



**MINISTER
ENVIRONMENTAL AFFAIRS
REPUBLIC OF SOUTH AFRICA**

Reference: LSA 168249

**APPEALS AGAINST THE DECISION TO GRANT AN ENVIRONMENTAL
AUTHORISATION TO MOSITO MINING (PTY) LTD IN RESPECT OF THE MINING
PERMIT APPLICATION FOR MINING DIAMONDS (KIMBERLITE) ON THE
REMAINDER OF THE FARM DUTOITSPAN 119, WITHIN THE MAGISTERIAL
DISTRICT OF BOSHOF, IN THE FREE STATE PROVINCE**

1. INTRODUCTION

On 11 November 2017, acting under delegated power, the Regional Manager: Mineral Regulation of the Department of Mineral Resources, Free State Regional Office (the DMR), granted an Environmental Authorisation (EA) to Mosito Mining (Pty) Ltd (the applicant) in respect of the Mining Permit Application for diamonds (Kimberlite) on the remainder of the Farm Dutoitspan 119, within the Magisterial District of Boshof, in the Free State Province.. The aforesaid EA was granted in terms of Regulation 4(2) of the Environmental Impact Assessment Regulations, 2014 (2014 EIA Regulations).

2. BACKGROUND AND APPEALS

2.1 On 28 September 2016, the applicant lodged an application for EA with the DMR in respect of the Mining Permit Application for diamonds (kimberlite) through the use of open cast mining method on the abovementioned property. The proposed mining area is located

within the Tokologo District of the Free State Province and lies approximately 5 km south-east of Kimberley.

- 2.2 The applicant commissioned L W Consultants as an independent environmental assessment practitioner (EAP) to undertake the environmental impact assessment (EIA) process for the above-mentioned project. The Basic Assessment Report (BAR) and Environmental Management Programme (EMPr) were received by the DMR on 24 November 2016 and the revised BAR and EMPr received on 13 February 2017.
- 2.3 The DMR was thereafter satisfied that the applicant complied with the minimum requirements of Regulation 19 of the 2014 EIA Regulations, and that the BAR as well as EMPr adequately assessed the impacts associated with the proposed activities. As a result thereof, the DMR granted an EA to the applicant on 11 November 2017 for the above mentioned project.
- 2.4 The Directorate: Appeals and Legal Review within the Department of Environmental Affairs (Appeals Directorate) thereafter received appeals against the granting of the aforementioned EA from the South African Heritage Resources Agency (SAHRA) (the first appellant), Mr Hein Knoke (the second appellant), Mr Rinus Weenink, behalf of Rooifontein Wildlife Club (the third appellant) and Cliff Dekker Hofmeyr Incorporated, on behalf of Ekapa Minerals (Pty) Ltd (fourth appellant) on 21 November 2017, 1 December 2017, 12 December 2017 and 14 December 2017 respectively.
- 2.5 The grounds of appeals were provided to the applicant, who submitted a responding statement thereto on 5 February 2018.
- 2.6 Comments on the grounds of appeals were thereafter received from the DMR on 22 February 2018.

3. DECISION

- 3.1 In reaching my decision on the appeals against the aforementioned decision by the DMR, I have taken the following into consideration:
- 3.1.1 Relevant material information contained in the project file (FS 30/5/1/3/3/1 (10201) EM);
 - 3.1.2 The grounds of appeal submitted by the first, second, third and fourth appellants on 21 November, 1 December, 12 December and 14 December 2017 respectively;
 - 3.1.3 The responding statement submitted by the applicant on 5 February 2018; and
 - 3.1.4 The comments submitted by the DMR on 22 February 2018.
- 3.2 Having considered the above information, and in terms of section 43 (6) of NEMA, I have decided to dismiss the appeals by the second and third appellants against the DMR's decision to grant the aforementioned EA to the applicant, and uphold the appeal by the first appellant.
- 3.3 In arriving at my decision on the appeals, it should be noted that I have not responded to each and every statement set out in the grounds of appeals and responding statement, and where a particular statement is not directly addressed, the absence of any response should not be interpreted to mean that I agree with or abide by the statement made.
- 3.4 Furthermore, should the appellants be dissatisfied with any aspect of my decision, they may apply to a competent court to have this decision judicially reviewed. Judicial review proceedings must be instituted within 180 days of notification hereof, in accordance with the provisions of section 7 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).

