

*Lcw*  
LANGE CARR & WESSELS

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Since 1948

BY Email: [collections@lcw.co.za](mailto:collections@lcw.co.za)

Our Ref: P S LANGE/RH/FLIS/0004

Your Ref: MR ZIYAAD HASSAM

18 January 2019

**DIRECTOR: APPEALS AND LEGAL REVIEW  
DEPARTMENT OF ENVIRONMENTAL AFFAIRS**

Private Bag X3447

PRETORIA

0001

PER REGISTERED POST

E-MAIL : [Appealsdirector@environment.gov.za](mailto:Appealsdirector@environment.gov.za)

**M & S CONSULTING**

P O Box 2473

KIMBERLEY

8300

PER REGISTERED POST

E-MAIL : [ms.consulting@vodamail.co.za](mailto:ms.consulting@vodamail.co.za)

**ALIDABIX (PTY) LTD**

94 Central Road

Beaconsfield

KIMBERLEY

8301

PER REGISTERED POST

E-MAIL : [berend@inext.co.za](mailto:berend@inext.co.za)

Dear Sir

**RE: APPEAL AGAINST ENVIRONMENTAL AUTHORISATION – (NC) 30/5/1/1/2/12131 PR – ALIDABIX (PTY) LTD (copper, zinc, gold, silver, diamond general, diamond alluvial, diamond in kimberlite, molybdenum, nickel and platinum group metals) OVER PORTION 3 (A PORTION OF PORTION 1 – STOMP OOR A) OF THE FARM STOMP OOR 109, SITUATED IN THE PRIESKA DISTRICT, NORTHERN CAPE PROVINCE**

On instructions of the Trustees of the FLIP VAN DER WESTHUIZEN TRUST (IT88/97) we hereby note an Appeal against the abovementioned Environmental Authorization.

Directors: PS Lange (B.Proc, Appraiser, Dip.Deceased Estates); CJ Carr (B.Proc, LL.B); LL Mokgoro (LL.B) [non executive];  
CJ Wessels (B.Juris, LL.B, GDA); JA Kruger (B.Proc, LL.B)

Associates: MA Isaacs (LL.B, LL.M); W Spangenberg (LL.B, LL.M); JC Haasbroek (B.Com Law, LL.B)

Lange Carr & Wessels Inc. is a Level Four contributor to BEE | Reg no: 2000/030346/21 | VAT no: 4650191671

member of  
**photoshoanehenney**  
GROUP OF ASSOCIATED LAW FIRMS

Please find enclosed the following;

1. Minutes of meeting of Trustees dated 18<sup>th</sup> January 2019, authorizing Mr P L Van Der Westhuizen to act on behalf of the Trust.
2. The completed Appeal Questionnaire with attached letter of Alidabix (Pty) Ltd, dated 2 July 2018 as supporting documentation.
3. Appeal Response Report as annexure "B".
4. Request for Condonation in terms of Section 47 of Act, 1998 (Act 107 of 1998).

The Applicant and M & S Consulting have been furnished with copies of the Appeal.

Please acknowledge receipt and keep us posted of developments.

Yours faithfully,

LANGE CARR & WESSELS ING./INC.

per:



/

**MINUTES OF A MEETING OF THE TRUSTEES OF FLIP VAN DER WESTHUIZEN TRUST(IT88/97)**

**HELD AT UPINGTON ON THE 18TH DAY OF JANUARY 2019.**

---

**Present:**

**PHILIPPUS LATEGAN VAN DER WESTHUIZEN, ID 651011 5077 085**

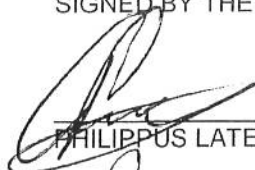
**RULIEN VAN DER WESTHUIZEN, ID 690310 0047 082**

**NICO ERASMUS, ID 720626 5127 080**

**RESOLUTION -**

1. It is resolved that the Trust represented by Mr Philippus Lategan Van Der Westhuizen, Id 651011 5077 085 will on behalf of the Trust note an Appeal against Enviromental Authorisation in terms of the National Enviromental Manangement Act, 1998 (Act 107 of 1998) which was granted by the Department of Mineral and Petroleum Resources of the Republic of South Africa Kimberley under reference number (NC) 30/5/1/1/2/12131 PR on the 20<sup>th</sup> of November 2018.
2. Mr Philippus Lategan Van Der Westhuizen is authorized to sign all documents relating to the Appeal including an application for condonation for the late filing of the Appeal in terms of the National Enviromental Management Act, 1998 (Act 107 of 1998) (NEMA).
3. Mr Philippus Lategan Van Der Westhuizen is authorized to do all acts needed and necessary for the Appeal Application.

**SIGNED BY THE TRUSTEES**

  
\_\_\_\_\_  
PHILIPPUS LATEGAN VAN DER WESTHUIZEN

  
\_\_\_\_\_  
RULIEN VAN DER WESTHUIZEN

  
\_\_\_\_\_  
NICO ERASMUS



REPUBLIC OF SOUTH AFRICA

**MAGTIGINGSBRIEF  
LETTERS OF AUTHORITY**

Ingevolge Artikel 6(1) van die Wet op Beheer oor Trustgoed, 1988 (Wet 57 van 1988)  
In terms of Section 6(1) of the Trust Property Control Act, 1988 (Act 57 of 1988)

No: IT88/97

Hiermee word gesertifiseer dat /  
This is to certify that

**PHILIPPUS LATEGAN VAN DER WESTHUIZEN** (Id. No. 651011 5077 08 5);  
**RULIEN VAN DER WESTHUIZEN** (Id. No. 690310 0047 08 2) en / and  
**NICO ERASMUS** (Id. No. 720626 5127 08 0)

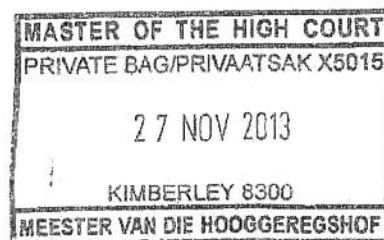
gemagtig word om op te tree as trustee(s) van die/  
is/are hereby authorized to act as trustee(s) of the/

**FLIP VAN DER WESTHUIZEN TRUST**

GEGEE onder my hand te **KIMBERLEY** op hede die dag van **NOVEMBER** jaar **2013**  
GIVEN under my hand at **KIMBERLEY** this day of year **2013**

Signature

**ASSISTENT MEESTER  
ASSISTANT MASTER**



**Appellant's contact information:**

Name: FLIP VAN DER WESTHUIZEN TRUST: IT 88/97  
Address: C/O Lange Cam + Weasels Inc.  
Schodderstraat 26 Oryzedicht Buiden  
P.O. Box 6 Wunnen 8806  
Phone: 054-3375000  
Cell: 0827725911  
Email: PIETIESH@LCW.CO.ZA

**Project information:**

Project name: ANIDABIX (PTY) LTD. PROSPECTING RIGHT  
Authorisation register number as on environmental authorisation:  
NC 3015/111/2/12131 P R.  
Authorisation date as on environmental authorisation:  
20/11/2018

**IMPORTANT! Please note:**

- The decision of the department is reflected in the letter of authorisation or rejection. The conditions of approval are contained in the environmental authorisation document, attached to the authorisation letter.
- The appeal must be accompanied by all relevant supporting documents or copies of these that are certified as true by a commissioner of oaths.
- The grounds of your appeal and the facts upon which they rest must be set out. You should formulate your objections or concerns as averments and not as questions about the project. Please therefore refrain from material or remarks that do not contribute to the merits of your appeal.
- To assist in this regard, the following questions are listed as a guideline only – more space may be used if necessary:



1. Are you lodging this appeal as an individual or on behalf of a community/organisation?

<del>Individual</del>	Community/ organisation
-----------------------	----------------------------

If on behalf of a community or organisation, please provide proof of mandate to do so.

