

KWAZULU-NATAL PLANNING AND DEVELOPMENT APPEALS TRIBUNAL

HELD AT PIETERMARITZBURG

APPEAL NO. PDA 17

In the matter between:

WEDGEWOOD OWNERS ASSOCIATION

FIRST APPELLANT

THE PRESERVATION OF MKONDENI MPUSHINI

SECOND APPELLANT

BIODIVERSITY TRUST

HILTON RATE PAYERS ASSOCIATION

THIRD APPELLANT

THE GARLINGTON HOME OWNERS ASSOCIATION

FOURTH RESPONDENT

WINTERSKLOOF CONSERVANCY

FIFTH APPELLANT

VENN NEMETH & HART

SIXTH APPELLANT

WALL PAPER INVESTMENTS (PTY) LTD AND A FERNDINOS **SEVENTH APPELLANT**

and

LAURUSCO DEVELOPMENTS

RESPONDENT

UMNGENI MUNICIPALITY

MUNICIPALITY

RULING ON POINTS *IN LIMINE* AND MERITS

Having considered the oral submissions of the parties, and the perusal of the documents filed of record, and mindful of the withdrawal of the appeal of the SEVENTH APPELLANT, it is ruled that:

1. The appeal by the SIXTH APPELLANT was not validly lodged and therefore there is no appeal;
2. The points *in limine* by the RESPONDENT and the MUNICIPALITY are dismissed.
3. The points *in limine* by the FIRST, SECOND, THIRD and FOURTH APPELLANTS are dismissed.
4. The Appeals of the FIRST, SECOND, THIRD and FOURTH APPELLANTS are hereby dismissed.
5. The Appeal by the RESPONDENT is upheld in respect of zoning of Areas A1 and A2.
6. The appeal of the RESPONDENT is dismissed in respect of the refusal of the bank guarantee as a mode of transaction for the proposed development.
7. In terms of Section 121(5)(b) of the KwaZulu-Natal Planning and Development Act, 2008, (Act No. 06 of 2008, as amended), the decision of the municipality made on 30 MAY 2012 is hereby altered in respect of the specific sections of the decision indicated herein under:
 - a. "3.1 Approve the zoning of Areas A1 and A2 for Business Park and Erf 1632, Hilton for sewerage treatment works. The approval of this zoning is subject to the significant improvement of the

horizontal and vertical alignment of the access road from the P/R 103 over the railway line to Areas A1 and A2. Such improvement shall include automatically activated guard booms and flashing lights at the level crossing and a sidewalk, no less than 2 metres in width, from the P/R103 up to and extending over the length of common boundary of the Deeside residential township to the immediate north west. These improvements shall be to the approval of the South African Transport Services (SATS), the KwaZulu-Natal Department of Transport and the Municipality jointly and severally as applicable."

- b. The shopping centre development proposed on Erf 1698 in Area D shall be limited to a maximum of 20000 sq m GLA for the first phase. This shall not preclude further phased development in later years to the maximum bulk as provided by the General Commercial 1 zoning of the site and as the market may further develop.
- c. The layout of the Area D shall be modified so as to exclude all development including roads, within the 30 metres wide screening buffer on the north eastern boundary flanking the Westwood. This modification of the layout shall be approved by the Municipality. The developer is required to remove over time, via a gradual process of thinning out the existing tree plantation and re-planting within the said buffer suitable indigenous trees so as to ensure the necessary screening to the west is maintained.

- d. A site development plan(s) shall be prepared for the shopping centre on Erf 1698 in Area D prior to the submission of formal construction building plans and which plans shall include a proposed earthworks plan and a variety of ground level view shed diagrams and landscape plans. Other than for any concept building, traffic and the earthworks plans, the said diagrams and plans are to be prepared by a landscape architect or a suitably qualified and experienced individual. This is with a view to ensuring that the visual bulk of the building, as viewed from nearby residential developments is minimised as far as is practically possible.
- e. A conservation servitude shall be surveyed and registered prior to or simultaneously with the first subdivisional registration of the proposed subdivisions, in favour of the Municipality, to ensure the protection of the areas of conservation significance such as, including, the wetlands. The areas which will be covered by the conservation servitude are depicted in the diagram depicting the areas A, B, C and D.
- (i) The developer shall pay for all costs associated with the surveying and registration of the conservation servitude with the Surveyor General and the Registrar of Deeds respectively;
 - (ii) The developer shall at his costs prepare an environmental management plan (EMP) which shall

deal with the situation prior to, during and post the construction of the township;

- (iii) The developer shall at his cost appoint an independent environmental control officer (ECO) to monitor compliance with EMP during construction and the appointment of the ECO shall be subject to the terms and conditions to be determined by the developer and the municipality;
- (iv) The developer shall establish a property owners association (POA), membership of which shall be binding for the future property owners of areas A1, A2, B, C1 and C2.
- (v) The conservation servitude shall not be for the use of the general public, but shall be for the sole benefit of the property owners indicated in (iv) above; provided that the POA may permit, at its sole discretion, a member or members of the public with an environmental or biodiversity interest access to the areas under the conservation servitude..
- (vi) The property owners shall be liable to pay a conservancy levy which shall be used for the maintenance and management of the conservation servitude areas. The conservation levy shall be paid by the property owners to the POA.

- (vii) The conservation servitude areas as indicated on the layout plan to be approved by the Municipality shall be suitably fenced off by the developer at its own costs, before any construction commences so as to ensure its protection from all construction and township development activities.
 - (viii) The EMP shall be adopted as part of the POA rules and to govern its usage and plan for their rehabilitation.
- f. The Municipality shall, subject to its compliance with provisions of various legislation applicable in the area and at the costs of the developer, extend the application of the Hilton Town Planning Scheme to cover the areas over which a conservation servitude shall be registered.
- g. The Municipality shall subject to its compliance with provisions of various legislation applicable in the area and at the costs of the developer, zone the conservation servitude to a suitable conservancy or conservation zone which shall be introduced into the Hilton Town Planning Scheme. This process needs not necessarily be completed, but shall be commenced, prior to the first transfer or other disposal of land taking place.
- h. The subdivisional layout of Area B shall be modified so as to honour the existing tarred access way to an existing business

operation to the immediate south of the area and go the north of the railway line.

- i. To ensure that the landscape character and ambiance of the area is not drastically altered and to ensure that there is a uniform theme for the proposed development, the developer shall establish an independent architectural review committee (ARC). The ARC shall be comprised of two independent architects; two representatives of the local residents organisations and one person representing the biodiversity sector.

- (i) The developer shall fund the operations of the ARC.
- (ii) When the development has been completed, the future property of the areas indicated shall constitute their ARC which shall perform the same functions as the initial ARC established by the developer. The POA shall fund the operations of the ARC created by the property owners.

8. No order as to costs.

DATED AT PIETERMARITZBURG ON THIS 6th DAY OF FEBRUARY 2013

T Nkosi

T Nkosi, Presiding Officer

Members of the Tribunal Panel: Mr J Forbes Miss N Khuzwayo; and Mr M Turnbull