



**MINISTER
WATER AND ENVIRONMENTAL AFFAIRS
REPUBLIC OF SOUTH AFRICA**

Reference: LSA123917

APPEAL DECISION

APPEAL AGAINST THE ENVIRONMENTAL AUTHORISATION ISSUED TO ESKOM HOLDINGS SOC LIMITED, FOR THE CONSTRUCTION OF THE PROPOSED MITCHELL'S PLAIN SUBSTATION, SWITCHING STATION AND A 400KV DOUBLE CIRCUIT TRANSMISSION POWER LINE FROM THE PROPOSED MITCHELL'S PLAIN SUBSTATION TO ANOTHER PROPOSED SWITCHING STATION, WITHIN THE CAPE TOWN METROPOLITAN MUNICIPALITY, WESTERN CAPE PROVINCE

1. INTRODUCTION

In terms of regulation 36 (1) of the Environmental Impact Assessment Regulations, 2010, published by Government Notice (GN) No. R. 543 of 2 August 2010 (the 2010 EIA Regulations), regarding activities identified under section 24 of the National Environmental Management Act, 1998 (Act No. 107 of 1998) (NEMA), the Deputy Director-General: Legal, Authorisations, Compliance and Enforcement (LACE) of the Department of Environmental Affairs (the Department) authorised Eskom Holdings Soc Limited (the applicant), on 11 June 2012, to proceed with the construction of the above-mentioned proposed project in Mitchell's Plain, within the jurisdiction of the City of Cape Town Metropolitan Municipality, Western Cape Province.

2. BACKGROUND

- 2.1 The proposed project comprises of the construction of the Mitchell's Plain Substation, a switching station and 2X400kV double circuit transmission power lines from the proposed Mitchell's Plain Substation to another proposed switching station.
- 2.2 The proposed Mitchell's Plain Substation, as authorised, is located on Portion 10 of the Cape Farm 693, and Route Alternative MS-C and MS-Db to the proposed switching station is located on Portion 66 of the Farm Saxenburg 419 at the intersection of Polkadraai Road and Zewenwacht link Road.
- 2.3 The environmental authorisation (EA) records the applicant's contention that the need and the desirability of the proposed project is due to the increased urban densification, and that the upgrade will strengthen and ensure continued security of the electricity supply within the City of Cape Town, Western Cape Province.

3 THE APPEAL

In terms of section 43 (1) of NEMA, Integrated Housing Development (Pty) Ltd and the Integrated Group (the appellants), both registered interested and affected parties, and represented by Edward Nathan Sonneberg Inc, lodged appeals against the environmental authorisation for the above-mentioned proposed project.

4. DECISION

- 4.1 In reaching my decision on the appeal lodged against the authorisation to proceed with construction of the proposed project, I have taken the following into consideration:
 - 4.1.1 Material information contained in the project file (12/12/20/1867);
 - 4.1.2 The grounds of appeal submitted by the appellants;
 - 4.1.3 The response of the applicant to the grounds of appeal;
 - 4.1.4 The comments received from the Chief Directorate: Integrated Environmental Authorisations (CD: IEA) of the Department; and

4.1.5 The need and desirability of the proposed project.

4.2 Having considered the above information, and acting in terms of section 43 (6) of NEMA, I have decided to:

4.2.1 Vary the EA by amending condition 26 **under the heading Specific Conditions** of the EA issued to applicant on 11 June 2012 for the construction of the proposed development to read as follows:

"The holder of the authorisation must consult with the affected property owners regarding the choice of design of the pylons to be utilised in the proposed development as identified in the Environmental Impact Assessment Report".

4.2.2 Dismiss the appeals against the EA issued by the Deputy Director-General: Legal, Authorisations, Compliance and Enforcement of the Department of Environmental Affairs to Eskom on 11 June 2012 for the construction of the proposed project.

