Ecological Socio-Economic Relationship (ESER) Framework. This framework is based on the principle that the relationship between economic efficiency, social justice, human well-being, and ecological integrity is not one of equal and overlapping spheres where losses in one area can be set off by enhancements in another. It directly connects these principles to the spatial component’.<sup>2</sup>
  - 2.1.4. The MMSEZ Environmental Impact Assessment (“EIA”) Report of September 2021 identified that the hills running east-west through the southern part of the proposed township (farms Joffre 584 Ms and Lekkerlag 580) are listed as Critical Biodiversity Areas (“CBAs”) and must be avoided so as to avoid conflict with other high-impact and incompatible land uses. The South African National Biodiversity Institute (“SANBI”) and Vhembe District Bioregional Plan recommend that this land should be maintained in natural or near-natural ecological conditions. Compatible uses include open space and low impact ecotourism and recreation uses. The majority of the farm Somme 611 MS is indicated as Ecological Support Area (“ESA”) 1, which is designated around the tributaries of the Sand River. All of these farms fall within the Application.
  - 2.1.5. These areas are important as their ecological infrastructure must be maintained in a natural ecological condition where only low-impact and strictly controlled activities will be permitted. The nature of the proposed development is such that it would have a significant impact on the area.<sup>3</sup>
  - 2.1.6. Moreover, the Vhembe District Bioregional Plan<sup>4</sup> and spatial zonation plan of the Vhembe Biosphere Reserve<sup>5</sup> identify that the southern part of the proposed township falls within the Critical Biodiversity Area 1 (the hill range). The land uses applied for in the Application are thus conflicting and at odds with the sensitivity and conservation zoning of the site.

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<sup>1</sup>SDF Guidelines (note 574 above). See Section 26(e) of the MSA, which requires all municipalities to compile SDFs as a component of the IDP.

<sup>2</sup> Ibid.

<sup>3</sup> Digby Wells Environmental, Musina Makhado SEZ Soil and Land Capability Assessment, 2019.

<sup>4</sup> Limpopo Department of Economic Development, Environment and Tourism ‘Vhembe District Bioregional Plan’ (December 2017)

<sup>5</sup> Vhembe SDF at pg. 56

2.1.7. The Vhembe SDF references the National Biodiversity Strategy and Action Plan (NBSAP) in detail, which requires local government ‘to develop a plan of action for the conservation and sustainable use of the country’s biological diversity’.<sup>6</sup> The implications include ensuring that sensitive areas are mapped, and their ongoing protection ensured. The provincial and district municipality SDFs follow this directive, referencing the Vhembe District Bioregional Plan in detail<sup>7</sup>, and outline the environmental sensitivity classes identified in the Critical Biodiversity Areas Map (CBA) for the Vhembe Bioregion<sup>8</sup> for specific development sites on the SDF maps. For each sensitivity classification, there are specific explanatory notes indicating development nodes and areas outside nodes.<sup>9</sup> Within each node of sensitivity the preferred types of ecologically-compatible development are provided, as stipulated in the National Environmental Management: Biodiversity Act, 2004 (NEM: BA) and National Environmental Management: Protected Areas Act, 2003 (NEM: PAA).<sup>10</sup>

2.1.8. One of the central SDF visions is to ‘optimise the rich and balanced mix of the regions agriculture, tourism, heritage, natural and mineral resources, and ecosystem services within their scenic settings’.<sup>11</sup> The SDF promotes the principle of spatial sustainability, efficiency, and resilience in municipal planning; as well as activities that are compatible with the characteristics of the area and mindful of its sensitivities. This aligns with the SPLUMA principles and is applied to the specific needs of the district.

2.1.9. What is clear is that the Application conflicts with the desired state of the region and the specific site is not compatible in terms of land use. After an assessment of the site-specific overlay of the area, it is clear that there are sensitivities present on the site that exceed the need and desirability for a large industrial complex. The Application conflicts with local and regional developmental plans.

2.1.10. The Application cannot be considered until the Vhembe SDF is amended to allow for this type of development.

## 2.2. The Tribunal must ensure compliance with environmental legislation.

2.2.1. In terms of section 42(2) of SPLUMA, when considering an application, the Tribunal must ensure compliance with environmental legislation. The environmental authorisation (“EA”) issued to LEDET on 23 February 2022 is specifically for the clearance of 3862 ha of indigenous vegetation, the development of infrastructure for the bulk transportation of water, and for the development of a road.

