

DE BEERS  
A DIAMOND IS FOREVER

# MPRDAB 15

Portfolio Committee on Minerals & Energy  
Parliament of the RSA  
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Attention: Ms Shenaaz Isaacs

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Dear Sirs

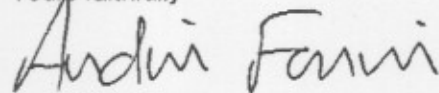
## SUBMISSION – RECONNAISSANCE PERMISSION

In 2005 De Beers Consolidated Mines Limited submitted comprehensive proposals to the Department of Minerals and Energy relating to the definition of "reconnaissance operations".

The submission does not appear to have been taken into account in the latest proposed amendments to the Mineral and Petroleum Resources Development Act, 2007.

We would urge Parliament to consider these submissions which are technical in nature and not controversial. A copy of the submission made in 2005 is attached for your attention.

Yours faithfully



**ANDRE FOURIE**  
De Beers Consolidated Mines Limited



### CORPORATE HEADQUARTERS

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DE BEERS CONSOLIDATED MINES LIMITED

SUBMISSION ON PROPOSED AMENDMENTS TO THE MINERAL AND  
PETROLEUM RESOURCES DEVELOPMENT ACT, 2002 IN RELATION TO  
SOIL SAMPLING

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1. INTRODUCTION

1.1 In the prelude to the enactment of the Mineral and Petroleum Resources Development Act, 2002 ("*MPRDA*"), De Beers requested that provision be made for a non-exclusive soil sampling permission, and offered drafting suggestions to that end.

1.2 The technical background to the request for a soil sampling permission is that –

1.2.1 Early stage exploration begins with a large area, typically 150 x 300 km, broadly to define possible areas of mineralization:

- ~~initially through remote sensing techniques that will include~~ the study of satellite images and airborne surveys; and
- thereafter if justified in the circumstances by means of soil and stream samples from selected areas inside the general

reconnaissance area and which of necessity involve disturbance of the surface of the earth.

- 1.2.2 For this kind of work exclusive rights are not required.
- 1.2.3 Soil sampling comprises part of the reconnaissance process and involves taking samples of the surface of the soil which do not exceed a depth of 30 millimetres from the surface and constitute a negligible impact on the environment.
- 1.2.4 If areas of mineralisation are identified as part of the reconnaissance process, and if a prospecting right under the MPRDA is granted, prospecting operations (including drilling and possibly excavations) will be commenced in respect of the specific targets identified during the reconnaissance process.
- 1.2.5 The grant of a reconnaissance permission on a non-exclusive basis will enable prospecting companies to establish their *bona fides* when requesting permission from land owners and occupiers for access.
- 1.3 The Department of Minerals and Energy was kind enough to give heed to De Beers' request by inserting a definition of, and provisions relating to, reconnaissance into the Bill which became the MPRDA.

s1 MPRDA : definition of "reconnaissance operation"

ss13 to 15 MPRDA : reconnaissance permissions

- 1.4 Regrettably however, the foregoing provisions relating to reconnaissance do not encompass soil sampling. The reason for this is that the definition of "reconnaissance operation", in its exclusion of any prospecting operation, thereby excludes searching for minerals by any method "which disturbs the surface ... of the earth". Soil sampling of its nature disturbs the surface of the earth, albeit in a minimal way. Soil sampling therefore falls within the definition of "prospecting", rather than within the definition of "reconnaissance operation".

s1 MPRDA : definitions of "prospecting" and "prospecting operation"

- 1.5 A further consequence of the recognition in the MPRDA of reconnaissance is that by virtue of the reference in the definition of "reconnaissance operation" in s1 MPRDA, to "photogeological surveys" and to "remote sensing techniques", the definition now also encompasses airborne surveys, whereas due to the fact that airborne surveys do not impact upon any of the objects of the MPRDA, including not on development of the Nation's mineral resources in an orderly and ecologically sustainable manner, there is

in our view no need for such surveys to be regulated by the MPRDA at all.

s1 MPRDA : definition of "reconnaissance operation"

s2 (including s2(h)), MPRDA

1.6 The amendments proposed below both to the MPRDA itself and to the Regulations ("*MPRDR*") made in terms of the MPRDA are therefore aimed at addressing the unintended consequences of the provisions in the MPRDA relating to reconnaissance operations, namely that the MPRDA :

1.6.1 still does not regulate soil sampling in a manner that is different to the regulation of prospecting;

1.6.2 regulates airborne surveys whereas regulation of airborne surveys is in our view unnecessary.

