

- Lee Burman (Hermanus Botanical Society [BOTSOC] and Bird Club)
- Antony van Hoogstraten (BOTSOC and neighbouring landowner)
- Linda Griffiths (BOTSOC)
- Dr Muthama Muasya (Botany, UCT)
- Estelle Spaarwater (Hermanus Historical and Aesthetics Committee)
- Glynis van Rooyen (representing Tourism in Hermanus)
- Andrae Marais (CapeNature)
- Grant Forbes (CapeNature)
- Duncan Heard – Chairperson (Environmental Management professional with more than 42 years of experience and a practicing Environmental Consultant)

FAB's main concerns are:

1. That FAB may not be afforded the time to consult and submit comments by the deadline.
2. In the final draft BAR and list of I&APs Duncan Heard is listed as an individual and not as Chairperson of FAB.
3. The proposed restaurant being erected so close to the high water mark.
4. The fact that the BAR contains no official written framework guarantee from the municipality that will regulate the use of the amphitheatre (makes it difficult to comment objectively on this matter).
5. A wetland specialist report for the rehabilitation of the wetland is not available as yet. (makes it difficult to comment objectively on this matter).


On behalf of FAB we look forward to your urgent reply on this matter.

Duncan Heard

Chairperson: Fernkloof Nature Reserve Advisory Board

12 Sepia Avenue, Vermont, Onrusrivier. 7201. SOUTH AFRICA

Tel: +27(0) 28 316 3386 | Cell: +27(0) 82 495 3943 | Fax: +27(0) 86513 4462 | Email: duncanheard@telkomsa.net


"We abuse land because we regard it as a commodity belonging to us. When we see land as a community to which we belong, we may begin to use it with love and respect." *Aldo Leopold, A Sand County Almanac*

Duncan Heard

CHAREL BRUWER - COPY FOR YOUR INFO.

From: Duncan Heard [duncanheard@telkomsa.net]
 Sent: 03 October 2013 10:23 AM
 To: 'zaahir.toefy@westerncape.gov.za'; 'Gerhard Gerber'
 Cc: 'David and Jane Beattie'; Lee Burman; Linda Griffiths; Pieter Scholtz; Estelle Spaanwater; Glynis van Rooyen; Muthama Mwasya; Antony van Hoogstralen; Andrae Marais; Grant Forbes; Tierck Hoekstra; 'Liez/ Bezuidenhout'; Neville Green; Hanneen van der Stoep
 Subject: RE: (Ref.: 15/3/11/E2/14/2026/13) :Piet se Bos Final BAR: Request for extension of deadline for Comments

Dear All

Please note that in my previous e-mail on this matter , I referred to the company EcoServe in error in the first paragraph – this must read EnviroAfrica.

Thank you

Duncan Heard
Chairperson: Fernkloof Nature Reserve Advisory Board

12 Sepia Avenue, Vermont, Onrusrivier. 7201. SOUTH AFRICA
 Tel: +27(0) 28 316 3386 | Cell: +27(0) 82 495 3943 | Fax: +27(0) 86513 4462 | Email: duncanheard@telkomsa.net



"We abuse land because we regard it as a commodity belonging to us. When we see land as a community to which we belong, we may begin to use it with love and respect." Aldo Leopold, A Sand County Almanac

EnviroAfrica

Environmental Planning and Impact Assessment Consultants
Omgewingsbeplanning en Impakbeoordeling Konsultante

3 October 2013

Mr D Heard
12 Sepia Avenue
Vermont
ONRUSRIVIER
7201

16/3/1/1/E2/14/2026/13: PROPOSED UPGRADE OF THE PIET SE BOS AND GROTTO BEACH AREA, HERMANUS: COMMENT PERIOD ON FINAL BASIC ASSESSMENT REPORT

The abovementioned project and yourself as registered I&AP as representative of Fernkloof Advisory Board refers.

In response to your letter dated 30 September 2013 requesting the comment period to be extended we wish to point out the following.

- o As a consultant we take it that you are aware of your responsibilities under NEMA. This *inter alia* means that one should conform to the requirements set during the impact assessment process and adhere to the corresponding deadlines and participate in the process in a pro-active manner. Such pro-active participation should take note of the following.
- o The written comments on the proposed project was requested in all documentation that was available from 18 March 2013 to be made before 3 May 2013.
- o The advert in the local newspaper appeared on 14 March 2013 already, however your first written response was only made on 23 April 2013 and then in your personal capacity, listing *no issues, concerns or impacts* as requested in all the documentation and newspaper advert. Note that this is some 29 days after the first notification!
- o You did point out that you required the approved draft BAR which was posted to your contact address given and a subsequently another hard copy was made available to you by hand.
- o You mention that you have been informed "by a number of members" who did not receive the correct document. We have informed you as representative of FAB already there were only two I&APs that referred to having received the wrong copy and they were both supplied with the correct copies. Please note that no copies of the draft BAR was supplied to I&APs willy-nilly, but only on request. Most of the I&APs accessed the draft BAR on the municipal website.

EnviroAfrica

Given the above sequence of events which we certainly do not see as a pro-active engagement by yourself as representative of FAB, as requested in all the documentation that was produced during the PPP and adherence to the NEMA deadlines, you may understand that we are reluctant to willy-nilly extend deadlines.

