

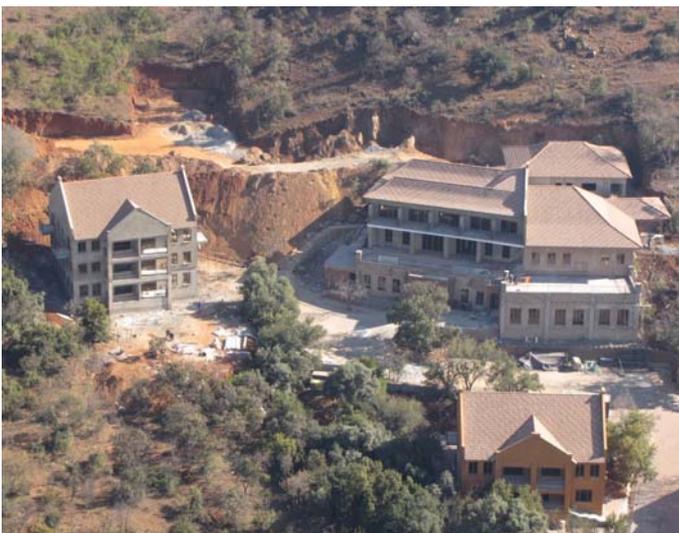
## STATEMENT ON THE KGASWANE COUNTRY LODGE

### MAGALIESBERG PROTECTED ENVIRONMENT

March, 2011 Update



After a lot of work, submitting affidavits and responding to the responses from the other side, and having had a day in the Mafikeng High Court arguing for an interdict restraining Kgaswane Country Lodge from continuing with construction activities, we are now braced for the main review hearing, which has been set down for the 5<sup>th</sup> and 6<sup>th</sup> May, 2011. This is the hearing for MPA's application for the decision by the MEC, dismissing the MPA's appeal against his previous decision to approve the Section 24G application by the developer for "rectification" of the Kgaswane Country Lodge, a ± 50 bedroom upmarket hotel which had been illegally constructed inside the Magaliesberg Protected Environment, to be reviewed and set aside.



A brief re-cap of the background to the matter is in order. In July, 2008, two members of the MPA, who were checking the conservation status of the Magaliesberg from the air, noticed a massive new development that was taking place inside the Magaliesberg Protected Environment (MPE) at Olifantsnek. The MPA immediately informed the North West Department of Agriculture, Conservation and Environment and learnt that they had only recently become aware of this illegal development and were in the process of prosecuting the developer.

Subsequently 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 although the MPA formally submitted its strong objections to this, it received notification on 9<sup>th</sup> March, 2009 that the Department had approved the application, and that the developer was permitted to carry on with his hotel development. Significantly, the EMF (Environmental Management Framework) for the Magaliesberg Protected Environment, which 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, was formally gazetted by the Department less than a week later. However, the regulations that have been in place ever since the Magaliesberg was proclaimed a Protected Natural Environment in 1994 (and going back to the original proclamation of the Magaliesberg Natural Area in 1977) also make it clear that such activities are not compatible with the protected area.

The MPA decided to object officially to this approval, and instructed an environmental law firm to assist it in this matter. The details of this process are given in the previous update. Suffice it to say that, on 5 February, 2010, eight months after it had lodged its objection, we received notification from the MEC of the Department, dismissing the MPA’s appeal.

In light of the serious risk that the decision of the Department to grant environmental authorisation to the Kgaswane Country Lodge poses to the integrity of the Magaliesberg Protected Environment, the MPA committee, with support of the Mountain Club of South Africa, the Johannesburg Hiking Club and the Buffelsfontein Valley Conservancy, decided to take the MEC’s decision on review and instructed advocate Peter Lazarus and Senior Counsel Paul Kennedy to prepare documents for this review. The MPA is already faced with another 24G application for the rectification of an illegal wedding and conference centre inside the MPE near the Hartbeespoort Dam, and it is clear that the precedent of the Department’s decision on Kgaswane Lodge will encourage developers to build illegally, and when apprehended to take the Section 24G route.

This MPA has been encouraged by the support it has received for its stand on this matter from the International Mountaineering and Climbing Federation. The Federation has sent a letter to the National Minister of Water Resources and Environmental Affairs, condemning the North West Department for not following its own Environmental Management Framework guidelines by allowing this incompatible development to continue.

The MPA is the sole applicant in the review, but there are three respondents, namely the MEC, the Head of Department and the developer. There are two parts to the MPA’s Notice of Motion for the review, the first being an urgent application for an interdict restraining Kgaswane Country Lodge from continuing with construction activities, 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.

The MPA had been authoritatively informed by an official in the Department that the development was only about 30% complete and that the Department had received a copy of the plans for the remaining 70% from the developer. However, in the Department’s response it was claimed that its official was wrong and that only 30% remained to be done. Then, when it came to the hearing for the interdict application in the Mafikeng High Court on 30<sup>th</sup> September, the Department again changed its

tune and said that the development had actually been completed, apart from finishing the swimming pool (the hole had already been excavated) and some clearing up and landscaping. In the light of this the judge ruled against the interdict application. However, given the statement that the development was virtually complete, despite the information to the contrary that the MPA had earlier received from the Department, we believe that the interdict was successful in stopping any further development (which we presume the developer had been planning to carry out).

A telling piece of information that emerged from the hearing was that, despite our advocates' assertion that a Section 24G rectification application for an illegal development of this magnitude would normally require the developer to pay a fine of at least half a million rand, Mr Jan Ntemane was only required to pay R21,000 by the Department. Another issue, pointed out in court by our Senior Counsel, was that the developer and the Department were contesting the interdict application, despite the former being the only party affected by it.

The main hearing has been set down for 5<sup>th</sup> and 6<sup>th</sup> May in the Mafikeng High Court, and it is expected to take one or at most two days (the main reason being that many of the arguments were covered in the interdict hearing and are now part of the court record). However, if a different judge is allocated, the hearing could take a little longer. Despite the Advocates charging us only 50% of their normal fees and the big discount that Cameron Cross Inc (the environmental lawyers who have been assisting us in this matter) are giving us on their fees, almost R260 000 has been spent on the matter so far. So it seems that our original estimate of R300 000 for the review was a bit low and that R400 000 will be nearer the mark.

We have been encouraged by the very generous donations that the MPA has received from a wide range of supporters, including members of the Mountain Club of South Africa and the Johannesburg Hiking Club, as well as from several concerned individuals. We have also received generous donations from the Cape Town Section of the MCSA and from the North-West Ecoforum. It will be recalled that the Johannesburg and Magaliesberg Sections of the MCSA have each guaranteed up to R100 000 towards the costs, from which we have drawn R30 000 so far, so with the R25 000 that we still have in the coffers we should be able to cover our costs. However, since these two Sections are expecting that most of the guaranteed amounts will not be called upon, we are once more calling for donations. Details of the account into which donations may be made are given below<sup>1</sup>.

Paul Fatti  
Chairman, Magaliesberg Protection Association  
14 March, 2011

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<sup>1</sup> Donations 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 (must be included): MPA718

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