

SOUTH AFRICA / JUDGMENT

West Coast Environmental Protection Association v Minister Of Water And Sanitation and Others (WT01/17/WC) [2021] ZAWT 8 (5 October 2021)

[2021] ZAWT 8

COURT

Water Tribunal

BEFORE

Ntika Maake, L. Mbanjwa

CASE / FILE NUMBER

WT01/17/WC

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IN

THE WATER TRIBUNAL

CASE

NO: WT01/17/WC

In

the appeal of:

WEST
COAST ENVIRONMENTAL
PROTECTION
ASSOCIATION APPELLANT
MINISTER
OF WATER AND SANITATION FIRST
RESPONDENT
CHIEF
DIRECTOR: WESTERN CAPE
DEPARTMENT
OF WATER AFFAIRS SECOND
RESPONDENTS
ELANDSFONTEIN
EXPLORATION
AND
MINING PTY
(LTD) THIRD
RESPONDENT

Quorum:	Adv. Ntika Maake (Chair). Ms. L. Mbanjwa (Additional Member)
	Hearing dates
	Submission of Heads
	of Argument and Judgement
	22 to 24 October 2019
	Appellant: 30 April
	2021
	11 to 13 December 2019
	First and Second
	Respondents: 10 May 2021
	10 to 12 February 2020
Third Respondent:	Kropz (Pty) Ltd: 12 May 2021
	1 to 4 February 2021
	Appellant
	Supplementary Heads of Argument: 21 May 2021
	Panel: Judgement and
	Order: 5 September 2021
	Panel: Reasons for
	Judgement: 5 October 2021
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[89].	

The fact that the appeal filed by the Provincial Department of Environmental Affairs and Planning was dismissed by the NEMA appeal authority authenticated the robustness of the Integrated Environmental Impact Assessment that was conducted by Kropz. The decision by the NEMA appeal authority certainly confirms the fact that the Integrated Environmental Impact Assessment that Kropz embarked upon conforms to the NEMA principles. It was a correct decision by the Department of Water and Sanitation not to direct Kropz to embark on another public participation process. For the reason stated above, the appeal ground regarding the procedural unfairness of granting this IWUL to Kropz fails and is therefore dismissed.

[90]

Substantive Grounds of appeal as follows:

2.1.

The water use licence application should have been refused on the basis of available information;[143]

2.2.

The information before the decision-maker was insufficient for granting a water use licence;[144]

2.3.

The decision-maker failed to be guided by the precautionary principle and public trust doctrine;[145] and

2.4.

The decision-maker and its delegated functionaries conducted themselves in a manner creating a reasonable apprehension of bias.[146] [91].

For the benefit of the readers of this judgement I provide a summary of the operation of the mine and then deal with the testimony of the

experts and factual witnesses, respectively. Elandsfontein Exploration and Mining (Pty) Ltd (EEM), proposes to mine phosphate on

the Cape West Coast. EEM has applied for a mining right for its proposed Elandsfontein Mine in terms of Section 22 of the Mineral and

Petroleum Resources Development Act No. 28 of 2002 (MPRDA) for a proposed strip mine that will include the farm Elandsfontein 349

Portions 2 and 4.

The

phosphate occurs within a sedimentary deposit and is below the groundwater table. To be able to mine safely the open pit mining area

will need to be dewatered by means of artificial recharge. The

indicated resource at Elandsfontein is 78Mt, at a grade of 10.1% P₂O₅. [92].

Due to the shallow, sandy, and uniform nature of the deposit, only surface mining methods were considered. No drilling or blasting is required. The phosphate occurs within a sedimentary deposit and is below the groundwater table. To be able to mine safely the open pit mining area will need to be dewatered by means of artificial recharge. Several surface mining methods were investigated, and strip mining has been selected as the preferred option, based primarily on environmental considerations. The strip mining will reduce the overall mining footprint and allow for continuous rehabilitation of the mining area. Upon mine closure, the majority of the mine area would have already been returned to its original status. As the mining activities intersect the upper Elandsfontein aquifer, continuous perimeter borehole pumping will be required to remove the excess water from the mining strips.

distribution hub, minimising the exposure of water to atmospheric conditions. In order to be able to mine safely the open pit mining area will need to be dewatered by means of artificial recharge. The proposed Elandsfontein mine is situated 15 km east of Langebaan. Geographically, Langebaan is approximately 100 km north of Cape Town. The proposed mine area is situated in quaternary catchment G10M of the Berg Olifants Water Management Area.[147] [93].

Mining method Mining Method DBCM

Strip mining has been selected as the preferred mining method, to allow continuous rehabilitation of the area, that would commence three years after mining has commenced. The surficial, lateral expanse and massive nature of the Elandsfontein deposit makes it suitable for open-pit mining methods. It has a typical tabular type of mineralised zone that is covered by soft sand, sandy topsoil and vegetation typical to the region. In this mining method, the following

activities are executed:

(i)

The land is cleared; topsoil is removed and stockpiled at designated sites for use in future land rehabilitation. Depending on the extent of the base of weathering, any further waste or ore that can be removed by free-digging is removed and stockpiled accordingly.

The topsoil is to be used as a berm around the pit to prevent water flow into the pit and to minimise transportation costs;

(ii)

In a number of cyclic processes the waste and/or mineralised material is excavated, hauled and dumped in designated sites;

(iii)

At

strategically planned periods the waste around the boundary of the pit is removed in order to mine out deeper ore.[148]

[94]

Water

Uses Applied for in terms of section 21 of the National Water Act.

Kropz applied for the following water uses for the purposes of operating its mine.[149]

Section

21(a).

Taking

water from open pit for mining purposes. For this purpose, Kropz required 946 080 m³/a.[150]

This

water use is the focus issue in this appeal matter.

Section

21(c) and (i).

Construction

of an open pit on an unnamed tributary. To continue mining and to access phosphate. For this purpose, Kropz requires

Approximately 10

to 15 Ha of land.

Section

21(e).

Re-injection

– artificial aquifer recharge 36 Boreholes. For the purposes of disposal of excess water. For this purpose, Kropz

requires 11 826 000

m³/for the first year.[151]

7 095 600 m³/a for the second year. 5 518 800 m³/a until the end of the operation. This water use application is the focus issue

in this

appeal.

Section

21(g).

Disposing

of waste in a manner which may detrimentally impact on a water

source. The purpose is over button soft stockpile, phosphate sands

mining overburden, softs stockpile, polluted stormwater system and waste dock dump. 15 150 000 m³ to be disposed of.

[95].

Disposing process water in two Elandsfontein plant process water dam HDPE lined earthen dam. This is for the purpose of water recovery and

reuse. For this purpose, Kropz requires 6000 m³. For the purpose of Plant stormwater dam, Kropz requires 6000 m³.

For the purpose of soft

stockpile stormwater dam, Kropz requires 30 000 m³. Backfilling of the mined area softs for the purposes

of rehabilitating the mined

pit. Kropz will require approximately 10 to 15 hectares of over button with the moisture content of

4% and process tailings with the

moisture content of 16% combined moisture content of six to seven percentages.

Section

21(j).

Removing

discharging or disposing of water found. for the purposes of continuation of the mine. Kropz requires 946 080 m³/a = 2

592 m³/d.

Removing

discharging or disposing of water found. for the purposes of continuation of the mine. Kropz requires 11 826 000 m³/a for the

first year. 7 095 600 m³/a for the second year. 5 518 800 m³/a until the end of the operations.

[96].

Due

to the complexity of the WULA, there were a plethora of correspondences between Kropz (Braff the consultant) and several officials

in the Western Cape Region of the Department of Water and Sanitations, Western Cape DEAP, SAN-Parks, Saldanha Bay Water Quality Forum Trust,[152]

as

well as the Saldanha Municipality as the local government where the Kropz mine will be operated. The purposes of these correspondences were amongst others to seek outstanding or additional information from Kropz the applicant and to seek clarity from Kropz or Braaf the

consultant.

[97].

The

one issue that haunted this application was the interplay between the MPRDA and NEMA and the nostalgic behaviour of some official in the

Western Cape DEAP in accepting that the DMR is the competent authority to issue environmental authorisations for mining activities in South Africa. These nostalgic behaviour on the side of DEAP officials continued despite the fact that the constitutional court in the *Maccsand v City of Cape Town & Others* clearly pronounced that the DMR is the competent authority to issue environmental authorisations in the mining industry, subject to positive comments from the Department of Environmental Affairs which must confirm that all the environmental risk that would have been triggered by the listed activities would have been adequately mitigated.[153] [98].

The first and the second substantive ground of

appeal in this matter reads as follows:

2.1.

The water use licence application should have been refused on the basis of available information.

2.2.

The information before the decision-maker was insufficient for granting a water use licence.[154]

A proper reading and analysis of these grounds of appeal creates an impression that the IWULA of Kropz was decided harshly and without

paying attention to details. I disavow these statements. Amongst the plethora of correspondences exchanged between Kropz and officials

within the Department of Water and Sanitation (DWS), the DWS send this correspondence on 1 June 2016 and sought the following information from Kropz. The title of the letter is: Elandsfontein

Exploration and Mining (Pty) Ltd:

Water Use Licence in terms of section 40 & 41 of the National Water Act, 1998 (36 of 1998), Berg-Olifants Water Management Area. “The

required information are as follows:

•
The final Mine Dewatering report prepared by SRK and;
•
The written confirmation from the Department of Environmental Affairs and Development Planning stating their position on the proposed development.
[99].
Please note that no water uses may comment prior to the approval from this Department.[155] After some exchange of correspondences between the parties, ostensibly satisfying the requirements of the DWS, the following letter was written to Elandsfontein Exploration and Mining (Pty) Ltd (Kropz) on 6 September 2016. The heading is: Elandsfontein Exploration and Mining (Pty) Ltd: Water Use Licence in terms of section 40 & 41 of the National Water Act, 1998 (36 of 1998): Taking Water from a Water Resource: Farm Elandsfontein 349, Portion 2, Malmesbury. Amongst others the letter stated that: “You have submitted the minimum critical information required for the Department to process your application. Your application will be evaluated by the Regional Head office, if more information is required, you will be informed.”[156]
These correspondences as well as others copious papers that were submitted by Kropz to the DWS clearly indicate that the DWS officials were vigilant and applied their minds in assessing this WULA in order to decide whether the WUL should be recommended to the decision-maker for either issuance of the WUL or decline the issuance of the WUL.
[100].
The appellant’s pleading document and its heads of argument is mistakenly arguing that Kropz had to apply for another environmental authorisation over and above the one granted by the DMR. The DMR finished Kropz with a detailed letter of authorisation dated 12 December 2016, titled “Environmental Authorisations.”[157]
The valediction of the approval letter reads as follows “13. Recommendations”
In view of the above, the NEMA principles, compliance with

the
conditions stipulated in this EA, and compliance with EMPr/closure
plan,
the
competent authority is satisfied that the proposed listed
activities
will not
conflict
with the general objectives of the Integrated Environmental
Management
stipulated in Chapter 5 of NEMA, and that any potentially
detrimental
environmental impacts resulting from the listed activities can be
mitigated
to the acceptable levels. The authorisation is accordingly granted.
Your
interest in the future of the environment is appreciated.”[158]
This letter that was issued by the DMR being the competent authority
to issue environmental authorisations for mining activities
as
confirmed by the constitutional court in the Maccsand case. The
Centre for Environmental Rights, (a prominent Environmental
organisation) said the following in regarding the Maccsand judgement.
“Crucially, the judgement confirms that mining operations
and
mining companies must
comply
with
all
laws,
and
that
the
MPRDA
does
not
trump
other
legislation,
including
provincial
legislation
like
the
Land
Use
Planning
Ordinance.”[159]
[101].
Kropz even went to apply for a rezoning of the farm Elandsfontein 349
from agriculture to mining at the Sadhana Bay Municipality.[160]

Sadhana

Bay Municipality being the competent authority to approve applications rezoning approved the rezoning application from Kropz. The This is another confirmation that Kropz acted within the applicable legislations as per the decision in the Maccsand case.[161]

Olivier

JJ, said the following regarding Kropz' compliance with the principle laid down by the court in the Maccsand judgement "The

implication of the CC decision in Maccsand is thus that legislation dealing with specific functional domains, each requiring authorisations by its functionary (whether national legislation (e.g. SALA), provincial legislation (such as LUPO), or municipal legislation (enacted in accordance with section 156(2) of the Constitution, read with Schedule 4 (Part B) and Schedule 5 (Part B)),

remains valid and enforceable."[162]

[102].

Although the documents in the RoD are voluminous, more than 3800 pages, they have been chronologically well arranged and they are easy

to read. I disagree with the bald claim by the former attorney of record for the appellant by stating that the documents provided by

the consultant of Kropz, i.e., Braaf Consulting were in shambles. Mr. Andersen said that "The water experts consulted by the

appellant and who's report are attached to this appeal agree that the iWULA was of such poor quality that the decision-maker ought to have

rejected the application outrightage.[163]

As

part of their appeal grounds on substantive issues, the appellant procured the services highly qualified experts in Water Management to

strengthen its case.[164]

Dewatering

of mining pit and the Artificial recharge into the down gradient acquirer.

