

M 3/6/5

Adv P Kantor
Kantor Legal Services cc
18 Canigou Avenue
RONDEBOSCH
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Fax 086 672 3395

Dear Adv Kantor

APPEALS LODGED IN TERMS OF SECTION 43(2) OF THE *NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998)* AGAINST THE ENVIRONMENTAL AUTHORISATION GRANTED FOR PROPOSED MIXED USE DEVELOPMENT AND ASSOCIATED INFRASTRUCTURE ON ERVEN 11058-11065, 11067-11070, 23459, 28094, 41076-41079, 41382-41384, 41533, 41568, 41948 AND 43919 BADEN POWELL DRIVE, MITCHELLS PLAIN (KAPTEINSKLIP)

The appeal on behalf of your client lodged against the decision of the Competent Authority to issue a partial Environmental Authorisation ("EA") granted on 24 November 2016 for the mixed use development and associated infrastructure on erven 11058-11065, 11067-11070, 23459, 28094, 41076-41079, 41382-41384, 41533, 41568, 41948 and 43919 Baden Powell Drive, Mitchells Plain (Kapteinsklip) ("the property"), has reference.

After careful consideration of all the appeals, as well as supporting documentation received, I have decided to partially uphold the appeals and vary the decision of the Competent Authority to address the concerns raised with regard to the requirement to permit development to the south of Baden Powell Drive.

By virtue of the powers conferred on me by the *National Environmental Management Act, 1998 (Act No 107 of 1998)* ("NEMA") and the Environmental Impact Assessment Amendment Regulations, 2010 and 2014 ("EIA Regulations") I herewith grant partial environmental authorisation to the City of Cape Town to undertake the list of activities specified in section B of the EA granted on 24 November 2016 with respect to Alternative 1 (applicant's preferred alternative).

Alternative 1 (applicant's preferred alternative – herewith partially authorised)

This alternative entails the removal of indigenous vegetation to establish a mixed use development

and associated infrastructure on Erven 11058-11065, 11067-11070, 23459, 28094, 41076-41079, 41382-41384, 41533, 41568, 41948, 43919 and a Portion of Erf 1212 marked as 1, 2, 3 and 4 on the attached map (north and south of Baden Powell Drive), Mitchells Plain.

The preferred alternative includes the following:

- A business component;
- A retail component;
- A commercial component;
- A residential component;
- Public open spaces;
- Public facilities; and
- Associated infrastructure (which includes roads, pipelines for the transportation of water, sewage and stormwater and stormwater attenuation ponds).

The original Environmental Authorisation granted on 24 November 2016 and the conditions under which the authorisation was granted are still valid, however Condition E2 and section F are removed because it is no longer applicable. Conditions E1 and E3 are amended to read as follows:-

CONDITION E1

This environmental authorisation is valid for a period of live years from the date of this appeal decision. The holder must commence with the listed activities within the said period or this environmental authorisation lapses and a new application for environmental authorisation must be submitted to the competent authority, unless the holder has lodged a valid application for the amendment of the validity period of this environmental authorisation, before the expiry of this environmental authorisation. In such instances, the validity period will be automatically extended ("the period of administrative extension") from the day before this environmental authorisation would otherwise have lapsed, until the amendment application for the extension of the validity period is decided. The listed activities, including site preparation, may not commence during the period of administrative extension.

CONDITION E3

The applicant must within 12 (twelve) calendar days of the date of this decision letter and in accordance with 2010 NEMA regulation 10(2), publish a notice in the newspapers contemplated in regulation 54(2)(c) and (d), and which newspaper was used for the placing of advertisements as part

of the Public Participation Process, that informs all interested and affected parties of the decision and where the decision can be accessed.

REASONS FOR THE DECISION

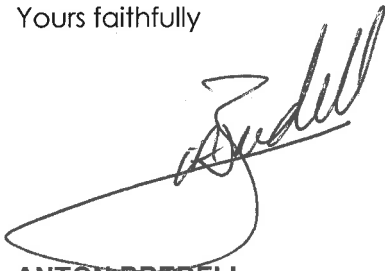
The appeals are upheld with regard to the development of a portion of Erf 1212 Baden Powell Drive, Mitchells Plain (Kapteinsklip) marked as 1, 2, 3 and 4 on the attached map for the proposed development. The original EA is varied based on the reasons that were provided in the decision of the delegated authority. Below find further reasons for partially upholding the appeals and varying the decision of the competent authority:

- i. The NEMA Principles provide that a risk-averse and cautious approach is applied, which takes into account the limits of current knowledge about the consequences of decisions and actions; and that negative impacts on the environment and on people's environmental rights be anticipated and prevented, and where they cannot be altogether prevented, are minimised and remedied.
- ii. The need for cross subsidisation and increased viability of the development through the construction of high end residential units, retail and business components;
- iii. The potential to create the opportunity for the growth of the economy in activities which include *inter alia* tourism and real estate;
- iv. Employment opportunities will be created;
- v. It is the best practicable environmental option since it allows for limited development on the southern site whilst limiting the impacts on the natural, cultural and the scenic heritage significance of the area. The False Bay coastal zone being of high conservation, scenic and tourism value;
- vi. Baden Powell Drive, is an established location for beach front developments such as Capricorn and Muizenberg, development is however limited to the northern side of Baden Powell Drive;
- vii. Permitting the development of Erf 1212 according to the applicant's preferred alternative would lead to the loss of ecosystem function in the stable parabolic dunes in the area;
- viii. On site fauna is considered threatened and the development of part of the site would have a lesser biodiversity impact on the remaining coastal vegetation;
- ix. Approval according to the applicant's preferred alternative will result in the permanent loss of Red List species; and
- x. The Botanical Specialist Peer Review of the Botany and Dune Specialist Report indicates that from a biodiversity perspective significant development south of Baden Powell Drive should

not be permitted but that a small triangle of land, approximately 0.75 ha in extent is developable and would retain a 210m wide potential ecological corridor south of this triangle.

