

**DRAFT SCOPING
REPORT
COMMENTS**

**KARSTEN
BOERDERY (PTY)
LTD**

OBJECTION AGAINST APPLICATION FOR MINING RIGHT AND COMMENTS ON DRAFT SCOPING REPORT SUBMITTED IN TERMS OF THE PROVISIONS OF THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT ACT, ACT 28 OF 2008

KARSTEN BOERDERY (PTY) LTD

OBJECTOR

BONGANI MINERALS (PTY) LTD

APPLICANT

APPLICATION REFERENCE NUMBER

WC 30/5/1/1/2/10110MR

PROPERTIES

**PORTION 1 OF THE FARM 297;
PORTION OF PORTION 21 OF THE
FARM NAMAQUASFONTEIN 76; AND
PORTION OF REMAING EXTENT OF
PORTION 6 OF THE FARM
NAMAQUASFONTEIN 76**

This Objection is submitted on behalf of Karsten Boerdery (Pty) Ltd (hereinafter referred to as the "**Objector**") under a power of attorney and it constitutes a formal objection against an application for a mining right, WC30/5/1/2/2/10110MR (hereinafter referred to as the "**Application**"). The Objector is an interested and affected party to the aforementioned application and has been duly registered as such in the records of the consultants of the Applicant.

THE OBJECTOR

1. The Objector is Karsten Boerdery (Pty) Ltd which is a member of the Karsten group of companies.
2. The Objector is the registered owner of the following properties:
 - portion 2 of the Farm Namaquasfontein No 76, Piketberg;
 - portion 13 of the Farm Namaquasfontein No 76, Piketberg; and
 - portion 5 of the Farm Wilgenhoutdrift 48, Piketberg.

These properties are located either adjacent to or in close proximity to the mine area which is the subject matter of the mining right application to which objection is made in terms hereof, both with regards to the merits thereof and also failure to apply the requisite procedures.

3. The Objector for all intents and purposes is a directly interested and affected party to the application of the Applicant and therefor has the necessary *locus standi* to file this objection.
4. The Karsten group of companies ("**Karsten Group**") has been in existence since 1968 and at present comprises of Karsten Holdings Limited and its various subsidiary and associated companies, including:-
 - Karsten Orange River;
 - Karsten western Cape;
 - Karsten UK;
 - Karsten Europe,
 - New Vision Fruit B.V;
 - Karsten Marketing;
 - Horison Fruit Logistics.
5. The Karsten Group is one of South Africa's leading mega agri-businesses respected both locally and internationally for the excellence of its products, cutting edge innovation and integrity in its dealings with staff, service providers and customers. It is the largest private table grape and dates producer and exporter in the Republic of South Africa. All its activities are based on the principles of applying good agricultural practices that conform to the highest international standards and caring for a sensitive environment where technically advanced production practices exist in harmony with nature. The Karsten Group annually produces approximately 630,000 cartons grapes for the local and international market. This amounts to approximately 2,835 tons of grapes.
6. The Karsten Group provides seasonal and permanent employment for a large community of people in some of South Africa's more remote regions. At present it provides employment to approximately 6,000 permanent and seasonal workers.

Including the dependants of workers, almost 24,000 persons are reliant upon Karsten Group. Workers share in benefits of training and development programmes which are offered in association with various institutions as well as social projects focussed upon workers and their families, including seasonal workers. Social and other benefits are offered to the larger community of people working within the group, including preschool care, bursary and study schemes for children of workers, health care and housing for both permanent staff and temporary workers.

7. Community involvement projects includes special gardening programmes at schools in the region; crèche facilities on all farms with pre-school children; women's clubs; adult literacy classes; computer training; sports facilities; social skills training workshops to enhance family and social life; leadership training; student loans to parents; housing for employees staying on farms; a comprehensive healthcare plan through clinics on the various farms; recreation facilities and transport that enable staff to participate in sport and other social activities; and spiritual counselling.
8. During 2012 the Karsten Group expanded its interests to the Western Cape by the Objector acquiring the properties referred to in paragraph 2 above and on which it conducts agricultural activities. The Objector already invested R115 million rand in relation to the agricultural activities on the relevant properties and its projection for expansion over the next 10 years amounts to a further R112 million. Employment to 448 persons is provided on these properties and it is expected that this figure will substantially increase when further expansions are implemented.
9. It will be demonstrated below that the agricultural endeavours of the Objector may be substantially affected should the Applicant's application to establish an open cast tungsten mine in the area become a reality and will also impact upon its planned future activities. Apart from its own activities, it is also evident that all other farmers and employees in the Moutonshoek and adjacent areas would equally suffer as a result of the envisaged and far reaching mining operations. These interests must be weighed against the merits of the Applicant's application

for a mining right and the impact thereof, not only from an economic point of view but also environmentally.

10. The negative impacts that any mining operations would have on the operations of the Objector would not be confined to only the Objector but will also affect the Karsten Group and its activities, national and international clients of the Objector and ultimately the country. It is a fact that the Objector is an integral part of a group that contributes significantly to the country's gross domestic product from an agricultural point of view. The same would apply in respect of all other farms in the affected area. It is the Objector's understanding a vast number of individual objectors will also voice their concern about the application for the mining right.
11. Based upon the above the Objector has every right to object to the application for a mining right and this Objection constitutes it vehement opposition to the envisaged mining operations.

THE APPLICATION

12. Bongani Minerals (Pty) Ltd (hereinafter referred to as the "**Applicant**") applied for a mining right in terms of section 22 of the Mineral and Petroleum Resources Development Act, 2002 (Act 28 of 2002), (hereinafter referred to as the "**Act**") to mine for tungsten and molybdenum on
 - the remaining extent of portion 6 of the Farm Namaquasfontein 76, Piketberg;
 - a portion of portion 21 of the Farm Namaquasfontein No 76, Piketberg; and
 - the whole of portion 1 of the Farm 297, Piketberg.(hereinafter referred to as the "**Affected Properties**")

This application was accepted by the Department of Mineral Resources: Western Cape Region (hereinafter referred to as the "**DMR**") as conveyed in its letter of 13 December 2018 ("**Acceptance Letter**").

13. It is recorded that on 14 January 2019, the DMR was notified by the undersigned that the Acceptance Letter was flawed in that it did not correctly reflect the Affected Properties in respect of which the application was made due to the fact that portion

1 of the Farm 297 was omitted therefrom. No response in this regard was forthcoming from the DMR. On 4 February 2019 the Applicant's consultant, Greenmined Environmental (hereinafter referred to as "**Greenmined**") provided the undersigned with another (rectified) letter which is also dated 13 December 2018 although it does not specifically recall the prior letter that was issued.

14. In terms of the Acceptance Letter, the Applicant is directed by the DMR to, amongst others, consult with the landowners, lawful occupiers and any interested and affected parties. The DMR further advised (in paragraph 2(c) of the Acceptance Letter) that the consultation process "*does not imply issuing letters and requesting parties to indicate whether they support your proposed project or not. It includes among others an extensive process of giving and discussing the specific details of the project, giving the interested and affected parties an opportunity to table their comments, objections and support. It also involves your written responses and specific commitments made in dealing with issues raised during consultation.*"¹

15. It is recorded that Greenmined on 4 December 2018 submitted a general background information document ("**BID**") to by-them-identified interested and affected parties. It is recorded that this BID was submitted 9 days before the application was even accepted by the DMR and the DMT issued instructions to be complied with by the Applicant. Addressees were informed by Greenmined that "*If we do not receive any comments from you on or before 5 February 2019, it will be accepted that you do not have any objections/comments with regard to the project and do not require any further documentation.*" In other words, no reaction would be interpreted as no objections or support for the application. They (perhaps conveniently) failed to take into account that the DMR issued a guideline directing that the consultation process "*is not expected to be discontinued after the 30 day deadline for the submission of the scoping report because a high level report is required, and further in depth consultation is required to more substantially inform the Environmental Impact Assessment and Environmental Management Programme in order to comply with section 39 (3) (b) (ii) and (iii) of the Act read with regulations 50 (c) (d) and (f).*" It is therefore evident that persons

¹ Own emphasis.

may still register as interested and affected parties and object against the Application, despite what the Applicant's consultant communicated.

