

# WEBBER WENTZEL

in alliance with > Linklaters



## The Directors

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Your reference

M North

Our reference

R Spalding / A Carr  
3023892

Date

28 February 2018

Dear Sirs

## Title Opinion - Tshipi é Ntle Manganese Proprietary Limited

### 1. Introduction

- 1.1 Webber Wentzel has been requested by Jupiter Mines Limited ("**Jupiter Mines**"), to prepare and issue an opinion in respect of the mining right held by Tshipi é Ntle Manganese Proprietary Limited, registration number 2008/003117/07 ("**Tshipi**"), a subsidiary of Jupiter Mines ("**Title Opinion**").
- 1.2 For the purposes of rendering this Title Opinion, we have examined the documents which were made available to Webber Wentzel by Jupiter Mines via an electronic dataroom hosted by <https://jacmac.sharefile.com/home/shared/fo461088-77b8-4c60-94b2-d81e9bcc434a> and <https://dropbox.com/home/Tshipi%20docs> ("**Documents**"). A list of the Documents is attached hereto marked Annexe A.
- 1.3 Except for the Documents, we have not, for the purposes of this Title Opinion, made any other enquiries or searches (save where explicitly noted) concerning Tshipi, nor have we considered any commercial transactions or arrangements pertaining to Tshipi.
- 1.4 For a summary of the relevant provisions of the Mineral and Petroleum Resources Development Act, 28 of 2002 ("**MPRDA**"), please refer to Annexe B.

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**Senior Partner:** JC Els **Managing Partner:** SJ Hutton **Partners:** BW Abraham RB Africa NG Alp OA Ampofo-Anti RL Appelbaum DC Bayman AE Bennett AP Blair DHL Booysen AR Bowley JL Brink S Browne MS Burger RI Carrim T Cassim SJ Chong A Christie KL Collier KM Colman KE Coster K Couzyn JJ Daniels JH Davies PM Daya L de Bruyn PU Dela JHB de Lange DW de Villiers BEC Dickinson MA Diemont DA Dingley G Driver HJ du Preez CP du Toit SK Edmundson AE Esterhuizen MJR Evans AA Felekis GA Fichardt G Fitzmaurice JB Forman C Gabriel CP Gaul KL Gawith OH Geldenhuys MM Gibson SJ Gilmour H Goolam CI Gouws PD Grealy JM Harvey MH Hathorn JS Henning KR Hillis XNC Hlatshwayo S Hockey CM Holfeld PM Holloway HF Human AV Ismail ME Jarvis CM Jonker S Jooste LA Kahn M Kennedy A Keyser PN Kingston M Kyle J Lamb L Marais S McCafferty MC McIntosh SJ McKenzie SI Meltzer CS Meyer AJ Mills JA Milner D Milo NP Mngomezulu S Mogale M Moloi LE Mostert VM Movshovich RA Nelson BP Ngoepe A Ngubo ZN Ntshona L Odendaal GJP Olivier N Paige AMT Pardini AS Parry S Patel GR Penfold SE Phajane TC Phala MA Phillips D Ramjettan GI Rapson Z Rawoot K Rew G Richards-Smith NJA Robb DC Rudman S Rugan M Sader H Samsodien JW Scholtz KE Shepherd AJ Simpson N Singh N Singh-Nogueira P Singh J Smit MP Spalding PS Stein MW Straeuli LJ Swaine JM Swanepoel Z Swanepoel A Thakor A Toefy PZ Vanda PP van der Merwe SE van der Meulen CS Vanmali JE Veeran D Venter B Versfeld MG Versfeld TA Versfeld DM Visagie J Watson KL Williams K Wilson RH Wilson M Yudaken **Chief Operating Officer:** SA Boyd

Webber Wentzel is associated with ALN

## 2. Analysis of the Documents

### 2.1 Mining Right 206 MR

#### 2.1.1 Title to Mining Right 206 MR

2.1.1.1 Ntsimbintle Mining Proprietary Limited, registration number 2004/003269/07 ("**Ntsimbintle**"), was the holder of a mining right granted by the Department of Mineral Resources ("**DMR**"), pursuant to section 23 of the MPRDA under DMR reference number NC 30/5/1/2/2/206 MR, in respect of manganese ore occurring in, on and under a portion of Portion 1 and a portion of Portion 2 of the farm Mamatwan 331, situated in the Magisterial/Administrative District of Kuruman, Northern Cape, Province of South Africa, measuring 767,3155 hectares, for an initial period of 30 years commencing on 7 April 2010 and ending on 6 April 2040, which right was notarially executed on 7 April 2010 and registered at the Mineral and Petroleum Titles Registration Office ("**MPTRO**") on 11 November 2010 under MPTR0 reference number MPT 122/2010 ("**the Mining Right**").

2.1.1.2 On 15 March 2011, Ntsimbintle and Tshipi executed a Notarial Deed of Cession in terms of which Ntsimbintle ceded the Mining Right to Tshipi. The Notarial Deed of Cession was registered in the MPTR0 on 17 March 2011 under MPTR0 reference number MPT 8/2011.

2.1.1.3 Save as noted below, we have been instructed that Tshipi has not received any notices issued by the DMR in terms of sections 47 or 93 of the MPRDA.

