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AFFAIRS AND DEVELOPMENT
PLANNING,
WESTERN CAPE PROVINCE

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Dear Honourable Minister,

APPEAL AGAINST AN ENVIRONMENTAL AUTHORISATION FOR PROPOSED UPGRADE TO THE R44 BETWEEN SOMERSET WEST AND STELLENBOSCH

Ref: 16/3/1/1/B4/45/1005/13

INTRODUCTION

1. We act for the Cape Winelands Integrated Planning Coalition (“CWIPC” or the “Appellant”). The CWIPC is a voluntary association comprised of members listed in ANNEX A, the majority of whom are registered interested and affected parties (I&APs) in respect of the environmental impact assessment process for the proposed upgrade to the R44 between Stellenbosch and Somerset West with reference number above (“the Project”).
2. This document constitutes our client’s statement of its grounds of appeal against the environmental authorisation granted by the Western Cape Department of Environmental Affairs and Development Planning (the “Department”) to the Western Cape Government: Department of Transport and Public Works (the “Applicant”) on 29 March 2018 in terms of section 24 of the National Environmental Management Act 107 of 1998 (“NEMA”) for the Project.
3. We confirm that we are duly authorised by the Appellant to submit this appeal on their behalf and to sign the appeal form.

COMPLIANCE WITH THE REGULATIONS

4. In accordance with the transitional provisions in the National Appeal Regulations, 2014,¹ this appeal is submitted in terms of Chapter 7 of the EIA Regulations, 2010,² read with section 43 of NEMA.
5. Our client was informed of the Department’s decision and provided with a copy of the authorisation on 3 April 2018.
6. We submitted a Notice of Intention to Appeal timeously to Mr Jaap de Villiers on 18 April 2018 on behalf of our client (see Annex B) and received email confirmation acknowledging receipt dated 19 April 2018 (attached as Annex C). The Notice of Intention to Appeal included details on where and for what period the Appeal submission will be available for inspection by the Applicant and was

¹ GNR 993 of 8 December 2014 in GG No. 38303.

² GNR 543 of 18 June 2010 in GG No. 33306.

delivered to the Applicant (Western Cape Government: Department of Transport and Public Works) on 24 April 2018 (see Annex D).

7. The official appeal form of your Department, completed and signed on behalf of the Appellant, is attached as Annex E.
8. Accordingly, our client has complied in full with the provisions of Regulation 60(3) of the EIA Regulations, 2010.

APPEAL

9. The Appellant appeals against the decision to grant the environmental authorisation granted on 29 March 2018 for the Project.
10. The Appellant submits that environmental authorisation for the development should not have been granted for the reasons set out in the sections following.
11. Accordingly, we respectfully request that the decision of the Director: Environmental Governance (“the decision maker”) to grant the environmental authorisation is set aside.
12. We set out our client’s grounds of appeal below.

BACKGROUND

13. Cape Winelands Integrated Planning Coalition (“CWIPC”) is a voluntary association of members interested in and affected by the proposed Project who wish to preserve and protect the economic, environmental and cultural heritage of the Cape Winelands for future generations.
14. Members include wine estates, farm and residential property owners, tour operators, wine industry employees, restaurant and guesthouse owners, the Cape Winelands Cultural Landscaping Informal Working Group, as well as a range of land use and sustainability professionals.
15. Members of our client consistently submitted comments in response to the various iterations of the Basic Assessment Report (BAR) made available for comment by the Environmental Assessment Practitioner (“EAP”).
16. While our client recognises the need to improve road safety and congestion on the R44, it submits in this appeal that the decision to authorise the Project in its current format is inconsistent with the requirement in section 24 of the Constitution and as set out in section 2(3) of NEMA that development must be socially, ecologically and economically sustainable. We say so because the decision maker has given undue weight to the considerations of traffic flow in the face of

unacceptably high negative impacts on cultural heritage in a significant cultural landscape that is both threatened and highly sensitive.

EXECUTIVE SUMMARY OF GROUNDS OF APPEAL

17. In summary, our client's primary grounds of appeal are:

- 17.1. That the need and desirability of the Project has not been established having regard to:
 - 17.1.1. the assumptions about current safety problems and expected safety improvement underlying the Project proposal;
 - 17.1.2. the significant, permanent impacts of the proposed Project in its current form on the landscape of the Cape Winelands, a threatened rural landscape of scenic and cultural significance³ and vital economic significance;
 - 17.1.3. the visual and heritage impacts which were under-emphasised in the basic assessment process, some of which cannot be mitigated;
 - 17.1.4. the consistent, broad-based and strong opposition to the Project by affected communities as well as organs of state over the six-year life of the EIA process; and
 - 17.1.5. appropriately satisfying access requirements for all road users through ensuring that the clear joint functions of the road; as both a high volume mobility route and a vital local access route are preserved. The prioritisation of one function so prominently over the other will have major negative economic, social, heritage and scenic impacts;
- 17.2. the Applicant's failure to consider a broad range of other feasible alternatives, despite being aware of them throughout the six year process,
- 17.3. that all relevant information was not before the decision maker as a consequence of the Applicant's failure to apply full scoping and environmental impact reporting ("S&EIR") to the application alternatively the competent authority's failure to require "S&EIR" to be conducted;
- 17.4. the Applicant's failure to comply with the requirements of cooperative governance;
- 17.5. the Applicant's failure to conduct a public participation process that was genuine and meaningful; and
- 17.6. the Applicant's failure to consider the proposed Project in its proper policy context which requires, among other things, an integrated, regional and strategic approach to

³ Western Cape Provincial Spatial Development Framework, 2014 page 53.

infrastructure planning and the consideration of policy imperatives such as the promotion of public transport and non-motorised transport (NMT) solutions, a shift away from private car growth and consideration of the needs of the poor and non-car users in transport planning.

LEGAL CRITERIA FOR DECISION MAKING IN AN APPLICATION FOR ENVIRONMENTAL AUTHORISATION

18. Regulation 8 of the EIA Regulations, 2010, provides that a decision maker in an application for environmental authorisation must take into account the need and desirability of the activity, the factors listed in section 24O of NEMA and in section 24(4).

19. In practice, in the context of this application, this means that the decision maker ought to have:

- ensured that there has been cooperation between the different organs of state with jurisdiction;
- taken into account the findings of the basic assessment process;
- applied the principles in section 2 of NEMA and the objectives of integrated environmental management to the decision;
- ensured that all the potential impacts had been adequately investigated and reported on and that where applicable, adequate mitigation measures were proposed;
- ensured that impacts on heritage resources were fully investigated and evaluated;
- satisfied itself as to the soundness of the information on which the decision is to be based (including whether there are gaps in knowledge and whether assumptions and predictions made are sound); and
- ensured that I&APs were given “a reasonable opportunity to comment”.

