

**THE CONSTITUTIONAL COURT**

**CCT Case no: 69/21**

**SCA Case no: 1105/2019**

**HC Case no: 11488/17P**

In the matter between:

**GLOBAL ENVIRONMENTAL TRUST** First Applicant

**MFOLOZI COMMUNITY ENVIRONMENTAL ORGANISATION** Second Applicant

and

**TENDELE COAL MINING (PTY) LTD** First Respondent

**MINISTER OF MINERALS AND ENERGY** Second Respondent

**MEC: DEPARTMENT OF ECONOMIC DEVELOPMENT,  
TOURISM AND ENVIRONMENTAL AFFAIRS** Third Respondent

**MINISTER OF ENVIRONMENTAL AFFAIRS** Fourth Respondent

**MTUBATUBA MUNICIPALITY** Fifth Respondent

<b>HLABISA MUNICIPALITY</b>	Sixth Respondent
<b>INGONYAMA TRUST</b>	Seventh Respondent
<b>EZEMVELO KZN WILDLIFE</b>	Eighth Respondent
<b>AMAFa aKWAZULU-NATALI HERITAGE COUNCIL</b>	Ninth Respondent
<b>CENTRE FOR ENVIRONMENTAL RIGHTS</b>	Amicus Curiae
<b>MPUKONYONI TRADITIONAL COUNCIL</b>	Amicus Curiae
<b>MPUKONYONI COMMUNITY MINING FORUM</b>	Amicus Curiae
<b>THE ASSOCIATION OF MINE WORKERS AND CONSTRUCTION UNION</b>	Amicus Curiae
<b>THE NATIONAL UNION OF MINEWORKERS</b>	Amicus Curiae

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**FILING SHEET**

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**KINDLY TAKE NOTICE THAT** appellant presents his Replying Affidavit as well as its twelve (12) annexures for service and filing.

SIGNED AT JOHANNESBURG ON THIS THE 1 DAY OF APRIL 2021.



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**TO: THE REGISTRAR OF THE CONSTITUTIONAL COURT**

JOHANNESBURG

AND TO: MALAN SCHOLES INC.

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AND TO: MGCAMU INC.

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**AND AMICUS CURIAE:**

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THE CONSTITUTIONAL COURT

CCT Case No: 69/21  
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In the matter between:

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<b>THE NATIONAL UNION OF MINEWORKERS</b>	Amicus Curiae

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## APPELLANTS' REPLYING AFFIDAVIT

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I, the undersigned

**SIFISO SENZO DLADLA**

do make oath and say:

1. I deposed to the founding affidavit dated 2 March 2021 herein. I reiterate that I depose to this affidavit on behalf of the Appellants and have been duly authorised to do so.
2. Unless the context indicates otherwise, the facts deposed to in this affidavit are within my personal knowledge and are, to the best of my belief, both true and accurate.
3. Where I make legal submissions, I do so on the advice of the Appellants' legal representatives. Where I rely upon information conveyed to me by others, I state the source, which information I likewise believe to be true and correct.
4. I have read the answering affidavit of Jan du Preez filed herein and deposed to on 16 March 2021. The purpose of this affidavit is to reply thereto, insofar as it may be necessary as provided for in Constitutional Court Rule 11(3)(b), alternatively I respectfully apply for leave to file this replying affidavit.

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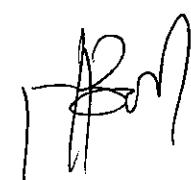
A handwritten signature in black ink, appearing to read "Sifiso Senzo Dladla".

## **WHY THIS AFFIDAVIT IS FILED**

5. I am advised that the rules of the Constitutional Court do not make provision for the filing of a replying affidavit.
6. However, due to the approach adopted in the answering affidavit, it has become necessary that this affidavit be filed. In particular, the First Respondent makes allegations of fact which it presents as common cause, which are disputed and makes allegations of fact, which have no basis from the record of appeal which was before the Supreme Court of Appeal. For these reasons, it is necessary to correct these allegations so that the appeal is decided on a correct factual footing.
7. The First Respondent also makes patently wrong conclusions of law. While this would have been dealt with during the written and legal argument in the matter, it is necessary to correct these because they are intertwined with the inaccurate statements of fact, and there is a grave danger for the application for leave to appeal to be decided on factual and legal submissions which are wrong and baseless.
8. For these reasons, leave is sought from the Chief Justice for the filing of this replying affidavit.

## **PRIMARY EMPLOYER ALLEGATIONS**

9. Tendele alleges to be the primary employer in the Somkhele region and further state that they are the primary driver of economic activity in the Mtubatuba municipal area. It also alleges that "*the closure of the mine.... would be the*

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*death knell of the Mtubatuba economy".* For the reasons detailed hereinbelow, the Appellants deny these bald and alarmist allegations.

10. The claim about the "*closure of the mine*" is – to the knowledge of Tendele – entirely spurious. Tendele knows that the Applicants have never asked for the closure of the mine. The case has always been about the fact that Tendele is conducting unlawful mining operations in the absence of the required environmental authorisations. Of course, until compliance is achieved, it was alleged that the mining operations must cease. But that is the consequence of the law. Further, at the SCA, the Applicants had conceded some parts of the relief to focus primarily on environmental justice while enabling the operations to continue. To reduce the claim of the Applicants to "*closure of the mine*" as Tendele does is regrettable.
11. Moreover, the allegation that Tendele is either a primary employer or the main employer in the area is false. The Hluhluwe-iMfolozi Park, under the management of the State owned entity, Ezemvelo KZN Wildlife, employs approximately 1007 people, a large number of contractors and 71 part-time environmental monitors. This National park is adjacent to Tendele's coal mine, and in addition to the abovementioned employee component, they further host a number of concessionaires, game and tour guides, all of whom owe their employment to the Hluhluwe-iMfolozi Park ("*HiP*").
12. Another significant employer in the area is the Umfolozi Sugar Mill which employs approximately 300 people and supports 2 000 small scale growers who deliver to the mill. The mill's large-scale growers employ approximately

S.S.D.



3 000 people. The indirect jobs the mill and its growers support are estimated to be approximately 16 000 people based on economic multipliers.

13. There is a vast discrepancy in the employment numbers alleged by Tendele in its affidavit. In actual fact, Tendele, on the facts which were made available at the High Court, appears to only employ 385 people. It is not disclosed by Tendele whether same are members of Somkhele community. I deal with this aspect further hereinbelow.
14. It is also important to note that there are significant inconsistencies in Tendele's employment statistics, as can be gleaned from various documents which are in the public domain. This calls into question the true role of Tendele in the local economy. It also calls into question whether Tendele has not exaggerated the impact of a successful order, against it:
  - 14.1 Tendele's Mining Right Application for areas 4 and 5, confirms that the number of employees to remain in service at the mine are 200 for the 30-year period presented. An extract of the said application is annexed hereto as "RA1".
  - 14.2 In Jan du Preez' letter to the community dated 18 April 2018, annexed hereto as "RA2", he states that "*if no mining, then the Mine will close in December and some 1200 direct employees, some 250 employees from our community entrepreneurs and some 500 training opportunities will be permanently lost.*"



S.S.D.

14.3 In an open letter dated April 2019, annexed hereto at "RA3", in response to a worker's strike, Tendele states that 1 500 jobs are said to be on the line.

14.4 In the same month, on 18 April 2019, Tendele's Luhlanga Boxcut Zero Basic Assessment Report stated that Tendele employs "some 1200 full-time employees, another 200 via service providers." An extract from this document is annexed at "RA4".

14.5 Again, on 29 April 2019, a letter from Tendele's attorneys, annexed hereto at "RA5", states that should Tendele be forced to close "approximately 15 000 people will lose their main source of income and about 40 local entrepreneurs will lose their businesses."

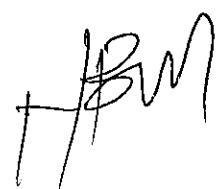
14.6 In an open letter from Jan du Preez on 27 November 2019, annexed at "RA6", he states that "100 employees are on the verge of losing their jobs and 1500 employees will further lose their jobs if the situation does not change by June 2020."

14.7 In the founding papers of Tendele's urgent section 54 application brought against certain MCEJO members in May 2020 in the KwaZulu-Natal High Court (Case No.:2650/2020), Mr du Preez states that "cessation of mining at Somkhele will render some 1609 local people unemployed" (a relevant extract from Mr. du Preez's affidavit at paragraph 92 is annexed as "RA7").

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- 15 As appears from the above, Tendele has consistently presented inconsistent employment numbers and provided different figures depending on the circumstance.
- 16 In CCMA form dated 25 June 2020, compiled on behalf of Tendele in a recent employment dispute, Tendele confirms that it employs only **358 people**. A copy of the aforesaid CCMA form is annexed as “RA8”.
- 17 The CCMA figure is more consistent with the mining right application number of 200. All the other inflated numbers that have been published by the Appellants in other *fora* and in Tendele’s answering affidavit should therefore be disregarded.
- 18 While the CCMA form also refers to *Mpukunyoni Mining* employing 458 and the blasting company, *Duma Manje*, employing 61 people, both *Mpukunyoni Mining* and *Duma Manje* are contractor companies and should stand alone.
- 19 *Mpukunyoni Mining* and *Duma Manje* are actually part of *Sandton Plant Hire (Pty) Ltd*, as can be seen from the document annexed hereto as “RA9”. As separate entities, *Mpukunyoni Mining* and *Duma Manje* are able to work on any mine or quarry in South Africa and are not bound to Tendele’s operations. Tendele’s inclusion of these jobs in its employment numbers is disingenuous to say the least.
- 20 As noted, the order asked for by the Applicants does not call for the closure of the mine, but compliance with the legislation – of course pending compliance, the law is that mining activities should not continue. In fact, when the matter was heard at the SCA, the Applicant’s had significantly attenuated the relief that

S.S.D. 

they sought to enable compliance with the provisions of the law while having minimal impact on the ability of Tendele to continue operating.

- 21 It must also be noted that while large scale mining activity is often lauded for its economic benefit, Tendele's vast open cast coal mining also impacts the environment. It produces waste which is harmful to the health of the surrounding communities. Mining is also disruptive of social and cultural norms, as the facts in this case show that ancestral graves had to make way for mining. The Constitution calls for the balancing of these interests, unlike the approach of the SCA, which completely overran the interests of the communities.
- 22 There are of course some members of the community who would be in favour of mining based on the promise of economic benefit. But the approach of Tendele simply pits one member of the community against the other. Some members of the community are concerned both about employment and devastating impact of mining on the environment, their health, quality of life and sense of community.
- 23 When considering the economic benefits of mining, the disadvantages and ongoing hardships experienced by mining affected communities should not be excluded.
- 24 While Tendele has created jobs, those jobs have come at a massive cost. It has harmed our environment. It has dissipated our communities. It has unearthed our ancestors. It has left most in the community poorer than they were before the mine arrived.

  
S.S.D. T.P.M.

25 The impact of Tendele's proposed activities goes further than the community and extends to the Hluhluwe-iMfolozi Park and tour operators earning a living from the associated ecotourism.

26 Tendele's statements regarding its benefits to the community its Social and Labour Plan are dealt with in an external audit of the SLP which is included in the Record (Volume 3, p 466 - 461). The promises of jobs and bursaries are historically not fulfilled and have led to numerous incidents of community unrest in the past.

#### **MAIN PRODUCER OF ANTHRACITE**

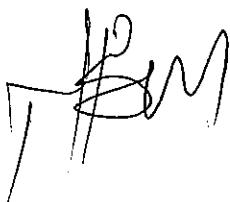
27 While I do not dispute that Tendele produces anthracite, it is certainly not to the extent or exclusivity that is alleged. Tendele's claims regarding the consequences which will flow from its closure are unsupported and alarmist.

28 Tendele claims that the Somkhele Mine is "one of the largest resources of open-pit minable anthracite in South Africa and is the principal supplier of anthracite to ferrochrome producers in South Africa".

29 The Appellants commissioned Simon Nicholas, an Energy Finance Analyst to consider these claims under a separate matter before the Pretoria High Court (Case No: 82865/18). An affidavit by Mr Nicholas, accompanied by his *curriculum vitae* and expert report are filed with this affidavit at "RA9".

30 Mr Nicholas points out the following:

30.1 Tendele is far from being the principal supplier of anthracite in South Africa. He lists several other producers, as he explains: "South Africa



S.S.D.

*clearly has alternative sources of anthracite other than the Tendele mine. It does not appear to be the case that South African ferrochrome industry jobs are dependent on the Tendele mine."*

- 30.2 The existence of these alternative producers, Mr Nicholas states, "*would appear to undermine the idea ... that closing the mine would wipe out the South African anthracite market*".
- 30.3 The South African steel industry also uses coking coal or metallurgical coal. Exxaro produces 2 million tonnes of coking coal which is more than Tendele's entire annual output. International prices of coking coal have recently dropped significantly, making it a more viable alternative to anthracite.
- 30.4 Thermal coal is easily available in South Africa and beyond, and the long-term outlook for demand for thermal coal is one of decline. Therefore, allowing an additional mine to produce thermal coal "*risks pushing coal prices even lower leading to existing coal mines becoming unprofitable, thereby endangering existing mining jobs in South Africa*". Put bluntly, if Tendele's mining area extension did not go ahead, it might save jobs elsewhere by limiting supply of an abundant good.

- 31 Tendele's attempt to justify its supposed importance to the economy is therefore disputed. It was always disputed in the High Court – Tendele cannot make these claims as if they are common cause.
- 32 In Petmin's own Annual Financial Report in November 2020 it includes a table setting out the Somkhele Anthracite Mine's "liquidity challenges". The primary

*S. S. D. T. P. M.*

issue is clearly a lack of demand for coal both locally and world-wide with lost export sales and both Glencore Ferrochrome and Samancor Ferrochrome sales reducing demand. A copy of the relevant page of the Report is annexed as Annexure "RA10".

33 By Tendele's own admission in the Management Brief dated 27 February 2020, the ferrochrome industry is under pressure and closing smelters. Reduction in demand is therefore one of the reasons for the need to retrench workers. A copy of Tendele's Management Brief is annexed as "RA11".

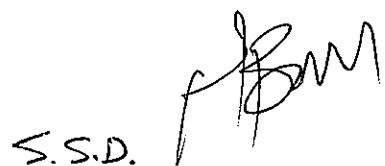
#### **IMPACT ON THE MINING INDUSTRY GENERALLY**

34 Tendele argues the following:

34.1 One: that holders of an MPRDA rights that did not obtain EA prior to 8 December 2014 would be obliged to apply in terms of s24G with administrative fine of up to R5 million; and

34.2 Two: that holders of an MPRDA right that have not commenced a specific listed activity would not be permitted to commence until EA is obtained, thereby wreaking havoc on mine planning and continuation of production leading to retrenchments or a mine having to close indefinitely.

