

"X" James
13/4/2022

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

Before the Honourable Mr Justice Francis

Cape Town, 13 April 2022

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

ORDER

By agreement between the Applicant and the First, Third and Fourth Respondents, it is

ordered that:

1. The application is stayed ("the stay").
2. During the stay, the Applicant shall also stay:
 - 2.1 the internal appeal lodged by the Applicant on 21 September 2020 in terms of section 96(1) of the Mineral and Petroleum Resources Development Act, 28 of 2008 ("the MPRDA") in respect of the decision taken by the Deputy-Director Mineral Regulation: Department of Mineral Resources and Energy on 19 June 2020 to grant consent to the Fourth Respondent in terms of section 102(1) of the MPRDA ("the internal appeal"); and
 - 2.2 the application which the Applicant lodged in terms of section 96(2) of the MPRDA to suspend the operation of the decision referred to in paragraph 2.1 above, pending the outcome of the internal appeal.
3. The Fourth Respondent undertakes that, in relation to any future applications under section 102 of the MPRDA that trigger a listed activity ("the section 102 application"), it will follow:
 - 3.1 the environmental authorisation process in terms of the National Environmental Management Act, 1998 ("NEMA");
 - 3.2 a meaningful consultation process on the section 102 application with interested and affected parties;
 - 3.3 a meaningful consultation process on the contents of the Social and Labour Plan submitted pursuant to the section 102 application in terms of the public participation process prescribed in the Environmental Impact Assessment

Regulations promulgated in terms of section 24(5) of NEMA, where the nature of the section 102 application is such that it will require an amendment to the Social and Labour Plan.

4. It is agreed as between the Applicant and the Fourth Respondent that the Fourth Respondent shall, by no later than 3 months from the date of this order, or such extended date as the Applicant and the Fourth Respondent may agree in writing, submit a draft Biodiversity Management Plan in terms of section 43 of the National Environmental Management Biodiversity Act, 10 of 2004 ("the Biodiversity Act"), to the First Respondent in respect of phases 1 to 4 as set out in the Biodiversity Management Plan for the Namaqualand Coastal Ecosystems Phase 1: Feasibility Study Final Report dated March 2022 prepared by GroundTruth ("the Feasibility Study").
 - 4.1 Such Biodiversity Management Plan will provide for the establishment of "no-go areas" and the formalisation of "set-aside areas" for conservation as set out in paragraph 5.4 of the Feasibility Study;
 - 4.2 The "no-go" and "set aside" areas will be identified and prioritised according to actual, on-the-ground sensitivity, with the support of specialist ecologists/botanists, taking account of the Western Cape Biodiversity Spatial Plan, 2017, and the areas should contribute meaningfully to the overall network of ecological corridors.
5. The Fourth Respondent undertakes to implement the Phase 1 commitments in terms of section 7.2 of the Feasibility Study within two months from the date of this order, and to make application for approval of the Phase 1 BMP under section 43 of the Biodiversity Act.

6. The Fourth Respondent shall, by no later than 3 months from the date of this order, or such extended date as the Applicant and the Fourth Respondent may agree in writing, submit a motivation for a Strategic Environmental Assessment ("SEA") to the relevant authority.

7. It is agreed as between the Applicant and the Fourth Respondent that, if the submission of the draft Biodiversity Management Plan in terms of paragraph 4 above does not result in:
 - 7.1 an approved Biodiversity Management Plan in terms of section 43(1) of the Biodiversity Act for the Namaqualand Coastal Ecosystems ("the approved BMP");

 - 7.2 a plan for the implementation of the approved BMP, including assignment of responsibility for the implementation of the approved BMP to the person, organisation, or organ of state identified in terms of section 43(2), as provided for in section 43(3)(b) and (c), of the Biodiversity Act;

 - 7.3 a biodiversity management agreement with the person, organisation or organ of state identified in terms of section 43(2), or any other suitable person, organisation or organ of state, regarding the implementation of the approved BMP in terms of section 44 of the Biodiversity Act; and

 - 7.4 an approved BMP published in the Gazette in terms of section 43(3)(a) of the Biodiversity Act;

within 12 months from submission of the draft BMP, or such extended date as may be agreed between the parties, the application will no longer be stayed and the Applicant shall be entitled to set the application down for hearing at a time convenient to the parties.

8. The Fourth Respondent shall bear responsibility for the costs of developing, securing, maintaining and extending the ecosystem in relation to the land under its ownership or control, subject to the approved BMP, for the duration of the approved BMP, in accordance with the implementation agreement referred to in paragraph 7.3.
9. It is agreed between the Applicant and the Fourth Respondent that, if the submission of the motivation for an SEA as referred to in paragraph 6 does not result in the adoption of an environmental management framework in terms of Regulation 5 of the Environmental Management Framework Regulations, 2010 and the publication of a notice of such adoption in the Government Gazette in terms of regulation 5(4) of the Environmental Framework Regulations within 12 months of the date of the completion of the SEA, or such extended date as may be agreed between the parties, the Applicant shall be entitled to set the application down for hearing at a time convenient to the parties.
10. In relation to the BMP and SEA referred to above:
 - 10.1. Paragraphs 4 to 9 of this Order constitute an agreement between the Applicant and the Fourth Respondent only;
 - 10.2. the First Respondent will participate in the formulation of these documents only in the way of commenting on outputs;
 - 10.3. the First Respondent will not be responsible for contributing towards any of the costs associated with formulating these documents; and
 - 10.4. the First Respondent need not involve herself in any manner other than as prescribed by the relevant statutory framework that implicates any of the

instruments mentioned in this order or any instrument motivated for in the draft BMP or the motivation for the SEA.

11. Each party shall pay its own costs incurred to date, including any wasted costs of the hearing set down for 22 to 25 March 2022 and costs of experts.

BY ORDER OF THE COURT

COURT REGISTRAR

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