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BY HAND

My Ref. Anterama
Your Ref. E12/2/3/1-B3/28-0497/07

The Director : Integrated Environmental Management
Department of Environmental Affairs and Development Planning
Western Cape Provincial Government

Attention : Mr Jaap de Villiers

Dear Sir,

APPEAL I.T.O. NATIONAL ENVIRONMENTAL MANAGEMENT ACT (Act. No. 107 of 1998): PROPOSED DEVELOPMENT OF ERF 4587, VAN DER POELS DOORDRIFT STREET, PAARL

Environmental Authorisation (refusal) by the Department of Environmental Affairs and Development Planning dated 01 April 2009, refers. Herewith full grounds for the appeal.

A. DRAFT URBAN EDGE STUDY, April 2007

1. The urban edge is not yet finalized and currently has no legal status as it needs to be approved as a structure plan or SDF. The Drakenstein municipality indicated that the intention is to accommodate the urban edge as part of the SDF. The SDF has not yet been approved and still needs to be subject to further public consultation.
2. In different drafts of the Urban Edge Study Erf 4587 was either inside or outside of the proposed urban edge, indicating that there is no agreement as to the exact demarcation of the urban edge. It seems that the authorities that have to make a decision about the urban edge have not come to an unanimous decision. The draft urban edge can thus not be used to base decisions on as agreement on the alignment has not yet been reached.
3. The Urban Edge study provides guidelines for future amendment as it acknowledges that it was done on a broad scale and thus some refinement should be permissible in its implementation, i.e. more detailed planning and applications may determine that there is merit in amending the edge.

The proposed development of Erf 4587 complies with these guidelines and thus qualifies for amendment. The proposed development complies with the guidelines for the amendment of the urban edge as it:

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- (a) adjoins existing urban development and therefore will not have a significant cost impact on municipal services;
 - (b) conforms with policies and objectives of the Drakenstein SDF, w.r.t maintaining character and aesthetic quality of Paarl Mountain;
 - (c) will not lead to further pressure to extend the urban edge as there are few instances on Paarl mountain where development could be allowed on the basis of being below the existing line of development and not having adverse visual impacts.
4. The northern boundary of the neighbouring property (Erf 4588), which is at the same contour height as Erf 4587 has been designated as a Paarl Farms Edge (which permits development). It is unclear why consideration should be given to permitting urban development on this erf, and not on Erf 4587 which is at the same level. Particularly as these properties are mainly visible in views from the north, and Erf 4588 is in front of (north of) Erf 4587. It makes no sense to allow development on the erf in front and not on the erf behind (which would largely be hidden from view by any development that was to be permitted on Erf 4588).
 5. According to Drakenstein Municipality a portion of the farm Sonneskyn was rezoned to single residential. Please note that the attached diagram/plan reflects a single dwelling zoning outside the Urban Edge. (See attached Addenda)
 6. Erf 4587 is below the existing line of development, i.e below Berghof hotel (a large scale building and site with urban character refer photo 4) on Erf 11088 to the south of Erf 4587 and the farmworker housing on Erf 4586, to the north of Erf 4587 (refer photo 4).
 7. The proposed development on erf 4587 is a low density residential development with a gross density of 10 DU/ha, which would be similar in character to adjoining low density residential areas to the east. Fire management regulations can be incorporated into the Operational EMP or can be included as conditions of authorisation.
 8. During the Basic Assessment Process the impact of the proposed development on mountain views was investigated. The site is principally visible from the north. The proposed development of Erf 4587 would not however raise the height at which urban development appears on this portion of the mountain, as seen from the north.

The proposed development of Erf 4587, at a gross density of 10 DU per ha, would be consistent with the character of the low density residential areas just east of the property, and would therefore not alter the existing character of the urban fringe.
 9. It should also be noted that the proposed development of Erf 4587 is consistent with the main objectives of the urban edge, which is to protect visually sensitive areas and areas of important biodiversity and agricultural activity. Erf 4587 is currently vacant and derelict and may be subjected to erosion. Erf 4587 is covered in alien species, and there are no important biodiversity or agricultural activity that needs to be conserved.

