

CES

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**Reference: Albany Wind Energy Facility, DEFF Ref: 14/12/16/3/3/2/1131 :
Impact to Indalo Protected Environment and Addo to Great Fish Corridor
Protected Area Expansion**

We are commenting on the Albany Wind Energy Facility (WEF), DEFF Ref: 14/12/16/3/3/2/1131 as a concerned association of landowners, as a formally protected area and a concerned group of wildlife tourism which constitutes the Indalo Protected Environment.

Under cover of this letter we make more detailed comment on the Draft EIR report and specialist studies supporting the application.

1 NDALO PROTECTED ENVIRONMENT

The Indalo Protected Environment is made up of the 9 private game reserves reflected in the Table below and consists of properties belonging to different landowners. These 9 private game reserves are located over 3 local municipalities in the Sarah Baartman District Municipality of the Eastern Cape Province of the RSA as indicated.

Table: Private Game Reserves forming part of the Indalo Protected Environment

No	Name	Size hectares	Local Municipality
1.	Amakhala Game Reserve	9,733.7	Sundays River Valley, Makana
2.	Hopewell Game Reserve	2,730.94	Sundays River Valley
3	Kariega Game Reserve	7,936.78	Ndlambe, Makana
4.	Kwandwe Game Reserve	18,988.04	Makana
5.	Oceana Beach and Wildlife Reserve	724.72	Ndlambe
6.	Pumba Game Reserve	5,837.10	Makana
7.	Shamwari Game Reserve	20,338.58	Sundays River Valley, Makana
8.	Sibuya Game Reserve	1,785.23	Ndlambe
9.	Lalibela Game Reserve	8,001.46	Makana
	TOTAL	76,076.59	

Based on government's Protected Area Expansion Strategy, buffer zones and Biodiversity Stewardship Programme, Indalo is currently actively working with local provincial and national partners including the Wilderness Foundation of South Africa, Eastern Cape Park and Tourism Agency and SA National Parks to expand areas under formal protection. This is done through further amalgamation of the southern, central and northern nodes into large agglomerations (>50 000Ha) of private nature and game reserves in the central node and private/public nature and game reserves through public-private partnerships with Addo National Park and the Great Fish (and various provincial nature reserves) in the south and north respectively.

One of the main objectives of the expansion plan is to enable common traversing agreements and unified conservation management through the dropping of fences between reserves. This is only realistic if areas

expand to the extent that larger areas of the protected area become contiguous and objectives have been set for short, medium and long term:

1. The short term:
 - a. Combining land in the central - between Lalibela and Pumba will require areas of 2500 ha; and
 - b. Combining land between Lalibela and Shamwari 2x 3500 ha.
2. Medium term:
 - a. Combining land between Sibuya, Kariega and Buffalo Kloof Private Reserve and Rivers Meeting Forest Reserve in the southern area will require some more substantive areas of 15 000ha, and
 - b. Combining land targeted by the National Protected Area expansion strategy between Shamwari, Lalibela, Pumba and Kwandwe of 50 000ha, and
 - c. Inclusion of key biodiversity conservation nodes and wilderness areas characterised by high scenic quality and low levels of intrusion
 - i. to the north and east of Addo,
 - ii. around Great Fish and south along the Fish River, and
 - iii. along the coastal shelf between Kenton and Port Alfred.
3. Long term:
 - a. Linking with the protected areas in the Amathole Biosphere Reserve.

To this effect a formal protected area expansion strategy is under development by various stakeholders including the Wilderness Foundation Africa, Eastern Cape Parks and Tourism Agency, South African National Parks and Indalo Association, which will guide protected area expansion, inform land-use planning, stimulate economic development and aide thicket restoration in the broader Albany region. Of specific relevance is the objective of the Addo Park to further expand where it is envisaged that the park will cover some 240 000 hectares on land with a proposed further 120 000 hectares of marine protected area¹.

The environmental and economic benefits associated with the agglomerations (>50 000Ha) of private reserves and expansion through private partnerships with Addo National Park in the south and the Great Fish in the north are considerable. Not only will this form a mega reserve as larger consolidated areas will lead to improved marketability of the Eastern Cape as a safari destination, making it comparable to Kruger, Sabi Sands and Madikwe. As much as wind energy development is necessary in South Africa, we hold wind energy development that impacts on the Addo, Great Fish and Indalo Protected Areas and their further extended areas to be untenable and undesirable that should be avoided at all cost.

2 BACKGROUND

Indalo reserves were formed (and continues to grow) by the amalgamation of land previously used for stock farming and substantial effort was made to remove human-made structures and to rehabilitate disturbed areas to return the landscape to a natural state.

With time Indalo has grown in terms of area under conservation, tourism numbers and revenue (an increase of 30% in visitors and Gross Revenue from R282m to R570m in the last 5 years). Before the covid-19 Pandemic five reserves intended increasing the number of beds, all nine intended increasing the size of the reserve, and eight of the nine were planning to expand both their community engagement and environmental education.

¹ Greater Addo Elephant National Park Project
<https://www.sanparks.org/parks/addo/conservation/geanp.php>

Indalo as an association and as individual members has made a substantial contribution to the conservation of threatened species including both black rhino and white rhino, the protection of landscapes of ecological importance along with contributions to numerous other objectives as set out in the Indalo Protected Area Management Plan. The Plan requires each reserve to secure the required financial resources to ensure achievement of the protected area management objectives.

Like the Addo National Park and the Great Fish Provincial Nature Reserve, the Indalo Private Game Reserves (like many others in South Africa and in Africa in general) is concerned with nature and wildlife tourism as a key protected area goods and service.

It is specifically the wildlife and nature tourist's experience that relies on the wilderness character of both the protected areas and their surrounds and in a way the wilderness character of the reserves which finances protection of ecological, geological, landscape and other features of scientific, cultural and/ or historical value (nature and wildlife tourism in reality underpins the protected areas operation and ability to meet biodiversity conservation objectives).

Like the Addo National Park and the Provincial Nature Reserves (most notably the Great Fish), the Indalo Private Game Reserves are managed according to a Protected Area Management Plan, but with the important difference that they do not receive public funds but have to secure funding from internal resources.

These resources are derived from nature and wildlife tourism which is dependent on a natural environment largely free from the structures and signs of modern civilisation (often from which the tourists come to get away). Wind energy development characterised by colossal skyline intrusion will impose a divestment on Indalo members impacted and curtail wildlife and nature tourism enabled protected area expansion.

3 OBJECTION

Although Indalo strongly supports all sustainable renewable energy development, we will object to any development such as the proposed Albany WEF that will prevent the greater Indalo to take its rightful place as a world class African nature and wildlife destination and curtail or intrude potential protected area expansion through partnership with the Addo and Great Fish Protected Areas. Indalo objects against the Albany WEF in the EIR for the following reasons.

3.1 VISUAL IMPACT ASSESSMENT

The Visual Impact Assessment (VIA) is defective and must be rejected, for the following reasons, amongst others:

- Poor selection of vantage points and complete omission of the Great Fish Provincial Nature Reserve are material deficiencies in the Report. The absence of the Great Fish Provincial Nature Reserve is conspicuous, and the deficiency is of such a nature that it makes the WEF ecologically unsustainable and should prevent the development on the proposed locality.
- The actual impact on the Great Fish Provincial Reserve and the Adams Krans view point as determined by Indalo's independent specialists, alone constitutes a fatal flaw. The aggregated visual impact on wildlife and nature tourism operations in the area would be an externality of fatal proportions for the further development of the WEF as proposed.
- It attempts to justify a high visual impact by indicating that the lifespan of the facility will be 20-25 years. If this expected lifespan were accurate it would not be justification for the high impact. In reality however the lifespan will likely be indefinite as turbine and wind energy technology advances and turbines are replaced so that operations continue past the 20-25 year period.

- It fails to scientifically contextualise the WEF development amidst the “very high visual sensitivity” of the receiving environment, rather it makes a statement that “the landscape of the study area is not pristine or of very high scenic value”.
- It indicates that there is limited mitigation potential due to the extreme size of turbines. However, it fails to investigate a reduced hub-height or the no-go alternative, both per turbine as well as for the WEF .
- The EIR’s external specialist review notes that the “peer reviewer received the VIA report at a very late stage in the process and has had very limited time to produce this peer review report”. This statement confirms that the specialist review cannot be upheld as verification of the veracity of the study, it, should be rejected and referred back to the specialist to perform a proper independent review that meets independent scientific standards.
- The lack of the consideration of impact to formally Protected Areas, most notably impact to the Great Fish Provincial Reserve measured against the stated expansion of the Indalo, Addo and Great Fish Protected Areas, is viewed with circumspection. The perpetuation of this material omission throughout the VIA (and perpetuation downstream into the SIA and EIR) is obfuscating the fact and severity of the matter.

