THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

Reportable

CASE NO: 347/04

In the matter between :

GREYS MARINE HOUT BAY (PTY) LTD	First Appellant
HOUT BAY YACHT CLUB	Second Appellant
C-CRAFT CLOSE CORPORATION	Third Appellant

and

MINISTER OF PUBLIC WORKS	First Respondent
THE MINISTER OF ENVIRONMENTAL AFFAIRS AND TOURISM	Second Respondent
BLUEFIN HOLDINGS (PTY) LTD	Third Respondent

Before:	**SCOTT, NAVSA, MTHIYANE, NUGENT JJA & MAYA AJA**
Heard:	**22 MARCH 2005**
Delivered:	**13 MAY 2005**
Summary:	**Administrative action – whether decision by Minister to let state land constitutes – whether appellants' rights or legitimate expectations affected.**

J U D G M E N T

NUGENT JA

NUGENT JA:

[1] Hout Bay, on the west coast of the Cape peninsula, serves as a harbour for small fishing boats that operate in that part of the ocean. The fishing industry, and the picturesque setting of the harbour, has spawned other commercial activities on the quayside. There are a number of fish-processing facilities, including one that is owned by the first appellant (Greys Marine). The Hout Bay Yacht Club (the second appellant) has premises alongside those of Greys Marine. On the other side of Greys Marine are premises in which the third appellant (C-Craft) builds and repairs boats. There are also other enterprises, like restaurants and shops, that attract visitors to the quayside. Needless to say, available space, both for occupation and for the passage and parking of vehicles, is at a premium.

[2] Alongside the water, where the fishermen offload their catch, there is a paved but otherwise undeveloped section of the quayside that is used by occupants and visitors alike. Greys Marine, for example, whose premises are situated back from the waterfront, crosses the area with its vehicles to load fish that have been landed, and to access its lobster pump that is located near the water. Members of the Yacht Club use the area to launch their boats. The open space enables C-Craft to manoeuvre large boats to and from its premises. It is also used by occupants and visitors for the passage and parking of vehicles and it serves generally to ease traffic congestion on the quayside.

[3] The quayside is owned by the state, which lets portions to the various occupants, including the three appellants. The authority to let state property vests in the President, as head of the executive, in terms of the Disposal of State Land Act 48 of 1961, but has been assigned by the President to the Minister of Public Works.

[4] The established order of life at Hout Bay was recently disturbed when the Minister granted a new tenancy on the quayside. The new tenant was a company (the third respondent, Bluefin) established by a group of women with deep roots in Hout Bay who wished to enter the fishing industry from which they were historically excluded. The company soon had access to fishing quotas, and acquired two fishing boats, and then set its sights on establishing a new fish-processing facility and associated restaurant at Hout Bay. It applied to the state to hire portion of the undeveloped area that I have described (a portion known as Lot 86, situated alongside the water, opposite the premises of Greys Marine) for the purpose of constructing and operating the proposed enterprise.

[5] In October 2001 the Minister of Public Works agreed to let the property to Bluefin. The area to be let was later extended to include an adjacent portion of the quayside (Lot 86 and the extended area came to be referred to as Lot 86A) and in June 2003 a formal lease was concluded.

[6] The three appellants, in particular, were alarmed at this turn of events. They felt that the development of Lot 86A would cause traffic congestion on

the quayside, deprive tenants and visitors of necessary parking and manouevering space, and impede access to their premises and to the waterside. In September 2003 – after being granted a temporary interdict restraining Bluefin from developing the property – the appellants applied to the Cape High Court to review and set aside the Minister's decision and for related relief. Their application was dismissed by Cleaver J, who also set aside the temporary interdict,[1] and the appellants now appeal with the leave of that court.

[7] The background to the grant of the lease to Bluefin is dealt with voluminously in the papers and I need traverse only the principal events. Lot 86 was one of two lots (the other was Lot 82) that were at one time let to the Yacht Club. When the Yacht Club hired the properties in 1996 (for a period of nine years and eleven months) it intended to use Lot 82 (which is set back from the water on one side of the premises of Greys Marine) to store trailers and to park vehicles and to construct a new clubhouse on Lot 86. Indeed, the terms of its lease obliged the Yacht Club to construct its clubhouse on that lot, and to do so within twelve months of the commencement of the lease.

