

2013

**INDEPENDENT
REVIEW
COMMITTEE**

13th March 2013

**[COMPILATION OF
COMMENTS AND RESPONSES
TO STATEMENTS MADE ON
REPORT OF THE HIGHWAY
REVIEW COMMITTEE]**

**SUBMITTED BY: DR. JAMES ARMSTRONG
CHAIRMAN**

TABLE OF CONTENTS

| | |
|--|----|
| ECOENGINEERING..... | 2 |
| NIDCO LETTER: Dr Carson Charles | 23 |
| DOOLAR RAMLAL, MINISTRY OF WORKS AND TRANSPORT | 40 |
| TRINTOPLAN CONSULTANTS LTD | 57 |
| Kelvin Ramkisson – Attorney at Law, Legal Advisor to NIDCO | 65 |
| NIDCO: STEVE GARIBSINGH..... | 78 |

ECOENGINEERING

**REPORT OF THE HIGHWAY REVIEW COMMITTEE
DEBE TO MON DESIR SEGMENT:
SAN FERNANDO TO POINT FORTIN HIGHWAY**

Ecoengineering's Comments

This document presents comments by Ecoengineering Consultants Limited on the **“Report of the Highway Review Committee, Debe to Mon Desir Segment: San Fernando to Point Fortin Highway”** (hereinafter called “the Report”). For convenience, the comments are presented in the order in which they appear in the Report. The Independent Review Committee (IRC) Report comments extensively on the EIA prepared by Ecoengineering Consultants. Appendix 3 of the IRC Report lists meetings and consultations held. It should be noted that no meeting was held with Ecoengineering Consultants to discuss or clarify any aspect of the EIA.

Response – Chairman, HRC

The statement that ‘no meeting was held with Ecoengineering consultants to discuss or clarify any aspect of the EIA’ is misleading.

In the first place, it should be noted that the “Review” was largely a review of all available documentation presented, with an indication that submissions were also invited. The HRC could not reasonably be expected to seek out all parties within the tight timeframe of 60 days. However, specifically in the case of Ecoengineering, we were aware that they were present at a meeting held at NIDCO on 9 January 2013. Many of the issues raised with respect to the EIA were discussed at that meeting as will be borne out in the verbatim notes of the meeting. At that meeting only one instance was recorded of an Ecoengineering intervention, which was to caution that an issue under discussion was the subject of a court matter. The HRC is therefore now surprised that Ecoengineering has decided to comment in some detail.

The HRC also interrogated, in great detail, the meticulous public Administrative Records of the EMA to which reference has been made in parts of the Report. It should also be mentioned that some of the other entities which submitted queries on the HRC’s Report were likewise present at the meeting on 9 January, where some of the issues now being raised were identified.

1 Acceptability of the EIA

Statement:

On Page 7, the Report states that: **“The opinion of the HRC is that the EIA was not acceptable and should have been rejected and returned to the Applicant”**.

Ecoengineering’s Comment:

This statement is inconsistent with the evaluation of Mr Eden Shand, Resource Consultant to the HRC, who states on Page 182 **“Notwithstanding the above deficiencies, the EIA is acceptable insofar that it contains enough information, though deeply buried, to enable a decision on the project”**.

Response– Chairman, HRC

It has been noted that Ecoengineering, and others who commented on the HRC’s Report, selected a statement by a resource consultant – Mr Eden Shand - to challenge the collective finding of the HRC that the EIA was inadequate and should not have been accepted and a CEC granted. Mr Shand was engaged to advise the Chairman and submit a report. It should be noted that this consultant cited numerous incidences of shortcomings, and endorsed many of the findings of specialist-consultants, as is evident in his submission in the Report and written advice to the Chairman. This consultant also advised the HRC to interrogate the Administrative Records of the EMA, which was actually already in progress, and which revealed various discrepancies which could not be reconciled, as has been pointed out in the HRC’s Report. The Committee as a whole also had considerably greater access to information, site visits and inter-disciplinary discussions, including the most valuable conclusions of Mr. Shand. Therefore, while, based on the information at his disposal, might consider the EIA as “acceptable”, this was not the considered opinion of the HRC. It is important that the Report should be considered more extensively. The Committee stands by its position on this matter.

Response – Environmental Consultant, HRC

My opinion on the acceptability is unchanged.

Response – EIA External Resource Consultant

Ecoengineering is correct. I stand by my own statement, supported by the matrix analysis. The response of the MOWT might be properly characterized as impertinent and dismissive, but that does not mean that their comments were unfounded. The absence of a record of communication between the proponent and the EMA in the period between the MOWT comments and the granting of the CEC does not constitute grounds for rejecting the EIA. More potent grounds must be articulated for the rejection. No EIA Report is perfect. Further study can always be indicated, but when does it end? How long is a piece of string?

2 Adequacy of the Social Impact Assessment

Statement:

On Page 7, the Report states that: **“A closer examination of the treatment of SIA within the EIA also indicates that this was quite inadequate”**.

Ecoengineering’s Comment:

In the Review of Social Components of the Environmental Impact Assessment (Section 3 of the Report of Resource Consultants), it is stated on Page 182 that **“First of all it must be acknowledged that the TOR, though thorough, did not require a separate social impact assessment (SIA)”**. In that circumstance, we question the approach used in Chapter 3 (Page 67 and following) of evaluating selected sections of the EIA against SIA Best Practice since the EIA does not contain an SIA.

Instead, when the Human impact sections of the EIA are evaluated on the basis of the requirements of the TOR (see Pages 159 and 160 of the Report), 23 of 29 were indicated as having been completed. For three others, the notation is that some information is provided (but not sufficient in the view of the Resource Consultants), and three were noted “the consultant did not receive or review the EMP”. The reason for this is not clear, since the digital copy of the EIA which was submitted to the HRC contained the EMP in Appendix Q.

Response – SIA External Resource Consultant

The absence of a specific and separate SIA is not the issue here. A level of social assessment was undertaken and it has to meet a standard, which could be nothing other than SIA best practice. It is not uncommon for the SIA to be subsumed under the EIA as it was in this case. However, the work is no different.

There were two levels of evaluation. Page 159-160 merely ascertained that the tasks were completed. The following section evaluated the quality of the work completed. Therefore the focus is not on the fact that they completed the work; it is on the quality of the work. The point about the EMP is not a big issue unless it contained information that would change the nature of my evaluation.

Response - SIA Consultant, HRC

Our report, while acknowledging that a separate SIA was not required, noted in considerable detail the elements of an SIA that were in fact required by the TOR and which followed best practice. The following is a direct quotation from our Report:

For example, the TOR in Section 1.2 describes the objectives of the environmental assessment as follows:

“The scope of the environmental assessment will be to determine the extent of environmental and social impacts arising from the proposed highway alignment from Debe to Mon Desir and at the same time examining the cumulative impacts from ongoing and other proposed development for the southwest Trinidad. It will also include a management plan to provide mitigation measures to deal with the negative impacts, a monitoring plan to gauge effectiveness of mitigation, and an assessment of the risks and hazards associated with the activity. The timely provision of adequate data to support the environmental assessment process is important.”

The highlighted phrases point to key elements of an adequate SIA.

This therefore cannot be the basis for questioning “the approach used in Chapter 3 (Page 67 and following) of evaluating selected sections of the EIA against SIA Best Practice”.

Further, our mandate required that we would examine the SIA elements from two viewpoints, in keeping with our mandate:

The actual SIA elements contained in the EIA report are now examined from two viewpoints

1. To what extent it conforms with the requirements of the TOR and to “best practice”.
2. To what extent it addresses issues raised by the HRM.

We further went on to outline why the Ecoengineering study was considered to be inadequate as follows:

With respect to the second major document containing data relevant to an SIA (*Appendix L Attitudes to the Proposed Highway*), three features are noted which make the study inadequate viz:

1. Inappropriate use of data gathering techniques
2. Restriction of the target groups of the surveys to those directly in the ROW and who were earmarked to be displaced.
3. Failure to clearly identify impacts in such a manner as to be able to quantify them for cost benefit analysis and for purposes of mitigation.

Note that only a part of item 3 above (quantification for cost benefit analysis) was not required by the TOR. Nothing of substance was mentioned with respect to mitigation measures resulting from SIA risks.

Finally even if 23 of the 29” elements were “completed”, the EMA was clearly not satisfied with the SIA elements (by whatever name called). We quote the EMA in our report as follows:

The limitations of the SIA related reports of the EIA were recognised by the EMA which noted in its response (RAR) to the CEC submission that:

.....
mechanisms were not identified, neither was the process outlined. The EIA report required a more in-depth investigation and analysis of the socio cultural environment. It is suggested that a detailed justification be provided for the methodology employed in the study.”

On the basis of the above, we maintain that the SIA elements of the study were clearly inadequate even if the analysis was restricted solely to what was required by the TOR.

Response – EIA External Resource Consultant

The term “Social Impact Assessment” should never have appeared during a review of the EIA. However, once the term was used, it has to be taken as synonymous with “Socio-cultural Impact Assessment. EIA TOR do not normally use the SIA term. A proper SIA is often an exercise of the same magnitude as a full-blown EIA. This is because it takes in economic impacts. EIAs do not include economic impacts. That is why that dimension is referred to as socio-cultural as opposed to socio-economic. Economic feasibility is done after engineering feasibility and before environmental feasibility. Cost-benefit analysis does not belong in an EIA. I have, therefore, to agree with the Ecoengineering comments.

3 Importance of the Oropouche Lagoon

Statement:

On Page 43, the Report lists among the issues raised by the HRM: **“The EIA ignoring the importance of the Oropouche Lagoon as one of the country’s most significant wetlands and its use in the context of the National Wetland Policy”.**

Ecoengineering’s Comment:

This statement is inaccurate. The importance of the lagoon is clearly outlined in Section J.6.1 of Appendix J (Ecology) the EIA Report. The Oropouche lagoon is also the subject of Appendix K (IMA Wetland Report) of the EIA Report. Finally, the National Wetlands Policy is clearly described in Section 2.4.3 of the EIA Report.

Response –Environmental Consultant, HRC

Ecoengineering included information as stated in their comments above. The problem with the EIA is that the information is presented in isolation and is not utilized to properly assess the impacts of placing the Highway within the wetland in the ways described within the HRC report. What has not been done for example, with regards of the Wetlands Policy is to discuss whether the proposed project conforms to the tenets of the Wetlands Policy. The presentation from the HRM did this examination and was

able to demonstrate that the Oropouche Lagoon in this case, was not treated as it should have been in accordance with the National Wetlands Policy.

We also go back to the fact that the entire Oropouche Lagoon should have been included in the Defined Study area in Section 4.1.1 if the interpretation of the EMA's TOR is to be properly applied whereby it stipulates: "**the study area should be determined by the extent of direct and indirect impacts on the physical, biological and social environments**". The reason for that stipulation is the expectation that the direct and indirect impacts on these environments would be properly assessed.

The brief reference to a 'Wider Study Area' much later in Chapter 4 (in 4.3.6) and presentation of information on these areas in appendices does not demonstrate treatment of these areas as high in priority. The EIA further did not properly assess impacts on these resources as Ecological units in Section 5. While the IMA report lists potential impacts (and in going further here, I am unaware of the TOR that the IMA was given to fulfil), it does not assess "the extent" of them and had it been done, the place for this was in Section 5.

Response - Hydrology Consultant, HRC

This statement is from HRM, same for 4-8

Response – EIA External Resource Consultant

Both the HRM and Ecoengineering deem the Lagoon to be an important wetland. Has either articulated why this ecosystem is important and what ecosystem services are derived therefrom?

4 Siparia Forest Reserve

Statement:

Again on Page 43, the Report lists among the issues raised by the HRM: "**The fact that the Siparia Forest Reserve is in close proximity to the Highway and should have been included in the Study Area**".

Ecoengineering's Comment:

This is inaccurate. The forest reserve is included in the "wider study area" as described in Table 4-1, Section 4.1.1 of the EIA Report and Section J.6 of Appendix J (Ecology).

Response –Environmental Consultant, HRC

The response given -with respect to Comment 3 above also applies. The 'wider study area' is only referred to briefly in 4.3.6 and in Appendix J and not in Section 4.1.1 which is headed Definition of the Study Area. Once again the Oropouche Lagoon should have been included as a unit within the Defined Study Area and the impact analysis should have treated it as such and it did not. Further, even within Appendix J, the boundaries of Siparia Forest Reserve are not mapped and once again the ROW is used as the sampling area.

Our substantive criticism is that the EIA does not assess the extent of impacts of the Siparia Forest Reserve as an Ecological Unit.

Response – EIA External Resource Consultant

The important question is whether or not the impact of the highway on the Reserve was considered, whether or not it was in the "study area" or "wider study area". Was there any impact at all? Significant or otherwise? My guess is that the Siparia Forest Reserve would not have appeared on the radar screen in a proper scoping exercise.

5 Human Crossings of the Proposed Highway

Statement:

Also on Page 43, the Report lists among the issues raised by the HRM: **"The health and safety issues associated with likely human crossings across the proposed highway"**.

Ecoengineering's Comment:

This statement is inaccurate. The Highway Design clearly describes fencing of the highway as a safety aspect (see Section 3.4.5.3 of the EIA Report). In addition, the design provides a footbridge in the Johkan Road area (see Section 3.2.13 of the EIA Report).

Response –Environmental Consultant, HRC

What the HRM referred to in this point was that residents would attempt to illegally cross the highway in order to reach relatives. I think there needs to be some clarification on the type of fencing that it proposed. A wall for example would be much more of a deterrent than a chain link fence. This option has been used in the past on the Cocorite stretch and residents made holes in the fence to cross it anyway.

Response – EIA External Resource Consultant

Whether these design features adequately deal with health and safety issues could best be answered by the engineers.

6 Crossing of Energy Pipelines

Statement:

On Page 47, the Report list among the deficiencies highlighted by the Ministry of Energy and Energy Industries: **“Lack of proper discussion of treatment of crossings with energy pipelines”**.

Ecoengineering’s Comment:

This is inaccurate. The EIA Report documents:

- A HAZID was included in the EIA for the crossing of natural gas pipelines along the route (see Section 6.2 and Appendix O).
- Consultation was held with NGC, bpTT, Petrotrin and PPGPL on the question of crossing of pipelines (see Section 3.3.9.4 and 3.3.9.5 and Appendix C).

Response- Hydrology Consultant, HRC

This statement was made by the Ministry of Energy as part of a set of main concerns brought forward by the technical review committee. These statements are just listed here, for completeness, and are NOT the position/opinion of HRC.

