



# agriculture, land reform & rural development

Department:  
Agriculture, Land Reform and Rural Development  
REPUBLIC OF SOUTH AFRICA



# LAND USE SCHEME GUIDELINES IN RESPECT OF LAND USED FOR MINING JANUARY 2020



(Addendum to the Land Use Scheme Guidelines issued in March 2017 by the Department of Rural Development and Land Reform)

# LAND USE SCHEME GUIDELINES

## IN RESPECT OF LAND USED FOR MINING

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# GLOSSARY OF TERMS AND ABBREVIATIONS

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In these guidelines, reference is made to various terms and abbreviations which stem from the relevant legislation regulating mining and related matters and the use and development of land. Although the glossary below refers to or may repeat official definitions from other sources, the list of terms and abbreviations is inserted to assist the reader to more easily grasp the ordinary meaning thereof in the context of preparing and implementing a Land Use Scheme.

## **Ancillary Activities**

In relation to mining means in terms of section 5 of the MPRDA any other activity incidental to prospecting or mining, which activity does not contravene the provisions of the MPRDA.

## **Applicant or Land Development Applicant**

In relation to a person who makes a land development application, means

- (a) an owner of the land concerned
- (b) a person acting as the duly authorised agent of the owner;
- (c) a person to whom the land concerned has been made available for development in writing by an organ of state or such person's duly authorised agent; or
- (d) a service provider responsible for the provision of infrastructure, utilities or other related services.

See Section 45(1) of SPLUMA. A holder of a mining right or mining permit issued by DMR will qualify as a land development applicant in terms of Section 45(1)(a) and/or Section 45(1)(c).

## **Beneficiation**

In relation to any mineral resource, means the following—

- (a) primary stage, which includes any process of the winning, recovering, extracting, concentrating, refining, calcining, classifying, crushing, screening, washing, reduction, smelting or gasification thereof;
- (b) secondary stage, which includes any action of converting a concentrate or mineral resource into an intermediate product;
- (c) tertiary stage, which includes any action of further converting that product into a refined product suitable for purchase by minerals-based industries and enterprises; and
- (d) final stage, which is the action of producing properly processed, cut, polished or manufactured products or articles from minerals accepted in the industry and trade as fully and finally processed or manufactured and value added products or articles.

## **Closure Certificate**

Means a certificate issued by the DMR to the holder of a mining right or mining permit as contemplated in Section 43 of the MPRDA.

## **Consent**

Means written authorisation granted by a municipality in terms of the provisions of a LUS, sanctioning the use and development of land, without permanently amending the prevailing land use zoning provisions applicable to such land. In other words, the land use zone in which the affected land is situated in terms of the LUS remains unchanged, whilst the municipality grants authorization for such immovable property to be used for purposes additional to those stipulated in the applicable land use zone in the LUS, subject to such conditions

that the municipality may deem expedient. Such conditions may, *inter alia*, restrict such consent to a predetermined period of validity, by expiry of which such consent shall likewise expire, unless extended by further consent of the municipality (and “consent use” shall have a similar meaning).

### **Department of Mineral Resources (DMR)**

Means the national department responsible for, inter alia, administering the grant of prospecting rights, mining rights and mining permits in terms of the MPRDA and matters connected therewith. In granting a prospecting right, mining right or mining permit, the DMR typically imposes conditions limiting the period of validity of such right or permit and the geographical area to which such right or permit shall apply. This has a bearing on the decision to be taken by the municipality with regard to regulating the use of the affected land in terms of the LUS. Note that with from effect from 29 May 2019, the DMR is now the Department of Mineral Resources and Energy.

### **Environmental Management Programme (EMP)**

Means an environmental management programme referred to in section 24N of the National Environmental Management Act 107 of 1998, the purpose of which is to manage and rehabilitate the environmental impact which may result from prospecting, or mining.

### **Holder**

In relation to a prospecting right, mining right or mining permit means the person to whom such right or permit has been granted or such person’s successor in title.

### **Land**

Means any erf, agricultural holding or farm portion, and includes any improvement or building on the land and any real right in land.

### **Land Use Scheme (LUS)**

Means the documents and plans referred to in Chapter 5 of SPLUMA, for the regulation of land use and the purpose, content and legal effect of which are described more fully in Sections 25 and 26 of SPLUMA. Suffice it to confirm that, in terms of SPLUMA, a LUS must give effect to and be consistent with the municipal spatial development framework (SDF) and must determine the use and development of all land within the municipal area (also for mining and related purposes). In the Land Use Scheme Guidelines (2017 Guidelines) of March 2017, paragraphs 1.3 and 1.4 provide further insight with regard to a LUS.

### **Mine**

Means , when—

(a) used as a noun—

- (i) any excavation in the earth, including any portion under the sea or under other water or in any residue deposit, as well as any borehole, whether being worked or not, made for the purpose of searching for or winning a mineral;
- (ii) any other place where a mineral resource is being extracted, including the mining area and all buildings, structures, machinery, residue stockpiles, access roads or objects situated on such area and which are used or intended to be used in connection with such searching, winning or extraction or processing of such mineral resource; and

(b) used as a verb, the searching for, winning and extraction of a mineral resource as provided for in the MPRDA and the processing of such mineral resource, whether by underground or open working or otherwise, and includes any ancillary activity incidental thereto in, on or under the relevant mining area, including but not limited to the provision of accommodation, medical, commercial, trading, sport, entertainment and restaurant services and other facilities for mine employees; and to bring onto the land any plant, machinery or equipment and to build, construct or lay down any surface or underground buildings, structures and infrastructure which may be required, used or intended to be used for the purpose of the aforesaid (and “mining” shall have a similar meaning).

## Mineral

Means any substance, whether in solid, liquid or gaseous form, occurring naturally in or on the earth or in or under water and which was formed by or subjected to a geological process, and includes sand, stone, rock, gravel, clay, soil and any mineral occurring in residue stockpiles or in residue deposits, but excludes—

- (a) water, other than water taken from land or sea for the extraction of any mineral from such water;
- (b) petroleum; or
- (c) peat;

## Mining Area

- (a) in relation to a mining right or a mining permit, means the area on which the extraction of any mineral has been authorised and for which that right or permit is granted;
- (b) in relation to any environmental, health, social and labour matter and any residual, latent or other impact thereto, including—
  - (i) any land or surface adjacent or non-adjacent to the area as contemplated in subsection (a)<sup>1</sup> but upon which related or incidental operations are being undertaken;
  - (ii) any surface of land on which a<sup>2</sup> road, railway line, powerline, pipe line, cableway or conveyor belt is located, under the control of the holder of such a mining right or a mining permit and which such holder is entitled to use in connection with the operations performed or to be performed under such right or permit; and
  - (iii) all buildings, structures, machinery, residue stockpiles, or objects situated on or in the area as contemplated in subsections (b) (i) and (ii)<sup>3</sup>.

## Mining Operation

Means any operation relating to the act of mining and matters directly incidental thereto including but not limited to top structures such as administrative offices, ablution facilities, storage facilities, maintenance facilities, mining headgear, tailings dams and electrical infrastructure (not an exhaustive list).

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<sup>1</sup> A patent referencing error in the MPRDA falls to be read in accordance with this version of the definition. See Dale et al *South African Mineral and Petroleum Law* Issue 24 Par 44.6 at MPRDA-66

<sup>2</sup> A patent referencing error in the MPRDA falls to be read in accordance with this version of the definition. See Dale et al *South African Mineral and Petroleum Law* Issue 24 Par 44.7 at MPRDA-67

<sup>3</sup> A patent referencing error in the MPRDA falls to be read in accordance with this version of the definition. See Dale et al *South African Mineral and Petroleum Law* Issue 24 Par 44.9 at MPRDA-67

## **Mining Permit**

Means a permit issued in terms of section 27 (6) of the MPRDA. A mining permit may be issued by the DMR in circumstances where the mineral resource in question is capable of being mined optimally within a period 2 years and where the defined mining area in question does not exceed 1.5 ha in extent. A mining permit is valid for the period specified in the permit which period may not exceed 2 years and which may be renewed for 3 periods thereafter, which periods (sequentially) may not exceed 1 year each.

## **Mining Purposes**

Means purposes normally or otherwise reasonably associated with the use of land for mining.

## **Mining Right**

Means a right to mine granted in terms of section 23 (1) of the MPRDA and which right shall be valid for the period specified by the DMR which period may not exceed 30 years, subject to renewal.

## **Mining Right Area**

Means the area on which the extraction of any mineral has been authorised in terms of the MPRDA and for which the right or permit is granted.

## **Mining Right Plan**

Means a plan submitted in terms of Regulation 2(2) of the MPRDA and approved by the DMR, which reflects the geographical area to which the prospecting right, mining right or mining permit relates.

## **Mining Site Plan**

The plan contemplated in Item 1(1)(c) of Appendix 4 to the Environmental Impact Assessment Regulations, 2014 GNR.982 of 4 December 2014, denoting the mining activities at scale.

## **Mineral and Petroleum Titles Registration Office**

Means the Mineral and Petroleum Titles Registration Office contemplated in section 2 of the Mining Titles Registration Act, 1967 (Act No. 16 of 1967).

## **Mining Work Programme**

Means the planned mining work programme to be followed in order to mine a mineral resource optimally, as provided for in terms of the MPRDA.

## **MPRDA**

Means the Mineral and Petroleum Resources Development Act 28 of 2002, as amended, and includes the regulations and any term or condition to which any permit, permission, licence, right, consent, exemption, approval, notice, closure certificate, environmental management plan, environmental management programme or directive issued, given, granted or approved in terms of the MPRDA, as amended, is subject.



## **Municipal By-law (By-law)**

Means the municipality's adopted by-law regulating spatial planning and land use management and, *inter alia*, contains provisions regulating a land development application, either seeking consent in terms of a LUS or to rezone land for, *inter alia*, the purposes of mining and incidental activities.

## **NEMA**

Means the National Environmental Management Act 107 of 1998, as amended.

## **Processing**

In relation to any mineral, means the winning, extracting, concentrating, refining, calcining, classifying, crushing, screening, washing, reduction, smelting or gasification thereof.

## **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.

## **Prospecting Area**

Means the area of land which is the subject of a prospecting right.

## **Prospecting Right**

Means the right to prospect granted in terms of section 17 (1) of the MPRDA.

## **Reconnaissance Operation**

Means any operation carried out for or in connection with the search for a mineral or petroleum by geological, geophysical and photo geological surveys and includes any remote sensing techniques, but does not include any prospecting operation other than acquisition and processing of new seismic data.

## **Rehabilitation**

Means the restoration of land and environment impacted by mining activities back to a sustainable usable condition.

## **Rezoning**

Means the process of amending the provisions of a LUS pertaining to the use and development of land and has the effect of permanently changing the land use zoning rights and restrictions which apply to such land and "rezone" shall have a similar meaning). The rezoning process is regulated by the municipal by-law on spatial planning and land use management.

## **SDF**

Means a Municipal Spatial Development Framework, as described in Chapter 4 of SPLUMA, the content and status of which are described in Sections 21 and 22 of SPLUMA. A municipal SDF must be prepared as part of the municipality's Integrated Development Plan in accordance with the Local Government: Municipal Systems Act, 2000. The SDF contains policy guidelines to inform and guide decisions on the use and development of land but does not grant any statutory land use rights.

## **SPLUMA**

Means the Spatial Planning and Land Use Management Act, 2013 , all associated regulations and any amendment thereof. SPLUMA is national framework legislation obliging all municipalities to, inter alia, prepare and adopt a LUS to, inter alia, regulate the use and development of land (also for mining and associated activities).

## **Town Planning Scheme (TPS)**

Means a town planning scheme as defined in older order legislation, including a provincial ordinance or act regulating town planning and township establishment, and remains to regulate the use and development of land until such town planning scheme is replaced by an adopted and approved LUS, as provided for in Section 26 of SPLUMA.

## EXECUTIVE SUMMARY:

# GUIDELINES IN RESPECT OF LAND USED FOR MINING

Municipalities in South Africa are obliged to prepare and adopt land use schemes for their areas of jurisdiction as contemplated in Section 24 of SPLUMA.



Land used, or planned to be used for any form of mining will therefore be situated within the boundaries of any such adopted LUS. . The responsible municipality is required to regulate the use of land in terms of the LUS and such obligation applies equally to land used for mining.

The mining of the mineral resource in turn, is regulated in terms of the MPRDA and NEMA . Mining is therefore subject to a mining right or mining permit having to be granted by the DMR. in terms of the MPRDA , the preparation and approval of an EMP and the grant by the DMR of

an environmental authorisation in terms of NEMA . Any such mining is unique, as a land use typology, given that:

- it is of a temporary duration, as the mining right or mining permit is limited in its timespan; and
- the use of land for mining is source dependent (i.e. mining can only take place where the mineral resource is present).

To regulate the use of land for mining, a municipality requires to incorporate into its LUS appropriate provisions for such purpose. Given the aforesaid peculiarities, the land use management provisions are required to be appropriate to the mining operation, its situational context and its duration.

As an extension to the Land Use Scheme Guidelines issued by the Department of Rural Development and Land Reform (DRDLR) in March 2017 (the 2017 Guidelines), this Addendum focusses solely on the regulation of land use for the purposes of mining, by employing appropriate provisions of a statutory LUS by the responsible municipality.

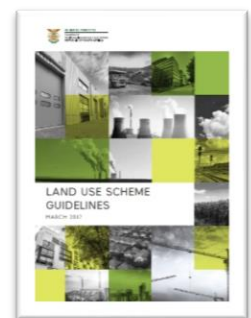
This Addendum includes alternative mechanisms to be considered by municipalities when preparing new or amending existing land use schemes namely:

### ■ **Alternative 1: Consent**

To provide for a form of temporary consent, which may be granted in terms of the provisions of a LUS, without changing the statutory zoning of the land on which mining occurs. The duration of the temporary consent for purposes of mining should be until a closure certificate is issued by the DMR.

### ■ **Alternative 2: Rezoning**

To amend the LUS by the rezoning of the affected land portion to be used for mining. By doing so, the municipality shall allocate an appropriate zoning category or categories to the affected land portion which may sanction the use thereof for the purpose of mining (possibly to co-exist with further land use zoning options permitting the alternative use of the land i.e. for "Agriculture" or similar).



In the paragraphs to follow, this addendum provides guidelines for consideration by municipalities to incorporate into their land use schemes and appropriate provisions to regulate the use of land for mining.

Apart from the guidelines contained in the first part of this Addendum, a separate Reference Document is attached setting out the background information pertaining to the unique nature of mining as a land use category and the legislation which regulates the extraction of a mineral resource, the peculiarities associated with a holder of a prospecting right, mining right or mining permit not necessarily being the registered land owner, requirements relevant to qualifying as a *bona fide* land development applicant in terms of SPLUMA and the relevant municipal by-law.

A large number of existing mines constitute lawful pre-land use scheme uses and need to be appropriately accommodated in the relevant LUS in terms of SPLUMA. The LUS must ensure the recognition of legal pre-LUS mining land uses, appropriate implementation and regularising of existing operations under SPLUMA and such transitional provisions as may be required.

Depending on the circumstances which apply to any specific municipality, such municipality may elect to utilise the guidelines contained in this addendum to populate the LUS in a manner which may appropriately respond to the obligation of the municipality to regulate the use of land for mining.

## CHAPTER 1:

### STATUS OF GUIDELINES

#### 1.1. Addendum to general guidelines *viz a viz* Chapter 8.3.2

- 1.1.1 All municipalities are required to prepare land use schemes as contemplated in Section 24 of SPLUMA. The 2017 Guidelines developed by the DRDLR to assist municipalities in the preparation of LUS, acknowledge that there is uncertainty amongst stakeholders on how to deal with mining in the new generation municipal land use schemes. Due to certain unique characteristics of mining land, the 2017 Guidelines do not cover mining from a land use management perspective.
- 1.1.2 Under Chapter 8.3.2 of the 2017 Guidelines, reference is made to land used for mining and mineral resource extraction and it is confirmed that the DRDLR, in co-operation with the then Chamber of Mines of South Africa (now the Minerals Council of South Africa) committed to the preparation of special guidelines applicable to land used for mining and related purposes.
- 1.1.3 This Addendum does not deal with petroleum exploration and production operations and accordingly exploration rights and production rights, which are also regulated currently under the MPRDA, are not dealt with herein.
- 1.1.4 This Addendum has the purpose of addressing the special guidelines contemplated in the aforesaid Chapter 8.3.2 of the aforesaid 2017 Guidelines and should therefore be read in the context of such 2017 Guidelines and be considered to be an integrated part thereof.

