



STATEMENT ON THE KGASWANE COUNTRY LODGE

MAGALIESBERG PROTECTED ENVIRONMENT

March 2013 Update



A luta continua!

Having lost its application for review of the North-West province's post-hoc approval for the Kgaswane Country Lodge, a 57-bedroom upmarket hotel which had been illegally constructed inside the Magaliesberg Protected Environment, in the Mafikeng High Court, as well as the application to the Judge for leave to appeal her judgement, the Magaliesberg Protection Association (MPA) has now been granted leave to appeal the judgement in the Supreme Court of Appeal in Bloemfontein. The Heads of Argument have been submitted to the Court and we are now waiting for a court date, which will most probably be in the second half of the year.



A brief re-cap of the background to the matter is in order. In July, 2008, two members of the MPA, who were checking the conservation status of the Magaliesberg from the air, noticed a massive new development that was taking place inside the Magaliesberg Protected Environment (MPE) at Olifantsnek. The MPA immediately informed the North West Department of Agriculture, Conservation and Environment and learnt that they had only recently become aware of this illegal development and were in the process of prosecuting the developer.

Subsequently the MPA learnt that the developer was applying for rectification of his illegal development (a 57-bedroom upmarket hotel), via Section 24G of the National Environmental Management Act, and although the MPA formally submitted its strong objections to this, we were notified on 9th March, 2009 that the Department had approved the application, and that the developer was permitted to carry on with his hotel development. This approval was given despite the fact that the EMF (Environmental Management Framework) for the Magaliesberg Protected Environment classifies the area where the Kgaswane Country Lodge is situated as “highly sensitive”, and designates hotels, lodges and conference centres as “incompatible activities” in such an area. Significantly, although the EMF had been completed by the Department in 2007 and was being used to guide their decision making, it was only gazetted by the Department less than a week after the decision to approve the hotel development. However, regulations that have been in place ever since the Magaliesberg was proclaimed a Protected Natural Environment in 1994 (and going back to the original proclamation of the Magaliesberg Natural Area in 1977) also make it clear that such activities are not compatible with the MPE. (The MPA later learnt that the fine imposed on the developer for building illegally inside the MPE was only R21,000 instead of at least R500,000 which is normally applied to a 24G application for a development of that size.)

The MPA decided to object officially to this approval, and instructed an environmental law firm to assist it in this matter. The details of this process are given in previous Statements issued by the MPA. Suffice it to say that, on 5 February, 2010, eight months after it had lodged its objection, we received notification from the MEC of the Department, dismissing the MPA’s appeal.

In light of the serious risk that the decision of the Department to grant environmental authorisation to the Kgaswane Country Lodge poses to the integrity of the Magaliesberg Protected Environment, since it could serve as a precedent for developers to build illegally and when apprehended to take the Section 24G route, the MPA committee decided to take the MEC’s decision on review. In this we had the support of the Mountain Club of South Africa, the Johannesburg Hiking Club and the Buffelsfontein Valley Conservancy, as well as other concerned individuals and organisations. The details of the review, in which advocate Peter Lazarus and Senior Counsel Paul Kennedy argued our case in the Mafikeng High court on 4th August, 2011 (as well as our earlier unsuccessful application to interdict further construction on the lodge, which was heard on 30th September 2010), are given in previous Statements. Unfortunately the judge was very unsympathetic to our cause – she even questioned why in our pleadings we focused on the environment, but not on the economy or job creation – and on 10th January, 2012 we received the judgement from the review hearing, dismissing our application, with costs awarded against the MPA. Our subsequent application to the judge for leave to appeal against her judgement was also dismissed, with costs.

Given the importance of this case for the future protection of the Magaliesberg, and for the prospects of success with South Africa’s application to UNESCO for the Greater Magaliesberg Region to be declared a Biosphere, the MPA committee then approached the Supreme Court of Appeal (SCA) in Bloemfontein for leave to appeal the judgements of the Mafeking High Court. Eventually, the MPA’s run of adverse decisions came to an end on 5 July, 2012 when the SCA granted us leave to appeal the judgement against us.

The MPA is very grateful for the generous support it has been receiving from the legal fraternity in its legal challenge.

- Senior Counsel Paul Kennedy and Advocate Peter Lazarus for representing us at the initial court action on a 50% fee basis
- Advocate Peter Lazarus for his generous offer to act on a *pro bono* basis for the appeal
- Advocate Fiona Southwood who has been assisting Peter in preparing the Heads of Argument, also on a *pro bono* basis
- Environmental law firm Cameron Cross for doing the same (apart from actual costs incurred)
- Attorney Amanda van der Lith who has taken over from Cameron Cross, also on a *pro bono* basis.

The MPA is very grateful for the many generous donations we have received, which has made it possible for it to take on the legal challenge. Nevertheless, the MPA still faces many costs in pursuing this litigation, so we are again asking for donations to help cover these costs. The MPA's bank details are given below¹.

Paul Fatti
 Chairman, Magaliesberg Protection Association
 7 March, 2013

¹Donations should be deposited into the Magaliesberg Protection Association's account at First National Bank:

Account number: 548 600 19793
 Branch: Killarney
 Branch Code: 25620500
 Reference: Kgaswane

Please send an e-mail to the MPA Secretary, Barbara Reid (reidb@iafrica.com) once you have made the deposit