



**MINISTER
FORESTRY, FISHERIES AND THE ENVIRONMENT
REPUBLIC OF SOUTH AFRICA**

Reference: LSA 224765

APPEAL DECISION

**APPEAL LODGED AGAINST THE DECISION OF THE DEPARTMENT OF MINERAL
RESOURCES AND ENERGY TO GRANT AN INTEGRATED ENVIRONMENTAL
AUTHORISATION TO IKWEZI VANADIUM (PTY) LTD, IN RESPECT OF A MINING RIGHT
AND ASSOCIATED ACTIVITIES**

Mining Affected Communities United in Action (MACUA)
and Women Affected by Mining United in Action (WAMUA) **Appellant**

Ikwezi Vanadium (Pty) Ltd **Applicant**

Department of Mineral Resources and Energy **Competent Authority**

Appeal: This is an appeal submitted by Mining Affected Communities United in Action (MACUA) and Women Affected by Mining United in Action (WAMUA) (the appellant), against the decision of the Regional Manager: Mineral Regulation of the Department of Mineral Resources and Energy (the DMRE), North-West Regional Office, taken on 19 October 2022, to grant an integrated environmental authorisation (IEA) to Ikwezi Vanadium (Pty) Ltd (the applicant) for listed activities pertaining to the proposed open cast mining of Iron Ore, Phosphate, Aggregate,

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Sand, Titanium and Vanadium Ore in respect of portions 1, 2 and the remaining extent of the Farm Morewag 921 JQ, and portion 7 of the Farm Haakdoornfontein 12 JQ (excluding portions 7 and 10 of the Farm Varkfontein 13 JQ) within the Magisterial District of Mankwe in the North West Province.

1. BACKGROUND AND APPEAL

- 1.1 On 21 September 2020, the applicant lodged an application for an IEA with the DMRE for listed activities in respect of a mining right application at the abovementioned location.
- 1.2 This application was lodged in terms of the Environmental Impact Assessment Regulations, 2014 (2014 EIA Regulations), published under the National Environmental Management Act, 1998 (Act No. 107 of 1998), as amended (NEMA), and Government Notice 921 (the list of waste management activities that have, or are likely to have, a detrimental effect on the environment), published under the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008) (NEMWA).
- 1.3 The applicant commissioned Envirostep (Pty) Ltd, as an independent environmental assessment practitioner (EAP), to undertake an environmental impact assessment (EIA) for the abovementioned EA application.
- 1.4 On 30 May 2022, the EAP submitted an Environmental Impact Assessment report (EIAR) and an Environmental Management Programme (EMPr), prepared in respect of the IEA application to the DMRE, for consideration and decision-making purposes.
- 1.5 On 19 October 2022, after evaluating the reports and all relevant information submitted in support of the above application, the DMRE issued the IEA to the applicant under reference number: NW 30/5/1/2/3/2/1/10178 EM.

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- 1.6 On 22 November 2022, the Directorate: Appeals and Legal Review (Appeals Directorate) within the Department of Forestry, Fisheries and the Environment (the Department) received an appeal from MACUA/WAMUA (the appellant) against the aforesaid decision of the DMRE to approve the IEA application. This appeal was lodged in terms of section 43(1A) of NEMA, read together with regulation 4 of the National Appeal Regulations, 2014 (2014 Appeal Regulations).
- 1.7 On 17 January 2023, the applicant and the DMRE submitted their responding statements to the appeals.
- 1.8 The appeal is predominantly premised on the grounds of inadequate public participation.
- 1.9 I shall deal with the grounds of appeal hereunder.

2. GROUNDS OF APPEAL, RESPONSES AND EVALUATION

- 2.1. The appellant submits the following:
 - 2.1.1. The community of Mononono is concerned with the manner in which the applicant conducted its consultations in relation to their IEA for the mining right activities.
 - 2.1.2. The appellants objectives are to create awareness about the rights of communities who live in areas surrounding mining operations; to build the agency of communities to claim these rights; and to support those communities, as they add their voice to deliberations about the future development of their area. The appellant has a shared interest in empowering local communities to address significant socio-economic challenges with the assistance of legislative mechanisms like the Constitution of South Africa.

