



Western Cape
Government

Environmental Affairs and
Development Planning

**MINISTRY OF LOCAL GOVERNMENT,
ENVIRONMENTAL AFFAIRS AND
DEVELOPMENT PLANNING**

M 3/6/5

Mr N Smith
Nicholas Smith Attorney
11 Bree Street
CAPE TOWN
8001

Tel.: 021 425 4256
Email: management@wcgb.co.za

Dear Mr Smith

APPEAL LODGED IN TERMS OF SECTION 43(2) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998) AGAINST THE DEVELOPMENT OF A DOLOS REVETMENT, RECLAMATION OF LAND IN THE SEA AND THE ASSOCIATED MIXED USE DEVELOPMENT ON ERF 173712, GRANGER BAY PRECINCT, VICTORIA & ALFRED WATERFRONT, CAPE TOWN

The appeal lodged against the environmental authorisation ("EA") in the above regard on behalf of the Water Club Residential Homeowners Association, refers.

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"), to dismiss the appeal and confirm the abovementioned decision of the competent authority. The abovementioned EA which is confirmed in this appeal decision and the conditions under which the authorisation is granted must be complied with, however Condition E6 and section G are excluded from this authorisation. Conditions E2 and E7 are substituted to read as follows:-

Condition E2

The holder must commence with the listed activities on site within a period of ten (10) years of the date of this appeal decision.

Condition E7

The listed activities, including site preparation, may commence after the issue of this Appeal Environmental Authorisation.

REASONS FOR THIS APPEAL DECISION:

The reasons for dismissing the appeal and confirming the decision of the competent authority are as follows:

1. Failure to take account the appellant's current occupation and use of the portion of the property ("the wedge")

The Environmental Impact Assessment ("EIA") process for the application commenced in 2013 which included mandatory public consultation. Thus the applicant communicated its intent for development of the 'wedge' in 2013. The occupation of the wedge was acknowledged and noted in the reports submitted to the Department during the application for Environmental Authorisation ("EA").

In terms of the EIA regulations, 2014, an application for EA must only obtain written consent from the land owner or person in control of the land, which is V&A Waterfront Holdings (Pty) Ltd. Regulations 16 and 39 of the EIA regulations, 2014 states as follows:

"16 (1) An application for an environmental authorisation must—

(b) when submitted in terms of regulation 19 or 21, be accompanied by—

(i) unless regulation 39(2) applies, the written consent referred to in regulation 39(1), if the applicant is not the owner or person in control of the land on which the activity is to be undertaken;"

"39 (1) If the proponent is not the owner or person in control of the land on which the activity is to be undertaken, the proponent must, before applying for an environmental authorisation in respect of such activity, obtain the written consent of the landowner or person in control of the land to undertake such activity on that land."

The applicant was within his rights, as the owner of the property, to submit an application in terms of the EIA regulations and put forth an application for consideration of the delegated competent authority and does not require consent from the occupiers of the site.

The occupiers of the site and the applicant have been in discussion regarding the continued use of the site since mid-2016 during which it was communicated to the occupiers of the site that the any lease extension will not extend beyond 31 August 2021.

The leasing of the property and the continued lease negotiations related to the erf is beyond the scope of NEMA and the EIA regulations. Furthermore, the Environmental Authorisation ("EA") does not prohibit the conclusion of any lease agreement nor does it impact on the duration of the extension. It should be noted that EA's have a set validity period during which the authorised activity must be commenced with. Failure to commence within the validity period will require that a new application be lodged for an EA.

2. The contents of the EA; the Director's failure to consider a substantive relevant consideration

The maintenance of the temporary rock revetment at Granger Bay has become extremely expensive to maintain and is regarded as unsustainable by coastal engineers. Without formally engineered defence structures there are no guarantees that storm surges and high seas will not overtop the revetment and cause damage in the vicinity of the Victoria Wharf mall and areas frequented by the public. The steep embankment created by the deposition of fill material, which forms the coastal edge west of Haul Road is unstable and is at risk of failure due to honeycombing, i.e. a form of wave-driven erosion that removes the fine material leaving an unstable fill platform. During 2012, a storm caused considerable damage to this embankment resulting in Haul Road being closed for several months with repairs costing approximately R2 million.

