OBJECTION TO ENVIRONMENTAL APPLICATION FOR CONSTRUCTION OF HOUMOED AVENUE EXTENSION, PHASE 1, NOORDHOEK AND SUBMITTED FINAL BASIC ASSESSMENT REPORT.

DEA&DP Reference No.: 16/3/3/6/7/1/F1/45/2016/17 (post-application number: 16/3/3/1/A6/45/2024/18)

Prepared for:

LYNN HANGER AND OTHER AFFECTED RESIDENTS/ PARTIES, MILKWOOD PARK AND NOORDHOEK .

Prepared by:

AVDS ENVIRONMENTAL CONSULTANTS

42 Afrikander Road,

Simon's Town,

7975

Tel/Fax: 021 786 2919

E-mail: avdspuy@iafrica.com

25 January 2019

OBJECTION TO ENVIRONMENTAL APPLICATION FOR CONSTRUCTION OF HOUMOED ROAD EXTENSION, PHASE 1, NOORDHOEK AND SUBMITTED FINAL BASIC ASSESSMENT REPORT.

Acronyms used in this appeal

EIA	Environmental Impact Assessment
EIA Regulations	NEMA EIA Regulations (2014) of GN No. R. 982
DBAR	Draft Basic Assessment Report
FBAR	Final Basic Assessment Report
RDBAR	Revised Draft Basic Assessment Report
CRR	Comments and Responses Report
BA	Basic Assessment
PPP	Public Participation Process
I&AP	Interested and Affected Party
TIA	Traffic Impact Assessment
EAP	Environmental Assessment Practitioner
DEADP	The Department of Environmental Affairs & Development Planning (also called the Competent Authority i.t.o. the application)
EA	Environmental Authorisation
NEMA	The National Environmental Management Act, 1998 (Act 107 of 1998), as amended
HAE	Houmoed Avenue Extension Phase 1 (the proposed activity, “Alternative 1”)
VIA	Visual Impact Assessment
PAJA	Promotion of Administrative Justice Act No. 3 of 2000
WLT	Western Leopard Toad
CN	Cape Nature
C:ERM	City of Cape Town: Environmental Resources Management
CoO1	Comment of Objection 1 (authored by AVDS Environmental Consultants)
CoO2	Comment of Objection 1 (authored by AVDS Environmental Consultants, as was submitted to the DEADP on 4/6/2018)

Introduction and context of this objection

1. This appeal is submitted by AVDS Environmental Consultants on behalf of residents of Milkwood Park, Sunnydale, Noordhoek and surrounds as well, as Noordhoek Chalets, Noordhoek Environmental Action Group (NEAG), Greengauge and ToadNUTS, and other parties who are collectively our clients.

2. Annexure 6 is a list of the objectors, being in number more than 100 registered Interested & Affected Parties, on behalf of whom this objection and comment is submitted.

3. The objection is prepared by Andre van der Spuy of AVDS Environmental Consultants. The author is a qualified environmental consultant and conservation biologist of more than 25 years experience. He is familiar with the receiving environment having been employed as the Environmental Site Manager at the Longbeach Mall premises (which includes the artificial wetlands which link to the natural wetlands as well as to the Houmoed Road reserve) for 20 years. He has also been involved with many local environmental processes directly related to the wetlands, including the planning and development of Lake Michelle and City stormwater infrastructure projects, amongst other developments. Accordingly, this objection must correctly be regarded as a professional review over and above being merely a mandated representation of interested & affected parties interests. The submission regards the genuine interests and protection of the environment paramount over the views of any party.

4. The interests and concerns of our clients, the objectors in this submission, share a common bond in that they seek to prevent the environmental and social degradation of the area and surrounds and that would naturally arise as a direct consequence of the proposed Houmoed Avenue Extension Phase 1 (HAE) activity.

5. This comment of objection, now submitted to the DEADP, being the Competent Autority, follows our earlier objections submitted during the BA process:

    1. Objection dated 25/8/2017 (CoO1); and

    2. Objection dated 3/6/2018 (as was submitted to the DEADP per email of 4/6/2018).

    The purpose of submitting our earlier objection of 4/6/2018 to the Competent Authority (as well as the party managing the BA process) was to ensure that the Competent Authority was timeously aware of the serious procedural concerns and objections contained therein in order for it to ensure that due process, and associated rights of I&APs, was accordingly restored in line with its administrative duty to ensure that due and

correct procedure is implemented in a fair, objective and independent manner. Consequently the Competent Authority was duly notified of our clients' objections and concerns in good time.

6. Our clients align themselves in support of the submissions of the ToadNUTs, made during the course of the EIA process, and which concern essentially the potential significant High negative impact on the Endangered Western Leopard Toad (*Sclerophrys Pantherina*) and its habitat.

7. Our clients align themselves in support of the submissions of Greengauge and Noordhoek Environmental Action Group which concern the protection of the local social and biophysical environment against the inevitably and confirmed potential negative impacts that the HAE will deliver.

8. This objection must not be presumed to necessarily constitute the full range of our clients' concerns with the HAE application and our clients reserve their rights to table with the Competent Authority any further matters that may come to their attention in the future.

9. Our clients should be regarded and recorded as <u>individual</u> Registered I&APs and as each being each strongly opposed to the environmental application for the proposed HAE for the reasons set out in this and previous submissions of objection (previous objections were also sent the Competent Authority for its information and consideration in the administration and decision-making process).

10. Furthermore, our clients reserve their rights also to submit their own individual comments/ objections against the application, at any time, should they choose to do so and state that such shall not nullify their interests in this objection, or this objection shall not nullify their interests contained in their individual objections.

11. The route(s) of the proposed HAE; several abutting and affected properties; and the surrounding wetland environment were visited and inspected by the author on 17 August 2017 in the company of Mrs. Lynn Hanger (local resident and objector), Mrs. Alison Faraday (ToadNUTs Co-founder and objector) and Mrs. Suzie J'Kul (ToadNUTs Co-founder and objector). Discussions were held with several of the affected residents, including Mr. James Large of Erf 5/944 (affected property owner and objector).

12. Having reviewed the FBAR our clients still strongly favour the so-called "No go" development option as the "best practical environmental option" of those presented in the application.

BACKGROUND TO THIS OBJECTION

13. This objection is centered on the fundamental concerns that our clients have with the two HAE development options presented in the DBAR, and as referred to as:

    - Alternative 1 (The Applicant's preferred development option and recommended by the EAP).

    - Alternative 2.

    Both development options are considered to be unacceptable on environmental and socio-economic grounds and there is evidence provided to show that they do not meet with the sustainable development requirements as such are set out under NEMA Section 2.

14. Both Alternatives 1 and 2 are sufficiently similar so as to offer insignificant difference of one over the other (with the exception of our client, Mr. James Large of erf 5/944 where both are anyway regarded by him as unacceptable given the extreme impacts both would have upon his property, assets, interests and lifestyle).

15. Accordingly, our clients strongly favour the "no go" development alternative as the "best practical environmental option".

16. Consequently, on account of the fundamental basis of this objection (i.e. to the presented HAE development options themselves), this objection does not concentrate on the associated management plan that has been drafted and it must be recorded that it is, by default, objected to on the basis that it is concerned with the management of a fundamentally unacceptable and unsustainable development proposal.

17. This comment of objection is submitted to the Competent Authority, The Department of Environmental Affairs and Development Planning, according to the conciliatory offer made by the DEADP and which was extended to our clients during a meeting held on 6 December 2018.

