

INITIAL COMMENTS RECEIVED - KATHU HOUSING DEVELOPMENT - FARM UITKOMS (FEBRUARY 2014 - MARCH 2014)					
Date	Issue	Comment	I&AP	Response	Respondent
12-Feb-14	General	Graag wil ek julle net daaraan herinner om DAFF (Bosbou) te registreer as 'n 'commenting authority' vir die residensiële ontwikkeling wat beplan word in Kathu (NC/EIA/09/JTG/GAM/KAT1/2014). Doen asseblief byvoorbait 'n 'overlay' op die Kathu bos dat ons net seker is dit raak nie een van die Boomveld Klasse en buffersone nie.	Jacoline Mans - Department of Agriculture, Forestry and Fisheries	Noted. You have been registered as an Interested and Affected Party. Please refer to Figure 6 and Section 5.2 of the Draft Scoping Report	EnviroAfrica CC
05-Mar-14		We hereby register Werkmans Attorneys on behalf of Kalahari Golf en Jag (Pty) Ltd and Khumani Housing Development Company (Pty) Ltd. Our clients are owners of various properties situated within close proximity to the property on which the proposed project is to take place and therefore have a direct interest in the application for Environmental Authorisation	Justin Truter (Werksmans Attorneys) on behalf of Kalahari Golf en Jag (Pty) Ltd and Khumani Housing Development Company (Pty) Ltd and Kalahari Golf en Jag Homeowners Association	Noted. You have been registered as an Interested and Affected Party, and as such, will be notified of the availability, and be sent a copy, of the Draft Scoping Report and all subsequent reports.	EnviroAfrica CC
06-Mar-14		In regard to the submission of comments on the proposed project, it is submitted that your notice dated 07 February 2014 does not contain sufficient detail in order for us to submit informed comments on the proposed project.	"	Noted. The letters dated 07 February 2014 are intended to inform potential Interested and Affected Parties (I&APs) of the NEMA Application and the opportunity to register as I&APs. More details on the project will be available in the Scoping Report, and the Environmental Impact Reports.	EnviroAfrica CC
11-Mar-14		Please would you register me as an interested party in the above mentioned EIA process. We will not be making any comments for or against the proposed developments, however, we wish to be informed of the process as it progresses and the EA outcome.	Lana Ignjatović - Leads 2 Business	Noted. You have been registered as an Interested and Affected Party, and as such, will be notified of the availability, and be sent a copy, of the Draft Scoping Report and all subsequent reports.	EnviroAfrica CC



agriculture, forestry & fisheries

Department:
Agriculture, Forestry and Fisheries
REPUBLIC OF SOUTH AFRICA

Directorate: Forestry Management (Other Regions)
P.O. Box 2782, Upington, 8800, Tel 054 338 5909, Fax 054 334 0030

Enquiries: J Mans
E-mail: JacolineMa@daff.gov.za
Date: 20 May 2015
Ref: F13/11/2/310

Department of Environment and Conservation
P.O. Box 2249
KURUMAN
8460

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) A particular tree,
- (b) A particular group of trees,
- (c) A particular woodland; or
- (d) 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-

- (a) Cut, disturb, damage or destroy any protected tree; or
- (b) 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-
 - (i) under a license granted by the Minister; or
 - (ii) in terms of an exemption from the provision of this subsection published by the Minister in the Gazette on the advice of the Council."

- 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) even 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 re-zone 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?

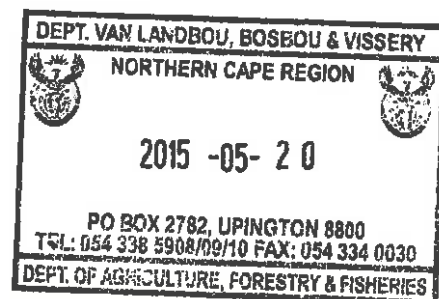
Thank you very much for allowing this Department to comment and for the additional time to do so.

Kind Regards,



Jacoline Mans
Chief Forester: NFA Regulation

cc Ms. Marubini (MashuduMa@daff.gov.za);
cc Ms. Buthelezi (ThokoB@daff.gov.za)
cc Ms. Buys (HettieB@daff.gov.za)
cc Ms. Elsabe Swart (Elsabe.dtec@gmail.com)





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Department:
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NORTHERN CAPE PROVINCE
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Enquiries :
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Navras :
Imbuzo :

Date :
Letifa : 13 May 2015
Datum :
Umhla :

Reference :
Tshupelo : NC/EIA/D9/JTG/GAM/KAT1/2014
Verwysing :
Isibathiso :

EnviroAfrica
B de Wit
P.O.Box 5367
Helderberg
7135

Dear Mr B de Wit

RE : APPLICATION FOR ENVIRONMENTAL AUTHORIZATION : PROPOSED HOUSING DEVELOPMENT ON PORTION 1 OF FARM UITKOMS NO.463, KURUMAN RD, KATHU, GAMAGARA LOCAL MUNICIPALITY, JOHN TAOLO GAETSEWE DISTRICT MUNICIPALITY, NORTHERN CAPE PROVINCE .

The Department of Environment and Nature Conservation has considered the Draft Scoping Report which was submitted by you in respect of the abovementioned application and received by the Department on the 17th of March 2015. The Department requires the following information to allow for an informed decision.

- The nature and quantity of raw materials needed during the construction phase. Their source, transportation to site, storage on site and pollution potential must be described.
- The amount of energy needed during both the construction and the operational phases. A description of the source and the availability must be given.
- The volume of water needed during both the construction and operational phases of the proposed development.
- Baseline information pertaining to the geological setting of the area.
- Photographs of the site must be dated and the direction from where the photographs were taken must be given.

- In addition to the National Forest Act, Act 84 of 1998, the Northern Cape Conservation Act, Act 09 of 2009 must also be considered.
- Clarify on the applicability of the listed activities R544:18 and 22, R546:13, 14 and 16 to the project.
- The national Department of Environmental Affairs is the Competent Authority for all the energy related listed activities.
- Socio-economic impact assessment must be included as a specialist study.
- A geotechnical assessment must be included as part of the specialist. The assessment will provide information related to the soil types, soil potential, soil stability, subsoil structure, suitability of the area to support the proposed structures and recommendation for foundations.

Please contact the undersigned should you require additional information and clarification regarding the above.

Kind regards,



Ramakulukusha Moses
Environmental Officer: Impact Management
Date: 13-05-2015

DELIVERED BY FAX & EMAIL

ENVIROAFRICA

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

OUR REFERENCE: Mr Justin Truter/sn/CW/

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8 May 2015

Dear Sir

COMMENTS ON THE DRAFT 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/10/JTG/GAM/KAT1/2014

- 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 We are instructed to comment on the Draft Environmental Scoping Report dated March 2015 ("the report") in respect of a proposed housing development ("the proposed**

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Directors DG Williams (Chairman) AL Armstrong BA Aronoff DA Artelrot Bata AR Berman MNM Bhengu L Bick GT Bossr TJ Boswell MC Brönn W Brown PF Burger PG Cleland JG Cloete PJ 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 le Roux MM Lessing E Levenstein JS Lochner L Louw JS Lubbe BS Mabasa PK Mabaso PM Madala MPC Manaka PJG Mason H Masondo C Moraltis KO Motshwane TA Mthiyane J Nickig JJ Niemand GA Nott BPF Olivier WE Oosthuizen M Pansegrouw CP Pauw AV Pillay T Potler BC Price AA Pyzikowski RJ Raath L Rood BR Roothman W Rosenberg NL Scott LK Silberman JA Smit JS Smk 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



development") on the property known as Farm Uitkoms No. 463, Portion 1, Kuruman Road, Kathu, Northern Cape ("the property").

3 THE PARTIES:

- 3.1 The application was prepared and submitted by EnviroAfrica CC ("**the EAP**") on behalf of Sishen Iron Ore Company (Pty) Ltd, the applicant.
- 3.2 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.
- 3.3 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.

4 BACKGROUND:

- 4.1 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 development.
- 4.2 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.
- 4.3 On 10 March 2015 our firm received notification of the availability of the report prepared in respect of the application for environmental authorisation for the proposed development.



Due to the time delay in the documents being made available to us, the EAP has agreed that these comments may be submitted by 8 May 2015.

4.4 The report indicates that on 28 January 2014 an application for environmental authorisation was lodged with the Department of Environment and Nature Conservation, Northern Cape ("D:EN:NC"), the application was formally accepted on 29 January 2014.¹ We note that although the report refers to this application form as an Appendix, it has not been provided with the report.

4.5 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.² The proposed development will further include approximately 163 interlinked rooms in a single building for accommodation purposes.³ The applicant also intends developing sectional title residential units that will be placed at random on the property.⁴

5 PROPERTY DESCRIPTION AND LOCATION

5.1 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.⁵

¹Page 12 and Appendix 1 of the report.

²Page 7.

³Page 17.

⁴Page 17.

⁵Page 7.



- 5.2 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 via Frikkie Meyer Street. ⁶
- 5.3 The report states that the current property zoning of the property is Agriculture, with the property being classified for sports and recreation activities (the Kathu Equestrian Club present on the property). The report notes that an application for rezoning and subdivision is being considered for the proposed development of a low density residential development.⁷ No information has been provided as to the status of this application.
- 5.4 As stated above, the report notes that the proposed development is located adjacent to the Kathu Forest. 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*". It is also noted that the woodland, of about 4 000 ha, is one of only two such woodlands in the world, making it the only woodlands of its kind in South Africa.
- 5.5 In terms of the Notice the Kathu Forest is located on Portion 1 & Remainder of the Farm Uitkoms No. 463. We note that the Kathu Forest is located on the property which the applicant intends developing and not adjacent to the property.
- 5.6 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

⁶ Page 7.

⁷ Page 7.



was declared a Natural Heritage Site. It is our understanding that this designation was undertaken in terms of the South African Natural Heritage Programme established by the Department of Environmental Affairs 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 covers an area of approximately 4672 ha. The Kathu Forest has also been included in the National Committee for Nature Conservation (NACOR) list as an area of conservation importance in 1978.

5.7 The Natural Heritage Site status results in the limitation of activities which may take place thereon.

5.8 We submit that these important aspects have not been sufficiently addressed in the report. This is a glaring omission in the report and constitutes a significant flaw in the environmental impact assessment process.

5.9 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. Our clients have instructed us to submit comments on the report, which we hereby do.

6 LEGAL FRAMEWORK:

6.1 National Environmental Management Act, 1998

6.1.1 NEMA is the overarching framework environmental management Act regulating environmental activities in South Africa. The framework created under NEMA ensures the legislative concretisation of the environmental rights guaranteed in section 24 of the Constitution of the Republic of South Africa. In its nature as a framework Act, it embraces



various fields of environmental concern namely, resource conservation and exploitation, pollution control and waste management, and land use planning and development.

6.1.2 The NEMA principles set out in section 2 apply throughout the Republic to the actions of all organs of state that may significantly affect the environment. Important for the purposes of these comments, section 2(3) provides that development must be socially, environmentally and economically sustainable.

6.1.3 Section 2(4)(a) provides that sustainable development requires the consideration of all relevant factors including the following:

- That the disturbance of ecosystems and loss of biological diversity area be avoided, or, where they cannot be altogether avoided, are minimised and remedied;
- That pollution and degradation of the environment are avoided, or, where they cannot be altogether avoided, are minimised and remedied;
- That a risk averse and cautious approach is applied, which takes into account the limits of current knowledge about the consequences of decisions and actions; and
- That the negative impacts on the environment and on peoples environmental rights be anticipated and prevented, and where they cannot be altogether prevented, are minimised and remedied.

6.1.4 Section 2(4)(b) provides that environmental management must be integrated, acknowledging that all elements of the environment are linked and interrelated, and it must take into account the effects of decisions on all aspects of the environment and all people in the environment by pursuing the selection of the Best Practicable Environmental Option ("BPEO").



- 6.1.5 Section 2(4)(l) provides that the social economic and environmental impacts of activities, including disadvantages and benefits, must be considered, assessed and evaluated, and decisions must be appropriate in the light of such consideration and assessment.
- 6.1.6 Section 2(4)(r) provides that sensitive, vulnerable, highly dynamic or stressed ecosystems such as coastal shores, estuaries, wetlands and similar systems requires specific attention in management and planning procedures, especially where they are subject to significant human resource usage and development pressure.
- 6.1.7 The NEMA 2010 regulations⁸ were repealed and replaced by the NEMA 2014 regulations⁹ on 4 December 2014, however regulation 53 of the NEMA 2014 regulations states that an application submitted in terms of the previous NEMA regulations and which is pending when the new regulations came into effect must, despite the repeal of those Regulations, be dispensed with in terms of those previous NEMA regulations as if those previous NEMA regulations were not repealed. In this regard, the application for the proposed development must be dispensed with in terms of the NEMA 2010 regulations.
- 6.1.8 Regulation 1 of the NEMA 2010 regulations defines "*environmental impact assessment*" as *a systematic process of identifying, assessing and reporting environmental impacts associated with an activity.*
- 6.1.9 Regulation 2 provides that the purpose of these Regulations is to regulate the procedure and criteria relating to the submission, processing and consideration of, and decision on, applications for environmental authorisations for the commencement of activities in order to avoid detrimental impacts on the environment, or where it cannot be avoided, ensure

⁸ GNR 543 of June 2010.

⁹ GNR 982 of December 2014.



mitigation and management of impacts to acceptable levels, and to optimise positive environmental impacts.

6.1.10 From the above, it is clear that the environmental impact assessment process is a process of information gathering in order to identify and assess the possible impacts of the intended activity in order for the decision-maker to make an informed decision whether to grant an environmental authorisation or not.

6.2 The National Heritage Resources Act, 1999 ("NHRA")

6.2.1 The NHRA regulates heritage resource management in South Africa and further promotes the protection of areas and infrastructure considered to be of heritage significance. The NHRA prohibits the alteration or demolition of any structure or part of a structure which is older than 60 years without a permit issued by the relevant provincial heritage resources authority.¹⁰ Of particular relevance to developments which span large areas, section 38 provides that where a development will involve the construction of certain infrastructure which exceed the determined thresholds including; any development or other activity which will change the character of a site exceeding 5 000m² in extent; or the re-zoning of a site exceeding 10 000m² in extent; notice must be given to the responsible heritage resources authority who will then determine whether any heritage resources will be affected by the proposed development.

6.2.2 Due to the size of the proposed development, it is clear that section 38 is triggered. It is further noted that the Kathu Forest, situated on the property, enjoys Natural Heritage status and was declared as the first Protected Woodland in the country in terms of section 12 (1) (c) of the NFA.

¹⁰Section 34.