2.1.1.4 As at the date of this Title Opinion, Tshipi is the registered holder of the Mining Right.

#### 2.1.2 Immovable properties

2.1.2.1 On 15 February 2018 we conducted an electronic search on [www.windeed.co.za](http://www.windeed.co.za) which search revealed the following:

2.1.2.1.1 Tshipi is the registered owner of

2.1.2.1.1.1 Portion 16 (a portion of Portion 1) of the farm Mamatwan 331, situated in the Magisterial/Administrative District of Kuruman, Northern Cape, Province of South Africa, measuring 427,5575 hectares, held by Deed of Title T 416/2014;

2.1.2.1.1.2 Portion 17 (a portion of Portion 2) of the farm Mamatwan 331, situated in the Magisterial/Administrative District of Kuruman, Northern Cape, Province of South Africa, measuring 339,7580 hectares, held by Deed of Title T 416/2014;

- 2.1.2.1.1.3                      Portion 18 (a portion of Portion 3) of the farm Mamatwan 331, situated in the Magisterial/Administrative District of Kuruman, Northern Cape, Province of South Africa, measuring 210,2322 hectares, held by Deed of Title T 416/2014; and
- 2.1.2.1.1.4                      49 erven situated in the Township of Kathu, Northern Cape, Province of South Africa, a list of which is attached hereto marked Annexe C.
- 2.1.2.2                              We understand that the aforementioned Portions 16 and 17 of the farm Mamatwan 331 constitute the area over which the Mining Right was granted. Accordingly, as at the date of this Title Opinion, Tshipi is the registered owner of certain immovable properties including the properties that are the subject of the Mining Right.
- 2.1.3                                **Material terms and conditions of the Mining Right**
- 2.1.3.1                              In terms of clause 5.1, Tshipi must pay to the State royalties payable, as contemplated in section 25(2)(g) of the MPRDA, throughout the duration of the Mining Right. We reviewed a copy of the income tax return submitted to SARS in 2016, as well as proof of payment of royalties for 2016 and 2017.
- 2.1.3.2                              In terms of clause 7.2, the mining operations in the mining area must be conducted in accordance with the Mining Work Programme and any amendment to such Mining Work Programme and an approved Environmental Management Programme.
- 2.1.3.3                              In terms of clause 8, Tshipi must dispose of all minerals and/or products derived from the exploitation of the manganese ore at competitive market prices, which means in all cases, non-discriminatory prices or non-export parity prices. If the minerals are sold to any entity, which is an affiliate or non-affiliated agent or subsidiary of Tshipi, or is directly or indirectly controlled by Tshipi, such purchaser must unconditionally undertake in writing to dispose of the minerals and any products produced from the Minerals, at competitive market prices.
- 2.1.3.4                              In terms of clause 17, the holder is bound by the provisions of an agreement or arrangement dated 26 and 27 September 2006 and 2, 3 and 4 October 2006 entered into between the holder (at the time of granting of the Mining Right, Ntsimbintle) (empowering partner) and Safika Resources Proprietary Limited, Women Investments Portfolio Holdings Limited, Sunshine Street Investments 131 Proprietary Limited, Bo-Mme Ba Meepo Investments Proprietary Limited, the Trustees of the Kgalagadi Rural Poverty Node Charitable Trust, Natural Resources Empowerment Fund, NC Women in Mining Proprietary Limited, Future Indefinite Investments 225 Proprietary Limited and Nkojane Economic Prospecting and Investment Proprietary Limited (empowerment partner), which agreement was taken into consideration for purposes of compliance with the requirements of the MPRDA and/or the Broad-Based Economic Empowerment Charter for the South African Mining

Industry ("**Mining Charter**"), and such agreement shall form part of the Mining Right.

2.1.3.5 In terms of clause 18, Tshipi must submit an annual detailed implementation plan to give effect to Regulation 46(e)(i), (ii) and (iii) of the MPRDA Regulations, published under Government Notice R527 in Government Gazette 26275 of 23 April 2004, as amended., which implementation plan must be in line with the Social and Labour Plan. We reviewed a copy of the Social and Labour Plan, dated 8 July 2009, submitted by Ntsimbintle together with the application for the Mining Right as well as a revised Social and Labour Plan prepared by Tshipi, dated December 2014, which was submitted to the DMR on 19 January 2015. Regarding Tshipi's compliance with the Social and Labour Plan, we have been provided with copies of Tshipi's Social and Labour Plan Annual Reports submitted to the DMR in respect of i) 2014/2015; ii) 2015/2016; and iii) 2016/2017.

2.1.3.6 We reviewed copies of the following notices issued to Tshipi in terms of section 93 of the MPRDA:

2.1.3.6.1 an notice issued in terms of section 93(1)(b)(i), dated 5 October 2015, cautioning Tshipi that failure to remedy human resources development and downscaling contraventions of MPRDA on or before 4 November 2015; and

2.1.3.6.2 a notice issued in terms of section 93(1)(b)(i), dated 25 February 2016, ordering Tshipi to extend a consultation process with labour representatives and to comply with the Social and Labour Plan in order to ameliorate the impact of job losses on or before 24 March 2016.

