

The Minister of Forestry, Fisheries and the Environment C/O The Director: Appeals and Legal Review

Department of Environment, Forestry and Fisheries

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Your reference
(FS)30/5/1/2/3/2/1(12) EM

Our reference
G Rapson / P Novotny / C Hoon
3053333.02

Date
20 May 2025

Dear Honourable Minister George,

APPEAL LODGED IN TERMS OF SECTION 43(1A) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT 107 OF 1998 ("NEMA"), READ WITH THE NATIONAL APPEAL REGULATIONS, 2025 ("APPEAL REGULATIONS"), AGAINST THE REFUSAL OF DE BEERS CONSOLIDATED MINES PROPRIETARY LIMITED'S APPLICATION FOR THE AMENDMENT ITS ENVIRONMENTAL MANAGEMENT PROGRAMME ("EMPr") IN RESPECT OF ITS VOORSPOED DIAMOND MINE

1. Webber Wentzel acts for De Beers Consolidated Mines Proprietary Limited ("**DBCM**" or "**Appellant**") and is instructed to lodge this appeal on behalf of DBCM in terms of section 43(1A) of NEMA read with the Appeal Regulations.
2. This appeal is lodged against the decision of the Chief Director: Mineral Regulation ("**Chief Director**") of the Department of Mineral Resources and Energy ("**DMRE**") to refuse ("**Refusal Decision**") DBCM's application in terms of regulation 31 of the Environmental Impact Assessment Regulations, 2014, for the amendment of the approved EMPr in respect of DBCM's Voorspoed Diamond Mine ("**Voorspoed Mine**") to remove the backfilling conditions stipulated in the EMPr ("**EMPr Amendment Application**").
3. The mining right in respect of the Voorspoed Mine was granted to DBCM by the DMRE on 5 September 2006. The right was granted for a period of 15 years ending in October 2023. Mining operations at the Voorspoed Mine ceased prematurely in December 2018. As a result, DBCM's board of directors took a decision to proceed with the decommissioning and

Cover Letter To DFFE(22660571.2)

Senior Partner: G Driver **Managing Partner:** S Patel **Partners:** BW Abraham RB Africa C Alexander AK Allie NG Alp TB Ball DC Bayman AP Blair K Blom N Blom AJR Booyesen AR Bowley M Bux V Campos RI Carrim T Cassim SJ Chong ME Claassens KL Collier KM Colman KE Coster K Couzyn DB Cron PA Crosland R Cruywagen JH Davies KM Davis PM Daya L de Bruyn A de Meyer PU Dela M Denenga C Dennehy DW de Villiers HM de Villiers ST Dias BEC Dickinson DA Dingley W Drue E Durman GP Duncan CP du Toit TC Dye L Dyer SK Edmundson LF Egypt KH Eiser JC Els S Farrren K Fazel G Fitzmaurice JB Forman L Franca M Garden MM Gibson H Goolam C Gopal CI Gouws PD Grealy L Green JM Harvey JS Henning KR Hillis CM Holfeld PM Holloway SJ Hutton KT Inglis ME Jarvis JC Jones CM Jonker S Jooste LA Kahn L Kamukwamba M Kennedy A Keyser GR Kgalle MT Kgoadi A Khumalo KE Kilner MD Kota JC Kraamwinkel AC Kruger S Kruger J Lamb LC Lambrechts LM Lamola B Lötter E Louw CF Mackenzie M Mahlangu V Mannar CCT Marupen-Shkaidy G Masina T Masingi N Mbere MC McIntosh SJ McKenzie CS Meyer A Mhlongo AJ Mills D Milo M Mkhabela DR Mogapi P Mohanlall L Moolman LE Mostert VM Movshovich M Mpungose A Muir C Murphy D Naidoo P Naidoo DC Nchabeleng DP Ndiweni ST Ngcamu LM Nkanza C Nöthling PD Novotny M Nxumalo AN Nyatumba MB Nzimande A October L Odendaal N Paige AS Parry GR Penfold SE Phajane MN Phala M Philippides BA Phillips MA Phillips CH Pienaar MP Pool DJ Rafferty D Ramjettan GI Rapson K Rew G Richards-Smith SA Ritchie J Roberts BJ Rule S Rule G Sader H Samsodien DA Serumula KE Shepherd ZK Sibeko N Singh N Singh-Nogueira CF Sieberhagen P Singh S Sithole R Smit C Smith P Soni MP Spalding MW Straeuli LJ Swaine Z Swanepoel WV Tembedza A Thakor T Theessen TK Thekiso C Theodosiou T Theunissen J Tihavani G Truter PZ Vanda SE van der Meulen JP van der Poel MS van der Walt CS Vanmali N van Vuuren JE Veeran HM Venter B Versfeld MG Versfeld TA Versfeld C Vertue T Viljoen DM Visagie EME Warrington J Watson M Wessels AWR Westwood RH Wilson JS Whitehead KD Wolmarans

