



# Mtunzini



## *SOS Mtunzininews update N013,. 14October 2012.*

**SOS**Mtunzini (Save Our Sands) is the joint campaign of the MRA (Mtunzini Residents Association) and the Mtunzini Conservancy to address the proposed sand dune mining to the North and the South of Mtunzini. The **Mtunzini Residents Association** (Reg. No. 2003/022172/08) and the **Mtunzini Conservancy** (Reg. No. 2007/006455/08) are both Section 21 companies. The Mtunzini Conservancy has Section 18A tax status and can issue tax certificates for donations made.

### *Getting up to speed after the last SOS (No. 12 in July)*

The pace of events has increased dramatically since the last SOS No. 12 in July where we communicated the fact that the DAEA (Department of Agriculture and Environmental Affairs) had authorised the mine in terms of NEMA (National Environment Management Act).

Since then 1) we have appealed the DAEA authorisation; 2) the DMR (Department of Mineral Resources) has approved the amended Fairbreeze EMPR (Environment Management Plan Report); 3) to our dismay and surprise, TRONOX have started construction of the Fairbreeze mine on the 1<sup>st</sup> of October without municipal planning approval; and 4) on Friday the 12<sup>th</sup> October we approached the high court for an interdict to stop TRONOX from construction activities until they have the necessary planning approval.

These authorisations from DAEA and the DMR give the impression that TRONOX may now proceed with the Fairbreeze mine. The fact is that these authorisations are part of a process, and if TRONOX were to be fair (FAIR TALK?) then they would wait until all the processes are complete before proceeding as would then be their right. In a fair world TRONOX may not start mining until I&APs (Interested and Affected Parties) have exhausted all their rights in all the relevant processes.

To start construction and mining TRONOX still requires: 1) final approval in terms of NEMA after the appeals to the DAEA have been considered and decided upon; 2) municipal approval from the Umlalazi Municipality, and 3) an Integrated Water Use Licence from the Department of Water Affairs and Forestry. Each of these three approvals is a process with appeals that need to be finalised before TRONOX proceeds. To do otherwise is not fair, and denies us administrative justice.

### *Appealing the DAEA authorisation of Fairbreeze mine*

Procedurally our appeal of the DAEA authorisation hinges on the fact that TRONOX took the unexpected and unprecedented step of somehow convincing the DAEA to allow them to conduct a **Basic Assessment** instead of a full **Scoping & Environmental Impact Assessment**. On matters of substance the appeal hinges on an unacceptable mining process, apparent inability to rehabilitate, destruction of wetlands, lack of acceptable offsets, and more. This is a process, and EXXARO should wait until our appeals have been considered and the process is complete before starting construction and eventually mining.

### *Municipal Planning approval*

Municipal Planning approval is required in KZN before construction and mining may commence, irrespective of other approvals that may have been obtained. Municipal planning is about the appropriateness of a development and its impact on neighbouring communities. The DMR does not deal with this aspect of mining and it is not considered in the EMPR. Also NEMA only pays lip service to it. It is the Municipality that oversees planning considering impacts on amenities and the need and desirability of a project in the planning process. TRONOX would appear to be trying to remove the municipality as the lawful arbiter of municipal planning by trying to avoid the planning process.

Municipal planning approval focusses on applying for approval to change land use, in this case, from agriculture to mining. It takes into account whether the proposed development is appropriate for the long term planning for the area. Is it a good idea to have an opencast mine 100 m from the Mtunzini town boundary? Will the proposed mine help to achieve the current to long-term planning objectives of the area which in our case is tourism and agriculture?

It is important to note that different issues are considered and emphasised during the Municipal planning approval process than those that are dealt with in the environmental (NEMA) approval process. The planning process focusses in a transparent way on the desirability of the change of land use **specifically in terms of its effect on neighbouring communities**. To the best of our knowledge TRONOX has not done this, and that planning approval for this project has not been applied for and the legislated process has not been followed. We have been denied the right of questioning the project in terms of needs and desirability and appropriateness.

It is the legal right of the Umlalazi Municipality to approve development that is suitable for the long term development of Mtunzini and surrounds. The Umlalazi municipality must follow due process and call for comment when it seeks to rezone land in order to give planning approval to a project.

At this point TRONOX admit that they need planning approval for the ore body FBCext on the southern boundary of Mtunzini. TRONOX claims that it does not need to have planning approval for the ore bodies FBA, FBB, and FBC. The SOS Campaign disputes this and are now in the process of getting a court order to stop TRONOX from all construction activities until they have obtained the required Municipal planning approval for all the ore bodies by following the legislated process in a transparent way.

This is about holding Tronox accountable to the law. TRONOX appear to be trying any loophole they can to avoid complying with the legislation and throwing light on the project. One has to ask, in the spirit of "FairTalk" why they would do this? The planning approval process, more than any other, takes into account the effect of mining (from construction to closure and beyond) on neighbouring human settlements and neighbouring land users.