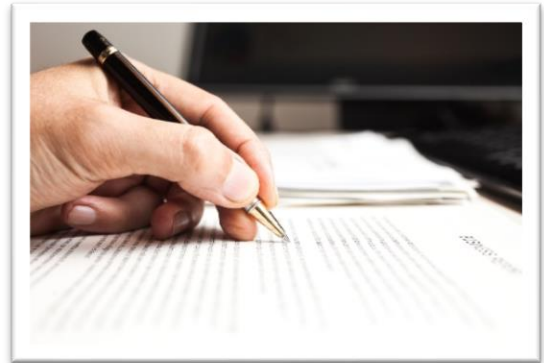
#### 1.2. Municipal areas affected by mining

- 1.2.1 Certain municipalities include areas where mining has been ongoing for different periods of time (also prior to the coming into effect of SPLUMA and, by implication, prior to the coming into effect of any LUS contemplated in SPLUMA).
- 1.2.2 Under the prior dispensation regulated by provincial legislation including, inter alia, the Town Planning and Townships Ordinance, 1986 (Ordinance 15 of 1986) of the former Transvaal province, municipalities were often prohibited from preparing town planning schemes in respect of land affected by mining. Alternatively, in certain of the old order town planning schemes, such schemes included general exemptions which had the effect of sanctioning the ongoing use of land within the scheme area for mining, where such mining had been legally sanctioned by legislation regulating mining. Often, the statutory zoning of the affected land used for mining, remained zoned for different purposes (for example “Agriculture”).



1.2.3 Where a municipal area is either affected by existing ongoing mining operations (as on the date of the coming into effect of a new land use scheme as contemplated in SPLUMA) alternatively, where such municipality may be confronted with the prospect of new mining operations having to commence post the coming into effect of a land use scheme, the provisions of the land use scheme must, by extension, be capable of accommodating the mining operations (to be regulated as a land use category) in a manner which requires to be consistent with the regulatory provisions imposed by the DMR in terms of the provisions of the MPRDA.

1.2.4 This Addendum therefore serves the purpose of providing guidelines to assist municipalities to incrementally introduce the statutory provisions of a new land use scheme with a view to properly regulating the use of land for mining (either existing or proposed) in a manner which shall not offend the provisions of the MPRDA.



## CHAPTER 2: PURPOSE AND OBJECTIVES OF THIS ADDENDUM

### 2.1 The nature of mining rights and permits in terms of the MPRDA

- 2.1.1 Mining rights and mining operations have unique characteristics that may not accord with traditional land use planning concepts. Many land-based activities associated with mining may be carried out in more than one location, based on land use suitability and other factors. Mining is, in the main, only possible where the mineral resource is found.
- 2.1.2 The special attributes of mining, as a land use typology, have in the past been recognised with specific exemptions and exclusions in various national and provincial legislative instruments dealing with land use planning, land use management and land development.
- 2.1.3 Currently mining is regulated, in part, by the provisions of the MPRDA ) which, restricts the geographical extent of the mining right or mining permit (underground and at surface) by reference to a Mining Right Plan whilst, simultaneously, restricting the term of validity of the mining right or mining permit to a finite period of time.
- 2.1.4 When the mining right or permit is issued in terms of the MPRDA, the DMR identifies one or more properties (usually registered farm portions) in the mining right or mining permit as being the land affected by such mining right or permit. This mining area is denoted on a Mining Right Plan, with reference to point-to-point description *viz a viz* a number of predetermined co-ordinates confirmed by a land surveyor.



2.1.5 It is against this background and the fact that mining is limited with regard to its geographical extent on the Mining Right Plan and with regard to the limited duration of the period of mining activities that the granting of a land use right in terms of a LUS must be considered. These somewhat unique characteristics of a mining right or permit in terms of the MPRDA may impact substantially on the manner in which a municipality may be required to regulate the use of land for mining in terms of the LUS. These matters are more fully traversed hereunder.

## 2.2 Old order mining/mineral rights and land use era versus the MPRDA/SPLUMA era

2.2.1 Prior to the implementation of the concept of wall to wall municipalities in terms of the Local Government: Municipal Structures Act 117 of 1998, not all land formed part of municipal areas and the large expanses of land on which mining was conducted fell outside the scope of municipal town planning/land use schemes. Certain pre-1994 planning legislation excluded land on which mining was conducted in consequence of which town planning schemes (now LUS ) generally did not cover mining and planning authorisations were generally not required for mining.

2.2.2 In December 2000, the local government elections completed the local government transitional processes to a democratic dispensation and so-called wall-to-wall municipal areas came into being. With the inclusion of all land in municipal areas of jurisdiction, some municipalities commenced with the inclusion in their land use schemes land that was subject to mining, and provided for such land in a variety of ways<sup>4</sup>. In a number of instances, the land on which mining was carried out was however not correctly dealt with e.g. it was zoned by default as agricultural land, without taking cognisance of the existing legal use thereof for mining purposes. In other municipalities the LUS granted blanket exemptions with regard to the use of land for mining.

2.2.3 The judgment in *Maccsand (Pty) Ltd v City of Cape Town and Others* 2012 (4) SA 181 (CC) also gave rise to some confusion.

2.2.3.1 The Court dealt with the interplay between the MPRDA and the Land Use Planning Ordinance 15 of 1985 of the former Cape Province (LUPO) and concluded that municipal planning is a functional area allocated in the Constitution to local government; that municipal planning does not constitute an impermissible intrusion into the area of mining which is an exclusive competence of the national sphere of government; and that the provincial ordinance therefor applies to land used for mining.



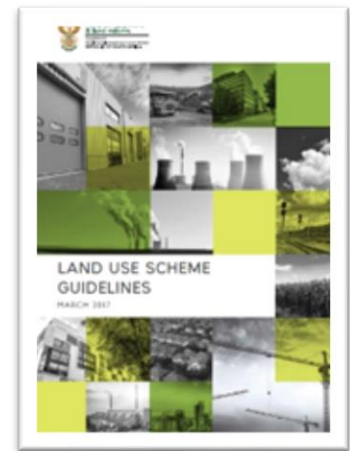
<sup>4</sup> The validity of such schemes would in each instance have to be assessed, as it may have been promulgated in contravention of e.g. section 21 of the Town Planning and Townships Ordinance 1986 (Transvaal).

- 2.2.3.2 The judgment has however frequently been misconstrued as if the provisions of LUPO that require a land use authorisation for the use of land for mining purposes, would apply countrywide, whereas LUPO only found application in the area of the former Cape Province. The different legislative frameworks of the respective provinces had different legislative frameworks, provisions and requirements regarding land used for mining. The specifically applicable legislation, as well as existing LUS , had to be considered in the determination of the land use status of and the regulatory requirements for land used for mining purposes.
- 2.2.4 With the coming into effect of SPLUMA , municipalities are now required to adopt wall to wall municipal-wide land use schemes to cover their entire municipal areas, including land used for mining.
- 2.2.5 Section 24(2)(a) of SPLUMA confirms that a land use scheme “must include appropriate categories of land use zoning”. Such categories should take cognisance of the range of rights held by mining entities, its relationship with other possible land uses, processes for the accommodation of the interests of landowners and right-holders, and the standing of each in view of section 45 of SPLUMA.
- 2.2.6 Of importance to this exercise are certain provisions of section 24 of SPLUMA which provide:
- 2.2.6.1 in subsection (2)(c) that:
- “A land use scheme adopted in terms of subsection (1) must—  
(c) include provisions that permit the incremental introduction of land use management and regulation in ... areas not previously subject to a land use scheme;”*
- 2.2.6.2 in subsection (3)(b) that:
- “(3) A land use scheme may include provisions relating to—  
(b) specific requirements regarding any special zones identified to address the development priorities of the municipality;”*
- 2.2.7 Section 24 of SPLUMA accordingly provides the legislative space for the development of appropriate categories of land use zoning and processes to meet the unique characteristics of land used for mining.
- 2.2.8 Further, prior to the enactment of the MPRDA in 2004, the dispensation pertaining to mining was predicated on, *inter alia*, the concept of mineral rights as a real right, capable of being divorced from the registered ownership of land (on which the mineral resource was situated). For the purposes of preparing a new LUS in terms of SPLUMA, and to address the new dispensation under the provisions of the MPRDA, the most important aspect to take into consideration is the fact that the principle of “mineral rights” and the private ownership thereof is no more. As a result, the mineral resources are the common heritage of the people of South Africa with the State as custodian thereof who controls it as more fully described in the MPRDA.
- 2.2.9 The MPRDA provided for transitional measures in its Schedule II, to ensure the security of tenure and continuation of prospecting and mining operations conducted at that time, and to give the holders of the old order rights an opportunity to comply with the MPRDA. The holders of the rights were afforded the opportunity to convert their old order mining leases, mynpachten, consents to mine, permissions to mine, claim licenses, mining authorisations and similar rights, to mining rights in terms of the MPRDA.



## 2.3 Existing lawful pre LUS mining

- 2.3.1 Historically, a number of legislative instruments provided for exemptions relating to land uses for mining. See in this regard Part 3 of the Reference Document hereto. Many pre-1994 planning legislation excluded land on which mining was conducted in consequence of which town planning schemes (now LUS ) did not generally cover most mining areas . Furthermore, planning authorisations were generally not required for mining.
- 2.3.2 Provision was also made for the continuation of lawful existing mining not in conformity with LUS . SPLUMA further contains a savings provision in section 26(3) that legitimises the continued lawfulness of current lawful mining land uses until a LUS is adopted in terms of SPLUMA.
- 2.3.3 A large number of mining operations therefore constitute lawful pre-scheme uses and need to be appropriately accommodated in the LUS in terms of SPLUMA.
- 2.3.4 Several municipalities are currently consolidating and extending current LUS or developing new schemes without the benefit of a sector-specific set of parameters for land used for mining . As a result of limited capacity within the planning industry, both in public and private sector, to adequately factor mining industry concerns into such schemes under development, such new SPLUMA-compliant schemes may unwittingly render current mining operations unlawful, unless special consideration is had to the characteristics of mining.
- 2.3.5 Returning to the 2017 Guidelines published by the DRDLR , it is important to take note of the following excerpt from Chapter 8.3.2 of such Guidelines which reads as follows:



*“• Many municipalities now include areas where mining activities have been exercised legally for many years. SPLUMA requires the development of land use schemes that cover the entire area (sic) of jurisdiction of these municipalities – therefore mining has to be accommodated in some form or other. Municipalities cannot “force” existing legal mines to “re-zone”.*

*• “Mining” is not necessarily a zoning that one could typically find in a land use scheme. Instead, mining use resorted under a general exemption, a general exclusion, an existing use exemption, some form of industrial zoning, or as a consent use right under agriculture. Due to mining being excluded from schemes in the past, very few municipalities have included zonings or use zones that can accommodate the complexity of this type of land use.”*

- 2.3.6 It is against this background that this Addendum has been prepared and, as will become clear from further paragraphs hereof, municipalities will typically be expected to:
- accommodate in the LUS existing lawful mining operations which were ongoing upon the date of coming into effect of a new LUS ; and
  - provide for specific provisions in the new LUS to respond appropriately to new land development applications seeking authorisation in terms of the LUS to sanction the use of land for new mining operations as may be granted in terms of the MPRDA.

## 2.4 What the Addendum aims to achieve

- 2.4.1 Security of tenure and the uninterrupted continuation thereof are important factors in decisions to invest in mining ventures. Section 2(g) of the MPRDA lists it as an objective to

provide for security of tenure. Ill-considered land use provisions can affect the security of tenure of mining land.

2.4.2 The legal nature of the various rights pertaining to mining has implications for the conceptualisation and characterisation of land use rights regulated by a LUS . This is so because of the multi-faceted and concurrent nature of the rights and authorisations that may be granted in relation to mining. The interplay of private and public law concepts, especially in their historical evolution and as shaped by legislative developments, make a case that LUS must confront and recognise the characteristics of mining, and the effect thereof on the regulation of the use of land.

2.4.3 Since the exercise of property rights is managed through “zoning” as indicative of what land use may be exercised on a property, the complexities of mining (taking cognisance of the mining right area, surface operations, underground activities, ancillary activities, prospective activities in mining right area, etc) must be adequately factored into land use scheme provisions. It is important that mining



industry sector-specific guidelines should provide municipalities, the mining industry and other role-players with a set of coherent provisions and procedures to ensure the implementation of SPLUMA compliant land use schemes in a manner appropriate to the legislative and operational framework for mining and the due compliance with SPLUMA and the relevant municipal by-laws by the mining industry.

2.4.4 Land use schemes should:

- take cognisance of the special attributes of mining as a land use typology and address such unique characteristics in the scheme provisions;
- provide suitable transitional provisions for existing legal pre-scheme uses for mining purposes;
- adhere to the legal requirements and reflect the spirit of relevant legislation; and
- provide in respect of land used for mining for appropriate tools and systems, in order to achieve coordinated, harmonious and sustainable development, to promote economic growth, to protect natural resources, to promote certainty of land use and to protect property values and investor confidence.



2.5 The main objectives of this Addendum are to:

- 2.5.1 define the conditions and processes that may be applied by municipalities to confirm the lawfulness of existing mining operations on land they occupy, in terms of section 26(3) of SPLUMA and to provide appropriately for such mining, and
- 2.5.2 develop a set of land use guidelines applicable to the land use management of land intended to be used for mining (i.e. by new land development applications).

2.6 The Addendum aims to:

- 2.6.1 provide clarity on a number of aspects peculiar to mining and the properties on which mining takes place;
- 2.6.2 provide tools to facilitate land use development in mining areas so as to enable land use regulators, the mining industry and other stakeholders to have clear, coherent and easily accessible standards to adhere to;
- 2.6.3 inform land development measures and processes regulated in terms of Chapter 6 of SPLUMA;
- 2.6.4 ensure the recognition of legal pre-scheme mining land use, appropriate implementation and regularising of existing operations under SPLUMA and such transitional provisions as may be required;
- 2.6.5 provide for alignment of and/or concurrent processes and recommend how to ensure appropriate implementation of SPLUMA and achieve compliance;
- 2.6.6 increase transparency and consistency in land use decisions affecting mining, promote public access to relevant information, improved understanding of land use regulations relevant to different mining activities, as well as recognising the benefits of multiple land uses within a mining area ;
- 2.6.7 instil shared commitment by government, mining industry and the public to the nature of mining as a land use typology, including multiple and sequential land use categories; and
- 2.6.8 minimise incidences of conflict over land use by improved ability to recognise differing needs and benefits to all stakeholders early.

## CHAPTER 3:

# RECOGNITION OF EXISTING LAWFUL PRE-LUS USE FOR MINING

### 3.1 PROVISIONS IN NEW LUS FOR EXISTING MINING USE

- 3.1.1 As provided for in SPLUMA, all municipalities are obliged to prepare and adopt LUS for their areas of jurisdiction and such LUS may include land lawfully used for an existing mining operation which was ongoing as on date of the adoption of the new LUS .
- 3.1.2 In the aforesaid instance, the municipality shall typically give notice of its intention to prepare and adopt the new LUS in terms of SPLUMA and, in so doing, invite interested and affected parties (including the holder of an existing mining right or mining permit) to participate by informing the municipality of the existing lawful use of the land for mining purposes. This will be with a view to having the existing lawful use for mining purposes accommodated within the provisions of the new LUS when such scheme comes into operation.
- 3.1.3 Upon the affected holder of the mining right or mining permit responding to the notice of the municipality as aforesaid, the municipality may collect the relevant information pertaining to the mining right or mining permit, its geographical extent, term of validity, the lawfulness of the pre-scheme use, and, in turn, insert the relevant information in the new LUS so as to accommodate the ongoing mining operation in an appropriate manner.
- 3.1.4 For the aforesaid purposes, the municipality may elect to bring about a permanent land use zoning category to sanction mining, alternatively to employ the mechanism of a temporary consent as described in following chapters which consent may be linked to the term of validity of the mining right or mining permit as issued in terms of the MPRDA.
- 3.1.5 On a basis similar to what has been described in Chapters 7 and 8, the municipality may elect to denote on the land use scheme map the fact that the affected property may be subject to a land use right sanctioning the ongoing use thereof for mining (either with regard to the aforesaid consent or a land use zoning). Also, upon expiry of the mining right and the closure of the mine, the municipality may retain a special denotation on its LUS scheme map to draw attention to the occurrence of shallow undermining which may be relevant to the affected portion of land. This will serve to inform the public so as to take the potential implications thereof into consideration.



