



REPORT TO: **MUNICIPAL PLANNING TRIBUNAL**

ITEM NO

WARD 71: APPLICATION FOR CONSENT AND DEPARTURE IN TERMS OF THE MUNICIPAL PLANNING BY-LAW, 2015: REMAINDER ERF 4212 CONSTANTIA, 31A TOKAI ROAD, KIRSTENHOF

Case ID	70460091
Case Officer	Y Jafta
Case Officer phone number	021 444 9536
District	Southern
Ward	71
Ward Councillor	P East
Report date	5 November 2019

1. EXECUTIVE SUMMARY

Property description	Remainder Erf 4212 Constantia
Property address	31A Tokai Road, Kirstenhof
Application components / description	<ul style="list-style-type: none"> Consent in terms of Item 59(b) of the Development Management Scheme to permit a freestanding base telecommunication station comprising, inter alia, 21m high slim line mast and 4 equipment containers, as per the site development plan (SDP) attached as Annexure C. Departure from Item 68(d) of the DMS to permit the freestanding base telecommunication station to be setback 0m in lieu of 3m from the western common boundary.
Site extent	4882m ²
Current zoning	General Business Subzone GB1, General Residential Subzone GR1 & Transport Zone 2
Current land use	Place of worship
Overlay zone applicable	None
PHRA or SAHRA heritage	No
Public participation outcome summary	52 objections received.
Recommended decision	
Approval	Refusal
✓	Approval in part & Refusal in part

2. BACKGROUND FACTS

- 2.1. A similar application for consent to permit a freestanding base station on the subject property was submitted on 2 June 2018. The application was refused acceptance as it did not comply with Section 71 of the MPBL.
- 2.2. A follow up application of a similar nature was submitted on 14 September 2018. This application was refused due to the failure to submit additional information timeously.

- 2.3. A 25m high tree monopole mast was advertised (see Annexure D). During the report writing stage, the applicant submitted an amended proposal for a 21m high slim line mast in order to mitigate the potential visual impact. The proposed location of the mast was moved further from the street boundary from being setback 10.4m to at least 20m from Tokai Road. This Department is of the opinion that these changes do not need to be advertised as they have been effected to reduce the impact in response to the objections.

3. SUMMARY OF APPLICANT'S MOTIVATION

- 3.1. The applicant's motivation (see Annexure E) may be summarised as follows:
- There is a current lack of cellular infrastructure to provide optimal and efficient data/ voice coverage in the area.
 - There have been always been complaints from the residents regarding coverage in the area.
 - The access to the mast will be kept locked for security reasons.
 - The proposed mast will provide for co-location of 4 service providers.
 - The measurement surveys conducted around the world have shown that the levels of public exposure as a result of base station emissions are fractions of a percentage of the maximum amount recommended by the International Commission of Non-Ionizing Radiation Protection (ICNIRP).
 - No present confirmed scientific evidence exists that would indicate any hazard to human health in situations that members of the public find themselves in.
 - To ensure optimal coverage, cellular stations should ideally not be more than 500m to 1000m apart.
 - Effective planning of sites and future sites was taken into consideration to ensure effective networks are developed and clutter reduced.
 - The proposed mast will not only benefit the local businesses; it will also enhance the signal quality of the residential properties in the area.
 - The proposed development fits into the surrounding area.
 - The proposal will ensure optimal use of an underutilized property.
 - The mast is strategically placed for minimal impact on the neighbouring properties.
 - The 25m high mast will ensure maximum coverage.
 - The mast will be camouflaged as a tree to mitigate the visual impact.
 - The departure to permit the mast to be located 0m from the street is to allow easy access for maintenance.
 - The proposal complies with the Municipal Spatial Development Framework (MSDF).
 - The proposal complies with the Telecommunications Mast Infrastructure Policy.
 - The proposal complies with the principles of Spatial Planning and Land Use Management Act (SPLUMA).
 - The proposal does not trigger any listed activity in terms of the National Environmental Management Act.
 - Church sites are selected as they are strategically located within residential neighbourhoods and they have the correct zoning to permit the use.
 - The proposal will have a positive economic and social impact.

