

**BEFORE THE MEC OF THE GAUTENG DEPARTMENT OF
AGRICULTURE AND RURAL DEVELOPMENT**

REF: GAUT 002/13-14/E0020

GREATER KYALAMI CONSERVANCY

APPELLANT

**RE: APPEAL OF ENVIRONMENTAL AUTHORISATION GRANTED TO
CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY (THE
APPLICANT) FOR THE PROPOSED CONSTRUCTION OF CROWTHORNE
BULK OUTFALL SEWER SYSTEM**

APPELLANT'S STATEMENT

- 1.** The Appellant is the Greater Kyalami Conservancy (“**GEKCO**”), a registered conservancy with the Gauteng Conservancy Association (“**GCA**”) under conservancy number **GCA 055**. [**Annexure B**]
- 2.** The appeal is submitted in terms of Section 43 of the National Environmental Management Act, 107 of 1998 (“**NEMA**”), read together with Chapter 7 of the Regulations made under the National Environmental Management Act 107 of 1998: Environmental Impact Assessment Regulations, GN R543 of 18 June 2010 (“**EIA Regulations**”).
- 3.** The Appellant submits that:

- a. It has *locus standi* to bring this appeal (as provided for in section 43 of NEMA);
- b. That it is a registered Interested and Affected Party (“**I&AP**”) (in terms of Chapter 6 of the EIA Regulations);
- c. That it submitted a notice of intention to appeal (in terms of Regulations 60 of the EIA Regulations) on 03 June 2014; and
- d. That it has complied with Regulations 60(3) of the EIA Regulations in that it lodged its notice of intention to appeal with the applicant on 03 June 2014. [**Annexure C**]

EXECUTIVE SUMMARY

It is the appellant’s submission that the Head of Department for GDARD erred in authorising the installation of the Crowthorne Bulk Sewer Line and that having regard to the facts presented herein the Honourable MEC should set aside the environmental authorisation granted and should require the applicant to undertake a full Environmental Impact Assessment, which will include updated and comprehensive specialize studies including a full social and economical impact study. The grounds for appeal are that the authorisation was granted based on: insufficient information; the activity is not supported by the City of Johannesburg’s Spatial Development Policy; the information provided is misleading and incorrect; and the EAP has not acted objectively in that full disclosure was not made to the competent authority or the specialist who had to undertake specialist studies.

BACKGROUND

4. Notice was published in March 2013 for public participation for the proposed bulk sewage line providing notice of a public meeting to be held on 27 March, 2013. The Environmental Assessment Practitioner (“**EAP**”) was stated as Dr Gwen Theron from LEAP. This meeting fell on a Wednesday just before the Easter weekend with only four days to comment which fell within the holiday period. Many of the I&AP’s objected to this timing as interested parties would be away and unable to participate. The local councilor, John

Mendelsohn requested from the EAP that the meeting to be rescheduled to a more suitable date. **[Annexure D]** This request was not considered by the applicant or the EAP. The meeting was an ‘information sharing’ session and the Background Information Document (“**BID**”) was also available to attendees. I&AP’s questioned the manner in which the meeting was held and the independence of the EAP when she told those attending that the ‘pipeline would go ahead’ regardless of their objections. No engineers were present at the public meeting to ask technical questions of, nor was the applicant, Joburg Water represented. **[Annexure E & F]**