3.2 SOCIO-ECONOMIC IMPACT ASSESSMENT

The Socio-Economic Impact Assessment (SIA) is flawed for the following reasons, amongst others:

- The finding of the SIA Specialist indicates that “[n]o evidence is presented to support the assertion that any wind farm development overseas has resulted in any adverse impact on tourism”. This finding is not correct insofar as it concerns wilderness tourism as shown through international research presented in the body of this document. It is clear that the assessment does not consider that much like the Kruger National Park and the Addo National Park, visitor experiences in Indalo and the Great Fish is concerned with activities and encounters in natural and unspoilt settings.
- The study errs in finding “Existing turbines do not affect any of the lodges at the game/hunting farms visually” and would appear to base this on Interview with Pumba Director Mr Dale Howart which who was never consulted or made any statement of this nature. We insist that this statement is corrected failing which we will be reporting this as misrepresentation to the competent authority as grounds to refuse application (or subsequent appeal as decision based on a material factual mistake).
- The study omits Nature and Conservation Tourism of formally Protected Areas, Provincial as well as Private Protected Areas from the surrounding land uses. Most notably there is no consideration afforded to Conservation Tourism from the Great Fish and Thomas Baines Protected Areas.
- The analysis in Section 7.5 Economic Sectors & Employment omits an analysis of the tourism sector and the extent to which nature and wildlife tourism contribute to the regional economy.
- The discussion of the tourism sector Section 7.6.2 Tourism does not consider to any level of detail the nature of the tourism product and services of the area, nor the wilderness character of the area as basis for nature and wildlife tourism.
- The conclusion of the SIA is wrong because it is informed by material factual mistakes in the VIA that the Albany WEF will not cause significant visual impacts on Protected Areas.

3.3 ECONOMIC IMPACT ASSESSMENT

Indalo performed an independent Economic Impact Assessment of the proposed Albany WEF which concludes that a compromise between Private Game Reserves and the WEF development (investment) could be a desirable solution. The preferred economic option indicates wind energy should be deployed sufficiently distant from nature and wildlife tourism based operators, so as to avoid impacting the wilderness character and its tourism value and sterilising future Protected Area expansion. Combined land use, that does not imply a reduction in environmental goods and services (or quality of environmental goods and services), should ideally be pursued.

3.4 NEED AND DESIRABILITY

Although the Scoping Report and EIR do provide motivation for the need and desirability of the project, all the listed desirable aspects can be achieved through deployment of the WEF in an alternative location with suitable wind resources within the province, or even beyond the province. They can be more effectively achieved in a location that would avoid significant impact to wilderness character and its tourism value as the proposed WEF will do. Neither of the two reports provide a motivation for the need and desirability in the context of the preferred location, which is a requirement of the EIA Regulations.

3.5 ASSESSMENT OF ALTERNATIVES

The lack of a proper investigation about alternative site locations in accordance with the prescribed requirements of the EIA Regulations is a material mistake in the EIR and forms further ground for the DEFF to reject the Albany WEF application. The VIA is specifically deficient in considering alternatives and specifically not considering the no-go option, with the inadequacy being carried over into the SIA and EIR where neither the no-go option nor the option (and benefits) of the Protected Area expansion program is considered.

4. CONCLUSION

The Indalo Protected Environment places on record that the EIR for the Albany WEF and the above-mentioned specialist studies are deficient to the extent that these inadequacies are covering up fatal flaws in the application. If these material deficiencies were to be addressed, it would become clear that the proposed WEF development would significantly blight views from the Great Fish Protected Area (most spectacularly from Adam Krans view point) and would degrade the scenic value of the area and its unique wilderness tourism product in general. Indalo is unconditionally in favour of the outright refusal of the present location of the Albany WEF based on the grounds set out in the attached comments of the EIR.

In other words, Indalo favours the ultimate, most effective mitigation measure for the Albany WEF and the fatal flaws that it holds in terms of impact to Protected Areas and their expansion - its avoidance through its outright refusal.



Neale Howarth

Chairperson of Indalo Private Game Reserve Association

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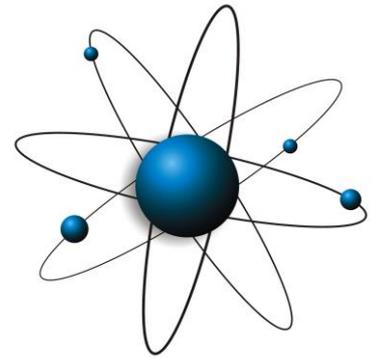
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21 July 2020



Attention: Ms Caroline Evans

Indalo Protected Area: Wind Energy

Dear Ms Evans

This letter replaces the provisional comments by the Indalo Association submitted to the CES on or about 13 July 2020 in respect of the Draft EIA for the proposed Albany Wind Energy Facility (WEF). These Revised Comments consist of the Executive Summary below and the Comments and should be read with the different specialist studies and annexures in separate files. The Revised Comments are substantially the same with some editorial changes. The only material aspect that has been added is our concerns regarding the cumulative impacts posed by the different WEFs that were not clearly expressed before and are recorded in paragraph 4.5 in the Executive Summary and paragraphs 3.1.6, 3.2.3, 3.2.6, 4.2.3 and 5.2 of the Comments.

In light of the Indalo's findings in the Revised Executive Summary and Comment (including annexures) that the draft EIR is fatally flawed, it is submitted that the CES has no option but to apply to the DEFF for a 90 day extension in terms of the EIA Regulations to redo the Visual Impact Assessment, the Socio-Economic Assessment, undertake proper focused meetings with the management of the different Indalo private Game Reserves, Great Fish and of Addo, change the draft EIR according to these findings and publish it for a second round of public comment. This proposed process reflects the generous instead of legalistic approach to procedural fairness during public participation and comment to EIAs prescribed by the courts (See e.g. Earthlife Africa v Director General Department of Environmental Affairs and Tourism 2005 (3) SA (C) at [95], [98] and [101.]) We advise that CES's failure to follow that aforesaid process and to correct the fatal flaws in the Draft EIR before filing the final EIR to the DEFF, will jeopardize the proposed Albany WEF.

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R No 2009/014472/07

EXECUTIVE SUMMARY

1. INDALO PROTECTED ENVIRONMENT

The Indalo Protected Environment is made up of the 9 private game reserves reflected in the Table below and consists of properties belonging to different landowners. These 9 private game reserves are located over 3 local municipalities in the Sarah Baartman District Municipality of the Eastern Cape Province of the RSA as indicated.

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	TOTAL	76,076.59	

2. BACKGROUND

2.1 Indalo reserves were formed (and continues to grow) by the amalgamation of land previously used for stock farming and substantial effort was made to remove human-made structures and to rehabilitate disturbed areas to return the landscape to a natural state.

- 2.2 With time Indalo has grown in terms of area under conservation, tourism numbers and revenue (an increase of 30% in visitors and Gross Revenue from R 282 million to R 570 million in the last 5 years). Before the Covid-19 Pandemic five Indalo reserves intended to increase the number of beds, all nine intended to increase the size of their reserves, and eight of the nine were planning to expand both their community engagement and environmental education.
- 2.3 Indalo as an association and its individual members have made a substantial contribution to the conservation of threatened species including both black rhino and white rhino, the protection of landscapes of ecological importance along with contributions to numerous other objectives as set out in the Indalo Protected Area Management Plan. The Plan requires each reserve to secure the required financial resources to ensure achievement of the protected area management objectives.
- 2.4 Like the Addo and the Great Fish, the Indalo Private Game Reserves (like many others in South Africa and in Africa in general) is concerned with nature and wildlife tourism as a key protected area goods and service.
- 2.5 It is specifically the wildlife and nature tourist's experience that relies on the wilderness character of both the protected areas and their surrounds and in a way the wilderness character of the reserves which finances protection of ecological, geological, landscape and other features of scientific, cultural and/ or historical value (nature and wildlife tourism in reality underpins the protected areas operation and ability to meet biodiversity conservation objectives).
- 2.6 Like the Addo National Park and the Provincial Nature Reserves (most notably the Great Fish), the Indalo Private Game Reserves are managed according to a Protected Area Management Plan, but with the important difference that they do not receive public funds but have to secure funding from internal resources.
- 2.7 These resources are derived from nature and wildlife tourism which is dependent on a natural environment largely free from the structures and signs of modern civilisation (often from which the tourists come to get away). Wind energy development characterised by colossal skyline intrusion will impose a divestment on impacted Indalo members and curtail wildlife and nature tourism enabled Protected Area expansion.

3. **OBJECTION**

Although Indalo strongly supports all sustainable renewable energy development, we object to any development such as the proposed Albany WEF that will prevent the greater Indalo to take its rightful place as a world class African nature and wildlife destination and curtail or intrude potential protected area expansion through partnership with the Addo and Great Fish Protected Areas. Indalo objects against the Albany WEF in the Draft EIR for the reasons explained below.

