

**LAND DEVELOPMENT APPLICATION IN TERMS OF SECTION 31 CHAPTER 5 AND
REGULATION 21 OF THE DEVELOPMENT FACILITATION ACT NO. 67 OF 1995:
HAWAAN FOREST ESTATE**

1. INTRODUCTION

This forms Part 2 of the DO's Report and is to be read in conjunction with Part 1 dated 30 May 2003. On 13 June 2003, it was agreed by all parties present, that the Hearing for the Hawaan Forest Estate Land Development Application be postponed until 29 September – 1 October 2003 to allow the eThekweni Municipality additional time to formulate their response to this application. Part 2 of the DO's report refers to all matters still outstanding and places on record all the additional correspondence, comments and objections received since 13 June 2003.

2. APPLICATION REVIEW (i/o Matters Outstanding)

2.1 Suspension of Certain Laws (cf Addendum 2)

- (A) Town Planning Ordinance No. 27 of 1949 (Section 44, 45 and 47 *bis* and Sections 11(11*bis*) and 12 of Chapter III)
- (B) Act 70/70 Subdivision of Agricultural Land Act
- (C) Removal of Restrictions Act, Act 84 of 1967

Approval has now been obtained from the Minister of Traditional Affairs, Safety and Security and Local Government for the suspension of (A) and (C) above. There has been no confirmation of the approval of (B) above - the suspension of Act 70/70 Subdivision of Agricultural Land by the Department of Land Affairs

2.2 Mineral Rights (cf Addendum 2)

The applicant has received confirmation from the Department of Minerals and Energy Affairs that the area under consideration will not interfere with mining or purposes incidental thereto and there is no objection to the proposed development. As the mineral rights owner, the State considers an amount of R1.00 per hectare, with a minimum of R100.00 per farm, to be adequate compensation to the State for permission to be given for the proposed development.

2.3 Removal of Restriction

Although agreement has now been reached between Moreland and the applicant in respect of the removal of the restrictive clause in the Title Deed, it should be noted that an objection to the Cancellation of Conditions of Title has been lodged by Mr Wally Menne. (cf Addendum 2)

2.4 Environmental Impact Assessment

2.4.1 Record of Decision (cf Addendum 4)

In respect of EIA/3771, the Department of Agriculture and Environment Affairs has authorized the establishment of the Hawaan Forest Estate on Portion 417 of Lot 31 No 1560 Umhlanga Rocks as depicted in the Hawaan Forest Estate Layout of Erven Drawing No 2278/1 dated 18 March 2003 subject to the following conditions of authorization:

General Conditions of Authorisation:

- 2.4.1.1 The availability of this Record of Decision must be advertised within the Daily News, North Glen and Isoleswe newspapers, within 10 days of the issuing of this authorization.
- 2.4.1.2 All registered interested and affected parties must be made aware, in writing, of the issuing of this Record of Decision, within 10 days of the issuing of this authorization, and of their right to lodge an appeal within 30 calendar days of the date of issue.
- 2.4.1.3 This Department reserves its right in terms of sub-regulation 9(3) of GN No. R1183 of 5 September 1997 as amended by GN No. R672 of 10 May 2002, to review any condition contained in this authorization, and if deemed necessary, delete or amend such condition, or at its discretion, determine new conditions, in such a manner that is lawful, reasonable and procedurally fair.
- 2.4.1.4 The applicant is responsible for compliance with the provisions for Duty of Care and remediation of damage contained in Section 28 of the National Environmental Management Act, Act 107 of 1998.
- 2.4.1.5 In the event of dispute regarding the severity of damage contemplated under 9.4 above, the decision of this Department will be final.
- 2.4.1.6 This Department retains the right to inspect the property at any time during its development and operational phases.
- 2.4.1.7 Failure to comply with these conditions of authorisation may result in this authorization being withdrawn and the applicant liable to legal action under Section 29 of the Environment Conservation Act, 1989.
- 2.4.1.8 The granting of this authorization, does not grant the applicant authorization or exemption from compliance with any other relevant and applicable legislation.

Specific Conditions of Authorisation:

- 2.4.1.9 The development shall adhere substantially to that depicted in Hawaan Forest Estate Layout of Erven Drawing No. 2273/1 dated 18 March 2003 prepared by Ndebele Kirby Planners.
- 2.4.1.10 There shall be no development in the Hawaan Community Conservation Zone other than that necessarily associated with the development proposal as authorized in this Record of Decision and included in the Construction and Operational Environmental Management Plans.
- 2.4.1.11 The conclusion of the Archaeological Report must be implemented, ie, test-pits must be excavated and a permit obtained from Amafa aKwaZulu-Natali for permission to damage/alter the two archaeological sites on the property PRIOR to any damage to these sites.
- 2.4.1.12 The stormwater control swales and attenuation ponds must be outside of the 20m buffer along the forest margin.
- 2.4.1.13 The stormwater control measures shall be instituted to the satisfaction of the City Engineer and shall be in place prior to other major earthworks on site commencing for the different phases.

