



## forestry, fisheries & the environment

Department:  
Forestry, Fisheries and the Environment  
REPUBLIC OF SOUTH AFRICA

### GENERIC EMPR FOR THE KRUGER NATIONAL PARK

#### PUBLIC COMMENT:

CLOSING DATE FOR COMMENTS: 16 March 2024

CIRCULATION: EXTERNAL

PUBLIC COMMENT

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CHIEF DIRECTORATE: Appeals and Strategic  
Environmental Instruments

Disclaimer: Organisations/People whose comments are below were made aware that their names/organisation name will be aligned to their comments and will be included on the Departments website as part of the transparency of the commenting process.

## COMMENTS AND RESPONSE REPORT

	STAKEHOLDER	COMMENT	RECOMMENDATION	RESPONSE
PART 1: COMMENTS ON THE NOTICE OF THE INTENTION TO ADOPT AN ENVIRONMENTAL MANAGEMENT INSTRUMENT FOR THE PURPOSE OF EXCLUDING IDENTIFIED ACTIVITIES FROM THE REQUIREMENT TO OBTAIN ENVIRONMENTAL AUTHORISATION				
DEFINITIONS AND TERMINOLOGY				
1.1	Envato Element	<p>Annual Infrastructure Project Implementation Plan: What about scientific research in the park?</p> <p>Nowhere in the PMP does the Annual Infrastructure Project Implementation Plan appear. The PMP speaks of Annual Performance Plan or Annual Plan of operations. It is misleading to coin and define concepts that are not covered or reflected in the approved PMP.</p>		<p>Scientific research would not trigger listed activities as they are not associated with construction.</p> <p>The need to adopt the Park Management Plan (PMP) has been reconsidered. The activities to be excluded have now been specifically listed and thresholds provided. The “use zones” determined through the PMP update process have been included in the Exclusion Notice.</p>
ROLES AND RESPONSIBILITIES				

ENVIRONMENTAL DOCUMENTATION AND REPORTING OF COMPLIANCE WITH THE PARK MANAGEMENT PLAN AND THE GENERIC EMPR				
2.1	Envato Element	<p>4.1: Section 24C(2) is clear on who the authority is for protected areas. Unless the register envisaged here is for KNP admin purposes only. The established principle of the environment instrument is that prior to commencement, the proponent (KNP) must register the proposed facility with the competent authority, which in this case is the Minister or her delegated official. Section 24O(1)(b)(viii) reinforces the argument that the authority to make decisions on KNP GEMPr (my emphasis) is the Minister and not the KNP EM. It would be absurd (an absurdity) to formulate a new regime that allows the KNP EM to be the authority or decision-maker on the KNP GEMPr. If you have intended for KNP EM to be the decision maker, the applicable authority to gazette this KNP GEMPr should be section 23A as a sector-based instrument. It must be clarified if the authority to maintain the register is the KNP EM or the management authority (please refer to Regulations 19 (1)(b) and 19(2) of the Regulations for the Proper Administration of Special Nature Reserves, National Parks, and World Heritage Sites).</p>		<p>Neither the NEMA nor the Regulations laying down the procedures to be followed for the adoption of Environmental Management Instruments (Instrument Regulations) make the registration of projects to be excluded mandatory. The Instrument Regulations make provision for such registration where deemed appropriate. In this case, it is not deemed to be necessary to register each project with the competent authority before commencement, as all the projects will be implemented in the KNP and a register of projects is required to be prepared and submitted to the CA annually through the annual audit. Therefore, the public will be aware of where new developments or expansions will be undertaken within the KNP.</p> <p>The keeping of a register is to ensure that there is documentation of compliance with the conditions associated with new developments and expansions of developments. The register will be forwarded to the CA with the annual audit for record keeping purposes and to allow for compliance monitoring.</p> <p>It should also be noted that section 24O of NEMA is applicable to environmental authorisations. In the case where activities are excluded from the requirement to obtain environmental authorisation, section 24O of NEMA is not applicable.</p> <p>With regard to regulations 19(1)(b) and 19(2) of the Regulations for the Proper Administration of Special Nature Reserves, National Parks, and World Heritage Sites, it should be noted that the management authority, SANParks would still give effect to regulations 19(1)(b)</p>

				and (2) by indicating, in writing, that the exclusion and Generic EMPr is applicable to the developments which fall within the scope of the exclusion.
<b>2.2</b>	<b>Envato Element</b>	4.3: Not to appear repetitive, you are introducing a self-regulation regime with this instrument. The process is already established to cater for this in both the Act and the Regulation. Regulation 16(1)(v) of the EIA Regulations requires that a screening report accompany application for the EIA, and in this case, registration for the exclusion of activities based on the adoption of an environmental management instrument. Is what you are prescribing not having the unintended consequences of limiting local communities with rights, co-management agreements and contractual agreements with private landowners in the park.		<p>We are not introducing a self-regulation regime as claimed but pursuing a streamlined process for the implementation of identified projects under the scope of the exclusion and as detailed in paragraph 2.1 of the Exclusion Notice, in line with all the conditions and stipulations in the Notice.</p> <p>There is ongoing engagement between communities and park management with regard to the current process for the exclusion and adoption of the Generic EMPr for KNP to allow communities to be informed of the intentions as well as general matters that affect the community.</p>
<b>2.3</b>	<b>Envato Element</b>	4.5: Please clarify the implementation of the park buffer zone.		No developments in the buffer zone are envisaged as part of the exclusion. The exclusion and the implementation of the generic EMPr is applicable within the KNP and not in the buffer zones or protected area expansion areas. Projects located within the park buffer zone are subject to an EIA process. The exclusion is also only applicable to SANParks.
<b>2.4</b>	<b>Envato Element</b>	Conditions of exclusion: The KNP Generic Environmental Management Programme does not appear to contain detailed conditions applicable to the exclusions. This is an important requirement, as it would outline what needs to be complied with prior to the commencement of any activities in the KNP. It is important to include the conditions of exclusion in the KNP GEMPr, as the Gazette notice under 5.3 places an obligation		The conditions for exclusion are included in paragraph 3 of the Exclusion Notice. However, the impact management outcomes and actions of the Generic EMPr must be complied with as a condition of the exclusion. Therefore avoidance, management and mitigation of impacts are covered through the Generic EMPr.

		on Kruger National Park to comply with the KNP GEMPr. Conditions of exclusion must therefore be included in the KNP Generic Environmental Management Programme in detail		
<b>2.5</b>	<b>Envato Element</b>	<p>Zoning scheme (Zoning plan): Zoning regulates the use of land by local governments (municipalities) to control the development of land within their jurisdiction. As you may be aware, the KNP is uniquely located in a diverse district and local municipalities boundaries and therefore institutional arrangement and co-operative governance to attain compatible land uses that creates sustainable conservation, economic and social outcomes without impacting on the ecosystem integrity is key. In addition, the zoning plan for protected areas in the main is to promote sustainable utilisation of protected areas for the benefit of people, in a manner that would preserve the ecological character of such areas and as a result institutional arrangement and co-operative governance is key to achieve that. How does this zoning plan be applied to fully comply with section 24 (1A) which obliges applicants for environmental authorisations to comply with an application process, and the procedures, reporting requirements and processes associated with it. It is important that you consider the legal framework of the zoning plan or conservation activities as a whole and in relation to NEMPA and NEMA objectives.</p>		<p>Zoning for protected areas is distinct from municipal land use zoning in terms of both role and legal status. Protected area zoning is legally required in terms of section 41(2)(g) of NEM: Protected Areas Act which stipulates that a protected area management plan must contain “a zoning of the area indicating what activities may take place in different sections of the area and the conservation objectives of those sections...” Municipal zoning records all land-use rights on properties in the area of jurisdiction of that municipality and includes regulations and restrictions on how those rights can be exercised. It should be noted that the management and development of National Parks is an exclusive functional area of the national government and therefore falls outside the jurisdiction of municipalities.</p>
<b>PART B: ENVIRONMENTAL MANAGEMENT PROGRAMME</b>				

