



## environmental affairs

Department:  
Environmental Affairs  
**REPUBLIC OF SOUTH AFRICA**

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

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

### **APPEAL RESPONSE REPORT**

**PROJECT NAME/TITLE:** Tormin: Environmental Authorisation in respect of the Unlawful Commencement of Activities (Section 24G) at Tormin Mine, West Coast, South Africa

**PROJECT LOCATION:** The Remaining Extent of the Farm Geelwal Karoo 262, in the Magisterial District of Vanrhynsdorp: Western Cape

**PROJECT REFERENCE NUMBER:** WC 30/5/1/2/3/2/1 (162 and 163 EM)

**DATE PROJECT/ACTIVITY AUTHORISED:** 18 June 2019

DETAILS OF THE APPELLANT	DETAILS OF THE APPLICANT
<b>Name of appellant:</b> Centre for Environmental Rights	<b>Name of applicant:</b> Mineral Sands Resources (Pty) Ltd (MSR)
<b>Appellant's representative (if applicable):</b>	<b>Applicant's representative (if applicable):</b>
<b>Postal address:</b> Second Floor, Springtime Studios, 1 Scott Road, Observatory, Cape Town, 7925	<b>Postal Address:</b> 1 <sup>st</sup> Floor, Block A, The Forum, North Bank Lane, Century City, 7441, Postnet Suite, Milnerton, Cape Town, 7435
<b>Email Address:</b> <a href="mailto:lgovindsamy@cer.org.za">lgovindsamy@cer.org.za</a> ; <a href="mailto:zomar@cer.org.za">zomar@cer.org.za</a>	<b>Email Address:</b> <a href="mailto:projects@mineralcommodities.com">projects@mineralcommodities.com</a> ; <a href="mailto:sibonelo@mineralcommodities.com">sibonelo@mineralcommodities.com</a>
<b>Telephone number:</b> 021 447 1647	<b>Telephone number:</b> 021 525 1900
<b>Fax Number:</b> 086 730 9098	<b>Fax number:</b> 021 555 3046

## **INTRODUCTION**

1. This is an appeal against the approval of the environmental authorisation granted by the Department of Mineral Resources (DMR) in terms of the National Environmental Management Act, 1998 (NEMA) and the Environmental Impact Assessment (EIA) Regulations, 2014 in respect of the unlawful commencement of activities (Section 24G), which application was made by Mineral Sands Resources (Pty) Ltd (MSR), on the Farm Geelwal Karoo 262, situated in the Magisterial District of Vanrhynsdorp, Western Cape.
2. The appellant is the Centre for Environmental Rights (CER), a registered non-profit company with registration number 2009/020736/08 that has been accredited as a non-profit organisation by the Department of Social Development under the Non-profit Organisations Act, 1997 with reference number NPO No. 075-863 and registered with the South African Revenue Service as a public benefit organisation under the Income Tax Act, 1962 with reference number PBO No. 930032226.
3. The CER is also a law clinic accredited by the Law Society of the Cape of Good Hope, and operates principally from premises at Springtime Studios, 1 Scott Road, Observatory, Cape Town, Western Cape.
4. The CER's mission is to advance the constitutional right – contained in section 24 of the Constitution – to an environment not harmful to health or well-being.
5. The CER helps communities and civil society organisations in South Africa realise their Constitutional right to a healthy environment, by advocating and litigating for environmental justice.
6. The CER confirms that Ms Li-Fen Chien is registered as an interested and affected party (IAP) on behalf of the CER in respect of MSR's application for environmental authorisation in order to extend mining operations at Tormin Mine.
7. The CER confirms that Ms Li-Fen Chien registered as an interested and affected party (IAP) on behalf of the CER in respect of MSR's application for environmental authorisation. Please note that Ms Chien is no longer employed at the CER as of 8 July 2019, and that Ms Zahra Omar, with email address [zomar@cer.org.za](mailto:zomar@cer.org.za) should be noted as the registered interested and affected party on behalf of the CER forthwith.
8. The CER's grounds of appeal are as follows:

- 8.1. Lack of independence of Environmental Assessment Practitioners, SRK Consulting
- 8.2. The location of the Remaining Extent of the Farm Geelwaal Karoo within the following areas of biodiversity importance:
  - 8.2.1. A Critical Biodiversity Area
  - 8.2.2. An important ecological corridor: Namaqualand Strandveld
  - 8.2.3. A terrestrial biodiversity hotspot: Succulent Karoo
  - 8.2.4. A biodiversity priority area
- 8.3. The sensitivity of the receiving environment has not been adequately considered: cumulative impacts of the activities on the Critical Biodiversity Area