### 3.2 EXISTING LAWFUL PRE SCHEME MINING LAND USE

- 3.2.1 Historically, a number of legislative instruments provided for exemptions relating to land use for mining purposes. Many pre-1994 planning legislation excluded land on which mining was conducted in consequence of which town planning schemes (now land use schemes) did not generally cover most mining areas. Furthermore, planning authorisations were generally not required for mining. Provision was also made for the continuation of lawful existing uses not in conformity with land-use schemes. This is fully discussed in Part 3 of the Reference Document hereto attached.

- 3.2.2 In the past municipalities dealt in different ways with land used for mining purposes and the exemptions and exceptions that applied to such use.
- 3.2.3 Depending on the date of the coming into effect of a LUS, there may be instances where land that at time was lawfully used for mining, was later incorporated into the ambit of the LUS. Those new LUS typically included some form of transitional arrangement with regard to acknowledging the existing lawful mining uses, alternatively to exempt the effective land portions from the provisions of the new scheme (where such new scheme militated against the use of land for mining on the affected land portion). In other instances the zoning of such land as provided for in the LUS correctly permitted the use of the land for mining purposes. As a result, the ongoing lawful mining operations on the affected land were considered to be compliant with the old order town planning scheme on date of the coming into effect of the new LUS in terms of SPLUMA.
- 3.2.4 Yet, in other instances the zoning of such land ignored the use of the land for mining purposes, without even providing for an exemption of the land from the provisions of the new scheme. In other examples, old order planning schemes may have been relevant to only parts of the municipal jurisdiction and may not have included the properties on which the existing lawful mining operations were ongoing at the time.
- 3.2.5 Cognisance must be taken of the large number of mining operations that constitute lawful pre-scheme uses and which need to be appropriately accommodated in the LUS in terms of SPLUMA.



### 3.3 CORRECTING AN EXISTING LAND USE SCHEME TO ACCOMMODATE LEGAL PRE SCHEME USE FOR MINING PURPOSES

- 3.3.1 Once a new land use scheme is adopted by the municipality and once the scheme has come into effect, circumstances may arise where the holder of a mining right or mining permit (which may have lawfully existed prior to the coming into effect of the land use scheme) may approach the municipality to have such existing lawful use for mining purposes accommodated within the LUS provisions.
- 3.3.2 For such purpose, it may be prudent for the municipality to consider inserting in its LUS a general provision which shall enable a pre-existing legal use of land for mining purposes, to be officially acknowledged and incorporated into the LUS (even post the coming into operation of the scheme).
- 3.3.3 In the above regard it may be prudent for the municipality to allow for an appropriate “window of opportunity” for the holder of any such mining right or mining permit to approach the municipality to have the LUS updated by incorporating the relevant provisions to sanction the mining operation. In other words, such amendment of the scheme (or the correction thereof) shall be of a technical nature and shall not trigger any further requirement to again attend to some form of public participation in the process of accommodating the legal pre-scheme use for purposes of mining.

- 3.3.4 The municipality may consider to insert the following wording as a general clause in the LUS for the aforesaid purposes:

***“Accommodating an existing lawful mining right or mining permit***

*For a period of 24 months from the date of the coming into effect of this land use scheme, a holder of a valid mining right or mining permit issued in terms of the MPRDA on any date prior to the date of the coming into effect of the land use scheme, may approach the municipality in writing to have the existing lawful use for mining accommodated within the land use scheme by the sanctioning of the use for mining on the affected property. Upon the municipality receiving the aforesaid notification, and upon the municipality being satisfied that the use of the land for mining lawfully existed prior to the coming into effect of the land use scheme, the municipality shall correct the land use scheme by inserting therein the relevant information to sanction the ongoing use of the affected property for mining , subject to such conditions as may be relevant.”*

## CHAPTER 4:

# RESPECTIVE HOLDERS OF RIGHTS PERTAINING TO LAND

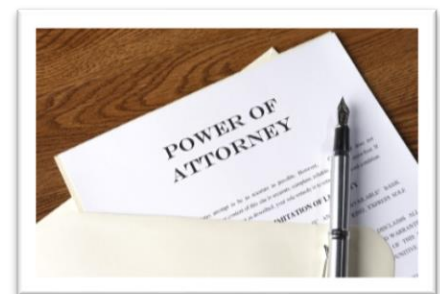
### 4.1 Land Development Applicant

4.1.1 In Section 45 of SPLUMA, the identity of a land development applicant as described alludes to a number of sub-categories. For the purposes of land use management contemplated in a LUS as relating to mining property, there are mainly two categories of *bona fide* land development applicants as provided for in SPLUMA namely:

- the registered owner of land (as defined in) or any authorised agent acting for such owner as per Section 45(1)(a) and (b) of SPLUMA; and
- a person to whom the land concerned has been made available for development in writing by an organ of state or such person's duly authorised agent, as per Section 45(1)(c) of SPLUMA.

4.1.2 Notwithstanding the provisions of SPLUMA, it transpires that a number of LUS prepared by municipalities post the coming into effect of SPLUMA and, more particularly, the provisions of enacted municipal by-laws on spatial planning and land use management matters, generally only recognize the registered owner of the immovable property as described in the title deed thereof to be a valid land development applicant.

4.1.3 It often occurs that the holder of a mining right or mining permit contemplated in the MPRDA is not the registered land owner. Also, the land owner is often unlikely to appoint the holder of the mining right as his/her agent contemplated in Section 45(1)(b) of SPLUMA. It follows that, under such circumstances, the holder of the mining right may potentially be precluded from applying to a municipality to acquire land use rights to sanction the mining in terms of the LUS.



4.1.4 This is legally untenable and it requires of the affected municipalities to adhere to Sections 45(1)(a) and (c) of SPLUMA and to acknowledge the holder of the mining right as a valid land development applicant.

4.1.5 A proper analysis of section 45(1)(a) with reference to the definitions in SPLUMA indicates that:

4.1.5.1 Section 1(1) of SPLUMA defines 'owner' as "the person registered in a deeds registry as the owner of land, or who is the beneficial owner in law."

4.1.5.2 The recognised deeds registries in South Africa are:

- The Deeds Offices established in terms of s1(1) of the Deeds Registries Act 47 of 1937; and
- The Mineral and Petroleum Titles Registration Office established in terms of s2(1) of the Mining Titles Registration Act 16 of 1967 (as amended), being the office for the registration of all mineral and petroleum titles and all other related rights, deeds and documents.

4.1.6 Land is defined in section 1(1) of SPLUMA to mean "any erf, agricultural holding or farm portion, and includes any improvement or building on the land and any real right in land." [Emphasis added]

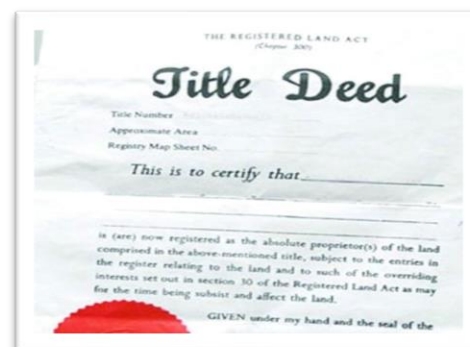
- 4.1.7 Real rights in land could typically be registered servitudes, usufructs, mortgages, or long leases. As discussed in prior chapters hereof, a registered prospecting right or mining right also constitutes a real right, not only to the mineral but also to the land to which the right pertains.
- 4.1.8 The holder of a registered mining right, being the “owner” of ‘land” as defined in SPLUMA, can therefore also lodge a land development application to the municipality in terms of section 45(1)(a) of SPLUMA.
- 4.1.9 Further, a person to whom the land concerned has been made available for development in writing by an organ of state, can also in terms of section 45(1)(c) of SPLUMA submit a land development application.
- 4.1.9.1 The “development” of land must be interpreted in accordance with the definition of “land development” in section 1(1) of SPLUMA, and would entail the erection of buildings or structures on land, the change of use of land, or any deviation from the land use permitted in terms of the applicable LUS .
- 4.1.9.2 In terms of sections 5 and 27 of the MPRDA the holder of a mining right or mining permit, is granted the right to enter onto the land to which the right relates and to build, construct and lay down buildings and infrastructure as may be required for purposes of prospecting or mining. The grant of a mining right or mining permit therefor effectively means that the land has been made available to the holder of such right for development by the DMR , being an organ of state.
- 4.1.10 The holder of a mining right or mining permit, being a person to whom the land concerned has been made available for development in writing by an organ of state, can therefore as from the effective date of the right or permit (being the date on which the permit was issued or the right executed) also submit a land development application to the municipality in terms of section 45(1)(c) of SPLUMA. In this instance the registration of the mining right will not be required to qualify the holder of the mining right as a land development applicant.
- 4.1.11 A land development application can however only pertain to the area subject to the real right concerned or the area made available for development and not exceed it. An application by the holder of a mining right or mining permit for land use rights to sanction the use of land for mining can accordingly merely pertain to the area of the mining right or mining permit and not to those parts of the immovable property that are not subject to the mining right or mining permit.
- 4.1.12 Similarly, a land development application by the registered owner of the immovable property cannot pertain to the area of his property that is subject to a mining right as he is not the “owner” of the real right that constitutes the “land”. In the instance that he wishes to bring a land development application that affects the mining right area, the consent of the holder of the mining right would be required. In addition, the consent of the Minister of Mineral Resources and Energy would be required in terms of section 53 of the MPRDA, relating the intended use of the surface of land in a manner which may be considered to be contrary the objects of the MPRDA or which use is likely to impede any of the objects of the MPRDA. The provisions of section 54 relating to the payment of compensation in certain circumstances to the owner or lawful occupier of the immovable property, would deal with any loss and damages suffered by the owner or lawful occupier.

## 4.2 Holder of right and owner of land

- 4.2.1 Section 5(1) of the MPRDA provides that a prospecting right or mining right granted in terms of the MPRDA and registered in terms of the Mining Titles Registration Act 16 of 1967, is a limited real right in respect of the mineral and of the land to which such right relates.



4.2.2 Section 5(3) of the MPRDA provides that the holder of a prospecting right or mining right may enter the land to which such right relates together with his employees and bring onto that land any plant, machinery or equipment and build, construct or lay down any surface, underground or undersea infrastructure which may be required for the purpose of prospecting or mining, as the case may be. Section 27(7) of the MPRDA makes similar provisions in respect of the holder of a mining right permit. The MPRDA makes a distinction between the “holder” of a prospecting right, mining right or mining permit and the “owner” of the land upon which mining will take place. The real rights afforded to the holder of the right to respectively the minerals and the land are thus separated from the landownership, and are held under separate title even in instances where the mining rights and landownership vest in one person. Both owners (the owner of the right and the owner of the land) are concurrently but differently affected by the land use rights granted in terms of a LUS.



4.2.3 The land owner holds the bare dominium to the land subject to the mining right and has no financial interest in the minerals, the use of the land for mining purposes or any improvements made by the holder of the mining right. The buildings on the surface of land used for mining purposes do not attach to the land as it normally does, but are attached to the mining right and would usually stand to be demolished at the end of life of mine.

4.2.4 Insofar as the holder of the right is concerned, the foundation for the holder’s rights of access and use of the land lies in sections 5(3) and 27(7) of the MPRDA read with common law rights and remedies<sup>5</sup>. The holder of the rights can however not simply ignore the rights of the owner or lawful occupier of the land. Section 54 of the MPRDA provides amongst others for consultation and processes to determine loss or damage suffered by the owner of the land and the payment of compensation for such loss or damage.



### 4.3 Potential areas of conflicting interests

4.3.1 An owner of land typically wishes to pursue the use of his/her land in accordance with land use rights that would make such use possible. Similarly, the holder of the mining right wishes to pursue the exercise of its mining right in accordance with land use rights that would make the exercise thereof possible.

4.3.2 The aforesaid is especially relevant in the instance where land is only partially burdened by a mining right and the owner of the remainder of the land wishes to use it for alternative purposes (e.g. agriculture or industry).

4.3.3 There may also be instances where land is burdened by a mining right but the surface use thereof for agricultural purposes is not affected by the underground mining activities. Should the zoning of the land merely provide for the use thereof for mining, alternatively only for the use thereof for agricultural purposes, the interests of both parties have not been taken into account.

4.3.4 These potentially conflicting interests have to be accommodated with appropriate provisions in the land-use scheme that enable both parties to lawfully pursue the use of their respective properties and rights.

<sup>5</sup> Dale et al *South African Mineral and Petroleum Law* Issue 24 Par 338. at MPRDA-468

## CHAPTER 5:

# SPATIAL DEVELOPMENT FRAMEWORK AND LAND USED FOR MINING

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### 5.1 WHERE TO MINE – OR NOT

- 5.1.1 Given that the use of land for mining is inherently source dependent, the responsible municipality will typically not be in a position to “predetermine” where mining should occur. This remains to be determined by the DMR which, in turn, is informed by the available mineral resource and its locality.
- 5.1.2 As a result, the SDF of a municipality (which must be given effect to in terms of the LUS) can hardly be expected to predetermine where mining should occur (from a geographical perspective). It follows that a LUS and a SDF should preferably incorporate special provisions talking to the use of land for mining, without attempting to be specific with regard to spatial planning considerations.
- 5.1.3 Where justified, a municipality may adopt guidelines as part of the SDF to prohibit the use of land for incompatible purposes (which may include mining) in say an environmentally sensitive area or land reserved for conservation purposes. Similarly, the SEF can contain measures to prevent incompatible land use in the vicinity of an existing mining operation.

### 5.2 SPATIAL DEVELOPMENT FRAMEWORK: SAVINGS CLAUSE

- 5.2.2 In accordance with Section 22(2) of SPLUMA which provides for departures from the SDF guidelines, where justified, by taking site specific circumstances into consideration, a LUS and a SDF should preferably recognise the relevance of the provisions of Section 22(2) in respect of the use of land for mining, without attempting to be specific with regard to spatial planning considerations.
- 5.2.3 With reference to the SDF, a municipality might incorporate the following:

***“Land used for mining.***

*Notwithstanding any guidelines contained in this spatial development framework to the contrary, it is recognised that the location of mineral resources constitutes site specific circumstances that could in accordance with Section 22(2) of SPLUMA justify a departure from the SDF, to permit the use of land for mining. This is premised on the reality that mining can only occur where the mineral resource is present, notwithstanding any SDF guidelines to the contrary.”*

### 5.3 PROSPECTING

- 5.3.1 When considering the nature and scope of prospecting, which is the temporary search for the presence of a mineral and the determination of the quality and quantity thereof, it follows that prospecting would not necessarily constitute a change in land use that warrants to be regulated in terms of a LUS or require land use authorisation.
- 5.3.2 Cognisance can also be taken of the provisions of section 30(3) of SPLUMA that provides that municipalities may regard an authorisation in terms of any other legislation that meets all the requirements set out in SPLUMA or in provincial legislation, as an authorisation in terms of SPLUMA. The grant of a prospecting right and the environmental authorisation may therefore be regarded by the municipality to constitute an authorisation in terms of SPLUMA.

# CHAPTER 6:

## PUNITIVE MEASURES

### 6.1 LEGAL ACTION AGAINST LAND OWNER

- 6.1.1 In certain LUS and prior town planning schemes, the owner of land, within the scheme area, remains primarily responsible to ensure that the use of the land accords with the provisions of the LUS.
- 6.1.2 Most LUS include certain punitive measures which may be imposed by the municipality in the event that land is used for purposes contrary the provisions of the LUS. This is generally based on the premise that the owner of the relevant property (as per the title deed) is in full control of the property.
- 6.1.3 In the case of land used for mining and where the holder of the mining right or permit is not the land owner, the provisions of the LUS (with regard to punitive measures) should be tailored in a manner which is also capable of responding to such circumstances.