18. It must be recorded that it is our view that I&APs have anyway a legal right under NEMA to submit comment on the FBAR since the FBAR is designed and purposed to have "the potential to influence the decision".

19. This right of comment on the FBAR and its supplementary information is further entrenched in this particular instance since the FBAR and its accompanying documentation and information (including the application form) incorporates information which has at no previous time been exposed to public review and comment during the NEMA public participation process.

20. In regard to a meeting of 6 December 2018 with the DEADP, it must also be noted that this meeting was held AFTER submission, by the EAP, of the FBAR and associated information despite our efforts and advice to the EAP and DEADP to first address the substantial failings of the application (which had been tabled before the EAP and thereafter with the Competent Authority, but without address) BEFORE submission, and acceptance by the DEADP, of the FBAR.

21. Given the substantial procedural failings associated with this application it was our stated view that the meeting with the Competent Authority amounted to an opportunity for the Competent Authority to understand and attend to the administrative failings, on its part, of the application as well as to better understand the background and true representative local community support of this, and our previous objections.

22. The reasons for our clients' objections are set out hereunder.

PROCEDURAL ISSUES

Management of the application by numerous legally-unmandated parties and variously proclaimed "EAPs".

23. Under the EIA Regulations and NEMA one natural person only is permitted to be appointed by the Applicant to manage the application and that person assumes strict liability for its management. A company or other non-natural entity, such as "Chand", has no legal standing in terms of the management of the HAE application and neither do any of its employees (apart from the one appointed by the Applicant to be the EAP and unless such other employee has been appointed as specialist under the NEAAM requirements for a specialist).

24. Our previous objections to this application (CoO1 and CoO2) dealt extensively with the illegal status of Chand and members of that company various acting and/ or proclaiming

to be, jointly or singularly, the EAP. Their management of the application, and sometimes interference therein, was pointed out and objected to extensively to such parties (including Sadia Chand and Ingrid Eggert) as well as to the Competent Authority in its capacity as the administrator of the application. Such actions were undertaken in an effort to restore the fundamentally compromised, and Applicant-favoured, BA process and findings to rightful order but which efforts were not correctly attended to by any of the parties. Blatant prejudicial actions of Sadia Chand against our clients collectively and individually (such as Suzie J'Kul of ToadNUTS in a public forum and in the application documentation itself) were challenged and Sadia Chand was asked to provide proof of her appointment to the role of the EAP. She however failed to deliver the promised answers and proof. These objections were raised thereafter with Ingrid Eggert, also proclaimed elsewhere to be the EAP, but who also failed to answer the queries in regard to Sadia Chand's proven legitimacy to be involved in any way in the management of the application. Thereafter the same objections were referred to Ayesha Hamdulay and Eldon van Boom of the competent Authority but who also variously failed (effectively) to address the important matters and in some cases defended the very matters of complaint and provided misleading responses. As was also stated in the meeting of 6/12/2018, the Competent Authority is guilty of not responding to urgent matters raised with it and which appears to have been a deliberate action designed to allow the managers of the application to continue to progress the application unchecked despite the fundamental procedural flaws that had been brought to its knowledge.

25. One of the matters raised during the course of the above extensive efforts to obtain information pertaining to the legitimacy of Sadia Chand's involvement was the right to view the actual application form which provides for only a single entry to record who the single and only EAP is. Despite numerous requests for the application form this was not produced in the BA documentation (as required under NEMA) nor by Sadia Chand, Ingrid Eggert or the Competent Authority. Only months later on 6 December 2018 was a copy of the application provided to us by "Chand" and in which the standard DEADP application form (which has provision made for only one person EAP) had been altered to make provision for the entries of two EAPs. The EAPs listed therein are Sadia Chand and Ingrid Eggert. It must be questioned why the relevant parties, including particularly the Competent Authority, took so many months to provide the application form and the unusually amended application form begs serious questions of the Competent Authority's role in these matters.

26. In light of our sustained objections, it therefore appears that the very belated presentation of application to us (on 5/12/2018) at the very end of the BA process (and in fact after submission of the FBAR) is a superficial guise on the part of those of Chand involved in

the management of the application, seemingly working in conjunction with the Competent Authority, to create the impression that there existed all along, and since the proclaimed submission of the application form, 2 legitimate EAPs (Sadia Chand and Ingrid Eggert). This is not the case however , as shown in our previous objections and this one. In support of our complaints, it must be noted that even in the CRR which accompanies the FBAR, the relevant responses are recorded as being those of "Chand" and not either of the 2 proclaimed EAPs.

27. In our rightful deference to the NEMA and EIA Regulations, at no stage during the application was it clear to us or our clients as to who was the legitimate EAP in this application. This situation contributed significantly to a justified mistrust and lack of faith in all of those involved in the management of the application, as well as ultimately those officials from the DEADP who were tasked with its administration and defended the management of the application and process.

Sustained Applicant-favoured bias of the "EAP(s)" and FBAR, and pre-determined outcome of recommendation of approval of the application.

28. In our submissions CoO1 and CoO2 the clear Applicant-favoured bias of the so-called EAP and other Chand employees, as well as the respective BARs produced under their management, was extensively presented with suitable examples given as proof. It is noted with concern that despite this the conduct of the proclaimed EAPs and others, and the management of the BA process itself, has remained unchanged and that the FBAR is unaltered in its significant level of Applicant-favoured bias in its contents and findings.

29. It is also noted that despite having been made fully aware of these matters of non-compliance the Competent Authority at no point implemented administrative action decisively in order to effect the necessary changes.

30. Our clients are not alone in their concerns over the EAP's objectivity and credibility and the FBAR is even forced to acknowledge the issue after the "EAP's" previous efforts to exclude the concern from record in the previous BAR draft versions. The "EAPs" have subsequently continued the management of the application in the same illegal manner.

31. It is averred that the FBAR and EAP(s) are fundamentally biased in favour of the Applicant's interests and preferred Alternative 1. Therefore the legislated rights of I&APs

to have their own interests upheld, presented and attended to on an equal and fair basis, and without compromise, by the “EAP” has not been honoured by the “EAP”.

32. Evidence of the subjective and Applicant-favoured bias of the EAP and RDBAR is tabled throughout this objection where such is identified.

33. EIA Regulations 13(1)(a),(b), (c) and (d), which requires that the EAP conduct him/ herself in an independent, objective and expert manner while ensuring uncompromised compliance with the EIA Regulations, have accordingly been violated by the EAP(s). EIA Regulation 12(3)(a) has consequently not been complied with.

34. As a consequence of the EAP(s) significant Applicant-favoured bias the results and findings of the FBAR are likewise unfairly favoured in the interests of the Applicant, and against I&APs (like our client’s) who have stated their objection to the proposed HAE and their preference for the “No go” development option. It is important here to point out that this important issue of prejudice against objecting I&APs applies to most of the 250 I&APs who have formally registered an interest in this application. The Competent Authority will need to take note of this in its decision-making process.

35. As an example (which the Competent Authority is already aware of via its record in our previous CoO1 and CoO2) of Applicant-favoured bias, it is pointed out that the so-called EAP(s) already in the DBAR (July 2017) recommended that the application be approved even though:

    (i) proper public participation had not even been undertaken, and
    (ii) significant information was known to be outstanding at that stage (for instance, the Faunal specialist report had not been completed and associated potential impact ratings were unknown).