[8] The Department of Environmental Affairs and Tourism (I will refer to the department simply as Environmental Affairs) would have preferred Lot 86 to have been left undeveloped. When financial constraints prevented the Yacht Club from commencing construction of its clubhouse within the stipulated time it applied for and was granted an extension for a year. Still

[1] The decision is reported at [2004] 3 All SA 446 (C).

unable to commence construction by the end of the extended period it sought a further extension, but that was opposed by Environmental Affairs, which also declined to approve plans for the proposed clubhouse that were submitted to it by the Yacht Club. The lack of support from Environmental Affairs seems to have been what prompted the Yacht Club – in about October 1999 – to offer to relinquish its lease of Lot 86 in return for support for the construction of its clubhouse on Lot 82 and an extended lease of that property. Environmental Affairs was delighted and supported the proposal.

[9] Meanwhile, Bluefin had become aware of the problems that were besetting the Yacht Club. Anticipating that the Yacht Club would be unable to fulfil its obligation to construct the clubhouse, and that the future of its lease was precarious, Bluefin applied to the Department of Public Works (I will refer to it as Public Works) to lease Lot 86 for its proposed fish-processing facility and restaurant.

[10] At that stage the Yacht Club had yet to relinquish its lease and for a while the application by Bluefin was held in abeyance by Public Works. Public Works was sympathetic to Bluefin's request, which fitted with the government's policy of assisting to transform the fishing industry, but Environmental Affairs felt that the waterfront should best be left undeveloped, particularly to allow access to the water for offloading and for mooring of boats and for the passage of traffic. At first the views of Environmental Affairs prevailed and in November 2000 Bluefin was told by

Public Works that its application would not be considered because it was opposed by Environmental Affairs.

[11] But Bluefin was not easily to be deterred. While Public Works was investigating the possibility of accommodating Bluefin elsewhere in Hout Bay, Bluefin continued to press for a lease of Lot 86, and became increasingly exasperated as matters dragged on. Meanwhile, the Yacht Club was proceeding with negotiations for the relinquishment of its lease of Lot 86 and the extension of its lease of Lot 82. In the course of the negotiations the Yacht Club sought from the state, as one of the conditions upon which it would relinquish its rights, an undertaking that Lot 86 and the adjacent water area would be left vacant, that it would not be let to any other person, and that it would not be used for the erection of any substantial buildings. The state declined to give such an undertaking, which the Yacht Club accepted, no doubt reluctantly. In June 2001 the Minister approved the Yacht Club's proposal and in October of that year the Yacht Club formally relinquished its rights over Lot 86 and concluded a new lease for Lot 82.

[12] Also in October 2001 a recommendation was made to the Minister by officials in her department that Lot 86 be let to Bluefin, which the Minister approved. The recommendation was accompanied by a supporting departmental memorandum that contained the following comments:

'The Department of Environmental Affairs & Tourism (Marine & Coastal Management Division) previously held the opinion that Lot 86 (as the only available undeveloped site with direct access to the water) should be utilised to accommodate

historically disadvantaged fishermen to offload and sell their catch. Bluefin Holdings has indicated that it would be prepared to accommodate the needs of the small fishermen in the development of Lot 86. The Department is also considering other opportunities on the waterfront to accommodate the needs of the small fishermen.'

[13] It was submitted on behalf of the appellants that that passage from the memorandum must have led the Minister to believe that although Environmental Affairs was once of the view that Lot 86 should be left vacant it was no longer of that view (which was not correct) and that the Minister laboured under that misapprehension when she made her decision. While the passage is capable of that meaning that is not how the Minister understood it. In the affidavit to which she deposed the Minister said that when she made her decision she was aware that Environmental Affairs wanted Lot 86 to be utilised to accommodate historically disadvantaged fishermen to off-load and sell their catch, that she did not understand Environmental Affairs to have changed its position to one that now favoured the lease, and that she nevertheless granted it. That being so there is no merit in the submission that the Minister was misled or that she misapprehended the true facts when she made her decision.

[14] Soon after the Minister approved the grant of a lease Bluefin asked Public Works to extend the area that was to be let to include an adjacent portion of the quayside. Public Works invited comments from the public in general and from other tenants with regard to that proposal. Notwithstanding

the opposition which that elicited Lot 86 and the extended area were let to Bluefin in June 2003 for twenty years.

