

ANNEXURE 2



environmental affairs

Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA

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APPEAL RESPONSE REPORT

PROJECT NAME/TITLE: De Beers Consolidated Mines Proprietary Limited – AMENDMENT OF THE 2010 APPROVED ENVIRONMENTAL MANAGEMENT PROGRAMME READ WITH THE CONDITIONS OF APPROVAL FOR THE REMOVAL OF BACKFILLING CONDITIONS IN RELATION TO DIAMOND MINING ACTIVITIES AT THE VOORSPOED MINE

PROJECT LOCATION: Remaining Extent of the Farm Voorspoed 2480 (Consolidated Subdivision 1 of the Farm Voorspoed 401, Subdivision 1 of the Farm Geldenhuys 1477 and Subdivision 2 of the Farm Morgenster 772), Voorspoed 401, Geldenhuys 1477 and Morgenster 772, situated in the magisterial district of Kroonstad: Free State Province

PROJECT REFERENCE NUMBER: DMRE REFERENCE NUMBER: (FS)30/5/1/2/3/2/1(12) EM

DATE PROJECT/ACTIVITY AUTHORISED: Refusal decision issued on 23 April 2025 and received on 29 April 2025

DETAILS OF THE APPELLANT	DETAILS OF THE APPLICANT
Name of appellant: De Beers Consolidated Mines Proprietary Limited (duly represented by Webber Wentzel)	Name of applicant: De Beers Consolidated Mines Proprietary Limited
Appellant's representative (if applicable): Garyn Rapson, Paula-Ann Novotny, Cobus Hoon (Webber Wentzel)	Applicant's representative (if applicable): Petrus Jordaan
Postal address: Webber Wentzel 90 Rivonia Road, Sandton Johannesburg, 2196 P.O. Box 61771, Marshalltown Johannesburg, 2107 Attention: Garyn Rapson / Paula-Ann Novotny / Cobus Hoon	Postal Address: P.O. Box 1964 Kroonstad, 9500 Attention: Petrus Jordaan <u>Applicant's appointed Environmental Assessment Practitioner:</u> GCS Water & Environmental Consultants Attention: Sharon Meyer / Paula Tolksdorff
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Fax Number: N/A	Fax number: N/A

GROUNDS OF APPEAL	RESPONDING STATEMENT OF THE DMRE
<p>1. INTRODUCTION</p> <p>1.1 Webber Wentzel acts for De Beers Consolidated Mines Proprietary Limited ("DBCM" or "Appellant") and hereby lodges this appeal on behalf of DBCM in terms of section 43(1A) of the National Environmental Management Act 107 of 1998, as amended ("NEMA"), read with the National Appeal Regulations, 2025 ("Appeal Regulations").¹</p> <p>1.2 This appeal ("Appeal") is lodged against the administrative decision of the Chief Director: Mineral Regulation ("Chief Director") of the Department of Mineral and Petroleum Resources ("DMRE"), to refuse ("Refusal Decision") DBCM's application in terms of regulation 31 of the Environmental Impact Assessment Regulations, 2014 ("EIA Regulations"),² for the amendment of the approved 2010 Environmental Management Programme ("2010 EMPr") in respect of DBCM's Voorspoed Diamond Mine ("Voorspoed Mine") to remove the backfilling conditions stipulated in the EMPr ("EMPr Amendment Application"). A copy of the Refusal Decision and the reasons for the Chief Director's decision ("RoD") is attached as "Annexe A" and "Annexe B", respectively.</p> <p>1.3 The Refusal Decision was taken on 23 April 2025 by the Chief Director. DBCM was notified of the Refusal Decision via email from the DMRE, dated 29 April 2025. A copy of this email is attached as "Annexe C".</p>	

¹ Published under Government Notice R5985 in *Government Gazette* 52269 of 13 March 2025.

² Published under Government Notice R982 in *Government Gazette* 38282 of 4 December 2014, as amended.

GROUNDS OF APPEAL	RESPONDING STATEMENT OF THE DMRE
<p>1.4 Regulation 4(1)(a) of the Appeal Regulations states that –</p> <p><i>"(1) An appellant must submit an appeal –</i></p> <p><i>(a) within 20 calendar days <u>from the date that the decision is sent by the decision-maker</u> [our emphasis], or, where applicable, by the applicant to registered interested and affected parties; or</i></p> <p><i>(b)"</i></p> <p>1.5 Since the 1st of May is a public holiday in South Africa, it is important to point out that regulation 1(3) of the Appeal Regulations provides that <i>"[W]here a prescribed timeframe is affected by one or more public holidays, the timeframe must be extended by the number of public holiday days falling within that timeframe"</i>.</p> <p>1.6 Accordingly, this Appeal is submitted on <u>20 May 2025</u>, i.e. within 20 days from the date of receipt of the Refusal Decision.</p>	
<p>2. OUTSTANDING INFORMATION / INCOMPLETE REASONS</p> <p>2.1 The RoD in respect of the Refusal Decision sets out the information which was considered by the Chief Director in taking the Refusal Decision. Paragraphs 1(f) and (h) under Annexure 1 to the RoD refer to comments received from both the Department of Water and Sanitation ("DWS") and the Principal Inspector of Mines ("PIM") in respect of the EMPr Amendment Application. We record that neither the DWS's</p>	

GROUNDS OF APPEAL	RESPONDING STATEMENT OF THE DMRE
<p>comments nor the PIM's comments were furnished to DBCM with the RoD.</p>	
<p>2.2 It is further noted that the RoD does not provide on which date the DWS provided comments. DWS has provided comments twice – first, as a commenting organ of state on the EMPr Amendment Application documents, which comments were dated 19 June 2023; and second; in response to the decision-maker's request for additional information and comments for purposes of taking a decision on the EMPr Amendment Application, which comments were dated 20 September 2023. As indicated in the letter from the decision-maker dated 29 September 2023 and attached hereto as "Annexe D", DBCM understands that the latter, second set of DWS comments is what is referred to in the RoD, and these have not been furnished to DBCM.</p>	
<p>2.3 Furthermore, each page of the RoD has been stamped by the DMRE. However, in several instances, the DMRE's stamp has been placed over crucial parts of the wording of the RoD, making some paragraphs of the RoD impossible to read and/or interpret.</p>	
<p>2.4 Accordingly, on 9 May 2025, Webber Wentzel, acting on behalf of DBCM, addressed an email to the Chief Director, requesting copies of the DWS's and PIM's comments, as well as an unstamped copy of the RoD. A copy of this email is attached as "Annexe E".</p>	
<p>2.5 On 12 May 2025, the DMRE provided an unstamped copy of the RoD to DBCM via email. However, the DMRE failed to provide copies of the DWS's and PIM's comments. A further email was therefore sent to the DMRE on 15 May 2025 to again request</p>	

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<p>copies of the DWS's and PIM's comments. A copy of this email is attached as "Annexe F".</p>	
<p>2.6 On 19 May 2025, Webber Wentzel received a telephone call from Mr Tuwani Monyai and an official from the DMRE who introduced himself as Cedrick. In the above telephone call, Webber Wentzel was advised that the PIM's comments cannot be provided to DBCM and will form part of the record of decision made available during the appeal.</p>	
<p>2.7 With regards to the DWS's comments, we were advised during the above telephone call that the DWS' comments have been provided to GCS Water and Environmental Consultants ("GCS"), DBCM's environmental assessment practitioner in respect of the EMPr Amendment Application. However, GCS confirmed that they were never provided with a copy of the DWS's comments. It is further clear from the decision-maker's letter attached above as Annexe D above that these DWS comments were sent directly to the DMRE and not to DBCM or GCS.</p>	
<p>2.8 Following the telephone call of 19 May 2025, Webber Wentzel addressed a further email to the DMRE to clarify that the DWS's comments and the PIM's comments are extraneous documents to the RoD which must be furnished with the RoD according to administrative law, as set out in paragraphs 2.10 and 2.11 below. The DMRE responded on the same day stating that "<i>You are advised to apply in terms of PAIA (Promotion of Access to Information)</i>", which statement DBCM submits is unlawful and incorrect. A copy of this email chain is attached as "Annexe G".</p>	

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<p>2.9 At the time of submission of this Appeal, neither Webber Wentzel nor DBCM have received the DWS's comments or the PIM's comments.</p>	
<p>2.10 It is evident from paragraph 3.1.13 of the RoD that the PIM did not support the EMPr Amendment Application. The Chief Director goes further to state that "<i>[T]he comments from MHS were considered during decision making process hence the mine environmental management section is not in support of the amendment the applicant or holder seek</i>". It is, however, not evident from the RoD that the DWS similarly did not support the EMPr Amendment Application. It is recorded that the Chief Director's failure to make available the DWS's and PIM's comments is severely prejudicial to DBCM, as it is unable to consider and address the reasons for the DWS's and PIM's opposition to the EMPr Amendment Application in this Appeal and whether the Refusal Decision is rationally connected to the DWS's and PIM's comments.</p>	
<p>2.11 It is further submitted that the decision-makers failure to furnish DBCM with the DWS's comments and the PIM's comments constitute a violation of the constitutional right to just administrative action.³ The Courts have confirmed that where an administrative decision-maker is required to furnish reasons for an administrative decision/action taken, if such reasons referred to an extraneous source, then that extraneous source must be identifiable to the reasonable reader.⁴</p>	
<p>2.12 DBCM therefore reserves its rights to supplement this Appeal once it has been provided with the DWS's comments and the</p>	

³ As contemplated in section 33 of the Constitution of the Republic of South Africa, 1996 and the Promotion of Administrative Justice Act, 2000.

⁴ *Commissioner for the SAPS and others v Maimela and another* [2003] 3 All SA 298 (T).