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2.1.3. Page 8 of the IEA states that the applicant conducted public participation with the community of Mononono and further indicates that the following public participation process (PPP) was followed:

- A notice for consultation was published in a local newspaper on 13 August 2021;
- A notice was placed at the project site; and
- Notices were sent to all key stakeholders and registered interested and affected parties (I&APs).

2.1.4. However, community members who are part of the Mononono MACUA Branch indicated that they were not aware of the PPP being undertaken in relation to the notices and indicated that consultation notices were only delivered to certain individuals within the community via email. Other affected community members only found out or received notice of the consultations once they had already taken place.

2.1.5. In *Bengwenyama Minerals (Pty) Ltd and Others v Genorah Resources (Pty) Ltd and Others* (the Bengwenyama case),¹ the community appealed a judgment in the Constitutional Court, after the approval of a mining right for Genorah following irregularities in the consultation process, lack of compliance with environmental requirements and unfair administrative procedures. The Constitutional Court (Froneman J) decided that Genorah had not consulted with the community as required by the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002) (MPRDA), that the decision-maker had not given the community a hearing or complied with the fairness requirements of PAJA, and that the environmental requirements in terms of the MPRDA had not been satisfied. The Court further held that the purpose of consultation with landowners, as required by the MPRDA, was to provide them with the information necessary to make an informed decision on how to respond to the application.

¹ *Bengwenyama Minerals (Pty) Ltd and Others v Genorah Resources (Pty) Ltd and Others* (CCT 39/10) [2010] ZACC 26.

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2.1.6. Similar to the Bengwenyama case, the applicant did not consult with all the I&APs and, as a result, the consultation process lacks compliance with environmental requirements. The Mononono community members were not provided with the information necessary to make an informed decision on how to respond to the application.

2.1.7. Page 7 of the IEA states that key factors were considered in granting the approval for the IEA, including the following:

- The procedure that was followed is in accordance with NEMA and the 2014 EIA Regulations;
- The environmental impacts associated with the activity will be addressed by the mitigation measures outlined in the EIAR and EMPr;
- A sufficient PPP was undertaken by the applicant in the community of Mononono;
- The air quality impact assessment report;
- The traffic impact assessment report;
- The biodiversity impact assessment report;
- The social assessment report;
- The hydrogeological assessment report;
- The agricultural agro-ecosystem specialist report;
- The noise impact assessment report; and
- The financial provision set aside for rehabilitation and submitted to the office.

2.1.8. Upon realising that the IEA did not contain the reports indicated on page 7, which would allow the appellant a full understanding of the processes and procedures undertaken by the applicant, as well as assist the appellant in making meaningful comments in the IEA, the appellant requested the reports directly from the applicant.

2.1.9. The applicant did not however provide the reports submitted to the DMRE for the appellant to assess the merits and compliance of the application, whereas I&APs have a right to access these documents as they are public documents.

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- 2.1.10. In the *Bengwenyama* case, the court held that I&APs as contemplated in the MPRDA are entitled by sections 10(1) and 22(4) of the MPRDA, to be furnished with a copy of the application for a mining right as contemplated in section 22 of the MPRDA. Although this case is different from the IEA process undertaken in the present matter, it is applicable with respect to providing access to public documents to facilitate meaningful public participation. Due to the lack of information presented in the EIA, the appellant was not able to meaningfully engage in the process.
- 2.1.11. In *Baleni and Others v Regional Manager Eastern Cape Department of Mineral Resources and Others*,² the court stated that I&APs are entitled by sections 10(1) and 22(4) of the MPRDA, to be furnished with a copy of an application for a mining right to exercise their rights under the MPRDA meaningfully. The court further held that the purpose of requesting information is to determine whether, post facto the process, certain requirements have been met. Furthermore, the inputs of the I&APs to the mining application are intended to inform the Minister whether the application meets all the prescribed requirements in terms of the objects of the MPRDA and the necessary consultation processes.
- 2.1.12. The Court therefore held that obtaining a copy of the mining right should not be restricted for the I&APs, as they are the persons who should deal directly with the issues that will ultimately determine the fate of the mining right application.
- 2.1.13. The applicant must provide the appellant with all the reports mentioned in page 6 of their EIA and conduct proper consultations with the Mononono community.

