

The Honourable Minister Gwede Mantashe
Minister of Mineral Resources and Energy

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Your reference

Our Reference

Date

I Sampson/kam
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18 November 2020

Dear Honourable Minister Mantashe

APPLICATION IN TERMS OF SECTION 96(2) OF THE MPRDA FOR THE SUSPENSION OF THE DECISION TAKEN IN TERMS OF SECTION 102(1) TO GRANT A MINE EXTENSION AT THE TORMIN MINE IN RESPECT OF PROPERTIES IN THE MAGISTERIAL DISTRICT OF VAN RHYNSDORP, PENDING THE OUTCOME OF THE APPEAL IN TERMS OF SECTION 96(1) OF THE MPRDA (MINING RIGHTS WC 30/5/1/2/2/10107MR AND WC 30/5/1/2/2/10108MR

1. We refer to the correspondence addressed to your office by the legal representatives for the Centre for Environmental Rights ("CER") on 17 November 2020.
2. We do not intend to litigate via correspondence, and stand by the submissions which we made in our letter of 13 November 2020 which is annexed for ease of reference, and which has not been addressed by CER's latest letter. In addition, we wish to point out the following:

Johannesburg: Partners: J Esterhuizen, T H Kamdar, L M Kotzé, N D Ntombela, I R Sampson, F van Rooyen, D Venter, J L Woker. **Senior Associates:** L Cleland, G Mathebula, N L V Vilakazi.
Associates: T Esterhuizen, S C Khan, R N Mampame.

Cape Town: Partner: P H Kumlehn. **Associate:** M Z Ncube.

Durban: Partners: R B Armstrong, M D Asherson, M J Bagwandeen, N Besesar, W P Coetzee, P C Cowan, S Davidson, E de Wet, A F Donnelly, A B Edwards, C Eve Friis, C J Field, J L Finnigan, E C Holmes, A W Lockem, M G Maeso, S A H Mkhize, M S Msomi, B D Nelson, M E Nkosi, K V Oosthuizen, V M Oosthuizen, A D Parsons, I R Sampson, J C Smith, Q van der Merwe, J M von Klemperer, D J Warmback, N P Woodroffe (Managing Partner). **Senior Associates:** P J Evelyn, D Joubert De Villiers. **Associates:** F A Christian, K A Hemero, N Kassier, W J Rajbansi, K Singh, S Singh, C M Wilson, A G Zwane.

Richards Bay: Partners: A J Heydorn, B C Morkel, B J van Rooyen. **Associate:** A P Kannigan.

Pietermaritzburg: Partners: B M Le Roux, J T Manuel, S G Shoji.

Consultants: Durban: S M S Dwyer, O M Oosthuizen, K Reddy, H N Theunissen. **Johannesburg:** J L Kotze.

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- 2.1. It now appears to be common cause between CER and our clients that there are no regulations pertaining to the suspension application now before you. In the premises, there is no regulatory or other basis for CER to file a “Response to the Rights’ Holders Reply”. The CER had an opportunity to place its submissions before you in its suspension application. With its eyes open, it elected to make such submissions at a high level and in the absence of any expert evidence. This was the case that was put before you and which falls to be adjudicated under section 96(2).
 - 2.2. CER now attempts to justify its filing of an additional “Response”, (which is in reality an entirely new case), on the basis that the Rights’ Holders raised “new matter” in their Reply to the Suspension Application. This submission has no merit. The question of “new matter” does not arise in the filing of the Rights Holders Reply, (which CER submits is akin to an “ Answering Affidavit”). The Rights Holders are entitled to put forward evidence and submissions in answer to the suspension application, which they did. It is CER, however, which now seeks to place new material before you impermissibly in a further “Response”. This, as we pointed out in our previous correspondence, was in response to the pinching of the shoe and falls to be rejected.
 - 2.3. Further, and finally, the CER appears determined to draw the Suspension Application under section 96(2) of the Mining Act into a fight about environmental issues. This is clear from paragraph 6 of the letter of 17 November 2020 in which CER asserts that “it is highly important that evidence be placed before the Honourable Minister in respect of the **risks of environmental harm**”. These issues are, with respect, inappropriate and irrelevant to raise in this forum, which deals with a mining licence (and not an environmental authorisation). This is a classic case of CER attempting to have a second bite at the cherry, when they have already objected (unsuccessfully) to the granting of the environmental authorisation.
3. In the premises, we ask that the Minister dismiss the suspension application.

Yours sincerely

Ian Sampson
SHEPSTONE & WYLIE
(This document has been sent electronically and is therefore not signed)