



**REFERENCE: 14/3/1/A6/86/0455/20**

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Attention: Mr Keith Wiseman

Dear Sir

**APPEAL LODGED IN TERMS OF SECTION 43(2) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998) AGAINST THE ENVIRONMENTAL AUTHORISATION GRANTED FOR THE PROPOSED PHASE 1 EXTENSION OF HOUMOED AVENUE SUNNYDALE**

1. The Environmental Authorisation ("EA") issued on 22 November 2019, and the appeal submitted by ADVS Environmental Consultants, refer.

2. After careful consideration of the appeal, as well as supporting documentation received, I have decided to dismiss the appeal and confirm the decision of the delegated competent authority.

3. **REASONS FOR THE DECISION**

The following are reasons to confirm the EA issued by the Delegated Competent Authority and to dismiss the appeal:

3.1. **Public Participation Process:**

3.1.1. The Public Participation Process ("PPP") in this matter complied with regulations 41-44 of the *National Environmental Management Act, 1998 (Act No. 107 of 1998)* ("NEMA") Environmental Impact Assessment ("EIA") Regulations, 2014 (Government Notice No. R. 982 of 4 December 2014), in that the following was undertaken by the EAP:

- Identification of potential Interested and Affected Parties ("I&APs");
- Notice boards were placed on site;
- Meetings were held on a one-on-one basis and 2 Focus Group meetings were held;

- Notification to I&APs availability of the draft Basic Assessment Report ("BAR"), the revised draft BAR and Final BAR for review and the subsequent withdrawal of the application as procedural concerns had been raised around the process.
  - I&APs were also notified of the availability of the new draft BAR and revised BAR for review;
  - An advertisement was placed in the False Bay Echo on 23 May 2019;
  - Noticeboards were placed on site in May 2019;
  - The BAR was made available for a commenting period of 30 days; and
  - Written notification submitted to adjacent landowners and State Departments of the availability of the BAR for a commenting period of 30 days.
- 3.1.2. It is noted that the PPP process is conflated and though it has been clarified that the withdrawn application does not form part of the considerations in this process, the inclusion of the processes undertaken as part of the PPP in the withdrawn application have been listed by the City of Cape Town ("CoCT") to demonstrate having gone beyond the requirements of the EIA Regulations. Comments included in the previous PPP process do not form part of this appeal process and did not form part of the considerations in issuing the EA as the application it formed a part of, had been withdrawn.
- 3.1.3. A summary of the comments as well as the comments submitted by I&APs were submitted by the Environmental Assessment Practitioner ("EAP") to the Competent Authority ("CA") for consideration.
- 3.1.4. As indicated by the CoCT, the newspaper articles did not constitute paid advertisements by the CoCT but were rather public interest articles for which the CoCT was required to provide inputs to respond to requests from the media.
- 3.1.5. As the Appellant indicates, there is opposition to the proposed Houmoed Avenue Extension ("HAE") by the local community. The PPP process is the opportunity for parties to submit their concerns for consideration by the EAP and subsequently the CA. It is however but one of the aspects of the process that have to be taken into consideration when making a decision as to whether or not to grant authorization.
- 3.2. **Role of and Independence of the EAP(s):**
- 3.2.1. Numerous allegations have been levelled against the EAPs, particularly Saadia Chand. Ms Chand's role in the process and her alleged conflict of interest and bias has been raised by the Appellant.
- 3.2.2. It should be noted that environmental consultancy firms with the available resources have in the past and do assign more than one consultant to deal with applications. As has been stated by the CoCT, they appointed the legal entity Chand Environmental Consultants to undertake the EIA process. The lead consultant and allocation of resources in respect of the application is determined by the firm. The BAR indicates "*Please provide details of the lead EAP...*" which is a clear indication that more than one EAP is able to work on an application.
- 3.2.3. Both Saadia Chand and Ingrid Eggert work under the banner of Chand Environmental Consultants and their joint undertaking of the EIA process would not serve as a source of confusion to Interested and Affected Parties ("I&APs").
- 3.2.4. The allegation that Saadia Chand has a conflict of interest due to her Directorship at Martin & East has been described as unfounded by the CoCT. The CoCT indicated that the construction contract for the HAE will be advertised in the open

