



REFERENCE: 14/3/1/A5/55/0351/18

The Director
Department of Transport and Public Works
P.O. Box 2603
CAPE TOWN
8000

Attention: Mr A. November

Tel: (021) 483 0536

Fax: (021) 483 2205

Email: Azni.November@westerncape.gov.za

Dear Sir

APPEALS 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 UPGRADE OF MAIN ROAD 191 (R45) BETWEEN PAARL AND FRANSCHHOEK ON PORTIONS 36, 47, 48, 50, 54 AND 56 OF THE REMAINDER OF FARM NO. 832, PAARL

1. The two Appeals lodged against the Environmental Authorisation ("EA") issued on 9 March 2018 and the Additional Information received on 12 November 2019, refer.
2. After careful consideration of the Appeals, as well as supporting documentation received, in terms of Section 43(2) of the *National Environmental Management Act, 1998 (Act No. 107 of 1998)* ("NEMA") and Regulation 7(3) of the 2014 National Appeal Regulations, I have decided to dismiss the two Appeals and confirm the decision of the competent authority granted on 9 March 2018.
3. The EA and the conditions under which the authorisation was granted must be complied with.
4. **AMENDMENTS/EXCLUSIONS TO THE ENVIRONMENTAL AUTHORISATION:**
The abovementioned EA must be complied with and the following exclusions/amendments must be implemented:
 - 4.1. Condition E8 and Section G of the abovementioned EA is excluded from this authorisation.
 - 4.2. The following are substituted and must be complied with:

Section E: Conditions of Authorisation

Condition E2:

"The holder must commence with the listed activities on within a period of five (5) years from the date of issue of this Appeal Environmental Authorisation."

Condition E7:

"The holder of the authorisation must in writing, within 12 (twelve) calendar days of the date of the appeal decision notify all registered Interested and Affected Parties ("I&APs")–

7.1 The outcome of the appeal;

7.2 The reasons for the appeal decision; and

7.3 The date of the decision."

Condition E9:

"The Amended Environmental Management Programme ("EMPr") submitted with the Additional Information Report during this Appeal process is hereby approved and must be implemented."

5. **REASONS FOR THIS APPEAL DECISION:**

The reasons for dismissing the Appeals and confirming the EA are contained in the EA. Below find further reasons for dismissing the Appeals and confirming the decision of the competent authority:

Cultural heritage

5.1. Regulation 3(1) of Appendix 1 of the 2014 EIA Regulations states that "[a] basic assessment report ["BAR"] must contain the information that is necessary for the competent authority to consider and come to a decision on the application, and must include...

(v) the impacts and risks identified for each alternative, including the nature, significance, consequence, extent, duration and probability of the impacts, including the degree to which these impacts—

(aa) can be reversed;

(bb) may cause irreplaceable loss of resources; and

(cc) can be avoided, managed or mitigated...

(vii) positive and negative impacts that the proposed activity and alternatives will have on the environment and on the community that may be affected focusing on the geographical, physical, biological, social, economic, heritage and cultural aspects;"

5.2. To meet the requirements of the applicable legislation, a BAR which contained an investigation of the potential consequences or impacts of the alternatives to the activity on the environment was submitted, stating *inter alia* the following:

Preferred Bridge Location Alternative (previously known as Alternative 3)

5.2.1. The preferred bridge location alternative involves the construction of a new two-lane road-over-rail bridge to acceptable geometric standards approximately 250m east of the existing bridge and intersecting with the existing MR189 (R101) and MR214 intersection, to accommodate both north and south bound traffic. The proposed bridge would pass over the existing railway line which would prevent the vertical clearance issues and ensure that the road is high enough and out of danger from potential flooding. This is considered the preferred option from a hydraulic and geometrical point of view with the provision being made for a new road over river bridge with 3 spans of 8,1m, 10,6m and 8,1m respectively orthogonal to the Van Wyks River, to accommodate the design flood. The bridge size was determined by the evaluation of the 1: 50-year recurrence interval flood line. This was done not to adversely affect the existing property owner downstream of the historical bridge for this recurrence interval flood.

- 5.2.2. A new 2 / 3,0m x 1,8m in-situ concrete culvert is proposed at km 0,316 to drain the low point against the proposed road fill.
- 5.2.3. No alterations to the existing historical bridge are proposed which will remain to accommodate traffic as a lower order road. While numerous aspects were considered in terms of the viability of the section of the MR191 that would no longer be required, in terms of this proposal, the following was concluded and would be implemented should this alternative be authorised:
- 5.2.3.1. Access will be allowed from the 'discarded' section of the MR191 directly onto the proposed Service Road parallel to MR189.
- 5.2.3.2. Maintenance will be undertaken on a regular basis with regards to ensuring that the culverts under the historical bridge are cleared of any debris.
- 5.2.3.3. A service road will be constructed along the southern side of the MR189 for all accesses along this strip to feed into the new access point proposed along the MR189 to improve the safety aspects of the road. The service road will have access to MR191 and MR189.
- 5.2.4. Furthermore, this alternative will involve the expropriation of the portion of land required for the proposed bridge and road realignment. The landowners that will be affected are: Portion 48 of the Remainder of Farm 832, Portion 36 of the Remainder of Farm 832, Portion 47 of the Remainder of Farm 832, Portion 50 of the Remainder of Farm 832, Portion 54 of the Remainder of Farm 832 and Portion 56 of the Remainder of Farm 832. The expropriation of land is a separate legal process that follows the standard procedures as set out in the *Road Ordinance, 1976 (Ordinance No. 19 of 1976)*, the *Expropriation Act, 1975 (Act No. 63 of 1975)* and the Constitution of the Republic of South Africa, 1996. The rights of each South African citizen are protected in our country's Constitution. In terms of the Constitution, the expropriation process must be "just and equitable" in every way. The expropriation process involves the appointment of an independent evaluator to determine the value of the land expropriated as well as to assess whether the expropriation has any negative effect on the remainder of the affected properties. The landowner will therefore be compensated at 100% of the value of the land required for the road reserve as well as in respect of any negative impact which the expropriation and associated activities (within the road reserve) will have on the remainder of the property. The owner will further also be compensated in respect of any actual financial losses suffered as a direct result of the expropriation, if such losses can be proven. This process is separate and independent of the EIA process.
- 5.2.5. A Heritage Practitioner has been appointed to ensure that the upgrading of the MR191 adheres to the NHRA. In response to a Notification of Intent to Develop ("NID") submitted to HWC, (reference 1109285B30), HWC stated that no further heritage studies were required. A submission was also made to the South African Heritage Resources Agency ("SAHRA") and a letter dated 23 May 2013 was received from the professional officer, Sonja Warwich-Stemmet stating that the SAHRA Built Environment Committee ("BELCOM"), supports the recommendations of the heritage practitioner that the road widening would have a low impact on heritage resources (SAHRA reference 9/2/084/181).
- 5.2.6. Since then a letter was written to HWC (Andrew Hall and Calvin van Wijk) and SAHRA (Greg Ontong) dated 23 May 2013 with supportive documentation indicating the amendments to the road alignment and concluding that there would be no heritage impact. The recommendation was made that SAHRA

comment to HWC, in terms of the Memorandum of Agreement, that the realignment of the portion of the road would have no heritage impact, that no further heritage analysis is required and that the road widening may proceed. This submission was uploaded onto South African Heritage Resources Information Systems on 30 May 2013. In the absence of any response to the contrary it can be assumed, as per Section 24O of the NEMA, that the heritage authorities concur with the recommendations of the heritage consultant.

- 5.3. A public participation process was conducted with the identified I&APs including landowners and occupiers of land adjacent to the site, the ward councillor, local and district municipalities, local ratepayers, environmental associations or interest groups, relevant Organs of State and relevant State Departments.
- 5.3.1. The public participation process entailed the following:
 - 5.3.1.1. Notification of potential I&APs of the draft BAR that was available for comment.
 - 5.3.1.2. Letter drops, where possible, were undertaken to inform occupiers of the site and adjacent owners about the proposed development.
 - 5.3.1.3. The project was advertised in the "Paarl Post", "Eikestad Nuus" and "Die Burger" newspapers on 10 August 2017.
 - 5.3.1.4. Notices were placed on site informing the public about the EIA process.
 - 5.3.1.5. State Departments were given a copy of the report and were requested to comment.
 - 5.3.1.6. A copy of the draft BAR was made available at the Paarl and Pniel Public libraries, as well as on Doug Jeffery Environmental Consultants' website (www.dougjeff.co.za), the EAP ("EAP") appointed to undertake the EIA process.
 - 5.3.1.7. The Draft BAR and EMPr were made available for a 30-day commenting period to all potential I&APs, State Departments and Local Authorities, from 10 August 2017 to 11 September 2017.
 - 5.3.1.8. An Open House Meeting was held on 29 August 2017 where during this commenting period information regarding the project was presented in a poster format. Engineers and Consultants were present to answer any queries raised by those attending the meeting.
 - 5.3.1.9. All comments received during the commenting period were summarized and responded to in the form of a comments and responses table appended to the BAR.
- 5.4. In terms of the description and assessment of the significance of impacts prior to and after the implementation of mitigation measures, the EAP identified that the proposed development will result in the loss of land, traffic noise and impact on the sense of place and the safety and security of the adjacent landowners.
- 5.5. The EAP stated in the BAR that:
 - 5.5.1. Traffic related noise impacts: Mr Harman indicated that there is already an existing road so this was not regarded as a major issue.
 - 5.5.2. Loss of land: There will be some land taken. However, this loss can be addressed through compensation at market related prices. Compared to Alternative 3, the loss of land is minimal.
 - 5.5.3. Enhanced value of property: Mr. Harman indicated that the area has been identified for light industrial development. Alternatives 1 and 2 would result in corner plots for both Mr. Harman and Mr. Kock, which according to Mr. Harman, have a higher market value.

- 5.5.4. Safety and security: Mr. Harman indicated that the maintenance of an existing, operational road along his northern boundary would be preferable to a closed, open space that has the potential to attract vagrants. The proposal intended to keep the road open to enable pedestrians to access the R 101 would increase the security risk to his property. Alternative 3 involves maintaining public access along the existing road that passes under the railway bridge. Mr. Harman believes this will create potential safety and security problems for him and Mr. Kock.
- 5.5.5. In summary, Mr Harman believed Alternatives 1 and 2 posed the least impact on the environment.
- 5.5.6. Based on the findings of the SIA the potential social impacts associated with Alternatives 1 and 2 are limited.
- 5.5.7. Alternative 3 requires the expropriation of land belonging to Mr Adams, his sister, Ms Denise Adams, and Mr Jaco de Villiers. The land that will be affected is located to the north east of the MR191 and east of the railway line.
- 5.5.8. The current sense of place can be described as rural. Alternative 3 will also impact on the residents of Adamsvale. The social impacts associated with Alternative 3 include:
- 5.5.8.1. Loss of land: Land belonging to Mr Adams and his sister will have to be expropriated to construct Alternative 3. The loss of land can be offset by compensation at market related prices. Based on the findings of the SIA, Mr Adams and his family, have lived in the area for over 40 years. They also acquired ownership of the land despite the restrictions placed on land ownership by the Apartheid laws prior to 1994. The value that Mr Adams and his wife attach to the property is therefore more than just a monetary value.
- 5.5.8.2. Impact on the current quiet, rural sense of place: The impacts associated with the raised road would include traffic noise impacts, visual impacts and safety impacts associated with pedestrians accessing his property off the road. Due to the raised nature of the road the noise impacts are likely to be more noticeable. The traffic noise impacts are likely to be exacerbated by the acceleration and braking associated with heavy vehicles along the section of Alternative 3 that cross the railway line. It may be possible to mitigate the traffic noise and safety impacts by constructing noise barriers and fencing along the road. However, it will not be possible to mitigate the impact of the road in the current, quiet rural sense of place associated with the property.
- 5.5.9. Impact on Adamsvale: The dwellings in Adamsvale are located within 60 meters of Alternative 3.
- 5.5.10. The impacts on the residents living in these dwellings will be similar to those experienced by Mr Adams.
- 5.5.11. Impact on property values: The establishment of Alternative 3 will impact negatively on the value of the property owned by Mr Adams and his sister. While they will be compensated for the land that is expropriated, the construction of the raised road will impact on the value of the remaining sections of the land that are not directly affected by Alternative 3. This will be linked to traffic noise, safety and visual impacts associated with the raised road on one's doorstep.
- 5.5.12. Environmental justice / discrimination: The social impacts associated with Alternative 3 raises potential environmental justice / discrimination issues. Environmental justice / discrimination refers' to a situation where historically disadvantaged and or minority groups are exposed to environmental impacts.

