



**MINISTER
FORESTRY, FISHERIES AND THE ENVIRONMENT
REPUBLIC OF SOUTH AFRICA**

Reference: LSA 252279

APPEAL DECISION

**APPEALS LODGED AGAINST A DECISION TO GRANT AN ENVIRONMENTAL
AUTHORISATION TO AFRICA OIL SA CORP, RICOCURE (PTY) LIMITED AND AZINAM
LIMITED, FOR THE PROPOSED AFRICA OIL SA CORP BLOCK 3B/4B OFFSHORE
EXPLORATION, OFF THE WEST COAST OF SOUTH AFRICA.**

Greenpeace Africa	First Appellant
Colleen Blankenberg	Second Appellant
Magrieta Jaars	Third Appellant
Betty Don	Fourth Appellant
Caroline Boois	Fifth Appellant
Cecelia van der Pholl	Sixth Appellant
Dalene Cloete	Seventh Appellant
Angila Joubert	Eighth Appellant

APPEALS LODGED AGAINST A DECISION TO GRANT AN ENVIRONMENTAL AUTHORISATION TO AFRICA OIL SA CORP, RICOURE (PTY) LIMITED AND AZINAM LIMITED, FOR THE PROPOSED AFRICA OIL SA CORP BLOCK 3B/4B OFFSHORE EXPLORATION, OFF THE WEST COAST OF SOUTH AFRICA.

Beverly Pickford	Ninth Appellant
Jaqueline Adams	Tenth Appellant
Jo-ann Boois	Eleventh Appellant
Leon Julies	Twelfth Appellant
Louis Afrikaner	Thirteenth Appellant
Magrieta Jacobs	Fourteenth Appellant
Melony Stevens	Fifteenth Appellant
Moeg Gesukkel Visserye Co-operative Ltd	Sixteenth Appellant
Alverno Klaase	Seventeenth Appellant
Charles Williams	Eighteenth Appellant
Christie Prins	Nineteenth Appellant
Claudine Jansen	Twentieth Appellant
Deborah De Wee	Twenty First Appellant
Ernest Prins	Twenty Second Appellant
Janetta Engelbrecht	Twenty Third Appellant
Laurencia Engelbrecht	Twenty Fourth Appellant
Laurencia Stevens	Twenty fifth Appellant
Lorencia Boois	Twenty Sixth Appellant
Lucinda Danster	Twenty Seventh Appellant

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Lucrechia Arendse	Twenty Eighth Appellant
Melissa Swarts	Twenty ninth Appellant
Mickyla Miggel	Thirtieth Appellant
Pamela Prins	Thirty First Appellant
Pedro Klaase	Thirty Second Appellant
Phezaan Julies	Thirty Third Appellant
Rowhena Afrikaner	Thirty Fourth Appellant
Danne Joubert	Thirty Fifth Appellant
Christie Prins	Thirty Sixth Appellant
Deborah De Wee	Thirty Seventh Appellant
Hottentot Eerste Nasie	Thirty Eighth Appellant
Sovereign Agro-ecology & Food Empowerment (SAFE)	Thirty Ninth Appellant
Sandveld Local Development Agency	Fortieth Appellant
The West Coast Guriqua Council	Forty First Appellant
The Green Net NPC	Forty Second Appellant
Suzanne du Plessis	Forty Third Appellant
Wild Trust	Forty Fourth Appellant
Environmental Traita	Forty Fifth Appellant
Bergrivier Municipality: Municipal Manager	Forty Sixth Appellant

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(Acting Mr. Dean Josephus)

Natural Justice, The Green Connection and the Masifundise
Development Trust.

Forty Seventh Appellant

Africa Oil SA Corp, Ricocure (Pty) Limited and Azinam
Limited

Applicants

Department of Mineral Resources and Energy

Competent Authority

Appeal: Forty-Seven (47) appellants (the appellants) have appealed against the decision of the Director-General: Mineral Regulation (DG:RM) of the Department of Mineral and Petroleum Resources (DMPR), taken on 16 September 2024, to grant an Environmental Authorisation (EA) to Africa Oil SA Corp, Ricocure (Pty) Limited and Azinam Limited (the applicants). The environmental authorisation pertains to listed activities associated with the proposed Africa Oil SA Corp Block 3B/4B Offshore Exploration, located approximately 120 km west of St Helena Bay and approximately 145 km south-west of Hondeklip Bay off the West Coast of South Africa.

1. BACKGROUND AND APPEALS

- 1.1 The applicants lodged an application for an environmental authorisation with the DMPR to undertake the listed activities associated with the proposed Africa Oil SA Corp Block 3B/4B Offshore Exploration at the abovementioned location. The environmental authorisation was granted in terms of the Environmental Impact Assessment Regulations, 2014, as amended (2014 EIA Regulations), published under the National Environmental Management Act, 1998 (Act No. 107 of 1998), as amended (NEMA).
- 1.2 The applicant commissioned SLR Consulting South Africa (Pty) Ltd as an independent Environmental Assessment Practitioner (EAP) to undertake the Environmental Impact Assessment (EIA) process for the proposed Africa Oil SA Corp Block 3B/4B Offshore Exploration project.

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- 1.3 On 20 May 2024, the EAP submitted the final Environmental Impact Assessment Report (EIAR) and the Environmental Management Programme (EMPr), in support of the environmental authorisation application to the DMPR for consideration and decision making.
- 1.4 After evaluating the supporting information and reports, the DMPR approved the application and issued an environmental authorisation to the applicants on 16 September 2024.
- 1.5 On 27 September 2024, registered interested and affected parties (I&APs) were notified of the environmental authorisation decision, provided with a copy thereof and advised of the right to appeal, in accordance with regulation 4(2) of the 2014 EIA Regulations.
- 1.6 Regulation 4(1) of the 2014 Appeal Regulations prescribes the procedure for submission of appeals contemplated in section 43(1A) of NEMA as follows:
- “(1) An appellant must submit the appeal to the appeal administrator, and a copy of the appeal to the applicant, any registered interested and affected party and any organ of state with interest in the matter within 20 days from:*
- (a) The date that the notification of the decision for an application for an environmental authorisation or a waste management licence was sent to the registered interested and affected parties by the applicant”*
- 1.7 Considering the provisions of regulation 4(1)(a) read with regulation 1(2) of the National Appeal Regulations, 2014 (Appeal Regulations), the due date for lodging an appeal against the aforesaid environmental authorisation was 17 October 2024.

The Submitted Appeals

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- 1.8 Between 28 September and 17 October 2024, the Directorate: Appeals and Legal Review (Appeals Directorate) within the Department of Forestry, Fisheries and the Environment (the Department/ DFFE) received forty-six (46) appeals from the first to forty-sixth appellants listed in the heading to this appeal decision against the decision taken by the DMPR to grant the above stated environmental authorisation. These appeals were timeously lodged in terms of section 43(1A) of NEMA, read together with regulation 4 of the 2014 National Appeal Regulations, 2014.

Condonation Granted to Natural Justice, The Green Connection and the Masifundise Development Trust for the late submission of their consolidated appeal

- 1.9 On 18 September 2024, the Appeals Directorate received a consolidated appeal from David Mtshali on behalf of Natural Justice, The Green Connection and the Masifundise Development Trust (the forty-seventh appellant). The appeal was submitted 2 minutes outside the prescribed appeal period and was therefore accompanied by an application for condonation in terms of section 47CB of NEMA.
- 1.10 On 18 October 2024, the appeal administrator furnished the application for condonation to the applicants and the DMPR for their consideration and the submission of any response thereon. On 21 October 2024, the applicants submitted a response stating that they did not object to the condonation request. The DMPR did not submit any response to the condonation application.
- 1.11 On 20 October 2024, the Director Appeals and Legal Review (Appeals Director), in her capacity as the delegated authority, considered and granted the application for condonation submitted by Natural Justice, The Green Connection and the Masifundise Development Trust, thereby permitting the appeal to be considered.

The Consolidated Appeal Response Report

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- 1.12 For purposes of administrative efficiency and to facilitate the effective processing of the appeals, the appeal administrator consolidated the forty-seven (47) appeals into a single consolidated Appeal Record and Report (ARR). On 22 October 2024, the appeal administrator furnished the consolidated ARR to the applicants and the DMPR for the submission of their responding statements in respect of the appeals. In accordance with regulation 5 of the Appeal Regulations, responding statements are required to be submitted within 20 days of receipt of the appeal documentation. Accordingly, the prescribed period for the submission of any responding statements by the applicants and the DMPR was due to lapse on 11 November 2024.

The Applicant's Responding Statement

- 1.13 On 01 November 2024, the applicants submitted an application in terms of section 47C read with section 47CA of NEMA, for the extension of the prescribed 20-day timeframe for the submission of their responding statement in respect of the appeals. In motivating their request, the applicants submitted that the appeals were "*voluminous and of a complex technical, procedural and legal nature*". In addition, to adequately consider and respond to each of the appeals, it was necessary to consult with the EAP, various specialists and its legal experts. Therefore, with due regard to the volume of appeals as well as the complexity of those appeals, it would require more than twenty (20) calendar days to adequately consider and respond to each of the forty-seven (47) appeals."
- 1.14 On 07 November 2024, the Appeals Director, in her capacity as the delegated authority, granted the applicants' extension of timeframe request and extended the period for submitting the responding statement to 02 December 2024.
- 1.15 On 29 November 2024, the applicants submitted their responding statement to the grounds of appeals.

The DMPR's Condonation Application for the late filing of its Responding Statement.

- 1.16 As of 11 November 2024, the DMPR (competent authority) had not submitted its responding statement on the consolidated appeals. Accordingly, the DMPR did not submit a responding statement within the prescribed timeframe contemplated in regulation 5 of the Appeal Regulations.
- 1.17 On 17 December 2024, the Appeals Directorate received the DMPR's responding statement. The responding statement was accompanied by an application for condonation for its late submission in terms of section 47C read with section 47CB of NEMA. In support of the application, the DMPR submitted as follows:
"The Petroleum Agency SA was requested to submit the responding statements on or before 11 November 2024. Regrettably, this could not take place by the due date owing to the capacity challenges we are currently experiencing. Please receive attached the responding statements, for which we seek condonation."
- 1.18 Section 47CB of NEMA regulates applications for condonation in relation to appeals contemplated in section 43(1A) of NEMA. The provision limits the period for which condonation may be granted to a period not exceeding the number of days prescribed for the relevant procedural step. In the present matter, regulation 5 of the National Appeal Regulations, 2014 afforded the competent authority twenty (20) days within which to submit a responding statement. Accordingly, any application for condonation could only regularise a delay of up to twenty (20) days beyond the prescribed deadline.
- 1.19 The responding statement was due on 11 November 2024. Applying the limitation contained in section 47CB of NEMA, the latest date by which a responding statement and accompanying condonation application could validly have been submitted was 2 December 2024. The competent authority's responding statement and condonation application were, however, only submitted on 17 December 2024, being fifteen (15) days

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after the maximum period for which condonation could lawfully be granted had expired.

- 1.20 In these circumstances, I am precluded by section 47CB (4) of NEMA from granting condonation for the late submission of the competent authority's responding statement. Consequently, I am precluded from granting the DMPR's condonation application, and the DMPR's responding statement will accordingly not be taken into account in determining this appeal.