35 In response to the first argument, Tendele's interpretation is quite correct. The appellants have persistently stated that compliance with section 24 of NEMA is peremptory. Tendele and any other mine intending to undertake a listed activity was under an obligation to obtain an environmental authorisation (EA) under NEMA. Failure to do so would then invoke the provisions of section



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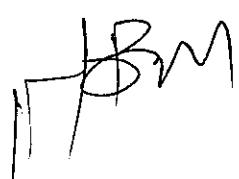
24G. This is simply compliance with the legislative provisions established to safeguard communities from breaches of their constitutional rights.

36 In response to the second: This argument presupposes that there are many mines in South Africa that applied for or obtained a mining right prior to 2014 (MPRDA right), without an EA and have yet to commence mining in terms of such right. There were no facts about this before the High Court. In any event, for reasons set out below, it is unlikely that there are vast numbers of mining companies that breached the law in the same way as Tendele has.

37 All mining rights applied for since December 2014 would have been subject to the One Environmental Management System which would streamline, as its name suggests, the NEMA and the MPRDA environmental authorisation processes into one. Therefore, all mining right holders who complied with the legislation implemented in December 2014 would already have environmental authorisations in terms of NEMA and judgement on this matter would make no difference to them.

38 The judgement in this particular matter would therefore affect only mining companies that, firstly hold a mining right applied for prior to December 2014; secondly, have no environmental authorisation in terms of NEMA for activities related to the implementation of that right; and thirdly have not yet commenced mining in terms of that right.

39 It is unlikely that there are a large number of mining companies who hold MPRDA rights applied for prior 2014, have not obtained an EA in terms of NEMA and who have not commenced mining. Even where there are such companies, their number is unlikely to be as significant, to the point that the

S.S.D. 

entire industry or sector will be brought to a grinding halt as a result of this judgement.

40 By way of example, Mbila Coal Investment Holdings SA has MPRDA rights for two proposed coal mines in Nongoma (approximately 60km north west of the Tendele mine). These MPRDA rights were granted in 2013 and mining has not yet commenced. However, they found it proper to apply for environmental authorisations in terms of NEMA prior to December 2014.

41 Significantly, Mbila Coal Investment Holdings SA is a mining company somewhat connected to Tendele. It has two of the same directors as Tendele, namely Mr. du Preez and Mr. Tanner and furthermore, Petmin Holdings (Pty) Ltd is a major shareholder in both mining companies.

42 It is apparent that Tendele's directors are well aware that they are obliged to obtain environmental authorisations for various listed activities.

43 In further response to Tendele's second argument, regulation 54A of the NEMA EIA Regulations<sup>1</sup> provides that if, prior to 8 December 2014:

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<sup>1</sup> Government Notice R982 in *Government Gazette* 38282 of 4 December 2014 (as amended)

**54A. Transitional provisions**

(1) Where, prior to 8 December 2014—

(a) environmental authorisation was required for activities directly related to—

- (i) prospecting or exploration of a mineral or petroleum resource; or
- (ii) extraction and primary processing of a mineral or petroleum resource;

and such environmental authorisation has been obtained; and

(b) a right, permit or exemption was required in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002) for—

- (i) prospecting or exploration of a mineral or petroleum resource; or
- (ii) extraction and primary processing of a mineral or petroleum resource;

and such right, permit or exemption has been obtained, and activities authorised in such environmental authorisation, right, permit or exemption commenced after 8 December 2014, such environmental authorisation, right, permit or exemption is regarded as fulfilling the requirements of the Act: Provided that where an application for an environmental authorisation was refused or not obtained in terms of the Act for activities directly related to prospecting, exploration or extraction of a mineral or petroleum resource, including primary processing, this subregulation does not apply.

S.S.D. *T.P.M.*

- 43.1 an EA was required for activities directly related to prospecting or extraction of a mineral and such environmental authorisation has been obtained; and
- 43.2 an MPRDA right was required and such right has been obtained; and
- 43.3 activities authorised in such environmental authorisation right commenced after 8 December 2014, such EA, is regarded as fulfilling the requirements of NEMA.

44 Regulation 54 further states that where an application for EA was not obtained in terms of NEMA for activities directly related to prospecting or extraction of a mineral prior to 2014, this regulation does not apply.

45 A judgement against the Appellants would be render this regulation meaningless.

#### **APPLICANTS REFERRED TO AS “THE TRUST”**

46 Referring to the Appellants collectively throughout the answering affidavit as “the Trust” is disingenuous as it creates the impression that the community is not a fundamental part of this appeal.

47 The community organisation (the second Appellant) consists of over 3 900 members, all of whom are impacted by the operations of Tendele in some way. Approximately 22 000 people live in the vicinity of Tendele’s open cast mining operations and are negatively affected as a result. The judgement of this

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Honourable Court will substantially affect thousands of community lives, not simply a Trust.

## CONCLUSION

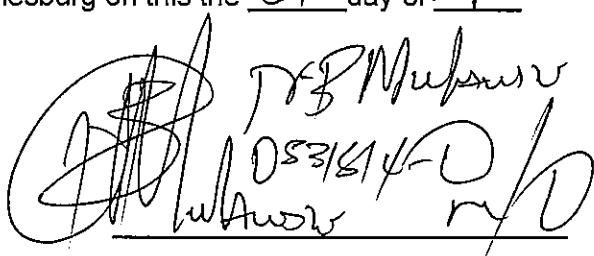
48 For the sake of expediency, I have only dealt with the new matters arising in Tendele's answering affidavit and not matters that are found elsewhere in the record. For the same reason I have dispensed with an ad seriatum. My failure to deal with any specific allegation or contention should not be deemed an admission.

49 In the circumstances, I submit that the Applicants have demonstrated that they are entitled to relief sought in the Notice of Motion, as amended.



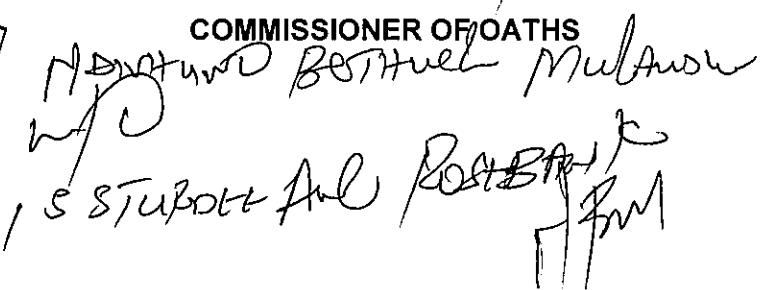
SIFISO SENZO DLADLA

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of his knowledge both true and correct. This affidavit was signed and sworn to before me at Johannesburg on this the 01 day of APRIL 2021.



DFB Mabuza  
053164-01/0

COMMISSIONER OF OATHS



Mabuza and Besthele Mabuza  
S Sifiso Senzo Dladla

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- The applicant has calculated the processing plant operating cost forecast (excluding labour) for the first ten years and is approximately R 91 580 803 during year 1 and this has been escalated by 7% from year 2 to year 10.
- The costs applicable to the mining operation provided are comparable with similar aggregate operations. This aspect has been covered adequately.

**REGULATION 11(1) (g) (iii) - details and costing of the technical skills and expertise and associated labour implications required to conduct the proposed mining operation.**

The structure of the mine is separated into two phases:

- 257 total employees for Tendele coal including management, finance, human resources, mining, plant process, engineering, community development, laboratory, safety, security and dispatch.
- 672 total employees for mining contractors including mining, Duma Manje Blasting, Leomat Plant Hire, Africa Truck Hire, Alpha Security and Applied Geology.

The applicant has provided skills category and positions that requires certificate of competency and this are as follows:-

- Mine Manager, engineering manager, rock engineer, surveyor, blaster, and electrician and pit superintendents.
- Services that will be outsourced include management, transport of Anthracite to port, plant and processing, open cast mining, mine planning and legal responsibility.
- The applicant has provided a costing and budgeting of skills categories and this can be summarised as follows:-

Year	No. Of employees	Total budget ( R )
Year 1-30	200	Y1= R48 025 181 (yearly escalated by 7% from year 2-30)

Table 6. Personnel cost forecasts on mine payroll

Note: number of employees to remain 200 for the 30 year period presented

Year	No. Of employees	Total budget (R)

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- The applicant has calculated the processing plant operating cost forecast (excluding labour) for the first ten years and is approximately R 91 580 803 during year 1 and this has been escalated by 7% from year 2 to year 10.
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S.S.D. 

# MANAGEMENT BRIEF

RA 3

Brief No	HR 2019 - 09	Date Issued	April 2019
To:	Employees of Tendele, Mpukunyoni Mining and Relevant Contractors		

## PLEA FOR UNITY IN THE FACE OF THE 13 DAY UNPROTECTED WORK STOPPAGE AFTERMATH

This is the first time in the history of the Mine that "an open letter" is addressed to all the various parties and stakeholders in the Community (the confidential section re salary adjustments is only inserted in the letter to Employees).

The purpose of this Brief is to provide more background and an update on the recent 13 day unprotected work stoppage. The rationale behind such communication is to emphasize the need for a unified labour force, and a request for the support from the Community and all leaders in the Community to join efforts in saving the Mine.

This letter is also addressed to all the parties listed above, as Tendele operates in the Community, and there is nothing that happens in the Mine, that does not have an impact in the Community. We are all interlinked.

**We are truly, "One Mine, One Team and One Community"**

This 13 days unprotected stoppage have costed us millions - and we will never truly recover from this unprotected work stoppage - and the implications will be felt forever all over the Mpukunyoni Community as our investment and support and assistance will radically be reduced due to the cost of the last 13 days.

The cost of this over the next 10 years (if we can secure future mining areas, see below) will be millions and millions and millions - and it will take all our combined efforts to ensure the mine "stays afloat".

In the end it boiled down to the following: do we allow the mine to close, 1500 people to be out of a job, entrepreneurs to lose all their contracts and lose their business - no more SLP investments, no more training and support in the Community or do we at least give it a chance and pay more - even though legally the Mine had an agreement in place with all Employees until June 2020, and was under no legal obligation to amend salaries.

All the contracts with our suppliers - all social and labour projects, all Community payments, all assistance in the Community, will have to be reviewed during the next few months.

My urgent request to TC, Nkosi, Indunas, MCMF, Municipality, Councillors, Employees, and Entrepreneurs:  
 Stop asking what the Mine can do for me - but ask what I can do to assist the Mine!

Only a strong Mine can make any difference to anyone! A Mine that closes is no good to anyone!

It is time to take hands / to agree to move forward / to give it our best shot to secure future mining areas.

Without future mining areas / the Mine will stop operating by September 2019,

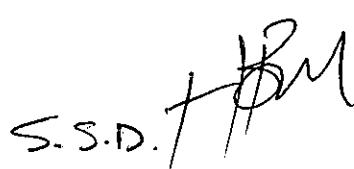
Without mining operations, plant operations, anthracite leaving our mine - and without bank debt (to finance our business), without motivated Employees and motivated management - we have no Mine and no income!

Look at the colour of the books with Madiba's famous quote "it always seems impossible, until it is done" as shown below.  
 The colour of the book - does not define the book!

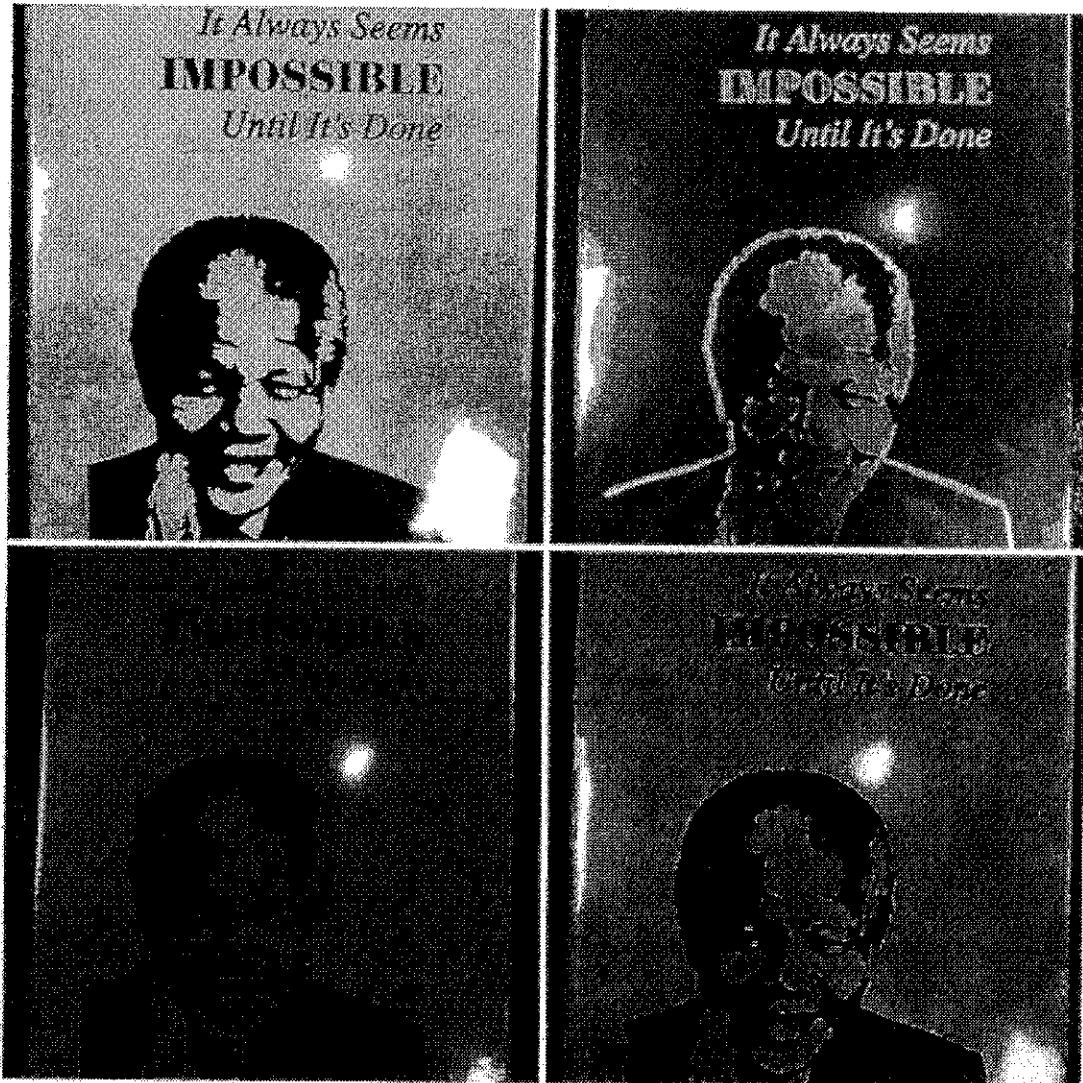
The colour of the T-shirts we wear, does not define us!

