



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

Reference: LSA.181971

APPEAL DECISION

**APPEAL AGAINST THE DECISION TO GRANT AN INTEGRATED ENVIRONMENTAL
AUTHORISATION TO ANGLO OPERATION (PTY) LTD**

The Grootvaly Blesbokspruit Conservation Trust **First Appellant**

Mr Hugo Arthur de Koningh **Second Appellant**

Largo & Grootvaly AH Residents & Businesses **Third Appellant**

Palmietkuilen (Pty) Ltd **Fourth Appellant**

Aston Lake Community **Fifth Appellant**

Springs Nigel Branch, Wildlife and Environment
Society of South Africa **Sixth Appellant**

Rossouw Pluimvee Beherend (Edms) Beperk **Seventh Appellant**

Anglo Operation (Pty) Ltd **Applicant**
Department of Mineral Resources **Competent Authority**

Appeal: This is an appeal against the decision of the Regional Manager: Mineral Regulation of the Department of Mineral Resources, Gauteng Regional Office (DMR) to grant an integrated environmental authorisation (IEA) to Anglo Operation (Pty) Ltd (the applicant), on 5 March 2019, in respect of a mining right application relating to opencast coal mining on Farm Palmietkuilen 241 IR, situated in the Magisterial District of Springs/Nigel, in Gauteng Province.

1. BACKGROUND

- 1.1. On 4 August 2016, the applicant lodged an application for IEA with the DMR in respect of a mining right application for opencast coal mining on Farm Palmietkuilen 241 IR, situated in the Magisterial District of Springs/Nigel, in Gauteng Province.
- 1.2. The applicant proposes to develop a new opencast coal mining operation on the properties referred above. Coal mining will be undertaken by conventional truck and shovel operations. The applicant proposes to extract coal through open pit mining and the project is anticipated to have a life of mine of approximately 47 years, with the anticipated production of 2 400 000 tonnes of coal per annum to supply local and international markets. The key project infrastructure will include:
 - 1.2.1 Open pit mining;
 - 1.2.2 Processing Plant and Fuel Storage;
 - 1.2.3 Haul roads from pit to plant and from plant to mine access point, and various conveyor belts;
 - 1.2.4 Various overburden dumps and ROM Stockpile Area;
 - 1.2.5 Discard disposal facilities (slurry dam and discard dump);
 - 1.2.6 Pollution Control Dam (PDC), Storm Water Trenches and Sewage Management Systems; and
 - 1.2.7 Site Offices and Security Offices.
- 1.3. On 5 March 2019, the DMR granted an IEA to the applicant in respect of a mining right application relating to opencast coal mining on the abovementioned property.

- 1.4. Subsequent to the aforesaid decision of the DMR, the Directorate: Appeals and Legal Review within the Department of Environmental Affairs (Appeals Directorate) received seven appeals from the abovementioned appellants. These appeals were lodged in terms of section 43(1A) of the National Environmental Management Act, 1998 (Act No. 107 of 1998) (NEMA), read together with regulation 4 of the National Appeal Regulations, 2014, as amended (Appeal Regulations).
- 1.5. After obtaining a copy of the appeal, Canyon Coal, on behalf of the applicant, submitted a response to the appeal on 15 April 2019. The enviro-legal applications for the project is managed by Pandospan (Pty) Ltd which forms part of Canyon Coal.
- 1.6. Comments on the grounds of appeals were thereafter received from the DMR on 11 June 2019.
- 1.7. On 27 August 2019, the Appeals Directorate conducted a site visit with the applicant, appellants and the DMR so as to gain a better understanding of the site characteristics.
- 1.8. The appeals by the appellants are premised on the following grounds:
 - 1.8.1 Cumulative impacts;
 - 1.8.2 Need and desirability of the proposed mining project;
 - 1.8.3 Procedural unfairness and public participation process;
 - 1.8.4 Noise, air and water pollution;
 - 1.8.5 Decrease in property value; and
 - 1.8.6 Impacts on agricultural land use.

Cumulative Impacts

- 1.9. The first appellant contends that the communities of Aston Lake and Largo would be sandwiched in-between two opencast coal mines. The third appellant also contends that in the absence of a comprehensive expert assessment on the cumulative impacts, the IEA

must be denied. The fourth and seventh appellant also raise concerns that the cumulative environmental impact has not been studied.

