



PORT ELIZABETH OFFICE

2 Lawrence Street, Central Hill, 6001, Port Elizabeth. PO Box 12444, Central Hill, 6006. Tel 041 585 9606 Fax to email 086 614 9701
Email peadmin@wessa.co.za www.wessa.org.za

OBJECTION TO THE PROPOSED FULENI ANTHRACITE COAL MINE (Ref: DC28/0035/2013 / KZN/EIA/0001371/2013)

WESSA, the Wildlife and Environment Society of South Africa, is deeply concerned about the application by the company Ibutho Coal (Pty) Ltd (Ibutho) to develop an anthracite coal mine right on the boundary of the world-renowned Hluhluwe-iMfolozi Park. WESSA understands that Ibutho has submitted a Mining Right Application (MRA) for coal on the Remaining Extent of the farm Fuleni Reserve 14375 in KwaZulu-Natal to the Department of Mineral Resources (DMR), with the intention to conduct opencast and underground coal mining for an estimated period of 32 years. This proposed Fuleni Mine has the potential to cause severe and irreversible impacts on this flagship game reserve and to the communities of the Fuleni-Umhlana area. As such WESSA strenuously objects to this proposed mine being authorised.

On the 2 June 2014 WESSA, along with numerous other conservation and community groups, voiced its opposition to Ibutho's application to the Ministers of Mineral Resources, Environmental Affairs and Tourism on the grounds that it proposes open-pit mining within 75m of the Hluhluwe-iMfolozi Park (HiP) fenceline. We are united in opposition to this mine, under the collective of the Save our iMfolozi Wilderness alliance (SOiW). WESSA, as part of SOiW, remains deeply concerned that this mine will:

- 1) significantly negatively impact on the Hluhluwe-iMfolozi Wilderness, decreasing its national conservation and tourism value;
- 2) significantly negatively impact on the long-term, sustainable development prospects of the Fuleni community; and
- 3) will set an unacceptable precedent for allowing mining within buffer zones around Protected Areas.

SOiW is submitting a substantive criticism of the draft Environmental Impact Report (dEIR), exposing its numerous fatal flaws. WESSA has contributed to this criticism with an exposé of serious deficiencies with the reporting of the public participation records of Annexure 1: Household Engagement in Volume 6 of the dEIR. In addition to the combined SOiW response, WESSA makes the following objections against this application and the dEIR's veracity.

WESSA and the other members of SOiW were relieved to learn in early November 2014, that the KZN Department of Mineral Resources had seen sense to reject the Final Scoping Report for this mine application. It was a bold and appropriate decision, which clearly demonstrated this Department's adherence to the 2013 mining guideline document to safeguard South Africa's biological diversity; as signed by the National Ministers of Environment Affairs and Mineral Resources and the National Chamber of Mines. In the foreword to these guidelines both Ministers acknowledged that "some places are sacrosanct – they have such high conservation value that we together commit not to disturb." The Hluhluwe-iMfolozi Park is one of our nation's sacrosanct places!

SOiW was disappointed to learn that Ibutho chose to re-submit its application to mine in this controversial area, and has proceeded into the EIR stage of this application. It is clear that the applicant has not taken the critical rejection to the proposed siting of this mine into consideration. Ibutho has failed to respect the precedent set by the Somkhele mining company, which when it discovered another viable coal seam close to the HiP boundary a few years ago, they acknowledged the tangible value of the iMfolozi wilderness area and chose not to mine this seam. Instead they selected a seam further away to reduce the negative impacts it would have on the park. It was also a parsimonious decision, in that moving away from a controversial area, they avoided delays, dismissal of the application and did not jeopardise the economic value of its neighbouring tourist hotspot and the communities that benefit from the revenue flowing from the HiP. The voluntary set-back respected the very necessary buffer zone around the HiP, a precedent that cannot be ignored.

It appears to WESSA that Ibutho has attempted to deliberately devalue the importance of the HiP alongside its MRA site. Throughout the Amended Final Scoping Report and most of the dEIR, the annotated site maps, diagrams and aerial images of the project location fail to indicate its potential neighbour as the sensitive HiP! It is particularly concerning that such images displayed in the various public participation documents and presentations omitted to indicate this important landowner. The HiP cannot be thought of as a typical neighbouring landowner not worth indicating on the public maps – WESSA regards this as a serious obfuscation of the situation.