16. Greenmined repeated in its draft scoping report that was submitted for comments (and which will be dealt with in paragraph [●]) that 298 persons were notified of the BID. The Objector was informed by reliable sources that Greenmined apparently sent 254 emails of which 93 "bounced" or did not reach the recipients. Based upon this it is believed only 137 persons were notified and not 298 persons as alleged. If this holds true, the notification by Greenmined may not have been as extensive as they would hope and also fails to constitute a process of public participation as directed by DMR.
17. The DMR, in its published general guidelines, follows the findings of the Constitutional Court in Bengwenyama Minerals (Pty) Ltd and Others V Genorah Resources (Pty) Ltd and Others 2011 (4) SA 113 (CC) pertaining to consultation by applicants with landowners, communities and interested and affected parties. In these guidelines it is mentioned that the "*the intention of the Act is **to make the application known** in order to afford communities and interested and affected parties an opportunity to raise comments and concerns before the application can be processed further*".
18. The Applicant is reminded of the fact that the salient points in the Constitutional Court's decision in this regard were and still are:
 - the purpose of the consultation is to provide landowners or occupiers with the necessary information on everything that is to be done, so that they can make an informed decision in relation to the representations to be made
 - The consultation process and its results are an integral part of the fairness process because the decision cannot be fair if the administrator did not have full regard to precisely what happened during the consultation process in order to determine whether the consultation was sufficient to render the grant of the application.
 - The consultation process required by the Act requires that the applicant must:

- inform that his application for mining rights on the owner's land has been accepted for consideration by the regional manager of DMR;
- inform in sufficient detail of what the mining operation will entail on the land, in order for interested and affected party to assess what impact the mining will have on the use of the land;
- consult with the landowner with a view to reach an agreement to the satisfaction of both parties in regard to the impact of the proposed mining operation; and
- submit the result of the consultation process to the regional manager of DMR within 30 days of receiving notification to consult.

19. Further according to the DMR, consultation must include:-

- The observance of the guidelines published by the Department of Land Affairs in cases where consultation with communities is concerned; and
- Meeting with the community and landowner and the interested and affected parties, which meetings must include dealing with the requirements set by the Constitutional Court.

20. The only process in which the Objector was engaged with regard to the Application was the receipt of the BID and (after registration as an interested and affected party), the draft scoping report ("**DSR**") to which further reference is made below. It will be argued below that these documents alone cannot, in the wider sense, be seen as a consultation process as envisaged by the DMR.

21. In furtherance of the argument articulated in paragraph 20 above, it is furthermore submitted by the Objector that the Applicant:-

- did not arrange for any public meeting to discuss those matters as instructed by the Constitutional Court and the DMR;
- apart from a generic BID and DSR, failed to provide substantial, material and relevant information pertaining to the Application; and

- affixed a notice inconspicuously on a fence along the road, 11 km from the proposed mining area.
22. It is the Objector's contention that the consultation or public participation process is materially flawed and the DMR should reject the Application on this basis alone.

THE APPLICANT

23. Apart from the fact that the Applicant is identified as Bongani Minerals (Pty) Ltd, no further information is provided regarding the Applicant. The Objector therefore has no idea who the Applicant is, its experience and expertise in the mining industry, its shareholders and its technical and financial abilities.

INFORMATION REQUIRED AND INFORMATION SUBMITTED

24. Any application for a mining right in terms of the Act essentially has two components –
- an application for a mining right in terms of section 22 of the Act; and
 - an application for environmental authorisation in terms of section 24 of the National Environmental Management Act, 1998 (No 107 of 1998) (hereinafter referred to as "**NEMA**").

This is confirmed by Section 22(1) of the Act – *"Any person who wishes to apply to the Minister for a mining right **must simultaneously apply for an environmental authorisation.**"*

25. The environmental authorisation application requires of the Applicant to first submit a draft scoping report (which it did), and also the environmental impact assessment and environmental management report. All interested and affected parties must be afforded an opportunity to object to and submit comments pertaining to these documents. The mining right application is different from the NEMA application.

26. In terms of section 23(1) of the Act, the Minister must, subject to subsection 23(4), grant a mining right if-
- (a) the mineral can be mined optimally in accordance with the mining work programme;
 - (b) the applicant has access to financial resources and has the technical ability to conduct the proposed mining operations optimally;
 - (c) the financing plan is compatible with the intended mining operation and the duration thereof,
 - (d) the mining will not result in unacceptable pollution, ecological degradation or damage to the environment,
 - (e) the applicant has provided financially or otherwise for the prescribed social and labour plan,
 - (f) the applicant has the ability to comply with the relevant provisions of the Mine Health and Safety Act, 1996 (Act No 29 of 1996);
 - (g) the applicant is not in contravention of any other relevant provision of the Act; and
 - (h) the granting of such right will further the objects referred to in section 2(d) and (f) and in accordance with the charter contemplated in section 100 and the prescribed social and labour plan.
27. The Applicant must comply with the aforesaid granting criteria.
28. In addition to the above the Mineral and Petroleum Resources Development Regulations, 2004 (hereinafter refer to as the "**Regulations**") contains certain requirements.
29. In terms of Regulation 10 an application for a mining right, amongst others, **must** contain:-
- the mineral or minerals for which the right is required;
 - the period for which the right is required;
 - a mining work programme contemplated in regulation 11;
 - a social and labour plan contemplated in regulation 46;

- detailed documentary proof of the applicant's technical ability or access thereto to conduct the mining activities and to mitigate and rehabilitate relevant environmental impacts;
- documentary proof that the applicant has the ability to comply with relevant provisions of the Mine Health and Safety Act, 1996 (Act 29 of 1996);
- a description of how the applicant's technical ability will be provided by making use of in-house expertise, contractors and consultants on the proposed mining operation;
- budget and documentary proof of the applicant's financial ability or access thereto; and
- a list of existing rights or a list of existing rights and permits (as the case may be) held by the applicant, to be compiled in a table format that indicates the region and location with regard to the land name and the existing right or permit number for each mineral within the Republic.

30. Regulation 11 compels the Applicant to submit a mining works programme containing or dealing with and containing details about the following:

30.1. Regulation 11(1)(d): Details of the identified mineral deposit concerned with regard to the type of mineral or minerals to be mined, its locality, extent, depth, geological structure, mineral content and mineral distribution.

The Applicant in other words is required to provide a detailed description of the identified mineral deposit concerned with regard to the type of mineral to be mined, its locality, extent, depth, geological structure, mineral content and mineral distribution, supported by a tabulated categorization of proven and probable reserves, **cross referenced to supporting reserve plans over the area applied for.**

The aforesaid information **must include and be cross referenced to a mineral resource map** and include-

- (i) the mineral to be mined;

- (ii) the locality of the mineral deposit in relation to the nearest town/city;
- (iii) the locality of the mineral deposit relative to the mining area,
- (iv) the information required in terms of regulation 8 in cases where the application was preceded by a prospecting right,
- (v) existing exploration results and supporting geological reports,
- (vi) a brief description of the geological structure of the mineral deposit;
- (vii) the size of the deposit,
- (viii) the depth of the mineral deposit below surface;
- (ix) details of proven and probable reserves, taking into consideration previous mining and extraction rates,
- (x) estimated grades, and a reserve statement that can be understood relative to the mineral resource map.

30.2. Regulation 11(1)(e): Details of the market for, the market's requirements and pricing in respect of, the mineral concerned. The aforesaid information should typically include, but should not be limited to-

- (i) A list of products and their proportionate quantities
- (ii) A list of product consumers,
- (iii) an indication of whether the market is local, regional, and/or international.

30.3. Regulation 11(1)(f): Details with regard to the applicable timeframes and scheduling of the various implementation phases of the proposed mining operation, and a technically justified estimate of the period required for the mining of the mineral deposit concerned. The applicant is required to provide detail with regard to the applicable

- (i) timeframes and scheduling of the various implementation phases of the intended mining operation, and a technically justified estimate of the period required for the mining of the mineral deposit concerned.
- (ii) The various construction and implementation phases from the planning stage up to the commencement of full production,

- (iii) A production forecast based on the reserve statement and the expected extraction, recovery and residue rates, which explains the sources of production over the period reflected in the cash flow forecast.
- (iv) A justification, based on proven and probable reserves and on production rates of the period over which the mine is expected to remain in production.

30.4. Regulation 11(1)(g)(i): Details and costing of the mining technique, mining technology and production rates applicable to the proposed mining operation. Compliance with the aforesaid regulation requires the Applicant to provide the basic design and costing of the mining operation, which information must include –

- (i) A map indicating the basic mine design together with a description of how, and in what sequence, the mineral reserve will be extracted;
- (ii) The specific mining techniques to be used;
- (iii) The position of access roads, shafts or declines, workshops, offices and stores, pumping facilities, primary development or pit design, processing plant locality, overburden and residue deposition sites, topsoil storage sites, stockpiles, waste dumps, and any other basic mine design features;
- (iv) A description of any specific engineering constraints that may be anticipated in accessing and extracting the mineral resource, such as groundwater management, flooding, surface protection, fly rock risks, seismicity, or any other identified constraints; and
- (v) Information as to whether the mining operation or part thereof is to be contracted out.

30.5. Regulation 11(1)(g)(ii): Details and costing of the technological process applicable to the extraction and preparation of the mineral or minerals to comply with market requirements.