### 6.2 SAVINGS CLAUSE IN RESPECT OF HOLDER OF MINING RIGHT OR MINING PERMIT

- 6.2.1 A municipality might insert in its LUS a provision which relates to the circumstance where the holder of the mining right or permit who is not the owner of the immovable property, uses the immovable property to which the mining right or permit applies for purposes contrary the provisions of the scheme. In such an instance, the responsible party, who may be taken to task by the municipality, will indeed not be the owner of the immovable property, but the holder of the mining right or permit (as the case may be).
- 6.2.2 The following suggested wording may be considered by a municipality to be inserted in the LUS so as to provide for these circumstances:

***“Municipality’s right to act against holder of mining right or mining permit***

*Notwithstanding provisions to the contrary contained in this scheme, nothing herein shall prohibit the municipality from taking steps against the holder of a mining right or mining permit where such holder is not the registered owner of the immovable property on which mining is being conducted and where the use of the land by the holder of the mining right or mining permit may be found to be in non-compliance with the provisions of the land use scheme.”*

## CHAPTER 7:

# TEMPORARY CONSENT IN TERMS OF LUS

## 7.1 WRITTEN CONSENT

- 7.1.1 The municipality may choose to sanction the use of the affected land for mining purposes by way of written consent in terms of the LUS or by means of a rezoning of the land, depending on the circumstances.
- 7.1.2 To enable a municipality to sanction the use of the affected land for mining purposes by way of written consent, the LUS may contain a general provision which confirms that, notwithstanding anything contained in the scheme to the contrary, any land which forms the subject of a lawful mining right or mining permit may be granted consent for the use thereof for mining.
- 7.1.3 The consent will typically attach to the property which forms or stands to form the subject of the mining right or mining permit and will be valid for the same period of validity as would be relevant to the mining right or mining permit.
- 7.1.4 In the instance where the application for a mining right has been submitted, but not yet approved, it may be feasible for the municipality upon the grant of the application to impose a condition that makes the change in land use subject to the grant of the mining right.



## 7.2 FACTORS INFORMING DECISION TO GRANT A CONSENT INSTEAD OF REZONING

- 7.2.1 Various factors need to be taken into account by a municipality to determine whether a consent would be the appropriate manner to authorise the use of land for mining.
- 7.2.2 Cognisance must also be taken of the fact that mining rights often cover multiple properties owned by different persons. Not all the properties might be subject to surface mining activities, or subject to the same impacts as the other cadastral units or will be capable of being used for the same land use purpose after mining has ended. Accordingly, it may be feasible for a municipality to rezone certain properties under a mining right, whilst granting a consent in respect of the other properties subject to the same mining right.
- 7.2.2 The following factors may inform a municipality to grant a consent instead of the rezoning of the affected land:
- 7.2.2.1 Mining Permit:  
A mining permit is of short duration and with a small footprint that would seldom cover the full extent of a cadastral unit. A consent would be appropriate in the instances of mining by virtue of a mining permit.
- 7.2.2.2 Short Duration of the mining activities:  
In the instance where the duration of the mining activities will be for a relatively short period, it may be appropriate to grant a consent.
- 7.2.2.3 Limited surface footprint of mining activities on cadastral unit:  
Where the surface mining activities will only pertain to a small area of a cadastral unit and the rest of the cadastral unit is used for and will continue to be used for alternative purposes, such as agriculture, a consent could be preferable. However,

this can also be addressed through a provision in the LUS that provides for 'split zonings' on a single cadastral unit.

#### 7.22.4 Ownership of the land:

In the instance where the owner of the land is not the holder of the mining right, the grant of a consent instead of rezoning would after the mining right has lapsed not place the burden on the landowner to apply for a rezoning (in which instance the holder of the mining right would no longer have any standing to apply for a rezoning). In the instance where the proposed mining activities will be on land zoned for agricultural purposes and the mining use zone in the municipality's LUS land use tables provides for the land to be freely used for mining and agriculture, a rezoning would of course not be necessary when the mining right lapses.

#### 7.2.2.5 Underground mining:

In the instance of underground mining, a substantial number of cadastral units may be affected by the mining right, although no substantial surface mining activities of any nature is anticipated to take place on the surface of such cadastral units. In such an instance a consent use could be appropriate in respect of the land where surface mining activities of a minor nature occurs.

#### 7.2.2.6 Land use after closure of mine:

Where the closure plan forming part of the EMP of the mining operation indicates that the land is to be rehabilitated to a state that will enable it to be used for purposes similar to its use prior to the commencement of the mining activities, a consent use could be appropriate.

### 7.3 LEVYING OF CHARGES

7.3.1 The municipality will retain the right to levy whatever development charges (bulk services contributions) may be justified with regard to the land which forms the subject of the temporary consent as would be similar to the permanent zoning of the land.



7.3.2 In granting the consent, the municipality will enjoy the same authority to impose whatever conditions it may deem expedient with regard to the use of the land for mining on a basis similar to imposing zoning conditions.

### 7.4 INDICATION ON SCHEME MAP

7.4.1 The LUS maps may be endorsed accordingly to draw attention to the fact that the property in question is used for mining (by consent), alternatively the mechanism of a special overlay zone may be used (as contemplated in SPLUMA) to properly denote the land area affected by the consent and the mining right/permit.

7.4.2 An example hereof is described more fully in Schedules 1, 2 and 3 hereof, to be considered by the municipality.

## CHAPTER 8:

# REZONING OF LAND FOR MINING

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### 8.1 ZONING AS OPPOSED TO CONSENT

In the event that the municipality so chooses, the land used or to be used for mining may be rezoned by the official amendment of the LUS provisions to such effect. In other words, the zoning sanctioning the use of the land for mining will attach to the land, irrespective of the duration of the mining activities.

### 8.2 REZONING UPON MINE CLOSURE

8.2.1 The municipality will not have the discretion to withdraw the right granted in terms of the relevant zoning as would be applicable to the alternative of granting consent.

8.2.2 Upon the termination of the mining activities it may be incumbent upon the land owner to bring about a further amendment of the LUS by again rezoning the affected property to be used for alternative purposes.

8.2.3 An example is set out in Schedules 5 and 6 hereof, for consideration by the municipality.

### 8.3 FACTORS INFORMING DECISION TO REZONE INSTEAD OF GRANTING CONSENT

8.3.1 The following factors can inform a municipality to attend to a rezoning of the affected land instead of the grant of a consent:

#### 8.3.1.1 Duration of the mining activities:

In the instance where a long life of mine is envisaged, with an extension of the initial period for which the mining right has been granted, the rezoning of the land may be appropriate. The post mine closure scenario must also be considered.

#### 8.3.1.2 Surface footprint of mining activities covering cadastral unit:

Where the surface mining activities will pertain to the whole or the greater part of a cadastral unit, the rezoning of the cadastral unit may be appropriate.

#### 8.3.1.3 Ownership of the land:

In the instance where the holder of the mining right is also the owner of the relevant land, the holder of the mining right as owner of the land will have standing to apply for rezoning after the lapse of the mining right. In this instance where the mining use zone in the municipality's LUS land use tables provides for the land to be freely used for mining and agriculture, a rezoning would of course not be necessary when the mining right lapses.

#### 8.3.1.4 Use and state of land after closure of mine:

Where the closure plan forming part of the environmental management programme for the mining operation indicates that the land is to be rehabilitated to a state or use that will be incompatible with the current zoning of the land, a consent might not be

appropriate and it will be prudent for the municipality to approve a rezoning of the relevant land.

#### 8.3.1.5 Shallow undermining:

In the instance where shallow undermining is envisaged, which would render the property inappropriate for future development, it may be prudent for the municipality to rezone such land, in order to alert all future decision makers and/or owners of the land in this regard. (A permanent notation on the LUS maps may be endorsed to draw attention to the fact that the property in question is subject to shallow undermining.)

## CHAPTER 9:

# THE POST CLOSURE USE OF MINING LAND

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### 9.1 THE HOLDER OF THE MINING RIGHT OR MINING PERMIT IS NOT THE REGISTERED OWNER OF THE LAND

- 9.1.2 Having regard to the provisions of Section 45(1)(a) and (c) of SPLUMA, the holder of the mining right or mining permit may be considered to be a *bona fide* land development applicant with a view to approaching the municipality to acquire the requisite land use rights in terms of the LUS (either by consent or rezoning).
- 9.1.2 Upon the expiry of the mining right or permit, the *locus standi* as land development applicant of the mining entity that is not the owner of the land will cease and will not permit such entity to approach the municipality to amend the provisions of a LUS to provide for another use (if required).
- 9.1.3 In other words, the land owner may become obliged (legally) to attend to the regularisation of the zoning attaching to the property in question for future non-mining land use. By example, the zoning of the land may be required to be amended, given the cessation of the mining activities and the official closure of the mine, whilst the zoning remains for “mining purposes”. The land owner may desire to use the land for its historic purpose (say for “agriculture”) and, as a result may be confronted with the responsibility of having to bring about an amendment of the LUS by rezoning from “mining” to “agriculture”. In the instance where the mining use zone in the municipality’s LUS land use tables provides for the land to be freely used for mining and agriculture, a rezoning would of course not be necessary when the mining ceases.
- 9.1.4 The provisions of Section 54 of the MPRDA that provide amongst others for the processes to determine and compensate loss or damage suffered by the owner of the land, could serve to address any potential cost of rezoning to be incurred by the land owner.

### 9.2 THE LAND OWNER IS ALSO THE HOLDER OF THE MINING RIGHT OR MINING PERMIT

- 9.2.1 Upon termination of the mining right or permit, the holder of the mining right or mining permit is the responsible party to attend to the orderly closure of the mine (including the rehabilitation of the land) as contemplated in the MPRDA and NEMA. A closure certificate, contemplated in Section 42 of the MPRDA, will herald the termination of the involvement of the mining company.
- 9.2.2 Should the use of the land after mine closure require a further amendment of the local LUS, the holder of the mining right or mining permit that has lapsed may, as land owner, approach the municipality with a view to procuring authorisation to use the affected land for purposes other than mining (either by way of procuring consent in terms of the LUS , alternatively amending the LUS by the rezoning of the affected property).<sup>6</sup>

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<sup>6</sup> See Section 45(1)(a) of SPLUMA



## CHAPTER 10:

# DATA COLLECTION RELEVANT TO A LAND DEVELOPMENT APPLICATION TO USE LAND FOR MINING

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### 10.1 DIFFERENT SCENARIOS

10.1.1 Upon a new LUS coming into effect in terms of the relevant provisions of SPLUMA, read with the local municipal by-law, the responsible municipality may be approached by mining entities seeking recognition or authorisation in terms of the LUS to sanction the use of land for mining (either existing, or proposed future operations).

10.1.2 The following scenarios may present themselves:

- **Scenario A:**  
**Existing lawful use of land for purposes of mining prior to the LUS in terms of SPLUMA coming into effect**

In this instance the responsible mining entity (the holder of the right or permit) would approach the municipality in terms of the relevant provisions of the by-law to officially recognise the lawful use of the land for mining purposes and, as a consequence, to incorporate same into the statutory provisions of the LUS to the extent that this may be required. This will typically not require to be given notice of and to invite objections and/or representations from interested and affected parties.

- **Scenario B:**  
**A mining entity seeking authorisation to sanction the use of land for a new mining operation (a land development application submitted post the coming into effect of the LUS in terms of SPLUMA) in terms of a mining right or mining permit already granted**

In this scenario the holder of the mining right/permit or the landowner may apply to the municipality in terms of the provisions of the by-law to procure authorisation in terms of the LUS for the use of the affected land for the mining operation in alignment with the authorisation granted by the DMR in terms of the MPRDA. This *de novo* land development application will require to be given notice of and to invite objections and/or representations from interested and affected parties.

- **Scenario C:**  
**A mining entity seeking authorisation to sanction the use of land for a new mining operation (a land development application submitted post the coming into effect of the LUS in terms of SPLUMA) in terms of a mining right or mining permit not yet granted but applied for**

In this scenario the landowner may apply to the municipality in terms of the provisions of the by-law to procure authorisation in terms of the LUS for the use of the affected land for the mining operation in anticipation of receiving authorisation from the DMR in terms of the MPRDA and NEMA. This *de novo* land development application will require to be given notice of and to invite objections and/or representations from interested and affected parties.

- 10.1.3 In all the scenarios, the municipality requires to be fully informed as to the proposed duration of the mining activities (including rehabilitation and closure), the geographical extent of the mining right or permit (denoted on the relevant Mining Right Plan) as well as the closure objectives and other relevant factors.
- 10.1.4 Cognisance must also be taken that an application may be lodged by the registered owner of the land before the mining right or permit has been granted. In such instance, slightly different information may be required as provided for hereunder.

## 10.2 DATA COLLECTION BY MUNICIPALITY

- 10.2.1 When approached in any of the aforesaid scenarios, the municipality should typically insist on the land development applicant providing the following:

### 10.2.1.1 Scenario A:

**A mining entity seeking to have an existing lawful use of land for purposes of a mining operation which existed prior to the LUS in terms of SPLUMA coming into effect , officially acknowledged and incorporated into the LUS**

- (i) A copy of the valid mining right or mining permit;
- (ii) In the instance that a converted mining right in terms of the transitional arrangements set out in Schedule II to the MPRDA, is dated after the coming into effect of a LUS that validly dealt with the land used for such mining purposes, a copy of the old order right in terms whereof the mining was conducted at the time of the LUS coming into effect;
- (iii) Confirmation in writing by the mining entity regarding the anticipated life of mine (including rehabilitation and closure);
- (iv) A copy of the approved Mining Right Plan submitted in terms of Regulation 2(2) of the MPRDA and attached to the mining right or mining permit, denoting the cadastral boundaries of the properties that are subject to the mining right or mining permit;
- (v) In instances where acknowledgment of a legal pre-scheme use is sought that relates to the use in terms of a surface right permit located outside the mining right area, a copy of the surface right permit together with the plan attached to the surface right permit and reflecting the area of the surface right permit;
- (vi) A copy of the mining site plan referred to in Item 1(1)(c) of Appendix 4 to the Environmental Impact Assessment Regulations, 2014 GNR.982 of 4 December 2014, which locates the mine activities at an appropriate scale, if applicable;
- (vii) Copies of the relevant title deeds and associated SG Diagrams of each component property to which the mining right, mining permit or surface right permit relates;



(viii) A copy of an official zoning certificate issued by the municipality with regard to each of the component properties which form the subject of the mining right or permit;

(ix) A resolution by the mining entity authorising the application to the municipality with regard to the acknowledgment of an existing legal pre-scheme operation;

(x) A written memorandum explaining:

- The extent of the mining area with regard to its locational context;
- The relevant provincial or national legislation and/or LUS in terms whereof the mining constituted a lawful land use prior to the LUS in terms of SPLUMA;
- The proposed wording of the written consent or zoning to be issued by the municipality in terms of the LUS or incorporated into the general provisions of the LUS upon adoption;
- The implications for the proposed consent or rezoning in terms of the LUS *viz a viz* the existing land use zoning provisions enshrined in the LUS;
- A conveyancer's report pertaining to any existing conditions of title or servitudes or other legal encumbrances and the manner in which same may be affected by the intended consent or rezoning to be granted in terms of the LUS;
- A land surveyor's certificate confirming the position and purpose and extent of any servitudes which affect the component properties which form the subject of the mining right or mining permit and the impact thereof on the intended use of the land for mining purposes;
- At the discretion of the municipality, a copy of the approved EMP and Mine Closure Plan as part thereof; and
- Where relevant, details of any shallow undermining so as to be denoted on the LUS scheme maps to inform affected parties.

(xi) Proof of payment of the prescribed application fee; and

(xii) As this will not constitute a new land development application but a recognition of an existing valid right, the aforesaid information shall place the municipality (typically the authorised official) in a position to prepare the requisite documents (either the consent form or amendment scheme) and to incorporate same into the LUS in the appropriate manner.