[103]

A substantial part of the experts reports, and the oral evidence testified by the expert witnesses was focusing on these water uses

and their potential pollution to the water resources. I will start with the expert reports for the appellant who did not testify at the

hearings and then deal with the expert reports of the authors who testified during the hearings.

Objection

to the IWULA by Cullinan & Associates Attorneys dated 10

February 2017

Athough

this report was signed off by Mr. Walter Anderson who is not an expert in Water Management, I will give my judgement on it. The

objection is based amongst others lack of public participation for the purpose of the IWULA.[165]

I

have dealt with item extensively in paragraph 72 to 86 above and dismissed this ground of appeal. The objection letter further refers

to the 2016 Nel report and Cullinan & Associates Attorneys clearly stated that they stand by Dr.Nel's report regarding the

Dewatering and artificial recharge into the Langebaan Lagoon.[166] [104].

It is common cause now, that Dr.Nel testified that more research was done since he submitted his report in 2016, and that he is satisfied

that the dewatering process and the artificial recharge into the Langebaan Lagoon will have very minor negative impacts if any. It is

important to indicate that even in the 2016 Nel report, Dr. Nel is not totally objecting to the operation of the mine.

Item

10 . Adaptive Measures.

10.1.

Potential impact.

Adaptive

measures in the management of site groundwater dewatering and artificial recharge might be required due to imperfect knowledge of

the system and
uncertainty regarding the
following:

•
The volumes of water that will be pumped from the mine;

•
The volume of water that can be artificially recharged;

•
The extent of changes due to the redistribution of water in the aquifer; and

•
Future changes to the mine plan.
[105].

10.2. Mitigation

The

mine is currently compiling a management strategy. The first draft seems to indicate that the mine is committed to best practice management and guidelines. Additional requirements from SANParks and

DWS must still be discussed and included.”[167]

Dr.

Nel was the fourth commentator to acknowledge and comment

Kropz

commitment to sustainable development.[168]

The DWS added its voice in the correspondence to Kropz on 30 July

2018 titled “Compliance

feed back letter: Submission of the Integrated WasteWater

Management

Plan (IWWMP) for Elandsfontein Exploration and Mining (Pty) Ltd

(01/G10M/ABCGIJ/5296),Hopefield

“4.1. The Department is satisfied with the 2018 IWWMP submitted.

4.2. The IWWMP is a working document that should be in practice

at

the facility on a daily basis. 5.

The

Department would like to comment Elandsfontein Exploration and Mining

(Pty) Ltd for striving to comply with the conditions of

your Water

Use Licence”.[169]

[106].

In his conclusion under
item 12, Dr Nel stated the
following:

“Although

there are many aspects of the groundwater system underneath the

Elandsfontein Phosphate Mine site that is not well understood

the

impact to the West Coast National Park and the Langebaan Lagoon can

be managed to mitigate any mine related

impact that might occur.

[107]

The main impact risk from the Elandsfontein Phosphate Mine is the

dewatering of the mine pit that could affect the down gradient

Langebaan Lagoon freshwater ecosystems, as well as local water

quality changes.

The

2016 Nel report was part of the documents that were discussed at the

WUUUACC meeting which recommended to the decision-maker

to issue the

WUL to Krop. The conclusion of the 2016 Nel report vindicates Kropz

and the rdecision-maker.Cullinan & Associates

Attorneys did a

disservice to its client’s case by relying on a report that is

commending Kropz as a company. Braaf the Consultant

for Kropz could

not have asked for a better conclusion than the one given by Dr.Nel.

[108].

Adaptive Management (monitor and modify approach) means an “approach

to the

management

of natural resources that is based on the learning by doing and on

making decissions as part of an on-going process of

monitoring, review

and adaptation. A planned course of action is kept under constant review and is adapted where appropriate as new information becomes available from the monitoring both result publication of new scientific findings and expert judgment and changing needs of society.”[170]

This

definition is consonant to the expert testimony of Dr. Botha and Dr. Nel for Kropz. I disagree with Counsel for the appellant’s submission that Kropz abused the principle of Adaptive Management as part of its submission to the decision-maker and during the hearing.[171]

The

2016 Dr. Nel report (October) suggested the implementation of adaptive management to mitigate any risk caused by the mining activities.[172]

The department’s Geohydrologist also supported the use of adaptive management.[173]

[109]

The

conclusion of the 2016 Nel report further exonerates the decision-maker i.e. the Director-General as well as the officials who worked on this application, more especially Mr. Dreyer, the assessor from the bald and unmeritorious allegations of apprehension of bias

towards the applicant Kropz. The bald allegations

read

as

follows

“2.6.

The

decision-maker

and

its

delegated

functionaries conducted themselves in a manner creating a reasonable apprehension of bias.”[174]

I agree with the submission by

Counsel

for the first and second that the appellant had not made any case during the hearing and even in the Heads of Arguments.[175]

Kropz

tried its level best to follow all the relevant legal requirements in obtaining the WUL. The compliments that it received from different

independent bodies and an esteemed Geohydrologist like Dr. Nel, considering that he authored the 2016 Nel report

while working for

SANParks is indicative of the fact that Kropz was given any special treatment in this application.

Reports of experts
witnesses who did not attend the hearing
[110].
Dr.
Roger
Parsons,
of
Parson
&
Associates
submitted
a
report
dated
15 March 2017.[176]
Some
of his comments are that the supporting documents of the IWULA were
in shambles and that the sequence in the documents differed
from the
contents list (page).[177] I
don't agree with this statement. I have earlier alluded to the
fact that the documents are volumnuos but throughly organised.
It is
for this reason that Adv. Ferreira, Counsel for the appellant was
able to provide all the parties as well as the panel members
with the
indexed and paginated files that were neatly packed and the sequence
of events in the RoD documents and the pleading
papers are very easy
to read, albeit time consuming. I do aplot Adv. Ferreira for her
proffessionalism on this aspect.
[111].
Dr. Parson further made a very serious statement regarding relevancy
of section 21 (j) water use application. She stated
that “
Simply put-the mine pit has to be dewatered to allow mining to take
place. All claims in the iWULA and supporting
documentation that the
dewatering is a matter of safety are false and misleading.”[178]
Dr. Parson further stated the following regarding the Artificial
recharge: “The pilot
artificial
recharge
test
of
15L/s
showed
that
the
planned
methods

of
recharge (horizontal pipe) cannot be used and that vertical boreholes
will have to be used to artificially recharge the abstracted
the
abstracted ground water back into the ground. Given the expected
volume programming reach back into the aquifer during their
first
yeah is 300 and 71st I conducted at 15 liters per second or 4% of the
expected one is inadequate".[179]
This
untested statement is incongruous with Dr. Nel's concluding
report which stated that "Based on the best data and
knowledge
of the system, the numerical model forward predictions conducted by
the mine's consultant show that
this
artificial recharge mitigation will result in no impact on the long
ban lagoon."
[112].
Dr. Nel's version was tested at the hearing and he emerged as a
credible witness and his knowledge of the area and
the subject matter
"Numerical modelling" is sapiental. I will attach no
evidential value on Dr. Parson's report.
I agree with Counsel
for Kropz that the evidence in Dr. Parson's report was not
tested in this appeal hearing.[180]
Even
if Dr. Parson was called to testify, his testimony was going to be
antagonistic to that of Dr. Nel. The conclusion of
Dr.
Nel and Dr. Parson are paradoxical to one another, yet they would be
testifying to support the appellant's case.
[113].
The appellant also procured the services of Dr. Christine Colvin to
critically assess the WULA more especially the ground
water in the
area. Dr. Colvin's report was not tested at the hearings.[181]
One
of the main concerns of Dr. Colvin is that "The the scale of
groundwater abstraction proposed by the mine is an order of
magnitude
greater than anything previously experienced in this area. In year 1
they propose abstracting and reinjecting 11 million
m³. Prior to 2008
the West Coast District Municipality abstracted 1.46 million m³ from
the lower aquifer 10 kilometers to the north-north
east of the mine
site. This resulted in a 10m drop in the water level around the
well-filled and the monitoring committee (including
DWS)

lowered
the abstraction rates by 10% to prevent further declines in
groundwater levels (DWS,2010).[182]
[114].
I
agree with Counsel for Kropz that the evidence in Dr. Colvin's
report was not tested at the hearing".[183]
Even though the conclusion of Dr.Colvin's report is not
militant towards the issuance of the WUL to Kropz, I will still
attach no evidential value to it. There is a discord between the
conclusion of Dr. Colvin and Dr.Nel's October 2016 report.
The
appellant's objection to the to issuance of the WUL to Kropz is
based on three expert reports that have are contradicting
one another
soritical to their conclusions. Even if the Water Tribunal was
confined to adjudicate this appeal based on the evidence
that was
before the WUUUACC and the Director-General, I will still dismiss
this appeal. It failed to meet the very basic requisite
to persuade
any presiding panel member(s). The element of corroboration is one of
the basic requirements of proving a litigant's
case in any
forum. I also took judicial notice of the fact that Dr.Covin is a
member of the Water Monitoring Committee where-by
she represents her
employer WWF who did not follow-up on its objection to the issuance
of the WUL to Kropz. She was present at
the
Water Monitoring Committee held on 14 June 2019,[184]
and
during other meetings she tendered apologies.[185]
[115].
Appellant's last substantial ground of appeal is that "2.5.
The decision-maker failed to be guided by the precautionary
principle
and public trust doctrine."[186]
The evidence contained in the pleading documents and Record of
Decision displayed exquisite proof that the decision to issue the
WUL
to Kropz was taken as per the guidance of the precautionary
principles and the public trust doctrine. I have already alluded
to
the fact that the people who objected to the granting of the mining
right to Kropz are Ms. Carika van Zyl, Ms. Liezel Strydom
as well as
Mr. van der Westhuizen. Ms. Strydom and Mr. van der Westhuizen's
reasons for opposing the mining operations at
Elandsfontein farm are
purely based on racism.[187]

It is only Ms. Carika van Zyl who stated that “No research was done on small animals such as tortoises and lizards. We did not see any environmental control officer on site during the bulldozing”. [188] The mine officials disputed this. The DMR which is the competent authority to issue environmental authorisations for mining activities commended Kropz for taking efforts to implement sustainable mining. [116].

“The Department would like to comment Elandsfontein Exploration and Mining (Pty) Ltd for striving to comply with the conditions of your Water Use Licence”. [189]

The mine currently proposes to mitigate the potential dewatering impact by putting back the groundwater abstracted into the same aquifer system down gradient of the mine, using artificial recharge. Based on the best data and knowledge of the system, the numerical model forward predictions conducted by the mine’s consultant show that this artificial recharge mitigation will result in no impact on the long ban lagoon.” [190]

The DMR finished Kropz with a detailed letter of authorisation dated 12 December 2016, titled “Environmental Authorisations.” [191]

[117].

The valediction of the approval letter reads as follows “13. Recommendations”

In view of the above, the NEMA principles, compliance with the conditions stipulated in this EA, and compliance with EMP/closure plan, the competent authority

is satisfied that the proposed listed activities will not conflict with the general objectives of the Integrated Environmental Management stipulated in Chapter 5 of NEMA, and that any potentially detrimental environmental impacts resulting from the listed activities can be mitigated to the acceptable levels. The authorisation is accordingly granted. Your interest in the future of the environment is appreciated.”[192]

[118]. This letter that was issued by the DMR being the competent authority to issue environmental authorisations for mining activities as confirmed by the constitutional court in the Maccsand case. The Centre for Environmental Rights, (a prominent Environmental organisation) said the following in regarding the Maccsand judgement. “Crucially, the judgement confirms that mining operations and mining companies must comply with all laws, and that the MPRDA does not trump other legislation, including provincial legislation like the Land Use Planning Ordinance.”[193]

All these testimonial letters by the different competent bodies and specialists like Dr. Nel confirm that the decision-maker approved the issuance of a WUL to Kropz being guided by the precautionary principle and public trust doctrine. This ground of appeal is really a scrapping of the bottom of the barrel. It is according dismissed. Analysis of the comments by DWS Internal Specialists through the lens of the Gugulethu Family Trust decision. [119]. Mr. Dreyer, the assessor sought internal comments from internal specialists as part of the internal process to assess the IWULA from

the applicant Kropz, and he received the following comments:

National Water

Resources Planning Unit

“National

Water Resources Planning is not supporting the recommendation to issue the water licence. This was based on the effects

dewatering of

the mine may have on the Reserve and its sustainable functioning.