    Since the EIA Regulations require the EAP to provide a reasoned opinion as to whether or not the application should be approved it is clear that the “EAP” based it’s recommendation upon reasons not in accordance with the prescripts of the EIA Regulations but instead based upon its own Applicant-favoured thinking and purposes.

36. From the above point it was thus evident from the earliest stage of the application’s BA process that it was being managed towards a pre-determined outcome of recommended approval by the “EAP(s)”. This unethical and illegal approach has remained arrogantly

unaltered during the entire course of the BA process despite the well-documented objections from various affected parties, including us. At the same time the Competent Authority at no stage intervened to restore the required independence despite being having been made aware of the concerns of objectors regarding the Applicant favoured-bias of the "EAP(s)". Point 70 of CoO2 has relevance and reads as follows:

"*As the EAP, and those other parties involved in managing this application, have failed to heed the serious matters raised in our 25 August 2017 submission and have instead pursued the same Applicant-favoured approach to managing the EIA process this submission will also be sent to the Competent Authority in order to bring the matter to its* attention for correct administration".

(Underlining added)

37. Another serious matter of misleading management and dishonesty by the EAP was brought to the attention of Mr. E. Van Boom of DEADP (per email of 14/11/2018) where the proclaimed EAP, Ingrid Eggert, had acted fraudulently by making a sworn statement in the 2nd Revised DBAR (page 103) "*that all the comments and inputs from stakeholders and I&APs have been included in this Report*;" and that she was "*aware that a false declaration is an offence in terms of Regulation 48 of the EIA Regulations, 2014 (as amended)*". It is a confirmed fact that the original comments of I&APs were NOT included in the 2nd RDBAR. It was pointed out therefore that the subsequent claims of the Competent Authority in support of the application's procedural correctness under management of the "EAP(s)"(i.e. that the application was "procedurally fair") was substantially incorrect and that the DEADP's condonation of such illegal actions rendered it complicit in them.

Procedural flaws in the management and administration of the Basic Assessment process.

38. The BA process for this application has been beset by numerous fundamental procedural flaws and which has resulted directly in the products of the process, being the various BAR drafts, including the FBAR, being accordingly flawed and unrepresentative of all of the facts and of reasoned and objective assessment of the facts.

39. This section of the objection brings (once again) to the Competent Authority's attention some of the procedural flaws not dealt with in other sections of the objection. It is pointed out how these flaws have been intentionally used to advance the interests of the

Applicant and/or to deprive known objectors of their associated rights to fair process. This objection also serves as a record of the deliberate management and administrative actions of, respectively, the "EAPs" and the Competent Authority to frustrate our registered I&AP clients in their efforts to exercise their rights fully under NEMA and to ultimately deprive them of such full rights. The collaborative actions of the Competent Authority in this regard is on record in its claim that the application was "*regarded as procedurally fair*" (per email of 31/10/2018)).

Public Participation Process flawed.

40. The right of our clients and other registered I&APs to participate in a fair and transparent BA application process , via the legislatively determined public participation process, has been severely retarded by the "EAPs" as well as the Competent Authority. As the Competent Authority is aware, extensive efforts were made on behalf of our clients to obtain critically important information which "*has or may have the potential to influence any decision with regard to (the) application*" (ref. EIA Regulation 40(2)).

41. In accordance with Applicant-favoured approach taken by the "EAPs" in this application certain information was withheld from I&AP review and comment where such information could provide the basis for informed I&AP criticism and objection. Such information that was not provided by the "EAPs" for comment included the:

(i) application form
(ii) CRR to the 2nd RDBAR
(iii) Original I&AP comments on the RDBAR
(iv) Marius Burger amphibian letter and his preceding advice
(v) Original I&AP comments on the 2nd RDBAR
(vi) Original I&AP comments on the FBAR
(vii) FBAR
(viii) Final CRR

Some of the above information was eventually released at later stages of the BA process for I&AP viewing only, but not comment, while other listed information has/ was never released at all. All of this information is subject to *inter alia* EIA Regulation 40(2) which reads as:

"The public participation process contemplated in this regulation must provide access to all information that reasonably has or may have the potential to influence any decision with regard to an application unless access to that information is protected by law and…"

Accordingly, all of this information should have been released at the earliest time of its production for the review of I&APs and who had the legal right to comment on it during the course of the BA process.

42. It must be recorded that Ingrid Eggert was numerously requested to release items of information but refused to do so. The Competent Authority was copied into all requests and was thus aware of our efforts to obtain timeously the information for comment purposes. The Competent Authority thus failed to intervene to ensure that I&APs rights, including those of our clients, were upheld.

43. It is further on record that the Competent Authority was directly asked to intervene on numerous occasions (first instance being per email of 20/9/2018 to Mr. Eldon van Boom) in order to assist us in obtaining the information for review and comment yet the DEADP failed to assist us and instead supported the illegal actions of the "EAPs" and claimed that the "*EIA application for this project is being administered according to the requirements of the EIA Regulations, 2014 and is regarded as procedurally fair*" and that "*Most of the requests you have made thus far deviate from the EIA requirements and is more than what is required in terms of the EIA Regulations,*" (per email of 31/10/2018 from Mr. E. van Boom).

44. Minutes of meetings related to the application were requested (per email of 4/9/2018) from the DEADP in terms of the EIA Regulations but the DEADP advised (per email of 31/10/2018) that such request must be made via the Public Access to Information Act provisions. The delayed time of almost 2 months between our request for the minutes and the refusal by the DEADP must be noted as an example of the Competent Authority's deliberate attempts to frustrate our rightful access to information in good time. Ultimately, the Competent Authority conceded to the request and supplied the subject meeting minutes on 3/12/2018 but this was already 2 weeks AFTER notification that the FBAR had been submitted thus rendering the substance all but meaningless in terms of the PPP.

45. It is our view that the original comments of I&APs which are required to be included in the relevant BARs and thus made available for public viewing and comment (per *inter alia* EIA Regulation 40(2)) have been repeatedly hidden from public view on account of the massive swell of local community opposition to the proposed HAE which the sheer volume of the original comments would clearly evidence. The excuse that such original comments have been withheld from public view according to requirements under the Protection of Private Information Act holds little merit given the ease with which personal

details appearing on the comments could be visually blocked out (as has been the case in other environmental applications) and given that the issue is one which relates to every environmental application (thus it is not an "*exceptional circumstance*" or unusual in any way).

Right of I&APs to comment on the FBAR and other important information denied.

46. Notification of submission of the FBAR to the DEADP was received on 21/11/2018 via email from the office of Chand and which advised that the document was available on the Chand website "*for information and record purposes only*", but not comment.

47. As was advised, and substantiated, to the Competent Authority (per EIA Regulation 40(2)) the FBAR is required to be made available to all registered I&APs for comment. This is because the level of significant difference between the DBAR and the FBAR cannot be left solely to the judgment of the "EAP" unchecked (and especially in the case of this particular application). Furthermore, the submitted FBAR for the HAE application was confirmed to contain new and important information not yet exposed to I&AP view and comment. Such information includes the original comments of I&APs and the last responses in the CRR to I&AP issues. As was explained to the Competent Authority at the meeting of 6/12/2018 the failure to allow registered I&APs to the undertake the important verification process pertaining to the "EAP(s)" having correctly and honestly recorded the original comments in the CRR is denied by such an approach. Also, the opportunity to contest the responses to such issues in the CRR is denied even though such responses (and original comments) "*may have the potential to influence any decision*" with regard to the application.