[15] It is in that setting that the Minister's decision is sought to be set aside but before turning to that issue it is convenient to deal with a subsidiary matter. The appellants allege that the proposed development of Lot 86A will contravene one or more legislative measures regulating the use of immovable property. They referred, for example, to the Land Use Planning Ordinance 15 of 1985 (Cape), which prohibits the use of property for a purpose other than that for which it is zoned. And to the Environmental Conservation Act 73 of 1989 and the National Environmental Conservation Act 107 of 1998, which require environmental impact assessments to be made before certain properties are developed. There are also building laws and regulations that must be complied with.

[16] Prohibitions on the use of the property until such time as their requirements have been met are immaterial to the validity of the Minister's decision. By letting the property the Minister did not purport to permit Bluefin to use the property unlawfully or relieve Bluefin of obligations that it might have under any law. As pointed out in *Minister of Public Works v Kyalami Ridge Environmental Association*[2] at para 59:

'The taking of a decision [on how land is to be used] is logically anterior to the procurement of consents that may be necessary for its execution. Indeed, it is only after a decision has been taken and details of the work to be done have been determined, that an

[2] 2001 (3) SA 1151 (CC).

application for consent can properly be made and considered. The absence of such consent may found an application for an interdict to restrain implementation of the decision. In itself, however, it is not a ground on which the decision can be set aside.'

And at para 105:

'The power that the government has to use its own land for the purpose of establishing a transit camp, is not a power that in itself entitles it to eliminate or ignore rights that the Kyalami residents might have under environmental, township or other legislation. If they have such rights, they are entitled to seek to enforce them. But their rights, if any, lie there.'

[17] But apart from the principal relief that the appellants sought (an order setting aside the Minister's decision) the appellants also sought an interdict restraining Bluefin from constructing anything on the property and the adjacent jetty before there had been an environmental impact assessment as contemplated by the Environmental Conservation Act 73 of 1989. It was submitted on their behalf that the application ought to have succeeded to that extent at least. I do not agree. Whatever Bluefin's intentions might initially have been, once the issue was first raised in the correspondence, and Bluefin had obtained advice, it was made clear to the appellants that Bluefin would not develop the site in conflict with environmental laws, and in its answering affidavit it alleged that an environmental impact assessment was in the process of being compiled. The appellants had no reasonable grounds for apprehending that Bluefin would not comply with its legal obligations, once those were brought to its attention, and on that ground alone they were not entitled to an interdict.

[18] Asserting the right to procedurally fair administrative action that is conferred by s 3 of the Promotion of Administrative Justice Act 3 of 2000 (PAJA) the appellants complained of not having been consulted or invited to comment on Bluefin's request to lease the property before it was approved by the Minister. It was also submitted on behalf of the appellants – though not pertinently raised in the founding affidavit – that the Minister's decision falls to be set aside in terms of s 6 of PAJA because it was irrational and arbitrary.

[19] The question at the outset is whether the Minister's decision constitutes administrative action falling within the terms of PAJA.[3]

[20] The Constitution is the repository of all state power. That power is distributed by the Constitution – directly and indirectly – amongst the various institutions of state and other public bodies and functionaries and its exercise is subject to inherent constitutional constraint – if only for legality[4] – the extent of which varies according to the nature of the power that is being exercised.

[21] What constitutes administrative action – the exercise of the administrative powers of the state – has always eluded complete definition. The cumbersome[5] definition of that term in PAJA serves not so much to

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[3] It is not necessary for purposes of this appeal to consider whether s 33 of the Constitution has a residual field of operation in relation to decisions that fall outside the terms of PAJA. See: Iain Currie & Jonathan Klaaren *The Promotion of Administrative Justice Benchbook* paras 1.27 and 1.28; *The New Constitutional and Administrative Law* Vol 2 by Cora Hoexter with Rosemary Lyster (ed. Iain Currie) pages 87-89. *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs* 2004 (4) SA 490 (CC) para 25.

[4] Cf. *Fedsure Life Assurance Ltd v Greater Johannesburg Transitional Metropolitan Council* 1999 (1) SA 374 (CC) paras 40, 56-58; *President of the Republic of South Africa v South African Rugby Football Union* 2000 (1) SA 1 (CC) para 148; *Pharmaceutical Manufacturers Association of SA: In re Ex Parte President of the Republic of South Africa* 2000 (2) SA 674 (CC) paras 51, 85, 90.