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<p>PIM's comments. To the extent that DBCM is not permitted to supplement this Appeal, DBCM notes that in terms of regulation 6 of the Appeal Regulations, the appeal administrator may request additional information from any person or affected organ of state for purposes of the appeal. The appeal administrator is accordingly hereby notified of these gaps in information and is requested by the Appellant to direct the DMRE to furnish it with the necessary information to enable a proper determination of this Appeal by the appeal authority.</p>	
<p>3. BACKGROUND</p> <p>3.1 The mining right in respect of the Voorspoed Mine was granted to DBCM by the DMRE on 5 September 2006. The right was granted for a period of 15 years ending in October 2023.</p> <p>3.2 The Voorspoed Mine was anticipated to be operational for a period of 12 to 15 years, with a projected Life of Mine ("LoM") until 2021.</p> <p>3.3 Mining operations commenced at the Voorspoed Mine on 4 November 2008. The mining operations comprised, among others, the construction of an open pit, which was mined to an approximate depth of 214 metres.</p> <p>3.4 Notwithstanding the anticipated LoM, mining operations at the Voorspoed Mine ceased prematurely in December 2018. This was due to a range of factors, including pit slope instability, complex geology, the size of the open pit, as well as fluctuations in resource price and exchange rates.</p>	

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<p>3.5 Following the decision to cease production, DBCM explored a divestment process with the view to securing a suitable operator to acquire and operate the Voorspoed Mine along with its assets and liabilities as a going concern. The DMRE also participated in the proposed divestment exercise, which consisted of a comprehensive bidding process in which proposals were received from 20 bidders. Pivotal to this sale process was the identification of an operator with empowerment credentials, technical ability, access to funding, the ability to comply with environmental and other regulatory requirements and the ability to contribute to the socio-economic development of the Kroonstad region. The sale process, which was initiated in November 2017, was unsuccessful in identifying a suitable operator that complied with these requirements.</p>	
<p>3.6 As a result, DBCM's board of directors took a decision to proceed with the decommissioning and closure of the Voorspoed Mine.</p>	
<p>3.7 In light of the above, and on 7 October 2019, DBCM applied for an environmental authorisation to the DMRE to obtain the requisite authorisation for the decommissioning and closure of the Voorspoed Mine ("Closure EA Application"). Pursuant to the Closure EA Application, DBCM sought authorisation to undertake, the now repealed, activity 22⁵ contemplated in</p>	

⁵ Prior to its repeal, activity 22 read as follows –

"The decommissioning of any activity requiring –

- (i) a closure certificate in terms of section 43 of the Mineral and Petroleum Resources Development Act, 2002 (Act 28 of 2002); or*
- (ii) a prospecting right, mining right, mining permit, production right or exploration right, where the throughput of the activity has reduced by 90% or more over a period of five years excluding where the competent authority has in writing agreed that such reduction in throughput does not constitute closure, but excluding the decommissioning of an activity relating to the secondary processing of a –*
 - (a) mineral resource, including the smelting, beneficiation, reduction, refining, calcining or gasification of the mineral resource; or*
 - (b) petroleum resource, including the refining of gas, beneficiation, oil or petroleum products, in which case activity 31 in this Notice applies."*

GROUNDS OF APPEAL	RESPONDING STATEMENT OF THE DMRE
<p>Environmental Impact Assessment Regulations Listing Notice 1 of 2014⁶ ("Listing Notice 1").</p> <p>3.8 The Closure EA Application contained a detailed investigation and comparative assessment of several decommissioning and closure options, including an in-depth consideration of the positive and negative implications of each identified closure alternative.</p> <p>3.9 Seven pit closure scenarios were initially considered, primarily in terms of the feasibility and costs thereof. After the initial screening, three pit closure scenario alternatives were selected and evaluated mainly in terms of the end land state of the open pit and mine residue deposits:</p> <p>3.9.1 The first alternative involved the development of a pit lake in terms of which the open pit would be left to fill/re-water through underground ingress, rainfall recharge directly into the pit and local runoff from the pit footprint area. This alternative was selected as the preferred alternative in the Closure EA Application ("Preferred Alternative");</p> <p>3.9.2 The second alternative was a variation of the Preferred Alternative. It also involved the development of a pit lake, but included a specifically engineered local run-off catchment area that will enhance the run-off to the pit and subsequently the re-watering progress; and</p> <p>3.9.3 The third alternative involved backfilling the pit using waste rock material removed from the pit during the mining process as fill material and backfilling the pit</p>	

⁶ Published under Government Notice R983 in *Government Gazette* 38282 of 4 December 2014, as amended.

GROUNDS OF APPEAL	RESPONDING STATEMENT OF THE DMRE
<p>excavation to current ground level ("Authorised Alternative").</p>	
<p>3.10 On 17 February 2020, the DMRE granted the Closure EA Application in which the third alternative, involving the backfilling of the pit, was approved ("Closure EA").</p>	
<p>3.11 On 17 March 2020, Webber Wentzel, acting on behalf of DBCM, lodged an appeal ("Closure EA Appeal") in terms of section 43 of NEMA against certain conditions included in the Closure EA.</p>	
<p>3.12 The Closure EA Appeal was only decided on 1 September 2022. As stated in the unnumbered paragraph of the RoD under the heading "<i>Background</i>", the Closure EA Appeal was never decided on the merits of the appeal, as activity 22 of Listing Notice 1 had been repealed at the time of deciding the Closure EA Appeal. Nevertheless, the appeal authority upheld the appeal and set aside the Closure EA.</p>	
<p>3.13 On 10 March 2020, GCS submitted the EMPr Amendment Application to the DMRE. The EMPr Amendment Application pertains to the amendment of the 2010 approved EMPr in respect of the Voorspoed Mine, read together with the DMRE's conditions of approval as set out in the DMRE's letter confirming the approval of the 2010 EMPr ("Approval Letter"). A copy of the Approval Letter is attached as "Annexe H".</p>	
<p>3.14 The purpose of the EMPr Amendment Application was to apply to the DMRE to remove the conditions of approval set out in paragraphs (d), (f) and (g) of the Approval Letter.</p>	

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<p>3.15 The conditions which DBCM sought to remove from the Approval Letter, and thus the 2010 approved EMPr, are as follows –</p>	
<p>3.15.1 condition (d), which provides that "<i>All mine waste (suitable for rehabilitation) must be taken back to the excavation area for backfilling purposes. Rehabilitation of the mining area must be done concurrently with mining activities (whenever and wherever possible)</i>";</p>	
<p>3.15.2 condition (f), which provides that "<i>Dump structures must not be left on the surface, this includes topsoil stockpiles, overburden stockpiles, waste rock stockpiles, tailings dumps and slimes dams</i>"; and</p>	
<p>3.15.3 condition (g), which provides that "<i>All excavations must be backfilled to the natural surface level; if a bulk factor exists it must be accommodated on the total area of disturbance</i>".</p>	
<p>3.16 The EMPr Amendment Application consisted of an application form, submitted to the DMRE on 10 March 2022, and a Final Amendment Application Report ("FAAR"), and numerous specialist studies compiled by independent specialists, which was submitted to the DMRE on or about 13 June 2023. A full copy of the application form and FAAR, as well as all the appendices thereto, is attached as the final annex to this Appeal marked "FAAR".</p>	
<p>3.17 The Refusal Decision refused to grant the EMPr Amendment Application, with the RoD providing that DBCM must comply with the 2010 EMPr and its conditions of approval.</p>	

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<p>4. GROUNDS OF APPEAL</p> <p>4.1 It is respectfully submitted that the Refusal Decision is unlawful, unreasonable, irrational and/or unfair.</p> <p>4.2 This submission is based on the following grounds of appeal –</p> <p>4.2.1 Firstly, the Refusal Decision is not rationally connected to the information before and considered by the decision-maker. In particular, the Refusal Decision failed to consider and/or give proper weight to the findings and recommendations made in the FAAR and the specialist studies attached thereto, as well as the additional information which the decision-maker expressly requested for purposes of rendering a decision.</p> <p>4.2.2 Secondly, the Chief Director failed to comply with his peremptory duties in terms of section 24O of NEMA, which sets out the criteria to be considered by competent authorities when considering an application⁷ brought in terms of the EIA Regulations. In particular, the Chief Director failed to apply the principles set out in section 2 of NEMA, including the principle of sustainable development, which requires the consideration of all relevant factors; the principle that environmental management requires the selection of the best practicable environmental option; and the principle that the social, economic and environmental impacts of activities, including disadvantages and benefits, must be considered</p>	

⁷ The term "*application*" is defined in regulation 1 of the EIA Regulations to include an amendment application submitted in terms of regulation 31 of the EIA Regulations.

GROUNDS OF APPEAL	RESPONDING STATEMENT OF THE DMRE
<p>and decisions must be appropriate in light of such assessment. In refusing the EMPr Amendment Application, the Chief Director also failed to give effect to the objects of the Mineral and Petroleum Resources Development Act 28 of 2002 (“MPRDA”), which include the objective of promoting economic growth and mineral resource development in the Republic. The refusal of the EMPr Amendment Application will result in the permanent sterilisation of the mineral resources of the Voorspoed Mine, which is inconsistent with this objective.</p> <p>4.2.3 Thirdly, the Refusal Decision failed to take relevant considerations into account. In particular, the decision-maker failed to consider South African and international best practice in regard to environmentally sustainable closure options for diamond mines.</p> <p>4.2.4 Lastly, the Refusal Decision is based on an incorrect application of the legislation relating to the closure of mining operations.</p> <p>4.3 The aforesaid failures inherent in the Refusal Decision are evident in the findings contained in paragraph 2 of Annexure 1 to the RoD, as well as the reasons for refusal contained in paragraph 3 of Annexure 1 to the RoD. DBCM’s specific responses to these findings and reasons for refusal are set out in paragraph 5 below.</p>	
<p>4.4 First ground of appeal: Failure to consider and/or give proper weight to the findings and recommendations made in the FAAR and the additional information requested by the decision-maker</p>	

GROUNDS OF APPEAL	RESPONDING STATEMENT OF THE DMRE
<p data-bbox="333 268 824 300"><u>Specialist assessments conducted</u></p> <p data-bbox="181 336 1160 564">4.4.1 Paragraphs 2(j) and 3.1.4 of Annexure 1 to the RoD provides that "<i>The review of the report also revealed that the decision to remove the three (3) conditions of approval is solely based on the cost the company will incur in backfilling the pit and that the company did not thoroughly consider sustainable development principles as contained in the NEMA.</i>"</p> <p data-bbox="181 603 1160 767">4.4.2 Paragraph 3.3 of Annexure 1 to the RoD again provides that "<i>[DBCM's] preference for the pit lake establishment option is solely based on economic reasons and did not take much consideration on the environmental, health and safety implications [...].</i>"</p> <p data-bbox="181 805 1160 868">4.4.3 Various other findings and reasons of the Chief Director in the RoD echo the above sentiments.</p> <p data-bbox="181 906 1160 1034">4.4.4 The selection of a pit lake as the preferred pit closure alternative in the EMPr Amendment Application was the result of the findings of several specialist studies conducted over several years.</p> <p data-bbox="181 1072 1160 1372">4.4.5 DBCM initially considered seven pit closure scenarios, at a screening level, primarily in terms of the feasibility and costs thereof. The pit closure costs for the various options ranged from approximately R48 million for the option to render the pit safe without any further interventions, to approximately R4 billion for the option to backfill the pit with the mine residue deposits on the mining area. This study concluded that backfilling of the pit would result in excessive costs that were not economically viable and</p>	

