

Amishka Mothilal

From: >
Sent: Wednesday, 02 May 2018 11:36
To: Stephanie Gopaul
Cc: ShumaniD
Subject: Basic Assessment Banghazi Lodge

Dear Stephanie

I was informed by Ms Olivier of DEA about the Bhangazi Lodge proposal in the Isimangaliso Wetland Park. Since natural forest will be affected, which is covered by our National Forests Act of 1998, the Department of Agriculture, Forestry and Fisheries is a commenting authority. Has the Department been approached to provide inputs, and to whom was the request sent? Can the report also be sent to me please, when released for comment?

Kind regards

Izak van der Merwe

Amishka Mothilal

From: IzakVDM < >
Sent: Tuesday, 29 May 2018 12:33
To: Willeen Olivier; siboniso@isimangaliso.com; BuhleM; TshifhiwaRa; Piet Theron; Stephanie Gopaul
Cc: JohanBE; ShumaniD
Subject: Proposed Bhangazi Development in iSimangaliso: Email 1

Dear colleagues

At the meeting last week on the Bhangazi Lodge, I said that I would communicate further on the issue of exceptional circumstances. I also prepared some comments after the site visit, with references to maps. I will send an email before end of the week after I received comments from colleagues.

Kind regards

Izak van der Merwe

Amishka Mothilal

From: IzakVDM <
Sent: Friday, 01 June 2018 14:23
To: Willeen Olivier; siboniso@isimangaliso.com; BuhleM; TshifhiwaRa; Piet Theron; Stephanie Gopaul
Cc: JohanBE; ShumaniD
Subject: RE: Proposed Bhangazi Development in iSimangaliso: Email 1
Attachments: COMMENT BHNGAZI LODGE.docx; Exceptional circumstances.docx

Dear colleagues

I attach the DAFF comments on the Bhangazi Lodge, and the clarification of relevant parts of the Section 3 of the National Forests Act of 1998. In essence the layout in its current form is not acceptable to DAFF, but we really think an alternative development can be creatively planned, with the transformed area as the main focus.

If necessary, we can communicate further on this. Some of the issues in the second document I have tried to convey as simple and concise as possible, but these are issues that advocates argued over and the documents can fill a large card board box. We will just be out of office first half of next week, in case you need to get hold of me.

Kind regards

Izak van der Merwe

From: IzakVDM
Sent: 29 May 2018 12:31 PM
To: "
Cc: J
Subject: Proposed Bhangazi Development in iSimangaliso: Email 1

1

Dear colleagues

At the meeting last week on the Bhangazi Lodge, I said that I would communicate further on the issue of exceptional circumstances. I also prepared some comments after the site visit, with references to maps. I will send an email before end of the week after I received comments from colleagues.

Kind regards

Izak van der Merwe

-

COMMENT / PROPOSALS ON BHANGAZI LODGE LAYOUT

The planned Bhangazi Lodge proposal should be revised. The site visit has shown an intact natural forest on the terrain that is fairly dense, with a few gaps here and there. The restaurant and the many units scattered through the forest, will lead to destruction of natural forest areas, and will have a significant impact on the integrity of the forest. Many gaps will be created with permanent structures replacing forest habitat. These would have edge effects beyond their footprint, such as noise, movement of people etc. that could also affect some of the fauna.

This is not only an issue of assessing impacts, but also of interpreting law, most specifically the limitation placed on destruction of natural forest for a new land use as per Section 3(3)(a) in the National Forests Act of 1998. These are described in a separate document submitted.

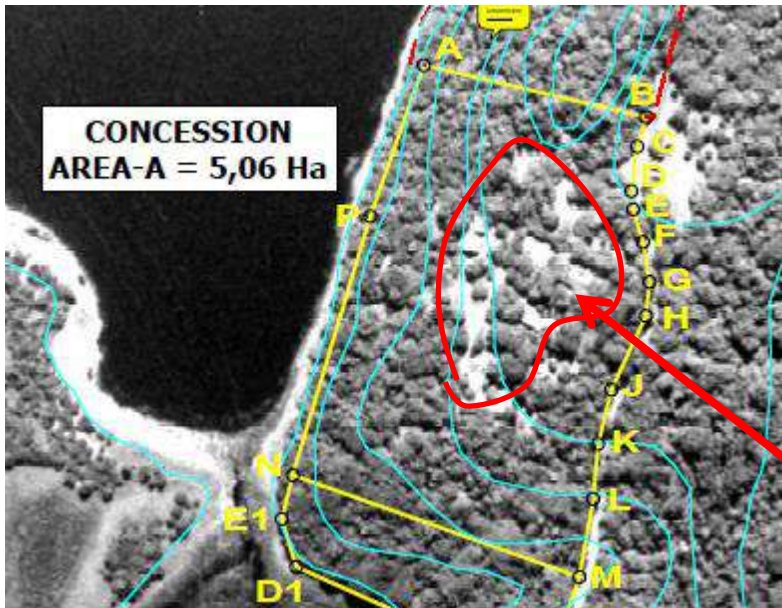
Section 3(3)(a) states: “...*natural forests must not be destroyed save in exceptional circumstances where, in the opinion of the Minister, a proposed new land use is preferable in terms of its economic, social or environmental benefits*”. The Department of Agriculture, Forestry and Fisheries (DAFF) and its legal advisers interpret the term exceptional circumstances strictly, as guided by court judgements made relating to the same term in other laws.

When DAFF applies the Section 3(3)(a), it considers whether the activity constitutes exceptional circumstances. It is purely the activity that is considered, not whether the project is a Strategic presidential project, a community project etc. In the past it refused licences for housing in natural forest, and even tourist housing, because these are not considered to be exceptional circumstances. Clear cut exceptional circumstances are strategic developments in the public interest like the national N2 road, but then only if no feasible alternatives exist. When looking at a project the question (but not the only question) is also whether the development is of greater public interest than the protection of the forest. Public interest means the general public, whose rights to a good environment in terms of the Constitution has to be upheld, as weighed against the interest of an individual or particular community.

In the Bhangazi Lodge layout there are two issues. DAFF does not see the development of a restaurant and chalets as an exceptional circumstance. But on top of that, it transpired during the site visit that there is a fairly large transformed area of more than a hectare already (old fishing camp), in which a feasible tourist development can be done. This weakens the case for placement of the restaurant and chalets in the forest even further. The current layout places the destructive development in the relatively intact natural forest, but hardly touches the transformed area. It should be the other way round. Place the major impacts in the transformed area, and tread lightly in the natural forest, which is not only a rare biome, but the forest type is also a declared threatened ecosystem. Isimangaliso should set the example. A wrong example here can set a precedent, creating difficulties for DAFF officials trying to keep private developers out of natural forest elsewhere.

Apart from placing the restaurant and main lodge in the transformed area, a small bush camp of about eight small tented or log houses placed under the canopy could be fitted in the few areas with some gaps in the understorey, as in the example of Storms River National Park. If considered, a forest specialist should be used to guide the process. Trails (preferably boardwalk to reduce compaction) and a lookout hide could be constructed in suitable locations (the latter can be at the edge of the forest, in the margin and raised above ground, at a location where it is not necessary to cut trees).

Although an application does not have to be made to DAFF for a licence in this case (state forest was transferred with delegated powers), Isimangaliso must still ensure that it abides by the law. If the eventual layout to be decided upon does not fit in with what was outlined above. DAFF will have no other option but to oppose the development.



This old fishing camp area is large and is transformed and should be fully utilised to carry most of the impacts – restaurant, accommodation etc. In the current layout it is barely utilised. A two storey lodge for example with restaurant at bottom, units on second floor and rooftop viewing area would be able to offer visitors with vistas on the lake.



The many units scattered near to each other will cause substantial damage to the forest and reduce its ecosystem and habitat functionality. It is not certain whether these would fit under the canopy or not. The guideline for a small bush camp is not more than 8 small units of not more than 30 square metre each, fitting under the canopy, like at Storms River National park.