The exact purpose of the impact assessment process is to raise these issues, concerns and impacts as early as possible in the process, based on the information available at the time, pro-actively, so that it can be addressed in the interim by means of written correspondence and the final BAR compiled so that there is clarity on the proposed project. Your organisation, having failed to do this during the comment period provided for this, we now have situation where we feel that you want to treat the final BAR as a draft BAR, with all the concomitant administrative and cost problems involved.

We have decided to grant you the extension that you have requested this time around, but please note that in future you as representative of FAB have a responsibility to ensure that your inputs are collected at the very onset of the process and adherence to the deadlines and requirements set by the EAP be treated as an absolute priority.

Please ensure that all comments by members of the FAB are directed to you, collated by yourself and as representative you supply us with the collated comment on the final BAR before your requested deadline

Yours sincerely



Charel Bruwer Snr

Rec'd 6/10

12

S C HIBBERD
P O BOX 2063
HERMANUS
7200

29 September 2013

Charel Bruwer
Enviro Africa
P O Box 4
ONRUS RIVER
7201

Dear Mr Bruwer

REF: 16/3/1/E2/14/2026/13

I received your letter dated 17 September on 27 September 2013.

As a very normal citizen I find it impossible to study the Basic Assessment Report in the short space of time allowed. Due to the size of the document I cannot download it on my computer and working full time it is not possible to visit the library for extended periods.

However, my original objection as set out in my previous correspondence remains. I do not accept the counter arguments raised by you or the explanation given to me by Mr Kuchar of the Overstrand Municipality.

I remain of the strong opinion that this project should NOT GO AHEAD under any circumstances for the reasons previously mentioned.

Having studied some of the documents I am left with the distinct feeling that the correct procedures have not been followed.

Yours faithfully



S C HIBBERD

CC: Department of Environmental Affairs and Development Planning
Attention: Directorate Integrated Environmental Management (Region B)
Private Bag X9086
CAPE TOWN
8000

1256

12a

EnviroAfrica

Environmental Planning and Impact Assessment Consultants
Omgewingsbeplanning en Impakbeoordeling Konsultante

31 July 2014

Mrs S C Hibberd
P O Box 2063
HERMANUS
7200

Dear Mrs Hibberd

**16/3/1/1/E2/14/2026/13: PROPOSED UPGRADE OF PIET SE BOS AND GROTTO BEACH AREA,
HERMANUS**

Your letter dated 29 September 2013 with regard to the abovementioned project refers.

As you may be aware a workshop on the Piet se Bos upgrade was held on 18 January 2014 in the municipal auditorium to which you were invited. After the workshop the Overstrand Municipality withdrew the construction of the proposed amphitheatre as the preferred option and also decided to reduce the scale of the proposed restaurant to be limited to a single storey wooden building.

A revised final BAR with a new preferred option was compiled of which you will receive a notification of availability in due course for your written comment. It will also contain a verbatim transcription of the workshop discussion as well as the revised plans for the proposed restaurant.

With regard to the other issues raised in your letter, the issues, concerns and impacts that you raised in your previous correspondence have all been addressed and re-iterated in discussions during the workshop. It remains your prerogative to accept or reject the answers given. You do not specify which "correct procedures" have not been followed, so we cannot specifically address those, but we can assure you that all the procedures specified under NEMA have been followed to the letter

Yours sincerely



Charel Bruwer Snr

1257

ANNEXURE D 364/551
Recd 18/10

Enviro Africa Overberg (Piet se Bos)
P.B.Box 4
Onrus
7201

No address (13) !
No contact details 0
→ (M) follow up please

Proposed Upgrade of the Piet se Bos and Grotto Beach Area, Hermanus

1454
H T200

Further to my registered letter to you of 11.04.2013.

I point out that there is a large Municipal billboard where 10th Avenue Voelklip takes an East turn on the final slope to Grotto Beach which states

NO ALCOHOL

NO MUSIC
NO CAMPING

It would appear that your scheme is directly opposed to Municipal Ordinances promulgated, presumably, for the benefit of the residents of Hermanus.

Yours faithfully



Mrs A.E.Boynton

EnviroAfrica

Environmental Planning and Impact Assessment Consultants
Omgewingsbeplanning en Impakbeoordeling Konsultante

13a

31 July 2014

Mrs A E Boynton
P O Box 1458
HERMANUS
7200

Dear Mrs Boynton

**16/3/1/1/E2/14/2026/13: PROPOSED UPGRADE OF PIET SE BOS AND GROTTA BEACH AREA,
HERMANUS**

Your undated letter received on 18 October 2013 with regard to the abovementioned project refers.

As you may be aware a workshop on the Piet se Bos upgrade was held on 18 January 2014 in the municipal auditorium to which you were invited. After the workshop the Overstrand Municipality withdrew the construction of the proposed amphitheatre as the preferred option and also decided to reduce the scale of the proposed restaurant to be limited to a single storey wooden building.

A revised final BAR with a new preferred option was compiled of which you will receive a copy in due course for your written comment. It will also contain a verbatim transcription of the workshop discussion as well as the revised plans for the proposed restaurant.