The Approach to the Appeals

- 1.21 The appeals are premised on the following grounds:
- 1.21.1 Failure to consider full scope of potential impacts;
 - 1.21.2 EA granted on the basis of flawed assessment and consideration of risks and impacts;
 - 1.21.3 Inadequate consideration of section 63 of the National Environmental Management: Integrated Coastal Management Act ¹ (NEM:ICMA) by the competent authority;
 - 1.21.4 Failure to adequately assess the No-Go Option and a misapplication of the precautionary principle;
 - 1.21.5 Inadequate need and desirability assessment;
 - 1.21.6 Failure to consider the cumulative impacts of production activities and GHG emissions associated with production activities;
 - 1.21.7 The EAP's independence;
 - 1.21.8 The EIA failed to adequately assess noise impacts;

¹ Act 24 of 2008.

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- 1.21.9 Inadequate assessment of the impact of the proposed activities on the livelihoods and food security of coastal communities including small-scale fishers (socio-economic impacts);
 - 1.21.10 Flawed Assessment and Mitigation of Environmental Risks and Impacts;
 - 1.21.11 Failure to adequately consider the climate change impacts of the Proposed Activities;
 - 1.21.12 Failure to assess transboundary impacts;
 - 1.21.13 The EAP failed to adequately address impacts on cultural and spiritual heritage and the National Heritage Resources Act;
 - 1.21.14 Inadequate mitigation measures for impacts on marine biodiversity and marine protected areas;
 - 1.21.15 The public participation process (PPP) did not achieve meaningful consultation, political decision-making process and the voice of indigenous communities;
 - 1.21.16 Oil Spill Contingency Plan and Oiled Wildlife Contingency Plan;
 - 1.21.17 Failure by the competent authority to properly apply its mind; and
 - 1.21.18 Constitutional and environmental rights.
- 1.22 It is well established that an appeal under section 43 of NEMA is an appeal in a wide sense. I have therefore approached this appeal by assessing the application afresh. I have undertaken a fresh evaluation of the evidence, information and submissions contained in the appeal record, including the grounds of appeal, responding statements, specialist studies, environmental assessment documentation and all other relevant material before me. While due regard has been given to the decision of the competent authority and the reasons therefore, I have exercised an independent judgement in determining whether the environmental authorisation should be upheld, amended or set aside. The appeal has accordingly been determined on the basis of a comprehensive reassessment of the merits and the applicable legal framework.

1.23 I wish to stress that I was guided in this appeal by the principles set out in section 2 of the National Environmental Management Act No. 107 of 1998 (NEMA). Those principles apply alongside all of the other appropriate and relevant considerations, including the State's responsibility to respect, protect, promote and fulfil the social and economic rights in Chapter 2 of the Constitution and in particular the basic needs of persons disadvantaged by unfair discrimination. My decision has therefore been guided after a careful consideration of all of the principles set out in section 2 of NEMA, including section 2(2) which provides that "environmental management must place people and their needs at the forefront of its concern and serve their physical, psychological, developmental, cultural and social interests equitably"; also, section 2(3) which provides that "development must be socially, environmentally and economically sustainable". Moreover, when I considered the issue of sustainable development, I did so with section 2(3) in mind and I considered the proper application of the factors articulated in section 2(4)(a) to (r).

1.24 I am also guided by the judgement in *Earthlife Africa Johannesburg v Minister of Environmental Affairs and Others* [2017] 2 All SA 519 (GP) at para 80, Murphy J explained that:

"NEMA, like all legislation, must be interpreted purposively and in a manner that is consistent with the Constitution, paying due regard to the text and context of the legislation. Section 2 of NEMA sets out binding directive principles that must inform all decisions taken under the Act, including decisions on environmental authorisations. The directive principles serve as guidelines (by reference) to which any organ of state must exercise any function when taking any decision in terms of NEMA or any statutory provision concerning the protection of the environment. They guide the interpretation, administration and implementation of NEMA and any other law concerned with the protection or management of the environment. Competent authorities must take into account the directive principles when considering applications for environmental

authorisation. The directive principles promote sustainable development and the mitigating principle that environmental damage must be avoided, minimised and remedied. The environmental impact assessment process is a key means of promoting sustainable development, by ensuring that the need for development is sufficiently balanced with full consideration of the environmental impacts of a project with potential environmental impacts. The directive principles caution decision-makers to adopt a risk-averse and a careful approach, especially in the face of incomplete information.”

- 1.25 I have also had regard to the guidance provided by the Constitutional Court in *Sustaining the Wild Coast NPC and Others v Minister of Mineral Resources and Energy and Others; Natural Justice and Another v Minister of Mineral Resources and Energy and Others* [2026] ZACC 33, the Western Cape High Court in *The Green Connection NPC and Natural Justice v Minister of Forestry, Fisheries and the Environment and Others* (Case No. 5676/2024), and the Western Cape High Court in *Aukotowa Fisheries Primary Co-operative Ltd and Others v Director-General: Department of Mineral and Petroleum Resources and Others* (Case No. 24492/2024). While each matter was decided on its own facts, the principles articulated in these judgments have informed my assessment of the grounds of appeal and the applicable legal framework.
- 1.26 Considering the overlapping and substantially similar nature of the grounds of appeal advanced by the appellants, I shall address their submissions in a consolidated manner under each respective ground of appeal set out below. Save where it becomes necessary to distinguish a submission or issue raised uniquely by a particular appellant, references shall generally be made collectively to “*the appellants*.”
- 1.27 Where specific reference is made to an individual appellant, such reference shall be construed as relating only to submissions, facts, or issues uniquely attributable to that appellant. Conversely, where the issues, arguments, or submissions are common to two or more appellants, they shall be dealt with collectively and referred to in this appeal decision as submissions of “*the appellants*” for purposes of convenience, coherence,

and avoidance of unnecessary repetition.

Consideration of the Interim Decisions and the Appointment of an Appeal Panel.

- 1.28 I have considered the interim decisions issued by my predecessors, including the determination by Minister Aucamp to revoke the earlier deferral decisions taken by former Minister George and proceed with the adjudication of the appeals. I concur with Minister Aucamp's reasoning that these appeals should be finalised without further delay and that prolonged deferral would be inconsistent with the effective administration of the appeal process contemplated in section 43 of NEMA and the National Appeal Regulations.
- 1.29 I have also considered whether it remains necessary to appoint an appeal panel in terms of section 43(5) of NEMA. In exercising this discretion, I have had regard to developments in the legal framework since the interim decisions were issued. In particular, the subsequent judgment in *Aukotowa Fisheries Primary Co-operative Limited and Others v Director-General: Department of Mineral and Petroleum Resources and Others* has provided substantial judicial guidance on a number of the issues that arise in these appeals, including the assessment of exploration activities, cumulative impacts, climate considerations, oil-spill contingency planning and the distinction between exploration and production phases. The legal position is therefore considerably clearer than it was when the earlier interim decisions were made.
- 1.30 I further note that the Appeal Administrator responsible for these appeals possesses the requisite qualifications, expertise and experience in environmental assessment and has provided a detailed recommendation addressing the factual, technical and legal issues raised by the parties. I am accordingly satisfied that the record before me, together with the Appeal Administrator's recommendation, provides a sufficient basis upon which to determine the appeals.

- 1.31 In these circumstances, I do not consider the appointment of an appeal panel to be necessary. The appointment of an appeal panel would inevitably result in additional procedural steps and further delay in the finalisation of appeals that have already been pending for an extended period. Having regard to section 237 of the Constitution, which requires constitutional obligations to be performed diligently and without delay, and the need for finality in administrative decision-making, I am satisfied that the appeals can properly be determined on the basis of the record and the recommendation before me without appointing an appeal panel.
- 1.32 With this in mind, I now deal with the grounds of appeal submitted by each of the appellants and where I deem it appropriate, I consolidate my evaluation of those grounds of appeal that are overlapping in nature.

2 GROUND OF APPEAL, RESPONSES, AND EVALUATION

2.1 FIRST GROUND OF APPEAL: FAILURE TO CONSIDER FULL SCOPE OF POTENTIAL IMPACTS

Submission by the appellants

In support of this ground of appeal, the appellants submit the following:

- 2.1.1. The Environmental Impact Assessment Report (EIAR) failed to assess the full scope of the environmental, socio-economic and climate-related impacts associated with the proposed exploration activities.
- 2.1.2. In particular, the EIAR improperly excluded consideration of potential production activities, despite the fact that commercial production constitutes a reasonably foreseeable consequence of successful exploration activities.
- 2.1.3. The Mineral and Petroleum Resources Development Act, 2002 (MPRDA) contemplates exploration and production as linked phases of a single process, given that section 82(a)

grants the holder of an exploration right the exclusive right to apply for a production right in respect of the same area. Accordingly, it is argued that production-related impacts ought to have been assessed as foreseeable impacts arising from the approval of the exploration activities.

- 2.1.4. It is further contended that section 24O(1)(b) of the NEMA requires the competent authority to consider all relevant factors, including pollution, environmental degradation and environmental impacts likely to arise if the application is approved.
- 2.1.5. By excluding production-related impacts from the assessment process, the competent authority was not placed in a position to consider all relevant environmental and socio-economic consequences associated with the proposed development.
- 2.1.6. The EIAr failed to adequately assess cumulative impacts as contemplated in the 2014 EIA Regulations. In this regard, it is submitted that cumulative impacts associated with the broader oil and gas value chain, including extraction, refining, transportation, combustion and resultant greenhouse gas emissions, were not sufficiently considered.
- 2.1.7. The EIAr did not adequately assess the need for and desirability of future oil and gas production activities. It is argued that, if production activities are ultimately found to be environmentally unacceptable or undesirable, then the risks and impacts associated with the exploration activities would similarly not be justified.
- 2.1.8. Reliance is also placed on the judgment in *Sustaining the Wild Coast NPC & Others v Minister of Mineral Resources and Energy & Others*, in which the Supreme Court of Appeal recognised that exploration activities form part of a continuum that may ultimately culminate in the production and combustion of fossil fuels and the associated greenhouse gas emissions.
- 2.1.9. The exclusion of production-related impacts from the EIAr constitutes a material and fatal flaw in the environmental assessment process, as it prevented the competent authority from taking account of all relevant considerations and undermined the objectives of integrated environmental management contemplated in NEMA.

Response by the applicants

In reply to this ground of appeal, the applicants submit the following:

- 2.1.10. The final EIAr adequately identified, assessed and mitigated all potential and cumulative impacts associated with the proposed exploration drilling activities authorised under the EA.
- 2.1.11. It is contended that the appellants' argument that production-related impacts should have been assessed at the exploration stage is unsupported by NEMA, the 2014 EIA Regulations, the Mineral and Petroleum Resources Development Act, 2002 (MPRDA), and the Petroleum Regulations.
- 2.1.12. The environmental authorisation issued on 16 September 2024 authorises exploration activities only, namely the drilling of up to five exploration wells within Block 3B/4B and does not authorise any production activities.
- 2.1.13. It is further submitted that exploration and production activities are treated as distinct and separate legal, regulatory and environmental processes under both NEMA and the MPRDA, each requiring separate rights, approvals and environmental authorisations. In this regard, exploration activities are regulated under Activity 18 of Listing Notice 2, while production activities are separately regulated under Activity 20 of Listing Notice 2.
- 2.1.14. The impacts assessed in the final EIAr were appropriately confined to the exploration activities applied for and authorised.
- 2.1.15. The production activities are speculative at this stage because no hydrocarbon resource has yet been discovered, and because the location, scale, nature and commercial viability of any potential resource remain unknown.
- 2.1.16. Accordingly, any assessment of future production impacts at this stage would therefore be premature, speculative and incapable of meaningful evaluation.
- 2.1.17. Section 24O(1)(b) of NEMA and the EIA Regulations require consideration of impacts associated with the activity for which authorisation is sought, namely exploration activities, and do not require assessment of hypothetical future production activities.

