

Annex D

Comments and Responses Report  
*Updated May 2021*

## BHANGAZI CULTURAL HERITAGE LODGE BASIC ASSESSMENT REPORT- COMMENTS AND REPONSES REPORT (CRR)

Details	Comments	Initial Responses	Responses
<b>Initial Notification</b>			
26 April 2018 Email Nicholas Scarr (Rhodes University)	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.	02 May 2018 Email  The draft Basic Assessment Report is currently under review and is to be released for public comment shortly.	Two emails were received from Mr. Scarr on 26 April 2018. Refer to the comment below for ERM's response.
26 April 2018 Email Nicholas Scarr (Rhodes University)	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.	02 May 2018 Email  The draft Basic Assessment Report is currently under review and is to be released for public comment shortly.	The draft Basic Assessment Report was available to the public for comment between 02 May 2019 to 01 June 2019. All stakeholders registered on the Stakeholder Database were notified of this on 30 April 2019, including Mr Nicholas Scarr..
02 May 2018 Email Nicholas Scarr (Rhodes University)	Morning and thank you 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.	04 May 2018 Email  We have registered you as an I&AP.	The draft Basic Assessment Report was available to the public for comment between 02 May 2019 to 01 June 2019. All stakeholders registered on the Stakeholder Database were notified of this on 30 April 2019, including Mr Nicholas Scarr.
11 September 2018 Email Nicholas Scarr (Rhodes University)	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.	12 September 2018 Email  The DBAR has not been released as yet. We are still revising certain design details and will inform stakeholders when the DBAR is available for comment.	The draft Basic Assessment Report was available to the public for comment between 02 May 2019 to 01 June 2019. All stakeholders registered on the Stakeholder Database were notified of this on 30 April 2019, including Mr Nicholas Scarr.
02 May 2018 Email Izak van der Merwe (Department of Agriculture, Forestry and Fisheries)	I was informed by Ms Olivier of DEA about the Bhangazi Lodge proposal in the Isimangaliso Wetland Park. Since natural forest will be affected, which is covered by our National Forests Act of 1998, the Department of Agriculture, Forestry and Fisheries is a commenting authority. Has the Department been approached to provide inputs, and to whom was the request sent? Can the report also be sent to me please, when released for comment?	03 May 2018 Email  I will certainly send the report to you for comment. We are in the process of completing the draft BAR and are arranging a meeting with DAFF/ DEA for the week of 21 May. I will keep you updated once further details are available.	No further response
29 May 2018 Email Izak van der Merwe (Department of Agriculture, Forestry and Fisheries)	Dear colleagues At the meeting last week on the Bhangazi Lodge, I said that I would communicate further on the issue of exceptional circumstances. I also prepared some comments after the site visit, with references to maps. I will send an email before end of the week after I received comments from colleagues.	29 May 2018 Email  Thank you Izak- this will be much appreciated.	No further response required.
01 June 2018 Email Izak van der Merwe (Department of Agriculture, Forestry and Fisheries)	I attach the DAFF comments on the Bhangazi Lodge, and the clarification of relevant parts of the Section 3 of the National Forests Act of 1998. In essence the layout in its current form is not acceptable to DAFF, but we really think an alternative development can be creatively planned, with the transformed area as the main focus. If necessary, we can communicate further on this. Some of the issues in the second document I have tried to convey as simple and concise as possible, but these are issues that advocates argued over and the documents can fill a large card board box. We will just be out of office first half of next week, in case you need to get hold of me.	Thank you for your email. The Department's suggestions have been incorporated into the Final BAR where applicable. These changes will be described further in the responses which follow.	Thank you for your email. The Department's suggestions have been incorporated into the Final BAR where applicable. These changes will be described further in the responses which follow.




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	<p>The planned Bhangazi Lodge proposal should be revised. The site visit has shown an intact natural forest on the terrain that is fairly dense, with a few gaps here and there. The restaurant and the many units scattered through the forest, will lead to destruction of natural forest areas, and will have a significant impact on the integrity of the forest. Many gaps will be created with permanent structures replacing forest habitat. These would have edge effects beyond their footprint, such as noise, movement of people etc. that could also affect some of the fauna.</p>		<p>The Bhangazi Lodge layout has been amended to accommodate the sensitivity of the area. In essence, the revised layout (Chapter 2 of the Final BAR) is proposed to have a lighter footprint lodge that uses standard safari tents on raised timber decks that blend into the natural environment thus minimizing visual disturbance. The new development area is not expected to be a significant size as a large portion of the area is already disturbed and was already previously developed.</p>
	<p>This is not only an issue of assessing impacts, but also of interpreting law, most specifically the limitation placed on destruction of natural forest for a new land use as per Section 3(3)(a) in the National Forests Act of 1998. These are described in a separate document submitted. Section 3(3)(a) states: "...natural forests must not be destroyed save in exceptional circumstances where, in the opinion of the Minister, a proposed new land use is preferable in terms of its economic, social or environmental benefits". The Department of Agriculture, Forestry and Fisheries (DAFF) and its legal advisers interpret the term exceptional circumstances strictly, as guided by court judgements made relating to the same term in other laws.</p>		<p>Please refer to the letter attached in Annex H of the Final BAR which provides a motivation for exceptional circumstances in terms of Section 3(3)(a) in the National Forests Act of 1998.</p>
	<p>When DAFF applies the Section 3(3)(a), it considers whether the activity constitutes exceptional circumstances. It is purely the activity that is considered, not whether the project is a Strategic presidential project, a community project etc. In the past it refused licences for housing in natural forest, and even tourist housing, because these are not considered to be exceptional circumstances. Clear cut exceptional circumstances are strategic developments in the public interest like the national N2 road, but then only if no feasible alternatives exist. When looking at a project the question (but not the only question) is also whether the development is of greater public interest than the protection of the forest. Public interest means the general public, whose rights to a good environment in terms of the Constitution has to be upheld, as weighed against the interest of an individual or particular community.</p>		<p>Please refer to the letter attached in Annex H of the Final BAR which provides a detailed motivation for exceptional circumstances in terms of Section 3(3)(a) in the National Forests Act of 1998.</p>
	<p>In the Bhangazi Lodge layout there are two issues. DAFF does not see the development of a restaurant and chalets as an exceptional circumstance. But on top of that, it transpired during the site visit that there is a fairly large transformed area of more than a hectare already (old fishing camp), in which a feasible tourist development can be done. This weakens the case for placement of the restaurant and chalets in the forest even further. The current layout places the destructive development in the relatively intact natural forest, but hardly touches the transformed area. It should be the other way round. Place the major impacts in the transformed area, and tread lightly in the natural forest, which is not only a rare biome, but the forest type is also a declared threatened ecosystem. Isimangaliso should set the example. A wrong example here can set a precedent, creating difficulties for DAFF officials trying to keep private developers out of natural forest elsewhere.</p>		<p>Please refer to the letter attached in Annex H of the Final BAR which provides a motivation for exceptional circumstances in terms of Section 3(3)(a) in the National Forests Act of 1998.</p> <p>The Bhangazi Lodge layout has been altered to accommodate the sensitivity of the area. In essence, the revised layout (Chapter 2 of the Final BAR) is proposed to have a lighter footprint (than stated previously) that uses standard safari tents on raised timber decks that blend into the natural environment thus minimizing visual disturbance. The affected area is not expected to be a significant size seeing as that a significant part is an already developed area (which will be demolished), and will not require any cutting down of trees within the development footprint.</p>
	<p>Apart from placing the restaurant and main lodge in the transformed area, a small bush camp of about eight small tented or log houses placed under the canopy could be fitted in the few areas with some gaps in the understorey, as in the example of Storms River National Park. If considered, a forest specialist should be used to guide the process. Trails (preferably boardwalk to reduce compaction) and a lookout hide could be constructed in suitable locations (the latter can be at the edge of the forest, in the margin and raised above ground, at a location where it is not necessary to cut trees ).</p>		<p>The Bhangazi Lodge layout has been altered to accommodate the sensitivity of the area. In essence, the revised layout (Chapter 2 of the Final BAR) is proposed to have a lighter footprint lodge that uses standard safari tents on raised timber decks that blend into the natural environment thus minimizing visual disturbance. The affected area is not expected to be a significant size seeing as that a significant part is an already developed area (which will be demolished), and will not require any cutting down of trees within the development footprint.</p>

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			Furthermore, the revised layout makes use of the small pockets identified within the forest where development of units can occur beneath the forest canopy. This ensures minimal disturbance to the forest.
	Although an application does not have to be made to DAFF for a licence in this case (state forest was transferred with delegated powers), Isimangaliso must still ensure that it abides by the law. If the eventual layout to be decided upon does not fit in with what was outlined above. DAFF will have no other option but to oppose the development.		Noted. Please refer to the revised layout as per suggested brought forward by DAFF in Chapter 2 of the Final BAR as well as the motivation for exceptional circumstances attached in Annex H
	This old fishing camp area is large and is transformed and should be fully utilised to carry most of the impacts – restaurant, accommodation etc. In the current layout it is barely utilised. A two storey lodge for example with restaurant at bottom, units on second floor and rooftop viewing area would be able to offer visitors with vistas on the lake.		Noted. Please refer to the revised layout and development plan as per Chapter 2 of the Final BAR.  The Bhangazi Lodge layout has been altered to accommodate the sensitivity of the area. The revised layout was amended to have a lighter footprint lodge that uses standard safari tents on raised timber decks that blend into the natural environment thus minimizing visual disturbance. The development area is not expected to be significant in size as a significant part is an already developed/ disturbed area (which will be demolished), and will not require any cutting down of trees.
	The many units scattered near to each other will cause substantial damage to the forest and reduce its ecosystem and habitat functionality. It is not certain whether these would fit under the canopy or not. The guideline for a small bush camp is not more than 8 small units of not more than 30 square metre each, fitting under the canopy, like at Storms River National park.		Noted. Please refer to the revised layout as per suggestion brought forward by DAFF in Chapter 2 of the Final BAR.  There will be 22 accommodation units developed within small open pockets in the forest. The accommodation units will be sited between the 25- and 15-metre contour lines below the current development footprint with views to the west and northwest across Lake Bhangazi. This will require innovative placing and stiling along the slope to ensure minimal disturbance to the forest. The forest canopy height is estimated to be 10m. A maximum height of 6m has been assumed for each unit which allows 3m for the accommodation level and 3m for the roof structure.
	The large restaurant will definitely destroy substantial natural forest and cannot be fitted under the canopy either. It should be in the transformed area of the old fishing camp.		Please refer to the revised layout as per Chapter 2 of the Final BAR. The restaurant is anticipated use up a footprint of 300m <sup>2</sup> and will be developed in the south western portion of the project site, nestled between existing trees. Ultimately, the tree canopy should not be significantly altered as a result of the restaurant development.
	No mature trees are cut or severely pruned, only seedlings and saplings are removed. The units are placed above the forest floor, and they either fit into an existing forest clearing, or under the canopy.		Noted. A total of 22 accommodation units are proposed to be developed in small open pockets within the forest. The forest is approximated to be 10m in height. Therefore, each unit to be developed will be under the forest canopy (maximum 6m in height). There is no planned removal of trees with a stem diameter exceeding 180mm. the staff quarters and parking bays are proposed to be developed on already disturbed (cleared) areas.

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	 <p>Small bush camp cabin fitting under the canopy (only 8 built by SANPARKS at Storms River)</p>		
	 <p>Small permanent tented camp structure fitting under the canopy</p>		<p>Noted, Thank you. Currently, it is anticipated that standard safari tents will be developed on raised timber decks that blend into the natural environment thus minimizing visual disturbance</p> 
	<p><b>Letter attached- EXCEPTIONAL CIRCUMSTANCES PER SECTION 3(3)(A) OF THE NATIONAL FORESTS ACT NO 84 OF 1998 (AS AMENDED)</b>  <b>Section 3(3)(a) of the National Forests Act of 1998 as Amended</b></p>		<p>Thank you for the guideline on exceptional circumstances. Please refer to the letter attached in Annex H of the Final BAR which provides a motivation for exceptional circumstances in terms of Section 3 in the National Forests Act of 1998.</p>
<p>07 September 2018                  Letter                  Ms Nosipho Ngcaba                  (Department of Environmental Affairs)</p>	<p>The proposed development falls within a portion of land which was given to people living on the eastern shores and were forcibly removed. The land claim has been settled through cash compensation, an allocation of community levies and traditional access rights to graves on higher ground to the north west of the Bhangazi Lake. Development rights to a portion of</p>	<p>07 September 2018                  Email                  Dear Stakeholder,</p>	<p>Please refer to Section 4.1.4 of the Final BAR which lists the national legislation applicable to the proposed project. The National Environmental Management: Protected Areas Act (Act 57 of 2003) is listed amongst them. Additionally, some of the key environmental principles that are of particular relevance to the iSimangaliso Wetland Park include the IUCN best practice</p>