- The mast will have a positive impact with regards to enhancing the network coverage in the area.
- The proposal does not impact on any additional external engineering services.
- National Heritage Resources Act is not triggered.
- There will be no impact on the biophysical environment.
- There will be no transport or traffic impact.

4. PUBLIC PARTICIPATION

		Applicable	Dates / Comments
Advertising	Notice in the media (s81)		
	Notice to a person (s82)	✓	25 June 2019
	Notice to Community organization (s83)	✓	25 June 2019
	Notice to Ward Councillor (s83)	✓	24 June 2019
	Notice of no objection (s84)		
	Notice to Provincial Government (s86)		
	Notice to an Organ of State (s87)		
	Public meeting		
	On-site display	✓	26 June 2019
Outcome	Objections	✓	52 objections were received.
	Objection petition		
	Support / No objection		
	Comments		
	Ward Councillor response		

Summary of objections received

- 4.1. Objections received (see Annexure F) may be summarised as follows:
- Notices were "returned to sender" before some interested and affected parties could collect them.
 - The notices served lacked meaningful detail; public participation was inadequate and due procedure was not followed.
The application is not in line with the Constitution.
 - Judge Yekiso's judgment which should overrule any By-Law states that a local authority is required to consider the contextual effect of buildings that will potentially be unsightly, objectionable or derogate neighbouring property values.
 - The proposal does not comply with the Telecommunication Mast Infrastructure Policy with regards to visual impact, needs & character of the area and co-location.
 - Significant financial loss can be expected upon sale of homes close to cell masts; this can be verified via a web search or with consultation from a reputable estate agent.
 - The proposal is financially motivated at the expense of the neighbouring community.
 - The proposed cell mast is significantly higher than the existing buildings in the area which will result in significant aesthetic disfigurement from many vantage points.
 - The visual impact will affect the quality of life of the neighbouring properties.
 - The property is zoned General Business Subzone GB1 with a maximum allowable height of 15m, the cell mast exceeds the height regulation

for this zone. The cell mast must be amended to comply with the 15m height.

- The precautions implemented by the City are no guarantee that there will be no health issues caused by prolonged exposure to radiation.
- There is sufficient research to cast doubt on the safety of cell masts.
- The Municipality has a responsibility to protect all citizens within reason.
- The area is close to a SANPARK area which contains fragile ecosystems, endemic birds, fauna and flora, yet no environmental impact assessment was provided.
- The human exposure guidelines have not been updated in more than 20 years; a health impact survey should be conducted.
- There is an ongoing theft of batteries and equipment of cell masts throughout the City; this application will create temptation and invite crime into the area
- The church building is older than 60 years; a permit from Heritage Western Cape is required.
- There is a mast proposed on Pollsmoor Road; co-location with such mast should be done instead of erecting another mast 916m from the mast at Pollsmoor Road.
- Approving the departure will set a precedent in the area thereby rendering the MPBL ineffective.

Summary of applicant's response to public participation

4.2. The applicant's response to the objections (see Annexure G) may be summarised as follows:

- The subject property is located within the urban edge and is not within a conservation overlay zone. There will be no impact on the environment.
- The mast will promote co-location to reduce clustering of masts, and in order to achieve this and optimal coverage, a mast height of 25m is required.
- The tree mast will be less intrusive and is the best design regarding this mast.
- Telecommunication is a crucial part of daily activities and plays a major role in economic systems.
- The emissions from cellular towers is non-ionizing radiation and do not directly damage DNA cells.
- The energy from cellular tower antennas are directed to the horizon with some downward scatter.
- The proposal will not have a negative impact on health.
- There are no habitable structures positioned within 50m of the antennas. The proposal complies with the 50m safety zone.
- Sufficient coverage is not provided by the existing base stations.
- Additional infrastructure is required to serve not only the present but future advancements in the telecommunications industry.
- The applicant acknowledges the concerns of the loss of property values, however, until evidence is provided, such objections are null and void.
- The applicant takes note of the concerns regarding public participation. No comment is provided in this regard as the process was initiated by the City.