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- 2.1.18. The cumulative impact assessment contained in the final EIAr complies with the requirements of the EIA Regulations and appropriately considered cumulative impacts associated with the proposed exploration activities together with other existing and reasonably foreseeable activities in the region.
- 2.1.19. The appellants' reliance on international Strategic Environmental Assessment (SEA) practice is rejected, and they argued that an SEA is distinct from a project-specific Environmental Impact Assessment (EIA) and is not a legal requirement for the proposed exploration activities.
- 2.1.20. The applicants further rely on previous ministerial appeal decisions confirming that the absence of an SEA does not invalidate an EIA process or constitute a lawful ground of appeal.
- 2.1.21. In relation to climate change impacts, it is submitted that greenhouse gas emissions and climate-related impacts associated with the exploration activities were assessed in a dedicated Climate Change Assessment Report included in the final EIAr.
- 2.1.22. Further it is argued that the cases relied upon by the appellants, including *Sustaining the Wild Coast NPC & Others v Minister of Mineral Resources and Energy & Others* and *Director: Mineral Development, Gauteng Region and Another v Save the Vaal Environment and Others*, do not establish that exploration and production activities constitute a single inseparable legal process requiring simultaneous environmental assessment.
- 2.1.23. All impacts required by law to be assessed for purposes of the exploration application were comprehensively assessed in compliance with NEMA, the EIA Regulations and the MPRDA, and that the appellants' attempt to require assessment of speculative future production impacts at the exploration stage is unsupported in law.

EVALUATION (Reasons for the decision)

- 2.1.24. The crux of this ground of appeal concerns whether the Environmental Impact Assessment (EIA) process undertaken for the proposed exploration activities ought to have included an assessment of the impacts associated with potential future production

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activities, including the broader environmental, socio-economic and climate change impacts arising from possible oil and gas extraction and production.

- 2.1.25. I have considered the submissions advanced by both the appellants and the applicants in this regard. I have also considered the evolving jurisprudence concerning the relationship between exploration and production activities in the petroleum sector. While certain judgments have recognised that exploration and production form part of a broader continuum of petroleum development, the courts have also recognised that they remain distinct regulatory stages governed by separate statutory authorisation processes.
- 2.1.26. While the appellants rely on the Supreme Court of Appeal's observations that exploration forms part of a continuum that may ultimately culminate in the extraction and combustion of fossil fuels, that judgment must now be read in light of the subsequent judgment of the Constitutional Court in *Sustaining the Wild Coast*. The Constitutional Court did not endorse a requirement that a detailed environmental assessment of future production activities must be undertaken at the exploration stage and recognised that later stages of petroleum development are subject to their own statutory decision-making and assessment processes.
- 2.1.27. In *The Green Connection NPC and Another v Minister of Forestry, Fisheries and the Environment and Others* (Case No. 5676/2024, Western Cape Division, 13 August 2025), the Court accepted that exploration and production are separate phases, although interconnected. Conversely, in *Aukotowa Fisheries Primary Co-operative Limited and Others v Director-General: Department of Mineral and Petroleum Resources and Others* (Case No. 24492/2024, Western Cape Division, 13 August 2026), the Court emphasised that environmental assessment obligations must be applied to the activity for which authorisation is sought and not to future activities whose scope and characteristics remain unknown.

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- 2.1.28. I accept that as recognised in *The Green Connection NPC and Another v Minister of Forestry, Fisheries and the Environment and Others* (Case No. 5676/2024, Western Cape Division, 13 August 2025), exploration is undertaken to determine whether commercially exploitable petroleum resources exist and therefore forms part of a broader petroleum development continuum. However, as recognised in *Aukotowa Fisheries Primary Co-operative Limited and Others v Director-General: Department of Mineral and Petroleum Resources and Others* (Case No. 24492/2024, Western Cape Division, 13 August 2026), it does not follow that an environmental assessment undertaken for an exploration application must necessarily include a detailed assessment of future production activities that have not yet been defined, proposed or applied for. Whether such impacts can meaningfully be assessed depends on the information reasonably available at the time of the decision and the nature of the activity for which authorisation is sought.
- 2.1.29. In this instance, I accept that the environmental authorisation granted on 16 September 2024 authorises exploration activities only. It does not authorise extraction, processing, transportation, refining or commercial production of hydrocarbons. The activity before the competent authority was therefore confined to the proposed exploration drilling within Block 3B/4B.
- 2.1.30. In assessing the appellants' submissions, I attach particular significance to the fact that no commercially viable hydrocarbon resource has yet been identified. At this stage it is unknown whether any resource exists, whether any discovery would comprise oil, gas or a combination thereof, whether such a discovery would be commercially recoverable, and whether the applicants would ultimately elect to pursue production activities. Similarly, the location, extent, extraction methods, production volumes, supporting infrastructure requirements, transportation arrangements, operational lifespan and technological processes that may potentially be associated with future production activities remain unknown.

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- 2.1.31. In the absence of such information, I am not persuaded that a meaningful, reliable or scientifically defensible assessment of the impacts associated with hypothetical future production activities could presently be undertaken. Any attempt to do so would necessarily be based on assumptions and speculation regarding matters that remain uncertain and undefined.
- 2.1.32. I further note that the NEMA, the 2014 EIA Regulations, distinguish between exploration activities and production activities as separate regulatory processes. Moreover, exploration activities trigger Activity 18 of Listing Notice 2, whereas production activities trigger a separate listed activity under Activity 20 of Listing Notice 2, each requiring separate applications, assessments and environmental authorisations. I therefore agree with the applicants that any future production activities would be subject to a separate and independent environmental assessment process should the applicants elect to pursue production activities at a later stage.
- 2.1.33. I am mindful of the appellants' argument that the potential consequences of future production may be relevant to broader questions of sustainability and environmental governance. However, I am not persuaded that the legislative framework requires the competent authority to undertake a detailed assessment of undefined future production activities as part of an exploration application. To require such an assessment would, in practical terms, oblige an applicant to assess impacts relating to activities for which the fundamental project parameters remain unknown, and which may never occur.
- 2.1.34. Having considered the applicable legislative framework, the information before the competent authority, and the relevant jurisprudence, I am not persuaded that the final EIAr was legally required to undertake a detailed assessment of speculative future production activities as part of the present exploration application. I am satisfied that the environmental impacts associated with the exploration activities for which authorisation was sought were assessed in accordance with NEMA and the 2014 EIA Regulations. Accordingly, this ground of appeal is dismissed.

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- 2.1.35. With regard to climate change, I note that a Climate Change Impact Assessment Report prepared by Airshed Planning Professionals, dated March 2024, was included as Appendix 4.2 to the final EIAr. The study assessed the greenhouse gas emissions and climate-related impacts associated with the proposed exploration activities. Since climate change considerations have been raised as a separate ground of appeal, I will address the adequacy of that assessment in the evaluation of the relevant ground of appeal.
- 2.1.36. Having considered the totality of the information before me, I am satisfied that the competent authority was required to assess, and did assess, the impacts associated with the exploration activities that formed the subject of the application. I am not persuaded that the absence of a detailed assessment of hypothetical future production activities rendered the final EIAr materially deficient or inconsistent with the applicable requirements of NEMA, the 2014 EIA Regulations or the MPRDA.
- 2.1.37. I therefore find that the final EIAr appropriately assessed the impacts associated with the activity for which authorisation was sought, namely exploration drilling, and that this ground of appeal has not established a material defect in the environmental assessment process.
- 2.1.38. Accordingly, this ground of appeal is dismissed.

2.2. SECOND GROUND OF APPEAL: ENVIRONMENTAL AUTHORISATION GRANTED ON THE BASIS OF FLAWED ASSESSMENT AND CONSIDERATION OF RISKS AND IMPACTS.

Submission by the appellants

In support of this ground of appeal, the appellants submit as follows:

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- 2.2.1. The environmental authorisation was granted on the basis of a flawed EIAr which allegedly failed to properly assess, represent and consider the risks and impacts associated with the proposed offshore exploration drilling activities.
- 2.2.2. Although the EIAr concludes that there are no environmental fatal flaws preventing the proposed project from proceeding, this conclusion is not supported by a sufficiently robust assessment of impacts. In particular, the appellants argue that the EIAr understates and misrepresents the significance of risks associated with a potential well blowout and crude oil spill.
- 2.2.3. The modelling of oil spill impacts was inadequate because it relied on only two well release points and assumed that capping of a blowout would occur within 20 days. This assumption fails to adequately account for potential delays arising from weather conditions, debris clearance and operational constraints, which could significantly worsen the impacts of a spill.
- 2.2.4. In addition, the EIAr itself acknowledges that a blowout could have HIGH to VERY HIGH impacts on marine fauna, including pelagic seabirds, marine mammals, turtles, shoreline habitats and sensitive breeding areas, with impacts potentially extending into Namibian and international waters.
- 2.2.5. Despite these findings, the EIAr ultimately downgraded the significance of these impacts to HIGH or MEDIUM significance through the application of mitigation measures, thereby allegedly understating the true extent and severity of the potential environmental harm.
- 2.2.6. Moreover, this misrepresentation compromised the integrity of the impact assessment and prevented the competent authority from properly considering all relevant environmental risks.
- 2.2.7. The EIAr improperly relied on mitigation measures contained in future plans that had not yet been developed or made available during the EIA process. In particular, the appellants note that the proposed mitigation measures depended on the future preparation of an Oil Spill Contingency Plan (OSCP) and an Oiled Wildlife Contingency Plan, neither of which were included in the EIAr or subjected to public participation.
- 2.2.8. These plans constitute critical mitigation measures for responding to a major oil spill and that their absence from the EIA process denied Interested and Affected Parties (I&APs) a

meaningful opportunity to consider and comment on the adequacy of the proposed spill response measures.

- 2.2.9. Accordingly, it is argued that the competent authority granted the environmental authorisation without sufficient information regarding the applicants' spill response capabilities and without properly assessing whether adequate mitigation measures would be in place. In this regard, it submitted that the decision is inconsistent with section 240 of the NEMA, which requires the competent authority to consider measures intended to avoid, manage or mitigate environmental impacts, as well as the applicants' ability to implement such measures.
- 2.2.10. The EIAr's identification of certain economic activities associated with oil spill response operations as positive impacts, including increased demand for goods and services and temporary employment opportunities arising from spill response activities are objected.
- 2.2.11. It is inappropriate and misleading to characterise economic activity arising from an environmental disaster as a positive impact, as this allegedly serves to dilute the significance of the environmental harm and improperly skews the impact assessment in favour of the proposed project.
- 2.2.12. In addition, the EIAr and environmental authorisation failed to adequately assess and consider the implications of the proposed activities for marine conservation efforts and sensitive ecosystems. Although the environmental authorisation includes conditions intended to avoid declared Marine Protected Areas (MPAs) and Critical Biodiversity Areas (CBAs), the exploration activities in close proximity to sensitive marine ecosystems will nonetheless result in significant adverse impacts, including disturbance of benthic communities and vulnerable deepwater reef systems.
- 2.2.13. Any future production activities or a well blowout event would significantly exacerbate these impacts and undermine broader marine conservation objectives.
- 2.2.14. Therefore it is submitted that the EIAr does not provide an accurate or reliable representation of the risks and impacts associated with the proposed exploration activities, with the result that the competent authority failed to properly consider all relevant factors when granting the EA.

