

OBJECTION AGAINST APPLICATION FOR PROSPECTING RIGHT AND COMMENTS ON ENVIRONMENTAL MANAGEMENT PLAN SUBMITTED IN TERMS OF THE PROVISIONS OF THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT ACT, ACT 28 OF 2008

LITTLE SWIFT INVESTMENTS 56 (PTY) LTD NAMAQUASFONTEIN BOERDERY TRUST	OBJECTORS
BONGANI MINERALS (PTY) LTD	APPLICANT
APPLICATION REFERENCE NUMBER	WC 30/5/1/1/2/434 PR
PROPERTY	FARM 297/1 PIKETBERG

This submission is submitted on behalf of Moutonshoek Investments (Pty) Ltd (ex Little Swift Investments 56 (Pty) Ltd) and the Namaquasfontein Boerdery Trust and it constitutes a formal objection against the application for a prospecting right on, amongst others, the property known as Farm 297/1, Piketberg.

Fact – an unknown entity with virtually no technical or financial abilities for the umpteenth time attempts to obtain prospecting rights in respect of active food-producing agricultural farms located in an environmentally sensitive area and providing a source of income for more than 195 individuals and their families. The submitted application and environmental management plan are generic in nature, fails to properly address material issues and in certain aspects is misleading.

The purpose of this submission therefore is to indicate to the relevant authority why this application should be summarily rejected.

INTRODUCTION

1. Bongani Minerals (Pty) Ltd (hereinafter referred to as the “**Applicant**”) applied for a prospecting right in terms of section 16 of the Mineral and Petroleum Resources Development Act, 2002 (Act 28 of 2002), (hereinafter referred to as the “**Act**”) to prospect for tungsten ore, molybdenum ore, copper ore, zinc ore, gold ore, silver ore and rare earths over the remaining extent of portion 6 (a portion of portion 2) and portions 1 and 13 of the Farm Namaquasfontein No 76 and portion 1 of Farm No 297 in the magisterial district of Piketberg (hereinafter referred to as the “**Prospecting Area**”). This application was provisionally accepted by the Department of Mineral

Resources: Western Cape Region (hereinafter referred to as the “**DMR**”) on 31 March 2010.

2. Following the acceptance letter of 31 March 2010 the Applicant was instructed by the DMR to –
 - (i) To notify in writing and consult with the landowners or lawful occupiers or any other affected party and to submit the result of such consultation to the DMR before or on 30 April 2010; and
 - (ii) To submit an environmental management plan to the DMR on or before 30 May 2010 (hereinafter referred to as the “**EMP**”).
3. Following the notification process initiated by Withers Environmental Consultants (hereinafter referred to as “**WEC**”) on or about 12 April 2010 (12 days after the provisional acceptance of the application) Moutonshoek Investments (Pty) Ltd (kindly note the name change from Little Swift Investments (Pty) Ltd) the owner of Farm 297/1 and Namaquasfontein Boerdery Trust the owner of portions 4 and 5 of Farm 76, immediately registered as Interested and Affected Parties and by 30 April 2010 submitted their initial objections against the application. (hereinafter referred to as the “**Objectors**”)
4. It is not the intention of the Objectors to deal with the consultation process in detail, but may refer to aspects thereof during the course of this submission if and when regarded as relevant.
5. For the purposes of this submission it is recorded that WEC has requested that all comments on the EMP must be submitted by 18 May 2010. It is not understood in terms of which provision of the Act or Regulations this timeframe was set and the opinion is held that the Objectors were not bound by this timeframe and WEC was informed accordingly. The Objectors have however undertaken to submit their submission to the DMR on or before 30 May 2010.
6. This submission is aimed at –

- (i) Supplementing the Objectors' submissions submitted to WEC on or about 30 April 2010; and
 - (ii) Providing comments on the draft EMP compiled by the Applicant.
7. It is also submitted that this submission should be read in conjunction with all other submissions, comments and objections submitted by other landowners in the Prospecting Area, Interested and Affected Parties and the Verlorenvlei Coalition representing in excess of 1500 members.

HISTORY

8. It is the Objectors' submission that before dealing with the application and the EMP the events preceding this application should be recorded.
9. Although the Applicant and WEC wish to downplay the history and would argue that this application is a "new" application and should be considered afresh, it is the Objectors' submission that this application can not be seen in isolation, but should be dealt with, with due cognisance of two previous prospecting right applications and two previous unsuccessful mining right applications submitted by the Applicant in respect of the same properties to which this application relates.
10. These applications were as follows:
- (i) A prospecting right application submitted by the Applicant during September 2005. This application was rejected on grounds of pollution concerns;
 - (ii) The second prospecting right application submitted by the Applicant on or about September 2006. This application was granted on 3 April 2007 but was taken on judicial review by the objectors. The right lapsed before the review could be finalised;
 - (iii) The first mining right application WC 30/5/1/2/2/328 MR submitted by the Applicant on 25 March 2009. After vigorous objections clearly indicating deficiencies in the application and related documentation and the apparent

inability to complete a proper environmental impact assessment, this application was withdrawn by the Applicant; and

