



Centre for Environmental Rights Annexure B

Advancing Environmental Rights in South Africa

Francois Joubert
GFJ Attorneys

By email: joubert@gfjattorneys.co.za

Our ref: CH/SP
Your ref: Francois Joubert/Ashleigh
28 November 2016

Dear Mr Joubert

PROPOSED YZERMYN UNDERGROUND COAL MINE / COMMENCEMENT AND UNDERTAKING OF ACTIVITIES

1. As you are aware, there have been extensive delays in the review application arising largely from the failure of the Minister of Mineral Resources (*"the Minerals Minister"*) to file the record of decision in respect of the powers which he exercised in terms of section 103(4)(b) of the Mineral and Petroleum Resources Development Act, 28 of 2002 (*"the MPRDA"*)¹ (*"the Minerals Minister's decision"*).
2. At the time that the review was launched we addressed a letter dated 8 September 2015 on behalf of our clients to the directors of Atha-Africa Ventures (Pty) Ltd (*"AAV"*) in which we sought an undertaking from AAV that it would give our clients 60 days written notice before commencing with any activities pertaining to the Yzermyn Underground Coal Mine in pursuance of its mining right. For ease of reference we annex a copy of that letter marked *"A"*.
3. As appears from the letter, at that stage, your client's applications for environmental authorisation and for a water use licence were still pending. Furthermore, the land over which the mining right was granted was zoned for agriculture and conservation.
4. On 17 September 2015 AAV responded to that letter. A copy of the response is annexed marked *"B"*. In their response AAV undertook to inform all registered interested and affected parties of any final decision made in respect of its mining right application, environmental impact assessment application and water use licence application within the respective statutory stipulated timeframes. There have been a number of relevant developments since then in respect of all the regulatory approvals which must be in place for AAV to commence activity on the site.
5. On 7 June 2016 the Chief Director: Environmental Affairs, Mpumalanga granted environmental authorisation to AAV in respect of several activities listed in the 2010 Listing Notices promulgated under

¹ All references to the MPRDA below are to the MPRDA prior to the amendments thereto giving effect to the One Environmental System.

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the National Environmental Management Act, 107 of 1998 (“NEMA”)(“EA”). Our clients lodged an appeal against the EA, your client submitted a responding statement and, on 18 November 2016, our clients submitted an answering statement. The environmental authorisation is suspended pending the outcome of the appeal.

6. On 28 June 2016 the Department of Mineral Resources approved AAV’s Environmental Management Programme in terms of section 39(4) of the MPRDA. On 13 October 2016 our clients lodged an appeal against the approval of the Environmental Management Programme. In terms of section 23(5) of the MPRDA, the mining right comes into effect on the date on which the Environmental Management Programme is approved. Our clients’ appeal does not suspend the approval of the Environmental Management Programme.
7. On 7 July 2016 the Department of Water and Sanitation (“DWS”) granted AAV’s application for a water use licence. Our clients requested the DWS to furnish them with the written reasons for the decision, which the DWS complied with on 17 November 2016. Our clients have instructed us to lodge an appeal against the grant of the water use licence which we are in the process of compiling. The effect of such an appeal would be to suspend the water use licence pending the outcome of the appeal.
8. In terms of the EA, prior to construction commencing, written permission must be obtained from the Minister of Environmental Affairs and the Minerals Minister to undertake mining activities within the Mabola Protected Environment in terms of section 48 of the National Environmental Management: Protected Areas Act, 57 of 2003 (“NEMPAA”)(“the NEMPAA approvals”).
9. One of the conditions imposed pursuant to the Minerals Minister’s decision is that AAV may not commence with mining if it has not complied with all other related legislation (in addition to obtaining an EA and a water use licence).
10. In the circumstances, our clients have instructed us to make a number of requests to AAV which we do below.
11. Firstly, has AAV made an application for the NEMPAA approvals? If so, has an opportunity been given for Interested and Affected persons such as our clients and all the other role-players that participated in the establishment of the Mabola Protected Environment to make representations in respect of the application? Our clients have to date not received any communication granting them such an opportunity. We reserve our clients’ rights should such an opportunity not have been (or be) afforded to them. Has AAV obtained the NEMPAA approval from (1) the Minister of Environmental Affairs and (2) the Minerals Minister? If so, kindly furnish us with a copy/copies thereof. If not, kindly confirm that AAV will notify our clients in writing upon receipt of each decision in terms of NEMPAA. This is particularly important because NEMPAA does not specify a mechanism and timeframe for the notification of interested and affected parties when such a decision is taken.
12. Secondly, has AAV applied for all the relevant planning approvals to commence activity on the site, including but not limited to, such rezoning approvals as it may require? If so, has an opportunity been

given for Interested and Affected persons such as our clients and all the other role-players that participated in the establishment of the Mabola Protected Environment to make representations in respect of the application(s)? We reserve our clients' rights should such an opportunity not have been (or be) afforded to them. Has AAV already obtained all the relevant planning approvals? If so, kindly furnish us with a copy(ies) thereof. If not, kindly confirm that AAV will notify our clients in writing upon receipt of the last of all such relevant planning approvals.

13. Thirdly, in light of all of the above, the contested nature of your client's proposed mining activities and the environmental significance and sensitivity of the site, our clients request a full indication in writing of your client's intentions and timeframes in respect of the commencement and undertaking of activities on the site, including but not limited to addressing the following:

13.1 Is AAV intending to undertake any activity on site whilst there are any internal statutory appeals and court proceedings pending?

13.2 If the answer to 13.1 above is yes, AAV is required to furnish full details thereof i.e. a programme (with timelines) of each of the activities to be undertaken pursuant to the granting of each of the mining right, the water use licence, the EA and the NEMPAA approvals.

13.3 Has AAV applied for and/or obtained a permit from the Mpumalanga Tourism and Parks Agency for the removal or destruction of indigenous protected and endangered plant and animal species? If so, kindly furnish us with copies of such application and/or permit.

13.4 If the EA appeal is dismissed and the NEMPAA approvals are obtained in the period between now and the end of January 2017, does AAV intend to commence and undertake construction activities in that period? If so, please provide full details.

13.5 Is AAV prepared to furnish our clients with an undertaking that it will give our clients 30 days written notification of commencement of any activities on site?

14. Kindly respond to all the issues raised in this letter by no later than close of business on **Friday 2 December 2016**. All our clients' rights are reserved to approach a court for urgent interdictory relief should it become necessary to do so.

15. We await to hear from you.

Yours sincerely

CENTRE FOR ENVIRONMENTAL RIGHTS

Per:

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