



RICHARD SUMMERS INC.  
ATTORNEYS

CES - Environmental and Social Advisory Services  
Grahamstown  
**Attention:** Ms. Caroline Evans

Our ref: RWS/cfa/CSP20-001  
DEA ref.: 14/12/16/3/3/2/1131

Per email: [c.evans@cesnet.co.za](mailto:c.evans@cesnet.co.za)

13 July 2020

Dear Caroline

**RE: COMMENT ON DRAFT ENVIRONMENTAL IMPACT ASSESSMENT (EIA) REPORT FOR THE ALBANY WIND ENERGY FACILITY (DEA REFERENCE NUMBER: 14/12/16/3/3/2/1131)**

**1. INTRODUCTION**

- 1.1. Richard Summers Inc was appointed by Kwandwe Private Game Reserve (“Kwandwe”) to review and comment on the Draft Environmental Impact Assessment Report (DEIR) for the proposed Albany Wind Energy Facility<sup>1</sup> (“proposed Albany WEF”).
- 1.2. The game reserve and ecotourism industry in the Eastern Cape are highly significant sectors that stand to be adversely affected by the proposed Albany WEF and other developments of a similar nature. Kwandwe Private Game Reserve is situated in close proximity to the proposed Albany WEF and has a direct and material interest in the outcome of this application, as it stands to be one of the most directly affected stakeholders.
- 1.3. Kwandwe Private Game Reserve also forms part of the statutorily protected and formally declared Indalo Protected Environment (“Indalo PE”) which is represented by nine Game Reserves (measuring 76 076,59 hectares in extent).<sup>2</sup> The Indalo PE was founded with the objective to promote biodiversity conservation and ecological sustainability on a much larger

<sup>1</sup> DEA reference number: 14/12/16/3/3/2/1131.

<sup>2</sup> Declaration Notice in Provincial Notice 70 in *Provincial Gazette* 4030 dated 13 April 2018, page 3.

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scale than individual reserves, and to present a unified voice on issues affecting the tourism and game reserve industry.

- 1.4. In terms of the conservation and protection of vegetation biodiversity targets and the wildlife conservation value of Kwandwe and the Indalo PE, and the ecosystem protection and ecosystem services they provide, the contribution made by Kwandwe and the Indalo PE is significant. This conservation value and the environmental, social and economic benefits of Kwandwe and the Indalo PE hinges entirely on the continued, long-term economic viability of the eco-tourism businesses underpinning the sustainability of the existing operations.

## **2. SUMMARY OF KEY ISSUES REGARDING THE DEIR**

- 2.1. The treatment of alternatives in the EIA process is deficient and fails to satisfy the legal requirements for the investigation and evaluation of alternatives to the activity during the EIA process.
- 2.2. The quantification of the socio-economic impact on game reserves and the tourism sector is one of the most significant issues identified during public participation process and this impact remains unresolved. Because of the high level of importance attached to this particular concern in relation to the proposed Albany WEF (evidenced by this concern being raised by numerous I&APs during the Scoping and Assessment phase), this constitutes a fatal flaw.
- 2.3. The nature of this obligations imposed in terms of the National Environmental Management Act, No 107 of 1998 (“NEMA”) requires the EAP to assess, among other things, the cumulative impact on the environment brought about by the proposed Albany WEF and all other existing and/or proposed WEFs that are in close proximity to the proposed Albany WEF. This in turn requires the EAP to assess the impact on the sustainability of existing game reserves and ecotourism operations. Although the socio-economic impact of the proposed Albany WEF has been identified as a concern in the DEIR and specialist assessments, the direct, indirect and cumulative impacts have not been quantified.



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- 2.4. The issue of ecosystems and biological diversity cannot be determined with reference to the contents of the biophysical specialist reports alone. The fact that the site is not considered ecologically sensitive is not the only issue of relevance. Absent from the EIA process is any consideration of the impacts on the conservation estate and biodiversity benefits of the Indalo PE where this and other WEFs (directly, indirectly or cumulatively) impact on the viability and sustainability of the existing game reserves and ecotourism operations of the Indalo PE and its constituent members.
- 2.5. Key stakeholder concerns are unresolved. The Indalo Management Authority consistently raised the concern that the proposed Albany WEF may jeopardise the core eco-tourism business model of any of the game reserves comprising the Indalo PE and thereby threaten the substantial conservation and socio-economic benefits that these protected areas provide.
- 2.6. The evaluation and consideration of need and desirability of the proposed Albany WEF does not satisfy the EIA best practice, nor does it meet the peremptory requirements prescribed by NEMA in this regard.
- 2.7. None of the questions or issues identified in the *2017 Need and Desirability Guideline* has been directly and expressly addressed by the EAP in the DEIR. Section 24O of NEMA has not been complied with as there is no indication that the EAP had regard to relevant guideline published in terms of section 24J of NEMA and associated minimum information requirements.
- 2.8. The indirect, cumulative and consequential impacts on Kwandwe Private Game Reserve, and the Indalo PE (and the individual game reserves comprising the Indalo PE) have not been quantified in circumstances where the proposed Albany WEF and other projects of a similar nature adversely affect the sustainability of these game reserves, statutorily declared protected areas, and ecotourism existing operations.



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- 2.9. The scope of assessment is defective as it excludes substations and transmission lines which comprise core infrastructure for the proposed Albany WEF and which infrastructure ultimately dictates the location of the project and the development footprint.
- 2.10. The project specifications of turbines used in the assessment is inconsistent and there is uncertainty regarding the extent to which a change in turbine or technical specifications may impact on the DEIR findings relating to impacts and significance thereof.
- 2.11. The information required to aid the significance rating of certain impacts are unknown and assumptions were drawn based on previous experiences.
- 2.12. The DEIR and specialist assessments ignore the sensitivity mapping and analysis with the result that the final proposed Albany WEF layout included in the DEIR is not the optimal layout from an environmental perspective, because it fails to respect all environmentally sensitive areas as NO-GO areas.
- 2.13. The various information gaps identified in these comments have the combined effect of compromising the ability of stakeholders to engage meaningfully in the EIA process and to be able to comprehend and interpret the nature, severity and duration of project related impacts. This undermines the public participation process and renders it meaningless.
- 2.14. The DEIR omits to include an updated comments and response table in order to specifically explain to stakeholders and I&APs how various comments throughout the EIA process have been addressed. This too renders the public participation process meaningless and defective.
- 2.15. Two external reviews have been commissioned in order to review the efficacy of the VIA and the EIA process as a whole. Both external reviews have identified that the EIA and the VIA suffer from fatal flaws and material omissions and as a result cannot serve as a basis for accurate impact evaluation and/or defensible decision-making by the competent authority.