The large restaurant will definitely destroy substantial natural forest and cannot be fitted under the canopy either. It should be in the transformed area of the old fishing camp.

EXAMPLES OF SMALL BUSH CAMP STRUCTURES FITTING UNDER THE CANOPY

No mature trees are cut or severely pruned, only seedlings and saplings are removed. The units are placed above the forest floor, and they either fit into an existing forest clearing, or under the canopy.



Small bush camp cabin fitting under the canopy (only 8 built by SANPARKS at Storms River)



Small permanent tented camp structure fitting under the canopy

EXCEPTIONAL CIRCUMSTANCES PER SECTION 3(3)(A) OF THE NATIONAL FORESTS ACT NO 84 OF 1998 (AS AMENDED)

Section 3(3)(a) of the National Forests Act of 1998 as Amended

The National Forests Act of 1998 states clearly that “...*natural forests must not be destroyed save in exceptional circumstances where, in the opinion of the Minister, a proposed new land use is preferable in terms of its economic, social or environmental benefits*”. This does not mean that all such issues have to be referred to the Minister of Agriculture, Forestry and Fisheries for a decision, but implies that mandated officials can apply the principle in decision-making, within the framework of policy and legal interpretation. These officials usually have to consider Section 3(3)(a) when they receive applications to destroy trees in a natural forest in terms of Section 7 of the National Forests Act.

Where a conservation agency or lease agent of State forests have delegated powers that include the destruction of natural forest, they also have to comply with the National Forests Act, including Section 3(3)(a). Any decisions by any authorities affecting natural forests, must also take that Section into account. Section 3(1)(c) of the Act states that the principles of Section 3 (including Section 3(3)(a)) must be taken into account “*in the exercise of any power or the performance of any duty under any other legislation where the performance of that duty will impact on natural forest or woodland.*” Section 3(1)(e) also determines that persons carrying out environmental impact assessments must take these principles into account.

Section 3 of the Act has other principles as well, such as that forests need to be managed to sustain yields of their potential economic, social and environmental benefits. When natural forest is affected not all the principles of Section 3 have to be taken into account such as to sustain the yield of forests etc. Section 3(2)(a) clearly states that an organ of state applying the principles “*must take into account the differences between natural forests, woodlands and plantations.*” Thus when natural forest is affected, the Section 3(3)(a) will be the overriding factor to consider.

Policy Principles and Guidelines for Control of Development Affecting Natural Forest

This policy document was adopted in 2009 to provide guidance to officials of the Department of Agriculture, Forestry and Fisheries (DAFF) on decision-making whenever land use change affects natural forests – either when deciding on licence applications to destroy trees in a natural forest, or when commenting on environmental impact assessments or land zoning or subdivision. It is currently being revised.

What is Natural Forest?

The National Forests Act defines natural forest in Section 2(1)(xx) is as follows:

‘A natural forest means a group of indigenous trees

- whose crowns are largely contiguous*
- or which have been declared by the Minister to be a natural forest under section 7(2)’*

This definition should be read in conjunction with Section 2(1)(x) which states that ‘Forest’ includes:

- a) A natural forest, a woodland and a plantation*
- b) The forest produce in it; and*
- c) The ecosystems which it makes up.*

Thus the definitions of “natural forest” and “forest” together ensure that we deal not only with the

trees, but all components of the forest, including fauna and flora. The definition of tree includes seedlings and saplings, not only mature trees. The term forest is wider than the term natural forest, and includes the latter.

The legal definition has to be supported by a technical definition, as demonstrated by a court case in the Umzimkulu magisterial district, relating to the illegal felling of Yellowwood (*Podocarpus latifolius*) and other species in the Gongqogonqo forest. The Minister declared all 26 natural forest types as natural forest by Government Gazette, just to add a safety margin in case disputes would arise over whether a vegetation is natural forest or not. There is a thick 273 page document titled "Classification System for South African Indigenous Forests" that describes the forest types. Forest subtypes have been identified for some forest types. In the Gongqogongqo forest case the court also accepted that disturbed forest can be considered as forest. These are reflected in forest canopy classes (see Appendix 1 at bottom).

The DAFF policy document states: To implement the National Forests Act, the correct identification of natural forests is of crucial importance. For this purpose the definition of 'Natural Forest' in the National Forests Act is insufficient, and must be supplemented by scientific definitions. To distinguish between natural forest, thicket and woodland may in some instances be difficult to the lay person, and the guidelines in Appendix B can be used to aid the distinction between these different biomes. Dense woodland or thicket can at a glance appear similar to natural forest, but can be identified correctly at closer inspection. Being able to identify and define the natural forests in an area, has a direct bearing on the restrictions applicable to land use and development. Use must be made of appropriate forest experts where any uncertainties exist.

The questions to ask are:

- Is this a vegetation community dominated by indigenous trees whose crowns are largely contiguous (crown cover must be 75% or more)?
- Does the vegetation community grow in multiple layers (at least a herb layer, shrub layer and a canopy layer of trees with touching crowns—see Appendix A)?
- Are the majority of these tree and shrub species typical forest tree and shrub species (indicator species for one of the national forest types)?
- Can it be identified as one of the defined national forest types?

These criteria are not watertight, and some exceptions may apply to forest types such as mangrove forest, riverine forest, sand forest and dune forest types. The scrub forms and pioneer regrowth phase of other forest types may also lack layers. All natural forests, however, will fit into one of the national forest types, will have more or less closed canopies, and will have associated plant and animal species.

Forest destruction

Section 3(3)(a) states that "*natural forests must not be **destroyed** save.....*"

Destroying a forest constitutes any action that would lead to the immediate or gradual killing of trees and associated plant and animal life, and the forest topsoil, in a whole forest (directly or indirectly), or in a part of such a forest, irrespective of whether it is a mature established forest, or a new forest or a new part of a forest which may be in the process of establishment or expansion for reasons such as exclusion of fire.

There is no case law yet that indicate the extent of clearance that would constitute natural forest destruction. In the case of the removal of one tree it could be difficult to prove destruction of natural forest, but the larger the clearance and the more trees affected, the easier this would be to prove.

New Land Use

Section 3(3)(a) states that “*natural forests must not be destroyed save in exceptional circumstances where....a **proposed new land use is preferable** in terms of its economic, social and environmental benefits.*” Because the National Forests Act does not define the term “land use”, one must resort to the general dictionary use of the term e.g. Wikipedia free encyclopedia defines it as “the human use of land”. It does not relate to land use and zoning rights specifically (such as provided for by land use legislation). So any human use of natural forest that will lead to the destruction or disturbance of natural forest, is applicable, and that also applies to housing or tourism development and associated infrastructure.

Exceptional Circumstances

Section 3(3)(a) states that “*natural forests must not be destroyed save in **exceptional circumstances** where....*”

The term “exceptional circumstances” indicates situations that are unusual, uncommon, rare or different (see Appendix C).

Where forests are affected by such projects, it must first be proven beyond doubt that unusual or rare circumstances apply, and secondly that no feasible alternative is available (such as an alternative site or route). If unavoidable, an off-set agreement must be reached to compensate for the loss, and all feasible mitigation measures must be taken to minimise the impact. “Exceptional circumstances” may also include essential expansion of infrastructure or services affecting natural forest in a local authority area, but is only allowable if there is no feasible alternative. Housing development (whether for residential or tourism purposes) cannot be considered as exceptional (rare or unusual). These are common land uses that can usually be placed elsewhere in the landscape. Clear cut examples of exceptional circumstances are capital projects of national and provincial strategic importance, such as the Wild Coast section of the N2 road, which traverses a few natural forest patches.