Response by the applicants

In this ground of appeal, the applicants respond as follows:

- 2.2.15. The appellant raises no substantive grounds of appeal in items 2(l) to 2(m), but merely cross-refers to section 11.3 of the final EIAr, the Environmental Impact Statement, and extracts from paragraph 3.2 of the EA.
- 2.2.16. The EIA process complied fully with the 2014 EIA Regulations and applicable guidelines, that the final EIAr accurately reflects the findings of independent specialists, and that a comprehensive public participation process was undertaken.
- 2.2.17. The allegation that impacts on the marine environment were misrepresented, referring to the marine specialist assessments and appendices of the final EIAr is rejected.
- 2.2.18. In response to the appellant's concerns regarding blowout risks and oil spill impacts, it is submitted that the final EIAr expressly acknowledges the potentially significant consequences of an unplanned blowout while accepting that the probability of such an event is extremely low.
- 2.2.19. It is noted that approximately 47 offshore wells have been drilled on South Africa's West Coast without any recorded blowouts and rely on Lloyd's Register global data indicating a blowout frequency of approximately 1.43×10^{-4} per exploration well.
- 2.2.20. They further state that the final EIAr assessed the environmental risk of an uncontrolled blowout as "High" prior to mitigation and that this significance rating was correctly assigned by the marine ecology specialist.
- 2.2.21. The appellants selectively quoted from the final EIAr and omitted passages confirming that the impact significance for marine fauna was assessed as ranging from medium to high, collectively high, in the unmitigated scenario.
- 2.2.22. It is therefore argued that the final EIAr correctly applied the approved significance assessment methodology contained in section 9.1 of the final EIAr and the Plan of Study for EIA, which assesses consequence, probability, cumulative effects, and irreplaceable loss to determine overall significance.

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- 2.2.23. Regarding oil spill modelling, it is submitted that the Oil Spill Drift Modelling (OSDM) Report was prepared by qualified specialists and modelled worst-case crude oil spill scenarios at the most likely and environmentally sensitive drilling locations, namely Points A and D.
- 2.2.24. It is confirmed that Point D represents the closest location to the coast and Benguela Muds MPA, while Point A is closest to Childs Bank and Orange Shelf Edge MPAs.
- 2.2.25. It is further contended that the modelling appropriately focused on the most likely drilling areas and worst-case scenarios.
- 2.2.26. The modelling concluded that, for all modelled quarters, prevailing currents would generally move oil northwest and away from the South African coastline. However, they acknowledge that if oil remained unrecovered after 60 days, some surface oil could potentially reach the coastline during specific seasonal conditions.
- 2.2.27. The appellants' allegation that impacts were understated and maintain that the final EIA accurately represents the risks associated with an unplanned blowout is rejected.
- 2.2.28. It is argued that mitigation and response measures would substantially reduce the extent, magnitude, duration, and probability of impacts, thereby reducing the post-mitigation significance from "High" to "Medium." In this regard, the applicants refer to proposed mitigation measures including the development of an Oil Spill Contingency Plan (OSCP), Oiled Wildlife Contingency Plan (OWCP), blowout response procedures, well-specific spill modelling, rapid mobilisation of response equipment, use of dispersants, surface containment measures, satellite tracking, and coordinated spill response exercises.
- 2.2.29. The applicants also respond extensively to the appellant's concerns regarding the absence of a finalised OSCP and Blowout Contingency Plan (BOCP) during the EIA process.
- 2.2.30. The plans are necessarily site-specific and can only be prepared once the precise well location, drilling contractor, and operational details are finalised.
- 2.2.31. It is maintained that neither NEMA nor the EIA Regulations require these plans to be completed or subjected to public participation prior to the granting of an environmental authorisation.

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- 2.2.32. The final EIAr sufficiently assessed the impacts of a blowout scenario and appropriately required the subsequent preparation of detailed contingency plans before drilling commences.
- 2.2.33. The OSCP and BOCP must be developed in consultation with SAMSA, PASA, and DFFE Oceans and Coast Unit, and approved before operations commence.
- 2.2.34. They also refer to condition 5.5.6 of the environmental authorisation, which requires submission of all specific management plans, including the OSCP, OWCP, BOCP, ERP, and other operational plans, at least 60 days before drilling begins.
- 2.2.35. The applicants rely further on the Minister's reasoning in the ENI Appeal Decision, which they state confirmed that preparation and circulation of a project-specific OSCP prior to authorisation is not legally required.
- 2.2.36. The appellant's allegation that the absence of these plans during the EIA process violated public participation rights under regulation 23 of the EIA Regulations is denied.
- 2.2.37. The appellants cite no legislative authority requiring these plans to be subjected to public participation before an environmental authorisation is granted and maintain that the extensive consultation process undertaken during the EIA satisfies all legal requirements.
- 2.2.38. Addressing the appellants' broader criticisms of the assessment methodology, it is submitted that the 2014 EIA Regulations require the assessment of "*potentially significant impacts*," meaning impacts that are reasonably likely rather than every remote or speculative possibility.
- 2.2.39. They argue that interpreting "*potential*" to include all conceivable eventualities would render EIAs impractical and inconsistent with section 24O of NEMA, which focuses on impacts likely to arise. Nonetheless, the applicants state that the final EIAr did assess the consequences of a blowout despite its extremely low probability.
- 2.2.40. The appellants' allegation that the final EIAr and environmental authorisation are fundamentally flawed is rejected. It is submitted that the appellants' criticisms are subjective and unsupported by the evidence in the final EIAr or the applicable legal framework.

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- 2.2.41. The final EIAr identified and assessed impacts from both planned and unplanned events, that medium-significance impacts were acknowledged where applicable, and that mitigation measures were prescribed accordingly.
- 2.2.42. Moreover, the environmental authorisation relates only to exploration activities and does not authorise production activities.
- 2.2.43. Any future production activities would require a separate production right, a new environmental authorisation, a fresh environmental impact assessment, and a new public participation process.
- 2.2.44. The authorised drilling areas are located within ecosystems classified as "Least Concern," that nearby Marine Protected Areas would not be affected by normal operations, and that impacts associated with an unlikely blowout were specifically assessed in the final EIAr.

EVALUATION (Reasons for the Decision)

- 2.2.45. The crux of this ground of appeal is whether the EIA process and the final EIAr adequately assessed and represented the environmental risks and impacts associated with the proposed exploration activities, particularly in relation to the risk of a well blowout, the adequacy of mitigation measures, the absence of a finalised OSCP, and the alleged implications for marine biodiversity and conservation efforts.
- 2.2.46. I am mindful that in determining this ground of appeal, I am not confined to considering whether the competent authority acted lawfully or rationally. As Appeal Authority, I am required to consider the merits of the matter afresh and determine whether the information before me justifies disturbing the decision to grant the EA. I must have due regard to the expertise of the independent specialists who undertook the assessments and to the methodologies applied in reaching their conclusions. Where competing views are advanced, the question is whether the evidence demonstrates that the specialist findings are materially flawed, unsupported by the information before me, or outweighed by other evidence on record.

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- 2.2.47. The substance of the appellants' complaint is that the final EIAr allegedly failed to properly assess and represent the risks associated with offshore exploration drilling activities, particularly the risk of a blowout and crude oil spill, and that the competent authority consequently failed to properly consider all relevant environmental factors prior to granting the environmental authorisation.
- 2.2.48. However, upon consideration of the final EIAr (pages 325 to 329), it is evident that the EIA process applied a structured and approved impact assessment methodology consistent with the requirements of the NEMA and the 2014 EIA Regulations. Section 9.1 of the final EIAr clearly explains the methodology applied in identifying, assessing, and rating impacts. The methodology included the identification of impacts through desktop analysis, specialist studies, and the public participation process (PPP), followed by the application of an Environmental Impact Management System (EIMS) methodology to assess environmental risk by considering consequence and probability. Consequence was determined through consideration of the nature, extent, duration, magnitude, and reversibility of impacts, together with cumulative impacts and the potential for irreplaceable loss of resources.
- 2.2.49. Importantly, the final EIAr did not ignore or minimise the consequences of an unplanned blowout. To the contrary, on page 334, the report expressly identified as potential impact on fisheries of large- scale hydrocarbon spill uncontrolled crude oil. On page 339 of the final EIAr, it is stated that the oil spill response activity could generate demand for goods and services necessary to sustain operational activities. This sustained demand over the response period of exploration could lead to additional business sales throughout the response industry's value chain (increased economic output, production and gross value added) (crude oil). The EIAr further states that a well blow- out event could lead to reduced fishing grounds and catch potential for the large pelagic longline fishing industry, which, in turn, may result in decreased economic productivity for the receiving economy' s fishing industry. As a consequence, the demand for inputs to the fishing industry and the outputs from the industry may be impacted (limiting business sales,

economic output and gross value added). The impact is viewed as a temporary impact given that the well blowout event might not be a long- term sustained event (condensate). Moreover, the final EIAr acknowledges blowout as a potentially "High" environmental risk prior to mitigation. The marine ecology specialist further acknowledged that impacts on marine fauna could be severe in the absence of mitigation measures.

2.2.50. I further note on pages 387 to 389, the final EIAr recognises that the greatest environmental threat associated with offshore exploration drilling is the possibility of a major crude oil spill resulting from a blowout or loss of well control. A blowout is described as the uncontrolled release of crude oil and/or natural gas after pressure control systems have failed. The report explains that an oil spill in the marine environment could have immediate and severe consequences for water quality and marine biodiversity, including mortality of marine fauna through suffocation or poisoning, respiratory damage, and the smothering of sensitive coastal habitats should oil reach the shoreline. Although the Area of Interest (AOI) is situated more than 180 km offshore and distant from coastal Marine Protected Areas (MPAs) and key coastal receptors, the final EIAr acknowledges that a large spill could still affect sensitive offshore and migratory species, as well as potentially impact sensitive receptors in Namibia, the Orange Shelf Edge MPA, and Tripp Seamount. The report specifically identifies pelagic seabirds, marine mammals, turtles, sharks, and commercially important fish species as vulnerable receptors, including numerous species classified as critically endangered, endangered, vulnerable, or near threatened. The overall sensitivity of the marine environment to a large oil spill is therefore assessed as "*High*."

2.2.51. The final EIAr further records that detailed oil spill modelling was undertaken for both condensate and crude oil blowout scenarios, including a worst-case scenario involving a continuous crude oil release for 20 days before capping. The modelling considered the physical and chemical behaviour of oil in the marine environment, including spreading, evaporation, dispersion, biodegradation, and the toxicity of hydrocarbons such as BTEX

compounds and polycyclic aromatic hydrocarbons (PAHs). The report explains that the toxicity and persistence of oil vary depending on its composition and environmental conditions, and that exposure may cause severe physiological harm to marine organisms through ingestion, inhalation, or physical coating of fur and feathers. While the modelling predicted that, under the scenarios assessed, oil would generally not reach the shoreline due to prevailing ocean currents, the final EIAr nevertheless acknowledges the potentially severe consequences for offshore marine ecology should a blowout occur.

- 2.2.52. These findings demonstrate that the final EIAr did not disregard, minimise or conceal the environmental risks associated with a blowout. On the contrary, those risks were expressly identified and assessed them as part of the environmental impact assessment process. I therefore do not concur with the appellants' contention that the final EIAr concealed or failed to recognise these risks.
- 2.2.53. In addition, the purpose of the EIA process is not merely to identify potential impacts but also to identify reasonable mitigation measures and evaluate the residual risk after mitigation. The fact that an impact assessed as being of "High" significance prior to mitigation is assigned a lower significance rating following mitigation does not, without more, demonstrate that the impact has been understated or misrepresented. Rather, it reflects the assessment methodology applied in the EIA process, which requires consideration of both unmitigated and post-mitigation impacts in order to evaluate residual environmental risk.
- 2.2.54. Moreover, the applicants adequately explained the basis upon which post-mitigation significance ratings were determined. The impact assessment methodology expressly requires impacts to be assessed both before and after mitigation. The reduction of significance from "High" to "Medium" following mitigation cannot, in itself, be regarded as improper or irrational, provided that the mitigation measures are reasonable, technically supported, and capable of implementation. In this regard, the final EIAr identified a range

of mitigation and contingency measures, including well-controlled systems, blowout preventers, capping systems, spill response measures, well-specific oil spill modelling, dispersant capability, coordinated response exercises, and contingency planning.