6.3 The National Forests Act, 1998

6.3.1 In terms of section 12 of the NFA, the Minister may declare a particular tree; a particular group of trees; a particular woodland; or trees belonging to a particular species as protected.¹¹

6.3.2 In terms of section 15, no person may cut, disturb, damage, destroy any protected tree or possess, collect, remove, transport, export, purchase, sell, donate in any other manner acquire; dispose of any protected tree, or any forest product derived from a protected tree, without a licence granted by the Minister. Furthermore, the Minister also has the power to declare a natural forest or woodland which is threatened with deforestation, or is being or has been deforested, a controlled forest area, if the Minister is of the opinion that urgent steps are required to prevent further deforestation or rehabilitation.

6.3.3 As noted above, the Kathu Forest is situated on the proposed development property and has recently been declared a protected woodland. As such any activities within the woodland area are subject to the limitations prescribed by section 15, above.

7 GROUNDS OF OBJECTION

7.1 We understand that the application process is currently in its infancy, and that further information will be provided in the reports to follow. We will however record our clients' initial concerns (in order to ensure that the subsequent iterations of the impact assessment reports adequately address our clients' concerns), reserving the right to provide further and more comprehensive comments once further information has been provided. Our clients' comments on the report are detailed below, but may be summarised as follows:

7.1.1 The information provided in the report is misleading and unclear;

¹¹Notice of the list of protected tree species under the National Forest Act, is published under Government Gazette Notice 877 of Government Gazette 37037 of 22 November 2013.



- 7.1.2 The report contains Insufficient Information in order for Interested and affected parties to submit Informed comments on the proposed development;
- 7.1.3 The report fails to adequately address the land use planning requirements;
- 7.1.4 The report does not address the implications of NEMA, particularly the Implications of the section 2 NEMA principles;
- 7.1.5 The report does not provide adequate information as required by regulation 28 of the NEMA 2010 regulations; and
- 7.1.6 The report fails to adequately address the impacts on the surrounding environment.
- 7.2 The information provided is misleading and unclear:**
- 7.2.1 In the report, the EAP refers to compliance with regulation 54(2)(6)(vi) of the NEMA 2010 regulations by confirming that notification letters were sent to the following organs of state which have jurisdiction in respect of the proposed development:¹²
- Department of Water Affairs;
 - South African Heritage Resources Agency;
 - Department of Agriculture and Land Reform;
 - Department of Roads and Public Works;
 - Department of Cooperative Governance, Human Settlements and Traditional Affairs;

¹²Page 27.



- Department of Agriculture, Forestry and Fisheries; and
- The South African National Roads Agency SOC Limited.

7.2.2 It is noted that the initial notification letter which was purportedly sent to the South African Heritage Resources Agency ("**SAHRA**") was not attached to the report. It is therefore unclear as to whether SAHRA was notified of the proposed development, as required in terms of section 38 of the NHRA.

7.2.3 This discrepancy represents a flaw in the report. As such, the report must be amended in order to confirm whether SAHRA was notified, as it legally required, and proof of such notification must be provided.

7.2.4 Furthermore, the report states that the proposed property may form part of the Kathu Forest. We submit that this statement is misleading and incorrect. The proposed property does form part of the Kathu Forest as confirmed in the Notice declaring the forest a protected woodland.

7.3 **Insufficient information provided:**

7.3.1 As noted above, our clients are aware that the assessment process is in its infancy and that further information about the proposed development will be made available in due course. We note that the report indicates that the environmental authorisation application has been provided, this is incorrect. The environmental authorisation application form which was submitted to the D:E&NC has not been provided with the report. The report is therefore incomplete and must be recirculated for comment together with the completed application form, as submitted to the D:E&NC.

7.3.2 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:



- Botanical Impact Assessment
- Traffic Impact Assessment
- Archaeological/Heritage Impact Assessment
- Paleontological Impact Assessment

7.3.3 As detailed below, we submit that further specialist studies are to be undertaken, including a biodiversity assessment; a visual impact assessment; a dust impact assessment; a socio-economic impact assessment; a water 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. 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.

7.3.4 No specialist reports have been provided with the current report and, considering the size and nature of the proposed development, we submit that the following studies must be undertaken:

7.3.4.1 **Biodiversity impacts** - We note that the EAP has identified a botanical impact assessment as a study which must be undertaken as part of the environmental impact assessment process. We note that a number of biodiversity impacts are likely to occur as the report indicates that the project area includes the unique protected tree, *Acacia erioloba* (Camel thorn), and associated fauna and avi-fauna species associated with the Camel thorns on the property. Furthermore, the property is situated within a protected woodland area, is declared a natural heritage site and is subject to development limitations. The report states that no fauna or avi-fauna impacts are anticipated and



therefore no impact assessments of these aspects will be undertaken.¹³ This statement is unqualified and cannot be relied upon. Reference is made to an article prepared by T. A. Anderson (**Annex 1 hereto**), 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 Camel thorn 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 (in the Kathu Forest area) and the need to protect biodiversity corridors the impact assessment cannot be limited to botanical aspects. The need for a comprehensive biodiversity impact assessment is apparent.

7.3.4.2 Water impacts - We note that the report does not identify a water impact assessment as being necessary. The report states that no above ground water resources are present on site.¹⁴ This has not been confirmed by an independent assessment. Reference is also 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 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 result in storm water contamination. Furthermore, the report confirms that there are no plans for any bulk storm water management

¹³ Page 25.

¹⁴ Page 21.



Infrastructure.¹⁵ Considering the size of the proposed development, it is unclear as to why this Infrastructure has been deemed unnecessary. The need for a water impact assessment report is therefore apparent. This impact assessment report must identify the various water impacts and propose mitigation measures which will be put in place in order to properly manage these impacts. Furthermore, we note that water storage and the use of borehole water are also required for the proposed development;¹⁶ however the report does not indicate whether a water use licence application will be made. Further information on these aspects of the proposed development is required.

7.3.4.3 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. 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 these traffic impacts.

7.3.4.4 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. As noted above, section 38 of the NHRA requires that notification of the proposed development must be submitted to the heritage authority. The report does not provide a clear indication as to whether a notice of intention to develop was submitted to the authority. Furthermore, our research has indicated that significant Stone Age sites

¹⁵ Page 24.

¹⁶ Page 23.



occur in and around Kathu and on adjacent farms, with these areas being subject to ongoing archaeological research. Reference is made to Annex 1, 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.

7.3.4.5 Visual Impacts – We note that the report does not identify a visual impact assessment as being necessary.¹⁷ 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 (particularly on animal and bird species) 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 will be managed.

7.3.4.6 Noise Impacts - We note that the report does not identify a noise impact assessment as being necessary. Due to the density, 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 area). This will 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. Noise impacts may also result in negative impacts for animal and bird life in the area. 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.

¹⁷ Page 26.



7.3.4.7 Dust Impacts - We note that the report does 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 the value of these properties.

7.3.4.8 Socio-economic Impacts - We note that the report does not identify a socio-economic impact assessment as being necessary. Furthermore, we note 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 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 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 below.

7.3.5 Infrastructure requirements:

7.3.5.1 We note that the infrastructure requirements for the proposed development have not been adequately addressed in the report. The report notes that no constraints exist regarding the availability of services for the operation of the proposed development other than permission being required for the connection to the existing Kathu East Reservoir and Tower. We note that no confirmation from the relevant authorities as to the availability of capacity to supply the necessary services has been provided. 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.



7.3.5.2 A Preliminary Bulk Services and Infrastructure Status Report ("the **BSISQR**"),¹⁸ was provided with the report; however the BSISQR states that it should be read in conjunction with previous reports prepared by Aurecon / WorleyParsons.¹⁹ We note that these previous reports have not been made available together with the report, making it impossible for interested and affected parties to submit informed comments thereon.

7.3.5.3 The report also states that the existing electrical substation in Kathu is able to accommodate the proposed development.²⁰ We submit that this statement is contradictory based on the recommendations made in this specialist Electrical Service Report,²¹ which specifically states that the existing capacity on the current 11Kv cable is insufficient to accommodate additional development and recommends that the applicant make further upgrades to this infrastructure.

7.3.5.4 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 clarity 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. The lack of information presents a significant flaw in the report and it must be amended and recirculated for comment.

7.4 Failure to adequately address the land use planning requirements:

7.4.1 The report makes mention of one Erf being utilized for sectional title blocks which will be placed at random on the property to accommodate the existing Camel thorn trees. This is

¹⁸ Appendix 5.

¹⁹ Page 1 of Appendix 5.

²⁰ Page 24.

²¹ Appendix 6.



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. The report should be supplemented to reflect the exact amount of residential units which the applicant intends to develop. Once supplemented the report must be recirculated for comment.

- 7.4.2 We note that the report does 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 proposed development.

In our consideration of the GMRSDf we have 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.

- 7.4.3 The failure to ensure that there is adequate infrastructure available presents a significant flaw in the application and it must be referred back to the EAP for supplementation. 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.

7.5 Failure to consider the provisions of NEMA:

- 7.5.1 Subsection 2(2) of NEMA provides that environmental management should be primarily concerned with people that will be affected by the activities and their respective needs.



As such we note that the report does not provide for any management measures addressing Impacts and Issues Identified.

7.5.2 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 does not accord with the NEMA requirements.

7.5.3 Subsection 2(4)(a)(vii) sets out that a risk averse and cautious approach should be followed, we note that the report identifies general risk factors, however the manner in which these factors are to be managed has not been addressed.

7.5.4 Subsection 2(4)(a)(viii) requires the applicant to identify negative impacts on the environment and on people's environmental rights and provide measures to prevent or minimise such impacts. The applicant has identified general anticipated negative impacts and has undertaken to address these impacts during the environmental impact assessment phase; however we note that no specific mitigation measures have been included in the report.

7.5.5 Subsection 2(4)(l) requires social, economic and environmental impacts of activities, including disadvantages and benefits to be weighed up. The report broadly states 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. No further socio-economic benefits and disadvantages are provided in the report. The report should include a socio-economic impact assessment report which identifies both the advantages and disadvantages of the proposed development (including the impact on existing businesses) and propose adequate mitigation and management measures.

7.5.6 Subsection 2(4)(r) 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. The current report does 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 the environmental impact report. Furthermore, the report does 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.²²

7.6 Failure to consider regulation 28 of the EIA 2010 regulations:

7.6.1 In order for the competent authority to properly consider the application for environmental authorisation, the report must set out any feasible alternatives to the activity.²³ This requirement relates to regulation 28 of the NEMA 2010 regulations,²⁴ which requires *inter alia*, that a scoping report must contain the following information:

7.6.1.1 *A description of feasible and reasonable alternatives that have been identified;*

7.6.1.2 *Identification of all legislation and guidelines that have been considered in the preparation of the scoping report;*

7.6.1.3 *A description of environmental issues and potential impacts, including cumulative impacts, that have been identified;*

7.6.1.4 *A description of the need and desirability of the proposed activity;*

7.6.1.5 *A description of identified potential alternatives to the proposed activity, including disadvantages and advantages that the proposed activity or alternatives may have on the environment and the community that may be affected by the activity;*

²² Published under Government Notice R727 in *Government Gazette* 32370 of 10 July 2009.

²³Section 24O of NEMA.

²⁴Published under Government Notice R543 in *Government Gazette* 33306 of 18 June 2010.



7.6.1.6 *In addition, a scoping report must take into account any guidelines applicable to the current activity which is the subject of the application.*

7.6.2 It is submitted that the report fails to identify and describe all the feasible and reasonable alternatives.

7.6.3 The definition of "alternatives" in the NEMA 2010 regulations provides that, in relation to the proposed activity, "alternatives" means *different means of meeting the general purpose and requirements of the activity, which may include alternatives to-*

7.6.3.1 *the property or location of the activity;*

7.6.3.2 *the type of activity to be undertaken;*

7.6.3.3 *the design or layout of the activity;*

7.6.3.4 *the technology to be used in the activity;*

7.6.3.5 *the operational aspects of the activity; and*

7.6.3.6 *the option of not implementing the activity".*

7.6.4 The report states that various alternatives were identified during the scoping phase,²⁵ however only four alternatives are presented, with Alternative 3 being the preferred alternative. We note that the report does not include a comprehensive assessment of the advantages and disadvantages of each proposed alternative.

7.6.5 The following alternatives must be assessed or an explanation furnished by the EAP as to why they are not deemed reasonable or feasible alternatives:

²⁵Page 15.



- 7.6.5.1 the property on which the proposed development will take place: considering the adverse impacts of the proposed activities on the receiving and surrounding environment and the unique sensitivity of this environment, it is incumbent on the EAP to show that there are no other, more suitable sites or location alternatives available;
- 7.6.5.2 the type of activity to be undertaken: It is incumbent on the EAP to show that there are no other, more suitable activity alternatives available; and
- 7.6.5.3 the same argument would apply in respect of the design or layout of the proposed development; the technology to be used in the proposed development and the operational aspects of the proposed development.
- 7.6.6 When considering the no-go development alternative the report states that no agricultural activities are taking place on this site although it is zoned as Agricultural Zone I.²⁶ We note that the report does not address why agricultural activities are not being undertaken on the property nor does it adequately assess the potential of the property being used for agricultural purposes. The report confirms that not pursuing the proposed development may result in no potential negative environmental impacts,²⁷ this results in a positive impact as the natural vegetation, biodiversity, heritage resources, water resources and existing businesses and activities will not be negatively affected.
- 7.6.7 It is 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 report must be amended by including further information on reasonable and feasible alternatives which is properly and comparatively assessed against the no-go option (which also requires proper description of the advantages and disadvantages of the no-go option). Following the inclusion of this information, the report must be recirculated for public comment.

²⁶ Page 17.

²⁷ Page 18.



7.6.8 The assessment of the *need and desirability* of the proposed development does not meet the requirements of the Department's guidelines for the assessment of need and desirability in environmental impact assessment.²⁸

7.6.9 The concept of "*need and desirability*" relates to, amongst others, the nature, scale and location of activities for which authorisation is sought, as well as requiring the wise use of land. The Guideline provides, *inter alia*, that:

"While essentially, the concept of "need and desirability" can be explained in terms of the general meaning of its two components in which need primarily refers to time and desirability to place (i.e. is this the right time and is it the right place for locating the type of land-use/activity being proposed?), "need and desirability" are interrelated and the two components collectively can be considered in an integrated and holistic manner. In order to properly interpret the EIA Regulations' requirement to consider "need and desirability", it is necessary to turn to the principles contained in NEMA, which serve as a guide for the interpretation, administration and implementation of NEMA and the EIA Regulations. With regard to the issue of "need", it is important to note that this "need" is not the same as the "general purpose and requirements of the activity. While the "general purpose and requirements" of the activity might to some extent relate to the specific requirements, intentions and reasons that the applicant has for proposing the specific activity, the "need" relates to the interests and needs of the broader public. In this regard the NEMA principles specifically inter alia require that environmental management must:

- *"place people and their needs at the forefront of its concern and equitably serve their interests;*

²⁸Published in government Notice 891 in *Government Gazette* 38108 of 20 October 2014.



