

BHP BILLITON/OPTIMUM COAL MINE (PTY) LTD SCHOONOORD

Importance:	<p>This case is illustrative of three systemic issues relating to prospecting and mining applications, namely alleged insufficient public participation and consultation (with the landowners in this case having had no notification of the application for conversion of old order rights whatsoever), deficiencies in the Environmental Management Programme (EMP) as regards the assessment of alternatives and the identification of cumulative impacts; and allegations of illegal mining. The case is otherwise useful for testing the extent to which the rules relating to the granting of new order prospecting and mining rights also apply to the conversion of old order rights. The opinion produced by Advocate Barnard (see paper trail) is useful in outlining how the objects of the MPRDA are made applicable to old order rights.</p>
Alleged Facts:	<p>The Optimum Colliery is located within the jurisdiction of the Steve Tshwete local municipality, Mpumalanga in the Witbank coalfield region. As of August 2007 it was wholly owned and operated by BHP Billiton Energy Coal South Africa Limited (BECSA). The colliery produces up to 6 MTPA of export coal and 6.5 MTPA of Eskom coal for purposes of powering the Hendrina power station. Operations at the Optimum Complex were covered by four separate mining authorizations qualifying as ‘old order rights’ in terms of the Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA). The complex was, however, operated as a single, consolidated operation. On 19 May 2008 the Department of Mineral Resources (DMR) granted a converted mining right to BHP Billiton in respect of the Optimum Colliery (the right being notarially executed on 5 June 2008). By the time of the lodging of the appeal referred to below, however, it appears that mining was being conducted by Optimum Coal Mine (Pty) Ltd (the relationship between BHP Billiton and Optimum Coal Mine (Pty) Ltd is not clear).</p> <p>The properties falling within the Optimum Complex included portions 1, 3, 4, 5, 8, 9, 10, 13, 15, 16, 17, 20 and 23 of the farm Schoonoord 164 IS of which some portions were owned by Jacobus Oosthuysen and others by the Jaco Oosthuysen Trust. It appears that an appeal in terms of s 96 of the MPRDA against the conversion of the old order mining rights was lodged by these two parties during September 2010, with the appellants alleging that they only became aware of the decision on 27 August 2010. On 14 September 2010, Optimum Coal Mine obtained an order of court from the North Gauteng High Court compelling J Oosthuysen in his personal capacity and as trustee of the Jaco Oosthuysen Trust to allow officials and employees of Optimum Coal access to the afore-mentioned properties, subject to compliance with certain conditions.</p>
Forum:	Administrative appeal to the D-G/Minister of the Department of Minerals in terms of s 96 of the MPRDA.
Issues for decision:	<p>The case raises the following issues:</p> <ul style="list-style-type: none"> • Procedural flaws in the public participation/consultation required for the conversion of an old order mining right. Despite being landowners whose farming operations would be extensively impacted by the conversion, it appears that the appellants received no notification whatsoever of the submission of the application for conversion. The lack

	<p>of any opportunity for public participation applied in respect of the development of the Social and Labour Plan as well as the Environmental Management Programme (EMP).</p> <ul style="list-style-type: none"> • Gaps and incomplete information in the EMP. The appellants alleged that the EMP failed to address the social, economic and environmental aspects of the mining operation properly. In particular, it failed to assess the mining option against alternative land uses in the area, did not consider the ‘no go’ option and failed to adequately consider cumulative impacts. • Illegal mining. The appellants further alleged that the mining company was conducting several mining activities that had not been approved in the EMP.
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Paper Trail:

Document	Author /Originator	Date
Social and Labour Plan – Optimum Colliery	BHP Billiton	August 2007
Converted mining right in favour of BHP Billiton	DMR	19 May 2008
Opinion relating to challenging the conversion of an old order right	Duard Barnard	10 September 2010
Court order relating to access to properties	North Gauteng High Court	14 September 2010