



Government of the Kingdom of Eswatini

**PUBLIC HEARING ON ENVIRONMENTAL IMPACT ASSESSMENT (EIA)
AND COMPREHENSIVE MITIGATION PLAN (CMP) FOR THE
PROPOSED GREEN CHERT MINING AT MALOLOTJA NATURE
RESERVE BY MICHAEL LEE ENTERPRISES, HHOHHO REGION**

Tribunal Findings Report

DECEMBER, 2024

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FOREWORD BY TRIBUNAL CHAIRPERSON

After all the challenges and daunting task associated with performing a function of this magnitude, it becomes imperative to pass a word of appreciation to all those who have contributed in one way or the other towards the final product of this work.

Members of the tribunal are deeply indebted for being identified as being worthy to render a service relating to dispute resolution that will hopefully have a positive impact not only to Eswatini but also to other states facing a similar impasse associated with minerals discovered in Nature Reserves or ecologically sensitive areas.

Special gratitude goes to employers of each of the tribunal members for having made it possible for them to leave their official employments, to dedicate time to this work. Similar thanks are extended to self-employed members of the tribunal who deserted their businesses and sacrificed valuable time for the success of this momentous work.

Special appreciation goes to His Lordship, the Chief Justice MCB Maphalala for having exercised a high level of cooperation by always ensuring that the Chairperson of the tribunal was available for the exercise even at the expense of his judicial functions. He is further commended for having released his support-staff member, Mr. S. Magagula, to perform transcription duties for the tribunal.

The Board for Eswatini Environment Authority, together with the management, are commended for providing the tribunal with the logistical support needed and for giving priority to the needs of the tribunal which saw it operating with minimal difficulty. I would like to thank our colleagues at work who, through tolerance and understanding, endured our prolonged absence, including carrying out some of our functions and duties.

Special thanks also go to all those who came forward to make presentations before the tribunal. They include members of the public from all walks of life, particularly those who have vested interest in the preservation of nature and the environment. Professionals in the field demonstrated both interest and great passion by even going an extra mile through providing a well-researched and most helpful information on the subject. Our greatest appreciation goes to the teams of both the project proponent and objectors who did not only come to make their presentations, but ensured that they were present throughout the proceedings, even way after they had made their submissions.

We are also deeply indebted to the Minerals Management Board (MMB) and the Eswatini National Trust Commission (ENTC) for availing their representatives to make submissions on their behalf. Such gratitude is also extended to the workers' unions who mandated a member to make their submissions to the tribunal. The presentations made by all these representatives were immensely valuable and went a long way in assisting the tribunal to accomplish its mandate. All presenters and


those who came to follow the proceedings are commended for maintaining a high level of discipline and a culture of respect.

My heartfelt gratitude also goes to the media houses for having ensured that the nation was consistently informed about the activities of the tribunal. They are highly commended for having reported the proceedings professionally, fairly and without any bias.

Finally, my appreciation also goes to the various families for the tribunal members, who provided moral support, patience and understanding which ensured the successful accomplishment of this work.

To this end, the tribunal declares that it conducted the exercise with all diligence, objectivity, fairness and good faith.

Thank you all.



David V. Khumalo
Tribunal Chairperson

LIST OF ABBREVIATIONS AND ACRONYMS USED
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GDP	Gross Domestic Product
GEF	Global Environment Facility
BGB	Barberton Greenstone Belt
CSO	Central Statistical Office
CMP	Comprehensive Mitigation Plan
CBD	Convention on Biological Diversity
EAP	Environmental Assessment Practitioner
ESIA	Environmental and Social Impact Assessment
EEA	Eswatini Environment Authority
EIA	Environmental Impact Assessment
ENTC	Eswatini National Trust Commission
KOBWA	Komati Basin Water Authority
MLE	Michael Lee Enterprises
MMB	Minerals Management Board
NBSAP	National Biodiversity Strategy and Action Plan
NDP	National Development Plan
NDC	Nationally Determined Contributions
SARA	Swaziland Archaeological Research Association
SNL	Swazi National Land
TCA	Transfrontier Conservation Area
UNFCCC	United Nations Framework Convention on Climate Change
TOR	Terms of Reference
CBD	Convention on Biological Diversity
UNESCO	United Nations Educational, Scientific and Cultural Organization
AIPs	Alien Invasive Plants
IUCN	International Union for Conservation of Nature
NDC	Nationally Determined Conditions
CSO	Central Statistical Office

EXECUTIVE SUMMARY

A locally registered company, by the name of Michael Lee Enterprises Eswatini Pty Ltd, hereinafter referred to as the Project Proponent, was granted a prospecting and mining licence of the Green Chert at Malolotja Nature Reserve, in line with sections 45 and 54 of the Mines and Minerals Act No. 4 of 2011. This was after outclassing its competitor, Swaziland Gemstones Pty Limited.

However, in as much as the prospecting operations were undertaken, the mining project could not materialize. Having received the Environmental Impact Assessment (EIA) report and the Comprehensive Mitigation Plan (CMP) from the project proponent, the Eswatini Environment Authority made its comments on the contents of both documents and referred them to public review, in terms of section 52 of the Environment Management Act No. 5 of 2002, read together with section 11 of the Environmental Audit, Assessment and Review Regulations of 2000 and the Environmental Assessment Regulations of 2022.

Prior to the public hearing, a total of 27 objections were lodged by members of the public who *inter alia* contended that the mining project would violate both the international and domestic environmental laws. They argued that the law prohibits mining in nature reserves. It was also argued that by allowing the mining project inside the Malolotja Nature Reserve, the country would place itself in serious disrepute and would be violating some of the Conventions signed and ratified. A further contention was that the mining project would be destructive to biological diversity. It was also contended that the project would cause water and air pollution, as well as unnecessarily cause deforestation.

The EEA proceeded to assess the objections and found that they were substantiated. In fact section 12 of the Environmental Audit, Assessment and Review Regulations of 2000 provide that if the objections exceed ten (10) in number and are substantiated, EEA must facilitate a public hearing through the appointment of a tribunal. The document containing the objections that had been received by EEA forms part of the Tribunal's report of findings and is included as "Appendix 3". The objections are part of what triggered the appointment of the Tribunal.

The mandate of the Tribunal was to conduct a public hearing for all Interested and Affected Parties to the proposed Green Chert mining project and to make findings including the provision of guidelines and recommendations that will help resolve the impasse. In that regard, the Tribunal has been called upon to consider, examine and analyse *inter alia* the EIA and CMP, the written and oral submissions from both the objectors and the project proponent, as well as all relevant legislation and policies.

The Tribunal's task was to establish whether or not the public concerns or objections submitted to EEA in accordance with section 17 of the Environmental Assessment Regulations of 2022 are sustainable. It was also to clearly ascertain the real and true public opinion on whether or not the proposed Green Chert mining project should be allowed.

The Tribunal was also mandated to establish whether or not allowing the proposed project would violate the land and constitute grave environmental breaches to the point of putting the EEA and Eswatini Government into disrepute. The Tribunal was to ultimately establish whether or not the proposed project will have adverse impacts on the environment and whether such adverse impacts cannot be mitigated.

The Tribunal's Terms of Reference are summarized below:

A Tribunal for Public Hearing is hereby appointed in terms of section 53 of the Eswatini Environment Management Act, 2002 as read together with Regulation 19(1), (2) and (3) of The Environment Assessment Regulations, 2022. The Tribunal is appointed to conduct a public hearing on Environmental Impact Assessment And Comprehensive Mitigation Plan the establishment and operations of The Green Chert Mine at Malolotja.

1. The Tribunal shall conduct a public hearing for all affected and interested parties to the proposed Green Chert Mine on farm 780 and portion 1 of farm 357, Malolotja, in the Hhohho Region; make findings, guided by the Environmental and Social Impact Statement, Comprehensive Mitigation Plan, written submissions on the project, oral representation, relevant legislation, policies and guidelines; and make recommendations concerning the following:
 - 1.1 Whether or not the establishment of the Malolotja Green Chert Mine has unmitigable social-economic and environment to deter its establishment and/or operations at Malolotja;
 - 1.2 Whether or not the public concerns/objections submitted in writing to the Eswatini Environment Authority in terms of Regulation 17 of the Environmental Assessment Regulations, 2022 on the environmental and social impacts of establishing and/or operating such a mine can be substantiated, guided by actual facts and/or have serious ramifications warranting consideration by the Eswatini Environment Authority before granting approval for operating a green chert mine;
 - 1.3 Public opinion of the current ESIA and Specialist reports prepared by Michael Lee Enterprises on the mining of green chart at Malolotja, the CMP therein and incidental information on the application for mining the green chert.

- 1.4 Whether or not the granting of the green chert approval will result in grave environmental breaches, putting the Eswatini Environment Authority and the Government of Eswatini into serious disrepute.

1 INTRODUCTION

1.1 BACKGROUND

The Kingdom of Eswatini has signed and ratified a series of conventions and other international legal frameworks on the conservation and protection of the environment. They include:

- Stockholm Declaration of 1972,
- Declaration of the United Nations Conference on Human Environment of 1972,
- Convention on Biological Diversity of 1992,
- United Nations Framework Convention on Climate Change of 1992,
- RIO Declaration on Environment and Development of 1992
- United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and Desertification, Particularly in Africa of 1994
- Noise and Vibration) Convention of 1977
- (to mention but a few).

By ratifying the conventions, the ratifying state commits itself to the legally binding obligation of complying with the requirements, standards and practices under the conventions. As part of its universally binding obligations, the ratifying state is required to conform to the norms of appropriate behaviour as expected of all other state parties. That state party must improve the standards of environmental protection and nature conservation including the application and enforcement. This should include promotion of fundamental principles of environmental protection. Acceptance of the membership by the estate goes with an undertaking by that state to take all necessary and appropriate measures to ensure effective protection of the environment. In that regard, the state party ought to inter alia revisit its domestic environmental laws and other related legislations in ensuring that they are properly modified so as to be in line with the provisions of the ratified conventions.

In keeping with this obligation, the Kingdom of Eswatini has over the years enacted and modified its laws relating to protection of the environment. They include the following:

- Environment Management Act of 2002
- Waste Regulation of 2000
- Air Pollution Control Regulation of 2010
- Water Pollution Control Regulations of 2010
- Litter Regulation of 2011
- The Mines and Minerals Act of 2011

- The Explosives Act of 1961
- The Flora Protection Act of 2001
- Game Act of 1991
- Plant Control Act of 1981
- National Trust Commission Act of 1972
- National Trust Commission Regulations of 1972

In this regard, state parties are obliged to comply with provisions of these conventions by *inter alia* ensuring that earthly natural resources including the air, water, land, flora and fauna are protected and conserved for the benefit of the present and future generations. See in this regard principles 1 and 2 of the Stockholm Convention of 1972.

They must prevent not only degradation of the environment, but must also prevent destruction of the environment including depletion of the biological and ecological resources. There must be recognition of the fact that some of the resources are endemic and irreplaceable, hence their destruction or loss may inevitably lead to tragic extinction which ought to be avoided at all costs. Not only extinction of the natural resources should be prevented, but deficiency in resources must also be circumvented in order to maintain the ecological balance of the biosphere. See proclamation 3 of the Stockholm convention (*supra*).

Empirical studies have revealed that there is a correlation between human life and the environment. Clean, healthy, safe and sustainable environment are a prerequisite for good health. Put differently, where biological diversity and ecological systems are healthy, a healthy human life is guaranteed. States have as such been called upon to take urgent actions in addressing issues of habitat and biological diversity loss. It has been shown that the loss of biological diversity and ecological system loss may at times cause diseases such as zoonology. This is an indication that there is a strong link between a healthy environment and the right to life.

As already pointed out, the state parties have most of all been called upon to put in place comprehensive and effective measures towards nature conservation. This includes enacting and modifying necessary legislations including regulations for the protection of nature and its habitat. See article 8 (k) of the Convention on Biological Diversity (*supra*). It is also worth mentioning that the national constitution – being, The Constitution of The Kingdom of Eswatini Act no.1 of 2005 - specifically section 216, embraces environmental protection. This is a demonstration for a serious commitment towards nature conservation by the country. The constitution mandates every individual within the borders of the country to promote the protection of the environment for the present and future generations. It provides that development and industrialization must be carried out in full

consideration of the environment. The constitution also commits the government to put in place a comprehensive and holistic approach in addressing environmental challenges. The contemplated measures include putting in place an appropriate environmental regulatory framework in order to effectively deal with environmental issues.

Indeed some of the above listed legislations do establish certain legal bodies or institutions who wield regulatory functions and duties on environmentally related issues. Section 3 of the National Trust Commission Act (supra) establishes the National Trust Commission, a body whose core functions involve the general supervision and control of the Eswatini national centre and other declared institutions , national parks, reserves and more.

Section 9 of the Environment Management Act (supra), establishes the Eswatini Environment Authority (EEA) whose functions involve the overall responsibility of regulating and managing environment in the country, see regulation 4(1) of the Environment Assessment Regulations of 2022.