- 1.10. In response to this ground of appeal, the applicant states that the cumulative impact of the different mining operations was properly assessed. The applicant states that after having regard to the cumulative impact as well as the proposed mitigation measures it was found that the project is viable and can proceed.
- 1.11. The DMR confirms that the applicant did undertake the relevant studies to assess the cumulative impacts of the proposed operation. The DMR states that it is satisfied that the cumulative impacts were properly assessed, mitigated and addressed.
- 1.12. In evaluating this ground of appeal, I note from the project file that the applicant did assess the cumulative impacts associated with the proposed mining project with reference to various fields that may be impacted including, Flora and Fauna, Surface Water, Groundwater, Wetlands, Aquatic Ecology, Air Quality, Noise, Visual, Cultural Heritage and Social. The outcome of such assessment indicates that the proposed mining activity can proceed with the implementation of mitigation measures. I thus cannot find that there is an absence of an assessment of the cumulative impacts. This ground of appeal is therefore dismissed.

Need and desirability of the proposed mining project

- 1.13. The third appellant argues that the need and desirability of this project has not been adequately investigated. The third appellant goes further to question why a comprehensive independent needs and desirability report was not presented so as to demonstrate the need and desirability to venture into agricultural land in the pursuit of coal.
- 1.14. In response to this ground of appeal, the applicant states that coal that would be produced through the proposed project would be of suitable quality for use in local markets. In addition to providing an essential resource for power generation in South Africa, the proposed project will have knock-on benefits including tax contributions, an overall improvement of the local socio-economic profile, job creation and procurement.

- 1.15. According to the DMR, it was clear from the information in the EMP and the accompanying specialist studies that the need and desirability of the project outweighs the no-go alternative. This was measured against ecological impacts and the finding was that the need and desirability from a social perspective was the preferred option.
- 1.16. In evaluation of this ground of appeal, I note that the need and desirability of the proposed project was assessed in terms of its economic and social benefits while highlighting how the environmental impacts will be addressed. The project contributes to ensuring sufficient coal resources are available to meet the demand required for electricity generation. Further to this I am aware of the benefits of the proposed project from a social perspective namely, new direct and indirect employment opportunities for local community members; enhancing the skills base among local community members and allowing for income generating activities; growth and diversification of the local and regional economy; increased economic contribution to the municipal areas, enabling better development of the towns and surrounding areas; and increased power generation and associated downstream benefits as result of increase in security of coal supply. In light thereof, I am satisfied that the need and desirability of the proposed mining activity has been established and considered prior to the issuance of the IEA. This ground of appeal is therefore dismissed.

Procedural unfairness and Public Participation Process

- 1.17. The fourth and the seventh appellants contend that the Draft Mining Work Programme and Draft Social and Labour Plan have not been provided to them despite numerous requests for such. The fourth and seventh appellants further contend that the DMR has allowed the applicant to submit additional comments and representations after the timeframe has elapsed. On this basis, the appellants argue that Interested and affected Parties (I&APs) were not given the opportunity to comment on the additional submissions.
- 1.18. The third appellant contends that the public participation process (PPP) was deliberately manipulated by the applicant. The fifth appellant argues that the Aston Lake Community

were not properly consulted and meetings were poorly organized which hindered participation by the community.

- 1.19. In response to this ground of appeal, the applicant states that documentation which the fourth and seventh appellant complains of, were made available for inspection on 14 March 2018. Further to this, the applicant states that there is a separate process followed under the Minerals and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002) (MPRDA) for the granting of a mining right and therefore this ground of appeal relating to the Draft Mining Work Programme and Draft Social and Labour Plan should be dealt with in terms of MPRDA.
- 1.20. Further to the above, the applicant states that the DMR requested a further round of public participation during January 2018 and individual meetings with I&APs were thereafter held, which the fourth and seventh appellants' representative was part of and was further invited to another meeting held on 20 March 2018 so as to submit further comments. The applicant states that the appellants' representative did not attend but was never precluded from attending the meeting or making written comments. The applicant states further that it conducted an extensive PPP, which included public meetings, advertisements, site notices and written correspondence.
- 1.21. The DMR advises that issues relating to Social and Labour Plan as well as the Mine Works Programme do not influence a decision on the IEA but are rather looked into and considered during the decision-making on the mining right in terms of the provisions of MPRDA. Further to this, the DMR advises that it directed the applicant to do a further round of public participation so as to ensure a proper consultation and this necessitated the extension of the period. The DMR indicates that it is satisfied that the minimum requirements for PPP were compiled with.
- 1.22. In evaluating this ground of appeal, I have perused the relevant information in the project file and noted the PPP undertaken by the applicant. I note that the applicant conducted one on one meetings with affected landowners, a community meeting and a public meeting so as to share project details, address comments already received from community

leaders where possible, and to obtain further comments. I further note that views, concerns and objections provided by I&APs throughout the PPP have been captured in the Comments and Response Report and the report includes responses provided. I am satisfied that the EMP, which was inclusive of the comments and responses, was subjected to a 30 day comment period. Further to this the DMR extended the PPP during January 2018. I am satisfied that such decision by the DMR ensured that the PPP was adequate. I thus cannot find that the appellants were deprived of the opportunity to raise concerns. As a result thereof, there is nothing before me which suggests that the PPP was inadequate or flawed. This ground of appeal is therefore dismissed.

