SEZ questions

Dear Sir/Madam

We write to raise questions about the decision-making with respect to the Musina-Makhado Special Economic Zone (SEZ).

We set out our concerns and comments with respect to a number of sections and headings. Not all sections may be relevant to you, but we have included all questions for all parties so that the full scope of our inquiry is clear. We flagged specific sections for the attention of specific entities for responses, to the extent relevant to them.

Please come back to us no later than CoB next Tuesday 3 March 2020.

Thank you

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Section A: The Operator

(For response: the minister of trade & industry, the department of trade & industry, Yat Hoi Ning (aka Yihai Ning) and Mr. Chuanhua "Frank" Shang.)

On 2017/09/15 minister of trade and industry Rob Davies signed the ***SPECIAL ECONOMIC ZONE OPERATOR PERMIT*** appointing and authorising the South African Energy Metallurgical Base (PTY) Limited to "develop, operate and manage the South African Energy and Metallurgical Zone of the Musina—Makhado Special Economic Zone in compliance with Section 35 of the Special Economic Zones Act and actions incidental thereto".

There are serious questions about the process and due diligence that led to that signature – and to decisions to continue this project in conjunction with South African Energy Metallurgical Base (PTY).

The directors of the company granted the operator permit at the time of minister Davies' decision were Mr. Yat Hoi Ning (aka Yihai Ning) and Mr. Chuanhua "Frank" Shang.

On this date, there was good reason for the minister to withhold granting this permit, pending a proper due diligence as to the fitness of Ning and Shang.

By this date there was public information showing that:

- Both Ning and Shang were associated with a London AIM listed company with holdings in Southern Africa: ASA Resource Group PLC (formerly known as Mwana Africa). Ning was the executive chair and Shang was a shareholder.

- <u>Five months</u> before the minister's decision (on or about 2017/04/18) it was reported (including on SA's Creamer Media and via official company announcements) that the ASA board had removed the CEO (Ning) and Financial Director Yim Kwan over alleged financial mismanagement.
- The company put out a statement saying: "The board is extremely disappointed to report that there is strong evidence of funds amounting to several million US dollars being transferred from the accounts of FRGM to entities in China, without full value being received by FRGM."
  FRGM refers to the company's Freda Rebecca Gold Mine in Zimbabwe.
- It stated the company had removed Ning from the board and his post as chief executive, along with the group's finance director, Kwan, who had his contract of employment terminated without notice.
- Kwan should have been known to the minister as on 15 June 2015 he had written to Davies on behalf of Mwana Africa, stating:
  "Mwana Africa Plc is interested in the planned South Africa Energy Metallurgical Industry Special Economic Zone (Musina SEZ), after its designation as an SEZ.
  We are interested to participate and discuss more details with regard to the project investment cooperation in the South Africa Energy Metallurgical Industry Special Economic Zone.
  To this end, we are willing to share the related information and our position with your department in terms of the project preliminary work which includes the project feasibility study materials, project cooperation plans and project program, as well as the project implementation program."
- The letter from Kwan, on behalf of Mwana was a word-for-word copy of a letter sent to Davies four days earlier by Ning on behalf of another company, Hong Kong Mining Exchange Company.
- On 2017/04/23 the Zimbabwe Sunday Mail reported that "more than US$15 million could have been spirited away through "shareholder loan repayments" of US$9,2 million; "advance payments" of US$2,7 million to Chinese businesses and partners; "management fees" of US$2,3 million; and disposal of properties worth US$715000".
- On 2017/07/ 29 ASA Resources shares were suspended pending "financial clarification".
- On 2017/08/01 administrators were appointed by the Royal Court of Justice to take over the running of ASA.
- On 2017/09/04 (ten days before Davies' decision) the Mashonaland Central magistrate issued an arrest warrant for the aforementioned Kwan.

So, on the day he signed the operator permit, the minister knew, or ought to have known, that the persons leading the charge on behalf of the Operator were implicated in allegations of fraud that had led to their removal from the directorate of a London listed company, that the same company had been suspended and placed under administration and that its finance director was a fugitive from justice.

Some additional due diligence might have revealed:

- that Shang (purportedly on behalf of Ning's Hong Kong Mining Exchange Company) and a South African, Briss Mathabathe were involved in the Chinese venture to buy into Profert, the South African fertilizer producer, an initiative that ended in tears and business rescue.

- that Shang and Mathabathe were also involved in the abortive Super 5 Media initiative which involved an attempt at setting up a Telkom linked competitor for

Mnet, but which resulted in collapse and losses both for Telkom and for a Chinese investor.