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	<p>land which comprises the Bhangazi Heritage Site on the South East of Lake Bhangazi was granted.</p> <p>The proposed development is 9.94 ha in extent, and it lies along the fringe of a small south eastern extension of Lake Bhangazi. Lake Bhangazi is the only permanent fresh water source in the area. The area provides an extremely important habitat for a number of plant and animal species, including Hippopotamuses (<i>Hippopotamus amphibious</i>) and Crocodiles (<i>Crocodylus niloticus</i>). 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 (<i>Cephalophus natalensis</i>) and Samango Monkey (<i>Ceropithecus mitus</i>), which breed in this area.</p> <p>Compliance with the National Environmental Management Protected Areas Act, Act No 57 of 2003</p> <ul style="list-style-type: none"> <li>In terms of applicable legislation of the Draft Basic Assessment Report does not recognise NEMPAA, the system of protected areas in South Africa recognises World Heritage Sites as kinds of protected areas.</li> </ul>	<p>Thank you for your correspondence. Your comments will be taken into consideration for this process and included in the comments and responses report.</p>	<p>guidelines for protected areas. See also Section 2.3.2 of the Final BAR which details the exceptional circumstances related to the proposed development.</p>
	<ul style="list-style-type: none"> <li>Section 50(5) of NEMPAA states that “no development, construction or farming may be permitted in a national Park, nature reserve, or world heritage site without the prior written approval of the management authority”. An approval letter for the proposed development must be written by the management authority assigned in terms of Section 38 of NEMPAA and from part of the documents to be submitted with the draft basic assessment report.</li> </ul>		<p>A confirmation letter from the Management Authority (iSimangaliso Wetland Park Authority) has been attached as Annex J of the Final BAR.</p>
	<ul style="list-style-type: none"> <li>In terms of NEMPAA Minister has prescribed regulations for the Proper Administration of Special Nature Reserves, National Parks, and World Heritage Sites excluding Vredefort Dome. However, there is no mention of these regulations in the Draft Basic Assessment Report.</li> </ul>		<p>Please note that the Final BAR has been amended to mention the Regulations for the Proper Administration of Special Nature Reserves, National Parks and World Heritage Sites as one of the applicable national legislation to this Project (Section 4.1.4 of Final BAR).</p>
	<ul style="list-style-type: none"> <li>In terms of Section 19 of the regulations for the Proper Administration of Special Nature Reservations, National Parks, and World Heritage Sites excluding Vredefort Dome no development contemplated in Section 50(5) of the Act shall be implemented in any area other than an area designated for such development in the Integrated Management Plan. It is not indicated where the proposed development footprint falls in terms of the zonation plan of isimangaliso Wetland park, a zonation and layout maps indicating the proposed development must be included.</li> </ul>		<p>Please refer to the letter attached in Annex H of the Final BAR which provides a detailed explanation regarding the exceptional circumstances under which this development is proposed to take place in terms of Section 3(3)(a) in the National Forests Act of 1998.</p>
	<p><b>Generic comments on the Basic Assessment Report</b></p> <ul style="list-style-type: none"> <li>The layout plan of the proposed development should be included in the Draft Basic Assessment Report.</li> </ul>		<p>The Layout Plan was included in Chapter 2 the Draft BAR which was released for public comment from 02 May 2019 to 01 June 2019. The Layout Plan also forms part of the Final BAR and can be found in Chapter 2 as Figure 2.3.</p>
	<ul style="list-style-type: none"> <li>An assessment to be conducted on the predicted impacts of the proposed development on the vertebrates and their habitats.</li> </ul>		<p>A Biodiversity and Wetlands Assessment was done as part of the proposed project. Please refer to section 1.6 of the Final BAR for a list of all the specialist studies conducted for this Project.</p>
<b>Draft BAR Commenting Period</b>			
26 April 2019 Email	<b>RE : PROPOSED DEVELOPMENT OF BHANGAZI CULTURAL TOURISM LODGE WITHIN ISIMANGALISO WETLAND</b>	26 April 2019 Email	Thank you for your comment. Please note that this is a platform for comments which are relevant to the proposed Project to be raised.

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Matthew Bremner (Richard Evans & Associates)	<b>PARK</b> 1. I did try to phone you to discuss the above matter. 2. I enclose herewith my company's profile and advertisement flyer. 3. My firm specialises in town planning, property and environmental law. 4. Should either you or the developer need assistance with responding to any objections or legal representation at any hearing, please do not hesitate to contact me.	Dear Stakeholder,  Thank you for your correspondence. Your comments will be taken into consideration for this process and included in the comments and responses report.	
29 April 2019 Email PMB Resource Centre (KZN Department of Agriculture, Forestry and Fisheries)	Good day Mrs Stephanie Gopaul, Please view attached document.	10 May 2019 Email  Morning  Thank you for the call this morning and request for a site visit on 17 May 2019. Please note that the DEA are conducting a site visit on 21 May and to exercise efficiencies, we would like to enquire if it is possible for you to join them on 21 May instead of 17 May?	A site visit was held at iSimangaliso Wetland Park on 17 May 2019. This site visit was attended by representatives of the DAFF, ERM and iSimangaliso Wetland Park Authority. The attendance register and meeting minutes can be found in Annex I of the Final BAR.
29 April 2019 Letter Ms K. Govender (KZN Department of Agriculture, Forestry and Fisheries)	This letter serves as a notice of receipt for the above document received on the 29 <sup>th</sup> April 2019. Kindly note that the document will be processed within 30 days from the date of receipt, provided that all requested information is submitted to the department timeously. Should any further information be required, please do not hesitate to contact this office.	No response required.	Noted, thank you.
02 May 2019 Email A.Nerissa Pillay (Ezemvelo KZN Wildlife)	Thank you for your email. Please note that the IEM Planning Division does not accept electronic copies of EIA documentation as we do not have the resources and storage capacity to process such copies. Please may I request that a hardcopy of the Basic Assessment Report be submitted to our offices (upon availability) for consideration and assessment. The documents can be forwarded to the following:  Addressee: Mr Andy Blackmore – Head IEM and Protected Area Planning (alternatively, Nerissa Pillay- Scientific Technician, Conservation Planning: IEM) Postal: P O Box 13053 Courier: Queen Elizabeth Park Cascades 3202 1 Peter Brown Drive Montrose 3201  Should you require any clarity regarding the above, or should you require any additional information please do not hesitate to contact this office.	02 May 2019 Email  I trust that you are well. Please note that one hard copy and one soft copy(CD) was delivered to the Ezemvelo offices in Durban on 24 April 2019. Please find the attached acknowledgement of receipt of documents. The document was addressed to Jennifer Olbers.	No further request received or response required
15 May 2019 Email Felicia Mdamba	Reference is made to the basic assessment report (BAR) that was recently submitted to the Economic Development, Tourism and Environmental Affairs (EDTEA), Mtubatuba Office regarding the above-mentioned proposed development.	15 May 2019 Email	No requests made or response required.

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(Department of Economic Development, Tourism and Environmental Affairs)	<p>As EDTEA, we would like to find out as to when does the 30 days -comment period ends. When exactly is the deadline for submitting comments. Also, the BAR that has been submitted thus far, is it a draft version or a final version?</p> <p>Further to the above; was the Coastal MANAGEMENT UNIT of our Department ,which is based at Pietermaritzburg submitted a copy of the above-mentioned BAR for comments.</p> <p>Thank you.</p>	<p>The comment period ends on 1 June- please note that this is the draft BAR. Also note that the DEA national are conducting a site visit on 21 May (i.e. next week) and if you are able to make that date, then you are welcome to join?</p> <p>A separate copy of the BAR was not sent to the Coastal Management Unit of the Dedtea as this is usually facilitated internally as required (based on our previous experience). However, should you require that we send through copy to that Department, please provide the address and contact details of the recipient and we can arrange that.</p> <p>If you have any queries on the BAR or need any clarifications, please feel free to contact us.</p>	
15 May 2019 Letter Mr Sabelo Malaza (Department of Environmental Affairs)	<p>The draft Basic Assessment Report (BAR) dated April 2019 and received by the Department on 15 April 2019, refers.</p> <p>Following the review of the above-mentioned application, this Department has the following comments:</p> <p>i. It has been indicated in the application form that the applicant’s contact person is Siboniso Mbense, however the application form is signed by Mrs Joice Gumede. Clarity is requested on whom the decision on the application should be addressed to. If Siboniso Mbense is the contact person of the applicant, you must submit a proof of authority which state that Mrs Joice Gumede has been given an authority to sign the application form on behalf of applicant contact person.</p>	<p>15 May 2019 Email</p> <p>Dear Stakeholder,</p> <p>Thank you for your correspondence. Your comments will be taken into consideration for this process and included in the comments and responses report.</p>	<p>Please note that the applicant is Mrs Joice Gumede as listed in Section 1.2 of the BAR and in the application form as the landowner contact.</p> <p>As per the application form, Bhangazi Community Trust remains the applicant, but the contact person is Mrs Joice Gumede.</p>
	<p>ii. Please ensure that all issues raised and comments received during the circulation of the draft BAR from registered I&amp;APs and organs of state which have jurisdiction in respect of the proposed activity are adequately addressed in the Final BAR (including comments from eZemvelo KZN Wildlife and the following Directorate within Department of Environmental Affairs(DEA): Directorate Biodiversity Conservation; Directorate Protected Areas Planning, Legislation, Compliance and Monitoring, Directorate of Transfrontier Conservation Area, as well as the Directorate World Heritage Management). Proof of correspondence with the various stakeholders must be included in the Final BAR. Should you be unable to obtain comments, proof should be submitted to the Department of the attempts that were made to obtain comments.</p>		<p>Noted. Please refer to Annex D of the Final BAR which includes all the comments received from stakeholders, including responses. The Comments and Responses Report also includes all comments received from stakeholders during the BA process as well as the applicable responses.</p>
	<p>iii. The Public Participation Process must be conducted in terms of Regulation 39, 40 41, 42, 43 &amp; 44 of the EIA Regulations 2014, as amended and all supporting documents such must be attached in the final BAR.</p>		<p>Noted. Please refer to Chapter 6 of the Final BAR which details the process followed for public participation. Public participation material has been attached in Annex C of the Final BAR.</p>
	<p>iv. A comments and Response trail report (C&amp;R) of all comments received during the Basic Assessment Process. The C&amp;R report must be a separate document from the main report and the format must be in a table format. It must clearly indicate the Stakeholder. date of</p>		<p>Noted. This Comments and Responses Report has been drafted accordingly.</p>



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	<p>comments. comments and EAPs response (See attached example in Annexure 1 of this letter).</p>		
	<p>v. Final BAR must also include Specialist Declaration of Interest in the Department's template.</p>		<p>Specialist Declaration forms have been included in Annex E of the Final BAR, for the following specialists:</p> <ul style="list-style-type: none"> <li>• Biodiversity and Wetland Study – Terratest (Pty) Ltd</li> <li>• Geotechnical Study – Terratest (Pty) Ltd</li> <li>• Engineering Services - Umsunguli Project Management</li> <li>• Traffic Impact Assessment - AG Traffic and Transportation Consultants (Pty) Ltd</li> <li>• Visual Impact Assessment - Environmental Planning and Design</li> </ul>
	<p>vi. The BAR must also include coordinates of the proposed project including associated infrastructures in degrees minutes and seconds. Coordinates (start, middle and end point) of all linear infrastructures must also be provided.</p>		<p>Please refer to Table 2.1 in the Final BAR for centre coordinates of the proposed Project site in the specified format.</p>
	<p>vii. The submitted draft BAR does not include an undertaking under oath or affirmation by EAP. You are therefore required to include an undertaking under oath or affirmations per the requirements of Appendix 1 (3) (r) of EIA Regulation 2014 which state that the BAR must include:</p> <p>"an undertaking under oath or affirmation by the EAP in relation to:</p> <ol style="list-style-type: none"> <li>i. the correctness of the information provided in the reports;</li> <li>ii. the inclusion of comments and inputs from stakeholders and I&amp;APs;</li> <li>iii. the inclusion of inputs and recommendations from the specialist reports where relevant; and</li> <li>iv. any information provided by the EAP to interested and affected parties and any responses by the EAP to comments or inputs made by interested and affected parties".</li> </ol>		<p>An undertaking under oath by the EAP has been provided in Annex F of the Final BAR.</p>
	<p>viii. Please ensure that the final BAR includes the following maps:</p> <ul style="list-style-type: none"> <li>• A3 Layout map</li> </ul> <p>A detailed site or route plan(s) must be prepared for each alternative site or alternative activity. It must be attached as Appendix A of the BAR. The site or route plans must indicate the following:</p> <ul style="list-style-type: none"> <li>• the property boundaries and numbers of all the properties within 50 meters of the site;</li> <li>• the current land use as well as the land use zoning of the site;</li> <li>• the current land use as well as the land use zoning of each of the properties adjoining the site or sites;</li> <li>• the exact position of each listed activity applied for (including alternatives);</li> <li>• servitude(s) indicating the purpose of the servitude;</li> <li>• a legend; and</li> <li>• a north arrow.</li> </ul> <ul style="list-style-type: none"> <li>• A3 Sensitivity Map</li> </ul> <p>The layout plan as indicated above must be overlain with a sensitivity map that indicates all the sensitive areas associated with the site, including, but not limited to:</p> <ul style="list-style-type: none"> <li>• watercourses;</li> <li>• the 1:100 year flood line (where available or where it is required by DWS);</li> <li>• ridges;</li> </ul>		<p>Please refer to Annex G of the Final BAR for the layout map and sensitivity map requested.</p>

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	<ul style="list-style-type: none"> <li>cultural and historical features;</li> <li>areas with indigenous vegetation (even if it is degraded or infested with alien species); and</li> <li>Critical biodiversity areas.</li> </ul> <p>The sensitivity map must not only overlay the sensitivity of the preferred site, but must also include all the identified alternatives.</p>		
	<p>ix. Please ensure that a flash drive containing the submitted draft BAR, final BAR and Amended Application form is submitted together with your final BAR.</p>		<p>Noted. A soft copy of the Draft BAR, the amended application and Final BAR in the form of a flash drive will be submitted to the Department as requested.</p>
	<p>x. The Department draws your attention to the requirement of Section 50 {1}(a)(i) of the National Environmental Management: Protected Areas Act, 2003 (Act No 57 of 2003), which reads as follows: Section 50: Commercial and community activities in a national park, nature reserve and world heritage site. (1) The management authority of a national park, nature reserve and world heritage site may, despite any regulation or by-law referred to in section 49, but subject to the management plan of the park, reserve or site- (a) Carry out or allow- (i) A commercial activity in the park, reserve or site; or....." • A confirmation letter from the management authority signed by the manager of Isimangaliso Wetland Park Authority indicating that the activity is in line with the approved management plan of the reserve or site must be included in the final report.</p>		<p>Noted. A confirmation letter from the Management Authority (iSimangaliso Wetland Park Authority) has been attached as Annex J of the Final BAR.</p>
	<p><b>General</b> The final BAR must comply with the requirements of this letter, Appendix 1, 4 and 6 of the EIA Regulations 2014, as amended.</p>		<p>The final BAR complies with the requirements of the letter as well as Appendix 1, 4 and 6 of the EIA Regulations 2014, as amended.</p>
	<p>You are hereby reminded that should the BAR fail to comply with the requirements of this comment letter, Appendix 1, 4 and 6 of the EIA Regulations as amended, the environmental authorisation may be refused.</p>		<p>Noted, thank you.</p>
	<p>You are reminded to comply with regulation 19 (1) (a) of the Environmental Impact Assessment Regulations, 2014 (as amended), which state that:  "Where basic assessment must be applied to an application, the applicant must, within 90 days of receipt of the application by the competent authority, submit to the competent authority •  (a) a basic assessment report, inclusive of specialist reports, an EMPr, and where applicable a closure plan, which have been subjected to a public participation process of at least 30 days and which reflects the incorporation of comments received, including any comments of the competent authority"</p>		<p>Noted, thank you. The Draft BAR, EMPr and specialist reports were released to the public for a 30 day comment period starting from 02 May 2019 to 01 June 2019. The Final BAR, incorporating all comments received, is to be submitted to the competent authority within 90 days of the date of submission of the application.</p>
	<p>Should there be significant changes or new information that has been added to the basic assessment report or EMPr which changes or information was not contained in the reports or plans consulted on during the initial public participation process, you are therefore required to comply with regulation 19 (b) which state:  "notification in writing that the basic assessment report, inclusive of specialist reports an EMPr, and where applicable, a closure plan, will be submitted within 140 days of receipt of the application by the competent authority, as significant changes have been made or</p>		<p>Noted, thank you. Although a number of comments were received during the public comment period which have been incorporated into the Final BAR and EMPr, there have been no substantial changes in the information provided particularly in terms of the impact assessment and the EMPr.</p>

