



**Ref: P17102\_CORRESPONDENCE\_LETTERS\_SENT\_39\_REV 00-Letter on SEZ Sam Sole**

03 March 2020

Community House  
41 Salt River Rd  
Salt River  
Cape Town  
7925

Your reference: SEZ Questions

**Attention: Mr Sole**

Dear Sir,

**M-M SEZ SOUTH SIDE - ENVIRONMENTAL IMPACT ASSESSMENT**

We refer to your email enquiry dated 25 February 2020 containing a list of questions addressed to amongst others, Delta BEC, LEDA and M-M SEZ SOC about numerous aspects of the Musina Makhado Special Economic Zone (SEZ) South Side.

Please find below a response by Delta BEC on behalf of LEDA in respect of the environmental impacts of the SEZ development.

***"Environmental Impacts***

- 1 *Delta Built Environment Consultants Pty Ltd (Delta BEC) was appointed by the Limpopo Economic Development Agency (LEDA) as an environmental assessment practitioner (EAP) to undertake the environmental impact assessment (EIA) and apply for environmental authorisation (EA) for the development of the Musina-Makhado Special Economic Zone (SEZ) in terms of Section 24 of the National Environment Management Act No. 107 of 1998 (NEMA) and the EIA regulations, 2014.*
  
- 2 *Delta BEC follows the Scoping phase and EIA phase in Part 3 of the EIA regulations to assess the environmental impacts of the proposed SEZ development. The Applicant will apply for EA for two listed activities, i.e. the clearing of indigenous vegetation to establish the SEZ South*

*Side (Activity 2 in Listing Notice 2) and the change of land use from agriculture for industrial use.*

- 3 *The SEZ South Side will be developed over various phases. In addition to the present EIA for site establishment, legislation requires that each future factory or other development such as bulk boundary infrastructure services will have to perform its environmental own basic assessment (BA) or full-scoping EIA and apply for its own EA, water use licence (WUL), atmospheric emission licence (AEL), heritage permits and waste management licence (WML), etc. for the relevant listed activities. There will thus be further opportunity for future public comment before the heavy industries will be built and operate.*
  
- 4 *The scoping phase included public participation with interested and affected parties (IAPs) who registered in response to the public advertisements and invitation by Delta BEC by providing positive and negative comments about the proposed SEZ South Side. These comments were captured in the final scoping report (FSR) that was approved by LEDET and will be addressed during the EIA phase. It is evident that the CER and their clients failed to respond to the public advertisement by not contacting Delta BEC with their comments within the prescribed timeframe. For unknown reasons, CER elected to rather contact the DTI, LEDET and other parties, which was only relayed to Delta BEC after the FSR had already been approved by the LEDET. In order to provide a sustainably fair opportunity to the CER to comment on the final scoping report (FSR), Delta BEC provided ample time for the CER outside the official comment period to deliver substantive comments, which it has received and will also address in the EIA. Delta BEC secured an extension of time from LEDET to address the substantive impacts of the SEZ South Side in the EIA as amongst others emphasised in the public comments.*
  
- 5 *It appears that the CER made a grave mistake by deducing from the above approach in the FSR that the EIA is inadequate and that it only investigates land clearing for site establishment, but not the significant environmental impacts of the development with respect to air, water, climate change, biodiversity and other aspects. Therefore, the CER concludes that the FSR and EIA process is fatally flawed and the SEZ will not be in the public interest. This is simply false. Delta BEC clearly states the contrary position in the FSR:*

*“Chapter 5 of this Scoping Report contains the detailed list of activities contained in R327, R325 and R324 which may be triggered for developments such as the Musina-Makhado SEZ southern site with thresholds and thus form part of this Scoping and EIA Process. The purpose of the EIA is to identify, assess and report on any potential*

impacts the proposed project, if implemented, may have on the receiving environment. The environmental assessment provides the Competent Authority (i.e. the LEDET), and the project proponent, LEDA, with [what] the consequences of their choices will be in terms of impacts on the biophysical and socio-economic environment and how such impacts can be, as far as possible, enhanced or mitigated and managed as the case may be.<sup>1</sup> [Our emphasis] This includes the potential cumulative impact of the development and hence the approach adopted and approved by LEDET in the FSR.

6 In accordance with the above approach and following the recommendations of the FSR), independent specialists were appointed for the EIA phase to perform 21 specialist studies to investigate the impacts of SEZ South Side development. These studies are:

- 6.1 Soil Classification and Land Capability Assessment
- 6.2 Biodiversity Assessment
- 6.3 Protected Tree Assessment
- 6.4 Wetland and Aquatic Assessment
- 6.5 Noise Impact Assessment
- 6.6 Air Quality Assessment
- 6.7 Climate Impact Assessment
- 6.8 Socio-Economic Assessment
- 6.9 Heritage Impact Assessment
- 6.10 Paleontological Impact Assessment
- 6.11 Visual Impact Assessment
- 6.12 Geotechnical Assessment
- 6.13 Flood Line Assessment
- 6.14 Cadastral Assessment
- 6.15 Traffic Impact Assessment
- 6.16 Topographical Survey

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<sup>1</sup> FSR 2019-06-05, p. 103-104.

