

DELIVERED BY FAX & EMAIL

ENVIROAFRICA

Attention: Clinton Geyser

Email: admin@enviroafrica.co.za

Fax: 0865120154

Cape Town Office

18th Floor 1 Thibault Square
Cape Town 8001 South Africa
P O Box 1474 Cape Town 8000
Docex 15 Cape Town
Tel +27 21 405 5100
Fax +27 21 405 5200
www.werksmans.com
enquiries@werksmans.com

YOUR REFERENCE: NC/EIA/09/JTG/GAM/KAT2/2014
OUR REFERENCE: Mr Justin Truter/sn/CW/
DIRECT PHONE: 021 405 5230
DIRECT FAX: 021 405 5200
EMAIL ADDRESS: jtruter@werksmans.com

8 May 2015

Dear Sir

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

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

- 1 We refer to the above matter and confirm that we act on behalf of Kalahari Gholf en Jag (Pty) Ltd, the Khumani Housing Development Company (Pty) Ltd and the Kalahari Gholf en Jag Home Owners Association ("**our clients**").
- 2 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**

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 Arteiro T Bata AR Berman NMN Bhengu L Bick GT Bossr TJ Boswell MC Brönn W Brown PF Burger PG Cleland JG Cloete PPJ Coetser C Cole-Morgan D Corbett JN de Villiers GW Driver LJ du Preez RJ Feenstra S Fodor SJ Gardiner D Gower 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 Moraitis KO Motshwane TA Mthiyane J Nicklig 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**



development") on the properties known as Portion 1 and the Remainder of the Farm Sims No. 462, 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, with a background information document, advising of the public participation process conducted in terms of the National Environmental Management Act, 1998 ("**NEMA**") in relation to the application for environmental authorisation for the proposed development.

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 an environmental authorisation was lodged with the Department of Environment and Nature Conservation, Northern Cape ("**D:E&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, the form was not provided with the report.

4.5 It is noted that the applicant intends on constructing a housing development and associated infrastructure with an estimate of up to 1439 property units being developed on the property.² It is further noted that the proposed development will include 538 single residential properties; 851 group housing properties; 4 properties for the development of flats; 6 commercial properties; 29 open space properties; 6 sites for places of worship; 2 sites for education; 2 properties for municipal use; the construction of internal roads; and associated services infrastructure.³

5 PROPERTY DESCRIPTION AND LOCATION

5.1 The report notes that the property is approximately 168.9 hectares in size and is located to the west of the town of Kathu, adjacent to the Kathu Village Mall, and east of Mapoteng.⁴ We note that conflicting information is provided later in the report, where it is stated that the property is located to the *north of the town of Kathu*.⁵ Clarification is required in order to identify the correct location of the property. Once the report has been supplemented in this

¹ Page 12 and Appendix 1 of the report.

² Page 7.

³ Page 7.

⁴ Page 7.

⁵ Page 9.



regard, we submit that it should be recirculated for public comment so that parties who were under the impression that they would not be affected, and may be so affected, have the opportunity to comment.

- 5.2 We note that the R380 runs through the proposed development. Further information is required in order to determine whether consent or approval from the relevant roads management authority is required, and if so, whether this application has been made.
- 5.3 The current property zoning is Agricultural and, according to the report, an application for rezoning and subdivision is being considered for the development of a mixed use residential development.⁶ No further information regarding the rezoning and subdivision application has been provided.
- 5.4 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 Page 7.



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.

6.1.5 Section 2(4)(i) 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, particularly where they are subject to significant human resource usage and development pressure.
- 6.1.7 The NEMA 2010 regulations⁷ were repealed and replaced by the NEMA 2014 regulations⁸ 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 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.

⁷ GNR 543 of June 2010.

⁸ GNR 982 of December 2014.



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.⁹
- 6.2.2 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 development.
- 6.2.3 Due to the size of the proposed development, it is clear that section 38 is triggered.

