

# WEBBER WENTZEL

in alliance with > **Linklaters**

**The Honourable Minister Gwede Mantashe**  
Minister of Mineral Resources and Energy  
c/o Ms Vuyelwa Siyeka  
Personal Assistant to the Minister  
By email: [vuyelwa.siyeka@dmre.gov.za](mailto:vuyelwa.siyeka@dmre.gov.za)

15th Floor, Convention Tower  
Heerengracht, Foreshore  
Cape Town, 8001

PO Box 3667, Cape Town  
8000, South Africa

Docex 34 Cape Town

T +27 21 431 7000  
F +27 21 431 8000

[www.webberwentzel.com](http://www.webberwentzel.com)

**Advocate Thabo Mokoena**  
Director-General: Department of Minerals and Energy  
By email: [thabo.mokoena@dmre.gov.za](mailto:thabo.mokoena@dmre.gov.za)  
[mamabefu.modipa@dmr.gov.za](mailto:mamabefu.modipa@dmr.gov.za)

cc: **Mr Pieter Alberts and Mr Tshepo Motsumi**  
Head: Legal Services  
Department of Mineral Resources and Energy  
By email: [pieter.alberts@dmr.gov.za](mailto:pieter.alberts@dmr.gov.za)  
[tshepo.motsumi@dmre.gov.za](mailto:tshepo.motsumi@dmre.gov.za)

cc: **Regional Manager: Mineral Regulation Western Cape**  
By email: [pieter.swart@dmr.gov.za](mailto:pieter.swart@dmr.gov.za);  
[busisiwe.magazi@dmr.gov.za](mailto:busisiwe.magazi@dmr.gov.za)

cc: **Ian Sampson**  
Shepstone & Wylie Attorneys  
Attorneys for the Rights Holders  
By email: [sampson@wylie.co.za](mailto:sampson@wylie.co.za)

Your reference

Our reference  
O Geldenhuys  
3044509

Date  
17 November 2020

Dear Honourable Minister Mantashe and Adv. Mokoena

## APPLICATION IN TERMS OF SECTION 96(2) OF THE MPRDA FOR THE SUSPENSION OF THE DECISION TAKEN IN TERMS OF SECTION 102(1) OF THE MPRDA TO GRANT A MINE EXTENSION AT TORMIN MINE

1. We refer to the letter dated 13 November 2020 addressed to you by Shepstone & Wylie Attorneys on behalf of the Rights Holders in respect of the above suspension application. We do not intend to deal with each and every allegation in the letter under reply and our failure to do so should not be construed as an admission of any of the contents thereof.

WW Letter To Minister And DG Re S 96(2) MPRDA Application 171120(15858915.1)

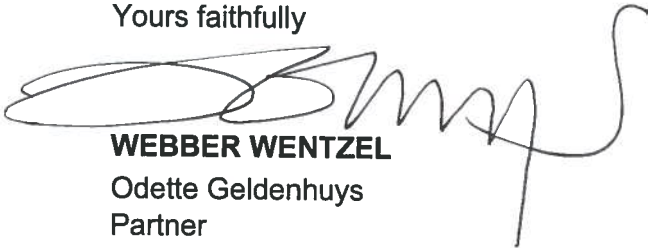
**Partners in office at Cape Town:** Office Managing Partner: G Fitzmaurice Partners: RB Africa AE Bennett AR Bowley SJ Chong KM Colman R Cruywagen MA Diemont HJ du Preez LF Egypt AE Esterhuizen MJR Evans OH Geldenhuys PM Holloway SJ Hutton AV Ismail S Jooste LA Kahn ACR Katzke A Keyser CS Meyer LE Mostert RA Nelson A October K Rew H Samsodien J Smit RS Smith PZ Vanda DM Visagie AWR Westwood