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	<i>significant new information has been added to the basic assessment report or EMPr or, where applicable, a closure plan, which changes or information was not contained in the reports or plans consulted on during the initial public participation process contemplated in sub.regulation (1) (a) and that the revised reports or, EMPr or, where applicable, a closure plan will be subjected to another public participation process of at least 30 days".</i>		
	You are hereby reminded of Section 24F of the National Environmental Management Act, Act No 107 of 1998, as amended, that no activity may commence prior to an environmental authorisation being granted by the Department.		Noted, thank you.
31 May 2019 Email Izak Van der Merwe (National Department of Agriculture, Forestry and Fisheries)	Dear Stephanie  Please receive herewith the DAFF comment on the BAR of the Bhangazi Lodge.  Regards	31 May 2019 Email  Dear Stakeholder,  Thank you for your correspondence. Your comments will be taken into consideration for this process and included in the comments and responses report.	Thank you for your comments. All the comments received from the DAFF have been incorporated into the Final BAR and have been responded to in this CRR.
31 May 2019 Letter Izak Van der Merwe (National Department of Agriculture, Forestry and Fisheries)	Your letter of 25 April 2019 inviting comment on the above-mentioned Basic Assessment report has reference. Please find herewith the comment of the Department of Agriculture, Forestry and Fisheries (DAFF) on the Basic Assessment report. The previous DAFF written comments of June 2018, and comments made at the meeting and site visit of 24 May 2018, are also relevant.		Thank you for your comments. All the comments received from the DAFF have been incorporated into the Final BAR and have been responded to in this CRR.
	1.This development is planned in a rare forest biome, and whatever development is allowed here may set a precedent for future decisions, also on private land, which is important given the pressures of land use change on coastal forests. These forests have been declared a threatened ecosystem.		Although within a sensitive area and threatened ecosystem, a significant part of the development is proposed to be located on a previously developed and now disturbed area in order to minimise the disturbance to the natural forest as far as possible. It is also important to note the exceptional circumstances (as described in Section 2.3.2 of the Final BAR) under which this development is proposed to occur.
	2. The reasons forwarded for this planned development as being exceptional circumstances do not deal with the type of development, but the issues of national imperatives, a signed agreement with the community, the relative importance assigned to tourism by government etc. In the previous DAFF comments submitted, it was made clear that when Section 3(3)(a) of the National Forests Act of 1998 (NFA) is applied (inter alia based on legal advice) the Department considers purely whether the activity constitutes exceptional circumstances, and not whether there is a land claim, whether it is a community project. Almost every developer along the coast cites reasons such as job creation, the importance government sets on tourism as reasons why their development should be exceptional, and if that reasoning would be accepted, most of the coastal forest of the country would become fragmented, and the blanket protection they receive from the NFA and the fact that they are declared threatened ecosystems would not be worth the paper these protection measures are written on.		Section 3(3) of the National Forests Act of 1998 states that "... <i>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</i> ". An agreement was signed by both iSimangaliso Wetland Park and the Bhangazi Community Trust on March 2006 (see Chapter 1 and Chapter 2 of the Final BAR), to develop a tourism facility within the World Heritage Site. According to this agreement, "... <i>the primary purpose of the Bhangazi Heritage site is for the interpretation of the cultural heritage of the Bhangazi community...</i> " Therefore, no other development or site alternative is applicable for this project.  Given this premise and the definition provided in the Act on what exceptional circumstances are, the proposed project will satisfy the social and economic benefits clause, as detailed in Chapter 2 of the Final BAR and as such, fulfils the exceptional circumstances section of the Act.  According to Section 2(1) of the Restitution of Land Rights Act 22 of 1994, "A person shall be entitled to restitution of a right in land if-

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			<p>(d) it is a community or part of a community dispossessed of a right in land after 19 June 1913 as a result of past racially discriminatory laws or practices..." As such, the continuation of this project would ensure that the Bhangazi Community Trust's rights according to the Restitution of Land Rights Act 22 of 1994 are met. There is no alternative to the location of this proposed activity and to deny the Trust their right to develop, would imply that restitution right cannot be exercised.</p>
	<p>3. Development affecting natural forest therefore has to be judged on whether the type of development itself is compatible with the biome, and if so, also whether there is any other alternative, and whether the size and layout is acceptable. As stated in the previous comments, case law dictates that the term "exceptional circumstances" be interpreted strictly and conservatively.</p>		<p>The proposed development is to occur largely on an already disturbed part of the forest. Existing accommodation units present at the site will be demolished to make way for the proposed development. Over and above this, small open pockets within the forest (see layout in Figure 2.3 of the Final BAR) will be used to place each of the proposed accommodation units. The trees within the pockets will be identified prior to construction by a specialist. The lodge will make use of standard safari tents on raised timber decks that blend into the natural environment thus minimising visual disturbance. The design and layout of the lodge has been amended multiple times in order to minimise impacts and based on the various specialists recommendations, as presented in the FBAR.</p>
	<p>4. In the case of the Bhangazi Lodge, the ecotourist accommodation (units placed among the trees) can in principle be accommodated, but then the size of these units have to be acceptable with minimal damage to the forest canopy. The Department accepts that the ecotourist units are exceptional when looking at the land use type, but when looking at the number of trees and canopies affected as indicated in the map in figure 7 of the visual impact assessment it shows significant clearance of canopy, which is not as benign as the examples of tented platforms and small cabins fitted under the canopy as at the De Vasselot restcamp in the Tsitsikamma. The Basic Assessment mentions the desire to follow best practice, but is this really a true example of best practice, and at all comparable to the much acclaimed forest cabins at De Vasselot Restcamp and at Storms River, which DAFF referred to in its previous comment?</p>		<p>The proposed development layout was amended in 2018 following the initial comments received from DAFF in 2018. The new layout as illustrated in Figure 2.3 of the Final BAR has been amended to ensure minimal disturbance to the natural forest. The canopy height is estimated to be 10m. The proposed development units will be a maximum height of 6m, and as a result there would be no significant clearance of the canopy. A vegetation survey was also conducted in 2018 which determined that the impacts to trees in the disturbed section should be very low, as no trees need to be removed. In the greenfield section however, construction will result in some loss of understory in the short term, and possibly minor gaps in the canopy. In the medium term, (5 years, or more) the forest will recover, and gaps, if any, in the canopy will close over. As such, various avoidance and mitigation measures have been presented in the EMPr (Annex B of the Final BAR) to minimise the impacts.</p>
	<p>5. The restaurant and swimming pool cannot be considered as exceptional circumstance. The development type of a restaurant is not inherently limited to a natural setting. In the terminology of the South African environmental economist Miles Mander, certain development types are not reliant on certain settings, that such development types in such settings can be regarded as a nice-to-have, and can develop from zero (in other words can be developed in degraded areas). With modern technology degraded areas can be transformed into attractive areas during development. The restaurant is larger than the individual units and will require more forest clearance. This restaurant should be placed in the large fishing cottage area that is already partially transformed. It will set the wrong precedent if this development is allowed in natural forest. Other developers along the coast can then reason that they could also place similar restaurant or business structures in natural forest in natural forest, given then that it is allowed on government land. DAFF officials have first-hand experience of legal cases where developers try to influence legal outcomes by referring to other examples or precedents.</p>		<p>The new layout as described above has been altered in such a way as to minimise disturbance and make use of open pockets within the forest as much as possible. The main complex which comprised the restaurant and the pool areas is estimated to have a footprint of 300m<sup>2</sup> and is located close to a large forest fig. The vegetation specialist has suggested that the tree be used as the central focus around which the deck of the restaurant complex can be built. It is estimated that at least 3 trees with a stem circumference of more than 60 cm, may need to be removed to build this complex. These include <i>Albizia adianthifolia</i>, <i>Celtis Africana</i>; and <i>Trichelia emmitica</i>. None of these trees are endangered or protected and occur in abundance in the forest. The large fishing cottage area is also being utilised for a different part of the proposed development, also optimising on developing on already disturbed parts of the forest.</p>

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	6. The question always to be asked, even for development of exceptional circumstances, is whether there are feasible alternatives. For the restaurant, the feasible alternative is the more degraded area where the existing fishing cottages are that will be demolished, and where the initial layout had a reception area indicated. The community gathering area can either be reduced in size or re-designed, or the Isimangiliso Wetland Park authority should considered accommodating this on degraded land nearby. In many cases that DAFF has dealt with, creative redesign and altering layouts found feasible solutions that reduced impacts on natural forests, and such redesign should happen in this case. A restaurant lifted to two storeys, could have views from the upper deck from the area where the current fishing cottages are, without being visible to eco-tourist units among the forest. It is not necessary to allow more forest destruction simply for a nice-to-have location. The primary objective of a protected area is conservation, and tourism is secondary.		As previously indicated, the large fishing cottage area is being utilised for a different part of the proposed development, by way of optimising development on already disturbed parts of the forest. The resultant and pool area are proposed to be placed between existing trees, where no more than three trees with a stem circumference of 60cm or more may potentially be removed. A vegetation specialist will be present at the site prior to construction to locate any trees of concern.  Refer to responses above for further details.
	7. Staff housing is also not dependent on a natural setting and is not an exceptional circumstance, and should be limited to degraded areas or existing structures.		Staff housing has been placed in an already disturbed area according to the updated layout in Figure 2.3 of the Final BAR.
	8. As far as the Environmental Management Programme is concerned, the following general comment is made: a) Isimangaliso needs to ensure full compliance with the National Forests Act for all activities undertaken. b) The Method Statements for activities affecting natural forests should be submitted to DAFF for comment. c) If the compliance monitoring by the EMO finds non-compliance incidents that amounts to transgression of the National Forests Act, DAFF must be informed and forest officers should have an opportunity to do inspection. Despite the transfer of powers in terms of assignment, DAFF still has national oversight over compliance with the protection of natural forests accorded in terms of the Act. Audit reports should also be made available to DAFF and EKZNW.		8. a) Noted. iSimangaliso and the Bhangazi Community Trust must adhere to the National Forest Act where the proposed project is concerned.  b) Noted. Prior to construction, Method Statements for any proposed activities affecting the natural forest will be submitted to DAFF for comment- it will be at the discretion of the iSimangaliso Wetland Park Management to set the commenting period.  c) Noted. Should non-compliances be detected by the EMO during compliance monitoring, DAFF will be notified. Audit reports will be made available to DAFF and EKZNW electronically upon request.
	9. The following comments apply to table 4.1: a) A forest specialist should be involved in giving inputs into the actual design and development of structures and facilities that may affect natural forest, and in training and environmental awareness, because natural forest presents a specialized environment requiring a certain level of understanding.		9. a) Recommendations have been presented by the vegetation specialist in the vegetation survey attached in Annex E of the Final BAR. Training and environmental awareness will also be conducted by a forest specialist on site prior to construction.
	9b) The footprint of all structures and infrastructure should be demarcated (with lint or stakes) prior to clearance of vegetation, and a forest ecologist and/or DAFF forest officer should be given the opportunity to inspect these before actual clearance. It should not just be the marking of individual trees. If this is not done, contractors often cause unnecessary damage outside the footprints because they do not see a clearly demarcated line. With the footprints is also meant the necessary limited space around the actual development area where construction workers and materials have to manoeuvre and work. The demarcation not only concerns trees, but also the understorey, especially where understorey cover is good and will be affected.		9. b) Noted. The footprint of all structures and infrastructure will be demarcated and inspected by the relevant parties prior to construction as suggested.
	9c) DAFF can deliver inputs through comment on method statements, and should also get sight of the ECO Monitoring reports.		9. c) Noted. Method statements and ECO monitoring reports will be made available electronically to DAFF upon request during the construction phase.
	9d) The tree survey result for affected sites with size classes and species should also be provided to DAFF, and units moved where necessary to limit damage to big trees.		9. d) Tree survey results as well as recommendations/ suggestions have been presented in the vegetation survey, attached in Annex E of the Final BAR. These recommendations have been taken in account in the FBAR and amended layout.

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	9e) There is mention of gardens around the lodge (the elevated tent units). No gardening with exotic vegetation should take place. The environment should remain as natural as possible, as at the De Vasselot restcamp in Tsitsikamma.		9. e) Noted. Only indigenous plants will be made use of to maintain the integrity and natural state of the environment, as far as possible.
	9f) Visitors must be discouraged to walk off boardwalks anywhere between units and other areas, and one way of doing that is to have wooden railings on either side of the boardwalk.		9. f) Noted. Visitors will be discouraged to walk off boardwalks anywhere between units and other areas.
	Your consideration of the above comments will be appreciated. For more information on the matter, kindly contact Ms Mulalo Sundani at Mulalosu@daff.gov.za: 012 309 5865 or Ms Shumani Dzivhani at ShumaniD@daff.gov.za at 012 309 5765.		Thank you for your comments. They have been taken into consideration and have been addressed in the Final BAR as referenced above.
01 June 2019 Email Nicholas Scarr (Rhodes University)	Herewith comment on ERM's Draft Basic Assessment Report (DBAR) of reference 0282731, in accordance with your letter of invitation dated 30 April 2019.		Although within a natural forest, a large component of the proposed development will be located in a previously disturbed area within such forest. It should also be noted that the proposed accommodation units are anticipated to not be closer than 15 meters to each other and they will be placed at least 10 meters away from the forest edge, inside the forest. As a result, the removal of trees which fall within this footprint will be negligible. In the short term the construction will result in some loss of understory and possibly minor gaps in the canopy. In the medium term, (5 years, or more) the forest will recover, and gaps, if any, in the canopy will close over.
	1. While section 4.1 of the report deals in some detail with the applicability of NEMA, the National Water Act and the NEM: Waste Act to the project, it merely lists the National Forests Act (NFA) as also being applicable. This is regarded as an omission in circumstances where it is being proposed that the lodge be located within an indigenous forest, and where licensing in terms of the NFA is fundamental to the project's implementation.		The National Forest Act ( Act 84 of 1998) is listed as applicable National legislation in Section 4,1 of the Final BAR.
	2. The NFA defines natural forest as a group of indigenous trees whose crowns are largely contiguous, or which have been declared by the Minister to be a natural forest. Para. 8.1.4 of the DBAR states that the forest canopy at the proposed project site is 85-95% intact, while para. 5.1.6 indicates that the proposed lodge would be situated in Northern Coastal Forest (FOz 7) according to Mucina and Rutherford (2006). Since this forest type is declared to be a natural forest in Schedule A to Notice 167 of 2017 issued by the (former) Minister of Agriculture, Forestry and Fisheries, and by virtue of the DBAR's description of the forest canopy, the vegetation which prevails at the site appears to comply with the definition of natural forest on both counts.		Your comments are noted, and will be dealt with in terms of the National Forest Act ( Act 84 of 1998).
	3. However the DBAR's only references to natural forest appear to be in the exceptional circumstances motivation contained in its para 2.3.2, and while the motivation links the term to section 3 (3) (a) of the NFA, it does not qualify it, or articulate its significance and implications in the wider context of the Act.		The type of forest where the proposed lodge is to be developed has been detailed in the Final BAR as well as the vegetation found in it. The vegetation survey attached in Annex E of the Final BAR has also extensively provided details on the vegetation types found at the site. Natural forests have been detailed in the vegetation survey as well as the Visual Impact Assessment attached in Annex E of the Final BAR.
	4. By the same token, while para. 5.1.6 of the DBAR notes that four species which are protected in terms of the NFA have been identified at the site, it fails to deal with the legal implications of the vegetation on the site constituting natural forest.		The vegetation specialist identified four protected tree species within the proposed development site. (see vegetation study in Annex E of the Final BAR). Another recommendation was made to reduce the unit sizes so as to reduce the footprint affected. Such recommendations were taken into consideration in the FBAR.
5. In fact, section 7 of the Act prohibits the destruction of indigenous trees in any natural forest without a licence issued by the Minister responsible for Forestry, and in this sense natural forest per se is protected.		As stated above, the vegetation specialist study is attached in Annex E of the Final BAR.  Any licencing to be undertaken for the pruning and removal of trees at the proposed site as required under Section 7 of the National Forests Act (Act 84 of 1998) will be done as a separate process.	