2.1.3.7 Tshipi submitted a response to the 5 October 2015 notice to the DMR on 4 November 2015. We have not been provided with Documents evidencing that the DMR invoked the provisions of sections 93(1)(b)(ii) or 47 subsequent to the issue of the aforementioned notices.

## 2.2 **Material Authorisations and Approvals**

### 2.2.1 **Environmental Authorisation, 2009**

2.2.1.1 An environmental authorisation was issued on 21 October 2009 by the former Department of Tourism, Environment and Conservation (currently the DENC)<sup>1</sup> for various activities associated with the mining operations (Reference NNO25/19NC/KGA/KATHU/37/2008). Construction at the Borwa Mine in terms of this authorisation commenced in June 2011 and operations started in November 2011 (soil stripping and overburden).

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<sup>1</sup> Permit 63.2009 with reference number NC/KGA/KATHU9/37/08.

- 2.2.1.2 The environmental authorisation makes reference to the Environmental Management Programme ("**EMPr**") and specifically requires that the mitigation measures and recommendations in the EMPr must be implemented and strictly adhered to.<sup>2</sup> An EMPr is in place for the Mine. The EMPr referred to in the environmental authorisation is the same document as the EIA / EMPr that was approved by the DMR, discussed below. There is only one EMPr for the Borwa Mine which was prepared to comply with both the MPRDA and the NEMA at the time that the MPRDA and NEMA environmental authorisation applications were submitted to the competent authorities. The EMPr was approved by the DMR and the DENC, separately.
- 2.2.1.3 The environmental authorisation is still in the name of "Ntsimbintle Mining (Pty) Ltd" and should be updated to reflect Tshipi as the holder.
- 2.2.2 **EMPr**
- 2.2.2.1 Before the "One Environmental System" ("**OES**") was implemented on 8 December 2014, environmental management of the mining industry was regulated under the MPRDA by means, *inter alia*, of the approval of EMPrs (in relation to mining rights). Applicants for mining rights would be notified by the relevant Regional Manager to submit an EMPr within a specified time period, after their mining right application had been accepted. The EMPr for the Borwa Mine was approved by the DMR under this system and in terms of the MPRDA on 20 October 2009 (DMR reference number NNO/25/19 NC/KGA/KATHU/37/2008).
- 2.2.2.2 Under OES, all EMPrs approved in terms of the MPRDA are regarded as environmental authorisations issued in terms of NEMA. Tshipi's EMPr is accordingly regarded as an environmental authorisation issued in terms of NEMA.
- 2.2.2.3 The following applications submitted by Tshipi to the DMR were approved on 31 January 2018:
- 2.2.2.3.1 Rectification application in terms of section 24G of NEMA: This application was submitted to the DMR on 14 December 2016 in respect of the unlawful establishment of a diesel farm consisting of above ground tanks with a total capacity of 996 000 litres and underground pipelines, and the widening of a haul road located on the eastern boundary of the surface use area; and
- 2.2.2.3.2 an application to amend the EMPr in terms of section 102 of the MPRDA: This application was prepared by Tshipi in order to cater for changes to the approved infrastructure layout.
- 2.2.2.4 We understand that Tshipi has not implemented all the requirements of its EMPr relating to its backfilling liability (the current EMPr requires that

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<sup>2</sup> Condition 26 of the EA.

concurrent backfilling take place and that at closure, the pit must be completely backfilled to achieve the closure objective of returning the land back to its pre-mining use, being grazing land). Tshipi is undertaking some concurrent backfilling and it is developing a backfill strategy as complete backfilling, as a final closure option, is no longer considered to be financially feasible. It is likely that a further EMPr amendment will be sought, as part of the backfilling strategy, to allow for partial backfilling.

### 2.2.3 Environmental authorisation, 2017

2.2.3.1 The DMR issued Tshipi with an environmental authorisation on 31 January 2018 (Reference No. NC/30/5/1/2/2/0206MR/00083MR). This environmental authorisation was issued following the approval of both the EMPr amendment application and the section 24G rectification application (mentioned above). This environmental authorisation has rectified various non-compliances with Tshipi's EMPr and with NEMA and authorised additional activities, including:

2.2.3.1.1 the expansion of a gravel haul road;

2.2.3.1.2 the establishment of a diesel farm with a total capacity of 996 000 litres;

2.2.3.1.3 an increase in the number, position, volume and layout of waste rock dumps;

2.2.3.1.4 changes to the design, capacity and position of the sewage treatment plant;

2.2.3.1.5 changes to the potable water storage facilities capacity and position; and

2.2.3.1.6 mining of the barrier pillar between Tshipi's Borwa Mine and the adjacent South 32 Mamatwan Mine.

2.2.3.2 The appeal period within which it is possible for interested and affected parties to appeal the DMR's decision to issue the environmental authorisation is currently pending. No appeals have been received to date. If an appeal is lodged, then this will suspend the operation of the environmental authorisation until the appeal has been finalised.

