



environmental affairs

Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA

APPEAL QUESTIONNAIRE

Appellant's contact information:

Name: **UMZIMVUBU CATCHMENT PARTNERSHIP PROGRAMME**
C/O NICKY MCLEOD (secretariat) and SINEGUGU ZUKULU (chair)

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Project information:

Project name: **ER APPLICATION FOR PETROLEUM PRODUCTS ON VARIOUS FARMS IN THE MAGISTERIAL DISTRICTS OF MATATIELE AND MT FLETCHER, EASTERN CAPE (12/3/295 ER)**

Authorisation register number as on environmental authorisation: **12/3/295**

Authorisation date as on environmental authorisation: **21/09/2017**

IMPORTANT! Please note:

- *The decision of the department is reflected in the letter of authorisation or rejection. The conditions of approval are contained in the environmental authorisation document, attached to the authorisation letter.*
- *The appeal must be accompanied by all relevant supporting documents or copies of these that are certified as true by a commissioner of oaths.*
- *The grounds of your appeal and the facts upon which they rest must be set out. You should formulate your objections or concerns as averments and not as questions about the project. Please therefore refrain from material or remarks that do not contribute to the merits of your appeal.*
- *To assist in this regard, the following questions are listed as a guideline only – more space may be used if necessary:*

1. Are you lodging this appeal as an individual or on behalf of a community/organisation?

Individual	Community/ organisation ✓
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If on behalf of a community or organisation, please provide proof of mandate to do so.

Please refer to attached MoU for Umzimvubu Catchment Partnership Programme (UCPP) and copy of letters submitted during scoping and EIA process by representatives of UCPP based on mandates from meetings, minutes attached. Attached as annexure 1

2. Is your appeal based on factors associated with the process that was followed by the applicant in obtaining authorisation?

Yes ✓	No
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Please provide reasons:

- a. objections submitted during public consultation (scoping and EIA phases) have either not been considered or not appropriately addressed by consultant – the final EIR omits these comments, along with petitions against the application facilitated by UCPP with local residents.
- b. UCPP was a registered IAP and has not received written notification of the the reasons therefore within the 14 day period required in NEMA regulations Dec 2014 4(1). PASA notified applicant on 26/09/2017, and 14 day period lapsed on 11/10/2017.
- c. Notification by sms with reference to a website to obtain the record of decision is not acceptable for rural people with limited access to internet.

3. Is your appeal based on factors associated with environmental impacts not taken into account by the department in refusing or authorising the application?

Yes ✓	No
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Please provide reasons:

- a. Precautionary principle was not applied, with respect to potential cumulative impacts on groundwater sources and biodiversity resulting from discovery of shale gas in mountain catchment area.
- b. The MINING AND BIODIVERSITY GUIDELINES (2013) developed by SANBI and DMR aims to minimise the impact of mining on country's biodiversity and ecosystem services. Applications for mining activities in CBAs and PAs, as well as 1km buffer of NFEPAs, may constitute a fatal flaw or face serious limitations, and mining in such areas may be considered out of place. Maps and references were provided to the the applicant's EAP: such information included CBAs, PAs, SWSAs, groundwater supply zones, NFEPAs, wetlands etc but have not been taken into account, other than excluding the ONR after this was discovered during