² *Baleni and Others v Regional Manager Eastern Cape Department of Mineral Resources and Others* [2020] 4 All SA 374 (GP).

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Response by the applicant

2.2. The applicant submits as follows:

2.2.1. The applicant understands the importance of community engagement and information sharing.

The following PPP was undertaken in terms of the 2014 EIA process:

- On 26 August 2021, site notices were placed at Municipal Offices and surrounding communities. A Site Notice was placed in Mononono (25°2'45"S; 27°11'13"E) as well as several other locations.
- Advertisements were placed in the following local newspapers:
 - On 19 March 2021 in the Platinum Bushvelder; and
 - On 13 August 2021 in the Platinum Weekly.
- Public sharing sessions in the form of Focus Group Meetings were held with the surrounding communities, land occupiers, and other stakeholders as follows:
 - On 11 May 2021 with members of the surrounding communities. A total of 142 members from the Mononono Community attended this meeting.
 - On 16 June 2021 to share information on planned projects, the current status of projects, and what the community can do to stay involved, as well as obtaining comments and concerns and addressing questions from the communities.
 - On 22 March 2022, a meeting was held with the affected farmers on and surrounding the proposed mine area.
 - On 25 March 2022, a further meeting was held with the cattle farmers in the area that use the property for grazing.

2.2.2. On 28 June 2021, an online meeting was held with representatives from MACUA/WAMUA, for further discussions on the project.

2.2.3. Stakeholders were requested to register as I&APs for the project to receive the draft documentation for review via email. The draft documents and all notifications were sent via

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email to all registered I&APs. Registered I&APs who received the draft documentation for review included members of the Mononono community structures and MACU/WAMUA. Landowners and Land Occupiers were consulted.

- 2.2.4. A large number of community members, and the Headman of Mononono attended the public meetings. During these meetings no concerns to stop the project were raised, on the contrary, the community members were pleading for the project to continue to create job opportunities as there is high unemployment in the community.
- 2.2.5. The draft EIAr and EMPr was circulated for public review on 1 October 2021 and the amended layouts sent on 18 May 2022. Members from MACUA were also sent the draft EIAr & EMPr for review. The reports were provided on a Dropbox link that was sent to all registered I&APs via the notification emails on 1 October 2021.
- 2.2.6. All due processes were followed in the consultations. This is evident from the documentary proof that has been provided. The appeal is baseless, as a meeting was held with the representative of MACUA/WAMUA on 28 June 2021, where all matters of clarity were discussed. There has been continuous correspondence with the MACUA/WAMUA representative. Furthermore, on the 10 August 2021, MACUA/WAMUA expressly stated that there are no outstanding documents that they require and that they had no further comments on the EIA documentation and process. They only indicated that they wished to be considered for the next phase of consultation, being the Social and Labour Plan processes.

Comments by the DMRE

- 2.3. The DMRE submits the following:
 - 2.3.1. According to the submitted final EIAr dated November 2021, it was indicated that PPP was conducted as follows:

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Scoping phase

- Background information documents were hand delivered to the surrounding landowners, occupiers of land adjacent to the property where the activity will be taking place, the municipal councillor, and an organisation of ratepayers which represented the community in the area.
- Newspaper adverts were placed in the Platinum Bushvelder on 19 March 2021 and in the Platinum weekly on 13 August 2021.
- A focus group meeting was held on 11 May 2021.

EIA phase

- On site notices were placed on the 26 August 2021 and proof of such was provided together with the GPS location of where those notices were placed.
- A second meeting was not held as the community members indicated that the first meeting was enough.

- 2.3.2. In addition, according to the email attached as part of the PPP, Phyllia Ngoatje of MACUA was consulted on the 28 July 2021 and responded on 10 August 2021 as follows *“I’ve gone through the documents and did not see anything missing that we would like to ask at this stage, we look forward to being part of the consultations, more especially on the SLP, going forward.”*

EVALUATION (REASONS FOR THE DECISION)

- 2.4. The central issue for determination in this appeal is whether the applicant, in pursuance of their IEA application for the proposed activities, satisfied the requirements of PPP contemplated in Chapter 6 of the 2014 EIA Regulations, namely, whether the applicant afforded the registered I&APs an opportunity to comment on the EA application, and to review and comment on the reports prepared in support of this application.