### 2.2.4 IWUL

2.2.4.1 An IWUL has also been granted for the Mine (Licence No: 10/D41K/AGJ/1735, File No. 27/2/2/D1141/C/1). The IWUL was issued

to Tshipi on 19 April 2015 and authorises section 21(a), (b), (g) and (j) water uses in terms of the National Water Act 36 of 1998 ("**NWA**").<sup>3</sup>

2.2.4.2 On 22 March 2016, Tshipi submitted an application to amend the IWUL with the Department of Water and Sanitation ("**DWS**"), which remains pending. This amendment applicant seeks, amongst other things, to rectify certain issues with the permitting of Borwa Mine's waste rock dumps, to correct certain inaccurate information contained in the IWUL and to remove certain conditions that have been included in the IWUL which are either not applicable to Tshipi's operations or are incapable of being complied with.

2.2.4.3 Tshipi is in the process of preparing a second application to amend the IWUL and obtain authorisation for new water uses to cater for the EMPr amendments discussed above. This application also includes a request for exemption from various requirements of GN R704. It is anticipated that this application will be submitted to the DWS in Q1 of 2018.

## 2.2.5 Financial provisioning

2.2.5.1 Pre - OES: Financial provision for rehabilitation in respect of mining rights. Applicants for mining rights had to put up financial provision for rehabilitation before the EMPr to the mining right could be approved. This initial financial provision had to be assessed annually, which assessments had to be submitted to the DMR. Section 6.15 of the EMPr provides that the estimate of the closure liability of Borwa Mine was R44 682 662.43 (including VAT).

2.2.5.2 We reviewed a financial assessment revision prepared by SLR Consulting, dated 18 January 2017 (Report no.2) in respect of the financial closure liability associated with the Borwa mine as at 31 December 2016 ("**SLR Report**"). The financial closure liability was calculated to be R109,718,824 (including VAT), however, this figure excludes any pit backfill. This SLR Report has been prepared using the DMR Guideline, as per current legal requirements.

## 2.3 Section 93 order

2.3.1 Tshipi was issued with a section 93 order by the Regional Manager, Northern Cape: DMR (Reference NC30/5/1/2/3/2/1/(2-6)EM). The order is dated 26 February 2014 and records that an audit and compliance inspection was conducted on 21 January 2014. The following non-compliances with the EMPr were noted in the order:

2.3.1.1 Hydrocarbon spillages were not being handled according to the management measures stipulated in the EMPr; and

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<sup>3</sup> Licence number: 10/D41K/AGJ/1735; File number: 27/2/2/D1141/C/1.

- 2.3.1.2 drip pans were not placed under stationary equipment and vehicles to contain accidental spillages.
- 2.3.2 Tshipi was ordered to clean all spills of hydrocarbons, store all hazardous substances containers in a demarcated area with a cement slab below and bunded walls and all scrap vehicles and equipment which constitute a pollution hazard must be withdrawn from use and repaired or replaced.
- 2.3.3 Further, the section 93 order provides that Tshipi is ordered to submit a financial provision review for the rehabilitation, remediation and management of the environmental impacts associated with mining operations by 26 March 2014. **[Note: We have been provided with a letter from the DMR, dated 4 April 2014, in respect of section 93 order which records that Tshipi was granted an extension for the submission of remedial measures in respect of the non-compliances observed during a site visit on 30 April 2014. The dates referred to appear to be incorrect as the letter was issued on 4 April 2014 but it records that a site visit took place on 30 April 2014. The non-compliances referred to in the extension letter are not expressed.]**
- 2.3.4 Tshipi was further ordered to upgrade its financial provision by an amount of R6 477 781 for the purposes of rehabilitation and management of environmental impacts associated with mining activities. We have been provided with a copy of financial guarantee from Guardrisk, dated 29 April 2014 (Reference no: GR/G/20801/0414/175), which confirms that R6 487 680 is available to the DMR for purposes of executing the EMPr. Tshipi has confirmed that this financial guarantee was submitted to the DMR for purposes of upgrading Tshipi's financial provision, as ordered by the DMR.
- 2.3.5 Tshipi received written notification from the Director General to confirm or set this order aside and, accordingly, this order has lapsed in accordance with the law.

### 3. Assumptions

In rendering this Title Opinion, we have assumed:

- 3.1 the genuineness of all stamps and seals on, and authenticity of all Documents, whether as originals or as copies (whether certified, copied, faxed, electronic or otherwise);
- 3.2 that all copies (whether certified, photocopied, faxed, electronic or otherwise) of the Documents are true and correct copies of the authentic original of which it is a copy and that both the original and the copies are complete;
- 3.3 that each of the parties to the respective Documents has the requisite capacity, power and authority and is lawfully able to enter into, to exercise its rights and to perform its obligations under each of the Documents to which it is a party;
- 3.4 that Tshipi has been duly incorporated and registered in the Republic of South Africa in terms of the South African Companies Act, No. 71 of 2008, as amended (the "**Companies Act**") and is in good standing;