20. In reaching his or her decision, the decision maker ought to have considered the following criteria:

- any pollution, environmental impacts or environmental degradation likely to be caused if the application is approved;
- what mitigation measures and measures to protect the environment may be taken;
- whether the applicant can, in practice, implement mitigation measures and comply with any conditions imposed in the authorisation;

- whether there are feasible and reasonable alternatives or changes to the activity that may minimise harm to the environment;
- all the information submitted with the application including comments by I&APs and commenting authorities;
- any applicable guidelines, policies or environmental management instruments adopted by the Minister; and
- any other information before the decision maker that is relevant.

21. Section 2 of NEMA contains the principles that must guide an organ of state in taking any decision under NEMA that may significantly affect the environment, including the decision to approve an application for environmental authorisation.⁴ Most critically for the purposes of the proposed Project, the principles specifically include that sustainable development requires the consideration of all relevant factors including:

21.1. “that the disturbance of landscapes and sites that constitute the nation’s cultural heritage is avoided, or where it cannot be altogether avoided, is minimised and remedied;”⁵ and

21.2. “[e]nvironmental management must be integrated, acknowledging that all elements of the environment are linked and interrelated, and it must take into account the effects of decisions on all aspects of the environment and all people in the environment by pursuing the selection of the best practicable environmental option.”⁶ The “best practicable environmental option is defined in NEMA to mean “the option that provides the most benefit or causes the least damage to the environment as a whole, at a cost acceptable to society, in the long term as well as in the short term.”

GROUNDINGS OF APPEAL

22. The Appellant’s detailed grounds of appeal are set out below.

⁴ Section 2(1)(c) of NEMA.

⁵ Section 2(4)(a)(iii) of NEMA.

⁶ Section 2(4)(b) of NEMA.

SUBSTANTIVE GROUNDS OF APPEAL

The information before the decision maker did not establish the need and desirability of the development

23. The Applicant's stated basis for the Project is the need to improve safety along the route. The claim is that the existence of carriageway "median-breaks" is the major contributor to an unacceptably high rate of accidents along this stretch of the R44 and this reasoning led to the proposed scheme in order to prevent "U" turns and right turns by closing existing median breaks.
24. The Stellenbosch Municipality analysed the accidents on the R44 and the R304 and recorded that a majority of accidents on the R44 occurred outside of the proposed upgrade area.⁷ The section in the Main Report of the Revised Final BAR detailing accident rates⁸ fails to justify the vast expense and adverse impact of the proposed upgrade to the limited 12km section of the R44 in light of this information. If more accidents occur outside of the proposed upgrade area on the R44, then that part of the R44 ought to be upgraded. This brings into question whether prioritisation should be given to closure of median breaks and construction of grade separated interchanges rather than other interventions where more accidents occur.
25. In addition, the Applicant's own traffic statistics show that accidents are twice as high at signalised intersections as at rural unsignalised intersections.⁹ It speculates that the cause of these accidents is motorists running the red lights and turning on the "intergreen" phase. However, the Applicant admits in a response to an I&AP comment that in fact "there is insufficient detailed data available to determine a trend in the rate of accidents."¹⁰ It therefore appears that the Applicant, and therefore the decision maker, had no information about the specific kinds of traffic behaviour that cause the accidents on this road.
26. Accordingly, the closure of all the median breaks has not been established as necessary to improve safety and reduce accidents, particularly at low-trafficked intersections. The Applicant failed to consider any alternatives to closing all the median breaks. This point has been made strongly in comments from I&APs since 2013.
27. If it is not necessary to close all median breaks then the underlying rationale for the construction of roundabouts at certain intersections is also brought into question.
28. According to the Department of Environmental Affairs' Guideline on Need and Desirability (DEA, 2017), the concept of "need and desirability":

⁷ See Annex F page 3 of letter dated 15 November 2016, paragraph 2.

⁸ See Revised Final BAR, Main Report, Section 3.1.2.6.

⁹ Conceptual Design Report and Traffic Data, Appendix E7 to the Amended Final BAR, at para 2.1.

¹⁰ Comments and Responses Report, Appendix F10, responses number 133 -134.

“relates to, amongst others, the nature, scale and location of development being proposed, as well as the wise use of land. While essentially, the concept of “need and desirability” can be explained in terms of the general meaning of its two components in which need primarily refers to time and desirability to place (i.e. is this the right time and is it the right place for locating the type of land-use/activity being proposed?), “need and desirability” are interrelated and the two components collectively can be considered in an integrated and holistic manner.”

29. The Guideline makes it clear that the consideration of “need and desirability” in EIA decision-making “requires the consideration of the strategic context of the development proposal along with the broader societal needs and the public interest.”¹¹

30. The Guideline also provides that:

“The “need and desirability” will be determined by considering the broader community’s needs and interests as reflected in a credible IDP, SDF and EMF for the area, and as determined by the EIA .”¹²

31. Regulation 24(1)(b) of the EIA Regulations, 2010 provides that the competent authority must reject a BAR if it does not contain required material information or has not taken into account applicable guidelines. To the extent that the Revised Final BAR did not take into account the Guideline on Need and Desirability the competent authority ought not to have accepted it for decision but should have rejected it.

Stellenbosch Municipal Spatial Development Framework (“SMSDF”)

32. The Revised Final BAR incorrectly states that latest Stellenbosch Spatial Development Framework was adopted by the Municipality in 2013.¹³ In fact, the current version was approved in 2017 and differs substantially from the 2013 version. The current MSDF was not considered by the EAP (despite a draft version being available since 2016).

33. The Revised Final BAR therefore fails to comply with the requirements of the Guideline on Need and Desirability which specifically requires consideration of the “credible SDF” for the area. This means that relevant information was not considered and outdated, irrelevant information (the 2013 SMSDF) was taken into account.

34. The 2017 SMSDF highlights the unique historical sense of place associated with Stellenbosch and its surrounds and explains that uncontrolled expansion of urban areas diminishes its appeal and threatens the fabric of the area.¹⁴ The current SMSDF provides that:

- the boundaries of view sheds along major routes should be determined by a visual resource management exercise,¹⁵

¹¹ Page 8.

¹² Page 7.

¹³ See page 5-20 in the Main Report.

¹⁴ SMSDF page 9.

- building heights and architectural styles should be controlled within 200m of any prominent road so as to preserve the heritage of the built environment.¹⁶

35. The EAP failed to deal with the current SMSDF to the detriment of the decision-maker who failed to consider the relevant information.

