



REFERENCE: 16/3/3/6/7/1/D4/24/0090/19  
ENQUIRIES: Ms Marianne Lesch  
DATE OF ISSUE: 2011. 2011

The Manager  
High Wave Consultants (Pty) Ltd  
11A Gladstone Street  
**DURBANVILLE**  
7550

Attention: Mr. Rikus Roos

Tel.: 021 975 1754  
E-mail: rikus@highwave.co.za

Dear Sir

**ACKNOWLEDGEMENT OF RECEIPT OF THE NOTICE OF INTENT TO SUBMIT AN APPLICATION IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 AND THE ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS, 2014: PROPOSED DEVELOPMENT OF A 25M HIGH TELECOMMUNICATIONS MAST ON PORTION 25 OF FARM 191, RHEENENDAL ROAD, PHANTOM ACRES, KNYSNA**

1. The abovementioned document dated 23 April 2019 as received by this Department on 06 May 2019, refers.
2. This letter serves as an acknowledgment of receipt of the abovementioned document.
3. Please note that the proposed activities may not commence prior to an Environmental Authorisation being granted by the Department.
4. The Department reserves the right to revise initial comments and request further information based on any new or revised information received.

Yours faithfully

PP **HEAD OF COMPONENT**

**ENVIRONMENTAL IMPACT MANAGEMENT SERVICES (REGION 3)**

**DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING**

Copied to: Mr Hennie Smit Knysna Municipality

Fax: (0)44 302 6333

Mr Emile Esquire EnviroAfrica CC

Email: hsmi@knysna.gov.za

E-mail: emile@enviroafrica.co.za

## Emile Esquire

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**From:** Emile Esquire <emile@enviroafrica.co.za>  
**Sent:** Monday, 20 May 2019 11:46 AM  
**To:** 'Floresca Julius'; 'rikus@highwave.co.za'; 'hsmit@knysna.gov.za'  
**Cc:** 'Meryll Fredericks'; 'Malcolm Fredericks'; 'Marianne Lesch'  
**Subject:** RE: DEA&DP Ref: 16/3/3/6/7/1/D4/24/0090/19 - Acknowledgement of Receipt of NOI for the proposed development of a 25m high telecommunications mast on Portion 25 of Farm 191, Rheenendal Road, Phantom Acres, Knysna (DEA&DP Ref: 16/3/3/6/7/1/D4/24/0090/19)

Dear Floresca,

I hereby acknowledge receipt of your Department's correspondence dated 20 May 2019.

Kind regards,

Emile Esquire



**EnviroAfrica**

*Environmental Consultant*

**EnviroAfrica cc**

p: +27 21 851 1616

f: +27 86 512 0154

a: Unit 7, Pastorie Park, Reitz St, Somerset West, 7130

P.O. Box 5367, Helderberg, 7135

w: [www.enviroafrica.co.za](http://www.enviroafrica.co.za) e: [emile@enviroafrica.co.za](mailto:emile@enviroafrica.co.za)

**From:** Floresca Julius <Floresca.Julius@westerncape.gov.za>

**Sent:** Monday, 20 May 2019 8:51 AM

**To:** rikus@highwave.co.za; hsmit@knysna.gov.za; emile@enviroafrica.co.za

**Cc:** Meryll Fredericks <Meryll.Fredericks@westerncape.gov.za>; Malcolm Fredericks

<Malcolm.Fredericks@westerncape.gov.za>; Marianne Lesch <Marianne.Lesch@westerncape.gov.za>

**Subject:** DEA&DP Ref: 16/3/3/6/7/1/D4/24/0090/19 - Acknowledgement of Receipt of NOI for the proposed development of a 25m high telecommunications mast on Portion 25 of Farm 191, Rheenendal Road, Phantom Acres, Knysna

Good Day,

Please find attached the comment from Ms. Marianne Lesch regarding the aforementioned subject.

For enquiries please contact Ms. Marianne Lesch on 044 – 805 8612 or using:

[Marianne.Lesch@westerncape.gov.za](mailto:Marianne.Lesch@westerncape.gov.za)

Kind Regards

**Floresca Julius**

Regional Operations Support

Development Management :Region 3  
Department of Environmental Affairs and Development Planning  
Western Cape Government

93 York Street, 4<sup>th</sup> Floor, York Park Building, George, 6530

Tel: (044) 805 8631

Fax: (044) 805 8650

E-mail: [Floresca.Julius@westerncape.gov.za](mailto:Floresca.Julius@westerncape.gov.za)

Website: [www.westerncape.gov.za/eadp](http://www.westerncape.gov.za/eadp)



Western Cape  
Government

BETTER TOGETHER.

Be 110% Green. Read from the screen.

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If you are not the intended recipient you may not copy or deliver this message to anyone."



## Emile Esquire

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**From:** Emile Esquire <emile@enviroafrica.co.za>  
**Sent:** Wednesday, 12 June 2019 11:14 AM  
**To:** 'gaillard@mweb.co.za'  
**Subject:** RE: Proposed telecommunication mast Rheenendal rd Knysna

Dear Johannes Gaillard,

Your email correspondence dated 10 June 2019, refers.

The contents of your email is duly noted and your name will be placed on the list of registered Interested and Affected Parties (I&APs) and will received a copy of the Pre-Application Basic Assessment Report (BAR) in due course.

Kind regards,

Emile Esquire

Environmental Consultant

EnviroAfrica cc

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+27 86 512 0154

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www.enviroafrica.co.za e: emile@enviroafrica.co.za

-----Original Message-----

**From:** Johannes gaillard <gaillard@mweb.co.za>

**Sent:** June 10, 2019 4:51 PM

**To:** admin@enviroafrica.co.za

**Subject:** Proposed telecommunication mast Rheenendal rd Knysna

Dear Emile Esquire,

In connection with the above , I received recently a second request to react to in this issue in addition to the municipal one send to us earlier.

I have reacted to the earlier request from the municipality about my views and take it that these are being kept and made available to the relevant institutions, so a copy does not seem nessesary at this stage .

If however that is not the case , I would like to be notified so that I can resend the same.

In addition of my reaction I would like to state that there are so many incorrect statements that it is well worth it to attend to these before any action is taken, beside the fact that there are various other spots which are and better and out of side in the direct surrounding area .

We hope you find this in order and we remain , Your faithfully Johan Gaillard (direct neighbor )

Sent from my iPad=







**"A combined effort to inform, share and take positive action  
to protect the long-term integrity and sustainability of the landscape in which we live"**

10 June 2019

Emile Esquire  
EnviroAfrica  
PO Box 5367  
Helderberg  
7135  
admin@enviroafrica.co.za

Dear Sir/ Madam

**RE: OBJECTION TO PROPOSED DEVELOPMENT OF BASE TELECOMMUNICATION MAST  
AND ASSOCIATED INFRASTRUCTURE ON PORTION 25 OF WESTFORD 191, KNYSNA  
DISTRICT**

The Committee of the Phantom Homtini Nature Conservancy, on behalf of our members who reside in the local Rheenendal community, wish to register as an Interested and Affected Party and also wish to lodge a strong objection to the above proposed development for the following reasons:

There are significant environmental impacts, as well as a disjuncture with the current land use and character of the immediately surrounding area w.r.t. the zoning scheme for Knysna. One of the most notable negative impacts is the visual impact that the proposed infrastructure will have on the natural surroundings which attracts many tourists to the area. The proposed development will undoubtedly pose a significant eye-sore to local residents and tourists and will degrade the aesthetic appeal of the rural setting. Furthermore, no alternative site locations have been considered which would be more amenable to such infrastructure.

Please lodge this objection and confirm our registration as I&APs in writing to the undersigned.

Yours faithfully

Iain Paton  
Chairman  
PHNC Committee  
phantomhomtini@gmail.com

Cc: Rheenendal Ratepayers Association  
Associated Rheenendal Council

## Emile Esquire

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**From:** Emile Esquire <emile@enviroafrica.co.za>  
**Sent:** Wednesday, 12 June 2019 3:43 PM  
**To:** 'phantomhomtini@gmail.com'  
**Cc:** 'iain@outeniqua.co.za'  
**Subject:** RE: Objection:Telecommunications tower, Portion 25/191 Westford Farm Rheenendal

Dear Mr Iain,

Your email correspondence with attached comment dated 10 June 2019, refers.

Please note that your comment is duly noted.

Your organisation's name are now placed on the list of registered Interested and Affected Parties (I&APs) and will receive a copy of the Pre-Application Basic Assessment Report (BAR) in due course.