- 3.5 that the Documents are comprehensive and complete and constitute all of the documentation which is available and necessary to consider to render this Title Opinion;
- 3.6 that all signatures on the Documents are authentic and each signatory was duly authorised and appointed to properly and validly sign such Document in his or her stated capacity;
- 3.7 that none of the parties to the Documents are or have been subject to or responsible for any duress or undue influence, misrepresentation, mistake, corruption, collusion or any other circumstances that in law (whether in the Republic of South Africa or elsewhere) would or may render any of the Documents void and/or unenforceable;
- 3.8 that the conclusion and entry into of any of the Documents is not and would not be deemed to be a fraudulent preference and that all such Documents were entered into in good faith;
- 3.9 as regards the legality, validity, binding effect and enforceability in the Republic of South Africa of obligations, agreements, Documents, matters or things referred to hereunder, that same are not illegal, invalid, non-binding or unenforceable under or by virtue of any applicable laws of any jurisdiction other than the Republic of South Africa;
- 3.10 the accuracy of any and all representations expressed in or implied by any of the Documents and submitted to Webber Wentzel for purposes of rendering this Title Opinion;
- 3.11 that no review applications or proceedings have been instituted for the review or setting aside of any of the Documents reviewed;
- 3.12 that no proceedings have been instituted and no other steps have been taken for the winding-up, business rescue, provisional or final liquidation of or for the appointment of an administrator, judicial manager or liquidator in respect of or in relation to Tshipi; and
- 3.13 that no order has been made or issued by a court of any other similar competent authority in relation to the winding-up, business rescue, liquidation or administration of Tshipi.

#### **4. Qualifications**

- 4.1 This Title Opinion is subject to the following qualifications:
- 4.1.1 this Title Opinion is given only-
- 4.1.1.1 with respect to South African law in force as at the date of this Title Opinion, as applied by the South African courts; and
- 4.1.1.2 in the context of practices and standards developed under South African law which have been applied and observed in light of Webber Wentzel's experience as attorneys practising in the Republic of South Africa;

- 4.1.2 no opinion is expressed or implied as to the laws of any jurisdiction other than the Republic of South Africa and Webber Wentzel does not hold itself to be an expert on, or even generally familiar with, any laws other than the laws of the Republic of South Africa;
- 4.1.3 no opinion is expressed or implied on any legal matters other than in respect of the Mining Right held by Tshipi in the Republic of South Africa under South African law;
- 4.1.4 no opinion is expressed or implied on the legal compliance of Tshipi with their respective memorandum of incorporation, any matters relating thereto and/or their obligations in terms of the Companies Act;
- 4.1.5 no opinion is expressed or implied as to the possible commercial, technical, financial or tax consequences of any particular arrangement and/or agreement;
- 4.1.6 Save as expressly stated above, Webber Wentzel did not investigate or confirm, and thus makes no comments or assessments and, unless expressly stated, expresses no views on, the compliance or failure by Tshipi to comply with the terms, conditions, rights and obligations of any right, permit, permission, authorisation, licence or agreement cited or referred to in this Title Opinion;
- 4.1.7 Webber Wentzel did not investigate and has not expressed any view on Tshipi's compliance or lack thereof with black economic empowerment as contemplated in section 2(d) and (f) of the MPRDA and the Broad Based Socio Economic Empowerment Charter for the South African Mining Industry developed by the Minister of Mineral Resources pursuant to the provisions of section 100(2)(a) of the MPRDA, or any amendment thereto;
- 4.1.8 although Webber Wentzel will review, comment and report on title in and to the Mining Right, Webber Wentzel cannot confirm that all requisite permits, licences, consents, approvals, authorisations, certificates, applications, registrations and declarations have been issued to or obtained by the holder of such rights;
- 4.1.9 Webber Wentzel shall not be liable for any inaccuracies in the Title Opinion arising from the actions and/or omissions and/or wilful statements or representations on the part of Tshipi and/or Jupiter Mines and/or any of their officers, representatives or agents which may take place or which may be made in connection with the preparation and/or rendering of this Title Opinion;
- 4.1.10 any views which are expressed in respect of, or on the basis of, any law, statute, regulation or similar rules, are expressed in respect of the relevant law, statute, regulation or similar rules as it was in force, and on the basis of the provisions hereof, at the date of this Title Opinion; and
- 4.1.11 equitable remedies such as interdicts or orders for specific performance are discretionary and will not be granted automatically by a South African court and such remedies will only be granted if certain requirements are satisfied. Nothing in this Title Opinion is to be taken as indicating that such remedy

would be available in respect of the obligations of any party under the Documents.

- 4.2 Webber Wentzel will have no liability of any nature, whether in contract, delict or otherwise, for any losses, damages, costs or expenses ("**losses**") whatsoever and howsoever caused arising from or in any way connected with Title Opinion, except where such losses are caused by Webber Wentzel's gross negligence or wilful default.
- 4.3 Webber Wentzel's liability to Tshipi and Jupiter Mines and any other person or entity entitled to rely and relying on the contents of this Title Opinion for any reason or purpose in any manner, for any claim whatsoever arising out of, or as a result of, or in connection with the Title Opinion, shall be limited to and shall not exceed an aggregate amount (inclusive of costs) equal to the amount recoverable, and actually recovered, under Webber Wentzel's professional indemnity cover.
- 4.4 This Title Opinion is given solely in connection with the Documents relating to the Mining Right held by Tshipi to and for the benefit and information of Jupiter Mines
- 4.5 This Title Opinion and the opinions expressed herein (in whole or in part) may accordingly not –
- 4.5.1 be transmitted or disclosed to or be used or relied upon by any other person or entity whatsoever for any purposes whatsoever; or
- 4.5.2 be quoted or referred to or made public or filed with any third party for any purpose whatsoever, except with Webber Wentzel's written consent.
5. Should you have any queries please do not hesitate to contact us.