See attached  
Mandate and map dated  
by the Members of the City  
Council, Wellington, dated 7/11/97.

2. Is your appeal based on factors associated with the process that was followed by the applicant in obtaining authorisation?

Yes	<del>No</del>
-----	---------------

Please provide reasons:

THE PROPERTY LOCATION AS SET OUT  
IN PARA C OF ENVIRONMENTAL AUTHORISATION  
REFERS PROPERTY LOCATED 45 KILOMETRES  
NORTHWEST OF PRIESKA WHICH  
IS INCORRECT THE INDICATED LOCATION  
HAS A BEARING ON A TOTALLY DIFFERENT PROPERTY

3. Is your appeal based on factors associated with environmental impacts not taken into account by the department in refusing or authorising the application?

Yes	<del>No</del>
-----	---------------

Please provide reasons:

EXISTING WATER USE ON PROPERTY FOR FARMING PURPOSES  
BY APPELLANT ALREADY EXCEEDS 10 000 LITRES (10M<sup>3</sup>)  
LIMIT PER DAY. APPLICANT INTENDS TAKING A  
UP TO 5000 LITRES per day (See attached  
letter dated 2/11/2018 of APPLICANT).  
MUST APPLY FOR WATER USE LICENCE - ABILITY  
DURING WHICH PROCESS GROUND WATER AVAILABILITY  
MUST BE PROVED.

The Department of Mineral Resources failed to EXAMINE THIS CRUCIAL ASPECT.

4. Would you agree to the activity proceeding if your concerns can be addressed by rectifying the process or mitigating or eliminating the impacts of the activity?

Yes	<input checked="" type="checkbox"/> No
-----	--

Please provide reasons:

Applicant contends that there is not sufficient groundwater resources for pumping and prospecting, if the CEATrans is proved during the WATER USE LICENCE APPLICATION and mitigating or eliminating MEASURES ARE SET OUT IN SUCH LICENCE APPLICATION

5. Are you fundamentally opposed to any development activity on the site?

<input checked="" type="checkbox"/> Yes	No
---	----

Please provide reasons:

N/A as the mineral rights do not belong to applicant as being the surface owner of the farm.

6. Do you have an objection in principle against the development?

<input checked="" type="checkbox"/> Yes	No
---	----

Please provide reasons:

No, but the applicant is of opinion that a water use licence cannot be granted as the extraction of 18000 l per day will deplete the property of all underground water resources.

*[Signature]*

7. Does your appeal contain any new information that was not submitted to the environmental consultant or department prior to the department's consideration of the application?

Yes	No
-----	----

If the answer above is yes, please explain why it should be considered by the Minister and why it was not made available to the environmental consultant or department during the application process.

See-attached letter by Applicant dated 2 July 2018. ~~upheld~~ ~~concerns~~ ~~the~~ ~~intent~~ ~~to~~ ~~extract~~ ~~5000-2000~~ ~~litres~~ ~~ground water~~ ~~per day~~ ~~which~~ ~~is not sustainable~~ ~~as~~ ~~set out~~ ~~above~~

8. DECLARATION:

I declare that the contents of this submission are to the best of my knowledge the truth and I regard this declaration as binding on my conscience.



APPELLANT

DATE:

18/11/2018



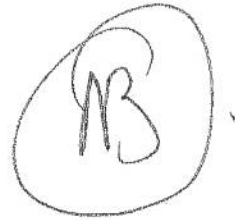
# ALIDABIX PROPRIETARY LIMITED

REG. NO. 2017/471777/07

Tel: +27 53 832 3298 | Fax: +27 53 832 3298 | 94 Central Road, Beaconsfield, Kimberley, 8315

2 July 2018

Lange Carr & Wessels Inc  
P.O. Box 6  
Upington  
8800



By email: [collections@lcw.co.za](mailto:collections@lcw.co.za)

Dear Sir

## APPLICATION FOR A PROSPECTING RIGHT - NC30/5/1/1/2/12131PR

We refer to your letter 28 June 2018, attached hereto for ease of reference.

We thank you for completing the response form for comment by interested and affected parties, to which we respond to as follows:

### 1. Water Permit must be obtained in terms of the National Water Act no. 36 of 1998 ("NWA")

With regard to section 20 of the NWA -

The Acting Director-General of Water and Sanitation has, in terms of Section 39 of the NWA, published the revised General Authorisation (GNR 538 of 02 September 2016) pertaining to the taking and storing of water, water uses in terms of Section 21(a) and 21(b) of the NWA respectively.

The General Authorisation came into effect on 1 March 2017 and replaced the General Authorisation for the taking and storing of water contained in GNR399 of 26 March 2004.

In terms of clause 7.2 of the Schedule to the 2017 General Authorisations, registration of a water use is only required if more than 10m<sup>3</sup> of water is taken from a groundwater resource per day *on average over a year on a property*.

During Phases 6 and 8 of the prospecting work programme, Alidabix (Pty) Ltd ("Alidabix") plans to drill a total of fifteen core boreholes. Provision has been made for 5 000 - 8 000 litres of water per day for the drill rig and therefore will not exceed the 10 000 litres (10m<sup>3</sup>) limit per day.

Accordingly, Alidabix is not required to apply for a water use license or register its water use after 3 March 2017 with the responsible authority by virtue of clause 7 of the 2017 General Authorisations.

Directors : JN Hamman, B van Deventer, NM Mosiapo



**2. Scarce water resource - permit to be limited to 3 years**

Prospecting right cannot be limited to 3 years given the time that each of the activities requires to complete and any limit will have an adverse effect on optimal exploration work being done. Prospecting work will be done in accordance with the Prospecting Work Programme & Environmental Authorisation stipulations and water use will be done in accordance with the NWA.