4. **VISUAL IMPACT ASSESSMENT**

The Visual Impact Assessment (VIA) is defective and must be rejected, for the following reasons, amongst others:

- 4.1 Poor selection of vantage points and complete omission of the Great Fish Provincial Nature Reserve are material deficiencies in the Report. The absence of the Great Fish is conspicuous, and the deficiency is of such a nature that it makes the WEF ecologically unsustainable and should prevent the development of the Albany WEF on the proposed locality.
- 4.2 The actual impact on the Great Fish Provincial Reserve and the Adam's Krans viewpoint as determined by Indalo's independent specialists, alone constitutes a fatal flaw in the VIA and the draft EIR. The aggregated visual impact on wildlife and nature tourism operations in the area would be an externality of fatal proportions for the further development of the WEF as proposed.
- 4.3 It attempts to justify a high visual impact by indicating that the lifespan of the facility will be 20-25 years. If this expected lifespan were accurate it would not be justification for the high impact. In reality however the lifespan will likely be indefinite as turbine and wind energy technology advances and turbines are replaced so that operations continue past the 20-25 year period.
- 4.4 It fails to scientifically contextualise the WEF development amidst the "very high visual sensitivity" of the receiving environment, rather it makes a statement that "the landscape of the study area is not pristine or of very high scenic value".

- 4.5 It fails to adequately investigate, assess and visually demonstrate through representative viewsheds the cumulative (combined) impact of all the present and planned different WEFs in the region e.g. Waaihoek, Plan 8 (Grahamstown – where the developer intends to enlarge the approved size of the turbines and environmental footprint), Albany, Dassenridge and Cookhouse. The VIA does not provide simulations (as EScience has done for Albany WEF from Adam's Krans) of the total impact on the visual and aesthetic wilderness character of the Expanded Protected Areas. This is a fatal omission of the report. Indalo submits this combined impact will be dramatic and prohibitive of yet another WEF development as it will materially disturb the wilderness character of the region for nature-based tourism.
- 4.6 It indicates that there is limited mitigation potential due to the extreme size of turbines. However, it fails to investigate a reduced hub-height or the no-go alternative, both per turbine as well as for the WEF.
- 4.7 The EIR's external specialist review notes that the "*peer reviewer received the VIA report at a very late stage in the process and has had very limited time to produce this peer review report*". This statement confirms that the specialist review cannot be upheld as verification of the veracity of the study, it, should be rejected and referred back to the specialist to perform a proper independent review that meets independent scientific standards.
- 4.8 The lack of the consideration of impact to formally Protected Areas, most notably impact to the Great Fish Provincial Reserve measured against the stated expansion of the Indalo, Addo and Great Fish Protected Areas, is viewed with circumspection. The perpetuation of this material omission throughout the VIA (and perpetuation downstream into the SIA and EIR) is obfuscating the fact and severity of the matter.

5. **SOCIO-ECONOMIC IMPACT ASSESSMENT**

The Socio-Economic Impact Assessment (SIA) is flawed for the following reasons, amongst others:

- 5.1 The finding of the SIA Specialist indicates that "*[n]o evidence is presented to support the assertion that any wind farm development overseas has resulted in*

any adverse impact on tourism". This finding is not correct insofar as it concerns wilderness tourism as shown through international research presented in the body of this document. The assessment does not consider that much like the Kruger National Park and the Addo National Park, visitor experiences in Indalo and the Great Fish is concerned with activities and encounters in natural and unspoilt settings.

- 5.2 The study errs in finding "*Existing turbines do not affect any of the lodges at the game/hunting farms visually*" and would appear to base this on Interview with Pumba Director Mr Dale Howarth who claims he was never consulted or made any statement of this nature. This statement is to be corrected failing which it would be misrepresentation to the competent authority and grounds to refuse application (or subsequent appeal as decision based on a material factual mistake).
- 5.3 The study omits Nature and Conservation Tourism of formally Protected Areas, Provincial as well as Private Protected Areas from the surrounding land uses. Most notably there is no consideration afforded to Conservation Tourism from the Great Fish and Thomas Baines Protected Areas.
- 5.4 The analysis in Section 7.5 Economic Sectors & Employment omits an analysis of the tourism sector and the extent to which nature and wildlife tourism contribute to the regional economy and does not form a basis for informed impact assessment.
- 5.5 The discussion of the tourism sector Section 7.6.2 Tourism does not consider to any level of detail the nature of the tourism product and services of the area, nor the wilderness character of the area as basis for nature and wildlife tourism.
- 5.6 The conclusion of the SIA is wrong because it is informed by material factual errors in the VIA that the Albany WEF will not cause significant visual impacts on Protected Areas. Section 6(2)(e)(iii) read with section (6)(2)(f)(ii)(cc) of PAJA does not allow the environmental authorisation (EA) for the Albany WEF to be based on material factual mistakes otherwise it will be set aside on appeal or review for irrationality and unlawfulness.

- 5.7 There are significant visual impacts (which were disregarded by the VIA, the SIA and the EIR) which will be a determining factor for conservation and nature tourism to the Extended Protected Areas, including the Private Game Reserves which are declared Protected Areas.

6. **ECONOMIC IMPACT ASSESSMENT**

Indalo performed an independent Economic Impact Assessment of the proposed Albany WEF which concludes that a compromise between the Indalo Private Game Reserves and the WEF development (investment) could be a desirable solution. The preferred economic option indicates wind energy should be deployed sufficiently distant from nature and wildlife tourism-based operators, to avoid impacting the wilderness character and its tourism value and sterilising future Protected Area expansion. Combined land use, that does not imply a reduction in environmental goods and services (or quality of environmental goods and services), should ideally be pursued.

7. **NEED AND DESIRABILITY**

Although the Scoping Report and EIR do provide motivation for the need and desirability of the project, all the listed desirable aspects can be achieved through deployment of the WEF in an alternative location with suitable wind resources within the province, or even beyond the province. They can be more effectively achieved in a location that would avoid significant impact to the wilderness character and its tourism value as the proposed Albany WEF will do. Neither of the two reports provide a motivation for the need and desirability in the context of the preferred location, which is a requirement of the EIA Regulations.

8. **ASSESSMENT OF ALTERNATIVES**

- 8.1 The lack of a proper investigation about alternative site locations in accordance with the prescribed requirements of the EIA Regulations is a material mistake in the EIR and forms further ground for the DEFF to reject the Albany WEF application.
- 8.2 The VIA is specifically deficient in considering alternatives and specifically not considering the no-go option, with the inadequacy being carried over into the SIA

and EIR where neither the no-go option or the option (and benefits) of the Protected Area expansion program is considered.

9. **CONCLUSION**

9.1 The Indalo Protected Environment places on record that the EIR for the Albany WEF and the abovementioned specialist studies are deficient to the extent that these inadequacies are covering up fatal flaws in the application. If these material deficiencies were to be addressed it would become clear that the proposed WEF development would significantly blight views from the Great Fish Protected Area (most spectacularly from Adam's Krans view point) and would degrade the scenic value of the area and its unique wilderness tourism product in general. Indalo is unconditionally in favour of the outright refusal of the present location of the Albany WEF based on the grounds set out in the attached comments of the EIR.

9.2 In other words, Indalo favours the ultimate, most effective mitigation measure for the Albany WEF and the fatal flaws that it holds in terms of impact to Protected Areas and their expansion - its avoidance through its outright refusal.

Yours faithfully

A handwritten signature in black ink, appearing to be 'T. Fischer', written over a faint rectangular stamp or box.

Mr Theo Fischer (on behalf of Indalo Association)

- ADDENDUM 1:** Cover letter by Mr Nel Howarth (July 2020) for Indalo Private Game Reserve Association
- ADDENDUM 2:** EScience and EBA (July 2020) Comments on the Albany Wind Energy Facility EIA Process: Inadequacies in EIR and Specialist Studies
- ADDENDUM 3:** EScience (July 2020) Visual Impact Assessment Report View Simulation and Motivation
- ADDENDUM 4:** Revision (June 2020) Review of the Need and Desirability of Renewable Energy in the Indalo Corridor: Economic Impact Assessment

**COMMENTS ON THE ALBANY WIND ENERGY FACILITY EIA PROCESS
INADEQUACIES IN EIR AND SPECIALIST STUDIES**

JULY 2020

By Mr T Fischer, EScience Associates (Pty) Ltd &
Dr JHE Basson, Ernst Basson Attorneys Inc

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1. INTRODUCTION

- 1.1 The Indalo Protected Environment ("Indalo") is made up of the 9 Private Game Reserves ("PGRs") belonging to different landowners. The 9 PGRs are located over 3 local municipalities in the Sarah Baartman District Municipality of the Eastern Cape Province of the RSA as indicated and form a corridor between the Addo National Park (Addo") and the Great Fish River Provincial Nature Reserve ("Great Fish").
- 1.2 Based on government's Protected Area Expansion Strategy, buffer zones and Biodiversity Stewardship Programme discussed in this Comment, Indalo is currently actively working with local provincial and national partners including the Wilderness Foundation South Africa, Eastern Cape Park and Tourism Agency ("ECPTA") and SA National Parks ("SANParks") to expand areas under protection. This includes further amalgamation of the southern, central and northern nodes of Indalo into large agglomerations (>50 000Ha) of private reserves in the central node and private/public reserves by forming public-private partnerships with Addo and the Great Fish (and various provincial nature reserves) in the south and north respectively.
- 1.3 Like Addo and the Great Fish, the Indalo PGRs (as are many others in South Africa and in Africa in general) are concerned with nature and wildlife tourism as a key protected area goods and service. Likewise, the Indalo PGRs are managed according to a Protected Area Management Plan but instead of relying on public funds like Addo and Great Fish, they must secure funding from internal resources.
- 1.4 These resources are derived from nature and wildlife tourism which is dependent on a natural environment largely free from the structures and signs of modern civilisation (often from which the tourists come to get away to find solitude, tranquillity and serenity). Wind energy development characterised by colossal skyline intrusion will impose a significant divestment on Indalo members impacted and curtail wildlife and nature tourism enabled protected area expansion.