GROUNDS OF APPEAL	RESPONDING STATEMENT OF THE DMRE
<p>were more than what could be considered proportional to the benefits achieved by mining activities over the LoM.</p>	
<p>4.4.6 After the initial screening, three pit closure scenario alternatives were selected in the 2017 Voorspoed Closure Plan,⁸ which was subsequently updated in 2022⁹ primarily in terms of the end land state of the open pit and mine residue deposits. These are described in paragraph 3.9 above, but for ease of reference –</p>	
<p>4.4.6.1 “Scenario 1” involved the development of a pit lake under current conditions;</p>	
<p>4.4.6.2 “Scenario 2” also involved the development of a pit lake, but included a specifically engineered catchment area to enhance the run-off to the pit; and</p>	
<p>4.4.6.3 “Scenario 3” involved backfilling the pit using the current waste rock dump as the main source of fill material.</p>	
<p>4.4.7 In 2019, Golder Associates Africa conducted a technical evaluation of the three alternatives.¹⁰ For this evaluation, a risk assessment was undertaken to identify the key risks and impacts of each closure scenario. The results from the risk assessment were then used to determine the preferred option from a sustainability perspective, which</p>	

⁸ Voorspoed Final Closure Plan, Redco and Uvuna Sustainability, August 2019, which was submitted to the DMRE as part of the Closure EA Application.

⁹ Voorspoed Final Closure Plan, Redco and Uvuna Sustainability, 2022, Appendix B to the FAAR.

¹⁰ Technical Evaluation of the Risks, Impacts and Management Requirements into Pit Backfilling versus Current Mine Plan (Pit Lake), Golder Associates Africa Proprietary Limited, February 2019 (Appendix E to the FAAR).

GROUNDS OF APPEAL	RESPONDING STATEMENT OF THE DMRE
<p>examined each option in terms of its health, safety, environmental, social and economic impact.</p> <p>4.4.8 The Golder report concluded with the following recommendation:</p> <p><i>"In terms of economic and environmental considerations, Scenario 1 is probably the best option due to the lower cost (land form rehabilitation included in the overall mine rehabilitation program) and environmental aspects (i.e. limit runoff from surrounding unprotected land and prohibit migration of contaminated water to the surrounding environment). Final environmental conditions won't be comparable directly with pre-mining conditions, as there would be limited aesthetic improvements.</i></p> <p><i>In Scenario 2, rewatering of the pit will be quicker than Scenario 1 but the water quality in the Pit Lake is expected to be impacted more than Scenario 1. However, Scenario 2 will improve the protection of the Pit Lake area over a shorter period than Scenario 1. Final conditions won't be comparable directly with pre-mining conditions, as there would be limited aesthetic improvements and land access will not be regained specifically on the engineered local catchment. Possibility that the Department of Water and Sanitation might argue against the development of a local engineered catchment directing the runoff into the Pit Lake instead of discharging into the catchment.</i></p> <p><i>Scenario 3 is not recommended due to the extraordinary costs of backfilling activity, the creation of a potential pollution footprint (i.e. remaining footprint of the current waste rock dump) and the potential impact on the</i></p>	

GROUNDS OF APPEAL	RESPONDING STATEMENT OF THE DMRE
<p data-bbox="412 268 1155 368"><i>surrounding environment due to polluted groundwater migrating from the saturated backfilled excavation as early as ~32 years after closure towards surrounding users."</i></p> <p data-bbox="181 403 1155 568">4.4.9 The findings of all these specialist studies, together with the findings of other specialist reports, were examined and incorporated into the FAAR and it was found that the development of a pit lake is preferable over the backfilling of the pit.</p> <p data-bbox="181 603 1155 703">4.4.10 For ease of reference, the advantages and disadvantages of the pit lake option from an environmental perspective are summarised below (as discussed in the FAAR):</p> <p data-bbox="181 738 651 767">4.4.10.1 Advantages:</p> <p data-bbox="181 802 1155 1337">4.4.10.1.1 The measures taken during decommissioning and closure will be sufficient to achieve the closure objectives of sustainability. They will also be sufficient to achieve the specific closure objectives of restoring as much as possible of the mining area to a condition consistent with the pre-determined post closure land use objectives, ensuring that the area is left in a condition that poses an acceptable level of risk to public health and safety and reducing the need for post closure intervention, either in the form of monitoring or on-going remedial work, as far as is practicably possible. The safety risk of the presence of the pit lake for the public and animals is actively being addressed by the</p>	

GROUNDS OF APPEAL	RESPONDING STATEMENT OF THE DMRE
<p>implementation of various layers of access control to the open pit;</p>	
<p>4.4.10.1.2 The cost of implementing the pit lake option is approximately 100 times less than the backfilling option (i.e. R4 billion vs R40 million), making it more proportionate to the benefits received from mining and from the post-mining land use; and</p>	
<p>4.4.10.1.3 Development of a possible water resource to be used by possible sustainable closure options for the mine.</p>	
<p>4.4.10.2 Disadvantages:</p>	
<p>4.4.10.2.1 The open pit will remain in the landscape after closure, which may pose a risk to human/animal safety. However, measures will be taken to reduce this risk. These include implementation of access control measures and construction of security fence, storm water trench and an enviro berm, in conjunction with adequate monitoring and maintenance standards on an ongoing basis. The maintenance of these measures can be included in the sustainable closure option that could make use of the water resource that will be created by the presence of a pit lake;</p>	
<p>4.4.10.2.2 Leaving the pit open to rewater will result in 70 ha of potential grazing land lost (which</p>	

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<p>provides grazing capacity for only 10 head of cattle);</p>	
<p>4.4.10.2.3 The grazing potential of the waste rock dump rehabilitated in-situ will be slightly lower than its rehabilitated footprint would have been; and</p>	
<p>4.4.10.2.4 All the residue deposits would remain on the surface and although rehabilitated, may result in groundwater contamination plumes beneath them.</p>	
<p>4.4.11 The FAAR goes into significant detail in assessing the water impacts¹¹ and modelling results¹² of the closure scenarios, and further concludes that:</p>	
<p>4.4.11.1 <i>"The viability of implementing backfilling was assessed in the Golder Report (Golder, 2019), and it was concluded <u>that backfilling is not environmentally, socially or financially feasible</u>. On this basis, DBCM concluded that the development of a pitlake would be the preferred closure option for the open pit at Voorspoed Mine."</i>¹³</p>	
<p>4.4.11.2 <i>"The risks and benefits associated with the pitlake closure option have been thoroughly assessed, both at the commencement of DBCM's operations at Voorspoed Mine in terms of the 2005 EMPR</i></p>	

¹¹ FAAR, page 34 onwards.

¹² FAAR, page 43 onwards.

¹³ FAAR, page 21.

GROUNDS OF APPEAL	RESPONDING STATEMENT OF THE DMRE
<p>(Metago, 2005) and the amended EMPr report associated with this document. Thus, the removal of the backfill conditions from the amended 2010 EMPR (FS 30/5/1/2/3/2/1 (12) EM) <u>will not present any additional impacts which have not already been assessed</u>. The investigation undertaken by Golder and Associates (2019) indicates that the backfilling option is not feasible for Voorspoed Mine, given the material environmental and financial implications of this undertaking. The further long term geochemical modelling (Golder, 2021) has shown that the long-term water quality will stabilise and improve. The study undertaken by GCS on behalf of the WRC (2019), as well as the Best Practice Guidelines developed by the International Council on Mining & Metals (2019) also concludes that pitlakes can form part of a sustainable mine closure plan, if designed correctly."¹⁴</p> <p>4.4.12 The Chief Director's failure to meaningfully consider the information before him is further evidenced by the finding at paragraph 2(g) of Annexure 1 to the RoD that "A pre-approval inspection was conducted on the 26th of July 2024 to check the status of the existing pit in the mining area. and it was established that the pit wall is eroding at an alarming rate." This finding fails to consider the mitigation measures proposed in the FAAR and EMPr.</p> <p>4.4.12.1 Failure of the pit wall is due to the weathering of the sidewalls of the pit. This is dependent on the geology (structural and lithological) of the sidewall</p>	

¹⁴ FAAR, page 68.

