

**ESCARPMENT ENVIRONMENTAL PROTECTION GROUP & WONDERFONTEIN
ENVIRONMENTAL COMMITTEE v DEPARTMENT OF WATER AFFAIRS & EXARRO COAL (PTY)
LTD, 2011 (UNREPORTED, WT 03/08/2010)**

Importance	The comments set out in the case of <i>Gideon Anderson t/a Zonnebloem Boerdery v Department of Water and Environmental Affairs & another</i> 2006 (Unreported, WT 24/02/2010) regarding the approach of the Water Tribunal to the issue of locus standi apply similarly to this case.
Parties	First Appellant: Escarpment Environmental Protection Group (EEPOG) Second Appellant: Wonderfontein Environmental Committee First Respondent: Department of Water and Environmental Affairs Second Respondent: Exarro Coal (Pty) Ltd
Facts	Exarro Coal (Pty) Ltd applied to the Department of Water Affairs for a water use licence in 2008 after it had secured a mining right in Belfast from the Department of Minerals, to which the appellants had also objected. The appellants engaged with Exarro in a series of meetings over the application for a water use licence until they lodged a written objection to the licence with the Department of Water Affairs on 2 September 2008. The Department had not, however, at any stage invited written comments from interested parties or required the applicant to call for such comments as envisaged by s 41(4) of the National Water Act 36 of 1998 (NWA). A water use licence was subsequently issued to Exarro Coal (Pty) Ltd on 25 January 2010. The appellants, aggrieved by the granting of the water use licence subsequently lodged an appeal with the Water Tribunal.
Relief sought	The appellants appealed to the Water Tribunal against the granting of a water use licence to Exarro Coal (Pty) Ltd, calling for it to be set aside.
Legal Issues & Judgment	The only legal question dealt with by the Tribunal related to the question of the appellants' <i>locus standi</i> to bring the action. The Tribunal's finding that the first and second appellants lacked <i>locus standi</i> centred on arguments dealing with the correct approach to interpretation to s 148(1)(f) of the NWA. The appellants conceded in this case that a strict, literal interpretation of s 148(1)(f) results in the appellants not having the requisite standing before the Tribunal. They further conceded that a literal interpretation does not limit the appellants' right of recourse to courts of law and that a liberal interpretation may lead to the opening of a 'floodgate' 'which could not reasonably possibly have been intended by the legislature when it enacted s 148(1)(f)'. The Tribunal held that a liberal interpretation of s 148(1)(f) cannot be supported because doing so would amount to 'usurping the legislative powers of the legislature' and neither the Constitution nor the Promotion of Administrative Justice Act, 2000 provide for internal appeal rights.
Outcome	The appeal was dismissed and the file closed.

Obiter	None.
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