However, as indicated above, based on the findings of the report prepared by Worley Parsons (October 2014) Alternative 3 is the only technically viable option. The directly affected landowners have also indicated that they are willing to consider fair compensation for the loss of land.

5.5.13. No-go: There is no impact as it maintains the current status quo. However, the benefits associated with the road upgrade would be forgone.

5.6. In the Comments and Responses Report, the EAP responded that:

5.6.1. The SIA notes that based on the Worley Parsons Report (October 2014) Alternatives 1 and 2 were found to be technically unsuitable due to flooding issues associated with the Van Wyks River. Alternative 3 is therefore the only technically feasible alternative for dealing with the flooding issues associated with the Van Wyks River. The SIA also notes that the most significant social impacts will be associated with Alternative 3, specifically the impact on the properties owned by the Adams family. The impacts include:

5.6.1.1. Impact on Adamsvale: The dwellings in Adamsvale are located within 60 metres of Alternative 3. The impacts on the residents living in these dwellings will be the same as those experienced by Mr Adams.

5.6.1.2. Impact on property values: The establishment of Alternative 3 will impact negatively on the value of the property owned by Mr Adams and his sister. While they will be compensated for the land that is expropriated, the construction of the raised road will impact on the value of the remaining sections of the land that are not directly affected by Alternative 3. This will be linked to traffic noise, safety and visual impacts associated with the raised road on one's doorstep.

5.6.2. The SIA also highlights the issues associated with environmental justice/discrimination issues, specifically noting that *"The social impacts associated with Alternative 3 raises potential environmental justice / discrimination issues. Environmental justice / discrimination refers' to a situation where historically disadvantaged and or minority groups are exposed to environmental impacts."*

5.6.3. The Impact Statement of the SIA notes that *"The findings of the SIA indicate that the social impacts associated with Alternative 3 can be addressed if acceptable compensation can be agreed with the affected landowners"*. This also implies that the social impacts cannot be effectively mitigated if agreement cannot be reached regarding what constitutes *"acceptable compensation"*.

5.6.4. Based on their discussions they were led to understand that compensation would be considered if it were sufficient. In this regard, the SIA clearly states that *"that the social impacts associated with Alternative 3 can be addressed if acceptable compensation can be agreed with the affected landowners"*. As such, if an agreement on what constitutes *"acceptable compensation"* cannot be achieved, then the social impacts associated with Alternative 3 cannot be effectively addressed.

5.6.5. The SIA highlights the significance of the value of the land to the Adams family.

5.6.6. The SIA highlights the impact on the quiet, rural sense of place, noting that the establishment of the raised road approximately 70 m in front of Mr Adams' house will have a significant impact on his current quality of life. The impacts associated with the raised road would include traffic noise impacts, visual impacts and safety impacts associated with pedestrians accessing his property off the road. Due to the raised nature of the road the noise impacts are likely to be more noticeable. It may be possible to mitigate the traffic noise and safety impacts by constructing noise barriers and fencing along the road. However, it will not be possible to

- mitigate the impact of the road in the current, quiet rural sense of place associated with the property.
- 5.6.7. There will be discussions relating to what would constitute fair and reasonable compensation. As indicated above, if an agreement on what constitutes “acceptable compensation” cannot be achieved, then the social impacts associated with Alternative 3 cannot be effectively addressed.
 - 5.6.8. The SIA highlights the impact on sense of place of the area. In this regard, the SIA notes that “it will not be possible to mitigate the impact of the road in the current, quiet rural sense of place associated with the property”.
 - 5.6.9. The mitigation measures for Alternative 3 note that the design must ensure that the current access for the dwellings located in Adamsville to the MR191 must be maintained. This access also enables residents of Adamsville to access Mr Adams’ shop. The road engineers have indicated that an underpass will be constructed which will enable vehicular and pedestrian access.
 - 5.6.10. The SIA comments on the impact of the residents of Adamsville, noting that “the dwellings in Adamsville are located within 60 metres of Alternative 3. The impacts on the residents living in these dwellings will be the same as those experienced by Mr Adams”.
 - 5.6.11. The process of discussing compensation falls outside the scope of the SIA. However, based on the findings of the SIA, if “acceptable compensation” cannot be achieved, then the social impacts associated with Alternative 3 cannot be effectively addressed.
 - 5.6.12. The current MR191 is an operational road that runs past the northern boundary of Mr Harman’s property. Pedestrians also use this section of road. In terms of the upgrade this section of the road will remain open to traffic and pedestrians. However, the volume of traffic will be reduced. There is therefore likely to be no “loss of privacy” given that the existing conditions will not change.
 - 5.6.13. The SIA Report was completed in 2015. Detailed interviews were undertaken as part of the SIA process. The authors believe the issues and concerns raised remain valid.
 - 5.6.14. As indicated above, the current MR191 is an operational road that runs past the northern boundary of Mr Harman’s property. Besides the reduced volume of traffic, the proposed upgrade is unlikely to result in a significant change in the current status quo. In addition, the SIA does recommend that security fencing be provided along the boundary of Mr Harman’s property.
- 5.7. The Department of Arts and Culture’s SAHRA commented (final comment) on 18 December 2014 that:
 - 5.7.1. A series of landscape plans were submitted to address heritage issues that were identified.
 - 5.7.2. The road widening proposal makes provision for a diversion around the 1860 railway bridge, which is identified as a heritage resource of considerable significance.
 - 5.7.3. Detailed design related to operational requirements related to clearance over the railway line, the need to ensure the conservation of the physical fabric of the bridge and the cognisance of the flood line have necessitated the realignment of the road some 50m eastwards.
 - 5.7.4. The realignment from the SAHRA approved plans will have no heritage impact. There are only two structures within the proposed road reserve; a concrete block shed and an unfurnished labourer’s cottage, which are of no heritage significance.

- 5.7.5. In principle the SAHRA, supports the above recommendations set in the above document. On condition that, should any materials be found during construction, all works should cease until proper evaluation of the resources is conducted to ensure that significance of the heritage resources on site is not compromised. Allied to this, all work should be guided by the principles which are set out in the conclusion of the document.
- 5.8. HWC also commented on 3 October 2011 that:
 - 5.8.1. An application is made for the widening of a 9.6 km long road running through a cultural landscape.
 - 5.8.2. The proposal is to increase the road lanes by 70 cm to 3.7m wide with 2m wide shoulders.
 - 5.8.3. All historical structures are set back from the road expansion which is within the existing road reserve.
 - 5.8.4. No further heritage studies are required.
- 5.9. The potential negative impacts associated with Alternative 3 on the affected property owners can be mitigated. However, successful mitigation would be dependent upon acceptance of compensation by the affected landowners. In terms of compensation the following recommendations are made:
 - 5.9.1. A meeting must be held with the property owners affected by Alternative 3 to inform them that Alternative 3 is the only viable technical option.
 - 5.9.2. The affected landowners must also be informed of the process associated with the expropriation process. In this regard expropriation is a separate legal process that follows the standard procedures as set out in the *Road Ordinance Act, 1976 (Act no. 19 of 1976)*. The rights of each South African citizen are protected in our country's Constitution as everyone has "*the right to administrative action that is lawful, reasonable and fair*" which must apply to the process of expropriation. The expropriation process involves an independent evaluator who is appointed to assess the value of the property required for expropriation. The evaluator will assess the property and determine the value of the property. The landowner will be compensated for 100% of the value of the land required for the road reserve. Furthermore, the evaluator will assess the impact of the expropriation and activities associated with the road on the remainder of the property. Must the evaluator find that the remainder of the property is negatively affected the landowner will also be compensated accordingly, depending on the level of impact as determined by the evaluator.
 - 5.9.3. Based on the findings of the SIA the option of paying compensation of the entire property, not just the section affected by the road corridor, must be discussed. This is due to the negative impact that the establishment of a raised road along Alternative 3 will have on the future value of the affected properties. This information must also be conveyed to the affected property owners.
 - 5.9.4. Noise barriers must be established along the section of Alternative 3 (new diverted road portion). The design of the noise barriers must be informed by the recommendations contained in the report prepared by the noise specialist (Jongens Keet Associates dated 2 August 2013).
 - 5.9.5. The embankment must be landscaped to screen the road. The landscape plan prepared by CNdV must be implemented.
 - 5.9.6. The road must be fenced off to prevent pedestrians from accessing the properties located adjacent to the road.
 - 5.9.7. The design of Alternative 3 must ensure that the current access for the dwellings located in Adamsvale to the MR191 is maintained. This access also enables

- residents of Adamsville to access Mr Adams' shop. The road engineers have indicated that an underpass will be constructed which will enable vehicular and pedestrian access.
- 5.9.8. The location of the service road adjacent to the R101 must be illustrated in the Draft BAR for comment.
- 5.10. In the reasons for the decision it is stated that:
- 5.10.1. *"... the proposed upgrade will result in both negative and positive impacts. The negative impacts are related to access to properties and the expropriation of land that is required for the realignment of the northern section of the MR191. The proposed realignment will unavoidably impact on the sense of place and the property value of the land and the rural residential settlement in this vicinity, however, the preferred realignment is the only technically feasible alternative when considering the closeness of the existing alignment, avoiding traffic issues related to flooding, the preservation of a heritage resource, the number of landowners that will be affected, the land use of the affected properties, construction times associated with each alignment and the cost of constructing the realigned road along a different route. All these factors have been taken into account when assessing the proposed upgrading and realignment of the MR191..."*
- 5.10.2. *"There will be severe negative social impacts on the Adamsville settlement."*
- 5.11. In terms of the **"General requirements for EAPs and specialists"** regulation 13 of the 2014 EIA Regulations states that: ... (2) *In the event where the EAP or specialist does not comply with subregulation (1)(a), the proponent or applicant must, prior to conducting public participation as contemplated in chapter 6 of these Regulations, appoint another EAP or specialist to externally review all work undertaken by the EAP or specialist, at the applicant's cost."*
- 5.12. Considering the above, there are no reasonable grounds to believe that the EAP and specialists were not independent. Therefore, no independent review of the EIA process and specialist studies is required as independent (not originally involved on the matter), qualified and experienced officials of the Competent Authority conducted a review of the EIA process afresh as required in terms of Section 43(2) of the NEMA and made an informed recommendation to the Appeal Authority.

Public Participation

- 5.13. In terms of Regulation 41 of the 2014 EIA Regulations a 30 days public participation process must be conducted to provide an opportunity to the I&APs to submit comments on the proposed development and:
- "The person conducting a public participation process ... must give notice to all potential interested and affected parties of an application or proposed application which is subjected to public participation by—*
- (a) fixing a notice board at a place conspicuous to and accessible by the public at the boundary, on the fence or along the corridor of—*
- (i) the site where the activity to which the application or proposed application relates is or is to be undertaken; and*
- (ii) any alternative site;*
- (b) giving written notice, in any of the manners provided for in section 47D of the Act, to—*
- (i) the occupiers of the site and, if the proponent or applicant is not the owner or person in control of the site on which the activity is to be undertaken, the owner*

or person in control of the site where the activity is or is to be undertaken and to any alternative site where the activity is to be undertaken;

(ii) owners, persons in control of, and occupiers of land adjacent to the site where the activity is or is to be undertaken and to any alternative site where the activity is to be undertaken;

(iii) the municipal councillor of the ward in which the site and alternative site is situated and any organisation of ratepayers that represent the community in the area;

(iv) the municipality which has jurisdiction in the area;

(v) any organ of state having jurisdiction in respect of any aspect of the activity; and

(vi) any other party as required by the competent authority;

(c) placing an advertisement in—

(i) one local newspaper; or

(ii) any official that is published specifically for the purpose of providing public notice of applications or other submissions made in terms of these Regulations;

(d) placing an advertisement in at least one provincial newspaper or national newspaper, if the activity has or may have an impact that extends beyond the boundaries of the metropolitan or district municipality in which it is or will be undertaken: Provided that

this paragraph need not be complied with if an advertisement has been placed in an

official referred to in paragraph (c) (ii);...