2. INDALO PROTECTED ENVIRONMENT

2.1 HISTORY

2.1.1 The Indalo Protected Environment ("PE") is made up of the 9 PGRs reflected in the Table below.¹

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7.	Shamwari Game Reserve	20,338.58	Sundays River Valley, Makana
8.	Sibuya Game Reserve	1,785.23	Ndlambe
9.	Lalibela Game Reserve	8,001.46	Makana
	TOTAL	76,076.59	

2.1.2 The PGRs that form the Indalo PE are classified as game and natural lodges for tourism purposes. The Tourism Grading Council of South Africa (TGCSA) regards "Private Nature Reserves" as part of "Game or Nature Lodges". The visual and scenic quality of the natural environment of the PGRs (along with wildlife and

¹ See detail in the Indalo Protected Environment - Protected Area Management Plan, 2019-2024 ("Indalo PAMP"), p 1-14.

hotel specifications), are part of the minimum requirements to be a Game or Nature Lodge.

"Scenic or natural vista (beyond that of the immediate garden area) e.g.: water view, rural outlook, mountain view or natural bush setting offering some Safari Activity such as Game Drives, Walking, Cycling, Horseback, Canoeing etc."² [Our emphasis.]

2.1.3 The unique background, character, nature-based tourism services, and community development by Indalo PGRs are well appreciated by national and regional authorities. Indalo PGRs have made a substantial contribution towards increasing areas under formal protection and contributing to achieve targets set in provincial and national protected area expansion strategies. Indalo PGRs reflect a proud history of financial investment and selfless personal commitment, dedication and service over many years by owners and personnel that have established and developed the different reserves as world class nature-based tourism destinations through ethical management of their biodiversity and natural environments. Protecting the unspoiled scenic and natural vistas of their unique natural environments were and are pivotal for the Indalo PGRs to establish and maintain their international reputation as malaria free wilderness tourism destinations of choice. This Comment demonstrates that the proposed location for the Albany Wind Energy Facility ("WEF") will significantly affect the unique wilderness experience of some of the PGRs, and in particular the Great Fish, which may cause serious economic harm to some parties.

2.1.4 Indalo is currently actively working with local provincial and national partners including the Wilderness Foundation South Africa, ECPTA and SANParks to expand areas under protection through further amalgamation of southern, central and northern nodes into large agglomerations (>50 000Ha) of private reserves in the central node and private/public reserves by forming public private partnerships

² See the *Minimum Requirements: Game Lodge / Nature Lodge Accommodation, 2014* p 1 at <https://www.tourismgrading.co.za/assets/Uploads/Game-NATURE-Lodge-Criteria.pdf>.

with Addo and the Great Fish (and various provincial nature reserves) in the south and north respectively.

2.1.5 One of the main objectives of the expansion plan is to enable common traversing agreements and unified conservation management through the dropping of fences between PGRs and Protected Areas. This is only realistic if areas expand to the extent that larger areas of reserve become contiguous and objectives have been set for short, medium and long term:

2.1.5.1 Short term:

- a. Combining land in the central - between Lalibela and Pumba will require areas of 2500 ha; and
- b. Combining land between Lalibela and Shamwari 2x 3500 ha.

2.1.5.2 Medium term:

- a. Combining land between Sibuya, Kariega, and Buffalo Kloof Private Reserves and Rivers Meeting Forest Reserve in the southern area will require some more substantive areas of 15 000 ha;
- b. Combining land targeted by the National Protected Area expansion strategy between Shamwari, Lalibela, Pumba and Kwandwe of 50 000 ha; and
- c. Inclusion of key biodiversity conservation nodes and wilderness areas characterised by high scenic quality and low levels of intrusion –
 - i. to the north and east of Addo;
 - ii. around Great Fish and south along the Fish River; and
 - iii. along the coastal shelf between Kenton and Port Alfred.

2.1.5.3 Long term: Linking with the protected areas in the Amathole Biosphere Reserve.

2.1.6 To this effect a formal protected area expansion strategy is under development by various stakeholders including Wilderness Foundation Africa, ECPTA, SANParks and Indalo Association that will guide protected area expansion, inform land-use planning, stimulate economic development and aide thicket restoration in the broader Albany region.

2.1.7 The environmental and economic benefits associated with the agglomerations (>50 000Ha) of private reserves and expansion through private partnerships with Addo in the south and the Great Fish in the north are considerable. Not only will this form a **Mega Eastern Cape Protected Area** as larger consolidated areas will lead to improved marketability of the Eastern Cape as a world class safari destination, making it comparable to Kruger, Sabi Sands and Madikwe. As much as wind energy development is necessary in South Africa, we hold wind energy development in Addo, Great Fish, Indalo and their further extended areas to be untenable and undesirable that should be avoided at all cost.

2.2 LEGAL STATUS

2.2.1 **Proclamation:** Indalo was declared on 13 April 2018 as a Protected Area, Category Protected Environment, in terms of section 28(1)(a)(i) and (b) of the National Environmental Management: Protected Areas Act, No. 57 of 2003 ("NEMPAA"), by the Member of the Executive Council ("MEC") for Economic Development, Environmental Affairs and Tourism, in the Eastern Cape Province.³

2.2.2 **Indalo Association:** The MEC assigned his power as Management Authority of the Indalo PE to the Indalo Association in terms of section 38(2)(b) of NEMPAA.⁴ The ECPTA, an agency of the Eastern Cape Department of Economic Development,

³ PN 70 of 13 April 2018 in PG 4030. Indalo PAMP, p 55. Lalibela Private Game Reserve was only declared part of the Indalo PE on 31 July 2019 in PN 219 of 31 July 2019 in PG 4280.

⁴ By the declaration notices.

Environmental Affairs and Tourism ("DEDEAT"), entered into an agreement with the Indalo Private Game Reserve Association that the Indalo PE becomes a Biodiversity Stewardship site.⁵

2.2.3 **Stewardship Agreement:** The Indalo Stewardship Agreement with the state forms an important part of the Indalo PE legal framework (read with the national and provincial biodiversity and conservation law, policies and programmes discussed below) that must be taken into consideration by the Department of Environment, Forestry and Fisheries ("DEFF") and the EAP in evaluating the EIA for the Albany WEF development. Section 8 of the Indalo Protected Area Management Plan ("PAMP") sets out certain restrictions on landowners in Indalo based on legislation and the Biodiversity Stewardship Agreement with the ECPTA. It specifically prohibits the placement of wind turbines for the generation of renewable energy inside Indalo.⁶ This prohibition on wind turbines inside Indalo addresses the same negative environmental impacts which Indalo demonstrates in this Comment that the location of the Albany WEF outside of the Indalo PE will have on the surrounding Protected Areas (including Indalo) and consequently should be situated elsewhere than the proposed site in the EIR.

2.3 LEGAL FRAMEWORK

2.3.1 The EAP's recommended in section 12.6 of the EIR that the proposed Albany WEF development be authorised (subject to the conditions). The EAP's recommendation is wrong, since the EIR is fatally flawed as demonstrated below and thus in contravention of the prescribed legal provisions. The EAP, and the DEFF as the competent authority, are required to consider, evaluate, and respectively recommend or decide, the Albany WEF application for EA against the prescribed legal framework which is summarised below.

⁵ Indalo PAMP, p 1-2. There are 5 categories of biodiversity stewardship in South Africa whereby conservation authorities secure land in biodiversity priority areas for conservation by entering into agreements with private and communal landowners: (i) Nature Reserves under NEMPAA with a single private nature reserve owner, (ii) Protected Environments (PEs) under NEMPAA with multiple landowners which is the case for Indalo, (iii) biodiversity management agreements (statutory contracts) under NEMBA, (iv) biodiversity agreements (common law contracts), and (v) biodiversity partnership areas (non-binding memorandums of understanding).

⁶ Indalo PAMP, p 92.

2.3.2 **Constitutional norms:** The Constitution is the supreme law in South Africa and hence the starting point in interpreting any legislation.⁷ Section 39(1) of the Constitution stipulates that the interpretation of the Bill of Rights (environmental rights in section 24 referred to below) must promote the values that underlie an open and democratic society based on human dignity, equality and freedom. International law must, and foreign law may, be considered during interpretation. This Comment demonstrates below that the legal comparison by the EIR (SIA) of the relationship between wind energy facilities and nature-based tourism in foreign jurisdiction was poorly done because of factual mistakes that excluded relevant foreign examples and referred to irrelevant foreign examples.

Furthermore, section 39(2) requires that the spirit, purport and objects of the Bill of Rights, which is the cornerstone of our society, must be promoted during legal interpretation. Hence the courts prescribe a purposive interpretation of the legal provisions regulating the EIA of the Albany WEF application measured within their larger statutory context and against the fundamental constitutional values. It is submitted that a purposive and contextual value based interpretation of environmental principles and the EIA requirements in NEMA justifies the use of international best environmental practice ("BPEO") standards for WEFs such as by the World Bank Group (International Finance Corporation ("IFC")) that will be discussed *infra*.

