

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA



CASE NO.: 28008/2021

(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED.

21/06/2022

In the matter between:

CULVERWELL CATTLE COMPANY PROPRIETARY
LIMITED

First Applicant

CULVERWELL CONSERVATION COMPANY
PROPRIETARY LIMITED

Second Applicant

STREET SPIRIT TRADING 175 PROPRIETARY
LIMITED

Third Applicant

ZILKAATS ESTATE HOMEOWNERS' ASSOCIATION

Fourth Applicant

LEON ERASMUS

Fifth Applicant

MAGDALENA SOPHIA MARIA ERASMUS

Sixth Applicant

KENEMANDANIE CLOSED CORPORATION

Seventh Applicant

WERNER HENNING

Eighth Applicant

OLGA HENNING

Ninth Applicant

GERHARDUS JACOBUS VAN ROOYEN

Tenth Applicant

MAKIBIG FARMS PROPRIETARY LIMITED	Eleventh Applicant
DEWILDT HELPMEKAAR NPC	Twelfth Applicant
And	
MINISTER OF MINERAL RESOURCES	First Respondent
DIRECTOR-GENERAL OF THE DEPARTMENT OF MINERAL RESOURCES	Second Respondent
THE REGIONAL MANAGER OF THE DEPARTMENT OF MINERAL RESOURCES, NORTH-WEST REGION	Third Respondent
CEDAR POINT MINERALS PROPRIETARY LIMITED	Fourth Respondent
NCHE MINING RESOURCES 247 PROPRIETARY LIMITED	Fifth Respondent
MADIBENG LOCAL MUNICIPALITY	Sixth Respondent
In Re:	
CEDAR POINT MINERALS PROPRIETARY LIMITED	Applicant
and	
CULVERWELL CATTLE COMPANY PROPRIETARY LIMITED	First Respondent
CULVERWELL CONSERVATION COMPANY PROPRIETARY LIMITED	Second Respondent
ZILKAATS ESTATE HOMEOWNERS' ASSOCIATION	Third Respondent
MINISTER OF MINERAL RESOURCES	Fourth Respondent
DIRECTOR-GENERAL OF THE DEPARTMENT OF MINERAL RESOURCES	Fifth Respondent
THE REGIONAL MANAGER OF THE DEPARTMENT OF MINERAL RESOURCES, NORTH-WEST REGION	Sixth Respondent

JUDGMENT

van der Westhuizen, J

- [1] There are two applications before court, a main application and a counter-application. These matters ensued upon the granting of a prospecting permit, NW30/5/1/2/2511PR, that was awarded to Cedar Point Proprietary Limited (Cedar Point), the applicant in the main application, on behalf of the Minister of Mineral Resources and Energy (the Minister), the fourth respondent in the main application. The prospecting permit was granted in terms of the provisions of the Mineral and Petroleum Resources Development Act, 28 of 2002 (MPRDA). It was to endure for a period of three years, i.e. until August 2022. The prospecting right permitted Cedar Point to prospect for the minerals Chrome Ore, Platinum Group Minerals and Nickle Ore.
- [2] The counter-application was filed partially in response to the main application by Culverwell Cattle Company Proprietary Limited (Culverwell), the first respondent in the main application. Other parties joined as applicants in support of Culverwell in its counter-application. I shall refer to all the applicants in the counter-application as Culverwell for ease of reference. Culverwell further filed an answering affidavit in the main application. It is to be assumed that, to the extent that a defence was raised in the answering affidavit of Culverwell, that defence is merely premised upon the relief sought in the counter-application.
- [3] Cedar Point primarily sought an interdict directing the landowners of the properties that are subject to the aforesaid prospecting permit, to allow Cedar Point to enter upon the affected properties to enable it to give effect to the prospecting permit.
- [4] In the answering affidavit, Culverwell raised the issue that the prospecting permit was allegedly granted unlawfully and thus subject to be reviewed and set aside. That relief is then only sought in the counter-application. However, the review and setting aside of the prospecting

permit is dependent upon the grant of relief that is sought in terms of the provisions of the Promotion of Administrative Justice Act, 3 of 2000 (PAJA).