- 5.14. The public participation process conducted to meet the requirements of Regulation 40 of the 2014 EIA Regulations is detailed under Annexure 2 of the reasons for the EA decision.
- 5.15. It is also concurred with the Applicant's Responding Statement with regards to the following:
- 5.15.1. 3 large site notices were placed along the affected road section. Refer to Appendix F5 of the BAR for proof and location of these notices.
- 5.15.2. English and Afrikaans adverts were placed in the "Paarl Post", "Eikestad Nuus" and "Die Burger" newspapers.
- 5.15.3. A letter drop was undertaken to all those living along the affected section of the road.
- 5.15.4. Letters were sent to landowners adjacent to the road and were asked to notify their tenants.
- 5.15.5. The public was invited to attend the Open House meeting where they could hold discussions with the consultants on the team. The meeting was held at Simondium Primary School since it was considered a suitable venue along the proposed route.
- 5.15.6. Meetings were held with the Appellants.
- 5.15.7. It must be referred to Appendix F of the BAR for proof of the public participation process that was conducted to meet the requirements of the applicable legislation.
- 5.16. The public participation notification letters stated, *inter alia*, that:
"Furthermore, please can occupiers/tenants who receive this letter who are not the land owners, inform the land owners and landowners who receive this letter and have tenants, please inform their tenants and/or provide Doug Jeffery Environmental Consultants (DJEC) with the necessary contact numbers.
I&APs who are unable to read or write or who otherwise need special assistance to state their views on the proposal, may, by appointment (during office hours)

request a member of Doug Jeffery Environmental Consultants to assist them to record their comments or objections."

- 5.17. It is therefore concurred with the Applicant's Responding Statement that:
- 5.17.1. The HWC Record of Decision dated 3 October 2011 stated that no further studies were required. There was thus no requirement for a heritage impact assessment in terms of Section 38 (3) of the NHRA.
- 5.17.2. There was no heritage report done since HWC indicated that no further studies were required.
- 5.18. As indicated above, the SIA does highlight the impact of the project on the land owned by the Adams family and residents of Adamsville, specifically the impact on rural, quiet, sense of place. The SIA also notes that it will not be possible to effectively mitigate these impacts.
- 5.19. During this Appeal process, the Additional Information Report was circulated to the Registered I&APs and Appellants to provide comments prior to the submission of the information for decision-making. During this PPP, the following comments were, amongst others, raised:
- 5.19.1. The reports issued by the EAP repeatedly refer to the railway bridge as a heritage resource of significant value. It is merely confirmed that bridge is protected as any other building of a similar nature, but this does not infer that the bridge has significant heritage value.
- 5.19.2. In the Comments and Responses Report submitted during this Appeal process, it is responded as follows:

Heritage status of the bridge

5.19.2.1. The Heritage Impact Specialist, Nicolas Baumann Urban Conservation and Planning, responded that:

5.19.2.1.1. The original Notification of Intention to Develop ("NID") in terms of Section 38 of the NHRA was submitted to HWC in September 2011. The NID identified the bridge as a heritage resource. In a Final Comment dated 3 October 2011, HWC endorsed the findings and recommendations of the NID and stated that no further heritage studies were required.

5.19.2.1.2. Similarly, in a Final Comment dated 18 December 2018 SAHRA quoted the statement that the bridge has been identified as a heritage resource of considerable significance and endorsed the findings and recommendations of the submission made.

5.19.2.1.3. In their statement dated 17 December 2014, it is stated "*it is my contention, as the author of the Drakenstein Heritage Survey... that the bridge is a heritage resource and that any application for demolition would not be supported by the heritage authority.*"

5.19.2.2. The fact that the bridge was not included in the heritage inventory is regarded as an omission and will have to be rectified. It is held that in a survey of over 2000 structures there are bound to be omissions. The survey cannot be regarded as a final and definitive statement of heritage significance.

5.19.2.3. The statement of significance states that significance resides in:

5.19.2.3.1. Its status as a component of the first railway line to the interior of the Cape colony, extending from Cape Town to Wellington.

- 5.19.2.3.2. The association with the Anglo Boer War and the related block of houses along the railway line.
- 5.19.2.3.3. The association with W.G. Brounger, railway engineer and later General Manager of Cape Government Railways who was also involved in the construction of the Hex River railway line.
- 5.19.2.4. The heritage consultant has been consistent in the identification of the bridge as a heritage resource and this has been supported both by HWC and SAHRA. The statement made by the Appellant that the bridge does not have significant heritage status it is not supported by any evidence and is strongly disputed. The fact that it is not registered does not mean it has no significance. There are substantial numbers of heritage resources that do not appear on any heritage register. The fact that it was not included in the Drakenstein Heritage Survey is an omission which will be rectified.
- 5.19.2.5. It is concluded that the bridge has considerable heritage significance and should be graded 3B heritage status.
- 5.19.3. On 23 April 2019, HWC confirmed that the bridge is protected in terms of Section 34 of the NHRA being older than 60 years and will be subject to an Application for a Permit.
- 5.19.4. In terms of the statement that it is not only the heritage value of the bridge but more about flooding, it is responded *inter alia* as follows:
 - 5.19.4.1. The reason for mentioning the other factors relevant to the existing railway bridge is that it is the sum of all the factors that in this option, crossing below the railway line and over the Van Wyks River at this location, not being viable.
 - 5.19.4.2. It is not the only heritage value of the bridge that needed to be considered. Other options such as the lowering of the road for the clearance required for heavy vehicles will increase the risk of frequent flooding potential by the Van Wyks River onto the road. The raising of the railway line, which will result in closure of the line for longer periods, is not viable due to it being the main route between Cape Town and the central and northern portions of the country and passengers and freight, being moved frequently on this line.
 - 5.19.4.3. The bridge is inadequate to cater for future traffic (especially large vehicles), the safety of the public and the flooding at the Van Wyks River culverts. The flooding risk at the Van Wyks River culverts below the Heritage Railway Bridge has been detailed in the Van Wyks River: Report on Hydrology, Hydraulics and Floodlines. Visual evidence of large vehicles connecting with the Railway bridge can also be observed on the bridge soffit. These reasons and future traffic predictions from traffic studies make the current alternative unsafe. Traffic studies indicated the poor level of service which will become worse as traffic in the area increases.
 - 5.19.4.4. On 7 May 2019, a large truck collided with the bridge soffit at the same position where the bridge has previously been repaired.
- 5.19.5. The original 1860 bridge was a rail over the river bridge. The road was later constructed with very limited options for drainage due to the toe vertical clearance required. The limited vertical height between the railway line and the river invert will remain problematic, even if the heritage bridge is demolished. The

river invert cannot be lowered due to the already flat invert slope and the downstream control in the river.

- 5.19.6. Railway lines are constructed with gradual gradients which will result in the raising of the line over a long distance, which in turn will result in the existing fill embankment being raised and widened with subsequent increase in the railway embankment footprint. The centre lines of the two railway lines are only 4m apart and according to the Transnet E7/2 Specification for works on, over, under or adjacent railway lines and near high voltage equipment, a contractor shall not carry out any work nearer than 3m from the centre line of an active railway line. Therefore, it will not be possible to work on one railway line while the other is active. The formation below the railway line will also need to be constructed. The only option would be to build a new railway line parallel to the existing one at a safe offset, thereby further increasing the railway fill embankment footprint. South of the existing MR191 railway bridge the Van Wyks River runs adjacent and parallel to the railway line for 200m between the railway fill embankment and the private property boundaries. Increasing the fill embankment footprint railway will result in diverting the Van Wyks River towards private properties. On the opposite side the Satchwell industrial buildings are situated on the boundary of the railway reserve at the toe of the existing fill embankment. North of the existing MR191 rail bridge the Drakenstein Municipality electricity substation and on the opposite side of the shop and the main house of the Adams family are all situated at the toe of the existing railway embankment. Any widening of the railway embankment will negatively affect two or more of these listed properties while also potentially severely affecting the Transnet operations. Therefore, the option of raising the railway are deemed not feasible and was not investigated further.

Comments on information submitted to the Competent Authority dated 9 March 2018

- 5.19.7. The expropriation costs included in the non-beneficial cost estimate is the potential expropriation costs for each of the options. Expropriation costs will be at a fair value as calculated by an independent valuator. This will take into consideration the mitigation measures proposed in the SIA study.
- 5.19.8. The expropriation costs for these alternatives are dependent on the existing zoning of the properties along the realigned routes. If these properties have been zoned for development, expropriation costs might be much higher.
- 5.19.9. The approximate expropriation cost is an estimate of what this cost might amount to but does not take the mitigations proposed in the SIA study into account. This need to be determined by an independent valuator. The expropriation at the Adams family is not simply the value of the property, but also the impact on their shop and lifestyle.
- 5.19.10. The Social Impacts Specialist, as previously responded to the Appeal by the Adams family states that:
- 5.19.10.1. The SIA highlights the potential impact on the sense of place and notes that the property was acquired under difficult circumstances during the apartheid era. In this regard, Section 4.4.3 of the SIA, Comparison of Social Impacts of Alternatives 1, 2 and 3, states the following:
- 5.19.10.1.1. Impact on the current quiet, rural sense of place: The establishment of a raised road of approximately 70m in front of Mr Adams' house will have a significant impact on his current quality of life. The impacts associated with the raised road would include traffic noise impacts,

visual impacts and safety impacts. Due to the raised nature of the road the noise impacts are likely to be more noticeable. The traffic noise impacts are likely to be exacerbated by the acceleration and braking associated with heavy vehicles along the section of Alternative 3 that cross the railway line. It may be possible to mitigate the traffic noise and safety impacts by constructing noise barriers and fencing along the road. However, it will not be possible to mitigate the impact of the road in the current, quiet rural sense of place associated with the property.

5.19.10.1.2. Based on the findings of the SIA Mr Adams and his family have lived in the area for over 40 years. They also acquired ownership of the land despite the restrictions placed on the land ownership by the apartheid laws prior to 1994. The value that Mr Adams and his family attach to the property is therefore more than just monetary value.

5.19.10.1.3. The directly affected landowners have indicated that they are willing to consider compensation for the loss of land and the associated impact on their quality of life. The SIA does not therefore state that the affected landowners are willing to accept compensation, merely that they are willing to consider it as an option. In this regard, the SIA notes that successful mitigation of the impact associated with Alternative 3 on the affected landowners is dependent upon the acceptance of compensation by the affected landowners. If compensation is not acceptable to the affected landowners then the significance of the social impacts associated with Alternative 3 remain high negative.

5.19.10.1.4. In terms of compensation, the following recommendations are made:

- A meeting should be held with the property owners affected by Alternative 3 to inform them that Alternative 3 is the only viable technical option.
- The affected landowners should also be informed of the process associated with the expropriation process. In this regard expropriation is a separate legal process that follows the standard procedures as set out in the *Road Ordinance Act, 1976 (Act No. 19 of 1976)*. The rights of each South African citizen are protected in our country's Constitution as everyone has a right to administrative action that is lawful, reasonable and procedurally fair, which must apply to the process of expropriation. The expropriation process involves an independent evaluator who is appointed to assess the value of the property required for expropriation. The evaluator will assess the property and determine the value of the property. The landowner will be compensated 100% of

the value of the land required for the road reserve. Furthermore, the evaluator will assess the impact of the expropriation and activities associated with the road on the remainder of the property. Should the evaluator find that the remainder of the property is negatively affected, the landowner will also be compensated accordingly, depending on the level of impact as determined by the evaluator.

- Based on the findings of the SIA the option of paying compensation of the entire property, not just the section affected by the road corridor, should be discussed. This is due to the negative impact that the establishment of the raised road along Alternative 3 will have on the future value of the affected properties. This information should also be conveyed to the affected property owners.

5.19.10.2. The recommendations are aimed at initiating the process for discussing the issue of compensation with the affected landowners. In this regard, the mitigation measures do not imply that compensation has been accepted by the affected landowners.

Ward Councillors

5.19.11. The EAP responded that they are not responsible for the action or non-action of ward councillors.

5.19.12. There have been significant and extensive opportunities for the surrounding community to get involved. The project has taken a significant amount of time to get to this point and there have been at least two full notification and advertising events. Site notices were displayed and newspaper advertisements were placed. Ward councillors were notified and neighbours were also notified.

5.19.13. On 27 March 2019, iX Engineers visited the Adams family property to survey the borehole position. The existence of a borehole on the property was only brought to their attention in the Appeal by the Adams family and not during the environmental and design process. The Adams family indicated the borehole position on the property and confirmed that this is the only borehole and confirmed that there is only one grave on the property. The drawing indicating the positions of the borehole and the grave on Adamsvale was submitted with the Additional Information Report.