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	<p>6. This over and above the protection afforded to the above four species of trees by section 15 of the Act.</p> <p>7. Section 3 (3) (a) of the NFA, which provides that natural forests must not be destroyed save in exceptional circumstances, needs to be read in conjunction with the prohibition on the destruction of natural forest in section 7 of the Act.</p>		<p>Please see response above. Your comments are noted, and will be dealt with in terms of the National Forest Act ( Act 84 of 1998).</p> <p>Noted. Section 3(3) of the National Forests Act of 1998 states that “...<i>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</i>”. An agreement was signed by both iSimangaliso Wetland Park and the Bhangazi Community Trust on March 2006 (see Chapter 1 and Chapter 2 of the Final BAR), to develop a tourism facility within the World Heritage Site. According to this agreement, “...<i>the primary purpose of the Bhangazi Heritage site is for the interpretation of the cultural heritage of the Bhangazi community...</i>” Therefore, no other development or site alternative is applicable for this project.</p> <p>Given this premise and the definition provided in the Act above on what exceptional circumstances are, the project provides environmental, social and economic benefits as detailed in Chapter 2 of the Final BAR and as such, fulfills the exceptional circumstances section of the Act.</p> <p>According to Section 2(1) of the Restitution of Land Rights Act 22 of 1994, “<i>A person shall be entitled to restitution of a right in land if- (d) it is a community or part of a community dispossessed of a right in land after 19 June 1913 as a result of past racially discriminatory laws or practices...</i>”</p> <p>As such, the continuation of this project would ensure that the Bhangazi Community Trust’s rights according to the Restitution of Land Rights Act 22 of 1994 are met.</p> <p>Any licencing to be undertaken for the pruning and removal of trees in the proposed site as required under Section 7 of the National Forests Act (Act 84 of 1998) will be done as a separate process.</p>
	<p>8. Section 3 (3) (a) moreover embodies a principle which, as specified in section 3 (1) (e) of the NFA, must be considered and applied by any person required in terms of any legislation to carry out an environmental impact assessment in respect of any activity which will or may have an effect on natural forest.</p>		<p>This has been noted.</p> <p>The principles detailed in Section 3 (3) of the National Forest Act state that-  “(c) <i>Forests must be developed and managed so as to –</i>    <i>(ii) sustain the potential yield of their economic, social, health and environmental benefits;</i>  <i>(vi) conserve heritage resources and promote aesthetic, cultural and spiritual values; and</i>  <i>(vii) advance persons or categories of persons disadvantaged by unfair discrimination.</i>”</p> <p>Furthermore, Section 3(3) of the National Forests Act of 1998 states that “...<i>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</i>”</p>

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			Given the above principles stated in the Act as well as what exceptional circumstances are deemed to be by the Act, the exceptional circumstances motivation provided in Section 2.3.2 of the Final BAR are significantly applicable and adhere to the National Forests Act.
	9. Accordingly the exceptional circumstances motivation is misplaced within the project need and desirability component (para. 2.3) of the DBAR, and should be repositioned in conjunction with due perspective being provided on the centrality of the NFA to the proposed project.		<p>The principles detailed in Section 3 (3) of the National Forest Act state that-</p> <p><i>“(c) Forests must be developed and managed so as to –</i></p> <p><i>(ii) sustain the potential yield of their economic, social, health and environmental benefits;</i></p> <p><i>(vi) conserve heritage resources and promote aesthetic, cultural and spiritual values; and</i></p> <p><i>(vii) advance persons or categories of persons disadvantaged by unfair discrimination.”</i></p> <p>Furthermore, Section 3(3) of the National Forests Act of 1998 states that <i>“...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”</i></p> <p>Given the above principles stated in the Act as well as what exceptional circumstances are deemed to be by the Act, the exceptional circumstances motivation provided in Section 2.3.2 of the Final BAR as well as the Needs and Desirability of the project (Section 2.3 of the Final BAR) are significantly applicable and adhere to the National Forests Act.</p>
	10. Potential forest impacts should similarly be aligned with sections 7 and 15 of the NFA.		<p>Your comments are noted, and will be dealt with in terms of the National Forest Act ( Act 84 of 1998).</p> <p>Any licencing to be undertaken for the pruning and removal of trees in the proposed site as required under Section 7 of the National Forests Act (Act 84 of 1998) will be done as a separate process.</p>
	11. On the matter of impacts, para. 8.1.2 of the DBAR indicates that <i>although there has already been some loss of forest within the lodge development footprint, the extent of the new development implies that further loss will be inevitable. It also states that on the basis of the plans, it is thought that at least 60% of the presently untouched forest will be felled or otherwise severely impacted upon.</i>		This has since been amended in the FBAR. A majority of the development is proposed to occur over already disturbed land so as to minimise the impact as much as possible. The accommodation units to be placed within the forest are proposed to be on safari tents raised on timber decks, also as a way of minimising the impact. A vegetation survey has been conducted which has identified the number of trees within the development area s which may be affected, so that they may be avoided as far as possible. Suggestions have also been made in the vegetation survey which aim at preserving the natural state of this environment and saving as many trees as possible. In this way, the impact of the proposed activity has been significantly reduced.
	12. The same para. notes that <i>the forest vegetation which would be lost consists of “Maputaland Moist Coastal Lowlands Forest” which is listed as being “Endangered”.</i>		Refer to the response above. It must also be noted that various mitigation measures have been presented in the Final BAR as well as in the EMPr in Annex B of the Final BAR to minimise the impacts as much as possible.
	13. In this respect it is pointed out that para. 4.3 (c) of the Policy Principles and Guidelines for Control of Development Affecting Natural Forests, published by the former Department of Agriculture, Forestry and Fisheries, stipulates that for endangered forest types, <i>no activities</i>		This has been noted. It should also be noted that Section 4.3 (e) of the Policy Principles and Guidelines for Control of Development Affecting Natural Forests also states that



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	<p>or development must be considered that will destroy forest. Defining destruction, the same document provides that this could mean any action that will cause the loss of forest habitat or part of it, including actions with direct impacts such as the cutting of forest trees</p>		<p>“As with environmental impact assessment procedures, no development authorisation should be given to land uses that will significantly transform forests, save in proven exceptional cases of national or provincial strategic importance where no alternatives are available. Where low-impact eco-tourist facilities ...and activities are authorized, these must be placed in the least sensitive parts of the forest, and care must be taken to limit the impacts. Development footprints must be limited, building or structure design and colour must blend with the forest, forest canopies must be kept intact, structures should be placed on stilts, and heavily used walkways should be placed on boardwalks to prevent soil compaction...”</p> <p>As such, measures have been taken with regards to the proposed project to change the layout (Figure2.3 of the Final BAR) as per comments received from DAFF to strategically use the already disturbed areas in the project site so as to minimise the impact. Additionally, small pockets of open land in the forest have been identified to develop accommodation units, under the forest canopy, nestled within existing trees. A vegetation survey (Annex E of the Final BAR) was also conducted to identify the potential trees to be affected and recommendations were made to reduce the size of the accommodation units to try reduce the footprint as much as possible. The accommodation are also proposed to be developed on safari tents on raised timber decks. Raised boardwalks will also be established as walkways all in an effort to minimise the impacts.</p> <p>Given the land claimants and the agreement signed between the Bhangazi Community Trust and iSimangaliso Wetland Park Authority in 2006, there is no other alternative site or development applicable in this case.</p> <p>For the reasons mentioned above, the Policy Principles and Guidelines for Control of Development Affecting Natural Forests have been met.</p>
	<p>14. On the other hand the document provides, for low-impact eco-tourist facilities like boardwalks and bird-hides, and small bush camps within endangered forest types.</p>		<p>This has been noted. Please see the previous response.</p>
	<p>15. From this perspective it is concerning that in para. 7 of the Vegetation Survey specialist study it is approximated that just over half the units within the greenfield section of the development, may need to have at least one, or more trees, with a stem circumference of 60 cm or more (equivalent to a stem diameter of 180 mm), removed.</p>		<p>The vegetation study also states that Although this development will result in some loss of forest trees, the forest will certainly not be destroyed, and apart from some understory clearing, will recover fully within a few years, (provided the structures are on elevated platforms, made of wood, and all paths in the forest consist of elevated boardwalks).</p>
	<p>16. Since the project which is being proposed therefore appears to exceed the provisions of the Policy Principles and Guidelines, it is urged that Forestry authorities be engaged as a matter of priority regarding the prospects of it being licensed in terms of the NFA.</p>		<p>The DAFF have been included in the Basic Assessment process as a commenting authority (see Annex C of Final BAR).</p> <p>It must be noted, however, that any licencing to be undertaken in terms of the National Forests Act (Act 84 of 1998) will be done as a separate process.</p>
	<p>17. On a matter of detail, para. 8.1.4 refers to the proposed accommodation units each having a footprint of 10 square meters, whereas para. 1.4 of the Vegetation Survey specialist study appears to indicate that that the dimensions are in fact 10 X 10 meters, with the correct</p>		<p>The correct dimensions for the accommodation units is 75 square meters as described multiple times in the Final BAR.</p>

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	<p>surface area accordingly being 100 square meters. At the same time the specialist study itself refers variously to the units being 10 meters squared and 10 square meters. Obviously this detail should be clarified, and associated dimensions and terminology should be expressed consistently throughout the DBAR and its annexures.</p> <p>18. Re the property description provided in Table 2.1, it is not possible to link this with Notice 1187 of 2006, in which the (then) Minister of Water Affairs and Forestry released State Forests described as Sodwana, Cape Vidal and Eastern Shores. Clarity on whether the Notice embraced the site of the proposed project is required in order for it to be ascertained whether any NFA licences which may be granted for the project would be issued in terms of section 7 or section 23 of the NFA.</p>		<p>The Bhangazi Heritage Site is located on the eastern side of Lake Bhangazi South, inland of the Cape Vidal dunes on the Eastern Shores of Lake St Lucia within the iSimangaliso Wetland Park. The SG code for the land parcel is TOLU 0000000000000000 and the centre coordinates are 28°06'48.2"S 32°32'11.0.</p> <p>As previously mentioned, any licencing to be undertaken in terms of the National Forests Act (Act 84 of 1998) will be done as a separate process, and does not fall under the current Basic Assessment process being discussed.</p>
<p>05 June 2019 Email Ms Happy Khambule (Department Economic Development, Tourism and Environmental Affairs)</p>	<p>Please receive the attached comments for the above mentioned report.</p> <p>With hope that all is in order</p>	<p>05 June 2019 Email</p> <p>Thank you Happy.</p> <p>We will capture these in the FBAR.</p>	<p>No further response required.</p>
<p>05 June 2019 Letter Ms Happy Khambule (Department Economic Development, Tourism and Environmental Affairs)</p>	<p>Tourism industry is generally known to overuse water resources, the draft report highlighted that water for the proposed development will be source from Mtubatuba abstraction works, however mentioned also that there are severe water restrictions at times, will the capacity of water at the abstraction point be able to cater for water demands of the proposed development. Is there a service level agreement obtained for sourcing water at the aforementioned source.</p>		<p>The proposed lodge will make use of the mainstream water supply (the Mtubatuba Abstraction Works) as mentioned in the Draft and Final BAR. However, there were options of potential water supply provided in the Bulk Services Engineering Report which included options of making use of the existing borehole or sinking a new borehole. It should be noted however, that these are only alternatives should the mainstream supply not be adequate. The water restrictions were most prominent during drought periods, and they would only last a maximum of a few hours in a day. Therefore, it is not expected that the mainstream water supply will be unable to accommodate the proposed development.</p>
	<p>The bulk Services Engineering Report in the draft BAR considered different options for water sources, however the identified sources are currently not in use or not suitable for consumption, are there any plans to consider or certain alternative water source over and above sourcing from Mtubatuba abstraction works.</p>		<p>The proposed lodge will make use of the mainstream water supply (the Mtubatuba Abstraction Works) as mentioned in the Draft and Final BAR. However, there were options of potential water supply provided in the Bulk Services Engineering Report which included options of making use of the existing borehole or sinking a new borehole. It should be noted however, that these are only alternatives should the mainstream supply not be adequate. The water restrictions were most prominent during drought periods, and they would only last a maximum of a few hours in a day. Therefore, it is not expected that the mainstream water supply will be unable to accommodate the proposed development.</p>
	<p>The draft report mentioned that there will be an onsite Sewage Treatment Plant (STP) system due to lack of properly managed municipal services at the proposed location, Clarity is required regarding the actual size of the plant, details on infrastructure associated with the preferred STP such as threshold of gravity main conveying effluent so to ensure that activity 10 of Listing Notice 1 is not affected by this development.</p>		<p>The proposed STP is anticipated to have a throughput capacity of 30m<sup>3</sup> per day and is not anticipated to trigger a listed activity – this has been included in Chapter 3 of the Final BAR.</p>
	<p>With reference to the above the developer is urged to ensure that there is no discharge of effluent to the wetlands near the lodge site into the lake Bhangazi</p>		<p>Discharge water from the STP will be stored in a storage tank with an aerial extent of 880 000m<sup>2</sup> before it is used for irrigation and domestic uses</p>