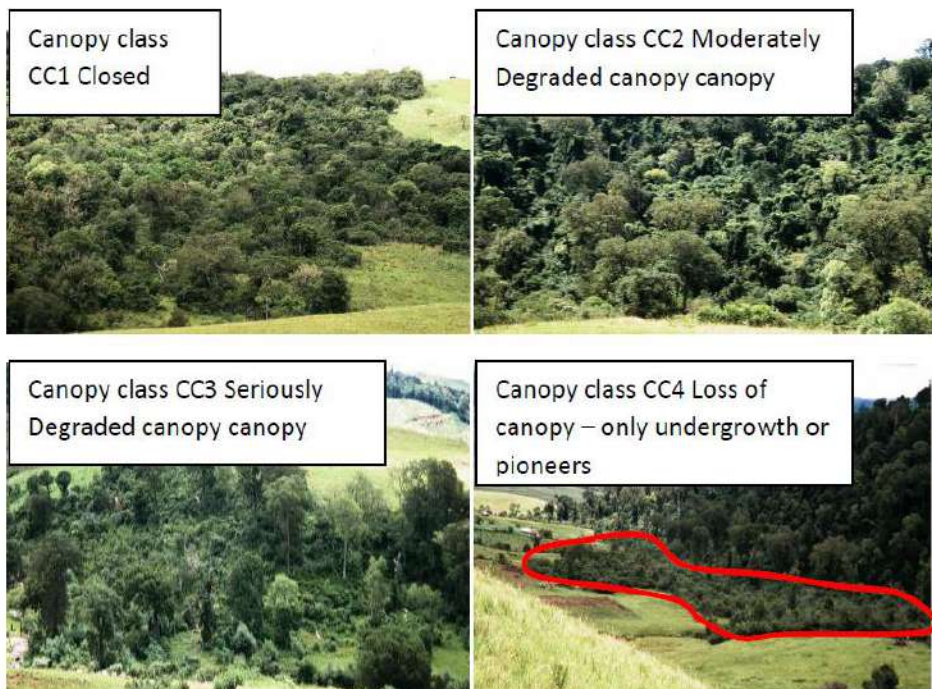
The onus is on applicants to prove exceptional circumstances, and also that there are no feasible alternatives.

Small bush camps of small platforms raised above the forest floor with tents or houses fitting under the canopy (like at Storms River National Park), could be considered as exceptional due to the small footprints and relatively low impacts on the forest integrity – if no mature canopy trees have to be cut. In such cases the canopy remains intact and the natural forest remains dominant.

There is no definitive case law yet on the terms exceptional circumstances of Section 3(3)(a) of the National Forests Act. There is however case law on the term as used in other legislation, which indicates that the term must be interpreted strictly, and refers to unusual or rare circumstances (See Appendix C).

APPENDIX A

FOREST CANOPY CONDITION CLASSES



APPENDIX B

COMPARISON BETWEEN THE CHARACTERISTICS OF NATURAL FOREST, WOODLAND AND THICKET

Attribute	Natural Forest	Woodland	Thicket
CANOPY (Tree crowns)	largely contiguous	broken, trees separated from each other at varying distances	largely contiguous
LAYERING (Strata)	two or more (canopy, herbaceous and shrub/sapling in between)	two or more (canopy, herbaceous and shrub/sapling in between)	absent
GRASSES	absent	present, dominant in herbaceous stratum	absent, except in glades (openings)
FIRE	absent	present (fire adapted ecology)	absent
SEASONAL EFFECTS	evergreen	deciduous	evergreen
TREE COMPONENT	dominant	dominant	rare
WOODY ELEMENT	dominant (trees)	wood and grass share dominance	dominant (dense shrubs/ dwarfed trees)

Key: Sharing attributes: **Green**

Not sharing attributes: **Red**

ANALYSIS:

- All three vegetation types are woody (forests)
- Only two attributes are common to both natural forest and woodland
- No attributes are common to both woodland and thicket
- Most attributes are shared by, or common to, natural forest and thicket
- Woodland is more different from both natural forest and thicket, than natural forest and thicket from each other
- The conclusion is that there is a closer relationship between natural forest and thicket, than between either of these and woodland.
- It may be that thicket is a xerophytic form of forest

APPENDIX C

CASE LAW RE EXCEPTIONAL CIRCUMSTANCES

See extract below from a judgement relating to the interpretation of the term “exceptional circumstances” from other legislation. Note the last sentence stating that a strict rather than a liberal meaning be attached to the term.

JUDICIAL PRECEDENTS

The phrase “*exceptional circumstances*” has been the subject of judicial debate in a plethora of authorities in various Divisions including the Supreme Court of Appeal and Constitutional Court. We highlight hereunder such cases in which an attempt has been made to define what is meant by “*exceptional circumstances*”.

21.

In *Incubeta Holdings (Pty) and Another* Sutherland J in an attempt to interpret the phrase as contained in section 18 of the Superior Court Act 10 of 2013 referred to

the summation of the meaning thereof quoting from the judgment of **MV Ais** and stated thus:

"17] *What constitutes 'exceptional circumstances' has been addressed by Thring J in MV Ais Mamas Seatrans Maritime v Owners, MV Ais Mamas, and Another 2002 (6) SA 150 (C), where a summation of the meaning of the phrase is given as follows at 156I – 157C:*

'What does emerge from an examination of the authorities, however, seems to me to be the following:

1. *What is ordinarily contemplated by the words "exceptional circumstances" is something out of the ordinary and of an unusual nature; something which is excepted in the sense that the general rule does not apply to it; something uncommon, rare or different; "besonder", "seldsaam", "uitsonderlik", or "in hoë mate ongewoon.*
2. *To be exceptional the circumstances concerned must arise out of, or be incidental to, the particular case.*
3. *Whether or not exceptional circumstances exist is not a decision which depends upon the exercise of a judicial discretion: their existence or otherwise is a matter of fact which the Court must decide accordingly.*
4. *Depending on the context in which it is used, the word "exceptional" has two shades of meaning: the primary meaning is unusual or different; the secondary meaning is markedly unusual or specially different.*
5. *Where, in a statute, it is directed that a fixed rule shall be departed from only under exceptional circumstances, effect will, generally I speaking, best be given to the intention of the Legislature by applying a strict rather than a liberal meaning to the phrase, and by carefully examining any circumstances relied on as allegedly being exceptional.'*



environmental affairs

Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA

Ms Debbie Weldon

Dear Ms Weldon

COMMENTS ON THE DRAFT BASIC ASSESSMENT REPORT FOR THE BHANGAZI CULTURAL HERITAGE LODGE, ISIMANGALISON WETLAND PARK, SOUTH AFRICA

Background

The proposed development falls within a portion of land which was given to people living on the eastern shores and were forcibly removed. The land claim has been settled through cash compensation, an allocation of community levies and traditional access rights to graves on higher ground to the north west of the Bhangazi Lake. Development rights to a portion of land which comprises the Bhangazi Heritage Site on the South East of Lake Bhangazi was granted.

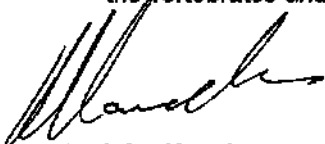
The proposed development is 9.94 ha in extent, and it lies along the fringe of a small south eastern extension of Lake Bhangazi. Lake Bhangazi is the only permanent fresh water source in the area. The area provides an extremely important habitat for a number of plant and animal species, including Hippopotamuses (*Hippopotamus amphibius*) and Crocodiles (*Crocodylus niloticus*). The vegetation in the area consists primarily of coastal forest and secondary grasslands, providing a habitat for many birds and other fauna, including the endangered Red Duiker (*Cephalophus natalensis*) and Samango Monkey (*Cercopithecus mitus*), which breed in this area.