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- 2.5. Evidently, the purpose of the public participation provision of NEMA is, among others, to afford people the opportunity to express their views on matters affecting them. This principle was reiterated by the Constitutional Court in *Fuel Retailers Association of Southern Africa v Director General Environmental Management Department of Agriculture and Conservation and Environment Mpumalanga Province*.³
- 2.6. I must stress that the requirement to consult with I&APs must accord with the specified principles of NEMA, as set out in section 2 thereof.
- 2.7. The 2014 EIA Regulations prescribes specific minimum public participation requirements to give effect to section 2 of NEMA. In particular, regulation 41(6) of the 2014 EIA Regulations stipulates that the person conducting the PPP must ensure that the participation by potential or registered I&APs is facilitated in such a manner that all potential or registered I&APs are provided with a reasonable opportunity to comment on the application or proposed application. These provisions are written in peremptory terms.
- 2.8. The minimum PPP requirements in the 2014 EIA Regulations (regulations 21, 23, 41, 42, 43 and 44) are as follows:
- 2.8.1. The person conducting PPP must give notice to all potential I&APs of an application or proposed application which is subject to public participation by –
- 2.8.1.1. Fixing a notice board (of a size of at least 60cm by 42cm) at a place conspicuous to and accessible by the public at the boundary, or on the fence or along the corridor of the site.
- 2.8.1.2. Giving written notice in any of the manners provided for in section 47D of NEMA to:
- The occupiers of the site and, if the applicant is not the owner or person in control of the site, the owner or person in control of the site;

³ *Fuel Retailers Association of Southern Africa v Director General Environmental Management Department of Agriculture and Conservation and Environment Mpumalanga Province* 2007 (6) SA 4 (CC) at para 76.

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- Owners, or persons in control of, and occupiers of land adjacent to the site where the activity is or is to be undertaken;
- The municipal councillor of the ward in which the site is situated and any organisation of ratepayers that represent the community in the area;
- The municipality which has jurisdiction in the area;
- An organ of state having jurisdiction in respect of any aspect of the activity; and
- Any other party as required by the competent authority.

2.8.1.3. Placing an advertisement in one local newspaper.

2.8.1.4. Using reasonable alternative methods, as agreed to by the competent authority, in those instances where a person is desirous of, but unable to, participate in the process due to illiteracy, disability, or any other disadvantage.

2.8.2. The person conducting the public participation process must ensure that information containing all relevant facts in respect of the application is made available to potential I&APs, and that participation by potential or registered I&APs is facilitated in such a manner that all potential or registered I&APs are provided with a reasonable opportunity to comment on the application.

2.8.3. The applicant must ensure the opening and maintenance of a register of I&APs and submit such a register to the competent authority, which register must contain the names, contact details and addresses of-

2.8.3.1. all persons who, as a consequence of the PPP conducted in respect of that application, have submitted written comments or attended meetings with the proponent, applicant or EAP;

2.8.3.2. all persons who have requested the proponent or applicant, in writing, for their names to be placed on the register; and

2.8.3.3. all organs of state which have jurisdiction in respect of the activity to which the application relates.

2.8.4. Registered I&APs are entitled to comment, in writing, on all reports or plans submitted to such party during the PPP contemplated in the 2014 EIA Regulations, provided that the I&AP discloses any direct business, financial, personal or other interest which that party may have in the approval or refusal of the application.

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- 2.8.5. The Scoping Report, EIAr and EMPr must have been subjected to a PPP of at least 30 days, prior to submission of the reports to the competent authority for decision-making.
- 2.8.6. The applicant must ensure that the comments of I&APs are recorded in the reports and plans and that such written comments, including responses to such comments and records of meetings, are attached to the reports and plans that are submitted to the competent authority.
- 2.9. In the present matter, the information before me indicates that the following PPP was undertaken (in sequential order):