10.2.2.2 Scenario B:

A land development applicant seeking authorisation to sanction the use of land for a new mining operation (an application submitted post the coming into effect of the LUS in terms of SPLUMA) in respect of a mining right or mining permit already granted

- (i) A copy of the valid mining right or mining permit;
- (ii) Confirmation in writing by the land development applicant regarding the anticipated life of mine (including rehabilitation and closure) ;
- (iii) A copy of the approved Mining Right Plan in terms of Regulation 2(2) of the MPRDA denoting the cadastral boundaries of the properties which form the subject of the mining right or mining permit;
- (iv) A copy of the mining site plan referred to in Item 1(1)(c) of Appendix 4 to the Environmental Impact Assessment Regulations, 2014 GNR.982 of 4 December 2014, which locates the proposed activity or activities for at an appropriate scale;

- (v) Copies of the relevant title deeds and associated Surveyor General Diagrams of each component property to which the mining right or mining permit applies;



- (vi) A copy of an official zoning certificate issued by the municipality with regard to each of the component properties which form the subject of the mining right or permit;

- (vii) A resolution by the mining entity authorising the application to the municipality with regard to the proposed consent or rezoning in terms of the LUS;

- (viii) A written memorandum explaining the extent of the mining area with regard to:

- Its locational context;
- The implications of the proposed consent or rezoning in terms of the LUS *viz a viz* the existing land use zoning provisions enshrined in the LUS;
- A conveyancer's report pertaining to any existing conditions of title or servitudes or other legal encumbrances and the manner in which same may be affected by the intended consent or rezoning to be granted in terms of the LUS;
- A land surveyor's certificate confirming the position and purpose and extent of any servitudes which affect the component properties which form the subject of the mining right or mining permit and the impact thereof on the intended use of the land for mining purposes;

- The effect of the possible granting of the consent or zoning in terms of the LUS on the adopted guidelines enshrined in the spatial development framework of the municipality relevant to the area in which the component properties are situated;
  - The proposed wording of the written consent or zoning to be issued by the municipality in terms of the LUS;
  - At the discretion of the municipality, a copy of the approved EMP and Mine Closure Plan as part thereof; and
  - Where relevant, details of any shallow undermining so as to be denoted on the LUS scheme maps to inform affected parties.
- (ix) Written summaries by traffic, civil, electrical and geotechnical engineers describing the manner in which engineering infrastructure shall be provided with regard to the mining operation, the impact of the mining operation on the receiving environment and more particularly the engineering services networks and road networks and any proposed improvements which may be required to ameliorate the impact of the mining operation with regard thereto, including any reasonable development charge/bulk services contribution which may be levied by the municipality where relevant; and
- (x) Proof of payment of the prescribed application fee.

#### 10.2.2.3 Scenario C:

**A land development applicant seeking authorisation to sanction the use of land for a new mining operation (an application submitted post the coming into effect of the LUS in terms of SPLUMA) in respect of a mining right or mining permit not yet granted but applied for**

- (i) Proof of lodgement with the DMR of an application for a mining right or permit;
- (ii) Confirmation in writing by the land development applicant regarding the anticipated life of mine (including rehabilitation and closure);
- (iii) A copy of the Mining Right Plan lodged in terms of Regulation 2(2) of the MPRDA denoting the cadastral boundaries of the properties which form the subject of the application of the mining right or mining permit;
- (iv) A copy of the draft mining site plan submitted or to be submitted in terms of Regulation 16(1)(b)(vi) of the Environmental Impact Assessment Regulations, 2014 GNR.982 of 4 December 2014, which locates the proposed activity or activities at an appropriate scale;
- (v) Copies of the relevant title deeds and associated Surveyor General Diagrams of each component property to which the proposed mining right or mining permit applies;
- (vi) A copy of an official zoning certificate issued by the municipality with regard to each of the component properties which form the subject of the proposed mining right or permit;

- (vii) A resolution by the mining entity authorising the application to the municipality with regard to the proposed consent or rezoning in terms of the LUS;
- (viii) A written memorandum explaining the extent of the mining area with regard to:
  - Its locational context;
  - The implications of the proposed consent or rezoning in terms of the LUS *viz a viz* the existing land use zoning provisions enshrined in the LUS;
  - A conveyancer's report pertaining to any existing conditions of title or servitudes or other legal encumbrances and the manner in which same may be affected by the intended consent or rezoning to be granted in terms of the LUS;
  - A land surveyor's certificate confirming the position and purpose and extent of any servitudes which affect the component properties which form the subject of the mining right or mining permit and the impact thereof on the intended use of the land for mining purposes;
  - The effect of the possible granting of the consent or zoning in terms of the LUS on the adopted guidelines enshrined in the spatial development framework of the municipality relevant to the area in which the component properties are situated;
  - The proposed wording of the written consent or zoning to be issued by the municipality in terms of the LUS;
  - At the discretion of the municipality, a copy of the approved EMP and Mine Closure Plan as part thereof; and
  - Where relevant, details of any shallow undermining so as to be denoted on the LUS scheme maps to inform affected parties.
- (ix) Written summaries by traffic, civil, electrical and geotechnical engineers describing the manner in which engineering infrastructure shall be provided with regard to the mining operation, the impact of the mining operation on the receiving environment and more particularly the engineering services networks and road networks and any proposed improvements which may be required to ameliorate the impact of the mining operation with regard thereto, including any reasonable development charge/bulk services contribution which may be levied by the municipality where relevant; and
- (x) Proof of payment of the prescribed application fee.

10.2.3 Based on the aforesaid submissions, the municipality (typically the authorised officer) shall be placed in a position to receive and circulate a new land development application and, upon receipt of the technical comments from the various municipal divisions (and, where relevant, from external authorities and service providers), to consider and determine the application and to issue the decision with regard to the consent in terms of the LUS or the requisite rezoning, subject to whatever conditions may be relevant.

## CHAPTER 11:

# EXAMPLE: CONSENT TO USE LAND FOR MINING GRANTED BY MUNICIPALITY IN TERMS OF LUS

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### 11.1 SPLUMA PRESCRIPTS

11.1.1 Whilst each LUS may be unique to its circumstances, the basic tenets of a LUS require compliance with the provisions of SPLUMA and should typically include a provision to regulate and manage the use of land for mining (as a special case). Section 24(3)(a) of SPLUMA provides for a LUS to include provisions relating to the use and development of land with the written consent of the municipality.

11.1.2 A typical “consent use category” in the land use table may not suffice to deal with a consent to use land for mining. As an alternative to inserting the use of land for mining as a typical “consent use category” in the land use table as part of the LUS, it may be preferable to insert a specific clause in the LUS to deal with mining (as a special case). This is premised on the fact that the mining remains a unique land use category, given its temporary nature, the fact that such operation will always be source dependent and that the duration of the consent should be linked to the duration of the mining activities (including rehabilitation and closure).

11.1.3 A LUS typically includes a list of land use categories in its land use table which land uses may be sanctioned by way of consent, given that such uses are deemed to be generally compatible with the primary land use zoning (or permitted use). By example, a “Residential 1” primary use may be deemed to be compatible with:

- A place of education; or
- Place of worship; or
- Medical facility, etc.

Such uses may be sanctioned by consent, depending on site specific circumstances.

However, the same cannot generally be said

about mining. Save perhaps for “Industrial” and “Agricultural” zoning categories, few primary land use rights may be expected to be generally compatible with mining. Most mines may be expected to be situated on farm portions.

*“The use of land for a mining operation is unique given that mining, as a land use typology, is a source dependent activity and can only occur where the mineral resource occurs, notwithstanding the SDF guidelines, which may suggest differently.”*

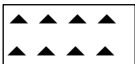
11.1.4 Hence the suggestion that “mining” should be treated as a special case and be provided for in a specific clause in the LUS.

### 11.2 SCHEDULES FOR CONSIDERATION BY MUNICIPALITY

11.2.1 Schedules 1 and 2 hereto serve as possible examples of the written consent that may be granted by a municipality in terms of its LUS, sanctioning the use of land for mining and associated purposes.

11.2.2 In Schedule 1 hereto, the proposed wording of a special clause, to be inserted as part of the LUS, is presented for consideration by the municipality and may be incorporated into the LUS (either in its present form, alternatively in an amended version thereof to suit the circumstances of the municipality). Such clause will therefore not be specific to any land use category or zoning provision but shall apply generally to any land to be used for mining, as may be sanctioned in terms of the MPRDA. The primary zoning of the affected land is

proposed to remain unchanged (typically “agricultural” or “industrial” or “undetermined” or similar).

- 11.2.3 By granting the consent for mining as set out in Schedule 2 (containing the proposed provisions of the consent and the suggested conditions under which it may be granted), the LUS is effectively extended to incorporate the temporary use of the affected land for the mining and associated purposes for a limited period of time, linked to the duration of the mining activities (including rehabilitation and closure). The consent set out as per the example of Schedule 2 therefore becomes an integral part of the LUS (for the period of the mining activities).
- 11.2.4 An important challenge in this regard is to properly denote on the LUS scheme map and document the fact that the consent for the use of land for mining purposes exists, so as to draw attention to its existence when a member of the public (an interested or affected party) enquires as to the land use rights which have been sanctioned with regard to a particular property. Also, where mining results in shallow undermining, same should be reflected on the LUS scheme maps to properly alert the public of such occurrence.
- 11.2.5 As per the example in Schedule 3 hereto, it is proposed to provide for the insertion of a symbol or abbreviation on the scheme map, confirming that the affected land portion is indeed subject to the aforesaid consent for use of land for mining. This will forewarn the reader of such circumstances and, in turn, the reader may enquire as to the content of the consent schedule, to be properly informed with regard to the extent of the land use right (for mining), its period of validity and the conditions under which it was granted. On its part the municipality is obliged in terms of Section 25(2)(c) of SPLUMA (read with the relevant section in the municipal by-law) to keep and maintain a register of all amendments to such LUS which register may typically include, under a separate section thereof, a listing of the schedules of consent granted with regard to the use of land for the purposes of mining. For similar reasons, the LUS scheme map may be amplified to draw attention to the occurrence of shallow undermining. This is illustrated on Schedule 4.
- 11.2.6 As per the examples of Schedules 3 and 4 (maps denoting the reference to mining and/or shallow undermining), the primary zoning of the affected property shall remain (say “agriculture”), whilst a symbol or abbreviation or notation is inserted on the map (within the confines of the boundaries of the affected property) to read, by example “s” for schedule. Alternatively the “s” may be amplified by reference to a schedule number which may accord with the numerical insertion in the register of amendments to the LUS (similar to the allocation of an amendment scheme number where a property is permanently rezoned). By example “S171”.
- 11.2.7 In the alternative, the municipality may elect to insert some form of symbol (by example “▲”) which may be described in the scheme clauses of the LUS and be denoted on the key on the scheme map as making reference to a schedule. The register of amendments to the LUS may confirm that it applies specifically to the use of the land for the purposes of mining. The use of the symbol “▲” may also be amplified by the addition of a numerical number to accord with the sequential insertion of the relevant schedule as part of the land use rights register. By example “▲ 171”. The use of an overlay zone, specifically denoting land subject to a consent for the use of the land for the purposes of mining, may also be employed for this purpose.
- 11.2.8 Where shallow mining occurs, the LUS scheme map may contain a further symbol or notation to draw attention thereto. By example: “▲ 171▼”. Alternatively a notation or hatching may be applied. By example 



The use of an overlay zone, specifically denoting land subject to a consent for the use of the land for the purposes of mining, may also be employed for this.

### **11.3 TERMINATION OF CONSENT**

- 11.3.1 When the mining activities have ceased and upon the DMR issuing a closure certificate as contemplated in Section 43 of the MPRDA, and in circumstances where the municipality updates or amends or reviews its LUS, such expired land use right (consent schedule) may be endorsed appropriately, confirming the lapsing of the land use right. In the alternative, such information may be removed from the register of amendments to the LUS and the symbols or denotations on the scheme map may be removed accordingly, purpose save where, in the opinion of the municipality, it remains important to reflect such information. This shall be particularly relevant where shallow undermining is applicable.
- 11.3.2 It may be prudent for the municipality to retain the information on its records (both on the scheme map and as part of the land use rights register), simply to properly inform the public record. In terms of the provisions of the MPRDA and NEMA, the holder of such right or permit must attend to the rehabilitation of the property in question and bring about the formal orderly closure of the mine. Although the mining activities have ceased, the downstream activities associated with the rehabilitation of the land and the closure of the mine may hold various consequences for the municipality and other affected parties (adjacent land owners, property developers, etc.).
- 11.3.3 It follows that, by retaining the information relevant to the former mining activities on the LUS and register of land use rights and by reflecting the required information on the scheme map, all concerned parties (the general public) shall remain properly informed with regard to such activities and, upon enquiry may procure information with regard to the implications of the aforesaid rehabilitation and mine closure from the DMR.

## CHAPTER 12:

# EXAMPLE: AMENDMENT OF LUS BY REZONING LAND FOR PURPOSES OF MINING

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### 12.1 SPECIAL ZONE AND DUAL ZONINGS


- 12.1.1 Whilst each LUS may be unique to its own circumstances, the basic tenets of a LUS require compliance with the provisions of SPLUMA and should typically include a provision to regulate and manage the use of land for mining (as a special case) in terms of the zoning provisions of the LUS. Sub-sections 24 (3) (b) and (c) of SPLUMA confirm that a LUS may include provisions relating to any special zones identified to address the development priorities of the municipality and any variation of conditions of a LUS (by the rezoning of the land in question).
- 12.1.2 As an alternative to inserting an independent land use zoning category in the land use table as part of the LUS to regulate use for mining purposes, the municipality may consider to insert a specific clause in the LUS to make provision for the rezoning of land, to sanction the use of land for mining (as a special case). This is premised on the fact that mining remains a unique land use category, given its temporary nature and the fact that such mining will always be source dependent.
- 12.1.3 Given that mining will inevitably come to an end, it may be prudent for the LUS to contain a type of “dual zoning”. In other words, the primary zoning category relevant to the affected land may remain (i.e. “Agriculture”) whilst provision may be made for mining to be sanctioned in addition to such primary zoning. This will enable unaffected parts of the affected land to be used for purposes other than mining whilst, simultaneously, also providing for the use of land to return to its former purpose when mining ends.

### 12.2 SCHEDULES FOR CONSIDERATION BY THE MUNICIPALITY

- 12.2.1 Schedules 5 and 6 hereto serve as possible examples of the wording of an amendment scheme, adopted by the municipality by the rezoning of the affected land to be used for mining in terms of the LUS.
- 12.2.2 In Schedule 5 hereto, the proposed wording of a special clause to be inserted as part of the LUS is presented for consideration by the municipality. This may be incorporated into the LUS (either in its present form, alternatively in an amended version thereof) to suit the circumstances of the municipality. Such clause will therefore not be specific to any land use zoning category or zoning provision but shall apply generally to any land to be used for mining as may be sanctioned in terms of the MPRDA.
- 12.2.3 In the example in Schedule 5, the primary zoning of the affected land shall remain unchanged (i.e. agricultural), but provision may be made for the aforesaid zoning category to be amplified to also provide for the use of the land for mining. This will effectively bring about a form of “dual zoning” where the historic and primary land use rights remain unchanged and where the amplification of the zoning provision will permit the same land to be used for mining, to accord with the mining right or mining permit as may be granted in terms of the provisions of the MPRDA.
- 12.2.4 In schedule 6 hereto the suggested wording of the zoning schedule containing the amplified land use rights (to include mining) are set out as part of the amendment scheme. This effectively amends the provisions of the LUS and becomes an integral part of the LUS.

## 12.3 LUS MAPS AND NOTATION

- 12.3.1 It is incumbent upon the municipality to properly denote, on the map of the LUS and relevant documents, the fact that the LUS has been amended by the rezoning of the land to be used for mining. This should draw attention to the existence of the amplified land use right (by rezoning) when a member of the public (an interested or affected party) enquires as to the land use rights which have been sanctioned with regard to a particular property.
- 12.3.2 As per the example in Schedules 3 and 4 hereto, it is proposed to provide for the insertion of a symbol or abbreviation on the scheme map, confirming that the affected land portion is indeed subject to the aforesaid amendment scheme providing for use for mining. In turn, this will forewarn the reader of such circumstances and, in turn, the reader may enquire as to the content of the amended LUS, to be properly informed with regard to the extent of the land use right (for mining), its period of validity and the conditions under which it was granted. On its part the municipality is obliged in terms of Section 25(1)(c) of SPLUMA (read with the relevant section in the municipal by-law) to keep and maintain a register of all amendments to such LUS.
- 12.3.3 As per the example of Schedules 3 and 4 (map denoting the reference to the use for mining), the primary zoning of the affected property shall remain (say "agriculture"), whilst a symbol or abbreviation is inserted on the map (within the confines of the boundaries of the affected property) to read, by example "s" for schedule. Alternatively the "s" may be amplified by reference to a schedule number which may accord with the numerical insertion in the register of land use rights (alternatively the allocation of an amendment scheme number where a property is permanently rezoned). By example "S171". It may be prudent to provide for a separate/unique notation for mining, given its unique characteristics and limited duration.
- 12.3.4 In the alternative, the municipality may elect to insert some form of symbol (by example "▲" which shall be described in the scheme clauses of the LUS and be denoted on the key on the scheme map as making reference to a schedule or amendment scheme, as part of the land use register and the fact that it applies specifically to the use of the land for the purposes of mining. The use of the symbol "▲" may also be amplified by the addition of a numerical number to accord with the sequential insertion of the relevant schedule as part of the land use rights register. By example "▲ 171". The use of an overlay zone, specifically denoting land subject to land use rights sanctioning mining, may also be employed for this purpose.