1.7 The main thrust of De Beers' proposed amendments is therefore to re-define "*reconnaissance operation*" to include soil sampling and to exclude aerial surveys.

1.8 As an additional amendment De Beers suggests that the submission of an environmental management plan is, due to the non-existent, or at most negligible, impact of reconnaissance operations on the environment, in our

view unnecessary. Amendments are therefore suggested to delete the requirement for an environmental management plan in the case of reconnaissance permissions.

1.9 Various consequential or related amendments are also suggested.

2. PROPOSED AMENDMENT OF DEFINITION OF "PROSPECTING"

2.1 It is proposed that the definition of "prospecting" in s1 MPRDA be amended as follows :

*' "prospecting" means intentionally searching for any mineral by means of any method -*

*(a) which disturbs the surface or subsurface of the earth, including any portion of the earth that is under the sea or under other water; or*

*(b) in or on any residue stockpile or residue deposit, in order to establish the existence of any mineral and to determine the extent and economic value thereof; or*

*(c) in the sea or other water on land;*

*but excludes soil sampling;*

2.2 The effect of the proposed amendment is to exclude soil sampling from the ambit of prospecting so that a prospecting right would not be required for

soil sampling, as a prelude to the inclusion of soil sampling as a form of reconnaissance operations.

- 2.3 For the sake of completeness and uniformity an amendment of the definition of 'exploration operation' in s1 of the MPRDA to exclude soil sampling may be considered.

3. PROPOSED AMENDMENT OF DEFINITION OF "RECONNAISSANCE OPERATION"

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- 3.1 It is proposed that the definition of "reconnaissance operation" in s1 MPRDA be amended as follows.

*"reconnaissance operation" means any operation carried out for or in connection with the search for a mineral or petroleum by geological[,] or geophysical [and photogeological] surveys on the surface of the land in question [and includes any remote sensing techniques] and includes soil sampling, but does not include :*

*(a) any prospecting or exploration operation;*

*(b) airborne surveys; or*

*(c) remote sensing techniques that do not involve entry onto the surface of the land in question;*

The effect of the above amendment is to :

- 3.1.1 include soil sampling within the definition of, and as a form of, reconnaissance operations so that a reconnaissance permission will be required for soil sampling;
- 3.1.2 exclude airborne surveys from the definition of reconnaissance operations so that airborne surveys would not be regulated in terms of the MPRDA (but would continue to be regulated by civil aviation legislation), a consequential amendment being the deletion of reference to photogeological surveys since photogeological surveys are a form of aerial surveys.

4. PROPOSED INSERTION OF NEW DEFINITION OF "SOIL SAMPLING"

- 4.1 It is proposed that s1 MPRDA be amended by the insertion after the existing definition of "retention permit" in s1 MPRDA, of the following new definition of "soil sampling".

' "soil sampling" means sampling which would but for this definition constitute prospecting but which is restricted to a depth of 30 millimetres from surface; provided however that :



(a) such sampling shall, in cases other than stream sediment sampling, be restricted to a sampling density of not more than two samples per square kilometre and a sample size of not more than 50 litres per square kilometre;

(b) stream sediment samples shall be restricted to not more than 50 litres of material collected from a streambed trap site for every square kilometre of the stream's catchment area;

and should such sampling exceed the above restrictions, sampling shall constitute prospecting;'

4.2 The effect of the proposed insertion is that the concept of soil sampling is defined for use in the amended definitions of "prospecting" and of "reconnaissance operation" in s1 MPRDA.

5. PROPOSED REMOVAL OF PROHIBITION AGAINST CONDUCTING RECONNAISSANCE OPERATIONS WITHOUT AN APPROVED ENVIRONMENTAL MANAGEMENT PLAN

5.1 It is proposed that s5(4) MPRDA be amended as follows.

'(4) No person may prospect for or remove, mine, conduct technical co-

*operation operations, reconnaissance operations, explore for and produce any mineral or petroleum or commence with any work incidental thereto on any area without –*

*(a) save in the case of a reconnaissance permission or a reconnaissance permit, an approved environmental management programme or approved environmental management plan, as the case may be;*

*(b) a reconnaissance permission, prospecting right, permission to remove, mining right, mining permit, retention permit, technical co-operation permit, reconnaissance permit, exploration right or production right, as the case may be; and*

*(c) notifying and consulting with the land owner or lawful occupier of the land in question.*

5.2 The reason for the proposed amendment to s5(4)(a) is that the environmental impact of reconnaissance is in our view non-existent or at the most negligible. The effect of the proposed amendment therefore is that no environmental management plan or environmental management programme would be required for reconnaissance.