Section 214 of the country's constitution, establishes the Minerals Management Board (MMB) whose functions *inter alia* involve considering applications relating to tendering in minerals and mining rights including advising the Ingwenyama on the overall management of minerals to mention but a few. See section 11 of the Mines and Minerals Act of 2011. This is the board that recommended granting of the prospecting and substantive license to the project proponent for purposes of carrying out the Green Chert mining project at Malolotja Nature Reserve.

The project proponent was to compile and lodge an Environmental Impact Assessment report, together with a Comprehensive Mitigation Plan to the EEA. The EEA could not grant a compliance certificate after several objections had been raised against the proposed mining project. The objectors argued that the proponent case is fraught with serious legal flaws in that both their Environmental Impact Assessment report and the Comprehensive Mitigation Plan either did not address certain pertinent issues at all or addressed them in a superficial way. They argued that the project proponent failed to make a case that would justify issuance of an environmental compliance certificate. So many other issues were raised by the objectors in the effort to demonstrate that the proposed Green Chert mining project should be rejected.

The project proponents raised counter arguments - contending that they made a good case justifying approval of the proposed mining project. Submissions from both sides appear in Chapters 2 and 3 of this report.

1.2 TERMS OF REFERENCE FOR THE TRIBUNAL

The Terms of reference for the Tribunal are summarised below as follows:

1. The Tribunal shall conduct a public hearing for all affected and interested parties to the proposed Green Chert Mine on farm 780 and portion 1 of farm 357, Malolotja, in the Hhohho Region; make findings, guided by the Environmental and Social Impact Statement, Comprehensive Mitigation Plan, written submissions on the project, oral representation, relevant legislation, policies and guidelines; and make recommendations concerning the following:
2. Whether or not the establishment of the Malolotja Green Chert Mine has unmitigable social-economic and environment to deter its establishment and/or operations at Malolotja;
3. Whether or not the public concerns/objections submitted in writing to the Eswatini Environment Authority (EEA) in terms of Regulation 17 of the Environmental Assessment Regulations, 2022 on the environmental and social impacts of establishing and/or operating such a mine can be substantiated, guided by actual facts and/or have serious ramifications warranting consideration by the Eswatini Environment Authority before granting approval for operating a green chert mine;
4. Public opinion of the current EIA and Specialist reports prepared by Michael Lee Enterprises on the mining of green chert at Malolotja, the CMP therein and incidental information on the application for mining the green chert.
5. Whether or not the granting of the green chert approval will result in grave environmental breaches, putting the Eswatini Environment Authority and the Government of Eswatini into serious disrepute.

The detailed Terms of Reference are included in Appendix 1.

1.3 METHODOLOGY

In exercising its mandate, the Tribunal had to take oral, written, pre-recorded and virtual submissions, including examining pictures and videos. The Tribunal also conducted a site inspection of both the proposed mine and other sites of Malolotja Nature Reserve.

The tribunal adopted the standard of proof on the balance of probabilities when conducting its hearings. Presenters made their deliberations under oath – with questions being asked solely for purposes of clarification.

All forms of admissible evidence as provided for by the law were acceptable, including documentary evidence. It must be acknowledged that cases for both the project proponent and the objectors were presented in an impressive, skillful and eloquent manner. The tribunal adopted the principle of

deciding the matter on its own merits as opposed to deciding same on the basis of the majority vote. In this regard, local and international laws have been applied, including International Conventions, other related international legal frameworks, the constitution of Eswatini, statutes, judgements and other authoritative writings on the subject, including text books and Journal publications. Most of all, the proceedings were held publicly and open to everyone – including the media.

2 CASE FOR THE PROJECT PROPONENT

2.1 INTRODUCTION

The case for the proponent is that they identified a business opportunity to mine a rare mineral in the Kingdom of Eswatini. Following a recommendation from the Minerals Management Board (MMB), Michael Lee Enterprise Eswatini Pty Limited (MLE) has been granted a mining right by Ingwenyama for the mining of varieties of chert deposits on Farm 780 and Portion 1 of Farm 357 in the Hhohho Region of Eswatini. The company proposes mining Green Chert in an area of 396.7148 ha using a semi-mechanized open-cast mining method. This will include the splitting of rock masses of considerable volume from the chert outcrop by drilling and blasting. After the blast, the rock will be cut and graded according to its quality.

The exploitation of this mineral will result in economic benefits accruing to its shareholders, Eswatini nation at large and the local community. The proposed shareholders as per section 133 of the Mines and Minerals Act of 2011 will be:

- 50% Micheal Lee Enterprises Eswatini (Pty) Ltd
- 25% Government of the Kingdom of Eswatini
- 25% the Ingwenyama in trust for the Swazi Nation

The proponent has committed themselves to not only follow the law as required in the process of application towards the commencement of the mining but also made a commitment to the local community in certain social investments.

The Environmental Impact Assessment (EIA) that was carried out has informed the Comprehensive Mitigation Plan (CMP). The CMP will be used to mitigate impacts on the environment, including the environmentally sensitive area adjacent to the project site. To this end the proponent has committed themselves to comply with the Environmental Management Act No 5 of 2002, the Mines and Minerals Act of 2011 and the Swaziland National Trust Commission Act No 9 of 1972 as well as various other pieces of national legislation which seek to protect the environment.

The project proponent submits that Eswatini is currently faced with numerous social and economic challenges. The country's economic growth trajectory was interrupted by the COVID-19 pandemic, and has since been on a recovery trend. These economic challenges have exacerbated the high levels of unemployment, particularly among the youth, which has been recorded as 64.99% in 2023 (CSO, 2023). In response to the socio-economic challenges, the Government of the Kingdom of Eswatini

has identified mining as one of the target sectors for accelerating economic growth and recovery (National Development Plan, 2019-2022). The Ministry of Natural Resources and Energy, in its strategic plan, seeks to have the mining contributing approximately 6% to the country's GDP. MLE believes the Green Chert mining project has a potential to contribute significantly to the country's economic growth and, in turn, alleviate the current socio-economic challenges.

2.2 VALUE OF THE GREEN CHERT

The project proponent argues that the Green Chert is of high value. In support of this, it was submitted that on the Mohs scale, which ranges between 0 – 10, the Green Chert has a hardness of 7 and a density of 2.8 g/cm³. As such, the Green Chert is of a unique and rare nature, and is highly sought-after by the luxury goods market. The enthusiasm for the mineral in the market was confirmed by MLE during the prospection period.

The mineral deposit occurs within the Barberton Greenstone Belt which forms part of the Makhonjwa Mountain range. This mountain range, according to recent geological research, is home to the oldest rocks in the world, at 3.6 billion years (Krone *et al*, 1996, and Byerly *et al*, 1996). This attribute adds to the appeal and value of final products and luxury items manufactured from Green Chert. The quality and value of the Green Chert is further enhanced by the presence of specs and veins of gold in it. As submitted by the project proponent, the prospecting process revealed that some grades of the Green Chert contain 0.98g of gold per tonne.

The project proponent has, as part of its mining licence conditions, committed to full beneficiation of the mineral after 2 years of commencement of operation. The first grade will mainly be used for the manufacture of luxury ornaments, while the second and third grades will target the tiling market. The beneficiation of the mineral in Eswatini will help ensure maximisation of returns from the Green Chert. MLE claims that this valuable mineral is bellowing for its exploitation because it is the only way Eswatini can realise its full economic value.

2.3 ECONOMIC VIABILITY OF THE MINING OPERATION

MLE submitted that they performed detailed geological surveys of the Green Chert outcrop on Farm 780 and Portion 1 of Farm 357, in the Hhohho Region. The exercise was also to determine the various grades that had commercial value. This was done through:

- Ultra-low frequency electromagnetic survey (*by Universe Resources Technology*)
- Exploratory core drilling (*by Michael Lee Enterprises*)
- Laboratory analysis (*by Super Laboratory Services in South Africa and SGS Laboratories*)

- Bulk sampling and Resource estimation (*by Michael Lee Enterprises*)

MLE estimates that there is 10 million tons of Chert, including the lower grades. The rate at which the mineral will be extracted is 5,196 tons per month. Based on these estimates, the lifespan for the mine is estimated at 173 years.

2.4 FINANCIAL AND ECONOMIC GROWTH CONTRIBUTION

Based on the prices of the first grade product, the project proponent asserts that at the current estimates, the total value of the Green Chert deposit is at least 31 billion Emalangeni (US\$1.7 billion). The major markets for the luxury ornaments that can be produced from beneficiation are international, which will mean the country will receive the much needed foreign exchange earnings. MLE also submits that the mining of the Green Chert will present an opportunity for local businesses to provide subcontracting work during the mining process, thereby improving the socio-economic situation of local companies. This will further stimulate economic growth in the country.

2.5 VISION FOR EMPLOYMENT OPPORTUNITIES

MLE estimates that they will provide employment opportunities for approximately 3,500 people. These projections are inclusive of opportunities that will be provided by other sub-projects that will be implemented by the company which are included in their labour plan. The project proponent has prepared a labour plan that integrates the company's broader vision. According to the labour plan, MLE intends to further improve the creation of employment opportunities by investing in other economic spin-offs that will be related to the Green Chert mining project, including the development of a beneficiation plant on site, establishment of an aquaculture project in collaboration with nearby institutions, establishment of a nursery for propagating indigenous trees and a botanical garden.

With the projected workforce of up to 3,500 people, there will be a mix of people who will be sourced from the local communities, as well as others who will be imported from other areas. The category of labour requirements will be inclusive of general labour, technically skilled labour, as well as professionals in related fields. The labour plan also includes key areas of focus such as training and capacity building, health and safety compliance, community development, and environmental management. These areas have been identified as essential for the success and sustainability of the project over its lifespan. The table below indicates the labour spread throughout the various proposed operations associated with mine.

Table 2.1: Category of Labour Requirements for the Green Chert Mining Project

Project Component	Category				
	Semi-skilled	Skilled labour	Professional	Snr. Management	Total
Green-Chert Mining Operations	300	265	15	12	592
Beneficiation Operations	220	877	5	24	1,126
Fish Farming	230	497	10	1	738
Community Engagement & Social Services	0	592	220	-	812
Admin.& Support Services	0	182	5		187
Indigenous Trees Nursery	0	27	22	1	50
Botanical Garden	0	26	44	1	71
				TOTAL	3,576

Youth and other presenters from areas such as kaNdeva, Nginamadvolvo, eNsangwini, Ekuvinjelweni and Pigg's Peak Town, who spoke in favour of the mine opening, emphasised that opening of the mine will actually bring them hope for employment opportunities and better livelihoods. The youth also emphasised that some were university and college graduates, but had never been employed, hence their support of the mine opening. Presenters from the local communities also decried the fact that despite having sacrificed a lot in educating their children, they find themselves also having to support their grown up children as well as their offsprings. According to them, this is very frustrating. Some speakers acknowledged that even if the job opportunities to be presented by the proposed mining project will not absorb all the job-seekers from the area, but at least there will be some community members who will benefit. The communities also presented that even though some of the job opportunities that will be created will require semi-skilled labour, at least there would still be some positive contributions to the livelihoods of the communities. Some presenters who had the privilege of getting employment during the prospecting stage for the Green Chert mining project expressed a desire to continue being employed.

2.6 POTENTIAL FOR DECREASING LEVEL OF CRIME

Presentations by the members of the community, particularly community leaders who spoke in favour of opening the mine contended that by reducing unemployment and impacting the economy of the area positively will lead to a reduction in the level of crime in the surrounding communities. It is asserted that the youth and other community members have found themselves involved in criminal activities such as sex work, dealing in illegal substances, robberies and even unregulated mining.

It was presented by some community members that the high prevalence of unemployment and poverty among the youth may have contributed to the undesirable civil unrest which occurred in 2021.

2.7 CORPORATE SOCIAL RESPONSIBILITY PROJECTS

The proponent for the mining project submits that they have identified the needs for the surrounding communities and, as a corporate social responsibility, has prepared comprehensive plans for implementing projects that will respond directly to the identified community needs.

To this end, MLE has undertaken to build schools for the neighbouring communities as part of their corporate social responsibility. During the prospecting stage, already MLE has supported the local Luhhumaneni Primary School by providing stoves for the consumer science laboratory as well as food parcels for the school feeding scheme. The upgrading of the access road to the mining area has benefited the communities of kaNdeva and Nsangwini because their access roads were previously inaccessible, especially in bad weather.

MLE has also committed to upgrading the healthcare facilities by building a clinic for the local community. There are some other community upliftment projects that the company has committed itself to, including the provision of water supply infrastructure and construction of shopping facilities.

2.8 STRATEGY FOR CAPACITY BUILDING AND SKILLS DEVELOPMENT

MLE has committed itself to offer vocational training programs in mining, beneficiation, aquaculture, horticulture (for the nursery and botanical garden), and administration. The proponent undertakes to institute an in-house skills transfer program, to be facilitated by experts from China. The program will cover training in explosives manufacture, drilling and green chert processing.

The project proponent submits that as part of their labour plan, they have committed to hiring approximately 30% women and 5% of people with special needs. MLE has also made a commitment that all key executive and management positions will be occupied by Emaswati and expatriate personnel in equal proportions.