- 30.6. 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. Compliance requires that this section is compatible with the information contained in the Social and Labour Plan.
- 30.7. Regulation 11 (1) (g) (iv): - Details and costing of regulatory requirements in terms of the Act and other applicable law (i.e. NEMA), relevant to the proposed mining operation, such as environmental management and rehabilitation costs.
- 30.8. Regulation 11 (1) (g) (viii): - provisions for the execution of the social and labour plan.
31. The above compulsory information and facts to be provided by the Applicant is material information and relevant to making an informed decision when objecting and commenting on the Application. The Objector and all other interested and affected parties are entitled to it, also those landowners who apparently has consented to the Applicant's intended mining operations. Without this important and relevant information, the Objector is not able to comment meaningfully and in an informed manner. The Applicant's and the DMR's attention is, once again, drawn to the following:
- The DMR has directed the Applicant in terms of the Acceptance Letter on 13 December 2018 that the consultation process is an extensive process of giving and discussing the specific details of the proposed project. It is contended by the Objector that reference is made to details of the nature referred to above and not merely those that relate to the environmental authorisation.
 - The purpose of the consultation is to provide interested and affected parties with the necessary information on everything that is to be done, so that they can make an informed decision in relation to the representations to be made;

- The provision of all relevant information and its result are an integral part of the fairness process.
 - The Applicant must inform all interested and affected parties in sufficient detail of what the mining operation will entail on the land, in order for interested and affected party to assess what impact the mining will have on the use of their land.
 - The Applicant is obliged to meeting with the interested and affected parties to allow discussions regarding the requirements in connection with the mining right application.
32. Neither the Objector nor any other interested and affected party has been provided with a copy of the mining right application and its supporting documentation as provided for in the Act and the Regulations.
33. At the request of the Objector a communication was sent to Greenmined on 29 January 2019 (copying the DMR) , enquiring as follows –
- (i) It is trite that a scoping report required in terms of Regulation 21 of the NEMA EIA Regulations is a forerunner of the environmental impact assessment report. Should it then be the Objector’s understanding that the consultation process would only focus upon the NEMA scoping report and environmental impact assessment report?
 - (ii) No indication could be found in the documents that I&AP’s were also invited to submit comments on the mining right application, or any indication that the complete application is available upon request or on their website.
 - (iii) The application, if duly submitted, in terms of regulation 10 must contain substantive and material information. Information that is imperative to inform any I&AP of the proposed activity and compliance with regulation 10 (1)(a) to (n). Without this information being made available it simply

would not be possible for any I&AP to meaningfully comment on the application.

- (iv) Section 10 of the MPRDA is obligatory in that members of the public must get an opportunity to submit comments on the application within a certain time period. In this case the members of the public were not afforded such opportunity and are only allowed to comment on a draft scoping report in terms of NEMA.
- (v) According to paragraph 2(c) of the Acceptance Letter the consultation process "*does not imply issuing letters and requesting affected parties to indicate whether they support your proposed project or not. It includes among others an extensive process of giving and discussing the specific details of the proposed project, giving the interested and affected parties an opportunity to table their comments, objections and support.*" The question begs when will the Applicant then make the application available to interested and affected parties to consider and comment on?
- (vi) Is it the intention of the Applicant to provide I&AP's only with an opportunity to comment upon the draft scoping report? If not, when will all material information be made available to enable I&AP's to make informed comments?

34. Greenmined, through its in-house legal advisor responded to the above communication on 4 February 2019, and informed as follows (own bold emphasis):-

- (i) Par 1: *The BID (Background Information Document) is, as the name suggests, a **document issued for information purposes only and as a courtesy to notify** all potential Interested and Affected Persons (I&AP's) of the proposed application to be submitted. In this document the proposed project is summarized to inform the potential I&AP's that **the application is to be submitted in due course and in the event that they would like to***

receive preliminary information regarding the project as well as progress thereof they can register as an I&AP.

- (i) Par 2: *“the Regional Manager must, in the prescribed manner, within 14 days after accepting an application lodged in terms of section 22 make known that an application for a mining right has been accepted in respect of the land in question and **call upon interested and affected persons to submit their comments regarding the application** within 30 days from the date of the notice”*
- (ii) Par 5: *“It is therefore clear that **the onus was not on Greenmined Environmental, on behalf of the applicant, to inform the potential or registered I&AP’s that the application has been accepted but rather the responsibility of the Regional Manager of the DMR**”*
- (iii) Par 8: *“Subregulation (3) provides that potential or **registered interested and affected parties, including the competent authority, may be provided with an opportunity to comment on reports and plans contemplated in subregulation (1) prior to submission of an application but must be provided with an opportunity to comment on such reports once an application has been submitted to the competent authority. Therefore, it is clear that the applicant was not obligated to provide the I&AP’s the opportunity to comment on the reports prior to the application being lodged with the DMR. The function of the BID, as well as advertisements, is specifically to notify the I&AP’s that an application will be submitted in due course and that they can register as an I&AP.***
- (iv) Par 11: *“Please note that **the mining right application itself is not available to the public, as it contains confidential information of the applicant. All reports however, from date of application, must be made available to the public, hence the public participation process**”*
- (v) Par 12: *“As mentioned in clause 3 above **it is not the applicant’s responsibility to provide all I&AP’s with the acceptance letter, however***

when you requested same from us it was provided to you without hesitation. In the meantime, the DMR has provided us with amended acceptance letters in terms of the MPRDA and NEMA, which is attached hereto for your attention and ease of reference."

- (vi) Par 14(ii): *"The application documentation is privileged and will not be made available to the public."* and Par 14(v): *"The applications are not being withheld, but it contains confidential information of our client. The potential and registered I&AP's received ample time to comment on the draft scoping report"*

35. Greenmined response can be summarised as follows:

- (i) It was under no obligation to provide a copy of the Acceptance Letter due to the fact that it was a function of the DMR.
- (ii) Despite being instructed by the DMR to "give and discuss" details of the proposed project, Greenmined and/or the Applicant decided to only provide the courtesy BID and a draft scoping report.
- (iii) It is the responsibility of the DMR to call upon I&AP's to submit their comments regarding the application. It therefore follows that the DMR must make the application available.
- (iv) Despite the fact that according to Greenmined the DMR must make the application available, it and/or the Applicant has decided that the application cannot be made available because it contains confidential information of the Applicant, and because Greenmined regarded it as privileged and will not be made available to the public. The Objector no longer has the status of an interested and affected party but is now regarded as a member of the general public. All of the aforementioned then culminates in Greenmined's final recordal that *"The applications are not being withheld, but it contains confidential information of our client"*

- (v) It is recorded that despite its stance regarding the mining right application as set out, it did not have any problem with supplying the application for environmental authorisation to the Objector, neither was it regarded as being the responsibility of the DMR.
 - (vi) Greenmined and/or the Applicant opted to ignore the instructions by the DMR in terms of Section 22(4) of the Act by not consulting in the prescribed manner. They did not give and discuss the specific details of the proposed mining operations.
36. Greenmined's response is abstruse and confusing, to put it mildly. The Objector could find absolutely no provision in the Act or the Regulations that an application submitted to the DMR is confidential. If it is, what would then be the purpose of a public participation process if I&AP's are deprived of the opportunity to peruse and consider an application and to comment on it. In fact, the only references to confidentiality relates to the conduct of the Minerals and Petroleum Board, data flowing from petroleum exploration and production, data provided by the Council for Geoscience, and data regarding proper records of mining activities and proper financial records in connection with the mining activities, after a mining right has been granted and the mine being in operation. The Act also contains no references to privileged or classified.
37. The Objector is at odds with Greenmined's contention that the Application is confidential or privileged. By adopting this stance, it unreasonably withholds substantive and/or material information from any and all I&AP's. It is accordingly impossible for the Objector and others to meaningfully object and comment on the Application.
38. Ironically enough, the very same Applicant on five previous occasions did make its applications available to I&AP's to peruse and comment on.

