

# THE GREATER KYALAMI CONSERVANCY “GEKCO”



28<sup>th</sup> March 2013

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## **NOTICE OF APPEAL: GAUT 006/12-13/E0089 DATED 20<sup>TH</sup> FEBRUARY 2013**

*(Against original decision of GAUT 002/07-08/N0934) The proposed amendment Riversands Lifestyle Estate/Diepsloot Industrial Development Precinct on portions 7, 36-38 & 121 of the farm Diepsloot 388 JRR (GAUT 006/12-13/E0089)*

In terms of our notice of intention to appeal letter dated the 28<sup>th</sup> February 2013, we hereby submit our Notice of Appeal as set out in the National Environmental Management Act, 107 of 1998 (“**NEMA**”). This letter serves to provide the detail to the NEMA APPEAL FORM as provided by yourselves and cross referencing to the points provided will ensue; as well as the new information not yet available at the time of the shortened participation process.

### **INTRODUCTION**

GEKCO was an I&AP and made submission to the original EIA process that was authorised as per GAUT 002/07-08/N0934 of 2009. GEKCO is aware that it has no recourse to that decision.

In a number of documents, including the rezoning application to the City of Johannesburg dated February 2013, Century Properties state that “the application has undergone several minor amendments in view of the current market changes and ..... intends to amend the pending township applications ...to accommodate the proposed Diepsloot mixed use precinct (SMME incubation hub)”. We believe that this amendment is nothing more than a ploy to reconstitute an economically unfeasible urban development scheme as originally designed and so source alternative funding

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(Jobs fund, IDC and DBSA) for it. The idea of the industrial development has been used by the developers to gain political favour, which it seems to have found given the haste with which the approvals for the amendments have been granted. Yet there has been little cognisance of the knock-on effects on the immediate neighbours, the sporting, social and environmental impacts. These impacts have been glossed over in order to “create” jobs for Diepsloot. We believe this to be a ruse that is unfounded and unsubstantiated.

GEKCO fully understands the desperate plight of the unemployed in Diepsloot but believe that this proposed amended industrial development is ill placed and ill conceived.

We consider that GDARD may have been misled in the amendment application or alternatively has misread the extent of the changes in land use affected by the amendment on the original RoD of 2009, erroneously allowed for a shorter period for which I&AP’s to submit responses and find it incredulous that the amendment could be ‘signed off’ a mere one business day after the close of this shortened submission period on the 14<sup>th</sup> February.

By way of this appeal, we therefore provide GDARD with all the information that we believe it has not had to hand in approving the amendment and urge GDARD to reconsider its decision of the 18<sup>th</sup> February 2013.

## **GROUND OFS OF APPEAL**

### **1. FLAWED PROCESSES (NEMA APPEAL doc § D3)**

#### **Background**

During 2008, Riversands Development (Pty) Limited (“**the applicant**”) applied for environmental authorization for the proposed mixed use development on portions 7, 36, 37, 38 and 121 of the Farm Diepsloot 288 J.R, Johannesburg (“**Riversands Lifestyle Estate**”). In particular the applicant applied to undertake the following activities:

- The bulk transportation of sewage and water, including storm water, in pipelines with: an internal diameter of 0,36 meters or more; or a peak throughput of 120 litres per second or more as per listed activity 1(k) of the Government Regulation 386;
- The construction of facilities or infrastructure for any purpose in one in ten year flood line of a river or stream, or within 32 meter from the bank of a river or stream where the flood line is unknown, excluding purposes associated with existing residential use, but including canals, channels, bridges, dams, and weirs as per listed activity 1(m) of the Government Regulation 386;
- The construction of facilities or infrastructure, including associated structures or infrastructure for the recycling, re-use, handling, temporary storage or treatment of general waste with a throughput capacity of 20 cubic meters or more daily average measured over a period of 30 days, but less than 50 tons daily average measure over a period of 30 days as per listed activity 1(o) of the Government Regulation 386;

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- The above ground storage of dangerous good, including petrol, diesel, liquid petroleum gas or paraffin, in containers with a combined capacity of more than 30 cubic meters but less than 1000 cubic meters at any one location as per listed activity 7 of Government Regulation 386;
- The construction of a road that is wider than 4 meters or that has a reserve wider than 6 meters, excluding roads that fall within the ambit of another listed activity which are access roads of less than 30 meters long as per listed activity 15 of Government Regulation 386;
- Any development activity, including associated structures and infrastructures, where the total area of the developed area is, or is intended to be, 20 hectares or more as per listed activity 2 of Government Regulation 387; and
- The construction of a dam where the highest point of the dam wall as measured from the outside toe of the wall to the highest part of the wall is 5 meters higher or where the high water mark of the dam covers an area of 10 hectares or more as per listed activity 6 of Government Regulation 387.