With reference to the other issues raised in your letter, we wish to point out that there are a number of other provincial and municipal ordinances that govern municipal developments. Of specific importance are the municipal ordinances regarding the control on noise, permits required for public gatherings and events held in the municipal area. Thus the municipality has the right under these ordinances to assess and manage individual events at their discretion. Thus even though those notices are displayed on site, they may in specific instances waive those restrictions upon specific assessment of an event application submitted to them for the necessary permit to host such an event. We trust that this brings clarity to the issue of noise, alcohol and music control in the municipal area.

Yours sincerely

Copy

Charel Bruwer Snr

P O Box 4
ONRUS RIVER 7201
Tel: (028) 3162888
Fax: 0865132141
Cell: 0828050190

CK 2007043835/23
-VAT No 4380237091

Charel Bruwer Snr
Charel Bruwer Jnr
Bernard de Witt

1259

EnviroAfrica
 P.O. BOX 4
 ONRUS RIVER 7201

PostNet Suite # 190
 Private Bag X16
 HERMANUS
 7200

16/3/1/1/E2/14/2026/13: PROPOSED UPGRADE OF THE PIET SE BOS AND GROTTO BEACH AREA, HERMANUS.

This letter serves to confirm that we wish to be registered as Interested and Affected Parties and are against the proposed upgrading of The Piet se Bos and Grotto Beach Area – we believe that Hermanus as a whole has far more social upliftment requirements than the above proposal.

This proposal will do nothing for the upliftment of the poor particularly those who live in the townships.

Nowhere is there any cost justification and how sustainable the project will be. Who is going to make money out of this proposal both initially and on an ongoing basis?

It has the appearance of "a nice to have for the minority"

There seems to be no real thought given to all the attendant problems that will arise from this project ie Noise, Traffic, Crime, Rubbish.

It is noted that the event/s would stop at midnight – which means the noise factor ie traffic dispersion would be around 1.00am! Why not close the event at 10.30 pm and route the traffic up to the Main Road (Seventh Street) – put sleeping policemen along 10th Street to stop it being used as a racetrack-to get home quickly? ?

All for the upliftment of the natural aspect of the area but not the unnecessary social intervention.

226 10th Street, Voelklip ERF 8008

228 10th Street, Voelklip ERF 6922

Regards

J M McCulloch

1260

14a

EnviroAfrica

Environmental Planning and Impact Assessment Consultants
Omgewingsbeplanning en Impakbeoordeling Konsultante

31 July 2014

Mr J McCulloch
Postnet Suite # 190
Private Bag X16
HERMANUS
7200

Dear Mr McCulloch

**16/3/1/1/E2/14/2026/13: PROPOSED UPGRADE OF PIET SE BOS AND GROTTO BEACH AREA,
HERMANUS**

Your undated letter received on 18 October 2013 with regard to the abovementioned project refers. You have been registered as I&AP at the request of Mr Armstrong who received all prior notifications to yourself at his address. From now on this address will be used for correspondence with yourself.

The issues, concerns and impacts that you have raised in your letter have all been addressed in detail and discussed in a workshop as well.

As you may be aware a workshop on the Piet se Bos upgrade was held on 18 January 2014 in the municipal auditorium to which you received an invitation to attend. After the workshop the Overstrand Municipality withdrew the construction of the proposed amphitheatre as the preferred option and also decided to reduce the scale of the proposed restaurant to be limited to a single storey wooden building.

A revised final BAR with a new preferred option was compiled of which you will receive a copy in due course for your written comment. It will also contain a verbatim transcription of the workshop discussion as well as the revised plans for the proposed restaurant.

Yours sincerely



Charel Bruwer Snr

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Charel Bruwer Snr
Charel Bruwer Jnr
Bernard de Witt

du plessis • hofmeyr • malan

land law specialists

Ours ref: CJH / H38
Your ref: 16/3/1/1/E2/14/2026/13

21 October 2013

Mr C A Bruwer
Enviro Africa
PO Box 4
ONRUS 7201

**BY REGISTERED MAIL
AND BY FAX: 086 513 2141**

Dear Mr Bruwer

**PROPOSED UPGRADE OF THE PIET SE BOS AND GROTTO BEACH AREA, ERF 4771
HERMANUS – COMMENT ON FINAL BASIC ASSESSMENT REPORT**

1. We act for a number of property owners in close proximity to the planned amphitheatre at Grotto Beach Hermanus. A list with the names of our clients is annexed hereto, marked 'A'.
2. Our instructions are to confirm, as we hereby do, that our clients are fundamentally opposed to the proposed amphitheatre and their intention is to use every possible opportunity and forum to voice their objection and to ensure that what they deem to be a wholly undesirable development is not implemented.
3. We are instructed to comment on our clients' behalf on the final Basic Assessment Report (the 'BAR') that was published recently for public comment and we do so below.
4. Before turning to our comments we draw your attention to our letter of 2 October 2013 to you wherein we recorded our client's concerns as regards the reasonableness of the opportunity to comment on the BAR. You have indicated in a subsequent letter that you deem an opportunity until 22 October 2013 to constitute a reasonable commenting period but

DU PLESSIS HOFMEYR MALAN INC (Registration Number: 2011/134862/21)
ATTORNEYS • CONVEYANCERS • NOTARIES

DIRECTORS: JP du Plessis B Juris LLB (UNISA), BPhil & MPhil Sustainability (US) •

CJ Hofmeyr BA LLB (US), LL.M (HU-Berlin), LL.M Public Law (UCT) • N Malan BA Industrial Psych (US), LLB (UNISA)

Suite 4, 1st Floor Waterstone Village Office Park, Cnr Main Rd & R44, Somerset West, 7130 • PO BOX 1488, Somerset West, 7129 • Tel: 021 851 0359 • Fax: 021 851 4852

our instructions are to confirm, as we hereby do, that our clients maintain that neither they, nor the rest of the community have been afforded a reasonable opportunity to make representations and their rights in this regard are reserved.

