



agriculture, forestry & fisheries

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ATTENTION: Mr. Moses Ramakulukusha (mramakulukusha@yahoo.com)
cc Mr. Clinton Geyser (Clinton@enviroafrica.co.za)

RE: COMMENTS ON DRAFT SCOPING REPORT FOR THE PROPOSED HOUSING DEVELOPMENT ON PORTION 1 OF THE FARM UITKOMS 463, KATHU (DENC REF: NC/EIA/09/JTG/GAM/KAT1/2014)

1. DEPARTMENTAL MANDATE

1.1 The Branch: Forestry and Natural Resource Management in the **Department of Agriculture, Forestry and Fisheries (DAFF)** is responsible for implementation of the **National Forests Act, Act 84 of 1998 (NFA)** and the **National Veld and Forest Fires Act, Act 101 of 1998** as amended. With the development of the activity, the developer must comply with the **NFA and NVFFA** as amended and take note of the following:

- 1.1.1 Section 12(1)(d): "The Minister may declare-
- A particular tree,
 - A particular group of trees,
 - A particular woodland; or
 - Trees belonging to a particular species, to be a protected tree, group of trees, woodland or species."
- 1.1.2 Section 15(1): "No person may-
- Cut, disturb, damage or destroy any protected tree; or
 - Possess, collect, remove, transport, export, purchase, sell, donate or in any other manner acquire or dispose of any protected tree, or any forest product derived from a protected tree, except-
 - under a license granted by the Minister; or
 - in terms of an exemption from the provision of this subsection published by the Minister in the Gazette on the advice of the Council."

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- 1.1.3 Section 62(2)(c): “Any person who contravenes the prohibition on-
- (i) The cutting, disturbance, damage or destruction of temporarily protected trees or groups of trees referred to in section 14(2) or protected trees referred to in section 15(1)(a); or
 - (ii) The possession, collection, removal, transport, export, purchase or sale of temporarily protected trees or groups of trees referred to in section 14(2) or protected trees referred to in section 15(1)(b), or any forest product derived from a temporarily protected tree, group of trees or protected tree, is guilty of a first category offence.
- 1.1.4 Section 58 (1): “Any person who is guilty of a first category offence referred to in sections 62 and 63 may be sentenced to a fine or imprisonment for a period of up to three years, or to both a fine and such imprisonment.”
- 1.1.5 The **Kathu Forest** is nationally **protected woodland in terms of Section 12 of the NFA**. Portion 1 of the farm Uitkoms forms part of the demarcated Kathu Forest and a tiny section of the proposed development is falling in **Class 1 Woodland**, which is regarded as the **primary conservation zone and a no-go area for development**.
- 1.1.6 The DAFF may refuse to issue license(s) for removal of trees in the Kathu Forest irrespective of the zoning and/or any other approvals. Sishen Mine is to the best of our knowledge committed to the protection of the Kathu Forest and it is unacceptable that even a small portion of it be sacrificed for urban expansion. **The site plan must be adjusted to exclude Kathu Forest.**

2. COMMENTS ON DRAFT SCOPING REPORT

- 2.1 The Draft Scoping Report (DSR) confirmed on page 14 that the proposed development may form part of the Kathu Forest. Page 20; figure 5 again confirmed the overlap with the demarcated Kathu Forest. The DAFF strongly objects to this. **Kathu Forest should be excluded from development.**
- 2.2 Page 15 refers to the alternatives and indicated that 450 (alternative 1) to 440 (alternative 2) erven will be developed on site and that Alternative 2 has taken sensitive archaeological area to the south-west of the site and the protected Kathu Forest and some thick stand of Camel thorn trees into account. The report stated that both alternatives are viable options, but not preferred, because it covers too much of the natural vegetation in the area. Alternative 3 (preferred alternative) is said to take into account the protected Kathu Forest (but it still overlaps with Kathu Forest) by including more land into the Open Space Zone II units, where Open Space zoning will account for 78% of the property, resulting in development of 172 erven over an area of 112 ha. It is not clear what activities would be allowed in the Open Space zoning. **Please note the local municipality cannot rezone any part of the Kathu Forest, because they have no mandate in terms of the National Forests Act, Act 84 of 1998 (NFA). If there is such a need, they will have to consult with the Minister of the DAFF, or exclude the Kathu Forest area from the proposed development.**
- 2.3 Kathu Forest **Class 1 Woodland is the primary conservation area and regarded as a no-go for development.** Page 18, figure 3, the image of the site with co-ordinate locations 3, 4 and 5 is overlapping with Class 1 Woodland of the Kathu Forest. The eastern boundary of the site, the line between co-ordinates 2 and 3, also intrudes in Kathu Forest, as well as the northern boundary, the line between co-ordinates 1 and 2. All of these will have to be adjusted to avoid the Kathu Forest.
- 2.4 The area with co-ordinate locations 3, 4 and 5 as referred to above, is earmarked for Open Space I, II or III. It is not clear what is meant by Open Space I, II and III. Table 1 on page 16 describe Open Zones I, II and III as ‘Park, Recreation and Conservation’. Again, it is not clear what type of park, recreation and conservation activities are anticipated in the Open Space Zones and whether

