

**DELIVERED BY EMAIL**

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YOUR REFERENCE: NC/EIA/09/JTG/GAM/KAT1/2014

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 FARM UITKOMS NO. 463, PORTION 1, KURUMAN ROAD, KATHU, NORTHERN CAPE**

**D:E&NC REF: NC/EIA/09/JTG/GAM/KAT1/2014**

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

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**Directors** DG Williams (Chairman) AL Armstrong BA Aronoff DA Arteiro T Bata AR Berman NMN Bhengu L Bick GT Bossr TJ Boswell MC Bröhn 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 Hosiosky 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 le Roux MM Lessing E Levenstein JS Lochner L Louw JS Lubbe BS Mabasa PK Mabaso PM Madaia 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 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.
- 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, together with a background information document, advising of the Public Participation Process being conducted in terms of the National Environmental Management Act, 1998 ("**NEMA**") in relation to the application for environmental authorisation for a proposed housing development on the property.
- 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 dated March 2015 ("**DSR**") prepared in respect of the application for environmental authorisation for a proposed housing development ("**the proposed development**") on the property known as Farm Uitkoms No. 463, Portion 1, Kuruman Road, Kathu, Northern Cape ("**the property**").



- 3.4 Due to the time delay in the documents being made available to us, the EAP 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 ("**the 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 constructing a housing development, internal roads, open spaces and associated infrastructure with an estimate of up to 172 individual property units on the property.<sup>1</sup> The proposed development will further include approximately 163 residential properties, open spaces and infrastructure areas.<sup>2</sup> The applicant also intends developing sectional title residential units that will be placed at random on the property.<sup>3</sup>

#### 4 **PROPERTY DESCRIPTION AND LOCATION**

- 4.1 The report notes that the property is approximately 112 hectares in size and located to the north-east of the town of Kathu, west of the Sishen Golf and Country Club and adjacent to the Kathu Forest.<sup>4</sup>

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<sup>1</sup>Page 7.

<sup>2</sup>Page 18.

<sup>3</sup>Page 7.

<sup>4</sup>Page 7.



- 4.2 It is also noted that the proposed development is bordered by the N14 to the east and Frikkie Meyer Street to the south, and access to the proposed development will be gained from Frikkie Meyer Street.<sup>5</sup>
- 4.3 The report states that the current property zoning is Agriculture Zone 1 and Special Zone (Mining Area) and states that an application for rezoning and subdivision is being considered for the proposed development of a low density residential development.<sup>6</sup> No information has been provided as to the status of this application.
- 4.4 At page 22, Figure 5, the FSR shows that the development property borders the Kathu Forest, with certain portions of the forest falling within the development property.
- 4.5 In terms of Government Notice R727 in *Government Gazette* 32370 of 10 July 2009 ("**the Notice**") the Kathu Forest was declared a Protected Woodland in terms of the National Forest Act, 1998 ("**NFA**"). The Notice records that "*the Kathu Forest is a unique woodland of exceptionally large Camel thorn trees (Acacia erioloba) north of the town of Kathu in the Northern Cape Province. The woodland (Kathu forest) was registered as a National Heritage Site in 1995 under the former Department of Environmental Affairs and Tourism's program*". As previously recorded, the woodland is the only woodland of its kind in South Africa.
- 4.6 In terms of the Notice the Kathu Forest is located on Portion 1 & Remainder of the Farm Uitkoms No. 463. The FSR states that parts of the Kathu Forest are within the proposed development property, however, that these portions have been excluded from the development footprint.<sup>7</sup>
- 4.7 We submit that although the portions of the Kathu Forest will be excluded from the development, we note from the FSR, that the development site will be situated along the

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<sup>5</sup> Page 7.

<sup>6</sup> Page 7.

<sup>7</sup> Page 21.



border of the forest area.<sup>8</sup> For this reason risk of detrimental impacts on the Kathu Forest associated with the construction and operation phases of the development remains relevant. Considering the significance of the forest and the proximity to the development property, we submit that these detrimental impacts cannot be adequately controlled, mitigated and prevented.