The following questions arise:

1) What are the ministry and the department's explanations for this due diligence failure?

2) What procedures were followed in selecting SAEMB?

3) How did this comply with constitutional and legal imperatives for the procurement of goods and services?

4) SAEMB is supposedly a subsidiary of Shenzhen Hoimor Resources Holding Company, but we have not been able to find a trace of this company. Please provide us with the registration, director and shareholder details of this company.

5) In the pre-feasibility study produced by Ning and still available on DTI website the ownership diagram suggests the SA Energy Metallurgical Special Industrial Zone Management company would be owned 51% by the Limpopo Economic Development Agency and 49% SA Energy Metallurgical Base Limited. Please indicate if this ownership model was ever implemented or, if not, what the current ownership stricture looks like.

Even following the formal announcement in September 2017, there were opportunities for the minister and the department to take stock and reassess the appropriateness of South African Energy Metallurgical Base (PTY).

- On 10 May 2018 the Financial Mail and BusinessLive carried a detailed expose on some of the preliminary allegations directed at Ning & co. (Fugitive nets mega DTI deal). The article quoted DTI spokesperson Sidwell Medupi as saying the DTI would investigate and, "If any evidence of wrongdoing emerges, the department will deal with such matters expeditiously."
- It also quoted a statement from Ning as saying Ning "strenuously" denies ASA's allegations as "completely untrue" and that he, Kwan and another director were removed from the board unjustly: "Our removal as directors of ASA was unlawful and I am currently bringing a claim in the high court of justice [in London] concerning my unlawful removal as a director and other matters," he said.
- However, according to the ASA Resource Group Plc - Joint Administrators' Progress Report dated 24 December 2018, the court actions brought by Mr Ning against the Directors, the Company and the Former Joint Administrators was struck out. We understand that the matter was dismissed because of evidence of non-disclosure by Mr Ning.
- This information is also available.

  On 29th November 2018 Judge Frith issued an order effectively dismissing Ning's applications. In his judgement he noted,

  "The petition [by Ning] is defended on substantial grounds which involve a number of very serious allegations being made against Mr Ning arising from his tenure as the chairman of the company, a role to which he was appointed on 8th June 2015 and from which he was dismissed on 16th April 2017. Those allegations are of misconduct, including fraudulent transfers of funds made by Mr Ning in relation to the company subsidiaries in Africa which he made to his associates. Specifically they included stealing money, a corrupt relationship between Mr Ning and the Chinese suppliers and an alleged tortious conspiracy between the Chinese directors. The pleadings are extensive…"

In order to go to trial, Ning was required to make disclosure, akin to our Rule 53. He failed to do so properly. Judge Frith ruled: "The paucity of information that was disclosed… does call into question the extent and veracity of the searches that were carried out… shortcomings are sufficient for me to come to the conclusion that in reality, the actions of Mr Ning are not consistent with a bona fide attempt to comply with the terms of the… order."

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The following further questions arise:

6) What investigation into the allegations was carried out by DTI?

7) Did the DTI (or its representatives) contact the Joint Administrators of ASA Resource Group? If so, what was the outcome? If not why not?

8) Assuming that DTI might have given Mr Ning the benefit of the doubt following his strenuous denials, that benefit would have been expunged by the striking off of his court challenge, especially as it was apparently done for reasons of lack of candour on the part of Mr Ning. Please comment

9) Given the above, why has the DTI persisted in allowing Mr Ning to drive this highly sensitive process?

Section B: The planning and designation process

(For response: the minister of trade & industry, the department of trade & industry, LEDA, LEDET, Premier Mathabatha, Mott MacDonald, Yat Hoi Ning (aka Yihai Ning) and Mr. Chuanhua "Frank" Shang, Musina Makhado SEZ (SOC), Delta Environmental Consultants.)

There are some serious questions regarding the planning process for this development, aside from the conflicted position occupied by the Limpopo Department of Economic Development, Environment and Tourism (LEDET), and the Limpopo Economic Development Agency (LEDA) that we will deal with in more detail in a separate section.

For now, it is worth noting:
- this project was initiated and driven by the Limpopo government and Premier Stan Mathabatha in particular;
- although it appeared from the announcements following President Cyril Ramaphosa's state visit to China at the beginning of September 2018, that the touted Musina-Makhado Energy and Metallurgical Zone investments were a Ramaphosa initiative,

this project in fact emerges from deep within the Zuma era and has all the hallmarks of the abuses that characterized that period.

