



M 3/6/5

Mr A du Toit
Left Break (South Africa) (Pty) Ltd
P.O Box 1070
BELLVILLE
7535

Dear Mr du Toit

APPEALS LODGED IN TERMS OF SECTION 43(2) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998, AGAINST THE DE HOOP COMMUNITY LIFESTYLE ESTATE DEVELOPMENT ON REMAINDER OF PORTION 1 OF FARM DE HOOP NO 838 AND FARM TITUS KLOOF NO 893, PAARL

The appeals lodged against the Environmental Authorisation ("EA") for the above proposed development refer.

After careful consideration of the appeals, as well as supporting documentation received, I have decided, in terms of section 43(6) of the National Environmental Management Act, 1998 (Act 107 of 1998) ("NEMA") and regulation 7(3) of the 2014 National Appeal Regulations (as amended), to dismiss the appeals and confirm the decision of the competent authority granted on 12 June 2017. The original Environmental Authorisation and the conditions under which the authorisation was granted are still valid, however Condition E7 and section G are excluded from this authorisation. Conditions E2 and E6 are substituted to read as follows:-

Condition E2

The Environmental Authorisation is valid for a period of fifteen years from the date of this appeal decision, within which commencement must occur.

Condition E6:

"The holder of the appeal environmental authorisation must in writing, within 14 (fourteen) calendar days of the date of the appeal decision notify all registered Interested and Affected

Parties ("I&AP's") of –

- 6.1 the outcome of the appeal;
- 6.2 the reasons for the appeal decision;
- 6.3 and the date of the decision."

The reasons for the confirmation of the aforementioned decision of the delegated officer are listed below and includes responses to the appeal issues.

1. REASONS FOR THE DECISION

- 1.1 In the *Fuel Retailers Association of Southern Africa v Director-General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province and Others 2007 (6) SA 4(CC)* the Constitutional Court had occasion to consider the provisions of section 24 of the Constitution along with the provisions of NEMA. The court noted that one of the declared purposes of NEMA is to establish principles that will guide organs of state in making decisions that may affect the environment. One of these principles requires environmental authorities to consider social, economic and environmental impacts of the proposed activity including its disadvantages and benefits.
- 1.2 The judgement states that: "The need for development must now be determined by its impact on the environment, sustainable development and social and economic interests. The duty of environmental authorities is to integrate these factors into decision-making and make decisions that are informed by these considerations. This process requires a decision-maker to consider the impact of the proposed development on the environment and socio-economic conditions." All information presented to the Department was taken into account, together with relevant legislation, policies and guidelines, including section 2 of NEMA, in the consideration of the application for EA.
- 1.3 The delegated competent authority has complied with the obligation set out in terms of the Needs and Desirability guideline to consider both the environmental and planning context. The PSDF which is applicable throughout the Western Cape had to be considered in terms of this development. The stated purpose of the PSDF "is to—
 - (a) make provision for the coordination, integration and alignment of provincial development policy in respect of the provincial functional areas listed in Schedules 4 and 5 to the Constitution and the land use implications thereof;
 - (b) indicate desirable land use and promote predictability in the utilisation of land; and

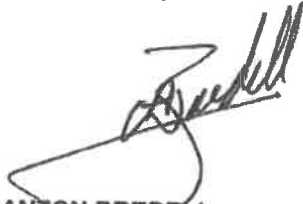
(c) *facilitate coordination, integration and alignment of national, provincial and municipal land use planning policy."*

- 1.4 The Drakenstein SDF demarcates the proposed development site as inside the Drakenstein Urban Edge and earmarked for "infill urban development." Although the properties were zoned for Agricultural use, the soils are of low potential in terms of agricultural crop production because of the clay content.
 - 1.5 On 20 February 2018, the Drakenstein Municipality granted the applicant approval for consolidation, subdivision, rezoning and consent use for the proposed development.
 - 1.6 The Department applied the triple bottom line test of sustainability as prescribed in NEMA, and concluded that all identified impacts and cumulative impacts, have been found to be capable of adequate mitigation and to have adequate regard to the significant socio-economic and environmental benefits.
 - 1.7 The applicant did assess alternatives and these were considered by the delegated competent authority. Having considered the socio-economic and environmental impacts of the proposed development, including its advantages and benefits; integrating those considerations into his decision; and making a decision informed by them, it was determined that Layout Alternative 1 amounted to the best practicable environment option.
 - 1.8 The development will result in positive socio-economic impacts, in that it will create additional employment opportunities within the local community. The proposed educational facilities will make schooling opportunities available closer to residential areas and to farms in the vicinity, reducing the need for long journeys to and from school.
 - 1.9 This development is within a rural landscape and will result in a change in the visual landscape experienced by receptors within the local area. Unimpeded mountain views enjoyed by residents will be impacted but these have largely been mitigated. It should however be noted that there is no right to a view in South African law.
 - 1.10 The noise impacts from the construction phase will be temporary and will generate no more noise impacts than are currently being experienced by residents at Pearl Valley and Val De Vie Estates due to the current expansion. The impacts associated with the heavy vehicles and dust will be mitigated.
 - 1.11 There is an obligation on every property owner in terms of the *Conservation of Agricultural Resources Act, 1983 (Act No. 43 of 1983)* to remove invasive species from their land. As indicated by the applicant, the site being heavily invaded by alien plant species was not proffered as a reason for development. Portion A of the development comprising of low potential soils and heavily invaded alien plant species will be used for the proposed development, while the larger cultivated remainder will retain its primary agricultural function.
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1.12 There is no requirement in NEMA for an applicant to undertake a Strategic Environmental Assessment and consider impacts not related to the proposed development. Each application is considered on its merits taking the positive, negative and cumulative impacts into account together with all relevant legislation, policies and guidelines.

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: 7/5/2018

cc. Dr J Neethling (Johan Neethling Environmental Services)

Mr H Kotze (Werksmans Attorneys)

Ms T Volschenk (Werksmans Attorneys)

info@jnes.co.za

hkotze@werksmans.com

tvolschenk@werksmans.com