



# Centre for Environmental Rights

## Advancing Environmental Rights in South Africa

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Your ref: B VAN DEN BERG  
Our ref: CH/SP/TG  
6 April 2017

### URGENT

Dear Sir/Madam

#### **ESCARPMENT ENVIRONMENTAL PROTECTION GROUP AND ANOTHER / THE MINISTER OF MINERAL RESOURCES AND OTHERS (CASE NO: 99593/15)**

1. It has come to our attention that during the week of 27 March 2017 your client commenced mining-related activities on portions 6 and/or 23 of the farm Groenvlei 353 JT and/or portion 12 of the farm Lakenvlei 355 JT in the Magisterial District of Belfast in Mpumalanga Province. Our information is that the mining-related activities constitute vegetation, including tree, clearing and the utilisation of an access road, and that such activities are continuing to date. We attach two photographs taken on 30 March 2017 depicting same.
2. Our clients, who are registered interested and affected parties in respect of the proposed mine, are greatly concerned and alarmed by your client's sudden commencement of mining-related activities and place on record that they have not received any notification of commencement from your client. Same is particularly egregious in the light of our clients' recent requests, in our letters dated 13 March 2017 and 24 March 2017, that your client give our clients notice before commencing any mining or preparations for mining. We note that, in your letter dated 17 March 2017, your client refused to give our clients 60 (sixty) days' written notice before commencing with any mining or preparations for mining.
3. In said letter your client also refused to provide information, as requested by our clients in our 13 March 2017 letter, regarding the statuses of your client's Environmental Management Programme (EMPR), the execution of its mining right, its environmental authorisation (EA), and the zoning (or rezoning) of the relevant properties as well as related planning approvals. Our information regarding the regulatory approvals required for your client to lawfully conduct mining or preparations for mining is as follows:

#### Water-use licence (WUL) in terms of the National Water Act, 36 of 1998 (NWA)

4. Each of our clients has submitted an appeal in terms of section 148(1) of the NWA with the Water Tribunal against the decision of the Department of Water and Sanitation (DWS) to issue a WUL to your client. These appeals are pending with no decisions having been reached at this time. The submission of the appeals automatically

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suspended the WUL pending the outcome of the appeals in terms of section 148(2)(b) of the NWA. Accordingly, your client does not currently have an operative WUL and any water uses – which were authorised by the WUL – undertaken by your client are unlawful in the present circumstances.

Environmental authorisation for applicable listed activities in terms of the National Environmental Management Act, 107 of 1998 (NEMA)

5. Your client is required to obtain environmental authorisation for applicable listed activities in terms of NEMA. To the extent that your client has not yet applied for and/or obtained environmental authorisation, the following listed activity, listed in the NEMA Listing Notice 2 promulgated on 4 December 2014<sup>1</sup>, is applicable to your client's proposed mining activities, as well as its proposed *and current* preparations for mining:

*“Any activity including the operation of that activity which requires a mining right as contemplated in section 22 of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), including associated infrastructure, structures and earthworks, directly related to the extraction of a mineral resource, including activities for which an exemption has been issued in terms of section 106 of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002).”*

6. Our information is that your client does not presently have environmental authorisation in terms of NEMA. Accordingly, the preparations for mining currently being undertaken by your client are unlawful in terms of NEMA. In this regard, we refer to section 24F(1)(a) of NEMA which provides that “[n]otwithstanding any other Act, no person may commence an activity listed ... in terms of ... [NEMA] unless the competent authority or the Minister or Minerals and Energy, as the case may be, has granted an environmental authorisation for the activity”. It is an offence to commence an activity in contravention of section 24F(1) of NEMA.<sup>2</sup>

Land-use management approvals

7. We attach zoning certificates dated July 2013 reflecting that portion 6 of the farm Groenvlei 353 JT and portion 12 of the farm Lakenvlei 355 JT are zoned for agriculture. It is our reasonable belief that portion 23 of the farm Groenvlei 353 JT is likewise zoned for agriculture. Our client is registered with the Emakhazeni Local Municipality as an interested and affected party in respect of any rezoning of the properties intended to be mined by your client and has not received any notice in this respect, accordingly it is our reasonable belief that the properties are presently zoned for agriculture.
8. In terms of the Emakhazeni Local Municipality Land Use Scheme, 2010 (ELUS) mining is a prohibited land-use on land that is zoned for agriculture.<sup>3</sup> In terms of the Town-Planning and Townships Ordinance, 15 of 1986 the use of land in contravention of the provisions of a town-planning (or land-use) scheme is a criminal offence.<sup>4</sup>