2.9 PROJECT PHASES AND WORKFORCE SCALING

MLE has indicated that the absorption of the jobs will occur in phases; 720 employees will be engaged in the initial setting up which will be the first 2 years. The balance of the employee quota will be engaged in the second phase which will be in the period 3 to 10 years.

2.10 COMPLIANCE WITH NATIONAL LEGISLATION

In making the application for the mining project, MLE submits that they followed due process. This includes following the guidelines as specified in the Mines and Minerals Act of 2011 and the Environmental Management Act of 2002, as well as other relevant legislation. Owing to the acknowledgment of the sensitivity of the mine site, the company committed itself to also adhere to The National Trust Commission Act of 1972.

2.11 CO-EXISTENCE OF THE MINING PROJECT WITH NATURE

The proponent submits that the mining guidelines relevant to mining in a conservation area were followed. A working relationship that was established with ENTC which commenced during the prospecting phase will be maintained throughout the life of the mining project. The various undertakings and commitments in the Comprehensive Mitigation Plan indicate the steps that will be taken to ensure there is co-existence between nature and the mine.

MLE further submits that they are confident in the ability to co-exist sustainably with nature in the operation of the proposed mine in that there is precedence worldwide. MLE also submits that the proposed Green Chert mining project will not be the first of its kind to be implemented successfully in a protected area by making examples of similar mining projects as follows:

- Richards Bay Minerals operation is a world leader in heavy mineral sands extraction and it is located near the iSimangaliso Wetland Park, a UNESCO World Heritage site in Kwa-Zulu Natal, South Africa. The mine has established an archaeological program to protect the cultural heritage of the area in partnership with anthropologists.
- The Jwanan Game Park resides within the lease area for the Jwaneng diamond mine in Botswana. The area spans more than 15,500 hectares and accommodates thousands of animals. The mine since 1982 has existed sustainably with the environment and is committed to minimising impacts on the environment, and preserving the fauna and flora that originally existed in its operational areas.

Other examples of mining operations in conservation areas that are cited by the project proponent include:

- Ambatovy Nickel Mine is located in Madagascar, within the Tropical Rainforest of the Atsinanana, which is a UNESCO World Heritage Site.
- The Taimyr Nickel Plant operates near the UNESCO-listed Putorana Plateau, a protected area in the Russian Arctic.

- The Tanami Gold Mine in Australia's Northern Territory operates near the ecologically sensitive Tanami Desert.

This position was echoed by a representative of MMB who also cited the Jwaneng Diamond mining project which is being conducted inside a nature reserve.

2.12 CURBING UNREGULATED MINING

MMB reported that all attempts to halt unregulated mining of the Green Chert in Malolotja Nature Reserve had not been successful. This has impacted negatively on the environment as well as the economy of the country. At least two fatalities had been reported from activities in the proposed Green Chert mining site. It is argued that the advent of the Green Chert mine will significantly help in curbing the unregulated mining activities and associated dangers.

3 CASE FOR THE OBJECTORS

3.1 INTRODUCTION

The objections that were registered regarding the proposed Green Chert Mining project have been grouped into the following broad categories:

- Flaws in the categorisation of the Green Chert Mining project
- Significant omissions in the Environmental Impact Assessment Report
- Irreversible damage on protected biodiversity (including flora, fauna and ecosystems function)
- Adverse impact on endemic plants and animals
- Likely irreversible damage on historical and archaeological sites which are a source of identity.
- Adverse impact of mining on the quality of surface and ground water resources, particularly in the Komati River.
- Air pollution
- Adverse impact of mining through environmental degradation

3.2 SHORT-COMINGS OF THE ENVIRONMENTAL CATEGORISATION

The following were pointed out by objectors as shortcomings of the project categorisation process:

3.2.1 Categorisation of the Prospecting Phase is Flawed

It is argued that both the prospecting and mining stages for the project should have been assigned a category 3 status, by virtue of the location of the project in an environmentally sensitive area of Malolotja, which is the Mgwayiza Valley. The decision by Eswatini Environment Authority (EEA) to assign a Category 2 to the prospecting stage for the Green Chert Mining project was flawed because both the Environmental Impact Assessment Regulations of 2022 as well as the EAARR, 2000 stipulate that the categorisation of a project should take into consideration, among other things, the

- a) project's location in relation to environmentally sensitive areas, and
- b) nature of the project.

Objectors noted that the nature of the proposed Green Chert Mining project warranted a Category 3 status, even for the prospecting stage because mining projects, by their nature, are destructive and exploitative, thereby warranting a more detailed assessment of their environmental impacts and associated mitigations. This requirement could best be met through the Environmental Impact Assessment procedures that are stipulated under Category 3 projects, as opposed to Category 2 projects.

3.2.2 Negative Impacts of Placing Prospecting Stage as Category 2

The quantity of rock that has been extracted during the prospecting stage is too high and therefore if such information was made available to EEA during the time of application for the project's categorisation by the proponent should have been convincing enough to place the project under Category 3.

Objectors feel that the consequence of placing the prospecting stage for the Green Chert Mining project under category 2 has facilitated a permanent scarring of the Mgwayiza Valley. They argue that this situation could possibly have been prevented had the process been subjected to more detailed investigations as required under Category 3 projects.

3.3 SHORT-COMINGS OF THE EIA/CMP REPORT

The following were pointed out by objectors as significant shortcomings of the EIA and CMP reports:

3.3.1 Significance of Montane Grasslands of Malolotja

The EIA/CMP report does not underscore the fact that Malolotja is home to the Montane Grasslands which are highly threatened. These grasslands originally covered 46% of land area for Eswatini, but the coverage has greatly reduced due to human activity, including timber plantations, human settlements, livestock grazing and infestation by Alien Invasive Plant species. To-date, only 2% of the Montane Grasslands is formally protected in Eswatini.

Objectors argue that the proposed mining project will put even more pressure on the existence of the already threatened Montane Grasslands because vegetation removal to create access roads, during mining of the rock and for the construction of other related infrastructure will promote the spread of Alien Invasive Plant species. These alien invasive Plant species have a tendency to wipe away indigenous plants because they spread aggressively.

3.3.2 EIA/CMP Report Understates Amount of Biodiversity Available in Project Site

Objectors observed that the different species of fauna that are known to occur within Malolotja, including the actual project site, has been under-reported. Table 3.1 below was used to support the argument that the EIA/CMP report was not thorough in sampling the different types of species that occur in the project area.

Table 3.1: Fauna Species Occurring in Malolotja Vs Number of Species Accounted for in EIA Report

No. of Species	Birds	Mammals	Amphibians	Reptiles
Listed in EIA report	22	21	None	None
Recorded from Malolotja	326	63	25	66

The objectors further submitted that peat bogs are some of the species of fauna that have recently been discovered at Malolotja Nature Reserve. As a result of the under-reporting of species that will potentially be impacted by the proposed mining operation, objectors pointed out that the severity of the project impacts was downplayed.

Objectors further contended that the assertion in the EIA/CMP report that the ecological impacts of the mining project constitute only 0.02% of the biodiversity of Malolotja Nature Reserve is not factual and is not based on scientific analysis, hence the true worth of the project site is deliberately being underrated.

3.3.3 EIA/CMP Report Incomplete

Objectors pointed out that the Environment Assessment Regulations, 2022 require that projects that have been placed under Category 3 should have a section where reasonable alternatives to the proposed development are analysed in detail. The observation of objectors is that the EIA/CMP report does not make the detailed analysis of reasonable alternatives to the proposed Green Chert Mining project, much against the requirements of environmental legislation. As a result, objectors firmly believe that decision-makers and the local communities have not been made aware of other options that there are and as such, they have been deprived of an opportunity to make an informed decision regarding the proposed Green Chert mining project.

Objectors further argue that the contents of Appendix B of the EIA/CMP report are missing. Appendix B was meant to be a description of the mining project and beneficiation process. Objectors are of opinion that the missing information in Appendix B is a major flaw because stakeholders are not able to adequately analyse the validity of the claims regarding the benefits that are promised by the project. As a result, objectors argue that the EIA/CMP report is not valid.

3.3.4 Lack of Geological Evidence in EIA/CMP Report

Objectors argue that without geologically supported findings regarding the size of the Green Chert deposits, the claims by the project proponent that the mine would have a life time of 173 years are baseless. Objectors opine that the EIA/CMP report should base their calculations on existing geological reports which have been audited and certified by credible institutions such as the Geology Society of South Africa. Objectors argue that the lack of information from credible sources casts some doubt on the claims regarding the projected life time for the mine. To the contrary, objectors hold the view that the proposed Green Chert mine will last for no more than 7 years.

3.3.5 Problem of Illegal Mining Exaggerated

Some objectors argue that the existing problem of illegal mining of the Green Chert is being exaggerated in order to justify the proposed project. It is argued that allowing the mining of the Green Chert is not a practical solution for curbing illegal mining. Other options for doing so have not been explored, including detailed consultations with key stakeholders in order to find lasting solutions. Solutions for curbing illegal mining, according to objectors, could include the construction of rangers houses and eco-tourism cabins at close proximity to the Green Chert site.

3.3.6 Conclusions of EIA/CMP Report Inconsistent With Its Own Findings

Objectors submitted that it was unexpected of the EIA/CMP study to conclude that the proposed mining project should go ahead when its own analysis suggested otherwise. The following points were submitted in support of this argument:

- When assessing the significance of each of the likely impacts of the mining operation, the EIA findings were that the Green Chert Mining project's ability to create employment was the only positive impact that scored well in the weighting procedures used, while the likely adverse impacts of the project on the environment and cultural resources received a more negative scoring.
- Objectors argued that it was absurd for the EIA/CMP report to conclude that on the overall, the project should go ahead because this decision was based on the grounds that the weighting system that was used to evaluate the significance of impacts suggested that the mining project would have a positive impact of reducing unemployment and contributing significantly to the economic development of Eswatini. By so doing, the EIA report's conclusions neglected the fact that its own weighting system pointed out that the overall negative impacts of the mining

project were exceedingly high compared to the positive ones, hence a logical conclusion should have been to suggest that the project should not go ahead.

3.4 GREEN CHERT MINING AN UNSUSTAINABLE OPTION FOR CREATING EMPLOYMENT AND IMPROVING ECONOMY

The following issues were raised to support an argument by objectors that the proposed Green Chert mining project is not a sustainable option for creating the much needed employment opportunities and for improving Eswatini's economic situation.

3.4.1 Contradictions with National Development Plan 2023-2028

Objectors argue that the National Development Plan (NDP) 2023-2028 emphasises government's commitment to a sustainable development path. The NDP emphasises the development of sustainable livelihoods and supports employment creation that seeks to protect the environment.

The point of argument is that since the proposed mining of the Green Chert will result in the destruction of sensitive biodiversity of the Mgowiza Valley, this places the project at odds with the development aspirations of the country, as enshrined in the NDP 2023-2028.

3.4.2 Economic Development and Employment Creation

Objectors also argue that the project proponent correctly recognises the fact that Eswatini is currently facing a dire socio-economic situation and unsustainably high rates of unemployment. The objectors further note that the project proponent is correct in concluding that there is a need to steer economic growth that will create jobs for the local communities and improve the revenue base for the country through the development of projects that will contribute significantly to the country's Gross Domestic Product (GDP). They however argue that the project proponent has failed to present a truthful and compelling case that the proposed Green Chert Mining project will offer sustainable solutions to the current problems of unemployment, poor socio-economic development and low GDP. The following were presented to support the above arguments:

- a) The nature and quality of jobs that will be provided by the mining operation are not described in sufficient detail.
- b) A significant number of the mine workers will not qualify to be paying taxes and therefore will not contribute to the national pool.

- c) The 3,500 jobs that will supposedly be created by the Green Chert Mining project are not categorised according to the operations that will be carried out during the mining process. The nature of jobs that will be created has also not been described in the EIA report.
- d) The information that is presented in the project description and that which was gathered through the inspection in loco that was offered as part of the Tribunal public hearing is not convincing that indeed 3,500 jobs can be created by the proposed mining operation.
- e) Objectors submit that the mining area itself appears to be too small to be able to accommodate 500 workers, let alone 3,500 workers.
- f) Hence objectors are of the firm view that the promised jobs are a deliberate exaggeration of fact with a fixed intention of misleading the prospective beneficiaries (who are the local communities) and as well as decision-makers, in particular EEA and the Minerals Management Board.

The above points, according to the objectors, casts some doubt on the claims by the project proponent that the Green Chert Mining project will significantly improve employment opportunities and steer economic growth in the desired direction.

3.4.3 Use of Inconclusive Data

The following arguments were presented by objectors to support their argument that the project proponent is using insufficient and inconclusive research data to reach the conclusion that the project is viable from a social and economic standpoint:

- The submission by Michael Lee Enterprises Ltd that the Green Chert Mining project will operate and provide employment opportunities to local communities for a period of 25 years is not supported by the necessary data which was obtained from the prospecting process.
- Findings of previous geological studies on the Mgwayiza valley have not been presented in the EIA report to support the argument that there will be adequate mineral deposits to justify the mining project.
- For example, data on the quantity of mineral deposits is not presented in the EIA report to justify the assertion that the project will indeed have enough quantities of mineral deposits to enable the mining operation to last for at least 25 years.
- Also relying on the opinion of a previous geological investigations report prepared by Professor Heubeck, the objectors contend that the mining project can only be operated for not more than seven (7) years.