Stellenbosch Environmental Management Framework (“SEMF”)

36. The proposed Project is not aligned to the SEMF.¹⁷ The Revised Final BAR only includes three paragraphs to the consideration of this substantial and highly relevant planning document.¹⁸

37. For instance, the SEMF is guided by a set of normative principles none of which is compatible with the proposed upgrade:

37.1. The principle of spatial sustainability requires the support of sustainable patterns of consumption and production, and ways of living are promoted that do not damage the natural environment. The proposed upgrade facilitates the unsustainable growth of (largely low occupancy) car use.

37.2. The principle of spatial resilience requires the reduction of vulnerability to environmental degradation, resource scarcity and climatic shocks as well as the protection and replenishment of ecological systems. The Project has demonstrated impacts on biodiversity and freshwater systems in critical biodiversity areas. Heritage and aesthetic attributes are included in the wide definition of ‘environment’ in the SEMF.

37.3. Most importantly, the principle of spatial quality requires the aesthetic and functional features of housing and the built environment to be improved to create liveable, vibrant and valued places that allow for access and inclusion of people with disabilities. The Project’s own heritage impact assessments and the correspondence with HWC show that the proposed upgrade is clearly not aligned with this principle due to its destruction of the surrounding cultural landscape, an impact especially concentrated on the landscape surrounding the proposed interchanges.

37.4. The principles of spatial efficiency and spatial justice are similarly not served by the Project due to the significant impact on affected businesses in the area and the unfair allocation of significant public resources for a short stretch of the R44 which could be better

¹⁵ Page 32.

¹⁶ Page 33.

¹⁷ The “consultative draft” version dated June 2014 is available on Stellenbosch Municipality’s website.

¹⁸ See section 5.3.14 on page 5-12.

used alleviating the needs of the poor. The Revised Final BAR does not provide for the poor without cars: taxi users, pedestrians and cyclists.

38. The draft SEMF provides for listed policy guidelines which apply within the Municipality including the guidelines that:

“All future buildings, roads and infrastructure (including powerlines) must be sited and designed according to the relevant SPCs and guidelines and are subject to heritage, environmental and visual impact analyses.”¹⁹

*In terms of the concept of critical regionalism, all development **should reflect a sense of limits**. There is a need for physical and temporal boundaries to frame and limit human places and activities. Limits need to be considered over the full spectrum of environmental management practices and issues, including the following:*

(i) Scale of urban expansion.

(ii) Scale of natural resource utilization.

(iii) Architectural styles, scale and visual impacts of surface infrastructure and roads.”²⁰

[emphasis added]

39. The Project certainly does not reflect a sense of limits. One of the assumptions underlying the Project is that of continual growth in traffic volumes. This is not ecologically sustainable and, as discussed in more detail elsewhere in this appeal, is contrary to current applicable spatial and transport policy and frameworks for the region (such as the guidelines and principles in the SEMF above as well as the Provincial Spatial Development Framework). It is contrary to international best practice which recognises that it is impossible to address increased traffic and congestion by upgrading roads; the result is simply more generated traffic.

40. The Applicant has not provided an assessment of the need and desirability of the proposed Project in the context of the current SEMF.

The Stellenbosch Municipality Integrated Development Plan (“SMIDP”)

41. The drafters of the Revised Final BAR cherry pick sections of the 2015/2016 SMIDP and yet still conclude that the proposed Project only “could” assist identified localised efforts and would “to

¹⁹ See section C6.1.3 subsection n) on page 101.

²⁰ See section C6.1.3 subsection i) on page 101.

some extent provide support for these objectives insofar as the Project is network related and provides necessary infrastructure which will be easy to maintain.²¹

42. The current 2017-2022 SMIDP was not considered in the Revised Final BAR. It therefore fails to comply with the requirements of the Guideline on Need and Desirability which specifically requires consideration of the “credible IDP” for the area. This means that relevant information was not considered and outdated, irrelevant information (the current SMIDP) was taken into account.
43. The EAP has not provided as assessment of whether the proposed upgrade is compatible with the current SMIDP. Accordingly, to the extent that the decision maker has relied on the information provided by the Applicant about the current IDP in Stellenbosch, it has taken into account an irrelevant consideration.
44. Therefore, although the Revised Final BAR lists the DEA&DP Guideline on Need and Desirability²² as having been considered, there is no evidence that the questions in the Guideline were considered or that the SMIDP, SMSDF and S MEMF were considered in the context of need and desirability as the Guideline requires.
45. Our submission is that if the Applicant had done so, it would have concluded that Project is not necessary or desirable.
46. A further concern is that, if safety was the underlying need which the Project is addressing then the majority of “benefits” of the preferred alternative should link to safety. However, in conducting the cost benefit analysis of selected alternatives, motorist time “savings” was used and was the dominant factor used to drive the case for the preferred option. Only by adding in such “savings” does the preferred alternative reach a pass mark benefit:cost ratio (still within a very limited assessment basis). If the Applicant had not included this factor in the cost benefit analysis the results would have been different, resulting in a different preferred alternative. In authorising the preferred alternative, the decision maker therefore took into account a factor that did not form a core basis for the scheme.
47. Our instructions are that the information on time savings was in any event incomplete and therefore misleading. A vehicle travel time comparison against the current operation of the road, i.e. the base case, was not conducted. The Project proponent simply states that a “do nothing” is not a feasible alternative, and that the closure of all median breaks is essential. Our instructions are that this approach be challenged, since safety improvements alone do not stand up strongly enough

²¹ See page 5-20 in the Main Report.

²² Part 6 (Need and Desirability) of the Department of Environmental Affairs and Development Planning’s EIA Guideline and Information series, March 2013. The relevant sections are nearly identical to the National Guideline we have quoted above, but the National Guideline is more recent.

in appraisal to discard options where (some) median breaks are retained. If such an option were assessed the traffic diversion, and so additional travel time, would be considerably less than those alternatives that were included in the evaluation. In addition, peak period bottlenecks entering into Stellenbosch and into Somerset West will in fact imply that there will be very minimal net time saving benefit for the system as a whole.