GROUNDS OF APPEAL	RESPONDING STATEMENT OF THE DMRE
<p>and the impact of weathering while being exposed to oxygen and water.</p>	
<p>4.4.12.2 DBCM's geotechnical specialists have determined that in the event of a pit wall collapse, the surface expression of the pit (i.e., the increased diameter of the pit that may be expected through the failure of the pit wall) is unlikely to expand. This is due to the bench configuration and the geological material.</p>	
<p>4.4.12.3 DBCM's geotechnical specialists have also modelled the surface expression of the pit relative to the fence line around the pit and have determined that even if there is surface expression consequent upon a pit wall collapse, the pit will not encroach past the fence line. Accordingly, even if there is further collapse of the pit wall, there will be no increase in the public safety risk provided that the safety measures recommended in the FAAR and EMPr are implemented.</p>	
<p>4.4.12.4 There are also no significant environmental issues involved with the failure of the Voorspoed open pit sidewall. Should there be a pit wall collapse, material from the sidewalls will collapse into the pit and some may reach the pit lake, while the majority will remain as scree on the sidewalls. Material from the sidewalls falling into the pit or falling into the pit lake will have a very limited impact, if any, on the pit lake water quality.</p>	

GROUNDS OF APPEAL	RESPONDING STATEMENT OF THE DMRE
<p>4.4.12.5 These findings are supported in the summary letter from GCS, referred to above and attached as Annexe I".</p>	
<p>4.4.13 The Chief Director's finding at paragraph 3.4 of Annexure 1 to the RoD, that "<i>the pit must be backfilled to avoid the health and safety risks that the pit can pose to people and animals</i>" again evidences his failure to have applied his mind to the EMPr Amendment Application documents and assessments. While a backfilled pit would minimise human / wildlife safety risks, the implementation of the mitigation measures recommended in the FAAR and the EMPr would also minimise human / wildlife safety risks. These measures include, as already mentioned, the construction of 2 metre high waste rock barriers / berms at the top of remaining access ramps; a security fence 10 metres outside of the indicated zone of relaxation, and a 5 metre deep trench and 5 metre high enviro berm in operations outside of the security fence. Any perceived public and wildlife safety advantages of the Authorised Alternative must also be weighed up against the environmental disadvantages of the Authorised Alternative which are likely to result in substantial and long-term groundwater pollution risks.</p>	
<p>4.4.14 DBCM notes that a further key factor considered in making the Refusal Decision was the amended 2010 approved EMPr, read together with the conditions of approval (refer to Annexe H). This amendment was obtained by DBCM to authorise an extension of the Voorspoed mining area. The DMRE authorised the amendment to DBCM's EMPr, but added a condition of approval to the effect that DBCM must backfill the open pit upon closure. Since the 2010</p>	

GROUNDS OF APPEAL	RESPONDING STATEMENT OF THE DMRE
<p>amendment application, which resulted in the inclusion of this condition, was submitted merely to incorporate an additional mining area to the Voorspoed Mine, no change to the activities taking place at the Voorspoed Mine requiring the imposition of backfilling conditions was anticipated. DBCM never considered backfilling in respect of the Voorspoed Mine and the option to backfill was not included in the 2010 amendment application (or any of the previous EMPr documentation) submitted to the DMRE for approval. As a result, the impacts associated with the backfilling of the open pit at the Voorspoed Mine were neither considered nor assessed and the backfilling condition was imposed by the DMRE in the absence of any feasibility or other investigations. The EMPr Amendment Application which is the subject of this Appeal was submitted by DBCM on the premise that the above backfilling condition ought not to have been imposed by the DMRE in the first place. The FAAR confirms this, in stating that:</p> <p>4.4.14.1 <i>"The purpose of the Section 102 amendment application submitted in 2010 was to extend the Voorspoed Mining right area to include a Portion of the Farm Morgenster 772 (formerly known as Subdivision 2 of the Farm Morgenster 772) to incorporate a small portion of Kimberlite ore body which was not geographically aligned with the western boundary of the originally authorised mining footprint. In requesting this amendment, no change</i></p>	

GROUNDS OF APPEAL	RESPONDING STATEMENT OF THE DMRE
<p>4.4.14.2</p> <p><i>to the mine's closure objectives were envisaged or requested."</i>¹⁵</p>	
<p>4.4.14.2</p> <p><i>"As the 2010 amendment application did not anticipate any change to the activities taking place at the Voorspoed Mine, the impacts associated with the backfilling of the open pit were neither considered nor assessed and the backfilling condition was imposed by the DMRE in the absence of any feasibility (technical, environmental, social, financial, and legal) or other investigations in support thereof."</i>¹⁶</p>	
<p>4.4.14.3</p> <p><i>"Given that the original EMPr (2005 EMPr) for the mine (Metago, 2005- [...]) and the closure EMPr and Final Basic Assessment Report (Centre for Environmental Management (CEM), 2019- [...]) assessed the impacts of the mine assuming that closure would include a pitlake, it is considered that the impact assessments currently in place are unlikely to require amendment, should this application be granted."</i>¹⁷</p>	
<p><u>Additional information requested by the decision-maker</u></p>	
<p>4.4.15</p> <p>As set out in paragraphs 2.2 and 2.7 above, the RoD indicates at paragraph 1(h) that the comments of the DWS were considered in taking the Refusal Decision. However, the Appellant records that the findings and reasons in</p>	

¹⁵ FAAR, page 1.

¹⁶ FAAR, page 1.

¹⁷ FAAR, page v.

GROUNDS OF APPEAL	RESPONDING STATEMENT OF THE DMRE
<p>paragraphs 2 and 3 of the RoD do not at all mention any of the comments made by the DWS in their letter addressed to GCS, dated 19 June 2023, a copy of which is attached hereto as "Annexe J". DBCM makes the following submissions with regards to the comments that were submitted by the DWS.</p>	
<p>4.4.16 It is evident from paragraph 2 of the DWS's comments, where the DWS lists the information that was considered by it in providing the comments, that the DWS only considered three of the specialist studies that were submitted together with the EMPr Amendment Application. Critically, the DWS failed to consider the Golder report which sets out a technical evaluation of the three alternatives considered by DBCM.</p>	
<p>4.4.17 In paragraph 3 of the DWS's comments, the DWS merely provides a summary of the water related specialist studies that informed the EMPr Amendment Application. However, it is noted that the DWS did not raise any concerns with the outcome of these studies.</p>	
<p>4.4.18 In the first two bulleted paragraphs under paragraph 4 of the DWS's comments, the DWS recommended that certain additional information be included in the EMPr Amendment Application.</p>	
<p>4.4.18.1 Firstly, the DWS indicated a geotechnical study must be conducted to determine the pit stability. DBCM appointed SRK Consulting (South Africa) Proprietary Limited to undertake the geotechnical</p>	

GROUNDS OF APPEAL	RESPONDING STATEMENT OF THE DMRE
<p>study and the SRK Geotechnical Report¹⁸ was submitted to the DMRE in January 2024. A copy of the SRK Geotechnical Report is attached as "Annexe K", which the DMRE asserts to also have considered in rendering its Refusal Decision at paragraph 1(e) of the RoD. The SRK Geotechnical Report concludes that:</p> <p><i>"On this basis it is concluded that either of Options 1 or 2 in the geochemical report (Golder, 2020) can be adopted for post-closure design, with a slightly lower level of risk (in terms of pit slope instability) attached to Option 3 – provided that the following is diligently implemented and maintained....."</i></p> <p>4.4.18.2 Secondly, the DWS also indicated that the financial implications associated with each of the closure options should be outlined by DBCM. DBCM submits that it is evident that the DWS failed to adequately consider the documents submitted by DBCM as part of the EMPr Amendment Application, as the FAAR states that <i>"The excessive cost of backfilling the pit (approximately R3.9 billion) renders this option both impractical and economically unfeasible. Scenario 1 (the pitlake option) was estimated to cost approximately R39 708 813 and Scenario 2, approximately R53 470 228"</i>¹⁹.</p>	

¹⁸ Geotechnical Closure Report for Voorspoed Open Pit, SRK Consulting (South Africa) Proprietary Limited, January 2024.

¹⁹ FAAR, page 38.

GROUNDS OF APPEAL	RESPONDING STATEMENT OF THE DMRE
<p>4.4.19 In the third bulleted paragraph, the DWS states that it "<i>is in support of the option to completely backfill the pit to reduce human interference and other wild animals from accessing the pit site</i>". DBCM submits that this statement is unsubstantiated, as it is evident that this statement is in no way connected to any of the findings mentioned by the DWS in paragraph 3 of their comments. Furthermore, the DWS clearly failed to consider the various mitigation measures referred to in the FAAR.</p>	
<p>4.4.20 The statement made by the DWS in the fourth bulleted paragraph is unsubstantiated and therefore denied for the reasons set out in paragraph 4.4 above.</p>	
<p>4.4.21 While DBCM has not been furnished with the DWS's comments of 20 September 2023, which appear to have informed the Refusal Decision, it notes that the DMRE letter of 29 September 2023 and attached above as Annexe D indicates that "<i>it was established that the recommendations are the same</i>" as those made by the DWS above. It is there unclear on what basis the Chief Director has relied on the DWS's comments to support the Refusal Decision, and there is no rational connection between this information source and the Refusal Decision.</p>	
<p>4.4.22 With respect to the SRK Geotechnical Report, DBCM notes that the DWS and the DMRE expressly requested this additional assessment be conducted for purposes of evaluating the EMPr Amendment Application, per the DWS comments above and the DMRE letter of 29 September 2023 and attached above as Annexe D.</p>	

GROUNDS OF APPEAL	RESPONDING STATEMENT OF THE DMRE
<p>4.4.23 DBCM submits that the Refusal Decision is similarly not rationally connected to the findings of the SRK Geotechnical Report. The SRK Geotechnical Report expressly concludes that "<i>A detailed and comprehensive geotechnical closure study has been carried out [...]with the study findings and conclusions presented in this Report: • The geotechnical study includes detailed Baseline stability analyses of the Voorspoed pit slopes, for static load conditions and different pit lake elevations, as well as several worst-case conditions and special scenario sensitivity assessments. The results of these analyses and reviews, support the Base Case pit closure design, which is Option 1 in the geochemical report (Golder, 2020)."</i>²⁰ The SRK Geotechnical Report further confirms that "<i>Appropriate geotechnical risk, design acceptance and consequence criteria were adopted for post-closure design of the Voorspoed open pit, with due consideration given to existing pit wall conditions in the pit, an evaluation of design confidence levels for post-closure design, and the potential consequences that may result from a pit slope failure at Voorspoed.</i>"²¹</p>	
<p>4.4.24 The findings and reasons for the Refusal Decision, as set out in the RoD, are thus patently false and irrational, as evidenced by the above assessments and recommendations, as well as the additional information expressly requested by the regulators for the purposes of evaluating the EMPr Amendment Application. For the Chief Director to select a pit closure option that is not only not supported, but is comprehensively dismissed by</p>	

²⁰ SRK Geotechnical Report, page 43.

²¹ SRK Geotechnical Report, page 43.