- (iv) The second mining right application WC 30/5/1/2/2/385 MR submitted by the Applicant on 28 September 2009. After vigorous objections clearly indicating deficiencies in the application and related documentation, this application was also withdrawn by the Applicant.
11. All four the above applications were poorly presented, based upon faulty studies and were not supported by any substantial specialist reports that actually could serve to support the application. These applications were not only objected to by the affected owners and other interested parties, but also by all relevant state departments who have expressed serious concerns. None of these applications received a single shred of support from any of the relevant role players.
 12. In its draft EMP the Applicant referred to these applications, but forwarded as reason for these abortive attempts the fact that it apparently was not allowed access to the properties to complete an Environmental Impact Assessment and Environmental Management Programme. The Applicant however remains silent on the fact that the DMR, in respect of the scoping report of MRA 328, specifically on 24 June 2009 recorded that *"it was difficult to comment on the document because the information provided to explain the project was mostly general, and not specific to make constructive and specific comment possible."* The opinion is held that this was the true reason for the failure of the applications and not because landowners did not want to cooperate with the Applicant.
 13. After reading the current application and EMP it is the Objectors' submission that the then concern expressed by the DMR should equally apply today.
 14. As justification for its decision to once again apply for a prospecting right, the Applicant refers to *"research undertaken by the University of Stellenbosch on stored core samples drilled during the 1970'shas revealed the presence of additional minerals in the project area."* As a result the Applicant then decided to apply for a prospecting right *"in order to obtain information on these additional minerals."* (Page 7 of the EMP). Is it then the contention of the Applicant that this research was done after September 2009 (when MRA 385 was lodged)? If not, then it should be abundantly

clear that this information should have been available during 2005 already (when the first PRA was lodged).

15. All previous applications related to prospecting/mining of tungsten and molybdenum ore and now all of a sudden 6 additional minerals are added and this apparently as a result of the “discovery” of these additional minerals through research! Ironically enough, apart from listing these additional minerals, neither the application, the prospecting work program nor the draft EMP make any further reference to the quantities or actual occurrence of these minerals in the Prospecting Area. One would have at least expected some kind of reference to a desktop study or respectable geological survey dealing with these material issues to justify the application!
16. It is a fact that the Objectors and all other interested and affected parties for more than 5 years now have been inconvenienced, frustrated and harassed by the Applicant’s attempts to acquire a prospecting or mining right and it is trusted that the DMR will once and for all put a stop to these attempts.
17. Based upon the Applicant’s statement that the ultimate purpose of the application is to “*develop a mine based on information gathered from the prospecting programme*”, it is the Objectors’ submission that the DMR in considering this application must then also consider the feasibility of mining for a mineral of a marginal grade in an active agricultural area located in an environmentally sensitive area. If that is the case then it is submitted that all the concerns expressed during the previous mining right applications remain relevant and will not be addressed by the envisaged prospecting operations.

THE APPLICATION

18. The Application does not meet the requirements of the Act.

18.1 At the outset it is the Objector’s contention that the acceptance by the DMR of the Applicant’s application is *ultra vires* since it does not meet with the requirements contemplated in section 16(1) of the Act for the following reasons.

18.2 Section 16(1)(b) states that any person lodging an application for a prospecting right must lodge the application” *in the prescribed manner*”. In

terms of section 16(2) the Regional Manager can only accept the application “*if the requirements contemplated in subsection (1) are met*”. If not, the application then must be dealt with in terms of the provisions of section 16(3).

- 18.3 Regulation 5(1)(b) of the Regulations published in terms of the Act stipulates that an application must be completed in the form of Form B contained in Annexure I and must contain “*in the case of a company....., documentary proof that the applicant has obtained the necessary authority to make the application in a representative capacity on behalf of the company....*”
- 18.4 Bongani Minerals (Pty) Ltd is the Applicant and it follows that its application should contain the necessary proof contemplated in regulation 5(1)(b). In other words a resolution by the company authorising a natural person to make the application in a representative capacity on its behalf.
- 18.5 From the application it would appear that one Johannes van der Walt is the authorised representative of the Applicant. This is confirmed by the undertaking (Part L of the Application) signed by the said Johannes van der Walt “*authorised thereto by Bongani Minerals*”
- 18.6 As proof of its compliance with this requirement the Applicant then refers to a copy of a resolution contained in appendix 10 to the application. This resolution however was passed by the Directors of **El Nino Mining (Pty) Ltd** on 23 March 2010 and it reads that “*Johannes Hendrik van der Walt is authorised to sign all documents pertaining to the said prospecting right on behalf of the Company.*”
- 18.7 El Nino Mining (Pty) Ltd is not the applicant company. It rather is the 100% shareholder in Riviera Tungsten (Pty) Ltd, the 49% shareholder in Bongani Minerals (Pty) Ltd, the Applicant.
- 18.8 El Nino Mining (Pty) Ltd has no jurisdiction to authorise one of its directors to sign all documents pertaining to the prospecting right on behalf of the independent Bongani Minerals (Pty) Ltd.
- 18.9 Van der Walt was therefore not authorised by the Applicant and has not “*obtained the necessary authority to make the application in a representative capacity on behalf of the company*”.

18.10 The Application does not contain the documentary proof as contemplated in regulation 5(1)(b), and does not comply with section 16(1)(b) and the acceptance of the application by the Regional Manager consequently was *ultra vires*.

18.11 In the Objectors' opinion this is a material deficiency with respect to the formal requirements in terms of the Act and it renders the application null and void *ab initio*.

19. Should the DMR however for some or other reason decide to condone the deficiency or allow the Applicant to *ex post facto* ratify Van der Walt's actions, the Objectors' rights in this regard remain fully reserved.

20. Bearing the aforementioned in mind the Objectors will now continue in dealing with the rest of the application and the EMP.

