By e-mail transmission to : mercyp@pixleykaseme.org.za
malansp@vodamail.co.za; malansp@vodamail.co.za; planning.wakkerstroom@gmail.co.;
planning@KZKUps.com; Shurt@cer.org.za; cwc.muller@gmail.com; aburns@wwf.org.za

PRACTICE GROUP
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30 YEARS

Our Ref : 700/299
PJ Dacomb

Your Ref: 15/4/1/2

8 January 2019

Attention : Ms M. Pethtla

Ms. M Phetla
Acting Municipal Manager
Dr. Pixley Ka Isaka Seme Local Municipality
Volksrust

Dear Ms. Pethla

YZERMYN 96 REGISTRATION DIVISION HT: PORTION 1, MPUMALANGA PROVINCE
APPLICATION FOR A CHANGE IN LAND USE
NOTICE OF APPEAL

With reference to the above and the e-mail notice received from your office dated 18 December 2018 and the attachment thereto dated 13 November 2018 concerning the outcome of the tribunal sitting regarding the aforesaid matter, we confirm that we act for the land development applicant in this matter and have been instructed to lodge an appeal to your office in terms Section 143 of the Spatial Planning and Land Use Management (SLUM) By-law for Dr. Pixley Ka Isaka Seme Local Municipality By-law, 2016 as we hereby do. We submit the following notice of appeal as also contemplated in Section 51 of the Spatial Planning and Land Use Management Act, 20132 (SPLUMA):

1. This appeal is lodged against the whole of the decision of the Joint Municipal Planning Tribunal for the aforesaid municipality as passed on 14 November 2018 and confirmed in writing (to whom it may concern) on 30 November 2018 and finally conveyed to the land development applicant under cover of an e-mail message from the Acting Municipal Manager on 18 December 2018. (Copy attached as ***Annexure 1***)

2. For the record, the aforesaid decision of the Tribunal osrensibly found that the land development applicant in this matter did not enjoy proper ***locus standi*** and, as a result the Tribunal resolved to strike / remove the land development application from the list of matters to be considered by such Tribunal. This occurred without offering the land development application (or any other party to the matter) an opportunity to appear before such Tribunal and to present argument accordingly.

3. It is therefor evident that having regard the provisions, inter alia, Section 148 of the aforesaid by-law (jurisdiction of the Appeal Authority) the relevant Appeal Authority is required to consider the appeal based on the provisions of the administrative action of the aforesaid Tribunal contemplated in the promotion of the Administrative Justice Act 2000 (PAJA) and the merits of the application (which have simply not been considered).

4. It is confirmed that this appeal does not pertain to any conditions of approval contemplated in Section 54 of the By-Law, given that the merits of the application had not been considered by the Tribunal prior to its decision with regard to the purported lack of *locus standi* of the land development applicant.

5. Having regard to the decision of the aforesaid Tribunal dated 30 November 2018 (and conveyed to the land development applicant on 18 December 2018) it is evident that such tribunal found that, with regard to Section 90 (1)(2) of the aforesaid Bylaw, the land development applicant was not authorised to act for the land owner. The following ground of appeal are aubmitted for consideration by the Appeal Authority:

   (i) The decision of the tribunal relies sorely on the provisions of Section 90 of the aforesaid By-law and particularly the provisions of Subsection 90(2) thereof, which talks to the requirement to include a power of attorney where the land development application purports to act for a different party. The provisions of Section 90 (2) do no align properly with the provisions of Section 45(1) of the Spatial Planning and Land Use Management Act, 2013 (SPLUMA). As the record correctly reflects, the land development applicant in this matter is not the registered land owner but a person (party) to whom the land concerned has been available for development (ie mining) by an Organ of State as contemplated in Section 45(1)(c) of SPLUMA. Whilst this provision is not correctly reflected in the aforesaid municipal By-law, it does not detract from right of the land development applicant (the holder of valid mining right as contemplated in the Mineral and Petroleum Resources Development Act. As issued by the Department of Mineral Resources) to submit a land development application as contemplated in the aforesaid provisions of SPLUMA.

   (ii) Against the foresaid background, it evident that the basis of the decision handed down by the Municipal Planning Tribunal (pertaining narrowly to the provisions of Section 90(2) of the By-law and ignoring the provision of Section 45(1)(c) of SPLUMA) is indeed the crux of the appeal. It is evident that, having regard to the aforesaid provisions of the national act (SPLUMA) the Municipal Planning Tribunal erred in its finding by not properly applying the provisions of the SPLUMA as it is obliged to do.

   (iii) The record reflects that the application in this matter deals fully with the aforesaid circumstances and is evident that the Tribunal failed to take such submissions into account.

