

To the Western Cape Ministry of Local Government, Environment Affairs & Development
Planning

**GROUNDS OF APPEAL
SUBMITTED BY HERITAGE WESTERN CAPE.**

**PROPOSED IMPROVEMENTS TO THE R44 BETWEEN STELLENBOSCH AND SOMERSET
WEST (DEA&DP REF. NO. 16/3/1/1/B4/45/1005/13):
STATEMENT OF GROUNDS OF APPEAL AGAINST ENVIRONMENTAL AUTHORISATION**

Your Department's Environmental Authorisation for the above development, dated 29/03/2018 and our Notice of Intention to Appeal, dated 13/05/2018, refer.

1. At the outset, Heritage Western Cape wishes to place on record its disappointment with the scant regard that the DEA&DP has shown for the serious concerns raised by HWC and a large number of I&APs regarding the proposed intrusive, over-engineered road upgrades, which will irrevocably change the cultural landscape which abuts the R44 between Stellenbosch and Somerset West. The Environmental Authorisation, which was issued in spite of HWC's concerns, goes against the spirit of co-operative governance and the aims of the Standard Operating Procedure (SOP), which was agreed between HWC and DEA&DP, dated 10/12/2015.
2. In light of the above, we have no choice but to appeal the Environmental Authorisation for the proposed R44 upgrade. This appeal letter should be read together with our detailed Final Comment on the Second Addendum HIA, dated 17/02/2017 and our supplementary comment on the Revised Final BAR.

Grounds for appeal

3. Legal Framework. The HIA was required by HWC in terms of Section 38(1) of the National Heritage Resources Act, Act 25 of 1999, (the NHRA). In terms of Section 38(8) of the NHRA :

*"The provisions of this section do not apply to a development as described in subsection (1) if an evaluation of the impact of such development on heritage resources is required in terms of the Environment Conservation Act, 1989 (Act No. 73 of 1989), or the integrated environmental management guidelines issued by the Department of Environment Affairs and Tourism, or the Minerals Act, 1991 (Act No. 50 of 1991), or any other legislation: Provided that the consenting authority must ensure that the evaluation fulfils the requirements of the relevant heritage resources authority in terms of subsection (3), and **any comments and recommendations of the relevant heritage resources authority with regard to such development have been taken into account prior to the granting of the consent.***

Both Heritage and Environment are listed as concurrent provincial competencies in schedules 4 and 5 of the Constitution. Thus in terms of the Constitution and in terms of the NHRA, HWC is the decision making body in respect of any heritage related matters in the

Western Cape Province. The provision that the comments and recommendations of HWC must have been “taken into account” does not therefore imply that DEAD&P can read the comments and then ignore them. Taking into account means that they must be incorporated into the final decision. This has not been done. The comments and recommendations of the approved HIA, that of Chris Snelling, have been rejected out of hand.

4. The Environmental Authorisation report and the reasons provided for authorising the activities are in our view not convincing and unquestioningly accept arguments put forward by the environmental practitioner and the DTPW.

- 4.1 The report states: “*All the concerns raised by I&AP's were responded to and addressed during the public participation process. Specific management and mitigation measures have been considered in this environmental authorisation and in the EMP to address the concerns raised*” (p15).

This statement does not only gloss over the numerous public and official objections to the proposals, but the claim that the “*management and mitigation measures*” will address the serious heritage impacts is not backed-up by any approved heritage impact assessment and is therefore rejected. The superficial mitigation measures that have been proposed in the VIA are totally inadequate and will not be able to meaningfully reduce the significant heritage impacts of an inappropriate mobility model, which includes inter alia the closure of 22 medians and the construction of grade separated roundabout interchanges and U-turn facilities.

- 4.2 The DEA&DP report states that “*the Department concurs with the environmental assessment practitioner's responses to the issues raised during the public participation process and has included appropriate conditions in this environmental authorisation*” (p15).

It is clear that the statements made by the DTPW and the environmental practitioner in the Final BAR were not interrogated or challenged by the Department, but merely ‘rubber’ stamped’

As far as heritage issues are concerned, the so-called “*appropriate conditions*” of the Environmental Authorisation contain only *one* heritage-related condition, which is the standard clause relating to human remains and archaeological finds. This does not in any way address the foremost heritage concern, being the visual impacts on the Grade II and Grade IIIA cultural landscape.