5. In what follows we provide you with our clients' comments on the BAR and we structure same as follows:

- 5.1. Procedural Flaws (Paragraphs 6 to 16);

- 5.1.1. Appointment of Environmental Assessment Practitioner (Paragraph 6 to 9);

- 5.1.2. Identification and Notification of Interested and Affected Parties (Paragraphs 10 to 14);

- 5.1.3. Insufficient Opportunity to comment on the Draft Basic Assessment Report (Paragraph 15);

- 5.1.4. Project Description (Paragraph 16);

- 5.2. Environmental Impacts (Paragraphs 17 to 38);

- 5.2.1. General (Paragraphs 17 to 20);

- 5.2.2. Noise (Paragraphs 21 to 29);

- 5.2.3. Cultural Considerations (Paragraphs 30 to 34);

- 5.2.4. Traffic (Paragraphs 35 to 37);

- 5.2.5. Other (Paragraph 38)

- 5.3. Lack of Need and Desirability (Paragraphs 39 to 41);

- 5.4. Lack of Information pertaining to Financial Viability (Paragraphs 42 to 46);

- 5.5. Inadequate and Incorrect observation of Environmental Management Principles (Paragraph 47);

- 5.6. Alternatives (Paragraphs 48 to 56);
- 5.7. Recommendation (Paragraphs 57 to 58);
- 5.8. Conclusion (Paragraphs 59 to 61)

PROCEDURAL FLAWS

Appointment of Environmental Assessment Practitioner

6. In terms of Regulation 16(2), read with Regulation 17(a) of the EIA Regulations, 2010 an applicant must appoint an independent Environmental Assessment Practitioner ('EAP') to manage an application for environmental authorisation. Having regard to the Standard Declaration that forms part of the BAR it would appear as if this requirement has not been complied with as Mr CA Bruwer, under authority of the Overstrand Municipality appointed himself or his company (Enviro Africa) as EAP for this project (see in this regard the Declaration, annexed hereto, marked 'B').
7. Admittedly, the BAR contains a further document, titled *Special Power of Attorney* (annexed hereto, marked 'C') wherein the Municipality's Director: Infrastructure & Planning appoints and authorises Mr Bruwer of Enviro Africa to complete and sign all documents '*required for the EIA*'. This document gives Mr Bruwer wide-ranging powers to act on behalf of the Municipality and includes the following paragraph, which our clients find very disconcerting:

"This includes to represent the Overstrand Municipality at any inquiry in relation to the abovementioned matter and generally do whatever may be necessary or desirable to procure the approval of the application, by virtue of those present and whatever the said representative have to date done herein."

(emphasis added)
8. The instructions given to Enviro Africa by the Municipality, are clearly not limited to preparing an application for environmental authorisation but extend to '*procuring the approval of the application*'. This instruction runs

counter to the fundamental principle that the EAP must be independent and must first and foremost establish what is in the best interest of the environment. The EAP's mandate may never be to *procure an approval* and as that is precisely what is expected of the Enviro Africa in this case, the very basis of the process is entirely flawed.

9. In light of the foregoing our instructions are to insist, as we hereby do, that a new basic assessment process be commenced and we strongly suggest that a new EAP be appointed to manage the process.

Identification and notification of Interested and Affected Parties

10. As you know, section 33 of the **Constitution of the Republic of South Africa, 1996** (the 'Constitution') affords everyone the right to administrative action that is lawful, reasonable and procedurally fair. In terms of section 3 the **Promotion of Administrative Justice Act, 2000 (Act 3 of 2000)** ('PAJA') everyone whose rights and legitimate expectations may be affected by administrative action must be given adequate notice of the nature and purpose of the administrative action and a reasonable opportunity to make representations. Administrative action following upon a process that failed to comply with section 33 of the Constitution and section 3 of PAJA, is unlawful, unconstitutional and therefore judicially reviewable.

11. Section 23(2) of the **National Environmental Management Act, 1998 (Act 107 of 1998)** ('NEMA') records the general objectives of integrated environmental management, and one of those objectives are stated in section 23(2)(d) to be to:

"ensure adequate and appropriate opportunity for public participation in decisions that may affect the environment"

12. Section 24(4)(a) of NEMA lays down minimum requirements with which all applications for environmental authorisation must comply. Section 24(4)(a)(v) provides that the process followed must

"... ensure public information and participation procedures which provide all interested and affected parties,, with a reasonable opportunity to participate in those information and participation procedures."

13. As we explain below, we are of the opinion that property owners whose rights and legitimate expectations are likely to be affected by the proposed amphitheatre have not been informed personally of the intended development, nor have their representations been solicited. They have not been provided with a reasonable opportunity to participate in the relevant information and participation procedures.