48. In addition, although the process has been conducted over 6 years, to date the affected communities have remained strongly and consistently opposed to the proposed access routes to the development. The Courts have held that strong opposition to a proposal by affected communities is a factor that the decision-maker must take into account when considering the need and desirability of a development proposal.²³
49. Not only affected individuals and communities, but also critical organs of state such as Heritage Western Cape and Stellenbosch Municipality have recorded their long standing opposition to the Project in comments submitted during the EIA process. In the case of Heritage Western Cape, we are instructed that it has filed a Notice of Intention to Appeal the decision to authorise the Project.
50. Stellenbosch Municipality has expressed in letters to the EAP that the Project, as specified, lacks need and desirability. For instance, in its letter dated 12 April 2016, the Municipality alleges that because only 12kms of the R44 is being upgraded, any improvements to mobility will be “immaterial” and that the “Project should be postponed until integrated transport planning has been done for the full functional area”. The 30 January 2017 letter states that while mobility may be improved for the 12kms of the upgrade, the Project will in fact result in greater congestion outside of the 12km stretch (in Stellenbosch and Somerset West). The 12 April 2016 letter expresses the lack of desirability by stating that the development is “inappropriate” in relation to its scale and context and “inefficient” in relation to the use of financial resources and expenditure.²⁴ The need for the Project was also questioned by the Municipality by stating that the proposed upgrade to 12kms of the R44 is not a high priority within the regional context as resources could be applied more strategically.²⁵
51. Heritage Western Cape’s final comment also describes the lack of desirability of the Project in concluding that “the strengthening of the high speed mobility model itself is incompatible with the underlying cultural landscape, which imposes itself on, rather than responds to, the landscape.”²⁶

²³ *Hayes and Another v Minister of Finance and Development Planning, Western Cape and Others* 2003 (4) SA 598 (C) at 624J - 625C.

²⁴ See Annex G para 2.4.

²⁵ See Annex G para 2.5

²⁶ Appendix H3 page 3.

52. Accordingly, both affected communities and critical provincial organs of state strongly oppose the Project.
53. The current proposal of grade separated intersections and a major intersection capacity increase changes the road function into a freeway-style corridor. This change is inappropriate and goes beyond the said need for the Project, which is chiefly to address safety concerns. The R44 provides a local access function and immense scenic, tourism and agricultural value are as important as its mobility role. Changing the road function has major implications for control of future development which were not considered. Contrary to modern sustainable and integrated transport principles, a comprehensive and integrated transport solution including aspects like public transport was never compiled and therefore never considered. Only various versions of road upgrades (road engineering) were proposed as alternatives, which does not constitute a sustainable transport solution. This is considered further below.
54. Accordingly the Revised Final BAR did not establish the need for and desirability of the Project. By virtue of Regulation 8 of the EIA Regulations, 2010, this is information relevant to the decision and the decision maker failed to take this into account.

Significant, permanent heritage and visual impacts that cannot be mitigated

55. One of NEMA's guiding principles is that development must be socially, environmentally and economically sustainable.²⁷ It specifically provides that sustainable development requires the consideration of all relevant factors including that "the disturbance of landscapes and sites that constitute the nation's cultural heritage is avoided, or where it cannot be altogether avoided, is minimised and remedied."²⁸
56. The Applicant's Heritage Impact Assessments concluded that both grade-separated options for the interchanges would have a negative impact of high significance rating on cultural heritage resources, with no mitigation possible. Appendix H3 to the Revised Final BAR contains Heritage Western Cape's conclusion that "the possible social and economic benefits of the proposed road upgrades are considered to be outweighed by the irreversible negative impacts on the scenic route, the greater cultural landscape and tourism"²⁹ (Own emphasis).
57. Section 38(8) of the National Heritage Resources Act, 25 of 1999 requires that a decision maker in an environmental authorisation "must ensure that the evaluation fulfils the requirements of the relevant heritage resources authority in terms of subsection (3), and any comments and

²⁷ Section 2(3).

²⁸ Section 2(4)(iii).

²⁹ Appendix H3 page 3.

recommendations of the relevant heritage resources authority with regard to such development have been taken into account prior to the granting of the consent.” We submit that Heritage Western Cape’s comments and this finding of the Applicant’s Amended Final BAR were not properly taken into account by the decision maker. If he had done so, he would have been obliged to conclude that the authorisation of the Project was incompatible with the promotion of sustainable development.

58. For the reasons set out in the next section, our client submits that the Visual Impact Assessment (VIA) conducted for the Project was inadequate and that the impacts are higher than are reflected in the Revised Final BAR.
59. Our client further submits that the proposed visual mitigation measures are insufficient to reduce visual impact on the cultural landscape adequately and our client has good reason to believe that mitigation measures as provided for in the environmental Management Plan (“EMP”) will in any event not be complied with by the Applicant. We say this on the basis that we are instructed that such mitigation measures provided in the EMP for the nearby R310 have not been complied with. As set out above, “whether the applicant can in practice implement mitigation measures and comply with any conditions imposed in the authorisation” is a factor which the decision maker must consider in making his or her decision. To the extent that he has not done so, he has failed to take into account a relevant consideration.
60. The purpose of the EIA Regulations, 2010 is regulating certain activities “in order to avoid detrimental impacts on the environment, or where it cannot be avoided, ensure mitigation and management of impacts to acceptable levels, and to optimise positive environmental impacts.”³⁰ (own emphasis)
61. A decision maker under the regulations must therefore refuse an application where impacts have either not been avoided or cannot be mitigated or managed to acceptable levels.

The Revised Final BAR is defective in that failed to adequately consider visual impact

62. Our client’s members have consistently stated that the visual representations provided during the public participation phase and in the VIA are misleading and do not fairly represent the significant visual impact of the proposed interchanges at Annandale and Winery roads for residents of the area. This misrepresentation of visual impacts has resulted in the I&APs not having the true visual impact and its assessment (which are relevant considerations) available when commenting, which

³⁰ Regulation 2.

renders their comments meaningless and does not comply with the NEMA requirement for a meaningful public participation process (this is discussed further below).

63. It also resulted in the decision maker not having the true visual impact and its assessment (relevant considerations) available when considering the application. For instance, Photo Plate 49 in the Visual Impact Assessment (“VIA”)³¹ purportedly depicts the grade-separated interchange at the Annandale Intersection but does so from 620 metres away and from an angle which does not show the 7 or 8 metre elevated roundabout above the horizon (thereby underemphasising the elevation). The unclear photo plates in the VIA also fail to show the interchanges being used by vehicles and the additional imposition of cars, trucks and large agricultural vehicles on top of the elevated sections of the road which would add to the visual impact and destruction of the landscape for those residents and community members residing and working in the areas around the proposed interchanges.
64. The VIA also entirely fails to give an indication of how light spill from the illuminated interchange will impact residents of the direct area at night. The visualisations of the proposed Project in the VIA were not sufficient to allow I&APs to accurately or fairly see the effect of the development on the landscape and are either too small or taken from angles underemphasising the visual impact.³² No equivalent photomontages of the proposed Annandale and Winery Road Interchanges are provided (only the Jamestown Cemetery grade-separated U-Turn bridge is provided on page 19 of Appendix E5.2.)³³
65. The HWC Final Comment supports this view by disagreeing with the findings of the VIA and its addendum which HWC believe underestimated the visual impacts of the proposed Project and overestimated the role of visual mitigation.³⁴ HWC’s Final Comment also bears out our client’s contention that the Applicant intentionally misrepresented the visual impacts by commenting that “the ratings were considered too low.”³⁵ HWC is a commenting authority in the application and it did not accept the findings in the VIA. However the decision maker failed to take this into account.
66. In the response to HWC’s Final Comment, the Applicant states that “the impact of the proposed Project on the scenic section of the R44 would in essence be confined to the two intersections – Annandale and Winery Roads.”³⁶ It is unfair to require those residents residing in precisely these

³¹ Page 62 of the VIA.