- *be integrated, acknowledging that all elements of the environment are linked and interrelated, and it must take into account the effects of decisions on all aspects of the environment and all people in the environment by pursuing the selection of the best practicable environmental option;*
- *pursue environmental justice "so that adverse environmental impacts shall not be distributed in such a manner as to unfairly discriminate against any person";*
- *ensure that decisions take "into account the interests, needs and values of all interested and affected parties"; and*
- *ensure that the environment is "held in public trust for the people, the beneficial use of environmental resources must serve the public interest and the environment must be protected as the people's common heritage".*

The consideration of "need and desirability" in EIA decision-making therefore requires the consideration of the strategic context of the development proposal along with the broader societal needs and the public interest. The government decision-makers, together with the environmental assessment practitioners and planners, are therefore accountable to the public and must serve their social, economic and ecological needs equitably. Ultimately development must not exceed ecological limits in order to secure ecological integrity, while the proposed actions of individuals must be measured against the short-term and long-term public interest in order to promote justifiable social and economic development - i.e. ensuring the simultaneous achievement of the triple bottom-line. Considering the merits of a specific application in terms of the need and desirability considerations, it must be decided which alternatives represent the "most practicable environmental option", which in terms of the definition in NEMA and the purpose of the EIA Regulations are that option that provides the most benefit and 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.*²⁹

- 7.6.10 The Guidelines therefore 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.
- 7.6.11 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 the 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.
- 7.6.12 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.
- 7.6.13 The Guidelines note that, in order to properly interpret the requirement in terms of the NEMA 2010 regulations regarding "need and desirability", it is necessary to turn to the National Environmental Management Principles in terms 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.
- 7.6.14 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

²⁹On page 15 and 16 of the Guidelines.



significant detrimental impact on the sense of place and current surrounding property uses, which include a thriving tourism and agricultural industry.

7.6.15 Considering the detrimental and irremediable impacts associated with the proposed development, it is clear that the activities for which authorisation is sought will manifestly not represent the 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" and that the BPEO will be the ceasing of any further development in the area.

7.6.16 In considering the desirability of the proposed development the report notes that the site is located in close proximity to the N14. The N14 passes through the Kathu Forest and has been identified as a scenic route.³⁰ We submit that the report does not fully consider the desirability of the proposed development as the location of the proposed development does not accord with the current sense of place. Reference is made to Annex 1, which states that due to the protected woodland status of the Forest area, only low-impact, ecotourism facilities and low density residential eco-estates may take place in the Forest and Forest buffer areas.

7.6.17 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.³¹ It is submitted that the report does not adequately explain and assess these requirements which results in a further shortfall to the application and report.

³⁰ Page 15 of the Heritage Impact Assessment for a proposed 132 kV power line, Kuruman Magisterial District, Northern Cape dated February 2015.

³¹ Page 10.



7.6.18 Furthermore, Annex 1 states that groundwater 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 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.

7.7 Impact on the surrounding environment:

7.7.1 The 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.

7.7.2 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 Camel thorn trees, situated north of the town.³² It is further noted that the Kathu Forest, which enjoys Natural Heritage status was declared the first Protected Woodland in the country in terms of section 12 (1) (c) of the NFA.

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

7.7.3.1 unsustainable utilisation of the natural environment;

³²Page 19.



- 7.7.3.2 the current development and expansion of the town of Kathu which includes an up-market housing development to the north of the town;
- 7.7.3.3 new and expanding mines;
- 7.7.3.4 the impact of the proposed development on the Kathu forest's ecological integrity and the potential loss of biodiversity;
- 7.7.3.5 groundwater issues are also of major concern, because the lowering of the water table by abstraction could lead to the death of the protected Camel thorn trees.
- 7.7.4 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 report and furthermore, does not accord with the principles outlined of NEMA as discussed above.
- 7.7.5 According to the GMRSDf, core conservation areas are critical to habitat preservation and strict environmental control measures should be put in place for any development or activity that would affect these core conservation areas.³³ The GMRSDf further notes the importance of the Kathu Forest and states that, due to its protected status under environmental legislation, protection against urban pressure is of extreme importance. We submit that the report has not assessed the negative impacts that the proposed development will have on the Kathu Forest and this constitutes a significant flaw in the report.
- 7.7.6 The GMRSDf also notes that development to the north of the town Kathu, which lies adjacent to the Kathu Forest, should be discouraged in order to avoid irrevocable environmental damage.³⁴ As previously stated the EAP states that the proposed

³³ Page 58 of GMRSDf.

³⁴ Page 39 of GMRSDf.



development is situated adjacent to the Kathu Forest. This is incorrect as the Kathu Forest is also placed on the property. It is submitted that the report does not adequately address the impacts of the proposed development on the surrounding environment. The report should be supplemented to provide for the assessment of the impact that the proposed development will have on the surrounding environment (including the Kathu Forest) and be recirculated for comments.

7.7.7 The report states that the proposed 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 proposed development as well as the negative effect on the Kathu Forest as a protected area and important tourist attraction. It is therefore 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.

7.7.8 Further to the above we submit that the report has failed to adequately (if not at all) address or identify a number of impacts that will occur as a result of the proposed development which 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. The impacts of these activities may have the following results:

7.7.8.1 As noted above, the GMRSDf states that water resources located within the Kathu area are extremely limited and the area has become dependent on underground water



resources.³⁵ The report does not address this issue and a water impact assessment should be undertaken to address any water use requirements and impacts that the proposed development might have on the water resources in the area.

7.7.8.2 The EAP states that the impact on mammal and bird species were not considered, as the proposed development is not expected to have any significant permanent impact on these species except those species associated with the Camel thorn trees.³⁶ We note that no fauna or flora impact assessment has been undertaken, as such no reliance can be placed on this statement. As noted above, the Kathu Forest provides the ideal habitat for a number of red data and protected species (including birds). The need for such an assessment is clear.

7.7.8.3 The report makes reference to the socio-economic context of the area and states that the unemployment rate is 17.7% for the Gamagara Municipality;³⁷ however the negative socio-economic impact of the construction and operational phase on the greater surrounding areas has not been addressed. It is likely 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.

7.7.8.4 The report states that no visual impact studies are contemplated due to the nature of the activity, the surrounding land-uses and the proximity to other residential developments, and that the sense of place is not expected to be significantly altered by

³⁵Page 11 of the GMRSDP.

³⁶Page 25.

³⁷Page 21.



the proposed residential development.³⁸ As noted above, the location, size and nature of the proposed development will result in a significant change of the current sense of place as well as numerous intrusive visual impacts. The failure to consider a visual impact assessment as being necessary presents a flaw in the application. It is likely that the proposed development will have a negative impact on the visual aesthetics of the area which cannot be adequately minimised or remedied, particularly considering that the area (the Kathu Forest) is an important tourist attraction and known for its unique sense of place.

7.7.8.5 The report states that heritage impacts have been identified as a number of Early Stone Age, Middle Stone Age and Later Stone Age implements were encountered over the proposed development site as well as a number of tools in disturbed areas,³⁹ however we note that no heritage, archaeological or paleontological impact assessment report has yet been prepared. Furthermore, the report does not clearly indicate whether there has been compliance with section 38 of the NHRA. As detailed above, the Kathu Forest area is located in a fossil desert, is a natural heritage site and a significant tourist attraction; it can only be assumed that the proposed development will have a negative impact on the heritage resources of the area.

7.7.8.6 The construction and operational phase may result in negative impacts as the use of vehicles, construction materials, 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 agricultural

³⁸Page 26.

³⁹Page 21.



production and the degradation of the protected Kathu Forest and the fauna and flora in the area.

7.7.8.7 As noted above, no studies have been provided as to the traffic impacts associated with the proposed development. It is submitted that the construction of a housing development in the area will result in a significant increase in traffic on roads which will have a high negative impact on existing road infrastructure. The report confirms the anticipated high volumes of traffic that will be generated by this development recommends that external road upgrades take place and suggests that mitigation measures be put in place regarding the proposed access route, however falls to elaborate on these suggested mitigation measures.⁴⁰ 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. It is further noted that traffic congestion already occurs on the N14 which is located within close proximity to the proposed development. A traffic impact assessment must be undertaken to assess the potential traffic impacts and propose adequate management measures.

7.7.8.8 The report notes that no constraints exist regarding the availability of services for the operation of the proposed development. As noted above, this statement is incorrect. We note that no confirmation of capacity from the relevant service providers has been provided with the report. Furthermore, the EAP assumes that the Kathu East Reservoir and Tower as well as the current sewer infrastructure have the capacity to accommodate the proposed development. It is submitted that this is a speculation, as the capacity to provide these services has not yet been determined. In respect to road service requirements, the BSISQR states that "*Frikkie Meyer Street is in the planning stage of a*

⁴⁰Page 26.



total upgrade and it is assumed that the EIA for this project covers the existing entrance to the Equestrian Centre",⁴¹ we submit that this assumption has not been confirmed.

- 7.7.8.9 Furthermore, the report incorrectly states that the existing electrical main substation in the Kathu area is able to accommodate the proposed development.⁴² We submit that this statement is contradictory based on the recommendations made in this specialist Electrical Service Report,⁴³ which specifically states that the existing capacity on the current 11Kv cable is insufficient to accommodate additional development. The report must be supplemented to clarify the infrastructure requirements and availability of capacity to accommodate the needs of the proposed development.
- 7.7.8.10 The construction phase activities will result in the increase in soil erosion and dust which may present a nuisance to interested and affected parties which are in close proximity to the proposed development and may negatively impact on the Kathu Forest and the ecology of the area. As noted above, a dust impact assessment must be undertaken in order to identify the dust impacts and propose adequate mitigation measures.
- 7.7.8.11 Furthermore, we note that the proposed development will be situated on the same property as the existing Kathu Equestrian Club. 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.
- 7.7.8.12 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 affect the soil and water resources and

⁴¹ Page 16 of Appendix 5.

⁴² Page 24.

⁴³ Appendix 6.



surrounding properties. This is an important factor, considering the likelihood of soil and water contamination and the likely degradation of the Kathu Forest area.

- 7.7.8.13 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, water sources, and the surrounding properties.
- 7.7.8.14 Noise as a result of the use of heavy duty vehicles and construction equipment during the construction phase and the increase in people and activity in the area during operational phase will likely destroy the current ambience of the rural area. As noted above, 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 tourism businesses related to the Kathu Forest) and will also result in the reduction of property values. Noise impacts will also impact on fauna and avi-fauna in the area.
- 7.7.8.15 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, and commercial emissions will result from the proposed development.
- 7.7.8.16 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 likely resulting in the diminished use and enjoyment of neighbouring properties by surrounding residents and owners.



8 CONCLUSION:

8.1 For the reasons motivated above we submit that:

8.1.1 The report is misleading and contains insufficient information, including reference to documents which have not been provided, in order for interested and affected parties to submit informed comments thereon;

8.1.2 The report does not address the implications of the NEMA; and

8.1.3 The report fails to adequately address all the impacts associated with the proposed development.

8.2 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 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. Consequently, the report should be supplemented in order to address the gaps identified herein and recirculated for comment.

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

Yours faithfully



WERKSMANS ATTORNEYS

The 'forest' in the Kalahari

Tania A. Anderson

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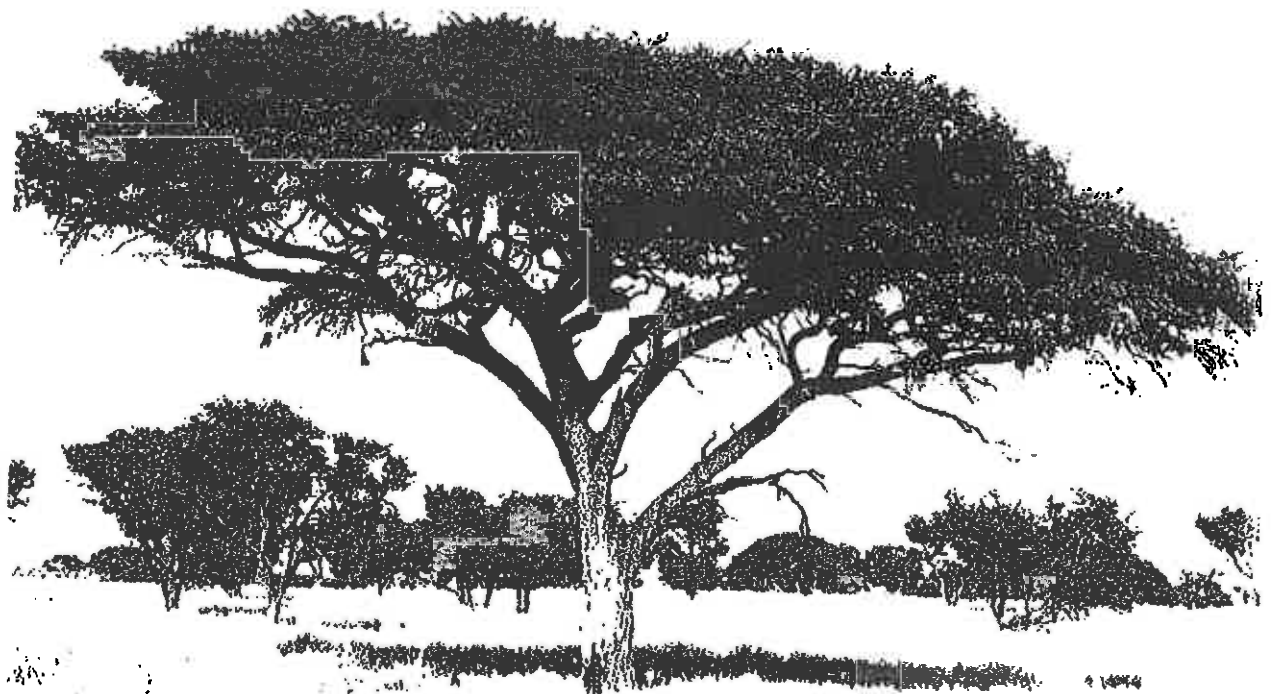
Commonly known as the Kathu Forest, an exceptional *Acacia erioloba* (Camel Thorn) woodland stands tall in the semi-arid southern Kalahari, just north of the town of Kathu which is 50km south-west of Kuruman. It is described as a forest because of the exceptional size and density of the Camel Thorn trees which form an open to closed canopy. It is apparently one of only two such woodlands in the world, with the other being between Mariental and Rehoboth in Namibia. The uniqueness of this small 4000 ha 'forest' was recognised as early as 1920, when it was declared a State Forest. In 1956 this forest was de-proclaimed to allow for the establishment of the town of Kathu, 'the town under the trees', in the southern portion of the woodland. In 1995 several properties containing the largest part of the Kathu Forest were registered as a Natural Heritage Site. It is encompassed by the Griqualand West Centre of Endemism (Van Wyk & Smith 2001).