GROUNDS OF APPEAL	RESPONDING STATEMENT OF THE DMRE
<p>credible experts as being inappropriate in the documentation that was before him at the time of making his decision, demonstrates that the Chief Director did not give proper weight to the findings and recommendations made in the EMPr Amendment Application and FAAR, inclusive of the specialist studies attached thereto, or the SRK Geotechnical Report. This is inconsistent with the very reason for the appointment of specialists during the environmental authorisation application process, which is to provide the decision-maker with impartial, technically defensible and objective scientific information to afford the decision-maker with an opportunity to make an informed decision on matters that he or she may not be specialised in.</p>	
<p>4.4.25 It is important to note that section 6(2)(f)(ii)(cc) of the Promotion of Administrative Justice Act, 2000 provides that an administrative action, such as the Refusal Decision, is reviewable if it is not rationally connected to the information before the decision-maker.</p>	
<p>4.4.26 Considering the above submissions made in this first ground of appeal, it is clear that the Refusal Decision, supported by the RoD, is unsubstantiated and/or irrational, as numerous specialist studies have been carried out by independent experts to assess the closure options in respect of the Voorspoed Mine, which assessments included health, safety, environmental, social and economic impacts in addition to (and not to the exclusion of) financial impacts. The Chief Director completely ignored and/or failed meaningfully to consider these assessments and the full extent and contents of the</p>	

GROUNDS OF APPEAL	RESPONDING STATEMENT OF THE DMRE
<p>information before it in taking its decision, resulting in the unlawful, unreasonable and/or irrational Refusal Decision.</p>	
<p>4.5 Second ground of appeal: Failure to apply the principles set out in section 2 of NEMA and to pursue the objectives of the MPRDA</p> <p>4.5.1 The RoD makes a number of unsubstantiated, blanket statements and findings regarding the EMPr Amendment Application not being consistent with, and the backfilling conditions rather being consistent with, the provisions of NEMA, the principles of section 2 of NEMA, sustainable development requirements, and section 24 of the Constitution of the Republic of South Africa, 1996 (see paragraphs 2(f), 3.1.1, 3.1.3, 3.1.4, 3.1.5, 3.1.6, 3.1.7, 3.1.8, 3.1.10, 3.1.14 and 3.2 of Annexure 1 to the RoD). None of these findings have been appropriately substantiated by the Chief Director, nor are they rationally connected to any of the information that was before him in taking the Refusal Decision. In addition, DBCM submits that these findings evidence that the Chief Director failed to properly apply the principles and provisions of the enabling legislation in taking a decision on the EMPr Amendment Application.</p> <p>4.5.2 Section 24O of NEMA sets out, in peremptory terms, the criteria which must be considered by competent authorities when considering an amendment application in terms of regulation 31 of the EIA Regulations.</p> <p>4.5.3 Section 24O(1)(a) requires the competent authority to comply with NEMA, which in turn requires the national environmental management principles set out in section 2</p>	

GROUNDS OF APPEAL	RESPONDING STATEMENT OF THE DMRE
<p>to serve as guidelines, by reference to which any organ of state must exercise any function when taking any decision in terms of NEMA.</p>	
<p>4.5.4 In this regard, it is respectfully submitted that the Chief Director failed to apply the principle set out in section 2(3) of NEMA that development must be socially, environmentally, and economically sustainable. To insist that DBCM implements a pit closure option that is more than 100 times more costly than an alternative closure option, and which is recommended by numerous environmental specialists as having minimal, if any, benefits from an environmental perspective is not consistent with this principle.</p>	
<p>4.5.5 For this reason, the Refusal Decision is also not in accordance with the principle of sustainable development as contemplated in section 2(4)(a) of NEMA, which also requires the consideration of the environmental, social and economic consequences of decisions. This principle is restated in section 2(4)(i) of NEMA, which requires that the social, economic, and environmental impacts of activities, including disadvantages and benefits, must be considered, assessed, and evaluated and decisions must be appropriate in light of such assessment. It is respectfully submitted that the Refusal Decision is not appropriate or legally justified in light of the assessments conducted of the social, economic and environmental impacts of the proposed pit closure.</p>	
<p>4.5.6 The Chief Director's insistence of implementing the backfilling of the pit in circumstances where every one of the documents before him unequivocally identified the</p>	

GROUNDS OF APPEAL	RESPONDING STATEMENT OF THE DMRE
<p>Preferred Alternative as the best practicable environmental option is clearly a contravention of the Chief Director's obligation, in terms of section 2(4)(b) of NEMA, to pursue the selection of the best practicable environmental option. Such an option is one which provides the most benefit or causes the least damage to the environment as a whole, at a cost acceptable to society in the long term as well as in the short term. At a cost of approximately R4 billion, compared to an estimate of some R40 million for the Preferred Alternative, the backfill option cannot conceivably be regarded as a cost acceptable to society. This is so particularly in circumstances where the backfill option significantly increases the long-term groundwater pollution risks during the post-closure phase.²²</p> <p>4.5.7 For the reasons already stated in the first ground of appeal, it is respectfully reiterated that the Chief Director failed to consider the information contained in the Application Form and FAAR, in non-compliance with section 24O(1)(b)(vi) of NEMA.</p> <p>4.5.8 By persisting with the backfill option over the Preferred Alternative, the Chief Director also failed to give effect to the objects of the MPRDA as set out in section 2 thereof. These include the objective of promoting economic growth and mineral resource development in the Republic. The implementation of the backfill option will result in the permanent sterilisation of the mineral resources of the Voorspoed Mine, whereas the Preferred Alternative will allow for the resources to be exploited in the future by</p>	

²² FAAR, page 34.

GROUNDS OF APPEAL	RESPONDING STATEMENT OF THE DMRE
<p>DBCM or another party should circumstances change. The Refusal Decision is thus inconsistent with this objective.</p>	
<p>4.6 Third ground of appeal: Failure to consider best practice</p> <p>4.6.1 In addition to contradicting and/or failing to meaningfully consider the findings of the FAAR, the insistence of the Chief Director to backfill the open pit of the Voorspoed Mine is also not in line with emerging international and South African best practice relating to mine closure, in terms of which pit lakes have been increasingly identified as viable and sustainable mine closure alternatives. While in the past regulators generally preferred either partial or complete backfill of pits as a closure option, it is now a generally accepted position that this option is often not cost effective or even environmentally desirable.²³</p> <p>4.6.2 Numerous international studies have been conducted regarding the viability of pit lakes as a mine closure option. A recent article in the international, peer reviewed, open-access journal, “<i>Minerals</i>”, explores the various uses that pit lakes have the potential to fulfil, by looking at existing uses around the world. A copy of this article, titled “<i>Realizing Beneficial End Uses from Abandoned Pit Mine Lakes</i>”, is attached as “Annexe L”.²⁴</p>	

²³ Opportunities for Sustainable Mining Pit Lakes in Australia, CD McCullough and MA Lund, accessed at https://www.researchgate.net/publication/225472002_Opportunities_for_Sustainable_Mining_Pit_Lakes_in_Australia.

²⁴ McCollough CD, Schultze M, Van den Berg J “*Realizing Beneficial End Uses from Abandoned Pit Mine Lakes*” *Minerals* (2020).

GROUNDS OF APPEAL	RESPONDING STATEMENT OF THE DMRE
<p>4.6.3 The article identifies the following end uses that have been realised in various locations around the world:</p> <p style="padding-left: 40px;"><i>“Passive and active recreation, nature conservation, fishery and aquaculture, drinking and industrial water storage, greenhouse carbon fixation, flood protection and waterway remediation, disposal of mine and other waste, mine water treatment and containment, and education and research.”</i></p>	
<p>4.6.4 In 2019, the International Council on Mining & Metals published the <i>“Integrated Mine Closure Good Practice Guide, 2nd Edition”</i> (“Good Practice Guide”),²⁵ which echoes the sentiments of the above article. The Good Practice Guide states that, while pit lakes may present certain residual risks at closure, they also offer substantial benefits (unlike many other mine closure options which ultimately sterilise the mining area). With proper management relating to the change in land type from terrestrial (pre-mining) to aquatic (post-mining), pit lakes can present numerous beneficial opportunities post-closure. By integrating social, environmental and economic viewpoints and factors, pit lakes can be used in a variety of activities, including the irrigation of agricultural land. Water management will need to be determined according to the characteristics of the pit lake and the surrounding area, in line with the over-arching notion of sustainability.</p>	
<p>4.6.5 Diamond mines commonly produce deep pits and therefore have the potential to form pit lakes. The majority</p>	

²⁵ IMMC *“Integrated Mine Closure Good Practice Guide” 2nd Edition* (2019).

GROUNDS OF APPEAL	RESPONDING STATEMENT OF THE DMRE
<p>of open pit kimberlite diamond mines are steep-sided and more or less circular, and the chemistry of groundwater associated with kimberlite deposits has an impact on the quality of the pit lake. In Canada, pit lakes are used as post-closure options in diamond mines. It has been shown that groundwater entering the mine is likely to have a chemistry similar to that of the nearby surface water body or will alternatively be a mixture of deeper groundwater and lake water. This same study states that "<i>groundwater associated with the kimberlite rock itself is unlikely to pose major problems from a water quality point of view</i>" and "<i>water associated with kimberlite rock should have very low concentrations of trace metals.</i>"²⁶ The Chief Director's finding, at paragraphs 2(e) and 3.3 of Annexure 1 to the RoD, namely that "<i>it is generally a standard practice for all diamond mining to be backfilled in the Republic</i>" is not only misplaced, but is also inconsistent with evolving industry best practice.</p> <p>4.6.6 Pit lakes are also commonly used in Australia, largely due to the growth in open cut mining over the last few decades. There, they are often perceived as beneficial to local communities, as well as the natural environment, depending on the quality of the water in the pit lake.²⁷ Significant effort has thus been expended on investigating and examining these pit lakes and their water quality, thereby promoting effective management.</p>	

²⁶ Harris L *et al* "Creating Lakes from Open Pit Mines: Processes and Considerations, Emphasis on Northern Environments" *Canadian Technical Report of Fisheries and Aquatic Sciences* (2009).

²⁷ Kumar R *et al* "Water Resources in Australian Mine Pit Lakes" *Water in Mining Conference* (2009).