[5] The definition of 'administrative action' in s 1 of PAJA is made particularly cumbersome by its incorporation of a number of terms that are themselves defined and often overlap.

attribute meaning to the term as to limit its meaning by surrounding it within a palisade of qualifications. It is not necessary for present purposes to set out the terms of the definition in full: the following consolidated and abbreviated form of the definition will suffice to convey its principal elements:

'Administrative action means any decision of an administrative nature made…under an empowering provision [and] taken…by an organ of state, when exercising a power in terms of the Constitution or a provincial constitution, or exercising a public power or performing a public function in terms of any legislation, or [taken by] 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…'.

[22] At the core of the definition of administrative action is the idea of action (a decision) 'of an administrative nature' taken by a public body or functionary. Some pointers to what that encompasses are to be had from the various qualifications that surround the definition but it also falls to be construed consistently, wherever possible, with the meaning that has been attributed to administrative action as the term is used in s 33 of the Constitution (from which PAJA originates) so as to avoid constitutional invalidity.[6]

[23] While PAJA's definition purports to restrict administrative action to decisions that, as a fact, 'adversely affect the rights of any person', I do not think that literal meaning could have been intended. For administrative action

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[6] *National Director of Public Prosecutions v Mohamed NO* 2003 (4) SA 1 (CC) para 35.

to be characterised by its effect in particular cases (either beneficial or adverse) seems to me to be paradoxical and also finds no support from the construction that has until now been placed on s 33 of the Constitution. Moreover, that literal construction would be inconsonant with s 3(1), which envisages that administrative action might or might not affect rights adversely.[7] The qualification, particularly when seen in conjunction with the requirement that it must have a 'direct and external legal effect',[8] was probably intended rather to convey that administrative action is action that has the capacity to affect legal rights, the two qualifications in tandem serving to emphasise that administrative action impacts directly and immediately on individuals.

[24] Whether particular conduct constitutes administrative action depends primarily on the nature of the power that is being exercised rather than upon the identity of the person who does so.[9] Features of administrative action (conduct of 'an administrative nature') that have emerged from the construction that has been placed on s 33 of the Constitution are that it does not extend to the exercise of legislative powers by deliberative elected legislative bodies,[10] nor to the ordinary exercise of judicial powers,[11] nor to the formulation of policy or the initiation of legislation by the executive,[12] nor

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[7] Section 3(1) provides that 'administrative action which materially and adversely affects the rights or legitimate expectations of any person must be procedurally fair'.
[8] As to the meaning of that phrase see Currie & Klaaren, fn 3, para 2.33.
[9] *SA Rugby Football Union*, fn 4, para 141.
[10] *Fedsure,* fn 4, para 45; *SA Rugby Football Union,* fn 4, para 140.
[11] *Nel v Le Roux NO* 1996 (3) SA 562 (CC) para 24; *SA Rugby Football Union*, fn 4, para 140.
[12] *SA Rugby Football Union*, fn 4, para 142.

to the exercise of original powers conferred upon the President as head of state.[13] Administrative action is rather, in general terms, the conduct of the bureaucracy (whoever the bureaucratic functionary might be) in carrying out the daily functions of the state which necessarily involves the application of policy, usually after its translation into law, with direct and immediate consequences for individuals or groups of individuals.[14]

[25] The law reports are replete with examples of conduct of that kind. But the exercise of public power generally occurs as a continuum with no bright line marking the transition from one form to another and it is in that transitional area in particular that

'[d]ifficult boundaries may have to be drawn in deciding what should and what should not be characterised as administrative action for the purposes of s 33'.[15]

In making that determination

'[a] series of considerations may be relevant to deciding on which side of the line a particular action falls. The source of the power, though not necessarily decisive, is a relevant factor. So, too, is the nature of the power, its subject matter, whether it involves the exercise of a public duty and how closely it is related on the one hand to policy matters, which are not administrative, and on the other to the implementation of legislation, which is. While the subject-matter of a power is not relevant to determine whether constitutional review is appropriate, it is relevant to determine whether the exercise of the power constitutes administrative action for the purposes of s 33.'[16]

It has also been emphasised that the difficult boundaries

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[13] *SA Rugby Football Union*, fn 4, paras 145.- 147.
[14] *SA Rugby Football Union*, fn 4, paras 136 and 146.
[15] *SA Rugby Football Union*, fn 4, para 143.
[16] *SA Rugby Football Union*, fn 4, para 143.