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<sup>6</sup> Vhembe SDF at pg. 14

<sup>7</sup> Vhembe SDF at pg. 54

<sup>8</sup> Vhembe SDF at pg. 57

<sup>9</sup> ‘The LSDF rationalises and promotes the optimal use of land and protection of natural resources by considering high and moderate potential agricultural areas, high and moderate environmental sensitivity areas and mining and mineral deposit areas, as well as other relevant factors.’ See *Ibid*.

<sup>10</sup> ‘The spatial planning categories include: Core 1a, which are formally protected conservation areas; Core 1b, which are CBAs outside of formally protected conservation areas; Core 2-River, which refer to corridors and wetlands. Buffer zones are also referred to as part of the decision-making criteria. The SDFs bring two new classifications, namely, urban settlement and urban edge-outer.’ See Vhembe SDF at pg. 4

<sup>11</sup> *Ibid*.

2.2.2. It does not authorise the activities that comprise the Application, and therefore, the Application cannot be considered by the Tribunal.

### **2.3. No Access to Application**

2.3.1. Access to the Application was restricted to a hard copy available at only two locations in the Musina and Makhado Local Municipalities for viewing only. The objectors' requests for digital access to a copy were ignored. In the absence of digital copies of all documents and information being made available for download from a publicly accessible website or shared drive or being given a digital or hard copy, the Objectors' right to procedural fairness under PAJA and access to information guaranteed in terms of section 32 of the Constitution and the Promotion of Access to Information Act (PAIA) was compromised.

2.3.2. Several members of the objectors' organisations and of surrounding communities in the Vhembe District who will be impacted by the proposed MMSEZ Township require special assistance as contemplated to understand the Application in order to comment thereon.

2.3.3. Any decision made in respect of the Application may materially and adversely affect the rights of their communities which consist of a significant proportion of people who cannot read or write and who otherwise need special assistance.

## **3. NEED AND DESIRABILITY**

3.1. It is trite that an applicant for rezoning must demonstrate that the application is desirable in the public interest.

3.2. The objectors submit that there are a number of features of this Application that render it most undesirable, namely:

### **3.2.1. Environmental Concerns**

3.2.1.1. The need and desirability of a development must consider whether it is the right time and right place for locating the type of land use/activity being proposed. Need and desirability is therefore equated to the wise use of land and should be able to answer the question of what the most sustainable use of land is.

3.2.1.2. From a planning perspective, the broad purpose of the SDFs and the Strategic Environmental Management Plan are to act as the primary environmental planning platform, dedicated to 'informing land-use planning, environmental assessment and authorisations, and natural resource management, by a range of sectors whose policies and decisions impact on biodiversity'.<sup>12</sup>

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<sup>12</sup> Limpopo Department of Economic Development, Environment and Tourism 'Vhembe District Bioregional Plan' (December 2017) vii.

- 3.2.1.3. The Application is to allow for development within the VBR. The VBR was officially included in the UNESCO World Network of Biosphere Reserves in 2009, making it 'only the sixth South African biosphere reserve and the third in Limpopo Province'.<sup>13</sup>
- 3.2.1.4. The VBR Strategic Environmental Management Plan and Vhembe District Bioregional Plan both referred to in the Vhembe SDF<sup>14</sup> identifies the proposed Applicant area as *very sensitive* and falling within areas classified as CBA 1, CBA 2, ESA 1 and ESA 2. These areas require protection and intensive management in order to ensure that critical biodiversity is maintained and ecosystems are protected. The status of CBAs permeates local development planning documents, as the SDFs identify this classification as central to decision-making from a planning perspective. Areas such as river corridors and wetlands are prioritised for protection from urban, agricultural, and mining activities.
- 3.2.1.5. The Application project will completely transform the entire region. The cumulative impact has not been adequately presented or informed the final decision. The site is identified as sensitive and this is supported by the data. Much work on sensitivity analysis has been done in the area, which has been incorporated into regional planning frameworks. This has been disregarded by the decision-maker as it does not align with the negative project impacts.