13.1. As will become apparent in the remainder of this document, noise is one of our clients' and other property owners in the area's primary concerns and accordingly our clients are of the opinion that one of the principal criteria when identifying and involving interested and affected parties ought to have been the likelihood that people might be impacted by the noise to be generated by the proposed facilities. We explain further in this document why we are of the opinion that the investigation and assessment of noise have been wholly inadequate, and at this juncture we record merely our clients' view that not all people that are likely to be affected by the noise have been notified personally of the intention to develop an amphitheatre. Our instructions are, for example, that Charm Homes CC the owners of erf 3057 Hermanus, a property that is located a mere 240m northwest of the proposed amphitheatre in the path of the prevailing wind has not received any notice of the proposed development.

13.2. Our clients have perused the lists of property owners that according to the Background Information Document and subsequent reports have been notified by post of the proposed development and it appears as if only the owners of the properties closest to Piet se Bos were so notified. We have clients who know from personal experience at their homes in the Kirstenbosch area that the noise generated by open air music concerts has an impact as far away as 500 metres from the stage and particularly given the uncertainty

as to the nature of events that will be hosted at the amphitheatre, we submit that the notification process was by no means adequate. Even if one were to assume conservatively that only properties within a 350 metre radius of Piet-se-Bos would be affected by and ought to have been notified of the proposed amphitheatre one finds astoundingly that well in excess of 100 property owners who ought to have been notified were not. Some of these owners have in the meantime become aware of the project through other channels and have registered as interested and affected parties but the vast majority is still not part of the decision-making process.

13.3. Given the overwhelming opposition to the proposed development, the amphitheatre in particular, from the people who have been properly notified, it is fair to say in our opinion that the project would have met with an even stronger gulf of opposition had a proper public participation process been followed. In this regard we draw your attention to the fact as researched by one of our clients that of the roughly 40 responses that were received according to the BAR, 36 indicated that they were opposed to the development.

14. In the premise, we submit that the very foundation of the process, namely the public participation process is on shaky legs at best and is incapable of forming the basis of a credible process. For this reason alone we submit that the process is fatally flawed and can only be remedied if it were to commence anew.

Insufficient opportunity to comment on the Draft Basic Assessment Report

15. In terms of Regulation 56(1) registered interested and affected parties are entitled to comment on *all written submissions, including draft reports*. It is axiomatic that an opportunity to comment on a document dealing with a different project or application cannot constitute compliance with this requirement. Your attention has been drawn in previous correspondence

on behalf of one of our clients to the fact that pertinent components of the Draft Basic Assessment Report dealt with an entirely different property and project and in this regard we refer you again to paragraph 3 of Ms Marieke Van Rooyen's letter to you, dated 25 April 2013, with which we concur.

Project Description

16. One of the primary objectives of the BAR is to properly and clearly inform interested and affected parties about the exact nature and potential impacts of a proposed development. Should the process fail to meet this objective it will fall foul not only of the requirements of the EIA Regulations but also of section 33 of the Constitution, section 3 of PAJA and sections 23 and 24 of NEMA. We submit that the BAR has in a number of respects not met this requirement and we list below a number of examples:

16.1. The project is described in the public notices and at various places throughout the BAR as an *'upgrade of the present open picnic area at Grotto Beach'*, an ideal that is likely to enjoy wide support from the public at large. This description is misleading at best, though, as the present picnic area revolves around the existing braai-structures, which will not be upgraded either in terms of the preferred option 1 or option 2. Option 1's project description states expressly that the braai structures will be removed altogether, whilst no mention is made in the description of option 2 of their upgrading. In terms of both alternatives the present picnic area will be reduced dramatically to make space for an amphitheatre; whilst no mention is made of any upgrading of the remainder of the picnic area. We submit that what is in fact described in the detailed project description can by no stretch of the imagination be described as an upgrade of the present picnic facility. On the contrary, what is proposed is the reduction of the existing picnic facility to the bare minimum to make space for a concert venue.

To the extent that the public notices do not spell this out, the public is misinformed and the public participation process is flawed.

16.2. In terms of Regulation 22(1) the EAP is obliged to prepare the basic assessment report in a format that may be determined by the competent authority. The BAR was in fact prepared in the format provided by the competent authority but information that was required in terms of that format and that is pertinently necessary for interested and affected parties to properly consider the impact of the proposed development on them, have been omitted from the report. Some of the more pertinent information omitted from the BAR is listed below:

16.2.1. Paragraph 4(b) of Section A of the BAR enjoins the applicant to produce a locality map, bearing a legend and indicating the prevailing wind direction (during November to April and during May to October). The prevailing wind direction in particular is of major significance from the perspective of neighbouring property owners as the direction of the wind will determine where the noise emanating from the amphitheatre will be experienced most. The locality map, annexed to the BAR as appendix 'A' has neither a legend, nor any indication of the prevailing winds. Interested and affected parties are therefore entirely in the blind as to where noise emanating from the amphitheatre will be the worst.

16.2.2. Paragraph 4(b) also requires of the applicant to provide a detailed site map that has to meet the following requirements:

16.2.2.1. It must be at a scale of at least 1:500 and the scale must be indicated on the plan;

16.2.2.2. It must indicate the current land use (not zoning) as well as the land use zoning of each of the adjoining properties;

16.2.2.3. It must show the position of each element of the application as well as any other structures on the site;

16.2.2.4. Sensitive environmental elements within 100m of the site must be included on the site plan, including (but not limited to) rivers, flood lines, ridges, cultural and historical features, areas with indigenous vegetation.

