



14/3/1/A6/16/0321/18

Ms Y Leibman
27 Nova Constantia Road
CONSTANTIA
7806

email: leibman@iafrica.com

Dear Ms Leibman

APPEALS LODGED IN TERMS OF SECTION 43(2) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998) AGAINST AN ENVIRONMENTAL AUTHORISATION GRANTED FOR THE PROPOSED ESTABLISHMENT OF THE MOUNT PROSPECT RETIREMENT VILLAGE ON ERVEN 2641 AND 2643, CONSTANTIA

The appeal lodged on behalf of the Constantia Ratepayers and Residents Association against the Environmental Authorisation ("EA") for the abovementioned proposed development, refers.

After considering all relevant facts and supportive documents at my disposal, I wish to advise that, in terms of section 43(6) of the *National Environmental Management Act, 1998 (Act No. 107 of 1998)* ("NEMA"), I have decided to partially uphold the appeals and replace the Environmental Authorisation granted on 17 October 2017, with the attached appeal Environmental Authorisation. The EA granted on 17 October 2017 is therefore no longer valid.

Yours faithfully

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

DATE: 14/1/2020



14/3/1/A6/16/0321/18

Ms A Wain
39 Pagasvlei Road
CONSTANTIA
7806

email: awain@mweb.co.za

Dear Ms Wain

APPEALS LODGED IN TERMS OF SECTION 43(2) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998) AGAINST AN ENVIRONMENTAL AUTHORISATION GRANTED FOR THE PROPOSED ESTABLISHMENT OF THE MOUNT PROSPECT RETIREMENT VILLAGE ON ERVEN 2641 AND 2643, CONSTANTIA

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

DATE: 14/1/2020



14/3/1/A6/16/0321/18

Mr M Madden
8 Eugene Marais Ave
CONSTANTIA
7806

email: madden@iafrica.com

Dear Mr Madden

APEALS LODGED IN TERMS OF SECTION 43(2) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998) AGAINST AN ENVIRONMENTAL AUTHORISATION GRANTED FOR THE PROPOSED ESTABLISHMENT OF THE MOUNT PROSPECT RETIREMENT VILLAGE ON ERVEN 2641 AND 2643, CONSTANTIA

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

DATE : 14/1/2020



14/3/1/A6/16/0321/18

Dr M Bresler
6 Olive Close
CONSTANTIA
7806

email: matt@bresler5.com

Dear Dr Bresler

APPEALS LODGED IN TERMS OF SECTION 43(2) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998) AGAINST AN ENVIRONMENTAL AUTHORISATION GRANTED FOR THE PROPOSED ESTABLISHMENT OF THE MOUNT PROSPECT RETIREMENT VILLAGE ON ERVEN 2641 AND 2643, CONSTANTIA

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

DATE: 14/1/2020



14/3/1/A6/16/0321/18

Ms Penelope Meyer
Heritage Western Cape
Private Bag X9067
CAPE TOWN
8000

email: Penelope.meyer@westerncape.gov.za

Dear Ms Meyer

APPEALS LODGED IN TERMS OF SECTION 43(2) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998) AGAINST AN ENVIRONMENTAL AUTHORISATION GRANTED FOR THE PROPOSED ESTABLISHMENT OF THE MOUNT PROSPECT RETIREMENT VILLAGE ON ERVEN 2641 AND 2643, CONSTANTIA

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

DATE: 14/11/2020



14/3/1/A6/16/0321/18

Prof. P Potter
1 Olive Close
CONSTANTIA
7806

email: paulpotterassociates@cybersmart.co.za

Dear Prof Potter

APPEALS LODGED IN TERMS OF SECTION 43(2) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998) AGAINST AN ENVIRONMENTAL AUTHORISATION GRANTED FOR THE PROPOSED ESTABLISHMENT OF THE MOUNT PROSPECT RETIREMENT VILLAGE ON ERVEN 2641 AND 2643, CONSTANTIA

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

DATE: 14/1/2020



14/3/1/A6/16/0321/18

Ms Y Leibman
27 Nova Constantia Road
CONSTANTIA
7806

email: leibman@iafrica.com

Dear Ms Leibman

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

DATE : 14/1/2020



14/3/1/A6/16/0321/18

Mr P J Jordan
Mount Prospect Retirement Village (Pty) Ltd
22 Evergreen Lane
CONSTANTIA
7806

Tel: (021) 794 7974
Fax: (021) 794 2203

Dear Mr Jordan

APPEALS LODGED IN TERMS OF SECTION 43(2) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998) AGAINST AN ENVIRONMENTAL AUTHORISATION GRANTED FOR THE PROPOSED ESTABLISHMENT OF THE MOUNT PROSPECT RETIREMENT VILLAGE ON ERVEN 2641 AND 2643, CONSTANTIA

With reference to your application for the abovementioned, find below the outcome with respect to the appeals lodged against the above proposed development.

After considering all relevant facts and supportive documents at my disposal, I wish to advise that, in terms of section 43(6) of the *National Environmental Management Act, 1998 (Act No. 107 of 1998)* ("NEMA"), I have decided to partially uphold the appeals and replace the Environmental Authorisation ("EA") granted on 17 October 2017, with this Environmental Authorisation. The EA granted on 17 October 2017 is therefore no longer valid.

APPEAL ENVIRONMENTAL AUTHORISATION

Authorisation is granted to the applicant to undertake Layout Alternative 7, with the exception of units 1-6, comprising of 31 single storey detached homes in relation to the activity listed in Section B below for the proposed establishment of a retirement village on Erven 2641 and 2643, Constantia.

A. DETAILS OF THE HOLDER OF THIS ENVIRONMENTAL AUTHORISATION

Mount Prospect Retirement Village (Pty) Ltd
c/o Peter John Jordan
22 Evergreen Lane
CONSTANTIA
7806
Tel.: (021) 794 7974
Fax: (021) 794 2203

The abovementioned applicant is the holder of this EA and is hereinafter referred to as "the holder".

B. LIST OF ACTIVITIES AUTHORISED

Government Notice No. R. 983 of 4 December 2014 as amended in Government Notice R.327 of 7 April 2017 –

Listed Activity	Activity/Project Description
<p>Activity 19: <i>"The infilling or depositing of any material of more than 10 cubic metres into, or the dredging, excavation, removal or moving of soil, sand, shells, shell grit, pebbles or rock of more than 10 cubic metres from a watercourse;</i></p> <p><i>but excluding where such infilling, depositing, dredging, excavation, removal or moving -</i></p> <ul style="list-style-type: none"><i>(a) will occur behind a development setback;</i><i>(b) is for maintenance purposes undertaken in accordance with a maintenance management plan;</i><i>(c) falls within the ambit of activity 21 in this Notice, in which case that activity applies;</i><i>(d) occurs within existing ports or harbours that will not increase the development footprint of the port or harbour; or</i>	<p>A small wetland ("Wetland B") will be filled in to accommodate the proposed development.</p>

<p>(e) where such development is related to the development of a port or harbour, in which case activity 26 in Listing Notice 2 of 2014 applies".</p>	
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The abovementioned list is hereinafter referred to as "the listed activity".

The holder is herein authorised to undertake the following related to the listed activity:

The development entails the establishment of a retirement estate on Erven 2641 and 2643, Constantia, as depicted in Annexure 1 (Layout Alternative 7, with the exception of units 1-6 Scenario 2). The six residential units that are proposed adjacent to the existing access servitude which runs along the western boundary of Erf No. 2641 are not approved.

The authorised development therefore comprises the following:

The proposed development comprises the establishment of not more than **31** single storey detached homes including the historic Mount Prospect farmstead's trees, four historic buildings, the werf and their interspatial relationships. No new buildings will be positioned in the farmstead precinct and between the farmstead and Groot Constantia. The farmstead Manor House and three barns are proposed for sensitive alteration and reuse to provide communal facilities for use by the residents as follows:

- Homestead: clubhouse;
- Barn 1: administration block;
- Barn 2: medical care centre; and
- Barn 3: the proposed use must still be confirmed, but may include a woodwork hobby room.

The historic farmstead will remain in its entirety. A communal pool and associated garden will be located adjacent to the homestead.

The proposed development also includes internal roadways and private open space greenbelt areas. The greenbelt areas include stands of mature trees which have been identified as having heritage significance. The green areas will include a vegetated buffer area around "Wetland A" and a vegetated buffer will also be established along the proposed development's northern boundary with the historic Groot Constantia wine estate. The edge planting along Pagasvlei Road will ensure a visual link from the Pagasvlei greenbelt to the south, to the historic homestead on the site.

Bulk engineering services infrastructure (water, sewerage, storm water and electricity) will be constructed which will connect to the surrounding municipal network. Fencing will be visually permeable and traversable by small mammals and reptiles including the Western Leopard Toad.

Access will be obtained via an existing servitude off Pagasvlei Road. Access will not be obtained directly off Pagasvlei Road or from Olive Close.

