



**APPEAL AUTHORITY IN TERMS OF SECTION 114(3) OF THE CITY OF CAPE TOWN
MUNICIPAL PLANNING BY-LAW AS AMENDED**

Our Reference: PAAP 05/10/2020

To: The Appellant
TTP Consult

NOTICE OF DECISION AND REASONS

APPEAL IN TERMS OF SECTION 108(1) OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 AS AMENDED IN RESPECT OF A DECISION TAKEN BY THE AUTHORISED OFFICIAL TO REFUSE AN APPLICATION FOR A HEIGHT DEPARTURE: PORTION 22 OF FARM ZOUTERIVIER NO. 22, 403 RONDEBERG ROAD, CAPE FARMS

A. INTRODUCTION

1. The appellant is Lian Kruger from TTP Consult.
2. The appeal is against a decision taken by the Delegated Official to refuse an application for a height departure from 25 m to 35 m for a freestanding base telecommunication station ("FBTS"). The consent use application for the FBTS was approved including two departures but not the height departure.
3. The above is necessary in order to erect the FBTS on a portion of this property that is zoned Agriculture Zone.
4. The Delegated Official approved the consent and departures but not the height departure on application 26 March 2020 with conditions.

B. DOCUMENTS

5. The following documents were considered when determining the appeal:
 - 5.1. The report to me dated 11 September 2020 with the following annexures:

5.1.1 Addendum A, namely the appellant's grounds for appeal.

5.1.2 Addendum B, namely the Delegated Official's report with annexures.

5.1.3 Addendum C, namely the Site Development Plans.

5.2. The recommendations and reasons from the Planning Appeals Advisory Panel ("PAAP").

C. APPEAL PROCEDURES

6. The appeal was considered in terms of the following process:

6.1. The appeal served at a meeting of my PAAP held on 13 October 2020 and it was decided to recommend that the appeal be upheld.

6.2. A copy of the recommendation and reasons from my Advisory Panel were placed before me for consideration.

D. FORMAL REQUIREMENTS

7. The appeal was submitted timeously.

E. GROUNDS OF APPEAL

8. A summary of the appeal grounds is set out below. To the extent that any appeal ground raised by the appellant is not specifically listed, I have not disregarded or ignored such ground but rejected it for the reasons given by the City's officials, the MPT and/or my Advisory Panel.

9. The appeal grounds may be summarised as follows:

9.1. The agricultural (rural) area have weaker network coverage as a result of limited cell towers in the area. It is therefore necessary to have the height departure in order to form part of the interconnected web of existing telecommunication infrastructure.

9.2. Apart from the limited telecommunication mast infrastructure in the area, other factors also contribute to weak coverage such as the height of the antenna over the surrounding landscape, the frequency of the signal in use, the directional characteristics of the antenna array on the site and the local geographic or regulatory factors.

- 9.3. Table 1 indicates and summarises the distance of other FBTS's in the area – from my perusal the closest one is approximately 5.637 m from this site.
- 9.4. The proposed 35 m FBTS would allow the antenna to be mounted 10 m higher to reach distances that would not be possible with a 25 m structure. If a 25 m high structure were to be constructed the demand toward network coverage would not be as effectively met, resulting in an undersupply of coverage to the rural area.
- 9.5. The regulation departure to 35 m in lieu of 25 m in height is a better alternative to an additional tower in proximity of the subject property that would be required to provide network support to the area.
- 9.6. The appellant is requesting the Appeal Authority to reconsider the requirement to submit a noise management plan as this is not relevant to the proposed development. This will result in unnecessary cost to the appellant and will be counterproductive.
- 9.7. The appellant is also requesting the Appeal Authority to reconsider the requirement to determine the public exclusion zone by a qualified person as this is deemed unnecessary due to the nature of the application not posing emission exposure to the surrounding area or habitable structures within the prescribed 50 m public safety zone.

F. RESPONSE TO THE APPEAL

10. Not applicable.

G. DEPARTMENTAL ASSESSMENT

11. The Officials reiterate the following in relation to the appeal:
- 11.1 The department is "not convinced" that the applicant has provided sufficient motivation for the height within the agricultural context.
- 11.2 The applicant identified and provided a list of all current TMI in proximity to the subject property and proposing a 35 m FBTS to be the first of its nature, which in essence exceed any other built structure in the immediate vicinity. The Officials attended a site visit on 18 March 2020 and it revealed that the rural landscape does not have significant natural features to lessen the impact of the proposal.

- 11.3 The official "maintains that the applicant did not adequately prove that a 35 m FBTM in the agriculture/rural landscape will not have a negative visual impact".
- 11.4 The applicant's appeal in respect of the health requirement is noted. However, these were not conditions of approval, but a general note as the department cannot impose conditions governed by other sets of legislation. The Department claims that the Noise Management Plan is required in terms of the ECA and the decision on the land use application does not absolve the applicant from complying with any other law.
- 11.5 The appeal against the requirement for the applicant to take appropriate steps to determine the public exclusion zone around the base station prior to the erection of infrastructure is not supported. The Department views it "necessary to protect the general public" from accessing the infrastructure and to be made aware of the potential health impacts.

H. PLANNING APPEALS ADVISORY COMMITTEE

- 12. My Planning Appeals Advisory Panel ("PAAP") recommended that the appeal be upheld for the following reasons:
 - 12.1. The property is zoned agriculture AG.
 - 12.2. The subject property is of more than suitable size, in order to accommodate the freestanding base telecommunication station, coupled with the necessary infrastructure and parking bay requirements as stated in the MPBL, 2015.
 - 12.3. The height departure is desirable in this instance because of the isolated site.

I. REASONS

- 13. Having considered all of the documentation before me, as well as the relevant extracts from the By-Law and the applicable legislation, plans, policies and similar instruments, I agree with and adopt the reasons and recommendations from my Planning Appeals Advisory Panel. I am in disagreement with the Delegated Official's report and am dismayed at the poor reasoning therein regarding the refusal of the height departure. I add the following:
 - 13.1. The property is zoned Agriculture Zone (AG) and isolated. From the table quoted by the officials and presented by the appellant, the closest FBTS is a considerable

distance away. I fail to see why; in this instance the mast can't be 10 m higher. It will defeat the purpose if the tower, which will inevitably lead to a proliferation of more masts.

- 13.2. Also, because the area is rural/agricultural, it may inevitably be difficult to mitigate the visual impact, but because this is so isolated, it can be justified.
- 13.3. The reasons for the conditions that were imposed and the reasoning thereof is arbitrary in my view, especially considering the site location.

J. CONCLUSION

14. In light of the above analysis and reasons, I hereby, in terms of the powers vested in me in terms of section 108(7)(a) of the By-Law, **uphold the appeal and grant the height departure to 35 m subject to Annexure A hereto which I amend as follows: All conditions listed under Appendix 1 "the Standard Health Requirements" are to be deleted. For clarity, these conditions under the consent and departure application that was granted by the official are also to be deleted.**

Yours faithfully,



ALDERMAN DAN PLATO

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Date: *20/10/2020*