

8 June 2021

Grootfontein Country Estates Home Owners' Association

Per email: afslaanvo@gmail.com;
simonndukwana@gmail.com

Attention : David Williams (Legal)
: Simon Ndukwana (Chairperson)

Your reference: Fibre Rollout

Dear Sirs,

NOTICE IN TERMS OF SECTIONS 22 AND 24 OF THE ELECTRONIC COMMUNICATIONS ACT 36 OF 2005 IN RESPECT OF GROOTFONTEIN COUNTRY ESTATE

We refer to the above, your letters of 12 and 26 May 2021 and our teleconference meeting on 20 May 2021.

1. Metro Fibre Networx Proprietary Limited ("**MetroFibre**") is a duly licensed electronic communications network service licensee in terms of the Electronic Communications Act 36 of 2005 as amended and its regulations thereto ("**ECA**"). I attach a copy of MetroFibre's license, 0179/IECNS/Jan09, as **Annexure 1** hereto.
2. Sections 22 and 24 of the ECA provide:

"Entry on and construction of lines across land and waterways

22 (1) An electronic communications network services licensee may –

- (a) enter upon **any** land, including any street, road, footpath or land reserved for public purpose, any railway and any waterway of the Republic (my emphasis);
- (b) **construct and maintain and electronic communications network or electronic communications facilities upon, under, over, along or across any land** including any street, road, footpath or land used for public purposes, railway or waterway of the Republic (my emphasis);
- (c) alter or remove its electronic communications network or its electronic communications facilities, and for that purpose attach wires, stays or any other kind of support to any building or any other kind of structure."

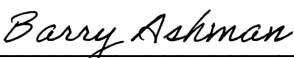
"Pipes under streets"

24 (1) A electronic communications network service licensee may, after providing thirty (30) days prior written notice to the local authority or person owning or responsible for the care and maintenance of any street, road or footpath –

- (a) construct and maintain in the manner of that notice any pipes, tunnels or tubes required for electronic communication network facilities under any such street, road or footpath;”.
3. We hereby give formal notice that MetroFibre intends to exercise its rights under Sections 22 and 24 of the ECA by entering onto the Grootfontein Country Estate (the “**Estate**”) for the purposes of finalising its constructing and maintaining an electronic communications facility to provide services to the Estate. We wish to inform you that MetroFibre has secured the necessary consents and permissions from the City of Tshwane Metropolitan Municipality (“**CoT**”) to undertake the works in the road reserves and public spaces and attach as **Annexure 2** copies of the wayleaves granted for the construction of the required electronic facilities.
 4. In the event that MetroFibre is denied access to the Estate, MetroFibre will have no choice but to approach a court for an order, the costs of which you will be liable for. This has been confirmed by the Supreme Court of Appeal in the cases of *Mzunduzi Municipality vs. Dark Fibre Africa Network (Pty) Ltd* and *Mobile Telephone Networks (Pty) Ltd vs. SMI Trading cc* and in the Constitutional Court, in the case of *City of Tshwane Metropolitan Municipality vs. Dark Fibre Africa (Pty) Ltd*.
 5. Please be advised that should another licensee exercise its rights to enter onto the Estate, it does not affect the right of MetroFibre to do likewise as no exclusivity is provided for by the provisions of Sections 22 and 24.
 6. Construction work will commence on the project on 14 June 2021. We attach a diagram of the area in which MetroFibre intends to reticulate its fibre as **Schedule 1** hereto.
 7. MetroFibre is available to, and wishes to, engage with the Grootfontein Country Estate Home Owners Association (“**HoA**”) at any convenient time with a view to determine reasonable working conditions that the HoA may wish it to adhere to for consideration prior to construction, including the presence or any existing infrastructure and/or buildings which may be affected by the civil works.
 8. MetroFibre shall take reasonable steps to ensure that no damage is done as a result of civil works and/or construction. In the event that damage is caused by MetroFibre’s activities, MetroFibre will repair the damages alternatively pay the reasonable costs of such repair.
 9. Should we not hear from you by close of business on Friday, 11 June 2021, we will assume that there are no conditions that you wish to draw to our attention to prior to construction and will proceed on Monday, 14 June 2021 as stated above.

10. MetroFibre notes that letter from the HoA with respect to the reticulation of fibre infrastructure in the Estate, dated 25 May 2021. Please note that our failure to address or deal with each and every allegation contained in the letter should not be deemed or construed to be any admission as to the accuracy or correctness thereof.
11. Dealing with some of the issues raised in the letter we wish to advise as follows:
- 11.1 **Heading – No Consultation with Landowners**
- 11.1.1 Commencing on 14 June 2021, MetroFibre shall construct the electronic facilities on the route indicated in Annexure 3. MetroFibre has been in contact with the HoA continuously since overall work was commenced in the immediate environs of the Estate. As stated in paragraph 7 above, MetroFibre remains happy to consult with all landowners with respect to the reticulation of fibre on their premises.
- 11.1.2 As requested, we attach a copy of our IECNS license and wayleaves for your perusal.
- 11.1.3 The wayleave is the only consent municipal consent that MetroFibre is obligated to obtain in respect of road reserves and other public areas.
- 11.2 **Heading - Security Concerns**
- 11.2.1 All MetroFibre contractors are properly supervised at all times.
- 11.3 **Heading – Aesthetics**
- 11.3.1 Electronic communications facilities, including poles, are reticulated across Gauteng and all major centres and are similar to telephone poles.
- 12 Finally, please be advised that MetroFibre will resist any legal interdict, injunction or other action brought against it and reserves all of its rights in this regard.

Yours sincerely



Barry Ashman
Senior Legal Advisor

