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REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

1. NOT REPORTABLE

2. NOT OF INTEREST TO OTHER JUDGES

CASE NO: 2021-56800

DATE: 8th August 2024

In the matter between:

LORD'S VIEW PROPERTY OWNERS ASSOCIATION NPC

Applicant

and

**MEMBER OF THE EXECUTIVE COUNCIL FOR ECONOMIC
DEVELOPMENT, AGRICULTURE, ENVIRONMENT & RURAL
DEVELOPMENT, GAUTENG PROVINCE**

First Respondent

**HEAD OF DEPARTMENT: GAUTENG DEPARTMENT OF ECONOMIC
DEVELOPMENT, AGRICULTURE, ENVIRONMENT & RURAL
DEVELOPMENT**

Second Respondent

ENVIROSERV WASTE MANAGEMENT (PTY) LIMITED

Third Respondent

**THE NATIONAL MINISTER OF HUMAN SETTLEMENT, WATER AND
SANITATION**

Fourth Respondent

Neutral Citation: *Lord's View POA v The MEC for Economic Development, Agriculture, Environment & Rural Development, Gauteng and Others* (56800/2021) [2024] ZAGPJHC --- (8 Augst 2024)

Coram: Adams J

Heard: 12 February 2024

Delivered: 8 August 2024 – This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to *CaseLines* and by release to SAFLII. The date and time for hand-down is deemed to be 12:30 on 8 August 2024.

Summary: Review – application for review and setting aside of decisions of licensing authorities in terms of National Environmental Management: Waste Act (NEMWA) – granting of approvals relating to the extension and the expansion of landfill site – review under doctrine of legality and principles relating to irrationality – Court finding the decisions of decision-makers to be lawful and rational and in compliance with the constitutional and statutory prescripts – Court found no basis for the applicant's contention that decisions were materially influenced by errors of law or based on irrelevant considerations or arbitrary or not rationally connected to the information before them or so unreasonable that no reasonable person would have so made the decision/s – Judicial review application dismissed.

ORDER

- (1) The applicant's application be and is hereby dismissed with costs.
- (2) The applicant shall pay the third respondent's costs of this opposed application, such costs to include the costs consequent upon the utilisation of Senior Counsel (where so employed).

JUDGMENT

Adams J:

[1]. On a daily basis domestic and other municipal waste – tonnes and tonnes of it – in the northern areas of jurisdiction of the City of Ekurhuleni ('CoE') and the City of Johannesburg ('CoJ') are required to be processed and disposed of somewhere in Gauteng. Land suitable for a landfill site is difficult to find in the province and there are few licensed landfill sites that are conveniently situated to these areas. There are competing interests for open spaces and for any additional land area which can and should be devoted to landfill sites. Chloorkop Landfill Site (CLS), run and managed on behalf of the government by the third respondent (EnviroServ) in this opposed application, is one such landfill site, which serves those areas. CLS however appears constantly to be at odds and in conflict with its neighbour, Lord's View Industrial Park (LVIP). The question to be considered is how the waste is to be managed and disposed of within the four corners of the law. The foregoing general issues are implicated in this application.

[2]. The applicant is the Lord's View Property Owners Association NPC. As its name suggests, its members are the owners of erven in LVIP, situate in the Chloorkop area, which falls within the area of jurisdiction of the CoE.

[3]. The first respondent ('the MEC') is the Member of the Executive Council of the Gauteng Province for the Gauteng Department of Economic Development, Agriculture and Rural Development ('the Department'). The MEC is in terms of section 43(2) of the National Environmental Management: Waste Act¹ ('NEMWA') the licensing authority for waste management licences in Gauteng. The MEC is the administrator who took two of the four decisions that

¹ National Environmental Management: Waste Act 59 of 2008.

the applicant seeks to impugn in these proceedings. Two decisions of the Head of the Department ('HoD'), who is cited in these proceedings in her capacity as the administrator who took those two decisions of first instance, were taken on appeal to the MEC in terms of the provisions of NEMWA.

[4]. The third respondent ('EnviroServ') is the licensed operator of the CLS, which, as already indicated, is a landfill site for the disposal of general municipal waste and which is situated on Portion 63 of the Farm Klipfontein ('Portion 63'), in the Kempton Park district. CLS is directly adjacent Erf 3[...], Chloorkop Extension 6 ('Erf 335'). The decisions sought to be impugned in these review proceedings relate to the CLS. Parts of CLS – on its western and southerly sides – are contiguous to the LVIP.