16.2.3. The site plan that is annexed to the BAR as appendix B is entirely illegible and it is impossible to establish whether the requirements listed above, have been complied with, let alone commenting on the plan in any detail.

ENVIRONMENTAL IMPACTS

General

17. Environmental Impact Assessments are undertaken in terms of Chapter 5 of NEMA, which is concerned generally with Integrated Environmental Management. Section 23(2) sets out the general objectives of integrated environmental management, which includes the following:

"(b) identify, predict and evaluate the actual and potential impact on the environment, socio-economic conditions and cultural heritage, the risks and consequences and alternatives 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;

(c) ensure that the effects of activities on the environment receive adequate consideration before actions are taken in connection with them;

(e) ensure the consideration of environmental attributes in management and decision-making which may have a significant effect on the environment"

18. Section 24 in turn sets out the procedure to be followed to apply for and obtain environmental authorisation "... in order to give effect to the general objectives of integrated environmental management laid down in this Chapter ..." Section 24(4)(a) lays down the minimum requirements with which all applications for environmental authorisation must comply and section 24(4)(4)(a)(iv) requires in particular that the process followed must ensure the:

"investigation of the potential consequences for or impacts on the environment of the activity and assessment of the significance of those potential consequences or impacts."

19. In terms of Regulation 22(2)(i) of the EIA Regulations a basic assessment report must include *inter alia* a:

"description and assessment of the significance of any environmental impacts, including-

- (i) cumulative impacts, that may occur as a result of the undertaking of the activity or identified alternatives or as a result of any construction, erection or decommissioning associated with the undertaking of the activity;
- (ii) the nature of the impact;
- (iii) the extent and duration of the impact;
- (iv) the probability of the impact occurring;
- (v) the degree to which the impact can be reversed;
- (vi) the degree to which the impact may cause irreplaceable loss of resources; and
- (vii) the degree to which the impact can be mitigated;"

20. As we explain below, we are of the opinion that the basic assessment process did not comply with the requirements referred to above as regards the investigation and assessment of a number of potential impacts.

Noise

21. One theme that runs like a golden thread through the comments and questions of interested and affected parties is the issue of noise likely to be generated by performances at the amphitheatre. The response to questions and comments in this regard is consistently that it is not possible at this stage to make any pronouncements regarding the nature, level, frequency, duration etc. of noise as it will depend on the nature of the performances, the sound equipment that will be used, the frequency of performances and the duration of individual performances, all of which presently are unknown. Similarly, it is stated that no information can be given at this stage as to noise attenuation measures as a business plan first has to be prepared for the amphitheatre. The BAR further endeavours to set concerned property owners' minds at ease with the assurance that noise will be managed and controlled by the Municipality, i.e. the applicant and operator. Interested and affected parties are expected therefore to be reassured by the fact that the operator will police itself.
22. The BAR records boldly that the proposed land use will not result in unacceptable opportunity costs. Particularly given the great uncertainty as to what the noise impact is going to be on neighbours or how it is going to be managed, such a bold unsubstantiated statement in a document that should guide the competent authority's decision is disappointing at best and smacks of a disregard for the rights and interests of interested and affected parties. The underlying prejudice with which neighbours' concerns about noise is viewed is evident furthermore from the language in which the BAR describes those concerns. Where the applicant is required to record what "the cumulative impacts (positive or negative) of the proposed land use .. will be" the BAR states as follows:

"The cumulative negative impact is that there will be more noise associated with this enhanced use that will be negatively perceived by those immediate residents that expect peace and quiet at all times." (emphasis added)

23. If the BAR contained any findings whatsoever of even a remotely scientific nature as to the potential nature, level, frequency, and duration of noise, which indicated that the neighbours' concerns were ill-founded statements such as those quoted above may have been justifiable. In the resounding absence of such findings or even indications to that effect, it is a statement that evidences disdain and prejudice to people that are genuinely concerned about how they will be affected by the project.
24. It is astonishing that the public is expected to comment, and the competent authority is expected to take a decision in respect of a project, the most pertinent impact of which is entirely unknown. What the public and the competent authority are essentially required to do is to sign a blank check. Apart from the fact that this approach defies logic it is entirely at odds with the statutory requirements for applications for environmental authorisations laid down *inter alia* in section 23 and 24 of NEMA and quoted in paragraphs 17 and 18 above.
25. A similar approach appears to have been followed some time ago when the comments of property owners around the Kirstenbosch Botanical Gardens were solicited on the staging of evening concerts in the Gardens. Ignorant of exactly how they were to be impacted, the community was generally in favour of the proposal. Today the Kirstenbosch concerts are extremely popular and whilst patrons not living in the area would describe them as peaceful and subdued events they have become a nightmare for people living around the venue. We annex hereto, marked 'D', a short account of a trustee of one of our clients who lives approximately 450 metres from the Kirstenbosch concert venue, which should signal a red light to the Municipality if it genuinely has the interest of its ratepayers at heart.
26. It is not only humans but also birds and animals living in and around the site that will be impacted by the noise associated with the proposed amphitheatre. The half-hearted approach to investigating the impact that noise will have on humans appears to have been adopted in

respect of birds and animals as well. Although no study, report or statement from a faunal expert is annexed to the BAR, the following bold statement is made under Section F, without any motivation or substantiation whatsoever:

"Concern was also expressed that artificial lighting and noise may disturb birds and animals in the immediate area, but investigation showed that there is a vast area of natural vegetation to the east of the proposed upgraded area where there will be no disturbance to where these animals can relocate if human activities, noise and lighting do become problematic."