4.3 The reasons for my decision are as follows:

4.3.1 **THE DEVELOPMENT OF THE PROPOSED POWER LINES IS IMMEDIATELY ADJACENT TO THE APPELLANT'S PROPERTY AND WILL HAVE A SIGNIFICANT DETRIMENTAL EFFECT ON THE BARDALE VILLAGE, AN AFFORDABLE HOUSING DEVELOPMENT PRESENTLY UNDER CONSTRUCTION AND PARTIALLY COMPLETED, WHICH IS SITUATED ON THE REMAINDER OF ERF 20733**

The appellants aver that the EA approves the revised route for the power lines development, which is immediately adjacent to their property. However, the appellant contends that the EA does not allow for any further negotiation of the position of the pylons next to their property, but specifically provides that only certain pylon positions (which do not include those to be constructed adjacent to their property) may be allowed for possible resettlement. The appellants further submits that despite their objection, the EA provides

that only the mono-pole design may be used, which in their opinion, will have a significant detrimental effect on their property.

The information before me shows that the description of the Bardale Village and the impacts associated with the proposed power lines development were discussed in the Final Environmental Impact Assessment Report (FEIAR), dated 29 February 2012. The report contained specialist studies, recommendations and concerns raised by the registered interested and affected parties (I&APs). The report furthermore concluded that in order to limit any possible impacts on the development, a deviation of a section of the route was necessary and the route alignment MS-Cb was recommended, which was authorised by the department authorised.

The department furthermore informed me that the approved route alignment runs parallel to an existing Eskom distribution servitude, which runs east of the appellants' property (Bardale village property). As a result of this, there is likely to be an insignificant amount of impact on the Bardale village.

As regards the appellants' concern in respect of mono-pole pylons, the information before me shows that I&APs suggested the use of single mast or steel mono-pole pylons towers, which according to them, are not a risk of dismantling and theft for the steel. In addition, the department informed me that the mono-pole was considered because of its limited use of space or smaller tower footprint. Furthermore, the department informed me that condition 29 of the EA allows for the resettlement of specific pylon positions, meaning the possible resettlement of households under which the pylons are located. In view of this, the condition does not stipulate that pylons cannot be relocated or moved, as suggested by the appellants.

In light of the aforementioned information, this ground of appeal is dismissed.

4.3.2 FLAWED PUBLIC PARTICIPATION PROCESS (PPP) AND EIA PROCESS FOLLOWED BY THE APPLICANT

The appellants aver that due to an oversight by the applicant, they were not consulted during the Scoping and First Draft phases of the EIA process, during which the power lines development was initially planned in such a manner that it traversed through Bardale Village, effectively sterilizing the majority of the remainder of their development. In addition, they contend that even though the final EIAR provides that the proposed power line development would be situated to the east of Bardale Village, they remain concerned about the potential noise, health and visual impacts that this re-alignment would have on their property.

Furthermore, the appellants submit that as a condition of their non-objection to the realignment, the final EIAR provides that the applicant would further consult with the landowners, including them, "to ensure that a route alignment which would ensure the protection of the land value and resources and which would also be to the socio-economic benefit of the communities" is attained. They argue that this means the applicant would undertake further negotiations with them, regarding the location of the servitude in such a manner as to protect the value of their property.

The information before me shows that the following were done during the scoping and first draft phase of the EIA process:

- public meetings and multi-stakeholders workshops were held;
- site notification posters were placed throughout the study area; and
- advertisements were also placed in 2 provincial and 3 local newspapers (in English and Afrikaans), which proved to be an acceptable means of communication with other I&APs in the study area.

In view of the above, I am satisfied that the PPP and the EIA process conducted by the applicant were not flawed and is in compliance with the 2010 EIA Regulations.

With regard to the appellants' contention in terms of realignment, the information before me shows that the additional route alignment proposed at the focus group meeting on 24 August 2011 was an alternative route alignment that was assessed in version 2 of the draft EIAR. In addition, the final EIAR indicates that in order to limit any possible impacts on the development, a deviation of a section of the route alignment MS-Cb was recommended.