- 2.2.55. I note the appellants further challenged the adequacy of the Oil Spill Drift Modelling (OSDM), particularly the use of two release points and the assumption of a 20-day capping period. However, the applicants provided a reasonable explanation that the selected release points represented both the most likely drilling areas and the environmentally most sensitive worst-case scenarios. The modelling also expressly acknowledged residual uncertainty and recognised that under certain seasonal conditions, unrecovered oil could potentially reach the South African coastline after prolonged periods. The modelling therefore cannot be said to have ignored the possibility of significant impacts.
- 2.2.56. Ultimately, the appellants' challenge is directed less at whether the blowout risk was identified and assessed and more at the conclusions reached by the specialist studies regarding probability, consequence and residual significance. However, the record demonstrates that the risk of a blowout was expressly recognised, modelled and evaluated through specialist investigations. The issue is therefore not whether the risk was considered, but whether the competent authority was entitled to rely on the specialist assessments before it. In the absence of evidence demonstrating that the assessments were irrational, materially deficient or unsupported by the available information, I am not persuaded that the competent authority was precluded from relying on those findings
- 2.2.57. The appellants additionally contend that the EIAr improperly relied upon mitigation measures contained in future OSCP and OWCPs which had not yet been finalised or subjected to public participation. I am not persuaded that the absence of finalised operational contingency plans rendered the EIA process unlawful or fundamentally defective.

- 2.2.58. The fact that project-specific operational contingency plans have not yet been finalised does not mean that the underlying risks and mitigation measures were absent from the EIA process. The final EIAr assessed the environmental consequences of a blowout scenario, identified the mitigation measures required to manage such risks, and required the subsequent preparation of detailed operational plans prior to drilling.
- 2.2.59. In this regard, the applicants correctly point out that these plans are necessarily site-specific and dependent on the final well location, drilling contractor, and operational arrangements. The final EIAr nonetheless identified the requirement for such plans and prescribed detailed parameters for their future development. Importantly, the environmental authorisation itself requires that these plans be submitted prior to the commencement of drilling operations. Neither NEMA nor the 2014 EIA Regulations expressly require project-specific OSCP or OWCPs to be finalised and subjected to public participation before an environmental authorisation may be granted for exploration activities.
- 2.2.60. I further accept that the EIA process was required to assess reasonably foreseeable and potentially significant impacts rather than every conceivable or speculative eventuality. The final EIAr did not disregard low-probability events. On the contrary, the consequences of a worst-case blowout scenario were specifically assessed notwithstanding the stated low probability of occurrence. The precautionary approach does not require the competent authority to assume that the worst conceivable outcome will occur; rather, it requires that potentially significant impacts be identified, assessed and considered in the decision-making process. I am satisfied that this occurred in the present matter. The appellants have not demonstrated that the competent authority ignored relevant considerations or failed to apply the precautionary principle when evaluating the application.
- 2.2.61. With regard to the appellants' criticism of the economic impact assessment, I do not find merit in the argument that the inclusion of economic activity associated with spill

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response rendered the assessment misleading or unlawful. The EIA Regulations require consideration of both positive and negative impacts. The mere identification of economic expenditure arising from response activities does not negate or diminish the environmental harm associated with a spill, particularly where the final EIA separately and expressly assessed the environmental risks of such an event.

- 2.2.62. I note the appellants also raise concerns regarding impacts on Marine Protected Areas (MPAs), Critical Biodiversity Areas (CBAs), and marine conservation objectives. The final EIA, however, specifically assessed impacts on marine ecology and acknowledged the sensitivity of nearby protected areas. The fact that the specialists ultimately concluded that such impacts could be mitigated to acceptable residual levels does not demonstrate that marine conservation considerations were ignored or inadequately considered during the assessment process.
- 2.2.63. Having regard to the above, I am not satisfied that the appellants have demonstrated that the final EIA was fundamentally flawed, that the impact assessment methodology was irrational or legally deficient, or that the competent authority failed to consider relevant environmental impacts before granting the EA. The record reflects that both planned and unplanned impacts were identified, assessed, and considered in accordance with the applicable legislative framework.
- 2.2.64. This ground of appeal is therefore dismissed.

2.3. THIRD GROUND OF APPEAL: INADEQUATE CONSIDERATION OF SECTION 63 OF THE NATIONAL ENVIRONMENTAL MANAGEMENT: INTEGRATED COASTAL MANAGEMENT ACT ² (NEM:ICMA) BY THE COMPETENT AUTHORITY

Submission by the appellants

In support of this ground of appeal, the appellants submit the following:

- 2.3.1. The competent authority failed to adequately consider the requirements of section 63 of NEM:ICMA when granting the EA.
- 2.3.2. Section 63 requires decision-makers to consider a range of factors relating to impacts on coastal public property, the coastal protection zone, socio-economic impacts, irreversible or long-lasting adverse effects, consistency with the conservation of coastal public property for present and future generations, and whether the proposed activity is in the interests of the whole community.
- 2.3.3. The environmental authorisation, however, reflects consideration only of limited factors, namely the public participation process, the assessment of potential impacts on the coastal environment, and the effects of coastal environmental processes on the project.
- 2.3.4. Neither the final EIA nor the DG's decision demonstrates meaningful engagement with critical section 63 considerations, particularly whether the project could result in irreversible or long-lasting adverse effects, whether it would serve the interests of the whole community, and the extent of the applicant's past compliance with similar authorisations.
- 2.3.5. The competent authority failed to appreciate his obligations under NEM:ICMA as the State's public trustee of coastal public property.
- 2.3.6. In terms of sections 11 and 12 of the Act, coastal public property is held in trust for the citizens of South Africa, and the State is required to conserve, protect and manage it in the interests of the community as a whole and for the benefit of present and future generations.

² Act 24 of 2008.

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- 2.3.7. The Act specifically prioritises collective public interests, long-term environmental sustainability, and the interests of living organisms dependent on the coastal environment.
- 2.3.8. The competent authority did not consider whether granting the authorisation was consistent with these trustee obligations.
- 2.3.9. Although the draft EIAr identified NEM:ICMA as applicable legislation, it did not contain any substantive assessment of the Act's requirements.
- 2.3.10. In response to comments raised during the PPP, the EAP stated that consideration of section 63 was the responsibility of the competent. The appellants submit that the competent authority could not properly discharge this duty without adequate information and assessment being placed before it by the applicant.
- 2.3.11. The competent authority conflated the specific requirements of section 63 with the broader assessment obligations under NEMA and the 2014 EIA Regulations, without giving proper attention to the distinct objects and protections contained in NEM:ICMA.
- 2.3.12. While the DG's reasons briefly summarised some section 63 considerations, there is no evidence that he meaningfully considered all relevant factors or the State's obligations under sections 12 and 21 of NEM:ICMA.
- 2.3.13. The decision to grant the environmental authorisation was taken without proper regard to the statutory duties and protections imposed by NEM:ICMA.

Response by the applicants

In response to this ground of appeal, the applicants submitted the following:

- 2.3.14. They deny that the competent authority failed to consider the requirements of section 63 of NEM:ICMA or that the final EIAr inadequately addressed the Act.
- 2.3.15. Section 4.7 of the final EIAr provides an overview of NEM:ICMA and that each of the factors listed in section 63 was assessed throughout the final EIAr, with impacts summarised in the report. This information was available both to the CA and to I&APs during the PPP.

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- 2.3.16. The final EIAr comprehensively addressed all relevant section 63 considerations, including impacts on coastal public property, marine sensitive environments, socio-economic impacts, pollution risks, coastal environmental processes, and the need and desirability of the project.
- 2.3.17. They provided references to various sections of the final EIAr and specialist studies to demonstrate where each section 63 factor was considered.
- 2.3.18. The appellants' assertion that the competent authority failed to apply his mind to section 63 is rejected.
- 2.3.19. Decision-makers are not required to explicitly list every subsection or factor considered in reaching a decision, particularly given the extensive legislative framework applicable to environmental authorisations.
- 2.3.20. The fact that some section 63 considerations are expressly recorded in the environmental authorisation demonstrates that the competent authority did consider the requirements of NEM:ICMA alongside the broader framework of NEMA and the EIA Regulations.
- 2.3.21. NEM:ICMA must be interpreted consistently with NEMA and the constitutional principle of sustainable development. In their view, environmental decision-making requires a balanced consideration of environmental, social and economic impacts, rather than a preservationist approach that excludes development.
- 2.3.22. The concept of the *"interests of the whole community"* includes both environmental protection and the sustainable use of coastal resources for economic and social benefit.
- 2.3.23. In relation to the appellants' concerns regarding irreversible or long-term impacts, it is submitted that section 9.3.1 of the final EIAr assessed impacts arising from planned and unplanned events, and that the appellants provided no evidence demonstrating inadequacies in those assessments.
- 2.3.24. Regarding the appellants' contention that the DG failed to consider the applicant's history of compliance with similar authorisations, the applicants rely on section 24O of NEMA, arguing that any material non-compliance would have been raised by relevant organs of state during the consultation process. As no such concerns were raised, the applicants submit that there was no basis to infer past non-compliance.

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- 2.3.25. The applicants also reject the allegation that the DG failed to consider whether the project would be in the interests of the whole community.
- 2.3.26. They contend that these considerations were addressed holistically throughout the final EIAr, including in sections dealing with need and desirability, socio-economic impacts, cultural heritage and marine ecology, and that the competent authority considered these factors in reaching the decision.
- 2.3.27. Notwithstanding the above, it is maintained that the competent authority was provided with all relevant information necessary to fulfil its obligations under NEM:ICMA, including the State's obligations under sections 11 and 12 relating to coastal public property.
- 2.3.28. The final EIAr complied with NEMA, the EIA Regulations and section 63 of NEM:ICMA, and that the environmental authorisation was therefore lawfully granted.

EVALUATION (Reasons for the Decision)

- 2.3.29. The crux of this ground of appeal is whether the competent authority, in granting the environmental authorisation, properly considered and applied the requirements of section 63 of the NEM:ICMA, including the State's obligations as trustee of coastal public property, or whether the decision was taken without adequate regard to the statutory factors prescribed under that Act.
- 2.3.30. The appellants contend that the competent authority failed to meaningfully consider several mandatory section 63 factors, particularly whether the proposed exploration activities may result in irreversible or long-lasting adverse impacts on the coastal environment, whether the activity would be contrary to the interests of the whole community, and whether the decision accords with the State's trustee obligations under sections 11 and 12 of NEM:ICMA. The appellants further submit that the final EIAr merely identified NEM:ICMA as applicable legislation without substantively assessing its requirements, and that the DG conflated the obligations under NEM:ICMA with the broader framework of NEMA and the EIA Regulations.