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- 2.16. The gaps and omissions in the assessment are extensive and constitute a material flaw in the EIA process. Due to the high levels of speculation and the categories of relevant information classified by the relevant specialists as unknown, the DEIR fails to comply with minimum legal requirements and cannot support reasonable or rational decision-making by the competent authority.
- 2.17. These issues are described in more detail in Sections 3 – 7 of this document, read together with the following Annexures comprising these Comments:

**ANNEXURE A – EXTERNAL REVIEW OF VISUAL IMPACT ASSESSMENT REPORT DATED APRIL 2020 BY BERNIE OBERHOLZER AND QUINTON LAWSON (INCLUDING VISUAL SENSITIVITY MAPS 1 – 18 ATTACHED TO THE REVIEW)**

**ANNEXURE B – KWANDWE PRIVATE GAME RESERVE CLIENT SURVEY RESULTS**

**ANNEXURE C – EXTERNAL REVIEW OF DRAFT ENVIRONMENTAL IMPACT ASSESSMENT (EIA) REPORT DATED APRIL 2020 BY GLOBAL GREEN.**

### 3. ALTERNATIVES

- 3.1. The DEIR recognises that “alternatives”, in relation to a proposed activity, means *different* means of meeting the general purpose and requirements of the activity but the EIA undertaken in relation to the proposed Albany WEF fails to consider any alternatives that could be construed as *different* means of meeting the general purpose and requirements of the activity. By way of illustration, the Visual Impact Assessment (“VIA”) report claims that the EIA process involved “*evaluating the various alternatives associated with the Albany WEF proposal and the identification of the preferred alternative, is provided in the Environmental Impact Assessment Report (EIAR) for this project*”.<sup>3</sup> This is highly misleading and incorrect.
- 3.2. This submission focusses on the manner in which “alternatives” has been dealt with in the

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<sup>3</sup> Page 26, VIA report.



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context of the EIA process for the proposed Albany WEF. The comment regarding alternatives is described in three distinct parts: (1) the manner in which the DEIR deals with alternative *technologies*; (2) the claim that alternative *layouts* have been provided by the Applicant; and (3) a brief review of the no-go option.

***Alternative Technologies***

- 3.3. The reliance on alternative technologies in the DEIR as “alternatives” for the purposes of the EIA Regulations is misleading. The “*alternative energy technology*” options described in section 7.2.4 of the DEIR are identified as coal fired power plants, biomass and nuclear power. None of these is a true or genuine alternative – or *different* means of meeting the general purpose and requirements of the activity - for the purposes of satisfying the EIA Regulations.
- 3.4. Regarding the assessment of technology alternatives, we point out that<sup>4</sup>:
- 3.4.1. Section 7.2.4 of the DEIR expressly refers to the activity or project as being for a *renewable energy development only*.
- 3.4.2. The NEMA listed activities applied for by the Applicant are described in the DEIR as being for the development of facilities/infrastructure for the generation of electricity from a *renewable resource*.
- 3.4.3. It is plain from the Applicant’s own description of the project in the DEIR that neither coal fired power plants, biomass nor nuclear power facilities constitute a genuine alternative technology option for the proposed Albany WEF which self-evidently is a renewable energy development.
- 3.5. Similarly, the options of solar and concentrated solar power identified in the DEIR as

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<sup>4</sup> Described in the DEIR as Alternative Energy Technologies 4, 5 and 6 on page 89, DEIR.



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alternatives are not genuine alternatives for the purpose of NEMA or the EIA Regulations.

This is evident from the following:

- 3.5.1. The DEIR states that “*only the most feasible and competitive developments are selected*” for the EIA and that “*solar plants will only be competitive if they are located in the highest potential areas*” in the Eastern Cape.<sup>5</sup>
- 3.5.2. The potential energy production maps reproduced in the DEIR indicate that the study area - where the Applicant wishes to undertake a renewable energy development - is most suitable for wind energy production.<sup>6</sup>
- 3.5.3. The DEIR confirms that the study area would not be competitive with solar plants located in the higher potential areas.<sup>7</sup>
- 3.6. It is evident that neither solar plants, coal fired power plants, biomass nor nuclear power are reasonable or feasible “alternatives” or different means for achieving the *project* viz a wind farm. This begs the question why these so-called alternative technologies were included and described as “alternatives” in the DEIR when it is plainly clear that they are not alternatives in any sense of the term. The reliance on these ‘options’ does not satisfy the NEMA requirement relating to the evaluation and assessment of alternatives.

#### **Alternative layouts**

- 3.7. The DEIR incorrectly claims that more than one project layout was assessed in the EIA process. This statement is demonstrably false, as illustrated by the following:
  - 3.7.1. The project entails a layout of a maximum of 66 turbines which was the only layout assessed. Although the DEIR misleadingly claims that a 90-turbine layout was also

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<sup>5</sup> Section 7.2.4, DEIR.

<sup>6</sup> Figures 7-1 to 7-4, DEIR.

<sup>7</sup> Page 84, DEIR.