Additionally, that Saldanha Municipality has for

many years been

abstracting water from the very same aquifer where the mine will be

dewatering and that it could jeopardise the

integrity of the aquifer

and water security of the Saldanha Municipality.”[194]

[120].

Resource Protection Unit

This

unit did not recommend the issuance of the IWUL because the mining

activities are being regulated in terms of section 21 (c) and (j) of

the National Water Act. The mining activities were going to take

place in an area situated between two watercourses. They are the

South and Groen River systems

and their associated wetlands as well

as to the downstream water resources, namely, the Langebaan Lagoon

and the associated wetlands.

The Langebaan Lagoon has been declared a

Ramsar Status and a Protected Area together with the West Coast

National Park.[195]

[121].

The Civil Design Unit

The

application in terms of section 21 (a), (b), (e), (g) and (j) of the

National Water Act (Act 36 of 1998) is supported on engineering

principles on the following conditions:

a)

The licensee must submit construction

drawings, specifications, design reports and the operation and

maintenance manual by the engineer

for the storm water dams and the

plant process dam, after approval of the water use licence but before

construction commence.

b)

The

licensee shall within 30 days after the completion of the activities

inform the relevant authority in writing thereof. It shall

be

accompanied by a signature of approval from the designer

(Professional Engineer) that the construction was done according to

the construction drawings.[196]

[122].

Groundwater Unit (Geohydrology)

Unit

This unit supported the issuance of the IWUL after having been satisfied with discussions that addressed its concerns during a meeting of the WUAAAC on 30 January 2017. However, this unit supported the issuance of the IWUL subject to a list of stringent site-specific conditions. The unit further required an agreement from the Western Cape Resource Protection Division and WA&IU: Environment and Recreation that the strict site-specific conditions provided adequately address their concerns. The unit listed 79 strict site-specific conditions that must be adhered to by Kropz.[197]

For reasons that were not provided to the Tribunal panel, not all the 79 site-specific conditions were included in the licence conditions. This deficiency in the IWUL conditions is one of the grounds of appeal in this matter. [123].

Counsel for the appellant meritoriously submitted that the department's Ground Water Unit (Geohydrology) supported the issuance of this IWUL subject to the 79 site-specific conditions. Without all the 79 site-specific conditions not being included in the IWUL conditions, then the issuing of the IWUL would not have been supported by this unit. The conditions in the current WUL do not include all the 79 site-specific conditions, that were provided for by the Groundwater Unit (Geohydrology). I fully concur with this submission. [124].

Item 4 of the resolutions of the WUAAAC meeting held on 30 January 2017, whereby the issuance of this WUL was recommended stated the

following:

4. Summary of suggested special conditions
 "This licence will be drafted by the regional office and all specialist conditions will be included in the licence".[198]

Counsel for the third respondent submitted that "It is not necessary to recite all of these conditions".[199]

I emphatically disagree with this submission. I agree with the submission of Counsel for the Appellant on this aspect. She cogently alluded to the fact that "(...) [t]he conditions in the WUL have been watered down to such an extent so as to render

the
Water Monitoring Committee effectively powerless to ensure adequate oversight.”[200]
There
is no indication on the Record of Recommendation, especially on the part where the Director-General had to singe that he made such a statement that some of the site-specific conditions are interrelated or duplicated.
[125].
Even
if the Director-General would have advanced such reasoning, I would still dismiss that reasoning. All the site-specific conditions must
be included in the licence. The situation in this case replicates the facts of the case in *Guguleto Family Trust v the Department of Water Affairs and Forestry*. [201]
In
short, the facts in that case before the Water Tribunal was that the application for the award for the water licence was investigated and
considered by the Chief Director: Department of Water Affairs and Forestry, Free State region. She recommended a written record of
decision that the licence be granted.
[126].
She attached a draft licence to her recommendations for consideration and approval by the responsible authority. The decision records that
the considerations mentioned in section 27 were taken into account, as well as the recommendations of: (a) the Scheme Manager: Sand Vet Water Users Association; (b) the Director: Department of Agriculture;
(c) the Communications Officer: Free State Regional Land Claims Commission; and (d) the Area Manager: Absa Corporate and Business Bank (being the mortgagee bank Vermeuinskraal).”[202]
The
responsible authority declined to award the WUL to the Guguleto Family Trust. The decision to decline the WUL to Guguleto Family Trust was unmeritoriously confirmed by the Water Tribunal on 18 May 2010. The error in law that was committed by the responsible authority and the Water Tribunal was to ignore the recommendations of the Chief Director: Department of Water Affairs and Forestry, Free State region who was more operational and had the technical appreciations of what was happening in the region. She was exactly in
the position of Ms. Vermaak the Geohydrologist.

[127].

The appellant, Guguletto Family Trust appealed the Water Tribunal decision to the High court in the unreported case of Guguletto Family

Trust V The Department of Water Affairs and Forestry.[203]

In

paragraph 9 judgement, the Honourable Murphy J stated the following,

“the favorable recommendation was forwarded to the

Director-General: Department of Water Affairs and Forestry, Pretoria

in December 2008. On 2 June 2009, the first respondent, the

Chief

Director: Water Use, Department Water Affairs and Forestry, Pretoria

addressed the following letter to the appellant: (...)

[A]fter

considering your applications together with all supporting documents

including your response to my letter dated 23 March

2009, it is with

regret to inform you that your licence applications (...) [i]s

not successful. Unfortunately, your applications

do not fulfil the

requirements as they do not promote redress of the past and gender discrimination.[204]

The

recommendation of the Chief Director: Water Use; Free State Region

which proposed a draft licence condition strikes a sensible

balance

in the application of section 27 (1). (...) [I]t also identified

that the proposed water use would have no negative environmental

impact and implicitly accept

the appellants assertion, (...)”.[205]

[128].

“Moreover, considering that the draft licence was proposed by

an official of the Middle Vaal Water Management Area

to which the ISP

applied. It is reasonable to assume she had knowledge of the ISP

policy statement on past discrimination and that

it remained current

and relevant. The recommendation also did not lose sight of the

possibility of revisiting the issue throughout

the duration of the

undertaking for which the water use will be authorized. While the

proposed licence period is for 20 years the

conditions of the draft

licence allow for a review every five years, permitting the amendment

of its terms to prevent the deterioration

of the quality of the water

resource, to take account of any insufficiency and to accommodate

changes in social-economic circumstances”.[206]

The following orders are accordingly made: (ii) the Appellant is

granted a licence on the terms and conditions set out in the draft

licence attached next to the records of decision of the Chief

Director: Department of Water Affairs and Forestry, Free State Region and dated 12 December 2008.”[207]

[129].

I will be remiss in my duty as the Chairperson of the Water Tribunal if I do not walk in the footsteps of the Honourable

Murphy J as

set-out in the Gugulethu Family Trust judgement. For these reasons, all the 78 site-specific licence conditions that

were submitted by

the Geohydrologist as per the resolutions of the WUUUAC meeting that was held on 30 January 2017 must form an

integral part of the

constitution of the Water Monitoring Committee for the Elandsfontein Phosphate Mine.

[130]

The acute deficit in relation to the lack of monitoring of policies and WUL conditions is a matter of common cause in the water

management sector, hence I applaud the recommendation for the formation of a water monitoring committee by the Department’s geohydrologist. The desperate need for the vigilant monitoring of compliance with WUL conditions was elucidated by Mdlalose, NPS as

follows: “As a common condition the Department requires that licence holders conduct internal and external audits within their

facilities and

external

audit

reports

are

to

be

submitted

on

an

annual

basis

to

the

Department. Similar to the IWWMP submissions, this has been lacking from the side of licence holders as well as on the side of authority

in terms of enforcing. It can be submitted that the water use licence has failed to be a tool to uphold and advance

water resource

protection and conservation. This failure is purely due to a lack of enforcement from the regulator. The National Water Act makes

provision for the use, the management, development, and protection of water. It also provides for compliance, enforcement and further

makes

provisions for remedies for failure to comply with its provisions, Excellent as the provisions and the Act itself is, implementation has proven to be unsuccessful.”[208] [131].

Comments from external departments and other stakeholders

The following stakeholders or interested and affected parties commented regarding this WULA: The Department of Environmental Affairs had not submitted its comments at the time of the issuance of the WUL. It however responded with positive comments in a letter dated 12 April 2017.[209]

The Director-General indicated that the West Coast National Park is managed by SAN Parks, which is an entity that reports to the Department of Environmental Affairs as per section 44 of the National Environmental Management Protection Areas Act (NEMPA) 2003 (57 of 2003). The Department of Environmental Affairs relied on the comments from SAN Parks in supporting the issuance of the WUL to Kropz on condition that the DWS adhered to the conditions that SA Parks had provided DWS. The Department of Mineral Resources issued a mining right as well as an environmental authorisation to Kropz.[210] The other Interested and Affected Parties (I&AP) who objected to the WULA submitted by Kropz were covered in the licence conditions, except WCEPA,[211] hence this appeal matter before the Tribunal. [132].

Section 27 of the NWA.

Considerations for issue of general authorisations and licences. For this hearing, I will refer to this section as the qualification section. Section 27(1) in issuing a general authorisation or licence a responsible authority must take into account all relevant factors, including –

(a)

existing lawful water uses;

The

mine is a greenfield, and there is no existing water use.[212]

(b)

the

need to redress the results of past racial and gender discrimination.

Elandsfontein's

Exploration

and

Mining

B-BBEE

scorecard

for

the

period

12

February 2016 to 11 February 2017 shows the company rated as a Level Four B-BBEE contributor.[213]

The

major shareholder of Kropz, via its holding

company,

is African Rainbow Capital, a subsidiary of Ubuntu-Botho Investments.

African Rainbow Capital also holds a direct 26% interest

in Kropz as

Kropz' BEE partner.[214]

[133].

(c) efficient and beneficial use of water in the public interest.

The

estimated capital investment during the construction phase of the

project is in the order of R1.33 billion, with approximately

800

people employed during the period. During the planning phase of the

project, a local employment target of 30% was established

for the

construction phase of the project. The figure below shows the actual

local employment statistics achieved for the project

to date –

on average, more than 50% of those employed in the construction of

the project reside within the Saldanha Bay Municipality.

The

operations phase of the project will employ at least 300 people, with

an ultimate target of 75% from the local communities.

Approximately

82 skilled and management and 218 low and semi-skilled. Training

opportunities will be provided to ensure that local

community members

can be placed in skilled employment positions as well as low and

semi-skilled posts. The employment numbers and

operation expenditure

has been modelled to show an impact on the direct livelihood (direct workers and dependents) of approximately

1 495 people. Indirect

employment opportunities amount to 32 908 during the operational

phase.[215]

[134].

(d)

the socio-economic impact –

(i)

of the water use or uses if authorised; or The mine cannot operate without the local and temporary dewatering of the mining area to access the ore. The mine has a positive socio-economic benefit through the employment of locals. Low-skilled and semi-skilled labour will be sourced mainly from the local communities and surrounding areas, in conjunction with the West Coast Business Development Centre. In addition, training opportunities will be provided to ensure that local community members can ultimately be placed in skilled employment positions. The phosphate will be sold both locally and internationally, therefore earning foreign exchange for the country. The mine will have a net positive impact on economic growth of the Saldanha Bay Municipality, the West Coast District and the Western Cape Province.[216]

[135]

(ii) of the

failure to authorise the water use or uses;

Failure

to authorise the water use licence would prevent the completion of the mine. This would result in the loss of significant employment

opportunities for the area, substantial economic growth of the local and regional surroundings, and failure to earn foreign revenue for

the country. Raw water for the mine will be procured from the Saldanha Bay Municipality. If the project does not proceed, large

revenue streams over the short-term will be lost by SBM. According to the report released by Stats SA on 24

August 2021 entitled Quarterly

Labour Force Survey (QLFS), the unemployment rate in the country was 34.4% in the second quarter

of 2021.[217]This

project will come as a relief to create sustainable employment in the Saldanha Bay Municipality and the surrounding areas.

[136]

(e) any

catchment management strategy applicable to the relevant water resource;

The

Berg Olifants Catchment Management Strategy has not been development yet, but the Berg ISP identifies that the Saldanha Bay area expected

to see major industrial development in the future. The ISP also noted that the groundwater resource should be monitored.[218](f)

the

likely effect of the water use to be authorised on the water resource and on other water users;

As part of the application process for permission to proceed with mining, a host of specialist studies were carried out (groundwater, environmental, surface water etc.). From the studies it is clear that all necessary measures will be in place to ensure that the proposed mining activity will not have any effect on the water resource or on other water users.[219]

The WUL is tied to 79 site specific conditions to ensure that any possible water contaminations will be mitigated accordingly.[220] [137].

(g) the class and the resource quality objectives of the water resource.

The groundwater quality class in G10M fall within Class II of the DWS water quality classification as a result of high chlorine and sodium concentrations. Class II of the DWS water quality classification represent water that is suitable for emergency use or limited short-term use.[221] (h)

investments already made and to be made by the water user in respect of the water use in question.

