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Date: 16 July 2021

Findings into Investigation Audit into Erf 1603 BKH

Attention:

Karol Michalowski <kmich@fairbridges.co.za> on behalf of the City of Cape Town Municipality
cc Naeema Jaffer <njaffer@fairbridges.co.za>
cc Gabby Wagner <gabby.wagner@capetown.gov.za> Senior Professional Officer, Development
Management, Spatial Planning & Environment Directorate.

and

Associated Parties (MTN and the Bidoli Family Business Trust)

Dear Parties

We have concluded our investigation, findings and endorsement on actions to be taken further. They are summarized below.

1. The permittance and operation of the Cellular Mast Tower on Erf 1603 BKH are in contravention of National Policies, Bi-lateral agreements and International Treaties under 'substances released into the environment' within the definition of 'public safety or environmental risk'.
2. The permit for the Cellular Mast Tower is endorsed to be revoked within two (2) days.
3. The deconstruction of the Ceullar Mast Tower is endorsed within fourteen (14) days.
4. The merits for an Equality High Court application have been met.

Deadline on receipt of documents

1. We have received no documentation to justify the continuing operation of the Cellular Mast Tower on Erf 1603 BKH.
2. We did receive a letter from Karol Michalowski acting on behalf of the City of Cape Town, see attached. This letter provides no requested information or valid reasons for further delays on the matter. This matter falls under the Public Interest Override (PIO) function. I shall reference the letter further below.
3. I shall reference Judge Kgomo's (2012) ruling in De Lange and another v Eskom Holdings Limited and others, heard in the South Gauteng High Court.

- a. As is in this matter, the court held that the information in the records, fall into the category of 'substances released into the environment' within the definition of 'public safety or environmental risk'.
 - b. The information requested all of which may lead to serious public safety or environmental risks that were relatively imminent.
 - c. Judge Kgomo (2012) indirectly invoked the precautionary principle (NEMA, 1998) to avoid potential broad public health and economic implications. The precautionary principle brings foresight and transparency to situations with high stakes. It re-invigorates the public health tradition requiring that we do no harm. While precautionary actions can be reversible, failure to take precautionary action may cause irreversible harm.
4. The reference of Judge Kgomo's ruling to this context scenario for the audit investigation has been reviewed by the Department of Justice and Constitutional Development (DoJCD). This has been reviewed by multiple Organs of State. You can find the explanation to the process that included the participation of the City of Cape Town in the published 2017 government study¹.

FWBattorneys ref: KM/nj/CIT137/0016

1. Your question to the jurisdiction of the WHO IAC. The jurisdiction and mandate of the committee are clearly listed in the report that was provided, along with the link to the associated information linking to the binding bi-lateral agreements and international treaties. The WHO IAC ZA committee is made-up of the following:
 - a. Department of Science and Innovation.
 - b. Department of Health.
 - c. Department of Defence.
 - d. Department of Agriculture and Forestry Services.
 - e. Department of Justice and Constitutional Development.
 - f. Department of International Relations and Cooperation.
 - g. Ethics committees.
 - h. International Science Council.
2. The NRF was elected to head the committee due to its demonstrated skills, experience in such matters, and endorsed international nominations.
3. The views expressed in this document are thus the voice of the nation, as stipulated in the report provided in our previous letter.
4. Your last question is about the sensitive nature of the requested documentation. There is no sensitive confidential nature to the requested documentation. They are held by a Public Body and are accessible to the public for any investigation.

¹ Lech, James; de le Rey, Edward; Krauss, K. (2017). Thesis JC Lech - Constructing an EMF radiation HYGEIA framework and model to demonstrate a public interest override, 326.

