

XSTRATA – VERKEERDEPAN EXTENSION

Importance:	<p>This case illustrates a number of the common themes arising from the case study review. The most salient aspect of the case probably relates to the indisputable sensitivity of the area as regards the presence of wetlands and the fact that the Department of Mineral Resources (DMR) approved the mining right and Environmental Management Programme notwithstanding this fact and clear objections from the Mpumalanga Tourism and Parks Authority. This raises issues around the manner in which the DMR is applying statutory criteria for the granting of mining rights as well as issues of co-operative government.</p>
Alleged Facts:	<p>This case relates to the granting of a mining right and approval of the EMP in favour of Xstrata South Africa (Pty) Ltd in respect of portions of the farm Verkeerdepán 50IT; Witrand 52IT; and Jaglust 47IT located in the magisterial district of Carolina, Mpumalanga Province. The mining right was granted some time during 2010 while the Environmental Management Programme (EMP) was approved by the DMR on 28 October 2010.</p> <p>The EMP completed for the study revealed that wetlands occupy 51% of the area of 1385 ha. Hillslope seepage wetlands occupy 618ha, pans occupy 27 ha and valley bottom wetlands occupy 55 ha of the site.</p> <p>Two public meetings relating to this project were held. At the second of these, it was requested that the studies for the project (particularly the water-related studies) be provided to I&APs for further comment. The consultants indicated that a scoping report for the project had been compiled according to both the Mineral and Petroleum Resources Development Act 22 of 2008 and the National Environmental Management Act 107 of 1998 and submitted to both the DMR and the Mpumalanga Department of Agriculture and Land Affairs (MDALA). They indicated that this document had been made available for public comment. In agreement with the authorities it was decided that an EMP would be submitted to the DMR in terms of the MPRDA, while an EIA would be submitted to the MDALA in terms of the NEMA. The MPRDA does not require that EIA/EMP documents be made available to the public prior to the submission, but that the EIA in terms of the NEMA would be made available for comment at a later stage. The final EMP submitted to the DMR was therefore not made available to the I&APs due to the time constraints imposed by the MPRDA.</p> <p>The properties in question were also under land claim investigations, but the land claimants were not consulted.</p> <p>The MLDPG objected to the mining right but were never notified of the RMDEC meeting at which their objection was considered.</p> <p>An appeal against the granting of the mining right was lodged by the Mpumalanga Lakes District Protection Group on 10 January 2011. At the time of lodging the appeal the MLDPG had still not obtained a copy of the mining right.</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>This case raises the following issues:</p> <ul style="list-style-type: none"> • Failure to provide adequate notice of application and to meet proper requirements for consultation. The consultants submitted the final

	<p>EMP to the DMR without allowing for public comment on this document, justifying their position on the basis of the fact that the I&APs would have a chance to comment on the EIA submitted in terms of NEMA to the MDALA.</p> <ul style="list-style-type: none"> • Work and other inputs from State departments ignored. The MTPA strongly and clearly objected to the granting of a mining right in respect of these farms, but the right was granted nevertheless. • Proposed mining activities would cause environmental damage in the area at variance with the maintenance of the area’s environmental integrity. The EMP in fact indicated that the damage done to the wetlands on the farm would be irreparable. The EMP also failed to address the pollution from the final voids created by the project. • Proposed mining activities would not promote sustainable and justifiable economic development.
--	---

Paper Trail:

Document	Author /Originator	Date
Objection to granting of mining right in favour of Xstrata	MLDPG	5 January 2009
MTPA objections relating to the Verkeerdepan Extension, Tselentis Colliery	MPTA	5 March 2009
Document containing email correspondence between Koos Pretorius and Lauren Flinders (Clear Stream Consultants)	Koos Pretorius	6 December 2010
MLDPG appeal against grant of mining right	MLDPG	10 January 2011