- 4.8 As detailed above, the Notice indicates that the Kathu Forest was registered as "National" Heritage Site in 1995; we understand that this was a typographical error and that the Forest was declared a *Natural* Heritage Site. This Natural Heritage Site covers an area of approximately 4672 ha. The Kathu Forest has also been included on the NACOR list as an area of conservation importance in 1978.
- 4.9 It is our understanding that this designation was undertaken in terms of the South African Natural Heritage Programme established in 1985. This Programme is now regulated under the National Environmental Management: Biodiversity Act, 2004 and National Environmental Management: Protected Areas Act, 2003 which provide the enabling structures to support it. The Natural Heritage Site status results in the limitation of activities which may take place on the site.
- 4.10 We maintain that the applicant has not addressed these important aspects in the report. This is a glaring omission in the report and constitutes a significant flaw in the environmental impact assessment process.
- 4.11 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 and surrounding environment, particularly that of the Kathu Forest. Our clients have instructed us to submit comments on the report, which we hereby do.

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<sup>8</sup> Figure 5, Page 22.



## 5 THE GROUNDS OF OBJECTION

5.1 We understand that further information will be provided in the reports to follow. We will however record our client's 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 further and/or more comprehensive comments once further information has been provided.

### 5.2 **The information provided is misleading and unclear:**

The report states that the proposed property may form part of the Kathu Forest. We submit that this statement is misleading and incorrect. As is provided from Figure 5 of the FSR, the Kathu Forest borders the development property, with certain sections of the forest falling within the development site.

### 5.3 **Insufficient information provided:**

5.3.1 Section 9 of the report notes that the following specialist studies are required and will be undertaken during the environmental impact assessment stage of the application process. As detailed in our previous comments, further specialist studies are to be undertaken, including a visual impact assessment; a dust impact assessment; a socio-economic impact assessment; a water assessment; a storm water management assessment; and a noise impact assessment. In response the EAP has indicated that certain of these additional studies are not required, or these impacts will be addressed in the Environmental Management Programme ("**EMP**"). For the reasons set out herein below, we submit that this is not acceptable.

5.3.2 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 as property owners. 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.

5.3.3 In our previous comments, we noted that no specialist reports have been provided with the DSR, in response the EAP has indicated that these assessments will be provided with the EIAR. We submit that, considering the size and nature of the proposed development, the following studies must be undertaken:

5.3.3.1 **Biodiversity impacts** - We noted that the EAP identified the 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 likely to occur as the report indicates that the project area includes the unique protected tree *Acacia erioloba* (Camelthorn trees) and associated fauna and avi-fauna species associated with the Camelthorns on the property. Furthermore, a portion of the protected woodland area, which is subject to limitations prescribed by the NFA, is situated within the development property. The EAP has indicated that the Botanical Assessment report has been completed and will be made available with the EIAR.

5.3.3.2 As previously stated, we submit that a *biodiversity assessment* must be undertaken to also assess the impacts on fauna and avi-fauna. This 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.

5.3.3.3 The FSR states that *mammal and bird species was not regarded as the proposed activity is not expected to have any significant, permanent impact on these species. Most fauna and avi-fauna species of importance will be associated with the Camelthorns on the*



*property*.<sup>9</sup> We submit that the EAP cannot limit the assessment to the impacts on the Camelthorn trees alone without this limitation being supported by an independent assessment. As detailed in our comments on the DSR, any conclusions in respect of the impact on fauna and flora without a comprehensive biodiversity impact assessment being undertaken are unqualified and cannot be relied upon.

5.3.3.4 Considering the location of the proposed development (with portions of the Kathu Forest falling within the development property) the need for a comprehensive biodiversity impact assessment is apparent. From the information currently available, there is no justification for the EAP to limit the assessment to the impact of the fauna and flora associated with the Camelthorn trees. It is common cause that fauna (particularly avi-fauna) have habitats which extend over vast areas. To limit the assessment to the Camelthorn trees is therefore not acceptable.