48. It was also pointed out to the Competent Authority that the right to comment on the FBAR was explicitly recorded in the DBAR (July 2017) and such right cannot subsequently be arbitrarily removed.

49. Despite our protestations the DEADP has refused to uphold the rights of all registered I&APs to comment on the HAE FBAR. At our meeting of 6/12/2018 with the Competent Authority a conciliatory offer was made to us on behalf of our clients to the extent that a comment period on the FBAR was extended until 25/1/2019. It is however our view that the offer is in fact an effort on the part of the Competent Authority to compensate for its failure in not having secured our rights to comment on the FBAR (and other critical information pertaining to the application). The fact that the same offer (legal right) has not been extended to all registered I&APs is a serious omission. At the same time the question must be asked as to whether of not the Competent Authority is legally entitled to

be exercising such an offer (or right in our view) given that it is a public participation task and which should rightfully fall to the duties of the appointed EAP.

50. The effort to secure from the Competent Authority the right of our clients to comment on the FBAR has been extensive and costly whereas it should have been willing provided by the EAP (but was not). It is improper for I&APs to have to undertake such measures to secure their legal rights under NEMA and in this regard the "EAP(s)" have once again failed significantly in their legislated duties.

Reasonably different alternatives not considered through independent consultative process.

51. Under the 2014 EIA Regulations, Section 1, "alternatives" are defined as being:

"*in relation to a proposed activity, means different means of meeting the general purpose and requirements of the activity, which may include alternatives to the …and includes the option of not implementing the activity;"*.

(Underlining supplied)

Thus, importantly the consideration of alternatives must be in relation to the purposes and requirements of the "activity" and not the "Applicant".

Also, the consideration of the "no go" option in NEMA environmental applications dealing with "alternatives" is therefore a prerequisite under the 2014 EIA Regulations.

52. The important issue of the application's failure to consider reasonable alternatives to the proposed HAE preferred option via a proper independent "consultative" basis was advised to the "EAPs" and the Competent Authority in our objection CoO2 (points 71 – 82). However, despite our advice from the earliest possibility of the BA process at no stage was the matter rectified during the BA process and thus the submitted FBAR, and the application too, remained fatally flawed on these grounds.

53. In the CRR it is noted that "Chand" claim that other alternatives proposed by I&APs were indeed considered by the Applicant's appointed Traffic Engineers but which were all ultimately dismissed for various reasons.

54. The dismissal by “Chand” and the FBAR of other tabled alternatives appears to rely entirely upon the professional opinion of the Applicant’s appointed traffic engineers. On closer inspection however it is noted that, despite the traffic study being presented in the FBAR as a “Specialist Report”, it is in fact correctly a professional report and it is significantly non-compliant with the requirements (as such are set out under EIA Regulations, Appendix 6) of a specialist report under NEMA. In other words the appointed traffic engineers, are not governed by the strict independence criteria that must be applied to a specialist operating as such under NEMA and these traffic engineers are instead acting in the interests and purposes of the Applicant. It is therefore to be expected that traffic study does not provide an independent and objective assessment of other I&AP alternatives which fall outside of the Applicant’s specific purposes or interests. In the CRR it is noted that “Chand” avoid the raised issue of the traffic professionals lack of independence and in so doing “Chand” are protecting the interests of the Applicant and dismissing the validity of those alternatives raised by I&APs.

55. It is also noted from the CRR that the professional rebuttal of the traffic study by Mr. Jon Lijnes was not made available to I&APs. In what appears to have been a subsequent submission in responses to comments made on Mr. Lijnes original rebuttal (Annexure 1; with permission), (as far as such can be ascertained from the CRR) he is recorded as having stated that,

“*the issues I raised have not been addressed in the Revised BAR. Without addressing these issues, the BAR is fatally flawed as it does not fully describe the potential impact on the environment nor offer any mitigation measures for such impact. (it should be noted that the environment includes the residents and road users in that environment)*

It is, in my opinion, nonsensical, extremely short sighted and completely illogical to simply state that there is no other choice, but to build Houmoed avenue as a statement in isolation. It is a fatal flaw in reasoning to neglect the potential impact of not taking account of the full consequences of the project. ”

To this “Chand” have merely adopted a dismissive response that “*The transport engineers (HHO) stand by their responses to the comments raised and the model that was used to inform the Traffic Impact Assessment*” (CRR, page 63). We again include Mr. Lijnes original rebuttal herewith (see Annexure 1; with permission). Of importance Mr. Lijnes found the traffic study to be limited in its scope and “fatally flawed” and his subsequent statements confirm an unchanged professional opinion by him.

56. In consideration of the above, it is clear that the Applicant-appointed traffic engineers are not objective or independent and consequently their dismissal of other alternatives raised by I&APs is obviously a measure taken to protect the narrow interests and purposes of the Applicant. Such an Applicant-favoured approach, permitted as it is by the "EAPs", does not accord with the "consultative" approach required by the EIA Regulations and it is accurate to state that proper consultative consideration of other alternatives has not occurred in this application where the 2 proposed HAE alternatives of the FBAR have been only considered in isolation.

57. The obligatory comparative assessment of the potential impacts of the "No go" option in relation to the proposed activity has not been properly and objectively undertaken in the application. Potential impacts associated with the "No go" option have been drastically understated in an effort to represent the two HAE alternatives more favourably. This effort of potential impact under-statement has been undertaken by the liberal and inappropriate (in many instances) use of a "neutral" allocation of potential impact rating associated with the "No go" option whereas clearly many of them should have been represented as "positive" potential impacts.

58. As an example, for the potential impact of "*Faunal Aspects: Direct impacts on fauna due to the road operation*" (FBAR, page 96) the "No go" alternative is allocated a "Neutral" impact rating whereas , in reality, the absence of the proposed "road operation" will obviously have a "positive" impact in that the direct road impacts on fauna will be avoided and thereby allow the fauna to persist (the ongoing persistence of such fauna must generally be considered to be a "positive" aspect by society).

Flawed methodology and therefore unrepresentative and unreliable findings in application.

59. The FBAR is a continuum of a fundamentally flawed methodology which is not compliant with the principles and requirements of NEMA and the EIA Regulations. The required methodology for a proper BA process, is fundamentally reliant upon the following two criteria (amongst others):

    a. That only a single individual (i.e. natural person) who meets the requirements set out under EIA Regulation 13 is appointed as the "EAP" to undertake the management of the application and which person assumes strict liability therefore; and

b. That a proper public consultation process be engaged with I&APs and whose views must genuinely inform the BA process, and its final outcome, from the earliest stage of the process, even including the identification of alternatives; the true need and desirability of the proposal; and, the identification of potential impacts that must be thoroughly assessed.

60. In our previous two objections (CoO1: items 45 – 46; and CoO2: items 83 – 85) it was recorded that the reasoned opinion, independence and objectivity of the parties acting as the EAP was significantly compromised and thus the respective reports and findings were likewise unreasonable and Applicant-favoured. The supposed superior judgment of the "EAP" in dismissing important concerns and issues of I&APs was identified. The pre-determined and premature recommendation of approval (already in 2017) of the application by the "EAP" (in the instance of significant outstanding information and specialist studies) was cited as an example of the "EAP's" gross Applicant-favoured bias in the management of the application.