The MEEI's concern as written, was specifically with regard to consultations with itself as the Regulator of energy pipelines

Response – EIA External Resource Consultant

What constitutes proper discussion is another matter for the engineers.

7 Consultation regarding Abandonment of Wells

Statement:

Also on Page 47, the Report lists among the deficiencies highlighted by the Ministry of Energy and Energy Industries: **“No consultation with regard to abandonment of wells”**.

Ecoengineering's Comment:

This statement is inaccurate. Consultation proceeded as follows:

- On June 10, 2005, a letter was sent to the MEEI during the conduct of the Environmental Feasibility Study to confirm that setback distances from existing wells (operating and abandoned) would be applicable to this highway extension project.
- As stated in Section 3.3.10.6 of the EIA Report, no response had been received as of the time of issuing that document.

Response –Environmental Consultant, HRC

I cannot comment on the letter as I have not seen it and am not certain the level of detail that it included. The concern was raised by the MEEI in its role as EIA reviewer and not the HRC, however, from my personal knowledge of the operations of the MEEI, it is quite easy to make appointments with their Engineers to discuss matters of this nature notwithstanding the lack of response to the letter.

Response – EIA External Resource Consultant

Ecoengineering could have re-opened the matter during the EIA preparation, which came after the earlier Environmental Feasibility Study. Therefore, there was no consultation.

8 Mitigation of Slope Instability

Statement:

Again on Page 47, the Report lists among the deficiencies highlighted by the Meteorological Office: **“Need for mitigation measures to deal with the levelling and cutting of slopes”**.

Ecoengineering’s Comment:

In fact, mitigation measures against slope instability are listed in Section 5.3.1.2 of the EIA Report.

Response –Environmental Consultant, HRC

This concern was raised by the Met Office in its role as a reviewer and not by the HRC. My comment is that there should have been some more detail with regard to mitigation measures stated and at least some demonstration that the technical team had developed some level of design for slope conservation measures given the level of design seen with regard to the roads and intersections.

9 Reference to Scarlet Macaw

Statement

On Page 59 the report incorrectly states "**..the Scarlet Macaw was not included as a rare/vulnerable/threatened species, however it is listed on Appendix I of Convention on International Trade in Endangered Species (CITES).**"

Ecoengineering's Comment:

This statement is incorrect since the species is clearly referenced as CITES listed in Sections 4.3.5 and 5.3.2.6 of the EIA.

Response –Environmental Consultant, HRC

Ecoengineering's comment is correct and therefore the statement made on Page 59 is incorrect.

The correction has been made in the revised report by deleting the incorrect statement.

10 Definition of Study Areas

Statement

On Page 55 it states that "**The area studied is defined differently for each environmental element studied which is highly irregular and poor practice**"

Ecoengineering's Comment:

In the TOR, the EMA indicated that "**the study area should be determined by the extent of direct and indirect impacts on the physical, biological and social environments**". The rationale for defining different study areas is to recognize that different impacts have different extents. For example, the study area for stream flow and flooding is likely to encompass the entire catchment. In contrast the study area for noise will only be a relatively narrow band along both sides of the highway. The use of different study areas for different environmental

components is recognized for EIAs conducted in other jurisdictions: For example, in Canada guidelines prepared for an EIA for a Copper Mine Project clearly indicates that **"Scoping establishes the boundaries of the EA and focuses the assessment on relevant issues and concerns. By defining the spatial and temporal boundaries, a frame of reference for identifying and assessing the environmental effects associated with the Project will be established. Different boundaries may be appropriate for each VEC."**A VEC is defined as Valued Ecosystem Component.

(Ref: Canadian Environmental Assessment Agency and Ontario Ministry of Environment - Environmental Assessment and Approvals Branch, 2011. Guidelines for the Preparation of An Environmental Impact Statement Pursuant to the Canadian Environmental Assessment Act and Ontario Environmental Assessment Act For The Marathon Platinum Group Metals and Copper Mine Project.)

Response –Environmental Consultant, HRC

Firstly, the Ontario system is much different from Trinidad's whereby different 'classes' or levels of EIA's are used for different types of projects (e.g. Municipal projects like water and sewage projects use a much less detailed EA than do projects in rural environments) so that any reference to their system cannot be taken in isolation.

Secondly, it is common for study boundaries for different environmental components to be defined and mapped differently and in configurations that best assess that component, however, a Defined Study area in practice refers to the overall boundary within which the entire EIA study is undertaken. It would be easy to enter a debate about terminology here and what is done internationally (which also varies from region to region). What remains is the fact that the area selected as the Study area in Section 4.1.1 was grossly inadequate and created a poor basis for impact assessment, particularly for a project to be introduced into a geographical area with two sensitive ecological units.

Response - Hydrology Consultant, HRC

This whole issue of Study Area Definition is not clear to me. There is one overall “Project Impact Study Area”. However, while assessing the different environmental elements, it makes sense to use different “element impact study areas” with boundaries per element for a project at this scale, purely for practical mapping reasons. The main question is if this approach resulted in “Environmental Element Impact Study Areas”, which boundaries are too limited to include all the direct and indirect impacts for that specific element.

Response – EIA External Resource Consultant

Ecoengineering makes a reasonable point

11 Geological Survey

Statement

Page 59 states that "**A Geological (as differentiated from soil engineering) Survey along the highway route should be done**".

Ecoengineering’s Comment:

Information on geology was accessed from published sources and provided in Section 4.2.2 of the EIA Report. Field geology studies have not typically been done as part of EIAs submitted to the EMA.

Response –Environmental Consultant, HRC

The suggestion of a field geological survey was not directed at the EIA preparers but rather to the technical team, should the highway move forward.

12 Proposed Mitigation Measures

Statement

There is a comment on page 62 Section 2.5.7.1 which states that **"The EIA seems to have considered mitigation measures in passing"**.

Ecoengineering's Comment:

Mitigation measures were clearly identified and highlighted in the EIA report. Appendix Q (Environmental Management Plan) also describes mitigation measures in the context of action by, timing, the need for specialized equipment, any necessary competence and training and estimated cost. This Plan also describes the means for verification of the effectiveness of these mitigation measures.

Response –Environmental Consultant, HRC

I'll take the opportunity here to expound on the comment "in passing" and perhaps could have chosen different words in my initial comments, though my opinion remains the same.

The Mitigation Measures described in the Section 5 were in most cases, written in very generic terms with extensive use of the word "should", which gives the impression that in most cases the measures are posed most often as suggestions rather than commitments to be undertaken by the proponent. The way that they were written gives the impression that the mitigation measures have not been well fleshed out and agreed with the technical team.

It is preferable at EIA stage to provide technical descriptions and details, including mitigation measures such as retaining walls, etc. It is possible however, that the EIA preparers had not received details from the technical team when they were preparing the EIA which resulted in the cursory discussion of mitigation measures.

13 Environmental Economic Study

Statement

On Page 108 it is stated that "**Economic Valuation is a mandatory aspect of an EIA and SIA to determine the direct and indirect cost of a project**".

Ecoengineering's Comment:

An Economic valuation is not requested in the TOR for this project, nor in other TORs for other projects. This is acknowledged on page 170 of the Report which recommends "**amend the terms of reference to require an economic assessment...**"

Response - Cost/Benefit Analysis Consultant, HRC

Acknowledgement is made of Ecoengineering's Comment that the Economic Valuation was not requested in the TOR for the project. However the position is maintained that:

- a) in the context of sustainable economic development which is one of the stated objectives of this project, social, economic and environmental costs and benefits (direct and indirect) must be factored into the decision-making process; and
- b) given the extraordinary financial outlay for this project

It was a grave "oversight" that the TORs did not explicitly require an economic assessment given the range of possible direct and indirect social and environmental that arise from a project of this nature. At a meeting with the HRC Team on January 9th2013 the President of NIDCO stated that the issue of quantifying costs and benefits (for the project) was not done since it is a "large" issue. He also noted that the project has "tremendous benefits". In the absence of details it is not known what these benefits might be and whether they do in fact outweigh any direct and indirect costs. These details can only be obtained via economic valuation and economic assessment.

On this score the World Bank (1998) noted that:

Successful economic development depends on the rational use of natural resources and on reducing as far as possible the adverse environmental impacts of development projects. Environmental assessment (EA) is a primary tool for achieving this objective,

by inserting critical environmental information into the process of project identification, preparation, and implementation.

Economic analysis, by comparison, is employed to determine if the overall economic benefits of a proposed project exceed its costs, and to help design the project in a way that produces a solid economic rate of return. **Adverse environmental impacts are part of the costs of a project, and positive environmental impacts are part of its benefits. Consideration of environmental impacts, therefore, should be integrated with the other aspects of the project in the economic analysis to the extent possible.**

“...Economic analysis... is employed to determine if the overall economic benefits of a proposed project exceed its costs, and to help design the project in a way that produces a solid economic rate of return. Adverse environmental impacts are part of the costs of a project, and positive environmental impacts are part of its benefits. Consideration of environmental impacts, therefore, should be integrated with the other aspects of the project in the economic analysis to the extent possible...”

Environmental economic analysis can play an important role at three main stages [of a project]: (i) in the assessment of the impacts of a proposed project and its various alternatives; (ii) in the analysis of preventive or mitigative options; and (iii) in project appraisal, once a specific alternative has been selected. In the case of both economic analysis and environmental assessment, the important distinction is between what would happen with the project and without the project, not other changes that may be happening over time.

Response – EIA External Resource Consultant

Ecoengineering is correct.

14 Detailed Designs as the Basis for the EIA

Statement:

The EIA prepared for the Debe to Mon Desir highway segment is referred to as a “**preliminary EIA**” on Pages 134 & 137.

In addition, the Report contains the following statements concerning the need for Detailed Designs as the basis for an EIA:

- **“It is unusual to grant a CEC without detailed plans and designs. ...”** (pages 123 & 134), and
- **“... a Final EIA should be based on detailed designs. ...”** (page 139).

"At most a preliminary CEC can be granted based on preliminary designs...." (page 139).

Ecoengineering's Comment:

Reference to a Preliminary EIA is incorrect, since that term does not appear anywhere in the CEC Rules. Similarly, the CEC Rules make no provision for a preliminary CEC.

The rationale for undertaking the EIA early in the project cycle is to allow the findings of the EIA to influence the final designs of the project. It must be noted that the statement that the EIA must be based on detailed designs goes against international “good-practice” for EIAs; as shown in the following quotations:

- 1) Information on the website of the Food and Agriculture Organization states: **“To be of most benefit it is essential that an environmental assessment is carried out to determine significant impacts early in the project cycle so that recommendations can be built into the design and cost-benefit analysis without causing major delays or increased design costs. Scoping is the process of determining which are the most critical issues to study and will involve community participation to some degree. It is at this early stage that EIA can most strongly influence the outline proposal. Detailed prediction and mitigation studies follow scoping and are carried out in parallel with feasibility studies”.**

(Ref: <http://www.fao.org/docrep/V8350E/v8350e06.htm>)

- 2) The UNEP Environmental Impact Assessment Training Resource Manual (Second Edition) describes the EIA Process as **“beginning as early as possible in the pre-feasibility stage”.**

(Ref: http://www.unep.ch/etu/publications/EIAMan_2edition_toc.htm)

- 3) The website of the Environmental Management Bureau, Government of the Philippines, indicates **“During the preparation of the project Feasibility Study, the proponent initiates the detailed environmental impact assessment”**.

(Ref: <http://www.emb.gov.ph/portal/eia/Aboutus/EIASystem/EIAandtheProjectCycle.aspx>)

- 4) A presentation on the website of the United Nations Environment Programme lists one of the Key Operating Principles of Good EIA Practice as: **“begin early in the project cycle”**.

(Ref: http://www.unep.ch/etu/publications/EIA_ovrhds/top01.pdf)

- 5) Notes of a 2007 Short Course organized by the United Nations University Geothermal Training Program indicate: **“The (EIA) study therefore requires a multi-disciplinary approach and should be done very early at the feasibility stage of a project. In other words, a project should be assessed for its environmental feasibility”**.

(Ref: <http://www.os.is/gogn/unu-gtp-sc/UNU-GTP-SC-05-28.pdf>)

Response-Hydrology Consultant, HRC

The EIA has to be done early in the project design cycle to determine significant impacts so that recommendations can be built into the design and cost benefit analysis without causing major delays or increased design costs. The required “detailed prediction and mitigation studies” are to follow the scoping and “are to be carried out in parallel with feasibility studies”. It is the opinion of the HRC that even though the hydrological studies were considered adequate to inform the preliminary technical design of the highway concerning dimensions for crossings of watercourses, the studies were considered insufficiently detailed to inform the impact assessment on the sheet flows on the flood plains, the potential impacts on flood patterns both upstream and downstream, the impacts on (ground) water quality as well as the potential resulting impacts on the existing ecology. It is in this context that the term “preliminary EIA” was used (even though this is not a term in the CEC rules) as the EIA was based on preliminary design and certain impacts and their mitigation measures were not yet sufficiently assessed.

Response –Environmental Consultant, HRC

I am not certain where the reference to this EIA being a ‘Preliminary EIA’ originated in our report. Eco is correct that it does not appear in the CEC Rules. It is true however, that in our system the EIA reviewed by the EMA is typically based on detailed designs or at least detailed descriptions (many of which were not presented in this EIA, particularly with regard to mitigation measures). It does not allow for EIA at different stages.

I do not agree with Ecoengineering’s use of citing here, as they seem to be very selectively supporting their concerns. It is true that in best practice the EIA process should begin early to assist with early decision making. It is also true that EIAs in different systems begin with a ‘‘Preliminary’’ EIA or Environmental Feasibility Study and are augmented at different stages of design (e.g. at feasibility, then front end design, then detail design) to allow for more in-depth assessment of impacts and presentation of mitigation measures, as more detail evolves in a project.

There is no ‘one way’ defined internationally for this process, though there are threads of similarity amongst developed regions, NGOs and international associations. It is however, incumbent on this committee to recommend what may be the best way forward for Trinidad and Tobago, which may in fact require the amendment of the CEC Rules and other related legislation (e.g. TCPD) to allow for changes.

Response – EIA External Resource Consultant

I do not see the connection between the selected quotes from the HRC Report and the Ecoengineering defence.