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<sup>1</sup> GG No. 38282, GN No. R. 984

<sup>2</sup> Section 49A(1)(a) of NEMA

<sup>3</sup> Paragraph 6.3 read with paragraph 6.1.4 of the ELUS

<sup>4</sup> Section 42 read with section 133 of the Town-Planning and Townships Ordinance

9. Furthermore, to the extent that your client has applied for and/or obtained (or is yet to apply for or obtain) the amendment of the ELUS to secure the rezoning of the properties to mining, in terms of section 3(g) of the Subdivision of Agricultural Land Act, 70 of 1970 (SALA) and paragraph 9.2.3 of the ELUS, the written permission of the Minister of Agriculture and/or the National Department of Agriculture was/is required for your client to give public notice of any such scheme amendment/rezoning application. It is unclear whether such permission has been obtained.
10. We also record that the properties intended to be mined by your client are located in an area identified in the Spatial Development Framework for the Emakhazeni Local Municipality, 2014 (Emakhazeni SDF) as well as the Spatial Development Framework for the Nkangala District Municipality, 2015 (Nkangala SDF) as an ecological corridor. The Emakhazeni SDF states that it is “... *important... that no mining and/or prospecting licenses should be granted in this precinct as it will have an adverse impact on the tourism and conservation character of the area.*”<sup>5</sup> The Nkangala SDF states that the mining right applications in this area are viewed as “... *a major concern as these intrude into the tourism triangle of [the Nkangala District Municipality].*”<sup>6</sup> One of the implementation measures proposed in the Nkangala SDF is to ensure that ecological corridors are not degraded by, *inter alia*, mining, and rather to allow land in these areas to be used for tourism-related activities, for the benefit of the local and regional economy.<sup>7</sup>
11. In order to lawfully mine on the intended properties, it is accordingly necessary for your client to apply to the Emakhazeni Local Municipality and the Nkangala District Municipality for the amendment of the Emakhazeni SDF and the Nkangala SDF, respectively. To our knowledge, the necessary amendments have not been effected by the Emakhazeni and Nkangala Municipalities.

#### Our clients’ demands

12. Your client’s ostensibly unlawful commencement of mining-related activities is having a negative environmental impact, as described in paragraphs 65 to 97 of the founding affidavit (pp. 23 to 35 of the record), and is prejudicing our clients’ application for judicial review of the grant of the coal mining right to your client and the failure of the Minister of Mineral Resources to decide our clients’ internal appeals against such grant.
13. In the light of the above we are instructed by our clients to demand, which we hereby do, that you make the following documents available to our clients, as professed proof of the disputed lawfulness of the mining-related activities presently being conducted by your client, alternatively undertake to and factually cease all such activities, no later than **13 April 2017**, failing which we will launch interdict proceedings against your client’s ostensibly unlawful commencement of mining-related activities and seek a punitive costs order against your client:
  - 13.1. an approved EMPR;
  - 13.2. an environmental authorisation for applicable listed activities in terms of NEMA;

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<sup>5</sup> Page 86 of the Emakhazeni SDF

<sup>6</sup> Page 62 of the Nkangala SDF

<sup>7</sup> Page 22 of Annexure A to the Nkangala SDF

- 13.3. zoning certificates reflecting that the relevant properties are zoned for mining;
- 13.4. to the extent applicable, the written permission of the Minister of Agriculture and/or the National Department of Agriculture in terms of the SALA and the ELUS for your client to give public notice of any scheme amendment/rezoning application in respect of the relevant properties; and
- 13.5. successful applications to the Emakhazeni Local Municipality and the Nkangala District Municipality for the amendment of the Emakhazeni SDF and the Nkangala SDF, respectively, to authorise the disputed coal mining.

14. Our clients' rights are strictly reserved.

Yours faithfully

**CENTRE FOR ENVIRONMENTAL RIGHTS**

A handwritten signature in black ink, appearing to read 'Suzanne Powell', enclosed within a hand-drawn circle.

per:

**Suzanne Powell**

**Attorney**

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