- 6.17 *Engineering Studies*
- 6.18 *Geo-Hydrological Survey*
- 6.19 *Health Impact Assessment*
- 6.20 *Water Resources Study*
- 6.21 *Energy Supply Study*
- 6.22 *Town Planning Study*

7 *Many of the specialist assessments have been completed whilst the remainder of the studies are well under way and will be completed soon. Once all the draft specialist reports have been received, Delta BEC (EAP) will complete the draft EIAR and publish the full set of documents for public comment as provided by the EIA regulations. The registered interested and affected parties (IAPs), including the CER, will then have the opportunity to study and comment on the expert reports and assessments of the environmental, social and economic impacts of the proposed SEZ South Side development before the final EIAR is submitted to the competent authority at LEDET to decide. The EIAR and the specialist assessments take note of and consider the concerns raised by the IAPs, including the CER, and will make an informed and balanced assessment and recommendation to the regulatory authority whether the SEZ South Side development is environmentally sustainable. The aforesaid EIA process is clearly prescribed in the EIA regulations and Delta BEC will follow it strictly to ensure public participation takes place before a final decision is taken about the development.*

8 *We suggest that, until the independent specialist impact assessments and draft EIAR are completed, it is presently premature, unscientific and, at best, speculative to draw conclusions about the environmental impacts and sustainability of the SEZ South Side development.*

### **Ministerial Response**

9 *Delta BEC was not privy to and thus cannot comment on the decision by the Minister of Environment, Forestry and Fisheries (Minister) that LEDET and not her Department is the competent authority to approve environmental authorisation (EA) for the heavy industrial development at the SEZ South Side. Delta BEC confirms that it was advised by LEDET at the commencement of the scoping phase that it, and not the national department, is the competent authority for the environmental authorisation process. According to the EIA regulations, the Proponent/Applicant and EAP must follow the instructions of LEDET and have*

done so. We suggest you take this matter further with the Minister and the Limpopo MEC responsible for the environment.

### **Strategic Environmental Assessment**

- 10 *The CER is wrong as it mistakenly argues the relevance of a strategic environmental assessment (SEA) in the present instance. The statutory requirements for the present phase of the SEZ South Side development are the application for environmental authorisation (EA) in terms of Section 24F of NEMA according to the process requirements of the EIA Regulations, 2014 (as amended). Delta BEC has stringently followed the prescribed EIA process. Section 24 of NEMA and the EIA regulations do not require Delta BEC to follow a SEA, but the Scoping and EIA processes. Also, the emphasis on a SEA is misplaced because the current EIA process provides a far more rigorous and detailed assessment of the environmental impact of the SEZ South Side development than is possible under a SEA.*
- 11 *The SEA is not prescribed by South African law but is a voluntary environmental management instrument under Section 24(5) of NEMA that can be used for environmental planning purposes along with other instruments such as environmental management frameworks (EMF), EIAs, environmental management programmes (EMPr), environmental risk assessments (ERAs), environmental feasibility assessments (EFAs), norms and standards and spatial developments tools (SDTs). Although Government, in 2010, gazetted EMF regulations<sup>2</sup>, it has not done so for SEAs. The Department has also not gazetted national norms and standards for SEAs. The Department only informally published SEA guidelines by the CSIR in 2000 and a SEA Information Document in 2004, but both these documents do not have legal status. Thus, government, for the past 16 to 20 years, did not regard the performance of a SEA to be important enough to warrant the gazetting of any binding regulatory instrument for its implementation. During the same period, however, the Department made significant changes to, for example, the EIA regulations, wherein it could have addressed SEAs as it has done with the environmental aspects of prospecting and mining operations.*
- 12 *The draft SEZ designation notice was gazetted on 11 March 2016 for public comment and IAPs could access the designation information and feasibility study on the website of the Department of Trade and Industry (DTI). The DTI advised that it did not receive any response about the environmental aspects of the proposed designation of the SEZ South Side for heavy industrial development.*

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<sup>2</sup> Environmental Management Framework Regulations, GN R547 in GG 33306 of 2 August 2010



13 *Due to the magnitude and extent of the EIA process, comments received as well as the environmental issues encountered, LEDET have granted an extension of time for the EIA process, up to 31 July 2020. The EAP is not in the process to release the draft or final EIA reports until all pertinent issues have been addressed with outstanding information and specialist studies concluded. All registered I&APs will receive communication pertaining to the future releases of the EIA material and decision by the competent authority.*

14 *We trust the above clarifies your questions."*

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Ronaldo Retief', is written over a large, hand-drawn oval shape.

Ronaldo Retief Pr.Sci.Nat. EAPASA  
For Delta BEC

cc: Limpopo Economic Development Agency (LEDA)