Compliance with the National Environmental Management Protected Areas Act, Act No. 57 of 2003

- In terms of applicable legislation the Draft Basic Assessment Report does not recognise NEMPAA, however in terms of Section 9 of NEMPAA, the system of protected areas in South Africa recognises World Heritage Sites as kinds of protected areas.
- Section 50(5) of NEMPAA states that *"no development, construction or farming may be permitted in a national Park, nature reserve, or world heritage site without the prior written approval of the management authority"*. An approval letter for the proposed development must be written by the management authority assigned in terms of Section 38 of NEMPAA and form part of the documents to be submitted with the draft basic assessment report.
- In terms of NEMPAA Minister has prescribed regulations for the Proper Administration of Special Nature Reserves, National Parks, and World Heritage Sites excluding Vredefort Dome. However, there is no mention of these regulations in the Draft Basic Assessment Report.
- In terms of section 19 of the regulations for the Proper Administration of Special Nature Reserves, National Parks, and World Heritage Sites excluding Vredefort Dome no development contemplated in Section 50(5) of the Act shall be implemented in any area other than an area designated for such development in the Integrated Management Plan. It is not indicated where the proposed development footprint falls in terms of the zonation plan of iSimagaliso Wetland Park, a zonation and layout maps indicating the proposed development must be included.

Generic comments on the Basic Assessment Report

- The layout plan of the proposed development should be included in the Draft Basic Assessment Report.
- An assessment to be conducted on the predicted impacts of the proposed development on the vertebrates and their habitats.



Ms Nosipho Ngcaba

Director- General

Department of Environmental Affairs

Letter signed by: Mr Karl Naude

Director: Protected Areas Planning, Legislation, Compliance and Monitoring

Date: 07/11/2018

Amishka Mothilal

From: Amishka Mothilal on behalf of ERM South Africa Comments Received
Sent: Thursday, 02 May 2019 10:04
To: Ashantia Nerissa Pillay; ERM South Africa Comments Received
Subject: RE: Release of the Draft Basic Assessment Report for the Proposed Development of Bhangazi Cultural Tourism Lodge within the iSimangaliso Wetland Park, KwaZulu Natal
Attachments: Acknowledgement - Ezemvelo.pdf

Dear Ms. Pillay,

I trust that you are well. Please note that one hard copy and one soft copy(CD) was delivered to the Ezemvelo offices in Durban on 24 April 2019. Please find the attached acknowledgement of receipt of documents. The document was addressed to Jennifer Olbers.

Kind Regards
ERM



From: Ashantia I
Sent: Thursday, May 2, 2019 8:34 AM
To: ERM South Africa Comments Received <
Subject: RE: Release of the Draft Basic Assessment Report for the Proposed Development of Bhangazi Cultural Tourism Lodge within the iSimangaliso Wetland Park, KwaZulu Natal

Dear Ms Mothilal,

Thank you for your email. Please note that the IEM Planning Division does not accept electronic copies of EIA documentation as we do not have the resources and storage capacity to process such copies. Please may I request that a hardcopy of the Basic Assessment Report be submitted to our offices (upon availability) for consideration and assessment. The documents can be forwarded to the following:

Addressee: Mr Andy Blackmore – Head IEM and Protected Area Planning (alternatively, Nerissa Pillay-Scientific Technician, Conservation Planning: IEM)

Should you require any clarity regarding the above, or should you require any additional information please do not hesitate to contact this office.

Best Regards

A. Nerissa Pillay
Scientific Technician
Conservation Planning: IEM



From: Amishka Mothilal [

On Behalf Of ERM South Africa Comments Received

Sent: Tuesday, April 30, 2019 4:56 PM

To: ERM South Africa Comments Received

Subject: Release of the Draft Basic Assessment Report for the Proposed Development of Bhangazi Cultural Tourism Lodge within the iSimangaliso Wetland Park, KwaZulu Natal

Dear Stakeholder,

Bhangazi Community Trust has submitted an application for Environmental Authorisation to the National Department of Environmental Affairs (DEA) in accordance with the National Environmental Management Act, 1998 (No. 107 of 1998), as amended, and the Environmental Impact Assessment (EIA) Regulations (Government Notice R. 326).

Bhangazi Community Trust was granted permission, by the iSimangaliso Wetland Park Authority, to develop a tourism facility within iSimangaliso Wetland Park (which is a World Heritage Site). In an effort to exercise this right, the Bhangazi Trust proposes to develop a Cultural Heritage Lodge on the 9.94 ha piece of land allocated which will consist of 68 sleeping units including staffing quarters. The site is located along the Main Road to Cape Vidal in the Mtubatuba Local Municipality within the uMkhanyakude District Municipality. It lies along the fringe of a small south-eastern extension of Lake Bhangazi, just west of the St Lucia road before it crosses the coastal dune belt to Cape Vidal.

Notice is hereby given that the Bhangazi Community Trust will be submitting an application for Environmental Authorisation to the National Department of Environmental Affairs (DEA) in accordance with the National Environmental Management Act, 1998 (No. 107 of 1998), as amended, and the Environmental Impact Assessment (EIA) Regulations (Government Notice R.

326). The Project will require Environmental Authorisation through a Basic Assessment (BA) in terms of NEMA as the following activities are triggered:

	Project Activities
GN R 324	Activity 4, 6, 12, 14
GN R 327	Activity 12, 30

The development requires the authorisation of activities 12 and 30 in Listing Notice 1 (GNR 327) Practitioner (EAP) office to undertake the Basic Assessment and associated Public Participation Processes in light of the triggered activities.

The Basic Assessment Report is available for comment from the **02 May 2019 to 01 June 2019** (i.e. a 31-day comment period) and can be accessed electronically from the project website at the following link: <https://www.erm.com/en/public-information-sites/basic-assessment-for-the-proposed-cultural-tourism-lodge-development-at-lake-bhangazi> or requested from ERM (for email transmission). Additionally, the report is available at the following locations in hard and soft copy:

- iSimangaliso Wetland Park.
- St Lucia Library.
- KwaMsane Library.

Stakeholders are invited to register as Interested and Affected Parties (I&APs) and to participate in the Basic Assessment process by identifying issues of concern and providing suggestions to enhance benefits of the project. Registered I&APs will be kept informed throughout the process. To register as an I&AP, submit comments, and to obtain more information, please contact ERM at the details below.

Tel: _____

Email: _____

Project website: <https://www.erm.com/en/public-information-sites/basic-assessment-for-the-proposed-cultural-tourism-lodge-development-at-lake-bhangazi>

Kind Regards
ERM

Khosi Dlamini

From: Stephanie Gopaul
Sent: 15 May 2019 01:30 PM
To: Felicia N. Mdamba
Cc: r _____ a
Mothilal
Subject: RE: The Basic assessment report for the BHANGAZI Cultural Heritage Lodge, Isimangaliso Wetland Park

Good Day Felicia

The comment period ends on 1 June- please note that this is the draft BAR. Also note that the DEA national are conducting a site visit on 21 May (i.e. next week) and if you are able to make that date, then you are welcome to join?

A separate copy of the BAR was not sent to the Coastal Management Unit of the Dedtea as this is usually facilitated internally as required (based on our previous experience). However, should you require that we send through copy to that Department, please provide the address and contact details of the recipient and we can arrange that.

If you have any queries on the BAR or need any clarifications, please feel free to contact us.

Kind Regards,
Stephanie Gopaul
Principal Consultant

ERM



ERM *The business of sustainability*

From: Felicia N. Mdamba < _____>
Sent: Wednesday, May 15, 2019 1:17 PM
To: Stephanie Gopaul < _____>
Cc: r _____ a
Subject: The Basic assessment report for the BHANGAZI Cultural Heritage Lodge, Isimangaliso Wetland Park

Dear Stephanie,

Reference is made to the basic assessment report (BAR) that was recently submitted to the Economic Development, Tourism and Environmental Affairs (EDTEA), Mtubatuba Office regarding the above-mentioned proposed development.

As EDTEA, we would like to find out as to when does the 30 days -comment period ends. When exactly is the deadline for submitting comments. Also, the BAR that has been submitted thus far, is it a draft version or a final version?

