



14/3/1/A3/53/0305/17

Messrs F Baard & D van Zyl
Ingwe Wine Estate (Pty) Ltd
P O Box 583
SOMERSET WEST
7219

Tel/Fax: (021) 858 1063
Email: ingwe@telkomsa.net

Gentlemen

APPEALS 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 PROPOSED INGWE/DE FORTUIJN HOUSING DEVELOPMENT ON PORTION 11 OF THE FARM GUSTROW NO. 918, SIR LOWRY'S PASS ROAD, SOMERSET WEST

The appeals lodged against the Environmental Authorisation ("EA") granted on 27 September 2017, 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 27 September 2017. The abovementioned EA and the conditions under which the authorisation was granted are still valid, however Condition E10 and section G are excluded from this authorisation. Conditions E3 and E8 are substituted to read as follows:-

Condition E3:

"This EA is granted for-

- 3.1 A period of five (5) years, from the date of this Appeal decision, during which period the holder must commence with the authorised listed activity; and
- 3.2 A period of ten (10), from the date the holder commenced with the authorised listed activity, during which period the authorised listed activity for the development phase, must be concluded."

Condition E8:

"The holder of the 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")–

- 8.1 *the outcome of the appeal;*
- 8.2 *the reasons for the appeal decision; and*
- 8.3 *the date of the decision."*

1. REASONS FOR THIS APPEAL DECISION:

The reasons for dismissing the appeals and confirming the aforementioned EA are contained in the aforementioned EA. Below find further reasons for dismissing the appeals and confirming the decision of the competent authority:

1.1 The NEMA principles require that "development must be socially, environmentally and ecologically sustainable" which includes that the "social, economic and environmental impacts of activities, including disadvantages and benefits must be considered, assessed and evaluated, and decisions must be appropriate in the light of such consideration and assessment". The 2014 Environmental Impact Assessment ("EIA") Regulations also require the need and desirability aspects to be considered in the basic assessment process. It is submitted that the need and desirability aspects of the activities were adequately considered in the Basic Assessment Report ("BAR") which informed the EA.

1.2 The need and desirability aspects however were previously raised as an issue during the public participation process ("PPP") of the EIA process and adequately addressed in the reasons for the EA. Section D of the BAR states *inter alia* the following in terms of the need and desirability aspects:

- i. The property is currently zoned for agriculture and will have to be rezoned to a sustainable mix residential use (the specific zoning is currently being determined by the land use planners), which complies with the City of Cape Town Spatial Development Framework.
- ii. The 2012 City of Cape Town Spatial Development Framework ("SDF") indicates that the proposed site is located within the urban edge and earmarked for residential development. The Helderberg District Plan, a component of the SDF, earmarks the land for so called "*peripheral residential*" development. The District Plan does not stipulate a density for "*peripheral residential*" development but requires new development to be sensitive to the character of the area. The SDF defines low density development to range between 10 and 25 units per hectare. This application is compliant with this requirement with 10.64 units per hectare.
- iii. The City of Cape Town's Integrated Development Plan ("IDP") identifies housing development in well located areas as an essential feature of successful urban restructuring. The IDP acknowledges that rapid and continuous low-density development is threatening the long term sustainability of Cape Town and that densification is necessary to reverse this trend. Growth management forms

- an important component of densification and includes utilising the urban edge, and optimal and sustainable use of land in transport corridors and economic nodes.
- iv. Sir Lowry's Pass Road is earmarked by the City of Cape Town as a scenic route and a draft policy has been drafted. The policy has not been approved, although the development is taking cognisance of the intention.
 - v. The proposed residential estate will include both single and general residential components as defined in the City of Cape Town's Planning By-Law.
 - vi. The proposed activity is well-aligned with the vision and spatial goals of the City of Cape Town.
 - vii. According to the Heritage Impact Assessment no buildings of heritage significance were identified. A single house over 60 years old was identified but was not considered a graded heritage resource. The cultural landscape was identified as a scenic amenity of some cultural/visual significance but the heritage component of that significance was regarded as negligible.
 - viii. Sir Lowry's Pass Road was identified as a route of heritage significance on account of its link to Sir Lowry's Pass Village. Impacts on cultural landscape elements have been satisfactorily accommodated in the proposal. These relate to the retention of windbreaks and the treatment of the Sir Lowry's Pass Road edge conditions. It was found that the proposal has responded satisfactorily to the heritage related design informants. Heritage requirements were not a key component of the area while containing strong scenic amenity conditions was not regarded as high in heritage significance.
 - ix. Noise nuisance during construction is considered short term and localised and will be managed through reasonable working hours and the implementation of the EMP which have been approved for implementation in the conditions of the EA.
 - x. Special care is taken to ensure that the visual impact will be acceptable and that the concept aligns with the existing sense of place.