HISTORY

39. It is the Objectors' submission that the events preceding the Application should be taken into account since these events have a bearing upon the Application.
40. Although the Applicant would wish to downplay the history and would argue that this application is a "new" application and should be considered afresh, it is the Objector's submission that this application cannot be seen in isolation, but should be dealt with, with due cognisance of three previous prospecting right applications and two previous unsuccessful mining right applications submitted by the Applicant in respect of the same properties to which the Application relates.
41. These applications were as follows:
 - (i) A prospecting right application submitted by the Applicant during September 2005. This application was rejected on grounds of pollution concerns;
 - (ii) The second prospecting right application submitted by the Applicant on or about September 2006. This application was granted on 3 April 2007 but was taken on judicial review by the objectors. The right lapsed before the review could be finalised;
 - (iii) The first mining right application WC 30/5/1/2/2/328 MR submitted by the Applicant on 25 March 2009. After vigorous objections clearly indicating deficiencies in the application and related documentation and the apparent inability to complete a proper environmental impact assessment, this application was withdrawn by the Applicant;
 - (iv) The second mining right application WC 30/5/1/2/2/385 MR submitted by the Applicant on 28 September 2009. After vigorous objections clearly indicating deficiencies in the application and related

documentation, this application was also withdrawn by the Applicant; and

- (v) A third prospecting right application under WC30/5/1/1/2/434PR dated 31 March 2010. This prospecting right was granted by the DMR on 1 July 2011 but was never exercised. The Applicant's applications for consent use (to be submitted to the relevant local authority having jurisdiction) to conduct prospecting right operations on the properties in question were refused. It is the Objector's information that the owner of portion 1 of Farm 297 again would not consent to any application for consent use on its property to mine for tungsten. It is also recorded that prospecting right 434PR **expired on 30 June 2014.**

42. It is unknown to the Objector why the Applicant persists in its endeavours to obtain a mining right in respect of the Affected Properties whilst it was, in the past, met with so many obstacles and objections.

MOUTONSHOEK PROTECTED ENVIRONMENT

43. It is common knowledge that two of the Affected Properties, (namely Portion 1 of the Farm 297 and Portion 21 of the Farm Namaquasfontein), are located within the demarcated Moutonshoek Protected Environment.
44. On 20 April 2018, Provincial Minister of Local Government, Environmental Affairs and Development Planning in the Western Cape, under section 28(1)(a)(i) of the National Environmental Management: Protected Areas Act, 2003 (Act 57 of 2003), declared a protected environment on 21 different farm portions. (Provincial Notice 56 of 2018, Provincial Gazette 7916 of 20 April 2018).
45. Cape Nature informed as follows:
- The public participation process for the Moutonshoek Protected Environment was started on 15 January 2016 and advertised in the Provincial Gazette. In addition, the provincial notice was published in two national newspapers as

is required by Section 33 of the National Environmental Management: Protected Areas Act 57 of 2003.

- As required by Section 32 of the National Environmental Management: Protected Areas Act 57 of 2003, the necessary state departments were consulted. These included the National Minister of Environmental Affairs, The Department of Mineral Resources, the Department of Water Affairs and Forestry, the Department of Environmental Affairs and Development Planning, South African Heritage Resources Agency, the Department of Agriculture, Berg River Municipality, the Regional Land Claims Commission and the South African National Biodiversity Institute. All comments received up until the 10th of April 2016 were taken into account.
- As required as part of the consultation process, the Moutonshoek Protected Environment was presented to the Joint Planning Task Team (JPTT) on the 29th of September 2017. The public participation process for the approval of the Management Plan was completed mid-March 2018 with notices having been published in the Sunday Times, City Press and Rapport on 11 February 2018. No objections to the Management Plan were received through these processes.
- There were no objections received during the public participation process and the Protected Environment was declared on 20 April 2018.

46. The purpose of declaring the area as a protected environment is encapsulated in Section 17 of the National Environmental Management: Protected Areas Act (herein after referred to as the "**Protected Areas Act**"), namely-

- to protect ecologically viable areas representative of South Africa's biological diversity and its natural landscapes and seascapes in a system of protected areas;
- to preserve the ecological integrity of those areas;
- to conserve biodiversity in those areas;

- to protect areas representative of all ecosystems, habitats and species naturally occurring in South Africa;
 - to protect South Africa's threatened or rare species;
 - to protect an area which is vulnerable or ecologically sensitive;
 - to assist in ensuring the sustained supply of environmental goods and services;
 - to provide for the sustainable use of natural and biological resources;
 - to create or augment destinations for nature-based tourism;
 - to manage the interrelationship between natural environmental biodiversity, human settlement and economic development;
 - generally, to contribute to human, social, cultural, spiritual and economic development; or
 - to rehabilitate and restore degraded ecosystems and promote the recovery of endangered and vulnerable species.
47. Section 48 of the Protected Areas Act prohibits mining in a protected environment. In terms of this section no person may, despite other legislation, conduct mining in a protected environment without the written permission of the Minister for national environmental management and the Cabinet member responsible for minerals and energy affairs.
48. The Applicant, its environmental consultant and the DMR are fully aware of this prohibition, yet the Applicant applied for a mining right in the Moutonshoek Protected Environment and the DMR apparently accepted such application without following due process.
49. The Objector acknowledges that there might be an exemption where mining activities will be allowed in a protected environment which may happen if both the Minister for Environmental Affairs and the Minister of Mineral Resources give their consent to such mining activities. Obtaining these ministers' consent would presuppose an application by the Applicant for such consent. A properly motivated application why the ministers should exercise their discretion in favour of the Applicant. The Objector could find no trace of any application of this nature. On the contrary, it may be possible that the Applicant relies upon the Minister for

Mineral Resources to address this issue. Nevertheless, whatever course of action is followed, any such decision would have an impact on certain interested parties and, for that matter, the Minister would be compelled to follow the processes and procedures that are prescribed in terms of the Promotion of Administrative Justice Act, 3 of 2000.

50. On 14 January 2019, the DMR was requested in writing to indicate whether any such permission to mine in the protected environment was granted. To date a response from the DMR is still absent.

LAND USE OF AFFECTED AREAS

51. The Affected Properties are located within the jurisdictional area of Bergrivier Municipality and are currently zoned as Agriculture Zone 1 in terms of the Bergrivier Municipality: Integrated Zoning Scheme By-Law, 2016. The current zoning of the subject farms does not allow for mining or prospecting and therefore a land use planning application must be submitted to Bergrivier Municipality, 2018. In terms of Section 86(1)(b) of the By-Law it is an offence to utilize land in a manner other than prescribed by a zoning scheme without the approval of the Municipality.”
52. In terms of the Integrated Zoning Scheme the objectives of Agricultural Zone 1 is to promote and protect agriculture on farms as an important economic, environmental and cultural resource. Limited provision is made for non-agricultural uses to provide rural communities in more remote areas with the opportunity to increase the economic potential of their properties, provided these uses do not present a significant negative impact on the primary agricultural resource. Agriculture means the cultivation of land for raising crops and other plants, including plantations, the keeping and breeding of animals, birds or bees, stud farming, game farming, intensive horticulture; intensive animal farming; a riding school or natural veld, and it does not include any mining activity.
53. The only zoning that allows for mining activities is Industrial Zone IV where mining is a primary land use.

54. It therefore follows that the Applicant, and it is submitted, will have to apply to the Bergrivier Municipality for the rezoning of the relevant portions of the Affected Properties from agricultural to industrial zoning in order to conduct mining activities.
55. In terms of Section 15(2) of the Municipal Planning By-law only the owner of the land or his or her agent may apply to the Municipality for the rezoning of land. It is the Objector's confirmed information that the registered owner of Portion 1 of Farm 297, (Moutonshoek Investments (Pty) Ltd) is likely not amenable to apply or give consent that a rezoning application be submitted. The Applicant's attempt to conduct mining activities on portion 1 of Farm 297 will not be entertained, even in the unlikely event that the DMR approves its application for a mining right.
56. In this regard the Applicant is referred to the comments made by the District Manager: LandCare West Coast of the Provincial Department of Agriculture, Mr Jan Smit. The District Manager strongly objects against the application for the mining right under discussion for the following reasons:
- The mining activities shall leave an inheritance that will remain for far longer than its working lifespan, causing a massive environmental problem similar to what is already been experienced in other areas in the world.
 - Never being able to fully compensate negative impacts of the proposed mine to the state, the environment and land users.
 - Prevent the continuation of farming on High and Unique Agricultural Land.
 - Impact negatively on the right to farm the subject properties and surrounding farms.
 - Permanently pollute the natural agricultural resources with minerals that have high levels of toxicity and are classified as emerging contaminants.
 - Expose minerals to air and water that will begin to produce acid, which will leach into run-off water to be dispersed into ground and surface water.
 - Result in acid mine drainage occurring in the remaining mine pit after mining and rehabilitation.
 - Permanently negatively affect water flow in the Krom Antonies River due to dewatering of the mining area.

- Negatively impact yields on boreholes and wells of surrounding groundwater users and may lead to some drying up due to the mine.
- Negatively impact on groundwater dependent wetland systems.
- Produce toxic dust that will impact on the production and market value of fruit and table grapes.
- Impact negatively on future agricultural activities and the continuation of current agricultural activities.
- Impact negatively on proposed new agricultural developments.
- Contaminate the agricultural and environmental resources of the catchment.
- Negatively affect the current agricultural production of the entire Moutonshoek Valley and other farms in the Verlorenvlei catchment area.
- Negatively affect the legally executed water use rights of surrounding farmers.
- Negatively affect Broad-Based Black Economic Empowerment
- Negatively affect the sustainable management of the Verlorenriver and its Estuary.
- Negatively affect the farming community, land users and workers.
- Will have a permanent negative impact on the current number of agricultural jobs as well as the long term number of agricultural jobs.
- Nullify the project investments made in this catchment by the office of the District Manager and other government entities.

