

**COMMENTS AND RESPONSES TABLE FOR THE
ADOPTION OF AN AD HOC DEVELOPMENT SETBACK LINE FOR ERF 281, CLIFTON**

NO.	COMMENTATOR & COMMENT	RESPONSE
1.	Andre Loock Loock Architecture 14 December 2015	
a.	My name is Andre Loock and I represent the Clifton View Body Corporate in an architectural capacity together with the town planner, Mr. Willem Buhrmann.	A direct email response was provided as follows: "Thank you for your email! I can confirm that Clifton View Body Corporate is registered on our database. We are currently in the process of preparing an additional notification which you will receive shortly. You will be provided with sufficient time to prepare and submit any additional comments."
b.	We have submitted our formal objections to the proposed application for removal and amendment of title deed restrictions and departures for erf 281, 6 Victoria Road.	Noted. These objections were submitted in response to the initial town planning application which has subsequently been withdrawn and a new application submitted in September 2016. Refer to Appendix L for the new town planning application.
c.	Your note regarding the Ad Hoc setback line application for erf 281 refers. Herewith our response on behalf of Clifton View Body Corporate: 1. We advise that neither the body corporate, owners nor the managing agent ever received any notice of the Ad hoc setback application. 2. We hereby register the Clifton View Body corporate and all owners to be relevant and affected parties. 3. We hereby file provisional objections to the application until such time as we have received formal notification in writing, addressed to the affected parties.	It is acknowledged that due to a clerical error, not all I&APs received the initial notification of 16 November 2015, however an additional notification was circulated shortly thereafter and a further extension was provided, thereby affording I&APs ample opportunity to comment on the application (refer to Section 8b of the application and to Appendix M for evidence of public participation activities carried out).
d.	We reserve our rights to file supplementary documentation and motivation once we were able to assess the awaited notice	Noted.
2.	Ms Sandra Hustwick Principal Environmental Professional Environmental and Heritage Management (Table Bay District)	

18 December 2015		
a.	<p><u>Preliminary Comment</u> Please note that in the section entitled, “in a nutshell”, it is proposed that a certain arbitrary line be adopted as both a high water mark (HWM) line, and as the proposed ‘setback line’.</p>	Noted. The HWM is not an arbitrary line, refer to the response to 2b below.
b.	<p>This ‘HWM’ line in fact is shown seaward of the seawall and occurs just above the intertidal zone and is obviously below where the de facto high water mark line would occur.</p> <p>As we know the high water mark is much higher up than the high tide mark, and is the mark reached by the waters of the sea during a storm during an ordinary storm during the stormiest time of the year.</p> <p>The sea reaches the seawall during certain periods, so it would seem arbitrary to adopt a line lower than the point reached by the highest waters of the sea as the setback line.</p>	The HWM is illustrated in Appendix I of the ad hoc development setback line application (“the application”) and is shown to be aligned with the existing retaining wall. The alignment of the HWM was obtained from the noting sheet submitted with the planning application (refer to Appendix L).
c.	<p>Furthermore, the intention of adopting a setback line, rather than assessing the impacts of construction activities on this sensitive coastal area, and giving the authority opportunity to impose conditions regarding measures to minimise impacts of pollution and environmental degradation, is questionable.</p> <p>There have been other sites along this coastline, where excavation and construction activities have occurred to the detriment of the environment, e.g. No. 1 Bantry Bay.</p>	<p>The setback line application has been made in terms of the EIA Regulations 2014. The listed activity triggered by the proposed development is activity 19 from GN R983 of 4 December 2014 (i.e. Listing Notice 1).</p> <p>Therefore, the application has been made in accordance with relevant legislation.</p> <p>In addition, the Department of Environmental Affairs and Development Planning (DEA&DP) confirmed, in writing in a letter dated 22 September 2015, that the abovementioned listed activity is triggered.</p> <p>Furthermore, upon receipt of the application, DEA&DP acknowledged receipt thereof and requested a public participation process (PPP) in order to further consider the application. The fact that DEA&DP responded to the application stating that the request would be further considered upon receipt of the requested</p>

			<p>information implies that the process of applying for a development setback line is not unacceptable in terms of NEMA and the EIA Regulations of 2014.</p> <p>Therefore, the application was rightfully made in terms of the EIA Regulations, 2014. DEA&DP will determine, through the application, whether or not further studies (be it additional information or an EIA) are required.</p>
<p>d.</p>		<p>Unless the development were considerably set back from the seaward boundary, and a vegetated buffer allowed to remain, there would most likely be undesirable construction impacts on the coastline (in addition to adverse long-term visual impacts).</p> <p>There are also other adverse visual impacts associated with the development regarding impacts on the coastal view corridors from the scenic drive, and impacts on seaward views for motorists, due to the development not respecting the provisions of the scenic drive regulations and the other building control measures resulting in obstructions to sea views.</p>	<p>The proposed development setback line along the existing retaining wall is considered appropriate, and the proposed development has been designed to be substantially further setback from the seawall in response to this comment. In addition, the proposed building lies well within the permissible building envelope. Possible anticipated environmental impacts have been provided in Section 7 of the application and were provided within the context of the following:</p> <ul style="list-style-type: none"> • The nature of the triggered listed activity (i.e. excavation, moving or infilling of greater than five cubic metres of material); • The surrounding development context and how the proposed development would be aligned with it; • The existing extent of infrastructure adjacent to the site relative to the coast and the HWM; • The scale and nature of the proposed development; • The anticipated duration of the construction phase of the proposed development; • The availability of existing service infrastructure; • The extent and nature of environmental sensitivities on and adjacent to the site; and • Input from I&APs (currently underway). <p>Although it is not the intention to touch the sea wall, the structural integrity of the wall would be monitored throughout the demolition and construction phases and, should excavations adjacent to the retaining wall have unforeseen implications on the existing wall, the wall would be re-instated so as to ensure continued protection for both the property and the marine environment. Given that the sea wall is proposed as the ad hoc development setback line, no activities would take place beyond the wall.</p>

			<p>Note that inputs from I&APs have resulted in considerable amendments to the application and comments were reasonably considered as far as possible.</p> <p>Concerns regarding the anticipated adverse visual impacts are noted. In response, the design has been substantially amended in order to reduce visual impacts on neighbours and users of Victoria Road. Refer to Section 5 of the application for details of how the proposed designs have been revised.</p> <p>Comments regarding visual impacts have been considered and the proposed design has been considerably revised with additional setbacks in order to reduce these impacts.</p> <p>The possible obstruction of views from neighbouring properties has been considered and the revised proposed designs can be found in Appendix E and Appendix F.</p> <p>Further visual impacts would be dealt with as part of the town planning application, given that it is the details of height and massing conditions detailed therein which would likely cause the impact.</p> <p>As indicated in the response to item 2c, the setback line application has been submitted in accordance with relevant legislation and in response to written confirmation from the DEA&DP to continue with the public participation component of the process.</p> <p>The impacts of the application have been largely considered within the context of the triggered listed activity, namely the moving, excavation or infilling of greater than five cubic metres of material/sand/rock. It is, however, acknowledged that through the public participation process one of the key issues raised relates to the visual impacts on the owners of apartments in Beaches and, to an extent, the general public making use of Victoria Road. These issues have been considered and the proposed design has been</p>
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			<p>revised accordingly.</p> <p>These impacts, although not directly related to the trigger, have been included in this revised application which will be provided to the DEA&DP for consideration noting that the visual issues will be dealt with more extensively as part of the town planning application.</p>
3.	<p>Sandy Geffen and Lew Geffen Chairperson of Body Corporate and Owner of Dunmore Properties 21 December 2015</p>		
a.	<p>I am the owner of 13 Dunmore, 5/7 Victoria Rd Clifton. I have registered my objection to the application for the redevelopment of ERF 281 but have not received any notification of the planned amendment of the setback line on Erf 281. I was informed by a fellow affected person of the application to have the setback line amended.</p>		<p>Noted. Refer to the response to comment 1c above. Your reference to this notification at the end of your comment implies that it was received, thus confirming that you were notified of the application.</p>
b.	<p>I strongly object to the planned amendment of the setback line as planned for the redevelopment of Erf 281 Clifton.</p>		<p>Noted. The proposal has been revised to accommodate comments from I&APs.</p>
c.	<p>My property is on the 4th floor of Dunmore and directly across the street of Erf 281. My view of the ocean will be severely affected by the approval of the new setback line as the proposed new building will extend much closer to the ocean than the present building. Presently I can see the whales when they come close to the beach and the planned setback line amendment on Erf 281 will deprive me of this view.</p>		<p>Noted, please refer to the visual impacts as discussed in response to comment 2d above. Furthermore, the proposed plans have been revised in response to comments regarding the visual impacts (refer to Section 5 of the application).</p>
d.	<p>I hereby declare my financial interest in the approval of the application for the amendment of the setback line on ERF 281. If approved it will have a severe negative effect on the value of my property. If the City of Cape Town approve such application I will take legal action to revert such approval and claim damages from them.</p>		<p>Noted. The impact on adjacent property value will not be assessed as part of the application as the focus of the establishment of the ad hoc development setback line would be to protect the coastal environment from the triggered listed activity (i.e. moving, excavation and infilling of material/sand). The DEA&DP is the competent authority (i.e. decision-maker) for this application, while the City of Cape Town would decide on the town planning application.</p> <p>Furthermore, the proposed plans have been revised in response to comments regarding the impacts on neighbouring properties (refer</p>

		to Section 5 of the application).
e.	As Owners and Chairperson of Dunmore directly opposite the proposed development, My Colleagues and Body Corporate object in totality to this development and to the interference of our view, our coastline and the beauty of Clifton. We resent this interference in our beautiful street and coastline and in all facets we object as the full building and as owners, our Owners resent this development in totality. You have letters from most of us and Teresa Dawson and Beaches.	Noted. Please note that only letters received in response to the proposal of an ad hoc development setback line have been included and considered in the application. Submissions pertaining to the town planning application will be dealt with as per the requirements of the City of Cape Town Municipal Planning Amended By-Law, 2016 (the "By-Law") and are separate from this NEMA process.
f.	It has become prevalent in Cape Town to interfere in nature and the eco-system of the sea. Both by sewerage which you have read about in many reports into our oceans and by Developers and this will seriously affect the eco-system of our Sea and our Ocean.	The establishment of the proposed ad hoc development setback line would pertain only to the proposed scope and has been proposed in order to reduce potential impacts on the coastal environment. The proposed development would connect with existing services.
g.	We also wish to point out that Victoria Road is legally a scenic drive and no development may be raised about the level of the current pavement. To this we strongly object.	Noted. This consideration will be dealt with as part of the planning process in terms of the By-Law.
h.	The adverse impacts on the scenic drive and side-space view corridors cannot support the building and set-back lines being relaxed and the current design plans at 6 Victoria Road, Clifton from an environmental point of view due to the adverse impact on the coastal ecology, and the scenic drive network(of metropolitan significance) which underpins the tourism economy.	Note that this application pertains to the establishment of an ad hoc development setback line along the existing retaining wall in order to limit environmental impacts largely related to the triggered listed activity in terms of the EIA Regulations, 2014. The approval of other building setback lines would fall under the umbrella of the town planning application in terms of the By-Law, which is a separate process. Refer to the response to item 2d above for more information on the anticipated impacts and how they were derived.
i.	The zoning scheme regulations (DMS) have to be upheld in order to protect the scenic drives as envisaged. That is what those provisions are there to specifically achieve. Departures from any of those provisions will most likely have adverse impacts on the bigger system and on the green matrix and coastal ecology and on downward views from Kloof Road above.	The town planning application in terms of the By-Law currently running parallel to the application addresses the proposal within the context of the zoning scheme. A new application was submitted in September 2016.