27. We find it very unusual that the BAR brushes aside the concerns about faunal impacts without even recording:

- 27.1. Which birds and animals could be affected;
- 27.2. How they could be affected;
- 27.3. What the investigation done to assess the impact on birds and animals entailed;
- 27.4. How large the 'vast area of natural vegetation to the east of the proposed upgraded area' is to which they can migrate;
- 27.5. Why the said vast area of natural vegetation is viewed as appropriate for hosting the said animals and birds;
- 27.6. What levels of noise and lighting would be 'problematic'

28. We submit in light of the foregoing that the BAR:

- 28.1. Does not identify, predict and evaluate the actual and potential impact on the environment of noise, the risks and consequences and alternatives and options for mitigation of noise with a view to minimizing same, and as such is incapable of achieving the objective set in section 23(2)(b) of NEMA;
- 28.2. does not ensure that the effects on the environment of noise receive adequate consideration before a decision is taken and as

such is incapable of achieving the objective set in section 23(2)(c) of NEMA;

28.3. does not ensure adequate and appropriate opportunity for public participation in decisions that may affect the environment and as such is incapable of achieving the objective set in section 23(2)(d) of NEMA;

28.4. does not include an investigation of the potential consequences for or impacts on the environment of noise and assessment of the significance of noise and its consequences or impacts and as such does not comply with one of the minimum requirements for an application for environmental approval laid down in section 24(4)(iv) and in Regulation 22(2)(i).

29. In the premise we submit that the application is fatally flawed and cannot form the basis of a lawful environmental approval.

Cultural considerations

30. Piet-se-Bos is one of the last public picnic areas in Hermanus where families of all walks of life can relax close to the beach free of charge. Recreational activities have revolved traditionally around the braai structures on the site and option 1, the preferred option, envisages the removal 'altogether' of those structures.

31. In terms of option 2, which appears to be a straw dog only as we explain elsewhere in this document, the existing braai structures will be maintained. No mention is made, however, of the upgrading thereof, nor of the picnic area in general. It would appear, therefore that when the Municipality talks about the upgrading of Piet-se-Bos they do not mean the upgrading of the existing facilities for the benefit of the traditional users, but rather the creation of other facilities that the Municipality

intends to operate at a profit at the expense of the existing facilities and their users.

32. The consent granted by Heritage Western Cape ('HWC') also refers to the improvement of the picnic area as opposed to the redevelopment of the site. We have unfortunately not had sight of the Notice of Intention to Develop that would have been submitted to HWC but from the wording of that body's consent we conclude that it too laboured under the misconception that the proposal is for the improvement of a picnic area as opposed to its virtual replacement with a concert venue.
33. A notion that permeates the BAR is that the creation of an amphitheatre will make the *'area more accessible to a wider variety of the community'*. This suggestion boggles the mind, as the area is currently accessible to all members of the public who may go there at no cost, apart from a R10 parking fee during the holiday season, from morning till night. If the amphitheatre were to be developed, though, the popular braai constructions, which ultimately is the site's draw card will be sacrificed and families not prepared or able to pay an entrance fee will be excluded from the area. The effect of the proposed development will therefore clearly be to make the area less accessible to members of the public.
34. Whilst the preferred option is likely to bring an end to an era that spans a few decades the notion expressed in Section F, that the development, will have "... *no cultural and historical impacts*" bears testimony to an extremely narrow view of what culture entails. We submit that the basic assessment process failed to consider properly the impact that the removal of the braai structures and the drastic reduction of the picnic facilities would have on the traditional use and users of the site, and as such is fatally flawed.

Traffic

35. Parking at and the flow of traffic to Grotto Beach is already a major problem during the holiday season. No one is more aware of this problem than property owners in streets such as 10th Street and 8th to 14th Avenue along which traffic is conveyed to the Grotto Beach parking area.
36. As our clients, and no doubt other property owners in the area, suspect that the existing problem will be worsened by the establishment of a concert facility at Grotto Beach catering for some 350 people, they would have expected the BAR to deal in some detail with traffic impacts. Unfortunately they have not been provided with even a short traffic statement by an appropriately qualified expert, which leaves them and the competent authority in the dark as regards a very important consideration.
37. We submit, in light of the foregoing, that the manner that the issue of traffic has been dealt with in the BAR falls short of the requirements laid down in section 23 and 24 of NEMA and constitutes another fatal flaw in the application.

Other

38. Our clients are concerned about a number of other issues that have not been dealt with in any detail in the BAR and which they believe have to be addressed before a proper picture can be formed of environmental impact the amphitheatre is likely to have. These issues include:

- 38.1. Lighting: Given the dearth of information about the events that are likely to be staged at the amphitheatre, it is difficult for our clients to comment on a number of aspects that are ordinarily associated with a venue such as this, including the issue of lighting. It is against this backdrop that our instructions are to confirm merely that our clients would be opposed to any form of lighting that will spoil the panoramic evening views over the bay.

