

DELIVERED BY EMAIL

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YOUR REFERENCE: NC/EIA/10/JTG/GAM/KAT2/2014

OUR REFERENCE: Mr Justin Truter/sn/CW/

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10 June 2016

Dear Sir

COMMENTS ON THE FINAL SCOPING REPORT FOR THE PROPOSED HOUSING DEVELOPMENT ON PORTION 1 AND THE REMAINDER OF THE FARM SIMS NO. 462, KURUMAN ROAD, KATHU, NORTHERN CAPE

D:E&NC REF: NC/EIA/10/JTG/GAM/KAT2/2014

1 We refer to the above matter and confirm that we act on behalf of Kalahari Gholf en Jag (Pty) Ltd, the Khumani Housing Development Company (Pty) Ltd and the Kalahari Gholf en Jag Home Owners Association ("**our clients**").

2 THE PARTIES:

2.1 The application was prepared and submitted by EnviroAfrica CC ("**the EAP**") on behalf of Sishen Iron Ore Company (Pty) Ltd, the applicant.

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Directors DG Williams (Chairman) AL Armstrong BA Aronoff DA ArtelroT Bata AR Berman NMN Bhengu L Bick GT Bossr TJ Boswell MC Brönn W Brown PF Burger PG Cleland JG Cloete PPJ Coetser C Cole-Morgan D Corbett JN de Villiers GW Driver LJ du Preez RJ Feenstra S Fodor SJ Gardiner D Gewer H Goolam R Gootkin ID Gouws GF Griessel D Hertz J Hollesen VR Hoslosky BB Hotz HC Jacobs TL Janse van Rensburg N Jansen van Vuuren G Johannes S July J Kallmeyer SLG Kayana A Kenny BM Kew N Kirby HA Kotze S Krige P Je Roux MM Lessing E Levensteln JS Lochner L Louw JS Lubbe BS Mabasa PK Mabaso PM Madala MPC Manaka PJG Mason H Masondo C Moraitis KO Motshwane TA Mthiyane J Nickig JJ Niemand GA Nott BPF Olivier WE Oosthuizen M Pansegrouw CP Pauw AV Pillay T Potter BC Price AA Pyzikowski RJ Raath L Rood BR Roothman W Rosenberg NL Scott LK Silberman JA Smit JS Smit CI Stevens PO Steyn J Stockwell JG Theron JJ Truter KJ Trudgeon DN van den Berg HA van Niekerk FJ van Tonder JP van Wyk A Vatalidis RN Wakefield DC Walker D Wegierski M Wiehahn DC Willans E Wood BW Workman-Davies **Consultant** JM Bortz



- 2.2 Our clients are owners of various properties situated within close proximity to the property on which the proposed development is to take place and therefore have a direct interest in the application for environmental authorisation.
- 2.3 Our clients are firmly of the view that the application is undesirable and will have significant negative impacts on both the receiving environment and surrounding environment and act herein in their own interest as well as in the interest of the environment and in the public interest.

3 **BACKGROUND:**

- 3.1 On 7 February 2014 our clients received a notification letter, with a background information document, advising of the public participation process conducted in terms of the National Environmental Management Act, 1998 ("**NEMA**") in relation to the application for environmental authorisation for the proposed development.
- 3.2 On 13 May 2014 correspondence was sent to the EAP confirming that our firm was to be registered as an interested and affected party on behalf of our clients.
- 3.3 On 10 March 2015 our firm received notification of the availability of the Draft Environmental Scoping Report ("**DSR**") prepared in respect of the application for environmental authorisation for a proposed housing development on the property known as Portion 1 and the Remainder of the Farm Sims No. 462, Kathu, Northern Cape ("**the property**").
- 3.4 Due to the time delay in the documents being made available to us, the EAP had agreed that our comments could be submitted by 8 May 2015. During April 2016, we received a copy of the Final Scoping Report dated April 2016 ("**FSR**"). We are instructed to submit comments on this FSR. This letter contains these comments and should be read together with our comments on the DSR.



3.5 At the outset we record that many of the concerns raised in our comments on the DSR have not been adequately address in the FSR, with the EAP indicating that this information will be provided as part of the Environmental Impact Assessment report ("**EIAR**") process or simply recording our comments as "*noted*". This does not constitute an adequate response and constitutes non-compliance with the NEMA EIA regulations (GNR 543 of June 2010), particularly regulation 28(h)(iv).