GROUNDS OF APPEAL	RESPONDING STATEMENT OF THE DMRE
<p>4.6.7 As a result of these international developments, complete backfills have become rare globally due to the excessive costs, as well as significant contamination issues that are generally associated with backfill material. This concern has been highlighted in respect of the Authorised Alternative, which poses significant and long-term groundwater contamination risks.</p>	
<p>4.6.8 The use of pit lakes as a mine closure and rehabilitation method is a relatively new concept in South Africa, with recent studies showing that they may well be viable long-term solutions for a variety of mines. For example, correctly designed pit lakes offer a passive water treatment option. This is important as mines that use active water treatment are energy intensive, using energy (mostly from the national grid) which could be used more effectively elsewhere in South Africa. Where water quality is suitable, pit lakes can be used as a water resource to supply communities after mine closure, such as for community agriculture projects.</p>	
<p>4.6.9 In August 2019, a report was compiled under the auspices of the Water Research Commission to investigate whether pit lakes are an environmentally sustainable closure option for mines. The study focussed on the development of pit lakes in the coal mining context, but the findings can equally be applied to a variety of mines, including diamond mines. A copy of the study, entitled "<i>An Investigation to Determine if South African Coal Mine Pit lakes are a Viable Closure Option</i>" is attached as "Annexe M".</p>	
<p>4.6.10 This study concludes as follows:</p>	

GROUNDS OF APPEAL	RESPONDING STATEMENT OF THE DMRE
<p><i>“Pit lakes can be environmentally sustainable if they are designed correctly and the surface discharge of water into the catchment area is managed. Should the pit lake be suitably designed, it forms a water sink to prevent uncontrolled discharge from the mining operations.</i></p> <p><i>A fundamental change in thinking and legislative requirement is required to view pit lakes as an environmentally sustainable solution to prevent uncontrolled discharge from open cast mining operations to avoid the expense of ongoing water treatment. Correctly designed pit lakes offer an environmentally sustainable closure option for open cast coal mines in South Africa.”</i></p> <p>4.6.11 The Water Research Commission study clearly shows that pit lakes are an environmentally sustainable mine closure solution, provided that they are correctly designed and that certain other requirements and standards are met. It also demonstrates that pit lakes are accepted as a scientifically defensible, environmentally sustainable mine closure option.</p> <p>4.6.12 It is accordingly submitted that the Chief Director's insistence on backfilling as the closure methodology for the Voorspoed Mine fails to consider international and South African best practices and emerging mine closure trends and for this reason the Refusal Decision is unreasonable.</p>	

GROUNDS OF APPEAL	RESPONDING STATEMENT OF THE DMRE
<p>4.7 Fourth ground of appeal: Flawed interpretation of the relevant mine closure legislation</p> <p>4.7.1 In paragraph 3.1.9 of Annexure 1 to the RoD, the Chief Director relies on the 'polluter pays' principle encapsulated in section 2(4)(p) of NEMA to decide that the pit must be backfilled as <i>"this is the responsibility of the mining right holder"</i>.</p> <p>4.7.2 In paragraph 3.1.11 of the RoD, the Chief Director states the following with regards to the implementation of the ongoing mitigation measures associated with Preferred Alternative:</p> <p><i>"The DMRE acknowledged these interventions, but the long-term management of the infrastructures is of concern. The mining right has lapsed, and the mining right holder will apply for a closure certificate in terms of section 43 of the Mineral and Petroleum Resources Development Act (herein referred to as the MPRDA). Should the company be issued with a closure certificate and vacate the site, no one will be responsible with the continuous management/maintenance of the infrastructure in place. The infrastructure in place will also be vandalised and this will be a safety concerns to the surrounding communities."</i></p> <p>4.7.3 The Chief Director goes further in paragraph 3.1.12 of the RoD to state that:</p> <p><i>"The infrastructures and programmes the holder propose for scenario 1 and 2 requires continuous management, monitoring and maintenance even after issuing of the closure certificate in terms of the MPRDA. The holder of</i></p>	

GROUNDS OF APPEAL	RESPONDING STATEMENT OF THE DMRE
<p><i>the right will leave the area after closure certificate is issued and the infrastructure in place will be vandalised. The state will incur unnecessary liability in ensuring the safety of surrounding communities and the attainment of environmental right as enshrined in section 24 of the constitution of the Republic of South Africa."</i></p>	
<p>4.7.4 DBCM respectfully submits that the aforementioned statements and findings are based on a complete misunderstanding or misinterpretation of the provisions of NEMA which govern mine closure.</p>	
<p>4.7.5 Section 41 of the MPRDA, read with the now repealed regulations 53 and 54 of the Mineral and Petroleum Resources Development Regulations,²⁸ previously regulated the obligation of a holder of, <i>inter alia</i>, a mining right to make the prescribed financial provision for the rehabilitation or management of negative environmental impacts associated with, <i>inter alia</i>, a mining operation. Section 41 of the MPRDA was repealed by section 33 of the Mineral and Petroleum Resources Development Amendment Act, 49 of 2008, effective 7 June 2013. The obligation to make financial provision now arises from the provisions of sections 24P (and, as of 30 June 2023, section 24PA) of NEMA.</p>	
<p>4.7.6 Section 24P(3) and (4) of NEMA provides that –</p> <p><i>“(3) Where prescribed, an applicant, must, before the competent authority issues an environmental authorisation, determine the financial provision</i></p>	

²⁸ Published under Government Notice R527 in *Government Gazette* 26275 of 23 April 2004, as amended.

GROUNDS OF APPEAL	RESPONDING STATEMENT OF THE DMRE
<p><i>which is required for undertaking progressive rehabilitation, decommissioning, closure and post-closure activities, including the pumping and treatment of extraneous and polluted water, where relevant.</i></p> <p>(4) <i>Where prescribed, the applicant, holder of an environmental authorisation, holder or holder of an old order right must provide financial provision for progressive rehabilitation, mitigation, decommissioning, closure and post-closure activities, including the pumping and treatment of extraneous and polluted water, where relevant, to ensure the mitigation and rehabilitation of adverse environmental impacts, including latent environmental impacts".</i></p> <p>4.7.7 Furthermore, section 24PA(3) of NEMA provides that "<i>[T]he financial provision provided in respect of latent environmental impacts or residual environmental impacts, including the pumping and treatment of extraneous and polluted water, must be transferred to the Minister responsible for mineral resources upon the issuing of a closure certificate, unless otherwise prescribed".</i></p> <p>4.7.8 Accordingly, DBCM has been and is legally obligated to set aside financial provision in respect of its closure and post-closure obligations and to transfer such financial provision to the Minister of Mineral and Petroleum Resources upon the issuance of a closure certificate in terms of section 43 of the MPRDA, to enable the DMRE</p>	

GROUNDS OF APPEAL	RESPONDING STATEMENT OF THE DMRE
<p>to implement such post-closure measures in the event that DBCM fails or is unable to do so.</p>	
<p>4.7.9 Furthermore, section 24R(1) of NEMA provides that the holder of, <i>inter alia</i>, a mining right remains responsible for any environmental liability, pollution or ecological degradation, the pumping and treatment of polluted or extraneous water, the management and sustainable closure thereof, notwithstanding the issuing of a closure certificate to the holder concerned.</p>	
<p>4.7.10 DBCM further submits that the Chief Director's insistence on the Authorised Alternative (backfilling) being mandated in law (see paragraphs 3.1.2, 3.1.15, 3.1.16 and 3.2 of Annexure 1 to the RoD) is incorrect and misguided. DBCM submits that backfilling is not the only accepted or prescribed closure scenario in law. Section 56 of the MPRDA expressly prescribes the principles for mine closure. Section 56(e) provides that the holder must ensure that the land is rehabilitated, as far as is practicable, to its natural state, or to a predetermined and agreed standard or land use which conforms with the concept of sustainable development; in accordance with the provisions of NEMA, the Financial Provisioning Regulations, 2015²⁹ and the EIA Regulations.</p>	
<p>4.7.11 The DMRE is thus permitted in law to agree to an alternative mine closure standard or post-closure land use which conforms to 'sustainable development' (and 'sustainable development' principles are elaborated upon in NEMA and relied on in the EMPr Amendment</p>	

²⁹ Published under Government Notice R1147 in *Government Gazette* 39425 of 20 November 2015, as amended.

GROUNDS OF APPEAL	RESPONDING STATEMENT OF THE DMRE
<p>Application). Current environmental legislation, in particular NEMA's Financial Provisioning Regulations, 2015, further provides for mine closure which achieves a post-mining land use and therefore supports and advocates for a sustainable end state as opposed to a pre-mining state. NEMA's Financial Provisioning Regulations, 2015 require proposed final post-mining land uses to be appropriate, feasible and possible of implementation.</p> <p>4.7.12 DBCM submits that such a case has been made for the Preferred Alternative, which ought to have supported and informed a decision by the Chief Director to grant the EMPr Amendment Application. The end land use objective for the Voorspoed Mine is to reinstate the rehabilitated footprint area back to agricultural land. In this respect, the aim is to achieve a sustainable land use, comply with the closure vision and match the rehabilitated footprint with the surrounding area as far as reasonably practical. The EMPr Amendment Application demonstrates that this objective will be achieved by the implementation of the Preferred Alternative. The FAAR indicates that the decommissioning and rehabilitation of Voorspoed Mine through the implementation of the Preferred Alternative will result in the attainment of the closure objectives which are aligned with all legal requirements that are applicable to the proposed closure process, through the implementation of the mitigation, management and monitoring measures outlined in the EMPr Amendment Application and the Voorspoed Mine EMPr and associated closure plans. In contrast, the Chief Director does not provide any justification in the Refusal Decision or RoD at all as to how these broad end land use objectives will be attained through the Authorised</p>	

GROUNDS OF APPEAL	RESPONDING STATEMENT OF THE DMRE
<p>Alternative. The Chief Director should have found that the decommissioning and rehabilitation of Voorspoed Mine through the implementation of the Preferred Alternative will result in the attainment of the closure objectives which are aligned with all legal requirements that are applicable to the proposed closure process, and that any additional benefits from backfilling the open pit are far outweighed by the costs. As mentioned earlier in this Appeal, the Preferred Alternative presents the best practicable environmental option and is the only financially feasible closure option.</p> <p>4.7.13 Finally, DBCM submits that the Chief Director has misapplied the NEMA section 2 principles in insisting on the Authorised Alternative (see paragraphs 3.1.4, 3.1.5 and 3.1.6 of Annexure 1 to the RoD). The EMPr Amendment Application and FAAR expressly addressed the tenets of sections 2(4)(a)(ii) and (viii) of NEMA, contrary to the Chief Director's findings, in seeking to avoid pollution or degradation of the environment, and to identify mitigation measures where adverse environmental impacts cannot be altogether avoided or prevented, to ensure DBCM's environmental obligations are met.</p> <p>4.7.14 It is accordingly submitted that the Chief Director's statements and findings with regards to the liability which will remain in respect of the Voorspoed Mine closure and post-closure measures, as well as the insistence on the Authorised Alternative as the only lawful closure solution, are unsubstantiated and informed by misapplications of</p>	