- 11.2.8 Where shallow mining occurs, the LUS scheme map may contain a further symbol or notation to draw attention thereto. By example: "▲ 171↓". Alternatively a notation or hatching may be applied. By example 

The use of an overlay zone, specifically denoting land subject to a consent for the use of the land for the purposes of mining, may also be employed for this.

## 12.4 TERMINATION OF MINING ACTIVITIES

- 12.4.1 When mining comes to an end, the "dual zoning" (e.g. "Agriculture and Mining") shall remain and sanction the use of the land for agricultural purposes without the request to bring about a further rezoning of the affected land
- 12.4.2 In circumstances where the municipality reviews or updates its LUS, the information pertaining to the mining activities in respect of which a closure certificate has been issued may be removed from the register of land use rights and the symbols or denotations on the scheme map may be removed accordingly.

12.4.3 Given that the municipality is dependent on information pertaining to the cessation of the mining activities, such municipality will not necessarily always be fully informed with regard thereto. To prevent difficulties of interpretation in this regard, it may be prudent for the municipality to retain the zoning record (reflecting the authorisation for mining) until the municipality is informed differently.

## CHAPTER 13:

### LAND USE SCHEME DEFINITIONS

- 13.1 Recommended definitions may be formulated and inserted in the LUS in order to ensure that the LUS is compliant with SPLUMA. It is recommended to align the LUS definitions as far as possible with the provisions of SPLUMA, the MPRDA and NEMA. This will reduce or eliminate provisions in the LUS that potentially conflict with the provisions of the aforesaid legislation.
- 13.2 Definitions should not only align with SPLUMA, but should accord with terms employed in the mining industry and MPRDA and NEMA definitions should be considered and inserted in the LUS where relevant.
- 13.3 In order not to compromise the holder of a mining right or mining permit as the applicant in a land development application, and rendering the LUS non-complaint with SPLUMA, the definition of a land development applicant in the LUS must align with and give effect to the provisions SPLUMA. This may require of the municipality to amend its by-law so as to identify a land development applicant in a manner which complies with Section 45(1) of SPLUMA.
- 13.4 In section 1 of the MPRDA, various relevant terms are defined. In order to properly regulate mining as a land use category, a LUS should therefore, as a minimum:
- Contain a definition of the MPRDA; and
  - Contain a provision indicating that defined terms in the MPRDA also apply in the scheme.
- 13.5 Definitions of the rights that may be held in terms of the MPRDA should be included in a LUS in order to properly inform the other provisions of the LUS.
- 13.6 The definitions should provide appropriately and adequately for the characteristics of mining and the ancillary activities that are inherently necessary. The definition of mining should accordingly allow exactly what is currently allowed in terms of the MPRDA, the approved mining rights and EMP in terms of NEMA. Suggested definitions of “mining” and related terms are set out in the introductory part hereof.
- 13.7 The terms and abbreviations inserted under the glossary of terms at the outset of this Addendum are those most frequently used. Where appropriate, the terms and abbreviations have been amplified by less technical explanations, in order to render the Addendum more user friendly.
- 13.8 It is recommended that a municipality should consider inserting the definitions of the followings terms in its LUS relevant to mining, as per the Glossary forming part of this Addendum:
- (i) Department of Mineral Resources (DMR)
  - (ii) Mine
  - (iii) Mining Area
  - (iv) Mining Operation
  - (v) Mining Permit
  - (vi) Mining Purpose
  - (vii) Mining Right
  - (viii) Mining Right Plan
  - (ix) Mining Site Plan
  - (x) MPRDA
  - (xi) NEMA
  - (xii) Prospecting Right

## CHAPTER 14:

# PUBLIC PARTICIPATION REQUIREMENTS AND DUPLICATION OF APPLICATION PROCESSES

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### 14.1 NOTIFICATION IN TERMS OF BY-LAW

- 14.2.1 When application is made for land use rights from the responsible municipality in terms of a LUS (in terms of SPLUMA), it is required of the land development applicant to give notice of the intention to apply for such rights.
- 14.2.2 Depending on the prescripts of the local municipal by-law or related regulating legislation, such notification typically affords an interested and affected party an opportunity to raise objections or make representations within a period of between 28 days and 30 days from date of first notice. Although this may differ from one municipality to the next, such notices typically appear in the relevant Provincial Gazette (twice) and are published in local newspapers circulating in the area in which the subject property is situated. The notification requirements may also include an obligation to post site notices on the boundaries of the subject property fronting on public roads and, in certain instances, to inform adjacent land owners by way of prepaid registered mail.

### 14.2 NOTICES IN TERMS OF THE MPRDA AND NEMA

- 14.2.1 During the process of making application to the DMR for mining rights/permits and ancillary authorisations in terms of the MPRDA, and/or NEMA, the applicant in such an instance would also be required to give notice of his/her intentions and to attend to a public participation process to allow interested and affected parties an opportunity to respond where relevant.
- 14.2.2 The lodgement of a land development application simultaneously with the application for the mining right/permit and other authorisations, could facilitate that the public participation processes could be conducted simultaneously with the abovementioned processes.

### 14.3 TAKING ACCOUNT OF PROCESSES UNDER OTHER LEGISLATION

- 14.3.1 The holder of a mining right must commence with mining within one year from the date on which the mining right becomes effective.<sup>7</sup> A delay in the acquisition of the required land use rights that results in a breach of this obligation, could result in the suspension or cancellation of the mining right.<sup>8</sup> Time is accordingly of the essence in the processing of a land development application for mining purposes, especially where the applicant is not the owner of the land and only qualifies as a land development applicant upon the grant of the mining right alternatively registration of the mining right in terms of the Mining Titles Registration Act 16 of 1967.
- 14.3.2 The preparation for the application for a mining right is an extensive and expensive process that involves a public consultation process<sup>9</sup> that is usually conducted simultaneously with the required public consultation processes relating to environmental authorisations, the environmental management programme and the water use licences. All stakeholders, including municipalities and the public, are exhaustively consulted in these multiple processes. It is at this juncture that it is advisable that the municipality should actively engage with the

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<sup>7</sup> Section 25(2)(b) of the MPRDA.

<sup>8</sup> Section 47 of the MPRDA.

<sup>9</sup> Section 10 of the MPRDA.

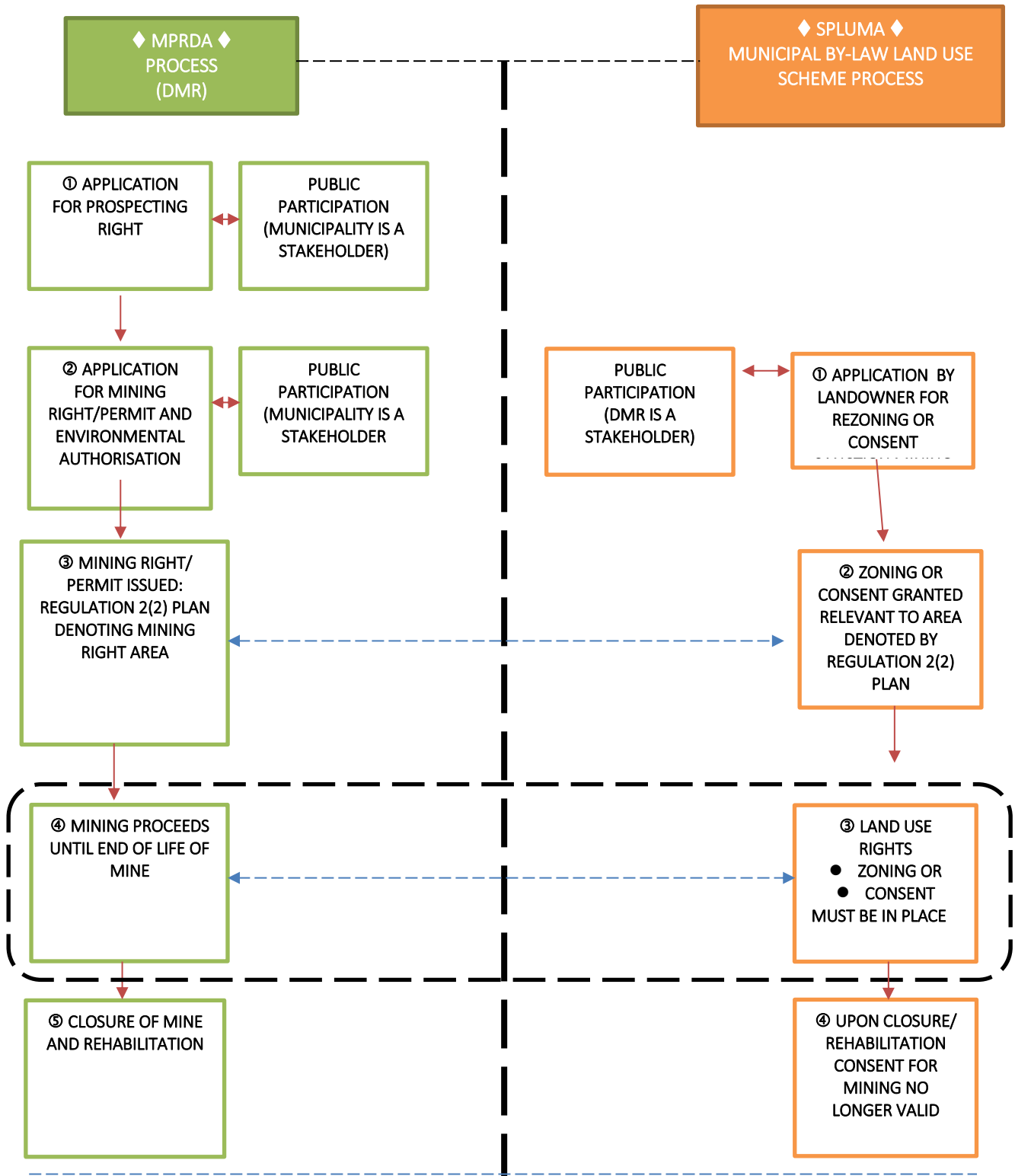
applicant and the DMR with a view to properly and timeously co-ordinating the aforesaid processes of authorisation.

- 14.3.3 Section 29 of SPLUMA provides that there is an obligation on a municipality to consult with the organ of state administering legislation that relates to activities that also require approval in terms of SPLUMA (which in the instance of mining would be the DMR in respect of the required authorisations in terms of the MPRDA and NEMA) in order to coordinate activities and to avoid duplication. A municipality may after such consultation with the DMR enter into an agreement with the DMR to avoid duplication in the submission of information or the carrying out of a process relating to any aspect of an activity that also requires authorisation in terms of SPLUMA. After such an agreement has been concluded the relevant municipal planning tribunal may take account of any process authorised under the legislation covered by that agreement as adequate for purposes of SPLUMA.
- 14.3.4 Further, section 30 (3) of SPLUMA provides that a municipality may regard an authorisation in terms of any other legislation that meets all the requirements set out in SPLUMA or in provincial legislation as an authorisation in terms of SPLUMA.
- 14.3.5 It is highly recommended that a municipality and the DMR enter into an agreement as envisaged in section 29 of SPLUMA. This would not only support the principle of integrated decision making and authorisations, but would be time and cost efficient.
- 14.3.6 There are no examples where municipalities have indeed concluded an agreement with the DMR or where it has indicated that it would regard an authorisation in terms of MPRDA and/or NEMA as an authorisation in terms of SPLUMA. It must also be considered that an outright waiving of notification and procedural requirements in terms of a local municipal by-law may result in downstream challenges, given that, in typical circumstances, an opposed land development application (in terms of SPLUMA or a municipal by-law) will result in a hearing being conducted by the appointed Municipal Planning Tribunal of the municipality. During such hearing interested and affected parties will be offered the opportunity to present their respective cases before a decision is taken with regard to the land development application. Care must be taken that such opportunity is not being denied for affected parties, that could result in legal challenges to be faced by the land development applicant (for mining land use rights) at a later stage in the process.

#### **14.4 MUNICIPALITY MAY COLLABORATE WITH DMR**

- 14.4.1 In order to avoid the consequences alluded to in the previous paragraphs, the agreement between the municipality and the DMR should not relate to a mere waiver by the municipality of notification requirements. Rather it may provide for a single consolidated or integrated public consultation process in respect of the applications under the MPRDA, NEMA and SPLUMA, upon proper notice with reference to all the said applications. The consolidated or integrated public consultation process should also adequately provide for compliance with the requirements under MPRDA, NEMA, SPLUMA and the municipal bylaws. Participants in this integrated consultation process will thereby be afforded the opportunity to present their cases before the Municipal Planning Tribunal of the municipality or to file an appeal in terms of SPLUMA and the municipal bylaws in the instance where an authorisation in terms of the MPRDA and NEMA is regarded as an authorisation in terms of SPLUMA.
- 14.4.2 There are as yet no practical examples of any such collaborations but may not prove difficult to achieve, in view of the practice that already exists to conduct the respective participation processes under the MPRDA, NEMA and the National Water Act 36 of 1998 simultaneously. Municipalities must also take cognisance that Section 29(1) of SPLUMA places an obligation on municipalities to consult with the DMR in this regard.

## THE DUAL PROCESSES OF AUTHORISATION:





# CHAPTER 15:

## DEVELOPMENT CONTROLS

### 15.1 LIMITATIONS ON USE OF LAND FOR MINING

15.1.1 The term “development controls” is a colloquial description of the collective of the measures imposed in terms of a LUS, defining the extent of the land use right. Such controls talk to matters such as:

- a limitation on the height of structures to be erected on a property;
  - a limitation on the coverage of roofed areas on a property;
  - a limitation on the permissible gross floor area of buildings that may be constructed on the property;
  - a prescription on the provision of parking and vehicular circulation and loading/off loading facilities on the subject property;
  - the imposition of building lines and building restriction areas (usually along perimeter boundaries); and
  - limitations on access to public road systems.
- (Not an exhaustive list)*

15.1.2 Whereas typical “development controls” for typical building structures associated with other land use categories (i.e. industrial, business, residential, etc.) are generally well understood, the same cannot be said for infrastructure typically associated with mining.

### 15.2 UNIQUE ASPECTS OF MINING CONTROLS

15.2.1 Mining may differ substantially from one category to the other (comparing say open cast to deep shaft mining), as well as differ by reason of the volume and accessibility of the mineral resources. As a result, the infrastructure to be erected at surface may vary substantially. Aspects such as mining head gear, large pump stations, fridge plants, etc. may be even more difficult to describe and regulate in the context of a LUS.

15.2.2 When applying to the DMR in terms of NEMA for the environmental authorisations required for a mining right, such applicant will be required to prepare a mining site plan in terms of Regulation 16(1)(b)(vi) of the Environmental Impact Assessment Regulations, 2014 GNR.982 of 4 December 2014. Such mining site plan locates the proposed activity or activities of the mining operation applied for at an appropriate scale. This plan is also referred to in Item 1(1)(c) of Appendix 4 to the Regulations and must be included as part of an EMP .

15.2.3 During the public participation processes the municipality will be consulted on the EMP, including the aforesaid mining site plan.

15.2.4 The mining site plan contemplated in Regulation 16(1)(b)(vi) as aforesaid may be put to good purpose by the municipality when granting consent for the mining operation alternatively amending the LUS by rezoning for such purpose. As opposed to a typical site development plan which may be described more fully in the LUS , the aforesaid Regulation 16(1)(b)(vi) mining site plan, upon approval thereof as part of the EMP, may suffice to be placed on record with the municipality to serve the same purpose as would be relevant to a typical site development plan.