6.3 **The National Forests Act, 1998 ("NFA")**

- 6.3.1 In terms of section 12 of the NFA, the Minister may declare a particular tree; a particular group of trees; particular woodland or trees belonging to a particular species to be protected.¹⁰
- 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

⁹Section 34.

¹⁰Notice 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.



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 We note that protected Camel thorn trees are present on the property; this may trigger the need for a licence under the NFA, depending on the impact of the proposed development on these trees.

7 GROUNDS OF OBJECTION

7.1 We understand that the application process is currently in its infancy, and that further information should 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 report adequately address our clients concerns), reserving the right to provide 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;

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 does not address the implications of the NEMA, particularly the implications of the section 2 NEMA principles;

7.1.4 The report does not provide adequate information as required by regulation 28 of the NEMA 2010 regulations; and

7.1.5 The report fails to adequately address the impacts on the surrounding environment.



7.2 The information provided in report is misleading and unclear:

- 7.2.1 The report states that consideration is being given to the construction of a housing development and associated infrastructure on the property.¹¹ However, the report notes that consideration is being given to the rezoning and subdivision of the property from Agricultural Zone I for the development of a *mixed-use* residential development. The report furthermore confirms that the applicant envisaged the property to conform to a mixed use development.¹²
- 7.2.2 We submit that the report does not clearly state whether the property will be utilized for a housing development or a mixed-use development. The lack of clarity in the report regarding the use of the property represents a flaw in the report. The report must be supplemented in this regard, providing detailed information as to the exact property uses contemplated by the applicant and how the current application is related to the rezoning and subdivision applications referred to in the report.
- 7.2.3 We note that the report considers the need and desirability of the proposed development. It is however unclear whether the factors considered in determining the desirability of the proposed development applies to the current project to be undertaken on Farm *Sims* as reference is also made to an entirely different development namely, the *Uitkoms* residential development situated on the property known as Farm *Uitkoms*.¹³ Reference to these two different developments has resulted in confusion as these developments are very similar in nature.
- 7.2.4 The lack of accurate and detailed information in the report represents a flaw in the report and as such, the report must be referred back to the EAP for amendment, following which it must be recirculated for comment.

¹¹ Page 7.

¹² Page 16.

¹³ Page 9.



7.2.5 We note that the EAP acknowledges 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 that have jurisdiction in respect of any activity undertaken on the property:¹⁴

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

7.2.6 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.

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

¹⁴ Page 28.



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 detailed 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 impact assessment; a visual impact assessment; a dust impact assessment; a socio-economic impact assessment; and a noise impact assessment. The failure to provide sufficient information as part of the environmental impact assessment will result in interested and affected parties being unable to formulate and submit informed comments on the impacts of the proposed development on the surrounding environment and on their rights. Furthermore, this will also affect the ability of a decision-maker to grant the environmental authorisation as the decision-maker will not have sufficient information on the impacts of the proposed development.



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 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* (Camel thorn), associated fauna and avi-fauna species and the wetlands and sensitive botanical areas. The impact assessment report must propose mitigation measures which will be put in place in order to properly manage the biodiversity impacts associated with the proposed development. The report states that no fauna or avi-fauna impacts are anticipated and therefore no impact assessments will be undertaken.¹⁵ This statement is unqualified and cannot be relied upon. Considering the location of the proposed development, 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. Although the report states that no above ground water resources were found, aside from a seasonal pan located at the northern end of the site, the area has also been identified in the National Freshwater Ecosystem Priority Area as a natural wetland. Reference is made to the Gamagara Municipality Reviewed Spatial Development Framework, 2010 ("**GMRSDF**") which provides that water resources located within the Kathu area are extremely limited and the area has become dependent on underground water resources. 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.

¹⁵ Page 25.



Furthermore, the report confirms that there are no plans for any bulk storm water management infrastructure. The need for a water impact assessment report is 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.

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

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 occur in and around Kathu and on adjacent farms. These areas are subject to on-going archaeological research. The need for a comprehensive assessment of the impact of the proposed development on these resources is apparent.

