**IN THE HIGH COURT OF SOUTH AFRICA**

**(WESTERN CAPE DIVISION, CAPE TOWN)**

 Case No.: **596/2019**

*Before His Lordship Mr. Justice Erasmus*

*Cape Town, September 2019*

In the matter between:

**CORNELIUS CONRADIE SMITH N.O.**  First Applicant

*(In his capacity as the duly appointed trustee*

*for the time being of the Cornelius Conradie*

*Smith FamilieTrust (IT 3686/2001))*

**HENRY GERHARD MCLACHLAN N.O.**  Second Applicant

*(In his capacity as the duly appointed trustee*

*for the time being of the Cornelius Conradie*

*Smith FamilieTrust (IT 3686/2001))*

**TEN BELLS HOMEOWNERS ASSOCIATION** Third Applicant

and

**ATC SOUTH AFRICA WIRELESS INFRASTRUCTURE (PTY) LTD** First Respondent

(Registration Number: 2010/003948/07)

**CITY OF CAPE TOWN** Second Respondent

**PHISANTEKRAAL PLAAS (PTY) LTD**Third Respondent

(Registration Number: 2000/029517/07)

*Application for review in terms of Rule 53*

 **DRAFT ORDER**

**THE FOLLOWING ORDER IS GRANTED IN FAVOUR OF THE APPLICANTS WITH THE KNOWLEDGE AND CONSENT OF THE FIRST RESPONDENT (THE SECOND RESPONDENT HAVING AGREED TO ABIDE THE DECISION OF THIS HONOURABLE COURT):**

1. The First Respondent withdraws its opposition to the relief sought by the Applicants in the review application.
2. In the absence of opposition by the First Respondent, and given that the Second Respondent abides the decision of this Honourable Court, the following decisions taken by or on behalf of the Second Respondent are reviewed and set-aside:

2.1 The decisions taken by the Second Respondent on 14 November 2017 to:

2.1.1 approve a consent use to permit the construction and erection of a 15m freestanding base telecommunications station on Farm 166, Diemersdal, Rural District Durbanville near Francis Albert Avenue / Herta Erna Street;

and

2.1.2 approve a building line departure to permit a freestanding base telecommunications station set back 5m in lieu of 30m along the Francis Albert Avenue boundary.

2.2 The decision taken by the Second Respondent's Appeal Authority on 22 May 2018 which served to uphold the decisions contemplated in paragraph 2.1 above on appeal.

1. The First Respondent shall (in accordance with its undertaking to do so) fully rehabilitate the site on which it commenced construction of its proposed free-standing telecommunications base station (pursuant to the approvals forming the subject of paragraphs 2.1 and 2.2 above having been granted) to its original state;

1. The First Respondent shall pay the Applicants' costs of this application as well as of the preceding application for interim relief (under the above case number, and in respect of which the issues of costs was reserved by His Lordship Mr Justice Sher), as taxed or agreed.

**BY ORDER OF THE COURT**

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**COURT REGISTRAR**