Noise, air and water pollution

- 1.23. The first appellant contends that acid mine drainage (AMD) will be discharged into the Blesbokspruit river with catastrophic consequences for the people of Gauteng who have to use the water for drinking purposes. The first appellant goes further to state that the AMD will have an adverse impact on beef if the cattle drink approximately 6 million liters of water per day from the river. Further to this, the first appellant argues that the release of AMD into the river will also negate South Africa's efforts to remain committed to the Ramsar Convention.
- 1.24 The fifth appellant contends that a real risk exists that the removal of vegetation will cause soil erosion and floods, especially for the Aston Lake Community. The fifth appellant goes further to state that the Aston Lake Community will constantly be faced with noise disturbance both in the construction and mining phases. In addition to this, the fifth appellant contends that the dust and gaseous emissions will have a serious negative impact and the EMP does not consider the long-term effect of the pollution.
- 1.25. In response to this ground of appeal, the applicant states that there was a geo-hydrological report done. The applicant further states that the AMD will not endure for the life of the mine but rather decant will only occur after the closure of the mine. The applicant further states that before it commences with the proposed mining it will have to obtain a water use licence and as part of the pending water use licence application an AMD management plan

has been developed and submitted to the Department of Water and Sanitation (DWS). The applicant goes further to elaborate on the mitigation measures set out in the EMP pertaining to limiting the impacts of water resources.

- 1.26. According to the applicant, the removal of vegetation will only occur within the mine footprint and it is unclear how the Aston Lake Community will experience soil erosion and floods. Further to this, the applicant states that the air quality models indicate that with the implementation of mitigation measures, dust deposition will not exceed the health standards outside of the project area. The applicant explains that dust sprayers and drop heights at tipping points will be utilised so as to ensure air quality impacts are confined. Regarding noise, the applicant states that the noise specialist concluded that, with the implementation of the recommended mitigation measures, noise impact can be reduced to a minor significance.
- 1.27. The DMR states that it did source comments from the DWS during the assessment of the application. The DMR states that with regard to the concerns raised, it considers such to be within the legal parameters and acceptable provided that the applicable mitigation measures are implemented.
- 1.28. In evaluating this ground of appeal, I am aware that the proposed mining activity requires an Integrated Water Use Licence Application (IWUL) and an associated Integrated Water and Waste Management Plan in terms of Section 21 of the National Water Act, 1998 (Act No. 36 of 1998) (NWA). Further to this I note that condition 3.14 of the IEA states that *"the holder of the IEA must ensure that any water uses listed in terms of section 21 of the National Water Act, 1998 (Act 36 of 1998) get authorization from Department of Water and Sanitation prior to the commencement of such activity (ies)"*. In this regard, the information before me indicates that the applicant has submitted its IWULA application to DWS and that such application is inclusive of an AMD management plan which DWS is in the process of assessing. Further to this I am satisfied that DWS was provided a copy of the final EMP together with the studies on 12 May 2017 and furthermore that DWS was one of the stakeholders the applicant engaged however DWS did not provide its comments during the EIA. Nevertheless, the information before me indicates that the potential impacts on

the water resources are rated medium after the implementation of mitigation measures. Furthermore, I note that the IEA includes appropriate conditions so as to ensure the protection of water resources in the area. In particular I note condition 4.7 of the IEA which states that *"The holder of the IEA must ensure that all liquid wastes, whose emissions to water or land could cause pollution are diverted to sewer, after testing water quality and receiving written approval from the relevant local authority."*

1.29. Regarding the concerns around soil erosion, condition 3.4 of the IEA provides that *"Vegetation clearance must be limited to areas where the individual activity will occur, and mitigation measures must be implemented to reduce the risk of erosion and alien species invasion"*. The Soil, Land Use and Land Capability assessment identifies suitable mitigation such as, but not limited to, minimizing the removal of vegetation in the footprint area; re-vegetation of the disturbed areas and soils compacted by heavy machinery in areas that are not utilized. I am thus satisfied that the EMP includes suitable erosion mitigation measures. Further to this condition 4.12 of the IEA stipulates that *"Erosion and soil loss must be prevented by minimizing the reclamation site exposed to surface water run-off"*.