C. LOCATION AND SITE DESCRIPTION

The listed activity will take place on Erven 2641 and 2643, Constantia.

The vineyards of the Groot Constantia farm are situated immediately adjacent to the northern boundary of the site. Pagasvlei Road is situated adjacent to the southern border of the site whilst Olive Close is situated to the east. High income, low density residential areas are located beyond Pagasvlei Road and Olive Close to the east, west and south of the site.

The SG 21-digit codes are:

Erf No. 2641: C01600110000264100000

Erf No. 2643: C01600110000264300000

Co-ordinates:

Latitude: 34° 01' 50.29" S

Longitude: 18° 25' 38.24" E

hereinafter referred to as "the site".

D. DETAILS OF THE ENVIRONMENTAL ASSESSMENT PRACTITIONER ("EAP")

Sillito Environmental Consulting

c/o Ms Colleen McCreadie

PO Box 30134

TOKAI

7966

Tel.: (021) 712 5060

Fax: (021) 712 5061

E. CONDITIONS OF AUTHORISATION

Scope of authorisation

1. The holder is authorised to undertake the listed activity specified in Section B above in accordance with and restricted to Layout Alternative 7, with the exception of units 1-6 described in the BAR dated 4 July 2017 on the site as described in Section C above.
2. The authorisation of the activity is subject to compliance with the conditions set out in this EA. The holder must ensure compliance with the conditions by any person acting

on his/her behalf, including an agent, sub-contractor, employee or any person rendering a service to the holder.

3. The holder must commence with, and conclude, the listed activity within the stipulated validity period which this appeal Environmental Authorisation is granted for, or this appeal Environmental Authorisation shall lapse and a new application for Environmental Authorisation must be submitted to the competent authority.
4. This EA is granted for–
 - (a) A period of five (**5**) years, from the date of this decision, during which period the holder must commence with the authorised listed activity; and
 - (b) A period of ten (**10**) years, from the date the holder commenced with an authorised listed activity, during which period the authorised listed activity for the construction phase, must be concluded.
5. Any changes to, or deviations from the scope of the description set out in Section B and Condition 2 above must be accepted or approved, in writing, by the competent authority before such changes or deviations may be implemented. In assessing whether to grant such acceptance/approval or not, the competent authority may request such information to evaluate the significance and impacts of such changes or deviations, and it may be necessary for the holder to apply for further authorisation in terms of the applicable legislation.
6. The holder of this appeal Environmental Authorisation must within fourteen (14) calendar days of the date of the appeal decision ensure, in writing, that all the registered interested and affected parties are provided with access to the appeal decision and the reasons for such decision.

Written notice to the competent authority

7. Seven calendar days' notice, in writing, must be given to the competent authority before commencement of construction activities. Commencement for the purpose of this condition includes site preparation.
 - 7.1 The notice must make clear reference to the site details and EIA Reference number given above.
 - 7.2 The notice must also include proof of compliance with the following conditions described herein:
Conditions: 6, 8 and 12.

Management of the activity

8. The draft Environmental Management Programme ("EMPr") submitted as part of the application for Environmental Authorisation must be amended to remove the six residential units not authorised by the competent authority. A copy of the amended

EMPr must be submitted to the Competent Authority before commencement of any land clearing and construction activities.

9. An application for amendment to the EMPr must be submitted to the competent authority in terms of Chapter 5 of the EIA Regulations, 2014 if any amendments are to be made to the objectives and outcomes of the EMPr, and these may only be implemented once the amended EMPr has been authorised by the competent authority.
10. The EMPr must be included in all contract documentation for all phases of implementation.
11. A copy of the Environmental Authorisation and the EMPr must be kept at the site where the listed activities will be undertaken. Access to the site referred to in Section C above must be granted and, the Environmental Authorisation and EMPr must be produced to any authorised official representing the competent authority who requests to see it for the purposes of assessing and/or monitoring compliance with the conditions contained herein. The Environmental Authorisation and EMPr must also be made available for inspection by any employee or agent of the applicant who works or undertakes work at the site.

Monitoring

12. The holder must appoint a suitably experienced Environment Control Officer ("ECO"), for the duration of the construction and rehabilitation phases of implementation.

The ECO must—

- 12.1 be appointed prior to commencement of any land clearing or construction activities commencing;
- 12.2 ensure compliance with the EMPr and the conditions contained herein;
- 12.3 keep record of all activities on site; problems identified; transgressions noted and a task schedule of tasks undertaken by the ECO;
- 12.4 remain employed until all rehabilitation measures, as required for implementation due to construction damage, are completed.

Environmental audit reports

13. The holder must, for the period during which the Environmental Authorisation and EMPr remain valid—
 - 13.1 ensure that the compliance with the conditions of the Environmental Authorisation and the EMPr is audited; and
 - 13.2 conduct at least two environmental audits to determine compliance with the conditions of the Environmental Authorisation and submit the environmental audit report to the competent authority.

14. The environmental audit report must be prepared by an independent person and must address the objectives and contain all the information set out in Appendix 7 of the EIA Regulations, 2014.

In addition to the above, the environmental audit report, must -

- 14.1 provide verifiable findings, in a structured and systematic manner, on-
 - (a) the level of compliance with the conditions of the EA and the EMPr and whether this is sufficient or not; and
 - (b) the extent to which the avoidance, management and mitigation measures provided for in the EMPr achieve the objectives and outcomes of the EMPr and highlight whether this is sufficient or not;
 - 14.2 identify and assess any new impacts and risks as a result of undertaking the activity;
 - 14.3 evaluate the effectiveness of the EMPr;
 - 14.4 identify shortcomings in the EMPr;
 - 14.5 identify the need for any changes to the avoidance, management and mitigation measures provided for in the EMPr;
 - 14.6 indicate the date on which the construction work was commenced with and completed or in the case where the development is incomplete, the progress of the development and rehabilitation;
 - 14.7 include a photographic record of the site applicable to the audit; and
 - 14.8 be informed by the ECO reports.
15. The holder must, within 7 days of the submission of the environmental audit report to the competent authority, notify all potential and registered Interested and Affected Parties of the submission and make the report available to anyone on request and, where the holder has such a facility, be placed on a publicly accessible website.

Specific conditions

16. Surface or ground water must not be polluted due to any actions on the site. The applicable requirements with respect to relevant legislation pertaining to water must be met.
17. An integrated waste management approach, which is based on waste minimisation and incorporates reduction, recycling, re-use and disposal, where appropriate, must be employed. Any solid waste must be disposed of at a waste disposal facility licensed in terms of the applicable legislation.
18. Should any heritage remains be exposed during excavations or any actions on the site, these must immediately be reported to the Provincial Heritage Resources Authority of the Western Cape, Heritage Western Cape (in accordance with the applicable legislation). Heritage remains uncovered or disturbed during earthworks must not be further disturbed until the necessary approval has been obtained from Heritage Western

Cape. Heritage remains include: archaeological remains (including fossil bones and fossil shells); coins; indigenous and/or colonial ceramics; any articles of value or antiquity; marine shell heaps; stone artefacts and bone remains; structures and other built features; rock art and rock engravings; shipwrecks; and graves or unmarked human burials.

A qualified archaeologist must be contracted where necessary (at the expense of the applicant and in consultation with the relevant authority) to remove any human remains in accordance with the requirements of the relevant authority.

19. All the mature trees on the werf and adjacent to the homestead and barns must be retained.
20. The architectural design of the development must be late Victorian style.
21. The mitigation measures and recommendations made by the various specialists involved in the EIA process, as contained in the EMPr, must be implemented and strictly adhered to.
22. Landscape Master Plan ("LMP") compiled for the development must be implemented and strictly adhered to.
23. The area where units 1-6 were proposed must form part of the open space system on the site.
24. Notwithstanding this EA, the holder must comply with any other statutory requirements that may be applicable when undertaking the listed activity.
25. If the holder does not commence with the listed activity within the period referred to in Condition 3, this EA shall lapse for the activity, and a new application for EA must be submitted to the competent authority. If the holder wishes to extend the validity period of the EA, an application for amendment in this regard must be made to the competent authority before the expiry date of the Environmental Authorisation.
26. The holder must submit an application for amendment of the EA to the competent authority where any detail with respect to the EA must be amended, added, substituted, corrected, removed or updated. If a new holder is proposed, an application for amendment in terms Chapter 5 of the EIA Regulations, 2014, (Part 1) must be submitted.

Please note that an amendment is not required if there is a change in the contact details of the holder. In this case, the competent authority must only be notified of such changes.

27. The manner and frequency for updating the EMPr is as follows:

Amendments to the EMPr, other than those mentioned above, must be done in accordance with Regulations 35 to 37 of GN No. R. 982 of 4 December 2014 or any relevant legislation that may be applicable at the time.