10) Please comment

From a technical point of view, the following issues from the planning process need to be raised:

- No proper feasibility study has been done at all.
- The pre-feasibility report of May 2014, conducted by Mott MacDonald was for a Petrochemical, Agro-processing and Logistics Hub at the SEZ. The industrial site was investigated for a Coal to Liquids complex, not for steel, manganese etc.
- The report noted: "The proposed Carbon to Hydrocarbon (CTHC) plant will make use of the coal reserves present in the Musina area and access to the transport infrastructure which will enable the products to be distributed throughout South Africa, the SADC countries and internationals markets…
  "The economic viability of the project depends largely on the quality and price of coal sourced from the area, the price of crude oil and by-products and the access to markets (transport costs) that will enable it to recover the exceptional high capital cost of constructing the proposed plant and clean up the high volume of greenhouse gas emissions - i.e. carbon dioxide."
- The final DTI Prefeasibility Presentation of 25 June 2014 noted: "The pre-feasibility study has proven that significant opportunity for the establishment of a SEZ exists around the logistics sector. The agriculture and petro-chemicals sectors also indicated opportunity, but only in the medium to longer term."
- Out of the blue, in August 2014, Ning's Hong Kong Mining Exchange, which, according to one visitor was little more than a single office, produced its own 'feasibility' study, conducted by no recognised authority, but instead by the "HK Mining Exchange Company Limited Research Institute of technology".
  We suggest no such institute exists.
  The figures for investment and output are all in round global sums, suggesting they are no more than bald guesses. This report, however, enjoys pride of place on the DTI website.
- A further Mott MacDonald Pre-feasibility Report dated July 2015 made no mention of the Hong Kong Mining Exchange proposals. And the study called for a "detailed feasibility study for the establishment of the coal to hydrocarbons complex" including "a bankable feasibility study" at an estimated cost of US$50 million.
- The July 2015 document proposed that a full feasibility study should be conducted prior to a "go or no-go" decision, including financial modelling and risk analysis.
- Strangely, on 31 July 2015 (according to its document properties), a re-jigged version of the pre-feasibility study was finalised, this time recast as "Feasibility Study" or "Business Plan" on behalf of the Limpopo Economic Development Agency (Leda) for the Musina SEZ Licence Application.
- Tacked on to the old version of the document was a new section titled "Targeted investments with timelines".
  This section noted: "A consortium consisting of Hong Kong Mining Exchange, Hoi Mor Industrial, China Harbour Engineering, China Africa Development Fund, Guangzhou Stainless Steel, Lianzhong Stainless Steel, Guangzhou Rising Steel, TaiYuan Iron and Steel, China Power Investment Company have been working to locate in the proposed Musina SEZ Metallurgical Cluster…

"This cluster development in the SEZ is seen as a flagship project between China and South Africa by Hoi Mor Industrial, who has signed an MoU with the Limpopo province premier in October 2014. Hoi Mor is well connected to the China government and the rest of the Chinese industry."

- The additions included an appendix listing "potential investors", naming them as
  Hong Kong Mining Exchange Company Limited (Ning company)
  Hoi Mor Industrial Group Limited (another Ning company)
  China Harbour Engineering Company
  Rising Steel (Guangzhou) Company Limited
  Mwana Africa PLC (the previous name of ASA Resources, where Ning was already a director and major shareholder)
- It is surely no co-incidence that a month earlier, in June 2015, Minister Davies had received rote "letters of interest" from the above companies.
- On 28 July Tshepo Phetla, then acting managing director of Leda, sent an application letter to minister Davies for the designation of Musina Special Economic Zone.
- Although no firm commitments had been made, the letter claimed "the SEZ has already attracted an investment worth approximately R38 billion. A Memorandum of Understanding (MOU) to develop a metallurgical cluster zone to produce steel and stainless steel products has been signed by LEDA and Hong Kong Mining Exchange group (Hoi Mor)".
- The Mott MacDonald document was revised again on 21 August 2015 (according to its file record released by the DTI in terms of an access to information request).
- This time the full Ning/Hoimor wish-list contained in the 2014 HK Mining Exchange document was faithfully reproduced, including nine projects that would supposedly form part of the Metallurgic cluster: a Coking Plant; a Thermal Power Plant, a Ferrochrome Plant; a Ferromanganese Plant; a Ferrosilicon Plant; a Pig Iron Metallurgy Plant; a Steel Plant; a Stainless Steel Plant; and a Lime Plant.
- Mott MacDonald did attempt to salvage some credibility by stating in this version:
  "The environmental pre-feasibility study of the proposed development at the Makhado site has identified several problem areas that subsequently require further and more robust investigation. If practical and effective mitigation measures cannot be implemented, then the overall project viability is questionable. Of critical concern are the following environmental issues:
  Intrusion into the protected area network;
  Detrimental effect on the biodiversity assets of the region;
  Resource use conflicts (especially with respect to land and water);
  Large-scale land transformation;
  Potential increase in pollution pathways;
  Need for social infrastructure investment;
  Integrating anticipated inflow of labour with existing communities; and
  High water requirements of the development in a water scarce area where much of the existing water resources are required for agriculture and thus food security.
- Further, more detailed, studies are required to quantify the impacts of the proposed development such that mitigation measures and alternatives can be identified before the project progresses."
- Despite the fact that no proper pre-feasibility study was done for the proposed Metallurgical cluster, never mind a detailed feasibility study, Minister Davies on 14 July 2016 announced; "Last week Cabinet approved the decision of the Minister of Trade and Industry, Dr Rob Davies to designate the Musina-Makhado SEZ. This means that Minister Davies has been given the green light to designate the zone and

