



REFERENCE: 14/3/1/1/D6/14/0433/19

Mr Justin Truter
Werksmans Attorneys
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Email: jtruter@werksmans.com

Dear Mr Truter,

APPEAL LODGED IN TERMS OF SECTION 43(2) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998) AGAINST THE ENVIRONMENTAL AUTHORISATION GRANTED FOR THE N1 GATEWAY BUSINESS PARK MIXED-USE DEVELOPMENT, ASSOCIATED INTERNAL ROADS AND SERVICE INFRASTRUCTURE ON PORTIONS 29, 30, 32, 374, 375 AND 377 OF THE FARM 728, JOOSTENBERGVLAKTE, KRAAIFONTEIN

1. Appeals lodged in terms of section 43(2) of the *National Environmental Management Act, 1998 (Act No. 107 of 1998)* ("NEMA") against the Environmental Authorisation ("EA") issued by the Department of Environmental Affairs and Development Planning's Director: Development Management for the N1 Gateway business park mixed-use development, associated internal roads and service infrastructure on Portions 29, 30, 32, 374, 375 and 377 of the Farm 728, Joostenbergvlakte, Kraaifontein ("the property") have reference.
2. After careful consideration of the appeals, as well as supporting documentation received, I have decided to dismiss the appeal and confirm the decision of the delegated competent authority. With respect to your request to vary the EA, such request is refused.
3. The abovementioned EA and the conditions under which the authorisation was granted must be complied with.
4. **AMENDMENTS/EXCLUSIONS TO THE ENVIRONMENTAL AUTHORISATION:**
 - 4.1. Section G of the abovementioned EA is excluded from this authorisation.
 - 4.2. Condition E9 and E10 of the EA is excluded from this authorisation.
 - 4.3. The following conditions of the EA are substituted and must be complied with:

SECTION E: CONDITIONS

Condition E3.1:

"A period of ten (10) years, from the date of issue of this Appeal Environmental Authorisation, during which period the holder must commence with the authorised listed activities; and"

Condition E8:

"8.1 The holder must, in writing, within 14 (fourteen) calendar days of the date of this appeal decision notify registered Interested and Affected Parties ('I&APs') of-

8.1.1 The outcome of the appeal;

8.1.2 The reasons for the decision;

8.1.3 The date of the decision; and

8.1.4 The date of issue of the decision."

5. REASONS FOR THE DECISION

The following are reasons to confirm the Environmental Authorisation issued by the Delegated Competent Authority and dismiss the appeal. The request to vary the EA by removing or replacing Conditions 22 and 23 of the EA is also discussed:

5.1. APPEAL GROUND 1: Public Participation

As confirmed by Dr Gale, though the Environmental Assessment Practitioner ("EAP") had originally erroneously indicated that there was no relevant community organisations, the Joostenbergvlakte Community Forum ("JCF") were not excluded from the Public Participation Process ("PPP") and the error had been corrected.

It is further alleged that JCF submitted its comments on the draft Basic Assessment Report ("BAR") and final BAR and these were not taken into consideration or ignored. In correspondence dated 4 May 2018, the EAP asserts that the comments were submitted after the closing date for comments. Concerns were subsequently raised directly with the Department in correspondence dated 12 April 2018, which the EAP addressed. Comment by JCF on the Final BAR was submitted on 22 March 2018, 41 days after the closing date for comments.

The Appellant's are of the view that the site in question precludes development, the site is however situated inside the urban edge and earmarked in the Northern District Spatial Development Framework ("NDSDF") for urban development purposes. The arguments put forward in the 12 April 2018 correspondence relate largely to "promises" made during the 2017 Spatial Planning meeting and of protection of the area as a green lung.