As mentioned above, the total estimated investment in the mine will be R1,33 billion. To date an amount of R346 million has been spent, and an amount of R786 million committed, i.e., orders placed, but not yet invoiced.[222]

“Kropz commissioned these specialists as part of the environmental impact assessment process provided for in terms of the

National Environmental Management

Act

107

of

1998

(NEMA),

as

required

by

the

MPRDA

for

the

granting of a mining right, at a cost of more than R25 million, of which R6 million was dedicated to specialist water studies.”[223]
[138].

(i).

the strategic importance of the water use to be authorised.

This is a water use with no strategic importance[224]

(j)

the quality of water in the water

resource which may be required for the reserve

and for meeting international obligations; and

There

are no international obligations that need to be met and the water

quality for the reserve will be managed through strict

licence

conditions. The mine is situation however located in close proximity

to the Langebaan Lagoon which is a Ramsar site.[225]

(k)

the probable duration of

any undertaking for which a water use is to be authorised

The

mining right for the mine is for fifteen (15) years and the water use

licence is recommended for a period of fifteen (15) years

and it will

be reviewed every year for the first three (3) years and thereafter,

every three (3) years.[226]

[139].

This

section provides a list of the factors that the decision-maker must

consider equitably so, without elevating any of the considerations,

above others. The departure point in interpreting this section, is

that the WUAAAC and the decision-maker must give equitable

consideration to all the factors that are listed in section 27(1) of

the NWA. There is no factor which should be elevated to a higher

status than other factors.[227]

This

section, and all other sections of the NWA and any relevant statutes

in this matter must be purposefully interpreted. Botha

C, said the

following regarding the interpretation of statutes: “However,

s39(2) is a peremptory provision, which means that all courts,

tribunals or forums must review the aim and purpose of legislation in

light

of the Bill of Rights: plain meanings and so called clear,

unambiguous text are no longer

sufficient.”[228]

I

agree

with

the

submission

of

Counsel

for

the

first

and

second respondents when he referred to the judgement of the constitutional court in the well-traversed case of Fuel Retailers Association v DG: Environmental MGT, Mpumalanga.[229]

Chief

Justice Ngobo, as he was then stated the following in paragraph 27,

“sustainable

development does not require the cessation of socio-economic development but seeks to regulate the manner in which it takes place.

It recognizes that the socio-economic development invariably brings risk of environmental damage as it puts pressure

on environmental

resources.”[230]

[140].

Counsel for the first and second respondents meritoriously alluded to the fact that only two factors out of the eleven factors

can be the

basis of WUAAAC and the decision-maker to decline the issuance of a WUL. He aptly referred the panel to the well-read

case of Makhanya NO

v Goede Wellington Boerdery (Pty) Ltd and Another.[231]The

decision-maker must strike a balance between the competing interests of economic development and protection of the environment

like water

resources.[232]

He

further articulated the fact that the appeal did not assail the other

eight factors stipulated in terms of section 27 (1) of the National

Water Act.[233]

I

fully concur with the line of reasoning espoused by Counsel for the first and second respondents. Counsel for Kropz also made

the same

logical submission regarding the fact that the issuances or declining of a WUL cannot be determined based on only two

considerations found

in section 27 (1)a of the National Water Act.

DWS’ factual

witness: Mr. Dreyer

[141].

The only factual witness for the first and second respondents, Mr.

Dreyer accurately motivated the rationale for the Department

to rely

on the 2012 reserve determination when assessing the WULA. He alluded

to the fact that the 2010 reserve determination was

the latest

determination that was suitable to rely on. This was in accordance with the provisions of section 17(1) of the NWA which provides that “until a system for classifying water resources has been prescribed or a class of a water resource has been determined, the Minister must before authorizing the use of water under s22(5) make a preliminary determination of the reserve”. [234]

Counsel for the appellant tried to discredit the testimony of Mr. Dreyer on this aspect, however I have found two contradicting statements between the November 2019 Riemann report and the submission by Counsel for the appellant. Counsel for the appellant submitted that the WULA was approved based on the 2012 reserve determination. [235]

Dr. Riemann stated the following in Riemann’s 2019 expert report: “The Department of Water and Sanitation failed to adhere to its own process. The pre-application meeting between Kropz and the DWS clearly states the requirement for a comprehensive reserve determination for the WULA (to be determined by the DWS), but only the 2004 desktop reserve was taken into account in the WUL. This further compromises the ability to undertake a risk- based impact assessment.” [236]

I agree with the submission of Counsel for the first and second respondent that the appellant submitted no legal basis to assail the Department’s reliance on the 2012 reserve determination. [237]

Analysis of testimonies of expert witnesses [142].

The appellant relied on the testimony of Dr. Riemann as its expert and the only witness in this case. Dr. Riemann, an esteemed Hydrogeologist with more than 30 years' experience in groundwater and water resource management. He holds an MSc in Applied Geology from the University of Kiel in Germany, and a PhD in Geo-hydrology from the IGS at the University of the Free State.[238] Throughout his testimony Dr. Riemann displayed his elucidation of the subject matter and his accuracy and honesty in answering questions was beyond reproach. He has submitted three review reports for this case and some these reports were exegeted during his testimony. Due to the highly technical nature of the expert witnesses, he also played an aegis role to help Counsel for the appellant to assail the testimony of the expert witnesses of Kropz as per the agreement among Counsels of the parties. Dr. Riemann commenced his testimony on 10 December 2019. After he was sworn in as a witness, and without being probed he said the following, "You have seen the record of 3 000 pages. I have not reviewed all of it." This was a brutally honest and truthful statement, but it had the unintended consequences of weakening the appellant's case. [143] Dr. Riemann further introduced the important issue of Adaptive Management. His sapiential and honest definition of Adaptive Management (AM) was that when one applies it, one does not make a once-off decision in managing any risk. He further stated that depending on the latest information that the mine will get in terms of its data modeling, the mine can even change the technology that it uses in its efforts to implement ground water management.[239] This statement regarding Adaptive Management was at odds with the legal submission made by Counsel for the appellant.[240] The

definition
that
was
explained
by
Dr. Riemann, the sole witness of the appellant supports that of Dr.
Nel, one of the expert witnesses of Kropz.[241]
Dr.
Nel suggested the implementation of Adaptive Management while he was
still working for SAN Parks in 2016. At that time, he had
raised some
concerns regarding the issuance of the WUL to Kropz. I have no
reasons to doubt the honesty of Dr. Nel.
[144].
I
must indicate that the implementation of Adaptive Management was
submitted by Kropz as part of its efforts to mitigate any adverse
impact to the water resources that could manifest because of the
mining activities.
Seward
P et
al;[242]
say
the following regarding Adaptive Management, “Predicting the
dynamic response of an aquifer system to development, and
what can be
‘captured’ will be exceedingly difficult. Aquifer systems
are complex, difficult to understand, and the
consequences of human
intervention are difficult to predict, especially in the case of
fractured rock aquifers, which cover 98%
of South Africa. It is
suggested that the way forward is to accept the complex,
difficult-to-predict
characteristics
of
aquifer
systems,
and
build
management
strategies around those characteristics, rather than deny those
characteristics and labour under the misapprehension
that just a few
more years of research will enable the sustainability of the system
to be determined to the nearest decimal place.
Such an approach can
be found in adaptive management, which Maimone (2004) considers to be
the only viable approach to be implemented.
If this is successful,
then larger-scale development might be considered, and so on.”

[145].

This paragraph proves that the following submission by Counsel for the appellant is flawed “18.

Given the absence of any, let alone sufficient, South African

precedents on the use of adaptive management in authorisations which implicate

section 2 of NEMA, the Water Tribunal may consider foreign law.”[243]

The legal submission by Counsel for the appellant contradicts the evidence of its sole witness. I must reiterate that the credibility of Dr. Riemann is not doubtful albeit flogging a dead horse in this case. I agree with the submission for Counsel for Kropz that

Dr.

Riemann’s testimony during his evidence-in chief as well as during cross- examination was not necessarily assailing the issuance

of the WUL to Kropz but was more concerned with the compliance with the WUL licence conditions. Most of Riemann’s concerns will be

resolved when all the WUL conditions will be fully complied with as per order of this judgement.

[146].

Kropz has welcomed Dr. Riemann’s suggestions regarding the adherence to the licence conditions.[244]

The other concern regarding Dr. Riemann’s evidence is that he has never been on the mine site. All his reports are desk top products, while

the

other

two

expert

witnesses

(Dr.

Botha

and

Dr.

Nel)

as

well

as

Ms. Lawrence, the factual witness of Kropz have been on site because they work and/or are contracted by Kropz. Dr. Riemann attended some

of the Water Monitoring Committee meetings and he should have requested the representatives of Kropz to arrange for him access to

the mine. There are no records in the minutes of the Water Monitoring Committee which indicate that Dr. Riemann or any representatives of

WCEPA requested the mine representatives to arrange access for Dr. Riemann to visit the mine. There was no testimony given by

any
representative of WCEPA to explain to the panel the denial of access
to the mine.

[147]

One

of the issues which Riemann raised during his testimony was that
there would have been a decline in the water balance in the
areas

within 5km radius of the mine.[245]

He

stated the following “Hence the West Coast District
Municipality and the Saldanha Bay Municipality currently exceed their
allocation from the Berg River and do not have additional water
available what to supply the mine.”[246]

This statement was not supported buy any corroborating evidence for
the Saldanha Bay Municipality. In fact, the contrary is true
in that

the Saldanha Bay municipality signed a water supply agreement with
Kropz. I find it strange that Dr. Riemann will make
this statement

without confirming its validity with the Saldanha Bay municipality.

This statement it's very much speculative in
nature and cannot be

accepted. In conclusion, Dr. Riemann said the following “We
suggest that these concerns and possible
flaws are discussed with the

legal team weather there is sufficient ground to appeal this
licence.”[247] These

concluding remarks decimate the strength of the appellant’s
case in this matter.

[148]

I

also want to add that at the end of Dr. Riemann’s
re-examination by Counsel, I ask Dr. Riemann whether from his expert
know that is beyond reproach whether he think that the licence ought
not to have been granted to Kropz, and his response what that
he does

not think that the WUL should have been declined. I agree with the
submission from Counsel for Kropz that most part of

Dr. Riemann’s

testimony was more about the adherence to the 79 site-specific
licence conditions that were suggested by the

Department’s

Geo-hydrologist.[248] I have

already stated in detail in paragraphs 77 to 787 with reliance on the
Gugulethelu Family trust decision that all the 79
site-specifications

suggested by the Geohydrologist must all be included in the licence
conditions.

[149]

On the other hand the panel received a very

credible testimony from Ms. Lawrence regarding the water balance. She
outstandingly
took the panel into her confidence by indicating that
Kropz satisfied the requirements of section 42.

Section

42(2) A responsible authority –

(a)

may, to the extent that it is reasonable to
do so, require the applicant, at the applicant's expense, to
obtain and provide
it by a given date with –

(i)

other
information, in
addition to
the information
contained in
the application

(ii)

an assessment
by a
competent person
of the
likely effect
of the
proposed licence on the resource quality; and

(iii)

an independent
review of
the assessment
furnished in
terms of
subparagraph (ii), by a person acceptable
to the responsible authority;

(b)

may conduct its own investigation on the
likely effect of the proposed licence on the protection, use,
development, conservation,
management and control of the water
resource.

(c)

may invite written comments from any organ
of state which or person who has an interest in the matter; and

(d)

must afford the applicant an opportunity to
make representations on any aspect of the licence application.

(3)

A responsible authority may direct that any assessment under
subsection (2)(a)(ii)

[150]

She

further indicated Saldanha Bay Steel which was one of the biggest employers in the area has closed.

The

Sunday Times reported the looming closure of the Saldanha Bay Steel as follows” Saldanha Bay Steel plant closure will

be

“catastrophic” for West Coast.”[249]

The

article further stated that “An estimated 900 workers will be left jobless by the end of the first quarter of 2020 as

the factory

scales back production from its current 1.2-million tons of steel

each year to none. The West Coast Chamber of Business

has called for

a meeting with stakeholders in the steel industry, warning about the impact of the closure.

Shanah

Damonse,

chairperson

of

the

chamber,

said

it

would

be

catastrophic. “No one can afford more unemployment,” she said.”

[151].

This part of Ms. Lawrence testimony is important in two folds. Due to the proximity between the premises of the of the Saldanha

Bay Steel

and the Elandsfontein Phosphate Mine relative to the Langebaan

Lagoon, it is obvious that the two major operations would

be

abstracting water from the same water resource. The closure of

Saldanha Bay Steel will mitigate any possible over- use of water

from

the water resource. The other importance issue which is a welcome

relieve to the residence and business community in the vicinity

is

that the Elandsfontein Phosphate Mine will create the much-needed job

opportunities in the area. The two major companies are

in the mining

sector. This means that most of the people in the neighborhood who

would have been retrenched from Saldanha Bay Steel,

will be, as a

matter of cause be easily trainable if employed at the Elandsfontein

Phosphate Mine Without. This piece of evidence

is in line with the

requirements of section 27(1) of the NWA. The issuance of the WUL to

Kropz is beneficial to the people of Saldanha Bay Municipality and the surrounding areas, while the appellant's basis for the objection to the mining operation is rooted in racist tendencies that should never be allowed to thrive in our democracy.