5. GEKCO submitted comments to the BID on the 4th of April, 2014 **[Annexure G]** pointing out the presence of Red Data species and requesting a full study to be done. Questions were raised as to the motivation and funding of the pipeline and for purchase of private land for servitudes. The consultant was unable to clearly answer all of these questions. A meeting with the engineers was requested repeatedly throughout the process; however this was not addressed or arranged by the EAP. **[Annexure H]**
6. The Basic Assessment Report (“**BAR**”) was released for comment, again over a holiday period, with comments closing on 22 January. GEKCO requested an extension to include professional input from Zitholele Consulting. GEKCO submitted comments on 27 January 2014 on the draft BAR **[Annexure I]** with Zitholele submitting comments on 27 January 2014 **[Annexure J]**. Zitholele found that *“no socio-economic impacts or wetland impacts appear to have been identified or addressed, which thus also affects the cumulative impact statements which too only focus on the biophysical environment”* and that *“primary concerns of the stakeholders in the area has not been addressed, as many of these comments focus on the operational issues, citing evidence of poor maintenance and large spills.”*
7. The EAP indicated, at this time, that she was not going to include all comments in the submission to GDARD. She contacted GEKCO **[Annexure K]** to state that all of the objections were the same so she would send one list with the names of the objectors listed. GEKCO objected to this as each person or organization has their own reasons for objecting and as such all comments

must be included. The EAP refused to do this and submitted an abbreviated version of the objections to the department.

CONCERNS WITH THE BULK SEWER LINE

8. The following concerns were put forward by GEKCO, which were not addressed in the BAR (see also Annexure I):

- a. Concerns with future maintenance of the sewage line / ability of municipality to maintain infrastructure as evidenced in the case study put forward in Carlswald where poor maintenance has led to regular blockages and spillage resulting in extensive damage to wetlands, flora and fauna. This endangers the health of humans and wildlife in the area.
- b. Northern sewage works unable to meet current capacity and regular sewage spills. The plant is designed to treat 450 ML effluent per day and during the wet season, the plant currently receives in excess of 600ML/day, which makes treatment of all effluent received impossible. This is confirmed by the Minister for Environmental and Water Affairs, Mrs Edna Molewa on 09 November, 2012 through a written question posed in Parliament. **[Annexure L]**
- c. Need for sewage infrastructure greater in other areas such as Diepsloot where sewage spills occur on a continual basis. These are reported and in many cases blockages occur immediately after they are cleared. Specific issues have been ongoing with constant spillage for many years due to insufficient pipe size and poor infrastructure. These spills are an extreme health concern as they take place within a highly populated area. Children walk through and play next to this contaminated water and soil and the effluent ends up in the wetland as per the photo attached. **[Annexure M]**
- d. Confirmed Red Data and threatened species in the GEKCO area and along the proposed pipeline, namely the African Grass Owl, African Hedgehog and African bullfrog. A confirmed sighting of a hedgehog

was recorded and submitted in GEKCO's response to the BAR. [Annexure I]. Grass owls have been confirmed in the Blue Hills area and have been seen hunting in the study area. The specialist advised a thorough study is undertaken of Grass owls in the area. [Annexure N]

- e. Social impact and specifically impact on Equestrian industry. GEKCO has consistently raised the importance of the Kyalami area - a unique industry in that it serves equestrians throughout Gauteng with visitors from South Africa and internationally participating in provincial, national and international events. World champion athletes live within the Kyalami area to make use of the facilities and specialised training on offer. The standards are of a high level which enables Olympic qualifying. It is suspected that Kyalami generates in excess of one Billion Rand through this industry and provides employment to thousands of people who are resident in the area and dependent on the ability of the area to retain open space and to remain conducive to equestrian activities. Healing and therapy through interaction with horses is practiced here and is growing worldwide as an effective therapy for stress reduction, rehabilitation and assistance with physical, mental and emotional disabilities and youth development. Existing facilities work with neighbouring communities of Diepsloot and Olivierhoutbosh and attract people from across the East Rand, West Rand and Pretoria who are in need of these therapies. The impact on these facilities, the equestrian industry and community at large must be considered.
- f. Increased development pressure would result from the provision of an outfall sewer in what is currently an agricultural area. It is anticipated that the City of Joburg would increase rates after the provision of the sewer as the potential for redevelopment with higher intensity land uses would exist. This would lead to the application for higher residential densities or non-residential development, which is not in line with the conservation objectives for the area. This was raised

repeatedly by I&AP's, however was not listed as an issue in the report.
As such, the EAP did not address or respond to this issue.