[5]. The fourth respondent, the National Minister of Human Settlements, Water and Sanitation ('the Minister'), is the Minister responsible for water affairs as referred to in s 1 of the National Water Act².

[6]. The applicant seeks the review and setting aside of two governmental approvals relating to the CLS granted in terms of NEMWA. However, four decisions, two of first instance by the HoD and two on appeal against those decisions to the MEC, are at issue in the proceedings. It may be apposite to cite from the applicant's notice of motion, in which an order in the following terms are sought: -

'(1) Reviewing and setting aside the decisions of the first and second respondents taken on 12 August 2021 and 5 July 2021 respectively, in terms of which the third respondent was granted "a period of 12 months from 10 August 2021" to continue operating the CLS ("the Extension Decision").

(2) Reviewing and setting aside the decisions of the first and second respondents taken on 9 August 2021 and 7 June 2021 respectively, in terms of which the third respondent was granted authorisation "for the

² National Water Act 36 of 1998.

expansion of the existing Chlookop Landfill Site, on the Northern part of the site on Erf 3[...] of Chlookop Extension 6, adjacent to the Chlookop Landfill Site” (“the Expansion Decision”).

(3) Directing the first and second respondents to pay the costs of this application, such costs to be paid jointly and severally with any other respondent opposing this application and to include those consequent upon the employment of two counsel.’

[7]. The original authorisation for the operation of the CLS was a waste disposal site permit issued on 30 October 1997 (‘the 1997 permit’) in terms of the now repealed s 20 of the Environment Conservation Act³ (‘the ECA’). The permit authorised the establishment, further development and operation of a waste disposal site on Portion 63. At the time of the hearing of the application before me on 12 February 2024, the permit was still in operation for purposes of closure and rehabilitation of the landfill facility that it authorised, but waste deposition authorised by the permit had come to an end.

[8]. The first approval (‘the extension decision’) is a variation in terms of s 54(1) of NEMWA of a condition attached to the 1997 permit. The extension decision extended the period during which waste deposition was permitted under authority of the 1997 permit to 9 August 2022. That date was a year beyond the date specified in terms of a licence condition that arose in 2016 when the then MEC approved an earlier application for variation of the 1997 permit’s licence conditions.

[9]. The second approval (‘the expansion decision’) granted *EnviroServ* a new waste management licence in terms of s 49(1) of NEMWA (‘the new WML’), which authorised the expansion of the CLS to Erf 3[...] directly from the northern face of the existing CLS landfill on Portion 63. Erf 3[...] is a separate, but directly adjacent, piece of immovable property to the north of Portion 63. The land area of Portion 63 is 23.21 hectares and Erf 3[...] is 3.12 hectares in

³ Environment Conservation Act 73 1989.

extent and the latter Erf 3[...] is on the opposite side of the CLS from where the LVIP is situated. The expansion to Erf 3[...] added three to four years to the active life of the CLS as a landfill site.

[10]. The applicant's administrative appeals, respectively against the HoD's expansion and extension decisions, were brought in terms of s 43 of the National Environmental Management Act⁴ ('NEMA'), read with the National Appeal Regulations promulgated under s 44(1)(a) of NEMA. The MEC was the appeal authority who decided the administrative appeals. The MEC dismissed the appeals. An appeal to an MEC under s 43 of NEMA is an appeal in the wide sense. It is 'a complete re-hearing of, and fresh determination on the merits of the matter with or without additional evidence or information' that allows the appellate decision-maker to substitute his or her own decision for the decision under appeal.

[11]. Chronologically the expansion decision preceded the extension decision. The HoD issued the expansion decision of first instance on 7 June 2021 and the MEC issued his appeal decision on 9 August 2021. The HoD approved the extension decision of first instance on 5 July 2021 and the MEC issued his appeal decision on 12 August 2021.

[12]. In accordance with s 49(2) of NEMWA, the department had on 5 August 2020 sought comments and recommendations from the Department of Water and Sanitation ('DWS') regarding the expansion application. On 21 April 2021 DWS issued a record of decision that recommended that a waste management licence for the expansion be issued. Conditions that the DWS specified in terms of the record of decision were later included in the new WML, in accordance with s 50(3) of NEMWA.

