

**AGRICULTURE, CONSERVATION AND ENVIRONMENT**

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**RECORD OF DECISION FOR PROJECT REFERENCE GAUT 002/04-05/2259**

By virtue of the powers delegated by the Minister in terms of Section 22 of the Environment Conservation Act (Act 73 of 1989) ("the Act"), the Department of Agriculture, Conservation and Environment ("the Department") has decided not to authorise Towndev to undertake the activity specified/ detailed below.

**1. DESCRIPTION, EXTENT AND LOCATION OF THE ACTIVITY:**

The proposed activity entails the subdivision and subsequent rural residential development with existing homestead and reserved area which falls within the ambit of sub regulation 2(c) of Government Notice R1182 (as amended) promulgated under sections 21, 26 and 28 of the Act.

The activity is proposed to take place on Portion 20 of the farm Grootfontein 394 JR. The site falls within the jurisdiction of Kungwini Local Municipality of the Metsweding District Municipality.

**2. KEY FACTORS INFORMING THE DECISION:**

In reaching its decision not to grant authorisation, the Department took, *inter alia*, the following into consideration:

- a) The information contained in the:
  - Plan of Study for Scoping dated 22 March 2005.
  - Scoping Report dated October 2006.
  - Supporting document dated 07 March 2007 and 19 June 2007.
- b) Relevant information obtained from the Departmental information base including *inter alia*:
  - Gauteng Agriculture Potential Atlas (GAPA3, June 2006).
  - Gauteng Open Space Program (GOSP 3).
- c) The objectives and requirements of relevant government legislation, policies and guidelines including:
  - The Act and section 2 of the National Environmental Management Act (Act 107 of 1998) ("NEMA").
  - The Development Facilitation Act (DFA).
- d) Kungwini West Environmental Management Framework (EMF).
- e) Compliance with applicable departmental, provincial and national legislation, policies and guidelines including the principles set out in section 2 of the National Environmental Management Act 1998 (Act 107 of 1998).
- f) The site specific merits of the application, the acceptability of the potential environmental impacts related to the proposal and the desirability of the development in the local and regional context.
- g) The findings of the site inspection undertaken by Olivia Rakobela of this Department on 22 June 2005.

Based on the evaluation of the above information the Department concluded *inter alia* that:

1. The revised Gauteng Agriculture Potential Atlas (GAPA 3, June 2006) indicates that the proposed site falls within the Agricultural Hub (HP-AH5) and designated an Important Agricultural Site. The site and its surrounding are predominantly characterised by high agriculture potential land. It is the Department's position that the loss or conversion of this natural non-renewable resource (high agricultural potential land) through rural residential development is not a desirable and/or sustainable land use option taking into account the limited availability or scarcity of high agriculture potential land as resource that require protection and sustainable utilisation. Therefore, granting authorisation for the proposed development will result in an agricultural land being permanently damaged and the impacts resulting from the loss of high potential agricultural land cannot be discounted.
2. This Department does not support the loss of high agricultural potential land, as it is a limited resource in the province and needs to be protected from development pressure as provided for in principle 2(3) of the National Environmental Management Act, (Act No. 107 of 1998) (NEMA) and principle 3(1) (c) (ii) of the Development Facilitation Act, (Act No. 65 of 1995).
3. The proposed residential development does not adopt a risk-averse and cautious approach as there will be the transformation of an agricultural land (change the land use from agriculture to residential in the agricultural land). In order to achieve sustainable development, NEMA requires the Department to take into consideration certain factors including applying a risk-averse and cautious approach, which takes into account the limits of current knowledge about the result of decisions and actions" [section 2(4)(a)(vii)].
4. The proposed development falls outside the urban edge as per Kungwini West Environmental Management Framework (EMF 2004) which indicates that alternative 2 proposes that the urban edge be delineated along the current of urban activity. The Department does not support and strongly discourages unsustainable development outside of the urban development boundary. Therefore, the proposed development is not supportive of the Framework's objectives which promote in-fill development within the urban edge and will also result in urban sprawl and densification outside the urban edge.
5. The proposed development is not compatible with the principles of Development Facilitation Act ("DFA") (Act No. 65 of 1995), which requires optimal use of land and supports the development of compact cities.
  - i. Development should promote integrated land development in rural and urban areas in support of each other [Principle (3) (1)(c)(ii)]. The activity will transform and sterilise significant areas of agricultural land, thereby impinging upon the integration of urban and rural functions.
  - ii. Development should encourage environmental sustainable land development practices and process [Principle 3(1)(c)(viii) and Principle 3(1)(h)(iii)]. The activity does not encourage sustainable use of nature and environmental resources as it proposes the transformation of agricultural land.
  - iii. The Department supports government policy that aims to promote in-fill development (Development Facilitation Act No. 65 of 1995) and densification within the urban edge and has noted that the proposed project is not supportive of these objectives
6. The proposed residential development (275 residential units that will occupy 314.43ha of the 538.19ha site) will significantly change the sense of place which depends on the active agricultural land and open-space areas and set a precedent for future development in the area.

Based on the above, the Department's conclusion is that the activity will lead to substantial detrimental impact on the environment, alternatively, that potential detrimental impacts resulting from this activity cannot be mitigated to acceptable levels and that the principles contained in section 2 of NEMA will not be given effect to if the activity were to proceed.

### 3. DURATION OF DECISION:

The applicant shall be entitled to reapply for authorisation in terms of the Act or any succeeding legislation after a period of 3 (Three) years from the date of this Record of Decision or prior to the expiry of this period if the applicant believes that a material change in the factors which influenced the decision of the Department has occurred.

### 4. APPEALS:

Appeals in respect of this decision must be directed to the MEC, Mr K Mosunkutu, Department of Agriculture, Conservation and Environment, Gauteng Provincial Government within 30 (thirty) days of the date of this decision. Appeals can be submitted utilizing one of the following methods:

By facsimile: (011) 333 0620;  
By post: P.O. Box 8769, Johannesburg 2000;  
By hand: 11<sup>th</sup> Floor, Diamond Corner Building, 68 Eloff Street, Johannesburg.

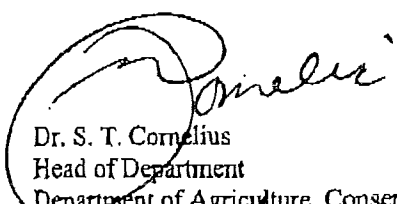
Please note that all appeals must comply with Section 35 of the Environment Conservation Act, Act No 73 of 1989, read together with Regulations R1182 and R1183 of 5 September 1997. In terms of the above section and regulations, your appeal must set out all the facts as well as the grounds of appeal. Furthermore, all the relevant documents or copies thereof must accompany the appeal and a commissioner of oaths must certify them as true.

The applicant is required to inform all registered interested and affected parties of the decision contained in this Record of Decisions as well as the process for appeal described above within 7 (Seven) calendar days of the date of signature of this Record of Decision. Failure to inform interested and affected parties within the stipulated time period will constitute non-compliance with this Record of Decision.

Should the applicant wish to appeal this decision, or any aspect of this decision, the applicant must notify and furnish copies of the appeal, which will be submitted, the MEC to all registered interested and affected parties. Proof of such notification must be submitted to the MEC with the appeal. Failure to comply with this provision may result in the MEC refusing to consider the appeal.

The lodging of an appeal in no way entitles the applicant to commence with the development or activity prior to a decision from the MEC upholding the appeal.

Yours faithfully

  
Dr. S. T. Cornelius  
Head of Department  
Department of Agriculture, Conservation and Environment  
Date: 22/08/2007