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assessed, this is plainly incorrect and misleading. There are only two passing references to a 90-turbine layout in the entire DEIR.<sup>8</sup>

- 3.7.2. The DEIR states that all specialists assessed a 'draft layout' of 90 turbines and the results were assessed *by the developer* in order to inform the layout described in the DEIR.<sup>9</sup>
- 3.7.3. This so-called "preliminary layout"<sup>10</sup> of 90 turbines and its assessment *by the developer* was never made available to I&APs at any time during the EIA process. It was rather determined *by the proponent* based on a "desktop pre-screening"<sup>11</sup>. In other words, the 90-turbine layout was not assessed at any time during the EIA in accordance with the EIA Regulations but was rather considered by the proponent as an internal exercise.
- 3.7.4. The results of the desktop pre-screening by the proponent were analysed in order to inform the project layout presented in the DEIR. The only layout that was in fact assessed, was the proponent's preferred option of a 66-turbine layout.
- 3.7.5. There is no evidence that the 66-turbine layout was ever adjusted to respond to the impact assessment during the EIA. The EAP undertook that this (layout adjustment) would take place "*based on the outcomes of the specialist assessment during the EIA phase*". It is plainly evident from the DEIR that only the developers preferred layout has been assessed. At no stage was the proponents preferred layout materially modified to respond to environmental constraints.
- 3.7.6. The 66-turbine layout has also not responded to the sensitivity map. This is evident from the fact that there has been no attempt to avoid the turbines that give rise to high impacts. It is particularly concerning that none of the turbines with a VERY HIGH or HIGH negative visual impact identified during the VIA has been avoided to ensure that the layout is optimal from an environmental perspective. The EAP has thus failed to adhere

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<sup>8</sup> In referencing Alternative Layout 1 on page 90 and page 96, DEIR.

<sup>9</sup> Page 96, DEIR.

<sup>10</sup> Page 90, DEIR.

<sup>11</sup> Page 90, DEIR.



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to the undertaking that “*all environmentally sensitive areas have been designated as NO-GO areas*”<sup>12</sup> in the final proposed layout.

3.7.7. The self-stated aim of the Socio-Economic Impact Assessment (“SIA”) report is to provide an appraisal of possible socio-economic consequences and make recommendations for feasible *alternatives* and realistic mitigation measures.<sup>13</sup> There is no evidence in the SIA report of any alternatives recommended or assessed by the Social Specialist during the SIA.

3.8. In summary, the 90-turbine layout is not a genuine alternative. It was not subject to any independent evaluation / assessment in terms of the EIA Regulations. The correct factual position is that no layout alternatives were investigated, evaluated or assessed. Accordingly, the DEIR states the correct factual position where it records that only “*the final proposed WEF*” of 66 turbines was included in the EIA.<sup>14</sup>

#### ***No-go option***

3.9. The DEIR indicated that “*all feasible alternatives*” and the “*no-go option*” will be equally assessed in order to evaluate the significance of respective impacts.<sup>15</sup> This did not take place.

3.10. In the DEIR, the no-go alternative is portrayed only in terms of the negative impacts associated with not undertaking the proposed development. This approach unfairly emphasises only the positive impacts of allowing the project to be undertaken, whilst excluding the full cost benefit analysis required in terms of the EIA Regulations.

3.11. The selective emphasis on the fact that the benefits of the project will not be realised operates to exclude other relevant considerations. There is no balanced account of the relative assessment of all risks and benefits associated with the *status quo* i.e. the no-go

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<sup>12</sup> Page 90, DEIR.

<sup>13</sup> Page 19, SIA report.

<sup>14</sup> Page 90, DEIR.

<sup>15</sup> Page 118, DEIR.



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alternative. This concern is illustrated by the following examples:

- 3.11.1. With regard to the no-go option the VIA report states: *“In the case of the Albany WEF, the development can have local job-creation benefits, while at the same time adding to the energy security of the region.”* There is no attempt to balance this against the fact the no-go option will not give rise to WEF *“high visual impact on the landscape”* and *“losses of scenic resources”* identified in the DEIR.
- 3.11.2. With regard to employment related impacts, the SIA report states that the effect of the no-go option will be that *“No employment and associated benefits will accrue to local communities or the broader Makana LM as a result of this project.”* There is no attempt to balance this against the fact that the number of employment opportunities at Kwandwe (in the reserve management and hospitality components) will not be affected by the no-go option as this will not give rise to WEF impacts that threaten the sustainability of the existing ecotourism operations.

**VIA alternatives**

- 3.12. The VIA report recognises the fundamental importance of alternatives assessment to the EIA as follows: *“Integral to the EIA process is the consideration and evaluation of alternatives to a proposed development plan”*<sup>16</sup>. The EAP (who also acted as the visual specialist) however failed to carry this through into the assessment.
- 3.13. The fact that various alternatives were not assessed during the EIA process is confirmed by the following:
  - 3.13.1. Paragraph 3.7 (above) illustrates that only one project alternative was assessed during the EIA process.

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<sup>16</sup> Page 26, VIA.



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- 3.13.2. With regard to the location of alternatives, the VIA report confirms that only one site (the project area) has been considered in the report.
- 3.13.3. With regard to technological alternatives, the VIA report confirms that only the development of a *wind energy facility* has been considered in the VIA report.
- 3.13.4. With regard to layout alternatives, the VIA confirms that only the proponent's preferred alternative - the turbine layout of 66 turbines — has been assessed.
- 3.14. In terms of applicable policy and guidelines<sup>17</sup> Level 4 Visual Assessment ought to consist of *inter alia* a description of alternatives and mitigation measures as some of its main elements. The investigation and implementation of alternatives in connection with the VIA and the DEIR was simply not done in connection with this project. The failure to investigate alternatives serves as confirmation that the EIA is fatally flawed and specifically the VIA has failed to satisfy the NEMA requirements regarding the evaluation of alternatives.

***Summary of comment on Alternatives in the DEIR***

- 3.15. The references in the DEIR to alternatives is self-serving and does not satisfy the prescribed legal requirements of NEMA. NEMA requires a genuine consideration of a range of alternatives *viz* different means of achieving the activity by stipulating that the EIA must ensure that reasonable and feasible alternatives are identified, described and evaluated with regard to the objectives of NEMA. The EAP has not assessed a different means of meeting the general purpose and requirements of the activity in question.
- 3.16. The DEIR reference to alternative technologies is misleading. The other technologies listed are not true alternatives to the project, and alternative layouts were not assessed at all.
- 3.17. The approach to alternatives in the EIA process pays lip service to the requirement regarding

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<sup>17</sup> For example, the DEA&DP NEMA EIA Guideline Series June 2005 - Involving visual and aesthetic specialists in EIA processes.



