

APPEAL
**AGAINST THE DECISION OF THE DEPARTMENT OF ECONOMIC DEVELOPMENT,
 TOURISM AND ENVIRONMENTAL AFFAIRS TO AUTHORISE THE UMDONI SOUTH BULK
 WATER AUGMENTATION PROJECT**

BAZLEY RESIDENTS' ASSOCIATION	Appellant
UGU DISTRICT MUNICIPALITY	Applicant
DEPARTMENT OF ECONOMIC DEVELOPMENT, TOURISM AND ENVIRONMENTAL AFFAIRS	The Department

APPEAL STATEMENT

1. THE APPELLANT
 - 1.1. The Appellant is the Bazley Residents' Association, an unincorporated association not for gain, having its administrative offices at 4 iPhiti Close, Bazley Beach.
 - 1.2. The Appellant is an elected representative body for residents and property owners of the town of Bazley.
 - 1.3. The objects of the Appellant are:
 - (a) To promote the security, welfare and environmental interests of all residents and visitors to Bazley Beach.
 - (b) To protect and conserve the natural biodiversity resources of Bazley for the benefit of present and future generations.
 - (c) To engage in, encourage and promote best practice in the management of natural resources in Bazley.
 - (d) To secure ongoing support from the public, business and the provincial government in support of the object of the Association.
 - 1.4. The Appellant is the joint custodian of the Bazley Conservancy.

1.5. The Appellant is a registered interested and affected party in the basic assessment process.

2. APPLICANT

2.1. The Applicant is Ugu District Municipality, the water services authority and water services provider with a mandate to provide water services infrastructure within its district.

2.2. The head office of the Applicant is situated at 28 Connor Street, Port Shepstone, 4240.

3. THE DEPARTMENT

3.1. The Department is Department of Economic Development, Tourism and Environmental Affairs, the competent authority for the issue of environmental authorisations under the National Environmental Management Act 107 of 1998 (NEMA) read with the EIA Regulations, 2014 (“the EIA Regulations”).

3.2. The head office of the Department is situated at 270 Jabu Ndlovu Street, Pietermaritzburg, 3201.

4. SUPPORTING DOCUMENTS

5. This appeal must be read with:

5.1. the Appellant’s second submission to the environmental assessment practitioner (EnviroPro) dated 23.8.23, Appendix 1 hereto;

5.2. The Appellant’s original submission dated 30 June 2024, Appendix 2 hereto;

5.3. Email correspondence between the Appellant and EnviroPro subsequent to 30 June 2024, copies whereof are contained in Appendix 3 hereto.

6. COMPLIANCE WITH REGULATION 4(1) OF THE NATIONAL APPEAL REGULATIONS, 2014

6.1. As proof of compliance with regulation 4(1) of the National Appeal Regulations, a copy of an email addressed to EnviroPro as the environmental assessment practitioner and only entity with lawful access the register of interested and affected parties requesting that they forward this appeal to registered all

interested and affected parties, together with their confirmatory reply, will be attached to this appeal.

- 6.2. The Appellant understands that this method of compliance with the National Appeal Regulations is acceptable to the appeal authority.

7. BACKGROUND

- 7.1. From the outset of the public participation process the consultants have maintained that there is only one correct route for the bulk augmentation pipeline through Bazley and that no alternative routes are feasible.
- 7.2. Notwithstanding the seemingly intransigent approach adopted by the engineers however, two deviations proposed by the Appellant in its original submission, covering nearly two thirds of the entire route through Bazley, have now been accepted by the engineers.
- 7.3. While the Appellant is satisfied with this amendment to the Applicant's initial proposal, at the same time it indicates that deviations are possible, where the outcome merits it.
- 7.4. Despite this, one of the Applicant's suggested deviations, and the most critical, directly affecting a significant proportion of Bazley residents, has been dismissed as being unfeasible without a proper and full analysis of its merits.
- 7.5. In an email dated 20 August 2024, the Appellant formally expressed its dissatisfaction with the engineers' conduct during this process.
- 7.6. In the Appellant's email, it complained that "the engineers have communicated ineffectively, provided inadequate information, and have been slow to respond—particularly problematic in a time-sensitive process. When a more detailed response was finally provided, it was written in terms both arrogant and patronizing, containing veiled accusatory language, which we find both unprofessional and unacceptable."
- 7.7. The emails referred to in the foregoing paragraphs are contained in Appendix 3.
- 7.8. The Appellant's submissions relate solely to Bazley and its environs. The Appellant is acutely aware of the imperative for this project to urgently provide