Noise assessment and mitigation measures

5.19.14. The current grade on the existing downhill section of MR191 from the intersection with MR189 to the railway bridge, adjacent to the property of Mr Harman, is 6% and 200m long. Large trucks will have to slow down at the bottom of the hill to navigate the narrow and low opening of the railway bridge. The proposed re-aligned MR191 has a downhill section from the railway bridge to the proposed Van Wyks River bridge with a 6.5% grade over 200m. The curve is also designed for the design speed and therefore it will not be necessary to brake at the curve when vehicles are not exceeding the design speed.

5.19.15. A noise barrier may comprise any vertical structure extending parallel to a road that is continuous and with apertures and with a minimum surface mass of 24kg/m². This includes walls made of brick or concrete, metal, safety glass, Perspex, wood and earth berms or any combination of these.

- 5.19.16. It is important to note that the noise barriers are only effective if they are located close to the source of noise and/or the receptors and that the effective height of the top of the barrier is greater than 2m. Effective height is the vertical distance between where the line of sight joining noise source and receiver intersects the barrier and the top of the barrier.
- 5.19.17. The proposed vibracrete wall is 2.1m high over an area where previously was a wire fence and joins the existing 1.8m high vibracrete wall between the School of Skills and the existing MR191.
- 5.19.18. Throughout the world there is a steady increase in road traffic over the years with an associated increase in road traffic noise levels. This has already impacted on the existing residences over the past years and will continue to increase on the existing alignment in the absence of the proposed road realignment. Noise level restrictions apply to all new roads but not existing roads.
- Land ownership**
- 5.19.19. According to the social impacts specialist, Alternative 3 had the highest social impacts of all three alternatives and these impacts were linked to land loss, possible need for relocation, impact on the sense of place, noise, visual and environmental justice issues. As the SIA noted, due to these impacts the option of buying the whole property owned by the Adams family should be explored. For them to replace what they currently have they would need to be able to purchase a similar property. Hence the need for proper compensation that considers what is being lost. If the compensation that they receive allows them to achieve this, then one could argue, that this would represent an acceptable mitigation measure. If the compensation does not allow them to address the loss, then effective mitigation has not been achieved, and hence the impacts remain high negative. In this case, this issue must be considered within the context of the benefits of the overall road upgrades and the costs borne by a single landowner. The relevant authority then need to make this decision.
- 5.20. Considering the above, the public participation that was conducted met the requirements of the applicable legislation.

Notification notice of the EIA

- 5.21. In the public participation notification letters dated August 2017, it was stated, *inter alia*, that:
"Due to unforeseen delays, the previous application relating to this proposal, was withdrawn. This is a new application in terms of the EIA Regulations 2014, as amended. All Interested and Affected Parties (I&APs) are required to register in this new process, should they wish to remain informed. While the previous public participation and comments received are not included in this application, the comments have been considered and taken into account. Please note, since this is a new process, previous comments will not form record of this application and any comment must be submitted in terms of this new application."
- 5.22. The Applicant's Responding Statement therefore is concurred with as follows:
- 5.22.1. Due to delays in the process unrelated to the basic assessment process and the fact that the basic assessment process was halted and restarted, due to reasons beyond the control of the EAP, all registered I&APs were specifically requested in writing to resubmit all their comments as part of the new process to ensure that all their issues were registered in terms of the new process.
- 5.22.2. This notice is a site notice and not the letter sent to neighbours. The letter sent to the neighbours was an invitation for interested and affected parties to either

- register and/or to comment on the proposal. The letter provided details of the availability of the report which included all the information.
- 5.22.3. The site notice, newspaper advertisements and letters of notification invited all I&APs to attend the Open House Meeting where the information in the report would be presented in poster format. It was indicated that the project team would be at the meeting to answer any queries on the proposal.
- 5.22.4. Refer to Appendix F of the BAR for copies of these notices.
- 5.22.5. Where no comments are received from 'the community' does not necessarily mean they were not notified or did not understand their rights.
- 5.22.6. A public participation process was followed in terms of the NEMA and the EIA Regulations, 2014.

Faults with the process

- 5.23. In terms of the general requirements for EAPs and specialists, Regulation 13 of the 2014 EIA Regulations state that:
"(1) An EAP and a specialist, appointed in terms of regulation 12(1) or 12(2), must—
(a) be independent;
(b) have expertise in conducting environmental impact assessments or undertaking specialist work as required, including knowledge of the Act, these Regulations and any guidelines that have relevance to the proposed activity;
(c) ensure compliance with these Regulations;
(d) perform the work relating to the application in an objective manner, even if this results in views and findings that are not favourable to the application;
(e) take into account, to the extent possible, the matters referred to in regulation 18 when
preparing the application and any report, plan or document relating to the application; and
(f) disclose to the proponent or applicant, registered interested and affected parties and the competent authority all material information in the possession of the EAP and, where applicable, the specialist, that reasonably has or may have the potential of influencing—
(i) any decision to be taken with respect to the application by the competent authority in terms of these Regulations; or
(ii) the objectivity of any report, plan or document to be prepared by the EAP or specialist, in terms of these Regulations for submission to the competent authority; unless access to that information is protected by law, in which case it must be indicated that such protected information exists and is only provided to the competent authority."
- 5.24. Regulation 48 of the 2014 EIA Regulations further states that:
"(1) A person is guilty of an offence if that person—
(a) provides incorrect or misleading information in any form, including any document submitted in terms of these Regulations to a competent authority or omits information that may have an influence on the outcome of a decision of a competent authority;
(b) fails to comply with regulation 10(c);
(c) fails to comply with regulation 13(1)(f);..."
- 5.25. It is concurred with the Applicant's Responding Statement that:
- 5.25.1. The EAP has considered all issues raised by the I&APs. Furthermore, all comments and responses have been collated and were attached to the Final BAR as Appendix F11.

- 5.25.2. The EAP is not involved in any projects in the immediate vicinity of this section of the road.
- 5.25.3. The delays in the process and the fact that the basic assessment process was halted and restarted, due to reasons beyond the control of the EAP. The Applicant, the Western Cape government, was committed to conducting the process in a responsible manner and ensuring that social, environmental and technical aspects of the project are suitably covered. This resulted in a slower process.
- 5.25.4. The EIA presented the findings of the specialists and explained the proposal so that the community could comment. The impact of the road on the Adams family was never disputed in the report and in fact the impact on the Adams family is highlighted, particularly in the SIA.
- 5.25.5. Tony Barbour undertook the SIA for an amendment for the Levendal Social Housing Project, which forms part of the approved Levendal Development.
- 5.25.6. The SIA consultants who undertook the SIA, namely Tony Barbour and Schalk van der Merwe have a combined SIA experience of about 25 years. Interviews with stakeholders were held at the place of choice of the stakeholders. In this regard the interviews with Mr and Mrs Adams were held at their home at a time of their choice. The discussions were held in their language of choice, Afrikaans.
- 5.25.7. The SIA notes that *"The value that Mr Adams and his wife attach to the property is therefore more than just a monetary value"* (refer to pages 50 and 60 of the SIA). The SIA also highlights the issue of environmental justice / discrimination. Environmental justice / discrimination refers' to a situation where historically disadvantaged and/or minority groups are exposed to environmental impacts. In this regard, the SIA states that the social impacts associated with Alternative 3 raises potential environmental justice / discrimination issues.
- 5.26. Considering the above, the general requirements for EAPs and specialists specified in the applicable legislation have been complied with. The BAR contains forms signed by the EAP and the specialists declaring that they have been independent in performing the work related to this Application.

Need and desirability

- 5.27. Regulation 18 of the current 2014 EIA Regulations requires the Competent Authority to consider the need and desirability aspects of the proposed activity when an application for EA is submitted for consideration.
- 5.28. The need and desirability aspects were considered in the BAR as follows:
 - 5.28.1. This proposal involves the upgrading of the MR191 between km 0,0 at the intersection with Old Paarl Road and continues past Simondium in a south easterly direction up to km 9,57 near the intersection with Helshoogte Road (MR 172).
 - 5.28.2. The Western Cape Provincial Spatial Development Framework, 2009, ("PSDF") was approved as a structure plan in terms of Section 4(6) of the Western Cape Land Use Planning Ordinance in June 2009, and therefore has statutory status. The PSDF is a long-term planning instrument, which is to be reviewed every five years. The overarching function of the PSDF is to provide spatial planning guidance aimed at sustainable development, including social justice and equity, at provincial level. The purpose of the PSDF is to:
 - 5.28.2.1. Be the spatial expression of the Provincial Growth and Development Strategy ("PGDS").
 - 5.28.2.2. Guide (metropolitan, district and local) municipal integrated development plans ("IDPs") and spatial development frameworks

- ("SDFs") and provincial and municipal framework plans (i.e. sub-SDF spatial plans).
- 5.28.2.3. Help prioritise and align investment and infrastructure plans of other provincial departments, as well as national departments' and parastatals' plans and programmes in the Province.
 - 5.28.2.4. Provide clear signals to the private sector about desired development directions.
 - 5.28.2.5. Increase predictability in the development environment, for example by establishing no-go, conditional and "go" areas for development and redress the spatial legacy of apartheid.
- 5.29. The proposed activity involves the upgrading of the existing MR191. Transport facilities are built primarily with a view to improve existing mobility and the prime objective is to reduce user cost, i.e. vehicle running cost, accident costs and travel time. The upgrading of this road will therefore contribute to the socio-economic development of the area which is a principle of the Western Cape PSDF.
- 5.30. The study area falls largely within Ward 1 (Simondium). The applicable municipal IDP identifies the following strategic development priorities for Ward 1:
- 5.30.1. Local economic development and job creation
 - 5.30.2. Infrastructure and environment
- 5.31. In terms of ward level specific needs, the IDP lists the following for Ward 1:
- 5.31.1. Skills development, job creation, small business empowerment, sustainable projects, Youth Development, skills development and promotion of tourism.
 - 5.31.2. Street lights, clean drinking water, maintenance of roads and existing facilities, maintenance of sidewalks, traffic lights and electricity.
- 5.32. The provision of infrastructure to facilitate and sustain economic growth falls in line with the Local Municipalities policies. An investigation report was compiled by then Kv3 Engineers, on the appointment of the Department of Transport and Public Works, in 2004 into the reseal of the MR191 between km 0,00 and 41,95. At the time it was found that major structural rehabilitation of a large portion of the route can be deferred for at least 10 years on condition that proper pre-treatment prior to resealing is carried out. In 2010, Kv3 Engineers (now Worley Parsons) were once again appointed to undertake an investigation report, on behalf of the Department of Transport and Public Works, to investigate whether the MR191 between km 0,0 to km 9,57 should be upgraded.
- 5.33. Considering the above, it is concurred with the Applicant's Responding Statement that:
- 5.33.1. Traffic studies indicated the poor level of service which will become worse as traffic in the area increases.
 - 5.33.2. The flooding risk on the existing alignment has been highlighted in the Van Wyks River: Report on Hydrology, Hydraulics and Floodlines.
- 5.34. It must be referred to the Evaluation of Alignment Options Table in Appendix 1 of the BAR.

Procedural unfairness

- 5.35. The Final BAR states that:
- 5.35.1. The upgrade will take place along the same route as the existing MR191, however, a portion of the existing MR191 between km 0.0 to ± km 0.5 will be diverted to avoid the complications surrounding the historical bridge. This will be undertaken through the means of expropriation.

- 5.35.2. It must be understood however that the expropriation of land is a separate legal process that follows the standard procedures as set out in the *Road Ordinance, 1976 (Ordinance No. 19 of 1976)*, the *Expropriation Act, 1975 (Act No 63 of 1975)* and the Constitution of the Republic of South Africa, 1996.
- 5.35.3. The rights of each South African citizen are protected in our country's Constitution. In terms of the Constitution the expropriation process must be "*just and equitable*" in every way. The expropriation process involves the appointment of an independent evaluator to determine the value of the land expropriated as well as to assess whether the expropriation has any negative effect on the remainder of the affected properties.
- 5.35.4. The landowner will therefore be compensated at 100% of the value of the land required for the road reserve as well as in respect of any negative impact which the expropriation and associated activities (within the road reserve) will have on the remainder of the property.
- 5.35.5. The owner will further also be compensated in respect of any actual financial losses suffered as a direct result of the expropriation, if such losses can be proven. This process is separate and independent of the EIA process.
- 5.36. During this Appeal process, the following additional information was requested from the Applicant to inform the Appeal decision:
 - 5.36.1. Comments from the I&APs and the Appellants in terms of the additional information which was submitted to the Competent Authority to inform the EA decision subject to this Appeal.
 - 5.36.2. Comments indicating how the concerns of the Appellant, as detailed in the letters appended to their Appeal, have been addressed.
 - 5.36.3. Proof that the ward councillor/s who represent the adjacent communities along the route of the proposed development (especially Adamsvale) were notified about the proposed development.