2.3.3 **Right to well-being:** Section 24 of the Constitution provides the fundamental normative foundation for environmental protection and conservation in South Africa by guaranteeing specific environmental rights to everyone. Section 24(a) protects the right to an environment that is not harmful to a person's health or well-being. The right to well-being is relevant to the Albany WEF because a person's well-being includes protection of the aesthetic quality of human life against nuisances such as odour, noise or visual pollution. This Comment indicates that the Albany WEF will cause significant visual disturbance which will negatively affect the aesthetic quality of the natural wilderness environment and the natural or wilderness experience of persons staying in or visiting the surrounding Protected

⁷ Section 2 of the Constitution.

Areas (Indalo, Great Fish and Addo). The visual disturbance will affect the right to well-being which cannot be justified in an open and democratic society based on human dignity, equality, and individual freedom. Consequently, the WEF should not be allowed to be developed on the proposed site but must be moved elsewhere where it does not have a significant impact on people's right to well-being.

2.3.4 **Right to dignity:** Section 10 of the Constitution also protects the human dignity of a person. The significant impact of the Albany WEF on the aesthetic quality and well-being of affected persons in section 24(a) of the Constitution by necessary implication also unjustifiably impair their human dignity. There is a direct relationship between the quality of the natural environment that a person is exposed to and the quality of that person's well-being and human dignity. Significant impacts of the former impair the latter. A person cannot have a dignified living (including a touristic experience) in a natural environment that is significantly visually polluted or degraded as will be brought about by the Albany WEF. Moreover, so in the present case where the unique wilderness character of the natural environment of the Indalo and Great Fish Protected Areas will be permanently scarred by the Wind Farm. The negative effect on tourism to Pumba PGR in Indalo caused by the Waaihoek WEF (see letter by the owner of Pumba, attached hereto) overwhelmingly illustrates the significant impact on nature-based and wilderness tourism by WEF developments. It shows a clear causal link between the reduction of aesthetic environmental quality by the WEF and the concomitant reduction of the visitors' human dignity to Pumba. The statements to the contrary in the SIA and EIR that fail to properly assess Pumba's concerns (which were clearly communicated to the EAP/SIA specialist but undervalued in the EIR) are factually and methodologically wrong and must be rejected by the DEFF as the competent authority.

2.3.5 **Right to environmental protection:** Section 24(b) of the Constitution guarantees the right to environmental protection. It places a constitutional obligation on the state to protect the environment for the sake of present and as well as future generations through reasonable measures that includes legislation that: (i) prevent pollution and ecological degradation; (ii) promote conservation and (iii)

secure ecological sustainable development and use of natural resources whilst promoting justifiable economic and social development. Thus, the constitutional principle of inter- and intragenerational conservation trusteeship places a clear legal duty on the DEFF (and other competent authorities e.g. SANParks, SANBI, ECPTA and local municipalities) to act as custodians of the natural environment and conservation by taking the necessary steps that may be required to ensure short and long-term environmental protection of the Indalo, Great Fish and Addo Protected Areas in the Eastern Cape Province. The court confirmed this principle in the Fuel Retailers case:

"The importance of the protection of the environment cannot be gainsaid. Its protection is vital to the enjoyment of the other rights contained in the Bill of Rights; indeed, it is vital to life itself. It must therefore be protected for the benefit of the present and future generations. The present generation holds the earth in trust for the next generation. This trusteeship position carries with it the responsibility to look after the environment. It is the duty of the court to ensure that this responsibility is carried out."⁸ [Own emphasis.]

2.3.6 The discussion of the viewsheds of the proposed WEF that were prepared by EScience for this submission (as per Addendum 3), overwhelmingly demonstrate the short and long term visual degradation of the natural environment. The DEFF's environmental trusteeship requires it to prevent this degrading development so that current and future visitors will continue to enjoy the unspoilt natural environment, moreover so of the planned Eastern Cape Mega Protected Environment through the expansion programme of the Addo, Great Fish, Indalo and other PGRs.

2.3.7 **Sustainable development:** Section 24(b)(iii) of the Constitution provides an exception to the right to environmental protection by acknowledging the right of the Applicant to the Albany WEF, but subject to the important proviso that it must be ecological sustainable. The right to sustainable development is one of the

⁸ *Fuel Retailers Association of South Africa (Pty) Ltd v Director-General Environmental Management Mpumalanga Province* 2007 (6) SA 4 (CC) para [102], see also para [71], [74], [75], [80], [93].

core environmental and economic principles in the Constitution and in South African law and is further guaranteed in the environmental principles in section 2(4) of NEMA that contain fundamental directives of state action, the principle of integrated environmental management in sections 23 and 24 of NEMA and the relevant EIA Regulations as well as various provisions of the specific environmental management acts ("SEMA's") and other legislation that provides environmental regulation of economic development. Sustainable development is defined by NEMA as the *"integration of social, economic and environmental factors into planning, implementation and decision-making so as to ensure that development serves present and future generations."*

2.3.8 The right to sustainable development requires that both the EAP in the EIR as well as the DEFF through its decision, to strike a fair balance or equilibrium (as explained by the courts) between environmental protection of the affected Protected Areas and the economic development of the Albany WEF. In light of the serious concerns and fatal flaws of the EIR to ensure proper environmental protection, it is clear that the EAP (and some specialists) had failed to comply with the integration requirement of the section 24(b) of the Constitution and section 2(4) of NEMA. Based on the supplementary information provided by Indalo in this submission, an informed and fair balancing of the Applicant's right to develop the Albany WEF *vis-a-vis* Indalo's (and the Protected Areas') and visitors' right to environmental protection and ecological conservation clearly shows that the environmental rights outweighs the development right at the proposed location. On the evidence explained in this submission, the proposed Albany WEF will not be ecologically sustainable as required by section 24(b) of the Constitution. For this reason, the DEFF as custodian of the natural environment of the must reject the Albany WEF application.

2.3.9 **Neighbour law:** The common law regulates the conduct between neighbours to prevent the unlawful and unreasonable impairment of each other's undisturbed enjoyment of their property due to noise, visual or odour pollution or other conduct by a neighbour. This common law duty of care by a landowner or user towards neighbours is based on the *sic utere tuo* doctrine. Failure by the intruding neighbour to cease the nuisance affecting the neighbouring property can result

in interdictory relief by a court of law and in worse cases payment of compensation by Aquilian action for the damages caused by the interference. In the present matter the Protected Areas precede the proposed Albany WEF. Also, the Albany WEF has been duly informed (through this Comment – which should have been done by the EIR, but which was omitted) of the expansion programme to create the Eastern Cape Mega Protected Area. Thus, the WEF must respect the historic rights and legitimate interests of Indalo and the other Protected Areas. (The expansion of Protected Areas and creation of buffer zones are prescribed by the existing law and government have developed and is implementing expansion policies, strategies and plans over many years (discussed below).) It is Indalo's view that negative environmental impacts of the WEF will cause a significant and permanent impairment of the undisturbed enjoyment of the Indalo and Great Fish Protected Areas as well as of the future Mega Protected Area.

2.3.10 **NEMA:** As required by section 24(b) of the Constitution, various laws were promulgated that ensure protection of the environment during the Albany Wind Farm development. Primary are NEMA and the EIA Regulations which in the present case provide the overall national legislative framework. Section 2 of NEMA contains fundamental environmental principles, that the EAP must consider when considering the environmental impacts for the EIR and the DEFF when deciding the Wind Farm application to ensure proper environmental protection. Sections 24(4) and 24O of NEMA provide the criteria for the EIR, including compliance with NEMA (integrated environmental management and mainstreaming of conservation management in section 23, the polluter's duty of environmental care in section 28), EIA Regulations, SEMAS and other regulations and notices as specified below. The EIA Regulations contain detail requirements for EIA studies e.g. to demonstrate the need and desirability of undertaking the proposed activity, assess alternatives (including location, technology and content), public comment, assess direct, indirect and cumulative impacts of the development, and take into account any applicable government policies, plans, guidelines, environmental management instruments, and other decision-making instruments that have been adopted by the competent authorities. We indicate below the failure by the EIR to comply with specific EIA requirements.

2.3.11 Various SEMAs apply to important aspects of the Indalo, Great Fish and Addo Protected Areas in the present matter e.g. to conservation (NEMPAA), protection of biological diversity (National Environmental Management: Biodiversity Act, No. 10 of 2004 ("NEMBA")), management of water resources (National Water Act, No. 36 of 1998 ("NWA")), waste management (National Environmental Management: Waste Act ("NEMWA")), management of coastal areas (National Environmental Management: Integrated Coastal Management Act, No. 24 of 2008 ("ICMA")), etc. (Not a complete list.) Provincial environmental and conservation legislation in the Eastern Cape Province adds a further layer of legislative control. In addition, national legislation such as for spatial development planning (permission for change of land-use by section 26(4) of the Spatial Planning and Land Use Management Act, No. 16 of 2013 ("SPLUMA")) and the by-laws and spatial development frameworks ("SDFs") of the Sundays River Valley, Makana and Ndlambe local municipalities provide additional protection to these Protected Areas.