effective water services to the Greater Malangen and GDP communities. The implication by the engineers that the Appellant's inputs into the public participation process were somehow delaying the provision of water to its neighbours is both fallacious and unhelpful to achieving a positive conclusion to this process.

7.9. Annexure 1 hereto, details the engineers' proposed pipeline route vs the existing (old) pipeline.

7.10. Annexure 2 details the engineers' proposed pipeline route compared to the Appellant's suggested pipeline route.

8. SUGGESTED ROUTE VARIATION

8.1. As has been dealt with extensively in the Appellant's submissions, it does not believe that the points raised by the engineering consultants, preclude consideration of its suggested minor pipeline route.

8.1.1. The engineers make the following statement:

"the large deviation around the town of Bazley cannot be considered in the application. The key reason for this is that the project involves bulk augmentation pipelines that will connect to existing supply reservoirs and smaller active reticulation network pipes as needed... The existing deteriorating old bulk pipeline will remain in the ground, with re-connections made to the new bulk pipeline at suitable locations... Relocating the replacement line to a different location would make this process unfeasible",

8.2. The Appellant disagrees with this statement.

8.3. The attached map (Annexure 1) indicates the existing pipeline in red (KMZ file provided by Enviropro) and the proposed pipeline in yellow (KMZ file provided by Enviropro). These maps clearly show significant deviations in the proposed pipeline compared to the existing pipeline, particularly:

8.3.1. The proposed pipeline does not follow nearly 1 km of the existing pipeline on Ridge Rd, from Reservoir Rd to Ndesingane.

- 8.3.2. Another significant portion of the existing pipeline crosses the sugarcane fields from Ridge Rd to the reservoir, while the proposed pipeline bypasses this route and continues up Ridge Rd before turning up Reservoir Rd to the reservoir.
- 8.4. These deviations contradict the engineers' assertion that "relocating the replacement line to a different location would make this process unfeasible," as they themselves have already proposed such deviations, and have already accepted two other deviations proposed by us.
- 8.5. Regarding the claim that the Appellant's proposed route would result in "unnecessary expenditure", the Appellant responds as follows:
- 8.6. The Appellant's proposed route (from the corner of Bushbuck Way to the reservoir) is approximately 1.3 km long, while the engineers' proposed route is about 1.8 km, 40% longer. Additionally, BRA's suggested route avoids trenching through:
- 8.6.1. Three roads (Ridge, Bushbuck, and Hilltop);
 - 8.6.2. Twenty-four driveways;
 - 8.6.3. Eight meter boxes (on the roadside);
 - 8.6.4. two waterways (WC28/WC29); and
 - 8.6.5. Other services e.g. fibre.
- 8.7. The Appellant postulated that its suggested route would be significantly more cost-effective than the proposed route, and therefore does not accept the engineers' assertion that it would result in "unnecessary expenditure."
- 8.8. In addition, the Appellant's suggested route avoids serious disruption to vehicular traffic through Bazley.
- 8.9. Further, the engineers contend that a whole gamut of specialist assessments will need to be completely redone, requiring substantial additional cost and time. However, this seems unlikely for the specialist fields that they list, given the absence of aquatic/freshwater systems, the absence of estuaries, and the highly transformed and previously excavated nature of the proposed route, which

would not require further detailed vegetation, palaeontological and heritage assessments.