6. PROPOSED DELETION OF REQUIREMENT FOR AN ENVIRONMENTAL MANAGEMENT PLAN FOR RECONNAISSANCE PERMISSIONS

6.1 It is proposed that ss39(2), 39(6)(a), and 39(7), MPRDA, be amended by the deletion of the references to reconnaissance permissions therein.

6.2 Section 39(2) MPRDA would therefore be amended to read as follows.

*'(2) Any person who applies for a [reconnaissance permission,] prospecting right or mining permit must submit an environmental management plan as prescribed.'*

6.3 Section 39(6)(a) MPRDA would therefore be amended to read as follows.

*'(6)(a) The Minister may at any time after he or she has approved an environmental management programme or environmental management plan and after consultation with the holder of the [reconnaissance permission,] prospecting right, mining right or mining permit concerned, approve an amended environmental management plan or environmental management programme.'*

6.4 Section 39(7) MPRDA would therefore be amended to read as follows.

*'(7) The provisions of subsection (3)(b)(ii) and the subsection (3)(c) do not apply to the applications for [reconnaissance permissions,]*

~~prospecting rights and mining permits.~~

6.5 The effect of the proposed amendments is that an environmental management plan will in our view, due to the non-existent or at most negligible impact of reconnaissance operations on the environment, not be required in the case of reconnaissance permissions or, as a consequence of s69(2), reconnaissance permits.

7. PROPOSED DELETION OF REQUIREMENT FOR ENVIRONMENTAL MANAGEMENT PLANS AND NOTIFICATION AND CONSULTATION IN THE CASE OF RECONNAISSANCE PERMITS FOR PETROLEUM

7.1 It is proposed that the deletion of s74(4) of the MPRDA be considered.  
Section 74(4) reads as follows:

*[(4) If the designated agency accepts the application, the designated agency must, within 14 days from the date of acceptance, notify the applicant in writing-*

- (a) to submit an environmental management plan in accordance with section 39 within a period of 30 days from the date of the notice; and*
- (b) to notify and consult with any affected party.]*

7.2 Although De Beers is not concerned with petroleum, it mentions the above deletion in order to align the provisions relating to reconnaissance permits for petroleum with those in regard to reconnaissance permissions for minerals.

7.3 The effect of the proposed deletion is that no environmental management plan, and no notification to or consultation with affected parties, would be required in the case of applications for reconnaissance permits for petroleum.

8. PROPOSED DELETION OF REQUIREMENTS FOR PLANS FOR RECONNAISSANCE PERMISSIONS TO REFLECT SURFACE STRUCTURES, SERVITUDES, AND TOPOGRAPHY

8.1 It is proposed that Regulation 2(2) in the MPRDR be amended by the addition at the end thereof of the following proviso.

*'Provided however that paragraphs (g) and (h) in sub-regulation (2), shall not apply in the case of plans accompanying applications for reconnaissance permissions or for reconnaissance permits.'*

8.2 The reason for the proposed deletion is that in the case of reconnaissance operations, surface structures, servitudes, and topography, are in our view

not relevant.

- 8.3 The effect of the proposed deletion is that plans accompanying applications for reconnaissance permissions and reconnaissance permits will not need to reflect surface structures, registered servitudes, or topography of the land to which the application relates.

9. REMOVAL OF NEED FOR NOTICES TO INTERESTED AND AFFECTED PARTIES IN THE CASE OF APPLICATIONS FOR RECONNAISSANCE PERMISSIONS AND RECONNAISSANCE PERMITS

- 9.1 It is proposed that Regulation 3 of the MPRDR be amended by the insertion of a new Sub-regulation (5) reading as follows.

'(5) Notwithstanding the provisions thereof, sub-regulations (1) to (4) shall not apply in the case of applications for reconnaissance permissions or reconnaissance permits.'

- 9.2 The reason for the proposed amendment is that ss10 and 14 MPRDA do not require prior consultation with interested and affected parties. The effect therefore is that no notices, publications or advertisements would be required in the case of applications for reconnaissance permissions or