The party we support - does not define us!

Whether we are young or old - male or female - We are all dependent on each other.



## MANAGEMENT BRIEF



We are "one mine, one team, and one Community"!  
We are a small business, and we need cash to survive!  
We need cash to secure future mining areas so that we can have a mine for 10 years!  
A 10 year mine will guarantee employment business opportunities and assistance in the Community!  
The majority of our bank funding for relocation will be cancelled by the end of April for all unsigned agreements.  
Your urgent support and assistance will be required to finalize the process before the funding lapses.  
All leaders to work together, together we all make a massive difference in the lives of some 15 000 people!  
It is time for new beginnings!  
It is time to try and secure a mine for 10 years!

It is also time to protect the mine against those people that would like to close the mine like the GET Foundation that continue to spread rumours, publish lies and deal in untruths! Ask yourself how many jobs have they ever produced? Ask yourself what will happen if they manage to close the Mine? As you all know they have been trying for years to close the mine (that is right, read again: TO CLOSE THE MINE), and recently lost an application in Court as they made the following allegations against Tendele:

## MANAGEMENT BRIEF

- Has no environmental authorization issued in terms of section 24 of the National Environmental Management Act 107 of 1998 ("NEMA");
- Has no land use authority, approval or permission from any municipality having jurisdiction;
- Has no waste management license issued by the Minister of Environmental Affairs (the fourth respondent) in terms of section 43 of the National Environmental Management: Waste Act 59 of 2008 ("Waste Act"); and
- Has no written approval in terms of section 35 of the KwaZulu-Natal Heritage Act 4 of 2008 ("KZN Heritage Act") to damage, alter, exhume or remove any traditional graves from their original position.

The Judge's ruling concludes as follows:

- "... I conclude that the applicants have failed to make a proper case for the relief claimed."
- "... the applicants have simply failed to put up cogent evidence to support their contentions that Tendele is mining unlawfully and without the requisite authorizations."
- 'Applicants not afforded the authorities concerned the opportunity to investigate the complaints before deciding to institute these proceedings'
- "... Allegations were vague, generalised and unsubstantiated..."

In summary the Judge's ruling stated that a proper case was not made out in the first place against the Mine and that a "scatter gun approach hoping to hit one target or another" was followed.

The Judge therefore dismissed the application – WITH costs against all applicants jointly and severally and must include the costs of 2 counsel.

It is no surprise that the Get Foundation have appealed, and your support will be required some time later this year. As a sign of goodwill, Tendele also offered not to implement the cost order. We have been asking the Get Foundation for years to join our MCMF structures (see below) and share their experiences so that we can all learn from them. However, sadly they have rejected all our approached.

It is easy to critique - and for all our critics (that has never made a mistake or learned a skill or started a business, etc. etc.) - and for all the wonderful people that daily try and make a difference (all our employees and so many leaders and ordinary community members)- some words of wisdom from Roosevelt:

*"It is not the critic who counts; not the man who points out how the strong man stumbles, or where the doer of deeds could have done them better. The credit belongs to the man who is actually in the arena, whose face is marred by dust and sweat and blood; who strives valiantly; who errs, who comes short again and again, because there is no effort without error and shortcoming; but who does actually strive to do the deeds; who knows great enthusiasms, the great devotions; who spends himself in a worthy cause; who at the best knows in the end the triumph of high achievement, and who at the worst, if he fails, at least fails while daring greatly, so that his place shall never be with those cold and timid souls who neither know victory nor defeat"*

### WORDS OF APPRECIATION

Obviously an unprotected work stoppage is against the law, however, a special word of thanks to:

- All Employees, the full time shop stewards and all other union leaders for maintaining law and order during the 13 day work stoppage.
- All Community Leaders, the Police, and the Tendele Security.
- A special word of thanks to so many people for all the many good wishes, messages, emails, and prayers! We truly appreciate it!
- Special word of thanks to the entire Managerial and Operational teams for keeping the ship afloat during very difficult times!
- Special word of thanks to the Tendele team that worked day and night for 13 days trying to resolve the unprotected stoppage. Your patience and diligence and support are truly appreciated!

All of you can be so proud - you all make a massive difference in the lives of some 15000 people! As long as we communicate to each other – and respect each other – and listen to each other – we may be able to achieve results without fear and intimidation and harm.

S.S.D. 

# MANAGEMENT BRIEF

## BACKGROUND TO THE UNPROTECTED STRIKE

The Company employs directly some 1200 people, and via the Community based entrepreneurs, employ indirectly a further 300 Employees. Of the 1200 people, some 54% belong to the Unions. After a 13 day unprotected work stoppage that started on 26 March, all Employees returned back to work on Tuesday, 9 April 2019 at 06h00 with full production running again.

The Company, AMCU and NUM ("the parties") signed agreements and the 13 day unprotected work stoppage terminated. What follows below under this heading "background" is an extract from the signed agreements.

The parties participated in a process facilitated by the CCMA to resolve the unprotected work-stoppage surrounding issues pertaining to the agreement signed 14 June 2017 for the 3 years ending 30 June 2020 (Substantive Agreement) and specifically in relation to Clause 7, "Equal Work for Equal Pay".

In terms of the Substantive Agreement, the Equal Work for Equal Pay clause developed over time, and a Task Team (consisting of representatives of both unions and the Company) was established. It was agreed to start a salary survey process and it was agreed that a salary survey was to be conducted to review certain job categories.

Regrettably, no terms of reference were agreed and no training was conducted to ensure that the Task Team had a common understanding as to what was required and what was the expectation of the report. An independent survey company, PE CORPORATE ("PECS") was appointed. This resulted in an initial "work in progress" and incomplete draft salary survey report (for 25 Job Categories) that made no recommendations, which was leaked to Employees in October 2018 ("October Survey Report"), and was fundamentally flawed.

The involved parties received an updated survey on the 25<sup>th</sup> March 2019 and was in the process of reviewing this report, and noted that the report made no recommendation and indicated that, out of 25 job categories, and comparing cost to company, only one category was "short changed" ("March Survey Report").

The survey report noted that one must consider the full cost-to-company and not only compare basic pay. The survey report also went on to say that other factors need to be considered such as affordability, area of operation, socio-economic conditions, unemployment in an area, job turnover (Tendele has a job turnover of less than 2%). The October 2018 survey report also required adjustment for correct job category definitions.

Following a discussion, the Salary Survey Task Team briefed the Employees around 18h00 on Tuesday 26 March 2019. An unprotected work stoppage started on the evening of 26 March 2019. After numerous engagements the parties agreed as follows:

- Agreements have been signed by Union representatives to amend the Substantive Agreement from 30 June 2020 to June 22.
- Tendele is committed to implement the amended agreement. This is in a spirit of preserving good labour relations that have existed for many years.
- It is not in the best interest of any Parties associated with the Somkhele Mine to be affected by an unprotected work-stoppage
- The Task Team that was in charge of the salary survey that included members of all the Parties, take a collective responsibility in the delay and misunderstanding associated with the salary survey.

## KEY POINTS AS OUTLINED IN THE SIGNED AGREEMENTS

- 1 Substantive agreement amended and extended from 30 June 2020 to June 22 ("amended substantive agreement")
- 2 The October survey report was used and adjustments will be made to Employees' salaries where appropriate, and the detail will be discussed with each employee
- 3 It is agreed that a new category of basic salary ("adjustment basic") will be created that will not attract any "cost to company" benefits including thirteenth cheque, shift allowance, shift overtime, etc. Save as outlined in this agreement.
  - 3.1 For example, assume the adjustment basic is R 500
  - 3.2 50% of the difference (R500 x 50% = R 250) for the month of April 2019
  - 3.3 100% of the difference (R500 x 100% = R 500) for the month of May 2019
  - 3.4 100% of the difference (R500 x 100% = R 500) from 01 July 2019 onwards

  
S.S.D.

# MANAGEMENT BRIEF

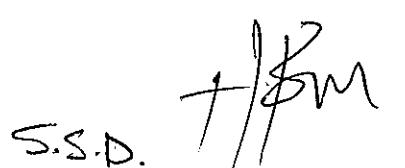
- 4 For all Employees, where the adjustment basic is less than R100, the difference is agreed to be R100 and to be adjusted as part of the adjustment basic and the employee will be paid R 100 from 1 April 2019.
- 5 The adjusted basis of Employees whose job categories have not been surveyed will increase from 1 April and the employee will be paid R 100 as part of the adjustment basic from 1 April 2019.
- 6 **JULY 2019**
  - 6.1 Basic salary to increase by R 1000 for all Employees (as per the original Substantive Agreement)
  - 6.2 Medical to increase by R 50 to R 650
  - 6.3 Housing Allowance by R 50 to R 1250
  - 6.4 Provident Fund 15% of original basic
  - 6.5 Maternity to remain at 4 months full pay
- 7 **JULY 2020:**
  - 7.1 Basic salary to be increased by the largest of 6% or R 700.
  - 7.2 Medical to increase by R 50 to R 700
  - 7.3 Housing Allowance by R 50 to R 1300
  - 7.4 Provident Fund to remain at 15% of original basic
  - 7.5 Maternity to remain at 4 months full pay
  - 7.6 It is specifically agreed that 50% of the adjustment basic to attract all benefits normally due to "basic salary"
- 8 **JULY 2021:**
  - 8.1 Basic salary to be increased by a formula as follows
  - 8.2 The largest of 6% or R 700. See Annexure A, Column M and M1.
  - 8.3 Medical to increase by R 35 to R 735
  - 8.4 Housing Allowance by R 50 to R 1350
  - 8.5 Provident Fund to remain at 15% of original basic
  - 8.6 Maternity to remain at 4 months full pay
  - 8.7 It is specifically agreed that 100 % of the adjustment basic to attract all benefits normally due to "basic salary"
- 9 **PHASE TWO**
  - 9.1 The Parties to this Agreement note that not all job categories have been surveyed. The parties will engage on "Phase Two" and the intention is to conduct a salary survey of at least 90% of all remaining job categories including Rangers that have previously not been surveyed.
  - 9.2 A Task Team comprising Employer representatives and all unions will be established to oversee this process.
  - 9.3 Detailed training sessions will be conducted with Shop stewards to make sure that all Parties understand what the report will cover and what the intended outcome of the report will be. Terms of Reference will be drafted, and this term will in all material aspects not deviate from the principles as outlined in the Amended Substantive Agreement.
  - 9.4 The Task Team to be established to also develop an agreed plan to educate the Employees into all aspects of Phase Two.
  - 9.5 The report will be specific and both basic salary and cost to company will be reviewed and compared before any adjustments are discussed and considered.
  - 9.6 All factors including affordability as specified in the March 2019 report will also be considered during Phase Two.
  - 9.7 It is the intention that Phase Two process will start once at least one future mining area (either the Ophondweni or the Emalahleni area) has been secured (meaning mining can commence and ROM coal can be transported to the Plant) and the Phase Two process will be finalized within six months after mining in either Ophondweni or Emalahleni has commenced.
  - 9.8 It is agreed that during the period until future mining areas are secured, all Unions and the Company will compile a list of proposed categories to be surveyed and will also prepare a list of those anomalies that exists in job categories surveyed and not surveyed. It is agreed that the Task Team (as contemplated in this section will only start its work after securing a future mining area.
- 10 **AGREEMENT CONDITIONS**
  - 10.1 All Employees who did not attend work during the unprotected work-stoppage between 26 March and the date on which the unprotected work-stoppage ends will be issued with a general final written warning valid for 12 months. Notwithstanding

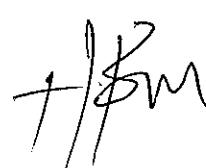
## MANAGEMENT BRIEF

this clause, if an employee was on approved sick or annual leave, such employee will not be issued with a general final written warning.

- 10.2 The Company to consider the specific circumstances on a case by case basis and any future disciplinary process resulting from the misconduct of any employee will be dealt with on its case merits. The general final written warning will not be used as a "witch hunt". If Employees believe there is a "form of intimidation", they have every right to exercise their right in terms of internal grievance procedures.
- 10.3 The amendments in this Agreement is implemented to save the future of the mine and to protect employment.
- 10.4 All Shop Stewards at the mine will undergo training at the SBF where after detailed training sessions will be arranged for all Employees to ensure that the expertise and understanding iro remuneration is improved.
- 10.5 The Parties agree that the Mine is operating in a poverty-stricken area where unemployment is a massive challenge. The Mine faces ongoing challenges to assist with employment of Community Members. It is agreed that all the appointments below will be made in the presence of a full-time shop steward to also explain that the appointment falls outside the SBF or mandate of the Unions.
  - 10.5.1 The Mine has been in operation for more than 10 years (since 2007), the Mine has reached its optimum production rate and no further expansion is required or foreseen over and above the formal 2018/19 budget.
  - 10.5.2 Therefore, it is hereby acknowledged and agreed that any additional appointments over and above the base-line (expansion to the current labour force), will be in line with the Mine's intention to create employment opportunities more so than as an operational requirement and the mine will be able to employ people at a rate to be negotiated between the Mine and such employee.
  - 10.5.3 Furthermore, it is agreed that activities that are not directly associated with drilling, mining and the plant operation is classified as "non-core" activities.
  - 10.5.4 The Mine is authorized to employ people in these non-core activities either permanently or temporarily at a rate to be agreed between the Mine and such employee, and it is agreed that SBF Agreement and the three-year Substantive Agreement iro rates will not apply to such employee/employment.
  - 10.5.5 The Mine is furthermore entitled to appoint trainees on a temporarily basis not exceeding 12 months at a rate to be agreed between the Mine and such employee, and it is agreed that SBF Agreement and the three-year Substantive Agreement iro rates will not apply to such employee/employment.
  - 10.5.6 It is specifically, for the sake of clarity and avoidance of doubt, noted and agreed that this Agreement will not include any work being conducted for training purposes, for example work-place exposure interventions, learnerships and other interventions aimed at the training and development of learners.
  - 10.5.7 It is further recorded that the term "core jobs" refer to jobs which are directly involved in the process flow of the coal, including but not limited to blasting, mining, processing, quality control and transporting of coal.
  - 10.5.8 It is further recorded that the term "non-core jobs" refer to jobs which are providing support services to "core jobs and in so doing are only indirectly involved in the process flow of the coal, these include but are not limited to security, finances, human resources and stores.
- 10.6 It is furthermore specifically agreed that companies that provide services to the Mine including companies that is majority owned by Mpukunyoni Community members, are not subject to this Agreement.