The Hluhluwe-iMfolozi Park is the flagship protected area of Ezemvelo and that of the KwaZulu-Natal Province. The HiP was the first designated protected area on the African continent, established in 1895 to prevent the extinction of the Southern white rhino. Additionally, the HiP incorporates the iMfolozi Wilderness Area which was the first wilderness area to be designated as such in South Africa and on the African continent, and where wilderness conservation as a desirable and defensible form of protected area land-use was formally adopted. Ezemvelo has a long history of innovative conservation research and development of conservation techniques, many of which have arisen out of the HiP. The Park with its Wilderness status provides a unique set of tourism assets, which contribute significantly to South Africa's suite of provincial, national and international tourist attractions and positive reputation. The HiP contributes to the local, regional and national economies through eco-tourism; as well as through direct and downstream employment opportunities related to the park. WESSA stresses the important point made by the Minister of Tourism in October 2014 that the tourism, primarily based on our game reserves, now accounts for a larger proportion of South Africa's Gross Domestic Product and now employs more people than the mining sector. Protecting our tourism assets is now more important than opening up new mines, especially those that threaten key national and provincial tourism drivers, such as Hluhluwe-iMfolozi Park. WESSA is not convinced that the economic value of the HiP has been adequately described in this dEIR, nor has the scale of the negative financial impact that the mine risks incurring against the KZN tourism economy been assessed in comparison to the mine's financial value being touted by Ibutho.

Undoubtedly the HIGH to VERY HIGH levels of noise, blasting, vibrations and other impacts of the proposed mine, as assessed in the dEIR, will have a severe adverse impact on this world-famous wilderness area and key tourism asset in KwaZulu-Natal. The managers of HiP, Ezemvelo, have reported that the Zululand Anthracite Colliery and Somkhele Mine, situated much further away from the HiP fenceline than that of the proposed Fuleni Mine, already adversely impacts on the HiP. This includes mining noise, which can be heard within the park's boundaries, particularly at night, impacting on fauna and tourist experience – which this author has personally experienced (in July of last year). Even just tourist perception that their experience of being in the HiP may be negatively impacted upon by a working mine will lead to a decline in revenue income and employment numbers of the HiP and the tourism operators that depend on it. WESSA opinions that existing jobs and eco-tourism value should not be risked by this proposed new development.

Without doubt the projected mine noise from the blasting, sirens, loading of vehicles and road traffic (estimated at 150 vehicle trips per day plus 150 to 200 coal-hauling truck trips per day) will have a significant and highly detrimental adverse impact on wilderness area. This is borne out by the conclusion of the Ambient Noise assessment (Section 5.2.6) that: “The mine operations will introduce a very loud noise source with a large footprint (in extent) into the area”. Noise intrusions would adversely impact on the HiP’s fauna, rhino security and Ezemvelo’s tourism, as well as providing constant noise to the Fuleni residents not forced to leave their ancestral lands. The proposed mine intends operating for 24 hours a day. The much lower ambient noise levels experience at night in a nature reserve and the Fuleni rural area will result in mining noise being carried further and exceeding ambient noise levels by the greatest amount at night. The intrusion of noise into wilderness threatens the very existence of wilderness and could likely culminate in iMfolozi wilderness losing its wilderness status.

A National Protected Area Expansion Strategy (NPAES) focus area is located within the western portion of the MRA area. In addition, according to the KwaZulu-Natal Terrestrial Conservation Plan, the MRA area contains areas specified as Biodiversity Priority Areas 1, with the highest Irreplaceability values – right where pits and spoil dumps are proposed. Mining this area will jeopardise the KwaZulu-Natal Terrestrial Conservation targets, and WESSA is of the opinion that this is a fatal flaw for this application! It has been the intention of Ezemvelo to expand the iMfolozi Wilderness Area into the Fuleni area, and to this end, WESSA understands that Ezemvelo has for a number of years been consulting with the amaKhosi and the Ingonyama Trust, to nurture this vision of developing eco-tourism opportunities with Fuleni and the other communities. Ezemvelo has been ground-truthing the area designated for expansion, known as the “iMfolozi Valley Project Area”; and these expansion plans have already borne fruit – with the Somopho Protected Area being declared earlier this year. WESSA notes the scant attention paid in the dEIR to this conservation expansion programme and indeed to the Somopho Protected Area, which the MRA intrudes across. Should the mine be allowed, it would significantly undermine and curtail this expansion programme, along with the attendant long-term eco-tourism and job beneficiation proposals being formulated in partnership with the amaKhosi. While the mine may provide 32 years of a select few jobs, the scarred landscape and immediate surrounds will be sterilised for the long-term against other viable, sustainable use; as per WESSA’s collective experience of the unfilled rehabilitation promises by mining companies.

