

- JON WHITE -

ATTORNEYS

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CYMBIAN ENVIRO-SOCIAL CONSULTING SERVICES

YOUR REF: Paula Tolksdorff
OUR REF: JW M104 001

Dear Madam

**ENVIRONMENTAL IMPACT ASSESSMENT (EIA) FOR THE MOOL-MGENI RIVER
TRANSFER SCHEME PHASE 2:
OUR CLIENT: THE MZIKI HOMEOWNERS ASSOCIATION**

Thank you for your letter dated 12 August 2008, being your invitation to contribute to the above EIA.

As stated repeatedly, my clients object to the proposed route for the new pipeline link from the proposed Spring Grove Dam wall to the existing pipeline.

The process to date is seriously flawed in that there has not been a proper assessment of alternative routes, as required by DEAT guidelines.

In my view, any decision in favour of the proposed route will be unlawful and subject to judicial review if:

- a) Reasonable and feasible alternative routes have been proposed but not properly assessed;
or
- b) No written report is prepared in regard to each such alternative route; or
- c) No detailed explanation is given why such alternative routes are rejected; or
- d) The objectors are not given a reasonable opportunity to respond to the reasons put forward for rejecting such alternative routes.

The objectors have made it clear from the outset that they wish alternative routes to be considered. For the reasons which appear hereunder, it seems that no serious consideration was given to any alternative routes and specifically that no written reports regarding alternative

routes were ever commissioned or prepared, and that consequently any decision to proceed with the proposed route will be unlawful and judicially reviewable.

1. On 25 June 2007, P Teurlings of BKS (Pty) Ltd assured me that his report would deal with the alternative routes being proposed.
2. On 25 June 2007, Ian Dickson, on behalf of the Mziki Homeowners' Association, sent you an e-mail regarding alternative routes that he had suggested. In that e-mail:
 - a. He said he had been told there were "engineering reasons" why these were not being considered.
 - b. He asked for written proof of the consideration/examination of alternative routes.
 - c. He said he had been advised this was not available/not been done.
 - d. He said he understood that in development applications such as this there should be a logical documented process looking at all feasible alternative routes in equal depth and detail and he would like to be advised of such study when it is available.
3. On 26 June 2007 Wolfgang Kanz sent you an e-mail specifically asking you to provide a list of the alternative routes being considered.
4. On 7 August 2007 I sent you an e-mail asking if you had received a response to the issues raised by Mr Kanz and could confirm that alternative routes were being considered, as required by the DEAT guidelines. On 13 August 2007 I faxed you a copy of such e-mail and requested a list of the alternative routes that were being considered.
5. Your response was to send me a map ("the section from the public meeting presentation where the pipeline alternatives were discussed").
6. On 14 August 2007 Jonathan Parkinson, chairman of Mziki Estates, sent you an e-mail pointing out that, while the map shows Mziki Estates as farmland with no structures, Mziki Estates consists of a row of nine houses and a wetland; and suggested that the alternatives be investigated, as they do not interfere with any dwellings and skirt farmland boundaries.
7. On 14 August 2007 Wolfgang Kanz sent you details of further alternative routes that he wished to be considered. In the same e-mail he requested you to include the following in the list of impacts to be considered:
 - a. Reduction of property values on account of servitudes
 - b. Area of wetland traversed;
 - c. Length of pipeline.

8. On 10 October 2007 you circulated minutes of the pipeline focus group meeting held on 4 June 2007 and the pipeline landowners site visit held on 11 June 2007.
9. The minutes of the 4 June 2007 meeting record P Teurlings as noting that the proposed route should ideally be sited along boundary fences. (It is notable that the proposed route cuts right across Mziki Estate).
10. On 20 November 2007 you circulated minutes of the second public meeting held on 25 June 2007. The minutes record P Teurlings as having stated "*the limiting factor is that along certain sections, the road, river and railway cannot be crossed from an engineering perspective*" as an explanation why the proposed route for the transfer pipeline has been chosen ahead of other alternative routes.
11. On 26 March 2008 Jonathan Parkinson sent you an e-mail dealing specifically with an alternative route that had been proposed to you previously by Ian Dickson (on behalf of the Mziki Homeowners Association). In such e-mail, Mr Parkinson noted that the following points should be considered in regard to the route suggested by my clients:
 - a. The difference in height where the pipeline crosses the R103 in my clients' proposal is much less severe than further along where the "red" proposed pipeline runs (implying less engineering/construction problems).
 - b. Following this route, there are only two people to deal with, both of whom claim not to be in favour of developing their properties in the future. The existing proposed route affects Bettison, Greene, nine Mziki homeowners, and Wolf (Kanz) – 12 people in all.
12. I have been unable to find anything in the Draft EIR that indicates that there has been a proper consideration of alternative routes and I can find no explanation for this omission, other than the unsubstantiated opinion of P Teurlings that "*the limiting factor is that along certain sections, the road, river and railway cannot be crossed from an engineering perspective*".

I shall annex to this letter a letter from A.M. Smith of Kantey & Templer consulting engineers advising that they can find no engineering reason why alternatives cannot be considered.

My clients will deal in detail, in separate correspondence, with their objections to the Draft EIR.

Yours faithfully

JON WHITE
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