Testimony of Dr. Botha

[152]

Before

I analyse Dr. Botha's testimony, it is important to identify the most important role-players, i.e., the specialists that Kropz contracted during the Integrated Environmental Management (IEM) until the WULA application of the IWUL and the ultimate issuance of the WUL. Geos was the main service provider who applied for the IWUL while IEM, during the application for the mining right, was the coordinator who consolidated the reports of the specialist studies that were submitted in support of the mining right and the IWUL.[250]

Since the main risk relative to the grounds of appeal is the dewatering of the mine pit,[251]

and

the artificial recharge into the Elandsfontein aquifer, I will only mention

the

specialist

reports

relevant

to

this

number

one

(1)

risk

of

Kropz

Phosphate

mine.

Geos

further applied for a Geo-hydrological Assessment, proposed an artificial recharge pilot study, groundwater monitoring protocol, pumping test and recharge study. Blue Science compiled the Fresh water report. SRK Consulting compiled the Groundwater Dewatering report. Braaf Environmental Practitioner compiled the conceptual Closure plan.[252]

[152]

Dr.

Botha is a water resources specialist with an MSc in Engineering Geology and a PhD in Hydrogeology. He is the Director at Water

hunters (Pty) Ltd. His company is an associate of Umvoto Africa (Pty) Ltd, where Dr. Riemann is a director.

He has been involved in numerous water resource assessments and planning studies, with a particular focus on mine water management and efficient mine management. Dr. Botha's testimony was more in response to one of the recommendations of Dr. Riemann's report which suggested the mining operations should be stopped until all the studies have been completed.

"Impact of change in mine processing; Impact of expansion of mine footprint; Additional long-term geochemical tests; Update GWMP to include all required monitoring and data analysis, irrespective of responsibility; Development and implementation of QC process for monitoring data; Proof of concept investigation for all suggested mitigation measures to ensure that these are feasible and can be implemented timeously." [253]

I must indicate that even though Dr. Botha is not a legal practitioner, the salutation of his report distinctively summarized the interrelations amongst the applicable legislations regarding the One Environmental System (OES) in the mining industry in South Africa. It stated that "The environmental and groundwater impacts of stopping the water use activities at Elandsfontein must be considered in the light of three statutory and precautionary measures before opening the mine pit." [254]

[153]

This

well-articulated introduction of the interrelations amongst the applicable legislations in the OES was eloquently summarized by Botha & Bekink in their journal article titled ‘Maccsand v City of Cape Town’ commonly known as the Maccsand Trilogy.[255]

I could not agree more with Dr. Botha’s introductory statement. [154]

Dr. Botha cogently articulated the obliterating risks that the water resource would be exposed to, should Kropz stop the most important “mitigation activity “at the mine site, being the dewatering of the mine pit.[256]

His report identified the following five risks which the water resources would have been exposed to should the mine stop dewatering the mine pit.[257] (i)

Abnormal evaporation losses and salinity increase (ii) Engineering geology, high wall stability. (iii) Engineering geology; high wall stability, increased pit surface area. (iv) Pollution. (v)

Consequences for DWS: Financial Security. [155].

Dr Botha’s evidence was in line with his report. He never contradicted himself during his evidence in chief and during cross examination by Counsel for the appellant. I must accept the testimony of Dr. Botha for the following reasons: He has nine years of operational experience as a Geo hydrologist in the mining industry. He was present during the Water Monitoring Committee and site meeting meetings. On the other hand, the appellant is relying on the sole testimony of Dr. Riemann. Beside his impressive academic background and expertise in the water sector management, the weakness in Dr. Riemann’s testimony is that he has never been to the mine site.

All his reports were based on desktop studies. What exacerbate the

weakness in Dr. Riemann's
testimony especially regarding site
visit to the mine is the following: Counsel for the appellant
lamented
to
the
panel
during
the
second
day
of
hearing
on

23 October 2019 that Dr. Riemann wanted to visit the mine site but
the officials from Kropz did not give him access to the mine.[258]

During
the evidence in chief of Dr. Riemann, on 13 December 2019 Counsel for
the appellant indicated with the approval of Dr. Rehman
that
according to his expertise knowledge he was able to review the
reports of expert witnesses of Kropz without visiting the mine
site.

The discord between the two statements cuts too deep. I therefore
must accept the testimony of Dr. Botha and the rationale
of his
report. I would have been egregiously remiss of Kropz to stop the
dewatering of the mine pit based on a report generated
from a desktop
study.

[156]

Kropz

also relied on the testimony of Dr. Nel, an independent and respected
hydrologist with a Masters in Hydrogeology from the
University of the

Free State and a PhD in Groundwater from the University of the
Western Cape. [259]He worked

for DWS for 10 years dealing with the applications for water use
licences. His area of expertise, which he has demonstrated
his

passion and a high degree of sapient is the acquisition of better
data. He has spent four years of his 10 years working in
an area near

Langebaan, involved in catchments to the north. He was also involved
in regional water abstraction from the Langebaan

Road aquifer, and in

geophysical studies to determine the clay layer of the Langebaan Road
aquifer.[260]

With

this kind of background I am satisfied that beside his outstanding
academic background and knowledge, Dr. Nel has a firsthand

personal knowledge of the area of interest in this matter. Dr Nel spent the last eight years consulting in the mining and modelling environment with GCS Water and Environmental Consultants (GCS), developing mining models, improving modelling techniques and developing better data collection.[261]

He was later appointed by SAN Parks to conduct an assessment of the possible hydrogeological impacts of the mine, and to assess the various specialist reports prepared for Kropz. In his 2016 Nel report, he raised some of the concerns regarding the possible adverse impact of the water resources due to the mining activities of Kropz. In the 2016 Nel report, his conclusion in the 2016 report was never militant against the issuance of the WUL to Kropz. It was Dr. Nel suggested that the best way to mitigate any possible impact on the water resources because of the dewatering process, Kropz must implement Adaptive Management. Considering that the appellant relied on report compiled by different specialists, Dr. Nel being one of them, Dr. Nel maintained his independent and recommended that the mine should implement Adaptive Management.

[262]

[157].

After he was appointed by Kropz as the hydrogeologist to undertake ongoing modelling (quantity and geochemical) required by the various site-specific conditions contained in appendix VII of the WUL Although Dr. Nel's scope includes amongst others the reference

to dewatering impact, artificial recharge, water quality changes, clay stability, monitoring and adaptive management,

I will dwell more

on the dewatering and the artificial recharge into the aquifer because this is the number one risk in the mining activities at Kropz

'mine. As per the features of Adaptive Management, where-by the team will update their data and risk mitigation plans as and when

more information becomes available, by the time he was appointed by Kropz, the data was enriched with new information and as a result Dr.

Nel was able produce an updated modelling and the confidence and the accuracy of predicting the characteristics and reaction of the aquifer to the artificially recharged water.

[158]

The

improved information that was gathered after the WUL was issued, enabled Dr. Nel to produce an even more accurate report called Geochemical

Transport

Modelling

in his 2018 (30 September) Nel report.[263]

The

importance regarding this part of the report under the heading Review of Monitoring Requirements is framed as follows. “Borehole PBH4

is well placed to detect any unexpected contaminant load from the waste rock dump. Quarterly water quality monitoring at this borehole

is recommended, to include wet and dry seasonal data. The worst-case prediction of contaminants moving away from the artificial recharge

wells shows limited movement before the slightly elevated concentrations will not be present within the national environment.

It would be beneficial to do monthly monitoring of the injection water quality to ensure no contaminants is released into the aquifer.

No additional monitoring holes near the injection holes are recommended. Boreholes SNP5 and SNP6 are placed downgradient of the injection boreholes and would detect any unexpected contaminant movement in the aquifer. Therefore, quarterly monitoring of SNP5 and

SNP6 is recommended.”[264]

Even

though the result in this report shows a remarkably

high

improvement

in

the

accuracy

the

data

collected

to

produce

more modelling report, Dr. Nel still suggested more regular monitoring and quarterly report to be submitted and be discussed ostensibly at the Water Monitoring Committee. This demonstrates the level of professional and his assertiveness to his independent and

credibility as an expert in the field of Ground Water Management.

[159]

September

2019 Elandsfontein Geochemical Model Update.

The report was produced in line with Licence condition number 77, which stipulated that the geochemical groundwater model needs

conclusion in this report
was amongst other the
following:

to be
revised/updated periodically to evaluate the potential impacts of the
various activities and water use on the underlying
Elandsfontein
Aquifer.[265]
His

“Based
on the current overburden and tailings leach data, no water quality
related impact is expected on the surrounding users, wetlands,
Langebaan Lagoon, Groen or Sout Rivers. It is recommended that
quarterly monitoring of water quality on boreholes PBH4, SNP5 and
SNP6 is conducted to confirm that no unexpected contaminants are
leaching from the waste rock and tailings material. Monthly
monitoring
of the injection water is recommended to evaluate the
concentrations of elements reporting to the in-pit dewatering under
operational
conditions.”[266]
[160]

Elandsfontein Aquifer Numerical Model
Update Nel report (16 Sept. 2019) This
report deals specifically with risk regarding the dewatering of the
mine pit and the artificial recharge. The conclusion in
this report
gave improved results regarding the
numerical
modelling of
the Elandsfontein
aquifer and
the surrounding areas. The significance of
the conclusions of this report are inter
alia; “The
monitoring data
sets provide
an improved
understanding of
the regional
aquifer system
properties and
recharge
processes. No
impacts of
dewatering of
the mine
are predicted
for the
Langebaan Lagoon
or any
surrounding users. (...) [T]he
modelled increased volumes of pit dewatering and associated increases

in artificial recharged water are not expected to change the net water balance of the aquifer. Various scenarios of parameter uncertainty have been considered; showing that the highest uncertainty in the volumes abstracted is natural recharge. The scenario where the total plant water supply is met by using an additional 473 000 m³/a of the pit dewatering instead of re- injecting it, will have negligible effect on the perimeter and in-pit dewatering and, on the water, arriving at the lagoon. The projected scenarios until 50 years after termination of mining and dewatering show that the increases in water levels due to artificial recharge is likely to increase water discharge volumes to the lagoon from 17 500 m³/day to 20 000 m³/day. This increased water discharge is likely to last until about 20 years post closure, and thereafter the water levels will be close to the pre-mining levels".

[161]

In conclusion he stated the following:

"It is recommended that the numerical model be updated in 18 months from August 2019, as soon as the first data from the next phase mining is started. This update can then be calibrated against the additional stresses induced and provide reduced uncertainty for any further dewatering scenarios." [267]

Dr.

Nel's testimony was coherent and his explanation of switching roles from being an expert witness who virtue of his 2016

Nel report

was part of the organisations that objected to the issuance of the WUL to Kropz. Although SAN-Park submitted an objection,

Dr. Nel's

report was not against the issuance of WUL. He satisfied the panel in explaining why he is now an expert witness for Kropz.

[162]

His reasons were that due to his change in employment and being available for taking consulting work opportunity, Kropz recruited him because of his expertise and scare skill of numerical modeling in Water Management sector, he accepted the offer from Kropz, hence he testified in favour of Kropz. His position regarding the implementation of Adaptative Management as part of mitigating

the impact of the water contamination was
 consistence and the results were proven in the Nel 2019 (6
 Sept.2019). His testimony
 due to its very highly technical in nature,
 was not successfully assailed by Counsel for the appellant. It was
 for this reason
 that Adv. Ferreira submitted an unprecedentedly
 astonishing, application to allow Dr. Riemann to address the panel to
 put the record
 straight in assailing part of Dr. Nel's
 testimony. Adv. Ferreira honestly conceded
 that she could not framed her questions properly because Dr. Nel's
 testimony was too technical for her to comprehend
 the information and
 then ask properly framed question. This application was not
 disapproved and as a result I will accept the testimony
 of Dr. Nel.