21. Ownership of Participation by Historically Disadvantaged South Africans

20.1 The Applicant takes pain in emphasising the fact that it is a "*BEE owned company*".

20.2 Apart from providing generic information on two of the "BEE" shareholders, Trevor da Silva Pikwane (37.74%) and Phemelo Ohentse Robert Sehunelo (10.20%), the application is silent on the other two shareholders, namely Dikgosi Diamonds CC (2.55%) and Latiefa Natasha Kau (0.51%)

20.3 It also does not provide any further information on Riviera Tungsten (Pty) Ltd, the 49% shareholder.

20.4 The application is also silent on –

- (i) Whether a shareholders' agreement is in existence regulating the relationship between the 5 shareholders of the Applicant;
- (ii) Whether a share pooling agreement between the minority shareholders is in place that will ensure that the Applicant will indeed remain a proper "*BEE owned company*" in all instances; and

- (iii) What the shareholders' responsibilities are as far as managing the applicant are concerned.

20.5 In light of the fact that Riviera Tungsten holds the largest percentage of shares and no documentary evidence is provided with regard to the matters referred to in par 20.4 above, serious reservations must exist with regard to the statement by the Applicant that it is a HDSA controlled company.

20.6 The fact that the sole shareholder of Riviera Tungsten (Pty) Ltd, El Nino Mining (Pty) Ltd (par 17.6 above) has authorised Van der Walt to sign all documents pertaining to the application, should also serve as proof that the HDSA shareholders do not actively participate in the management of the Applicant.

22. Prospecting work program: Geological description of the land

21.1 The Applicant devotes a full page to the geological description of the land stating that the "deposit" represents one of the "most significant exploration successes of recent years". It is not clear whether this refers to the 1970's exploration or the research done on core samples. Apparently during 2009 this was enough to justify applying for a mining licence when the Applicant submitted an application "*based on advice that adequate historical information was available and that additional prospecting activities were not required.*"

21.2 The Applicant then refers to mining activities occurring 50 km to 180 km from the proposed Prospecting Area in respect of lime, heavy minerals (?), previous diamond mining, previous prospecting, current diamond mining, and gypsum. No reference is however made to zinc, gold, silver, copper or rare earths.

21.3 According to the Applicant a desktop analysis has already been initiated through a literature review of geological articles and previous prospecting. No information regarding the outcome of such desktop analysis is however provided by the Applicant.

21.4 In the Applicant's opinion this description is of such a generalised nature that it is impossible to make any constructive and specific comment possible.

23. Prospecting method:

22.1 When discussing the envisaged prospecting methods the Applicant states that the samples obtained through drilling will be “*transported to the University of Stellenbosch for full analysis*”. According to the EMP however these samples “*will be removed from site to Piketberg for further analysis*”. Where will analysis then actually take place?

22.2 The Objectors have serious reservations with regard to the drilling to be conducted and are of the opinion that the information provided is misleading. For instance.

- (i) It is stated that it is proposed to drill at approximately 150 drill sites. Would this mean one hole per site or could there be more than one hole?
- (ii) In the Objectors opinion is clear that more than one hole will be drilled per site. This actually is confirmed by the Applicant when it is stated that it may be required to “*drill a series of fanned holes*”.
- (iii) Reference to approximately “160 holes” therefore is misleading. In the same vein reference to the total drilling depth is also misleading and could the anticipated total drilling depth of 23 250m increase significantly taking into account the additional series of fanned holes to be drilled. This in turn would increase the cost estimate and place a further burden on the Applicant’s doubtful financial ability.

24. The Applicant’s technical and financial ability – will be dealt with under separate headings below.

25. Cost estimate of the expenditure for each phase

25.1 In part K of the application provision is made for R60,000 during Phase 1 for rehabilitation & environment. (According to the EMP however this amount is R80,000)

25.2 No further specific provision is made for rehabilitation and environment during Phase 2 (drilling). According to the Applicant R23,500,000 is however estimated for direct prospecting "*incl rehab*". In the Objectors' opinion this is extremely vague and provide no indication whatsoever of what financial provision has been made for rehabilitation during this invasive phase.

25.3 The Applicant in response to the various objections and concerns raised by interested and affected parties in the Comments and Response Table (Appendix 1A to the Public Consultation Report) on no less than 7 occasions undertook to pay compensation towards interested and affected parties in respect of, amongst others –

- (i) Rehabilitation for agricultural areas;
- (ii) Water used during prospecting operations;
- (iii) Inconvenience to landowners;
- (iv) Mitigation of potential impacts of prospecting; and
- (v) Loss in production caused by drilling operations

25.4 The Objectors could however find no indication that provision for such compensation has been made in the cost estimate submitted by the Applicant. Serious doubts also exist with regard to the Applicant's ability to provide for such compensation and rehabilitation in a very modest budget of R23,545,000 for the entire prospecting operation.

THE ENVIRONMENTAL MANAGEMENT PLAN

26. With regard to the nature of the EMP as a whole it is the Objectors' submission that it is generic and provides no substantial information that would enable the DMR to make an informed decision. As a matter of fact the opinion is held that this document amounts to nothing more than a verbatim copying of the DMR's standard prescribed

EMP document. The project specific information provided seems to follow the trend set by the Applicant in its previous applications and it is “ *difficult to comment on the document because the information provided to explain the project was mostly general, and not specific to make constructive and specific comment possible.*”

27. The Applicant relies heavily on “*Walker (1994)*” when the latter apparently regarded “*the combination of greisen, skarn, and extensive hydrothermal alteration and mineralisation at Riviera as unique*”. The Applicant however fails to refer to or are not aware of its own Prof A Rozendaal’s statement made on Monday, 25 May 2009 during the Poster Session V13B, Metro Toronto Convention Centre, Toronto, Canada which reads as follows:

“The blind Riviera deposit is located in the Western Cape Province and was discovered by stream sediment sampling in the mid 1970’s. Resources total 46 million metric tons assaying 0,216 per cent tungsten and 200 parts per million molybdenum, a marginal grade that has prohibited development into an open cast mine.”.