- 11 THE PARTIES AGREE THAT THEY WILL IN ABSOLUTE GOOD FAITH AND COMMITMENT, AND TOGETHER INVESTIGATE AND IMPLEMENT AND DO EVERYTHING IN ITS POWER TO IMPROVE PRODUCTIVITY IN ORDER TO MAKE UP THE PRODUCTION LOST AS A RESULT OF THE UNPROTECTED WORK STOPPAGE.
- 12 DISPUTE SETTLEMENT
  - 12.1 The Parties agree that in the event of disputes regarding the interpretation and/or application of this Agreement, the required procedure in terms of the Labour Relations Act no 66 of 1995 and the Constitution shall be observed.
- 13 PEACE OBLIGATION
  - 13.1 The Parties agree that sound and harmonious employee/employer relationships are essential for the mutual benefit of all concerned.
  - 13.2 The Parties declare their joint commitment to the common objectives of the maintenance of industrial peace, the future growth and prosperity of the Employer and the fair and equitable treatment of all Employees.



S.S.D. 

# MANAGEMENT BRIEF

## REQUEST FOR PAYOUT OF LEAVE

We have been requested to consider paying out leave to compensate for the loss of income due to the unprotected strike and the "no work no pay" principle. We are sympathetic to the request, however as outlined above, we have lost 13 days of production and we have been unable to get one ton of material to our customers, and therefore we have no cash coming in. Until we start mining in future mining areas, we will continue to run short. We therefore are unable to do any pay-outs of any leave and the principle of "No work No pay" remains in place.

## EXTRACT FROM THE MARCH 2019 SURVEY REPORT

1. *The salary information provided in the benchmark tables provides a guideline on the external competitiveness of the salary only. In no way do they form recommendations as other factors like affordability, internal equity, regional variances also need to be factored in when looking at pay.*
2. *KwaZulu-Natal makes up 16% of the survey sample.*
3. *It is important to understand that the majority of the salary data in the KZN region reflects salaries from companies operating in Durban, Pietermaritzburg and Richards Bay.*
4. *Tendele Mine falls within the rural area of the Mtubatuba municipality. As outlined in the IDP of the Mtubatuba Municipality, Tendele Mine is the only major provider of employment in the area. The Municipality's Integrated Development Plan ("IDP") for 2017/2018 - 2022 mentions in point 13.1 that "...mining is one of the major employment sectors in Mtubatuba Municipality through Somkhele Coal Mine...".*
5. *It is further recognized in the IDP, inter alia, that "[T]he unemployment rate within Mtubatuba Municipality was at 59.7% in 2001, however in 2011 there... [was] a significant improvement as it is estimated to be at 39%. This may be due to the coal mining operation taking place in the Mpukunyoni Traditional Council area, Somkhele Mine." The IDP furthermore states that the Mtubatuba Municipality's economy is driven by the performance and structures of, inter alia, mining at Somkhele.*
6. *Tendele exhibits a very low staff turn-over due to voluntary termination of employment, even for semi-skilled and skilled positions which are in high demand across the mining industry (high mobility). This may be indicative of a workforce which exhibits a low need to move to other companies/job opportunities.*
7. *The average staff turn-over for Mpukunyoni Mining over the 5-year period from 2014 to 2018 is 1.2% whilst that of Tendele is 1.8%. This does not support a notion of a workforce that is unhappy with its working conditions and/or remuneration.*
8. *With a lower cost of living, high levels of unemployment and low staff turn-over, there is a lack of market-driven factors compelling companies operating in rural areas such as Mtubatuba to offer higher remuneration and subsequently such companies could pay a substantial discount on salaries with-out experiencing recruitment challenges or a shortage of candidates for employment.*
9. *High mobility is also affected by experience. Tendele's employment policies and commitment to employ at least 80% of its labor force from the local Community has contributed significantly to the relative low experience levels of operators since preference is given to recruiting and training local unemployed and inexperienced operators instead of recruiting experienced operators from other mines.*
10. *The benchmark tables reflect market data as extracted from our General staff salary survey for the mining industry within Kwa-Zulu Natal. The analysis reflects Basic Salary, Guaranteed Package and Total Package figures. The benchmark market salary information provided in this report should be used as a guideline when making pay decisions.*
11. *Additional factors that need to be considered when reviewing pay adjustments include:*
  - i. *For this section we need to ask, "How competitive are Tendele Mine employee salaries against the market?" In the South African market, the Guaranteed Package or Cost to company figures tend to be a more reliable figure when comparing to the market. When looking at external competitiveness one also needs to consider the levels of Employees and the availability (Supply vs demand) of labor. With high levels of unemployment in the Mtubatuba municipality, there is not a limited supply of labor for semi-skilled positions in the Mine. The National Minimum Wage Act has been set for a phased implementation as of 1 May 2018. This act requires all employers (with exception of Agriculture, Domestic workers and some SME's) to pay a minimum wage of R20 per hour/ R3500 per month (40 hours). All benchmark salaries fall well above this level.*
  - ii. *The relative worth of each job, without regard for individual characteristics or competence is typically reflected in the "Job worth" hierarchy determined by a job grading system. The higher the grade the more complex the job. Currently, Tendele does not have a grading system and any such analysis would need to be based on the jobs themselves.*
  - iii. *For any salary adjustments to be meaningful, it must be affordable to the organization.*
  - iv. *We have been provided with signed Substantive Agreements going as far back as 2010 until the most recent three-year agreement (1 July 2017 to 30 June 2020) signed between the Company and the Employees. Of significance in these*

  
S.S.D. H. Fourie

# MANAGEMENT BRIEF

agreements is the fact that said agreements predominantly provide for staggered increases – an indication that parties have agreed to allocate resources proportionally to where the greatest need existed.

- v. We have also been provided with a copy of the Tendele presentation to the DMR indicating that the Profit Margin in 2017 was less than 3% and 6% in 2018. We also understand from this presentation that the Mine has huge difficulties to obtain future mining areas and already has engaged Labor in Section 189(A) consultations.
- vi. Regional variances have a significant impact on the variance in remuneration offered by companies. Examples of these differences are the following:
  - The average annual household income from work in KwaZulu Natal (R 71 110) is 30% lower than that of the National Average (R 100 246) according to Living Conditions Survey 2014/2015 published by StatsSA
  - The average annual household income from work in Traditional Areas (R 32 812) is 68% lower than that of the National Average (R 100 246) according to Living Conditions Survey 2014/2015 published by StatsSA
  - The average annual total household income (including the likes of grants, pensions etc.) in Traditional Areas (R 56 333) is 60% lower than that of the National Average (R 138 168) according to Living Conditions Survey 2014/2015 published by StatsSA
  - The average household annual income per family around Mtubatuba amounted to R 55 920 according to the 2011 census
  - With a lower cost of living and high levels of unemployment, companies operating in rural areas like the Mtubatuba municipality could typically pay a discount on salaries relative to rates within KZN as a whole,

## TENDELE IMPACT IN THE COMMUNITY

For the sake of clarity and the avoidance of doubt, see the annexure to this brief indicating the enormous impact that Tendele has made in the Community. It is impossible to "please" every one, it is impossible not to make mistakes, but the overall positive impact in the lives of at least 15000 people in the Community is unquestionable.

## TENDELE PROFITABILITY

Tendele's financial statements are submitted to the DMR yearly. Tendele's profitability in 2017 was below 3%, and in 2018 was around 6%. This profit is not enough to finance the debt and to finance the acquisition of future mining areas. The impact of the last 13 days will forever have an impact on our ability to assist with projects in the Community.

## COMMUNITY COMMUNICATION STRUCTURES

A "ROADMAP AGREEMENT" was developed during 2016 and signed and adopted in 2017 to address historical and current contentious issues between the Mine and the surrounding Communities creating a representative communication structure - Mpukunyoni Community Mining Forum (MCMF).

Community related issues are discussed and resolved at these structures.

This structure does not deal with employment or existing procurement issues as this is dealt with at Tendele Mine.

The MCMF assists with relocation issues, until a DAC Committee is elected in a particular area. Thereafter all negotiations are private between the Mine and the families to be relocated.

The MCMF meets quarterly or as often as required representing:

- Mpukunyoni Traditional Council ("MTC") consisting of the Indunas of the 30 Izigodi of Mpukunyoni
- Inkosi and Nduankulu are permanent invitees
- The MTC nominates a Portfolio Head of Mining as part of the MCMF Exco
- Mtubatuba Local Municipality (Democratically elected Councilors of the Wards where the Mine operates)
- MAC – Mining Area Committees representing the Induna and the Communities in the designated mining areas , democratically elected (each MAC meets at least once a month)
- Directly Affected Communities (DAC), representing communities that have been/to be relocated.
- Local Entrepreneurs that deals with the Mine
- Tendele Mine (including organised labor representing AMCU and NUM)

The MCMF has an Exco consisting of 4 local leaders and the Mine and meet as often as required and the intention is to assist Local leaders to take ownership of local issues!

As the largest employer in the Mpukunyoni area and Mtubatuba Municipality, we understand the importance of communication and peace and stability in the area.

The MCMF and MAC is always open to all organizations and individuals who want to engage in a meaningful manner if it can assist the Mine to remain strong as only a strong mine can assist the Community.

  
 S.S.D. T.B.

# MANAGEMENT BRIEF

## PROPOSED APPROACH

The state of all parties' attitude remains very essential in the wake of such trying times. Most importantly, we are "One Team, One Mine and One Community", and we need motivated Employees and management to ensure we produce product safely, efficiently and as productive as possible as we want to maximize the product that leaves the Mine. For this Mine to continue to exist and obtain money for the anthracite that we sell to our clients, it needs customers, it needs trucks to leave our mine and deliver product to the Port and to our local customers, it needs the drilling, blasting, mining, haulage and plant operations to continue.

For all of the above we need loans from banks to pay for the machines, diesel explosives, your salaries, electricity and all the contractors (such as Taxi, haulage, rom trucks, MBA trucks, etc. etc.).

One undeniable fact is that what job we do, what qualifications we have, what we wear, gender and age do not define us as we still remain dependant on one another.

It must always be reiterated that we are "One Mine, One Team and One Community". Let us all hold hands irrespective of any forms of differences that may or may have existed and ensure we can have a Mine for ten (10) years.

It is truly to our interest that we attain future mining areas as this Mine is like a tree and it thus needs to be strong and be able to provide fruits to its Employees, Community and business partners. There should also be a fair return to the Mine's shareholders. If the demands on the tree are too much, the tree will die and we will all suffer. As previously communicated, without future mining areas, we won't have a Mine.

## COMPLAINTS AGAINST THE HR MANAGER AND IR SUPERINTENDENT:

Management previously received a list of complaints against the HR Manager and IR Superintendent. After the unprotected work stoppage on 1 March, the Mine and AMCU signed an MOU, and it was agreed that the complaints against the 2 incumbents will be investigated by a third-party independent Chairperson.

It is both the Company's responsibility and the right of Employees to be subjected to procedurally and substantively fair processes – a principal which unions have consistently required from management where their members were subjected to disciplinary action. This outcome will be communicated once the investigation is completed.

## CONCLUSION

In the face of challenging times and especially the harsh aftermath of the UNPROTECTED work stoppage, all Employees, all Community leaders and all stakeholders are encouraged to hold hands towards a common goal. It is undeniable that the UNPROTECTED work stoppage we recently experienced has had far reaching implications but every role player is advised to do everything in their power to ensure that we vigorously move forward.

We plead with all stakeholders and all Employees to support the endeavours aimed at securing future mining areas as that is our ticket to securing the future. The engagements with future mining areas are still continuing and need everyone's support to eventually yield good results.

Lets' all have a unity driven attitude which sees no colour, gender, occupation, any affiliation but only a companion in ensuring unity, vigour and strength in our current operation and future mining areas.

Last but not least, safety and peace in the Community remains an essential aspect which should be at the centre in all that we do. As much as we need coal to sustain the business, we do not want coal that has blood in it. Let us work safely and peacefully!

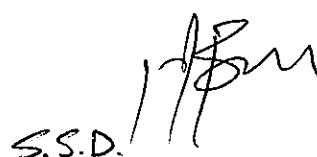
We are One Mine, One Team, One Community!



Jan du Preez  
CEO



Jarmi Steyn  
COO



Jarmi Steyn  
S.S.D.

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- h) Disposing in any manner of water which contains waste from, or which has been heated in, any industrial or power generation process;
- i) Altering the bed, banks, course or characteristics of a watercourse;
- j) Removing, discharging or disposing of water found underground if it is necessary for the efficient continuation of an activity or for the safety of people; and
- k) Using water for recreational purposes.

A General Authorisation Registration (GA) would be required in terms of Section 39(1) of the National Water Act (Act 36 of 1998), Notice 509 of 2016 as the following water uses would be applicable:

- Section 21(c): Impeding or diverting the flow of water in a watercourse; and
- Section 21(i): Altering the bed, banks, course or characteristics of a watercourse.

#### 6.2.1 Department of Water and Sanitation Notice 704 of 1999

Regulations on use of water for mining and related activities aimed at the protection of water resources

##### Restrictions on locality

Except in relation to a matter contemplated in regulation 10 (Sand Winning), carry on any underground or opencast mining, prospecting or any other operation or activity under or within the 1:50 year flood-line or within a horizontal distance of 100 metres from any watercourse or estuary, whichever is the greatest.

## 7 PROJECT MOTIVATION

### 7.1 Need and Desirability

The resources are required to ensure the uninterrupted operation of mining at Somkhele. Production and community challenges have resulted in planned resources being unavailable to mine. Below is a brief synopsis of benefits Somkhele mine has brought to the community.

