



ALL RISE

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12 August 2024

Dear Madam,

APPLICATIONS FOR REMOVAL / DESTRUCTION OF PROTECTED TREES FOR THE MUSINA-MAKHADO SPECIAL ECONOMIC ZONE (“MMSEZ”) AND FOR THE ESTABLISHMENT OF TOWNSHIP MUSINA-MAKHADO SPECIAL ECONOMIC ZONE EXTENSIONS 1 & 2 (“TOWNSHIP”)

1. We confirm that we act on behalf of the following:

- 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. We are instructed that several applications in terms of section 15(1) and/or 16(1) of the National Forests Act Regulations of 2009 (“the Regulations”) have been submitted to your department for the removal and/or destruction of trees for the MMSEZ development and MMSEZ Township establishment.
3. The expert vegetation study commissioned by Musina-Makhado SEZ (SOC) Ltd¹ identified four tree species of conservation concern protected in terms of the National Forest Act. The protected tree survey² identified and counted the protected trees in the project area.³ In summary, the total number of specimens recorded was 109 034 of which 51.3% consisted of Marula trees (*Sclerocarya birrea* subsp. *caffra*) trees, 41.9% of Shepherd’s trees (*Boscia albitrunca*), 5.2% of Baobabs (*Adansonia digitata*) and 1.65% of Leadwood trees (*Combretum imberbe*). The Musina Mopane Bushveld habitat was the largest vegetation unit in the area and consequently had the highest number of protected trees at 96 336. The report recommends the relocation of these trees – over 109 034 of them. There is no indication as to where these trees will be relocated. The cost of relocating a Baobab is between R20 000 to R100 000 per tree, with a success rate of only 50%. The success rate of transplanting a Shepherd’s Tree is less than 10%, and the Marula and Leadwood trees, about 10%. Musina Mopane Bushveld is poorly protected, with only 2% statutorily conserved in game reserves.
4. With its abundant natural assets, the Vhembe District bioregion possesses high potential as a ‘mega-living landscape’ within the framework of the biodiversity economy and has been identified as a biodiversity economy node in the draft National Biodiversity Economy Strategy.
5. 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. This 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. The immediate benefits of this 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 UNFCC Paris Agreement and the Global Biodiversity Framework targets.
6. However, biodiversity and carbon credit generation capacity are ultimately dependent on intact, functioning natural ecosystems as natural infrastructure. Issuing licences for the removal of thousands of indigenous trees will severely disrupt the ecosystems and the provision of ecosystem services and destroy the high biodiversity value of the area. The irreversible environmental damage comes at the expense of farming and the emerging nature-based economy in the Vhembe District.
7. The Vhembe District Municipality’s Spatial Development Framework 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

¹ Appendix K of the draft EIA for the MMSEZ application for environmental authorisation.

² Appendix J of the draft EIA for the MMSEZ application for environmental authorisation

³ With the exception of the north-eastern section of the project area which was reported to be inaccessible at the time.

off by enhancements in another. It directly connects these principles to the spatial component'.⁴ The predominant land use is cattle farming

8. 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. 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.⁵
9. Moreover, the Vhembe District Bioregional Plan⁶ and spatial zonation plan of the Vhembe Biosphere Reserve⁷ identify that the southern part of the area falls within the Critical Biodiversity Area 1. 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'.⁸ 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 detail⁹, and outline the environmental sensitivity classes identified in the Critical Biodiversity Areas Map (CBA) for the Vhembe Bioregion¹⁰ for specific development sites on the SDF maps.
10. 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'.¹¹ 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.
11. What is clear is that granting the licences will cause significant and irreversible environmental harm and loss of biodiversity in the area and is in conflict with the desired state of the region. Our clients are, therefore, strongly opposed to the applications.
12. According to your PAIA manual, these applications are not freely available on your website. However, given the nature of the applications, the significant harm such licences will have on the environment, and the implications for people living in the area, no PAIA application should be necessary for you to share them with us. However, we will complete the necessary PAIA application if you require us to do so.

⁴ Ibid.

⁵ Digby Wells Environmental, Musina Makhado SEZ Soil and Land Capability Assessment, 2019.

⁶ Limpopo Department of Economic Development, Environment and Tourism 'Vhembe District Bioregional Plan' (December 2017)

⁷ Vhembe SDF at pg. 56

⁸ Vhembe SDF at pg. 14

⁹ Vhembe SDF at pg. 54

¹⁰ Vhembe SDF at pg. 57

¹¹ Ibid.

13. We are therefore instructed to request from you, as we hereby do, copies of all applications made in terms of sections 15 and 16 of the National Forests Act, or any other section in respect of the MMSEZ development and Township establishment.
14. In the meantime, we remind you that in terms of Section 4(3) of the Regulations, no application for a licence can be considered until an applicant submits proof that he or she has complied with the Acts referred to as a "specific environmental management Act" in the National Environmental Management Act, 1998 or any other Act that is applicable to the application. In this case, the applicant has not complied with the following:
 - 14.1. Obtaining a water use licence in terms of the National Water Act;
 - 14.2. Establishment of the township in terms of SPLUMA; and
 - 14.3. Obtaining Environmental Authorisations for the numerous Listed Activities that are planned for the MMSEZ (other than the EA that has been granted for clearance of vegetation) in terms of the EIA regulations promulgated under the National Environmental Management Act, 1998 ("NEMA"). 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. It does not authorise the rest of the activities that comprise the MMSEZ.
15. The EA is currently the subject of three independent review proceedings under case numbers 13525/22 (Polokwane High Court), 59812/2022 (Gauteng Division, Pretoria High Court) and 41/2023 (Polokwane High Court). Decisions are also pending in the Water Use Licence application, which our clients objected to on 16 June 2024, and the Town Planning Application which our clients submitted objections to on 26 July 2024.
16. We further remind you of the principles in the National Forests Act, which include Section 3(3)

- (a) natural forests must not be destroyed save in exceptional circumstances where, in the opinion of the Minister, a proposed new land use is preferable in terms of its economic, social or environmental benefits;
- (b) ...
- (c) forests must be developed and managed so as to-
 - (i) conserve biological diversity, ecosystems and habitats;
 - (ii) sustain the potential yield of their economic, social and environmental benefits;
 - (iii) promote the fair distribution of their economic, social, health and environmental benefits;
 - (iv) promote their health and vitality;
 - (v) conserve natural resources, especially soil and water;
 - (vi) conserve heritage resources and promote aesthetic, cultural and spiritual values; and
 - (vii) advance persons or categories of persons disadvantaged by unfair discrimination.

17. Further to the above, the Section 2 principles of 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.
18. 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).
19. 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:
 - 19.1. a threat of serious or irreversible environmental damage; and
 - 19.2. uncertainty as to the nature and scope of the threat of environmental damage
20. 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.
21. Given the harm that the removal and/or destruction of thousands of indigenous and protected trees will have on the environment, the decision-maker should apply the precautionary principle in making his or her decision.
22. We look forward to receiving all applications made under the National Forest Act regarding the MMSEZ development and township establishment as soon as possible.

Yours sincerely,

Kirsten Youens

(Sent by email and therefore not signed)