Further to the above; was the Coastal MANAGEMENT UNIT of our Department, which is based at Pietermaritzburg submitted a copy of the above-mentioned BAR for comments.

Thank you.

Regards,

Felicia Mdamba

081 431 3220

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Khosi Dlamini

From: Stephanie Gopaul
Sent: 03 May 2018 08:10 AM
To: IzakVDM
Cc: ShumaniD
Subject: RE: Basic Assessment Banghazi Lodge

Morning Izak

I will certainly send the report to you for comment. We are in the process of completing the draft BAR and are arranging a meeting with DAFF/ DEA for the week of 21 May. I will keep you updated once further details are available.

Kind Regards,
Stephanie Gopaul
Senior Consultant



ERM *The business of sustainability*

From: |
Sent: Wednesday, May 02, 2018 11:36 AM
To: Stephanie Gopaul <
Cc: ShumaniD <
Subject: Basic Assessment Banghazi Lodge

Dear Stephanie

I was informed by Ms Olivier of DEA about the Bhangazi Lodge proposal in the Isimangaliso Wetland Park. Since natural forest will be affected, which is covered by our National Forests Act of 1998, the Department of Agriculture, Forestry and Fisheries is a commenting authority. Has the Department been approached to provide inputs, and to whom was the request sent? Can the report also be sent to me please, when released for comment?

Kind regards

Izak van der Merwe

Amishka Mothilal

From: Matthew Bremner ·
Sent: Friday, 26 April 2019 12:16
To: ERM South Africa Comments Received
Subject: RE : PROPOSED DEVELOPMENT OF BHANGAZI CULTURAL TOURISM LODGE WITHIN ISIMANGALISO WETLAND PARK
Attachments: COMPANY PROFILE.pdf; A5 FLYER.pdf

Dear Stephanie

RE : PROPOSED DEVELOPMENT OF BHANGAZI CULTURAL TOURISM LODGE WITHIN ISIMANGALISO WETLAND PARK

1. I did try to phone you to discuss the above matter.
2. I enclose herewith my company's profile and advertisement flyer.
3. My firm specialises in town planning, property and environmental law.
4. Should either you or the developer need assistance with responding to any objections or legal representation at any hearing, please do not hesitate to contact me.

Kind regards,

MATTHEW HILL BREMNER
PARTNER
RICHARD EVANS & ASSOCIATES

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Khosi Dlamini

From: Stephanie Gopaul
Sent: 29 May 2018 12:34 PM
To: _____ t
Cc: JohanBE; ShumaniD
Subject: RE: Proposed Bhangazi Development in iSimangaliso: Email 1

Thank you Izak- this will be much appreciated.

Kind Regards,
Stephanie Gopaul
Senior Consultant

ERM



From: IzakVDM <
Sent: Tuesday, May 29, 2018 12:33 PM

Subject: Proposed Bhangazi Development in iSimangaliso: Email 1

Dear colleagues

At the meeting last week on the Bhangazi Lodge, I said that I would communicate further on the issue of exceptional circumstances. I also prepared some comments after the site visit, with references to maps. I will send an email before end of the week after I received comments from colleagues.

Kind regards

Izak van der Merwe



agriculture, forestry & fisheries

Department:
Agriculture, Forestry and Fisheries
REPUBLIC OF SOUTH AFRICA

F:	DAFF	Ms. K. Govender
1	Forestry Regulations & Support	29 April 2019
KarenM@daff.ov.za	P/Bag X9029	
	Pietermaritzburg	
	3200	

**17 The Boulevard
Westway Office Park
Westville, 3635**

Attention: Stephanie Gopaul

**DRAFT BASIC ASSESSMENT REPORT FOR THE PROPOSED
DEVELOPMENT OF BHANGAZI CULTURAL TOURISM LODGE WITHIN THE
ISIMANGALISO WETLAND PARK, KWAZULU –NATAL, UMKHANYAKUDE
DISTRICT MUNICIPALITY.**

This letter serves as a notice of receipt for the above document received on the 29th April 2019. Kindly note that the document will be processed within 30 days from the date of receipt, provided that all requested information is submitted to the department timeously. Should any further information be required, please do not hesitate to contact this office.

Yours faithfully

Ms. K. Govender

.....
Forestry Regulations & Support

KwaZulu-Natal Forestry Management



environmental affairs

Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA

F

Mrs Stephanie Goupal
Environmental Resources Management (ERM) South Africa (Pty) Ltd

Dear Mrs Goupal

COMMENTS ON THE DRAFT BASIC ASSESSMENT REPORT FOR THE PROPOSED BHANGAZI CULTURAL HERITAGE LODGE, ISIMANGALISO WETLAND PARK, KWAZULU NATAL PROVINCE

The draft Basic Assessment Report (BAR) dated April 2019 and received by the Department on 15 April 2019, refers.

Following the review of the above-mentioned application, this Department has the following comments:

- i. It has been indicated in the application form that the applicant's contact person is Siboniso Mbense, however the application form is signed by Mrs Joice Gumede. Clarity is requested on whom the decision on the application should be addressed to. If Siboniso Mbense is the contact person of the applicant, you must submit a proof of authority which state that Mrs Joice Gumede has been given an authority to sign the application form on behalf of applicant contact person.
- ii. Please ensure that all issues raised and comments received during the circulation of the draft BAR from registered I&APs and organs of state which have jurisdiction in respect of the proposed activity are adequately addressed in the Final BAR (Including comments from eZemvelo KZN Wildlife and the following Directorate within Department of Environmental Affairs(DEA): Directorate Biodiversity Conservation; Directorate Protected Areas Planning, Legislation, Compliance and Monitoring, Directorate of Transfrontier Conservation Area, as well as the Directorate World Heritage Management). Proof of correspondence with the various stakeholders must be included in the Final BAR. Should you be unable to obtain comments, proof should be submitted to the Department of the attempts that were made to obtain comments.
- iii. The Public Participation Process must be conducted in terms of Regulation 39, 40 41, 42, 43 & 44 of the EIA Regulations 2014, as amended and all supporting documents such must be attached in the final BAR.
- iv. A comments and Response trail report (C&R) of all comments received during the Basic Assessment Process. The C&R report must be a separate document from the main report and the format must be in a table format. It must clearly indicate the Stakeholder, date of comments, comments and EAPs response (See attached example in Annexure 1 of this letter).
- v. Final BAR must also include Specialist Declaration of Interest in the Department's template.

- vi. The BAR must also include coordinates of the proposed project including associated infrastructures in degrees minutes and seconds. Coordinates (start, middle and end point) of all linear infrastructures must also be provided.
- vii. The submitted draft BAR does not include an undertaking under oath or affirmation by EAP. You are therefore required to include an undertaking **under oath** or affirmation as per the requirements of Appendix 1 (3) (r) of EIA Regulation 2014 which state that the BAR must include:

"an undertaking under oath or affirmation by the EAP in relation to:

- i. the correctness of the information provided in the reports;*
- ii. the inclusion of comments and inputs from stakeholders and I&APs;*
- iii. the inclusion of inputs and recommendations from the specialist reports where relevant; and*
- iv. any information provided by the EAP to interested and affected parties and any responses by the EAP to comments or inputs made by interested and affected parties".*

- viii. Please ensure that the final BAR includes the following maps:

- **A3 Layout map**

A detailed site or route plan(s) must be prepared for each alternative site or alternative activity. It must be attached as Appendix A of the BAR. The site or route plans must indicate the following:

- ✓ the property boundaries and numbers of all the properties within 50 meters of the site;
- ✓ the current land use as well as the land use zoning of the site;
- ✓ the current land use as well as the land use zoning of each of the properties adjoining the site or sites;
- ✓ the exact position of each listed activity applied for (including alternatives);
- ✓ servitude(s) indicating the purpose of the servitude;
- ✓ a legend; and
- ✓ a north arrow.