5.3.3.5 Furthermore, there is concern that impacts associated with the development will negatively affect the forest area. This concern is also shared by the Department of Agriculture, Forestry and Fisheries, Northern Cape ("**DAFF**") which indicated its strong objection to the project in its comments on the DSR. Furthermore, DAFF notes that although the applicant intends to rezone the portions of the forest area to Open Space Conservation Area, the municipality does not have the competence to adjudicate such application in terms of the NFA. In response the EAP has requested DAFF's support to pursue the rezoning of these areas in terms of NEMA. We submit that this is a flaw to the application process which is incomplete by the failure to include the rezoning aspects of the Kathu Forest.

5.3.3.6 In response to our concerns regarding the negative impacts associated with the development, particularly in relation to the impacts on the Kathu Forest, the EAP has

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<sup>9</sup> Page 27.





indicated that additional impact assessment reports requested by us are not required or will be provided for as part of the EIAR process.

5.3.3.7 Reference is again made to an article prepared by T. A. Anderson (annexed to our comments on the DSR), which notes that the uniqueness of the Kathu Forest was confirmed in 1956 when the forest was declared a State Forest. The article notes that the Camelthorn trees provide services which are scarce in the area, including shade and shelter for many animal and bird species, including Red Data and other protected species. The article further states that the forest supports a unique array of bird species. Importantly, the article states that the forest must be actively conserved for scientific, biodiversity, landscape and eco-tourism reasons. It is for this very reason that the forest was declared a protected woodland area, in terms of the NFA. Considering the location of the proposed development (next to the Kathu Forest area) and the need to protect biodiversity corridors (particularly in regard to avifauna, where ecosystems and hunting grounds can span large areas) the need for a comprehensive biodiversity impact assessment is apparent. We make reference to the NEMA section 2 principles which provides for a risk-averse and cautious approach to be applied, which takes into account the limits of current knowledge about the consequences of decisions and actions.<sup>10</sup>

5.3.3.8 For the reasons detailed herein, we submit that comprehensive impact assessments, as requested, are required in order to adequately assess the impacts of the proposed development on the forest area, a portion of which falls directly within the development area. Although the applicant has indicated that these areas will be excluded from the development, the impacts associated with this development may prove detrimental due to the proximity of the forest area to the development site.

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<sup>10</sup> Section 2(4).



5.3.3.9 **Water impacts** – In our comments on the DSR, we noted the municipal SDF indicated that water resources located within the Kathu area are extremely limited and the area has become extremely dependant on underground water resources. 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. 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.

5.3.3.10 **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. Due to the scale of the proposed development, 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. This 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 to our comments, the EAP has indicated that our concerns are "noted", as detailed above, this response does not conform with the requirements of the NEMA Regulations.

5.3.3.11 **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. Reference is made to Annex 1 to our previous comments, which notes that in 1995, the forest was declared a Natural Heritage Site and is therefore afforded additional protection. The article further notes that the Kathu Forest is found on red Aeolian sand which is considered to be a fossil desert. 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.

5.3.3.12 **Visual impacts** – we note that the report does not identify a visual impact assessment as being necessary.<sup>11</sup> We submit that due to the location, rural ambience, size and nature of the proposed development, significant visual impacts will occur as a result of the proposed large scale development. An independent specialist must assess the anticipated visual impacts, particularly those associated with the multi-storey buildings, building materials used, and artificial lighting 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 the applicant intends on managing them. In response to our comments, the EAP has indicated that a visual impact assessment is not necessary as the development will be situated between two existing residential developments. 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.

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<sup>11</sup> Page 26.



- 5.3.3.13 **Noise impacts** – in our comments on the DSR, we noted that the report did not identify a noise impact assessment as being necessary. In response to our comment, the EAP has indicated that noise impacts are to be addressed in the EMP.
- 5.3.3.14 Due to the scale and location of the proposed development we note 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 the use and enjoyment of the surrounding properties and landowners as well as negatively impact of 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. 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.
- 5.3.3.15 **Dust impacts** - in our comments on the DSR we noted that the report did not identify a dust impact assessment as being necessary. Due to the scale of the proposed 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 and landowners as well as negatively impact of the value of these properties and the integrity of the Kathu Forest. 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 though the EMP without an impact assessment undertaken, particularly in regard to the impact of dust on the Kathu Forest which is situated next to and within the development site. This



impact assessment it 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.