Kind regards,

Emile Esquire



**EnviroAfrica**

*Environmental Consultant*

**EnviroAfrica cc**

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**From:** Phantom Homtini Conservance <[phantomhomtini@gmail.com](mailto:phantomhomtini@gmail.com)>

**Sent:** June 10, 2019 8:43 PM

**To:** [admin@enviroafrica.co.za](mailto:admin@enviroafrica.co.za)

**Cc:** Iain Paton <[iain@outeniqua.co.za](mailto:iain@outeniqua.co.za)>; Petra <[ptenvelde@gmail.com](mailto:ptenvelde@gmail.com)>; Henk van Wagtenonk

<[manyvar@gmail.com](mailto:manyvar@gmail.com)>; [craig@biriku.com](mailto:craig@biriku.com); Phantom Homtini Conservance <[afxeno@telkomsa.net](mailto:afxeno@telkomsa.net)>

**Subject:** Objection:Telecommunications tower, Portion 25/191 Westford Farm Rheenendal



Dear Sir/Madam



Please find the attached letter for your immediate attention.

regards  
Iain Paton  
Chairman  
PHNC

100

## Emile Esquire

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**From:** Emile Esquire <emile@enviroafrica.co.za>  
**Sent:** Thursday, 13 June 2019 11:24 AM  
**To:** 'sam@avalonfarm.co.za'  
**Cc:** 'bill@avalonfarm.co.za'; 'tanyalocks@gmail.com'  
**Subject:** RE: Objection letter from Mr. W Annetts and Ms. S Kay (adjacent property to Portion 25 of Farm Westford 191, Knysna) - Municipal reference: collab. ref 768549; File ref Kny 191/25

Dear Sam,

Your email correspondence dated 11 June 2019, refers.

I hereby acknowledge receipt of the attached documents submitted to Knysna Municipality as part of the Land Use Application for the proposed telecommunication mast.

Please note that your comment is duly noted.

You are now placed on the list of registered Interested and Affected Parties (I&APs) and will receive an electronic copy of the Pre-Application BAR that will go out for public comment in due course.

Kind regards,

Emile Esquire



**EnviroAfrica**

*Environmental Consultant*

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w: [www.enviroafrica.co.za](http://www.enviroafrica.co.za) e: [emile@enviroafrica.co.za](mailto:emile@enviroafrica.co.za)

**From:** Sam <[sam@avalonfarm.co.za](mailto:sam@avalonfarm.co.za)>

**Sent:** June 11, 2019 1:37 PM

**To:** [admin@enviroafrica.co.za](mailto:admin@enviroafrica.co.za)

**Cc:** [bill@avalonfarm.co.za](mailto:bill@avalonfarm.co.za); 'Tanya Locks' <[tanyalocks@gmail.com](mailto:tanyalocks@gmail.com)>

**Subject:** FW: Objection letter from Mr. W Annetts and Ms. S Kay (adjacent property to Portion 25 of Farm Westford 191, Knysna) - Municipal reference: collab. ref 768549; File ref Kny 191/25

Hi Emile, as per your conversation with Bill last week Friday at our property Avalon and adjacent property Sevenoaks (John and Tanya), please see info below and attached documents – we emailed these to the relevant Knysna Municipality rep (Mrs Mniki) on 2<sup>nd</sup> April.

Our objection to the proposed cellphone mast tower is laid out in the attached documents.

Please contact us with any queries, thanks

Regards,  
Sam

Bill Annetts and Sam Kay

Avalon  
Rheenendal Road  
Knysna  
Tel: +27 (0)44 388 4896  
Cell: +27 (0)82 534 8336  
[sam@avalonfarm.co.za](mailto:sam@avalonfarm.co.za)



Save a tree. Don't print this e-mail unless it's necessary

**From:** Sam <[sam@avalonfarm.co.za](mailto:sam@avalonfarm.co.za)>

**Sent:** 02 April 2019 09:36 AM

**To:** 'knysna@knysna.gov.za' <[knysna@knysna.gov.za](mailto:knysna@knysna.gov.za)>; 'lmniki@knysna.gov.za' <[lmniki@knysna.gov.za](mailto:lmniki@knysna.gov.za)>

**Cc:** 'Bill Annetts' <[bill@avalonfarm.co.za](mailto:bill@avalonfarm.co.za)>

**Subject:** Objection letter from Mr. W Annetts and Ms. S Kay (adjacent property to Portion 25 of Farm Westford 191, Knysna) - Municipal reference: collab. ref 768549; File ref Kny 191/25

Dear Ms. Mniki,

Please see attached objection letter and your reference letter, many thanks.

Please contact us with any queries.

Regards,  
Sam

Bill Annetts and Sam Kay  
Avalon (Portion 15 of 191 Westford Farm / Road, Knysna)  
Rheenendal Road  
Knysna  
Tel: +27 (0)44 388 4896  
Cell: +27 (0)82 534 8336  
[sam@avalonfarm.co.za](mailto:sam@avalonfarm.co.za)



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01 April 2019

ERF:9-00191-015 Mr William Annetts and Ms Samantha Kay

Avalon, Portion 15 of Westford Farm 191, Knysna , 6576

**To: The Municipal Manager**

**PO Box 21, Knysna 6570**

Dear Ms Linda Mniki,

Reference: Objection to Temporary Use Departure & Permanent Departure of Building Line:  
Portion 25 of Farm Westford 191, Knysna

We are writing in reference to your letter dated 04.03.2019 and with regards to the above reference. We are stating our objections herewith, the reasons for our objection are listed below. We kindly request that you strongly consider all the points below.

Our property, Portion 15 of Westford Farm 191 lies directly next to the proposed cellphone mast position. We feel that the proposed 25-metre high tower will have a substantial **negative impact on our property's value**, and we are therefore strongly opposed to the position proposed in the application. Whether there are proven health risks or not associated with a cellphone tower, general public perception is that it is dangerous to live near a cellphone tower. In addition, should we choose to sell our property in the future, the pool of potential buyers would significantly decrease due to the *perceived* health risks associated with living next to a cellphone tower / mast.

This tower will have a **detrimental impact on tourism to the area and specifically to the adjacent and nearby accommodation establishments** – again, whether there are proven health risks or not associated with a cellphone tower, general public perception is that it is dangerous to live near a cellphone tower. Tourists will very likely NOT book accommodation at neighbouring accommodation establishments, which will in turn be extremely detrimental to the livelihood of those accommodation / property owners. This will in turn affect income for the Knysna Municipality if there are fewer tourists booking those accommodation options. We urge the Municipality to consider the livelihood of ALL property owners, as well as yourselves, and not just the owners of the property who would be paid a rental income for the use of their land for this cellphone tower.

The tower structure is certainly of a permanent nature; therefore, an **application cannot be brought for a temporary land use departure**.

**The area in which this mast is proposed already has Vodacom LTE connectivity**, therefore, existing masts can provide cell phone connectivity and there is no need or desirability for an additional mast within this area. Residents with poor cellphone reception (the site owner, for example) could simply change their service provider to Vodacom.

The mast will also have a significant **negative visual impact on the surrounding area and surrounding property values**. The mast is out of character with the surrounding properties on that part of the Rheenendal Road and will negatively affect tourism and the charisma of the neighbourhood. No mention is made in the application of the fact that the Rheenendal Road is part of the Seven Passes Scenic Route, nor part of the Rheenendal Ramble (see



[www.rheenendalramble.co.za](http://www.rheenendalramble.co.za)). There are many businesses in the vicinity of the mast that make natural products (e.g. soaps, honey, plant nursery) or provide tourist accommodation where the natural product or scenic natural environment is seen as the key characteristic.

**The mast contravenes Knysna Municipality's Policy for the placing, size and appearance of cellular communication masts within the Knysna Municipal area.**

In addition, the trees adjacent to the proposed site are alien vegetation and if removed in the future, the view from our house would be of the entire tower, which is also unacceptable to us personally.

**The application itself has several inconsistencies that would need to be addressed and we would expect a new proposal would be re-issued to all parties who have received your letter once these inconsistencies have been addressed:**

1. The application is for a temporary land use departure, but the proposed infrastructure is certainly not of a temporary nature
2. The front page of the application indicates that it is for a rooftop base telecommunications station whereas the body of the application in many places refers to a freestanding station and a 25-metre tall mast with several attachments, together with various ancillary buildings and infrastructure;
3. The application in some places refers to a monopole mast but in paragraph 5.h. on page 17 refers to a lattice design mast. The elevation plan (sheet 6 of the plans) indicates a monopole
4. The proposed site lies right against the fence along the Rheenendal Road. We would assume that approval would be required from the Provincial Roads Engineer and if so, we would require written proof of this approval. The structure will also have lights on a night which would result in a dangerous and confusing situation. The proposed signage (paragraph 4.c.) will be contrary to Act 21/1940. The fence at this point is also unusually close to the actual tar surface. The normal distance from the edge of tar to the fence would be about 9,3 metres whereas it is about 3 metres.
5. In paragraph 5b. it is stated that one of the reasons for the choice of the site is the minimized visual impact. This is clearly not accurate as it would be built directly along a scenic road in an area with very few trees and certainly no indigenous vegetation. So, the visual aspect of the proposal has not been addressed satisfactorily at all and appears to be a generalized statement used in other applications. The only impact that has been considered is to indicate that all the dishes etc. will be placed on one pole. The tallest of the ESKOM towers on the powerline that crosses the Rheenendal Road is 29 metres tall; the proposed tower is only slightly shorter and would have a massive visual impact.
6. The need for this very high tower is must be addressed. The information given in the application indicates that the coverage expected from the tower would be only 500 – 1000 metres. Paragraph of the application 5.f. shows several plans to indicate how this coverage tends decrease as the number of users increases. A 25-metre high tower would most certainly not be required to provide coverage for the 500 to 1000-metre cells indicated in the plans in our area. The intention of such a tall tower would be most certainly to cover a much larger area of up to 1500 to 2000 metres. The intention of the tower appears to be for much further-reaching communication and more in the order of a main cell phone base station. The application tends to give the impression that it is a local station required

because of bad cell phone coverage in the local area. We feel that the application is intentionally misleading in this regard.