61. In the CRR attached to the FBAR it is noted that these above issues are responded to by a legally unmandated party ("Chand") who we do not recognize and whose response we reject, and whose identity and response the Competent Authority must likewise reject. No response to the repeatedly raised issues is provided by the/an EAP (individual). The responses provided by "Chand" are anyway entirely dismissive of the important issues and makes no attempt to address them – even the clear example provided by the "EAP's" unwarranted judgment of dismissal of the critical issue of impacts on property values is flippantly avoided and argued around by claiming that "independent specialists" had informed the judgement of the EAP and that the EAP is required under the EIA Regulations to "provide such opinions". "Chand" is however incorrect since there is no provision under the EIA Regulations for "such opinions", unreasoned and as they are, and which are the correct discipline of suitable specialists alone.

62. The EAP/"Chand" fail to realize that simply being termed, or even identified as an EAP or specialist, does not justify such a person's opinion or findings being provided without a reasoned and objective basis therefore. Review of the CRR reveals that the provided responses are extensively plagued by such a misconstrued view on the part of the respondents and especially "Chand". Where an I&AP presents a reasoned alternative or new view to that of an appointed EAP or specialist then that EAP or specialist is required to engage in reasoned argument with such alternative view and cannot, under NEMA, simply dismiss an I&AP's view based solely on a proclaimed superior level of expertise (or for that matter an irrational argument). It is not sufficient for "Chand" to provide a response to the effect that an I&AP's view is invalid simply because the "EAP", "Chand"

or a particular specialist found otherwise or simply do not agree. Such does not constitute a reasoned opinion but merely an unsubstantiated different view.

63. Thus, instead of properly engaging with the issues raised by us and I&APs, even where these do not necessarily benefit the purposes of the Applicant, the EAP / "Chand" have instead stubbornly persisted with a prejudicial approach and methodology which is counter to I&APs rights to have their concerns properly addressed by a legitimate EAP and suitable specialists. The effect of this approach by the EAP/ "Chand" is that important concerns and potential impacts that should have been investigated and assessed in the FBAR have been illegitimately excluded from it by the EAP/ "Chand" and thus the DEADP will be unable to make a reasoned and justified decision of approval.

64. The PPP undertaken by the "EAP" for this application is fatally flawed in its Applicant-favoured approach which has simply dismissed critical issues and concerns of ours and others where such legitimate matters could have be detrimental to the interests and purposes of the Applicant (i.t.o. *inter alia* the latter's, budget, time frames, and development goals). We and our clients, as well as other I&APs, have repeatedly made extensive and detailed representation of alternatives (such as alternative road routings and public transport options) to the proclaimed purposes of the proposed development but which have summarily been rejected by the "EAP" and Applicant without basis and with frequent reference to the Applicant's appointed traffic engineer who is not an independent specialist (as is required under NEMA to objectively comment on, and assess, such important matters).

65. Under the EIA Regulations, Appendix 1, point 2, the *inter alia* identification of alternatives and need and desirability is required to be via a "consultative process" and which under NEMA must include consultation with I&APs such as our clients who happen to constitute a significantly large sector of the affected local community. The EAP/ Chand have instead engaged in a pseudo-PPP in which new and/ or additional potential concerns and impacts which are unfavourable to the Applicant are effectively dismissed unless the address of specific items is of very limited to no material impact upon the interests of the Applicant. The flawed methodology has not permitted the need and desirability of the proposal , nor the development of alternatives, to be informed in any way by a "consultative process" with I&APs. This is despite the fact that the CRR reveals that an overwhelming majority of I&APs and local community members and organizations are opposed to the proposed HAE and its development alternative and are instead strongly in favour of the "no go" option. This is a major fatal flaw in the application and the Applicant and EAP were advised from the earliest stages of the process to act differently and properly but failed to do so.

66. As a consequence of the flawed methodology employed in this application the results and findings cannot be regarded as (i) being representative of all I&APs; (ii) as being objective; and, (iii) sufficiently reliable to allow for a justifiable and accountable decision (other than total refusal of the activity) to be made by the Competent Authority.

SUBSTANTIVE ISSUES

Need and desirability not proven.

67. The presented Need and desirability of the HAE proposal is based primarily upon the traffic study by HHO Africa. The latter is not a "Traffic Impact Assessment" or a "Specialist Study" (as such is defined under NEMA). The Traffic Study is designed to serve the interests of the Applicant alone and as such its case for the need and desirability of the activity is not balanced or objective.

68. As background to this aspect of the objection the Competent Authority is referred to points 86 – 99 of the CoO2 (which it has in its possession). In that CoO2 objection it was pointed out that the need and desirability of the proposed activity was not suitably justified and the following issues were tabled in this regard:

a) The rebuttal by Mr. Jon Lijnes of the HHO Africa traffic study and which rebuttal found the traffic study to be fatally flawed (as apparently did subsequent input from Jon Lijnes).

b) A previous environmental application of 2004 for the proposed HAE was refused on various procedural and substantive grounds.

c) It was explained that the City does not have an unlimited right to exercise the attached land use rights without due consideration to the context of the time at which those rights are intended to be exercised. In the *Oudekraal Estates*[1] case the Court stated that "*the exploitation of property rights is always constrained by such laws as exist at the time that they are sought to be implemented*".

d) It was shown that existing planning directives indicate that the proposed HAE is not desirable.

[1] Oudekraal Estates (Pty) Ltd and the City of Cape Town and Others SCA (Case No. 41/2003), para. 42.

e) The huge environmental risk to the wetland and associated socio-economic aspects was pointed out as being unwarranted against the unconvincing and limited benefits of the proposed HAE as such are outlined in the BAR.

f) It was shown that there is majority local community opposition to the proposed HAE (Note: the PPP results indicate the same in an overwhelming majority but which is undeclared anywhere in the FBAR of application).

g) Reference was made to the RDBAR and the Traffic Study which revealed that, *"even with the implementation of the Houmoed Avenue extension; some intersections will still operate at over capacity conditions."*

69. The CoO2 thus concluded that, notwithstanding the severe environmental and social destruction that the HAE would cause, the proposed HAE has insufficient justification according to its own evidence, when same is correctly interpreted by a professional whose interests are not directly aligned to those of the Applicant.

    The CRR is typically un-engaging and dismissive of the sound arguments raised by I&APs refuting the proclaimed need and desirability of the activity and it essentially defers to the Applicant-favoured Traffic Study. It is thus fair to conclude that this application and the Applicant has blatantly ignored the need and desires of the local community who constitute those humans most affected by the proposed HAE.

Real wetland impacts and "offset" mitigation program misrepresented.

70. The Competent Authority is advised to refer to our CoO2 (which was submitted to it on 4/6/2018), points 100 – 113, as background to this further comment.

71. As previously advised, the loss of 1.55ha of wetland habitat on the Cape Peninsula is an unacceptable loss of a highly threatened habitat type, and especially where the specific habitat in question is considered to be of moderate to high to conservation importance.

72. In our previous CoO1 and CoO2 it was outlined that the proposed offset program of rehabilitating certain identified wetland areas adjacent to the proposed HAE is falsely presented as being a "wetland rehabilitation" exercise and which approach appears to be designed to afford the application it positive impact ratings by the Freshwater Specialist but which are undeserved in reality.