This very same Prof Rozendaal is also on record for stating during, as far as could be established, the 27th Earth Science Congress of the Geological Congress of the Geological Society of South Africa, Stellenbosch, 2000, as follows: “*Despite suitability for open-cast mining, well established infrastructure and relative simple metallurgy, the grade of the deposit remains marginal.*” and “ *A halo of exo-skarn associated subeconomic mineralization envelopes the Riviera Pluton and is hosted by metasomitted calcareous rocks of supracrustal sequence. It is however of limited extent and rarely contributes to the total resources.*”.

It is the Objectors’ opinion that these statements made by its own Prof Rozendaal during 2000 and 2009 are certainly in direct contradiction with is apparent justification for applying for a prospecting right based on Walker’s 1994 comments.

28. The Applicant then continues and states that it has decided to apply for a prospecting right because of the “revelation” of the presence of additional minerals in the project area. The Applicant however fails to submit any information on the quality, occurrence, grade and quantities of these additional minerals it is looking for. In respect of the rare earth elements the Applicant also conveniently fails to refer to or is unaware of pronouncements made by Prof Rozendaal which are in the public domain, to wit: ‘*Accessory minerals include pyrite, pyrrhotite, chalcopyrite, sphalerite and the LREE*

enriched mineral allanite. Scheelite and molybdenite occurs as fine disseminations, but also as coarse grains within cross-cutting, late stage quartz and calcite veins in the granite and the wall rocks.' (Rozendaal, 25 May 2009).

29. In addition the prospecting information is required to *"refine the current mine model and to investigate the feasibility of potential underground, instead of open cast mining."* No information is however provided on this so-called "current mine model" that needs refining.
30. It is the Objectors' submission that the Applicant has provided absolutely no substantial justification for applying for a prospecting right. On its own submission the purpose of the prospecting right is not to establish the quantity and location of the minerals applied for but to *"develop a mine based on information gathered from the prospecting programme"*. The Objectors vehemently oppose the development of any mine and regard this application as another futile attempt to obtain mining rights over agricultural land located in an environmentally sensitive area.
31. In the Objectors' opinion the rest of the EMP is completed in general terms and does not provide any substantial information that would enable the DMR to make a well-informed decision. The Objectors also wish to refer to a few inconsistencies and/or misinformation contained in the EMP:
 - (i) It is stated that the area of each drill site that will be disturbed will be approximately 60m² in extent. Taking into account that the two water pits alone would be 12.5m² in extent it is questionable if the boreholes, drilling rig, metres of 20 mm class 3 plastic pipe, a generator, mono pumps and personnel could be accommodated in the remaining area of 6m X 8m.
 - (ii) The Applicant indicates that 8 drilling sites will be situated within 1km from farm houses. Based on the diagram for drill sites provided it is the Objectors submission that 81 drill sites will actually be situated within 1 km from 7 farm houses and another 35 drill sites within 1 km from a further 4 farm houses.
 - (iii) The statement by the Applicant that the impact upon agricultural land and the disruption of agricultural activities

during prospecting will be low (negative) is rejected. On the circular area alone where lucerne is grown that provides fodder for the breeding horses no less than 18 drill sites are envisaged! The impact upon agricultural land and agricultural activities in the opinion of the Objectors will therefore be high.

32. In the Objectors opinion the most glaring omission from the EMP is a reference to the area and its environmental importance. The envisaged Prospecting Area is located north of the slopes of the Piketberg and is surrounded on its southern, eastern and western boundaries by the mountains. These mountains form a natural catchment area for the Krom Antonies River and the subterranean aquifers that provide water and life for the entire area right up to Elandsbay. To argue that the envisaged prospecting activities and the ultimate mining objectives would not negatively affect this invaluable eco-system constitutes, in the Objectors' opinion, a complete disregard of the value of this catchment area. It is submitted that the drilling of 160 plus holes 250 m deep and traversing this area and the eventual developing of an open cast mine over an area of 55 ha shall lead to the ravaging of this life-giving eco-system, with irreversible consequences . To even suggest that complete rehabilitation would be possible clearly portrays a total ignorance of the devastating effect the envisaged prospecting and the ultimate objective will have on this area. The Applicant however deems it not necessary to address this material issue.
33. Other aspects emanating from the EMP will be dealt with under separate headings elsewhere in the submission.

