

The Botanical Society
of South Africa



Die Botaniese Vereniging
van Suid-Afrika

003-394 NPO

Conservation Unit

Private Bag X10, Claremont, 7735

Tel: 027-21-799-8824 Fax: 027-21-761-5983: Email: paisley@botanicalsociety.org.za

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Strategic Environmental Focus (Pty) Ltd
PO Box 74785
LYNWOOD RIDGE
0040

By registered post

Attn: Mr Reuben Heydenrych

Dear Sir

**CONSIDERATION OF STAKEHOLDER COMMENTS AND BIODIVERSITY BY THE EIA PROCESS FOR
ESKOM'S 'KUDU INTEGRATION PROJECT'**

Our previous communication and correspondence with yourselves regarding the EIA process for the Kudu Integration Project refers.

1. Concerns about public participation

We wish to place on record our misgivings about the public participation process to date, and specifically the manner in which this environmental process has - notwithstanding undertakings to the contrary - seemingly failed to take adequate cognisance of a number of pertinent biodiversity considerations that have been raised with yourselves on a number of occasions.

By the same token, though, we would welcome a reasoned explanation that can convince us otherwise and, so doing, dispel our concerns in this regard.

Failing such explanation, we would be forced to conclude that this process is flawed on both procedural and substantive grounds - which, in turn, could influence our response to any decision that may result from this EIA.

In summary, we expect the following to be recorded in any further record of I&AP comment generated in the course of this application:

- (a) Written substantiation for your claim that BotSoc's comments and recommendations regarding the consideration of biodiversity are being considered in this application for environmental authorisation; alternatively,
- (b) The reasons why you have decided not to consider such comments and recommendations.

2. Our expectations regarding scoping and the EIA process

It is our understanding that the main intentions of scoping is to provide interested and affected parties (I&APs) with a reasonable opportunity to identify key issues of concern that may require further specialist investigation in relation to the environmental aspects of project planning, design and decision-making (cf DEAT 2002, p 5; Münster 2005, p 29).

In terms of the scoping guideline currently in use in the Western Cape, environmental assessment practitioners are responsible for ensuring that issues raised by I&APs are addressed in the EIA process in an objective manner, and reasons must be given when issues have not been addressed (DECAS 2001, p 6). In general, scoping must comply with the prescribed minimum procedures for the investigation, assessment and communication of the potential impact of activities that require environmental authorisation (section 24(4) of the National Environmental Management Act 107 of 1998 as amended).

In terms of its stated approach, the Final Scoping Report (FSR) for this project (23 May 2006) would seem to be consistent with the foregoing interpretation of scoping. At paragraph 1.4, the FSR gives the purpose of scoping as:

- Documenting the main issues which require attention, and potential management and mitigation measures;
Giving Interested and Affected Parties (I&APs) the opportunity to confirm that their concerns and suggestions have been adequately documented for consideration in the impact assessment phase; and
- Inviting comments on the proposed guidelines for impact assessment, which are based on the results of scoping.

Our experience to date, however, has not been that of a scoping process that gives credible and explicit effect to the aforestated objectives. Reasons for this conclusion are presented below.

3. Purpose of submission

This submission summarises our engagement with the environmental assessment process for the project in question. It also identifies a number of shortcomings that we believe urgently need

to be addressed, failing which we would recommend that an independent reviewer be appointed to report on the adequacy of this EIA.

4. Documenting of key issues of concern

Our involvement with this scoping process has entailed a number of telephonic conversations with Guillaume Nel of SEF (our communication commenced late last year), as well as a formal written submission on the biodiversity aspects of the project, and a series of ensuing e-mails.