73. In its response in the CRR “Chand” (not the freshwater specialist!) reject our assessment of the true nature of the proposed wetland habitat offset effort. This rejection is based upon a reasoning that the wetland impacts associated with the proposed HAE are not medium-high or high negative and which then, according to a particular Guideline, allows the proposed HAE wetland “rehabilitation” effort to escape being termed and bound by particular wetland offset project criteria.

74. The manipulated view of “Chand” in making this flawed determination is to be rejected since the identified wetland rehabilitation areas are outside of the proposed HAE development footprint and are therefore areas that would not be directly affected by the proposed construction. Thus, the (degraded) current state of the identified wetland rehabilitation areas outside of the site is not the result of the proposed HAE and therefore the initiative to rehabilitate such areas is a voluntary proposal which is being introduced to the application to justify and “offset” the direct (intentionally under-stated) negative wetland impacts that would be incurred by the HAE, and to motivate the proposed HAE. Such an initiative is thus confirmed to be exactly a conservation “offset” as such is defined, understood and implemented in the real world of conservation management and planning.

75. Secondly, potential impact ratings of the Freshwater Study are to be questioned. This Study states as follows:

“No off-site "wetland offsets" are required for the proposed development because, according to the results of the freshwater ecosystems impact assessment, no residual impacts of moderate-to-high or high significance were identified for wetlands.”

However, the Freshwater Study (page 38) records that a potential impact upon the Western Leopard Toad and other fauna from trampling by vehicles (Without Mitigation; Operational Phase; both development Alternatives; Permanent Road) is “Medium – High” Negative, and “Low” Negative after mitigation. This impact assessment by a non-specialist (amphibian) is highly questionable and is contested by our client, ToadNUTS. The proposed mitigation measures for WLT have been contested strongly since they have never been tested elsewhere (and are thus unproven to be effective); are not informed by a frog specialist; and, according to the local WLT specialist organization, ToadNUTS (the true authority on the WLT Noordhoek population) are significantly at odds with the characteristics of the WLT and its breeding and life cycle. Thus, it is quite likely that the Medium – High” negative pre-mitigation impact rating will even be elevated to a “High” negative rating (due to construction of the HAE and associated useless

mitigation measures). This would then seemingly constitute the need for a wetland offset program according to the advice of the Freshwater Study (but the Guideline prescribed details of such a program are unknown and are but presumed to be onerous given the Specialist's and "Chand's sustained efforts to avoid declaration of the "trigger" threshold impact ratings for such).

76. Thirdly, while the Freshwater Study assesses the potential vehicle "trampling" threat to the WLT it telling avoids the even more obvious and critical impact of WLT habitat loss (which includes wetland habitat). This is a glaring omission since habitat loss through inter alia urbanization is given as the primary cause for the "Endangered" status of the WLT. On the other hand, the failure to include this obvious potential impact is no doubt due to the "High" negative potential impact rating that it would unavoidably register (post-mitigation) and which would (apparently) automatically trigger the requirement for an off-site wetland offset program. It is therefore the contention of this objection that the Freshwater Specialist, and others involved, have intentionally omitted this particular habitat-related potential impact assessment so as to avoid the necessity for a off-site wetland offset project. The Competent Authority will be required to give this obvious information gap due and serious consideration.

77. So, given the likelihood that the Applicant's intended wetland rehabilitation plan does indeed constitute a conservation offset initiative it is then correct of our previous CoO2 to advise that the positive impacts attributed to the proposed HAE by the proposed wetland rehabilitation effort are actually a misrepresentation of the true facts. Instead the benefits of such an off-site "offset" plan actually constitute mitigation of the direct negative wetland impacts (and which are, in reality, of a much greater significant negative impact than is presented) that would be incurred by the proposed HAE. In other words all of the potential wetland impacts of the proposed HAE (both development alternatives) are negative and the marginal benefits of the mitigation via the wetland offset initiative are not sufficient to reflect any net positive wetland impacts associated with the proposed HAE.

78. Our view , as it is stated above, is strongly supported by the below extract from the Freshwater Study (page 39):

"The proposed rehabilitation of seasonal wetland habitat of … at least 0.5 to 0.6 ha in extent along the edges of the proposed road, as a core component of the development project, will to some degree offset the anticipated loss of wetland and reduce the significance of this cumulative impact to a low-to-medium level."

79. From the above it is noted that the planned attainment of 0.5 – 0.6 ha of rehabilitated wetland will only "*to some degree offset*" (underlining added) the loss of 1.55ha of existing wetland habitat.

80. In its decision-making processes the Competent Authority will be expected to look beyond the manipulated attempts of the application and to properly consider the real potential significant negative impacts of the proposed HAE.

Faunal Impact Assessment superficial and insufficient.

81. In our objection of CoO1 its was pointed out that despite the faunal specialist study having been completed the "EAP" already then (2017) recommended the approval of the proposed HAE. It was thus clear that the faunal study was designed, from the start, to be irrelevant to the outcome of approval of the application.

82. In our CoO2 (points 114 – 141) the review of the faunal aspects of the application were presented with the conclusion that the faunal study was substantially insufficient and lacking and a fatal flaw was identified. The Competent Authority was provided with a copy of the CoO2 for its information and is requested to again acquaint itself with it for the purposes background to this objection.

83. Despite the advice provided to the "EAPs" in the CoO2, the FBAR, the Faunal Study and the CRR remain materially unchanged and essentially ignore the important advice, including that provided by ToadNUTS, and which are the acknowledged specialists regarding the WLT species. Advice was provided that *inter alia* a comprehensive specialist amphibian study was required since the impacts of the proposed HAE as it stood (with its limited and untested mitigation theories), and still stands, represents a huge threat to the existence of the potentially affected WLT population and accordingly a "fatal flaw" was identified in the application. The "No go" alternative was supported under the circumstances.

84. The FBAR relies heavily upon the proclaimed credibility of the faunal specialist and the fact that Cape Nature and City of Cape Town: Environmental Resource Management accept the faunal study as it exists. Both of these institutional sources of support are however compromised and accordingly disputed.

85. It is a fact that Mr. S. Todd is not sufficiently qualified to provide the necessary insight and assessment on the entire scope of the faunal component of the HAE affected

environment on account of its complex, diverse and sensitive ecological nature, habitats and various endangered species.

86. CN and C:ERM constitute “Commenting Authorities” under the NEMA. They are not, and cannot be, “specialists” as such are defined under NEMA and EIA Regulations. They have political connections which are closely aligned with those of the Applicant and their vested mutual interests in this regard are significant and have undoubtedly influenced their views on the application. It is therefore remiss of the “EAPs” to rely so heavily, and entirely, upon these institutions to support the proclaimed adequacy of the Faunal Study and especially in regard to its dealing with amphibian matters. Nonetheless, the fact remains that the HAE application has not been informed by an amphibian specialist who has been appointed in terms of NEMA to investigate the critical and extensively tabled amphibian and WLT concerns.

87. Extensive and numerous calls for the application to be informed by a proper amphibian impact study have gone unheeded by the “EAPs” and Applicant, However, the services of Mr. Marius Burger (a recognized amphibian specialist, but whose credibility is questioned by some) were eventually commissioned, but not declared by the “EAPs”. When his known involvement was discovered and revealed the “EAPs’ chose to make available a brief letter of opinion by Marius Burger in which the adequacy of the Faunal Study in terms of amphibian issues was confirmed. The said letter was presented to I&APs during a comment period (on 21/8/2018) but was only made available for viewing and not comment. It was proclaimed by the “EAPs” and Mr. Burger that his opinion was merely for the internal purposes of the “EAPs” in order to inform and confirm the findings of the Faunal Study.