4 THE REASONS FOR MY DECISION ARE AS FOLLOWS:

4.1 APPEAL BY THE FIRST APPELLANT

4.1.1 The first appellant contends that the EA was granted against the advice of the recommendations contained in the archaeological impact assessment. The first appellant further contends that the EA was granted without its final comments as required by the National Heritage Resources Act, 1999 (Act No. 25 of 1999) (NHRA). The appellant contends, furthermore, that the application is located within areas of high sensitivity and also that the area is recognised as a heritage landscape at the provincial level and has significant history regarding the area.

4.1.2 In response to the grounds of appeal by the first appellant, the applicant submits that, according to the archaeological report, it has been mentioned that mining occurred during the 1980's and further that this area is very rich in diamonds. This report further indicates that the footprint of the proposed development is located within a historical mining area that forms part of a historically significant landscape. The applicant submits that mining has been done on the area in the past and further that the area is already disturbed by mining activities. It is the submission by the applicant that if there was a need to conduct paleontological impact assessment (PIA), the archaeologist would have informed all the parties involved.

Furthermore, the applicant submits that if at any stage archaeological or paleontological effects are discovered, it will stop all mining activities and contact relevant authority. The applicant also submits that the area is suitable for mining activities and could also uplift local small mining communities which could be uplifted in various ways. Kimberly is a community with an average to high unemployment percentage and elevated crime levels, and therefore the development of a mine can and will result in the employment opportunities within the direct vicinity and produce economic growth for the area.

4.1.3 In evaluating the grounds of appeal by the first appellant and the response thereto by the applicant, I note that the archaeological impact assessment report, which includes

paleontological issues, was included in the BAR and EMPr submitted to the DMR for consideration prior to making its decision on the application for EA.

- 4.1.4 With regard to the sensitivity of the area, I further take note that the applicant did conduct a paleontological impact assessment which states that the area is regarded as archaeologically sensitive and further that the proposed development footprint is located in an area considered to be of high historical and archaeological significance and will likely have an adverse effect on the integrity of Kimberly's historical landscape. Information before also indicates that that mining has been done on the area in the past and further that the area is already disturbed by mining activities. The information before me indicates that if there was a need to conduct paleontological impact assessment (PIA), the archaeologist would have informed all the parties involved. The information also indicates that a phase one of Heritage Impact Assessment (HIA) was done with low to no impact and also that should any archaeological items found, necessary authorities will be contacted.

I note however, the provisions of section 38(8) of NHRA which indicates that the consenting authority must ensure that the evaluation fulfils the requirements of the relevant heritage authority in terms of subsection (3), and any comments and recommendations of the relevant heritage resources authority with regard to such development have been taken into account prior to the granting of the consent. Information before me indicates that the applicant failed to address the interim comments dated 23 March 2017 received from the appellant, and as a result thereof, no final comments were issued by the appellant in respect of the application for EA. This, in my view, resulted in a fatal flaw on the part of the DMR to issue an EA without the benefit of such final comments from the appellant.

- 4.1.5 In light of the above, the appeal by the first appellant is accordingly upheld and that the decision by the DMR to grant the aforementioned EA is hereby set aside. Furthermore, the applicant is instructed to fully comply with interim comment by the appellant dated 23 March 2017. The final comments by the appellant must thereafter be submitted to the DMR for consideration prior to making decision on the application for the EA.