closure of the Voorspoed Mine. On 10 March 2020, GCS Water and Environmental Consultants ("**GCS**"), DBCM's environmental assessment practitioner, submitted the EMPr Amendment Application to the DMRE. The EMPr Amendment Application pertains to the amendment of the 2010 approved EMPr in respect of the Voorspoed Mine, read together with the DMRE's conditions of approval as set out in the DMRE's letter confirming the approval of the 2010 EMPr ("**Approval Letter**"). The purpose of the EMPr Amendment Application was to apply to the DMRE to remove the conditions of approval set out in paragraphs (d), (f) and (g) of the Approval Letter, which requires DBCM to backfill the open pit at the Voorspoed Mine. The Refusal Decision refused to grant the EMPr Amendment Application, with the record of decision in respect of the Refusal Decision providing that DBCM must comply with the 2010 EMPr and its conditions of approval.

4. DBCM submits that the Chief Director erred in refusing the EMPr Amendment Application and the Refusal Decision should, therefore, be set aside on appeal. The Refusal Decision is not rationally connected to the information which was before the Chief Director at the time of taking his decision and was further informed by material misapplications of the enabling legislative provisions, with the result that the Refusal Decision is unlawful, unreasonable, irrational and/or unfair.
5. On the strength of the submissions and grounds of appeal submitted herewith, the Appellant thus challenges the Refusal Decision and lodges this appeal to the Minister of Forestry, Fisheries and the Environment ("**Minister**") – in accordance with section 43(1A) of NEMA and the Appeal Regulations – against the decision to refuse DBCM's EMPr Amendment Application, further submitting that the decision to refuse the EMPr Amendment Application should be set aside ("**Appeal**").
6. The Appellant has complied with the requirements of regulation 4 of the Appeal Regulations, by submitting the Appeal:
 - 6.1 to the appeal administrator (i.e., the Minister care of the Directorate, Appeals and Legal Review of the Department of Forestry, Fisheries and the Environment) and to GCS, for distribution to all registered interested and affected parties in accordance with the provisions of regulation 4(2)(c) of the Appeal Regulations; and
 - 6.2 within 20 days (i.e., by 20 May 2025) from the date that DBCM was notified of the Refusal Decision.
7. As stated in the Appeal, and despite having requested information and documentation in respect of the Chief Director's reasons for taking the Refusal Decision on more than one occasion, the Appellant has still not been provided with all of the information and documentation which was before the Chief Director when taking the Refusal Decision. This has severely prejudiced and impacted the Appellant's right to appeal and to fair administrative justice. In particular, the Appellant has to-date still not been provided with copies of the comments received from both the Department of Water and Sanitation ("**DWS**") and the Principal Inspector of Mines ("**PIM**") in respect of the EMPr Amendment Application, which was requested by the Chief Director for purposes of taking the Refusal Decision, as stated in paragraphs 1(f) and (h) under Annexure 1 to the record of decision in respect of the Refusal Decision. The Appellant is therefore unable to consider and address the reasons for the DWS's and PIM's opposition to the EMPr Amendment Application in this Appeal and whether the Refusal Decision is rationally connected to the DWS's and PIM's comments.
8. The Appellant accordingly requests an opportunity to supplement the Appeal once it has been provided with all information and documentation reasonably necessary to enable it to exercise its right to appeal the Refusal Decision. The Appellant requests the direction of the appeal administrator in this respect, and further notes and requests that the appeal administrator exercise its discretion under regulation 6 of the Appeal Regulations to direct

the Chief Director to furnish it with the necessary information to enable a proper determination of this Appeal by the appeal authority.

9. A copy of the completed Appeal Response Report, together with supporting annexures and the Appeal Questionnaire, are provided under cover of this letter:
- 9.1 The prescribed and completed Appeal Questionnaire and Appeal Response Report are attached as "**Annexure 1**" and "**Annexure 2**", respectively.
- 9.2 A copy of our mandate to lodge the Appeal on behalf of the Appellant is attached to the Appeal Questionnaire as Annexure "**AQ1**".
10. Please let us know if your Office requires any further information.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Rapson', with a small dot to the right.**WEBBER WENTZEL**

Garyn Rapson

Partner

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