7. The application suggests that there is a high growth in the demand for local telecommunication coverage in the surrounding community. This area has a very low population density. The minimum property size allowed is 3 hectares. There is also very little chance of the density increasing much as the area falls outside the urban edge is not identified for any form of development in the various structure plans. The area is indicated for rural activities such as conservation and tourism.
8. It does not appear as though the required pre-application meeting was held for this proposal – if it was, kindly provide proof thereof.

In summary, we strongly oppose the application for the following main reasons:

- Reduction of our property's resale value, and a much smaller pool of possible buyers would be available should we decide to sell in the future
- Negative financial impact on the surrounding accommodation establishments and on the Knysna Municipality / town of Knysna
- Structure is certainly of a permanent nature, therefore an application cannot be brought for a temporary land use departure
- An existing Vodacom cellphone tower already services the area so there is no need for an additional mast. Subscribers with poor MTN or other cell reception could simply change service providers
- The mast contravenes Knysna Municipality's policy for the placing, size and appearance of cellular communication masts within the Knysna Municipal area
- Negative visual impact from our property
- Application information has many inconsistencies that would need to be addressed; the application would need to be corrected and resent to all affected property owners for comments

**In closing, the above application should be refused as there is no need for an additional cellphone tower, nor is there any desirability for one by the surrounding property owners. In addition, it proposed structure and position contravenes planning policy.**

Please contact us with anything that needs to be clarified, many thanks.

Kind regards,

Bill Annetts



Sam Kay

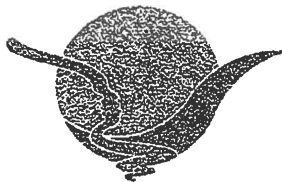


Date

02 April 2019

Date

02 April 2019



**KNYSNA**

Municipality Munisipaliteit uMasipala

Collab. Ref.: 768549

File Ref.: Kny 191/25

J.H. Smit

Tel: 044-302 6318

**Via Registered Mail**

**2019-03-04**

WE Annetts & SJ Kay  
PO Box 350  
KNYSNA  
6570

Dear Sir/Madam,

**PROPOSED TEMPORARY USE DEPARTURE & PERMANENT DEPARTURE:  
PORTION 25 OF FARM WESTFORD 191, KNYNSNA**

Applicant: Highwave Consultants (Pty) Ltd  
Owner: Leonard Flaum  
Reference number: Application No. 2038  
Physical Address: 191 Westford Road, Knysna  
Proposal:

- i) **Proposed Temporary Use Departure** from the provisions of Section 8 scheme regulations (1988), in order to allow the development of a freestanding base telecommunication station with a 25m monopole mast, in terms of **Section 15(2)(c)** of the Knysna Municipality By-law on Municipal Land Use Planning (2016);
- ii) **Proposed Permanent Departure**, in terms of **Section 15(2)(b)** of the Knysna Municipality By-law on Municipal Land Use Planning (2016), to allow the relaxation of the street building line (Rheenendal Road) from 30m to 0m to allow the placement of the proposed development.

Notice is hereby given in terms of Section 45 of the Knysna Municipality By-Law on Municipal Land Use Planning (2016) that the abovementioned application has been received and attached hereto for your attention. A full copy of the application is available for inspection during office hours at the Town Planning Department, 3 Church Street, Knysna as well as the municipality's website for ease of access:

<http://www.knysna.gov.za/resident-services/planning/current-land-use-applications/>

Any written comments may be addressed in terms of Section 50 (attached hereto), of the said legislation to the Municipal Manager, P.O Box 21, Knysna or via email to [knysna@knysna.gov.za](mailto:knysna@knysna.gov.za) & [lmniki@knysna.gov.za](mailto:lmniki@knysna.gov.za) on or before **7 April 2019**, quoting your name, address, contact details, interest in the application and reasons for your comments. Persons who cannot write may approach the Town Planning Office at 3 Church Street, Knysna, during office hours, where the responsible official will assist you in putting your comments in writing.

Should you have any further enquiries, please contact **Linda Mniki** telephone number: **044-302 6383** or via e-mail address: **lmniki@knysna.gov.za**.

Yours faithfully,

  
**MS. P. MAKOMA**  
**ACTING MUNICIPAL MANAGER**  
**/16**

03 June 2019

Dear Interested and Affected Party

**NEMA EIA PUBLIC PARTICIPATION PROCESS**

**PROPOSED DEVELOPMENT OF A 25M HIGH TELECOMMUNICATION MAST ON PORTION 25 OF FARM 191, RHEENENDAL ROAD, PHANTOM ACRES, KNYSNA, WESTERN CAPE**

Notice is hereby given of the intention to submit an application, and the public participation, process in terms of the National Environmental Management Act, 1998 (Act No. 107 of 1998), as amended ("NEMA"), Environmental Impact Assessment Regulations 2014. The proposed development of a 25m high telecommunication mast on Portion 25 of Farm 191, Rheenendal Road, Phantom Acres, Knysna, Western Cape, and includes activities listed in terms of the NEMA EIA Regulations, 2014.

EnviroAfrica cc has been appointed by High Wave Consultants (Pty) Ltd. to undertake the NEMA EIA Application for Environmental Authorisation process.

**Application for environmental authorization to undertake the following activities:**

Government Notice R324 (Listing Notice 3): Activity No. 3

**Project Description & Location:**

A telecommunications mast, including associated infrastructure, is proposed on Portion 25 of Farm 191, Rheenendal Road, Phantom Acres, Knysna, Western Cape. The proposed development is to clear an area of 64m<sup>2</sup> to erect a 25m high monopole mast with antennas situated on the top of the proposed structure. No new roads will be constructed as an existing access road will be utilised to gain access to the proposed site. The proposed site is located outside the rural area of Phantom Acres, Knysna. The site is Agriculture zoned, and the site co-ordinates are 33° 59' 18.80"S, 22° 58' 43.96"E.

**Public Participation:** Interested and Affected Parties (I&APs) are hereby notified of the application and invited to register (in writing) and/or provide initial comments and identify any issues, concerns or opportunities relating to this project to the contact details provided below, on or before 15 July 2019. In order to register or submit comment, I&APs should refer to the project name, and provide their name, address & contact details (*indicating your preferred method of notification*) and an indication of any direct business, financial, personal, or other interest which they have in the application. Please note that future correspondence will only be sent to registered Interested and Affected Parties. Please note that the Pre-Application Basic Assessment Report (Pre-App BAR) will be available on our website ([www.enviroafrica.co.za](http://www.enviroafrica.co.za)) on 14 June 2019.

Please note that only Registered I&APs:

- will be notified of the availability of reports and other written submissions made (or to be made) to the Department by the applicant, and be entitled to comment on these reports and submissions;
- will be notified of the outcome of the application, the reasons for the decision, and that an appeal may be lodged against a decision; and
- will be notified of the applicant's intention to appeal the decision of the competent authority, together with an indication of where and for what period the appeal submission will be available for inspection.

You are also requested to pass this information to any person you feel should be notified.

Consultant: EnviroAfrica CC. P.O. Box 5367, Helderberg, 7135 / Fax: 086 512 0154 / Tel: 021 8511616 / E-mail: [admin@enviroafrica.co.za](mailto:admin@enviroafrica.co.za)

Yours sincerely



Emile Esquire  
Environmental Consultant  
EnviroAfrica



The first part of the paper discusses the importance of the research and the objectives of the study. It then presents a literature review of the existing research on the topic. The next section describes the methodology used in the study, including the data sources and the statistical techniques employed. The results of the study are then presented, followed by a discussion of the findings and their implications. Finally, the paper concludes with a summary of the main points and suggestions for future research.

The research was conducted using a quantitative approach, with data collected from a survey of 1,000 participants. The survey was designed to measure the levels of various factors related to the research topic. The data was then analyzed using a series of statistical tests, including t-tests, ANOVA, and regression analysis. The results of these tests are presented in the following sections.

The findings of the study indicate that there is a significant relationship between the variables being studied. Specifically, the results show that as the level of one variable increases, the level of another variable also tends to increase. This relationship is supported by the statistical tests, which show that the probability of observing such a relationship by chance is very low.