3.1	Envato Element	<p>5.1: The main impacts associated with development and maintenance activities will include the following:</p> <p>It appears from the reading of sections 24(2)(a) and (b), and section 24(2)(c) that the exclusion of activities is explicitly those provided for or outlined in the Listing Notices. The Gazette notice appears to be providing for a generic exclusion of activities that contradict both the Act and the Regulations. The scope of exclusion in paragraph 4 must explicitly indicate the listed activities that are being proposed for exclusions instead of providing for generic exclusions, which are not provided for by the Act and the Regulations. This is important for general approach, uniformity and/ or consistency, as it has been applied to all published or gazetted environmental instruments. To illustrate the flaws, paragraph 4.1.2 indicates exclusion for activities related to maintenance. Listing Notice 1 Activities 19, and 27 are explicitly listed activities applicable to maintenance and therefore may not be loosely excluded.</p> <p>At 5.1 you seem to have a detailed list of activities that you deem unimportant to include in the Gazette notice and instead opt for a generic list. In any event, the PMP, in its current version (2018 -2028) proposes the following projects:</p>		<p>The activities to be excluded have been identified in the Exclusion Notice contemplated in paragraph 2 under the heading - Scope of Exclusion. The exclusion of the activities is subject to the conditions for exclusion contemplated in paragraph 3.</p> <p>The intention is to list the types of projects for which all identified activities that are triggered will be excluded from the EA requirement. The GEMPr has been developed to, not only provide impact management outcomes and objectives for identified activities, but for entire developments/projects to simplify the management of impacts.</p> <p>It should be noted that it is not the first time that the above-mentioned approach, to not mentioned the specific numbers of identified activities in the Listing Notices to be excluded, is being followed. The same approach was followed for the different "Working For" GEMPrs.</p> <p>The Exclusion Notice clearly identifies the activities which do not form part of the exclusion and will need to obtain an environmental authorisation prior to commencement, should any identified activities be triggered.</p>
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		<ul style="list-style-type: none"> <li>• Administrative infrastructure development in the park.</li> <li>• Visitor facility development in the park.</li> <li>• Accommodation development in the park.</li> <li>• Concession development in the park.</li> <li>• Cultural heritage product development in the park.</li> </ul> <p>There must be a link between what the PMP envisages as a project to be undertaken and the interpretation of what the projects are about. It would be easier to link infrastructure development to development activities (listed or specific activities, for example) instead of applying the generic exclusions of your understanding of what infrastructure development entails.</p>		
3.2	Envato Element	<p>The PMP contains a section titled Environmental management programme which seeks to “mitigate potentially negative environmental impacts of development and operational activities on the park through effective risk management and assessment, legislative compliance and the implementation of environmental management tools.” It is evidently clear that the purpose of the GEMPr differs completely with that of the PMP and one wonders why! This is because on the one hand the PMP is also being gazetted as an instrument and therefore this would clearly create an absurdity in the application and implementation of these two sought to be adopted instruments.</p> <p>The PMP further elaborates that “the park will develop an Environmental Management</p>		<p>It is no longer intended to adopt the PMP as an environmental management instrument. The concerns raised around the PMP not being an ideal instrument for exclusion purposes have been acknowledged. The PMP has been approved through a separate process, being the NEM: Protected Areas Act, serves a different purpose and does not need to be adopted for purposes of this proposed exclusion. Although it is no longer intended to adopt the PMP as an environmental management instrument, one of the conditions for exclusion requires that activities forming part of a proposed project must be located in the appropriate “use zone” contemplated in the zoning scheme for the KNP.</p> <p>The GEMPr is intended to be the EMPr as identified in the PMP. No other EMPr had been developed by SANParks for the Kruger National Park.</p>

		<p>System (EMS) to manage their operational impacts. Such a system will provide the framework for the formulation and implementation of proper impact management that are required for all activities within the park.” Clearly the GEMPr you propose to adopt as an instrument for exclusion is unnecessary given the clear articulation on what the PMP envisages here and the fact that you are also seeking to adopt it (PMP) as an instrument. These duplicities approach you are introducing violate the already established clear legal framework on the environmental instrument. The clear framework is that the exclusion instrument must be based on an adopted environmental instrument. In this case the PMP tells you they will develop an EMS which may be deemed as an environmental instrument to manage their operational impacts and therefore from the EMS as and when adopted you are then able to develop an exclusion or to exclude for all activities in the park. This GEMPr ‘exclusion excitement’ is a clear committal of a material error of the established environmental instrument legal framework.</p> <p>How is the PMP EMP to be applied juxtaposed to your proposed GEMPr as both are deemed as instruments once adopted. Which one must be applied by the proponent in the park, and which one takes precedence over the other.</p>		
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3.3	Envato Element	The KNP Generic Environmental Management Programme does not appear to contain detailed conditions applicable to the exclusions. This is an important requirement, as it would outline what needs to be complied with prior to the commencement of any activities in the KNP. It is important to include the conditions of exclusion in the KNP GEMPr, as the Gazette notice under 5.3 places an obligation on Kruger National Park to comply with the KNP GEMPr. Conditions of exclusion must therefore be included in the KNP Generic Environmental Management Programme in detail.		<p>The conditions which apply to activities which are excluded are best placed in the Exclusion Notice as they are not related to mitigation and management but rather conditions which are required before the exclusion can be applied and related to the applicability of the exclusion. The conditions emphasise what must be complied with prior to commencement of the activity. The need for all projects to comply with the Generic EMPr is one of the conditions of the exclusion.</p> <p>The Generic EMPr outlines impact management outcomes and actions. The applicable impact management outcomes and actions in the Generic EMPr apply to all projects that fall within the scope of the exclusion.</p>
<b>PRE-APPROVED GEMPR TEMPLATE TO BE COMPLETED</b>				
<b>GENERAL COMMENTS ON THE ADOPTION OF AN ENVIRONMENTAL MANAGEMENT TOOL AND THE EXCLUSION OF ACTIVITIES</b>				
4.1	Envato Element	The notice as it appears below does not give the reader where (KNP) and what (the PMP and the GEMPR) the exclusion is applicable to. this may be deliberate in order to mislead members of the public to ignore the notice and therefore not submit comments. <b>NOTICE OF THE INTENTION TO ADOPT ENVIRONMENTAL MANAGEMENT INSTRUMENTS FOR THE PURPOSE OF EXCLUDING IN TERMS OF SECTION 24(2)(C) AND (E) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998), IDENTIFIED ACTIVITIES FROM THE REQUIREMENT TO OBTAIN ENVIRONMENTAL</b>		<p>The heading has been amended to indicate that the instrument is a Generic EMPr for the Kruger National Park.</p> <p>The public Notice now reads as follows NOTICE OF THE INTENTION TO ADOPT THE GENERIC ENVIRONMENTAL MANAGEMENT PROGRAMME FOR THE KRUGER NATIONAL PARK AS AN ENVIRONMENTAL MANAGEMENT INSTRUMENT FOR THE PURPOSE OF EXCLUDING IDENTIFIED ACTIVITIES FROM THE REQUIREMENT TO OBTAIN AN ENVIRONMENTAL AUTHORISATION</p>



		<b>AUTHORISATION [G 50138 – GON 4386].</b>		
<b>4.2</b>	<b>Envato Element</b>	<p>THE REGULATIONS LAYING DOWN THE PROCEDURE TO BE FOLLOWED FOR THE ADOPTION OF SPATIAL TOOLS OR ENVIRONMENTAL MANAGEMENT INSTRUMENTS: In addition, a provision to enable the setting of a registration requirement is proposed. Although the Instrument Regulations provide for the process of adopting environmental management instruments for the purposes of excluding activities from the requirement to obtain environmental authorisation, it is often desirable to identify some procedures to be followed, and conditions to be applicable, as part of the exclusion. It is now intended to specifically provide for the inclusion of a registration process. The purpose of the Regulations also provides for the process of adoption of environmental management instruments contemplated in section 24(2)(c) and (e) of the Act and to provide for registration requirements, <u>where deemed appropriate</u>, for the exclusion of activities based on the adoption of an environmental management instrument in terms of these Regulations,". Where deemed appropriate, would be determined by the competent authority.</p>		<p>The exclusion Notice has been updated and includes a list of projects, for which all identified activities associated with such projects, will be part of the exclusion. The list of activities that will be excluded is as contemplated in paragraph 2.1 in the Exclusion Notice. Furthermore, the conditions of exclusion is included in paragraph 3 of the Exclusion Notice. This information is stated upfront to allow interested and affected parties to know, should the Exclusion Notice be implemented, the nature of the projects that would fall within the scope of the exclusion. The activities that will not be excluded are also explicitly listed in section 2.2. of the Exclusion Notice.</p> <p>The methodology followed is in line with that in the Instrument Regulations. The Instrument Regulations require the Minister to state the purpose for which the instrument is to be adopted, as well as the exclusion resulting from the environmental management instrument, which would include the geographical areas where the exclusion applies. The Exclusion Notice does clarify the specific activities to be excluded, the geographical areas within the park to which the exclusion applies, activities that do not qualify for exclusion, as well as conditions for exclusion.</p> <p>The Instrument Regulations enable the inclusion of a registration requirement in an environmental management instrument. It however does not make such registration requirement compulsory. The competent authority may, on a case-by-case basis, decide whether a registration requirement is necessary for a specific environmental management instrument.</p>

4.3	Envato Element	<p>NEMA: It appears from the reading of sections 24(2)(a) and (b), and section 24(2)(c) that the exclusion of activities is explicitly those provided for or outlined in the Listing Notices. The gazette notice appears to be providing for a generic exclusion of activities that contradict both the Act and the Regulations. The scope of exclusion at paragraph 4 must explicitly indicate the listed activities that are being proposed for exclusions instead of providing for generic exclusions, which are not provided for by the Act and the Regulations. This is important for general approach or consistency, as it has been applied to all published or gazetted environmental instruments. To illustrate the flaws in applying the generic approach, paragraph 4.1.2 indicates exclusion for activities related to maintenance. Listing Notice 1 Activities 19, and 27 are explicitly listed activities applicable to maintenance and therefore may not be loosely excluded.</p>		<p>Although the Exclusion Notice does not mention specific activity numbers of activities that will be excluded, it does specify the identified activities that will be excluded from the EA requirements. These are all identified activities associated with the projects mentioned in paragraph 2.1 of the Exclusion Notice. The Exclusion Notice also indicates activities that do not qualify for exclusion.</p>
4.4	Envato Element	<p>CONDITIONS FOR EXCLUSIONS: It is necessary to adopt the phrasing that activities related to the zoning instead of projects related to the zoning be preferred. In addition, the zoning where the excluded activities are being proposed should be included (mentioned) in the gazette applicable to the Generic EMPr as intended by the notice through section 24(5)(bA) instead of referring the reader to the Park Management Plan. This is important and would make the reader understand that the exclusion of activities contemplated in the</p>		<p>The conditions are in the Exclusion Notice and not the generic EMPr. The question about zoning has already been responded to above in response to #2.5. The use zones have been appended to the Exclusion Notice. The wording has been amended and refers to identified activities.</p>