The EIA application included 2 design alternatives and the preferred alternative (authorised) and the No-go alternative. The current use of the property was assessed as part of the No-go Alternative and was found to not fit into the future planning of V&A Waterfront Holdings (Pty) Ltd.

The development proposal presented as the preferred alternative and authorised in the EA comprises of:

- A mixed use development approximately 1.6ha in extent (primarily residential with some retail; private open space; commercial components; and associated infrastructure) on Erf 173712 and a portion of Erf 149294; and
- Associated revetment and land reclamation.

The architecture of the buildings will respond to the receiving environment and is not anticipated to be visually intrusive. Building heights will not exceed 21.5 m or approximately 5 floors, and will be in accordance with the parameters stipulated in the Record of Decision issued by Heritage Western Cape in 2015, which preserves a view arc across Granger Bay. Outside of the view arc, towards Beach Road/Granger Bay Boulevard Ext., buildings may be higher.

The development and expansion of the dolos revetment and reclamation of land in the sea will entail the following:

The existing temporary rock revetment will be upgraded and replaced with a permanent dolos revetment. The new dolos revetment will extend from the existing dolos revetment (which ends at Breakwater Boulevard) for approximately 310m in a straight line across Granger Bay and towards the existing embankment that marks the coastal edge of Granger

Bay. The existing embankment will be replaced with rock revetment for a length of approximately 160m. Approximately 2.4ha of land in the sea will be reclaimed. Approximately 189 340m³ of fill material will be required for the reclamation activities. Fill material will be obtained from the excavations associated with the mixed use development.

A 30m wide coastal seapark and associated infrastructure will be developed and will provide continuous public access from Beach Road to and along the coast for approximately 750m, of which approximately 300m will be within the Granger Bay Precinct. This will include an extension of the existing coastal walkway along the coastal edge of the reclaimed land and associated public amenities.

Access for private vehicles will be gained from Beach Road and Granger Bay Boulevard Extension. The existing Haul Road will be demolished and replaced by a link between Granger Bay Boulevard Extension and Breakwater Boulevard. This link road will be developed over a portion of the reclaimed land, which will provide access to the proposed development. All services required for the proposed development are available.

The final SDP and layout will be determined during the land use application and authorised by the City of Cape Town ("CCT"), which will not exceed the scope of what is authorised in the EA.

The long standing occupation of site by the appellant was considered by the delegated competent during the adjudication of the EIA application and the consideration of the appeal. As stated in the Responding Statement to the appeal, the applicant has not had sight of the agreement between Transnet and the Granger Bay Berth Holders 'Association but has indicated that they are open to discussions regarding the continued access to the Eastern Breakwater for maintenance activities, given the early stage of development.

The occupiers of the site and the applicant have been in discussion regarding the continued use of the site since mid-2016 during which it was communicated to the occupiers of the site that the any lease extension will not extend beyond 31 August 2021. The leasing of the property and the continued lease negotiations related to the erf is beyond the scope of NEMA and the EIA regulations. Furthermore, the Environmental Authorisation ("EA") does not prohibit the conclusion of any lease agreement nor does it impact on the duration of the extension. It should be noted that EA's have a set validity period during which the authorised activity must be commenced with. Failure to commence within the validity period will require that a new application be lodged for an EA.

I am satisfied that the EIA process complied with the legislative requirements as stated in NEMA and the EIA regulations, the alternatives presented and evaluated were reasonable

and feasible, and that sufficient information was available for the delegated competent authority to make an informed decision.

It is reiterated that the negotiations related to the extension of the lease of Erf 173712 is beyond the scope of NEMA and the EIA regulations.

3. The decision-making process

The applicant's EAP's comments were included in the final reports submitted to the Department. All the information on the application file, which included the draft and final EIR formed part of the adjudication of the application.

All the information was reviewed independently during the appeal process and I am satisfied that EIA process complied with all the EIA legislative requirements, that all issues raised were included and considered by the Department.

The zoning of the V&A Waterfront was determined as "Development Zone" in 1993 by the City of Cape Town. The zoning comprises of a basket of rights and a planning approval process known as the 'Package of Plans'. This allows for development proposals to evolve from policy and objectives for a zone/site as a whole (Development Framework) to spatially defined development guidelines for a functional area (Precinct Plan) and then to site specific development proposals (Site Development Plan). Development controls such as setbacks, coverage, building heights, etc. are not predetermined, but are determined according to policies, objectives and design imperatives and at various stages of project development.