The proposed development of Riversands Lifestyle Estate, according to the Final Environmental Impact Assessment Report, May 2008, page 47 (compiled by African EPA on behalf of the Applicant) (“**Final EIA Report**”), provides that the *“proposed development is spread over the property in a manner that accommodates the specific need for each component of the development. For instance the residential development is located away from the major road network to allow the commercial and agricultural uses to provide a buffer between the residential areas and the roads”*.

Page 49 of the Final EIA Report provides that the mixed use development is the preferred alternative as the *“commercial, high density, low density and retirement residential units will be located in the non-environmental sensitive areas of the property”*.

On 9<sup>th</sup> January 2009 the applicant received environmental Authorization from the Gauteng Department of Agriculture, Conservation and Environment (“**GDACE**”) in terms of section 24 of NEMA for the proposed mixed use development of Riversands Lifestyle Estate under the Authorization register number *Gaut 022/07-08/N0934* (“**Environmental Authorization**”).

On 12 December 2012 Bokamoso Landscape CC trading as Bokamoso Environmental (“**Bokamoso**”), acting on behalf of the applicant, requested the Gauteng Department of Agriculture and Rural Development (“**GDARD**”) to shorten the period of public participation to 14 days for interested and effected parties to register and submit comments relating to an application to be brought by the applicant in terms of NEMA to amend the Environmental Authorization (“**Exemption Request**”).

No notice of the Exemption Request was given to any third parties.

The applicant submitted in its Exemption Request that it intended to amend the Environmental Authorization in order to extend the industrial uses to those areas previously identified for residential use to accommodate *“the implementation of the SMME Incubator programme driven by the Gauteng Provincial Government (Gauteng Enterprise Propeller) and funded through the Jobs Fund.”*

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As justification for the shortened public participation process, the applicant merely stated that:

- there is urgency to start construction; and
- the project forms part of the Gauteng Government Flagship projects.

On 12<sup>th</sup> December 2012 GDARD granted the Exemption Request (“**Exemption Decision**”) to the effect that the applicant was exempted from the normal public participation period and that a shortened public participation period was allowed.

*Note: The Exemption Request and the Exemption Decision are both dated 12 December 2012.*

On 1<sup>st</sup> February 2013 an e-mail notice of an application to amend the Environmental Authorization in terms of regulation 39 of the 2010 Regulations was received by GEKCO (“**Amendment Notification**”) detailing the nature of the amendments Century Property Developments (Pty) Limited (“**Century**”), the now proponent wishes to make and giving all interested and affected parties 15 days to respond thereto. (**See Appendix A**)

This was the first time GEKCO was notified of the amendments initiated by the Century.

On 12<sup>th</sup> February 2013 GEKCO requested that the public participation process be extended to give interested and affected parties more time to consider the amendment application as, on the face of it, the amendment was a substantial change from the initial approved development. This request was sent to Mr Loyiso Mkwana and Ms Smangele Sikahoblea. A copy of this request is attached hereto marked **Appendix B**

On 12 February 2013 GEKCO, along with other parties were notified that it was not possible to extend the public participation period as an exemption had been granted to the applicant in terms of which a shortened public participation process was allowed. The e-mail informing GEKCO of this is attached hereto marked **Appendix C**

This was the first time that GEKCO was made aware of the existence of the Exemption Decision or in fact that the applicant had made an Exemption Request already in December 2012

GEKCO, along with other interested and affected parties received a copy of the Exemption Request and the Exemption Decision on 13<sup>th</sup> February 2013.