j.	It is vital that report-writers and decision-makers retain foremost in their minds the long-term vision for the City's scenic drives of enhancing scenic amenity from each abutting property along the scenic drive at each re/development opportunity (and to achieve something greater for Cape Town as a whole) by not bending the whims of individual property owners and damaging a metropolitan resource in the process due to negligence.	The potential for impact from the scenic drive has been acknowledged in the application, however, the details of the proposal relative to scenic drive regulations form part of town planning application in terms of the By-Law.
k.	We have registered our objection to the application for the redevelopment of ERF 281 and recorded our interest as interested and affected party.	Noted. You are registered as an I&AP for the application and will be informed of the project as per the requirements of NEMA and the EIA Regulations, 2014.
l.	We require that a full environmental impact assessment be carried out before this application is considered, please.	The application is being carried out according to the requirements of NEMA and the EIA Regulations, 2014. DEA&DP is the competent authority for this application and will decide whether or not an EIA or an ad hoc development setback line is required. Refer to the response to item 2c above for more information in this regard.
m.	We object to the amendment of the existing setback line and "associated infrastructure" as planned for the redevelopment of Erf 281 Clifton. Our property is situated close by, directly across the street of the applicant, Erf 281 Clifton.	Noted. The proposed development has been revised in response to comments received from I&APs (refer to Appendix E and Appendix F for initial and revised plans).
n.	The impact on the sensitive and protected environment and on our clear view of the ocean will be detrimental if the new setback line and "associated infrastructure" are approved as the proposed new building will extend much closer to the ocean than the present building and will result in massive bulk increased. The negative impact on the environment and ocean, rocks, sea life and Clifton amenity and on the nearby properties cannot be underestimated. Presently we can see the whales when they come close to the beach and the planned setback line amendment on Erf 281 will deprive us of this view and the concept plans for this property indicate a direct and negative impact on our property and its value.	Refer to the response to item 2d regarding the assessment and consideration on impacts for the application. Furthermore, the revised development proposal has implemented additional setbacks in response to comments received from I&APs.
o.	We hereby declare our business, economic and financial interest in the approval of the application for	Noted. Refer to the response to comment 3n above.

	the amendment of the setback line and the "associated infrastructure" on ERF 281 Clifton. If approved, such approval and the change in the existing setback line will have a very negative effect on the value of our property and on the unique amenity of Clifton.	
p.	We have replied in more detail to the letter dated 17 December, 2015 seeking a change in the setback line in due course. As well as to the proposed amendment of the illegal height requisition above the pavement of Victoria Road and the subsequent glass structures and lighting -	Please note that no further response was received to the letter dated 17 December, 2015. Note that this application does not propose to alter any setback lines established by the City of Cape Town (this is rather the subject of the town planning application which is a separate process), but rather to establish an ad hoc development setback line along the existing retaining wall in order to ensure that the impacts (relative to the triggered listed activity) on the marine environment are limited. In this regard, note that the revised development proposal is substantially further setback from the coastal boundary, thereby posing less risk to the coastal environment.
q.	Could you kindly in the next week share via e-mail all information you have available in this application in order to allow for meaningful comment?	All information regarding the application has been made available via the notification of 17 December 2015 as well as notification on 26 January 2016 providing additional time for I&AP comment. The documentation is also available at the Camps Bay public library and on the Chand website (http://www.chand.co.za/victoria.asp). The proof of previous public participation activities undertaken with respect to this NEMA application is included in Appendix M . Note that evidence of the final circulation of the application will be provided to the DEA&DP with the final submission.
r.	Whichever way we object in totality and reserve all our rights in law and in Toto	Noted. Certain details of the proposed development have been revised in response to comments received from I&APs.
4.	Helet Merkling Registered owner 10 January 2016	
a.	1. Kindly ensure that all correspondence in this matter is addressed to my e-dress at merk@mweb.co.za rather than via registered mail to 9 Victoria Rd., Clifton in order to allow for fair comment and participation, please.	Noted. The email address has been added to the I&AP database and will be used for future correspondence.

b.	2. Can you please advise who the attorneys are representing the applicant (Mr. David Sable) and who at the DEA&EA is dealing with this application?	The attorney is Mr. Anton Slabbert and the DEA&DP Case Officer dealing with the above-mentioned project is Ms. Keagan-Leigh Adriaanse.
c.	3. I am a director of Triangle Strategies (Pty) Ltd., the registered owner of erf 40 Clifton situate at 9 Victoria Rd Clifton. We have registered our objection to the application for the redevelopment of ERF 281 and recorded our interest as interested and affected party.	Noted. You are registered as an I&AP for this application.
d.	<p>We require that a full environmental impact assessment be carried out before this application is considered, please. We object to the amendment of the existing setback line and "associated infrastructure" as planned for the redevelopment of Erf 281 Clifton. Our property is situated close by, diagonally across the street of the applicant, Erf 281 Clifton. The impact on the sensitive and protected environment and on our clear view of the ocean will be detrimental if the new setback line and "associated infrastructure" are approved as the proposed new building will extend much closer to the ocean than the present building and will result in massive bulk increased. The negative impact on the environment and ocean, rocks, sea life and Clifton amenity and on the nearby properties cannot be underestimated. Presently we can see the whales when they come close to the beach and the planned setback line amendment on Erf 281 will deprive us of this view and the concept plans for this property indicate a direct and negative impact on our property and its value.</p> <p>We hereby declare our business, economic and financial interest in the approval of the application for the amendment of the setback line and the "associated infrastructure" on ERF 281 Clifton. If approved, such approval and the change in the existing setback line will have a very negative effect on the value of our property and on the unique amenity of Clifton.</p>	Refer to the response to comments 2c and 2d above regarding the legislative requirements in terms of NEMA and the assessment and consideration on impacts for the application.

		We will reply in more detail to the letter dated 17 December, 2015 seeking a change in the setback line in due course. Could you kindly in the next week share via e-mail all information you have available in this application in order to allow for meaningful comment?	
5.	Grant Ford Cliffe Dekker Hofmeyr Inc.: Director 14 January 2016		
a.	1.	We refer to the above-mentioned matter and confirm that we represent the Body Corporate of The Beaches, Erf 508 Clifton, 10 Victoria Road, Clifton as well as certain of its members / apartment owners ("our Client ").	Noted.
b.	2.	As you may be aware our Client is / are some of the major objectors to your current application referred to above and will also object to the subsequent application made for the adoption of an ad hoc development setback line in terms of the National Environmental Management Act, No. 107 of 1998 (" the Applications ").	Noted. The proposed development has been revised in response to comments received from I&APs.
c.	3.	We are instructed that the Beaches Body Corporate held its AGM yesterday.	Noted.
d.	4.	We understand that at the AGM one of its members, Mr Natie Kirsh, advised the meeting that he / his family planned to invest in your development and that he had spoken to you and (as he understood it) you had advised and assured him as follows:- 4.1 that (due to impractical costs and time delays) you do not intend to proceed with the planned re-development of the current building / apartment complex situated at Erf 281 Clifton at No 6 Victoria Road (the "Property") , Clifton as applied for in the Applications and do not plan to expand it beyond its current envelope, other than to:-	Noted that Mr. Kirsh has not had any direct conversation with Chand Environmental Consultants and it appears as though this letter was submitted to Tommy Brummer Town Planners in response to a meeting held as part of the town planning application in terms of the By-Law.

	<p>4.1.1 add prefabricated balconies;</p> <p>4.1.2 construct a new entrance area;</p> <p>4.1.3 install a new lift;</p> <p>4.1.4 carry out a general internal upgrade; and</p> <p>4.1.5 install a swimming pool & entertainment area towards the sea wall</p>	
e.	5 Our understanding is that Mr Kirsh has no difficulty in our Client / us confirming this with you directly.	Refer above.
f.	6 We are furthermore informed that Mr Mel Gutkin, who is a friend or acquaintance of yours, has also been reliably informed that you would not, in the re-development of the Property, interfere with the views that the members of the Beaches Body Corporate enjoy from their apartments. Presumably this would also extend to the flow of natural light and air circulation currently enjoyed by occupants of those apartments.	Note that Chand has not informed Mr. Gutkin of any such changes, either formally or informally. Refer to the response to comment 5d above.
g.	7 The purpose of this correspondence is to seek confirmation from you that the abovementioned information is correct.	Chand cannot confirm or deny the above confirmation as Chand was not involved in any of the engagement. Refer to the response to comment 5d above.
h.	8 We bring it to your attention that our Client is required to submit a detailed response to the ad hoc set back application by no later than 5 February 2016.	Noted, refer to the response to comment 1c above regarding the public participation activities conducted as part of this application in terms of NEMA and the opportunity provided to I&APs to comment thereon.
i.	9 We have already commenced assisting our Client and the appointed professionals to compile this response. In the circumstances, and should the above-mentioned information received from Mr Kirsh, Mr Gutkin and others indeed be correct, we	This application in terms of NEMA has not been withdrawn as the proposed development (i.e. redevelopment of the apartment block on Erf 281, Clifton) would trigger listed activity 19 of Listing Notice 1 (GN. R983 of 4 December 2014) of the EIA Regulations 2014. Note, however, that the details of the proposed development have

	invite you to withdraw both Applications, that are before the City of Cape Town and the Department of Environmental Affairs & Development Planning respectively as soon as possible and in any event within the next 7 days, which withdrawal our Client will agree to on the basis that it bears its own legal and professional costs.	been revised in response to comments received from I&APs. Refer to Section 5 of the application for details of how the proposed designs have been revised.
j.	10 Should we not receive proof of withdrawal of the Applications within 7 days, our instructions are to complete our Client's response to the ad hoc set back application which will take considerable time and which will run up further unnecessary costs, which our Client would obviously prefer to avoid	Noted. This comment was received and the response letter from Cliffe Dekker Hofmeyr Inc. as well as Chand's responses are tabled under item 7 below.
k.	11 Our Client would be grateful to receive confirmation and in due course proof of your withdrawal of the Applications with a view to resolving the current issues in a mutually satisfactory manner.	Refer to the response to comment 5i above.
l.	12 We trust that any future development proposals, including those outlined above, will be discussed with our Client before they are implemented and, where necessary, application for their authorisation is made.	I&APs will continue to be notified of this application as per the requirements of the EIA Regulations, 2014 and NEMA.
6.	Dennis Hamer Sole member Serious Foods and Registered owner 27 January 2016	
a.	REF: 16/3/3/6/a7/5/3341/15 I am the owner of 9 Dunmore, 5/7 Victoria Rd Clifton.	Noted.
b.	I strongly object to the planned amendment of the setback line as planned for the redevelopment of Erf 281 Clifton.	Noted. Please note that a formal development setback line in terms of NEMA does not yet exist and where it may (or may not) exist in terms of other legislation has not yet been adopted by the DEA&DP. This application proposes the establishment of an ad hoc development setback line in order to reduce the potential impacts of the triggered listed activity (in terms of the EIA Regulations, 2014) on the environment. There would be no