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alternatives assessment. The VERY HIGH and HIGH significance ratings of adverse visual impacts in this case make the consideration of alternative sites especially relevant to this project and this must first be satisfied in order for the NEMA requirement to be addressed.

3.18. The DEIR does not satisfy the objective in Item 2(d)(i) of Annexure 3 of the EIA Regulations regarding the obligation to determine the nature, significance, consequence, extent, duration and probability of the impacts occurring to inform identified preferred alternatives.<sup>18</sup>

3.19. In the circumstances, no alternatives can be regarded as having been applied for, consulted on during the EIA or its impacts investigated in terms of NEMA or the EIA Regulations. The EAP has effectively bypassed the requirement to identify and confirm the preferred site and final project layout, through a detailed selection process, which ought to have included an identification of impacts and risks inclusive of identification of cumulative impacts and a ranking process of all the identified alternatives focusing on the geographical, physical, biological social, economic, and cultural aspects of the environment.

#### 4. NEED AND DESIRABILITY

4.1. The need for and desirability analysis in the DEIR is superficial and fails to satisfy the NEMA requirements. The purpose of this section is to highlight the primary concerns with the need for and desirability analysis, with emphasis on the following:

4.1.1. The DEIR does not specifically and explicitly address project need and desirability *throughout* the EIA process, nor does it do so *specifically* in the overall impact summary or in dealing with individual project impacts identified.

4.1.2. The DEIR fails to specifically and explicitly address any of the pertinent need and desirability questions listed in the 2017 *Need and Desirability Guideline* (DEA: 2017).

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<sup>18</sup> EIA Regulations, Appendix 2, (1)(g)(viii) and (1)(h)(ix)).



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- 4.1.3. The DEIR does not specifically and explicitly evaluate each impact (both negative and positive) in terms of the criterion of “need and desirability” for each of the aspects of the environment affected by the proposed Albany WEF project.
- 4.1.4. The need for and desirability analysis in the DEIR fails to give a balanced account of applicable policy in relation to the project, and instead selectively focuses only on policies regarding green technology and the promotion of renewable energy, thereby ignoring the associated costs and negative impacts of undertaking the development.
- 4.2. As will be described more fully below, these failures ultimately render the assessment lopsided and have the effect of favouring the approval of the project to the exclusion of a considered and balanced assessment of all relevant policies, project costs and negative impacts. The inadequate analysis defeats the foundational aim of the EIA process *viz* to identify, predict and evaluate the actual and potential risks for and impacts on the environment, including socio-economic considerations. These failures, in turn, contribute to the EAP’s failure to identify alternatives that avoid negative impacts altogether, or minimise and manage negative impacts. In these circumstances, both the EIA process and the project are fatally flawed.

***Failure to explicitly address the impact mitigation hierarchy***

- 4.3. Central to the *2017 Need and Desirability Guideline* is the recognition of the importance of the hierarchical approach to impact management. The DEIR falls short in this regard because it singularly fails to implement the Impact Mitigation Hierarchy. This is a critical deficiency in the EIA, which is demonstrated by the following:
- 4.3.1. The DEIR concludes that the proposed Albany WEF “*will undoubtedly have a high visual impact on the landscape*” and that “*the potential losses of scenic resources are high*”.<sup>19</sup>

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<sup>19</sup> Page 113, DEIR.



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- 4.3.2. Despite the findings of VERY HIGH and HIGH negative visual impacts, only one project “alternative” was assessed and that is the proponents’ preferred project alternative.
- 4.3.3. Throughout the Screening, Scoping and Assessment phases of the EIA, the VERY HIGH and HIGH visual impacts identified were neither avoided nor mitigated. There has been no attempt to avoid all environmentally sensitive areas by designating these as NO-GO areas.
- 4.3.4. The EAP has not demonstrated that impact avoidance is not possible either with reference to empirical evidence or in terms of accepted EIA practice.
- 4.3.5. The EAP ignores the obvious conclusion that negative impacts could be *avoided altogether* by removing turbines that give rise to VERY HIGH and HIGH negative visual impacts, but no such measures were explored or implemented to minimise or remedy these identified impacts.
- 4.4. As a decision-making tool to assist the competent authority (and I&APs) in determining whether the proposed activity satisfies the criterion of need and desirability and constitutes the best environmental option contemplated in NEMA, the EIA process is compromised because the “need and desirability” analysis reported in the DEIR completely ignores the Impact Mitigation Hierarchy. This results in flawed EIA outcomes which favour the project proponent to the exclusion of all other relevant considerations. This failing – the failure to deal with all aspects relevant to need and desirability – represents a clear and manifest breach of the principle of sustainability foundational to NEMA and the EIA process.

***Failure to explicitly address any ecological considerations***

- 4.5. The *2017 Need and Desirability Guideline* recognises the importance of national policies and strategies that take cognisance of strategic concerns such as climate change, food security, “*as well as the sustainability in supply of natural resources and the status of our ecosystem services*”. There is no indication in the DEIR of how project impacts on ecosystem services



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or conservation value has been considered in the need and desirability analysis (if at all). Chapter 3 of the DEIR (Need and Desirability) is devoid of reference to these ecological considerations or how this project impacts on the ecological integrity of the area and ecosystem services provided by game reserves in the area including specifically the Kwandwe Private Game Reserve and the Indalo PE.

- 4.6. The DEIR myopically focuses only on *certain* strategic concerns and the biophysical aspects of the site and ignores that fact that the spatial and temporal context required to be analysed in order to satisfy the need and desirability enquiry is broader than this (DEA: 2017).
- 4.7. The concern regarding project impacts on ecological integrity was appropriately framed by stakeholders during the public participation process in relation to the following two areas: (1) the impact on the operations of existing game reserves and ecotourism operations; and (2) the impact on the Indalo PE. Neither issues have been addressed in the EIA process and remain unaddressed and unresolved.
- 4.8. Specifically, the following considerations have not been explicitly taken into account and/or reported on in the DEIR:
  - 4.8.1. The broader potential indirect and consequential impact on Threatened Ecosystems if the sustainability of the Kwandwe Private Game Reserve and the Indalo PE is compromised.
  - 4.8.2. The impact on Critical Biodiversity Areas (“CBAs”), Ecological Support Areas (“ESAs”), and conservation targets currently secured and statutorily protected in the Kwandwe Private Game Reserve and the Indalo PE.
  - 4.8.3. The impact on global and international responsibilities relating to the environment and protected areas management.
  - 4.8.4. The impact on identified vegetation types in the study area (a significantly high proportion of which the EIA recognises are statutorily conserved in the Indalo PE and in



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a number of private reserves, including Kwandwe).