3.5 PROPOSED GREEN CHERT MINING AT ODDS WITH ESWATINI'S GLOBAL COMMITMENTS

3.5.1 Climate Change Commitments Being Undermined

Objectors pointed out that Eswatini is party to the United Nations Framework Convention on Climate Change (UNFCCC). In 2015, the country signed the Paris Agreement and made commitments to reduce emissions. Eswatini further committed to prioritising natural carbon sinks and sustainable land use by submitting revised Nationally Determined Contributions (NDC) in 2021. Eswatini is one of the participants in the 2024 COP29 discussions for climate change financing.

Taking into account the above-mentioned commitments, allowing the mining operation at the proposed location will make it difficult for Eswatini to achieve her climate change commitments because the mining project would lead to land degradation, biodiversity loss, and increased emissions, thereby contradicting the country's climate commitments.

Objectors contend that due to the contradictions mentioned above, the consequence of opening the proposed Green Chert Mining will most likely result in the following:

- Loss of funding for the country's climate change projects
- Tarnish the reputation of Eswatini as a country that is committed to being a climate-smart nation.
- Future partnerships on the international scale may be foregone.

3.5.2 United Nations Convention on Biological Diversity

Objectors argue that Eswatini is signatory to the Convention on Biological Diversity (CBD) and that the agreements reached under this Convention are legally binding. Their argument is that the Convention on Biological Diversity was inspired by a growing commitment to sustainable development by the international community. Objectors contend that under the auspices of the CBD, Eswatini developed its second National Biodiversity Strategy and Action Plan (NBSAP). The objectors cited the following specific commitments that Eswatini made under the NBSAP:

- Strategic Goal C – "Improving the status of biodiversity by safeguarding ecosystems, species and genetic diversity."

- Target 11 – is a commitment by Eswatini to ensure that by 2022 Eswatini should have at least 20% of its land area protected, especially those areas that are of particular importance for biodiversity and ecosystem services.
- Objectors argue that since the third National Biodiversity Strategy and Action Plan is currently being developed, the reason why Interested and Affected Parties (IAPs) should be gathered must be to discuss their contributions to the third NBSAP, instead of being gathered to defend the integrity of biological diversity against its planned removal, reduction and fragmentation.

Objectors are of the opinion that that if the Green Chert Mining project is allowed to go ahead, Eswatini will not be able to meet the targets that were committed to under the CBD and in particular, the National Biodiversity Strategy and Action Plan.

3.5.3 Disqualification from International Funding Mechanisms

Objectors argue that by allowing the Green Chert mining project to go ahead at Malolotja, Eswatini will disqualify itself from benefiting through the Global Environment Facility (GEF) and other international funding mechanisms. It is further argued that Eswatini has already benefited immensely from the GEF, where a lot of money was received by the country in order to implement livelihoods intervention programmes that aim to improve the country's resilience to the impacts of climate change and to promote the sustainable use of the country's biological diversity for sustainable development.

Objectors made an example of the Small Grants Programme (SGP) under the Global Environment Facility, which is a facility designed for funding community-based projects that promote conservation of the environment to generate income, thereby helping in poverty reduction. A grant of about six million Emalangeni (SZL6,000,000) was received by Eswatini in 2021 through the SGP, for the implementation of a project called “Strengthening National Protected Area System of Eswatini.”

3.6 SETTING A BAD PRECEDENT

Objectors are of the following view regarding the proposed Green Chert mining project:

- Mining in protected areas such as Malolotja Nature Reserve is not allowed, as provided for in the National Trust Commission Act of 1972 and the Environment Assessment Regulations of 2022.
- Objectors argue that allowing the Green Chert mining project to go ahead in such an ecologically sensitive area of the country is setting a bad precedent that will, in the future, allow any form of ecologically destructive developments to be allowed in other environmentally sensitive and protected areas of Eswatini.

- Allowing the project to go ahead has a potential to significantly undermine the integrity and authority of both the ENTC and EEA as institutions that were put in place to ensure the enforcement of the environmental laws of the country.
- Allowing the project to go ahead will weaken the ability for EEA and ENTC to enforce their mandate of protecting both the Environment and Society.
- The trajectory for Eswatini's development path will change for ever if the mining of the Green Chert in a formally protected area is allowed. This will be so because other potential developers will have the urge to propose mining developments in protected areas as long as they present a case for economic development and job creation. This will be done to the detriment of the country's commitments to environmental protection and sustainable development.
- Objectors also argue that the mining project will place Eswatini in a bad light because the country will be violating the commitments made through the signing of international agreements such as the United Nations Convention on Biological Diversity as well as the United Nations Framework Convention on Climate Change.

3.7 LOSS OF ECOLOGICALLY SIGNIFICANT BIODIVERSITY

The objectors submitted the following arguments to support the opinion that the proposed Green Chert Mining project should not be allowed:

3.7.1 True Worth of Malolotja Surrounding Landscape Being Underrated

The objectors contend that the EIA fails to present a detailed discussion of the global and local context regarding the true worth or value of Malolotja. Objectors argue that the presence of critically endangered and endemic species of flora and fauna within the Mgowayiza valley and the associated implications of disturbing that ecosystem function are not discussed adequately in the EIA report.

Objectors assert that some of the endemic species known to occur only within the Mgowayiza valley and nowhere else in the world are not discussed in the EIA report. They argue that the omission of this analysis has resulted in the conservational significance and true value of Malolotja being underrated. When applauding the economic value of the mining project, the EIA report should also articulate the losses that will also be incurred due to the permanent damage to the landscape.

It is argued that the result of the flaws mentioned above is that the assessment of the socio-economic benefits of the project in the EIA report has been done in a manner that makes the proposed Green Chert Mining project appear to be a good trade-off for destroying an ecosystem that is of international

and global significance, and one that has a potential to sustainably benefit the socio-economic situation of Eswatini if harnessed appropriately.

Another argument is that the assessment of the negative impacts of the Green Chert Mining project should be weighed against the true value of the project site being located in a protected area, a site that is ecologically sensitive and that which is of global significance.

It is further argued that the project site is at close proximity to pre-historic archaeological material. Hence mining operations will increase the risk of the archaeological material being destroyed by human activity.

3.7.2 Objection due to Project Site Being of Highest Ecological Value

The following data was presented by some objectors to support the argument that the Green Chert Mining project should not go ahead:

- The ecological uniqueness of the project site which warrants that it should be protected from disruption
- The mining project will Impact on 8 endemic fauna species (Red Data list species).

The table below was presented to support the argument that there is the existence of endemic fauna in the proposed site for the Green Chert Mining project.

Table 3.2: List of Endemic and Endangered Species of Fauna Occurring in Proposed Project Site

No.	Scientific Name	English Name
1.	<i>Afroedura major</i>	Swazi thick-tailed Gecko
2.	<i>Afroedura major</i>	Giant Swazi flat gecko
3.	<i>Bradypodion transvaalense</i>	Swazi Dwarf chameleon
4.	<i>Nucras lalandii</i>	Delalande's sandveld lizard
5.	<i>Chamaesaura aenea</i>	Transvaal grass lizard
6.	<i>Chamaesaura anguina</i>	Cape grass lizard
7.	<i>Inyoka swazicus</i>	Swazi rock snake
8.	<i>Lamprophis fuscus</i>	Yellow-bellied house snake
9.	<i>Dasypeltis inornate</i>	Brown egg eater

Malolotja contains the highest number of unique fauna and flora species

- Project site is home to *Afroedura major* (Giant Swazi flat gecko)
- Project site is part of the Barbeton Centre of Plant Endemism
- Peat bogs have recently been discovered at Malolotja Nature Reserve
- The mining will cause damage to endemic flora (i.e. montane grassland)

Malolotja represents:

- 51% of the country's flora
- 72% of the country's endemic flora
- 30% of the country's fauna, 38% of which is Red Data Listed

Montane grassland is Unique to Malolotja

Site is of highest ecological value

- Investing in such high-ecological value resource is the most profitable and most sustainable option for the country.

Micro-climate

Micro-climate of project area not found anywhere else in the world. There are endemic plant and animal species for the site.

3.7.3 Pristine Nature of Malolotja

It was argued that the designated project site particularly exists as a pristine mountain landscape which is unique in the Southern African region. The site currently promotes eco-tourism and the potential to improve its attraction as an international tourist destination.

3.7.4 Increased spread of Invasive Alien Plant species

The clearing of land for the establishment of major infrastructure for the mine such access roads, will promote invasion of Malolotja by AIPs. Invasive Alien Plant species will present a threat to the ecologically significant grass species which is unique to Malolotja, notably the Montane grassland.

3.8 DECLARATION OF WORLD HERITAGE SITE MAY BE FOREGONE

Objectors opine that opening the Green Chert Mining operation will result in Eswatini foregoing the opportunity of the Mgowiza Valley being declared as a UNESCO World Heritage site. In this way, Eswatini will lose the economic benefits associated with such a status. Objectors argue that one of the negative consequences that may come as a result of losing the opportunity of the project area being declared a UNESCO World Heritage site is that Eswatini would lose the prospects of receiving funding for improving the infrastructure that would link the Makhonjwa Mountain range and the Mgowiza Valley with the Mpumalanga's Panorama Route and Geo Trail between Bulembu and Barberton.

3.9 POSSIBLE WATER POLLUTION AND IMPACTS ON COMMUNITY HEALTH

Objectors submit that open pit mining will promote excessive soil erosion, that will increase the silt load in the Mgwayiza stream and ultimately the Komati River and Maguga Dam. The pollution of the rivers will affect downstream water users, including those who rely on the Maguga Dam. Water quality and quantity are already an issue downstream, hence pollution from the mining activity including increased diseases and drought are likely to happen.

3.10 AESTHETICAL AND SPIRITUAL VALUE OF MALOLOTJA

Objectors to the Green Chert mining project opine that nature is therapeutic and that by being in open spaces such as Malolotja Nature Reserve offers some spiritual healing and provides connections to the unseen wonders of nature that can only be understood by those who allow their souls to be exposed to this experience. The objectors then submitted that the mine will result in the degradation of the area, thereby leading to invaluable loss of the intrinsic value of Malolotja Nature Reserve.

It is argued that no monetary value can be attached to the potential loss in the aesthetic and spiritual benefits derived from the Malolotja Nature Reserve. Objectors assert that the intrinsic value of the project site and the surrounding landscape has not been factored into the assessment of the negative impacts of the proposed mining project in the EIA/CMP report.

3.11 SOME IMPACTS OF THE MINING PROJECT ARE UNMITIGABLE

The objectors argue that the Mgwayiza Valley has a unique micro-climate which in turn supports the existence of species of flora and fauna that are highly threatened and those that are endemic to that project site. By being endemic to that site, objectors argue that it is nearly impossible to develop mitigation measures that will ensure the continued survival of the affected floral and faunal species because the reason that those species occur in that location is the uniqueness of the site.

The objectors submit that the mining operation will disturb the existing landscape through vegetation removal and rock extraction, resulting in an alteration of the ecosystem functions. Objectors made an example that while some indigenous species of flora will be successfully propagated in the nursery that has been established by MLE at Malolotja, it will however be impossible to successfully translocate those flora and fauna species that exhibit endemism to the Mgwayiza Valley's unique micro-climate. According to the objectors, the lack of possible mitigations for the threatened and endemic species of flora and fauna suggests that the species will cease to exist if the mine is allowed to operate.

Objectors further contend that poisonous gas leaks from the mining operations including blasting will never be reversible. Another point of objection is that the existing landscape was formed some

hundreds of years ago, hence it is unlikely that any amount of mitigations implemented by the project proponent will be sufficient to restore it.

3.12 SOME MITIGATIONS IN THE EIA/CMP REPORT ARE NOT ENFORCEABLE

It is argued that the EIA/CMP report highlights several high risk factors which included significant impacts of the mining project such as:

- Loss of terrestrial habitats
- Loss of plant species with conservational significance
- Disruption of ecosystems functioning
- Spread of invasive species
- Disturbance of faunal species that are of conservational significance
- Negative impacts on tourism and public perception

Objectors decry the enforceability of the associated mitigations that are discussed in the EIA/CMP report. They also argue strongly that the proposed mitigations are overly optimistic and will be difficult to monitor as they require a lot of money and highly skilled expertise to monitor and enforce compliance. The EIA/CMP report, it is asserted, fails to propose a realistic budget and skills base that are required for enforcing compliance.

3.13 CONCLUSIONS MADE BY OBJECTORS

Objectors conclude that in light of the severe impacts of the proposed mining project, some of which are said to be irreversible, the country should not approve the implementation of the Green Chert Mining project. Instead, Government should intensify investments into more sustainable options for addressing the current situation of high unemployment rate and low GDP.

3.13.1 Investment in Green Economy Being a Sustainable Option

Eswatini has made commitments to sustainable development by signing the UN Convention on Biological Diversity and the United Nations Framework Convention on Climate Change. Hence Eswatini Government should invest and advocate for the development of a green economy for creating jobs and income generation. The UNESCO World Heritage status would offer Eswatini with a unique opportunity to establish a resilient economic model of developing the Bulembu-Ngwenya corridor and linking with Kruger National Park, thereby benefiting from effective community participation in eco-tourists.