28. Non-compliance with a condition of this EA or EMPr may render the holder liable to criminal prosecution.

ANNEXURE 1: AUTHORISED LAYOUT



ANNEXURE 2: REASONS FOR THE DECISION

In reaching its decision, the competent authority, *inter alia*, considered the following:

- a) The information contained in the Application Form dated 9 May 2017, as received by the competent authority on 10 May 2017, the BAR dated 4 July 2017 and the EMPr submitted together with the BAR, and the information received by the competent authority on 7 July 2017, respectively.
- b) The objectives and requirements of relevant legislation, policies and guidelines, including section 2 of the NEMA.
- c) The comments received from Interested and Affected Parties and the responses provided thereon, as included in the BAR dated 4 July 2017.
- d) The meetings held on:

Date: 31 January 2017

Attended by: Ms Adri La Meyer and Ms Rondine Isaacs of the Department of Environmental Affairs and Development Planning ("DEA&DP") and Mr Andrew September of Heritage Western Cape.

Date: 5 April 2017

Attended by: Ms Colleen McCreddie of Sillito Environmental Consulting; Ms Bridget O'Donoghue (heritage consultant); Mr Geoff Underwood of Planning Partners, Mr Peter Kantor of Kantor Legal Services cc; and Mr Eldon van Boom and Ms Rondine Isaacs of the DEA&DP.

- e) The site visit conducted on:

Date: 28 September 2017

Attended by: Mr Eldon van Boom, Ms Rondine Isaacs and Mr Theo Engel of the DEA&DP.

- f) The Appeals that submitted by:

- Constantia Residents' and Ratepayers' Association submitted by Ms Y. Leibman;
- Ms Y. Leibman;
- Mr B. Barker;
- Professor P. Potter;
- Dr D. Matthew and Ms V. Bresler;
- Heritage Western Cape ("HWC");
- Ms A. Wain; and
- Mr M. Madden.

- g) The information received on 9 May 2018 from Planning Partners on behalf of the applicant comprising of:

- Various alternatives with their respective financial implications to the developer;
 - A request by the applicant that should they provide the ATVANTAGE Financial Feasibility Report, that this report be treated as confidential and that should the matter be litigated at a later stage, the part of the Rule-53 record containing the Reports should be subject to a strict confidentiality regime, and
 - The Mount Prospect: Evolution of the Development Plan which comprises of all the alternatives considered.
- h) The comments received on 21 June 2018 from Interested and Affected Parties.
- The ATVANTAGE financial feasibility Executive Summary.
 - The Project Viability Review completed by MLC Construction Cost Consultants.
 - The comments received on 28 March 2019 from Interested and Affected Parties.

All information presented above was taken into account in the consideration of the Environmental Authorisation and the appeal.

- i) The site visit conducted on 10 December 2019.

LEGISLATIVE MANDATE

1. In terms of the relevant legislation, the decision-making powers afforded to the appellate authority are such that it may, "confirm, set aside or vary the decision, provision, condition or directive or make any other appropriate decision". The assessment of appeals raises substantive and policy-laden issues and a determination of whether the proposed application will result in a development that is sustainable, that avoids detrimental impacts on the environment, or where it cannot be avoided, ensure mitigation and management of impacts to acceptable levels, and to optimise positive environmental impacts.
2. Section 24 of the *Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996)* ('the Constitution'), provides:

"24 Environment

Everyone has the right-

- (a) to an environment that is not harmful to their health or well-being; and*
- (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that-*
 - (i) prevent pollution and ecological degradation;*
 - (ii) promote conservation; and*
 - (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development."*

3. The power of the National Environmental Minister or a provincial MEC to regulate environmental matters is now under the National Environmental Management Act, 1998 (Act No. 107 of 1998) ("NEMA") (a law enacted to give effect to the environmental right in section 24 of the Constitution):
 - 3.1 Section 2 of the NEMA lays down certain generally-applicable principles of environmental management which must be applied by persons when deciding whether or not to grant authorisations under section 24 of the NEMA. See section 2(1)(c) and (e) of NEMA, which provide that the NEMA principles:
 - 3.1.1 "serve as guidelines by reference to which any organ of state must exercise any function when taking any decision in terms of this Act or any statutory provision concerning the protection of the environment" (section 2(1)(c)); and
 - 3.1.2 "guide the interpretation, administration and implementation of this Act, and any other law concerned with the protection or management of the environment" (section 2(1)(e)).
 - 3.2 The NEMA principles include the following:
 - 3.2.1 Environmental management must place people and their needs at the forefront of its concern, and serve their physical, psychological, developmental, cultural and social interests equitably' (section 2(2));
 - 3.2.2 "Development must be socially, environmentally and economically sustainable" (section 2(3));
 - 3.2.3 sustainable development – a term defined in section 1 of the NEMA as meaning – 'the integration of social, economic and environmental factors into planning, implementation and decision-making so as to ensure that development serves present and future generations' – "requires the consideration of all relevant factors . . ." in environmental decision-making (section 2(4)(a));
 - 3.2.4 "Environmental management must be integrated, acknowledging that all elements of the environment are linked and interrelated, and it must take into account the effects of decisions on all aspects of the environment and all people in the environment by pursuing the selection of the best practicable environmental option" (section 2(4)(b)); and
 - 3.2.5 "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" (section 2(4)(i)).
 - 3.3 The key legislation that provided the framework and guidelines for undertaking the Environmental Impact Assessment ("EIA") process includes:
 - 3.3.1 EIA Regulations, 2014 as promulgated in terms of NEMA.
 - 3.3.2 National Heritage Resources Act, 1999 (Act No. 25 of 1999).

A. KEY FACTORS

Appeal review

1. The Decision

The Environmental Impact Assessment ("EIA") application submitted was for the establishment of a retirement estate comprising of 37 single storey detached homes, clubhouse, an administration block, a medical care centre and a woodwork/hobby room.

The Environmental Authorisation ("EA") was required due to the infilling of one of the wetlands on site. The applicable listed activity is –

"Activity 19:

"The infilling or depositing of any material of more than 10 cubic metres into, or the dredging, excavation, removal or moving of soil, sand, shells, shell grit, pebbles or rock of more than 10 cubic metres from a watercourse;

but excluding where such infilling, depositing, dredging, excavation, removal or moving –

- a) will occur behind a development setback;*
- b)) is for maintenance purposes undertaken in accordance with a maintenance management plan;*
- c)) falls within the ambit of activity 21 in this Notice, in which case that activity applies;*
- d) occurs within existing ports or harbours that will not increase the development footprint of the port or harbour; or*
- e) where such development is related to the development of a port or harbour, in which case activity 26 in Listing Notice 2 of 2014 applies".*

Section B (List of Activities Authorised) of the Environmental Authorisation ("EA") states as follow:

"The proposed project entails the establishment of a retirement estate on Erven 2641 and 2643, Constantia, as depicted in Annexure 2 (Figure 1 dated 18 November 2016 as contained in the BAR dated 4 July 2017)." Annexure 2 of the EA contains a site plan for the approved alternative which restricts the development to 37 single storey detached homes.

The reasons for the decision states *"The proposed development comprises of approximately 37 single storey detached homes..."*. The word 'approximately' in the EA was used in Annexure 3 (Reasons for the decision) in the section discussing the alternatives considered. I concur that the EA must be more definitive and that the use of the word 'approximately' must be avoided.

While no specific condition was included in the EA that specifically relates the heritage value of the site and the surrounding area, a condition which manages the process should any heritage

remains and/or artefacts be uncovered during the construction phase of the development was included in the EA. Condition 20 of the EA states –

"20. Should any heritage remains be exposed during excavations or any actions on the site, these must immediately be reported to the Provincial Heritage Resources Authority of the Western Cape, Heritage Western Cape (in accordance with the applicable legislation). Heritage remains uncovered or disturbed during earthworks must not be further disturbed until the necessary approval has been obtained from Heritage Western Cape. Heritage remains include: archaeological remains (including fossil bones and fossil shells); coins; indigenous and/or colonial ceramics; any articles of value or antiquity; marine shell heaps; stone artifacts and bone remains; structures and other built features; rock art and rock engravings; shipwrecks; and graves or unmarked human burials.

A qualified archaeologist must be contracted where necessary (at the expense of the applicant and in consultation with the relevant authority) to remove any human remains in accordance with the requirements of the relevant authority."

Additional conditions relating the management of the impacts of the heritage aspects on the site have been included in this appeal EA.

It should be noted that conditions in an EA must relate to the applicable listed activities and its impacts on the environment.

2. Wholesale failures in the treatment of heritage-related impacts in the decision-making process

The relevant statutory framework applicable to the development are:

"The Constitution of the Republic of South Africa, 1996 deals with the environment in section 24 and states that everyone has a right –

"24 (a) to an environment that is not harmful to their health or well-being; and

(b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that—

(i) prevent pollution and ecological degradation;

(ii) promote conservation; and

(iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development."