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- 2.3.31. Having considered the appeal submissions, the applicants' response, the final EIAr and the reasons for decision on pages 15 to 20 of the environmental authorisation, this ground of appeal is not persuasive.
- 2.3.32. The record demonstrates that NEM:ICMA and section 63 thereof were expressly identified and considered in the final EIAr. Pages 43 to 44 of the final EIAr contain a dedicated discussion of NEM:ICMA, including its objects, the State's trustee obligations, the duty of care, and the factors listed in section 63 that must be considered by the CA in relation to coastal activities. The final EIAr specifically records that the CA must consider these factors together with the findings of the EIA process, including impacts on marine sensitive environments, socio-economic impacts, pollution risks, public participation outcomes, and the need and desirability of the project.
- 2.3.33. Additionally, the applicants correctly point out that the final EIAr assessed the relevant section 63 considerations throughout the report and supporting specialist studies. The final EIAr included assessments relating to marine ecology, the socio-economic impacts, cultural heritage, environmental risks, coastal sensitivities, alternatives, need and desirability, and public participation. The impacts associated with planned and unplanned events were also assessed in the relevant impact assessment sections. While the final EIAr may not have provided a separate stand-alone chapter expressly analysing each subsection of section 63 sequentially, the relevant considerations were substantively addressed within the broader EIA assessment.
- 2.3.34. In this regard, I note Marine Biodiversity Specialist Assessment was undertaken by Pisces Environmental Services (Pty) Ltd. I note on page 255 of this report, the specialist reported that *"in the unlikely event of a spill, the impacts on the marine fauna before mitigation are thus considered to be of MEDIUM significance in the case of condensate and HIGH significance in the case of crude oil. It must be emphasised that the likelihood of a blowout occurring is extremely low."* I note that pages 255 to 256 provided mitigation measures to manage the identified impacts. The specialist further stated that with the

implementation of the best management practices, the residual impact on pelagic fish and larvae, seabirds, marine mammals and turtles would still be of moderate to high intensity, but the extent and duration would decrease. Overall, the residual impacts would be of MEDIUM significance. On page 258 the specialist stated that the residual impacts on marine habitats and communities associated with the unlikely event of an oil spill or other unplanned events are summarised in the Table on page 258 to 261, and the main mitigation measures are listed thereof.

- 2.3.35. Moreover, I note the appellants' argument appears to place undue emphasis on the absence of explicit reference to every subsection of section 63 in the DG's reasons for decision. The issue is not whether the decision-maker expressly reproduced every subsection of section 63 of ICMA in the reasons for decision, but whether the record demonstrates that the information necessary to evaluate the section 63 considerations was before the competent authority and was considered in the decision-making process. In addition, ICMA must be interpreted and applied within the broader framework of NEMA. The question is not whether the section 63 considerations were addressed in a separate stand-alone assessment, but whether the information necessary to evaluate those considerations formed part of the environmental assessment record and was placed before the competent authority. In the present matter, I am satisfied that the relevant information relating to coastal public property, marine ecological impacts, socio-economic impacts, environmental risks, mitigation measures and broader sustainability considerations was before the competent authority and formed part of the environmental assessment process. This is unlike circumstances where such considerations are absent or cannot be discerned from the record.
- 2.3.36. In this regard, the environmental authorisation and final EIAr indicate that the CA considered impacts on the marine and coastal environment, socio-economic impacts, public participation outcomes, mitigation measures, cumulative impacts, and the broader objectives of sustainable development. The appellants have not demonstrated that any specific mandatory factor was entirely ignored or excluded from consideration. Rather,

their complaint is primarily that the DG did not expressly articulate each factor in detail in the reasons for decision.

- 2.3.37. The appellants' submission that the DG failed to consider the "interests of the whole community" is also not supported by the record. The final EIAr considered socio-economic impacts, need and desirability, marine ecological impacts, and broader sustainability considerations. NEM:ICMA must furthermore be interpreted consistently with section 24 of the Constitution and the principles of sustainable development under NEMA, which require the balancing of environmental protection with socially and economically justifiable development. The concept of the "interests of the whole community" does not require the preservation of the coastal environment in an untouched state, but rather requires consideration of whether the activity can proceed in an ecologically sustainable manner with appropriate mitigation.
- 2.3.38. Similarly, the appellants' contention that the state's trustee obligations under sections 11 and 12 of NEM:ICMA were ignored is not borne out by the record. The final EIAr on page 43, expressly references the state's obligations as trustee of the coastal zone and acknowledges the requirement to protect coastal public property for present and future generations. These considerations formed part of the legislative framework placed before the competent authority.
- 2.3.39. The appellants further allege that there was inadequate consideration of irreversible or long-lasting adverse impacts. However, the final EIAr included specialist assessments of marine ecological impacts, environmental risks, and mitigation measures, including consideration of planned and unplanned events. This is evident in the information contained on pages 255 to 261 of the said report. The appellants have not provided sufficient evidence demonstrating that these assessments were materially deficient or that the competent authority failed to consider them.

- 2.3.40. The appellants further contend that insufficient regard was had to the applicants' history of compliance with similar environmental authorisations. However, no evidence has been placed before me demonstrating any material history of non-compliance by the applicants. Accordingly, I find that the appellants have not established that the competent authority failed to consider any relevant compliance history material to the application before him.
- 2.3.41. While it may have been preferable for the competent authority to more explicitly articulate its consideration of each section 63 factor in the reasons for decision, the absence of detailed reference to every statutory consideration does not, in itself, establish a failure to apply the mind or a reviewable irregularity. The totality of the record indicates that the relevant information was before the CA and that NEM:ICMA considerations were integrated into the broader environmental assessment process.
- 2.3.42. Accordingly, this ground of appeal lacks sufficient merit to warrant interference with the decision to grant the EA.
- 2.3.43. This ground of appeal is therefore dismissed.

2.4. FOURTH GROUND OF APPEAL: FAILURE TO ADEQUATELY ASSESS THE NO-GO OPTION AND INSUFFICIENT BASELINE DATA AS WELL AS A MISAPPLICATION OF THE PRECAUTIONARY PRINCIPLE.

Submission by the appellants

In support of this ground of appeal, the appellants submit, in summary, the following:

- 2.4.1. The assessment of the no-go alternative in the final EIAr was fundamentally flawed because it was evaluated primarily in terms of the loss of potential economic and

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- developmental benefits associated with the proposed exploration activities, without adequately balancing those benefits against the potential environmental risks and costs.
- 2.4.2. The final EIAr characterised the no-go alternative as a “*low negative*” impact on the basis that it would result in lost opportunities, including potential oil and gas discoveries, economic benefits, energy security contributions, and opportunities for scientific research.
- 2.4.3. This assessment failed to meaningfully consider the potentially significant environmental impacts that may arise from exploration and possible future production activities.
- 2.4.4. As a result, it submitted that the final EIAr did not properly identify or assess the best practicable environmental option as required under NEMA and the EIA Regulations.
- 2.4.5. The CA’s decision to reject the no-go alternative was flawed because it relied excessively on speculative economic opportunity costs while failing to adequately consider material environmental risks and uncertainties.
- 2.4.6. In addition, the appellants contend that appropriate and up-to-date scientific information should be available to inform a comprehensive assessment of impacts, before a decision can be made whether to authorise a harmful activity.
- 2.4.7. A comprehensive and accurate assessment of the potential impacts requires a robust understanding of the current state and potential stressors.
- 2.4.8. Without a thorough understanding of the current state and potential sensitivities of marine ecosystems, it is not possible to evaluate the significance of future impacts accurately and to accurately assess the cumulative environmental effects.
- 2.4.9. The final EIAr failed to apply the precautionary principle as required under NEMA.
- 2.4.10. It is further submitted that where there is scientific uncertainty or insufficient evidence regarding environmental impacts, decision-makers are required to adopt a risk-averse and cautious approach that considers the full range of possible consequences.
- 2.4.11. The Marine Ecology Report repeatedly acknowledges substantial scientific uncertainty regarding deep-sea marine ecosystems, particularly benthic environments within the area of interest.
- 2.4.12. The report notes that sampling beyond certain depths has not taken place, that deep-sea benthic ecosystems are poorly understood, and that there is very limited information

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regarding the sensitivity of marine organisms and ecosystems to drilling discharges or the long-term ecological consequences of exploration activities.

- 2.4.13. Despite these acknowledged knowledge gaps, the appellants argue that the final EIAr nevertheless concluded that most drilling impacts on benthic species would be of “low” significance.
- 2.4.14. The final EIAr effectively treated the absence of scientific data as evidence of absence of harm, rather than recognising uncertainty as a basis for adopting a precautionary approach. This resulted in an underestimation of potential long-term, cumulative and ecosystem-level impacts on deep-sea biodiversity.
- 2.4.15. The Marine Ecology Report acknowledges limited scientific information regarding offshore marine mammal populations, distribution patterns, and long-term effects of underwater noise pollution.
- 2.4.16. The report also recognises uncertainty regarding population trends and the potential consequences of prolonged disturbance or displacement from important feeding or breeding areas.
- 2.4.17. Consequently, the final EIAr failed to adequately apply the precautionary principle in circumstances where significant uncertainty existed regarding the environmental impacts of exploration activities on marine ecosystems and species.

Response by the applicants

In response to this ground of appeal, the applicants submit as follows:

- 2.4.18. The appellants' claims are unsubstantiated and unsupported by evidence, and that the final EIAr adequately assessed the no-go alternative, marine ecological impacts, cumulative impacts, and uncertainties associated with the proposed activities.
- 2.4.19. With regard to the no-go alternative, the applicants state that section 9.5 of the final EIAr specifically assessed the implications of not proceeding with the proposed exploration activities.

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- 2.4.20. The no-go alternative would preserve the existing environmental state of the drilling sites but would also result in the loss of potential benefits, including the opportunity to identify oil and gas resources, contribute to South Africa's economy and energy security, undertake further scientific research, and generate economic benefits at local, regional and national level.
- 2.4.21. The alternatives to the proposed activity were therefore properly considered and assessed, and that the CA was provided with sufficient information to make an informed decision.
- 2.4.22. The final EIAr complied with the requirements of NEMA, the EIA Regulations and PAJA by placing all relevant information before the competent authority.
- 2.4.23. Cumulative impacts were assessed in section 9.4 of the final EIAr, while section 8 described the environmental baseline and receiving environment using the best available scientific data.
- 2.4.24. The final EIAr also assessed the potential impacts associated with planned and unplanned discharges, including oil spills and their effects on the marine environment.
- 2.4.25. In response to the appellants' allegation that long-term impacts were not considered, the applicants point out that the final EIAr's impact assessment methodology expressly considered duration as a criterion and assessed impacts ranging from immediate to permanent.
- 2.4.26. The Marine Ecology Report identified several impacts extending beyond the duration of the project, including long-term and permanent impacts associated with seabed disturbance, drilling discharges, residual infrastructure, non-native species introductions, and potential oil spills. The applicants therefore reject the claim that the final EIAr ignored impacts occurring beyond the operational life of the project.
- 2.4.27. Regarding the precautionary principle, the applicants submit that the EIA process inherently involves predictive assessments based on the best available information and cannot depend on absolute scientific certainty.
- 2.4.28. The specialist studies acknowledged existing data gaps, assumptions, uncertainties and limitations, and that these were transparently disclosed in the final EIAr together with confidence levels for each assessment.

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- 2.4.29. The precautionary principle under NEMA does not require decision-makers to halt development merely because uncertainties exist but rather requires a risk-averse and cautious approach that takes account of the limits of current knowledge. According to the applicants, such an approach was adopted throughout the final EIAr.
- 2.4.30. In response to concerns regarding deep-sea benthic environments, the applicants acknowledge that scientific knowledge regarding deep-water ecosystems is limited. However, they state that the final EIAr relied on the best available information and incorporated mitigation measures specifically designed to address these uncertainties.
- 2.4.31. These measures include mandatory pre-drilling seabed surveys, ecological baseline surveys, mapping of sensitive habitats within 1 000 metres of proposed well sites, collaboration with DFFE and SANBI, relocation of well sites where sensitive habitats are identified, and operational controls aimed at minimising impacts on vulnerable benthic communities.
- 2.4.32. The applicants reject the appellants' assertion that the final EIAr treated unknown impacts as non-existent.
- 2.4.33. It is submitted that the final EIAr expressly assessed impacts on benthic communities and recognised that potential impacts would likely be localised in extent, especially when combined with mitigation measures and avoidance of sensitive habitats.
- 2.4.34. With regard to marine mammals and underwater noise impacts, the final EIAr identified and assessed these impacts using specialist studies, including an Underwater Sound Transmission Loss Modelling Study.
- 2.4.35. The final EIAr acknowledged data gaps regarding marine mammal populations and trends but nevertheless concluded that the impacts would be of low significance due to the short duration and limited spatial extent of the exploration activities, together with the implementation of mitigation measures.
- 2.4.36. Consequently, the final EIAr adopted a precautionary and scientifically informed approach, relied on the best available information, adequately disclosed uncertainties and limitations, and provided the CA with sufficient information to assess the environmental risks associated with the proposed exploration activities.