THE APPLICANT'S STRUCTURE

34. The Applicant, Bongani Minerals (Pty) Ltd, that was initiated with the exclusive intention to prospect and mine the mineral deposit in the Moutonshoek Area, is described as a 51% BEE owned company. Its shareholders are as follows:
- | | | | |
|---|----------------------------|---|--------|
| ➤ | Riviera Tungsten (Pty) Ltd | – | 49% |
| ➤ | T da Silva Pikwane | - | 37.74% |
| ➤ | POR Sehunelo | - | 10.20% |
| ➤ | Dikgosi Diamonds CC | - | 2.55% |
| ➤ | LN Kau | - | 0.51% |

35. Riviera Tungsten (Pty) Ltd, described as the “minority” shareholder with its 49%, is owned by El Nino Mining (Pty) Ltd who in turn is a wholly owned subsidiary of Batla Minerals South Africa (Pty) Ltd.
36. Apart from general information about Pikwane and Sehunelo no information is provided with regard to any of the other three shareholders. For instance the shareholding in Riviera Tungsten (Pty) Ltd and its activities.
37. No shareholders’ agreement has been provided nor is any information available regarding the management of the Applicant, especially to determine if the BEE components indeed actively participate in its management and decision-making.
38. Whilst a description is provided of the staff compliment of El Nino Mining (Pty) Ltd no details are provided in respect of that of the Applicant.
39. No information is provided by the Applicant of legal agreements between it and El Nino Mining (Pty) Ltd providing for technical and financial assistance to the Applicant by El Nino Mining as alleged.
40. No information is provided regarding El Nino’s mining activities other than a brief reference to its single prospecting and mining activity involving diamonds in the Maluti mountains and the conclusion that it is efficient in the field of mining weathered Kimberlite and gravel with a high clay content.
41. Regarding the ultimate holder, Batla Minerals SA it is stated that it is a mining investment company conducting its activities in South Africa through El Nino Mining.
42. In the Objectors’ opinion the above information does not allow anyone to make an informed decision on the status and abilities of either the Applicant, its shareholders or the latter’s shareholders. As a matter of fact it is the Objectors’ submission that the Applicant is nothing more than a shell and a front company for El Nino Mining (Pty) Ltd.

THE APPLICANT’S TECHNICAL ABILITY

43. In terms of regulation 5(1)(h) the application must contain documentary proof of the Applicant’s technical ability or access thereto.
44. In this regard the Applicant in its application and EMP merely states as follows:

- (i) *“The Applicant and the respective geologist, have been involved in the mining and prospecting industry for a number of years and in that time gained sufficient knowledge in the safe and optimal methodologies in prospecting and rehabilitation practices for prospecting operations and mines.” ; and furthermore*
- (ii) *“the Applicant has at his disposal the applicable capacity in terms of machinery, equipment and infrastructure required.”*

45. Neither of the above statements is supported by any documentary proof whatsoever. In a letter dated 23 March 2010 the Applicant merely states that *“apart from its in house expertise, Bongani will be assisted by various experts and consultants to ensure that the environmental management plan and prospecting work program are completed in an efficient and correct manner.”* Whilst the CV's of the consultants the Applicant wishes to engage in the process are noteworthy in certain aspects, the Objectors remain to be convinced that they have the required experience to manage and oversee the prospecting operations as envisaged by the Applicant.
46. The Applicant's track record is well known and unless the unsuccessful submission of two prospecting right and two mining right applications should be regarded as *“involvement in the mining and prospecting industry”* and evidence of *“gaining sufficient knowledge”*, then it is submitted that the Applicant has no technical ability of any kind. The Applicant has no resumé of any previous prospecting or mining operations conducted by it.
47. No record is provided of the machinery, equipment and infrastructure the Applicant has at its disposal. It is the Objectors' submission that the Applicant does not have any of these at its disposal.
48. If technical ability and machinery etc. will however be put at the disposal of the Applicant by another company etc., then surely these statements should at least have been backed up with documentary proof of the existence of legal and binding agreements to this effect.

49. It is the Objectors' submission that the Applicant does not have the required technical ability to carry out the envisaged prospecting operations in accordance with the provisions of the Act or in compliance with its own EMP.

THE APPLICANT'S FINANCIAL ABILITY

50. In terms of regulation 5(1)(j) the application must contain "*a budget and documentary proof of the applicant's financial ability or access thereto*"
51. In an effort to comply with this requirement the Applicant merely attaches a letter by El Nino Mining (Pty) Ltd (the apparent sole shareholder in the Applicant's 49% shareholder, Riviera Tungsten (Pty) Ltd) which states that El Nino has the financial ability to fund the prospecting work programme and the EMP over the period envisaged. The latter company then attached a letter from Rand Merchant Bank stating its current available funds for this project as being more than R10 million. El Nino also stated that it will make the balance of the funds available during the course of the program.
52. In the Applicant's opinion the aforementioned then apparently constitutes a budget and documentary proof of its financial ability. This is rejected with the contempt that it deserves.
53. If the letter by RMB is properly read it should be clear that what is stated on behalf of the Relationship Manager concerned is that El Nino at 24 March 2010 has had R10 million available in a current account. Contrary to what El Nino in its letter alleges, it does not state that the R10 million is available for this project. From other evidence provided it is clear that El Nino is engaged in the mining of diamonds in the Maluti Mountains and also employs 180 people. In the Objectors' opinion one can safely assume that the amount in the current account should also be available to fund the diamond mining activity, other liabilities and matters incidental thereto. The Objectors are therefore for not one moment convinced that the entire R10 million, or more, will be made available to the Applicant.
54. It is clear that the Applicant on its own does not have any funds available for the envisaged prospecting operations and will have to obtain funding from elsewhere.
55. No documentary proof of such financing agreements is however provided. One would at least assume that both the companies should require some security in this regard,

either by way of a loan agreement or a joint venture agreement. A mere resolution by El Nino Mining that it is committed to “underwrite” the approved budget of the Applicant in the Objectors’ opinion is not a binding and secure agreement by a long chance.