Section 24 of the Constitution thus considers the integration of environmental protection and socio-economic development and envisages that environmental considerations will be balanced with socio-economic considerations through the concept of sustainable development, which provides a framework for reconciling socio-economic development and

environmental protection. Inherent in environmental protection is the conservation and protection of heritage and cultural aspects.

NEMA is the primary legislative measure that gives effect to Section 24, and the principles in Section 2 and the provisions of Chapter 5 of NEMA relating to integrated environmental management are relevant to this matter. Section 2 of the *National Environmental Management Act, 1998 (Act No. 107 of 1998)* ("NEMA") states that for a development to be sustainable, all relevant factors must be considered including, *inter alia*:

- *that the disturbance of ecosystems and loss of biological diversity are avoided, or, where they cannot be altogether avoided, are minimised and remedied;*
- *that the disturbance of landscapes and sites that constitute the nation's cultural heritage is avoided, or where it cannot be altogether avoided, is minimised and remedied;*
- *that the use and exploitation of non-renewable natural resources is responsible and equitable, and takes into account the consequences of the depletion of the resource...*

In terms of Integrated Environmental Management Section 23(2) of NEMA which states: "*The general objective of integrated environmental management is to –*

(b) identify, predict and evaluate the actual and potential impact on the environment, socio-economic conditions and cultural heritage, the risks and consequences and alternatives and options for mitigation of activities, with a view to minimising negative impacts, maximising benefits, and promoting compliance with the principles of environmental management set out in section 2;"

NEMA requires all development to be socially, economically and environmentally sustainable. NEMA defines sustainable development as "*the integration of social, economic and environmental factors into planning, implementation and decision-making for the benefit of present and future generations*".

NEMA, like all legislation, must be interpreted purposively and in a manner that is consistent with the Constitution, paying due regard to the text and context of the legislation. As a matter of general principle, a legislature when interpreting legislation are duty bound by section 39(2) of the Constitution to promote the purport, spirit and objects of the Bill of Rights in the process of interpreting the provision in question. The approach mandated by section 39(2) is activated when the provision being interpreted implicates or affects rights in the Bill of Rights, including the fundamental justiciable environmental right in section 24 of the Constitution.

Thus, Section 2 of NEMA sets out binding directive principles that must inform all decisions taken under the Act, including decisions on environmental authorisations. The directive principles serve

as guideline by reference to which any organ of state must exercise any function when taking any decision in terms of NEMA or any statutory provision concerning the protection of the environment. They guide the interpretation, administration and implementation of NEMA, and any other law concerned with the protection or management of the environment.

Heritage Western Cape ("HWC"), is the provincial authority responsible for the implementation of the *National Heritage Resources Act, 1999 (Act No. 25 of 1999)* ("NHRA"). Section 38 (1), (3) and (8) NHRA states –

"Heritage resources management

38. (1)(c)(i) Subject to the provisions of subsections (7), (8) and (9), any person who intends to undertake a development categorised as—

(c) any development or other activity which will change the character of a site—

(i) exceeding 5 000 m² in extent;

must at the very earliest stages of initiating such a development, notify the responsible heritage resources authority and furnish it with details regarding the location, nature and extent of the proposed development.

(2) The responsible heritage resources authority must, within 14 days of receipt of a notification in terms of subsection (1)—

(a) if there is reason to believe that heritage resources will be affected by such development, notify the person who intends to undertake the development to submit an impact assessment report. Such report must be compiled at the cost of the person proposing the development, by a person or persons approved by the responsible heritage resources authority with relevant qualifications and experience and professional standing in heritage resources management; or

(b) notify the person concerned that this section does not apply.

(3) The responsible heritage resources authority must specify the information to be provided in a report required in terms of subsection (2)(a): Provided that the following must be included:

(a) The identification and mapping of all heritage resources in the area affected;

(b) an assessment of the significance of such resources in terms of the heritage assessment criteria set out in section 6(2) or prescribed under section 7;

(c) an assessment of the impact of the development on such heritage resources;

(d) an evaluation of the impact of the development on heritage resources relative to the sustainable social and economic benefits to be derived from the development;

(e) the results of consultation with communities affected by the proposed development and other interested parties regarding the impact of the development on heritage resources;

- (f) if heritage resources will be adversely affected by the proposed development, the consideration of alternatives; and
- (g) plans for mitigation of any adverse effects during and after the completion of the proposed development.

(8) The provisions of this section do not apply to a development as described in subsection (1) if an evaluation of the impact of such development on heritage resources is required in terms of the Environment Conservation Act, 1989 (Act No. 73 of 1989), or the integrated environmental management guidelines issued by the Department of Environment Affairs and Tourism, or the Minerals Act, 1991 (Act No. 50 of 1991), or any other legislation: Provided that the consenting authority must ensure that the evaluation fulfils the requirements of the relevant heritage resources authority in terms of subsection (3), and any comments and recommendations of the relevant heritage resources authority with regard to such development have been taken into account prior to the granting of the consent."

Thus, in terms of section 38(8) of the NHRA, HWC can only act as a commenting authority on EIA applications. In terms of this, DEA&DP entered into an Operational agreement/Standard Operation Procedure with HWC. This agreement requires that DEA&DP ensure that the requirement of Section 38(8) of the NHRA has been complied with, the relevant aspects related to impacts on heritage resources have been adequately assessed and addressed and all comments and recommendations have been taken into account in the EA.

In terms of the above, the competent authority, i.e. DEA&DP, has to take into account the sustainable development principles which promote the precautionary principle that environmental harms must be avoided, minimised and remedied. The proposed development site has a heritage resource grading of IIIA, which is defined as "such a resource must be an excellent example of its kind or must be sufficiently rare. These are heritage resources which are significant in the context of an area. This grading is applied to buildings and sites that have sufficient intrinsic significance to be regarded as local heritage resources; and are significant enough to warrant that any alteration, both internal and external, is regulated. Such buildings and sites may be representative, being excellent examples of their kind, or may be rare. In either case, they should receive maximum protection at local level." Thus, the buildings and sites have sufficient intrinsic significance to be regarded as a local heritage resource and the heritage resource significance of grade IIIA is rated as High.

Additionally, the site is subject to an application to have it declared as a provincial heritage site.

The site directly abuts the Groot Constantia Estate, which was declared a national monument in 1936 and since 1999 is a formally protected provincial heritage site. The proximity of the site

to the Groot Constantia Estate, the Constantia Tokai Historic Farmlands and Constantia Winelands Cultural Landscape are a key considerations.

The Heritage Impact Assessment ("HIA") noted that the South African Heritage Resource Agency ("SAHRA") has commenced with the process to have the Constantia Valley declared as a national heritage site. The HIA for the site concluded that the site comprises of 3 heritage precincts which is rated high, medium and low significance. The authorised Layout Alternative 7 comprised of 37 single storey detached homes being located in the medium and low significant precincts. The high significance precinct will be preserved and not used for any of the residential use.

The impact on the heritage resources was identified as a key issue during the EIA process. The key concerns noted by HWC included:

- the site is situated at the urban edge and adjoining the Constantia Winelands Cultural landscape;
- the high densities, in the context of the rural context of the area are not appropriate, regardless of the visual mitigation proposed;
- insufficient consideration given to the grade IIIA heritage resource grading of site in relation to the density of the development with particular concern to units 1-6 (Site Development Plan dated 18 November 2016) being proposed in the south-western quadrant of the site.

HWC thus recommended that a building typology that is more appropriate in the remnant rural context be considered.

HWC indicated support for the development of residential units in the low significant precinct but noted their concern with units 1-6 (on the Site Development Plan dated 18 November 2016). No development in this area will provide for a greater visual link between the Pagasvlei Greenbelt and Groot Constantia. In addition, the removal of units 1-6 single storey detached homes will result in a low density development in line with the character of the adjacent land use and will create a bigger vegetated open space buffer on the boundary with Pagasvlei Road.

Thus, I have varied the EA authorising that Layout Alternative 7, with the exception of units 1-6 (comprising of only 31 single storey detached homes) be approved. This will allow development to take place that is cognisant of the specific heritage constraints, responding to the environmental aspects of the site while presenting a development option to the developer.

3. Failure to properly and cooperatively interact with HWC (Standard Operating Procedure)

The Standard Operating Procedure ("SOP") concluded between DEA&DP and HWC was undertaken to avoid duplication and to allow for coordination in terms of the requirements in terms of NEMA and the NHRA.

Section 38(8) of the NHRA states that if the development activities listed in Section 38(1) must be subjected to an EIA in terms of NEMA, then a separate HIA and approval from the heritage resources authority is not required, provided that the environmental authority must:

- ensure that if the relevant heritage resources authority requires an HIA it fulfils the requirements of the heritage resources authority; and
- any comments and recommendations of the relevant heritage resources authority with regard to such development have been taken into account prior to the granting of the environmental authority's consent.