- market in accordance with supply chain management processes and the Municipal Finance Act.
- 3.2.5. Both Ms Chand and Eggert have years of experience as environmental consultants and are fully aware that their independence as consultants is pivotal to their continued practice. The information gathered, conclusions drawn, and recommendations made are based on the available information.
- 3.2.6. It has also been confirmed by the CoCT that the necessary traffic engineering expertise exists within the CoCT but that the Traffic Study was conducted by HHO, a consulting engineering company external to and independent of the CoCT.
- 3.3. **Need and Desirability:**
- 3.3.1. The delegated competent authority has complied with the obligation set out in terms of the Needs and Desirability guideline to consider both the environmental and planning context. The Department, having considered all the relevant factors concluded that all identified impacts and cumulative impacts, have been found to be capable of adequate mitigation and to have adequate regard to the socio-economic and environmental benefits.
- 3.3.2. The Departments' Need & Desirability Guideline stipulates that *"need and desirability will be determined by considering the broader community's needs and interests as reflected in a credible IDP, SDF and EMF for the area, and as determined by the EIA."*
- 3.3.3. As indicated in the BAR, the CoCT considers the HAE to be a priority project given *"the urgency to resolve significant road congestion in the Valley...It is clear that current and future traffic volumes necessitate the proposed link (bypass) road."* The level of congestion is confirmed in the review by Dr Harding. He states *"The road is designed for a capacity of 1000 vehicles per hour, a level that will be reached within a very short time after construction."*
- 3.3.4. The Municipal Spatial Development Framework ("MSDF") 2018, no longer defines an urban edge but instead is guided by spatial areas with specific special outcomes, as a result the proposal is aligned with the principles of the Provincial Spatial Development Framework ("PSDF").
- 3.3.5. The proposal is in line with the vision of the PSDF which promotes connectivity in the Cape by ensuring that urban communities are inclusive, integrated, connected and collaborate, with a priority to establish an access system within and between functional regions.
- 3.3.6. The road corridor does not fall within an area classified as Critical Biodiversity Area ("CBA") on terrestrial or aquatic grounds, though the wetland is considered an aquatic Critical Ecological Support Area. The impacts can however be mitigated to an acceptable level.
- 3.3.7. The proposal is in line with the approved municipal Integrated Development Plan ("IDP") and Spatial Development Framework ("SDF"). Budgetary provision is made in the IDP for the HAE. The project also forms part of the CoCT's Congestion Management Programme which sets out the expenditure and interventions aimed at addressing traffic congestion in Cape Town between 2015 – 2020.
- 3.3.8. The HAE will provide a link between the Masiphumelele informal settlement and the greater urban area, thereby contributing to better integration and access to resources.

3.4. **Collusion:**

- 3.4.1. Allegations of collusion between the EAP, CoCT, Departmental officials and the CA as well as alleged Applicant-favoured bias are unfounded.
- 3.4.2. Chand and Ms Eggert are not precluded by the relevant regulations from jointly undertaking and EIA process or portions thereof.
- 3.4.3. Numerous of the concerns raised in respect of the alleged collusion relate to the application which had been withdrawn and is therefore not relevant to the approval of the EA. The EAP indicated that allegations of procedural irregularities resulted in the decision to withdraw the previous application. Any shortcomings from that process therefore have no bearing on the EA or the appeal.
- 3.4.4. The allegation that Ms Eggert acted fraudulently by making a sworn statement that all comments were included in the 2<sup>nd</sup> revised BAR when comments from the withdrawn application were not included is patently false. The EAP commenced a new application process and comments could be resubmitted by I&APs but the comments from the withdrawn application did not form part of the new application and revised BAR.
- 3.4.5. It is also indicated by the Appellant the Chand is a profit-orientated company, solely owned by Saadia Chand and therefore lacks the ability to act in the independent manner required. As stated above, independence is central to the practice of all EAPs and if an EAP is unable to act independently they will not be able to continue to practice. Ms Chand, as any other EAP is entitled to payment for work done. By the Appellant's logic in respect to Ms Chand, EAPs will not be able to undertake projects for clients with whom they have previously worked unless they do so without compensation.
- 3.4.6. The fact that the CA considered the application and all relevant documentation and granted authorisation does not constitute collusion. The CA applied his mind and concluded that issuing an authorisation was appropriate.