Further concerns noted and not addressed in the environmental report

- 5.37. It is concurred with the Applicant's Responding Statement that:
 - 5.37.1. Pegging of the landfill (road fill) area was requested on 20 March 2018. The footprint of the planned road was pegged by a surveyor on 28 March 2018. Clarity was provided on 4 April 2018 that the pegged points are the toe points of the road, at the bottom of the grassed fill embankment. At previous meetings with the property owners, the design drawings, indicating the impact on their property, was displayed and discussed. The design drawings overlaid on aerial photography to provide enhanced visual clarity were displayed as posters at the Open House Meeting held on 29 August 2017 and were also attached to the BAR as Appendix F8.
 - 5.37.2. Response 29 in the Comments and Responses Report: The grave site was surveyed on 6 October 2017 after they became aware of it through the comments and responses process. The grave is not on the affected property and access to the grave will not be changed or influenced from the existing status quo. The grave is more than 40m away from road toe line and they are not changing status about access.
- 5.38. The bridge and additional drainage culverts have been sized to prevent any increase in water level for the calculated 1: 50-year flood upstream of the proposed road embankment toe. No changes have occurred in the river morphology which will influence the flood line calculation significant enough to

- justify the redoing of a flood line study. The rainfall figures used for the runoff calculations are also based on a rainfall station with reliable records.
- 5.39. The stormwater inlet is a 675mm diameter pipe discharging into the existing Van Wyks River culverts. The inlet has sufficient capacity for the 2-year recurrence interval flood and slightly less than the 5-year recurrence interval flood from the catchment draining towards it. As mentioned in the technical report "*Van Wyks River: Report on Hydrology, Hydraulics and Floodlines*" (Appendix B9 of the BAR) the existing Van Wyks River culverts start flooding MR191 from the 5-year recurrence interval flood. Therefore, a bigger inlet for the side drain will be of no use for this magnitude flood.
- 5.40. Maintenance is however important as this inlet was also partially silted up during their original site investigation.
- 5.41. The bridge and the additional drainage culverts are positioned at the topographical low points along the embankment and are sized to adequately to deal with the river flows and local stormwater runoff.
- 5.42. Sediment build-up will not increase, this is due to the bridge abutments being positioned outside the river low flow channel. Therefore, no blocking of the regular flows which is associated with slow flow velocities and which might result in sediment build up.
- 5.43. The road surface drainage will be controlled within the road kerbs and discharged 40m away from the house at the proposed new box culvert. No direct road surface stormwater will flow down the embankments in an uncontrolled manner. An open earth drain will be constructed at the bottom of the road embankment to direct the stormwater away from the existing house.
- 5.44. Any new road will result in noise levels higher than occurring prior to the road. However, the quietest road surface commensurate with civil engineering requirements is to be used. This, together with the erection of noise barriers (walls) over part of the trajectory will mitigate the levels of noise to be compliant with the stringent *Western Cape Noise Control Regulations, 2013 (Provincial Notice No. 2 of 2013)*. All mitigation measures as needed by the Noise Impacts Specialist Adrian Jongens have been put in place and approved.
- 5.45. A 1m high wall will be constructed as part of the bridge 10m past the residence that will be at the foot of the high fill.
- 5.46. The area is situated adjacent to the Van Wyks River low flow channel and is currently at considerable risk of being flooded and is not ideally suited for human habitation. There will however be a 3m wide maintenance area between the proposed eastern road embankment toe and the new fence, which could be used to access this area for maintenance. A new access gate is also proposed next to the culvert outlet structure to provide controlled access to this area from the maintenance area.
- 5.47. The proposed road will have a visual impact on Adamsvale. This has been assessed in the SIA (both in terms of visual impact and sense of place) as well as in the BAR. The visual impact is medium high negative in terms of its significance and can be slightly mitigated with the implementation of landscaping.
- 5.48. Design drawings, indicating the impact on the Adams property, were displayed and discussed at various meetings, were included in the BAR (Appendix B) and were displayed at the Open House Meeting which was attended by two members of the Adams Family.
- 5.49. DJEC informed Ms Adams via email on 4 April 2018 that the points which were pegged out are the toe points of the road and the bottom of the grassed fill

- embankment and that only two lines were pegged, the toe lines on both sides of the road.
- 5.50. Throughout the world there is a steady increase in road traffic over the years with an associated increase in road traffic noise levels. Noise level restrictions apply to all new roads but not existing roads. With the proposed realignment, the noise levels at Adamsvale will increase, however, noise mitigation procedures have been recommended where required.
- 5.51. The SIA notes that based on the Worley Parsons Report (October 2014) Alternatives 1 and 2 were found to be technically unsuitable due to flooding issues associated with the Van Wyks River. Alternative 3 is therefore the only technically feasible alternative for dealing with the flooding issues associated with the Van Wyks River. The SIA also notes that the most significant social impacts will be associated with Alternative 3, specifically the impact on the properties owned by the Adams family.
- 5.52. There is a potential for increase in opportunistic crime, however, this can be mitigated easily, for example, by fencing off the road through that section of land.
- 5.53. The people who live in the affected area are not property owners, and would need to move if compensation is agreed to.

Alternatives

- 5.54. Section 24(4)((b)(i) of the NEMA, in terms of the procedures for the investigation, assessment and communication of the potential consequences or impacts of activities on the environment, require with respect to every application for EA *"investigation of the potential consequences or impacts of the alternatives to the activity on the environment and assessment of the significance of those potential consequences or impacts, including the option of not implementing the activity"*.
- 5.55. In terms of the criteria to be considered by the Competent Authority when considering Applications, section 24O(1)(b)(iv) of the NEMA further states that if the Competent Authority considers an Application for an EA, it must consider *"where appropriate, any feasible and reasonable alternatives to the activity which is the subject of the application and any feasible and reasonable modifications or changes to the activity that may minimise harm to the environment."* Therefore, the alternatives must be considered as reasonable and feasible for inclusion in the EIA process.
- 5.56. The definition and assessment requirements relating to *"alternatives"* makes it clear that the obligation to consider alternatives may be achieved in a variety of different ways including site locations, types of activities, design or layout; and technological or operational aspects of undertaking the activity (either in combination or in isolation of each other).
- 5.57. The section of MR191 under consideration to be upgraded starts at km 0,0 at the intersection with the Old Paarl Road (MR189) and continues pass Simondium in a south-easterly direction up to km 9,57 near the intersection with Helshoogte Road (MR 172). To meet the requirements of the applicable legislation with regards to the consideration of alternatives, the following site alternatives detailed under the *"Alternatives"* section and depicted in Figure 10 of the Final BAR and the reasons for the EA decision subject to Appeal were considered:
- Option 1 (Orange colour line feature on the map):**
- 5.57.1. The intended diversion of MR191 was registered in 1989. 13 years later in 2002 the intended diversion was withdrawn due to the subsequent approval of the

expansion of the mining activities on Farm 815/1 which compromised of the diversion route. Therefore, this option was not further investigated.

Option 4 (Pink colour line feature on the map):

5.57.2. This option approximately 500m to the east of the existing MR191 historical bridge was also investigated. It is situated opposite the DRE access and MR189 intersection and crosses over the existing strawberry farm of which approximately a third will be lost due to the road alignment. This alternative also involves the construction of a new two-lane bridge over the railway line to acceptable geometric standards to accommodate both north and southbound traffic. This option also involves approximately 2 km of the new road for which land will have to be expropriated and therefore more affected properties than with the preferred option. A complete new road will have to be constructed at a much higher cost than the upgrading of the existing road. This option involves the realignment of approximately 20% of the road section being upgraded. The last section of this road is also problematic where it will run between the existing brick quarry with very deep excavation on the one side and existing vineyards on the other side. The connection onto the existing MR191 alignment at the end of this option is also problematic where it will be substandard or alternatively expropriation and relocation will be required.

5.57.3. Relocation of people living adjacent to the brick quarry will also be required. Therefore, this option was not considered further.

Option 5 (Light Blue colour line feature on the map):

5.57.4. This is an option approximately 1500m to the west of the existing MR191 historical bridge. The alignment starts on the existing Divisional Road 1103. A new two-lane bridge over the railway line of acceptable geometric standards will be needed to accommodate both north and southbound traffic. The design speed must be reduced to 60km/h for the first section of the road to minimise the expropriation required which is not preferred due to the class of road to be designed. The realignment of a portion of DR1103 will be required to create a new intersection onto the new MR191 alignment at a straight section with adequate sight distance and where the road level and super elevation is more favourable for an intersection. This intersection will still involve substantial expropriation together with the expropriation for the approximately 1,6km of the new road. The new road construction over the 1,6km of the new road will also be more expensive than the upgrading of the existing MR191.

5.57.5. The connection onto the existing MR191 alignment at the end of this option is also problematic where it will be substandard or substantial expropriation and relocation will be required. Therefore, this option was not investigated further.

Option 2 (Red colour line feature on the map):

5.57.6. This option included the investigation of two Alternatives along this route. Alternative 1 involved the proposed construction of a new single lane bridge on the western side of the existing bridge to accommodate the northbound traffic. The existing bridge would remain to accommodate the southbound traffic. However, the vertical clearance of 3,8m on the existing bridge is substandard and would in future require that heavy vehicles be diverted to the northbound carriageway. The existing MR191 route low point on the road below the historical bridge is 119.5m. This current level provides a substandard vertical clearance of 3,80m with higher vehicles often connecting with the arch section of the bridge as it could be observed from the damage on the bridge on site. The originally proposed bridge adjacent and to the west of the existing historical bridge would

be required to comply to the minimum clearance standard of 5.2m due to the required capital expenditure and the risk involved with a substandard clearance. With a minimum bridge soffit level of 124.57m it will result in a maximum road centreline level of 119.37m at the road low point below the bridge. This is 0.13m below the existing road level which is frequently flooded. Alternative 1 was therefore not considered a viable option to pursue.

- 5.57.7. Because of the flaws identified in Alternative 1, Alternative 2 developed and involved the construction of a new two-lane bridge to acceptable geometric standards on the western side of the existing bridge to accommodate both north and southbound traffic. The existing bridge would remain to accommodate pedestrian traffic. The bridge for this option was planned to pass under the railway line and over the Van Wyks River. However, the railway line and the Van Wyks River were posing numerous constraints for this alternative including the continued risk of potential flooding along this road.
- 5.57.8. The option of removing the road and culverts below the historical bridge to increase the capacity was investigated together with a new structure below the proposed road alignment. Due to the minimum clearance road level the maximum drainage structure height is limited to 1.0m. This together with the available space limited the new structure to an in-situ concrete structure of 4 / 3.0m x 1.0m. The capacity of this structure with inlet control is 24m³/s, which will result in the new road being overtopped and the low point on the road being flooded for the duration of the flood.
- 5.57.9. Worley Parsons looked at the option of canalizing this section of the Van Wyks River by means of a concrete canal from 100m upstream of the proposed road alignment to downstream of the existing historical bridge up to the low-level crossing to the property owned by Mr & Mrs Adams. This was done to investigate the option of maintaining supercritical flow throughout the canal and thereby increasing the capacity of the structures. The computer programme Hydrological Engineering Center's River Analysis Systems ("HEC-RAS"), developed by the US Army Corps of Engineers was used to determine the water flow and energy levels for this proposed canalized section. It was however found for both the QT and Q2T of 30m³/s and 40m³/s respectively that supercritical flow could not be maintained throughout the canal with hydraulic jumps occurring before the originally proposed structures and through the historical bridge section. The removal of the existing road and culverts and the new drainage structures below the originally proposed MR191 route alignment together with the canalized section did not resolve the potential flooding risk. This option would also involve the lowering of the existing 700mm steel bulk water pipeline crossing the canal and the road alignment which would require additional scour and air valves on the pipeline.
- 5.57.10. For Alternative 2 to comply with drainage requirements, an additional railway culvert with size 3/3m x 0,9m would have to be installed underneath the railway line to the south, plus an additional culvert of the same size underneath the road to convey flows to the existing river stream, as well as an additional 4/3m x 1,0m multi-barrel in-situ culvert underneath the new road directly north of the new railway underpass.
- 5.57.11. However, the Van Wyks River section downstream of the historical bridge has a very flat slope and a restricted cross section which in combination has a backwater effect which causes the low-lying area (Remainder of Farm 832/48 and 832/47) to the north east of the river to form a flood plain during high flows. The new MR191 road level low point below the railway line bridge is such that

damming of water would be restricted to 1.2m, after which flooding of the road would occur. The backwater effect in the Van Wyks River poses a real threat of exceeding this level and flooding the road. Increasing the width of the culverts below MR191 and the railway line will not have a significant impact on the capacity due to this backwater effect by the river and will incur little benefit at a very large cost. Any increase in the flow downstream of the historical bridge will also increase the flood level in the downstream area, also due to the backwater effect in the river. Therefore, these two alternatives (known as Alternatives 1 & 2), cannot be assessed further as they are not viable Alternatives.

