

Louise Agenbag

From: Mdi N [MdiN@ledet.gov.za]
Sent: 06 May 2010 12:03 PM
To: louise@polygon.co.za
Cc: Mongwe V M
Subject: FW: Proposed Maake Plaza filling station, Tzaneen area: Appeal

Kindly see below. Regards

From: Mongwe V M
Sent: 04 May 2010 10:15 AM
To: Mdi N
Subject: RE: Proposed Maake Plaza filling station, Tzaneen area: Appeal

This matter has reference.

1. According to the EIA Regulations there is no Appeal in between the EIA process because that is not the final decision by the Department. What is applicable in this case is objection based on given reasons. By the way we don't have such an Appeal which is not applicable in any way.
2. We have already informed the EAP to proceed with the compilation of the EIA Report on our letter dated 30/07/2009. If the Interested and affected parties have problems will then raise objections and not Appeals.
3. The EAP can therefore proceed with the process in respect of the existence of the "Appeal". Even if there was a genuine Appeal, it does not stop the process unless directed so by the MEC.
4. I hope the matter is resolved.

Victor M Mongwe

*Department of Economic Development, Environment and Tourism
Environmental Impact Management*

Tel/Fax: (015) 295 4013

Email: mongwev@ledet.gov.za



From: Mdi N
Sent: 03 May 2010 11:34 AM
To: Mongwe V M
Subject: FW: Proposed Maake Plaza filling station, Tzaneen area: Appeal

From: Louise Agenbag [mailto:louise@polygon.co.za]
Sent: 20 April 2010 02:40 PM
To: Mdi N
Subject: RE: Proposed Maake Plaza filling station, Tzaneen area: Appeal

Dear Nomazizi

Have you had any feedback yet from the relevant officials?

Thank you!

Louise

From: Mdi N [mailto:MdiN@ledet.gov.za]
Sent: 15 April 2010 10:24 AM
To: Louise Agenbag
Subject: RE: Proposed Maake Plaza filling station, Tzaneen area: Appeal

Dear Louise

I discussed this with the concerned officials, I am just waiting for them to come back to me.

Regards

Nomazizi

From: Louise Agenbag [mailto:louise@polygon.co.za]
Sent: 12 April 2010 11:54 AM
To: Mdi N
Subject: Proposed Maake Plaza filling station, Tzaneen area: Appeal

Morning Mdi,

APPEAL SUBMITTED BY PRAF AGAINST LDEDET'S ACCEPTANCE OF SCOPING REPORT: PROPOSED FILLING STATION AT MAAKE PLAZA, REMAINDER OF THE FARM RITA 668-LT, TZANEEN AREA

Our telephonic discussion this morning (12 April 2010) with regards to the above-mentioned appeal has reference. I have liaised with Chantal Wagner and Tumisho Tladi of the MEC's office regarding the validity of the appeal, which was submitted by the Petroleum Retailers Alignment Forum (PRAF) against LDEDET's acceptance of the Environmental Scoping Report (ESR) for the proposed filling station at Maake Plaza in the Tzaneen area. However, neither Chantal nor Tumisho was able to advise me regarding the validity of the appeal, and hence Chantal referred me to you. Kindly refer to the e-mails below for a record of my correspondence with Chantal and Tumisho.

Basically, I need guidance from you as to whether Polygon as the EAP can proceed with the rest of the EIA process for the proposed filling station. The appellant is of the opinion that the EIA process should be halted while their appeal is pending, but we feel that the appeal is not correctly before the MEC and therefore cannot stop the EIA process from being completed. Mr Rhulani Mthombeni and Mr Victor Mongwe of LDEDET have indicated that, in their view, an appeal can only be submitted once the competent authority (in this case LDEDET) have issued a decision as to whether a project can proceed or not, and not while the EIA process is still underway as in this case. Mr Mthombeni and Mr Mongwe advised us to continue with the EIA process, and no indication has been received from the MEC's office that the EIA process should be suspended pending the outcome of the appeal. However, to be on the safe side, we would appreciate confirmation from the MEC's office that we can proceed with the rest of the EIA process, as we would like to avoid the risk of any steps of the EIA being considered invalid at a later stage due to the pending appeal.

For background, attached please find copies of the following:

- PRAF's appeal documents, submitted on 28 September 2009
- Polygon's responding statement, sent to PRAF on 14 October 2009
- PRAF's communications requesting suspension of the EIA process whilst the appeal is pending (20 and 29 October 2009)

- Polygon's response to the request for suspension (24 November 2009)

Thank you in advance for your assistance in this matter – your guidance will be greatly appreciated. If you have any queries or require any additional information, please do not hesitate to contact me.