15.2.5 The situational context of the top structures to be erected within the defined mining area will be denoted on such mining site plan, indicating how access will be gained and where the different components of the mining infrastructure will be situated (at scale). As a result, the information contained on such mining site plan may well serve as development controls or to more fully inform any further development controls to be imposed by the municipality and may negate the further requirement to prepare and submit a site development plan (possibly as a condition of zoning or consent that may be granted by the municipality).

15.2.6 In the examples set out in the schedules hereto, reference is made to the aforesaid mining site plan to be incorporated into the provisions of the LUS (or rather with regard to the conditions of approval imposed by the municipality).

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The Practice Group Consulting Town Planners



**THE PRACTICE GROUP**



*January 2020*

## SCHEDULE 1:

### Consent to use land for mining

#### 1. Proposed clause(s) to be inserted in LUS in respect of land used for mining

- 1.1 In this schedule, the suggested wording of relevant clauses, to be inserted in a LUS, is presented for consideration by a municipality. These clauses are proposed to remain as standard provisions of the LUS, talking specifically to the sanctioning of the use of land for mining as a special case. In this alternative, it pre-supposes that rezoning of land for mining will not be required. The alternative of rezoning is described in a further schedule hereof.
- 1.2 In most LUS , a table will be inserted containing information on the different land use zones which form part of the LUS and which:
- includes a column reflecting purposes for which land and buildings may be erected and used under such use zone (so-called permitted or primary land uses);
  - includes a column reflecting which buildings may be erected or which uses of land may be permitted only with the consent of the municipality; and
  - a column which reflects which buildings and land uses shall not be permitted within the relevant use zone.
- 1.3 For the purposes of this Addendum, it is suggested that a specific clause be inserted immediately after the land use table in the LUS which may read as follows:

***“Clause X: Uses not subject to Land Use Table Y***

*The use of land for mining is not reflected in the land-use table and land in all land-use zones, but excluding land in a proclaimed township, may be used for mining purposes, subject to the following:*

- (i) The written consent of the municipality that the land may be used for mining in addition to the uses permitted in terms of the scheme, subject to such conditions as may be imposed by the municipality.*
- (ii) The written consent of the municipality shall not prohibit or restrict the use of the land for any other purpose for which the land and buildings may be used under the use zone indicated in the land-use table.*
- (iii) The written consent of the municipality shall become effective on the date of the grant by the municipality of the consent, alternatively from the effective date of the mining right or mining permit in terms of the MPRDA, whichever is the later date, and shall endure until a closure certificate, contemplated in Section 43 of the MPRDA is issued by the DMR with regard to the affected land.*

*(iv) No written consent granted by the municipality in terms of this land use scheme shall be construed as conferring upon any person the right to erect or use any building or to use any land for any purpose which is prohibited or otherwise restricted in terms of a condition registered against the title deed of such land or imposed in respect of such land under any law relating to the use of land.”*

- 1.4 The implication of the aforesaid suggested insertion in the LUS is that, notwithstanding the grant of a mining right or mining permit by the DMR in terms of the MPRDA and notwithstanding the municipality granting consent in terms of the LUS with regard to the use of land for mining purposes, the existence of a restrictive condition of title or conditions of grant or a condition imposed in terms of a law regulating the use of land, shall remain to restrict the use of land to such effect, until such restriction is removed or waived. In a typical LUS, as enacted under the provisions of SPLUMA and the applicable municipal by-law, provision will generally be made for an application to be submitted to the municipality for the removal of a restrictive condition of title, should same prohibit the use of land as may be contemplated in the written consent of the municipality handed down with regard to mining.
- 1.5 The granting of written consent by the municipality to sanction the use of the affected land for mining shall lapse upon a closure certificate being issued by DMR, as contemplated in the provisions of the MPRDA .
- 1.6 The landowner shall also qualify to apply for the written consent of the municipality as set out herein prior to the grant of the mining right or permit. This will afford the applicant for the mining right or permit the necessary security of tenure to proceed with the costly and time-consuming process of application for a mining right. Further, in terms of section 25(2) of the MPRDA the holder of a mining right must commence with mining within one year from the date on which the mining right becomes effective, failing which the mining right may be withdrawn. The written consent of the municipality should however only become effective on the date of the grant by the municipality of the consent, alternatively from the effective date of the mining right or mining permit in terms of the MPRDA, whichever is the later date. The effective date of a mining right or mining permit is defined in the MPRDA as the date on which the relevant permit is issued or the relevant right is executed.
- 1.7 Only the holder of a valid registered mining right or mining permit contemplated in the MPRDA, alternatively the owner of the land (or their duly authorised agents), may apply for the consent of the municipality as set out herein. Such application for consent shall comprise the following:
- (i) A completed application form as prescribed in the LUS ;
  - (ii) A covering letter identifying the affected land, the registered owner of the immovable property; the holder or applicant for the mining right or mining permit and containing information with regard to all appendices to such submission. This shall include a copy of the mining right or mining permit granted by the DMR, alternatively proof of lodgement with the DMR of an application for a mining right or mining permit, as well as a copy of the Mining Right Plan in terms of Regulation 2(2) of the MPRDA denoting the cadastral boundaries of the properties which form the subject of the mining right or mining permit ;
  - (iii) A motivating memorandum, the details of which shall accord with the prescripts of the municipality set out in the LUS ;

- (iv) A company resolution and/or power of attorney authorising the land development application as well as the duly authorised representative or agent of the land development applicant ;
- (v) Certified copies of the title deeds of each affected property;
- (vi) The mining site plan in terms of Regulation 16(1)(b)(vi) of the Environmental Impact Assessment Regulations, 2014 GNR.982 of 4 December 2014 or referred to in Item 1(1)(c) of Appendix 4 thereto, alternatively a site plan indicating the part of the affected land within which the surface infrastructure, structures and buildings required for and associated with mining will be erected on the affected land;
- (vii) A zoning certificate pertaining to each affected portion of land forming the subject of the mining right or mining permit;
- (viii) Proof of payment to the municipality of the prescribed application fee;
- (ix) A certificate by a registered conveyancer pertaining to existing conditions of title, conditions of grant or servitudes which may impact on the intended mining operation;
- (x) If a surface right permit attaching to the mining right is located outside the mining right area, a copy of the surface right permit together with the plan attached to the surface right permit and reflecting the area of the surface right permit;
- (xi) Particulars of any municipal services that will be required for purposes of mining;
- (xii) In the instance that municipal services will be required for purposes of mining, engineering services outline scheme reports with regard to civil and electrical engineering services required to sustain and support the mining; and
- (xiii) A traffic impact assessment report.

1.8 With regard to the giving of notice of an application for written consent to use land for mining as contemplated herein, the land development applicant shall, where required by the municipality, comply with the requirements of the LUS with regard to such notification and deliver proof to the municipality upon conclusion thereof (by way of sworn affidavit).

1.9 In the above circumstances it will be incumbent upon the land development applicant to approach the municipality in terms of the relevant provisions of the by-law, to remove any offending condition of title to the extent that it may be relevant. This will be a separate and parallel application process and shall not affect the application for written consent as set out above.

1.10 In most LUS a general provision will be inserted talking to the requirement of a site development plan (and its content). However, with regard to a written consent granted for mining as contemplated in this Addendum, a further specific clause may be required to allow for some flexibility and latitude, having regard to the conditions imposed by the DMR in granting the mining right or permit in terms of the MPRDA and approval of the environmental management programme in terms of NEMA.

- 1.11 The municipality may therefore consider to insert a further clause for such purpose to read as follows:

***“Clause (Z): Requirement for mining***

*(...) The municipality may require the land development applicant seeking written consent in terms of the land use scheme to sanction the use of the affected land for mining, to submit to the municipality a mining site plan on which is identified the part of the affected land where the surface infrastructure, structures and buildings required for and associated with mining purposes will be located: Provided that, the municipality may accept the mining site plan in terms of Regulation 16(1)(b)(vi) of the Environmental Impact Assessment Regulations, 2014 GNR.982 of 4 December 2014 or the plan referred to in Item 1(1)(c) of Appendix 4 to the Regulations for such purpose.”*

## SCHEDULE 2

### Consent Use Schedule in terms of land use scheme

1. For the purposes of granting consent to use land for mining as described herein, a schedule is required to encapsulate the details of such consent and the conditions under which the consent shall be applicable, including reference to its term of validity and related information.
2. The structure and format of the schedule of consent to be issued by the municipality under the aforesaid circumstances may differ from one municipality to the other. However, for the purposes hereof, a generic structure is proposed in the paragraphs to follow which may be used by the municipality to incorporate as part of a new or revised LUS and to be amended/amplified to suit the circumstances of the relevant municipality.

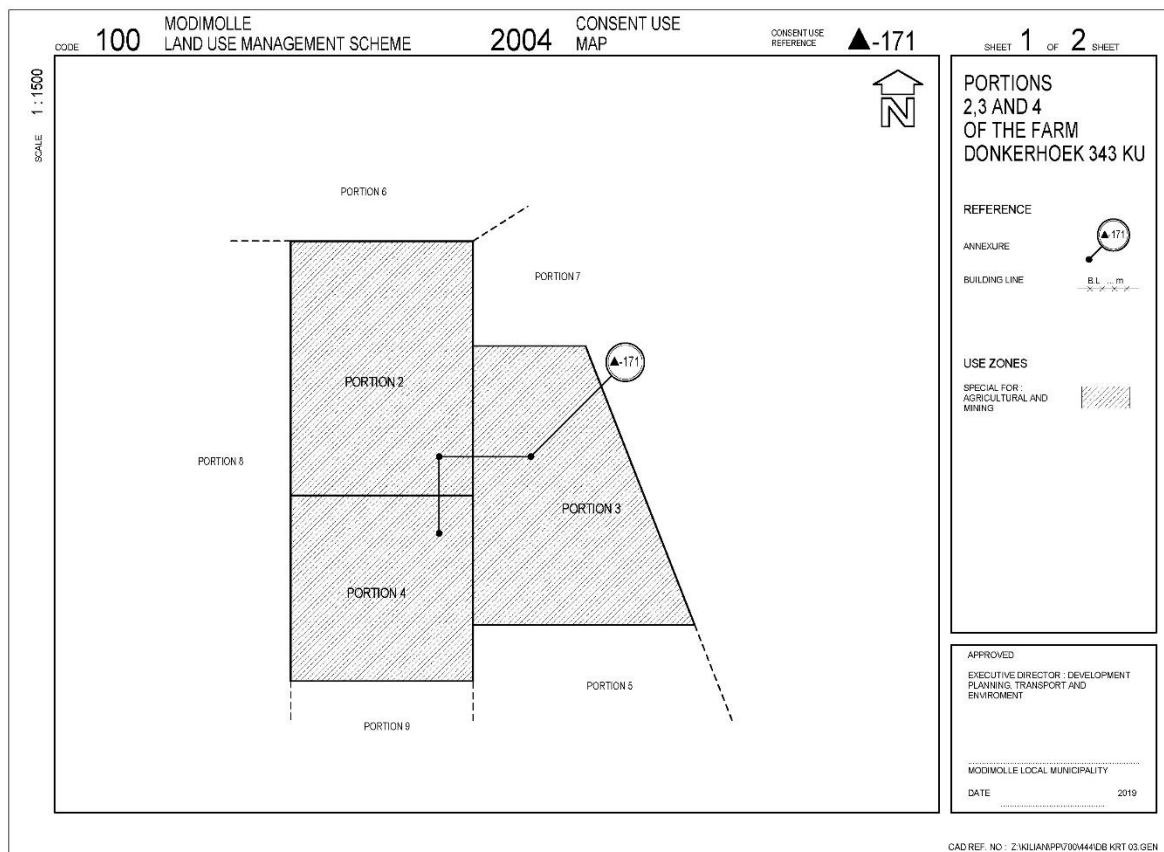
#### EXAMPLE: CONSENT USE SCHEDULE: PORTION X OF THE FARM THANDEKILE NO 513 KT

1	Use Zone IV	<b>"Agriculture"</b>
2	Consent	Mining
3	Definitions	As per Scheme
4	Coverage	As per the mining site plan i.t.o. Item 7 hereof
5	Height	As per the mining site plan i.t.o. Item 7 hereof
6	Floor Area Ratio	As per the mining site plan i.t.o. Item 7 hereof
7	Site Plan	The holder of the mining right shall submit to the municipality a mining site plan indicating the extent and locational circumstances of infrastructure, structures and buildings associated with mining: Provided that the Plan contemplated in Regulation 16(1)(b)(vi) of the Environmental Impact Assessment Regulations, 2014 GNR.982 of 4 December 2014 or referred to in Item 1(1)(c) of Appendix 4 thereto may be submitted for this purpose
8	Building Lines	As per the mining site plan in Item 7
9	Parking Requirements	As per the mining site plan in Item 7
10	Access	As per the mining site plan in Item 7
11	Physical barriers	As per the mining site plan in Item 7
12	Period of Validity	This consent shall become effective on the date of signature hereof, alternatively on the date of the coming into effect of the valid mining right or permit, whichever is the later and shall remain valid until a closure permit is issued by the DMR as contemplated in Section 43 of the MPRDA.
13	General:	
	13.1	This consent is of a temporary nature, subject to the limitation described in Item 12 above.
	13.2	The municipality may withdraw this consent in its sole discretion in the event that the land is used in a manner which does not comply with the aforesaid conditions of consent.

# SCHEDULE 3

## Denoting Mining on the Scheme Map

1. Where a consent is granted by the municipality to use land for mining and such consent is properly incorporated into the LUS under the register of land use rights, it would be prudent for the municipality to also denote, on the scheme map, that the affected land is indeed subject to such consent.
2. Typically, the scheme map shall reflect a notation or colour code denoting the statutory zoning of the land in question, as more fully described in the LUS clauses or regulations. Where a consent is granted as contemplated herein, it should also be reflected on the scheme map. Hence the proposals in the following paragraphs.
3. It would be prudent for the municipality to consider to insert on its scheme map some form of notation (or symbol) drawing attention to the fact that the land in question is subject to a consent granted by the municipality to sanction the use thereof for mining. The reader shall therefore be properly informed to have regard to the land use register as part of the LUS and to view the details relevant to the consent for use for mining as granted by the municipality.
4. In the illustration to follow, an example of a scheme map alluding to an existing consent for the use of mining is illustrated for possible use by a municipality for the aforesaid purpose. Alternatively the municipality may make use of a special overlay zone to indicate all land used for mining.

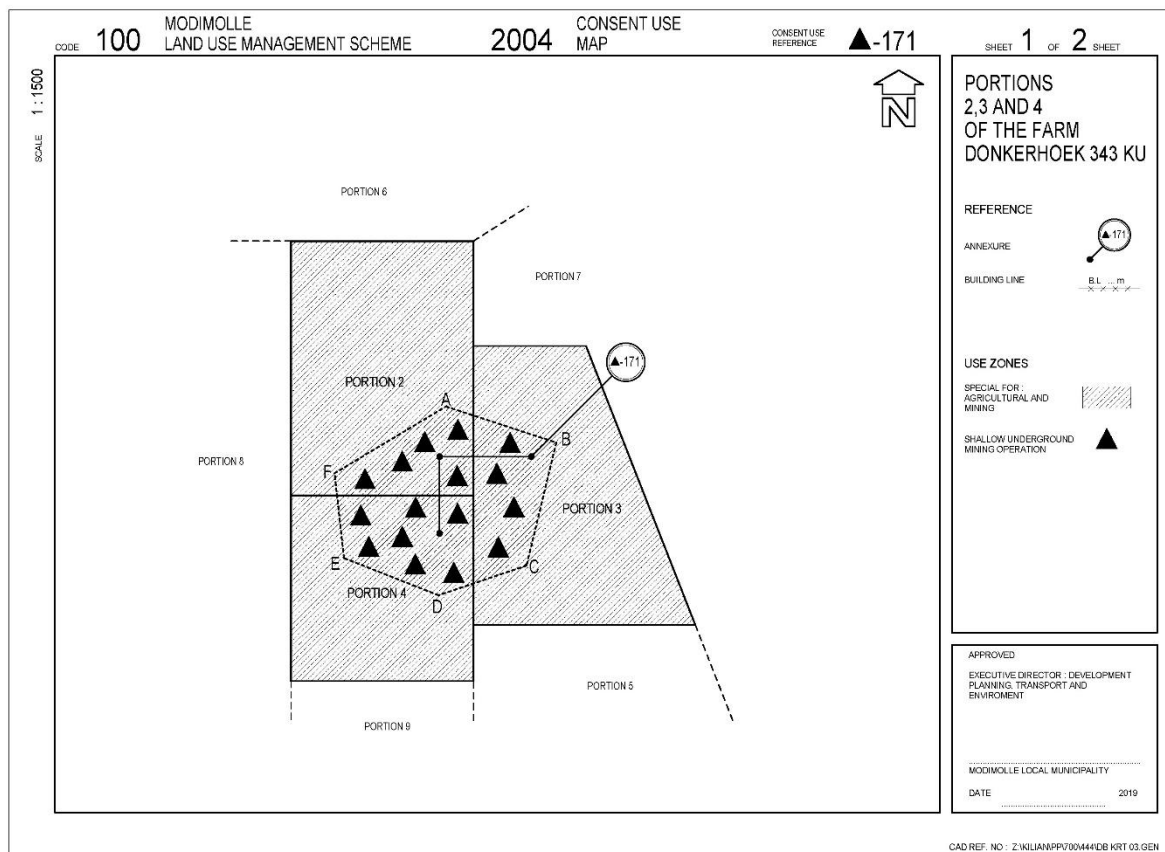




## SCHEDULE 4:

# Denoting Occurrence of Shallow Underground Mining on the Scheme Map

1. Where mining includes an area of shallow undermining, it would be prudent for the municipality to also denote same on the scheme map, so as to draw attention to such occurrence and to forewarn effected parties accordingly.
2. The illustration to follow provides an example that may be used by a municipality under such circumstances.