		“amendment”, but rather an ad hoc line limiting the extent of the proposed development along the coast.
c.	My property is on the 3 th floor of Dunmore and directly across the street of Erf 281. My view of the ocean will be severely affected by the approval of the new setback line as the proposed new building will extend much closer to the ocean than the present building. Presently I can see the whales when they come close to the beach and the planned setback line amendment on Erf 281 will deprive me of this view.	Noted. Refer to the response to item 2d above regarding the assessment and consideration on impacts for the application.
d.	I hereby declare my financial interest in the approval of the application for the amendment of the setback line on ERF 281. If approved it will have a severe negative effect on the value of my property. If the City of Cape Town approve such application I will take legal action to revert such approval and claim damages from them.	Noted. The impact on adjacent property value will not be assessed as part of the application as the focus of the establishment of the ad hoc development setback line would be to protect the coastal environment from the triggered listed activity (i.e. moving, excavation and infilling of material/sand). The DEA&DP is the competent authority (i.e. decision-maker) for this application, while the City of Cape Town would decide on the town planning application in terms of the By-Law.
e.	It has become prevalent in Cape Town to interfere in nature and the eco-system of the sea. Both by sewerage which you have read about in many reports into our oceans and by Developers and this will seriously affect the eco-system of our Sea and our Ocean.	This comment has also been received from Ms. Sandy Geffen and Mr. Lew Geffen representing the Body Corporate and Owner of Dunmore Properties. These have been responded to under comment 3, therefore please refer above.
f.	We also wish to point out that Victoria Road is legally a scenic drive and no development may be raised about the level of the current pavement. To this we strongly object.	This comment has also been received from Ms. Sandy Geffen and Mr. Lew Geffen representing the Body Corporate and Owner of Dunmore Properties. These have been responded to under comment 3, therefore please refer above.
g.	The adverse impacts on the scenic drive and side-space view corridors cannot support the building and set-back lines being relaxed and the current design plans at 6 Victoria Road, Clifton from an environmental point of view due to the adverse impact on the coastal ecology, and the scenic drive network(of metropolitan significance) which underpins the tourism economy.	This comment has also been received from Ms. Sandy Geffen and Mr. Lew Geffen representing the Body Corporate and Owner of Dunmore Properties. These have been responded to under comment 3, therefore please refer above.
h.	The zoning scheme regulations (DMS) have to be upheld in order to protect the scenic drives as	This comment has also been received from Ms. Sandy Geffen and Mr. Lew Geffen representing the Body Corporate and Owner of

	envisaged. That is what those provisions are there to specifically achieve. Departures from any of those provisions will most likely have adverse impacts on the bigger system and on the green matrix and coastal ecology and on downward views from Kloof Road above.	Dunmore Properties. These have been responded to under comment 3, therefore please refer above.
7.	Terry Winstanley CLIFFE DEKKER HOFMEYR INC 3 February 2016	
a.	INTRODUCTION 1.1 We act on behalf of the Body Corporate of the Beaches, located at 8 and 10 Victoria Road, Clifton (the "Beaches") and for owners of units in the Beaches, collectively referred to as our "Clients".	Noted.
b.	1.2 The Beaches is situated immediately adjacent to the Villa D'Azur, which is located on Erf 281, Clifton (the "Property"), where the owner proposes to demolish the existing building and reconstruct a much larger, differently configured one (the "Proposed Development").	Noted. The Beaches is considered an adjacent landowner.
c.	1.3 In order for the Proposed Development to proceed lawfully, the owner of the Property (the "Applicant") has applied to the City of Cape Town (the "City") for various departures from its Zoning Scheme (the "Scheme"), adopted under the Land Use Planning Ordinance ¹ ("LUPO") and for amendment or removal of certain restrictions in the title conditions applicable to the Property ("Title Conditions"), which application is referred to here as the "LUPO Application" and a copy of which is	Correct. Note that this application has subsequently been withdrawn and a new application submitted in September 2016 which addresses comments received from I&APs.

¹ 15 of 1985

	attached, marked "A". The LUPO Application was lodged in June 2015, our clients were notified of it and have lodged objections to it for reasons more fully explained below.	
d.	1.4 The Applicant has now also applied (in the name of Tommy Brummer, the town planner appointed for the Proposed Development) to the Department Environmental Affairs & Development Planning ("DEA&DP") for the adoption of an <i>ad hoc</i> development setback line for the Property, which setback it wishes to coincide with the high water mark of the sea (the "Setback Application"). The LUPO and Setback Applications are referred to collectively here as "the Applications". This document is a response to the Setback Application.	Correct.
e.	1.5 If the Setback Application is granted, it will not be necessary for the Applicant to comply with the Environmental Impact Assessment (" EIA ") Regulations ² or to obtain environmental authorisation to undertake the Proposed Development. (This is discussed in more detail below.)	Note that the application for an ad hoc development setback line is compliant with EIA regulations, 2014 and the NEMA. Refer to the response to comment 2c above for more details.
f.	1.6 Clearly the purpose of the Setback Application is made to obviate the need for an EIA, which position is confirmed in a notice dated 16 November 2015 (the " Notice ").	Refer to the response to comment 2c above.
g.	1.7 Our Clients are concerned that if it proceeds, the Proposed Development will adversely affect views, natural light, air flow, privacy and the value of the units in the Beaches. It will also have adverse visual impacts for the general public	Refer to the response to comment 2d above. As indicated in the response to comment 2c above, the setback line application has been submitted in accordance with relevant legislation and in response to written confirmation from the DEA&DP to continue with the public participation component of the

² Made GNR 982, 984 and 985 in Government Gazette 10328 of 4 December 2014.

	and may have impacts on the beach and adjacent areas. If no EIA is undertaken, these potential impacts cannot be assessed or mitigated. The granting of the Setback Application would raise other legal issues, explained more fully below.	process.
h.	1.8 Our Clients therefore request that the Setback Application be refused and that the Applicant be required to comply with the EIA Regulations in order to assess the likely impacts of the Proposed Development, subject to the requested conditions, set out in section 4 below.	Noted. However, the application is already compliant with EIA Regulations, 2014 as listed activity 19 of GN R983 provides for exclusion under a development setback line.
i.	<p>2 MATERIAL FACTS</p> <p>2.1 <u>The Applications</u></p> <p>2.1.1 The LUPO Application seeks numerous significant departures from the Scheme. These are specified in Annex A, but summarised here. These relate to the height of buildings closest to the sea (normally restricted to 13m); permission is requested for a construction double that, namely 25,94m. Importantly, the LUPO Application also requests the relaxation of a height restriction imposed under the Scheme in favour of the general public prohibiting buildings above pavement levels in, among others, Clifton, known as the "Scenic Drive Regulation". The purpose of that restriction is to enable the public, both pedestrian and vehicular, to see the sea, the breakers and the beach at Clifton. What is requested is a building of 3.84m above pavement level and approximately 8m x 10m in size; this is patently a significant departure that will have adverse impacts for the general public.</p>	Noted. The LUPO application was withdrawn and a new (revised) application submitted in terms of the City of Cape Town Municipal Planning Amendment By-law, 2016. While departures and City approval is still required, the departures have been reduced significantly. Of relevance is the fact that height departures are no longer required from the base zoning (GR4) and Local Area Overlay zoning regulations. While a departure is still required to permit certain structures on the roof of the building to project above the Victoria Road footway (e.g. Scenic Drive Overlay departure), the proposed glass box has been significantly reduced in size. In addition, residents and visitors will no longer park on the roof and views to the sea will therefore no longer be obstructed by cars parked on the roof, which is currently the case. The scenic value of the road and pavement will accordingly be increased as a result of the proposed re-development of the site.

j.	2.1.2 Also applied for are departures from the ordinarily permitted maximum width of the building; the Scheme permits a building to be half of the site width in Clifton, which would be 15.58m on this site; what is proposed here is a building 10m wider than that, that is 25.5m.	Noted. Almost all (if not all) buildings on the lower side of Victoria Road in Clifton contravene this condition and the proposed building will therefore not detract from the established built fabric of the area. The buildings on either side of the property concerned are much wider than half the width of the erven they are situated on and it is relevant to note that the width of The Beaches (Erf 508) takes up the full width of this site.
k.	2.1.3 The Scheme requires that no building may be built between a side boundary and a line drawn at 25 degrees from that side boundary. The purpose of that prohibition is to ensure an unimpeded view of the sea, the breakers and the beach at Clifton, including for the public standing at road level. A departure from this provision would also have to be required for the Proposed Development to proceed. In addition, the LUPO Application requests a relaxation of the side boundaries to allow the top floor of the building to be 11m closer to the common boundaries than is ordinarily permitted.	Noted. As shown on the current plans, the 3 rd to 8 th storeys of the main building complies with the 25 degree line from the northern boundary to enable views past the building from Clifton View as well as the public using Victoria Road. The same cannot be said for other buildings on the lower side of Victoria Road in Clifton, given that almost all (if not all) buildings do not comply with this provision.
l.	2.1.4 Further relaxations requested are of the depth and bulk (floor area) ordinarily permitted by the Scheme; in the case of the latter application is for almost 50% more than the Scheme permits.	<p>Noted. Almost all (if not all) buildings on the lower side of Victoria Road in Clifton do not comply with floor space in terms of the current By-law. The existing buildings were all approved in terms of the former zoning scheme when floor space for flats was determined in terms of number of habitable rooms. Since 1 March 2013, floor space is calculated in terms of actual square meterage. While a floor space departure is required, it is most relevant to note that the proposed floor space is still much lower than the floor space which has been approved for almost all other buildings in the immediate vicinity. The proposed floor space for Villa d'Azur is 1.88, while the following has been approved for the buildings in the immediate vicinity of Erf 281::</p> <ul style="list-style-type: none"> • Clifton View (Erf 510), an approved floor space of 3.65; • No 1 Victoria (Erf 291), an approved floor space of 3.07; • The Beaches (Erf 508), an approved floor space of 2.43; and • Dunmore (Erf 518), an approved floor space of 1.59.

			The building will therefore remain one of the smallest buildings in Clifton and the departure regarded desirable given that it will not deviate from the established built fabric and sizes of buildings in the area.
m.	2.1.5	Also requested are the amendment or removal of the Title Conditions; those restrict the built upon and street building lines and prohibit construction below the 40 feet contour. The amendment or removal of those restrictions will enable the Proposed Development to proceed.	Noted. The removal and amendment of the conditions will enable the building to be built closer to the street (removal of the 4.72m street line restriction) and also to be built lower (removal of the 40 feet contour restriction) which is in the direct interest of the surrounding property owners. The removal will enable the proposed building to be as close as possible to the road and for the ground floor to be lower (excavation) as such being most sensitive to the views over the site from neighbouring erven.
n.	2.1.6	It is therefore evident from the Applicant's own LUPO Application that if the Proposed Development proceeds, it will be significantly higher, wider and deeper than is allowed by the Scheme and the Title Conditions. It will also be significantly closer to the high water mark than the Title Conditions currently permit. Self-evidently this will have environmental impacts on the receiving environment, including visual impacts for both neighbours and the passing public, and impacts on light and natural airflow for neighbours. It may also have impacts on the beach and adjacent areas.	Note that the proposed development has been revised in response to comments received from I&APs. The building will remain one of the smallest buildings on the lower side of Victoria Road in Clifton.
o.	2.1.7	The Setback Application consists of, among other things, a completed application checklist (the "Checklist"). It stipulates, firstly, that it is an application made for a development setback adopted under the EIA Amendment Regulations, 2010 ³ . It specifically states that if granted, it will not be adopted under the National Environmental Management Act: Integrated Coastal Management Act ⁴ ("ICMA"), or the National	The reference to the " <i>application made for a development setback adopted under the EIA Amendment Regulations, 2010</i> " refers to the form upon which the application is made. This form is an official document provided by DEA&DP for the purposes of undertaking a development setback line application and was (and is to-date) the latest version available. Given DEA&DP's acknowledgement of the application which: 1) Refers to the acceptance of the application in terms of the EIA Regulations 2014; and 2) Is silent about the EIA Regulations, 2010.

