



CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

SPATIAL PLANNING & ENVIRONMENT
ENVIRONMENTAL MANAGEMENT

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11 September 2020

To: The Western Cape Ministry of Local Government, Environmental Affairs & Development Planning

For the Attention of: The Appeal Administrator
Mr Marius Venter

Per Email: DEADP.Appeals@westerncape.gov.za

APPLICATION FOR CONDONATION FOR THE LATE SUBMISSION OF APPEAL IN TERMS OF SECTION 47C OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 107 OF 1998 (NEMA):

Appeal of the Environmental Authorisation Granted in Terms of NEMA and the Environmental Impact Assessment Regulations, 2014 (as amended) for the proposed redevelopment of the River Club for Mixed Use Development and Associated Infrastructure on the Remainder of Erf 15326 and Erven 26169 – 26175, 26426 – 26427, 108936 and 151832, Observatory

Your Reference: 16/3/3/1/A7/17/3001/20

INTRODUCTION

The City of Cape Town (the City) submits this application for condonation for the late filing of the above appeal. The due date for the submission of the appeal was yesterday, 10 September 2020. Unfortunately, and regretfully, the City was not able to meet this deadline despite its best efforts. In what follows, we set out the following:

- Good cause;
- Reasons for the late submission;
- Prejudice to any party;
- Prospects of Success;
- Evaluation of the Importance of the Matter;

In light of the above submissions, and given the very short period of lateness (i.e. less than 24 hours), it is respectfully requested that the decision-maker consider this application for condonation favourably.

1. GOOD CAUSE

- 1.1 The City, as the Local Authority, has a direct interest in this matter. The proposed development has significant impacts on matters falling within the City's mandate. This includes, but is not limited to, the responsibility for infrastructure provision and maintenance, the conservation and management of core conservation areas and stormwater management. It is therefore essential that the City's appeal be properly considered given the impacts on the City's responsibilities.
- 1.2 In addition, the City as the owner and custodian of assets, infrastructure and resources has a responsibility to the citizens of Cape Town to ensure that it has properly considered matters affecting the afore-going. This includes a consideration of risks and liability to the afore-going and to private property owners' assets and investments.

2. REASONS FOR THE LATE SUBMISSION

- 2.1 As you will appreciate, the City is a complex organisation and decisions are not made by a single person; nor are decisions to appeal Environmental Authorisations (EAs) made lightly.
- 2.2 The City received the EA on 20 August 2020 which had to then be distributed to the relevant City departments for consideration, notwithstanding that the City had already considered the Basic Assessment Report (BAR) and Specialist Studies.
- 2.3 The EA had implications for the City as described in the specific conditions in the EA (page 8 of 31, section 15 -21) and this required evaluation and discussion by various internal departments and branches including Biodiversity Management, Environmental and Heritage Management, Coastal Management, Urban Planning and Design, Catchment, Stormwater and River Management, Climate Change and Water and Sanitation.
- 2.4 A meeting was held on the 25th of August 2020 with the various City departments to consider the EA and whether or not to appeal. At this meeting, the internal departments agreed that the EA be appealed, subject to support from the City's Executive Management. At this meeting, it was requested that the City seek an extension of time to submit the appeal. As such, a request for extension was submitted on the 26th of August 2020 outlining the following reasons for the request:
 - 2.4.1 Given the significant impact on City property and infrastructure both current and in the future, the City needed time to carefully study the implications of the EA;
 - 2.4.2 The complexity of the Environmental Impact Assessment (EIA); and
 - 2.4.3 The constraints of the Covid-19 lockdown.
- 2.5 Drafting of the appeal commenced on 26th of August and the City had to evaluate the extent to which the City's comments on the BAR were considered in granting the EA. As you will appreciate, the City's comments on the BAR were over 100 pages. On the 31st of August 2020, the City was advised that its request for extension was declined.
- 2.6 Given the volume and complexity of the information, it took the internal departments several days to draft their inputs to the appeal. These had to then be interrogated and discussed between the different departments following which they had to be collated into a single draft appeal document. This lengthy and complicated process was completed by 8 September 2020, which is submitted as a reasonable period of time, particularly given remote working conditions due to the Covid-19 pandemic. While the City has systems in place to continue functioning during the Covid-19 pandemic, there are limitations to this way of working.
- 2.7 In fact, City officials went substantially beyond their normal working hours, working late nights and into the early hours of many mornings and over weekends in order to meet the deadline for submission of the appeal.
- 2.8 The draft appeal document was then submitted to the City's Executive Management on 8 September 2020 for review and support that the appeal be submitted. Given the extent and complexity of the