3.5. **Freshwater Ecosystems Impact Assessment Report:**

- 3.5.1. The Appellant called into the question the expertise of Dean Ollis (Freshwater Consultant) and Simon Todd (Faunal Consultant) and submitted a review by Dr William Harding.
- 3.5.2. Dr Harding's review raised concerns with the literature resources that were utilised or underutilised for the purpose of preparing the specialist reports. Mr Ollis confirmed that key reports on the Noordhoek wetlands cited by Dr Harding were in fact consulted and cited. He concedes that some of the citations were omitted from the reference list though. Mr Ollis confirms that having read through reports, some of which he had previously read as summaries and states that his assessment conclusions remain unchanged.
- 3.5.3. He also calls into question the exclusion of the 17-year-old Ratcliffe Report. He argues that the EAPs position that the most updated information was included was not sufficient for the decision-maker to make an informed decision due to the exclusion of the Ratcliffe Report. Mr Ollis indicated that although he had not repeated all the detailed information contained in the aforementioned report, all the relevant information had been taken into consideration and referred to Ratcliffe's findings where relevant. He points out that Ratcliffe reached very similar conclusions to his report as to the likely significance of the potential impacts on the wetlands that could result from the proposed road.

- 3.5.4. Dr Harding questioned the Present Ecological State ("PES") rating assigned to the Pick 'n Pay ("PnP") wetland as well as the Ecological Categories assigned by Mr Ollis for the PES. It is confirmed by Ollis that the detailed explanations provided for his PES assessment which followed nationally accepted protocols. Harding disagrees with the ratings as he expressed the opinion that the hydrology of the wetland "*has been largely unchanged for 50 years*" and the vegetation "*equally unchanged for longer.*" Ollis confirms that a cursory review of available imagery clearly shows that the PnP reedbed has been substantially transformed over the past 50 years. The presumed natural reference state of the PnP reedbed was used as the baseline for the PES as is the standard practice for PES assessments, not an arbitrary point in time 50 years ago. Ollis therefore stands by his original ratings for the PES of the PnP reedbed, being that it is of moderate-to-high conservation importance.
- 3.5.5. Since the proposed road will be approximately 800m in length and there are already a multitude of roads in the catchment area of the PnP reedbed which drain into the wetland. There are at least 60km of existing road in the catchment of the wetland all of which ultimately drain into the PnP wetland via a network of stormwater drains. These roads are already exerting a major impact on the wetland. The proposed HAE will add less than 1.7% to the total length of roads already present in the catchment of the wetland.
- 3.5.6. The Freshwater Ecosystems Impact Assessment Report is clear that the PnP reedbed which forms an integral part of the greater Noordhoek Wetland System has been transformed through historical agricultural development and more recent urban development of the Noordhoek Valley. As a result, the wetland system was rated as largely modified (Ecological Category D), relative to the perceived natural reference state of this freshwater ecosystem, with the present state of the hydrology, water quality and vegetation of the wetland considered to be especially impacted.
- 3.5.7. The wetland was still rated as being of moderate-to-high conservation importance. Although it is indicated that up to 10 species of amphibians could be associated with the wetland, only the Endangered Western Leopard Toad ("WLT") *Amietophrynus Sclerophrys Pantherinus* is currently noted to be of conservation concern.
- 3.5.8. It is anticipated that approximately 3% of the total extent of the PnP reedbed and 0.5% of the Greater Noordhoek Wetland System will be lost as a result of the establishment of the HAE, the impact of which is considered to be a negative impact of low-to-medium significance for the permanent wetland and of medium significance for the seasonal wetland.
- 3.5.9. Rehabilitation of wetland areas along the edges of the HAE will be effected to compensate for the anticipated loss of wetland associated with the construction of the HAE. The implementation of wetland rehabilitation interventions as stipulated in pages 16-18 and mitigation measures in pages 28-40 of the Freshwater Ecosystems Impact Assessment Report is deemed to be a positive impact of low-to-medium significance for the freshwater ecosystems.
- 3.5.10. The above report concluded that the proposed HAE would be acceptable, in terms of impacts on freshwater ecosystems, if all the recommended mitigation measures are properly implemented and the proposed rehabilitation of non-permanent wetland habitat is properly carried out as an integral part of the HAE.

- 3.5.11. The road as proposed would not compromise the functioning of the wetland as a whole, despite the fact that there would be impacts.
- 3.5.12. With respect to the value of a wetland as calculated by Dr Harding, it would be dependent on many variables. He further based his calculations on the Greater Noordhoek Wetland System as a whole, whereas only a section along the 800m long proposed road will be impacted. The accuracy of global estimates, as given by Dr Harding and referred to by the Appellant, have not been substantiated.
- 3.5.13. The Appellant indicated that the HAE posed a flooding risk but as confirmed by the CoCT, the road design took account possible flood events, it is therefore not clear why the Appellant believes the HAE would result in the need to clean-up shacks subsequent to flood events.