56. In light of the fact that El Nino apparently would be prepared to fund the envisaged operation, then it would only be reasonable to expect that documentary proof of the sound financial ability of El Nino should be made available by way of audited financial statements as well as bank statements.
57. Should it appear that El Nino also does not have the financial ability to fund the envisaged project to the unrealistic low budgeted amount of R23 million, one would assume that El Nino’s holding Company, Batla Minerals A (Pty) Ltd should then provide documentary proof of its financial ability to fund the Applicant through its subsidiary, El Nino Mining (Pty) Ltd. However, according to research done by the Objectors’ it would appear that Batla Minerals SA is experiencing financial difficulties in that it (according to its own website) during the 2009 financial year and 2010 financial year has suffered substantial operational losses.
58. In the Objectors’ opinion and based upon the absence of any substantial documentary proof to this effect neither the Applicant nor El Nino has the required financial abilities.
59. It therefore is the Objectors’ submission that the Applicant has not and can not provide any documentary proof of its financial ability and that the DMR in terms of the provisions of section 17(2) of the Act, must refuse the application for a prospecting right on this ground alone.
60. It is also the Objectors’ submission that the above should serve as a clear indication that the application is actually made by El Nino Mining (Pty) Ltd and not by the Applicant and that the latter should be regarded as nothing more than a front for El Nino.

THE SUBJECT PROPERTY

61. Farm 297/1, 175,3848 hectares in extent, constitutes the farm, Moutonshoek, in existence since 1917.

62. The Property holds significant and well-documented socio-economical, cultural, ecological and historical value for the Piketberg Region. Most importantly it forms part of the catchment area for the Krom Antonies River.
63. Active and self-sustained farming activities have been in existence for decades.
64. The Property together with the neighbouring Portions 4 & 5 of Farm 76 hosts one of the best known and acclaimed horse breeding herd's in South Africa comprising 121 horses accommodated in 46 camps. The Objectors produce much sought after world class yearlings for racing in South Africa and abroad. The Property is at full capacity in terms of the number of horses that can be accommodated on the farm. Every horse camp is full and there is no alternative lodging available for mares and foals should prospecting be commenced with for a period of two years.
65. In addition a total of 101 hectares on the Property is under lucerne, teff, oats and wine grapes.
66. The Objectors also jointly own a cattle herd producing 28 tons of meat per year.
67. The farming activities provide work and a source of income to 55 permanent and 140 seasonal workers and their families.
68. No less than 7 residences can be found on the Property providing permanent accommodation to the Objector and their employees and another 16 residences on the property of the other Objector, Namaquasfontein Boerdery Trust.
69. The natural vegetation, amongst others, found on the property is Swartland Shale Renosterveld, which is regarded as one of the three most threatened vegetation types in the country. Only 9% of this vegetation type remains, and it is thus regarded as Critically Endangered in terms of the new National Spatial Biodiversity Assessment (Rouget et al 2004). Any mining or prospecting activity on the Property will seriously jeopardise the conservation status of this critically endangered habitat to the detriment of not only the Western Cape, but the country and the world.
70. Based upon the aforementioned it is the opinion of the Objectors that any prospecting activities would not only have a detrimental effect on the farming activities, and the lives of all associated with the Property, but it also would be in direct conflict with the nature and character of the property. As a result the application should not even be considered.

ZONING OF THE PROPERTY

71. Farm 297/1 is zoned as rural.
72. This zoning promotes and protects agriculture on farms as an important economic, environmental and cultural resource. Limited provision is made for non-agricultural uses to provide owners with an opportunity to increase the economic potential of their properties, without causing a significant negative impact on the primary agricultural resource
73. In terms of the Scheme Regulations in terms of the Land Use Planning Ordinance 15 of 1985 (LUPO) the following restrictions apply to this land use –
- (i) Primary uses are: agriculture, intensive horticulture, dwelling house, riding stables, environmental conservation use, environmental facilities, rooftop base station, and additional use rights.
 - (ii) Additional use rights, which may be used by the occupant of a property as a primary use are: second dwelling, or home occupation, or bed and breakfast establishment, or home child care, subject to certain requirements
 - (iii) Consent uses are: guest-house, hotel, tourist accommodation, tourist facilities, intensive animal farming, harvesting of natural resources, mine, utility service, transmission tower, aquaculture, animal care centre, farm shop, agricultural industry.
74. Based on the provisions of the Scheme Regulations it is quite clear that prospecting activities are neither a primary nor an additional use. At most and if the definition of a “mine” could be extended to also include “prospecting”, the latter could possibly qualify at least as a consent use. Whether this would be possible may be a discussion for another time.
75. So and for the sake of this submission alone it could be argued that prospecting might be regarded as a “consent use”. The latter is defined as “*The use of property for any purpose specified as a consent use is permitted only if the Council concerned grants its prior written approval for such consent use.*”