5.3.3.16 **Socio-economic impacts** - in our comments on the DSR, we noted that the report did not identify a socio-economic impact assessment as being necessary. We submit that 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, for the operational phase, however the impacts may also have a detrimental effect on existing businesses and tourism activities (as a result of the Kathu Forest) which are undertaken in the area and would likely result in job losses as a result. A socio-economic assessment is required in order to identify the impacts associated with the proposed development and propose adequate mitigation measures. Such an assessment would also assist in the desirability determination, as discussed in detail in our comments on the DSR. In response, the EAP has indicated that a socio-economic impact assessment will be conducted and that this aspect will be addressed in the FSR. We note that no further information on this aspect has been included in the FSR.

#### 5.3.4 **Infrastructure requirements:**

5.3.4.1 We note that the infrastructure requirements for the proposed development have not been adequately addressed in the FSR. The FSR states that due to the level of development that is occurring within Kathu, the availability of bulk services for the development will need to be investigated.

5.3.4.2 In our comments on the DSR, we noted that no confirmation from the relevant authorities as to the availability of capacity to supply the necessary services has been provided, save for a general statement by the municipality in regard to "bulk services"



(see Appendix 5B).<sup>12</sup> Considering the nature and size of the proposed 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 to our comments, the EAP has indicated that letters from the service providers will be provided with the EIAR.

- 5.3.4.3 This statement confirms our contention that the statements in both the DSR and FSR as to the availability of services are unconfirmed, unsupported and cannot be relied upon. Furthermore, the EAP has not amended the sections dealing with infrastructure and services in the main FSR to indicate that the availability of these services are yet to be confirmed;<sup>13</sup> only in the comments and responses table does the EAP indicate that confirmation of service letters will be provided in the EIAR.
- 5.3.4.4 A Preliminary Bulk Services and Infrastructure Status Report ("**the BSISQR**"),<sup>14</sup> was provided with the report; however the BSISQR states that it should be read in conjunction with previous reports prepared by Aurecon / WorleyParsons.<sup>15</sup> We note that these previous reports were not made available with the DSR or the FSR, making it impossible for interested and affected parties to submit informed comments thereon.
- 5.3.4.5 In our previous comments, we noted that the DSR stated that the existing electrical substation in Kathu is able to accommodate the proposed development.<sup>16</sup> We pointed out that this statement conflicted with the recommendations made in this specialist Electrical Service Report,<sup>17</sup> which specifically states that the existing capacity on the current 11Kv cable is insufficient to accommodate additional development and

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<sup>12</sup> 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.

<sup>13</sup> Section 6.

<sup>14</sup> Appendix 5.

<sup>15</sup> Page 1 of Appendix 5.

<sup>16</sup> Page 24.

<sup>17</sup> Appendix 6.



recommends that the applicant make further upgrades to this infrastructure. The FSR has been corrected in this regard and states that the proposed development can be accommodated on the existing Main Sub. However, a new 11kV will need to be installed from the Main Sub to the development.<sup>18</sup> We note that no approval or confirmation from Eskom in regard to this upgrade is provided.

5.3.4.6 It is unclear whether the proposed Postmasburg Waste Water Treatment Works and sewer line forms part of the current application process. We submit that the lack of information regarding this activity presents a flaw in the report. Waste water and sewerage treatment 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 our previous comments on the DSR, we noted that the lack of information presents a significant flaw in the report and must be amended and recirculated for comment. We note that the EAP has not addressed this comment in the FSR, as noted above; the failure to address this comment is contrary to the NEMA Regulations.