5. Your statements bring about more questions for concern and motivate further why this matter is called into investigation.
- a. Public interest is a common concern amongst citizens and significant segments in the management and affairs of local, provincial and national government and is rooted in the SA Constitutional Human Rights (1996) as a promotion of social accountability. Private companies, i.e. MTN, that provide a public utility requiring regulation are included, because private individuals rely on such a private company for vital services. Public interest in SA includes the systemic threat or violation of human rights and/or may include upholding the law as well as public awareness of public safety or environmental risks.
 - i. The Judge Kgomo provides that, even where grounds for refusing access to a record exist, the public interest is paramount in certain information. Accordingly, where the PIO test is satisfied, the record must be released, irrespective of an applicable mandatory or discretionary ground for refusal. The test has two parts. Firstly, it needs to be established that the disclosure of the record would reveal evidence of either:
 1. A substantial contravention of, or failure to comply with the law (for example, regulations not being implemented, corruption); or
 2. An imminent and serious public safety or environmental risk (for example, EMF radiation exposure hazard conditions that may go unchecked).
 - ii. A ‘public safety or environmental risk’ is defined to mean harm or risk to the environment or the public (including individuals in their workplace) associated with:
 1. A product or service which is available to the public;
 2. A substance released into the environment, including the workplace;
 3. A substance intended for human or animal consumption;
 4. A means of public transport; or
 5. An installation or manufacturing process or substance which is used in that installation or process.
 - iii. Secondly, after establishing that the records contain one of those two categories of information, it must be established that the public interest in the disclosure of the record clearly outweighs the harm contemplated in the relevant ground for refusal.
 - b. The Centre for Social Accountability versus the Secretary of Parliament and others (2010) [CfSAvSPo], the Eastern Cape High Court defined the metric thresholds that must be met to establish that the record reveals evidence of either a ~~substantial~~² contravention of, or failure to comply with, the law, or an imminent and serious public safety or environmental risk. The ruling found that the applicant must show ‘on the balance of probabilities’ that the disclosure of the record would reveal the required contravention, failure or risk. This means that all interested parties have to be granted access and opportunity to submit their cases to ‘the

² CfSAvSPo (2010) it was ruled the words ‘substantial’ and ‘would’ in section 46 (a) do not require any heavier onus than the accepted standards of civil procedure. Thereby, a contravention or failure can be either a minor or substantial breach. Therefore, it is simplified to a contravention or failure.

balance of probabilities' test before any decision is made. If the application on merit is successful, the public interest becomes public disclosure, making information or data readily accessible and available to all interested individuals and institutions.

- i. In a permit being granted to the Associated Parties, all data requested in our previous letter is confirmed as public disclosure, making all data readily accessible.
- c. Exposure to EMF radiation is a globally recognised public interest cause of concern for many people and governments.

Actions endorsed to be taken

1. The City of Cape Town Municipality (CoCPT) Permits office is endorsed to revoke the permit for Erf 1603 BKH with immediate effect.
 - a. This was confirmed to be the authorized action by the City's permit office as recorded in the govt. study.
2. Within two (2) days of receipt of this report, the CoCPT is endorsed to obtain from the Mayor's office an order to shut off and lockdown the power to the Cell Tower facility on Erf 1603 BKH. The action is to be carried out by:
 - a. CoCPT metro police.
 - b. CoCPT Electricity generation department.
3. The above point has already been discussed in person with the mayor of CoCPT prior. In meeting, visual evidence was presented and discussed demonstrating members of the public and or residents can be within direct line-of-sight to a microwave radiation beam.
4. The CoCPT is endorsed to take further action to the decommission of the structure within fourteen (14) days.
5. If the CoCPT is not sure in understanding how to undertake such actions, the NRF does have a Human Capital and Infrastructure Development (HCID) program that can assist in training the CoCPT to the confidence levels needed in conducting such regulatory activities.

Failing to take action

1. Should the CoCPT elect to not carry out the endorsed actions above, the community and or the State may approach the Equality High Court for relief.
 - a. In such relief, based on the reviewed discussions with the DoJCD as stipulated in the government study, each CoCPT member/individual whose name has authorized and or continues to authorize the Permit for the Associated Parties can be requested to be forwarded onto the National Prosecuting Authority (NPA) for further actions.
2. The CoCPT is electing to waste further tax payers contributions due to the CoCPT's contravention to the spirit of the Municipal Systems Act. Simply, municipalities are not to create or carry out practices that will weaken National Policies.

