



MUNISIPALITEIT - MUNICIPALITY / UMASIPALA-WASE
BEAUFORT-WES / BEAUFORT WEST / BHOBHOFOLO

Departement van die Direkteur: Ingenieursdienste
Department of the Director: Engineering Services
Isebe Lomphathi Owongameleyo: Kwicandelo Lezenjineli

Reference
Verwysing

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Imibuzo

C.B.Wright

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Datum

Date
Umhla

10 March 2022

BEAUFORT WEST
BEAUFORT WES
BHOBHOFOLO
6970

**PRE-APPLICATION: APPLICATION FOR CONSENT USE: UMSINDE EMOYENI
ENERGY FACILITY: BEAUFORT WEST MUNICIPAL AREA**

Present: **Meeting via Teams**

Mr C.B.Wright: Authorized Official
Ms M.Govender
Mr Johan van der Westhuysen

The following points were discussed as follows:

1. PURPOSE

- 1.1. The purpose of the pre-application input is to ensure that the application is correct and complete and not to assess the merit of the application.

2. APPLICATION

- 2.1. Application is made to the Beaufort West Municipality for the following:

Consent Use: Renewable Energy Structures on :

- Portion 2 of farm Witteklip No. 32
- Portion 1 of farm Klein Driefontein No. 152
- Portion 4 of farm De Hoop No. 30
- Portion 2 of the farm Driefontein No. 26
- Remainder of farm De Hoop No. 30
- Portion 7 of farm Driefontein No. 26
- Remainder of Farm Schietkuil No. 3

Application is made for:

- a) **Consent Use** : Renewable Energy Structure (32 wind turbines) on six properties, ito. Section 19 of the By-Law on Municipal Land Use Planning for Beaufort West Municipality, 2019,
- b) **Consent Use** : Utility Service (Substation) on one property, ito. Section 19 of the By-Law on Municipal Land Use Planning for Beaufort West Municipality, 2019,

- 2.2. The application indicates (page 8) that a separate request will be submitted to the Municipality for the registration of servitudes over various farm portions for the grid connection lines and substation. It should be noted that Section 24(1)(f) of the By-Law on Municipal Land Use Planning for Beaufort West Municipality (2019), exempts the registration of servitudes for the provision of electricity transmission lines *"by or on behalf of an organ of state or service provider"* from requiring municipal approval within the Beaufort West Municipality are of jurisdiction.
- 2.3. Grid connection will be a separate request and will be dealt with on its own according to Clause 24 1 (f) i of the Land Use Planning By-Law of Beaufort West Municipality.
- 2.4. From the Site Development Plan (No. 1756E/SDP dated 07/2021), it appears that a portion of the grid connection lines will be located within the Ubuntu Municipality (Northern Cape). The applicant is reminded that the exemption, mentioned in 2.2. above, will not apply for that portion of the associated servitude and may require additional applications to that municipality.

3. POWER OF ATTORNEY

- 3.1. The required Powers of Attorney are included in the motivation report. However, in order to confirm a continued chain of authority, the application should also include the Company Registration Documents and Trust Deeds for the various legal entities (as registered owners of the application properties), indicating the appointed directors or trustees of the said companies and trusts to confirm the authority of the signatories on the Powers of Attorney.

4. AGRICULTURE

- 4.1. The motivation report (p12-13) contains a general description of the current agricultural practices and potential on the subject properties. More information would need to be provided regarding the agricultural practices on the portions where the wind turbines are proposed. The reason being, that a land development that utilises an area of five hectares or more of agricultural land that has been cultivated or irrigated during the 10-year period immediately preceding the proposed land development that involves urban development, will trigger a provincial land use application in terms of section 53 of LUPA (Land Use Planning Act, Act 3 of 2014, read together with section 10 of the LUPA regulations). On face value the proposed development does not appear to require a provincial land use application, however it must be verified in the motivation report.