76. Based upon the aforementioned it is the Objectors' submission that Farm 297/1's current land use zoning does not permit prospecting activities and application therefore must be made to the local authority to obtain a consent use approval. Such an application in terms of section 15 of LUPO may only be lodged by an owner of land. It is recorded that the owner of Farm 297/1 has not and will not submit such an application.
77. The Objectors are also well aware of the DMR's opinion regarding the applicability of LUPO vis-a-vis the provisions of the MPRDA. It is a well-known fact that the DMR does not consider land use restrictions to be restrictive in so far as it relates to prospecting and mining rights and does not require authorisations in this regard.
78. It is however the Objectors' opinion that this point of view was dealt a blow when a ruling was made against it in the case of Swartland Municipality v Louw N.O and Others, Case No 13703/09
79. The facts relating to the decision that was handed down on 21 December 2009 briefly were that the Swartland Municipality sought an interdict to prevent the holder of a mining right from commencing mining activities on a farm, which had not properly been rezoned to a use, which permits mining in terms of LUPO. The holder of the mining right and the Department of Mineral Resources argued that the Constitution did not give municipalities executive authority to deal with mining and minerals. As a result they argued that the Minerals and Petroleum Resources Development Act (MPRDA) impliedly repealed all provisions of LUPO, which are in conflict with the MPRDA. The Court however held that
- (i) in terms of Schedule 4 of the Constitution, "municipal planning", which includes land use zoning, is reserved for regulation by municipal authorities only, and the regulation of regional planning and development may be extended to municipal authorities.
 - (ii) LUPO is not directed at the control of mining and it does not attempt to directly regulate mining.
 - (iii) Zoning is not connected with the issuing of mineral rights to the extent that it should be regulated by the MPRDA.

- (iv) LUPO is 'relevant law' for the purposes of the MPRDA and as such the holder of a mining right must ensure that his or her land is appropriately zoned before commencing any mining activities.

80. This case represents the current legal situation in the Western Cape and must find application in the present case – namely that no prospecting activities are permitted on Farm 297/1 (and for that matter on all the other subject properties) unless the landowner Objectors apply for and obtain permission from the Council concerned for at least permitting prospecting as a consent use. It is recorded that the landowners concerned have no intention to submit such applications.

MINERALS ON THE PROPERTY

81. It is a well documented fact that the minerals tungsten ore and molybdenum ore can be found on the Property.

82. It is also a fact that the resources are of a marginal grade that has prohibited development into an open cast mine. (Rozendaal *op cit.*)

83. The Applicant has submitted no evidence of any other minerals that could be found on the property and even if the minerals zinc, copper, gold, silver or rare earth elements are found on the property or the other subject properties, the opinion is held that the grade and the quantities would be of such an extent that would not render any viable mining thereof remotely possible.

84. As previously mentioned it is the Objectors' opinion that the Applicant's statement that its interests in the additional minerals has prompted it to submit this application is regarded as simply a smokescreen.

85. The Objectors, in the absence of supporting evidence in this regard by the Applicant, could not find any authority since 1980 that would conclude that anything else than a very low possibility of discovering an economically viable mineral deposit of the additional kinds referred to by the Applicant would be applicable to the Property. It therefore is submitted by the Objectors that -

- (i) Some of the “additional” minerals might be present on Farm 297/1 albeit in ignorable quantities.
 - (ii) There is only a slim chance of finding any other additional minerals on Farm 297/1.
 - (iii) These “additional” minerals predominantly occur in other provinces.
 - (iv) Information regarding the presence of these additional minerals is readily available in reports and geological maps published by the Geological Survey and the Council for Geoscience.
 - (v) All that is required would be to do more than simply a “desktop study”.
 - (vi) Embarking on extensive prospecting activities such as drilling deep holes all over Farm 297/1 in search of some elusive “additional” minerals shall be a waste of money which the Applicant in any case evidently does not have.
86. Returning to the real reason for this prospecting right application, namely the mining of the tungsten deposit it is recorded that all the objectors’ opposition in this regard are well documented.
87. Since the Applicant’s ultimate goal for prospecting is to develop a tungsten mine the opinion is held that the DMR, when considering this application, must do this against the background of the stated ultimate goal. No purpose would be served to grant a prospecting right if a mining right application would not be successful. In this regard the Applicant’s record then speaks for itself – its total inability to respond to material concerns raised by the DMR as well as other relevant state departments.
88. It is the Objectors’ respectful submission that the DMR must take into consideration the financial viability of an envisaged mine, particularly when considering the extremely low grade of the tungsten ore – lower than anywhere else in the world where tungsten is profitably mined. According to figures provided in Table 10 of the 1998 USGS International Strategic Summary Report for Tungsten, (Page 50) the

Riviera Deposit ranked 140th out of 154 identified tungsten resources sites world wide with its estimated 46 metric tons.

89. Finally it is trusted that sanity will prevail when the DMR has to balance the interests of the exploitation of marginal mineral deposits with that of active agricultural production and food security.

ENVIRONMENTAL MATTERS

90. The envisaged Prospecting Area is located north of the slopes of the Piketberg and is surrounded on its southern, eastern and western boundaries by the mountains. These mountains form a natural catchment area for the Krom Antonies River and the subterranean aquifers that provide water and life for the entire area right up to Elandsbay. To argue that the envisaged prospecting activities and the ultimate mining objectives would not negatively affect this invaluable eco-system constitutes, in the Objectors' opinion, a complete disregard of the value of this catchment area. It is submitted that the drilling of 160 plus holes 250 m deep and traversing this area and the eventual developing of an open cast mine over an area of 55 ha shall lead to the ravaging of this life-giving eco-system, with irreversible consequences . To even suggest that complete rehabilitation would be possible clearly portrays a total ignorance of the devastating effect the envisaged prospecting and the ultimate objective will have on the environment. The Applicant however deems it not necessary to address this material issue.
91. According to Cape Nature the prospecting area will have an effect on important fragments of indigenous vegetation, including Leipoldtville and Fynbos (classified as endangered); Swartland Shale Renosterveld (classified as critically endangered); Piketberg Quartz Succulent Shrubland (classified as endangered); Piketberg Sandstone Fynbos, Cape Lowland Alluvial Vegetation (classified as critically endangered) and Cape Lowland Freshwater Wetlands.
92. The impacts of the proposed activities will extend beyond the prospecting area which is located at the source of the Verlorenvlei (Recognised as one of 19 wetlands in South Africa of international importance) one of the largest natural wetlands along the West Coast of South Africa. Rather than being subjected to the negative impacts prospecting/mining shall have on the system, the activities in the Krom Antonies

River valley should be directed at active upgrading and rehabilitation of the riverine ecosystems.