³ Page 3

⁴ 24 of 2008

		<p>Water Act⁵ (“NWA”). It does not state under which law it would be adopted.</p>	<p>It is implicit that the form used is accurate and that it does not prejudice the applicant.</p> <p>The form states the following: “<i>This form must be used to request the competent authority to adopt/define an ad hoc development setback line.</i>” It is understood that DEA&DP is currently in the process of updating the form to reflect the 2014 EIA Regulations. Furthermore, all correspondence with I&APs clearly states that the EIA Regulations of 2014 are applicable to the application.</p> <p>Notwithstanding the above, the EIA Regulations of 2010 also provide for a setback line application in terms of the similarly listed activity 18 of GN R544 (Listing Notice 1).</p> <p>With regard to the National Environmental Management Act: Integrated Coastal Management Act (ICMA), reference to the fact that the adoption of the development setback line would not be in terms of ICMA is also provided in the DEA&DP official form. It is understood from DEA&DP (<i>pers comms</i> Mr. A Gabriel, 22/02/2016) that DEA&DP has not yet adopted the coastal zone line as described in ICMA.</p> <p>The front page of the form states that the development setback line would be adopted in terms of the National Environmental Management Act (No. 107 of 1998) (NEMA).</p> <p>Notwithstanding the above, comments have been added to the application form which clarifies the submission in terms of the EIA Regulations, 2014.</p>
<p>p.</p>	<p>2.1.8</p>	<p>The checklist mentions only one relaxation required, that is the street building line⁶. As mentioned above, what in fact has been applied for in the LUPO Application is the amend or removal of the Title Conditions and the relaxation of:</p>	<p>It was not deemed necessary to comprehensively detail all relaxations and departures applied for in the planning application in the setback line application in terms of the NEMA as these have been (and will continue to be) dealt with in the planning application. The City of Cape Town would make a separate decision regarding the town planning application.</p>

⁵ 36 of 1998

⁶ Section 7, page 16

		<p>2.1.8.1 Four height restriction; 2.1.8.2 Three width restriction; 2.1.8.3 Two depth restriction; and 2.1.8.4 A bulk or floor area restriction</p>	<p>Note that the planning application is being carried out by Tommy Brummer Town Planners and is being done in accordance with the By-Law.</p> <p>The nature of the triggered listed activity is used to guide the application and the necessary information contained therein in order to ensure that the information provided is relevant for making a decision in terms of the listed activities.</p> <p>As the trigger refers to a threshold of five cubic metres of material/sand being moved, removed or excavated within 100m of the High Water Mark (HWM) of the sea, the description of the proposal clearly illustrates the proposed scale of the development and what the extent of excavation and infilling would be through:</p> <ul style="list-style-type: none"> • Graphic displays of the difference between the current and proposed scale of the development (refer to Appendix G of the application); • Details of existing and proposed massing (refer to Appendix E of the application); and • Details of where excavation would be required in the slope (refer to Appendix E of the application). <p>In addition, the application provides graphic evidence and a description of the context in which the proposal is made.</p> <p>The information provided is considered appropriate for the competent authority (i.e. DEA&DP) to make a decision on the application.</p> <p>Notwithstanding the above, the town planning application has been included in Appendix L and a summary of the proposal has been provided in section 7e of the application in terms of the NEMA and EIA Regulations, 2014.</p>
q.		<p>2.1.9 This represents a material non-disclosure; if DEA: DP is aware of the extent of the relaxations required and the likely impacts these will cause, it may come to a different view on the Setback Application.</p>	<p>Refer to the response to comment 7p above.</p>

r.	<p>2.1.10 The Applications are similar in some respects. Both show that if the Proposed Development proceeds, there will be buildings right up to the existing retaining wall, situated on the high water mark, that is, to the proposed setback line. A copy of the sketch provided in both Applications is annexed marked “B”. Both Applications state the retaining wall will not be altered in any way, as no works will take place on the retaining wall⁷. However, the Checklist states that “the retaining wall appears to have been subjected to some erosive force in the areas where the stones are more visible”⁸. It is therefore difficult to imagine that the Proposed Development (which will require skilled engineering, given its size and position) can be safely constructed without some reinforcement or shoring up of that wall. We therefore doubt that assertion repeatedly made that no changes will be made to the retaining wall. This needs to be interrogated in more detail. If the wall is going to be reinforced or replaced, the impacts of that must be assessed⁹.</p>	<p>The ad hoc setback line application has stated that the proposed development would be stepped in nature and that the buildings would extend to the existing retaining wall on the seaward side of the development (refer to Section 5 of the application). It further informs the reader that the retaining wall will not be altered in any way as no works will take place on the retaining wall or seawards thereof.</p> <p>The application provides some information on the demolition and excavation phase, however further details regarding the step-by-step process of construction are not available at this stage of the proposed development.</p> <p>Examples from neighbouring and other properties along the strip could be followed with regard to the protection of the wall.</p> <p>Notwithstanding the above, the revised development proposal is substantially further setback from the retaining wall, which reduces the risk of damage to the wall. Section 5 of the application form has been revised in this regard. Although the intention is not to touch the wall, the structural integrity of the wall would be monitored throughout the demolition and construction phases and, should excavations adjacent to the retaining wall have unforeseen implications on the existing wall, the wall would be re-instated so as to ensure continued protection for both the property and the marine environment. Given that the sea wall is proposed as the ad hoc development setback line, no activities would take place beyond the wall.</p>
s.	<p>2.1.11 There are also some important differences between the two Applications. The LUPO Application requests a relaxation of the Scenic Drive Regulations to enable the Proposed Development to reach a height of 3.84m above street level. The Setback Application specifies that “the new</p>	<p>It is proposed that temporary emergency parking be available on the roof of the new building, and not on the road. In terms of the By-law, application has been made for a scenic drive departure to permit the floor of the temporary emergency parking on the roof of the building to be 400mm in lieu of 2m or more below the level of the pedestrian footway of Victoria Road.</p>

⁷ Section 5, page 10

⁸ Section 3, page 5

⁹ Section 5, page 10, section 7 and 8 on page 16

		development would comprise eight storeys with a glass box containing the lift structure and a car lift platform projecting above the roof (<u>and level with Victoria Road</u>) ¹⁰ (emphasis added). Further, where the LUPO Application proposes so-called emergency parking on the roof of the Proposed Development the Setback Application states that parking will not be on the roof (despite the proposed presence of a car lift platform referred to above) and that emergency parking will be provided on the road. ¹¹ It is unclear how this will be achieved. There are therefore material contradictions between the two Applications.	
t.	2.1.12	The Setback Application mentions that the LUPO Application is made for the removal of the 4.72m street building line condition in the title deed, but does not mention any of the (many) other relaxations applied for and that will have an adverse impact on the neighbours and / or the public. ¹² The Setback Application creates the impression that the Proposed Development will, aside from the street building line, be largely compliant with the Scheme. That is not correct.	Refer to the response to comment 7p above regard to the type on information contained in the application.
u.	2.1.13	The checklist requires the applicant to describe any negative environmental impacts that may occur if the request is granted (in the section headed “Environmental Impacts” ¹³). The response states that “While there are no negative impacts anticipated as a result of the operational phase of the proposed development, the impacts associated with the construction phase are	It is the opinion of the EAP that the impacts during operational phase would be minor given the context of the proposed development and the nature of the listed activity triggered. In addition, the focus is on protecting the marine environment, which is why the setback line was proposed at the existing retaining wall and HWM. The EAP did not visit the home of each of the adjacent landowners to assess the view from each home, which is why the opinion of

¹⁰ Section 5, page 10

¹¹ Section 5, page 10

¹² Page 16

¹³ Section 7

	<p>typical of any small-scale development.....” It is difficult how such a conclusion regarding “operational “impacts (that is, once the construction is complete) can be reached, given the numerous and significant departures required. The Setback Application contends that, if granted, there will be an increase in the value of the Property as well as properties in the area.¹⁴ That is disputed. It could never be true of the Beaches.</p>	<p>adjacent landowners is sought through the PPP for the application.</p> <p>The application does not specify that neighbouring properties would have increased value and refers to the general desirability of the Clifton area.</p> <p>Notwithstanding the above, the proposed development has been revised in response to comments received from I&APs, particularly those of adjacent landowners, and the visual and property value concerns have been addressed.</p>
v.	<p>2.2 The urban edge</p> <p>2.2.1 It is also contended in the Setback Application that the site is located “well within the urban edge”.¹⁵ (It is the term “urban area” that is used in the EIA Regulations). That is also disputed. We think the Property is at least partially outside of an urban area (and the urban edge) for reasons explained below.</p>	<p>It is the opinion of the EAP that the development falls with the urban area, given the dense development along the coastal strip of Clifton, particularly that of the adjacent properties.</p> <p>It is believed that DEA&DP would be of the same opinion, however the Department is still due to consider and make a decision on the application.</p> <p>Additional motivation will be provided in response to the points raised below.</p>
w.	<p>2.2.1.1 The term “urban areas” is defined in the EIA Regulations to mean “areas situated within the urban edge as defined or adopted by the competent authority”¹⁶ As is legally required, the City has determined and observes an urban edge in its land use planning decisions. The urban edge is depicted in the City’s spatial development framework (“SDF”).</p>	<p>The full definition of “urban areas” has not been quoted. In terms of the EIA Regulations of 2014, the “urban edge” refers to: <i>...“areas situated within the urban edge (as defined or adopted by the competent authority), or in instances where no urban edge or boundary has been defined or adopted, it refers to areas situated within the edge of built-up areas”.</i> Note that this definition applies to both the 2014 and 2010 EIA Regulations.</p> <p>To date, DEA&DP has not adopted the Spatial Development Framework (SDF) for the City of Cape Town (referred to in comment 7w), which means that the urban edge depicted in the various SDFs for each region do not strictly apply.</p> <p>DEA&DP currently views urban areas as built-up areas. The</p>

¹⁴ Section 7

¹⁵ Section 7

¹⁶ Regulation 2 in Listing Notice 1

		application clearly shows that the property is located within a built-up area.
x.	2.2.1.2 The SDF defines the development edge as: “demarcated edge line defining the outer limits of urban development for a determined period of time.”	Refer to the response to comment 7w above.
y.	2.2.1.3 There are two types of edge lines mentioned in the SDF, namely “urban edge lines” and “coastal edge lines”.	Noted.
z.	2.2.1.4 The “coastal edge” is a “demarcated area around the coast, established primarily to protect coastal resources and to avoid hazardous and financial risks pertaining to areas at risk of flooding.” ¹⁷	Noted.
aa.	2.2.1.5 Also relevant in the SDF is the “coastal edge management zone”, defined to mean “the management zone between the sea and the coastal edge.	Noted, however the urban and coastal edge lines in the SDF do not explicitly apply to the application (refer to the response to item 7w above).
bb.	2.2.1.6 Attached marked “C” is an aerial photograph obtained with the assistance of City officials and from the City’s web site. (A complete explanation of how this was done is contained in a memorandum by Ms. du Toit, attached marked “D”) The continuous blue line on Annex B depicts the coastal edge. The City also has the information regarding the position of the high water mark and has apparently plotted it on aerial photographs like the one shown in Annex C, but uses it for internal purposes only and will not release it. What has been established is that there is no necessary correlation between the high water mark and the coastal edge; there is often a corridor of land between the high water mark and the coastal edge which falls across privately owned land which is	Noted. The low resolution aerial photograph provided is grainy and, although the line drawn by Ms. du Toit is clear, its relation to the property boundaries is not.

