

IN THE APPEAL:

CENTRE FOR ENVIRONMENTAL RIGHTS

APPLICANT

IN RE:

MINISTER OF MINERAL RESOURCES AND ENERGY

DECISION-MAKER

DIRECTOR-GENERAL:

DEPARTMENT OF MINERAL RESOURCES AND ENERGY

DECISION-MAKER

MINERAL SANDS RESOURCES (PTY) LTD

RIGHT HOLDER

TORMIN MINERAL SANDS (PTY) LTD

RIGHT HOLDER

**CONDITIONAL APPLICATION FOR CONDONATION IN TERMS OF REGULATION
74(4) OF THE AMENDMENT MINERAL AND PETROLEUM RESOURCES
DEVELOPMENT ACT (MPRDA) REGULATIONS**

1. This is a conditional application for condonation in terms of Regulation 74(4) of the Amendment MPRDA Regulations¹ ("the Amendment Regulations").
2. **TAKE NOTICE** that the affidavit of Zahra Omar will be used in support of this application.

SIGNED AND DATED AT CAPE TOWN ON THIS 30th DAY OF OCTOBER 2020.



APPELLANT'S ATTORNEYS

Webber Wentzel Attorneys
Convention Towers,
Heerengracht Street,
Foreshore,
Cape Town

¹ As amended by GN420, GG43172 of 27 March 2020.

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LODGED AT:

DEPARTMENT OF MINERAL RESOURCES: WESTERN CAPE REGIONAL OFFICE

Atterbury House, 9th Floor
c/o Lower Burg & Riebeeck Street
CAPE TOWN

FOR ATTENTION: MR PIETER SWART

Regional Manager
Mineral Regulation: Western Cape
By email: Pieter.Swart@dmre.gov.za; buisiwe.maqazi@dmr.gov.za

TO: THE MINISTER OR THE DIRECTOR-GENERAL

Department of Mineral Resources and Energy
2nd Floor, Block 2B
Trevenna Campus
c/o Meintjies & Francis Baard Streets
Sunnyside, Pretoria

FOR ATTENTION: THE CHIEF DIRECTOR: LEGAL SERVICES

By email: Pieter.alberts@dmr.gov.za; Tshepo.Motsumi@dmre.gov.za;
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AND TO: SHEPSTONE & WYLIE ATTORNEYS

Attorneys for the Rights Holders

24 Richefond Circle
Ridgeside Office Park
Umhlanga Rocks
DURBAN

FOR ATTENTION: Ian Sampson

By email: sampson@wylie.co.za

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AFFIDAVIT

I, the undersigned –

ZAHRA OMAR

do hereby make oath and say that –

1. I am a practising attorney of the High Court of South Africa and am employed as such by the Appellant, the Centre for Environmental Rights ("the CER"). I am duly authorised to depose to this affidavit on behalf of the CER.
2. The facts and circumstances set out in this affidavit fall within my personal knowledge and belief, except where the context indicates otherwise, and are true and correct.

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3. Where I make contentions of a legal nature, I do so on the advice of the CER's legal representatives.
4. On 21 September 2020, the CER lodged a Notice of Appeal in terms of section 96(1) of the MPRDA ("the Notice of Appeal") accompanied by an application for suspension in terms of section 96(2) of the MPRDA ("the suspension application"). The Notice of Appeal was submitted by way of electronic submission to the Decision-Makers and the Rights Holders. Proof of the CER's electronic submission is annexed hereto as "**Annexure A1**".
5. Hard copies of the Notice of Appeal and accompanying suspension application were delivered to the Decision-Makers and the Rights Holders on 30 September 2020.
6. On 1 October 2020, Mr Tshepo Motsumi from Legal Services at the Department of Mineral Resources and Energy acknowledged "*...the Notice of Appeal lodged on 1 October 2020...*" and allocated the reference number 9/2/4/3/1230 thereto, copying Mr Pieter Swart from the Western Cape Regional Office. A copy of Mr Motsumi's acknowledgment of receipt of the CER's Notice of Appeal is annexed hereto as "**Annexure A2**".
7. On 14 October 2020, Mr Ian Sampson, the attorney for the Rights Holders, submitted a reply to the CER's suspension application. In paragraphs 6 – 7 of Mr Sampson's affidavit, he points out that the CER's Notice of Appeal is defective as it failed to comply with the latest Amendment Regulations. A copy of the Rights Holders' reply is annexed hereto as "**Annexure A3**".
8. The MPRDA Regulations as amended by GN349 in Government Gazette 34225 dated 18 April 2011 ("the pre-amendment Regulations") were amended on 27 March 2020 by the Amendment Regulations to the Mineral and Petroleum