'conservation' refers to formal conservation in the form of a Nature Reserve or a Protected Area declared in terms of the relevant legislation such as the National Environmental Management Protected Areas Act (NEMPA) or National Environmental Management Biodiversity Act (NEMBA). It is crucial to note that in the Kathu Forest, all vegetation are protected, not just the protected tree species *per se*. Kathu Forest should be left intact in its natural undisturbed state as far as possible, with no artificial watering (i.e. for parks or lawns), roads, buildings, etc. Existing land-use (agriculture) may continue.

- 2.5 Page 17 refers to the no-go alternative and stated that "no Agricultural activities are taking place on this site although it is zone as Agricultural Zone 1." Kindly note that re-zoning of agricultural land is subjected to the Sub-division of Agricultural Land Act 70 of 1970 and agricultural land cannot be changed to another land use without the supported recommendation under the Act. A local authority cannot change the zoning of demarcated agricultural land to any other zoning without a letter from the Registrar of this Act. The DAFF is responsible for the Sub-division of Agricultural Land Act 70 of 1970. The Branch: Forestry in the DAFF may object to the re-zoning if it will negatively impact on the protected Kathu Forest. Our interpretation of the Kathu Forest declaration is that **existing land-use activities (at the time of the publication) may continue, but re-zoning to residential cannot be tolerated in Kathu Forest.**
- 2.6 Page 17 stated in Open Space Zone III (Conservation) areas, no structure shall be erected or use practised else than those included in the definition of a "conservation area" or as specifically approved by Council. Kindly note that the Kathu Forest is nationally protected woodland and the Council does not have any delegated authority in exercising powers and duties in terms of the NFA.
- 2.7 Page 19 refers to the fact that Kathu Forest is a Protected Woodland and stated that "the proposed property is adjacent to the declared Kathu Forest..." As already pointed out, the DAFF is of the opinion that the development site infringes into Kathu Forest in the north and east, as well as the area between numbers 3, 4 and 5 in the map supplied as figure 3 on page 18 of the DSR. In fact, co-ordinate numbers 1 to 5 are all located inside the demarcated Kathu Forest. We used co-ordinates 1 to 5 supplied on page 18 of the DSR (green dots below) and overlaid it on the Kathu Forest map. The red line is the Kathu Forest boundary and the black line corresponds with development area:

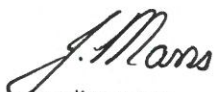


Fig. 1 The red line depicts the Kathu Forest Boundary. Co-ordinate points 1, 2, 3, 4 and 5 as per DSR are the green dots above and all are located inside Kathu Forest. The Eastern boundary of the development site (black line) also infringes into Kathu Forest.

- 2.8 Please adjust the boundaries of the proposed development site, by excluding the areas intruding into the demarcated Kathu Forest, to ensure that it is excluded from development.
- 2.9 The layout maps provided in the DSR as Appendix 2 (2A; 2B and 2C) cut-off the northern section of the proposed development. Thus is it not clear what, if anything but Open Zone, is planned for the northern section of the development site. May you please provide further details in terms of the layout plans for the remainder of the development site?

Thank you very much for allowing this Department to comment and for the additional time to do so.

Kind Regards,



Jacoline Mans
Chief Forester: NFA Regulation

- cc Ms. Marubini (MashuduMa@daff.gov.za);
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