ENVIRONMENTAL AUTHORISATION

9. On 16 May 2014 Ms TR Mbassa-Sigabi, the Head: Agriculture and Rural Development authorised the construction of the Crowthorne Bulk Outfall Sewer System. The authorisation states that the “*Department is satisfied, on the basis of information available to I and subject to compliance with the conditions of this environmental authorisation, that the applicant should be authorised to undertake the activities specified...*”.
10. The activities undertaken are:
 - a. The construction of facilities or infrastructure exceeding 1 000 metres in length for the bulk transportation of water, sewage or storm water with an internal diameter of 0,36 metres or more; or with a peak throughput of 120 litres per second or more [Regulation 9, GN Regulation 544 of 18 June 2010];
 - b. The construction of canals; channels; bridges; dams; weirs; bulk storm water outlet structures; marinas; jetties exceeding 50 square metres in size; slipways exceeding 50 square metres in size; buldings exceeding 50 square metres in size or infrastructure or structures covering 50 square metres or more where such construction occurs within a watercourse or within 32 metres of a watercourse, measured from the edge of a watercourse, [Regulation 11, GN Regulation 544 of 18 June 2010];
 - c. The infilling or depositing of any material of more than 5 cubic metres into, or the dredging, excavation, removal or moving of soil, sand, shells, shell grit, pebbles or rock of more than 5 cubic metres from a watercourse [Regulation 18, GN Regulation 544 of 18 June 2010]; and
 - d. The expansion of facilities or infrastructure for the bulk transportation of water, sewage or storm water where: the facility or infrastructure is

expanded by more than 1 000 metres in length; or where the throughput capacity of the facility or infrastructure will be increased by 10% or more [Regulation 37, GN Regulation 544 of 18 June 2010].

GROUND FOR APPEAL

11. Insufficient information

- a.** In making any decision that could potentially impact on the environment the competent authority must, inter alia, take into consideration the principles of environmental management as contained in section of NEMA.
- b.** Section 2 of the Act provides that:
 - development must be socially, environmentally and economically sustainable;
 - that a risk-averse and cautious approach is applied, which takes into account the limits of current knowledge about the consequences of decisions and actions;
 - decisions must take into account the interests, needs and values of all interested and affected parties;
 - the social, economic and environmental impacts of activities, including disadvantages and benefits, must be considered, assessed and evaluated, and decisions must be appropriate in light of such consideration and assessment; and
 - sensitive, vulnerable, highly dynamic or stressed ecosystems, such as wetlands require specific attention in management and planning procedures, especially where they are subject to significant human resource usage and development pressure.
- c.** The applicant, in requesting environmental authorisation, has undertaken a basic assessment process. Further specialist studies were also conducted and submitted to the competent authority.

- d. It is the appellant's view that the information provided by the applicant in its basic assessment report, together with the specialist reports is insufficient to allow the competent authority to make a decision.
- e. More particularly, the appellant is of the view that the basic assessment report does not investigate any social or economical impact of the activity and mere assertions are made regarding this. This is insufficient and does not provide the competent authority with any verifiable information on the social and economic impact of the activity. Of concern is the fact that the competent authority itself does not seem to undertake any of its own investigations and merely relies on the information (or lack thereof) from the applicant.
- f. With regard to the specialist studies, each of these studies did not investigate the impacts of a **sewage line at all, but were studying the impact of a storm water pipeline** for the Retail Africa shopping centre to discharge into existing dams. The minimum biodiversity requirements from GDARD specified an amphibian study with specific reference to the African Bullfrog. The specialist identified '*excellent temporary pans*' in the study site and stated "*considering the size of the study site and the good breeding sites for the bullfrogs this is an Important Breeding site for this Near Threatened Species in Gatueng.*" The specialist goes further to state that "*it is very important that there should be a joint conservation plan for this specific giant bullfrog population.*" Yet trapping was not conducted because "*the terms of reference did not require such intensive work.*"
- g. Notwithstanding the fact that the study did not focus on a sewer line but a stormwater pipe, each study consisted of only a single day visit and the report particularly states that a full investigation was not undertaken as it was not required. Considering that the activity is to take place in a wetland - this is unacceptable and we submit that the applicant should undertake a full fauna and flora assessment that is current and takes into consideration the seasonal requirements of some of the fauna and flora that could potentially occur in the area, as well

