

Annex C9

EA Refusal Letter



## environmental affairs

Department:  
Environmental Affairs  
REPUBLIC OF SOUTH AFRICA

Private Bag X 447· PRETORIA 0001·Environment House 473 Steve Biko Road Arcadia PRETORIA

DEA Reference: 14/12/16/3/3/1/2015

Enquiries: Zamalanga Langa

Telephone: (012) 399 9389 E-mail: [zlanga@environment.gov.za](mailto:zlanga@environment.gov.za)

Mrs Joice Sipiwe Gumede  
Bhangazi Community Trust  
PO Box 1387  
**MTUBATUBA**  
3935

Telephone Number: (035) 550 0068  
Email Address: [Bhangazicomunitytrust@telkomsa.net](mailto:Bhangazicomunitytrust@telkomsa.net)

### PER E-MAIL / MAIL

Dear Mrs Gumede

### **REFUSAL OF ENVIRONMENTAL AUTHORISATION IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT 107 OF 1998), AS AMENDED, GN R982/983/985, AS AMENDED: THE PROPOSED BHANGAZI CULTURAL HERITAGE LODGE, ISIMANGALISO WETLAND PARK IN KWAZULU NATAL PROVINCE.**

With reference to the above application, please be advised that the Department has decided to refuse Environmental Authorisation (EA). The refused (EA) and reasons for the decision are attached herewith.

In terms of Regulation 4(2) of the Environmental Impact Assessment Regulations, 2014, as amended (the EIA Regulations), you are instructed to notify all registered interested and affected parties, in writing and within 14 (fourteen) days of the date of the EA, of the Department's as well as the provisions regarding the submission of appeals that are contained in the Regulations.

In terms of the Promotion of Administrative Justice Act, 2000 (Act No 3 of 2000), you are entitled to the right to fair, lawful and reasonable administrative action; and to written reasons for administrative action that affects you negatively. Further your attention is drawn to the provisions of the Protection of Personal Information Act, 2013 (Act no. 4 of 2013) which stipulate that the Department should conduct itself in a responsible manner when collecting, processing, storing and sharing an individual or another entity's personal information by holding the Department accountable should the Department abuse or compromise your personal information in any way.

Your attention is drawn to Chapter 2 of National Environmental Management Act, 1998 (Act No. 107 of 1998) National Appeal Regulations published under Government Notice R993 in Government Gazette No. 38303 dated 08 December 2014 (National Appeal Regulations, 2014), which prescribe the appeal procedure to be followed. Kindly include a copy of this document (National Appeal Regulations, 2014) with the letter of notification to interested and affected parties in this matter.

*M.S.*

Should any person wish to lodge an appeal against this decision, he/she must submit the appeal to the appeal administrator, and a copy of the appeal to the applicant, any registered interested and affected party, and any organ of state with interest in the matter within 20 days from the date that the notification of the decision was sent to the registered interested and affected parties by the applicant; or the date that the notification of the decision was sent to the applicant by the Department, whichever is applicable.

**Appeals must be submitted in writing in the prescribed form to:**

The Director: Appeals and Legal Review of this Department at the below mentioned addresses.

**By email:** [appealsdirector@environment.gov.za](mailto:appealsdirector@environment.gov.za);

**By hand:** Environment House  
473 Steve Biko  
Arcadia  
Pretoria  
0083; or

**By post:** Private Bag X447  
Pretoria  
0001

Please note that in terms of Section 43(7) of the National Environmental Management Act, Act No. 107 of 1998, as amended, the lodging of an appeal will suspend the environmental authorisation or any provision or condition attached thereto. In the instance where an appeal is lodged, you may not commence with the activity until such time that the appeal is finalised.

To obtain the prescribed appeal form and for guidance on the submission of appeals, please visit the Department's website at [https://www.environment.gov.za/documents/forms#legal\\_authorisations](https://www.environment.gov.za/documents/forms#legal_authorisations) or request a copy of the documents at [appealsdirector@environment.gov.za](mailto:appealsdirector@environment.gov.za).

Kindly include a copy of this document with the letter of notification to interested and affected parties.

Yours faithfully



**Mr Sabelo Malaza**  
**Chief Director: Integrated Environmental Authorisations**  
**Department of Environmental Affairs**  
**Date:** 30/10/2019

cc:	Stephanie Gopaul	ERM South Africa	Email: <a href="mailto:Stephanie.gopaul@erm.com">Stephanie.gopaul@erm.com</a>
	Zama Mbanjwa	DEDTEA	E-mail: <a href="mailto:Zama.mbanjwa@kzndae.gov.za">Zama.mbanjwa@kzndae.gov.za</a>
	Siboniso Mbense	Isimangaliso Wetland Authority	E-mail: <a href="mailto:siboniso@isimangaliso.com">siboniso@isimangaliso.com</a>



## **environmental affairs**

Department:  
Environmental Affairs  
REPUBLIC OF SOUTH AFRICA

# **Refusal of Environmental Authorisation**

**In terms of Regulation 20. (1)(b), of the Environmental Impact Assessment Regulations, 2014, as amended.**

**The proposed Bhangazi Cultural Heritage Lodge, Isimangaliso Wetland Park within Mtubatuba Local Municipality, KwaZulu Natal Province.**

**uMkhanyakude District Municipality**

<b>Application Reference Number:</b>	<i>14/12/16/3/3/1/2015</i>
<b>Applicant:</b>	<i>Bhangazi Community Trust</i>
<b>Location of activity:</b>	<i>Isimangaliso Wetland Park; Mtubatuba Local Municipality; uMkhanyakude District Municipality; KwaZulu Natal Province.</i>

## Decision

The Department is satisfied, on the basis of information available to it, that the applicant should not be authorised to undertake the activities specified below.

Details regarding the basis on which the Department reached this decision are set out in Annexure 1.

## Activities refused

By virtue of the powers conferred on it by the National Environmental Management Act, 1998 (Act 107 of 1998) and the Environmental Impact Assessment Regulations, 2014, as amended, the Department hereby refuses environmental authorisation for –

### **BHANGAZI COMMUNITY TRUST**

with the following contact details –

Mrs Joice Sipiwe Gumede

Bhangazi Community Trust

PO Box 1387

**MTUBATUBA**

3935

Telephone Number: (035) 550 0068

Fax Number: (035) 550 0068

Email Address: [Bhangazicomunitytrust@telkomsa.net](mailto:Bhangazicomunitytrust@telkomsa.net)

to undertake the following activities (hereafter referred to as "the activity") indicated in Listing Notice 1 and Listing Notice 3, as amended (Regulations GN R. 983 and GN R. 985 as amended):

Activity number	Activity description
<p><u>GN R. 983 Item 12:</u> <i>The development of buildings exceeding 100m in size where such development occurs-</i> <i>(c) if no development setback exists, within 32 metres of a watercourse, measured from the edge of a watercourse.</i></p>	<p>The proposed lodge will have a combine buildings footprint (restaurant, tourist tents and staff accommodation) of approximately 1,800m<sup>2</sup> and is located within 32m from the edge of Lake Bhangazi.</p>
<p><u>GN R. 983 Item 30:</u> <i>Any process or activity identified in terms of section 53(1) of the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004).</i></p>	<p>The proposed lodge is located within the iSimangaliso Wetland Park which is protected under the NEM: Biodiversity Act.</p>
<p><u>GN R. 985 Item 4:</u> <i>The development of a road wider than 4 metres with a reserve less than 13, 5 metres.</i> <i>(d) KwaZulu-Natal</i> <i>v. World Heritage Sites</i></p>	<p>The access road to the proposed lodge is wider than 4m to accommodate for a left and right lane with a reserve less than 13.5 metres.</p>
<p><u>GN R. 985 Item 6:</u> <i>The development of resorts, lodges, hotels and tourism or hospitality facilities that sleeps 15 people</i> <i>(d) KwaZulu-Natal</i> <i>ix. World Heritage Sites;</i></p>	<p>The proposed lodge is within iSimangaliso and will provide for 22 sleeping units.</p>
<p><u>GN R. 985 Item 12:</u> <i>Clearance of an area of 300 m<sup>2</sup> or more of indigenous vegetation except where such clearance of indigenous vegetation is required for maintenance purposes undertaken in accordance with a maintenance plan.</i> <i>(b) in KwaZulu-Natal:</i> <i>(ix) World Heritage Sites</i></p>	<p>The proposed development is located within iSimangaliso and will require the clearing of at least 1,800m<sup>2</sup> for the footprints of the units and restaurant.</p>
<p><u>GN R. 985 Item 14:</u> <i>The development of</i> <i>(viii) jetties exceeding 10 square metres in size;</i> <i>(v) World Heritage Sites</i></p>	<p>The proposed lodge is within iSimangaliso and will have a combined buildings footprint (restaurant, tourist tents and staff accommodation) of approximately 1,800m<sup>2</sup>. The jetty is proposed to be 20 m<sup>2</sup> in size.</p>

as described in the final basic assessment report (BAR) dated July 2019 at:

21 Digit SG code:

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Coordinates:

Layout alternative 2 (Preferred)	Latitude	Longitude
Centre coordinates	28°06 '48.2"S	32°32 '11.0"E

- for the proposed Bhangazi Cultural Heritage Lodge in iSimangaliso Wetland Park within Mtubatuba local municipality, KwaZulu Natal Province, hereafter referred to as "the property".

Infrastructure associated with the proposed Bhangazi Cultural Heritage Lodge includes:

- Ten x 2-bed units with the option of catered and self-catering;
- Eight x 4-bed family units with the option of catered and self-catering;
- Trail camp - four x 2-bed units with a communal braai area;
- A restaurant located close to the lake shore with a footprint of 300m<sup>2</sup>, including a recreation deck and pool area.
- Five staff quarters each with a footprint area of 75m<sup>2</sup> and single storey in height.
- A Jetty with a footprint size of 20m<sup>2</sup> at the in south-western corner of Lake Bhangazi South.
- The parking arrangements for the project include:
  - Visitors parking (18)
  - Chalet parking (13)
  - Bus parking (2)
  - Staff parking (3)
  - Lodge vehicles (2)
  - Game drive (1)
- The reception is located within the day visitors /gathering area.

## Legislative Requirements

### Scope of authorisation

1. Authorisation is refused for the proposed development of Bhangazi Cultural Heritage Lodge in iSimangaliso Wetland Park in KwaZulu Natal Province.

### Notification of authorisation and right to appeal

2. The holder of the authorisation must notify every registered interested and affected parties, in writing and within 14 (fourteen) calendar days of the date of this refused environmental authorisation, of the decision to refuse the activities.
3. The notification referred to must –
  - 3.1. specify the date on which the authorisation was issued;
  - 3.2. inform the interested and affected party of the appeal procedure provided for in the National Appeal Regulations, 2014;
  - 3.3. advise the interested and affected party that a copy of the authorisation will be furnished on request; and
  - 3.4. give the reasons of the competent authority for the decision.

Date of refusal of environmental authorisation: 30/10/2019



Mr Sabelo Malaza

Chief Director: Integrated Environmental Authorisations

Department of Environmental Affairs



## Annexure 1: Reasons for Decision

### 1. Information considered in making the decision

In reaching its decision, the Department took, *inter alia*, the following into consideration -

- a) The information contained in the amended application form submitted to this Department on 16 July 2019;
- b) The information contained on the draft basic assessment report submitted to this Department on 15 April 2019;
- c) The Department's comments on the draft basic assessment report dated 15 May 2019;
- d) Comments received from Interested and Affected Parties (I&APs) included in the BAR dated July 2019;
- e) The information contained in the final basic assessment report received by this department on 16 July 2019;
- f) Findings of the site visit undertaken on the 11 July 2019 with EAP, Isimangaliso Wetland Park Authority and Bhangazi Community Trust;
- g) The information contained in the specialist studies contained in the Basic Assessment Report dated July 2019;
- h) Comments from Department of Agriculture Forest and Fisheries dated 31 May 2019;
- i) Comments from Rhode University: Public Service Accountability Monitor (PSAM) dated 01 June 2019 and
- j) The objectives and requirements of relevant legislation, policies and guidelines, including section 2 of the National Environmental Management Act, 1998 (Act No. 107 of 1998), as amended.

### 2. Key factors considered in making the decision

A summary of the issues which, in the Department's view, were of the most significance is set out below-

- a) Non-compliance with Regulation 44 (1) of the Environmental Impact Assessment Regulations (EIA) 2014 as amended which state that *"the applicant must ensure that the comments of interested and affected parties are recorded in reports and plans and that such written comments, including responses to such comments and records of meetings, are attached to the reports and plans that are submitted to the competent authority in terms of these Regulations"*
- b) Comments from Department of Agriculture Forest and Fisheries (DAFF) dated 31 May 2019 which were email to the EAP on the 31 May 2019 are not included in the final BAR.

- c) Comments from Rhodes University: PSAM dated 1 June 2019 and emailed to the EAP on the 01<sup>st</sup> June 2019

### 3. Findings

After consideration of the information and factors listed above, the Department made the following findings -

- a) The final BAR submitted does not comply with Regulation 44. (1) of EIA Regulations 2014 as amended.
- b) The final BAR submitted does not include comments from Rhode University (PSAM) dated 1 June 2019 which were emailed to the EAP on the 1 June 2019. PSAM notified the Department via email that their comments were forwarded to the EAP on the 21 June 2019 and the EAP responded that comments from PSAM was not received. PSAM provided proof from Rhodes University's Information Technology Services that the email was sent to the EAP and further the same which was sent to the EAP, DAFF was also copied on the email and national DAFF office confirmed that comments from PSAM were received.
- c) The final BAR submitted also does not include comments from DAFF dated 31 May 2019 which were emailed to the EAP on the 31 May 2019. The EAP acknowledge the receipt of the comments from DAFF via email on the 31 May 2019.
- d) DAFF's in their comments dated 31 May 2019 stated the following:
  - (i) that the proposed 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.
  - (ii) 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.

- (iii) 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.
- (iv) In the case of the Bhangazi Lodge, the ecotourism 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 ecotourism 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?
- (v) 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
- (vi) 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 consider 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 stories, 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.

- (vii) 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.
  - (viii) The Environmental Impact Management Programme (EMPr) must include Method Statement affecting natural forest for all activities to be undertaken.
- e) Taking into consideration comments from DAFF dated 31 May 2019, the positioning of the restaurant, swimming pool and staff housing as indicated in the layout Map (alternative layout 2-preferred) cannot be considered as exceptional circumstance as required by Section 3(3) (a) of the National Forest Act of 1998.
  - f) Section 3(3) (a) of the National Forest Act of 1998 which state 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*”.
  - g) DAFF in their comments that 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.
  - h) The location of the staff housing as indicated in the layout plan must be moved to degraded area or to existing areas. The staff housing is also not dependent on a natural setting and is not an exceptional circumstance as required by Section 3(3) (a) of the National Forest Act of 1998.
  - i) The positioning of the ecotourism accommodation are accepted by DAFF because the units will be placed among the trees and these units can be considered as an exceptional circumstances as required in terms of Section 3(3) (a) of the National Forest Act of 1998. DAFF's comments dated 15 May 2019

states that, when looking at the land use type and looking at the number of trees and canopies affected as indicated in the map under figure 7 of the visual impact assessment study included in the BAR, 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 DAFF previous comments.

In view of the above, the competent authority is of the opinion that the proposed development will conflict with the general objectives of integrated environmental management stipulated in Chapter 5 of the National Environmental Management Act, 1998 (Act No. 107 of 1998), as amended, as the process followed does not fulfil the requirements of Appendix 1 and Regulation 44. (1) of EIA Regulations 2014 as amended. Therefore, the environmental authorisation is hereby **refused**.

Annex C10

Bhangazi Community Trust Appeal, with Method  
Statement

**MINUTES OF THE SITE MEETING:  
BHANGAZI COMMUNITY LODGE**

BHANGAZI FISHING CAMP SITE  
ISIMANGALISO WETLAND PARK

*(Site visit, arranged by DEFF: Appeals and Legal Review,  
to assess the revised layout plan as submitted in the appeal documentation)*

**12/03/2020**

**1. ATTENDANCE**

<b>Name</b>	<b>Organisation</b>	<b>Email</b>	<b>Tel.</b>
J S Gumede	Bhangazi Community Trust	Bhangazicomunitytrust@telkomsa.net	079 9977849
V Mthiyane	Bhangazi Community Trust	Bhangazicomunitytrust@telkomsa.net	072 914250
R Mthiyane	Bhangazi Community Trust	Bhangazicomunitytrust@telkomsa.net	066 5688481
Peter Velcich	Nuleaf Planning and Environmental	peter@nuleafsa.co.za	082 4420220
Piet Theron	African Safari Foundation	Piettheron01@gmail.com	0824686488
N Nkosi	Department of Environment Forestry and Fisheries (DEFF):IEA	nnkosi@environment.gov.za	012 3999392
Z Langa	DEFF:IEA	zlanga@environment.gov.za	012 3999389
I Van der Merwe	DEFF: Forestry	izakvdm@daff.gov.za	084 9102604
S E Mbense	iSimangaliso Wetland Park Authority	Siboniso@isimangaliso.com	035 5901633

**2. APOLOGIES**

- a. Apologies were received from Mr. Mokete Rakgogo (DEFF, Director: Appeals and Legal Review) and Advocate Rudessa Harris (DEFF, Director: Appeals and Legal Review), both of whom were unable to reach the site due to civil protest action encountered en-route.

### 3. MINUTES

- a. A pre site visit meeting was held at the offices of Isimangaliso Wetland Park Authority, starting at 10h00.
  - i. Mr Theron chaired this meeting and welcomed all.
  - ii. Mr Theron explained to the Bhangazi Community Trust members the purpose of the meeting and why the appeal process was happening and what the process entailed.
  - iii. Following the understanding that the DEFF: Appeals and Legal Review officials would not make the site visit, it was agreed that a site visit would still be undertaken by the attendees and that arrangements would be made for said officials to visit the site the following day (pending the state of the protest action). Mr Mbense undertook to make the necessary arrangements in this regard
  - iv. Mr Velcich then presented the core issues addressed in the Appeal, as submitted to DEFF on the 28/02/2020.
  - v. Mr Velcich specifically highlighted the revisions that were made to the layout plan, in response to comments and concerns that were received from DEFF (Forestry) and Public Service Accountability Monitors (PSAM) in the Basic Assessment Process, as follows:
    1. The restaurant / pool complex had been relocated from the forest area to a disturbed site within the old Bhangazi Fishing Camp.
    2. Similarly, the staff accommodation facilities were positioned within the disturbed area.
    3. All other infrastructure, with the exception of the guest chalets, was located in the disturbed area.
    4. The access road system had been revised to include a single entry road, off the main Cape Vidal road.
    5. The size of the guest chalets had been reduced from 75m<sup>2</sup> to <70m<sup>2</sup> and <50m<sup>2</sup> (4 bed and 2 bed chalets respectively).
    6. A comprehensive Method Statement had been developed to address all construction and post construction related activities within the forest area.



7. Mr Velcich emphasized that the Method Statement pays particular attention to the siting of the chalets within the forest area. In this regard, pre-construction activity would include the identification and marking of sites and pathways with a suitably qualified botanist. This activity will also include the marking of trees and plants that may or may not be disturbed.
- vi. Mr Van Der Merwe noted the following:
1. DEFF are more concerned with keystone species and protection of our natural forests, and less concerned with protected species.
  2. Any removal of protected species would require permitting / licensing from the iSimangaliso Wetland Park Authority, and not from DEFF (due to the transfer of the said state forest from the then Minister of Agriculture, Forestry and Fisheries to the then Minister of Environmental Affairs. This transfer included the transfer of the provisions of section 7 of the National Forestry Act (NFA) for Protected Areas).
  3. The mandate of DEFF in terms of natural forests, and in accordance with the National Forestry Act, is to ensure that natural forests are protected, and not cleared except in exceptional circumstances. DEFF would like to avoid creating a precedent, by approving the development of infrastructure within natural forests, where such infrastructure could not reasonably be considered 'exceptional circumstance'.
  4. Mr Van der Merwe noted that DEFF had sought legal opinion, which stated that the restaurant / pool complex and staff housing could not be considered 'exceptional circumstance' but that guest chalets could be considered 'exceptional circumstance'. Therefore, DEFF are supportive of the revised layout plan as submitted with the appeal, in that only guest chalets will be developed within the forest area. Mr Van der Merwe went on to note that positioning of the chalets within the natural forest area was important to the success of the tourism destination, and the positioning of such units must ensure a true eco-tourism / forest experience for guests.

5. Mr Van der Merwe noted that our natural forests are important as they provide numerous benefits to the community at large, through eco-system services, hence the strict nature of national legislation governing our natural forests.
  6. Mr Van der Merwe concluded by noting that: he was happy with the revisions and to the layout plan; supportive of method statement and mitigation measures; that such revisions were responsive to DEFF concerns; that the concept of exceptional circumstance had now been properly addressed; and, in his words, *'this can work'*
  - vii. Mr Mbense noted that the Bhangazi Community Trust would be involved in the specific actions and activities listed in the Method Statement, and most importantly, with the final positioning of the chalets on-site.
  - viii. Mr Van der Merwe requested that the Method Statement include the identification of any plant species (as opposed to tree species) for transplanting
  - ix. Mrs Joice Mthiyane (Bhangazi Community Trust Chairperson) spoke at length about the history of the project, and impressed on all stakeholders that this project was first initiated over 20 years ago, in 1999. The community have been patiently waiting ever since to see some tangible progress and benefit, but have instead been faced with numerous delays and obstacles. She requested that all project stakeholders recognise the plight of the community in this regard, and maximise all efforts to bring this project to fruition in an expedient manner.
- b. Following the meeting, the attendees made their way to the site, for a site inspection
- i. Mr Velcich used the layout plan to orientate the attendees on the ground, and pointed out the disturbed sites where the restaurant, reception, staff housing, trails camp chalets, and access road and parking areas would be located (all within the disturbed footprint of the old Bhangazi Fishing Camp).
  - ii. The attendees then walked from site to site for closer inspection.
  - iii. Ms Langa noted that the site and infrastructure, used to house Ezemvelo KZN Wildlife staff, was severely degraded, and very poorly maintained.

- iv. Ms Langa queried the participation of PSAM in the Appeal process. Mr Velcich noted that contact had been made with Mr Scarr from PSAM, and that Mr Scarr was provided with the Draft Appeal document and invited to submit comment and input. However, Mr Scarr indicated that, in terms of procedure, he would feel more comfortable commenting on the Final Appeal as submitted to DEFF. Mr Velcich noted that Mr Scarr had been furnished with a copy of the Final Appeal.
  - v. The attendees were then taken along an informal pathway leading through the forest and down to the edge of the lake. Along this route, Mr Velcich pointed out a number open of pockets in the forest which were suitable for the development of chalets, without the need for significant clearance or pruning of trees. Mr Van der Merwe confirmed this by measuring out one of the sites with a tape measure.
- c. Following the site walk,
- i. Ms Nkosi discussed the way forward, noting that DEFF, Director: Appeals and Legal Review would require their comments submitted by Monday 16<sup>th</sup> March, following which, a recommendation on the Appeal would be forwarded to the Minister for a decision. She also noted that the process *may* require resubmission of the layout plan to the Interested and Affected Parties, and resubmission of the Comments and Response Report and Final Basic Assessment Report.
  - ii. Mr Van der Merwe again noted that he was comfortable with the new layout and mitigation measures, and specifically the actions described in the Method Statement. Mr Van der Merwe concluded with the observation that *'this can be done'*.

#### 4. CLOSURE

- a. Mr Theron thanked everyone for attending the meeting and site visit, and closed the meeting at approximately 12h30.

# BHANGAZI LODGE APPEAL DISCUSSION

DISCUSSION WITH DEFF & DAFF

14 Feb 2020



# APPEAL RESPONSE REPORT

## Basic information

- **PROJECT NAME/TITLE:**
  - Basic Assessment for the Bhangazi Cultural Heritage Lodge, iSimangaliso Wetland Park, South Africa
- **PROJECT LOCATION:**
  - iSimangaliso Wetland Park, Norther Kwazulu Natal, South Africa
- **PROJECT REFERENCE NUMBER:**
  - 14/12/16/3/3/1/2015
- **DATE PROJECT/ACTIVITY AUTHORISED:**
  - Authorisation Refused 30/10/2019. Note that the Appeals window was increased to 29/02/2020
- **DATE NOTIFIED OF DECISION:**
  - 01/11/2019

# DEFF'S REFUSAL TO GRANT EA: KEY FACTORS

1. Non-compliance with Regulation 44(1) of the Environmental Impact Assessment Regulations (EIA) 2014 (Public Participation Process)
  - The DEFF references two stakeholder submissions that were not included in the Final Basic Assessment Report (FBAR) submissions:
    - A submission from DAFF, submitted to the EAP on the 31/05/2019; and
    - A submission from Rhodes University (PSAM) submitted to the EAP on the 01/06/2019.
2. Issues relating to the positioning of certain high impact non-‘exceptional circumstance’ infrastructure in an high sensitivity area, specifically:
  - Staff housing.
  - Restaurant and communal pool complex.

## RESPONSE: NON-INCLUSION OF DAFF PSAM COMMENTS

- As per the NEMA regulations, the DBAR was disclosed for comment on the 02/05/2019 until 01/06/2019 for submission of comments. These comments were included in the FBAR, which was submitted to DEFF on the 16/07/2019. This included initial comments from both PSAM and DAFF.
- The DAFF and PSAM submitted additional comments on the final day of the comment period, 01/06/2019. The EAP acknowledges that, due to an administrative error, these comments were not initially included in the Comments and Response Report (CRR) as part of the FBAR submission (16/07/2019).
- However, once the EAP became aware of these comments, the oversight regarding their non-inclusion was discussed with the DEFF Case Officer (CO) on 20/08/2019 and arrangements were made with the CO for the EAP to submit an updated CRR.
- In the updated CRR, the EAP comprehensively responded to the DAFF and PSAM comments and submitted such to the DEFF Case Officer on the 30/08/2019 (Note that the DEFF EA refusal letter is dated 30/10/2019). Proof of submission and delivery of this updated report is included as Annexure...
- This issue was further addressed by the EAP in so far as all stakeholders were notified of the updated CRR in a letter from the EAP dated 02/09/2019, and the stakeholders were furnished a copy thereof.

Following the above, it would appear from the Refusal of EA, that DEFF did not take the amended CRR into account during the processing and adjudication of the application (despite the arrangements between the DEFF and the EAP to submit such). It is therefore reasoned that, with the submission of the updated CRR, the application was in fact fully compliant with Regulation 44(1) of the Environmental Impact Assessment Regulations (EIA) 2014 as amended.

# DISCUSSION: POSITIONING OF THE STAFF ACCOMMODATION & MANAGEMENT INFRASTRUCTURE

- DEFF, in the refusal letter, make the erroneous inference that the proposed staff housing area is positioned within the undisturbed forest area on a greenfield site
  - As per the statement under point (h) of the refusal letter which reads ...*'The location of the staff housing as indicated in the layout plan must be moved to a degraded area or to existing areas...'*
- In fact, the layout map in the FBAR submission indicates that the staff housing is positioned in a disturbed area (cleared / developed).





# DISCUSSION: POSITIONING OF THE RESTAURANT / POOL COMPLEX

- DAFF, in principle, is not opposed to the development of the chalet units within the forested area.
  - DAFF's comment '*...the ecotourism accommodation (units placed among trees) can in principle be accommodated, but then the size of these units have to be acceptable with minimal damage to the forest canopy..*'
- DAFF recommend:
  - reducing the size of the units and developing alternative unit design to accommodate specific sites; and that
  - the restaurant complex be relocated to a disturbed area on the site; and that
  - A method statement be developed for all activities within the natural forest.
- A specialist botanical survey, commissioned at the behest of DAFF and included in the FBAR, and using a specialist recommended by DAFF, makes the finding that
  - The development of the units within the forest *may* have an impact relating to the removal of trees
    - loss of canopy cover and understorey cover, small increased risk of erosion
  - Residual impacts of this activity are negligible, and
  - It is anticipated that the forest canopy and undergrowth will recover, with mitigation as follows:
    - enrichment planting,
    - the use of raised platforms and boardwalks and
    - modular construction of units to best fit each particular site.

## Note:

- 4 protected tree species (NFA) were identified within the greater study area.
- Only 1 protected species were identified within the chalet development zone (Marula).
- No protected plant species (undergrowth) were identified within the study area (but may occur).
- This assessment was done on an assumed footprint area of 100m<sup>2</sup> per unit.

## Trees that may be impacted (Protected species highlighted)

Development section	Number of trees in 10 x 10 m plot with stem circumference (cm)				Other species present
	10-29	30-59	>= 60	Species > 60	
<b>Lodge accommodation (11X2)</b>					
unit 1 a	4	3	2	<i>Diospyros natalensis</i> <i>Clerodendron glabra</i>	<i>Vepris lanceolata</i> <i>Ziziphus mucronata</i>
unit 2 a	0	4	0		<i>Sersia nebulosa</i> <i>Grewia occidentalis</i> <i>Strichnos Gerradii</i>
unit 3 a	8	0	0		<i>Sclerocarya birrea</i> , <i>Trichelia emmitca</i>
unit 4 a	7	1	0		<i>Trichelia emmetica</i> , <i>Celtis African</i>
unit 5 a	7	0	2	<i>Celtis African</i> , <i>Clerodendron glabra</i>	<i>Vepris lanceolate</i> , <i>Ficus trichopoda</i>
unit 6 a	15	2	1	<i>Vepris lanceolate</i>	<i>Celtis African</i> , <i>Clerodendron glabra</i> , <i>Grewia occidentalis</i> <i>Strichnos Gerradii</i>
unit 7 a	10	0	2	<i>Sclerocarya birrea</i>	<i>Diospyros natalensis</i> ; <i>Harpephyllum caffrum</i>
unit 8 a	7	0	0		<i>Clerodendron glabra</i> , <i>Albizia adianthifolia</i> , <i>Strichnos gerradii</i> <i>Protorhus longifolia</i>
unit 9 a	8	0	1	<i>Trichelia emmetica</i>	<i>Diospyros natalensis</i> <i>Clerodendron glabra</i> <i>Albizia adianthifolia</i>
unit 10 a	6	2	1	<i>Trichelia emmetica</i>	<i>Clerodendron glabra</i> <i>Diaspyros natalensis</i>

					<i>Celtis Africana</i> <i>Ficus trichapodia</i> <i>Ficus craterostoma</i> <i>Hyphaene coriacea</i> <i>Brachylaena discolour</i>
unit 11 a	4	4	2	<i>Albizia adianthifolia</i> <i>Sersia natalensis</i>	<i>Clerodendron glabra</i> <i>Diaspyros natalensis</i> <i>Sersia nebulosa</i>
<b>Lodge accommodation (7 x4)</b>					
unit 1 b	3	4	0		<i>Euclea natalensis</i> <i>Albizia adianthifolia</i>
unit 2 b			2	<i>Albizia adianthifolia</i> <i>Protorhus longifolia</i>	<i>Euclea natalensis</i>
unit 3 b	5	2	2	<i>Albizia adianthifolia</i> <i>Diaspiros natalensis</i>	<i>Clerodendron glabra</i> <i>Brachyleana discolour</i> <i>Celtis Africana</i>
unit 4 b	10	4	0		<i>Albizia adianthifolia</i> <i>Diaspiros natalensis</i> <i>Brachylaena discolour</i>
unit 5 b	9	4	0		<i>Brachylaena discolour</i> <i>Searsia nebulosi</i> <i>Searsia gueniensis</i>
unit 6 b	6	0	1	<i>Protorhus longifolia</i>	<i>Brachylaena discolour</i> <i>Ziziphus mucronata</i>
unit 7 b	Could not fit in, leave out				
<b>Main complex (plot 25x25)</b>	10	6	3	<i>Albizia adianthifolia</i> <i>Celtis Africana</i> <i>Trichelia emmitica</i>	<i>Ficus craterostoma</i> <i>Hyphaene coriacea</i> <i>Trichelia emmitica</i>

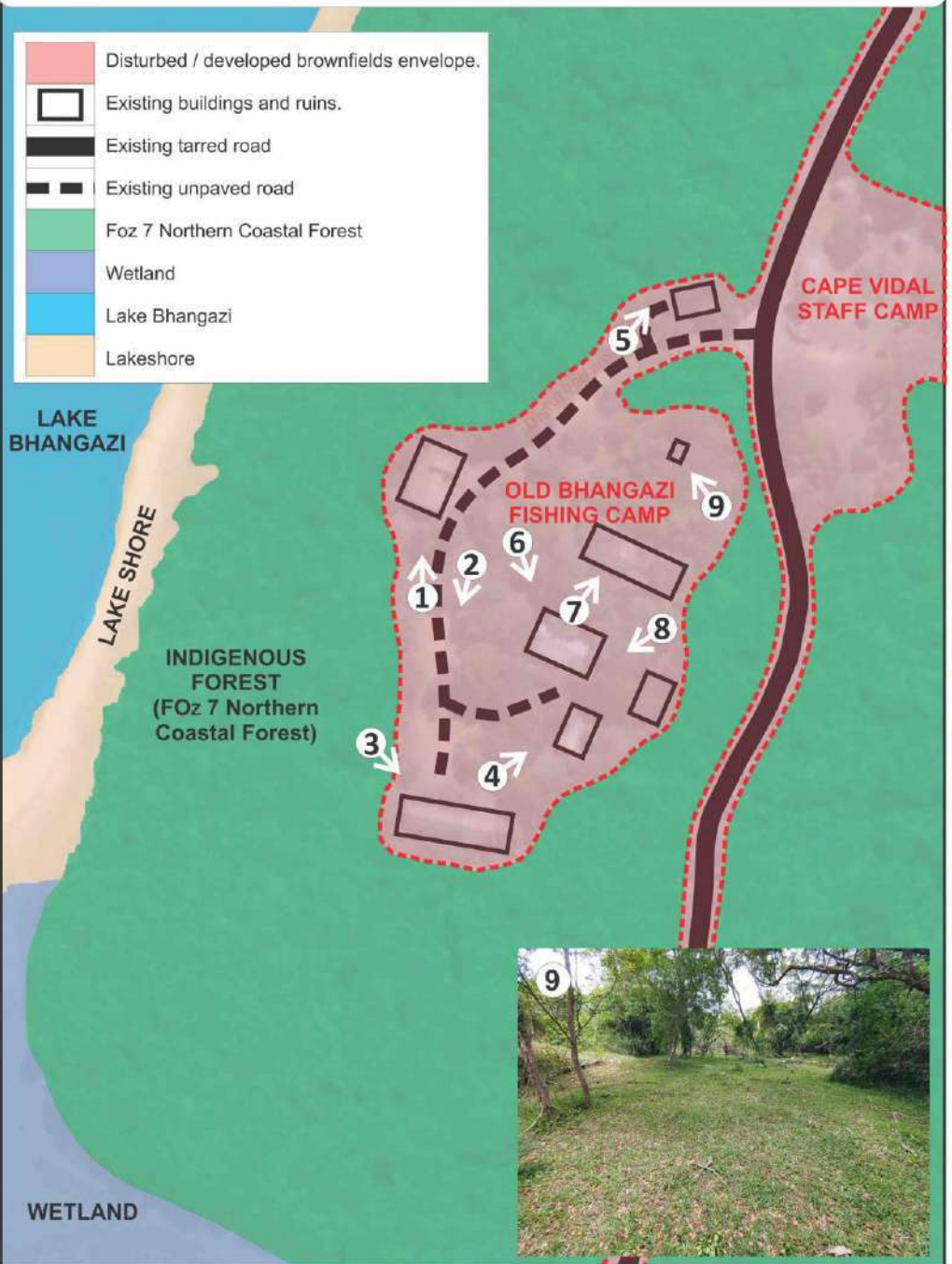
## RESPONSE: SITING OF THE RESTAURANT / POOL COMPLEX

- The restaurant and pool complex, previously located within the forest, has been repositioned to a disturbed area outside the forest.
- The staff housing has been split and repositioned on two separate disturbed areas within the old Bhangazi fishing camp (brownfields sites).
- All development within the forest:
  - Will make use of pre-identified cleared areas (old camping spots) where possible, and
  - Reducing the footprint size of the 11x 2 bed units from 75m<sup>2</sup> to <50m<sup>2</sup>.
  - Reducing the size of the 7x 4 bed units from 75m<sup>2</sup> to <60m<sup>2</sup>
  - Use will be made of elevated decks and boardwalks (no infrastructure will be built on the ground).
  - Will be designed for a modular configuration for best positioning on the site.
- The dual access roads have been consolidated to minimize the footprint impact on the forest and restricted to only one access road (existing) in and out of the facility.
- Whilst it is noted that DAFF and the DEA accept the positioning of the ecotourism units (tented chalets) within the forest, the appellant nonetheless proposes further mitigation of potential impacts related hereto by:
  - Limit on the maximum tree removal size of 180mm diameter .
  - No removal of any listed tree species as Protected in terms of the NFA.
  - Appointment of a landscaping contractor to assist with the transplanting trees where at all possible.
- These measures will result in the following nett improvements / benefits to the environment:
  - Original potentially cleared forest area (tented chalets, restaurant, staff): **approx. 1900m<sup>2</sup>**
  - Revised potentially cleared forest area (tented chalets): **approx. 960m<sup>2</sup>**
  - By removing the restaurant complex from the forested area, an opportunity is created to space the tented chalet units further apart, and therefore more opportunity is created to find a site that can accommodate the units without significant tree clearing.

# RESPONSE: METHOD STATEMENT FOR ACTIVITIES WITH THE FOREST

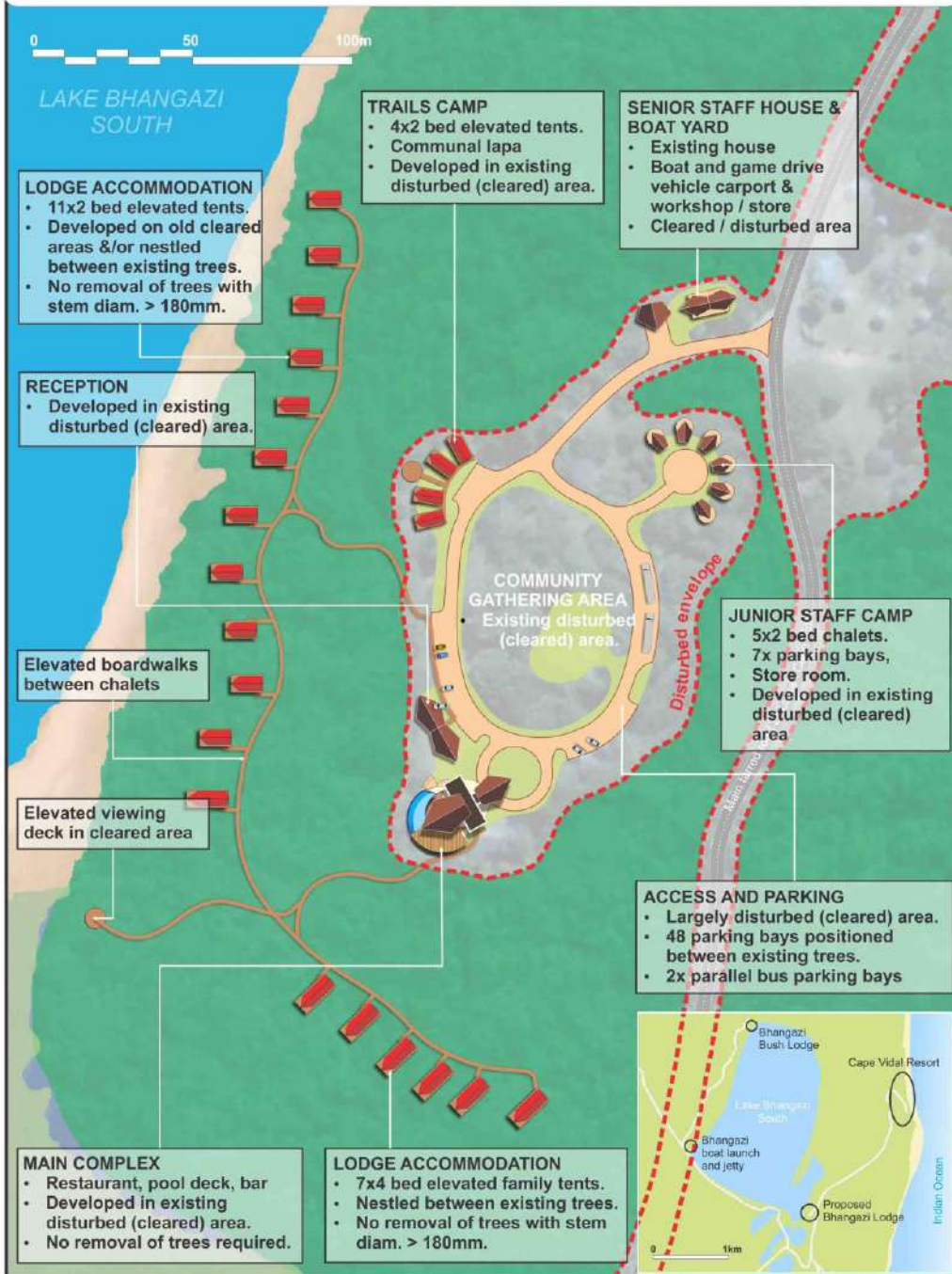
- Pre-construction
  - Site establishment (Botanist and ECO):
    - Identify suitable development envelopes.
    - Identify boardwalk alignment.
    - Mark protected trees and trees exceeding 180mm diam.
    - Identify possible pruning or thinning requirements.
    - Identify possible tree specimens to be transplanted, and mark accordingly.
    - Clearly define each development envelope with danger tape.
    - Identify and define proposed construction access, lay-down, storage and mixing areas.
    - Drafting and submission of permits for removal, transplanting and/or pruning of forest vegetation, as may be required for each site.
  - Design (Architect / Landscape Architect)
    - Develop most appropriate modular layout / arrangement of tented chalet units for each site (site specific).
  - Contractor
    - Ensure contractor has experience with construction in similar environments.
    - ECO to undertake project specific environmental awareness and training course with all construction staff.
    - Establishment of a site nursery for transplanting and enrichment planting.
- Construction
  - ECO to undertake regular (monthly) site monitoring and auditing procedures (measured against the EMPr).
  - EO to report to ECO on weekly basis.
  - Fine system to be instituted.
- Post construction / rehabilitation
  - Removal of all construction debris and material.
  - Rehabilitation of all disturbed areas.
  - Counter erosion measures.
  - No sign-off or final payments (retention) before site is rehabilitated to ECO approval.

# BHANGAZI LODGE SITE ASSESSMENT 02/2020

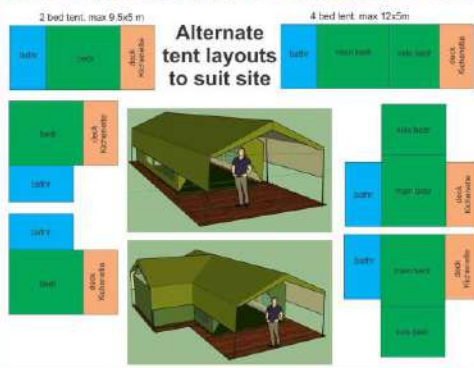


# BHANGAZI LODGE SITE LAYOUT PLAN 02/2020

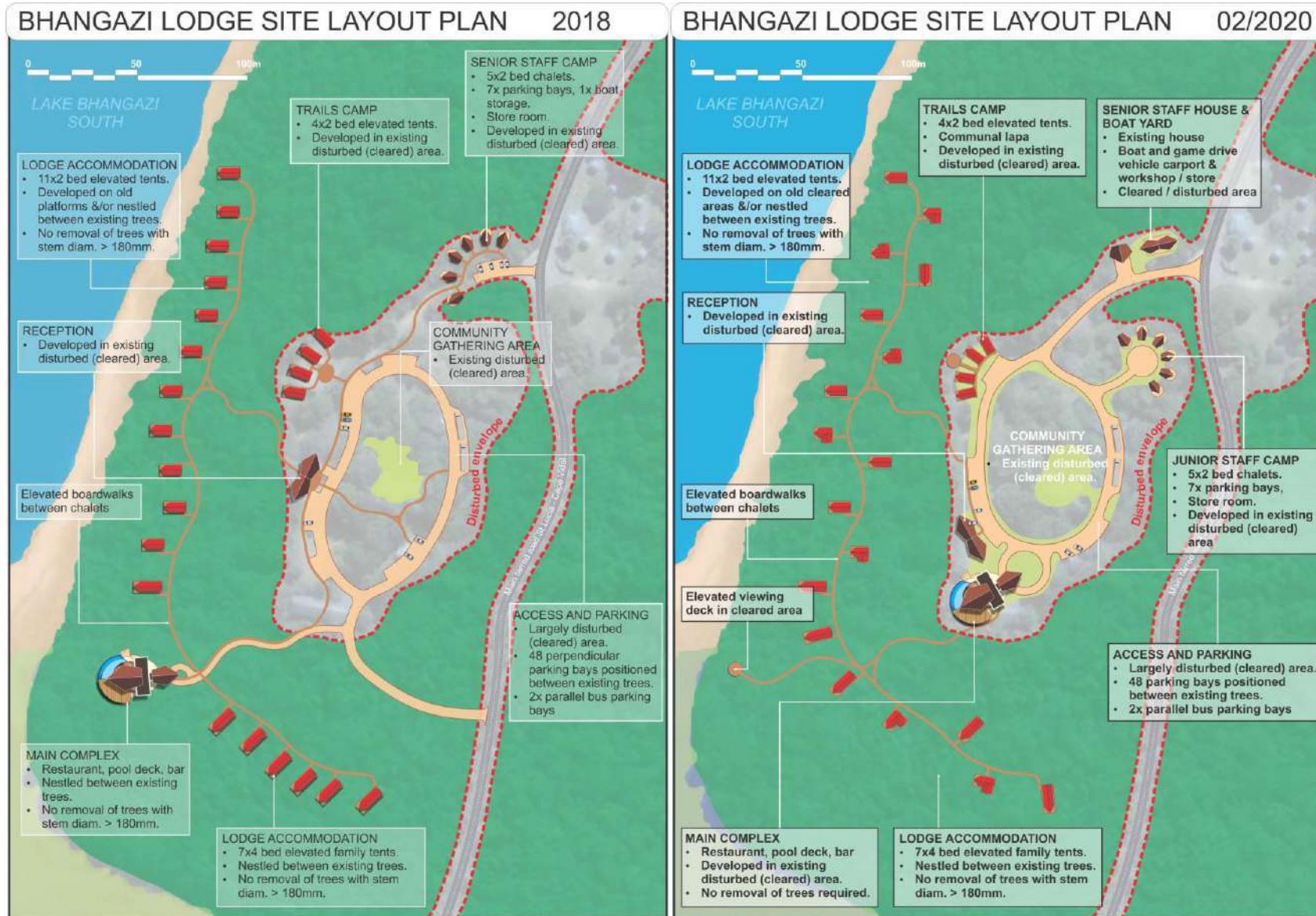
Typical examples of cleared pockets within forested area



Typical look and feel imagery

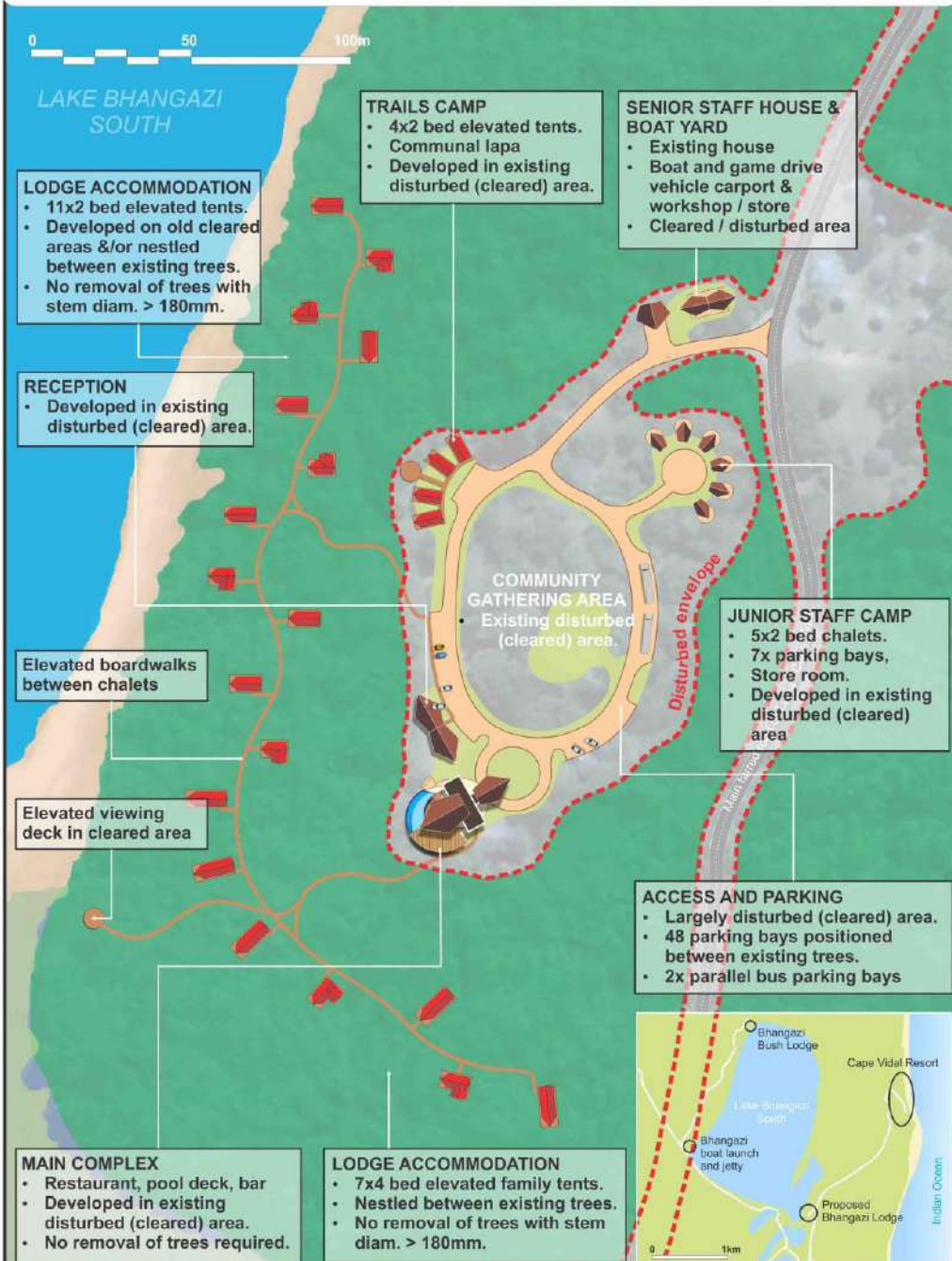


# COMPARISON: ORIGINAL LAYOUT (LEFT) VERSUS REVISED LAYOUT (RIGHT)



# BHANGAZI LODGE SITE LAYOUT PLAN 02/2020

Typical examples of cleared pockets within forested area



**LODGE ACCOMMODATION**

- 11x2 bed elevated tents.
- Developed on old cleared areas &/or nestled between existing trees.
- No removal of trees with stem diam. > 180mm.