[13]. The applicant's application for a review of the above decisions is based on the doctrine of legality, in addition to being based on and in terms of the

⁴ National Environmental Management Act 107 of 1998.

provisions of the Promotion of Administrative Justice Act⁵ ('PAJA'). The applicant's case is that the impugned decisions should be reviewed and set aside because they were: (a) materially influenced by errors of law; (b) based on irrelevant considerations where relevant considerations were not taken into account; (c) arbitrary; (d) not rationally connected to the information before the decision-makers; (e) so unreasonable that no reasonable person would have so made the decision/s; and (f) 'otherwise unlawful'.

[14]. The first, second and fourth respondents ('the state respondents') have given notice that they will not be opposing the judicial review application and will be abiding the court's decision. *EnviroServ* opposes the application on the basis that the impugned decisions were lawful and fell squarely within the ambit of the law.

[15]. The issue to be considered in this application is simply whether the impugned decisions fall to be reviewed and set aside as being irrational. That issue is to be decided against the factual backdrop as set out in the paragraphs which follow. The material facts can, in my view, be gleaned from a final Waste Impact Report ('WIR') of the environmental assessment practitioner, Mr Hemming of SLR Consulting (Pty) Ltd, on *EnviroServ*'s application for the extension decision, as well as from his final Basic Assessment Report ('BAR') on *EnviroServ*'s application for the new WML. Mr Hemming is the independent Environmental Assessment Practitioner ('EAP') appointed in accordance with regulation 12(1) of the Environmental Impact Regulations, 2014 ('the EIA regulations') to manage the environmental assessment components of the extension and expansion applications.

[16]. It is common cause that the development of a landfill site occurs incrementally and systematically, in successive sections. The sections are referred to in waste management parlance as 'cells'. If expansion of a landfill to new cells cannot be accommodated under the applicable waste management

⁵ Promotion of Administrative Justice Act 3 of 2000.

licence, the operator of the facility has to apply for a further licence to authorise the expansion. The infrastructure for each cell has to be designed and constructed to exacting engineering standards. Each cell has an engineered liner at its base and appurtenant structures to prevent leachate from disposed waste entering the subsoil and groundwater. The leachate collection system of each cell allows leachate drained from the base of the cell to be collected in tanks or dams and disposed of off-site. Infrastructure to contain rainwater runoff from the slopes of the to-be-deposited waste body also needs to be installed, among other things. The requirements that the liners, leachate collection systems and infrastructure generally have to comply with have become stricter and more extensive over time.

[17]. The 1997 permit authorised initial development of two cells. The permit conditions, however, provided that further developments could be undertaken, provided that engineering plans for such developments were approved by the Regional Director of the then Department of Water Affairs and Forestry. Approval for the development of a further five cells under authority of the 1997 permit was given over the years since 1997. Cell 5 and Cell 6 were approved on 11 June 2008. Cell 7 was approved on 30 September 2019.

[18]. Condition 3.13 of the 1997 permit specified a maximum height of ten metres above ground level for the landfill that it authorised. EnviroServ applied during 2013 in terms of s 54(1) of NEMWA for a variation of condition 3.13 to allow waste deposition to an increased height. This application for variation was granted on 10 August 2016 ('the 2016 height extension decision'), which increased the maximum height that the landfill could reach to 25 metres above ground level.

[19]. The 2016 height extension decision was subject to a number of conditions that were specified in an addendum to the 1997 permit. One of these, condition 3.2.6, was that '[t]he additional height of 15 metres should be within a period of 15 years from the date of signature of this Addendum after

which capping closure must be implemented'. The relevant commencement date in that regard is 30 September 2019, which is also the date on which approval ('the Cell 7 Approval') was given for the construction and use of Cell 7 under authority of the 1997 permit. Cell 7 is in the northern corner of Portion 63. It is relatively small, with its base covering only 0.76 hectare of the overall 23.2113 hectares of Portion 63. Waste deposition in Cell 7 commenced on 2 November 2020. The landfill capacity that Cell 7 provided had been used by 9 August 2022 and deposition under authority of the 1997 permit had ceased in compliance with the extension decision.