as the impacts of knock-on development through the installation of a sewage line that would not have been considered in the study of a storm water drain. The specialist clearly states that environmental studies are limited in scope, time and budget and recommendations are based on informed assumptions based on bona fide information sources and the specialist cannot accept responsibility for conclusions based on the information provided at the time of directive. If the directive is incorrect or misleading, this would cause the specialist to make an unsound recommendation.

- h.** In support of this is the fact that a number of the properties that are impacted by the construction of the bulk sewer line form part of the Greater Kyalami Conservancy, including the Beaulieu Bird Sanctuary. In terms of the Regional Environmental Management Framework, prepared for GDARD, that was adopted in the *Government Gazette* under Regulation 5(4) of the EMF Regulations 2010 (Government Notice R547) [**Annexure O**] (“**EMF**”) the GEKCO area and the Beaulieu Bird Sanctuary are categorized as medium and very high development constraint zones respectively.
- i.** The EMF is drafted and adopted in terms of Chapter 3 of NEMA. Section 16 of NEMA provides that every organ of state must “*exercise every function it may have, or that has been assigned or delegated to it, by or under any law, and that may significantly affect the protection of the environment, substantially in accordance with the environmental implementation plan or the environmental management plan prepared, submitted and adopted by that organ of state*”.
- j.** In terms of the EMF any development within a very high or medium development constraint zone is subject to a full Environmental Impact Assessment (“**EIA**”) process. The EMF also provides further development constraints within these areas (see in this regard the comments by GEKCO filed herewith under [**Annexure I**]). The environmental authorisation, along with the Basic Assessment Report completely ignores this. This is of great concern to the appellant

especially after this was highlighted to the applicant and the competent authority. Section 16(1)(a) of NEMA provides that any substantial deviation from an environmental management plan must be reported forthwith to the Director-General. The appellant is of the view that this too, has not been done.

12. The activity is not supported by City of Joburg's Spatial Development Policy

- a. The sewage line runs almost entirely outside the Urban Development Boundary as defined by the City of Johannesburg. Introduction of services outside the Urban Development Boundary is not supported by the Spatial Development Framework (SDF) for the City of Johannesburg as it adds additional cost to infrastructure maintenance and the promotion of urban sprawl. The defining policy for this area is the Region A Regional Spatial Development Framework (RSDF) 2010-2011. The RSDF states *"The entire sub area falls outside the Urban Development Boundary. It comprises mainly of environmentally sensitive areas, natural open spaces, agricultural holdings and farm portions. This means that no further township establishments can be supported on any erven within Sub Area 8. The entire sub area falls within the Greater Kyalami Conservancy (GEKCO) area"*

13. False or misleading statements made in the report

- a. The specialist report identifies an important African Bullfrog breeding site in the conservancy and recommends a conservation plan be put in place for its protection. GEKCO also confirmed presence of African Hedgehogs in the study area in comments on the Draft BAR. However, in the BAR it states: *"Are there any rare or endangered flora or fauna species (including red list species) present on the site - NO"*
- b. Specialists conducted only one site visit conducted on 11 February 2011 where they walked the study site and visually scanned 500m on

either side of the proposed pipeline. The specialist states in the herpetofaua report: During the site visit, reptiles and amphibians were identified by visual sightings through random transect walks. No trapping was conducted, as the terms of reference did not require such intensive work.