93. The prospecting area falls within the Greater Cederberg Biodiversity Corridor which aims to conserve and restore the unique biodiversity of this region and encourage sustainable land use practices.
94. It is believed that the envisaged prospecting/mining shall pose a high level of risk to the terrestrial and aquatic ecosystems in the area and their functioning. Any prospecting/mining should be regarded as entirely inappropriate for the area and could have significant and irreversible impacts on the environment – for instance: the continued existence of the very scarce Verlorenvlei Redfin Fish, a species only to be found in this 14 km piece of river on earth.
95. In the Objectors' further opinion a proper investigation, assessment and evaluation of the proposed prospecting operations on Farm 297/1 will reveal that such activities inevitably shall have a detrimental effect upon the environment as well as the socio-economic conditions of everyone that in some or other way is associated with Farm 297/1 and the application should not be granted for the following reasons:
 - (i) The farm's biodiversity importance of national significance,
 - (ii) The farm's agricultural importance,
 - (iii) The socio-economic impact upon the farm's employees;
 - (iv) The incompatibility and cumulative negative impact of a prospecting/mining activity on the nature, scale and grain of the existing rural land.
96. It is also submitted by the Objectors that both the principles of the National Environmental Management Act 1998 (Act 107 of 1998) and, potentially, some of the listed activities under the Act would be relevant to the application. In addition there are probably other environmental legal requirements which must be complied with such as- the granting of a waste management licence under the Waste Act, 2000 (Act 59 of 2000) and the undertaking of a Heritage Impact Assessment under the National Heritage Resources Act, 1999 (Act 25 of 1999).

PUBLIC RESPONSE

97. It can be unequivocally stated by the Objectors that this application has received no positive response from the public. This is confirmed by the negative publicity it has received in the printed and electronic media.
98. The Objectors are not aware of any public support for the application. As a matter of fact the reaction overwhelmingly was condemning the application; calling for the rejection thereof and questioning the “real” reason behind the bringing of this application.
99. It is also submitted by the Objectors that it is extremely unlikely that any other government department would even consider conditionally supporting the application.
100. It is submitted that the DMR will have no other option but to take note of the vehement and vigorous public and departmental opposition when considering the application.

CONCLUSION

101. In light of what has been stated in paragraphs 1 to 98 above the Objectors are of the opinion that the prospecting right application submitted by Bongani Minerals (Pty) Ltd should be rejected by the Department of Minerals Resources.
102. For the sake of convenience the reasons for rejecting the application are summarised as follows:
 - 100.1 First and foremost the application does not comply with section 16(1)(b) of the Act and it is submitted that the acceptance of the application by the Regional Manager was *ultra vires*.
 - 100.2 No proof is in existence that the Applicant's HDSA shareholders share in the management of the Applicant which should constitute non-compliance with section 2(d) of the Act.
 - 100.3 The generic nature of the application and EMP and the absence of required substantive evidentiary proof.

- 100.4 The Applicant's total lack of technical and financial abilities to initiate, conduct and complete the envisaged prospecting operations;
- 100.5 The subject property is an active agricultural farm providing residence and employment to a number of persons. The factual nature of the property renders a harmonious co-existence with prospecting activities impossible.
- 100.6 The property's zoning does not permit any prospecting activities and the landowner will not submit any application for a consent use.
- 100.7 There is only a slight possibility that minute quantities of the so-called "additional" minerals may be found.
- 100.8 Any prospecting activity would have a serious and detrimental effect on constitutionally entrenched environmental matters.
- 100.9 The application would not be supported by any other government department. The application also has no public support and as a matter of fact is widely condemned. Serious concerns also exist in respect of the real reason for bringing this application.
- 100.10 The interests of active agricultural production and food security outweigh the exploitation of marginal mineral deposits.
- 100.11 The Applicant fails to address the impact that the envisaged activities will have on the natural water catchment area formed by the mountains surrounding the area. It portrays a complete disregard of the importance of this ecosystem and by doing that the Applicant intentionally renders the livelihood of all those entirely dependent upon this important life-giving environment – man, animal and plant alike – subservient to pure economical considerations that ultimately could only benefit the Applicant and its puppet masters.

Finally it is submitted that –

- In light of the documented history and the ultimate objective of the Applicant any attempt to downplay the effect of this application by stating that it is merely a prospecting right application should be rejected with the contempt it deserves;

- this application should be considered against the background of previous unsuccessful applications in this regard, especially in light of the fact that the Applicant unequivocally states that the ultimate goal is to develop a mine;
- this submission should be read in conjunction with the submissions made by other interested and affected persons.
- Serious reservations should exist with regard to who actually is behind and driving this application.

The Objectors also respectfully request the opportunity to address RMDEC to amplify this submission when the Committee performs its functions under section 10 of the Act..

Signed on behalf of the Objectors at Cape Town on this 30th day of May 2010.



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