7.3.4.5 Visual impacts - We note that the report does not identify a visual impact assessment as being necessary. We submit that due to the location, current rural ambience, size and



nature of the proposed development, significant visual impacts will occur as a result of the proposed large scale development. An independent specialist must assess the anticipated visual impacts, particularly those associated with the multi-storey buildings, building materials used, and artificial lighting (and its effect on biodiversity in the area) and propose adequate mitigation measures so that interested and affected parties (and the decision-maker) may be informed as to what these impacts are and how they are to be managed.

7.3.4.6 **Noise impacts** - We note that the report does not identify a noise impact assessment as being necessary. 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 biodiversity in the area, the use and enjoyment of the surrounding properties, as well as negatively impact on the value of these properties. These noise impacts are not normally associated with the current property uses in the area and an assessment is required in order to identify the impacts and propose adequate mitigation measures.

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 development, we anticipate there to be high levels of dust generated by construction and ancillary activities. This would likely cause a nuisance which would affect the use and enjoyment of the surrounding properties as well as negatively impact the value of these properties.

7.3.4.8 **Socio-economic impacts** - We note that the report does not identify a socio-economic impact assessment as being necessary. The proposed development may have a positive effect in respect of employment creation for the local community, mainly during the construction phase, and to a lesser extent during the operational phase, however the impacts identified above may have a detrimental effect on existing businesses and



activities which are undertaken in the area and would likely result in job losses. A socio-economic assessment is required in order to identify the impacts associated with the proposed development (both positive and negative) and propose adequate mitigation measures. Such an assessment would also assist in the desirability determination, as discussed below.

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 access to the site will be provided via the R380 at the Kathu Village mall, from the Kathu mine road and from the "old road" to the north. The report confirms that all roads will require upgrading, however no information has been provided as to whether any consent from the Provincial or local roads authority will be required. Furthermore, no indication is provided as to the duration of these upgrades and how these works will impact on the existing traffic flow of the area.
- 7.3.5.2 Furthermore, the report notes that water supply will be provided by the Kathu West and Sesheng South reservoirs, however no confirmation of capacity to supply the volumes of water required has been provided. Considering the nature and size of the development, it is imperative that a reliable water supply be secured for both the construction and operational phases in order to prevent any detrimental impacts on the natural water resources in the area.
- 7.3.5.3 The Preliminary Bulk Services and Infrastructure Status Report ("**the BSISQR**"),¹⁶ states that it should be read in conjunction with previous reports prepared by Aurecon / Worley/Parsons.¹⁷ We note that these previous reports were not provided with the report,

¹⁶ Appendix 5.

¹⁷ Page 1 of Appendix 5.



making it impossible for interested and affected parties to submit informed comments thereon.

- 7.3.5.4 We note that the Electrical Service Report provided with the report (Appendix 6) was conducted for the development on Farm *Uikoms* and not this proposed development. It is therefore unclear as to how the findings of this report, which was conducted in respect of an entirely different property, can be relied upon. Nevertheless, we note that the Electrical Service Report clearly states that the capacity of Kathu substation is insufficient to accommodate any further development in Kathu.
- 7.3.5.5 It is unclear whether the proposed Postmasburg Waste Water Treatment Works and sewer line forms part of the current application proposed. 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 must be amended and recirculated for comment.
- 7.3.5.6 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 development.
- 7.3.5.7 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.
- 7.3.5.8 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.

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

7.4.1 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.

7.4.2 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.

7.4.3 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.

7.4.4 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.

7.4.5 Subsection 2(4)(i) 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 development does not materialise. No further socio-economic benefits and disadvantages are discussed in the report. The report should include a socio-economic impact assessment report which identifies the advantages and disadvantages of the proposed development and proposes adequate mitigation and management measures.

7.4.6 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.