The
 co-existence of mining companies and environmental activists through
 the lens the Fuel Retailers
 Association v DG: Environmental Management & Others
 [163]

The
 constitutional court played a critical role of a pathfinder in the
 well-read judgement of Fuel Retailers Association of Southern
 Africa
 v Director-General: Environmental Management, Department of
 Agriculture, Conservation and Environment, Mpumalanga Province
 and
 Others. On paragraph 58 the court said "Sustainable development
 does not require the cessation of socio- economic development
 but
 seeks to regulate the manner in which it takes place. It recognizes
 that socio-economic development invariably brings risk
 of
 environmental damage as it puts pressure on environmental resources".
 This statement validates the report by Dr. Botha,
 when he was
 responding to Dr. Riemann's suggestion that Kropz must stop the
 mining activity, especially the dewatering of
 the mine pit until all
 the studies regarding the risk assessment are completed. The court
 further indicated the following [S]ustainable
 development is defined
 to mean "the integration of social, economic and environmental
 factors into planning, implementation
 and decision-making for the
 benefit of present and future generations." [268]
 Kropz
 WUL is fully complaint with this statement. The exquisite of evidence
 submitted by Kropz is beyond reproach.

[164]

“One of the key principles of NEMA requires people and their needs to be placed at the forefront of environmental management – batho pele. It requires all developments to be socially, economically and environmentally sustainable”. This statement could not explain the catastrophic situation in the country regarding the high unemployment rate better. The Kropz Phosphate mine could not have come at an opportune time than this. I take encouraged that the evidence before my sister and I, demonstrated that Kropz took concerted effortsto comply with all the relevant legislations in their application for a mining right and subsequently the Integrated Water Use licence which is the subject of this baleful appeal and more so because the cornerstone of this appeal is pervaded by racial intendencies.

[165]

Environmental activists remain very much relevant in society in relation to the protection of the environment. They can be a voice of reason when those who suffer from the scotoma of economic developments through the exploitation of mineral resources at the costs of the degradation of the environment move at the speed of light without considering the interests of future generations. They must however accept that their role is not to protect the environment to the stagnation of economic developments in the country. The mitigation steps which Kropz have put in place are sound and the philosophy behind them are traceable in the ground water management sector. One of the mitigating steps that Kropz put in regarding the dewatering of the mine pit and the artificial recharge was eloquently stated by Dr. Botha that not only had a risk-based assessment been undertaken at the time of the WULA, there was a continuous risk assessment in the form of emergency response plan that as ‘a real time emergency response plan’, in the form of the telemetry system which provided for the logging of operational data in real time in the control room of the mine, triggering alarms when required.[269]

Reta

G, Dong X, Zhonghua Li, in their research article titled “Environmental impact of phosphate mining and beneficiation:

review” said the following regarding one of the successful mitigation of the impact of phosphate mine activities on water resources. “Establish automatic real-time hydrology and water quality monitoring strategy.”[270]

[166]

The

critical role of Environmental activists[271]

should be implemented in a balanced manner so that they are seen as anti-development agents in the mining sector. Musodza WJT,[272]

said

the following in his master’s dissertation, quoting the authoritative Professor Humby “Civil society frequently employs

the concept of

conservation

to challenge developments, stating that it is detrimental to the environment, this is countered by the sustainable development

concept.”[273] This

accurate analysis of behaviors of some of civil society organisation is being demonstrated by the manner in which members of the appellant

opposed the granting of the mining right as well as the WUL to Kropz.

For the reasons stated above, the appeal is dismissed.

RULING

ON THE APPEAL (ORDER)

It is ordered thus:

[13]. The appeal is dismissed.

[14]. The licence conditions as per the Water Use Licence No. 01/G10M/ABCGIJ/5296 that was issued by the Director-General of the Department of Water and Sanitation are amended to include all the following site-specific conditions as determined by the geohydrologist and adopted by the WUAAAC meeting held on 30 January 2017:

1. The quantity of water authorised to be taken (abstracted from the dewatering boreholes and pit) in terms of this licence may not be exceeded and may be reduced when the licence is reviewed.
2. The maximum composite use must be limited to the volume required by the mine under stringent demand management conditions. This determined volume must be the maximum licensed section 21(a). All remaining groundwater must be returned to the aquifer of origin in an unpolluted state.

3. An independent assessment must be carried out within 12 months from the date of issuance of this licence to determine the mine water demand considering strict demand management and they need to limit groundwater (pit water) consumptive usage.
4. The water from the pit sump must not be available for external users.
5. Water reporting to the pit in excess of their consumptive pit sump water use must be treated and returned to the aquifer of origin in such a state as to limit the impact on the water quality and also to limit the impact on long-term groundwater levels in the area.
6. This licence will be reviewed after twelve
- (12) months; twenty-four (24) months and based on the findings of the two reviews, every three (3) years thereafter.
7. The licensee is to fund an independent and comprehensive assessment of the impact of mining on the regional aquifer prior to the first licence review. The section 21(a) volume shall be reduced as determined by the assessment (up to 50% per licence review).
8. The licensee must establish, develop and implement a comprehensive and appropriate groundwater monitoring network and programme to determine the impact, change, deterioration and improvement of the environment associated with the activities as well as compliance with the Water Use Licence conditions. It must be set as an early warning system to detect any influences of the dewatering and artificial recharge with special emphasis along the Elandsfontein paleo valley and pollution caused by seepage from the solid stockpile, softs stockpile and backfill. The date and time of monitoring in respect of each groundwater level and sample taken must be recorded together with the results of the analysis as well as other significant information (low flow, flooding, pollution incident, dry borehole, artesian, etc). Records must be kept as specified in the monitoring programme and reported to the Monitoring Committee on at least a six (6) monthly basis.
9. The licensee shall appoint a suitably qualified experienced independent external specialist who must be registered with SACNASP as a professional natural scientist to review all the monitoring reports on an annual basis to conduct an annual audit on compliance with the monitoring programme. Their review must be conducted within six months of this licence and a report on the audit shall be submitted to the responsible authority
10. The Licensee must evaluate potential impact areas around the site before mining below the water table takes place to assist in the identification of a suitable monitoring network and to collect baseline data should any long- term changes in the system occur.
11. The licensee must critically evaluate the data from the Department's monitoring boreholes to establish their suitability of acting as monitoring boreholes. Should they be found unsuitable new monitoring boreholes must be established.

12. A groundwater monitoring network and programme must be established immediately as per the proposed monitoring programme contained in the Water Use Licence Application. A programme containing any modification proposed by the Monitoring Committee must be submitted to the responsible authority within (6) months from the date of issuance of this licence for approval.
13. The licensee shall install and monitor appropriate water measuring devices to measure the amount of water abstracted, received and/or consumed, as applicable to the infrastructure. The licensee shall ensure that all measuring devices are properly maintained and in good working order and must be easily accessible. This shall include a programme of checking, calibration, and/or renewal of measuring devices. The monitoring of the aquifer(s) during operation must be automated as far as possible, to avoid unnecessary data gaps and unreliable data. All water taken from the resource shall be measured as follows.
 - 13.1. The daily quantity of water taken (from all dewatering boreholes and pit sump) must be metered or gauged and the total recorded at the last day of each month; and
 - 13.2. The licensee shall keep record of all water taken and a copy of the records shall be forwarded to the responsible authority on or before 25 January and 25 July of each year.
14. Suitable measuring structures must be constructed upstream and downstream of each dam (Storm water dams and processing plant dam) to measure the flow entering and leaving the dams and this information must be available to the responsible authority.
15. Monitoring boreholes in the monitoring network must be clearly marked, numbered, and must be equipped with lockable caps and results must be submitted to the responsible authority. The Department reserves the right to sample monitoring boreholes at any time and to analyse these samples, or to have samples taken and analysed.
16. Daily rainfall must be measured on the site and recorded and a copy of the records shall be forwarded to the responsible authority on or before 25 January and 25 July of every year.
17. The quantity of water stored must be recorded continually.
18. The water balance of the mine inflows, groundwater levels and groundwater quality must be monitored to update the conceptual model and improve the confidence in the predicted impacts.
19. The Department must be notified beforehand if the mine plan or the artificial recharge schedule and/or programme is to be changed.
20. The monitoring requirements might change should the mine plan or the artificial recharge areas change. The monitoring network and/or programme must be updated in such a situation and submitted to the responsible authority for approval.
21. Monitoring points must not be changed without prior notification to and written approval by the responsible authority.

22. Records shall be kept as specified in the monitoring programme. These records, the data analysis and reporting shall be made available to the responsible authority and other relevant organisations as specified below:
 - 22.1. During operation a monitoring report must be prepared as specified in the monitoring programme and submitted to the Monitoring Committee or its legal successor;
 - 22.2. A copy of the report must be submitted to the responsible authority and
 - 22.3. Copies of the field sheets and digital data must be available on request.
23. The licensee is to ensure that measures are put in place for independent evaluation and verification of environmental performance relating to the monitoring of water resources and archiving of all data related to the operations, both during and post the life of the mine.
24. The licensee must ensure that a numerical model is developed and used to support the aquifer management and wellfield operation. The model will be used to inform adaptive management decisions such as amendments to abstraction rates or points for optimal groundwater use and management of the potential impact on other water users and the environment, especially the Geelbek, Langebaan Lagoon and Langebaan Road Aquifer.
25. Aquifer testing must be conducted within six (6) months of the date of issuance of this licence. The tests must be conducted for a long enough period (determined by a specialist, geohydrologist) to provide responses at observation boreholes in order to determine more accurate storage/storativity values. The updated data must be used to update the numerical model.
26. An updated hydrocensus must be conducted within six (6) months of the date of issuance of this licence to include an estimation of the groundwater discharge volumes and points and a representative sample of the boreholes covering the sub-catchment up to the lagoon, including the areas where the numerical model would be set up. The information and data must be used to update the numerical model, including the steady state calibration against the discharge from the aquifer, to improve the prediction capability of the model.
27. The impacts on the Groen and Sout rivers must be incorporated into the numerical model.
28. All monitoring dewatering and artificial recharge boreholes that have not been logged between January 2015 and December 2016 must be logged with a pH, EC and temperature sonde and camera to confirm that depth and screen positions in the boreholes before groundwater dewatering commence. The information and data gathered must be used within the first 26 monthly updates of the numerical model.
29. The model will be updated on a six (6)-monthly-basis by the mine consultants (qualified geohydrologist). Data collected during the operational phase of the mine, drilling and aquifer testing data must be used to update the numerical model to improve the prediction capability of the model.

30. The following scenarios must be modeled every time as from the first updated numerical model:
 - 30.1. The current scenario,
 - 30.2. They projected scenarios every two (2) years or at periods to be specified by the monitoring committee and approved by the responsible authority for the life of the mine (including best case, likely case, worst- case scenarios).
 - 30.3 Projected scenarios for every two years and add periods to be specified by the monitoring committee and approved by the responsible authority for 50 years after mining and dewatering (including best case, likely case, worst case scenarios).
31. A geochemical study, including kinetic leach testing, adsorption testing, geochemical modelling and numerical transport modelling must be done to determine the aquifer material, Eh and pH conditions which play a role in the adsorption of Arsenic processes and to confirm the concentrations and impacts of Phosphorous, Fluoride, Arsenic, Uranium and Thorium on the Langebaan Lagoon and Geelbek.
32. Geochemical modeling is to include the short-term and continuous plumb behaviour well into post closure once water levels returned to natural state.
33. Geochemical modeling is required to stimulate groundwater quality, special distribution for the life of the mine as well as the long-term post mining situation after natural flow conditions have returned.
34. A geochemical model report must be submitted to the responsible authority within one month of their finalisation of the geochemical model.
35. The effectiveness of proposed groundwater management and artificial activities compared to their modeled prediction must be continuously monitored and their model revised, updated and reported.
36. The licensee must attempt to prevent adverse effects on the water users. All complaints must be investigated by a suitable qualified person and if it is established that an existing lawful user's water supply or aquatic ecosystems are unacceptably impacted by this water use, authorised in respect of this licence, the licensee must initiate suitable compensative measures.
37. Polluted groundwater within the aquifer is to be contained within the boundaries of the mining operation both during and posed closer.
38. No mining-related hydro-chemical changes within the aquifer are permitted outside the mine site boundary.

39. Dewatering boreholes have to be continuously monitored for traces of pollution. No polluted water is to be reinjected into the artificial recharge process. The water must be returned below the groundwater table and in such a state that there is no impact on the ground water chemistry down gradient of the site.
40. Comprehensive baseline chemistry for the mining area and surround SANParks and the Langebaan Lagoon must be provided in a report to the Department before the watering and injection operations commence. Each sample must be analysed at a SANAS accredited laboratory for at least the variables shown in Table 1 (page 3478 of RoD) and Table 2 (page 3478- 79) and any other identified elements of concern. All elements of concern are to be analysed and reported on, including heavy metals.
41. The quality of the resource must be monitored by taking samples quarterly at groundwater monitoring points within the monitoring network. Each sample must be analysed at an SANAS accredited laboratory for at least the variables and at frequencies, as shown in the table below and/or any other variable as may be required from time to time by the responsible authority.
42. The date, time, and monitoring point in respect of each sample taken shall be recorded together with the results of the analysis.
43. An increase concentration trend of any element is to trigger investigation and mitigation prior to reaching threshold values identified in the monitoring programme.
44. If groundwater pollution has occurred or may possibly occur as a result of activities authorised in this licence, the licensee must immediately conduct the necessary investigations and implement additional monitoring and rehabilitation measures which must be to the satisfaction of the responsible authority.
45. Acceptable and suitable areas must be identified for additional boreholes and additional injection areas should it be necessary to spread the artificial recharge to limit the rise in water levels. The feasibility of these areas must be assessed. The information on the additional boreholes and additional injection areas must be provided to the Department for approval before any drilling takes place.
46. Monitoring of water levels and management of the injection rate into the boreholes must be done on a continuous basis.
47. Warning and critical groundwater levels must be set to limit seepage zones and must be submitted within two
(2) months from the date of issuance of this licence.
48. An emergency response plan, should the artificial recharge process be less efficient than anticipated and result in surplus water, must be submitted within two (2) months of issuance of this licence.