B. PAARL FARMS LAND USE MANAGEMENT STUDY, July 2005

Erf 4587 was subdivided in 1925. It is currently owned by Anterama Inv CC since 2005, and the previous owner was Sonneskyn Landgoed Pty Ltd who owned the land since 1976.

L'Joubert Estate is currently being developed on a portion of the Farm Sonneskyn (refer photo 6). It is thus unclear why a statement is made that erf 4587 is of high conservation value as it originates from the farm Sonneskyn, while other developments were approved on Sonneskyn. The mere statement on the high conservation value is also not substantiated with botanical or biodiversity surveys. Erf 4587 has been highly impacted on in the past which lead to a total destruction of top soil and any indigenous vegetation. The erf was covered with Blue gums and cleared about a year ago. Since then no indigenous vegetation has reappeared and the erf is still in an extremely degraded state (refer photo 5). The erf furthermore is not situated as such to create a biological corridor as any such corridors have been blocked by urban development. To rehabilitate this 8000m² property would not only be extremely expensive due to the degraded state, but will serve no conservation purpose. It is my view that due consideration of the statement regarding the conservation value was not done.

Cape Nature in fact commented as follows on the Basic Assessment:

"We have no objections from an ecological perspective, since there appear to be no ecological issues of regional significance relevant to this application"

C. THE DRAFT DRAKENSTEIN SPATIAL DEVELOPMENT FRAMEWORK, OCTOBER 2006

The Urban Edge has not been established as the Drakenstein Urban Edge Study is still in draft form and has no legal status. Erf 4587 is currently derelict and may be subject to erosion.

The SDF proposes that established farms be used as barrier between urban areas and core conservation areas. The site does not border directly onto the Paarl Mountain Reserve. It is separated by a significant erf (erf 4586) which is also zoned for agricultural purposes and which forms a buffer to the reserve.

This 8000m² erf is in the first place not a viable farming entity and although zoned for agricultural purposes not large enough to sustain any productive agriculture. Should the right of agriculture be exercised it should be kept in mind that a single house and outbuildings can be built on the site and the plot can be used for example grazing of animals etc. This may in fact have a more detrimental impact on the area than the proposed development. The potential impacts include high water used to irrigate pastures, spraying of vineyards/orchards, potential pollution of run-off due to herbicides/pesticides etc.

The Department of Agriculture also indicated that they have no objection to the change of land use.

D. HERITAGE WESTERN CAPE (HWC)

As stated in the Basic Assessment Report, a full heritage report was submitted to HWC. This report was submitted to the APM meeting who approved the application in principle. The report was then also referred to the BELCOM committee who decided not to support the application, as the proposed development would be outside of the urban edge.

It seems that HWC has not done a proper investigation or took an informed decision as their opposition to the proposed development is based mainly on the fact that erf 4587 is not included in the urban edge. As stated in paragraph A above, the Draft Urban Edge Study that has no legal status and therefore HWC's comments is not based on fact and should they have no other reasons for not supporting this proposed development, their comments should be disregarded.

CONCLUSION

Although the Department of Environmental Affairs and Development planning indicated that a site visit was undertaken, it appears that no real assessment of the site was considered and a decision was taken based on draft policy documents which (1) lack site level detail and (2) has no legal status or buy-in (agreement amongst stakeholders). Thus to base a decision solely on such policy documents is unacceptable and the minister is urged to consider the specific site conditions and merit of the application in reaching a decision on the matter.

Yours faithfully



2009-05-07.

Willem Bührmann

Enclosures : Application form
Photos
"Authorisation" from DEA&DP
diagram/plan showing zoning outside Urban Edge

cc : Anterama