- c. The terms of reference as given to the specialists were not for this activity (ie the installation of a bulk sewer line), but to study a storm water drain for the proposed Retail Africa shopping centre. The specialist states the following about the project they are conducting the study for: *“The proposed stormwater pipeline on the study site is intended to drain stormwater from the hard surfaces of a proposed new shopping centre on the corner of the R55 and Main Road (M71), Kyalami and will probably also drain runoff water from the R55 itself.... The overflow of the dam, which will serve as a receptacle for the stormwater, runs into another dam and the overflow of these eventually drains into the Jukskei River. The topography of the site is the undulating plains typical of the Highveld Grasslands of the interior.”*
- d. If any specialist study is conducted describing a different activity or misidentifying the development, that study should be considered inapplicable or at least invalid. Inclusion of misaligned studies into the final submission should be regarded as an attempt by the Applicant to mislead the competent authority. In this case the Applicant did mislead the authority and gained authorisation based on incorrect submissions/information. Take a power line as an example, referencing to a 32kV while building a 132kV line will invalidate such a specific study and continuing to use it as an applicable study is far more than an oversight, but rather devious and misleading to all other parties involved.

14. The conduct of the EAP

- a.** The EIA Regulations, particularly Regulation 17 provides for the general requirements of an EAP. Regulation 17 provides that:
 - i.** The EAP must be independent;
 - ii.** Must perform the work relating to the application in an objective manner, even if this results in views and findings that are not favourable to the applicant;
 - iii.** Needs to take into account the need and desirability (Regulation 8) of the activity;
 - iv.** Must disclose to the applicant and the competent authority or the person compiling a specialist report or undertaking a specialized process, all material information in the possession of the EAP that reasonably has or may have the potential of influencing any decision to be taken with respect to the application by the competent authority or the objectivity of any report, plan or document to be prepared by the EAP or person compiling a specialize report or undertaking a specialized process.

- b.** The EAP was made aware at various stages of the process of the presence of Red Data Species on or close to the proposed site of the activity. The EAP was also informed that the study area fell within GEKCO and the Beaulieu Bird Sanctuary, both of which are provided for in the EMF and due to the nature of these areas, the EMF required a full EIA to be conducted in respect of any activity to take place in a medium and very high development constraint zone.

- c.** The EAP does not inform the competent authority of this in the BAR.

- d.** The EAP does not seem to inform the specialist who are required to undertake specialist studies of the actual nature of the activity (a stormwater pipe and the bulk sewer line are not remotely the same

activity) – nor are they informed of the fact that the proposed sewer line will transverse the GEKCO area and the Beaulieu Bird Sanctuary and that the regional EMF needs to be considered in reference to any study undertaken in the area.

- e. The EAP, by her actions and responses to I&APs puts into question her objectivity as she refused to accommodate the I&APs in moving the public meeting, which was held just before the Easter Holiday; at not stage provided access to engineers (which was requested by a number of the I&APs); refused to submit all comments received to the competent authority and does not provide either the competent authority or specialists who are briefed with correct information alternatively provides misleading information.

CONCLUSION

- 15. Based on the foregoing, it is the appellant's submission that the Head of Department, MS T R Mbassa-Sigabi erred in authorising the installation of the bulk sewer line based on the factual information provided to GDARD.
- 16. The appellant also submits that the applicant through the EAP has intentionally misguided the competent authority in providing specialist studies that do not deal with the installation of a bulk sewer line but rather the installation of a storm water pipe.
- 17. As such, the appellant submits that the Honourable MEC, having regard to the facts presented herein, should set aside GDARD's environmental authorisation and require the applicant to submit a full EIA, which includes updated and complete specialist studies, as well as a comprehensive social and economical impact assessment.

Additional annexures:

Annexure P - Beaulieu Bird Sanctuary Nature Reserve – Gazette Notice 1993

Annexure Q – Regional EMF Gazetted



A handwritten signature in blue ink, appearing to read 'K. Kalles', followed by a horizontal line extending to the right.

Signed by Kristin Kallesen, chairperson of GEKCO

27 June 2014