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			at the lodge. The discharge water will be tested by a certified lab bi-annually.
	It is noted that out of the extent of 9.94 ha site, Bhangazi Northern portion of 5.06 ha (concession area A) is earmarked for development and the remaining 4.88 ha southern side is said to be for no development zone. The developer is encouraged to strictly manage and maintain the conservation area B and the rest of the lodge development site and ensure that there is no further disturbance of the forest edge and also control of alien/ weed species.		Noted. Various management measures, recommended by the specialists to minimise impacts, have been included into the EMPr which the Developer will adhere to during the course of the Project. The Developer is also obligated to adhere to the iSimangaliso Wetland Park Authority's Guidelines.
	A drawing layout plan illustrating all structures and associated infrastructure including but not limited to rooms, access roads and small routes linking the proposed structure should be included in the final Basic Assessment Report.		A layout map of the proposed development has been proved in Annex G of the Final BAR. More detailed drawings will be established closer to construction time.
	This office of the Department trust that this development will implement the recommended environmental management mitigation measures suggested for the biophysical impacts by specialist assessments which will enable the proposed development to operate without compromising NEMA principles and ensure minimal impacts on natural habitat as possible.		All management measures recommended by specialists in the EMPr will be adhered to during the course of the Project to minimise the associated impacts as much as possible.
<b>Comments Received Post submission to DEFF</b>			
20 October 2019 (Received by Applicant on 01 November 2019) Letter Mr Sabelo Malaza (Department of Environmental Affairs)	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 decision are attached herewith.		Noted. I&APs were notified of the DEFF's refusal to grant an EA for the project.
	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 date of the EIA, of the Department's as well as the provisions regarding the submission of the 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 provision 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 an 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 date 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.		
	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 the interest in the matter within 20 days from the date that the application 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.		
	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.		

**BHANGAZI CULTURAL HERITAGE LODGE BASIC ASSESSMENT REPORT- COMMENTS AND REPONSES REPORT (CRR)**

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	Details regarding the basis on which the Department reached this decision are set out in Annexure 1		
	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 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.		
	Annexure 1: Reasons for Decision		
	1. Information considered in making the decision		
	In reaching its decision, the Department took, <i>inter alia</i> , 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 in the draft basic assessment report submitted to this Department on 15 April 2019;		
	c) The Department's comments on the draft basic assessment report date 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 on the site visit undertaken on 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 Rhodes 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 ' <i>the applicant must ensure that the</i>		

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	<p>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'.</p>		
	<p>b) Comments from Department of Agriculture Forest and Fisheries (DAFF) dated 31 May 2019 which were emailed to the EAP on the 31 May 2019 are not included in the final BAR.</p>		
	<p>c) Comments from Rhodes University: PSAM dated 1 June 2019 and emailed to the EAP on the 01<sup>st</sup> June 2019.</p>		
	<p>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.</p>		
	<p>b) The final BAR submitted does not include comments from Rhodes 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 the Rhodes University's Information of 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.</p>		
	<p>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.</p>		
	<p>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 forest. These forests have been declared a threatened ecosystem.</p>		
	<p>(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 (<i>inter alia</i> 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.</p>		
	<p>(iii) In the case of 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 acceptable 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</p>		

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	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 circumstances. 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, 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 developments 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 be either reduced in size or re-designed, or the iSimangaliso Wetland Park authority should consider accommodating this on degraded land nearby. In many cases that the 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 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		

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	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) 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) 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 authority is of the opinion that the proposed development will conflict with the general objectives of the 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.		
On 28 November 2019 Appeal Response submitted by the Bhangazi Community Trust Appellant representative: Mr Peter Velcich of Nuleaf Planning and Environmental (Pty)Ltd	On 28 November 2019, the Appellant submitted an application requesting an extension on the deadline for submitting an appeal against the EA refusal. The request was to move the deadline from 28 November 2019 and extend it to 29 February 2020.	-	Refer to Annexure 1: Condonation: Extension of appeal period, contained in the BAR under Annex C – Stakeholder Engagement Documents, item 4.
6 December 2019 Letter Advocate Mokete Rakgokgo (DEFF: Appeals Directorate)	The Department of Environment Forestry and Fisheries (DEFF)'s Appeals Directorate granted the Appellant's request for an extension to file an appeal in response to the Department's refusal of an EA.	-	See previous comment.
27 February 2020 Appeal Response submitted by the Bhangazi Community Trust Appellant representative: Mr Peter Velcich of Nuleaf Planning and Environmental (Pty)Ltd	Mr Peter Velcich of Nuleaf Planning and Environmental (Pty)Ltd was appointed as the Appellant's representative to prepare and submit the appeal on behalf of the Bhangazi Trust. The appeal document was submitted in response to the DEFF's refusal of EA.	-	The details of the appeal document are discussed in the updated BAR.  A copy of the appeal is included in the BAR under the Annex C – Stakeholder Engagement.
23 March 2020 Letter Nicholas Scarr (Rhodes University)	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.		Noted.  This CRR has recorded the full suite of comments and responses received in the previous PPP round. In addition, the correspondence between the appellant, DAFF and PSAM has been appended to the updated BAR (please refer to Annex C- Stakeholder Engagement).

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	<p>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).</p> <p>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.</p> <p><u>Responding statement</u>                      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.</p>		<p>ERM aims to ensure that all feedback from I&amp;APs is captured in the updated BAR to be submitted to DEFF for adjudication. This is to address the shortcomings of the previous PPP and ensure that all concerns raised are recorded in compliance with EIA regulations.</p>
	<p>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.</p>		<p>In the Executive Summary (compiled in terms of the <i>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)</i>. Directions (of June 2020), a list of changes/updates to the BAR has been drawn up. Table 1-4 of the Executive Summary lists the BAR section, details of the applied changes as well as page numbers of where the changes can be found.</p> <p>The Executive Summary was sent as an attachment to the email sent to I&amp;APs, notifying them of the new PPP.</p>
	<p>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.</p>		<p>The updated BAR has sought to address this shortfall.</p>
	<p>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).</p>		
	<p>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.</p>		<p>Noted. The PPP that has been initiated aims to address this point by allowing the public to comment on the proposed site layout changes. The EAP will also ensure a comprehensive information pack is submitted with the Final BAR to avoid piecemeal submission of critical information, and to avoid a similar situation as that highlighted by PSAM.</p>
	<p>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.</p>		
	<p>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.</p>		
	<p>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.</p>		<p>Noted. Please refer to the previous comment.</p>



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	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, 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).		The concerns raised by PSAM relate more to the regulatory processes followed in the previous PPP and BAR finalisation. The concerns are acknowledged, moreso with them being noted by DEFF in the appeal decision (paragraphs 2.1.6 2.1.8).
	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.		<p>The DEFF's subsequent decision on the application can be summarised as follows:</p> <ul style="list-style-type: none"> <li>• Grounds of appeal dismissed: <ul style="list-style-type: none"> <li>• The DEFF not taking onto consideration the updated CRR in their adjudication of the final BAR.</li> </ul> </li> <li>• Grounds of appeal upheld: <ul style="list-style-type: none"> <li>• The location of the staff housing area.</li> <li>• The revised site layout.</li> </ul> </li> </ul> <p>Please refer to Annex C – Stakeholder Engagement, Item 6 for a copy of the Appeal Decision letter.</p>

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			To this effect, the Minister ruled that due to significant changes to the site layout, the revised BAR must be taken out for public participation. After which the revised BAR will be evaluated by the department for a decision. (please refer to the Appeal Decision, Paragraph 3.3.2 'Remit the matter to the Department for reconsideration, as alluded to in paragraphs 2.3.12 – 2.3.14 above').
	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.		The appeal decision letters recognises PSAM's reservations regarding the inconsistencies of the BAR and previous PPP process. However, the decision does offer the appellant and opportunity to address the BAR inconsistencies (particularly in relation to regulation 44(1) 2014 EIA Regulations), and disseminate the full extent of project information to the CA and I&APs (see Paragraph 2.3.12 of the appeal decision).
	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.		

## BHANGAZI CULTURAL HERITAGE LODGE BASIC ASSESSMENT REPORT- COMMENTS AND REPONSES REPORT (CRR)

Details	Comments	Initial Responses	Responses
<p>16 April 2020 Letter Minister Barbara Creecy (Department of Environment Forestry and Fisheries (DEFF, formerly Department of Environmental Affairs))</p> <p>29 April 2020 Email Peter Velcich (Nuleaf-Appellant's Representative)</p>	1. BACKGROUND AND APPEAL		Responses to the appeal decision are noted in this CRR. They have culminated in the updating of the BAR in light of the site layout revisions, as well as in the initiating of this new PPP.
	1.4 Upon evaluation of the final Basic Assessment Report (BAR) dated July 2019, as well as <i>inter alia</i> 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 an exceptional circumstance as required by section 3(3) a of the National Forest Act, 1998 (Act No. 84 of 1998), which state that “... <i>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</i> ”.		
	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 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 in conjunction 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 iSimangaliso 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 Appeal 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.			

**BHANGAZI CULTURAL HERITAGE LODGE BASIC ASSESSMENT REPORT- COMMENTS AND REPONSES REPORT (CRR)**

Details	Comments	Initial Responses	Responses
	<p>2 EVALUATION</p> <p>2.1 <i>The Department did not consider the amended Comments and Response Report (CRR) during the processing</i></p> <p>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 notification of the interested and affected parties (I&amp;APs), the application was in fact fully compliant with regulation 44(1) of the Environmental Impact Assessment Regulations, 2014, as amended (2014 EIA Regulations).</p>		
	<p>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&amp;AP informed the Department on 20 August 2020 that their comments on the 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.</p>		
	<p>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 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 appellants; response to the comments were received by the Department on 02 September 2019 and included in the revised final BAR.</p>		
	<p>2.1.4 The Department states that the 2014 EIA Regulations does not make provision for the amendment of the 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.</p>		
	<p>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.</p>		
	<p>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 confirmed their decision to the final BAR dated July 2019.</p>		
	<p>2.1.7 An analysis of the final BAR suggests that the appellant failed to comply with the 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 comment, 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”.</p>		
	<p>2.1.8 I agree with the submission by the Department that the 2014 EIA Regulations does not make provision for the amendment of the final BAR so as to address 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</p>		
	<p>2.2. <i>The location of the proposed staff housing area</i></p>		

**BHANGAZI CULTURAL HERITAGE LODGE BASIC ASSESSMENT REPORT- COMMENTS AND REPONSES REPORT (CRR)**

Details	Comments	Initial Responses	Responses
	<p>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.</p>		
	<p>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 appanate 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 the 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.</p>		
	<p>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.</p>		
	<p>2.2.4 In light of the above, I cannot find that the proposed provision 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.</p>		
	<p>2.3 <i>Revision of the site layout</i></p>		
	<p>2.3.1 The appellant states that it reviewed the comments and concerns listed by DAFF and PSAM, as well as the reason 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 the 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, trail 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.</p>		
	<p>2.3.2 The appellant advises that the following proposals were taken into consideration:</p> <ul style="list-style-type: none"> <li>• Reducing the size of the units and developing alternative unit design to accommodate specific sites.</li> <li>• That the restaurant complex be relocated to a disturbed area on the site.</li> <li>• That a Method Statement be developed for inclusion in the BAR, covering all activities within the natural forest.</li> </ul>		
	<p>2.2.2 Following the above, the appellant provides an updated site layout plan and additional mitigation measures as follows:</p> <p>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 old derelict building, remnant of the Bhangazi Fishing Camp. This revision also implies that the proposed restaurant</p>		

**BHANGAZI CULTURAL HERITAGE LODGE BASIC ASSESSMENT REPORT- COMMENTS AND REPONSES REPORT (CRR)**

Details	Comments	Initial Responses	Responses
	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 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 of each unit within the forest area, the following additional mitigation measures are proposed: <ul style="list-style-type: none"> <li>• Reducing the footprint size of the 2 bed units from 75 m<sup>2</sup> to &lt;50 m<sup>2</sup>.</li> <li>• Reducing the size of the 4 bedroom units from 75 m<sup>2</sup> to &lt;60 m<sup>2</sup></li> <li>• Developing modular / alternate designs of the units to facilitate placement in the forest with minimal impact on existing large trees.</li> <li>• Limit on the maximum tree removal size of 180 mm diameter, priority will be given to transplanting trees where at all possible.</li> <li>• No removal of any listed tree species as Protected in terms of the NFA.</li> </ul>		
	2.3.4 In addition to the above, the appellatant 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 appellatant. 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 the method statement and mitigation measures and stated that such revisions were responsive to their concerns and that the concept of exceptional circumstances 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		

**BHANGAZI CULTURAL HERITAGE LODGE BASIC ASSESSMENT REPORT- COMMENTS AND REPONSES REPORT (CRR)**

Details	Comments	Initial Responses	Responses
	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 the 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 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 the 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 <i>de novo</i> 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 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 is 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 to 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 process 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;		

**BHANGAZI CULTURAL HERITAGE LODGE BASIC ASSESSMENT REPORT- COMMENTS AND REPONSES REPORT (CRR)**

Details	Comments	Initial Responses	Responses
	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 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 00;		
	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 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 the decision judicially reviewed. Judicial review proceedings must 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).		
29 April 2020 Email Peter Velcich Nuleaf Planning and Environmental (Pty)Ltd	Hi Zama,  Further to our chat this afternoon, I would like to confirm that the project EAP can go ahead and update the DBAR and resubmit to the I&AP's for a 30 day comment period.  I ask for confirmation as the appeal decision advises under point 3.3.2 ' <i>Remit the matter to the Department for reconsideration, as alluded to in paragraphs 2.3.12 – 2.3.14 above.</i> '	DEFF response:  Dear Peter  Our telephone conversation and your email below has reference, Please note that the Minister ruled that due to significant changes to the site layout, the revised BAR must be taken out for public participation. After which the revised BAR will be evaluated by the department for a decision.  Kindly also ensure that when you submit to the Department, you include a cover letter indicating that the amended draft BAR is submitted as a result of an appeal decision. Copy of appeal decision must form part of the cover letter. The application form will also need to be amended to include Nu Leaf as the new EAP.	The EAP has noted the DEFF's decision on the way forward with the EA application. As such, the BAR, EMPr and other annexes have been updated in light of the revised site layout.  Furthermore, ERM has developed a Public Participation Process (PPP) Plan in line with the COVID-19 Directions. The purpose of the Plan is to detail the undertaking of the PPP under 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.  Please refer to Annex C, Item 9 of the BAR, for a copy of the PPP Plan.