On 14<sup>th</sup> February 2013 GEKCO submitted its comments to Bokamoso. A copy of its comments is attached hereto marked **Appendix D**

GEKCO is not aware of when the amendment application was submitted to GDARD, however, the closing period for comments was Friday the 15<sup>th</sup> February 2013. GEKCO assumes that the application could not have been submitted to GDARD before this date as all comments received from interested and affected parties would need to be attached to any such amendment application.

On Monday the 18<sup>th</sup> February 2013, the following working day and also the date the authorization was approved but unsigned, GDARD approved the application to amend the Environmental Authorization in terms of regulation 39 of the 2010 Regulations (“**Amendment Authorization**”). (**See Appendix E**)

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It would appear that DGARD may not have had sight of GEKCOs comments to the amendment as per **Appendix D** as many of the material changes to the original RoD are highlighted therein and should be read separately as much of it is not duplicated in this document. Specifically, the changes to densities and land use appropriation with plans are provided herein.

There were **NO REASONS** given for approval of the Amendment Authorization as required in regulation 10(1) of the 2010 Regulations; merely the decision itself. Furthermore, the amendment is dated as 18 February 2013 and there is a stamp from the HOD's office dated 20 February 2013. There is also no signature on the decision. Various attempts have been made to obtain the reasons for the decision to no avail

On 5 March 2013, Warburton Gunn, GEKCO's legal representative sent a letter to GDARD requesting that a directive be given as contemplated in section 43(7) of NEMA to suspend the Amendment Authorization pending an appeal to be initiated by the applicant in terms of regulation 60 of the 2010 Regulations. Warburton Gunn also requested reasons for the decision as per Regulation 10(1) of the 2010 Regulations in order for GEKCO to prepare its appeal. Furthermore, clarification was sought in respect of the date of the decision as several time periods with which GEKCO needed to comply depends on the date of the decision. A copy of the letter is attached hereto and marked **Appendix F**

On 7 March 2013 GDARD acknowledged receipt of Warburton Gunn's letter however, to date, no further information or communication has been provided by GDARD. As such, GEKCO still does not have the reasons for GDARD's decision in respect of the Amendment Authorization and there is still no clarity as to whether the Amendment Authorization is dated 18 February 2013 or 20 February 2013.

On 28<sup>th</sup> February 2013 a notice of intention to appeal was sent by GEKCO to GDARD. A copy of the notice is attached hereto and marked **Appendix G**

The empowering legislation relating to the making of the Exemption Decision and the Amendment Authorization by the applicant is set out in NEMA and the 2010 Regulations.

The relevant sections in NEMA read as follows:

Section 24(4)(v)

*“(4) Procedures for the investigation, assessment and communication of the potential consequences or impacts of activities on the environment – must ensure, with respect to every application for an environmental Authorization...public information and participation procedures which provide all interested and affected parties, including all organs of state in all spheres of government that may have jurisdiction over any aspect of the activity, with a reasonable opportunity to participate in those information and participation procedures;”*

(own emphasis added)

section 24M

*“(1) The Minister or an MEC, as the case may be, may grant an exemption from any provision of this Act, except from a provision of this Act, except from a provision of section 24(a).”*

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*(4) The Minister, the Minister of Minerals and Energy or MEC may only grant an exemption contemplated in subsection (1) or (2), as the case may be, if – granting of the exemption is unlikely to result in significant detrimental consequences for or impacts the environment; the granting of the exemption is unlikely to adversely affect the rights of interested or affected parties.*

*(own emphasis added)*

The relevant sections in the 2010 Regulations read as follows:

regulation 1

*“1 Interpretation*

*‘application’ means an application for – ... an amendment to an environmental Authorization in terms of Chapter 4 of these Regulations;*

*An exemption from a provision of these Regulations in terms of Chapter 5 of these regulations;”*

regulation 12

*“12 Applications*

*An application for an environmental Authorization for the commencement of an activity must be made to the competent authority referred to in regulation 3...”*

regulation 13

*“13 Checking of applications for compliance with formal requirements*

*Upon receipt of an application, the competent authority to which the application is submitted must check whether the application –*

*is properly completed and that it contains information required in the application form; and*

*is accompanied by any reports, other documents and fees as required in terms of these Regulations; and*