Over the last 11 years since the mine has been in operation, in addition to the direct and indirect employment created, a number of community projects have been implemented to transform the Mpukunyoni area. Tendele has invested some R1.2 billion into the mine and has directly or indirectly invested some R1.4 billion into the local Community. The following is a list of some of the projects undertaken by the mine:

- Employment of some 1200 full time employees, another 200 via service providers with more than 82% from the hosting community
- Four community halls have been built in adjacent areas to the mine

# MALAN SCHOLES

ATTORNEYS

RAS

ssingh@malanscholes.co.za [www.malanscholes.co.za](http://www.malanscholes.co.za)  
Postal Suite 324, Private Bag X1, Melrose Arch, 2075  
First Floor, One-On-Jameson, 1 Jameson Avenue  
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T +27 (0)11 718 4600 F +27 (0)87 238 5315

## BY EMAIL

TO:

YOUENS ATTORNEYS

Sheffield Beach

KwaZulu-Natal

Attention - KM Youens

[kyouens@youensattorneys.co.za](mailto:kyouens@youensattorneys.co.za)

CC:

[Cecilia.Maroleni@dmr.gov.za](mailto:Cecilia.Maroleni@dmr.gov.za)

[EbSnyman@justice.gov.za](mailto:EbSnyman@justice.gov.za)

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Your ref: 7099/18/Z46

Our ref: H Scholes / S Singh / M van der Merwe / MAT 2412

29 April 2019

Dear Madam

**MFOLOZI COMMUNITY ENVIRONMENTAL JUSTICE ORGANISATION & ANOTHER /  
MINISTER OF MINERAL RESOURCES AND OTHERS: CASE NO. 82865/2018**

- 1 We refer to the above matter, your letter dated 11 April 2019 ("11 April Letter") and our letter dated 18 April 2019.
- 2 The purpose of this letter is solely to respond to the request for undertakings contained in your 11 April Letter. We accordingly do not intend to respond to any other statements made in your 11 April Letter and such lack of response must not be taken to be an admission of the correctness of those statements. We reserve the right to respond to these statements at the appropriate time and in the appropriate forum.
- 3 As we understand your letter, your client requires the following undertakings from our client in relation to Mining Right KZN30/5/1/2/2/10041MR issued to our client on 26 October 2016 ("Areas 4 and 5 Mining Right") –
  - 3.1 that our client will refrain from commencing with any core mining or related activities in terms of the Areas 4 and 5 Mining Right pending the determination of the pending review application, which you anticipate will be heard in the third or fourth term in 2019. The request for this undertaking appears in paragraphs 3.1 of your 11 April Letter, read with paragraphs 5, 6 and 8 thereof;
  - 3.2 that should our client intend to commence with the aforesaid core mining or related activities prior to the determination of the review application, your client be provided with

a minimum of two months written notice. The request for this undertaking appears in paragraphs 3.2 of your 11 April Letter;

3.3 that no mining operations will commence in terms of the Areas 4 and 5 Mining Right, until such time as the actions identified in paragraph 7 of your 11 April Letter have been undertaken.

4 As regards the undertaking referred to in paragraph 3.1 above (and contained in paragraph 3.1 of the 11 April Letter, read with paragraphs 5, 6 and 8 thereof), our client is unable to provide this undertaking, particularly in light of the uncertain time frame within which the review may be determined and finalised.

5 As regards the undertaking referred to in paragraph 3.2 above (and contained in paragraph 3.2 of your 11 April Letter), we confirm that our client will provide your client with a minimum of two months written notice of its intention to commence mining operations. For the sake of clarity, this undertaking relates to the construction of open cast pits in the areas forming the subject of the Areas 4 and 5 Mining Right and does not relate to all activities incidental thereto, for which our client is unable to provide your client with such extended notice. Our client will nevertheless comply with the notice requirement contained in section 5A(c) of the Mineral and Petroleum Resources Development Act 28 of 2002 ("MPRD Act") in this regard.

6 As regards the undertaking referred to in paragraph 3.3 above (and contained in paragraph 7 of your 11 April Letter), we respond as follows -

6.1 Ad paragraphs 7.1, 7.2 and 7.3 of your 11 April Letter -

6.1.1 our client will at all times comply with its approved Environmental Management Plan, any approved amendments thereof ("EMP") and its Areas 4 and 5 Mining Right.

6.2 Ad paragraph 7.4 of your 11 April Letter -

6.2.1 we confirm that Machibini has formally been withdrawn from the mining right area.

6.3 Ad paragraph 7.5 of your 11 April Letter -

6.3.1 the question of whether environmental authorisation is required by our client for activities listed in section 24(2) of the National Environmental Management Act 107 of 1998 ("NEMA") is addressed in the judgment of Seegobin J in Case No. 11488/17P which judgment is the subject of a pending application for leave to appeal brought by your client. Our client maintains that it does not require environmental authorisation in terms of section 24(2) of the NEMA for its mining operations and, accordingly, is unable to provide your client with the undertaking sought.

6.4 Ad paragraph 7.6 of your 11 April Letter -

6.4.1 our client is well aware of its obligations in terms of the National Water Act 36 of 1998 ("NWA"). It accordingly undertakes not to commence any water uses for which a water use licence is required in terms of section 21 of the NWA prior to such licence being obtained.

6.5 Ad paragraph 7.7 of your 11 April Letter -

6.5.1 we confirm that our client has provided the financial provision required by the DMR, for the grant of the Areas 4 and 5 Mining Right which financial provision has not been disputed by the DMR. This amount will be assessed annually and updated, if necessary, in accordance with the relevant legislation.

6.6 Ad paragraph 7.8 of your 11 April Letter -

6.6.1 we confirm that final copies of the EIA, EMP and associated appendices and addendums have been lodged with the DMR as required by the relevant legislation.

6.7 Ad paragraph 7.9 of your 11 April Letter -

6.7.1 the question whether or not mining operations may commence before the full and informed consent of all the people that hold rights of use, occupation, or access within the mining right area in terms of the Interim Protection of Informal Rights to Land Act 31 of 1996 ("IPILRA") (which consent is to be obtained in terms of the custom and usage of the relevant community) has been obtained, is not settled in our law as the judgment in Baleni and Others v Minister of Mineral Resources and Others (73768/2016), is the subject of an application for leave to appeal.

6.7.2 We have been instructed that Tendele will, in any event, not commence with mining before Tendele has obtained the consent of the Mpukunyoni Traditional Council, the Indunankulu, Chief Induna of the Mpukunyoni Area and the individual households in the affected Community.

6.8 Ad paragraph 7.10 of your 11 April Letter -

6.8.1 we confirm that our client is currently engaged in the process contemplated in section 54 of the MPRD Act with the owners and lawful occupiers of the areas forming the subject of the aforesaid mining right.

7 We have furthermore been instructed to advise you that -

7.1.1 Tendele has historically complied with all legislative requirements in the conduct of its mining operations and will continue to do so;

7.1.2 Tendele engages in continuous dialogue with all relevant stakeholders, including the DMR, the Mtubatuba Municipality, local Traditional structures and two of the largest Unions in the South African Mining sector, in order to ensure that its mining operations are carried out with their cooperation;

7.1.3 any forced closure of the Tendele mine as propagated by your clients, will have a devastating impact on the local Community as the Community depends on and benefits from the Tendele mine as a source of income for the Community members. Approximately 15 000 people will lose their main source of income and about 40 local entrepreneurs will lose their businesses, should Tendele be forced to close; and

7.1.4 Tendele has on numerous occasions attempted to meet with your clients to attempt to address your clients' concerns, to no avail. Notwithstanding Tendele's attempts

to find an amicable solution to the prevailing impasse between your clients and Tendele, your clients persist in their efforts to bring more unnecessary legal action against Tendele, as anticipated by your letter under reply, choosing the risk of terminating the income of Community members over constructive dialogue to resolve the relevant issues.

- 8 We lastly take note of your intention to launch an urgent application should our client fail to provide your client with the undertakings sought. For the reasons set out above, we are of the view that the launch of such proceedings would be both ill-founded and unnecessary. Should your client nevertheless proceed with such an application, we advise that our clients will oppose such proceedings and also seek the appropriate cost order/s in this regard.

Yours faithfully



**MALAN SCHOLES INCORPORATED**

# Tendele Coal Mine

Annexure D

26 November 2019

Open Letter to:

Mpukunyoni Council

Traditional House

Members of MCMF

Mtubatuba Municipality

MAC ( Machibini, Dubelenkunzi, Myeki, Esiyemebeni and Ophondweni

DACs (Machibini, Dubelenkunzi, Luhlanga, Qhubuka, Emalahleni and Ophondweni)

All Ward counselors (Ward 15, 17, & 18)

Businessmen and employees (Union representatives)

## Introduction

This letter serves to inform about:

- The current situation of the Mine
- Update on proposed mining areas and relocation of people
- Efforts to counteract a potential disaster of June 2020
- Impacts of mine closure on employees and Mpukunyoni community

It is important that everyone works together to find new mining areas so that:

- Tendele Coal Mine can operate in Somkhele another 10 years
- 1500 jobs can be secured
- The community can benefit with education opportunities, Lego programme for 8000 children, continued projects enlisted in the SLP, assistance in community problems, water relief for people in need

It is with regret that the relocation process has been ongoing for 30 months and there has been little success in gaining new mining areas. Only 80 percent of families (about 100) from Emalahleni and Ophondweni have signed relocation agreements with the Mine. Since 2007, 225 families have signed relocation contracts. They have been relocated and compensated. With great sadness, we cannot compensate or pay families that have signed contracts until every family in proposed mining areas have agreed to relocation.

Failure to acquire new mining areas will lead to a loss of 1500 jobs, trade opportunities, and other benefits brought by the Mine to the community. There have been rumours that the above mentioned information is false. Hence, to

S.S.D. 

ensure the above mentioned information you are advised to contact traditional leadership, chairperson of MAC, chairperson of DAC or MCMF.

The Somkhele Mine is facing court cases brought by the GET Foundation and MCEJO, regardless of the Mine trying to meet with these organisations. It is clear that these organisations want to close the Mine, which will result in devastating effects for the community. The Mine is open to discuss problems, derived the truth not lies.

We advise that a MCMF meeting be held at the Mine on the 29th of February 2020 to discuss this pending issue of Tendele and possible solutions.

Conclusively, we pass our condolences to relatives and the whole Mpukunyoni community for the loss of Inkosi M.M Mkhwanazi, Baba G. Mkhwanazi, and Induna S.Z Mkhwanazi from Ophondweni.

#### **New Mining Areas**

Last week of October and November, employees received full pay. This has been happening for the past 150 months. However, this will be impossible in the near future due to the difficulty of acquiring new mining areas. We have been warning and begging people in the last 30 months that new mining areas are needed urgently.

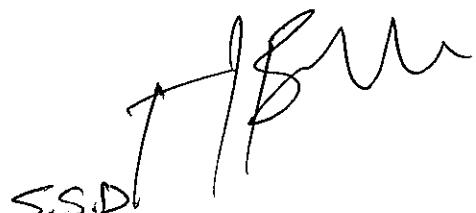
I have recently returned from an overseas trip to check in with our coal customers. The undisputed fact of business is that if our consumers find themselves in doubt, they have a right to take their business elsewhere. This could have a major and adverse effect on our Mine which could include even Mine closure - as we are not certain where would get coal due to a lack of new mining areas.

The Mine is currently operating in a loss and this will result in debt. We need to prove to our bank lenders that we can save the Mine and acquire new mining areas in time. Otherwise, the Mine will be closed soon. Availability of funds is one of the essential and fundamental components of Mining operation.

#### **The following elaborates of the Mine's current situation:**

- The protests at the beginning of the year led to the Mine's temporary closure. This resulted in a dramatic decrease in productivity, leading to the Mine's major loss.
- Sadly, we have started the retrenchment process of 100 Tendele employees.
- Some employees working in the coal shaft are now earning 25% less due to their reduced working hours.
- Number of taxis (employee transport) and trucks transporting coal inside the Mine has been reduced.
- The number of trucks transporting coal to the harbour has also been reduced. This is affecting local business men and truck drivers.
- New Mining areas are still not acquired.

#### **Process of relocation**



S.S.D.

The Mine is currently negotiating with two villages, Emalahleni and Ophondweni. It is encouraged that this process should be supported by the Mine employees and traditional leaders, to ensure its success. Note the table below for update:

Emalahleni	Count
Households represented by lawyers	13
Not measured, but visited	21
Measured	2
Negotiations began	19
Concluded negotiations	4
Signed agreements	50
Total number of houses	110

Ophondweni	Count
Not measured	2
Measured	0
Negotiations have begun	14
Concluded negotiations	3
Signed agreements	48
Total number of houses	67

Due to prolonged negotiations with the proposed mining areas, the Mine is in a difficult state.

- 100 employees are on the verge of losing their jobs and 1500 employees will further lose their jobs if the situation does not change by June 2020.

There are families who have signed agreements, but cannot receive payment due to other families who have not signed or agreed to relocation. These families are eager to start their new lives, relocate and send their children to new schools but cannot due to resistant families. The Mine has taken the following measures:

- Due to problems with the relocation process, the Mine has decided to change the northern borderline excluding some houses in the process.
- With the situation at hand, the Mine will no longer negotiate with families outside the new borderline. However, the Mine will continue honouring agreements that were already signed with excluded families.

S.S.D. 

Proposal about the new borderline has been issued and accepted in/by the Traditional Council.

With regret, it is important to note that **Only when every household has signed relocation agreements/contracts that payment will be made and families relocated. Until then, the Mine will not start operating in proposed areas.**

**Solutions in progress:**

We have an opportunity to make the most out of the current pits in areas, Dubelenkunzi; KwaQhubuka, and Luhlanga although these areas now have less valuable coal. The above mentioned areas will only be in operation for a few more months than the Mine closes if new areas are not acquired.

It is important to note that a minimum of 6 months (for preparation) is needed before mining operations begin in a new area. Thus, if new areas are not acquired by December 2019 1500 jobs will be lost by June 2020. For clarity, the only way to save the 1500 jobs would be to acquire new mining areas. This has not changed in the past 30 months.

We will soon come to the conclusion of section 54, and ask DMR to proceed with the relocation process using an independent arbitrator who will then follow up an application for a court settlement. During court proceedings, we would have to close the Mine. The relocation process would be on standstill; all 100 households that have agreed and are happy to relocate will have to wait for the court's decision as well as other households that have not signed/agreed to relocation.

We urge families that do not want to relocate, to think again about the impacts on their lives (how the last 5 years of their lives have been and how it would be if they were to relocate) and impact on community members that want to relocate if they continue resisting relocation.

It is true that business owners working with the Mine will suffer due to the pressure currently suppressing the Mine. In addition, I assure you that there are no other business opportunities in the area that is why we are fighting so hard to save the Mine.

**Social and Labour Plan projects**

Due to the above mentioned issues, we have informed DMR that if the Mine cannot continue operating all projects will be halted. The enlisted projects are education, various benefits given to the community, community allowances, cellphone and travel allowances. These benefits will be stopped from 1 January 2020 onwards. There will be a meeting held with beneficiaries to inform them with the latest. The Mine is not lawfully obligated to give out such benefits, be it the beneficiaries want to complain.

**Grants of 1 percent for training and community development**

We confirm that auditors are busy investigating the 1 percent that has already been significantly reduced due to the challenges faced by the Mine. These funds should be used towards community training and development projects.

S.S. D. 

Funding companies should get certificates from their auditors that indeed the money is used for training and development. Once the exact amount has been discovered, we will notify MCMF and MAC so as to discuss what the funds will be used for.