EVALUATION (Reasons for the Decision)

- 2.4.37. The essence of this ground of appeal relates to whether the final EIA adequately assessed the no-go alternative and whether the environmental assessment properly applied the precautionary principle in circumstances where scientific uncertainty exists regarding potential impacts on the marine environment, particularly deep-sea benthic ecosystems and marine mammals.
- 2.4.38. I note the appellants contention that the no-go alternative was improperly dismissed on the basis of speculative economic opportunity costs, without adequately weighing the potential environmental risks and uncertainties associated with exploration drilling. They further argue that the final EIA underestimated environmental risks by relying on insufficient baseline information, inadequately assessing cumulative and long-term impacts, and failing to adopt a sufficiently cautious approach in relation to scientific uncertainty.
- 2.4.39. From the onset, I have noted that the issues relating to cumulative impacts form the subject of a separate and distinct ground of appeal, which will be considered and assessed comprehensively under that ground of appeal. In the circumstances, it would be premature and potentially duplicative to engage extensively with the merits of the cumulative impacts assessment under the present ground of appeal. Accordingly, my assessment under this ground will be confined to the issues relating to the adequacy of the assessment of the no-go alternative and the application of the precautionary principle.
- 2.4.40. Regarding the no-go alternative, the Constitutional Court has repeatedly recognised that environmental decision-making requires the balancing of environmental protection and socio-economic development through the principle of sustainable development. In *Fuel Retailers Association of Southern Africa v Director-General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province and*

Others 2007 (6) SA 4 (CC), the Court emphasised that environmental protection and development are inextricably linked and that neither automatically overrides the other. This approach was reaffirmed in *Sustaining the Wild Coast NPC and Others v Minister of Mineral Resources and Energy and Others*.

2.4.41. The assessment of the no-go alternative must be undertaken within the framework of the environmental management principles in NEMA. The fact that the no-go option avoids environmental impacts does not automatically render it the preferred alternative. Rather, the competent authority is required to consider and balance the environmental, social and economic consequences of both proceeding with and not proceeding with the proposed activity.

2.4.42. Against this backdrop, I note the following:

2.4.42.1. Page 76 of the final EIAr states “*the no go alternative would imply that no exploration activities are undertaken. As a result, the opportunity to identify potential oil and gas resources within the Block 3B/ 4B and proposed AOI would not exist. This will negate the potential negative and positive impacts associated with the proposed exploration activities.*” It is evident that the final EIAr did consider and assess the implications of not proceeding with the proposed activities.

2.4.42.2. Section 9.5 of the final EIAr expressly identified both the environmental benefits associated with the no-go option, namely the avoidance of exploration-related impacts, and the potential socio-economic and strategic opportunity costs associated with not proceeding, including impacts on economic development, energy security and research opportunities.

2.4.42.3. Page 479 of the final EIAr, records that the no-go alternative would entail that no survey or exploration activities are undertaken and, accordingly, that the negative environmental impacts associated with the proposed activities would not materialise. However, the adoption of the no-go alternative would also result

in the loss of potential positive impacts associated with the proposed exploration activities, including the opportunity to identify potential oil and gas resources within the application area, which may contribute to the economy and energy security of South Africa, the opportunity to conduct independent research on the deep-water environments of the West Coast, and potential economic benefits to the local, regional and national economy. As no mitigation measures are applicable to the no-go alternative, the impact significance remains low both before and after mitigation, and the overall significance rating therefore remains unchanged.

- 2.4.43. The fact that the final EIAr ultimately did not prefer the no-go option does not, in itself, indicate a defective alternatives assessment. Under NEMA, the purpose of an alternatives assessment is not to guarantee selection of the no-go option, but to ensure that feasible alternatives and their respective impacts are identified and comparatively assessed so that the CA may make an informed decision.
- 2.4.44. The appellants' argument that the final EIAr failed to meaningfully weigh environmental costs against economic benefits is also not fully supported by the record before me. The final EIAr contains extensive specialist studies assessing marine ecology, fisheries, underwater noise, oil spill risks, socio-economic impacts and cumulative impacts. While the appellants disagree with the conclusions reached by the specialists, disagreement with the weight assigned to impacts does not establish that the impacts were ignored or not assessed.
- 2.4.45. I further note the appellants allege that the final EIAr failed to adequately assess cumulative impacts, baseline conditions, oil spill risks and long-term impacts. However, the final EIAr and associated specialist reports contain dedicated sections dealing with these matters, including cumulative impact assessments, descriptions of the receiving environment, planned and unplanned discharge scenarios, and impact duration classifications ranging from immediate to permanent impacts. As stated above, I will deal

with those issues relating to cumulative impacts under my evaluation of that particular ground of appeal.

- 2.4.46. Nonetheless, I note that the Marine Ecology Report expressly assessed impacts extending beyond the operational life of the project, including long-term impacts associated with drilling discharges, seabed disturbance and residual infrastructure. The executive summary of the report clearly states *"Block 3B/4B falls into the Atlantic Offshore Bioregion. Although there is a lack of knowledge of the community structure and diversity of benthic macrofauna off the shelf edge, the South Atlantic unclassified slopes and unclassified abyssal unconsolidated habitat types have been rated as 'least threatened', reflecting the great extent of these habitats in the South African Exclusive Economic Zone (EEZ). Two geological features of note in the vicinity of the proposed area of interest are Child's Bank, situated ~50 km due east of the area of interest for exploration drilling at about 31°S, and Tripp Seamount situated at about 29°40'S, ~25 km north-northwest of the area of interest. Features such as banks and seamounts often host deepwater corals and boast an enrichment of bottom-associated communities relative to the otherwise low profile homogenous seabed habitats. Due to its offshore location, plankton abundance is expected to be low, with the major fish spawning and migration routes occurring further inshore on the shelf. The dominant fish in the area would include the migratory large pelagic species such as tunas, billfish and pelagic sharks. Seabirds will be dominated by the pelagic species such as albatross, petrels and shearwaters. Migrating turtles in the area would include the leatherback and loggerhead turtles. Marine mammals likely to occur offshore include a variety of baleen whales including humpbacks, Antarctic minke, fin and sei whales. Toothed whales will include sperm and killer whales, as well as a variety of beaked whales and dolphins. The licence area overlaps with the Orange Shelf Edge MPA and the Orange Seamount and Canyon Complex EBSA. The Area of Interest for drilling, however, specifically avoids these areas."*

- 2.4.47. The principal issue raised by the appellants concerns the application of the precautionary principle in the context of acknowledged scientific uncertainty regarding deep-sea ecosystems and marine mammals. The specialist studies indeed recognise significant limitations in available scientific knowledge relating to deep-water benthic communities, ecological functioning, and long-term ecosystem responses to drilling activities. Moreover, section 12 of the final EIAr on page 506 provides limitations and assumptions of the development.
- 2.4.48. Considering the above, the appellants are correct that scientific uncertainty exists. However, the existence of uncertainty does not necessarily render the assessment inadequate or unlawful. Moreover, NEMA requires a risk-averse and cautious approach that takes into account the limits of current knowledge. The final EIAr reflects that these uncertainties were expressly acknowledged by the specialists, that assumptions and confidence levels were identified, and that mitigation and adaptive management measures were incorporated to address identified risks and data gaps.
- 2.4.49. The precautionary principle does not require decision makers to refrain from authorising an activity whenever scientific uncertainty exists. Rather, it requires a risk-averse and cautious approach that considers the limits of current knowledge and seeks to avoid or minimise environmental harm through appropriate assessment and mitigation measures. *Fuel Retailers Association of Southern Africa v Director-General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province and Others* 2007 (6) SA 4 (CC) and *The Green Connection NPC v Minister of Forestry, Fisheries and the Environment and Others* support this approach
- 2.4.50. It is well established that environmental impact assessments are predictive exercises undertaken on the basis of the best available scientific information and cannot depend upon complete scientific certainty in every scenario. The existence of scientific uncertainty does not necessarily render an assessment deficient. The relevant question

is whether the uncertainty has been identified, disclosed and considered, and whether appropriate mitigation and management measures have been proposed.

- 2.4.51. Importantly, the final EIAr and EMPr require pre-drilling seabed surveys, ecological baseline assessments, mapping of sensitive habitats, collaboration with scientific institutions and regulators, relocation of well sites where sensitive habitats are identified, and measures aimed at minimising direct seabed impacts. These measures demonstrate an attempt to operationalise a precautionary approach rather than disregard uncertainty altogether.
- 2.4.52. The appellants' submission that scientific uncertainty may justify a more conservative assessment is not entirely without merit. However, the presence of uncertainty does not, without more, compel refusal of an application. The relevant question is whether the uncertainty was identified, disclosed and considered, and whether appropriate mitigation, monitoring and adaptive management measures were proposed to address such uncertainty. While aspects of the specialist assessments may reasonably remain open to scientific debate, the final EIAr does not ignore uncertainty, nor does it proceed on the basis that unknown impacts do not exist. Rather, it recognises limitations in available information and seeks to address them through mitigation, monitoring and pre-drilling investigations.
- 2.4.53. Similarly, with regard to marine mammals and underwater noise impacts, the final EIAr acknowledges data limitations and uncertainties regarding population trends and behavioural responses. Specialist acoustic modelling and mitigation measures were nevertheless undertaken, and the impacts were assessed in the context of the temporary and localised nature of the proposed exploration activities.
- 2.4.54. In evaluating these issues, it is also important to distinguish between scientific disagreement and legal inadequacy. In exercising my appellate powers, I am required to determine whether the information before me is sufficient to support an informed decision

in accordance with NEMA and the EIA Regulations. NEMA does not require absolute scientific certainty before an activity may be authorised. Rather, it requires a risk-averse and cautious assessment that takes account of the limits of current knowledge. On the information before me, I am satisfied that the specialist studies identified the relevant risks, disclosed the key uncertainties and limitations, and proposed mitigation and management measures intended to address those uncertainties.

- 2.4.55. While aspects of the specialist assessments may reasonably remain open to scientific debate, the appellants have not demonstrated that the final EIAr failed to assess the no-go alternative altogether, ignored material impacts, or wholly failed to apply the precautionary principle as contemplated under NEMA.
- 2.4.56. Having considered the appeal submissions, the applicants' responses, the final EIAr and specialist reports, this ground of appeal is not sufficient to warrant setting aside the EA.
- 2.4.57. Therefore, this ground of appeal is dismissed.

2.5. FIFTH GROUND OF APPEAL: INADEQUATE NEED AND DESIRABILITY ASSESSMENT.

Submission by the appellants

In support of this ground of appeal, the appellants submit the following:

- 2.5.1. The EIAr and the decision to grant environmental authorisation are fundamentally deficient in their assessment of the need and desirability of the proposed exploration activities.
- 2.5.2. The assessment is incomplete and legally flawed because it fails to adequately consider the full lifecycle implications of the proposed project, particularly the reasonably foreseeable consequences of potential future oil and gas production.