3.13.2 Strengthening of Eco-tourism Investment

Objectors believe that by reopening Eswatini's application for UNESCO World Heritage status offers a far more viable and sustainable strategy for economic development than pursuing mining in Malolotja. Given that just across the ridge in South Africa, World Heritage status has already been granted by UNESCO, the unique value of the proposed project area and its surroundings are being highlighted.

According to objectors, opening the Green Chert Mining operation will result in Eswatini foregoing the opportunity of the Mgwayiza Valley being declared as a UNESCO World Heritage site. In this way, Eswatini will lose the economic benefits associated with such a status. Objectors argued that one of the negative consequences that may come as a result of losing the opportunity of the project area being declared a UNESCO World Heritage site is that Eswatini would lose the prospects of receiving funding for improving the infrastructure that would link the Mgwayiza Valley with the Mpumalanga's Panorama Route and Geo Trail between Bulembu and Barberton.

The UNESCO World Heritage status would offer Eswatini with a unique opportunity to establish a resilient economic model of developing the Bulembu-Ngwenya corridor, thereby benefiting from the who already visit places in South Africa such as the Kruger National Park.

3.14 POSSIBLE MITIGATIONS PROPOSED BY OBJECTORS

The objectors argue strongly that if the Green Chert Mining is allowed to go ahead, despite the points of objections that they raised, at least the following should be undertaken:

3.14.1 Option 1 – Preparation of EIA by external experts

- An independent team of experts, funded by international funding organisations, should be engaged to undertake a thorough Environmental Impact Assessment study.
- The externally funded team of environmental experts should come from all the different disciplines that are required for undertaking an Environmental Impact Assessment study of this level of sensitivity.
- Objectors argue that they are confident that an Environmental Impact Assessment study undertaken in this manner would be able to investigate in sufficient detail all the likely environmental impacts of the proposed Green Chert Mining project and be able to propose satisfactory mitigations, in line with local and international environmental law.

3.14.2 Option 2 - Upgrading of current EIA/CMP to Address Concerns

- The project proponent should use findings of Geological Reports and Beneficiation Plans to back up their claims regarding the sustainability of the mining project, including its ability to operate for as long as 25 years. Such information to be part of the assessments in the EIA report.
- MLE should address all the issues that were identified by objectors as either missing or insufficiently covered in the current EIA/CMP report.
- Specific areas of concern that should be covered in the revised EIA/CMP report should include, but not limited to the following:
 - a) Discussion of alternatives in a way that is stipulated in the Environment Assessment Regulations, 2022
 - b) The alternative of eco-tourism development should be assessed in greater detail than has been done in the current EIA/CMP report.
 - c) Properly account for the ecologically significant species of flora and fauna that occur within the Mgwayiza Valley, sufficiently assess the associated impacts of the mining operations and then propose effective mitigation measures that are enforceable.
 - d) MLE to commit to the establishment of a fund that will be used to compensate for the environmental destruction that will be caused by the Green Chert mining project.
 - e) A credible and independent body should be tasked with managing the proposed fund and for monitoring and enforcing compliance by the Project Proponent during the operation of the mine.

4 RELEVANT LAWS AND INSTITUTIONAL FRAMEWORK

4.1 LEGALITY OF MINING IN PROTECTED NATURE RESERVES

It was contended by most of objectors that the law prohibits mining in nature reserves or areas considered as being environmentally sensitive. They argued that the proposed Green Chert mining project should not be allowed since the chert is located at Malolotja Nature Reserve. It has been submitted that the proposed mining project will constitute a grave violation of the law should it be allowed. Further argument was that the mining operation will not only set a bad precedent but will also put the country into serious disrepute at global level.

Conventions and other similar international legal frameworks recognize states, as having sovereign rights to exploit their own resources pursuant to their own environment, development and policies. In this regard, the states must comply with the United Nations charter together with the principles of international law. State parties must also ensure that activities within their jurisdiction of control do not cause damage to the environment of other states. The Rio Declaration on Environment and Development of 1992 reads as follows in this regard:

“States have, in accordance with the charter of the United Nations (UN) and the principles of international law, the sovereign rights to exploit their own resources pursuant to their environment and development policies and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction.”

Also see article 3 of the Conservation on Biological Diversity of 1992

Principle 17 of the Rio Declaration on environment development (supra) provides that whenever a state party is contemplating to undertake a proposed project that is likely to have an adverse impact of a serious nature, that state must conduct an Environmental Impact Assessment in order to protect the environment. This in effect means the conventions recognize the sovereignty of state parties and that they are entitled to manage and exploit their natural resources in accordance with their laws and policies but in keeping with the principles of the international law. Section 49 (1) of the Environment and Management Act of 2002 also provides as follows in this regard:

“49 (1) The Government shall exercise and give effect to Swaziland’s sovereignty over its natural resources, including its genetic resources, and its powers and rights to manage the living and non-living natural resources within its territories and in areas over which it

exercises rights of the sovereignty, to the fullest extent permitted under international law. (2)

The Government shall co-operate with other Governments, and with domestic and international organisations in order to protect the regional and global environment.”

There are specific domestic laws that directly address the question of whether or not conducting a mining project in a nature reserve is illegal.

According to section 22 (4) and (5) of The Mines and Minerals Act No.4 of 2011, the Minerals Management Board is prohibited from recommending the granting of a mineral right relating to either prospecting or mining in an area specified to be a game reserve or a sanctuary including an area specified to be habitat of an indigenous flora reserve under the law protecting flora except after consultation with the Minister responsible for the administration of game and protection of flora. The provision states as follows in this regard:

22(4) “Except after consultation with the Minister responsible for the administration of game, the Board shall not recommend the granting of a mineral right that authorises reconnaissance, prospecting or mining operations on an area that has been specified as a game reserve or a sanctuary in terms of any law regulating game.

(5) Except after consultation with the Minister responsible for protection of flora, the Board shall not recommend the grant of a mineral right that authorises reconnaissance, prospecting or mining operations on an area that has been specified to be an indigenous flora reserve under the law protecting flora.”

Again, section 20(1) (h), (i) and (j) as read together with subsections (2) and (3) of The National Trust Commission Act of 1972 prohibits removal of any natural resource including a seed, plant, animal, stone, mineral or other natural object from a park or reserve. The prohibition extends to digging or interfering with the natural configuration of the land in the park or reserve including altering the natural flow of water in a park or reserve. There are however exceptions to this general rule. Under subsections (2) and (3) of the same section and Act, the Commission is empowered to deviate from the above general rule for scientific purposes, improvement of the park, reserve or for other good and sufficient reason. The provision specifically reads as follows:

“20 (1) “Subject to subsection (2), no person other than a park warden or park official in the execution of his official duty shall -....

- (h) remove from a park or reserve any seed, plant or animal, whether alive or dead, or any part of a plant or animal, or any fossil, stone, mineral or other natural object whatsoever, or any object aesthetic, historical, archaeological, scientific, sacred or religious value or interest;
- (i) dig or excavate any hole, pit or trench or otherwise interfere with the natural configuration of the land in a park or reserve, or alter the natural flow of water in a park or reserve;
- (j) pollute any water in or flowing into a park or reserve, or use any insecticide, herbicide or any other chemical or poison in such a way as to affect animal or plant life in a park or reserve;
- (2) notwithstanding subsection (1), the Commission may, for scientific purposes or the improvement of the park or reserve or for other good and sufficient reason, authorise any person to do any act prohibited by the section.”

What is clear when gleaning from the provisions of the two above legislations, is that conducting a mining project in a nature reserve or park is prohibited as a general rule, but can be allowed under certain circumstances or exceptions. In relation to section 22 (4) and (5) of the Mines and Minerals Act (*supra*), it suffices for the Board to recommend granting of a mineral right if the Minister has been consulted.

Under section 20(1) (h) – (j) as read together with subsection (2) of the National Trust Commission Act (*supra*), parks or nature reserves should as a general rule not be interfered with. None of the natural resources ought to be removed from the park or reserve. Digging or excavation are prohibited. Removal or even relocating of any of natural resources including fauna and flora from a park or reserve is prohibited. Digging of any natural resource including minerals is prohibited.

Another prohibition also relates to pollution of water flowing into the reserve. It is therefore succinctly clear that under this provision, mining operation is, as a general rule, prohibited in a nature reserve or park. However, certain conditions ought to be satisfied for the Commission to authorise performance of otherwise prohibited acts including mining or even relocation of other natural resources. Good and sufficient reason ought to be shown before the mining right can be granted. In effect the good and sufficient reasons referred to above, mean that for the mineral extraction to be carried out in a nature reserve, there must be a justification that is good, sound and compelling. The question is whether in the context of the proposed Green Chert mining, there are good, sound and compelling reasons justifying departure from the general rule which *inter alia* prohibits mining in a park or nature reserve.

Socio-economic challenges have been cited as some of the compelling reasons why there has been a strong inclination towards reviving and promoting mining industry in the country. Unemployment levels stood at 64.99% for the youth in 2023, (CSO).

The Tribunal learnt with dismay that there are people who have remained unemployed until they reach the ages of 40-50 years. It was submitted amongst the educated youth, that there are those who remain unemployed even after years of completing their tertiary education. This has escalated poverty to disproportionate levels. Public opinion gained from submissions made by the public during the hearing was overwhelmingly that the mining industry must be revived in order to reduce the prevailing high unemployment rates and to alleviate poverty. It was also submitted that revival of the mining industry will help improve the country's economy. A forceful argument was made that unemployment and poverty have an adverse effect on the right to life and as such, people should not be made to suffer when in fact there are mineral deposits that can help change the sad state of affairs.

It must be acknowledged that poverty has been identified and singled out as an anti-social element or scourge that is prevalent in developing countries. It has been respectfully submitted that eradication of poverty must be prioritized. The Convention on Biological Diversity (supra) in its preamble has the following to say:

“Recognising that economic and social development and poverty eradication are the first and overriding priorities of developing countries.”

Much as it has been contended by some objectors that more investments should be done in eco-tourism so that unemployment can be curbed, it has been shown that it will take a very long period of time for eco-tourism to meaningfully reduce unemployment rate in the country. Public opinion was that much as eco-tourism should be improved, the mining industry should also be revived in order to help improve the country's economy.

In fact, there is evidence that the government has serious challenges when it comes to meeting some of its socio-economic mandates. For example, the government has increased the categories of courses that cannot be provided with scholarships at tertiary level. Again, the government is struggling to increase social grants for the elderly and disabled. Sources of revenue have dwindled including Foreign Direct Investment.

Climate change has adversely affected the country's agricultural sector and this has immensely contributed to the current poverty levels. A question was asked during the hearing on why revival of the mining industry was not being confined to those mineral sites that are

not within nature reserves. The response was that the country has very limited mining sites – hence the need to consider even the Green Chert which is located in the Malolotja Nature Reserve.

Finally, evidence has shown that the Green Chert has been subject of illegal and unregulated mining for many years such that the country has suffered huge economic loss and human lives. Public opinion is that it is in the public interest for the Green Chert to be mined legally and in a regulated manner for the benefit of the entire nation.

5 ANALYSIS AND FINDINGS

5.1 OVERVIEW

The Tribunal reviewed in detail the issues that were presented by the project proponent and those that were presented by the objectors to the proposed Green Chert mining project. The review of the presentations by both parties was accompanied by a detailed review of relevant and applicable environmental laws (both local and international), institutional framework, as well as the current development aspirations for the Government of the Kingdom of Eswatini.

The activities highlighted above enabled the Tribunal to:

- determine the public opinions and public interests regarding the proposed Green Chert mining project;
- examine and determine the public opinions and interest
- based on its findings, make appropriate recommendations

The overall objective was to help reach common ground and make recommendations that would help ensure the accomplishment of the sustainable development goals for the Government of the Kingdom of Eswatini, in line with the country's socio-economic needs as well as complying with relevant environmental laws and obligations.

5.2 SOCIO-ECONOMIC FINDINGS

5.2.1 Potential for Employment Creation

On the matter that the quoted figure of 3,500 people to be employed by MLE is an exaggeration, the Tribunal established that the figure is spread through the reach of the project and not confined to mining. The green chert mining operations will contribute just 17% of the promised jobs, with the benefaction operation contributing the most, at approximately 30%. The rest of the jobs are to come from other associated undertakings, including planned community social services, fish farming, and other support services.

The job opportunities, as submitted by the project proponent, will be spread over a period of up to 10 years, covering the different phases for the project. The Tribunal further found that of the 3,500 jobs, 10% will be professional jobs comprised of college-trained personnel. About 70% of the jobs will be skilled labour with the balance being semi-skilled. A projected 750 opportunities for semi-skilled

labour will benefit the local communities, especially the youth who were found to be in desperate need for employment opportunities.

The majority of the promised jobs will materialise after two years from the commencement of the project, which is when beneficiation is set to begin (with beneficiation being the local processing of the mineral to produce final product). If beneficiation of the Green Chert is not undertaken in Eswatini, it would be difficult for the country to realise the full value of the Green Chert mining project. The finding of the tribunal is that local beneficiation of the Green Chert is one of the conditions of issuance of the mining licence to MLE by the Minerals Management Board.