- 2.4.1.14 Residences may not exceed three storeys or levels in height (ie. ground plus two).
- 2.4.1.15 Provision must be made for on-site sewage treatment to the satisfaction of eThekweni Municipality for the period until eThekweni Municipality can accept sewage from the trunk sewer connection.
- 2.4.1.16 Transects to monitor the condition of the forest and the number of mammals in the forest shall be conducted at least once per annum. Should it become necessary to control the number of mammals in the forest associated with this development, then such measures are to be agreed with eZemvelo KZN Wildlife prior to the implementation of such measures.
- 2.4.1.17 Access pathways in the forest on the property are to be maintained on existing game tracks where possible. Boardwalks may only be constructed over drainage lines or down slopes prone to erosion. Any deviation from this will require separate prior environmental authorization from this Department.
- 2.4.1.18 Home Owners Association is to be formed and shall comprise of all owners within the Hawaan Forest Estate. The Home Owners Association shall nominate members to the Hawaan Forest Conservation Trust and ascribe to the rules and regulations of the Trust.
- 2.4.1.19 The Construction Environmental Management Plan must be approved by this Department before the commencement any construction activity on the development area.
- 2.4.1.20 The Operational Environmental Management Plan must be approved by this Department before occupation of any of the residential units.
- 2.4.1.21 An independent Environmental Control Officer shall be appointed at the developers cost to monitor implementation of the Construction Environmental Management Plan. Monthly compliance reports shall be submitted to this Department quoting the EIA reference number EIA/3771 for attention: The Head: Compliance Monitoring, Durban Regional Office, 17th floor, 477 Smith Street, Durban.
- 2.4.1.22 The implementation of the Operational Environmental Management Plan shall be similarly monitored with compliance reports furnished to the Department at least every four months, or such period as may be determined in consultation between the developer and this Department.
- 2.4.1.23 **Validity**
The following validity periods shall be applicable to this development:
- Construction (including preparatory earthworks and installation of services) shall commence within **18 months** of authorization. If physical work on the development has not commenced within this period then this authorisation is deemed to have lapsed and is no longer valid.
 - Construction activities shall be completed within **48 months** of commencement of construction activities
 - Conditions pertaining to the operation of the development shall be valid for the lifespan of the development.

2.4.2 Environmental Impact Report and Copies of Objections

Attached at Addendum 3 is a list of the respondents to the Environmental Impact Report along with a summary of the issues raised and the applicant's comments in response to these issues. In addition, the applicant has supplied a register and minutes of the public meeting held on 21 May 2003 and copies of all the comments received on the Environmental Impact Report to date. The applicant has further confirmed that there have been no changes to the Environmental Impact Reports (Part 1 and Part 2) these being the same reports previously submitted to the Development Tribunal and the Department of Agriculture and Environment Affairs for consideration.

2.4.3 Service Agreement and Servicing Standards

No service agreements have been entered into between the eThekweni Municipality and the Applicant as the city has indicated that its ability to accept and dispose of sewage effluent is under investigation. The City is presently not able to commit to the receipt and acceptance of the developers sewerage until they have identified an appropriate method of sewage disposal to serve the proposed development, has all the necessary authorisations for the required construction and has obtained the necessary funding commitments. The City has advised that this process may take approximately two years.

The applicant has advised that they are negotiating with the City for the use of septic tanks as an interim solution.

2.4.4 Title Deeds, Diagrams and Servitudes

The applicant has confirmed that Hawaan Investments (Pty) Ltd has taken transfer of the land and documentation to support this will be made available at the Hearing on 29 September 2003

3.0 AFFIDAVIT OF OBJECTION IN TERMS OF REGULATIONS 8(8)(a) OF THE REGULATIONS MADE UNDER THE DEVELOPMENT FACILITATION ACT 67 OF 1995 FILED ON BEHALF OF THE ETHWKEINI MUNICIPALITY (cf Addendum 5)

The eThekweni Municipality ("the city") sought an adjournment of the hearing set down for 13 June 2003 to enable them to formulate a considered response to the Hawaan Forest Estate application. The city has since undertaken an extensive planning exercise for the Ohlanga catchment and has considered the application against the outcomes of that exercise.