THE SCOPING PHASE

- 2.9.1. Site notices were placed on the surrounding site on 10 February 2021. The detail of the site notices (i.e. the contents of the notice, and the date of placement and location of the notices) are not clearly indicated in the photographs of the site notices contained in the EIAr, however the proof of placement of the site notices is confirmed by the appellant itself in an email dated 10 February 2021, wherein the appellant (legal.phyllia@macua.org.za) states that "A notice citing you has been seen in Mononono with DMR reference number: NW 30/5/1/2/2/10178 MR)." In the email, the appellant requests information on how I&APs can register to enable the Mononono community structures to engage on the application for the mining right. The appellant also provided the contact details of two members of the Mononono community structures for inclusion in the EAP's I&AP database.
- 2.9.2. A clear photograph of the site notice is also attached to the appellant's email dated 10 February 2021, from which it can be ascertained that the site notice provided the details of the application for the IEA which is subjected to PPP, as well as the manner in which, and the person to whom, representations in respect of the application could be made. The applicant also submitted the EAP's detailed expense claim as additional proof of the placement of the abovementioned site notices on 10 February 2021, in Mononono, Legogolwe and Manamakgotheng.
- 2.9.3. Registered I&APs received written notification (email) of the proposed application for IEA on 10 March 2021. A link to access the draft Scoping Report was included in the email.

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- 2.9.4. The draft / consultation Scoping Report was made publicly available to all registered I&APs for review and comments from 11 March 2021 to 16 April 2021. The applicant submitted email proof, dated 10 March 2021, of the circulation of the draft Scoping Report to the appellant. Moreover, in an email dated 12 March 2021, the appellant itself forwarded the EAP's email to the same two members of the Mononono community structures (ditsele.sam@gmail.com; modisephefo29@gmail.com) which it provided to the EAP for registration on 10 February 2021. The appellant's email, which states "*Please find the email and the attached scoping report from the link for you[r] attention. Share with your structures, discuss and let's work together to make comments if there is something you disagree with*" thus confirms receipt of the draft Scoping Report by the appellant and the relevant leaders of the Mononono Community.
- 2.9.5. A newspaper advertisement was placed in the Platinum Bushvelder on 19 March 2021 to notify I&APs of the application for an EA and WML, and to inform them of the availability of the draft Scoping Report for comments.
- 2.9.6. A Background Information Document (BID) containing details of the environmental authorisation process and the proposed project was distributed (hand delivered) to the surrounding landowners and some were emailed to relevant authorities and I&APs on 11 May 2021.
- 2.9.7. Public consultation meetings were held on 11 May 2021 at a private venue in Mononono. Close to 180 people attended the sessions on 11 May 2021. Attendees were from communities surrounding the proposed mining area, including members of the Mononono and Moruleng communities. The briefing sessions were conducted in local languages and in English. Comments and responses made at the meeting, attendance registers, and photographic evidence of the meetings, is captured in the PPP report.
- 2.9.8. On 31 May 2021, the DMRE declined the Scoping Report and requested additional information, namely proof that the Scoping Report had been sent to the local municipality for comments, proof of the placement of the onsite notices and newspaper advertisement, a complete list of I&APs, proof of acknowledgement of the receipt of the Background Information Documents, and clear maps. The additional information was to be submitted to the DMRE by 18 June 2021.
- 2.9.9. On 04 June 2021 and 06 June 2021 respectively, the EAP submitted the draft Scoping Report to the Moses Kotane Local Municipality, the North West Department of Economic Development,

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Environment, Conservation and Tourism (DEDECT), and the South African Heritage Resources Agency (SAHRA), for their comments thereon.