#### 5.4 **Failure to adequately address the land use planning requirements:**

5.4.1 The report makes mention of one Erf being utilized in the form of sectional title blocks which will be placed at random on the property to accommodate the existing Camelthorn trees. This is known as Residential Zone II which will consist of a *group of separate and/or connected individual residential units*. We note that the report contains contradictory information regarding the number of property units which are to be developed and does not provide sufficient detail regarding the designated uses for each of these units. In our comments on the DSR we stated that the report should be supplemented to reflect the exact amount of residential units which the applicant intends to develop and once

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<sup>18</sup> Page 26.



supplemented that the report must be re-circulated for comment. We note that this comment was not addressed in the FSR. As noted above, the failure to adequately address our concerns does not comply with the NEMA Regulations.

- 5.4.2 We note that the report does not provide sufficient information on the Gamagara Municipality Reviewed Spatial Development Framework, 2010 ("**GMRSDF**") requirements. This is particularly significant with regard to whether the municipality has the proper refuse disposal infrastructure and capacity required to accommodate the proposed development.
- 5.4.3 In our comments on the DSR, 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. This comment was not addressed in the FSR. As noted above, the failure to adequately address our concerns does not comply with the NEMA Regulations.
- 5.4.4 In our comments on the DSR, we noted that 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 simply regarded the comment as "Noted". As noted above, this does not constitute an adequate response in terms of the NEMA regulations.





## 5.5 Failure to consider the provisions of NEMA:

- 5.5.1 In our comments on the DSR, we noted the failure by the applicant to consider the NEMA section 2 provisions.
- 5.5.2 In response to the failure to comprehensively address the provisions of sections 2(2), 2(4)(a)(vii), 2(4)(a)(viii) of NEMA, the EAP has indicated that this information will be provided during the EIAR process.
- 5.5.3 As it stands, interested and affected parties are not provided with sufficient information on the proposed measures to be employed to mitigate and manage negative impacts which may occur, this this does not accord with the NEMA requirements.
- 5.5.4 Subsection 2(4)(a)(vii) sets out that a risk averse and cautious approach should be followed, we note that to simply exclude the Kathu Forest areas from the development (as the applicant intends) and not undertake an impact assessment of the potential implications of the development on this forest area does not accord with this principle.
- 5.5.5 Subsection 2(4)(i) requires social, economic and environmental impacts of activities, including disadvantages and benefits to be weighed up. The reports broadly state that the direct and indirect socio-economic benefit of not constructing the residential development will not be realised if the proposed development does not materialise. This aspect was raised in our comments on the DSR and in response the EAP has stated that this section has been amended, however 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. The report should include a socio-economic impact assessment report which identifies the advantages and disadvantages of the proposed development (including the impact on existing businesses) and proposes adequate mitigation and management measures.



5.5.6 Furthermore, subsection 2(4)(r) of NEMA makes provision for sensitive, vulnerable, highly dynamic or stressed ecosystems which require specific attention in respect of management and planning procedures where they are subject to human usage and development. In our comments on the DSR, we noted that it did not include the identification of any negative impacts that may occur and simply states that the measures will be assessed in the specialist reports to be undertaken as part of EIAR. Furthermore, the DSR did not indicate whether the applicant intends to enter into an off-set or conservation management agreement with the authorities for the conservation and management of the protected Kathu Forest and adjoining areas.<sup>19</sup> In response to this, the EAP has indicated that at this stage no off-set is proposed. In light of the importance of the Kathu Forest area, that it is the only such forest in South Africa, and considering its proximity to the development property, we submit that such an offset arrangement must be considered.

5.6 **Failure to consider regulation 28 of the EIA 2010 regulations:**

5.6.1 In our previous comments on the DSR, we noted the failure by the applicant 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.

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<sup>19</sup> Published under Government Notice R727 in *Government Gazette* 32370 of 10 July 2009.