The South African Constitution clearly states that everyone has the right (Section 24 b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that -

- (i) prevent pollution and ecological degradation;
- (ii) promote conservation; and
- (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

It is clear that economic developments need to be balanced with environmental concerns, but not at the expense of the (communal) environment for the sake of (private) gains. In forming balanced decisions, NEMA requires the application of the Duty of Care and Precautionary Principles, where in the face of high risk or uncertainty as to the impacts a development may cause, that caution should be exercised against allowing such development. The dEIR claims that the many impacts with HIGH to VERY HIGH significance ratings can be mitigated to acceptable limits or otherwise excused for the sake of creating jobs. WESSA recognises that South Africa faces a jobs crisis, but we are well aware that tourism, especially tourism derived from our nation’s nature assets, holds more potential for sustainable jobs than does mining. WESSA finds the concluding paragraph of the Wilderness Risk Assessment a compelling caution against this ill-considered application:

The overarching impacts that the mine will impose upon the HiP wilderness area are far reaching and as of yet not definitive. What is known is that the mine is likely to have a negative impact on the wilderness area, the biodiversity and species conservation, with the possible resultant loss of the HiP’s wilderness designation. The de-designation of the HiP as a result of the proposed mine potentially has

international ramifications in terms of wilderness conservation and will highlight on an international stage the loss of conservation status of natural resources in South Africa. Based on this, the proposed project could potentially be considered fatally flawed due to the conflicting land use requirements and existing land uses in the area unless it is possible to mitigate impacts in such a way as to support the adjacent land use as functional wilderness.

Ezemvelo has already expressed concerns about the noise, vibration, dust and light pollution impacts of the Somkhele Mine on the HiP's fauna and tourist products; and that mine is situated at least 5 kilometres from the HiP fenceline. This experience promotes the application of the Precautionary Principle against allowing this mine in such close proximity (just 75m!) to the HiP.

WESSA strongly oppose this MRA within the buffer zone of the HiP. Even though a specific buffer zone has not been legally delineated around the HiP, it is abundantly clear from the biodiversity and hydrology assessments of this dEIR that this MRA falls within a critical zone of influence around the HiP. This is reinforced by Somkhele Mine's precedent-setting decision to acknowledge that it will have detrimental impacts on the HiP and deliberately set itself back by at least 5kms from the HiP fenceline, to provide a buffer zone. The National Buffer Zone Strategy (Biodiversity Policy and Strategy for South Africa: Strategy on Buffer Zones for National Parks - General Notice 106 of 2012) advocates the critical importance of buffer zones around protected areas and especially for, but not exclusively, national parks. Buffer zones are required to limit excessive development which may negate the primary objectives and attractions of national park; as well as to ensure the sustainable economic contribution such parks make to the region and to the country as a whole. WESSA concurs with Ezemvelo in their appraisal that even though the HiP is not a national park, it is a protected area of national conservation importance. The National Buffer Zone Strategy lists 'Guiding Principles' of intrinsic value of ecosystems, the Duty of Care, the sustainable use of biodiversity, the fair and equitable distribution of benefits and the Precautionary Principle. Any activity proposed adjacent to the HiP must not jeopardise the HiP and must conform to these guiding principles. Recognising the importance and need for buffer zones around Protected Areas in KZN, the KwaZulu-Natal Environmental, Biodiversity and Protected Areas Management Bill, 2014 (EPG No. 4, 25 February 2015), includes Section 35: Buffer zones. It describes the purpose of a buffer zone is to -

(a) ensure that the environmental purpose for which a protected area is declared is not negatively affected by development or any other activities in the areas surrounding the protected area;

(b) protect important areas of high value for biodiversity and to society where such areas extend beyond the boundaries of a protected area;

Clearly this MRA is in contravention of these intentions. WESSA recognises that the buffer zone of the HiP has yet to be scientifically ascertained and legally proclaimed. But even a lay person with minimal knowledge of environmental impacts of mining, will appreciate that a mine within 100m of the HiP is well within a buffer zone around the HiP fenceline and that it will undoubtedly negatively impact on the fauna of this famous reserve. Even if an arbitrary and minimal buffer zone of 1km from the HiP is set, that at least a quarter of this high intensity development is within this limit.

The Mining and Biodiversity Guideline (2012) provides explicit direction in terms of where mining-related impacts are legally prohibited, where biodiversity priority areas may present high risks for mining projects, and where biodiversity may limit the potential for mining. According to the assessment reported on in the dEIR conducted in terms of the Mining and Biodiversity Guideline, the majority of the mining footprint area falls within an area considered to be of **Highest Biodiversity Importance**. Highest Biodiversity Importance areas include areas where mining is not legally prohibited, but where there is the highest risk that due to their potential biodiversity significance (the neighbouring HiP) and importance to ecosystem services (e.g. water flow regulation and water provisioning) that this mining proposal will be significantly constrained or may not receive necessary authorisations.