Dr Gale and the JCF expressed concerns around the wetlands on site and the potential impacts on the aquifer associated with the proposed development. In this respect Dr L. Day confirmed that *"although the overall site includes surface aquatic ecosystems, none of them are in a near-natural condition and the drainage pattern throughout has been significantly disrupted."* She further states that the loss of wetlands W2 and W3 as well as of Dam E as suggested in development layouts would not be associated with a significant loss of biodiversity. The two natural wetlands as identified are both determined to be degraded and assessed as of a low Ecological Importance and Sensitivity ("EIS") and in a Poor (Category E) condition. These wetlands are not considered rehabilitable without significant expense. The limited function these wetlands provide can be replicated in an effectively managed stormwater attenuation, amelioration and conveyance system, provided that this incorporates several specific design elements. The net risk of the proposed development to the water resource will be low, and the net development impact would have low significance.

The EAP determined that any impacts to the aquifer are extremely remote and unlikely and that the presence of the aquifer does not preclude the development as there will be no groundwater abstraction while all stormwater will be strictly managed in accordance with an approved Stormwater Management Plan which complies with the Stormwater Management By-Law No. 6300, 2005 and requirements.

The concerns expressed are noted but Dr Day's report is clear that the proposed development impacts would be of low significance.

Concerns have also been raised in respect of municipal functions which fall outside the ambit of the EIA process. These will be addressed during the planning and building approvals processes which are municipal competences.

With respect to concerns expressed around the provision of municipal services and whether the extent and severity of the drought were taken into consideration when it was confirmed in the letter dated 19 September 2016, that sufficient capacity exists, that determination is made by the municipality who have the responsibility of providing the services.

Issues raised in respect of the water use licence process should be addressed to the National Department of Human Settlements, Water and Sanitation.

5.2. **APPEAL GROUND 2: Alternatives**

Section 24(4)((b)(i) of the NEMA, requires *"investigation of the potential consequences or impacts of the alternatives to the activity on the environment and assessment of the significance of those potential consequences or impacts, including the option of not implementing the activity"*.

The alternatives must be considered as reasonable and feasible for inclusion in the EIA process.

The assessment requirements relating to *"alternatives"* makes it clear that the obligation to consider alternatives may be achieved in a variety of different ways including site locations, types of activities, design or layout; and technological or operational aspects of undertaking the activity (either in combination or in isolation of each other).

Although the design alternatives appear similar, the approved alternative (3) has considerably fewer erven than proposed Alternative 1 in particular and Alternative 2. Alternative 1 would result in the loss of all the wetlands on site.

It could also be argued that Alternative 2 and Alternative 3 are similar but the latter reduces the number of erven and the proposed re-alignment of a section of road alongside the wetland corridor, will ensure protection of Wetland 4 within the stormwater management system.

The no-go approach does not entail the site remaining undeveloped and would permit the properties to be utilised in terms of its Transport Use and Agriculture. The NDSDP however indicates the area for urban use and within an Industrial / Mixed Use zone, thus the no-go option does not align with the municipality's vision for the area. The no-go option was not considered reasonable or feasible.

5.3. **APPEAL GROUND 3: Planning Context & Need and Desirability**

The site which is made up of six portions is zoned as Transport Use (Portions 374, 375 and 377 of the Farm No. 728, Joostenbergvlakte) and Agriculture Zone (Portions 29, 30 and 32 of the Farm No. 728, Joostenbergvlakte). The proposed development falls within the urban edge and within an area designated as an Industrial/Mixed-Use node in terms of the NDSDF.

The proposed development is consistent with the relevant spatial planning policies.

An application will have to be submitted to the City of Cape Town for rezoning. Appellants will have opportunity to comment on the land use planning process.

As our country's high levels of unemployment is of concern, the proposed development would potentially benefit the two nearby areas of Wallacedene and Bloekombos with short and long term employment opportunities associated with the proposed development.

5.4. **APPEAL GROUND 4: Visual Impacts**

Visual impacts were not expressed as a concern during PPP for the Draft BAR and Final BAR processes.

The site will largely have a visual impact from the N1. To the rear of the site are vineyards and Bugz Playpark/ Wijnland Auto Museum on the Tarentaal Road side of the property. Visual impacts in respect of the structures to be erected will be considered in the design and building approval requirements to be assessed by the municipality.

