



NEWSLETTER- JANUARY 2017

Dear Readers,

We would like to wish all our readers a very happy New Year and prosperous 2017.

We trust everyone had a great festive season and managed to relax and kick back before heading back to the grind.

The January edition of the newsletter will look at updates in the environmental, mining and natural resources sector while also focussing on cases, law and news.

Follow Gunn Attorneys on social media for updates and information, click on the icon below:



NATIONAL NEWS

The Melrose Trees – a National Heritage

An interesting decision was made in October 2016, regarding the trees in Melrose, Johannesburg.

The iHlathi Melrose-Birdhaven Conservancy lodged a complaint with the police about the illegal demolition of a house in Melrose. The Melrose Ratepayers' Association also opposed the cluster-like development but lost on appeal in 2015. The house, however, was more than 60 years old and therefore fell under the protection of the National Heritage Resources Act.

iHlathi ("the forest" in Zulu) was established in December 2014 for Birdhaven, Melrose, Melrose Estate and Melrose North. It aims to help develop a "green meander" between Rosebank and Melrose Arch

The conservancy and association had opposed the demolition on three grounds:

- The rule of law had been flouted by the developers.
- The importance of heritage context - the entire stand should be viewed as part of a neighbourhood which had evolved organically.

- The importance of the public realm, which would be damaged by the proposed development - a gated community for all purposes.

iHlathi chairperson Markus Scheuermaier said: “The decision made by the appeals committee protecting the trees represents a significant precedent.”

This decision is important as it solidifies the idea that trees and not only houses do fall under the National Heritage Resources Act and the 'context' of a neighbourhood matters as much as its buildings.

While the demolition has been upheld, the appeals committee has subjected it to conditions that certain trees must be retained and protected during construction.

(Sourced from http://www.iolproperty.co.za/roller/news/entry/landmark_decision_saves_heritage_trees and ELA Newsletter)

Renewable Energy and the Rehabilitation of Mines

It is not often that the phrases renewable energy and mines are put together, however in November 2016 it was reported that *“Promethium Carbon, in collaboration with the British High Commission and Harmony Gold, have developed a toolkit which looks at combining renewable energy generation with the rehabilitation of mining-impacted land in order to uplift local communities.”*

The above statement may have bells ringing and red flags flying, as how could a non-renewable activity impacted-land produce renewable energy? It is quite a simple, genius and a much-delayed solution.

Land that has been environmentally stripped and degraded for the procurement of non-renewable sources needs to be rehabilitated in terms of the National Environmental Management Act. Further, South Africa needs to rely on the use of more renewable energy. In conclusion, land that has been stripped can, after activities have discontinued, be used for the placement on renewable energy projects.

“There are an estimated 4000 – 60000 abandoned mines in South Africa. While it is unlikely that renewable energy projects could be rolled out at all or even the majority of these sites due to technical or financial reasons, there could still be significant potential for the deployment of renewable energy. It is therefore important to identify opportunities for the industry, specifically in the application of solar energy technologies.”

The thinking is quite clever. Take advantage of vast amounts of open land that has already been stripped and could not possibly be used for much else and turn it into a useful piece of land – where renewable energy projects often are not started due to land size constraints. Killing two birds with one stone, right?

We will have to wait and see if such solution is a plausible one for land rehabilitation and ensuring the decline in degradation of biodiversity and resources.

(Source: *DNA Economics Newsletter* 24 November 2016)

Silicosis lawyer turns sights on Sasol

In our previous newsletters, we have reported on the ongoing court battles regarding the class action silicosis case and the judgments allowing for such class action to go forward.

Since the decision by the Courts to allow such class action to continue, lawyer Richard Spoor is set to launch a similar case next year, also at the Gauteng High Court (Johannesburg). The case involves 22 former coal miners who say they contracted lung diseases after working at petrochemicals giant Sasol. Obviously with the outcome of the Silicosis judgments Spoor is very confident in winning in the Sasol case. He stated that 'Sasol runs better coal mines in terms of health and safety (than other coal-mining houses). That is why we are targeting it. The others could be even worse,' he said. 'We have the 22 people with good cases, no controversies. They have all worked on different collieries owned by Sasol.' Sasol has stated that they made sure that the miners knew how to use their health and safety gear – we will have to await the outcome of the case to see.

NATIONAL CASE LAW

National Society for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development and Another

In a landmark judgment in the case of *National Society for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development and Another* (CCT1/16) [2016] ZACC 46 (8 December 2016), The Court considered whether the NSPCA was entitled to privately prosecute under section 7 or section 8 of the Criminal Procedure Act (CPA).

The court went even further to look at the essence of animal welfare and the need for protecting animals from cruelty. The Court states "Therefore, the rationale behind protecting animal welfare has shifted from merely safeguarding the moral status of humans to placing intrinsic value on animals as individuals."

The Court held that because the NSPCA is explicitly charged with upholding a number of statutes regulating animal welfare and preventing animal cruelty, the SPCA Act must incorporate prosecutions of animal cruelty. To accept any other interpretation would render the animal protection regime toothless.

Ultimately, the Court held that the unique context, history and background of the NSPCA demands that the term "institute legal proceedings" in section 6(2)(e) of the SPCA Act takes on a specific and nuanced meaning which confers the power to institute private prosecutions

on the NSPCA. The Court accordingly ordered a declaration to that effect. The Court held that it would not be judicious to consider the section 7 arguments, as it would not offer the NSPCA further relief.

JOKE OF THE MONTH

Q: How do oil companies deal with tanker spills?

A: Slick lawyers.

Submit your commercial, mining or environmental law joke to Gunn Attorneys at alexarae@gunnattorneys.co.za and the best jokes will be published in our next newsletter.

ABOUT GUNN ATTORNEYS

Gunn Attorneys was established in 2014 by Adam Gunn, leveraging on many years of experience in the natural resources sector. Amongst other things Adam was legal counsel to Ridge Mining and First Uranium Corporation and a partner at Edward Nathan Sonnenbergs and Eversheds. The vision of the firm continues to be to provide exceptional service to our clients in the natural resources sector.

Our contact details:

Adam Gunn

Office: +27 11 788 2000

Fax: +27 86 459 2405

Mobile: +27 72 533 4399

Physical: 15 Glenhove Road, Melrose, 2196.

E-mail: adam@gunnattorneys.co.za

professionals@gunnattorneys.co.za

Website: www.gunnattorneys.co.za

Social media: https://www.facebook.com/gunnattorneys/?ref=aymt_homepage_panel

[https://twitter.com/Gunn Attorneys](https://twitter.com/Gunn_Attorneys)

<https://www.linkedin.com/company/gunn-attorneys>

Gunn Attorneys welcomes your constructive feedback regarding any aspects of our newsletter.

To unsubscribe from this newsletter, please reply to this e-mail with the subject of the e-mail: "unsubscribe"

Disclaimer:

This newsletter does not aim to provide a summary of all the legal developments in the environmental, mining and natural resources sectors. For professional legal advice on any particular issue, please contact us.

