



STATEMENT ON THE KGASWANE COUNTRY LODGE

MAGALIESBERG PROTECTED ENVIRONMENT

August, 2010 Update



In July 2008, Kevin Gill and Vincent Carruthers, both members of the Magaliesberg Protection Association (MPA) who were checking the conservation status of the Magaliesberg from a Bateleurs flight along the range, noticed a massive new development that was taking place inside the Magaliesberg Protected Environment (MPE) at Olifantsnek. A subsequent communication with officials from the North West Department of Agriculture, Conservation and Environment revealed that they had only recently become aware of this illegal development and that they were in the process of prosecuting the developer. A visit to the development revealed that it comprised five large two- and three-storey buildings which were already nearing completion.

The MPA sent letters to the MEC of the Department, as well as to the Rustenburg municipality, alerting them to this development and expressing its great concern about this violation of the Protected Environment. In these letters the MPA pointed out that, apart from the threat that this development posed to the integrity of the MPE, it also threatened the initiative for the Greater Magaliesberg region to be declared a Biosphere under the UNESCO charter, which the MPA was pursuing in conjunction with the North West and Gauteng Departments. Moreover, if this development was not stopped, it could open the floodgates for further incompatible developments within the MPE.

Some time later the MPA learnt that the developer was applying for rectification of his illegal development, via Section 24 G of the National Environmental Management Act, and the MPA sent a letter to the environmental consultant who was preparing the application, objecting strongly to it on the same grounds as used in the previous letters. On 9th March, 2009 the MPA was informed that the Department had approved the application, and that the Developer was permitted to carry on with his development, a ± 50 bedroom upmarket hotel called Kgaswane Country Lodge.

The EMF (Environmental Management Framework) for the Magaliesberg Protected Environment classifies the area where the Kgaswane Country Lodge is situated as “highly sensitive”, and designates hotels, lodges and conference centres as “incompatible activities” in such an area. The EMF is published by the same Department as approved the development, and the EMF had been completed and in the public domain for more than a year prior to the Department’s decision to approve the Kgaswane Lodge application. However, it was only formally gazetted a few days after the decision to

approve the application. This delay allowed the Department to claim to be able to ignore the provisions and recommendations of its own EMF.

The MPA decided to object officially to this approval, and instructed an environmental law firm to assist it in this matter. The association also arranged for publicity on the issue through articles which appeared in the Rustenburg Herald and in the Sunday Independent. Funding towards the legal objection was donated by the Johannesburg and Magaliesberg Sections of the MCSA, the Johannesburg Hiking Club and the Buffelspoort Valley Conservancy. The MPA also used some of its own funds, plus money that was left over from a previous (successful) legal challenge in which the association had been engaged. After many delays, most of them caused by the Department's tardiness in supplying the necessary documentation to the MPA, the appeal to reverse the Department's decision was formally lodged with the current MEC on 1 June, 2009. After further delays, the MEC scheduled a site meeting for 14 September, which he, his assistant, the developer (Mr Jan Ntemane) and a number of MPA committee members attended. Both sides presented their (opposing) arguments to the MEC and an inspection was made of the Country Lodge. The MEC promised to come back shortly to both parties with his decision. After further delays, the MEC informed the MPA that he wanted a further discussion between its Chairman, Paul Fatti, the developer and himself, which meeting eventually took place in Mafikeng on 11 December, 2009. A long discussion took place, in which Paul spelt out the severe negative consequences that the approval of the development would have on the protection status of the Magaliesberg and on the viability of the Biosphere, the developer described how the guests at his up-market establishment would be able to appreciate the natural environment of the Magaliesberg, and the MEC expressed his reluctance to refuse a development into which so much money had already been invested and which would provide employment for local inhabitants.

On 5 February, 2010, the MPA received a fax from the Department, stating that, after considering the merits of the appeal by the MPA, the MEC had decided to dismiss it and confirm the belated Section 24G approval of 9 March, 2009 for the Kgaswane Country Lodge.