   (iv) Having regard to the provisions of the Promotion of the Administration Justice Act, 2000(PAJA), it is also incumbent on the Municipal Planning Tribunal to demonstrate that it has followed administrative action that if procedurally fair. It is evident from the record and the e-mail message from the Municipal Manager dated 18 December 2018 (copy attached hereto as ***Annexure 1***) that no hearing was conducted in this matter and that the decision arrived at by the Municipal Planning Tribunal was taken in the absence of the land development applicant (and any other parties to the matter) and without the benefit of having offered such parties (including the land development applicant) an pportunity to address the Tribunal on this matter. This amounts to administrative action that is procedurally unfair and in contravention of the provisions of PAJAas aforesaid.

6. The relief sought in this appeal is as follows:

   (i) That the decision of the Joint Municipal Planning Tribunal of the Dr. Pixley Ka Isaka Seme Local Municipality dated 14 November 2018, pertaining to the subject matter herein be set aside for reasons set out above.

   (ii) That the merit of the land development application (seeking a change in the use of land with regard to the subject property described herein) be considered in the context of the original land development application and the comments received with regard thereto and that a decision be handed down by the Appeal Authority with regard to the application once the parties on record have been offered the opportunity to be heard accordingly. This notice of appeal has been served on the objectors listed in the records of the municipality in this matter (as set out in more detail at the end of this notice of appeal).

(iii) That, with reference to the provisions of Section 157 of the aforesaid By-law, the relief sought in this matter also requires an oral hearing before the Appeal Authority such that the parties on record be granted a proper opportunity to address the matter under consideration and to dispel any incorrect interpretation of the provisions of the law in question.

(iv) That the municipal Appeal Authority shall hand down a cost order against the aforesaid Joint Municipal Planning Tribunal in favour of the land development applicant, given that its incorrect interpretation of the provisions of the aforesaid legislative provisions has resulted in the land development applicant having to expend additional and wasted costs with regard to this appeal. The appellant reserves the right to further address the appeal authority with regard to such costs at the appropriate time.

7. The issues to be considered by the Appeal Authority relevant hereto are contained in the original motivating memorandum submitted by the land development applicant. In summary such issued include (but are not limited to):

(i) The land development applicant, a mining company, holds a valid mining right issued in terms of the Mineral and Petroleum Resources Development Act (MPRDA), issued by the National Department of Mineral Resources.

(ii) Against the aforesaid background it is evident that the land development applicant qualifies as such in terms of provisions of Section 45(1)(c) of SPLUMA.

(iii) The aforesaid mining right was preceded by other applications for authorisations in terms of, inter alia, the relevant environmental legislation, based on which a positive record of decision is available (forming part of the documents as originally submitted by the land development applicant).

(iv) The land development applicant is on record as having responded to the objections raised with regard to this matter and such response is on record with the municipality, confirming that in all relevant respects, the ground of objection are fivrilous, without foundation and based on incorrect assumptions by the authors of such objections.

(v) It follows that a fully motivated land development applications was submitted to the municipality and it is evident that the municipal planning tribunal has not considered the content of the application for the reasons alluded to above.

8. As far as the award of costs may be concerned, the motivation thereof is reserved and given that the procedure to be conducted by the Appeal Authority may have a marked effect on the method of calculating such costs and the submission thereof to the appeal authority for consideration, this will be addressed at the appropriate time once the final arrangements of the Appeal Authority are made known.

9. For the purposes of this appeal and any notice with regard thereto, the address particulars listed in the letterhead hereof will suffice. As far as the serving of this notice is concerned, it is confirmed that, as per ***Annexure 2***, the objectors on record have been informed accordingly.

10. Having regard to the provisions of Section 142 of the aforesaid by-law, such by-law does not include any format of a notice of appeal nor any details of the Registrar of the relevant Appeal Authority. However, having regard to the provisions Section 51 of SPLUMA, it is evident that the appeal against the decision of the Municipal Planning Tribunal must be submitted to the Municipal Manager within the prescribed 21 days of date of notification. The date of notification in this matter is clearly 18 December 2018, when the aforesaid Municipal Manager (in her acting capacity) informed the land development applicants of the decision of the Municipal Planning Tribunal. The 21 day notice period ends on Tuesday 8 January 2019, being the date of this notice.

We kindly request confirmation of receipt of this notice of appeal be confirmed by return of e-mail and that the further arrangements with regard to the appeal process be confirmed in due course. Our poer of attorney at act for the land development applicant (now as appellant) is on record with the municipality as part of the original application bundle.

Yours faithfully

PETER DACOMB
per: THE PRACTICE GROUP

D: 700299mp(PJD'19/ln)

ANNEXURE 2

OBJECTORS LIST – PARTIES NOTIFIED OF APPEAL

1.	**SP Malan**	**malansp@vodamail.co.za**
2.	**Mabola Protected Envonments Associations**	**malansp@vodamail.co.za**
3.	**KZN Urban Planning Studio**	**planning.wakkerstroom@gmail.com** **planning@KZNups.com**
4.	**Centre of Environmental Rights**	**shurt@cer.org.za**
5.	**Pikkie Uys Trust**	**cwc.muller@gmail.com**
6.	**WWF-SA Land & Biodiversity Stewardship Programme**	**aburns@wwf.org.za**