These findings have important implications for the field of study. They suggest that the factors being studied are closely related and that understanding one factor can help to predict the level of another. This information can be used to develop more effective interventions or policies in the field.

In conclusion, the study has provided valuable insights into the relationship between the variables being studied. The findings suggest that there is a strong, positive correlation between the two variables, and that this relationship is statistically significant. Further research is needed to explore the underlying mechanisms of this relationship and to develop more targeted interventions.

## Emile Esquire

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**From:** Emile Esquire <emile@enviroafrica.co.za>  
**Sent:** Thursday, 13 June 2019 12:02 PM  
**To:** 'markdaviddebruyn@gmail.com'  
**Cc:** 'mark@lazyleopard.co.za'  
**Subject:** RE: Objection to telecom tower on Portion 25 of Farm Westford 191 Knysna

Dear Mark,

Your e-mail correspondence dated 12 June 2019, and attached objection letters, refers.

Please note that your comment is duly noted and that your name will be placed on the list of registered Interested and Affected Parties (I&APs) and will receive an electronic copy of the Pre-Application Basic Assessment Report (BAR) that will go out for public comment in due course.

I do take note of your preferred method of communication, which is via e-mail.

Kind regards,

Emile Esquire



**EnviroAfrica**

*Environmental Consultant*

**EnviroAfrica cc**

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a: Unit 7, Pastorie Park, Reitz St, Somerset West, 7130

P.O. Box 5367, Helderberg, 7135

w: [www.enviroafrica.co.za](http://www.enviroafrica.co.za) e: [emile@enviroafrica.co.za](mailto:emile@enviroafrica.co.za)

**From:** Mark de Bruyn <[markdaviddebruyn@gmail.com](mailto:markdaviddebruyn@gmail.com)>

**Sent:** June 12, 2019 10:22 AM

**To:** [admin@enviroafrica.co.za](mailto:admin@enviroafrica.co.za); Petra ten Velde <[ptenvelde@gmail.com](mailto:ptenvelde@gmail.com)>; Tanya Locks <[tanyalocks@gmail.com](mailto:tanyalocks@gmail.com)>; Lazy Leopard <[corlia.debruyn@gmail.com](mailto:corlia.debruyn@gmail.com)>; John de Bruyn <[johnanthony.debruyn@gmail.com](mailto:johnanthony.debruyn@gmail.com)>; Shirley Erasmus <[shirleyjosiee@gmail.com](mailto:shirleyjosiee@gmail.com)>; David De Bruyn <[david.debruyn@gmail.com](mailto:david.debruyn@gmail.com)>; [transport@lantic.net](mailto:transport@lantic.net); Ingrid and Barry Young <[ings.young@mweb.co.za](mailto:ings.young@mweb.co.za)>

**Subject:** Fwd: Objection to telecom tower on Portion 25 of Farm Westford 191 Knysna

Attention Emile Esquire

Hi Emile

I wish to refer to your recent notices regarding this proposal. Please register me as a stakeholder. I will receive no financial benefit from the proposal. Please use my email addresses [markdaviddebruyn@gmail.com](mailto:markdaviddebruyn@gmail.com) and [mark@lazyleopard.co.za](mailto:mark@lazyleopard.co.za) as my preferred contact addresses. My cell number is 072 458 3894.

Also please see my attached objection, with regard to the town planning application, that I sent to the Municipality regarding the proposed telecom mast.

I will probably like to add other comments later on, once I have perused the BAR and other information.

Please acknowledge receipt of this email.

Kind regards  
Mark

**MARK DE BRUYN**  
cell 072 458 3894  
tel 044 388 4773

----- Forwarded message -----

From: **Mark de Bruyn** <[markdaviddebruyn@gmail.com](mailto:markdaviddebruyn@gmail.com)>  
Date: Tue, 2 Apr 2019 at 10:15  
Subject: Objection to telecom tower on Portion 25 of Farm Westford 191 Knysna  
To: Linda Mniki <[lmniki@knysna.gov.za](mailto:lmniki@knysna.gov.za)>, <[knysna@knysna.gov.za](mailto:knysna@knysna.gov.za)>

Hi Linda

Please see my letter of objection, against the proposed telecom tower on Portion 25 of Farm Westford No. 191 Knysna, attached herewith. I have also attached a copy of a court case that I refer to in my letter.

Could you please acknowledge receipt.

Kind regards,  
Mark

**MARK DE BRUYN**  
cell 072 458 3894  
tel 044 388 4773

# MARK DE BRUYN

"Blue Hills", Rheenendal Road, Knysna	Tel 044 388 4773
P.O. Box 135, Knysna 6570	Cell 072 458 3894
email: <a href="mailto:mark@lazyleopard.co.za">mark@lazyleopard.co.za</a>	1 April 2019

Our reference: K192/13

Your reference: Kny191/25 Collab 768549

The Municipal Manager  
P.O. Box 21, Knysna 6570  
[knysna@knysna.gov.za](mailto:knysna@knysna.gov.za)  
[lmniki@knysna.gov.za](mailto:lmniki@knysna.gov.za)

Dear Sir/Madam

## PROPOSED TEMPORARY USE DEPARTURE AND BUILDING LINE RELAXATION FOR PORTION 25 OF THE FARM WESTFORD No. 191 KNYSNA

Thank you for your letter dated 2019-03-04 and thank you for affording us to comment on this application.

I live at Blue Hills, which is on Portion 13 of Farm Charlesford 192 Knysna and across the Rheenendal Road from Portion 25 of Farm Westford No. 191 (191/25). My wife owns Portion 13 and 35 of Charlesford 192 (192/35) and together we rent two accommodation units on these two properties out for holiday accommodation, known as "Lazy Leopard".

The plans of the proposal indicate that 192/13 lies directly across from 191/25 but in fact 192/35 lies directly across from 191/25. Our property 191/25 is therefore directly against the boundary of 191/25 in the vicinity of the proposed mast.

We feel that the proposed 25-metre high tower will have a substantial negative impact on us personally, our property value and our accommodation livelihood and are therefore strongly opposed to the position and size of the tower proposed in the application.

### The application:

I feel that there are several inconsistencies in the application. These include the following:

1. The application is for a temporary land use departure when the proposed infrastructure is certainly not of a temporary nature and can only be expected to expand in the future;
  2. The front page of the application indicates that it is for a rooftop base telecommunications station whereas the body of the application in many
-

- places refers to a freestanding station and a 25-metre tall mast with several attachments, together with various ancillary buildings and infrastructure;
3. The application in some places refers to a monopole mast but in paragraph 5.h. on page 17 refers to a lattice design mast. The elevation plan (sheet 6 of the plans) indicates a monopole.
  4. Paragraph 4. e. on page 6 indicates that the activity will be subject to an Environmental Impact Assessment as it triggers one of the categories in the NEMA Listing Notice No. 3. It is usual that if an EIA is required that it either be done simultaneously with a land-use planning application or before it. This also has important implications as alternative site would need to be proposed and evaluated in an EIA.
  5. The visual aspect of the proposal has not been addressed satisfactorily at all and appears to be a generalized statement used in other applications. The only impact that has been considered is to indicate that all the dishes etc. will be placed on one pole! Please note that the tallest of the ESKOM towers on the powerline that crosses the Rheenendal Road is 29 metres tall. This proposed tower is only slightly shorter and would have a massive visual impact. No mention is made in the application of the fact that the Rheenendal Road is part of the seven passes scenic route. In paragraph 5b. it is stated that one of the reasons for the choice of the site is the minimized visual impact. This is clearly not accurate as it would be difficult to find a site with less of a negative visual impact, being directly along a scenic road in an area with very few trees and certainly almost no indigenous vegetation! This thing will stand out like a sore thumb!
  6. The proposed site lies right against the fence along the Rheenendal Road. As far as I know this road (Main Road 355) is a building restriction road and approval would be required for the proposal in terms of Act 21 of 1940. As far as I am aware the Provincial Roads Engineer will not grant approval for any structure that is right up against the fence. The structure will also have lights on a night which would result in a dangerous and confusing situation. The proposed signage (paragraph 4.c.) will be contrary to Act 21/1940. The fence at this point is also unusually close to the actual tar surface. The normal distance from the edge of tar to the fence would be about 9,3 metres whereas it is about 3 metres.
  7. The need for this very high tower is questioned. The information given in the application indicates that the coverage expected from the tower would be only 500 – 1 000 metres. Paragraph of the application 5.f. shows several plans to indicate how this coverage tends decrease as the number of users increases. A 25-metre high tower would most certainly not be required to provide coverage for the 500 to 1 000-metre cells indicated in the plans in our area. The intention of such a tall tower would be most certainly to cover a much larger area of up to 15 to 20 kilometres. The intention of the tower appears to be for much further-reaching communication and more in the
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order of a main cell phone base station. The application tends to give the impression that it is a local station required because of bad cell phone coverage in the local area. I feel that the application is intentionally misleading in this regard.