decision, it is critical that the appeal reflect the views of the City as a whole and is supported at the highest level.

- 2.9 The City's Executive Management had queries on the draft appeal document which had to be discussed with the relevant officials. Various amendments were required to the draft appeal document and these were finalised and the appeal re-submitted to the Executive Management on 9 September 2020.
- 2.10 Given their various other urgent commitments and given the fact that they are working remotely due to the Covid-19 pandemic, the Executive Management were only able to provide their support for the appeal today, the 11th of September 2020. Thereafter, the appeal was submitted without delay.

3. PREJUDICE

- 3.1 The City submits that there will be no prejudice to the EA Holder, any registered interested and affected parties or the decision-maker given the minimal delay in submission. Given that less than 24 hours have passed since the deadline and given that several appeals have been submitted to the decision-maker in this matter, it is unlikely that the decision-maker has been able to complete consideration of the already submitted appeals.
- 3.2 Furthermore, this is not a material delay. The EA holder and its anchor tenants will not suffer any prejudice. No construction processes will be delayed as a result of the late submission.

4. PROSPECTS OF SUCCESS

- 4.1 Given the minimal delay in this appeal being submitted (i.e., less than 24 hours) and the justified reasons therefor, the City believes its application for condonation should be considered favourably.
- 4.2 As indicated, the City has not submitted this appeal lightly. It has acted in good faith at all times and endeavoured to meet the time-frames. The appeal is well considered and objective and addresses the issues of concern to the City, rather than constituting criticism of either the decision-maker or the EA holder. The City's views as contained in the Appeal are fair and reasonable, and consistent with the City's previous submissions.
- 4.3 The City tried its best to avoid the late submission of the appeal as is evident by the request for extension of time to submit the appeal which was not granted. This fact should be looked upon favourably in considering this application for condonation.
- 4.4 This application for condonation is submitted as an alternative remedy to the application for an extension of time for submission of the appeal, as proposed by the decision-maker in his decision declining the City's request for such extension. The City stresses that while every effort was made to submit the appeal by the due date, this was unfortunately not possible for the reasons above.

5. EVALUATION OF THE IMPORTANCE OF THE MATTER

- 5.1 The EA approves a large scale development on the River Club Property and surrounding City land. The proposed development covers an area of 25 hectares. The affected land is part of the Metropolitan Open Space System, ecological corridors and linkages of the Biodiversity Network and the Salt River Catchment. Impacts on any part of these three systems (or aspects of them) have implications for the functionality of the broader systems or networks.
- 5.2 Given the above, it is submitted that this is a significant matter that requires that the City's views, as contained in its appeal, be given due consideration by the decision-maker.

CONCLUSION

The City submits that based on the above, condonation in this case is warranted. There will be no prejudice to any party if the City's appeal is accepted given the minimal delay in submission of the appeal. As is evident from the above, a concerted effort was made to submit the appeal by the due date.

In addition, the scale of the proposed development and associated impacts merit that the City's concerns be considered by the decision-maker.

We look forward to your favourable consideration of this application for condonation.

Yours faithfully

A handwritten signature in black ink, appearing to be 'KW', is written over a horizontal line. The signature is cursive and somewhat stylized.

KEITH WISEMAN
ACTING DIRECTOR: ENVIRONMENTAL MANAGEMENT DEPARTMENT