It is the obligation of the Applicant to convince the decision-making authorities that its proposed mining activities would not result in the above.

57. The Applicant concedes that it would also need to obtain the permission of the Head of the Department of Environmental Affairs under the provisions of Section 53 of the Western Cape Land Use Planning Act, 2014 (Act No. 3 of 2014). In terms of this section no person may without an approval develop land that will have a substantial effect on agriculture, due to the nature or scale of the proposed land use. The Applicant is reminded of the fact that the Department who must consider the Applicant's application in terms of this section, will be the very same Department that declared the Moutonshoek Protected Area.

58. Both the Applicant and the DMR should be painfully aware of the fact that despite the Applicant being granted a prospecting right in 2011 to prospect for certain minerals, it was never able to exercise its rights under that prospecting right. Due to land use considerations as explained above, the Applicant was not able to obtain any consent to prospect on land zoned for agricultural use. It was refused by the Bergrivier Municipality because the prospecting activities would have a negative impact upon the natural environment and the alleged benefit of the prospecting activities did not outweigh those that would be lost as a result of the prospecting activities.
59. The Applicant now applied for a much more invasive mining right. It is the Objector's contention that even if the DMR could find justification to grant a mining right (which, in the opinion of the Objector, based on merits, should not be the case), the end result would probably be exactly the same. The Applicant would not be able to obtain approval to rezone the affected properties from agriculture to industrial zone to render its envisaged mining activities an allowed land use.

MINERALS ON THE PROPERTY

60. At the crux of every mining right application, including that of the Applicant, is the availability and extent of the mineral resource that is to be extracted.
61. The Objector could find no evidence submitted by the Applicant pertaining to, amongst others:-
- the locality of the mineral deposit relative to the mining area,
 - the information required in terms of Regulation 8 in cases where the application was preceded by a prospecting right,
 - existing exploration results and supporting geological reports,
 - a description of the geological structure of the mineral deposit;
 - the size of the deposit,
 - the depth of the mineral deposit below surface;
 - details of proven and probable reserves,
 - estimated grades of the deposit.

62. Furthermore, no evidence was submitted regarding:-
- The specific mining techniques to be used;
 - The position of access roads, shafts or declines, workshops, offices and stores, pumping facilities, primary development or pit design, processing plant locality, overburden and residue deposition sites, topsoil storage sites, stockpiles, waste dumps, and any other basic mine design features;
 - A description of any specific engineering constraints that may be anticipated in accessing and extracting the mineral resource, such as groundwater management, flooding, surface protection, fly rock risks, seismicity, or any other identified constraints; and
 - Information as to whether the mining operation or part thereof is to be contracted out
63. The above is material and substantive information that must be considered by the Objector in order to submit meaningful and informed comments. It may also be necessary for the Objector to obtain the opinions of its own expert specialists.
64. In the both the BID (page 6) and the DSR (pages 16, 31, 40) it is recorded by the Applicant that: *"The Applicant currently holds a prospecting right (WC 30/5/1/1/2/10197 PR) over the proposed mining right application area for tungsten (W) ore, molybdenum (Mo) ore, rare earths, copper ore, zinc ore, gold ore and silver ore. Owing to the outcome of the prospecting operation, the applicant wishes to apply for a mining right for the winning of tungsten and molybdenum"*.
65. These records are, to say the least, confusing for the following reasons:-
- 65.1. The Applicant was granted a prospecting right on 1 July 2011 under reference WC30/5/1/1/2/434PR.
- 65.2. This prospecting right expired on 30 June 2014.
- 65.3. The Applicant no alleges that it is the holder of prospecting right WC30/5/1/1/2/10197PR over the application area. This reference number

differs from the 2011 granted prospecting right. The Applicant gave no explanation in this regard.

- 65.4. It is accepted that the Applicant could have applied for the renewal of the prospecting right 434PR in terms of Section 18 of the Act after meeting the requirement of that section, particularly a detailed report reflecting the prospecting results under the right to be renewed. The Applicant could not comply with this requirement since it was prevented from exercising its rights as explained.
- 65.5. If the right was indeed renewed the Objector finds it strange that a new reference number would be allocated. The existing right would have simply been endorsed with the renewal under the same reference number.
- 65.6. According to Section 18(4) of the Act it was only possible to renew the prospecting right once for a period of three years. It then follows that the right in any case should have lapsed on 30 June 2017.
- 65.7. It is improbable that a new prospecting right under reference 10197PR would have been granted without complying with the provisions of Section 16 of the Act, specifically Section 16(4) that requires submission of environmental reports and a public participation process after due notification.
- 65.8. Notwithstanding the fact that 434PR could have been renewed or a new prospecting right 10197PR inexplicably been granted, the Applicant could not have conducted any prospecting activities without first obtaining the required land use approval.
- 65.9. In the absence of any documentary proof to the contrary the Objector questions the Applicant's recordal that it is the holder of a valid prospecting right.

- 65.10. The Applicant's further statement that it applies for a mining right "owing to the outcome of the prospecting operation" is also questioned. Physical prospecting on the land constituting the mining right application area was not possible due to land use restrictions and as far as the Objector is aware of, did not occur.
- 65.11. It is recorded that the Centre for Environmental Rights on 29 September 2015 submitted a request under the provisions of the Promotion of Access to Information, 2000 (Act 2 of 2000), under reference CER-2015-DMR-0009 (WESSA). SAHA (South African History Archive) in its Freedom of Information Programme recorded the summary of this matter (http://foip.saha.org.za/request_tracker/entry/cer-2015-dmr-0009) and it is quoted as follows:-

Record summary

16-11-2015 (Christine Reddell):

Received letter - letter simply indicated that no rights had been issued in that area, and that an application for tungsten was pending - "Bongani Minerals (Pty) Ltd (10197 PR) on the rem extent portion 6 and portions 1; 13 of the farm Namaquasfontein 76, portion 1 of the farm 297".

I responded by writing to Mervin Petro (listed contact person for enquiries) - I explained that we were under the impression that a prospecting right had been granted and that a renewal application had been submitted - that is why we asked for a copy of both the prospecting right and the renewal application. The response received did not adequately deal with our PAIA request.

20-11-2015 (CR):

Very unhelpful response from Mervin - "I believe we have responded to your request adequately according to my knowledge and our records. I am unable to respond to what newspaper articles alleged. For any further deliberations please contact our Mineral Laws Section (Mr Mwelase X1055)."

Tried Mr Mwelase many times, finally got hold of him on 1-12-2015 - He said that he didn't know the facts (this was the first time he was hearing about it), but that I must understand that his office needs to protect itself. They will provide access to information when a court orders them to but can't just release information just because someone sitting at head office says so. The person sitting at head office doesn't know what the information looks like and the risks involved in releasing. He said - we can't give out copies of prospecting works programmes, or financial ability, but we can sometimes give out technical information. He said that organisations like ours should give reasons why we want the information - even though the form doesn't provide a space to do so. He said - the best place to get this information is the company itself, not through government. He said - you shouldn't put government at risk like this. He was very firm and rude and completely horrible to deal with - he cut me off all the time. I was firm too, and it was clear by the end of the conversation that we were both really frustrated with each other. He said he would follow up with Mervin (which I doubt he will do). I asked if I could send him our request form and the decision letter from national - and he just said - "I'll get it from Mervin".

- 65.12. On 21 December 2018, Greenmined was requested to make available documentation reflecting and confirming the "outcome of the prospecting operation". Greenmined responded on 8 January 2019 as follows " *The prospecting operation referred to in the BID included geological re-logging of the available historic diamond drill core, resampling of a select number of these holes and a short-lived diamond drilling programme on the Remainder of Portion 6 (portion of portion 2) Namaquasfontein Farm No 76. Your request for "documentation reflecting and confirming the outcome of the prospecting operation" has been forwarded to the applicant and we will respond accordingly upon receipt of the relevant documentation*". In this regard the following:-

- (i) It is recorded that, and not surprisingly, no documentation regarding the alleged prospecting has been forthcoming from the Applicant; and
- (ii) Gleaning from the response of Greenmined it is clear that the prospecting activities were those identified under 434PR before it was aborted by the Applicant. No reference is made to any activities under the alleged 10197PR.