5. SITE DEVELOPMENT PLAN

- 5.1. Although the Site Development Plan (included within the application) may be considered as a general illustration of the intended development, the municipality will only be in a position to determine the final elements which should be incorporated within the Site Development Plan (as contemplated in Section 23(2) of Beaufort West Municipal Standard Zoning Scheme By-Law, 2020), after its assessment of the application.
- 5.2. In terms of Section 23(5) of the Beaufort West Municipal Standard Zoning Scheme By-Law, 2020, the detailed Site development plan, complying with such measures as may be required by the municipality (ito. Section 23(2)), will need to be submitted to- and approved by the municipality prior to commencement of any development on the relevant land unit.

6. PUBLIC PARTICIPATION

6.1. During the public participation process, comments must be obtained from the following (in addition to the comments already included within the application):

- a) Department of Agriculture: Western Cape,
- b) South African National Roads Agency,
- c) District Roads Engineer,
- d) Department of Environmental Affairs and Development Planning, specifically provincial planning comment in terms of Section 45 of LUPA, and
- e) Ubuntu Local Municipality (Northern Cape Province)

7. CONDITIONS OF IMPLEMENTATION

Implementation of the consent use rights may only be implemented once proof of the registration of the notarial deed of lease between the land owner and the applicant has been provided to the Beaufort West Municipality.

The cost of the application is as follows:

• Consent Use	: R 4 816.00
• Advertisement Cost: Municipality	: R 2 758.00
• Advertisement Cost: Provincial Newspaper	: R 1 380.00
• Total Cost of the application	<u>R 8 954.00</u>

Beaufort West Banking Details:

Bank : Nedbank
Account Holder : Beaufort West Municipality
Account Number : 10742 80318
Type of Account : Current Account
Branch Code : 198765
Reference : Umsinde Emoyeni Energy Facility

Mr Wright explains the way forward:

- A copy of the minutes, proof of payment and all relevant information must be attached to the application.
- The final application can be obtained from Mr Mitchell. Mr Mitchell can also assist upon completion of the final application.
- The final application must be submitted to the Senior Manager: Administration: Mr. P.Strumpher.


Address:

**112 Donkin Street
Mid Town
BEAUFORT WEST
6970**

- The final application must be completed and signed by the owner.
- When the final application is submitted, 2 hard copies as well as a complete electronic copy on CD are required.

- Application will be advertised for a period of 8 weeks for any objections.
- If there are any objections, the applicant may appeal.
- Applicant can then send his appeal application to the Municipal Manager.

Meeting adjourned.

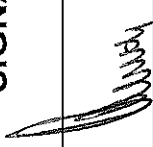



MR C.B. WRIGHT
AUTHORIZED OFFICIAL
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Umsinde Emoyeni Renewable Energy Facility, Beaufort West Municipal Area.mg.doc



**ATTENDANCE REGISTER
PRE-APPLICATION MEETING :
APPLICATION FOR CONSENT USE
UMSINDE EMOYENI ENERGY FACILITY: BEAUFORT WEST
10 MARCH 2022**

NAME AND SURNAME	OFFICIAL/APPLICANT	SIGNATURE
Mr C.B.Wright	AURTHORIZED OFFICIAL	
Ms M.Govender	PERSONAL ASSISTANT	
Mr. J.Van Der Westhuysen	APPLICANT/ ON BEHALF OF APPLICANT	

Urban Dynamics EC

From: Riaan Thomson <Riaan.Thomson@westerncape.gov.za>

Sent: Tuesday, April 5, 2022 1:09 PM

To: Kobus Munro <Kobus.Munro@westerncape.gov.za>; Johan van der Westhuysen <johan@udec.co.za>

Subject: RE: WC Standard By-Laws and Registration of Leases

Hi Johan,

I trust that you are healthy and well.