NIDCO LETTERS: Dr Carson Charles

21.2.2013 Letter to Afra Raymond
25.2.2013 Cover Letter to Afra Raymond
25.2.2013 Edited Letter to Afra Raymond



National Infrastructure Development Company Limited

No. 3 Melbourne Street
Port of Spain, Trinidad, West Indies
Tel: 624-9474/5593
Fax: 624-5512



Partnering to build
Modern infrastructure

21 February, 2013

Mr. Afra Raymond
President
Joint Consultative Council
Professional Centre Building
11-13 Fitzblackman Drive
Wrightson Road
Port of Spain

Re: Report of the Highway Review Committee

Dear Mr. Raymond

The National Infrastructure Development Company Limited (NIDCO) has made a preliminary study of the document conveyed to us by email and hard copy entitled: "Report of the Independent Review Committee of the Debe to Mon Desir Segment of the San Fernando to Point Fortin Highway, submitted by Dr. James Armstrong, Chairman." Further to email correspondence exchanged between NIDCO and the Joint Consultative Council (JCC), we now present the following general and specific comments:

1. The document is a collection of papers prepared independently by consultants with an executive summary prepared independently by the Committee Chairman. This is procedurally flawed, as it does not result in a proper committee report. Instead, the several papers prepared should be considered working papers or background documents and a cohesive document representing the findings, analyses and recommendations of the committee as a whole and signed by all committee members, except where minority reports are presented, should be prepared and presented to the J.C.C. for transmission to NIDCO.
2. No consideration has been given to the fact that a \$5.2 Billion construction contract exists between NIDCO and an international contractor to build the highway and there was neither protest nor appeal by the Highway Re-route Movement, or any other group or individual against the grant of Certificate of Environmental Clearance (CEC) by the Environmental Management Authority (EMA) within the stipulated time, or the announcement of the project by the Government in 2010, or the symbolic turning of the sod by the Prime Minister in January 2011, or the well publicised receipt of funds and signing of the contract by NIDCO in July 2011.

There is also no evidence presented to the effect that NIDCO has proceeded in violation of any law. In these circumstances it is professionally improper and entirely unreasonable for the consultants to conduct these analyses and arrive at recommendations without giving consideration to the very significant financial and other consequences of suspending or truncating any portion of the contract. It is indeed amazing that this matter was not even enquired into by the consultants.

Board of Directors: Mr. Krishendath Ramoutar (Chairman)
Professor Winston Suite (Deputy Chairman), Mrs. Mandavi Tiwary, Mr. Hollis J. Eversley, Mr. Rabindra H. Outar, Ms. Reneelise Khan

3. In the Executive Summary, 'Historical Context' (page 3 of the report), it is stated that "A Brazilian Company, Construtora OAS Ltda (OAS) was procured in 2011...". The procurement of the company was actually conducted in early 2010 and construction started under a Letter of Intent in March 2011, with a planned completion date of March 2015. On page 4, correction should be made to the second paragraph to indicate that the HRM wrote to the Prime Minister in February 2012 and not February 2011. This is important as the matter was highly publicised and the route presented in detail at a public meeting in December 2010, followed by start of works in March 2011 and signing of the contract in July 2011, well before the first expression of protest by the HRM more than a year after public presentation of the route.
4. In the Executive Summary (page 5 of the report), it is reported that "In separate discussions it was also agreed with NIDCO that work in other areas would be scaled back pending the receipt of the report of the Review Committee". This statement is false and should be deleted as there was no discussion or agreement between NIDCO and the JCC or the HRM on the other segments of the highway.
5. Urban and Regional Planning – NIDCO agrees with the view that the entire highway needed to be planned as part of a comprehensive land use/transportation planning exercise for South Trinidad. NIDCO asserts that this was indeed so and cites the National Physical Development Plan and the South West Regional Plan wherein the highway was recognized as an integral element. It should be noted that in no plan or project document is 'Debe to Mon Desir' recognised as a coherent entity, except in reference to the HRM protest group.
6. Environmental Impact: The HRC has concluded that the EIA was not acceptable although it addressed the requirements of the Terms of Reference (TOR). This is not logical as the EIA is required to satisfy the TOR. The HRC has unfairly condemned the professional work of the consultants that carried out the EIA. Instead, the HRC should have enquired of the EMA as to its reasons for granting the CEC in spite of what were deemed to be inadequate and dismissive responses by the Ministry of Works and Infrastructure in 2009/2010.

Indeed, the HRC may be accused of suggesting some level of impropriety in the conduct of the affairs of the EMA. It is not acceptable to make an accusation that the EMA improperly 'relented' without having given the EMA an opportunity to respond in this matter. Given the far reaching implications of seeking to derail a project on the grounds that the body with statutory authority for granting approval to proceed was guilty of improper conduct in discharging its responsibilities, the HRC has a professional duty to seek clarification on this matter before arriving at its conclusions.

7. Human Settlement: It is to be noted that Outline Approval has been granted by the Town and Country Planning Division for the Petit Morne site. Cabinet, and by implication the Minister with responsibility for Planning, has also approved the site for residential development, and, inter alia relocation of persons affected by the highway acquisition process. The Ministry of Works and Infrastructure is currently preparing an application for Final Planning Permission and NIDCO does not intend to relocate persons to the site before these approvals are received. It is difficult to see how this can constitute a "flagrant flouting of the statutory requirements".

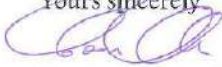
The HRC may also wish to take into consideration the fact that the only organization representing residents to be relocated in 2010 when the project was launched was the Debe to San Francique Highway Action Committee. This group was requested to identify preferred sites for relocation. The first area of preference was a site at Hermitage. When this proved unsuitable the group selected Petit Morne as its alternate preferred site. It cannot be appropriate for the HRC to select its own site at Golconda as more suitable without reference to the views expressed by the affected persons at the time when these matters were being addressed.

8. **Traffic and Transportation:** This is the primary purpose of the highway, yet it is treated as a minor issue in the report. The Ministry of Works and Infrastructure and NIDCO have the responsibility to meet the traffic and transportation needs of the South Western Region of Trinidad, along with other areas of the country. It is because of this mandate that there are adverse impacts on the environment and on settled communities that must be minimized and mitigated.
9. **Hydrology and Hydraulics:** The comments regarding the Design-Build approach are out of place here as they reflect opinions on procurement policy and are unrelated to the review of hydrology and hydraulics. In a situation where complete engineering designs existed for the highway before the design-build contract was awarded, these comments cannot possibly follow from any logical argument.
10. **Land Tenure and Acquisition:** NIDCO assures the Committee that there is no instance where entry on to property has been made without legal authority. It should be noted that under Section 3 Notice authority is granted to carry out surveys and other relevant investigations. Sections 4 Notice has been published for all areas released to the contractor. The offending statement is inflammatory and prejudicial and has been made without any evidence whatsoever. It should be deleted.
11. **Conclusion (page 8 of the report) :** The HRC cannot professionally justify the statement that “A significant concern ...is whether or not the lawful authority ...is conforming to due process...” with not a shred of evidence to support such a statement. Not one case has been presented where due process was not followed. This is a serious matter in that it appears to cast doubt on whether the constitutional rights of persons are being abridged during the acquisition and other processes in the absence of any information that this is so. NIDCO assures that due process is being fully adhered to in respect of all legal requirements and requests, that the statement be deleted.
12. **Recommendations (page 9 of the report) :** The recommendations constitute a list of instructions to stop all work along an entire segment of roadway, which does not itself constitute a single community, without regard to consequences for the construction contract and the cost to Government and tax payers. There is no attempt to identify areas of this segment where there may be no significant environmental or other danger. No account is taken of the balance to be made between the risks associated without proceeding, stopping all work or proceeding in particular areas. Without considering and comparing these risks, the HRC is being professionally irresponsible in the presentation of its recommendations.

In addition to the above comments, several comments, some of which were previously sent by email, are hereto attached for the consideration of the J.C.C. and its technical committee, as follows:

- ✓ Comments by Ecoengineering Consultants
- ✓ Comments by Trintoplan Consultants Ltd.
- ✓ Comments by Mr. Kelvin Ramkissoon, Attorney-at-Law
- ✓ Comments by Mr. Doolar Ramlal – Director, Environmental Unit, Ministry of Works and Infrastructure
- ✓ Comments Mr. Steve Garibsingh – Vice President, Engineering & Programme Management- NIDCO

Yours sincerely



Dr. Carson Charles
President

23 February, 2013

Mr. Afra Raymond
President
Joint Consultative Council
Professional Centre Building
11-13 Fitzblackman Drive
Wrightson Road
Port of Spain

Re: Report of the Highway Review Committee

Dear Mr. Raymond

I refer to our letter dated 21 February, 2013. Please note that item #10 of the said document is to be replaced by the following:

10. Land Tenure and Acquisition (page 8 of the report): NIDCO assures the Committee that there is no instance where entry on to property has been made without legal authority. It should be noted that under Section 3 Notice authority is granted to carry out surveys and other relevant investigations. However, it is common practice for investigations and studies to be carried out prior to the start of the acquisition process for the purpose of acquiring a CEC, preparing project, estimates or conducting feasibility studies. In such a situation entry would not be made onto any property without the permission of the owner or occupier. It should also be emphasized that Section 4 Notice has been published for all areas released to the contractor.

The offending statement is inflammatory and prejudicial and has been made without any evidence whatsoever. It should be deleted.

By way of further clarification, it should be noted that the land acquisition consultant made several comments (pages 145 to 149 of the report) which must be carefully examined.

Firstly, the case presented that "NIDCO has failed to follow due process..." is completely unacceptable (page 144 of the report).

At (a) : As explained above, social surveys and investigations are routinely carried out without the publication of Section 3 Notices in the early stages of any project, provided that persons' properties are not entered into without their consent. The HRM did not exist six years or even three years ago and no complaint has been received of such unauthorized conduct from the community groups which then existed. In any event, such preliminary work does not form part of the acquisition process.

At (b) : At no point was entry made for construction purposes without Section 4 authority. NIDCO challenges the consultant to identify any such case before making remarks **designed to cast doubt in a court of law over Government's commitment to lawful acquisition of private property.**

At (c), (d), (e) : These matters reflect differences of opinion between the consultant and NIDCO over policies which should govern the treatment of encroachers and squatters. However, they bear no relationship whatsoever to the matter of due process insofar as the acquisition process is concerned.

Secondly the consultant indicated that "up to the time of writing of this report, NIDCO had not provided written documentation to the HRC Consultant on land acquisition and re-settlement measures in the affected communities". However, no such request has been made to NIDCO in writing and no indication that this was required, has been conveyed to the President of NIDCO at any time. Indeed the only request made by the JCC for responses to specific items of concern was by way of an Aide Memoire sent by Ms. Desiree Arthur Lopez on behalf of the JCC to Dr. Charles on 09 January, 2013, wherein it was stated "This is not intended to solicit any written response from NIDCO or HRM".

Thirdly, the consultant stated that his research findings suggest the following:

- "3) A lack of transparency in the calculation of compensation for some who have agreed to be relocated.*
- 4) Inconsistency in the quantum of payments made to various property owners"*

It needs to be emphasized that all acquisition procedures followed and all settlements arrived at up to the time of the delivery of the HRC report were made under the process followed previously for other highway acquisitions and **all negotiations were carried out by the Commissioner of Valuations.** Clearly the consultant's comments were based on no relevant information whatsoever and are completely unrelated to any actions of NIDCO.

I have accordingly amended NIDCO's letter to the JCC as attached.

Yours faithfully



Dr. Carson Charles
President



National Infrastructure Development Company Limited

No. 3 Melbourne Street
Port of Spain, Trinidad, West Indies
Tel: 624-9474/5593
Fax: 624-5512



Parlamentshuis
National Infrastructure

25 February, 2013

Mr. Afra Raymond
President
Joint Consultative Council
Professional Centre Building
11-13 Fitzblackman Drive
Wrightson Road
Port of Spain

Re: Report of the Highway Review Committee

Dear Mr. Raymond

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12. Recommendations (page 9 of the report) : The recommendations constitute a list of instructions to stop all work along an entire segment of roadway, which does not itself constitute a single community, without regard to consequences for the construction contract and the cost to Government and tax payers. There is no attempt to identify areas of this segment where there may be no significant environmental or other danger. No account is taken of the balance to be made between the risks associated without proceeding, stopping all work or proceeding in particular areas. Without considering and comparing these risks, the HRC is being professionally irresponsible in the presentation of its recommendations.

In addition to the above comments, several comments, some of which were previously sent by email, are hereto attached for the consideration of the J.C.C. and its technical committee, as follows:

- ✓ Comments by Ecoengineering Consultants
- ✓ Comments by Trintoplan Consultants Ltd.
- ✓ Comments by Mr. Kelvin Ramkissoon, Attorney-at-Law
- ✓ Comments by Mr. Doolar Ramlal – Director, Environmental Unit, Ministry of Works and Infrastructure
- ✓ Comments Mr. Steve Garibsingh – Vice President, Engineering & Programme Management- NIDCO

Yours sincerely



Dr. Carson Charles
President

Re: Point 2:

The HRC was indeed mindful of these issues. It was also of utmost importance that the Committee advise NIDCO and the Government of the Republic of Trinidad and Tobago of the need to conform with the relevant legislation and to take account of the interest of the affected publics prior to embarking upon construction of the Debe to Mon Desir highway segment.

With respect to the contention that there is no evidence that NIDCO has proceeded in violation of any law, note the following:

As indicated at page 39 of the report of the HRC, Part III of the TCP Act stipulates that permission is required for any development that is carried out after the commencement of the Act, development being defined to include the carrying out of building or engineering operations in, on, over or under any land; and the subdivision of any land. This is acknowledged on page 7 of the EIA at 2.1.3.2 which states “Planning Permission..... is the legal requirement before development can commence.” Planning Permission has indeed been obtained for the construction of the highway segment under review for applications referenced T7M: 0440/2007 and T8N: 0443/2007 with a number of conditions including the following:

“That the consent of the Local Authority be obtained prior to the commencement of development” as “The Municipal Corporation Act (1990) requires this to be done.”

A note was included on both notices of Planning Permission as follows:

“Grant of planning permission indicates only that the development permitted has the Minister’s approval for the purposes of the Town and Country Planning Act. This planning permission could be lawfully implemented only if you satisfy the requirements of all other laws applicable to the implementation of the development permitted and grant of planning permission is not necessarily an indication that you would be able to do so.”

“Other laws applicable.....” would include the Environmental Management Act, and would therefore require that all of the conditions attached to CEC1372/2006 be fulfilled, including the following:

- The design, layout, scale and components of the development shall be subject to the approval of the relevant authorities.....such as the Penal/Debe Regional Corporation, Siparia Regional Corporation, TCPD, MEEI, WASA, WRT..... (Condition (iii) (b) on page 25).
- The Applicant should pursue.....resident relocation and resettlement utilising best industry practices, such as the World Bank Operational Policy 4.12. (Condition (iii) (e) on page 26).
- The Applicant shall ensure that all final negotiations for the acquisition of all properties (inclusive of private agricultural lands) and compensation to the owners shall be completed before the commencement of any relocation and demolition works.....(Condition (iii) (f) on page 26).