Defences raised by *EnviroServ* in opposition to the Review Application

[20]. As a preliminary point *in limine* it is contended by *EnviroServ* that the dispute between the parties regarding the extension decision has become moot in view of the fact that the waste deposition under authority of the 1997 permit ceased before 9 August 2022. The purpose of the extension decision – to grant time for Cell 7 to be used to its capacity – was achieved before 9 August 2021.

[21]. In these circumstances, so the contention on behalf of *EnviroServ* goes, the dispute regarding the validity of the extension decision having become moot, the court should not entertain it. I agree with this contention. The simple point is that the extension decision no longer has application. Therefore, the subject matter of the applicant's cause of action for review has, essentially, been extinguished.

[22]. For this reason alone, the review application relating to the extension decision should fail.

[23]. I now turn my attention to the grounds of review raised by the applicant. In that regard, the applicant, in its founding affidavit, alleged ten grounds of review in respect of the extension decision, fourteen in respect of the expansion

decision and a further four grounds of review which the applicant alleges pertain to both decisions.

[24]. The mainstay of the applicant's case is that condition 3.2.6, referred to *supra*, specified a definite end date for the CLS that was reached at the latest on 9 August 2021. It argues, in essence, that operation of the CLS as a landfill site could not lawfully be extended by variation of condition 3.2.6 or expansion of the CLS to Erf 3[...] in terms of the new WML.

[25]. I proceed to deal with the applicant's arguments separately in relation to the two decisions at issue.

[26]. As regards the applicant's argument in relation to the expansion decision, it argues that the administrative decision-makers treated the expansion application as a stand-alone application, applying only to Erf 3[...]. It avers further that the new WML does not permit the expansion of the CLS from the existing landfill on Portion 63 towards Erf 3[...] and that there is nothing in the new WML that permits (or could permit) further waste deposition of any sort on Portion 63, a site that is no longer permitted to receive waste.

[27]. In similar vein, the applicant argues that the expansion decision extended the validity of EnviroServ's waste management licence unlawfully, permitting the continued operation of the CLS after EnviroServ's licence had lapsed.

[28]. Mr Barrie SC, who appeared on behalf of EnviroServ, contends that these arguments ignore the fact that the new WML did not extend the 1997 permit and that the scope of the new WML is quite clear.

[29]. I find myself in agreement with this contention. Condition 4.1 of the new WML defines the scope of the licence permitting the expansion of the CLS to Erf 3[...]. Condition 4.1(a) provides that '[t]he expansion project will extend

directly from the Northern face of the existing Chloorkop Landfill Site ...'. The drawings referred to in condition 4.2(a) are also quite clear in that regard. The applicant's actual complaint is that condition 3.2.6 was 'a mandatory closure provision' and that condition 3(a) of the extension decision stated that 'EnviroServ Waste Management (Pty) Ltd must ensure that the waste disposal operations on Portion 63 of the Farm Klipfontein 12 IR cease within twelve months from 10 August 2021'.

[30]. That argument on behalf of the applicant is misguided. Condition 3.2.6 was not a mandatory closure provision of the CLS as such. It was a condition that specified that one of the waste management activities that the 1997 permit authorised, waste deposition, but now to the extended height permitted in terms of the 2016 height extension, should occur within five years. It is trite that an administrative decision-maker may not allow the discretion vested in her/him by law to be fettered by the dictates of others or by rigid adherence to a laid-down policy. If the fetter arises from the dictates of someone other than the decision-maker, s 6(2)(e)(iv) of PAJA applies.

[31]. Moreover, as contended by *EnviroServ*, Condition 3.2.6 was not legislation. It was a condition specified in 2016 in the circumstances that pertained at that time. If the HOD or MEC had regarded condition 3.2.6 as a mandatory closure clause in respect of the CLS as such, prohibiting expansion of the CLS to Erf 3[...], they would have failed to exercise the discretion conferred by s 49(1) of NEMWA. They would have allowed the exercise of their discretion to be fettered by condition 3.2.6, specified by the MEC in 2016.