5.57.12. Furthermore, the question arose as to whether the bridge, as proposed at the preferred location (indicated as Option 3), could cross the railway line along the existing route (indicated by Option 2). However, the following was noted making this impossible:

5.57.12.1. The toe line of the new road over rail will encroach approximately 20m into Mr. Harman's property with a fill height of approximately 9.0m at the residential dwelling. Access to the bottom of this property would also have to be closed.

5.57.12.2. Similar impacts would be experienced to the properties adjacent to the above property and therefore the Drakenstein Municipality's substation would have to be relocated due to the fill line and no access could be provided.

5.57.12.3. Access to OP305 and to the Adams family's Shop will have to be relocated.

5.57.12.4. Due to the design of the bridge no access to the historical bridge will be possible, the historical bridge would barely be visible and specific design will be needed to ensure that it stays intact as requested by the Heritage Authorities.

5.57.12.5. The river will be crossed with a wide prism which will have major impacts on the already difficult drainage scenario at this point.

5.57.12.6. Economically this would not be feasible. The rail at the existing bridge is in a fill whereas at the new road-over-rail-bridge the railway line is on ground level. Therefore, less fill material will be used for the preferred alternative (Option 3).

5.58. It is concurred with the Applicant's Responding Statement in terms of the following:

5.58.1. Options were investigated but the preferred alternative authorised in the EA is the most viable option. The evaluation of alignment options table was also provided in Appendix 1 of the Responding Statement. From this table it was clear that Option 3 is the most favourable. This was considered by the Department before the granting of the EA.

5.59. Alternative routes were considered as indicated in the evaluation of alignment options table in Appendix 1 of the Responding Statement. Considering the proposed alignment by the owners, the following should be noted:

5.59.1. Access and turning movement at the MR189 intersection will not be possible if moved too close to the CDS building.

5.59.2. The toe line will encroach onto the CDS building and access to the building from the existing service road will become severely restricted.

5.59.3. The road will clash with the large number of water chambers on the bulk water pipeline supplying water to Paarl from the Wemmershoek Dam.

5.59.4. The river crossing should be perpendicular as far as possible for hydraulic efficiency and to lessen the impact on the river environment.

- 5.59.5. The proposed alignment will also negatively affect buildings on the School of Skills property.
- 5.60. Access can be provided on the eastern side as described previously, but this area is not ideally suited for human habitation as it is situated very close to the Van Wyks River low flow channel. An access culvert was not considered due to the safety issues with regards to criminal elements that were highlighted as a concern by the owners.
- 5.61. The aim was to keep the rural feel with fills and landscaping. Viaduct will be all concrete and will not fit into this rural setting.
- 5.62. The proposed road height is determined by the geometric standards to provide the required vertical clearance over the railway lines, allowable parabolic vertical curvature, grades, etc. The road surface drainage will be controlled within the road kerbs and discharged 40m away from the house at the proposed new box culvert. No direct road surface stormwater will flow down the embankments in an uncontrolled manner. An open earth drain will be constructed at the bottom of the road embankment to direct the stormwater away from the existing house.
- 5.63. The flooding risk at the Van Wyks River culverts below the Heritage Railway Bridge has been detailed in the Van Wyks River: Report on Hydrology, Hydraulics and Floodlines. Visual evidence of large vehicles connecting with the Railway Bridge can be observed on the bridge soffit. These reasons and future traffic predictions from traffic studies make this alternative unsafe. Traffic studies indicated the poor level of service which will become worse as traffic in the area increases.
- 5.64. The Applicant fails to see how an upgraded road with 2m wide paved shoulders, designated pedestrian walkway, proper geometric design, no vertical clearance or flooding risks is not an improvement on road safety.
- 5.65. It is concurred with the Applicant's Responding Statement in terms of the following:
- 5.65.1. 5 Options were considered and are explained in the BAR. Reasons are given as to why 4 of the 5 options were not considered feasible.
- 5.65.2. The No-Go option is clearly described on page 57 of the Final BAR.
- 5.65.3. The preferred alternative was the only alternative assessed, other than the no-go option, since the report clearly explains why the other alternatives were not considered reasonable and feasible.
- 5.65.4. It must be referred to the matrix of alternatives submitted to the Competent Authority and provided in the Evaluation of Alignment Options Table in Appendix 1 of the Responding Statement.
- 5.65.5. The redundant section of MR191 will be left open as part of the service road system. This will give the Drakenstein Municipality access to the electricity substation, as well as allow traffic from the service road to travel towards Paarl via the re-aligned MR191.
- 5.65.6. The alternatives raised by the Appellant were included in the Final BAR and discussed on pages 52 to 57.
- 5.65.7. Discussions were held around alternative ways of dealing with the section of MR191 situated alongside the Appellant's property but no promises of land were made to the Appellant.
- 5.66. Considering the above, alternatives were considered as required by the applicable legislation.

Recommendations made by the Environmental Assessment Practitioner, social impact assessor and other specialists, are not included as conditions in the authorisation document received

- 5.67. Section 24E(a) of the NEMA states that an EA must ensure adequate provision is made for the on-going management and monitoring of the impacts of the activity on the environment throughout the life cycle of the activity.
- 5.68. The noise mitigation measures are included in the EMP which was approved in the conditions of the EA to mitigate the potential impacts of the activities during the construction and operational phases of the development.

Site Visit

- 5.69. Site visits were conducted by the officials of the Department and the Appeal Authority before the EA was granted and before the Appeal decision was issued, to:
 - 5.69.1. Obtain a general overview of the site and its environment.
 - 5.69.2. Verify through observations that the information is relevant as submitted by the EAP and specialists to inform the decision on granting or refusing the application for listed activities is correct.
- 5.70. The site visits were conducted at the properties or near the properties of the Appellants to see the areas which will be affected by the proposed development. The site visits were not meant to discuss the issues with the Applicant and the Appellants.

EIA Process

- 5.71. It is concurred with the Applicant's Responding Statement in terms of the following:
 - 5.71.1. The delays in the process and the fact that the basic assessment process was halted and restarted, were due to reasons beyond the control of the EAP, and was unrelated to non-compliance with the applicable legislation.
 - 5.71.2. With the commencement of the first EIA process, Option 2 was considered as a viable option, but during the detailed design stage it was found that this alternative was not viable anymore due to reasons discussed previously above and listed in the Evaluation of Alignment Options Table in Appendix 1 of the Responding Statement.
 - 5.71.3. The preferred alternative was the only alternative assessed, other than the no-go option, since the report clearly explains why the other alternatives were not considered reasonable and feasible. In terms of the law, the Applicant is only required to assess reasonable and feasible alternatives. Refer to the explanation on pages 52-57 of the Final BAR.
 - 5.71.4. In the Comments and Responses Document, Appendix F11 of the Final BAR, detailed responses are provided to the comments/concerns of the Appellant.
- 5.72. It is acknowledged that there are structures on the Adams property which are older than 60 years but these are not considered to have heritage significance in terms of the definitions in the NHRA.

Comments on the Environmental Report

- 5.73. It is concurred with the Applicant's Responding Statement in terms of the following:
 - 5.73.1. As mentioned in the Comments and Response Document (Appendix F11 of the Final BAR) *"Taking into account the new road layout with new accesses and service road, the existing access needs to be closed."*

- 5.73.2. The SIA recommends that the affected landowners be contacted and a process be initiated to discuss the option of compensation. As indicated above, the SIA does not state that the affected landowners are willing to accept compensation, merely that they are willing to consider it as a possible option. The process of discussing compensation falls outside the scope of the SIA. In addition, the SIA consultants are not mandated to discuss compensation with the affected landowners. This is a function of the Provincial Roads Department.
- 5.73.3. The SIA highlights the potential impact on sense of place and notes that the property was acquired under difficult circumstances during the Apartheid era.
- 5.73.4. Expropriation will be at a fair value as calculated by an independent valuator. This will take into consideration the mitigations proposed in the SIA study. It is not indicated where the pricing above originates from, but the expropriation process will follow on the EIA process as it was indicated to property owners on numerous occasions.
- 5.73.5. The MR191 traverse numerous streams and associated wetlands which have been assessed by the Freshwater Specialist. The proposed impacts on the aquatic systems can be mitigated to an acceptable level of impact. In most cases it will have a low negative impact or a negligible impact.
- 5.73.6. A full SIA was done to quantify the impact on society.
- 5.73.7. The construction of the road bridge over the river and through a wetland depression will indeed lead to the loss of freshwater habitat. However, the condition of the freshwater habitat that will be lost is currently not good. The river has been heavily impacted by surrounding agricultural, residential and infrastructural development. Nonetheless, to mitigate against the loss of freshwater habitat, rehabilitation of the affected reaches of the Van Wyks River has been recommended as a condition of the road construction.
- 5.73.8. The original 1860 bridge was a rail over river bridge. The road was later constructed with very limited options for drainage due to the vertical clearance required. The limited vertical height between the railway line and the river invert will remain problematic, even if the heritage bridge is demolished. The raising of the railway is not viable due to it being the main route between Cape Town and the central and northern portion of the country and passengers and freight, being moved frequently on this line.
- 5.73.9. The BAR did identify that there would be a visual impact for the Adams family but that it will not impact visually on Mr Harman. The visual impact was assessed in the BAR and SIA (both in terms of visual impact and sense of place). No purpose would be served by getting further specialist assessment of this since it is already acknowledged in the report that there will be a visual impact. A Landscaping Plan was included as a condition in the BAR which would help mitigate the visual impact.
- 5.73.10. The ninety percent that is referred to is a typing error and should have been 9%. A better estimate of the percentage of contract work executed by labour, small and medium enterprises and medium and micro enterprises can only be made once the bill of quantities for the project has been completed, but 9% have been achieved on similar contracts.
- 5.73.11. The SIA notes that "*The directly affected landowners have indicated that they are willing to consider compensation for the loss of land and the associated impact on their quality of life*". The SIA does not state that the affected landowners are willing to accept compensation, merely that they are willing to consider it as an option.

- 5.73.12. The capital cost does not include expropriation, as the process has not started, or other non-beneficial costs. It is only the estimated construction value.

Administrative

- 5.74. The concerns that are raised under this ground of appeal in relation to contracts with the consultants must be addressed to the relevant authority as they do not relate to the impacts of the listed activities.