### **3.2.2. Lack of Water and Energy**

- 3.2.2.1. Currently, according to the Department of Water and Sanitation ("DWS"), the region has insufficient water supply, and people are already struggling for access to water, as the resource is fully allocated.<sup>15</sup>
- 3.2.2.2. The objectors' specialist for the MMSEZ EIA process, Dr. Munnik, confirmed that "the Sand River catchment already uses more water than it has available. The shortfall in urban requirements is met through transfers from other WMAs".<sup>16</sup> Using DWS data, Munnik also states that "the Sand is the driest catchment in the Limpopo North WMA with very limited surface water resources. However, it has exceptional groundwater reserves which have been fully and possibly over-exploited, mostly by irrigation".<sup>17</sup> One estimate puts the exploitation of groundwater at 155% of the calculated available yield, which is clearly not sustainable".<sup>18</sup>
- 3.2.2.3. A Water Use Licence Application has been made and is in the public participation phase. It does not include the Application project activities.
- 3.2.2.4. As we have not had access to the Application, we have no knowledge as to how the availability of water has been addressed. However, as it is evident that there is

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<sup>13</sup> Ibid.

<sup>14</sup> Vhembe SDF at pg. 56.

<sup>15</sup> Urban Econ 2020, Food and Tourism Impact Assessment, pg. 57

<sup>16</sup> Munnik, pg. 7

<sup>17</sup> Munnik, pg. 7

<sup>18</sup> Using information from DWS 2016 pgs. 4-12.

already a water shortage in the catchment, the Application cannot possibly address the water issue adequately.

- 3.2.2.5. It is assumed that there is no solidification of the necessary power resources for the Application project. A dedicated 3,300MW coal-fired power plant<sup>19</sup> (to be built by PowerCorpChina)<sup>20</sup> was originally planned to supply the zone's electricity needs.<sup>21</sup> However, in the wake of China's 2021 pledge not to build any new coal-fired power projects abroad, Fossil Free South Africa sought and received (somewhat oblique) confirmation<sup>22</sup> from the Chinese Ambassador to South Africa that the power plant would not go ahead. The MMSEZ SOC has since publicly announced that solar PV generation and renewables will replace the thermal electricity plant.<sup>23</sup> However, the EA granted in February 2022 makes express reference to the revised site layout, which includes the coal-fired power station. Moreover, the specialist report on the power supply plans, which form part of the EIAR, states plainly that solar PV power generation is not viable and has been rejected as an option.<sup>24</sup>
- 3.2.2.6. In July 2022 it was further announced that MMSEZ would partner with Australian company African Resources Development Energy (ARD Energy), which would supply green-hydrogen" electricity. "Paladin Hydrogen, a partner of ARD Energy, is using its Tasmanian project as the prototype of coal-to-hydrogen technology that apparently has zero emissions. Once that project reaches sufficient scale, the intention is to deploy the technology to the Makhado coal fields of northern Limpopo".<sup>25</sup> However, as a prototype, there is no guarantee that this energy source will provide the answers to MMSEZ's energy problems.
- 3.2.2.7. Moreover, as of April, this electricity source seems to have been abandoned in favor of nuclear energy. The Zoutspanberger reported that "MMSEZ developers are looking to acquire eight small modular reactors to supply nuclear power to the MMSEZ".<sup>26</sup>
- 3.2.2.8. As one commentator to the article noted, "it is obvious that the MMSEZ managers/planners have no consistent plan for bulk electricity provision nor water provision for the MMSEZ, since they have moved from coal power to solar power and now to nuclear power".<sup>27</sup>

### **3.2.3. Harm to Other Sectors and the Biodiversity Economy**

- 3.2.3.1. With its abundant natural assets, the Vhembe District bioregion possesses high potential as a 'mega-living landscape' within the framework of the biodiversity

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<sup>19</sup> <http://emsez.com/en/zsyz.php?id=57&lm=36&lm1=6>

<sup>20</sup> <http://emsez.com/en/about.php?id=39>

<sup>21</sup> <https://livinglimpopo.org/mmsez>

<sup>22</sup> <https://fossilfreesa.org.za/wp-content/uploads/2021/11/FFSA-correspondence-China-MMSEZ.pdf>

<sup>23</sup> <https://livinglimpopo.org/mmsez>

<sup>24</sup> <https://livinglimpopo.org/mmsez>

<sup>25</sup> See more at <https://www.southafricanbusiness.co.za/10/2022/renewable-energy/green-hydrogen-comes-to-limpopo>

<sup>26</sup> Andries van Zyl "MMSEZ now also looking at nuclear power" 19 April 2024

<https://www.zoutpansberger.co.za/articles/news/6022/2024-04-19/mmsez-now-also-looking-at-nuclear-power>

<sup>27</sup> Quote from said Mr Johan Fourie of Save Our Limpopo Valley Environment (SOLVE) in

economy and has been identified as a biodiversity economy node in the draft National Biodiversity Economy Strategy.