Approximately a third of the MRA area is considered to be of **High Biodiversity Importance** (as it falls within areas considered to be protected area buffers around National Parks, World Heritage Sites or Nature Reserves, as well as being an identified priority for the KZN provincial spatial biodiversity plans and high water yield areas. These areas are important for conserving biodiversity, for supporting or buffering other biodiversity priority areas, for maintaining important ecosystem services for particular communities or the country as a whole. The Mining Guideline indicates that these areas options may be limited for mining. In total, approximately $\frac{1}{3}$ of the MRA has either **Highest** or **High Biodiversity Importance** rating. It is a reasonable deduction from the above assessment that the National Department of Mineral Resources own guidelines, then recommend that this area not be made available for mining. These ratings are corroborated by the faunal, floral, wetland and aquatic assessments conducted by Scientific Aquatic Services for Jacana Environmentals cc.

The buffer zone determination project has been initialized and technical studies are underway to determine an appropriate buffer zone and land use guidelines to compliment the zonation system of the Park. WESSA believes that it will be highly irresponsible of the KZN Dept of Economic Development, Tourism & Environmental Affairs (DEDTEA) to even consider approving this dEIR until such time as the HiP Buffer Zone has been determined and available for the DEDTEA to consider its decision. The DEDTEA has a Duty of Care under NEMA to postpone making such a decision, considering the national importance of the Hluhluwe-iMfolozi Park. It would be adequate grounds of Appeal against such a premature decision, considering the imminent availability of such a buffer zone determination and the lengthy (32 years) temporal and regional geographical scale of negative impacts elucidated in the dEIR.

The River and Aquatic assessments conclude that the iMfolozi and Mvamanzi riverine resources are of significant importance in terms of function and service provision with special mention of biodiversity, cultural value and water provision in a rural area with high cultural value. The riverine resources associated with the mining footprint area are largely intact and are therefore important in terms of biodiversity value as they provide habitat and migratory corridors for a diversity of faunal and floral species. The riverine resources also have significant downstream importance for biodiversity maintenance and other basic ecosystem services as these systems are major tributaries of the St Lucia estuary in the iSimangaliso Wetland Park and World Heritage Site (iSimangaliso).

WESSA reminds DEDTEA of how acid mine leachate has polluted wide areas from so many of South Africa's existing, closed and abandoned mines; creating a costly national problem, which is threatening scarce water resources and community health. You will recall how over R350 million of tax-payers' money was used over 2013 to clean up acid-mine leachate in Gauteng province alone – that is public funds were inappropriately used to clear up privately generated pollution. Acid mine leachate is a severe form of pollution and spills of it have already caused fish and crocodile mortalities in the rivers flowing through the Kruger National Park: an international embarrassment and a severe threat to the integrity of this keystone tourism revenue generator in South Africa. WESSA recognises that the acid mine leachate from this site would not drain into the HiP, but instead downriver into the iMfolozi water catchment component of the iSimangaliso Wetland Park World Heritage site. The FSR and the dEIR reports that the iMfolozi catchment is water stressed and already has a definite and serious water quality and quantity problem. This proposed mine has the potential to contribute to and exacerbate this existing situation. This is because as regional water abstraction from this catchment increases, it will concentrate the levels of in-stream pollutants reaching the iSimangaliso/Lake St Lucia System, mitigating the effect of the distance from the MRA to the iSimangaliso's Zone of Influence (24 km) and Lake St Lucia System (64 km).

The Executive Summary provided by Scientific Aquatic Services (SAS) highlights the potential adverse impact of the Fuleni mine on the HiP and iSimangaliso, with an assessed ecological impact of high significance both within and potentially beyond the boundaries of the project. SAS warns that the potential for post-closure impacts on water quality are of concern, which WESSA understands to be principally from acid mine leachate. SAS also clearly

indicates their unease that unless the mine is able to treat and/or contain all potential sources of contaminated water, and indefinitely post-closure, to pre-mining water quality standards, SAS regards this mining project as posing a **very high** long term impact on the region, which includes iSimangaliso. The fact that iSimangaliso has been recognised with World Heritage status, which is the highest level of conservation and cultural protection that can be afforded to an area, along with thousands of jobs and the significant percentage of tourism revenue that iSimangaliso contributes to the KZN provincial GDP, it advocates a risk adverse and extremely cautious approach in deciding on this mine's application.

