

**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

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**SUPPLEMENTARY SUPPORTING EXPERT AFFIDAVIT OF SUSAN BROWNLIE**

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I, the undersigned

**SUSAN FRANCES BROWNLIE**

state under oath that:

- 1 On 21 September 2020 I deposed to a supporting expert affidavit accompanying the founding affidavit in the above matter.
- 2 The facts set out in this affidavit fall within my personal knowledge and belief, except where the context indicates otherwise, and are true and correct.
- 3 Unless otherwise specified terms defined in the founding and supplementary founding affidavit and the supporting affidavit that I have already deposed to have the same meaning in this affidavit.
- 4 I have read the supplementary founding affidavit and specifically confirm that the contents of the following paragraphs are true and correct and accurately reflect my view and opinion: -
  - 4.1 paragraph 73 in relation to Critical Biodiversity Areas (CBAs);
  - 4.2 paragraphs 90 to 93 in relation to the flaws in the assessment of impacts on terrestrial biodiversity;
  - 4.3 paragraph 98.2 in relation to the misplaced reliance on search and rescue to mitigate impacts; and
  - 4.4 paragraphs 111, 119, 121 to 124 and 134 in relation to rehabilitation.

**The Mining and Biodiversity Guideline**

- 5 In paragraphs 74 to 89 of the supplementary founding affidavit the CER contends that the Department of Mineral Resources and Energy ("DMRE")'s reliance on, and application of, the Mining and Biodiversity Guideline in the DMRE's comments in respect of the IEA appeal are flawed. As set out in the supplementary founding affidavit, in terms of the Mining and Biodiversity Guideline there is a set of six filters that must be sequentially applied when considering applications pertaining to mining in category B biodiversity priority areas. Category B is "*Highest biodiversity importance*" and includes CBAs.



6 The six filters are as follows (“ZA 41”, p.34.)

*“When considering mining activities in these biodiversity priority areas, the following set of filters should be sequentially applied and mining should only be considered if:*

*a) It can be clearly shown that the biodiversity priority area coincides with mineral or petroleum reserves that are strategically in the national interest to exploit.*

*b) There are no alternative deposits or reserves that could be exploited in areas that are not biodiversity priority areas or less environmentally sensitive areas.*

*c) It can be demonstrated that there are spatial options in the landscape that could provide substitute areas of the same habitat for conservation, to ensure that biodiversity targets would be met<sup>1</sup>.*

*d) A full economic valuation of mining compared with other reasonable/ feasible alternative land uses, undertaken as a necessary component of the EIA, shows that mining would be the optimum sustainable land use in the proposed area.*

*e) A detailed assessment and evaluation<sup>2</sup> of the potential direct, indirect and cumulative impacts of mining on biodiversity and ecosystem services shows that there would be no irreplaceable loss or irreversible deterioration, and that minimizing, rehabilitating, and offsetting or fully compensating for probable residual impacts would be feasible and assured, taking into account associated risks and time lags.*

*f) A risk-averse and cautious approach, taking into account the limits of current knowledge about the consequences of decisions and actions, can be demonstrated both in the assessment and evaluation of environmental impacts, and in the design of proposed mitigation and management measures.”*

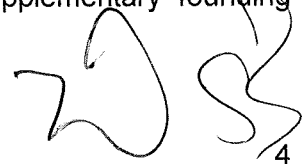
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<sup>1</sup> The footnote states: “CBAs are selected to be the most efficient configuration of areas in the landscape that would meet conservation targets. That is, there may be alternative configurations that could meet these targets. If there are no options, however, then the given CBAs must be considered to be ‘irreplaceable’.

<sup>2</sup> The footnote states: “i.e. an economic valuation that addresses the values of biodiversity and ecosystem services that conventional economic analysis excludes, since their value is not traded or priced in the marketplace. A full economic valuation may show that the value of the intact ecosystem to local communities and society exceeds the value of a proposed land use (e.g. Millennium Ecosystem Assessment, TEEB).”



- 7 As outlined in the supplementary founding affidavit, the DMRE did not apply these obligatory six filters.
- 8 However, even if the DMRE had attempted to apply these filters, it would appear to me that none of them have been adequately satisfied. I briefly deal with each of the filters below.
- 9 In relation to filter (a), no explicit evidence has been provided that mineral reserves being mined by MSR are strategically in the national interest.
- 10 In relation to filter (b), there is no consideration in MSR's final Environmental Impact Assessment Report and Environmental Management Programme ("EiAR") of alternative deposits or reserves in different, less sensitive locations which could be exploited – the EIA requires a consideration of alternatives.
- 11 In relation to filter (c), there is no consideration in the EiAR of possible areas of the same habitat and attributes for conservation, to substitute for the impacts on the CBA. Notably, as the footnote to this filter in the Mining and Biodiversity Guideline states, if there are no alternative configurations of areas then the given CBA must be considered to be 'irreplaceable.'
- 12 In relation to filter (d), a full economic valuation of mining showing that mining would be the optimum sustainable land use in the proposed area, was not undertaken as part of the EiAR.
- 13 In relation to filter (e), as explained in my supporting affidavit to the founding affidavit, direct, indirect and cumulative impacts of MSR's mining activities on biodiversity patterns (i.e. ecosystems, species, special habitats) and on ecological processes have not been adequately assessed in the EiAR (paragraphs 11 – 15 of the affidavit), nor has the need for biodiversity offsets to compensate for residual negative impacts been adequately assessed (paragraph 16 of the affidavit).
- 14 Further, the proposed mitigation measures relied upon in the EiAR are, in my view, inadequate for all the reasons given in the founding and supplementary founding affidavits.

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- 15 In relation to filter (f), a risk-averse and cautious approach has clearly not been adopted, including for the reasons set out below.
- 16 Granting an Integrated Environmental Authorisation to MSR for its mining extension despite the above uncertainties is contrary to section 2(4)(vii) of NEMA which requires a risk-averse and cautious approach, taking into account the limits of current knowledge about the consequences of decisions and actions. Should mining be allowed to continue in the section 102 mining extension area, there is a real risk of long-term, potentially permanent, damage to – and fragmentation of – a national and provincial CBA. The reliance on rehabilitation post-mining is inappropriate and contrary to the need for a risk-averse and cautious approach, particularly given the considerable uncertainty about rehabilitation and reliance on search-and-rescue.
- 17 As set out in the supplementary founding affidavit, MSR's expansion plans include the whole of the Geelwal Farm (i.e. not only the section 102 MPRDA mining extension area) and a large inland area at Klipvley Karoo Kop (inland from the ten Northern Beaches). Considered against a trajectory of progressive loss of the affected CBA, and noting that due consideration of the cumulative impacts of mining was inadequate in the documentation submitted as part of the EIAR (as expressly required in the NEMA EIA Regulations), there is no assurance that the expansion of mining in this area is ecologically sustainable.

## Conclusion

- 18 In conclusion, it is my view that the potential impacts on this CBA, inadequacy of the proposed mitigation measures, limitations in knowledge with regards to the likelihood of success thereof, and the clear lack of alignment with national and provincial environmental legislation, policies and guidelines, warrant the DMR's decision to grant an Integrated Environmental Authorisation, and the Environment Minister's decision to dismiss the CER's appeal against the granting of the Integrated Environmental Authorisation, being reviewed and set aside.





**SUSAN FRANCES BROWNLIE**

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at CLAREMONT on this the 25<sup>th</sup> day of **FEBRUARY 2021**, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended by R1648 of 19 August 1977, and as further amended by R1428 of 11 July 1989, having been complied with.



**COMMISSIONER OF OATHS**

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