- 65.13. Based on the above, the Objector takes issue with statements made by the Applicant that it conducted prospecting activities and that, in the process, it obtained information that justified the Application. It is accordingly necessary that this aspect receives further scrutiny by all the relevant authorities that will be engaged in the consideration of the Application and associated authorities.
66. The Objector, in the absence of any substantive supporting evidence in this regard by the Applicant, is not aware of any authority since 1908 that would sign of a finding that would conclude that anything else than a very low possibility of extracting an economically viable mineral deposit would be applicable to the application area.
67. The Applicant's very own consultant, SRK Consulting, in April 2013 submitted a report "*Technical review of the Riviera Tungsten Deposit, Western Cape Province, South Africa*". The request was for SRK to compile and sign off on a technical review of their Riviera Tungsten Project. The report was compiled by Prof A Rozendaal and Dr H Theart. Incidentally, this report was compiled at the instructions of the Applicant after 434PR was granted. Its objective was to provide the Applicant with technical advice and strategic advice and to prepare an Independent Technical Assessment of the projects.
68. It is clear that the technical review did **not** provide a SAMREC (South African Mineral Resource Committee) or JORC (Code prepared by the Joint Ore Reserves Committee of the Australasian Institute of Mining and Metallurgy, Australian

Institute of Geoscientists and Minerals Council of Australia) compliant classified mineral resource and suggested an indicated-classified **resource** might be attainable if further exploration is completed. Such further exploration would include substantial further drilling and would necessarily also include bulk sampling. There is no evidence that this was done by the Applicant.

69. The Objector was informed by its consultants that during 2008 the Applicant requested Venmyn Rand to conduct an independent preliminary scoping study. Venmyn concluded that the Mineral Resource statement is not SAMREC or JORC Code compliant and as a result, it had the status of a conceptual study.
70. Both Venmyn 2008 and SRK 2013 make it clear that a new pre-feasibility level study must be completed after results for the recommended exploration are integrated. The economic extraction **potential** of Riviera would be a primary outcome of such work.
71. It is the Objector's contention that no right to mine can be approved for a deposit without a SAMREC or JORC declared classified resource and with not-established (or unknown) prospects of economic extraction.
72. The Applicant is challenged to provide documentary proof that the tungsten and molybdenum deposits allegedly to be found on the application area is a SAMREC or JORC classified mineral resource.
73. Furthermore, the Applicant is obliged to provide substantive information that it has concluded a pre-feasibility and feasibility assessment with regard to the mining operations. It has to provide a concept techno-economical assessment report reflecting not only a closure plan, but more importantly an opening and operational plan for the envisaged mine.
74. The Applicant is also requested to provide evidence confirming the economic viability of the mining operations, especially in light of the fact that the tungsten price (US dollars per mtu WO₃) since 2012 has dropped by 67% (<https://www.metalary.com/tungsten-price/>)

75. It is clear from the DSR that it is the Applicant's sole intention to export the mineral product. None is earmarked for the local market. In light of the fact that China and Russia account for 90% of the world supply, the Applicant must give an indication of who its market would be and how it would compete with the major role-players in the tungsten industry. In the final analysis, any of these potential benefits must be weighed against the detrimental effects of the intended mining operation having regard to the interests, not only of those farmers conducting agricultural activities but also the broader community and the environment.
76. The Objector wishes to draw the attention to what would appear to be an inconsistency on pages 95, 96 and 97 of the DSR. The Applicant made certain comments on specific topics and refers to Information extracted from the Technical Review of the Riviera Tungsten Deposit, Western Cape Province, South Africa, SRK Consulting, 2018. Gleaning from the information provided it is clear that the reference should have been to the 2013 SRK report.

HYDROLOGICAL IMPACTS

77. Ample evidence exist that the Krom Antonies River Valley and the regions downstream from the intended mining area are highly sensitive areas where the regular supply of good quality river and groundwater are essential for their existence, and the livelihood of all that reside and make a living there. Further downstream, the RAMSAR site of Verlorenvlei is also dependent on the water from the Krom Antonies River to keep the salinity regulated
78. The onus is on the Applicant to produce substantive evidence that the mine will not have a negative effect on the quality of the ground and river water flowing from the valley and also will not significantly reduce the volume of groundwater in the region and water in the Krom Antonies River. In particular the following negative impacts must be considered :-
- mining operations would draw an amount of water that would make farming in the area unsustainable.

- Water quality of the aquifers and water in the Krom Antonies river would be negatively affected due to runoff through the mine and mine dump.
- Acid mine drainage (AMD) will occur through the lifetime of the mine from water seeping into the pit.
- A large tailings dam shall pose a risk of spills causing massive contamination to the surrounding area.
- Water filling up the mine pit will become acidic from AMD and eventually decant and contaminate the surrounding groundwater.

DRAFT SCOPING REPORT

79. The Objector now hereunder deals with the DSR submitted by the Applicant.
80. After perusing the contents of the DSR it is submitted by the Objector that **it is difficult to comment on the document because the information provided to explain the project was mostly general, and not specific to make constructive and specific comment possible.**
81. The aforesaid was also the conclusion by the DMR when a similar application was considered under 328MR and consequently refused the mining right application on 24 June 2009. It is trusted that the DMR would be consistent in its consideration of the subject DSR.
82. The DSR is part of the application for environmental authorisation and does not deal with the mining right application. Reference was already made to the fact that the Applicant and/or its consultant has arbitrarily classified the mining right application as confidential and the Objector is prevented from commenting on it.
83. The DSR comprise 348 pages. The Applicant devotes no less than 73% of the DSR to lists of stakeholders and identified I&AP's, proof of emails, posting of documents, comments by I&AP's, responses by Greenmined and then repeating this information. The rest of the submission comprise of a generic completion of a scoping report pro forma required by the DMR. References are made to extraction of dated reports that formed part of previous prospecting and mining

right applications by the Applicant and in most cases the Applicant and/or its consultant addresses an issue simply by stating that it will be dealt with in the environmental authorisation report. No specialist reports were provided. As a result, it remains extremely difficult and almost impossible for the Objector, and it believes other objectors as well, to process the information and provide meaningful comments.

84. The scoping report contemplated in Regulation 49 is founded on the principle of consultation with interested and affected parties, which consultation process and its results are an integral part of the fairness process. If the consultation process was not sufficient then the decision-maker cannot grant any application.

85. The DMR has published guidelines for the compilation of a scoping report. Any applicant, including the Applicant, is obliged to comply with these guidelines. Measured against these guidelines it is clear that the Applicant has failed materially in its obligations in this regard. The Objector fails to see how the Applicant will be able to attend to the following before it has to submit its final scoping report to the DMR on 18 February 2018, at the latest. The Applicant and/or its environmental consultant did not–
 - had any meeting with the community, landowners and interested and affected parties;

 - inform the community, landowners, and interested and affected parties in sufficient detail of what the mining operation will entail on the land, in order for them to assess what impact the mining will have on them or on the use of their land. In fact, the mining right application was intentionally withheld;

 - consult with the community, landowners, and interested and affected parties with a view to reaching agreement to the satisfaction of both parties in regard to the existing cultural, socio-economic or biophysical environment, as the case may be, and how potentially that will be impacted on by the proposed mining operation;

- deal with the socio-economic environment that may be directly affected by a change in land use;
- provide a complete description of the existing status of the biophysical environment that will be affected, including the main aspects such as water resources, flora, fauna, air, soil, topography etc., supported by specialist reports;
- confirm that the community and identified interested and affected parties have been consulted and that they agree that the potential impacts identified include those identified by them;
- provide a list of potential impacts on the socio- economic conditions of any person on any adjacent or non-adjacent property who may be affected by the proposed mining operation.
- provide any description of potential cumulative impacts that the proposed mining operation may contribute to considering other identified land uses which may have potential environmental linkages to the land concerned, for instance the existing farming activities, investments made and future expansion investments
- provide a list of any land developments identified by the community or interested and affected parties that are in progress and which may be affected by the proposed mining operation.
- provide a list of any proposals made in the consultation process to adjust the operational plans of the mine to accommodate the needs of the community, landowners and interested and affected parties.
- describe the most appropriate procedure to plan and develop the proposed mining operation with due consideration of the issues raised in the consultation process.

86. The Objector has also been informed that up to the date of the filing of this objection, the Applicant failed to identify and consult with representatives of the !Aman // Aes Traditional authority (Previously known as Amaquas of the West Coast). According to this traditional authority the mine application area is part of its ancestral lands and are therefore of huge significance to them and needs to be protected.