issue an SEZ operator permit to the Department of Economic Development, Environment and Tourism in Limpopo. A consortium of Chinese investors led by Hong Kong Mining Exchange (Hoi Mor) will be investing more than R40 billion into the park which they will also develop and manage."

11) Please carefully review the events and documents set out above – which are based on record released by the DTI in terms of an access to information request – and set out any inaccuracies or points you wish to dispute or explain.

12) Please explain why we should not conclude that the DTI abandoned prudent and responsible planning, assessment and feasibility protocols for what would be one of the largest industrial developments in the country's history – in favour of a 'pet project' approach, driven by opaque and unaccounted for private and geopolitical interests.

Section C: The Operator Agreement

(For response: the minister of trade & industry, the department of trade & industry, LEDA, LEDET, Yat Hoi Ning (aka Yihai Ning) and Mr. Chuanhua "Frank" Shang, Musina Makhado SEZ (SOC).)

On 2017/03/02 an operator agreement was signed between the Musina Makhado SEZ (SOC) represented by Tshepo Phetla (then acting CEO of the Limpopo Economic Development agency) and the Shenzhen Hoimor Resources Holding Company, represented by Ning.

The operator agreement is disturbing in the way in which it mortgages responsibility for this megaproject to an unknown foreign entity, effectively handing over control and management of a large patch of South African land for a project that, if implemented, will have major impact on the use of resources, on exports, on pollution and greenhouse gas emissions, on the local environment, labour-market and economy.
There are several concerns worth highlighting:

- The appointment of the Shenzhen Hoimor Holding Company Limited as the Operator of the Metallurgical Cluster in terms of this Agreement is exclusive, meaning it cannot be displaced as long as the agreement is valid, which is 90 years with an option to extend for a further 30 years. (Please comment)
- Shenzhen is given the responsibility to "ensure compliance with all applicable laws and regulations"; something that is contrary to its authority, its competence and its own interests. (Please comment)
- Indeed, the responsibilities granted to Shenzhen are very wide. It is to "take complete and overall responsibility for the establishment, development, planning, control, security, operation and management of the Metallurgical Cluster" including managing a "customs controlled area" and implementing measures relating to the B-BBEE Act and various preferential procurement policies. (Please comment)

There is an extensive 'shopping list' regarding Shezhen's responsibilities, including to:

- take overall responsibility, as the general contractor and operator, of all Infrastructure Projects within the Metallurgical Cluster;

- Undertake the obligation and assume the responsibilities of an administrator and coordinator of environmental protection initiatives, water and power supply, as well as transportation projects;
- undertake the obligation and assume the responsibilities of a lessor and administrator of the Metallurgical Cluster;
- establish and operate vocational and technical education schools for the purposes of training, educating, providing work experience and equipping professionals/personnel to work in the Metallurgical Cluster;
- establish a customs bonded area and logistics and transport service platform for the Metallurgical Cluster;
- adopt rules and regulations for husinesses within the Metallurgical Cluster in order to promote their safe and efficient operation
- recommend to the SEZ Entity whether or not to approve an application by a business to locate within the Metallurgical Cluster;

This list underlines the points made about the abrogation of responsibility by South African authorities. (Please comment)

There are a number of conditions and milestones attached to the agreement:

Conditions Precedent

13) All required approvals are obtained in terms of the Public Finance Management Act, 1999 for the conclusion of this Agreement. Have these been obtained? If so, what are the particulars?

14) The Minister of Rural Development and Land Reform approves, in writing, the notarial lease agreement between LEDA and MCPA. Has this been done? If so, on what date?

