Township developments and the MPRDA

January 2016

Developing problems

With a rapidly expanding population and the ever increasing demand for accommodation in close proximity to the CBDs, developers and town planners who seek greener (and vacant) pastures, subsequently end up striking gold, or so they think. It is evident, however, that many entities involved in the establishment and development of new townships are blissfully unaware of the provisions of the Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA).

The provisions of the MPRDA

Section 53(1) of the MPRDA provides that any person who intends to use the surface of any land in any way that may be contrary to any object of the MPRDA, or which is likely to impede any such object, must apply to the Minister of Mineral Resources (the Minister) for approval. This section must be read with section 48 of the MPRDA, which prohibits prospecting and mining rights from being granted by the Minister in respect of any land comprising a residential area. This accordingly means that when an area of land is established as a township, and rezoned as a residential area, any minerals that may have been mined from that land are sterilised and prospecting and mining rights may not be granted in respect thereof.

The problem

As it is almost impossible to establish whether the use of land would be contrary or impede any objects of the MPRDA, it may appear that the Minister must approve any intended use of any land in the Republic, and not just land that may be obviously affected by prospecting or mining activities.

It then follows that if you intend to establish a new township, which would require land to be re-zoned as residential land, an application for the Minister's approval of the intended use would have to be submitted to the Department of Mineral Resources (the DMR). The provisions of the MPRDA clearly state that such a submission to the Minister is obligatory and not discretionary.

This interpretation is nevertheless debateable, as it creates an additional regulatory obligation on developers and conveyancers, and would potentially stifle the development of township and residential areas. In practice it seems that such applications are only submitted if the land

concerned relates to areas that have clearly been affected by prospecting or mining activities, or areas where mineral resources are known to be present.

Developers and town planners tend to overlook the fact that the use of certain land, where mining activity may have been prevalent in the past, may be subject to approval from the Minister, even if there have been no prospecting or mining activities in respect of that portion of land for decades.

The regulations to the MPRDA do not prescribe the form or content in which an application is to be made to the DMR. Once the Minister receives the application, he usually gives notice of the application to interested and affected parties, such as any prospecting or mining rights holders, who hold such rights over or near the area of land that will be affected by the intended use.

The Minister may also have an investigation conducted if it is alleged that the intended use of the surface of any land may result in the mining of mineral resources being detrimentally affected. When an investigation is concluded, written notice is served on the person who intends using that land, notifying that person of the allegation that the intended use may result in the mining of mineral resources being detrimentally affected.

After considering the results of the investigation, the Minister may direct the persons concerned to take the necessary corrective measures within a specified period of time. The Minister could, however, also reject the application.

An application may be rejected if:

- the intended use of the land would result in the sterilisation of mineral resources;
- the intended use of the land may affect the success of a prospecting or mining rights application; or
- the land in question is near the vicinity of any potentially health threatening source resulting from previous mining or related activities.

Even if an investigation is not conducted, the Minister has a wide discretion and is not obligated to grant approval of the application under defined circumstances or within a specified period of time.

This makes the success of such an application unpredictable. Failure to submit such an application is, according to the MPRDA, an offence which is punishable by fine or imprisonment.

Conclusion

That being said, there seems to be uncertainty in practice as to when an application for land use is to be submitted to the DMR. Reference to "any land" in the MPRDA would effectively mean all the land in the Republic. However, many townships have been approved and developed without the prior approval of the Minister, which leads one to contemplate whether the intention of the legislature was actually to refer to only land in respect of which mineral resources may be sterilised - which is impossible to determine without geological and other professional reports.

Developers, town planners and conveyancers should nevertheless familiarise themselves with the provisions of the MPRDA and always ensure that they have done a thorough investigation in respect of the a portion of land to be developed and re-zoned, as all that glitters could indeed turn out to be gold.

> Read the full article online