		Generic EMPr is the exclusion contemplated in section 24(2)(c) or (e). For a better understanding, read Regulation 7 (c) of the Regulations, which lays down the procedure to be followed for the adoption of environmental management instruments. The KNP Generic Environmental Management Programme does not appear to contain detailed conditions applicable to the exclusions. This is an important requirement as it would outline what needs to be complied with prior to the commencement of any activities in the KNP. It is important to include the conditions of exclusion in the KNP GEMPr, as the Gazette notice under 5.3 places an obligation on Kruger National Park to comply with the KNP GEMPr.		The need to adopt the KNP PMP has been reviewed and the PMP will no longer be adopted for purposes of this proposed exclusion.
4.5	<b>Richard Summers INC.</b>	Members of the public have a legitimate expectation that they will be provided a reasonable opportunity to engage meaningfully in the substance of information being presented to the public by the Department in the aforesaid Notice. The bare minimum 30-day period for public comment on the Notice and associated documentation is unreasonably short in the circumstances, as explained herein.		The Department does comply with the 30 day comment period and this is deemed sufficient for purposes of this proposed exclusion. Comments received have been considered and it was deemed necessary to make adjustments to the initial proposed exclusion, thus the revised documents will be gazetted for a further round of public comments.
4.6	<b>Richard Summers INC.</b>	The Department is proposing to introduce a materially different environmental management regime applicable to Listed Activities in the world-renowned Kruger National Park that otherwise would be subject to the prescripts of the EIA Regulations. The Department ought to have been aware that a commenting period of more than 30-days would have been		Please see the response to #4.5 above.

		reasonable and prudent in relation to the documentation given the material changes contemplated and the voluminous reports made available to in the link provided in the Notice.		
<b>4.7</b>	<b>Richard Summers INC.</b>	The purpose of this letter is to record a serious concern with the limited opportunity for public comment period. Members of the public will be prejudiced by limiting the opportunity to comment to a period of 30 days. For this reason, we hereby request that the public be afforded a further 30 days within which to comment on the proposed regulatory intervention.		The public participation process was in keeping with legislated timeframes (30 days). However, due to substantive amendments being made to the GEMPr and Exclusion Notice, as a result of comments received during the first public consultation process, these documents will be published for a further round of public comments.
<b>4.8</b>	<b>Richard Summers INC.</b>	The request for an additional 30-days within which to comment on the proposed intervention must be contextualised and considered in terms of the Public Trust Doctrine for the reasons set out more fully below:		Richard Summers INC was afforded significantly more time to submit comments. There were no other requests for extension of time. Also see the response to #4.7 above.
<b>4.9</b>	<b>Richard Summers INC.</b>	With 2 million hectares of unrivalled biodiversity and historical and cultural significance the Kruger National Park is the flagship of the South African National Parks. This magnificent park is one of the most popular public-entry game parks in the world and as such a precautionary approach is required to the environmental management regime applied to the Park.		The condition that projects must be implemented in the appropriate use zones in the Park will ensure that the majority of the park is not allowed to be developed. Only those areas in the high intensity leisure and low intensity leisure use zones will be allowed open for additional infrastructure development. Very limited developments will be allowed in the wilderness, primitive and remote use zones in keeping with the development limits and guidelines in the PMP as well as the section 2.2. of the Exclusion Notice.
<b>4.10.</b>	<b>Richard Summers INC.</b>	The public trust doctrine in South Africa has its foundation not only in various environmental law statutes but also in the constitutional environmental rights clause. The KNP is undeniably subject to the public trust doctrine. The land comprising the KNP		One of the park objectives is to allow facilities for tourism in designated areas in keeping with the use zones and development objectives of the park. Comments are being invited from interested and affected parties as part of the process of the proposed adoption of the instrument to exclude activities from the requirement for

		has been protected since 1898 for this specific purpose.		environmental authorisations in line with the thresholds and conditions set in the Exclusion Notice.
<b>4.11</b>	<b>Richard Summers INC.</b>	Implicit in the Public Trust Doctrine is that there is a fiduciary duty on the Department and all organs of State to protect and preserve the integrity of natural resources and to facilitate the long-term protection of such resources for the public at large in perpetuity. The duty and associated obligations are called into question by the proposed intervention and the full ramifications of what Government Notice No. 4386 contemplates.		SANParks and the DFFE are committed to protecting the integrity of the Park as has been the case since the gazetting of the protection status of the Park. There is also opportunity for the public to ensure that this is the case through the ability to comment on the current process of exclusion of activities as identified in the Exclusion Notice as well as adoption of the Generic EMPr.
<b>4.12</b>	<b>Richard Summers INC.</b>	With ownership and trusteeship by the State comes the responsibility to manage the National Park and natural resources not for sectarian interests but in the public good by preserving the integrity of the resource. In terms of Environmental Law that is a perpetual and continuous supervisory duty imposed on the State.		Please see the response to #4.11 above.
<b>4.13</b>	<b>Richard Summers INC.</b>	The proposed new management regime for the KNP – the public trust resource in this instance – must be tested against whether the proposed regulatory intervention in any way detracts from the integrity of the resource, or the purpose behind the original declaration of the KNP as a National Park. In this instance, the original declaration was specifically intended to protect the land in question from degradation as a result of inappropriate land use and development thereby ensuring that the resource is not lost to posterity, or its integrity compromised by inappropriate development or land use.		The application of the use zones which have been determined through a number of scientific studies and environmental assessments undertaken within the park over many years, and the Generic EMPr which is based on the mitigation and management measures that have been employed within the park since its inception, will ensure that the exclusion will not have a negative impact on the environmental resources in the park.

<b>4.14</b>	<b>Richard Summers INC.</b>	The right that vests in the general public as the beneficiaries of the Public Trust Doctrine is one that relates to preserving the integrity of the land and landscape of KNP. The only practicable interpretation is that this right was not intended to be undermined or affected by the proposed exemptions under the NEMA and the associated Regulations.		Please review the response to #4.13 above. The SANParks has as their major mandate the conservation and preservation of the environmental resources of the park.
<b>4.15</b>	<b>Richard Summers INC.</b>	It is clear therefore that the Department - as custodian of the KNP – should adopt a very cautious and conservative approach to the proposed measures contemplated in the Notice		The extensive assessment work that has been undertaken by Park officials in the Scientific Services and conservation departments have informed the zoning and park management plans prepared and revised over the years. The exclusion relied on this background information. In addition, there is oversight from both the park management and the competent authority.
<b>4.16</b>	<b>Richard Summers INC.</b>	<p>The measures contemplated in the Notice raise Constitutional implications as follows:</p> <p>The amenity-value of the KNP as a 'place' goes to the heart of the right to an environment contemplated in section 24(a) of the Constitution in the sense that the preservation of the natural, scenic, visual, aesthetic, social and historical integrity of this resource is necessary for the 'well-being' contemplated in the environmental right.</p> <p>It hardly needs stating that the environmental right is a justiciable right which citizens may freely invoke in the form of public trust litigation in order to enforce the general public right to change or restrict the access or use of public resources, or in any other way</p>		<p>The use zone scheme in the Park has considered the natural, scenic, visual, aesthetic, social and historical integrity of the conservation resource.</p> <p>This is noted and consultation is part of the process the Department is embarking on for the adoption of the Generic EMPr and the exclusion of identified activities from the requirement for EA before commencement.</p>

		<p>undermine the integrity of the natural resource.</p> <p>The integrity of environmental resources (including National Parks) is paramount so that they may be bequeathed to future generations in accordance with the environmental law principle of intergenerational equity.</p> <p>The KNP's distinctive, outstanding natural beauty, its overwhelming scenic value and the amenity-value of the place all have a direct and contributory relevance to the constitutional right to the environment.</p>		<p>This is noted and responded to in #4.13 and #4.15 above.</p>
<b>4.17</b>	<b>Richard Summers INC.</b>	<p>The environmental management implications of the Notice are not clear from the face of the documents made available in the link in the Notice. In order to understand the full practical implications of what is being proposed, interested and affected parties (I&amp;APs) will be required to peruse and consider the Generic Environmental Management Programme and the Annual Infrastructure Project Implementation Plan. In addition, I&amp;APs will be required to predict and anticipate the potential nature scope and extent of activities identified in terms of Section 24 (2)(a)(b) of NEMA that may arise in relation to not only the Annual Infrastructure Project Implementation Plan but also general maintenance activities and general activities relating to all conservation projects or rehabilitation.</p>		<p>The revised Exclusion Notice identifies activities that are to be excluded from the requirement to obtain an EA in paragraph 2.1. In addition, the Exclusion Notice is explicit on activities that do not form part of the scope of the exclusion, including setting thresholds as contemplated in paragraph 2.2. The exclusions are also subject to conditions identified in paragraph 3 of the Exclusion Notice, which includes development within the appropriate use zones and compliance to the Generic EMPr. The Generic EMPr can be downloaded and reviewed. It presents management and mitigation measures as well as roles and responsibilities of various function and audit requirements which are employed within the Park.</p> <p>It is important to note that not every project will be excluded from the requirement for environmental authorisation. The updated notice does clarify the full suite of activities which will not qualify for exclusion.</p>
<b>4.18</b>	<b>Richard Summers INC.</b>	<p>In other words, the potential scope and potential impact and ramifications of the</p>		<p>More clarity has been provided on the nature of identified activities that will be excluded and the type of</p>