8. The application suggests that there is a high growth in the demand for local telecommunication coverage in the surrounding community. This area has a very low population density. The minimum property size allowed is 3 hectares. This is far lower than the average residential property of say 0,1 hectares, in fact it is 30 times lower! There is also very little chance of the density increasing much as the area falls outside the urban edge is not identified for any form of development in the various structure plans. The area is indicated for rural activities such as conservation and tourism.
9. It would appear from the confusing and conflicts in the application that this application follows along the lines of generic format and so it is clear that the individual characteristics of the area and the site was not addressed.
10. The proposal conflicts with the SLUMA principle of sustainability as it would certainly detrimentally affect this established scenic route and the tourism economy of the area.
11. It would also appear that the proposal conflicts with several the aspects of the Municipal policy on telecom masts such as height, form, position and visual mitigation.
12. It does not appear as though the required pre-application meeting was held for this proposal.

Impact on us personally:

The extremely high visual impact of the tower, in its proposed position, will have a negative impact on us and our property. It lies virtually at our entrance gate and would be very unsightly every time we enter or exit. The character of our property has been built up over the 35 years that we have been here. We have tried to improve our surroundings to be in line with the rural and natural character of the area. This 25-metre high tower would also be very ugly for guests who come to our accommodation to enjoy the natural surroundings that we have developed over this time. It would be basically at our entrance and would deflate the rural, natural tone of the area.

Our property values would certainly decrease, and our accommodation business would certainly be negatively affected because of the visual impact.

The Rheenendal is an important scenic drive with a rural and natural character and it adds a lot of value to the character of the area and is the heart of a well-established tourism economy. It also forms part of the seven passes route and is the tourism gateway for the area beyond such as the Goudveld State Forest and Millwood and Jubilee Creek areas, which are very popular and an important part

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of the natural heritage for which Knysna is famous. We, amongst a lot of other people have put in a lot of effort to protect and enhance this tourism gateway and a large telecommunications tower along this road will severely undermine this.

General Impact:

The proposal is not aligned with the recent Knysna Spatial Development Framework Strategic Synthesis 2017. In this document the importance of the environment is highlighted as underpinning the economy of the area and in turn is important to the region as a whole. The environmental resource base of the Municipality is recognized as its most important economic asset and it is stated that features such as scenic landscapes, visual landmarks and scenic routes should be conserved. This proposed high tower right along the Rheenendal Road would severely undermine this environmental asset and the character of the area for present and future generations. This road forms the backbone of the seven-passes route and the Rheenendal Ramble. It is the responsibility of the Municipality to protect these assets.

The road has recently been cleared by the District Municipality of most of the alien vegetation and at present the road provides a nice scenic drive on route to the other attractions in the area.

Need for a 25-metre high telecommunications tower:

From experience there does not appear to be a need for extra cell phone coverage for this area. The "complaints" referred to in the application appear to be a generic reason given by companies wishing to erect masts on which they can then rent out space to various telecommunications users. The coverage maps given in the application appear to be very contradictory. Recent fixed fiber lines to the area have enabled many users to utilize VOIP cell phone communication and wi-fi is in any case preferred by tourists who often don't have local cell phone contracts.

The dimensions of the tower would indicate that its purpose is far more than a provider local of cell-phone coverage as the area is sparsely populated. I also notice that the application has been made by a company that provides such telecom towers and not by one of the larger cell-phone companies.

Any telecom structure in the area that may be required should be very carefully placed to as not have any visual impact on the neighbouring properties and the area in general. It is probable that other sites, with possibly lower towers, could be found to satisfy this, if a mast of some sort is required by the cell phone companies.

Temporary Departure and Appeal Court Case 1139/2015:

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Please refer to this recent appeal court case as attached. It was decided in this case that a cellular telecommunications base station (of smaller dimensions than the one proposed) was not a temporary structure and that the Local Authority had incorrectly approved building plans for this. From this judgement it is very clear that the Municipality would not have the authority to allow any structure to be built on this land if it granted a temporary land-use departure in terms of Section 15(2)(c) of the By-laws, for this proposal.

Conclusion:

I feel that the application has not clearly outlined the proposal and provides conflicting information.

The visual impact of the proposed tower would be severely detrimental to the character and economy of the area and region.

As far as I am aware no EIA has been commenced and no alternative sites been proposed.

I am most strongly opposed to application number 2038, for the temporary land use departure, being granted. I am also most strongly opposed to relaxation of the 30-metre building line to allow for the proposed 25-metre high telecommunications mast.

Yours faithfully,



**Mark de Bruyn**

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# THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

## JUDGMENT

**Reportable**  
Case No: 1139/2015

In the matter between:

**MOBILE TELEPHONE NETWORKS (PTY) LTD**

**APPELLANT**

and

**CARL HENRICUS BEEKMANS NO**

**FIRST RESPONDENT**

**STEPHEN MARSHALL NO**

**SECOND RESPONDENT**

**TIMOTHY LISTER MAUGHAN NO**

**THIRD RESPONDENT**

**CITY OF CAPE TOWN**

**FOURTH RESPONDENT**

**Neutral citation:** *Mobile Telephone Networks v Beekmans NO* (1139/2015)  
[2016] ZASCA 188 (1 December 2016)

**Coram:** Leach, Petse, Dambuzza, Mathopo and Van der Merwe JJA

**Heard:** 17 November 2016

**Delivered:** 1 December 2016

**Summary:** Local authority: building plans: national building regulations: temporary building: must be determined by objective assessment of its nature and purpose: cellular communications base station and mast not a temporary building: building plans wrongly approved.

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## ORDER

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**On appeal from** Western Cape Division of the High Court, Cape Town  
(Rogers J sitting as court of first instance):

The appeal is dismissed with costs, including the costs of two counsel.

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## JUDGMENT

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**Van der Merwe JA (Leach, Petse, Dambuza and Mathopo JJA  
concurring):**

[1] The appellant, Mobile Telephone Networks (Pty) Ltd (MTN), applied to the fourth respondent, the City of Cape Town (the City), for approval of the erection of a cellular communications base station and mast (the base station) on erf 10762, Dalham Road, Constantia. In terms of the application the base station was to be a temporary building and the application was approved by the City on that footing. The first, second and third respondents are the trustees of the Stemar Trust (the Trust). The Trust is the owner of erf 10764, which adjoins erf 10762. The Trust applied in the Western Cape Division of the High Court, Cape Town for the review and setting aside of the decision of the City to approve the erection of the base station. That court (per Rogers J) granted the relief claimed by the Trust, but granted leave to MTN to appeal to this court. The central issue in the appeal is whether the City correctly regarded the base station as a temporary building.

[2] The issue arose in the circumstances set out below. MTN is a licenced cellular network service provider. As a result of a number of complaints, MTN ascertained that the cellular phone reception in the area of Constantia was poor. In order to improve the cellular phone coverage, MTN decided to erect a



base station in the area. Its research indicated that erf 10762 was ideally suited for this purpose.

[3] In terms of the relevant zoning scheme, however, erf 10762 was zoned as 'Single residential'. This zoning did not allow the erection of the base station. Accordingly, during 2008 MTN applied to the City for approval of a temporary departure of land use for a period of five years in terms of s 15(1)(a)(ii) of the Land Use Planning Ordinance 15 of 1985 (LUPO). At all relevant times MTN acted for or on the authority of the owner of erf 10762. Despite having received objections thereto, the City granted the application during October 2010. In a letter dated 4 November 2010, the City advised MTN that the approval would run for a period of five years from its final notification letter. It appears, from the papers, that the final notification letter was sent on 5 March 2013, after the determination of unsuccessful internal appeals against the decision to allow the temporary land use departure. The five year period of the land use departure thus commenced on 5 March 2013. The conditions of approval included the following:

'After 5 years, or if the site is decommissioned before such time, the applicant must remove all site infrastructure and the site must be rehabilitated, within one month, to its former state or to a condition that is in line with the land use and character of the area at the time, as required by Council. (If the communication structures are still required to be operational after this time, a new application to Council must be made for its consideration and approval.)'

[4] The conditions also provided that MTN would not be exempted from applicable regulations. MTN consequently had to obtain approval of the building plans of the base station in terms of the National Building Regulations and Building Standards Act 103 of 1977 (the Act) and the National Building Regulations made in terms of s 17(1) of the Act and published in GN R2378, GG 12780, 12 October 1990 as amended (the regulations). During April 2013 MTN submitted the building plans in respect of the base station to the City in terms of s 4 of the Act. After the submission of the building plans, a senior official of the City made the following recommendation in an on site inspection report:

'It is highly recommended that a rigorous public participation process transpires with all the relevant parties, as there has been public outcry in the media some time ago in that particular area.'

As a result of a public participation process that then took place, 21 property owners in the area, including the Trust, objected to the building plans, mainly on the basis that their adjoining and neighbouring properties' values would be negatively affected. In the normal course of events the approval of the building plans would have had to be considered in terms of s 7 of the Act.