In this regard it is noted that engineering works have commenced on interchanges at Debe and Siparia even though, at March 04, 2013, the approval of the relevant local authorities, *viz.*, the Penal/Debe Regional Corporation and the Siparia Regional Corporation had not yet been obtained.

Continuation or start of any work on this highway segment would be unauthorised under the provisions of the TCP Act, and such actions are, therefore, NOT advised.

Engineering operations have also been started on land at M2 Ring Road and Manahambre Road, Petit Morne, St. Madeline for residential purposes, partly for the resettlement of persons who currently reside in the path of the Debe to Mon Desir segment of the highway. There is no permission for this development, Outline Planning Permission granted June 15, 2010 having lapsed one year later in accordance with the condition in the permission that it “.....*shall lapse and become null and void unless the particulars and plans.....are submitted.....within one (1) year from the date of this Outline Permission*”. Since no particulars and plans have been submitted to the Town and Country Planning Division in this respect, there is currently **no** permission for these lands to be developed. The developer would be required to obtain **Final** Planning Permission for the development, and to meet all other statutory requirements, before plots of land can legally be transferred to individual owners. The process of obtaining Final Planning Permission is likely to be quite protracted because a CEC, most likely involving the preparation and approval of an Environmental Impact Assessment (EIA), would need to be obtained from the EMA before permission can be granted by the Town and Country Planning Division.

Even if NIDCO can argue that this violation of the TCP Act could not, properly, be laid at its doorstep, the HRC needed to advise of the regulatory requirements and the time

frame involved in allowing the occupation of this land by the affected persons (see pages 40 and 41 of the HRC report).

Re: Point 5:

Note that the National Physical Development Plan (NPDP), as stated in the HRC report (page 31) stressed the need for “*a national transportation plan which would analyse transport demand in the context of the NPDP and detail transportation proposals for implementation and phasing over the ensuing 20 years.*” In addition, the Plan states that “*.....detailed feasibility studies of all proposed new links and of recommended upgrading for existing links must be carried out. Such studies will determine the projected traffic and therefore the class and quality of routes necessary as well as the exact alignment of these routes.*”

The Plan also advised that consideration should be given, *inter alia*, to:

“Traffic management and traffic control devices and techniques to improve large scale movement of goods and people; investigation of alternative means of transportation for people and/or goods such as rail.....and internal air and sea transportation; and staggering of working hours to ease traffic congestion.” The Proposals map from the Plan, which was reproduced at page 32 of the HRC report, and which is shown on Figure 1 below, shows a number of ‘coastal transport’ links connecting La Brea to San Fernando, and San Fernando to points to the north of Trinidad.

A precise and firm alignment for a highway such as this would need to be determined based on detailed feasibility studies which, three decades after the preparation of the Plan and in accordance with the current legislative regime, would include rigorous investigation into the social, economic, and environmental impacts of alternative alignments, and the formulation of appropriate and effective mitigation measures, before a final and firm alignment and other details relating to road width and capacity, for example, could be determined. Therefore, while the highway was “*recognised as an integral element*” of the Plan a firm and dedicated alignment was not.

‘The South West Regional Plan’ (properly named *Planning for Development: The South West Region*), prepared in 1974, recommended the extension of the SHH to link Point Fortin and Siparia with San Fernando and other points to the north, as well as the provision and/or upgrading of rural access roads through key agricultural areas. As stated in the HRC report, “*the view was expressed that the capital costs of this project should be measured against the benefits to be derived in the form of shorter travel times and distances between the Capital Region and St. Patrick.....*” signalling the importance of proper cost-benefit studies in the determination of the details of the

highway. Again, as indicated in the HRC report the Plan also recommended that “improvements be effected to the road network in the region as the basis of a more efficient system of bus routes and a more reliable public transport service.”

Hence, both the NPDP and the ‘South West Regional Plan’ emphasised the need to employ measures to supplement transportation improvements afforded by the construction of additional highways. It is not clear whether or not such measures were considered, in this case, to provide for the needs of the south west peninsula of Trinidad.

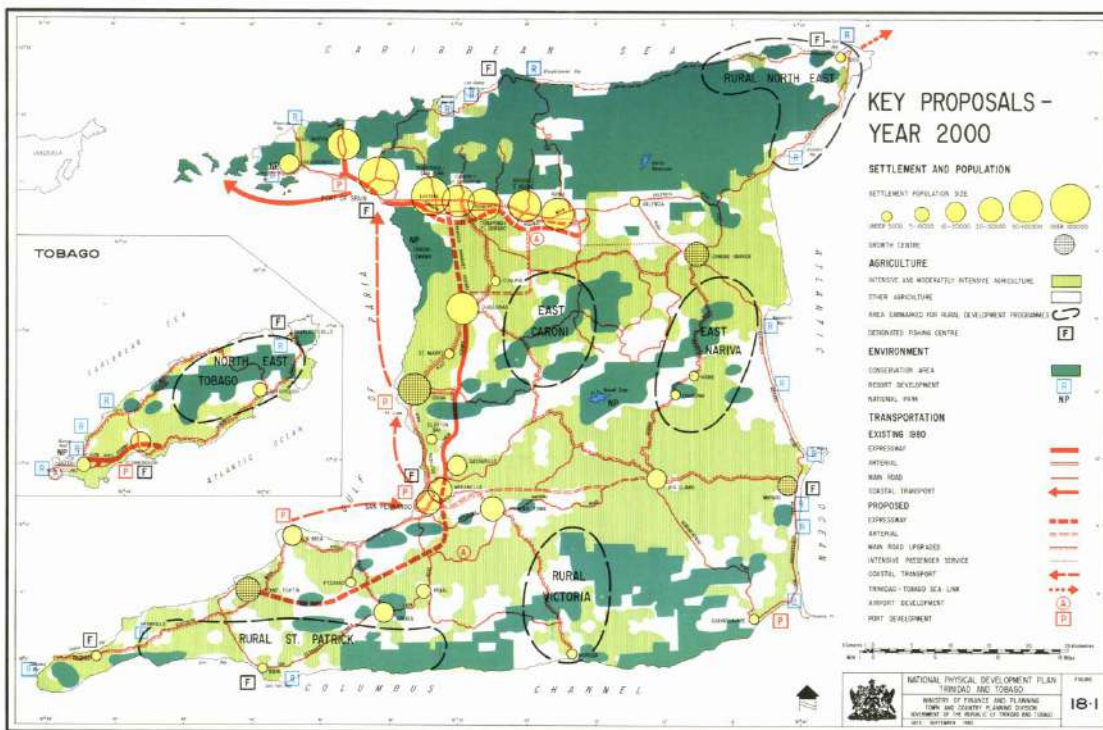


Figure 1.1: NPDP Proposals Map

Source: NPDP

Re: Point 6:

It is reasonable to assume that, in the interest of transparency, and in accordance with the EMA legislation, all of the considerations relating to the processing of the EIA and the CEC application had been placed on the Administrative Record of the EMA. Hence, making enquiry “of the EMA as to its reasons for granting the CEC.....” was a luxury that could not be afforded within the very limited time frame granted for the review.

Re: Point 7:

In accordance with the TCP Act, and as acknowledged in the EIA at 2.1.3.2 on page 7, “*Planning Permission (commonly called Final Planning Permission...) is the legal requirement before development can commence. The Grant of Outline Planning Permission comes with a list of conditions to be satisfied in the application for Planning Permission.*” Sub-section 11 (eleven) of Part III of the TCP Act and Section 6 of the Town and Country Planning (General Development) Order made under Section 9(1) of the Act set out the procedure by which the Minister (with responsibility for town and country planning) can grant permission to develop land, and that involves the submission of an application on a form issued by the Minister.

Approval granted by “*Cabinet, and by implication the Minister.....*” for the use of the site for residential purposes including the relocation of persons residing in the route of the highway alignment, does **not** constitute planning permission in accordance with the TCP Act and, therefore, does not empower the developers to start or proceed with clearing and engineering works on the Petit Morne (or any other) site. As indicated in the HRC report, the procedure for bringing this land into readiness for the intended purpose is likely to be quite protracted, involving, as it does, the grant of a Certificate of Environmental Clearance (CEC) by the EMA before Planning Permission can be obtained from the Minister, and the completion of all infrastructural works before applications for Planning Permission to develop individual plots can be entertained by the TCPD on behalf of the Minister.

Re the second paragraph of point 7 it would have been helpful if this information had been communicated to the HRC during its review of the matter.

Re: Point 11:

The issues relating to the illegal development of land covered above are relevant.

DOOLAR RAMLAL, MINISTRY OF WORKS AND TRANSPORT

COMMENTS ON REPORT OF THE HIGHWAY REVIEW COMMITTEE

DEBE TO MON DESIR SEGMENT

SAN FERNANDO TO POINT FORTIN HIGHWAY

By Mr Doolar Ramlal, Director – Environmental Unit, Ministry of Works and Transport

A. SCOPE OF REPORT

This report seeks to highlight the validity of information presented in the Report of the Highway Review Committee (HRC).

For each of the relevant sections in the report the comments on the HRC have been grouped as follows:

- a) Comments that contain errors of fact
- b) Comments that contain misleading statements
- c) Comments that offer opinions that are not properly justified
- d) Comments that illustrate errors of conclusion

In addition, conflicting views were highlighted.

B. SUMMARY OF FINDINGS

Urban and Regional Planning

It would appear that the planning consultants support the proposed alignment since it closely follows that set out in the National Physical Development Plan (NPDP) and the South West Regional Plan of 1974.

Environmental Impacts

The contents of the summary reflect the views of the HRC. The other consultant's (Mr Eden Shand) views mostly conflict with the HRC's views and for some inexplicable reason, was not represented or reproduced in the summary. The HRC opined that the EIA was not acceptable conflicts with Mr Shand's view that the EIA was acceptable. The opinions of the HRC here are unfounded.

Social Impacts

1. The findings of the HRC contradict with some of the findings of Mr Eden Shand. In addition, there are many inaccuracies with the information presented in the body of the report some of which are highlighted later in this report.
2. The omission that is most glaring is that the HRC failed to indicate whether the EIA satisfied the TOR. Only Eden Shand addressed this question which was answered in the affirmative.

C. COMMENTS ON RELEVANT SECTIONS

Section 1.0 URBAN REGIONAL PLANNING

Introduction

The work of the HRC was evaluated and this process yielded the following information.

It would appear that most of the HRC's comments lend additional support for the highway project as proposed. A major portion of the HRC's comments in the area dealing with 'Urban Regional Planning' relates to a review of all of the development plans that impact upon the area within which the San Fernando to Point Fortin Highway runs. Plans prepared before the project documents were submitted to the approval agencies all claim that the San Fernando to Point Fortin Highway was an important project and formed part of their proposals.

1.1 Comments that contain misleading statements

- P. 29. Line 10: The HRC is claiming that more attention needed to be given to the impact that the highway will have on the 'landscape of the south western peninsular'.

This statement is unclear and misleading as it can be interpreted in a variety of ways by the reader.

Response - Urban Planner, HRC

The word 'landscape' here is used as a synonym for land space or spatial make-up (note the Wikipedia definition of the word includes "...the living elements of land cover including indigenous vegetation, and human elements including different forms of land use...."

It is difficult to understand the confusion in the reader's mind or how the term can mislead.

- 1.2 P. 29, 2nd paragraph: The HRC is claiming that the potential adverse impacts of the proposed highway in terms of induced development that does not have planning permission, cannot simply be mitigated by having proper land use plans with enforced policy by the relevant authority (in this case the TCPD). The HRC however quotes this same argument as voiced by the TCPD on p. 31, 2nd- to- last paragraph, where the NPDP is quoted as calling for 'strong land use controls, particularly with respect to agriculture and conservation areas'. The HRC is therefore claiming that projects like the proposed highway should be withheld because the planning authority does not have the capacity to manage enforcement.

If this is so, then the planning authority should be strengthened otherwise positive development projects such as the highway will be stymied.

Response - Urban Planner, HRC

It is quite a stretch to deduce that the HRC is "...claiming that projects like the proposed highway should be withheld....because the planning authority does not have the capacity to manage enforcement." This could not possibly have been what the report intended to state. It is a fact that the Town and Country Planning Division and other relevant agencies need to be strengthened with regard to their capability to pursue enforcement action against unauthorised development.

- 1.3 P. 29, Second-to-last paragraph: The HRC is claiming that the proposed highway will split communities and services.

The MOWI is claiming however that the new frontage roads running parallel to the highway, would allow the parties on both sides of the alignment to still connect via overpasses and interchanges along the route.

The HRC perhaps has not grasped this point as it refers only to interchanges and overpasses and not the local frontage roads which are the key to the continued connectivity. In addition, the point must be made that built development along much of the Debe - Mon Desir segment is loosely scattered and very often unauthorised. In reality, it is virtually impossible to find a clear path through the apparent maze without separating parts of the 'community', as dispersed as these communities are, because they are unplanned and likely unauthorized.

Response - Urban Planner, HRC

Section 1.2.2 of the Urban Regional Planning section of the report admits that *“It is difficult to determine the efficacy of the proposed mitigation measures, that is, the construction of interchanges and overpasses at the affected locations.* “The same holds true for any proposed frontage roads.

- P. 41, Sec. 1.6: The HRC claims that the planning for the project need to benefit from a wider comprehensive plan that ‘seeks to balance land use and transportation needs’. **The planning for the project however was done in the context of the 1974 South West Region Plan and the 1984 National Physical Development Plan, as reported by the HRC. As indicated elsewhere by the HRC, both of these plans included proposals for the highway to Point Fortin.**

Response - Urban Planner, HRC

The response to point 5 of the letter from Dr. Carson Charles is relevant.

1.4 Comments that offer opinions that are not properly justified

- The HRC claims, at page 28, Mapping, that “a land use survey should have been undertaken to determine the exact location of the properties to be acquired and the use to which each one is put, and the results of the survey mapped and submitted with the EIA”.

This comment does not benefit from an understanding of the problems associated with doing detailed land use surveys in rural and agricultural areas where mapping is often incomplete or outdated and access on the ground sometimes very difficult, particularly for agricultural lands. At the preliminary stage of an EIA, without the benefit of land surveyors’ inputs, it would have been very difficult to spatially locate the alignment, structures and unfenced agricultural properties on the ground. The only option at this early stage in the project cycle would have been to do a preliminary identification of structures and parcels using secondary sources of data, including existing cadastral mapping and the most recently available aerial photography, supplemented by a practical level of ground-trothing.