88. In this regard it is pointed out that under EIA Regulations the “EAPs” were obliged to make the Burger letter available also for comment by registered I&APs. This is a serious denial of I&APs rights to comment on all information that has the “potential” to influence the decision on the application. The latter point is particularly pertinent in that the amphibian/ WLT concern is a central concern to our many clients and especially the ToadNUTS whose purpose and existence relates directly to the conservation of the WLT. Under the circumstances the failure to make the Burger report available for comment, despite its significant purpose in the application, is a fatal procedural flaw.

89. It is also recorded that the Competent Authority is aware of the Burger letter but has pretended that it simply does not exist and has thus ignored its role in potentially influencing the decision on the application. This is a critical administrative failure since it is indeed the Competent Authority to which the decision-making duty falls. Such a “head

in the sand" approach to the Burger information is not tolerated under NEMA and can only possibly be interpreted as a ploy to look after the interests of the Applicant by not allowing a NEMA non-compliant specialist opinion to be introduced to the application and which would thus provide proper grounds for contesting it.

90. Still further, it is contended here that the "EAPs" were also obliged to bring the existence, contents and application of the Burger letter to the attention of the Competent Authority as information that was referred to and used to potentially influence the contents and findings of the application.

91. Interestingly, even a Cape Nature letter of comment (dated 28 August 2018) on the application makes reference to the role of the Burger input as being an "internal review" and which resulted in a "*slight variation in terms of the rating of impacts*" of the Todd faunal study. It is thus beyond dispute that the Burger report has had a bearing on the application and therefore it should have been exposed to public review and comment.

92. Since it is established, based on the advice of the "EAPs", and the Competent Authority (per meeting of 6/12/2018), that no amphibian specialist has been appointed to attend to the application it is then left to the expert opinion of Dr. John Measey, a recognized and properly qualified amphibian specialist, to submit comment on the adequacy of the faunal study and application in addressing the important issues around amphibians. See Annexure 2 for Dr. Measey's expert comment and opinion in this regard.

93. It is noted that Dr. Measey finds the faunal "desktop" study by Simon Todd inadequate and in his opinion the matter "*requires a thorough investigation as to the best ways in which to mitigate effects of the road prior to construction*". The approach taken by the application to the management of amphibian conservation is regarded by Dr. Measey as "risk- intensive" instead of "risk-averse" as is required under NEMA".

94. The ToadNUTS is a recognised authority on the local WLT population through its extensive and successful conservation efforts over more than 10 years. Like Dr. Measey, ToadNUTS has found that, apart from the critical absence of a proper amphibian specialist study, the mitigation proposed in the application to deal with potential WLT impacts is uninformed and inappropriate. Yet, despite this, "Chand" and Todd claim in the CRR (page 116, point 13) that the potential impacts on the WLT are "*appropriately mitigated to ensure the sustainability of this population*". The claims of these suitably unqualified parties are roundly contradicted by those of a proper amphibian expert, Dr. J. Measey who has reviewed the faunal study. Dr. Measey's views are supported by those of the ToadNUTS.

95. The submission of ToadNUTS is attached as Annexure 5. This important and informative report puts into perspective the importance of the Houmoed WLT population and its associated wetland habitat and breeding ponds. It also points out the inadequacies of the Toad faunal study in regard to amphibians and specifically the WLT.

96. The haphazard and superficial treatment of herpetological issues by the application and faunal report has even resulted in the confirmed presence of another Endangered amphibian, the Cape Platanna (*Xenopus gilli*), being ignored and not even considered in the mitigation measures". The presence of this important species is confirmed by Dr. Measey as well as the ToadNUTS.

97. We are also aware of the comment of the Western Leopard Toad Conservation Committee (see Annexure 3) and which objects in no uncertain terms to the failure to have conducted a proper amphibian study as well as the manipulated approach of the "EAP" in having denied comment on the "internal" Burger report.

98. In conclusion, there can be no doubt that the proper "risk-averse" approach required (in terms of NEMA) to attend to faunal matters in this application, and including those related to amphibians, has not been incorporated and that the reliance of the "EAPs" on the comments of Commenting Authorities to support the generalist faunal "desktop" study in lieu of proper independent experts (such as a herpetologist, appointed in terms of NEMA) as well as the application's reliance upon the unreferenced Marius Burger record, is insufficient expert information required to make a proper and accountable decision on the application.

Potential impact of loss in property value and mitigation via compensation.

99. In previous submissions (CoO1 and CoO2) the important issue of potential property devaluation due the proposed HEA was raised and explained, particularly as such would relate to those property owners directly adjacent to the proposed development (and which include some of our clients). Repeated advice was given of the need to provide specialist advice and quantification of such potential impacts but such has been all but ignored by the "EAPs".

100. It was also explicitly explained to the "EAPs" the legal imperative, in terms of NEMA and the accepted impact mitigation hierarchy, to compensate such potential impacts and affected parties. It is noted that the same issue was also raised by other I&APs during the course of the BA process. The application has however failed to assess this important (and inevitable) potential impact and it has failed to determine appropriate mitigation (compensation) therefore. It must be noted that the EIA Regulations require that all potential environmental impacts associated with a proposed activity be identified and assessed. The application has failed in this regard.

101. In dealing with this serious concern (to many I&APs) the "EAPs" have been dismissive of it on the basis of the "EAPs" (i.e. not a specialist) view that potentially affected property owners should have discounted the potential property loss on account of the long-standing existence of the adjacent (or nearby) road reserve. The EAPs naivety in this supposed rationale is glaring and, apart from the many assumptions encompassed within such rationale, the associated implications of the previously refused 2004 environmental application (such as setting a precedent for refusal of HAE) is conveniently ignored by the "EAPs".

102. In the FBAR the EAP has effectively dismissed this significant potential negative impact again and has provided the following explanation (see page 10 of the FBAR, "*Socio-economic Impact: Impact upon property values*");

"*Affected residents have indicated that the road will result in a marked reduction in the property values, however it is submitted that the current property values may be overestimated by not taking account of the adjacent designated road reserve and the City's published intensions to construct the road. While the road will change the character of the area abutting the corridor…, it will likely not impact on the prices that an informed buyer would have offered the landowners pre-and post the road construction. Construction of the road now should therefore have a nil effect on real property values.* "

The repeated dismissal of this important impact is a fatal flaw and is unjustified and illogical.

103. The logic employed by the "EAPs" to dismiss the impact by stating that the consequences of the impact upon affected property owners (as being uninformed buyers) is deserved by them is grossly speculative, simple and condescending – and it yet again panders to the Applicant's interests. As mentioned, the "EAPs" fail to acknowledge that the 2002 environmental application for the proposed HAE was refused in 2004 on appeal. Therefore, the relevant property market after that date would have justifiably factored in a

disqualification of the possible future construction of the proposed HAE and which disqualification would have foreseeably resulted in an elevation in value of potentially affected properties (and which includes not only those directly adjacent to the road reserve). It also fails to consider the fact that the HAE road reserve falls outside of the Urban Edge, and which according to the applied logic of the "EAPs", an informed buyer would reasonably consider to be an instituted security against the HAE ever being constructed.