49. The monitoring programme must be designed to detect any changes along the flow path. Sampling of specific horizons in the aquifer must be done to determine the influence of shallow and deep aquifer conditions on the transport of potential contaminants.
50. Monitoring for Arsenic concentrations must be done within one kilometer (1km), two kilometres (2km) and three kilometres (3km) from the potential Arsenic sources.
51. The Arsenic mobility and adsorption percentage must be monitored.
52. Data loggers with live data on a website must be used for the most important boreholes. Access to the data must be obtained via a web login and SANParks and the Department must have access to this data.
53. Weekly hand readings must be collected at the remainder of the boreholes. Data loggers with manual download must also be downloaded during monitoring rounds.
54. Water quality samples must be collected on a monthly basis. Field readings of Eh, pH and EC must be included. Parameters analysed must include PO₄, As, F, U and Th.
55. Borehole profiling of all boreholes specified in the monitoring programme, for EC, temperature, Eh, pH and dissolved Oxygen must be done at least on a six (6) monthly-basis, or as specified in the monitoring programme, and a report on the findings must be submitted to the responsible authority annually.
56. The borehole monitoring and maintenance procedures must be implemented as per the proposed borehole monitoring and maintenance procedures proposed by SRK to Elandsfontein Exploration and Mining (Pty)Ltd. A programme containing any modifications proposed by the monitoring committee must be submitted to the responsible authority within six (6) months from date of issuance of this license for approval.
57. An annual hydrogeological report providing a comprehensive assessment of the response of the aquifer to operations must be submitted to the responsible authority. Recommendations for mitigation of any negative impacts are to be provided and implemented as required.
58. Quarterly monitoring reports must be compiled and submitted to the Department within two (2) months after each quarter.
59. Monitoring data must be available to a local water user association or forum who can evaluate the data.
60. Management response groundwater levels and groundwater quality must be established in collaboration with the Department.
61. Groundwater level and quality responses must comply with any specified management response levels.

62. Warning levels regarding the minimum and maximum warning levels for groundwater level and water quality changes need to be quantified and included in the monitoring programme for approval by the Department.
63. Groundwater level and quality warning levels must be adhered to.
64. Monitoring data for the EEM operations must be collected specifically to improve the predictions towards the Langebaan Lagoon during future model updates.
65. The licensee must at all times prevent contamination of the environment, by the provisions of suitably designed impermeable site underlay systems and drainage arrangements.
66. The licensee must at all times prevent the contamination of the environment, by providing a suitably designed impermeable site underlay systems and drainage arrangements.
67. Preventative actions must be provided to ensure that there is no pollution beneath the soft stockpile. Monitoring is to be put in place to detect any such pollution.
68. The geochemical characteristics of the slime backfill must be provided within three (3) months of the date of issuance of this license.
69. The licensee must embark on a systematic long-term rehabilitation programme to restore the watercourse(s) to environmentally acceptable and sustainable conditions after completion of the activities.
70. All disturbed areas must be re-vegetated with an indigenous seed mix in consultation with an indigenous plant expert, ensuring that during rehabilitation only indigenous shrubs, trees and grasses are used in restoring the biodiversity.
71. An active campaign for controlling invasive species must be implemented within disturbed zones to ensure that it does not become a conduit for the propagation and spread of invasive exotic plants.
72. Rehabilitation must be concurrent with the construction and operational phase.
73. A photographic record must be kept as follows and submitted with reports as set out in section 2:

150% ">

73.1. Dated photographs of all the sites to be impacted before any further construction commences after the date of the issuance of this licence;

73.2. Dated photographs of all the sites during construction monthly; and

73.3. Dated photographs of all the sites after completion of construction, seasonally.

74. The licensee must supply proof to the Department of sufficient financial security within twelve (12) months from the date of issuance of this licence and include the following actions:

74.1. Independent assessment of mining impact prior to each licence review,

74.2. Maintaining of monitoring wells in the long-term for continued monitoring of the wells and

74.3. Remediation in the event of pollution being detected beyond the boundary of the site. This security is required over and above any financial requirements that need to be provided under mining and environmental legislation.

75. The data collected throughout the operational phase should be used for post-closure planning and to determine the extent and frequency of post-closure groundwater level and - quality monitoring.

76. No expansion of the mine operation, outside the boundaries of this licence, is allowed before a strategic environmental assessment of the impact of the mining on the aquifer system as a whole and on the environment has been completed.

[15]. No cost order is made; each party carries the costs for its legal fees.

Thus, handed down in Pretoria on 12 November 2021.

Adv. Ntika Maake

Chairperson of the Panel and of the Water Tribunal

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[1] <http://www.statssa.gov.za/publications/P0211/P02112ndQuarter2021.pdf>

[2] Act 36 of 1998.

[3] Introduced in terms of section 30 of the National Water Amendment Act 27 of 2014.

[4] The Departments of Mineral Resources; Environmental Affairs; Water and Sanitations.

[5] Act 107 of 1998.

[6] Section

148. Appeals to Water Tribunal (1) There is an appeal to the Water Tribunal – (f) subject to section 41(6), against a decision of a responsible authority on an application for a licence under section 41, or on any other person who has timeously lodged a written objection against the application”

[6] Section

148. Appeals to Water Tribunal

(1) There is an appeal to the Water Tribunal –

(f) subject to section 41(6), against a decision of a responsible authority on an application for a licence under section 41, or on any other person who has timeously lodged a written objection against the application”

[7] See page 3492 of the RoD.

[8] See page 3491 of the RoD.

[9] See page 3492 of the RoD.

[10] See page 3 to 4 of the Appeal records.

[11] Case No: WT 01/17/WC, ruling date 16 Nov.2017.

[12] See page 66 of the 3rd Respondent’s Heads of Argument

[13] See page 61 of the 3rd Respondent’s Heads of Argument

[14] See pages 340-350 of the Appeal records.

[15] See page 8 of the Appeal records.

[16] Hoexter C; Administrative Law in SA 2021 (2nd Edition) (Juta) 505.

[17] Section 38 Enforcement of rights

[18] See page 3473 of RoD volume 15

[19] See page 3473 to 3481 of RoD volume 15.

[20] See page 3473 to 3483 of RoD volume 15

[21] See page 3483 of RoD volume 15

[22] See page 3483 to 3485 of RoD volume 15.

[23] See page 3492 of RoD volume 15.

[24] See section 2 of the constitution.

[25] See section 7 of the constitution.

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- [26] See section 8 of the constitution.
- [27] See section 24 of the constitution.
- [28] See section 27(1) (b) of the constitution.
- [29] See section 32(1) (b) of the constitution.
- [30] Act 2 of 2000
- [31] Chamberlain L; Fighting Companies for Access to Information (2016) SUR 23 - v.13 n.23 at page 201.
- [32] (69/2014)
- [2014] ZASCA 184.
- [33] Chamberlain L; Fighting Companies for Access to Information; supra at page 201.
- [34] See section 33(1) & (2) of the constitution, as well as section 5 of PAJA.
- [35] Act 3 of 2000.
- [36] See section 34 of the constitution.
- [37] Tribunal Rules published in terms of Government Gazette No.926 on 23 November 2005.
- [38] See section 39 of the constitution.
- [39] See section 2 (1) a-e of Nema 1998
- [40] Section 2(1) a-e of Nema of 1998.
- [41] Section 3 of Chapter 2 of Nema of 1998.
- [42] HiII R.C; Integrated Environmental Management Systems in the implementation of projects. (2000) (Vol.96) South African Journal of Science, page 50 said “IEM South Africa embodies the synthesis of scientific and managerial competence that is necessary to attain effective environmental management in the implementation of projects.”
- [43] Kotzé LJ; Improving Unsustainable Environmental Governance in South Africa: The case for Holistic Governance 2006 (1) (PER) at page 1.
- [44] Kotzé LJ; Improving Unsustainable Environmental Governance in South Africa; supra at page 5.
- [45] Section 24 (1) of the Nema of 1998
- [46] See pages 3586-3587 of RoD. Payment guarantee from Invested Bank dated 10 February 2015.
- [47] See page 678 of the Appeal records.
- [48] See page 434 to 435 of the Appeal records.

- [49] See page 448 of the Appeal record
- [50] Ibid.
- [51] See page 3444 of the ROD.
- [52] Gazetted on the 24March 2017 in terms of Government Gazette No. 40713.
- [53] See pages 548 to 550 of the Appeal records.
- [54] Discrimination means “any act or omission including a policy, law, rule or practice, condition or situation, which directly or indirectly affect (a) imposes burdens, obligations, disadvantages on; or (b) withhold, opportunities or advantages from any person or more of the prohibited grounds. See section 1 of the Promotion of Equality and Promotion of Unfair Discrimination Act 4 of 2000.
- [55] See pages 683 to 686 of the Appeal records
- [56] See page 684 of the Appeal records.
- [57] Ibid.
- [58] See page 543 of Appeal records
- [59] Act 4 of 2000. Section 12. Prohibition of dissemination or publication of information that discriminates. No person may – (a) disseminate or broadcast any information (b) publish or display any advertisement or notice, that could be reasonably construed as or reasonably understood to demonstrate a clear intention to unfairly to discriminate against other person: (...).
- [60] See page 140-175 of the Appeal records. See also page 3309 to 3317 of the RoD.
- [61] See page 3320 to 3323 of the RoD.
- [62] See page 13 of Kropz Heads of Argument.
- [63] See page 3318 to 3319 of the Record of Decision.
- [64] See page 703 to 706 of the Appeal records.
- [65] See page 705 of the Appeal records.
- [66] See page 686 to 688 of the Appeal records.
- [67] Hoexter C; Administrative Law in South Africa (2nd edition) (2021 edition) Juta at page 65.
- [68] Ibid.
- [69] Kidd M; Fairness Floating Down the Streams? The Water Tribunal and Administrative Justice (2012) 19 SAJELP (25) at page 27.
- [70] 1963

[2] SA 588 (T) at 590F-591A.

[71] See also *Rand Ropes (Pty) Ltd v Commissioner for Inland Revenue* 1944 AD 142 at par.150.

[72] See page 3492 of RoD.

[73] See Hoexter C; *Administrative Law in South Africa*; supra at page 68.

[74] Section 149 (4) The appeal must be prosecuted as if it were an appeal from a Magistrate's Court to a High Court.

[75] See pages 2641 to 2644 of the RoD

[76] See pages 2649-2650 of the RoD.

[77] See pages 2651-2666 of the RoD.

[78] See page 2666 of the RoD.

[79] See pages 1202 to 1203 of the RoD.

[80] See page 3266.

[81] See page 3209 of the RoD

[82] See page 2029 of the RoD.

[83] See *Maccsand v City of Cape Town & Others* 2012(4) SA 181 CC at para

11. This position was also buttressed by Kotzé LJ; *Improving unsustainable environmental governance in South Africa: The Case for Holistic Governance*. (2006) (1) PER at page 9.

[84] See the correspondence from the DEAP dated 18 July 2016 on pages 3255 to 3257 of the RoD.

[85] See page 55 of the appellant's heads of argument.

[86] See pages 3587 to 3590 of the RoD vol 15.

[87] See paragraphs 6, 27 and 36.5 of the ruling handed down on the 20 November 2017.

[88] See paragraph 45.1 of the ruling handed down on the 20 November 2017.

[89] Section 148(2) The Tribunal is an independent body which – (a) has jurisdiction in all the provinces of the Republic; and

(b) may conduct hearing anywhere in the Republic.

[90] Act 33 of 2000.

[91] [2004] 3 All SA 1 (SCA) at paragraph 26.

[92] See *Oudekraal Estates (Pty) Ltd v City of Cape Town* [2004] 3 All SA 1 (SCA) at paragraph 26.

[93] [2016] ZACC 35 at paragraph 36.