The Kathu Forest is found on red aeolian sand of the Gordonia Formation, Kalahari Group, which is now considered to be a fossil desert. The red sands of the Kalahari are often underlain by calcrete of tertiary to recent age, which in turn overlies andesitic or basaltic lava of the Ventersdorp Group (Visser 2006). This

intrazonal woodland is within the Eastern Kalahar Bushveld Bioregion and the Kathu Bushveld vegetator unit (Mucina & Rutherford 2006). Only 1% of the vegetation is transformed when considering the level of transformation at the macro-scale for the entire extent of this vegetation unit. At the local level however around the town of Kathu there is significant transformation pressure on the vegetation, especially where there are high concentrations of *Acacia erioloba*. The presence of this dense woodland at Kathu may be due to the large underground water supply, which occurs in huge aquifers below the red Kalahari sand and calcrete substrates.

Acacia erioloba, a protected tree under the National Forests Act of 1998, plays an important role in the Kalahari Savanna of the Northern Cape. Throughout most of its range, it is the only large tree species that grows on sand where average annual rainfall is below 400mm (Carr 1976; Milton & Dean 1995). Large isolated Camel Thorn trees provide resources and services that are scarce in the Kalahari, such as shade and shelter for many animal species, nest sites for birds and mammals, observation posts, bark foraging for birds, mammals and reptiles, and specialized food for

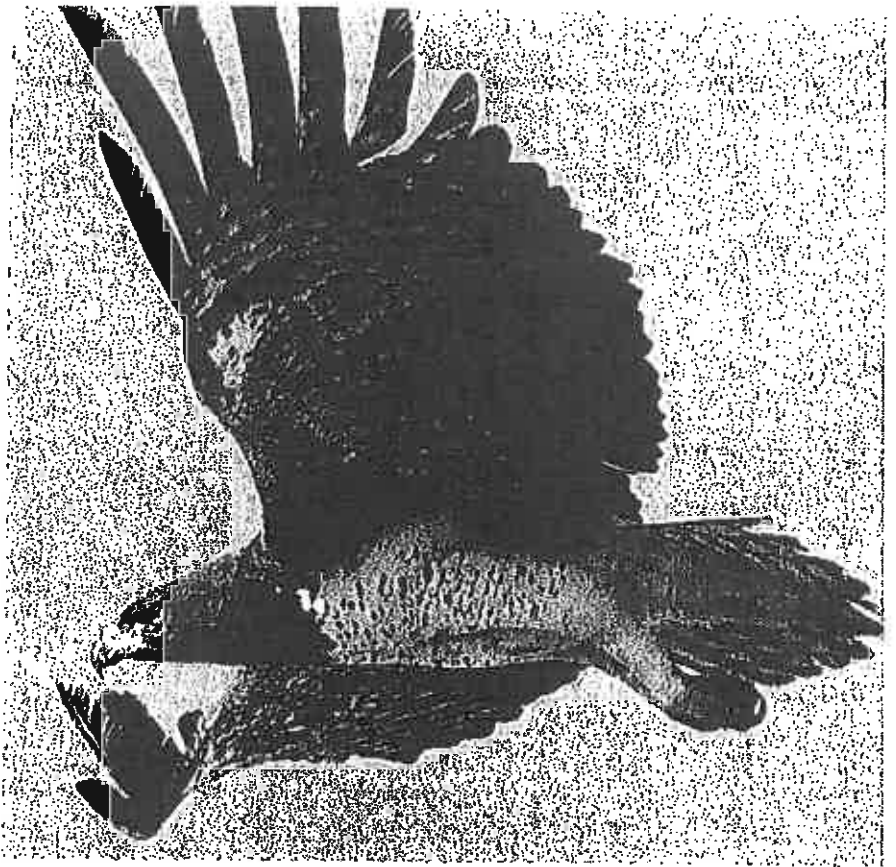
The Camel Thorn, *Acacia erioloba*.



prey items (Milton & Dean 1995). Owls, raptors and vultures use Camel Thorn trees for perch-hunting, nesting and roosting. Camel Thorn trees provide food to many animals, in the form of foliage and pods, with the latter being available during winter when other protein-rich foods are scarce.

The Camel Thorn is considered to be a keystone species in the Kalahari because it facilitates the processes that maintain heterogeneity and species diversity, namely seed dispersal and site modification (Milton & Dean 1995). One of its keystone functions is the generation of patchiness, performed only by large trees. Over the centuries it has been of much use to man; many historical moments have been made in the shade of a Camel Thorn tree. The wood was used to make domestic utensils, the seeds used as a coffee substitute by the Korannas, the bark and pods were used medicinally, and the roots used to make flutes by the Nama when reeds were unavailable.

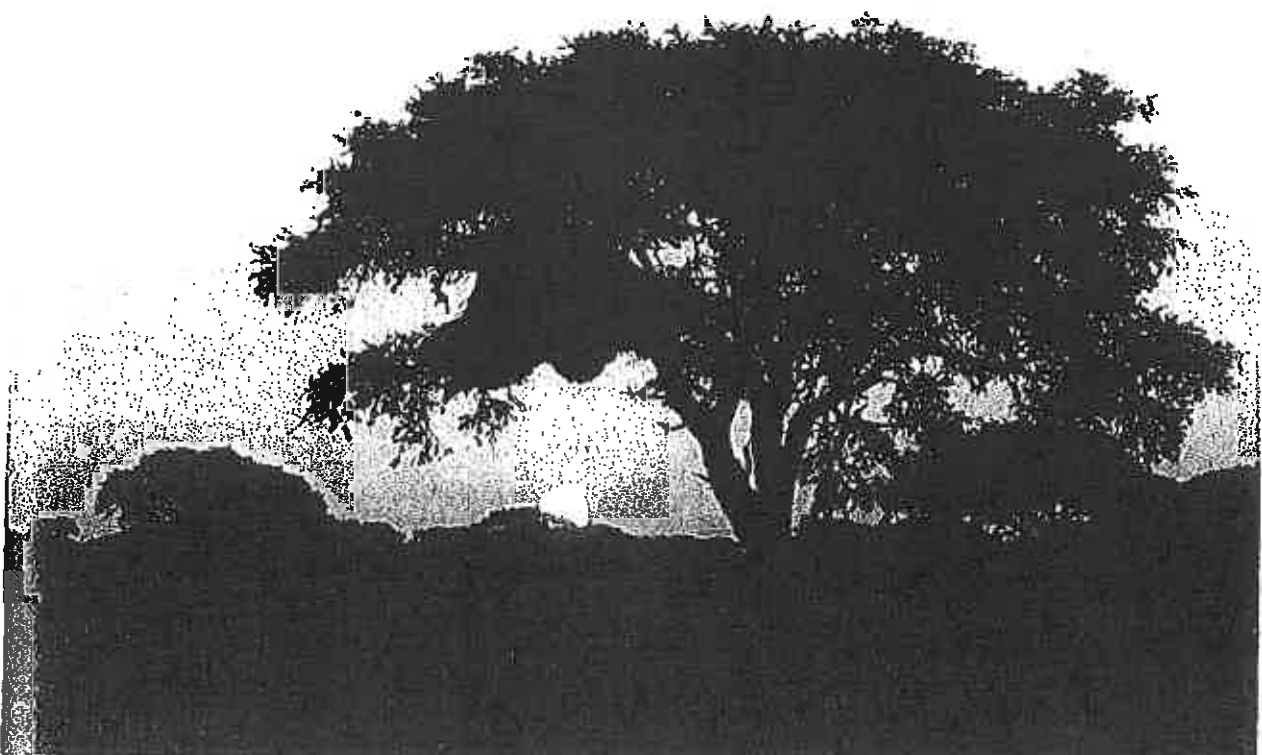
Today it continues to provide shade and shelter in desert areas, and sweet gum that is relished as a sweet by children, to mention but a few of its values to man. The Kathu Forest has had a long history of utilization by man dating back 800 000 years, confirmed by the presence of innumerable artefacts which make it one of the richest archaeological sites in the world.



The magnificent Martial Eagle inhabits the Kathu Forest.
Photo: Mark Anderson

The teeth of an extinct species of elephant, *Elephas recki*, along with finely crafted silica-coated hand axes, have been found in a site on the edge of the forest. The most recent traces of early people include San stone tools and Tswana pottery. Early people would have harvested berries from the large Buffalo Thorns (*Ziziphus*

Sunset view of *Acacia erioloba* woodland.

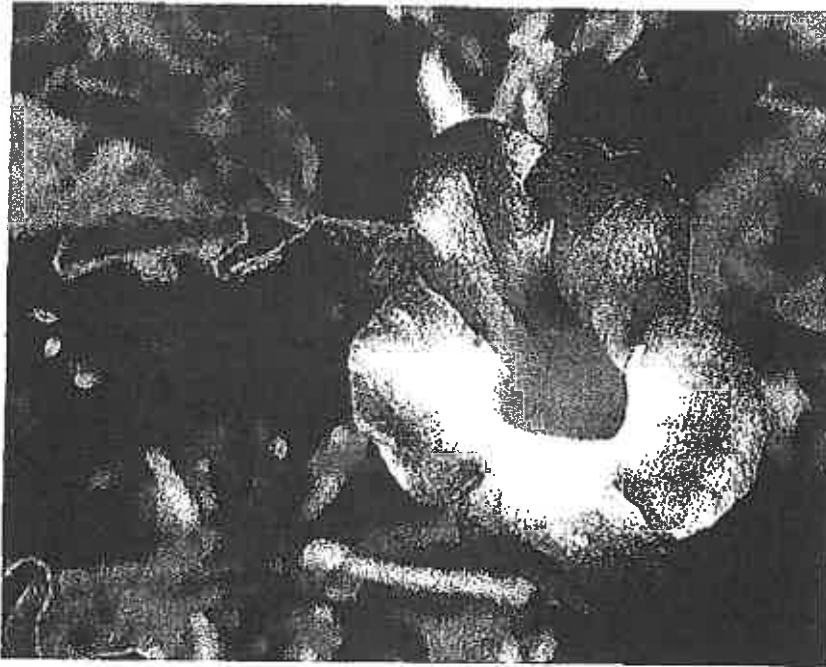


mucronata subsp. *mucronata*), Raisin Bushes (*Grewia flava*) and Blue Bushes (*Diospyros lycioides*), and used the roots of the Shepherd's Tree (*Boscia albitrunca*), which is also present in the forest. *Hoodia gordonii*, present in small numbers as isolated individuals, has for thousands of years been used by the San to stave off

hunger during their often lengthy hunting trips. *Boophone disticha* and other geophytes may have provided their medicinal needs. Red Data species recorded in the woodland include *Hoodia gordonii* and *Harpagophytum procumbens* subsp. *procumbens*; both these species occur in low numbers

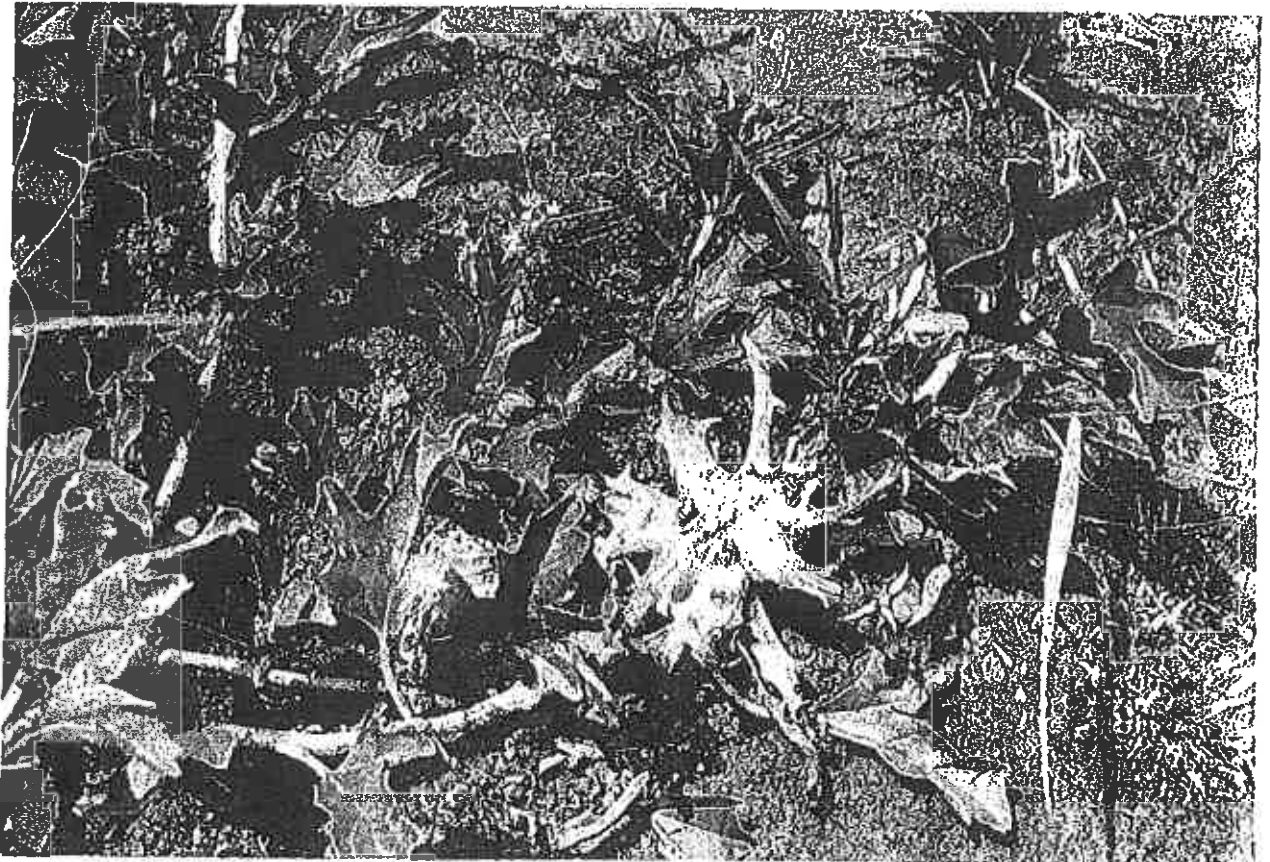
and in fairly small populations throughout most of their range. The woodland also harbours protected species such as *Ammocharis coranica*, *Nerine laticoma* and *Ruschia griquensis*, and the endemics/near-endemics *Rhus tridactyla* (endemic to the Griqualand West Centre), *Antheophora argentea* and *Panicum kalaharensis* (endemic to the southern Kalahari).