- According to the DMS, a freestanding base station is not subject to the development rules pertaining to height insofar as it does not exceed a maximum height of 25m.
- The objections relating to the unconstitutionality of the application are made solely on the assumption that base stations have a definite effect on the health of the surrounding inhabitants.
- Measures are set in place to prevent criminal activity within the base station.
- The proposal aims to ensure a better-connected telecommunications network.
- Even though church sites are favourable, a desktop study to determine the best possible location has been undertaken.

5. BACKGROUND TO PROPOSAL

Description of the area / surrounding land uses

- 5.1. The property is located in an area that can be characterized as a mixed use area consisting of shopping centers, offices, block of flats, dwelling houses and a place of instruction, with the non-residential uses located along Tokai Road. The area is further characterized by the busy nature of Tokai Road and the close proximity of Main Road and the M5 freeway.

Zoning

- 5.2. As can be seen on Annexure B, the subject property is zoned General Business Subzone GB1, General Residential Subzone GR1 and Transport Zone 2. The property is surrounded by similarly zoned properties; also found in the area are properties zoned Single Residential Zone 1.

Property description

- 5.3. The subject property is large in size and has an irregular shape. The property is located along Tokai Main Road. Vehicular access to the site is gained from Dam Road. The property is developed with a place of worship and has a few trees on site.

Proposed development

- 5.4. It is proposed to erect a 21m high slim line freestanding base telecommunication station with 4 equipment containers on the subject property, as per the SDP attached as Annexure C. The proposal requires consent and involves a departure, as set out in Annexure A, relating to the common boundary setback.

6. PROPOSAL ASSESSMENT

6.1. Consideration of criteria in terms of Section 99(1):

6.1.1. Compliance with the requirements of the MPBL:

- The application complies with the general requirements of the MPBL.
- As the base station has not been erected, no administrative penalty is required.

6.1.2. Compliance or consistence with the municipal spatial development framework

- The subject property is located in an area identified as *Consolidation Area* in terms of the Municipal Spatial Development Framework (MSDF). The proposal is consistent with the MSDF.
- 6.1.3. Consideration in terms of Section 99(3) of the desirability of the following criteria:
- a. Socio-economic impact: The proposal will have a positive socio-economic impact as it will provide improved network coverage with social and economic benefits.
 - b. Compatibility with surrounding uses:
 - The mast will stand out and be visually prominent in the area in which it is proposed especially considering the height of existing buildings and the maximum permissible height (10m, 11m & 15m) of properties in the immediate area.
 - Cell masts are to be located in the area in which they are meant to serve, however, the context and character of the area should not be compromised. The cell mast as proposed does not fit in with the character of the area.
 - The mast will dominate the skyline and will be visually obtrusive particularly to the residential properties to the south and east. The tree “disguise” was not supported by this Department as such “disguises” are not convincing particularly where there are not a lot of real trees of similar height to blend in. The changed design will result in a visual improvement, but will still not be contextually appropriate. The new location will in fact be even more intrusive to the residential properties to the south.
 - In this regard it is noteworthy that the proposal does not align with Objective 2 of the Telecommunication Mast Infrastructure Policy (ie “to ensure that the TMI is placed in the best possible location”) that states that visual sensitivity is informed by land cover and visual absorption capacity and that areas of pasture and ploughed land have the highest visual sensitivity. Objective 2.1 of the policy states that base stations “should preferably be located within areas where they have the least visual impact”, which is clearly not being complied with.
 - There is no doubt that other possibly viable site alternatives can be investigated and as a result, Objective 2.3 of the Telecommunication Mast Infrastructure Policy (ie “all possible site location alternatives should be explored ... in order to minimize the impact of the TMI ...”) has not been adhered to. The applicant's list and explanation of alternatives is unconvincing, particularly with regard to the Blue Route Shopping Centre.
 - It is noteworthy that the Environmental Resources Management Department objected to the application due to the potential visual impact (both the advertised and the revised design).
 - c. Impact on the external engineering services: There will be no impact on external engineering services.
 - d. Impact on safety, health and wellbeing of the surrounding community:
 - There is a lack of evidence to suggest that there is a health risk associated with telecommunication base stations. International, national, provincial and local health authorities are of this opinion. It must be noted that one of the conditions of approval is that Council

can impose further conditions if proof is forthcoming of negative health implications of this technology. The radio frequency exposure will need to comply with the guidelines of the International Commission on Non-Ionizing Radiation Protection.