Dealing with specific matters contained in the DSR

87. Reference was already made to the questionable statements by the Applicant that it is the holder of a valid prospecting right and that the outcome of the prospecting justified the mining right application.
88. The Applicant refers to a number of reports, but none has been made available for scrutiny. It is assumed that they should be made available during the environmental assessment phase leaving objectors with only 30 days to study and comment on at least 11 identified specialist reports.
89. On page 21 of the DSR it is stated as a fact that mining operations will be run on a 24-hour 7 days of the week basis. This is in total disregard of the right of the Objector and its constituents to enjoy a disruptive environment with peace and quiet, especially during night hours.
90. The Applicant on page 21 states that no less than 350 Ha of the 531 Ha mining right area will be altered/transformed by its proposed mining operations. The total life of the mine is expected to be 21 years and the mining right will be valid for 30 years. It is evident that a high fertile potential and unique agricultural land will be transformed into a mine and in the process also alter the provision of water that will irreversibly impact upon groundwater resources.
91. On page 26 it is indicated that the Applicant will provide employment to 211 employees, including management. The Objector alone provides work to 448 employees. It is clear that the Applicant regards the rights and expectations of other employees to be subservient to its objectives and, in the process disregards

the devastating consequences the Objector's and other landowners' employees will have to face if farming operations are to shut down or be limited because of the mining activities.

92. From the comments received by the Applicant at the date of the submission of the DSR it is clear that only Eskom supports the application. Eskom as an I&AP cannot even be remotely compared with the Objector and others in terms of interests at stake and the way in which they shall be affected.
93. In support of information regarding the environmental attributes associated with the mining area, the Applicant relies upon information contained in specialist reports compiled in 2009 as part of its prospecting right application. It is the Objector's contention that Applicant has failed to provide any justification that these 10-year old reports are still relevant and authoritative.
94. On page 40 the Applicant attempts to justify the need and desirability of the mining activity. This discussion is totally inadequate since it only refers to –
 - tungsten being considered a strategic material by China and the European Union and then a description of the importance of the metal;
 - the questionable prospecting activities by the Applicant justifying the need for a mining right application;
 - the probable employment opportunities and a general comment regarding contributions to the local economy.
95. At the most the Applicant is referred to the NEMA: Guideline on Need and Desirability (Guideline 9) – GenN 891 in GG 38108 of 20 October 2014. The Applicant would find this extremely helpful in respect of conducting a proper assessment of the need and desirability of its intended mining operations.
96. The Applicant confirms that a social and labour plan was submitted as part of the mining right application. No details are provided in respect of this plan other than stating that it would be dealt with in detail in the draft environmental impact assessment report. This despite the fact that the Applicant was obliged to address the socio-economic environment that may be directly affected by a change in land

use in the scoping report. As a result, the Objector has no information in this regard neither can it provide any comments.

97. On page 119 of the DSR the Applicant lists no less than 29 negative impacts on the receiving environment as a result of the mining operations. These include, mining in the Moutonshoek environment; potential relocation of farm owners/residents; visual intrusion; impact on groundwater resources; etc. It then proceeds and identify 8 potential positive impacts, namely –

- *increased work opportunities to local residents* – the Applicant however fails to make any reference to how many employees may lose their employment on the farms, both directly and adjacent to the mining site. The Applicant is obliged to consider and discuss the potential work losses that face current employees;
- *potential decrease in water demand from local resources as result of an offsite reverse osmosis plant*– the Applicant who loses sight of the fact that its mining operations will negatively impact upon all water resources, not only in the mining area, but also on farms, such as that of the Objector, who rely on borehole water. Also, the properties downstream of the Krom Antonies River and the Verlorenvlei.
- *increased income generated within the Moutonshoek Valley*– the Applicant failed to consider the loss of income to be sustained when 3 working farms will be forced to shut down and also the negative impacts of the presence of the open cast pit mine and mining operations on the Objector’s and other adjacent farm owners’ agricultural activities.
- *Contribution of Riviera Tungsten to South African export* – the Applicant, apart from making a general statement, did not provide any financial figures to substantiate this “positive” impact. Absent also is a study where the current contribution to South African export by the Objector and other farming operations is compared with the potential contribution by the Applicant’s mine.

- *Potential use of the rehabilitated opencast pit for water storage* – the Applicant gave no indication of the volume of water that would be stored, where would the water come from and if the water stored would be fit for human, animal or irrigation purposes. Potential Acid mine drainage (AMD) would render any water stored in the pit to be unfit for whatever purpose. The Objector could find no specialist report addressing this issue.
- *Potential use of the slimes dam for water storage or aquaculture purposes*– in the absence of any studies to the contrary it is the Objector’s submission that water stored in the slimes dam in all probability would be totally unfit for agricultural use. (It is recorded that the Applicant did not provide any information on the volumes of how much slimes/tailings would be stored in the slimes/tailings dam). On the contrary it is contended that any large tailings dam shall pose a risk of spills causing massive contamination to the surrounding area.
- *Return of the rehabilitated area to agricultural land use* – there is no evidence that this would be achievable. In fact, evidence worldwide exists that the degradation of the receiving environment, especially agricultural land is irreversible and permanent.

98. Proper consideration of the Applicant’s “positive” impacts would reveal that they all in fact point to the contrary. As a result, the envisaged mine would have only negative impacts.

99. The Applicant then proceeds and deal with possible mitigation measures to address the potential negative impacts, pages 120 to 127. In general, it is the Objector’s submission that the measures proposed will not be effective as suggested by the Applicant, in fact there is no evidence that it would have the desired results. Measures include:-

- *Potential relocation of affected farm owners/residents* –The Applicant gives no indication of where the land owner, his family and employees will be relocated to, nor does it give any idea of the costs involved. Will the

Applicant return to the land all those that have been relocated once the mining has stopped? Would the Applicant also remunerate the farm owner for loss of income and also compensate the farm employees or source alternative employment.

- According to the Applicant *dust emissions*, amongst others, would be mitigated by water spraying. Water is a scarce and precious commodity in the area and should exclusively be utilised for farming activities. This resource will be depleted by spraying it 24/7 for 365 days a year as indicated by the Applicant. This measure also is not feasible.
- The Objector could find no reference to a *visual impact assessment* with recommendations on how to mitigate visual impacts. According to the Applicant this could be achieved by keeping the mining site neat and in a good condition. The Applicant however gave no indication of how it would mitigate the visual impact of a huge opencast pit in the pristine Moutonshoek valley.
- The Applicant states that *noise generated* by the 24/7 mining activities shall comply with Noise Control Regulations. The Applicant however failed to indicate what measures will be taken to ensure compliance. Drilling and blasting on weekdays between 8:00 and 17:00 surely would cause a disturbing noise to humans and animals alike, yet no mitigation measures in this regard are described.
- *Storm water and potential sedimentation* of the Krom Antonies River would be mitigated through a storm water management plan. No such plan was presented to peruse and comment on.
- Potential *impact on groundwater sources and seepage* from the slimes dam. No feasible mitigation measures are proposed, and everything is left to be dealt with as part of the EIA process.

- *Rehabilitation of excavated area:-* the Objector submits that the excavated area will remain as a scar on the environment. The degradation of the environment and agricultural land shall be irreversible and there simply will be no way in which the land will be rehabilitated to its primary use.

100. The description of the proposed activities in the DSR is totally inadequate for interested parties to be able to provide informed comments.

- The DSR does not even provide the surface extent of the proposed open pit. In Table 1 on page 16 of the DSR it is stated that the extent of "Opencast mining" is $\pm 400\text{m}$ (opencast pit). This is a measurement of length and not area. Presumably it was meant that the diameter of the proposed open pit is 400m.
- The extent of the open pit is not provided in Appendix 4 (the Site Layout Plan). The Site Layout Plan does not even have a scale bar nor was it compiled by an engineer. The final depth of the open pit is not provided.
- The extent of the proposed open pit as measured on Google Earth is somewhere between 16 and 20 hectares, but this is not made clear anywhere in the DSR.

101. The description of the operational phase (pages 20 and 21) is inadequate.

- The DSR states: "*The first phase will focus on pre-stripping the top layer material, of which the topsoil will be stored separately for rehabilitation, then overburden stripping to access the ore body, and then 20 m of opencast mining*".
- The 20m probably refers to overburden removal and not opencast mining. This means that the DSR does not provide the proposed final depth of open cast mining. The DSR does not provide any information about the proposed decline shafts and the proposed dimensions of the underground workings.