Response - Urban Planner, HRC

It is difficult to understand the problem involved in undertaking a land use survey of 165 buildings that are all accessed by roadways in motorable condition. All that is required is a windscreen survey that would take not more than one-half day to record the fact that 150 of the structures are (in most cases, clearly) utilised for residential purposes, and that would cost almost nothing when compared with the overall cost of the project. Note that the HRC report, at page 28, suggests that “...*what was required was detailed land use information relating to all of the buildings in the path of the alignment.*” This information would, in any event, be required for the purpose of determining the level of compensation to be paid to affected property owners.

1.5 Comments that illustrate errors of conclusion

- P. 39 Sec. 1.5.1: It would appear that the HRC does not realize that the highway segment referred to as 'Debe to Mon Desir' consistently stops at the Fyzabad Interchange in the west, in both the CEC and planning applications. The St. Mary's to Point Fortin segment includes a 'spur'

running to the east that connects with the Debe to Mon Desir segment in its western extremity.

The result of this misconception is that the HRC erroneously concluded that Planning Permission for the area between the Fyzabad Interchange and Mon Desir was granted before the CEC was obtained as they were comparing the date of the Planning Permission for the St. Mary's to Point Fortin segment with the date of the CEC for the Debe to Mon Desir segment.

Response - Urban Planner, HRC

With respect to the CEC application (1372/2006), which was based on the EIA under reference, the description at 3.1.7 on page 46 of the EIA is relevant: “*The alignment..... ends in the **Mon Desir** area where it intersects the St. Mary's Junction to Point Fortin segment. The total length of the segment from the San Francique area to **Mon Desir** is approximately 11.1 km.*” This is reflected on page 24 of the HRC report (at 1.1 of the Urban and Regional Planning section). The Debe to Mon Desir alignment shown in the EIA report is shaded magenta in Figure 2 following, and distinguished from the other segments which are shown green. Note that the magenta line goes from Debe to Mon Desir **past Fyzabad**. The EIA and, consequently, the CEC therefore relate to the entire Debe to **Mon Desir** segment and not a Debe to Fyzabad segment as stated by Mr Ramlal.

With respect to the contention that the stretch between Fyzabad and Mon Desir is a 'spur', note that the expression 'spur' is defined in various dictionaries as “a short branch road or railway line” (Oxford); or “a railroad track that branches off from a main line” (Merriam-Webster). The Fyzabad to Mon Desir section could not be considered a 'spur' based on the information at hand as clearly shown on the map. There are two spurs in the segment, shown in broken magenta line on the map, one connecting the highway to the San Fernando Siparia Erin Road at Penal, the other connecting to the Siparia Road at Siparia.

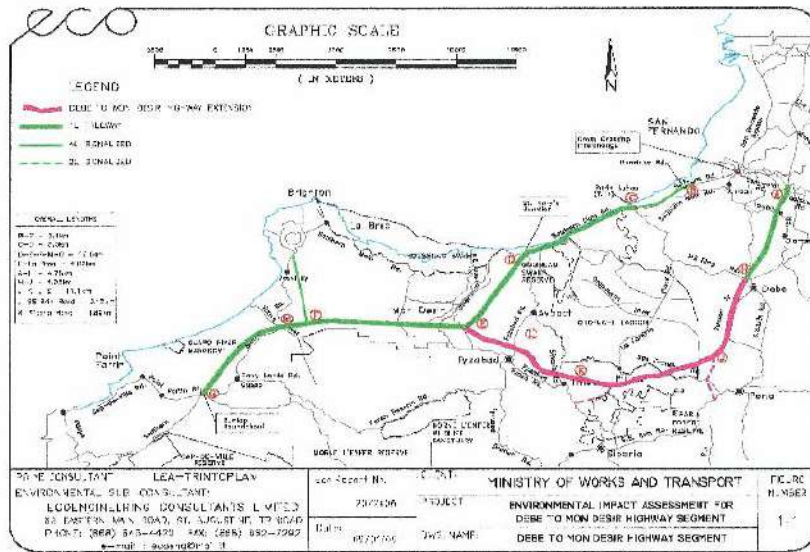


Figure 2: Alignment Debe to Mon Desir and other Segments

Source: Figure 1-1 following page 2 of the EIA report

With respect to the planning application, the location drawing at Figure 3 herein is taken from the actual application T7M:0440/2007 submitted to the TCPD.

Mr Ramlal is correct in stating that the planning application was for the Debe to Fyzabad portion of the highway (although the location drawing showed the entire Debe to Mon Desir segment). And that is precisely the problem, and precisely what the HRC report states:

“Application T7M:0440007– this submission was made on March 05, 2007 for Planning Permission (PP) for the development of land for ‘Transportation purposes’ Whereas the location of the land was given as “Debe – Mon Desir” and the alignment shown on what appears to be a location drawing is the entire alignment of the segment under review, all of the other drawings attached to the application show only the stretch from the intersection of the M2 Ring Road and the S.S. Erin Road in the Debe area to the proposed Fyzabad Interchange.”

As stated in the HRC report the remainder of the alignment (Fyzabad to Mon Desir) was covered under application T7M:0443/2007 which was submitted on the same day as 0440/2007 but approved on March 12, 2009 long before the CEC 1372/2006 was granted in April 20, 2010.

If there is an error as Mr Ramlal states, it comes from the labelling and coverage of the EIA with which the HRC was presented and from the failure of NIDCO, *et al*, to provide the Committee with the EIA that would have included the Fyzabad to Mon Desir segment or 'spur'.

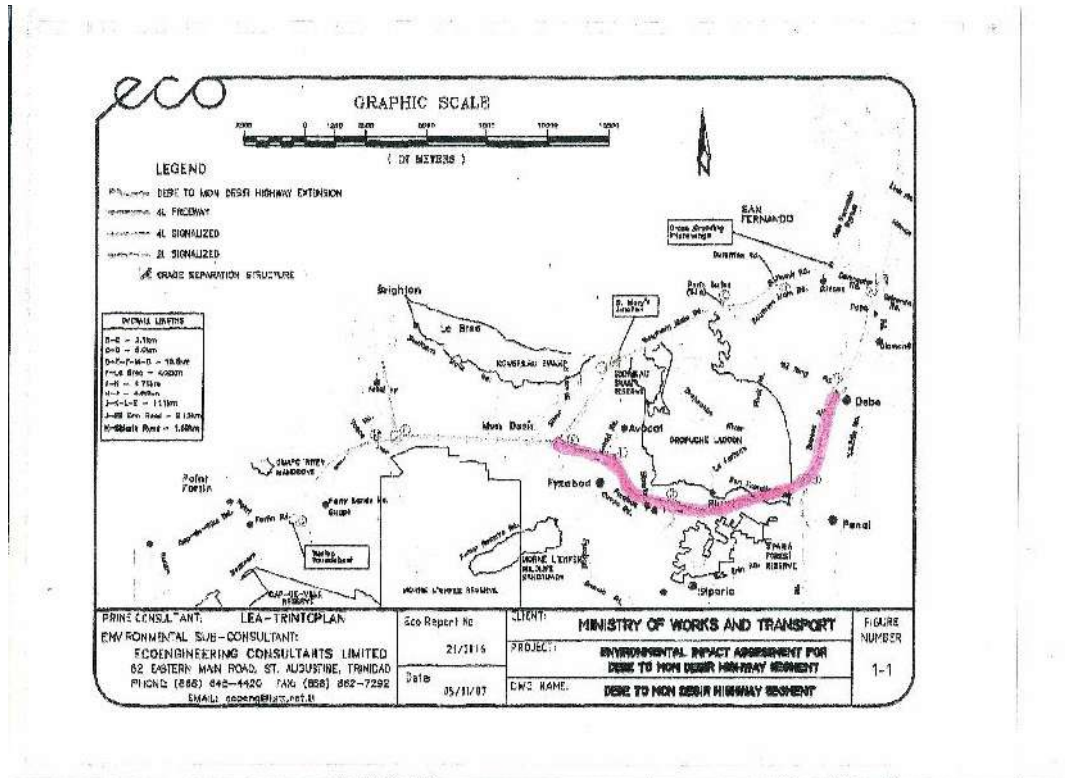


Figure 3: Location Drawing, Application T7M:0440/2007 for Debe to Mon Desir Highway Segment

Source: Application for Planning Permission T7M:0440/2007

Section 2.0 ENVIRONMENT

This Chapter was littered with erroneous and misleading statements and unwarranted opinions conclusions and recommendations.

The HRC totally failed to address the most important of the three objectives i.e. to determine the validity of the concerns brought forward by the HRM.

An EIA is generated based on the mandate given, in a TOR. As a consequence, any sensible reviewer should know that an EIA could only be evaluated based on whether the TOR was or was not satisfied. This HRC failed to indicate that **based on the TOR** whether the EIA was/was not acceptable. Rather, the HRC took an unprofessional and biased approach to indicate that the EIA was not acceptable. The scope of any review is determined by the requirements of the TOR, nothing else.

2.1 Comments that contain misleading statements

- P. 52 Section 2.4.2 Scoping

The HRC indicated that there is an omission of a proper scoping exercise prior to the development of a TOR.

FACT: A proper scoping exercise was done in the feasibility study.

- P. 62 Section 2.5.7 Method for Assessing Impacts and Proposing Mitigation Measures

The entire paragraph is misleading.

FACT: The proposed Mitigation Measures were adequate, this was supported by Mr Eden Shand who gave this chapter a high quality grading.

2.2 Comments that offer opinions that are not properly justified

The HRC states that “the lack of documented public concerns from the local communities **seems** to have been a missed opportunity by those who are calling for a reversal of the decision to proceed with the Highway. **If public comments had been submitted** in writing iterating many of the concerns being brought forward during this HRC review and in the great detail that has been presented by the HRM to the HRC, **the EMA should have had to have demonstrated greater consideration of the perceptions of this group.**”

FACT: The above opinion of the HRC implies that the information received during Public Review of the EIA Process was insufficient when compared to the detailed information presented by the HRM.

These issues presented by the HRM were NOT submitted during the allocated time period for Public Comment. It must be noted that the MOWT followed all protocol regarding the timelines required for Public Comment. To this end, it can be concluded that the HRM simply did not present their issues during the required time to the EMA and for the HRM to present information at this time has a great negative cost impact on the Government of the Republic of Trinidad and Tobago (GORTT). All public consultants were properly advertised in the newspapers as well as by loudspeakers. The EIA was place for public comment for one (1) month.

- P. 65 Section 2.8 – Main Conclusions

FACT: All of the points highlighted in this section are quite contentious as they are warped opinions. They refer to the EIA Review Process carried out by the EMA. It must be noted that the MOWT satisfied all the requirements put forward by the EMA during the EIA Process.

Section 3.0 SOCIAL IMPACTS

3.1 Comments that contain errors of fact

- Page 80. Section 3.7. Evaluation of issues raised by the HRM.

The consultant argued on behalf of the HRM by citing two samples- Sample 1 on page 81 and Sample 2 on page 82.

The two examples put forward can be used in any textbook as glaring examples of bias in sampling a population. Clearly, the samples were taken in areas where the people objected to the construction of the Highway and are meant to mislead the reader.

The consultant failed to take into account the terms and conditions mentioned in the CEC regarding relocation issues. In addition, he failed to address the provision of lands at Petit Morne etc. for persons to be relocated.

The consultant supports Mr Boodhai's views without giving proper justification.

Response – SIA Consultant, HRC

The actual HRC report in this regard, reads as follows:

Dr Sinanan spent two days in the area (Debe to Mon Desir) to elucidate some of the social impacts which would relate especially to elderly women and children; issues of impact equity. She is well aware of the preliminary nature of the findings (given the short time period and the small samples of people interviewed) but they are instructive for three reasons:

- Firstly, they illustrate the need for data.
- Secondly, they illustrate some of the techniques used world wide in assessing social impacts of this nature
- Thirdly, they illustrate what a scoping study even of such short duration could achieve in terms of study area definition, issue identification and selection of significant impacts to be further investigated in the full SIA.

The only reader who could be misled by the above is one who is wilfully blind. Where is the “error of fact” in the above statement? It is interesting to note that the “textbook” which indicated the problems of small sample sizes was apparently not useful in evaluating the improper use of focus groups. The Report states in this regard that:

The first point to note is that the use of focus groups to collect socio-economic data is inappropriate. The sample of persons in such groups is small and typically not representative of the population of interest. Such groups are very useful to gain insights into socio-cultural issues, lifestyles, stakeholder identification etc.

The second point made by Mr Ramlal is as follows:

“The consultant failed to take into account the terms and conditions mentioned in the CEC regarding relocation issues. In addition, he failed to address the provision of lands at Petit Morne etc. for persons to be relocated.”

Response:

An entire section of the report, handled by a different consultant, dealt with this in detail.

The third comment by MOWT was as follows:

“The consultant supports Mr Boodhai’s views without giving proper justification.”

Response:

The report states as follows:

We note three features which make the study inadequate viz:

- ❖ Inappropriate use of data gathering techniques
- ❖ Restriction of the target groups of the surveys to those directly in the ROW and who were earmarked to be displaced.
- ❖ Failure to clearly identify impacts in such a manner as to be able to quantify them for cost benefit analysis and for purposes of mitigation.

Each of the above is detailed in the report and form the basis for the agreement with Mr Boodhai’s views.

3.2 Comments that contain misleading statements

- Pg74 Section 3.5 Conformity with the Requirements of the SIA and with “Best Practices”.

The Reviewer : In our view, a major failing of the SIA components of the EIA related to the Debe to Mon Desir segment of the Solomon Hochoy Highway Extension to Point Fortin project begins with inadequate scoping. He goes on to state in the last paragraph – No SIA studies have been found relating to the segment relating to the “widening and reconstruction of approximate 12 km of the Southern Main Road and South Trunk Road from Dumfries Road to Delhi (Mon Desir). Based on this misconception the reviewer found that there was not enough data in the current EIA to assess social impacts.

FACT: SIA studies were done for all areas except for the segment between Dumfries Road to Paria Suites, where no persons were affected. SIA studies were done for the rest of the area. The reviewer should check the EIA from Paria Suites to St. Mary’s Junction and also the EIA from St. Mary’s Junction to Pt. Fortin. All relevant information is contained therein.

Response – SIA Consultant, HRC

Mr Ramlal is of the view that the reason that the HRC found the SIA to be inadequate relates to the lack of SIA data relating to the Dumfries Road to Delhi (Mon Desir) highway. He notes that “Based on this misconception the reviewer found that there was not enough data in the current EIA to assess social impacts.”