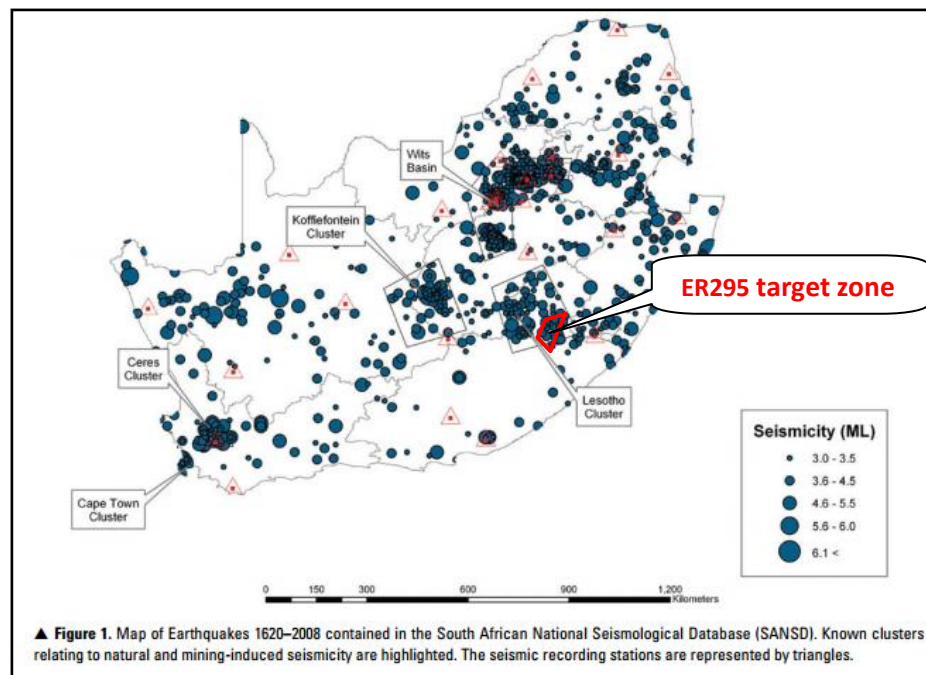
scoping. No attention has been paid to the extensive CBA presence in the area in the public consultation response in the EIR final report.

4. Would you agree to the activity proceeding if your concerns can be addressed by rectifying the process or mitigating or eliminating the impacts of the activity?

Yes	No✓
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Please provide reasons:

- The target area is a watershed and forms the strategic water source for the uMzimvubu catchment, with high risk of exploration activity leading to extractive mining, with consequent high risk of groundwater contamination.
- Area is also part of the Lesotho seismic region cluster, with a high risk of seismic activity impacting upon subsurface structures and potential groundwater contamination. Please refer to figure 1 below.
- The predominant livelihood pursuit is agricultural – exploratory aerial survey through full tensor gradiometry survey can disrupt livestock and remote rural settlements, and identification of shale gas or coal bed methane deposits has a high likelihood of leading to extensive sub surface hydraulic fracturing, with surface well pads extending over hundreds of hectares, requiring transformation and loss of agricultural land. This will threaten local livelihoods in an already vulnerable community. The promise of jobs is not seen to be realistic as most will require externally sourced skills and will not benefit local residents facing land losses.



5. Are you fundamentally opposed to any development activity on the site?

Yes	No✓
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Please provide reasons:

Only opposed to activities which conflict with sustainable land use, livelihood basis and health of community

6. Do you have an objection in principle against the development?

Yes✓	No
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Please provide reasons:

A significant portion (over 50%) of the target area has been identified for stewardship, based on its Critical Biodiversity Area and freshwater priority status. This information was provided to SLR, but not considered. **Please refer to attached annexure 2 map.**

We do not fully understand the long term potential impacts of the exploration and any resultant unconventional extraction development on the landscape and substrate. We believe the precautionary principle should be applied with respect to any risky (i.e. not fully understood) fossil fuel developments, and more attention paid to development of renewable and less-polluting energy sources, in line with South Africa's COP17 obligations.

7. Does your appeal contain any new information that was not submitted to the environmental consultant or department prior to the department's consideration of the application?

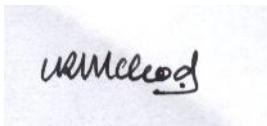
Yes✓	No
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If the answer above is yes, please explain why it should be considered by the Minister and why it was not made available to the environmental consultant or department during the application process.

Revised Strategic Water Source Areas were developed by CSIR and DWS in September 2017, following on from the National Water Resource Strategy 2 (NWRS2) recommendations to protect these strategic areas in the light of water scarcities and unknown climate changes.

8. **DECLARATION:**

I declare that the contents of this submission are to the best of my knowledge the truth and I regard this declaration as binding on my conscience.