Kind regards,

Louise Agenbag

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Fax: 015 307 3080
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Post: PO Box 1935, Tzaneen, 0850
Web: www.polygonenvironmental.co.za



John 3:16: "For God so loved the world that He gave his one and only Son, that whoever believes in him shall not perish but have eternal life."

From: Louise Agenbag [mailto:louise@polygon.co.za]
Sent: 17 March 2010 09:02 AM
To: 'tladit@ledet.gov.za'
Subject: FW: Proposed Maake Plaza filling station, Tzaneen area: Appeal

Morning Tumisho

APPEAL SUBMITTED BY PRAF AGAINST LDEDET'S ACCEPTANCE OF SCOPING REPORT: PROPOSED FILLING STATION AT MAAKE PLAZA, REMAINDER OF THE FARM RITA 668-LT, TZANEEN AREA

Herewith a copy of the e-mail I sent to Chantal on 11 December 2009 outlining why we (as the environmental assessment practitioner) do not view the above-mentioned appeal as valid. We have been advised by Mr Rhulani Mthombeni and Mr Victor Mongwe of LDEDET to continue with the EIA process, as an appeal cannot be submitted by stakeholders while the EIA process is still underway, in other words before LDEDET has issued a decision on whether the proposed project should be allowed to proceed or not. However, as the appeal was submitted to the MEC's office, I would like to get confirmation from the MEC's office in this regard before we proceed.

I would greatly appreciate it if you could let me know with whom the appeal is at the moment, so that I can follow up with him/her as to their view on the matter.

If you have any queries, please do not hesitate to contact me at any time! I appreciate your assistance – I realise that you're in a difficult position as Chantal was actually dealing with this issue and she wasn't able to brief you on it when you took over from her.

Kind regards,

Louise

From: Louise Agenbag [mailto:louise@polygon.co.za]
Sent: 11 December 2009 02:53 PM
To: 'Wagner C G'
Cc: jason@mccormick-property.co.za; 'Green Gain Consulting'
Subject: Proposed Maake Plaza filling station, Tzaneen area: Appeal

Chantal,

Thank you for the feedback. Could you confirm whether LDEDET is currently reviewing the appeal process (i.e. whether the appeal was correctly submitted and can be considered by LDEDET), or the appeal itself (on the substance of the appeal)?

The reason for my query is that we do not consider the appeal to be valid, as it was submitted *during* the EIA process (following acceptance of the scoping report by LDEDET), and not in reference to a decision issued by LDEDET on the proposed project. Both Mr Rhulani Mthombeni (IEM Manager: Mopani District) and Mr Victor Mongwe (Senior Manager: IEM) have indicated that an appeal can only be submitted once the competent authority (in this case LDEDET) has issued a decision on whether a proposed project can proceed, and not whilst an EIA process is still underway. Mr Mthombeni and Mr Mongwe advised us to proceed with the EIA process.

In our view, an appeal can only be submitted on an administrative decision, which is defined in terms of the Promotion of Administrative Justice Act (PAJA, Act No. 3 of 2000) as follows:

Section 1(i) - *“Any decision taken, or any failure to take a decision, by –*
 a) *an organ of state, when –*
 (i) *exercising a power in terms of the Constitution or a provincial constitution; or*
 (ii) *exercising a public power or performing a public function in terms of any legislation; or*
 b) *a natural or juristic person, other than an organ of state, when exercising a public power or performing a public function in terms of an empowering provision which adversely affects the rights of any person and which has a direct, external legal effect...*
“

We do not view the acceptance of the ESR as an administrative action, as it does not in itself adversely affect the rights of any person or grant any rights to any person. Rather, it is only the final decision by LDEDET as to whether to grant or refuse environmental authorisation which will grant or take away any rights.

The appellant has requested that the EIA process be suspended pending the outcome of the appeal; however, we feel that the process should continue, for the following reasons:

- We do not consider the appeal to be correctly before the MEC, as it was not submitted in reference to an administrative decision
- LDEDET, through their Mr Mthombeni and Mr Mongwe, have advised us to continue with the EIA process
- No indication has been received from the MEC’s office that the process should be suspended

We would greatly appreciate it if you could confirm whether or not the MEC’s office agrees that the appeal is not valid, and if you could provide confirmation that we can continue with the EIA process, as set out in the Plan of Study for EIA which formed part of the Environmental Scoping Report as was accepted by LDEDET.