**3.6. Fauna Impact Assessment Report:**

- 3.6.1. The Faunal Impact Assessment Report concluded the HAE will result in approximately 2ha of habitat loss along the margins of the PnP reedbed but that said loss is not considered highly significant as the affected reedbeds are homogenous and the loss will be limited to a small portion of the extensive PnP reedbeds.
- 3.6.2. Two open water bodies were identified that would be impacted to a greater degree by the HAE which are considered locally significant and are not available elsewhere in the wetland system.
- 3.6.3. The Endangered WLT is identified as being of specific concern with regard to the water bodies, as these are immediately adjacent to the proposed HAE. It is recommended that potential impacts on the WLT be addressed through engineered mitigation measures, which include toad underpasses with associated drift fences. It is further recommended that an amphibian specialist should inform the design of the toad underpasses.
- 3.6.4. It is also recommended that the toad underpasses be monitored for at least 3-5 seasons to evaluate their success and improve their design if necessary.
- 3.6.5. The majority of impacts associated with development of the HAE on fauna are considered to be low after the implementation of mitigation measures. Further, there are no highly significant impacts on fauna likely to be associated with the proposed HAE which would prevent the project going ahead as long as the mitigation measures recommended with respect to the WLT are effectively implemented.
- 3.6.6. The Harding review has raised particular concerns in respect of the impacts of the noise generated by vehicles utilising the road. As has been pointed out this road will be approximately 800m in length where there is at least 60km of existing road in the catchment of the wetland.
- 3.6.7. As the Harding review points out, road effect impacts are not immediate, which is why it was recommended that monitoring be undertaken for at least 3-5 seasons.
- 3.6.8. Mr. Marius Burger of Sungazer Faunal Surveys had been commissioned, in his capacity as a herpetologist, to review the Faunal Impact Assessment, specifically as it related to the findings and recommendations regarding the WLT. Mr Burger determined that the report was adequate and comprehensive in terms of identifying the relevant impacts and mitigation measures in respect of the HAE. He concluded that the overall impact can be mitigated to a large degree but that some impact is unavoidable.

- 3.6.9. Mr Burger further expressed the view that since the HAE is unlikely to result in the local extinction of the WLT or impair its ecological viability to a significant degree, it is plausible to develop the HAE and also maintain an adequate level of WLT ecological viability in the long term. He agreed that the planning of the finer details and specifications of the various toad-friendly features must be done in consultation with an amphibian specialist at the detailed design phase of the project.
- 3.6.10. A separate herpetologist assessment would thus not have come to a different conclusion and was therefore not required.
- 3.6.11. With respect to the Appellant not having been granted access to Mr Burger's comments and recommendations during the withdrawn EIA process, it is reiterated that these were two separate processes and as indicated by the CoCT, it was not made available during the first process as it was not included in documents placed before the CA for consideration and therefore fell outside of the EIA process.
- 3.6.12. It was also inferred that comments and inputs provided by ToadNUTS had not been considered. As pointed out by the CoCT, a one-on-one meeting between the parties to obtain input from ToadNUTS was declined by the organisation.

**3.7. Traffic Impact Assessment:**

- 3.7.1. The Appellant alleged that no proper Traffic Impact Assessment ("TIA") was undertaken and questioned the contention that the main reason for the need for the HAE was due to the benefits of alleviating traffic congestion currently being experienced with the Noordhoek/Kommertjie road network. It should be noted that Mr. Jon Lijnes, whose inputs are used by the Appellant in respect to the perceived shortcoming of the TIA indicates that the TIA appears to have been conducted correctly, he however disagrees with the conclusions and recommendations reached.
- 3.7.2. As indicated in the TIA a number of alternatives had been considered to accommodate future traffic growth including proposals for Ou Kaapse Weg and Kommetjie Road as well as the completion of the Houmoed Avenue link between Kommetjie Road and Noordhoek Road.
- 3.7.3. The findings highlighted that sections of Ou Kaapse Weg (between Noordhoek Road and Kommetjie Main Road), and Kommertjie Main Road (between Corsair and Houmoed Avenue) operate at very low levels of service during weekday peak periods in the peak direction of travel.
- 3.7.4. The introduction of upgrading and signalization of the Ou Kaapse Weg/Noordhoek Road Intersection has increase traffic capacity in the northbound and eastbound direction and reduced capacity in the southbound direction during peak periods. Due to the current congestion along Ou Kaapse Weg in the southbound direction during the PM peak period, motorists destined for Fish Hoek, particularly turn left into Corsair Way at the Buller Louw Avenue Intersection and 'rat run' through Sun Valley to reach Kommetjie Main Road and thereafter through Fish Hoek to Main Road to travel southwards.
- 3.7.5. Congestion along Kommetjie Main Road has a major impact on bus and taxi services travelling between the public transport interchange at Fish Hoek Station and the residential townships of Msiphumelele and Ocean View, as well as to and from the employment opportunities in Fish Hoek itself, and also in Fish Eagle Park and Heron Park Industrial areas.