'will need to be drawn carefully in the light of the provisions of the Constitution and the overall constitutional purpose of an efficient, equitable and ethical public administration. This can best be done on a case by case basis.'[17]

[26] It was submitted on behalf of the Minister that because the state is the owner of the property that is now in issue, and has all the ordinary rights of ownership, it may use the property as if it was a private owner and its conduct in doing so is not administrative action. While it is true that the state enjoys the private rights of ownership it was pointed out in *Minister of Public Works v Kyalami Ridge Environmental Association*[18] that those rights are to be asserted within the framework of the Constitution. What is in issue in the present case is not the use to which state ownership is being put but rather the manner in which those rights of ownership have been asserted.

[27] *In Bullock NO v Provincial Government, North West Province*[19] it was held by this court that the disposal of a right in state property (the right in that case was a servitude) constituted administrative action for purposes of s 33 of the Constitution (as it then read).[20] It was submitted on behalf of the Minister that *Bullock's* case is distinguishable because in that case the rights were alienated in the belief that the provincial government was obliged to do so,[21] whereas in the present case the impugned decision 'amounts to a policy

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[17] *SA Rugby Football Union*, fn 4, para 143.
[18] 2001 (3) SA 1151 (CC) para 40.
[19] 2004 (5) SA 262 (SCA)
[20] Until PAJA came into effect s 33(1) and 33(2) were to be read as set out in item 23(2)(b) of Schedule 6 to the Constitution but that is not material for present purposes.
[21] *Bullock*, fn 16, para 15: 'The first respondent did not purport to dispose of the right pursuant to a policy a policy decision taken in the light of broad policy considerations; it disposed of the right because it thought it was obliged to do so.'

decision' (the words are taken from the heads of argument). There will be few administrative acts that are devoid of underlying policy – indeed, administrative action is most often the implementation of policy that has been given legal effect – but the execution of policy is not equivalent to its formulation. The decision in the present case was not one of policy formulation but of execution. No matter that the motivation for making the decision differed from that in *Bullock* I do not think that the decisions in each case are materially distinguishable.

[28] Nor do I think there are grounds for distinguishing administrative action as contemplated by s 33 of the Constitution from administrative action envisaged by PAJA (at least within the context of the decision that is now in issue). If the qualifications in PAJA's definition purport to exclude from its ambit some acts that would otherwise constitute administrative action for purposes of s 33 none of them are material to the case that is before us. The Minister's decision was made in the exercise of a public power conferred by legislation, in the ordinary course of administering the property of the state, and with immediate and direct legal consequences (at least for Bluefin) and I see no reason to differ from the conclusion in *Bullock* that it constituted administrative action.[22]

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[22] *Transnet Ltd v Goodman Brothers (Pty) Ltd* 2001 (1) SA 853 (SCA) and *Logbro Properties CC v Bedderson* NO 2003 (2) SA 460 (SCA) (which distinguished *Cape Metropolitan Council v Metro Inspection Services (Western Cape) CC* 2001 (3) SA 1013 (SCA)) and *Metro Projects CC v Klerksdorp Local Municipality* 2004 (1) SA 16 (SCA) are consistent with and afford some support for that construction.

[29] But s 3(1) of PAJA confers a right to procedural fairness only in respect of administrative action that 'materially and adversely affects the rights or legitimate expectations of any person.'[23]

[30] While 'rights' may have a wider connotation in this context,[24] and may include prospective rights that have yet to accrue,[25] it is difficult to see how the term could encompass interests that fall short of that.[26] It has not been shown that any rights – or even prospective rights – of any of the appellants (or of any other person) have been adversely affected by the Minister's decision. None of the appellants have any right to use the property that has been let, or to restrict its use by others, nor has any case been made out that their rights of occupation of their own premises have been unlawfully compromised. As pointed out in *Kyalami Ridge,*[27] at para 95:

'The general rule is that the reasonable use of property by an owner is not subject to restrictions, even if such user causes prejudice to others.'[28]