³² See for instance Plates 42 and 43 on page 54 purportedly showing the Winery Road intersection from Ken Forrester Vineyards.

³³ VIA Addendum Report.

³⁴ Appendix H3 page 3.

³⁵ Appendix H3 page 3.

³⁶ Appendix H3 page 11.

areas (who are members of CWIPC) to bear the brunt of the upgrade and the destruction of the cultural landscape. NEMA provides that environmental management must place people and their needs at the forefront of its concern, and serve their physical, psychological, developmental, cultural and social interests equitably.³⁷

67. In summary, the visual impact assessment and addendum underemphasised the visual impact of the proposed interchanges and therefore failed to adequately consider the visual impact of the Project or to allow I&APs an opportunity to engage meaningfully with it.

The Revised Final BAR is defective in that it failed to adequately assess all alternatives

68. NEMA provides that:

68.1. one of the objectives of integrated environmental management is to identify, predict and evaluate the actual and potential impact on the environment, socio-economic conditions and cultural heritage, the risks and consequences and alternatives³⁸ and options for mitigation of activities, with a view to minimising negative impacts, maximising benefits, and promoting compliance with the principles of environmental management set out in section 2,³⁹

68.2. environmental impact assessments are required to include an investigation of the potential consequences or impacts of the alternatives to the activity on the environment and an assessment of the significance of those potential consequences or impacts, including the option of not implementing the activity;⁴⁰

68.3. when considering an application for environmental authorisation, the competent authority must, take into account all relevant factors, including where appropriate, any feasible and reasonable alternatives to the activity, and any feasible and reasonable modifications or changes to the activity that may minimise harm to the environment.

69. In giving effect to the above, a BAR is required to, inter alia,

³⁷ NEMA section 2(2).

³⁸ Alternatives are defined in the EIA Regulations, 2010, as

different means of meeting the general purpose and requirements of the activity, which may include alternatives to the—

(a) *property on which or location where the activity is proposed to be undertaken;*
 (b) *type of activity to be undertaken;*
 (c) *design or layout of the activity;*
 (d) *technology to be used in the activity; or*
 (e) *operational aspects of the activity;*
 (f) *the option of not implementing the activity.*

³⁹ Section 23(2)(b) of NEMA.

⁴⁰ Section 24(4)(b)(i) of NEMA.

- 69.1. include a summary of the positive and negative impacts and risks of the proposed activity and identified alternatives;
 - 69.2. identify the alternatives considered, including the activity, location and technology alternatives;
 - 69.3. describe the need and desirability of the proposed alternatives;
 - 69.4. include an assessment of the risks and impacts of alternatives, including cumulative impacts;
 - 69.5. provide a motivation for the preferred technology alternative; and
 - 69.6. a full description of the process followed to reach the proposed preferred alternative, including the environmental attributes associated with the alternatives focusing on the geographical, physical, biological, social, economic, heritage and cultural aspects, the impacts and risks identified for each alternative;
70. Specialist reports are required to include a description of the findings and potential implications of such findings on the impact of the proposed activity, including identified alternatives on the environment.
71. Many comments submitted by members of the Appellant suggested lower cost options in keeping with, and more appropriate to, the multiple roles the R44 serves. An alternative suggested by I&APs was to remove a large number of median breaks while keeping a select number of openings in place where the line of sight is good and safety measures can be incorporated along with reduced speeds and highly visible speed limit enforcement. This alternative was never assessed.
72. The reason given for non-inclusion of this alternative for assessment by the Applicant was that this option is not viable due to how the road is classified and applicable design standards. However, this is exactly the approach the Applicant themselves applied in the recently upgraded 3km stretch of the R310 past Lyndoch, now a dual carriageway with an 80km/h speed limit. Four median breaks have been constructed to allow access to existing properties flanking the route, plus one additional signalised intersection. We accordingly submit that a feasible alternative was not assessed.
73. More significantly, the Applicant failed to assess any alternatives other than different layout alternatives to the various intersections. Our client submits that if the Applicant had located the Project in its proper policy and legislative context other feasible alternatives to a “pure engineering solution” would have emerged and been assessed. This context is considered more fully in the last section of this appeal but, in summary, we submit that the relevant policy documents required that alternatives were considered relating to:

- NMT;
- public transport;
- traffic demand management interventions (for example, a move away from private car use, moving road freight to rail and others of this nature); or
- pro-poor options (including options to benefit non-car owners).

74. No alternatives of this nature were assessed.

PROCEDURAL GROUNDS OF APPEAL

Applicant should have followed a full Scoping and Environmental Impact Reporting process

75. The Revised Final BAR states at page 1-5 that “[t]he format of this Revised Final BAR has not followed that prescribed by DEA&DP for a Basic Assessment. The format has rather been aligned to that of an environmental impact report which facilitates a more suitable means of presenting the findings of a project of this nature. For completeness sake the standard DEA&DP BAR form is included in Appendix A.” (own emphasis).
76. The EAP is correct in identifying the Project as one in which full Scoping and Environmental Impact Reporting (“S&EIR”) ought to have been conducted. However, it is in our view not sufficient to informally “align” the BAR with the S&EIR process. Regulation 20(3) of the EIA Regulations, 2010 required the EAP to advise the Applicant at the start of the Project that it was unlikely that the competent authority would be able to reach a competent decision on the basis of the information in a basic assessment report.
77. Alternatively, and where the EAP did not do so, the competent authority ought in terms of Regulation 5(b) to have advised the EAP that a S&EIR process was required in order to place sufficient information before the decision-maker to ensure that a competent decision was made.
78. We say so because the impacts on cultural heritage of the Project are high and cannot be mitigated, and moreover affect a cultural heritage resource comprising a whole region. This means that the issues to be considered in deciding whether to authorise the Project are complex and interrelated. As we have set out above, the information before the decision maker did not establish need and desirability, which requires consideration of the “broader societal needs and the public interest.” The basic assessment process could not and did not place sufficient information before the decision maker to enable him to make a competent decision.
79. The failure of the Applicant and EAP alternatively the competent authority to recognise that this Project required more thorough and rigorous reporting as provided for in S&EIR means that a

material procedure of the empowering provisions (the EIA Regulations, 2010) was not complied with.