3.6 It is noted that the applicant intends on constructing a housing development and associated infrastructure with an estimate of up to 1439 property units being developed on the property.¹ It is further noted that the proposed development will include 538 single residential properties; 851 group housing properties; 4 properties for the development of flats; 6 commercial properties; 29 open space properties (note that the FSR later indicates that 31 properties are to be used for this purpose); 6 sites for places of worship; 2 sites for education; 4 properties for municipal use; the construction of internal roads; and associated services infrastructure.²

4 **PROPERTY DESCRIPTION AND LOCATION**

4.1 The report notes that the property is approximately 168.9 hectares in size and is located to the west of the town of Kathu, adjacent to the Kathu Village Mall, and east of Mapoteng.³

4.2 The current property zoning is Agricultural and, according to the report, an application for rezoning and subdivision is being considered for the development of a mixed use residential development.⁴

4.3 Our clients are of the view that the proposed development is undesirable and will have a negative impact on their own rights and interests as landowners as well as on the receiving

¹ Page 7.

² Page 7.

³ Page 7.

⁴ Page 7.



and surrounding environment. Our clients have instructed us to submit comments on the FSR, which we hereby do.

5 **GROUNDS OF OBJECTION**

5.1 We understand that further information will be provided in the reports to follow. We will however record our clients' concerns on the FSR (in order to ensure that the subsequent iterations of the impact assessment reports adequately address these concerns), reserving the right to provide more comprehensive comments once further information has been provided.

5.2 **Insufficient information provided:**

5.2.1 As detailed in our previous comments on the DSR, we submit that further specialist studies are to be undertaken, including a biodiversity impact assessment; a visual impact assessment; a dust impact assessment; a storm water management assessment; and a noise impact assessment. The failure to provide sufficient information as part of the environmental impact assessment will result in interested and affected parties being unable to formulate and submit informed comments on the impacts of the proposed development on the surrounding environment and on their rights. Furthermore, this will also affect the ability of a decision-maker to grant the environmental authorisation as the decision-maker will not have sufficient information on the impacts of the proposed development.

5.2.2 We note that no specialist reports have been provided with the FSR and the EAP has indicated that these reports will be provided with the EIAR. Considering the size and nature of the proposed development, we submit that the following studies must be undertaken:

5.2.2.1 **Biodiversity impacts** - We note that the EAP has identified a botanical impact assessment report as a study which must be undertaken as part of the environmental impact assessment process. We note that *biodiversity* impacts are also likely to occur as



the report indicates that the project area includes the unique protected tree *Acacia erioloba* (Camelthorn), associated fauna and avi-fauna species; wetlands; and sensitive botanical areas. The impact assessment report must propose mitigation measures which will be put in place in order to properly manage the biodiversity impacts associated with the proposed development. In our previous comments on the DSR we noted that the report stated that no fauna or avi-fauna impacts are anticipated and therefore no impact assessments will be undertaken.⁵ We submitted that this statement is unqualified and cannot be relied upon, considering the location of the proposed development. In response the EAP has stated that a botanical impact assessment has been undertaken and will be made available with the EIAR. We submit that considering the location of the property, that a *biodiversity* assessment must also be undertaken, to assess potential impacts on fauna and avi-fauna.

5.2.2.2 **Water impacts** - We note that the report does not identify a water impact assessment as being necessary. Although the report states that no above ground water resources were found, aside from a seasonal pan located at the northern end of the site, the area has been identified in the National Freshwater Ecosystem Priority Area as a natural wetland. Furthermore, in the FSR, the EAP has indicated that the wetland area will be excluded from the development and a buffer will be implemented which should not affect the avi-fauna that may visit the site. We submit that this comment is not supported by any independent impact assessment to confirm that the proposed buffer and impacts on the avi-fauna are acceptable. We submit that the biodiversity impact assessment recommended above must be undertaken to assess whether the proposed buffer area is sufficient to mitigate any impacts associated with the development. In our comments on the DSR, reference was made to the Gamagara Municipality Reviewed Spatial Development Framework, 2010 ("**GMRSDF**") which provides that water resources located within the Kathu area are extremely limited and the area has become dependent on underground water resources. In

⁵ Page 25.