According to the Central Statistical Office (CSO), youth unemployment rate was recorded at 64.99% in 2023, in spite of the youth literacy rate of 89.28% recorded in 2020. According to CSO, In 2022 Eswatini had 36.1% of the population living below the poverty line. The proposed mining project has a potential to reduce unemployment and contribute significantly to the country's GDP through t

5.2.2 Setting Precedent

The objectors assert that allowing the mine in an environmentally sensitive area will create a precedent and there may be a rush for applications for mining in such areas. The finding of the Tribunal is that MMB's decision to issue a mining licence to MLE was influenced mainly by Government's strategy to consider mining as a means for reviving the economy of the country to sustainable levels.

In response to the argument that by allowing the Green Chert mining project to operate, Government will be setting a bad precedent, the finding of the Tribunal are as follows:

- Government is cognisant of the likely environmental impacts of mining operations that may be undertaken in protected areas, hence any approved mining operations in protected areas is regulated by provisions of the law.

In cases where mining is proposed in protected areas, the Mines and Minerals Act requires that MMB works in collaboration with relevant institutions such as ENTC to develop guidelines for the protection the environment.

- The Tribunal further established that since the Green Chert Mining project is within jurisdiction of ENTC, already a Memorandum of Understanding has been signed between MMB and ENTC, wherein environmental guidelines were developed.

The Tribunal's analysis revealed that when assessing applications for mining operations, MMB uses a set of guidelines to assess applications before reaching a decision on whether or not to grant a

mining licence. The following are laid down guidelines which were developed and agreed upon between ENTC and MMB for use when assessing applications for a mining licence in nature reserves:

- i. Use the best available biodiversity information on the area of interest from academic and other studies.
- ii. Engage all relevant stakeholders thoroughly
- iii. Use best practice EIA to identify, assess and evaluate impacts of all aspects and stages of a mining operation;
- iv. Apply the stipulated mitigation hierarchy when planning any mining-related activities;
- v. Ensure applicant develops robust comprehensive mitigation plans; and
- vi. Ensure full and effective implementation of the CMP, including an adaptive management plan.

To this end, the finding of this Tribunal is that the mining licence issued by the Minerals Management Board will only be operationalised once the Project Proponent has satisfied the conditions highlighted above and have been issued with Environmental Compliance Certification by EEA.

If a mining is being proposed in a protected area, the law requires that the proponent must enter into an Memorandum of Understanding with Eswatini National Trust Commission.

The EEA and ENTC are fully empowered by law and the tribunal's finding is that their authority was respected in the process of the application submitted by MLE.

The tribunal further established that the assertion by objectors that allowing mining in a protected area is unprecedented worldwide cannot be substantiated. The Tribunal has identified areas in the world where economic considerations have led to mining operations being instituted in protected areas, including those that were declared as UNESCO World Heritage Sites. Below is one of the examples that have been identified:

- In 2012, the Republic of Tanzania made a decision to open a uranium mining operation within the Selous Game Reserve, which was an area that had already been declared as a UNESCO World Heritage Site. Tanzania was motivated by a dire socio-economic situation to make a decision to open the uranium mine in such a sensitive site.
- The World Heritage Council (WHC) reversed an earlier decision not to allow the mining operation on grounds that the mining activities would be incompatible with the status of Selous Game Reserve, a World Heritage site.

- The WHC, in its decision to reverse the earlier verdict, mentioned “...*decides in an exceptional and unique manner to approve the proposed boundary modification of the Selous Game Reserve, United Republic of Tanzania*”.

The decision to allow the mining of uranium in a UNESCO World Heritage Site was allowed as an exception because of economic considerations for the Republic of Tanzania, with the belief that mitigation measures would be instituted and sufficient to protect the receiving environment.

5.2.3 Economic Benefits

Another contention from the objectors to the opening of the Green Chert mine is that the economic benefits of the mine will not be worth the harm that will be done to the environment. It was submitted that at the most, quantitative studies estimate that it will take some 7 years to exhaust the economically minable material.

The finding of the Tribunal with data extracted from an internationally reputable consultant (Universe Resources Technology) suggests that there is a total of 8,320,461 tons of various grades of green chert. This means at the suggested rates of extraction of about 5,200 tons per month, the mine has a lifespan of up to 130 years. This puts the estimated value of the mineral that can be mined at least 31 billion Emalangeni (US\$ 1.7 billion).

It is the view of the Tribunal that the assertion by the objectors that there will be no economic benefit from the exploitation of the mineral and that the estimated life of the mine is about 7 years does not have a firm basis. This argument, as per the findings of the Tribunal, is solely based on qualitative studies and not on more conclusive methods which include electromagnetic surveys and exploratory core drilling.

The Tribunal further established that the life of the mine and the calculated value of the mineral deposit justifies that the project can in fact be classified as a long-term mining venture, as opposed to being short-term. The mineral reserves are sufficient to last for more than the 25-year operational mining period that has been granted to the project proponent. This projects therefore has the potential to meaningfully contribute to the alleviation of the socio-economic challenges that the country is facing.

5.2.4 Unregulated Mining

The proponent asserts that the authorities had admitted failure to curb unregulated mining of the Green Chert from the Malolotja Nature Reserve. The socio-economic conditions and elements of criminality have been the biggest driver of this phenomenon, and it is fast becoming a subregional

problem. These factors have made curbing the illegal mining very difficult. The illegal mining not only damages the environment, but also puts the lives of the illegal miners and security personnel at risk.

Issuing the mining licence to the proponent enables the country to harness the dividends from the exploitation of the Green Chert, in the form of dividends, taxation, royalties, lease fees and creation of employment for the citizens, instead of allowing the mineral to only benefit the illegal syndicates.

Another compelling evidence which suggests that allowing regulated mining will be better than the status quo include the fact that even well-resourced countries such as the Republic of South Africa are also facing the problem of illegal mining, and they have tried and failed to effectively enforce different control measures. The Tribunal has established that the submission by MMB and ENTC to the effect that they are failing to stop the scourge does appear credible.

Having a mining company that will take responsibility for security in the area while paying economic dividends to the country appears to be a better option. The assertion that the solution to illegal mining will be solved only by increasing security has been shown to be unsustainable.

5.2.5 Co-existence With Nature

The various undertakings and commitments such as the Comprehensive Mitigation Plans that were developed for the Green Chert mining project provide some evidence that the developer is committed to ensuring co-existence between nature and the project.

The Tribunal further undertook some literature review, which indicates the presence of similar cases in Southern Africa, where mining projects are successfully being undertaken in protected areas, alongside measures for controlling the likely impacts on the sensitive environments. The Jwaneng diamond mining which houses the Jwaane Game Park in Botswana is one example. This mining project has been in operation since 1982. The Richards Bay Minerals operations is another example where mining operation exists in harmony with the nearby iSimangaliso Wetland Park, a UNESCO World Heritage site in South Africa. The Richards Bay Minerals mine has established an archaeological program to protect the cultural heritage of the area in partnership with anthropologists.

The lesson that has been drawn from these two cases is that putting in place systems and conditions for operation in environmentally sensitive areas such as the Malolotja Nature Reserve is key to sustaining the co-existence between mining operations and nature.

5.3 ENVIRONMENTAL ANALYSIS

5.3.1 Categorisation of the Project

The Environment Assessment Regulations, 2022, Part III (Existing projects and proposed projects), section 12 (2) states that in deciding on the categorisation of a proposed project, the Authority shall take into consideration all relevant factors including, nature of the project and its location in relation to environmentally sensitive areas. The findings of the Tribunal is that indeed the Green Chert Mining project is located in an environmentally sensitive area.

However, the Tribunal is of the view that the argument regarding the categorisation of the prospecting stage for the Green Chert Mining project being flawed is outside the scope of work for the Tribunal. The Terms of Reference for the Tribunal restrict its assignment to the current EIA report, CMP report and associated specialist studies for the proposed Green Chert Mining project. The detailed Terms of Reference are included in Appendix 1 of this report.

5.3.2 Categorisation of the Project

The Tribunal finds that according to the Environment Assessment Regulations, 2022, the meaning of “Alternatives” in relation to a proposed activity, means different means of meeting the general purpose and requirements of the activity, which may include:

- (a) the property on which or location where it is proposed to undertake the activity
- (b) the type of activity to be undertaken
- (c) the design or layout of the activity
- (d) the technology to be used in the activity; and
- (e) the operational aspects of the activity

The Fifth Schedule (under regulation 14) of the EA Regulations of 2022 – gives Guidelines for Project Proponents in conducting environmental impact assessment studies. Stage 7 of the guidelines is concerned with the Assessment (or Comparison) of alternatives by the team of environmental practitioners. The team of environmental practitioners undertaking the EIA study are required under stage 7 to do the following:

- The team compares all the alternatives from the basis of economic, socio-cultural and environmental gains and costs;
- The team ranks and recommends all alternatives to the project proponent on the basis of sound environmental and economic analysis.

The finding of the Tribunal is that the EIA report is not very detailed in its analysis of alternatives as required under Stage 7 (1) and (2) of the Fifth Schedule.

5.3.3 Legality of Mining in Nature Reserves

Having examined this legal question raised, the Tribunal has found that the general rule is that conducting a mining project in nature reserve is prohibited but there are exceptions to this general rule, being prior consultation with the Minister including showing a good and sufficient reason why there must be a departure from the general rule, justifying mining in nature reserve. The laws of Eswatini therefore allow mining to be conducted in a nature reserve on condition there are good and compelling reasons justifying the mining project. This must also be on condition that stringent measures are put in place to ensure that adverse impact to the environment are mitigated.

In the context of the proposed Green Chert Mining project, the finding of the Tribunal is that special social-economic factors have been shown to justify departure from the general rule and to allow the project in Malolotja to go ahead. The high unemployment rate and escalated poverty levels pose as a good sufficient reason to justify conducting the mining project at Malolotja nature reserve. The Tribunal has found that allowing the mining project is also justified by the country`s poor economic state. The ongoing illegal and unregulated mining at Malolotja also justifies that the chert be extracted in a lawful regulated manner for the benefit of the entire nation. It has also been found that similar socio-economic factors have led other countries to conduct mining projects inside nature reserves. It therefore has been found by the Tribunal that conducting a mining project in a nature reserve will not be the first of its kind with Eswatini as suggested by some presenters.

It has as well been found that EEA and the country will not be put into grave disrepute by allowing the mining project to get underway as long as compelling reasons have been shown. This is also because due process has been followed coupled with all the necessary measures having been put in place according to law.

5.3.4 Irreversible Environmental Damage

Another point of objection is that the existing landscape was formed over thousands of years, hence it is unlikely that any amount of mitigations implemented by the project proponent will be sufficient to restore it.

The findings of the Tribunal is that the extraction of the rock during the mining process will in fact result in some gradual alteration of the landscape as more land area is being mined. The Makhonjwa

mountain where the Green Chert will be mined will in fact change and it will not be possible to reinstate it to its original form, regardless of the implementation of rehabilitation measures.

5.3.5 Unmitigable Impacts

The Tribunal observed that some species of flora that occur within the Mgwayiza Valley can be translocated and propagated elsewhere, as evidenced by the nursery that has already been established at the Malolotja Nature Reserve Training Centre. Hence the Tribunal concludes that the impacts on some of the terrestrial flora are mitigable.

Secondly, recent data that was submitted to the Tribunal points to the presence of highly endangered as well as endemic species of flora and fauna within the Mgwayiza Valley, part of which will be the mining site. This implies that the habitat for the endangered species is limited and restricted to the Mgwayiza Valley, and that there are no other populations of the same species beyond those limits, even within the Malolotja Nature Reserve.

However, to-date the characteristics of the Mgwayiza valley that make it unique are not fully understood, hence it is not easy to predict if the activities of the proposed Green Chert Mining project will alter the ecosystems function, especially if they were to be restricted to areas outside the pristine areas around where the Mgwayiza stream originates.

The Tribunal further observes that a carefully developed CMP, coupled with strict monitoring and enforcement, is so far the only tool that can be depended upon to ensure the co-existence of the mining project and the surrounding environment which is ecologically sensitive (just as has been evidenced in the case studies where mining co-exist with nature in environmentally sensitive areas).

At this stage, the effectiveness of the CMP and the recommendations made by the Tribunal in Chapter 6 to effectively protect the endemic species cannot be tested because the project has not yet started. The Tribunal observes that in order to reach a scientific conclusion that the proposed mining project will present some unmitigable impacts on the endangered and endemic species will require strict observation of the performance of the ecosystems function over a longer period of time, coupled with observations of the behaviour of the species over time. The irreversibility of the impacts of the project on the ecologically sensitive Mgwayiza Valley can be ascertained with certainty after carrying out these observations.

5.3.6 Impacts of Green Chert Mining of Archaeological and Historical Sites

The Green Chert Mining site is situated above an area where there are some cultural heritage and historical sites, dating back some hundreds of years. These sites are currently of particular interest to

researchers who would like to fully explore and uncover their true worth. traditional and heritage sites will be lost because of the mine. The impacts of the mining activities, if uncontrolled, can have an unrecoverable impact on the historical and cultural heritage sites.