¹⁷ Page 83 of the SDF read with table 6.4

		therefore outside of an urban area.	
cc.	2.2.2	Accordingly, it is likely that the Property falls at least partly outside of an urban area and within the coastal management area.	Notwithstanding the above response (to comment 7bb), it is clear from the aerial image provided that neither the proposed development nor the proposed development footprint (or associated triggered listed activity in terms of NEMA) falls within the coastal management area.
dd.	2.2.3	Also important for present purposes is the fact that the Property falls within an area defined as the “ Coastal Zone ” under the National Environmental Management: Integrated Coastal Management Act ¹⁸ (“ICMA”). ¹⁹ It is therefore ordinarily subject to additional protection afforded coastal areas and resources under ICMA, discussed in more detail below.	<p>Even if some of the property falls within the coastal zone (which is not explicitly clear in the aerial image provided in comment 7), no development is proposed within this zone.</p> <p>ICMA refers to “development or activities” (S63(2)) as well as (S63(1))coastal activities, neither of which apply to the application as all proposed development and related NEMA listed activities would occur outside of the coastal zone.</p> <p>Therefore, the coastal zone does not need to be considered in the application.</p> <p>Notwithstanding the above, it is understood that the coastal zone has not yet been adopted by the DEA&DP.</p>
ee.	2.3	<u>Notice for purposes of public participation</u>	
	2.3.1	The notice was received, almost coincidentally, by our clients ‘planning advisor, Dr Stephen Townsend, who was asked to circulate it to other interested and affected parties (“I&APS”). This was done by way of an e-mail addressed by Ms. Marielle Penwarden, apparently the environmental assessment practitioner (“EAP”) appointed for the Setback Application, dated 12 October 2015. A copy of that e-mail is attached marked “E”. Tellingly, the-mail refers to the Setback Application as “the environmental authorization”, supporting the view that the	<p>The email referred to in Appendix E of the letter from the Beaches was not attached. Therefore, refer to the full email (sans attachments, as this is what has been included in Appendix E of the letter from the Beaches) in Appendix M.</p> <p>When reading the email, the following facts are clear:</p> <ul style="list-style-type: none"> • Dr. Townsend was not asked to circulate the information to other I&APs. In fact, it was clearly stated in a follow-up email, dated 17 October 2015, that passing on information to I&APs was not (own emphasis) expected of him; and • Additional notification and sufficient commenting time for all I&APs who were not previously notified was imminent; • Dr. Townsend acknowledged receipt of the email of 17 October 2015. <p>Furthermore, the notification letter provided in the email (which is</p>

¹⁸ 24 of 2008

¹⁹ Section 1

		Setback Application is intended to be a substitute for an EIA in compliance with the EIA Regulations.	the document to which “Appendix E” in the Beaches letter refers) explains the triggered listed activity and is written as required by NEMA and the latest DEA&DP Guideline on Public Participation (August 2010). Refer to the response to comment 2c above for information regarding the fact that the setback line application has been submitted in accordance with relevant legislation and in response to written confirmation from DEA&DP.
ff.	2.3.2	The Notice stipulated a review period of 30 days, from 19 November 2015 to 11 January 2016, within which period I&APs were invited to comment on the Application. Importantly, firstly, 19 November 2015 to 11 January 2016 is not a 30-day period. Secondly, our client did not formally received the Notice and, to the extent that it received it at all, it did so on 12 December 2015.	Refer to the response to comment 1c above.
gg.	2.3.3	With regard to public participation, the Application mentions that public participation has been initiated as part of the planning process. It states that an agreement has been reached with DEA&DP that all that is required for public participation in this application is notification of the local authority; notification of landowners; and the provision of a 30-day comment period to I&APs.	Noted, however the terms “agreement” implies that the public participation process was negotiated with DEA&DP. This is not the case. The application was submitted to DEA&DP who responded with their requirements (refer to their letter in Appendix H). DEA&DP required written notification to the City of Cape Town and adjacent landowners and that they be afforded a 30-day comment period.
hh.	2.3.4	Implicit in this statement is that adjacent owners will be notified, but none of our Clients received a copy of the Notice (except informally, by way of the e-mail addressed to Dr Townsend, referred to above). There was no evidence on the EAP’s website of any notification of I&APs.	Refer to the response to comment 1c above. Evidence of the notification of I&APs for the revised application in terms of the NEMA and EIA Regulations, 2014 will be submitted with the final application to the DEA&DP.
ii.	2.3.5	Subsequently, several of our Clients received a copy of the Notice by email, now dated 17 December 2015 (the “Revised Notice”). It	Agreed. Refer to the response to comment 1c above.

		conveys substantially the same information, save that it records that due to a clerical error, the notice was not send to some of the landowners. For that reason, an additional round of notification is being conducted and comments are required by 5 February 2016. ²⁰	
jj.	2.3.6	Significantly, the general public has not been notified of the Proposed Development, despite the potential implications for it as a result of the relaxation of the Scenic Drive Regulations. That would ordinarily have been done in (at least) a publication circulating in the area concerned. This is, in our view, a fatal flaw in the advertising process. In addition, there is still no evidence on the EAP's website that all I&APs have been notified of the Setback Application.	<p>Note that the Scenic Drive Regulations have been addressed as part of the town planning application in terms of the By-Law.</p> <p>With respect to the application, the process required by DEA&DP was followed and, in fact, went beyond the requirements of DEA&DP as an additional extension on the public comment period was recently provided to 07 March 2016 through a notification dated 26 January 2016 (to which the letter from the Beaches does not refer at all). Note that the PPP required by DEA&DP for the application is not unusual for this type of application.</p>
kk.	2.3.7	The Checklist remains unchanged and the comments made regarding it, set out in section 2.1, remain valid and are reiterated.	<p>Noted. Refer to responses above.</p> <p>The application has been revised in response to comments received from I&APs.</p>
ll.	3 RELEVANT LAW AND ITS APPLICATION HERE <u>National Environmental Management Act</u>	3.1.1 The National Environmental Management Act ²¹ (NEMA") contains several provisions that are relevant to this Setback Application. Importantly, it is silent on the issue of the granting of an ad hoc setback line.	<p>The application form provided by DEA&DP explains that the development setback line application applies to NEMA listed activities.</p> <p>With regard to NEMA, S24(5)(b)(iv) allows the Minister or MEC (in concurrence with the Minister) to make regulations which lay down the procedure to be followed in respect of applications by any person to be exempted from the provisions of any regulation in respect of a specific activity. S24(5)(bA)(ix) further states that the Minister or MEC (in concurrence with the Minister) may also lay down the procedure to be followed for the preparation, evaluation and adoption of prescribed environmental management instruments which may include any relevant instruments which</p>

²⁰ Second last paragraph of Revised Notice

²¹ 107 of 1998

			<p>may be developed in time.</p> <p>It is believed that the ad hoc development setback line is such an instrument and DEA&DP are within their rights to enforce this.</p> <p>Furthermore, the mere existence of an exclusion for a setback line in listed activity 19 implies that such an activity may be authorised should there be a development setback line in place and that it may be authorised by the competent authority (in this case, DEA&DP as they would be the competent authority should the exclusion not apply as well). Note that the EIA Regulations define a “development setback” as “a setback line defined or adopted by the competent authority”.</p>
mm.	PRINCIPLES	<p>3.1.2 NEMA stipulates that any official or organ of state exercising any power under any statutory provision concerning the protection or management of the environment is obliged to have regard to the principles set out in NEMA²² (the "NEMA Principles"). There can be no statutory provision more obviously directed at the protection or management of the environment than NEMA. For that reason, when making a decision to grant or refuse the Setback Application, the DEA&DP must have regard to the relevant principles. These include that:</p>	<p>DEA&DP is mandated to make decisions on environmental issues and will no doubt have regard to the NEMA principles when doing so.</p> <p>An ad hoc setback line application allows for DEA&DP to decide whether or not an EIA would be required and, if not, affords DEA&DP the power to allow a specific project scope to be realized beyond a certain point in the landscape (i.e. the development setback line).</p> <p>Furthermore, the NEMA principles would be considered in light of the nature of the listed activity triggered.</p>
nn.	3.1.2.1 "Development must be socially, environmentally and economically sustainable"; ²³		<p>Section 3 of the application interrogates the existing context in order for the authorities to establish whether or not the proposal is in line with the <i>status quo</i> of development in the area.</p>

²² Section 2(1)(c) and (e)

²³ Section 2(3)

		<p>Section 7 of the application form requires that information on various impacts be provided, both positive and negative, for both the proposal and no-go alternative. Section 7 also requests information regarding the relative location to Critical Biodiversity Areas (CBAs), existing building or setback lines, as well as the proposed development setback line.</p> <p>Section 8 requires that input from Interested and Affected Parties be obtained in order to provide further details on whether their rights are adversely affected. The proposed design has been substantially amended in response to comments received from I&APs.</p>
oo.	3.1.2.2 "The disturbance of eco-systems and loss of biological diversity are to be avoided, or where they cannot be altogether avoided, are minimised and remedied", ²⁴	<p>Section 3 requires that some baseline information for the site be provided and queries erosion, the proximity to the nearest estuary, as well as the beach or watercourse nearby be described.</p> <p>Section 4 also requests details as photographs of the "affected" watercourse in order to the authorities to gauge the sensitivity of the area.</p> <p>Section 7 inquires about sensitive areas such as CBAs.</p>
pp.	3.1.2.3 "A risk-averse and cautious approach is applied, which takes into account the limits of current knowledge about the consequences of decisions and actions", ²⁵ and	<p>This approach is promoted through the requirements of Section 7 which requests input on potential impacts as well as Section 6 which requires that the surrounding land use be described in detail to ensure that the proposal is not out of character with the surrounding development.</p> <p>The DEA&DP have further requested the input of the City of Cape Town and adjacent landowners for the application, which illustrates that they are risk-averse and that local knowledge is important to them and the process.</p>
qq.	3.1.2.4 "The social, economic and environmental impacts of activities, including disadvantages and benefits,	The positive and negative impacts of the proposed activity are required in Section 7. These have also been further revised in response to comments received from I&APs.