GROUNDS OF APPEAL	RESPONDING STATEMENT OF THE DMRE
<p>the applicable legislative provisions, rendering the Refusal Decision unlawful, unreasonable, irrational and/or unfair.</p>	
<p>5. <i>AD SERIATIM</i> RESPONSE TO THE FINDINGS AND REASONS FOR REFUSAL CONTAINED IN ANNEXURE 1 TO THE ROD</p> <p>5.1 It is further respectfully submitted that the findings referred to in paragraph 2 of Annexure 1 to the RoD, and the reasons for refusal referred to in paragraph 3 of Annexure 1 to the RoD, are not rationally connected to the information which was before the Chief Director in making the Refusal Decision and are unlawful and/or unreasonable in that they are not substantiated by any objective or correct technical or legal reasoning. These failures render the Refusal Decision and RoD to contravene DBCM's constitutional right to administrative justice, given particularly that the findings and reasons in the RoD are not objective, comprehensible or informative, as they are not substantiated with reference to any counter-balancing legitimate concerns or information, or at all.</p> <p>5.2 Each finding and reason for refusal will be addressed in turn.</p> <p>5.3 It must be noted that the failure by DBCM to address any of the statements and averments made in the RoD must not be construed as an admission as to the correctness of those statements and averments. DBCM specifically disputes and/or denies all statements and averments made by the Chief Director in the RoD which are contrary to what is set out in this Appeal and/or the EMPr Amendment Application.</p>	

GROUNDS OF APPEAL	RESPONDING STATEMENT OF THE DMRE
<p>5.4 Specific response to the findings contained in paragraph 2 of Annexure 1 to the RoD</p>	
<p>5.4.1 Ad paragraph 2.a of Annexure 1 to the RoD</p>	
<p>5.4.1.1 DBCM submits that while some of the specialist reports submitted to the DMRE as part of the EMPr Amendment Application are the same studies that were submitted in support of the Closure EA Application, it is not correct to state that all specialist studies are the same.</p>	
<p>5.4.1.2 By way of example, the Voorspoed Mine Final Closure Plan, 2019, prepared by Redco and Uvuna which was submitted together with the Closure EA Application, was subsequently updated by Redco and Uvuna, and the version submitted as part of the EMPr Amendment Application is dated 2022.</p>	
<p>5.4.1.3 The Chief Director further states that the Closure EA was granted on 17 February 2020. However, this statement is irrelevant as the decision to grant the Closure EA was set aside on 1 September 2022, by virtue of the Closure EA Appeal.</p>	
<p>5.4.1.4 Lastly, DBCM submits that it is unclear why the Chief Director mentions the fact that DBCM submitted the same specialist reports with the EMPr Amendment Application as were submitted with the Closure EA Application as a finding. The environmental impacts that had to be assessed as part of both applications are the same, and it is therefore incomprehensible why the Chief Director</p>	

GROUNDS OF APPEAL	RESPONDING STATEMENT OF THE DMRE
<p>would have expected different specialist studies to be submitted. It is common practice in the industry for reliance to be placed on specialist studies that were previously prepared over a study area.</p> <p>5.4.2 Ad paragraph 2.b of Annexure 1 to the RoD</p> <p>5.4.2.1 In the first sentence of paragraph 2.b of Annexure 1 to the RoD, the Chief Director states that "<i>The 2019 reports presented different scenarios or alternatives relating to the rehabilitation of the quarry and <u>the same scenarios</u> [our emphasis] has been included in the current application</i>". However, this statement is incorrect. Under paragraph 2.b the Chief Director lists the scenarios as summarised in the Closure EA Application, whereas the Chief Director lists the scenarios as summarised in the EMPr Amendment Application in paragraph 2.d of Annexure 1 to the RoD. When comparing the scenarios listed under paragraph 2.b with those listed under paragraph 2.d, it is clear that these scenarios are not the same – DBCM went to great lengths to revisit the previous scenarios presented in the Closure EA and to improve the scenarios.</p> <p>5.4.2.2 DBCM submits that it is irrational for the Chief Director to do a comparison of the Closure EA Application with the EMPr Amendment Application. The purpose of the Closure EA Application was to assess the environmental impacts associated with the undertaking of the listed activity applied for pursuant to the Closure EA Application. Whereas the purpose of the EMPr Amendment Application</p>	

GROUNDS OF APPEAL	RESPONDING STATEMENT OF THE DMRE
<p>was to motivate for the removal of the backfilling conditions in the 2010 EMPr. Accordingly, the intent of the EMPr Amendment Application was to assess the environmental impacts associated with establishing a pit lake, as opposed to backfilling the open pit, and the Chief Director ought to have applied his mind to the information and documentation placed before him as part of the EMPr Amendment Application.</p>	
<p>5.4.3 Ad paragraph 2.c of Annexure 1 to the RoD</p>	
<p>5.4.3.1 The statement made by the Chief Director in paragraph 2.c is irrelevant as it relates to the Closure EA which was set aside in September 2022.</p>	
<p>5.4.3.2 As stated in the ground of appeal at paragraph 4.4 above, it is clear that the Chief Director failed to consider the information that was placed before him in deciding the EMPr Amendment Application.</p>	
<p>5.4.4 Ad paragraph 2.d of Annexure 1 to the RoD</p> <p>The contents of this paragraph are noted, and DBCM refers to the submissions made in the paragraph 5.4.2 above.</p>	
<p>5.4.5 Ad paragraph 2.e of Annexure 1 to the RoD</p>	
<p>5.4.5.1 The contents of this paragraph are denied, for the reasons set out in the grounds of appeal at paragraphs 4.4 and 4.6 above.</p>	

GROUNDS OF APPEAL	RESPONDING STATEMENT OF THE DMRE
<p>5.4.5.2 DBCM specifically notes that the Preferred Alternative has not been motivated in the EMPr Amendment Application from a purely financial / economic perspective, and the Chief Director's findings in this respect are entirely unsubstantiated. The FAAR expressly concludes that that backfilling is not environmentally, socially or financially feasible.</p>	
<p>5.4.5.3 The Chief Director further does not provide any substantiation in respect of finding that the Preferred Alternative (i.e., the pit lake) and its potential impacts "<i>are not prevalent in the diamond mining sector</i>". DBCM has evidenced the contrary in the ground of appeal at paragraph 4.6 above.</p>	
<p>5.4.6 Ad paragraph 2.f of Annexure 1 to the RoD</p> <p>The contents of this paragraph are entirely unsubstantiated and therefore denied. DBCM refers to the various submissions made in the ground of appeal at paragraph 4.5 above in evidencing that this finding is unreasonable and/or irrational.</p>	
<p>5.4.7 Ad paragraph 2.g of Annexure 1 to the RoD</p> <p>The contents of this paragraph are denied. This finding fails to consider the mitigation measures proposed in the FAAR and EMPr. DBCM further refers to its submissions to address the pit wall erosion at paragraph 4.4.12 above.</p>	
<p>5.4.8 Ad paragraph 2.h of Annexure 1 to the RoD</p>	

GROUNDS OF APPEAL	RESPONDING STATEMENT OF THE DMRE
5.4.8.1	The contents of this paragraph are denied.
5.4.8.2	Paragraph 4.4 of the SRK Geotechnical Report (see Annexe K hereto) sets out a detailed assessment of the erosion and slope degradation impacts associated with the pit lake option.
5.4.8.3	<p>It is important to note that paragraph 4.4.1 of the SRK Geotechnical Report states that –</p> <p><i>"Predicting erosion rates and resultant extent of erosion long-term, and weathering/rheological processes acting in pit slopes following closure, in complex geological terrane comprising several different lithologies as exposed in the Voorspoed pit slopes, is very challenging due to the multitude of variables involved and uncertainty in how these may change over time."</i></p>
5.4.8.4	In light of the above, DBCM submits that it is impossible to accurately predict exactly when the state of stability will be reached.
5.4.8.5	<p>That being said, paragraph 4.4.3 of the SRK Geotechnical Report states that –</p> <p><i>"From precedent experience, vegetation on the pit slopes will only start establishing itself once slope angles have failed back and eroded to angles of 15 to 18 degrees, and active break-back and erosion will continue, albeit at reduced rates over time, until such quasi-stable condition is reached (probably a few/several decades from now). Note that such</i></p>

GROUNDS OF APPEAL	RESPONDING STATEMENT OF THE DMRE
<p><i>quasi-stable, vegetated configuration, with a 15 degrees overall slope angle, formed the basis for setting out the current security fence line when it was constructed in 2018.</i></p> <p><i>Based on this evaluation of historical break-back rates in the Voorspoed pit, and precedent experience elsewhere, it is not expected that break-back and erosion will extend beyond the current security fence position – provided stormwater runoff around the Voorspoed pit is controlled such that no concentrated runoff into the pit occurs, causing local erosion, and triggering more break-back than currently expected."</i></p> <p>5.4.8.6 Accordingly, DBCM submits that the Chief Director failed to consider the relevant assertions of the SRK Geotechnical Report which confirm that while it is very difficult to predict the exact extent to which erosion of the pit will continue, it is not expected that break-back and erosion will extend beyond the position of the security fence at the Voorspoed Mine.</p> <p>5.4.8.7 It is therefore submitted that the impacts associated with break-back and erosion have been adequately assessed as part of the EMPr Amendment Application and the SRK Geotechnical Report confirms that these impacts will be limited to the area situated within the security fence at the Voorspoed Mine.</p> <p>5.4.9 Ad paragraph 2.i of Annexure 1 to the RoD</p>	

GROUNDS OF APPEAL	RESPONDING STATEMENT OF THE DMRE
5.4.9.1 The contents of this paragraph are entirely unsubstantiated and therefore denied.	
5.4.9.2 Since the Chief Director has not referred to any report submitted as part of the EMPr Amendment Application in substantiating this statement, it is unclear on what basis this statement is made.	
5.4.10 Ad paragraph 2.j of Annexure 1 to the RoD The contents of this paragraph are vehemently denied, for the reasons set out in the ground of appeal at paragraph 4.4 and paragraph 5.4.5 above.	
5.5 Specific response to the reasons for refusal contained in paragraph 3 of Annexure 1 to the RoD	
5.5.1 Ad paragraph 3.1 of Annexure 1 to the RoD	
5.5.1.1 For the reasons set out in the grounds of appeal at paragraphs 4.4, 4.5, 4.6 and 4.7 above, DBCM submits that the reasons advanced by the Chief Director in persisting with the backfilling option (i.e., the Authorised Alternative) are completely unsubstantiated, irrational, misdirected, unlawful and/or unreasonable.	
5.5.1.2 All the specialist studies submitted by DBCM as part of the EMPr Amendment Application state categorically that the pit lake option (i.e., the Preferred Alternative) is the most viable option from	