The specialist assessments were based on the Precinct Plan depicting the maximum coverage and height. A Development Controls document was also prepared for the site which specifies and limits building heights, and as such a "stepping-down" profile will be implemented in the development. This stepping-down is considered appropriate in terms of urban design.

A site inspection is not a legislated requirement and sufficient information was available on the Departments information base to negate the requirement for a site inspection. A site visit was undertaken by officials of the Sub-directorate: Environmental Appeals Management and concludes that the proposed mixed-use development proposal presented in the Precinct Plan is in-line with primary use in the area.

I concur with the "Package of Plans" approach being implemented in the development and that the final Site Development Plan ("SDP") will not exceed the maximum development envelope authorised in the EA. Furthermore, the development will be subject the Land Use management approval process adjudicated by the municipality during which the SDP will be finalised.

4. Visual impacts

The zoning of the V&A Waterfront was determined as "Development Zone" in 1993 by the City of Cape Town. The zoning comprises of a basket of rights and a planning approval process known as the 'Package of Plans'. This allows for development proposals to evolve from policy and objectives for a zone/site as a whole (Development Framework) to spatially defined development guidelines for a functional area (Precinct Plan) and then to site specific development proposals (Site Development Plan). Development controls such as setbacks, coverage, building heights, etc. are not predetermined, but are determined according to policies, objectives and design imperatives and at various stages of project development.

The specialist assessments were based on the Precinct Plan depicting the maximum coverage and height. A Development Controls document was also prepared for the site which specifies and limits building heights, and as such a "stepping-down" profile will be implemented in the development. This stepping-down is considered appropriate in terms of urban design.

The VIA ratings were based on worst case scenario, and will be in line with the receiving environment and will not extend beyond the current maximum height of the surrounding buildings. Development Controls the height, and Package 5 was reduced to result in a "stepping-down" profile towards the coastline from the approved Phase I buildings.

The statement that the visual rating could more accurately be assessed with detailed plans relates the issue that with more information, the findings of the VIA could be more accurate. The level, extent and the degree of confidence in the assigned rating of the VIA undertaken for the development proposal is the same for an assessment with more detailed plans.

Though the views enjoyed by surrounding residents may be impacted, the interruption is not anticipated to be significant enough to cause loss of a sense of place. The proposed mixed use development does not mean that the entire area and its surroundings will be changed, thereby resulting in a negative impact on the enjoyment of the scenery for both residents and tourists. Additionally, South Africa law does not recognise an inherent right to an existing view from a property.

On 15 July 2015 Heritage Western Cape ("HWC") issued their final comment on the Heritage Impact Assessment, which included the findings of the visual impact assessment. HWC stated that the development is supported subject to the implementation and compliance with the mitigation measures stated by the specialists, including the VIA specialist. The VIA specialist mitigation measures and the Development Controls for the Granger Bay Precinct Plan have been included in the EA and the Environmental Management Programme ("EMPr"). Non-compliance with a condition of the EA and/ or the EMPr may result in criminal prosecution.

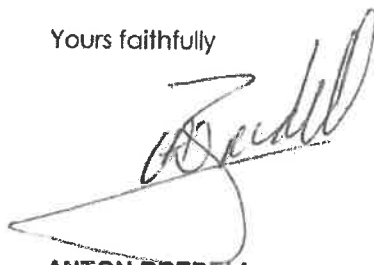
Furthermore, the development will be subject the Land Use management approval process adjudicated by the City of Cape Town during which the SDP will be finalised. The final SDP will be in line with the development approved in the EA and will not exceed the development parameters of the EA. An application for to amend the EA will be required if the development parameters of the EA will be exceeded or is materially different.

A further opportunity will be available for registered interested and/ or affected parties to make representation in the adjudication process.

I am satisfied that sufficient information was available related the potential visual impact of the proposed development to support my decision.

In view of the above, the NEMA principles, compliance with the conditions stipulated in the EA, and compliance with the conditions of the EMP, I am thus satisfied that 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: 10/4/2019

(1) Mr. N Steytler

(2) Mr. Z. Toefy

EAP

DEA&DP

Fax: 086 694 6901

Fax: 021 483 4372