The short start to the long answer is that a lease will only trigger a need for a subdivision approval, if the lease is required to, or intended, to be **registered**, and specifically over only a **portion** of the property. It is further understood, that it was never the intention of LUPA and the By-laws on Municipal Land Use Planning that *all* leases require a subdivision approval.

To expand on this, one would need to consider the **extent of the lease** (i.e. whether or not the lease covers only part of a land unit), whether or not there is a need **to register** the lease, and the **length of time** of the lease (less than 10 years v/s more than 10 years) which determines the requirement to register the lease, as elaborated below:

Extent of the lease:

LUPA defines "subdivision", in relation to land as the **division of a land unit into more land units**, and includes any physical activity on the land to prepare the land for subdivision, but does not include the preparation of a subdivision plan. **It follows that if a lease (regardless of the length of time of the lease) covers the full extent of the land unit then no new land unit is created and hence no subdivision would be necessary.**

Registering of the lease:

LUPA then defines a "land unit" as a portion of **land registered or capable of being registered** in a deeds registry, and includes a servitude right or lease.

Therefore if a lease of **a portion** of land **is registered** it becomes a land unit in terms of LUPA and then it requires a subdivision approval, which may or may not be exempted from municipal approval.

Although not prescribed by the **Deeds Registry Act, 1937**, some leases shorter than 10 years may be capable of being registered, but not all are. Consequently if the lessee and/or lessor decide to register such a short term lease, which is capable of being registered, it will trigger the need for a subdivision approval as the Surveyor General's Office will at some point require municipal certification/stamp on the relevant diagram. This a municipality will not be able to provide without a subdivision approval or confirmation of an exemption from municipal approval.

The Deeds Registry Act, 1937 does not define a "lease" nor does it per se require a lease to be registered, but does provide that certain leases "can" be registered.

In terms of the Act the definition of "**immovable property**" includes (b) any registered lease of land which, when entered into, was for a period of not less than ten years or for the natural life of the lessee or any other person mentioned in the lease, or which is renewable from time to time at the will of the lessee indefinitely or for periods which together with the first period amount in all to not less than ten years.

Therefore if a lease of land is longer than 10 years (or even a 9 years and 11 month lease with provisions for its extension or renewal) then it becomes part of immovable property.

Lastly, the Formalities in Respect of Leases of Land Act, 18 of 1969 then provides in section 1(2) that a lease of land for a period longer than 10 years is only valid if it is registered. Therefore the need to validate a lease of land longer than 10 years, triggers the requirement for it to be registered, hence it will trigger the need for a subdivision approval.

In conclusion:-

- If no new land unit is created (i.e. lease covers the whole of the registered land unit) there is no need for a subdivision, since the lease diagram will be whole of the cadastral land unit, i.e. SG diagram – reference in the lease documents would then be the existing SG diagram and not some new smaller new diagram to be drawn up.
- If the lease covers only a part of the land unit and the parties **wish to register it**, even if for a period shorter than 10 years, then a subdivision would be required, unless it is one of those instances where the lease is exempted from municipal approval.
- For a lease of portion of land unit for a period of longer than 10 years **to be valid** it needs to be registered and it would then require a diagram, i.e. either a lease diagram in the case of partial lease of land (thus requiring a subdivision unless exempted from municipal approval) or the SG diagram of the land if the full extent is leased, i.e. no subdivision required since no new land unit is created.

From the above logic, and in answering your scenarios more directly:

- Scenario 1: Registering a long-term lease over the entire farm – *Does not require a subdivision application.*
- Scenario 2: Registering a short-term lease on a portion of the farm – *Does require a subdivision application, as the lease is registered and only over a portion of the property. However, if the short-term lease, over a portion of the property was not registered (and not required to be registered), it would not require a subdivision application.*

We trust that you find the above in order. Please do not hesitate to contact us, should any further queries arise.

Kind Regards,

Riaan Thomson Pr.Pl. A/023/2007

Chief Town and Regional Planner

Department of Environmental Affairs and Development Planning

Western Cape Government

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