**TRAILS CAMP**

- 4x2 bed elevated tents.
- Communal lapa
- Developed in existing disturbed (cleared) area.

**SENIOR STAFF HOUSE & BOAT YARD**

- Existing house
- Boat and game drive vehicle carport & workshop / store
- Cleared / disturbed area

**RECEPTION**

- Developed in existing disturbed (cleared) area.

**COMMUNITY GATHERING AREA**

- Existing disturbed (cleared) area.

**JUNIOR STAFF CAMP**

- 5x2 bed chalets.
- 7x parking bays, Store room.
- Developed in existing disturbed (cleared) area

Elevated boardwalks between chalets

Elevated viewing deck in cleared area

**ACCESS AND PARKING**

- Largely disturbed (cleared) area.
- 48 parking bays positioned between existing trees.
- 2x parallel bus parking bays

**MAIN COMPLEX**

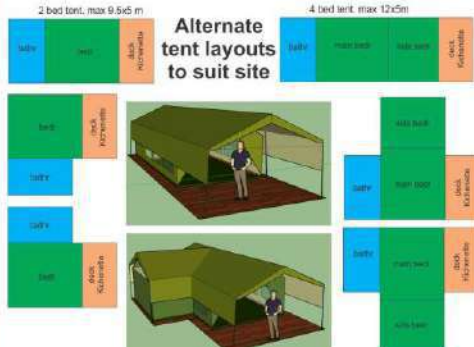
- Restaurant, pool deck, bar
- Developed in existing disturbed (cleared) area.
- No removal of trees required.

**LODGE ACCOMMODATION**

- 7x4 bed elevated family tents.
- Nestled between existing trees.
- No removal of trees with stem diam. > 180mm.



Typical look and feel imagery





# BHANGAZI LODGE SITE LAYOUT PLAN 02/2020

Typical examples of cleared pockets within forested area



0 50 100m

LAKE BHANGAZI SOUTH

**LODGE ACCOMMODATION**  
 • 11x2 bed elevated tents.  
 • Developed on old cleared areas &/or nestled between existing trees.  
 • No removal of trees with stem diam. > 180mm.

**RECEPTION**  
 • Developed in existing disturbed (cleared) area.

Elevated boardwalks between chalets

Elevated viewing deck in cleared area

**MAIN COMPLEX**  
 • Restaurant, pool deck, bar  
 • Developed in existing disturbed (cleared) area.  
 • No removal of trees required.

**TRAILS CAMP**  
 • 4x2 bed elevated tents.  
 • Communal lapa  
 • Developed in existing disturbed (cleared) area.

**SENIOR STAFF HOUSE & BOAT YARD**  
 • Existing house  
 • Boat and game drive vehicle carport & workshop / store  
 • Cleared / disturbed area

**COMMUNITY GATHERING AREA**  
 Existing disturbed (cleared) area.

**JUNIOR STAFF CAMP**  
 • 5x2 bed chalets.  
 • 7x parking bays, Store room.  
 • Developed in existing disturbed (cleared) area

**ACCESS AND PARKING**  
 • Largely disturbed (cleared) area.  
 • 48 parking bays positioned between existing trees.  
 • 2x parallel bus parking bays

**LODGE ACCOMMODATION**  
 • 7x4 bed elevated family tents.  
 • Nestled between existing trees.  
 • No removal of trees with stem diam. > 180mm.



Typical look and feel imagery



**Alternate tent layouts to suit site**

2 bed tent, max 9.5x5 m

4 bed tent, max 12x5m

**MINUTES OF THE SITE MEETING:  
BHANGAZI COMMUNITY LODGE**

BHANGAZI FISHING CAMP SITE  
ISIMANGALISO WETLAND PARK

*(Site visit, arranged by DEFF: Appeals and Legal Review,  
to assess the revised layout plan as submitted in the appeal documentation)*

**12/03/2020**

**1. ATTENDANCE**

<b>Name</b>	<b>Organisation</b>	<b>Email</b>	<b>Tel.</b>
J S Gumede	Bhangazi Community Trust	Bhangazicomunitytrust@telkomsa.net	079 9977849
V Mthiyane	Bhangazi Community Trust	Bhangazicomunitytrust@telkomsa.net	072 914250
R Mthiyane	Bhangazi Community Trust	Bhangazicomunitytrust@telkomsa.net	066 5688481
Peter Velcich	Nuleaf Planning and Environmental	peter@nuleafsa.co.za	082 4420220
Piet Theron	African Safari Foundation	Piettheron01@gmail.com	0824686488
N Nkosi	Department of Environment Forestry and Fisheries (DEFF):IEA	nnkosi@environment.gov.za	012 3999392
Z Langa	DEFF:IEA	zlanga@environment.gov.za	012 3999389
I Van der Merwe	DEFF: Forestry	izakvdm@daff.gov.za	084 9102604
S E Mbense	iSimangaliso Wetland Park Authority	Siboniso@isimangaliso.com	035 5901633

**2. APOLOGIES**

- a. Apologies were received from Mr. Mokete Rakgogo (DEFF, Director: Appeals and Legal Review) and Advocate Rudessa Harris (DEFF, Director: Appeals and Legal Review), both of whom were unable to reach the site due to civil protest action encountered en-route.

### 3. MINUTES

- a. A pre site visit meeting was held at the offices of Isimangaliso Wetland Park Authority, starting at 10h00.
  - i. Mr Theron chaired this meeting and welcomed all.
  - ii. Mr Theron explained to the Bhangazi Community Trust members the purpose of the meeting and why the appeal process was happening and what the process entailed.
  - iii. Following the understanding that the DEFF: Appeals and Legal Review officials would not make the site visit, it was agreed that a site visit would still be undertaken by the attendees and that arrangements would be made for said officials to visit the site the following day (pending the state of the protest action). Mr Mbense undertook to make the necessary arrangements in this regard
  - iv. Mr Velcich then presented the core issues addressed in the Appeal, as submitted to DEFF on the 28/02/2020.
  - v. Mr Velcich specifically highlighted the revisions that were made to the layout plan, in response to comments and concerns that were received from DEFF (Forestry) and Public Service Accountability Monitors (PSAM) in the Basic Assessment Process, as follows:
    1. The restaurant / pool complex had been relocated from the forest area to a disturbed site within the old Bhangazi Fishing Camp.
    2. Similarly, the staff accommodation facilities were positioned within the disturbed area.
    3. All other infrastructure, with the exception of the guest chalets, was located in the disturbed area.
    4. The access road system had been revised to include a single entry road, off the main Cape Vidal road.
    5. The size of the guest chalets had been reduced from 75m<sup>2</sup> to <70m<sup>2</sup> and <50m<sup>2</sup> (4 bed and 2 bed chalets respectively).
    6. A comprehensive Method Statement had been developed to address all construction and post construction related activities within the forest area.

7. Mr Velcich emphasized that the Method Statement pays particular attention to the siting of the chalets within the forest area. In this regard, pre-construction activity would include the identification and marking of sites and pathways with a suitably qualified botanist. This activity will also include the marking of trees and plants that may or may not be disturbed.
- vi. Mr Van Der Merwe noted the following:
1. DEFF are more concerned with keystone species and protection of our natural forests, and less concerned with protected species.
  2. Any removal of protected species would require permitting / licensing from the iSimangaliso Wetland Park Authority, and not from DEFF (due to the transfer of the said state forest from the then Minister of Agriculture, Forestry and Fisheries to the then Minister of Environmental Affairs. This transfer included the transfer of the provisions of section 7 of the National Forestry Act (NFA) for Protected Areas).
  3. The mandate of DEFF in terms of natural forests, and in accordance with the National Forestry Act, is to ensure that natural forests are protected, and not cleared except in exceptional circumstances. DEFF would like to avoid creating a precedent, by approving the development of infrastructure within natural forests, where such infrastructure could not reasonably be considered 'exceptional circumstance'.
  4. Mr Van der Merwe noted that DEFF had sought legal opinion, which stated that the restaurant / pool complex and staff housing could not be considered 'exceptional circumstance' but that guest chalets could be considered 'exceptional circumstance'. Therefore, DEFF are supportive of the revised layout plan as submitted with the appeal, in that only guest chalets will be developed within the forest area. Mr Van der Merwe went on to note that positioning of the chalets within the natural forest area was important to the success of the tourism destination, and the positioning of such units must ensure a true eco-tourism / forest experience for guests.

5. Mr Van der Merwe noted that our natural forests are important as they provide numerous benefits to the community at large, through eco-system services, hence the strict nature of national legislation governing our natural forests.
  6. Mr Van der Merwe concluded by noting that: he was happy with the revisions and to the layout plan; supportive of method statement and mitigation measures; that such revisions were responsive to DEFF concerns; that the concept of exceptional circumstance had now been properly addressed; and, in his words, *'this can work'*
  - vii. Mr Mbense noted that the Bhangazi Community Trust would be involved in the specific actions and activities listed in the Method Statement, and most importantly, with the final positioning of the chalets on-site.
  - viii. Mr Van der Merwe requested that the Method Statement include the identification of any plant species (as opposed to tree species) for transplanting
  - ix. Mrs Joice Mthiyane (Bhangazi Community Trust Chairperson) spoke at length about the history of the project, and impressed on all stakeholders that this project was first initiated over 20 years ago, in 1999. The community have been patiently waiting ever since to see some tangible progress and benefit, but have instead been faced with numerous delays and obstacles. She requested that all project stakeholders recognise the plight of the community in this regard, and maximise all efforts to bring this project to fruition in an expedient manner.
- b. Following the meeting, the attendees made their way to the site, for a site inspection
- i. Mr Velcich used the layout plan to orientate the attendees on the ground, and pointed out the disturbed sites where the restaurant, reception, staff housing, trails camp chalets, and access road and parking areas would be located (all within the disturbed footprint of the old Bhangazi Fishing Camp).
  - ii. The attendees then walked from site to site for closer inspection.
  - iii. Ms Langa noted that the site and infrastructure, used to house Ezemvelo KZN Wildlife staff, was severely degraded, and very poorly maintained.

- iv. Ms Langa queried the participation of PSAM in the Appeal process. Mr Velcich noted that contact had been made with Mr Scarr from PSAM, and that Mr Scarr was provided with the Draft Appeal document and invited to submit comment and input. However, Mr Scarr indicated that, in terms of procedure, he would feel more comfortable commenting on the Final Appeal as submitted to DEFF. Mr Velcich noted that Mr Scarr had been furnished with a copy of the Final Appeal.
  - v. The attendees were then taken along an informal pathway leading through the forest and down to the edge of the lake. Along this route, Mr Velcich pointed out a number open of pockets in the forest which were suitable for the development of chalets, without the need for significant clearance or pruning of trees. Mr Van der Merwe confirmed this by measuring out one of the sites with a tape measure.
- c. Following the site walk,
- i. Ms Nkosi discussed the way forward, noting that DEFF, Director: Appeals and Legal Review would require their comments submitted by Monday 16<sup>th</sup> March, following which, a recommendation on the Appeal would be forwarded to the Minister for a decision. She also noted that the process *may* require resubmission of the layout plan to the Interested and Affected Parties, and resubmission of the Comments and Response Report and Final Basic Assessment Report.
  - ii. Mr Van der Merwe again noted that he was comfortable with the new layout and mitigation measures, and specifically the actions described in the Method Statement. Mr Van der Merwe concluded with the observation that *'this can be done'*.

#### 4. CLOSURE

- a. Mr Theron thanked everyone for attending the meeting and site visit, and closed the meeting at approximately 12h30.



## environmental affairs

Department:  
Environmental Affairs  
REPUBLIC OF SOUTH AFRICA

Private Bag X447, Pretoria, 0001, Environment House, 473 Steve Biko Road, Pretoria, 0002

Email: [Appeals@environment.gov.za](mailto:Appeals@environment.gov.za)

### APPEAL RESPONSE REPORT

**PROJECT NAME/TITLE:** Basic Assessment for the Bhangazi Cultural Heritage Lodge, iSimangaliso Wetland Park, South Africa

**PROJECT LOCATION:** iSimangaliso Wetland Park, Norther Kwazulu Natal, South Africa

**PROJECT REFERENCE NUMBER:** 14/12/16/3/3/1/2015

**DATE PROJECT/ACTIVITY AUTHORISED:** Authorisation Refused 30/10/2019. Note that the Appeals window was increased to 29/02/2020

**DATE NOTIFIED OF DECISION:** 01/11/2019

DETAILS OF THE APPELLANT	DETAILS OF THE APPLICANT
<p><b>Name of appellant:</b>  <b>Bhangazi Community Trust</b>  Appeal compiled and submitted by Nuleaf Planning and Environmental (Nuleaf) on behalf of the appellant. See letter of authority attached as Annexure 1.</p>	<p><b>Name of applicant:</b>  <b>Bhangazi Community Trust</b>  Appeal compiled and submitted by Nuleaf Planning and Environmental (Nuleaf) on behalf of the applicant. See letter of authority attached as Annexure 1.</p>
<p><b>Appellant's representative (if applicable):</b>  <b>Nuleaf Planning and Environmental (Pty)Ltd represented by Peter Velcich</b></p>	<p><b>Applicant's representative (if applicable):</b>  <b>Nuleaf Planning and Environmental (Pty)Ltd represented by Peter Velcich</b></p>
<p><b>Postal address:</b></p> <ul style="list-style-type: none"> <li>• <b>Bhangazi Community Trust:</b> PO Box 1387, Mtubatuba, 3935</li> <li>• <b>Nuleaf:</b> 8a Trevor Street, Murrayfield, Pretoria, 0184</li> </ul>	<p><b>Postal Address:</b></p> <ul style="list-style-type: none"> <li>• <b>Bhangazi Community Trust:</b> PO Box 1387, Mtubatuba, 3935</li> <li>• <b>Nuleaf:</b> 8a Trevor Street, Murrayfield, Pretoria, 0184</li> </ul>
<p><b>Email Address:</b>  Bhangazicomunitytrust@telkomsa.net</p>	<p><b>Email Address:</b>  Bhangazicomunitytrust@telkomsa.net</p>
<p><b>Telephone number:</b>  035 550 0068</p>	<p><b>Telephone number:</b>  035 550 0068</p>





## INTRODUCTION / BACKGROUND

The iSimangaliso Wetland Park is a World Heritage Site located in the coastal and inland areas of north-eastern KwaZulu-Natal. The Park occupies an area of approximately 358,534ha comprising fifteen ecosystems and a number of notable and diverse landscapes. Between the 1950's and 1970's, people living on the Eastern Shores were forcibly removed. In post-apartheid South Africa, the national government has implemented a land restitution programme that allows dispossessed communities to reclaim the land they were forcefully removed from. The land claim for this area 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 South, have also been granted. The institution formed by the former-claimants is the Bhangazi Community Trust.

The Bhangazi Community Trust, in agreement with the iSimangaliso Wetland Park Authority, was given vested authority to develop a 60-bed tourism facility to display the cultural heritage of the Bhangazi local community. The Bhangazi Site is located approximately 30 km's north of St Lucia and 2 km's south-west of the beach at Cape Vidal. Proximity to the Cape Vidal road means easy access from St Lucia. The site is 9.94 ha in extent and is divided into two pockets - a northern portion of 5.06 ha earmarked for development and a southern no-development zone of 4.88 ha. This development is proposed to be located on a 5,06 ha site on the shores of Lake Bhangazi, which form part of the Eastern Shores of the iSimangaliso Wetland Park. This area is designated for tourism development in the Environmental Management Plan that was developed in terms of the World Heritage Site. This was widely workshopped with stakeholders, and ultimately approved by the Minister of Environmental Affairs.

Following the above, a feasibility study for the proposed lodge and associated development activities was undertaken and a funding application for R35m submitted to the Department of Environment, Forestry and Fisheries' (DEFF) Environmental Protection and Infrastructure Programme (EPIP). Based on the fact that the Bhangazi Lodge has been listed as one of the priority projects for DEFF's further implementation of the National Biodiversity Economy Programme, EPIP has committed R20m to the Bhangazi Lodge project which will be available for use on 1 April 2020.

An Environmental Impact Assessment Process (EIA) was initiated in 2018, and an application for Environmental Authorisation (EA) was submitted to the DEFF 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). A Final Basic Assessment Report (FBAR) was submitted to DEFF for adjudication purposes on the 16/07/2019.



A Letter of Refusal of Environmental Authorisation, issued by DEFF, was received by the applicant on the 1/11/2019. The applicant decided to exercise the right of appeal, and requested that the timeframe for submission of an appeal be extended to the 29/02/2020. This request was approved by the DEFF. See Annexure 1.

The applicant appointed Peter Velcich of Nuleaf Planning and Environmental (Pty) Ltd (Nuleaf) to prepare and submit the appeal on behalf of the applicant.

The key issues or concerns listed as reasons for the refusal of EA, centre around the contention that the EIA process was not compliant with Regulation 44(1) of the Environmental Impact Assessment Regulations (EIA) 2014, as well as certain concerns about the layout of facilities with respect to the sensitivities of the site (brown and greenfield areas). It is respectfully submitted that these issues and concerns, some of which arose due to a misinterpretation of the FBAR submission, can be comfortably addressed and allayed to the satisfaction of all parties involved.

These issues are discussed below:

A handwritten signature in black ink, appearing to be 'P. Velcich', written over a light grey circular stamp.

GROUNDS OF APPEAL	RESPONDING STATEMENT BY THE APPLICANT	COMMENTS BY THE DEPARTMENT
<p>1. The key factors considered by the DEFF in making the decision to refuse environmental authorisation for the project centred around non-compliance with Regulation 44(1) of the Environmental Impact Assessment Regulations (EIA) 2014 as amended which states <i>'the applicant must ensure that the comments of interested and affected parties are recorded in reports and plans and that such written comments, including responses to such comments and records of meetings, are attached to the reports and plans that are submitted to the competent authority in terms of these Regulations'</i></p> <p>The DEFF references two submissions that were ostensibly not included in the Final Basic Assessment Report (FBAR) submissions:</p> <ul style="list-style-type: none"> <li>• A submission from the Department of Agriculture, Forestry and Fisheries (DAFF), submitted to the EAP on the 31/05/2019; and</li> <li>• A submission from Rhodes University Public Service: Accountability Monitor (PSAM) submitted to the EAP on the 01/06/2019.</li> </ul> <p>The appellant responds as follows:</p> <ul style="list-style-type: none"> <li>• As per the NEMA regulations, the DBAR was disclosed for comment on the 02/05/2019 until 01/06/2019 for submission of comments. These comments were included in the FBAR, which was submitted to DEFF on the 16/07/2019. This included initial comments from both PSAM and DAFF.</li> <li>• The DAFF and PSAM submitted additional comments on the final day of the comment period, 01/06/2019. The EAP acknowledges that, due to an administrative error, these comments were not initially included in the Comments and Response Report (CRR) as part of the FBAR submission (16/07/2019).</li> <li>• However, once the EAP became aware of these comments, the oversight regarding their non-inclusion was discussed with the DEFF Case Officer (CO) on 20/08/2019 and arrangements were made with the CO for the EAP to submit an updated CRR.</li> <li>• In the updated CRR, the EAP comprehensively responded to the DAFF and PSAM comments and submitted such to the DEFF Case Officer on the 30/08/2019 (Note that the DEFF EA refusal letter is dated</li> </ul>		



<p>30/10/2019). Proof of submission of this updated report is included as Annexure 2. Receipt of the updated CRR is not disputed by DEFF.</p> <ul style="list-style-type: none"> <li>This issue was further addressed by the EAP in so far as all stakeholders were notified of the updated CRR in a letter from the EAP dated 02/09/2019, and the stakeholders were furnished a copy thereof (see Annexure 3).</li> </ul> <p>Following the above, it would appear from the Refusal of EA, that DEFF did not take the amended CRR into account during the processing and adjudication of the application (despite the arrangements between the DEFF and the EAP to submit such). It is therefore reasoned that, with the submission of the updated CRR and the notification of the interested and affected parties, the application was in fact fully compliant with Regulation 44(1) of the Environmental Impact Assessment Regulations (EIA) 2014 as amended.</p>		
<p>2. DEFF, in the refusal letter, make the incorrect inference that the proposed staff housing area is positioned within the undisturbed forest area on a greenfield site (as per the statement under point (h) of the refusal letter which reads ...'The location of the staff housing as indicated in the layout plan must be moved to a degraded area or to existing areas....' Note that the layout map in the FBAR submission clearly indicates that the staff housing is in fact positioned in a disturbed area (cleared and developed), and is not in any way within a forested or greenfields area. See annexure 4 for photographic evidence.</p>		
<p>3. Upon instruction from the Bhangazi Community Trust, Nuleaf have reviewed the 01/06/2019 comments and concerns listed by DAFF and PSAM, as well as the reasons for refusal of EA as listed by DEFF (which largely referenced the DAFF comments and concerns), with a view to incorporating any reasonable proposals and additional mitigation measures made therein.</p> <p>The site was visited by staff of Nuleaf staff together with members of the Bhangazi Community Trust on the 22/01/2020. All disturbed areas within the proposed development envelope were accurately plotted and opportunities for development of the chalets within the forest with minimal disturbance to vegetation were identified (see Annexure 5). It was found that the currently developed / disturbed area (old fishing camp) will provide more than enough space for the placement of the restaurant, pool, reception, staff accommodation, trails camp, roads and parking. It was also found that the forest is populated with cleared pockets (old fishing</p>		

camping spots) that are well disposed to development of the chalets without significant (if any) removal of vegetation.

Following this, Nuleaf feels that fundamental revisions can be made to the project design and layout in order to allay the concerns of DAFF, PSAM and DEFF. These revisions include amendments to the proposed (existing) layout plan, and specifically to the positioning of certain facilities on the site, as proposed by DAFF in the aforementioned comments.

Note that DAFF, by its own admission in the 01/06/2019 comments, is not opposed to the development of the chalet units within the forested area, and supports the FBAR submission that the development of these units in this area can be reasonably considered an exceptional circumstance. This is supported by DAFF's comment which reads '*...the ecotourism accommodation (units placed among 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 following DAFF proposals were taking into consideration:

- DAFF recommend that consideration be given to reducing the size of the units and developing alternative unit design to accommodate specific sites.
- DAFF recommend that the restaurant complex be relocated to a disturbed area on the site.
- DAFF requests that a Method Statement be developed for inclusion in the EMPr, covering all activities within the natural forest.

Following the above, the appellant takes this opportunity to positively respond to the concerns and recommendations raised by DAFF, PSAM, and DEFF (in the refusal letter), and an updated site layout plan and additional mitigation measures are submitted as follows:

- a) The restaurant and pool complex, previously located within the forest, has been repositioned to a disturbed area outside the forest. The specific site is currently totally devoid of indigenous vegetation and is largely covered by an old derelict building, a remnant of the Bhangazi Fishing Camp. This revision also implies that the proposed restaurant access / service road leading from the parking area, through the forest to the restaurant, is no longer required.



- b) The staff housing has been repositioned on two separate disturbed areas within the old Bhangazi fishing camp (brownfields sites).
- c) Development within the forest will be limited to guest chalets and pedestrian boardwalks only and will make use of pre-identified cleared or semi-cleared areas (old camping spots).
- d) All the chalets within the forest will be developed on elevated decks. Circulation between chalets will be via elevated timber boardwalks (no infrastructure will be built on the ground).
- e) The previously proposed dual access roads (off the Cape Vidal road) have been consolidated and restricted to only one access road in and out of the facility.
- f) Considering the footprint impact of each unit within the forest area, the following additional mitigation procedures are proposed:
  - Reducing the footprint size of the 2 bed units from 75 m<sup>2</sup> to <50 m<sup>2</sup>.
  - Reducing the size of the 4 bedroom units from 75 m<sup>2</sup> to <60 m<sup>2</sup>
  - Developing modular / alternate designs of the units to facilitate placement in the forest with minimal impact on existing large trees.
  - Limit on the maximum tree removal size of 180mm diameter, priority will be given to transplanting trees where at all possible.
  - No removal of any listed tree species as Protected in terms of the NFA.

These measures will result in the following nett benefits:

- Original potentially cleared forest area (tented chalets, restaurant, staff) of approximately **1900 m<sup>2</sup>** / is now revised to a potentially cleared forest area (tented chalets) of **960 m<sup>2</sup>** .Note, this is the physical footprint of the deck structures and does not imply clearing of forest canopy.
- By removing the restaurant complex from the forested area, an opportunity is created to space the tented chalet units further apart, and therefore more opportunity is created to find a site that can accommodate the units without significant clearance of vegetation.

Annexures 6 illustrates the revised layout versus the original layout. Annexure 7 illustrates the revised layout together with site photographs, general development guidelines, alternative modular layout of the chalets, and look and feel imagery.



<p>In response to a request by DAFF, a Method Statement has been developed for all activities within the natural forest, and is included as Annexure 8.</p> <p><i>Note: Nuleaf met with DAFF officials on the 13/02/2020 and the 18/02/2020. The abovementioned was discussed at length and DAFF indicated support for the proposed revisions to the layout and design of the project. DAFF also gave input into the proposed Method Statement.</i></p>		
<p>4. A specialist botanical survey (included in the FBAR), commissioned at the behest of DAFF following a site visit with the EAP and applicant, and using a specialist recommended by DAFF, found the following:</p> <ul style="list-style-type: none"> <li>• 4 protected tree species (NFA) were identified within the greater study area.</li> <li>• Only 1 protected species was identified within the chalet development zone (Marula).</li> <li>• No protected plant species (undergrowth) were identified within the study area (but may occur).</li> </ul> <p>The specialist report goes on to say that:</p> <ul style="list-style-type: none"> <li>• The development of the units within the forest <i>may</i> have an impact relating to the removal of trees (i.e. loss of canopy cover and understorey cover, small increased risk of erosion);</li> <li>• the <u>residual impacts of this activity are negligible</u>, and</li> <li>• <u>it is anticipated that the forest canopy and undergrowth will recover</u>.</li> </ul> <p>Mitigation and avoidance measures listed in the specialist report are both practical and easily achievable, and include</p> <ul style="list-style-type: none"> <li>• enrichment planting,</li> <li>• the use of raised platforms and boardwalks and</li> <li>• the use of modular construction of units to best fit each particular site.</li> </ul> <p>Note that this assessment was done on an <u>assumed footprint area of 100 m<sup>2</sup></u> per chalet. The size of the units has since been reduced to less than 60 m<sup>2</sup> (4 bed) and less than 50 m<sup>2</sup> (2 bed). These mitigation measures are accepted and will be implemented as discussed above.</p>		

## IMPACT STATEMENT

The proposed revisions to the layout are not anticipated to realise any additional impacts (beyond those addressed in the FBAR), nor do they trigger any additional listed activities as per the EIA Regulations. In fact, as the revisions primarily include relocating infrastructure from a greenfields site to a brownfields site concurrent with a significant reduction of the development footprint in the forest areas, the revised layout and design will result in a nett positive impact. Similarly, the adoption of a specific Method Statement will further ameliorate potential negative impacts within the natural forest.

MITIGATION MEASURE	NETT RESULT	IMPACT
Remove proposed new access road, in favour of using the existing access road to the fishing camp area.	No longer need to clear an extent of 200m <sup>2</sup> (forested area) for the access road alignment.	Nett positive impact
Relocate restaurant and pool complex from forest zone to disturbed fishing camp zone	No longer need to clear an extent of 350 m <sup>2</sup> (forested area) for the restaurant and pool complex	Nett positive impact
Following above, no requirement for new access road leading to restaurant complex	No longer need to clear an extent of 200 m <sup>2</sup> (forested area) for the service road alignment.	Nett positive impact
Reducing the size of the proposed 2 and 4 bed chalet units from 75 m <sup>2</sup> to 50 m <sup>2</sup> and 40 m <sup>2</sup> respectively.	Potentially cleared area reduced from 1350 m <sup>2</sup> to 970 m <sup>2</sup> (footprint of raised decks, not necessarily clearance of forest canopy).	Nett positive impact
Forest infrastructure limited to chalets and boardwalks only, all on raised timber decks.	Reduction of impact on undergrowth.	Nett positive impact
Method Statement covering all activities in forest area.	Better planning, management, monitoring and auditing of activities within the forest area.	Nett positive impact

**Note:** During the site visit of 22/01/2020, Nuleaf found that the portion of the proposed development site, specifically the brownfields area adjacent to the forest, is in an advanced stage of degradation, due to the ongoing human habitation of derelict buildings and very poor site management and housekeeping practices. The site is littered with debris, refuse and building rubble, and there is evidence of illegal felling of forest trees along the edge of this area. It is Nuleaf's considered opinion that the development of a well-managed upmarket lodge on this site will realise a nett positive impact for the area and surroundings.





**CONCLUDING COMMENTS:**

Nuleaf respectfully submits that, on the evidence of the foregoing, this project should receive Environmental authorisation, subject to:

- The implementation of the additional mitigation measures as described under 3 (a) – (f) above.
- The implementation of the revised layout plan as presented in Annexure 7.
- The implementation of the Method State protocol as presented in Annexure 8.
- The implementation of all mitigation measures as presented in the FBAR and EMPr.

**ARR comments by Case Officer**

Name & Surname:

Date:

Signature:

.....

**Approved by Supervisor**

Name & Surname:

Date:

Signature:

.....



**ANNEXURES:**

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**INCLUDED UNDER SEPARATE COVER**

- EA Refusal Letter, DEFF Ref 14/12/16/3/3/1/2015
- Updated CRR Report, ERM, 30/08/2019
- A3 maps and plans (Annexures 5, 6 and 7)



Reference: LSA 190144

**DECISION IN RESPECT OF THE REQUEST FOR EXTENSION**

**REQUEST FOR EXTENSION OF TIMEFRAMES TO FILE AN APPEAL AGAINST A DECISION TO REFUSE AN ENVIRONMENTAL AUTHORISATION TO BHANGAZI COMMUNITY TRUST FOR THE PROPOSED DEVELOPMENT OF THE BHANGAZI LODGE AT CAPE VIDAL, ISIMANGALISO WETLAND PARK**

**1. INTRODUCTION**

1.1 In terms of Chapter 4 of the Environmental Impact Assessment Regulations, 2014, as amended (2014 EIA Regulations), regarding activities identified under section 24 of the National Environmental Management Act, 1998 (Act No. 107 of 1998) (NEMA), the Chief Director: Integrated Environmental Authorisations of the Department of Environmental Affairs (CD: IEA) refused an Environmental Authorisation (EA) to Bhangazi Community Trust (the applicant), on 30 October 2019, for the proposed development of the Bhangazi Lodge at Cape Vidal, Isimangaliso Park.

**2. BACKGROUND AND THE REQUEST FOR CONDONATION**

2.1 On 30 October 2019, the Department refused an EA to the applicant in respect of the proposed development of the Bhangazi Lodge at Cape Vidal within Isimangaliso Wetland Park.

2.2 The applicant was informed of the aforesaid decision of the CD: IEA and also furnished with a copy of the refusal decision on 8 November 2019. Therefore considering the provisions of regulation 4(1) of the 2014 National Appeal Regulations (2014 Appeal Regulations), the due date for the submission of an appeal was 28 November 2019.

2.3 On 28 November 2019, the Directorate: Appeals and Legal Review within the Department of Environmental Affairs (Appeals Directorate) received a request for extension on 28 November 2019 from the applicant, to submit their appeal on or before 28 February 2020.

2.4 In motivating for its request for extension of timeframe to submit an appeal, the applicant submits that more time is needed to revise the current Bhangazi Lodge layout plan to adequately address key issues and concerns raised by Interested and Affected parties, and the applicant would like to engage the Department of Environmental Affairs and Isimangaliso Wetland Park Authority to discuss and agree on concerns raised.

**3. LEGISLATIVE FRAMEWORK GOVERNING THE REQUEST FOR EXTENSION**

3.1 In terms of section 47C of NEMA, the Minister have the legal authority, subject to explicit limits, to grant an extension or condonation for the submission of an appeal which is out of time. The powers and duties enshrined in sections 47C of NEMA relating to the legal authority to extend or condone a failure by a person to comply with a period in terms of the Appeal Regulations have been sub-delegated to the Director of the Appeals Directorate.

3.2 Section 47C of NEMA provides as follows:

*"The Minister or an MEC may extend, or condone a failure by a person to comply with, a period in terms of this Act or a specific environmental management Act, except a period that binds the Minister or MEC.*

3.3 Regulation 4(1) of the National Appeal Regulations, 2014, as amended (2014 Appeal Regulations) provides that:

*"(1) An appellant must submit the appeal to the appeal administrator, and a copy of the appeal to the applicant, any registered interested and affected party and any organ of state with interest in the matter within 20 days from:*


- (a) the date that the notification of the decision for an application for an environmental authorisation or a waste management licence was sent to the registered interested and affected parties by the applicant; or*
- (b) the date that the notification of the decision was sent to the applicant by the competent authority, issuing authority or licensing authority, in the case of decisions other than those referred to in paragraph (a).*

**4. DECISION**

- 4.1 In reaching my decision on the applicant's request for extension of timeframes to submit an appeal, it should be noted that I have not responded to each and every statement set out in the request for extension, and that where a particular statement is not directly addressed, the absence of any response thereof should not be interpreted to mean that I agree with or abide by the statement made.
- 4.2 It seems to me that, in determining whether or not extension should be granted in the present matter, I must make my determination on the basis of the terms of section 47C of NEMA.
- 4.3 Having duly considered the reasons advanced by the applicant in its request for extension of timeframes to submit an appeal, I find that good cause exists for the granting of the said request for the following reasons:
  - 4.3.1 The applicant has furnished me with a satisfactory explanation; and
  - 4.3.2 No prejudice will be suffered by any other party as a result of granting the request for extension.

**REQUEST FOR EXTENSION OF TIMEFRAMES TO FILE AN APPEAL AGAINST A DECISION TO REFUSE AN ENVIRONMENTAL AUTHORISATION TO BHANGAZI COMMUNITY TRUST FOR THE PROPOSED DEVELOPMENT OF THE BHANGAZI LODGE AT CAPE VIDAL, ISIMANGALISO WETLAND PARK**

- 4.4 In light of the foregoing, the applicant's request for extension of timeframes to file an appeal on or before 28 February 2020 is hereby granted.

  
ADV. MOKETE RAKGOGO  
DIRECTOR: APPEALS AND LEGAL REVIEW  
DATE: 06/12/2019

**From:** Khosi Dlamini [mailto:Khosi.Dlamini@erm.com]

**Sent:** 30 August 2019 16:19

**To:** 'Zama Langa' <ZLanga@environment.gov.za>

**Cc:** Amishka Mothilal <Amishka.Mothilal@erm.com>; Basil Bafana (Com) <basil@isimangaliso.com>; Phumlani Lugagu <phumlani@isimangaliso.com>; Siboniso Mbense <siboniso@isimangaliso.com>; Sizo Sibiya <sizo@isimangaliso.com>; Stephanie Gopaul <Stephanie.Gopaul@erm.com>; 'Piet Theron' <piettheron01@gmail.com>

**Subject:** 14/12/16/3/3/1/2015 Bhangazi Cultural Heritage Lodge - Updated CRR

Afternoon Zama,

As per our discussion last week, I have attached the updated Comments and Responses Report for your review.

Please let me know should you have any queries.

Kind regards,

Khosi Dlamini

Environmental Consultant

**ERM**

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**E** [khosi.dlamini@erm.com](mailto:khosi.dlamini@erm.com) | **W** [www.erm.com](http://www.erm.com)



**ERM** *The business of sustainability*

**From:** Khosi Dlamini [mailto:Khosi.Dlamini@erm.com] **On Behalf Of** ERM South Africa Comments Received

**Sent:** 02 September 2019 09:44

**Subject:** BASIC ASSESSMENT FOR THE PROPOSED DEVELOPMENT OF BHANGAZI CULTURAL TOURISM LODGE WITHIN THE ISIMANGALISO WETLAND PARK, KWAZULU-NATAL- Updated CRR

*Reference: 0282731*

Dear Stakeholder,

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 a portion of the 9.94 ha piece of land allocated, which will consist of 60 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.

As such, an application for Environmental Authorisation was submitted 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). Furthermore, a Final Basic Assessment Report (BAR) was submitted to the National Department of Environment, Forestry and Fisheries (DEFF) (formally known as the Department of Environmental Affairs) for adjudication purposes on 16 July 2019.

It has subsequently come to ERM's attention that there was a technical error with receipt of certain comments, which resulted in the oversight of some comments from I&APs and stakeholders. Consequently, such comments were omitted from the Comments and Responses Report (CRR) attached to the Final BAR that was submitted to the DEA for decision. Having carefully reviewed the omitted comments, ERM concludes that no new information needed to be presented in the BAR and hence revision of the BAR was not necessary.

ERM has incorporated the above-mentioned comments into an updated CRR which has been submitted to the National DEFF on 30 August 2019 and is hereby made available to all registered I&APs from 2 September 2019.

Because there was no new information in the omitted comments, responses to them, or the Final BAR, it follows that there was no legal obligation to circulate the Final BAR for further comment to the Interested and Affected Parties (I&APs) before submitting it to the decision-making Authority. It also follows that since I&APs had no further right to comment on the Final BAR and the Specialists Reports, they suffered no prejudice as a result of the circulation of the updated CRR.

The Final BAR together with the updated CRR can be accessed from the Project Website: <https://www.erm.com/en/public-information-sites/basic-assessment-for-the-proposed-cultural-tourism-lodge-development-at-lake-bhangazi>

Once the Department reaches a decision, the details of such resolution will be communicated to all registered stakeholders and I&APs via email. Please contact ERM should you have any questions. Thank you for your participation during this process.

Yours sincerely,

**ERM** Suite S005 | 17 The Boulevard | Westway Office Park | Westville | 3635 | Durban | South Africa **T** +27 31 265 0033 | **F** +27 31 265 0150

**E** [commentsandresponses@erm.com](mailto:commentsandresponses@erm.com) | **W** [www.erm.com](http://www.erm.com)

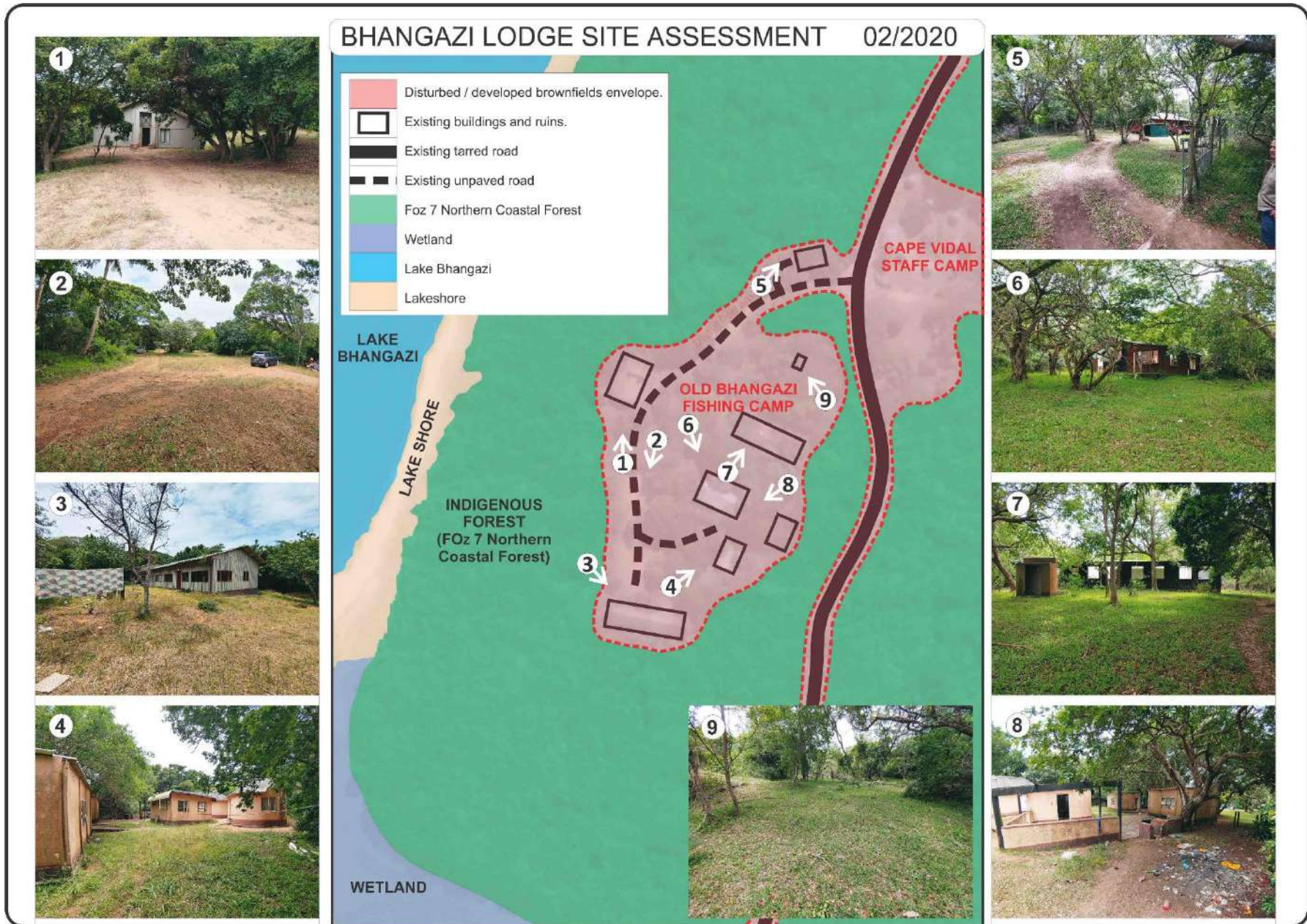
Annexure 4: Photographic evidence: Staff area, brownfields site



JUNIOR STAFF CAMP  
• 2 bed elevated tents.  
• Developed in existing  
turbid (cleared) area.

SENIOR STAFF CAMP  
• 5x2 bed chalets.  
• 7x parking bays, 1x boat  
storage.  
• Store room.  
• Developed in existing  
disturbed (cleared) area.