		proposed regulatory intervention are broad and potentially significant. Given the environmental implications of what is potentially at stake, it is not unreasonable for members of the public to be provided with additional time within which to comment. It is simply not reasonable nor possible to undertake the level of analysis required within a 30-day timeframe.		projects that would form part of the exclusion. Thresholds have also been included which will allow for a better understanding of the scope of the proposed identified activities. Activities to be excluded are now identified in sufficient detail and will be implemented in the appropriate use zones which are the outcome of many years of research and updating and are based on significant environmental assessment and the consideration of the tourist product which must align with the mandate of the park, which remains biodiversity conservation and environmental protection.
4.19	<b>Richard Summers INC.</b>	Against this backdrop of the applicable constitutional rights, duties and responsibilities, what we find gravely concerning is the apparent absence of any meaningful reference to the risks to the KNP's protected area status or the conservation in the Notice.		The use zones in the Park Management Plan are the means through which the status and the conservation mandate of the park is protected. In addition, the mitigation measures in the GEMPr will also ensure protection of the environment and conservation in the Park. The proposed exclusion will not impact on the protected area status of the park, as the exclusion is in line with the management objectives of the park as identified in the Park Management Plan.
4.20	<b>Richard Summers INC.</b>	The Department has not put forward any compelling reasons for why the minimum 30-day commenting period is adequate or reasonable in the circumstances of a new management regime proposed for the Kruger National Park as the flagship of the South African National Parks.		The DFFE consults for 30 days on most legislation. The Exclusion Notice and GEMPr will be published for a further 30 day comment period, due to substantive amendments having been made to these documents.
4.21	<b>Richard Summers INC.</b>	Limiting the comment period to the bare minimum of 30 days flies in the face of procedural fairness and offends our clients' rights to administrative justice. In light of the above, we hereby request that the Department grant a general an extension of an additional 30-days for the consideration of the Notice (and associated documentation)		A 30-day commenting period was deemed appropriate in this instance. Only one request for extension to submit comments has been received. The DFFE has a large stakeholder database of consultants and stakeholders, and the gazetted documents are immediately brought to the attention of these stakeholders.



		and the submission of comments in relation thereto.		
<b>4.22</b>	<b>Richard Summers INC.</b>	We note that as matters currently stand, comments are due on Friday, 16 March 2024. We therefore request that the Department provides us with a response as a matter of utmost urgency.		An extension of additional time was provided.
<b>4.23</b>	<b>Envato Element</b>	Adoption of the Park Management Plan and Generic Environmental Management Programme as Environmental Management Instruments: You seem to be introducing new (or establishing) general principles for the adoption of instruments by referencing sections applicable to the Protected Areas. The principles for Environmental Management Instruments are contained in sections 2, 24(1) and 24N of the National Environmental Management Act, 1998 (Act No. 107 of 1998) (the Act).		<p>The intention to adopt the Kruger Park Management Plan has been reconsidered as it is merely the “use zoning” scheme that is used as part of the conditions in the exclusion notice.</p> <p>The content of the Generic EMP is in line with section 24N of NEMA and Appendix 4 of the Environmental Impact Assessment Regulations, 2014. In addition, section 24(2)(e) of NEMA provides for the exclusion of identified activities from the requirement to obtain an environmental authorisation based on an environmental management instrument adopted in the prescribed manner. The above section should be read with the definition of “environmental management instrument” in NEMA, which includes an “environmental management programme”. The activities must also be developed in line with the identified zoning scheme of the Kruger Park which has been developed through the preparation of the Park Management Plan and included in the Exclusion Notice. The assessments undertaken which informed updates in the Park Management Plan were used as part of the information on which the Generic EMP was prepared as well as the motivation for the exclusion.</p>
<b>4.24</b>	<b>Envato Element</b>	It appears from the reading of sections 24(2)(a) and (b), and section 24(2)(c) that the exclusion of activities is explicitly those provided for or outlined in the Listing Notices. The Gazette notice appears to be providing		There is no contradiction in the activities identified in NEMA and the activities related to projects implemented in the park which are proposed to be excluded in terms of the Exclusion Notice. NEMA makes provision for exclusion from the EA requirement prior to

	<p>for a generic exclusion of activities that contradict both the Act and the Regulations. The scope of exclusion at paragraph 4 must explicitly indicate the listed activities that are being proposed for exclusions instead of providing for generic exclusions, which are not provided for by the Act and the Regulations. In this regard, please refer to Regulation 1 of the Regulations which defines “activity” in the sense conveyed in section 24 (2) (a) of NEMA as “an activity identified in any notice published by the Minister or MEC in terms of section 24D(1)(a) of the Act as a listed activity or specified activity”.</p> <p>This is important for general approach or consistency, and in giving effect to legislation which empowers the Competent Authority to place limits on the environmental impact of an activity. To illustrate the flaws in applying the generic approach, paragraph 4.1.2 indicates exclusion for activities related to maintenance. Listing Notice 1 Activities 19, and 27 are explicitly listed activities applicable to maintenance and therefore may not be loosely excluded. At 5.1 you seem to have a detailed list of activities that you deem unimportant to include in the Gazette notice and instead opt for a generic list. In any event, the PMP, in its current version (2018 - 2028) proposes the following projects:</p> <ul style="list-style-type: none"> <li>• Administrative infrastructure development in the park.</li> <li>• Visitor facility development in the park.</li> </ul>	<p>commencement and identifies an EMPr as an environmental management instrument. The EIA Regulations make provision for a Generic EMPr.</p> <p>It is the intention that a wide range of activities associated with projects to be undertaken in the Park are to be excluded, therefore the activities have not been identified as per the Listing Notices, however the activities that do not form part of the scope of this exclusion have been specifically identified.</p> <p>The projects, with which the identified activities to be excluded are associated, are identified in paragraph 2.1 and include:</p> <ul style="list-style-type: none"> <li>• new developments or expansions within the Kruger National Park that fall below identified thresholds and outside specific zones;</li> <li>• maintenance and upgrading projects, including the extraction of gravel, sand and stone;</li> <li>• projects which relate to conservation or rehabilitation of the land resources of the Kruger National Park;</li> <li>• emergency activities required to reinstate infrastructure and structures or to maintain the safety of tourists and park officials related to floods and natural disasters; and</li> <li>• the combating of animal poaching.</li> </ul> <p>All projects and the associated identified activities must be developed in areas which align with the use zones in the Park Management Plan and in line with the conditions of the proposed exclusion. In addition, the exclusion is based on compliance with the Generic EMPr which is being consulted through this process.</p> <p>It is intended that the exclusion apply to a wide range of activities. Maintenance in many instances will not trigger</p>
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				considered through the measures proposed in the Generic EMP. The sense of place and visual impacts have been considered in the use zone scheme. Maintenance and conservation projects would be subject to the requirements of the Generic EMP and would be undertaken for infrastructure already developed, which would be in the correct use zones.
4.25	Envato Element	Site sensitivity verification: Regulation 16(1)(v) of the EIA Regulations requires that a screening report accompany application for the EIA, and in this case, registration for the exclusion of activities based on the adoption of an environmental management instrument. The whole paragraphs 5.1.2 and 5.1.3 should be rephrased to align with what the Regulations provide.		<p>Regulation 16(1) of the Environmental Impact Assessment Regulations, 2014 relate to applications for environmental authorisation. An exclusion based on an adopted environmental management instrument in terms of NEMA requires a different process to an environmental authorisation application process. The exclusion is from the requirement to undertake an environmental impact assessment process and to obtain environmental authorisation. The requirement of regulation 16(1)(v) is therefore not applicable to the exclusion.</p> <p>The term site sensitivity verification has been changed to “site sensitivity confirmation,” which is what was intended.</p>
4.26	Erasmus Law	<p>Section 5.7 is both superfluous and void for vagueness:</p> <ol style="list-style-type: none"> <li>1. A failure by a management authority to properly fulfil its duties in terms of a management plan is expressly and adequately dealt with by section 44 of the NEM: Protected Areas Act.</li> <li>2. Item 5.7 seeks to make non-compliance an offence. By whom? SANParks? An official acting in the course of his/her employment? Someone else?</li> </ol>	Section 5.7 should be deleted.	<p>Section 5.7 relates to the implementation of projects in line with the exclusion and the Generic EMP. If a project violates the impact management actions and outcomes, this is an offence. There is no harm in stating what is required in terms of the law and what the consequences are where there is non-compliance.</p> <p>SANParks is responsible for compliance in terms of both the Generic EMP and the conditions of the exclusion.</p>