4.2 APPEAL BY THE SECOND APPELLANT

- 4.2.1 The second appellant contends that the issue of where water will be sourced and brought on site has not been addressed adequately. The appellant contends that in the BAR, nothing is specified regarding access to the mining area and that any route would have impact on the vehicles on the farm. Furthermore, the appellant contends that the routes used by heavy vehicles must be maintained regularly as it is with neighbouring projects. The appellant contends further that it is not clear how many people and at what level will be employed by the project, and that how will they be transported to and from the site. It is the contention by the appellant that the advantages of job creation and the present actual benefits from utilising the farm for recreation, should be weighed against each other.
- 4.2.2 The appellant contends further that it is necessary to indicate the lifespan of the mine and the number as well as type of heavy vehicles that would be used. The appellant contends, furthermore, the applicant must indicate how dust and noise would be contained. In addition, the appellant contends that the track record of the applicant is important in order to avoid issues of non-compliances with rehabilitation obligations. In addition thereto, the appellant further contends that the applicant did not give sufficient details regarding environmental issues like pollution, water usage etc. and the impact that the project would have on the environment.
- 4.2.3 In response to the grounds of appeal by the second appellant, the applicant submits that water will be sourced from Sol Plaatjie Municipality, and that at the beginning, it will be hauled by trucks in order to prevent dust pollution and by pipeline at a late stage. In this regard, the applicant submits that water will not be extracted from the farm. The applicant further submits that existing roads will be used as far as possible, and if any other roads are constructed, this will form part of the rehabilitation process and that maintenance of existing roads will be done by the applicant itself and the appellant on existing roads. Furthermore, the applicant submits that a biodegradable dust suppressant will be used in this process and that the application area will be fenced off with an access control, and that further entrance will also be discussed once the mining permit has been granted.

- 4.2.4 The applicant submits in addition that it is not certain how many employees will be employed, however, the working hours will be normal and only security personnel will be on site after hours. The mining operations, the applicants submits, will be for about 5 years. In addition thereto, the applicant submits that dust pollution will be dealt with by spraying roads with a bio degradable suppressant with work taking place during normal hours and there will still be tranquillity of the farming environment enjoyed by visiting people.
- 4.2.5 With regard to the track record of the applicant to avoid issues of non-compliance, the applicant submits that it has had two mines and met the necessary requirements from the DMR. The applicant submits that the DMR would not issue an EA without all aspects covered, including the rehabilitation of the mine, and that should any heritage be discovered, this must be dealt with in accordance with the conditions specified in the EA.
- 4.2.6 In evaluating the appeal by the second appellant and the response thereto by the applicant, I take note from the applicant's response that water will be sourced from Sol Plaatjie Municipality and that the water usage licence is still pending and will be dealt with by the relevant competent authority. I further take note that there is a notice to apply for water use license which is attached to the BAR and the EMPr. In addition thereto, I note that in terms of condition 3.21 of the EA, it is indicated that the holder thereof must obtain authorisation from the Department of Water and Sanitation (DWS) before commencing with listed activities and that no mining activities can take place without the mining permit in terms of section 27 of Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002) (MPRDA).
- 4.2.7 Furthermore, I note from the BAR and EMPr that the location and amount of roads will be finalised during the final stage of planning and construction phase and that should the applicant need new roads, it may apply for an amendment to the EA, alternatively ask permission from the farm owner for a new road. I note also that the applicant will use spray on the road with non-polluting substances mixed in water to chemically bind dust particles for dust reduction. The information before me indicates that it is not clear how many people

will be employed, however, the working hours will be normal and only security personnel will be on site after hours. Furthermore I note that the permit in terms of the MPRDA is issued for 2 years which can be renewed 3 times annually on a mine with a 5 years life span.

4.2.8 In addition thereto, I note that the number of heavy machineries to be used together with their type thereof was not indicated in the BAR and EMPr, however, it is indicated that dust suppression will be done through the spraying of chemical bounded or recycled water and that noise level will be mitigated by operating during office hours. I note that, although there is no more information regarding the track records of the applicant, the only safeguard that the DMR has is the financial provisions, as stated in section 2(i) on the reasons for decisions on the EA, which can be withheld should the applicant fail to rehabilitate the environmental damages.

4.2.9 In light of the foregoing, the appeal by the second appellant is accordingly dismissed.

4.3 APPEAL BY THE THIRD APPELLANT

4.3.1 The third appellant contends that there was no public meeting that took place and that no rehabilitation and access to the farm were tabled. Furthermore, the appellant contends that no proof of water licence or application was submitted to interested and affected parties (I&APs) and also that there is no mention of infrastructure for treatment of effluent, waste water or sewerage in the BAR. The appellant further contends that it is unclear where will the kimberlite be processed and stockpiles taken.