APPELLANT: secretariat for UCPP, on behalf of membership

20/10/2017

DATE:



environmental affairs

Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA

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APPEAL RESPONSE REPORT

PROJECT NAME/TITLE:

ER APPLICATION FOR PETROLEUM PRODUCTS ON VARIOUS FARMS IN MAGISTERIAL DISTRICTS OF MATATIELE AND MT FLETCHER EASTERN CAPE (12/3/295 ER)

PROJECT LOCATION: **MATATIELE & MT FLETCHER RURAL AREAS, EASTERN CAPE**

PROJECT REFERENCE NUMBER: **12/3/295**

DATE PROJECT/ACTIVITY AUTHORISED: **21/09/2017**

DETAILS OF THE APPELLANT	DETAILS OF THE APPLICANT
Name of appellant: UMZIMVUBU CATCHMENT PARTNERSHIP PROGRAMME (UCPP)	Name of applicant: RHINO OIL & GAS EXPLORATION SOUTH AFRICA (Pty) Ltd
Appellant's representative (if applicable): MCLEOD & ASSOCIATES ATTORNEYS	Applicant's representative (if applicable): PHILIP STEYN
Postal address: P.O. BOX 14, MATATIELE, 4730	Postal Address: ICON BUILDING, SUITE 300, CNR LONG STREET & HANS STRIJDOM AVE, CAPE TOWN, 8000

Email Address: nicky@enviros.co.za or mark@mcleods.co.za	Email Address: phillipsteyn1@gmail.com or psteyn@rhinoresourcesltd.com
Telephone number: 082 782 6067 / 039 737 4849 / 039 737 3117	Telephone number: 797 161 030
Fax Number: 039 737 4892 / 3117	Fax number: none provided

GROUNDS OF APPEAL	RESPONDING STATEMENT	COMMENT BY THE DEPARTMENT / DMR
<p>1. EIR IGNORED RELEVANT CONSULTATION GUIDELINES</p> <p>a. S24O(1)(viii) of NEMA enjoins the Minister to take into account “any guidelines, departmental policies, and environmental management instruments that have been adopted in the prescribed manner by the Minister or MEC, with the concurrence of the Minister, and any other information in the possession of the competent authority that are relevant to the application”.</p> <p>b. Regulation 40(1) of the NEMA regulations demands that Interested and Affected Parties (I&APs) must be afforded 30 days to submit comments on the EIA and EMPr.</p> <p>c. The pre-ambule to the Directive issued in terms of the MPRDA states that the government acknowledges the importance of communities being involved in the mining process from the earliest stages of the application process for prospecting . This involves communities being consulted and informed on any mining activities in their area. The preamble points out that the consultation process is integral to the fairness of the process due to the fact that the process cannot be fair is the administrator did not have regard to the consultation process in order to assess whether the consultation was sufficient to render the grant of the application procedurally fair.</p> <p>d. We submitted comments within such timeframes in response to both the scoping report and draft EIR, and these are not included in the final EI report submitted by SLR on behalf of Rhino to PASA, according to the hard copy made</p>		

<p>available for perusal by IAPs in Matatiele. The comments contain extensive objections to the proposed exploration activity, along with a petition signed by several hundred people in opposition to the proposal, facilitated by UCPP. These have been ignored in the final EIR report, submitted in October 2016.</p> <p>e. For this reason any defect in the process most particularly relating to affording communities opportunities to object and giving their concerns a voice must be regarded as rendering the process procedurally unfair.</p>		
<p>2. <u>NO PROPER NOTICE OR DOCUMENTS IN SESOTHO or XHOSA – SEVERE PREJUDICE TO RURAL ILLITERATE POPULATION</u></p> <p>a. No attempt has been made to make the technical documentation contained in the EIA understandable to local Sotho and Xhosa Speakers, other than a very cursory background information document at the outset.</p> <p>b. Regulation 40(2) to NEMA dictates that the <u>applicant “must provide access to all information that reasonably has or may have the potential to influence any decision with regard to an applicationand must include consultation with (d) all potential, or, where relevant, registered interested and affected parties.</u> Regulations 41 (2)(e) and 44 (2) also make reference to using <i>reasonable alternative methods</i> to notify, and record commentary by, people who may be unable to participate due to illiteracy, disability or any other disadvantage.</p> <p>c. Given the fact that the information available was in a language not familiar to the majority of the population of the area under application, we submit that this peremptory regulation has not been complied with and the I&APs have not been provided with such information or consulted with in any meaningful sense.</p>		
<p>3. <u>NO NOTICES TO OWNERS & OCCUPIERS</u></p> <p>a. We have seen that the application relates to a number of properties yet further note that the owners and occupiers of many such properties have not been notified of the application. They are obviously interested parties who are probably not notified of these proceedings.</p> <p>4. No <i>bona fide</i> attempt was made to communicate the intentions of Rhino Oil and gas to the wider rural population who mostly do not possess smartphones or have internet access. The A3 poster attached to a single pole next to the R56 on the</p>		