[32]. The HoD specified condition 3(a) of the extension decision in relation to the 1997 permit, which was the licence at issue before her for purposes of the extension decision. The extension decision was taken with full knowledge of the expansion decision which had been taken shortly before. The expansion application was drawn to the attention of the decisionmakers in terms of the final WIR. In the context of the facts that pertained at the time, condition 3(a)

meant that waste disposal under authority of the 1997 permit had to cease by 9 August 2022. That is how it has been understood by everybody concerned and what has occurred. Condition 3(a) did not prohibit the expansion that was to be undertaken under authority of the new WML. Again, that is how it has been interpreted by everybody concerned.

[33]. As for the argument regarding the extension decision, the applicant argues that condition 3.2.6 stated that the 1997 permit would lapse on the happening of the earlier of two events, namely: (a) the CLS reaching a height of 25 metres, or (b) 9 August 2021. The applicant argues further that the decision-maker in 2016, the then MEC, decided that the 1997 permit would terminate at the latest on 9 August 2021.

[34]. EnviroServ's first response to the argument is that condition 3.2.6 specified or decided nothing of the sort. I find myself in agreement with this contention by *EnviroServ*. On a proper interpretation, condition 3.2.6 specified a period within which one of the waste management activities that the 1997 permit authorised, waste disposal, should be completed. Furthermore, the 2016 height set a maximum height for the landfill. It did not define an event that would terminate the 1997 permit – far from it. The 1997 permit, in its terms, licensed not only waste deposition, but also rehabilitation and closure of the landfill facility that it authorised. A waste management licence is required for decommissioning of a facility for a waste management activity. The 1997 permit no longer authorises waste deposition, but it will remain extant and valid until decommissioning is completed. It is still operational.

[35]. Accordingly, I am of the view that condition 3.2.6 could be amended to allow deposition to continue for another year. The variation in terms of the extension decision was 'the amendment of a condition or requirement', as referred to in s 54(2)(d) of NEMWA.

[36]. It is further contended by the applicant that *EnviroServ* 'breached' the 25-metre height restriction arising from the 2016 height extension decision during or about November 2020 and that that caused the 1997 permit to lapse. As a result, so the argument continues, there was no licence in existence by June 2021 that could have been extended when the extension decision was made. The applicant's case on this score appears to be that condition 3.2.6 meant that, if any part of the landfill authorised by the 1997 permit at any time exceeded the 25-metre height, the 1997 permit would lapse.

[37]. There is no merit in that contention if for no other reason than the fact that that is simply not what the 2016 height extension decision specified. Moreover, and apart from the fact that reaching or breaching the maximum height would not cause the 1997 Permit as such to lapse, condition 3.2.6 has to be read in context. Conditions 3.1.1, 3.1.13, 3.1.14 and 3.1.16 of the 2016 height extension decision specified that the height increase should occur in accordance with revised design drawings and should conform to certain requirements for the plateau. The 25 metres applies to the final landform. This is explained by the engineers Jones & Wagener's Mr Cilliers in his affidavit and the annexure thereto. If the final landform were to be higher than the maximum 25 metres, it would be a contravention of a licence condition, not an event bringing the 1997 permit to an end.

[38]. The applicant then also argues that the extension decision was, in effect, a renewal of the 1997 permit, which was not permitted. The argument is that s 51(1)(e) of NEMWA provides that a waste management licence must specify the period for which a licence is issued and a period within which any renewal of the licence must be applied for. Because no such periods applied to the 1997 permit, it could not be renewed. In the absence of both a statutorily required option to renew and a stipulated renewal period, the 1997 permit could not be extended. The administrative decision-makers in 2021 therefore had no discretion to extend or renew the 1997 permit and could never lawfully have

done so when they could not have determined whether the application to renew had been brought timeously.

[39]. *EnviroServ* contends that the extension decision was not a renewal of the 1997 permit. I agree. The foregoing follows from the fact that the permit still authorises decommissioning and remains valid for that purpose. The period during which deposition could take place could not be extended by renewal in terms of s 55 of NEMWA. It had to occur by variation in terms of s 54. Insofar as s 51(1)(e) specifies that a waste management licence has to specify the period for which the licence is issued and period within which renewal of any licence must be applied for, it has no bearing on the 1997 permit, which was issued prior to NEMWA being enacted.