response, the EAP has stated that a geo-hydrological impact assessment will be undertaken as part of the EIAR. We note that the FSR makes no mention of a Geo-hydrological assessment as one of the specialist studies to be undertaken. We further submitted that due to the nature and scale of the proposed development, we anticipate that a large portion of the property will be levelled and covered with built structures, concrete or tar. This will likely impact on storm water velocity which may increase erosion of the surrounding properties and may further result in storm water contamination. Furthermore, the report confirms that there are no plans for any bulk storm water management infrastructure. In response, the EAP has indicated that the municipality is currently procuring consultants to prepare a Storm water Master Plan for the Kathu area. We submit that this does not address the storm water management impacts associated with this particular development, particularly runoff and erosion. As such, Storm water Management Assessment must be undertaken in order to confirm the impacts of storm water runoff as a result of the development.

5.2.2.3 **Traffic impacts** - We note that the EAP has identified the traffic impact assessment report as a study which must be undertaken as part of the environmental impact assessment process. It is submitted that the construction of a high density mixed-use development consisting of 1439 units and commercial business activities will result in a significant increase in traffic on roads which will have a high negative impact on existing infrastructure. The report confirms the anticipated high volumes of traffic that will be generated by the proposed development, recommends that external road upgrades take place, and suggests that mitigation measures be put in place regarding the proposed access route, however fails to elaborate on what these mitigation measures are.⁶ Furthermore, the GMSDF confirms that Kathu is already facing traffic congestion issues due to a large number of mining activities which are extremely transport intensive. Due to the scale of the proposed development and the intended mixed uses which will be

⁶ Page 31.



undertaken on the property, it is clear that there will be a significant increase in traffic in the area during the operational phase. Traffic impacts will also result from the construction phase as a result of slow moving heavy duty construction vehicles accessing and leaving the site. The increase in traffic and congestion will put pressure on existing transport arteries identified in the report. The impact assessment report must propose traffic mitigation and safety measures which will be put in place in order to properly manage the traffic impacts. In response, the EAP has indicated that this assessment will be provided in the EIAR.

5.2.2.4 **Archaeological, Heritage and Paleontological impacts** - We note that the EAP has identified archaeological, heritage and paleontological impact assessment reports as studies which must be undertaken as part of the environmental impact assessment process. Furthermore, our research has indicated that significant Stone Age sites occur in and around Kathu and on adjacent farms. These areas are subject to on-going archaeological research. The need for a comprehensive assessment of the impact of the proposed development on these resources is apparent. In response to this comment, the EAP has indicated that heritage and paleontological assessments will be prepared as part of the EIAR.

5.2.2.5 **Visual impacts** – In our comments on the DSR, we noted that the report does not identify a visual impact assessment as being necessary. We submitted that due to the location, current rural ambience, size and nature of the proposed development, significant visual impacts will occur as a result of the proposed large scale development. Such visual impacts will include skyline obstructions; reflections from glass surfaces such as windows; and light pollution particularly during the night time hours. Reference is made to Appendix 6 which states that the sizes, operating hours and types of businesses to take place in the Business, Institutional, and Authority zones are yet to be determined. As such, we submit that the EAP cannot conclude that a visual impact assessment is not required. An independent specialist must assess the anticipated visual impacts, particularly those



associated with the multi-storey buildings, building materials used, and artificial lighting (and its effect on biodiversity in the area) and propose adequate mitigation measures so that interested and affected parties (and the decision-maker) may be informed as to what these impacts are and how they are to be managed. The EAP has indicated that *visual impact assessment is not deemed necessary. The proposed development will be located within the urban edge, with residential and commercial land-uses adjacent to the property. The proposed site is classified as "mixed-use development" and "lower density residential in the Kathu Spatial Development Framework and has been earmarked for the planned urban expansion.* We disagree with the EAPs statement. The visual impacts of the proposed development could differ in the height, style and volume of buildings of the proposed development compared to that of the surrounding properties. For this reason, we reiterate that a visual impact assessment must be undertaken and be made available for comment.