- **A3 Sensitivity Map**

The layout plan as indicated above must be overlain with a sensitivity map that indicates all the sensitive areas associated with the site, including, but not limited to:

- ✓ watercourses;
- ✓ the 1:100 year flood line (where available or where it is required by DWS);
- ✓ ridges;
- ✓ cultural and historical features;
- ✓ areas with indigenous vegetation (even if it is degraded or infested with alien species); and
- ✓ Critical biodiversity areas.

The sensitivity map must not only overlay the sensitivity of the preferred site, but must also include all the identified alternatives.

- ix. Please ensure that a flash drive containing the submitted draft BAR, final BAR and Amended Application form is submitted together with your final BAR.
- x. The Department draws your attention to the requirement of Section 50 (1)(a)(i) of the National Environmental Management: Protected Areas Act, 2003 (Act No 57 of 2003), which reads as follows:

Section 50: Commercial and community activities in a national park, nature reserve and world heritage site.

- (1) The management authority of a national park, nature reserve and world heritage site may, despite any regulation or by-law referred to in section 49, but subject to the management plan of the park, reserve or site-
 - (a) Carry out or allow-
 - (i) A commercial activity in the park, reserve or site; or....."

- A confirmation letter from the management authority signed by the manager of Isimangaliso Wetland Park Authority indicating that the activity is in line with the approved management plan of the reserve or site must be included in the final report.

General

The final BAR must comply with the requirements of this letter, Appendix 1, 4 and 6 of the EIA Regulations 2014, as amended.

You are hereby reminded that should the BAR fail to comply with the requirements of this comment letter, Appendix 1, 4 and 6 of the EIA Regulations as amended, the environmental authorisation may be refused.

You are reminded to comply with regulation 19 (1) (a) of the Environmental Impact Assessment Regulations, 2014 (as amended), which state that:

"Where basic assessment must be applied to an application, the applicant must, within 90 days of receipt of the application by the competent authority, submit to the competent authority -

(a) a basic assessment report, inclusive of specialist reports, an EMPr, and where applicable a closure plan, which have been subjected to a public participation process of at least 30 days and which reflects the incorporation of comments received, including any comments of the competent authority"

Should there be significant changes or new information that has been added to the basic assessment report or EMPr which changes or information was not contained in the reports or plans consulted on during the initial public participation process, you are therefore required to comply with regulation 19 (b) which state:

"notification in writing that the basic assessment report, inclusive of specialist reports an EMPr, and where applicable, a closure plan, will be submitted within 140 days of receipt of the application by the competent authority, as significant changes have been made or significant new information has been added to the basic assessment report or EMPr or, where applicable, a closure plan, which changes or information was not contained in the reports or plans consulted on during the initial public participation process contemplated in sub-regulation (1) (a) and that the revised reports or, EMPr or, where applicable, a closure plan will be subjected to another public participation process of at least 30 days".

You are hereby reminded of Section 24F of the National Environmental Management Act, Act No 107 of 1998, as amended, that no activity may commence prior to an environmental authorisation being granted by the Department.

Yours sincerely



Mr Sabelo Malaza

Chief Director: Integrated Environmental Authorisations

Department of Environmental Affairs

Signed by: Mr. Danle Smit

Designation: Deputy Director: Integrated Environmental Authorisations: Protected Areas

Date: 15/05/2019

Annexure 1

Format for Comments and Response Trail Report:

Date of comment, format of comment name of organisation/I&AP	Comment	Response from EAP/Applicant/Specialist
27/01/2016 Email Department of Environmental Affairs: Strategic Infrastructure Development (John Soap)	Please record C&R trail report in this format Please update the contact details of the provincial environmental authority	EAP: (Noted)The C&R trail report has been updated into the desired format, see Appendix K EAP: Details of provincial authority have been updated, see page 16 of the Application form

Melissa Mari

From: Stephanie Gopaul
Sent: 10 May 2019 10:33 AM
To: PMB ResourceCentre
Cc: Thembalakhe Sibozana
Subject: RE: Acknowledgment letter

Morning

Thank you for the call this morning and request for a site visit on 17 May 2019. Please note that the DEA are conducting a site visit on 21 May and to exercise efficiencies, we would like to enquire if it is possible for you to join them on 21 May instead of 17 May?

Kind Regards,
Stephanie Gopaul
Principal Consultant

ERM

Subject: Acknowledgment letter

Good day Mrs Stephanie Gopaul,
Please view attached document.
Regards,

PMB Resource Centre



agriculture,
forestry & fisheries

Department:
Agriculture, Forestry and Fisheries
REPUBLIC OF SOUTH AFRICA

Sub Directorate: Forestry Regulations & Support
Department of Agriculture, Forestry and Fisheries

Tel:
Fax:
Web:
E-mail:

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edtea

Department :
Economic Development, Tourism and
Environmental Affairs
PROVINCE OF KWAZULU-NATAL

Directorate: Environmental Services

Enquiries : Happy Khambule
Imibuzo :
Navrae :

Telephone: 035 550 0330
Ucingo : 081 410 8582
Telefoon :

Private Bag : X 004
Isikhwama Seposi : Mtubatuba
Privaat Sak : 3935

Reference: Comments on DBAR
Inkomba: Bhangazi Lodge
Verwysing:

Fax : N/A
iFeksi :
Faks :

Date : 05 June 2019
Usuku :
Datum :

Fax Transmission

**Environmental Resources Management Southern Africa (Pty) Ltd
Private Bag X21
Westville
3630**

Attention: Mrs Stephanie Gopaul
Tel: 031 265 0033
E-mail: Stephanie.Gopaul@erm.com

Dear Madam

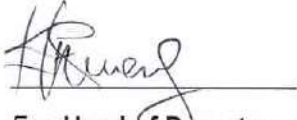
COMMENTS ON THE SUBMITTED DRAFT BASIC ASSESSMENT REPORT FOR THE PROPOSED BHANGAZI CULTURAL HERITAGE LODGE, ISIMANGALISO WETLAND PARK, WITHIN UMKHANYAKUDE DISTRICT MUNICIPALITY SOUTH AFRICA NICIPALITY

1. Reference is made to the draft Basic Assessment Report (BAR) for the abovementioned project that was received by uMkhanyakude district office of the Department of Economic Development, Tourism and Environmental Affairs (herein after referred to as the "Department") on the 6th of May 2019.
2. Thank you for affording this office of the Department an opportunity to comment on this draft BAR.
3. This office of the Department has reviewed the draft report for the Bhangazi Cultural Heritage Lodge as proposed by Mbizeni Development Corporation (Pty) Ltd, taken note of the recommendation/ mitigation measures suggested by various specialist reports in relation to this development and has following comments:

4. Tourism industry is generally known to overuse water resources, the draft report highlighted that water for the proposed development will be source from Mtubatuba abstraction works, however mentioned also that there are severe water restrictions at times, will the capacity of water at the abstraction point be able to cater for water demands of the proposed development. Is there a service level agreement obtained for sourcing water at the aforementioned source.
5. The bulk Services Engineering Report in the draft BAR considered different options for water sources, however the identified sources are currently not in use or not suitable for consumption, are there any plans to consider or certain alternative water source over and above sourcing from Mtubatuba abstraction works.
6. The draft report mentioned that there will be an onsite Sewage Treatment Plant (STP) system due to lack of properly managed municipal services at the proposed location, Clarity is required regarding the actual size of the plant, details on infrastructure associated with the preferred STP such as threshold of gravity main conveying effluent so to ensure that activity 10 of Listing Notice 1 is not affected by this development.
7. With reference to the above the developer is urged to ensure that there is no discharge of effluent to the wetlands near the lodge site into the lake Bhangazi.
8. It is noted that out of the extent of 9.94 ha site, Bhangazi Northern portion of 5.06 ha (conservation area A) is earmarked for development and the remaining 4.88 ha southern side is said to be for no development zone. The developer is encouraged to strictly manage and maintain the conservation area B and the rest of the lodge development site and ensure that there is no further disturbance of the forest edge and also control of alien/ weed species.
9. A drawing layout plan illustrating all structures and associated infrastructure including but not limited to rooms, access roads and small routes linking the proposed structure should be included in the final Basic Assessment Report.
10. This office of the Department trust that this development will implement the recommended environmental management mitigation measures suggested for the biophysical impacts by specialist assessments which will enable the proposed development to operate without compromising NEMA principles and ensure minimal impacts on natural habitat as possible.