80. The failure to subject the Project to a full scoping procedure led to the failure to adequately assess all the feasible alternatives, as a properly conducted scoping process would have identified the strategic importance of the Project and located it in its correct policy and legislative context.

The requirements of cooperative governance in NEMA were not complied with

81. In accordance with the Constitutional imperative that all spheres of government and organs of state must “co-operate with one another in mutual trust and good faith by....co-ordinating their actions and legislation,”⁴¹ NEMA requires that there must be inter-governmental co-ordination and harmonisation of policies, legislation and actions relating to the environment.⁴²
82. The Project is not aligned with applicable national and provincial spatial and transport policies which emphasise the need for non-motorized transport and public transport facilities and the shift away from “ever-increasing dependence on private cars.”⁴³
83. We submit that no major interventions to road design and function such as those proposed in the Project should be approved in isolation from a detailed and integrated assessment of the road in the context of broader sustainable transport, social, economic and environmental matters. The Revised Final BAR is not such an assessment. No attempt has been made to assess the proposed upgrade within the local and regional context through a scenario planning approach presenting interventions which best link to approved policy objectives.
84. Stellenbosch Municipality has consistently submitted comment regarding the lack of integrated planning principles evident in the proposed Project, and requested that the development be postponed “until transport planning has been done for the functional area.”⁴⁴ The Municipality also requested that full scoping and EIR be conducted in which all “downstream impacts” were assessed.⁴⁵
85. Accordingly, the decision to authorise the Project did not comply with the requirement in NEMA that the actions of different organs of state are coordinated with one another.

⁴¹ Constitution of the Republic of South Africa, 1996, section 41(1)(h)(iv).

⁴² Section 2(4)(l).

⁴³ 2017 Stellenbosch Municipality Spatial Development Framework page 5, 15.

⁴⁴ See letter from Stellenbosch Municipality

⁴⁵ See Annex F, letter dated 30 January 2017.

The EAP failed to comply with public participation requirements of the EIA Regulations, 2010

86. The decision maker in an application for environmental authorisation is required by the Regulations to ensure that interested and affected parties are given a reasonable opportunity to comment.
87. The Revised Final BAR was distributed by CCA on behalf of the Applicant for comment from 12 December 2016 to 30 January 2017. No exceptional circumstances justified conducting public participation during the festive period when many of the interested and affected parties were not able to comment on the document. This was particularly the case for those interested and affected parties involved in the wine industry as this period coincided with the extremely busy harvest period.
88. The period from 2 January to 30 January was not sufficient for interested and affected parties to meaningfully consider new information provided by the EAP and to submit properly considered comments on the Revised Final BAR and consequently the ability of interested and affected parties to meaningfully participate as required by Regulation 56(1) and Regulation 56(6) was compromised.
89. This was a contravention of the EIA Regulations, 2010 which provide that an Applicant and EAP must refrain from conducting any public participation process during the period of 15 December to 2 January unless justified by exceptional circumstances (Regulation 54(8)). In addition, the competent authority must agree to any public participation process conducted during this period (Regulation 54(8)).
90. No evidence has been provided that the competent authority agreed to allow the Applicant and EAP to conduct this process during the holidays or that there were exceptional circumstances justifying it.
91. Not only were private individuals disadvantaged, but organs of State were also prejudiced by the comment period falling over the festive season. Regulation 56(7) requires that 40 days be given for state departments in which to comment. If the days between 15 December and 2 January are excluded, only 30 days were allowed for the participation of State Departments to comment on the Revised Final BAR.
92. We are instructed that comments and objections submitted by our client and other I&APs were summarily dismissed during the four rounds of Basic Assessment Responses to I&AP Reports. The level of valid concern was very well known to the officials and politicians and every effort was made by them to avoid proper engagement. In a public meeting in August 2017, hosted by the Mayor of Stellenbosch and the Provincial MEC for Transport, not one satisfactory answer to public questions was given from the representative of the Applicant, Project Engineer Malcolm Watters. As the attendees became more irate, MEC Grant publicly undertook that workshops would be arranged

and held. No record of the meeting was ever produced and the promised workshops have never taken place.

93. Accordingly our client submits that the EAP and Applicant had no real intention to engage meaningfully with I&APs.
94. South African law requires that interested and affected parties should be given a genuine opportunity to be heard before the mind of the decision-maker becomes fixed. Furthermore, the right to dignity demands that people be allowed to participate meaningfully in matters that will affect them,⁴⁶ particularly where it affects a fundamental matter like the 'sense of place' of the area in which they live.⁴⁷ In practice this means that their comments and concerns should not simply be dismissed but must be investigated and considered. Reasons must be given why they are not appropriate or cannot be accommodated.
95. The Project generated a vast range of objections from a wide spectrum of professions, organisations, interested groups and local parties.⁴⁸ As stated above, the affected communities have been strongly and consistently opposed to the proposed access routes to the development since the process began six years ago. The Courts have held that strong opposition to a proposal by affected communities is a relevant factor that the decision-maker must take into account when considering the need and desirability of a project.⁴⁹

The decision to authorise the Project does not take into account applicable transport and spatial development policies.

96. The Revised Final BAR purports to consider the Project in the context of applicable transport and spatial development policies and instruments.
97. The analysis of the policy context in the Revised Final BAR is flawed in that:
- 97.1. outdated versions of key policies were referred to. Of the 15 policy documents referred to in the Revised Final BAR, in only 3 cases (all provincial policies) did the Applicant refer to the most current versions. In all other cases, outdated versions of policies were referred to despite the later versions being publically available in November 2017 when the Revised Final BAR was submitted.

⁴⁶ *Matatiele Municipality and Others v President of the Republic of South Africa and Others* (2) 2007 (1) BCLR 47 (CC) at paras 66-67.

⁴⁷ *Matatiele* at para 79.

⁴⁸ See Appendix F10 to the Revised Final BAR as to the sheer volume of objections submitted in response to the Project.

⁴⁹ *Hayes and Another v Minister of Finance and Development Planning, Western Cape and Others* 2003 (4) SA 598 (C) at 624J - 625C.

