

SAVE MAPUNGUBWE COALITION

STATEMENT

Johannesburg, South Africa
7 December 2012

The Save Mapungubwe Coalition withdraws from the Memorandum of Understanding with Coal of Africa Limited, and joins the Environmental Monitoring Committee for the Vele Colliery

Background

1. In 2010, the Save Mapungubwe Coalition (the Coalition)¹ instituted legal proceedings aimed at setting aside the mining approvals granted to Limpopo Coal Company Pty Ltd for the Vele Colliery because the Coalition believed that the decision to authorise mining in this area was inappropriate. The Coalition was also of the view that that the decision to grant a water use licence for the Vele Colliery was inappropriate and was based on insufficient and unreliable information. That position has not changed.
2. Towards the end of 2011, the Coalition resolved to commence negotiations with Coal of Africa Limited (CoAL) and its subsidiary Limpopo Coal Company Pty Ltd (jointly referred to as “CoAL”). The decision to commence negotiations was based on the Coalition’s assessment that it was more likely to achieve best practice through negotiation rather than litigation.
3. On 24 November 2011, the Coalition signed a Memorandum of Understanding (MoU) with CoAL to guide negotiations towards a Memorandum of Agreement (MoA). The overall aim of these negotiations, as agreed by both the Coalition and CoAL, was to set a benchmark for best practice in relation to managing and mitigating the impacts of coal mining and related activities on the environment, specifically including the impact on water and heritage resources – not only for the Vele Colliery, but for all future coal mines. This would be done through:
 - a. commissioning additional research of the potential impacts of mining and related activities on water and heritage resources, which had not been done prior to the licences being issued; and
 - b. in view of the results of this additional research, agreeing amendments to licences issued to CoAL for the Vele Colliery,² as well as timeframes for the submission of amendment applications to the Departments of Water Affairs (DWA) and Mineral Resources. Together with other key issues set out in the MoU, this further agreement would be recorded in the MoA.

Withdrawal from negotiations

4. After nine months of engagement, the Coalition took the decision to withdraw from the MoU and to cease negotiations towards an MoA. The reasons for this decision are as follows:
 - a. As a result of the additional research commissioned during negotiations, new information came to light about past and ongoing non-compliance with water legislation

¹ The Coalition consists of the Endangered Wildlife Trust, BirdLife South Africa, Wilderness Foundation South Africa, World Wide Fund for Nature South Africa, Mapungubwe Action Group and the Association of Southern African Professional Archaeologists.

² In particular, the environmental management programme (EMPR) approved by the Department of Mineral Resources and the integrated water use licence (IWUL) authorised by the Department of Water Affairs.

at the Vele Colliery, as well as existing detrimental impacts that now require remediation.

- i. It appears that, when it commenced mining, CoAL did not have all the authorisations it required for certain water use activities associated with its mining operations, and still do not have such authorisations. Although this is disputed by CoAL, the DWA has advised the Coalition that Limpopo Coal had been instructed to apply for such authorisations by the DWA, but had failed to do so. CoAL did not disclose this to the Coalition prior or during negotiations. An independent expert has identified detrimental impacts on watercourses as a result of the unauthorised water use activities, which impacts now require urgent remediation.
 - ii. Furthermore it also appears that, since the water use licence was granted, there has been non-compliance at Vele in respect of which the DWA issued a non-compliance letter to CoAL in June 2012. Although we are advised that this non-compliance has now been remedied, CoAL did not disclose this to the Coalition at the time.
- b. Too much information essential for setting best practice remained outstanding to be able to achieve any agreement on best practice in the near future. Based on expert advice, the Coalition believes and has consistently stated that this information should have been obtained by Limpopo Coal before approvals were granted to Limpopo Coal. This includes, in particular, reliable information about the impact the mining activities will have on groundwater.
5. In these circumstances, the Coalition no longer saw any reasonable prospect of achieving best practice through negotiating a further agreement with CoAL. The Coalition notified CoAL of its decision in writing, and also met with CoAL today, 7 December 2012, to close negotiations.

Engagement with authorities, and joining the Environmental Monitoring Committee

6. Since August 2012, the Coalition has met with the Department of Water Affairs and Department of Environmental Affairs to draw the non-compliance at the Vele Colliery to the attention of the authorities. As at 7 December 2012, neither department has confirmed any plans to take further enforcement action to ensure compliance. As far as we are aware, no deadline have been set for applications for the outstanding water use licences or for the recommended remediation on site.
7. On 31 October 2012, the Coalition requested and was accepted as full member of the Environmental Monitoring Committee (EMC) for the Vele Colliery.³ The Coalition's objectives at the EMC are, firstly and most urgently, to ensure compliance with environmental, water and heritage legislation at the Vele Colliery, and secondly to ensure the preservation and protection of the Mapungubwe Cultural Landscape.