5.3.7 Contravention of International Convention

Another point of argument by objectors to the proposed Green Chert Mining project is that the commitments made by Eswatini under the CBD and the UNFCCC are legally binding. Hence the implications of opening the proposed mine will have adverse consequences on Eswatini's reputation.

The Tribunal made some investigations into specific commitments made under the CBD in relation to the possible implications of allowing the proposed Green Chert Mining project at Malolotja to operate. The key findings are as discussed below:

(i) Indeed the agreements that Eswatini entered into by the ratification of the CBD and UNFCCC are legally binding.

(ii) Following the country's ratification of the Convention on Biological Diversity, the following strides have been made:

- Eswatini developed the National Development Strategy for 2022, which recognises the commitments of biodiversity conservation by promoting a development path that emphasises the enhancement of the green economy.
- Eswatini recently developed the National Biodiversity Strategy and Action Plan (NBSAP), second revision for the period 2016-2022.
- Eswatini has been developing country targets for achieving the objectives under the NBSAP, for submission and discussion at the UN.
- Eswatini has recently developed the sixth national report which was an evaluation of progress made towards the attainment of the national biodiversity goals provided in the NBSAP 2.
- According to the NBSAP 2, the following targets were successfully achieved:
 - 1) Target 2, where Biodiversity mainstreaming actions are on track to achieve the target.
 - 2) Target 11, where increasing the Protected Areas is on track to achieve the set target.
 - 3) The attainment of the remaining targets is in progress, but at an unsatisfactory level of progress due to a number of domestic constraints.

The Tribunal further determined that a significant number of actions have been taken by the Government of the Kingdom of Eswatini towards honouring its climate change commitments made under the auspices of the UNFCCC. The country also developed the National Climate Change Policy of 2016. Eswatini also participated in the recent Conference of Parties (COP29) for climate change negotiations which was held in Azerbaijan.

On the overall, the Tribunal determines that following the country's ratification of the Convention on Biological Diversity as well as the United Nations Framework Convention on Climate Change, the setting of country targets and taking steps towards their attainment demonstrates a genuine commitment to honouring the country's commitments under these international Conventions. Eswatini has been regularly reporting to the United Nations some of the domestic constraints that are being faced which make it a challenge to achieve the country's targets within the timeframes that the country has set. For example, Eswatini has recently developed the sixth national report which was an evaluation of progress made towards the attainment of the national biodiversity goals provided in the NBSAP 2.

The Tribunal further analysed the sustainable development goals for Eswatini and made some findings related to the socio-economic challenges that the country is facing, including persistently high unemployment rates, especially among the youth, increased poverty and poor GDP. In recognition of the socio-economic challenges currently being faced the country, the Government of the Kingdom of Eswatini has recently pronounced a desire to change its policy direction by promoting more investment into the mining sector in order to help steer economic growth, reduce youth unemployment and poverty, alongside its commitment to promoting investment into the Green Economy.

5.3.8 Impacts of Mine on Invasive Alien Plants

The objectors argued that land clearing for the mine operation will promote the spread of Invasive Alien Plant species in Malolotja, thereby threatening the Montane grasslands which are already threatened. The Tribunal finds that indeed there will be land clearing during the operation of the mine which will have the potential to promote the spread of Invasive Alien Plants. Already the access road to the mining area has facilitated some land clearing, thereby making the exposed areas prone to infestation by these invasive plant species. Other mining activities such as land clearing for the construction of physical infrastructure will further promote the proliferation of the Invasive Alien Plants. This is particularly so because other areas within the Hhohho region already suffer from the proliferation of the these Alien Invasive Plant species.

The finding of the Tribunal is that Eswatini already has developed guidelines for the management and control of Invasive Alien Plants which can be utilised by MLE to control and remove the species as they are observed. The CMP that has already been developed by MLE is sufficient to control this problem, provided that strict compliance is enforced.

6 TRIBUNAL CONCLUSIONS AND RECOMMENDATIONS

6.1 CONCLUSION

The following conclusions are made:

- The proposed Green Chert Mining project will have significant impacts on the receiving environment due to the sensitivity and the presence of species of flora and fauna that are of ecological importance, even on a global scale.
- Mining activities such as the extraction of rock outcrop and soil disturbance are likely to result in an increase in the silt load within the Mgwayiza stream, which can ultimately be deposited into the Komati River, Maguga Dam and beyond.
- Since the proposed Green Chert Mining project is within the catchment for a shared water course (i.e. a tributary to the Komati River Basin) Eswatini's commitment to report to other members of the Tripartite Interim Agreement Between Republic of Mozambique, Republic of South Africa and the Kingdom of Eswatini for Cooperation on the Protection and Sustainable Utilisation of the Water Resources of the Incomati and Maputo Watercourses.
- Eswatini's commitment towards the fulfilment of its global obligations under the different Conventions, in particular the CBD and the UNFCCC, is not in doubt due to the measurable steps that have been taken over the years at national level to align with the requirements for sustainable development, the protection of the country's biodiversity, and reduction of emissions that contribute to climate change.
- The country has also exemplified its commitments through the enacted of new environmental laws, revision of a number of existing ones, development of national targets on biodiversity protection and climate change reduction, as well as taking of measurable steps towards fulfilment of the national targets in order to be aligned with the international commitments.
- Alongside Eswatini's initiatives to ensure biodiversity protection, promotion of eco-tourism development, community participation, and the prevention of activities that contribute to the impacts of climate change and global warming, there have been persistent socio-economic challenges and a dwindling economy.
- The country's economic development situation was worsened by the advent of the COVID 19 pandemic, and the path to recovery has been very slow.

- According to the Central Statistical Office, youth unemployment rate was recorded at 64.99% in 2023, despite that the youth literacy rate is high at 89.28% as recorded in 2020.
- According to the CSO, in 2022 Eswatini had 36.1% of the population living below the poverty line.
- It can be concluded from this statistics that most of the country's youth is employable and that the persistently high unemployment rates and increased poverty are partly attributed to a lack of adequate employment opportunities in the country.
- Without stringent mitigation measures, as well as strict monitoring and enforcement of environmental compliance, it is concluded that the proposed Green Chert Mining can have immeasurable damage to the surrounding environment, which is of a sensitive nature.
- International Best Practice confirms that biodiversity and mining projects in protected nature reserves can co-exist sustainably.
- Allowing the Green Chert Mining project to go ahead would not be a fatal flaw, as long as it is implemented with due regard to the integrity and sensitivity of the environment within Malolotja Nature Reserve.

6.2 TRIBUNAL RECOMMENDATIONS

The Tribunal observed throughout the public hearings that there were conflicting views between the those objecting to the proposed mining of the Green Chert in Malolotja Nature Reserve and those who are in favour of the project. Thorough analysis of the submissions from both parties by the Tribunal revealed that the proposed mining of the Green Chert in Malolotja Nature Reserve is in the public interest. Standing out most in the submissions were the socio-economic needs confronting the country and the importance of protecting the integrity of the environment. Further, the Tribunal learnt from the analysis that even stronger economies such as South Africa, Botswana to name a few, have opened mines in their Nature Reserves under stringent conditions in order to ensure the co-existence of the mine and nature.

It is the ruling of the Tribunal that the proposed Green Chert Mining project at Malolotja Nature Reserve should be implemented, taking into account the recommendations as presented in Table 6.1 below. EEA can only issue the Environmental Compliance Certificate and letter of authorization to MLE after the latter has filled the identified gaps in its EIA and CMP reports.

Table 6.1: Tribunal Ruling and Proposed Mitigations

ISSUES	MITIGATION MEASURES PROPOSED	IMPLEMENTATION RESPONSIBILITIES	
		RESPONSIBILITY	STAGE OF PROJECT IMPLEMENTATION
1. IMPROVEMENTS OF EIA AND CMP REPORTS TO ADDRESS CURRENT SHORT-COMINGS			
<p>1.1 Assessment of alternatives The EIA and CMP report have some gaps which would have implications for effectiveness and enforceability.</p>	<ul style="list-style-type: none"> ○ The current EIA report should be revised to sufficiently cover the assessment of project alternatives as provided for in the Environment Assessment Regulations, 2022. 	<ul style="list-style-type: none"> ○ MLE 	<ul style="list-style-type: none"> ● Within first month of adoption of this Tribunal Findings Report.
<p>1.2 Weighting of impacts in EIA report The weighting of impacts in the current EIA and CMP report is only done for the likely project impacts prior to mitigations, and no weighting of the likely project impacts after mitigations has been done. This flaw makes the overall impacts appear to be overly negative compared to the positive ones (as if any mitigation measures would not be able to improve the situation).</p>	<ul style="list-style-type: none"> ○ Revise the assessment of all the likely impacts of the Green Chert project to include the assessment of the severity of the impacts after implementation of mitigations. 	<ul style="list-style-type: none"> ○ MLE 	<ul style="list-style-type: none"> ● Within first month of adoption of this Tribunal Findings Report.
<p>1.3 Survey of species of flora & fauna The checklist of species of flora and fauna found within the project area is not thorough, as some species that are known to occur within Mgwayiza Valley and the larger project area have not been accounted for in the current EIA report</p>	<ul style="list-style-type: none"> ○ Use existing secondary data from specialist studies that have previously been undertaken for the Mgwayiza Valley and its environs to augment primary data obtained from floral and faunal surveys that were undertaken during the preparation of the current EIA report. ○ Use the updated checklist to assess in detail the likely impacts of the Green Chert Mining project, especially on the endangered and endemic species. ○ Update the CMP to include proposed mitigation measures for addressing the 	<ul style="list-style-type: none"> ○ MLE 	<ul style="list-style-type: none"> ● Within first month of adoption of this Tribunal Findings Report.

ISSUES	MITIGATION MEASURES PROPOSED	IMPLEMENTATION RESPONSIBILITIES	
		RESPONSIBILITY	STAGE OF PROJECT IMPLEMENTATION
	impacts on endangered and endemic species.		
<p>1.4 Job creation potential for the Green Chert project</p> <p>MLE submitted to the Tribunal information on the employment creation potential that was not included in the current EIA/CMP report. The Tribunal's finding is that this crucial information answers some of the points of objection to the Green Chert Mining project, in particular the projects ability to create the approximately 3,500 employment opportunities</p>	<ul style="list-style-type: none"> ○ All information submitted to the Tribunal relating the labour plan for MLE should be included in the revised EIA/CMP report. ○ Compliance with the operational terms and conditions included in the mining licence issued by MMB shall be closely monitored to ensure that the project proponent actually fulfils them. ○ The conditions in the mining licence shall be included as part of the CMP in the revised EIA/CMP report. ○ Beneficiation of the Green Chert within Eswatini shall be implemented within the first two (2) years of operation of the mine. ○ The requirement for beneficiation shall be included as part of the CMP for the revised EIA/CMP report. ○ The mining licence shall be withdrawn in the event the project proponent fails to comply with the associated conditions of issue. ○ MMB should withdraw the mining licence. MLE should be monitored by. 	<ul style="list-style-type: none"> ○ MLE ○ MMB and EEA ○ MLE 	Monitoring and evaluation of implementation mitigations should be quarterly, starting from the first year of mine operation.

ISSUES	MITIGATION MEASURES PROPOSED	IMPLEMENTATION RESPONSIBILITIES	
		RESPONSIBILITY	STAGE OF PROJECT IMPLEMENTATION
<p>1.5 Other Gaps in EIA/CMP report</p> <p>Objectors identified verifiable gaps in the EIA and CMP report.</p>	<ul style="list-style-type: none"> ○ Revise the current EIA/CMP report to address the gaps that were presented by objectors 	<ul style="list-style-type: none"> ○ 	<ul style="list-style-type: none"> • Prior to EEA giving final decision regarding the EIA/CMP report and the mining project itself.
2. COLLABORATION WITH RELEVANT INSTITUTIONS			
<p>2.1 Enforcement of mitigations for protecting sensitive flora and fauna species</p> <p>The Green Chert mining project is likely to have adverse impacts on the ecologically sensitive areas of the Mgwayiza Valley.</p>	<ul style="list-style-type: none"> ○ Identify other institutions that should be responsible for regular monitoring the ecosystems function in the Mgwayiza Valley and establish if mitigation measures are effective in avoiding and/or reducing the likely impacts on the endangered and endemic species of flora and fauna. ○ Develop a Species' Management Plan in collaboration with key institutions (e.g. Academia, UNESWA, ENTC, other experts in different fields of ecology). ○ Species Management Plan to identify experts as well as a budget that will be needed for independent monitoring of ecosystems functions over the lifetime of the Green Chert Mine and develop additional mitigations that will become necessary, as informed by emerging situations. ○ Species Management Plan shall be approved by EEA prior to its implementation. ○ A physical buffer shall be created around the mining area in order to control encroachment of mining activities on 	<ul style="list-style-type: none"> ○ MLE to develop the plan in collaboration with identified institutions ○ EEA to identify key institutions to participate in the formulation of the Plan. 	<ul style="list-style-type: none"> • Plan to be in place within the first year of operation of the Green Chert Mining Project.

