

Landowner consent requirement withdrawn for mining-related EA applications

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11 Mar 2022

With effect from 3 March 2022, consent is no longer required for environmental authorisation (EA) or waste management licence (WML) applications for mining-related activities, where the EA/WML applicant is not the owner or person in control of the land intended for such activities.



Source: Dmitry Kalinovsky © [123RF.com](#)

This consent requirement was introduced through a raft of amendments to the Environmental Impact Assessment Regulations (EIA Regulations) which were gazetted on 11 June 2021. The contentious requirement had resulted in several unintended consequences, including the (in some cases indefinite) deferment of mining-related EA/WML application submissions, in instances where landowner consent has been unreasonably withheld.

Minerals Council seeks alignment with DFFE

In response to the regulation 39(b) amendment, the Minerals Council South Africa (MCSA) launched a court application to review and set aside the introduction of the consent requirement. The MCSA also engaged the Department of Forestry, Fisheries, and the Environment (DFFE) in parallel to the judicial proceedings, with the objective of seeking alignment on this impractical requirement. It is anticipated that the court proceedings will now be withdrawn.



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The withdrawal of the consent requirement is a welcome development and aligns with the Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA), which together with the National Environmental Management Act 107 of 1998 and

the EIA Regulations, provide a more than adequate stakeholder consultation framework. This regime is complemented by the internal remedy available under section 54 of the MPRDA in terms of which parties can agree on commercial terms relating to access to land, or as a last resort, request the Department of Mineral Resources and Energy to intervene, where access to land is unreasonably withheld.

The withdrawal is backdated so it is as if this consent requirement never existed. The minister indicated that her reason for the withdrawal was because of lack of consultation, which seems to leave the door open for DFFE to try introduce this requirement again in future (this time not through the backdoor).

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