Turning some focus on the adequacy of the public consultation of the Fuleni villagers who may be forced to move or otherwise be impacted upon by the proposed Fuleni mine, WESSA has contributed to the SOiW substantive criticism of the draft Environmental Impact Report by providing a review of Annexure 1: Public Participation Records Volume 6 (Household Engagement). A summary of our findings is presented below:

Based on our findings to date, WESSA strongly rejects the manner in which the "engagements" have been conducted and presented in the dEIR; for the following reasons:

- no information about the context, background and purpose of these one-on-one engagements was provided, viz. there is no report or mention made in the dEIR to data gathered during these "engagements" or explaining the objectives and methodology or providing an analysis of the responses;
- conflicting and disturbing feedback from several respondents concerning the way the information was being gathered, namely the questionable explanations given to the respondents as to the purpose of the questions, as well as threats if they refused to respond. The threats made are of great concern and Jacana and Naledi should investigate and deal decisively against those of the interviewers who made these threats, as well as to remove all response gathered by these interviewers from the Public participation/consultation process (PPP) record and for the interviewees to be apologised to;
- these "engagements" involved one-way communication focussed on gathering data about agreeing to the mine from ill-informed people, many of whom kept asking for specific information from the EAP and Ibutho Coal to enable them to make informed comments and decisions about the Fuleni mine, but have yet to receive the required input to do so;
- An estimated 35% of the survey forms are blank with only the name of person, ID number and signature and no other information;
- variability and inconsistency in the skills-levels, competence, reliability and honesty of the interviewers with some interviewers blatantly misrepresenting the interviewees by mistranslating the Zulu information provided by people opposed to the mine and even going so far in some cases to translating questions from the interviewees about the certainty of getting employed to instead recording them as statements of support: "we are happy with mine and the employment opportunities it will bring in our communities"!

These issues point to a questionable public consultation process with the villagers most likely to have their lives severely altered by the presence of such a mine. Further interrogation of the PPP suggests that the villagers have been heavily lured into supporting the MRA with the insinuation of jobs becoming available to them if they do. Of critical concern to WESSA is the strong likelihood that the mine will lead to an increase in poaching in the HiP; which contains one of the densest populations of rhino in the world. The threat comes from having a large workforce having sight into the HiP and the activity and noise of the proposed mine over the HiP fenceline masking the entry and exit of poachers into the HiP. Ezemvelo reports that the rhino population of the HiP is already under serious threat by poachers. WESSA has been intimately involved in trying to protect rhino and elephants from poaching since the early 1910's, and holds that this increased risk should not even be tolerated.

WESSA holds that the proposed Fuleni is inappropriate and will severely impact on the Hluhluwe-iMfolozi Park, a significant conservation heritage for South Africa, a long-term employer and a crucial tourism economic driver in

northern KZN. From personal experience of having overnighted in the HiP in July of last year, I can attest that even the far off Somkhele and Zululand Anthracite collieries create a perceptible noise and light disturbance to visitors.

WESSA holds that the example set by the Somkhele mining company is appropriate and that this precedent be adhered to by requiring Ibutho Coal and any other applicants wanting to mine around the Hluhluwe-iMfolozi Park, to have at least an equal set-back distance. In this way, at least any individual level of mining impact won't appear any worse than what is currently experienced. By confirming this precedent, it will have bold positive consequences for dissuading future mining applications in the immediate buffer zones around key conservation and tourism assets across South Africa. But in approving this EIR and allowing this MRA at this proposed site, the DEDTEA will be unfortunately setting a very poor precedent for protecting our natural heritage and the jobs that they sustain from future mining or heavy industry applications adjacent to protected areas. Such a decision will have severe long-term implications for conservation in South Africa.

WESSA urges Ibutho Coal (Pty) Ltd to respect the integrity of the Hluhluwe-iMfolozi Park, to adhere the Somkhele precedent and the tenants of the Mining and Biodiversity Guideline and to withdraw this harmful application. WESSA calls upon the KZN Department of Economic Development, Tourism & Environmental Affairs and the KZN Department of Mineral Resources to recognise that the Hluhluwe-iMfolozi Park is one of the sacrosanct places that their own guidelines require them to protect, and to uphold the NEMA Precautionary Principle required of all decision-makers having an impact on our environment. WESSA encourages these departments to protect the Hluhluwe-iMfolozi Park from this application that threatens the integrity of this major conservation and tourism jewel of our country.

Date:

03 August 2015

Contact:

Morgan Griffiths

Environmental Governance Programme Manager

Email: morgan.griffiths@wessa.co.za

Tel: 041 5859606