Yours sincerely



**WEBBER WENTZEL**

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**Annexe A**

**Schedule of Documents**

<b>Item</b>	<b>Document</b>
<b>Mining Right 206 MR</b>	
1.	Mining Right NC 30/5/1/2/2/206 MR
2.	Deed of Cession of Mining Right NC 30/5/1/2/2/206 MR
3.	Mining Work Programme for Mining Right NC 30/5/1/2/2/206 MR
4.	Social and Labour Plan for Mining Right NC 30/5/1/2/2/206 MR
5.	Updated Social and Labour Plan for Mining Right NC 30/5/1/2/2/206 MR
6.	Notice in terms of section 93(1)(b)(i) of the MPRDA, dated 25 February 2016
7.	Notice in terms of section 93(1)(b)(i) of the MPRDA, dated 2-5 October 2015
8.	Response to notice in terms of section 93(1)(b)(i) of the MPRDA of 25 February 2016, dated 4 November 2015
9.	Social and Labour annual Report for 2014/2015
10.	Social and Labour Plan Annual Report for 2015/2016
11.	Social and Labour Plan Annual Report for 2016/2017
12.	Mining Charter Compliance Report for 2014/2015
13.	Mining Charter Compliance Report for 2015/2016
14.	Mining Charter Compliance Report for 2016/2017
15.	SARS form ITR14 for the 2016 financial year
16.	SARS form IRP5 for the 2017 financial year
17.	SARS form MPR3 for the 2016 financial year

18.	Proof of Payment from Tshipi to SARS, dated 27 February 2017
19.	Proof of payment from Tshipi to SARS, dated 29 March 2017
20.	SARS form MPR2 for Period 2 of 2017
21.	Deed of Servitude K15/2014S
22.	Deed of Title T 416/2014
23.	Deed of Title T 2426/2010
<b>Environmental</b>	
24.	Environmental authorisation issued on 21 October 2009 by the former Department of Tourism, Environment and Conservation (currently the DENC) for various activities associated with the mining operations (Reference NNO25/19NC/KGA/KATHU/37/2008).
25.	EMPr for the Borwa Mine approved by the DMR on 20 October 2009 (DMR reference number NNO/25/19 NC/KGA/KATHU/37/2008).
26.	Environmental authorisation on 31 January 2018 (Reference No. NC/30/5/1/2/2/0206MR/00083MR).
27.	<u>Rectification application in terms of section 24G of NEMA</u> , submitted to the DMR on 14 December 2016
28.	Application to amend the EMPr for the Borwa Mine in terms of section 102 of the MPRDA
29.	IWUL issued to Tshipi on 19 April 2015 (Licence No: 10/D41K/AGJ/1735, File No. 27/2/2/D1141/C/1)
30.	Financial assessment revision prepared by SLR Consulting, dated 18 January 2017 (Report no.2) in respect of the financial closure liability associated with the Borwa mine as at 31 December 2016.
31.	Section 93 order by the Regional Manager, Northern Cape: DMR (Reference NC30/5/1/2/3/2/1/(2-6)EM). The order is dated 26 February 2014

**Annexe B****Summary of the relevant provisions of the MPRDA**

This Annexe B is intended as background information in relation to this Title Opinion. As such it is only a summary of the more pertinent provisions of the MPRDA and is not comprehensive or complete. The MPRDA is the principal (but not the only) legislation regulating the grant of rights to conduct prospecting and mining operations in the Republic of South Africa.

**Section 5: Legal nature of prospecting right, mining right, exploration right or production right, and rights of holders thereof.**

- (1) A prospecting right, mining right, exploration right or production right granted in terms of the MPRDA and registered in terms of the Mining Titles Registration Act, 1967, is a limited real right in respect of the mineral or petroleum and the land to which such right relates.
- (2) The holder of a prospecting right, mining right, exploration right or production right is entitled to the rights referred to in this section and such other rights as may be granted to, acquired by or conferred upon such holder under the MPRDA or any other law.
- (3) Subject to the MPRDA, any holder of a prospecting right, a mining right, exploration right or production right may:
  - (a) enter the land to which such right relates together with his or her employees, and bring onto that land any plant, machinery or equipment and build, construct or lay down any surface, underground or under sea infrastructure which may be required for the purpose of prospecting, mining, exploration or production, as the case may be;
  - (b) prospect, mine, explore or produce, as the case may be, for his or her own account on or under that land for the mineral or petroleum for which such right has been granted;
  - (c) remove and dispose of any such mineral found during the course of prospecting, mining, exploration or production, as the case may be;
  - (cA) subject to section 59B of the Diamonds Act, 1986, (in the case of diamond) remove and dispose of any diamond found during the course of mining operations;
  - (d) subject to the National Water Act, 1998, use water from any natural spring, lake, river or stream, situated on, or flowing through, such land or from any excavation previously made and used for prospecting, mining, exploration or production purposes, or sink a well or borehole required for use relating to prospecting, mining, exploration or production on such land; and
  - (e) carry out any other activity incidental to prospecting, mining, exploration or production operations, which activity does not contravene the provisions of the MPRDA.