- It is further important to note that the contents of the 2018 memorandum from the national Department of Health (see Annexure L). This makes it clear that “considering the very low exposure levels and research results collected to date, there is no convincing scientific evidence that the weak RF [radio frequency] signals from base stations and wireless networks cause adverse health effects”. It further states that “local and other authorities, in considering the environmental impact of any particular base station, do not need to and should not attempt, from a public health point of view, to set any restrictions with respect to parameters such as height of the mast, distance of the mast, and duration of exposure”.
 - As is indicated in the diagrams attached as Annexure I, no antennae are located so that habitable structures are within a zone of 50m directly in front of the antennae at the same height as required by the City’s Telecommunication Mast Infrastructure Policy. However, the abutting property to the west is zoned General Business Subzone GB1 with a permissible maximum height of 15m. The lowest antenna at 14.5m will be lower than the permitted height of buildings in General Business Subzone GB1, thereby creating a potential health risk.
- e. Impact on heritage: The property is not within a Heritage Protection Overlay Zone; there will be no impact on heritage.
- f. Impact on the biophysical environment: The property is already developed and is not environmentally sensitive. No trees will be affected; the application does not have an impact on the biophysical environment.
- g. Traffic impacts, parking, access and other transport related considerations: The proposal does not include a transport related application, and there will be no traffic related impact as a result of the application.
- h. Conditions that can mitigate an adverse impact of the proposed land use: No conditions can mitigate the adverse impact of the base station.

6.1.4. Would approval of the application have the effect of granting the property the development rules of the next subzone within a zone?

- No.

I am satisfied that the decision making criteria in Section 99(1) have been assessed.

I am satisfied that the considerations in Section 99(3) have been assessed and that the proposed land use is not desirable.

6.1.5. Impact on existing rights:

- The proposal will have a negative visual impact.

6.1.6. Other considerations prescribed in relevant national or provincial legislation.

- The proposal complies with the principles set out in Section 59 of the Land Use Planning Act and Section 7 of the Spatial Planning and Land Use Management Act.

I am not satisfied that the decision making criteria in Section 99(2) have been complied with.

7. REASONS FOR DECISION

- 7.1. Reasons for the recommended decision for **refusal** relating to the application for the consent and departure may be summarised as follows:
- 7.1.1 The proposal does not comply with the desirability criteria in Section 99 of the Municipal Planning By-Law, 2015, insofar as its compatibility with surrounding uses is concerned.
- 7.1.2 The mast will be very visible from the all directions; the mast will dominate the sky line.
- 7.1.3 Possible alternatives have not been adequately investigated by the applicant.
- 7.1.4 The proposal creates a potential health risk as the bottom of the antenna will be lower than the maximum permitted height on a property zoned General Business Subzone GB1, that is within 50m of the base station.

8. RECOMMENDATION

In view of the above, it is recommended that:

- 8.1. The application consent in terms of Item 59(b) of the Development Management Scheme to permit a freestanding base telecommunication station on Remainder Erf 4212 Constantia, **be refused** in terms of Section 98(c) of the Municipal Planning By-Law, 2015.
- 8.2. The application for a departure, as set out in Annexure A, for Remainder Erf 4212 Constantia, **be refused** in terms of Section 98(c) of the Municipal Planning By-Law, 2015.