Conclusion

The situation presents a “Prisoner’s Dilemma”. Rejection responses to the requested data, presents the pattern of the non-zero sum game called the “Prisoner’s Dilemma”. Prisoner’s dilemma, in game theory, is a situation in which two or more parties each have two options and where the outcome crucially depends on the simultaneous choices made by both. It shows why two or more completely rational parties might not cooperate, even when it appears to be in their best interests to do so.

Both the CoCPT and Associated Parties have raised up a defence to remain silent and or secretive. In the government study, on the record senior municipal officials of the CoCPT from various departments stipulated outcries to regulations not being met, and that they are placed into a position of disempowerment because they feel “industry” has totalitarian authority. The research findings are of great concern to the State.

Stipulated by the DoJCD, the framework to which this committee is governed by is to help toward achieving a transparent and accountable government based on a more rigorous and fact-based standard. This is loudly expressed and instructed by the President. We find the CoCPT and Associated parties purposefully obstructing such a mandate.

Expressed in our previous letter, the aim of the request is to assist the CoCPT, community, and the Associated Parties. Such assistance to the CoCPT and Associated Parties has been rejected with no valid grounds for refusal and or justification for fair discrimination against the community and or State.

We look forward to your sincere assistance and cooperation in this request.

Kind regards



James Lech

Doctoral Candidate
World Health Organization - International EMF Project & Optical Radiation - ZA, Chair
Diplomatic Science Officer - ZA
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Our ref:	KM/nj/CIT137/0016
Your ref:	200617.000.NRF-WHO-IAC-ZA
Date:	15 July 2021

NATIONAL RESEARCH FOUNDATION

Att: James Lech

Pretoria
South Africa

VIA EMAIL: who.internationalemfproject.za@gmail.com

Dear Sir/Madam

RE: INVESTIGATION AUDIT INTO ERF 1603 BKH

1. We refer to the above matter and confirm that we act on behalf of the City of Cape Town (“our client”).
2. Your letter addressed to our client dated 17 June 2021 bears reference.
3. We do not intend to respond to each and every allegation set out in your letter and we reserve our client's right to do so at the appropriate stage, and in the appropriate forum, if and when necessary. Failure to deal with an allegation should not be construed as an admission of same.
4. We note your request and/or demand for a copy of all documentation, technical drawings, licenses, propagation maps and certifications in relation to the lattice mast present at Erf 1603 Bakkershoopte.

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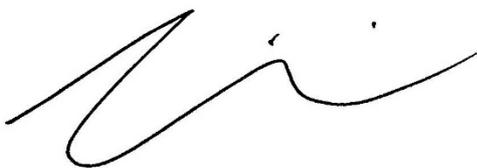
FAIRBRIDGE ARDERNE & LAWTON INC. - Reg. No. 1985/000003/21.

Also in Johannesburg.

5. It is manifestly clear that your letter fails to set out the necessary and authoritative mandate with which you seek to substantiate the demand of the documentation allegedly in our client's possession.
6. It is further apparent from the legal and legislative framework as derived from the National Research Foundation Act 23 of 1998 that your request and/or demand does not fall within and is not contemplated in the functions, powers and duties of the National Research Foundation.
7. To this end and in the event that our client is in possession of the documentation requested, which it at this juncture does not confirm nor deny, our client will not hand over any documentation of any nature to you or any other alleged representative of the Natural Research Foundation, until such time as the requisite substantiation and authority has been provided to us.
8. With reference to page 2 of your letter, our client fails to reconcile the relevance of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 with the demand and/or request made from our client. It is further perplexing as to why, as your letter puts it, "the residents" and/or the state would approach the equality court. In this regard, we invite you to clarify the relevance of the legislation relied upon in your demand, together with the basis and authority for the punitive measures you seek to impose on our client in the event it does not comply to the vague and unwarranted demands outlined in your letter.
9. In light of the sensitive nature of the documentation demanded, we believe that the above request for substantiation and authority is prudent and reasonable. In this respect we look forward to your response hereto.
10. Our client's rights remain strictly reserved.

Yours faithfully

FAIRBRIDGES WERTHEIM BECKER



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