#### **Conclusion**

If new mining areas are acquired, the Mine will operate for another 10 years.

Let's stand together and stop asking **What can the Mine do for me, but instead let's ask what can I do for the Mine.** Let's work together as "One Mine, One Team, and One Community" to save the Mine. The proposed mining areas will secure 1500 jobs, prevent financial problems in the community, protect businessmen from the community and a lot more.

S.S.D. 

care and maintenance (i.e. by 1 April 2021), Somkhele will close, production will cease, and Tendele's remaining employees will be retrenched. No employees will be rehired by Tendele.

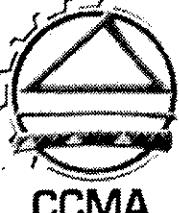
92 The cessation of mining at the Somkhele mine would render some 1 609 local people unemployed and would be the death-knell of the Mtubatuba economy as unemployment in the Mtubatuba area is already at 39% percent, considering what is stated in the IDP. The unemployment rate is likely higher than 39% at present.

92.1 A notice in terms of section 189(3) of the Labour Relations Act, 66 of 1995 issued on 17 February 2020 to Tendele's employees is attached marked "JDP7". The section 189(3) notice commences the consultation on retrenchments that will occur if the future mining areas are not secured. The section 189(3) process commenced because of the risk to Tendele's mining operations from several sources, including the possibility that the section 54 process would not be concluded in time.

92.2 A management brief dated 27 February 2020 providing feedback on the anticipated large-scale retrenchments if the future mining areas are not secured is attached marked "JDP8".

93 Tendele was obliged, before bringing this application, to exhaust the section 54 process to attempt to agree compensation with the relevant lawful occupiers. As I explain below, Tendele has done so. There can be no suggestion of any undue delay in bringing this application.

  
S.S.D.

<p>LRA Form 7.20 Section 189A Labour Relations Act, 1995</p>	<p><b>REQUEST FOR SECTION 189A OPERATIONAL REQUIREMENTS FACILITATION</b></p>	 <b>CCMA</b>
<p><b>READ THIS FIRST</b></p> <p></p> <p><b>WHAT IS THE PURPOSE OF THIS FORM?</b></p> <p>This form enables a party to initiate a section 189A facilitation process.</p> <p><b>WHO FILLS IN THIS FORM?</b></p> <ul style="list-style-type: none"> <li>• An employer who employs more than 50 employees and is contemplating dismissing one or more employees for reasons based on the employer's operational requirements; or</li> <li>• Consulting parties representing the majority of employees whom the employer contemplates dismissing.</li> </ul> <p><b>WHERE DOES THIS FORM GO?</b></p> <p>The Registrar, Regional Office of the CCMA in the region where the dismissals for operational requirements is contemplated. If the contemplated dismissals are in two or more regions, the form must be sent to the CCMA Head Office.</p> <p><b>WHAT WILL HAPPEN WHEN THIS FORM IS SUBMITTED?</b></p> <p>When you request facilitation the CCMA will appoint a facilitator to assist the parties engaged in consultation process.</p>	<p><b>1. DETAILS OF PARTY REQUESTING FACILITATION</b></p> <p>Employer <input checked="" type="checkbox"/> Party representing majority of employees: AMCU, NUM, Solidarity</p> <p>Name: Tendele Coal Mining and Employers represented in Somkhele Bargaining Forum (SBF) Postal Address: PostNet Suite 208, PBag X103, Mtubatuba, 3935 Cell: 082 3099 633 Email: <a href="mailto:jarmi@somkhele.co.za">jarmi@somkhele.co.za</a> Contact Person: Jarmi Steyn</p> <p><b>2. DETAILS OF THE OTHER PARTY</b></p> <p>Name: AMCU Postal Address: Unit 7, Liralink Street, Palm Court Building, Richards Bay, 3900 Email: <a href="mailto:amcu@somkhele.co.za">amcu@somkhele.co.za</a> Contact Person: Bheki Sithole</p> <p>Name: NUM Postal Address: 22 Bellingham Park, Pennylane CBD, Richards Bay, 3900 Email: <a href="mailto:num@somkhele.co.za">num@somkhele.co.za</a> Contact Person: Ivan Bhengu</p> <p>Name: Solidarity Postal Address: 12 Anglers Rod, Meerensee, Richards Bay, 3900 Email: <a href="mailto:peter@solidarity.co.za">peter@solidarity.co.za</a> Contact Person: Peter McBeath</p>	

*H. J. B. M.*  
S. S. D.

**3. DETAILS OF FURTHER PARTIES** (Please provide the names of any further parties, eg where more than one union is involved, and attach details.)

See point 2

**4. HOW MANY EMPLOYEES DOES THE EMPLOYER EMPLOY?**

Total Mine is 1127 end of May 2020, of which Tendele employs 358, Mpukunyoni Mining employs 458 and Duma Manje employs 61.

**5. HOW MANY EMPLOYEES ARE LIKELY TO BE RETRENCHED?**

600 employees is currently the most likely case. Worst case is all employees except for 70 who will continue the Care and Maintenance of the site

**6. HOW MANY EMPLOYEES ARE AFFECTED? (Total employees who need to be consulted?)** 1127

Case Number.....

Please turn over →

  
S.S.D.

<p><b>OTHER PARTIES</b></p> <p>If more than one party is referring the dispute or if the dispute is referred against more than one party, write down the additional names and particulars on a separate piece of paper and attach details to this form.</p> <p><b>OTHER INSTRUCTIONS</b></p> <p>A copy of this form must be served on the other party.</p> <p>Proof that a copy of this form has been served on the other party must be supplied by attaching and of the following:</p> <ul style="list-style-type: none"><li>▪ A copy of a registered slip from the Post Office; or</li><li>▪ A copy of a signed receipt if hand delivered; or</li><li>▪ A signed statement confirming service by the person delivering the form; or</li><li>▪ A copy of a fax confirmation slip; or</li><li>▪ A copy of an email confirmation slip or sent email; or</li><li>▪ Any other satisfactory proof of service.</li></ul> <p>The CCMA may be requested to assist with service.</p> <p><b>CHECK!</b></p> <p>Have you attached proof that this form has been served on the other party?</p>	<p><b>7. RETRENCHMENTS ARE CONTEMPLATED IN THE FOLLOWING REGIONS OR WORKPLACE LOCATIONS: (Please indicate expected numbers.)</b></p> <p>All 600 employees that are employed at Somkhele Mine</p> <p><b>8. HOW MANY EMPLOYEES HAS THE EMPLOYER DISMISSED FOR OPERATIONAL REQUIREMENTS IN THE PAST 12 MONTHS AND IN WHICH REGIONS OR WORKPLACE LOCATIONS? (Please indicate numbers.)</b></p> <p>Completed – 73 employees</p> <p>In process – 58 employees</p> <p><b>9. ATTACH THE SECTION 189(3) NOTICE ISSUED BY THE EMPLOYER TO THIS FORM. (The matter cannot be processed without a complete s189(3) notice.)</b></p> <p>See attached Notice as issued on 25 June 2020</p> <p><b>10. WHAT ARE THE REASONS FOR THE CONTEMPLATED DISMISSALS FOR OPERATIONAL REQUIREMENTS?</b></p> <p>Current anthracite reserves are being depleted in the operational mining areas and the Mine is as yet unable to enter into new mining areas.</p> <p><b>11. WHAT ALTERNATIVES TO RETRENCHMENT HAVE BEEN CONSIDERED?</b></p> <p>Parties have not yet entered into consultations regarding alternatives. Alternatives will not be possible if the Mine closes in entirety. In the most likely case where 600 employees are affected, alternatives need to be discussed and could still include no wage increases in July 2020 and short time scenarios. These are however suggestions but still have to be consulted on.</p>
	<p>Please turn over </p>

*S.S.D. 77pm*

#### 12. SECTOR

Indicate the sector or service in which the dispute arose. - Mining

<input type="checkbox"/> Retail	<input type="checkbox"/> Safety/Security (Private)
<input checked="" type="checkbox"/> <b>Mining</b>	<input type="checkbox"/> Domestic
<input type="checkbox"/> Building & Construction	<input type="checkbox"/> Food & Beverage
<input type="checkbox"/> Business/Professional Services	<input type="checkbox"/> Transport (Private)
<input type="checkbox"/> Agriculture/Farming	
<input type="checkbox"/> Other.....	

#### 13. INTERPRETER SERVICES

Is an interpreter required? Yes - IsiZulu

<input type="checkbox"/> Afrikaans	<input type="checkbox"/> IsiNdebele	<input type="checkbox"/> <b>IsiZulu</b>
<input type="checkbox"/> IsiXosa	<input type="checkbox"/> Sepedi	<input type="checkbox"/> SeSotho
<input type="checkbox"/> Setswana	<input type="checkbox"/> IsiSiswati	<input type="checkbox"/> Xitsonga
<input type="checkbox"/> Sign Language	<input type="checkbox"/> Tshivenda	<input type="checkbox"/> Other .....

#### 14. SPECIAL FEATURES / ADDITIONAL INFORMATION

Briefly outline any special features / additional information the CCMA needs to note:

None

#### 15. PLACE OF FACILITATION

Please select where you would prefer the facilitation to take place:

a. CCMA Office

b. Employer Premises

If you select employer premises, please provide physical address of employer's premises.

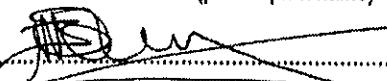
We would like to suggest a combination and that a virtual platform in the form of ZOOM be utilized for facilitation sessions taking into consideration the Covid 19 protocols and climate

#### 16. CONFIRMATION OF ABOVE DETAILS

Form submitted by: JM Steyn

(please print name)

Signature:



Position: Chief Operating Officer

Date: 25 June 2020

Place: Somkhele Mine

S.S.D. 

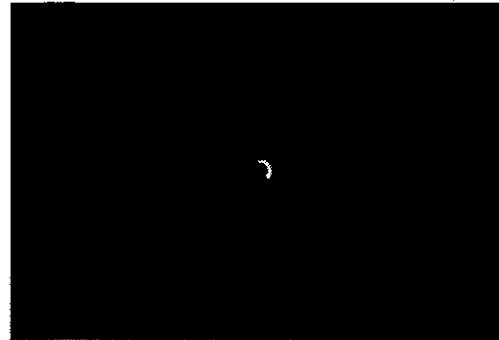
WE'RE HIRING: VIEW AVAILABLE JOBS

Select a page



COMPANIES

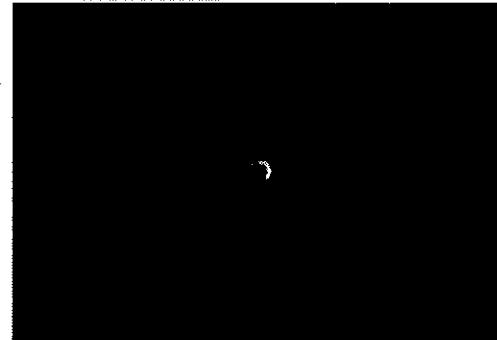
RA 9



### Almar Investments

Almar Investments (Pty) Ltd, was established in 1996 and from humble beginnings have subsequently become a preferred supplier and...

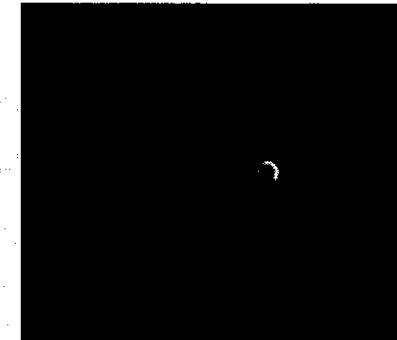
View Job



### Duma Manje Blasting

Duma Manje Blasting is a company that has been in operation for over 20 years and has a proven track record in the mining industry.

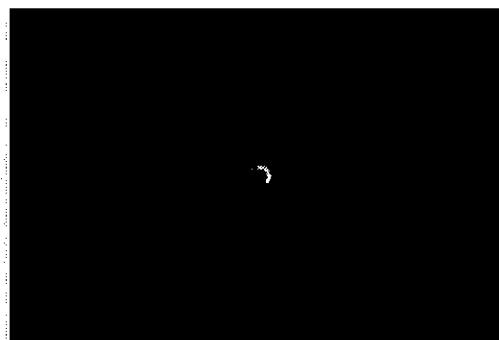
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### Mpukunyoni Mining

Mpukunyoni Mining is a company that has been in operation for over 20 years and has a proven track record in the mining industry.

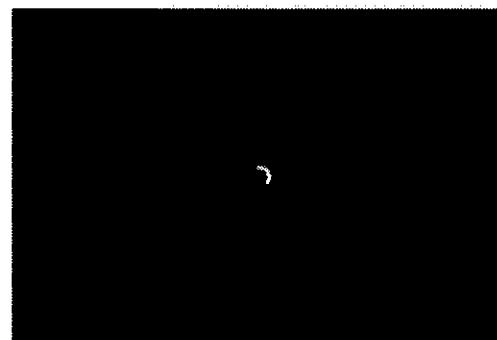
View Job



### Sandton Mining

Sandton Mining is a company that has been in operation for over 20 years and has a proven track record in the mining industry.

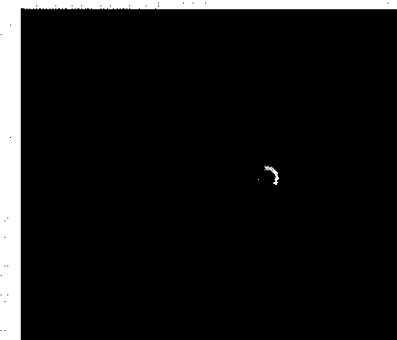
View Job



### Sandton Plant Hire – Since 1982

Sandton Plant Hire – Since 1982 is a company that has been in operation for over 20 years and has a proven track record in the mining industry.

View Job



### Slag Handling & Bulk Material Cont

Slag Handling & Bulk Material Cont is a company that has been in operation for over 20 years and has a proven track record in the mining industry.

View Job

S.S.D.

T. Bm

## Somkhele Plant

OUR VISION



At Somkhele Plant, we are committed to providing high-quality, reliable industrial solutions. Our vision is to be a leading provider of mobile plants and equipment, offering innovative solutions to our clients. We believe in the power of teamwork and collaboration, and we are dedicated to providing exceptional customer service and support. We are always looking for ways to improve and grow, and we are excited about the opportunities ahead.

[FIND OUT MORE ABOUT OUR VISION](#)

OUR MISSION



[FIND OUT MORE ABOUT OUR MISSION](#)

UNIQUE APPROACH



[LEARN MORE](#)

CONTACT US

Call Us

Email Us

[info@sandtonplant.co.za](mailto:info@sandtonplant.co.za)

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S.S.D.T. *IPW*  
S.S.D.T.