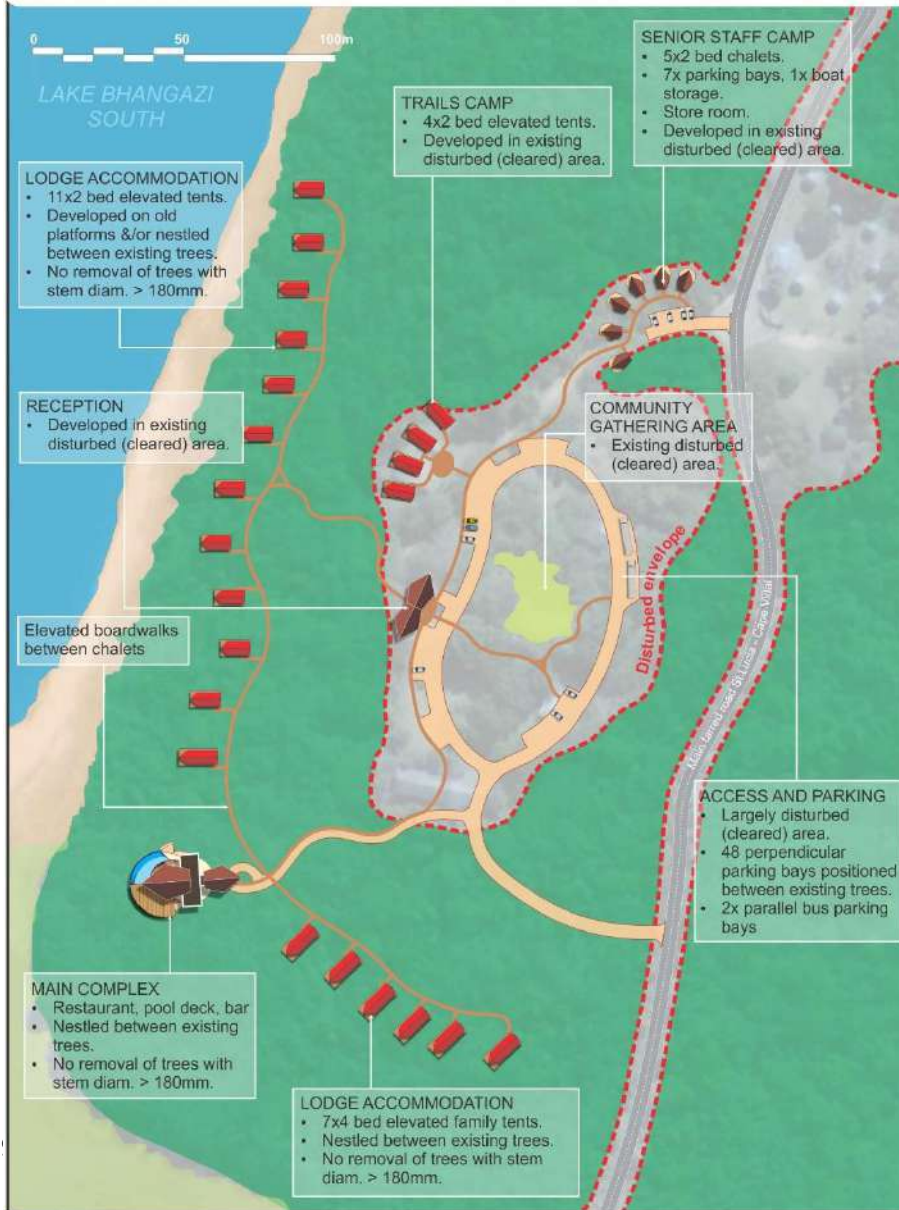
Proposed staff housing area (photograph above left, and on plan above right)



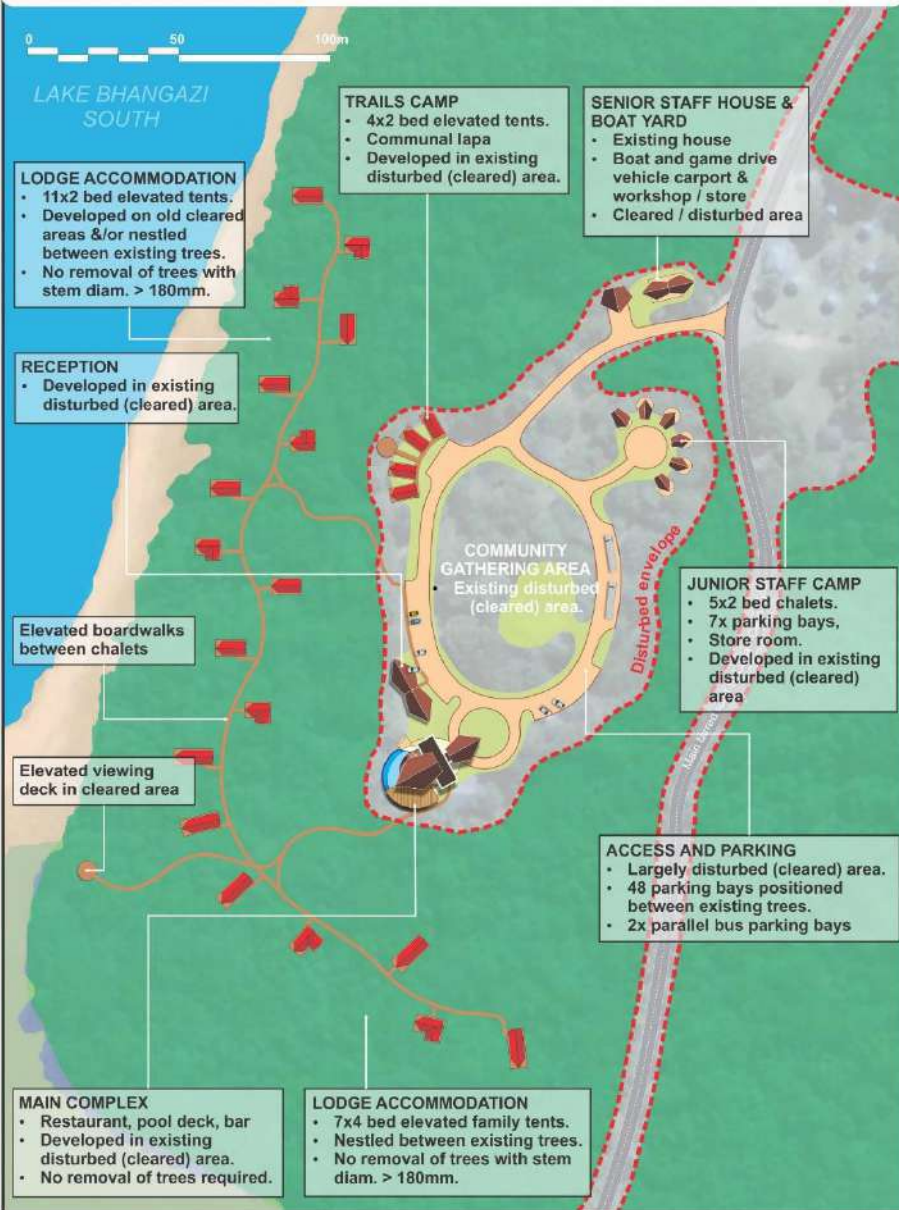


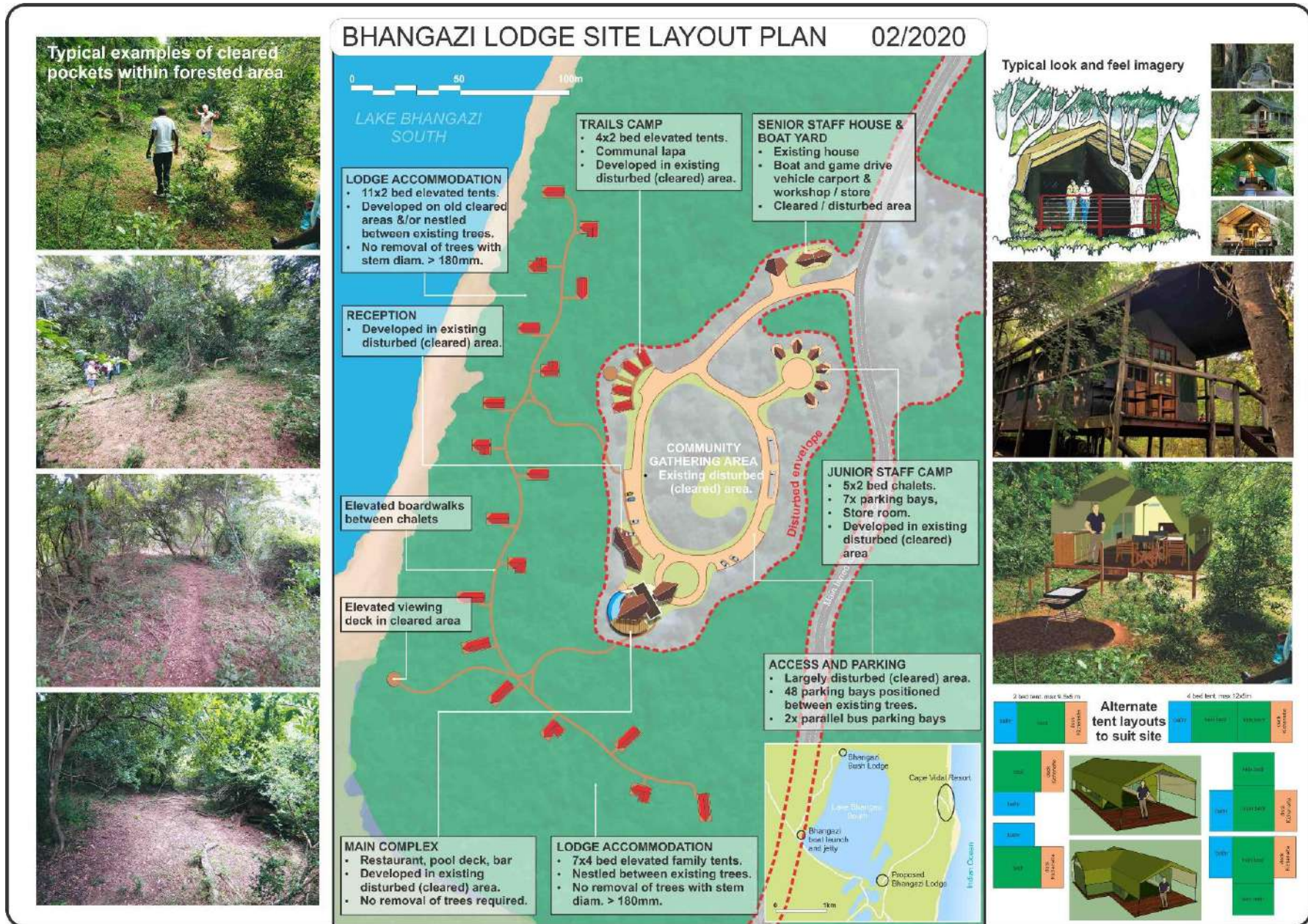
Annexure 6: Plan – comparative illustration: original and revised layout

### BHANGAZI LODGE SITE LAYOUT PLAN 2018



### BHANGAZI LODGE SITE LAYOUT PLAN 02/2020





# BHANGAZI LODGE SITE LAYOUT PLAN 02/2020

Typical examples of cleared pockets within forested area



0 50 100m

LAKE BHANGAZI SOUTH

**LODGE ACCOMMODATION**  
 • 11x2 bed elevated tents.  
 • Developed on old cleared areas &/or nestled between existing trees.  
 • No removal of trees with stem diam. > 180mm.

**RECEPTION**  
 • Developed in existing disturbed (cleared) area.

Elevated boardwalks between chalets

Elevated viewing deck in cleared area

**MAIN COMPLEX**  
 • Restaurant, pool deck, bar  
 • Developed in existing disturbed (cleared) area.  
 • No removal of trees required.

**TRAILS CAMP**  
 • 4x2 bed elevated tents.  
 • Communal lapa  
 • Developed in existing disturbed (cleared) area.

**SENIOR STAFF HOUSE & BOAT YARD**  
 • Existing house  
 • Boat and game drive vehicle carport & workshop / store  
 • Cleared / disturbed area

**COMMUNITY GATHERING AREA**  
 Existing disturbed (cleared) area.

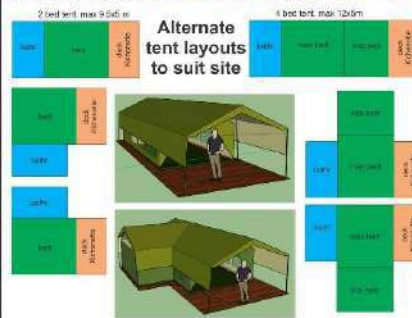
**JUNIOR STAFF CAMP**  
 • 5x2 bed chalets.  
 • 7x parking bays,  
 • Store room.  
 • Developed in existing disturbed (cleared) area

**ACCESS AND PARKING**  
 • Largely disturbed (cleared) area.  
 • 48 parking bays positioned between existing trees.  
 • 2x parallel bus parking bays

**LODGE ACCOMMODATION**  
 • 7x4 bed elevated family tents.  
 • Nestled between existing trees.  
 • No removal of trees with stem diam. > 180mm.



Typical look and feel imagery



**BHANGAZI LODGE DEVELOPMENT,  
iSimangaliso Wetland Park  
METHOD STATEMENT: ACTIVITIES WITHIN THE FOREST  
February 2020**

This Method Statement describes specific actions required during the pre-construction, construction and post-construction (rehabilitation) phases of the project. These actions are to be read in conjunction with the EMP as submitted with the FBAR.

- **PRE-CONSTRUCTION**

- Site establishment (Botanist, ECO, and DAFF officials):
  - Identify suitable development envelopes.
  - Identify boardwalk alignment.
  - Mark protected trees and trees exceeding 180mm diam.
  - Identify possible pruning or thinning requirements.
  - Identify possible tree specimens to be transplanted, and mark accordingly.
  - Clearly define each development envelope with danger tape.
  - Identify and define (danger tape) proposed construction access, lay-down, storage and mixing areas.

- Drafting and submission of permits / licensing for removal, transplanting and/or pruning of forest vegetation for each site, as may be required in terms of Section 7 of the National Forests Act (Act 84 of 1998).
- Design (Architect / Landscape Architect)
  - Develop most appropriate modular layout / arrangement of tented chalet units for each site (site specific).
  - Ensure design is responsive to green building guidelines and energy efficiency.
  - ECO to approve final design / layout of each unit.
- Contractor
  - Ensure that the appointed contractor has experience with construction in similar (protected) environments.
  - ECO to undertake project specific environmental awareness and training course with all construction staff.
  - ECO / contractor to appoint an Environmental Officer (EO), who will report to ECO on weekly basis.
- The ECO, EO and Contractor to develop a construction specific Method Statement.
  - The Method Statements must be submitted to the ECO for approval prior to the commencement of the any construction activity, including clearing. Any changes to the method of works must be reflected by amendments to the original approved Method Statement as is needed. Any changes in this regard must be approved by the ECO, understanding that such changes are environmentally acceptable and in line with the requirements of the EMPr. It is a statutory requirement to ensure the wellbeing of employees and the environment. To allow the mitigation measures in the EMPr to be implemented, the Construction Method Statement should briefly detail how and when a process will be carried out, the possible dangers/risks, and the methods of control required. This should be detailed for the following:
    - Type of construction activity;
    - Timing and location of the activity;
    - Construction procedures for the following specific activities;

- Bunding;
  - Construction site and office/yard establishment;
  - Site nursery establishment;
  - Cement mixing / concrete batching/bentonite mixing;
  - Contaminated water;
  - Dust management;
  - Erosion control;
  - Fire, hazardous and/or poisonous substances including their storage;
  - Personnel, public and animal safety;
  - Rehabilitation of modified environment(s);
  - Solid and liquid waste management;
  - Sources of materials (including MSDSs);
  - Top-soil management;
  - Storm water Management.
- Materials and equipment to be used;
  - Transportation of the equipment to / from site;
  - How equipment/material will be moved while on site;
  - Location and extent of construction site office and storage areas;
  - Emergency/disaster incident and reaction procedures; and
  - Rehabilitation procedures and continued maintenance of the impacted environment.
- The Contractor will be accountable for all actions taken in non-compliance of the approved Method Statement and the EMPr.

- CONSTRUCTION
  - ECO to develop an Environmental Monitoring and Auditing Protocol (EM&AP), informed by the EMPr and the conditions of the EA.
  - The EM&AP to include provision for fines in the event of transgressions and non-compliance.
  - ECO to undertake regular (monthly) site monitoring and auditing assessments (measured against the EMPr). Monthly Environmental Monitoring and Auditing Reports to be submitted to DEFF, and the iSimangaliso Wetland Park Authority.
- POST CONSTRUCTION / REHABILITATION
  - ECO to monitor and approve removal of all construction debris and material.
  - ECO to monitor and approve the rehabilitation of all disturbed areas.
  - ECO to monitor and approve counter erosion measures.
  - No sign-off or final payments (retention) before site is rehabilitated to ECO approval.

Annex C11

PSAM Response to Appeal



## **Minister of Environment, Forestry and Fisheries**

**Attention: Director: Appeals & Legal Review, Department of Environment, Forestry and Fisheries (DEFF)**

**Via email: [Appealsdirector@environment.gov.za](mailto:Appealsdirector@environment.gov.za)**

## **APPEAL RESPONDING STATEMENT: BHANGAZI CULTURAL HERITAGE LODGE, ISIMANGALISO WETLAND PARK**

The appeal lodged on 28 February 2020 by the Bhangazi Community Trust in respect of DEFF's refusal of environmental authorisation of reference number **14/12/16/3/3/1/2015** refers.

Herewith a responding statement in accordance with Regulation 5 of the National Appeal Regulations, 2014, as amended.

Attention is drawn to the fact that the appeal does not contain a statement and supporting documentation, as required in terms of Appeal Regulation 4 (2) (b) (iii), to confirm the appellant's compliance with Regulation 4 (1).

Correspondingly, the appeal was not copied to ourselves as required, thereby necessitating our receipt of it, on request, from the appellant's representative (Nuleaf Planning and Environmental (Pty) Ltd), on 3 March 2020.

### **Responding statement**

1. As alluded to in both DEFF's refusal of authorization and the appeal, comments provided by the Public Service Accountability Monitor (PSAM) and the Forestry Branch of the (then) Department of Agriculture, Forestry and Fisheries (DAFF), within the specified timeframe, to the environmental assessment practitioner (EA) which managed the application for authorization (Environmental Resources Management Southern Africa), were not recorded in and attached to the Final Basic Assessment Report (FBAR) submitted to the Department, as required by Regulation 44 (1) of the NEMA Environmental Impact Assessment Regulations 2014, as amended.
2. By the same token the FBAR did not indicate the manner in which the matters raised by PSAM and DAFF were incorporated in the report, as required in terms of section 3 (1) (h) (iii) of Appendix 1 to the same Regulations.

3. Consequently the FBAR did not meet the requirements of Regulation 19 (3) of the Regulations, which requires that basic assessment reports must contain the information set out in Appendix 1.
4. At p. 5 the appeal indicates that the EAP subsequently discussed the omission of PSAM's and DAFF's comments from the FBAR with DEFF's case officer (CO), and that *arrangements were made with the CO for the EAP to submit an updated CRR* (i.e. comments and response report).
5. However the 2014 EIA Regulations neither make provision for the amendment of FBAR's subsequent to their having been submitted to the competent authority, nor do they afford the competent authority discretion to receive and consider additional information from EAP's subsequent to its receipt of a FBAR.
6. Regulation 20 provides that the only avenues available to a competent authority subsequent to its receipt of a basic assessment report are to either grant or refuse environmental authorization.
7. This in contrast to the preceding 2010 EIA Regulations, which expressly provided for the amendment of a basic assessment report, subsequent to its submission to the competent authority, if it did not contain material information required in terms of the Regulations.
8. The CO therefore acted *ultra vires* in concluding arrangements with the EAP for the submission to DEFF of an updated CRR, conceivably due to being unaware of this significant distinction between the 2010 and 2014 Regulations.
9. Accordingly the reasoning, at p. 6 of the appeal, that *with the submission of the updated CRR and the notification of the interested and affected parties, the application was in fact fully compliant with Regulation 44(1)*, is flawed.
10. Further affirming an apparent unawareness of the limits prescribed by Regulation 20, in correspondence addressed to PSAM on 20 August 2019<sup>1</sup> (i.e. subsequent to DEFF's receipt of the FBAR) the CO advised that the EAP *was correct in forwarding your (omitted) comments to the department so that they can be taken into consideration and so that they are incorporated into the final decision*.
11. This mistaken stance also appears to hinge on the 2010 EIA Regulations, with Regulation 56 (6) having provided for registered interested and affected parties' comments on FBAR's to be submitted directly to competent authorities.
12. In any event, it is noted that notwithstanding the CO's conclusion of arrangements with the EAP for the submission of an updated CRR to DEFF, para. 1 of Annexure 1 to the authorization refusal does not include the latter amongst the information it considered in attaining its decision to refuse authorization.
13. At para's 1 (h) and (i), Annexure I does however include, as information it considered, the DAFF and PSAM comments which were excluded from the FBAR,

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<sup>1</sup> See email attached as Annexure 1.

these having been in effect indivisible from the updated CRR, the sole purpose of which was incorporation of and response to the excluded comments.

14. Para. 2 of Annexure 1 moreover indicates that the same excluded DAFF and PSAM comments were, respectively, key factors in it attaining its decision, while para. 3 deals at length with DAFF's comments.
15. Given the inextricability of the excluded comments and the updated CRR, the assertion on p. 6 of the appeal that *DEFF did not take the amended CRR into account during the processing and adjudication of the application* does not hold water.
16. At the same time, whether the Department considered the updated CRR *per se* or the previously excluded comments only is immaterial in as much as either way it acted *ultra vires* in extending itself beyond the bounds of Regulation 20 (and in any case no basis exists upon which it could elect to consider the comments but not the updated CRR).
17. That said, 2014 EIA Regulations 19 (3) and 44 (1) are peremptory, and DEFF therefore acted correctly in refusing environmental authorization, albeit that its consideration of the excluded DAFF and PSAM comments was *ultra vires*.
18. The updated CRR can not be brought into play in the appeal, and the refusal cannot be overturned and supplanted by environmental authorization on the basis that the FBAR's non-compliance with Regulations 19 (3) and 44 (1) was not material, did not prejudice any person, or was not procedurally unfair, as contemplated in section 47A of NEMA.
19. Consequently the refusal must stand, and a fresh application must be lodged should the applicant wish to continue to pursue the establishment of the proposed lodge.
20. Substantive issues relating to DAFF's rationale, as outlined in para's. 3 (d) – (i) of Annexure 1 to the authorization refusal, are not pursued here, given that DEFF's consideration of DAFF's excluded comment was *ultra vires*.
21. Regrettably it appears that in considering, and granting, the appellant's request for inordinately protracted extension of the appeal period prescribed in the National Appeal Regulations, DEFF did not have regard for the compelling defects associated with the FBAR, it being inconceivable that had it done so, it would have provided for the lengths the appellant has gone to in support of the appeal.
22. It is noted that in addition to being the competent authority in this application, DEFF's Environmental Protection and Infrastructure Programme has *committed R20m to the Bhangazi Lodge project which will be available for use on 1 April 2020*, as indicated on p. 3 of the appeal.
23. It is further noted that the Isimangaliso Wetland Park, in which the proposed lodge would be located, is administered by an authority which falls under DEFF's auspices.
24. It is trusted that DEFF's multiple roles in relation to the proposed project will not unduly influence the appeal outcome.

25. We point out that our reservations regarding the FBAR's inadequacies, and the implications thereof, were set out in correspondence with DEFF prior to it reaching a decision on the application for authorization.
26. Specifically, in addition to forwarding to the case officer correspondence which elicited the response reflected in Annexure 1 to this responding statement, on 22 August 2019 we directed communication to the Chief Director: Integrated Environmental Authorisations, as contained in Annexure 2 hereto.
27. Further to this, on 4 September 2019 we expressed concern to the same official that we had been notified by the EAP on 2 September 2019 that an updated CRR had been submitted to DEFF – see Annexure 3 in this regard.
28. We additionally, in our correspondence of 4 September 2019, requested to be advised as follows:
- a) *whether DEA prevailed on the EAP to furnish it with the updated comments and responses report;*
  - b) *if DEA did so prevail on the EAP, the basis for its having done so in circumstances where Government Notice No. 326 does not provide for it;*
  - c) *whether DEA has accepted or rejected the updated comments and responses report, and*
  - d) *if it has accepted the updated comments and responses report, the basis for its having done so when Government Notice No. 326 does not provide therefor.*
29. It is disconcerting that the requested information was not received, despite follow-up requests on 15 September and 16 October 2019 (both included in Annexure 4), and that confirmation that DEFF had concluded an arrangement for the EAP to provide it with an updated CRR had to be obtained by way of the appeal.

Sincerely.



**N G Scarr**  
**PSAM Monitoring & Advocacy Programme**

**Date: 23 March 2020**

**From:** [Zama Langa](#)  
**To:** [Nicholas Scarr](#)  
**Cc:** [Stephanie Gopaul](#); [Amishka Mothilal](#); [Nyiko Nkosi](#); [Danie Smit](#)  
**Subject:** RE: Bhangazi DBAR  
**Date:** Tuesday, 20 August 2019 12:58:39 PM  
**Attachments:** [image001.png](#)

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Dear Mr Scarr

I hope I am understanding point 9 correctly, If my understanding is correct I am in agreement with you, ERM does have to give a response to the comments that you have made regardless of when in the process they were received. They were also correct in forwarding your comments to the department so that they can be taken into consideration and so that they are incorporated into the final decision. Furthermore when they do respond to your comments ERM is still expected to forward that response to the department.

Please do not hesitate to contact me for further clarity.

**Regards,**  
**Zamalanga Langa**  
**Environmental Officer Specialised Production: IEA (Protected Areas)**  
**Department of Environmental Affairs**

**Tel: 012 399 9389**  
**Cell: 072 146 4308**

---

**From:** Nicholas Scarr [mailto:n.scarr@ru.ac.za]  
**Sent:** Tuesday, August 20, 2019 11:16 AM  
**To:** Zama Langa  
**Cc:** Stephanie Gopaul; Amishka Mothilal  
**Subject:** RE: Bhangazi DBAR

Good day

We refer to the email correspondence below which was copied to yourself, the content of which is self-explanatory.

Having regard for the content of the email and associated preceding correspondence included with it we trust DEA will affirm our stance as reflected in point 9 below.

Please advise in this regard.

Kind regards

*Nicholas Scarr*  
*Public Service Accountability Monitor*  
*Rhodes University*  
*South Africa*

Tel 041 379 4208 & 076 985 7938

[www.psam.org.za](http://www.psam.org.za)

---

**From:** Nicholas Scarr <[n.scarr@ru.ac.za](mailto:n.scarr@ru.ac.za)>

**Sent:** Tuesday, 20 August 2019 11:08 AM

**To:** 'Amishka Mothilal' <[Amishka.Mothilal@erm.com](mailto:Amishka.Mothilal@erm.com)>

**Cc:** 'Stephanie Gopaul' <[Stephanie.Gopaul@erm.com](mailto:Stephanie.Gopaul@erm.com)>; '[Zlanga@environment.gov.za](mailto:Zlanga@environment.gov.za)' <[Zlanga@environment.gov.za](mailto:Zlanga@environment.gov.za)>

**Subject:** RE: Bhangazi DBAR

Dear Amishka

I refer to your email of 19 August 2019 to DEA (copy attached).

1. ERM's indication to DEA that PSAM, via myself, "claims" that it submitted comments on the Draft Basic Assessment Report, and "alleges" that it did so at the time it did, are unfortunate in circumstances where I have furnished yourselves with a copy of the email transmission involved, and you have forwarded the same transmission to DEA.
2. It is abundantly plain from the email message that comments on the Draft Basic Assessment Report were submitted to yourselves, and that this occurred within the prescribed timeframe.
3. Over and above this, Rhodes University's Information Technology Services has advised that the email message *was correctly handed over by the university's outgoing mail server to one of the incoming mail servers for [erm.com](http://erm.com) within 11 seconds of your PC submitting the message to our outgoing mail server*, and substantiated this with its outgoing mail server's log entries for the delivery.
4. Moreover, after being transmitted to ERM at 11:11 PM, at 11:23 PM the same email was forwarded to Mr van der Merwe, then of DAFF and now of DEAFF, who, it is noted in Annexure D to the Final Basic Assessment Report, provided yourselves with comment on the proposed lodge on 1 June 2018.
5. Simultaneously with being forwarded to Mr van der Merwe, the email was additionally forwarded to another role player (not a registered interested and affected party in this matter) in natural forest governance in South Africa.
6. The email was duly received by both Mr van der Merwe and this role-player.
7. By all accounts therefore PSAM's email system was fully functional when it is submitted its comments, and its submission occurred timeously and in good order.
8. Separately, as per our email to yourselves of 16 August 2019, included below, ERM was requested to *"please advise DEA without delay of the situation as regards PSAM's input."*
9. We did not request that our comments be referred to DEA – as expressly indicated in the same email, since they were submitted to ERM within the prescribed timeframe, "in

*principle we do not believe that liaising with DEA in lieu of ERM dealing with our input as required in terms of the relevant regulations would be appropriate.”*

10. We stand by this position.

Kind regards

*Nicholas Scarr  
Public Service Accountability Monitor  
Rhodes University  
South Africa  
Tel 041 379 4208 & 076 985 7938  
[www.psam.org.za](http://www.psam.org.za)*

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**From:** Nicholas Scarr <[n.scarr@ru.ac.za](mailto:n.scarr@ru.ac.za)>  
**Sent:** Friday, 16 August 2019 4:32 PM  
**To:** 'Stephanie Gopaul' <[Stephanie.Gopaul@erm.com](mailto:Stephanie.Gopaul@erm.com)>  
**Cc:** 'Khosi Dlamini' <[Khosi.Dlamini@erm.com](mailto:Khosi.Dlamini@erm.com)>; 'Amishka Mothilal' <[Amishka.Mothilal@erm.com](mailto:Amishka.Mothilal@erm.com)>  
**Subject:** RE: Bhangazi DBAR

Dear Stephanie

Its not a matter of our believing that the comments PSAM submitted have not been included in the final BAR - it is a fact that they are not.

When we submitted our input we were aware of the due date and hence dispatched it before expiry of that date.

I have already advised Amishka that we forwarded our comment to the address as specified by ERM. The relevant email will be re-forwarded to yourselves from my sent items folder after this transmission.

We have yet to evaluate the effect on the content of the final BAR of our input not having been taken into account, but since it was submitted within the prescribed timeframe, in principle we do not believe that liaising with DEA in lieu of ERM dealing with our input as required in terms of the relevant regulations would be appropriate.

Can you please advise DEA without delay of the situation as regards PSAM’s input, and copy me the associated communication.

Please advise further after viewing our submission of 1 June 2019.

Kind regards

*Nicholas Scarr  
Public Service Accountability Monitor*

Rhodes University  
South Africa  
Tel 041 379 4208 & 076 985 7938  
[www.psam.org.za](http://www.psam.org.za)

---

**From:** Stephanie Gopaul <[Stephanie.Gopaul@erm.com](mailto:Stephanie.Gopaul@erm.com)>  
**Sent:** Friday, 16 August 2019 3:22 PM  
**To:** Nicholas Scarr <[n.scarr@ru.ac.za](mailto:n.scarr@ru.ac.za)>  
**Cc:** Khosi Dlamini <[Khosi.Dlamini@erm.com](mailto:Khosi.Dlamini@erm.com)>; Amishka Mothilal <[Amishka.Mothilal@erm.com](mailto:Amishka.Mothilal@erm.com)>  
**Subject:** RE: Bhangazi DBAR

Afternoon Nicholas

As per your call with Amishka today, it has come to our attention you believe that the comments that you submitted on the draft BAR on 1 June 2019, have not been included in the final BAR. Please note that the comment period ended on 1 June 2019 and we have gone back into our project mailbox to look for comments from you, but there is no email from you on or after this date. I also did not receive a direct email from you as you have been sending previously (as per the email trail). Please can you advise to whom or which address you sent the comments and provide a proof of such submission as we cannot locate this coming through our server.

Apologies for an inconvenience on our part, however we cannot include or address comments that we did not receive. Our IT Department is also verifying that your email address was not blocked so if you did submit comments, they were not restricted by us in any way. Please note that the final BAR has been submitted for decision and you are welcome to submit your comments directly to the Competent Authority.

Please do send through your comments directly to me and we can discuss a way forward. Thanks

Kind Regards,  
Stephanie Gopaul  
Principal Consultant

**ERM**

Suite S005 | 17 The Boulevard | Westway Office Park | Westville | 3635 | Durban | South Africa  
T +27 31 265 0033 | F +27 31 265 0150 |

E [stephanie.gopaul@erm.com](mailto:stephanie.gopaul@erm.com) | W [www.erm.com](http://www.erm.com)



---

**From:** Nicholas Scarr <[n.scarr@ru.ac.za](mailto:n.scarr@ru.ac.za)>  
**Sent:** Tuesday, September 11, 2018 1:00 PM  
**To:** Stephanie Gopaul <[Stephanie.Gopaul@erm.com](mailto:Stephanie.Gopaul@erm.com)>  
**Cc:** Khosi Dlamini <[Khosi.Dlamini@erm.com](mailto:Khosi.Dlamini@erm.com)>  
**Subject:** RE: Bhangazi EIA- registration of I&AP



Hi Stephanie

Our previous correspondence included below refers. On 2 May 2018 you indicated that the DBAR for this project *is to be released for public comment shortly*. Can you please advise of the status in this respect.

Kind regards

*Nicholas Scarr  
Public Service Accountability Monitor  
Rhodes University  
South Africa  
Tel 041 379 4208 & 076 985 7938  
[www.psam.org.za](http://www.psam.org.za)*

---

**From:** Stephanie Gopaul <[Stephanie.Gopaul@erm.com](mailto:Stephanie.Gopaul@erm.com)>  
**Sent:** Friday, 04 May 2018 1:32 PM  
**To:** Nicholas Scarr <[n.scarr@ru.ac.za](mailto:n.scarr@ru.ac.za)>  
**Cc:** Khosi Dlamini <[Khosi.Dlamini@erm.com](mailto:Khosi.Dlamini@erm.com)>  
**Subject:** RE: Bhangazi EIA- registration of I&AP

Hi Nicholas

We have registered you as an I&AP.

Kind Regards,  
Stephanie Gopaul  
Senior Consultant

**ERM**

Suite S005 | 17 The Boulevard | Westway Office Park | Westville | 3635 | Durban | South Africa  
T +27 31 265 0033 | F +27 31 265 0150 |

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**From:** Nicholas Scarr [<mailto:n.scarr@ru.ac.za>]  
**Sent:** Wednesday, May 02, 2018 9:51 AM  
**To:** Stephanie Gopaul <[Stephanie.Gopaul@erm.com](mailto:Stephanie.Gopaul@erm.com)>  
**Subject:** RE: Bhangazi EIA

Morning and thankyou for the update Stephanie.

Can you please register me, within my capacity as below, as an I&AP and fwd a copy for the DBAR when it is released.

Kind regards

*Nicholas Scarr*  
*Public Service Accountability Monitor*  
*Rhodes University*  
*South Africa*  
*Tel 041 379 4208 & 076 985 7938*  
[www.psam.org.za](http://www.psam.org.za)

---

**From:** Stephanie Gopaul [<mailto:Stephanie.Gopaul@erm.com>]  
**Sent:** Wednesday, 02 May 2018 9:31 AM  
**To:** Nicholas Scarr <[n.scarr@ru.ac.za](mailto:n.scarr@ru.ac.za)>  
**Subject:** RE: Bhangazi EIA

Good Morning Nicholas

The draft Basic Assessment Report is currently under review and is to be released for public comment shortly.

Kind Regards,  
Stephanie Gopaul  
Senior Consultant

**ERM**

Suite S005 | 17 The Boulevard | Westway Office Park | Westville | 3635 | Durban | South Africa  
T +27 31 265 0033 | F +27 31 265 0150 |

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**From:** Nicholas Scarr [<mailto:n.scarr@ru.ac.za>]  
**Sent:** Thursday, April 26, 2018 4:13 PM  
**To:** Stephanie Gopaul <[Stephanie.Gopaul@erm.com](mailto:Stephanie.Gopaul@erm.com)>  
**Subject:** RE: Bhangazi EIA

Dear Ms Gopaul

My email below refers. I have established that ERM is still the project EAP, and as such would appreciate an update on the NEMA application status.

Kind regards

*Nicholas Scarr*  
*Public Service Accountability Monitor*  
*Rhodes University*

South Africa

Tel 041 379 4208 & 076 985 7938

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**From:** Nicholas Scarr [<mailto:n.scarr@ru.ac.za>]

**Sent:** Thursday, 26 April 2018 1:01 PM

**To:** 'stephanie.gopaul@erm.com' <[stephanie.gopaul@erm.com](mailto:stephanie.gopaul@erm.com)>

**Subject:** Bhangazi EIA

Dear Ms Gopaul

I was referred to you by one of your colleagues. I am in possession of a 2016 ERM BID for proposed resort development at Bhangazi, Maputaland. The EAP nominated on the BID is Debbie Weldon, who apparently no longer works for ERM. Can you please urgently advise whether ERM is still involved in this proposal, and if it is, what the status of the associated NEMA application is.

Kind regards

*Nicholas Scarr*

*Public Service Accountability Monitor*

*Rhodes University*

*South Africa*

*Tel 041 379 4208 & 076 985 7938*

*[www.psam.org.za](http://www.psam.org.za)*

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**From:** [Nicholas Scarr](mailto:Nicholas.Scarr@environment.gov.za)  
**To:** ["Smalaza@environment.gov.za"](mailto:Smalaza@environment.gov.za)  
**Cc:** ["Dsmit@environment.gov.za"](mailto:Dsmit@environment.gov.za); ["Zlanga@environment.gov.za"](mailto:Zlanga@environment.gov.za)  
**Subject:** FW: Bhangazi DBAR  
**Date:** Thursday, 22 August 2019 8:49:00 PM  
**Attachments:** [image001.png](#)  
[Bhangazi.514229.txt](#)  
[Bhangazi.Lodge.DBAR comment.PSAM.0619.doc](#)

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Attention: Mr S Malaza

Dear Mr Malaza

1. Please see the train of email correspondence included below, and the attachment relating to our email immediately below this one.
2. You will note that on 20 August 2019 we communicated with Zama Langa of your Department in connection with this matter. By way of separate transmission we will forward you the response received from Zama on the same day.
3. In short:
  - a) PSAM submitted comments on the DBAR for this application timeously and in good order.
  - b) The EAP asserts that it did not receive these comments, and requested PSAM to corroborate that it submitted them.
  - c) This we have done, as detailed in the preceding correspondence.
  - d) The veracity of Rhodes University's IT Services demonstration that our comments were submitted timeously and in good order has not been challenged or countered by the EAP.
4. It goes without saying that with the EAP asserting that it did not receive our comments, these have not been recorded in and attached to the FBAR as required in terms of Regulation 44 (1) of Government Notice No. 326 of 2017.
5. Likewise the FBAR does not indicate the manner in which the issues we raised have been incorporated in the FBAR as required in terms of section 3 (1) (h) (iii) of Appendix 1 to the EIA Regulations, 2014, as amended.
6. Consequently the FBAR does not meet the requirements of Regulation 19 (3) of Government Notice No. 326 of 2017.
7. In the circumstances we contend that your Department is bound to refuse environmental authorisation as provided for in Regulation 20 (1) (b) of the said Notice.
8. You will notice in the preceding correspondence that having submitted our comments to the EAP, we forwarded these, on the same day, to Mr van der Merwe of (then) DAFF's Forestry Regulation and Oversight Directorate (now part of your Department), as well as to another role player in natural forest governance.
9. We did this on the basis that our comments on the DBAR pertain expressly to matters

which reside under the National Forests Act, 1998 (NFA), which fell at the time within DAFF's mandate (now DEFF's).

10. Mr van der Merwe and the other role-player (a former member of DAFF) are experts in the administration of the NFA, and were consulted by ourselves in relation to the application.
11. As indicated, both Mr van der Merwe and the other role-player received our comments timeously and in good order.
12. Although Zama has received our comments, they are attached herewith again for your convenience.

Trusting that our position is clear, and that your Department will see its way to acting in accordance with our contention that environmental authorisation must be refused. Please advise if you require further information relating to Rhodes University's IT Services corroboration of our submission, or to any other matter.

Kind regards

*Nicholas Scarr*  
*Public Service Accountability Monitor*  
*Rhodes University*  
*South Africa*  
*Tel 041 379 4208 & 076 985 7938*  
[www.psam.org.za](http://www.psam.org.za)

---

**From:** Nicholas Scarr <n.scarr@ru.ac.za>  
**Sent:** Tuesday, 20 August 2019 1:57 PM  
**To:** 'Stephanie Gopaul' <Stephanie.Gopaul@erm.com>  
**Cc:** 'Amishka Mothilal' <Amishka.Mothilal@erm.com>; 'Zlanga@environment.gov.za' <Zlanga@environment.gov.za>  
**Subject:** RE: Bhangazi DBAR

Dear Ms Gopaul

Please note that our submission was made on 1 June 2019, not 21 June 2019 as indicated in your email below.

I do not routinely request delivery or read receipts and therefore attach herewith Rhodes University's Information Technology Services' outgoing mail server's log entries as proof of delivery of our emailed submission.

I did not receive an automatically generated response.

Regardless of the exact fate of our comments on the day they were submitted, we trust it is unequivocally clear to all concerned that PSAM indeed transmitted them to ERM via email at 11:11 PM on 1 June 2019.

Kind regards

*Nicholas Scarr  
Public Service Accountability Monitor  
Rhodes University  
South Africa  
Tel 041 379 4208 & 076 985 7938  
[www.psam.org.za](http://www.psam.org.za)*

---

**From:** Stephanie Gopaul <[Stephanie.Gopaul@erm.com](mailto:Stephanie.Gopaul@erm.com)>  
**Sent:** Tuesday, 20 August 2019 11:28 AM  
**To:** Nicholas Scarr <[n.scarr@ru.ac.za](mailto:n.scarr@ru.ac.za)>; [Zlanga@environment.gov.za](mailto:Zlanga@environment.gov.za)  
**Cc:** Amishka Mothilal <[Amishka.Mothilal@erm.com](mailto:Amishka.Mothilal@erm.com)>  
**Subject:** RE: Bhangazi DBAR

Dear Mr. Scarr

Thank you for the email. It is unfortunate that we did not receive your comments on 21 June 2019 (as you indicated). Please provide us with a delivery or read receipt so that we can query further with our IT department. Please also note that there was an automatic message generated by our email server to all emails that we received- please advise if you received such email from us? If you did not, this further confirms that your email did not come through our server.

I must apologise for an inconvenience that you are enduring, however, we simply did not receive your comments and therefore did not include in the FBAR or CRR.

Kind Regards,  
Stephanie Gopaul  
Principal Consultant

**ERM**

Suite S005 | 17 The Boulevard | Westway Office Park | Westville | 3635 | Durban | South Africa  
T +27 31 265 0033 | F +27 31 265 0150 |

E [stephanie.gopaul@erm.com](mailto:stephanie.gopaul@erm.com) | W [www.erm.com](http://www.erm.com)



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---

**From:** Nicholas Scarr <[n.scarr@ru.ac.za](mailto:n.scarr@ru.ac.za)>  
**Sent:** Tuesday, August 20, 2019 11:16 AM  
**To:** [Zlanga@environment.gov.za](mailto:Zlanga@environment.gov.za)  
**Cc:** Stephanie Gopaul <[Stephanie.Gopaul@erm.com](mailto:Stephanie.Gopaul@erm.com)>; Amishka Mothilal <[Amishka.Mothilal@erm.com](mailto:Amishka.Mothilal@erm.com)>  
**Subject:** RE: Bhangazi DBAR

Good day

We refer to the email correspondence below which was copied to yourself, the content of which is self-explanatory.

Having regard for the content of the email and associated preceding correspondence included with it we trust DEA will affirm our stance as reflected in point 9 below.

Please advise in this regard.

Kind regards

*Nicholas Scarr*  
*Public Service Accountability Monitor*  
*Rhodes University*  
*South Africa*  
*Tel 041 379 4208 & 076 985 7938*  
[www.psam.org.za](http://www.psam.org.za)

---

**From:** Nicholas Scarr <[n.scarr@ru.ac.za](mailto:n.scarr@ru.ac.za)>  
**Sent:** Tuesday, 20 August 2019 11:08 AM  
**To:** 'Amishka Mothilal' <[Amishka.Mothilal@erm.com](mailto:Amishka.Mothilal@erm.com)>  
**Cc:** 'Stephanie Gopaul' <[Stephanie.Gopaul@erm.com](mailto:Stephanie.Gopaul@erm.com)>; '[Zlanga@environment.gov.za](mailto:Zlanga@environment.gov.za)' <[Zlanga@environment.gov.za](mailto:Zlanga@environment.gov.za)>  
**Subject:** RE: Bhangazi DBAR

Dear Amishka

I refer to your email of 19 August 2019 to DEA (copy attached).

1. ERM's indication to DEA that PSAM, via myself, "claims" that it submitted comments on the Draft Basic Assessment Report, and "alleges" that it did so at the time it did, are unfortunate in circumstances where I have furnished yourselves with a copy of the email transmission involved, and you have forwarded the same transmission to DEA.
2. It is abundantly plain from the email message that comments on the Draft Basic Assessment Report were submitted to yourselves, and that this occurred within the prescribed timeframe.
3. Over and above this, Rhodes University's Information Technology Services has advised that the email message *was correctly handed over by the university's outgoing mail server to one of the incoming mail servers for [erm.com](http://erm.com) within 11 seconds of your PC submitting the message to our outgoing mail server*, and substantiated this with its outgoing mail server's log entries for the delivery.
4. Moreover, after being transmitted to ERM at 11:11 PM, at 11:23 PM the same email was forwarded to Mr van der Merwe, then of DAFF and now of DEAFF, who, it is noted in



Annexure D to the Final Basic Assessment Report, provided yourselves with comment on the proposed lodge on 1 June 2018.

5. Simultaneously with being forwarded to Mr van der Merwe, the email was additionally forwarded to another role player (not a registered interested and affected party in this matter) in natural forest governance in South Africa.
6. The email was duly received by both Mr van der Merwe and this role-player.
7. By all accounts therefore PSAM's email system was fully functional when it is submitted its comments, and its submission occurred timeously and in good order.
8. Separately, as per our email to yourselves of 16 August 2019, included below, ERM was requested to *"please advise DEA without delay of the situation as regards PSAM's input."*
9. We did not request that our comments be referred to DEA – as expressly indicated in the same email, since they were submitted to ERM within the prescribed timeframe, *"in principle we do not believe that liaising with DEA in lieu of ERM dealing with our input as required in terms of the relevant regulations would be appropriate."*
10. We stand by this position.

Kind regards

*Nicholas Scarr  
Public Service Accountability Monitor  
Rhodes University  
South Africa  
Tel 041 379 4208 & 076 985 7938  
[www.psam.org.za](http://www.psam.org.za)*

---

**From:** Nicholas Scarr <[n.scarr@ru.ac.za](mailto:n.scarr@ru.ac.za)>  
**Sent:** Friday, 16 August 2019 4:32 PM  
**To:** 'Stephanie Gopaul' <[Stephanie.Gopaul@erm.com](mailto:Stephanie.Gopaul@erm.com)>  
**Cc:** 'Khosi Dlamini' <[Khosi.Dlamini@erm.com](mailto:Khosi.Dlamini@erm.com)>; 'Amishka Mothilal' <[Amishka.Mothilal@erm.com](mailto:Amishka.Mothilal@erm.com)>  
**Subject:** RE: Bhangazi DBAR

Dear Stephanie

Its not a matter of our believing that the comments PSAM submitted have not been included in the final BAR - it is a fact that they are not.

When we submitted our input we were aware of the due date and hence dispatched it before expiry of that date.

I have already advised Amishka that we forwarded our comment to the address as specified by

ERM. The relevant email will be re-forwarded to yourselves from my sent items folder after this transmission.

We have yet to evaluate the effect on the content of the final BAR of our input not having been taken into account, but since it was submitted within the prescribed timeframe, in principle we do not believe that liaising with DEA in lieu of ERM dealing with our input as required in terms of the relevant regulations would be appropriate.

Can you please advise DEA without delay of the situation as regards PSAM's input, and copy me the associated communication.

Please advise further after viewing our submission of 1 June 2019.

Kind regards

*Nicholas Scarr*  
*Public Service Accountability Monitor*  
*Rhodes University*  
*South Africa*  
*Tel 041 379 4208 & 076 985 7938*  
[www.psam.org.za](http://www.psam.org.za)

---

**From:** Stephanie Gopaul <[Stephanie.Gopaul@erm.com](mailto:Stephanie.Gopaul@erm.com)>  
**Sent:** Friday, 16 August 2019 3:22 PM  
**To:** Nicholas Scarr <[n.scarr@ru.ac.za](mailto:n.scarr@ru.ac.za)>  
**Cc:** Khosi Dlamini <[Khosi.Dlamini@erm.com](mailto:Khosi.Dlamini@erm.com)>; Amishka Mothilal <[Amishka.Mothilal@erm.com](mailto:Amishka.Mothilal@erm.com)>  
**Subject:** RE: Bhangazi DBAR

Afternoon Nicholas

As per your call with Amishka today, it has come to our attention you believe that the comments that you submitted on the draft BAR on 1 June 2019, have not been included in the final BAR. Please note that the comment period ended on 1 June 2019 and we have gone back into our project mailbox to look for comments from you, but there is no email from you on or after this date. I also did not receive a direct email from you as you have been sending previously (as per the email trail). Please can you advise to whom or which address you sent the comments and provide a proof of such submission as we cannot locate this coming through our server.