- 3.7.6. The TIA stipulates that it is clear that the critical sections of the traffic network are operating at over capacity conditions.
- 3.7.7. For scenarios where the partial and full Houmoed links are introduced, the critical links and intersections will operate at or just over capacity conditions indicating that the partial or full links to the Phase 1 extension of Houmoed Avenue are essential for the internal road network in the study area to accommodate the 2028 development scenario. In addition, Lekkerwater Road and Houmoed Avenue will also operate at capacity conditions. The Ou Kaapse Weg to the north of Noordhoek Road will operate at well over capacity conditions.
- 3.7.8. As indicated by the CoCT, the comments submitted by Mr Lijnes were considered but there is a difference of opinion in respect to his conclusions.
- 3.7.9. With respect to the independence of HHO Engineers, the CoCT has confirmed that while the study was commissioned by the CoCT, the assessment reflects HHO's findings, which are independent findings (outside of the CoCT's in-house traffic engineering capacity).

### 3.8. **Alternatives:**

- 3.8.1. The No-Go option was clearly detailed and assessed in the BAR. It was determined that the need and desirability and mitigatable impacts associated with the development option was considered more compelling. The No-Go option was found not to be reasonable or feasible and therefore not the best practicable environmental option.
- 3.8.2. Alternatives were considered in the context of the baseline environment, which included the existence of the road reserve in the location, the presence of the wetland, other environmental sensitivities and the extent of the adjacent urban environment.
- 3.8.3. Alternative 1 and 2 were directly compared against environmental criteria and subject to specialist assessment. This process resulted in Alternative 1 being indicated as the preferred alternative as it would have the lesser environmental impact as documented in the BAR.

### 3.9. **Property Value:**

- 3.9.1. The existence of the road reserve served as an indicator that a road may be constructed at some point in time. The realization of the possibility is therefore not considered to have an effect on the value of the property.

## 4. **AMENDMENTS/EXCLUSIONS TO THE ENVIRONMENTAL AUTHORISATION:**

**Condition E: 3** is amended as follows:

This Appeal Environmental Authorisation is granted for-

- 3.1 A period of ten (10) years, from the date of issue of this decision, during which period the holder must commence with the authorised listed activities; and
- 3.2 A period of ten (10) years, from the date the holder commenced with the authorised listed activities, during which period the authorised listed activities for the development phase, must be concluded.

**Condition E: 8** is amended as follows:

The holder must in writing, within fourteen (14) calendar days of the date of this decision notify registered interested and affected parties ("I&AP's") of –



- 8.1 The outcome of the Appeal;
- 8.2 The reasons for the decision; and
- 8.3 The date of the decision.

**Condition E: 9 & E: 10** and **Condition G.1-5** as contained in the EA are herewith removed.

5. Since I have discharged my decision-making powers when making the decision, I am *functus officio* in this regard. My decision is final and your only recourse, should you still be aggrieved by my decision, is to apply to the Western Cape High Court to review my decision.

Your interest in the future of our environment is appreciated.

Yours faithfully,



ANTON BREDELE  
**WESTERN CAPE MINISTER OF LOCAL GOVERNMENT,  
ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING**

**DATE:** 18/9/2020

Copied to:

1. Directorate Development Management

(Zahir Toefy)

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**REFERENCE NO: 14/3/1/A6/86/0455/20**

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Dear Mr van der Spuy

**APPEAL LODGED IN TERMS OF SECTION 43(2) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998) AGAINST THE ENVIRONMENTAL AUTHORISATION GRANTED FOR THE PROPOSED PHASE 1 EXTENSION OF HOUMOED AVENUE SUNNYDALE**

Your appeal lodged against the Environmental Authorisation ("EA") granted 22 November 2019 for the above proposed development, refers.

After careful consideration of the appeal, as well as supporting documentation received, I have decided in terms of section 43(6) of the *National Environmental Management Act, 1998*, ("NEMA") to dismiss the appeal and confirm the decision of the competent authority granted on 22 November 2019.

Attached herewith please find a copy of the letter issued to the Applicant containing the reasons for my appeal decision.

Yours faithfully,



ANTON BREDELL  
MINISTER OF LOCAL GOVERNMENT,  
ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING

DATE: 18/9/2020