RA 10

IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

Case No.: 82865/18

In the matter between:

MFOLOZI COMMUNITY ENVIRONMENTAL JUSTICE ORGANISATION	First Applicant
SABELO DUMISANI DLADLA	Second Applicant
and	
THE MINISTER OF MINERALS AND ENERGY	First Respondent
REGIONAL MANAGER, DEPARTMENT OF MINERAL RESOURCES, KWAZULU-NATAL	Second Respondent
DIRECTOR-GENERAL, DEPARTMENT OF MINERAL RESOURCES	Fourth Respondent
TENDELE COAL MINING (PTY) LTD	Fourth Respondent
MINISTER OF ENVIRONMENTAL AFFAIRS	Fifth Respondent
MTUBATUBA MUNICIPALITY	Sixth Respondent
HLABISA MUNICIPALITY	Seventh Respondent
INGONYAMA TRUST	Eighth Respondent
EZEMVELO KZN WILDLIFE	Ninth Respondent
AMAFa aKWAZULU-NATAL HERITAGE COUNCIL	Tenth Respondent
MPUKUNYONI TRADITIONAL COUNCIL / MPUKUNYONI TRADITIONAL AUTHORITY	Eleventh Respondent
MPUKUNYONI COMMUNITY MINING FORUM	Twelfth Respondent
ASSOCIATION OF MINEWORKERS AND CONSTRUCTION UNION (AMCU)	Thirteenth Respondent
NATIONAL UNION OF MINE WORKERS (NUM)	Fourteenth Respondent

SSD / JBM SWY

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**AFFIDAVIT**

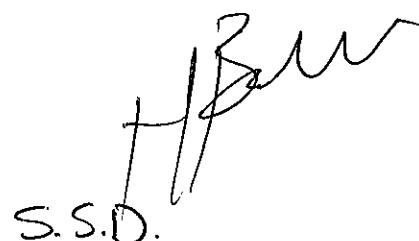
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I, the undersigned,

**SIMON NICHOLAS**

do hereby make oath and say:

- 1 I am an adult male Energy Finance Analyst at the Institute for Energy Economics and Financial Analysis (IEEFA) in New South Wales, Australia.
- 2 The facts contained herein, unless the contrary is indicated by the context, are within my personal knowledge. They are, to the best of my knowledge and belief, both true and correct.
- 3 Prior to my current occupation I worked in the finance sector at various banks including ABN Amro, Macquarie Bank and Commonwealth Bank of Australia. I am a Fellow of the Institute of Chartered Accountants in England and Wales.
- 4 My focus at IEEFA is on coal markets including developed markets such as Japan and South Korea as well as developing countries such as India, Pakistan and Bangladesh and across Africa. Within my focus on the Asian seaborne thermal coal market I have published analysis of the South African coal export sector.



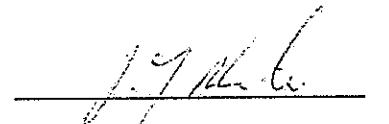
Simon  
S.S.D.

5 I confirm that the resume annexed hereto marked **SN1** sets out my background and professional work record and is true and correct, save where the context indicates otherwise.

6 I confirm that I wrote the report annexed hereto marked **SN2**.

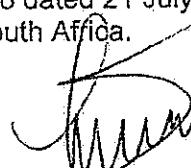
7 I confirm that the contents of the report are true and correct and are within my personal knowledge save where the context indicates otherwise.

8 I record that my location in Australia, the Covid-19 lockdown and the urgency of this matter has made commissioning this affidavit difficult. I will only be able to commission over a video call.



**SIMON NICHOLAS**

I certify that the above signature is the true signature of the deponent who has acknowledged to me that he knows and understands the contents of this affidavit was signed and sworn to at Durban, SA on this the 11 of June 2020 via Zoom in accordance with the provisions of Regulation R128 dated 21 July 1972 (as amended, the Deponent being in Australia and me being in South Africa).



**COMMISSIONER OF OATHS**

**TRUDIE HAYLEY NICHOLS**

**COMMISSIONER OF OATHS**

PRACTISING ATTORNEY R.S.A.  
GROUND FLOOR COMPENDIUM HOUSE  
5 THE CRESCENT  
WESTWAY OFFICE PARK, WESTVILLE, 3629  
KWA-ZULU NATAL. TEL: 031 265 0651



**S.S.D.**

*sw*

SN1

## Resume

Name	Simon Nicholas
Nationality	Australian/British
Address	21 Gordon Avenue, Blackheath, NSW 2785
Contact	+61405831614 simonnickolas34@gmail.com
Education and Qualifications	<p>Masters of Environmental Management graded High Distinction with Excellence</p> <p>Awarded the Orica Ronnie Harding Prize 2017 for best performance</p> <p>University of New South Wales</p> <p>FCA – Fellow of the Institute of Chartered Accountants of England and Wales.</p> <p>BSc (Honours) Zoology graded 2:1</p> <p>Imperial College, London.</p> <p>Anglo-European School, Ingatestone International Baccalaureate (36 points) including Maths, History, Biology, Chemistry, French and English.</p>

## Current

July 2016 – present      **Institute of Energy Economics and Financial Analysis (IIEFA)**

## Energy Finance Analyst

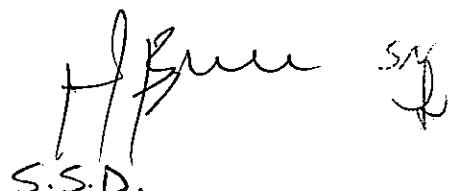
- Lead analyst for IEEFA covering Bangladesh and Pakistan power system and energy transition research.
- Lead analyst covering the Asian seaborne thermal coal market and long term implications for Australia and South Africa.
- Analysis of Asian and African coal-plant pipeline, power utilities, mining and power engineering companies, and transition towards renewable energy.

Albion S.A.  
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- Wrote and published many research reports, briefing notes, articles, newspaper columns (refer to my IEEFA author archive <https://ieefa.org/author/simon/> ).

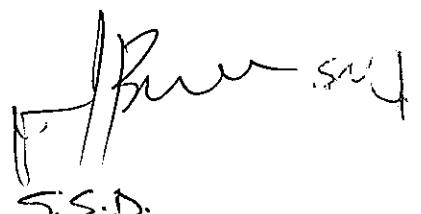
#### **Career History**

March 2011 – February 2015	<b>Commonwealth Bank of Australia – Sydney</b>
	<b>Product Controller – Equity Products Group</b>
	<ul style="list-style-type: none"> <li>• Reporting and analysis of Equity Products Group performance.</li> <li>• Liaison with traders, back office, Group Finance, Performance Reporting.</li> <li>• Responsibility for implementing finance projects.</li> <li>• Supporting front office business development projects.</li> <li>• Development and maintenance of process documentation.</li> </ul>
January 2010 – December 2010	<b>Kruger National Park – South Africa</b>
	<b>Game Ranger, Nsikasi Bush Camp, Mdluli concession</b> <ul style="list-style-type: none"> <li>• Trained as a Safari Guide at Makalali Game Reserve.</li> <li>• Member of the Field Guides Association of Southern Africa.</li> <li>• Anti-poaching patrols within the Mdluli concession.</li> <li>• Walking safaris for guests at Nkambeni Safari Camp.</li> <li>• Training of student guides.</li> <li>• Bushfire fighting within the concession and greater Kruger area.</li> <li>• Track maintenance, grading and erosion control.</li> <li>• Supervising scientists and students undertaking field work.</li> </ul>
March 2007 – September 2009	<b>ABN AMRO Bank - Sydney</b>
	<b>Senior Analyst – Credit Risk Project Team</b> <ul style="list-style-type: none"> <li>• Senior member of a project team responsible for implementing a new risk reporting process.</li> </ul>


  
 H. Bruce S.S.D.

- Led Steering Group meetings with key staff (Finance, Risk, Operations) from locations in Asia and Australia.
- Coaching and assisting junior members of the team.
- Key contact for staff around the Group worldwide to assist in planning and resolution of issues and developments.

September 2005 – March 2007	<b>Macquarie Bank - Sydney</b>
	Manager - Equity Markets Financial Operations
	<ul style="list-style-type: none"> <li>• Leading a team of three people responsible for Reporting and analysis of Equity Markets Group performance.</li> <li>• Responsible for training and annual appraisal of team members.</li> <li>• Liaison with Hong Kong and London business managers and risk management.</li> <li>• Participation in ongoing development projects.</li> </ul>
January 2003 – August 2005	<b>ABN AMRO Bank - London</b>
	Equity Derivatives Product Control and Financial Reporting
	<ul style="list-style-type: none"> <li>• Reporting and analysis of Equity Derivatives performance.</li> <li>• Development and testing of an expansion of the daily reporting system as part of an upgrade project.</li> <li>• Liaison with traders, Operations, Central Finance and Risk Management.</li> </ul>
Sept 1999-Oct 2002	<b>PricewaterhouseCoopers - London</b>
	Three years within the Consumer/Industrial Audit Group with main clients including:
	<ul style="list-style-type: none"> <li>• Reckitt Benckiser.</li> <li>• Burberry.</li> <li>• Mars Electronics.</li> </ul>



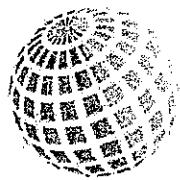
S.S.D.

Other

Board member of the Nature Conservation Council of NSW

- Member of the board (Executive Committee) since 2016
- Chair of the Fundraising Committee since 2018
- Treasurer since 2019

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S.S.D.



**SN2**

**Report: Tendele Coal Mining (Pty) Ltd**

I am an Energy Finance Analyst at the Institute for Energy Economics and Financial Analysis (IEEFA). Prior to this I worked in the finance sector at various banks including ABN Amro, Macquarie Bank and Commonwealth Bank of Australia. I am a Fellow of the Institute of Chartered Accountants in England and Wales.

My focus at IEEFA is on coal markets including developed markets such as Japan and South Korea as well as developing countries such as India, Pakistan and Bangladesh and across Africa. Within my focus on the Asian seaborne thermal coal market I have published analysis of the South African coal export sector.

Pages 27 and 28 of the 11<sup>th</sup>-14th Respondents' Answering Affidavit in the Review (case number 82865/18) give details of the industries that the existing Tendele mine operations products are supplied to: the South African ferrochrome industry, the South African steel industry, overseas steel industries, overseas thermal power generation and other overseas industries such as cement kilns.

There are alternative products that can supply these industries, other than Tendele's products, which calls into question the need for an extension of the mining operations at Tendele in order to support South African jobs.

First of all, Tendele is far from the only producer of anthracite in South Africa. Other sources of South African anthracite include Menar's Zululand Anthracite Colliery (ZAC)<sup>1</sup>, Jindal Africa's Kiepersol mine<sup>2</sup> and Unicorn Capital's Nkomati anthracite mine<sup>3</sup>.

ZAC is itself seeking to extend anthracite production. ZAC considers itself to be "South Africa's sole producer of prime anthracite" and "the preferred supplier to key industrial clients in the South African market".<sup>4</sup> Menar also has plans to develop another anthracite mine – the Riversdale Anthracite Colliery.<sup>5</sup>

<sup>1</sup> <https://www.zac.co.za>

<sup>2</sup> <https://www.jindalafrica.com/business-profile/coal-mining/kiepersol-product>

<sup>3</sup> <https://www.unicorncapital.co.za/investments/>

<sup>4</sup> <https://www.engineeringnews.co.za/article/nkomati-anthracite-to-supply-40-of-south-africas-needs-in-three-to-five-years-2018-06-01>

<sup>5</sup> [https://static1.squarespace.com/static/5954aed34f14bcef30872e85/t/5da8d855d5a903190c8283cd/1571346518612/ZAC\\_Coaltrans\\_Press+Release.pdf](https://static1.squarespace.com/static/5954aed34f14bcef30872e85/t/5da8d855d5a903190c8283cd/1571346518612/ZAC_Coaltrans_Press+Release.pdf)

<sup>6</sup> [http://menar.com/wp-content/uploads/2019/07/Menar\\_PressRelease\\_RAC-1.pdf](http://menar.com/wp-content/uploads/2019/07/Menar_PressRelease_RAC-1.pdf)

*PLB* *sj*  
*S.S.D.*

These alternative sources of anthracite would appear to undermine the idea stated on page 28 and 29 of the 11<sup>th</sup>-14<sup>th</sup> Respondents' Answering Affidavit that closing the mine would "wipe out the South African anthracite market" and endanger 20,000 South African ferrochrome industry jobs.

Tendele also supplies the South African steel industry with anthracite but coking coal (also known as metallurgical coal) is a more commonly used alternative to anthracite for the production of steel. Although South Africa is predominantly a producer of thermal (or energy) coal, some coking coal is produced in South Africa. For instance, Exxaro – the biggest coal producer in South Africa – produces 2 million tonnes of coking coal per annum<sup>7</sup>, more than Tendele's entire annual output according to figures in the 11<sup>th</sup>-14<sup>th</sup> Respondents' Answering Affidavit. Exxaro is also planning to expand its coking coal production by a further 1.7 million tonnes per annum (Mtpa) with construction underway and first additional production expected in the second half of 2020.<sup>8</sup>

In addition, international prices of coking coal have recently dropped significantly making it an even more viable alternative to anthracite. Prices for hard coking coal have recently been as low as US\$113 per tonne, down from US\$210 per tonne in May 2019.<sup>9</sup>

Tendele also supplies the Brazilian steel industry but here again there are alternative products. For instance, Brazilian mining giant Vale owns the Moatize mining operation in Mozambique that currently produces coking and thermal coal. Vale plans to overhaul the mine to focus on coking coal production for the steel industry, increasing the annual coking coal production from 12Mtpa to 15Mtpa.<sup>10</sup>

Furthermore, the mining right application for the extension of the Tendele mine appears to suggest that the extension will produce more thermal coal than anthracite.

On page 616 of the Record in the Review the mining right application gives details of the expected revenue from anthracite and energy coal sales over the life of the mine extension. The application states, "The consolidated total of revenue to be generated over thirty year period for anthracite over the LOM has been estimated to be in the region of R83 406 541 062. The estimate revenue for Energy Coal over the LOM is in the region of R88 619 290 290 415".

The figure given of over R88 trillion of revenue from energy coal sales over the life of the mine (LOM) is clearly a fundamental error. Most likely the digits 290 in the estimated energy coal revenue figure have been erroneously repeated in which case the correct figure should be R88 619 290 415. Even if this is the case, the extension is still set to produce more revenue from energy (thermal) coal sales than anthracite.