1.30. Regarding the noise and air quality concerns, I note that noise emanating from the machinery and vehicles during the construction and operational phases are moderate before the implementation of mitigation measures and minor thereafter. Further to this, the EMP states that dust suppression on the haul roads and cleared areas must be regularly undertaken. Condition 4.8 of the IEA stipulates that *"Non-compliance with any condition of this IEA or EMP may result in the issuing of a directive in terms of section 28 of NEMA and or a compliance notice in terms of section 31L of NEMA"*. The holder of the IEA is thus obliged to adhere to the mitigation measures in the EMP. This ground of appeal is accordingly dismissed.

Decrease in property value

1.31. The fifth appellant contends that the value of the Aston Lake Community property will devaluate and will become more invaluable both because of the visual effect.

- 1.32. In response to this ground of appeal, the applicant states that the method of mining to be conducted is role over mining wherein continuous rehabilitation concurs as the mining progresses. This will ensure that there is no open void left when the mining is completed as top soil and subsoil will be stored separately to be replaced into the void as part of rehabilitation.
- 1.33. In evaluating this ground of appeal, I am satisfied that the open pit will be rehabilitated. The EMP states that, so as to curb visual impact dust monitoring and management as per the Air Quality Monitoring Plan must be implemented, the existing rows of trees planted near some farm residences as windbreaks/vegetation screens need to be maintained and protected and grievances from visual receptors must be monitored and addressed through a Grievance Mechanism. I am satisfied that such mitigation measures are suitable and appropriate so as to reduce visual impact. This ground of appeal is thus dismissed.

Impacts on agricultural land use

- 1.34. The second appellant argues that agricultural land use has to disappear for the sake of economic development and express concern that food security becomes more and more threatened. The second appellant refers to Environmental Management Plan (EMP) which states that the preservation, development, and sustainable use of agricultural land are integral to ensure long-term food security in South Africa. The fourth and seventh appellants contend that there was objection by the then Department of Agriculture Forestry and Fisheries (DAFF) against the loss of high agricultural land yet this was ignored by the DMR.
- 1.35. The fourth and seventh appellants contend that the findings in the Socio-Economic Impact Assessment Report and the Soil Land Use Capability Assessment Report have not been considered by the DMR in its decision making process. According to fourth and seventh appellants the said reports conclude that: (1) the activities will not be able to coincide with agricultural land uses, (2) the project is likely to sterilise a relatively large land area with high potential agricultural potential, (3) that available land with similar soil capability, water

resources and irrigation infrastructure is virtually non-existent, (4) the use of the land for mining will result in a nett decrease in food supply, (5) when topsoil is removed from the infrastructure areas, the land capability is reduced to nothing and land use will change from intensive cultivation (72%) to mining. The sixth appellant states that the area is a renowned agricultural area.

1.36. In response to this ground of appeal, the applicant states that the proposed mining activity will not impact on the food security of the country as farming and mining will take place concurrently because the full extent of the pit will not be mined immediately. The applicant explains that only 5% of the national maize production comes from Gauteng and during the operation phase approximately 20 hectares of land will be used per annum for mining, thus only 1 300 hectares will be distributed by the mine over 53 years. The applicant explains further that the pit will be rehabilitated to grazing land as a minimum requirement and goes further to explain the rehabilitation process.

1.37. The applicant explains that DAFF's comments were received during the scoping phase of the project in terms of the Conservation of Agricultural Resources Act, 1983 (Act No. 43 of 1983) (CARA). The applicant states that the said comments indicated that biodiversity assessments must be undertaken, and an EMP must be compiled. The applicant states that this was done and the suggested mitigation measures were incorporated in the final EMP and the IEA. Further to this, in a letter addressed to the Appeals Directorate dated 30 September 2019, the applicant states that the DAFF had no objection to the proposed development but only had an objection to portions 4 and 13 of the farm Palmietkuilen. The applicant states that the other comments raised by DAFF relates to a subdivision of agricultural land and the only comments relevant to the EA application was made in terms of CARA during the scoping phase.

1.38. The DMR submits that the impact on agricultural land was considered and assessed through the studies. The DMR states that according to the studies, the proposed mining activity will have minimal and acceptable impacts on food security. The DMR also states that the "no go" option was also considered and weighed against the benefits of the project. According to the DMR, DAFF comments were received which comments related to

studies to be undertaken by the applicant during the EIA process and these studies were conducted.