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

7.5.1 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.¹⁸ This requirement relates to regulation 28 of the NEMA 2010 regulations,¹⁹ which requires *inter alia*, that a scoping report must contain the following information:

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

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

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

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

¹⁸Section 240 of NEMA.

¹⁹Published under Government Notice R543 in *Government Gazette* 33306 of 18 June 2010.



7.5.1.5 *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;*

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

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

7.5.3 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-*

7.5.3.1 *the property or location of the activity;*

7.5.3.2 *the type of activity to be undertaken;*

7.5.3.3 *the design or layout of the activity;*

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

7.5.3.5 *the operational aspects of the activity; and*

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

7.5.4 The report states that various alternatives were identified during the scoping phase,²⁰ however only four alternatives are presented with Alternative 3 being the preferred

²⁰ Page 15.



alternative. We note that the report does not include a comprehensive assessment of the advantages and disadvantages of each alternative.

7.5.5 The report states that Alternative 3 *"has importantly taken the sensitive natural features such as wetlands and the sensitive botanical areas into consideration when it has come to the placement of open spaces and roads"*,²¹ however these considerations are not adequately assessed and interested and affected parties are not provided with any information on the criteria used in the assessment process. This statement also contradicts earlier statements in the report, which provides that there are no above ground water resources present on the property. In terms of the National Water Act, 1998, a wetland is included in the definition of a water resource.

7.5.6 Furthermore, we note that no consideration has been given to the wetlands and sensitive botanical areas when considering the placement of residential properties, institutional properties, business properties and associated infrastructure. As such we submit that the identification and comparative assessment of alternatives does not meet the statutory standard.

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

7.5.7.1 the property on which or location of the activity: 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;

7.5.7.2 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;

²¹ Page 16.



- 7.5.7.3 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.
- 7.5.8 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.²² 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 development may result in no potential negative environmental impacts,²³ this results in a positive impact as the natural vegetation, heritage resources, water resources and existing businesses and activities will not be negatively affected.
- 7.5.9 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 in terms of the advantages and disadvantages of such no-go option). The report must then be recirculated for comment.
- 7.5.10 The description of the *need and desirability* of the proposed activity provided in the report does not meet the requirements of the Department's guidelines for the assessment of need and desirability in environmental impact assessment.²⁴

²² Page 18.

²³ Page 18.

²⁴Published in government Notice 891 in *Government Gazette* 38108 of 20 October 2014.



7.5.11 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;*
- *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."²⁵

7.5.12 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.

²⁵ On page 15 and 16 of the Guidelines.



- 7.5.13 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.
- 7.5.14 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.
- 7.5.15 The Guidelines note that, in order to properly interpret the requirement in terms of the NEMA 2010 regulations to consider "need and desirability", it is necessary to turn to the National Environmental Management Principles of NEMA which serve as a guide for the interpretation, administration and implementation of NEMA and its regulations. We note that the report does not adequately address the NEMA principles and how the proposed development will meet these principles.
- 7.5.16 The EAP has referenced the benefits of the proposed development; however we note that these benefits are limited and the proposed development will likely have a far more significant detrimental impact on the sense of place and current surrounding property uses, which include a thriving tourism industry.
- 7.5.17 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 Best Practicable Environmental Option ("**BPEO**"), which is defined in NEMA as "*the option that provides the most benefit or causes the least damage to the*



environment as a whole, at a cost acceptable to society, in the long term as well as in the short term” and that the BPEO will be the ceasing of any further development in the area.

7.5.18 We note that the proposed development cannot come into operation before the proposed upgrades mentioned in the BSISQR have been implemented, particularly due to bulk water and sewer infrastructures being an important requirement for the development.²⁶

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

7.5.20 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.²⁷ It is submitted that the report does not adequately explain and assess these requirements which results in a further shortfall in the application.

7.6 **Impact on the surrounding environment:**

7.6.1 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.

²⁶ Page 9.

²⁷ Page 10.