Broadly speaking the city is supportive of the application subject to conditions being imposed as Conditions of Establishment. These conditions are set out in the Affidavit and relevant Annexures attached at Addendum 5 and summarized below:

- No development on the forest portion except public pedestrian access
- No development within a buffer zone of 20 meters from the edge of the forest
- No development north of the pepper tree hedge
- The registration of a conservation or non-user servitude in favour of the city and Ezemvelo KZN Wildlife over the forest portion, fallow canelands and buffer zone
- The protected area to be managed by a multi-stakeholder trust or other institutional mechanism which will allow appropriate public pedestrian access to the protected area
- Connection to sewer lines will be allowed once appropriate method of sewage disposal to serve the development has been identified and necessary authorizations and funding commitments have been obtained

- After construction, the stormwater runoff is to be equivalent to pre-development quality and quantity
- The rules of the Homeowners Association must prohibit the keeping of cats, dogs and pets that harm wildlife or may threaten biodiversity
- The Homeowners Association must ensure an income stream of R200 000 at today's value per annum for the environmental management of the protected area
- A landscaping plan (excluding the protected area) and using vegetation that is predominantly indigenous is to be submitted to the City for approval prior to development
- No fences permitted in the protected area and the security fence around the development must be permeable to small animals

Arising out of this planning exercise, the city also prepared Land Development Objectives for the catchment and these will shortly be submitted to the MEC for approval under section 27 of the DFA. The Land Development Objectives are outlined in the Affidavit and relevant Annexures attached at Addendum 5.

The affidavit draws attention to the City's three main concerns as follows:

- Environmental Impacts, namely deficiencies in respect of the Hawaan Forest Conservation Trust and the need for optimal management of the forest as a whole.
- Sewage Disposal issues, namely, the city is not presently able to increase the discharge of treated effluent into the Ohlanga River because of the negative impact that that will have on the estuary. The city is presently not able to commit to the receipt and treatment of the development's sewage until they have finalized the outcome of their investigations to solve this difficulty.
- Stormwater Management – the city is content with the stormwater proposal but reserve their right to comment on the stormwater management plan and final design for the detention ponds.

4.0 COMMENTS / OBJECTIONS RECEIVED AFTER 13 JUNE 2003 (cf Addendum 2)

- Facsimile dated 9 June 2003 from Winstanely Smith and Cullinan Inc addressed to the Deputy Registrar of the DFA Tribunal
- Letter from eThekweni Municipality received on 13 June 2003 entitled Comment on Environmental Impact Report addressed to G Nicolson and letter addressed to Sarah Allan (DAEA)
- E-mail from Wally Menne addressed to Sarah Allan dated 15 June 2003
- Facsimile dated 17 June 2003 from Ezemvelo KZN Wildlife addressed to Hawaan Investments
- Letter dated 17 June 2003 from Hawaan Investments (Pty) Ltd
- Facsimile dated 17 June 2003 from Ezemvelo KZN Wildlife in response to Hawaan Investment letter dated 17 June 2003
- Letter from Cllr Karen Read dated 13 June 2003
- Comments on the Environmental Scoping Report and Environmental Impact Report

submitted by Pravin Amar Development Planners cc on 17 June 2003

- Letter from Winstanley Smith and Cullinan Inc addressed to Sarah Allan dated 1 July 2003
- Letter from Ezemvelo KZN Wildlife dated 29 July 2003 addressed to Hawaan Investments (Pty) Ltd
- Letter from Hawaan Investments dated 7 August 2003 addressed to Ezemvelo KZN Wildlife
- Letter from Hawaan Investments dated 7 August 2003 addressed to Dr Roberts
- Letter from Hawaan Investments dated 8 and 11 August 2003 addressed to Pravin Amar
- E-mail from Wally Menne to Sarah Allan (DAEA) dated 7 August 2003
- Letter dated 8 August 2003 from the Minister of Traditional Affairs, Safety and Security
- Letter dated 29 August 2003 from the Department of Minerals and Energy Affairs
- Facsimile dated 1 September 2003 to Deputy Tribunal Registrar from Ndebele Kirby Planners
- Invitation to Public Meeting on 13 September 2003 from Pravin Amar Development Planners
- Hawaan Forest. Some requirements for maintaining viability
- Peer Review of EIA 3771: Hawaan Forest Estate
- Minutes of a public meeting on a proposed Hawaan Forest Estate Residential Development - 21 May 2003 at Natal Sharks Board Auditorium
- Letter from Guy Nicolson dated 6 September 2003 enclosing a list of respondents to the Environmental Impact Report, the issues raised and the comments in response to them
- Letter from Guy Nicolson dated 10 September 2003 containing a list and copies of all comments received on the Environmental Impact Report and a register of all who attended the public meeting held on 21 May 2003
- Letter from Hawaan Investments dated 10 September and enclosures listed therein
- Objection to Cancellation of Conditions of Title from Wally Menne dated 10 September 2003 and 17 September 2003
- Affidavit of objection in terms of Regulation 8(8)(a) of the regulations made under the Development Facilitation Act 67 of 1995, dated 15 September 2003, filed on behalf of the eThekweni Municipality