97.2. not all relevant transport or spatial development policies and instruments were considered; and

97.3. even where applicable transport and spatial development policies were considered in the Revised Final BAR, the Applicant failed to draw the decision maker's attention to key policy obligations.

This is considered further in the paragraphs following.

Transport policies

National Land Strategic Transport Framework

98. The NLTsf is a relevant policy document and it is not referred to in the Revised Final BAR at all. It is a framework for transport planning for all spheres of Government and sets the overarching goals, vision, and objectives for each element of the transport system, which must be reflected in the Provincial Land Transport Frameworks (PLTFs) and Integrated Transport Plans (ITPs).

99. The NLTsf seeks to provide a strategic framework that will guide planning decisions for all modes of land transport and yet has not been addressed in the Revised Final BAR.

100. Section 4.1 of the NLTsf provides a vision for land transport and includes the following key strategic objectives:

- a much improved sustainable public transport system with better and safer access, more frequent and better quality services and facilities to an agreed standard;
- greater mobility options particularly for those who do not have a car;
- safer and easier cycling and walking;
- a transport system that is consistent with the real needs of people living in different parts of South Africa and with differing abilities to afford travel; and
- different travel patterns and transport usage and, where appropriate, reduced need to travel by motor vehicles from having achieved an integrated land use and transport system.

101. We submit that not only are these objectives not given proper weight in the Revised Final BAR but that the proposed Project is not aligned with any of them.

Western Cape Provincial Land Transport Framework (PLTF)

102. Despite being relevant to the proposed Project, the Western Cape Provincial Land Transport Framework 2011-2016 was not considered by the EAP and is not listed under the policy documents considered under the heading of “Planning Context” in the Revised Final BAR.⁵⁰
103. The PLTF provides a framework for a transport system built on the pillars of sustainability, equity, access to opportunity in an economically efficient manner and safety and seeks to ensure that these factors are taken into account in order to ensure cohesive planning with surrounding areas.

Stellenbosch Comprehensive Integrated Transport Plan (“SCITP”)

104. The Revised Final BAR’s Main Report refers to an outdated and irrelevant Comprehensive Integrated Transport Plan for Stellenbosch dated 2011.⁵¹ The current SCITP covers the period 2016 to 2021 and has been available on the Municipality’s website since 1 June 2016, and drafts have been available prior to this. The Revised Final BAR devoted a total of 7 sentences to addressing the SCITP (the current version of the Transport Plan is almost 300 pages long).
105. The current SCITP is therefore a relevant and important policy that was not considered. The brief reference to the 2011 version constitutes the consideration of irrelevant information placed before the decision-maker.
106. While the R44 is classified in the SCITP as a “major road network,” the areas of congestion reflected in the SCITP are not consistent with the interchanges proposed by the Applicant in the BAR. For instance, the intersections of Winery and Annandale Roads with the R44 are not listed under section 3.8.3 of the SCITP which describes the main areas of congestion along major roads as identified in the Stellenbosch Roads Master Plan.⁵²
107. Our client denies that the R44 is “predominantly a high speed mobility route” as it is described by the EAP in the Revised Final BAR and that this classification can be used to justify the bulk and scale of the proposed upgrade.⁵³
108. We submit that it is significant that both the PLTF and the current SCITP were excluded from consideration by the EAP in light of the fact that so much opposition for this Project is directed towards its lack of integration from its regional context and with relevant policies and planning documents.

⁵⁰ See Revised Final BAR, Main Report, page 5-14.

⁵¹ See Revised Final BAR, Main Report, section 5.3.13 on page 134.

⁵² See page 78 of the SCITP.

⁵³ See Annex G, letter dated 12 April 2016 para 2.2

The Provincial Sustainable Transport Programme (PSTP) for Stellenbosch

109. The Provincial Sustainable Transport Programme (PSTP) for Stellenbosch is a continuous programme of collaboration between the Province and Municipality aimed at expanding capacity for transport planning and developing and implementing solutions and improvements to non-motorised travel, public transport and travel demand management.

110. Various documents have been prepared to date under the PSTP for Stellenbosch including:

- Transport in Stellenbosch: Contextual Review and Status Quo Situation, January 2017;
- Summary of Best Practices in World Towns and Cities in Sustainable Transport;
- Traffic Calming and Setting Appropriate Speeds for the Streets in Stellenbosch, Jan 2017;
- Proposed Provincial Road Improvements to the R44 between Stellenbosch and Somerset West: Options for Refocusing the Proposed Scheme, Ver. 1.2, 21 Sept. 2017;
- Brief Transport Feasibility Assessment on a Western Bypass Route of Stellenbosch, October 2017;
- Towards a Sustainable Transport Strategy for Stellenbosch Municipality, Summary Report, Dec 2017; and
- A 10 Point Plan for Transport in Stellenbosch: Draft for Discussion, April 2018.05.16

111. These documents are highly relevant to the Project but are not mentioned in the Revised Final BAR, nor is the Stellenbosch NMT and Cycle Plan.

Western Cape Infrastructure Framework, 2013

112. The WCIF provides transition priorities for 5 sectors. The three transitions proposed for the transport sector are:

- investment in public transport and NMT infrastructure, particularly in larger urban centres;
- prioritisation of general freight rail over bulk freight; and
- shifting freight traffic from road to rail along major routes.

113. The Revised Final BAR's main report devotes only two, self-serving paragraphs to the WCIF and does not attempt to align the project with the transition priority towards investment in public transport and NMT. While the BAR recognises that the WCIF calls for a new approach to infrastructure, the proposed Project in fact entrenches old transport patterns and fails to address uncontrolled traffic growth.⁵⁴

Spatial planning policies

⁵⁴ See Main Report, page 5-15.

Western Cape Provincial Spatial Development Framework (“PSDF”).

114. In its summary of the relevance of the Western Cape Provincial Spatial Development Framework (“PSDF”), the Revised Final BAR notes that in considering bulk infrastructure projects, priority must be given to “projects that aim to shift from private transport to public transport or those that reduce travelling time instead of increasing it.” However, the Applicant has clearly selected the second part of this sentence as important and ignored the first part. The PSDF endorses the principles in the WCIF mentioned above regarding the need for a transition towards more investment in public transport and NMT and makes it clear that in creating efficient settlements and improving accessibility to settlements, NMT and public transport must be prioritised over private car use. The many references to this principle in the PSDF are ignored.

Stellenbosch IDP and SDF

115. As we have stated above, the Revised Final BAR has failed to consider the latest versions of these two policies at all. The discussion of outdated versions of the policies is legally irrelevant.