ISSUES	MITIGATION MEASURES PROPOSED	IMPLEMENTATION RESPONSIBILITIES	
		RESPONSIBILITY	STAGE OF PROJECT IMPLEMENTATION
	<p>adjoining areas that fall outside the designated mining sites.</p> <ul style="list-style-type: none"> ○ Appropriate signage shall be erected to prohibit unauthorized encroachment into adjoining areas that are of ecological sensitivity. 		
<p>2.2 Impacts on Cultural Heritage sites</p> <p>The Green Chert Mining site is at close proximity to a historical site, which has a potential for further research.</p>	<ul style="list-style-type: none"> ○ MLE to establish some partnership with key institutions such as the Natural History Society in Eswatini and anthropologists in order to establish an archaeological program designed to protect the cultural heritage site that is at close proximity to the site for the proposed Green Chert Mining project. ○ Provide adequate funding to effective protection of the historical and cultural heritage sites around the project area. ○ A physical buffer zone shall be created around the historical and cultural heritage sites. ○ The historical and cultural heritage sites shall be open for further research and recreation, with mining operations not impeding access to the sites. ○ Appropriate signage shall be erected to prohibit unauthorized encroachment either by construction activity and humans. 	<ul style="list-style-type: none"> ○ MLE and EEA 	<p>To be in place within the first year of operation of the Green Chert mine.</p>

ISSUES	MITIGATION MEASURES PROPOSED	IMPLEMENTATION RESPONSIBILITIES	
		RESPONSIBILITY	STAGE OF PROJECT IMPLEMENTATION
<p>2.3 Rehabilitation plans</p> <p>In addition to continuous rehabilitation of the mining site, it will be important to plan and budget for implementation of end of project rehabilitation.</p>	<ul style="list-style-type: none"> ○ Prepare an end of project rehabilitation plan with associated costs, human resource requirements and equipment. ○ The rehabilitation plan shall include a simulation of what the mined out mountain will look like. ○ The rehabilitation plan shall also include details of what the rehabilitated landscape will look like after rehabilitation. ○ The detailed rehabilitation plan shall be included as part of the revision of the current EIA/CMP report. 	<ul style="list-style-type: none"> ○ MLE 	<p>To be in place prior to issuance of final approval of the project by EEA.</p>
<p>2.4 Impacts of Invasive Alien Plants</p> <p>IAPs may encroach into some areas within the project sites.</p>	<ul style="list-style-type: none"> ○ MLE to enrich the CMP for IAPs by preparing a checklist of species that are prone to the larger project site. ○ Use the existing guidelines for the control of IAPs that was developed by ENTC to prepare specific guidelines that shall be used by MLE to monitor and control the proliferation of these invasive species. ○ Specific guidelines will include a realistic budget for controlling IAPs species ○ Specific guidelines to identify the human resources and equipment necessary to effectively implement the specific guidelines. 	<ul style="list-style-type: none"> ○ MLE 	<p>Within the first month of submission of this Tribunal Findings report.</p>

ISSUES	MITIGATION MEASURES PROPOSED	IMPLEMENTATION RESPONSIBILITIES	
		RESPONSIBILITY	STAGE OF PROJECT IMPLEMENTATION
	<ul style="list-style-type: none"> Mining operations shall commence once EEA has approved the guidelines. 		
3. ENVIRONMENTAL AUDIT OF MINING OPERATIONS			
<p>3.1 External Environmental Auditing</p> <p>Due to the sensitivity of the project site and its environs, it will become important to audit the Green Chert Mining project at reasonable intervals</p>	<ul style="list-style-type: none"> In addition to internal auditing as provided for in the environmental legislation, the following shall be undertaken: The Green Chert Mining project shall be subjected to external audits to help track the performance of the approved CMP and identify any implementation difficulties in a timely manner. External Environmental and Social Audits shall be funded from the proposed Environmental Fund which shall be developed for the Green Chert Mining project. Internal Project Compliance reporting to EEA shall be done shall be undertaken by MLE quarterly. 	<ul style="list-style-type: none"> EEA/ENTC MLE 	<p>External audits to be undertaken annually, starting from the first year of mine operation.</p> <p>Internal Audits to be undertaken quarterly, starting from the first year of mine operation.</p>
<p>3.2 Transboundary Water Quality</p> <p>The Green Chert mining project is located next to a tributary of a transboundary water resource (i.e. the Komati River).</p> <p>Article 6 Protection of the Environment</p> <p>Article 8 Water Quality and Prevention of Pollution</p>	<ul style="list-style-type: none"> The initiation of the Green Chert Mining project shall be reported to the other parties to the “Tripartite Interim Agreement Between Republic of Mozambique, Republic of South Africa and the Kingdom of Eswatini for Cooperation on the Protection and Sustainable Utilisation of the Water Resources of the Incomati and Maputo Watercourses” so that any possible 	<ul style="list-style-type: none"> EEA/DWA 	<p>Reporting to other parties to be done prior to the start of mining operations.</p>

ISSUES	MITIGATION MEASURES PROPOSED	IMPLEMENTATION RESPONSIBILITIES	
		RESPONSIBILITY	STAGE OF PROJECT IMPLEMENTATION
	transboundary impacts on water resources in the Komati River can be discussed at that level.		
4. FUNDING FOR IMPLEMENTATION OF SPECIAL MITIGATIONS FOR PROTECTING ENDANGERED SPECIES AND CULTURAL HERITAGE SITES			
<p>4.1 Creation of special purpose vehicle</p> <p>Implementation of the plans proposed in this report will have significant financial implications as well as human resource requirements.</p>	<ul style="list-style-type: none"> ○ A Special Purpose Vehicle should be created that will be used to fund the implementation of the special mitigations as described under 2.2 (impacts on cultural heritage sites) and 3.1 (external audits). ○ The Special Purpose Vehicle funded directly by MLE. ○ The Special Purpose Vehicle fund shall be managed by key institutions (ENTC, Natural History Society, EEA, local Anthropologists). 	<ul style="list-style-type: none"> ○ EEA 	<p>Special Purpose Vehicle shall be in place throughout the life time of the Green Chert Mining project, starting from the second year of mining operation.</p>

We, the undersigned, do hereby unanimously declare that all the contents of this report are a true reflection of our findings.



David V. Khumlao

Chairperson of the Tribunal

Ms Julian Nomsa Mlangeni
Member / Secretary



Mr Simon N. Maphanga
Member



Dr Ntombenhle Dlamini
Member



Mr Bhekisisa Nsibandze
Member



APPENDIX 1
DETAILED TERMS OF REFERENCE FOR THE TRIBUNAL



**APPOINTMENT OF TRIBUNAL FOR PUBLIC HEARING PROCESS ON THE
PROPOSED GREEN CHERT MINING AT MALOLOTJA NATURE RESERVE BY
MICHAEL LEE ENTERPRISES PROJECT**

In terms of Regulation 19 (1), (2) and (3) of The Environment Assessment Regulations, 2022, I hereby announce an Appointment of a Tribunal for Public Hearing Process on the Proposed Green Chert Mining at Malolotja Nature Reserve by Michael Lee Enterprises Project, with the terms of reference in the schedule attached hereto and appoint **Mr. David Khumalo**, an attorney of the High Court and Supreme Court of Eswatini, Serving as a Principal Magistrate of the Manzini Magistrate Court as the Chairperson of a Tribunal to conduct a Public Hearing on the Proposed Green Chert Mining Project on farm 780 and portion 1 of farm 357, Malolotja, in the Hhohho Region by Michael Lee Enterprises. The following individuals are further appointed as members of the Tribunal:

Ms. Julian Nomsa Mlangeni -Environmentalist

Mr. Simon Maphanga- Geologist

Dr. Ntombenhle Dlamini- Scientist and Academic

Mr. Bhekisisa Nsibandze- Engineer

**THUS, DONE AND SIGNED IN MBABANE ON THIS THE 18TH DAY OF OCTOBER
2024.**

**MR. MLUNGISI C. SIMELANE
CHAIR OF THE MANAGEMENT BOARD
ESWATINI ENVIRONMENT AUTHORITY**

SCHEDULE

**TERMS OF REFERENCE OF THE
TRIBUNAL FOR PUBLIC HEARING ON ENVIRONMENTAL AND SOCIAL
IMPACT ASSESSMENT (ESIA) AND COMPREHENSIVE MITIGATION PLAN
(CMP) FOR THE PROPOSED GREEN CHERT MINING AT MALOLOTJA
NATURE RESERVE BY MICHAEL LEE ENTERPRISES, HHOHHO REGION**

A Tribunal for Public Hearing is hereby appointed in terms of Section 53 of the Eswatini Environment Management Act, 2002 as read together with Regulation 19(1), (2) and (3) of The

Environment Assessment Regulations, 2022. The Tribunal is appointed to conduct a public hearing on Environmental and Social Impact Assessment (EISA) And Comprehensive Mitigation Plan (CMP) the establishment and operations of The Green Chert Mine at Malolotja.

2. The Tribunal shall conduct a public hearing for all affected and interested parties to the proposed Green Chert Mine on farm 780 and portion 1 of farm 357, Malolotja, in the Hhohho Region; make findings, guided by the Environmental and Social Impact Statement, Comprehensive Mitigation Plan, written submissions on the project, oral representation, relevant legislation, policies and guidelines; and make recommendations concerning the following:
 - 2.1 Whether or not the establishment of the Malolotja Green Chert Mine has unmitigable social-economic and environment to deter its establishment and/or operations at Malolotja;
 - 2.2 Whether or not the public concerns/objections submitted in writing to the Eswatini Environment Authority in terms of Regulation 17 of the Environmental Assessment Regulations, 2022 on the environmental and social impacts of establishing and/or operating such a mine can be substantiated, guided by actual facts and/or have serious ramifications warranting consideration by the Eswatini Environment Authority before granting approval for operating a green chert mine;
 - 2.3 Public opinion of the current ESIA and Specialist reports prepared by Michael Lee Enterprises on the mining of green chart at Malolotja, the CMP therein and incidental information on the application for mining the green chert.
 - 2.4 Whether or not the granting of the green chert approval will result in grave environmental breaches, putting the Eswatini Environment Authority and the Government of Eswatini into serious disrepute.
3. These Terms of Reference may be added to, varied or amended from time to time.
4. All stakeholders and organs of state relevant herein, and the public will be required to cooperate fully with the Tribunal in conducting these public hearing.
5. The Environmental Management Act, 2002, and the Environment Assessment Regulations, 2022, shall apply to the Tribunal subject to such amendments and exemptions as may be specified by proclamation from time to time.

6. The Tribunal shall submit its report and recommendations to the Chair of the Management Board of the Eswatini Environment Authority within eight (5) weeks from the date of appointment.
7. The Tribunal is authorized to conduct its work meaningfully and effectively in conducting the hearing by conferring on the Tribunal all the powers necessary to carry out this mandate as per the guiding statutes.
8. **Conduct of proceedings:**
 - 8.1 Only interested and affected parties registered during the designated days with the secretary of the tribunal will be afforded an opportunity to make representations to the tribunal;
 - 8.2 Registration can be done physically, via email or telephone;
 - 8.3 The Tribunal will be sitting between 1000hrs and 1600hrs on designated days at a venue to be announced;
 - 8.4 Each presenter will be given 20 minutes to make their submissions;
 - 8.5 Submissions will be made on a first come first served basis following the order of registration;
 - 8.6 The project proponent will be accorded an opportunity to make the first presentation on the proposed project;
 - 8.7 The tribunal may conduct an inspection in loco of the proposed project site
 - 8.8 Submissions may be in writing or may be presented orally; however, all submissions should be all presented to the tribunal physically or virtually
 - 8.9 This being a public hearing, no submissions may be made in camera or in private.
9. **Confidentiality:** All members of the Tribunal shall maintain strict confidentiality regarding the proceedings, discussions, and any sensitive information obtained during the course of their duties. This confidentiality shall extend beyond the term of their appointment and the conclusion of the public hearing process. Any breach of confidentiality may result in immediate dismissal from the Tribunal and potential legal consequences.
10. **Declaration of Interest:** All Tribunal members shall, prior to the commencement of their duties, submit a written declaration disclosing any actual, potential, or perceived conflicts of interest related to the proposed Green Chert Mining project or any of the parties involved. This declaration shall include, but is not limited to:

- a. Any financial interests in the proposed green chert mine
 - b. Personal or professional relationships with Michael Lee Enterprises, its employees, or contractors
 - c. Involvement in any environmental organizations/groups or initiatives that may influence their impartiality
 - d. Any other circumstances that could reasonably be perceived as influencing their judgment or decision-making capacity in relation to this public hearing
11. If any conflict of interest arises or becomes known during the Tribunal's work, the member shall immediately disclose this to the Chair of the Management Board of the Eswatini Environment Authority.
12. The Chair of the Management Board shall have the authority to evaluate any declared conflicts of interest and determine whether the Tribunal member should be recused from specific discussions or decisions or removed from the Tribunal entirely.
13. The Tribunal will be remunerated in accordance with PEU Circular No.3 of 2024 on Board Fees for public enterprises.

APPENDIX 2
OBJECTIONS SUBMITTED PRIOR TO TRIBUNAL
APPOINTMENT