**BHANGAZI CULTURAL HERITAGE LODGE BASIC ASSESSMENT REPORT- COMMENTS AND REPONSES REPORT (CRR)**

Details	Comments	Initial Responses	Responses
		<p>I hope this provides clarity but if you require further assistance feel free to contact me.</p> <p>Stay Safe</p>	
<p>3 August 2020 Email (to the DEFF) Piet Theron (Bhangazi Community Trust)</p>	<p>Dear Zama</p> <p>Hope you're well and staying safe under lock down. Please note that ERM (through the appointment of one of their sub-contactors - Thembeke Environmental Consulting) has agreed to support the process to finalise and submit the Bhangazi Lodge BAR. Samantha Moodley (copied in this email) from Thembeke Environmental Consulting will be in touch with you shortly to discuss the proposed way forward.</p>	<p>DEFF Response: Dear Piet</p> <p>I am very well thank you, Hope all is well on your end as well.</p> <p>I will await Ms Moodley's call, look forward to it thank you.</p>	<p>Dear Zama</p> <p>Hope you are well. Piet's e-mail from below refers. We look forward to working with you to finalise this application. My colleague Kamogelo, copied on this e-mail, has in fact been in touch already regarding the public comment period on the updated BAR. As per your guidance we will be submitting a public participation plan to you for review and approval during the course of this week. We look forward to receiving your feedback on that.</p> <p>Thanks and take care.</p> <p>.</p>
<p>4 August 2020 Email Samantha Moodley (Thembeke Environmental Consulting)</p>	<p>Hi Zama</p> <p>As you are aware TEC is assisting ERM in revising the BAR and the associated PP process for the above referenced application.</p> <p>Please see attached the proposed Public Participation Plan for your review and approval. It would be much appreciated if you could please provide your comments by 12 August 2020.</p> <p>I look forward to your feedback.</p> <p>Many thanks</p>	<p>DEFF's response</p> <p>6 August 2020 Email Zamalanga Langa (DEFF)</p> <p>Good day</p> <p>You are invited to attend a meeting to discuss the Public Participation Plan and Way forward for the Bhangazi Cultural Heritage Lodge BA. This is to ensure that the EAP and the department are on the same page to avoid further delays of the project.</p> <p>Proposed date: 07 August 2020 at 11h00 on MS Teams</p> <p>Please confirm your availability so that I can send the MS Teams link for meeting.</p>	<p>The meeting held on 07 August 2020 and was attended by the following:</p> <ul style="list-style-type: none"> <li>• Zamalanga Langa (DEFF)</li> <li>• Nyiko Nkosi (DEFF)</li> <li>• Danie Smi (DEFF)</li> <li>• Piet Theron (Representing Bhangazi Community Trust)</li> <li>• Stephanie Gopaul (ERM)</li> <li>• Samantha Moodley (Thembeke Environmental Consulting Pty Ltd (TEC))</li> <li>• Kamogelo Mokhine (TEC)</li> </ul> <p>Please refer to Annex C (Stakeholder Engagement), item 15 for the meeting minutes.</p>
<p>12 August 2020 Email Samantha Moodley (TEC)</p>	<p>Hi Zama</p> <p>Hope all is well with you.</p> <p>Please find attached the revised Public Participation Plan for your approval.</p> <p>Trust all is in order.</p> <p>Please do not hesitate to contact me should you have any questions.</p>		<p>Please see the response from DEFF below.</p>

**BHANGAZI CULTURAL HERITAGE LODGE BASIC ASSESSMENT REPORT- COMMENTS AND REPOSES REPORT (CRR)**

Details	Comments	Initial Responses	Responses
	Many thanks		
13 August 2020 Email Zamalanga Langa (DEFF)	<p>Good day</p> <p>The Final Public Participation Process (PPP) Plan for the abovementioned project dated August 2020 and received by this department on 13 August 2020 and the MS Teams meeting held 07 August 2020 refers.</p> <p>The Department has evaluated the Public Participation Plan which is submitted as per Minister Directive dated 05 June 2020 in response to Covid-19 pandemic and hereby approves the plan for the abovementioned project.</p> <p>You may proceed with the public participation process in accordance with the tasks contemplated in the PPP plan. Should you wish to deviate from the submitted PPP Plan, the amended PPP Plan must be submitted to the Department for approval prior commencement.</p> <p>Please ensure that the PPP plan forms part of the report that will be submitted to the department with a cover letter and appeal decision as discussed in our meeting.</p> <p>You are hereby reminded of Section 24F of the National Environmental Management Act 1998 (Act No. 107 of 1998), as amended, that no activity may commence prior to an Environmental Authorization being granted by the Department.</p>		<p>Noted.</p> <p>The updated BAR is accompanied by a cover letter detailing the reason for the submission. The BAR is also accompanied by the approved PPP Plan and a copy of the appeal decision, as Directed by DEFF.</p> <p>It must be noted that there are a couple of changes made in the Plan. These pertain to:</p> <ol style="list-style-type: none"> <li>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&amp;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.</li> <li>2. Comment period dates: In the approved Plan, it is stated that the 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 now been pushed out by 3 days and the 51 days will now be from 27 August 2020 to 19 October 2020.</li> </ol> <p>DEFF has been made aware of the changes in telephonic conversations between Kamogelo Mokhine (Thembeke Environmental) and the project Case Officer.</p>
18 August 2020 Email Kamogelo Mokhine (Thembeke Environmental Consulting(Pty) Ltd)	<p>Good day Zama,</p> <p>I hope this email finds you well.</p> <p>As per the discussion with DEFF on Friday 7 August 2020, we enquired with Specialists about updating their respective reports in light of the revised site layout.</p> <p>The biodiversity specialist has just reverted indicating the need to do a site sensitivity verification , in line with the GN R 320 (20 March 2020): "Procedures for the Assessment and Minimum Criteria for Reporting on Identified Environmental Themes" (please refer to the email below from Magnus van Rooyen).</p>	<p>DEFF Response</p> <p>20 August 2020 Dear Kamo</p> <p>Please note that, as discussed in our meeting all Specialist studies need to be updated to take into consideration the amended layout, this will means that all Specialist which were commissioned for the proposed project need to provide statements/confirmations which confirms whether the change that have been made to</p>	<p>Noted.</p> <p>Specialist have been engaged and validation letters as well as updated specialist declarations have been received, indicating that the proposed site layout revisions will not affect the significance ratings of the impacts already assessed by the specialists.</p> <p>Please refer to Annex E for copies of the letters and signed declarations.</p> <p><b>NOTE:</b> In early communication with the traffic specialist (Mr Andile Gqaji of AG Traffic and T Consultants (Ptv) Ltd), it was indicated that the site layout changes would not have an impact on the traffic study findings. This is due to there being no changes to the road network that was assessed in the</p>

## BHANGAZI CULTURAL HERITAGE LODGE BASIC ASSESSMENT REPORT- COMMENTS AND REPOSSES REPORT (CRR)

Details	Comments	Initial Responses	Responses
	<p>We are committed to undertaking a thorough and transparent assessment in line with relevant legislation. However, given that the Bhangazi BAR is for an existing EA application (one submitted before GN R 320 was promulgated), would we still need to undertake the site sensitivity verification?</p> <p>Based on our understanding of the nature of the changes to the layout, we do not envisage that there would be changes that warrant detailed field assessments, given that the changes are all taking place in a footprint that has already been assessed comprehensively.</p> <p>The updates might include revising the impact assessment; however we still don't think this would require specialists going to site.</p> <p>In this regard, we would like to propose that a desktop study be done by the biodiversity specialist to update the report.</p> <p>Please provide the DEFF's advice on the matter as we want to ensure that we fulfil all regulatory requirements but at the same time we do not want to put the construction schedule at risk or have the client incur further costs.</p> <p>Your guidance on this matter will be much appreciated.</p> <p>We look forward to your feedback on the matter, so we know how best to proceed.</p>	<p>the initial layout will increase the level of impact or not. If it will increase the level of impact, further mitigation measures must include in the Specialist report , Basic assessment report the and EMPr.</p> <p>The onus is on the EAP and Specialist on how this should be done, if specialist is of the opinion that they cannot provide these statements or confirmations as required without going to site to see the new location of some infrastructure as per amended layout, the way forward must be taken by you and the specialist.</p> <p>Further to the above, new Specialist Declaration of Interest must also be obtained for all Specialist statement/confirmations to be obtained on new amended layout map.</p>	<p>traffic study. As at the finalisation of the BAR however, Mr Gqaji was not in a position to submit his validation letter due to there being a death in his family, following which he had taken a leave of absence.</p> <p>ERM will ensure that Mr Gqaji's inputs and a new signed specialist declaration are submitted with the final BAR.</p>
<b>Draft BAR Commenting Period – August – October 2020</b>			
28 August 2020 Email Mr Jephrey Gumede	Good news It sound very interesting		Noted
7 September 2020 Email Mr Jephrey Gumede	Thanks for update I wish all the best.		Noted
25 September 2020 Letter (via email) Mr Sabelo Malaza (DEFF)	<p>Dear Mrs Goupal</p> <p><b>COMMENTS ON THE AMENDED DRAFT BASIC ASSESSMENT REPORT FOR THE PROPOSED BHANGAZI CULTURAL HERITAGE LODGE, ISIMAGALISO WETLAND PARK, KWAZULU NATAL PROVINCE</b></p> <p>The amended Basic Assessment Report (BAR) dated August 2020 and received bby this Department on 28 August 2020, refer.</p> <p><u>This letter serves to inform you that the following information must be include in the final BAR:</u></p> <p><b>(a) Listed Activities</b></p> <ul style="list-style-type: none"> <li>It is noted that no amended application has been submitted. Please ensure that all relevant listed activities in the BAR are the same as the listed activities applied for on the initial application form received by the Department.</li> </ul>		<ul style="list-style-type: none"> <li>No amendment application has been submitted since this is not applicable. The listed activities identified in the original BAR have not changed. The activities listed in the amended BAR are identical to those that were submitted for application under the initial BA process. The listed activities in the updated BAR do not differ from the original</li> </ul>

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	<ul style="list-style-type: none"> <li>If the activities applied for in the application form differ from those mentioned in the final BA, an amended application form must be submitted. Please note that the Department's application form template has been amended and can be downloaded from the following link: <a href="https://www.environment.gov.za/documents/forms">https://www.environment.gov.za/documents/forms</a>.</li> <li>It is imperative that the relevant authorities are continuously involved throughout the basic assessment process as the development property possibly falls within the geographically designated areas in terms of numerous GN R. 985 Activities.</li> </ul>		<p>application, and as such, no amended application has been submitted. This was confirmed at the meeting with the DEFF held on 7 August 2020 (please refer to Annex C – Stakeholder Engagement Documents, item 15).</p> <ul style="list-style-type: none"> <li>As part of the appeals process, site visits and meetings were conducted with the Forestry Directorate (13 and 18 February 2020) and the DEFF (12 and 13 March 2020) to discuss the planned changes to the lodge layout. Measures have been taken to strategically use the already disturbed areas within the project site to minimise the impact of the proposed project on the forest area. These measures are based on ongoing input from the authorities, particularly the feedback from the February/March 2020 meetings. Records of these discussions can be found under Annex C – Stakeholder Engagement Documents, item 10. In addition, the EMPr (Annex B) details the updated impact mitigation and management measures based on the revised layout. It must be noted however, that the revised changes do not trigger any new listed activities and as such, there has been no change to the EA application.</li> <li>The applicant, has involved the DEFF (as the competent authority) throughout the appeal and BAR update process. The project EAPs have sought advice on the process to follow in amending the BAR, especially under the COVID lockdown period. During the PPP, other authorities such as the DEFF: Forestry and Biodiversity directorates have been engaged and encouraged to provide input on the amended BAR. Record of the engagement has been included under Annex C - Stakeholder Engagement, specifically: <ul style="list-style-type: none"> <li>Annex C15 - Minutes from PPP meeting with DEFF, 7 August 2020;</li> <li>Annex C16 - Email Correspondence; and</li> <li>Annex C17 - PPP Correspondence.</li> </ul> </li> </ul>
	<p><b>(b) Public Participation Process</b></p> <p>(i) The following information must be submitted with the final BAR:</p> <ol style="list-style-type: none"> <li>a) Copies of all comments received during the initial BAR as well as <b>AMENDED DRAFT BAR</b> comment period; and</li> <li>b) A comment and response report which contains all comments received and responses provided to all comments and issues raised during the public participation process for the initial BAR as well as the mended draft BAR. Please note that the comments received from this Department must also form part of the comment and response report.</li> </ol> <p>(ii) Please ensure that all issues raised and comments received during the circulation of the amended draft BAR from registered I&amp;APs and organs of state which have jurisdiction (including this Department's Biodiversity Section and DEFF: Forestry) in respect of the proposed activity are adequately addresses in the final BAR.</p> <p>(iii) Proof of correspondence with the various stakeholders must be included in the final BAR. Should you be unable to obtain comments, proof should be submitted to the Department of the attempts that were made to obtain comments.</p>		<p>(i) The required information is noted.</p> <ol style="list-style-type: none"> <li>a) Copies of written correspondence and record of all engagements are included under Annex C - Stakeholder Engagement, specifically Part 5: PPP Correspondence.</li> <li>b) Comments received during the public participation processes for the initial BAR and the amended draft BAR are captured in the final BAR (specifically in this CRR).</li> </ol> <p>(ii) Changes to the BAR reflecting the comments received (and their integration) have been underlined for ease of reference. Every effort has been made by the EAP to elicit comments from stakeholders, as seen in the emails contained in Annex C5.</p> <p>(iii) Copies of written correspondence and record of all engagements are included under Annex C - Stakeholder Engagement, specifically Part 5: PPP Correspondence.</p>