- 4.9. The impact on the Indalo PE and its contribution to the above ecological integrity considerations is simply not addressed at all in the DEIR. The comments submitted by Indalo Protected Area Management Authority remain pertinent:

*“The Indalo Protected Area Management Authority opposes the proposed location of any wind energy facility that may jeopardize in any way the core eco-tourism business model of any of the game reserves within the Indalo Protected Environment and thereby threaten the substantial conservation and socio-economic benefits that these protected areas provide.”<sup>20</sup>*

- 4.10. The DEIR gives no consideration to the potential consequences of impacts on tourism (game reserves and associated ecotourism industry in the area) or the resultant loss or protection of biological diversity that will follow if the feasibility and/or sustainability of these operations is adversely impacted due to the VERY HIGH and HIGH visual impact on the landscape and associated loss of scenic resources that the DEIR and specialist assessments have identified *will* occur if the project is allowed to proceed.

- 4.11. Despite the EAP admitting (correctly) that it is *“vital to consider the socio-economic impacts of the proposed WEF on the surrounding game farms which form part of the Eastern Cape’s tourism industry from both an eco-tourism and hunting perspective”<sup>21</sup>* this was not done in either the scoping or assessment phase of the EIA. This is a fatal flaw.

***Failure to explicitly address sustainability***

- 4.12. The DEIR fails to address sustainability explicitly as a key consideration relevant to the need and desirability evaluation in terms of NEMA. This omission undermines the fact that ultimately the need for and desirability of the project is based on the principle of

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<sup>20</sup> Page 249, DEIR.

<sup>21</sup> Section 3.6, DEIR.



sustainability (DEA: 2017). This omission is illustrated by the following:

- 4.12.1. The stakeholder comment that the *“respective specialist would have to conduct a comparison of the positive economic benefits and sustainability between this development and the tourism industry of the Region where the project is proposed”*<sup>22</sup> has not been addressed and the relevant concern is unresolved.
- 4.12.2. There is no reference in the Section 3.6 of the DEIR to sustainability as set out in the Constitution and in NEMA, or as provided for in various other relevant policies and plans, including *inter alia* the National Development Plan 2030.
- 4.12.3. There are only three references to ‘sustainability’ throughout the entire DEIR (cf. Sections 6.5.4; 6.8; and 10 of the DEIR) and none of those references explicitly relate to, or deal with, the economic, social or environmental sustainability of the project. The issue is simply not dealt with.
- 4.12.4. There is a failure to recognise and integrate into the assessment process the principle of sustainability specifically in relation to each identified project impact.
- 4.12.5. The DEIR fails to assess the impact on the sustainability of ecotourism, existing game reserves and the tourism industry which are policy objectives are consistent with Strategic Objective 1.5 of the Eastern Cape Vision 2030 Provincial Development Plan.
- 4.12.6. The DEIR does not expressly reference or integrate all policies relevant to the principle of sustainability. There is no reference at all in the DEIR to the National Sustainable Development Policy or other strategic policies that promote the principle of sustainability.
- 4.12.7. There is no reference at all to biodiversity and conservation management policies or

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<sup>22</sup> Page 251, DEIR.



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strategic objectives. There is also no reference at all to protected areas management policies or related protected areas strategic objectives.

- 4.13. The DEIR fails to address the question of need, desirability and sustainability in the manner contemplated in *Fuel Retailers Association of SA (Pty) Ltd v Director General, Environmental Management Mpumalanga and Others*.

***Failure to address the strategic context***

- 4.14. When evaluating need and desirability of project specific applications, such as the proposed Albany WEF, the strategic context of such applications should be considered. The DEIR fails to achieve this for the following reasons:

4.14.1. In terms of the overarching strategic context, only a small section of the proposed Albany WEF falls within Renewable Energy Development Zones (REDZ) 3 (Cookhouse). At best for the Applicant, a maximum of 20% of the site falls within this REDZ. The DEIR fails to motivate in terms of the *Need & Desirability Guideline* why the bulk of the project departs from the REDZ.

4.14.2. During the public participation process, stakeholders expressly identified that a motivation is required regarding why the development is being proposed outside the REDZ.<sup>23</sup> The EAP's response to this in the DEIR is inadequate and merely states that the site was selected based on both wind potential and the land use of the properties, and that "*other factors will be detailed in the EIR and various specialist studies...*".<sup>24</sup> The EAP's response does not address the stakeholder concern and nor does it provide the requisite motivation. In fact, neither the DEIR nor the specialist studies convincingly motivate why the development is being proposed outside the REDZ. The concern therefore remains unaddressed and unresolved and is a material flaw in the need and desirability analysis.

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<sup>23</sup> Page 251, DEIR.

<sup>24</sup> Page 251, DEIR.



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4.14.3. The DEIR unquestioningly relies on considerations relevant only to the proponent regarding its (i.e. the developer's) decision to undertake the proposed Albany WEF outside of REDZ. This is illustrated by the following response in the DEIR:

*"...when developers identify wind resources which are economically desirable coupled with sites which are situated within a close proximity to existing Eskom distribution infrastructure. The decision, by Albany Wind Power, to investigate the proposed site stemmed from the high wind potential of the site combined with the available capacity of the Eskom substation".<sup>25</sup>*

#### **Failure to address environmental context**

4.15. In order to improve on the level of integration of social, economic, ecological considerations and its associated impacts, NEMA provides for the compilation of information and maps that specify the sensitive attributes of the affected environment. Appropriately responding to the identified sensitive attributes of the environment is a hallmark of the need and desirability analysis, but in this case the environmental sensitivities have been ignored in this analysis.