Thus, HWC's decision making powers are usurped and they become a commenting authority on EIA applications. As such, if the heritage resources authority requires a HIA, then the HIA must be undertaken as one of the EIA specialist studies, but the environmental authority must ensure that the heritage resources authority's requirements in terms of the assessment are met. The environmental authority must take into account the comments and recommendation of the heritage resources authority prior to granting or refusing environmental authorisation.

It is noted that the meeting dated 24 March 2017 between HWC and the DEA&DP predated the final comment issued by HWC, however the comment remained the same as the comment dated 21 September 2016. The delegated competent authority's review of the EIA application resulted in the authorisation of Layout Alternative 7 which includes 37 single storey detached homes. HWCs' Final Comment of 24 March 2017 is summarised as follows-

- Principle of densification not opposed;
- concerns expressed that insufficient consideration has been given to the impact on heritage resources;
- Site situated adjacent to the Constantia winelands cultural landscape, high densities not appropriate;
- Site graded IIIA although application for a Provincial Heritage Site has been submitted;
- Consideration of the building typology that is more appropriate in the remnant rural context should be addressed.

From the aforementioned comment it can be deduced that HWC, as the provincial authority for heritage resources in the Western Cape, is not opposed to the proposal of development on the site, just not in the form of the applicants preferred alternative.

The comment issued by the SAHRA, was based on the information contained in their information base.

The heritage aspects relating to the application were revisited and it was found that the delegated competent authority's review of all the information did not place as much weight on the significance of the heritage and cultural aspects of the site within the greater landscape as the appeals administrator. The noteworthy heritage aspects included:

- the site is situated at the urban edge and adjoining the Constantia Winelands Cultural landscape;
- the high densities, in the context of the rural context of the area are not appropriate, regardless of the visual mitigation proposed;
- insufficient consideration given to the grade IIIA heritage resource grading of site in relation to the density of the development with particular concern to units 1-6 (Site Development Plan dated 18 November 2016) being proposed in the south-western quadrant of the site.

The additional economic information provided by the applicant failed to provide sufficient information to support the impact on the heritage resources. I am cognisant that Scenario 2 which comprises of 31 single storey detached homes will provide a reduced rate of return on the investment to the applicant. However, in order to promote development that is both environmentally and socially/culturally justifiable, Layout Alternative 7, with the exception of units 1-6 (comprising of 31 single storey detached homes), is supported and recommended for approval.

I conclude that Layout Alternative 7, with the exception of units 1-6 (comprising of 31 single storey detached homes) is the best practicable environmental option which addresses the specific heritage aspects of the site and greater landscape, maintains the rural urban design and environmental integrity of the site while provided development opportunities to the applicant.

4. Failure to consider relevant information

In terms of regulation 20(1) of the EIA Regulation, 2014 –
20 (1) The competent authority must within 107 days of receipt of the basic assessment report and EMPr, or where relevant the closure plan, in writing—

(a) grant environmental authorisation in respect of all or part of the activity applied for;"

Thus, in terms of regulation 20(1) of the EIA Regulations, 2014, the delegated competent authority has the discretion to, based on the information submitted in support of the application, to grant

an EA for any alternative or part thereof. The adjudication of an EIA application is an iterative process which commences with the pre-application process up until the final reports are submitted for an EA. Even though the dates that appear on the route form appear close together, applications are discussed between officials throughout its lifespan.

In the light of the NEMA and the precautionary principles, the heritage aspects related to the application was revisited during the adjudication of the appeals and it was found that the delegated competent authority's review of all the information did not fully consider to the significance of the heritage and cultural aspects of the site within the greater landscape.

5. Failure by the DEA&DP to evaluate the legislated process for the Final BAR

Two development applications were submitted for the proposed development. The first application failed to meet the legislated timeframes in the EIA Regulations, 2014. The application lapsed and the file was closed. The second application culminated in the EA which is the subject of this appeal process.

The EIA application and the final BAR met all the requirements of the EIA Regulations, 2014.

The adjudication of the appeals included a review of all the information contained in the EIA application files, and the subsequent information received during the appeal.

The heritage aspects related to the application were revisited and it was found that the delegated competent authority's review of all the information did not fully consider to the significance of the heritage and cultural aspects of the site within the greater landscape.

I conclude that the 31 single storey detached homes presents the best practicable environmental option that address and responds to the specific heritage aspects of the site and greater landscape, maintains the rural urban design and environmental integrity of the site while providing development opportunities to the applicant.

6. Issues regarded by the decision maker reasoning for the authorised alternative

In terms of Regulation 20(1) of the EIA Regulations, 2014, the delegated competent authority has the discretion to, based on the information submitted in support of the application, to grant an EA for any alternative or part thereof.

The Layout Alternative 6 included 40 single storey detached homes which presented a development that was not acceptable to the delegated competent authority, Interested and Affected Parties, HWC and the applicant. Layout Alternative 7 was presented by the applicant as the preferred alternative to the DEA&DP for an EA.

7. Density

Two scenarios were evaluated in the financial feasibility viability investigation. Scenario 1 comprises of Layout Alternative 7 that was authorised in the EA dated 17 October 2017 and scenario 2 comprises of Layout Alternative 7, with the exception of units 1-6. The difference between the 2 scenarios is that units 1-6 has been removed. The removal of units 1-6 results in a lower density development in line with the character of the adjacent land use.

I conclude that the only approving 31 single residential units is the best practicable option which addresses to the specific heritage aspects of the site and surrounding area, maintains the rural urban design and environmental integrity of the site while providing development opportunities to the applicant.

8. Loss of wetland

The Freshwater Baseline Study ("FBS") was undertaken by Dr Liz Day from the Freshwater Consulting Group who has over 20 years' experience working in freshwater ecosystems, specialising in urban river and wetland rehabilitation and management.

The FBS concluded that the impacts on the wetlands associated with the development include:

Wetland A

- planting of localised areas of eroded/collapsed banks (positive impact);
- removal of fill and alien vegetation, and the replanting of indigenous vegetation (positive impact);
- short-term disturbance of the wetland during the construction phase of sewer but will be addressed with the implementation of mitigation measures listed in the Environmental Management Programme ("EMPr");
- long term interventions to address erosion through bank shaping and planting which could include the installation of gabions (positive impact);
- no changes in water quality during the operation phase with the implementation of EMP;
- no changes in water quality during the operation phase with the implementation of EMP;
- removal of alien vegetation and reinstatement of indigenous vegetation is anticipated to improve base flows and improve riparian area;
- stormwater will be dissipated outside of the wetland.

Wetland B

- loss of Wetland B is considered negligible considering the low ecological importance and sensitivity with the mitigation / offset mitigation.

All the specialist recommendations for the protection, rehabilitation and expansion of the conservation-worthy Wetland A informed the development layout. The specialist recommendations have also been included in the EMPr, which will govern the lifecycle of the development. These measures include appropriate stormwater management to prevent contamination, erosion or impact on the hydrological characteristics of Wetland A as well as appropriate buffer areas around Wetland A. These measures have been approved in principle by the City of Cape Town. The Stormwater Management Plan was compiled with input from the freshwater specialist in accordance with City of Cape Town's 2010 Management of Urban Stormwater Impacts Policy.

A Water Use License Application in terms section 40 and 41 of the *National Water Act, 1998 (Act No. 36 of 1998)* has also been submitted with the Department of Water and Sanitation.

The Appeal Authority is satisfied that the impacts on the wetlands on site was identified and assessed. I conclude that the loss of Wetland B is acceptable and is mitigated by the rehabilitation and ongoing management of Wetland A.

9. Visual Impact

The Visual Impact Assessment undertaken for the development found that the site is located within a residential area to the southeast of the Groot Constantia Estate, within the Constantia Valley. The landscape character is rural with low density development surrounding the site.

The Constantia Valley forms part of the Cape Winelands Cultural Landscape which has significant tourism and heritage value. The site is located just outside the boundary of the Cape Winelands Cultural Landscape as defined by the City of Cape Town City Space Cultural Recreation Resources Zone for the Southern District Plan Technical report.

Due to the topographic location of the site and the screening effects of surrounding development and vegetation, the site has the potential to be substantially absorbed into its context. This is particularly evident with increasing distance, where the site is largely obscured from view. The proposed development will be most visible in the immediate vicinity of the site, i.e., within a 1km radius.

The proposed development of 31 single storey detached homes responds to the lower densities of development that is present in area that is located to the north east of the site. The exclusion of units 1-6 increases the open space towards the west of the site and maintains the visual link with the surrounding area. The edge planting along Pagasvlei Road will further ensure a visual link with the Pagasvlei greenbelt to the south of the site.

I conclude that the development will not cause severe visual intrusion or impact significantly on the character or sense of place of the Constantia Valley. The visual impacts associated with the proposed development are considered to be within acceptable levels with the implementation of mitigation measures.