GROUNDS OF APPEAL	RESPONDING STATEMENT OF THE DMRE
<p>an environmental, social and economic point of view.</p>	
<p>5.5.2 Ad paragraph 3.1.1 of Annexure 1 to the RoD</p> <p>The contents of this paragraph are entirely unsubstantiated and therefore denied. DBCM refers to the various submissions made in the ground of appeal at paragraph 4.5 above in evidencing that this finding is unreasonable and/or irrational.</p>	
<p>5.5.3 Ad paragraph 3.1.2 of Annexure 1 to the RoD</p>	
<p>5.5.3.1 The contents of this paragraph are denied. DBCM submits that the Chief Director's reason is here based on a material errors) of law, and refers to its submissions in the ground of appeal at paragraph 4.7 above (in particular, paragraphs 4.7.10 to 4.7.12).</p>	
<p>5.5.3.2 DBCM further refers to its submissions in the ground of appeal at paragraph 4.4.14, which evidence that the DMRE was not empowered to impose the backfilling conditions in the 2010 EMPr in the first place.</p>	
<p>5.5.3.3 DBCM submits that the decommissioning and rehabilitation of Voorspoed Mine through the implementation of the Preferred Alternative will result in the attainment of the closure objectives which are aligned with all legal requirements that are applicable to the proposed closure process, through the implementation of the previously authorised and</p>	

GROUNDS OF APPEAL	RESPONDING STATEMENT OF THE DMRE
<p>now identified mitigation, management and monitoring measures, thereby ensuring that DBCM complies with its statutory duties of care under section 28 of NEMA.</p> <p>5.5.4 Ad paragraph 3.1.3 of Annexure 1 to the RoD</p> <p>5.5.4.1 The contents of this paragraph are denied. DBCM refers to its submissions made in the ground of appeal at paragraph 4.5 above, noting that the Chief Director has again provided no substantiation for this finding and, in fact, has misapplied the legal provisions in his decision-making.</p> <p>5.5.4.2 Furthermore, and due to the higher rainfall experienced during the past wet season, a pit lake of approximately 70 meter deep has already formed, which makes access to this level of the pit impossible. The Golder report, referred to in paragraph 4.4 above, indicates that the pit bottom is situated at a level of approximately 1110 meters above mean sea level (mamsl), whereas the top of the pit is situated at approximately 1410 mamsl.³⁰ According to the simulations done by Golder, there will only be an approximate difference 60 mamsl after 10 000 days³¹. Since approximately 70 meters of the pit has already been filled, we submit that period is likely to be much shorter. The Golder report further indicates that the water level will reach</p>	

³⁰ Golder Report, page 53 (Appendix E to the FAAR).

³¹ It is important to note that this should not be construed as meaning that it will still take 10 000 days for the water to reach this level, this period is merely for simulation purposes.

GROUNDS OF APPEAL	RESPONDING STATEMENT OF THE DMRE
<p>1200 mamsl in less than 10 years, which would reduce the risk of illegal miners accessing the pit due to the high water levels. Accordingly, there is no substantiation or finding which supports the statement by the Chief Director that the pit lake will attract illegal miners. In fact, the converse is true and the specialist studies evidence that illegal miners will not be able to access the pit lake.</p>	
<p>5.5.5 Ad paragraphs 3.1.4 to 3.1.8 of Annexure 1 to the RoD</p>	
<p>5.5.5.1 The contents of these paragraphs are denied. DBCM submits that these reasons are, again, entirely unsubstantiated, irrationally connected to the information that was before the Chief Director and are informed by material errors of law. DBCM refers to its submissions made in the grounds of appeal at paragraphs 4.4, 4.5 and 4.7.13 above. The EMPr Amendment Application and FAAR in fact align with the legislative prescripts identified by the Chief Director in these reasons.</p>	
<p>5.5.6 Ad paragraph 3.1.9, 3.1.11 and 3.1.12 of Annexure 1 to the RoD</p> <p>The contents of this paragraph are denied, for the reasons set out in the ground of appeal at paragraph 4.7 above (in particular, paragraphs 4.7.1 to 4.7.9).</p>	
<p>5.5.7 Ad paragraph 3.1.10 of Annexure 1 to the RoD</p> <p>This paragraph does not constitute a reason, but merely a blanket, unsubstantiated statement, which DBCM is</p>	

GROUNDS OF APPEAL	RESPONDING STATEMENT OF THE DMRE
<p>unable to respond to. DBCM nevertheless refers to its submissions made in the ground of appeal at paragraph 4.5 above.</p>	
<p>5.5.8 Ad paragraph 3.1.13 of Annexure 1 to the RoD</p> <p>As stated in paragraph 2.1 above, DBCM was not furnished with a copy of the comments submitted by the PIM, when the Refusal Decision and RoD was issued to it, nor has it been provided with a copy of the PIM's comments following an express request for same. DBCM's rights are reserved in this respect.</p>	
<p>5.5.9 Ad paragraph 3.1.14 of Annexure 1 to the RoD</p> <p>The contents of this paragraph are denied. DBCM refers to its submissions made in the ground of appeal at paragraph 4.5 above.</p>	
<p>5.5.10 Ad paragraph 3.1.15 of Annexure 1 to the RoD</p>	
<p>5.5.10.1 The contents of this paragraph are denied. DBCM refers to its submissions made in the grounds of appeal at paragraphs 4.4 and 4.7 above.</p>	
<p>5.5.10.2 DBCM specifically submits, per paragraphs 4.7.10 to 4.7.12, that the DMRE is permitted in law to agree to an alternative mine closure standard or post-closure land use which conforms to 'sustainable development', and such a case has been made for the Preferred Alternative to be (re)approved by way of a grant of the EMPr Amendment Application.</p>	

GROUNDS OF APPEAL	RESPONDING STATEMENT OF THE DMRE
<p>5.5.11 Ad paragraph 3.1.6 of Annexure 1 to the RoD</p> <p>As stated in paragraph 5.4.9 above, this statement made by the Chief Director is entirely unsubstantiated and baseless. Nevertheless, DBCM refers to its submissions in the ground of appeal at paragraph 4.7.</p>	
<p>5.5.12 Ad paragraph 3.2 of Annexure 1 to the RoD</p>	
<p>5.5.12.1 The contents of this paragraph are denied. DBCM refers to the various submissions made in the grounds of appeal at paragraphs 4.4, 4.5 and 4.7 above, which evidence that:</p>	
<p>5.5.12.1.1 the Chief Director's reasons are not rationally connected to the information before and considered by him as decision-maker; and he failed to consider and/or give proper weight to the findings and recommendations made in the FAAR and the specialist studies attached thereto;</p>	
<p>5.5.12.1.2 the Chief Director failed to comply with his peremptory duties in terms of section 24O of NEMA, which sets out the criteria to be considered by competent authorities when considering an application brought in terms of the EIA Regulations. In particular, the Chief Director failed to correctly apply the principles and provisions of the enabling legislation; and</p>	
<p>5.5.12.1.3 the Chief Director's reasons are further informed by material errors of law, and in</p>	

GROUNDS OF APPEAL	RESPONDING STATEMENT OF THE DMRE
<p style="text-align: center;">particular, are based on an incorrect application of the legislation relating to the closure of mining operations.</p> <p>5.5.13 Ad paragraph 3.3 of Annexure 1 to the RoD</p> <p>5.5.13.1 The contents of this paragraph are denied. DBCM refers to the various submissions made in the grounds of appeal at paragraphs 4.4, 4.5, 4.6 and 4.7. These reasons, in particular, evidence the Chief Director's failure to take relevant considerations, specialist assessments and legal prescripts into account and to consider South African and international best practice in regard to environmentally sustainable closure options for diamond mines.</p> <p>5.5.14 Ad paragraph 3.4 of Annexure 1 to the RoD</p> <p>5.5.14.1 The contents of this paragraph are denied. DBCM refers to the various submissions made in the grounds of appeal at paragraphs 4.4, 4.5, 4.6 and (in particular, paragraph 4.4.13).</p> <p>5.5.14.2 The Chief Director's insistence on the Authorised Alternative has been evidenced through this Appeal to be based on unlawful, irrational, unreasonable and/or unfair reasons.</p>	
<p>6. RELIEF SOUGHT ON APPEAL</p>	

GROUNDS OF APPEAL	RESPONDING STATEMENT OF THE DMRE
<p>6.1 DBCM accordingly respectfully requests the Minister of Forestry, Fishery and the Environment ("Minister"), in terms of section 43(6) of NEMA, to –</p> <p>6.1.1 set aside the Refusal Decision; and</p> <p>6.1.2 substitute the Refusal Decision with a decision approving the EMPr Amendment Application (i.e., approving the removal of the conditions of approval set out in paragraphs (d), (f) and (g) of the Approval Letter).</p> <p>6.2 The Minister is further respectfully requested to grant any further and/or alternative relief as is appropriate in the circumstances.</p>	
<p>7. CONCLUSION</p> <p>7.1 DBCM, as the Appellant, submits that the Chief Director erred in refusing the EMPr Amendment Application and the Refusal Decision should, therefore, be set aside on appeal. The Refusal Decision is not rationally connected to the information which was before the Chief Director at the time of taking his decision and was further informed by material misapplications of the enabling legislative provisions, with the result that the Refusal Decision is unlawful, unreasonable, irrational and/or unfair.</p> <p>7.2 These grounds of appeal respectfully compel a decision from the Minister in this Appeal to set aside the Refusal Decision and substitute it with a decision to approve the EMPr Amendment Application.</p>	

GROUNDS OF APPEAL	RESPONDING STATEMENT OF THE DMRE
7.3 All DBCM's rights are reserved, specifically the right to supplement the contents of this Appeal, as set out in paragraph 2.12 above.	