The plants of the Kathu Forest support a unique array of bird species, such as the rare yellow morph of the Green-winged Pytilia, yellow Crimson-breasted Shrikes, Red-billed Spurfowl, Pied Babbler, Groundscraper Thrush and Red-billed Buffalo Weaver (Liversidge 2000).



Harpagophytum procumbens flower.

Harpagophytum procumbens is a Red Data species, visible above ground for a few months after summer rains.



For thousands of years this dynamic ecosystem has been providing goods and services and playing a role in the maintenance of patterns and processes in the southern Kalahari.

Now, faced with a new suite of increasing threats, it must be actively conserved or die a slow death by a thousand cuts. In recent decades, parts of the Kathu Forest have been mis-managed which has led to its deterioration.

Arbicides have been used to control Black Thorn trees (*Acacia mellifera* subsp. *detinens*), spreading as a result of overgrazing. The chemicals have also affected other woody vegetation including Camel Thorns (Liversidge 2000).

Mine dust from the nearby Sishen Iron Ore Mine has been implicated as a possible cause of tree die-offs. Camel Thorn pods were being collected on a large scale to use as livestock feed and sections have been overstocked. For several years harvesting of protected Camel Thorn trees from the Natural Heritage Site for the fuelwood market escalated (Anderson & Anderson 2001).



Nerine laticoma on pan fringes at Kathu.

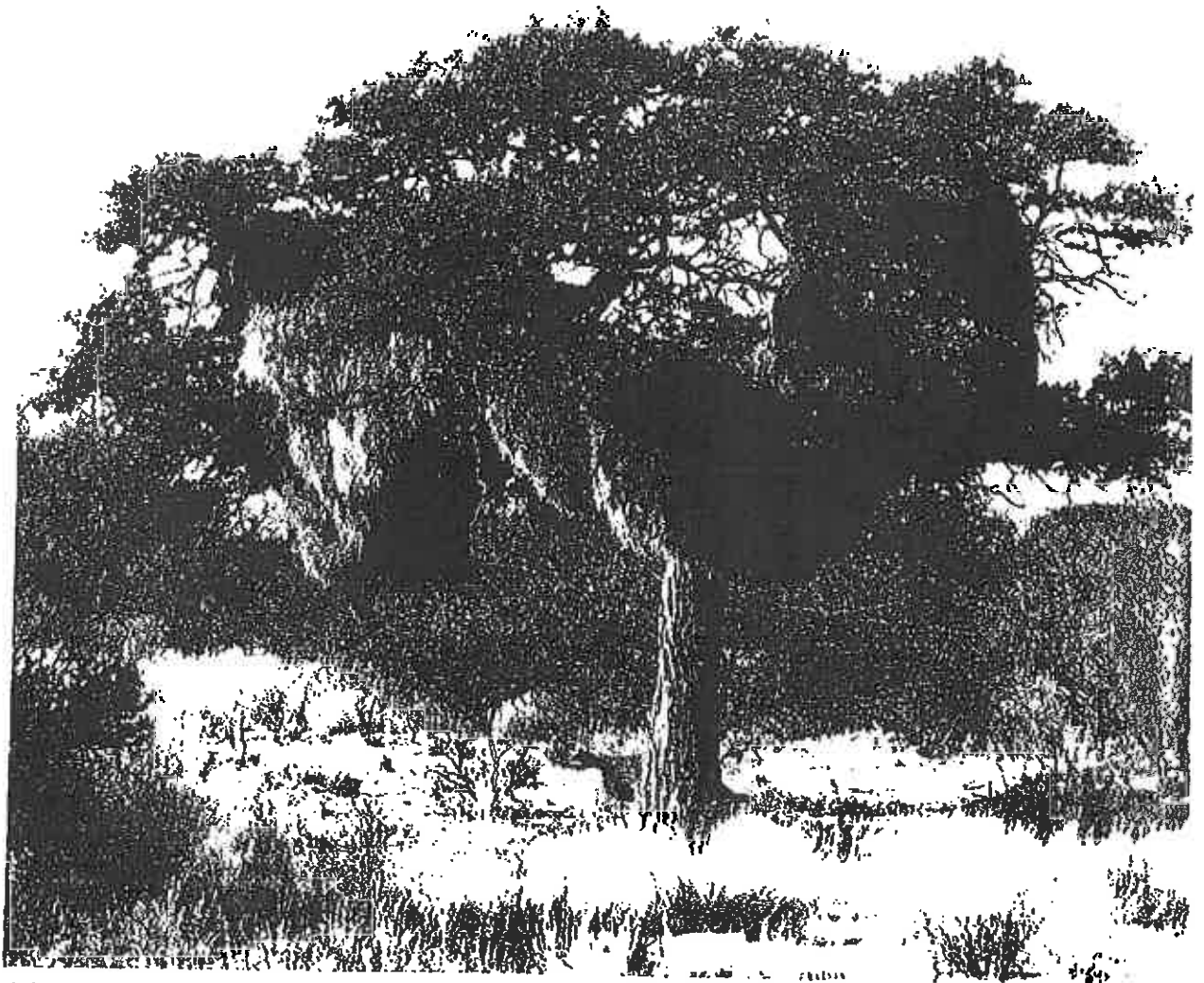
Today, the rich fossil water resource in the aquifers is rapidly being abstracted for use by Kumba's Sishen Iron Ore Mine, by surrounding farmers and by a developmental boom in the once-sleepy town of Kathu which includes water-thirsty, up-market housing developments. This unsustainable use and lowering of the water table could lead to the death of Camel Thorn trees, the keystone species of the forest. *Acacia erioloba* is able to access permanent water deep in the soil, and tap roots of up to 60m have been reported.

Kathu Forest is considered worth protecting for scientific, biodiversity, landscape and eco-tourism reasons. Surveys have shown a moderate to high diversity in plant and animal species, including several Red Data, endemic and protected species. Specialist reports for environmental impact assessments around Kathu indicate that the Kathu forest is seriously under-protected (Van Rooyen 2006). Between 27-34% of the forest has already been transformed, and new developments could increase this figure to 36%.

According to the National Spatial Biodiversity Assessment for South Africa, the threshold at which an ecosystem could become critically endangered is when only 16 to 30% of the natural ecosystem remains. For a forest ecosystem the threshold could be as high as 70% and, as this has already been reached for the Kathu Forest, it could already be considered Critically Endangered.

To afford the woodland a higher level of protection before too much is transformed, a request was made to the Department of Water Affairs and Forestry (DWAF) in April 2006 for emergency protection of the Kathu Forest under the National Forests Act (NFA). The DWAF in July 2007 gazetted its intention of declaring the Kathu Forest a Protected Woodland under Section 12 of the National Forests Act.

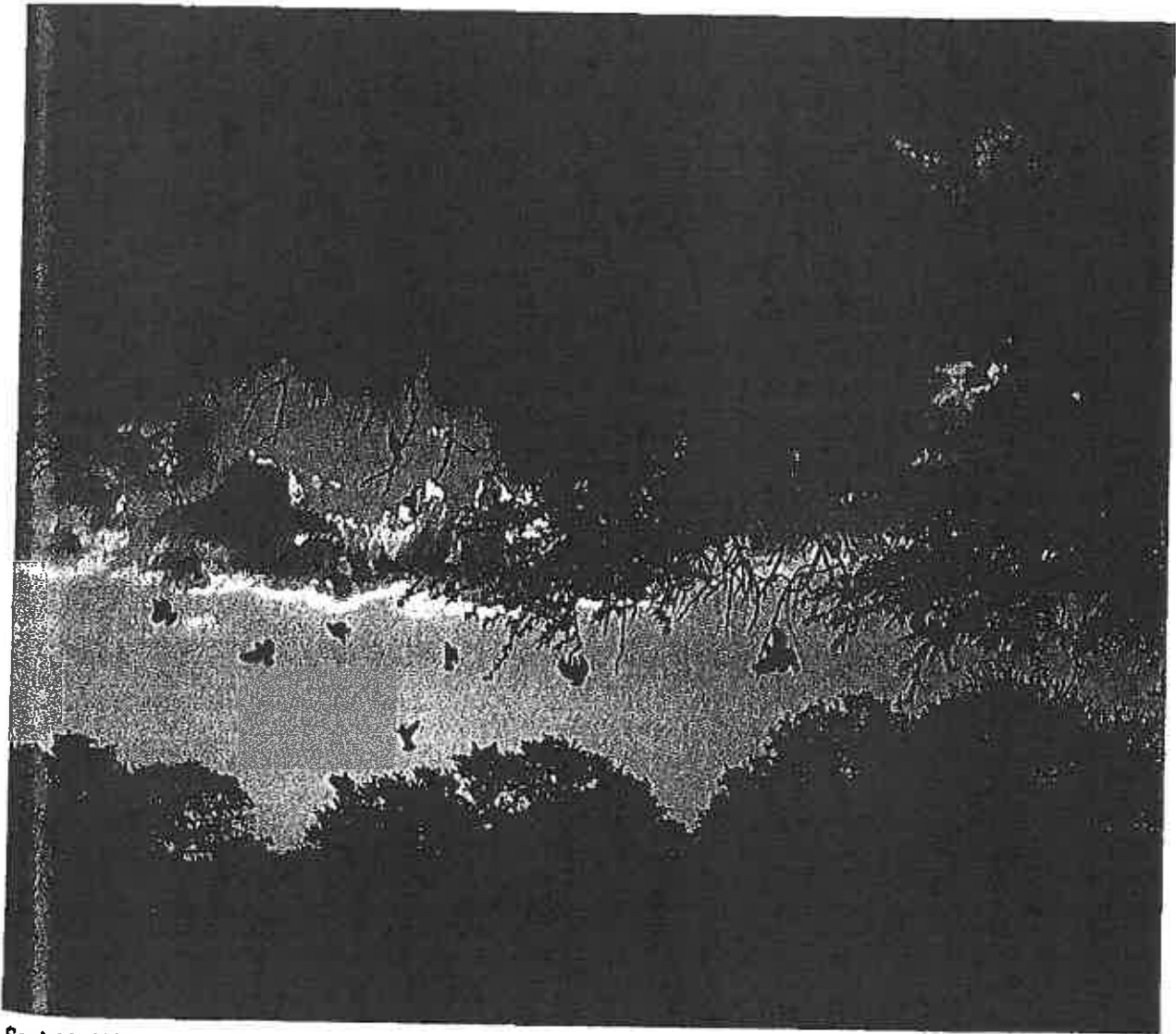
A task team co-ordinated by the provincial Department of Tourism, Environment and Conservation met for the first time in November 2007 to tackle the process of formally declaring the forest a protected environment under the National Environmental Management: Protected Areas Act. Such protection will allow current land use practices to continue, but will safeguard the woodland against future detrimental anthropogenic influences. The core area of dense woodland will be regarded as the prime conservation area, while the development of limited low-impact, ecotourism facilities may be allowed in the second class of more open woodland. Low density residential eco-estates may be considered in the buffer area (comprising the third class of open woodland), but with compensatory actions to provide for the protection of the prime conservation areas.



A large Sociable Weaver nest in a Camel Thorn tree. Photo: Mark Anderson

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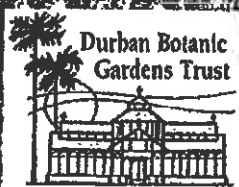
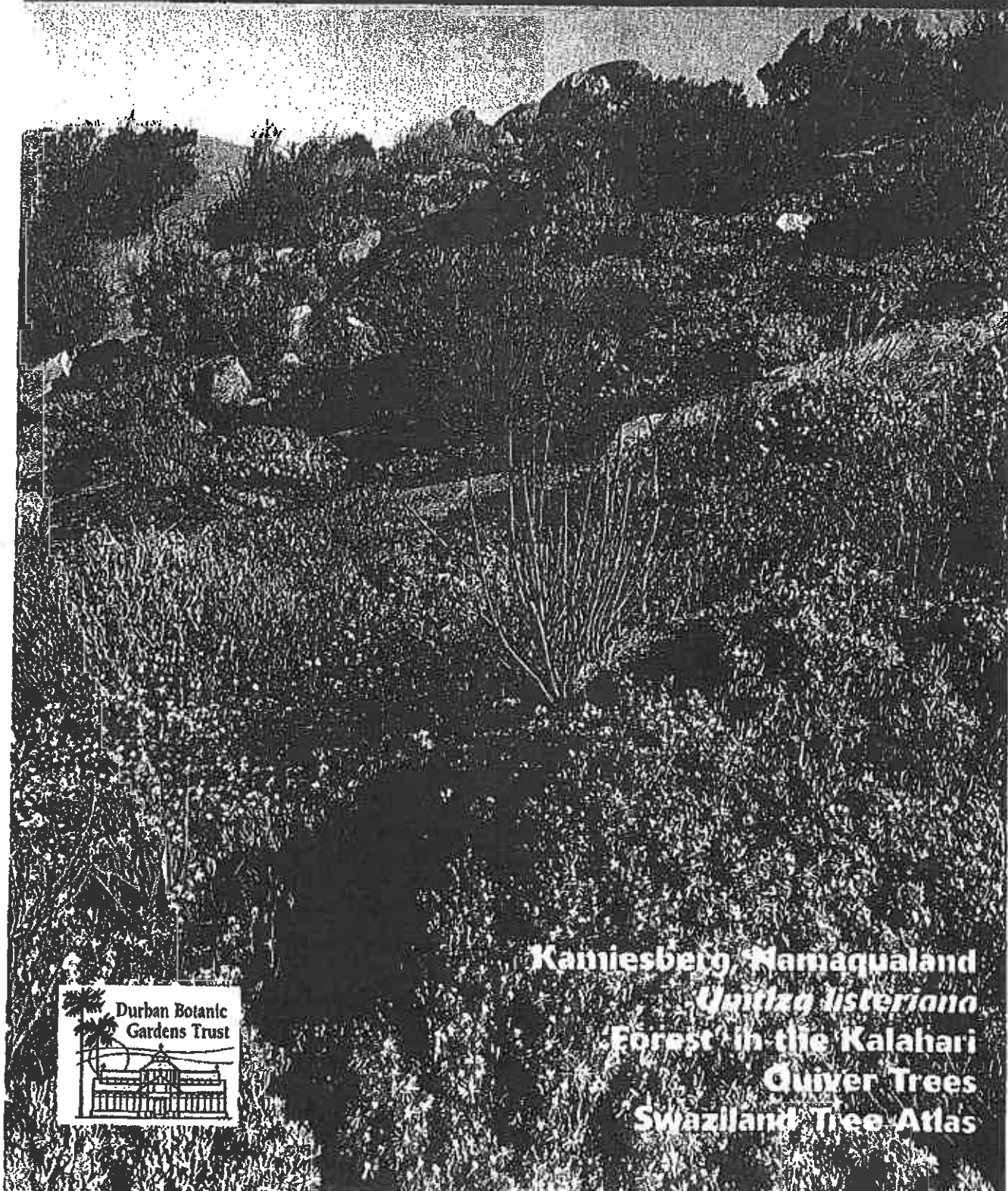
Sociable Weavers entering their nest at sunset. Photo: Mark Anderson