²⁴ Section 2(4)(a)(i)

²⁵ Section 2(4)(a)(vii)

		must be considered, assessed and evaluated and decisions must be appropriate in the light of such consideration and assessment". ²⁶	
rr.	3.1.2.5	It is obvious from the LUPO Application that if the development proceeds, it will create potentially significant impacts. It is, in our view, a breach of the NEMA principles for DEA&DP to grant the Setback Application. The net effect will be to ensure that those impacts do not have to be assessed, nor, where possible, mitigated. It is also clear that where, on the face of it, significant impacts are likely in a coastal area, a risk-averse approach must be adopted by DEA&DP. It cannot properly apply those Principles if the Setback Application is granted and no EIA is carried out, DEA&DP cannot comply with the NEMA principles quoted above.	<p>The impacts have been evaluated in the context of the triggered listed activity, namely the moving, excavating or infilling of greater than five cubic metres of material/sand/rock.</p> <p>DEA&DP is within their rights to grant <i>ad hoc</i> development setback lines and have been doing so for the Clifton (and other coastal ribbon development areas) for some time.</p> <p>It is believed that, upon conclusion of the required public participation process, DEA&DP would have sufficient information to make an informed decision on the process. DEA&DP will no doubt take the NEMA principles into account when considering the application.</p>
ss.	3.2	Our courts have confirmed that the implementation of these principles is mandatory in the making of decisions such as the one to grant or refuse the Setback Application. In the matter of <i>Fuel Retailers Association of Southern Africa v Director General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province & Others</i> ²⁷ (the " <i>Fuel Retailers Case</i> ") the Constitutional Court quoted the NEMA Principle referred to in paragraph 3.1.2.4 above, and confirmed that the NEMA Principles must guide the implementation of legislation concerning the protection and	<p>Noted.</p> <p>The social, economic and environmental impacts of activities, including disadvantages and benefits, have been considered in the application and will be taken into account when the application is considered.</p>

²⁶ Section 2(4)(i)

²⁷ 2007(6) SA 4 (CC)

	management of the environment. The Court found that "it is therefore plain that these principles must be observed as they are of considerable importance to the protection and management of the environment."	
tt.	3.3 The <i>Fuel Retailers Case</i> reiterated a similar finding to that in the matter of <i>BP Southern Africa Limited v The MEC for Agriculture, Conservation, Environment and Land Affairs</i> . ²⁸	Noted.
uu.	3.4 These NEMA Principles cannot be applied if there is no information available to the decision-maker to use to apply them. There can therefore be no rational basis for making a decision regarding the Application without the benefit of the findings and recommendations of at least a basic assessment.	Refer to the response to comment 7rr above.
vv.	3.5 Another consequence of the granting of the Setback Application (and therefore the failure to undertake an EIA) is that it will not be possible for the City to apply the relevant NEMA principles, including the obligation to take into account all of the environmental impacts (including those on people) in the consideration of the LUPO Application, unless it stipulates an EIA in accordance with a process prescribed by it. The granting of the Setback Application will potentially result in a flawed decision on the LUPO Application because the City will simply not have sufficient information before it to make a defensible decision.	The City would be able to authorise the town planning application on condition that an Environmental Management Programme (EMPr) be compiled for the construction and operational phases of the development.
ww.	3.6 <u>EIA Regulations</u> 3.6.1 NEMA, read with the EIA Regulations, prohibits the undertaking of listed activities	Noted.

²⁸ 2004 (5) SA 124 (W)

	regarded by the Minister of Environmental Affairs (" Minister ") as likely to have a significant effect on the environment (" Listed Activities "), without first obtaining environmental authorisation, that may not be granted without compliance with, or exemption from, the EIA Regulations.	
xx.	<p>3.6.2 There are several listed activities that are triggered by the Proposed Development and, but for the granting of the Setback Application, environmental authorisation for these will be needed so their impacts will have to be assessed. These include:</p> <p>3.6.2.1 <i>"The infilling or depositing of any material of more than 5m³ on to or the dredging, excavation, removing or moving of soil, sand, shells, grit, pebble or rock of more than 5m³ from...a distance of 100m inland of the high-water mark of the sea...excluding where such infilling, depositing, dredging, excavation, removal or moving -</i></p> <p><i>a will occur behind a development setback</i>²⁹</p>	Noted.
yy.	<p>3.6.2.2"Development... <i>if no setback exists, within a 100m inland of the high watermark of the sea ...in respect of - ...buildings of 50m² or more; or infrastructure with a development footprint of 50m² or more ...excluding where such development occurs within an urban area".</i>³⁰</p>	This activity is not triggered by the proposed development because the development falls within an urban area (refer to the response to comments to 7v, 7w and 7bb regarding the urban area).
zz.	3.6.2.3" <i>The expansion of facilities ...if no development setback exists, within a distance of 100m inland of the high-water</i>	Refer to the response to comment 7yy above.

²⁹ Listed Activity 19 on Listing Notice 1

³⁰ Listed Activity 17 on Listing Notice 1 in GNR 983 in Government Gazette 38282 of 4 December 2014

		<i>mark of the sea...in respect of building where a building is expanded by 50m² or more...but excluding where such expansion occurs within an urban area</i> ³¹	
aaa.	3.6.3	The application of each of these Listed Activities will be ousted by the granting of the Setback Application. It is respectfully submitted that in circumstances where it is clear that the Proposed Development is likely to have significant environmental impacts, it would not be a sound exercise of DEA&DP's discretion to grant the Setback Application; it should simply let the EIA process run its course so that those impacts can be assessed and, where necessary, mitigated.	Noted, however the <i>ad hoc</i> development setback line application process is provided for in order for the competent authority to decide whether or not an EIA is required when specific listed activities are triggered and, if not, affords DEA&DP the power to allow a specific project scope to be realized beyond a certain point in the landscape (i.e. the development setback line)
bbb.	3.7	<u>Power to grant Setback Application</u> 3.7.1. The Checklist specifies that the Setback Application is made under the EIA Amendment Regulations, 2010. However, the 2014 EIA Regulations are applicable to this Application. Further, not one of the 2010 Regulations, the 2014 Regulations or NEMA itself provides a power to, or a process by which, a setback can be adopted. It is therefore respectfully submitted that any decision to grant a setback would be <i>ultra vires</i> the powers of DEA&DP and would be vulnerable to attack on review.	The application is submitted on the latest form required by DEA&DP. It is understood that DEA&DP is in the process of updating the official form, however currently accepts applications in terms of the 2014 EIA Regulations on the aforementioned "outdated" form. Refer to the response to comment 7o for more information in this regard. The definition of a development setback allows for the adoption of a setback line by the competent authority.
ccc.	3.7.2	Our courts have reinforced this principle of legality; an official or organ of state may exercise no power and perform no function beyond that conferred him, her or it (<i>Affordable Medicine Trust v Minister of Health and Others</i> ³²). Further, our courts have made it clear that the consequences	Noted, however it is believed that DEA&DP is within their rights to grant a development setback line for the proposed development, given the allowable exclusion in listed activity 19 and the fact that S5 of the NEMA and the EIA Regulations of 2014 allow for the competent authority to approve a development setback.

³¹ Listed Activity 54 on Listing Notice 1

³² 2006 (3) SA 247 (CC)

		<p>of an authority exceeding its powers; where only a particular decision is legally mandated, any decision or part of one that exceeds those powers is invalid and will be set aside (<i>Pharmaceutical Manufacturers of South Africa v the President of the Republic of South Africa</i>³³. Axiomatically, the absence of a power to make a decision, such as the one to grant the Setback Application in these circumstances, will also be set aside by a court if asked to review that decision.</p>	
	<p>ddd.</p>	<p>3.8 ICMA</p> <p>3.8.1 As mentioned above, important for present purposes is the fact that the Property falls within an area defined as the "Coastal Zone" under ICMA.³⁴ That is because the Coastal Zone includes the "Coastal Protection Area" which is defined to include "any land...that is situated within 100m of the high water mark of the sea."³⁵ Self-evidently, the Site falls within the Coastal Protection Zone. It is clear that the legislature intended to afford particular protection to that area. In this situation, that protection is exercised through the EIA Regulations; ICMA imposes additional requirements that must take place during the process of an EIA undertaken in compliance with the EIA Regulations if it is proposed that a Listed Activity will take place in the Coastal Zone, defined in ICMA as a "Coastal Activity".³⁶ Where a Coastal Activity is</p>	<p>As provided for in the response to comments 7o, 7aa, 7bb, 7cc and 7dd above, the proposed development and development activity does not fall within the coastal zone indicated on the aerial image provided by the Beaches (i.e. no coastal activities are proposed within the coastal zone).</p> <p>Furthermore, the coastal zone line has not yet been formally adopted by DEA&DP.</p>

³³ 2000 (2) SA 764 (CC)

³⁴ Section 1

³⁵ Section 16 of ICMA

³⁶ Section 1

		proposed within the Coastal Zone, the competent authority, (that is DEA&DP) must take into account relevant factors including whether the Coastal Protection Zone will be affected by the Proposed Development. ³⁷	
eee.	3.8.2	If the Setback Application is granted, those provisions of ICMA cannot be complied with because no EIA will have been undertaken and no determination by DEA&DP under the relevant provisions of ICMA will be required. In the circumstances the exercise of the discretion to grant the Setback Application flies in the face of the Legislature's intention (articulated in section 61(c)(1) of ICMA) that developments in the coastal zone must be subject to more rigorous scrutiny than other receiving environments.	Refer to the response to 7ddd above.
fff.	3.9	<u>The Promotion of Administrative Justice Act.</u>	DEA&DP is empowered to make a decision on the application for the adoption of an ad-hoc development setback line. Whilst such a decision is administrative action, as contemplated by PAJA, such administrative action is lawful in all respects and, therefore, not reviewable by a court in terms of PAJA.
	3.9.1	The Promotion of Administrative Justice Act ³⁸ (" PAJA ") regulates administrative action undertaken by officials and organs of state. A decision to grant or refuse the Setback Application constitutes "administrative action" as defined by PAJA, ³⁹ which action is subject to judicial scrutiny. PAJA specifies in what circumstances a court may review and set aside a decision. They include where the administrator who took it was not	A court will only review and set aside administrative action which is unlawful, which is not the case in this instance. As has been pointed out above, DEA&DP have made decisions on similar applications many times previously, including in respect of Beaches, who wish not to suggest that such applications are unlawful.