**3. Negative experience with prospecting works done on Eyerdop Pan 58**

All prospecting work and rehabilitation were done in terms of an approved prospecting right and environmental management programme. A recent Environmental Audit Report (28 February 2018) prepared by independent environmental consultants, and which was submitted to the DMR and Mr. van der Westhuizen, concluded that the findings during the site visit showed no non-compliances and that all prospecting activities are in line with the conditions contained in the EMP document.

**4. Water use by landowner is already 10 000 per day**

A survey of the boreholes on the property under application will be done to establish the position of the boreholes and to establish the current water use on the property under application.

**5. Comply with BEE requirements**

Alidabix will be BEE compliant as required by the relevant legislation and in this regard Alidabix's BEE report has already been submitted to the DMR as part of the prospecting right application process.


**6. Farm security**

Alidabix will commit to adhering to the security protocols of the landowner and directions in this regard, provided that such directions are reasonable and does not interfere or impede the activities of Alidabix.

**7. Request that no boreholes drilled deeper than 40 meters**

The prospecting activities will be done in accordance with the approved Prospecting Work Programme and the provisions of the Environmental Authorisation. A limit of 40m cannot be placed on boreholes as this will sterilise areas of the target to be drilled and will restrict optimal exploration being done. Holes in the current Prospecting Work Programme are small diameter percussion and core drill holes and will not have any effect on existing boreholes or the water table.

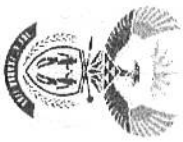
Yours faithfully



MN Mosiapo  
Director



ANNEXURE B



environmental affairs  
Department:  
Environmental Affairs  
REPUBLIC OF SOUTH AFRICA

Private Bag X447, Pretoria, 0001, Environment House, 473 Steve Biko Road, Pretoria, 0002

Email: [Appealsdirector@environment.gov.za](mailto:Appealsdirector@environment.gov.za)

APPEAL RESPONSE REPORT

PROJECT NAME/TITLE:

AMIDABIX (Pty) Ltd Prospecting Right Application

PROJECT LOCATION:

District of PRINSEK, NORTHERN CAPE

PROJECT REFERENCE NUMBER:

NC 30/5/11/12/12/31 PR.

DATE PROJECT/ACTIVITY AUTHORISED:

20/11/2018.

DETAILS OF THE APPELLANT		DETAILS OF THE APPLICANT	
Name of appellant:		Name of applicant:	
FIMP VAN DEE WESTHUIZEN TRUST IT 28/97.		AMODABIX (PTY) LTD.	
Appellant's representative (if applicable): Bullpup Kagan van de Westhuizen		Applicant's representative (if applicable): Bjérens van der Ventere	
Postal address: c/o Kame Cam + Meads Inc. P.O. Box 6. URBETON 800		Postal Address: P.O. BOX 2473 KIMBERLEY 8300.	
Email Address: P.ETIESK@kcw.co.za.		Email Address: ms.counseling@vdcamnet.co.za	
Telephone number: 054-3375000		Telephone number: 053-8611765	
Fax Number: 054-3375001		Fax number: +2786 636 0731	

GROUNDS OF APPEAL	RESPONDING STATEMENT	COMMENT BY THE DEPARTMENT / DMR
1. LOCATION OF SUBJECT PROPERTY INCORRECT.		
2. APPLICANT COMPELLED TO APPLY FOR WATER USE LICENSE IN TERMS OF NATIONAL WATER ACT	36/1998	
3.		
4.		
5.		



**ARR comments by Case Officer**

Name & Surname:

Date:

Signature:

.....

**Approved by Supervisor**

Name & Surname:

Date:

Signature:

.....

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REQUEST FOR CONDONATION IN TERMS OF SECTION 47 C OF THE NATIONAL  
ENVIRONMENTAL MANAGEMENT ACT, 1998 (Act 107 of 1998) (NEMA)

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I, the undersigned PHILIPPUS LATEGAN VAN DER WESTHUIZEN, ID 651011 5077 085 duly authorized thereto by FLIP VAN DER WESTHUIZEN TRUST (IT88/97) hereby apply for Condonation for the late filing of the Appeal against the granting of an Environmental Authorisation in terms of Regulation 20(1) (a)/24(1)(b) of the Environmental Impact Assessment Regulations, 2014 as amended ("EIA Regulations") issued by the Department Mineral Resources of the Republic of South Africa on the 20<sup>th</sup> November 2018, Northern Cape Region.

The reasons for the late filing of the Appeal is due to the fact that I, as Trustee of FLIP VAN DER WESTHUIZEN TRUST only received the notification of the granting of the environmental authorisation per registered post on the 9<sup>th</sup> of January 2019.

I reside in the District of Marydale and could only consult with my legal advisors, being attorneys Lange Carr & Wessels Upington on the 16<sup>th</sup> of January 2019. I suggest that the degree of lateness is minimal as the time for launching the Appeal was also suspended from the 15<sup>th</sup> of December 2018 to the 5<sup>th</sup> of January 2019.

I also suggest that there is no prejudice in the granting of this Condonation Application and that it will be in the interest of justice to grant the Application for Condonation.

I also suggest that having regard to the fact that it is clearly set out in the Appeal and the Objection to the Application that there is insufficient water on the subject property to sustain a viable farming operation and prospecting operation simultaneously, which necessitates the process of applying for a water use licence, which I suggest cannot be granted.

Signed on this 18<sup>th</sup> day of JANUARY 2019.



PHILIPPUS LATEGAN VAN DER WESTHUIZEN



## Tanja Jooste

**From:** Bêrend van Deventer [berend@inext.co.za]  
**Sent:** 07 February 2019 08:22 AM  
**To:** collections@lcw.co.za; 'Mmatsatsi Maboko'  
**Cc:** 'Appeals'; 'Hano Hamman'; 'Tanja Jooste'; 'nelson mosiapo'a'  
**Subject:** RE: RE APPEAL AGAINST ENVIROMENTAL AUTHORISATION (NC) 30/5/1/1/2/12131 PR  
**Attachments:** 2019 02 07 Response to Appeal by FvdW Trust.pdf; Annexure 1 - 2019 01 18 Appeal from FvdWT - Lange Carr - email cover.pdf; Annexure 2 - 2019 01 18 Appeal from FvdWT - Lange Carr.pdf; Annexure 3 - 2018 06 07 Letter from LC - FvdWT lawyer.pdf; Annexure 4 - 2018 11 28 Letter to FvdWesthuizen Trust co Lange Carr.pdf; Annexure 5 - 2018 11 28 Registered letter to FvdWT.pdf; Annexure 6 - BAR & EMPR - Alidabix - Property description.pdf; Annexure 7 - Environmental Authorisation - Property description.pdf; Annexure 8 - Environmental Authorisation Par C.pdf; Annexure 9 - DWS correspondence.pdf; Annexure 10 - Condition 3.21 of the EA.pdf; 2019 02 07 - Appeal Response Report -FvdWT Appeal against issuing of EA - 12131PR.docx

Dear Mmatsatsi

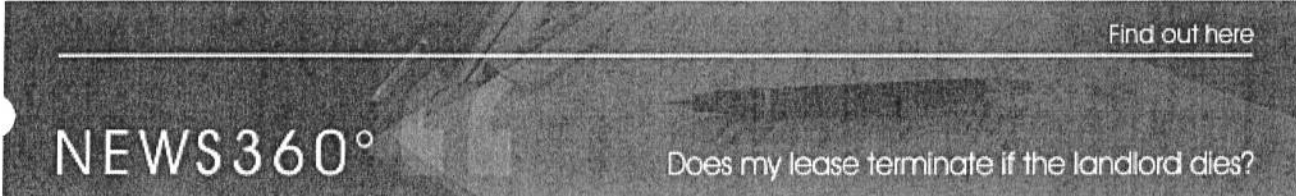
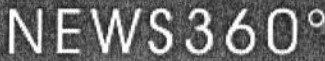
Attached our Responding Statement with annexure and the Appeal Response Report.