104. It is submitted that the "EAPs" are not suitably qualified to address this critical and complex issue and potential impact and that a suitable professional land valuer should have been employed as a specialist in terms of NEMA in order to conduct a quantified, objective and independent land value impact assessment. The unacceptable and Applicant-biased response of the FBAR to this potential impact is rejected and the failure of the "EAPs" to have commissioned a proper independent specialist property value impact report is another fatal flaw.

105. Furthermore, the arguments of the "EAPs" is firmly rebuffed in the specialist report (see Annexure 4) of Mrs. Jenney Shaw, a registered and qualified property valuer, and who is familiar with local affected property environment. Mrs. Shaw goes further to confirm that it is "*highly likely that the values of the properties adjacent to the road will be significantly negatively affected by the construction of Houmoed Rd Phase 1*."

106. It is interesting to note that the City of Cape Town itself (which is effectively the Applicant) also acknowledges and advises of the "*significant if not substantial negative impact on the value of the fronting properties*" (CRR, page 139) that the proposed HAE would have. Nonetheless, "Chand" merely responds that "t*he EAP has a different view whether there is an impact on property values*".

107. The failure to have assessed the discussed potential impact on property values via the services of a proper specialist is a fatal flaw in the application since the manifestation of this potential impact, should the HAE development proceed, is beyond reasonable question and this potential impact is confirmed by a registered professional property valuer.

Failure of the application to undertake a proper independent Traffic Impact Assessment.

108. Given the importance of vehicle traffic impacts in regard to this proposed HAE the application is substantially and fatally flawed by not having been informed by an independent Traffic Impact Assessment which accords with the necessary criteria set out under Appendix 6 of the EIA Regulations. The Traffic Study undertaken by HHO Africa and which is used to inform this application does not meet the requirements set out under Appendix 6 of the EIA Regulations and cannot be relied upon to provide accurate and objective information.

109. The failure of the application to have undertaken a proper traffic Impact Assessment is a fatal flaw.

Cumulative impact of the proposed HAE and other alternatives.

110. The cumulative impact of the HAE has again not been properly assessed in the FBAR and can therefore not properly inform the DEA's decision of approval. This is based upon a misunderstanding of what a cumulative impact is on the part of the EAP.

111. The 2014 NEMA Regulations define "cumulative impact" as follows:

"in *relation to an activity, means the past, current and reasonably foreseeable future impact of an activity, considered together with the impact of activities associated with that activity, that in itself may not be significant, but may become significant when added to the existing and reasonably foreseeable impacts eventuating from similar or diverse activities;"*

(Underlining supplied)

112. Using the data of the FBAR itself ("Impact Summary" table, FBAR, page 94) a comparison of the cumulative impacts of the Preferred HAE option (Alternative 1), the development Alternative 2, and the "No go" Alternative was undertaken for all development phases and with mitigation effort applied. The results are as follows:

IMPACT	***No. of impacts for Alternative 1 (Preferred)***	***No. of impacts for Alternative 2***	***No. of impacts for "No go" option***

+	2*	2*	3
-	21	21	1
Neutral/ N/A	0	0	15

* these positive impact results are over-stated since they include the "positive" impact attributed incorrectly by the FBAR to the wetland rehabilitation offset plan but which is actually a mitigation measure designed to compensate (offset) other negative wetland impacts.

It will be observed that the 21 negative impacts of both the Alternative 1 (Preferred) and 2 far outweigh the single negative impact of the "No go" alternative. Merely 2 positive impacts are associated with the 2 development Alternatives which is less than the 3 positive impacts attributed to the "No go" option. As this objection shows elsewhere the excessive (calculated) use by the "EAPs" of the term "Neutral" (or "N/A") to disguise other considerable number of positive impacts attributable to the "no go" option has significantly under-represented the benefits of the "No go" option. On the other hand this objection also shows that all the significant negative impacts that will be incurred by either of the development options have not been assessed in the FBAR and it could therefore be expected that the negative impacts of the two development Alternatives are even considerably more than are revealed by the above table.

Therefore approximately 91% of all the impacts associated with the HAE proposal(s) are negative.

In conclusion, the cumulative negative impact associated with both HAE alternatives is extreme and far exceeds the overall positive cumulative impact that the "No go" option will have.

113. The fact that approximately 91% of all the post-mitigation impacts associated with the HAE proposal are negative confirms that the HAE proposal cannot be considered to be environmentally sustainable development. It also reveals that the HAE is an initiative which is impossible to mitigate to an acceptable level.

114. Under Item 13 (page 53) of the Departmental BAR Form (the FBAR) the EAP is required to answer the following question:

"*What will the cumulative impacts (positive and negative) of the proposed land use associated with the activity applied for, be?*"

The evasive response of the EAP is to simply refer the reader/ Competent Authority to another section of the report. The above assessment of this objection however answers

the question 13 and shows that the more than 91% of the impacts of the HAE will be negative and positive impacts will be insignificant (as shown above this analyses does not yet factor in the considerable manipulations of the EAP towards the interests of the Applicant/ HAE).

115. It is therefore very clear that the true cumulative impact of the proposed HAE is overwhelmingly negative, wide-spread and significant and it includes various "fatal flaw" impacts which would be revealed through a proper and independent impact assessment process.

116. In the CRR the EAP has responded to the cumulative impact assessment presented (again) in this objection by stating that our assessment is flawed in that it does not consider the need and desirability of the proposed HAE against the assessed cumulative impact. The EAP further states (CRR, Page 124) that the correct method of assessment is that *"(e)ach impact is measured on its own merit, to understand whether it can be brought to an acceptable level, post mitigation*". Thereafter, if any individual impact is found not to be capable of mitigation to an acceptable level (author's note: whatever be that may be?) then such would "trump" the proposal's need and desirability. What the EAP seems to still fail to understand is that its described methodology relies on the assessment of individual impacts as opposed to the sum of those individual impacts (the cumulative impact).

The EAP's logic also makes no sense on the basis that any benefits that could be ascribed to the need and desirability of the proposed HAE should surely be reflected as individual positive potential impacts in the application's impact assessment ratings. As such, the cumulative assessment presented in this objection must be reasonably assumed to already incorporate an accurate representation of the proposal's need and desirability (and therefore a further comparison to the proposal's need and desirability would amount to "double accounting" and which is not correct). The EAP's rationale is thus flawed.

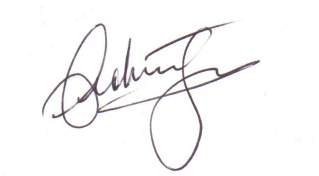
Furthermore, this objection shows elsewhere that the subject application's consideration of need and desirability is anyway substantially flawed, superficial and unsubstantiated to the extent that any proclaimed benefits are all but non-existent.

117. It is thus clear that the proposed HAE is fatally flawed on account of its overwhelmingly negative potential cumulative impact.

Conclusion

118. As with the two previous comments of objection (being CoO1 and CoO2), which were submitted to the "EAP" and the Competent Authority, this objection shows that the application remains fundamentally and fatally flawed on several grounds and that the "EAPs" failed to use the advice offered by us and other I&APs to guide the application towards the "best practical environmental option". Under the circumstances the "No go" development option remains the only accountable and justifiable option that is available for approval by the Competent Authority.

This objection and comment submitted by:



Andre van der Spuy

List of Annexures:

1. Jon Lijnes Traffic Study review
2. Dr. John Measey Opinion
3. Western Leopard Toad Conservation Committee letter.
4. Property Valuer Report (Mrs. J. Shaw)
5. ToadNUTS Report
6. List of clients/ objectors.