10. Screening on site

Additional appropriate screening comprising mature trees and shrubs (i.e. a hedgerow) will be planted along the palisade fence boundary of Erf 2643 with Erf 2642, the Landscape Master Plan ("LMP") has been amended to reflect this.

The Landscape Management Plan has been included as a condition of the EA.

11. Olive Close as a building site access road in the construction phase

Section 49A(1)(c) of the NEMA states that it is an offence to fail to comply with or to contravene a condition of an EA granted for a listed activity or specified activity or an EMPr.

The construction phase of the development will be managed as per the EMP along with an Environmental Control Officer ("ECO"), which has been included as conditions in the EA. The ECO will be responsible for the implementation of the EMP and to monitor compliance with the EMP and EA during the construction phase of the development.

12. Misrepresentation of Comment from the City of Cape Town: Environmental Management Section

The City of Cape Town: Environmental and Heritage Management Branch noted that they 'in principle' do not have a problem with the development, issues related to densities, size of the residential units and layout, in terms of the residential units being located close to each other, in the comments they submitted relating to the development.

Units 1-6 have been removed from the authorised development layout. The removal of the 6 residential units will result in a low density development in line with the character of the adjacent land use.

I conclude that approving Layout Alternative 7, with the exception of units 1-6 is the best practicable option which addresses the specific heritage aspects of the site and surrounding area, maintains the rural urban design and environmental integrity of the site while providing development opportunities to the applicant.

13. Land Use Policies

I note the reference to the various sections contained in the Southern District Plan of the City Cape Town. The SDP will be a key informant during the adjudication of the land use application.

I further note that the development will not be subdivided into individual erven and as such the City of Cape Town Municipal Planning By-Law, 2015 is not applicable.

In addressing the prevailing rural character and urban design, units 1-6 has been removed as per Scenario 2. No development in this area will provide for a greater visual link between the Pagasvlei Greenbelt and Groot Constantia. In addition, the removal of the 6 single storey detached homes will result in a low density development in line with the character of the adjacent land use. It will also create a bigger vegetated open space buffer on the boundary with Pagasvlei Road.

Review of the Environmental Impact Information

1. Alternatives

The following layout alternatives were considered:

Residential layout alternative 1 (existing development rights):

This alternative was based on the existing land use rights attached to the current Single Residential Zone 1 zoning. No rezoning, consent use or subdivision of land would be required for the alternative.

This alternative was rejected for the following reason:

The need and desirability of retirement housing and facilities for the elderly within the Constantia area has been demonstrated in terms of the City's planning imperatives for the area. This alternative does not align with the identified need.

Residential layout alternative 2 (subdivision into 9 residential plots):

This alternative proposed a subdivision of the property into 9 portions of similar size (approximately 4000m²), the extent which would be consistent with surrounding residential plots.

This alternative was rejected for the following reason:

The need and desirability of retirement housing and facilities for the elderly within the Constantia area has been demonstrated in terms of the City's planning imperatives for the area. This alternative does not align with the identified need.

Residential layout alternative 3 (subdivision into 19 residential plots):

This alternative proposed a subdivision of the property into 19 portions of similar size (approximately 1350m²), which is a common erf size within the Constantia Valley. An additional portion would be created for a new public road.

This alternative was rejected for the following reason:

The need and desirability of retirement housing and facilities for the elderly within the Constantia area has been demonstrated in terms of the City's planning imperatives for the area. This alternative does not align with the identified need.

Layout alternative 4 (preliminary retirement estate layout):

In this alternative the retirement estate consisted of 71 units, as well as an entertainment/administrative centre in approximately the same position as the existing manor house. All of the historic farm buildings, including the manor house, would be demolished.

This alternative was rejected for the following reasons:

- An internal road would be required to cross the park and wetland in the southern portion of the site and encroaches on Wetland A which has been identified as being of high ecological importance and sensitivity.
- The historic buildings would not be retained.
- Olive Close, a small residential cul-de-sac, would be used as the access road to the proposed development.

Layout alternative 5 (alternative retirement estate layout based on identified environmental sensitivities):

In this alternative the retirement estate consisted of 58 units, as well as an entertainment/administrative centre at the existing manor house, an assisted living/medical centre at one of the existing barns and a gym/coffee bar at another existing barn. There would be a variety of unit layouts (all single storey) with two and three bedroom combinations.

This alternative was rejected for the following reasons:

- The layout is too dense.
- The City of Cape Town's heritage branch did not support the layout since it would have a significant impact on the cultural landscape.

Layout alternative 6 (alternative retirement estate layout in response to stakeholder concerns):

In this alternative the retirement estate consisted of 40 units and entailed a new design scheme.

This alternative was rejected since Heritage Western Cape, the City of Cape Town's Environmental and Heritage Resource Management Department, as well as heritage civic organisations in the area, supported the heritage specialist's opinion that the rural character of the site and the surrounds was not adequately supported by the development proposal.

Layout alternative 7 (herewith authorised):

The proposed project entails the establishment of a retirement estate on Erven 2641 and 2643, Constantia, as depicted in Annexure 1 (Scenario 2). However, the six residential units that are proposed adjacent to the existing access servitude which runs along the western boundary of Erf No. 2641 are excluded from this authorisation.

The authorised development therefore comprises the following:

The proposed development comprises the establishment of only 31 single storey detached homes including the historic Mount Prospect farmstead's trees, four historic buildings, the werf and their interspatial relationships. No new buildings will be positioned in the farmstead precinct and between the farmstead and Groot Constantia. The farmstead Manor House and three barns are proposed for sensitive alteration and reuse to provide communal facilities for use by the residents as follows:

- Homestead: clubhouse;
- Barn 1: administration block;
- Barn 2: medical care centre; and
- Barn 3: the proposed use must still be confirmed, but may include a woodwork hobby room.

The historic farmstead will remain in its entirety. A communal pool and associated garden will be located adjacent to the homestead.

This is the preferred alternative for the following reasons:

- The number of residential units has been reduced, thus reducing the density of the proposed development;
- There are vegetated areas between certain residences which connect the central open area to the lateral site precincts;
- The central park is increased in width;
- The residences are reduced in maximum height;
- The residence design has simplified roofscapes, thereby keeping more with the Cape rural typology roofs, i.e., the residences have either one or two barn shaped roofs with corresponding lean to roofed sections and there are fewer roof divisions within a residential design;
- All buildings are orientated to the same orthogonal layout as the historic buildings;
- Houses are further set back from the manor house;
- There are no residences within the farmstead precinct, thereby extending the undeveloped area between the site and Groot Constantia and allowing a clear visual link between Groot Constantia, the site and the Pagasvlei Greenbelt;
- The werf is bounded by one road and not surrounded by internal roadways;
- The small barn (Barn A) is retained for future use such as a woodwork/hobby room;

- Of the five houses positioned closest to Pagasvlei Road, two houses are set further away from the road than before;
- A small vineyard is proposed on a section adjacent to Groot Constantia boundary;
- Marginally more trees are positioned on the common boundary between the site and Groot Constantia; and
- Less trees are proposed on the Pagasvlei street boundary in order to retain views from the roadway to the manor house.

This alternative responds to the provides an ample open space area through the middle of the site will create a visual link between the Pagasvlei Greenbelt and Groot Constantia. It furthermore provides a generous setback from the boundary with Groot Constantia so that there is no high density development on the western boundary.

I am of the opinion that the removal of the six units will mitigate the potential negative impacts on Groot Constantia substantially and will provide for a greater visual link between the Pagasvlei Greenbelt and Groot Constantia. In addition, the removal of the six residential units will result in a low density development and will create a bigger vegetated open space buffer on the boundary with Groot Constantia.

The bigger vegetated open space buffer will provide for a bigger corridor for the movement of Western Leopard Toads between open spaces in the Groot Constantia Estate vineyards and Wetland A during the breeding season. The reduction in the number of residential units will further reduce risks to migrating Western Leopard Toads associated with the number of vehicles traversing the site.

"No-go" alternative:

This alternative entails the maintenance of the *status quo* at the site, i.e., low intensity horse livery. This alternative was rejected since certain benefits which have been identified and associated with the development proposal will not be realized, such as the rehabilitation and ongoing maintenance of Wetland A, as well as the formal protection of the buildings of heritage significance on the site.

2. Heritage/cultural impacts:

The site presently consists of a historic farm complex dating from the mid/late nineteenth and twentieth century. Components of the complex include the homestead, two large barns, one small barn and low walls. The significant spaces that contribute to the farmstead complex is a werf situated between the homestead and two large barns. Insignificant structures include stables, a modern carport, a small room and paddock fencing.

The significant vegetation and natural environments consist mature trees, wetlands, formal homestead garden and boundary hedge. The variety of tree species include Oaks, Stricta, Wild

Olive, Red Gum and Camphor. Several mature oak trees are considered to have heritage status and will be retained as far as possible.