4.1 Correspondence

The written correspondence is summarised as follows:

On 27-01-2006, BotSoc wrote to SEF in response to the BID, published at the outset of scoping, and requested registration as an I&AP. The following issues were raised:

- Succulent Karoo = biodiversity hotspot, national priority for conservation action, therefore risk-averse & precautionary approach is advised
- Biodiversity (pattern and process) features highlighted in systematic conservation plan for Succulent Karoo (SKEP)
- Spatial recommendations given (avoid loss of highly irreplaceable habitat, promote functional connectivity, reduce fragmentation through restorative actions)
- Convene inter-disciplinary 'corridor workshop' to identify potential route alternatives
- Need for strict compliance with National Environmental Management Principles, especially those pertaining to avoiding etc loss of biodiversity and ecosystem function
- Furnished recommended terms of reference (ToR) for consideration of biodiversity in environmental assessment
- Fynbos Forum ecosystem guidelines should be consulted to identify critical issues in Succulent Karoo
- Consult DEA&DP guideline on involvement of biodiversity specialists in environmental processes
- Contact details, references supplied

On 12-04-2006, BotSoc raised the following issues with respect to SEF's responses to its comments on the Draft Scoping Report:

- SEF issues and responses' table ignored all BotSoc comments/recommendations barring reference to biodiversity ToR, recommended use of Fynbos Forum ecosystem guidelines
- Failure to consider all aspects raised by BotSoc may result in delays to project, especially in EIA phase, due to inadequate contextualisation of biodiversity implications
- 'Corridor workshop' should be convened to identify major biodiversity issues that can be dealt with proactively
- BotSoc recommends that FSR records international biodiversity importance of Succulent Karoo, the Western Succulent Karoo in the context of the NSBA and as a priority for national conservation action, as well as the SKEP programme and its implications for the project

On 12-04-2006, SEF replied per e-mail as follows to BotSoc:

- SEF will ensure that issues are considered
- BotSoc's submission has been sent to the project botanist

In September, BotSoc telephonically requested SEF for the biodiversity ToR and the issues and responses' table from the Final Scoping Report.

On 28-09-2006, SEF responded to BotSoc by confirming:

- That the SEF biodiversity ToR had been sent to BotSoc
- The EIA would be made available to all I&APs to ensure that their "issues" had been addressed or recorded
- BotSoc's letter of 27-01-2006 had been given to the specialists attending the second integrated specialists' meeting; they had also been given to the team botanist
- That the Issues and Responses' table had been furnished to BotSoc.

Subsequent to these exchanges, we have had insight into the following documentation:

- The minutes of the 'corridor workshop' of 5 May 2005;
- The ToR for the vegetation study;
- The Final Scoping Report (23 May 2006); and
- The Plan of Study: EIA.

4.2 'Corridor workshop'

There is no record in the minutes of the corridor workshop that BotSoc's inputs were tabled, let alone discussed.

4.3 ToR for vegetation study furnished by SEF

These ToR make no reference to any of the contextual biodiversity informants identified by BotSoc (cf our letter of 27 January 2006, and the subsequent e-mail of 12 April 2004). The ToR simply state that 'individuals' in the SKEP programme, SANParks, CapeNature and BotSoc must 'be involved'.

4.4 Final Scoping Report (23 May 2005)

There is no evidence that the contextual biodiversity informants identified by BotSoc were even considered for integration in the Final Scoping Report, which makes no reference to the SKEP conservation assessment, important ecological process areas, or areas identified as having high irreplaceability-high vulnerability status in terms of the SKEP framework for action. Equally, the National Spatial Biodiversity Assessment is not mentioned, and neither are the

biodiversity ToR recommended by BotSoc. This is despite SEF's assurance that these issues would be 'considered'.

As for the Issues and Responses' table, BotSoc's comments of 27-01-2006 are well-recorded.

However, every single response to the issues raised by BotSoc is the same, and entails the statement *verbatim*: "Informing the specialists of these guideline to be followed. Copies of the detailed guideline letters was issued to all the specialists. Several phone calls to ensure that these guidelines are considered and to discuss the process followed for the Scoping process."

This stock, 'cut-and-paste' treatment of I&AP comment can scarcely be construed as proof that the project environmental assessment team has applied its mind to carefully-considered and substantiated I&AP comment on the biodiversity aspects of a project which traverses an area of extraordinary biological richness and vulnerability. The responses reflected in the document in question are rote, unthinking and careless, and fall badly short of the criterion of reasonableness that is prescribed by legislation and endorsed in best practice guidelines.