[5] However, a memorandum written by an official of the City dated 2 October 2013, caused a significant turn of events. In this memorandum the following was stated:

'Application 01461/2013, to erect a cellular mast and communication base on Erf 10762 Constantia.

The application is to be returned to the applicant unapproved in its current form.

The applicant is to submit a written application in terms of Regulation A23(1) promulgated under s 17(1) of the National Building Regulations and Building Standards Act, 103 of 1977. The period to be applied for as a temporary building (cell mast) is to be for a maximum of five (5) years. This is to bring it in line with the Temporary Land Use Departure that has been granted for this property.

This will then replace the s 4 application and lpos is to indicate it as a temporary building.'

In a letter dated 3 October 2013, the City informed MTN that the application for approval of the building plans had been evaluated in terms of the regulations and was refused in terms of s 7 of the Act. The last sentence of the letter read:

'The applicant must comply with the requirements as indicated on the attached memo[andum] from [the] Section Head.'

The letter had attached to it the aforesaid memorandum of 2 October 2013.

[6] As a result, on 10 October 2013, MTN submitted the same building plans to the City for approval of the construction of the base station as a temporary structure in terms of the regulations. On 17 October 2013 the City approved the application in the following terms:

'Provisional authorisation is hereby granted in terms of Regulation A23(1) promulgated under s 17(1) of the National Building Regulations and Building Standards Act, 103 of 1977 as amended (the Act) to proceed with the erection of the Temporary Cellular Communication Base Station as proposed on building plan application number 01461/2013 subject to the following conditions:

1. The period it may remain on the property is five (5) years from the granting of the Temporary Land Use Departure (granted in March 2013). It will then be demolished and all material removed from the property. One or more extensions may be considered on request of the owner as contemplated in Sub-regulation A25(4) provided that the Land Use Departure is further extended.
2. The Building Development Management Section reserves the right to order you to remove the temporary structure should it be deemed necessary for health or safety reasons or on non-compliance with any of the conditions imposed in granting this authorisation.
3. All conditions set out in the granting of the Temporary Land Use Departure remain and are to be adhered to.'

[7] MTN commenced construction of the base station during July 2014 at the location indicated on the building plans. On 31 July 2014, the Trust launched an application in two parts against MTN. In the first part the Trust sought an urgent interdict restraining MTN from proceeding with the construction of the base station pending the determination of the second part, namely the review and setting aside of the approval of the building plans. The second part of the application was eventually determined by Rogers J.

[8] In the correspondence that followed on the issue of the application, MTN acknowledged that the construction of the base station in terms of the building plans took place at a location on erf 10762 that differed from the location thereof indicated on the site plan submitted as part of the application in terms of LUPO. MTN stated that it would cease construction at the incorrect location, rehabilitate that location and commence construction at the correct location. As a result, the first part of the application was removed from the roll. However, presumably in terms of advice to MTN that the approval it had received in terms of LUPO provided that the location of the base station had to be 'generally in accordance with' the site plan and that the location of the

base station on the building plans complied with that requirement, MTN resumed construction of the base station at the location indicated on the building plans. The Trust learned of this on 27 October 2014, and on 31 October 2014 it launched a second application for an urgent interdict pending the review application. This application was dismissed by Allie J on the ground that it lacked sufficient urgency. In the event, when the review application came before Rogers J on 21 May 2015, the construction of the base station had been completed. The court a quo correctly said that the construction could not have progressed far by the time that the original application was launched by the Trust on 31 July 2014 or when the urgent application was launched on 31 October 2014.

[9] In the court a quo the Trust essentially relied on two review grounds. The first was that given the nature of the base station, it ought not to have been approved as a temporary building. The second review ground, as I have indicated, related to the alleged divergence in respect of the exact location of the base station. The court a quo upheld the first review ground and, in the event, found it unnecessary to decide the second.

[10] It follows from what I have said that the interpretation of the definition of 'temporary building' in the regulations and the provisions of regulation A23 is central to the determination of this appeal. In terms of the regulations, a temporary building is defined as: 'any building that is so declared by the owner and that is being used or is to be used for a specified purpose for a specified limited period of time, but does not include a builder's shed.'

Regulation A23 further reads as follows:

**'TEMPORARY BUILDINGS'**

(1) On receipt of any application to erect a building which the applicant has declared to be a temporary building, the local authority may, subject to the provisions of subregulations (2), (3) and (4), grant provisional authorisation to the applicant to proceed with the erection of such building in accordance with any conditions or directions specified in such authorisation.

(2) Before granting such authorisation the local authority may require the submission of—

- (a) a statement of the period for which authorisation is required;
  - (b) a site plan;
  - (c) layout drawings in sufficient detail to enable the local authority to determine the general size, form, materials of construction and use of the proposed building; and
  - (d) any structural detail required by the local authority to determine the structural safety of the proposed building.
- (3) The local authority shall grant the authorisation contemplated in subregulation (1) for a limited period, to be determined with regard to the period specified by the applicant.
- (4) The local authority may at the request of the owner grant approval for one or more extensions of the period contemplated in subregulation (3): Provided that where it is intended that the public should have access to such building each such request shall be accompanied by a certificate signed by an approved competent person, indicating that the condition of the structural system is satisfactory.
- (5) The owner of such building may, not later than the last day of the period contemplated in subregulation (3), submit to the local authority such additional plans and details as required by the local authority in order to consider an application in terms of section 4 of the Act.
- (6) Where such local authority has granted approval in respect of an application contemplated in subregulation (5) the owner shall submit to the local authority an affidavit stating that any part of such building erected in terms of the provisional authorisation has been erected in accordance with the plans and details contemplated in subregulation (5).
- (7) If any plans and details contemplated in subregulation (5) have not been submitted to such local authority or if such local authority has refused to grant approval in respect thereof, the owner shall forthwith remove or demolish such building.'

[11] It is well established that the meaning of these provisions must be established by consideration of the words used, the statute as a whole and the context of the provisions. The context includes the apparent scope and purpose of the statute. See *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA 13; 2012 (4) SA 593 (SCA) para 18. In terms of the definition of 'this Act' in s 1 of the Act, the Act includes the regulations. It follows that the regulations must be interpreted in the context of the Act.

[12] In ordinary parlance, the word 'provisional' means subject to some subsequent act or event. It is in this sense that the word is used in s 7(6) of the Act. It provides:

'The provisions of this section shall not be construed so as to prohibit a local authority, before granting or refusing its approval in accordance with subsection (1) in respect of an application, from granting at the written request of the applicant and on such conditions as the local authority may think fit, *provisional* authorization to an applicant to commence or proceed with the erection of a building to which such application relates.' (My emphasis.)

[13] I agree with the court a quo that this meaning (subject to some subsequent act or event) cannot be ascribed to the word 'provisional' in regulation A23. Regulation A23(5) provides that additional plans may (not must) be submitted in order to consider an application in terms of s 4 of the Act. Most temporary buildings, however, will not be superseded by a permanent building. I agree that the word 'provisional' in regulation A23 means 'temporary'. I also agree that it could not have been intended that a temporary building is simply a building which an applicant has declared to be a temporary building in terms of regulation A23. Such a formalistic interpretation ignores the context of the Act and the regulations and is rightly not relied upon by MTN. See *Affordable Medicines Trust & others v Minister of Health & others* 2006 (3) SA 247 (CC) para 114. Regulation A23 is therefore applicable to a temporary building within the meaning of the Act and the regulations as a whole.

[14] Ordinarily a temporary building is a building that is not a permanent one. And whether a building is permanent or temporary is ordinarily determined by its objective nature, characteristics and purpose.

[15] The mast of the base station is 14,5 metres high. The court a quo meticulously analysed the building plans of the base station and said the following:

'Although there is no information before me about the cost of constructing the base station, it must be considerable. The mast and supporting equipment are no doubt



sophisticated and costly. The structure housing the equipment and on which the mast is to be installed has all the hallmarks of permanence, with specifications for foundations, external cavity walls, cement screed floors, rhino board ceilings, corrugated iron roofing and parapet walls at each end. The roofed building, with three rooms, is 7,98m length x 3,56m width x 2,5m height (with the parapets and roof extending above this). The external slab on which the mast stands is 7,98m length x 3,5m width surrounded by a 2,4m high wall.'

Counsel for MTN did not dispute any of this. He, in fact, fairly conceded that in terms of its objective nature, the base station is likely to last for an indefinite period of time.

[16] The purpose of the base station is to serve the telecommunication needs of the community in the area. The location of the base station was carefully selected to serve this purpose. MTN said that the base station 'shall result in an improved and sustained network service'. There is no evidence at all that these needs of the community will terminate within five years of 5 March 2013, that is by 4 March 2018. All indications are to the contrary. It is an objectively significant fact that MTN has never disavowed any intention to apply for the extensions expressly envisaged in the LUPO approval and regulation A23(4).