*has taken into account any guideline applicable to the submission of applications.*

*The competent authority must, within 14 days of receipt on the application, and in writing –*

*acknowledge receipt of and accept the application, if the application is in order; or*

*acknowledge receipt and reject, in writing, the application, if is not in order.”*

*(own emphasis added)*

*“(2) Before the EAP managing an application for environment Authorization submits a final report complied in terms of these Regulations to the competent authority, the EAP must give registered interested and affected parties access to, and an opportunity to comment in the report in writing.”*

regulation 51(3)

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*“The applicant or EAP must communicate his or her intention to apply for exemption or the application for exemption in terms of regulation 50 by giving notice in the manner prescribed in sub regulation 54(2)(a), (b), (c) or (d) or a combination thereof which is appropriate in the circumstances and as agreed to with the Minister, MEC or Minister of Mineral Resources, to the land owner or person in control of the land and all potential or registered interested and affected parties, as the case may be.”*

(own emphasis added)

regulation 60

*Notice of intention to appeal.—(1) A person affected by a decision referred to in these regulations who wishes to appeal against the decision, must submit a notice of intention to appeal with the Minister, MEC, or delegated organ of state, as the case may be, within 20 days after the date of the decision.*

The Exemption Decision and the Amendment Authorization is subject to an appeal process on the basis that these decisions are *inter alia* an irregular and unlawful administrative action in that -

- GDARD was obliged to reject the Exemption Request sent by the applicant as it did not comply with the official application form prescribed under NEMA and the 2010 Regulations and furthermore, no notice was given to interested and affected parties of such request; and GDARD was obliged, in terms of regulation 13, to reject any application that is not ‘in order’. GDARD does not have discretion to condone or disregard the non-compliance of certain regulatory processes set out in NEMA and the 2010 Regulation.

NEMA provides that an exemption may only be granted if the granting of the exemption is unlikely to adversely affect the rights of interested or affected parties. It is GEKCO’s view that the Exemption Request which seeks to shorten the public participation process in respect of a substantial amendment to the Environmental Authorization does adversely affect the rights of interested or affected parties. The fact that GDARD could make such a decision, which clearly impacts on the rights of interested and affected parties to meaningfully participate in the amendment, on the same day on which it receives the Exemption Decision is a clear indication that GDARD did not apply its mind.

The applicant, in order to submit a valid exemption application, was required to do so within the confine of the 2010 Regulations read with NEMA. The Exemption Request sent by the applicant was defective to the extent that –

- no notice was provided by Bokamoso, on behalf of the applicant, as envisaged in regulation 51(3) of the 2010 Regulations; and
- The formal application form was not used as envisaged in regulation 12(2) (a) and did not contain all the relevant information required for GDARD to make the appropriate decision.

As such, the Amendment Authorization was given on a defective Exemption Decision and accordingly was procedurally unfair and in the alternative, GDARD acted arbitrarily or

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capriciously in coming to the decision of the Amendment Authorization and the Exemption Decision.

In the circumstances, it is respectfully submitted that both the Exemption Decision and the Amendment Authorization be set aside.

**2. UNNACCEPTABLE ENVIRONMENTAL IMPACTS (NEMA APPEAL doc § D5)**

*From the GDARD website:*

“Environmentalists, government officials and communities from around Soweto gathered at Dorothy Nyembe Education Centre in Dobsonville to listen to MEC Nandi Mayathula-Khoza raise awareness and outline measures on how to preserve and protect wetlands. The event was a partnership between the Gauteng Department of Agriculture and Rural Development [GDARD] and other partners such as City Parks and the City of Joburg to celebrate Wetland's Day. During her address in Soweto, MEC Nandi Mayathula-Khoza said unity is critical in curbing the destruction of the estimated 35-60% of the country's wetlands. “Let us conserve and manage our wetlands as they are vital in reducing the severity of draughts and floods. Wetlands purify water and provide a habitat for many different plants and animals valuable to the community',” Mayathula-Khoza urged.” Wetland conservation is one of the main priorities for provincial government and must be considered very seriously.