[31] Although in *Bullock's* case – in which the aggrieved party had continuously hired the affected property over a period of 32 years and had erected structures on the property that were vital for the use of its own property – an interest falling short even of a prospective right was recognised, it might be that the court had in mind rather a legitimate expectation,

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[23] There was no suggestion in the present case that a right in broader terms is conferred by the Constitution itself.
[24] *Premier, Mpumalanga v Executive Committee, Association of State-aided Schools* 1999 (2) SA 91 (CC) para 31.
[25] *Kyalami Ridge*, para 100
[26] *Kyalami Ridge*, para 100, but cf. *Bullock* para 19.
[27] Fn 18.
[28] Cf *Regal v African Superslate (Pty) Ltd* 1963 (1) SA 102 (A) 106H.

grounded in past practice, that the affected property would continue to be available for the use of the aggrieved party. But even if reliance may be placed on an interest falling short of a prospective right – of which I am doubtful – I do not think that the appellants have shown that they have a peculiar interest transcending those enjoyed by the public at large.

[32] Nor has it been shown that any of the appellants (or any other person) has a legitimate expectation that the property would be left vacant, or even that they would be consulted, or their comments invited, before it was let. In considering what conduct would give rise to a legitimate expectation Corbett CJ, in *Administrator, Transvaal v Traub,*[29] cited the following passage from the speech of Lord Fraser of Tullybelton in *Council of Civil Service Unions v Minister for the Civil Service*:[30]

> 'Legitimate, or reasonable, expectation may arise either from an express promise given on behalf of a public authority or from the existence of a regular practice which the claimant can reasonably expect to continue.'

Those requirements were considered in greater detail in *National Director of Public Prosecutions v Phillips*,[31] which was cited with approval by this court in *South African Veterinary Council v Szymanski*.[32]

[33] Although the property was physically vacant before it was let to Bluefin and was available in practice for the general use of tenants and the public at large counsel for the appellants could point us to no conduct on the

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[29] 1989 (4) SA 731 (A) 756I, cited with approval in *SA Rugby Football Union*, fn 4, para 212.
[30] [1984] 3 All ER 935 (HL) 944a-b.
[31] 2002 (4) SA 60 (W) para 28.
[32] 2003 (4) SA 42 (SCA) para 19.

part of the state or any of its officials to suggest that the appellants were brought under the impression that that state of affairs would continue indefinitely or even that they would be invited to comment before its use was altered.[33] On the contrary, when the Yacht Club sought an undertaking to that effect the undertaking was expressly refused. Moreover, in recent years at least, it was not the state that permitted that use of Lot 86, but rather the Yacht Club, which was the tenant.

[34] The appellants also submitted – although this was not pertinently raised in the founding affidavit – that the Minister's decision was irrational and arbitrary and falls to be set aside in terms of s 6 of PAJA. In advancing that submission much was sought to be made of the view that Environmental Affairs had taken of the matter, which, it was submitted, amounted to a policy to leave the property vacant, with which Public Works had 'aligned itself' before the Minister's decision was taken. It was submitted that the Minister's decision was arbitrary and irrational because it purported to vary that policy, and in any event, because it failed to take account of the traffic congestion that would result from the proposed development of the property and the effect of depriving tenants and others of parking and ready access to the water.

[35] I do not think the evidence established the existence of a policy on the part of Environmental Affairs – it showed no more than that Environmental Affairs held views from time to time as to the best use of the property – nor

[33] Cf *Kyalami Ridge*, fn 18, para 99

that Public Works aligned itself with any policy and even less that it adopted the views of Environmental Affairs as its own. Nor does the evidence establish that the Minister failed to take account of the consequences of the property being developed by Bluefin. If the appellants were entitled to seek to review the Minister's decision on the grounds set out in terms of s 6 of PAJA – a matter on which I express no opinion – there are no proper grounds for finding that the Minister's decision was arbitrary or irrational and there is no merit in those submissions.

[36] The appellants have not established proper grounds for impugning the Minister's decision and the court *a quo* correctly dismissed the application and set aside the temporary interdict. The appeal is dismissed with costs, for which the appellants are to be jointly and severally liable, which are to include the costs of two counsel.

R W NUGENT
JUDGE OF APPEAL

CONCUR:

SCOTT JA)
NAVSA JA)
MTHIYANE JA)
MAYA AJA)