- [5] The relief sought in the counter-application is premised upon a three part granting of relief, the one following upon the other. The primary relief that is sought in Part A, is, firstly, an *interim* interdict preventing Cedar Point from entering upon the properties that are the subject of the prospecting permit and to refrain from conducting any prospecting thereon, pending, secondly, compliance with a *mandamus* which is further sought which related to the provisions of PAJA. The relief in Part B related to the review and setting aside of the prospecting permit once Culverwell received the required information (reasons for the granting of the prospecting permit) in terms of the provisions of PAJA. In Part C Culverwell sought a perpetual interdict in terms whereof the Minister is to be interdicted from receiving and entertaining any future application for prospecting rights in respect of the affected properties, and to be interdicted from granting of any prospecting right in respect of the affected properties.
- [6] It was submitted on behalf of Cedar Point that, bar the relief sought in the counter-application, no defence was raised in the answering affidavit to the main application. That submission was premised upon the trite principle that an administrative decision, whether lawfully or unlawfully made, was considered to be valid until that administrative decision was reviewed and set aside by a competent court.¹ It was common cause that the grant of the said prospecting permit was an administrative decision.
- [7] It is clear from the structure of the relief sought in the counter-application that Culverwell required certain information (in particular the reasons for

¹ *Oudekraal Estates (Pty) Ltd v City of Cape Town et al* 2004(6) SA 222 (SCA); *Camps Bay Ratepayers' and Residents' Association et al v Harrison et al* 2011(4) SA 42 (CC) [62]

the grant of the prospecting permit) in terms of PAJA, and once that was received, it would only thereafter seek a review and setting aside of the decision to grant the said prospecting permit.

- [8] In this regard, it is to be noted that on behalf of Culverwell, submissions were mainly made with reference to the relief sought in Part A, i.e. the grant of an *interim* interdict and compliance with the provisions of PAJA that related to the providing of reasons for the grant of the prospecting permit. Counsel for Culverwell nevertheless sought a dismissal of Cedar Point's main application. In respect of the counter-application, he only sought the grant of the relief contained in Part A. However, when counsel made his closing submissions in respect of the counter-application, after hearing the submissions on behalf of Cedar Point and the Minister, he indicated that he held instructions received late, and after moving the counter-application only in respect of Part A, from his instructing client, Culverwell, that he further sought the relief in terms of Part A, B and C simultaneously. No submissions were however made in respect of the relief in Part B and/or Part C.
- [9] As recorded earlier, the relief sought in Part B is dependent upon the grant of the relief sought in Part A which related to the providing of information sought in terms of PAJA. In passing, the relief in Part C would be contrary to the provisions of section 2 of the MDRPA.
- [10] As recorded earlier, and insofar as a defence was raised in the main application, it related to the counter-application that was dependent upon a successful grant of the relief in terms of PAJA and only thereafter, a successful review and setting aside of the grant of the said prospecting permit. It is to be noted that Culverwell did not seek that the main application be postponed pending a successful review and setting aside of the granted prospecting permit, but that the main application be summarily dismissed. The dismissal was sought in the face of the fact that Culverwell had proven no defence to the main application.