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Kamiesberg Namaqualand
Quiver Trees
Forest in the Kalahari
Swaziland Tree Atlas

DRAFT SCOPING REPORT COMMENTS RECEIVED - Proposed housing development, Portion 1 of Farm Uitkoms No 463, Kathu

Date	Comments	Response	Status
2015/05/13	The nature and quantity of raw materials needed during the construction phase. Their source, transportation to site, storage on site and pollution potential must be described.	Moses Ramakululusha - Department: Environment and Nature Conservation	Noted. Will be addressed in the Environmental Impact Report (EIR)
	The amount of energy needed during both the construction and the operational phases. A description of the source and availability must be given.		Noted. Will be addressed in the Environmental Impact Report (EIR)
	The volume of water needed during both the construction and operational phases of the proposed development		Noted. Will be addressed in the Environmental Impact Report (EIR)
	Baseline information pertaining to the geological setting of the area		Some information has been included in Section 5.6 of the Final Scoping Report. More detailed description of the geology will be included in the Geo-technical assessment to be included in the EIR.
	Photographs of the site must be added and the direction from where the photographs were taken must be given		Noted. This has been included in Section 3.8 of the Final Scoping report
	In addition to the National Forest Act, Act 84 of 1998, the Northern Cape Conservation Act, Act 09 of 2009 must also be considered		Noted. This has been included in Section 3.8 of the Final Scoping report
	Clarify on the applicability of listed activities R544: 18 and 22, R546: 13, 14 and 16 to the project		R544:18 - There are no watercourses identified on the site. Therefore no infilling etc. within a watercourse is expected. R546: 22 - the entrance road is expected to be 6m wide, with a 1m shoulder on either side. R546: 13 - An area exceeding 1ha is expected to be cleared. The site is in close proximity to the Kathu Forest. R546: 14 - the site is located within the Urban Edge of Kathu, and is therefore not applicable. This has been removed from the Final Scoping Report. R546: 16 - there are no watercourses that have been identified on the site.
	The national Department of Environmental Affairs is the Competent Authority for all the energy related listed activities		Noted. No energy related listed activities are being applied for.
	Socio-economic impact assessment must be included as a specialist study		Noted. A Socio-economic assessment will be included in the EIR
	A geotechnical assessment must be included as part of the specialist. The assessment will provide information related to the soil types, soil potential, soil stability, subsoil structure, suitability of the area to support the proposed structures and recommendation for foundations		Noted. A Geo-technical Assessment will be included in the EIR
	General		
	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.	Justin Tronec - Weitsmans Attorneys - on behalf of of Idahani Golf en Jag (Pty) Ltd, the Khumani Housing Development Company (Pty) Ltd and the Kalaahari Golf en Jag Home Owners Association	Noted
	The report indicates that on 28 January 2024, an application for environmental authorisation was lodged with the Department of Environment and Nature Conservation, Northern Cape ("DENEC"), the application was formally accepted on 29 January 2024. We note that although the report refers to this application form as an Appendix, it has not been provided with the report.		Noted. The Acknowledgement of Receipt of the Application Form from the DENEC has been included as Appendix 1 of the Draft Scoping Report. A copy of the Application Form will be included as Appendix 18 in the Final Scoping Report, which you will receive a copy of when available.
	The report states that the current property zoning of the property is Agriculture, with the property being classified for sports and recreation activities (the Kathu Equestrian Club present on the property). The report notes that an application for rezoning and subdivision is being considered for the proposed development of a low density residential development. No information has been provided as to the status of this application.		Noted. It is the intention of the developer to lodge an application for land use change, hence the statement of an application being considered. However, as any specialist in terms of land development is aware and as the parties represented by Weitsmans Attorneys are aware through their past developments in Kathu, no application for land use change at the local authority will be considered without the relevant Environmental Authorisation. Hence the land use change application will only be submitted after the NEMA process has been concluded and will be available for public comment in terms of the Spatial Planning and Land Use Management Act governing this process. Whereas this process allow for public participation in terms of environmental concerns, land use concerns will be addressed as part of that process.
	We understand that the application process is currently in its infancy, and that further information will be provided in the reports to follow. We will however record our clients' initial concerns (in order to ensure that the subsequent iterations of the impact assessment reports adequately address our clients' concerns), reserving the right to provide further and more comprehensive comments once further information has been provided. Our clients' comments on the report are detailed below, but may be summarised as follows:		
	The information provided in the report is misleading and unclear.		Noted

	<p>The area with co-ordinates locations 3, 4 and 5 as referred to above, is earmarked for Open Space I, II and III. It is not clear what is meant by Open Space I, II and III. Table 1 on page 15 described Open Space Zones I, II and III as "Park, Recreation and Conservation". Again, it is not clear what type of park, recreation and conservation activities are envisaged 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 NEMPA or NEMBA. It is crucial to note that in the Kathu Forest, all vegetation are protected, not just the protected trees 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 parts and lawns), roads, buildings etc. Existing land-use (agriculture) may continue.</p>	<p>Please note that Open Space II covers the area to the north of the property which includes the existing Kathu Equestrian Club. This is only to formalise the Equestrian club area. No further development is planned as part of this development in that area. Open Space III is the proposed conservation area to the west of the site, that overlaps the Kathu forest. No development what so ever will take place in that area. MacroPlan - The statement that the northern section of the involved property covers category 1 woodland and that the proposed zoning of Open Space Zone I covers the said area is correct. This is merely to accue the correct land use rights to the historically present Kathu Equestrian Club. This rezoning is not intended to negate the limitations of the Kathu Forest Proclamation and would not automatically allow for additional structures to be erected as the area's development is significantly protected by NEMA. According to the Gamagaga Scheme the following land use rights are accorded by the proposed zoning: "private open spaces: any land which has been set aside in this scheme for use as a private site for sport, playing, rest and recreation facilities or as an ornamental garden or pleasure-garden, provided that the land is under the long term management of a private person or authority, and also a cemetery or show grounds, whether public or private." We understand the concern of DAFF in terms of additional development and propose 2 options: 1. DAFF allows this rezoning, but with the strict limitation that any expansion of the current equestrian facilities be done under their supervision, or 2. That the northern section of the property where the Category 1 woodland is crossed, also be zoned to Open Space Zone III as in the instance of the overlap to the east of the site. We will comply in any instance.</p>	<p>We are fully aware of the workings of land development on Agricultural Land and always ensure compliance in this regard. All the land involved in this application has already been excluded from the definition of Agricultural Land, as contemplated by Act 70 of 1970. Furthermore, it should be clarified that no additional construction is proposed within the Kathu Forest by this development proposal. The rezoning section indicated as Open Space Zone II will merely formalise the rights of the existing activities of the Kathu Equestrian Club.</p>	<p>MacroPlan</p>
	<p>Page 17 refers to the no-go alternative and stated that "no agricultural activities are taking place on this site although it is zoned as Agricultural Zone 1". Kindly note that rezoning 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 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 rezoning 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 publication) may continue, but rezoning to residential cannot be tolerated in Kathu Forest.</p>	<p>We are fully aware of the workings of land development on Agricultural Land and always ensure compliance in this regard. All the land involved in this application has already been excluded from the definition of Agricultural Land, as contemplated by Act 70 of 1970. Furthermore, it should be clarified that no additional construction is proposed within the Kathu Forest by this development proposal. The rezoning section indicated as Open Space Zone II will merely formalise the rights of the existing activities of the Kathu Equestrian Club.</p>	<p>We are fully aware of the workings of land development on Agricultural Land and always ensure compliance in this regard. All the land involved in this application has already been excluded from the definition of Agricultural Land, as contemplated by Act 70 of 1970. Furthermore, it should be clarified that no additional construction is proposed within the Kathu Forest by this development proposal. The rezoning section indicated as Open Space Zone II will merely formalise the rights of the existing activities of the Kathu Equestrian Club.</p>	<p>MacroPlan</p>
	<p>Page 17 stated that Open Space Zone III (Conservation) areas, no structures shall be erected or used 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 NFA</p>	<p>We are fully aware of the workings of land development on Agricultural Land and always ensure compliance in this regard. All the land involved in this application has already been excluded from the definition of Agricultural Land, as contemplated by Act 70 of 1970. Furthermore, it should be clarified that no additional construction is proposed within the Kathu Forest by this development proposal. The rezoning section indicated as Open Space Zone II will merely formalise the rights of the existing activities of the Kathu Equestrian Club.</p>	<p>We are fully aware of the workings of land development on Agricultural Land and always ensure compliance in this regard. All the land involved in this application has already been excluded from the definition of Agricultural Land, as contemplated by Act 70 of 1970. Furthermore, it should be clarified that no additional construction is proposed within the Kathu Forest by this development proposal. The rezoning section indicated as Open Space Zone II will merely formalise the rights of the existing activities of the Kathu Equestrian Club.</p>	<p>MacroPlan</p>
	<p>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 developments site intrudes into Kathu Forest in the north and east, as well as the area between numbers 3, 4 and 5 in the map supplied as figures 3 on page 18 of the DSR. In fact, co-ordinates numbers 1.-5 are all located inside the demarcated Kathu forest. We used the co-ordinates 1.-5 supplied on page 18 of the DSR and overlaid it on the Kathu Forest map. The red line is the Kathu Forest boundary and the black line corresponds with the development area</p>	<p>We are fully aware of the workings of land development on Agricultural Land and always ensure compliance in this regard. All the land involved in this application has already been excluded from the definition of Agricultural Land, as contemplated by Act 70 of 1970. Furthermore, it should be clarified that no additional construction is proposed within the Kathu Forest by this development proposal. The rezoning section indicated as Open Space Zone II will merely formalise the rights of the existing activities of the Kathu Equestrian Club.</p>	<p>We are fully aware of the workings of land development on Agricultural Land and always ensure compliance in this regard. All the land involved in this application has already been excluded from the definition of Agricultural Land, as contemplated by Act 70 of 1970. Furthermore, it should be clarified that no additional construction is proposed within the Kathu Forest by this development proposal. The rezoning section indicated as Open Space Zone II will merely formalise the rights of the existing activities of the Kathu Equestrian Club.</p>	<p>EnvirowAfrica</p>
	<p>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.</p>	<p>We are fully aware of the workings of land development on Agricultural Land and always ensure compliance in this regard. All the land involved in this application has already been excluded from the definition of Agricultural Land, as contemplated by Act 70 of 1970. Furthermore, it should be clarified that no additional construction is proposed within the Kathu Forest by this development proposal. The rezoning section indicated as Open Space Zone II will merely formalise the rights of the existing activities of the Kathu Equestrian Club.</p>	<p>We are fully aware of the workings of land development on Agricultural Land and always ensure compliance in this regard. All the land involved in this application has already been excluded from the definition of Agricultural Land, as contemplated by Act 70 of 1970. Furthermore, it should be clarified that no additional construction is proposed within the Kathu Forest by this development proposal. The rezoning section indicated as Open Space Zone II will merely formalise the rights of the existing activities of the Kathu Equestrian Club.</p>	<p>MacroPlan</p>
<p>2015/05/06</p>	<p>In terms of the Notice the Kathu Forest is located on Portion 1 & Remainder of the Farm Likhous No. 463. We note that the Kathu Forest is located on the property which the applicant intends developing and not adjacent to the property.</p>	<p>We are fully aware of the workings of land development on Agricultural Land and always ensure compliance in this regard. All the land involved in this application has already been excluded from the definition of Agricultural Land, as contemplated by Act 70 of 1970. Furthermore, it should be clarified that no additional construction is proposed within the Kathu Forest by this development proposal. The rezoning section indicated as Open Space Zone II will merely formalise the rights of the existing activities of the Kathu Equestrian Club.</p>	<p>We are fully aware of the workings of land development on Agricultural Land and always ensure compliance in this regard. All the land involved in this application has already been excluded from the definition of Agricultural Land, as contemplated by Act 70 of 1970. Furthermore, it should be clarified that no additional construction is proposed within the Kathu Forest by this development proposal. The rezoning section indicated as Open Space Zone II will merely formalise the rights of the existing activities of the Kathu Equestrian Club.</p>	<p>EnvirowAfrica</p>

Justin Truter - Werkemans Attorneys - on behalf of Kanihari Ghoif en Jag (Pty) Ltd, the Kanihari Housing Development Company (Pty) Ltd and the Kanihari Ghoif en Jag Home Owners Association