GROUNDS OF APPEAL	RESPONDING STATEMENT	COMMENT BY THE DEPARTMENT / DMR
<p><b><u>LACK OF INDEPENDENCE OF ENVIRONMENTAL ASSESSMENT PRACTITIONERS, SRK CONSULTING</u></b></p> <p>1. The CER submits that the environmental assessment practitioners acting in this application, SRK Consulting, are not independent as required by regulation 13(1) of the EIA regulations.</p> <p>2. The DMR, in refusing to grant MSR an integrated environmental authorisation for the proposed expansion of Tormin, noted that <i>“the Environmental Assessment practitioner and the applicant did not disclose the information at their disposal in that they failed to notify the Department, state organs and the general public of the NEMA contraventions within the application area in relation to the clearance of vegetation, construction of the reservoir, and pipeline.”</i> The DMR quoted the requirements of an independent environmental</p>		

<p>assessment practitioner, as set out in the EIA Regulations.</p> <p>3. SRK were the appointed environmental assessment practitioners in MSR's expansion application, and as such, should have disclosed to the DMR, and interested and affected parties, that MSR had unlawfully commenced listed activities without authorisation.</p> <p>4. This issue of independence was raised by the CER in its objections addressed to SRK on 12 March 2018 and 4 June 2018 respectively.</p>		
<p><b><u>LOCATION OF THE FARM GEELWAL KAROO WITHIN AREAS OF BIODIVERSITY IMPORTANCE</u></b></p> <p>1. The area in respect of which MSR has been granted environmental authorisation to commence and continue the section 24G activities, is the Remaining Extent of the Farm Geelwaal Karoo 262, situated in the Magisterial District of Vanrhynsdorp.</p> <p>2. We note that this is the same area in respect of which MSR has applied and been granted environmental authorisation for a prospecting</p>		

<p>right (Reference no. 10162PR). The CER lodged an appeal to that decision in March this year and that appeal currently remains under consideration by the Department of Environmental Affairs.</p> <p>3. In that appeal, we raise as a concern the significance of the subject area (the Remaining Extent of the Farm Geelwal Karoo 262) from a biodiversity perspective. We reiterate those concerns here:</p> <p><b><u>Critical Biodiversity Area (CBA)</u></b></p> <p>4. The area under application, which is located in the Matzikama Local Municipality, falls within a CBA and close to an aquatic Ecological Support Area (ESA). This is shown on the map and associated table from the Western Cape Biodiversity Spatial Plan (WCBSP) Handbook<sup>1</sup> attached as <b>Annexure A</b> (the area under application is the blue shaded area marked as “Site 2” on the map)</p> <p>5. CBAs are defined in the WCBSP Handbook as <i>“Areas in a natural condition that are required to meet biodiversity targets, for species, ecosystems</i></p>		
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--	--

<sup>1</sup> Pool-Stanvliet R, Duffell-Canham A, Pence G, and Smart R. 2017. Western Cape Biodiversity Spatial Plan Handbook. Stellenbosch: CapeNature.

<p><i>or ecological processes and infrastructure.”<sup>2</sup></i> These biodiversity targets relate directly to South Africa’s international conservation obligations in terms of the Convention on Biological Diversity, and include all areas needed to meet species and ecosystem targets, highly threatened ecosystems, critical corridors to maintain landscape connectivity and all areas needed to meet ecological infrastructure targets.</p> <p>6. As is shown on the map attached as <b>Annexure A</b>, much of the area under application falls within a CBA Type 1 (namely, an area in a natural condition). According to the Handbook, the desired management objective for a CBA Type 1 is to <i>“Maintain in a natural or near natural state, with no further loss of habitat. Degraded areas should be rehabilitated and “only low-impact, biodiversity-sensitive land uses are appropriate.”<sup>3</sup></i></p> <p>7. These areas have been designated CBAs mostly in order to promote coastal resource protection and to maintain ecological processes (including ecological corridor function) associated with the coastal strip, especially the ability of fauna restricted to this area to disperse along the coast.</p>		
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--	--

---

<sup>2</sup> As above, p 55.

<sup>3</sup> As above, p 55.

<p>The proposed prospecting activities, which presuppose further mining in the area, therefore pose a potential threat to the functioning of the affected CBAs, both in terms of a direct impact on species diversity (biodiversity pattern) as well as on broad-scale ecological processes.</p> <p>8. The area under application for the prospecting right also lies near to an aquatic Ecological Support Area Type 1, defined as an area that is “<i>still likely to be functional</i>”.<sup>4</sup> According to the Handbook, these are “<i>Areas that are not essential for meeting biodiversity targets, but that play an important role in supporting the functioning of PAs or CBAs, and are often vital for delivering ecosystem services.</i>”<sup>5</sup> The desired management objectives for these areas are to “<i>maintain in a functional, near natural state. Some habitat loss is acceptable, provided the underlying biodiversity objectives and ecological functioning are not compromised.</i>”<sup>6</sup></p> <p><b><u>Important ecological corridor</u></b></p> <p>9. The dominant vegetation type on site is Namaqualand Strandveld, which has little formal protection and is steadily declining. An analysis</p>		
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--	--

<sup>4</sup> As above, p 52.