<p>edge of the 109 000 ha area mentioned in the Scoping report was not in a location that would have been passed in going from the market centre of Matatiele to our farming area in any event. The area is accessed by 20 or 30 district roads and when one is travelling on them realistically one does not stop to look at a single fluttering paper on a fence post.</p>		
<p>4. <u>EIR IGNORED RELEVANT ENVIRONMENTAL GUIDELINES AND SUBMISSIONS MADE REGARDING POTENTIAL CUMULATIVE IMPACTS RESULTING FROM EXPLORATION</u></p> <p>a. The authorisation / ROD section 5.7.2 indicates that ‘rationale provided by the EAP in addressing concerns and objections related to future activities is satisfactory’. We strongly disagree with this statement, and propose that this contradicts the NEMA-founded precautionary principle, the pertinent guidelines for this process, and the constitutional rights of the affected residents to a clean and healthy environment.</p> <p>b. We further submit that the EIR is invalid based on ignoring biodiversity and water resource management guidelines and concerns. The Mining And Biodiversity Guidelines (2013) developed by SANBI and DMR aim to minimise impact of mining on country’s biodiversity, water security and ecosystem services. The guide indicates that ‘applications for mining activities in Critical Biodiversity Areas (CBAs) and Protected Areas (PAs), as well as 1km buffer of NFEPAs (Freshwater priority areas), may constitute a fatal flaw or face serious limitations’, and mining in such areas may be considered out of place.</p> <p>c. The National Water Resource Strategy 2 (NWRS2) makes recommendations to protect strategic water sources areas (SWSAs) in the light of water scarcities and unknown climate changes, the upper uMzimvubu (target for ER295) being a key SWSAs, as shown in annexure 1 map.</p> <p>d. Maps and references were provided to the applicant’s EAP, SLR, including CBAs, PAs, SWSAs, groundwater supply zones, NFEPAs, as well as proposed stewardship sites to secure the watershed, but these have not been taken into account, other than excluding the Ongeluksnek Nature Reserve (a proclaimed PA) after this was discovered during scoping. No attention has</p>		

<p>been paid to IAPs responses regarding concerns based on the potential impacts on both surface and groundwater in this strategic water source area, in the public consultation response in the EIR final report.</p>		
<p>5. <u>APPLICATION EXPIRED: NO DECISION POSSIBLE AS THE 107 PERIOD LAPSED</u></p> <p>a. In terms of regulation 24(1) of the Regulations to NEMA Regulation 38282 of the 4th December 2014 the competent authority has 107 days from the submission of the application within which to make a decision as to whether to authorise the activity.</p> <p>b. According to your notice dated 21st September 2017, the Delegated Authority (DA) received the Application on the 12 October 2016 . In the premises the decision had to be made (having regard to the <i>dies non</i> period of the 15 December to 5 January) no later than on the 17th February 2017. The decision was purportedly made on the 21st September 2017. Accordingly the decision was made 216 days after the expiry of the prescribed period. The language in the relevant section is couched in peremptory terms. The Minister is bound to make his decision as to approving the activity within this 107 day period. The Minister has no power to grant or refuse the application outside of the 107 day period. For this reason the decision of the Minister in this case, being made outside of the period mentioned in the regulation is of no force and effect and, with respect, falls outside of the power of the DA.</p>		
<p>6. <u>NO PUBLICATION OF APPLICATION LODGED: APPLICATION LAPSED AUTOMATICALLY</u></p> <p>a. The prescribed manner for the designated agency (i.e. PASA) to give notice in terms of Section 10 of the MPRDA is set out in Regulation 3 of the MPRDA Regulations (GN R 527 of April 2004). In terms of s2.2.1 of the EIR, “PASA has confirmed to SLR that, in respect of this application, they placed a notice on a notice board at their office and in the Magistrate's Court in the magisterial district applicable to the land in question.”</p> <p>b. S10(1)(a) of the MPRDA dictates in peremptory terms that “within 14 days of accepting an application lodged in terms of s79 of PASA must make known and publish this fact in the prescribed manner”. The manner of publication is set out</p>		