11. Should you have any further queries regarding this correspondence please do not hesitate to contact this office of the Department.

Yours faithfully



Date: 05/06/2019

For: Head of Department:

Department of Economic Development, Tourism and Environmental Affairs

Signed by: Mrs. H.S Khambule

Control Environmental Officer: Environmental Impact Assessment

UMkhanyakude District Office

Khosi Dlamini

From: Khosi Dlamini
Sent: 22 May 2019 07:29 AM
To: 'AyandaMny'
Subject: RE: Bhangazi Site Visit Minutes.docx

Thank you - my apologies, I will correct that.

Kind regards,
Khosi

From: AyandaMny <AyandaMny@daff.gov.za>
Sent: Tuesday, May 21, 2019 2:50 PM
To: Khosi Dlamini <Khosi.Dlamini@erm.com>
Subject: RE: Bhangazi Site Visit Minutes.docx

Thanks Khosi, one correction my surname is Mnyungula and not Mnyongola

From: Khosi Dlamini [<mailto:Khosi.Dlamini@erm.com>]
Sent: 21 May 2019 01:52 PM
To: Siboniso Mbense; WisemanR; Nomfundo Ngcongo; Phumlani Lugagu; Thembalakhe Sibozana; AyandaMny
Cc: Stephanie Gopaul
Subject: Bhangazi Site Visit Minutes.docx

Afternoon All,

Please see the attached minutes from the site visit held on 17 May 2019 at the iSimangaliso Wetland Park. Please could I ask that you each go through the minutes and verify, or add information where I may have left something out. Could you kindly return to me once done.

Many thanks!

Kind regards,

Khosi Dlamini
Environmental Consultant

ERM

Suite S005 | 17 The Boulevard | Westway Office Park | Westville | 3635 | Durban | South Africa
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Khosi Dlamini

From: IzakVDM <IzakVDM@daff.gov.za>
Sent: 31 May 2019 05:03 PM
To: ERM South Africa Comments Received
Cc: ShumaniD; MulaloSU; MiyelaniN
Subject: DAFF comemnt Bhangazi Lodge
Attachments: COMMENT ON THE BASIC ASSESSMENT FOR THE BHANGAZI CULTURAL HERITAGE LODGE, KWAZULU-NATAL.pdf

Dear Stephanie

Please receive herewith the DAFF comment on the BAR of the Bhangazi Lodge.

Regards

Izak van der Merwe

Forestry Scientific Services
Department of Agriculture, Forestry and Fisheries
Tel 012-3095771
Cell 0849102604
Email: izakvdm@daff.gov.za



agriculture, forestry & fisheries

Department:
Agriculture, Forestry and Fisheries
REPUBLIC OF SOUTH AFRICA

Forestry and Natural Resources Management, Department of Agriculture, Forestry and Fisheries
Private Bag X93, Pretoria 0001

Enquiries: Mr Izak van der Merwe Tel: 012 309 5771 Fax: 012 309 5840
E-mail: izakvdm@daff.gov.za

Ms Stephanie Gopaul
Environmental Resources Management
17 The Boulevard
Westway Office Park
WESTVILLE
3635

Email: commentsandresponses@erm.com

Dear Ms Gopaul

COMMENT ON THE BASIC ASSESSMENT FOR THE BHANGAZI CULTURAL HERITAGE LODGE, KWAZULU-NATAL

Your letter of 25 April 2019 inviting comment on the above-mentioned Basic Assessment report has reference. Please find herewith the comment of the Department of Agriculture, Forestry and Fisheries (DAFF) on the Basic Assessment report. The previous DAFF written comments of June 2018, and comments made at the meeting and site visit of 24 May 2018, are also relevant.

1. This development is planned in a rare forest biome, and whatever development is allowed here may set a precedent for future decisions, also on private land, which is important given the pressures of land use change on coastal forests. These forests have been declared a threatened ecosystem.
2. The reasons forwarded for this planned development as being exceptional circumstances do not deal with the type of development, but the issues of national imperatives, a signed agreement with the community, the relative importance assigned to tourism by government etc. In the previous DAFF comments submitted, it was made clear that when Section 3(3)(a) of the National Forests Act of 1998 (NFA) is applied (inter alia based on legal advice) the Department considers purely whether the activity constitutes exceptional circumstances, and not whether there is a land claim, whether it is a community project. Almost every developer along the coast cites reasons such as job creation, the

importance government sets on tourism as reasons why their development should be exceptional, and if that reasoning would be accepted, most of the coastal forest of the country would become fragmented, and the blanket protection they receive from the NFA and the fact that they are declared threatened ecosystems would not be worth the paper these protection measures are written on.

3. Development affecting natural forest therefore has to be judged on whether the type of development itself is compatible with the biome, and if so, also whether there is any other alternative, and whether the size and layout is acceptable. As stated in the previous comments, case law dictates that the term “exceptional circumstances” be interpreted strictly and conservatively.
4. In the case of the Bhangazi Lodge, the ecotourist accommodation (units placed among the trees) can in principle be accommodated, but then the size of these units have to be acceptable with minimal damage to the forest canopy. The Department accepts that the ecotourist units are exceptional when looking at the land use type, but when looking at the number of trees and canopies affected as indicated in the map in figure 7 of the visual impact assessment it shows significant clearance of canopy, which is not as benign as the examples of tented platforms and small cabins fitted under the canopy as at the De Vasselot restcamp in the Tsitsikamma. The Basic Assessment mentions the desire to follow best practice, but is this really a true example of best practice, and at all comparable to the much acclaimed forest cabins at De Vasselot Restcamp and at Storms River, which DAFF referred to in its previous comment?
5. The restaurant and swimming pool cannot be considered as exceptional circumstance. The development type of a restaurant is not inherently limited to a natural setting. In the terminology of the South African environmental economist Miles Mander, certain development types are not reliant on certain settings, that such development types in such settings can be regarded as a nice-to-have, and can develop from zero (in other words can be developed in degraded areas). With modern technology degraded areas can be transformed into attractive areas during development. The restaurant is larger than the individual units and will require more forest clearance. This restaurant should be placed in the large fishing cottage area that is already partially transformed. It will set the wrong precedent if this development is allowed in natural forest. Other developers along the coast can then reason that they could also place similar restaurant or business structures in natural forest in natural forest, given then that it is allowed on government land. DAFF officials have first-hand experience of legal cases where developers try to influence legal outcomes by referring to other examples or precedents.
6. The question always to be asked, even for development of exceptional circumstances, is whether there are feasible alternatives. For the restaurant, the feasible alternative is the more degraded area where the existing fishing cottages are that will be demolished, and where the initial layout had a reception area indicated. The community gathering area can either be reduced in size or re-designed, or the Isimangiliso Wetland Park authority should considered accommodating this on degraded land nearby. In many cases that DAFF has dealt with, creative redesign and altering layouts found feasible solutions that reduced impacts on natural forests, and such redesign should happen in this case. A restaurant lifted to two storeys, could have views from the upper deck from the area

where the current fishing cottages are, without being visible to eco-tourist units among the forest. It is not necessary to allow more forest destruction simply for a nice-to-have location. The primary objective of a protected area is conservation, and tourism is secondary.