Apologies for an inconvenience on our part, however we cannot include or address comments that we did not receive. Our IT Department is also verifying that your email address was not blocked so if you did submit comments, they were not restricted by us in any way. Please note that the final BAR has been submitted for decision and you are welcome to submit your comments directly to the Competent Authority.

Please do send through your comments directly to me and we can discuss a way forward. Thanks

Kind Regards,  
Stephanie Gopaul  
Principal Consultant

**ERM**

Suite S005 | 17 The Boulevard | Westway Office Park | Westville | 3635 | Durban | South Africa  
T +27 31 265 0033 | F +27 31 265 0150 |

E [stephanie.gopaul@erm.com](mailto:stephanie.gopaul@erm.com) | W [www.erm.com](http://www.erm.com)



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---

**From:** Nicholas Scarr <[n.scarr@ru.ac.za](mailto:n.scarr@ru.ac.za)>  
**Sent:** Tuesday, September 11, 2018 1:00 PM  
**To:** Stephanie Gopaul <[Stephanie.Gopaul@erm.com](mailto:Stephanie.Gopaul@erm.com)>  
**Cc:** Khosi Dlamini <[Khosi.Dlamini@erm.com](mailto:Khosi.Dlamini@erm.com)>  
**Subject:** RE: Bhangazi EIA- registration of I&AP

Hi Stephanie

Our previous correspondence included below refers. On 2 May 2018 you indicated that the DBAR for this project *is to be released for public comment shortly*. Can you please advise of the status in this respect.

Kind regards

*Nicholas Scarr  
Public Service Accountability Monitor  
Rhodes University  
South Africa  
Tel 041 379 4208 & 076 985 7938  
[www.psam.org.za](http://www.psam.org.za)*

---

**From:** Stephanie Gopaul <[Stephanie.Gopaul@erm.com](mailto:Stephanie.Gopaul@erm.com)>  
**Sent:** Friday, 04 May 2018 1:32 PM  
**To:** Nicholas Scarr <[n.scarr@ru.ac.za](mailto:n.scarr@ru.ac.za)>  
**Cc:** Khosi Dlamini <[Khosi.Dlamini@erm.com](mailto:Khosi.Dlamini@erm.com)>  
**Subject:** RE: Bhangazi EIA- registration of I&AP

Hi Nicholas

We have registered you as an I&AP.

Kind Regards,  
Stephanie Gopaul  
Senior Consultant

**ERM**

Suite S005 | 17 The Boulevard | Westway Office Park | Westville | 3635 | Durban | South Africa  
T +27 31 265 0033 | F +27 31 265 0150 |

E [stephanie.gopaul@erm.com](mailto:stephanie.gopaul@erm.com) | W [www.erm.com](http://www.erm.com)



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**From:** Nicholas Scarr [<mailto:n.scarr@ru.ac.za>]  
**Sent:** Wednesday, May 02, 2018 9:51 AM  
**To:** Stephanie Gopaul <[Stephanie.Gopaul@erm.com](mailto:Stephanie.Gopaul@erm.com)>  
**Subject:** RE: Bhangazi EIA

Morning and thankyou for the update Stephanie.

Can you please register me, within my capacity as below, as an I&AP and fwd a copy for the DBAR when it is released.

Kind regards

*Nicholas Scarr  
Public Service Accountability Monitor  
Rhodes University  
South Africa  
Tel 041 379 4208 & 076 985 7938  
[www.psam.org.za](http://www.psam.org.za)*

---

**From:** Stephanie Gopaul [<mailto:Stephanie.Gopaul@erm.com>]  
**Sent:** Wednesday, 02 May 2018 9:31 AM  
**To:** Nicholas Scarr <[n.scarr@ru.ac.za](mailto:n.scarr@ru.ac.za)>  
**Subject:** RE: Bhangazi EIA

Good Morning Nicholas

The draft Basic Assessment Report is currently under review and is to be released for public comment shortly.

Kind Regards,  
Stephanie Gopaul  
Senior Consultant

**ERM**  
Suite S005 | 17 The Boulevard | Westway Office Park | Westville | 3635 | Durban | South Africa  
T +27 31 265 0033 | F +27 31 265 0150 |

E [stephanie.gopaul@erm.com](mailto:stephanie.gopaul@erm.com) | W [www.erm.com](http://www.erm.com)



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---

**From:** Nicholas Scarr [<mailto:n.scarr@ru.ac.za>]  
**Sent:** Thursday, April 26, 2018 4:13 PM  
**To:** Stephanie Gopaul <[Stephanie.Gopaul@erm.com](mailto:Stephanie.Gopaul@erm.com)>  
**Subject:** RE: Bhangazi EIA

Dear Ms Gopaul

My email below refers. I have established that ERM is still the project EAP, and as such would appreciate an update on the NEMA application status.

Kind regards

*Nicholas Scarr*  
*Public Service Accountability Monitor*  
*Rhodes University*  
*South Africa*  
*Tel 041 379 4208 & 076 985 7938*  
[www.psam.org.za](http://www.psam.org.za)

---

**From:** Nicholas Scarr [<mailto:n.scarr@ru.ac.za>]  
**Sent:** Thursday, 26 April 2018 1:01 PM  
**To:** 'stephanie.gopaul@erm.com' <[stephanie.gopaul@erm.com](mailto:stephanie.gopaul@erm.com)>  
**Subject:** Bhangazi EIA

Dear Ms Gopaul

I was referred to you by one of your colleagues. I am in possession of a 2016 ERM BID for proposed resort development at Bhangazi, Maputaland. The EAP nominated on the BID is Debbie Weldon, who apparently no longer works for ERM. Can you please urgently advise whether ERM is still involved in this proposal, and if it is, what the status of the associated NEMA application is.

Kind regards

*Nicholas Scarr*  
*Public Service Accountability Monitor*  
*Rhodes University*  
*South Africa*  
*Tel 041 379 4208 & 076 985 7938*  
[www.psam.org.za](http://www.psam.org.za)

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Please visit ERM's web site: <http://www.erm.com>

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This electronic mail message may contain information which is (a) LEGALLY PRIVILEGED, PROPRIETARY IN NATURE, OR OTHERWISE PROTECTED BY LAW FROM DISCLOSURE, and (b) intended only for the use of the Addressee (s) names herein. If you are not the Addressee (s), or the person responsible for delivering this to the Addressee (s), you are hereby notified that reading, copying, or distributing this message is prohibited. If you have received this electronic mail message in error, please contact us immediately and take the steps necessary to delete the message completely from your computer system. Thank you.

Please visit ERM's web site: <http://www.erm.com>

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Please visit ERM's web site: <http://www.erm.com> To find out how ERM manages personal data, please review our [Privacy Policy](#)

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Please visit ERM's web site: <http://www.erm.com> To find out how ERM manages personal data, please review our [Privacy Policy](#)

**From:** [Nicholas Scarr](mailto:Nicholas.Scarr@environment.gov.za)  
**To:** ["Smalaza@environment.gov.za"](mailto:Smalaza@environment.gov.za)  
**Cc:** ["Dsmit@environment.gov.za"](mailto:Dsmit@environment.gov.za); ["Zlanga@environment.gov.za"](mailto:Zlanga@environment.gov.za)  
**Subject:** RE: Bhangazi DBAR  
**Date:** Wednesday, 04 September 2019 12:10:00 PM  
**Attachments:** [image001.png](#)  
[BASIC ASSESSMENT FOR THE PROPOSED DEVELOPMENT OF BHANGAZI CULTURAL TOURISM LODGE WITHIN THE ISIMANGALISO WETLAND PARK KWAZULU-NATAL- Updated CRR.msg](#)

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Dear Mr Malaza

We refer to our correspondence to you of 22 August 2019, included below, as well as to preceding related correspondence.

1. In our correspondence of 22 August 2019 we drew your attention to the fact that the FBAR submitted to yourselves by the EAP associated with this matter did not meet the requirements of Regulation 19 (3) of Government Notice No. 326 of 2017, and that as such your Department is bound to refuse environmental authorisation as provided for in Regulation 20 (1) (b) of the said Notice.
2. We have not received any response from you to that correspondence, but on 2 September 2019 we received correspondence from the EAP (attached herewith) in which it was indicated that on 30 August 2019 an updated comments and responses report had been submitted to your Department.
3. However:
  - a) The comments and responses report is circumscribed by section 3 (1) (h) (iii) of Appendix 1 to Government Notice No. 326, and accordingly comprises part of the content of the FBAR;
  - b) Government Notice No. 326 does not make provision for the amendment of FBAR's subsequent to their having been submitted to the competent authority, and
  - c) likewise Government Notice No. 326 does not afford the competent authority discretion to request EAP's to submit additional information to it subsequent to its receipt of a FBAR.
4. In the circumstances can you please advise, as a matter of urgency
  - a) whether DEA prevailed on the EAP to furnish it with the updated comments and responses report;
  - b) if DEA did so prevail on the EAP, the basis for its having done so in circumstances where Government Notice No. 326 does not provide for it;
  - c) whether DEA has accepted or rejected the updated comments and responses report, and
  - d) if it has accepted the updated comments and responses report, the basis for its having done so when Government Notice No. 326 does not provide therefor.

We await your prompt response, and reiterate our stance that that because FBAR as originally submitted to DEA did not meet the requirements of Regulation 19 (3) of Government Notice No.

326 of 2017, the Department is bound to refuse environmental authorisation.

Kind regards

*Nicholas Scarr*  
*Public Service Accountability Monitor*  
*Rhodes University*  
*South Africa*  
*Tel 041 379 4208 & 076 985 7938*  
[www.psam.org.za](http://www.psam.org.za)

---

**From:** Nicholas Scarr <n.scarr@ru.ac.za>  
**Sent:** Thursday, 22 August 2019 8:49 PM  
**To:** 'Smalaza@environment.gov.za' <Smalaza@environment.gov.za>  
**Cc:** 'Dsmit@environment.gov.za' <Dsmit@environment.gov.za>; 'Zlanga@environment.gov.za' <Zlanga@environment.gov.za>  
**Subject:** FW: Bhangazi DBAR

Attention: Mr S Malaza

Dear Mr Malaza

1. Please see the train of email correspondence included below, and the attachment relating to our email immediately below this one.
2. You will note that on 20 August 2019 we communicated with Zama Langa of your Department in connection with this matter. By way of separate transmission we will forward you the response received from Zama on the same day.
3. In short:
  - a) PSAM submitted comments on the DBAR for this application timeously and in good order.
  - b) The EAP asserts that it did not receive these comments, and requested PSAM to corroborate that it submitted them.
  - c) This we have done, as detailed in the preceding correspondence.
  - d) The veracity of Rhodes University's IT Services demonstration that our comments were submitted timeously and in good order has not been challenged or countered by the EAP.
4. It goes without saying that with the EAP asserting that it did not receive our comments, these have not been recorded in and attached to the FBAR as required in terms of Regulation 44 (1) of Government Notice No. 326 of 2017.
5. Likewise the FBAR does not indicate the manner in which the issues we raised have been incorporated in the FBAR as required in terms of section 3 (1) (h) (iii) of Appendix 1 to the EIA Regulations, 2014, as amended.



6. Consequently the FBAR does not meet the requirements of Regulation 19 (3) of Government Notice No. 326 of 2017.
7. In the circumstances we contend that your Department is bound to refuse environmental authorisation as provided for in Regulation 20 (1) (b) of the said Notice.
8. You will notice in the preceding correspondence that having submitted our comments to the EAP, we forwarded these, on the same day, to Mr van der Merwe of (then) DAFF's Forestry Regulation and Oversight Directorate (now part of your Department), as well as to another role player in natural forest governance.
9. We did this on the basis that our comments on the DBAR pertain expressly to matters which reside under the National Forests Act, 1998 (NFA), which fell at the time within DAFF's mandate (now DEFF's).
10. Mr van der Merwe and the other role-player (a former member of DAFF) are experts in the administration of the NFA, and were consulted by ourselves in relation to the application.
11. As indicated, both Mr van der Merwe and the other role-player received our comments timeously and in good order.
12. Although Zama has received our comments, they are attached herewith again for your convenience.

Trusting that our position is clear, and that your Department will see its way to acting in accordance with our contention that environmental authorisation must be refused. Please advise if you require further information relating to Rhodes University's IT Services corroboration of our submission, or to any other matter.

Kind regards

*Nicholas Scarr*  
*Public Service Accountability Monitor*  
*Rhodes University*  
*South Africa*  
*Tel 041 379 4208 & 076 985 7938*  
[www.psam.org.za](http://www.psam.org.za)

---

**From:** Nicholas Scarr <[n.scarr@ru.ac.za](mailto:n.scarr@ru.ac.za)>  
**Sent:** Tuesday, 20 August 2019 1:57 PM  
**To:** 'Stephanie Gopaul' <[Stephanie.Gopaul@erm.com](mailto:Stephanie.Gopaul@erm.com)>  
**Cc:** 'Amishka Mothilal' <[Amishka.Mothilal@erm.com](mailto:Amishka.Mothilal@erm.com)>; 'Zlanga@environment.gov.za' <[Zlanga@environment.gov.za](mailto:Zlanga@environment.gov.za)>  
**Subject:** RE: Bhangazi DBAR

Dear Ms Gopaul

Please note that our submission was made on 1 June 2019, not 21 June 2019 as indicated in your email below.

I do not routinely request delivery or read receipts and therefore attach herewith Rhodes University's Information Technology Services' outgoing mail server's log entries as proof of delivery of our emailed submission.

I did not receive an automatically generated response.

Regardless of the exact fate of our comments on the day they were submitted, we trust it is unequivocally clear to all concerned that PSAM indeed transmitted them to ERM via email at 11:11 PM on 1 June 2019.

Kind regards

*Nicholas Scarr*  
*Public Service Accountability Monitor*  
*Rhodes University*  
*South Africa*  
*Tel 041 379 4208 & 076 985 7938*  
[www.psam.org.za](http://www.psam.org.za)

---

**From:** Stephanie Gopaul <[Stephanie.Gopaul@erm.com](mailto:Stephanie.Gopaul@erm.com)>  
**Sent:** Tuesday, 20 August 2019 11:28 AM  
**To:** Nicholas Scarr <[n.scarr@ru.ac.za](mailto:n.scarr@ru.ac.za)>; [Zlanga@environment.gov.za](mailto:Zlanga@environment.gov.za)  
**Cc:** Amishka Mothilal <[Amishka.Mothilal@erm.com](mailto:Amishka.Mothilal@erm.com)>  
**Subject:** RE: Bhangazi DBAR

Dear Mr. Scarr

Thank you for the email. It is unfortunate that we did not receive your comments on 21 June 2019 (as you indicated). Please provide us with a delivery or read receipt so that we can query further with our IT department. Please also note that there was an automatic message generated by our email server to all emails that we received- please advise if you received such email from us? If you did not, this further confirms that your email did not come through our server.

I must apologise for an inconvenience that you are enduring, however, we simply did not receive your comments and therefore did not include in the FBAR or CRR.

Kind Regards,  
Stephanie Gopaul  
Principal Consultant

**ERM**  
Suite S005 | 17 The Boulevard | Westway Office Park | Westville | 3635 | Durban | South Africa  
T +27 31 265 0033 | F +27 31 265 0150 |

E [stephanie.gopaul@erm.com](mailto:stephanie.gopaul@erm.com) | W [www.erm.com](http://www.erm.com)



---

**From:** Nicholas Scarr <[n.scarr@ru.ac.za](mailto:n.scarr@ru.ac.za)>  
**Sent:** Tuesday, August 20, 2019 11:16 AM  
**To:** [Zlanga@environment.gov.za](mailto:Zlanga@environment.gov.za)  
**Cc:** Stephanie Gopaul <[Stephanie.Gopaul@erm.com](mailto:Stephanie.Gopaul@erm.com)>; Amishka Mothilal <[Amishka.Mothilal@erm.com](mailto:Amishka.Mothilal@erm.com)>  
**Subject:** RE: Bhangazi DBAR

Good day

We refer to the email correspondence below which was copied to yourself, the content of which is self-explanatory.

Having regard for the content of the email and associated preceding correspondence included with it we trust DEA will affirm our stance as reflected in point 9 below.

Please advise in this regard.

Kind regards

*Nicholas Scarr  
Public Service Accountability Monitor  
Rhodes University  
South Africa  
Tel 041 379 4208 & 076 985 7938  
[www.psam.org.za](http://www.psam.org.za)*

---

**From:** Nicholas Scarr <[n.scarr@ru.ac.za](mailto:n.scarr@ru.ac.za)>  
**Sent:** Tuesday, 20 August 2019 11:08 AM  
**To:** 'Amishka Mothilal' <[Amishka.Mothilal@erm.com](mailto:Amishka.Mothilal@erm.com)>  
**Cc:** 'Stephanie Gopaul' <[Stephanie.Gopaul@erm.com](mailto:Stephanie.Gopaul@erm.com)>; '[Zlanga@environment.gov.za](mailto:Zlanga@environment.gov.za)' <[Zlanga@environment.gov.za](mailto:Zlanga@environment.gov.za)>  
**Subject:** RE: Bhangazi DBAR

Dear Amishka

I refer to your email of 19 August 2019 to DEA (copy attached).

1. ERM's indication to DEA that PSAM, via myself, "claims" that it submitted comments on the Draft Basic Assessment Report, and "alleges" that it did so at the time it did, are unfortunate in circumstances where I have furnished yourselves with a copy of the email transmission involved, and you have forwarded the same transmission to DEA.

2. It is abundantly plain from the email message that comments on the Draft Basic Assessment Report were submitted to yourselves, and that this occurred within the prescribed timeframe.
3. Over and above this, Rhodes University's Information Technology Services has advised that the email message *was correctly handed over by the university's outgoing mail server to one of the incoming mail servers for [erm.com](mailto:erm.com) within 11 seconds of your PC submitting the message to our outgoing mail server*, and substantiated this with its outgoing mail server's log entries for the delivery.
4. Moreover, after being transmitted to ERM at 11:11 PM, at 11:23 PM the same email was forwarded to Mr van der Merwe, then of DAFF and now of DEAFF, who, it is noted in Annexure D to the Final Basic Assessment Report, provided yourselves with comment on the proposed lodge on 1 June 2018.
5. Simultaneously with being forwarded to Mr van der Merwe, the email was additionally forwarded to another role player (not a registered interested and affected party in this matter) in natural forest governance in South Africa.
6. The email was duly received by both Mr van der Merwe and this role-player.
7. By all accounts therefore PSAM's email system was fully functional when it is submitted its comments, and its submission occurred timeously and in good order.
8. Separately, as per our email to yourselves of 16 August 2019, included below, ERM was requested to *"please advise DEA without delay of the situation as regards PSAM's input."*
9. We did not request that our comments be referred to DEA – as expressly indicated in the same email, since they were submitted to ERM within the prescribed timeframe, *"in principle we do not believe that liaising with DEA in lieu of ERM dealing with our input as required in terms of the relevant regulations would be appropriate."*
10. We stand by this position.

Kind regards

*Nicholas Scarr  
Public Service Accountability Monitor  
Rhodes University  
South Africa  
Tel 041 379 4208 & 076 985 7938  
[www.psam.org.za](http://www.psam.org.za)*

---

**From:** Nicholas Scarr <[n.scarr@ru.ac.za](mailto:n.scarr@ru.ac.za)>  
**Sent:** Friday, 16 August 2019 4:32 PM  
**To:** 'Stephanie Gopaul' <[Stephanie.Gopaul@erm.com](mailto:Stephanie.Gopaul@erm.com)>

**Cc:** 'Khosi Dlamini' <[Khosi.Dlamini@erm.com](mailto:Khosi.Dlamini@erm.com)>; 'Amishka Mothilal' <[Amishka.Mothilal@erm.com](mailto:Amishka.Mothilal@erm.com)>  
**Subject:** RE: Bhangazi DBAR

Dear Stephanie

Its not a matter of our believing that the comments PSAM submitted have not been included in the final BAR - it is a fact that they are not.

When we submitted our input we were aware of the due date and hence dispatched it before expiry of that date.

I have already advised Amishka that we forwarded our comment to the address as specified by ERM. The relevant email will be re-forwarded to yourselves from my sent items folder after this transmission.

We have yet to evaluate the effect on the content of the final BAR of our input not having been taken into account, but since it was submitted within the prescribed timeframe, in principle we do not believe that liaising with DEA in lieu of ERM dealing with our input as required in terms of the relevant regulations would be appropriate.

Can you please advise DEA without delay of the situation as regards PSAM's input, and copy me the associated communication.

Please advise further after viewing our submission of 1 June 2019.

Kind regards

*Nicholas Scarr*  
*Public Service Accountability Monitor*  
*Rhodes University*  
*South Africa*  
*Tel 041 379 4208 & 076 985 7938*  
[www.psam.org.za](http://www.psam.org.za)

---

**From:** Stephanie Gopaul <[Stephanie.Gopaul@erm.com](mailto:Stephanie.Gopaul@erm.com)>  
**Sent:** Friday, 16 August 2019 3:22 PM  
**To:** Nicholas Scarr <[n.scarr@ru.ac.za](mailto:n.scarr@ru.ac.za)>  
**Cc:** Khosi Dlamini <[Khosi.Dlamini@erm.com](mailto:Khosi.Dlamini@erm.com)>; Amishka Mothilal <[Amishka.Mothilal@erm.com](mailto:Amishka.Mothilal@erm.com)>  
**Subject:** RE: Bhangazi DBAR

Afternoon Nicholas

As per your call with Amishka today, it has come to our attention you believe that the comments that you submitted on the draft BAR on 1 June 2019, have not been included in the final BAR. Please note that the comment period ended on 1 June 2019 and we have gone back into our project mailbox to look for comments from you, but there is no email from you on or after this date. I also did not receive a direct email from you as you have been sending previously (as per

the email trail). Please can you advise to whom or which address you sent the comments and provide a proof of such submission as we cannot locate this coming through our server.

Apologies for an inconvenience on our part, however we cannot include or address comments that we did not receive. Our IT Department is also verifying that your email address was not blocked so if you did submit comments, they were not restricted by us in any way. Please note that the final BAR has been submitted for decision and you are welcome to submit your comments directly to the Competent Authority.

Please do send through your comments directly to me and we can discuss a way forward. Thanks

Kind Regards,  
Stephanie Gopaul  
Principal Consultant

**ERM**

Suite S005 | 17 The Boulevard | Westway Office Park | Westville | 3635 | Durban | South Africa  
T +27 31 265 0033 | F +27 31 265 0150 |

E [stephanie.gopaul@erm.com](mailto:stephanie.gopaul@erm.com) | W [www.erm.com](http://www.erm.com)



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---

**From:** Nicholas Scarr <[n.scarr@ru.ac.za](mailto:n.scarr@ru.ac.za)>  
**Sent:** Tuesday, September 11, 2018 1:00 PM  
**To:** Stephanie Gopaul <[Stephanie.Gopaul@erm.com](mailto:Stephanie.Gopaul@erm.com)>  
**Cc:** Khosi Dlamini <[Khosi.Dlamini@erm.com](mailto:Khosi.Dlamini@erm.com)>  
**Subject:** RE: Bhangazi EIA- registration of I&AP

Hi Stephanie

Our previous correspondence included below refers. On 2 May 2018 you indicated that the DBAR for this project *is to be released for public comment shortly*. Can you please advise of the status in this respect.

Kind regards

*Nicholas Scarr  
Public Service Accountability Monitor  
Rhodes University  
South Africa  
Tel 041 379 4208 & 076 985 7938  
[www.psam.org.za](http://www.psam.org.za)*

---

**From:** Stephanie Gopaul <[Stephanie.Gopaul@erm.com](mailto:Stephanie.Gopaul@erm.com)>  
**Sent:** Friday, 04 May 2018 1:32 PM  
**To:** Nicholas Scarr <[n.scarr@ru.ac.za](mailto:n.scarr@ru.ac.za)>

**Cc:** Khosi Dlamini <[Khosi.Dlamini@erm.com](mailto:Khosi.Dlamini@erm.com)>  
**Subject:** RE: Bhangazi EIA- registration of I&AP

Hi Nicholas

We have registered you as an I&AP.

Kind Regards,  
Stephanie Gopaul  
Senior Consultant

**ERM**

Suite S005 | 17 The Boulevard | Westway Office Park | Westville | 3635 | Durban | South Africa  
T +27 31 265 0033 | F +27 31 265 0150 |

E [stephanie.gopaul@erm.com](mailto:stephanie.gopaul@erm.com) | W [www.erm.com](http://www.erm.com)



---

**From:** Nicholas Scarr [<mailto:n.scarr@ru.ac.za>]  
**Sent:** Wednesday, May 02, 2018 9:51 AM  
**To:** Stephanie Gopaul <[Stephanie.Gopaul@erm.com](mailto:Stephanie.Gopaul@erm.com)>  
**Subject:** RE: Bhangazi EIA

Morning and thankyou for the update Stephanie.

Can you please register me, within my capacity as below, as an I&AP and fwd a copy for the DBAR when it is released.

Kind regards

*Nicholas Scarr  
Public Service Accountability Monitor  
Rhodes University  
South Africa  
Tel 041 379 4208 & 076 985 7938  
[www.psam.org.za](http://www.psam.org.za)*

---

**From:** Stephanie Gopaul [<mailto:Stephanie.Gopaul@erm.com>]  
**Sent:** Wednesday, 02 May 2018 9:31 AM  
**To:** Nicholas Scarr <[n.scarr@ru.ac.za](mailto:n.scarr@ru.ac.za)>  
**Subject:** RE: Bhangazi EIA

Good Morning Nicholas

The draft Basic Assessment Report is currently under review and is to be released for public

comment shortly.

Kind Regards,  
Stephanie Gopaul  
Senior Consultant

**ERM**

Suite S005 | 17 The Boulevard | Westway Office Park | Westville | 3635 | Durban | South Africa  
T +27 31 265 0033 | F +27 31 265 0150 |

E [stephanie.gopaul@erm.com](mailto:stephanie.gopaul@erm.com) | W [www.erm.com](http://www.erm.com)



---

**From:** Nicholas Scarr [<mailto:n.scarr@ru.ac.za>]  
**Sent:** Thursday, April 26, 2018 4:13 PM  
**To:** Stephanie Gopaul <[Stephanie.Gopaul@erm.com](mailto:Stephanie.Gopaul@erm.com)>  
**Subject:** RE: Bhangazi EIA

Dear Ms Gopaul

My email below refers. I have established that ERM is still the project EAP, and as such would appreciate an update on the NEMA application status.

Kind regards

*Nicholas Scarr  
Public Service Accountability Monitor  
Rhodes University  
South Africa  
Tel 041 379 4208 & 076 985 7938  
[www.psam.org.za](http://www.psam.org.za)*

---

**From:** Nicholas Scarr [<mailto:n.scarr@ru.ac.za>]  
**Sent:** Thursday, 26 April 2018 1:01 PM  
**To:** '[stephanie.gopaul@erm.com](mailto:stephanie.gopaul@erm.com)' <[stephanie.gopaul@erm.com](mailto:stephanie.gopaul@erm.com)>  
**Subject:** Bhangazi EIA

Dear Ms Gopaul

I was referred to you by one of your colleagues. I am in possession of a 2016 ERM BID for proposed resort development at Bhangazi, Maputaland. The EAP nominated on the BID is Debbie Weldon, who apparently no longer works for ERM. Can you please urgently advise whether ERM is still involved in this proposal, and if it is, what the status of the associated NEMA application is.

Kind regards



*Nicholas Scarr*  
*Public Service Accountability Monitor*  
*Rhodes University*  
*South Africa*  
*Tel 041 379 4208 & 076 985 7938*  
[www.psam.org.za](http://www.psam.org.za)

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Please visit ERM's web site: <http://www.erm.com>

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Please visit ERM's web site: <http://www.erm.com>

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Please visit ERM's web site: <http://www.erm.com> To find out how ERM manages personal data, please review our [Privacy Policy](#)

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Please visit ERM's web site: <http://www.erm.com> To find out how ERM manages personal data, please review our [Privacy Policy](#)

**From:** [Nicholas Scarr](#)  
**To:** ["Smalaza@environment.gov.za"](mailto:Smalaza@environment.gov.za)  
**Cc:** ["Dsmit@environment.gov.za"](mailto:Dsmit@environment.gov.za); ["Zama Langa"](#)  
**Subject:** RE: Bhangazi DBAR  
**Date:** Wednesday, 16 October 2019 9:20:00 AM  
**Attachments:** [image001.png](#)

---

Dear Mr Malaza

We refer to our unanswered correspondence of 4 September 2019 and our follow-up of 15 September 2019, both included below.

Are you now in a position to respond please?

Kind regards

*Nicholas Scarr*  
*Public Service Accountability Monitor*  
*Rhodes University*  
*South Africa*  
*Tel 041 379 4208 & 076 985 7938*  
[www.psam.org.za](http://www.psam.org.za)

---

**From:** Nicholas Scarr <n.scarr@ru.ac.za>  
**Sent:** Sunday, 15 September 2019 11:07 AM  
**To:** 'Smalaza@environment.gov.za' <Smalaza@environment.gov.za>  
**Cc:** 'Dsmit@environment.gov.za' <Dsmit@environment.gov.za>; 'Zama Langa' <ZLanga@environment.gov.za>  
**Subject:** FW: Bhangazi DBAR

Dear Mr Malaza

We refer to our correspondence of 4 September 2019, included below, as well as to preceding correspondence.

Can you please urgently advise as per para. 4 of our correspondence of 4 September 2019.

Kind regards

*Nicholas Scarr*  
*Public Service Accountability Monitor*  
*Rhodes University*  
*South Africa*  
*Tel 041 379 4208 & 076 985 7938*  
[www.psam.org.za](http://www.psam.org.za)

---

**From:** Nicholas Scarr <[n.scarr@ru.ac.za](mailto:n.scarr@ru.ac.za)>  
**Sent:** Wednesday, 04 September 2019 12:11 PM  
**To:** 'Smalaza@environment.gov.za' <[Smalaza@environment.gov.za](mailto:Smalaza@environment.gov.za)>

**Cc:** 'Dsmit@environment.gov.za' <[Dsmit@environment.gov.za](mailto:Dsmit@environment.gov.za)>; 'Zlanga@environment.gov.za' <[Zlanga@environment.gov.za](mailto:Zlanga@environment.gov.za)>  
**Subject:** RE: Bhangazi DBAR

Dear Mr Malaza

We refer to our correspondence to you of 22 August 2019, included below, as well as to preceding related correspondence.

1. In our correspondence of 22 August 2019 we drew your attention to the fact that the FBAR submitted to yourselves by the EAP associated with this matter did not meet the requirements of Regulation 19 (3) of Government Notice No. 326 of 2017, and that as such your Department is bound to refuse environmental authorisation as provided for in Regulation 20 (1) (b) of the said Notice.
2. We have not received any response from you to that correspondence, but on 2 September 2019 we received correspondence from the EAP (attached herewith) in which it was indicated that on 30 August 2019 an updated comments and responses report had been submitted to your Department.
3. However:
  - a) The comments and responses report is circumscribed by section 3 (1) (h) (iii) of Appendix 1 to Government Notice No. 326, and accordingly comprises part of the content of the FBAR;
  - b) Government Notice No. 326 does not make provision for the amendment of FBAR's subsequent to their having been submitted to the competent authority, and
  - c) likewise Government Notice No. 326 does not afford the competent authority discretion to request EAP's to submit additional information to it subsequent to its receipt of a FBAR.
4. In the circumstances can you please advise, as a matter of urgency
  - a) whether DEA prevailed on the EAP to furnish it with the updated comments and responses report;
  - b) if DEA did so prevail on the EAP, the basis for its having done so in circumstances where Government Notice No. 326 does not provide for it;
  - c) whether DEA has accepted or rejected the updated comments and responses report, and
  - d) if it has accepted the updated comments and responses report, the basis for its having done so when Government Notice No. 326 does not provide therefor.

We await your prompt response, and reiterate our stance that that because FBAR as originally submitted to DEA did not meet the requirements of Regulation 19 (3) of Government Notice No. 326 of 2017, the Department is bound to refuse environmental authorisation.

Kind regards

*Nicholas Scarr*  
*Public Service Accountability Monitor*  
*Rhodes University*  
*South Africa*  
*Tel 041 379 4208 & 076 985 7938*  
[www.psam.org.za](http://www.psam.org.za)

---

**From:** Nicholas Scarr <[n.scarr@ru.ac.za](mailto:n.scarr@ru.ac.za)>  
**Sent:** Thursday, 22 August 2019 8:49 PM  
**To:** 'Smalaza@environment.gov.za' <[Smalaza@environment.gov.za](mailto:Smalaza@environment.gov.za)>  
**Cc:** 'Dsmit@environment.gov.za' <[Dsmit@environment.gov.za](mailto:Dsmit@environment.gov.za)>; 'Zlanga@environment.gov.za' <[Zlanga@environment.gov.za](mailto:Zlanga@environment.gov.za)>  
**Subject:** FW: Bhangazi DBAR

Attention: Mr S Malaza

Dear Mr Malaza

1. Please see the train of email correspondence included below, and the attachment relating to our email immediately below this one.
2. You will note that on 20 August 2019 we communicated with Zama Langa of your Department in connection with this matter. By way of separate transmission we will forward you the response received from Zama on the same day.
3. In short:
  - a) PSAM submitted comments on the DBAR for this application timeously and in good order.
  - b) The EAP asserts that it did not receive these comments, and requested PSAM to corroborate that it submitted them.
  - c) This we have done, as detailed in the preceding correspondence.
  - d) The veracity of Rhodes University's IT Services demonstration that our comments were submitted timeously and in good order has not been challenged or countered by the EAP.
4. It goes without saying that with the EAP asserting that it did not receive our comments, these have not been recorded in and attached to the FBAR as required in terms of Regulation 44 (1) of Government Notice No. 326 of 2017.
5. Likewise the FBAR does not indicate the manner in which the issues we raised have been incorporated in the FBAR as required in terms of section 3 (1) (h) (iii) of Appendix 1 to the EIA Regulations, 2014, as amended.

6. Consequently the FBAR does not meet the requirements of Regulation 19 (3) of Government Notice No. 326 of 2017.
7. In the circumstances we contend that your Department is bound to refuse environmental authorisation as provided for in Regulation 20 (1) (b) of the said Notice.
8. You will notice in the preceding correspondence that having submitted our comments to the EAP, we forwarded these, on the same day, to Mr van der Merwe of (then) DAFF's Forestry Regulation and Oversight Directorate (now part of your Department), as well as to another role player in natural forest governance.
9. We did this on the basis that our comments on the DBAR pertain expressly to matters which reside under the National Forests Act, 1998 (NFA), which fell at the time within DAFF's mandate (now DEFF's).
10. Mr van der Merwe and the other role-player (a former member of DAFF) are experts in the administration of the NFA, and were consulted by ourselves in relation to the application.
11. As indicated, both Mr van der Merwe and the other role-player received our comments timeously and in good order.
12. Although Zama has received our comments, they are attached herewith again for your convenience.

Trusting that our position is clear, and that your Department will see its way to acting in accordance with our contention that environmental authorisation must be refused. Please advise if you require further information relating to Rhodes University's IT Services corroboration of our submission, or to any other matter.

Kind regards

*Nicholas Scarr*  
*Public Service Accountability Monitor*  
*Rhodes University*  
*South Africa*  
*Tel 041 379 4208 & 076 985 7938*  
[www.psam.org.za](http://www.psam.org.za)

---

**From:** Nicholas Scarr <[n.scarr@ru.ac.za](mailto:n.scarr@ru.ac.za)>  
**Sent:** Tuesday, 20 August 2019 1:57 PM  
**To:** 'Stephanie Gopaul' <[Stephanie.Gopaul@erm.com](mailto:Stephanie.Gopaul@erm.com)>  
**Cc:** 'Amishka Mothilal' <[Amishka.Mothilal@erm.com](mailto:Amishka.Mothilal@erm.com)>; 'Zlanga@environment.gov.za' <[Zlanga@environment.gov.za](mailto:Zlanga@environment.gov.za)>  
**Subject:** RE: Bhangazi DBAR

Dear Ms Gopaul

Please note that our submission was made on 1 June 2019, not 21 June 2019 as indicated in your email below.

I do not routinely request delivery or read receipts and therefore attach herewith Rhodes University's Information Technology Services' outgoing mail server's log entries as proof of delivery of our emailed submission.

I did not receive an automatically generated response.

Regardless of the exact fate of our comments on the day they were submitted, we trust it is unequivocally clear to all concerned that PSAM indeed transmitted them to ERM via email at 11:11 PM on 1 June 2019.

Kind regards

*Nicholas Scarr*  
*Public Service Accountability Monitor*  
*Rhodes University*  
*South Africa*  
*Tel 041 379 4208 & 076 985 7938*  
[www.psam.org.za](http://www.psam.org.za)

---

**From:** Stephanie Gopaul <[Stephanie.Gopaul@erm.com](mailto:Stephanie.Gopaul@erm.com)>  
**Sent:** Tuesday, 20 August 2019 11:28 AM  
**To:** Nicholas Scarr <[n.scarr@ru.ac.za](mailto:n.scarr@ru.ac.za)>; [Zlanga@environment.gov.za](mailto:Zlanga@environment.gov.za)  
**Cc:** Amishka Mothilal <[Amishka.Mothilal@erm.com](mailto:Amishka.Mothilal@erm.com)>  
**Subject:** RE: Bhangazi DBAR

Dear Mr. Scarr

Thank you for the email. It is unfortunate that we did not receive your comments on 21 June 2019 (as you indicated). Please provide us with a delivery or read receipt so that we can query further with our IT department. Please also note that there was an automatic message generated by our email server to all emails that we received- please advise if you received such email from us? If you did not, this further confirms that your email did not come through our server.

I must apologise for an inconvenience that you are enduring, however, we simply did not receive your comments and therefore did not include in the FBAR or CRR.

Kind Regards,  
Stephanie Gopaul  
Principal Consultant

**ERM**  
Suite S005 | 17 The Boulevard | Westway Office Park | Westville | 3635 | Durban | South Africa  
T +27 31 265 0033 | F +27 31 265 0150 |

E [stephanie.gopaul@erm.com](mailto:stephanie.gopaul@erm.com) | W [www.erm.com](http://www.erm.com)



---

**From:** Nicholas Scarr <[n.scarr@ru.ac.za](mailto:n.scarr@ru.ac.za)>  
**Sent:** Tuesday, August 20, 2019 11:16 AM  
**To:** [Zlanga@environment.gov.za](mailto:Zlanga@environment.gov.za)  
**Cc:** Stephanie Gopaul <[Stephanie.Gopaul@erm.com](mailto:Stephanie.Gopaul@erm.com)>; Amishka Mothilal <[Amishka.Mothilal@erm.com](mailto:Amishka.Mothilal@erm.com)>  
**Subject:** RE: Bhangazi DBAR

Good day

We refer to the email correspondence below which was copied to yourself, the content of which is self-explanatory.

Having regard for the content of the email and associated preceding correspondence included with it we trust DEA will affirm our stance as reflected in point 9 below.

Please advise in this regard.

Kind regards

*Nicholas Scarr  
Public Service Accountability Monitor  
Rhodes University  
South Africa  
Tel 041 379 4208 & 076 985 7938  
[www.psam.org.za](http://www.psam.org.za)*

---

**From:** Nicholas Scarr <[n.scarr@ru.ac.za](mailto:n.scarr@ru.ac.za)>  
**Sent:** Tuesday, 20 August 2019 11:08 AM  
**To:** 'Amishka Mothilal' <[Amishka.Mothilal@erm.com](mailto:Amishka.Mothilal@erm.com)>  
**Cc:** 'Stephanie Gopaul' <[Stephanie.Gopaul@erm.com](mailto:Stephanie.Gopaul@erm.com)>; '[Zlanga@environment.gov.za](mailto:Zlanga@environment.gov.za)' <[Zlanga@environment.gov.za](mailto:Zlanga@environment.gov.za)>  
**Subject:** RE: Bhangazi DBAR

Dear Amishka

I refer to your email of 19 August 2019 to DEA (copy attached).

1. ERM's indication to DEA that PSAM, via myself, "claims" that it submitted comments on the Draft Basic Assessment Report, and "alleges" that it did so at the time it did, are unfortunate in circumstances where I have furnished yourselves with a copy of the email transmission involved, and you have forwarded the same transmission to DEA.

2. It is abundantly plain from the email message that comments on the Draft Basic Assessment Report were submitted to yourselves, and that this occurred within the prescribed timeframe.
3. Over and above this, Rhodes University's Information Technology Services has advised that the email message *was correctly handed over by the university's outgoing mail server to one of the incoming mail servers for [erm.com](mailto:erm.com) within 11 seconds of your PC submitting the message to our outgoing mail server*, and substantiated this with its outgoing mail server's log entries for the delivery.
4. Moreover, after being transmitted to ERM at 11:11 PM, at 11:23 PM the same email was forwarded to Mr van der Merwe, then of DAFF and now of DEAFF, who, it is noted in Annexure D to the Final Basic Assessment Report, provided yourselves with comment on the proposed lodge on 1 June 2018.
5. Simultaneously with being forwarded to Mr van der Merwe, the email was additionally forwarded to another role player (not a registered interested and affected party in this matter) in natural forest governance in South Africa.
6. The email was duly received by both Mr van der Merwe and this role-player.
7. By all accounts therefore PSAM's email system was fully functional when it is submitted its comments, and its submission occurred timeously and in good order.
8. Separately, as per our email to yourselves of 16 August 2019, included below, ERM was requested to *"please advise DEA without delay of the situation as regards PSAM's input."*
9. We did not request that our comments be referred to DEA – as expressly indicated in the same email, since they were submitted to ERM within the prescribed timeframe, *"in principle we do not believe that liaising with DEA in lieu of ERM dealing with our input as required in terms of the relevant regulations would be appropriate."*
10. We stand by this position.

Kind regards

*Nicholas Scarr  
Public Service Accountability Monitor  
Rhodes University  
South Africa  
Tel 041 379 4208 & 076 985 7938  
[www.psam.org.za](http://www.psam.org.za)*

---

**From:** Nicholas Scarr <[n.scarr@ru.ac.za](mailto:n.scarr@ru.ac.za)>

**Sent:** Friday, 16 August 2019 4:32 PM

**To:** 'Stephanie Gopaul' <[Stephanie.Gopaul@erm.com](mailto:Stephanie.Gopaul@erm.com)>

**Cc:** 'Khosi Dlamini' <[Khosi.Dlamini@erm.com](mailto:Khosi.Dlamini@erm.com)>; 'Amishka Mothilal'



<[Amishka.Mothilal@erm.com](mailto:Amishka.Mothilal@erm.com)>

**Subject:** RE: Bhangazi DBAR

Dear Stephanie

Its not a matter of our believing that the comments PSAM submitted have not been included in the final BAR - it is a fact that they are not.

When we submitted our input we were aware of the due date and hence dispatched it before expiry of that date.

I have already advised Amishka that we forwarded our comment to the address as specified by ERM. The relevant email will be re-forwarded to yourselves from my sent items folder after this transmission.

We have yet to evaluate the effect on the content of the final BAR of our input not having been taken into account, but since it was submitted within the prescribed timeframe, in principle we do not believe that liaising with DEA in lieu of ERM dealing with our input as required in terms of the relevant regulations would be appropriate.

Can you please advise DEA without delay of the situation as regards PSAM's input, and copy me the associated communication.

Please advise further after viewing our submission of 1 June 2019.

Kind regards

*Nicholas Scarr  
Public Service Accountability Monitor  
Rhodes University  
South Africa  
Tel 041 379 4208 & 076 985 7938  
[www.psam.org.za](http://www.psam.org.za)*

---

**From:** Stephanie Gopaul <[Stephanie.Gopaul@erm.com](mailto:Stephanie.Gopaul@erm.com)>

**Sent:** Friday, 16 August 2019 3:22 PM

**To:** Nicholas Scarr <[n.scarr@ru.ac.za](mailto:n.scarr@ru.ac.za)>

**Cc:** Khosi Dlamini <[Khosi.Dlamini@erm.com](mailto:Khosi.Dlamini@erm.com)>; Amishka Mothilal <[Amishka.Mothilal@erm.com](mailto:Amishka.Mothilal@erm.com)>

**Subject:** RE: Bhangazi DBAR

Afternoon Nicholas

As per your call with Amishka today, it has come to our attention you believe that the comments that you submitted on the draft BAR on 1 June 2019, have not been included in the final BAR. Please note that the comment period ended on 1 June 2019 and we have gone back into our project mailbox to look for comments from you, but there is no email from you on or after this date. I also did not receive a direct email from you as you have been sending previously (as per the email trail). Please can you advise to whom or which address you sent the comments and

provide a proof of such submission as we cannot locate this coming through our server.

Apologies for an inconvenience on our part, however we cannot include or address comments that we did not receive. Our IT Department is also verifying that your email address was not blocked so if you did submit comments, they were not restricted by us in any way. Please note that the final BAR has been submitted for decision and you are welcome to submit your comments directly to the Competent Authority.

Please do send through your comments directly to me and we can discuss a way forward. Thanks

Kind Regards,  
Stephanie Gopaul  
Principal Consultant

**ERM**

Suite S005 | 17 The Boulevard | Westway Office Park | Westville | 3635 | Durban | South Africa  
T +27 31 265 0033 | F +27 31 265 0150 |

E [stephanie.gopaul@erm.com](mailto:stephanie.gopaul@erm.com) | W [www.erm.com](http://www.erm.com)



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**From:** Nicholas Scarr <[n.scarr@ru.ac.za](mailto:n.scarr@ru.ac.za)>  
**Sent:** Tuesday, September 11, 2018 1:00 PM  
**To:** Stephanie Gopaul <[Stephanie.Gopaul@erm.com](mailto:Stephanie.Gopaul@erm.com)>  
**Cc:** Khosi Dlamini <[Khosi.Dlamini@erm.com](mailto:Khosi.Dlamini@erm.com)>  
**Subject:** RE: Bhangazi EIA- registration of I&AP

Hi Stephanie

Our previous correspondence included below refers. On 2 May 2018 you indicated that the DBAR for this project *is to be released for public comment shortly*. Can you please advise of the status in this respect.

Kind regards

*Nicholas Scarr  
Public Service Accountability Monitor  
Rhodes University  
South Africa  
Tel 041 379 4208 & 076 985 7938  
[www.psam.org.za](http://www.psam.org.za)*

---

**From:** Stephanie Gopaul <[Stephanie.Gopaul@erm.com](mailto:Stephanie.Gopaul@erm.com)>  
**Sent:** Friday, 04 May 2018 1:32 PM  
**To:** Nicholas Scarr <[n.scarr@ru.ac.za](mailto:n.scarr@ru.ac.za)>  
**Cc:** Khosi Dlamini <[Khosi.Dlamini@erm.com](mailto:Khosi.Dlamini@erm.com)>

**Subject:** RE: Bhangazi EIA- registration of I&AP

Hi Nicholas

We have registered you as an I&AP.

Kind Regards,  
Stephanie Gopaul  
Senior Consultant

**ERM**

Suite S005 | 17 The Boulevard | Westway Office Park | Westville | 3635 | Durban | South Africa  
T +27 31 265 0033 | F +27 31 265 0150 |

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**From:** Nicholas Scarr [<mailto:n.scarr@ru.ac.za>]  
**Sent:** Wednesday, May 02, 2018 9:51 AM  
**To:** Stephanie Gopaul <[Stephanie.Gopaul@erm.com](mailto:Stephanie.Gopaul@erm.com)>  
**Subject:** RE: Bhangazi EIA

Morning and thankyou for the update Stephanie.