- 1.39. In evaluating this ground of appeal, I am aware that the site visit conducted on 27 August 2019, confirmed that agricultural activities within the project area comprises of irrigated and dry-land commercial maize and soya farming operations. I note from the EMP that the sterilization of land due to the mining activity will have a minor negative effect on production of maize and soya beans in the Gauteng Province, but will be significant in the context of the current production of dry beans in the Gauteng Province. I further note from the EMP that the Mining Right Area is dominated by the presence of soils highly suited for agriculture and the impact assessment on soils and land use found that the project site is situated on prime agricultural land. The proposed mining will change the land use from crop farming to mining. I note that the applicant indicates that whilst mining is taking place, farming will not be affected on a permanent basis due to the efficiency of concurrent rehabilitation and certain portions being mined at a time. However, I note from the EMP that no land capability mitigation measures are possible during the construction and operational phases because the land use is changed from intensive cultivation (agriculture) to open pit mining.
- 1.40. The information before me indicates that, during the appeal process, comments were sourced from the now Department of Agriculture, Land Reform and Rural Development (DALRRD). Such comments were provided on 25 September 2019. The DALRRD states that the proposed mining activity is located within a proposed Protected Agricultural Area which has a priority rating of B. According to DALRRD, this means that this area is regarded as high potential agricultural land which should be protected for agricultural production purposes. The DALRRD further advises that land capability ratings varies from 1 to 15 with 15 being the highest possible rating. The capability evaluation value of the proposed mining area is 9. DALRRD states that it regards areas with a land capability rating of 9 and higher to be of extreme importance.
- 1.41. Further to the above, the Directorate: Spatial Information Management within the Department of Environment Forestry and Fisheries was requested to do a screening of the

proposed mining area, which confirmed that the site comprises mainly of very sensitive agricultural areas. Whilst I am aware of the social benefits of the proposed mining, I find that such does not outweigh the need to protect and preserve the prime agricultural land. The said area has been utilised for agricultural activities for generations and can go on to be used for such provided soil disturbances are avoided. One of the biggest threats to the retention of productive agricultural land is the conflict between agriculture and mining land uses. With the matter at hand, I find that it is vital to preserve the current land-use, namely commercial agriculture.

- 1.42. I must stress that NEMA, which was enacted to give effect to section 24 of the Constitution, embraces the concept of sustainable development. Sustainable development is defined to mean *"the Integration of social, economic and environmental factors into planning, implementation and decision-making for the benefit of present and future generations"*.
- 1.43. NEMA requires that people and their needs be placed at the forefront of environmental management – *batho pele*. It requires all developments to be socially, economically and environmentally sustainable. Most significantly, it requires that the social, economic and environmental of a proposed development be *"considered, assessed and evaluated"* and that any decision made *"must be appropriate in light of such consideration and assessment"*.
- 1.44. In light of the foregoing, I have decided to uphold this ground of appeal and set aside the decision of the DMR to grant the aforementioned IEA to the applicant on 5 March 2019.

2. DECISION

- 2.1. In reaching my decision on the appeals lodged against the granting of the aforementioned IEA, I have taken the following into consideration:
- 2.1.1 Information contained in the DMR project file (GP30/5/1/2/3/2/1(10047) EM), in particular the EA and EMP;
- 2.1.2 The above-mentioned seven appellants' grounds of appeals;

- 2.1.3 The response by the holder of IEA, received on 15 April 2019;
- 2.1.4 The comments by the DMR, received on 11 June 2019,
- 2.1.5 The outcome of site visit conducted on 27 August 2019;
- 2.1.6 The screening tool results received from the Directorate: Spatial Information Management on 23 September 2019;
- 2.1.7 The comments from DALRRD, received 25 September 2019; and
- 2.1.8 The letter received from the applicant dated 30 September 2019.
- 2.2. In terms of section 43(6) of NEMA, I have the authority, after considering the appeals, to confirm, set aside or vary the decision, provision, condition or directive or to make any other appropriate decision.
- 2.3. Having carefully considered the above mentioned information, and in terms of section 43(6) of NEMA, I have decided to dismiss the grounds of appeals mentioned in paragraph 1.8.1 to 1.8.5 and uphold the ground of appeal mentioned in paragraph 1.8.6 above. The decision of the DMR to grant the aforementioned IEA to the applicant on 5 March 2019 is hereby set aside.
- 2.4. In arriving at my decision on the appeals, it should be noted that I have not responded to each and every statement set out in the appeals and response thereto, and where a particular statement is not directly addressed, the absence of any response thereof should not be interpreted to mean that I agree with or abide by the statement made.
- 2.5. Furthermore, should any party be dissatisfied with any aspect of my decision, it 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).



MS B D CREECY, MP

MINISTER OF ENVIRONMENT, FORESTRY AND FISHERIES

DATE: 20/10/2019 .