Milestones/requirements

15) Shenzhen is required take out and maintain adequate insurance to cover its liability and responsibilities under the Agreement. Has this been done?

16) Shenzhen is required to provide the SEZ Entity with a development roadmap setting out the requirements and timetable for the planning, construction, supply of infrastructure and utilities within the Metallurgical Cluster. Has this been done? If not, why not? If so, please provide a copy.

17) Shenzhen is required to maintain adequate and proper accounts and other records in relation to its business and report on the activities, performance and development of the Metallurgical Cluster to the Minister and as required under any other legislation. Has this been done? If not, why not? If so, please provide a copy of the latest report.

18) The SEZ entity shall transfer 60 square kilometres of land leasing agreements with rights and responsibilities to Shenzhen Hoimor Resources Holding Company Limited for the Purposes of developing the Metallurgical Cluster in terms of this

Agreement. Has this been done? If not, why not? If so, please provide a copy of the deed of transfer.

19) The agreement provides that Musina-Makhado SEZ (SOC) Limited must, at least two months before the end of each financial year or at a later date determined by the Minister, submit to the Minister for approval a business and financial plan. Has this been done? If not, why not? If so, please provide a copy of the latest report.

20) Shenzhen Hoimor Resources Holding Company Limited must provide the SEZ Entity with the business and financial plan, at least 30 days prior to the SEZ Entity's submission to the Minister.
Has this been done? If not, why not? If so, please provide a copy of the latest report.

21) Shenzhen Hoimor Resources Holding Company Limited may apply for funding in terms of the SEZ Act, 2014 and Regulations to develop the Metallurgical Cluster. Has Shenzhen done so? If so, what are the details?

22) The Parties will, within 3 (three) months from the Signature Date, establish an SEZ Committee. Has this been done? If so, please provide the names of the committee members.

23) Please explain the shareholding and control structure of the Musina Makhado SEZ (SOC)

24) In a response to a Parliamentary question of 17 October 2018 (Question NW2843) The minister of Trade & Industry states "There are no approved projects that received investment support from Chinese companies. The dti, LEDET (Limpopo Economic Development Environment and Tourism) and its agency, LEDA (Limpopo Economic Development Agency) are currently finalizing technical due diligence processes with potential investment companies from China."
Please detail the current position.

Section D: The lead partner Ledet/LEDA conflict of interest

(For response: the minister of trade & industry, the department of trade & industry, LEDA, LEDET, Premier Mathabatha, Musina Makhado SEZ (SOC).)

The Centre for Environmental Rights (CER) makes a powerful case for the national Minister of Environment, Forestry and Fisheries must be designated as the competent decision-making authority for any EMSEZ EIA processes, which we deal with in more detail in the environmental section.

But the following more general propositions are worth recording. The proposed SEZ will have very large, national implications and effects, whether financial, economic or environmental.

It is simply inappropriate for minor provincial institutions – the LEDA and Ledet – to be exercising oversight and control over this process.

Both institutions are likely to be political subservient to Premier Stan Matabatha, who has been the foremost champion of this project from inception in 2014.

LEDA

- LEDA is conflicted as it has already confirmed the development Metallurgical Cluster SEZ as part of its declared priorities and plans.
- LEDA also has a spotty investment and governance record, for instance in regard to Dilakong/ASA Metals and Sefateng.
- The weakness of the institution is demonstrated by the weakness of the operator agreement, outlined above.
- Premier Mathabatha has a historical association with LEDA (he served as the chief operations officer from about 2003 to 2010) and may well continue to exercise institutional influence.
- We point, for instance, to his controversial intervention last year regarding allegations about Limpopo Connexion, a LEDA subsidiary.
- The MEC intervened and appears to have overruled or rotated the board of Corridor Mining (another LEDA subsidiary) in an inappropriate way in respect of the handling of a dispute over Sefateng – raising further questions about the institutional independence of LEDA.