Can you please register me, within my capacity as below, as an I&AP and fwd a copy for the DBAR when it is released.

Kind regards

*Nicholas Scarr  
Public Service Accountability Monitor  
Rhodes University  
South Africa  
Tel 041 379 4208 & 076 985 7938  
[www.psam.org.za](http://www.psam.org.za)*

---

**From:** Stephanie Gopaul [<mailto:Stephanie.Gopaul@erm.com>]  
**Sent:** Wednesday, 02 May 2018 9:31 AM  
**To:** Nicholas Scarr <[n.scarr@ru.ac.za](mailto:n.scarr@ru.ac.za)>  
**Subject:** RE: Bhangazi EIA

Good Morning Nicholas

The draft Basic Assessment Report is currently under review and is to be released for public comment shortly.

Kind Regards,  
Stephanie Gopaul  
Senior Consultant

**ERM**

Suite S005 | 17 The Boulevard | Westway Office Park | Westville | 3635 | Durban | South Africa  
T +27 31 265 0033 | F +27 31 265 0150 |

E [stephanie.gopaul@erm.com](mailto:stephanie.gopaul@erm.com) | W [www.erm.com](http://www.erm.com)



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**From:** Nicholas Scarr [<mailto:n.scarr@ru.ac.za>]  
**Sent:** Thursday, April 26, 2018 4:13 PM  
**To:** Stephanie Gopaul <[Stephanie.Gopaul@erm.com](mailto:Stephanie.Gopaul@erm.com)>  
**Subject:** RE: Bhangazi EIA

Dear Ms Gopaul

My email below refers. I have established that ERM is still the project EAP, and as such would appreciate an update on the NEMA application status.

Kind regards

*Nicholas Scarr  
Public Service Accountability Monitor  
Rhodes University  
South Africa  
Tel 041 379 4208 & 076 985 7938  
[www.psam.org.za](http://www.psam.org.za)*

---

**From:** Nicholas Scarr [<mailto:n.scarr@ru.ac.za>]  
**Sent:** Thursday, 26 April 2018 1:01 PM  
**To:** '[stephanie.gopaul@erm.com](mailto:stephanie.gopaul@erm.com)' <[stephanie.gopaul@erm.com](mailto:stephanie.gopaul@erm.com)>  
**Subject:** Bhangazi EIA

Dear Ms Gopaul

I was referred to you by one of your colleagues. I am in possession of a 2016 ERM BID for proposed resort development at Bhangazi, Maputaland. The EAP nominated on the BID is Debbie Weldon, who apparently no longer works for ERM. Can you please urgently advise whether ERM is still involved in this proposal, and if it is, what the status of the associated NEMA application is.

Kind regards

*Nicholas Scarr*

*Public Service Accountability Monitor*  
*Rhodes University*  
*South Africa*  
*Tel 041 379 4208 & 076 985 7938*  
[www.psam.org.za](http://www.psam.org.za)

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Annex C12

DEFF Decision on Appeal



**MINISTER  
FORESTRY, FISHERIES AND THE ENVIRONMENT  
REPUBLIC OF SOUTH AFRICA**

**Reference: LSA 190144**

**APPEAL DECISION**

**APPEAL AGAINST THE REFUSAL OF AN ENVIRONMENTAL AUTHORISATION FOR  
THE PROPOSED DEVELOPMENT OF THE BHANGAZI CULTURAL HERITAGE  
LODGE, ISIMANGALISO WETLAND PARK, IN KWAZULU-NATAL PROVINCE**

**Bhangazi Community Trust**

**Applicant/Appellant**

**Department of Environment, Forestry and Fisheries**

**Competent Authority**

**Appeal:** This is an appeal submitted by the Bhangazi Community Trust (the appellant) on 27 February 2020, against the decision of the Chief Director: Integrated Environmental Authorisations of the Department of Environment, Forestry and Fisheries (the Department) to refuse an Environmental Authorisation (EA) on 30 October 2019, for the proposed development of the Bhangazi Cultural Heritage Lodge in Isimangaliso Wetland Park, in KwaZulu-Natal Province.

**1. BACKGROUND AND APPEAL**

- 1.1** On 15 April 2019, the appellant lodged an application for EA with the Department for the proposed development of the Bhangazi Cultural Heritage Lodge at the abovementioned location.

- 1.2. The appellant was granted a right by Isimangaliso Wetland Park Authority, to develop a tourism facility within the World Heritage Site. In an effort to exercise this right, the appellant proposed to develop a cultural heritage lodge within the iSimangaliso Wetland Park.
- 1.3. The proposed lodge was to include:
- Ten x 2-bed units with the option of catered and self-catering;
  - Eight x 4-bed family units with the option of catered and self-catering;
  - Trail camp - four x 2-bed units with a communal braai area;
  - A restaurant located close to the lake shore with a footprint of 300m<sup>2</sup>, including a recreation deck and pool area;
  - Five staff quarters each with a footprint area of 75m<sup>2</sup> and single storey in height;
  - A Jetty with a footprint size of 20m<sup>2</sup> at the south-western corner of Lake Bhangazi South;
  - The parking arrangements for the project include:
    - Visitors parking (18)
    - Chalet parking (13)
    - Bus parking (2)
    - Staff parking (3)
    - Lodge vehicles (2)
    - Game drive (1)
  - The reception is located within the day visitors / gathering area.
- 1.4. Upon evaluation of the final Basic Assessment Report (BAR) dated July 2019, as well as *inter alia* the comments from the Directorate: Forestry Regulation and Oversight within the then Department of Agriculture Forest and Fisheries (DAFF) dated 31 May 2019, the Department refused an EA to the appellant on 30 October 2019.
- 1.5. The Directorate: Forestry Regulation and Oversight was not in support of the preferred layout due to the fact that the positioning of the restaurant, swimming pool and staff housing cannot be considered as exceptional circumstance as required by section 3(3) (a) of the



National Forest Act, 1998 (Act No. 84 of 1998), which state 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"*.

- 1.6. Following the aforesaid decision of the Department, the Directorate: Appeals and Legal Review (Appeals Directorate) within the Department received a request for extension from the appellant on 28 November 2019. The appellant requested an extension of timeframe to lodge their appeal on or before 28 February 2020. This request was granted by the Director of the Appeals Directorate on 6 December 2019.
- 1.7. On 27 February 2020, the appellant lodged their appeal against the refusal of an EA. This appeal was lodged in terms of section 43(1) of the National Environmental Management Act, 1998 (Act No. 107 of 1998) (NEMA), read together with regulation 4 of the National Appeal Regulations, 2014, as amended (Appeal Regulations). The appeal was accompanied by a revised site layout plan aiming to address the concerns of the Directorate: Forestry Regulation and Oversight within the then DAFF.
- 1.8. The Appeals Directorate arranged a site visit so as to assess the revised layout plan as submitted in the appeal documentation. The Directorate: Forestry Regulation and Oversight as well as the Department were requested to attend the site visit so as to provide informed responses and comments on the grounds of appeal. The site visit occurred on 12 March 2020 however the Appeals Directorate was unable to partake the site visit due to violent protest which took place at Olakeni, located in the area of Mbazwana. Nevertheless the Appeals Directorate visited the site and discussed the revised site layout with the ISimangaleo Wetland Park Authority on 13 March 2020. Minutes of the site visit held of 12 March 2020 were compiled by the applicant on 16 March 2020 and circulated to all attendees as well as the Appeals Directorate.

- 1.9. The Department timeously submitted a response to the grounds of appeal on 16 March 2020. Comments on the grounds of appeal were received by the Appeals Directorate from the Directorate: Forestry Regulation and Oversight on even date.
- 1.10. On 23 March 2020, a letter was received from Rhodes University Public Service: Accountability Monitor (PSAM) which highlights the shortcomings of the final basic assessment report (BAR) submitted during the EIA process. Furthermore PSAM states that their comments were not included in the final BAR. Further to this PSAM states that the Department is now playing multiple roles pertaining to the proposed project and trust that this will not unduly influence the outcome of the appeal.
- 1.11. The appeal is premised on the following grounds:
  - 1.11.1. The Department did not consider the amended Comments and Response Report (CRR) during the processing and adjudication of the EA application;
  - 1.11.2. The location of the proposed staff housing area; and
  - 1.11.3. Revision of the site layout.

## **2. EVALUATION**

- 2.1 ***The Department did not consider the amended CRR during the processing and adjudication of the EA application***
  - 2.1.1 The appellant submits that the Department did not take into account the amended CRR during the processing and adjudication of the EA application. The appellant contends that, with the submission of the updated CRR and the notification of the Interested and affected parties (I&APs), the application was in fact fully compliant with regulation 44(1) of the Environmental Impact Assessment Regulations, 2014, as amended (2014 EIA Regulations).
  - 2.1.2 In response to this ground of appeal, the Department explains that after receiving the final BAR on 16 July 2019, PSAM as an I&AP informed the Department on 20 August 2019 that

their comments on draft BAR, which were submitted on 1 June 2019, have not been incorporated in the final BAR. The Department further explains that the appellant and PSAM were contacted and engaged on the issue. The appellant was required to provide response to comments received from PSAM.

- 2.1.3 In addition to the above, the Department explains that they were informed by DAFF that their comments on the draft BAR, which were submitted to the appellant on 31 May 2019, have also not been incorporated in the final BAR. The Department further explains that the appellant and DAFF were contacted and engaged on the issue. The appellant was also required to provide a response to comments received from DAFF. The appellant's response on the comments were received by the Department on 03 September 2019 and included in the revised final BAR.
- 2.1.4 The Department states that the 2014 EIA Regulations does not make provision for the amendment of a final BAR. Further to this, the Department states that the comments received from DAFF were substantive and if the appellant had considered same before the submission of the final BAR, this would have influenced the amendments to the layout map.
- 2.1.5 In their comments to this ground of appeal, the Directorate: Forestry Regulation and Oversight provides that the final BAR did not address their comments in the CRR and corrections to this came at a later stage.
- 2.1.6 In evaluating this ground of appeal and responses thereto, I note that it is not in dispute that the final BAR did not include the comments from both DAFF and PSAM. However the appellant thereafter amended CRR and submitted same to the Department. This amended CRR incorporated the lacking comments as well as the responses thereto by the appellant. The Department nevertheless rightfully confined their decision to the final BAR dated July 2019.
- 2.1.7 An analysis of the final BAR suggests that the appellant failed to comply with regulation 44(1) of the 2014 EIA Regulations which requires that *"the applicant must ensure that the*

*comments of interested and affected parties are recorded in reports and plans and that such written comments, including responses to such comments and records of meetings, are attached to the reports and plans that are submitted to the competent authority in terms of these Regulations”.*

2.1.8 I agree with the submission by the Department that the 2014 EIA Regulations does not make provision for the amendment of a final BAR so as to addresses shortcomings therein. As a result thereof, I cannot find that the Department erred in refusing an EA on the basis that the final BAR submitted in support of the EA application did not comply with regulation 44(1) of the 2014 EIA Regulations. I must add that the provision of regulation 44(1) are peremptory, not discretionary. For these reasons, this ground of appeal must fail.

## **2.2 *The location of the proposed staff housing area***

2.2.1 The appellant states that the Department, in the refusal letter, makes an incorrect inference that the proposed staff housing area is positioned within the undisturbed forest area on a greenfield site. According to the appellant, the layout map in the final BAR clearly indicates that the staff housing is in fact positioned in a disturbed area (cleared and developed), and is not in any way within a forested or greenfields area.

2.2.2 In response to this ground of appeal, the Department advises that such conclusion was drawn from the comments received from the Directorate: Forestry Regulation and Oversight. However the Department states that the appellant is correct in that the staff housing location is within the degraded area. The Department advises that based on the new information provided on the change of layout, the staff housing have been changed and there are two locations for staff housing, namely junior and senior staff housing. Based on the site visit conducted on 12 March 2020, the Department states that they are in support of the location of the both junior and senior staff housing as it is within degraded area. The Department further recommends that this change on the layout be subjected to 30 days public participation process (PPP) before recommending a decision.

2.2.3 In evaluating this ground of appeal and the responses thereto, I note that the Directorate: Forestry Regulation and Oversight has no objection to the location of the staff housing. From both the site visits conducted on 12 and 13 March 2020, it was observed that the proposed senior staff camps is to be located within a degraded area with an existing house and the junior staff is to be located within an already disturbed area with open space.

2.2.4 In light of the above, I cannot find that the proposed position of the staff housing is likely to impact on keystone species or the natural forest. As a result thereof this ground of appeal is upheld.

### **2.3 *Revision of the site layout***

2.3.1 The appellant states that it reviewed the comments and concerns listed by DAFF and PSAM, as well as the reasons for refusal of EA as listed by the Department. According to the appellant, all disturbed areas within the proposed development envelope were accurately plotted and opportunities for development of the chalets within the forest with minimal disturbance to vegetation were identified. The appellant states that it was found that the currently developed or disturbed area, namely the old fishing camp, will provide more than enough space for the placement of the restaurant, pool, reception, staff accommodation, trails camp, roads and parking. The appellant states that it was also found that the forest is populated with cleared pockets that are well disposed to development of the chalets without significant (if any) removal of vegetation.

2.3.2 The appellant advises that the following proposals were taken into consideration:

- Reducing the size of the units and developing alternative unit design to accommodate specific sites.
- That the restaurant complex be relocated to a disturbed area on the site.
- That a Method Statement be developed for inclusion in the BAR, covering all activities within the natural forest.

2.3.3. Following the above, the appellant provides an updated site layout plan and additional mitigation measures as follows:

- a) The restaurant and pool complex, previously located within the forest, has been repositioned to a disturbed area outside the forest. The specific site is currently totally devoid of indigenous vegetation and is largely covered by an old derelict building, a remnant of the Bhangazi Fishing Camp. This revision also implies that the proposed restaurant access / service road leading from the parking area, through the forest to the restaurant, is no longer required.
- b) The staff housing has been repositioned on two separate disturbed areas within the old Bhangazi fishing camp (brownfields sites).
- c) Development within the forest will be limited to guest chalets and pedestrian boardwalks only and will make use of pre-identified cleared or semi-cleared areas (old camping spots).
- d) All the chalets within the forest will be developed on elevated decks. Circulation between chalets will be via elevated timber boardwalks (no infrastructure will be built on the ground).
- e) The previously proposed dual access roads (off the Cape Vidal road) have been consolidated and restricted to only one access road in and out of the facility.
- f) Considering the footprint impact of each unit within the forest area, the following additional mitigation procedures are proposed:
  - Reducing the footprint size of the 2 bed units from 75 m<sup>2</sup> to <50 m<sup>2</sup>.
  - Reducing the size of the 4 bedroom units from 75 m<sup>2</sup> to <60 m<sup>2</sup>
  - Developing modular / alternate designs of the units to facilitate placement in the forest with minimal impact on existing large trees.
  - Limit on the maximum tree removal size of 180mm diameter, priority will be given to transplanting trees where at all possible.
  - No removal of any listed protected tree species.

2.3.4. In addition to the above, the appellant states that a Method Statement has been developed for all activities within the natural forest.

2.3.5. In response to this ground of appeal, the Department states that, based on the new information and the appeal site visit conducted on the 12 March 2020, the Department is in

support of the proposed change in layout as it has addressed the points raised on the reason for refusal. According to the Department, the positioning of the restaurant including a swimming pool is now placed within the degraded area with existing house. The Department does however recommend that this change on the layout be subjected to 30 days PPP before recommending a decision on the proposed development.

- 2.3.6. In their comments on this ground of appeal, the Directorate: Forestry Regulation and Oversight indicates that moving the restaurant out of the natural forest into the degraded area fully addresses their concern. Further to this, the Directorate: Forestry Regulation and Oversight states that as far as the boardwalk and chalets are concerned, that can be accommodated in forest clearings and fitted under the canopy in some places, but this will depend on the specific site by site placement and design to be done in cooperation with the forest ecologist, including activities such as marking out sites, rescuing protected species etc.
- 2.3.7. In evaluating this ground of appeal and the responses thereto, I note the particulars of the revised site layout, as well as the additional mitigation measures proposed by the appellant. I further note from the minutes of the site visit conducted on 12 March 2020 that the Directorate: Forestry Regulation and Oversight were happy with the revisions to the layout plan; supportive of method statement and mitigation measures and stated that such revisions were responsive to their concerns and that the concept of exceptional circumstance had now been properly addressed.
- 2.3.8. Further to this, the Appeal Directorate was briefed by the ISimangaliso Wetland Park Authority on 13 March 2020 on the revisions made to the site layout. It was observed that the restaurant and pool complex is now proposed within an already disturbed area largely covered by an old derelict building. It was further noted that the development within the forest will be confined to only the guest chalets and pedestrian boardwalks, which are now proposed to be developed within pre-identified cleared or semi-cleared pockets.
- 2.3.9. I further note that after the refusal decision, the applicant commissioned a study by a botanical specialist. This specialist identified four protected tree species within the greater

study area but only one protected species was identified within the chalet development zone, namely the Marula Tree. No protected plant species were identified within the study area. The botanical specialist further states that the residual impacts of this activity are negligible, and it is anticipated that the forest canopy and undergrowth will recover.

- 2.3.10. I must point out that the revised site layout was not part of the information available at the disposal of the Department for consideration prior to making a decision on the EA application. This information together with a study by a botanical specialist was only introduced during the appeal process and therefore constitutes new information.
- 2.3.11. In this regard, it is imperative to stress that the appeal under section 43 of NEMA is a wide appeal involving a determination *de novo* where the decision in question is subjected to reconsideration on new or additional facts or information. It encompasses a complete re-hearing of and fresh determination on the merits of the matter with or without additional evidence or information. This implies that, when determining the appeal, I may have regard to all information relevant to the appeal, including information or evidence that only emerged after the decision of the Department to refuse an EA in respect of the proposed development.
- 2.3.10. I have considered the revised site layout, particularly the restaurant, pool complex, viewing deck, staff housing, as well as the proposed repositioning of the guest chalets and pedestrian boardwalks and the proposed reduction of the project footprint. I have further considered that both the Department and the Directorate: Forestry Regulation and Oversight have no objection to the revised site layout as it is less invasive compared to the original site layout.
- 2.3.11. In light of the foregoing, the ground of appeal is accordingly upheld.
- 2.3.12. However, I am of the view that a just and equitable remedy is to afford the applicant an opportunity to rectify the irregularity of the BAR to the extent of its inconsistency with the regulation 44(1) 2014 EIA Regulations, and also incorporate new information which emerged after the decision of the Department to refuse an EA. In my view, this remedy is



in accordance with the principle of severance and proportionality, and will ensure that the good is given effect to and the bad remedied accordingly.

2.3.13. Accordingly, the matter is remitted to the Department in order to afford the applicant an opportunity to amend the BAR as alluded in paragraph 2.3.12 above. Due to significant changes or new information added to the BAR, the revised report must be subjected to a public participation of at least 30 days as required by regulation 19 (1) (b) of the 2014 EIA Regulations.

2.3.14. Any comments received from I&APs as well as responses thereto by the applicant must be incorporated into the final BAR for submission to the Department for reconsideration of the EA application. In this regard, the timeframes prescribed by the 2014 EIA Regulations in respect of PPP and decision making must be adhere to.

### **3 DECISION**

3.1 In reaching my decision on the appeal lodged against the decision of the Department to refuse an EA, I have taken the following into consideration:

3.1.1 The appeal received on 27 February 2020;

3.1.2 The responding statement submitted by the Department on 16 March 2020;

3.1.3 The comments on the grounds of appeal submitted by the Directorate: Forestry Regulation and Oversight on 16 March 2020;

3.1.4 The minutes of the site visit conducted on 12 March 2020, received on 16 March 2020;

3.1.5 The outcome of the site visit conducted by the Appeal Directorate on 13 March 2020,

3.1.6 The letter received from Rhodes University Public Service: Accountability Monitor (PSAM) on 23 March 2020;

3.1.7 The information contained in the project file (14/12/6/3/3/1/2015) with specific reference to the refusal decision dated 30 October 2019 and the final BAR dated June 2019; and

3.1.8 The extension decision dated 6 December 2019.

- 3.2 In terms of section 43(6) of NEMA, I have the authority, after considering the appeal, to confirm, set aside or vary the decision, provision, condition or directive or to make any other appropriate decision.
- 3.3 Having carefully considered the abovementioned information and in terms of section 43(6) of NEMA, I have decided to:
- 3.3.1 Dismiss the ground of appeal mentioned in paragraph 1.11.1 and uphold the grounds of appeal mentioned in paragraphs 1.11.2 and 1.11.3 above; and
- 3.3.2 Remit the matter to the Department for reconsideration, as alluded in paragraphs 2.3.12 – 2.3.14 above.
- 3.4 In arriving at my decision on the appeal, it should be noted that I have not responded to each and every statement set out in the appeal and/or responses thereto, and where a particular statement is not directly addressed, the absence of any response thereof should not be interpreted to mean that I agree with or abide by the statement made.
- 3.5 Should any party be dissatisfied with any aspect of my decision, it may apply to a competent court to have this decision judicially reviewed. Judicial review proceedings must be instituted within 180 days of notification hereof, in accordance with the provisions of section 7 of the Promotion of Administrative Justice Act, 2000 (Act No.3 of 2000) (PAJA).



**MS B D CREECY, MP**

**MINISTER OF FORESTRY, FISHERIES AND THE ENVIRONMENT**

DATE: 16/4/2020 .

Annex C13

Notification material for revised BAR

C13.1

Notification Letter



26 August 2020

Reference: 14/12/16/3/3/1/2015

ERM Reference: 0282731

Dear Interested and Affected Party

**Subject: BASIC ASSESSMENT UPDATE AND NEW PUBLIC PARTICIPATION PROCESS FOR THE PROPOSED DEVELOPMENT OF BHANGAZI CULTURAL TOURISM LODGE WITHIN THE ISIMANGALISO WETLAND PARK, KWAZULU-NATAL**

The Bhangazi Community Trust was granted permission by the iSimangaliso Wetland Park Authority, to develop a tourism facility within the iSimangaliso Wetland Park, in KwaZulu-Natal. In an effort to exercise this right, the Bhangazi Trust proposes to develop a Cultural Heritage Lodge on a portion of the 9.94 ha piece of land allocated, which will consist of a 60-bed accommodation facility (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.

An application for Environmental Authorisation (EA) was submitted to the National Department of Environment, Forestry and Fisheries (DEFF) (formerly the Department of Environmental Affairs (DEA)) in accordance with the National Environmental Management Act, 1998 (Act No. 107 of 1998), as amended, and the Environmental Impact Assessment (EIA) Regulations (Government Notice R. 326), as amended in 2017. Furthermore, a Basic Assessment Report (BAR) was submitted to the DEFF for adjudication purposes on 16 July 2019.

A decision on the application was subsequently delivered by DEFF on 30 October 2019, where the EA was refused. The key reasons listed for the refusal of EA centred around the contention that the EIA process was not compliant with Regulation 44(1) of the 2014 EIA Regulations (which speaks to the recording of comments of Interested and Affected Parties (I&APs) in the project reports to be submitted for evaluation by the competent authority), as well as certain concerns about the proposed layout of facilities with respect to the potential sensitivities of the site.

The applicant decided to exercise their right to appeal the DEFF's decision, where an appeal was submitted following site visits with the authorities as well as updates to the site layout in order to address the concerns raised by the I&APs. In the DEFF's decision on the appeal, two of the reasons cited for refusal of the EA were dismissed and one was upheld. The ground that was upheld called for the updating of the BAR to account for the changes to the site layout. The DEFF also ruled that a new Public Participation Process (PPP) would need to be initiated to afford the public an opportunity to comment on the revised BAR.

In this regard, ERM has revised the BAR based on the new layout and has initiated a new PPP. In compliance with the Disaster Management Act (57/2002): Directions Regarding Measures to Address, Prevent and Combat the Spread of COVID-19 Relating to National Environmental Management Permits and Licences (05 June 2020), a Public Participation Process Plan has been

Page 1 of 2

developed to detail how the new PPP will be undertaken. This Plan was approved by DEF on 13 August 2020.

The updated BAR is accompanied by the updated Comments and Response Report (CRR) from the previous consultation process, including responses received from I&APs regarding the DEFF's decisions and outcomes of the BAR adjudication and appeal process.

The Updated BAR together with the updated CRR are available for review and comment from **27 August 2020 to 19 October 2020 (with 19 October being the last day for submitting comments)**. The report can be accessed from the Project Website:  
<https://www.erm.com/en/public-information-sites/basic-assessment-for-the-proposed-cultural-tourism-lodge-development-at-lake-bhangazi>

All comments, issues and responses are to be communicated with:

**Stephanie Gopaul**

**Tel: 031 265 0033**

**Email: [commentsandresponses@erm.com](mailto:commentsandresponses@erm.com)**

For your convenience, we have attached an Executive Summary of the BAR update and new PPP, as well as a Responses and Comments sheet for you to register as an IAP and submit comments to ERM.

Thank you for your participation during this process and we look forward to receiving your feedback.

C13.

Newspaper Advert and Site Notices



**UKUHLOLWA OKUYISEKELO KOKWAKHIWA OKUPHAKANYISWAYO KWE-BHANGAZI  
CULTURAL TOURISM LODGE NGAPHAKATHI KU-ISIMANGALISO WETLAND PARK,  
KWAZULU-NATALI**

**UKUKHISHWA KOMBIKO OWUHLAKA WOKUHLOLWA OKUYISEKELO UKUZE UMPHAKATHI  
UPHAWULE**

I-Bhangazi Community Trust yanikwa imvume yi-iSimangaliso Wetland Park Authority, ukuthi yakhe indawo yezokuvakasha e-iSimangaliso Wetland Park (okuyiNdawo Yamagugu Yomhlaba). Ngomzamo wokusebenzisa leli lungelo, i-Bhangazi Trust yaphakamisa ukwakha i-Cultural Heritage Lodge esiqeshini somhlaba eyawunikwa esiwu-9.94 ha ezoba namagumbi angama-68 kubandakanya izindawo zokuhlala abasebenzi. Le ndawo iku-Main Road oya e-Cape Vidal kuMasipala Wasekhaya eMtubatuba kuMasipala Wesifunda uMkhanyakude. Ingasemngceleni weselulo esiseningizimu esempumalanga yeDamu iBhangazi, entshonalanga nje yomgwaqo i-St Lucia ngaphambi kokuthi unqamule ibhande elisentabeni engasogwini oya e-Cape Vidal.

Lapha kunikezwa isaziso sokuthi i-Bhangazi Community Trust izohambisa isicelo soKugunyazwa Kwezemvelo kuMnyango Wezemvelo Kazwelonke ngokuhambisana noMthetho Wokuphathwa Kwezemvelo Kazwelonke, 1998 (Nombolo 107 ka-1998), njengoba uchitshiyelwe, kanye neZimiso Zomthetho Zokuhlola Umthelela Emvelweni (Isaziso Sikahulumeni R.326). Iphrojekthi izodinga Ukugunyazwa Kwezemvelo ngokusebenzisa Ukuhlolwa Okuyisisekelo ngokoMthetho Wokuphathwa Kwezemvelo Kazwelonke (NEMA) njengoba imisebenzi elandelayo iqalisiwe:

	<b>Imisebenzi yePhrojekthi</b>
GN R 324	Imisebenzi 4, 6, 12, 14
GN R 327	Umsebenzi 12, 30

I-Environmental Resources Management (ERM) iqokiwe njengehhovisi elizimele leSisebenzi Sokuhlola Ezemvelo (EAP) ukuthi lenze Ukuhlola Okuyisisekelo kanye neZinhlelo Zokuhlanganyela Komphakathi ezihambisana nakho maqondana nemisebenzi eqalisiwe.

Umbiko Wokuhlola Okuyisisekelo uyatholakala ukuze kuphawulwe kusukela ngomhla ka-**27 Agasti 2020 ukuya kumhla ka 19 Okthober 2020** (okungukuthi yisikhathi sokuphawula esiyizinsuku ezingama-31) futhi ungatholakala ngokwe-elektronikhi kuwebhusayithi yephrojekthi ekuxhunyenweni okulandelayo: <https://www.erm.com/en/public-information-sites/basic-assessment-for-the-proposed-cultural-tourism-lodge-development-at-lake-bhangazi> noma icelwe e-ERM (ukwenzelwa ukudluliswa nge-imeyili).

Ababambiqhaza bayamenywa ukuthi babhalise njengaBantu Abanentshisekelo Nabathintekayo (ama-I&AP) nokuthi bahlanganyele ohlelweni Lokuhlolwa Okuyisisekelo ngokukhomba izinto ezikhathazayo nokunikeza iziphakamiso zokwenza ngcono izinzuzo zephrojekthi. Ama-I&AP abhalisile azohlala aziswa ngesikhathi sohlelo lonke. Ukubhalisa njenge-I&AP, ukuletha imibono yokuphawula, nokuthola ulwazi oluthe xaxa, sicela uxhumane ne-ERM kule mininingwane engezansi.

**Stephanie Gopaul**  
**Ucingo: 031 265 0033**

I-imeyili: [commentsandresponses@erm.com](mailto:commentsandresponses@erm.com)

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





## BASIC ASSESSMENT FOR THE PROPOSED DEVELOPMENT OF BHANGAZI CULTURAL TOURISM LODGE WITHIN THE ISIMANGALISO WETLAND PARK, KWAZULU-NATAL

### RELEASE OF THE DRAFT BASIC ASSESSMENT REPORT FOR PUBLIC COMMENT

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 is running an Environmental Authorisation process, under the jurisdiction of the National Department of Environment, Forestry and Fisheries (DEFF, formerly the 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:

	<b>Project Activities</b>
GN R 324	Activity 4, 6, 12, 14
GN R 327	Activity 12, 30

Environmental Resources Management (ERM) has been appointed as the independent Environmental Assessment Practitioner (EAP) office to undertake the Basic Assessment and associated Public Participation Processes in light of the triggered activities. The DEFF initially rejected the application for EA on 30 October 2019, however, the decision was overturned following the appeals process which resulted in a revised layout. The BAR has been updated based on changes to the layout and comments garnered during the appeals process.

In this regard, the updated Basic Assessment Report is available for comment from **27 August 2020 to 19 October 2020** (i.e. a 51 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).

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 using the details below.

**Stephanie Gopaul**  
Tel: 031 265 0033

Email: [commentsandresponses@erm.com](mailto:commentsandresponses@erm.com)

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

Annex C14

Public Participation Plan



26 August 2020

Reference: 14/12/16/3/3/1/2015

ERM Reference: 0282731

Dear Interested and Affected Party

**Subject: Deviations from Approved Public Participation Plan for the Bhangazi Cultural Heritage Lodge Basic Assessment Process –**

Environmental Resources Management Southern Africa (Pty) Ltd (ERM) developed a Public Participation Process (PPP) Plan in line with the *Disaster Management Act (57/2002): Directions Regarding Measures to Address, Prevent and Combat the Spread of COVID-19 Relating to National Environmental Management Permits and Licences (of 5 June 2020)*.

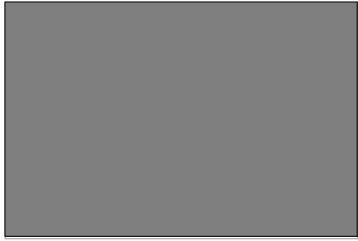
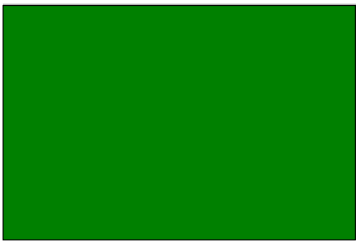
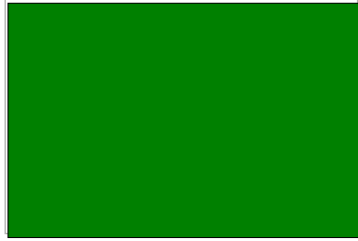
The purpose of the Plan is to detail the approach to the PPP for the Basic Assessment (BA) process for the Bhangazi Cultural Heritage Lodge development. The draft Plan was submitted to the National Department of Environment, Forestry and Fisheries (DEFF) on 4 August 2020, and the final Plan was approved by the DEFF on 13 August 2020. A few minor changes have been made to the plan, which have been communicated and agreed with the DEFF telephonically. The changes are as follows:

- 1. Advertisements:** The placing of notification advertisements is in compliance with Section 41(2) of the Environmental Impact Assessment Regulations (EIA), Government Notice Regulation (GN R) 326. Adverts will be placed in the Ilanga in isiZulu and in The Mercury in English (as detailed in the PPP Plan). The Mercury advert will be placed on the newspaper's **digital platform**. This is to accommodate non-isiZulu speaking I&APs and also caters to those who prefer digital news platforms over print media. The advert is also anticipated to reach a wider audience given that it can be accessed on different devices. Furthermore, the online advert is in line with the COVID-19 directions in that it facilitates virtual communication and allows for the EIA process to proceed while ensuring the mitigation of COVID-19 risks.
- 2. Comment period dates:** In the approved Plan, it is stated that the 51 day public comment period will commence on 24 August 2020 and be concluded on 16 August 2020. Due to challenges faced in obtaining new signed declarations from project specialists, this date has been pushed out by 3 days and the 51 days will now be from **27 August 2020 to 19 October 2020**.

We hope you find the above in order and we look forward to engaging with you.

Yours sincerely,

Stephanie Gopaul  
Principal Consultant



**Public Participation Plan for the Bhangazi Cultural Heritage Lodge Basic Assessment Process, iSimangaliso Wetland Park, South Africa**

August 2020

ERM Reference: 0282731

DEA Reference: 14/12/16/3/3/1/2015

*Bhangazi Community Trust*

Public Participation Plan for the Bhangazi  
Cultural Heritage Lodge Basic Assessment  
Process, iSimangaliso Wetland Park, South  
Africa

August 2020

Prepared by: Samantha Moodley

For and on behalf of Environmental Resources Management  Approved by: Philip Johnson    Position: Partner  Date: August 2020
--

This report has been prepared by Environmental Resources Management the trading name of Environmental Resources Management Limited, with all reasonable skill, care and diligence within the terms of the Contract with the client, incorporating our General Terms and Conditions of Business and taking account of the resources devoted to it by agreement with the client.

We disclaim any responsibility to the client and others in respect of any matters outside the scope of the above.

This report is confidential to the client and we accept no responsibility of whatsoever nature to third parties to whom this report, or any part thereof, is made known. Any such party relies on the report at their own risk.

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## ACRONYMS

BA	Basic Assessment
BAR	Basic Assessment Report
BID	Background Information Document
CA	Competent Authority
CRR	Comments and Responses Report
DAFF	Department of Agriculture Forestry and Fisheries
DEA	(National) Department of Environmental Affairs
DEFF	Department of Environment, Forestry and Fisheries
EA	Environmental Authorisation
EAP	Environmental Assessment Practitioner
EIA	Environmental Impact Assessment
EMPr	Environmental Management Programme
ERM	Environmental Resources Management Southern Africa (Pty) Ltd
FBAR	Final Basic Assessment Report
GN R	Government Notice Regulations
I&APs	Interested and Affected Parties
IDP	Integrated Development Plan
NEMA	National Environmental Management Act (Act No. 107 of 1998, as amended)

# 1 INTRODUCTION

This report presents the proposed Public Participation Plan for the development of the Bhangazi Cultural Heritage Lodge, in north-eastern KwaZulu-Natal. This Plan has been compiled to comply with the Disaster Management Act (57/2002): Directions Regarding Measures to Address, Prevent and Combat the Spread of COVID-19 Relating to National Environmental Management Permits and Licences, gazetted on 05 June 2020.

## 1.1 PROJECT OVERVIEW

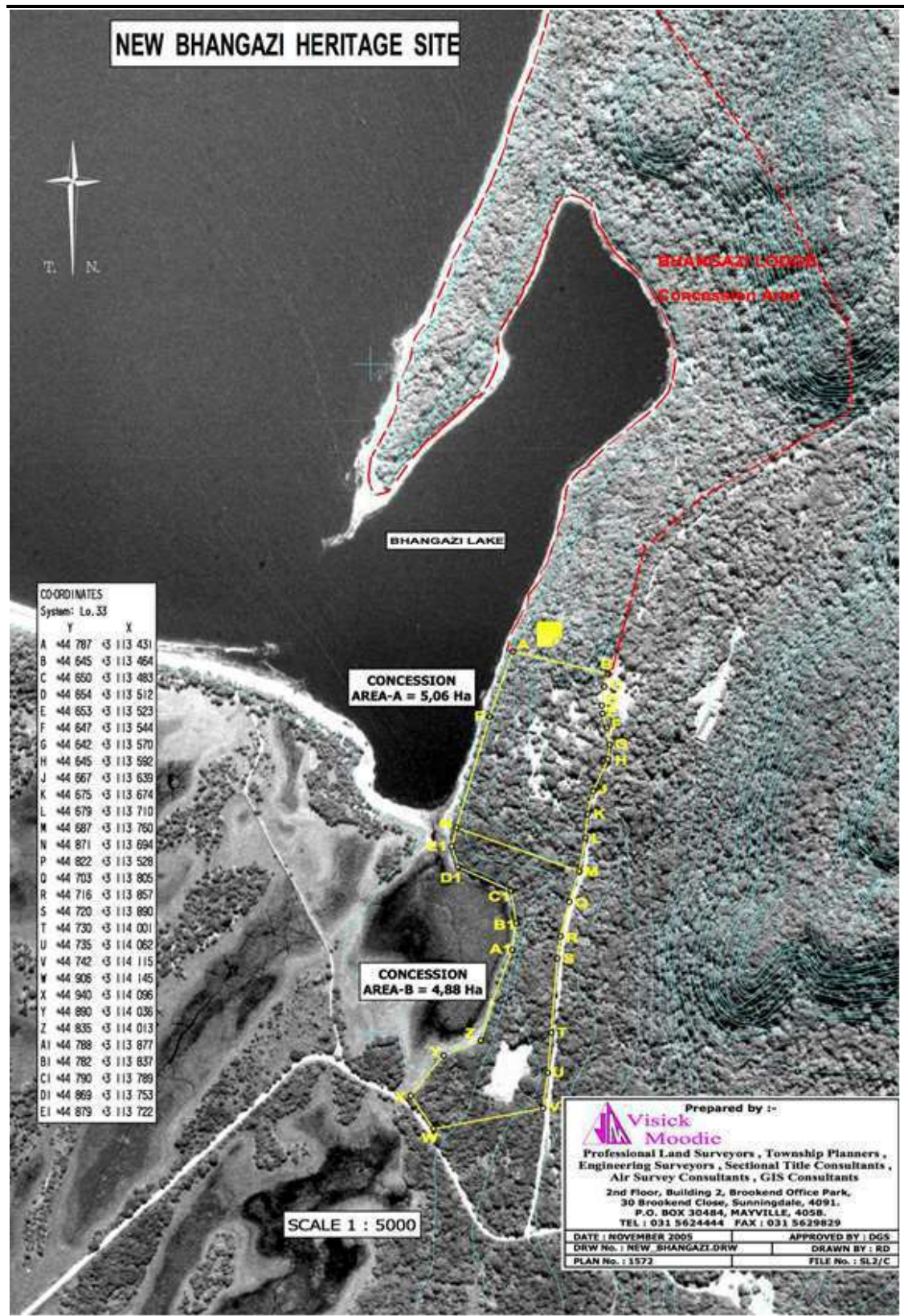
The proposed lodge is situated within the iSimangaliso Wetland Park (iSimangaliso), which is a World Heritage Site located in the coastal and inland areas of north-eastern KwaZulu-Natal. iSimangaliso was established in November 2000 in terms of Regulations published under the World Heritage Convention Act (No 49 of 1999). Between the 1950s and 1970s, people living on the Eastern Shores were forcibly removed. The land claim for this area 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 South, have also been granted. The institution formed by the former claimants is the Bhangazi Community Trust.

The Bhangazi site falls within the uMkhanyakude District Municipality. The site is about 30 km north of St Lucia and 2 km south-west of the beach at Cape Vidal. The proposed site is 9.94 ha in extent, divided into two areas: a northern portion of 5.06 ha earmarked for development and a southern no-development zone of 4.88 ha (**Error! Reference source not found.** overleaf). 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. The site (Concession Area A = development zone) is divided into two pockets, namely:

- The northern portion- Concession Area A); and
- The southern no-development zone- Concession Area B.



Figure 1-1 Map of Bhangazi Site (Concession Area A = development zone)



The Heritage site also lies adjacent to the Cape Vidal road, a popular tourist destination. Lake Bhangazi is the only permanent fresh water source in the area. The natural berm separating the Mfabeni Swamp and the Bhangazi Lake is a unique geomorphological feature of high ecological importance. 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.

In terms of an agreement between the Bhangazi Community Trust and iSimangaliso, signed in March 2006, "the primary purpose of the Bhangazi Heritage site is for the interpretation of the cultural heritage of the Bhangazi community; where an interpretive centre (museum) is the central component of the site concept and design. The development will comprise a tourism facility including overnight chalets, a restaurant and an interpretation/ education centre with all necessary support facilities including parking. The facilities will be located adjacent to Lake Bhangazi, which is within the iSimangaliso Wetland Park.

The site currently contains a number of guest cottages set in forest clearings above the 25-metre contour line. The cottages, accommodating between eight and 20 people each, are currently managed by Ezemvelo KZN Wildlife as part of the Cape Vidal complex. The cottages have become run down and will be demolished as part of the site's re-development. The cleared area around the current structures has limited aesthetic value. Its sense of place is further diminished by the absence of long views and the proximity of a busy paved road to the east. This is especially so compared to other sites on the Eastern Shores that either have direct beach access or more pleasing views (or a combination of both). However, the forested belt west of the current footprint does have excellent views across Lake Bhangazi's south-eastern basin towards a forested peninsula in the northwest and the main expanse of the lake in the west. These views would be considerably enhanced if west-facing units were raised on decks into the canopy of the forest. The accessibility of the site and its location inside the park (which makes it an ideal base for a range of sea-, lake and terrestrial activities) further enhances its value as a tourism asset.

## 1.2 AUTHORISATION APPLICATION HISTORY

Before the proposed project can begin, environmental authorisation (EA) must be obtained in terms of the Environmental Impact Assessment (EIA) Regulations of the National Environmental Management Act (No 107 of 1998, as amended) (NEMA). The proposed project triggers listed activities in terms of the NEMA EIA Listing Notices 1 and 3 (Government Notice Regulations 983 and 985) and therefore requires the completion of a Basic Assessment (BA). As the project is proposed to take place within a World Heritage Site, the National Department of Environment, Forestry and Fisheries (DEFF)<sup>1</sup> is the designated Competent Authority (CA).

<sup>1</sup> Formerly Department of Environmental Affairs (DEA)

In April 2019, registered stakeholders were notified of the proposed Project and the consultation process through which the project reports would be subjected. The draft BAR was released into the public domain for a public participation period (PPP), which ran from 2 May 2019 to 1 June 2019. The PPP concluded in June 2019 and the final BAR submitted to the Department on 16 July 2019.

Following the initial finalisation and submission of the BAR, the following events transpired:

- The DEFF's refused to award the Environmental Authorisation (EA) (in a letter dated 01 November 2019; see Appendix 6)
- A site visit was conducted with the DEFF Department of Agriculture, Forestry and Fisheries (DAFF) (13 and 18 February 2020; see Appendix 7 for notes from the site meeting and appeal discussion);
- An appeal was lodged by Nuleaf Planning and Environmental (Pty) Ltd on behalf of the Bhangazi Community Trust (27 February 2020; see Appendix 8); and
- The DEFF issued a decision on the appeal, which upholds 1 of the 3 grounds for appeal (16 April 2020; see Appendix 9).

A new PPP has been initiated in order to rectify the irregularities highlighted in the DEFF decision on the initial EA adjudication. This is also to ensure that I&APs are offered a chance to raise their concerns on the substantive amendments to the BAR and to see these being addressed by the Applicant, and being integrated in the project reports as required by the applicable EIA Regulations.

### 1.3 PUBLIC PARTICIPATION

Public participation is the interaction and engagement between the public and those undertaking the Environmental Authorisation (EA) process. The Public Participation Process (PPP) is a two way communication process which helps the public understand the processes and mechanisms through which environmental issues and needs are investigated and resolved by the responsible agency. The process also keeps all Interested and Affected Parties (I&APs) informed of the status and decision made for a project.

The PPP takes into consideration all comments and concerns raised by the public. This includes the resource which should be used, as well as the alternative developments being considered.

The DEFF released the Integrated Environmental Management Guidelines Series (Guideline 7) in 2012. This Guideline provides guidance on the procedure and provisions of the PPP in terms of the NEMA EIA Regulations (as amended), as well as other regulations and guiding documents. According to the DEA, "*public participation is one of the most important aspects of the EA process*" and this is "*because people have a right to be informed about potential decisions that may affect them and to be afforded an opportunity to influence those*

*decisions*". The undertaking of PPP for the proposed Bhangazi development is to ensure that these sentiments are implemented by the project proponent.

The objectives of the PPP for the upgrade of the Bhangazi Cultural Heritage Lodge Project are as follows:

- To identify relevant individuals, organisations and communities who may be interested in or affected by the existing and proposed activities.
- To clearly outline the scope of the Project, including the scale and nature of the existing and proposed activities.
- To identify viable Project alternatives that will assist the relevant authorities in making an informed decision.
- To identify shortcomings and gaps in existing information.
- To identify key concerns raised by I&APs that should be addressed in the subsequent specialist studies.
- To highlight the potential for environmental impacts, whether positive or negative.
- To inform and provide the public with information and an understanding of the existing and proposed activities, issues and solutions.
- To clearly outline how the PPP will be undertaken in light of the current "National State of Disaster".

#### **1.4 DETAILS OF ENVIRONMENTAL ASSESSMENT PRACTITIONER (EAP)**

The EAP for the applicant is:

EAP and Contact Person:	Mrs Stephanie Gopaul (Project Manager)
Postal Address:	Postnet Suite 59 Private Bag X21 Westville 3630
Physical Address:	17 The Boulevard, Westway Office Park, Westville, Durban
Tel:	+27(0) 31 265 0033
Fax:	+27 (0) 31 265 0150
Email:	Stephanie.Gopaul@erm.com

ERM has appointed Ms Samantha Moodley of Thembeke Environmental Consulting (Pty) Ltd to facilitate the BAR revision and PPP process under ERM's supervision. Samantha's details are follows:

Tel:	+27(0) 71 678 1951
Email:	Samantha@thembeka-env.co.za

## 1.5 *DEFF DIRECTIONS IN RELATION TO COVID-19 PANDEMIC*

On 05 June 2020, the Minister of DEFF issued Directions<sup>2</sup> regarding measures to address, prevent and combat the spread of COVID-19 relating to National Environmental Management Permits and Licences. The purpose of these Directions is to limit the threat posed by the COVID-19 Pandemic, as well as to alleviate, contain and minimise the effects of the National State of Disaster. This is particularly relevant to environmental licencing, as well the public participation and stakeholder engagement processes.

In accordance with Annexure 3 of the Directions, a Public Participation Plan is required prior to submission of the Application for EA. The Public Participation Plan must be agreed to, and approved by the Competent Authority (CA) prior to the application being submitted.

In complying with PPP regulations, the EAP will ensure that:

- all reasonable measures are taken to identify potential I&APs for purposes of conducting public participation on the application; and
- ensure that, as far as is reasonably possible, taking into account the specific aspects of the application-
  - (a) information containing all relevant facts in respect of the application or proposed application is made available to potential I&APs; and
  - (b) participation by potential or registered I&APs has been facilitated in such a manner that all potential or registered I&APs are provided with a reasonable opportunity to comment on the application or proposed application.