5.5. **APPEAL GROUND 5: Freshwater Impacts**

The statements regarding the impact of the development on the aquifer are contradicted by the specialist studies that informed the Final BAR, specifically the Wetland and Freshwater Ecology study prepared by Freshwater Consulting.

Dr Day states that the loss of wetlands W2 and W3 as well as of Dam E as suggested in the development layouts would not be associated with a significant loss of biodiversity. The two natural wetlands as identified are both determined to be degraded and assessed as of a low EIS and in a Poor (Category E) condition. These wetlands are not considered rehabilitable without significant expense. The limited function these wetlands provide can be replicated in an effectively managed stormwater attenuation, amelioration and conveyance system, provided that this incorporates several specific design elements. The net risk of the proposed development to the water resource will be low, and the net development impact would have low significance.

5.6. **APPEAL GROUND 6: Traffic Impacts**

The original assessment dated February 2017, indicated that no pedestrian sidewalks or cycling facilities are present in the area, despite notable volumes of both these modes. This was confirmed in the revised Traffic Impact Assessment ("TIA") dated December 2019.

The 2017 TIA indicated that in order to improve the safety of pedestrians a pedestrian bridge was considered as a mitigation measure as a large proportion of the population uses public transport or walking and cycling as travelling modes requiring

more emphasis to be placed on the provision of a user-friendly pedestrian environment. Having calculated that approximately 455 and 245 pedestrians will cross the N1 in the AM and PM peak hours, it was concluded that the location warrants the provision of a pedestrian bridge.

The TIA further concluded that:

- All three intersections operate at an acceptable Level of Service ("LOS");
- All three intersections would require minor improvements to accommodate the growth in background traffic until 2021 at a similar LOS;
- Further improvements to the intersections would be required to ensure the LOS remains the same in 2021, once the development traffic is added to the network; and
- A significant number of public transport, pedestrian and bicycling trips are likely to be generated by the development, for which adequate infrastructure should be provided.

With respect to Non-motorised transport ("NMT") the TIA clearly states that a dedicated pedestrian and bicycle bridge should be provided over the N1 at the location east of the Value Logistics Warehouse along with additional NMT access recommendations.

The 2019 revised TIA indicates that both terminals of the Joostenbergvlakte Interchange operate at a capacity with critical movements operating at a LOS F. SANRAL confirms that the interchange operates at capacity during peak hours. Expected 2024 traffic demand for the N1 Ramps North/Lucullus Street is expected to continue to operate at unacceptable LOS F during AM and PM peak hours whilst N1 Ramps South/Maroela Road is expected to operate at or over capacity during the AM and PM peak hours.

With regard to the pedestrian bridge the revised TIA concluded that it is not warranted yet as there is no exact collision data. It further states that SANRAL would have budgeted for the construction of a pedestrian bridge and the construction of such a bridge cannot be solely at the cost of the Applicant as other developments will derive benefit.

It is recommended that:

- the Lucullus Street/Waarburgh Road all-way stop be converted to a 2-way stop with Lucullus Street (north/south movement) being free-flow;
- the N1 Ramp North/Lucullus Street provide a free flow left turn lane on the eastbound approach, widening the north approach to accommodate a separate left turn and widening the bridge to provide a right turn lane on the south approach; and
- the N1 Ramp South/Maroela Road widen the north approach to accommodate a right turn lane, allowing a 3 lane cross section over the bridge.

SANRAL, per their comments dated December 2019, expressed a view that the pedestrian bridge is warranted. The view is further expressed that developers bare the cost of provision for the pedestrian bridge.

SANRAL further indicates that the proposed improvements at the Joostenbergvlakte interchange should be implemented ahead of any further developments in the area.

