



APPEAL FORM
In terms of the National Appeal Regulations

April 2019

Form Number: AF12/2014

Note that:

1. This appeal must be submitted within **20 days** of being notified of the decision.
 2. This form is current as of **December 2014**. It is the responsibility of the Appellant to ascertain whether subsequent versions of the form have been released by the Appeal Administrator.
 3. This form must be used for appeals submitted in terms of National Appeal Regulations, 2014 in so far as it relates to decisions in terms of the:
 - a. Environment Conservation Act, 1989 (Act No. 73 of 1989);
 - b. National Environmental Management Act, 1998 (Act No. 107 of 1998);
 - c. National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004);
 - d. National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004);
 - e. National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008); and subordinate legislation made in terms of these laws.
 4. The required information must be inserted within the spaces provided in the form. The sizes of the spaces provided are not necessarily indicative of the amount of information to be provided. The spaces may be expanded where necessary.
 5. Unless protected by law, all information contained in, and attached to this application, will become public information on receipt by the Department.
 6. A digital copy of this form may be obtained from the Department's website at <http://www.capegateway.gov.za/dept/eadp>.
 7. Please consult the National Appeal Regulations (dated 8 December 2014) and the Department's Circular EADP 0028/2014 on the "One Environmental Management System" and the EIA Regulations (dated 9 December 2014), and any other relevant regulations.
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A. DECISION BEING APPEALED

1. Reference Number of the Decision being appealed:

16/3/3/1/A6/50/2046/19

2. Type of Decision being appealed (please circle the appropriate option):

<input checked="" type="radio"/> Environmental Authorisation	<input type="radio"/> 24G Administrative Fine	<input type="radio"/> Amendment of Environmental Authorisation	<input type="radio"/> Amendment of Environmental Management Programme	<input type="radio"/> Waste Management Licence	<input type="radio"/> Atmospheric Emission Licence	<input type="radio"/> Exemption Notice
<input type="radio"/> Permit in terms of NEM: BA	<input type="radio"/> Administrative Notice/ Directive	<input type="radio"/> ECA: OSCA Permit	<input type="radio"/> Other			

3. Brief Description of the Decision: Proposed Phase 2 Extension of Houmoed Avenue and associated upgrading of Masiphumelele Settlement, Sunnydale and Masiphumelele

4. Date of the decision being appealed (i.e. date on which the decision was made):

25 March 2020

B. APPELLANT'S INFORMATION

5. Please circle the appropriate option

<input type="radio"/> Applicant	<input type="radio"/> State Department / Organ of State	<input checked="" type="radio"/> Interested and Affected Party
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6. Appellant's information:

Name: The Noordhoek Environmental Action Group (NEAG).

Address: PO Box 709, Noordhoek, 7979.

Tel: 071-677-0974

Cell: 071-677-0974

Fax: n/a

Email: andrea@plunge.co.za

neag.info@gmail.com

C. APPEAL INFORMATION

7. Did you lodge an Appeal submission within 20 days of the notification of the decision being sent to you?

Yes / **No** (Circle the appropriate response). If "Yes", attach a copy herewith.

8. The following documents must accompany the appeal submission, kindly indicate if they have been attached to the submission:

8.1 a statement setting out the grounds of appeal?;

Yes / **No** (Circle the appropriate response)

8.2 supporting documentation which is referred to in the appeal submission?;

Yes / **No** (Circle the appropriate response)

8.3 a statement, including supporting documentation, by the appellant that a copy of the appeal was submitted to the applicant, any registered interested and affected party and any organ of state with interest in the matter within 20 days from:

8.3.1 the date that the notification of the decision was sent to the registered interested and affected parties by the applicant.

Yes / **No** (Circle the appropriate response).

Please indicate the date on which a copy of the Notice of the decision was sent. **_ 14 June 2020**

OR

8.3.2 the date that the notification of the decision was sent to the applicant by the competent authority, issuing authority or licensing authority.

Yes / **No** (Circle the appropriate response).

Please indicate the date on which a copy of the Notice of the decision was sent. _____

D. GROUNDS OF APPEAL

9. Set out the ground/s of your appeal: Clearly list your appeal issues and provide an explanation of why you list each issue.

1: We are not opposed to the construction of Phase 2 as defined in this application. However we reject any and all linkages of this Phase to Phase 1, that is the section of Houmoed Road between Lekkerwater Road and Buller Louw, as is being handled under a separate application. These two applications are stand alone applications and all and any linkages between the two cannot make the permission (RoD or rezoning) or completed construction dependent upon the completion of the other, as set out and implied in Point 3.1 on page 23 of the RoD and point 3.3 on page 28 of the RoD.

2: On page 5 of the RoD, under the heading "Proposed upgrading of the informal settlement" reference is made to upgrading of the stormwater outflows from Masiphumelele before they enter the wetland. This is provided further detail in point 3.4 on page 31. We are of the informed opinion that merely upgrading these outflows is insufficient as they carry unsustainably high levels of pollution, particularly during low flow periods. We support the installation of low water flow diversion pumps in order that this highly polluted water is redirected into the adjacent sewer main and thence to the Wildevoelwei Water Treatment works to be treated. We also feel that attention must be paid to the accessibility of the proposed culverts as the drains in this region are regularly blocked. Access must be provided for routine clearance of these culverts.