<sup>2</sup> Disaster Management Act (57/2002): Directions Regarding Measures to Address, Prevent and Combat the Spread of COVID-19 Relating to National Environmental Management Permits and Licences (5 June 2020).

## 2 PUBLIC PARTICIPATION PLAN

In accordance with Regulation 41 of the EIA Regulations, the following activities have and will be conducted:

- Ongoing consultation with the DEFF.
- Identification and registration of new I&APs, in addition to those already registered for the project.
- Fixing of a notice board for the duration of the revised BAR commenting period.
- Written notice to all I&APS (electronically).
- Placement of advertisements in the Ilanga, Zululand Observer and the Mercury newspapers.
- Hosting of BAR on a publically accessible website for the comment and appeal periods.

### 2.1 TIMEFRAMES

The development of the Bhangazi Cultural Heritage Lodge has triggered the need for a BA process to be followed, to apply for the EA in terms of the EIA Regulations. The revised draft BAR (BAR) and Draft Environmental Management Programme (EMPr) will be made available to registered I&APs as part of the PPP. The EAP aims to run a 51-day PPP from 24 August 2020 to 16 October 2020. The 51 days consists of the NEMA Regulated 30-day PPP, as well as an additional 21 days as required by Regulation 4.3 of the Directions, which states that:

*“Timeframes or periods extended in terms of the repealed Directions, for any services and actions referred to in the Annexures which were suspended on 27 March 2020 and are now resumed in terms of these Directions, are extended or deemed to be extended by an additional 21 days or such further date as may be determined by the relevant authority”.*

A Project schedule (Appendix 1) has been developed for the Project, with key dates as follows:

**Table 2-1: Project timeline**

Activity	Completion Timeframe
Draft BAR Compilation	13 July 2020 – 10 August 2020
Finalisation of BAR and preparation for PPP	10 August 2020 – 21 August 2020
51-day PPP	24 August 2020 – 16 October 2020.
Finalisation of BAR	17 October 2020 – 29 October 2020
Submission to DEFF	30 October 2020

## **2.2 BASIC ASSESSMENT PROCESS**

The Applicant is in the process of undertaking the following activities as part of the Assessment Process:

- Submission of the Public Participation Plan, in line with the National Disaster Management Directions for NEMA applications.
- Compilation of the revised DBAR and EMPr, including the PPP.
- Notification of I&APs of the revised BAR.
- 51-day PPP and review of revised DBAR and EMPr.
- Review and decision by the competent authority (i.e. DEFF).
- Appeal Phase.

## **2.3 SITE VISITS**

An initial site visit for the proposed project was held on 17 May 2019 at the request of the Provincial DAFF. The reason for the site visit was for DAFF to get an understanding of the proposed Project and the potential impacts it may impose onto forestry.

An additional site visit was undertaken by Nuleaf and the Bhangazi Community Trust on 22 January 2020 in response to the DEFF's EA refusal. The purpose of this was to plot disturbed areas within the proposed development envelope and to identify opportunities for alternative development of the chalets within the forest with minimal disturbance to vegetation.

Furthermore, the CA and commenting authorities undertook additional site visits as outlined under Section 1.2.

## **2.4 REGISTER OF I&APs**

As part of the initial BA process, a stakeholder database was developed from the database maintained by the iSimangaliso Wetland Park Authority. Stakeholder details were verified and updated as necessary. In complying with the EIA Regulations, ERM will notify registered stakeholders of the new PPP via email. Additional stakeholders and interested and affected parties (IA&Ps) will be registered on the database throughout the consultation process. Notification of the new I&APs will be facilitated as described in Section 2.5.

## **2.5 I&AP NOTIFICATION IN TERMS OF REGULATION 41 OF EIA REGULATIONS, 2014**

### 2.5.1 *Site Notices*

According to the EIA Regulations, a notice board must be fixed at a place conspicuous to, and accessible by, the public; (i.e. at the boundary, on the fence or along the corridor of the site).

Site notices will be erected and will be the required size in accordance with the EIA Regulations, as well as laminated and mounted to steel poles (where possible). This will ensure that the site notices are available for the full duration of the PPP. The site notices will be in both English and isiZulu to accommodate the diverse residents in the area. Please see Appendix 4 for the Site Notice template.

### 2.5.2 *Newspaper Adverts*

Three newspaper adverts will be published as follows:

- In isiZulu, in the Ilanga newspaper; and
- In English, in the Zululand Observer and the Mercury .

The advertisements will outline the Project, as well as the process which will be followed in terms of the EA process. The advertisements will also include contact details of the EAP, as well as how to register as an I&AP. Please see Appendix 5 for the Newspaper Advisement template.

## 2.6 *THE DRAFT BAR AND EMPr AVAILABILITY*

The Draft BAR will be submitted to the DEFF electronically, in line with the Directions. For the greater public, the reports will be made available on ERM's website and each I&AP will be sent a link to access the reports upon commencement of the PPP. Alternatively, the BAR can be emailed to I&APs upon request, or copies made available on discs or memory sticks as per Annexure 2 of the COVID-19 Directions. During this time, all comments and concerns will be taken into consideration and recorded. All responses to these comments will be presented to the DEFF as part of the Final BAR and EMPr.

Registered I&APs will be informed of the submission of the final BAR as well as DEFF's decision on the BAR adjudication.

## 2.7 *NOTIFICATION OF THE DECISION MADE BY THE DEFF*

Once the DEFF has made a decision on the Draft BAR and EMPr, an email will be sent to each I&AP notifying them of the decision, as well as the link to the EA issued by DEFF. If the I&AP cannot access the EA online, they must contact the EAP who will use one of the following methods to ensure the I&AP receives the document:

- e-mail
- ERM website
- Zero Data Portal
- Cloud Based Services



# Appendix 1- Project Schedule

Activity	Completion Timeframe
Draft BAR Compilation	13 July 2020 – 10 August 2020
Finalisation of BAR and preparation for PPP	10 August 2020 – 21 August 20
51-day PPP	24 August 2020 - 16 October 2020.
Finalisation of BAR	17 October 2020 – 29 October
Submission to DEFF	30 October 2020

## **Appendix 2- I&AP Database**

Organisation	Stakeholder Subtype	Name	Surname	Organisation Interest
Amajuba District Municipality	District Municipal	M	Pumes	Commenting Authority
City of uMhlathuze	I&AP	Sharin	Govender	Information
City of uMhlathuze Local Municipality	Local Municipal	Admin		Commenting Authority
Department of Agriculture, Forestry and Fisheries: Fisheries Management	National	Siphokazi	Ndundane	Commenting Authority
Department of Agriculture, Forestry and Fisheries: Cetane	National	Veronica	Mangala	Commenting Authority
Department of Agriculture Forestry and Fisheries	National	Chris	Wilkie	Commenting Authority
Department of Agriculture, Forestry and Fisheries	National	Deon	Durholtz	Commenting Authority
Department of Agriculture, Forestry and Fisheries: Fisheries Operational Support	National	Sue	Middleton	Commenting Authority
Department of Agriculture, Forestry and Fisheries: Fisheries Research and Development	National	Justice	Matshili	Commenting Authority
Department of Agriculture, Forestry and Fisheries: Resources Research	National	Kim	Prochazka	Commenting Authority
Department of Agriculture, Forestry and Fisheries: Resource Research	National	Janet	Coetzee	Commenting Authority
Department of Economic Development, Environmental Affairs and Tourism	Provincial	Ntomboxolo	Boni	Commenting Authority
Department of Environmental Affairs	National	Milicent	Solomons	Commenting Authority
Department of Environmental Affairs	National	Nosipho	Ngcaba	
Department of Environmental Affairs	Competent Authority	Dee	Fischer	Information
Department of Environmental Affairs	I&AP	Londeka	Ngcobo	
Department of Environmental Affairs: Oceans and Coasts	National	Nosipho	Peterson	Commenting Authority
Department of Environmental Affairs: Oceans and Coasts	National	Shonisani	Munzhedzi	Commenting Authority
Department of Environmental Affairs: Oceans and Coasts	National	Gqobani	Popose	Commenting Authority

Organisation	Stakeholder Subtype	Name	Surname	Organisation Interest
Department of Environmental Affairs: Oceans and Coasts	National	Jonas	Mphepya	Commenting Authority
	National	Andy	Cockcroft	Commenting Authority
	National	Mike	Meyer	Commenting Authority
	National	Herman	Oosthuizen	Commenting Authority
	National	Alan	Boyd	Commenting Authority
Elephant Lake Group	I&AP	Deon	Steyn	Information
eThekweni Municipality	Metropolitan Municipal	Peron	Amein	Commenting Authority
	Metropolitan Municipal	Sean	O'Donoghue	Commenting Authority
	Metropolitan Municipal	Sipho	Nzuza	Commenting Authority
	Local Municipal	Chumisa	Thengwa	Commenting Authority
	Local Municipal	Diane	VanRensburg	Commenting Authority
Ezemvelo KZN Wildlife	Provincial	Nerissa	Pillay	Commenting Authority
	Provincial	Santosh	Bachoo	Commenting Authority
	Provincial	Andy	Blackmore	Commenting Authority
	Provincial	Cedric	Coetsee	Commenting Authority
	Provincial	Kevin	Green	Commenting Authority
	Provincial	Tamsyn	Livingstone	Commenting Authority
	Provincial	George	Nair	Commenting Authority
	Provincial	Caroline	Fox	Information
	Provincial	Ashantia Nerissa	Pillay	
Ezemvelo KZN Wildlife, Scientific Services	Provincial	Jennifer	Olbers	Information
iLembe District Municipality	District Municipal	Nonhlanhla	Gamede	Commenting Authority
Ingquza Hill Local Municipality	Local Municipal	Admin		Commenting Authority
iSimangaliso Wetland Park Authority	Parks	Terri	Castis	I&AP
	Parks	Andrew	Zaloumis	I&AP
	Parks	Thembi	Buthelezi	I&AP
	I&AP	Siboniso	Mbense	Information
	I&AP	Phumlani	Lugagu	Information
King Cetshwayo District Municipality	District Municipal	Admin		Commenting Authority
KwaDukuza Local Municipality	Local Municipal	Ricardo	Mthembu	Commenting Authority
KZN Department of Agriculture and Rural Affairs	Provincial	Peter	Kuyler	Commenting Authority

Organisation	Stakeholder Subtype	Name	Surname	Organisation Interest
KZN Department of Cooperative Governance and Traditional Affairs	Provincial	Thando	Tubane	Commenting Authority
	Provincial	Vishnu	Govender	Commenting Authority
	Provincial		Mzila	Commenting Authority
KZN Department of Economic Development, Tourism and Environmental Affairs	Provincial	Omar	Parak	Competent Authority
	Provincial	Bonisiwe	Sithole	Competent Authority
	Provincial	Kim	van Heerden	Competent Authority
	Provincial	Nombulelo	Zungu	Competent Authority
	Provincial	Sibusiso	Myeza	Competent Authority
	Provincial	Zama	Mbanjwa	Competent Authority
Mandeni Local Municipality	Local Municipal	SB	Zulu	Commenting Authority
Mbhashe Local Municipality	Local Municipal	SV	Poswa	Commenting Authority
Mnquma Local Municipality	Local Municipal	Zonwabele	Plata	Commenting Authority
Mtubatuba Local Municipality	Local Municipal	Harry	Mchunu	Commenting Authority
Ndlambe Local Municipality	Local Municipal	Rolly	Dumezweni	Commenting Authority
Ngqushwa Local Municipality	Local Municipal	Nosipho	Yaphi	Commenting Authority
Nyandeni Local Municipality	Local Municipal	MD	Ngqondwana	Commenting Authority
Port St Johna Local Municipality	Local Municipal	Mlombile	Cingo	Commenting Authority
Ray Nkonyeni Municipality	Local Municipal	Sihle Maxwell	Mbili	Commenting Authority
	Local Municipal	Bridgette	Turrell	Commenting Authority
SAAMBR	I&AP	David	Pearton	
SANParks	National	Elizabeth	Mahlangu	Commenting Authority
Sarah Baartman District Municipality	District Municipal	Ted	Pillay	Commenting Authority
South African Heritage Resources Agency (SAHRA)	National	Briege	Williams	Commenting Authority
	National	John	Gribble	Commenting Authority
South African Maritime Safety Authority (SAMSA)	National	Ravi	Naicker	Commenting Authority
	National	Daron	Burgess	Commenting Authority
	National	Dave	Manley	Commenting Authority
	National	M	Brkovic	Commenting Authority

Organisation	Stakeholder Subtype	Name	Surname	Organisation Interest
South African Maritime Safety Authority (SAMSA) (Durban)	Provincial	Hopewell	Mkhize	Commenting Authority
South African Maritime Safety Authority (SAMSA) (Richards Bay)	Provincial		Lobo	Commenting Authority
South African Navy Hydrographic Office	Navy	A	Kampfer	Information
Sundays River Valley Local Municipality	Local Municipal	I	Manene	Commenting Authority
Umdoni Local Municipality	Local Municipal	X	Luthuli	Commenting Authority
uMfolozi Local Municipality	Local Municipal	SW	Mgenge	Commenting Authority
uMgungundlovu District Municipality	District Municipal	Terence Lancelot Sibusiso	Khuzwayo	Commenting Authority
uMhlathuze Local Municipality	Local Municipal	Nathi	Mthethwa	Commenting Authority
	Local Municipal	Nhlanhla J	Sibeko	Commenting Authority
Umzumbe Local Municipality	Local Municipal	NC	Mgijima	Commenting Authority
	Local Municipal	N	Mgwatyu	Commenting Authority
uThungulu District Municipality	District Municipal	Mandla	Nkosi	Commenting Authority
Zululand District Municipality	District Municipal	Inkosi Mzamo	Buthlezi	Commenting Authority
Richard Evans & Associates		Matthew	Bremner	I&AP
Rhodes University	Private	Nicholas	Scarr	I&AP

# **Appendix 3- Notification Email Template**



**Subject: BASIC ASSESSMENT FOR THE PROPOSED DEVELOPMENT OF BHANGAZI CULTURAL TOURISM LODGE WITHIN THE ISIMANGALISO WETLAND PARK, KWAZULU-NATAL- Updated CRR**

*Reference: 0282731*

Dear Stakeholder,

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 a portion of the 9.94 ha piece of land allocated, which will consist of 60 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.

As such, an application for Environmental Authorisation (EA) was submitted 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). Furthermore, a Final Basic Assessment Report (BAR) was submitted to the National Department of Environment, Forestry and Fisheries (DEFF) (formally known as the Department of Environmental Affairs) for adjudication purposes on 16 July 2019.

A decision on the application was subsequently delivered by DEFF, where the EA was refused. The key issues listed as reasons for the refusal of EA centre around the contention that the EIA process was not compliant with Regulation 44(1) of the 2014 EIA Regulations, as well as certain concerns about the layout of facilities with respect to the potential sensitivities of the site.

ERM and the Bhangazi Community Trust have since made revisions to the planned site layout, taking into account the concerns raised by the Department of Agriculture Forestry and Fisheries (DAFF) as well as other Interested and Affected Parties (I&APs). In this regard, ERM has initiated a new PPP and has revised the Basic Assessment Report to reflect the revisions undertaken. Furthermore, the revised reports are accompanied by a comprehensive Comments and Response Report (CRR), from the previous consultation process, as well as responses received from I&APs regarding the DEFF's decisions and outcomes of the BAR adjudication and appeal process.

The revised Draft Final BAR together with the updated CRR are available for review and comment from **24 August 2020 to 16 October 2020**. The report can be accessed from the Project Website: <https://www.erm.com/en/public-information-sites/basic-assessment-for-the-proposed-cultural-tourism-lodge-development-at-lake-bhangazi>

All comments, issues and responses are to be communicated as follows:

**Attention:** **Stephanie Gopaul**  
**Tel:** 031 265 0033  
**Email:** [commentsandresponses@erm.com](mailto:commentsandresponses@erm.com)

Thank you for your participation during this process.

Yours sincerely,

**ERM**

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

**T** +27 31 265 0033 | **F** +27 31 265 0150

**E** [commentsandresponses@erm.com](mailto:commentsandresponses@erm.com) | **W** [www.erm.com](http://www.erm.com)

# Appendix 4- Site Notice Template



**UKUHLOLWA OKUYISEKELO KOKWAKHIWA OKUPHAKANYISWAYO KWE-BHANGAZI  
CULTURAL TOURISM LODGE NGAPHAKATHI KU-ISIMANGALISO WETLAND PARK,  
KWAZULU-NATALI**

**UKUKHISHWA KOMBIKO OWUHLAKA WOKUHLOLWA OKUYISEKELO UKUZE UMPHAKATHI  
UPHAWULE**

I-Bhangazi Community Trust yanikwa imvume yi-iSimangaliso Wetland Park Authority, ukuthi yakhe indawo yezokuvakasha e-iSimangaliso Wetland Park (okuyiNdawo Yamagugu Yomhlaba). Ngomzamo wokusebenzisa leli lungelo, i-Bhangazi Trust yaphakamisa ukwakha i-Cultural Heritage Lodge esiqeshini somhlaba eyawunikwa esiwu-9.94 ha ezoba namagumbi angama-68 kubandakanya izindawo zokuhlala abasebenzi. Le ndawo iku-Main Road oya e-Cape Vidal kuMasipala Wasekhaya eMtubatuba kuMasipala Wesifunda uMkhanyakude. Ingasemngceleni weselulo esisingizimu esempumalanga yeDamu iBhangazi, entshonalanga nje yomgwaqo i-St Lucia ngaphambi kokuthi unqamule ibhande elisentabeni engasogwini oya e-Cape Vidal.

Lapha kunikezwa isaziso sokuthi i-Bhangazi Community Trust izohambisa isicelo soKugunyazwa Kwezemvelo kuMnyango Wezemvelo Kazwelonke ngokuhambisana noMthetho Wokuphathwa Kwezemvelo Kazwelonke, 1998 (Nombolo 107 ka-1998), njengoba uchitshiyelwe, kanye neZimiso Zomthetho Zokuhlola Umthelela Emvelweni (Isaziso Sikahulumeni R.326). Iphrojekthi izodinga Ukugunyazwa Kwezemvelo ngokusebenzisa Ukuhlolwa Okuyisisekelo ngokoMthetho Wokuphathwa Kwezemvelo Kazwelonke (NEMA) njengoba imisebenzi elandelayo iqalisiwe:

	<b>Imisebenzi yePhrojekthi</b>
GN R 324	Imisebenzi 4, 6, 12, 14
GN R 327	Umsebenzi 12, 30

I-Environmental Resources Management (ERM) iqokiwe njengehhovisi elizimele leSisebenzi Sokuhlola Ezemvelo (EAP) ukuthi lenze Ukuhlola Okuyisisekelo kanye neZinhlelo Zokuhlanganyela Komphakathi ezihambisana nakho maqondana nemisebenzi eqalisiwe.

Umbiko Wokuhlola Okuyisisekelo uyatholakala ukuze kuphawulwe kusukela ngomhla ka-**24 Agasti 2020 ukuya kumhla ka 16 Okthober 2020** (okungukuthi yisikhathi sokuphawula esiyizinsuku ezingama-51) futhi ungatholakala ngokwe-elektronikhi kuwebhusayithi yephrojekthi ekuxhunyweni okulandelayo: <https://www.erm.com/en/public-information-sites/basic-assessment-for-the-proposed-cultural-tourism-lodge-development-at-lake-bhangazi> noma icelwe e-ERM (ukwenzelwa ukudluliswa nge-imeyili).

Ababambiqhaza bayamenywa ukuthi babhalise njengaBantu Abanentshisekelo Nabathintekayo (ama-I&AP) nokuthi bahlanganyele ohlelweni Lokuhlolwa Okuyisisekelo ngokukhomba izinto ezikhathazayo nokunikeza iziphakamiso zokwenza ngcono izinzuzo zephrojekthi. Ama-I&AP abhalisile azohlala aziswa ngesikhathi sohlelo lonke. Ukubhalisa njenge-I&AP, ukuletha imibono yokuphawula, nokuthola ulwazi oluthe xaxa, sicela uxhumane ne-ERM kule mininingwane engezansi.

**Stephanie Gopaul**  
**Ucingo: 031 265 0033**  
I-imeyili: [commentsandresponses@erm.com](mailto:commentsandresponses@erm.com)

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



## **BASIC ASSESSMENT FOR THE PROPOSED DEVELOPMENT OF BHANGAZI CULTURAL TOURISM LODGE WITHIN THE ISIMANGALISO WETLAND PARK, KWAZULU-NATAL**

### **RELEASE OF THE DRAFT BASIC ASSESSMENT REPORT FOR PUBLIC COMMENT**

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 is running an Environmental Authorisation process, under the jurisdiction of the National Department of Environment, Forestry and Fisheries (DEFF, formerly the 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:

	<b>Project Activities</b>
GN R 324	Activity 4, 6, 12, 14
GN R 327	Activity 12, 30

Environmental Resources Management (ERM) has been appointed as the independent Environmental Assessment Practitioner (EAP) office to undertake the Basic Assessment and associated Public Participation Processes in light of the triggered activities.

The updated Basic Assessment Report is available for comment from the **24 August 2020 – 16 October 2020** (i.e. a 51 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).

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.

**Stephanie Gopaul**

**Tel: 031 265 0033**

Email: [commentsandresponses@erm.com](mailto:commentsandresponses@erm.com)

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

# Appendix 5 - Newspaper Advertisement Template

Same as the site notice template, for both isiZulu and English adverts.

# **Appendix 6 - DEFF Decision on EA Application**



## environmental affairs

Department:  
Environmental Affairs  
REPUBLIC OF SOUTH AFRICA

Private Bag X 447· PRETORIA 0001·Environment House 473 Steve Biko Road Arcadia PRETORIA

DEA Reference: 14/12/16/3/3/1/2015

Enquiries: Zamalanga Langa

Telephone: (012) 399 9389 E-mail: [zlanga@environment.gov.za](mailto:zlanga@environment.gov.za)

Mrs Joice Sipiwe Gumede  
Bhangazi Community Trust  
PO Box 1387  
**MTUBATUBA**  
3935

Telephone Number: (035) 550 0068  
Email Address: [Bhangazicommunitytrust@telkomsa.net](mailto:Bhangazicommunitytrust@telkomsa.net)

### PER E-MAIL / MAIL

Dear Mrs Gumede

### **REFUSAL OF ENVIRONMENTAL AUTHORISATION IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT 107 OF 1998), AS AMENDED, GN R982/983/985, AS AMENDED: THE PROPOSED BHANGAZI CULTURAL HERITAGE LODGE, ISIMANGALISO WETLAND PARK IN KWAZULU NATAL PROVINCE.**

With reference to the above application, please be advised that the Department has decided to refuse Environmental Authorisation (EA). The refused (EA) and reasons for the decision are attached herewith.

In terms of Regulation 4(2) of the Environmental Impact Assessment Regulations, 2014, as amended (the EIA Regulations), you are instructed to notify all registered interested and affected parties, in writing and within 14 (fourteen) days of the date of the EA, of the Department's as well as the provisions regarding the submission of appeals that are contained in the Regulations.

In terms of the Promotion of Administrative Justice Act, 2000 (Act No 3 of 2000), you are entitled to the right to fair, lawful and reasonable administrative action; and to written reasons for administrative action that affects you negatively. Further your attention is drawn to the provisions of the Protection of Personal Information Act, 2013 (Act no. 4 of 2013) which stipulate that the Department should conduct itself in a responsible manner when collecting, processing, storing and sharing an individual or another entity's personal information by holding the Department accountable should the Department abuse or compromise your personal information in any way.

Your attention is drawn to Chapter 2 of National Environmental Management Act, 1998 (Act No. 107 of 1998) National Appeal Regulations published under Government Notice R993 in Government Gazette No. 38303 dated 08 December 2014 (National Appeal Regulations, 2014), which prescribe the appeal procedure to be followed. Kindly include a copy of this document (National Appeal Regulations, 2014) with the letter of notification to interested and affected parties in this matter.

*M.S.*

Should any person wish to lodge an appeal against this decision, he/she must submit the appeal to the appeal administrator, and a copy of the appeal to the applicant, any registered interested and affected party, and any organ of state with interest in the matter within 20 days from the date that the notification of the decision was sent to the registered interested and affected parties by the applicant; or the date that the notification of the decision was sent to the applicant by the Department, whichever is applicable.

**Appeals must be submitted in writing in the prescribed form to:**

The Director: Appeals and Legal Review of this Department at the below mentioned addresses.

**By email:** [appealsdirector@environment.gov.za](mailto:appealsdirector@environment.gov.za);

**By hand:** Environment House  
473 Steve Biko  
Arcadia  
Pretoria  
0083; or

**By post:** Private Bag X447  
Pretoria  
0001

Please note that in terms of Section 43(7) of the National Environmental Management Act, Act No. 107 of 1998, as amended, the lodging of an appeal will suspend the environmental authorisation or any provision or condition attached thereto. In the instance where an appeal is lodged, you may not commence with the activity until such time that the appeal is finalised.

To obtain the prescribed appeal form and for guidance on the submission of appeals, please visit the Department's website at [https://www.environment.gov.za/documents/forms#legal\\_authorisations](https://www.environment.gov.za/documents/forms#legal_authorisations) or request a copy of the documents at [appealsdirector@environment.gov.za](mailto:appealsdirector@environment.gov.za).

Kindly include a copy of this document with the letter of notification to interested and affected parties.

Yours faithfully



**Mr Sabelo Malaza**  
**Chief Director: Integrated Environmental Authorisations**  
**Department of Environmental Affairs**  
**Date:** 30/10/2019

cc:	Stephanie Gopaul	ERM South Africa	Email: <a href="mailto:Stephanie.gopaul@erm.com">Stephanie.gopaul@erm.com</a>
	Zama Mbanjwa	DEDTEA	E-mail: <a href="mailto:Zama.mbanjwa@kzndae.gov.za">Zama.mbanjwa@kzndae.gov.za</a>
	Siboniso Mbense	Isimangaliso Wetland Authority	E-mail: <a href="mailto:siboniso@isimangaliso.com">siboniso@isimangaliso.com</a>





## **environmental affairs**

Department:  
Environmental Affairs  
REPUBLIC OF SOUTH AFRICA

# **Refusal of Environmental Authorisation**

**In terms of Regulation 20. (1)(b), of the Environmental Impact Assessment Regulations, 2014, as amended.**

**The proposed Bhangazi Cultural Heritage Lodge, Isimangaliso Wetland Park within Mtubatuba Local Municipality, KwaZulu Natal Province.**

**uMkhanyakude District Municipality**

<b>Application Reference Number:</b>	<i>14/12/16/3/3/1/2015</i>
<b>Applicant:</b>	<i>Bhangazi Community Trust</i>
<b>Location of activity:</b>	<i>Isimangaliso Wetland Park; Mtubatuba Local Municipality; uMkhanyakude District Municipality; KwaZulu Natal Province.</i>

## Decision

The Department is satisfied, on the basis of information available to it, that the applicant should not be authorised to undertake the activities specified below.

Details regarding the basis on which the Department reached this decision are set out in Annexure 1.

### Activities refused

By virtue of the powers conferred on it by the National Environmental Management Act, 1998 (Act 107 of 1998) and the Environmental Impact Assessment Regulations, 2014, as amended, the Department hereby refuses environmental authorisation for –

#### **BHANGAZI COMMUNITY TRUST**

with the following contact details –

Mrs Joice Sipiwe Gumede

Bhangazi Community Trust

PO Box 1387

**MTUBATUBA**

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to undertake the following activities (hereafter referred to as "the activity") indicated in Listing Notice 1 and Listing Notice 3, as amended (Regulations GN R. 983 and GN R. 985 as amended):

Activity number	Activity description
<p><u>GN R. 983 Item 12:</u> <i>The development of buildings exceeding 100m in size where such development occurs-</i> <i>(c) if no development setback exists, within 32 metres of a watercourse, measured from the edge of a watercourse.</i></p>	<p>The proposed lodge will have a combine buildings footprint (restaurant, tourist tents and staff accommodation) of approximately 1,800m<sup>2</sup> and is located within 32m from the edge of Lake Bhangazi.</p>
<p><u>GN R. 983 Item 30:</u> <i>Any process or activity identified in terms of section 53(1) of the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004).</i></p>	<p>The proposed lodge is located within the iSimangaliso Wetland Park which is protected under the NEM: Biodiversity Act.</p>
<p><u>GN R. 985 Item 4:</u> <i>The development of a road wider than 4 metres with a reserve less than 13, 5 metres.</i> <i>(d) KwaZulu-Natal</i> <i>v. World Heritage Sites</i></p>	<p>The access road to the proposed lodge is wider than 4m to accommodate for a left and right lane with a reserve less than 13.5 metres.</p>
<p><u>GN R. 985 Item 6:</u> <i>The development of resorts, lodges, hotels and tourism or hospitality facilities that sleeps 15 people</i> <i>(d) KwaZulu-Natal</i> <i>ix. World Heritage Sites;</i></p>	<p>The proposed lodge is within iSimangaliso and will provide for 22 sleeping units.</p>
<p><u>GN R. 985 Item 12:</u> <i>Clearance of an area of 300 m<sup>2</sup> or more of indigenous vegetation except where such clearance of indigenous vegetation is required for maintenance purposes undertaken in accordance with a maintenance plan.</i> <i>(b) in KwaZulu-Natal:</i> <i>(ix) World Heritage Sites</i></p>	<p>The proposed development is located within iSimangaliso and will require the clearing of at least 1,800m<sup>2</sup> for the footprints of the units and restaurant.</p>
<p><u>GN R. 985 Item 14:</u> <i>The development of</i> <i>(viii) jetties exceeding 10 square metres in size;</i> <i>(v) World Heritage Sites</i></p>	<p>The proposed lodge is within iSimangaliso and will have a combined buildings footprint (restaurant, tourist tents and staff accommodation) of approximately 1,800m<sup>2</sup>. The jetty is proposed to be 20 m<sup>2</sup> in size.</p>

as described in the final basic assessment report (BAR) dated July 2019 at:

21 Digit SG code:

T	O	L	U	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
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Coordinates:

Layout alternative 2 (Preferred)	Latitude	Longitude
Centre coordinates	28°06 '48.2"S	32°32 '11.0"E

- for the proposed Bhangazi Cultural Heritage Lodge in iSimangaliso Wetland Park within Mtubatuba local municipality, KwaZulu Natal Province, hereafter referred to as "the property".

Infrastructure associated with the proposed Bhangazi Cultural Heritage Lodge includes:

- Ten x 2-bed units with the option of catered and self-catering;
- Eight x 4-bed family units with the option of catered and self-catering;
- Trail camp - four x 2-bed units with a communal braai area;
- A restaurant located close to the lake shore with a footprint of 300m<sup>2</sup>, including a recreation deck and pool area.
- Five staff quarters each with a footprint area of 75m<sup>2</sup> and single storey in height.
- A Jetty with a footprint size of 20m<sup>2</sup> at the in south-western corner of Lake Bhangazi South.
- The parking arrangements for the project include:
  - Visitors parking (18)
  - Chalet parking (13)
  - Bus parking (2)
  - Staff parking (3)
  - Lodge vehicles (2)
  - Game drive (1)
- The reception is located within the day visitors /gathering area.

## Legislative Requirements

### Scope of authorisation

1. Authorisation is refused for the proposed development of Bhangazi Cultural Heritage Lodge in iSimangaliso Wetland Park in KwaZulu Natal Province.

### Notification of authorisation and right to appeal

2. The holder of the authorisation must notify every registered interested and affected parties, in writing and within 14 (fourteen) calendar days of the date of this refused environmental authorisation, of the decision to refuse the activities.
3. The notification referred to must –
  - 3.1. specify the date on which the authorisation was issued;
  - 3.2. inform the interested and affected party of the appeal procedure provided for in the National Appeal Regulations, 2014;
  - 3.3. advise the interested and affected party that a copy of the authorisation will be furnished on request; and
  - 3.4. give the reasons of the competent authority for the decision.

Date of refusal of environmental authorisation: 30/10/2019



Mr Sabelo Malaza

Chief Director: Integrated Environmental Authorisations

Department of Environmental Affairs

## Annexure 1: Reasons for Decision

### 1. Information considered in making the decision

In reaching its decision, the Department took, *inter alia*, the following into consideration -

- a) The information contained in the amended application form submitted to this Department on 16 July 2019;
- b) The information contained on the draft basic assessment report submitted to this Department on 15 April 2019;
- c) The Department's comments on the draft basic assessment report dated 15 May 2019;
- d) Comments received from Interested and Affected Parties (I&APs) included in the BAR dated July 2019;
- e) The information contained in the final basic assessment report received by this department on 16 July 2019;
- f) Findings of the site visit undertaken on the 11 July 2019 with EAP, Isimangaliso Wetland Park Authority and Bhangazi Community Trust;
- g) The information contained in the specialist studies contained in the Basic Assessment Report dated July 2019;
- h) Comments from Department of Agriculture Forest and Fisheries dated 31 May 2019;
- i) Comments from Rhode University: Public Service Accountability Monitor (PSAM) dated 01 June 2019 and
- j) The objectives and requirements of relevant legislation, policies and guidelines, including section 2 of the National Environmental Management Act, 1998 (Act No. 107 of 1998), as amended.

### 2. Key factors considered in making the decision

A summary of the issues which, in the Department's view, were of the most significance is set out below-

- a) Non-compliance with Regulation 44 (1) of the Environmental Impact Assessment Regulations (EIA) 2014 as amended which state that *"the applicant must ensure that the comments of interested and affected parties are recorded in reports and plans and that such written comments, including responses to such comments and records of meetings, are attached to the reports and plans that are submitted to the competent authority in terms of these Regulations"*
- b) Comments from Department of Agriculture Forest and Fisheries (DAFF) dated 31 May 2019 which were email to the EAP on the 31 May 2019 are not included in the final BAR.

- c) Comments from Rhodes University: PSAM dated 1 June 2019 and emailed to the EAP on the 01<sup>st</sup> June 2019

### 3. Findings

After consideration of the information and factors listed above, the Department made the following findings -

- a) The final BAR submitted does not comply with Regulation 44. (1) of EIA Regulations 2014 as amended.
- b) The final BAR submitted does not include comments from Rhode University (PSAM) dated 1 June 2019 which were emailed to the EAP on the 1 June 2019. PSAM notified the Department via email that their comments were forwarded to the EAP on the 21 June 2019 and the EAP responded that comments from PSAM was not received. PSAM provided proof from Rhodes University's Information Technology Services that the email was sent to the EAP and further the same which was sent to the EAP, DAFF was also copied on the email and national DAFF office confirmed that comments from PSAM were received.
- c) The final BAR submitted also does not include comments from DAFF dated 31 May 2019 which were emailed to the EAP on the 31 May 2019. The EAP acknowledge the receipt of the comments from DAFF via email on the 31 May 2019.
- d) DAFF's in their comments dated 31 May 2019 stated the following:
  - (i) that the proposed 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.
  - (ii) 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.

- (iii) 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.
- (iv) In the case of the Bhangazi Lodge, the ecotourism 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 ecotourism 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?
- (v) 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
- (vi) 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 consider 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 stories, 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.

- (vii) 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.
  - (viii) The Environmental Impact Management Programme (EMPr) must include Method Statement affecting natural forest for all activities to be undertaken.
- e) Taking into consideration comments from DAFF dated 31 May 2019, the positioning of the restaurant, swimming pool and staff housing as indicated in the layout Map (alternative layout 2-preferred) cannot be considered as exceptional circumstance as required by Section 3(3) (a) of the National Forest Act of 1998.
  - f) Section 3(3) (a) of the National Forest Act of 1998 which state 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*”.
  - g) DAFF in their comments that 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.
  - h) The location of the staff housing as indicated in the layout plan must be moved to degraded area or to existing areas. The staff housing is also not dependent on a natural setting and is not an exceptional circumstance as required by Section 3(3) (a) of the National Forest Act of 1998.
  - i) The positioning of the ecotourism accommodation are accepted by DAFF because the units will be placed among the trees and these units can be considered as an exceptional circumstances as required in terms of Section 3(3) (a) of the National Forest Act of 1998. DAFF's comments dated 15 May 2019

states that, when looking at the land use type and looking at the number of trees and canopies affected as indicated in the map under figure 7 of the visual impact assessment study included in the BAR, 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 DAFF previous comments.

In view of the above, the competent authority is of the opinion that the proposed development will conflict with the general objectives of integrated environmental management stipulated in Chapter 5 of the National Environmental Management Act, 1998 (Act No. 107 of 1998), as amended, as the process followed does not fulfil the requirements of Appendix 1 and Regulation 44. (1) of EIA Regulations 2014 as amended. Therefore, the environmental authorisation is hereby **refused**.

# **Appendix 7 - Bhangazi Lodge Appeal Discussion**

# BHANGAZI LODGE APPEAL DISCUSSION

DISCUSSION WITH DEFF & DAFF

14 Feb 2020



# APPEAL RESPONSE REPORT

## Basic information

- **PROJECT NAME/TITLE:**
  - Basic Assessment for the Bhangazi Cultural Heritage Lodge, iSimangaliso Wetland Park, South Africa
- **PROJECT LOCATION:**
  - iSimangaliso Wetland Park, Norther Kwazulu Natal, South Africa
- **PROJECT REFERENCE NUMBER:**
  - 14/12/16/3/3/1/2015
- **DATE PROJECT/ACTIVITY AUTHORISED:**
  - Authorisation Refused 30/10/2019. Note that the Appeals window was increased to 29/02/2020
- **DATE NOTIFIED OF DECISION:**
  - 01/11/2019

# DEFF'S REFUSAL TO GRANT EA: KEY FACTORS

1. Non-compliance with Regulation 44(1) of the Environmental Impact Assessment Regulations (EIA) 2014 (Public Participation Process)
  - The DEFF references two stakeholder submissions that were not included in the Final Basic Assessment Report (FBAR) submissions:
    - A submission from DAFF, submitted to the EAP on the 31/05/2019; and
    - A submission from Rhodes University (PSAM) submitted to the EAP on the 01/06/2019.
2. Issues relating to the positioning of certain high impact non-‘exceptional circumstance’ infrastructure in an high sensitivity area, specifically:
  - Staff housing.
  - Restaurant and communal pool complex.

## RESPONSE: NON-INCLUSION OF DAFF PSAM COMMENTS

- As per the NEMA regulations, the DBAR was disclosed for comment on the 02/05/2019 until 01/06/2019 for submission of comments. These comments were included in the FBAR, which was submitted to DEFF on the 16/07/2019. This included initial comments from both PSAM and DAFF.
- The DAFF and PSAM submitted additional comments on the final day of the comment period, 01/06/2019. The EAP acknowledges that, due to an administrative error, these comments were not initially included in the Comments and Response Report (CRR) as part of the FBAR submission (16/07/2019).
- However, once the EAP became aware of these comments, the oversight regarding their non-inclusion was discussed with the DEFF Case Officer (CO) on 20/08/2019 and arrangements were made with the CO for the EAP to submit an updated CRR.
- In the updated CRR, the EAP comprehensively responded to the DAFF and PSAM comments and submitted such to the DEFF Case Officer on the 30/08/2019 (Note that the DEFF EA refusal letter is dated 30/10/2019). Proof of submission and delivery of this updated report is included as Annexure...
- This issue was further addressed by the EAP in so far as all stakeholders were notified of the updated CRR in a letter from the EAP dated 02/09/2019, and the stakeholders were furnished a copy thereof.

Following the above, it would appear from the Refusal of EA, that DEFF did not take the amended CRR into account during the processing and adjudication of the application (despite the arrangements between the DEFF and the EAP to submit such). It is therefore reasoned that, with the submission of the updated CRR, the application was in fact fully compliant with Regulation 44(1) of the Environmental Impact Assessment Regulations (EIA) 2014 as amended.

# DISCUSSION: POSITIONING OF THE STAFF ACCOMMODATION & MANAGEMENT INFRASTRUCTURE

- DEFF, in the refusal letter, make the erroneous inference that the proposed staff housing area is positioned within the undisturbed forest area on a greenfield site
  - As per the statement under point (h) of the refusal letter which reads ...*'The location of the staff housing as indicated in the layout plan must be moved to a degraded area or to existing areas...'*
- In fact, the layout map in the FBAR submission indicates that the staff housing is positioned in a disturbed area (cleared / developed).





# DISCUSSION: POSITIONING OF THE RESTAURANT / POOL COMPLEX

- DAFF, in principle, is not opposed to the development of the chalet units within the forested area.
  - DAFF's comment '*...the ecotourism accommodation (units placed among trees) can in principle be accommodated, but then the size of these units have to be acceptable with minimal damage to the forest canopy..*'
- DAFF recommend:
  - reducing the size of the units and developing alternative unit design to accommodate specific sites; and that
  - the restaurant complex be relocated to a disturbed area on the site; and that
  - A method statement be developed for all activities within the natural forest.
- A specialist botanical survey, commissioned at the behest of DAFF and included in the FBAR, and using a specialist recommended by DAFF, makes the finding that
  - The development of the units within the forest *may* have an impact relating to the removal of trees
    - loss of canopy cover and understorey cover, small increased risk of erosion
  - Residual impacts of this activity are negligible, and
  - It is anticipated that the forest canopy and undergrowth will recover, with mitigation as follows:
    - enrichment planting,
    - the use of raised platforms and boardwalks and
    - modular construction of units to best fit each particular site.

## Note:

- 4 protected tree species (NFA) were identified within the greater study area.
- Only 1 protected species were identified within the chalet development zone (Marula).
- No protected plant species (undergrowth) were identified within the study area (but may occur).
- This assessment was done on an assumed footprint area of 100m<sup>2</sup> per unit.

## Trees that may be impacted (Protected species highlighted)

Development section	Number of trees in 10 x 10 m plot with stem circumference (cm)				Other species present
	10-29	30-59	>= 60	Species > 60	
<b>Lodge accommodation (11X2)</b>					
unit 1 a	4	3	2	<i>Diospyros natalensis</i> <i>Clerodendron glabra</i>	<i>Vepris lanceolata</i> <i>Ziziphus mucronata</i>
unit 2 a	0	4	0		<i>Sersia nebulosa</i> <i>Grewia occidentalis</i> <i>Strichnos Gerradii</i>
unit 3 a	8	0	0		<i>Sclerocarya birrea</i> , <i>Trichelia emmitca</i>
unit 4 a	7	1	0		<i>Trichelia emmetica</i> , <i>Celtis African</i>
unit 5 a	7	0	2	<i>Celtis African</i> , <i>Clerodendron glabra</i>	<i>Vepris lanceolate</i> , <i>Ficus trichopoda</i>
unit 6 a	15	2	1	<i>Vepris lanceolate</i>	<i>Celtis African</i> , <i>Clerodendron glabra</i> , <i>Grewia occidentalis</i> <i>Strichnos Gerradii</i>
unit 7 a	10	0	2	<i>Sclerocarya birrea</i>	<i>Diospyros natalensis</i> ; <i>Harpephyllum caffrum</i>
unit 8 a	7	0	0		<i>Clerodendron glabra</i> , <i>Albizia adianthifolia</i> , <i>Strichnos gerradii</i> <i>Protorhus longifolia</i>
unit 9 a	8	0	1	<i>Trichelia emmetica</i>	<i>Diospyros natalensis</i> <i>Clerodendron glabra</i> <i>Albizia adianthifolia</i>
unit 10 a	6	2	1	<i>Trichelia emmetica</i>	<i>Clerodendron glabra</i> <i>Diaspyros natalensis</i>

					<i>Celtis Africana</i> <i>Ficus trichapodia</i> <i>Ficus craterostoma</i> <i>Hyphaene coriacea</i> <i>Brachylaena discolour</i>
unit 11 a	4	4	2	<i>Albizia adianthifolia</i> <i>Sersia natalensis</i>	<i>Clerodendron glabra</i> <i>Diaspyros natalensis</i> <i>Sersia nebulosa</i>
<b>Lodge accommodation (7 x4)</b>					
unit 1 b	3	4	0		<i>Euclea natalensis</i> <i>Albizia adianthifolia</i>
unit 2 b			2	<i>Albizia adianthifolia</i> <i>Protorhus longifolia</i>	<i>Euclea natalensis</i>
unit 3 b	5	2	2	<i>Albizia adianthifolia</i> <i>Diaspiros natalensis</i>	<i>Clerodendron glabra</i> <i>Brachyleana discolour</i> <i>Celtis Africana</i>
unit 4 b	10	4	0		<i>Albizia adianthifolia</i> <i>Diaspiros natalensis</i> <i>Brachylaena discolour</i>
unit 5 b	9	4	0		<i>Brachylaena discolour</i> <i>Searsia nebulosi</i> <i>Searsia gueniensis</i>
unit 6 b	6	0	1	<i>Protorhus longifolia</i>	<i>Brachylaena discolour</i> <i>Ziziphus mucronata</i>
unit 7 b	Could not fit in, leave out				
<b>Main complex (plot 25x25)</b>	10	6	3	<i>Albizia adianthifolia</i> <i>Celtis Africana</i> <i>Trichelia emmitica</i>	<i>Ficus craterostoma</i> <i>Hyphaene coriacea</i> <i>Trichelia emmitica</i>

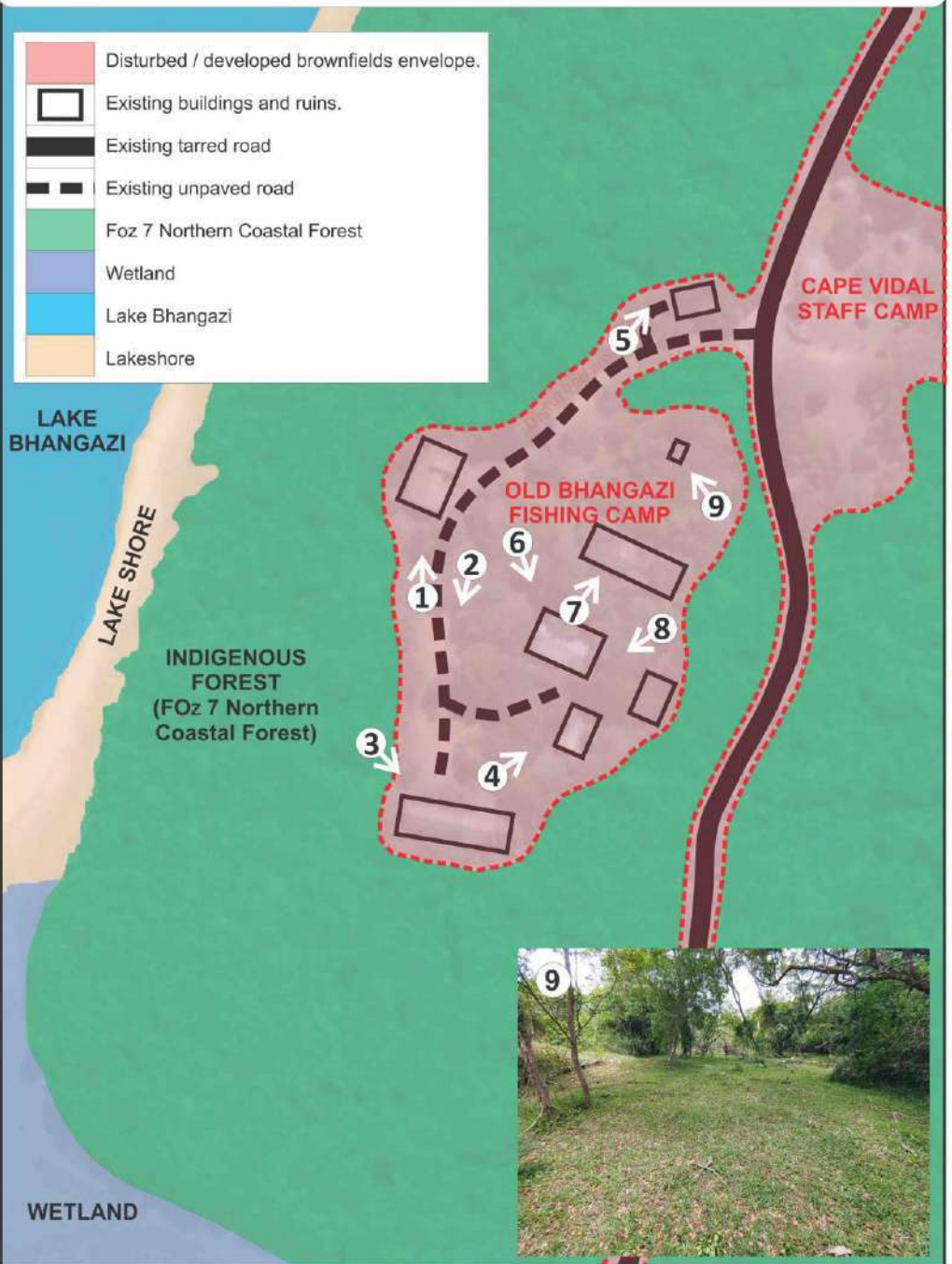
## RESPONSE: SITING OF THE RESTAURANT / POOL COMPLEX

- The restaurant and pool complex, previously located within the forest, has been repositioned to a disturbed area outside the forest.
- The staff housing has been split and repositioned on two separate disturbed areas within the old Bhangazi fishing camp (brownfields sites).
- All development within the forest:
  - Will make use of pre-identified cleared areas (old camping spots) where possible, and
  - Reducing the footprint size of the 11x 2 bed units from 75m<sup>2</sup> to <50m<sup>2</sup>.
  - Reducing the size of the 7x 4 bed units from 75m<sup>2</sup> to <60m<sup>2</sup>
  - Use will be made of elevated decks and boardwalks (no infrastructure will be built on the ground).
  - Will be designed for a modular configuration for best positioning on the site.
- The dual access roads have been consolidated to minimize the footprint impact on the forest and restricted to only one access road (existing) in and out of the facility.
- Whilst it is noted that DAFF and the DEA accept the positioning of the ecotourism units (tented chalets) within the forest, the appellant nonetheless proposes further mitigation of potential impacts related hereto by:
  - Limit on the maximum tree removal size of 180mm diameter .
  - No removal of any listed tree species as Protected in terms of the NFA.
  - Appointment of a landscaping contractor to assist with the transplanting trees where at all possible.
- These measures will result in the following nett improvements / benefits to the environment:
  - Original potentially cleared forest area (tented chalets, restaurant, staff): **approx. 1900m<sup>2</sup>**
  - Revised potentially cleared forest area (tented chalets): **approx. 960m<sup>2</sup>**
  - By removing the restaurant complex from the forested area, an opportunity is created to space the tented chalet units further apart, and therefore more opportunity is created to find a site that can accommodate the units without significant tree clearing.