5.2.2.6 **Noise impacts** - In our comments on the DSR, we noted that the report does not identify a noise impact assessment as being necessary. We submitted that due to the scale and location of the proposed development that noise will be generated during the construction and operational phases (construction noise, residential and commercial uses and increased traffic will affect the ambience of the surrounding areas). This would likely cause a nuisance which would affect biodiversity in the area, the use and enjoyment of the surrounding properties, as well as negatively impact on the value of these properties. These noise impacts are not normally associated with the current property uses in the area and an assessment is required in order to identify the impacts and propose adequate mitigation measures. In response to our comment, the EAP has indicated that noise impacts are to be addressed in the EMP. We submit that the EAPs proposal, to address noise management in the EMP, is unacceptable. Noise impacts associated with the development cannot be appropriately managed though the EMP without an impact assessment being undertaken by an independent specialist who will



provide recommendations as to how to manage the noise impacts. These recommendations are then incorporated into the EMP. For this reason, we reiterate that a noise impact assessment must be undertaken and be made available for comment.

5.2.2.7 **Dust impacts** - In our comments on the DSR, we noted that the report does not identify a dust impact assessment as being necessary. Due to the scale of the development, we anticipate there to be high levels of dust generated by construction and ancillary activities. This would likely cause a nuisance which would affect the use and enjoyment of the surrounding properties as well as negatively impact the value of these properties. In response to our comment, the EAP has indicated that dust impacts are to be addressed in the EMP. We submit that the EAPs proposal to address dust impacts in the EMP is unacceptable. Dust impacts associated with the development cannot be appropriately managed through the EMP without an impact assessment undertaken, particularly in regard to the properties situated in close proximity to the development site. This impact assessment is to be conducted by an independent specialist who would then make recommendations as to how best to manage these impacts. These recommendations are then incorporated into the EMP. For this reason, we reiterate that a dust impact assessment must be undertaken and be made available for comment.

5.2.2.8 **Socio-economic impacts** - In our comments on the DSR, we noted that the report does not identify a socio-economic impact assessment as being necessary. The area is inherently agricultural in nature; the proposed development which consists of high density residential and commercial activities could reduce property values which will have a negative impact on the interests of those who own neighbouring properties. Furthermore, in considering the impacts identified above, the rights of affected parties to the use and enjoyment of their properties will likely be reduced. The proposed development may have a positive effect in respect of employment creation for the local community, mainly during the construction phase, and to a lesser extent during the operational phase, however the



impacts identified above may have a detrimental effect on existing businesses and activities which are undertaken in the area and would likely result in job losses. A socio-economic assessment is required in order to identify the impacts associated with the proposed development (both positive and negative) and propose adequate mitigation measures. Such an assessment would also assist in the desirability determination, as discussed below. In response the EAP has indicated that a socio-economic assessment will be undertaken and will be provided with the FSR. We note that this report was not made available with the FSR.

5.2.3 **Infrastructure requirements:**

5.2.3.1 In our comments on the DSR, we noted that the infrastructure requirements for the proposed development have not been adequately addressed in the report. The report notes that access to the site will be provided via the R380 at the Kathu Village mall, from the Kathu mine road and from the "old road" to the north. The report confirms that all roads will require upgrading; however no indication is provided as to the duration of these upgrades and how these works will impact on the existing traffic flow of the area. In response the EAP has indicated that further information on infrastructure, roads, and traffic will be provided with the EIAR.

5.2.3.2 We further noted that the report indicated that water supply will be provided by the Kathu West and Sesheng South reservoirs, however no confirmation of capacity to supply the volumes of water required has been provided. Considering the nature and size of the development, it is imperative that a reliable water supply be secured for both the construction and operational phases in order to prevent any detrimental impacts on the natural water resources in the area. In response the EAP has indicated that confirmation of water supply will be provided with the EIAR. We submit that no reliance can be placed on the statements provided in the FSR in regard to the provision of these services without



a letter of support from the service provider expressly confirming its ability to provide such services.

5.2.3.3 We noted that the Preliminary Bulk Services and Infrastructure Status Report ("**the BSISQR**"),⁷ states that it should be read in conjunction with previous reports prepared by Aurecon / Worley/Parsons,⁸ however that these previous reports were not provided with the DSR, making it impossible for interested and affected parties to submit informed comments thereon. In response the EAP has indicated that further information will be provided with the EIAR. We note that the Aurecon / Worley/Parsons reports were also not provided with the FSR. It is unclear as to why these reports have not been provided as they should be available, considering that they informed the preparation of the BSISQR.

5.2.3.4 In our comments on the DSR we noted that the Electrical Service Report (Appendix 6) was conducted for the development on Farm *Uikoms* and not this proposed development. The correct report has been provided with the FSR, however this report confirms our earlier concerns that the capacity of the Kathu substation is insufficient and cannot accommodate any further developments. The report proposes that the developer install one new 11 kV ring from Kathu West Intake Substation to the proposed site. We note that no approval or confirmation from Eskom in regard to this upgrade is provided with the FSR.