4.3.2 In response to the grounds of appeal by the third appellant, the applicant submits that consultation was done on various occasions through meetings in Kimberly and in DMR offices in Welkom and that all people were duly informed of such and that the rehabilitation was addressed in the BAR and EMPr. In addition thereto, the applicant submits that water will be procured from Sol Platjie Municipality by truck transportation to the site and further that there will be a discussion regarding the pipeline which will benefit the farm as well. It is the submission by the applicant that the BAR does address issue of treatment of effluent

and that backfilling will be done as part of the rehabilitation process and that processing will be done on site to avoid impact on the environment.

4.3.3 In evaluating the grounds of appeal by the third appellant and the response thereto by the applicant, I note from the information before me that public participation was done using different methods, including notices, letters and local newspaper adverts specifically on Diamonds Filed Advertiser and Geklassifiseerd newspaper, and that there is proof in the BAR regarding different dates that the meetings were held. I also note that the rehabilitation plan was discussed and addressed in the BAR and that the access issue rest upon the two parties involved.

4.3.4 Furthermore, it can be noted from the BAR that there is a notice to apply for water use license as the applicant cannot commence with the mining activities without a valid water use licence issued by the relevant competent authority. In this regard, I take note of condition 3.21 of the EA which obliges the applicant to obtain authorisation from the DWS prior to the commencement of such activity. I note further that the BAR and EMPr indicates that there will be settling dam to be used for efficient water flow and recycling and that this dam forms a unit for water recycling to ensure relative clean water for the mineral processing activities.

4.3.5 The information before me indicates that the applicant is not authorised to process the kimberlite material as there is no application for such activity, and that should a need arise to process kimberlite material, the applicant must apply to the DMR for the amendment of the EA to include such activity.

4.3.6 In light of the foregoing, the appeal by the third appellant is dismissed

4.4 APPEAL BY THE FOURTH APPELLANT

4.4.1 The fourth appellant contends there was no adequate consultation in that it was not provided by the applicant with an opportunity to comment on the amended BAR before it was submitted to the DMR. The appellant contends that the project may trigger some of

the listed activities which have not been applied for and may need a full scoping and EIA process and that there will be a removal of vegetation which may require an EA. Furthermore, the appellant contends that the dried settled material from the settling dams will be used as rehabilitation material, and that this could be considered as a disposal of waste which may disturb the water course. According to the BAR, a diesel storage tank will be installed and its capacity has not been stated. It is the contention by the appellant that there has been inadequate consideration of impacts, mitigation measures and alternatives as the EAP states that no specialist studies were required, and that the EMPr lacks specificity and is not appropriate for the development in terms of mitigation measures proposed, and further that no site alternatives were considered.

4.4.2 It is furthermore the contention by the appellant that the BAR and EMPr do not consider the vegetation types present on the site as there was no site visit that was conducted during appropriate summer and winter season for accurate indication of the protected species found in the property. The appellant contends in addition that the BAR and EMPr does not provide for the decommissioning and rehabilitation of the settling dams, which is significant impact of diamond mining. In addition thereto, the appellant contends that no heritage impact assessment was conducted by the applicant and that the activity triggers section 38 of the NHRA.

4.4.3 It is the appellant's contention that socio-economic impacts including eco-tourism caused by noise and dust generated by the activities was not considered, including overnight camping facilities. Therefore, the appellant contends that the mitigation measures contained in the EMPr are wholly inadequate to deal with the noise and eco-tourism. It is the contention by the appellant that mining project will pose a threat to mine workers due to hunting activities, and that no agreement exists between the applicant and the property management. Furthermore, the appellant contends that game breeding abilities will be negatively affected. It is not indicated from the BAR how the mining will generate income for communities, the appellant contends, and that the mining will have a negative effect on the biodiversity conservation, education, sustainability and the socio economic benefits to the community.