The site (Mount Prospect) is identified as a high local heritage resource for its architectural, aesthetic and historic significances. The homestead, its formal garden, three barns, werf and associated mature trees are the core heritage precinct on the site.

The site is the remaining precinct of a much larger farm that extended to Klein Constantia roadway and included the Pagasvlei greenbelt. Historic surveys confirm the age of the structures to date from the late nineteenth century.

Historic resources in the immediate context of the site include Groot Constantia farm, Nova Constantia farm, Constantia Main Road and the Pagasvlei Stream Greenbelt. Groot Constantia farm is part of the South African Heritage Resource Agency ("SAHRA") 2015 Grade 1 Provisionally Protected Area of the Cape Winelands Cultural Landscape. SAHRA confirmed that the Mount Prospect site does not fall within the Grade 1 Provisionally Protected Area.

Mount Prospect is assessed to have the following cultural values:

- Importance in the community or pattern in South African history;
- The site represents a Victorian era farm that was subdivided off farms granted in the seventeenth century.
- Mount Prospect has significance in the pattern of rural land settlement in Constantia.

Rare aspects of South Africa's cultural heritage:

- The site is the only remaining late nineteenth century farmstead complex in Constantia.
- Although the homestead is assessed as being altered at a later stage, the complex, which originates from the mid nineteenth century, is assessed as rare.

Potential to yield information that will contribute to an understanding of South Africa's cultural heritage:

- The buildings are highly intact and remain in use for stabling horses and storage for agricultural fittings (e.g. wine vats).

Importance in demonstrating the principal characteristics of a particular class of South Africa's natural or cultural heritage:

- The site with its fine farmstead is the remains of a much larger farm and the site demonstrates the principle characteristics of the Cape's cultural heritage.

Importance in exhibiting particular aesthetic characteristics valued by a community and cultural group:

- The local community members, local civic associations, historians and professional heritage practitioners assess the site with high aesthetic qualities that are valued.

Importance in demonstrating a high degree of creative and technical achievement:

- The creative achievement is evident in the farmstead complex, which reflects a working farmstead in the arrangement of the buildings and the relating open spaces.

The site positively contributes to its context off Pagasvlei Road, Pagasvlei greenbelt, Groot Constantia farm and the broader Constantia as a site that provides aesthetic and historic value and as a reminder of Constantia as a historically important agricultural area.

The site precinct sensitivities in relation to the identified cultural values are as follows:

Highest significance:

- The farmstead's four buildings (homestead, two large barns and one small barn);
- The farmstead complex, which is the four buildings' combined grouping, their spatial relationships which include the open spaces between the buildings, mature trees, werf and formal garden;
- Setting of the farmstead, i.e., the homestead's formal gardens and the space around the farmstead precinct; and
- Wetland environment.

Middle significance:

- South eastern field;
- Precinct adjacent to Groot Constantia; and
- Certain trees within the lower significant area.

Lowest significance:

- Site precinct and wetlands north of the farmstead complex; and
- Erf No. 2643.

Mount Prospect is assessed to have historical, architectural, technical, intrinsic and associational cultural significances. It is assessed as a heritage resource in terms of Sections 3(3) and 7(1) of the National Heritage Resources Act, 1999 (Act No. 25 of 1999) as a structure of cultural significance and satisfies the criteria contained in Section 7(1)(b) for a Grade IIIA grading (high local significance).

The Environmental Management: Areas Environment – Heritage Section of the City of Cape Town considers the preferred alternative to be desirable.

Heritage Western Cape supports development in the low significance precinct only i.e. Layout Alternative 7, with the exception of units 1-6 (comprising of 31 single storey detached homes).

3. Visual impacts

A Visual Impact Assessment was undertaken by Square One Landscape Architects on the preferred Layout Alternative 7 during November 2016. The assessment considered the visual character of the proposed development to determine the visual compatibility of the development with regards to its location within the Constantia Valley.

According to the assessment the site is located within a residential area to the southeast of the Groot Constantia vineyards, within the Constantia Valley. The Constantia Valley forms part of the Cape Winelands Cultural Landscape which has significant tourism and heritage value. However, the site is located just outside the boundary of the Cape Winelands Cultural Landscape as defined by the City of Cape Town City Space Cultural Recreation Resources Zone for the Southern District Plan Technical report.

Due to the topographic location of the site and the screening effects of surrounding development and vegetation, the site has the potential to be substantially absorbed into its context. This is particularly evident with increasing distance, where the site is largely obscured from view. The proposed development will be most visible in the immediate vicinity of the site, i.e., within a 1km radius.

The proposed development will not cause severe visual intrusion or impact significantly with the character or sense of place of the Constantia Valley. The visual impacts associated with the proposed development are considered to be within acceptable levels with the implementation of mitigation measures.

4. Biophysical Impacts

According to the City of Cape Town Biodiversity Network Map, the site is not located in a CBA, Ecological Support Area or in an area that is classified as protected or conservation. The site has been transformed due to historical agricultural activities such as the planting of vineyards and low intensity farming and as such none of the original natural vegetation remains on the site.

Two distinct wetland areas are located on the site as follows:

Wetland A (Granite fynbos seep with a channelled outflow):

This is the largest (approximately 0.196ha in size) and most ecologically important wetland and comprises the source area of the Pagasvlei Stream. The main wetland channel comprises a steeply-sided channel that is prone to under-cutting and erosion in places. The wetland is shaded by various (mainly alien) trees including oaks, poplars and willows and occasional indigenous species such as Wild Pear.

The channel and associated wetland drain towards Pagasvlei Road. Downstream of the road, the wetland condition degrades rapidly, with the wetland being channelized into a narrow, alien-invaded channel set within a broad area of grassed public open space. Alien willow trees, as well as alien invasive cannas and Wild Ginger line the top of the channel at the road.

Wetland A is impacted by the following issues and activities:

- Possible infilling/stabilisation of its headwater area;
- Channelization;
- Extensive loss of indigenous vegetation and its replacement by alien species;
- Shading (by oaks), which limits plant growth;
- Fragmentation from its downstream reaches by the road; and
- Diversions of upstream surface flows and possible changes in wet season inflows.

Wetland A is considered of high ecological importance and sensitivity due to the likely use of the wetland pools as breeding habitat for Western Leopard Toads, the wetland's position at the head of the Pagasvlei catchment and its role in influencing stream flow.

The protection of Wetland A is important from an ecological and biodiversity perspective. The wetland is vulnerable to concentrated inflows and runoff, poor water quality, further fragmentation and impacts as a result of loss of upslope recharge areas, and diversion of storm water flows into lower lying areas.

Wetland B (Granite fynbos seep without channelled outflow):

The wetland is a hillslope seep wetland of approximately 0.132ha in size and is located immediately downslope of the driveway. The wetland extends an unknown area into the adjoining erf to the southeast.

Wetland B is impacted by the following issues and activities:

- Fragmentation from Wetland A by past agriculture and other activities;
- Alien vegetation;
- Possible grazing or other disturbances, leading to loss/change in indigenous plant communities and dominance by pioneer plant species; and
- Possible diversion of seepage flows into the wetland as a result of upstream development.

Wetland B is considered an isolated wetland habitat of low ecological importance and sensitivity. The wetland has a low sensitivity to development along its margins, due to the degree to which it has already been disturbed.

Impacts on Western Leopard Toad species:

There are large populations of the species in the area between Groot Constantia, Nova Constantia and Sillery and includes this site. The deep permanent pools that occur in the "eye"

of the Pagasvlei Stream (Wetland A) are considered suitable breeding habitat for Western Leopard Toads.

During the non-breeding season, the frogs disperse away from the ponds and occupy terrestrial areas, including suburban gardens, agricultural land and Groot Constantia. Wetland A will be retained, rehabilitated and maintained, thereby protecting the breeding habitat of the species. The gradient of certain sections of the northern site boundary with Groot Constantia will be designed to facilitate Western Leopard Toad movement.

The reduction in the number of units to 31 will slightly reduce risks to migrating Western Leopard Toads associated with the number of vehicles traversing the site. The removal of the previous unit numbers 39 and 40 from the western corner of the site (Groot Constantia boundary) further opens up the corridor for the movement of Western Leopard Toads through the site, including the inclusion of conceptual pathways through the open space upslope of the wetland conservation area (Wetland A).

According to the freshwater specialist, the rehabilitation, expansion and maintenance of Wetland A will offset the infilling of Wetland B. The impact on the loss of habitat quality and fragmentation of corridors for use by Western Leopard Toads is considered to be low with the implementation of mitigation measures. The impacts on Wetland A as a result of development proximity, the layout of the sewerage system, construction activities and the installation of storm water and sewerage infrastructure are also considered to be low with the implementation of mitigation measures.

The recommendations and mitigation measures made by the freshwater specialist are included in the EMP and must be strictly adhered to as stipulated by Condition 21 of this appeal Environmental Authorisation.