Kind regards

Bêrend  
Director - Alidabix (Pty) Ltd  
083 297 6060

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**From:** Rina Human [mailto:collections@lcw.co.za]  
**Sent:** 18 January 2019 03:35 PM  
**To:** berend@inext.co.za  
**Subject:** RE APPEAL AGAINST ENVIROMENTAL AUTHORISATION (NC) 30/5/1/1/2/12131 PR  
**Importance:** High



[Find out here](#)  
Does my lease terminate if the landlord dies?

**Rina Human**  
Secretary, Litigation and Deceased Estates

Switchboard: 054 337 5000  
Facsimile: 054 337 5001  
Email: collections@lcw.co.za

  
LANGE CARR & WESSELS  
Procurators • Attorneys  
Member of the Phalshoane Henney Group

 <a href="#">Our Website</a>	 <a href="#">Our Services</a>	 <a href="#">Our People</a>	 <a href="#">Facebook</a>	 <a href="#">Group Website</a>
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Kindly note that Lange Carr & Wessels will NEVER change its bank account details via e-mail. We urge you to contact our offices to verify banking details, prior to making any payments or deposits and to ignore any e-mail purporting to be from us amending or providing our banking details. Please DO NOT contact us on the telephone number supplied in such e-mail, but rather search our landline number in the public domain.

7 February 2019

Director: Appeals and Legal Review  
Department of Environmental Affairs  
Private Bag X3447  
Pretoria  
0001

Dear Sir / Madam

**RESPONSE TO THE SUBMISSION OF AN APPEAL BY THE FLIP VAN DER WESTHUIZEN TRUST AGAINST THE GRANTING OF THE ENVIRONMENTAL AUTHORISATION FOR PROSPECTING ACTIVITIES NC 30/5/1/1/2/12131 PR TO ALIDABIX (PTY) LTD IN RESPECT OF PORTION 3 (A PORTION OF PORTION 1 - STOMP OOR A) OF THE FARM STOMP OOR 109, SITUATED IN THE MAGISTERIAL DISTRICT OF PRIESKA, NORTHERN CAPE PROVINCE.**

**BACKGROUND AND INTRODUCTION**

1. Alidabix (Pty) Ltd ("Alidabix" or "Applicant") applied for an Environmental Authorisation ("EA") for prospecting activities on Portion 3 ( a portion of Portion 1 - Stomp Oor A) of the farm Stomp Oor 109.
2. The application for an EA was submitted to the Department of Mineral Resources ("DMR") in terms of the National Environmental Management Act, 1998 (Act 107 of 1998) ("NEMA"), as amended and in terms of GNR327 of GG40772 of the Amendment of the Environmental Impact Assessment Regulations Listing Notice 1 of 2014 as published on the 7th of April 2017("NEMA EIA Regulations"). The application reference number is: **NC 30/5/1/1/2/12131 PR.**
3. The DMR granted Alidabix the EA on 20 November 2018 under the reference number, **NC 30/5/1/1/2/12131 PR.**
4. On 27 November 2018, the EA was received by Alidabix.
5. On 28 November 2018, in terms of Section 4(2) of the NEMA EIA Regulations, all registered interested and affected parties were:
  - 5.1. informed of that the application for EA has been granted by the DMR;
  - 5.2. given a copy of the EA, which included the decision by the DMR, the conditions of the EA, duration, appeal and the reasons for the decision;

- 5.3. informed of the date of the decision - 20 November 2018;
  - 5.4. informed of the date of issue and receipt of the decision to Alidabix - 27 November 2018;
  - 5.5. informed that any registered interested and affected party may lodge an appeal against the decision in terms of the NEMA Appeal Regulations, and they were referred to the copy of the NEMA Appeal Regulations for the requirements of the appeal process;
  - 5.6. given a copy of the NEMA Appeal Regulations;
  - 5.7. provided with contact details of the holder of the EA, Alidabix; and
  - 5.8. invited to contact the author of the letter if there were any questions or additional information required.
6. On 18 January 2019, Alidabix received a letter from Lange Carr & Wessels via email, stating that Lange Carr & Wessels on instructions of the trustees of the Flip van der Westhuizen Trust ("the Trust" or "Appellant"), is lodging an appeal against the EA. Attached to the letter were the following:
- 6.1. minutes of the meeting of the trustees of the Trust;
  - 6.2. completed Appeal Questionnaire with letter from Alidabix dated 2 July 2018 as supporting documentation;
  - 6.3. Appeal Response Report; and
  - 6.4. request for condonation in terms of section 47C of NEMA.

Copy of the letter, including its annexures, from the Appellant, and the email under which it was sent, are annexed hereto as Annexure 1 and Annexure 2.

## **APPEAL AGAINST THE EA IN TERMS OF THE NEMA APPEAL REGULATIONS - LEGAL FRAMEWORK**

7. Before responding to the grounds of the appeal against the EA, it is instructive to provide an overview of the applicable legal regime governing the appeal process and the relevant sections in the NEMA Appeals Regulations applicable to the submission of an appeal and if this process was duly followed.

### **NEMA**

8. Section 43(1) of NEMA reads:
- Any person may appeal to the Minister against a decision taken by any person acting under a power delegated by the Minister under this Act or a specific environmental management Act.*

9. Section 43 (4) of NEMA reads:

*An appeal under subsection (1), (1A) or (2) must be noted and must be dealt with in the manner prescribed and upon payment of a prescribed fee.*

10. Section 44(1)(a) of NEMA reads:

*The Minister may make regulations dealing with any matter which under this Act must be dealt with by regulation.*

### **NEMA APPEAL REGULATIONS**

11. The Minister of Environmental Affairs has made regulations pertaining to the processing, consideration of, and decision on appeals, under section 44(1)(a) read with section 43(4) of the NEMA, and published the National Appeal Regulations No. 993 in Government Gazette notice number 38303 on 8 December 2014 ("NEMA Appeal Regulations").