3: The rules governing this process provide that independence is a vital criterion for the EAP. We allege that a reasonable apprehension of bias on the part of the EAP exists. It recently came to our attention that the EAP failed to declare the existence of a potential conflict of interests to the IAPs or the authorities as required by the relevant rules. We are advised that this conduct on the part of the EAP is a breach of the relevant rules, as set out in **Annexure 1**, and that this breach is serious enough to vitiate the entire process.

9.1 Is your appeal based on factors associated with the process that was followed by the applicant/Environmental Assessment Practitioner/Competent Authority in reaching the decision?

Yes / **No** (Circle the appropriate response). Please provide details.

As per point 3 in Section D 9 above we refer you to our Annexure 1, setting out our legal grounds of appeal which are in common with the legal grounds of appeal lodged in respect of Phase 1 of Houmoed road.

9.2 Is your appeal based on factors associated with matters of unacceptable environmental impacts/extenuating circumstances not taken into account by the Competent Authority?

Yes / **No** (Circle the appropriate response). Please provide details.

Partially, as referred to in points one and two above under section D 9.

9.3 Have your appeal issues been raised previously in the public participation process?

Yes / **No** (Circle the appropriate response). Please provide details.

Yes, We have previously raised the existence of a reasonable apprehension of bias on the part of the EAP have provided evidence supporting this allegation. We later raised a further allegation of the existence of an undeclared potential conflict of interests on the part of the EAP and adduced evidence to this effect. See **Annexure 1**. Evidence in respect of the undeclared potential conflict the interest on that part of the EAP, Sadia Chand of Chand Consulting, only came to light after we had lodged our original appeals hence we again raise it here, after initially raising this matter in regard to our appeals against Phase 1 of Houmoed Road as submitted on our behalf by Andre van der Spuy Consultants.

9.4 Are you fundamentally opposed to the decision (e.g. to any development activity on the site)?

Yes / **No** / **Not applicable** (Circle the appropriate response). Please provide details.

As noted in our point 1 under section D 9, we are not opposed to the construction of this portion of Houmoed Road but this does not condone our continued wholesale objection to Phase One of Houmoed Road and our approval of this phase does not condone or support in any way the other. Neither does our lack of opposition in any way address the fatal flaw of the conflict of interest of the EAP who has conducted this EA.

9.5 Are you in favour of the decision if your concerns can be remedied by rectifying the process or by mitigating or eliminating an impact/s of the activity/ies?

Yes / **No** / **Not applicable** (Circle the appropriate response). Please provide details.

Yes, if our suggestions and objections are addressed we are not opposed to the continuation of the activity. But again this does not in any way address the fatal flaw in this process of the undeclared potential conflict of interest of the EAP.

9.6 Please indicate what measures you propose to have your concerns remedied.

As set out in points 1, 2, and 3 in point 9 above. The process must start again with an independent EAP.

9.7 Does your appeal contain any new information that was not submitted to the Environmental Assessment Practitioner (EAP) / or registered I&APs/ or the competent authority prior to the decision?

Yes / **No** (Circle the appropriate response). If the answer above is "Yes" please explain what this information is and why it should be considered by the Appeal Authority and why it was not made available to the EAP/ or I&AP/ or the competent authority prior to the decision. (Please ensure that the new information is attached hereto.)

We raised the existence of a reasonable apprehension of bias on the part of the EAP at an early stage and provided evidence supporting this allegation. At a later stage, after we had submitted our comments on the scoping report, it came to our attention that the EAP had not declared the existence of a potential conflict of interests as required in terms of the regulations. We then raised a further allegation of the existence of an undeclared potential conflict of interests on the part of the EAP and adduced evidence to this effect. See **Annexure 1**. Concrete evidence in respect of the undeclared potential conflict the interest on the part of the EAP, Sadia Chand of Chand Consulting, only came to light after we had lodged our original appeals hence we again raise it here, after initially raising this matter in regard to our appeals against Phase 1 of Houmoed Road as submitted on our behalf by Andre van der Spuy Consultants.

The evidence of the undeclared potential conflict of interests on the part of the EAP was only discovered through our investigations into our appeal to the RoD on Phase 1 of Houmoed Road. This should in no way preclude the consideration of this extremely serious breach by the lead consultant in Chand Consulting, as is clearly set out in our legal opinion shared in Appendix 1. In fact we are advised that this is such a serious breach by the EAP as to vitiate the entire process, which should be set aside and a new Consultant appointed to restart this process.

E. SUBMISSION ADDRESS

This appeal must be submitted to the Appeal Administrator at the address listed below within 20 days of being notified of the decision:

By post: Attention: Marius Venter
Western Cape Ministry of Local Government, Environmental Affairs &
Development Planning
Private Bag X9186, Cape Town, 8000; or

By facsimile: (021) 483 4174; or

By hand: Attention: Mr Marius Venter (Tel: 021-483 3721)
Room 809, 8th floor Utilitas Building
1 Dorp Street, Cape Town, 8000; or

By e-mail: DEADP.Appeals@westerncape.gov.za

Note: You are also requested to submit an electronic copy (Microsoft Word format) of the appeal and any supporting documents to the Appeal Administrator.

Signed – Dr A. Marais



Appellant's signature

Date 14 July 2020.