It is said that SA has the best policies in the world but not the capacity to enforce them. There are also many cases where socio-economic need may be called on to override such policy but GEKCO does not believe that this is one of them: The wetlands on the proposed development site may already be slightly compromised but are not irreparable. They are certainly irreplaceable and more damage is the likely outcome of spreading an industrial site over both banks of this tributary of the Jukskei.

**2.1. Wetland risks**

GEKCO is very concerned that any industrial activity, let alone the increased density will have a detrimental pollutant effect on the wetland and riparian zone.

To this, we remain concerned as to this developers increased use of amendments and draw your attention to your decision of the 4<sup>th</sup> March 2013 [GAUT 006/12-13/E0070 – proposed amendment to Waterfall Estates development] paragraphs 4.a & 4.c where encroachment into the buffer zones has been requested and accordingly denied by GDARD and which is now under appeal by the developer.

**2.2. Water borne sewage**

The amendment makes reference to “construction for the treatment of effluent, wastewater or sewage” which is not permissible by the City's Waste Water Policy and as such a

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connection to the Northern Water Works would be required. However, GEKCO is concerned as to the capacity issues surround this treatment facility as it has been recorded as being dysfunctional 365 days a year and polluting the Hartebeespoort-Juskei catchment area as a result

A moratorium on adding to this sewage works should be called for until after its capacity issues have been addressed

**2.3. Storm water management**

There is grave concern that the storm water management as a result of increased roof and covered surface area (roads & parking lots etc) as a result of the increased densities and industrial proposal will not be catered for adequately and that the downstream effects have not sufficiently been taken into consideration.

**2.3.1.** Increased run-off does not appear to be catered for via increased berms and attenuation dams as preventative flooding measures.

**2.3.2.** To this, the 32m buffer zone is unlikely to be adequate given this developments own added pressures and also from a holistic perspective given other and Century Property’s own proposed developments upstream.

**2.4. Noise and Air pollution**

While there is some indication of control measures being put in place over the construction period, there is no indication as to how this will be controlled thereafter and the effects it will have on the immediate neighbours and the rural-equine ethos of the area in general. The addition of an industrial site is materially different in this regard and demands specialist input.

**News 24 2011-07-26 08:55**

Johannesburg - The reduction of Gauteng’s wetlands through property development is the result of poor town planning and the province’s lack of proactive protection for sensitive ecosystems, agriculture MEC Nandi Mayathula-Khoza has said.

The National Wetland Inventory has mapped more than 120 000 wetlands throughout the country, accounting for about 7% of South Africa’s surface area, the Business Day reported on Tuesday. Commonly referred to as marshes, swamps or vleis; wetlands fulfill functions in ecosystems such as flood attenuation, provision of clean water and carbon storage.

They support a range of specialized plant, insect, bird and mammal life and also supply wild food, grazing, building and craft materials to humans.

Addressing a media briefing in Johannesburg on Monday, Mayathula-Khoza blamed the proliferation of development for encroaching on the province’s wetlands, saying this could have been prevented with advanced land-use planning.

"We have been reacting after a developer has moved in to try and save an ecosystem instead of proactively identifying these sensitive areas in advance and ensuring that they are protected and excluded from any form of development," she said.

Mayathula-Khoza said she was banking on this becoming a thing of the past when the Gauteng Planning Commission, announced by Premier Nomvula Mokonyane this month, started functioning.

Mokonyane said the commission would undertake integrated strategic and spatial planning to facilitate improvements in the provincial government’s performance through monitoring and evaluation.

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**2.5. Wildlife corridors**

Wildlife and biodiversity corridors were catered for in the original design but the increased densification to cater for the same amount of homes in order to make up for the land lost to the largely revised industrial site does not appear to cater for this need any longer

**3. PREVIOUS SUBMISSION IN PP PROCESS (NEMA APPEAL doc § D7)**

A copy of GEKCO's submission of 14<sup>th</sup> Feb is available as **Appendix D** and must be read in conjunction with this appeal for full the explanation of GEKCO's concerns

**4. NEW INFORMATION (NEMA APPEAL doc § D9 & 11)**

**4.1. Employment & economic benefit claims**

**4.1.1.** GEKCO engaged with the NOWETO Business Council soon after hearing of the proposed amendment. (NOWETO is a business chamber representing the interests of the business community in the Diepsloot Township) We were astonished to discover that they were not aware of this proposed development, other than by way of the information that we provided to them. It seems to us that any such proposed industrial scheme ought at the very least to have had wide community consultation, especially among those that are primarily supposed to be affected by the development. The approach of providing a top-down jobs creation approach without appropriate community consultation is a recipe for disaster.

