



Western Cape
Government

Environmental Affairs and
Development Planning

MINISTRY OF LOCAL GOVERNMENT,
ENVIRONMENTAL AFFAIRS AND
DEVELOPMENT PLANNING

M 3/6/5

Mr. Mr R Lundie
Boschendal (Pty) Ltd
PO Box 25
GROOT DRAKENSTEIN
7680

Dear Mr Lundie

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 PROPOSED MIXED-USE DEVELOPMENT ON PORTION 7 AND 10 OF FARM NO 1647 BOSCHENDAL (BOSCHENDAL VILLAGE)

The appeal lodged on behalf of the Dwars River Valley Community Development Trust against the proposed development in the above regard refers.

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"), to confirm the abovementioned decision of the competent authority and to dismiss the appeal. The abovementioned EA which is confirmed in this appeal decision and the conditions under which the authorisation is granted must be complied with, however Condition E8 and section F are excluded from this authorisation. The following conditions are substituted to read as follows:-

Condition 2

The holder must commence with the listed activities on site within a period of five (5) years from the date of this appeal decision.

Condition 7

The applicant must, in writing, within 14 (fourteen) calendar days of the date of this appeal decision notify the registered Interested and Affected Parties ("I&AP's") of the outcome of the appeal

decision and the reasons for the decision.

1. REASONS FOR THE DECISION

The following are reasons to confirm the Environmental Authorisation issued by the Delegated Competent Authority:

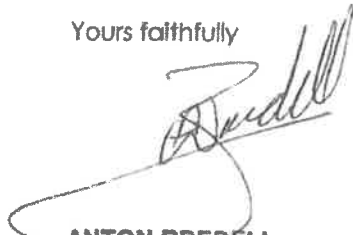
- (i) The Ndifuna Ukwazi comment submitted together with the appeal documentation relates to the Land Use Planning application being considered by Stellenbosch Municipality and the issues raised therein have been addressed by the applicant in that process. Ndifuna Ukwazi, as a registered Interested and Affected Party, did not utilise the opportunity to comment on the Basic Assessment Report during the public participation process and their comment was therefore not considered for the purpose of this appeal. Additionally, Ndifuna Ukwazi, as a registered I&AP could submit an appeal in this matter if they opposed the decision of the Competent Authority, but did not submit such appeal.
- (ii) 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 socio-economic and environmental benefits and disadvantages. Having considered both the environmental and planning context, granting the EA was determined to be the Best Practicable Environmental Alternative. By granting the EA, conditions are imposed to limit the impacts on the receiving environment and allows the Department to monitor and enforce compliance with such conditions.
- (iii) In the matter of *SLC Property Group (Pty) Ltd and Another v Minister of Environmental Affairs and Economic Development (Western Cape) and Another (5542/2007)[2007] ZAWCHC 58; [2008] 1 All SA 627 (C)(26 October 2007)* the court held that it was incumbent upon the Minister and the department "to consider the social, economic and environmental impact of the proposed activity so identified." The Minister is, however not empowered to "implement housing policies aimed at rectifying injustices of the past." The court further found that such condition, if imposed, would not be rationally related to, nor based on or derived from information before the Minister in terms of the relevant prescribed procedures and Regulations.
- (iv) With regard to the insertion of conditions to ensure that appropriate funds are paid to the Trust and requires the Applicant to incorporate the provision of affordable housing, the same court held that such a condition would not pertain to the impact of the identified activities on the environment and the imposition thereof is *ultra vires* the power of the

Minister in terms of the relevant legislation. It was stated that although the establishment of the trust fund originated with the applicants, "this would seem to be a matter for negotiation between all interested parties and not something to be imposed by way of condition.

- (v) In light of the above judgement, conditions of authorisation imposing legally binding obligations on the developer to ensure funds are paid to the Appellant and to ensure that provision is made for adequate affordable housing to the poor and working class residents of the Dwars River Valley, cannot be imposed by the Minister, as the imposition of such conditions is *ultra vires* the power of the Minister in terms of the relevant legislation.

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: 6/12/2018

cc. Mr Z Toefy (DEA&DP)

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