- 4.3 It is ironic that the DEA&DP report acknowledges that many concerns and objections were raised against the above-ground grade-separated turning facilities at Winery Road and Annandale Road (p17), but then still authorises these highly intrusive facilities, with complete disregard for the serious concerns raised.
- 4.4 The Environmental Authorisation report refers to the HIA reports by ACO Associates and the Visual Study by Megan Anderson Landscape Architects. **None** of these reports were however approved by HWC, as they did not meet the requirements of section 38(3) of the National Heritage Resources Act.

- 4.5 Only the subsequent Second Addendum HIA by Mr Chris Snelling, dated November 2016 was fully endorsed by HWC. Based on the findings of that HIA, **none** of the alternatives assessed during the Basic Assessment process were considered acceptable from a cultural heritage perspective. The HIA concluded that both the grade-separated options, above as well as below ground, would have a negative impact of high significance rating on cultural heritage resources, due to the imposition of an urban morphology into a rural cultural landscape which is considered a valuable heritage resource.
- 4.6 The Second Addendum HIA concluded that "***from a heritage point of view, the High Speed Mobility Model, along with the proposed interventions in their entirety, must be considered flawed as the proposed interventions envisaged will have a permanent, irreversible and detrimental impact on the identified heritage resources.***"
- 4.7 HWC agreed with the findings of Mr Snelling and, in a Final Comment dated 17 February 2017, made it clear that the proposal in its current form was not supported and that a complete review of the nature of the proposed upgrade to the entire route needed to be undertaken with substantial input from a heritage practitioner, landscape architect and urban designer to provide for an integrated and holistic solution.
- 4.8 The DTPW however dismissed the findings of its **own** heritage consultant and submitted a number of arguments as to why the proposed upgrades should take place. HWC has responded to and refuted those arguments in its comment on the Revised Final BAR.
- 4.8.1 The Environmental Authorisation report quotes the DTPW's responses at length, including the statements "*a range of alternatives were investigated*" and that "*it was found that none of these options could provide safe U-turn opportunities while maintaining effective functionality or operation efficiency in the context of the existing traffic volumes. Thus it was concluded that a grade-separated interchange would be the only viable approach to accommodate existing and growing traffic volumes and the U-turn movements at these intersections*" (p25).

The flaw in this argument is that "*effective functionality*" and "*operation efficiency*" are the non-negotiable objectives of the DTPW. The underlying objective **to maintain mobility at all costs**, appears to have dismissed several alternatives and led to the preference for grade-separated interchanges, which is directly at variance with the heritage considerations.

- 4.8.2 The DTPW claims that it "*is committed to utilize a heritage practitioner, landscape architect and urban designer during the detailed design phase in order to ensure that the concept design is implemented in a manner that would be more compatible with the R44 as a scenic drive and acceptable from a cultural heritage landscape perspective*" (p25)

This would however not address the underlying concern regarding the selection of an **inappropriate conceptual approach**. As recommended in the Second Addendum HIA, the afore-mentioned practitioners should provide

input into the review of the upgrade proposals “*in the first instance in order to provide for an integrated and holistic solution*”, not to attempt to mitigate the impacts of the proposals after the fact. A fundamental flaw in the VIA and the DTPW’s approach is the notion that the impacts can be landscaped away. HWC strongly disagrees with this approach.

4.9 The EA report concludes that “*the proposed development is predicted to have both negative and positive impacts*”. Only two negative heritage impacts are listed:

4.9.1 “*The proposed infrastructure will have a negative impact on the visual character along the R44. However, the VIA found that these impacts can be mitigated to a certain extent*” (p27).

The substantial negative heritage impacts of the proposed infrastructure are underplayed. Furthermore, the findings of the flawed VIA are irrelevant, as it was not approved by HWC and the proposed mitigation measures will be entirely inadequate, especially as far as the grade-separated roundabouts and grade-separated U-turn facilities are concerned.

4.9.2 “*The HIA concluded that the proposed infrastructure will have an unacceptable impact on the cultural landscape*” (p27).

DEA&DP’s Environmental Authorisation report notes that the proposals will have an unacceptable impact on the cultural landscape, but appears to place little value on these findings and does not state why these severe heritage impacts are, in the view of DEA&DP, outweighed by the “*effective functionality*” or the “*operation efficiency*” put forward by the DTPW.