7. Staff housing is also not dependent on a natural setting and is not an exceptional circumstance, and should be limited to degraded areas or existing structures.
8. As far as the Environmental Management Programme is concerned, the following general comment is made:
 - a) Isimangaliso needs to ensure full compliance with the National Forests Act for all activities undertaken.
 - b) The Method Statements for activities affecting natural forests should be submitted to DAFF for comment.
 - c) If the compliance monitoring by the EMO finds non-compliance incidents that amounts to transgression of the National Forests Act, DAFF must be informed and forest officers should have an opportunity to do inspection. Despite the transfer of powers in terms of assignment, DAFF still has national oversight over compliance with the protection of natural forests accorded in terms of the Act. Audit reports should also be made available to DAFF and EKZNW.
9. The following comments apply to table 4.1:
 - a) A forest specialist should be involved in giving inputs into the actual design and development of structures and facilities that may affect natural forest, and in training and environmental awareness, because natural forest presents a specialized environment requiring a certain level of understanding.
 - b) The footprint of all structures and infrastructure should be demarcated (with lint or stakes) prior to clearance of vegetation, and a forest ecologist and/or DAFF forest officer should be given the opportunity to inspect these before actual clearance. It should not just be the marking of individual trees. If this is not done, contractors often cause unnecessary damage outside the footprints because they do not see a clearly demarcated line. With the footprints is also meant the necessary limited space around the actual development area where construction workers and materials have to maneuver and work. The demarcation not only concerns trees, but also the understorey, especially where understorey cover is good and will be affected.
 - c) DAFF can deliver inputs through comment on method statements, and should also get sight of the ECO Monitoring reports.
 - d) The tree survey result for affected sites with size classes and species should also be provided to DAFF, and units moved where necessary to limit damage to big trees.
 - e) There is mention of gardens around the lodge (the elevated tent units). No gardening with exotic vegetation should take place. The environment should remain as natural as possible, as at the De Vasselot restcamp in Tsitsikamma.
 - f) Visitors must be discouraged to walk off boardwalks anywhere between units and other areas, and one way of doing that is to have wooden railings on either side of the boardwalk.

Your consideration of the above comments will be appreciated. For more information on the matter, kindly contact Ms Mulalo Sundani at Mulalosu@daff.gov.za: 012 309 5865 or Ms Shumani Dzivhani at ShumaniD@daff.gov.za at 012 309 5765.

Best Regards



.....
NAME: MR IZAK VAN DER MERWE
DIRECTORATE: FORESTRY REGULATION AND OVERSIGHT
DATE: 31 MAY 2019

Ms Stephanie Gopaul
ERM South Africa

Via email: commentsandresponses@erm.com

PROPOSED BHANGAZI CULTURAL HERITAGE LODGE, ISIMANGALISO WETLAND PARK

Dear Ms Gopaul

Herewith comment on ERM's Draft Basic Assessment Report (DBAR) of reference 0282731, in accordance with your letter of invitation dated 30 April 2019.

1. While section 4.1 of the report deals in some detail with the applicability of NEMA, the National Water Act and the NEM: Waste Act to the project, it merely lists the National Forests Act (NFA) as also being applicable. This is regarded as an omission in circumstances where it is being proposed that the lodge be located within an indigenous forest, and where licensing in terms of the NFA is fundamental to the project's implementation.
2. The NFA defines *natural forest* as *a group of indigenous trees whose crowns are largely contiguous, or which have been declared by the Minister to be a natural forest*. Para. 8.1.4 of the DBAR states that the forest canopy at the proposed project site *is 85-95% intact*, while para. 5.1.6 indicates that the proposed lodge would be situated in *Northern Coastal Forest (FOz 7) according to Mucina and Rutherford (2006)*. Since this forest type is declared to be a natural forest in Schedule A to Notice 167 of 2017 issued by the (former) Minister of Agriculture, Forestry and Fisheries, and by virtue of the DBAR's description of the forest canopy, the vegetation which prevails at the site appears to comply with the definition of natural forest on both counts.
3. However the DBAR's only references to natural forest appear to be in the *exceptional circumstances motivation* contained in its para 2.3.2, and while the motivation links the term to section 3 (3) (a) of the NFA, it does not qualify it, or articulate its significance and implications in the wider context of the Act.
4. By the same token, while para. 5.1.6 of the DBAR notes that *four species which are protected* in terms of the NFA have been identified at the site, it fails to deal with the legal implications of the vegetation on the site constituting natural forest.

5. In fact, section 7 of the Act prohibits the destruction of indigenous trees in any natural forest without a licence issued by the Minister responsible for Forestry, and in this sense natural forest *per se* is protected.
6. This over and above the protection afforded to the above four species of trees by section 15 of the Act.
7. Section 3 (3) (a) of the NFA, which provides that natural forests must not be destroyed save in exceptional circumstances, needs to be read in conjunction with the prohibition on the destruction of natural forest in section 7 of the Act.
8. Section 3 (3) (a) moreover embodies a principle which, as specified in section 3 (1) (e) of the NFA, must be considered and applied *by any person required in terms of any legislation to carry out an environmental impact assessment in respect of any activity which will or may have an effect on natural forest.*
9. Accordingly the *exceptional circumstances motivation* is misplaced within the *project need and desirability* component (para. 2.3) of the DBAR, and should be repositioned in conjunction with due perspective being provided on the centrality of the NFA to the proposed project.
10. Potential forest impacts should similarly be aligned with sections 7 and 15 of the NFA.
11. On the matter of impacts, para. 8.1.2 of the DBAR indicates that *although there has already been some loss of forest within the lodge development footprint, the extent of the new development implies that further loss will be inevitable.* It also states that *on the basis of the plans, it is thought that at least 60% of the presently untouched forest will be felled or otherwise severely impacted upon.*
12. The same para. notes that *the forest vegetation which would be lost consists of "Maputaland Moist Coastal Lowlands Forest" which is listed as being "Endangered".*
13. In this respect it is pointed out that para. 4.3 (c) of the *Policy Principles and Guidelines for Control of Development Affecting Natural Forests*, published by the former Department of Agriculture, Forestry and Fisheries, stipulates that for endangered forest types, *no activities or development must be considered that will destroy forest.* Defining *destruction*, the same document provides that *this could mean any action that will cause the loss of forest habitat or part of it, including actions with direct impacts such as the cutting of forest trees.....*
14. On the other hand the document provides, for *low-impact eco-tourist facilities like boardwalks and bird-hides, and small bush camps* within endangered forest types.
15. From this perspective it is concerning that in para. 7 of the *Vegetation Survey* specialist study *it is approximated that just over half the units within the greenfield section of the development, may need to have at least one, or more trees, with a stem circumference of 60 cm or more (equivalent to a stem diameter of 180 mm), removed.*

16. Since the project which is being proposed therefore appears to exceed the provisions of the Policy Principles and Guidelines, it is urged that Forestry authorities be engaged as a matter of priority regarding the prospects of it being licensed in terms of the NFA.
17. On a matter of detail, para. 8.1.4 refers to the proposed accommodation units each having a *footprint of 10 square meters*, whereas para. 1.4 of the *Vegetation Survey* specialist study appears to indicate that the dimensions are in fact 10 X 10 meters, with the correct surface area accordingly being 100 square meters. At the same time the specialist study itself refers variously to the units being *10 meters squared* and *10 square meters*. Obviously this detail should be clarified, and associated dimensions and terminology should be expressed consistently throughout the DBAR and its annexures.
18. Re the *property description* provided in Table 2.1, it is not possible to link this with Notice 1187 of 2006, in which the (then) Minister of Water Affairs and Forestry released State Forests described as Sodwana, Cape Vidal and Eastern Shores. Clarity on whether the Notice embraced the site of the proposed project is required in order for it to be ascertained whether any NFA licences which may be granted for the project would be issued in terms of section 7 or section 23 of the NFA.

Sincerely.

A handwritten signature in black ink, appearing to read 'N G Scarr', with a stylized flourish at the end.

N G Scarr
PSAM Monitoring & Advocacy Programme

Date: 1 June 2019