**4.1.2.** If the announcements in the media (and in the amendment) are anything to go by, it appears that the development will cost R1.6 Billion and create 15,000 permanent jobs. If this is the basis on which the amendment has been so rapidly rushed through the approvals process, the assumptions need to be properly tested

4.1.2.1. This equates to a cost of R104,000 per job created

4.1.2.2. NGO's operating within Diepsloot and surrounding communities are able to create sustainable jobs for approximately R20, 000 per new job.

4.1.2.3. Given that public money is to be applied to this development (amongst others; R370 Million from the "Jobs Fund"), it is essential to ask how this money will be spent, and if it will be done so effectively. Given the wide disparity between what the local community can do in terms of Rands/job and what this development proposes, a specialist economic study is hereby called for.

4.1.2.4. This is especially true because the developer of the land is a private developer, and stands to gain very significantly from this development. In fact, we suggest that the majority of the economic benefit will find its way into the pocket of the developer and not into the hands of the community that it ostensibly will help.

**4.1.3.** The public has not been given access to any economic benefit study that may have been conducted, nor of any feasibility study.

4.1.3.1. Again, since public money is involved, and since this is supposedly a flagship project of the province, we consider this to be inappropriate.

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- 4.1.3.2. There is significant potential for the misuse of public funds and of public office to push through a development that may have long term undesirable consequences for the community, yet accrue significant short term benefit to the developers and to those with a political agenda.
- 4.1.4. Extrapolation of Development costs**
  - 4.1.4.1. From the information provided, it seems as though 71Ha of land will be put to industrial and commercial use
  - 4.1.4.2. At the proposed development cost of R1.6 Billion, and assuming a coverage ratio of 40% (which is consistent with the coverage rates proposed on some parts of the proposed development), this equates to R56 000 per built square meter which is considerably above the development cost expected for this type of development
  - 4.1.4.3. In the absence of any detailed information, the above information can only be taken as a very approximate guide, but it highlights the need for more information to be made available not only to the to the public but also all City, Provincial & public funding bodies involved in the funding and approval processes, especially given the significant impact that this proposed development will have on the adjacent communities
- 4.1.5.** As further elaborated in paragraph 4.6 below, there are numerous additional sites for an industrial opportunity that can serve the interests of the Diepsloot community, even though they may be further afield.
  - 4.1.5.1. Money could be significantly better spent upgrading or revitalising existing industrial nodes where services already exist
  - 4.1.5.2. Locating the industrial zone near to an already overstressed informal node will only serve to bring even more people to the area, and is more likely to generate longer term harm for the community than good.
  - 4.1.5.3. It does not appear in the amendment application that consideration has been given to alternative sites, as is required in terms of the NEMA Act.

**4.2. No business impact study**

- 4.2.1.** As an example, the Kaya Sands and Linbro Park light industrial developments next to Cosmo City and Alexandra respectively are under economic pressure and have much unsold and un-leased space (See JHI <http://www.jhi.co.za/> and Broll <http://www.broll.co.za/> websites)
- 4.2.2.** The latest SAPOA (<http://www.sapoa.org.za/>) report into industrial properties (2012) alone suggests that there is still a very large amount of vacant space available to lease or purchase. **(SEE APPENDIX M)**

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Type of Property	Lease available (m <sup>2</sup> )	Vacancy Rate (% of total)
SA – All industrial	3 899 300	4.1%
SA – All warehousing	965 300	4.3%
SA – Light Manufacturing	662 600	5.1%
Gauteng	2 340 185	5.1%
Midrand/Olifantsfontein	207 688	27 properties available

**4.2.3.** The original ROD (2009) allowed for a residential-mixed use development. Job creation is now the fundamental argument that the developer is promoting with this development. However no evidence or corroboration is produced as to the type of jobs, level of skills required, or sustainability of employment. [For example: Steyn City promoted job creation for Diepsloot in its applications and thus far over 3000 permanent employees have been relocated from the city centre to occupy the office park and Diepsloot residents were only used for the temporary construction contracts.]