12. The purpose of the NEMA Appeal Regulations is to regulate the procedure contemplated in section 43(4) of the NEMA relating to the submission, processing and consideration of, a decision on an appeal.

13. Regulation 2 of the NEMA Appeal Regulations reads:

When a period of days must be reckoned in terms of these Regulations, the period must be reckoned as from the start of the day following that particular day to the end of the last day of the period, but if the last day of the period falls on a Saturday, Sunday or public holiday, that period must be extended to the end of the next day which is not a Saturday, Sunday or public holiday, and the period of 15 December to 5 January must be excluded from the reckoning of days.

14. Regulation 4(1) of the NEMA Appeal Regulations reads:

*An appellant must submit the appeal to the appeal administrator, and a copy of the appeal to the applicant, any registered interested and affected party and any organ of state with interest in the matter within 20 days from:*

- a) the date that the notification of the decision for an application for an environmental authorisation or a waste management licence was sent to the registered interested and affected parties by the applicant; or*

- b) the date that the notification of the decision was sent to the applicant by the competent authority, issuing authority or licensing authority, in the case of decisions other than those referred to in paragraph (a).*

15. Regulation 4(2) of the NEMA Appeal Regulations reads:

*An appeal submission must be-*

- a) submitted in writing in the form obtainable from the appeal administrator;*  
*and*
- b) accompanied by-*
  - (i) a statement setting out the grounds of appeal;*
  - (ii) supporting documentation which is referred to in the appeal submission; and*
  - (iii) a statement, including supporting documentation, by the appellant to confirm compliance with regulation 4(1) of the these Regulations.*

**APPEAL AGAINST THE EA IN TERMS OF THE NEMA APPEAL REGULATIONS - THE APPELLANT HAS NOT SUBMITTED THE APPEAL WITHIN THE TIMEFRAMES OF THE NEMA APPEAL REGULATIONS**

16. On 7 June 2018, M&S Consulting (the Environmental Assessment Practitioner appointed by Alidabix) received a letter from Lange Carr & Wessels stating that Lange Carr & Wessels are acting on behalf of the Trust (Appellant) - copy of the letter annexed hereto as Annexure 3.
17. All correspondence with the Trust during the public participation process were done through Lange Carr & Wessels per the request made in their letter dated 7 June 2018.
18. On 28 November 2018, in terms of Section 4(2) of the NEMA EIA Regulations, all registered interested and affected parties were informed that the application for EA has been granted by the DMR. Therefore, 28 November 2018 is the notification date per regulation 4(1)(a) of the NEMA Appeal Regulations ("Notification Date").
19. On 28 November 2018, the Appellant, via Lange Carr & Wessels, was also informed that application for EA has been granted by the DMR. The letter to the Appellant was send via email to Lange Carr & Wessels and confirmation that the email was read by Lange Carr & Wessels was send to M&S Consulting on 28

November 2018 at 13h00 - copy of the email with the read confirmation annexed hereto as Annexure 4.

20. On 28 November 2018 a copy of the above named letter was also send to the Trust via registered post - copy of the letter annexed hereto as Annexure 5.

21. In terms of regulation 4(1)(a) of the NEMA Appeal Regulations, the Appellant **must** submit the appeal -

21.1. to the appeal administrator,

21.2. **a copy of the appeal to the applicant, in this case Alidabix,**

21.3. a copy of the appeal to any registered interested and affected party; and

21.4. a copy of the appeal to and any organ of state with interest in the matter,

within 20 days from the Notification Date.

22. With reference to regulation 2 of the NEMA Appeal Regulations, the due date for the submission of the appeal by the Appellant, in terms of regulation 4(1)(a) of the NEMA Appeal Regulations, was 9 January 2019. The date was calculated as follows:

22.1. 29 November 2018 to 14 December 2018 - 16 days

22.2. period from 15 December 2018 to 5 January 2019 excluded

22.3. 6 January 2019 to 9 January 2019 - 4 days

22.4. total of 20 days reached on 9 January 2019 ("Appeal Submission Due Date").

23. The Appellant forwarded a copy of the appeal to Alidabix on 18 January 2019 (see Annexure 1 & 2) which is well outside the Appeal Submission Due Date as required by regulation 4(1)(a) of the NEMA Appeal Regulations, and therefore the Appellant failed to meet the requirements of regulation 4(1)(a) of the NEMA Appeal Regulations.

## **APPEAL RESPONSE REPORT - ALIDABIX RESPONSE TO THE GROUNDS OF APPEAL**

### **LOCATION OF SUBJECT PROPERTY INCORRECT**

24. In paragraph 2 of the Appeal Questionnaire, the Appellant states that: "The property location as set out in paragraph C of the EA refers property located as 45 kilometres north west of Prieska which is incorrect. The indicated location has bearing on a totally different property."

25. As stated in paragraph 1 above, Alidabix applied for an Environmental Authorisation ("EA") for prospecting activities on Portion 3 ( a portion of Portion 1 - Stomp Oor A) of the farm Stomp Oor 109 - see extract of the Basic Assessment Report ("BAR") annexed hereto as Annexure 6.
26. The property description in the preamble to the cover letter from the DMR informing Alidabix that the EA has been granted (page 1 of the EA), matches the property description in the BAR, and the letter refers to this description in the first paragraph of the letter when it states that the application for an EA has been granted - page 1 of EA annexed hereto as Annexure 7.
27. On page 3 of the EA, the location of activity is described as, "On portion 3 ( a portion of portion 1 of the farm stomp Oor A) of the farm Stomp Oor 109, situated in the Magisterial District of Prieska, Northern Cape Region" - page 3 of EA annexed hereto as Annexure 7.
28. On page 5 paragraph C of the EA, the location is described as, "portion 1 of (the farm Stomp Oor A) of the farm Stomp Oor 109, situated in the Magisterial District of Prieska. The total footprint of the proposed prospecting area covers an extent of 2736.983ha and it is located approximately 45 kilometres North West of Prieska - page 5 of EA annexed hereto as Annexure 8.
29. It is clear from the above that the property description in paragraph C of the EA was only a human typing error, as in the rest of all the application documents, BAR and the EA the property description and location were indeed correct. Section 47A(1)(b) of NEMA reads:

*A regulation or notice, or an authorisation, permit or other document, made or issued in terms of this Act or a specific environmental management Act, may be amended or replaced **without following a procedural requirement of the relevant Act if:***

- (i) the purpose is to correct an error; and*
- (ii) the correction does not change the rights and duties of any person materially.*

The error in the wording in paragraph C does not constitute grounds for an appeal and the error may be corrected in terms of section 47A(1)(b) of NEMA. Alidabix shall engage with the DMR in terms of section 47A(1)(b) of NEMA to correct the



wording of paragraph C of the EA, so that it reads the same as the property descriptions in the rest of the EA and BAR.