[40]. The simple fact of the matter is that if a waste management licence issued under NEMWA does not, for whatever reason, specify these periods, it does not mean that no renewal would be possible. Even if a licence condition expressly states that no renewal will be possible, the licence holder would still be entitled to apply for renewal in terms of s 55(1) of NEMWA (and/or amendment of the restricting condition in terms of s 54) and the decision-maker seized of the application would have to assess the application on its merits. The decision-maker would, no doubt, take cognisance of the prior condition, but he/she will still have to exercise his/her own discretion in terms of s 55, read with ss.48 and 49, to grant or refuse the application on its merits.

[41]. The next ground of review raised by the applicant relates to a consideration of the availability of alternative landfill sites. The applicant submits that the administrative decision-makers ignored that there is an ample supply of landfill sites in Ekurhuleni that could receive waste as an alternative to the CLS.

[42]. This review ground singular lacks merit. As contended on behalf of *EnviroServ*, merely to state that there are alternatives available, does not mean that the alternatives are at the relevant time feasible as reasonable alternatives

to the CLS. The operating landfill sites in Ekurhuleni are much further away from the municipal areas served by the CLS. Taking into account the critical shortage of landfill airspace in Gauteng, using other sites depletes the available airspace at such facilities. The final BAR included the submissions by the CoJ and CoE in support of the project. These submissions provided compelling evidence to the decision-makers regarding why the expansion, which would provide additional landfill airspace for a relatively short period of time, is necessary and desirable.

[43]. As regards employment opportunities, the applicant argues that the administrative decision-makers did not engage in a qualitative assessment of the conflicting employment opportunities that could arise in the LVIP, as opposed to the CLS, or the effect that the continued retardation of development of the LVIP would have on the CoE.

[44]. The final BAR included the Urban Econ report that formed part of the applicant's objection, a socio-economic impact assessment by Nomad Consulting and a report in response to the Urban Econ report from Mercury Financial Consultants. The applicant's case relating to employment opportunities that would potentially be created in the LVIP was made by Urban Econ. The HOD in her reasons for the expansion decision stated particularly that one of the documents that the Department took into consideration was the Urban Econ report. The potential impact on employment that the LVIP could potentially have, the livelihood of the waste reclaimers at the CLS and the overall economic benefits that the wider society would derive from continued operation of the CLS for three to four years, would have been taken into account in the light of the Urban Econ report.

[45]. I am therefore of the view that this ground of review also lacks merit.

[46]. The next ground of review raised by the applicant relates to paragraph 4(c) of the HoD's reasons for decision, which reads as follows:

‘The proposed activity has been clearly demonstrated by the applicant??
What are we trying to say here? Is it in terms of the need and desirability? Please state what has been clearly demonstrated.’

[47]. The applicant argues that this demonstrates that the HoD had reached a conclusion and then went in search of reasons to support it.

[48]. There is no merit in this contention. As submitted by *EnviroServ*, the comment in paragraph 4(c) was quite obviously a note that the HoD or another official had made to somebody else in the administrative hierarchy. It was erroneously included in the HOD’s reasons. The note does, however, not establish what the applicant suggests. If anything, it rather suggests that the author had applied her/his mind appropriately to the decision at hand.

[49]. The applicant also alleges that the development and expansion of the CLS to Erf 3[...] under authority of the new WML will cause irreversible harm to the environment. The applicant, presumably, implies that the HoD and/or the MEC were not appropriately cognisant of potential negative environmental impacts that the expansion could have.

[50]. There is no basis for this suggestion. It is belied by the HoD’s reasons for her decision, the MEC’s appeal reasons, the report that the DWS rendered regarding *EnviroServ*’s application for the new WML and, most importantly, the strict and onerous conditions specified for the expansion in terms of the licence conditions of the WML. The conditions that the DWS imposed served to address the most serious potential impacts that a landfill site can have on the natural environment, and pollution of groundwater and watercourses.

[51]. It is, as contended by *EnviroServ*, that the potential environmental impacts and the avoidance and mitigation measures to address these were canvassed in great detail in the final BAR and the specialist report that accompanied it. Assessing and evaluating these issues is what the officials of

the DWS and the Department are all about in relation to applications for waste management licences.