**4.2.4.** The history of such developments is well documented where the Dainfern development led to the creation of Diepsloot and the Rooihuiskraal, Noordwyk & Blue Valley developments led to Olievenhoutsbos’ birth

**4.2.5.** GEKCO together with the GHS (Gauteng Horse Society) commissioned a survey over the period of the 1<sup>st</sup> to the 19<sup>th</sup> of March in order to ascertain the economic value of the equestrian industry. The equine properties covered contribute over R85m in rates to the city based upon their combined property values as at the latest 2013 valuation of R 1 319 194 851 (R1.3bn) in total over the 339 equine related properties. To this, there are approximately 2 456 horses in the area that cost on average R 75 329 per horse per annum to run which is +/- R185m/annum on horses alone. The total spent by the equestrian industry on an annual basis equates to over R800m towards the GDP of Gauteng which is a significant, viable and sustainable industry that is currently in place and at threat to a proposed industrial development with no credibility or validity **(SEE APPENDIX H for full survey results)**

**4.3. No Traffic Impact Study**

The housing densities and the overall number of units have increased as well as a far larger proposed industrial site (to the original commercial one) and the amendment concluded that the traffic “assessment impact remains unchanged” under the proviso of the R511 being upgraded and that the alternative route though Rose Road be utilised. Rose Rd runs through the heart of Kyalami and the equestrian heartland of this country and as such is not a viable alternative. (See § 4.4.4)

**4.4. No Social Impact Study**

This same proposed industrial development will have a significant impact on the social structure of the immediate neighbours.

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- 4.4.1.** There has been no indication of any study what-so-ever as to the implications of increased densification from 20units/ha to 40units/ha (up to 3 stories) on the surrounding mostly rural-equine neighbours
- 4.4.2.** There has been no indication of any study what-so-ever as to the implications of the major land use change envisaged to industrial usage on the surrounding mostly rural-equine neighbours and what the effects this HUB may have of those that are not directly involved therein or whether there will be any beneficiation to the residents of Diepsloot as to skills required
- 4.4.3.** While mention is still made of the “Riversands” school in the amendment, the proposed site plan does not cater for this much needed learning centre for the overflow kids from Diepsloot and a training Centre is catered for instead. This is a concern.
- 4.4.4.** From 4.2.5 above, GEKCO together with the GHS (Gauteng Horse Society) committed a survey over the period of the 1<sup>st</sup> to the 19<sup>th</sup> of March in order to ascertain the economic value of the equestrian industry that will become under threat from increased densification and industrial development as they are not compatible in the same environment (see support letters as to this case attached from SAEF (SA Equestrian Federation), GHS (current governing body of equestrian sports in Gauteng) and the South African Equine Veterinary Association) **APPENDICES I, J, K & L**  
This survey covered 339 properties with equine interests in the immediate area with a valid 30% participation and owning over 934 ha (3 343 200m<sup>2</sup>) and at an average of 2.4ha per equine property. They contribute over R85m in rates to the city based upon their combined property values as at the latest 2013 valuation of R 1 319 194 851.  
To this, there are approximately 2 456 horses in the area that cost to run on average R 75 329 per horse which is R185m/annum on horse alone. The total spent by the equestrian industry equates to over R800m towards the GDP of Gauteng which is significant current, viable and sustainable industry that is in place and at threat to a proposed industrial development with no credibility  
[See **APPENDIX H** or the full survey]
- 4.4.5.**A map is provide as a JPEG (**APPENDIX H1**) to show the extent of coverage of horses in the greater Kyalami area where the properties shaded in pink have horses on them or are involved in equine related business in relation to the Riversands Industrial development in grey on the west side of the map

**4.5. Authorization contrary to City Spatial Development Plan (rezoning)**

- 4.5.1.** The original and approved proposal made reference to commercial and residential development. This proposal makes reference to industrial rezoning which a very material change in land use. This amendment alone should be cause for concern and have resulted in a new EIA and PP process with further specialist studies made available by the developer. (See details in Para 1 above)
- 4.5.2.** In a relatively recent judgment handed down by the Supreme Court of Appeal, the constitutional legal standing of IDP processes and the spatial planning policies of the City of Johannesburg, and all other municipalities across the country have been secured against potential conflict from approved Provincial development plans. The

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judgment declares that provincial bodies may not take on the function of municipal planning. As a result, this will ensure certainty in the property market, its residents, investors and property developers alike that should now have a clear understanding of what land uses will be allowed in any given area. The judgment sets a clear precedent of which this GDARD authorization apparently contravenes.