³⁷ Section 63(1)(c)

³⁸ 3 of 2000

³⁹ Section 1

		authorised to do so by the empowering provision. ⁴⁰ In our view this disposes of the matter entirely; the Checklist makes it clear that the adoption of any setback would not be under ICMA or the NWA, there is no power to adopt one in NEMA or under either the 2010 EIA Regulations (which are in any event not applicable) nor the 2014 EIA Regulations that replaced them. A court would undoubtedly set aside any authorisation of the Setback Application.	
ggg.	3.9.2	In addition, PAJA provides that a court may set aside a decision where it is so unreasonable that no reasonable person could have exercised that power or performed that function. ⁴¹ We do not believe that a court would find it reasonable to approve an application that circumvents the EIA Regulations in these circumstances.	<p>The EIA Regulations are not being circumvented as the application is made under an exclusion provided by the EIA Regulations, 2014 (and those of 2010).</p> <p>The application considers and provides information and impacts associated with the triggered listed activity in terms of the EIA Regulations, 2014.</p> <p>A decision to grant an ad-hoc development setback line application could not be considered to be unreasonable in the circumstances of the matter and the High Court will not review the approval of the application on the purported basis that it is.</p>
hhh.	3.9.3	<u>The Scheme</u>	<p>The tool used to assess the potential impacts is the development setback line application, which is provided for under NEMA and the EIA Regulations of both 2010 and 2014 (although only those of 2014 apply to the application).</p> <p>The Scheme provides uniform standards and requirements but also provides for deviations from the uniform provisions. Such deviations would not automatically amount to breaches of privacy and or neighbours' rights to use and enjoy their properties. In any event, such deviations are dealt with in terms of applications made to the City of Cape Town and all interested and affected parties will have an opportunity of</p>
	3.9.4	The City adopted the Scheme which sets the benchmark for the built environment; people who live in Cape Town must accept the standards imposed by the Scheme, as well as the infringements of their privacy and the use and enjoyment of their properties that will inevitably flow from the ordinary implementation of those standards. Any relaxation of those standards is potentially a further breach of	

⁴⁰ Section 6 (2)(a)(i)

⁴¹ Section 6 (2)(h)

	<p>privacy and neighbours' rights to use and enjoy their property. Requested relaxations of the number and extent sought by the Applicant are potentially significant; the obvious tool to assess them is an EIA.</p>	<p>making representations in regard thereto. This need not affect this application for an ad-hoc development setback line.</p> <p>All buildings on the lower side of Victoria Road in Clifton do not comply with the special zoning regulations applicable to these erven. The character of the area has therefore not been informed by the special conditions, but through the removal and amendment of title deed conditions and departures from the zoning scheme regulations. Probably the most significant provision applicable to these erven is the scenic drive regulations. While scenic drive departures are required, it is relevant to note that the new building will improve the scenic quality of the road which cannot be said of most other buildings on the lower side of Victoria Road.</p>
iii.	<p>4. CONCLUSION AND REQUEST</p> <p>4.1 In our clients' submission, there are many compelling reasons why the Setback Application should not be granted and that a decision to grant it would, in the light of all of its procedural and substantive shortcomings, be vulnerable to attack on judicial review. These reasons are that:</p>	<p>Noted.</p>
jjj.	<p>4.1.1 The Checklist mentions only one relaxation applied for in the LUPO Application; given that what has been requested is the relaxation of four height restrictions; three width restrictions; two depth restrictions; and bulk or floor area restriction; given the likely significant impacts on the receiving environment, this is not a case for the granting of the an <i>ad hoc</i> setback.</p>	<p>The application provides the information relevant to the listed activity which is triggered under NEMA and the EIA Regulations of 2014.</p>
kkk.	<p>4.1.2 There is no power in law to grant the Setback Application.</p>	<p>DEA&DP has power in law to grant a development setback line and has been successfully doing so in the past.</p>
lll.	<p>4.1.3 A court would likely find that no reasonable person would make a decision that will have the effect of circumventing</p>	<p>The EIA process is not being circumvented, but rather a relevant process within the provisions of the EIA Regulations of 2014 is being applied.</p>

		<p>the EIA process in these circumstances; the departures sought by the Applicant are numerous and significant, the legislature has provided extra protection for the coastal environment that will not be triggered by the granting of the Setback Application and the LUPO decision must sensibly be informed by an EIA which will not be before the City if the Setback Application is granted.</p>	<p>The legislation for the coastal environment (i.e. ICMA) does not apply to the proposed development as no coastal activities will be taking place within the coastal zone. Furthermore, DEA&DP has not yet adopted the ICMA coastal zone line.</p>
mmm.	4.1.4	<p>The Scheme was adopted by the City to establish the ordinary acceptable encroachments on privacy and the use and enjoyment of property. If it proceeds, the Proposed Development will make significant further inroads on those encroachments. The Setback Application was made to circumvent the obligation to undertake an EIA of some kind which would enable decision-makers in both Applications to determine the impacts of the Proposed Development and implement the NEMA Principles in making their respective decisions.</p>	<p>Planning legislation makes provision for property owners to apply for departures from the provisions of the Scheme which must be granted if considered desirable.</p> <p>The ad hoc setback line application has been made in accordance with the EIA Regulations 2014 and contains sufficient information for DEA&DP to consider the triggered listed activity and associated impacts.</p>
nnn.	4.1.5	<p>If it proceeds, the proposed Development will fall at least partially in the Coastal Protection Area, to which the Legislature intended to give special protection, by way of a supplemented EIA process. If the Setback Application is granted then the impacts on the Coastal Protection Area will not be assessed.</p>	<p>The coastal zone line in terms of ICMA has not yet been adopted by DEA&DP and, therefore, would not apply to the application.</p>
ooo.	4.1.6	<p>There has been inadequate notice of the Setback Application; it is evident from the LUPO Application that a relaxation of Scenic Drive Regulation is requested; if that is granted the public's rights to a view of the sea, breakers, rocks and beach from Victoria Road will be adversely</p>	<p>The required notice will be provided for the town planning application.</p> <p>The notice required by the DEA&DP has been adhered to for the application and, in fact, additional notice has been provided in this regard over and above the DEA&DP requirements.</p>

		affected. For that reason the advertising process that has taken place to date is inadequate; the general public has no way of knowing that it may be affected by the proposed development and therefore cannot object.	
ppp.	4.2	It is therefore requested that the Setback Application be refused.	Given the baseline environment and the relevant listed activity triggered in terms of the EIA Regulation, 2014, it is believed that an <i>ad hoc</i> development setback line application is appropriate. Furthermore, the development setback line along the existing retaining wall and HWM is deemed acceptable.
qqq.	4.3	In addition, it is requested that if the same EAP is appointed to carry out any EIA that may be undertaken in the future in compliance with the EIA Regulations, then that EIA should be subject to review in accordance with the EIA Regulations; ⁴² given the view already expressed by the EAP that the proposed development will have no negative impacts during "operation", which conclusion in all the circumstances casts doubt on the independence and objectivity of the EAP.	<p>It is irrational to extract one phrase from the entire application and proclaim the EAP to have compromised on their independence. The EAP has conducted itself professionally and competently and it is unreasonable to suggest that the opinion of the EAP is in any manner biased or not independent.</p> <p>There should be no doubt regarding the independence of the EAP given the following:</p> <ul style="list-style-type: none"> • The process undertaken has been transparent (both with interaction with I&APs and DEA&DP) and has been carried out according to the necessary process; and • The facts as observed have been presented concisely, with a marked absence of emotive or persuasive language. <p>Furthermore, the opinion regarding the impacts of the development took cognizance of the following:</p> <ul style="list-style-type: none"> • The nature of the triggered listed activity (i.e. excavation, moving or infilling of greater than five cubic metres of material); • The surrounding development context and how the proposed development would be aligned with it; • The existing extent of infrastructure adjacent to the site relative to the coast and the HWM; • The scale and nature of the proposed development; • The anticipated duration of the construction phase of the

⁴² Regulation 13(2) of the 2014 EIA Regulations

			<p>proposed development;</p> <ul style="list-style-type: none"> • The availability of existing service infrastructure; • The extent and nature of environmental sensitivities on and adjacent to the site; and • Input from I&APs (currently underway). <p>Note that inputs from I&APs have resulted in a revision of the application which will be circulated to I&APs once the revised designs are finalised.</p>
8.	<p>Mark Diskin Registered owner 3 February 2016 and 29 February 2016</p>		
a.	<p>I returned from the UK yesterday and found Marielle Penwarden's letter dated 26th January 2016 in my Beaches post box. While the letter refers to "reduce the scope of the proposed development" and calls for comment by 7th March, all the information currently on your website refers to the previous scheme. Am I missing certain new information on which I may comment?</p>	<p>A direct email response was provided as follows: "Thank you for your email! The architects and town planners are in the process of coming up with alternative designs and nothing concrete has been put forward as yet. Once a suitable design has been selected, we will notify registered I&APs of the changes and the process going forward. Therefore, at the moment, the information on the website is all that is available for public comment."</p>	
b.	<p>Should we still expect alternative designs prior to March 7th?</p>	<p>A direct email response was provided as follows: "If and when Chand receives amended plans, we will be able to confirm to Interested and Affected Parties (I&APs) the intention of the applicant. We are, at present, uncertain as to when the amended plans will be finalised."</p> <p>Note that the application and proposed plans have been revised and are currently available for public comment.</p>	
9.	<p>Helet Merkling Registered owner 20 February 2016</p>		
a.	<p>Kan julle asb. vir my alle aangepaste ontwerp details stuur van Villa D'Azur en bevestig of die kolossale glas en staal struktuur op die dak van die gebou en op die "Scenic Drive" al weggelaat is en n driedimensionele tekening aan ons stuur van die dakontwerp.</p> <p>Kan julle ook bevestig dat julle proaktief met alle</p>	<p>A direct email response was provided as follows: "Ek sal die gewysigde planne vir jou stuur sodra ons die finale stel planne van die argitekte gekry het."</p> <p>Note that the application and proposed plans have been revised and are currently available for public comment.</p>	

		geaffekteerde partye enige aanpassings van die ontwerp sal deel, asb.?	
10.	Willem Buhrmann Willem Buhrmann Associates 01 March 2016		
a.	<p>Please confirm if the amended plans are going to be part of the AD HOC DEVELOPMENT SETBACK LINE Application?</p> <p>Please also confirm if these amended plans are to be formally circulated for comment as part of the LUMS Application.</p>	<p>Note that the application and proposed plans have been revised and are currently available for public comment. Note that, in terms of the requirements of the NEMA, comments received on this revised application will not be responded to, but will be provided to the DEA&DP with the final submission. I&APs will also receive a notification of the decision taken by the DEA&DP.</p> <p>A new town planning application was submitted in September 2016 and the appropriate public engagement activities will be undertaken.</p>	
11.	Andre Loock Loock Architecture 03 March 2016		
a.	<p>Following our conversation earlier today I wish to confirm the following:</p> <p>1 Marielle confirmed that Chand have not received a revised or amended site development plan from the Design Workshop to date.</p>	<p>Noted, no revised designs were received at the time. However, the application and proposed plans have subsequently been revised and are currently available for public comment.</p>	
b.	<p>2. Marielle confirmed that Chand's current application for the adoption of an ad hoc development setback line for erf 281 is <u>based</u> on the original SDP circulated by Cape Town city council on the 14th of September 2015.</p>	<p>Agreed.</p>	
c.	<p>3. Marielle confirmed that comment period on the setback line application is <u>still effective 7th of March 2016</u>.</p>	<p>Agreed.</p>	
d.	<p>4. Andre Loock, on behalf of Clifton View, requested that Chand extend the comment period once more in view of the above. This will save everybody a lot of time and money and allow the developers to issue a revised SDP which must be formally</p>	<p>Although the comment period was not extended, any additional comments received have been considered in this application.</p> <p>Refer to the response to comment 10a above.</p>	