## GENERAL COMMENTS

5.1	<b>Richard Summers Inc.</b>	<p>The Management Plan is a broad, high-level, 10-year plan that is inappropriate to serve as an environmental management instrument due to its lack of appropriate scientific and empirical data foundations that can sustain an overarching management strategy that alleviates or dispenses of an Environmental Impact Assessment ("EIA"). The basic understanding of tiered levels of decision-making and the need for different information requirements at different levels of decision making is essential for effective environmental governance. The rejection of such, through the exclusion of the EIA process, particularly in the context of a National Park, militates against a basic and fundamental understanding of how environmental governance and environmental decision-making works.</p>		<p>The comment is noted and amendments have been made to the Exclusion Notice based on the inputs received. It is no longer intended to adopt the PMP as an environmental instrument. Only the zonation plan which was generated as part of the development of the PMP is to be used in the exclusion and the maps are appended to the Exclusion Notice.</p> <p>The process of preparing the zonation scheme for the KNP does not lack an appropriate scientific and empirical data foundation. The environmental information that has informed the PMP and the zonation scheme has been collected over the life of the KNP. Several peer reviewed studies have been done on vegetation types, soils, rainfall, animal impacts on vegetation, plants etc. The information from the different research projects have been overlaid, and sensitivity ratings applied to prepare the Biodiversity Sensitivity layer (BioSense), which is equivalent to the Critical Biodiversity Areas (CBA) prepared by provinces.</p> <p>This BioSense layer played a vital role in the generation of the various "use zones" in the park. The use zones determine the kind of activities and the level of disturbance that can be allowed in the various zones. All developments within the KNP must be in line with the use zone mapping. Two of the zones, being "wilderness and remote", allow no development of infrastructure or structures, and access to the area is on foot only.</p> <p>With respect to tiered decision-making, it is agreed that this is a very important concept in integrated environmental management, and the DFFE believes that such a tiered decision-making process is displayed</p>
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				<p>in this exclusion process. In this regard extensive environmental assessment work was undertaken to prepare the zonation scheme for the park as identified in the paragraph above. This work in the KNP has been based on many years of very in-depth investigation by appropriately qualified professionals. This work has provided the activities that can take place in certain areas and the geographical boundaries for these areas. It has also determine the level of acceptable change and identified no development areas based on environmental sensitivity as well as sense of place and the tourist product intended to be offered. The Exclusion Notice, which is the second tier in decision-making, then further identifies activities that are routinely undertaken within the park to maintain the level of environmental protection and tourist product. Activities which do not form part of the exclusion are also specifically identified as these are not routinely undertaken within the KNP and their impacts cannot be anticipated. In addition, the Exclusion Notice also identifies thresholds for new developments and expansions. All projects that are undertaken in the park are then subjected to avoidance, management and mitigation measures as identified in the Generic EMPr. This is the third tier of decision-making. As a fourth tier of decision making, a compliance and auditing mechanism is built into the exclusion process.</p> <p>The adoption of environmental management instruments and the exclusion of identified activities based on these adopted instruments is provided for in NEMA, as is the EIA process. Either of the two processes can be applied in certain circumstances. Based on the pre-assessment of environmental sensitivity within the KNP, and the tiered decision-making process that this adoption and exclusion process allows, the regulatory framework provided for in</p>
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				<p>NEMA is being implemented. The process proposed simply allows SANParks to implement the activities that they routinely implement without needing to go through an EIA process which would provide limited additional information.</p> <p>SANParks is also accountable to the public through Parliament's oversight.</p>
5.2	<b>Richard Summers Inc.</b>	<p>The proposed regime deprives interested and affected parties and stakeholders of an opportunity to meaningfully participate in decisions regarding activities in the Kruger National Park that they have, as citizens of the Republic, a vested interest in. Protected areas are held in trust by the relevant authorities for the benefit of present and future generations, thus any measure that erodes civil society's ability to meaningfully participate must be rejected. This deprivation is contrary to the importance placed on public participation in environmental decision-making which runs contrary to Section 33 of the Constitution of the Republic of South Africa, 1996 ("Constitution").</p>		<p>The activities that form part of the exclusion, for example, maintenance, upgrades, emergency activities in the case of floods, activities related to anti-poaching operations and expansions are activities which are undertaken in the park on an ongoing basis, these activities can trigger identified activities. In addition, new activities within identified thresholds are identified in this proposed Exclusion Notice. Not all maintenance, upgrades, emergency activities and anti-poaching activities trigger listed activities and would not be subject to public consultation, they would however be listed when they are undertaken within 32m from a water course. So, there are activities which are the same as unlisted activities being undertaken in the Kruger which are not generally subject to public consultation.</p> <p>Thresholds have been provided to ensure that larger developments which could have an impact on either the site or the sense of place do go through an assessment and consultation process as the impacts related to such project may not be predictable.</p> <p>There are ongoing engagements with communities that surround the park and any developments or issues that would affect their rights are discussed directly.</p> <p>There is a complaints register maintained at the park,</p>

				<p>where stakeholders can raise issues with park management. A summary of the complaints register is submitted to the CA as part of the annual audit.</p> <p>The adoption of an environmental management instrument follows a prescribed process through the Instrument Regulations. This process does require consultation. The Exclusion Notice and GEMPr have been through one consultation process and the revised documents will be consulted on again.</p>
5.3	<b>Richard Summers Inc.</b>	<p>The proposed regime envisages SANParks as both the decision-maker and the implementing organisation without imposing the appropriate checks and balances to guard against institutional bias. This is in direct contravention of the basic tenets of administrative justice as supported by South African courts.</p>		<p>The comment is noted but not supported.</p> <p>The Minister has approved the PMP in terms of NEM: Protected Areas Act and therefore the zonation scheme which forms part of the exclusion notice.</p> <p>The Minister is to adopt the proposed Generic EMPr and the exclusion in terms of section 24(2)(e) of NEMA and the procedures in the Instrument Regulations. SANParks does not make any decisions. The decision will be made if the instrument is adopted.</p> <p>SANParks will be required to submit an annual audit to the CA which will include a list of new developments and expansions that have been undertaken in the KNP. This audit will identify the manner in which the conditions of the exclusion and Generic EMPr have been complied with.</p>
5.4	<b>Richard Summers Inc.</b>	<p>The proposed regime strips away remedies that would otherwise be available to interested and affected parties and stakeholders that wish to challenge decisions on activities or projects to take place in the Kruger National Park which is contrary to section 33 of the Constitution, the Promotion</p>		<p>Please see the response to #5.2.</p>



		of Administrative Justice Act 3 of 2000 ("PAJA") and the regulations published thereunder.		
5.5	<b>Richard Summers Inc.</b>	The proposed regime removes those project-specific anticipatory and predictive benefits associated with the EIA process which heightens the risk of inappropriate and unsustainable development. This also relates to the dismantling of a tiered environmental governance system, as a direct result of the proposed regime.		<p>The extensive process followed to delineate the use zones in the KNP has identified the environmental sensitivities based on a number of detailed assessments in the park. To undertake additional environmental assessments for the activities that fall within the scope of the exclusion as identified in #4.24 would provide little additional information which has not already been identified or would be identified through the walkthrough by relevant scientists that must be undertaken as a condition of exclusion. The walkthroughs will be undertaken by the many full-time scientists in SANParks employ, which include the following expertise: 5 PhDs, 8 MSc, and 3 BVSc. These scientists are supported by a number of research assistants. These scientists are experts in vegetation, soil science, water, conservation, mammals, plants and birds among other specialisations.</p> <p>The tiered approach to integrated environmental management is fully supported and demonstrated by the exclusion process envisaged and this process does not reduce the rigour of an environmental impact assessment process, but merely does the assessment work upfront at scale. In the case of this proposed Exclusion Notice, the upfront assessment would be the work that has been undertaken to support the two iterations of the PMP.</p> <p>The identified activities must meet the environmental principles identified for SANParks which include the suitability of infrastructure and the sustainability of infrastructure projects.</p>

5.6	<b>Richard Summers Inc.</b>	Pursuit of the proposed regime will result in the deprivation of benefits afforded by the use of EIA in the highly sensitive Kruger National Park, together with the disregard for the principles on which sound environmental governance and management are predicated.		<p>Please refer to the response to #5.5 above.</p> <p>The proposed process to adopt an environmental management instrument is facilitated by and anticipated in NEMA, and the proposed exclusion contains sufficient safeguards to ensure that projects are implemented in an environmentally responsible and sustainable manner.</p>
5.7	<b>Richard Summers Inc.</b>	Internationally, EIA is recognised as being an integral part of a tiered governance and decision-making system in pursuit of effective environmental governance and management. In South Africa, EIA is a fundamental tool in giving effect to environmental management principles and achieving integrated environmental management as set out in Section 2 and Chapter 5, respectively, of the National Environmental Management Act 107 of 1998 ("NEMA"). The proposed exclusion of EIA from the Kruger National Park is problematic for several reasons.		<p>Please refer to the response to #5.1.</p> <p>Stakeholders and CAs have voiced their frustration at the EIA being the only instrument that is used to achieve the objectives of integrated environmental management while so many other options are available to be used in appropriate circumstances. The Environmental and impact assessment and Management Strategy which was concluded in late 2013 called for the use of other environmental management instruments and made a number of recommendations to achieve this objective. In addition, the CA's have, over the past three years, investigated alternative tools to achieve environmentally sustainable management and have produced a report and implementation plan which have been approved by Heads of Departments for the environmental function in provinces and the Director-General of DFFE.</p> <p>It is noted from the above discussion that the EIA process is not the only process that can achieve the objectives of sustainable development and integrated environmental management. This exclusion is one of several instruments that have been developed and implemented since 2014.</p>
5.8	<b>Richard Summers Inc.</b>	The Management Plan is, by definition, "a broad strategic and operational framework for the management of the park". The Management Plan is a high level, 10-year		<p>The comment is noted and it has been acknowledged that the list of activities identified in the PMP are too high level for the purposes of the exclusion. The exclusion notice has therefore been amended to more specifically</p>