- 5.6.2 We further noted that the assessment of the *need and desirability* of proposed development as contained in the DSR did not meet the requirements of the Department's guidelines for the assessment of need and desirability in environmental impact assessment.<sup>20</sup> In response to this concern, the EAP has indicated that this will be assessed during the EIAR process.
- 5.6.3 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.
- 5.6.4 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.
- 5.6.5 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 and agricultural industry.
- 5.6.6 In considering the desirability of the proposed development the report notes that the site is located in close proximity to the N14. As discussed above the Kathu Forest is located near the proposed development and the N14 passing through the Kathu Forest has been identified as a scenic route.<sup>21</sup> We therefore submit that the report does not fully consider the desirability of the proposed development as the location of the proposed development

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<sup>20</sup>Published in government Notice 891 in *Government Gazette* 38108 of 20 October 2014.

<sup>21</sup> Page 15 of the Heritage Impact Assessment for a proposed 132 kV power line, Kuruman Magisterial District, Northern Cape dated February 2015.



does not accord with the current sense of place. Reference is made to Annex 1 (to our comments on the DSR), which states that due to the protected woodland status of the forest area, only low-impact, ecotourism facilities and low density residential estates may take place in the forest and forest buffer areas.

- 5.6.7 Furthermore in our previous comments, reference was made to Annex 1 which stated that ground water resources in the area have been detrimentally affected by mining activities, as such; the proposed development will likely put further strain on these limited resources and is therefore clearly undesirable. Annex 1 indicates that should any further reduction in groundwater occur, this may very well result in the death of the Kathu Forest, which is dependent on the underground aquifers in the area. In response the EAP as indicated that this statement is "speculative". As noted above, no water assessments have been provided by the applicant to contradict this information. As such, to note that this information is "speculative" is not accepted.

## 5.7 **Impact on the surrounding environment:**

- 5.7.1 The area has a unique ambience and the biological diversity of the area should be protected for the 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.
- 5.7.2 It is 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.<sup>22</sup> It is further noted that the Kathu Forest, which enjoys

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<sup>22</sup>Page 21.



Natural Heritage status was declared as the first Protected Woodland in the country in terms of section 12 (1) (c) of the NFA.

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

5.7.3.1 unsustainable utilisation of mankind of the natural environment;

5.7.3.2 the current development and expansion of the town of Kathu which include an up-market housing development to the north of the town;

5.7.3.3 new and expanding mines;

5.7.3.4 the impact of the proposed development on the Kathu forest's ecological integrity and the potential loss of biodiversity;

5.7.3.5 groundwater issues are also of major concern, because the lowering of the water table by abstraction could lead to the death of the trees.

5.7.4 In response to these statements, the EAP has indicated that the Kathu Forest is situated well away from the development. We submit that this statement is not correct, as indicated in the FSR,<sup>23</sup> portions of the forest are present on the development property with the forest bordering the development property.

5.7.5 Furthermore, 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

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<sup>23</sup> Page 22.



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.

5.7.6 In response to our comment on the GMRSDf which states that water resources located within the Kathu area are extremely limited and the area has become extremely dependant on underground water resources.<sup>24</sup> The EAP has indicated that a water impact assessment is not necessary. We submit that this conclusion cannot be supported. From the GMRSDf and the potential of negative impacts on the water table (and possible death of camelthorn trees), we submit that a water impact assessment is necessary. In response the EAP states that a Geo-technical assessment will be undertaken and made available with the EIAR. We note that the FSR does not identify a Geo-technical assessment as one of the assessments to be undertaken.

5.7.7 The EAP states that the impact on mammal and bird species were not regarded as the proposed development is not expected to have any significant permanent impact on these species except those species associated with the Camelthorn trees.<sup>25</sup> In our comments on the DSR we noted that no fauna or flora impact assessment had been undertaken. In response the EAP has stated that this comment is incorrect as a flora assessment had been undertaken and will be made available with the EIAR. We submit that at during the DSR and FSR commenting periods, no such report was made available for consideration; as such the comments made are in fact correct. Furthermore, as detailed above, due to the location of the development a comprehensive biodiversity impact assessment must be done.

5.7.8 In our previous comments, we noted that the DSR makes reference to the socio-economic context of the area and states that the unemployment rate is 17.7% for the Gamagara Municipality; however did not address the negative socio-economic impact of the

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<sup>24</sup>Page 11 of the GMRSDf.