- 4.4.4 In addition, the appellant contends that the BAR does not provide how water will be provided on site and that if the applicant construct a pipeline, more impact assessment will be required. It is the appellant's contention that ecotourism will be negatively affected by the mining activities which are not compatible with the current land use in the area. In addition thereto, the appellant contends that the BAR does not consider noise impacts which the appellant view as a major omission. The appellant contends that the EAP does not have the suitable and required qualifications.
- 4.4.5 Furthermore, the appellant contends that the applicant does not comply with the one environmental system regarding applications for water use licence and waste management license. It is the appellant's contention that the property constitute agricultural land for such purposes and that the applicant has failed to comply with Spatial and Land Use Management Act, 2013 (Act no. 16 of 2013) (SPLUMA). Therefore, the appellant contends that the DMR failed to comply with the principles in terms of section 2 of NEMA and that the decision does not consider the interests and needs of the people affected.
- 4.4.6 In response to the grounds of appeal by the fourth appellant, the applicant submits that various attempts were made to consult one on one with the fourth appellant and the Wildlife club, however there was a delay occasioned by both of them, and instead of discussing the issues at hand, the appellant had an issue with regard to the timing and the preparation on the type of meetings held. The applicant submits that all necessary reports were made available at the consultant's office. All the activities, the applicant submits, were addressed in the BAR and that the wetland delineation specifically identified the area not as a wetland and did not require any further studies. The applicant submits that the diesel tank on the mining area will only be a 23m³ storage tank and that alternatively, it will supply diesel on a daily basis with a mobile trailer. Furthermore, the applicant submits that when indigenous species are affected, that will be dealt with in terms of the BAR and the rehabilitation process, as well as dealing with various relevant state departments to prevent the loss of species.
- 4.4.7 It is the applicant's submission that if it was necessary, the decision maker would have requested more reports about other impacts. The activities, the applicant submits, would

take place during working hours with only security personnel on the mining area. The applicant furthermore submits that if another site were to be used, the hauling of the material would have a greater impact on the environment. It is the applicant's submission that vegetation clearance must be limited on areas where individual activities will occur and that mitigation measures will be implemented to reduce the risk of erosion and alien species invasion. The applicant further submits that the protected plant species and those listed will not be cut or disturbed, damaged, destroyed and that their products must not be possessed, collected or removed without a permission from the Department of Agriculture, Forestry and Fisheries (DAFF). The applicant submits that the appellant's concerns were adequately addressed in the EA.

4.4.8 In addition thereto, the applicant submits that the application area is small and the loss of game is likely to be due to the appellant's hunting activities than mining activities, and that it must protect all fauna and flora, which if noted, all protected species will be reported to applicable authorities. The employees, the applicant submits will also be trained to identify these species to protect them, and consequently, any danger to the wildlife will be viewed in a serious light thereof. It is the submission by the applicant that DWS will be included for evaluation and input regarding the rehabilitation of settling dams.

4.4.9 Furthermore, it is the applicant's submission that the HIA impacts was done with low to no impact and also that should any archaeological items found, necessary authorities will be contacted. The applicant submits that it tried on several occasions to accommodate the appellant but without any willingness to come to an agreement. In addition thereto, the applicant submits that noise and pollution were addressed in the BAR while mining activities will take place during normal working hours, thereby causing no disturbances during night times. It is common cause that the place is for protection of wildlife and that hunters would be able to avoid any danger, the applicant submits, and that this issues would have been discussed if the appellant had committed itself for doing this. The applicant submits that the appellant has several issues like illegal mining and labour related issues, and with an additional mining company, more of the local community's challenges would be resolved and that employees would receive training in conservation of fauna and flora for the benefit of all parties.