Ledet

- Ledet, which is expected to assess and manage the very serious environmental concerns, which should have the potential to scrub the project, is highly conflicted.
- The department is inherently conflicted, combining economic development and environment.
- The Departmental Operational Plan 2019-20 notes: "Ledet Strategic Objective: Ensure industrial development, trade and investment promotion (Implementation of Mining Roundtable Resolutions, two Green Economy focus areas and Special Economic Zone activities. Ensure effective SEZ work-streams implementation)"
- The MEC, Thabo Mokone, was a director of LEDA when the SEZ applications and decisions were made.
- In a 2019 article on China Reform Daily he is quoted thus: "Mr.Thabo Mokone, MEC of Economic Development, Environment and Tourism of Limpopo 100% supports the development of Musina-Makhado Special Economic Zone. "We will spare no effort to ensure that all obstacles are removed so as to ensure the success of our investment in the special economic zones."
- The HoD, Solly Kgopong, is similarly compromised by his written and public endorsement of the EMSEZ projects.
- The deputy director for Environment & Tourism, Ms Keleabetswe Tlouane (Environment and Tourism) is a very small fish, without the institutional backing and standing to stand up to her bosses, where that might be required.
- The chief executive of the SEZ, Lehlogonolo Masoga, has no industrial development experience, has a chequered history (see his cellphone porn controversy and punch-up with Limpopo Khelobedu artist Khashane "DJ Leseilane") and is also firmly embedded in the political hierarchies of the province – as is the chair, Rob Tooley.

25) Please review the points above and set out any inaccuracies or points you wish to dispute or explain.

26) Please explain why we should not conclude that the attempt to leave decisions to provincial entities represents a serious, perhaps deliberate, abrogation of national responsibility.

Section E: The Environmental issues

(For response: the minister of Environmental Affairs, the minister of trade & industry, the department of trade & industry, LEDA, LEDET, Premier Mathabatha, Yat Hoi Ning (aka Yihai Ning) and Mr. Chuanhua "Frank" Shang, Musina Makhado SEZ (SOC), Delta Environmental Consultants.)

On 21 October 2019 the Centre for Environmental Rights (CER) wrote to Environment minister Barbara Creecy and her top officials, as well as to Delta Built Environmental Consultants, the firm that produced a so-called Final Scoping Report (FSR) for the proposed Musina-Makhado Special Economic Zone (SEZ), also referred to as the South African Energy and Metallurgical Special Economic Zone ("EMSEZ").

The letter raises concerns about the environmental impact assessment (EIA) application process for the components that will form part of the EMSEZ proposed by the Limpopo Economic Development Agency (LEDA) – and attaches a copy of the detailed objection lodged by CER to the scoping report by Delta.

The letter sets out three major concerns:

- the extensive environmental footprint of the proposed EMSEZ – in particular the irreversible impacts for South Africa's water resources and biological diversity;
- the anticipated negative health impacts of the EMSEZ – with its expected harmful air and water emissions; and
- the high climate impacts of the project, which will highly prejudice South Africa's mitigation and adaptation efforts, as well as its international commitments.

CER submits that the EMSEZ is a matter of national and international concern, as:

- the project would be built in an area of Limpopo that is already so water-stressed that the Department of Water and Sanitation, and the FSR itself, concede that a "definite source of sustainable water for the SEZ is still under investigation". Without a guaranteed supply of water, the EMSEZ would not be able to function, nor would it be able to contribute towards long-term regional "development" goals without having severe consequences for other water-users and ecosystems. This could have country-wide repercussions, particularly if water resources from other parts of the country are to be relied on;
- it will be located within a province where air quality is of such concern that certain territories have been declared a priority area under the National Environmental Management: Air Quality Act, 2004 and it is certain that the EMSEZ will contribute to the worsening of air quality and human health impacts in the area due to the transboundary nature of air pollution; and

- the EMSEZ will undoubtedly impact South Africa's international and national obligations to mitigate and adapt to climate change. Not only would the various components of EMSEZ contribute to climate change through their greenhouse gas (GHG) emissions, but they will exacerbate the area's vulnerability to climate change through, for example, using and polluting the area's limited freshwater recourses – threatened by the impacts of climate change – making it even harder for communities living in Limpopo to withstand the impacts of climate change.

CER told minister Creecy that, given its far-reaching impacts and the potentially significant issues around water availability, climate impacts, high costs and impacts on the communities in the area:

- the LEDET was not an appropriate "competent authority" for EIA processes.
- it was appropriate that the EIA process be preceded by a strategic environmental assessment (SEA), which looks holistically at the environmental and development issues, "due to its massive scale and the far-reaching implications that the many projects associated with it would have".

The objection document points out: "Without an SEA, this EIA, which purportedly focuses only on the clearing of land, should not proceed because it is not capable of assessing the full breadth of cumulative impacts of EMSEZ and its associated projects."

In other words, a process which only assesses the top-structure and then the projects one by one makes sense in terms of assessing the overall impact.

The objection also points out in detail that the EMSEZ is not in the public interest as it will have severe and irreversible impacts on water resources, climate change, food security, agriculture, air quality and soil quality.