Achievements, and lessons learnt

8. The Coalition and its organisational members have spent significant time and resources on trying to protect the water and heritage resources impacted by this particular colliery. We believe that our intervention has raised significant awareness, both locally and internationally, about the

³ The establishment of the EMC for the Vele colliery is a condition of both the environmental authorisation issued by the Department of Environmental Affairs and the water use licence issued by the Department of Water Affairs. Various national, provincial and local authorities are represented on the EMC. More information about the EMC's composition, terms of reference and work to date can be obtained from the EMC Chairperson, Jennifer Kock, at (012) 663 9259 or Jennifer Kock envirolead@gmail.com.

natural and cultural heritage contained in the Mapungubwe Cultural Landscape, and highlighted the urgent need for adequate protection of our World Heritage Sites, including provision for adequate buffer zones for all World Heritage Sites.

9. However, we also acknowledge that we have not achieved what we hoped to achieve at the Vele Colliery through either the legal proceedings, or the negotiations undertaken during 2012. This highlights a number of key lessons:
 - a. **Integrated permitting:** The need for a coordinated, integrated permitting system that allows mining, water, environmental and heritage authorities enough time and opportunity to exercise their respective mandates in accordance with the requirements of the Constitution and other applicable legislation.
 - b. **No-go areas:** The need for authorities to agree on and demarcate areas of heritage, ecological, biodiversity, cultural and hydrological importance and value where no mining should be allowed, particularly to avoid a situation where mining companies are allowed to invest significant capital in an area where mining should never have been allowed in the first instance. A proposed list of such areas of critical biodiversity and hydrological value and sensitivity, based on extensive scientific research and consultation with a wide range of affected parties and authorities, was submitted to the Minister of Mineral Resources in February 2011 by a group of thirteen NGOs.⁴ Although the Minister of Water and Environmental Affairs mentioned in public earlier this year that an announcement of prohibited areas by her mineral resources counterpart was imminent, as at date hereof no such declaration has been made public.
 - c. **Fixing damage after bad decisions based on inadequate information:** The challenges of trying to remediate detrimental environmental impacts caused by the issuing of authorisations without adequate information, or by unauthorised activities that have caused harm to the environment. To ensure sustainable use of land and natural resources, it is essential to ensure that all necessary information is collected and assessed by the relevant authorities before making their decisions in terms of planning and environmental authorisations.
 - d. **Best practice cannot be achieved retroactively:** The impossibility of trying to achieve best practice in relation to managing and mitigating the impacts of coal mining and related activities on the environment retroactively. Implementing best practice cannot be an “afterthought” in project development. It has to be an intrinsic part of the design, development and implementation process of a project to be cost and time effective and efficient.
 - e. **More coherent decision-making:** The need for decisions on environmental impacts assessments (EIAs) to take into consideration other planning strategies and policies (especially in terms of water and biodiversity) in the national, provincial and municipal spheres. In this case, the Coalition believes that if such documents had been duly considered, this development would not have been authorised in its current location.

⁴ For more information, see <http://cer.org.za/virtual-library/letters/prohibitions-and-restrictions-on-prospecting-and-mining-in-environmentally-sensitive-areas-in-terms-of-s-49-of-the-mprda/>. Note that this submission did not comprehensively deal with issues of cultural heritage, which require special attention.

Call for national planning discussion on future mining developments

10. Based on the above, the Coalition urges government, especially the Presidency and the National Planning Commission (NPC), to facilitate a focused, strategic and inclusive planning discussion regarding future mining developments in South Africa and especially regarding possible future mining developments in the Waterberg Area which has been identified as a key action by the NPC in its latest Development Plan: Vision 2030. Integrated strategic planning will be the only way:
 - a. to facilitate sustainable development in the Waterberg area, which is a high biodiversity and water scarce area;
 - b. comprehensively and proactively to map and inform the possible coal mining development in the area, prior to the EIA stage, taking into consideration all relevant information, avoiding unnecessary delays and costs at a later stage for the government, developers and other relevant stakeholders.

11. South Africa cannot afford to impact any further on some of the critical biodiversity, water and related ecosystems infrastructures and services which are essential and necessary for economic and social development. It is the duty of government to ensure that its decisions contribute to sustainable development.

THE SAVE MAPUNGUBWE COALITION

Endangered Wildlife Trust (www.ewt.org.za)

BirdLife South Africa (www.birdlife.org.za)

Wilderness Foundation South Africa (www.wildernessfoundation.co.za)

World Wide Fund for Nature South Africa (www.wwf.org.za)

Association of Southern African Professional Archaeologists (www.asapa.org.za)

Mapungubwe Action Group