<p>in regulation 3 , a regulation made in terms of s107 of the MPRDA.</p> <p>c. The application was lodged on the 22 May 2015. (p2.2 of EIR).</p> <p>a) The notices in terms of s79 were allegedly sent to two Magistrates Courts in Matatiele and Mt Fletcher by PASA, yet no proof was put up in the application that the notices were exhibited by the authorities at the Courts in any event. No proof of Gazette publication was provided by PASA, and it was subsequently discovered that the Gazette notice was published over 18 months later in December 2016.</p> <p>b) We submit that no notice was exhibited by PASA at the Maluti Court, which Court has jurisdiction over the larger portion of the land under application, nor was a Gazette notice was published within the required 14 day period.</p>		
<p>7. <u>NO NOTIFICATION OF OUTCOME OR REASONS</u></p> <p>a. Although regulation 4(2)(a) of the Regulations to NEMA, Regulation 38282 of the 4th December 2014 demands that all I&APs be advised of not only the outcome of the Application <u>but also the reasons</u> for the decision within 14 days of the decision having been made (21/9/17).</p> <p>b. Despite such period having lapsed, the UCPP has not been notified of the reasons for the decision. We were notified that a decision had been made by SMSs and e-mails, but not of the reasons for the decision. We were referred to a website link which showed ‘error’ with no details.</p> <p>c. This is a failure of the Applicant to comply with a peremptory provision.</p>		
<p>8. <u>IRRATIONAL DECISION BY DA WITH CONFLICT OF INTEREST, RESULTING IN IGNORING OF PRECAUTIONARY PRINCIPLE</u></p> <p>a. Regulation 18 of the Regulations to NEMA, Regulation 38282 of the 4th December 2014 dictates that the competent authority must be guided by the two criteria, namely:-</p> <ul style="list-style-type: none"> • need and • desirability of authorising the activity. <p>b. There are many elements of the process of gas extraction from shale beds that are presently unknown. The impact on ground water quality, the impact of volatile gas leakage on stock and human fertility and the impact on surface</p>		

<p>animals (eg. Soil biota such as earth worms) that serve to support our grazing lands are just three of the unknown elements. We understand from NEMA that when faced with unknowns, the approach of the authority ought to be guided by the “precautionary principle”, that is that the conduct is undesirable until the unknowns, become known. The impact of the authority approving the use in the face of the unknowns is that the authority has not made a rational decision.</p> <p>c. It is unclear as to why Rhino Oil & Gas as a foreign owned company with no BEE status in South Africa, is undertaking this application to explore: they have indicated that exploration will ‘assist with obtaining knowledge to plan further prospecting’: surely the optimal approach would be for exploratory steps to be taken openly and co-operatively in the public domain, though Strategic Environmental Assessment for appropriate areas which do not clash with water and biodiversity priorities, to allow for expansion of such knowledge. Private exploration has the potential to lead to secretive, corrupt, misinformed and destructive decision making.</p>		
<p>9. NO FINANCIAL PROVISIONING</p> <p>a) Regulation 24(4) of the NEMA Regulations requires that the authority “may only issue an authorization if the provisions of section 24P(1) of the Act have been complied with”.</p> <p>b) S24P(1) of NEMA states that “An applicant for an environmental authorisation relating to prospecting, exploration, mining or production must, before the Minister responsible for mineral resources issues the environmental authorisation, comply with the prescribed financial provision for the rehabilitation, closure and ongoing post decommissioning management of negative environmental impacts”.</p> <p>c) The record of decision makes absolutely no reference to a consideration of whether the Applicant needs to put up security for environmental damage that requires repair in the event of the termination of the activity. In the premises, the Delegated Authority misdirected himself in considering the Application without first having considered this aspect as is demanded by Regulation 24(4).</p>		

Annexure 1:

Memorandum of Understanding for UCPP establishment;

Mandate to respond on behalf of membership, and initial planning record;

Copies of objections and petitions submitted.

Annexure 2:

Map of affected area with sensitive “no-go” zones shown, as submitted during coping and EIA process