The EMSEZ, with its heavily carbon polluting projects is clearly out-of-line with mitigation pathways to prevent global warming of more than 1.5 °C.

There is also no discussion of – or proposal to assess in the EIA – the risk that the entire EMSEZ and all of its associated infrastructure will become a stranded asset;

The FSR's analyses of water use and water availability in the region are extremely flawed.

In general, the FSR's estimations of water availability in the region are inaccurate, vague, and significantly overstated. There is a very strong likelihood that there will not be sufficient water to meet the EMSEZ's water needs.

Even the FSR report notes: "A critical risk factor for the success of the Musina-Makhado SEZ southern site is the long-term availability of water as the region is severely water strained."

There is no estimation of water requirements during the operation of at least 5 new coal mines that will extend over 1 000 km2 in the region (Mopane, Chapudi, Makhado, Generaal and Vale). Despite taking up a large part of the FSR, there is no analysis of the mines' potential impacts to groundwater and surface water in the region, which could alter the amount of water available for use in EMSEZ facilities, as well as all other uses.

The FSR lacks basic facts about the proposed projects that will be part of EMSEZ, including: what each component will entail; the amount and type of fuel to be used; annual water requirements during construction and operation; wastewater volumes; solid waste volumes; and annual air pollution emissions, including mercury and other heavy metals, and it fails to include an adequate baseline assessment of air, soil and water quality in the region;

The FSR fails to consider the cumulative impacts of the project including the environmental, health and climate impacts of the many new coal and mineral mines that will supply EMSEZ. According to the FSR, over 104,000 ha of new coal mines are proposed for the region, including Mopane Project, Chapudi Project, Makhado Project, Generaal Project, and Vele Project, with no assessment of, or reference to, their environmental impacts. The SEA and EIA processes must assess the impacts of these new coal mines that will supply EMSEZ – in particular no provision is made for the assessment of impacts of these mines and associated projects on protected areas, endangered species, and ecosystems.

To give some idea of the water impact: the Hong Kong Mining Exchange document from 2014 estimates the water usage of the EMSEZ as 44,5 million m3 per annum.

According to Africacheck, the SA per capita average water usage is 85 775 litres per annum.

Ie, this SEZ will use the same amount of water as more than half a million people if 44,5 million is correct (518799). The Delta scoping report puts the water requirements at 123 million m3 per annum, meaning the project will use as much water as 1.43 million people.

The FSR itself acknowledges the risks.

It notes:

9.2.3. *'The information presented in this chapter is based predominantly on a desktop exercise and would have to be refined through specialist input. In light of the sensitivity of the site, it is strongly recommended that more detailed specialist studies be undertaken before the project progresses. Overlap of the project site with protected areas and important biodiversity areas makes the suitability of this site for the proposed heavy industry development highly questionable. This is further compounded by the fact that the proposed water intense development falls within a water scarce environment. Detailed studies must be undertaken on water availability, as the Limpopo River, which is the proposed water source for the development, is already under severe pressure from a host of existing water users. Furthermore, the impact of the proposed development on the air quality of the region would have to be investigated. A recent project undertaken by Mott MacDonald found that air quality in the Limpopo region would be severely impacted by particulate matter emissions from existing and proposed future power stations along the Limpopo River in South Africa and Botswana. Hence, the cumulative impact of adding the emissions of the proposed development to the greater area would have to be well understood in order to ensure that national and international emissions standards are not exceeded.'* The recommendations are that some specialist studies are 'of critical importance' –

- Water availability
- Socioeconomic
- Air quality/ emissions and
- Ecology.

9.2.4. '*The environmental pre-feasibility study of the proposed development at the Makhado site has identified several problem areas that subsequently require further and more robust investigation. If practical and effective mitigation measures cannot be implemented, then the overall project viability is questionable. Of critical concern are the following environmental issues:*

- *Intrusion into the protected area network;*
- *Detrimental effect on the biodiversity assets of the region;*
- *Resource use conflicts (especially with respect to land and water);*
- *Large-scale land transformation;*
- *Potential increase in pollution pathways;*
- *Need for social infrastructure investment;*
- *Integrating anticipated inflow of labour with existing communities; and*
- *High water requirements of the development in a water scarce area where much of the existing water resources are required for agriculture and thus food security.*

Further, more detailed, studies are required to quantify the impacts of the proposed development such that mitigation measures and alternatives can be identified before the project progresses'.

Given these stark and inconvenient facts, one would have imagined that minister Creasey would have engaged substantively with the issues raised by CER.

Instead, in a letter dated 5 December 2019, the minister responds glibly, confirming, without offering any justification, that the LEDET is the competent authority.