As mentioned before, the inadequacy of the SIA data is firmly rooted in an analysis of the data relating to the Debe to Mon Desir segment of the highway. The bulk of the SIA section of the report is devoted to his segment. Even the most cursory examination of Section 3 of the HRC report will substantiate this.

A single example will suffice. The Report states, inter alia about this segment:

Note that the house owners interviewed did not include any that were not directly in the ROW – a major omission in the determination of social impacts. All of the data collected on the ROW properties to be acquired, should have been collected on a sample of households in a 2-3 km wide band on either side of the proposed roadway. This includes data on commuting, location of employment, age structure of households (to assess vulnerability of the old and children) community structures etc.

We stand by our conclusion that:

The fundamental determination of this review is that there is not enough data in the current EIA to adequately assess the social impacts, to classify them in terms of severity and to plan adequately to mitigate them.

Response: Urban Planner, HRC

With respect to the final sentence that “The reviewer should check the EIA from Paria Suites...”, it was the responsibility of NIDCO *et al* to provide the information relative to the review exercise. It is noted that the original package from NIDCO included two CECs, one of which was for the segment under review, the other for the Golconda to Debe segment of the highway.

CONFLICTING VIEWS

Section 2.0 ENVIRONMENT

- P. 53, Section 2.4.1 Terms of Reference (TOR) as required by the Certificate of Environmental Clearance (CEC) Rules.

The HRC agreed that the TOR covers the critical views of development and confirms to World Bank Standards.

FACT: This statement conflicts with another statement on Page 54 – Section 2.4.2. - Scoping, where the HRC ‘out of the blue’ stated that there were flaws in the TOR as reflected by an omission of a proper scoping exercise. The scoping exercise was done in the feasibility study phase. The HRC went on to list deficiencies in the TOR on Page 54 – Section 2.4.3. TOR Deficiencies

- P. 62 – Section 2.5.6. Public and Stakeholder Engagement.

The reviewer stated that:

“Consultations seem to have been done at least in keeping with the requirements of the EMA’s TOR”.

CONFLICTS WITH

P. 63 – Section 2.6. Role of the Public in the EIA Review Process

2nd Paragraph.

The Reviewer stated: That there was a lack of documented public concerns from local communities.

CONFLICTING VIEWS- Chapter 2 VS Eden Shand

| Chapter 2/HRC | Eden Shand's Report |
|---|---|
| <p>1. Page 62. Section 2.5.7.1</p> <p>HRC calls for entire chapter on Proposed Mitigating Measures to be redone.</p> <p>2. Page 62 Section 2.5.6</p> <p>Public and Stakeholder Engagement. 1st Paragraph, Last Line states “A number of concerns were raised during the public consultation meetings by affected community members are not resolved in the EIA.”</p> <p>3. Page 65. Section 2.8 – Conclusion</p> <p><u>EIA was not acceptable.</u></p> <p>4. Page 55. Section 2.5.1. Rationale for Projects</p> <p>HRC – states that:</p> <p>There are no specific goals or objectives for the project that explains why this segment is needed and who needs it.</p> <p>Page 62. Section 2.5.8.</p> <p>The HRC:</p> <p>Called for examination of two alternatives based on presentation of HRM.</p> | <p>Page 183. Table</p> <p>Consultant gave this entire chapter – a high quality grading.</p> <p>Page 181 Section 14</p> <p>Consultations seem to have been done at least in keeping with the requirements of the TOR.</p> <p>Page 182.</p> <p>EIA acceptable – Contains enough information to enable a decision on the project.</p> <p>Shand Page 180 – 1st Paragraph states:</p> <p>The body of the report contains sufficient detail about purpose and objectives of the development.</p> <p>Page 181. Section 13 –</p> <p>Reviewer states:</p> <p>Consideration of advantages and disadvantages of alternative routes and alignments was completely done.</p> <p>A clear case was made for the route and alignment finally selected. The justification for the chosen route on the grounds of accessibility for the settlements of Debe, Penal, Siparia and Fyzabad was indisputable.</p> |

CONFLICTING VIEWS – SOCIAL IMPACTS

| Social Impacts Assessment | Social Component of EIA |
|---|--|
| <p>Page 76. 2nd Paragraph – 1st Line</p> <p>Focus groups to collect socio – economic data inappropriate.</p> <p>Page 85. Section 3.9</p> <p>HRC states- “There is not enough data in the current EIA to adequately assess the social impacts, to classify them in terms of severity and to plan adequately to mitigate them”.</p> | <p>Page 162. Section 3.3.3.3 – Focus Groups 1st Line</p> <p>Focus groups were used during the public consultations. This is a good approach.</p> <p>(a) Page 183. – Eden Shand</p> <p>There is enough information to enable a on decision in the project.</p> <p>(b) Review of Social Components. Page 159. Section 3.2</p> <p>The TOR for SIA was adequate. Overall the EIA complied with the social components of the TOR.</p> |

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COMMENTS ON REPORT BY HIGHWAY REVIEW COMMITTEE (HRC)

From a reading of the Highway Review Committee (HRC) report it is clear that a number of professional specialists undertook an extensive review of a wide range of technical issues which in their opinion should have been considered in the preparation of the feasibility study and design of the Solomon Hochoy Highway Extension to Pt. Fortin. Unfortunately, their review and comments did not seem to include a review of the Terms of Reference and Scope of Works for the project. As a consequence, whilst there are meaningful comments relating to the feasibility and design, there are comments about issues that were beyond the scope of the original Terms of Reference and Scope of Works. Their report also includes a number of factual errors.

Some specific comments include:

1. The Terms of Reference for the study undertaken by Trintoplan is for the design of a highway. One cannot expect that the Lea-Trintoplan team could have responded to the suggested Integrated Watershed Management Study as such a study was clearly completely outside the scope of services to which Lea-Trintoplan responded. This project was for a highway design and therefore all the studies, assessments etc. would have been done on the basis of work required for a highway extension.
2. It would appear that some members of the Highway Review Committee (HRC) have done reviews of design reports and technical reports without the benefit of seeking clarification on the contents of the referenced documents from the originators of the documents. This is particularly so with respect to the Environmental Component and the Social Impact component of the review. This is unfortunate especially considering that wide ranging and often inaccurate comments have been made. It is normal professional ethics that in situations like this, there should be discussion between the reviewers and the originators of the documents.

Response – Hydrology Consultant, HRC

It was not the intention to suggest that Lea-Trintoplan was to undertake the IWMS but that one should have been done and LEA –Trintoplan would have had the benefit of referencing this.

However, the impact of infrastructure such as the highway is not outside the scope of an IWMP. HRC does not expect that the highway project is responsible for such a plan but that such a plan is within the scope of proper water management and environmental management.

At the preliminary design level, the need for such a plan should have been indicated and seen as a necessity for the detailed design, considering the impact of the highway on the local and downstream hydrology of the flood plains and wetlands.

EXECUTIVE SUMMARY: INTRODUCTION

“The exercise demonstrated the advent of an era of enlightenment -----.”

It should be pointed out that while the age of ICT has led to a high level of environmental awareness and activism in developing countries, it has not concurrently highlighted the lack of information (e.g. hydrologic in the case of T&T) on which such awareness can move forward. An analogy with the density of car ownership amply illustrates this point: It has been rapidly possible to achieve high levels of car ownership per capita in developing countries e.g. Brazil, India, Nigeria, T&T to name a few - some of which are close to the developed world. However, to reach the state of corresponding transportation infrastructure is another, and challenging, matter. It is our humble view that the abovementioned report should take cognizance of the dichotomy between what is desirable and what is possible.

SUMMARY OF FINDINGS

Hydrology and Hydraulics:

“However, the analyses are not carried out in the context of an Integrated Watershed Management Plan for the South Oropouche River Basin.”

It should be pointed out that so far no Integrated Watershed Management Plan for the South Oropouche River Basin is available. Moreover, such plans - out of necessity - are multi-disciplinary and comprise many study fields ranging from Anthropology, Archaeology ----- Economics--- Public Health --- Sociology ----- Zoology. It is beyond the scope of Hydrologic and Hydraulic Engineering as would be carried out for the extension of the highway.

EXECUTIVE SUMMARY – GENERAL

The majority of readers (perhaps 95% or more) will only read the executive summary. Therefore, it ought to be accurate and balanced.

Section 7 (Page 117 - 139)

Section 7.3.3, Page 129, Sub-section: Estimation of Peak Flows

"The analyses undertaken did not include a multiple-day rainfall event with subsequent flood event with the consequence that the peak flows could be seriously underestimated."

Such analysis requires the use of a rainfall/runoff model. However application of such models is not possible in T&T due to hydrologic data limitations. In its absence, Antecedent Moisture Condition (AMC) II (which assumes five preceding days of rain totalling 3.5 cm) was used in the NRCS Method.

Response – Hydrology Consultant, HRC

The Antecedent Moisture Condition (AMC) II assumes 35mm of rain in the five preceding days but this does not reflect the reality of flood events in Trinidad and especially the South Oropouche River Basin. Hence the AMC III may have been the preferred option for South Oropouche. In addition, the areas which are crossed are most likely already inundated with water when the design event happens.

The HRC acknowledges the hydrologic data limitations and therefore the deficiency in the presented analysis to properly assess both the impact on the flood patterns and related ecology during different rainfall scenarios (not only the extreme one).

Section 7.3.3 Page 131, Sub-section: Hydraulic Design of Bridges(Last sentence in the penultimate paragraph)

" - a 50-year 24-hour rainfall event causes a flood event with a return period which is smaller than 50 years."

Lack of correspondence between design peak rainfall and the resulting peak stream flow is well known in engineering hydrology, and should be considered in hydrologic design. However, there is no measured relationship known for T&T. In the absence of such information, a higher curve number of 70 was used for the South Oropouche River; compared to a lower value of 60 for the smaller streams. This aspect was inadvertently not mentioned, in an explicit manner, in the mentioned Hydrology and Hydraulics Report.

It may be noted that the author had explicitly mentioned this aspect in his report for the 60 inch diameter natural gas pipeline river crossings for the Atlantic LNG Train IV Project for the TRINTOPLAN/KBR in 2003. In that case, fracture of the pipeline at a river crossing by hydrodynamic forces can lead to release of a buoyant plume of odourless, colourless and flammable gas and a public disaster, and in the absence of information, AMC III - the most severe antecedent moisture condition - was used.

Response – Hydrology Consultant, HRC

Comments on the lack of information are acknowledged and the conservative approach taken noted. However in another study in the Caparo basin, extensive multiple day analyses were undertaken but this may not have been included in the scope of this project and the data may not have been available.

1.0 REGIONAL AND URBAN PLANNING

The HRC recommends that “the planning of the proposed Debe to Mon Desir segment of the extension of the SHH needed to have been undertaken as part of a comprehensive plan that seeks to balance land use and transportation needs of south west Trinidad and to do so with a minimum of disruption of human communities. Given the limited land space that is available in Trinidad and Tobago, and the large land take associated with road infrastructure such as highways and interchanges, the Planners need to come up with mechanisms and approaches that would effectively address long term congestion

problems and provide the accessibility that is needed to improve connections between the various areas of the country without severely impacting the lives of people.

The above observation makes reference to the responsibility of “**the planners**”. But there is no definition of who these planners are. This could and should mean the Town and Country Planning Division for land use planning and the Highways Division of the Ministry of Works for transportation planning. The scope of works for the project did not include a land use planning study for the south west region. However, the design did include seeking an alignment that minimised disruption to communities to the extent that was practicable.

Response – Urban Planner, HRC

The Land Use/Spatial Planner engaged on a project with potential for far-reaching consequences for the land space of the south west region should, as a matter of course, take these matters into consideration in working and reporting on the EIA.

4.0 HUMAN SETTLEMENTS

This section of the review report recommends as follows:

- Expand the Study Area to cover the South West Region so as to ensure that sustainable development possibilities can be viewed from the stand point of the Human Settlement Perspective.
- Draw on current and on-going studies to ensure integration development strategies are achieved.
- Embrace a staged infrastructural upgrading programme to substantially improve the road connections within the Peninsula and to those Settlements to the east which whilst having the effect of opening up possibilities for enterprising endeavours, job opportunities and economic pursuits.
- Let GOLCONDA be the chosen site for Village Expansion – an Integrate Human Settlement.

These recommendations are clearly extra and additional to the scope of work for the feasibility study and design of the highway extension. These recommendations are therefore the basis for an additional and separate study for the south west region.

6.0 TRAFFIC AND TRANSPORTATION

A factual error is observed in the last line of page 112. That line states: “It is also the opinion of the consultants that Trintoplan **did** consider the alternative route option being suggested by the HRM.”

It is not clear how the HRC arrived at this opinion, but if the alternative route is the one suggested by the HRM from Debe to Mosquito Creek, this alignment alternative was not in fact conceived or considered as a genuine alternative route.

Another factual error is observed in the first bullet line of page 115. That line states “The Trintoplan pre-feasibility study of 1998 **did** include the alternative northern route suggested by the HRM.”

The northern route included in the 1998 pre-feasibility did not include a link from Debe to Mosquito Creek as proposed by the HRM. The northern route referred to in the 1998 study is the widening of the South Trunk Road from Cross Crossing to St. Mary’s junction and then a new 4-lane highway cross country from St. Mary’s junction to Pt. Fortin. This is also part of the proposed highway improvements in the 2005 study, in addition to the extension of the SHH from Golconda to Mon Desir to link up with the “northern route” from St. Mary’s junction.

Response – Traffic and Transportation Consultants

The Trintoplan questions probably have arisen because of alterations introduced in editing the Traffic & Transportation submission.

- 1) The map illustrating the similarity of the route considered by Trintoplan to the HRM route was omitted.
- 2) During editing the phrase “[study] of 1998” was inserted into the bulleted point in the Conclusions and is removed:

“The Trintoplan pre-feasibility study did include the alternative northern route suggested by the HRM;” (The Traffic & Transportation submission does not refer to the 1998 document in its list of documents commented upon)

The document has been amended as follows:

1. The sentence has been amended, and the missing map inserted, as follows:

Among the options considered by Trintoplan was a route which effectively is the option suggested by the HRM (See Figure 6.3).

