

**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No. **13446/2020**

In the matter between:

CENTRE FOR ENVIRONMENTAL RIGHTS NPC Applicant

And

MINISTER OF ENVIRONMENT, FORESTRY AND FISHERIES First Respondent

MINISTER OF MINERAL RESOURCES AND ENERGY Second Respondent

REGIONAL MANAGER: MINERAL REGULATION, WESTERN CAPE REGIONAL OFFICE Third Respondent

MINERAL SANDS RESOURCES (PTY) LTD Fourth Respondent

NORTH WESTERN CAPE MINING FORUM Fifth Respondent

RAAKVAT BOERDERY (Edms) Bpk Sixth Respondent

MERLE SOWMAN Seventh Respondent

MEC FOR DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING WESTERN CAPE GOVERNMENT Eighth Respondent



**FILING SHEET:
AMENDED NOTICE OF MOTION AND SUPPLEMENTARY FOUNDING
AFFIDAVIT**

Documents filed herewith:

1. Amended notice of motion;
2. Supplementary founding affidavit deposed to by Zahra Omar;
3. Supporting affidavit deposed to by Susan Brownlie;
4. Supporting affidavit deposed to by Merle Sowman;
5. Supporting affidavit deposed to by Nick Helme; and
6. Supporting affidavit deposed to by Michael Schlebach.

Dated at **CAPE TOWN** on this the **26th** day of **FEBRUARY 2021**



WEBBER WENTZEL

Attorneys for the Applicant

15th Floor, Convention Tower

Heerengracht, Foreshore

Cape Town

(Ref: O Geldenhuys / N Thema / 3044509)

Tel: 021 431 7000

Email: odette.geldenhuys@webberwentzel.com

TO:

THE REGISTRAR

High Court of South Africa

Western Cape Division, Cape Town

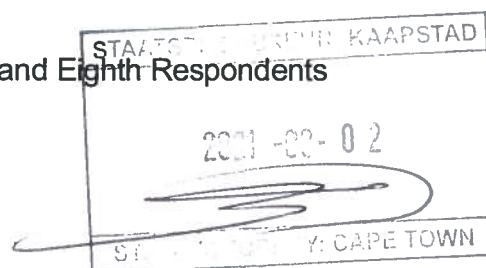
AND TO:

THE STATE ATTORNEY

Attorney for the First, Second, Third and Eighth Respondents

4th Floor, Liberty Life Centre

22 Long Street



10/10

CAPE TOWN
Tel: 021 441 9203/72
Email: CaVanTonder@justice.gov.za
Per: C Van Tonder
Ref: 1637/20/P21

AND TO:

SHEPSTONE & WYLIE ATTORNEYS
Attorneys for the Fourth Respondent
10th Floor, 2 Long Street
CAPE TOWN
Email: masi.ncube@wylie.co.za
(Ref: M Z Ncube/TRAN29887.22)

AND TO:

NORTH WESTERN CAPE MINING FORUM
Fifth Respondent
Beehive 23
A.A.S. Le Fleur Street
VREDENDAL NORTH
Tel: 063 806 1277
Email: nwcmningforum@gmail.com
Ref: Edward Mostert
[SERVICE PER E-MAIL]

AND TO:

RAAKVAT BOERDERY (Edms) Bpk
Sixth Respondent
PO Box42
KOEKENAAP
Email: Raakvat@namakwanet.co.za
[SERVICE PER EMAIL]

AND TO:

MERLE SOWMAN
Seventh Respondent
7 Linden Way
Constantia Nek Estate
Hout Bay
Email: merle.sowman@uct.ac.za
[SERVICE PER EMAIL]

**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

CASE NO: 13446/2020

In the matter between:

CENTRE FOR ENVIRONMENTAL RIGHTS NPC Applicant

and

MINISTER OF ENVIRONMENT, FORESTRY AND FISHERIES First Respondent

MINISTER OF MINERAL RESOURCES AND ENERGY Second Respondent

**REGIONAL MANAGER: MINERAL REGULATION,
WESTERN CAPE REGIONAL OFFICE** Third Respondent

MINERAL SANDS RESOURCES (PTY) LTD Fourth Respondent

NORTH WESTERN CAPE MINING FORUM Fifth Respondent

RAAKVAT BOERDERY (Edms) Bpk Sixth Respondent

MERLE SOWMAN Seventh Respondent

**MEC FOR DEPARTMENT OF ENVIRONMENTAL
AFFAIRS AND DEVELOPMENT PLANNING
WESTERN CAPE
GOVERNMENT** Eighth Respondent



AMENDED NOTICE OF MOTION

KINDLY TAKE NOTICE that the Applicant intends to make application to the above Honourable Court on a date determined by the Registrar for an order in the following terms:

1 reviewing and setting aside the decision taken by the First Respondent on 26 March 2020 in terms of section 43(6) of the National Environment Management Act, 1998, 107 of 1998 ("*NEMA*") to:-

1.1 dismiss the Applicant's appeal against the decision taken by the Department of Mineral Resources and Energy on 7 June 2019 in terms of section 24 of NEMA, read with the 2014 Environment Impact Assessment Regulations, and the National Environmental Waste Act, 2008, 59 of 2008 to grant an Integrated Environmental Authorisation to the Fourth Respondent to extend mining operations at Tormin Mine ("*the Integrated Environmental Authorisation*"); and

1.2 not to set aside the decision taken by the Department of Mineral Resources and Energy on 7 June 2019 to grant the Integrated Environmental Authorisation;

2 reviewing and setting aside the decision taken by the Department of Mineral Resources and Energy on 7 June 2019 to grant the Integrated Environmental Authorisation;

3 in the alternative to paragraphs 1 and 2 above, if the decision in paragraph 1, or the decisions in both paragraphs 1 and 2 are reviewed and set aside, and are remitted to the relevant decision maker(s), the remittal is subject to the decision makers(s) directing SRK Consulting (South Africa) (Pty) Ltd (or such other Environmental Assessment Practitioner as the Fourth Respondent may wish to appoint instead) to:-

3.1 obtain the following studies done by suitably qualified experts:

3.1.1 a further specialist terrestrial ecology study;

3.1.2 a specialist climate change study;

3.1.3 a rehabilitation study;

3.2 prepare a revised draft of the Environmental Impact Assessment Report and Environmental Management Programme dated November 2018 (*the EIAR*), taking into account the findings and recommendations of the above specialist studies;

3.3 undertake public participation in respect of the revised draft of the EIAR; and

3.4 amend the EIAR and submit the amended EIAR to the Department of Mineral Resources and Energy;

- 4 amending the citation of the First Respondent to the Minister of Forestry, Fisheries and the Environment;
- 5 directing the First, Second and Third Respondents, and any other Respondent who opposes this application, to pay the costs of this application, jointly and severally, the one paying the other to be absolved, such costs to include the costs of two counsel;
- 6 granting further and/or alternative relief.

TAKE NOTICE FURTHER that the affidavits of **ZAHRA OMAR, SUSAN BROWNLIE, MERLE SOWMAN, NICK HELME** and **MICHAEL SCHLEBACH** will be used in support of this application.

TAKE NOTICE FURTHER that the Applicant has appointed the address of the Applicant's attorneys as being the address at which it will accept notice and service of all process in these proceedings.

TAKE NOTICE FURTHER that the Respondents are called upon to show cause why the relief should not be granted.

TAKE NOTICE FURTHER that the First Respondent is required to despatch within fifteen (15) days of receipt of this Notice of Motion to the Registrar of this Honourable Court the record of decision identified in paragraph 1 above together with such reasons as the First Respondent desire to give or are in law required to give, and to notify the Applicant that the First Respondent has done so.

TAKE NOTICE FURTHER that the Second and Third Respondents are required to despatch within fifteen (15) days of receipt of this Notice of Motion to the Registrar of this Honourable Court the record of decision identified in paragraph 2 above together with such reasons as the Second and Third Respondents desire to give or are in law required to give, and to notify the Applicant that they have done so.

TAKE NOTICE FURTHER that the Applicant shall be entitled, within ten (10) days after the Registrar has made the records of decision available to them, to deliver a Notice and accompanying affidavit amending, adding to or varying the terms of this Notice of Motion and founding affidavit.

TAKE NOTICE FURTHER that any Respondent desiring to oppose this application, must:

1. within 15 (fifteen) days after receipt of this notice of motion, or within 15 (fifteen) days after receipt of any amendment to this notice of motion, deliver notice to the Applicant's attorneys of such intention to oppose and must in such notice appoint an address within 8 (eight) kilometres of the office of the Registrar at which it will accept notice and service of all process in these proceedings;
2. within 30 (thirty) days after the expiry of the time referred to in Uniform Rule 53(4) of the Uniform Rules of Court, deliver any affidavit it may desire to deliver in answer to the allegations made by the Applicant.

KINDLY PLACE THE MATTER ON THE ROLL FOR HEARING ACCORDINGLY.

DATED at CAPE TOWN this 26th day of FEBRUARY 2021.