- 7.6.2 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.²⁸
- 7.6.3 It is further noted that the Kathu Forest was declared as the first Protected Woodland in the country, in terms of Government Notice R727 in *Government Gazette* 32370 of 10 July 2009 ("**the Notice**"), of section 12 (1) (c) of the NFA.
- 7.6.4 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 been included in the National Committee for Nature Conservation (NACOR) list as an area of conservation importance in 1978.
- 7.6.5 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 status results in the limitation of activities which may take place on and around the Forest property.
- 7.6.6 According to the Gamagara Municipality Integrated Development Plan, 2013/2014 ("**GMIDP**") the following major environmental challenges are found within Kathu:
- 7.6.6.1 unsustainable utilisation of mankind of the natural environment;
 - 7.6.6.2 the current development and expansion of the town of Kathu which include an up-market housing development to the north of the town;

²⁸ Page 20.



7.6.6.3 new and expanding mines;

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

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

7.6.7 It is noted that none of these issues raised in the GMIDP have been addressed in the report. We submit that this is a glaring omission in the application and furthermore, does not accord with the principles of NEMA, as discussed above.

7.6.8 The report states that the proposed development does not fall within, or adjacent to, the declared Kathu Forest, but that it is located within the Kathu Bushveld, which is characterised by a medium-tall tree layer with *Acacia erioloba* in places, but mostly open and including *Boscia albitrunca* as the prominent trees.²⁹

7.6.9 We submit that the report does not consider the unique ambience for which the area is known (as a result of the Kathu Forest). Furthermore, the exact distance and location of the proposed development in relation to the Kathu Forest is not clarified in the report. We further note that the report only mentions that the proposed development is located within the Kathu Bushveld, but fails to assess the potential impact that the development will have on the unique attributes of this Bushveld (such as the tourism and ecological resources it provides).

7.6.10 The report states that the development is located within the urban edge of Kathu, and can therefore also be considered to be infill development. It further notes that infill planning are contemporary principles used to promote integration and to ensure optimum utilisation of

²⁹ Page 20.



available land. The report does not however consider the negative impact the proposed development will have on the interests of those who own properties within close proximity to the property. It is 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.

7.6.11 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. Impacts likely to be associated with the proposed development include water impacts; biodiversity impacts; socio-economic impacts; visual impacts; heritage impacts; traffic impacts; impacts on municipal services in the area; and construction phase impacts. The impacts of these activities may have the following results:

7.6.11.1 As noted above, the GMSDF states that water resources located within the Kathu area are extremely limited and the area has become dependent on underground water resources.³⁰ Furthermore, the report contains an unqualified statement that there are no aboveground water resources present on the property. This statement is contradicted as the report later confirms the existence of a small pan on the property and acknowledges that the area is identified in the National Freshwater Ecosystem Priority Area as a natural wetland. No reliance can be placed on these conflicting statements, pending the undertaking of a specialist water impact assessment report. A water impact assessment should be conducted to identify any potential water use activities required for the proposed development and address any impacts that the proposed development might have on the water resources in the area.

7.6.11.2 The EAP acknowledges that the site is generally covered in thick vegetation identified and that the site is degraded in certain areas,³¹ however it is noted that a specialist

³⁰ Page 11 of GMRSDf.

³¹ Page 20.



botanical impact assessment must still be commissioned to confirm the status of vegetation on the property. In this regard, no reliance can be placed on this statement made in the report until it is confirmed by a specialist impact assessment.

7.6.11.3 The EAP states that the impact on mammal and bird species were not (and will not) be 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.³² We note that no fauna or flora impact assessment has been (or will be) undertaken, as such no reliance can be placed on this statement. As noted above, considering the nature and location of the area, such an assessment must be undertaken in order to confirm what the biodiversity impacts of the proposed development will be.

7.6.11.4 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,³³ however the 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.

7.6.11.5 The report states that no visual impact studies will be undertaken due to the nature of the activity, the surrounding land-uses, the proximity to other residential developments, and that the sense of place is not expected to be significantly altered by the proposed residential development.³⁴ As noted above, the location, size and nature of the development will significantly impact the current sense of place and will result in

³² Page 26.