**APPLICANT COMPELLED TO APPLY FOR WATER USE LICENSE IN TERMS OF NATIONAL WATER ACT 36 OF 1998**

30. In paragraph 3 of the Appeal Questionnaire, the Appellant states that: "Existing water use on the property for farming purposes by Appellant already exceeds 10 000 litres (10m<sup>3</sup>) per day. Applicant intends taking up to 8 000 litres per day (see attached letter dated 2/7/2018). Applicant must apply for water use license - during which process groundwater availability must be proved."

31. Below is an extract of the letter dated 7 September 2018, that Alidabix send the Department of Water and Sanitation in Upington:

"Our understanding of the National Water Act, 1998 (Act No. 36 of 1998) ("NWA") was that, with the removal of "Small Industrial Users" in the amendments made to Schedule 1 of the NWA, the introduction of the revised General Authorisation (GNR 538 of 02 September 2016) catered for the "Small Industrial Users" who has lawful access to the property, albeit at a lower rate of 10m<sup>3</sup> per day (clause 7.2 of GNR 538, registration of a water use is only required if more than 10m<sup>3</sup> of water is taken from a groundwater resource per day on average over a year on a property).

As stated in our letter of 22 August 2018, Alidabix's water requirement for core drilling during phases 6 and 8 of the Prospecting Work Programme ("PWP") will be 5 000 - 8 000 litres of water per day when the core drill rig is operational. In the event that water is not available on the property under the GNR 538, without the requirement to register, Alidabix will:

- a) source the water required for the prospecting activities from a legal source in the area or bring the water required in via a mobile water tanker; and /or
- b) substitute the core drilling (phases 6 & 8 of the PWP) with reverse circulation drilling (RC Drilling), which does not use water.

In the event that a and/or b above is implemented, Alidabix will not be engaging in a Water Use activity in terms of the NWA, and will therefore not be required to apply for a Water Use License." - annexed hereto as Annexure 9 the correspondence with the DWS Upington.



32. From the Alidabix letter dated 7 September 2018 it is clear that Alidabix will not be engaging in a Water Use activity in terms of section 21 of the NWA, and will therefore not be required to apply for a Water Use License.
33. Copies of all correspondence with the DWS were also timeously submitted to the DMR.
34. It should also be noted that the EA states that the holder must ensure that any water uses listed in terms of section 21 of the NWA must be authorised by the DWS prior to the commencement of activities - see paragraph 3.21 of the EA annexed hereto as Annexure 10.
35. The Appellant's grounds of appeal are based on narrative that the Applicant is required to apply for a Water Use License. Alidabix is not required to apply for a Water Use License for its intended prospecting activities. In the event that water is not available on the property under the GNR 538 for its prospecting activities, without the requirement to register, Alidabix will:
- c) source the water required for the prospecting activities from a legal source in the area or bring the water required in via a mobile water tanker; and /or
  - d) substitute the core drilling (phases 6 & 8 of the PWP) with reverse circulation drilling (RC Drilling), which does not use water.
- In the event that a and/or b above is implemented, Alidabix will not be engaging in a Water Use activity in terms of section 21 the NWA, and will therefore not be required to apply for a Water Use License.
36. In addition, water use is not grounds for an appeal against the granting of the EA, since the DMR is not mandated to manage the water use authorisation process, the appeal against the granting of the EA based on water matters falls outside the competence of the Appeal Administrator and the Appeal Authority (as defined in the NEMA Appeal Regulations).
37. It is noted that Appellant stated that its current existing water use on the property for farming purposes already exceeds 10 000 litres (10m<sup>3</sup>) per day. If the Appellant is not the holder of a Water Use License it may be that the current water use on the property by the Appellant is illegal in terms of the NWA.

## CONCLUSION AND PRAYERS

38. The appeal lodged by the Appellant against the granting of the EA in terms of the **NEMA Appeal Regulations** should be dismissed based on the following:

- 38.1. The Appellant was informed on 28 November 2018 that an application for EA has been granted by the DMR and the Appellant, through its lawyers Lange Carr & Wessels, acknowledged receipt of the notification on the same date. The Appellant, via Lange Carr & Wessels, forwarded a copy of the appeal against the EA to Alidabix on 18 January 2019 (see Annexure 1 & 2) which is well outside the Appeal Submission Due Date as required by regulation 4(1)(a) of the NEMA Appeal Regulations, and therefore the Appellant failed to meet the requirements of regulation 4(1)(a) of the NEMA Appeal Regulations (refer to above paragraphs 16 to 23);
- 38.2. The property description in paragraph C of the EA was clearly a human typing error. The error in the wording in paragraph C does not constitute grounds for an appeal and the error may be corrected in terms of section 47A(1)(b) of NEMA; and
- 38.3. The Appellant's grounds of appeal are based on narrative that the Applicant is required to apply for a Water Use License. Alidabix is not required to apply for a Water Use License for its intended prospecting activities since it will not be engaging in a Water Use activity in terms of section 21 the NWA. In addition, water use is not grounds for an appeal against the granting of the EA, since the DMR is not mandated to manage the water use authorisation process, the appeal against the granting of the EA based on water matters falls outside the competence of the Appeal Administrator and the Appeal Authority (as defined in the NEMA Appeal Regulations).

Yours sincerely



**Bêrend van Deventer**

**Director : Alidabix (Pty) Ltd**

**List of attached annexures:**

- 1) **Annexure 1** - 2019 01 18 Appeal from FvdWT - Lange Carr - email cover
- 2) **Annexure 2** - 2019 01 18 Appeal from FvdWT - Lange Carr
- 3) **Annexure 3** - 2018 06 07 Letter from LC - FvdWT lawyer
- 4) **Annexure 4** - 2018 11 28 Letter to FvdWesthuizen Trust co Lange Carr
- 5) **Annexure 5** - 2018 11 28 Registered letter to FvdWT
- 6) **Annexure 6** - BAR & EMPR - Alidabix - Property description
- 7) **Annexure 7** - Environmental Authorisation - Property description
- 8) **Annexure 8** - Environmental Authorisation Par C
- 9) **Annexure 9** - DWS correspondence
- 10) **Annexure 10** - Condition 3.21 of the EA

## Tanja Jooste

---

**From:** Bêrend van Deventer [berend@inext.co.za]  
**Sent:** 07 February 2019 08:41 AM  
**To:** collections@lcw.co.za; 'Mmatsatsi Maboko'  
**Cc:** 'Appeals'; 'Hano Hamman'; 'Tanja Jooste'; 'nelson mosiapo'a'  
**Subject:** RE: RE APPEAL AGAINST ENVIROMENTAL AUTHORISATION (NC) 30/5/1/1/2/12131 PR  
**Attachments:** 2019 02 06 - Director Resolution - FvdWT Appeal response.pdf

Dear Mmatsatsi

With reference to my earlier email below, attached is the Alidabix resolution authorising me to lodge the response on behalf of Alidabix.