- [11] The first part of the relief in Part A, that of an *interim* interdict pending a successful review and setting aside of the granted prospecting permit, is subservient to the existence of a *prima facie* right, although open to some doubt. Culverwell has not proven such a *prima facie* right, either in the main application, or in its counter-application. Cedar Point holds a clear right in the prospecting right that was granted in its favour, whether lawfully or unlawfully granted. That prospecting right endured until it was reviewed and set aside by a competent court. It follows that Culverwell is not entitled to an *interim* interdict pending a possible review and setting aside of the grant of the prospecting permit.
- [12] A further requirement to be proven when seeking an *interim* interdict is that of an apprehension of irreparable harm. In the present instance, no such irreparable harm has been shown. Culverwell has, in terms of the provisions of the MPRDA an equally adequate remedy, that of an internal appeal. In contrast, Cedar Point stands to suffer irreparable harm if the interdict is granted. The prospecting permit would have run its course by the time a decision is reached in respect of a successful review and setting aside of the grant of the prospecting permit.
- [13] Furthermore, section 7 of PAJA provides that no application to court for the review and setting aside of an administrative decision lies where the applicant for such review application has not exhausted all the internal remedies provided in the MPRDA.² In this regard, section 96 of the MPRDA provides *inter alia* an appeal to the Minister. It is common cause that Culverwell did not follow such a procedure. In fact, it intentionally disavowed utilising such procedure. On behalf of Culverwell it was submitted that such party may nevertheless seek an order from the court dispensing with strict compliance with the provisions of section 96 of the MPRDA.³ It is trite that only in exceptional circumstances the court would

² *Bengwenyama Minerals (Pty) Ltd et al v Genorah Resources (Pty) Ltd et al* 2011(4) SA 113 (CC)

³ *Dengetenge Holdings (Pty) Ltd v Southern Sphere Mining and Development Company Ltd et al* 2014(5) SA 138 (CC); *Koyabe et al v Minister for Home Affairs et al* 2010(4) SA 327 (CC);

so order.⁴ A party is to clearly and fully detail the exceptional circumstances it relies upon in an application to court.

- [14] In the present instance, Culverwell failed to provide clear details of such circumstances that could be considered exceptional *in casu*. The only allegation made in that regard, was that the main deponent on behalf of Culverwell alleged that he *was left disillusioned and failing in trust in the internal remedies of the Mineral and Petroleum Resources Development Act*. Furthermore, no formal application was made in that regard. It was merely referred to in passing that there were exceptional circumstances *in casu*. Other than the oblique reference mentioned above, no circumstances were stated or alleged.
- [15] It was submitted on behalf of the Minister that the procedure relating to internal appeals would allow Culverwell access to the information it sought in terms of PAJA.⁵ In my view, it follows that Culverwell is not entitled to the relief it seeks relating to the information required in terms of PAJA.
- [16] In view of all the foregoing, the balance of convenience clearly favours Cedar Point.⁶
- [17] It follows in my view, that Culverwell is not entitled to the relief sought in Part A and consequently, the counter-application stands to be dismissed. No grounds for the review and the setting aside of the grant of the prospecting permit were raised or proven and furthermore, no application for review lay in terms of PAJA. Grounds for the grant of a perpetual interdict were neither raised, nor proven.

⁴ *Nichol v Registrar of Pension Funds* 2008(1) SA 383 (SCA); *Dengetenge, supra*

⁵ Regulation 74 of the Regulations Promulgated in terms of the MPRDA

⁶ *Joubert v MMaranda Mining Co (Pty) Ltd* (1) 2010(1) SA 199 (SCA)

- [18] In the absence of an order in terms of which the main application is to be postponed pending a review and setting aside of the grant of the prospecting right, Cedar Point is entitled to enforce its rights in terms of the granted prospecting right. It follows that Cedar Point is entitled to the relief it sought in the main application.
- [19] There remains the issue of costs. In this regard the following is to be noted:
- (a) Culverwell filed voluminous papers (in excess of 2 000 pages) in support of its counter- application. The majority of which was irrelevant to the true issues it raised. It consisted of a history spanning many years prior to the granting of the prospecting permit under consideration, all of which was irrelevant to the issues to be determined;
 - (b) Culverwell was advised on 3 September 2020 of Cedar Point's intention to access the relevant properties to execute upon the prospecting permit. On the same day Culverwell unequivocally indicated that it refused access to the properties and that it would never grant access to the properties for the purpose of executing upon the prospecting right;
 - (c) Cedar Point was advised by Culverwell on 3 September 2020 that it intended to launch an application for review and setting aside of the granted prospecting right, which it intended to do within four weeks. No such application was launched;
 - (d) Attempts on the part of Cedar Point to negotiate a resolution to the *impasse* was met stoically by Culverwell, the latter stubbornly and obtusely frustrated any attempt to mediate;
 - (e) On 26 February 2021, a meeting in terms of section 54 of the MPRDA was held between the parties. Other than a spurious