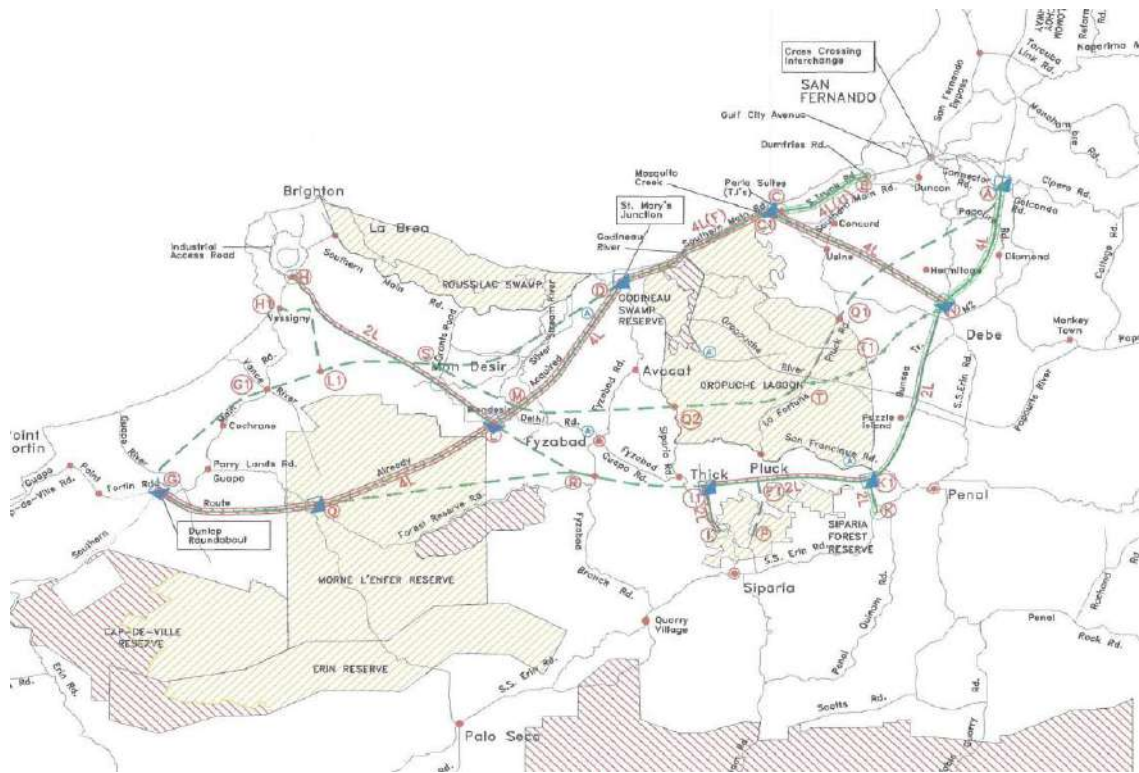


Figure 6.3: Golconda to Point Fortin Highway, Possible Route Options

Source: *Solomon Hochoy Highway Extension to Point Fortin, Final Report on Feasibility Investigations, Volume 1 - Engineering and Economic Feasibility*, LEA-Trintoplan Consultants Ltd, Figure 2.4.B.a.

It is not clear what the 4th bullet sentence of page 115 is saying.

Response – Traffic and Transportation Consultants

What is unclear is that the public reads about building a highway to Point Fortin. The question then arises: If you are going to build a highway to Point Fortin, and you are already widening Mosquito Creek, then the man-in-the street will ask : why then do you still need to pass the highway through Penal and Siparia? Part of the answer seems to be that there may be another motive: to develop the Penal-Siparia-Fyzabad area. This motive is not captured in the phrase “a highway to Point Fortin”. So there is some confusion about what one is really doing.

Kelvin Ramkissoon – Attorney at Law, Legal Advisor to NIDCO

Comments by Attorney at Law, Mr Kelvin Ramkissoo

AN ANALYSIS OF THE HIGHWAY REVIEW COMMITTEE'S REPORT

Background

1. In late 2012, the Highway Re-route Movement (“HRM”) staged public demonstrations in response to GORTT’s decision to undertake the construction of the extension of the Solomon Hochoy Highway (“the Highway”) in respect of the Debe to Mon Desir segment. The HRM outlined a plethora of reasons why this segment of the highway should not be undertaken. The public demonstrations and postulations of the HRM attracted widespread media coverage. In an apparent attempt to quell the public rantings of the HRM and to determine the veracity of their claims, the Joint Consultative Council (“JCC”) undertook to establish a committee known as the Highway Review Committee (“HRC”) to undertake a technical review of the Debe to Mon Desir segment of the highway. The HRC presented its draft report in early February 2013.
2. This paper proposes to critically analyse the findings and conclusions of the HRC. In so doing, particular emphasis would be placed in determining whether the HRC’s report in terms of its references and findings on legal issues, statutes and legislation can be supported. This analysis further attempts to examine some of the technical conclusions reached by the HRC and determine whether the same are tenable or can be impeached on the ground of irrationality in the Wednesbury sense.

Methodology

3. The analysis will be undertaken by examination of the primary material which has been formulated (studies, technical reports, data etc.) in support of the application for the Certificate of Environmental Clearance (“CEC”). It will then identify the statements or findings of the HRC to determine the legal or technical soundness thereof and highlight any incongruity, insofar as the same may arise.

Discussion and Analysis

4. Section 75 of the Constitution confers upon the Cabinet of the Republic of Trinidad and Tobago the general direction and control of the Government. It is collectively responsible therefor to the Parliament. The construction of the highway is a decision of the Cabinet and there is nothing to suggest that the decision to do so is illegal or otherwise improper. This must be the starting point.

Response - Land Acquisition Consultant, HRC

This consultant is unaware that the HRC suggested that Cabinet did not have the authority to make decisions in respect of the highway .The report lists a number of cases where the law appeared to have been flouted. NIDCO failed to provide all the documentation requested to determine the full and accurate position .It appears that NIDCO is now laying the blame on Cabinet. Cabinet decisions are normally based on a Cabinet Note requesting the said decision(s) with the technical rationale .The background documentation to these questionable policies/decisions was requested but was not supplied. It may well be that Cabinet was not properly advised. This consultant suggests that NIDCO should still supply the documentation requested in respect to land acquisition, private treaty ,resettlement policy, ex gratia awards and other payments to occupiers/owners so that the consultants can review their position. This consultant assumes that “general control and direction” do not include unlawful, illogical or improper policies and/or directives.

5. In any project of this nature, it must be assumed that there will be some displacement. Insofar as the allegation is made that such displacement will involve violations of fundamental rights as guaranteed under the Constitution, the same is misplaced. Rights are not absolute, but are qualified and circumscribed. No fundamental right is untrammelled. In **Collymore v AG**, Wooding CJ opined at pg. 14 as follows:

“In my Judgment, then, freedom of association means no more than freedom to enter into consensual arrangements to promote the common-interest objects of the associating group. The objects may be any of many. They may be religious or social, political or philosophical, economic or professional, educational or cultural, sporting or charitable. But the freedom to associate confers neither right nor licence for a course of conduct or for the commission of acts which in the view of Parliament are inimical to the peace, order and good government of the country. In like manner, their constitutionally-guaranteed existence notwithstanding, freedom of movement is no license for trespass, freedom of conscience no license for sedition, freedom of expression no license for obscenity, freedom of assembly no license for riot and freedom of the press no license for libel.”

Response - Land Acquisition Consultant, HRC

This consultant is assuming that this relates to the conclusions of “the summary of findings”; if it is, it is unprofessional as the statement clearly referred to actions which were contrary to law and in no way suggested untrammelled “rights”.

Some of the individual statements and findings analysed.

i. Statement

“The Ministry and NIDCO must approve the design at intervals and, therefore, OAS has engaged the service of international consultants HALCROW to prepare designs that satisfy the requirements of the contract. Further design checks are to be undertaken by reputable consultancy firms.”

Comment

The HRC’s report recognizes that MOWI and NIDCO must approve the designs at intervals. These designs are further subject to approval from the various regulatory agencies such as the TCPD, the EMA and the Drainage Division. In saying that further design checks are to be undertaken by reputable consultancy firms, and having regard for the necessity for approval from the regulatory bodies, the HRC has no basis to presume that such designs would not conform to the requirements of international best practice and propriety.

ii. Statement

“Given the limited land space that is available in Trinidad and Tobago, and the large land-take associated with road infrastructure such as highways and interchanges, the Planners need to come up with mechanisms and approaches that would effectively address long-term congestion problems and provide the accessibility that is needed to improve connections between the various areas of the country without severely impacting the lives of people.”

Comment

The traffic studies which were conducted suggest that the Debe to Mon Desir segment of the highway will address long term congestion and provide both connectivity and accessibility within the communities and between various areas of the country. The extension of the highway to Point Fortin is well documented. It is a project which goes back as far as 1963. It is not of recent vintage. In 1963 the Princess Margaret Highway was extended to create the Sir Solomon Hochoy Highway from Chaguanas to Chase Village. The second phase was the extension from Chase Village to Couva and the third phase from Couva to St. Joseph Village, San Fernando, then to Golconda. The extension from Golconda to Point Fortin is yet another phase as part of

the national Physical Infrastructure Development for Trinidad. It is part of a wider comprehensive plan that takes cognizance of the 1974 South West Region Plan and the 1984 National Physical Development Plan.

Response - Urban Planner, HRC

With respect to comments on the South West Region Plan and the NPDP: Refer to response on point 5 of Dr. Charles letter..

iii. Statement

“The Committee determined that while the requirements for the environmental assessment were generally adequately set out in the TOR issued by the EMA in April 2006, these were quite dated. The EIA was actually submitted in February 2009, almost three years after the issuance of the final TOR.”

Comment

A typical EIA may take 2 to 3 years to complete. There is thus a lapse between the TOR and the EIA report. The information contained in the EIA was the latest available material. It is incorrect to say that any information was out-dated. The information was produced in response to that mandated by the TOR.

iv. Statement

“The responses from the Ministry of Works and Infrastructure (MOWI) to the issues raised by the Review Panel were found by the HRC to be inadequate and often dismissive.... The opinion of the HRC is that the EIA was not acceptable and should have been rejected and returned to the applicant. It seems that the EMA relented without having the applicant provide adequate responses.”

Comment

This is an inaccurate statement. The Drainage Division, the Met services and WASA were amongst others that submitted responses. The statement that the EIA should have been rejected is incongruous with that of Mr Shand’s who at page 182 of the report stated that the EIA was acceptable. He however stated that it contained enough information but qualified that by saying

that such was “deeply buried” to enable a decision on the project. It is to be further noted that the extant legal proceedings do not challenge the grant of the CEC on the classic judicial review grounds of illegality, irrationality or procedural impropriety. In any event any challenge to the CEC ought to have been made within three months of the date of its issue in accordance with the provisions of the **Judicial Review Act**. A court at this stage cannot embark upon a review of the decision making process relating to the CEC since any challenge by way of judicial review is woefully out of time. The statement that the EMA “seems” to have relented is a serious indictment against the regulatory independence and integrity of the EMA. Such a statement has no place in a report compiled by a group of professional men and women and ought to be struck out from the HRC’s report in the absence of any conclusive evidence to validate such a bold assertion.

v. **Statement**

“A closer examination of the treatment of SIA within the EIA also indicates that this was quite inadequate. It was noted that the study area of direct and indirect impacts was not clearly defined, and not drawn sufficiently wide to allow for the consideration of all of the relevant social issues.”

Comment

The project executors cannot be expected to go beyond the terms of the TOR. In any event at page 70 of the HRC’s report it is concluded that “that TOR for the Debe to Mon Desir segment of the proposed highway contains many of the elements [described above] as being required for an acceptable SIA...” The HRM consultant at page 81 undertook a sample of 40 women living outside and within the ROW. She then took two samples, the first consisting of 20 persons over age 60, and the second 20 women between 22 and 68. Her focus was on the elderly and on women. The sample groups came from persons in the immediate vicinity who are living in the proposed segment of the highway. It is submitted that any result arising from such a sampling population would be skewed and inherently biased. The sample study came from areas where it is most likely that persons were objecting to the construction of the highway and from persons who would most likely be objectors to the project. It is to be noted that SIA studies were conducted for all areas save for the segment between Dumfries Road to Paria Suites, where there were no affected persons. At page 159 of the HRM’s report, the relevant components are extracted to highlight the areas which should have been addressed in the social components of the EIA. In terms of the study area (Box 1), it was stated that this should be determined by the extent of direct and indirect impacts...and social environments... as well as surrounding communities....that can be affected. The HRC’s reviewing consultant has stated there was compliance with this. In terms of identification and description of the study area to illustrate the spatial extent of the project and the impact area, the reviewing consultant again indicated that there was compliance. Likewise, the HRC’s consultant stated that there was compliance with the

identification and location of all human settlements (including ribbon development) impacted by the proposed project. In the light of the identification of the study areas, the HRC's comments on social impact are untenable and cannot be substantiated.

vi. **Statement**

“Indications are that approvals for development of the proposed resettlement sites at Petit Morne and Golconda were not obtained from the appropriate authorities, which suggests a flagrant flouting of the statutory requirements. It is felt that Golconda offers a better option for the consideration of relocation as it allows for conditions similar to those to which the relocates are accustomed.”

Comment

Information coming to hand is that the TCPD has granted outline approval for the Petit Morne site. Other approvals from other regulatory agencies such as the Regional Corporation are required at a later stage in the development.

Response - Land Acquisition Consultant, HRC

Can this be satisfactory when the contract has already been awarded and NIDCO stated that failure to hand over the lands needed on a timely basis is likely to lead to substantial claims from the contractor.

To suggest that there was “a flagrant flouting of the statutory requirements” is accusing the GORTT and its agencies of committing violations of the law. Such a statement ought not to be made unless there is conclusive evidence to suggest such. In any event, failure to observe the statutory requirements often attract penal sanctions and it is the function of a court of law, not the HRC to determine whether there has been violation of the law .

Response - Land Acquisition Consultant, HRC

Evidence of failure to observe statutory requirements are documented in the Report. The HRC would have been failing in its duty not to make appropriate recommendations.

vii. **Statement**

“The Committee agreed that the EIA considerations were eventually compromised by the Design-Build approach, and concluded that this approach was ill-advised for this project as the implementation risks are in direct conflict with Best Practice, and therefore not in the best interest of the people of Trinidad and Tobago.”

Comment

The HRC has failed to particularize how the EIA considerations were compromised by the design build/approach. It has further failed to identify how the implementation risks are in conflict with best practice and not in the interest of the people of Trinidad and Tobago. On the contrary, the essence of the design/build model is that the contractor will share some of the risks and the liabilities. It is the contractor who is charged with the designing of various segments of the project. Where a design is unsuitable or would not be appropriate for the particular component or geographical area, the contractor bears the risk. Because the contractor is engaged in designing, the risk is shared. This is the rationale for the adoption of the design build model. The sharing of the risk in this model is of tremendous advantage to the government and people of Trinidad and Tobago.