Kind regards

Bêrend

---

**From:** Bêrend van Deventer [mailto:berend@inext.co.za]  
**Sent:** 07 February 2019 08:22 AM  
**To:** 'collections@lcw.co.za'; 'Mmatsatsi Maboko'  
**Cc:** 'Appeals'; 'Hano Hamman'; 'Tanja Jooste'; 'nelson mosiapo'a'  
**Subject:** RE: RE APPEAL AGAINST ENVIROMENTAL AUTHORISATION (NC) 30/5/1/1/2/12131 PR

Dear Mmatsatsi

Attached our Responding Statement with annexure and the Appeal Response Report.

Kind regards

Bêrend  
Director - Alidabix (Pty) Ltd  
083 297 6060

---

**From:** Rina Human [mailto:collections@lcw.co.za]  
**Sent:** 18 January 2019 03:35 PM  
**To:** berend@inext.co.za  
**Subject:** RE APPEAL AGAINST ENVIROMENTAL AUTHORISATION (NC) 30/5/1/1/2/12131 PR  
**Importance:** High

[Find out here](#)

NEWS360°

Does my lease terminate if the landlord dies?

**ALIDABIX PROPRIETARY LIMITED**

**REG. NO. 2017/471777/07**

**("the Company")**

**DIRECTORS RESOLUTION PASSED IN TERMS OF THE COMPANY'S  
MEMORANDUM OF INCORPORATION ON WEDNESDAY 6 FEBRUARY 2019**

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**RESPONSE TO APPEAL BY THE FLIP VAN DER WESTHUIZEN TRUST  
AGAINST THE GRANTING OF AN EA**

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**It was noted:**

1. The Company applied for an Environmental Authorisation ("EA") for prospecting activities on Portion 3 ( a portion of Portion 1 - Stomp Oor A) of the farm Stomp Oor 109.
2. The DMR granted the Company the EA on 20 November 2018 under the reference number, **NC 30/5/1/1/2/12131 PR**.
3. On 18 January 2019, the Company received an appeal notification against the EA from the Flip van der Westhuizen Trust ("FvdWT").

**It was unanimously resolved, by all directors of the Company, that:**

1. The Company responds to the appeal from FvdWT; and
2. for the purposes of the above resolution Mr. Bêrend van Deventer as director of the Company, is authorised on behalf of the Company, to do or cause all such things to be done and to sign all documentation, as he may find to be necessary, in order to give effect to and implement the above resolution.



**NM Mosiapo  
Director**



**JN Hamman  
Director**



**B van Deventer  
Director**

## Tanja Jooste

---

**From:** Mmatsatsi Maboko [MMaboko@environment.gov.za]  
**Sent:** 07 February 2019 09:25 AM  
**To:** Bêrend van Deventer; collections@lcw.co.za  
**Cc:** Appeals; 'Hano Hamman'; 'Tanja Jooste'; 'nelson mosiapo'a'  
**Subject:** RE: RE APPEAL AGAINST ENVIROMENTAL AUTHORISATION (NC) 30/5/1/1/2/12131 PR

Dear Berend

The Department acknowledges receipt of your responding statement, received on 7 February 2019.

Kind regards

Mmatsatsi Maboko  
Appeals and Legal Review  
Department of Environmental Affairs  
Tel: (012) 399 8870  
Email: [mmaboko@environment.gov.za](mailto:mmaboko@environment.gov.za)

*"His grace is sufficient"*

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**From:** Bêrend van Deventer [<mailto:berend@inext.co.za>]  
**Sent:** 07 February 2019 08:22 AM  
**To:** [collections@lcw.co.za](mailto:collections@lcw.co.za); Mmatsatsi Maboko  
**Cc:** Appeals; 'Hano Hamman'; 'Tanja Jooste'; 'nelson mosiapo'a'  
**Subject:** RE: RE APPEAL AGAINST ENVIROMENTAL AUTHORISATION (NC) 30/5/1/1/2/12131 PR

Dear Mmatsatsi

Attached our Responding Statement with annexure and the Appeal Response Report.

Kind regards

Bêrend  
Director - Alidabix (Pty) Ltd  
083 297 6060

---

**From:** Rina Human [<mailto:collections@lcw.co.za>]  
**Sent:** 18 January 2019 03:35 PM  
**To:** [berend@inext.co.za](mailto:berend@inext.co.za)  
**Subject:** RE APPEAL AGAINST ENVIROMENTAL AUTHORISATION (NC) 30/5/1/1/2/12131 PR  
**Importance:** High

[Find out here](#)

NEWS360°

Does my lease terminate if the landlord dies?

## Tanja Jooste

---

**From:** Bêrend van Deventer [berend@inext.co.za]  
**Sent:** 28 March 2019 09:33 AM  
**To:** 'Hano Hamman'; 'Tanja Jooste'  
**Subject:** FW: Condonation Decision - Alidabix  
**Attachments:** Condonation Decision.pdf

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**From:** Mmatsatsi Maboko [mailto:MMaboko@environment.gov.za]  
**Sent:** 27 March 2019 09:52 AM  
**To:** collections@lcw.co.za  
**Cc:** Bêrend van Deventer; Appeals  
**Subject:** Condonation Decision - Alidabix

Dear Appellant and Applicant

Kindly find attached decision for your attention. We will now continue with our recommendations to the Minister on the appeal(s).

Kind regards

Mmatsatsi Maboko  
Appeals and Legal Review  
Department of Environmental Affairs  
Tel: (012) 399 8870  
Email: [mmaboko@environment.gov.za](mailto:mmaboko@environment.gov.za)

*"His grace is sufficient"*

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## **environmental affairs**

Department:  
Environmental Affairs  
REPUBLIC OF SOUTH AFRICA

**Reference: LSA 180046**

### **CONDONATION DECISION**

**REQUEST FOR CONDONATION FOR THE LATE FILING OF THE APPEAL AGAINST THE DECISION TO GRANT ENVIRONMENTAL AUTHORISATION TO ALIDABIX (PTY) LTD IN RESPECT OF A PROSPECTING RIGHT APPLICATION TO PROSPECT FOR DIAMONDS (ALLUVIAL, GENERAL AND IN KIMBERLITE), COPPER, GOLD, ZINC, NICKEL, SILVER MOLYBDENUM ORE AND PLATINUM GROUP METALS ON PORTION 3 (OF A PORTION OF PORTION 1 OF THE FARM STOMP OOR A) OF THE FARM STOMP OOR 109, WITHIN THE MAGISTERIAL DISTRICT OF PRIESKA, IN THE NORTHERN CAPE PROVINCE**

#### **1. INTRODUCTION**

In terms of Chapter 4 of the Environmental Impact Assessment Regulations, 2014, published under Government Notice R982 in Government Gazette 38282 of 4 December 2014 (2014 EIA Regulations), regarding activities identified under section 24 of the National Environmental Management Act, 1998 (Act No. 107 of 1998) (NEMA), the Regional Manager: Mineral Regulation of the Department of Mineral Resources, Northern Cape Regional Office (DMR) granted Environmental Authorisation (EA) to Alidabix (Pty) Ltd (the applicant), on 20 November 2018, in respect of a prospecting right application to prospect for diamonds (alluvial, general and in kimberlite), copper, gold, zinc, nickel, silver molybdenum ore and platinum group metals on portion 3 (of a portion of portion 1 of the farm Stomp Oor A) of the farm Stomp Oor 109, within the Magisterial District of Prieska, in the Northern Cape Province.