Resources Development Regulations, 2020,² including the provisions for the submissions of appeals contained in Regulation 74 of the Amendment Regulations.

9. In preparing its Notice of Appeal, the CER therefore erroneously relied on Regulation 74 of the pre-amendment Regulations instead of the Amendment Regulations.

10. The CER maintains, however, that in lodging its Notice of Appeal there was nevertheless substantial compliance with the Amendment Regulations. In this regard:


10.1 A copy of the Notice of Appeal was served on affected parties (the Rights Holders) by way of electronic transmission as per Regulations 74(1)(b) and (16);

10.2 A copy of the Notice of Appeal was lodged with the Minister and Director-General as per Regulation 74(1)(c);


10.3 The Notice of Appeal as filed on 21 September 2020 was submitted within 30 days of the date of the CER becoming aware of the decision in respect of which this Appeal is lodged as per Regulation 74(2), and the Notice of Appeal was therefore timeously lodged;

10.4 The Notice of Appeal clearly stated the decision appealed against and the grounds on which the appeal is based, listed the affected persons, and was accompanied by supporting documentation referred to therein as per Regulation 74(5); and

² GN420, GG43172 of 27 March 2020.

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- 10.5 The Notice of Appeal was accompanied by a non-refundable appeal fee of R500.00 as per Regulation 74(7).
11. Further, the attorney for the Rights Holders, Mr Ian Sampson was served a complete copy of the Notice of Appeal and all supporting documentation and was accordingly able to submit a reply to the CER's suspension application ("**Annexure A3**" above).
 12. Furthermore, any procedural defects in the CER's Notice of Appeal are being cured by way of this submission.
 13. The CER further submits that its suspension application which accompanied the Notice of Appeal is not defective as there are no Regulations pertaining to the submission of suspension applications in terms of section 96(2) of the MPRDA. In any event, the CER hereby re-lodges the suspension application on affidavit.
 14. As mentioned in paragraph 10.3 above, the CER's Notice of Appeal as lodged by electronic submission on 21 September 2020 was lodged timeously.
 15. Furthermore, in the event that the DMR considers the CER's Notice of Appeal to only have been lodged on 1 October when it received the hard copy – as stated in its acknowledgment of received 1 October 2020 ("**Annexure A2**" above) – then this rectified Notice of Appeal is lodged timeously within the 30 day period.
 16. In the event that the appeal authority takes a different view and regards the Notice of Appeal as only being lodged now, the CER submits that the late lodging of the Notice of Appeal (to the extent that it may be late) should be condoned for the reasons set out above.

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ZAHRA OMAR

I CERTIFY THAT:

1. The Deponent acknowledged to me that:
 - 1.1. She knows and understands the contents of this declaration;
 - 1.2. She has no objection to taking the prescribed oath;
 - 1.3. She considers the prescribed oath to be binding on his conscience.
2. The Deponent thereafter uttered the words, "I swear that the contents of this declaration are true, so help me God."
3. The Deponent signed this declaration in my presence at **PRETORIA** on this **30th** day of **OCTOBER 2020**.



COMMISSIONER OF OATHS

Full names:

Address:

Capacity:

CHRISTO Van NIEKERK
COMMISSIONER OF OATHS
Practising Attorney Gauteng
Gildenhuys Malatji Inc
164 Totius Road
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