<sup>5</sup> As above, p 55.

<sup>6</sup> As above, p 55,

<p>done in 2016 by CapeNature shows that the remaining extent of Namaqualand Strandveld has decreased by more than 20% since 2011. This stretch of coastline and inland area has been identified as an important ecological corridor, the importance of which has been elevated due to notable loss and degradation of habitat between the Olifants and Sout Rivers.</p> <p>10. The role of CBAs to meet South Africa's international obligations in terms of the Convention on Biological Diversity does not appear to have been considered or addressed in the Environmental Authorisation. CBAs are areas which have been scientifically and systematically designated since they are essential if the country is to meet its biodiversity targets, often involving vegetation types and ecosystems that occur nowhere else in the world. CBAs are the most efficient configuration in space, with the least negative impact on land uses, and any negative impacts on these areas are seen to be unacceptable since they are likely to result in long-term (if not permanent) loss of biodiversity. The loss of any material area of critical biodiversity would generally be seen as constituting 'irreplaceable loss' and its significance as being 'very high' or 'high'.</p>		
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--	--

<p><b><u>Globally recognised terrestrial biodiversity hotspot</u></b></p> <p>11. Importantly, the area is also one of three globally recognised biodiversity hotspots, being located in the Succulent Karoo. A map indicating this area is attached as <b>Annexure B<sup>7</sup></b>. There are 34 globally recognised hotspots and the Environmental Authorisation granted by the DMR, falls into one of these hotspots. It is therefore important to note that in addition to the area under application falling into national biodiversity priority areas, the area also falls under a globally recognised biodiversity hotspot.</p> <p><b><u>Concluding point</u></b></p> <p>12. The decision by the DMR to grant Environmental Authorisation to continue these activities in a CBA is therefore flawed as essential information relating to the CBA does not appear to have been taken into account.</p>		
<p><b><u>FAILURE TO ADEQUATELY CONSIDER THE SENSITIVITY OF THE RECEIVING ENVIRONMENT: CUMULATIVE IMPACTS ON THE CBA</u></b></p>		

<sup>7</sup> This map was taken from the 'Climate Change Adaptation Plans for South African Biomes' report, published by the DEA in 2015, and is available at: [https://www.environment.gov.za/sites/default/files/reports/climatechangeadaptation\\_plansforsouthafricanbiomes\\_report.pdf](https://www.environment.gov.za/sites/default/files/reports/climatechangeadaptation_plansforsouthafricanbiomes_report.pdf).

<ol style="list-style-type: none"> <li>1. In Appendix H to the section 24G application (SRK Consulting Report No: 527693/1, April 2018), SRK explains that "<i>the expanded process area and new process water dam lie within a CBA [Critical Biodiversity Area]</i>" and that "<i>[c]learing for the expanded process area and new process water dam have caused physical disturbance to and the removal of intact vegetation habitat, and individual plants of SCC [species of conservation concern] and other protected species were probably destroyed by vegetation clearing</i>".</li> <li>2. SRK then goes on to conclude that the area affected by the activities which are the subject of this application has a local impact on a relatively small area and that "<i>the activities are unlikely to have significantly altered the overall functioning of the CBA, as significant areas of intact Strandveld vegetation remain</i>". SRK's overall assessment of the impact is deemed to be "of low significance".</li> <li>3. This assessment of the impact is misleading, as it does not appropriately assess the cumulative impacts of the activities on the CBA, when considered together with the existing mining activities on the site, the proposed expansion of the Tormin mine (under SRK reference number 507228), and the recently approved prospecting application alongside the banks of the Olifants river.</li> </ol>		
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--	--

## **CONCLUSION**

In the circumstances, the CER requests that the Environmental Authorisation granted by the DMR be set aside on both procedural and substantive grounds.

The appellant confirms compliance with Regulation 4(1) of the NEMA regulations, 2014.

**DATED AT CAPE TOWN THIS 9<sup>th</sup> DAY OF JULY 2019.**



---

**CENTRE FOR ENVIRONMENTAL RIGHTS**

Appellant

2<sup>nd</sup> Floor, Springtime Studios

1 Scott Road, Observatory

Tel. 021 447 1647

Fax: 086 730 9098

Ref: L Govindsamy / Z Omar