- 4.4.10 It is the submission by the applicant that water will be brought from Sol Platjie municipality and that should a need for a pipeline arise, necessary authorisation will be applied for. The mining area, the applicant submits, will be small and not visible, and therefore the noise will be localised on a small area only during working area. Regarding the competency of the EAP, the applicant submits that the EAP has 17 years of experience and that the EA would not have been issued by the DMR if not satisfied with necessary documentations. The applicant further submits that the DWS confirmed that the mining right must be issued first before it can consider waste water authorisation, which is still under consideration.
- 4.4.11 The applicant submits that there is a contradiction by the appellant on whether the land is used for agriculture purpose or as a conservation area. However the applicant submits that it has consulted with relevant Department in terms of Spatial and Land Use Management Act, 2013 (Act No. 16 of 2013) (SPLUMA).
- 4.4.12 In evaluating the appeal by the fourth appellant and the response thereto by the applicant, I note from the information before me that PPP was conducted in terms of the EIA regulations through various kinds of notices and that in one certain meeting which was held at the Galeshwe Housing Support Centre, the appellant was not represented. I note that it appears that the appellant preferred to be consulted directly and not through the general consultation process.
- 4.4.13 I am aware that the DMR is only authorised to grant the EA based on the listed activities applied for by the applicant, and that if there are omissions to activities, such can be amended through appropriate amendment application. Furthermore, I note an undertaking by the DMR that should there be any non-compliance on the part of the applicant, compliance notice would be issued accordingly. Similarly, the information before indicates that the closure plan can be amended at a later stage of the closure of the mine. I also note that the diesel tank to be used has less capacity hence it was not included for activities to be assessed during the EA application. I am aware that if there can be any non-compliance, the DMR would have to enforce compliance as required.

- 4.4.14 In addition thereto, I note that archaeological and ecological impact studies were conducted by the applicant, wherein impacts were highlighted. The information before me indicates that nowhere in the BAR and the EMPr is stated that there are protected species. I note also that the BAR and EMPr has outlined biological environmental impact within the area of study or proposed mining area and that it must be indicated that the farm is not declared as a game farm and that the application area is unlikely to have any impact on biodiversity conservation and sustainability. Regarding the decommissioning of dams, I am satisfied that this is a mandate of another government Department.
- 4.4.15 I note that the archaeological studies conducted indicates that the holder of the EA is obliged to report any heritage and cultural resources to the relevant authority. I note from the information before me that vegetation clearance must be limited on areas where individual activities will occur and that mitigation measures will be implemented to reduce the risk of erosion and alien species invasion as indicated in condition 3.6 of the EA. Furthermore, I note that protected plant species and those listed will not be cut or disturbed, damaged, destroyed and that their products must not be possessed, collected or removed without a permission from the Department of Agriculture, Forestry and Fisheries (DAFF).
- 4.4.16 The information before me indicates that the socio economic impacts have been considered accordingly and that water will be sourced from the Sol Plaatje municipality. Furthermore, I note that noise and visual impacts have been mitigated for in the BAR and EMPr.
- 4.4.17 The information further indicates that the EAP possess the following short courses from the University of Potchefstroom: Introduction to Environmental Management (2002), Environmental Impact Assessment (2002) and Legal Framework for Managing Water in South Africa, and furthermore, she assisted with two EIA processes for a Golf Course development in Modder Rivier, and later did her first EIA processes for the development of a filling station on the N12 in Warrenton. I note that she further conducted several EIA for mining rights on la Reystryd 53 IO, Lichtenburg (2004), Longlands, Barkly West (2004) and Lohattha 673, Postmas burg (2009, 2011) on the farm Groot Derm 10, Alexander Bay.

- 4.4.18 I am therefore satisfied that the EAP possess necessary and reasonable qualifications to do the work. I also take note of one environmental system, which aims to encourage an integrated governance system and co-ordination of activities amongst government institutions, and that such system should as far as possible be adhered to.
- 4.4.19 The information before me indicates that the area is relevant for both agricultural purposes and is identified as conservation-worthy bioregion. I am therefore satisfied that the three pillars of sustainable development were adequately addressed in the BAR and the EMPr.
- 4.4.20 I am furthermore satisfied that the DMR considered, evaluated and assessed all relevant reports and that these considerations were adequately addressed during the PPP and mitigated accordingly before the EA was granted. The information before me furthermore indicates that the DMR complied with its responsibilities under the provisions of NEMA and that it took into consideration all relevant information before reaching a decision to grant the aforementioned EA.
- 4.4.21 I am also satisfied with the evidence provided to me that the PPP for the aforementioned application for EA complied, in all material respects, with the minimum requirements of the 2014 EIA Regulations.
- 4.4.22 In light of the foregoing, the appeal by the fourth appellant is accordingly dismissed.



DR B E E MOLEWA, MP

MINISTER OF ENVIRONMENTAL AFFAIRS

DATE: 2018/06/07