<sup>25</sup>Page 25.



construction and operational phase on the greater surrounding areas, particularly in regard to the forest and surrounding tourism activities. We noted the likelihood that the construction phase will result in temporary employment and the operational phase will also provide limited employment opportunities, however there may also be significant detrimental impacts on employment for the existing businesses in the area as a result of the undesirable negative impacts associated with the proposed development. In response, the EAP has indicated that further information on the socio-economic impacts is provide in the FSR. We note that no additional information has been provided with the FSR in regard to the potential socio-economic impacts on the existing activities as a result of the development.

5.7.9 In our comments on the DSR, we noted that the construction and operational phase may result in negative impacts as the use of vehicles, construction materials and chemicals and other hazardous substances may contaminate soil and water sources and negatively impact on various fauna and flora on the property (including the horses housed at the equestrian club) as well as the surrounding properties. The operational phase will see the use of vehicles and 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 in agricultural production and the degradation of the protected Kathu Forest. In response, the EAP has simply indicated that this concern is "noted". As stated above, this response is not acceptable.

5.7.10 In our comments on the DSR, we noted that the proposed development will be situated on the same property as the existing Kathu Equestrian Club. We noted that the report does not address the negative impacts that the proposed development will have on the horses in the area during both the construction and operational phases of the proposed development. We also stated 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 contaminations which will negatively



affect the soil and water sources and surrounding interested and affected parties. This is an important factor, considering the likelihood of soil and water contamination and the likely degradation of the Kathu Forest area.

- 5.7.11 Furthermore, we noted that solid waste and ablution facilities provided for workers during the construction phase may attract vermin if this waste is not collected and disposed of properly. As noted that 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.
- 5.7.12 In regard to noise impacts, we 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 in the area during operational phase will likely destroy the current ambience of the rural area. This may detrimentally impact on the use and enjoyment of the surrounding properties, the current businesses and activities being undertaken in the area (such as the Kathu Equestrian Club) and will also result in the reduction of property values. Noise impacts will also impact on fauna and avi-fauna in the area.
- 5.7.13 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 vehicular, household and commercial emissions will result from the proposed development.
- 5.7.14 In response, the EAP has simply indicated that these concerns are "noted" and will be addressed in the EMP. As stated above, an impact assessment 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 impacts cannot be managed through an EMP, without the requisite impact assessments being undertaken by





- independent specialists. As such the proposal to address these impacts in an EMP is unacceptable.
- 5.7.15 In our comments on the DSR, we stated that the area is inherently agricultural in nature, the proposed development, which consists of high density residential activities in such an area would impact on the sense of place and likely reduce property values. With the impacts associated therewith, also likely resulting in the diminished use and enjoyment of neighbouring properties by surrounding residents and owners.
- 5.7.16 In response, the EAP has indicated that it does not agree that the area is inherently agricultural nature as the site is bounded by a residential estate and commerce. However, the EAP confirms that the area may have a rural character due to the very low density of the residential development in the area. Furthermore, the EAP confirms that the property does have a rural character due to the equestrian facilities being located on-site. The EAP has indicated that the proposed development does not imply high density, with relatively large stands being proposed with the primary right of only one loose-standing house being allowed on each (save for the group housing site). The residential properties will also not be directly adjacent to the adjacent low density residential estate, but will be adjacent to the high density enclosed group housing complex to the east. The EAP attests that the proposed layout will not negatively impact on the character of the Kalahari Golf & Jag Landgoed, nor should it impact on the enjoyment and use of the surrounding properties. We note that this detail was not provided in the body of the DSR and FSR, however maintain that to increase the number of residential units, particularly in regard to the proposed group housing, in the area will result in the incremental erosion of the rural sense of place of the area.



6 **CONCLUSION:**

For the reasons motivated above we submit that the report, in its current form, is incomplete as certain material information, relied upon in the report, has not been provided; 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

A handwritten signature in black ink, appearing to be a stylized 'W' or similar initials, written over the typed name 'WERKSMANS ATTORNEYS'.

**WERKSMANS ATTORNEYS**