5.2.3.5 In our previous comments on the DSR we noted that unclear and insufficient information had been provided in regard to the waste water and sewerage treatment at the site. These aspects are of significant concern to our clients, whose use and enjoyment of their properties will be negatively impacted upon as a result of inadequate waste water and sewage management. In response the EAP has indicated that bulk waste water will be accommodated at the Gamagara Municipality Waste Water Treatment Works (WWTW).

⁷ Appendix 5.

⁸ Page 1 of Appendix 5.



We note that this information has not been included in the body of the FSR. Furthermore, no letters from the municipality are provided confirming its capacity to provide "water services", the letter of confirmation provided with the FSR (Appendix 5B) simply confirms that the municipality will provide "bulk services" however does not state what these services are.

5.2.3.6 We further noted that the DSR did not provide sufficient information on the GMRSDf, this is particularly significant with regard to whether the municipality has the proper refuse disposal infrastructure and capacity required to accommodate the development. In our consideration of the GMRSDf we noted that refuse disposal is a growing concern for the municipality as refuse is being transported to Dibeng for dumping, however, it appears that this is not a legally declared dumping site. The municipality intends on entering into discussions regarding an alternative dumping site between Kathu and Dibeng. However the current status of these discussions is unclear. In response the EAP has indicated that service confirmation letters will be provided in the EIAR. The EAP has also indicated that these aspects of the development will be considered during the application for land use change.

5.2.3.7 The failure to ensure that there is adequate infrastructure available presents a significant flaw in the application. Inadequate provision for waste management resulting from the proposed development will also trigger the duty of care obligations under section 28 of NEMA and section 16 of the National Environmental Management Waste Act, 2008 which may result in criminal liability for the applicant. In response to this concern the EAP has indicated that this is "noted". We submit that the failure to address comments is contrary to the NEMA Regulations.



5.3 **Failure to consider the provisions of NEMA:**

5.3.1 In our comments on the DSR, we noted that the EAP had not fully considered the NEMA section 2 principles. In response the EAP has indicated that the impacts and mitigation measures will be addressed in the EIAR. Furthermore, the EAP indicated that the socio-economic aspects of the proposed development have been addressed in the FSR, however we submit that no further information on the socio-economic impacts on the existing activities surrounding the development area, or the benefits of not proceeding with the development have been provided in the FSR.

5.4 **Failure to consider regulation 28 of the NEMA 2010 regulations:**

5.4.1 In our previous comments on the DSR, we noted the failure to properly consider alternatives. We submitted that the identification and assessment of alternatives is inadequate and does not meet the legal standard required under NEMA, read with the relevant guidelines on the identification and assessment of alternatives. The reports provided must be amended by including further information on reasonable and feasible alternatives (that meet the definition of alternatives) which is properly and comparatively assessed against the no-go option (which also requires proper description in terms of the advantages and disadvantages of the no-go option). In response, the EAP has stated that a comprehensive assessment of alternatives will be undertaken as part of the EIAR process.

5.4.2 In our previous comments, we noted that the assessment of *need and desirability* of the proposed activity provided in the report does not meet the requirements of the Department's Guidelines.⁹

⁹Published in government Notice 891 in *Government Gazette* 38108 of 20 October 2014.



- 5.4.3 As detailed in our comments on the DSR, the Guidelines provide that the consideration of need and desirability during the assessment process must consist of a preliminary description of the relevant considerations in relation to the feasible and reasonable alternatives.
- 5.4.4 The consideration of need and desirability in decision-making requires the consideration of the strategic context of the development proposal along with the broader societal needs and the public interest. In light of the flaws in the identification and assessment of alternatives noted herein, the inadequacy of the assessment of need and desirability in the report is a glaring omission in the application process.
- 5.4.5 Simply put, the statutory imperative to assess need and desirability is to determine whether this is the right time and the right place for the proposed activities, and whether the proposed activity is the most sustainable use of the land concerned. We submit that the information presented in the report does not place the decision-maker in a position to make this determination.
- 5.4.6 The Guidelines note that, in order to properly interpret the requirement in terms of the NEMA 2010 regulations to consider "need and desirability", it is necessary to turn to the National Environmental Management Principles of NEMA which serve as a guide for the interpretation, administration and implementation of NEMA and its regulations. We note that the report does not adequately address the NEMA principles and how the proposed development will meet these principles.
- 5.4.7 The EAP has referenced the benefits of the proposed development; however we note that these benefits are limited and the proposed development will likely have a far more significant detrimental impact on the sense of place and current surrounding property uses, which include a thriving tourism industry.