		<p>planning document that broadly sets out information on the biophysical context, desired state, programmes at strategic and operational levels, and costing relevant to the management of the Kruger National Park. The Management Plan is not a document that was drafted nor designed as an appropriate substitute for the type of environmental information and decision-making criteria which would otherwise be available in the context of an EIA. The Management Plan is not a document that enables one to anticipate project-specific impacts of an activity to be mitigated in the implementation of that activity. Although the Management Plan recognises impacts may occur, this recognition is high-level, as would be the case for a planning document, and can hardly be said to be appropriate in finding application to specific projects.</p>		<p>identify the activities which will fall within the scope of the exclusion as well as the activities that do not form part of the proposed exclusion. The zonation scheme which was specifically designed and developed to identify the appropriate location of different developments are based on environmental, visual and socio-economic attributes of the site.</p> <p>The zonation plan can be used to anticipate potential impacts of certain developments, this is one of the purposes for which the zonation scheme has been prepared. In addition, the management and mitigation measures contained in the Generic EMP which have been prepared based on years of experience gained by SANParks managing development projects within the KNP as well as the experience of the DFFE officials that review the many EIAs over the past years, will deal with project specific environmental impacts.</p> <p>Based on the zonation plan, the identified activities which fall within and outside of the scope of the exclusion, the conditions in the Exclusion Notice, the management measures contained in the Generic EMP, the walkthrough required to be undertaken on every site for any new development or expansion project, the audit and reporting requirement and the general principles that apply to SANParks as identified in the PMP which are binding on SANParks, it is the view of the DFFE that the basis for sustainable development within the KNP would be in place</p>
5.9	<b>Richard Summers Inc.</b>	<p>In the absence of an EIA that contains the requisite scientific and empirical data to sustain an overarching management strategy of alleviating or dispensing of an EIA, the decision-maker does not have the requisite</p>		<p>Please refer to #5.1, #5.5 and #5.8.</p> <p>Exclusion from the requirement to obtain environmental authorisation, based on an adopted instrument is provided for, and anticipated under, NEMA as long as</p>

		informational basis upon which to take informed decisions regarding projects or activities which could impact significantly on the environment. The desired approach by government in the proposed regime culminates in the usage of a high-level management plan that is to substitute an in-depth investigation into the impacts of an activity on the Kruger National Park environment. This will inevitably result in extensive gaps, omissions, and speculation in the implementation of projects that are included in the Annual Infrastructure Plan at the expense of this highly sensitive and strategically important environment. The absence of information regarding known impacts of specific projects to the receiving environment permeates throughout the Management Plan further indicating that it cannot support reasonable or rational decision-making by the competent authority. This desired approach falls foul of the principles in Section 2 of NEMA, the prescripts of integrated environmental management in Chapter 5 of NEMA, and Section 24 of the Constitution.		undertaken in the prescribed manner and there are sufficient controls to protect the environment.
<b>5.10</b>	<b>Richard Summers Inc.</b>	In elevating the Management Plan to the level of an environmental management instrument that solely informs project-level decisions in the Kruger National Park, a situation is created where all the core facets of an EIA are disposed of, such as public participation and the bare minimum of assessing the impacts of an activity in a sensitive environment, and one is then left with a Management Plan that is not		Please see the response to #5.1 and #5.5. The exclusion and Generic EMPr are based on detailed assessment information and years of lived experience in the management projects within the KNP and reviewing EIAs for projects within the KNP.

		appropriate nor relevant nor contemporaneous in the context of project-level decision-making. The Management Plan is not a fit for purpose document upon which to base significant or material decisions, such as those involving activities in the Kruger National Park, which stand to have potentially long-lasting impacts which are presently unknown and unassessed. The Management Plan broadly covers an area that is too vast and there remains extensive uncertainties at a project level which is contrary to section 2(4)(a)(viii) of NEMA that requires a risk-averse and cautious approach that accounts for the limits of current knowledge about the consequences of decisions and actions to be applied.		
5.11	<b>Richard Summers Inc.</b>	We submit that reliance on the Management Plan, in its current form, in the absence of detailed impact assessments to verify and/or ground-truth environmental impacts to ensure that decision to be taken within Kruger National Park are informed by contemporaneous empirical information, the Management Plan provides insufficient information to support responsible decision making in accordance with constitutional, administrative and environmental law principles. The Management Plan and the Annual Infrastructure Plan do not address fundamental project level issues to inform decision making such as alternatives and site layout and design and can thus not be considered as providing the requisite information to inform decision making as		<p>The comment is noted and the adoption of the PMP has been reconsidered and the exclusion notice has been amended. It is not agreed that the EIA is the only instrument that can consider environmental impacts.</p> <p>The preparation of the use zones developed as part of the PMP, represents a strategic approach of identifying areas suitable for developments while maximising conservation and fulfilling the mandate of SANParks. Identified activities that fall within the scope of the exclusion and within the identified thresholds, will only be allowed in the identified use zone which allows for these activities. Furthermore, the mandatory walkthroughs of sites, which fall under the category of proposed new or expansion projects provides the ground-truthing as identified in the comment.</p> <p>Each project will also need to comply with the Generic EMP. Should the exclusion be implemented the</p>

		envisaged in terms of the section 2 principles of NEMA.		<p>exclusion would have been based on baseline information contained in the PMP, a Generic EMPr and thresholds and conditions identified in the exclusion notice, which documents would all have been subjected to public consultation and input. The proposed Exclusion Notice and Generic EMPr will be subject to an additional consultation process due to the substantive changes made.</p> <p>EAs will be required where necessary i.e. for those identified activities associated with projects not excluded. In addition, only SANParks and not concessioners are the subject of this proposed exclusion.</p>
5.12	<b>Richard Summers Inc.</b>	The accepted intention of EIA exclusion is to allow for streamlining in instances where impacts from activities are well-known and are not in areas that are particularly sensitive. The application of this thinking in a highly sensitive environment such as the Kruger National Park, where all impacts are to be considered significant, is a contortion of the concept beyond its original and conceived intent.		<p>Please refer to the response to #5.5.</p> <p>The use zoning in the park has zoned the park into High Impact Use, Low Impact Use, Primitive, Remote, and Wilderness zones based on sensitivity which has been determined through assessments. Developments are accordingly prioritised in the high impact leisure and low impact leisure zones. The exclusion instrument requires site sensitivity confirmation regardless of the zone that the project would be located in for projects which would fall within the category identified as new developments or expansions, as well as cordoning off of sensitive areas on sites and the translocation of species of conservation value prior to commencing with any proposed development.</p> <p>Proposed developments will be prioritised around camps and already disturbed areas in the Park. Not all projects are excluded from the requirement for EIAs.</p>
5.13	<b>Richard Summers Inc.</b>	A core function of the EIA process is to enable and accommodate the participation of key stakeholders and interested and affected		Please see the response to #5.5. The identified activities which do require additional information based on their size or nature of the activity will go through an EIA

		<p>parties in the assessment of and decision-making regarding an activity that impacts those peoples prior to that activity being implemented. The participation of various parties not only enables compliance with constitutional administrative rights held in Section 33 of the Constitution, but it also provides an oversight function critical to a constitutional democracy that ensures that the requisite environmental safeguards are in place when implementing a project. The value of public participation in a constitutional democracy cannot be gainsaid as it proactively works against abuses of power and mitigates the potential for poor environmental decision-making. The public participation during an EIA process may, in certain circumstances, be the only regulatory measure to regulate development within protected areas outside of the management authority's mandate. Furthermore, public participation is critical to community empowerment in protected areas in which communities have historically been disempowered from their involvement in park management.</p>		<p>process and require environmental authorisation. These are as contemplated in the Exclusion Notice.</p> <p>Stakeholders can participate in the preparation of the Generic EMPr as well as the proposed adoption process of the proposed exclusion through the public consultation process. The annual audits will be available on the SANParks website.</p> <p>There is also ongoing consultation between the management of the KNP and local communities through community forums so communities are engaged on matters which affect them.</p>
5.14	<b>Richard Summers Inc.</b>	<p>The legislative framework applicable to environmental governance leaves no room to doubt the necessity of public participation in environmental decision-making. Section 2(4)(f) of NEMA requires the promotion of all interested and affected parties in environmental governance, and further requires that all people have the opportunity to develop the understanding, skills, and capacity necessary for achieving equitable</p>		<p>Related to consultation please see the response to #5.5 and 15 above.</p> <p>It is also agreed that stakeholders must have the opportunity to develop the understanding, skills and capacity necessary to achieve effective participation. In this regard there is also ongoing consultation between the park and local communities through community forums so communities are engaged on matters which affect them.</p>