## **2. BACKGROUND AND REQUEST FOR CONDONATION**

- 2.1 On 28 November 2018, the DMR granted an EA to the applicant in respect of a prospecting right application to prospect for diamonds (alluvial, general and in kimberlite), copper, gold, zinc, nickel, silver molybdenum ore and platinum group metals on portion 3 (of a portion of portion 1 of the farm Stomp Oor A) of the farm Stomp Oor 109, within the Magisterial District of Prieska, in the Northern Cape Province.
- 2.2 On 28 November 2018, registered interested and affected parties (I&APs) were informed of the DMR's decision to grant the aforementioned EA, and therefore the due date for the submission of the appeal was 9 January 2019.
- 2.3 On 18 January 2019, the Directorate: Appeals and Legal Review within the Department of Environmental Affairs (Appeals Directorate) received an appeal from Flip van der Westhuizen Trust (the appellant) with a formal request of condonation for the late submission of the appeal against the aforementioned EA.
- 2.4 In motivating the request for condonation for the late filing of its appeal, the appellant submits that the reason for the delay in the submission of this appeal is that the trustee received notification of the granting of the EA via registered post on 9 January 2019, and could only consult with its legal advisors on 16 January 2019.
- 2.5 The appellant's request for condonation was thereafter responded to by the applicant in its responding statement, which was submitted on 7 February 2019. In its response, the applicant submits that it objects to the appellant's request for condonation on the following reasons:
  - 2.5.1 The applicant received a letter from Lange Carr & Wessels Attorneys advising the applicant that they act on behalf of the appellant, and as such, all correspondence during the public participation process must be done through them;

- 2.5.2 On 28 November 2018, all registered I&APs including the appellant's Attorneys were informed of the DMR's decision to grant the EA to the applicant, and a read email confirmation was sent to the applicant on the same date; and
- 2.5.3 On 28 November 2018, a letter was also sent to the appellant via registered post.
- 2.6 It is against this background that the applicant argues that the appellant failed to meet the requirements of Regulation 4(1) (a) of the National Appeal Regulations, 2014.

### **3 LEGISLATIVE FRAMEWORK GOVERNING THE REQUEST FOR CONDONATION**

- 3.1 In terms of section 47C of NEMA, the Minister of Environmental Affairs has the legal authority to grant an extension or condonation for the late submission of an appeal or responding statement, as contemplated in terms of the National Appeal Regulations.
- 3.2 In terms of section 42 of NEMA, the exercise of the powers referred to in paragraph 3.1 above, has been delegated to the Director of the Appeals Directorate.
- 3.3 Section 47C of NEMA provides as follows:

*"The Minister or an MEC may extend, or condone a failure by a person to comply with, a period in terms of this Act or a specific environmental management Act, except a period that binds the Minister or MEC".*

- 3.4 Section 47CB of NEMA, which deals with extension or condonation of time periods applicable to appeals relating to prospecting, exploration, mining or production, provides as follows:

*(1)The Minister may only in exceptional circumstances extend or condone a failure by a person to comply with a time period applicable to an appeal contemplated in section 43 (1A), except for a time period which binds the Minister.*

*(2) The Minister may not accept an application for condonation to submit an appeal contemplated in section 43 (1A) after 30 days has lapsed from the date of the decision by the Minister responsible for mineral resources or any person acting under his or her delegated authority.*

*(3) When considering an extension or condonation the Minister must consider the following factors:*

- (a) The degree of lateness;*
- (b) a detailed explanation of the reasons for the lateness;*
- (c) whether and to what extent that person or the Minister responsible for mineral resources will suffer prejudice if the time period is extended or failure to comply with a time period is condoned; and*
- (d) a detailed explanation of the merits of the application for extension or condonation.*

*(4) The time period may only be condoned for a maximum period equal to the time period allowed for the action for which condonation is sought in terms of this Act.*

3.5 Regulation 4(1) of the National Appeal Regulations, 2014 provides as follows:

*"An appellant must submit the appeal to the appeal administrator, and a copy of the appeal to the applicant, any registered interested and affected party and any organ of state with interest in the matter within 20 days from:*

- (a) The date that the notification of the decision for an application for an environmental authorisation or a waste management licence was sent to the registered interested and affected parties by the applicant; or*
- (b) The date that the notification of the decision was sent to the applicant by the competent authority, issuing authority or licensing authority, in the case of decisions other than those referred to in paragraph (a)".*

#### 4. DECISION

- 4.1 In reaching my decision on the request for condonation for the late filing of an appeal, it should be noted that I have not responded to each and every statement set out by the appellant or applicant, and that 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.
- 4.2 In evaluating the appellant's request for condonation, response thereto by the applicant and taking into consideration the aforementioned legal provisions, I note that section 47CB (3) of NEMA gives content to the requirement of "*exceptional circumstances*", as per section 47CB of NEMA, in that it specifies that when considering an application for extension or condonation, I must have regard to the factors mentioned in paragraph 3.4 above.
- 4.3 These factors to which I must have regard in terms of section 47CB (3) overlap with the factors considered in the context of condonation in the courts. In cases in respect of extensions of statutory time periods, the courts have held that in considering whether good cause is shown to extend a time period, a court may consider any relevant factor, including the degree of lateness, the explanation therefore, the prospects of success on the merits and the importance of the case. The courts have held further that although these factors are interrelated, they are not individually decisive. They must thus be assessed together.
- 4.4 It seems to me that, in determining whether or not condonation should be granted in the present appeal, I must make my determination on the basis of the terms of section 47CB(3) of NEMA.
- 4.5 Having duly considered the reasons advanced by the appellant in its request for the late filing thereof, response thereto by the applicant as well as factors listed in paragraph 3.4 above, I am accordingly persuaded that condonation should be granted to the appellant for the following reasons:

- 4.5.1 the degree of lateness, which accumulates to nine days, is minimal;
- 4.5.2 the appellant has furnished me with a satisfactory explanation of the merits of the application and, in my view, an eminently reasonable explanation for the delay; and
- 4.5.3 Although the applicant opposes the aforementioned request for condonation, it has not placed any information before me or advanced reasons as to why it will be prejudiced should the aforementioned request be granted.
- 4.6 As a result of the foregoing, the appellant's request for condonation for the late filing of its appeal is accordingly granted.

  
MOKETE RAKGOGO

ACTING DIRECTOR: APPEALS AND LEGAL REVIEW

DATE: 27/03/2019