4.16. The Global Green review confirms this concern by concluding that the *"sensitivity map provides the location of high sensitive / constraint zones **with little thought seemingly to avoiding these sensitive locations...** The impression is that the geographical sensitivity was mapped and then **the location of the turbines ignored it.**"<sup>26</sup>*

#### **Selective and disproportionate focus on certain policies**

4.17. The DEIR focuses on high level policies in order to argue that the project is compatible with the policy context such as the South African Integrated Resource Plan with no commensurate focus on directly relevant considerations applicable to project's need an desirability being

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<sup>25</sup> Page 95, DEIR.

<sup>26</sup> Page 13, Global Green review.



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identified.

- 4.18. There is universal support for the “need” to be cognisant of climate change in order to promote renewable sources of energy and leveraging a green economy. But this alone is not sufficient to motivate need and desirability for the proposed Albany WEF project in terms of NEMA. Chapter 3 of the DEIR (Need & Desirability) is devoid of any reference to policy objectives relating to the environmental conservation, biodiversity protection and protected areas management.
- 4.19. NEMA requires the principle of sustainability to be addressed from three components (social, economic, and ecological), which the DEIR fails to achieve. NEMA also requires the strategic policy context to be reviewed with direct reference to the bespoke project level considerations and concerns that come to light during the EIA process. Again, the DEIR does not do this. Instead the DEIR singularly focuses on generic policy goals and objectives associated with renewable energy. In doing so the EAP has diverted focus away from the principle of sustainability and issues that are directly relevant to impact assessment at project scale.
- 4.20. In summary, the exclusive reliance in the DEIR on policy in support of green energy and universally applicable high-level policy goals e.g. climate change mitigation does not satisfy the NEMA requirement relating to need and desirability.

### ***Unsubstantiated claims***

- 4.21. The DEIR relies on the following misleading and/or unsubstantiated claims:
- 4.21.1. The project “*will contribute*”<sup>27</sup> to local development objectives and socio-economic benefits but the SIA report expressly acknowledges that those benefits have not been qualitatively assessed.

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<sup>27</sup> Page 32, DEIR.



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- 4.21.2. The DEIR cites “*significant direct foreign financial investment*”<sup>28</sup> and benefits for local communities without substantiating this claim based on data or empirical evidence attributable to the proposed Albany WEF project.
- 4.21.3. The DEIR cites generic REIPPP “*local content requirements*” that “*can lead*”<sup>29</sup> to socio-economic benefits without in any way quantifying or qualifying this generalisation in relation to the proposed Albany WEF project especially regarding the alleged benefits for local industry, the creation of skilled and unskilled jobs in terms of which no concrete data is provided in the DEIR.
- 4.21.4. Chapter 3 of the DEIR (Need & Desirability) places a heavy emphasis on the United Nations Framework Convention on Climate Change UNFCCC and the Kyoto Protocol as being relevant to the need and desirability enquiry because, so it is claimed in the DEIR, the proposed Albany WEF project will contribute to a reduction in greenhouse gasses (“GHG”). The DEIR expressly relies on several national policies to claim a GHG emission reduction benefit associated with the project.<sup>30</sup> The claim that this project will contribute towards a reduction in GHG emissions is not substantiated anywhere in the DEIR. There is no study undertaken of existing emissions or emissions displacement by the project to support the benefit that the EAP alleges will be achieved by the project. There is also no recognition in the DEIR of international literature which shows that the emission displacement in respect of wind farm projects is in any event potentially very low.<sup>31</sup>
- 4.21.5. The DEIR claims that the proposed Albany WEF is consistent with the White Paper on Renewable Energy Policy and the objectives therein, “*thus contributing to sustainable development and environmental conservation*”<sup>32</sup> The claim that this shows that the

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<sup>28</sup> Page 32, DEIR.

<sup>29</sup> Page 32, DEIR.

<sup>30</sup> This same motivation is rolled out in respect of 5 other policies cited by the EAP in support of the project: National Development Plan (DEIR, section 3.4.1); National Climate Change Response White Paper (DEIR, SECTION 3.4.2); Long Term Mitigation Scenarios (DEIR, SECTION 3.4.7); Industrial Policy Action Plan (DEIR, SECTION 3.4.8); and Eastern Cape Climate Change Strategy (DEIR, SECTION 3.5.2).

<sup>31</sup> Thompson et al. Marginal greenhouse gas emissions displacement of wind power in Great Britain.

<sup>32</sup> Page 26, DEIR.



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project contributes to sustainable development or environmental conservation is superficial and is not substantiated.

***Irrelevant considerations***

4.22. The DEIR relies on the following information that is intended to motivate in favour of the proposed Albany WEF project as being compatible with policies promoting renewable sources of energy:

4.22.1. The REIPPP is claimed to be relevant to need and desirability (DEIR, section 3.4.6). The fact that the REIPPP has gone through four bidding phases and is entering a 5<sup>th</sup> bidding phase has no direct bearing at all to the need and desirability enquiry for the purposes of NEMA.

4.22.2. The DEIR references the ANC ruling party's 2019 election manifesto to show that the project is compatible with green energy.

4.22.3. The DEIR incorrectly motivates need and desirability for the project as demonstrating South Africa's commitment to its international obligations in terms of UNFCCC and the Kyoto Protocol. This is inaccurate and misleading. South Africa has no binding obligations in terms of the Kyoto protocol or the UNFCCC.

4.22.4. The DEIR also motivates the project with regard to a description of South Africa's electricity supply constraints without any empirical data to show how the project will resolve those constraints.

4.23. In light of the above, the DEIR fails to substantiate and/or motivate how these factors are relevant to need and desirability at project level. The suggestion that these considerations are at all relevant to need and desirability is misleading, and serves to underscore that the need and desirability enquiry is based on irrelevant considerations.