This route alignment runs parallel to the applicant's existing distribution power lines servitude, which is located east of the appellant's property, and was previously approved (Condition 1 of the EA). The applicant furthermore informed me that owing to the urban setting of the appellant's property and the existing infrastructure that runs to its east, the visual impact assessment did not rate the proposed route alignment near their property as high.

With regard to the issue of further negotiations in respect of servitudes, the department informed me that they do not have any objection to further negotiations between the appellants, residents of Bardale Village and the applicant. However, any agreements that will result in non-compliance with any conditions in the EA must be reported as required by condition 43 of the EA. In addition to the above, condition 5 of the EA provides that any changes and deviations from the project description set out in the authorisation must be approved by the department in writing.

In light of the aforementioned, this ground of appeal is dismissed.

4.3.3 *CONDITION 29 OF THE EA WHICH REFERS TO RESETTLEMENT*

The appellants aver that condition 29 of the EA provides that only certain pylons may be relocated and the effect of this is that pylons located immediately adjacent to their property cannot be relocated further eastwards during the servitude negotiation process. In view of this, they submit that there remains ample opportunity for the route alignment to be moved further eastwards by at least 100m, which would considerably reduce the impacts on their

property, most particularly in the area near Blue Downs CBD, where there are large vacant areas.

In response to this ground of appeal, the applicant informed me that a move of pylons MS-C-43 to MS-C-47 further eastward is restricted by the proposed railway line and 2 existing suburbs (Happy Valley and an unnamed suburb north of Happy Valley). In addition, and with a view of protecting the socio-economic benefits of the existing communities, the applicant does not recommend the movement of pylons more than the allowable 20m eastwards, which will result in resettlement of people within the Happy Valley suburb.

Moreover, the department informed me that condition 29 of the EA does not prevent relocation of any of the approved pylon positions and they confirm that the approved servitude is not located further eastwards, as required by the appellants. However, should there be any movement of the servitude further eastwards, then surrounding land-uses being the railway and other existing suburbs should be considered.

In view of the aforementioned, I am satisfied that any agreements on the moving of the servitude further eastwards, will be done in accordance with condition 5 and 43 of the EA, and taking into account the surrounding land-uses and other existing suburbs.

This ground of appeal is therefore dismissed.

4.3.4 CONDITION 26 OF THE EA WHICH APPROVES ONLY THE MONO-POLE DESIGN PYLONS

The appellants aver that condition 26 of the EA approves only the mono-pole pylons, as opposed to the various alternative options assessed in the second EIAR, including the supporting tower. They submit that the visual intrusiveness of these towers can be subjective, as some viewers may perceive the lattice design of a self-supporting tower as less intrusive than a mono-pole design. They further argue that it is for this reason that they made it a condition of their qualified support for the proposed development that

consultation be held with them, residents of Bardale Village and the applicant regarding the design of the pylons, and that such negotiations be made a condition of approval.

In response to the concern pertaining to the type of design of the pylons to be used, I have noted that all the parties agree that condition 26 of the EA can be amended. Therefore, I agree to amend this condition to reflect that the applicant must consult with all affected property owners regarding the designs of the pylons to be used in the project.

However, note should be taken that the parties may only choose one of the designs identified in the EIAR. In addition, caution should be exercised that the overall power line should be as uniform as possible to avoid impacts on the other residents of the City of Cape Town.

4.3.5 THE NOISE IMPACT ASSESSMENT OF THE PROJECT FAILED TO ASSESS THE SOCIAL IMPACT OF CORONA AS IT IS USUALLY DETECTED WITHIN THE SERVITUDE AREA AND IN CLOSE PROXIMITY THERETO

The appellants aver that the effect of corona (breakdown of air molecules resulting from water droplets forming a conductor) will have a significant impact on their development as it is usually detected within the servitude area and in close proximity thereto.

In response to this ground of appeal, the information before me shows that the social impact of corona was assessed in the final EIAR and it indicates that corona is audible usually within the servitude area and is rated as no impact, considering the ambient noise level associated with the surrounding land uses. Furthermore, according to the department, in terms of the Noise Control Regulations, the sound level from the site measured at the nearest dwelling must not exceed 7dBA and this measure is also included in the approved Environmental Management Plan (EMP). I have also noted that the appellants refer to considerable noise levels; however they do not indicate the levels by which the acceptable standards will be exceeded.