5.0 CONCLUDING COMMENTS

The following issues are to be noted:

- The Ministerial approval for the suspension of Act 70/70 Agricultural Land Act is still outstanding
- No services agreements have been entered into between the applicant and the eThekweni Municipality save for letters from the various Service Units. The City's ability to accept and treat the development's sewage has not been resolved..
- The Deed of Transfer is to be made available at the Hearing

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ADDENDUM 1

Correspondence after 13 June 2003

- Letter from DO to applicant dated 9 September 2003
- Letter from DO to Deputy Registrar dated 11 September 2003
- Facsimile dated 1 September 2003 to Deputy Tribunal Registrar from Ndebele Kirby Planners

ADDENDUM 2

Comments / objections received after 13 June 2003

- Facsimile dated 9 June 2003 from Winstanely Smith and Cullinan Inc addressed to the Deputy Registrar of the DFA Tribunal
- E-mail from Wally Menne addressed to Sarah Allan dated 15 June 2003
- Facsimile dated 17 June 2003 from Ezemvelo KZN Wildlife addressed to Hawaan Investments
- Letter dated 17 June 2003 from Hawaan Investments (Pty) Ltd
- Facsimile dated 17 June 2003 from Ezemvelo KZN Wildlife in response to Hawaan Investment letter dated 17 June 2003
- Letter from eThekweni Municipality received on 13 June 2003 entitled Comment on Environmental Impact Report addressed to G Nicolson and letter addressed to Sarah Allan (DAEA)
- Letter from Cllr Karen Read dated 13 June 2003 in support of the postponement
- Comments on the Environmental Scoping Report and Environmental Impact Report submitted by Pravin Amar Development Planners cc on 17 June 2003
- Letter from Winstanley Smith and Cullinan Inc addressed to Sarah Allan dated 1 July 2003
- Letter from Ezemvelo KZN Wildlife dated 29 July 2003 addressed to Hawaan Investments (Pty) Ltd
- Letter from Hawaan Investments dated 7 August 2003 addressed to Ezemvelo KZN Wildlife
- Letter from Hawaan Investments dated 7 August 2003 addressed to Dr Roberts
- Letter from Hawaan Investments dated 8 and 11 August 2003 addressed to Pravin Amar
- E-mail from Wally Menne to Sarah Allan (DAEA) dated 7 August 2003
- Invitation to Public Meeting on 13 September 2003 from Pravin Amar Development Planners
- Hawaan Forest. Some requirements for maintaining viability
- Peer Review of EIA 3771 : Hawaan Forest Estate
- Objection to Cancellation of Conditions of Title from Wally Menne dated 10 and 17 September 2003
- Letter dated 8 August 2003 from the Minister of Traditional Affairs, Safety and Security
- Letter dated 29 August 2003 from the Department of Minerals and Energy

ADDENDUM 3

Applicant's response

- Letter from Guy Nicolson dated 6 September 2003 enclosing a list of respondents to the Environmental Impact Report, the issues raised and the comments in response to them
- Letter from Guy Nicolson dated 10 September 2003 containing a list and copies of all comments received on the Environmental Impact Report and a register of all who attended the public meeting held on 21 May 2003
- Letter from Havaan Investments dated 10 September including
 - HI letter to Ezemvelo Wildlife dated 7 August 2003
 - Dr Mentis comments on the buffer zone and other issues
 - Dr Mentis comments on the Lawes and O'Connor reports
 - Ben Breedlove's comments on Richard Boons letter
 - Letter of Authority as to setting up the Conservation Trust
- Minutes of a public meeting on a proposed Havaan Forest Estate Residential Development - 21 May 2003 at Natal Sharks Board Auditorium

ADDENDUM 4

Record of Decision

- Record of Decision from the Department of Agriculture and Environment Affairs dated 17 September 2003

ADDENDUM 5

Affidavit of objection – eThekweni Municipality

- Affidavit of objection in terms of Regulation 8(8)(a) of the regulations made under the Development Facilitation Act 67 of 1995, filed on behalf of the eThekweni Municipality

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