The minister also confirms this deference to LEDET in stating that the DEA had met with LEDET about the concerns raised by CER and that LEDET "take cognisance of the issues raised in your letter" and that these would be addressed in the environmental impact assessment report.

The minister simply refers concerns about the inadequacy of the public consultation process back to LEDET.

The minister did not address any of the arguments for a Strategic Environmental Assessment, merely noting her view that there was "no legal requirement for an SEA to be conducted at this time".

The minister confirms her washing her hands of responsibility by stating that: "The DEA… confirms that the LEDET is in fact the competent authority to process the application. The DEA cannot therefore be designated as the competent declsion making authority for any EMSEZ EIA processes or intervene in the existing EIA process."

27) Please review the points above and set out any inaccuracies or points you wish to dispute or explain.

28) Please explain why we should not conclude that the attempt to leave decisions to provincial entities represents a serious, perhaps deliberate, abrogation of national responsibility.

29) Please explain how an SEZ can be declared without these critically important studies as they will affect the entire feasibility of the SEZ?

<u>Section F: Questions to the Minister of Minerals, Resources and Energy (DMRE)</u>

We are aware that the shadow minister, Kevin Mileham MP, has submitted Parliamentary questions as follow hereunder regarding the Musina-Makhado Special Economic Zone (SEZ). We believe the questions raise important issues and we repeat them – along with a request for answers.

"The proposed SEZ purportedly entails the development of a 3 300MW coal-fired power station, which is not contemplated in, and for which no provision is made, in the Integrated Resource Plan for Electricity (IRP) promulgated on 18 October 2019. In order to obtain a licence from the National Energy Regulator of South Africa (NERSA), the developer of this proposed coal-fired power station must demonstrate "*evidence of compliance with any integrated resource plan applicable at that point in time <u>or provide reasons for any deviation for the approval of the Minister</u>*" in terms of the Electricity Regulation Act, 2006.

In light of the above~~:~~

30) Which factors are taken into account in considering a request for a deviation from the IRP?

If such application has already been made:

31) What are the reasons provided for the requested deviation?
32) What public participation processes were followed in relation to this application?
33) Has a decision been made in relation to this application? If so, what decision has been made and what are the reasons for that decision?

If such application has not yet been made:

34) What public participation processes will be followed in relation to such application?
35) Will any decision be made available, together with the reasons for such decision?

36) Given the nature and scale of the proposed SEZ – as well as its various industrial components i.e. steel, cement and lime processing plants – which will significantly impact South Africa's international and national obligations to mitigate and adapt to climate change - how does the DMRE justify the disconnect between South Africa signing the Paris Agreement on Climate Change which is

aimed at reducing GHG emissions, the President announcing at the United Nations Climate Summit in September 2019 that "*the recent IPCC Special Report on Global Warming of 1.5 °C has identified southern Africa as a climate change hot spot. Our region is likely to become drier and drastically warmer even under 1.5 or 2 °C of global warming*" and then driving further investment in fossil fuel infrastructure with significant new GHG emissions?

37) According to Climate Tracker, South Africa's climate change commitments – in terms of its fair share range – is one degree short of being critically insufficient, and entirely inconsistent with holding warming to below 2°C let alone with the Paris Agreement's stronger 1.5°C limit. If all government targets were in this range, warming would reach between 3°C and 4°C. In such circumstances, how do we justify building another 3300MW coal fired power station, when there are a host of cheaper alternative renewable energy sources available?

<u>Section G: Questions to the Minister of Human Settlements, Water and Sanitation (DWS)</u>

We are aware that the shadow minister, Emma Louise Powell MP, has submitted Parliamentary questions as follow hereunder regarding the Musina-Makhado Special Economic Zone (SEZ). We believe the questions raise important issues and we repeat them – along with a request for answers.

38) How will the agricultural sector – which is one of Limpopo's primary sources of income – be impacted if several mines, industries and coal fired power stations were to be built, particularly in terms of the limited water resources and associated impacts of acid mine drainage on existing water resources?
39) Has the DWS carried out an in-depth analysis of the country's water resource availability in all regions of Africa (South Africa, Zimbabwe and Botswana), and a climate change vulnerability assessment for the water resources that are required to supply the SEZ with water?
40) Does this study include areas immediately under water stress, or which are likely to be under water stress within 5 -10 years, and beyond? Has the DWS compiled a list of regions within the vicinity of the proposed SEZ that face imminent water insecurity; if not, why not; if so, what is the list of these regions? Please provide the relevant details if such studies have been conducted and if not, why not?

ENDS