

To: The Chief Executive Officer
The Petroleum Agency South Africa
7 Mispel Street
Belville
7530

Attention: Dr. Phindile Masangane

By email: plu@petroleumagency.co.za

20 February 2023

In re: The Green Connection - Comments on Azinam and JV Partners' application for a Production Right for petroleum ito s83 of the MPRDA: Block 2B in the Northern Cape Province (ref: 12/4/014 PR)

1. Introduction

These comments are submitted on behalf of the Green Connection¹ in response to a Notice by the Petroleum Agency SA ('PASA') indicating that on 15 November 2022 it accepted an application for a production right for petroleum by Azinam South Africa (Pty) Limited, Thombo Petroleum Limited, Africa Energy South Africa (Pty) Ltd, and Simbo Petroleum No.2 Limited ('Azinam and its JV Partners'). In accordance with s10(1)(b) of the Mineral and Petroleum Resources Development Act, 2002 ('MPRDA'), the Notice included an invitation to any person wishing to submit comments on the application to do so in writing on or before 20 February 2023.

¹ The Green Connection is a registered non-governmental organisation, that believes that economic growth and development, improvement of socio-economic status and conservation of natural resources can only take place within a commonly understood framework of sustainable development. The Green Connection aims to provide practical support to both the government and non-governmental/civil society sectors, which are an integral part of sustainable development.

2. Insufficient information provided to make informed comment

The s10 notice published on the PASA website included the following documents:

- Section 10 Notice (in English and Afrikaans);
- Executive Summary of the production right application (in English and Afrikaans); and
- Plan of the area (including a map) for the production right application.

In terms of s10 of the MPRDA, within 14 days of accepting an application, the Regional Manager must in the prescribed manner make known that an application for (in this instance) a production right has been accepted, and must call upon interested and affected persons ('I&APs') to submit their comments regarding the application within 30 days from the date of the notice.

It is relevant to note that s6 of the MPRDA stipulates (among other things) that, subject to the Promotion of Administrative Justice Act, 2000 ('PAJA'), any administrative process conducted or decision taken in terms of the MPRDA must be conducted in accordance with the principles of lawfulness, reasonableness and procedural fairness.

It has long been recognised that a procedurally fair decision-making process requires (among other things) that a person '*must be put in possession of such information as will render his [or her] right to make representations a real, and not an illusory one*'.² Hoexter points out that there is '*a crucial link between the amount and type of information disclosed to an affected person and the quality of his or her opportunity to make representations*'.³

Insofar as the s10 Notice provides the opportunity for I&APs to make meaningful comments that will be taken into consideration by the DMRE when making its decision on the production right application, sufficient information should be made available when the s10 Notice is

² *Heatherdale Farms v Deputy Minister of Agriculture* 1980 (3) SA 476 (T) (486F-G)

³ Hoexter (2nd edition, 2018), *Administrative Law in South Africa*, at p371, referring to by the Constitutional Court in *Bengwenyama Minerals v Genorah Resources* 2011 (4) SA 113 (CC) paras 69-74.

advertised to enable the Green Connection and other I&APs to make meaningful, informed comment.

Having regard to the limited information provided with the s10 Notice, the Green Connection submits that it is unable to make informed comment in the absence of the following:

- Information showing that Azinam and its JV partners have access to financial resources, and have the technical ability to conduct the proposed production operation optimally;
- Information showing that the production will not result in unacceptable pollution, ecological degradation or damage to the environment;
- Information showing the estimated expenditure, and that such expenditure is compatible with the intended production operation and duration of the production work programme;
- Information showing that Azinam and its JV partners have the ability to comply with the relevant provisions of the Mine Health and Safety Act, 1996;
- Information showing that Azinam and its JV partners are not in contravention of any relevant provision of the MPRDA;
- Information showing that Azinam and its JV partners have complied with the terms and conditions of the exploration right;
- Information showing that Azinam and its JV partners have provided financially and otherwise for a prescribed social and labour plan;
- Evidence that the petroleum can be produced optimally in accordance with the production work programme;
- Information showing that the granting of the production right will further the object referred to in section 2 (d) and (f) and in accordance with the Charter contemplated in section 100 and the prescribed social and labour plan; and
- A full life-cycle assessment of the project, including ecological, economic, financial and social impacts.

In light of the above, the Green Connection objects to the production right application, and call upon PASA and/or the applicants to make the relevant information (referred to above) available to the public to facilitate informed and meaningful comment before a decision on the production right application is made. It is submitted that a failure to do so will render the production right application process procedurally unfair, and any production right granted will be vulnerable to being set aside on Judicial Review.

3. Production will result in unacceptable pollution, ecological degradation or damage to the environment

Section 84 of the MPRDA stipulates that the Minister must grant a production right if the production will not result in unacceptable pollution, ecological degradation or damage to the environment.

The Green Connection is aware that the applicants will be required to conduct an environmental impact assessment (EIA) process related to this application (no EIA notification has yet been received), and record that it intends to submit detailed technical and legal comment as part of this EIA process. However, the unavailability of this information at this stage precludes the Green Connection from making substantive comment on this aspect of the production right application, and renders this commenting opportunity largely meaningless.

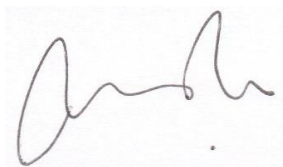
Notwithstanding this, the Green Connection submits that from a climate crisis perspective, it is inevitable that the extraction, processing, storage, transport and end-use of oil and gas from the proposed production operations will result in significant emissions of greenhouse gases (GHGs). These GHGs will add to the GHGs already present in the atmosphere, resulting in increased adverse impacts on human health and well-being and on the environment (species and ecosystems). Impacts on human health and well-being are likely to include (among others) impacts from increased adverse environmental effects, impacts on food availability and affordability, loss of property due to sea-level rise, and deterioration in physical and

mental health and well-being. Environmental impacts are likely to include (among others) increased temperatures, worsening and prolonged droughts, longer and more intense heatwaves, increases in extreme weather events, increased ocean acidity, decline in ecosystems and habitat, and increased rates of species extinction.

Given this, the exploitation of oil and gas is not needed, is undesirable, is locally and globally irresponsible, is contrary to South Africa's international climate change and biodiversity commitments, and contravenes the State's obligations under section 24 of the Constitution.

In light of the above, the Green Connection submits that from a climate change perspective, the proposed production operations will result in unacceptable pollution, ecological degradation and damage to the environment, and accordingly object to the production right application.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Adrian Pole', with a small dot below the signature.

Adrian Leonard Pole