2.3.12 **Conservation:** The conservation of biodiversity is primarily regulated by NEMPAA and NEMBA which should be interpreted and applied in an integrated manner in support of each other's legislative purpose and objectives. Both laws emphasise the state's constitutional obligation as the national trustee for the environment to protect and conserve biological diversity, natural landscapes and seascapes as well as the species and ecosystems therein and ensure the sustainable use of indigenous biological resources.⁹ All state institutions in the national, provincial and municipal spheres of government must comply with the provisions of these Acts, their regulations, norms and standards, frameworks, strategies, conservation policies and management instruments. The provisions of NEMBA and NEMPAA prevail over conflicting provisions of any national, provincial or municipal laws e.g. provincial spatial biodiversity plans, Sara Baartman District Municipality and Makana Local Municipal integrated development plans ("IDPs") and the Makana Local Municipal SDF.¹⁰ NEMBA and NEMPAA must be interpreted and applied in accordance with the national environmental management principles

⁹ Sections 3 of NEMBA and NEMPAA. *Mining and Environmental Justice Community Network of SA and others v Minister of Environmental Affairs and Others*, Case 50779/2017 NGHC 6 November 2018, para 4.7 ("Mabola").

¹⁰ Section 48(1) of NEMBA.

of NEMA as well as be read with its applicable provisions.¹¹ In the *Mabola* case the court confirmed the objectives of NEMPAA in section 2 are –

“the provision, within the framework of national legislation, including NEMA, for the declaration and management of protected areas, to provide for cooperative governance in the declaration and management of such areas, including the promotion of sustainable utilisation of protected areas for the benefit of people in a manner that would preserve the ecological character of such areas.”¹² [Own emphasis]

2.3.13 The viewshed prepared by Indalo discussed below (Addendum 3) clearly illustrates that the Albany WEF will destroy the ecological (aesthetic) character of the scenic view from Adam's Krans in the Great Fish Protected Area. Thus, the location of the Albany WEF will be in clear violation of NEMPAA as protected by the court. The provisions of NEMPAA (and NEMBA) trump conflicting economic growth policies in the various strategy documents and spatial planning instruments referred to by the SIA Specialist (para 3.2, 3.3 and 3.4) as justification for the Albany WEF. The legality principle of the rule of law in section 1 of the Constitution requires that all government policies must be consistent with the Constitution and legislation (in this case NEMPAA and NEMBA) otherwise they are unconstitutional and will be set aside to have no force or effect. This means the SIA cannot place more emphasis on government policies for economic (energy) development than on conflicting environmental legislation when considering the Albany WEF. The EIA Regulations require the SIA specialist and the EAP to adequately assess and disclose information that is detrimental to the WEF. This was not adequately done in the EIR.

2.3.14 **Conservation** obligations: Section 17 of NEMPAA is important for the evaluation of the environmental impact of the WEF with respect to the Indalo, Great Fish and Addo Protected Areas. It specifies the legal purposes which these Protected Areas are obligated to fulfil, i.e. –

¹¹ Sections 6 and 7 of NEMBA and section 5(1) of NEMPAA.

¹² *Mabola*, para 4.6.

- “(a) to protect ecologically viable areas representative of South Africa’s biological diversity and its natural landscapes and seascapes in a system of protected areas;
- (b) to preserve the ecological integrity of those areas;
- (c) to conserve biodiversity in those areas;
- (d) to protect areas representative of all ecosystems, habitats and species naturally occurring in South Africa;
- (e) to protect South Africa’s threatened or rare species;
- (f) to protect an area which is vulnerable or ecologically sensitive;
- (g) to assist in ensuring the sustained supply of environmental goods and services;
- (h) to provide for the sustainable use of natural and biological resources;
- (i) to create or augment destinations for nature-based tourism;
- (j) to manage the interrelationship between natural environmental biodiversity, human settlement and economic development;
- (k) generally, to contribute to human, social, cultural, spiritual and economic development; or
- (l) to rehabilitate and restore degraded ecosystems and promote the recovery of endangered and vulnerable species.” [Own emphasis.]

2.3.15 **Protected Area Obligations:** Section 28(2) of NEMPAA stipulates that the Indalo PE may only be declared for the following purposes, -

- “(a) to regulate the area as a buffer zone for the conservation and protection of a ... national park, MPA, ... or nature reserve;
- (b) to enable owners of the land to take collective action to conserve biodiversity on their land and to seek legal recognition therefor;
- (c) to protect the area if it is sensitive to development due to its (i) biological diversity, (ii) natural characteristics, (iii) scientific, cultural, historical, archaeological or geological value, (iv) scenic and landscape value, or (v) provision of environmental goods and services;

- (d) to protect a specific ecosystem outside of a national park, or nature reserve;
- (e) to ensure that the use of natural resources in the area is sustainable; or
- (f) to control change in land use in the area if the area is earmarked for declaration as, or inclusion in, a national park or nature reserve." [Own emphasis.]

2.3.16 All the purposes in section 17 of NEMPAA apply to Indalo, Great Fish and Addo. The underlined provisions of section 17 require that Indalo and the other Protected Areas must, (i) provide environmental goods and services, (ii) create an environment that is conducive for nature-based tourism, and (iii) ensure ecological sustainable social and economic development takes place. Similarly, the purposes in section 28(2) of NEMPAA apply specifically to the Indalo. This means that Indalo must (i) form a buffer zone between the Addo and Great Fish, (ii) enable the different PGRs inside Indalo to conserve their biodiversity, (iii) protect sensitive areas in respect of economic development e.g. areas with scenic and landscape value, and (iv) provide environmental goods and services.

2.3.17 **Legal error:** Indalo objects against approval of the Albany WEF because the development will prevent Indalo from fulfilling its statutory obligations (purposes) in sections 17 and 28 of NEMPAA. (This is also the case for the Great Fish and Addo in respect of their obligations under section 17.) This is so because the environmental impact of the WEF will affect the ability of the Protected Areas to adequately provide some of the environmental goods and services (e.g. game drives and walks, experiencing wildlife in their natural habitat, nature photography, wildlife education, game cuisine and cultural interaction with local communities), will significantly affect nature-based tourism and is not ecologically, socially and economically sustainable because it will cause the reduction of visitors to some of the Indalo PGRs and Protected Areas. In this regard we refer to the negative effect of the Waaihoek WEF on tourism to Pumba (see Pumba letter attached) which confirm these risks as real and not miniscule or theoretical as appears to be the impression created in the EIR and SIA.

2.3.18 **Unlawful and unconstitutional conduct:** The recommendation by the EAP in the EIR contains a material legal error that will have an unlawful and unconstitutional legal effect if the DEFF approves the application. The EAP's recommendation to the DEFF to provide conditional environmental authorisation (EA) for the development of the Albany WEF will affect the ability of Indalo and the other Protected Areas to comply with their legal obligations under section 17 and 28 of NEMPAA, respectively (as underlined). This effect by the environment authorisation will be contrary to the rule of law, and thus unlawful and unconstitutional conduct. If the Applicant receives EA for the Albany Wind Farm development, Indalo reserves its right to have it set aside on internal appeal to the Minister, or on judicial review in terms of sections 6(2)(d) and (i) of the Promotion of Administrative Justice Act, 3 of 2000 ("PAJA") as well as the right to obtain interdictory relief where necessary.

2.3.19 **NEMBA:** NEMBA regulates the legal classification and permitting system for the protection of threatened ecosystems and species in South Africa. It also provides the legal framework for integrated and coordinated planning, monitoring of biodiversity conservation and protection through 3 instruments: (i) the national biodiversity framework (provide national norms and standards to all organs of state, communities and the private sector throughout the country), (ii) bioregional plans (maps for specific geographic areas that identify Critical Biodiversity Areas ("CBAs") and Ecological Support Areas ("ESAs") with guidelines for land use, and (iii) biodiversity management plans (to protect listed threatened ecosystems, indigenous species and special categories in specific cases). Indalo indicates below important gaps in the assessment of the avifaunal impact of the WEF which will contravene the statutory obligations of the WEF in terms of NEMBA and its regulations.

2.3.20 **Protected Area Expansion:** The National Protected Area Expansion Strategy ("NPAES") in 2008 provides the national policy framework for the integrated and coordinated expansion and consolidation of the Protected Areas under NEMPAA through ecosystem specific expansion targets. Extended Protected Areas provide important ecosystem goods and services e.g. production of clean water, flood moderation, preventative erosion, carbon storage and protection of the

aesthetic value of the landscape. NPAES identified the Baviaans-Addo Area (Focus Area Nr. 3) for protection of 7 biomes in the Eastern Cape as a suitable Protected Area expansion area (and includes the Albany Thicket biome). The Eastern Cape Provincial Areas Expansion Strategy, 2012 ("ECPAES") was developed by ECPTA to implement the terrestrial objectives of NPAES in the EC Province. ECPAES mapped 20 priority areas and developed a realistic implementation plan over the next 5 years for focus areas of high, medium and low precedence that include the Greater Addo and the Great Fish Protected Areas. The Indalo PE is included in the proposed expansion of the Protected Areas by ECPAES. Thus, the aforesaid national and provincial expansion programs provide the legal basis for the creation over time of a Mega Protected Area in the Eastern Cape. The EIR is deficient because it does not adequately assess and consider how the expansion of the Protected Areas will be impacted by the development of the Albany WEF at the proposed location.