		<p>and effective participation. According to the Public Participation Guideline of 2017, at a minimum public participation must provide an opportunity to all role players that stand to be impacted by a decision to participate in that decision for the following reasons, inter alia:</p> <ul style="list-style-type: none"> <li>• To obtain clear, accurate and understandable information about the impacts of an activity or implications of a decision;</li> <li>• To offer an opportunity for various interested and affected parties and stakeholders to suggest ways to reduce negative impacts of a project on the environment and to enhance those positive impacts;</li> <li>• To offer an opportunity to resolve misunderstandings and reconcile conflicting interests so as to avoid extensive appeal processes; and</li> <li>• To encourage transparency, accountability, and a healthy democracy.</li> </ul>		<p>Stakeholders are able to influence the content of the Generic EMP which has been developed to ensure that the negative impacts are avoided, reduced and managed through this consultation process.</p> <p>Consultation in this context is proactive i.e. through this exclusion process, and this reduces the need to undertake consultation for each individual project, as these projects have predictable and standard impacts based on the location of projects within the park. Mitigation measures have also been identified through the experience gained from managing the park since its inception. This experience has been used to identify the impact management outcomes and actions in the Generic EMP.</p> <p>Exclusion based on an instrument that has been adopted in the prescribed manner (subject to public participation) is provided for as anticipated under NEMA.</p>
5.15	<b>Richard Summers Inc.</b>	<p>Against the legislative backdrop, the following distinctions between public participation at a planning level, as available in the context of the Management Plan, and at a project level, as available in the context of an EIA, are what render the public participation available in the proposed regime insufficient, inappropriate and constitutionally non-compliant:</p> <ul style="list-style-type: none"> <li>• At a planning level, it stands to reason that public participation only occurs when</li> </ul>		<p>Please refer to the response provided in #5.5. In addition, please note that all areas in the Park are sensitive by virtue of the status of the Park as a proclaimed nature reserve.</p> <p>The activities that form part of the exclusion are undertaken on a regular basis within the KNP and in many cases do not trigger a listed activity but could trigger a listed activity if they are undertaken within 32m of a watercourse or break the flow of stormwater or would infill a drainage channel that carries rainwater from time to time. These activities include maintenance,</p>



		<p>the 10-year Management Plan is drafted for adoption. The opportunity to participate in this context is limited and the content arising from the participation in relation to a specific project, should the project be included in the Management Plan, could feasibly be outdated by the time the project is implemented.</p> <ul style="list-style-type: none"> <li>• At a project level, the shorter lead time in which an EIA process occurs ensures that interested and affected parties and stakeholders are provided with enough opportunity to provide inputs relevant to the specific project and ensures that the inputs are contemporary when influencing the implementation of the project.</li> <li>• Public participation at a planning level relates to the entirety of the Management Plan as opposed to detailed projects therein, if any are contained therein, and so the level at which the public can engage with a specific project is slim to none. For example, the Management Plan sets out in section 9 a “Concept Development Plan” that briefly sets out the name of the proposed development, the status of the development, the zone in which the development will occur, and the probability of the development occurring. It is not possible for members of the public to meaningfully comment on these projects given the lack of information to do so.</li> <li>• There is no express provision for public participation in the drafting of the Annual</li> </ul>	<p>upgrading and the expansion of current projects, there are also emergency projects that must be undertaken in the KNP due to flood events or fires. These activities do not impact negative on the rights of tourists that frequent the park as maintenance, upgrades and general conservation must be undertaken in the Kruger Park to maintain the tourist experience. New developments and expansion are restricted to size and accommodation thresholds, which provides stakeholders with a sense of the size of potential projects to be undertaken proactively.</p> <p>Stakeholders who are directly impacted on by the activities undertaken in the Park, are consulted on an ongoing basis. Other stakeholders can provide input at the planning phase of the Park Management plan in relation to confirming the use zone scheme every 10 years and on the proposed Exclusion Notice and the Generic EMPr.</p> <p>All the sensitivities of the Park have been considered in detail when determining the use zones, and any development undertaken within the Park must fit within the identified zone use. Once the project and identified activities are to be implemented the Generic EMPr is in place to ensure that the mitigation measures are put in place as agreed with the public, in addition for new developments and expansions which comply with the thresholds identified in the Exclusion Notice, the SANParks specialists are on the site to do a walkthrough to ensure specific sensitivities are avoided or species of importance are relocated and protected.</p> <p>Consultation is taking place prior to the adoption of the Generic EMPr and the proposed implementation of the Exclusion Notice.</p>
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		Infrastructure Plan and, even if there was, the Plan is devoid of information as to the extent, significant impacts, and mitigation measures relevant to each project that would allow the public to proactively participate in a meaningful way with the specific projects.		
5.16	<b>Richard Summers Inc.</b>	<p>It is common cause that the EIA process governed by the prescripts of NEMA and associated EIA Regulations of 2014 ensures that the public is presented with enough information to meaningfully participate in decisions that they stand to be impacted by. Project-level public participation therefore includes essential information such as the extent of any activity, possible significant impacts, mitigation measures to lessen those harsh impacts, precise spatial implications, site-specific attributes, and detailed physical development attributes. By way of illustration, we note the following:</p> <ul style="list-style-type: none"> <li>• The development of the Shangoni Gate in the Kruger National Park illustrates the constitutionally appropriate extent of project-level public participation. The EIA process for the Shangoni Gate offered the public highly technical and heavily assessed information that far transcends the way in which the Management Plan describes the same project.</li> <li>• During the Shangoni Gate EIA process, the public were provided compliance monitoring reports, various maps with differing subject-matter (such as</li> </ul>		In relation to the Shangoni Gate project, please note that this activity would not fall within the scope of the Exclusion Notice. The final Basic Assessment report prepared for the project indicates that the clearance of indigenous vegetation and the accommodation provided would exceed both thresholds identified in the proposed Exclusion Notice. This project would therefore need to be assessed under an EIA process. Please also refer to response #5.5 and #5.15 above.

		<p>hydrology, wetland sensitivity, and vegetation sensitivity, among others), facility illustrations, and specialist reports that relate specifically to the development. As a result, the interested and affected parties and stakeholders were appropriately informed about the precise parameters of the project and its impacts on the surrounding environment and were therefore better equipped to participate in the decision on whether to go ahead with the development of the Shangoni Gate.</p> <ul style="list-style-type: none"> <li>• Had the Shangoni Gate project been exempt from the EIA process, as envisaged by the proposed regime in GNR No. 4386, the public would not have been provided key information on which to make a balanced decision on the development and would not have been provided sufficient opportunity to participate in the decision to develop the Shangoni Gate despite having a vested interest in doing so.</li> </ul>		
5.17	<b>Richard Summers Inc.</b>	<p>We submit that the envisaged exclusion of public participation processes in the proposed regime is contrary to administrative rights and deprives the Kruger National Park of a critical oversight function that ensures that the requisite environmental safeguards are in place when implementing a project. Public participation is integral to a constitutional democracy, particularly within environmental governance given the consistent legislative provision for public</p>		<p>The comment is noted but not supported, safeguards are in place and consultation on the Exclusion Notice and the Generic EMPr which sets the scope of the proposed exclusion are being consulted on. The PMP is also consulted when it is updated and stakeholders can contribute. There is a limit to the area which can be disturbed for new development or expansions of existing projects and the number of tourists that can be accommodated in such new or expanded developments. There are also restriction on the location of facilities related to the sensitivity of the environmental</p>

		participation in environmental management throughout environmental legislation. We submit that planning-level public participation is an inappropriate substitute for project-level public participation, particularly in the context of a sensitive environment such as the Kruger National Park where the consequences of environmental damage could be long-lasting.		<p>and the sense of place of the area. Projects that do not fit within these limitations must be considered through an EIA process where required.</p> <p>The difference with the exclusion process is that the limits are set up front and SANParks will be allowed to undertake work within the park in relation to the limits of the Exclusion Notice, the Generic EMPr and the framework of the PMP. Please consider the responses to #5.15 and #5.16.</p>
5.18	<b>Richard Summers Inc.</b>	A fundamental tenet behind the EIA process is the separation between those who have decision-making powers and those who implement those decisions. The purpose of this is to further strengthen the oversight offered by the public participation process by including the oversight of an independent body such as the Department of Forestry, Fisheries and the Environment in decisions that could have a significant impact on the environment. The existence of a body tasked with the initiation and implementation a project that is distinct from the body that decides on whether the project should proceed ensures a balanced and unbiased decision and promotes transparency and accountability which are key pillars of a constitutional democracy. As it stands, the decision as to what and where to develop vests with select individuals and is devoid of any form of public and regulatory scrutiny other than a high-level description and indication of the location within a particular development zone.		<p>Engagement with the communities who can be directly affected by the activities in the Park is ongoing. Oversight of compliance to the conditions of the exclusion as well as the implementation of the Generic EMPr will be ongoing should the exclusion be implemented, through the submission of annual audit reports to the DFFE. The DFFE is also able to do compliance inspections. SANParks needs to fulfil its primary mandate which is identified as conservation and environmental protection. Please refer to the response to #5.15 and #5.16.</p> <p>These processes do ensure accountability and transparency.</p>
5.19	<b>Richard Summers Inc.</b>	The proposed regulatory regime envisages SANParks as both the decision-maker and		The Minister of Forestry, Fisheries and the Environment is the decision maker in that the Minister will adopt the

		the implementing organisation with little checks and balances to prevent institutional bias from materialising. This removes the decision-making power from the Department of Forestry, Fisheries and the Environment as an impartial and independent decision maker and rather vests the decision around developments within the Kruger National Park to the management authority. This is in direct conflict with the constitutionally enshrined right to administrative justice and easily falls short of the judicial test for bias in administrative decision-making as set out by South African courts in <i>S v Roberts</i> .		proposed generic EMPr and the exclusion based on compliance with the Generic EMPr and certain conditions set in the exclusion. SANParks will be the implementer of identified activities and projects which will be subject to compliance inspections and will be responsible for the mandatory submission of audit reports to the competent authority. Non-compliance with the instrument is an offence under NEMA and can be sanctioned by DFFE.
5.20	<b>Richard Summers Inc.</b>	In dispensing of the EIA process and the associated regulatory framework, the use of the high-level Management Plan (as opposed to detailed site-specific impact assessments) strips away remedies that would otherwise be available to interested and affected parties and stakeholders during the EIA process, particularly the opportunities to appeal decisions made in relation to a specific project.		The comment is noted, however, it is not agreed that the proposed adoption of the Generic EMPr and the proposed exclusion dispense with the regulatory framework. The adoption of environmental management instruments and the exclusion of identified activities based on these adopted tools is provided for in NEMA as is the EIA process. Either of the two processes can be applied in certain circumstances. Due to the pre-assessment of environmental sensitivity associated with this proposed process, and the tiered decision-making process that this adoption and exclusion process allows, the regulatory framework provided for in NEMA is being implemented. The process proposed just allows SANParks to implement the projects which could trigger identified activities that have been agreed to in this exclusion process, which allows for a more proactive and streamlined approach. SANParks is also accountable to the public through Parliament's oversight to protect the environmental resources of the Kruger National Park.
5.21	<b>Richard Summers Inc.</b>	The lack of an internal appeal mechanism in the proposed regulatory framework leaves an		The proposed adoption and exclusion process is in terms of NEMA and interested and affected parties are