		circulated.	
12.	Willem Buhrmann Willem Buhrmann Associates 04 March 2016		
a.	Ref: 2174 – Clifton Views Melissa & Marielle I wish to confirm that Tommy Brümmer, on behalf of the registered owner / developer of Villa D'Azur, presented to André and me, on 19 February 2016, a revised Site Development Plan (SDP), that was to have been formalised and circulated to the Interested and affected Parties, including Chands, as substitution SDP.	A formal letter was provided by Mr. Anton Slabbert in response to this query: “As you may know, I act on behalf of the owners of the units in Villa d’Azur, who have submitted various applications to Province and the City of Cape Town in regard to the development of that property.	
b.	This revised SDP was to be made available to you as the replacement plan to be advertised as the substitute to the advertised proposal.	I further refer to your emails sent to Chand Environmental Consultants relating to the objections to the application for the adoptions of an ad hoc development setback line.	
c.	To date we have not received a formal copy and your email reflecting that the closing date of 7 March 2016 for responses, remains, as far as the ad-hoc setback application is concerned, therefore raise questions and uncertainty as to the process (es).	Now that all interested and affected parties have submitted their objections to all the applications, my client will take these into consideration in deciding how to proceed with the development of the property.	
d.	Please kindly confirm the official position, as per André Loock's request for an extension date to be confirmed. My objection on behalf of Clifton View Body Corporate stands, and on behalf of my clients I reserve all their rights, in the light of the mentioned uncertainty, to submit further motivation to the earlier, and this objection filed, pending receipt of the amended SDP and a reasonable / extended response date.	In the circumstances, and once decisions in regard to the future development have been taken, we will revert to you to discuss the same and the issues raised in the objections, in the hope that a mutual acceptable development can be agreed upon and the objections of your clients to the same withdrawn.”	
e.	I also record that this request for an extension and reservation of rights is also filed on behalf of my clients, One Victoria Road and Ergoflex, owners of 3 properties situated opposite Victoria Road from Villa D'Azur, which properties will be very negatively / materially impacted by the proposed bulk and positioning of the proposed structure, not only in terms of it proposed encroaching into the volumetric constraints of the Zoning		

	Regulations, but critically also, by the proposed encroaching on the seaward setbacks and the Scenic Drive Regulations by way of the very large, unsightly and undesirable "glass box" that forms part of the development proposal, reflected on the SDP.	
f.	Thank you in anticipation for acknowledging receipt of this request and confirming an extended response closing date that will accommodate a recirculated SDP and fair process.	
13.	Willem Buhrmann Willem Buhrmann Associates 07 March 2016	
a.	<p>Ref: 2174 – Clifton View</p> <p>Melissa & Marielle</p> <p>My subjoined e-mail refers.</p> <p>May I reiterate my concern that the objectors are being prejudiced and are uncertain as to the process and timeline/closing date, having been advised that amended plans were to substitute the ones advertised.</p> <p>All my clients' rights are reserved since I have not had any response to my e-mails requesting clarity on this matter.</p>	Noted.
b.	<p>Thank you for your letter in response to my emails.</p> <p>I have not been able to submit substantive objections as we were advised by Tommy (who presented same to André and myself), that the plans to the application were to be substituted with what was deemed to be plans that would result in a less intrusive development envelope. My clients' rights therefore remain reserved.</p>	The email response provided was as follows: "It is understood that you received the attached letter (referring to the response to comment 12) in response to your queries. Please note that it still stands."
14.	Willem Buhrmann Willem Buhrmann Associates 07 March 2016	

	a.	I responded to Mr Slabbert's letter reserving all my clients' rights.	A direct email response was provided as follows: "Your response to Mr. Slabbert is noted."
	b.	<p>One of the reasons for the objection, on behalf of Clifton View Body Corporate, is that soil is to be removed from within the By-Law building restriction areas. This affected area is within the 25degree setback line and the building restriction line limiting all development closer than one third the site depth from the seaward boundary of the subject property.</p> <p>Within this excavated area it is proposed to erect structures that will impede views from my clients' apartments and properties. The loss of views will seriously derogate from the affected properties and is totally undesirable and should never be allowed.</p>	<p>A direct email response was provided as follows: "Your additional comment has been recorded and will be formally responded to in the Comments and Response Report in due course."</p> <p>Note that the proposal has been revised in response to comments received from I&APs, particularly with regard to their concerns regarding the visual impacts and impact on their property values.</p>
15.	<p>Andre Loock Loock Architecture 07 March 2016</p>		
	a.	Further to your correspondence with Mr. Buhrmann I would like to remind you that your application for the ad hoc departure is still based on the original SDP prepared and submitted by Tommy Brummer Town Planners on 14th of September 2015.	A direct email response was provided as follows: "It is acknowledged that the application currently available for comment for the proposed ad hoc development setback line is the original SDP and not revisions which have been informally discussed between you and Tommy Brummer."
	b.	We have recently been provided with a work-in-progress revised scheme by TBTP which clearly indicates a large portion of the building to be cut back at ground, first and second storey levels. Once formally submitted surely this will influence your current application and necessitate a revised subsequent application to fall in line with the revised scheme? I have attached the revised pack which I received from Tommy Brummer to this email for your consideration.	<p>A direct email response was provided as follows: "If and when Chand receives amended plans, we will be able to confirm to Interested and Affected Parties (I&APs) the intention of the applicant. Thank you for the attachment, however I believe it is not the design scheme referred to in your comment, it is correspondence from Mr. Anton Slabbert to Mr. Willem Buhrmann dated 7 March 2016."</p> <p>Refer to the response to comment 10a above.</p>
	c.	<p>Note: Myself and the following owners are registered as interested and affected parties:</p> <p>Mr. Mike Fullard (2B Clifton View) Dr. Karyn Moshal (5B Clifton View) Mr Folawiyo (7B Clifton View)</p>	<p>A direct email response was provided as follows: "Yourself and the following owners are registered as I&APs on the database: Mr. Mike Fullard (2B Clifton View) Dr. Karyn Moshal (5B Clifton View) Mr Folawiyo (7B Clifton View) Doug Jackson (Clifton View 4B)</p>

	<p>Doug Jackson (Clifton View 4B) Mr Krayten Clifton View 3A Mr Gray, Clifton View 4A Ms. Antoinette Steenkamp & Mr. Hugh Souparis (Clifton View unit 6B) Mr Shlain (Clifton View 3B) Mr Ian Hamilton (Clifton View 1B)</p> <p>On behalf of our clients from Clifton View we object to the adoption of an ad-hoc development setback line for remainder erf 281, Clifton.</p> <p>Please acknowledge and register this objection.</p>	<p>Mr Krayten Clifton View 3A Mr Gray, Clifton View 4A Ms. Antoinette Steenkamp & Mr. Hugh Souparis (Clifton View unit 6B) Mr Shlain (Clifton View 3B) Mr Ian Hamilton (Clifton View 1B)</p> <p>Your objection is acknowledged and recorded. Formal responses will be included in the Comments and Response Report in due course.”</p> <p>Refer to the response to comment 10a above.</p>
16.	<p>Willem Buhrmann Willem Buhrmann Associates 07 March 2016</p>	
a.	<p>I also represent the One Victoria Road Body Corporate, as well as Ergoflex (Pty) Ltd, properties across Victoria Road from Villa D'Azur.</p>	<p>A direct email response was provided as follows: “Your representation of One Victoria Road Body Corporate as well as Ergoflex (Pty) Ltd is noted. These parties are recorded as Interested and Affected Parties (I&APs) on the database.”</p>
b.	<p>One of the reasons for their objection, is that soil is to be removed from within the By-Law building restriction areas. This affected area is within the 25degree setback line and the building restriction line limiting all development closer than one third the site depth from the seaward boundary of the subject property.</p>	<p>A direct email response was provided as follows: “Your comment has been recorded and will be formally responded to in the Comments and Response Report in due course.”</p> <p>Refer to the response to 14b above.</p>
c.	<p>Within this excavated area it is proposed to erect structures that will impede views from my clients' apartments and properties. The loss of views will seriously derogate from the value of the affected properties and is totally undesirable and should never be allowed.</p>	<p>Refer to the response to 14b above.</p>
d.	<p>A further issue relates to the proposed development that will rely on the setback line adoption, where a covered structure is to be erected over the excavation along Victoria Road, where the lifts are to be installed and garages constructed.</p>	<p>Refer to the response to 14b above.</p>
17.	<p>Chris Willemse</p>	

Camps Bay Ratepayers and Residents' Association (Chairperson) 7 March 2016		
a.	The CBRRA, as a registered I&AP – and the only registered ratepayers' organization for the area and its community – is totally opposed to this application for the adoption of an ad hoc development setback line.	A direct email response was provided as follows: “We acknowledge receipt of your objection.”
b.	The planning application made in terms of the Removal of Restrictions Act and the LUPO has been responded to in previous correspondence to the Provincial Minister for Planning of the PGWC and to the City of Cape Town. In this, the CBRRA has made its opposition to this proposal clear.	Noted. The planning application has been withdrawn and a new application submitted in September 2016 which responds to concerns raised by I&APs.
c.	It would now appear that the applicant is attempting to avoid having to obtain environmental authorization in terms of a full Environmental Impact Assessment (EIA).	As indicated in the response to comment 2c above, the setback line application has been submitted in accordance with relevant legislation and in response to written confirmation from the DEA&DP to continue with the public participation component of the process.
d.	Given the sensitivity of the site and the great many environmental (and planning) factors involved in this proposed development, the CBRRA finds this approach totally unacceptable.	Refer to the response to comment 17c above.
e.	Without going into the detail of the matter, the CBRRA refers you to the letter of Cliffe, Dekker, Hofmeyr to yourselves dated 03 February 2016 (Ref TWY/CP/C.18-418). The CBRRA agrees with the contents thereof and hereby allies itself to the arguments and the points contained therein.	Refer to the responses to comment 7 above.
f.	Further, the CBRRA is strongly of the opinion that this development will have an extremely negative impact on the public's right to the scenic drive protection which, given the tourist value of the area, will also have a financial implication for the city as a whole. It is also unacceptable that the narrow financial interests of the applicant can negatively affect the constitutional rights of the community to the view amenity enshrined in law. This refers to both the glass “pimple” on top of the proposed building, above the	Refer to the response to comment 2d above. Furthermore, note that the glass box has been reduced as part of the revised development proposal.

		back of roadway and the proposed blocking of sight-lines from the public sidewalk down to the ocean.	
	g.	The CBRRRA requests that this application be refused.	Noted. The DEA&DP will make the final decision on the application for an ad hoc development setback line based on the information provided. I&APs will be notified of the outcome.
18.	Helet Merkling Registered owner 8 March 2016		
	a.	1. Kindly also confirm receipt of our objection for 9 Victoria rd., Clifton, please. I need to see the 3 D roofscape drawing and external lighting details of the proposed design, please.	A direct email response was provided as follows: "The objection for 9 Victoria Road, Clifton is noted. All drawings with respect to the proposed ad hoc development setback line application are available for viewing on Chand's website (http://www.chand.co.za/victoria.asp). The 3D roofscape drawing and external lighting details requested are not in Chand's possession and we therefore cannot provide you with the same. "
	b.	2. Can you also ask the owner to change as priority the light bulb in the Villa D'Azur sign light and install a shielded light below in the wall underneath the sign light as we are being kept awake die to strong refraction and nuisance from those lights.	A direct email response was provided as follows: "Please note that your query regarding the light bulb in the Villa D'Azur sign has been passed on to the applicant, however it will not be followed up further as it has no bearing on the proposed ad hoc setback line application."