			<p>The report states that the proposed property may form part of the Kaiti Forest. We submit that this statement is misleading and incorrect. The proposed property does form part of the Kaiti Forest as confirmed in the Notice declaring the forest a protected woodland.</p> <p>The failure to ensure that there is adequate infrastructure available presents a significant flaw in the application and it must be referred back to the EAP for supplementation.</p> <p>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.</p>			<p>Noted. Please note that although parts of the property are located within the Kaiti Forest, no development will take place within the Kaiti Forest. This will be clarified in the Final Scoping Report.</p>	EnviroAfrica
			<p>The failure to ensure that there is adequate infrastructure available presents a significant flaw in the application and it must be referred back to the EAP for supplementation.</p> <p>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.</p>			<p>Noted. Service capacity confirmation letters will be provided in the EIR.</p>	EnviroAfrica
			<p>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.</p>			<p>Noted.</p>	EnviroAfrica
		Specialist studies	<p>As detailed below, we submit that further specialist studies are to be undertaken, including a biodiversity assessment, a visual impact assessment, a dust impact assessment, a socio-economic impact assessment, a water 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. 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.</p>	Justin Truter - Wertheim's Attorneys - on behalf of of Kaitiaki Golf on Jag (Pty) Ltd, the Khumani Housing Development Company (Pty) Ltd and the Kaitiaki Golf on Jag Home Owners Association		<p>Noted. Please responses below</p>	
			<p>No specialist reports have been provided with the current report and, considering the size and nature of the proposed development, we submit that the following studies must be undertaken:</p> <p>We note that the EAP has identified a botanical impact assessment as a study which must be undertaken as part of the environmental impact assessment process. We note that a number of biodiversity impacts are likely to occur as the report indicates that the project area includes the unique protected trees, <i>Acacia erioloba</i> (Camel thorn), and associated fauna and avifauna species associated with the Camel thorns on the property. Furthermore, the property is situated within a protected woodland area, is declared a natural heritage site and is subject to development limitations. The report states that no fauna or avifauna impacts are anticipated and therefore no impact assessments of these aspects will be undertaken. 13 This statement is unqualified and cannot be relied upon. Reference is made to an article prepared by T. A. Anderson (Annex 1 hereto), which notes that the uniqueness of the Kaiti Forest was confirmed in 1955 when the forest was declared a State Forest. The article notes that the Camel thorn 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 (in the Kaiti Forest area) and the need to protect biodiversity corridors the impact assessment cannot be limited to botanical aspects. The need for a comprehensive biodiversity impact assessment is apparent.</p>			<p>Specialist reports will be submitted with the Environmental Impact Report</p>	EnviroAfrica
			<p>We note that the EAP has identified a botanical impact assessment as a study which must be undertaken as part of the environmental impact assessment process. We note that a number of biodiversity impacts are likely to occur as the report indicates that the project area includes the unique protected trees, <i>Acacia erioloba</i> (Camel thorn), and associated fauna and avifauna species associated with the Camel thorns on the property. Furthermore, the property is situated within a protected woodland area, is declared a natural heritage site and is subject to development limitations. The report states that no fauna or avifauna impacts are anticipated and therefore no impact assessments of these aspects will be undertaken. 13 This statement is unqualified and cannot be relied upon. Reference is made to an article prepared by T. A. Anderson (Annex 1 hereto), which notes that the uniqueness of the Kaiti Forest was confirmed in 1955 when the forest was declared a State Forest. The article notes that the Camel thorn 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 (in the Kaiti Forest area) and the need to protect biodiversity corridors the impact assessment cannot be limited to botanical aspects. The need for a comprehensive biodiversity impact assessment is apparent.</p>			<p>The botanical report has been completed (and will be included in the Environmental Impact Report) and carefully considers all the aspects pertinent to impacts on the flora of the development site.</p>	Dr Dave McDonald
			<p>Water impacts - We note that the report does not identify a water impact assessment as being necessary. The report states that no above ground water resources are present on site. This has not been confirmed by an independent assessment.</p>			<p>As Independent Environmental Assessment Practitioners, no above-ground water resources were observed on the property during site visits or desktop studies. The National Freshwater Ecosystem Priority Areas map (GANBI BGIS) also does not identify any freshwater ecosystems on the site. As such, the need for a freshwater Impact Assessment on the site is considered unnecessary</p>	EnviroAfrica

	<p>Reference is also made to the Gamagaya Municipality Reviewed Spatial Development Framework, 2010 ("GMSDF") which provides that water resources located within the Kachu area are extremely limited and the area has become extremely dependent 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 tarmac. This will likely impact on storm water velocity which may increase erosion of the surrounding properties and may result in storm water contamination. Furthermore, the report confirms that there are no plans for any bulk storm water management infrastructure. Considering the size of the proposed development, it is unclear as to why this infrastructure has been deemed unnecessary. The need for a water impact assessment report is therefore apparent. This impact assessment report must identify the various water impacts and propose mitigation measures which will be put in place in order to properly manage these impacts. Furthermore, we note that water storage and the use of borehole water are also required for the proposed development; however the report does not indicate whether a water use licence application will be made. Further information on these aspects of the proposed development is required.</p>		<p>The Gamagaya Municipality is busy with the procurement of consultants to do a complete Storm Water Master Plan for the greater Kachu. Boreholes were not advised, as indicated in Section 4.2.1 on page 11 and 12 of the Draft Bulk Services report dated 5 November 2014. No additional water storage (reservoirs) are proposed within the development. The existing reservoir and tower will be utilised.</p>	<p>MWD Ishlhart</p>
	<p>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 these traffic impacts.</p>	<p>Noted</p>	<p>Noted</p>	<p>EnviroAfrica</p>
	<p>Archaeological, Heritage and Palaeontological Impacts - We note that the EAP has identified archaeological, heritage and palaeontological impact assessment reports as studies which must be undertaken as part of the environmental impact assessment process. As noted above, section 38 of the NHRRA requires that notification of the proposed development must be submitted to the heritage authority. The report does not provide a clear indication as to whether a notice of intention to develop was submitted to the authority. Furthermore, our research has indicated that significant Stone Age sites occur in and around Kachu and on adjacent farms, with these areas being subject to on-going archaeological research. Reference is made to Annex 1, 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 Kachu Forest is found on red Acaolian 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.</p>		<p>Noted. A detailed Heritage Impact Assessment as well as a Palaeontological Assessment has been conducted and will be included in the EIR</p>	<p>EnviroAfrica</p>
	<p>Visual Impacts - We note that the report does not identify a visual impact assessment as being necessary. 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 (particularly on animal and bird species) 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 will be managed.</p>		<p>A visual impact assessment is not deemed necessary. The proposed development will be located between two existing residential developments.</p>	<p>EnviroAfrica</p>
	<p>Noise Impacts - We note that the report does not identify a noise impact assessment as being necessary. Due to the density, 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 area). This will 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. Noise impacts may also result in negative impacts for animal and bird life in the area. 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.</p>		<p>Noted. Noise impacts during construction will be addressed in the Environmental Management Programme. The noise impacts during the operational phase are expected to be similar to that of any other residential development in the area. Please note that noise impacts will be addressed in the EIR, however, a noise impact assessment is therefore not deemed necessary.</p>	<p>EnviroAfrica</p>

			<p>Dust Impacts - We note that the report does 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 the value of these properties.</p> <p>Socio-economic Impacts - We note that the report does not identify a socio-economic impact assessment as being necessary. Furthermore, we note 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 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 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 below.</p>			Dust mitigation will be addressed in the Environmental Management Programme. A Dust Impact Assessment is not deemed necessary	EnviroAfrica
						Notes: A Socio-economic Impact Assessment will be conducted. This will be addressed in the Final Scoping Report	EnviroAfrica
	NEMA		<p>Subsection 2(2) of NEMA provides that environmental management should be primarily concerned with people that will be affected by the activities and their respective needs. As such we note that the report does not provide for any management measures addressing impacts and issues identified</p> <p>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 does not accord with the NEMA requirements.</p> <p>Subsection 2(4)(a)(vi) sets out that a risk averse and cautious approach should be followed, we note that the report identifies general risk factors, however the manner in which these factors are to be managed has not been addressed.</p> <p>Subsection 2(4)(a)(vii) requires the applicant to identify negative impacts on the environment and on people's environmental rights and provide measures to prevent or minimise such impacts. The applicant has identified general anticipated negative impacts and has undertaken to address these impacts during the environmental impact assessment phase; however we note that no specific mitigation measures have been included in the report.</p> <p>Subsection 2(4)(c) requires social, economic and environmental impacts of activities, including disadvantages and benefits to be weighed up. The report broadly states that the direct and indirect socio-economic benefits of not constructing the residential development will not be realised if the proposed development does not materialise. No further socio-economic benefits and disadvantages are provided in the report. The report should include a socio-economic impact assessment report which identifies both the advantages and disadvantages of the proposed development (including the impact on existing businesses) and propose adequate mitigation and management measures.</p> <p>Subsection 2(4)(f) 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. The current report does 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 the environmental impact report. Furthermore, the report does 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 Kesthu Forest and adjoining areas</p>		Notes	EnviroAfrica	
						Notes: Impacts and mitigation measures will be addressed in the Environmental Impact Report phase of the application.	EnviroAfrica
						Notes: Impacts and mitigation measures will be addressed in the Environmental Impact Report phase of the application.	EnviroAfrica
						Mitigation measures can only be included once the potential impacts have been assessed by the various specialists. The impact mitigation measures will be addressed and included in the Environmental Impact Report (EIR) and draft Environmental Management Programme (Included in the EIR)	EnviroAfrica
						Notes: This has been addressed in the Final Scoping Report, and a Socio-economic Impact Assessment will be conducted	EnviroAfrica
						At this stage, no offset is proposed. Any potential impacts on the Kesthu Forest and any other sensitive ecosystems, including recommendations and mitigation measures will be addressed on the Botanical Impact assessment and will be included in the EIR	EnviroAfrica
	Alternatives					Alternatives have been addressed in Section 4 of the Final Scoping Report, including other alternatives in Section 4.5	EnviroAfrica
						A comprehensive assessment of the potential impacts, including the alternative layouts will be addressed in the EIR	EnviroAfrica

				<p>the property on which the proposed development will take place, considering the adverse impacts of the proposed activities on the receiving and surrounding environment and the unique sensitivity of this environment; it is incumbent on the EAP to show that there are no other, more suitable sites or location alternatives available;</p>	<p>Property within the urban edge of Kathu is becoming a scarce commodity and a fortunate few have large tracts of land available for township expansion. The 3 main role players are: Kumba (the developer in this instance), Kalahari Ghoff & Jag and the local authority. The developer (referred to as 'he' for the purpose of simplification), in being a major economic contributor and employment generator in the region, wishes to provide housing to its employees and those to do so on land he currently owns within the Kathu urban edge. The scale of the development, considering the other NEMA process being considered on SWS, on which the participant also commented, is of such a nature that, if the developer chose alternative sites suitable in terms of the SDF, he would have to acquire land from other owners, such as parcels represented by the participant. The developer therefore upholds the right to invest in the development of his own land as he sees fit, granted that all environmental and legislative measure is considered and complied to. Furthermore, in being situated within the urban edge of Kathu, the choice of this site for development, whilst still maintaining the primary use of recreation as envisioned in the SDF, as well as motivating zonings which will discourage development within proclaimed woodland, is adequately reasonable and justified.</p>	<p>MacroPlan</p>
			<p>the type of activity to be undertaken: it is incumbent on the EAP to show that there are no other, more suitable activity alternatives available</p>	<p>The proposed activity is to provide much needed additional housing opportunities in Kathu, and is therefore the only activity alternative considered. MacroPlan - The development provides for the protection of the current recreational land uses on the property, provides for protective zoning of sensitive areas and provides low impact low density housing opportunities in an evolving urban market, aiming to create an extremely liveable and desirable living environment. We believe that the development adequately considers the interplay of land uses and that other uses than residential and recreation will not be as fitting.</p>	<p>EnviroAfrica and MacroPlan</p>	
			<p>the same argument would apply in respect of the design or layout of the proposed development; the technology to be used in the proposed development and the operational aspects of the proposed development.</p>	<p>Various alternative layouts have, and will continue to be looked at, during the process</p>		
			<p>When considering the no-go development alternative the report states that no agricultural activities are taking place on this site although it is zoned as Agricultural Zone 1. We note that the report does not address why agricultural activities are not being undertaken on the property nor does it adequately assess the potential of the property being used for agricultural purposes. The report confirms that not pursuing the proposed development may result in no potential negative environmental impacts, this results in a positive impact as the natural vegetation, biodiversity, heritage resources, water resources and existing businesses and activities will not be negatively affected.</p>	<p>Plases note that an assessment on the potential impacts (negative and positive) of the proposed development, as well as any mitigation measures, will be conducted in the EIR phase. These will be looked at in the context of the need for housing within an area designated for urban expansion within the SDF.</p>	<p>EnviroAfrica</p>	
			<p>It is 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 report must be amended by including further information on reasonable and feasible alternatives which is properly and comparatively assessed against the no-go option (which also requires proper description of the advantages and disadvantages of the no-go option). Following the inclusion of this information, the report must be recalculated for public comment.</p>	<p>Noted. The potential negative and/or positive environmental impacts will be assessed in the Environmental Impact Report.</p>	<p>EnviroAfrica</p>	
			<p>The assessment of the need and desirability of the proposed development does not meet the requirements of the Department's guidelines for the assessment of need and desirability in environmental impact assessment.</p>	<p>Noted.</p>	<p>EnviroAfrica</p>	
			<p>The Guidelines therefore 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.</p>	<p>Noted. Alternatives have been addressed in Section 4 of the Final Scoping Report, including other alternatives in Section 4.5</p>	<p>EnviroAfrica</p>	
			<p>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 the 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</p>	<p>Noted. Need and desirability is addressed in Section 2 of the Scoping Report, and will be assessed in further detail in the EIR</p>	<p>EnviroAfrica</p>	
			<p>Need and Desirability</p>	<p>Justin Truter - Werkmans Attorneys - on behalf of of Kalahari Ghoff en Jag (Pty) Ltd, the Whumani Housing Development Company (Pty) Ltd and the Kalahari Ghoff en Jag Home Owners Association</p>	<p>EnviroAfrica</p>	