- 3.2.3.2. The Great Vhembe Conservation Area, a joint initiative of the VBR and Living Limpopo in partnership with other organisations that advocate for a sustainable economic development model for the Vhembe bioregion, seeks *inter alia* to capitalise on the carbon sequestration capacity of the Vhembe District's natural carbon sink and the area's high biodiversity and conservation value. The project is fully aligned with and seeks to give effect to the Vhembe District Bioregional Plan as incorporated into the Vhembe SDF – the biodiversity and carbon credit yield depends on its implementation.
- 3.2.3.3. The immediate benefits of this catalytic project for the community custodians of Vhembe's rich carbon and biodiversity reservoir and the potential economic stimulus for this predominately poor rural area, are significant, along with the potential contribution it can make in the context of the global climate and nature crisis to South Africa's binding commitments under the UNFCCC Paris Agreement and the Global Biodiversity Framework targets.
- 3.2.3.4. However, the biodiversity and carbon credit generation capacity is ultimately dependent on intact, functioning natural ecosystems as natural infrastructure. The establishment of the Application project, which is misaligned with the Vhembe SDF, and the industrial activities planned in the zone, will severely disrupt the ecosystems and the provision of ecosystem services and will degrade the high biodiversity value areas.
- 3.2.3.5. The irreversible environmental damage that the Project development will cause comes at the expense of farming and the emerging nature-based economy in the Vhembe District. While the Application fails to adequately motivate the need and desirability of the Township MMSEZ, it also fails to consider alternatives and the catastrophic costs to natural capital and other economic sectors dependent on its preservation. The Vhembe District Bioregion and Vhembe Biosphere Reserve can be regarded as a strategic sovereign asset, whose value will be severely damaged by the MMSEZ and the MMSEZ Township Development.

#### 4. APPLICATION OF SECTION 2 PRINCIPLES OF NEMA

- 4.1. The Section 2 principles of the National Environmental Management Act, 1998 ("NEMA") apply throughout the Republic to the actions of all organs of state that may significantly affect the environment and serve as guidelines by reference to which any organ of state must exercise any function when taking any decision in terms of any statutory provision concerning the protection of the environment. This includes decisions taken under bylaws.
- 4.2. Section 2(4)(a) states that sustainable development requires the consideration of all relevant factors including, that a risk-averse and cautious approach is applied, which takes into account the limits of current knowledge about the consequences of decisions and actions; and that

negative impacts on the environment and on people's environmental rights be anticipated and prevented, and where they cannot be altogether prevented, or minimised and remedied. (These principles are commonly referred to as the precautionary principle and the mitigation hierarchy).

4.3. The application of the precautionary principle and the associated need to take precautionary measures are triggered by the satisfaction of two conditions precedent or thresholds:

4.3.1. a threat of serious or irreversible environmental damage; and

4.3.2. uncertainty as to the nature and scope of the threat of environmental damage

Simply put, the precautionary principle holds that if there is a well-founded suspicion that certain activities may harm the environment, the government ought to regulate and control such activity immediately rather than wait for incontrovertible evidence of long-term harm.

4.4. Given the harm that this Application project will have on the environment, the decision-maker should apply the precautionary principle and ensure all relevant environmental and other harms are factored into the decision.

## 5. CONCLUSION

- 5.1. There are fatal flaws in the Application that need to be resolved before a decision can be made.
- 5.2. The need and desirability of the project is lacking from at least three aspects - environmental harm, and lack of water and energy.
- 5.3. The objectors have not been given the opportunity to view the Application prior to submitting these comments. We have therefore submitted a general objection on our clients' behalf and reserve the right to submit further objections once we have been given access to the Application.
- 5.4. These objections are submitted without prejudice and should not be construed as our complete or final submission to the Application. We reserve our right to address the Council of the Musina Municipality, the Development Tribunal, or a similar Body and reserve the right to elaborate on our reasons for objecting.
- 5.5. We commit to submitting our revised and updated objections at least one week before the Tribunal Hearing, provided the Application has been made available to us timeously.

Yours faithfully,

Kirsten Youens

*(Sent by email and therefore not signed)*