Drainage and soil erosion

- 5.75. The Applicant's Responding Statement which states the following is concurred with:
- 5.75.1. The existing Van Wyks River flow morphology will be retained. The proposed bridge abutments are positioned outside the Van Wyks River low flow channel with only two piers inside the river to minimise the impact on the river.
- 5.75.2. Flow velocities in the Van Wyks River are relatively low due to the downstream control in the river.
- 5.75.3. The existing Van Wyks River flow morphology will be retained. The increase in flow velocities is limited due to the designed width of the bridge opening and modelled flow velocities will still be below values which will result in erosion.
- 5.75.4. The Van Wyks River: Report on Hydrology, Hydraulics and Floodlines executed by WPRSA is included in the BAR.
- 5.75.5. The proposed Van Wyks River Bridge is positioned to balance the requirements to cross the river perpendicular to reduce the area of impact on the riverine environment, as well as the distance away from the Adamsvale shop and residence. Not all detailed design investigations and calculations are necessarily submitted in a report, but the results thereof are provided in the final design drawings.
- 5.75.6. The existing Van Wyks River flow morphology will be retained. The increase in flow velocities is limited due to the designed width of the bridge opening and modelled flow velocities will still be below values which will result in erosion.
- 5.75.7. The road height is determined by the geometric standards to provide the required vertical clearance over the railway lines, allowable parabolic vertical curvature, grades, etc. Road height is not only dictated by stormwater concerns, and in this case, it was not the determining factor.
- 5.75.8. As per the Van Wyks River hydrological and hydraulic study detailed in the Van Wyks River Report included in the BAR, the design aimed at limiting any potential long term negative influence on the river. The box culvert inlet is situated at the low point on the western side along the planned road embankment toe to drain the lower lying area away from the river low flow channel. Not all detail design investigations and calculations are necessarily submitted in a report, but the results thereof are provided in the final design drawings. Monitoring / inspection and maintenance of drainage structures form part of routine road maintenance which is managed by the Western Cape government.
- 5.75.9. Details on the existing stormwater inlet into the Van Wyks River Culverts below and to the north east of the railway bridge: The stormwater inlet is a 675mm diameter pipe discharging into the existing Van Wyks River culverts. The inlet has sufficient capacity for the 2-year recurrence interval flood and slightly less than the 5-year recurrence interval flood from the catchment draining towards it. As mentioned in the technical report "Van Wyks River: Report on Hydrology, Hydraulics and Floodlines" (Appendix B9 of the BAR) the existing Van Wyks River culverts start

flooding MR191 from the 5-year recurrence interval flood. Therefore, a bigger inlet for the side drain will be of no use for this magnitude flood. Maintenance is however important as this inlet was also partially silted up during the original site investigation.

- 5.75.10. Road runoff is controlled and discharged via kerbs and channels, down chutes with stilling basins, one discharging at the proposed box culvert inlet and the other downstream of the proposed bridge. This will mitigate the above concerns and divert stormwater runoff away from the Adams' property and into the river.
- 5.75.11. In the Comments and Responses Report, it is stated that drainage from MR189 and the service road to the north of Mr. Harman's property: The current 300mm diameter pipe discharging concentrated flow from MR189 directly onto Mr Harman's property will be closed off and the flow diverted along a pipe system below the MR189 median towards a culvert discharging to the existing side drain along the eastern side of the existing MR191 towards the Van Wyks River. The surface runoff from MR189 will be cut off by an open drain between MR189 and the service road, draining towards the west. The service road will drain by an unconcentrated sheet flow over the embankment towards the south and the property of Mr Harman. The runoff draining towards his property is less than that currently draining via the pipe and will also not be concentrated at one point but will be spread over a wide area and thereby reduce the impact thereof.
- 5.75.12. From their calculations the run-off from the service road is less than the current flow from MR189 and will be an unconcentrated sheet flow. However, the existing drain next to Mr. Harman's fence will be cleaned and opened to divert the runoff from the service road to the east and along the western side of the existing MR191 towards the Van Wyks River.

Environmental impact

- 5.76. The comments were raised during the EIA process in terms of the stormwater impacts, the EAP responded as follows in the Comments and Responses Report:
 - 5.76.1. The road surface drainage will be controlled within the road kerbs and discharged at the proposed new box culvert.
 - 5.76.2. No direct road surface stormwater will flow down the embankments in an uncontrolled manner. An open earth drain will be constructed at the bottom of the road embankment to direct the stormwater away for the existing house.
 - 5.76.3. The stormwater inlet is a 675mm diameter pipe discharging into the existing Van Wyks River culverts. The inlet has sufficient capacity for the 2-year recurrence interval flood and slightly less than the 5-year recurrence interval flood from the catchment draining towards it. As mentioned in the technical report "*Van Wyks River: Report on Hydrology, Hydraulics and Floodlines*" (Appendix B9 of the BAR) the existing Van Wyks River culverts start flooding MR191 from the 5-year recurrence interval flood. Therefore, a bigger inlet for the side drain will be of no use for this magnitude flood. Maintenance is however important as this inlet was also partially silted up during the original site investigation.
 - 5.76.4. The cleaning of culvert inlet and outlet structures will be included in the construction works. This has been included as a recommendation in the BAR.
- 5.77. In terms of the stormwater impacts, the following mitigation measures are proposed in the EMPr included for implementation in the conditions of the EA:
 - Construction phase:
 - 5.77.1. Reasonable measures must be undertaken to control the erosive effects of stormwater runoff.

- 5.77.2. Silt screens must be implemented to prevent overland flow from causing erosion.
- 5.77.3. Point source discharge of storm water must be prevented on slopes as this will lead to erosion of the unstable slope with loss of vegetation and resultant deep donga erosion.
- 5.77.4. Any stormwater outlets must be constructed in such a manner as to ensure no soil or bank erosion takes place.
- 5.77.5. The use of straw bales as filters, which are placed across the flow of overland stormwater flows, shall be used as an erosion protection measure.
- 5.77.6. The ploughing-in of straw offers limited protection against storm water runoff-induced erosion and shall be used as an erosion protection measure.
- 5.77.7. Drip trays must be used for all pumps, generators, etc. to prevent water contamination because of fuel spills or leaks.
- Operational phase:
- 5.77.8. Works are only to be conducted during the dry (summer season) when the river is at its lowest flow.
- 5.77.9. The area of works (disturbance) must be limited to the area required to carry out the intervention required. This must be clearly demarcated.
- 5.77.10. If a litter trap is to be placed at the outlet structure, this must be periodically cleared of debris. The litter trap must also be repaired or replaced if required.
- 5.77.11. Any areas of disturbance created because of intervention activities must be rehabilitated.
- 5.77.12. Culvert inlet and outlet structures need to be cleaned if blocked.
- 5.78. It is concurred with the Applicant's Responding Statement that:
- 5.78.1. Culverts are provided at the low point of the western/upstream side of the road embankment toe and the remainder of the construction area will be graded to drain towards it.
- 5.78.2. After construction is completed (many mitigation measures are provided for the construction phase), there is unlikely to be an increase in sediment transport, compared to the current. This is unlikely to present a problem for the natural environment. A litter trap was designed for one of the sections of the road, specifically to ensure that litter will not enter a stream.
- 5.78.3. Previous realignment of the river for road and railway construction has had an impact on the riverine habitat and has led to the loss of wetland habitat. While this EIA cannot redress these impacts, this was considered when making the recommendations for mitigation, so that there will be no net increase in the negative impacts associated with past and present activities around the river. In fact, with effective rehabilitation of the affected reach of the Van Wyks River, there should be a net improvement.
- 5.78.4. The status quo of the Van Wyks River at the historic railway bridge will not be changed and the design of the new Van Wyks River Bridge has been done to have the least possible impact on the Van Wyks River morphology.
- 5.78.5. The cleaning of the existing MR191 culverts are included in the contract and should further be maintained by the provincial district roads engineer.

Flood line analysis

- 5.79. When comments were raised during the EIA process in terms of the flood line, the EAP responded as follows in the Comments and Responses Report:
- 5.79.1. Inputs from the residents affected by flooding were also mentioned in the report, but conclusions and recommendations was based on probabilistic calculations.

The report includes photographs of flooding taken on 16 August 2013. The floodlines are for the 1: 50-year flood only.

- 5.79.2. In 2010 the report titled "*Investigation report for Upgrading of Main Road 191*" already identified the Van Wyks River bridge crossing as having inadequate capacity for the design runoff.
- 5.80. It is concurred with the Applicant's Responding Statement, as informed by the engineering specialist, the EAP and the Social Impacts Specialist that:
 - 5.80.1. Inputs from the residents affected by flooding were mentioned in the Van Wyks River Report, but conclusions and recommendations were based on deterministic and probabilistic calculations. The report includes information of flooding at this river crossing which occurred on 16 August 2013. Rainfall figures are included in the report for this flooding event for the Wemmershoek rainfall station, as it was the nearest available and reliable data. It should be noted that the rainfall at Wemmershoek, mountainous area is on average higher than for the Van Wyks River catchment area. Therefore, they maintain their reasoning that the flooding of 16 August 2013 of MR191 was in the region of a 5-year recurrence interval flood.
 - 5.80.2. It should be noted that as a minimum design standard the Van Wyks River Culvert must be able to accommodate the 10-year recurrence interval flood with freeboard and the road should not overtop for the 20-year recurrence interval flood.
 - 5.80.3. No changes have occurred in the river morphology which will influence the flood line calculation significant enough to justify the redoing of a flood line study. The rainfall figures used for the runoff calculations are also based on a rainfall station with a record length longer than 50 years.
 - 5.80.4. The design of the bridge and additional culvert was done as such to not negatively affect the existing up to 1: 50-year recurrence interval peak flood floodline at the Adamsvale shop.
 - 5.80.5. The flood line analysis is based on an actual detail survey of the area and rainfall calculations from actual historical rainfall data. The general practice is to assume the energy levels as the expected flood levels to lower the risk of damage to and flooding of proposed or existing developments.
 - 5.80.6. Floodlines are therefore normally conservative estimates of potential flooding.
 - 5.80.7. The rainfall figures used for the runoff calculations are also based on a rainfall station with a record length longer than 50 years.
 - 5.80.8. Hydrological and hydraulic modelling was done for a range of potential recurrence interval floods.
 - 5.80.9. The labourer's cottages are in a poor condition and were identified as not having heritage significance. One of them has become partly renovated during the duration of the MR191 design phase. These cottages are however situated dangerously close to the low flow channel of the Van Wyks River and below the expected 50-year flood line. Low flow velocities occur in the river due to downstream control, with even lower flow velocities in the flood plain surrounding the labourer's houses.
 - 5.80.10. As mentioned previously the Van Wyks River is functioning as downstream controlled and the hydraulic model confirmed this. The Berg River is however situated too far away and topographically lower to influence the 1: 5-year flood event. It should be noted that the currently available 1: 100-year flood line for the Berg River is situated approximately 550m downstream from the existing MR191 culverts below the historical railway bridge.

- 5.80.11. The original 1860 bridge was a rail over the river bridge. The road was later constructed with very limited options for drainage due to the vertical clearance required. The limited vertical height between the railway line and the river invert will remain problematic, even if the heritage bridge is demolished. The river invert cannot be lowered due to the already flat invert slope and the downstream control in the river.
- 5.80.12. MR191 should be re-aligned to resolve this situation during larger rainfall events, but at the same time the existing infrastructure should be maintained as it was originally designed to cater for the reduced traffic which might still use this crossing.
- 5.80.13. Upgrading of the road is also to provide an acceptable level of service for the increased traffic volumes expected over the next twenty years and not only to mitigate the restricted vertical clearance and flooding risk at the existing bridge.
- 5.80.14. No monetary value could be placed on the safety of motorists where a known safety risk has been identified and where this could be eliminated on the re-aligned main route during the upgrading of the road.

Noise impacts

- 5.81. The comments were raised during the EIA process in terms of the noise impacts, the EAP responded as follows in the Comments and Responses Report:
 - 5.81.1. The upgrading of the road will result in traffic noise impacts. Due to the raised nature of the road the noise impacts are likely to be more noticeable.
 - 5.81.2. The quietest road surface is to be used commensurate with civil engineering and safety requirements.
 - 5.81.3. Any new road will result in noise levels higher than occurring prior to the road. However, the quietest road surface commensurate with civil engineering requirements is to be used. This, together with the erection of noise barriers (walls) over part of the trajectory will mitigate the levels of noise to be compliant with the stringent *Western Cape Noise Control Regulations, 2013*.
 - 5.81.4. A 1m high wall will be constructed as part of the bridge 10m past the residence that will be at the foot of the high fill.
 - 5.81.5. The height of the wall on the elevated road will be similar to that of the otherwise obligatory crash barriers. It is an individual decision whichever is aesthetically more acceptable.
 - 5.81.6. The noise mitigation requirements have been calculated in accordance with long standing and validated national and international standard procedures.
 - 5.81.7. It may be possible to mitigate the traffic noise impacts by constructing noise barriers and fencing along the road.