2.3.21 **Buffer Zones:** The expansion of Protected Areas is complemented by a strategy to create buffer zones to National and Provincial Parks such as for Addo and Great Fish. The ecological landscapes of the Parks continue into the surrounding region and their viability as Parks depend on their social, economic and ecological integration into the surrounding region. Once declared and gazetted, the buffer zones will provide legal mechanisms to regulate development in that area e.g. to prevent the negative impacts of intruding developments. As indicated section 28(2) of NEMPAA provides that one of the purposes of the Indalo PE was to form a buffer zone with the Addo and Great Fish. Lalibela in the Indalo PE plans to expand its area to link up with neighbouring Shamwari and Pumba Game Reserves to form part of the proposed Larger Addo - Great Fish Corridor (also referred to as the Albany Corridor). To this effect a formal protected area expansion strategy is under development by various stakeholders including the Wilderness Foundation Africa, ECPTA, SANParks, and the Indalo Association. The EIR does not adequately assess and consider how the proposed development of the Albany WEF will impact on the proposed Larger Addo - Great Fish Corridor (Albany Corridor).

2.3.22 **EC Biodiversity Plan:** The draft EC Biodiversity Strategy and Action Plan, 2017 for the protection of threatened or protected ecosystems was gazetted in 2018 for comment and is based on a comprehensive technical report known as the EC Biodiversity Conservation Plan, 2017. Once adopted these 2017 Plans will replace the outdated EC Biodiversity Conservation Plan of 2007 which is presently still in force. The 2017 Plans emphasise the importance of private conservation areas to the conservation of biodiversity and their contribution to the regional economy and its further expansion process. The 2017 Plans provide a systematic Spatial Biological Assessment ("SBA") that generated and mapped (down to district level) spatial terrestrial and aquatic CBA and ESA priorities based on biodiversity patterns, ecological processes, current and future land uses and the PA network. It provides a matrix of guidelines for recommended land use types and activities that have been linked to SPLUMA land uses (Spatial Biodiversity Land Use Guidelines" ("SBLUG")) based on their impacts measured against the management objectives of the CBAs and ESAs.

2.3.23 The state's constitutional duty to ensure intergenerational environmental equity is not limited to climate change adaptation programmes such as the promotion of renewable energy (the Albany WEF), but it has the concomitant fundamental obligation to protect and conserve the environment by ensuring the ecological sustainability of the natural and wilderness environment – even against negative impacts of renewable energy projects such as the WEF. The EIR is one sided because it only focuses on the former and does not strike a fair balance between climate change adaptation and long-term environmental conservation and protection envisaged by the Protected Area expansion programme as discussed above.

