

## TROLLOPE MINING SERVICES - ELANDSKLOOF

<b>Importance:</b>	<p>This case study provides excellent material to illustrate three areas of major concern: (1) lack of procedural fairness in the consultation process and access to information; (2) inadequacy of the environmental and socio-economic impact study conducted by the mining consultant; (3) the (then) Department of Minerals and Energy's failure to pick up on the flaws both in the procedure and substance of the Environmental Management Plan (EMP).</p>
<b>Alleged Facts:</b>	<p>This matter related to the grant of a prospecting right for coal, in favour of Trollope Mining Services 2000 (Pty) Ltd, in respect of all portions of the farm Elandskloof 321 JT in the magisterial district of Belfast. The Department of Minerals and Energy (DME) approved the Environmental Management Plan (EMP) on 19 October 2006 and granted the prospecting right on 13 April 2007 (DME reference no. <i>MP 30/5/1/1/2/1277 PR</i>). The mining consultant appointed by Trollope Mining Services was Mr Gerhard Visagie (from Geovicon CC).</p> <p>A number of natural and judicial persons held property rights to the farm Elandskloof. The prospecting application was accepted by the DME on 18 August 2006. Geovicon CC first endeavored to contact the landowners between on 13 - 16 September 2006 (i.e. 3 to 0 days before the expiry of the period for consultation relating to a prospecting right, as set out in s 16(4) of the MPRDA) by sending a letter and a copy of the Prospecting and Work Programme to the landowners by registered mail. In one instance, the documentation was only dispatched on 16 October 2006.</p> <p>From December 2006 the landowners requested Geovicon CC to provide them with access to information, but these requests were refused. In January 2007, the acting attorneys received instructions from two of the landowners to obtain access to information relating to the prospecting application in terms of the Promotion of Access to Information Act 2 of 2000 (PAIA). The request was partially granted, but the DME failed to indicate the reasons for not granting the request fully or the provisions of PAIA on which it relied to refuse access. The DME's response also failed to specify an internal appeal procedure available to the applicants. DME did not respond to a request from the acting attorneys to furnish this outstanding information and, moreover, by the time the appeal was granted the information to which the applicants had partially been granted access was still not made available. Another landowner applied for access to the EMP in terms of PAIA in its own capacity and was granted full access. It received a copy of the documentation on 24 April 2007 (some 6 months after the documents had been submitted to the DME).</p> <p>Prior to the granting of the prospecting right a few landowners also submitted objections to the application to Geovicon CC – these were also forwarded to the regional office of the DME, but only one was eventually included in the EMP. The fatally flawed consultation process was brought to the attention of the DME, and a request was made to organize an urgent meeting to resolve issues around the granting of the right. This request was ignored.</p> <p>The landowners first became aware of the granting of the prospecting right on 16 May 2007 or during the course of the week thereafter (i.e. more than a month <i>after</i> the prospecting right was granted) when the mining consultant</p>

	<p>attempted to meet with them to secure access to the land. The various landowners of the farm Elandskloof approached Cameron Cross Attorneys to represent them in the lodging of an appeal against the grant of the prospecting right. A request for suspension of all prospecting activities pending the outcome of the appeal was made prior to the granting of the appeal, but with no response either from Trollope Mining Services or the DME.</p>
<p><b>Forum:</b></p>	<p>Administrative appeal to the D-G/Minister of the Department of Minerals in terms of s 96 of the MPRDA.</p>
<p><b>Issues:</b></p>	<p>The appeal raises the following issues:</p> <ul style="list-style-type: none"> <li>• Failure on the part of the mining company, acting through its consultant, to properly consult with landowners, as required by s 10 of the MPRDA, read with regulation 3 of the MPRDA regulations. The notice that is required to be placed in the magistrate’s court in the magisterial district in which the right is applied for was apparently kept in a drawer in the office of the clerk of the court at the Magistrate’s Court in Belfast. As noted above, the consultant only attempted to consult with the landowners 3 to 0 days before the expiry of the consultation period. Further, not public participation meeting was ever held.</li> <li>• Failure to provide interested and affected parties with relevant information: The landowners were merely sent a copy of the Prospecting and Work Programme, with no information whatsoever of the environmental or socio-economic impacts of the proposed prospecting activities. This flew in the face of the types of information which should be made available in terms of regulation 5 of the MPRDA regulations and Form B, Annexure I to the MPRDA. Geovicon CC’s steadfast refusal to grant the landowners access to relevant information was steadfastly refused, thus severely prejudicing the landowners.</li> <li>• Infringement of the right to environment in s 24 of the Constitution on the basis that the investigative studies undertaken by the consultant were generic in nature and not site-specific, at best constituting a desk-top study. The EMP, for instance <i>inter alia</i>: <ul style="list-style-type: none"> <li>• failed to make <i>any</i> mention of a sensitive wetlands ecosystem on the farm;</li> <li>• failed to indicate how the threat of soil erosion and pollution of the watercourse would be abated, which threat arose from prospecting as close as 100m from the water resource;</li> <li>• failed to mention the impact of prospecting on the breeding sites of significant and red data species of wetland birds [this would be in clear contravention of South Africa’s international obligations under both the Ramsar Convention, the Convention on Migratory Species and the African-European Waterbirds Agreement];</li> <li>• failed to take into account the concerns expressed by the Mpumalanga Parks and Tourism Board regarding the significance of the site from the perspective of terrestrial biodiversity;</li> <li>• failed to mention at least 5 plant species that were rare, near threatened or vulnerable on the far and to affirm the presence of indigenous fauna on game lodges in the area as well as fauna listed as</li> </ul> </li> </ul>

	<p>Red Data species;</p> <ul style="list-style-type: none"> <li>• failed to assess and record grave and historical sites on the farm;</li> <li>• failed to adequately specify the source of water from which the mining company would obtain the 1 000 to 10 000 litres of water per day required for their operations. In this regard, consent to use the existing borehole on the property had also not been obtained from the landowners;</li> <li>• provided no information whatsoever on the impact of prospecting activities on the surrounding rivers, dams, surface water and groundwater;</li> <li>• failed to indicate which roads would be used as access roads or how the mining company would maintain and rehabilitate these;</li> <li>• failed to indicate how the operations would benefit the local communities;</li> <li>• failed to attach a copy of the bank guarantee to the EMP for the financial provision for rehabilitation of R47 580.</li> </ul> <p>The landowners further alleged that the mining company, the consultant and the officials of the DME were deliberately uncooperative and indeed obstructive in their engagement regarding this matter.</p>
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**Paper Trail:**

<b>Document</b>	<b>Author /Originator</b>	<b>Date</b>
Acceptance of prospecting right application	DME	18 August 2006
Prospecting right	DME	13 April 2007
Appeal against granting of prospecting right	Cameron Cross Attorneys	15 June 2007
Letter requesting response relating to suspension of administrative decision and provision of certain documentation	Cameron Cross Attorneys	27 September 2007
Acknowledgement of internal appeal against grant of prospecting right	DME	5 October 2007