- 2.9.10. On 08 June 2021, the applicant held a zoom meeting with the appellant (MACUA) to discuss the overall Ikwezi Vanadium project. The applicant attached the zoom meeting video recording to its responding statement as proof of the meeting in this regard.
- 2.9.11. On 10 June 2021, the updated Scoping Report was submitted to the DMRE.
- 2.9.12. Additional public consultation meetings were held on 16 June 2021 at the same private venue in Mononono. More than 200 people attended the sessions, including community leaders and a tribal authority. Attendees were from communities surrounding the proposed mining area, including members of the Mononono community. The briefing sessions were conducted in local languages spoken in the community being SeTswana, siXhosa, isiZulu and in English. Comments and responses made at the meeting, attendance registers, and photographic evidence of the meetings, are captured in the PPP report.
- 2.9.13. On 21 July 2021, the DMRE accepted the Scoping Report.
- 2.9.14. On 28 July 2021, the EAP emailed the appellant (legal.phyllia@macua.org.za), stating that, as per their telephonic conversation, the meeting minutes (comments and response report) and attendance registers of the 4 briefing sessions held on 11 May 2021 were attached to the email, and that MACUA/WAMUA was to advise should they require another meeting on the project. The following documents were attached to that email: 1) draft Comments and Response Report; 2) Public Participation Report; 3) Comment Forms received 11 May 2021; 4) Traffic Impact Assessment Report, and 5) the draft Air Quality Impact Assessment Report.
- 2.9.15. On 10 August 2021, the appellant (legal.phyllia@macua.org.za) provided a response to the EAP's email of 28 July 2021, wherein they stated that they had gone through the documents and did not see anything missing that they would like to comment on at that stage, and that they looked forward to being part of the consultations, particularly the Social Labour Plan (SLP), going forward.
- 2.10. I pause here to reflect on the above-mentioned Scoping Phase PPP. I have noted that the newspaper advertisement was published 7 days after the commencement of the 30-day

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commenting period on the draft Scoping Report. The applicant attributes this irregularity to the publication frequency of the local newspapers during COVID and avers that the EAP requested the advertisement to be published on 10 March 2021, however due to the newspaper's publishing schedule, the advertisement was only published on the next available date. While regulation 41(2)(c) of the 2014 EIA Regulations only requires I&APs to be notified of the application which is subjected to PPP, and not necessarily the availability of the Scoping Report for comment, it is apparent that such advertisements must be published prior to, or on the date of commencement of the 30-day commenting period, to ensure that I&APs are timeously notified of the project and that they are afforded, at a minimum, a full 30 days to register for the project and comment on the Scoping Report.

- 2.11. The applicant submits that the commenting period on the draft Scoping Report was in any event affected by three public holidays (Monday, 22 March 2021; Friday, 2 April 2021; and Monday, 5 April 2021), which automatically served to extend the public participation period by an additional three days, and states that the commenting period on the draft Scoping Report therefore ended on Monday, 19 April 2021. In this regard, I must point out that regulation 3(5) of the 2014 EIA Regulations (which states that “[w]here a prescribed timeframe is affected by one or more public holidays, the timeframe must be extended by the number of public holiday days falling within that timeframe”) requires the EAP to actively extend the 30-day commenting period to provide a due date for comments that already takes into account any public holidays falling within that period. It is not incumbent on registered I&APs to know or assume that the deadline provided by the EAP, for the submission of comments on the Scoping Report, ought to have been extended by an additional three days.
- 2.12. Notwithstanding the above, I take note of the applicant's submission in their responding statement that the final Scoping Report was only submitted to the DMRE on 10 June 2021, after the additional public participation was conducted with the local municipality, and focus group meetings were held with the community, and that the I&APs were therefore afforded additional

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time to the initial 30 days to submit comments on the draft Scoping Report, subsequent to the publication of the newspaper advertisement.

- 2.13. I note further from the above Scoping Phase PPP that the Scoping Report was initially submitted to the DMRE for decision-making sometime after 16 April 2021 (the end of the initial consultation period on the report) and before 31 May 2021 (the decline of the Scoping Report by the DMRE), and that the applicant subsequently undertook additional PPP to comply with the information requirements of the DMRE. In this regard, I note that the applicant circulated the Scoping Report to the Moses Kotane Local Municipality, the North DEDECT, and to SAHRA for comments on 06 June 2021, however the updated Scoping Report was subsequently submitted to the DMRE for decision making on 10 June 2021, which would not have afforded these authorities a period of 30 days to comment on the Scoping Report prior to submission thereof to the DMRE.
- 2.14. Notwithstanding the above, I note that the Scoping Report was only accepted by the DMRE on 21 July 2021. It is therefore possible that these authorities were permitted additional time (concurrent with the DMRE's review of the updated Scoping Report) to comment on the report, and that the EAP communicated the outcome of the additional PPP undertaken, and any comments received, to the DMRE, prior to the DMRE's acceptance of the updated Scoping Report. In any event, the EIAr confirms that further consultations were undertaken with these authorities during the EIA phase. I am therefore satisfied that they would have been afforded another opportunity to comment on the application during the EIA phase. It is also noteworthy that no comments or objections to the application for IEA were received from these authorities, and that these authorities also did not appeal the granting of the EA.
- 2.15. I note that additional public consultation meetings were held on 16 June 2021, after the updated Scoping Report had already been submitted to the DMRE. It must however be noted that these meetings were undertaken by the EAP in addition to the minimum PPP required by the 2014 EIA Regulations, and that the comments received at these meetings were considered during

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the EIA phase of the application and were included to the Comments and Response Report (CRR) attached to the EIAr.