demand for payment of an excessive amount, Culverwell was unaccommodating and a referral to arbitration was directed by the Regional Manager. The purpose of the arbitration was to arbitrate upon the amount for compensation in view of the prospecting on the affected properties, Culverwell having indicated that it would accept compensation for the prospecting to be undertaken. On 26 May 2021 Cedar Point invited Culverwell to arbitrate, however the latter, on 31 May 2021, refused to arbitrate and repeated its stance not to permit entry to the affected properties and again threatened to launch an application for review and setting aside of the prospecting permit within 14 days. However, no such application for review and setting aside was launched;

- (f) On 15 June 2021 Cedar Point launched the main application. Culverwell filed a belated notice of opposition to the main application. However, no answering affidavit was served. Consequently, Cedar Point set the matter down on the unopposed motion court roll. Subsequent to the enrolment on the unopposed motion court roll, an answering affidavit was filed on behalf of Culverwell, as well as the counter-application;
- (g) As recorded earlier, the issue of a review and setting aside of the prospecting permit was pushed into the future. It was not moved at the hearing. After three threats of a review and setting aside of the prospecting permit, it is only envisaged by Culverwell to be done in the distant future;
- (h) It follows that Culverwell had dragged its feet in pursuing a review and setting aside application and in so doing frustrated Cedar Point in executing upon its granted prospecting rights. The delay was intentional and purposefully executed and with

an obvious purpose of denying Cedar Point its right to prospect on the affected properties;

- (i) Furthermore, in my view, Culverwell raised spurious grounds why it should be excused for not complying with the provisions of internal remedies available to it in terms of the MPRDA. It had intentionally and purposefully decided not pursue that route.

[20] Further in this regard, Cedar Point sought a punitive costs order. It is to be noted that Culverwell also sought a punitive costs order, although on other grounds.

[21] In view of the foregoing, Cedar Point is entitled to a punitive costs order.

I grant the following order:

1. The first and second respondents are directed to allow the applicant, its employees, experts, contractors and other representatives to enter the areas defined as the Properties in a map annexed hereto marked "XYZ" (the Properties) and the first and second respondents are interdicted and restrained from refusing the applicant access to the Properties;
2. The applicant is hereby authorised to enter onto the Properties together with its employees, experts, contractors and other representatives and to bring onto the land any plant, machinery or equipment which may be required for purposes of carrying out the prospecting activities as envisaged by Prospecting Right, bearing Department of Minerals and Energy reference number: NW30/5/1/2/2511PR;
3. The first and second respondents are directed to allow the applicant, its employees, experts, contractors and other representatives to

bring any plant, machinery or equipment required, by the applicant, in order to carry out prospecting as envisaged by Prospecting Right, bearing Department of Minerals and Energy reference number: MW30/5/1/2/2511PR;

4. The first and second respondents are interdicted from interfering with the prospecting activities of the applicant or obstructing the applicant's access to the Properties in any way;
5. Directing that the first and second respondents pay the costs of this application, jointly and severally, on the scale as between attorney and client;
6. The counter-application is dismissed with costs, such costs to be on the scale as between attorney and client.


C J VAN DER WESTHUIZEN
JUDGE OF THE HIGH COURT

Judgment Reserved:	4 May 2022
On behalf of Applicant:	L U C Spiller
Instructed by:	Bishop Fraser Attorneys
On behalf of First to Third Respondents:	J Wentzel
Instructed by:	Matthew Klein Attorneys
On behalf of the Fourth to Sixth Respondents:	R Ramuhala
Instructed by:	The State Attorney
Judgment Delivered:	2 June 2022

Plan prepared in terms of Regulation 42 of the Mining Title Registration Act (Act 16 of 1976)