		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.			Noted. Need and desirability is addressed in Section 2 of the Scoping Report, and will be assessed in further detail in the EIR.	EnviroAfrica
		The guideline note that, in order to properly interpret the requirement in terms of the NEMA 2002 regulations regarding "need and desirability", it is necessary to turn to the National Environmental Management Principles in terms 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.			Noted. Need and desirability is addressed in Section 2 of the Scoping Report, and will be assessed in further detail in the EIR.	EnviroAfrica
		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.			Noted. A Socio-economic Impact Assessment has been conducted, and will be included in the EIR.	EnviroAfrica
		Considering the detrimental and irremediable impacts associated with the proposed development, it is clear that the activities for which authorisation is sought will manifestly not represent the 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" and that the BPEO will be the cessation of any further development in this area.			Potential Impacts will be addressed in the Environmental Impact Report, and assessed by independent specialists.	EnviroAfrica
		In considering the desirability of the proposed development the report notes that the site is located in close proximity to the N34. The N34 passes through the Kathu Forest and has been identified as a scenic route. We submit that the report does not fully consider the desirability of the proposed development as the location of the proposed development does not accord with the current sense of place. Reference is made to Annex 1, which states that due to the protected woodland status of the Forest area, only low-impact, ecotourism facilities and low density residential eco-estates may take place in the Forest and Forest buffer areas.			A Socio-economic Impact Assessment will be included in the EIR.	EnviroAfrica
		It is noted that the criteria used to determine the desirability of the location is based on the principles of integration by means of land planning and the optimum utilisation of available land and resources, availability of bulk services, accessibility and proximity of employment opportunities. It is submitted that the report does not adequately explain and assess these requirements which results in a further shortfall to the application and report.			These will be addressed in the EIR.	EnviroAfrica
		Furthermore, Annex 1 states that groundwater 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 clearly undesirable. Annex 1 indicates that, should any further reduction in groundwater occur, this may well result in the death of the Kathu Forest, which is dependent on the underground aquifers in the area.			This is speculative and there is, at this stage, no data to support such a supposition.	Dr Dave McDonald
	Impacts on environment	The 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 carefully balanced against the significant impact of this development on the surrounding environment, which is an important tourist attraction.	Justin Truter - Werkman's Attorneys - on behalf of of Kalahari Golf en Jag (Pty) Ltd, the Khumali Housing Development Company (Pty) Ltd and the Kalahari Golf en Jag Home Owners Association		Noted	EnviroAfrica
		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 Camel thorn trees situated north of the town. It is further noted that the Kathu Forest, which enjoys Natural Heritage status was declared the first Protected Woodland in the country in terms of section 32 (1), (b) of the NFEA.			Noted	EnviroAfrica
		According to the Gamagara Municipality Integrated Development Plan, 2033/ 2014 ("GIM IDP") the following major environmental challenges are found within the Kathu area:			Noted	
		unsustainable utilisation of the natural environment.			Noted	
		the current development and expansion of the town of Kathu which includes an up-market housing development to the north of the town.			Noted	
		new and expanding mines			Noted	
		the impact of the proposed development on the Kathu forest's ecological integrity and the potential loss of biodiversity			Noted	
		groundwater issues are also of major concern, because the lowering of the water table by abstraction could lead to the death of the protected Camel thorn trees.			The proposed development is well away from the Kathu Forest and will not affect its ecological integrity or biodiversity. It is true that a lowering of the water table COULD lead to the death of protected camelthorn trees but no information is available on this matter and it remains purely speculative.	Dr Dave McDonald Dr Dave McDonald

	<p>It is noted that none of these issues raised in the GMDP have been addressed in the report. We submit that this is a glaring omission in the report and furthermore, does not accord with the principles outlined of NEMA as discussed above.</p> <p>According to the GMRSDP, care conservation areas are critical to habitat preservation and strict environmental control measures should be put in place for any development or activity that would affect these core conservation areas. The GMRSDP further notes the importance of the Kathu Forest and states that, due to its protected status under environmental legislation, protection against urban pressure is of extreme importance. We submit that the report has not assessed the negative impacts that the proposed development will have on the Kathu Forest and this constitutes a significant flaw in the report.</p>	<p>Please see responses above</p>	<p>Potential impacts on the Kathu Forest will be addressed in the Botanical Impact Assessment, and be included in the EIR.</p>	<p>EnviroAfrica</p>
	<p>The GMRSDP also notes that development to the north of the town Kathu, which lies adjacent to the Kathu Forest, should be discouraged in order to avoid irrevocable environmental damage. As previously stated the EAP states that the proposed development is situated adjacent to the Kathu Forest. This is incorrect as the Kathu Forest is also placed on the property. It is submitted that the report does not adequately address the impacts of the proposed development on the surrounding environment. The report should be supplemented to provide for the assessment of the impact that the proposed development will have on the surrounding environment (including the Kathu Forest) and be recalculated for comments.</p>	<p>Potential impacts on the Kathu Forest will be addressed in the Botanical Impact Assessment, and be included in the EIR.</p>	<p>Potential impacts on the Kathu Forest will be addressed in the Botanical Impact Assessment, and be included in the EIR.</p>	<p>EnviroAfrica</p>
	<p>The report states that the proposed development is located within the urban edge of Kathu, and can therefore also be considered to be <i>infill development</i>. 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 proposed development as well as the negative effect on the Kathu Forest as a protected area and important tourist attraction. It is therefore 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.</p>	<p>A Socio-economic Impact Assessment has been conducted, and will be included in the EIR.</p>	<p>A Socio-economic Impact Assessment has been conducted, and will be included in the EIR.</p>	<p>EnviroAfrica</p>
	<p>Further to the above we submit that the report has failed to adequately (if not at all) address or identify a number of impacts that will occur as a result of the proposed development which 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. The impacts of these activities may have the following results:</p>	<p>See responses above and below</p>	<p>See responses above and below</p>	<p>EnviroAfrica</p>
	<p>As noted above, the GMRSDP states that water resources located within the Kathu area are extremely limited and the area has become dependent on underground water resources. The report does not address this issue and a water impact assessment should be undertaken to address any water use requirements and impacts that the proposed development might have on the water resources in the area.</p>	<p>A Water Impact Assessment is not deemed necessary, as no above-ground water resources were identified on site. A Geo-technical assessment has been conducted and will be included in the EIR.</p>	<p>A Water Impact Assessment is not deemed necessary, as no above-ground water resources were identified on site. A Geo-technical assessment has been conducted and will be included in the EIR.</p>	<p>EnviroAfrica</p>
	<p>The EAP states that the impact on minimal and bird species were not considered, as the proposed development is not expected to have any significant permanent impact on these species except those species associated with the Camel Thorn trees. We note that no fauna or flora impact assessment has been undertaken, as such no reliance can be placed on this statement. As noted above, the Kathu Forest provides the ideal habitat for a number of red data and protected species (including birds). The need for such an assessment is clear, that no fauna or flora impact assessment has been undertaken, as such no reliance can be placed on this statement. As noted above, the Kathu Forest provides the ideal habitat for a number of red data and protected species (including birds). The need for such an assessment is clear.</p>	<p>Once again the geographical location of the proposed development is pertinent here. The development site is well away from Kathu Forest and would not affect any mammal or bird species reliant specifically on Kathu Forest habitat. It is erroneous to say that there has not been a 'flora' study. Such a study has been completed and will be made available in the EIR.</p>	<p>Once again the geographical location of the proposed development is pertinent here. The development site is well away from Kathu Forest and would not affect any mammal or bird species reliant specifically on Kathu Forest habitat. It is erroneous to say that there has not been a 'flora' study. Such a study has been completed and will be made available in the EIR.</p>	<p>Dr Dave McDonald and EnviroAfrica</p>
	<p>The report makes reference to the socio-economic context of the area and states that the unemployment rate is 17.7% for the Gamaesva Municipality; however the negative socio-economic impact of the construction and operational phase on the greater surrounding areas has not been addressed. It is likely 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.</p>	<p>Notes. This has been addressed in the Final Scoping Report, and a Socio-economic Impact Assessment will be conducted</p>	<p>Notes. This has been addressed in the Final Scoping Report, and a Socio-economic Impact Assessment will be conducted</p>	<p>EnviroAfrica</p>

	<p>The report states that no visual impact studies are contemplated due to the nature of the activity, the surrounding land-uses and the proximity to other residential developments, and that the sense of place is not expected to be significantly altered by the proposed residential development. As noted above, the location, site and nature of the proposed development will result in a significant change of the current sense of place as well as numerous intrusive visual impacts. The failure to consider a visual impact assessment as being necessary presents a flaw in the application. It is likely that the proposed development will have a negative impact on the visual aesthetics of the area which cannot be adequately minimised or remedied, particularly considering that the area (the Kathu Forest) is an important tourist attraction and known for its unique sense of place.</p>	<p>Please see responses above.</p>		
	<p>The report states that heritage impacts have been identified as a number of Early Stone Age, Middle Stone Age and Later Stone Age implements were encountered over the proposed development site as well as a number of tools in disturbed areas, however we note that no heritage, archaeological or palaeontological impact assessment report has yet been prepared. Furthermore, the report does not clearly indicate whether there has been compliance with section 38 of the NHRA. As detailed above, the Kathu Forest area is located in a fossil desert, is a natural heritage site and a significant tourist attraction; it can only be assumed that the proposed development will have a negative impact on the heritage resources of the area.</p>	<p>Noted. A Heritage and Palaeontological assessment will be included in the EIR. The project has been registered on SAHRIS, which does comply with Section 38 of the NHRA</p>		<p>EnviroAfrica</p>
	<p>The construction and operational phase may result in negative impacts as the use of vehicles, construction materials, 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 agricultural production and the degradation of the protected Kathu Forest and the fauna and flora in the area.</p>	<p>Noted.</p>		
	<p>As noted above, no studies have been provided as to the traffic impacts associated with the proposed development. It is submitted that the construction of a housing development in the area will result in a significant increase in traffic on roads which will have a high negative impact on existing road infrastructure. The report confirms the anticipated high volumes of traffic that will be generated by this 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 these suggested mitigation measures. 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. It is further noted that traffic congestion already occurs on the N14 which is located within close proximity to the proposed development. A traffic impact assessment must be undertaken to assess the potential traffic impacts and propose adequate management measures.</p>	<p>Noted. A Traffic Impact Assessment will be included in the EIR</p>		<p>EnviroAfrica</p>
	<p>The report notes that no constraints exist regarding the availability of services for the operation of the proposed development. As noted above, this statement is incorrect. We note that no confirmation of capacity from the relevant service providers has been provided with the report. Furthermore, the EIP assumes that the Kathu East Reservoir and Tower as well as the current sewer infrastructure have the capacity to accommodate the proposed development. It is submitted that this is a speculation, as the capacity to provide these services has not yet been determined. In respect to road service requirements, the BISSQR states that "Frikkie Meyer Street is in the planning stage of a total upgrade and it is assumed that the EIA for this project covers the existing entrance to the Equestrian Centre", we submit that this assumption has not been confirmed.</p>	<p>See responses above</p>		
	<p>Furthermore, the report incorrectly states that the existing electrical main substation in the Kathu area is able to accommodate the proposed development. We submit that this statement is contradictory based on the recommendations made in this specialist Electrical Service Report, which specifically states that the existing capacity on the current 11kV cable is insufficient to accommodate additional development. The report must be supplemented to clarify the infrastructure requirements and availability of capacity to accommodate the needs of the proposed development.</p>	<p>See responses above</p>		

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The construction phase activities will result in the increase in soil erosion and dust which may present a nuisance to interested and affected parties which are in close proximity to the proposed development and may negatively impact on the Katsi Forest and the ecology of the area. As noted above, a dust impact assessment must be undertaken in order to identify the dust impacts and propose adequate mitigation measures.

Furthermore, we note that the proposed development will be situated on the same property as the existing Katsi Equestrian Club. 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.

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 affect the soil and water resources and surrounding properties. This is an important factor, considering the likelihood of soil and water contamination and the likely degradation of the Katsi Forest area.

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, water sources, and the surrounding properties.

Noise as a result of the use of heavy duty vehicles and construction equipment during the construction phase and the increase in people and activity in the area during operational phase will likely destroy the current ambience of the rural area. As noted above, 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 Katsi Equestrian Club and tourism businesses related to the Katsi Forest) and will also result in the reduction of property values. Noise impacts will also impact on fauna and sk-fauna in the area.

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, and commercial emissions will result from the proposed development.

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 likely resulting in the diminished use and enjoyment of neighbouring properties by surrounding residents and owners.

Noted. The property is relatively flat, and soil erosion is not expected to be a significant issue. Dust mitigation during construction will be addressed in the EMP. Dust should not be an issue during the operational phase as the site will be developed, and vegetation will remain on the undeveloped sections. A dust impact assessment is therefore not deemed necessary.

Noted. This will be addressed in the Environmental Management Programme.

Noted. This will be addressed in the Environmental Management Programme.

Noted. Solid waste disposal during the construction phase will be addressed in the Draft Environmental Management Programme (EMP)

Noted. Potential noise impacts will be addressed in the Environmental Impact Report and the EMP

Noted. Potential emission impacts will be addressed in the Environmental Impact Report and the EMP

We do not agree that the area is inherently agricultural nature as the site is bounded by a residential estate and commerce. Yes, the area may have a rural character due to the very low density of the residential development in the area. The involved property has a rural character due to the equestrian facilities being located on-site. Furthermore, the proposed development does not imply high density at all, with relatively large stands being proposed with the primary right of only one horse-standing house being allowed on each (except for one group housing site). The development also provides for large tracts of open areas which will accommodate grazing of the equestrian club, protection of heritage resources, protection of the Katsi forest and continue to accommodate the equestrian club. 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. We therefore attest that this proposed layout will not negatively impact on the character of the Katsi Forest & Jag Landgoed, nor should it impact on the enjoyment and use of the surrounding properties.

DELIVERED BY EMAIL

ENVIROAFRICA

Attention: Clinton Geyser

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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").

Werksmans Inc. Reg. No. 1990/007215/21 Registered Office 155 5th Street Sandton 2196 South Africa
Directors DG Williams (Chairman) AL Armstrong BA Aronoff DA Artero T Bata AR Berman NMN Bhengu L Bick GT Bossr TJ Boswell MC Brönn W Brown PF Burger PG Cleland JG Cloete PPI 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 JD Gouws GF Griessel D Hertz J Hollesen VR Hoslosky BB Holz HC Jacobs TL Janse van Rensburg N Jansen van Vuuren G Johannes S July J Kalimeyer 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 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 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 addressed 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.¹ The proposed development will further include approximately 163 residential properties, open spaces and infrastructure areas.² The applicant also intends developing sectional title residential units that will be placed at random on the property.³

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.⁴

¹ Page 7.

² Page 18.

³ Page 7.

⁴ 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.⁵
- 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.⁶ 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.⁷
- 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

⁵ Page 7.

⁶ Page 7.

⁷ Page 21.



border of the forest area.⁸ 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.

⁸ 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.*⁹ 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

⁹ 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.¹⁰

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.

¹⁰ 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.¹¹ 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.

¹¹ 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 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 through 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 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 through 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).¹² 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;¹³ 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**"),¹⁴ was provided with the report; however the BSISQR states that it should be read in conjunction with previous reports prepared by Aurecon / WorleyParsons.¹⁵ 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.¹⁶ We pointed out that this statement conflicted with the recommendations made in this specialist Electrical Service Report,¹⁷ which specifically states that the existing capacity on the current 11Kv cable is insufficient to accommodate additional development and

¹² 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.

¹³ Section 6.

¹⁴ Appendix 5.

¹⁵ Page 1 of Appendix 5.

¹⁶ Page 24.

¹⁷ 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.¹⁸ 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

¹⁸ 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 (“**GMRSD**F”) 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 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)(l) 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.¹⁹ 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.

¹⁹ 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.²⁰ 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.²¹ We therefore submit that the report does not fully consider the desirability of the proposed development as the location of the proposed development

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

²¹ 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.²² It is further noted that the Kathu Forest, which enjoys

²²Page 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,²³ 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 EAP's obligation to provide such information in accordance with

²³ 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.²⁴ 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.²⁵ 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

²⁴Page 11 of the GMRSDf.

²⁵Page 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 provided 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 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' followed by a long horizontal flourish.

WERKSMANS ATTORNEYS