Social impact assessment

- 5.82. It is concurred with the Applicant's Responding Statement, as informed by the Social Impacts Specialist; that:
 - 5.82.1. The accepted approach to SIAs is to identify people and or communities that may potentially be affected by a project.
 - 5.82.2. In the case of the MR191 project the identification of affected parties was informed by the comments on the Scoping Report and the consultants' understanding of the potential issues. Many of the affected parties interviewed qualify as immediate affected parties, such as owners of Berg River Resort, Paarl Nursery and Winelands Estate.

- 5.82.3. Meetings were also held with Mr Adams and Mr Harman, who are also "immediate" stakeholders. In addition, the key issues raised by other immediate stakeholders, such as noise, dust and safety impacts during the construction phase, are also likely to apply to the residents of the informal settlement. With mitigation these impacts will have a low negative significance.
- 5.82.4. Interviews were held with Mr and Mrs Adams and their legal representative. Based on the interview with Mr and Mrs Adams and observations during the site visits, it was clear that the impacts associated with Alternative 3 would affect both the Adams family and the residents of Adamsvale.
- 5.82.5. The SIA does comment on and assess operational and cumulative impacts.
- 5.83. Based on the findings of the SIA the potential benefits associated with the upgrade of the MR191 include:
- 5.83.1. Improved road infrastructure, road safety and access to the area.
- 5.83.2. An opportunity to extend the pedestrian path in Simondium.
- 5.84. The potential negative impacts are largely linked to the alternatives identified to address the challenges posed by the historic railway bridge and flooding of the Van Wyks River. These issues are confined to the northern section of the MR191 and affect a relatively small number of landowners, specifically the Adams family, Mr Harman and Mr Kock. Alternative 3 also impacts on the residents of Adamsvale.
- 5.85. The SIA Report refers to three alternatives identified as part of the EIA process and notes that based on the findings of the Worley Parsons study, Alternatives 1 and 2 were not technically feasible. However, the SIA Report does provide a comparison of the social impacts associated with Alternatives 1, 2 and 3 (Section 3.4.3, Comparison of social impact of Alternatives 1, 2 and 3. The aim of this was to compare the social impacts associated with each alternative regardless of the finding that Alternatives 1 and 2 were found to be technically unfeasible.
- 5.86. A pedestrian sidewalk can be created to ensure that the safety issues are addressed.
- 5.87. Stairs will be provided from the OP5251 route up the embankment onto the proposed walkway. This will result in a much safer crossing of the railway line on the "preferred route".
- 5.88. It should be noted that pedestrian counts were conducted to establish the need for the extension of the walkway from Simondium towards Paarl. The illegal crossing of private land and railway lines will now be resolved with a walkway with stairs down to the OP5251 route or continue the walkway towards the brickfields.
- 5.89. The BAR explains that the route generally passes through a farming environment, although the section through Simondium could be described as urban. A separate walkway on the eastern side of the road prism has been proposed for the protection of pedestrians. In addition, the following recommendations were included and were suggested to be included as conditions of approval:
- 5.89.1. The issues regarding pedestrian safety and the MR191/ Klapmuts-Simondium Road intersection must be considered in the upgrade.
- 5.89.2. The option of installing street lights along the section of the MR191 though Simondium must be investigated. This would improve road safety for pedestrians and motorists.
- 5.89.3. A landscaping plan must be implemented to enhance the existing scenic quality of the road. In this regard CNdV have been appointed to prepare a landscaping plan for the project.
- 5.89.4. The extension of the pedestrian path to the MR191/ Klapmuts-Simondium Road intersection must be investigated. The pathway must also be designed to

accommodate bicycles. The maximum width of pathway is 1,8m due to space constraints. The new 2,0m wide surfaced road shoulder could also be used by cyclists.

5.89.5. The embankment must be landscaped to screen the road.

5.89.6. The landscape plan prepared by CNdV must be implemented. This plan was included as an appendix to the BAR.

Visual impact assessment

5.90. In the BAR, the EAP stated that:

5.90.1. The proposed road upgrading will result in visual impacts associated with the raised road on one's doorstep.

5.90.2. The road traverses a landscape of considerable cultural, historical and scenic significance. Land grants in the scenic corridor date from the late eighteenth century and the related built form reflects the rich layering of the landscape from this period. Many of the historical farm werfs are located on the terrace to the west of the Berg River and do not have a visual spatial relationship with the MR191. Heritage resources which do have a visual spatial relationship with the MR191 have been identified in the Drakenstein Heritage Survey. They include, inter alia, the old railway bridge adjacent to the MR189, the farm werfs at Keunenberg, Keunienburgh and Riverside, the Het Stigt school complex (PHS), the Simondium station, various railway cottages and farm cottages and the small commercial node at Simondium. Significant lateral views of the Klein Drakenstein and Simonsberg mountain have also been identified and mapped and have a significant clump of trees.

5.90.3. The activity will not impact on the surrounding community's health or wellbeing and negligible impacts (if any) are expected in terms of noise, visual or sense of place impacts resulting from the construction phase and which would be mitigated through the implementation of the EMPr.

5.91. When comments were raised during the EIA process in terms of the visual impacts, the EAP responded as follows in the Comments and Responses Report:

5.91.1. The plans included in Appendix B8 of the BAR show the design of the bridge.

5.91.2. The SIA acknowledges that the raised road will result in visual impacts and impacts on the rural sense of place to the Adams Family.

5.91.3. It is possible to visualise the design of the bridge from the drawings included in Appendix B8 of the BAR.

5.92. The Applicant's Responding Statement states that:

5.92.1. The visual impacts were assessed by the EAP in the BAR and in the SIA. The Landscape Plan by CNdV will mitigate the visual impacts as far as possible.

5.92.2. There will be a visual impact on Adamsvale, this is mentioned in the report. A new VIA will only confirm this which is already known.

5.93. Considering the above, the visual impacts have been adequately addressed.

Traffic impact study

5.94. When comments were raised during the EIA process in terms of the need and desirability, the I&APs and the EAP stated the following:

5.94.1. The Drakenstein Municipality stated that they support the upgrade of the proposed road and the need and desirability assessment explains why the upgrading of the road is required.

5.94.2. The existing access point is closed due to its proximity to the new intersection due to safety and traffic flow considerations.

- 5.95. The need and desirability aspects of the proposed road upgrading are dealt with in section D of the BAR.

Transparency

- 5.96. Should access be required in terms of the information submitted to the Organs of State with regards to this matter a request may be lodged in terms of section 18(1) of the *Promotion of Access to Information Act, 2000 (Act No. 2 of 2000)* ("PAIA"). At the Department of Environmental Affairs and Development Planning, Ms Annelize De Villiers may be contacted in terms of the request for access to information process from: Tel: (021) 483 8315 or Fax: (021) 483 3016 or email Annelize.DeVilliers@westerncape.gov.za.
- 5.97. Unless the information must be treated confidential, access to the information submitted to the Competent Authority with regards to this matter will be made available if applied for appropriately.
- 5.98. It must be noted, unless it is specified as such, the conduct of meetings is not required as the minimum requirement for the public participation process that must be undertaken in terms of the applicable 2014 EIA Regulations.

Suitability of appointed consultants / Independence and objectivity

- 5.99. Regulation 13 of the 2014 EIA Regulations requires EAPs and specialists to:
- 5.99.1. Be independent.
- 5.99.2. Have expertise in EIAs or undertaking specialist work as required, including knowledge of the NEMA, the applicable EIA Regulations and any guidelines that have relevance to the proposed activity.
- 5.99.3. Ensure compliance with the applicable EIA Regulations.
- 5.99.4. Perform the work relating to the application in an objective manner, even if this results in views and findings that are not favourable to the application.
- 5.99.5. Disclose to the Applicant, registered I&APs and the Competent Authority all material information in the possession of the EAP and, where applicable, the specialist, that reasonably has or may have the potential of influencing—
- 5.99.5.1. Any decision to be taken with respect to the Application by the Competent Authority in terms of the applicable EIA Regulations; or
- 5.99.5.2. The objectivity of any report, plan or document to be prepared by the EAP or specialist, in terms of the applicable EIA Regulations for submission to the Competent Authority.
- 5.100. The Applicant's appointed EAP and specialists declared or affirmed, as signed in the BAR, that all the information submitted with regards to this matter is true and correct and complies with the requirements of Regulation 13 of the 2014 EIA Regulations.
- 5.101. It is concurred with the Applicant Responding Statement in terms of the following:
- 5.101.1. The inclusion of Lindsay Speirs was since Jenna Theron had left the employment of Doug Jeffery Environmental Consultants ("DJEC") and a new consultant assisted Doug Jeffery with the Application. DJEC has played a role in the assessment of the alternatives presented by the project team and not in the design of the road.
- 5.101.2. In addition to the time delays, it was a recommendation of the Competent Authority, after discussions with them, that it would be better to start the Application in terms of the latest regulations and that it was in fact a Basic Assessment Process and not a Full EIA process. It was therefore decided that it would be cleaner to start again.

5.102. Considering the above, the Competent Authority has no reasonable belief that the EAP and specialists that were appointed by the Applicant were not independent in this EIA process.

6. **CONCLUSION:**

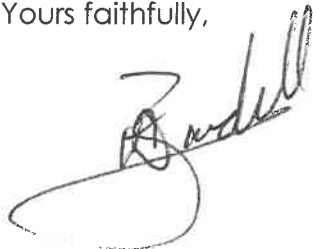
In view of the above, the NEMA principles, compliance with the conditions stipulated in the Appeal EA and compliance with the conditions of the EMP, the proposed activities will not conflict with the general objectives of integrated environmental management stipulated in Chapter 5 of the NEMA and any potentially detrimental environmental impacts resulting from the activities can be mitigated to acceptable levels.

7. **DISCLAIMER:**

The Western Cape Government, the Local Authority, committees or any other public authority or organisation appointed in terms of the conditions of this EA shall not be responsible for any damages or losses suffered by the holder, developer or his/her successor in any instance where construction or operation subsequent to construction is temporarily or permanently stopped for reasons of non-compliance with the conditions as set out herein or any other subsequent document or legal action emanating from this decision.

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.

Yours faithfully,



ANTON BREDELE

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

DATE: 31/8/2020

Copied to:

Mr D. Jeffery/ Ms L. Speirs (Doug Jeffery Environmental Consultants)

Ms C. Winter (Drakenstein Municipality)

Mr Z. Toefy (Directorate: Development Management (Region 2))

Mr S. van der Merwe (Stellenbosch Municipality)

Email: Lindsay@dougjeff.co.za

Fax: (021) 870 1522

Email: Zaahir.Toefy@westerncape.gov.za

Fax: (021) 886 6899



REFERENCE: 14/3/1/A5/55/0351/18

Ms Megan-Leigh Adams
LDS Adams and Family
Old Paarl Road
SOUTHERN PAARL
7646

Tel: (021) 863 1475
Email: mgnlghadams@yahoo.co.uk

Dear Madam

APPEALS 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 UPGRADE OF MAIN ROAD 191 (R45) BETWEEN PAARL AND FRANSCHHOEK ON PORTIONS 36, 47, 48, 50, 54 AND 56 OF THE REMAINDER OF FARM NO. 832, PAARL

Your Appeal lodged in terms of section 43(2) of the *National Environmental Management Act, 1998 (Act No. 107 of 1998)* ("NEMA") against the Environmental Authorisation ("EA") issued by the Department of Environmental Affairs and Development Planning's Director: Development Management (Region 2) on 09 March 2018 has reference.

After careful consideration of the appeal, as well as supporting documentation received, I have decided in terms of section 43(6) of the NEMA to dismiss the appeals and confirm the decision of the delegated competent authority.

The original Environmental Authorisation granted on 09 March 2018 and the conditions under which the authorisation was granted are still valid, however condition E8 and Section G of the abovementioned EA is excluded from this authorisation and Conditions E2, E7 and E9 are amended.

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

Your interest in the future of our environment is appreciated.

Yours faithfully,

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

DATE: 31/8/2020

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Fax: (021) 870 1522
Email: Zaahir.Toefy@westerncape.gov.za
Fax: (021) 886 6899



REFERENCE: 14/3/1/A5/55/0351/18

Mr Kurt Harman
Country Lane Farm
Old Paarl road
SOUTHERN PAARL
7646

Cell: 083 225 3831
Email: kurt@acct.co.za

Dear Mr Harman

APPEALS 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 UPGRADE OF MAIN ROAD 191 (R45) BETWEEN PAARL AND FRANSCHHOEK ON PORTIONS 36, 47, 48, 50, 54 AND 56 OF THE REMAINDER OF FARM NO. 832, PAARL

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