³³ Page 22 of draft scoping report.

³⁴ Page 27.



significant 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 high density 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 is an important tourist attraction and known for its unique ambience.

7.6.11.6 The report states that heritage impacts have been identified, as a number of Middle Stone Age ("**MSA**") and Later Stone Age ("**LSA**") implements were encountered over the proposed development site (a dispersed scatter of MSA tools were recorded in the north east of the proposed development site, alongside the old Kuruman Road and a ruined concrete reservoir and the foundations of a modern structure/building were found among a stand of large Camel thorn trees),³⁵ 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.

7.6.11.7 The construction and operational phase may result in negative impacts as the use of vehicles, construction materials, chemicals and other hazardous substance may contaminate soil and water sources and negatively impact the surrounding properties. The operational phase will see the use of vehicles, the generation of solid waste and other activities which could result in contamination of soil and water sources and the increase in vermin, likely leading to a decline in agricultural production and the destruction of the ecology in the area.

7.6.11.8 As noted above, no studies have been provided as to the traffic impacts of the proposed development. It is submitted that the construction of a high density mixed-use development consisting of 1439 units and commercial business activities will result in a significant increase in traffic on roads which will have a high negative impact on

³⁵ Page 23.



existing infrastructure. The report confirms the anticipated high volumes of traffic that will be generated by the proposed development, recommends that external road upgrades take place, and suggests that mitigation measures be put in place regarding the proposed access route, however fails to elaborate on what these mitigation measures are.³⁶ 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. A traffic impact assessment must be undertaken to assess the potential traffic impacts and propose adequate management measures.

- 7.6.11.9 The report confirms that the proposed development cannot come into operation before the proposed bulk services and infrastructure in the Kathu area have been upgraded.³⁷ It is submitted that the report does not include confirmation by the local authority of its ability and capacity to provide the necessary services to accommodate the proposed development. It is likely that, given the large scale of the proposed development, this would place significant pressure on current service delivery in the area.
- 7.6.11.10 The construction phase activities will result in the increase in soil erosion and dust which may present a nuisance to interested and affected parties who are in close proximity to the property. As noted above, a dust impact assessment must be undertaken in order to identify the dust impacts and propose adequate mitigation measures.
- 7.6.11.11 During the construction phase, equipment and construction materials such as concrete and other building materials must be handled and stored properly in order to prevent spillages and contamination which will negatively impact soil and water resources. This is an important factor, considering the likelihood of soil and water contamination, bearing in mind the nature and scale of the proposed development.

³⁶ Page 27.

³⁷ Appendix 5.



- 7.6.11.12 Facilities are to be provided for workers during the construction phase for both solid waste and ablution facilities, this may attract vermin if this waste is not collected and disposed of properly. Ablution facilities must be monitored in addition to the behaviour of workers in order to prevent contamination which will negatively affect the soil, any water sources and surrounding properties.
- 7.6.11.13 The noise, as a result of the use of heavy duty vehicles and construction equipment during the construction phase and the increase in people and activities in the area during operational phase, will likely destroy the current sense of place of the area. As noted above, this may detrimentally impact on the use and enjoyment of the surrounding properties; the current businesses being undertaken in the area and will also result in the reduction of property values.
- 7.6.11.14 Emissions during both the construction and operational phases of the proposed development will be increased which will have an effect on air quality in the area as not only dust will be discharged but also vehicular and commercial emissions will result from the proposed development.
- 7.6.11.15 The area is inherently agricultural in nature; the proposed development which consists of high density residential and commercial activities could reduce property values which will have a negative impact on the interests of those who own neighbouring properties. Furthermore, in considering the impacts identified above, the rights of affected parties to the use and enjoyment of their properties will likely be reduced.

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; the impacts associated with the proposed development have not been properly assessed; and adequate management and mitigation measures in respect of impacts likely to be associated with the proposed development have not been provided. 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