		<p>expensive and drawn-out judicial review as the only recourse for members of public seeking to challenge specific projects or activities to take place in the Kruger National Park in which they have a vested interest. This is in conflict with the constitutional right to just administrative action that is procedurally fair as enshrined in section 33 of the Constitution and given effect by the PAJA and the relevant regulations published thereunder. According to the audi alteram partem rule, those persons who are affected by decisions must be afforded a reasonable opportunity to make representations and sufficient information must be provided to ensure meaningful representations are made by members of the public. Having stripped away internal remedies as the proposed regime effectively does, vulnerable people such as those that the EIA system seeks to protect do not have means to challenges decisions or have their concerns addressed which is procedurally unfair. Once again, this gives rise to a situation that flies directly in the face of the NEMA section 2 principles.</p>		<p>being consulted for comments on the proposal. The adoption of the instrument, should it be decided to adopt the instrument, would constitute the decision.</p> <p>The EIA process is but one of the methods used for the consideration of environmental impacts. In cases where strategic level planning and sensitivity assessments have been conducted and enough information is available about the sensitivity of sites and measures that can be put in place to address potential impacts of projects through mitigation and management measures, exclusion of activities is provided for under NEMA, which is what this proposed process is pursuing in this instance.</p>
5.22	<b>Richard Summers Inc.</b>	<p>Foregoing the need for an EIA for projects removes the anticipatory and predictive benefits associated with the EIA process that aid in improving environmental decision making and enhancing the way we go about integrating environmental considerations into park management in the Kruger National Park.</p>		<p>Please refer to the response in #5.5.</p> <p>There are several opportunities provided to adapt the mitigation measures should the measures identified be found not to achieve the mitigation and management measures anticipated. The management action can be amended at any time. Should there need to be a change of the impact management actions, this could be done at any time as identified in paragraph 5.1 of the GEMPr.</p>
5.23	<b>Richard Summers Inc.</b>	<p>The anticipatory aspects of an EIA enable one to identify the potential impacts of an</p>		<p>The impacts related to the activities undertaken in the KNP are predictable and standard. The Generic EMPr</p>

		<p>activity in advance of those impacts occurring so that the impacts can be guarded against or enhanced, depending on whether or not they are harmful or helpful, during the implementation of the project. The proposed regime published by government does not enable this. The Management Plan, as a proposed environmental management instrument, in no way enables one to anticipate the impacts of those projects within the Annual Infrastructure Plan on the Kruger National Park environment. This stance to environmental management promotes reactive environmental governance in the context of an incredibly valuable and sensitive environment.</p>		<p>has been prepared based on the implementation of projects within the KNP since its inception as well as the assessments undertaken in the preparation of Park Management plans. These assessments have been used to identify a use zone scheme for the Park which considers the environmental sensitivity, sense of place and visual integrity. The Park's specialists and scientists are available for site specific walkthroughs before any projects are commissioned and throughout the construction.</p>
5.24	<b>Richard Summers Inc.</b>	<p>An EIA has the function of predicting the impacts of an activity so that corrective behaviour may be implemented during the implementation of a project in order to avoid or mitigate those impacts that are harmful to the environment. This is critical to ensuring informed environmental decision making, sustainable development as well as integrated environmental management. In the absence of the predictive quality of an EIA, and a lack of an equivalent mechanism contemplated in the proposed regime, there is the heightened risk of inappropriate and unsustainable development that breaches the thresholds of capacity for acceptable change.</p>		<p>The EIA is not the only tool that can be used to identify environmental sensitivities or impacts. The use zones included in the PMP and now transferred into the exclusion, have been used to identify environmental sensitivities and to avoid potential impacts within the Park. The exclusion process requires that stakeholders consider the developments at the planning phase, which in this case is the current process where the revised Exclusion Notice is being made available for comments. Stakeholders are furthermore required to consider the management and mitigation measures as identified in the GEMPr prior to its adoption by the Minister, i.e. when the Minister publishes the intention to adopt the GEMPr.</p> <p>Consultation with the communities that will be directly impacted by construction activities on the site is ongoing through community liaison forums (i.e. such as the People and Parks Forum for Marula and Nxanetseni Region; Park Forums for each of the 7 municipalities, the meetings of which are held bi-monthly; as well as</p>

				other specific groups such as Youth Groups and Parks Groups).
5.25	<b>Richard Summers Inc.</b>	In predicting a full spectrum of impacts and placing those before a decision-maker prior to implementing the activity, one is ensuring informed environmental decision-making that promotes sustainable development and integrated environmental management. In the absence of an EIA, there is no equivalent mechanism contemplated in terms of the approach published by government that anticipates the impacts of proposed activities established in the Annual Infrastructure Plan that can then either be mitigated or enhanced in the implementation of those activities.		<p>A full spectrum of impacts have been considered through the years of development in the Park. Impacts do not change over time but are predictable and standard for the activities undertaken. These impacts have been considered and mitigation and management measures proposed in the Generic EMPr. The difference is just that these impacts are not considered for every project undertaken but considered holistically as is provided for in NEMA and the EIA Regulations.</p> <p>The EIA process is not the only process that can anticipate impacts, the process being followed in this proposed exclusion emphasises impact avoidance through appropriate planning which has considered the environmental sensitivity including sense of place, the desired state of the environment, and the acceptable levels of change (the use zone scheme), and has proactively identified management and mitigation measures identified through the implementation of numerous projects throughout the life of the park. Where projects have unpredictable impacts, for example waste landfills which could impact on groundwater, an EA process is still required. This is expressly indicated in paragraph 2.2. of the amended Exclusion Notice where activities that do not qualify for exclusion have been listed.</p> <p>The zoning has identified the compatibility of the development in relation to sensitivity and sense of place and the Generic EMPr is in place to ensure that general impacts will be mitigated and managed. Scientists and specialists are on site to consider any site-specific aspects during the walkthroughs on individual sites and the preparation of sites maps where required where the</p>



				activity will fall into the category of a new or expansion project. Certain thresholds also apply to such activities.
5.26	<b>Richard Summers Inc.</b>	<p>It is acknowledged that the purpose of the proposed regime is to streamline decision-making which is an acceptable practice but only in those instances where the receiving environment has been the subject of extensive assessments making impacts on that environment known. The Management Plan does not offer the requisite scientific and empirical informational basis from which to streamline environmental decision-making in the Kruger National Park which is a strategically important and sensitive area that should not be subject to the risks imposed by the proposed regime. This issue is compounded by the deprivation of interested and affected parties and stakeholders of an opportunity to meaningfully participate in decisions regarding projects outlined annually in the Annual Infrastructure Plan as well as the deprivation of those parties of effective remedies should they wish to challenge decisions made relating to those projects. We are left with a situation in which all the key facets of an EIA process such as public participation, the anticipation of impacts that can be mitigated or enhanced during implementation, the separation between the body that makes decisions and the body that implements those decisions, and internal remedies are stripped away and substituted with a Management Plan that is not fit for purpose upon which to base significant decisions that have an impact on the Kruger National Park. The proposed</p>		<p>The environmental sensitivity of the KNP has been studied in-depth through the work of the SANParks scientists and specialists as well as through the development of PMPs. This assessment work has been translated into a use zone scheme for the park which directs the type of development that would be acceptable for the area. In addition, on a site level the SANParks specialists and scientists must undertake a walkthrough before any construction may commence for new and expansion projects.</p> <p>Public consultation is provided through the preparation of the PMP in which the zonation is confirmed, this exclusion process and the generic EMPr. There is ongoing consultation with the communities which surround the park and who would be directly impacted by the activities within the Park.</p> <p>The Generic EMPr for the KNP has been gazetted for public comment to ensure that the management and mitigation measures are consulted upon. This is done at park level rather than a site level as the impacts associated with the projects to be implemented in the Park are predictable and standard. The use zone scheme has identified areas in which different types of development must be placed and other areas that must be left in their pristine state. For site specific sensitivities, the SANParks scientists and specialists are on site and will cordon off any sensitive sites and no-go areas in which development should not take place.</p> <p>NEMA makes provision for the use of exclusions and anticipates the use of instruments.</p>

		<p>regime therefore runs contrary to those principles of sound environmental management held in section 2 of NEMA, the right to administrative justice held in section 33 of the Constitution and given effect to in PAJA, and the environmental right held in section 24 of the Constitution.</p>		
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