- xi. Although the additional comments indicate that increasing density on the northern section would not achieve the same or similar socio-economic objectives as the southern section, I am of the view that increased densities and a viable economic development typology can be achieved by changing the proposed typology on the northern section and within the authorised development triangle.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Anton Bredele', written over a large, light-colored oval shape.

ANTON BREDELL
WESTERN CAPE MINISTER OF LOCAL GOVERNMENT,
ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING

DATE: 21/11/2017

	TOTAL AREA (ha)
Development North of Baden Powell Drive (exclu. PRASA)	28.6
Development South of Baden Powell Drive	10.15
Total Development Area	38.75
PRASA Land Holdings- to be developed by Prasa	5.63
Total Development Footprint	44.38
Total Study Area	85

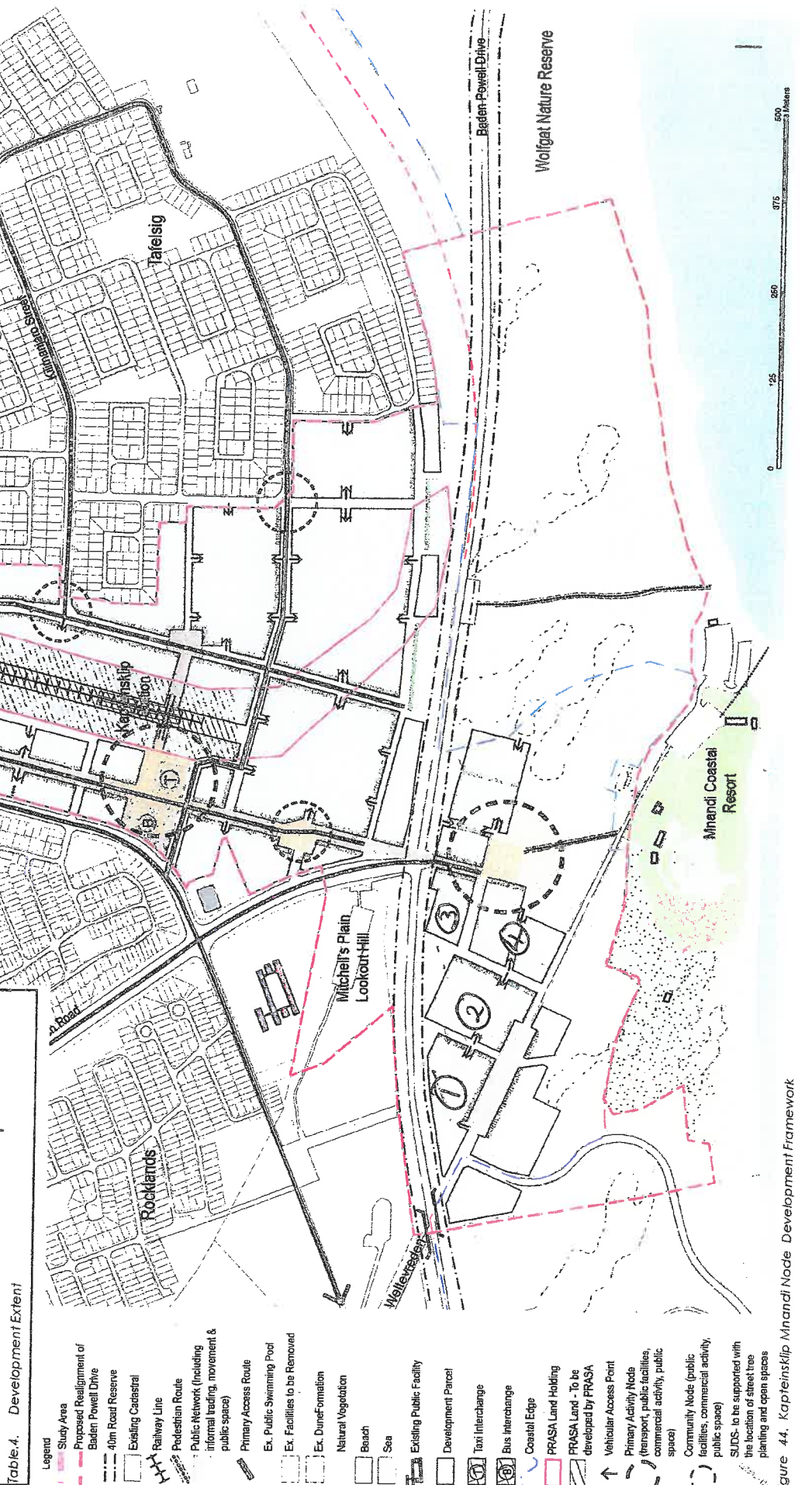


Figure 44. Kapteinsklop Mhanda Node Development Framework