In view of the above-mentioned measures, this ground of appeal is dismissed.

4.3.6 SENSITIVE NOISE RECEPTOR SUCH AS LEARNERS AT THE SCHOOL AND PROPERTY RESIDENTS STAND TO BE DIRECTLY AFFECTED

In response to this ground of appeal, the information before me shows that the proximity of schools to the proposed power line development has been discussed in the Social Impact Assessment which is contained in the EIAR. The impacts have been rated as medium during the construction phase and low during the operation phase. Again, as discussed above in paragraph 4.3.6, noise can only be an issue if acceptable levels will be exceeded and this measure is also included in the EMP.

This ground of appeal is therefore dismissed.

4.3.7 HEALTH IMPACTS OF THE PROPOSED POWER LINE DEVELOPMENT ON RESIDENTS AND LEARNERS

The appellants aver that there are no investigations by the applicant of the effects of corona iron pollution which may result in lung cancer, cardiovascular and respiratory illness and aggravated asthma and allergies.

In response to this ground of appeal, the information before me shows that studies were undertaken by the applicant, and the impacts from these studies have been rated as medium during the construction phase and low during the operation phase. Secondly, the approved section of the alignment that borders the appellant's property to the east is following the existing route alignment and that reduces new possible negative impacts. There is also no indication of new impacts other than the accumulation of already existing impacts. The appellants also do not provide any conclusive evidence that links the proposed development to corona iron pollution and the health risks which they refer to.

In view of the above, this ground of appeal is dismissed.

4.3.8 THE PROPOPOSED DEVELOPMENT WILL HAVE A SIGNIFICANT AND UNMITIGATABLE VISUAL IMPACT ON BARDALE VILLAGE

In response to the appellants' concern in this regard, the information before me shows that the preferred route alignment as approved by the department is located next to the existing distribution servitude and runs to the east of the appellant's property. I am informed by the department that this was done in order to limit possible visual impacts on the appellant's housing development, and was viewed as a measure to reduce further impacts by bringing together impacts of similar nature.

The Department further informed me that there will be a slight impact occurring where there is an incremental impact of additional line to existing electrical installations.

In addition, owing to the urban setting of the appellant's property and the existing infrastructure that runs to its east, the visual impact assessment did not rate the proposed route alignment near the appellant's property as high.

In light of the aforementioned information, this ground of appeal is dismissed.

4.3.9 THE PROPOPOSED DEVELOPMENT MAY RESTRICT THE REQUIRED PEDESTRIAN LINK AND RIGHT OF WAY BETWEEN HAPPY VALLEY AND BARDALE VILLAGE

According to the department, the transmission power line servitude varies from 35m to 55m wide, with an approved operational maximum of 5.5m under the towers. Based on the above, a pedestrian link could still be accommodated beneath the maximum operational height under the tower conductors of the proposed development.

In light of the above, this ground of appeal is dismissed.

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4.3.10 FINANCIAL LOSS AS A RESULT OF FAILURE TO DEVELOP SCHOOL ON PHASE 8

According to the appellants, should the proposed school on phase 8 not be developed as a result of the construction of the proposed development, they will suffer financial loss of approximately R5 Million and additional costs and delays associated with re-zoning for another purpose. They further submit that they might suffer unquantifiable losses associated with the decrease in value of various residential and commercial properties, which losses they anticipates will be substantial.

In response to the appellants concern in this regard, the appellants are directed to discuss potential financial loss with the applicant during the land acquisition negotiation phase. However, I am informed by the applicant that they foresee no practical reason why the proposed schools on phase 8 of the appellant's property could not be developed.

In light of the afore-mentioned, this ground of appeal is dismissed.



MRS B E E MOLEWA, MP

MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS

DATE: 2013/07/09