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***Ignores relevant policy objectives***

- 4.24. Applicable policy is selectively referenced by the EAP. The DEIR highlights only those issues which show compatibility between the proposed Albany WEF project and certain identified strategic policy objectives, with the result that the need and desirability analysis fails to provide a balanced consideration of all relevant social, economic, and ecological considerations.
- 4.25. This concern is illustrated with reference to the Eastern Cape Vision 2030 Provincial Development Plan (“PDP”):
- 4.25.1. The PDP draws on other national planning documents, including the National Infrastructure Plan and the Industrial Policy Action Plan (2014 to 2016) to show that environmental challenges relate not only to climate change, but also include threats to biodiversity etc.<sup>33</sup> The DEIR ignores this as the need and desirability analysis is devoid of any biodiversity-related policy considerations.
- 4.25.2. The DEIR focusses exclusively on climate change and renewable energy policy and ignores equally important objectives such as the objective to nourish and protect the provincial tourism economy. In this regard, the PDP expressly identifies game reserves in the Eastern Cape Province as top attractions for international tourists and that international tourism spending is 40% greater than domestic tourism spending.<sup>34</sup>
- 4.25.3. The socio-economic significance of game reserves to the strategic policy objective of growing and developing the tourism industry in the Eastern Cape Province is highlighted by the fact that the rise and success of game reserves “*and the lucrative tourism business they attract, point to the potential material and social successes to be realised if a well thought through and ambitious development of the deprived rural parts of the Eastern*

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<sup>33</sup> Page 117, PDP.

<sup>34</sup> PDP Strategic Section 1.5.5: Grow and develop the tourism industry.



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*Cape were to be undertaken.”<sup>35</sup>*

- 4.25.4. The PDP identifies seven sectors with high potential for economic development. One of these is the Tourism Sector (and specifically includes eco-tourism). Whilst the PDP also lists the renewable energy sector, the fact is that both sectors are equally relevant. Notwithstanding, the analysis in the DEIR strongly suggests that the renewable energy is the only relevant consideration, which is clearly not the case if one views applicable policy more holistically.
- 4.25.5. Equally important is the fact that policy strategy identified in the PDP is for the Province to use its competitive advantages to grow the volume and value of eco-tourism in the Province, and to avoid activities that undermine the Tourism Sector through inappropriate and insensitively located development.
- 4.25.6. The assessment in the DEIR falls short of these strategic policy objectives as the VERY HIGH and HIGH negative visual impacts of the proposed Albany WEF directly undermine the very resource upon which the ecotourism in the area derives a significant competitive advantage. The review by Global Green confirms Kwandwe’s concern that there will be a negative impact on ecotourism operations, but the DEIR has failed to investigate and quantify this impact.

***Stakeholder concerns remain unaddressed and unresolved***

- 4.26. At the outset of this process, key stakeholder concerns identified that the EIA process must be able to show that *“the project will not compromise the localised Climate Change Adaptation process for the area. It should be noted that area is within one of the areas identified as a climate change corridor as well as an ecological corridor linking existing protected areas within the Province.”<sup>36</sup>*

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<sup>35</sup> Page 56, PDP.

<sup>36</sup> Page 250, DEIR.



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- 4.27. The EAPs response to this was that the Ecological Specialist Report *will assess* the impacts of the proposed development on the climate change corridor (and the ecological corridor linking protected areas, including the Indalo PE). The fact that this was not done is illustrated by the following:
- 4.27.1. The scope of study undertaken in the Ecological Impact Assessment is superficial – the assessment is limited to analysing only the direct impacts on the site and it completely ignores the potential indirect and consequential impact of the project (and the cumulative impact) on the ecological integrity and ecosystem services of the broader area, including the Indalo PE.
- 4.27.2. The Ecological Impact Assessment is fatally flawed as it only recognised The Beggars Bush State Forest and the ECCA Local Authority Nature Reserve within the proposed Albany WEF study area, to the exclusion of other statutorily protected areas such as Kwandwe Private Game Reserve and the Indalo PE.
- 4.27.3. Kwandwe forms part of Indalo PE which borders the proposed site. Although no turbines or associated infrastructure are proposed within Kwandwe Private Game Reserve and the Indalo PE, the extent to which the proposed Albany WEF may impact indirectly on the statutorily protected areas has not been considered, evaluated or assessed.
- 4.28. The Ecological Impact Assessment does not analyse any of the above-mentioned aspects and this is a key limitation in the need and desirability analysis in the overall EIA process which is required to consider ALL relevant issues (in this case this refers to impacts on the ecological corridor) to be viewed more holistically. There is no consideration of the broader ecological issues at all in the DEIR or the Ecological Impact Assessment and this key stakeholder concern remains unaddressed and unresolved.
- 4.29. The DEIR pays lip service to the potential costs of the project especially regarding potential impact on the tourism industry, which remains unquantified and unassessed. The DEIR claims incorrectly that the “*potential socio-economic*” impact on the tourism industry sector



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have been “*well outlined and assessed as part of the Socio-Economic Impact Assessment*”<sup>37</sup>. This claim is both false and misleading. In fact, section 3.6 of the DEIR relies heavily on the SIA which it claims draws on “*evidence*” and “*conclusions*” obtained during an “*extensive study*”. This fundamentally misrepresents the correct position and overstates the efficacy of the evaluation. The SIA does not assess this impact.

***Summary of comment on project need and desirability***

- 4.30. As demonstrated throughout these comments, the impact assessment for the proposed Albany WEF is deficient, with various key concerns remaining unaddressed and unresolved. The need and desirability analysis – which is a critical component of the EIA process and is intended to serve as a “*mirror of the impact summary*” (DEA: 2017) – reflects this deficient and incomplete evaluation of the relevant issues.
- 4.31. Need and desirability is critical to the EIA process. It is where the integration of environmental, social and economic considerations relevant to project EIA and the principle of sustainability entrenched in section 2 of NEMA come to the fore. The DEIR undermines the relevance of need and desirability in the EIA process in the following manner:
- 4.31.1. By failing to answer the list of questions in the Need and Desirability Guideline which should be addressed when considering need and desirability of a proposed development.<sup>38</sup> This leaves I&APs at a disadvantage by depriving them of the ability to meaningfully understand the cost benefit analysis that NEMA and the EIA Regulations require.
- 4.31.2. By failing to explain how the development serves the principle of sustainability, including explaining: (1) how the development may impact ecosystems and biological diversity; (2) how the development will impact ecological sustainability; and (3) how the development

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<sup>37</sup> Page 32, DEIR.