ANNEXURES

Annexure A	Application details
Annexure B	Locality plan / public participation map
Annexure C	Revised site development plan
Annexure D	Advertised site development plan
Annexure E	Applicant's motivation
Annexure F	Objections
Annexure G	Applicant's response to objections
Annexure H	Internal departmental comments
Annexure I	Plan reflecting compliance with 50 health zone
Annexure J	Map reflecting all the base stations in the area and coverage plots
Annexure K	Alternative sites
Annexure L	Memorandum from National Department of Health
Annexure M	Title deed
Annexure N	Conveyancer's certificate
Annexure O	List of relevant parties



Section Head

Name: P Hoffa

Tel no: 021 444 7724

Date: 2019-11-05



District Manager

U Gonsalves

021 444 7720

2019-11-05

ANNEXURE A

In this annexure:

"City" means the City of Cape Town

"The owner" means the registered owner of the property

"The property" means **Remainder Erf 4212 Constantia, 31A Tokai Road, Kirstenhof**

"Bylaw" and "Development Management Scheme" has the meaning assigned thereto by the City of Cape Town Municipal Planning Bylaw, 2015 (as amended)

"Item" refers to the relevant section in the Development Management Scheme

"Dir: DM" means Director: Development Management or his/her delegatee.

CASE ID: 70460091

1. APPLICATIONS REFUSED IN TERMS OF SECTION 98 (c) OF THE BYLAW

- 1.1. Consent in terms of Item 59(b) of the Development Management Scheme to permit a freestanding base telecommunication station.
- 1.2. Departure from Item 68(d) of the Development Management Scheme to permit the freestanding base telecommunication station to be setback 0m in lieu of 3m from the western common boundary.

ANNEXURE O
List of relevant parties

Applicant:
TTP-Consult
lian@ttp-consult.co.za

Objectors

1. Kirstenhof and Environs Residents' Association
P.O Box 107
Steenberg, 7947

2. Y & K McFarlane
31 Vans Road
Tokai, 7945
Erf 10466

3. M Nicholls
39 Tokai Road
Tokai, 7945

4. Dr L Hattingh
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5. The Princess Christian Home
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6. C & J Bernicchi
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7. EMS Vincent
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Erf 7115

8. PC Key
21 Jupiter street
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Erf 6494

9. E Ridge
19 East Light Way
Kirstenhof, 7945
Erf 5378

10. L Nicholson
19 Dam Road
Kirstenhof, 7945
Erf 4233

11. MC Miceli

12. G Phyffer
5 Susan Way
Tokai, 7945
Erf 4257

13. C Brittain Erf 13287
34 Highgrove Estate
31 Tokai Road
Kirstenhof, 7945
14. SJ Robertson Erf 13287
48 Highgrove Estate
31A Tokai Road
Tokai, 7945
15. N Carpenter Erf 13256
3 Highgrove
31A Tokai Road
Tokai, 7945
16. R Carpenter Erf 13256
3 Highgrove
31A Tokai Road
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Harmony Estate Road
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mike@metapipe.co.za
19. H Hill
37 Vans Road
Tokai, 7945
20. AJ Bowen Erf 13306
53 Highgrove estate
Tokai Road
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21. GFD Motors (Pty) LTD, BP Blue Route, Pn'P Express Tokai
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P.O Box 30008
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22. C Carlstein
14 Adelaar Street
Kirstenhof, 7945
23. A & B Lyne
61 Seven Sleepers Close
Kirstenhof, 7945

24. CD Nysschens
4 Silver Water Street
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25. T N Slatter
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36. N Greenberg
51 Highgrove
31 Tokai Road, Tokai, 7945

37. I Jacobs Erf 4215
39 Tokai Road
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38. C Valkenburg Erf 7894
3 Venus Street
Kirstenhof, 7945
39. G Halstead
48 Highgrove Complex
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Kirstenhof, 7945
40. K Steinhof
41. P O'Connor
39 Tokai Road
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42. AP Rogers Erf 4235
15 Dam Road
Kirstenhof, 7945
43. JM Pearce Erf 7122
3 Dam Road
Kirstenhof, 7945
44. H Hill
37 Vans Road
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