



Western Cape
Government

Environmental Affairs and
Development Planning

MINISTRY OF LOCAL GOVERNMENT,
ENVIRONMENTAL AFFAIRS AND
DEVELOPMENT PLANNING

M 3/6/5

Ms Lauren Fine
DA REALTY (Pty) Ltd
c/o Norton Rose Fulbright Attorneys
10th Floor, 8 Riebeeck Street
CAPE TOWN
8001

e-mail: lauren.fine@nortonrosefulbright.com

Dear Ms Fine

APPEAL LODGED IN TERMS OF SECTION 43(2) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998) AGAINST THE REFUSAL TO ADOPT AN AD HOC DEVELOPMENT SETBACK LINE IN TERMS OF THE NEMA EIA REGULATIONS, 2014 (AS AMENDED) FOR THE PROPOSED DEMOLITION OF AN EXISTING DWELLING AND DEVELOPMENT OF AN 11 FLOOR APARTMENT BLOCK AND ASSOCIATED INFRASTRUCTURE ON ERVEN 46 AND 47, CLIFTON

Your appeal lodged against the decision of the Department in the above regard has reference.

After careful consideration of the appeal, as well as supporting documentation received, I have decided in terms of section 43 (6) of the National Environmental Management Act, 1998 (Act 107 of 1998) ("NEMA") and the National Appeal Regulations, 2014, as amended, to dismiss the appeal and confirm the abovementioned decision of the competent authority. Please note that the interested and affected parties involved in the Public Participation Process must be informed of this decision within fourteen (14) days of the date of this letter.

REASONS FOR THE DECISION:

The following are the reasons for dismissing your appeal and confirming the decision of the Delegated Authority:

- i. The proposed development triggers listed activities which require an EA prior to commencement. The following listed activities are applicable:

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Listing Notice 1 of the NEMA EIA Regulations, 2014 (as amended)

Activity Number 19A

Activity Description:

The infilling or depositing of any material of more than 5 cubic metres into, or the dredging, excavation, removal or moving of soil, sand, shells, shell grit, pebbles or rock of more than 5 cubic metres from—

- (i) the seashore;*
- (ii) the littoral active zone, an estuary or a distance of 100 metres inland of the highwater mark of the sea or an estuary, whichever distance is the greater; or*
- (iii) the sea; —*

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

- (f) will occur behind a development setback;*
- (g) is for maintenance purposes undertaken in accordance with a maintenance management plan;*
- (h) falls within the ambit of activity 21 in this Notice, in which case that activity applies;*
- (i) occurs within existing ports or harbours that will not increase the development footprint of the port or harbour; or*

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.

Listing Notice 3 of the NEMA EIA Regulations, 2014 (as amended)

Activity Number 12

The clearance of an area of 300 square metres or more of indigenous vegetation except where such clearance of indigenous vegetation is required for maintenance purposes undertaken in accordance with a maintenance management plan.

i. Western Cape

- i. Within any critically endangered or endangered ecosystem listed in terms of section 52 of the NEMBA or prior to the publication of such a list, within an area that has been identified as critically endangered in the National Spatial Biodiversity Assessment 2004;*
- ii. Within critical biodiversity areas identified in bioregional plans;*
- iii. Within the littoral active zone or 100 metres inland from high water mark of the sea or an estuarine functional zone, whichever distance is the greater, excluding where such removal will occur behind the development setback line or even in urban areas;*
- iv. On land, where, at the time of the coming into effect of this Notice or thereafter such land was zoned open space, conservation or had an equivalent zoning; or*

- v. *On land designated for protection or conservation purposes in an Environmental Management Framework adopted in the prescribed manner, or a Spatial Development Framework adopted by the MEC or Minister.*
- ii. The definition/adoption of an ad-hoc setback line is at the discretion of the competent authority, and such decision is based on the merits of the application.
- iii. In the *Fuel Retailers Association of Southern Africa v Director-General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province and Others 2007 (6) SA 4(CC)* the Constitutional Court considered the provisions of section 24 of the Constitution along with the provisions of NEMA. The court noted that one of the declared purposes of NEMA is to establish principles that will guide organs of state in making decisions that may affect the environment. One of these principles requires environmental authorities to consider social, economic and environmental impacts of the proposed activity including its disadvantages and benefits.
- iv. Sustainable development requirements as set in NEMA include the consideration of relevant factors *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 waste is avoided, or where it cannot be altogether avoided, minimised and reused or recycled where possible and otherwise disposed of in a responsible manner; that negative impacts on the environment and on people's environmental rights be anticipated and prevented, and where they cannot be altogether prevented, are minimised and remedied and that a risk-averse and cautious approach is applied, which takes into account the limits of current knowledge about the consequences of decisions and actions. The decision of the Competent Authority was based on relevant considerations and within his mandate as provided in NEMA.
- v. The traffic assessment provided by BVI 50 consultants dated 24 August 2017 does not address the impact the demolition and operational phases of the proposed development will have on Victoria Road and/or Kloof Road. It assessed the movement of vehicles to and from the property and turning movements on the two proposed parking levels.
- vi. Two of the respondents indicated the existence of a historic water course which lies within the development and impacts on overland and groundwater courses and requires assessment as part of the excavation and construction impacts. The Geotechnical and Engineering Geological Investigation conducted by M. van Wieringen & Associates dated February 2017, makes mention of a stream bordering the site to the south-east. The Checklist does not address the impacts of the proposed development on the stream. The location of the development in

relation to the stream could trigger a further listed activity. The following listed activity may be applicable:

Listing Notice 1 of the NEMA EIA Regulations, 2014 (as amended)

Activity Number 12

Activity Description:

The development of—

(i) dams or weirs, where the dam or weir, including infrastructure and water surface area, exceeds 100 square metres; or

(ii) infrastructure or structures with a physical footprint of 100 square metres or more; where such development occurs—

(a) within a watercourse;

(b) in front of a development setback; or

(c) if no development setback exists, within 32 metres of a watercourse, measured from the edge of a watercourse; —

excluding—

(aa) the development of infrastructure or structures within existing ports or harbours that will not increase the development footprint of the port or harbour;

(bb) where such development activities are related to the development of a port or harbour, in which case activity 26 in Listing Notice 2 of 2014 applies;

(cc) activities listed in activity 14 in Listing Notice 2 of 2014 or activity 14 in Listing Notice 3 of 2014, in which case that activity applies;

(dd) where such development occurs within an urban area;

(ee) where such development occurs within existing roads, road reserves or railway line reserves; or

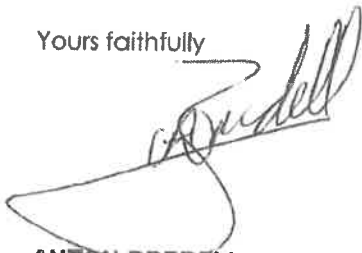
(ff) the development of temporary infrastructure or structures where such infrastructure or structures will be removed within 6 weeks of the commencement of development and where indigenous vegetation will not be cleared.

- vii. The report further indicates blasting will be required and blasting vibrations will be keenly felt by neighbouring structures and that such blasting will need to be carefully designed and monitored in order to keep vibrations, air blasts and noise to within tolerable levels at neighbouring buildings. Concern is expressed regarding the effects on neighbours and their properties of possible vibration from blasting.
- viii. With regard to issues of slope stability, the report indicates that permissions would be required to install permanent anchors beneath the public space extending to Kloof Road. It goes on to state

that depending on the quality of the bedrock and the height of the slope, deformations of the neighbouring structures to the north-west and south-east are expected to be governing constraints in the design of the excavation and lateral support.

- ix. The report further states that restricted access and congestion on Victoria Road will be a highly significant factor, particularly with regard to the queuing and loading of trucks and that access from Kloof Road is unlikely to be granted.
- x. As no designs for the proposed 11 floor development have been provided, a determination on the visual impact of the proposed development and the appropriateness of the design cannot be made.
- xi. A determination of the impacts of the proposed development cannot be made as there are too many unknown factors that have not been addressed in the Checklist or the Geotechnical and Engineering Geological Investigation submitted. The method of demolition, operational phase activities and mitigation measures are not sufficiently dealt with in the aforesaid documents.
- xii. The EIA process will address the construction and operational aspects of the project and thus the concerns raised in the setback line application process.
- xiii. I am aware that a departure and consent use have been granted to your client by the municipality. Planning approval is however only one of the approvals required. The requirements and considerations of an EIA process are not the same as for a planning application. The Competent Authority is not bound by the outcome of a planning application.
- xiv. My refusal to adopt the set-back line should not be interpreted as a refusal of the development, but rather that the applicant must now conduct a Basic Assessment EIA.

Yours faithfully



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

DATE: 4/6/2019

M 3/6/5

Mr C Willemse
Chairman
Camps Bay Ratepayers Association

campsbayratepayers@gmail.com

Dear Mr Willemse

RESPONDING STATEMENT TO APPEAL LODGED AGAINST THE REFUSAL TO ADOPT AN AD HOC DEVELOPMENT SETBACK LINE FOR THE PROPOSED DEMOLITION OF AN EXISTING DWELLING AND DEVELOPMENT OF AN 11 FLOOR APARTMENT BLOCK AND ASSOCIATED INFRASTRUCTURE ON ERVEN 46 AND 47, CLIFTON

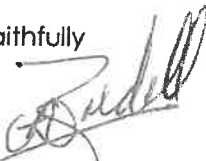
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Attached please find a copy of my decision to the applicant containing the reasons for my decision.

Your interest in the future of our environment is appreciated.

Yours faithfully



ANTON BREDELL
**WESTERN CAPE MINISTER OF LOCAL GOVERNMENT,
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Ms Monique Sham
moniquesham@gmail.com

Dear Ms Sham

RESPONDING STATEMENT TO APPEAL LODGED AGAINST THE REFUSAL TO ADOPT AN *AD HOC* DEVELOPMENT SETBACK LINE FOR THE PROPOSED DEMOLITION OF AN EXISTING DWELLING AND DEVELOPMENT OF AN 11 FLOOR APARTMENT BLOCK AND ASSOCIATED INFRASTRUCTURE ON ERVEN 46 AND 47, CLIFTON

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ANTON BREIDELL
WESTERN CAPE MINISTER OF LOCAL GOVERNMENT,
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DATE: 4/6/2019



M 3/6/5

joonas@worldonline.co.za

Dear Mr Joonas

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

DATE: 4/6/2019

M 3/6/5

Ms Helet Merkling
CLIFTON

merk@mweb.co.za

Dear Ms Merkling

RESPONDING STATEMENT TO APPEAL LODGED AGAINST THE REFUSAL TO ADOPT AN *AD HOC* DEVELOPMENT SETBACK LINE FOR THE PROPOSED DEMOLITION OF AN EXISTING DWELLING AND DEVELOPMENT OF AN 11 FLOOR APARTMENT BLOCK AND ASSOCIATED INFRASTRUCTURE ON ERVEN 46 AND 47, CLIFTON

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