A few examples suffice to illustrate this assertion:

BotSoc's first recorded comment refers to biodiversity ToR and guidelines that should be followed. SEF acknowledges this.

However, the second BotSoc comment cites the National Environmental Management Principles when advising a precautionary and risk-averse approach to the project, which would largely be implemented in a global biodiversity hotspot. The SEF response is that 'these guidelines' will be followed.

The third BotSoc comment refers to the conservation plan for the Succulent Karoo (SKEP) and points to factors such as highly irreplaceable vegetation, where this has been mapped through an explicit and systematic process of target-based prioritisation, and the occurrence of quartz patches as examples of vulnerable habitat types. SEF, in its response, maintains that 'these guidelines' will be followed. And so it goes on, from one *non sequitur* to another.

5. SEF's assurances regarding comments by BotSoc

The stock and, with respect, meaningless response by SEF gives no indication whatsoever that BotSoc's identification of key concerns relating to biodiversity have at all been comprehended, let alone registered, by the project consultants. By the same token, if the project consultants disagree with BotSoc's comments, the grounds for such disagreement are nowhere presented.

Overall, we fail to find any comfort in SEF's response to our comments that these are, in fact, being addressed as claimed: this is not evident from their treatment in the Issues and Responses' table of the Final Scoping Report, the record of the specialists' workshop, the vegetation ToR, nor the Plan of Study: EIA - which is mute on any of the substantive and procedural comments and recommendations raised by BotSoc.

We believe our comments are relevant, well-substantiated and reasonable.

This conclusion is supported by the fact that BotSoc's detailed comments of 27 January 2006 have been supported in their entirety by CapeNature, which has statutory responsibility for the conservation of biodiversity in the Western Cape. Your attention is also drawn to the attached circular issued by the Acting CEO of Cape Nature (17 August 2006), which clearly states CapeNature's expectations on how it expects biodiversity considerations to be dealt with in environmental processes.

Furthermore, the Department of Environmental Affairs and Development Planning makes express mention of systematic conservation plans as key sources of information on biodiversity in its *Guideline for involving biodiversity specialists in EIA processes* (Brownlie 2005), and the need to draft appropriate terms of reference for the consideration of biodiversity that would take such informants into account.

In summary, there is no evident contradiction between the views expressed by BotSoc regarding how biodiversity should be considered, and those of the organs of state that are respectively responsible for biodiversity conservation and sustainable development in the Western Cape.

This cannot, unfortunately, be said of the manner in which the environmental process for the Kudu Integration Project has treated biodiversity considerations in the course of scoping and, now, inception of the EIA phase.

6. The way forward

In the light of the foregoing concerns, can you kindly, and as a matter of urgency, substantiate in writing:

- (a) That BotSoc's comments and recommendations regarding the consideration of biodiversity are, in fact, being considered as claimed; alternatively,
- (b) If such comments and recommendations by BotSoc are not being considered in this EIA process, the reasons for this.

Until such time as our concerns are adequately addressed, we will have no option but to doubt the integrity, lawfulness, objectivity and fairness of this public participation process. Allied to this, we are also obliged to question the soundness of this EIA's treatment of biodiversity considerations in the Succulent Karoo which, may we again remind you, is a global biodiversity 'hotspot' and one of nine regions nationally that have been prioritised for conservation action by the South African National Biodiversity Institute.

We are looking forward to receiving your response within 10 working days of receipt of this letter.

Yours sincerely,



CHARL DE VILLIERS

Biodiversity in Environmental Assessment Project

cc	Dr Bruce McKenzie, BotSoc	docbruce@mweb.co.za
	The Director: Biodiversity, CapeNature	khamman@capenature.co.za
	Land-use Advisory Unit, CapeNature	landuse@cncjnk.wcape.gov.za
	Mr Tony Barnes, DEA&DP	anbarnes@pgwc.gov.za
	Mr Wynand Fourie	Wfourie@deat.gov.za

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