Should you have any queries or wish to discuss any aspect of the project, or if you would like to set up a meeting to discuss the project, please do not hesitate to contact me.

Thanking you in anticipation for your assistance.

Kind regards,

Louise Agenbag

From: Wagner C G [mailto:WagnerCG@ledet.gov.za]
Sent: 05 November 2009 06:06 PM
To: Louise Agenbag
Subject: RE: Proposed Maake Plaza filling station, Tzaneen area: Appeal

Good Day,

Please note that I am unable to provide feedback however do be advised that the Appeal process is currently being dealt with and once finalised all the relevant companies / organisation will be given an update with regards to their submission.

We appreciate your patience during this time.

Regards,

Ms Chantal Wagner
APPOINTMENT SECRETARY

From: Louise Agenbag [mailto:louise@polygon.co.za]
Sent: 04 November 2009 04:26 PM
To: Wagner C G
Subject: RE: Proposed Maake Plaza filling station, Tzaneen area: Appeal

Hi Chantel

Thank you for the confirmation. Are you able to provide feedback as to the validity of the appeal? If not, can you refer me to the appropriate person to discuss the matter with?

Kind regards,

Louise

From: Wagner C G [mailto:WagnerCG@ledet.gov.za]
Sent: 04 November 2009 04:12 PM
To: Louise Agenbag
Subject: RE: Proposed Maake Plaza filling station, Tzaneen area: Appeal

Good Day,

This serves to confirm receipt of the appeal.

Regards,

Ms Chantal Wagner
APPOINTMENT SECRETARY

From: Louise Agenbag [mailto:louise@polygon.co.za]
Sent: 03 November 2009 04:33 PM
To: Wagner C G
Cc: 'Jason'
Subject: Proposed Maake Plaza filling station, Tzaneen area: Appeal

Hi Chantel

PROPOSED FILLING STATION AT MAAKE PLAZA, TZANEEN AREA: APPEAL BY PRAF AGAINST LDEDET'S ACCEPTANCE OF SCOPING REPORT

Our telephonic discussion this morning with regards to the above has reference. As discussed, we (Polygon Environmental Planning) are currently undertaking an EIA for the proposed establishment of a filling station at Maake Plaza shopping centre in Maake, Greater Tzaneen Municipality. An appeal has been submitted by PRAF (the Petroleum Retailers Alignment Forum) against LDEDET's acceptance of the Environmental Scoping Report (ESR) (the ESR was accepted by LDEDET on 30 July 2009). For ease of reference please find attached copies of PRAF's e-mailed appeal and LDEDET's letter accepting the ESR.

PRAF indicated that they faxed their appeal to the MEC's office. I am uncertain as to the date on which it was sent to the MEC's office, but a copy of the appeal was e-mailed to Polygon on 28 September 2009. It would be greatly appreciated if you can confirm whether the appeal was received by your office.

Furthermore, I would appreciate guidance from the MEC's office as to the validity of this appeal, as it was submitted whilst the EIA process is still underway and *not* against a final decision by LDEDET as to whether or not the proposed project can proceed. Feedback from Mr Rhulani Mthombeni and Mr Victor Mongwe of LDEDET has been that an appeal cannot be submitted at this stage of the process, but only once a decision has been issued on the project as such (authorisation / rejection). We have also been advised that the acceptance of the ESR does not constitute an administrative action as defined in terms of the Promotion of Administrative Justice Act (PAJA, Act No. 3 of 2000), as it does not in itself adversely affect the rights of any person or grant any rights to any person. Rather, we feel that only the final decision by LDEDET as to whether to grant or refuse environmental authorisation will grant or take away any rights, and therefore only the latter decision can be appealed. It would be greatly appreciated if the MEC's office can advise us in this regard.

The appellant (PRAF) feel that the EIA process should be suspended by their appeal; however, LDEDET have advised us to continue with the impact assessment phase of the EIA, as set out in the Plan of Study for EIA which formed part of the ESR which was accepted by LDEDET, unless the MEC directs us to suspend the process. We would therefore appreciate the MEC's feedback in this regard.

We eagerly await feedback from the MEC's office with regards to the following:

- Has PRAF's appeal been received by the MEC's office?
- Does the MEC consider the appeal to be valid?
- Should we continue with the impact assessment phase of this EIA process?

Thanking you in advance for your assistance.

Kind regards,

Louise Agenbag
Environmental Scientist

Polygon Environmental Planning CC

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John 3:16 - "For God so loved the world that he gave his only begotten son, that whosoever believeth in him should not perish, but have everlasting life."

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