On 12 March 2010, at a committee meeting of the MPA to which interested parties and representatives of the organisations which helped fund the appeal were invited, a decision was taken to seek advice from a senior advocate on the merits and prospects of taking the MEC's decision to court on review. Peter Lazarus, member of the MCSA and advocate specialising on environmental matters, and Senior Counsel Paul Kennedy subsequently provided the MPA with a memo in which they provisionally conclude that there are reasonable prospects of the review succeeding (their opinion is provisional in that the record containing the documents upon which the MEC made his decision will only be revealed once review proceedings are initiated). While they do not hold out much hope that success would lead to an order for the lodge to be demolished and the land rehabilitated, this is what should be demanded in the review. In their view, success of the review will more likely result in the MEC being compelled to reconsider the development in the context of the environmental status of the area and (hopefully) imposing certain restrictions on the development which will mitigate its impact on the Magaliesberg. The most important outcome would be to discourage the Department from allowing similar developments to take place in the MPE in future.

On the basis of this information and in light of the risks that the Department's granting of environmental authorisation to the Kgaswane Country Lodge poses to the integrity of the Magaliesberg Protected Environment, the MPA committee decided in early May to take the MEC's decision on review and instructed the advocates to prepare the documents for this review. After a lot of hard work from all sides, the Notice of Motion and Founding Affidavit were delivered to the Mafikeng High Court on 4 August, 2010 (180 days after the MPA received notice from the MEC dismissing its appeal) and the lengthy process of the Review is now underway.

There are two parts to the Notice of Motion, the first being an urgent application for an interdict restraining Kgaswane Country Lodge from continuing with construction activities (it has recently come to light that construction is far from complete), and the second being an application for the decision by the MEC, dismissing the MPA's appeal, to be reviewed and set aside, and for his Department's

decision to grant environmental authorisation for the Lodge also to be reviewed and set aside. Following this, the owners are to be directed to demolish Kgaswane Country Lodge and to rehabilitate the affected environment, as far as reasonably practicable. The 72-page Founding Affidavit provides a brief history of the conservation of the Magaliesberg as well as of the MPA since its establishment in 1975, and its involvement in objecting to the Lodge ever since it first discovered the development (as has been described above). This is followed by detailed arguments, many of them based on the fact that the Lodge contravenes many of the stipulations of both the Rustenburg Spatial Development framework and the EMF for the Magaliesberg Protected Environment. The Founding Affidavit contains more than 200 pages of annexures, including photographs of the development taken by Stephen Bailey from his microlight plane.

While the advocates consider it unlikely that the MPA would be ordered to pay the costs of a review application, even if it is unsuccessful, the legal costs are likely to be high. Taking into account the advocates' generous offer to reduce their fees by 50% and the discount that Cameron Cross Inc (the environmental lawyers who have been assisting us in this matter) have offered us, we estimate that the total cost of taking the MEC's decision to court on review will be in the region of R300 000.

In light of a generous donation that the MPA has received from the estate of Hermann Vogl, it should be able to put at least R100 000 towards these costs, leaving a further R200 000 to be raised. The MPA has launched a fund-raising campaign, starting with the membership of the four organisations which helped fund the appeal (the Johannesburg and Magaliesberg Sections of the MCSA, the Johannesburg Hiking Club and the Buffelspoort Valley Conservancy) and to date the support received has been very encouraging, including generous donations from several MCSA Sections and other organisations. The Johannesburg and Magaliesberg Sections of the MCSA have each guaranteed up to R100 000 towards the costs, which meant that the MPA was able to go ahead with the action without fear of running out of funds (clearly, the Sections are hoping that most of the guaranteed amounts will not be called upon). The MPA has started a publicity campaign, initially in the newspapers, but is planning to step this up in all the media. While the main purpose of the publicity is to advertise the protected status of the Magaliesberg and discourage developers from trying their luck (as did Kgaswane Country Lodge), it is hoped that it will increase interest in the Magaliesberg as a priceless natural resource and garner support for the Magaliesberg Biosphere concept. It will hopefully also help to attract donations¹.

Paul Fatti
Chairman, Magaliesberg Protection Association
7 August, 2010

¹Donations should be deposited in the Cameron Cross Inc. trust account at Standard bank:

Trust account number: 410 290 351

Branch: Centurion

Branch Code: 012 645 40

Reference: MPA718

Please e-mail Tandina Charters at Cameron Cross (tandinac@cameroncross.co.za) when you have made the deposit, with a copy to the MPA Secretary, Barbara Reid (sleighb@iafrica.com).