116. In summary, our client’s submission is that the Revised Final BAR did not take into account all relevant policies and planning instruments because:

116.1. it failed to consider the Project in terms of the requirements of integrated transport planning; and

116.2. it ignored strong policy obligations towards:

- the promotion of public transport and NMT solutions;
- a shift away from private car growth;
- better management of existing infrastructure before considering additional infrastructure; and
- pro-poor solutions and inclusive planning.

117. Many I&APs pointed out that the scheme will have strategic and high level impacts. Stellenbosch Municipality itself submitted an unequivocal objection to the scheme in 2014 and again in April 2016 stating that “The basic assessment process is inadequate for a project such as this which has major implications from a sustainable and safe transport perspective but also from

socio-economic and environmental perspectives. The scheme as currently envisaged is not supported.”⁵⁵

118. Both the Revised Final BAR and the environmental authorisation for the Project focus exclusively on the R44 motor traffic and its continued increase. The Project does nothing to address local transport issues and excessive congestion in Stellenbosch and, increasingly, Somerset West.
119. The concept of promotion of integration of public transport was dismissed in a few lines as not being the focus for the scheme. The intention of reducing general traffic through travel demand management and NMT and public transport development should have been included in the economic evaluation, with decreased future levels of general traffic input into the modelling.
120. Current and future NMT demand was not assessed at all in the Revised Final BAR.
121. Our client’s view is that supporting any road expansion project without a thorough review of a range of options (including options better aligned with policy directives within a broad evaluation framework) is irresponsible.
122. The legal effect of this failure of the Revised Final BAR to consider relevant policy instruments either properly or at all is that not all relevant information to the decision was before the decision maker, who consequently failed to take into account relevant information in his decision to authorise the Project. To the extent that outdated policies were taken into account the decision maker has considered irrelevant information.
123. Furthermore, the failure to consider relevant policy instruments meant that feasible alternatives to a pure engineering solution were never identified, let alone assessed.

CONCLUSION

124. A decision to grant an environmental authorisation is administrative action which is reviewable in terms of section 6 of the Promotion of Administrative Justice Act, 3 of 2000 (“PAJA”).
125. Administrative action is reviewable if:
- 125.1. a mandatory and material procedure or condition prescribed by an empowering provision was not complied with (section 6(2)(b)); or
 - 125.2. the action was taken because irrelevant considerations were taken into account or relevant considerations were not considered (section 6(3)(e)(iii)).

⁵⁵ See Comments Received On Draft Basic Assessment Report - Letter from Stellenbosch Municipality to CCA 12 April 2016 page 25.

126. The decision maker in this application for authorisation failed to take into account the following relevant information:

126.1. that the impact on cultural heritage resources is high and cannot be mitigated while section 2(4)(iii) of NEMA requires that the disturbance of landscapes and sites that constitute the nation's cultural heritage is avoided, or where it cannot be altogether avoided, is minimised and remedied;

126.2. the recommendations made by HWC in its role as commenting authority on the application and its role as decision-maker with regards to heritage matters in the Western Cape;

126.3. that need for and desirability of the Project was not established as required by the EIA Regulations, 2010 and the Guideline on Need and Desirability (DEA, 2017);

126.4. relevant and applicable spatial planning instruments such as the current SIDP and SMSDF;

126.5. relevant and applicable transport planning policies such as the NLTF and PLTF, current SCITP, documents generated as part of the PSTP for Stellenbosch and the Stellenbosch NMT and Cycle Plan;

126.6. that the ability of the Applicant to implement the authorised mitigation measures can be questioned; and

126.7. strong and sustained opposition to the project from affected communities and organs of state including the Stellenbosch Municipality and Heritage Western Cape.

127. The decision maker considered the following irrelevant considerations:

127.1. the inadequate visual representations provided by the EAP in the visual impact assessment which did not accurately represent the visual impact of the interchanges on the cultural landscape; and

127.2. the EAP's commentary on out of date spatial policies for Stellenbosch Municipality.

128. The decision maker also erred in granting the authorisation in light of the non-compliances with the requirements of the empowering provisions in NEMA and the EIA Regulations, 2010 as follows:

128.1. a full scoping and EIA process should have been conducted as the competent authority was unlikely to be able to reach a decision on the basis of information provided in a basic assessment report;

- 128.2. that the public participation process followed did not constitute a “genuine opportunity to comment” as contemplated by the Constitutional Court in *Matatiele Municipality* and was not compliant with the EIA Regulations, 2010 in that components of it were conducted between 15 December and 2 January 2017, I&AP comments were not given proper consideration and the visual impact assessment misrepresented the visual impacts;
- 128.3. the assessment of alternatives was inadequate in that alternatives to closing all the median breaks, or to upgrading the road at all were not considered and that alternatives consistent with current sustainable transport policy relating to NMT, travel demand management interventions and public transport among others were not assessed; and
129. We further submit that the requirements of cooperative governance in the Constitution and NEMA were not met by the decision to authorise the Project.
130. The decision to grant the environmental authorisation for the Project in its current form effectively authorises the destruction of the cultural landscape of at least a 12km stretch along the Cape Winelands along the R44 between Stellenbosch and Somerset West.
131. If the Project is implemented, our client submits that it will significantly negatively impact the historic and natural sense of place associated with this stretch of road and consequently will have a significant negative impact on tourism and the lives of affected communities.
132. For the reasons set out above, the Project does not represent the best practicable environmental option to the need to improve safety on the R44. It is therefore inconsistent with the promotion of sustainable development required by section 24 of the Constitution and section 2(3) of NEMA and does not meet the requirements of integrated environmental management provided for in sections 23 and 24 of NEMA.
133. For these reasons, we respectfully submit that the authorisation should be set aside.



CULLINAN & ASSOCIATES INC.

per: Sarah Kvalsvig and Danjelle Midgley

LIST OF ANNEXES

Annex A: List of members of Cape Winelands Integrated Planning Coalition.

Annex B: Notice of Intention to Appeal sent to the office of Mr Anton Bredell, Western Cape Minister of Local Government, Environmental Affairs and Development Planning on 18 April 2018.

Annex C: Acknowledgement of receipt of Notice of Intention to Appeal on behalf of MEC Mr Anton Bredell dated 19 April 2018.

Annex D: Notice of Intention to Appeal including details on where and for what period the Appeal submission will be available for inspection by the Applicant as delivered to the Western Cape Government: Department of Transport and Public Works) on 24 April 2018.

Annex E: Completed 2010 Appeal Form/Questionnaire.

Annex F: Letters from Stellenbosch Municipality dated 15 November 2016 and 30 January 2017.

Annex G: Letters from Stellenbosch Municipality dated 12 April 2016.