**Senior Partner:** JC Els **Managing Partner:** SJ Hutton **Partners:** BW Abraham RB Africa NG Alp RL Appelbaum DC Bayman KL Beilings AE Bennett T Blackbeard AP Blair DHL Booysen AR Bowley J Braum MS Burger M Bux RI Carrim T Cassim SJ Chong C Collett KL Collier KM Colman KE Coster K Couzyn DB Cron PA Crosland R Cruywagen JH Davies PM Daya L de Bruyn PU Dela M Denenga DW de Villiers BEC Dickinson MA Diemont DA Dingley G Driver W Drue HJ du Preez CP du Toit SK Edmundson LF Egypt KH Eiser AE Esterhuizen MJR Evans K Fazel AA Felekis G Fitzmaurice JB Forman KL Gawith OH Geldenhuys MM Gibson CI Gouws PD Grealy S Haroun JM Harvey JS Henning KR Hillis Z Hlophe CM Hofeld PM Holloway AV Ismail ME Jarvis CA Jennings JC Jones CM Jonker S Jooste LA Kahn ACR Katzke M Kennedy A Keyser MD Kota JC Kraamwinkel J Lamb E Louw M Mahlangu V Mannar L Marais MC McIntosh SJ McKenzie CS Meyer AJ Mills D Milo NP Mngomezulu M Moloi LE Mostert VM Movshovich RA Nelson G Niven ZN Ntshona M Nxumalo AN Nyatumba A October L Odendaal GJP Olivier N Paige AMT Pardini AS Parry S Patel GR Penfold SE Phajane M Philippides BA Phillips MA Phillips D Ramjattan GI Rapson K Rew SA Ritchie NJA Robb G Sader M Sader H Samsodien JW Scholtz KE Shepherd AJ Simpson N Singh N Singh-Nogueira P Singh S Sithole J Smit RS Smith MP Spalding PS Stein MW Straeuli LJ Swaine Z Swanepoel A Thakor T Theessen TK Thekiso C Theodosiou R Tihavani G Truter PZ Vanda SE van der Meulen JP van der Poel CS Vanmali JE Veeran B Versfeld MG Versfeld TA Versfeld DM Visagie EME Warrington J Watson AWR Westwood RH Wilson M Yudaken **Chief Operating Officer:** SA Boyd

2. As our client pointed out in paragraph 17 of its response to the Rights Holders' Reply in the suspension application ("the Response"), Regulation 74 of the Amendment MPRDA Regulations governs appeals, not applications in terms of section 96(2) of the MPRDA for the suspension of a decision, pending the outcome of an internal appeal in terms of the MPRDA. There are no regulations governing such suspension applications.
3. In the Response, our client motivated the basis upon which it was submitting the Response to the document which the Rights Holders submitted, and which they referred to as a "Reply". The Rights Holders' "Reply" contains the Rights Holders' grounds of opposition to the suspension application and is akin to an answering affidavit in court proceedings. It also contains new material. Prior to delivering the Response, our client motivated in its letter of 16 October 2020 addressed to the Honourable Minister why it was entitled to respond to the Reply. Our client addressed a further letter to the Honourable Minister on 30 October 2020, amongst other aspects, stating that it would be delivering its response to the Right Holders' Reply by 6 November 2020. The Right Holders did not object. Furthermore, the suspension application was lodged as a matter of urgency when our client became aware of the section 102(1) decision which is the subject of the internal appeal. Neither the DMRE, nor the Rights Holders' had advised our client that the section 102 decision had been taken.
4. In light of the issues raised in the Reply, and in order to place relevant information before the Honourable Minister, our client appointed independent experts to assess aspects of the environmental impacts in respect of the section 102(1) mining extension and the risks to the environment if the section 102 decision is not suspended. Their evidence is placed before the Honourable Minister in the Response, which includes their accompanying affidavits.
5. In the circumstances of all of the above, our client submits that it was entitled to deliver the Response. The Honourable Minister has a wide discretion as to the documents and information placed before the Honourable Minister for purposes of a suspension application and the procedures to be adopted in determining the suspension application.
6. In this particular suspension application, it is highly important that evidence be placed before the Honourable Minister in respect of the risks of environmental harm if the suspension application is not granted. Our client therefore denies (as alleged by the Rights Holders) that the Response is not properly before you and falls to be ignored, alternatively that the portions referred to in paragraph 4 of the letter under reply fall to be struck out as an improper attempt to make out a new case in reply.
7. However, our client acknowledges that the Response contains new matter and that it would be procedurally fair to allow the Rights Holders an adequate opportunity of 10 working days to respond to the new matter.
8. Our client therefore requests that the Honourable Minister notifies the Rights Holders' attorney that:
  - 8.1 Our client was entitled to deliver the Response, together with the supporting expert evidence;
  - 8.2 the entire Response, together with the supporting expert evidence, will form part of the information to be considered by the Honourable Minister when taking the decision in respect of whether or not to suspend the section 102(1) decision, pending the outcome of the internal appeal; and

- 8.3 the Rights Holders are afforded an opportunity of 10 working days to reply to the new matter in the Response and the supporting expert evidence, namely
- 8.3.1 Paras 63 – 69 of the Response together with the entire affidavit of Susan Brownlie;
- 8.3.2 Paras 70 – 77 of the Response together with the entire affidavit of Nick Helme;
- 8.3.3 Para 78 – 53.8 (sic) (the second one – on p.29) together with the entire affidavit of Peter Carrick;
- 8.3.4 the entire affidavit of Merle Sowman.

Yours faithfully



**WEBBER WENTZEL**

Odette Geldenhuys

Partner

Direct tel: 021 431 7290

Direct fax: 021 431 8290

Email: [odette.geldenhuys@webberwentzel.com](mailto:odette.geldenhuys@webberwentzel.com)