## SCHEDULE 5:

### Zoning of land for mining

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#### 1. Proposed clause (s) to be inserted in LUS in respect of the rezoning of land for mining.

1.1 In this schedule, the suggested wording of relevant clauses, to be inserted into the LUS, is presented for consideration by a municipality. These clauses are proposed to remain as standard provisions of the LUS, talking specifically to the rezoning of land to sanction the use of land for mining as a special case. In this alternative, it pre-supposes that rezoning of the land to sanction use of land for mining will indeed be required as an alternative to the granting of written consent by the municipality, described in Schedule 1 hereto.

1.2 In a typical LUS, a table will be inserted, containing information on the different land use zones which form part of the LUS and which:

- includes a column reflecting the purposes for which land and buildings may be erected and used under such use zone (co-called permitted or primary land uses);
- includes a column reflecting which buildings may be erected and which uses of land may be permitted only with the written consent of the municipality; and
- includes a column which reflects which buildings and land uses shall not be permitted within the relevant use zone.

1.3 For the purposes of this addendum, it is suggested that a specific clause be inserted immediately after the land use table in the LUS which may read as follows:

***“Clause X: Land Use Zoning to sanction the use of land for Mining.***

*The use of land for mining is not reflected in the land use table. Notwithstanding anything to the contrary contained in this scheme, any land in any land use zone, but excluding land in a proclaimed township, may be used for mining purposes subject to:*

*i) The amendment of the land use scheme by the rezoning of the affected land as may be granted by the municipality which shall have the effect of retaining the existing permitted land use rights reflected in the LUS and by adding the right to also use such land for mining.*

*ii) The adoption of the amendment scheme as described in (i) above shall not prohibit or restrict the use of land for any other purpose for which the land and buildings may be used under the use zone indicated in the land use table.*

*iii) The adoption of the amendment scheme by the municipality for the sanctioning of the use of the land for mining shall become effective on the date of the notice published in the provincial gazette to bring such amendment scheme into operation*

*iv) No amendment of the land use scheme by the municipality to sanction the use of land for mining shall be construed as conferring on any person, the right to erect or use any building or to use any land for any purpose which is prohibited or otherwise restricted in terms of a condition registered against the title deed of such land or imposed in respect of such land under any law relating to the use of land.”*

1.4 The implication of the aforesaid suggested insertion in the LUS is that, notwithstanding the amendment of the LUS to sanction the use of the land for mining by rezoning and notwithstanding a mining right or mining permit having been granted by the DMR and in terms of the MPRDA, the existence of a restrictive condition of title or conditions of grant or a condition imposed in terms of a law regulating the use of land, shall remain to restrict the use of land to such effect, until such

restrictions are removed or waived. In a typical LUS of the municipality as enacted under the provisions of SPLUMA and the Local Government: Municipal Systems Act, 2000, provision will generally be made for an application to be submitted to the municipality for the removal of a restrictive condition of title, should same prohibit the use of land as may be contemplated in the written consent of the municipality handed down with regard to mining.

- 1.5 In terms of Section 25(2) of the MPRDA, the holder of a mining right must commence with mining within 1 year from the date on which the mining right becomes effective, failing which the mining right may be withdrawn. The amendment of the LUS by the rezoning of the affected land for mining purposes shall however only become effective on the date of the publication in the provincial gazette of the notice bringing the amendment of the LUS into effect.
- 1.6 Only the holder of a valid registered mining right or mining permit contemplated in the MPRDA, alternatively the owner of the land (or their duly authorised agents) may apply for the amendment of LUS by the rezoning of the affected land for mining, as set out herein. Such application to amend the LUS (by way of rezoning) shall comprise the following;
- (i) A completed application form, as prescribed in the LUS;
  - (ii) A covering letter identifying the affected land, the registered owner of the immovable property, the applicant for or holder of the mining right alternatively mining permit and containing information with regard to all appendices to such submission. This shall include a copy of the mining right or mining permit issued by the DMR alternatively proof of lodgement with the DMR of an application for a mining right or mining permit, as well as a copy of the Mining Right Plan in terms of Regulation 2(2) of the MPRDA denoting the cadastral boundaries of the properties which form the subject of the mining right or mining permit;;
  - (iii) A motivating memorandum, the details of which shall accord with the prescripts of the municipality set out in the LUS;
  - (iv) A company resolutions and/or power of attorney authorising the land development applicant or the duly authorised representative or agent of the land development applicant to act in the matter;
  - (v) Certified copies of the title deeds of each affected portion of land;
  - (vi) The mining site plan in terms of Regulation 16(1)(b)(vi) of the Environmental Impact Assessment Regulations, 2014 GNR.982 of 4 December 2014 or referred to in Item 1(1)(c) of Appendix 4 thereto, alternatively a site plan indicating the part of the affected land within which the surface infrastructure, structures and buildings required for and associated with mining will be erected on the affected land;
  - (vii) A zoning certificate pertaining to each affected portion of land forming the subject of the mining right or mining permit;
  - (viii) Proof of payment to the municipality of the prescribed application fee;
  - (ix) A certificate by a registered conveyancer pertaining to existing conditions of title, conditions of grant or servitudes which may impact on the intended mining;
  - (x) If a surface right permit attaching to the mining right is located outside the mining right area, a copy of the surface right permit together with the plan attached to the surface right permit and reflecting the area of the surface right permit;

- (xi) Particulars of any municipal services that may be required for purposes of mining;
- (xii) In the instance that municipal services will be required for purposes of mining, engineering services outline scheme reports with regard to civil and electrical engineering services required to sustain and support the mining; and
- (xiii) A traffic impact assessment report.

1.8 With regard to the giving of notice of an application to amend the LUS by the rezoning of land for mining as contemplated herein, the land development applicant shall, where required by the municipality, comply with the requirements of the LUS and the municipal by-law with regard to such notification and deliver proof to the municipality upon conclusion thereof (by way of sworn affidavit).

1.9 In the above circumstances, it will be incumbent upon the land development applicant to approach the municipality in terms of the relevant provisions of the municipal by-law to remove any offending condition of title to the extent that it may be relevant. This will be a separate and parallel application process and shall not affect the application for the amendment of the LUS by the rezoning of the affected land for mining purposes.

1.10 In most land use schemes a general provision may be inserted talking to the requirement of a site development plan (and its content). However, with regard to an application to amend a LUS by the rezoning of land for mining as contemplated in this Addendum, a further specific clause may be required to allow for some flexibility and latitude having regard to the conditions imposed by the DMR in granting the mining right or mining permit in terms of the MPRDA and approval of the EMP in terms of NEMA.

1.11 The municipality may therefore consider to insert a further clause for such purpose to read as follows:

***“Clause Z: Requirement for a site plan indicating mining***  
*(The municipality may require the land development applicant seeking to amend the land use scheme by the rezoning of land for mining to submit to the municipality a mining site plan on which is identified the part of the affected property where the surface infrastructure, structures and buildings required for and associated with mining may be located: Provided that the municipality may accept the mining site plan approved by the Department of Mineral Resources in terms of Regulation 16(1)(b)(vi) of the Environmental Impact Assessment Regulations, 2014 GNR. 982 of 4 December 2014 or referred to in Item 1(1)(c) of Appendix 4 thereto”.*

1.12 In Schedules 6 and 7 hereto, examples are provided with regard to the format and content of the amendment scheme documents which may be brought into effect by the municipality as part of the rezoning of the land for mining including reference to the scheme maps and the suggested wording of the zoning conditions relevant to mining.

# SCHEDULE 6

## Zoning schedule for mining

1. For the purposes of granting approval for a rezoning to use land for mining as described herein, a schedule is required to encapsulate the details of the rezoning so granted and the conditions under which the rezoning shall be applicable, including reference to its term of validity and related information.
2. The structure and format of the zoning schedule to be issued by the municipality under the aforesaid circumstances may differ from one municipality to the other. However, for the purposes hereof, a generic structure is proposed in the paragraphs to follow which may be used by the municipality to incorporate it as part of a new LUS and to be amended/amplified to suit the circumstances of the relevant municipality.

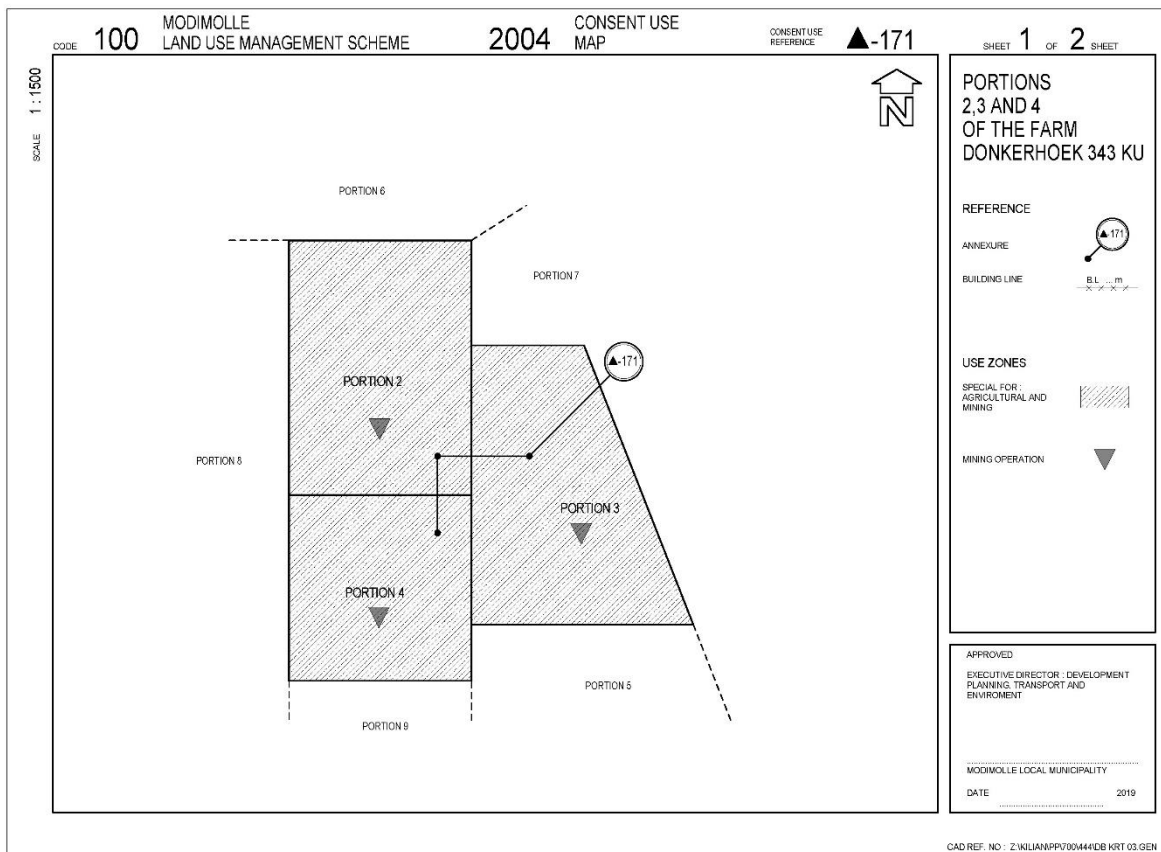
### ZONING SCHEDULE: PORTIONS 2, 3 AND 4 OF THE FARM DONKERHOEK 343, REGISTRATION DIVISION KU

1	Use Zone	<b>12: Agriculture and Mining</b>
	Consent	As per scheme
3	Definitions	As per scheme
4	Coverage	As per mining site plan i.t.o. Item 7 hereof
5	Height	As per mining site plan i.t.o. Item 7 hereof
6	Floor Area Ratio	As per mining site plan i.t.o. Item 7 hereof
7	Site Plan	The holder of the mining right shall submit to the municipality a mining site plan indicating the extent and locational circumstances of infrastructure, structures and buildings associated with mining and the Plan contemplated in Regulation 16(1)(b)(vi) of the Environmental Impact Assessment Regulations, 2014 GNR.982 of 4 December 2014 or referred to in Item 1(1)(c) of Appendix 4 thereto may be submitted for this purpose
8	Building Lines	As per mining site plan i.t.o. Item 7 hereof
9	Parking Requirements	As per mining site plan i.t.o. Item 7 hereof
10	Access	As per mining site plan i.t.o. Item 7 hereof
11	Physical barriers	As per mining site plan i.t.o. Item 7 hereof
1	General:	
	13.1	The use of the aforesaid property for mining is of a temporary nature. Upon the cessation of mining activities and the issue of a closure certificate the property shall only be used for the remaining land use rights sanctioned herein and subject to the conditions of this amendment scheme.

# SCHEDULE 7

## Amendment of Scheme Map for Mining

1. Where a rezoning is approved by the municipality to use land for mining and such rezoning is properly incorporated into the LUS under the register of land use rights, it would be prudent for the municipality to also note, on the scheme map, that the affected land is indeed subject to such a rezoning approval (i.e. reference to the mining operation).
2. Typically, the scheme map shall reflect a notation or colour code denoting the statutory zoning of the land in question, as more fully described in the LUS clauses or regulations.
3. It would therefore be prudent for the municipality to consider to insert on its scheme map some form of additional notation (or symbol) drawing attention to the fact that the land in question is subject to a rezoning for mining approved by the municipality. The reader may therefore be properly informed to have regard to the land use register as part of the land use scheme and to view the details relevant to the rezoning as granted by the municipality.
4. In the illustration below an example of a scheme map alluding to a rezoning for mining is illustrated for possible use by a municipality for the aforesaid purpose. In this scenario the entire site assembly is subject to both the existing "Agricultural" zoning whilst also alluding to the right to use the property for "Mining".
5. In the scenario below only part of the site assembly is affected by mining, denoted by a defined point-to-point description.



## SCHEDULE 8

### Prospecting

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Where prospecting rights granted in terms of MPRDA and the relevant environmental authorisations granted in terms of NEMA, including the approved EMP's regulating the exercise of the prospecting right, are recognised by the municipality in accordance with section 30(3) of SPLUMA to constitute authorisations in terms of SPLUMA for the use of the relevant land for prospecting purposes, a municipality might incorporate the following in the LUS:

***“Prospecting.***

*Notwithstanding anything contained in this LUS to the contrary, a prospecting right granted in terms of MPRDA and the relevant environmental authorisation granted in terms of NEMA, including the approved environmental management programme regulating the exercise of the prospecting right, are recognised by the municipality in accordance with section 30(3) of SPLUMA to constitute an authorisation in terms of SPLUMA for the use of the relevant land for prospecting purposes. This is premised on the nature and limited scope of prospecting, the limited timeframe for exercising the rights under a prospecting right, the public consultation processes that preceded the grant of the prospecting right and the environmental authorisation.”*