THE EIA PHASE

- 2.15.1. A second newspaper advertisement was placed in the Platinum Weekly on 13 August 2021, to notify I&APs of the application for an EA and Waste Management Licence (WML), and to inform them of the availability of the EIAr/EMPr for comments. The advertisement provided details on how to access the reports.
 - 2.15.2. On 26 August 2021, site notices were displayed at different points in the study area, including Mononono, Sesfikile, Legogolwe, Manamakgoteng, the Mogwase Community Library, and the Moses Kotane Local Municipality.
 - 2.15.3. The draft EIAr & EMPr was made publicly available to all registered I&APs for review and comments from 1 October 2021 to 1 November 2021, including the MACUA/WAMUA representative (Phyllia Ngoatje) and the two members of the Mononono community structures identified by the appellant for registration as I&APs. The email sent to registered I&APs on 01 October 2021 included a Dropbox link to access and download the draft EIAr and EMPr.
 - 2.15.4. On 05 November 2021, the final EIAr and EMPr was submitted to the DMRE.
 - 2.15.5. On 21 February 2022, the DMRE provided comments on the EIAr.
 - 2.15.6. On 22 March 2022, the applicant/EAP held a meeting with affected farms on Haakdoornfontein.
 - 2.15.7. On 25 March 2022, the applicant/EAP held a meeting with affected cattle farmers.
 - 2.15.8. All comments received from I&APs are captured in the Comments and Response Report, which formed part of the final EIAr. Members of the Mononono community and a MACUA/WAMUA representative (Phyllia Ngoatje) are also included in the I&AP register.
 - 2.15.9. On 18 May 2022, an amended EIAr and EMPr was provided to I&APs. No public review period was indicated in the notification.
 - 2.15.10. On 30 May 2022, a final amended EIAr and EMPr was submitted to the DMRE.
- 2.16. It is therefore apparent from the above-mentioned EIA phase PPP that the appellant, through

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their representative, and the members of the Mononono community who registered as I&APs, were afforded an adequate opportunity to participate in the application for IEA during the scoping phase and on the initial version of the EIAr.

- 2.17. In addition, the applicant's responding statement includes an affidavit from TS Ditsele, dated 8 February 2024, wherein he stated under oath that he was formerly part of the community leaders from the Mononono Community, and an activist involved with the appellant (MACUA), that objected to the applicant's IEA on the basis that there was no consultation conducted by the applicant within the community during the EIA processes. He states further that the objection was unfortunately based on misinformation and disinformation within their own community structures and that consultations were held with the applicant, together with MACUA and that he was one of the recipients of the environmental reports from the applicant, which were sent to his email address. He accordingly confirms that he is satisfied with the EIA and consultation processes that were conducted and has no further objections to the granting of the applicant's IEA.
- 2.18. Notwithstanding the above, I have noted from the PPP conducted during the EIA Phase of the application, that the EAP provided an amended EIAr/site layout plan to the registered I&APs and that the EAP's email, dated 18 May 2022, was silent as to a commenting period thereon. I have perused the contents of the EAP's email, and while it states that an amended EIAr and EMPr is attached to the email, only the layout plans/maps and a pdf copy of the original email to the I&APs dated 01 October 2021 (which contains a link to the original version of the draft/consultation EIAr) are attached to that email.
- 2.19. In any event, registered I&APs would not have been afforded the full legislated 30 days to comment on the amended EIAr/site layout plan, since the final amended EIAr was subsequently submitted to the DMRE for decision-making only 12 days after it was provided to the I&APs. I am cognisant that the amendment to the site layout plan was effected to exclude portion 7 and 10 of the Farm Vlakfontein from the mining right area and site layout plan, which ultimately

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serves to reduce the size of the mining area and potential environmental impacts. However, it is imperative that registered I&APs be provided with an opportunity to comment on the amendments to the EIAr, EMPr and site layout plan, as per the requirements of regulation 23(1)(b) of the 2014 EIA Regulations, which requires a revised EIAr to be subjected to another PPP of at least 30 days where significant changes have been made to the report, which was not contained in the original EIAr consulted on during the initial PPP.

