

# WEBBER WENTZEL

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## Mr Pieter Swart

Regional Manager

Mineral Regulation, Western Cape

By email: [Pieter.Swart@dmre.gov.za](mailto:Pieter.Swart@dmre.gov.za) ;

[Vusumuzi.Mwelase@dmre.gov.za](mailto:Vusumuzi.Mwelase@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)

cc: **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)

cc: **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@dmre.gov.za](mailto:Pieter.alberts@dmre.gov.za);

[Tshepo.Motsumi@dmre.gov.za](mailto:Tshepo.Motsumi@dmre.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

Date

O Geldenhuys

30 November 2020

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**URGENT**

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**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

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Dear Mr Swart

**CENTRE FOR ENVIRONMENTAL RIGHTS' APPEAL IN TERMS OF SECTION 96(1) OF THE MPRDA / MINISTER OF MINERAL RESOURCES AND ENERGY / DMRE / MINERAL SANDS RESOURCES (PTY) LTD AND TORMIN MINERAL SANDS (PTY) LTD / REQUEST FOR RECORD OF THE DECISION MADE IN TERMS OF SECTION 102 OF THE MPRDA TO EXTEND MINING OPERATIONS AT THE TORMIN MINE ON THE WEST COAST**

1. We refer to our client's ("**the Centre for Environmental Rights**") appeal lodged in terms of section 96(1) of the Mineral and Petroleum Resources Development Act, 2002 ("**MPRDA**") in respect of the above decision.
2. We write to you to request that the decision-maker's Record of Decision ("**ROD**") in the above appeal be delivered to our client in accordance with Regulation 74(8) of the MPRDA Amendment Regulations. Regulation 74(8) states that:  
  
*"upon receipt of the notice of appeal referred to in subregulation (1), but no later than 10 days thereafter, the Regional Manager must send copies of all records pertaining to the decision or decisions which are the subject of the appeal to the appellant, to all identified affected persons, and to the Director-General or to the Minister, as the case may be."*
3. In your email correspondence of 25 November 2020, in response to our client's request for the ROD, you stated that our client's "*original appeal*" was not lodged at the Regional Office but at the Head Office; that you were unable to open the link to the files forwarded to you by email on 30 October 2020 and that you have also not received a hard copy of the appeal.
4. Our client lodged the appeal electronically on 21 September 2020 and delivered hard copies to the parties on 30 September 2020. Our client did not copy the Regional Office when it lodged the appeal, because our client initially followed the pre-amendment MPRDA regulations which require that appeals only be submitted to the National (Head) Office. However, when the National Office acknowledged receipt of our client's appeal on 1 October 2020, you were copied in that email. That email correspondence is attached hereto as Annexure A.
5. Our client subsequently cured the procedural defects in the appeal, and electronically delivered a rectified appeal on 30 October 2020, in full compliance with the MPRDA Amendment Regulations.
6. We point out that the electronic transfer link through which we submitted our client's rectified appeal had a 7-day period within which the documents are made available to the recipient. It appears as if you were unable to access our client's rectified appeal because that 7-day period had already expired.
7. Regulation 74(16) of the Amendment Regulations allows for electronic submissions. There was therefore no obligation on our client to deliver a hard copy to your office. However, as per your request, we delivered a hard copy to your office on Thursday 26 November 2020.
8. We also note Regulation 74(10)(a) which states that:

*“The appellant after having received a copy of the record of decision as contemplated in subregulation (8) and after receiving any answering affidavit from affected parties referred to in subregulation (9):*

*(a) may submit to the Regional Manager, together with proof of service of a copy thereof on the affected party or parties, an amended notice of appeal relating to aspects flowing from the record of decision, or a replying affidavit to any answering affidavit, within 30 days after having being served with the affected party or parties answering affidavit or on expiry of the 30 day period in subregulation (9).”*

9. The Rights Holders submitted their answering affidavit in terms of Regulation 74(9) on 30 September 2020. The Amendment Regulations provide for an appellant to have received the ROD before submitting an amended notice of appeal and replying affidavit to the Rights Holders' answering affidavit.
10. We therefore request that the Regional Manager delivers the Record of Decision to our client as a matter of urgency.

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)

**Zahra Omar**

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**From:** Tshepo Motsumi <Tshepo.Motsumi@dmre.gov.za>  
**Sent:** Thursday, 01 October 2020 14:27  
**To:** Zahra Omar; Leanne Govindsamy; Pieter Swart; Vusumuzi Mwelase  
**Subject:** ACKNOWLEDGMENT OF THE LODGED (9/2/4/3/1230)

Good day,

The Notice of Appeal lodged on 1 October 2020 is hereby acknowledged; and allocated reference number 9/2/4/3/1230.

Please forward a proof of payment of the appeal fee (R 500) within 14 days.

If the appeal fee is not yet paid; departmental banking details are as follow:

**ABSA ACCOUNT NUMBER**

406 1769 154

**BRANCH**

Van Der Walt, Pretoria

**BRANCH CODE**

632005

**ACCOUNT TYPE**

CHEQUE

**EFT REFERENCE NUMBER**

01052126MR20

We trust you shall find the above in order.

Kind regards.  
Tshepo Motsumi

**Tshepo Motsumi**

Legal Services

Tel : 012 444 3051

Email : [Tshepo.Motsumi@dmre.gov.za](mailto:Tshepo.Motsumi@dmre.gov.za)

Website :



**mineral resources**

Department:  
Mineral Resources  
**REPUBLIC OF SOUTH AFRICA**