The Figure: A, B, C, D, E, F, G, H, J, K, L, M, N, P, Q, R, S, T, U, V, W, X, Y, Z, A1, B1, C1, D1, E1, F1, G1, H1, J1, K1, L1, M1, N1, P1, Q1, R1, S1, T1, U1, V1, W1, X1, Y1, Z1, A2, B2, C2, D2, E2, F2, G2, H2, J2, K2, L2, M2, N2, P2, Q2, R2, S2, T2, U2, V2, W2, X2, Y2, Z2, A3, B3, C3, D3, E3, F3, G3, H3, J3, K3, L3, M3, A

Represents:

Portions 137, 138, 156

Remainder of Portions 143 and 14,
and Portions of the Remainder of Portion 203
and 216

of the Farm Zilkaatsnek 439 JQ.

Total Extent of 1044.67 Hectares

Located in the Magisterial District of
Brits
North West

Compiled November 2019 using available
Surveyor General Data and Information
supplied by applicant.

Certified by C. J. Kirchhoff
Professional Land Surveyor

Signed: _____
PLS 0962

Date:

Applicant:
Cedar Point Minerals Proprietary Limited
REG NO: 2009/013382/07

Signed:

Date: 29 JANUARY 2020

Plan Approved:

Regional Manager
Department of Minerals and Energy
North West Province

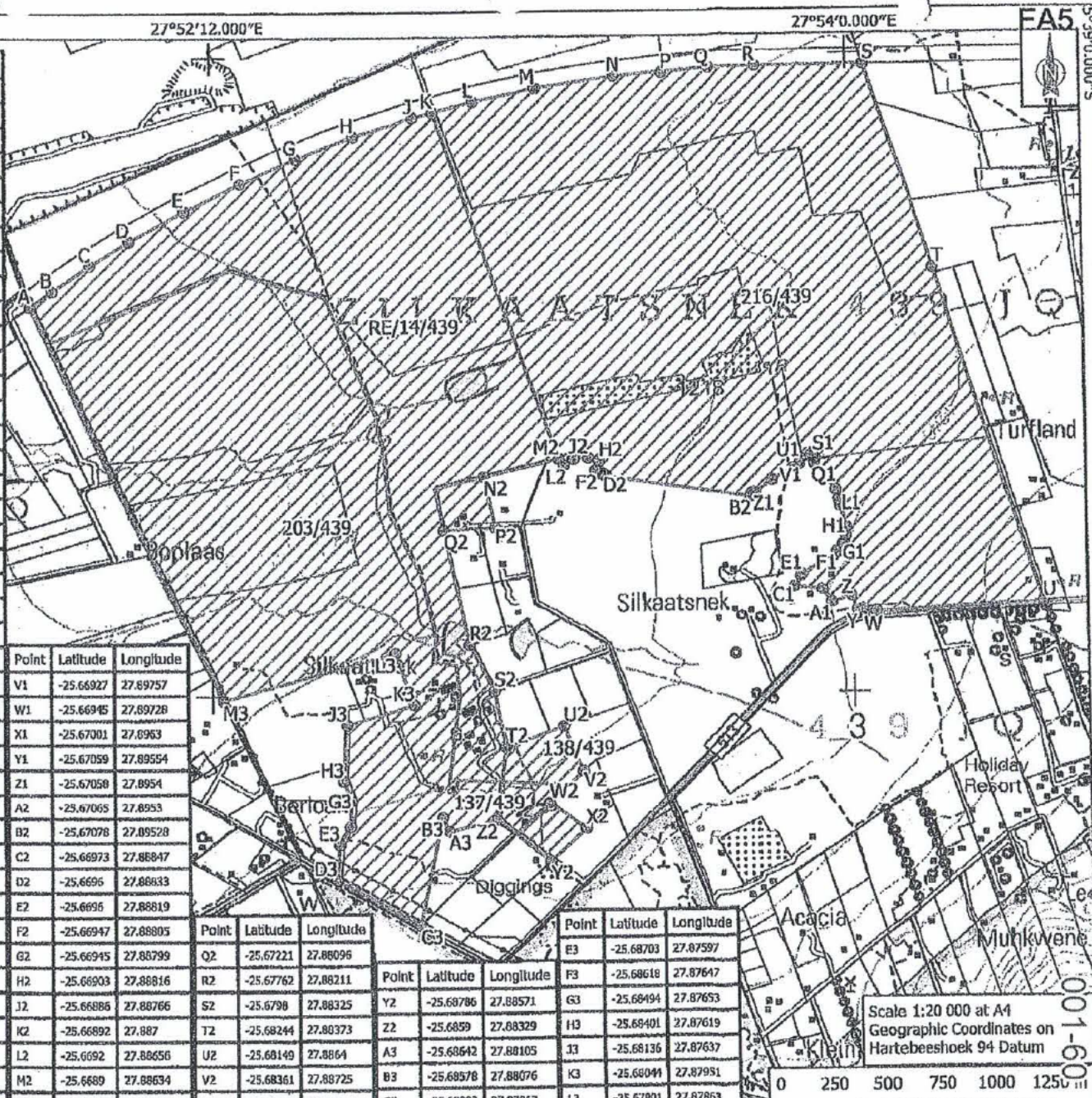
OPT No:

Point	Latitude	Longitude
A	-25.66167	27.86161
B	-25.66094	27.86265
D	-25.65959	27.86628
C	-25.65973	27.86444
E	-25.65718	27.86802
F	-25.6559	27.87143
G	-25.65475	27.87412
H	-25.65373	27.87688
J	-25.65285	27.87969
K	-25.6526	27.88063
L	-25.6521	27.88254
M	-25.65151	27.88544
N	-25.65095	27.88905
P	-25.65081	27.89135
Q	-25.6506	27.89356
R	-25.65035	27.89579
S	-25.65052	27.90085
T	-25.66012	27.90381
U	-25.67583	27.90869

Z	-25.67549	27.89993	Point	Latitude	Longitude
A1	-25.67570	27.89898	V1	-25.66927	27.89757
B1	-25.67515	27.89855	W1	-25.66945	27.89728
C1	-25.67502	27.89726	X1	-25.67001	27.89653
D1	-25.67453	27.89757	Y1	-25.67059	27.89554
E1	-25.67446	27.89764	Z1	-25.67058	27.8954
F1	-25.67339	27.89925	A2	-25.67065	27.8953
G1	-25.67307	27.89952	B2	-25.67078	27.89528
H1	-25.67265	27.89968	C2	-25.66973	27.88847
J1	-25.67225	27.8997	D2	-25.6696	27.88833
K1	-25.67125	27.89943	E2	-25.6696	27.88819

L1	-25.67114	27.89951	F2	-25.66947	27.88805	Point	Latitude	Longitude
M1	-25.67103	27.89948	G2	-25.66945	27.88799	Q2	-25.67221	27.88096
N1	-25.67096	27.89936	H2	-25.66903	27.88816	R2	-25.67762	27.88211
P1	-25.6705	27.89923	J2	-25.66886	27.88766	S2	-25.6798	27.88325
Q1	-25.66925	27.89828	K2	-25.66892	27.887	T2	-25.68244	27.88373
R1	-25.66901	27.89834	L2	-25.6692	27.88656	U2	-25.68149	27.8864
S1	-25.66886	27.89822	M2	-25.6689	27.88634	V2	-25.68361	27.88725
T1	-25.66881	27.89795	N2	-25.66971	27.88286	W2	-25.68507	27.8857

Point	Latitude	Longitude	Point	Latitude	Longitude
			E3	-25.68703	27.87597
			F3	-25.68618	27.87647
Y2	-25.68786	27.88571	G3	-25.68494	27.87653
Z2	-25.6859	27.88329	H3	-25.68401	27.87619
A3	-25.68542	27.88105	J3	-25.68136	27.87637
B3	-25.68578	27.88076	K3	-25.68041	27.87951
C3	-25.69082	27.87967	L3	-25.67801	27.87863



Scale 1:20 000 at A4
Geographic Coordinates on
Hartebeeshoek 94 Datum

0 250 500 750 1000 1250