# RESPONSE: METHOD STATEMENT FOR ACTIVITIES WITH THE FOREST

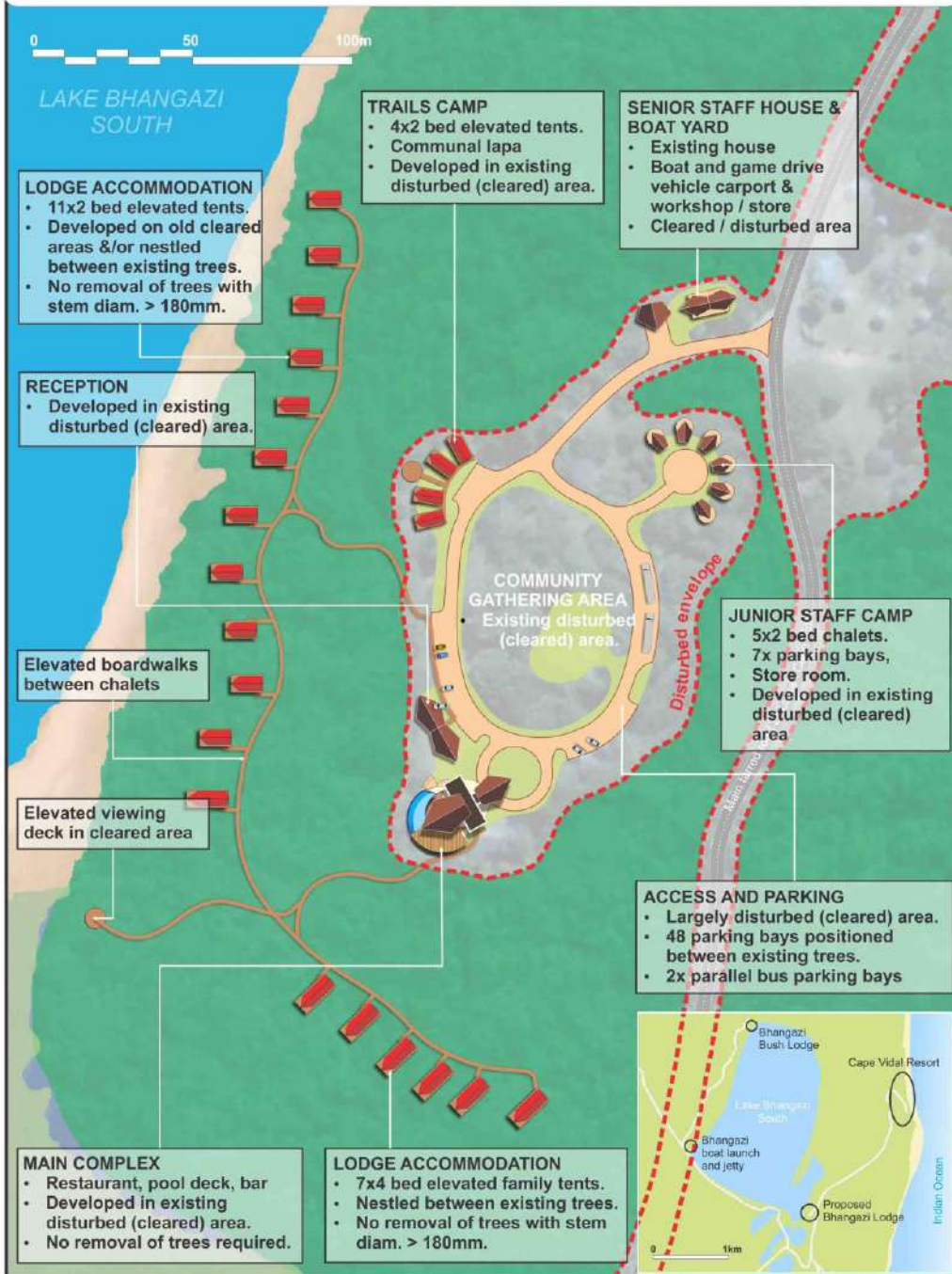
- Pre-construction
  - Site establishment (Botanist and ECO):
    - Identify suitable development envelopes.
    - Identify boardwalk alignment.
    - Mark protected trees and trees exceeding 180mm diam.
    - Identify possible pruning or thinning requirements.
    - Identify possible tree specimens to be transplanted, and mark accordingly.
    - Clearly define each development envelope with danger tape.
    - Identify and define proposed construction access, lay-down, storage and mixing areas.
    - Drafting and submission of permits for removal, transplanting and/or pruning of forest vegetation, as may be required for each site.
  - Design (Architect / Landscape Architect)
    - Develop most appropriate modular layout / arrangement of tented chalet units for each site (site specific).
  - Contractor
    - Ensure contractor has experience with construction in similar environments.
    - ECO to undertake project specific environmental awareness and training course with all construction staff.
    - Establishment of a site nursery for transplanting and enrichment planting.
- Construction
  - ECO to undertake regular (monthly) site monitoring and auditing procedures (measured against the EMPr).
  - EO to report to ECO on weekly basis.
  - Fine system to be instituted.
- Post construction / rehabilitation
  - Removal of all construction debris and material.
  - Rehabilitation of all disturbed areas.
  - Counter erosion measures.
  - No sign-off or final payments (retention) before site is rehabilitated to ECO approval.

# BHANGAZI LODGE SITE ASSESSMENT 02/2020

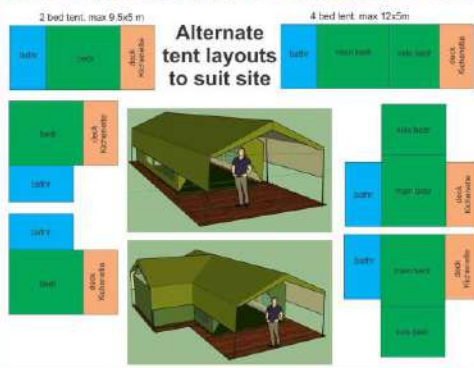


# BHANGAZI LODGE SITE LAYOUT PLAN 02/2020

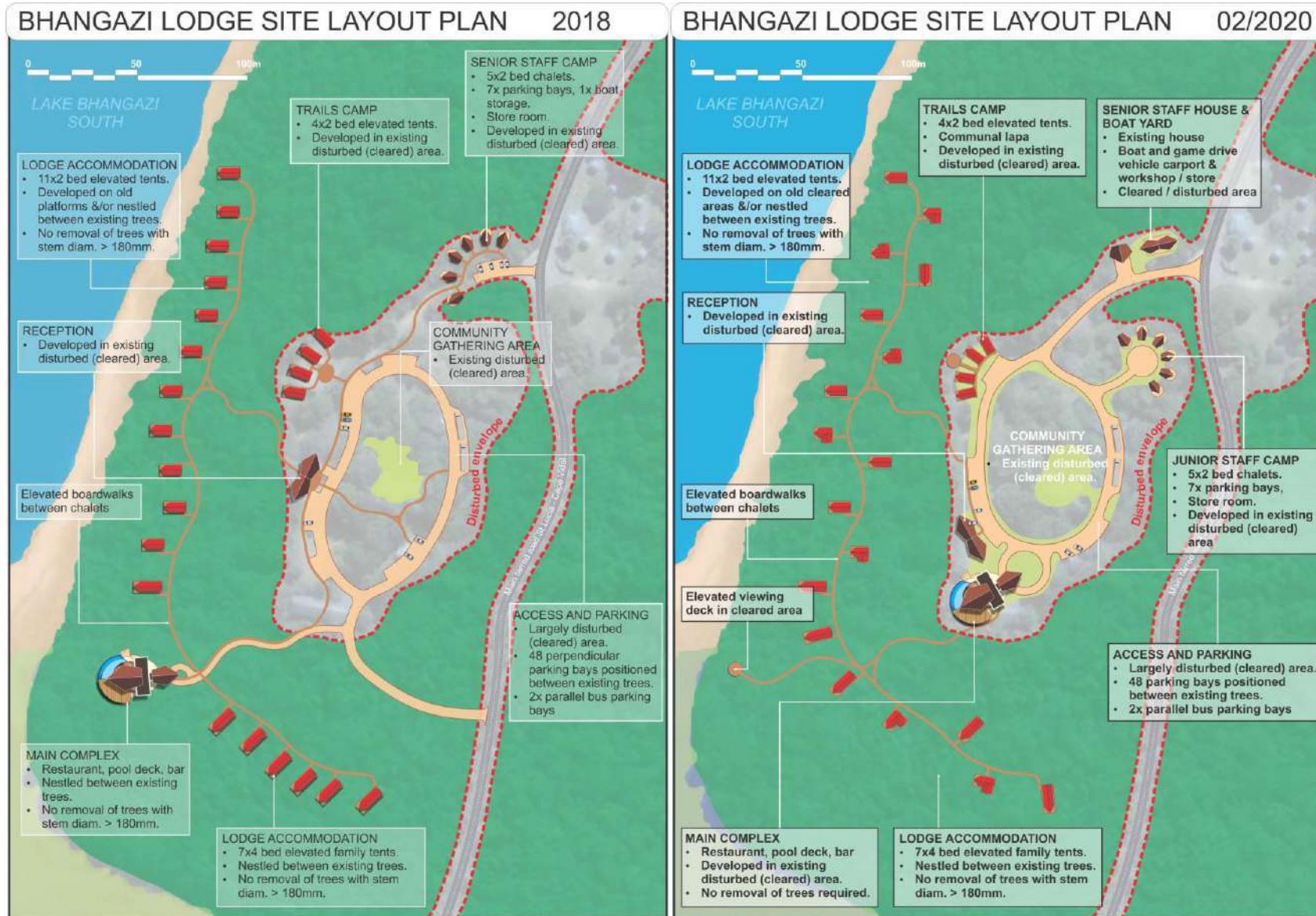
Typical examples of cleared pockets within forested area



Typical look and feel imagery

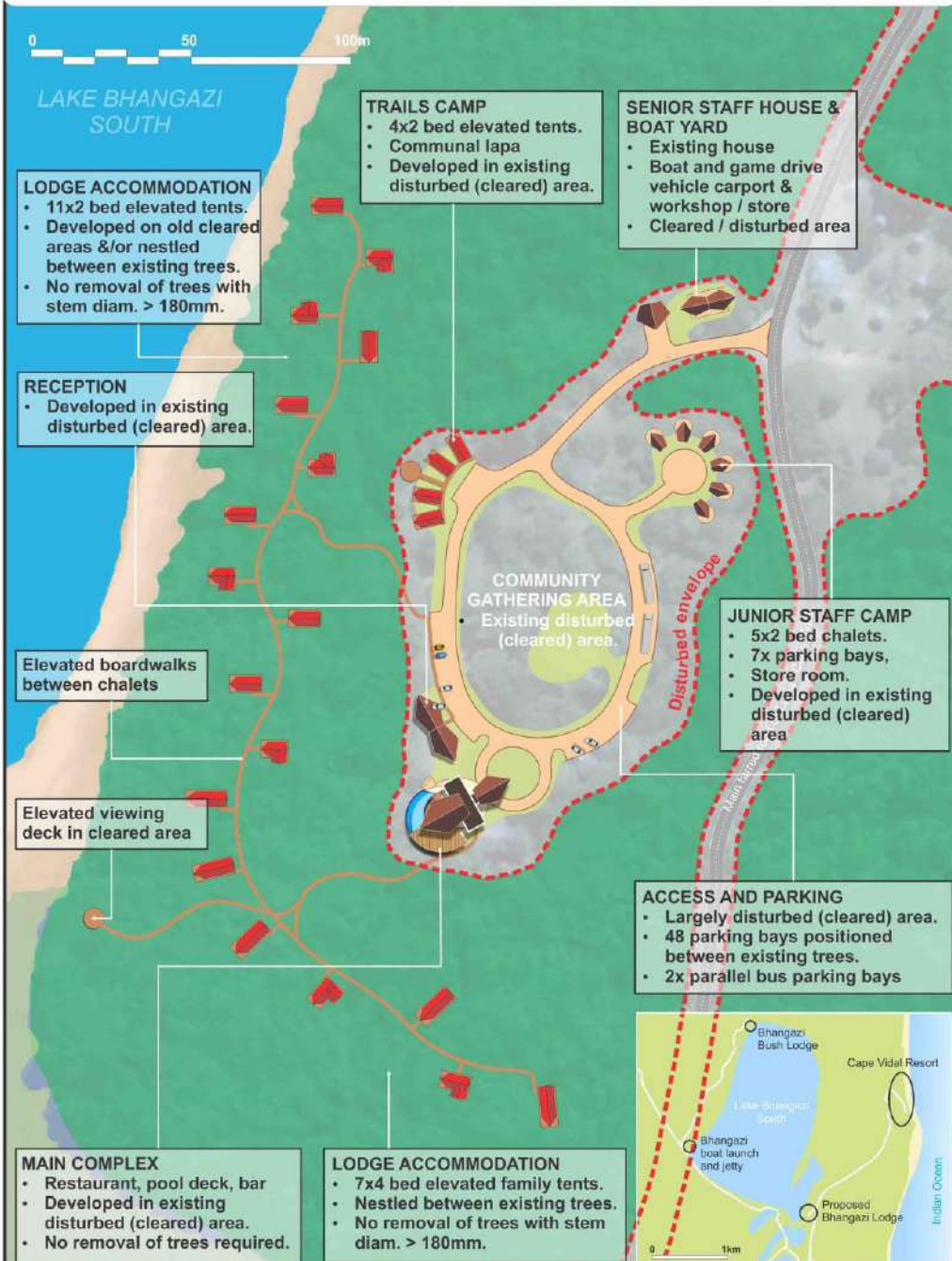


# COMPARISON: ORIGINAL LAYOUT (LEFT) VERSUS REVISED LAYOUT (RIGHT)



# BHANGAZI LODGE SITE LAYOUT PLAN 02/2020

Typical examples of cleared pockets within forested area



**LODGE ACCOMMODATION**

- 11x2 bed elevated tents.
- Developed on old cleared areas &/or nestled between existing trees.
- No removal of trees with stem diam. > 180mm.

**TRAILS CAMP**

- 4x2 bed elevated tents.
- Communal lapa
- Developed in existing disturbed (cleared) area.

**SENIOR STAFF HOUSE & BOAT YARD**

- Existing house
- Boat and game drive vehicle carport & workshop / store
- Cleared / disturbed area

**RECEPTION**

- Developed in existing disturbed (cleared) area.

**COMMUNITY GATHERING AREA**

- Existing disturbed (cleared) area.

**JUNIOR STAFF CAMP**

- 5x2 bed chalets.
- 7x parking bays, Store room.
- Developed in existing disturbed (cleared) area

Elevated boardwalks between chalets

Elevated viewing deck in cleared area

**ACCESS AND PARKING**

- Largely disturbed (cleared) area.
- 48 parking bays positioned between existing trees.
- 2x parallel bus parking bays

**MAIN COMPLEX**

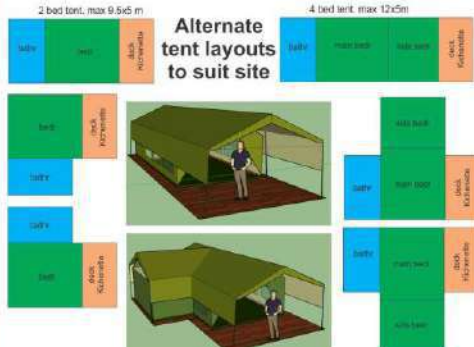
- Restaurant, pool deck, bar
- Developed in existing disturbed (cleared) area.
- No removal of trees required.

**LODGE ACCOMMODATION**

- 7x4 bed elevated family tents.
- Nestled between existing trees.
- No removal of trees with stem diam. > 180mm.



Typical look and feel imagery





# BHANGAZI LODGE SITE LAYOUT PLAN 02/2020

Typical examples of cleared pockets within forested area



0 50 100m

LAKE BHANGAZI SOUTH

**LODGE ACCOMMODATION**  
 • 11x2 bed elevated tents.  
 • Developed on old cleared areas &/or nestled between existing trees.  
 • No removal of trees with stem diam. > 180mm.

**TRAILS CAMP**  
 • 4x2 bed elevated tents.  
 • Communal lapa  
 • Developed in existing disturbed (cleared) area.

**SENIOR STAFF HOUSE & BOAT YARD**  
 • Existing house  
 • Boat and game drive vehicle carport & workshop / store  
 • Cleared / disturbed area

**RECEPTION**  
 • Developed in existing disturbed (cleared) area.

**COMMUNITY GATHERING AREA**  
 Existing disturbed (cleared) area.

**JUNIOR STAFF CAMP**  
 • 5x2 bed chalets.  
 • 7x parking bays, Store room.  
 • Developed in existing disturbed (cleared) area

Elevated boardwalks between chalets

Elevated viewing deck in cleared area

**ACCESS AND PARKING**  
 • Largely disturbed (cleared) area.  
 • 48 parking bays positioned between existing trees.  
 • 2x parallel bus parking bays

**MAIN COMPLEX**  
 • Restaurant, pool deck, bar  
 • Developed in existing disturbed (cleared) area.  
 • No removal of trees required.

**LODGE ACCOMMODATION**  
 • 7x4 bed elevated family tents.  
 • Nestled between existing trees.  
 • No removal of trees with stem diam. > 180mm.



Typical look and feel imagery



**Alternate tent layouts to suit site**

2 bed tent, max 9.5x5 m

4 bed tent, max 12x5m

# **Appendix 8 - Bhangazi Community Trust Appeal against EA Refusal**



## **environmental affairs**

Department:  
Environmental Affairs  
REPUBLIC OF SOUTH AFRICA

Private Bag X447, Pretoria, 0001, Environment House, 473 Steve Biko Road, Pretoria, 0002

Email: [Appeals@environment.gov.za](mailto:Appeals@environment.gov.za)

### **APPEAL RESPONSE REPORT**

**PROJECT NAME/TITLE:** Basic Assessment for the Bhangazi Cultural Heritage Lodge, iSimangaliso Wetland Park, South Africa

**PROJECT LOCATION:** iSimangaliso Wetland Park, Norther Kwazulu Natal, South Africa

**PROJECT REFERENCE NUMBER:** 14/12/16/3/3/1/2015

**DATE PROJECT/ACTIVITY AUTHORISED:** Authorisation Refused 30/10/2019. Note that the Appeals window was increased to 29/02/2020

**DATE NOTIFIED OF DECISION:** 01/11/2019

DETAILS OF THE APPELLANT	DETAILS OF THE APPLICANT
<p><b>Name of appellant:</b>  <b>Bhangazi Community Trust</b>  Appeal compiled and submitted by Nuleaf Planning and Environmental (Nuleaf) on behalf of the appellant. See letter of authority attached as Annexure 1.</p>	<p><b>Name of applicant:</b>  <b>Bhangazi Community Trust</b>  Appeal compiled and submitted by Nuleaf Planning and Environmental (Nuleaf) on behalf of the applicant. See letter of authority attached as Annexure 1.</p>
<p><b>Appellant's representative (if applicable):</b>  <b>Nuleaf Planning and Environmental (Pty)Ltd represented by Peter Velcich</b></p>	<p><b>Applicant's representative (if applicable):</b>  <b>Nuleaf Planning and Environmental (Pty)Ltd represented by Peter Velcich</b></p>
<p><b>Postal address:</b></p> <ul style="list-style-type: none"> <li>• <b>Bhangazi Community Trust:</b> PO Box 1387, Mtubatuba, 3935</li> <li>• <b>Nuleaf:</b> 8a Trevor Street, Murrayfield, Pretoria, 0184</li> </ul>	<p><b>Postal Address:</b></p> <ul style="list-style-type: none"> <li>• <b>Bhangazi Community Trust:</b> PO Box 1387, Mtubatuba, 3935</li> <li>• <b>Nuleaf:</b> 8a Trevor Street, Murrayfield, Pretoria, 0184</li> </ul>
<p><b>Email Address:</b>  Bhangazicomunitytrust@telkomsa.net</p>	<p><b>Email Address:</b>  Bhangazicomunitytrust@telkomsa.net</p>
<p><b>Telephone number:</b>  035 550 0068</p>	<p><b>Telephone number:</b>  035 550 0068</p>



## INTRODUCTION / BACKGROUND

The iSimangaliso Wetland Park is a World Heritage Site located in the coastal and inland areas of north-eastern KwaZulu-Natal. The Park occupies an area of approximately 358,534ha comprising fifteen ecosystems and a number of notable and diverse landscapes. Between the 1950's and 1970's, people living on the Eastern Shores were forcibly removed. In post-apartheid South Africa, the national government has implemented a land restitution programme that allows dispossessed communities to reclaim the land they were forcefully removed from. The land claim for this area 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 South, have also been granted. The institution formed by the former-claimants is the Bhangazi Community Trust.

The Bhangazi Community Trust, in agreement with the iSimangaliso Wetland Park Authority, was given vested authority to develop a 60-bed tourism facility to display the cultural heritage of the Bhangazi local community. The Bhangazi Site is located approximately 30 km's north of St Lucia and 2 km's south-west of the beach at Cape Vidal. Proximity to the Cape Vidal road means easy access from St Lucia. The site is 9.94 ha in extent and is divided into two pockets - a northern portion of 5.06 ha earmarked for development and a southern no-development zone of 4.88 ha. This development is proposed to be located on a 5,06 ha site on the shores of Lake Bhangazi, which form part of the Eastern Shores of the iSimangaliso Wetland Park. This area is designated for tourism development in the Environmental Management Plan that was developed in terms of the World Heritage Site. This was widely workshopped with stakeholders, and ultimately approved by the Minister of Environmental Affairs.

Following the above, a feasibility study for the proposed lodge and associated development activities was undertaken and a funding application for R35m submitted to the Department of Environment, Forestry and Fisheries' (DEFF) Environmental Protection and Infrastructure Programme (EPIP). Based on the fact that the Bhangazi Lodge has been listed as one of the priority projects for DEFF's further implementation of the National Biodiversity Economy Programme, EPIP has committed R20m to the Bhangazi Lodge project which will be available for use on 1 April 2020.

An Environmental Impact Assessment Process (EIA) was initiated in 2018, and an application for Environmental Authorisation (EA) was submitted to the DEFF 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). A Final Basic Assessment Report (FBAR) was submitted to DEFF for adjudication purposes on the 16/07/2019.



A Letter of Refusal of Environmental Authorisation, issued by DEFF, was received by the applicant on the 1/11/2019. The applicant decided to exercise the right of appeal, and requested that the timeframe for submission of an appeal be extended to the 29/02/2020. This request was approved by the DEFF. See Annexure 1.

The applicant appointed Peter Velcich of Nuleaf Planning and Environmental (Pty) Ltd (Nuleaf) to prepare and submit the appeal on behalf of the applicant.

The key issues or concerns listed as reasons for the refusal of EA, centre around the contention that the EIA process was not compliant with Regulation 44(1) of the Environmental Impact Assessment Regulations (EIA) 2014, as well as certain concerns about the layout of facilities with respect to the sensitivities of the site (brown and greenfield areas). It is respectfully submitted that these issues and concerns, some of which arose due to a misinterpretation of the FBAR submission, can be comfortably addressed and allayed to the satisfaction of all parties involved.

These issues are discussed below:

A handwritten signature in black ink, appearing to be 'P. Velcich', written over a light blue circular stamp.

GROUNDS OF APPEAL	RESPONDING STATEMENT BY THE APPLICANT	COMMENTS BY THE DEPARTMENT
<p>1. The key factors considered by the DEFF in making the decision to refuse environmental authorisation for the project centred around non-compliance with Regulation 44(1) of the Environmental Impact Assessment Regulations (EIA) 2014 as amended which states <i>'the applicant must ensure that the comments of interested and affected parties are recorded in reports and plans and that such written comments, including responses to such comments and records of meetings, are attached to the reports and plans that are submitted to the competent authority in terms of these Regulations'</i></p> <p>The DEFF references two submissions that were ostensibly not included in the Final Basic Assessment Report (FBAR) submissions:</p> <ul style="list-style-type: none"> <li>• A submission from the Department of Agriculture, Forestry and Fisheries (DAFF), submitted to the EAP on the 31/05/2019; and</li> <li>• A submission from Rhodes University Public Service: Accountability Monitor (PSAM) submitted to the EAP on the 01/06/2019.</li> </ul> <p>The appellant responds as follows:</p> <ul style="list-style-type: none"> <li>• As per the NEMA regulations, the DBAR was disclosed for comment on the 02/05/2019 until 01/06/2019 for submission of comments. These comments were included in the FBAR, which was submitted to DEFF on the 16/07/2019. This included initial comments from both PSAM and DAFF.</li> <li>• The DAFF and PSAM submitted additional comments on the final day of the comment period, 01/06/2019. The EAP acknowledges that, due to an administrative error, these comments were not initially included in the Comments and Response Report (CRR) as part of the FBAR submission (16/07/2019).</li> <li>• However, once the EAP became aware of these comments, the oversight regarding their non-inclusion was discussed with the DEFF Case Officer (CO) on 20/08/2019 and arrangements were made with the CO for the EAP to submit an updated CRR.</li> <li>• In the updated CRR, the EAP comprehensively responded to the DAFF and PSAM comments and submitted such to the DEFF Case Officer on the 30/08/2019 (Note that the DEFF EA refusal letter is dated</li> </ul>		



<p>30/10/2019). Proof of submission of this updated report is included as Annexure 2. Receipt of the updated CRR is not disputed by DEFF.</p> <ul style="list-style-type: none"> <li>This issue was further addressed by the EAP in so far as all stakeholders were notified of the updated CRR in a letter from the EAP dated 02/09/2019, and the stakeholders were furnished a copy thereof (see Annexure 3).</li> </ul> <p>Following the above, it would appear from the Refusal of EA, that DEFF did not take the amended CRR into account during the processing and adjudication of the application (despite the arrangements between the DEFF and the EAP to submit such). It is therefore reasoned that, with the submission of the updated CRR and the notification of the interested and affected parties, the application was in fact fully compliant with Regulation 44(1) of the Environmental Impact Assessment Regulations (EIA) 2014 as amended.</p>		
<p>2. DEFF, in the refusal letter, make the incorrect inference that the proposed staff housing area is positioned within the undisturbed forest area on a greenfield site (as per the statement under point (h) of the refusal letter which reads ...'The location of the staff housing as indicated in the layout plan must be moved to a degraded area or to existing areas....' Note that the layout map in the FBAR submission clearly indicates that the staff housing is in fact positioned in a disturbed area (cleared and developed), and is not in any way within a forested or greenfields area. See annexure 4 for photographic evidence.</p>		
<p>3. Upon instruction from the Bhangazi Community Trust, Nuleaf have reviewed the 01/06/2019 comments and concerns listed by DAFF and PSAM, as well as the reasons for refusal of EA as listed by DEFF (which largely referenced the DAFF comments and concerns), with a view to incorporating any reasonable proposals and additional mitigation measures made therein.</p> <p>The site was visited by staff of Nuleaf staff together with members of the Bhangazi Community Trust on the 22/01/2020. All disturbed areas within the proposed development envelope were accurately plotted and opportunities for development of the chalets within the forest with minimal disturbance to vegetation were identified (see Annexure 5). It was found that the currently developed / disturbed area (old fishing camp) will provide more than enough space for the placement of the restaurant, pool, reception, staff accommodation, trails camp, roads and parking. It was also found that the forest is populated with cleared pockets (old fishing</p>		



camping spots) that are well disposed to development of the chalets without significant (if any) removal of vegetation.

Following this, Nuleaf feels that fundamental revisions can be made to the project design and layout in order to allay the concerns of DAFF, PSAM and DEFF. These revisions include amendments to the proposed (existing) layout plan, and specifically to the positioning of certain facilities on the site, as proposed by DAFF in the aforementioned comments.

Note that DAFF, by its own admission in the 01/06/2019 comments, is not opposed to the development of the chalet units within the forested area, and supports the FBAR submission that the development of these units in this area can be reasonably considered an exceptional circumstance. This is supported by DAFF's comment which reads '*...the ecotourism accommodation (units placed among 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 following DAFF proposals were taking into consideration:

- DAFF recommend that consideration be given to reducing the size of the units and developing alternative unit design to accommodate specific sites.
- DAFF recommend that the restaurant complex be relocated to a disturbed area on the site.
- DAFF requests that a Method Statement be developed for inclusion in the EMPr, covering all activities within the natural forest.

Following the above, the appellant takes this opportunity to positively respond to the concerns and recommendations raised by DAFF, PSAM, and DEFF (in the refusal letter), and an updated site layout plan and additional mitigation measures are submitted as follows:

- a) The restaurant and pool complex, previously located within the forest, has been repositioned to a disturbed area outside the forest. The specific site is currently totally devoid of indigenous vegetation and is largely covered by an old derelict building, a remnant of the Bhangazi Fishing Camp. This revision also implies that the proposed restaurant access / service road leading from the parking area, through the forest to the restaurant, is no longer required.



- b) The staff housing has been repositioned on two separate disturbed areas within the old Bhangazi fishing camp (brownfields sites).
- c) Development within the forest will be limited to guest chalets and pedestrian boardwalks only and will make use of pre-identified cleared or semi-cleared areas (old camping spots).
- d) All the chalets within the forest will be developed on elevated decks. Circulation between chalets will be via elevated timber boardwalks (no infrastructure will be built on the ground).
- e) The previously proposed dual access roads (off the Cape Vidal road) have been consolidated and restricted to only one access road in and out of the facility.
- f) Considering the footprint impact of each unit within the forest area, the following additional mitigation procedures are proposed:
  - Reducing the footprint size of the 2 bed units from 75 m<sup>2</sup> to <50 m<sup>2</sup>.
  - Reducing the size of the 4 bedroom units from 75 m<sup>2</sup> to <60 m<sup>2</sup>
  - Developing modular / alternate designs of the units to facilitate placement in the forest with minimal impact on existing large trees.
  - Limit on the maximum tree removal size of 180mm diameter, priority will be given to transplanting trees where at all possible.
  - No removal of any listed tree species as Protected in terms of the NFA.

These measures will result in the following nett benefits:

- Original potentially cleared forest area (tented chalets, restaurant, staff) of approximately **1900 m<sup>2</sup>** / is now revised to a potentially cleared forest area (tented chalets) of **960 m<sup>2</sup>** .Note, this is the physical footprint of the deck structures and does not imply clearing of forest canopy.
- By removing the restaurant complex from the forested area, an opportunity is created to space the tented chalet units further apart, and therefore more opportunity is created to find a site that can accommodate the units without significant clearance of vegetation.

Annexures 6 illustrates the revised layout versus the original layout. Annexure 7 illustrates the revised layout together with site photographs, general development guidelines, alternative modular layout of the chalets, and look and feel imagery.



<p>In response to a request by DAFF, a Method Statement has been developed for all activities within the natural forest, and is included as Annexure 8.</p> <p><i>Note: Nuleaf met with DAFF officials on the 13/02/2020 and the 18/02/2020. The abovementioned was discussed at length and DAFF indicated support for the proposed revisions to the layout and design of the project. DAFF also gave input into the proposed Method Statement.</i></p>		
<p>4. A specialist botanical survey (included in the FBAR), commissioned at the behest of DAFF following a site visit with the EAP and applicant, and using a specialist recommended by DAFF, found the following:</p> <ul style="list-style-type: none"> <li>• 4 protected tree species (NFA) were identified within the greater study area.</li> <li>• Only 1 protected species was identified within the chalet development zone (Marula).</li> <li>• No protected plant species (undergrowth) were identified within the study area (but may occur).</li> </ul> <p>The specialist report goes on to say that:</p> <ul style="list-style-type: none"> <li>• The development of the units within the forest <i>may</i> have an impact relating to the removal of trees (i.e. loss of canopy cover and understorey cover, small increased risk of erosion);</li> <li>• the <u>residual impacts of this activity are negligible</u>, and</li> <li>• <u>it is anticipated that the forest canopy and undergrowth will recover</u>.</li> </ul> <p>Mitigation and avoidance measures listed in the specialist report are both practical and easily achievable, and include</p> <ul style="list-style-type: none"> <li>• enrichment planting,</li> <li>• the use of raised platforms and boardwalks and</li> <li>• the use of modular construction of units to best fit each particular site.</li> </ul> <p>Note that this assessment was done on an <u>assumed footprint area of 100 m<sup>2</sup></u> per chalet. The size of the units has since been reduced to less than 60 m<sup>2</sup> (4 bed) and less than 50 m<sup>2</sup> (2 bed). These mitigation measures are accepted and will be implemented as discussed above.</p>		

## IMPACT STATEMENT

The proposed revisions to the layout are not anticipated to realise any additional impacts (beyond those addressed in the FBAR), nor do they trigger any additional listed activities as per the EIA Regulations. In fact, as the revisions primarily include relocating infrastructure from a greenfields site to a brownfields site concurrent with a significant reduction of the development footprint in the forest areas, the revised layout and design will result in a nett positive impact. Similarly, the adoption of a specific Method Statement will further ameliorate potential negative impacts within the natural forest.

MITIGATION MEASURE	NETT RESULT	IMPACT
Remove proposed new access road, in favour of using the existing access road to the fishing camp area.	No longer need to clear an extent of 200m <sup>2</sup> (forested area) for the access road alignment.	Nett positive impact
Relocate restaurant and pool complex from forest zone to disturbed fishing camp zone	No longer need to clear an extent of 350 m <sup>2</sup> (forested area) for the restaurant and pool complex	Nett positive impact
Following above, no requirement for new access road leading to restaurant complex	No longer need to clear an extent of 200 m <sup>2</sup> (forested area) for the service road alignment.	Nett positive impact
Reducing the size of the proposed 2 and 4 bed chalet units from 75 m <sup>2</sup> to 50 m <sup>2</sup> and 40 m <sup>2</sup> respectively.	Potentially cleared area reduced from 1350 m <sup>2</sup> to 970 m <sup>2</sup> (footprint of raised decks, not necessarily clearance of forest canopy).	Nett positive impact
Forest infrastructure limited to chalets and boardwalks only, all on raised timber decks.	Reduction of impact on undergrowth.	Nett positive impact
Method Statement covering all activities in forest area.	Better planning, management, monitoring and auditing of activities within the forest area.	Nett positive impact

**Note:** During the site visit of 22/01/2020, Nuleaf found that the portion of the proposed development site, specifically the brownfields area adjacent to the forest, is in an advanced stage of degradation, due to the ongoing human habitation of derelict buildings and very poor site management and housekeeping practices. The site is littered with debris, refuse and building rubble, and there is evidence of illegal felling of forest trees along the edge of this area. It is Nuleaf's considered opinion that the development of a well-managed upmarket lodge on this site will realise a nett positive impact for the area and surroundings.



**CONCLUDING COMMENTS:**

Nuleaf respectfully submits that, on the evidence of the foregoing, this project should receive Environmental authorisation, subject to:

- The implementation of the additional mitigation measures as described under 3 (a) – (f) above.
- The implementation of the revised layout plan as presented in Annexure 7.
- The implementation of the Method State protocol as presented in Annexure 8.
- The implementation of all mitigation measures as presented in the FBAR and EMPr.

**ARR comments by Case Officer**

**Approved by Supervisor**

Name & Surname:

Name & Surname:

Date:

Date:

Signature:

Signature:

.....

.....

**ANNEXURES:**

Annexure 1: Condonation: Extension of appeal period..... 13  
Annexure 2: Correspondence EAP /DEFF regarding submission of updated CRR ..... 15  
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Annexure 6: Plan – comparative illustration: original and revised layout..... 19  
Annexure 7: Plan and design guidelines:– Revised layout..... 20  
Annexure 8: Method statement – activities within the forest area ..... 22

**INCLUDED UNDER SEPARATE COVER**

- EA Refusal Letter, DEFF Ref 14/12/16/3/3/1/2015
- Updated CRR Report, ERM, 30/08/2019
- A3 maps and plans (Annexures 5, 6 and 7)



Reference: LSA 190144

**DECISION IN RESPECT OF THE REQUEST FOR EXTENSION**

**REQUEST FOR EXTENSION OF TIMEFRAMES TO FILE AN APPEAL AGAINST A DECISION TO REFUSE AN ENVIRONMENTAL AUTHORISATION TO BHANGAZI COMMUNITY TRUST FOR THE PROPOSED DEVELOPMENT OF THE BHANGAZI LODGE AT CAPE VIDAL, ISIMANGALISO WETLAND PARK**

**1. INTRODUCTION**

1.1 In terms of Chapter 4 of the Environmental Impact Assessment Regulations, 2014, as amended (2014 EIA Regulations), regarding activities identified under section 24 of the National Environmental Management Act, 1998 (Act No. 107 of 1998) (NEMA), the Chief Director: Integrated Environmental Authorisations of the Department of Environmental Affairs (CD: IEA) refused an Environmental Authorisation (EA) to Bhangazi Community Trust (the applicant), on 30 October 2019, for the proposed development of the Bhangazi Lodge at Cape Vidal, Isimangaliso Park.

**2. BACKGROUND AND THE REQUEST FOR CONDONATION**

2.1 On 30 October 2019, the Department refused an EA to the applicant in respect of the proposed development of the Bhangazi Lodge at Cape Vidal within Isimangaliso Wetland Park.

2.2 The applicant was informed of the aforesaid decision of the CD: IEA and also furnished with a copy of the refusal decision on 8 November 2019. Therefore considering the provisions of regulation 4(1) of the 2014 National Appeal Regulations (2014 Appeal Regulations), the due date for the submission of an appeal was 28 November 2019.

2.3 On 28 November 2019, the Directorate: Appeals and Legal Review within the Department of Environmental Affairs (Appeals Directorate) received a request for extension on 28 November 2019 from the applicant, to submit their appeal on or before 28 February 2020.

2.4 In motivating for its request for extension of timeframe to submit an appeal, the applicant submits that more time is needed to revise the current Bhangazi Lodge layout plan to adequately address key issues and concerns raised by Interested and Affected parties, and the applicant would like to engage the Department of Environmental Affairs and Isimangaliso Wetland Park Authority to discuss and agree on concerns raised.

**3. LEGISLATIVE FRAMEWORK GOVERNING THE REQUEST FOR EXTENSION**

3.1 In terms of section 47C of NEMA, the Minister have the legal authority, subject to explicit limits, to grant an extension or condonation for the submission of an appeal which is out of time. The powers and duties enshrined in sections 47C of NEMA relating to the legal authority to extend or condone a failure by a person to comply with a period in terms of the Appeal Regulations have been sub-delegated to the Director of the Appeals Directorate.

3.2 Section 47C of NEMA provides as follows:

*"The Minister or an MEC may extend, or condone a failure by a person to comply with, a period in terms of this Act or a specific environmental management Act, except a period that binds the Minister or MEC.*

3.3 Regulation 4(1) of the National Appeal Regulations, 2014, as amended (2014 Appeal Regulations) provides that:

*"(1) An appellant must submit the appeal to the appeal administrator, and a copy of the appeal to the applicant, any registered interested and affected party and any organ of state with interest in the matter within 20 days from:*


- (a) the date that the notification of the decision for an application for an environmental authorisation or a waste management licence was sent to the registered interested and affected parties by the applicant; or*
- (b) the date that the notification of the decision was sent to the applicant by the competent authority, issuing authority or licensing authority, in the case of decisions other than those referred to in paragraph (a).*

**4. DECISION**

- 4.1 In reaching my decision on the applicant's request for extension of timeframes to submit an appeal, it should be noted that I have not responded to each and every statement set out in the request for extension, and that where a particular statement is not directly addressed, the absence of any response thereof should not be interpreted to mean that I agree with or abide by the statement made.
- 4.2 It seems to me that, in determining whether or not extension should be granted in the present matter, I must make my determination on the basis of the terms of section 47C of NEMA.
- 4.3 Having duly considered the reasons advanced by the applicant in its request for extension of timeframes to submit an appeal, I find that good cause exists for the granting of the said request for the following reasons:
  - 4.3.1 The applicant has furnished me with a satisfactory explanation; and
  - 4.3.2 No prejudice will be suffered by any other party as a result of granting the request for extension.

**REQUEST FOR EXTENSION OF TIMEFRAMES TO FILE AN APPEAL AGAINST A DECISION TO REFUSE AN ENVIRONMENTAL AUTHORISATION TO BHANGAZI COMMUNITY TRUST FOR THE PROPOSED DEVELOPMENT OF THE BHANGAZI LODGE AT CAPE VIDAL, ISIMANGALISO WETLAND PARK**

- 4.4 In light of the foregoing, the applicant's request for extension of timeframes to file an appeal on or before 28 February 2020 is hereby granted.

  
ADV. MOKETE RAKGOGO  
DIRECTOR: APPEALS AND LEGAL REVIEW  
DATE: 06/12/2019



**From:** Khosi Dlamini [mailto:Khosi.Dlamini@erm.com]

**Sent:** 30 August 2019 16:19

**To:** 'Zama Langa' <ZLanga@environment.gov.za>

**Cc:** Amishka Mothilal <Amishka.Mothilal@erm.com>; Basil Bafana (Com) <basil@isimangaliso.com>; Phumlani Lugagu <phumlani@isimangaliso.com>; Siboniso Mbense <siboniso@isimangaliso.com>; Sizo Sibiya <sizo@isimangaliso.com>; Stephanie Gopaul <Stephanie.Gopaul@erm.com>; 'Piet Theron' <piettheron01@gmail.com>

**Subject:** 14/12/16/3/3/1/2015 Bhangazi Cultural Heritage Lodge - Updated CRR

Afternoon Zama,

As per our discussion last week, I have attached the updated Comments and Responses Report for your review.

Please let me know should you have any queries.

Kind regards,

Khosi Dlamini

Environmental Consultant

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**ERM** *The business of sustainability*

**From:** Khosi Dlamini [mailto:Khosi.Dlamini@erm.com] **On Behalf Of** ERM South Africa Comments Received

**Sent:** 02 September 2019 09:44

**Subject:** BASIC ASSESSMENT FOR THE PROPOSED DEVELOPMENT OF BHANGAZI CULTURAL TOURISM LODGE WITHIN THE ISIMANGALISO WETLAND PARK, KWAZULU-NATAL- Updated CRR

*Reference: 0282731*

Dear Stakeholder,

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 a portion of the 9.94 ha piece of land allocated, which will consist of 60 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.

As such, an application for Environmental Authorisation was submitted 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). Furthermore, a Final Basic Assessment Report (BAR) was submitted to the National Department of Environment, Forestry and Fisheries (DEFF) (formally known as the Department of Environmental Affairs) for adjudication purposes on 16 July 2019.

It has subsequently come to ERM's attention that there was a technical error with receipt of certain comments, which resulted in the oversight of some comments from I&APs and stakeholders. Consequently, such comments were omitted from the Comments and Responses Report (CRR) attached to the Final BAR that was submitted to the DEA for decision. Having carefully reviewed the omitted comments, ERM concludes that no new information needed to be presented in the BAR and hence revision of the BAR was not necessary.

ERM has incorporated the above-mentioned comments into an updated CRR which has been submitted to the National DEFF on 30 August 2019 and is hereby made available to all registered I&APs from 2 September 2019.

Because there was no new information in the omitted comments, responses to them, or the Final BAR, it follows that there was no legal obligation to circulate the Final BAR for further comment to the Interested and Affected Parties (I&APs) before submitting it to the decision-making Authority. It also follows that since I&APs had no further right to comment on the Final BAR and the Specialists Reports, they suffered no prejudice as a result of the circulation of the updated CRR.

The Final BAR together with the updated CRR can be accessed from the Project Website: <https://www.erm.com/en/public-information-sites/basic-assessment-for-the-proposed-cultural-tourism-lodge-development-at-lake-bhangazi>

Once the Department reaches a decision, the details of such resolution will be communicated to all registered stakeholders and I&APs via email. Please contact ERM should you have any questions. Thank you for your participation during this process.