- 8.10. The Appellant is sceptical that a comparative cost analysis of its proposed route with that proposed by the engineers has been done and therefore has difficulty in accepting the engineers' statement that the Appellant's proposal would result in "unnecessary expenditure". The engineers have failed to show anywhere in their responses a basis for that claim.
- 8.11. Regarding the assertion that "the proposed rerouting would result in a new additional WC that is not associated with an existing formal road", the Appellant's respond as follows:
 - 8.11.1. It has been established that the aquatic specialist incorrectly delineated the upper portion of the aquatic system, and the Appellant's suggested route does not, in fact, intersect the existing aquatic system, as previously claimed. This was acknowledged in an email from EnviroPro dated 21 August 2024.
 - 8.11.2. The engineers have provided the following set of rules (*italics*) that they follow for determining a route. The Appellant's responses (**bold**) to this approach are as follows:
 - (a) *The correct route for secondary bulk pipeline replacements as a rule is: 'From one bulk storage/off-take point to the next bulk storage/off-take point.'* **Both routes meet this requirement.**
 - (b) *'Follow an existing servitude if there is for that purpose, and/or a road, unless there is valid exceptional reason to deviate somewhere else.'* **The Appellant's proposed route follows an existing road network and road servitude, so this is not problematic. Further, the Appellant considers the substantial disruptions described to a major part of the town's road system and many residential properties, and the reduced impacts described above if its proposed route was used, as factors that provide 'a valid exceptional reason' not to follow an existing servitude.**
 - (c) *'For any exceptional deviation avoid at all costs engaging any private properties.'* **The route put forward by the engineers will engage Illovo and**

many private residential landowners and businesses. The alternative route the Appellant suggests would also engage Illovo but no private residential landowners and businesses, thus making its proposed route far less problematic according to this rule.

- (d) *‘For any exceptional deviation avoid any new green-field implications rather than existing route’* **While the Appellant is not entirely sure of the engineers’ definition of ‘green-field implications’, it submits that its proposed route avoids any green-field implications, as it follows an existing road system for its virtual entirety, and runs through highly transformed areas (road verge and sugarcane fields) for the entirety of its route. For the engineers to state that the Appellant’s proposed route is through a green-fields site is therefore factually incorrect.**

9. SUMMARY OF SUBMISSIONS

- 9.1. In summary, the Appellant firmly believes that the engineers have not adequately considered the merits of the alternative route proposed to them, as they are required to do. Consequently, they are not in a position to conclusively state that no other option is feasible.
- 9.2. The Appellant also asserts that its concerns and suggestions have not been appropriately addressed by the consultants, providing grounds for review on the basis that relevant considerations have been ignored, and erroneous considerations have been taken into account.

10. GROUNDS OF APPEAL

- 10.1.1. The following grounds of appeal arise from the foregoing:

FIRST GROUND OF APPEAL

- 10.1.2. The Applicant failed to assess alternative routes, particularly the alternative route proposed by the Appellant, as required by the EIA Regulations and consequently, the Department erred in accepting the Applicant’s basic assessment report, and compounded this error by approving the environmental authorisation.

SECOND GROUND OF APPEAL

- 10.1.3. When alerted to the existence of a viable, feasible alternative route, the public participation process should have included an invitation to comment on this alternative. The failure to do so is a flaw in the public participation process, rendering the basic assessment report flawed, and therefore the decision of the Department flawed.

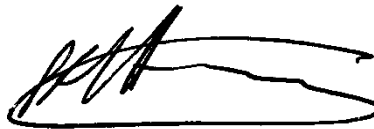
THIRD GROUND OF APPEAL

- 10.1.4. The assessment of need and desirability, by failing to fully consider the desirability of the alternative routes available, especially the relative social, economic and environmental impacts, falls short of what is required by the EIA Regulations.

11. CONCLUDING SUBMISSIONS

- 11.1. The Appellant accordingly submits that its grounds of appeal should be upheld, and the decision of the Department set aside.
- 11.2. At the very least, the Honourable MEC should direct the Department to reconsider the Applicants submission and direct the Applicant and the Department to undertake a thorough investigation into the alternative route (detailed in Annexure 2) proposed by the Appellant.

DATED AT BAZLEY THIS 22nd DAY OF JANUARY 2025



PAUL HARVEY
FOR THE BAZLEY
RESIDENTS' ASSOCIATION

Annexure 1

Engineers' proposed pipeline route (yellow) vs existing (old) pipeline (red)



Annexure 2

Engineers' proposed pipeline route (yellow) vs suggested BRA pipeline route (pink)