Additional comments

5. There is no doubt that despite the fact that it is a dual carriageway facility, the R44 between Stellenbosch and Somerset West is a **scenic route**. It not only the road that constitutes a scenic route, but also its scenic envelope and its associated infrastructure.
6. HWC is in agreement with the applicant’s heritage consultant, Mr Snelling’s Second Addendum HIA that the upgrade into a dual carriageway with related urban road geometric design has turned the R44 into a mobility route whose rural quality is often compromised along its route. This does however **not** render this scenic route or the cultural landscape as a lost cause or engineering upgrades that would exacerbate the mobility route morphology, as a fait accompli.
7. With regard to the closure of the median breaks, HWC is in agreement with the Second Addendum HIA that the median crossings have significant contributory significance to both the R44 as a scenic route and as a linkage with the underlying and tangible rural cultural landscape.
8. HWC maintains that the social and economic benefits of the proposed road upgrades, as claimed by the DTPW, are **outweighed** by the irreversible negative impacts on the scenic route, the greater cultural landscape and tourism. The DTPW’s inference that any alternatives other than the ones proposed will lead to an “*unsafe road*” is disputed. A limited access, freeway model is not necessarily a safer alternative. Furthermore, it should be

borne in mind that it is precisely the rural nature and scenic qualities found in the study area that attract tourists to the Cape Winelands.

9. Cognisance should be taken of the recommendations of the provincial '*Heritage and Scenic Resources: Inventory and Policy Framework*' (2013), which was commissioned by DEA&DP. One of the threats to scenic routes and passes identified in that report is "***insensitive road 'improvements', road widenings, street furniture, lighting, etc.***", which lead to a loss of scenic value and rural character." The subject application is a prime example of such insensitive road improvements.

Conclusion

10. The Environmental Authorisation report is misleading in its silence on the extent of opposition from I&APs, including the Stellenbosch community, who are supposed to be the beneficiaries of the road upgrades.
11. In its Final Comment, HWC has endorsed the findings of the DTPW's **own** heritage consultant, as contained in the Second Addendum HIA of November 2016, which was not supporting any aspect of the proposal in its current form. Both the Revised Final BAR and the EA appear to (a) dismiss the findings of that HIA and (b) rely on superficial visual mitigation measures to address a fundamentally flawed development model.
12. Section 38(8) of the NHRA exempts developments from approval by the provincial heritage authority where such developments are subject to an environmental impact assessment, **provided that** "*the consenting authority must ensure that the evaluation fulfils the requirements of the relevant heritage resources authority in terms of subsection (3), and any comments and recommendations of the relevant heritage resources authority with regard to such development have been taken into account prior to the granting of the consent.*"

In terms of section 38(3), the current Environmental Authorisation is **fatally flawed** as,

- (a) the visual impact assessment, which was a requirement of HWC in its NID response, was **not** endorsed by HWC (neither its impact ratings nor its proposed mitigation measures), but DEA&DP still relied on its findings in arriving at a decision. In its Final Comment of 08/02/2017, HWC's IACom clearly stated that it "*disagreed with the findings of the VIA report and addendum VIA, in that the ratings were considered too low, the impacts under-estimated and the role of visual mitigation after the fact over-emphasised*";
- (b) the findings of the one heritage report that *did* fulfil the requirements of section 38(3) of the NHRA, the Second Addendum HIA by Mr Snelling, were **completely ignored** by DEA&DP and had no influence on the Environmental Authorisation or its conditions;
- (c) the comments and concerns of the heritage resources authority were **not** taken into account and, in fact, the **most intrusive alternatives**, being grade-separated roundabouts and grade-separated U-turn facilities were authorised in a number of instances;
- (d) the recommendations of the heritage resources authority were **not** taken into account and, with the exception of including the standard 'archaeological clause', **no** heritage-related conditions were imposed. Since HWC did not support the proposal, it did not have an opportunity to impose conditions and the Environmental Authorisation does not require detailed design and landscaping proposals to be submitted to HWC for approval.

13. The proposals in their current form will have a permanent, irreversible and detrimental impact on the identified Grade II and Grade IIIA heritage resources and forever change the landscape of the Stellenbosch Winelands.
14. We trust that the MEC for Environmental Affairs will uphold this appeal, set aside the flawed Environmental Authorisation and allow for the further exploration of more appropriate alternatives for the R44.

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