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	<p><b>(c) Environmental Management Programme (EMPr)</b>            Kindly ensure that the EMPr in the final BAR includes the following:</p> <ul style="list-style-type: none"> <li>a) Curriculum vitae of the EAP;</li> <li>b) A map at an appropriate scale which superimposes the proposed activity, its associated structures, and infrastructure on the environmental sensitivities of the preferred site, indicating any areas that should be avoided, including buffers;</li> <li>c) A description of the <u>impact management outcomes</u>, including management statement, identifying the impacts and risks that need to be avoided, managed and mitigated as identified throughout the environmental impact process for all the phases of the development including-               <ul style="list-style-type: none"> <li>(i) Planning and design;</li> <li>(ii) Pre-construction activities;</li> <li>(iii) Construction activities;</li> <li>(iv) Rehabilitation of the environment after construction and where applicable post closure; and</li> <li>(v) Where relevant, operation activities;</li> </ul> </li> <li>d) The method of monitoring the implementation of the impact management actions contemplates in paragraph (f) of Appendix 4 of the EIA Regulations 2014, as amended;</li> <li>e) The time periods within which the impact management actions contemplated in paragraph (f) of Appendix 4 of the EIA Regulations, 2014, as amended, must be implemented;</li> <li>f) The mechanism for monitoring compliance with the impact management actions contemplated in paragraph (f) of Appendix 4 of the EIA Regulations 2014, as amended; and</li> <li>g) An environmental awareness plan describing the manner in which risks must be dealt with in order to avoid pollution or the degradation of the environment.</li> </ul>		<p>The EMPr has been developed in accordance with Section 24N of the NEMA and Appendix 4 of GN R 326 of the EIA Regulations of 2014 (as amended in April, 2017). The EAP has ensured that the items listed by DEFF are included in the final EMPr in Annex B as required by legislation. Please refer to the following:</p> <ul style="list-style-type: none"> <li>a) Annex A of the final BAR for the EAP curriculum vitae;</li> <li>b) Section 1 of the EMPr for a detailed composite map;</li> <li>c) Please refer to Section 6 of the BAR for a description of the impact management outcomes, specifically:               <ul style="list-style-type: none"> <li>(vi) Section 6.1 - Planning and design;</li> <li>(vii) Section 6.1 - Pre-construction activities;</li> <li>(viii) Section 6.2 - Construction activities;</li> <li>(ix) Section 6-2 - Rehabilitation of the environment after construction and where applicable post closure; and</li> <li>(x) Section 6.3 - Operation activities.</li> </ul> </li> </ul> <p>Please refer to Tables 6-1 to 6-3 for the following:</p> <ul style="list-style-type: none"> <li>d) The monitoring of impact management actions;</li> <li>e) Timing/frequency of the implementation of impact management actions and monitoring;</li> <li>f) Monitoring compliance with the implemented impact management actions; and</li> <li>g) The development and proposed implementation of an environmental awareness and training.</li> </ul>
	<p><b>(d) Layout Map</b>            The final BAR must include a map at an appropriate scale which superimposes the proposed activity and its associated structures and infrastructure on the <u>environmental sensitivities</u> of the preferred site indicating any areas that should be avoided, including buffers.</p>		<p>Updated maps have been included under Annex G – Maps. The EAP will ensure that the maps in the final BAR depict the the environmental sensitivities and buffers, as required by the DEFF.</p>
	<p><b>(e) Undertaking of an Oath</b></p> <ul style="list-style-type: none"> <li>i. Please note that the final BAR must also have an undertaking under oath/affirmation by the EAP.</li> <li>ii. An undertaking under oath or affirmation by the EAP (administered by a Commissioner of Oaths) as per Appendix 1(3)© of the NEMA EIA Regulations, 2014, as amended, which states that the BAR must include:           <ul style="list-style-type: none"> <li>“an undertaking under oath or affirmation by the EAP in relation to:               <ul style="list-style-type: none"> <li>a) The correctness of the information provided in the reports;</li> <li>b) The inclusion of the comments and inputs from stakeholders and I&amp;APs;</li> <li>c) The inclusion of inputs and recommendations from specialist reports where relevant; and</li> <li>d) Any information provided by the EAP to the interested and affected parties and any responses by the EAP to comments or inputs made by the interested and affected parties”.</li> </ul> </li> </ul> </li> </ul>		<p>The EAP's declaration and undertaking can be found in Annex F of the final BAR.</p>

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	<p><b>General</b> When submitting the final BAR online, you are requested to separate the main report and appendices. Appendices must be attached in the format as indicated on Page VII of the BAR. Please refrain from submitting the BAR as well as appendices as one big file.</p>		<p>Noted. The final BAR will be uploaded as follows: Volume 1: • Final BAR Volume 2: • Annex A - Curricula Vitae • Annex B - Environmental Management Programme • Annex C - Stakeholder Engagement • Annex D - Comments and Responses Report • Annex E – Specialist Studies and Declarations • Annex F - EAP Declaration • Annex G - Maps • Annex H - Exceptional Circumstances Letter • Annex I - Site Visit • Annex J - Letter from iSimangaliso Wetland Park Authority</p>
	<p>Please also ensure that the final BAR includes the period for which the Environmental Authorisation is required and the date on which the activity will be concluded as per Appendix 1(3)(1)(q) of the NEMA EIA Regulations, 2014, as amended.</p>		<p>It must be noted that the proposed activity includes operational aspects that will be in effect for a number of years. As such, the envisioned period for which the authorisation is required is in excess of 30 years and an exact date for the conclusion of the lodge operations cannot be given at this stage.</p> <p>The period for which the EA is required has been added to the BAR, under Section 2.6.</p>
	<p>Should you fail to meet any of the timeframes stipulated in Regulation 19 of the NEMA Regulations, 2014, as amended, your application will lapse.</p>		<p>Noted, thank you.</p>
	<p>You are hereby reminded of Section 24F of the National Environmental Management Act, Act No. 107 of 1998, as amended, that no activity may commence prior to an Environmental Authorisation being granted by the Department.</p>		<p>Noted, thank you.</p>
<p>19 October 2020 Email Izak van der Merwe Forestry and Natural Resources Management, Department of Agriculture, Forestry and Fisheries</p>	<p>Afternoon Stephanie  Please receive herewith our comment from forestry.  Best regards  Izak van der Merwe  Forestry Scientific Services Department of Environment, Forestry and Fisheries</p>	<p>19 October 2020 Good afternoon Izak  We acknowledge receipt of the comments.  Kind Regards, Stephanie Gopaul Principal Consultant</p>	<p>Noted</p>
<p>19 October 2020 Letter (sent via email) Izak van der Merwe Forestry and Natural Resources Management, Department of Agriculture, Forestry and Fisheries</p>	<p>Dear Ms Gopaul  <b>BASIC ASSESSMENT UPDATE AND PUBLIC PARTICIPATION PROCESS FOR THE BHANGAZI CULTURAL HERITAGE TOURISM LODGE WITHIN THE ISIMANGALISO WETLAND PARK, KWAZULU NATAL (REFERENCE 14/12/16/3/3/1/2015)</b></p>		

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	<p>Your invitation for comment on the above, dated 27 August 2020, has reference. Please find herewith the comment of the Directorate Forestry Regulation and Oversight Department of Environment, Forestry and Fisheries (DEFF).</p> <p>1. The changes made as agreed will lead to a great reduction in the footprints. Not all the services options were discussed in sufficient detail during the meeting and site visit I attended this year, but it was agreed that a forest specialist assist with the final design aspects and siting of units and the facilities such as boardwalk and viewing platform.</p>		<p>Pre-construction activity will include the identification and marking of sites and pathways with a suitably qualified forest ecologist. This activity will also include the marking of trees and plants that may or may not be disturbed. Annex B (the EMPr) has been updated to include the specialist's input (please refer to Section 6.1, Table 6-1 of Annex B).</p>
	<p>2. The Isimangaliso motivation of exceptional circumstances is given in point 2.3.3 of the BAR, but the response of DAFF which placed it in proper legal context is not provided. That context should be given, because this is a very important principle which underpins much of the comments of the Forestry Branch of DEFF (formerly with DAFF).</p>		<p>Noted.</p> <p>An updated motivation has been provided, taking into consideration the legal context which the DAFF response provides. Please refer Sections 2.3.2 and 2.3.3 of the BAR, as well as Annex H for the updated Exceptional Circumstances Letter.</p>
	<p>3. Table 2-1 of the executive report indicates that the chalets would not necessarily lead to clearance of canopy. Yet it was agreed that all units have to fit in under the canopy, and that is also partly the reason why the maximum diameter of trees that may be removed were limited, and why the forest specialist has to participate in the final layout to find suitable sites where units fit either under the canopy, or in existing forest gaps. The layout plan of February 2020 thus does not show the final location of tented platforms and chalets and that should be stated in text referring to that plan. The discussion on the DEFF guideline document under 4.2.8 of the BAR states specifically: "Small pockets of open land in the forest have been identified to develop accommodation units, under the canopy, nestled within existing trees". This statement thus more accurately reflects what was agreed upon, except that it cannot be stated that these sites have all already been identified, the forest specialist will still assist with refinement of site selection and the Scope of Work in Table 6-2 and points made under point 8.2.4 later in the report appears to confirm that work on this is still required, and that site selection and design adaptations will be a constant process. The document needs to be consistent throughout.</p>		<p>The BAR has been updated to reflect the discussions surrounding the canopy clearing.</p> <p>To ensure consistency throughout, the changes to the BAR have been made as follows:</p> <ul style="list-style-type: none"> <li>• Section 2.5;</li> <li>• Section 4.1.3;</li> <li>• Section 4.2.8;</li> <li>• Table 6-1</li> <li>• Section 8.2.1;</li> <li>• Section 8.2.4; and</li> <li>• Section 8.3.1.</li> </ul> <p>In line with Comment 3., in the February/March 2020 discussions, it was indeed agreed that the forest ecologist would assist in the final design aspects, including the final siting of accommodations units and facilities such as the boardwalk and viewing platform. This item has been added as a pre-construction measure in Table 6-1 of the EMPr (Annex B).:</p>
	<p>4. Other design aspects discussed under 2.7 of the BAR which the forest ecologist needs to assist with is the water, sewerage and energy supply. These may have some impacts or footprints that are not discussed in detail, and may need to be mitigated, apart from the technology also discussed in 3.3. Services like power cables and water supply should be brought in under the boardwalk, or fixed to the boardwalk access paths. Point 3.3 of the BAR describes the sewage treatment as being accommodated on site. It is not clear if this is one treatment facility servicing all units. If so, will it be placed outside the natural forest, and would it then be possible for the pipes leading to the sewage treatment facility to also be accommodated in the boardwalk footprint as far as possible? These are aspects the appointed forest specialist must also look at. These comments also relate to the table 6-1 describing the scope of work.</p>		<p>Noted.</p> <p>The BAR has been updated to reflect the comments on the placement of the services cables and pipelines. Please refer to the following sections for the changes:</p> <ul style="list-style-type: none"> <li>• Section 2.7.7. and</li> <li>• Section 3.3.1.</li> </ul> <p>These considerations will also be discussed and finalised with the forest specialist prior to construction, as recommended by the Department. Furthermore, this aspect has been added as a recommendation under Section 9.3 of the BAR, and as a Pre-Construction measure in Annex C (the EMPr).</p>

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	<p>5. The final layout map of figure 3-2 includes an elevated viewing platform and describes it as placed in a cleared area. It is assumed this is an existing cleared area, and not an area to be cleared (even if placed in natural forest, minimal clearing or pruning would be required if the location is carefully chosen for the corner anchor stollations, which are actually the only points of impact for a raised deck platform, and steps going up can start at the base of one or more anchor stollations). Under the platform the canopy can remain intact. Globally there are examples how this can be done, and can be found on the internet through the google application.</p>		<p>Noted, thank you.</p> <p>The viewing platform will be constructed in an already disturbed area and the footprint of this area will not encroach on uncleared forest area or an area that would need tree pruning.</p> <p>In addition, a recommendation has been made that the viewing platforms be constructed in line with international best practise for construction of such structures in forest areas (e.g. the South African Wood Preservers Association (SAWPA)'s Timber Decking Substructure Regulations and Preservative Treatment guidance note (July 2018), and the United States Department of Agriculture (USDA)'s Forest Service's Wetland Trail Design and Construction, 2007) . Please refer to Sections 4.2.8 of the BAR.</p>
	<p>6. Under the National Forests Act of 1998 described in 4.1.3 of the BAR the Box describing the applicability of the Act to the project mentions that the licensing process is handled separately from the EA. Prior to the meeting in March 2020 I was informed that the State forest area encompassing the site was transferred to Isimangaliso, which would have meant transfer of National Forests Act powers as well (Sections 7, 15 and 23 which provides for licensing or pruning of tree cutting in natural forest, protected trees and activities on State forest land respectively.</p> <p>My attention was recently drawn to the fact, however, that the Government Gazette Notice of 1 December 2006 which transferred management of that land from the then Department of Water Affairs and Forestry was not an assignment of State forest land (with which licensing powers are transferred), but that it was a "Release of State Forest Land Areas Not Required for Forestry Purposes for Allocation to the Department of Environmental Affairs and Tourism: Greater St Lucia Wetland Park". Please see the Government Gazette Notice attached. Release of State forest land means it is not State forest anymore and Section 23 does not apply anymore, whereas assignment retains the State forest status with transfer of powers to the new management agent. Sections 7 and 15 then still apply but as far as I could determine in the limited time available the powers are held by the Directorate Woodlands and Indigenous Forests in the KZN regional office who has to issue the licence. This should not be problematic, and there should be no delay because the major concerns have been thrashed out.</p>		<p>Noted, thank you. The BAR has been updated and the reference to Section 23 has been removed given that the affected land is no longer state forest area. Please see the changes in the following sections:</p> <ul style="list-style-type: none"> <li>• Sections 2.3.2 and 2.3.3;</li> <li>• Section 4.1.3; and</li> <li>• Annex H, the Exceptional Circumstances Letter.</li> </ul> <p>Furthermore, the EAP will guide the Bhangazi Trust on the process to follow in obtaining any required licence in terms of the NFA. This includes engagement with the Directorate Woodlands and Indigenous Forests of KZN (which has been added as a recommendation in Section 9.3. of the BAR). It is the EAPs opinion that this engagement be made a licence condition with which the Bhangazi Trust would need to comply.</p>
	<p>7. I also attach exemptions published under the National Forests Act of 1998, which indicates that protected areas are exempt the requirement for licensing for handling protected trees, but not for natural forests. There are reasons for this which cannot be elaborated upon in this comment.</p>		<p>Noted, thank you.</p>
	<p>8. Point 8.2.4 relating to the forest canopy and flora, and the mitigation measures stated to minimize impact should also refer to avoidance or rescue of red data plants, the diameter limitation of trees that can be removed, and avoidance of canopy tree removal, placement in open areas etc. Trees for removal must be marked beforehand and be inspected by the forest specialist and relevant forest officers. Proper control of construction staff will be required to prevent illegal bark harvesting and snares.</p>		<p>Section 8.2.4 of the BAR has been updated accordingly. Additionally, in Table 6-1: Planning and Design Phase: Environmental Management Programme of Annex B (the EMP), an insertion has been made regarding the forest ecologist's input into the final site layout demarcation, and identification of suitable development pockets for boardwalks and walkways.</p>