1.3 The environmental assessment practitioner together with the applicant adequately addressed the need and desirability in the BAR and responded to the issues raised in terms of need and desirability. The comments and responses report (which includes responses to the appellant's comments made during the Basic Assessment process and the comments of the City of Cape Town as mentioned in the appeal) submitted as part of the proof of compliance with the PPP conducted during the Basic Assessment process states *inter alia* that:

- i. The property is situated within the Helderberg urban edge as demarcated in both the City of Cape Town SDF and the Helderberg District Plan and is earmarked for urban development.
- ii. The Helderberg District Plan, a component of the SDF, earmarks the land for "peripheral residential development". The District Plan does not stipulate a density for peripheral residential development but requires new development to be sensitive to the character of the area.
- iii. Various meetings were held with the City of Cape Town's officials (and proof of such meetings has been provided in the attachments of the Basic Assessment Report) during which the concept

- of peripheral residential development, densities and aesthetically impact was workshopped. It must be noted that the City of Cape Town has not been able to provide detailed guidelines the concept of peripheral residential, reflected in the Helderberg District Plan 2012.
- iv. The City of Cape Town has not prepared a landscape plan for the scenic route. The scenic route has not been promulgated or approved. The applicant does, however, support the concept of the scenic route and will create a development setback from the Sir Lowry's Pass Road for landscaping.
 - v. The final urban design detail will form part of the town planning application.
 - vi. The City of Cape Town's IDP identifies housing development in well located areas as an essential feature of successful urban restructuring. The IDP acknowledges that rapid and continuous low-density development is threatening the long term sustainability of Cape Town and that densification is necessary to reverse this trend.
 - vii. With regard to the agricultural potential, the agricultural potential report done by Re-Salt describes the soils as of medium agricultural potential and that the soils cannot sustain wine production of quality without irrigation during the summer. It states that under the current climatic and economic conditions the applicant is not a viable wine farm.
 - viii. The visual impact is considered to be one of the most significant aspects of the proposed development since the property is located along a scenic route. In order to evaluate and mitigate visual impacts, ARLA Consulting Landscape Architects was appointed to do a visual impact assessment ("VIA") of the proposed development. The task of the VIA was to evaluate the proposed development in terms of all of the City of Cape Town's planning documents and its vision for the Sir Lowry's Pass Village Road area. This study notes that the Ingwe Wine Estate, Dinsley smallholding and Broadlands Stud farm have become three fragments of agricultural activity within an increasingly non-agricultural landscape and out of the many surrounding properties, very few are used for agricultural purposes. It therefore seems logical to promote and protect the existing agricultural land north of the Old Sir Lowry's Pass Road, up to Sir Lowry's Pass Village, but allow medium density development to take place below Old Sir Lowry's Pass Road. In this way, land is developed within the urban edge with minimum impact on the identity or scenic character of Cape Town.
 - ix. The concept of Peripheral Residential, as reflected in the Helderberg District Plan 2012, is not yet clearly defined, other than a draft document which appears to be work in progress.
 - x. As part of the application, various meetings were held with the City of Cape Town's spatial planning unit during which the concept of peripheral residential development was workshopped extensively.
 - xi. These workshops led to various design and layout option changes/ alterations, which accumulated into the final design (the preferred option) that will be submitted to the City of Cape Town's land use department.
 - xii. A heritage impact assessment was commissioned which informed Heritage Western Cape's ("HWC") comments which state that they have no objections to the proposed development.