[52]. A further ground of review is that, according to the applicant, the expansion decision was in breach of undertakings given to it. The expansion has occurred, so the applicant alleges, in breach of undertakings given to it and others over many years. This is apparently a reference to alleged undertakings given by *EnviroServ*. *EnviroServ*'s version in that regard is a denial that it gave any such undertakings. What they put out publicly at any relevant time, so *EnviroServ* avers, accorded with what its intentions and expectations were at that time (which were in 2016 reflected in condition 3.2.6). The opportunity to expand the CLS to Erf 3[...] arose only in 2019. *EnviroServ* never put out that, if opportunity arose for the CLS to be expanded to a neighbouring property, which, as it turned out, could only be Erf 3[...], it would not take it up.

[53]. I have no reason not to accept this explanation by *EnviroServ*. In any event, what *EnviroServ* put out at any time could not bind the administrative decision-makers. Condition 3.2.6 can also not be regarded as an undertaking given to the applicant by the Department. It was a condition that limited the time period during which one of the waste management activities that the CLS' current WML authorised, should be completed. That condition could be varied in terms of section 54(1) of NEMA in appropriate circumstances.

[54]. Moreover, there is no legal basis in terms of the Constitution or PAJA that compels administrative decision-makers to act in accordance with alleged undertakings inferred from prior administrative decisions. Again, if the HOD or the MEC had regarded themselves as bound to any alleged undertaking in terms of condition 3.2.6, they would have unlawfully placed a fetter on their exercise of discretion.

[55]. This review ground should therefore also fail.

[56]. In all of the circumstances and for the reasons mentioned above, the impugned decisions are not invalid or unlawful and therefore cannot and should not be reviewed or set aside. In the final analysis, the applicant has not, in my view, established any grounds of review under s 6 of PAJA or s 24 of the Constitution. Section 24 of the Constitution, NEMA and NEMWA all concern the proper and appropriate balancing of competing interests in the overall interests of the natural environment, conservation and society as a whole, in the context of securing ‘ecologically sustainable development and use of natural resources while promoting justifiable economic and social development’⁶.

[57]. The applicant’s assertions that the extension decision and the expansion decision were tainted by unlawfulness are unfounded. This relates particularly to the applicant’s assertions to the effect that condition 3.2.6 compelled the HoD and MEC to refuse the expansion application.

[58]. As contended by *EnviroServ*, the developer of the LVIP developed the LVIP in close proximity to the CLS, a working landfill site for general municipal waste. Its interests have to be balanced with the interests of the wider community, including particularly the CoE and CoJ, in the operation of the CLS for another few years, without material detriment to the natural environment, and thus contributing to sustainable development.

[59]. In the light of these findings, it is not necessary for me to deal with any of the other issues raised by any of the parties or the further disputes between them, such as the state of the rule 53 record, which, according to the applicant, is ‘chaotic and incomplete’. Suffice to say that, in my view, the state of the record provides no basis for review of the extension or expansion decisions. The deficient state of the record cannot be equated to deficient decision-making.

⁶ Section 24(b)(iii) of the Constitution. See *Fuel Retailers Association of Southern Africa v Director-General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province and Others* 2007(6) SA 4 (CC) at [44] – [45] & [57] – [62].

[60]. The applicant's review application falls to be dismissed.

Costs

[61]. The general rule in matters of costs is that the successful party should be given his costs, and this rule should not be departed from except where there are good grounds for doing so, such as misconduct on the part of the successful party or other exceptional circumstances. See: *Myers v Abramson*⁷.

[62]. I can think of no reason why I should deviate from this general rule. The applicant should therefore be ordered to pay the costs of the opposed application of the third respondent.

Order

[63]. In the result, I make the following order:

- (1) The applicant's application be and is hereby dismissed with costs.
- (2) The applicant shall pay the third respondent's costs of this opposed application, such costs to include the costs consequent upon the utilisation of Senior Counsel (where so employed).

L R ADAMS

Judge of the High Court

Gauteng Division, Johannesburg

⁷ *Myers v Abrahamson* 1951(3) SA 438 (C) at 455

HEARD ON:	12 th February 2024
JUDGMENT DATE:	8 th August 2024 – Judgment handed down electronically
FOR THE APPLICANT:	W N Shapiro SC
INSTRUCTED BY:	Moore & Associates, Umhlanga
FOR THE THIRD RESPONDENT:	F G Barrie SC
INSTRUCTED BY:	Nicholas Smith Attorneys, Cape Town
FOR THE FIRST, SECOND, FOURTH AND FIFTH RESPONDENTS:	No appearance
INSTRUCTED BY:	No appearance