5.7. **RESPONSE TO REQUEST TO REMOVE CONDITIONS 22 & 23 OF THE EA:**

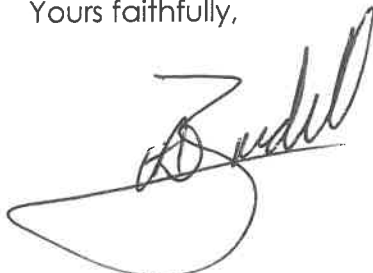
The recommendations per the 2017 and 2019 TIA's are similar with the exception being whether a pedestrian bridge is warranted with the latter arguing that it is not at this time. Additionally, as confirmed by SANRAL, significant improvements to the N1 and Joostenbervlakte interchange are being planned to accommodate the increased traffic volumes that will be generated but such improvements should be implemented prior to any further development in the area.

The Responding statement submitted indicates that the Appellants should be comforted by the fact that stringent conditions, being conditions 22 -24 have been included in the EA to prevent and/or mitigate traffic impacts. The statement recognises the need for these conditions.

It is further noted, that the conditions were included based on the specialist inputs furnished in the Final BAR and these conditions were not appealed by the Applicant at the time the EA was issued.

SANRAL's view, which is supported, contends that the pedestrian bridge, for the developers cost, is warranted. The curtailment of development prior to the improvements to the N1 and Joostenbergvlakte interchange is based on the premise that it is expected to operate at or over capacity with the addition of traffic from the proposed development(s).

Yours faithfully,



ANTON BREDELL

**WESTERN CAPE MINISTER OF LOCAL GOVERNMENT,
ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING**

DATE: 22/6/2020

Copied to:

Development Management (Region 1) Mr Zaahir Toefy

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REFERENCE: 14/3/1/1/D6/14/0433/19

Mr Leon Fourie
Joostenbergvlakte Community Forum
PO Box 466
BELVILLE
7535

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Dear Mr Fourie,

APPEAL LODGED IN TERMS OF SECTION 43(2) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998) AGAINST THE ENVIRONMENTAL AUTHORISATION GRANTED FOR THE N1 GATEWAY BUSINESS PARK MIXED-USE DEVELOPMENT, ASSOCIATED INTERNAL ROADS AND SERVICE INFRASTRUCTURE ON PORTIONS 29, 30, 32, 374, 375 AND 377 OF THE FARM 728, JOOSTENBERGVLAKTE, KRAAIFONTEIN

Your appeal lodged against the Environmental Authorisation ("EA") granted on 13 June 2018 for the above proposed development, refers.

After careful consideration of all the appeals, as well as supporting documentation received, I have decided in terms of section 43(6) of the *National Environmental Management Act, 1998*, ("NEMA") to dismiss the appeals and confirm the decision of the delegated competent authority.

The original Environmental Authorisation granted and the conditions under which the authorisation was granted are still valid, however Condition E9, E10 and section G are excluded from this authorisation and Conditions E3.1 and E8 are amended.

Attached herewith please find a copy of my letter addressed to the applicant containing the reasons for my appeal decision.

Your interest in the future of our environment is appreciated.

Yours faithfully,



ANTON BREDELL

**WESTERN CAPE MINISTER OF LOCAL GOVERNMENT,
ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING**

DATE: 27/6/2020



REFERENCE: 14/3/1/1/D6/14/0433/19

Dr Barbara Gale
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KRAAIFONTEIN NORTH
7572

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Dear Dr Gale,

APPEAL LODGED IN TERMS OF SECTION 43(2) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998) AGAINST THE ENVIRONMENTAL AUTHORISATION GRANTED FOR THE N1 GATEWAY BUSINESS PARK MIXED-USE DEVELOPMENT, ASSOCIATED INTERNAL ROADS AND SERVICE INFRASTRUCTURE ON PORTIONS 29, 30, 32, 374, 375 AND 377 OF THE FARM 728, JOOSTENBERGVLAKTE, KRAAIFONTEIN

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ANTON BREDELL

**WESTERN CAPE MINISTER OF LOCAL GOVERNMENT,
ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING**

DATE: 22/6/2020