Once again, as with the NEMA process, we ask that TRONOX respect our request that as neighbours they do the right thing and obtain planning approval for the entire mine, and not just one small part of it as they apparently intend doing.

### *So, the question remains: are we really to be tronoxed by TRONOX?*

Well the answer is still: only if we let TRONOX tronox us! The future of our town and our environment is in our hands. The authorisation of the mine by the DAEA triggered 5 separate independent appeals. Appeals were received from The Wildlands Trust, Twin Streams Blue People, WESSA, and one other. These appeals took up the legality of the process, and the lack of information that this flawed process delivered for decision making by the authorities.

The SOS Campaign is insisting that proper Municipal planning approval is obtained for the Fairbreeze mine. TRONOX will apparently soon be starting the process to obtain Municipal Planning authorisation for FBCext on our southern boundary. If you are not happy with the mine being on our immediate southern boundary make sure that you engage fully with this process to ensure that you do not get tronoxed. This is your opportunity to once again engage the process and insist that, should the mine go ahead, that the mine retreats further from the Mtunzini southern boundary or that even FBCext not be given approval at all because of its proximity to the town. Moving the mine back from the town boundary would appear to be a sensible planning decision and presumably one which we could expect our municipality to make for us.

If the SOS Campaign is successful in its attempt through the courts to insist that Municipal planning is required for all the other orebodies then it will mean that the neighbours to these orebodies can also make use of the Municipal planning process to try and mitigate the possible negative impact of the mine on them. It will be another opportunity not directly related to the DMR to take the matter in hand and influence the outcome.

## *Pictures from Hillendale*

The past month has been pretty wet, with predictable results at Hillendale.



Current view from northern boundary of Hillendale gives a good idea of what the southern boundary of Mtunzini will look like should the Fairbreeze mine go ahead.



## *How is the Fairbreeze mine likely to affect beach views and tourism?*

**Before**



**After**



## *So where are we now?*

TRONOX requires approvals in terms of NEMA, Municipal planning, and a Water Use Licence.

The process in terms of the NEMA approval is well under way. We have appealed the authorisation that was granted under this process and await the outcome of this appeal. There are at least 4 other independent appeals that have been lodged.

TRONOX does not have Municipal planning approval for the Fairbreeze mine. While they admit they do not have it for the FBCext orebody, they have started construction of the mine because they seem to think they have some sort of approval or are exempt for some reason on the other orebodies. We are in the process of approaching the high court for an interdict to stop construction until they have Municipal approval for all the ore bodies, i.e. FBA, FBB, FBC, and FBCext.

This is now a new phase of the campaign involving litigation. Litigation is costly and we really do rely on your continued support in our attempt to make sure that due process is followed and that our rights are upheld with respect to this massive high impact project that is proposed.

### Mtunzini and SOS site details:

**Mtunzini.co.za:** <http://mtunzini.co.za/>; **Mtunzini Conservancy:** <http://mtunzini.co.za/conservancy.htm>; **SOS Mtunzini:** <http://mtunzini.co.za/exxaro.htm>

## Contributions

Your on-going support and encouragement is much appreciated. This has put us in a strong position to challenge TRONOX on several fronts. Now that we have been forced into this litigation phase with respect to Municipal planning to secure our rights your continued financial support is as important as ever. Please make your contributions to: The **Mtunzini Conservancy** at any branch of **First National Bank** or via the internet to: **First National Bank, Sort Code: 220130, Account number: 62093027475.**

Please use your business name or surname and initials as a reference and fax to ++ 27 86 512 6476 or E Mail to [bwkewley@telkomsa.net](mailto:bwkewley@telkomsa.net) the following information: 1) Proof of payment, 2) your full name, 3) postal address, 4) E Mail address and your Telephone number. For donations from outside South Africa, the details for the bank and bank account are as follows: -**First National Bank, Empangeni Branch, P O Box 13, Empangeni, 3880, KwaZulu Natal, South Africa, Sort Code : 220130; Account number : 62093027475, SWIFT Code : FIRNZAJJ659.** If you have any problems, you can contact the **Operations Manager at First National Bank, Empangeni : Mrs Reeva Cornelius, Telephone+27(0)357726763, Fax number+27(0)357922591**

The **Mtunzini Conservancy** (Reg. No. 2007/006455/08) is a Section 21 company. The Mtunzini Conservancy has Section 18A tax status and can issue tax certificates for donations made. Our auditors are **Hills Howard & Associates (Pty) Ltd.** PO Box 585 Empangeni 3880. Tel.+27 35 772 6611.

Thank you for supporting SOS Mtunzini.

Yours faithfully



Barbara Chedzey

Chairperson Mtunzini Conservancy

### SOS Committee members

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