**4.5.3.** Also the fact that this property was outside the Urban Development Boundary until (2008) and has not yet received municipal services means that approving this development allows for further urban sprawl to take place which is contrary to the GDS 2040 and Gauteng 2055 policies.

**4.6. Alternative Industrial Sites**

**4.6.1. Blue Hills 397JR** – GEKCO has been working with the owners of this land to get it rezoned as light industrial/commercial to serve both Olievenhoutsbos and Diepsloot to no avail as yet. It is on both the R55 and R562 which are both earmarked for upgrades and have power and water borne sewage infrastructure on hand already. The Mrandi ESKOM sub-station can be seen to the north-west of the site. Some commercial development has already begun on the north-east of the site – which has been rezoned as a small business node by the City in 2008



**4.6.2. Diepsloot East** – This second site already has support from the Diepsloot residents and interest from the DBSA for a housing development scheme. Whilst it is earmarked for high density residential there is scope for some of it to be made available for industrial and commercial activity as it is a large space. It borders on the R511 and R562 main arterials as well as the N14 highway with regards accessibility

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#### **4.7. Gauteng Employment Growth and Development Strategy (GEGDS) Department of Economic Development**

See *paragraph 4.6.1* “Driver: Rural and Agricultural Development and Food Security: “In parallel, efforts have been made to protect agriculturally zoned land in Gauteng for the advancement of land transformation. This is to be achieved in part by ensuring that decisions about land-use reflect the opportunity cost of land transformation with respect to the interests of broader society..... Key objectives of the policy include: preventing the inappropriate sub-division of high-potential agricultural land, preventing the fragmentation of this land, contributing towards food security in the province, promoting emerging farmers. Local production reduces the reliance on produce imported from other provinces and therefore reduces carbon emissions, while creating employment in the province”

The GEKCO conservancy is actively promoting sustainable living and is currently engaging with the Gauteng City Region Observatory (GCRO) to identify this area as a potential area for the conservation of wetlands, biodiversity and promoting food security initiatives.

To this, in the amendment, the consultant clearly states that this site is arable and has been utilised for active farming in the recent past. This amendment is therefore in contradiction to the above DED policy

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**CONCLUSION**

This appeal highlights a flawed process where:

- The misconception that the proposed changes to the original RoD affected by the amendment are not material and therefore this oversight must require further investigation and clarity must be provided and;
- The shortened time allowed for public participation was inappropriate especially considering the significant and material changes to the proposed development, not according to prescribed regulations and did not allow sufficient time for all registered I&AP's to provide full comment; and
- Given the substantive change in the development, a process of wider consultation with local communities should have been instituted; and
- It appears that GDARD did not apply its mind appropriately when authorising the amendment which is revealed by the fact that it took only one working day from the comment 'close date' to when the amendment application was authorised

The potential impact of the revised land use to 'industrial' and higher densities proposed requires that a full impact revision of the amendment be undertaken in a manner that incorporates the needs and wants of all residents of Diepsloot & the Greater Kyalami. Since it appears that there has been very little consultation with the surrounding communities, it infers that only the interests of the developer have been

Accordingly, we thank you for your consideration of this appeal and request that the decision approving the amendment as well as the exemption application be set aside and a process of appropriate engagement with the affected communities under the guidance of NEMA be undertaken in the best interests of all.

**Contributions to this appeal were made by:**

Andrew Dicks – Chairman GEKCO

Janine Turner – Legal input

Kristin Kallesen – Chairperson JEA

Dudley Baylis – GEKCO

Jacqueline Wetselaar – Environmental specialist