**Section 5A. Prohibition relating to illegal act.**

No person may prospect for or remove, mine, conduct technical co-operation operations, reconnaissance operations, explore for and produce any mineral or petroleum or commence with any work incidental thereto on any area without:

- (a) an environmental authorisation;
- (b) a reconnaissance permission, prospecting right, permission to remove, mining right, mining permit, retention permit, technical co-operation permit, reconnaissance permit, exploration right or production right, as the case may be; and
- (c) giving the landowner or lawful occupier of the land in question at least 21 days written notice.

**Section 11: Transferability and encumbrance of prospecting rights and mining rights.**

(1) A prospecting right or mining right or an interest in any such right, or a controlling interest in a company or close corporation, may not be ceded, transferred, let, sublet, assigned, alienated or otherwise disposed of without the written consent of the Minister, except in the case of change of controlling interest in listed companies.

(2) The consent referred to in subsection (1) must be granted if the cessionary, transferee, lessee, sub-lessee, assignee or the person to whom the right will be alienated or disposed of:

- (a) is capable of carrying out and complying with the obligations and the terms and conditions of the right in question; and
- (b) satisfies the requirements contemplated in section 17 or 23, as the case may be.

(3) The consent contemplated in subsection (1) is not required in respect of the encumbrance by mortgage contemplated in subsection (1) of right or interest as security to obtain a loan or guarantee for the purpose of funding or financing a prospecting or mining project by:

- (a) any bank, as defined in the Banks Act, 1990 (Act No. 94 of 1990); or
- (b) any other financial institution approved for that purpose by the Registrar of Banks referred to in the Banks Act, 1990 (Act No. 94 of 1990), on request by the Minister,

if the bank or financial institution in question undertakes in writing that any sale in execution or any other disposal pursuant to the foreclosure of the mortgage will be subject to the consent in terms of subsection (1).

(4) Any transfer, cession, letting, subletting, alienation, encumbrance by mortgage or variation of a prospecting right or mining right, as the case may be, contemplated in this section must be lodged for the registration at the Mineral and Petroleum Titles Registration Office within 60 days of the relevant transaction.

**Section 23: Granting and duration of mining right.**

(1) Subject to subsection (4), the Minister must grant a mining right if:

- (a) the mineral can be mined optimally in accordance with the mining work programme;
- (b) the applicant has access to financial resources and has the technical ability to conduct the proposed mining operation optimally;
- (c) the financing plan is compatible with the intended mining operation and the duration thereof;
- (d) the mining will not result in unacceptable pollution, ecological degradation or damage to the environment;
- (e) the applicant has provided for the prescribed social and labour plan;
- (f) the applicant has the ability to comply with the relevant provisions of the Mine Health and Safety Act, 1996 (Act No. 29 of 1996);
- (g) the applicant is not in contravention of any provision of the MPRDA; and
- (h) the granting of such right will further the objects referred to in section 2 (d) and (f) and in accordance with the charter contemplated in section 100 and the prescribed social and labour plan.

(2) The Minister may, having regard to the nature of the mineral in question, take into consideration the provisions of section 26.

(2A) If the application relates to the land occupied by a community, the Minister may impose such conditions as are necessary to promote the rights and interests of the community, including conditions requiring the participation of the community.

(3) The Minister must, within 60 days of receipt of the application from the Regional Manager, refuse to grant a mining right if the application does not meet the requirements referred to in subsection (1).

(4) If the Minister refuses to grant a mining right, the Minister must, within 30 days of the decision, in writing notify the applicant of the decision and the reasons.

(5) A mining right granted in terms of subsection (1) comes into effect on the effective date.

(6) A mining right is subject to the MPRDA, any relevant law, the terms and conditions stated in the right and the prescribed terms and conditions and is valid for the period specified in the right, which period may not exceed 30 years.

**Section 47: Minister's power to suspend or cancel rights, permits or permissions.**

(1) Subject to subsections (2), (3) and (4), the Minister may cancel or suspend any reconnaissance permission, prospecting right, mining right, mining permit, retention permit or holders of old order rights or previous owner of works, if the holder or owner thereof:



- (a) is conducting any reconnaissance, prospecting or mining operation in contravention of the MPRDA;
- (b) breaches any material term or condition of such right, permit or permission;
- (c) is contravening any condition of the environmental authorisation; or
- (d) has submitted inaccurate, false, fraudulent, incorrect or misleading information for the purposes of the application or in connection with any matter required to be submitted under the MPRDA;

(2) Before acting under subsection (1), the Minister must:

- (a) give written notice to the holder indicating the intention to suspend or cancel the right;
- (b) set out the reasons why he or she is considering suspending or cancelling the right;
- (c) afford the holder a reasonable opportunity to show why the right, permit or permission should not be suspended or cancelled; and
- (d) notify the mortgagee, if any, of the prospecting right, mining right or mining permit concerned of his or her intention to suspend or cancel the right or permit.