Response - Land Acquisition Consultant, HRC

This addresses the general concept and not the peculiarities of this project where official land acquisition procedures were not in place before the contract was awarded and where it has been stated that the law will not be used to remove occupiers.

General Comments and Responses

6. At page 28 of the report, the HRC suggested that a land use survey should have been undertaken to determine the exact location of properties to be acquired and the results mapped and submitted with the EIA.

Response - Urban Planner, HRC

Refer to comments on point 1.4 of Mr Ramlal’s report relating to the issue of the land use survey.

Response

It is reasonable to assume that in the early stages of the project all that was required would be identification of structures and parcels using secondary source material such as the information contained in the land registry, the district revenue office, existing maps and cadastral sheets from the lands and surveys division and from aerial surveys.

7. At page 40 (ii), the HRC makes the statement that planning permission was granted before the CEC was obtained whereas the CEC rules stipulate that planning permission cannot be granted until a CEC is obtained from the EMA

Response

This is false and misleading and refers only to projects that also require an EIA as part of the CEC process.

Response - Urban Planner, HRC

The issue of approval having been granted to application T7M:0440/2007 prior to the issue of the CEC is covered at the response to point 1.5 of Mr Ramlal's report. Mr Ramkissoon appears to have missed the point that this project **does** require an EIA as part of the CEC process.

8. The HRC at recommendation 2.6 page 13 states that effective stakeholder participation is essential in the decision-making process and that the relevant agencies must ensure that proper consultation is carried out.

Response

Where a duty of consultation is placed upon a decision maker, this is almost always interpreted by the courts to require merely an opportunity to make written representations or comments upon announced proposals. Where the words, "hearing" or "opportunity to be heard" are used in legislation, they usually require a hearing at which oral submissions and evidence can be tendered: See **Lloyd v Mc Mahon [1987] AC 625**. The proper approach to consultation was stated in **R v North and East Devon Area Health Authority ex parte Coughlan [2001] QB 213** as follows:

"To be proper, consultation must be undertaken at a time when proposals are still at a formative stage; it must include sufficient reasons for particular proposals to

allow those consulted to give intelligent consideration and an intelligent response; adequate time must be given for this purpose; and the product of consultation must be conscientiously taken into account when the ultimate decision is taken.”

Response - Land Acquisition Consultant, HRC

The consultations were not conducted under conditions that would ensure effective or genuine stakeholder participation.

Although consultation must take place at the formative stage, it does not require consultation on every possible option. While consultation requires that sufficient reasons be given for the particular proposals to enable those consulted to give intelligent consideration and an intelligent response to the proposals, it does not usually require that sufficient information be given about any objections to the proposals to enable those consulted to give intelligent considerations and intelligent response to the objection. In general, there is no duty to re-consult unless there is a fundamental difference between the proposals consulted on and those which the consulting party subsequently wishes to adopt. See **De Smith’s Judicial Review, Sixth Ed. Para 7-054.**

In these circumstances, and the consultations having taken place in accordance with that mandated by the EIA, there can be no complaint that there was inadequate consultation such as to vitiate any decision made in respect of the project.

Response - Land Acquisition Consultant, HRC

Two of the most important items of such consultations are “compensation” and “relocation.” Relocation proposals affect compensation. The resource personnel at the consultations did not include the necessary valuation expertise and the information provided was inadequate. A Section 3 notice under the Act allows, “to enter upon the land for investigative purposes only and do all or any of the following things:(a) survey and take levels of any land in any locality to which the public purposes relate;(b) dig or bore into the subsoil of such land; (c) do all other acts necessary to ascertain whether the land is adaptable to the purposes for which it is required; (d) set out the boundaries of the land intended to be acquired and the intended line of the works, if any, proposed to be done thereon; (e) mark levels, boundaries and lines by placing marks and cutting trenches; (f) cut down and clear away any standing crop, fence, tree or bush, where otherwise the survey cannot be completed, the levels taken or the boundaries or line of the works marked; (g) set up and maintain gauges in any stream or watercourse, and

have access to the same from time to time for purposes of observation; and (h) do all such other acts as may be incidental to or necessary for any of the purposes aforesaid” and under subsection . “(6) The Commissioner shall not enter into any building, or into or upon any enclosed yard, court or garden attached to a dwelling house, except—(a) with the consent of the occupier thereof; or (b) after giving to the occupier at least twenty-four hours’ notice in writing of his intention to do so.” And under sub section “(7) Compensation shall be paid to any person interested in the land so entered for any actual damage or injury resulting to him by reason of the exercise of the powers conferred by this section and shall be assessed—(a) in so far as it relates to land, the acquisition of which is subsequently abandoned under section 8 or deemed to be abandoned under section 9, in the manner provided by this Act; or (b) in so far as it relates to land, the compulsory acquisition of which is completed under section 5, as though it were part of the compensation for the acquisition of the land” .

The consultations were held after many of these activities were completed but the notice was only published on the 3rd Feb 2012 .Nowhere in the documents provided was it mentioned that “payments” would be assessed “under the shadow of Compulsory Purchase” although NIDCO stated so in January 2013 and it was clearly indicated that this was incorrect. The problem at the consultations was not that stake holders were not given an opportunity to respond but that the “proposal”... It is obvious that the “proposal” did not include sufficient reasons for particular proposals to allow those consulted to give intelligent consideration and an intelligent response was not properly documented. It is not sufficient to say we are going to build a highway from San Fernando to Pt. Fortin. Public notice of the lands “likely to be required” must be published in accordance with the Act and must be sufficiently detailed to allow the average person to determine whether it was likely that his property would be affected. It does not appear that this was done.. Even when the notice was published on the 3/2/12 it was useless as it was inadequate for anyone other than a land surveyor to locate the approximate area on the ground.

9. At page 63 of the report, the HRC states that the lack of documented public concerns from the local communities seems to have been a missed opportunity by those who are calling for a reversal of the decision to proceed with the highway. It further states that if public comments had been submitted in writing outlining many of the concerns brought forward during the HRC’s review and in the great detail that has been presented by the HRM to the HRC, the EMA should have demonstrated greater consideration of the perceptions of this group (the HRM).

Response

This criticism of the HRM's is flawed in logic. It subsumes that the HRM was an entity in existence in the formative stages of the project and during the subsistence of the consultation sessions held in 2006 and 2007. It fails to take cognizance that the HRM as an organized body only emerged in 2011 and started its public campaign in 2012. The applicant for the CEC, the MOWT complied with all protocols, statutory and regulatory, regarding the timelines fixed for public comment. The reality is that the HRM did not present their points of view during this timeframe which was stipulated. To suggest that the project undertakers must now accept the proposals of the HRM is to disregard and ignore the existence of the statutory and regulatory timeframes which have been fixed to undertake such processes of consultations and stakeholders' representations. Taken to its logical conclusion, this would entail an exercise carried on ad infinitum. This could not have been the intention of the framers of the legislation.

Conclusion

10. There are many other instances of factually flawed statements and consequential misleading analyses which are contained in the HRC's report. Insofar as the same consist of technical and engineering issues, these are beyond the scope of this analysis. However, there is sufficient material in the HRC's report which may justify the same being impugned on the ground of irrationality in the Wednesbury sense. The Executive Summary of the report contains material which is often incongruous with the detailed analyses conducted by the individual reviewers.

Response - Land Acquisition Consultant, HRC

There is no evidence to justify this statement.

If there are disagreements with the HRC recommendations, these must be clearly defined.

11. In the case of the individual reviewers, their right to criticize and present alternative view points and suggestions in a professional and considered manner is respected. However, such must be predicated upon a fair and meaningful analysis of the body of studies, reports and data upon which the project was conceptualized and which justified its necessity.

Response - Land Acquisition Consultant, HRC

It must also include evidence presented by the HRM and the general public.

12. In presenting this analysis, it is evident that in the instances highlighted above, such matters were either overlooked or were not duly taken cognisance of . The result is that unwarranted and sometimes baseless criticisms and findings have been made with the consequence that the Debe to Mon Desir section of the highway has been unnecessarily castigated.

NIDCO: STEVE GARIBSINGH

EPM COMMENTS ON REPORT BY THE JCC HRC

| Nr | JCC HRC Statement | EPM Response |
|-----------|---|--|
| 1. | <p>Urban and Regional Planning, 1.6 Conclusions and Recommendation, p. 41 – “The planning of the proposed Debe to Mon Desir segment of the extension of the SHH highway needed to have been undertaken as part of a comprehensive plan that seeks to balance the land use and transportation needs of south west Trinidad, and to do so with a minimum of disruption of human communities.”</p> | <ol style="list-style-type: none"> 1. All the relevant available planning instruments reviewed in the report are in full support of the construction of the extension of the highway through the Debe, Penal, Siparia regions (Planning for Development: The South West Region, The National Physical Development Plan Trinidad and Tobago (NPDP), Siparia Final Draft Municipal Development Plan, Penal/Debe Regional Corporation Final Draft Municipal Development Plan, and the Point Fortin Plan). The construction of the highway is consistent with the development plans that are available for the region. 2. One of the key factors in route selection was minimum disruption of human communities. 3. The optimum route was selected as confirmed by the APDSL study (Least Cost Path Analysis for Debe - Mon Desir Segment of the Solomon Hochoy Highway Extension, Prepared by Dr. Bheshem Ramlal, All-Inclusive Project Development Services Limited, January 2013). |
| 2. | <p>Human Settlement – “Relocation to Petit Morne would take affected residents well away from their current environments and involve significant dislocation including school accessibility, family connections, and generational patterns of community. In addition the current approval and implementation process indicates that the availability of usable residential plots at Petit Morne cannot be achieved under two to three years. This site is not recommended for Relocation.”</p> <p>Executive Summary by Dr. James Armstrong, Human Settlement, 2nd paragraph, p. 7 – “Indications are that approvals for development of the proposed resettlements sites at Petit Morne and Golconda were not obtained from the appropriate authorities, which suggests a flagrant flouting of the statutory</p> | <ol style="list-style-type: none"> 1. It should be noted that the site at Petit Morne was agreed to by residents who were represented by the Debe San Francique Highway Action Committee. 2. “...which suggests a flagrant flouting of the statutory requirements...” Nowhere in the HRC consultant’s report does such strong language exist – The consultant simply states that there are no approvals. |

| Nr | JCC HRC Statement | EPM Response |
|----|---|--|
| | requirements. It is felt that Golconda offers a better option for the consideration of relocation as it allows for conditions similar to those to which the relocates are accustomed. | |
| 3. | Economic Cost Benefit Considerations, p. 107 Consultant's Comments – "The Consultant concurs with the general sentiment of the HRM as stated above given the absence of quantifiable evidence to corroborate the benefits and costs of the Project. It should be noted though that the HRM/Kublalsingh report also does not detail any dollar values for the ranges of negative impacts from the project that it has identified." | <p>Based on the Consultant's statement, one is forced to conclude that the consultant (Ms Marlene Attz?) has a complete understanding of the highway alignment, and its costs and benefits, and agrees with the following:</p> <p>"Even a cursory glance at the potential costs and perceived benefits of the Debe to Mon Desir Highway shows that this project is an unmitigated planning disaster. Its potential destructive impacts are non-mitigatable and permanent:</p> <ul style="list-style-type: none"> (i) It will bifurcate thirteen well-established communities and engender permanent disconnectivities. (ii) It will disaggregate a socially, economically, and culturally empowered region. (iii) It will jeopardize the future of the Oropouche Lagoon as a potential food basket. (iv) It will fragment a system of well-connected road system West of the Siparia-Erin Main Road. (v) it will compromise the system of hydrology of the Oropouche Lagoon and its ecology. (vi) Its financial costs will be exceedingly more than advertised by the state and will jeopardize the other viable segments of the highway, and the national economy. (vii) It will lead to significant and permanent negative environmental and health effects on residents who live within its catchment. (viii) It would cause flooding to remaining communities stretching as far back as Barrackpore in the East; particularly if hydraulic systems are not maintained; the costs of these systems will be permanent. (ix) The aggregate required will be 1.4 million tons which will jeopardize the water, soil and vegetation systems of the Northern Range and North East Trinidad." <p>What is the basis for the consultant's conclusion that "Perceived benefits, as listed in the EIA for this</p> |

| Nr | JCC HRC Statement | EPM Response |
|----|--|--|
| | | project, and implied in the rationale and objectives for this project are either negligible when contrasted with potential costs; ..."? Why is the Government's position less believable than the HRM's position – on what evidence? No evidence presented to support consultant's position. |
| 4. | Executive Summary, Summary of Findings, Land Tenure and Acquisition, p. 8 – "Indications are that entry on to property for executing the project might have been made without Section 4 authority as required by legislation." | NIDCO has not entered any property without appropriate authorization. Section 4 Notice was published for all properties entered in the segment. |

Response – Urban Planner, HRC

With respect to point 1 EPM Response, please refer to comments on point 5 of Dr. Charles' letters. Note that the Siparia, Penal/Debe, and Point Fortin Plans would not have been required to critique the highway alignment, but to consider it a given on which the respective proposals would need to be based.

On point 2 EPM Response, the conduct of engineering operations at the Petit Morne site **does**, indeed, represent a "flagrant flouting" of the Laws of the land as indicated in response to point 2. of Dr. Charles' letter, the relevant excerpt of which follows:

As indicated at page 39 of the report of the HRC, Part III of the TCP Act stipulates that permission is required for any development that is carried out after the commencement of the Act, development being defined to include the carrying out of building or engineering operations in, on, over or under any land; and the subdivision of any land. This is acknowledged on page 7 of the EIA at 2.1.3.2 which states "***Planning Permission..... is the legal requirement before development can commence.***"

Engineering operations have been started on land at M2 Ring Road and Manahambre Road, Petit Morne, St. Madeline for residential purposes, partly for the resettlement of persons who currently reside in the path of the Debe to Mon Desir segment of the highway. There is no permission for this development, Outline Planning Permission granted June 15, 2010 having lapsed one year later in accordance with the condition in the permission that it "*.....shall lapse and become null and void unless the particulars and plans.....are submitted.....within one (1) year from the date of this Outline*

Permission". Since no particulars and plans have been submitted to the Town and Country Planning Division in this respect, there is currently **no** permission for these lands to be developed. The developer would be required to obtain **Final** Planning Permission for the development, and to meet all other statutory requirements, before plots of land can legally be transferred to individual owners.