- [94] Oudekraal above n 37 at para 27.
- [95] Oudekraal above n 37 at para 35.
- [96] As Forsyth puts it, “some ‘functional voidability’ of invalid administrative action is thus implied by section 172: an invalid administrative act will be effective until any judicial-set period of suspension has come to an end”. Forsyth “The Theory of the Second Actor Revisited” (2006) *Acta Juridica* 209 at 228.
- [97] 2016
- (3) SA 580 (CC).
- [98] See also Moleya NI; The effect of the Oudekraal principle on the rule of law (01.08.2018) <https://www.researchgate.net/publication/330396200>,
on page 6.
- [99] See Government Gazette No. No. 28060 dated 23 September 2005.
- [100] Maake N; Towards a One Environmental System in the Extractive. See Towards a One Environmental System in the Extractive ...<https://repository.up.ac.za/handle/10211/10211> at age 4.
- [101] Act 25 of 2014
- [102] Maake N; Towards a One Environmental System in the Extractive. *supra* at pages 10 to 11.
- [103] 27 of 2014.
- [104] NEMA 107 of 1998
- [105] Act 36 of 1998.
- [106] Act 28 of 2002
- [107] Jeffery A; Finding the right balance between mining and the environment (IRR 2018) 3.38) 5.
- [108] Vivoda V; Determinants of Foreign Direct Investment in the Mining Industry (CSRMSMI 2017) 25
- [109] *Maccs and v City of Cape Town & Others* 2012 (4) at paragraph 12.
- [110] Musodza WJT; The One Environmental System: Did we get it right? LLM Dissertation. See <https://wiredspace.wits.ac.za/bitstream/handle/10539/26814/The%20One%20Environmental%20System.pdf?sequence=1>. Page 39.
- [110] Musodza WJT; The One Environmental System: Did we get it right? LLM Dissertation. See <https://wiredspace.wits.ac.za/bitstream/handle/10539/26814/The%20One%20Environmental%20System.pdf?sequence=1>. Page 39.

- [111] See page 2 of the Appeal records.
- [112] Appeal records 428 para 6. Also RoD pages 3441-3490.
- [113] Section 2(4) (b) of NEAM states that “Environmental management must be integrated, acknowledging that all elements of the environment are linked and interrelated, and it must take into account the effects of decisions on all aspects of the environment and all people in the environment by pursuing the selection of the best practicable environmental option”.
- [114] Appellant Heads of Argument para 15 page 8.
- [115] See page 693 of the Appeal record.
- [116] 2012
- (4) SA 181 (CC).
- [117] Kotzé LJ; Improving unsustainable environmental governance in South Africa: The Case for Holistic Governance. (2006) (1) PER at page 9.
- [118] Fuggle RF; (1990) Integrated Environmental Management: An Appropriate Approach to Environmental Concerns. 8:1-2, 29-45, DOI: 10.1080/07349165.1990.9726027 at page 30. in Developing Countries
- [118] Fuggle RF; (1990) Integrated Environmental Management: An Appropriate Approach to Environmental Concerns. 8:1-2, 29-45, DOI: 10.1080/07349165.1990.9726027 at page 30. in Developing Countries
- [119] Fuggle RF; supra at page 44
- [120] Appeal records 428 para 7.
- [121] See page 2 of the Appeal records.
- [122] See page 8, paragraph 17.
- [123] See page 29 of Kropz Heads of Arguments.
- [124] See pages 213 to 250 of the Record of Decision.
- [125] See page 444 of the Appeal records
- [126] Public Participation and Water use Rights PER 2015(18)4 at page 945 to 946.
- [127] Hoexter C Administrative Law; supra at page 407
- [128] King P & Reddell C; Public Participation and Water use Rights; supra at page 946.
- [129] Appeal records page 443-445.
- [130] Appeal records page 476.

- [131] Appeal records page 484.
- [132] See <https://sbwqft.org.za/about-sbwqft/>
- [133] See page 62 to 63 of Annexure “B”. Report from Anchor Environmental dated 9 September 2015 addressed to Mr. Christo van Wyk; Chairman of SBWQFT.
- [134] See paragraph 76 on page 29 and 30 of the Appeal records.
- [135] Act 25 of 2014.
- [136] See page 443 of the Appeal records.
- [137] See page 445 of the Appeal records
- [138] See paragraph 42 on page 345-344 of appeal records.
- [139] 2012(4) SA 181 CC at paragraph 22.
- [140] See Maake N; One Environmental Environment dissertation supra; at page
- [141] See page 349 to 350 of the appeal records.
- [142] See page 448 of the Appeal records.
- [143] See page 2 of the Appeal records.
- [144] Ibid.
- [145] See page 3 of the Appeal records.
- [146] Ibid.
- [147] See pages 3409 to 3410 of the RoD.
- [148] See pages 3414 to 3415 of the RoD.
- [149] See pages 3454 to 3455 of the RoD.
- [150] See page 3418 of the RoD.
- [151] Ibid.
- [152] See paragraphs 80-82 above regarding the comment and support for Kropz WULA by SBWQFT.
- [153] See *Maccsand v City of Cape Town*: supra paragraph 12.
- [154] See pages 5-6 of the Appeal records.
- [155] See page 2084 to 2085 of the RoD.
- [156] See pages 2108 of RoD.
- [157] See pages 2651-2666 of the RoD.

- [158] See page 2666 of the RoD.
- [159] See <https://cer.org.za/news/media-release-constitutional-courts-decision-in-maccsand-case-marks-end-of-an-era>.
- [160] See 443, paragraph 61 of the Appeal records.
- [161] Maccsand V City of Cape Town & others; supra at footnote 48.
- [162] Olivier NJJ et al; Maccsand (Pty) Ltd v City of Cape Town 2012 (4) SA 181 (CC) (PER) (2012) (12) 5 at page 559 of 638.
- [163] See page 5 paragraph 8.2 of the Appeal record.
- [164] See page 31 of the Appeal record.
- [165] See page 75 to 77 of the Appeal records.
- [166] See page 77 to 81 of the Appeal records.
- [167] See page 159 of the Appeal records.
- [168] The CWCBR chooses to support EMM in their application as they have proven that they conduct their business in an environmentally responsible manner. (...) [A]ll precautions are taken to minimize the environmental impact, particularly with regards to the Geelbek Wetland.” See pages 1202 to 1203 of Rod. The DMR Kropz on 23 April 2015 for going an extra mile in practicing sustainable mining. See page 3266.
- [169] See page 572 of the Appeal records.
- [170] Park C and Allaby M; A dictionary of Environment and Conservation 2013 (Oxford Press) 2nd edition page 8.
- [171] See page 6 of the appellant’s HoA.
- [172] See page 159 of the Appeal records.
- [173] See page 3476, item 26 of the RoD.
- [174] See page 2 of the Appeal records.
- [175] See page 33 of the first and second respondent’s Head of Arguments.
- [176] See pages 117 to 125 of the Appeal records.
- [177] See page 118 of the Appeal records.
- [178] See page 121 of the Appeal records.
- [179] See page 123 of the Appeal records.
- [180] See page 7 of Kropz HoA.

[181] Ibid.

[182] See pages 3320 to 3337 of the RoD, as well as 14 of the Appeal records.

[183] See page 7 of Kropz HoA.

[184] See pages 21 to 22 of Annexure A.

[185] See page 593 of the Appeal Records.

[186] See page 2 of the Appeal Records.

[187] See page 684 of the Appeal Records.

[188] See page 685 of the Appeal Records.

[189] See page 572 of the Appeal records.

[190] 161 of the Appeal records.

[191] See pages 2651-2666 of the RoD.

[192] See page 2666 of the RoD.

[193] See <https://cer.org.za/news/media-release-constitutional-courts-decision-in-maccsand-case-marks-end-of-an-era>.

[194] See page 3473 of the RoD.

[195] See page 3481 to 3483 of the RoD.

[196] See page 3483 of the RoD.

[197] See page 3473-3481 of RoD.

[198] See page 3488 of the RoD.

[199] See page 35 paragraph 85 of Kropz HoA.

[200] See page 18 of the appellant HoA.

[201] CASE NO: WT16/07/2009

[202] See paragraph 8 of the judgement.

[203] Case No. A566/10 delivered on 25 October 2010.

[204] See paragraph 9 of the judgement.

[205] See paragraph 23 of the judgement.

[206] See paragraph 24 of the judgement.

[207] See paragraph 27 of the judgement.

- [208] Mdlalose, NPS; Evaluation of the water use licensing regime of the National Water Act in advancing the protection and conservation of water resources. LLM Dissertation on pages 47-48. See Evaluation of the water use licensing regime of the National ...<https://researchspace.ukzn.ac.za/handle/>.
- [209] See pages 3249 to 3250 of RoD.
- [210] See page 3483 of the RoD.
- [211] See 3484 to 3485 of the RoD.
- [212] See page 3428 of RoD, as well as page 3 of Kropz HoA and Exhibit A page 32.
- [213] See page 1383 of RoD.
- [214] See page 3 of Kropz HoA, as well as Exhibit A page 32.
- [215] See page 3429 of the RoD.
- [216] See page 3430 of the RoD.
- [217] Q2:2021 The official unemployment rate was 34,4% in the se[http://www.statssa.gov.za](http://www.statssa.gov.za/publications) publications > Media release issued on 24 August 2021.
- [218] See page 3430 of the RoD.
- [219] See page 3431 of the RoD.
- [220] See pages 3473 to 3481 of the RoD.
- [221] See page 3487 of the RoD.
- [222] Ibid.
- [223] See page 2 of Kropz HoA.
- [224] See page 3488 of the RoD.
- [225] Ibid.
- [226] Ibid.
- [227] See *Guguletto Family Trust V The Department of Water Affairs and Forestry*. Case No. A566/10, paragraph 13. Unreported and delivered on 25 October 2010. See also *Tikly v Johannes* No 1963 (2) SA 588 at 590F-591A.
- [228] Statutory Interpretation (Juta) (2016) (5th edition) 101.
- [229] 2007
- (6) SA 4 CC at paragraph 27.
- [230] *Fuel Retailers* supra page 27 para [58]. See also page 15 of the department's HoA.

- [231] [2013] 1 ALL SA 526 (SCA) (30 November 2012)
- [232] Makhanya No v Goede Wellington Boerdery (Pty) Ltd and Another; supra at paragraph 34.
- [233] See page 12 of DWS HoA.
- [234] See page 19 to 20 of the Department HoA. See also page 1 of the RoD.
- [235] See page 34 of the appellant's HoA. The re
- [236] See page 154 of Annexure A.
- [237] See page 19, paragraph 38 of the Department's HoA.
- [238] See page 658 Annexure "B".
- [239] See 660 of Annexure "B".
- [240] See page 6 paragraph 16 to 19 of the appellant's reply to the HoA of Kropz.
- [241] See page 159 of the Appeal records.
- [242] Seward P et al; Sustainable groundwater use, the capture principle, and adaptive management (2006) Water SA Vol. 32 No. 4 at page 477 to 478.
- [243] See page 6 of the appellant's reply to respondents' HoA.
- [244] See pages 211 to 212 of Annexure "A".
- [245] See page 191 to 193 of the Appeal records.
- [246] See page 191 of the Appeal records
- [247] See page 193 of the Appeal records
- [248] 248
- [249] <https://www.timeslive.co.za/news/south-africa/2019-11-13-saldanha-steel-plant-closure-will-be-catastrophic-for-west-coast/>
- [249] <https://www.timeslive.co.za/news/south-africa/2019-11-13-saldanha-steel-plant-closure-will-be-catastrophic-for-west-coast/>
- [250] See pages 451 to 454 of the Appeal records.
- [251] See page 33 of the Appeal records.
- [252] Ibid.
- [253] See page 612 of Annexure B.
- [254] See page 597 to 608 of the Appeal Records

[255] Botha & Bekink; Maccsand v City of Cape Town, Minister for Water Affairs and Environment, MEC for Local Government, Environmental

Affairs and Development Planning, Western Cape Province, Minister for Rural Development and Land Reform, and Minister for Mineral

Resources 2012 4 SA 181 (CC)' 2015 De Jure 456-467.

[256] See page 33 of the Appeal records.

[257] See page 599 to 607 of the Appeal record.

[258] See page

[259] See page 66 to 67 of the 3rd Respondent's Heads of Argument.

[260] Ibid.

[261] Ibid.

[262] See paragraph 22 above.

[263] See pages 149 to 187 of Annexure B.

[264] See page 169 of Annexure B.

[265] See page 303 to 340.

[266] See page 319 of Annexure B.

[267] See page 339 of Annexure B.

[268] 2007

(6) SA 4 (CC) (7 June 2007)

[269] Fuel retailers Association paragraph 60.

[270] See Annexure B page 598

[271] Reta G, Dong X, Zhonghua Li, et al. Environmental impact of phosphate mining and beneficiation: review. Int J Hydro. 2018;2(4): at page 429.

[272] Musodza WJT; LLM Dissertation: "The One Environmental System: Did we get it right?" on page 7.

[273] Humby T-L; 'One environmental system': aligning the laws on the environmental management of mining in South Africa' (2015) 33 Journal of Energy & Natural Resources Law, at page 128.

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