<sup>7</sup> Exxaro, South African Investment Conference Media Tour presentation, 31<sup>st</sup> October 2019

<sup>8</sup> Exxaro, Integrated Report 2019

<sup>9</sup> <https://www.afr.com/companies/mining/coal-s-price-collapse-threatens-australian-mines-20200507-p54qv>

<sup>10</sup> <https://steelguru.com/coal/nov29-vale-to-shut-mozambique-coal-operations-for-3-months/553162>

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The following paragraph on page 616 states, "The revenue for Anthracite was calculated based on expected Anthracite sales of R14 354 507 tons...The revenue for Energy Coal was calculated based on expected Energy Coal sales of R18 892 995 tons..."

Again, there appears to be a fundamental error in these figures. They are written with an "R" indicating a Rand figure and also with the unit "tons" indicating a quantity. Given the context of the paragraph it can be presumed that these are meant to be quantities. As such, the mining right application appears to be stating that the mine extension will produce significantly more energy coal (18,892,995 tons) than anthracite (14,354,507 tons) over the life of the mine. This is a reversal of the production of the existing mine which produces mainly anthracite with significantly less energy coal. The mine extension would appear to be set to mine a significantly lower quality resource than the existing operation.

Assuming the figures given in the mining right application can be interpreted correctly, the proposed extension is in effect a thermal (energy) coal mine that also produces anthracite as the secondary product.

Thermal coal is widely available both in South Africa and beyond. The short term outlook for the thermal coal market is poor<sup>11</sup> given the economic impacts of Covid-19 which is significantly reducing power demand. In addition, in the long term outlook for thermal coal is one of permanent decline given the ongoing energy transition towards renewable energy.<sup>12</sup> With the thermal coal market set for oversupply, there are going to be plenty of alternative sources of thermal coal going forward.

India is by far South Africa's biggest thermal coal export destination. India is now stepping up its efforts to reduce thermal coal imports in order to protect its domestic mining industry.<sup>13</sup>

With the thermal coal demand facing continued decline, adding additional supply from new mines and mine extensions risks pushing coal prices even lower leading to existing coal mines becoming unprofitable, thereby endangering existing mining jobs in South Africa.<sup>14</sup>

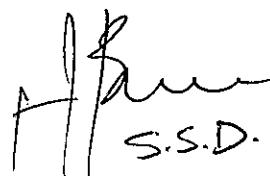
South Africa clearly has alternative sources of anthracite other than the Tendele mine. It does not appear to be the case that South African ferrochrome industry jobs are dependent on the Tendele mine. Furthermore, according to the mining right application the mine extension would produce more energy (thermal) coal than anthracite. With the thermal coal market entering oversupply and permanent demand reduction, adding more thermal coal product into

<sup>11</sup> <https://www.argusmedia.com/en/news/2107096-global-coal-exports-slump-in-1q?backToResults=true&selectedMarket=Coal>

<sup>12</sup> <https://ieefa.org/ieefa-report-transition-planning-a-must-as-south-africas-export-markets-pivot-away-from-thermal-coal/>

<sup>13</sup> <https://www.argusmedia.com/en/news/2102087-india-steps-up-initiatives-to-cut-coal-imports?backToResults=true&selectedMarket=Coal>

<sup>14</sup> <https://www.afr.com/companies/mining/coal-s-price-collapse-threatens-australian-mines-20200507-p54qyy>

  
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the market may only serve to depress coal prices and further endanger existing South African coal mining jobs.

J.J. Shatto

Simon Nicholas  
Energy Finance Analyst  
Institute for Energy Economics and Financial Analysis

J. J. Shatto  
S.S.D. <sup>EW</sup>

## Somkhele Anthracite Mine

### Update on Social and Labour Plans (SLP) – 19 November 2020

On 17 November 2020, the audited annual financial statements (AFS) for Tendele Coal Mining Proprietary Limited for the year ended 30 June 2020 were approved and signed off by our auditors, KPMG.

**Pursuant to the finalization of the AFS, an update on our Social and Labour Plans is provided below.** Somkhele currently has two SLPs for its mining areas:

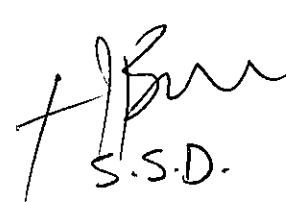
- one for Area 1 and Area 2 (nearing depletion); and
- one for Area 4 and Area 5 (where no mining has yet taken place due to the inability to finalise relocation agreements).

*This SLP was amended in July 2020 to accommodate for the impact of the Covid-19 pandemic and to accommodate the fact that Somkhele does not yet have access to new mining areas.*

As noted in the revised SLP for MR 10041 (dated 27 July 2020), the financial performance of Somkhele was negatively impacted by the Covid-19 pandemic and due to the fact that new mining areas were not accessible and deeper, more expensive areas were required to be mined.

The table below is an extract from the revised SLP for MR 10041 (dated 27 July 2020) and outlines the liquidity challenge presented by the Covid-19 pandemic.

R245m	Export sales cancelled (South American Iron Ore Sinter Market)
R100m	Pre-strip not recovered due to Covid19 shutdown production curtailed
R90m	Glencore Ferrochrome inland sales lost (April and reduced May)
R70m	Samancor Ferrochrome inland sales lost (April and reduced May)
R505m	Total

  
S.S.D.

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The table below, included in the revised SLP for MR 10041 (dated 27 July 2020) is now updated to include results for the year ended 30 June 2020, generated a pre-tax loss of almost R100 million for the year ended 30 June 2020.

FINANCIAL YEAR SUMMARY	FY 14	FY 15	FY 16	FY 17	FY 18	FY 19	FY 20
Revenue	1 019 788	1 274 164	1 282 618	1 414 236	1 535 951	1 691 484	1 071 591
Cost of Sales	788 233	973 221	934 481	1 254 916	1 192 395	1 289 316	1 050 723
Operating profit/(loss)	231 555	300 943	348 137	159 319	343 556	402 167	20 868
IDC interest	(3 601)	(2 078)	(799)	-	-	-	-
Depreciation	(38 873)	(45 154)	(44 052)	(50 244)	(127 189)	(110 309)	(81 471)
Finance income	5 768	6 615	8 411	8 312	8 062	3 372	4 475
Finance expense	(29 723)	(30 374)	(20 683)	(23 370)	(21 113)	(23 012)	(18 942)
Notional interest rehabilitation liability	(2 250)	(3 063)	(11 364)	(10 237)	(10 632)	(25 191)	(20 996)
Royalty (Paid to RSA Government)	(2 284)	(18 595)	(40 544)	(29 642)	(37 273)	(36 537)	(3 454)
Petmin marketing fee (based on pre-tax profit)	(16 066)	(24 148)	(23 910)	(5 351)	(15 541)	(21 048)	-
Profit/(loss) Before Tax (PBT)	144 523	184 143	215 194	48 785	139 869	189 440	(99 521)
Tax	(40 466)	(51 560)	(60 254)	(19 025)	(40 776)	(54 765)	26 896
Profit/(loss) after tax (NPAT)	104 057	132 583	154 939	29 759	99 092	134 675	(72 625)
Profit / Revenue ratio AT	10%	10%	12%	2%	6%	8%	-7%

#### Update on funding position

Subsequent to 30 June 2020, Petmin and Tendele entered into various refinancing agreements with its funders in which a total of R593 million debt was secured as follows:

- Term Loans from banking institutions – R393 million
- Shareholder loans – R100 million
- Short-term banking facilities – R100 million

In addition, shareholders have provided the banking institutions with guarantees amounting to R110 million.

Somkhele's existing mining areas will be depleted within the next two years and the cash generated in that period of time is required to settle the debt noted above.

In order for there to be a meaningful future contribution to the community around Somkhele, the mine needs to complete the relocation process in the new mining areas. Should this happen, then Somkhele will continue to have the ability to make a meaningful contribution to the local community for the next 10 years.

*J. S. S. D.*  
S.S.D.

**“JDP8”** EA 12

# MANAGEMENT BRIEF

**129**

Brief No	HR 2020 – 05	Date Issued	27 February 2020
To:	Employees of Tendele, Mpukunyoni Mining and Relevant Contractors		

## FEEDBACK REGARDING CCMA FACILITATION IN TERMS OF SECTION 189 (3) OF THE LABOUR RELATIONS ACT, 1995 – LARGE SCALE RETRENCHMENTS

As per the brief sent out on 17 February 2020, the Mine is facing large scale retrenchments and has together with the unions (NUM, AMCU and Solidarity) approached the CCMA to facilitate the process.

The first facilitation was held on 25 February 2020 and this brief summarises what was presented to the Unions by Management as well as the way forward. The facilitation involves the employees of Tendele Coal mining (Pty) Ltd, Mpukunyoni Mining (Pty) Ltd and Duma Manje Blasting (Pty) Ltd – these three companies collectively employ 916 employees at Somkhele Mine.

### Detail Presented by the Mine:

The Mine again presented the information regarding the reasons for retrenchments:

- Future mining areas as well as Boxcut 0 not available as yet for mining;
- Current mining of deeper materials in the operational pits has caused increased production costs;
- Geological issues in some pits causing coal losses which influences production costs;
- Luhlanga pit's (Area 8) mining has been concluded – thus surplus labour available;
- Ferrochrome industry under pressure and closing some smelters which influences Tendele's ability to sell coal;
- Export markets unavailable as coal prices have reduced and clients sourcing materials elsewhere;
- Reduction of non-core positions to reduce costs.

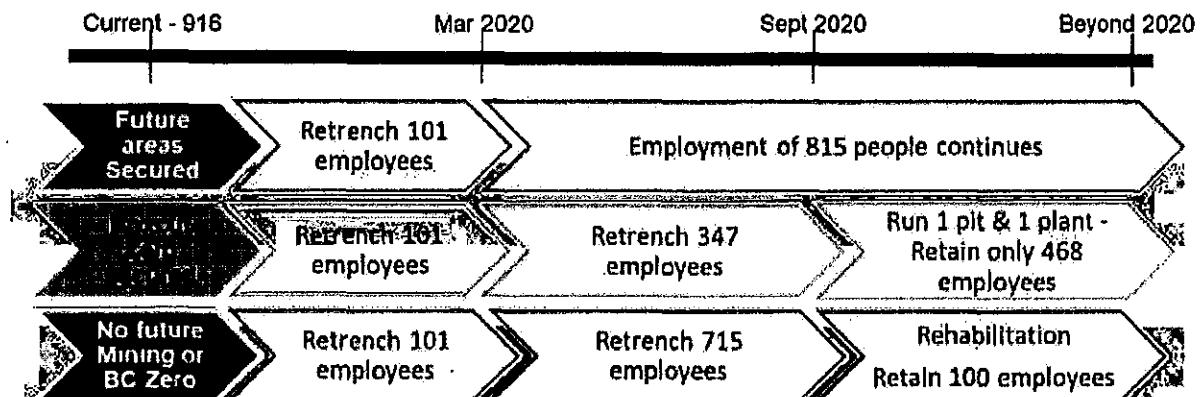
The Mine proposed that retrenchment criteria be used in terms of the table below (this being an example) instead of the principle of LIFO (Last In First Out) as this principle has never been used before in the Mine.

Criteria	Score (?/10) (a)	Weight (?/10) (b)	Weighted Scores (a x b)	Comment
Scholastic	4	5	20	Below ST 5= 0, St 5 - =1, St6 = 2, St 7 = 3, St 8 = 4, St 9=5, Matric = 6 (ABET 3 = 4)
Qualifications	5	8	40	5 Points if meeting job requirements, 2 points per additional relevant qualification
Operator Licenses	2	8	16	x points per license where relevant to the position
Years of Service	6	2	12	2 points per year of service
Performance	8	8	64	Supervisory rating
Disciplinary Record	2	-5	-10	2 points per valid warning
DAC	1	10	10	1 for yes, 0 for no
<b>TOTAL</b>			<b>152</b>	

The Mine furthermore presented the planned numbers for retrenchment for the three companies in question are as per the below details in the schematic and table. This shows the amount of employees for

*H. G. D.*  
S.S.D.

each company that will be affected by the end of March 2020 as well as September 2020 depending on whether BoxCut 0 (BC0) or Future Mining (FM) areas will be secured at the time:



	Current Total	Retrench End March 2020	If ONLY BC0, Retrench End Sept 2020	If NO BC0 / FM Retrench End Sept 2020	FINAL Total (Rehab, Care & Maintenance)
Tendele	375	59	94	182	40
Mpukunyoni Mining	478	41	226	158	53
Duma Manje	63	1	27	28	7
<b>Total Reduced</b>		<b>101</b>	<b>347</b>	<b>368</b>	
<b>Total Remaining</b>	<b>916</b>	<b>815</b>	<b>468</b>	<b>100</b>	<b>100</b>

In terms of timeframes the Mine has confirmed that no retrenchments will occur before the end of March 2020 and that the retrenchments envisaged in September will depend on the progress with new mining areas by the end of June 2020, i.e if access to one area is obtained at that time.

The Mine also stated that Severance Pay will consist of the following:

- 1 x week per completed year of service
- 1 month's notice pay
- Accumulated leave
- Pro-rata bonus
- EBS dividend if a "good leaver"

#### Unions Response

The Union representatives have requested that they first share the information presented by the Mine with their constituencies and receive mandates before comments or inputs will be noted. After these discussions, feedback will be given to Management at the next meeting which is scheduled for 9 March.

A proposal has been tabled that a task team be setup between the Unions and Management (3 of each, thus 12 people in total) to review relocation and beneficiation to date and to see if any assistance can be provided through such a platform. The Mine welcomes this initiative but also notes that Union officials and


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Regional Heads have been briefed to date by the CEO, Mr Jan du Preez. Important to note that this process cannot assist with the retrenchments planned for end March but can assist with that which is envisaged in September.

The proposal has also been made that the Mine considers the TES (temporal employment services) which is available through DoL for the retrenchments planned in March. Commissioner Hlope of the CCMA has committed to explain / present more regarding this process at our next meeting. Management will in the meantime also research this in preparation and notes that no commitments can be made without understanding the implications.

**The way forward:**

Next meeting dates at the CCMA have been agreed to as 9 March and 23 March 2020.

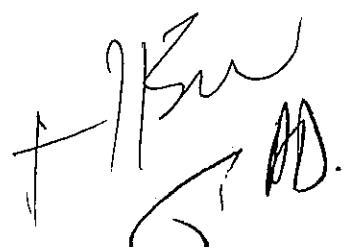
We urge employees to, as said, promote the Mine and explain to your family and friends, the importance of an operational mine in this area. Although this is sad news, let's keep our heads up and our focus clear in terms of our daily tasks to be done at work, avoid production standing time and have a conscious regard for safety and health of yourself and your peers whilst you work.

Yours sincerely



JM Steyn

COO



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