2.20. In addition, the file before me includes a copy of the final EIAr dated November 2021, which appears to be the initial final EIAr submitted to the DMRE on 05 November 2021 for decision-making (prior to the amendment of the site layout plan). It does not include the final amended EIAr submitted to the DMRE on 30 May 2022, or the final Comments and Response Report with all comments received during the Scoping and EIA phase and the EAP's responses thereto. It is not clear whether an amended version of the EIAr was indeed submitted to DMRE on 30 May 2022, or whether the amended EIAr simply constituted of the initial final EIAr dated November 2021, together with the amended site layout plan. Irrespective, I find it appropriate to remit the matter to the CA to afford I&APs a period of 30-days to comment on the amended EIAr, EMPr and site layout plan, and to afford the appellant an opportunity to address the gaps in the PPP.

2.21. This ground of appeal is accordingly upheld.

3. DECISION

3.1. In reaching my decision on these appeals, I have taken the following into consideration:

3.1.1 The appeal lodged by the appellant on 22 November 2022;

3.1.2 The responding statements submitted by the applicant and the DMRE on 17 January 2023; and

3.1.3 The information contained in the project file (NW 30/5/1/2/3/2/1/10178 EM), with specific reference to the EIAr and EMPr dated November 2021, and the IEA dated 19 October 2022.

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- 3.2. In terms of section 43(6) of NEMA, I have the authority, after considering the appeal, to confirm, set aside or vary the decision, provision, condition, or directive or to make any other appropriate decision.
- 3.3. Having duly considered the abovementioned information, in terms of section 43(6) of NEMA, I have decided to:
- 3.1.1. Uphold the appellant's ground of appeal in respect of public consultation on the amended EIAr and EMPr; and
- 3.1.2. Remit the IEA application to the DMRE for further consultation and reconsideration.
- 3.2. In this regard, both the CA and the appellant are afforded an opportunity to ensure that the identified irregularities of the previously undertaken EIA process are addressed and/or rectified.
- 3.2.1. I direct the applicant/EAP to:
- 3.2.1.1. Subject the amended EIAr and EMPr and site layout plan to review and comments by I&APs for a period of 30 days, as provided for in regulations 23, 40 and 43 of the 2014 EIA Regulations.
- 3.2.1.2. Ensure that any comments received from I&APs are objectively considered and responded to, and that I&AP comments, as well as responses thereto by the EAP, are incorporated into the final EIAr (in the Comments and Response Report), for submission to the DMRE within 106 days for reconsideration.
- 3.2.2. I direct the CA to:
- 3.2.2.1. Consider the IEA application upon receipt of the EIAr and EMPr, and to make a decision thereon within 107 days from the date of receipt thereof.
- 3.2.2.2. Provide guidance to the applicant about the nature and extent of any of the processes that may or must be followed or decision support tools that must be used in order to comply with NEMA and the 2014 EIA Regulations and any other law or specific environmental management Act that needs to be complied with, as well as matters that may prejudice the success of the

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application, as contemplated in regulation 8 thereof. This must be done with reasonable certainty and/or precision.

- 3.2 In arriving at my decision on the appeal, I have not responded to each and every statement set out in the appeal and/or responses thereto, and where a particular statement is not directly addressed, the absence of any response thereto should not be interpreted to mean that I agree with or abide by the statement made.
- 3.3 Should any party be dissatisfied with any aspect of my decision, they may apply to a competent court to have this decision judicially reviewed. Judicial review proceedings must be instituted within 180 days of notification hereof, in accordance with the provisions of section 7 of the Promotion of Administrative Justice Act, 2000 (Act No.3 of 2000) (PAJA).



DR DION GEORGE, MP

MINISTER OF FORESTRY, FISHERIES AND THE ENVIRONMENT

DATE: 27 August 2024