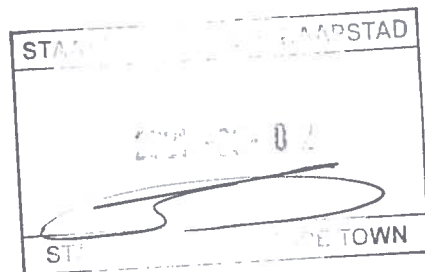
WEBBER WENTZEL
Applicant's attorneys
Convention Tower
Heerengracht Street
Cape Town
Tel: 021 431 7290
Email: odette.geldenhuys@webberwentzel.com
Ref: O Geldenhuys /3044509

TO:

THE REGISTRAR OF THE ABOVE HONOURABLE COURT
High Court of South Africa
Western Cape Division, Cape Town
35 Keerom Street
CAPE TOWN
8001

AND TO:

THE STATE ATTORNEY
Attorney for the First, Second, Third and Eighth Respondents
4th Floor, Liberty Life Centre
22 Long Street
CAPE TOWN
Tel: 021 441 9203/72
Email: CaVanTonder@justice.gov.za
Per: C Van Tonder
Ref: 1637/20/P21



AND TO:

SHEPSTONE & WYLIE ATTORNEYS
Attorneys for the Fourth Respondent
10th Floor, 2 Long Street
CAPE TOWN
Email: masi.ncube@wylie.co.za
Ref: M Z Ncube/TRAN29887.22

AND TO:

NORTH WESTERN CAPE MINING FORUM
5th Respondent
Beehive 23
A.A.S. Le Fleur Street
Vredendal North

WEST COAST
Tel: 063 806 1277
Email: nwcminingforum@gmail.com

[SERVICE PER E-MAIL]

AND TO:

RAAKVAT BOERDERY (Edms) Bpk
6th Respondent
PO Box42
Koekenaap
8146
WESTERN CAPE
Email: Raakvat@namakwanet.co.za

[SERVICE PER E-MAIL]

AND TO:

MERLE SOWMAN
7th Respondent
7 Linden Way
Constantia Nek Estate
Hout Bay
WESTERN CAPE
Email: merle.sowman@uct.ac.za
[SERVICE PER E-MAIL]

Nkosinathi Thema

From: Nkosinathi Thema
Sent: 26 February 2021 19:51
To: kumlehn@wylie.co.za
Subject: FW: Centre for Environmental Rights / Minister of Environment, Forestry and Fisheries; Minister of Mineral Resources and Energy; Regional Manager: Ministerial Regulation, Western Cape Regional Office & others (WCHC 13446/2020)

Large File Send Sent Files

Powered by **mimecast**

You shared files with kumlehn@wylie.co.za.

File(s):

Amended Notice of Motion and Supplementary Founding Affidavit 260221.pdf

Dear Pauline

We refer to the above matter.

We hereby serve, by email, the Applicant's amended notice of motion and supplementary affidavit.

Regards,

Nkosinathi Thema | Trainee Attorney

T: +27214317196 | M: +27824025442 | nkosinathi.thema@webberwentzel.com | www.webberwentzel.com

From: Nkosinathi Thema

Sent: 26 February 2021 19:44

To: CaVanTonder@justice.gov.za

Cc: cvantonderstateattorney@gmail.com; masi.ncube@wylie.co.za; nwcminingforum@gmail.com;

Raakvat@namakwanet.co.za; merle.sowman@uct.ac.za

Subject: Centre for Environmental Rights / Minister of Environment, Forestry and Fisheries; Minister of Mineral Resources and Energy; Regional Manager: Ministerial Regulation, Western Cape Regional Office & others (WCHC 13446/2020)

cvantonderstateattorney@gmail.com masi.ncube@wylie.co.za nwcminingforum@gmail.com Raakvat@namakwanet.co.za

Amended Notice of Motion and Supplementary Founding Affidavit 260221.pdf

Dear All

We refer to the above matter.

We hereby serve, by email, the Applicant's amended notice of motion and supplementary affidavit.

Regards,

Nkosinathi Thema | Trainee Attorney

T: +27214317196 | M: +27824025442 | nkosinathi.thema@webberwentzel.com | www.webberwentzel.com

We have a dedicated [website page](#) to help our clients navigate through all of the legal & commercial challenges that arise from the COVID-19 outbreak, as well as government regulations to contain it.



- South Africa Law Firm of the Year – Chambers Africa Awards 2021**
- African Tax Firm of the Year (International Tax Review European Tax Awards, 2020)**
- Legal DealMakers of the Decade (DealMakers, 2019)**
- Law Firm of the Year (South African Professional Service Awards 2019/2020)**

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