- The overburden is 5m to 20m thick according to the original description of the deposit by Walker PWA (1994). The sub-outcropping rock below that is deeply weathered and 1 to 10m of clay is commonly found below the alluvium.
- On page 21 of the DSR it is stated: "*Currently it is proposed that ±350 ha of the 531.44 ha mining right area will be altered by the proposed mining activity*". This does not balance with the information provided in the Site Layout Plan (Appendix 4):

Item	Activity	Extent (hectares)
1.	Slimes Dam	10.63
2	Plant Area / Offices/ Operations	3.00
3.	Open Pit (area not provided in DSR)	20.00
4.	Overburden storage area	47.83
	Total	81.46

- The potential impact of Acid Mine Drainage (AMD) has not been identified as a potential impact that may have a negative impact on the receiving environment (see list of potential impacts on page 118). The ore body and the associated alteration in the wall rocks contain sulphide minerals including molybdenite (MoS_2), pyrite (FeS_2), pyrrhotite (Fe_{1-x}S) and chalcopyrite (CuFeS_2).
- The term Acid Mine Drainage (AMD) refers to a low pH, high heavy metal effluent typical from water passing through sulphide mineral contained in mines, waste dumps or tailings dumps and is most commonly associated with the production of ferrous iron and sulphuric acid through the oxidation of iron pyrite. If operations at Riviera Tungsten result in AMD it could have a significant negative impact on any natural water that is affected (e.g. ground water, rivers or wetlands).

- In order to access the ore in the open pit or in the proposed underground pit it will be necessary to dewater the mining areas. This will require groundwater and rainwater to be pumped out of the mine. The impact of mine dewatering is an activity that has not been identified as a potential impact that may have a negative impact on the receiving environment (see list of potential impacts on page 118).

102. On page 124 of the DSR it is stated that –

- *Mining must be conducted only in accordance with the Best Practice Guideline for small scale mining that relates to storm water management, erosion and sediment control and waste management, developed by the Department of Water and Sanitation (DWS), and any other conditions which that Department may impose.*
- The proposed mine is not a small scale mine. It is a large-scale drill and blast operation with a processing plant, slimes dam and overburden and waste rock dumps. The stormwater management plan and associated infrastructure (cut off drains, silt retention ponds etc.) should be prepared and signed off by a qualified civil or mining engineer.

103. Page 126 of the DSR deals with the rehabilitation of the excavated area. It is stated that:

- "Incline shafts must be sealed;
- Rocks and coarse material removed during the operational phase must be dumped into the excavation;
- No waste may be permitted to be deposited into the excavations;
- Once overburden, rocks and coarse natural materials has been added to the excavation and it was profiled with acceptable contours and erosion control measures, the topsoil previously stored must be returned to its original depth over the area."

104. Until the correct depth of the open cast mine is provided it is not possible to properly comment on the above statement. It is highly unlikely that a large open cast mine will be filled with rocks and overburden.
105. This also contradicts with a statement on page 146 of the DSR that considers the potential use of decommissioned mine areas for alternative purposes such as water storage. It is stated that the likelihood and significance that decommissioned infrastructure can be implemented for future use by landowners must be assessed during the EIA process. These possibilities must form part of the closure plan to be approved for the mining area, and must include options such as, but not limited to, the possible use of the slimes dam for aquaculture purposes, use of the opencast pit for water storage.
106. The presence of pyrite in the slimes dam and in the wall rocks of the open pit may mean that these areas are not suitable for aquaculture or even for storing water.

OUTSTANDING INFORMATION TO BE PROVIDED BY APPLICANT

107. The Objectors submit that the following additional specialist reports and assessments are also required to provide interested and affected parties and authorities with sufficient information so that informed comments can be provided:
 - 107.1. A full and correct technical description of the mining methods (open cast and underground) including detailed layout plans as well as a description of the processing method, the processing plant, storage of tailings, storage of overburden and storage of waste rock.
 - 107.2. A specialist visual impact assessment based on the actual project specifications and from affected peoples residence .
 - 107.3. A geotechnical study to determine the slope stability of the pit in the overburden, weathered rock and hard rock as well as a description of

bench heights, bench slopes and the estimated volume of overburden and waste rock that will be removed and stockpiled.

- 107.4. A geochemical study by an environmental geochemist to characterise the AMD potential of the ore, wall rocks and tailings and an assessment of the significance of the impact of AMD on the receiving environment.
- 107.5. A stormwater management plan and associated infrastructure (cut off drains, silt retention ponds etc.) to be prepared by a qualified engineer.
- 107.6. An assessment of the impact of the dewatering of the mine must be included in the terms of reference for the proposed Hydrogeological Assessment and Freshwater Ecological Assessment.
- 107.7. A detailed plan of the envisaged tailings/slimes dam that has been designed and signed off by a professional engineer, with specifications designed and built to meet or exceed the highest international safety standards.
- 107.8. To assist I&AP's to properly assess the project and provide meaningful comments, the following information is also required from the Applicant:
 - the size, shape and location of the excavation based on prospecting information and mining methods to be used;
 - the size, location, slope and height of the slimes dam and overburden dump;
 - the predicted volume of the slimes that will be produced based on the prospecting information;
 - the chemistry of the ore and resultant tailings based on the prospecting information;

- the predicted structure of the slimes;
- the chemistry and structure of overburden;
- the volume of water to be used by the plant, people and dust suppression and the proposed source thereof;
- the volume and quality of water that will be released into the environment;
- details regarding the volume and type and concentration of each chemical used and released by all the different processes in the plant;
- the electricity demand of the total project;
- the depth, volume of overburden based upon the prospecting information;
- the volume of all other wastes that may be produced;
- volume and method of fuel storage;
- details regarding the predicted noise and dust emissions from the crushing plant and mining;
- the location and size of housing and offices of all the employees;
- the design of a sewage plant with a capacity for all staff members;
- all internal roads, conveyers or pipelines routes;
- the predicted volume and weight of traffic out of and onto the valley;
- maps drawn up by a surveyor and with a scale suitable to define impacts, must indicate the size and location and slopes of the excavation, dumps and infrastructure and be used to describe the

mining phases, explain proposed mitigation measures and allow the monitoring of compliance;

- specific “prospecting information” that indicates the depth and properties of the soil, overburden and ore layers. The grades of the products and chemistry of the ore as well as clarity on the volumes and composition of the tailings;
- A Socio-Economic Impact assessment (in addition to a social and labour plan) to determine and compare the feasibility of the proposed mine with that of the existing land use. infrastructure must be explained; and
- All risks, impacts and costs on current land-use namely agriculture and others, schools, crèches, training, housing, land values, jobs, lifestyle, quality of life, soils, projects, road infrastructure, current water users and electricity supply, and other industries such as agriculture and tourism.

107.9. The hydrological study must be conducted over at least a dry and this current wet cycle. The hydrological study must investigate the effect of dewatering and mining activity at this particular site and water uses and to water users lower down the catchment, especially during the predicted future dry seasons.

107.10. The slimes dam will add a significant risk of siltation of the river and estuary and a report must address the risk of siltation of the Krom Antonies River by the mining and dumps and mitigation and monitoring measures, comprehensively.

107.11. Baseline noise and dust measurements and predicted noise and dust emissions from the plant, mill and other mining activities. As well as an assessment of how the current land use in the valley may be affected.

- 107.12. An assessment of the impact on soils and land capability and also assess the impact of dust, water loss and water quality as well as on the soils on agriculture production.
- 107.13. A mine plan drawn up by a qualified surveyor, based on the prospecting information and with a scale suitable to define impacts, , describing the mining phases in more detail, propose mitigation measures and monitor compliance. The maps and information provided in the report must be of a suitable scale to make assessment of the impacts impossible. Include a mine and rehabilitation plan that indicates the different phases of mining activities based on the actual figures.
108. The Applicant acknowledged that the information provided in the DSR is totally insufficient by stating on page 129 that:-
- Various alternatives (project, technology, design etc.) will be considered during the EIA process;
 - The need and desirability of the proposed activity will be discussed in detail and weighed against the no-go option of upholding the *status quo* at the study area.
 - The findings, recommendations and management measure proposed in the specialist reports will be assessed during the EIA process and incorporated into the DEIAR;
 - The impact of the proposed project on the physical-, biological-, and human environments will be assessed.
 - Mitigation measures will be proposed to control, modify, remedy or stop the impacts associated with the proposed activity on the surrounding environment.

The only reasonable deduction that can be made from the aforementioned is that the Applicant has a concept of what it wishes to achieve. It still has to commence with the pre-feasibility, feasibility and operational phases. It hopes to achieve this during the EIA phase. As a result, the DSR is flawed in that it does not provide the Objector with even the basic information to consider.

PUBLIC RESPONSE

109. The Objector unequivocally states that this application has received no positive response from the public. This is confirmed by the objection submitted on behalf of a further 473 objectors.
110. Apart from Eskom, it is extremely unlikely that any other government department would even consider conditionally supporting the application.
111. It is submitted that the DMR will have no other option but to take note of the vehement and vigorous public and departmental opposition when considering the application.

CONCLUSION

112. In light of what has been stated above, the Objector is of the opinion that the mining right application submitted by Bongani Minerals (Pty) Ltd should be rejected by the Department of Minerals Resources.

Signed on behalf of the Objector at Cape Town on this 12th day of February 2019.



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