38.2. Future Activities: Apart from the fact that very little information is given as to the immediate operations and activities at the amphitheatre, the BAR is completely silent about possible expansion or future activities. Our clients' concerns in this regard stem from experience with similar venues, which grow and adapt in accordance with the demands at any given time.

LACK OF NEED AND DESIRABILITY

39. In terms of Regulation 22(2)(g) of the EIA Regulations a basic assessment report must contain:

"a description of the need and desirability of the proposed activity."

40. No convincing pronouncement is made anywhere in the BAR that suggest that any of the proposed 'upgrades' are in fact needed. Where the question is posed in Section D, paragraph 5 whether the "community / area need the activity and the associated land use concerned (is it a societal priority)" the response is as follows:

"The upgrade will largely enhance the use to the community to which the public open space can be put."

41. Apart from the fact that it is highly debatable whether the development will indeed enhance the use of the site, it is clear from this response that there is no real need for the 'upgrading'. It would in any event have been very odd for the Municipality to contend that there was a real need for the construction of an amphitheatre as the EAP has recorded in a number of letters to interested and affected parties that the Municipality is not looking for an area where an amphitheatre can be constructed but is looking at the upgrading and rehabilitation of the Piet-se-Bos area.

LACK OF INFORMATION PERTAINING TO FINANCIAL VIABILITY

42. In light of the dramatic change proposed to a unique public open space, one would have expected the Municipality to have done a decent financial viability study before starting to spend public funds on a process to transform it entirely. If such a study was in fact done, its results are certainly not recorded in the BAR. No indication is given as to the likely costs of the project although the design and planning of the facility appear to have progressed significantly.
43. The expected capital value of the activity on completion is estimated to be R700 000.00 but no indication whatsoever is given as to how this figure was calculated and it is not clear at all to our clients what the basis for this figure is.
44. The 'expected yearly income or contribution to the economy' is very confusingly recorded as follows:
- "-R50 000-00
Million"*
45. No indication whatsoever is given of:
- 45.1. the estimated number of events;
 - 45.2. the estimated entrance fee at events;
 - 45.3. the estimated income per event;
 - 45.4. the estimated running costs of the amphitheatre per year (excluding amortization of capital costs);
 - 45.5. Amortisation of capital costs.
46. It is in our respectful submission impossible to draw any conclusions whatsoever from the BAR as to the capital expenditure, likely income and generally the financial viability of the project and we fail to see how financial considerations could positively inform an environmental authorisation.

INADEQUATE AND INCORRECT OBSERVATION OF ENVIRONMENTAL MANAGEMENT PRINCIPLES

47. The BAR proclaims that a number of the environmental management principles listed in section 2 of NEMA was considered as part of the basic assessment process and informed the positive recommendation with which the BAR concludes. We list below some of those principles and state why we are of the opinion that upon a proper application of those principles to the present application, a positive recommendation would be entirely inappropriate:

- 47.1. Environmental management must place people and their needs at the forefront of its concern: The disdain with which the concerns of people living around Piet-se-Bos have been met bears testimony to the fact that people and their needs have not been afforded much priority, let alone been placed at the forefront of environmental management's concern.
- 47.2. Pollution and degradation of the environment are to be avoided, or where they cannot be altogether avoided, they are to be minimised and remedied: It is astounding that the avoidance and minimisation of pollution and the degradation of the environment is singled out as one of the environmental management principles that this project will champion given the striking unwillingness in the BAR to engage properly with the issue of noise pollution.
- 47.3. That a risk-averse and cautious approach be applied: Reliance on this principle for support of the positive recommendation of the application is equally mind-boggling given the acknowledgement in the BAR that the nature, level, frequency, duration of and attenuation strategies in respect of noise are still entirely unknown.

ALTERNATIVES

48. Section 24(4)(b) of NEMA lists a number of requirements with which every application for environmental application has to comply as a bare minimum. In terms of section 24(4)(b)(i) each application must include an:

"investigation of the potential consequences or impacts of the alternatives to the activity on the environment and assessment of the significance of those potential consequences or impacts, including the option of not implementing the activity."

49. Regulation 22(2)(h) of the 2010 EIA Regulations builds on section 24(4)(b)(i) and provides that a basic assessment report must include:

"a description of any identified alternatives to the proposed activity that are feasible and reasonable, including the advantages and disadvantages that the proposed activity or alternatives will have on the environment and on the community that may be affected by the activity."

50. Given the emphasis that both NEMA and its regulations place on the identification and consideration of alternatives it is axiomatic that an application that affords insufficient priority to alternatives or that pays lip service only to it will be viewed with circumspection.

51. It is our submission that the BAR failed to identify, investigate and assess alternatives to the extent required by NEMA and its regulations for the reasons set out below.

52. Two alternative land uses only were considered; and the only difference between the two is that the one includes the rehabilitation of the wetland whilst the other does not. It is odd that the applicant purports to present a project excluding the rehabilitation of the wetland as a genuine alternative as it is recorded in the BAR that the Municipality's objective with the project is the upgrading and rehabilitation of the Piet-se-Bos area. It appears therefore as if the second alternative is merely a straw