(3) The Minister must direct the holder to take specified measures to remedy any contravention, breach or failure.

(4) If the holder does not comply with the direction given under subsection (3), the Minister may act under subsection (1) against the holder after having:

- (a) given the holder a reasonable opportunity to make representations; and
- (b) considered any such representations.

(5) The Minister may by written notice to the holder lift a suspension if the holder:

- (a) complies with a directive contemplated in subsection (3); or
- (b) furnishes compelling reasons for the lifting of the suspension.

### **Section 93: Orders, suspensions and instructions.**

(1) If an authorised person finds that a contravention or suspected contravention of, or failure to comply with:

- (a) any provision of the MPRDA; or
- (b) term or condition of any right, permit or permission or any other law granted or issued or any environmental management programme or environmental management plan approved terms of the MPRDA, has occurred or is occurring on the relevant reconnaissance, exploration, production, prospecting mining or

retention area or place where prospecting operations or mining operations or processing operations are being conducted, such a person may:

- (i) order the holder of the relevant right permit or permission, or the person in charge of such area, any person carrying out or in charge of the carrying out of such activities or operations or the manager, official, employee or agent of such holder or person to, take immediate rectifying steps; or
- (ii) order that the reconnaissance, prospecting, exploration, mining, production or processing operations or part thereof be suspended or terminated, and give such other instructions in connection therewith as may be necessary.

(2) The Director General must confirm or set aside any order contemplated in subsection (1) (a) or (b).

(3) The Director-General must notify the relevant holder or other person contemplated in subsection (1) in writing within 60 days after the order referred to in subsection (1) (a) or (b) has been set aside or confirmed, failing which such order shall lapse.

**Annexe C**

**Schedule of erven**

<b>Item</b>	<b>Erf</b>	<b>Portion</b>	<b>Township</b>	<b>Deeds Office</b>	<b>Deed of Title</b>
1.	6638	0	Kathu	Vryburg	T2353/2012
2.	6660	0	Kathu	Vryburg	T2409/2012
3.	1476	0	Kathu	Vryburg	T2692/2011
4.	<b>[Note: Deed of Title T2672/2011 lists Erf 1082.]</b>		Kathu	Vryburg	T2672/2011
5.	13072	0	Kathu	Vryburg	T2672/2011
6.	5106	0	Kathu	Vryburg	T2732/2011
7.	5101	0	Kathu	Vryburg	T2732/2011
8.	5102	0	Kathu	Vryburg	T2732/2011
9.	5103	0	Kathu	Vryburg	T2732/2011
10.	5105	0	Kathu	Vryburg	T2732/2011
11.	5107	0	Kathu	Vryburg	T2732/2011
12.	5109	0	Kathu	Vryburg	T2732/2011
13.	5110	0	Kathu	Vryburg	T2732/2011
14.	5111	0	Kathu	Vryburg	T2732/2011
15.	5112	0	Kathu	Vryburg	T2732/2011
16.	5104	0	Kathu	Vryburg	T2732/2011
17.	5108	0	Kathu	Vryburg	T2732/2011
18.	6036	0	Kathu	Vryburg	T3191/2011

19.	10455	0	Kathu	Vryburg	T329/20141682
20.	1682	0	Kathu	Vryburg	T3220/2011
21.	10468	0	Kathu	Vryburg	T330/2014
22.	13051	0	Kathu	Vryburg	T3447/2013
23.	13052	0	Kathu	Vryburg	T3448/2013
24.	13054	0	Kathu	Vryburg	T3450/2013
25.	13055	0	Kathu	Vryburg	T3451/2013
26.	13057	0	Kathu	Vryburg	T3453/2013
27.	13058	0	Kathu	Vryburg	T3454/2013
28.	13060	0	Kathu	Vryburg	T3456/2013
29.	13061	0	Kathu	Vryburg	T3457/2013
30.	13062	0	Kathu	Vryburg	T3458/2013
31.	13065	0	Kathu	Vryburg	T3461/2013
32.	13066	0	Kathu	Vryburg	T3462/2013
33.	13067	0	Kathu	Vryburg	T3463/2013
34.	13068	0	Kathu	Vryburg	T3464/2013
35.	13069	0	Kathu	Vryburg	T3465/2013
36.	13070	0	Kathu	Vryburg	T3466/2013
37.	13071	0	Kathu	Vryburg	T3467/2013
38.	13053	0	Kathu	Vryburg	T3449/2013
39.	13056	0	Kathu	Vryburg	T3452/2013
40.	13059	0	Kathu	Vryburg	T3455/2013
41.	13063	0	Kathu	Vryburg	T3459/2013

42.	13064	0	Kathu	Vryburg	T3460/2013
43.	9475	0	Kathu	Vryburg	T3695/2013
44.	10600	0	Kathu	Vryburg	T3696/2013
45.	10609	0	Kathu	Vryburg	T3697/2013
46.	10601	0	Kathu	Vryburg	T3698/2013
47.	9473	0	Kathu	Vryburg	T3699/2013
48.	10610	0	Kathu	Vryburg	T3760/2013
49.	10624	0	Kathu	Vryburg	T3726/2013