5.4.8 Considering the detrimental and irreparable impacts associated with the proposed development, it is clear that the activities for which authorisation is sought will manifestly not represent the Best Practicable Environmental Option ("**BPEO**"), which is defined in NEMA as *"the option that provides the most benefit or causes the least damage to the environment as a whole, at a cost acceptable to society, in the long term as well as in the short term"*. We submit that the BPEO will be the ceasing of any further development in the area.

5.4.9 We note that the proposed development cannot come into operation before the proposed upgrades mentioned in the BSISQR have been implemented, particularly due to bulk water and sewer infrastructures being an important requirement for the development.¹⁰

5.4.10 It is submitted that the lack of infrastructure represents a significant shortfall in the application, considering that without implementation of suitable infrastructure the proposed development cannot be pursued. In considering the lack of information provided, it is evident that the applicant has not fully considered the need for the development in the Kathu area.

5.4.11 It is noted that the criteria used to determine the desirability of the location is based on the principles of integration by means of infill planning and the optimum utilisation of available land and resources, availability of bulk services, accessibility and proximity of employment opportunities.¹¹

5.4.12 We note that the EAP has not responded to the concerns noted in our comments on the DSR in regard to the assessment of alternatives or desirability determination, save to indicate that the municipality has confirmed that it will fulfil the role of "service provider" (see Appendix 5B). We note that the exact functions to be fulfilled by the municipality as a

¹⁰ Page 9.

¹¹ Page 10.



service provider are not made clear in this letter. Furthermore, we submit that the failure by the EAP to address and respond to each of the concerns noted above does not comply with the provisions of the NEMA Regulations (as discussed above).

5.5 **Impact on the surrounding environment:**

5.5.1 In our comments on the DSR, we noted that the surrounding area has a unique ambience and the biological diversity of the area should be protected for the use and enjoyment of future generations. The proposed development should be viewed in light of the uniqueness of the Northern Cape and in accordance with the objectives of NEMA. The benefits derived from the proposed development should be cautiously balanced against the significant impact of this development on the surrounding environment, which is an important tourist attraction.

5.5.2 We noted that the town, Kathu has become known as the "town under the trees" due to the location of the Kathu Forest, a unique woodland of exceptionally large Camelthorn trees, situated north of the town.¹²

5.5.3 It was further noted that the Kathu Forest was declared as the first Protected Woodland in the country, in terms of Government Notice R727 in *Government Gazette* 32370 of 10 July 2009 ("**the Notice**"), of section 12 (1) (c) of the NFA. This Natural Heritage Site covers an area of approximately 4672 ha. The Kathu Forest has been included in the National Committee for Nature Conservation (NACOR) list as an area of conservation importance in 1978.

5.5.4 According to the Gamagara Municipality Integrated Development Plan, 2013/2014 ("**GMIDP**") the following major environmental challenges are found within Kathu:

¹² Page 24.



- 5.5.4.1 unsustainable utilisation of mankind of the natural environment;
- 5.5.4.2 the current development and expansion of the town of Kathu which include an up-market housing development to the north of the town;
- 5.5.4.3 new and expanding mines;
- 5.5.4.4 the impact of the proposed development on the Kathu forest's ecological integrity and the potential loss of biodiversity;
- 5.5.4.5 groundwater issues are also of major concern, because the lowering of the water table by abstraction could lead to the death of the trees.
- 5.5.5 It is noted that none of these issues raised in the GMIDP have been addressed in the report. We submit that this is a glaring omission in the application and furthermore, does not accord with the principles of NEMA. Furthermore, although the development will not impact directly on the Kathu Forest (as per the FSR) the EAP has confirmed that lowering the water table could result in the death of protected Camelthorn trees, but that no information is provided on this aspect. We submit that it is the EAPs obligation to provide such information in accordance with the NEMA section 2 principles. In terms of the risk averse-cautious approach, the possibility of harm to protected tree species militates against the development.
- 5.5.6 In our comments on the DSR, we noted that the report stated that the proposed development does not fall within, or adjacent to, the declared Kathu Forest, but that it is located within the Kathu Bushveld, which is characterised by a medium-tall tree layer with *Acacia erioloba* in places, but mostly open and including *Boscia albitrunca* as the prominent trees.¹³ We note that the report fails to assess the potential impact that the development

¹³ Page 24.



will have on the unique attributes of this Bushveld (such as the tourism and ecological resources it provides). In response to this, the EAP has indicated that these impacts will be assessed in the Botanical impact assessment to be provided with the EIAR.