In view of the above, the significance of the impact associated with the infilling of the wetland for the proposed development will be adequately mitigated.

5. Activity Need and Desirability

Currently, Erven 2641 and 2643 are separate erven, each zoned for Single Residential Use. It is intended to rezone the two properties to general Residential 1 for group housing.

The site is located within the urban edge within the Constantia Valley. The area where the site is situated is earmarked in the Cape Town Spatial Development Framework ("CTSDF") for urban development, which includes residential use. The proposed development proposal is therefore aligned with the spatial planning category as designated in the CTSDf.

The proposed development proposal is consistent with the Southern District Plan (2012) as follows:

- The site falls within the urban edge;
- The site is located outside of the Constantia Winelands Cultural Landscape zone;
- The site falls outside of the "High Potential and Unique Agricultural Land" zone and the "Agricultural Areas of Significant Value Given Existing Use" zone; and
- The site is not identified as an area of potential impact (e.g., conservation area, Critical Biodiversity Area ("CBA")).

The site plays a limited role with regards to the broader cultural landscape since the site falls outside of the Provisionally Protected Grade 1 area of the Constantia Tokai Historic Farmlands and does not fall within the Constantia Winelands Cultural Landscape in the CTSDP. The site is also not an agricultural anchor in the area since the property is not large enough to run a viable agricultural operation. The site is also not adjacent to a tourist or scenic route.

The proposed development proposal is consistent with Policy R2 and Policy R5 of the Provincial Spatial Development Framework, i.e., "*Sustainable use of the Western Cape's spatial assets*".

Policy R2: "*Safeguard inland and coastal water resources, and manage the sustainable use of water*". In this regard, the present ecological state of the wetlands on the site is Category C/D, which means "moderately to highly modified". It is proposed to improve and rehabilitate the wetland in the southern portion of the site, i.e., Wetland A which will greatly improve the ecological value of the wetland.

Policy R5: "*Safeguard cultural and scenic assets*". In this regard, the historic buildings and wall on the site will be retained and restored. The vast majority of the existing trees, including trees of cultural and historic value will be retained.

Furthermore, a buffer area that ranges between 13m to 19m will be implemented to ensure that the proposed development's edge against the boundary of the adjacent Groot Constantia farm is softened with landscaping.

The Southern District Plan, the Constantia-Tokai Growth and Management Plan and statistics for the area indicate that there is a need for more retirement type developments in the Constantia area. Thus, development of a retirement estate on the site will meet this need.

6. Traffic impacts

Access to the site will be obtained off Pagasvlei Road via an existing access servitude which runs along the western boundary of Erf No. 2641. The servitude currently provides access to Erf No. 2641 and to a few properties situated immediately west of the site. The new access will be

wider than the existing servitude in order to provide for more space for vehicles and landscaping.

A new traffic circle is proposed at the intersection of Pagasvlei Road and the access servitude to allow for safe and easy access to the site and to improve road safety conditions along Pagasvlei Road. Access will be controlled at the entrance to the retirement estate.

Erf No. 2643 is currently accessed from Olive Close. However, this access will be closed after the construction phase has been completed in an attempt to reduce vehicle disturbance to residents of Olive Close. The City of Cape Town's Transport Department does not object to the proposed site access.

The typical traffic volumes on the immediately surrounding road network are found to be generally low. All the intersections operate at excellent levels of service and safety is generally good for traffic obeying speed limits and the rules of the road. The scale of the proposed development will not generate high volumes of traffic. As such, the proposed development will not result in a significant impact on the surrounding road network.

7. Financial Feasibility Assessment

ATVANTAGE was appointed as the Project Managers and Quantity Surveyors for the Mount Prospect Retirement Estate, to specifically evaluate an alternative scenario comprising of 31 single storey detached homes from the authorised 37 single storey detached homes.

Project Viability Review completed by MLC Construction Cost Consultants. The assessment of the financial viability was based on –

- the land purchase price;
- civil infrastructure budgets (Sutherland & Associates);
- electrical infrastructure budgets (Converge Consulting);
- Landscape budgets (Planning Partners);
- typical house cost (ATVANTAGE).

The financial viability assessment produced the following results:

	37 single storey detached homes	31 single storey detached homes
Land	17.4%	19.6%
Bulk infrastructure contributions	0.7%	0.7%
Building works	48.2%	46.1%
External works	5.8%	6.5%

Contingencies	2.7%	2.6%
Cost escalation	5.7%	5.2%
Professional fees	7.5%	7.4%
General costs	1.8%	1.8%
Capitalised interest	10.3%	10.1%
Total cost % reduction	-	11%
Total income % reduction	-	19%
Development profit	20.45%	10.25%

From the table it is evident that most of the cost of the development is fixed or adjusted marginally resulting in a reduction of 11% of the overall capital expenditure. Reducing the number of single storey detached homes by 6 (of the most valuable units) results in a 50% reduction in the profit margin.

The evaluation concluded that –

- The omission of the 6 single storey detached homes from the scheme reduces the sellable space by 18%.
- When taking into account that these 6 single storey detached homes are of a higher price category due to their positioning, views, etc. the effect of the 18% reduction in sellable space translates to a 19% reduction in sales revenue.
- The cost of development does not reduce by the same 19% due to the components of development cost that are not dependent on the unit construction. This would include the land cost, infrastructure & servicing costs and other smaller cost components. Hence the reduction in development cost is only 11%.
- The effect of the above on the financial viability of the scheme is a reduction in projected return on total capital outlay from 22.1% to 10.6%.

8. Public Participation

EIA application

The Public Participation Process comprised of the following:

- Potential Interested and Affected Parties (the municipal ward councillor, Ratepayer's Associations, relevant registered Heritage Conservation Bodies, relevant Non-Governmental Organisations, the landowner, landowners and occupants of properties adjacent to the site) were notified of the proposed application via registered mail and/or e-mail on 17 July 2015;
- Two notice boards were placed on site on 21 July 2015 (one notice was placed on Erf No. 2641 on Pagasvlei Road and another notice was placed on Erf No. 2643 on Olive Close);
- An advertisement was placed in the "Constantia Bulletin" newspaper on 21 July 2015;
- A focus group meeting was held with the residents adjacent to Olive Close on 12 August 2015;

- Registered Interested and Affected Parties were notified via registered mail and/or e-mail of the availability of the pre-application BAR between 16 September 2015 and 18 September 2015;
- The pre-application BAR was also placed at the local Meadowridge Public Library;
- An open house meeting was held at the Alphen Hall on Constantia Main Road on 23 September 2016;
- Registered Interested and Affected Parties were notified via e-mail of the draft BAR which was made available between 13 July 2016 and 18 August 2016;
- The draft BAR was also placed at the local Meadowridge Public Library;
- An open house meeting was held at the Alphen Hall on Constantia Main Road on 21 July 2016;
- E-mail notifications were sent to registered Interested and Affected Parties on 12 May 2017 to announce the availability of the amended draft BAR.

Appeal

- The following information circulated for comment:
 - Various alternatives with their respective financial implications to the developer;
 - A request by the applicant that should they provide the ATVANTAGE Financial Feasibility Report, that this report be treated as confidential and that should the matter be litigated at a later stage, the part of the Rule 53 record containing the Reports should be subject to a strict confidentiality regime, and
 - The Mount Prospect: Evolution of the Development Plan which comprises of all the alternatives considered.
- The comments received from the appellants.
- The Executive Summary of the ATVANTAGE report, that is signed off by an independent financial specialist, was made available to the interested and affected parties ("I&APS") and the appellants.
- The comments received from on the ATVANTAGE Executive Summary. Included was a copy of the Project Viability Review completed by MLC Construction Cost Consultants.

Authorities consulted

The authorities consulted during the EIA application included the following:

- Department of Water and Sanitation;
- Heritage Western Cape; and
- Various departments within the City of Cape Town.

I am satisfied that the Public Participation Processes that were followed met the minimum legal requirements. All the comments and responses that were raised were included in the BAR.

9. The National Environmental Management Principles (set out in section 2 of the NEMA) which apply to the actions of all organs of state, serve as guidelines by reference to which any organ of state must exercise any function when taking any decision, and which must guide the interpretation, administration and implementation of any other law concerned with the protection or management of the environment. In terms of the NEMA Principles, the effects of decisions on all aspects of the environment are to be taken into account. As such, the consideration, assessment and evaluation of the social, economic and ecological impacts of activities (disadvantages and benefits) must be undertaken, and decisions are to be appropriate in the light of such consideration and assessment.
10. I am satisfied that the proposed development of the 31 single storey detached homes is the best practicable environmental option that addresses the specific heritage aspects of the site and greater landscape, maintains the rural urban design and environmental integrity of the site while provided development opportunities to the applicant.
11. 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 development 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 proposed development can be mitigated to acceptable levels.

Yours faithfully



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

DATE: 14/11/2020

Copied to: 1. Ms C. McCreadie
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