



The Office of the Official Opposition
Free State Provincial Legislature

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P.O. Box 81, Bloemfontein 9300

Date:	11 March 2021
To:	Mr Patric Mothamaha Municipal Manager Maluti-a-Phofung Municipality
Cc:	Hon Thembeni Nxangisa MPL MEC for COGTA Free State Provincial Government
Cc:	Hon Barbara Creecy MP Minister of Environment, Forestry and Fisheries South African Government
From:	Hon Leona Kleynhans MPL Member of the Official Opposition Free State Legislature
Subject:	Objection to the illegal erection of a 45m telecommunications tower on Erf 67, 74 Stuart Street, Harrismith

Dear Mr Mothamaha,

The above mentioned matter refers.

As a resident of Harrismith since 1980, I wish to bring to your attention that the 45 meter telecommunications tower which has been constructed on Erf 67, 74 Stuart Street, Harrismith, is in violation of The National Environmental Management Act, 1998 (NEMA); The Environmental Impact Assessment Regulations 2014 (as amended) (EIA Regulations); The Spatial Planning and Land Use Management Act, 2013 (SPLUMA); and the Maluti-a-Phofung Municipality Municipal Land Use Planning By-Law, gazetted on 6 November 2015 (Planning By-Law).

APPLICATION DISCREPANCIES:

- The application lodged on 24 February 2016 is unsigned.
- The application was not approved by the Radio Engineer, Planner, or Engineer of the applicant.



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- The applicant is identified as Warren Petterson Planning which is applying on behalf of Atlas Tower, but claims to be the authorised agent of the 'owner'.
- The application does not include a Power of Attorney signed by the owner of Erf 67.

NOTICE DISCREPANCIES:

- Notices were placed in the Provincial Gazette and the Harrismith Chronicle (a privately owned newspaper) on 18 and 25 August 2017. The notices were placed by the applicant, as agent of the owner. In terms of the Planning By-Law section 51(1)(a), the applicant **and the owner** must be identified in the notice.
- The address of the applicant in the notice differs from that in the application.
- The notice refers to section 63(1) and section 64(2) of the SPLUMA Act. These sections do not exist.
- The notice refers to MaP By-Law 2014. The Planning By-Law was gazetted in November 2015, so working on the assumption that this is what is referred to, the gazetted Planning By-Law states: "*Notice is hereby given that the Council of the Maluti-a-Phofung Local Municipality adopted the set of Municipal Land Use Planning By-Laws*". Please provide a copy of the Minutes of the council meeting where the by-law was adopted.
- No notification to directly affected neighbours of the proposed tower was done.
- No public meeting of affected residents was held.
- The notice indicated that the plans could be viewed in Phuthaditjhaba which is 50km from the affected area, while there are municipal offices in Harrismith.

APPROVAL DISCREPANCIES:

- Was the application considered by the Municipal Planning Tribunal as required by the SPLUMA Act?
- There was no 'comprehensive application' submitted as required by the Planning By-Law. No Needs Assessment, Motivation, Heritage Assessment or EIA were submitted.
- The Planning By-Law states at section 72(2)(f) that Heritage Resource conservation must be considered, yet no heritage assessment was undertaken of the 170 year-old sandstone buildings immediately surrounding the tower.



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- Section 72(8) also states: “*The Municipality may not approve a land use application subject to a condition that approval in terms of other legislation is required.*” (November 2020 Parliamentary reply by Minister Creecy – attached)
- No EIA was conducted as required by section 24(2)(a) of NEMA, and the EIA regulations. The construction of any telecommunications tower of over 15 meters high, **must** be the subject of a prior Environmental Impact Assessment.
- A signed and certified copy of Power of Attorney by the owner is compulsory in terms of the Planning By-Law.
- Were copies of the signed notices delivered to all surrounding neighbours, submitted by the applicant after the notification period?
- Were any objections received by the applicant, provided to the MPT?
- Was proof provided by the applicant of public meetings held with the affected community?
- Were the electricity supply requirements for the installation considered?
- Was the effect of the installation on the property valuations in the area considered?
- Were the aesthetics of a 45m construction, on a 100m² footprint, tightly squeezed in between homes, considered by the MPT?
- Were other alternative sites for the installation considered? Within meters of the chosen site there are numerous green areas, parks and open spaces which would have been more suitable.
- Was a certified copy of the title-deed of the owner provided?
- Was the impact on traffic, including air traffic (SAPS and EMS helicopters) considered?
- Were the possible cancer causing effects of a telecommunications tower in a creche, and within meters of residents, considered?
- Was the effect of four 3x3 m ‘equipment containers’ on air quality and noise pollution of the environment considered?
- Was the air and noise pollution of a proposed ‘generator’ of unspecified power, on a quiet neighbourhood considered?
- The application was stamped and signed by someone whose names and designation is not recorded, on 10/06/2019. The qualifications or delegated powers of this person must be explained.



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- Other required municipal officials did not sign the application: Town Planner, Health, Structural, Electrical, Fire.
- Were the deliberations and decisions of the MPT recorded in their minutes? Please provide the relevant minutes of the meeting.

FURTHER NOTICE DISCREPANCIES:

- In terms of section 57 of the Planning By-Law, if a period of 18 months has passed between the first Notice of the Application (August 2017) and no decision of approval has yet been taken by the municipality, ***the application must again be advertised***. Such notice should again have been given in February 2019, prior to the signing of the application in June 2019. This was not done.
- In terms of section 65(1) of the Planning By-Law, 'The municipality must, within 21 days of its decision, in writing notify the applicant ***and any other person whose rights are affected*** by the outcome of the decision, the reasons for the decision and their ***right to appeal*** if applicable'. ***This was not done, thereby denying affected parties their right to appeal the decision.***
- In terms of section 65(5) of the Planning By-Law, the Administrator must within seven days of the date of approval of an application referred to in section 16(2) publish a notice of its decision in the Provincial Gazette. This was not done.

CONSTRUCTION DISCREPANCIES:

- Without any prior warning to residents in Harrismith, or in the immediate vicinity, construction commenced on the site in late February and by 5 March was complete, a period of about two weeks.
- The 4m deep excavations within 3m of the neighbouring building, could well have undermined the structure of that building.
- The 28 day standard required period for settling and hardening of the concrete base structure, before erection of the pylons was not adhered to.
- Did the municipality demand any assurances or guarantees from the applicant in terms of structural damages to surrounding properties? Either during construction or after?
- Will Maluti-a-Phofung Municipality be responsible for the comprehensive insurance requirements of surrounding properties, in the event of tornadoes which affect the area?



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CONCLUSION:

From the above unanswered questions it is clear that the erection of the telecommunications tower on Erf 67 in Harrismith is ill considered, reckless in the extreme, and completely illegal. I suggest that the municipality immediately order the dismantling and removal of the construction, as has been done by various courts across the country, including the Constitutional Court.

The community of Harrismith are outraged at this abuse of power and demand that the tower be removed completely.

Please provide a comprehensive response, including answers to all my questions, and how the municipality will address this illegal activity, within seven working days.

Failure to do so, will force us to seek legal recourse.

Section 49A of the National Environmental Management Act, 1998, specifies that it is an Offence in terms of NEMA regulations to "*commence an activity listed or specified in terms of section 24(2)(a) unless the competent authority has granted an environmental authorisation for the activity*".

Section 49B of NEMA states: "*(1) A person convicted of an offence in terms of section 49A, is liable to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, or to both the fine and the imprisonment*".

Kind regards,

Leona Kleynhans
Member of the Free State Provincial Legislature
Spokesperson on Human Settlements and COGTA
Drakensberg Constituency Head
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