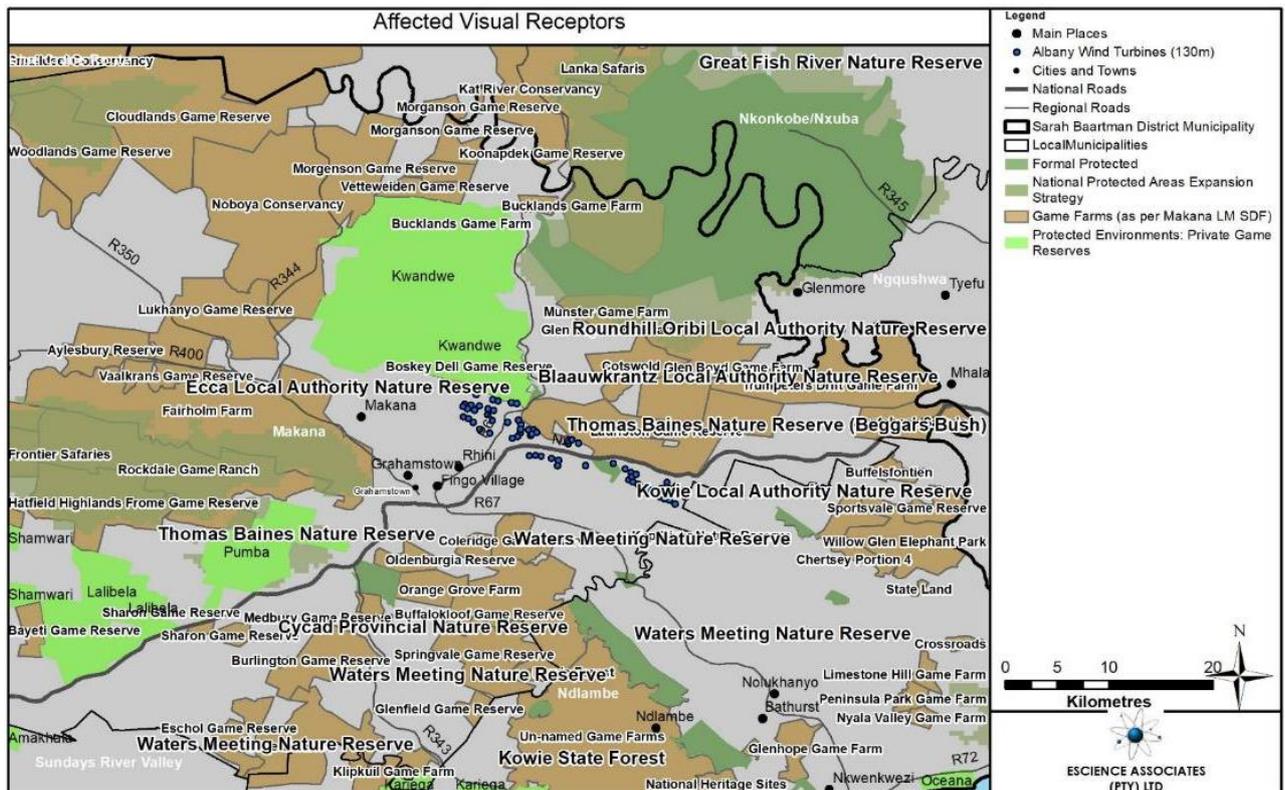
3. COMMENTS OF SPECIALIST STUDIES

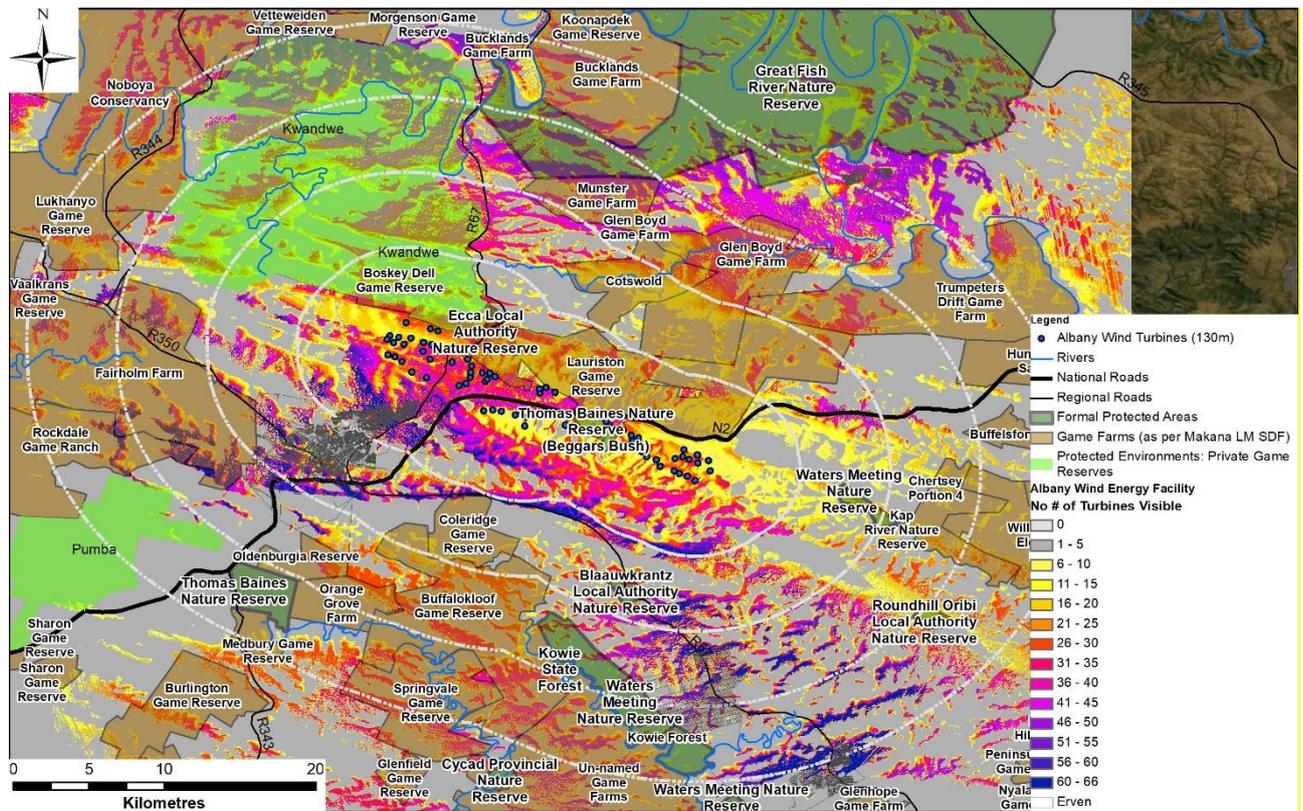
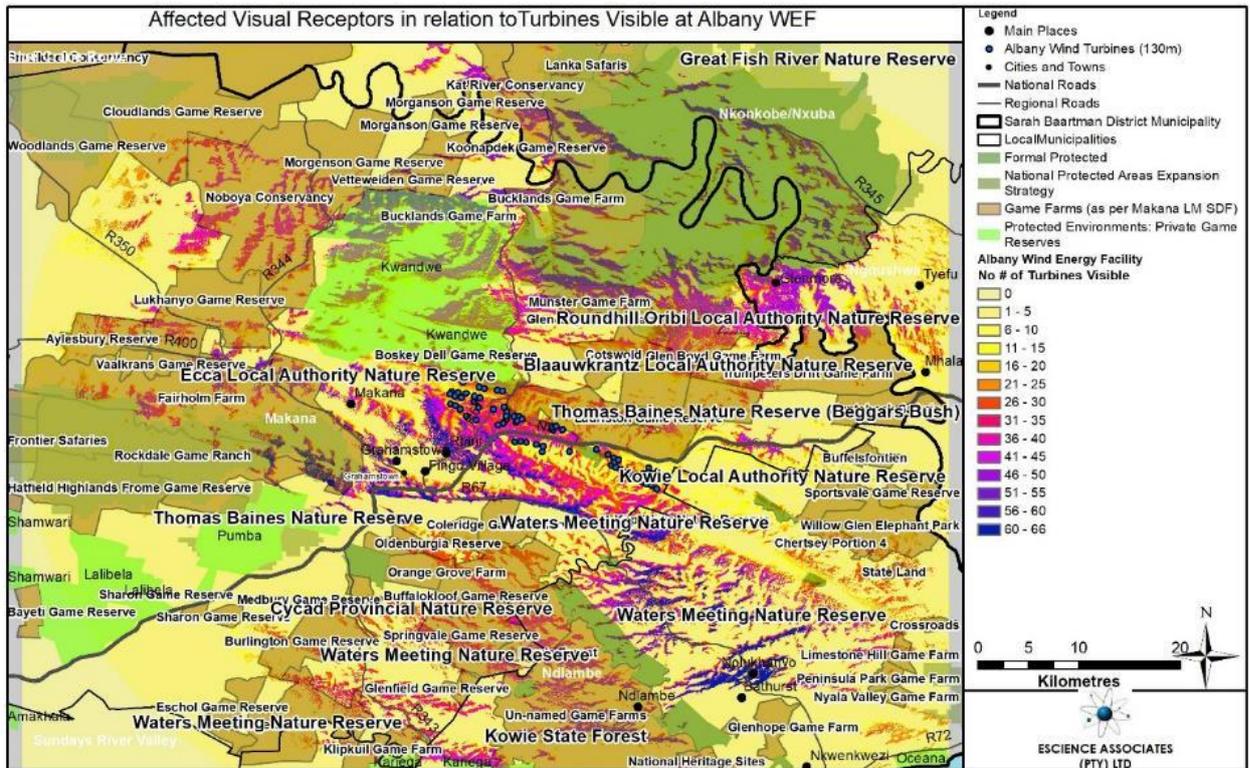
3.1 SENSE OF PLACE AND VISUAL IMPACT ASSESSMENT

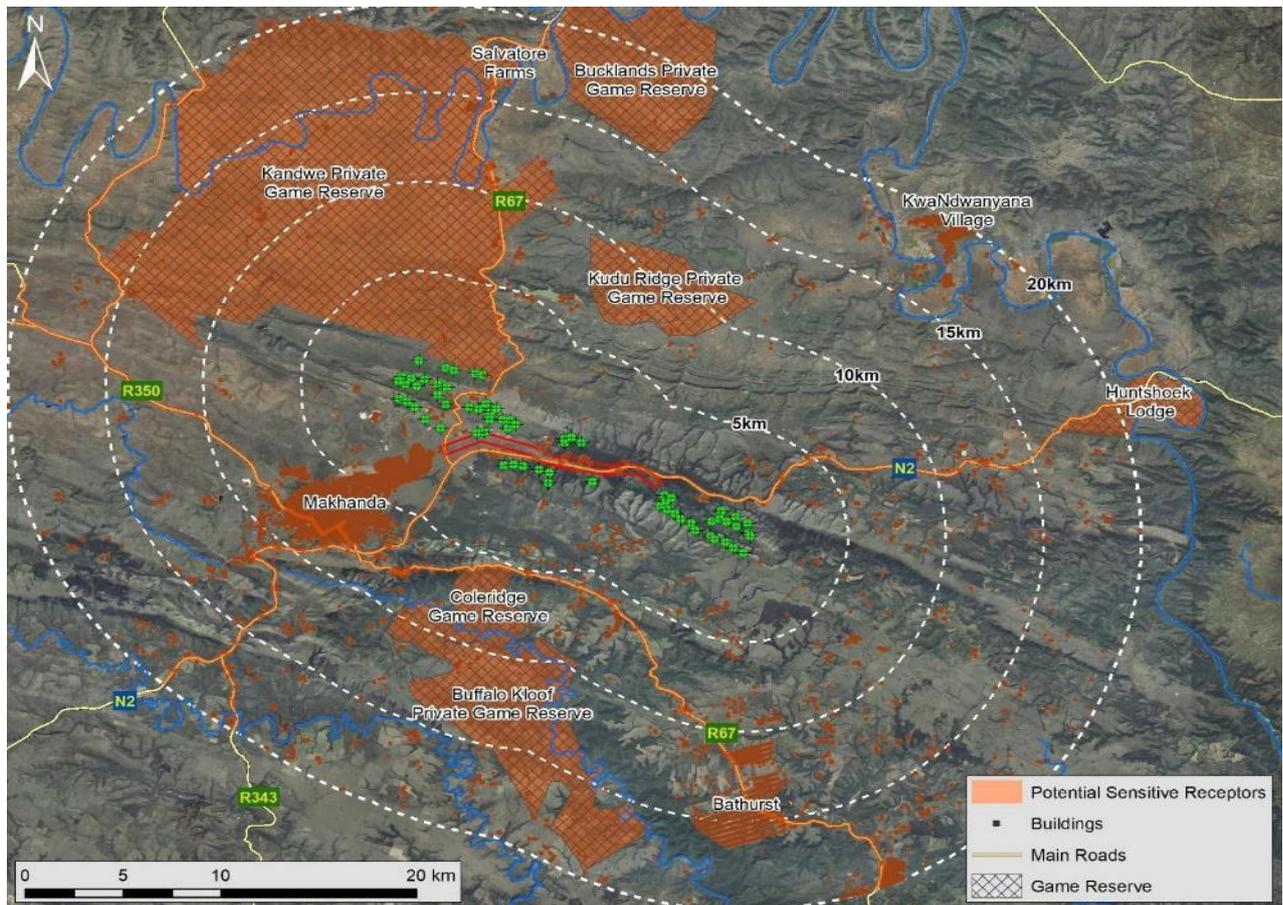
3.1.1 **Requirements:** A Visual Impact Assessment (VIA) has to be fit for purpose and needs to determine visual impact "significance" with respect to both the local as well as regional importance of the landscape and features the landscape is

comprised of, the relative pristineness of landscape and features comprising and their contribution to sense of place. The VIA in the EIR for the Albany WEF did not meet these objectives, is defective and must be rejected.

3.1.2 **Identification of sensitive receptors:** The VIA indicates that “Based on potential sensitivity, visibility and exposure, the following sensitive receptors (Figure 7) were identified within the study area.” However, the identification of the receptors is totally inadequate as can be gleaned from the below maps prepared by EScience for Indalo.







3.1.3 **Vantage points:** Poor selection of vantage points and complete omission of the Great Fish Provincial Nature Reserve are material deficiencies in the Report. The absence of the Great Fish is conspicuous, and the deficiency is of such a nature that it beggars' belief. The actual impact on the Great Fish and the Adam's Krans view point as determined by independent specialist alone constitutes **a fatal flaw**, the aggregated visual impact on wildlife and nature tourism operations in the area would be an externality of **fatal proportions**.

3.1.4 **Landscape sensitivity and Cookhouse REDZ:** The characterisation of the landscape of the study area is flawed and the quality of its visual character is misrepresented. A statement is made that "*the landscape of the study area is not pristine or of very high scenic value*". Although the EIR makes much about the fact that the development is in part located within the Cookhouse REDZ, it should be noted that the REDZ visual sensitivity mapping at the regional scale indicate that the Albany WEF receiving environment is categorised as 'very high visual sensitivity'. (Our emphasis.) This means that it is not ideally suitable for wind farm development where the wilderness character forms the basis for wildlife and