[17] There can be no doubt that upon an objective consideration of the nature and purpose of the base station, it is not a temporary building. This was not seriously disputed by counsel for MTN. The argument he advanced was that the base station falls squarely within the definition of 'temporary building' in the regulations and that thus it is a temporary building, irrespective of its physical structure. According to this argument the only requirements for a temporary building are those specifically mentioned in the definition of 'temporary building'. These are: that the building is so declared by the owner; that it is being used or is to be used for a specific purpose; that it is being used or is to be used for a specified limited period of time; and that it is not a builder's shed.

[18] The logical conclusion of this argument is that a building that according to its objective nature and purpose is decidedly permanent and not temporary, may nevertheless be regarded as temporary. According to the argument, a building may qualify as a temporary building simply by a declaration to that effect and the specification of a purpose and any limited period of time. For the reasons that follow, I am unable to agree.

[19] The long title of the Act proclaims that its purpose is to promote uniformity in the law relating to the erection of buildings and to prescribe building standards. The building standards are no doubt intended to promote the public interest, safety and health.

[20] In order to fulfil this aim, the Act provides for a clear procedure and strict requirements for approval of the erection of any building. Subject to the exceptions referred to in s 2 and in respect of minor works in s 13 of the Act, none of which are applicable here, s 4(1) provides that no person shall erect any building without the prior written approval of the local authority in question. The definition of 'building' in the Act is very wide. It includes:

'(a) any other structure, whether of a temporary or permanent nature and irrespective of the materials used in the erection thereof, erected or used for or in connection with—

- (i) the accommodation or convenience of human beings or animals;
- (ii) the manufacture, processing, storage, display or sale of any goods;
- (iii) the rendering of any service;
- (iv) the destruction or treatment of refuse or other waste materials;
- (v) the cultivation or growing of any plant or crop.'

Section 4(2) provides that the application must be in writing and on the prescribed form. Section 4(3) stipulates the information required in respect of an application in terms of s 4(1). Section 4(4) provides that any person that erects any building in contravention of the provisions of s 4(1), shall be guilty of an offence.

[21] Section 5 obliges a local authority to appoint a building control officer. A building control officer must have the qualifications prescribed in the

regulations. This is dealt with in regulation A16. The minimum qualification for a building control officer is the equivalent of a senior certificate plus three years of tertiary education at an accredited educational institution in either civil engineering, structural engineering, architecture, building management or building science. In terms of s 6(1)(a) a building control officer must make recommendations in respect of all building plans submitted to the local authority in terms of s 4(3).

[22] Section 7(1) provides as follows:

'(1) If a local authority, having considered a recommendation referred to in section 6(1)(a)—

(a) is satisfied that the application in question complies with the requirements of this Act and any other applicable law, it shall grant its approval in respect thereof;

(b) (i) is not so satisfied; or

(ii) is satisfied that the building to which the application in question relates—

(aa) is to be erected in such manner or will be of such nature or appearance that—

(aaa) the area in which it is to be erected will probably or in fact be disfigured thereby;

(bbb) it will probably or in fact be unsightly or objectionable;

(ccc) it will probably or in fact derogate from the value of adjoining or neighbouring properties;

(bb) will probably or in fact be dangerous to life or property,

such local authority shall refuse to grant its approval in respect thereof and give written reasons for such refusal:

Provided that the local authority shall grant or refuse, as the case may be, its approval in respect of any application where the architectural area of the building to which the application relates is less than 500 square metres, within a period of 30 days after receipt of the application and, where the architectural area of such building is 500 square metres or larger, within a period of 60 days after receipt of the application.'

[23] This section has been interpreted to mean that a local authority may only approve an application in terms of s 4 if, after having considered a recommendation of the building control officer in terms of s 6(1)(a), it is

satisfied both that the application complies with the requirements of the Act and any other applicable law in terms of s 7(1)(a) and that the proposed building will not bring about any of the disqualifying factors referred to in s 7(1)(b)(ii). See *Walele v City of Cape Town & others* 2008 (6) SA 129 (CC) paras 55-56 and *Turbull-Jackson v Hibiscus Coast Municipality & others* [2014] ZACC 24; 2014 (6) SA 592 (CC) paras 51-95 (in which the Constitutional Court overruled the decision of this court in *True Motives 84 (Pty) Ltd v Mahdi & another* [2009] ZASCA 4; 2009 (4) SA 153 (SCA)).

[24] The Act does not distinguish between temporary buildings and other buildings. However, in terms of s 17(1)(o) the Minister of Economic Affairs and Technology may make regulations to regulate, restrict or prohibit the erection of temporary buildings and the occupation or use thereof or access thereto. Regulation A2(1) details the plans and particulars that must be submitted to the local authority in respect of an application in terms of s 4 of the Act. In terms of the proviso to regulation A2(1), in the case of a temporary building only such plans and particulars as are contemplated in regulation A23 shall be submitted. This constitutes an exception to the carefully designed structure of the Act in respect of approval of buildings. In context this provides a strong indication that the relaxation was only intended to apply to buildings that are truly temporary. This informs the ambit and purpose of regulation A23.

[25] The definition of 'temporary building' and regulation A23 must also be read with regulation A1(7). Regulation A1(7) contains two important considerations. First, it provides that before granting provisional authority in terms of regulation A23, the local authority must, inter alia, assess the building in relation to the intended use and life thereof. This clearly requires an objective assessment. Second, it indicates the type of building that should be regarded as temporary, such as an exhibition stall (regulation A1(7)(b)) or a building for experimental, demonstration, testing or assessment purposes (regulation A1(7)(c)).

[26] In my judgment it is necessarily implicit in the regulations that an objective assessment of the nature and purpose of a building must determine

whether it is a temporary building or not. For these reasons, the court a quo correctly concluded that the City materially erred in regarding the base station as a temporary building. It follows that the appeal must be dismissed. As the judgment of the court a quo suggested, MTN may apply to the City for approval of the building plans of the base station in terms of s 4 of the Act. For this reason it is not only unnecessary, but undesirable to express an opinion on the Trust's second review ground.

[27] The appeal is dismissed with costs, including the costs of two counsel.

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C H G van der Merwe  
Judge of Appeal

**APPEARANCES:**

For Appellant: W R Mokhari SC (with him A M Mtembu)  
Instructed by:  
Mashiane Moodley & Monama Inc, Sandton  
Lovius Block Attorneys, Bloemfontein

For Respondents 1 to 3: D Mitchell SC (with him L Kelly)  
Instructed by:  
Francis Thompson & Asdpen, Cape Town  
Symington & De Kok, Bloemfontein





## Emile Esquire

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**From:** Emile Esquire <emile@enviroafrica.co.za>  
**Sent:** Thursday, 13 June 2019 12:29 PM  
**To:** 'tanyalocks@gmail.com'  
**Cc:** 'johnbrewerx@gmail.com'  
**Subject:** RE: Objection to Temporary use Departure & Permanent Departure Portion 25 of Farm Westford 191, Knysna

Dear Tanya,

Your e-mail correspondence dated 12 June 2019 and attached document dated 25 march 2019, refers.

Please note that your comment is duly noted and that your names will be placed on the list of registered Interested and Affected Parties (I&APs) and will receive an electronic copy of the Pre-Application Basic Assessment Report (BAR) that will go out for public comment in due course.

Kind regards,

Emile Esquire



**EnviroAfrica**

*Environmental Consultant*

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**From:** Tanya Locks <[tanyalocks@gmail.com](mailto:tanyalocks@gmail.com)>  
**Sent:** June 12, 2019 10:57 AM  
**To:** [admin@enviroafrica.co.za](mailto:admin@enviroafrica.co.za)  
**Cc:** John Brewer <[johnbrewerx@gmail.com](mailto:johnbrewerx@gmail.com)>  
**Subject:** Fwd: Objection to Temporary use Departure & Permanent Departure Portion 25 of Farm Westford 191, Knysna

Dear Emile,

Please find attached our letter of objection for the mast site. Bernard visited our property on Friday and we have a direct view of the mast location.

Kind regards

Tanya Locks  
0793449728

----- Forwarded message -----

**From:** Tanya Locks <[tanyalocks@gmail.com](mailto:tanyalocks@gmail.com)>

**Date:** Mon, 25 Mar 2019, 20:44

**Subject:** Objection to Temporary use Departure & Permanent Departure Portion 25 of Farm Westford 191, Knysna

To: <[Lmniki@knysna.gov.za](mailto:Lmniki@knysna.gov.za)>

Cc: John Brewer <[johnbrewerx@gmail.com](mailto:johnbrewerx@gmail.com)>

Dear Linda,

Thank you very much for your time today. I have attached an electronic copy of the objection letter from John Brewer & myself.

Unfortunately I did not receive the email you sent with the four relevant planning documents. Possibly it was too large to send in one email. I already have the Policy for the placing, sizing and appearance of cellular communication masts. Is it possible to send me the other three documents?