Yours sincerely,

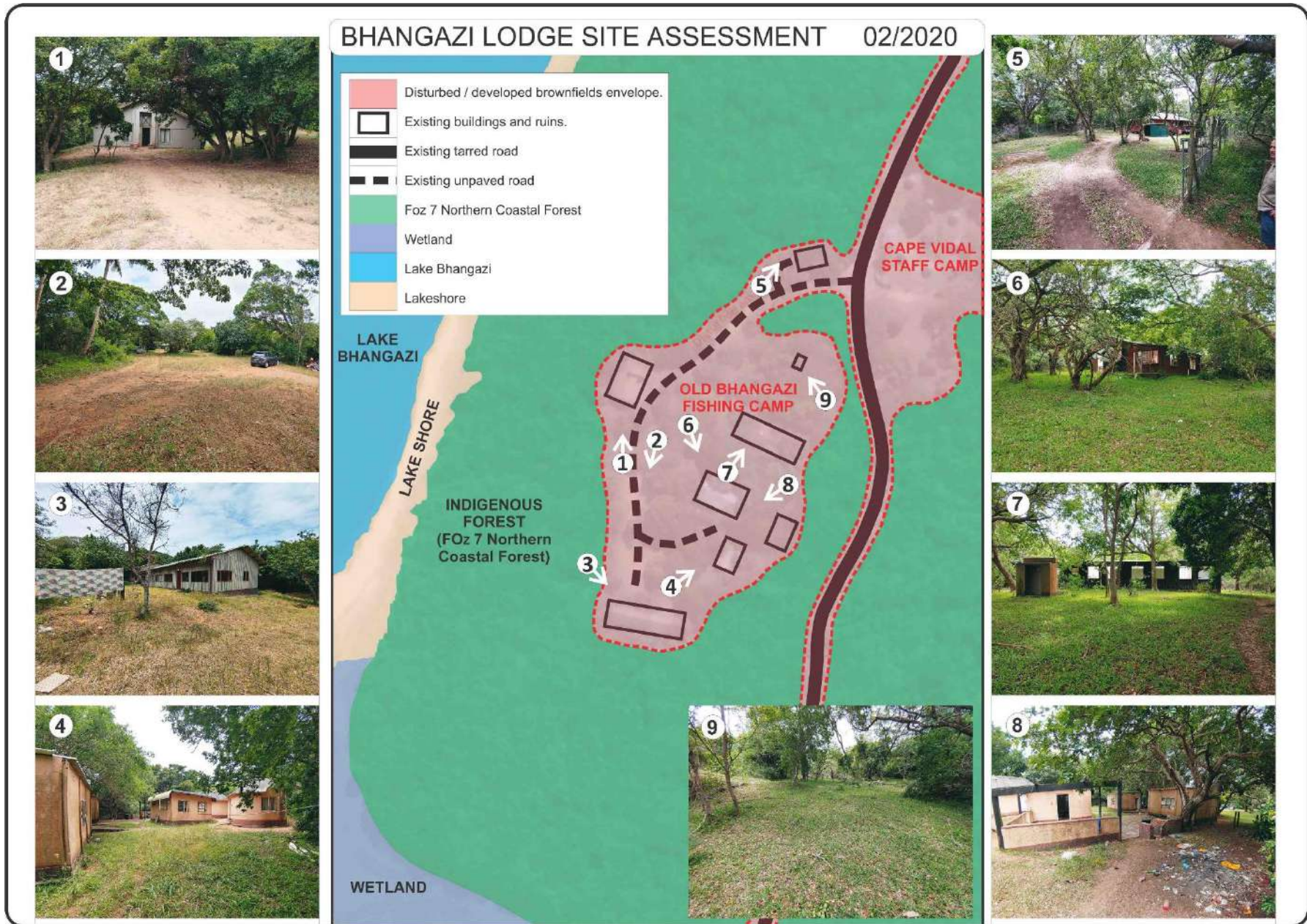
**ERM** Suite S005 | 17 The Boulevard | Westway Office Park | Westville | 3635 | Durban | South Africa **T** +27 31 265 0033 | **F** +27 31 265 0150

**E** [commentsandresponses@erm.com](mailto:commentsandresponses@erm.com) | **W** [www.erm.com](http://www.erm.com)

Annexure 4: Photographic evidence: Staff area, brownfields site

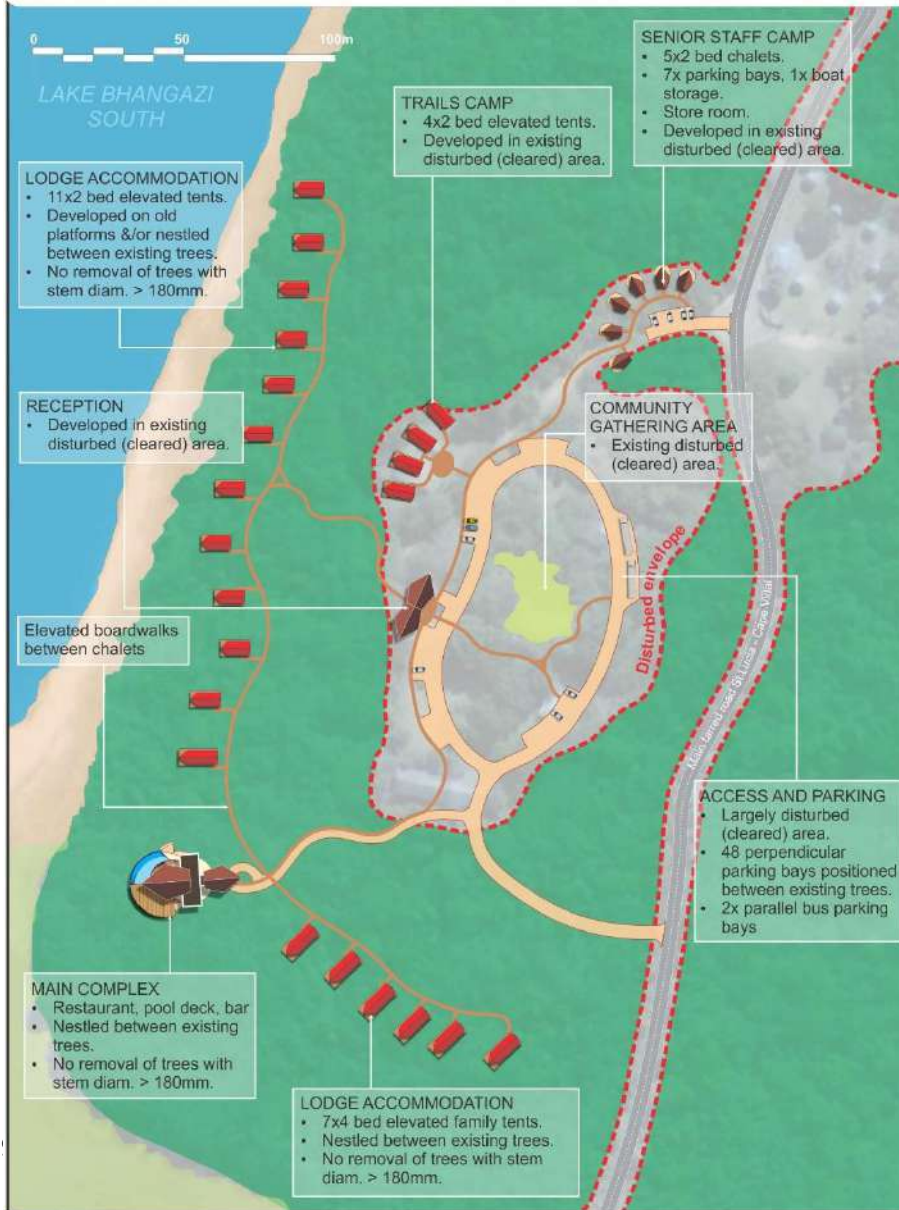


Proposed staff housing area (photograph above left, and on plan above right)

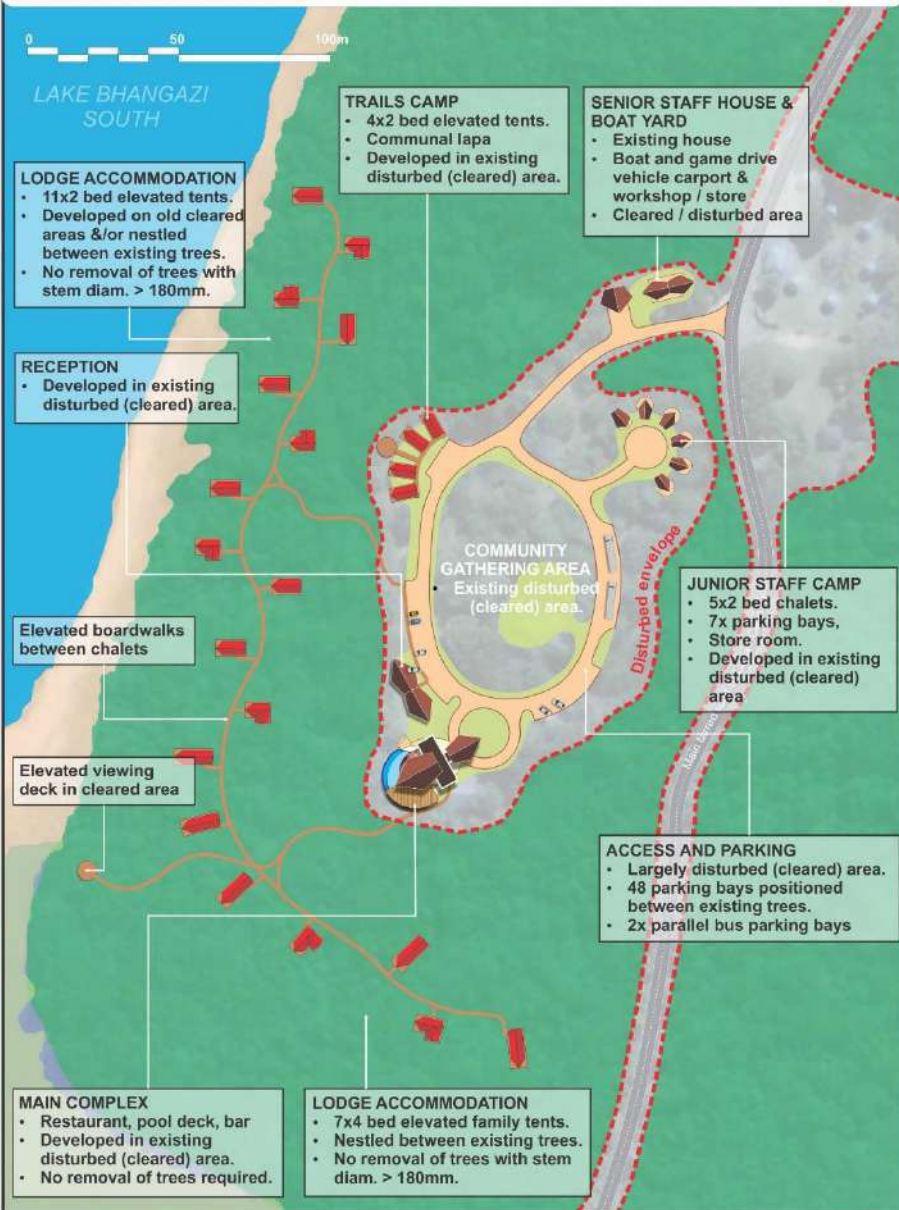


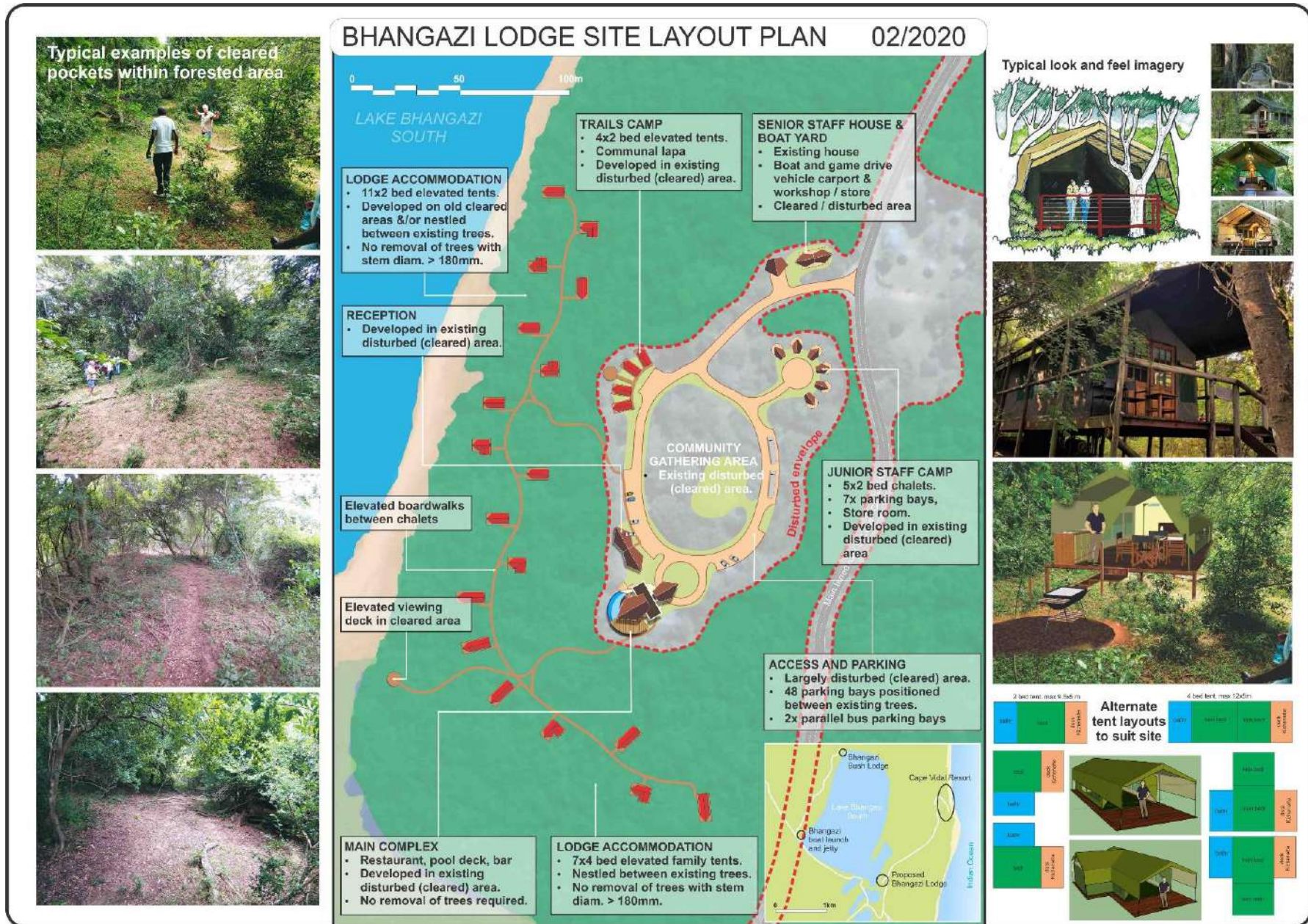
Annexure 6: Plan – comparative illustration: original and revised layout

### BHANGAZI LODGE SITE LAYOUT PLAN 2018



### BHANGAZI LODGE SITE LAYOUT PLAN 02/2020

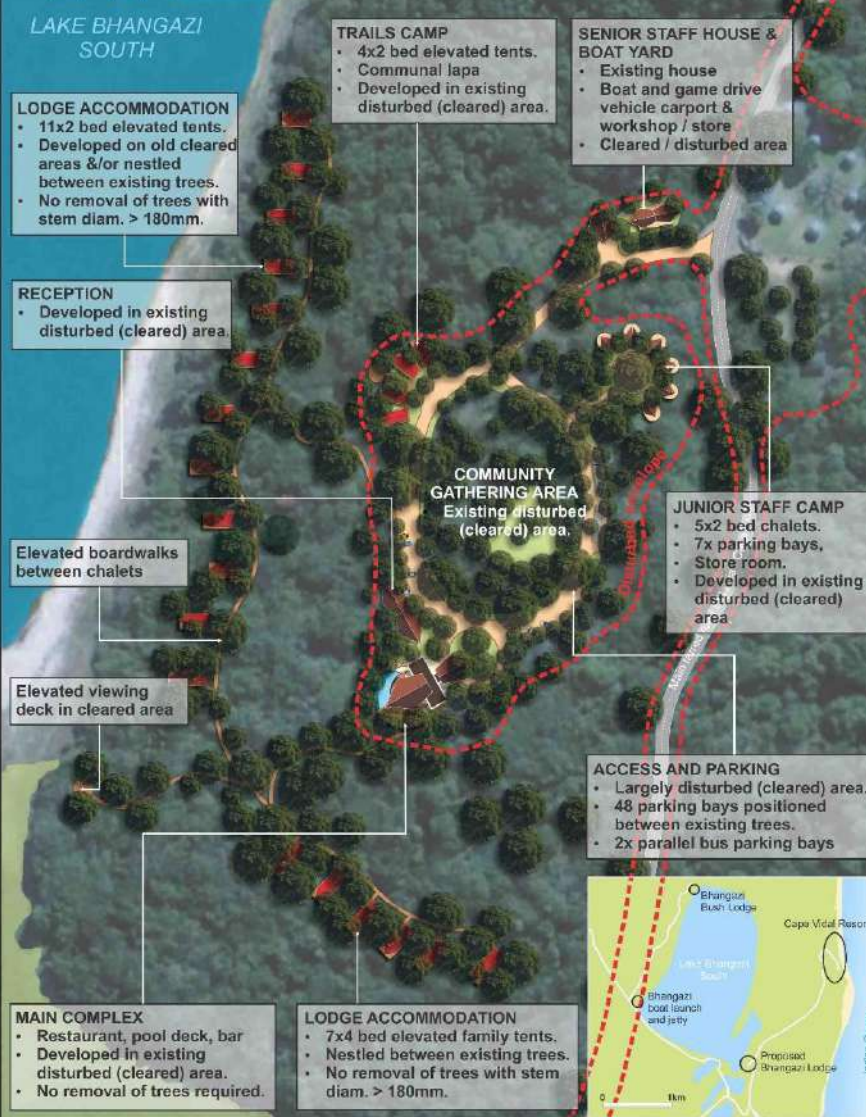




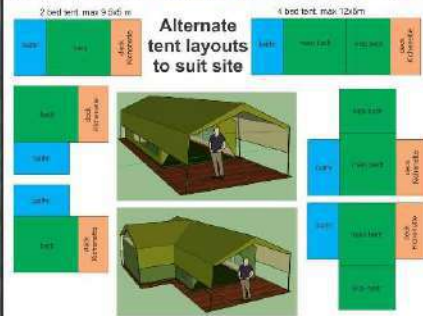
# BHANGAZI LODGE SITE LAYOUT PLAN 02/2020



0 50 100m



## Typical look and feel imagery



**BHANGAZI LODGE DEVELOPMENT,  
iSimangaliso Wetland Park  
METHOD STATEMENT: ACTIVITIES WITHIN THE FOREST  
February 2020**

This Method Statement describes specific actions required during the pre-construction, construction and post-construction (rehabilitation) phases of the project. These actions are to be read in conjunction with the EMP as submitted with the FBAR.

- **PRE-CONSTRUCTION**

- Site establishment (Botanist, ECO, and DAFF officials):
  - Identify suitable development envelopes.
  - Identify boardwalk alignment.
  - Mark protected trees and trees exceeding 180mm diam.
  - Identify possible pruning or thinning requirements.
  - Identify possible tree specimens to be transplanted, and mark accordingly.
  - Clearly define each development envelope with danger tape.
  - Identify and define (danger tape) proposed construction access, lay-down, storage and mixing areas.



- Drafting and submission of permits / licensing for removal, transplanting and/or pruning of forest vegetation for each site, as may be required in terms of Section 7 of the National Forests Act (Act 84 of 1998).
- Design (Architect / Landscape Architect)
  - Develop most appropriate modular layout / arrangement of tented chalet units for each site (site specific).
  - Ensure design is responsive to green building guidelines and energy efficiency.
  - ECO to approve final design / layout of each unit.
- Contractor
  - Ensure that the appointed contractor has experience with construction in similar (protected) environments.
  - ECO to undertake project specific environmental awareness and training course with all construction staff.
  - ECO / contractor to appoint an Environmental Officer (EO), who will report to ECO on weekly basis.
- The ECO, EO and Contractor to develop a construction specific Method Statement.
  - The Method Statements must be submitted to the ECO for approval prior to the commencement of the any construction activity, including clearing. Any changes to the method of works must be reflected by amendments to the original approved Method Statement as is needed. Any changes in this regard must be approved by the ECO, understanding that such changes are environmentally acceptable and in line with the requirements of the EMPr. It is a statutory requirement to ensure the wellbeing of employees and the environment. To allow the mitigation measures in the EMPr to be implemented, the Construction Method Statement should briefly detail how and when a process will be carried out, the possible dangers/risks, and the methods of control required. This should be detailed for the following:
    - Type of construction activity;
    - Timing and location of the activity;
    - Construction procedures for the following specific activities;

- Bunding;
  - Construction site and office/yard establishment;
  - Site nursery establishment;
  - Cement mixing / concrete batching/bentonite mixing;
  - Contaminated water;
  - Dust management;
  - Erosion control;
  - Fire, hazardous and/or poisonous substances including their storage;
  - Personnel, public and animal safety;
  - Rehabilitation of modified environment(s);
  - Solid and liquid waste management;
  - Sources of materials (including MSDSs);
  - Top-soil management;
  - Storm water Management.
  - Materials and equipment to be used;
  - Transportation of the equipment to / from site;
  - How equipment/material will be moved while on site;
  - Location and extent of construction site office and storage areas;
  - Emergency/disaster incident and reaction procedures; and
  - Rehabilitation procedures and continued maintenance of the impacted environment.
- The Contractor will be accountable for all actions taken in non-compliance of the approved Method Statement and the EMPr.

- CONSTRUCTION
  - ECO to develop an Environmental Monitoring and Auditing Protocol (EM&AP), informed by the EMPr and the conditions of the EA.
  - The EM&AP to include provision for fines in the event of transgressions and non-compliance.
  - ECO to undertake regular (monthly) site monitoring and auditing assessments (measured against the EMPr). Monthly Environmental Monitoring and Auditing Reports to be submitted to DEFF, and the iSimangaliso Wetland Park Authority.
- POST CONSTRUCTION / REHABILITATION
  - ECO to monitor and approve removal of all construction debris and material.
  - ECO to monitor and approve the rehabilitation of all disturbed areas.
  - ECO to monitor and approve counter erosion measures.
  - No sign-off or final payments (retention) before site is rehabilitated to ECO approval.

# **Appendix 9 - DEFF Decision on Appeal against EA Refusal**



**MINISTER  
FORESTRY, FISHERIES AND THE ENVIRONMENT  
REPUBLIC OF SOUTH AFRICA**

**Reference: LSA 190144**

**APPEAL DECISION**

**APPEAL AGAINST THE REFUSAL OF AN ENVIRONMENTAL AUTHORISATION FOR  
THE PROPOSED DEVELOPMENT OF THE BHANGAZI CULTURAL HERITAGE  
LODGE, ISIMANGALISO WETLAND PARK, IN KWAZULU-NATAL PROVINCE**

**Bhangazi Community Trust**

**Applicant/Appellant**

**Department of Environment, Forestry and Fisheries**

**Competent Authority**

**Appeal:** This is an appeal submitted by the Bhangazi Community Trust (the appellant) on 27 February 2020, against the decision of the Chief Director: Integrated Environmental Authorisations of the Department of Environment, Forestry and Fisheries (the Department) to refuse an Environmental Authorisation (EA) on 30 October 2019, for the proposed development of the Bhangazi Cultural Heritage Lodge in Isimangaliso Wetland Park, in KwaZulu-Natal Province.

**1. BACKGROUND AND APPEAL**

- 1.1** On 15 April 2019, the appellant lodged an application for EA with the Department for the proposed development of the Bhangazi Cultural Heritage Lodge at the abovementioned location.

- 1.2. The appellant was granted a right by Isimangaliso Wetland Park Authority, to develop a tourism facility within the World Heritage Site. In an effort to exercise this right, the appellant proposed to develop a cultural heritage lodge within the iSimangaliso Wetland Park.
- 1.3. The proposed lodge was to include:
- Ten x 2-bed units with the option of catered and self-catering;
  - Eight x 4-bed family units with the option of catered and self-catering;
  - Trail camp - four x 2-bed units with a communal braai area;
  - A restaurant located close to the lake shore with a footprint of 300m<sup>2</sup>, including a recreation deck and pool area;
  - Five staff quarters each with a footprint area of 75m<sup>2</sup> and single storey in height;
  - A Jetty with a footprint size of 20m<sup>2</sup> at the south-western corner of Lake Bhangazi South;
  - The parking arrangements for the project include:
    - Visitors parking (18)
    - Chalet parking (13)
    - Bus parking (2)
    - Staff parking (3)
    - Lodge vehicles (2)
    - Game drive (1)
  - The reception is located within the day visitors / gathering area.
- 1.4. Upon evaluation of the final Basic Assessment Report (BAR) dated July 2019, as well as *inter alia* the comments from the Directorate: Forestry Regulation and Oversight within the then Department of Agriculture Forest and Fisheries (DAFF) dated 31 May 2019, the Department refused an EA to the appellant on 30 October 2019.
- 1.5. The Directorate: Forestry Regulation and Oversight was not in support of the preferred layout due to the fact that the positioning of the restaurant, swimming pool and staff housing cannot be considered as exceptional circumstance as required by section 3(3) (a) of the

National Forest Act, 1998 (Act No. 84 of 1998), which state 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"*.

- 1.6. Following the aforesaid decision of the Department, the Directorate: Appeals and Legal Review (Appeals Directorate) within the Department received a request for extension from the appellant on 28 November 2019. The appellant requested an extension of timeframe to lodge their appeal on or before 28 February 2020. This request was granted by the Director of the Appeals Directorate on 6 December 2019.
- 1.7. On 27 February 2020, the appellant lodged their appeal against the refusal of an EA. This appeal was lodged in terms of section 43(1) of the National Environmental Management Act, 1998 (Act No. 107 of 1998) (NEMA), read together with regulation 4 of the National Appeal Regulations, 2014, as amended (Appeal Regulations). The appeal was accompanied by a revised site layout plan aiming to address the concerns of the Directorate: Forestry Regulation and Oversight within the then DAFF.
- 1.8. The Appeals Directorate arranged a site visit so as to assess the revised layout plan as submitted in the appeal documentation. The Directorate: Forestry Regulation and Oversight as well as the Department were requested to attend the site visit so as to provide informed responses and comments on the grounds of appeal. The site visit occurred on 12 March 2020 however the Appeals Directorate was unable to partake the site visit due to violent protest which took place at Olakeni, located in the area of Mbazwana. Nevertheless the Appeals Directorate visited the site and discussed the revised site layout with the ISimangaleso Wetland Park Authority on 13 March 2020. Minutes of the site visit held of 12 March 2020 were compiled by the applicant on 16 March 2020 and circulated to all attendees as well as the Appeals Directorate.

- 1.9. The Department timeously submitted a response to the grounds of appeal on 16 March 2020. Comments on the grounds of appeal were received by the Appeals Directorate from the Directorate: Forestry Regulation and Oversight on even date.
- 1.10. On 23 March 2020, a letter was received from Rhodes University Public Service: Accountability Monitor (PSAM) which highlights the shortcomings of the final basic assessment report (BAR) submitted during the EIA process. Furthermore PSAM states that their comments were not included in the final BAR. Further to this PSAM states that the Department is now playing multiple roles pertaining to the proposed project and trust that this will not unduly influence the outcome of the appeal.
- 1.11. The appeal is premised on the following grounds:
  - 1.11.1. The Department did not consider the amended Comments and Response Report (CRR) during the processing and adjudication of the EA application;
  - 1.11.2. The location of the proposed staff housing area; and
  - 1.11.3. Revision of the site layout.

## **2. EVALUATION**

- 2.1 ***The Department did not consider the amended CRR during the processing and adjudication of the EA application***
  - 2.1.1 The appellant submits that the Department did not take into account the amended CRR during the processing and adjudication of the EA application. The appellant contends that, with the submission of the updated CRR and the notification of the Interested and affected parties (I&APs), the application was in fact fully compliant with regulation 44(1) of the Environmental Impact Assessment Regulations, 2014, as amended (2014 EIA Regulations).
  - 2.1.2 In response to this ground of appeal, the Department explains that after receiving the final BAR on 16 July 2019, PSAM as an I&AP informed the Department on 20 August 2019 that



their comments on draft BAR, which were submitted on 1 June 2019, have not been incorporated in the final BAR. The Department further explains that the appellant and PSAM were contacted and engaged on the issue. The appellant was required to provide response to comments received from PSAM.

- 2.1.3 In addition to the above, the Department explains that they were informed by DAFF that their comments on the draft BAR, which were submitted to the appellant on 31 May 2019, have also not been incorporated in the final BAR. The Department further explains that the appellant and DAFF were contacted and engaged on the issue. The appellant was also required to provide a response to comments received from DAFF. The appellant's response on the comments were received by the Department on 03 September 2019 and included in the revised final BAR.
- 2.1.4 The Department states that the 2014 EIA Regulations does not make provision for the amendment of a final BAR. Further to this, the Department states that the comments received from DAFF were substantive and if the appellant had considered same before the submission of the final BAR, this would have influenced the amendments to the layout map.
- 2.1.5 In their comments to this ground of appeal, the Directorate: Forestry Regulation and Oversight provides that the final BAR did not address their comments in the CRR and corrections to this came at a later stage.
- 2.1.6 In evaluating this ground of appeal and responses thereto, I note that it is not in dispute that the final BAR did not include the comments from both DAFF and PSAM. However the appellant thereafter amended CRR and submitted same to the Department. This amended CRR incorporated the lacking comments as well as the responses thereto by the appellant. The Department nevertheless rightfully confined their decision to the final BAR dated July 2019.
- 2.1.7 An analysis of the final BAR suggests that the appellant failed to comply with regulation 44(1) of the 2014 EIA Regulations which requires that *"the applicant must ensure that the*

*comments of interested and affected parties are recorded in reports and plans and that such written comments, including responses to such comments and records of meetings, are attached to the reports and plans that are submitted to the competent authority in terms of these Regulations”.*

2.1.8 I agree with the submission by the Department that the 2014 EIA Regulations does not make provision for the amendment of a final BAR so as to addresses shortcomings therein. As a result thereof, I cannot find that the Department erred in refusing an EA on the basis that the final BAR submitted in support of the EA application did not comply with regulation 44(1) of the 2014 EIA Regulations. I must add that the provision of regulation 44(1) are peremptory, not discretionary. For these reasons, this ground of appeal must fail.

## **2.2 *The location of the proposed staff housing area***

2.2.1 The appellant states that the Department, in the refusal letter, makes an incorrect inference that the proposed staff housing area is positioned within the undisturbed forest area on a greenfield site. According to the appellant, the layout map in the final BAR clearly indicates that the staff housing is in fact positioned in a disturbed area (cleared and developed), and is not in any way within a forested or greenfields area.

2.2.2 In response to this ground of appeal, the Department advises that such conclusion was drawn from the comments received from the Directorate: Forestry Regulation and Oversight. However the Department states that the appellant is correct in that the staff housing location is within the degraded area. The Department advises that based on the new information provided on the change of layout, the staff housing have been changed and there are two locations for staff housing, namely junior and senior staff housing. Based on the site visit conducted on 12 March 2020, the Department states that they are in support of the location of the both junior and senior staff housing as it is within degraded area. The Department further recommends that this change on the layout be subjected to 30 days public participation process (PPP) before recommending a decision.

2.2.3 In evaluating this ground of appeal and the responses thereto, I note that the Directorate: Forestry Regulation and Oversight has no objection to the location of the staff housing. From both the site visits conducted on 12 and 13 March 2020, it was observed that the proposed senior staff camps is to be located within a degraded area with an existing house and the junior staff is to be located within an already disturbed area with open space.

2.2.4 In light of the above, I cannot find that the proposed position of the staff housing is likely to impact on keystone species or the natural forest. As a result thereof this ground of appeal is upheld.

### **2.3 *Revision of the site layout***

2.3.1 The appellant states that it reviewed the comments and concerns listed by DAFF and PSAM, as well as the reasons for refusal of EA as listed by the Department. According to the appellant, all disturbed areas within the proposed development envelope were accurately plotted and opportunities for development of the chalets within the forest with minimal disturbance to vegetation were identified. The appellant states that it was found that the currently developed or disturbed area, namely the old fishing camp, will provide more than enough space for the placement of the restaurant, pool, reception, staff accommodation, trails camp, roads and parking. The appellant states that it was also found that the forest is populated with cleared pockets that are well disposed to development of the chalets without significant (if any) removal of vegetation.

2.3.2 The appellant advises that the following proposals were taken into consideration:

- Reducing the size of the units and developing alternative unit design to accommodate specific sites.
- That the restaurant complex be relocated to a disturbed area on the site.
- That a Method Statement be developed for inclusion in the BAR, covering all activities within the natural forest.

2.3.3. Following the above, the appellant provides an updated site layout plan and additional mitigation measures as follows:

- a) The restaurant and pool complex, previously located within the forest, has been repositioned to a disturbed area outside the forest. The specific site is currently totally devoid of indigenous vegetation and is largely covered by an old derelict building, a remnant of the Bhangazi Fishing Camp. This revision also implies that the proposed restaurant access / service road leading from the parking area, through the forest to the restaurant, is no longer required.
- b) The staff housing has been repositioned on two separate disturbed areas within the old Bhangazi fishing camp (brownfields sites).
- c) Development within the forest will be limited to guest chalets and pedestrian boardwalks only and will make use of pre-identified cleared or semi-cleared areas (old camping spots).
- d) All the chalets within the forest will be developed on elevated decks. Circulation between chalets will be via elevated timber boardwalks (no infrastructure will be built on the ground).
- e) The previously proposed dual access roads (off the Cape Vidal road) have been consolidated and restricted to only one access road in and out of the facility.
- f) Considering the footprint impact of each unit within the forest area, the following additional mitigation procedures are proposed:
  - Reducing the footprint size of the 2 bed units from 75 m<sup>2</sup> to <50 m<sup>2</sup>.
  - Reducing the size of the 4 bedroom units from 75 m<sup>2</sup> to <60 m<sup>2</sup>
  - Developing modular / alternate designs of the units to facilitate placement in the forest with minimal impact on existing large trees.
  - Limit on the maximum tree removal size of 180mm diameter, priority will be given to transplanting trees where at all possible.
  - No removal of any listed protected tree species.

2.3.4. In addition to the above, the appellant states that a Method Statement has been developed for all activities within the natural forest.

2.3.5. In response to this ground of appeal, the Department states that, based on the new information and the appeal site visit conducted on the 12 March 2020, the Department is in

support of the proposed change in layout as it has addressed the points raised on the reason for refusal. According to the Department, the positioning of the restaurant including a swimming pool is now placed within the degraded area with existing house. The Department does however recommend that this change on the layout be subjected to 30 days PPP before recommending a decision on the proposed development.

- 2.3.6. In their comments on this ground of appeal, the Directorate: Forestry Regulation and Oversight indicates that moving the restaurant out of the natural forest into the degraded area fully addresses their concern. Further to this, the Directorate: Forestry Regulation and Oversight states that as far as the boardwalk and chalets are concerned, that can be accommodated in forest clearings and fitted under the canopy in some places, but this will depend on the specific site by site placement and design to be done in cooperation with the forest ecologist, including activities such as marking out sites, rescuing protected species etc.
- 2.3.7. In evaluating this ground of appeal and the responses thereto, I note the particulars of the revised site layout, as well as the additional mitigation measures proposed by the appellant. I further note from the minutes of the site visit conducted on 12 March 2020 that the Directorate: Forestry Regulation and Oversight were happy with the revisions to the layout plan; supportive of method statement and mitigation measures and stated that such revisions were responsive to their concerns and that the concept of exceptional circumstance had now been properly addressed.
- 2.3.8. Further to this, the Appeal Directorate was briefed by the ISimangaliso Wetland Park Authority on 13 March 2020 on the revisions made to the site layout. It was observed that the restaurant and pool complex is now proposed within an already disturbed area largely covered by an old derelict building. It was further noted that the development within the forest will be confined to only the guest chalets and pedestrian boardwalks, which are now proposed to be developed within pre-identified cleared or semi-cleared pockets.
- 2.3.9. I further note that after the refusal decision, the applicant commissioned a study by a botanical specialist. This specialist identified four protected tree species within the greater

study area but only one protected species was identified within the chalet development zone, namely the Marula Tree. No protected plant species were identified within the study area. The botanical specialist further states that the residual impacts of this activity are negligible, and it is anticipated that the forest canopy and undergrowth will recover.

- 2.3.10. I must point out that the revised site layout was not part of the information available at the disposal of the Department for consideration prior to making a decision on the EA application. This information together with a study by a botanical specialist was only introduced during the appeal process and therefore constitutes new information.
- 2.3.11. In this regard, it is imperative to stress that the appeal under section 43 of NEMA is a wide appeal involving a determination *de novo* where the decision in question is subjected to reconsideration on new or additional facts or information. It encompasses a complete re-hearing of and fresh determination on the merits of the matter with or without additional evidence or information. This implies that, when determining the appeal, I may have regard to all information relevant to the appeal, including information or evidence that only emerged after the decision of the Department to refuse an EA in respect of the proposed development.
- 2.3.10. I have considered the revised site layout, particularly the restaurant, pool complex, viewing deck, staff housing, as well as the proposed repositioning of the guest chalets and pedestrian boardwalks and the proposed reduction of the project footprint. I have further considered that both the Department and the Directorate: Forestry Regulation and Oversight have no objection to the revised site layout as it is less invasive compared to the original site layout.
- 2.3.11. In light of the foregoing, the ground of appeal is accordingly upheld.
- 2.3.12. However, I am of the view that a just and equitable remedy is to afford the applicant an opportunity to rectify the irregularity of the BAR to the extent of its inconsistency with the regulation 44(1) 2014 EIA Regulations, and also incorporate new information which emerged after the decision of the Department to refuse an EA. In my view, this remedy is

in accordance with the principle of severance and proportionality, and will ensure that the good is given effect to and the bad remedied accordingly.

2.3.13. Accordingly, the matter is remitted to the Department in order to afford the applicant an opportunity to amend the BAR as alluded in paragraph 2.3.12 above. Due to significant changes or new information added to the BAR, the revised report must be subjected to a public participation of at least 30 days as required by regulation 19 (1) (b) of the 2014 EIA Regulations.

2.3.14. Any comments received from I&APs as well as responses thereto by the applicant must be incorporated into the final BAR for submission to the Department for reconsideration of the EA application. In this regard, the timeframes prescribed by the 2014 EIA Regulations in respect of PPP and decision making must be adhere to.

### **3 DECISION**

3.1 In reaching my decision on the appeal lodged against the decision of the Department to refuse an EA, I have taken the following into consideration:

3.1.1 The appeal received on 27 February 2020;

3.1.2 The responding statement submitted by the Department on 16 March 2020;

3.1.3 The comments on the grounds of appeal submitted by the Directorate: Forestry Regulation and Oversight on 16 March 2020;

3.1.4 The minutes of the site visit conducted on 12 March 2020, received on 16 March 2020;

3.1.5 The outcome of the site visit conducted by the Appeal Directorate on 13 March 2020,

3.1.6 The letter received from Rhodes University Public Service: Accountability Monitor (PSAM) on 23 March 2020;

3.1.7 The information contained in the project file (14/12/6/3/3/1/2015) with specific reference to the refusal decision dated 30 October 2019 and the final BAR dated June 2019; and

3.1.8 The extension decision dated 6 December 2019.

- 3.2 In terms of section 43(6) of NEMA, I have the authority, after considering the appeal, to confirm, set aside or vary the decision, provision, condition or directive or to make any other appropriate decision.
- 3.3 Having carefully considered the abovementioned information and in terms of section 43(6) of NEMA, I have decided to:
- 3.3.1 Dismiss the ground of appeal mentioned in paragraph 1.11.1 and uphold the grounds of appeal mentioned in paragraphs 1.11.2 and 1.11.3 above; and
- 3.3.2 Remit the matter to the Department for reconsideration, as alluded in paragraphs 2.3.12 – 2.3.14 above.
- 3.4 In arriving at my decision on the appeal, it should be noted that I have not responded to each and every statement set out in the appeal and/or responses thereto, and where a particular statement is not directly addressed, the absence of any response thereof should not be interpreted to mean that I agree with or abide by the statement made.
- 3.5 Should any party be dissatisfied with any aspect of my decision, it may apply to a competent court to have this decision judicially reviewed. Judicial review proceedings must be instituted within 180 days of notification hereof, in accordance with the provisions of section 7 of the Promotion of Administrative Justice Act, 2000 (Act No.3 of 2000) (PAJA).



**MS B D CREECY, MP**

**MINISTER OF FORESTRY, FISHERIES AND THE ENVIRONMENT**

DATE: 16/4/2020 .



# **Appendix 10 - Meeting Minutes from Discussion with DEFF on Updated BAR and Public Participation**

Meeting: Bhangazi Cultural Heritage Lodge Basic Assessment (DEFF Reference: 14/12/16/3/3/1/2015)  
Date: 7 August 2020

## MEETING PARTICIPANTS

Department of Environment, Forestry and Fisheries (DEFF)	Client: Motswiri Development Agency (representing Bhangazi Community Trust)	Environmental Resources Management (ERM)
<ul style="list-style-type: none"> <li>■ Nyiko Nkosi (NN)</li> <li>■ Zamalanga Langa (ZL)</li> <li>■ Danie Smi (DS)</li> </ul>	<ul style="list-style-type: none"> <li>■ Piet Theron (PT)</li> </ul>	<ul style="list-style-type: none"> <li>■ Stephanie Gopaul (SG)</li> <li>■ Samantha Moodley (SM, Thembeke Environmental Consulting Pty Ltd (TEC))</li> <li>■ Kamogelo Mokhine (KM, Thembeke Environmental Consulting Pty Ltd (TEC))</li> </ul>

## INTRODUCTION

The objective of the meeting was to discuss the draft public participation plan and way forward for the Bhangazi Cultural Heritage Lodge application for Environmental Authorisation.

## MINUTES AND ACTION ITEMS

Points of Discussion		Actions
1.	Zamalanga Langa (ZL) opened the meeting and stated the purposed of the meeting	-
2.	Stephanie Gopaul (SG) confirmed that ERM is still the Environmental Assessment Practitioner (EAP) on the project.  Thembeke Environmental Consulting Pty Ltd (TEC) has been appointed to facilitate the public participation process (PPP) and Basic Assessment Report (BAR)	-
1.	Overview of the proposed Public Participation Plan given by Kamogelo Mokhine (KM)	-
2.	Environmental Authorisation (EA) application form remains unchanged. <ul style="list-style-type: none"> <li>• EAP details remain as is</li> <li>• No new activities added.</li> <li>• No amendments to the activities listed in the application</li> </ul>	-
3.	Nyiko Nkosi (NN) clarified the timelines in the 05 June 2020 Disaster Management Act (57/2002): Directions Regarding Measures to Address, Prevent and Combat the Spread of COVID-19 Relating to National Environmental Management Permits and Licences.	EAP to update Public Participation Plan; <ul style="list-style-type: none"> <li>• The PPP dates to be changed</li> </ul>

Points of Discussion	Actions
<ul style="list-style-type: none"> <li>• Regulation 4.3:               <ul style="list-style-type: none"> <li>○ PPP to be extended by 21 days.</li> <li>○ Applies to EA applications submitted prior to the Directions being promulgated.</li> </ul> </li> <li>• Regulation 4.4:               <ul style="list-style-type: none"> <li>○ All regulated timeframes to be extended by 30 days.</li> <li>○ Applies to EA applications submitted after 05 June 2020.</li> </ul> </li> </ul> <p><b>Regulation 4.3 applicable to the Bhangazi Project.</b></p>	<p>21 days to be added to the planned 30-day PPP</p>
<p>4. TEC/ERM to ensure that <b>ALL</b> Interested and Affected Parties (I&amp;APs) are contacted and made aware of BAR update and PPP.</p> <p>Ensure that comments are elicited from Mr Nicholas Scarr of the Rhodes University Public Service Accountability Monitor (PSAM). He is one of the key I&amp;APs to be contacted throughout the PPP.</p> <p>Comments from other I&amp;APs that were initially omitted must be captured in the CRR, and integrated and addressed in the updated BAR.</p>	<p>EAP will make contact with I&amp;APs telephonically and via email, notifying them of the BAR updates, as well as the commencement of the PPP.</p> <ul style="list-style-type: none"> <li>• I&amp;APs will also be notified of the conclusion of the commenting period.</li> </ul>
<p>4. BAR is to be made available digitally, in line with the Directions.</p>	<p>BAR is to be made available to I&amp;APs follows:</p> <ul style="list-style-type: none"> <li>• On an online portal.</li> <li>• Via email if/when requested.</li> </ul> <p>Provision of CD via courier service</p>
<p>5. BAR submission to the DEFF must be done <b>electronically</b> using the Department's Novell Filr online system (accessible via onto <a href="https://sfiler.environment.gov.za:8443/">https://sfiler.environment.gov.za:8443/</a>, as per Annexure 2 of the Directions).</p> <p>A cover letter is to accompany the BAR. It should contain:</p> <ul style="list-style-type: none"> <li>• The reason for the BAR submission (i.e. as a result of an appeal process).</li> <li>• A copy of the Public Participation Plan approval.</li> <li>• A list of all the information that is being submitted (updated layouts, updated specialist reports/letters from specialists, meeting minutes from site visits, etc.).</li> <li>• Copies of the EA decision and appeal decision.</li> </ul>	<p>No need to submit a copy of EA application since there no changes have been made to it</p>
<p>6. An updated Public Participation Plan is to be submitted to the DEFF.</p> <ul style="list-style-type: none"> <li>• The DEFF will give formal approval to the EAP.</li> </ul>	<p>EAP to make changes to the Plan as discussed in the meeting.</p> <p>The approval from the DEFF must be submitted with the BAR.</p>

Points of Discussion	Actions
<p>The EAP is to get comments from other DEFF units as well, such as the Biodiversity, Forestry and Heritage.</p>	<p>EAP will ensure the relevant DEFF Units are made aware of the project and that comments received from the Units is captured and addressed accordingly.</p>
<p>7. Specialist studies to be updated to reflect the changes in the layout. The studies are to be integrated into the updated BAR, and copies of the reports are to be appended to the BAR.</p> <p>Should there be no changes, each specialist is to compile a letter, detailing:</p> <ul style="list-style-type: none"> <li>• The review of the layout changes in relation to the area of specialization.</li> <li>• Motivation as to why they believe that the revised layout will not change the identified impacts and their significance.</li> </ul> <p>The letters are to be submitted with the BAR.</p>	<p>EAP to contact specialists and make sure the necessary changes are made to the reports, and request letters from specialists where applicable.</p> <p>Relevant sections of the BAR will be updated with the changes from specialists, should any changes arise.</p>
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**Meeting end: 11:41 am**

Annex C15

Minutes from PPP meeting with DEFF, 7 August  
2020

Meeting: Bhangazi Cultural Heritage Lodge Basic Assessment (DEFF Reference: 14/12/16/3/3/1/2015)  
Date: 7 August 2020

## MEETING PARTICIPANTS

Department of Environment, Forestry and Fisheries (DEFF)	Client: Motswiri Development Agency (representing Bhangazi Community Trust)	Environmental Resources Management (ERM)
<ul style="list-style-type: none"> <li>■ Nyiko Nkosi (NN)</li> <li>■ Zamalanga Langa (ZL)</li> <li>■ Danie Smi (DS)</li> </ul>	<ul style="list-style-type: none"> <li>■ Piet Theron (PT)</li> </ul>	<ul style="list-style-type: none"> <li>■ Stephanie Gopaul (SG)</li> <li>■ Samantha Moodley (SM, Thembeke Environmental Consulting Pty Ltd (TEC))</li> <li>■ Kamogelo Mokhine (KM, Thembeke Environmental Consulting Pty Ltd (TEC))</li> </ul>

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**Meeting end: 11:41 am**



Annex C16

Email Correspondence