

MACCSAND (Pty) Ltd v CITY OF CAPE TOWN 2012 (4) SA 181 (CC)

NJJ Olivier*

C Williams**

PJ Badenhorst***

SUMMARY

The Constitutional Court in *Maccsand (Pty) Ltd v City of Cape Town* (CCT 103/11) 2012 ZACC 7 decided that the granting of mining rights or mining permits by the Minister of Mineral Resources in terms of the *Mineral and Petroleum Resources Development Act 28 of 2002* does not obviate the obligation on an applicant to obtain authorisations in terms of other legislation that deals with functional domains other than minerals, mining and prospecting. This applies to all other legislation, irrespective of whether the responsible administrator of such other legislation is in the national, provincial or local sphere of government. The effect of the decision is that planning and other authorities which derive their statutory mandate and powers from other legislation retain all their powers as regards planning and rezoning, for instance. In addition, the Minister of Mineral Resources cannot make a decision on behalf of, or for, such functionaries. The judgement also clarified the question of whether or not a national Act can supersede provincial legislation dealing with a distinctly different functional domain. In principle, the decision also indicates that the fact that a range of authorisations are required in terms of separate statutory instruments (each with its own functional domain and administered by its own functionary) does not necessarily amount to conflicts between these instruments. An owner of land may now insist that his land may not be used for mining purposes if it is not zoned for such purposes. It is submitted that, in order to provide certainty to land owners, developers and government functionaries, and to promote investor

* Nic Olivier. BA (Law), LLB, LLD, BA(Hon), MA B Phil, BA (Hons). Professor, SADC Centre for Land-related, Regional and Development Law and Policy, University of Pretoria. Email: oliviern@mweb.co.za.

** Clara Williams. LLB. Lecturer, Faculty of Law, University of Pretoria, Non-practising Attorney Email: clara.williams001@gmail.com.

*** Pieter Badenhorst. BLC, LLD, LLM, LL.M. Associate Professor of Law, Deakin University and Visiting Professor, Nelson Mandela Metropolitan University. Email: pieter.badenhorst@deakin.edu.au.

confidence (especially in the mining sector), an intergovernmental system for the consideration of applications by the functionaries responsible for the separate statutory instruments needs to be developed as a high priority.

KEYWORDS: co-operative government; conflict of laws; intergovernmental relations; *Land Use Planning Ordinance* 15 of 1985; land use; *Mineral and Petroleum Resources Development Act* 28 of 2002; mining; planning; rezoning