Kind regards

Tanya Locks

----- Forwarded message -----

From: **Tanya Locks** <[tanyalocks@gmail.com](mailto:tanyalocks@gmail.com)>

Date: Mon, 25 Mar 2019, 13:35

Subject: Fwd: letter

To: Tanya Locks <[tanyalocks@gmail.com](mailto:tanyalocks@gmail.com)>

Portion 26 of Westford Farm  
191

Knysna

6576

25th March 2019

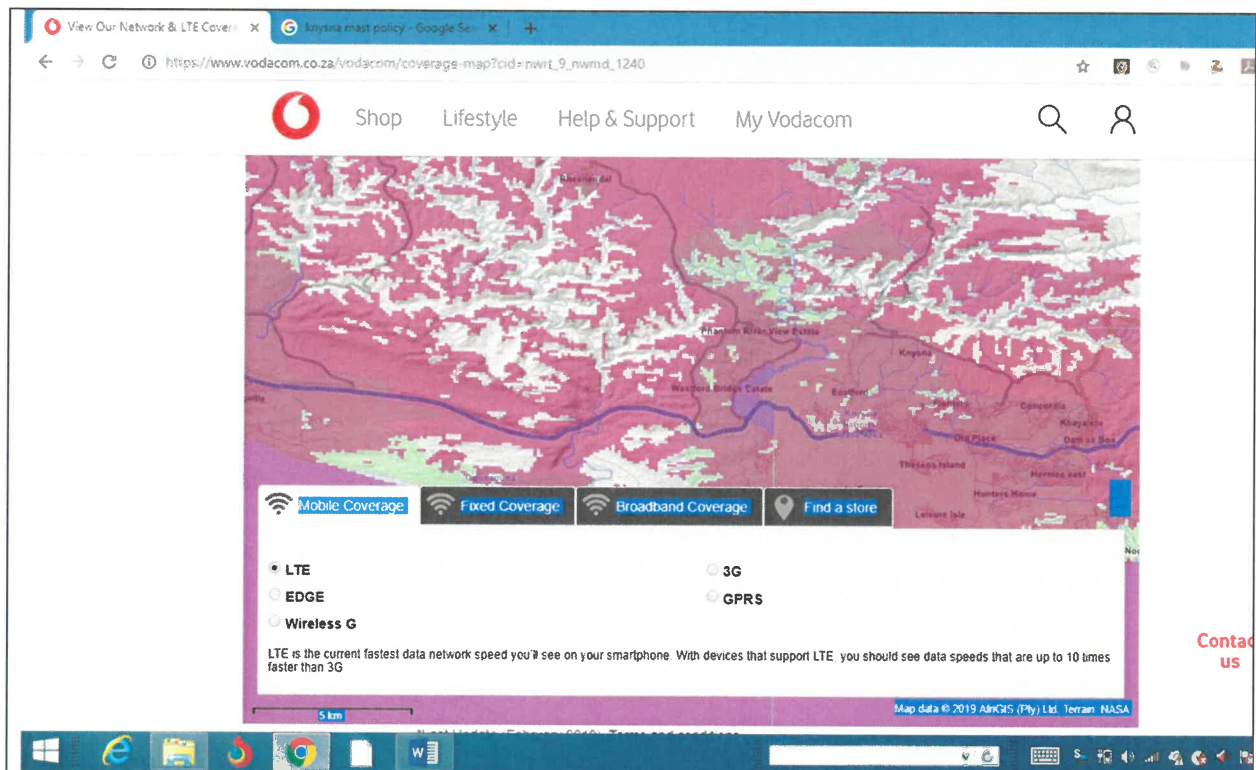
**Objection to Temporary Use Departure & Permanent Departure: Portion 25 of Farm Westford 191, Knysna**

Dear Municipal Manager

I am writing to object to the above planning application.

The area in which this mast is proposed already has Vodacom LTE connectivity, therefore, existing masts can provide cell phone connectivity and there is no need or desirability for an additional mast within this area. The mast will have a significant negative visual impact on the surrounding area. The mast is out of character with the surrounding properties on the Rheenendal Road and will negatively affect tourism and the charisma of the neighbourhood. The mast contravenes Knysna Municipality's Policy for the Placing, size and appearance of cellular communication masts within the Knysna Municipal area.

The application provides either false or out of date information on the current mobile phone connectivity in the area. The Vodacom LTE connectivity is substantially greater than Figure 6 in this report and their website shows connectivity all along the road and in most areas except the kloofs where there are no residents. I have attached a screenshot of the Vodacom website below which differs significantly from Figure 6 of the report.





Planning policy requires that cell phone masts must be designed in a manner which provides for them to be shared by the other service providers. As Vodacom already provides adequate coverage to this area, other service providers should be using these existing masts used by Vodacom, not seeking alternative mast locations.

As noted in the Knysna Spatial Development Framework Strategic Synthesis 2017, Section 5.2.1 'The Environment is the Economy' and 'The environmental resource base of the KMA as its most important economic asset'. 'The unique character and qualities of the KMA should be enhanced by recognizing and ensuring statutory protection of scenic landscapes, visual landmarks and scenic routes from obtrusive and unattractive development.' The area surrounding this mast is a recognized scenic route and area of tourism known as the Rheenendal Ramble (see [www.rheenendalramble.co.za](http://www.rheenendalramble.co.za)). There are many businesses in the vicinity of the mast that make natural products (e.g. soaps, honey, plant nursery) or provide tourist accommodation where the natural product or scenic natural environment is seen as the key characteristic. A mobile phone mast is detrimental to this neighbourhood character. Although globally many tourists often look for telecommunication connectivity with accommodation, it is WiFi that is noted with tourist accommodation rather than mobile phone signal.

The mast will be visually intrusive at 25m high close to the existing ridge of the Rheenendal road. No attempt has been made to blend this mast in with the existing natural surroundings.

The Knysna Municipality's Policy for the placing, size and appearance of cellular communication masts within the Knysna Municipal area requires that two alternative solutions to the problem must be submitted for alternative placements of the mast in addition to alternative material/colour/structure solutions. The document states that 'Various alternative candidates were evaluated and approached for this proposal as detailed below:', but no information was provided.

The policy also requires that masts in rural areas must be screened by a back drop of trees and this has not been proposed. Most of the trees currently on the site are invasive, alien species (Australian blackwood and Pine), so there should be a control plan for their removal in accordance with National Environmental Management Biodiversity Act 2004 and the Alien and Invasive Species Regulations. The site layout drawing in Annexure E appears to show existing trees, although there is no legend. This plan appears to have been drawn from satellite mapping without much knowledge of the site which has led to a number of errors. The boundary line from E to D is in the wrong place and shows the cottage (which is in portion 25 of Westford Farm, not portion 26) within the mast site and many more trees on this site boundary than there are. On the boundary between portion 25 of Westford Farm, there are just three trees within the proposed site and these are all the alien, invasive Australian blackwood / *Acacia melanoxylon*.

Annexure B shows the telecommunications coverage before and after the installation of the mast. The 500m radius from the mast I estimate to cover 25 property erfs. More pertinently the fair and good coverage and availability shown on the map, I estimate extends to just 16 different property owners' dwellings. With the exception of the site owner, the majority of residents are opposed to this mast about which they received no prior consultation. It seem ludicrous to be proposing such a visual intrusion for so few potential 'beneficiaries' (the document on page 12 states that 'the surrounding community will be the main beneficiary'). Only one property owner (the site owner) whose property has been up for sale for the majority of recent years, so has questionable interest in the future of the area, appears to want this mast. There is currently a 'For Sale' sign outside his property.

The proposal mentions the 'potential for increased urban densification and growth in the area' however the area surrounding the proposed mast is composed of smallholdings, many around the minimum size of 3 hectares with a limit to the number of dwellings so there is very little potential for this.

There is no public land within the vicinity of the mast except the Rheenendal Road. This area of road has a number of bends with no overtaking restrictions for the majority of the mast area. The road has become increasingly busy and dangerous over the years and with most people passing at 80km/h it is not an area that would experience a high need for phone calls or data and as stated above, the road already has cell phone coverage.

Section 4e of the submitted document notes that Environmental impact assessment (EIA) and Environmental Authorization (EA) is required as the mast is being placed on land not previously used for this purpose and the mast exceeds 15m in height. The purpose of EIA is to identify the likely significant effects on the environment and take them into account during the decision making process. The document states that 'Highwave Consultants have requested an Environmental firm to submit the NEMA Applicability checklist and the response from DEADP will be sent through as soon as it is received.' This indicates that the environmental assessment was not part of the decision making process in the selection of this site and that the consideration of alternatives that is required for the objectivity of the assessment process has not occurred. Public involvement is a fundamental principle of EIA and helps to ensure that the EIA process is open, transparent and robust and this has not occurred.

The applicant does not appear to have considered the surrounding area or residents. With the exception of the site owner no one has been consulted about the mast. The application states 'The property is surrounded by other.' i.e. no information about the surrounding area.

Therefore, the application for this Telecommunication station should be refused as there is no need or desirability for it and it contravenes planning policy.

Yours sincerely,

John Brewer & Tanya Locks