- 5.5.7 The report states that the development is located within the urban edge of Kathu, and can therefore also be considered to be infill development. It further notes that infill planning are contemporary principles used to promote integration and to ensure optimum utilisation of available land. The report does not however consider the negative impact the proposed development will have on the interests of those who own properties within close proximity to the property. In our comments on the DSR, we submitted that the report does not adequately consider the impact that the proposed development will have on the surrounding environment as required in terms of section 2 of NEMA. In response, the EAP has stated that this will be assessed as part of the socio-economic impact assessment report.
- 5.5.8 Further to the above, we submit that the report has failed to adequately (if at all) address or identify a number of impacts that will occur as a result of the proposed development. As detailed above, impacts likely to be associated with the proposed development include water impacts; biodiversity impacts; socio-economic impacts; visual impacts; heritage impacts; traffic impacts; impacts on municipal services in the area; and construction phase impacts.
- 5.5.9 Furthermore, we submitted that the construction and operational phase may result in negative impacts as the use of vehicles, construction materials, chemicals and other hazardous substance may contaminate soil and water sources and negatively impact the surrounding properties. The operational phase will see the use of vehicles, the generation of solid waste and other activities which could result in contamination of soil and water sources and the increase in vermin, likely leading to a decline in agricultural production and



the destruction of the ecology in the area. In response, the EAP has simply indicated that this concern is "noted". As stated above, this response is not acceptable.

5.5.10 The construction phase activities will result in the increase in soil erosion and dust which may present a nuisance to interested and affected parties who are in close proximity to the property. As noted above, a dust impact assessment must be undertaken in order to identify the dust impacts and propose adequate mitigation measures. In response, the EAP has indicated that the potential soil erosion and dust impacts will be addressed in the EMP. As stated above, these aspects cannot be properly addressed in an EMP and must be informed by the undertaking of independent impact assessments.

5.5.11 In our comments on the DSR we also noted that during the construction phase, equipment and construction materials such as concrete and other building materials must be handled and stored properly in order to prevent spillages and contamination which will negatively impact soil and water resources. This is an important factor, considering the likelihood of soil and water contamination, bearing in mind the nature and scale of the proposed development.

5.5.12 Furthermore, we submitted that facilities are to be provided for workers during the construction phase for both solid waste and ablution facilities, this may attract vermin if this waste is not collected and disposed of properly. Ablution facilities must be monitored in addition to the behaviour of workers in order to prevent contamination which will negatively affect the soil, any water sources and surrounding properties.

5.5.13 We also noted that the noise, as a result of the use of heavy duty vehicles and construction equipment during the construction phase and the increase in people and activities in the area during operational phase, will likely destroy the current sense of place of the area. As noted above, this may detrimentally impact on the use and enjoyment of the surrounding



properties; the current businesses being undertaken in the area and will also result in the reduction of property values.

5.5.14 Furthermore, we stated that emissions during both the construction and operational phases of the proposed development will be increased which will have an effect on air quality in the area as not only dust will be discharged but also vehicular and commercial emissions will result from the proposed development.

5.5.15 In response to these concerns, the EAP has indicated that these aspects will be addressed in the EMP. As stated above, impact assessments must be undertaken to identify potential impacts and provide recommendations to mitigate and manage the impacts identified. This information *informs* the EMP. We submit that these impacts cannot be managed through an EMP, without the requisite impact assessments being undertaken by independent specialists.

6 **CONCLUSION:**

The report, in its current form, is incomplete as certain material information, relied upon in the report, has not been provided; there has not been compliance with the NEMA requirements; the impacts associated with the proposed development have not been properly assessed; and adequate management and mitigation measures in respect of impacts likely to be associated with the proposed development have not been provided.

7 We thank you for your consideration of our clients' comments.

Yours faithfully

WERKSMANS ATTORNEYS