1.4 The mitigation measures which were recommended in the specialist VIA (as contained in Annexure 3 of the EA) are considered adequate to ameliorate any potential impacts in terms of the sense of place.

1.5 In terms of the impacts on fauna, the BAR identified that different forms of wildlife can be expected on a farm in comparison to an urban environment. Typical fynbos veld wildlife such as reptiles like snakes, but also scorpions and rodents, in addition to birds and mammals are less acceptable in an urban environment. The nature of the impact involves the loss of ecosystem resulting in loss of wildlife (although the farm is already significantly transformed and located within a relatively densely populated area). In terms of this impact, the significance prior to the implementation of mitigation measures was rated "medium-low" and "low" after the following mitigation measures, which are considered adequate and which form part of the EMP approved in the conditions of the EA, are implemented:

- i. Trapping, poisoning and /or killing of animals is strictly forbidden. No domestic pets or livestock are permitted on site during the development of the activities. Many slow moving animals, local amphibian and other species follow instinctive movements along roadside corridors where they travel from place to place.
- ii. Every effort must be implemented on a daily basis by the contractor to ensure that the construction areas are checked for any animals and to ensure their removal and protection from direct and indirect impacts during the construction activities.
- iii. The removal of fauna from the site must be done in accordance with the requirements of the Nature Conservation Ordinance regulating these activities.
- iv. Environmental corridors and "no-go" areas must be demarcated and protected.

1.6 The reasons for the EA address:

- i. The concerns (such as the objections specifically raised by Whale Coast Conservation and Mrs Margie and Mr James Humphris) raised during the PPPs.
- ii. Alternatives considered and the reasons why the authorised one is considered feasible and reasonable compared to the other alternatives.
- iii. The consideration of the need and desirability aspects including the issue of Peripheral Residential development.
- iv. The unsustainable agricultural potential of the site.
- v. The transformed nature of the site which is currently being used for agricultural purposes.
- vi. The invalid wetlands alleged to exist on the site.
- vii. The traffic impacts whose recommended mitigation measures are included in conditions 19 and 20 of the EA.
- viii. The low heritage significance of the site as agreed to by HWC.
- ix. The dust and noise impacts which are addressed in the mitigation measure contained in the EMP approved for implementation in the conditions of the EA.
- x. The visual impacts which are appropriately addressed in the conditions of the EA.

1.7 In light of the above, the appeals must be dismissed and the EA must be confirmed in terms of section 43(6) of the NEMA as the grounds of the appeals have adequately addressed.

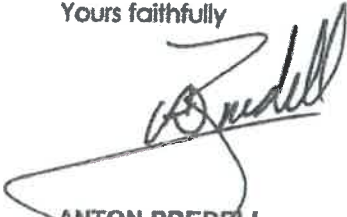
CONCLUSION:

In view of the above, the NEMA principles, compliance with the conditions stipulated in the EA and compliance with the conditions of the EMP, the proposed activities will not conflict with the general objectives of integrated environmental management stipulated in Chapter 5 of the NEMA and any potentially detrimental environmental impacts resulting from the activities can be mitigated to acceptable levels.

DISCLAIMER:

The Western Cape Government, the Local Authority, committees or any other public authority or organisation appointed in terms of the conditions of this EA shall not be responsible for any damages or losses suffered by the holder, developer or his/her successor in any instance where construction or operation subsequent to construction is temporarily or permanently stopped for reasons of non-compliance with the conditions as set out herein or any other subsequent document or legal action emanating from this decision.

Yours faithfully



**ANTON BREDELL
PROVINCIAL MINISTER OF LOCAL GOVERNMENT,
ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING**

DATE: 2/5/2018

Copied to:

Mr P. Botes (EnviroAfrica)

Mr Z. Toefy (Directorate: Development Management (Region 1))

Fax: (086) 512 0154

Fax: (021) 483 4372

e-mail: Zaahir.Toefy@westerncape.gov.za