<sup>38</sup> There is no evidence that the 2017 *Need & Desirability Guideline* was taken into account or that the issues and specific questions required to be addressed are dealt with explicitly.



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will address the socio-economic impacts of the development. In these circumstances, it is not possible for I&APs to make an informed understanding of how the development will impact on their environmental rights.

- 4.31.3. By failing to explain how the development entails the balancing of the factors identified in the Need and Desirability Guideline and the impacts identified in the DEIR which, in turn, compromises the efficacy of the public participation process.
- 4.31.4. By failing to explain the proposed development in context of the ALL applicable spatial planning tools and policy instruments relevant to applicable to the study area.
- 4.31.5. By a disproportionate and biased focus on national policies and strategies that support renewable energy as a key strategic objective to the exclusion of other relevant policies that promote ecological sustainability; biodiversity and conservation management priorities for expanding the protected area network for ecological sustainability and climate change adaptation (e.g. National Protected Area Expansion Strategy For South Africa 2008).
- 4.31.6. By crudely framing the proposed development as a choice between the *status quo* (i.e. the no-go alternative) and the positive socio-economic growth the EAP attributes to allowing the proposed Albany WEF to proceed.
- 4.31.7. By the inadequate recognition of the socio-economic benefits and multiplier effects associated with the contribution of existing game reserves to the local and provincial economy. This is not expressly recognised in a way that the need and desirability of a development entails the objective balancing of all relevant factors.
- 4.31.8. By paying lip service to the potential costs of the proposed Albany WEF and particularly the potential impact on the tourism sector and game reserves in the area.
- 4.32. In summary, the main concerns identified in connection with the need and desirability



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analysis include the following:

- 4.32.1. Based on the DEIR, it is not possible to determine whether the proposed activity is the best environmental option, because the “need and desirability” component of the EIA fails to be informed by impacts identified and/or the sum of all the impacts considered holistically.
- 4.32.2. The need and desirability evaluation is singularly biased towards motivating for the proposed Albany WEF and fails to address all relevant environmental, social and economic considerations in a balanced and objective manner. The positive project-related aspects are overstated, and the negative consequences of the proposed Albany WEF project are not quantified. Key elements of the analysis are missing (e.g. impacts on land values) and have not been investigated at all.
- 4.32.3. Section 3.2 of the DEIR identifies the main drivers as only those that are compatible with the project (expanding green energy, securing and improving security of electricity supply and the socio-economic benefits associated with the green economy) and ignores other relevant considerations.
- 4.32.4. The DEIR references international conventions and local policy selectively on the basis of highlighting only those that support the drivers that operate in favour of the project as identified by the EAP. The clear impression created is that the EAP supports unequivocally the proposed development irrespective of project specific impacts or the significance and/or severity of impacts.
- 4.32.5. The need and desirability analysis is incomplete because key ecological considerations are unresolved and key impacts are unaddressed. Impacts on ecological conservation targets and ecosystem services are not addressed at all in the DEIR.
- 4.33. The need and desirability analysis categorically fails to satisfy the legal requirement imposed in NEMA and the EIA Regulations to implement a hierarchical approach to impact



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management.

## 5. VISUAL IMPACTS

5.1. In terms of significance ratings, the VIA report states:

*“Negative impacts that are ranked as being of “VERY HIGH” and “HIGH” significance will be investigated further to determine how the impact can be minimised or what alternative activities or mitigation measures can be implemented.... The most effective and practical mitigations measures will then be proposed”.*<sup>39</sup>

5.2. This was simply not done. There has been no attempt to implement the hierarchical approach to impact management through impact avoidance to address the negative visual impacts ranked as being of “VERY HIGH” and “HIGH” significance.

5.3. The VIA report does not satisfy the requirements of a Level 4 Visual Assessment. Firstly, the VIA fails to describe or assess any genuine project alternatives. Secondly, it fails to prescribe or implement impact avoidance and/or mitigation measures required to address high impacts. Thirdly, it fails to ensure that the assessment is undertaken by an *“independent visual specialist.”*<sup>40</sup>

5.4. Not one of the significance ratings in the VIA report has varied between pre- and post-mitigation, notwithstanding the fact that the negative visual impacts are ranked as being of high significance. This alone serves as confirmation that the EIA is fatally flawed and the VIA – as a critical component of the EIA process - has failed to integrate the findings of high negative visual impacts in the assessment process.

5.5. The visual impacts of the project were some of the key concerns identified by stakeholders

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<sup>39</sup> Page 49, VIA report.

<sup>40</sup> GUIDELINE FOR INVOLVING VISUAL AND AESTHETIC SPECIALISTS IN EIA PROCESSES (DEA&DP).



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during the public participation process. Given the findings of VERY HIGH and HIGH significance of visual impacts, coupled with the fact that no meaningful attempt has been made to avoid and/or mitigate adverse impacts, Kwandwe commissioned an independent review of the VIA report. The review was undertaken by Bernie Oberholzer and Quinton Lawson both of whom are experts in visual impact assessment and widely recognised leaders in this field. The report by Bernie Oberholzer and Quinton Lawson (attached hereto marked “A”) must be read as if incorporated into and forming part of these comments.

- 5.6. The findings of the Oberholzer / Lawson review include the following:
- 5.6.1. The conclusions in the VIA report are questionable, having not been adequately informed by accurate baseline information.
  - 5.6.2. The avoidance of high significance visual impacts is completely ignored.
  - 5.6.3. Several findings in the VIA report lack credibility.
  - 5.6.4. The DEIR ignores the high scenic value and wilderness quality of the study area and the negative impacts on visual scenic resources are not meaningfully responded to.
  - 5.6.5. There is limited evidence of proper screening having been undertaken during the EIA in order to avoid visually sensitive areas.
  - 5.6.6. The DEIR ignores the REDZ visual mapping which shows that this portion of the REDZ 3 is classified as very high visual sensitivity.
  - 5.6.7. The VIA was conducted ‘in house’ by the EAP and the external peer review report commissioned by the EAP cannot be relied upon as an independent expert peer review.
  - 5.6.8. The VIA report is riddled with self-contradiction. For example, on the one hand recognising the integrity and value of scenic resources and the high potential loss of such