

SOMKHELE MINE AUTHORISED TO CONTINUE AS LIVELIHOODS OF 15,000 PEOPLE ARE AT STAKE

Johannesburg, 16 May 2022. On 4 May 2022, the Pretoria High Court handed down a judgment relating to a Mining Right and an environmental management programme (EMPr) held by Tendele Coal Mining Proprietary Limited (Tendele) in respect of its Somkhele Mine near Mtubatuba, KwaZulu-Natal.

The Court application by the Mfolozi Community Environmental Justice Organization (MCEJO) and others sought to set aside Tendele's Mining Right and EMPr, which serve as the basis for a 10-year extension of the life of the Mine. If granted, such an order would have resulted in the end of the Mine.

The Mining Right and its EMPr were not, however, set aside by the Court but rather sent back to the Minister of Mineral Resources and Energy for reconsideration, on the clear basis that the Mining Right and EMPr remain in force pending that determination. The reason for the Court making this determination was to ensure the Mine's ultimate survival, as anthracite reserves in Tendele's existing target areas will be depleted by 30 June 2022, leaving no alternative but to retrench the remaining employees at the Mine, cancelling contracts with local service providers and placing the Mine on care and maintenance.

The Somkhele Mine

The Somkhele Mine has been in operation for more than 16 years. To date, the Mine has contributed R2.7 billion in direct benefits to local community members, to the benefit of more than 40 000 people. Some of these benefits include the following –

- over R1,55 billion has been paid in salaries, benefitting more than 15 000 people;
- more than R80 million has been spent on community projects in the Mpukunyoni area;
- more than R751 million has been spent on procuring services from more than 70 community-based entrepreneurs benefitting more than 4000 people; and
- 21 542 people have received different forms of training over the last 15 years.

None of these benefits would have materialised in the absence of the Somkhele Mine.

When the Mine is in full operation, the Mine directly and indirectly employs more than 1500 people, with 87% of these employees being from the Mpukunyoni community around the Mine. It is significant that the minimum salary paid by the Mine is R16,000.00 per month.

Unemployment in this area is well over 70% and the majority of the community residing around the Mine rely on social grants to survive. The loss of these jobs and procurement opportunities as a consequence of the Mine closing will leave more than 12 000 people from this community without any form of income and with no prospects of finding alternative employment. The implications of the Somkhele Mine closing are only exacerbated by the impacts of the July 2021 riots across the province and the recent floods in KwaZulu Natal.

The continued operation of the Mine will ensure that benefits in the order of R4.7 billion will flow directly to the community around the Mine over a 10-year period. These benefits include employment, procurement opportunities for local businesses and Social and Labour Plan spend, including training and water provision (amongst other benefits). In addition, the Mine will contribute some R2.5 billion to the South African economy through PAYE, company tax and royalties.

The Mining Right and EMPr and the Order granted by the Court

As far back as March 2021, Tendele publicly conceded that the public participation process conducted during the application process for the Mining Right and EMPr was imperfect, and the specialist studies conducted during the EIA/EMP process did not adequately cover the entire area over which Tendele was granted a Mining Right. Fully acknowledging these deficiencies, Tendele abandoned 92% of the area that was originally subject to the Mining Right. The retained areas include 3 distinct areas where Tendele intends mining for a further 10 years. In addition, and during 2019 and 2020, Tendele appointed independent specialists to conduct a further 26 environmental studies to assess the extent of the impacts of Tendele's intended mining in these 3 retained areas. These 26 additional studies will be subjected to a public participation process and will be placed before the Minister in the rehearing of the appeal.

It is important to emphasise that this is not a new mine. Tendele has been operating the Somkhele Mine for more than 16 years. The mining method to be adopted by Tendele is the same as the mining method used in its previous mining areas. With this in mind, Tendele's environmental assessment practitioner is confident that Tendele's intended mining operations in the 3 remaining areas will not cause unreasonable environmental pollution. The impacts of Tendele's operations are clearly known and understood and the proposed mitigation measures to be adopted by Tendele will adequately address these impacts.

Tendele's mining activities in 2 of the 3 areas (namely, the Emalahleni and Ophondweni areas) will only endure for between 2 and 4 years. Tendele will immediately, upon ceasing mining in these areas, commence with surface rehabilitation. Consequently, the impacts associated with Tendele's mining will be very short lived. Tendele will then proceed to mine in the Mahujini area for an estimated 6 years. Importantly, only 18 square kilometres of land will be directly affected as a result of open-cast mining by Tendele over a 10-year period.

Tendele proposed to the Judge in the Court application that, taking into account Tendele's concessions, the 26 new specialist studies and the significant reduction in the mining area, the Mining Right and the EMPr not be set aside, but that the appeal before the Minister of Mineral Resources and Energy be reopened in order to allow Tendele to address the conceded irregularities. It must be emphasised that the irregularities

have been significantly curtailed as a consequence of the abandonment of the majority of the mining area. The Judge agreed with Tendele's proposal and granted the order proposed by Tendele. The Judge concluded that *"I have reflected on the parties' cases including the reasons placed by the applicants. But this is a case that calls for pragmatism to guide the court"*.

This is not the first time that a Court has noted the importance of keeping this Mine open. In a judgment of the Supreme Court of Appeal, Schippers J stated that *"[If Tendele's mining operations are brought to a grinding halt, this would have catastrophic consequences. The mine is the primary driver of economic activity in Mtubatuba... The Mpukunyoni amici submitted that if mining operations were to stop, the South African anthracite market would be wiped out, which would have a knock-on effect on the ferrochrome industry that employs more than 20,000 people and is a major exporter in the South African economy. Tendele has also made significant investments in the development of the area, which include the provision of apprenticeships, training in farming activities, adult basic education and training, bursaries and student teachers... The termination of mining operations, even temporarily, would be the death knell of the Mtubatuba economy and would result in the loss of the livelihood of the Mpukunyoni community, together with significant benefits described above."*

The order by the Judge not only ensures that Tendele is in a position to remedy the conceded irregularities as efficiently as possible but gives the Mine a fighting chance to survive, because existing anthracite reserves will be depleted by June 2022, leaving the Mine with no alternative but to proceed with retrenching its employees.

Tendele has worked tirelessly to establish a strong working relationship with the Community and has spent thousands of man-hours in the Community to obtain support for its mining activities. As a direct result of building relationships, fixing mistakes of the past and creating a communication platform in the Community, Tendele was supported in the Court application by the Mpukunyoni Traditional Council which is constituted by 30 iziNdunas of the 30 izigodi (communities) of the Mpukunyoni area, AMCU and NUM, which together represent about 90% of the unionised workers employed by Tendele as well as representatives of local business and community organisations. This demonstrates significant Community support for the Mine.

The closure of the Somkhele Mine will have devastating consequences for the surrounding Community, will result in 15 000 people losing their livelihoods and will result in the future loss of R4.7 billion in direct community benefits over a 10-year period. These consequences cannot be overstated, and the Mine is doing all that it can to ensure its survival.

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