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19 October 2020 Email Nicholas Scarr (Rhodes University)	Dear Ms Gopaul  Herewith please find comment on the 2020 DBAR together with supporting documentation.  Kind regards  Nicholas Scarr Public Service Accountability monitor Rhodes University South Africa	19 October 2020 Good Day Nicholas,  Thank you for your comments. We will consider them for finalisation of the Basic Assessment Report (were relevant and applicable) and respond to these in the Comments and Responses Report.  Kind Regards, Stephanie Gopaul Principal Consultant	Noted and addressed below.
19 October 2020 Letter (via email) Nicholas Scarr (Rhodes University)	Dear Ms Gopaul  Herewith comment on ERM's Draft Basic Assessment Report (DBAR) of reference 0282731 and dated August 2020.  1. PSAM's comment of June 2019 on the previous DBAR centered on natural forest impacts, and as such our input included various references to the National Forests Act, 1998 (NFA).		Noted. Comments were addressed in the updated Comments and Responses Report included with the 2020 DBAR as Annexure D.
	2. In turn, ERM's responses to our comment contained multiple indications (see updated Comments and Responses Report included with the 2020 DBAR as Annexure D) that any licencing to be undertaken in terms of the NFA <i>will be done as a separate process</i> , as well as the statement that licencing <i>does not fall under the current Basic Assessment process being discussed</i> .		In ensuring that we effect Duty of Care, the Bhangazi Trust we will be advised on the steps to be taken in engaging with the Directorate: Woodlands and Indigenous Forests (KZN), as well as the process to be followed in obtaining any required NFA licences. Engagement with the Directorate Woodlands and Indigenous Forests (KZN) has been added as a recommendation in the BAR (Section 9.3.), and it is the EAPs opinion that this be made a licence condition with which the Bhangazi Trust would need to comply.
	3. The separation between NEMA and NFA application processes in their own rights is a given.		Noted.
	4. However, since one of the activities for which NEMA authorisation is being sought at Bhangazi is <i>the clearance of an area of 300 square meters or more of indigenous vegetation</i> (in accordance with Activity 12 of Listing Notice 3, as detailed on p. 43 of the DBAR), and the vegetation involved is natural forest, any evaluation of detail pertaining to the project's impacts on natural forest clearly straddles both processes.		The findings from the specialist forest ecology study were a key aspect of the amended BAR. In turn, we envisage that the findings will be used to inform the NFA licencing process if and where applicable.
	5. This is reinforced by Chapter 2 of the NFA containing sustainable forest management principles which, in terms of section 3 (1) (a) of the Act, must be considered and applied <i>in the exercise of any power or the performance of any duty in terms of any other legislation where the exercise of that power or the performance of that duty will impact on a natural forest</i> .		Noted
	6. These principles must likewise be considered and applied <i>by any person required in terms of any legislation to carry out an environmental impact assessment in respect of any activity which will or may have an effect on natural forest</i> , as pointed out in our comment on the previous DBAR.		Noted. We envisage that the contents of the BAR and the specialist study will be the key sources of information used to complete any required NFA license applications. As the EAP, we aim to advise the Bhangazi Trust on the process to be followed in obtaining the forestry licence (if required).

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	7. Indeed, the DBAR reflects that ERM has engaged both the principles and the NFA administering authority, viz. the Forestry Branch of the national Department of Environment, Forestry and Fisheries (DEFF), in relation to natural forest impacts.		Noted and thank you for this acknowledgement.
	8. On the other hand, PSAM is not convinced that the DBAR deals with forest impacts in sufficient detail to enable authority decision-making in this regard, whether in terms of the NFA or NEMA.		<p>It is the EAPs opinion that sufficient consideration has been given to forest impacts, in line with the previous comments received from the DEFF: Forestry Directorate as well as the PSAM. This is demonstrated in the discussions held around the revision of the layout where the lodge components have (as far as practicable) moved out of the forest area, and into areas that are already disturbed (please refer to Annex C - Stakeholder Engagement, specifically Part 5: PPP Correspondence for these discussions). The disturbance of forest area was a critical point of contention in the original layout, particularly where the removal of canopy is concerned. It must be noted however, that the comments from the Forestry Directorate do not indicate any additional concerns pertaining to further forest impacts, as long as all discussions surrounding the layout changes are integrated into the final site plans.</p> <p>With this new layout, it is envisioned that the significance of forest impacts will decrease substantially; moreso once additional recommendations are implemented, such as the placement of services cables below boardwalks (as suggested by the Forestry Directorate).</p>
	9. This is starkly illustrated by the manner in which the DBAR deals with sewage treatment at the proposed lodge. At p. 40 it is indicated that an above ground treatment plant is the preferred system due to its anticipated <i>minimal impact</i> , but the implications of 1000 liter primary settling tanks being installed <i>at each room or unit</i> do not receive mention.		<p>There are a few above ground settling tanks currently on the development site, as highlighted in the Bulk Services Engineering Report (Annex E, Part 1). It must be made clear that this section of the existing facilities is being considered for the placement of the new septic tank and STP.</p>
	10. It is reasonable to presume that notwithstanding the reference to an above ground treatment system, within the context of the proposed lodge the presence of above ground primary settling tanks in conjunction with chalets would be undesirable, and that underground installation of these tanks would be preferable.		<p>In terms of the smaller tanks, Bio-Sewage will be installing 1,500 litre <b>mini</b>-collection tanks collect the grey and black water from each accommodation unit and not per room. The grey and black water will then be pumped up to the main collection tanks, which will be placed strategically around the guest accommodation area. Please refer to the Bio-Sewage schematic diagram (in Section 3.3.1 of the BAR), which shows the general layout of the sewage tanks.</p> <p>The installation and operation of the Bio-Sewage tanks has been clarified in Section 3.3.1, (Alternative 3) of the BAR. In addition, the potential impact of the settling tank installation has been assessed in the final BAR (please refer to Sections 8.2 and 8.3). The EMPr has also been updated to account for the identified impacts (please refer to Annex B, Sections 6.1 to 6.3).</p> <p>It is envisaged that the new tanks will be operated in a similar manner and a recommendation has been made that the tanks be placed in a way that will not impact on the lodgers and that will not pose a risk to the forest area.</p>
	11. This would give rise to at least eighteen associated excavations, the individual and cumulative impacts of which would not be insignificant, given both the abundance and diversity of biological material, over and above extensive tree and plant root networks,1 contained within the forest floor, and the importance of soil structure to the forest's integrity.		<p>According to the updated layout plan of the bio sewage system, apart from the board walk, only three excavations will be required within the forested section. These are the collection tanks. Most of the piping and electrical feeds can be located under the board walk, thus minimizing the overall</p>

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Details	Comments	Initial Responses	Responses
	12. Regardless of whether they are located above or below ground, each settling tank would need to be connected to a main sewer line, and this would likely also entail at least eighteen excavations, on the presumption that the feeder lines would need to be entrenched.		<p>footprint of the system. The footprint of each collection unit is also not extensive (2,2 x 1,5). It is believed that these can be sensitively located so as to minimise tree removal , however there may be the need for pruning and root removal, and possibly having to remove some smaller trees.</p> <p>Given that this will be done over a short period (i.e. for construction only), it is not envisioned that these excavations will have a significant impact on the receiving environment.</p>
	13. This scenario presumes that the main sewer line could be located outside of the forest margin, but if or where it could not be, this too would obviously necessitate forest floor disturbance.		It will be recommended to the Bhangazi Trust that the disturbance of forest floor be accounted for in the forest licence application (should it be required).
	14. The DBAR is also silent in relation to the means by which water and electricity would be conveyed to the proposed chalets. Conceivably this could be achieved by way of infrastructure attached to the underside of the proposed boardwalk, and would not also require trenching activities, but the point is that a forest impact assessment needs to include coverage of matters such as these.		<p>In implementing the Forestry Directorate's recommendations, the Developer will consider bringing in the services like power cables and water supply under the boardwalk, or fixing the lines to the boardwalk access paths. This will be done prior to the commencement of construction.</p> <p>Sections 2.7.7 and 8.1 of the BAR has been updated to include the recommendations on the placement of service cables.</p>
	16. Last but not least in so far as forest floor disturbances are concerned, while stilted chalets with boardwalk access are presented as environmentally "soft" options, impacts arising from the innumerable excavations required for the planting of pole supports should not be underestimated.		<p>International best practise will be followed when erecting supports structures for boardwalks (e.g. the United States Department of Agriculture (USDA)'s Forest Service's Wetland Trail Design and Construction (2007), and the South African Wood Preservers Association (SAWPA)'s Timber Decking Substructure Regulations and Preservative Treatment guidance note (July 2018)). This is also to ensure that the concerns raised previously are addressed during project implementation.</p> <p>These considerations have been included in the Final BAR under section 8.2.2, and detailed in the Forest Vegetation Specialist report (Annex E of the BAR).</p>
	17. At the same time, it is noted that provision has been made for single access avenues from the main complex to where the boardwalk spans the two and four bed chalet clusters respectively; in this respect it is trusted that operational practicalities will not prompt a perceived need for additional access link routes, and hence further substrate intrusions.		The layout depicted in Figure 3-2 (although void of the exact location details), is the final location for the lodge components under application. Deviation from this layout is most likely to result in the environmental impacts triggered by the original lodge layout. However, the points raised here cannot be accepted or confirmed at this point given that 'explicit' detail on the infrastructure impacts infrastructure impacts cannot be provided.
	18. In any event, the point here is that in order to form the kind of comprehensive, realistic picture which is a necessary prerequisite for informed decision-making, authorities need to be presented, <i>inter alia</i> in this case, with explicit information regarding all project elements, and their potential impacts on natural forest.		
	19. Proceeding in this vein, it could be argued that what the authorities are being asked to authorize at this stage is more akin to a concept than a project.		
	20. This is because as with the absence of infrastructure detail and its linkage to locality-specific forest elements, the preferred layout plan in Figure 3-2 of the DBAR does not denote chalets in locations where they will necessarily occur, and accordingly, precise indications of their impacts are not, and cannot be, provided.		

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	21. It is noted that forest impact mitigation and avoidance measures advocated at p. 98 the DBAR include <i>as far as possible, building flexible structure shapes to fit around larger trees, and placing of raised platforms and boardwalks in old camp sites, with open understory.</i>		Noted. Thank you for the acknowledgement.
	22. It is further recommended that <i>a forest ecologist be present when the sites are surveyed and laid out</i> , while section 6.3.3 of the Environmental Management Programme (annexure B to the DBAR) includes various associated planning and design measures.		Noted. Section 8.2.4 of the BAR has been updated accordingly. Additionally, in Table 6-1: Planning and Design Phase: Environmental Management Programme of Annex B (the EMPr), an insertion has been made regarding the forest ecologist's input into the final site layout demarcation, and identification.
	23. It is however contended that the pursuit of this approach subsequent to the granting of NEMA and/or NFA approval would amount to the cart having been placed before the horse.		Noted. Thank you for the acknowledgement.
	24. The laying out of all the proposed chalets and their ancillary infrastructure should precede approval, with a consequent evaluation of the impacts which would accrue from project implementation in accordance with the layout being availed to the authorities for consideration.		Noted. The BAR and EMPr will be updated to reflect that the site survey to be conducted with the forest specialist will serve to ensure that the layout on the ground does not deviate from what has been approved by the DEFF, should an EA be granted.
	25. This is regarded as a reasonable approach given that the proposed project would be located within an ecosystem which has been assigned endangered status, as alluded to in PSAM's comment on the 2019 DBAR.		
	26. It is an approach which is not without precedent, in as much as the State has previously required it of proponents of forested property development projects.		Noted.
	27. The proposed approach moreover accords with a court-determined benchmark for structured assessment of the scale of natural forest impacts, as DEFF Forestry will be aware.		Noted and responded to above.
	28. In fact, premised on the writer's observation that construction-related natural forest impacts consistently exceed those predicted at project inception stage, <sup>2</sup> it is submitted that it is the only methodology which enables proper appreciation of the nature and extent of probable impacts.		Noted. No response required.
	29. Separately, in its comment on the 2019 DBAR PSAM queried the report's <i>property description</i> , ERM's response to which was noted, but did not resolve the issue underpinning the query.		<p>Although the Draft BAR refers to Section 23 of the NFA, the DEFF: Forestry Directorate has commented on this, citing the Section's inapplicability to the proposed project given that the affected property is no longer state forest area. Section 4.1.3 of the BAR has been updated to reflect this.</p> <p>In terms of Section 7, and with the revised layout, no trees of concern will be cut down to make way for the construction of the lodge. In addition, the Bhangazi Trust may potentially be exempt from obtaining a tree removal license when looking at Activity (1)(c) of Government Gazette Notice 25 of 24 January 2014 (Exemptions in terms of Sections 7(1) and 15(1) of the National Forests Act, 1998 (Act No. 84 of 1998), as amended), given that the proposed lodge will be situated within a declared park. This, however, will be confirmed upon engagement with the Directorate Woodlands and Indigenous Forests: KZN office.</p>
	30. Regardless, subsequent investigation points to the fact that whereas the site of the proposed project would previously have fallen within either the Eastern Shores or Cape Vidal State forest, these State forests no longer exist, by virtue of their release <sup>3</sup> under Notice 1187		Noted and no response required.

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	of 2006 (copy included with this submission) for allocation to the Department of Environmental Affairs and Tourism: Greater St Lucia Wetland Park, on the basis that they were not required for forestry purposes.		
	31. This is pointed out for the record, since both the Comments and Response Report and the minutes of the site meeting of 12 March 2020 (see Annexure I) allude to DEFF not being the NFA licensing authority for Bhangazi due to the transfer of administering powers under the NFA along with the allocation of the State forests from the (then) Department of Water Affairs and Forestry to the Department of Environmental Affairs and Tourism.		Noted.
	32. It is emphasized, in accordance with para. 30 above, that the release of State forest land negates the possibility of a concomitant transfer of powers under the NFA to another organ of State, since the effect of the release is that the land ceases to constitute State forest.		It must be noted that the release still put in place the provisions of law which were transferred in the statement (vis Section 7 and section 15), these provisions are still relevant and active. It is in this regard that the Bhangazi Trust will engage with the Directorate: Woodlands and Indigenous Forests, KZN office on matters pertaining to NFA licencing. This is in line with the recommendations by the DEFF: Forestry Directorate in their response to the updated BAR.