- 2.5.3. In this regard, exploration activities are intrinsically linked to future production, as the purpose of exploration is to identify commercially viable reserves for extraction. It is therefore artificial and irrational to assess need and desirability solely in relation to the exploration phase without also considering the environmental, climatic, and socio-economic impacts associated with downstream production activities.
- 2.5.4. The EIAr is deficient because it does not properly assess the climate change implications of potential future production, including greenhouse gas emissions over the full lifecycle of oil and gas development.
- 2.5.5. This omission results in an incomplete understanding of the project's overall environmental consequences and undermines the competent authority's ability to properly assess whether the activity is needed and desirable in terms of the NEMA and the applicable Need and Desirability Guideline.
- 2.5.6. A central contention is that the EIAr relies on the assumption that natural gas may function as a "transition fuel" within South Africa's energy system. The appellants dispute this assumption, arguing that recent scientific and economic literature indicates that fossil gas may have comparable or higher greenhouse gas impacts than coal when methane leakage and lifecycle emissions are considered.
- 2.5.7. Further, reliance on outdated or contested energy planning assumptions renders the need and desirability justification unreliable.
- 2.5.8. The assessment fails to adequately consider South Africa's climate change commitments under the Paris Agreement and its remaining carbon budget.
- 2.5.9. Any future oil and gas production resulting from successful exploration could materially undermine these commitments and result in significant long-term environmental and economic harm.
- 2.5.10. In addition, the EIAr overstates the potential economic benefits of future oil and gas development, while failing to adequately consider countervailing risks such as stranded asset risk, infrastructure lock-in, exposure to future carbon border adjustment mechanisms, and declining global demand for fossil fuels due to the energy transition.
- 2.5.11. The appellants rely on recent jurisprudence, including *Sustaining the Wild Coast NPC v Minister of Mineral Resources and Energy and Others*, to argue that climate change

considerations and downstream impacts of fossil fuel development are legally relevant at the exploration stage.

- 2.5.12. A proper application of NEMA requires a comprehensive assessment of need and desirability that includes foreseeable production-related impacts.
- 2.5.13. Irrevocably, the competent authority failed to consider all relevant factors required under section 24O of NEMA and the 2017 Need and Desirability Guideline, particularly the broader environmental and climate implications of the proposed activity.
- 2.5.14. The decision to grant environmental authorisation is irrational, procedurally deficient, and not properly informed by a legally compliant assessment of need and desirability.

Response by the applicant

In reply, the applicants submit the following:

- 2.5.15. The final EIAr contains a comprehensive and compliant assessment of the need and desirability of the proposed exploration activities, as required under the NEMA and the 2014 EIA Regulations.
- 2.5.16. Section 5 of the final EIAr specifically addresses need and desirability and is supported by the broader policy and legislative context set out in Section 4 of the final EIAr.
- 2.5.17. The appellants' case impermissibly seeks to conflate exploration activities with potential future production and utilisation of hydrocarbons.
- 2.5.18. They emphasise that the current application relates solely to exploration, and not production, and that it is neither legally required nor methodologically feasible to assess the environmental impacts of speculative future production activities at this stage, where no resource has yet been defined.
- 2.5.19. Any assessment of production-related impacts, including greenhouse gas emissions and downstream use, will arise only in the context of a future, separate environmental authorisation process should production be proposed.
- 2.5.20. In relation to climate change considerations, it is submitted that the final EIAr includes a specialist climate change assessment which evaluated greenhouse gas emissions

associated with the proposed exploration activities themselves and found these impacts to be of low significance.

- 2.5.21. The scope 3 emissions associated with potential future production cannot be meaningfully assessed at this stage and would fall within a subsequent production-related application, should such activities be pursued.
- 2.5.22. With regard to policy considerations, the applicants rely on existing national energy planning instruments, including the Integrated Resource Plan 2019 (IRP 2019) and the Nationally Determined Contributions under the Paris Agreement, which they state recognise a role for natural gas in South Africa's future energy mix as a transitional fuel.
- 2.5.23. The final EIAr appropriately reflects this policy context and that exploration is necessary to determine whether viable resources exist to inform future energy planning and policy development.
- 2.5.24. The need and desirability assessment was properly informed by a specialist economic impact assessment, which considered both positive and negative socio-economic effects of the proposed exploration activities.
- 2.5.25. Concerns regarding stranded assets, sovereign debt implications, and broader economic transition risks fall outside the reasonable scope of a project-specific environmental authorisation for exploration and are more appropriately addressed at a later stage, should production be contemplated.
- 2.5.26. The applicants also dispute the assertion that cumulative or downstream impacts have been excluded, contending that the final EIAr assessed impacts relevant to the "project" as defined, namely exploration activities only, and that inclusion of speculative production impacts would be premature and inconsistent with the staged regulatory framework under NEMA and the Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA).
- 2.5.27. The final EIAr and supporting documentation placed before the CA provided sufficient information to enable a lawful determination of need and desirability for the exploration activities, including consideration of environmental, social, and economic factors relevant to the proposed project, and that the decision was therefore properly informed and legally compliant.

EVALUATION (Reasons for the Decision)

- 2.5.28. The substance of this ground of appeal concerns whether the final EIAr adequately assessed the need and desirability of the proposed exploration activities, particularly in light of climate change considerations, South Africa's energy transition commitments, and the potential downstream impacts associated with any future oil and gas production.
- 2.5.29. In this regard, the appellants contend that the final EIAr adopted an unduly narrow approach by confining the need and desirability assessment to the exploration phase only, while excluding consideration of the reasonably foreseeable impacts of future production and utilisation of any discovered hydrocarbon resources. According to the appellants, exploration activities cannot be meaningfully separated from production because exploration is undertaken precisely to enable eventual extraction and commercialisation of oil and gas resources. The appellants further contend that the final EIAr's reliance on natural gas as a "*transition fuel*" is scientifically outdated, inconsistent with South Africa's climate commitments, and unsupported by current evidence demonstrating the viability of renewable energy alternatives. They also argue that the final EIAr failed to adequately assess lifecycle greenhouse gas emissions, downstream climate impacts, stranded asset risks, and the implications of additional fossil fuel development for South Africa's remaining carbon budget and net-zero commitments.
- 2.5.30. The applicants, on the other hand, submit that the final EIAr complies with the requirements of NEMA, the EIA Regulations, and the Guideline on Need and Desirability. They contend that the present application relates solely to exploration activities and not production activities, and that any production-related impacts would require separate authorisations and separate environmental assessments at a later stage should commercially viable resources be identified. The applicants further rely on existing national energy policy instruments, including the Integrated Resource Plan 2019 (IRP 2019), which recognises a role for natural gas within South Africa's future energy mix. The applicants also submit that the climate change impacts associated with the

exploration activities themselves were assessed by specialists and found to be of low significance due to the temporary and limited nature of the proposed activities.

- 2.5.31. Having considered the submissions of the parties, the need and desirability information provided on pages 63 to 75 of the EIAr, and the applicable legal framework, I am satisfied that the need and desirability assessment in the final EIAr expressly recognises that the proposed activities are limited to exploration and do not authorise production activities. Section 5 of the final EIAr clearly records that the project aims to identify oil and gas resources only and that the identification and assessment of impacts are confined to exploration activities. The final EIAr further explains that the proposed exploration may provide information relevant to future energy planning and policy considerations, particularly within the context of the IRP 2019 and South Africa's broader energy transition objectives.
- 2.5.32. The final EIAr additionally considers the broader policy context, including South Africa's dependence on imported oil and gas, energy security considerations, and the economic rationale associated with potential resource discovery. It also records that greenhouse gas emissions associated with the exploration phase were assessed as part of the EIA process and found to be limited due to the temporary duration and restricted scope of the activities.
- 2.5.33. Page 505 of the final EIAr records that *"based on the findings of the Climate Change Assessment, the following recommendations are made i.e. the means to minimise air emissions from the Project would be achieved by implementing a maintenance plan to ensure all ship engines and boilers receive adequate maintenance to minimise unburnt fuel released to the atmosphere and maximize energy efficiency. NEMAQA also provides for the monitoring and reporting of GHG emissions. As per the National Greenhouse Gas Emission Reporting Regulations and the Methodological Guidelines for Quantifying of GHG Emissions (2022), the IPCC default emission factors are to be used together with country- specific density and calorific values for the fuel used. The Regulations require*

that CO₂ and CH₄ levels (calculated based on Tier 2 or 3 methodologies) be reported on annually via the SAGERS; Carbon tax (Carbon Tax Act (Act 15 of 2019)) needs to be estimated based on the requirements and tax allowances; The Declaration of Greenhouse Gases as Priority Pollutants require certain processes to submit a Pollution Prevention Plan to the Minister for approval. The production process does not involve the emissions of GHG in excess of 100 kt. Thus, although reporting is required via SAGERS, it may be concluded that the current project does not require a Pollution Prevention Plan."

- 2.5.34. Insofar as the appellants argue that the final EIAr was legally required to assess the impacts of future production and downstream combustion activities as part of the present application, I am not persuaded that the omission of such an assessment renders the need and desirability evaluation fatally defective. The statutory framework established under NEMA, the 2014 EIA Regulations and the MPRDA distinguishes between exploration and production activities and contemplates separate authorisation processes for each phase. In *Aukotowa Fisheries Primary Co-operative Limited and Others v Director-General: Department of Mineral and Petroleum Resources and Others*, the Court recognised that environmental assessment obligations must be applied to the activity for which authorisation is sought and not to future activities whose scope, nature and characteristics remain uncertain. I further note that while the Constitutional Court in *Sustaining the Wild Coast NPC and Others v Minister of Mineral Resources and Energy and Others*; *Natural Justice and Another v Minister of Mineral Resources and Energy and Others* recognised that exploration forms part of a broader petroleum development continuum, the Court did not hold that a detailed assessment of undefined future production activities is required at the exploration stage. Rather, the Court emphasised the need for proper consideration of the environmental, social and climate-related implications of the exploration activity that is the subject of the application.

- 2.5.35. At the exploration stage, the existence, scale, commercial viability, location and nature of any potential hydrocarbon resource remain uncertain and speculative. In these

circumstances, a detailed assessment of production-related impacts, including downstream combustion impacts and lifecycle emissions, would necessarily be based on assumptions regarding matters that are presently unknown and may never materialise. Accordingly, I am not persuaded that NEMA or the EIA Regulations required the competent authority to undertake a detailed need and desirability assessment of hypothetical future production activities as part of the present exploration application.

- 2.5.36. Accordingly, the need and desirability assessment before me is directed at the proposed exploration activities. While the final EIA recognises that the discovery of hydrocarbon resources may have future economic and energy-security implications, the existence, nature, scale, location, commercial viability and method of extraction of any potential future resource remain unknown.
- 2.5.37. While the concerns raised by the appellants regarding climate change, stranded assets, lifecycle emissions, and South Africa's transition to lower-carbon energy sources are important and relevant considerations in the broader environmental governance context, many of these considerations would more appropriately arise for detailed assessment should an application for production rights and associated environmental authorisation be pursued in future. Importantly, any future production activities would be subject to a separate EIA process, specialist assessments, and public participation requirements, during which production-related impacts, including lifecycle greenhouse gas emissions and consistency with prevailing climate policy and scientific developments, would require proper consideration.
- 2.5.38. I further note that the final EIA did not entirely disregard climate change considerations. A specialist climate change assessment was undertaken in relation to the proposed exploration activities themselves, and the final EIA acknowledges the evolving nature of South Africa's energy planning framework, including the need for continual reassessment of energy policy in light of technological and scientific developments. The fact that there may be competing scientific, economic or policy perspectives regarding the role of

natural gas within the energy transition does not, in itself, render reliance on prevailing government policy irrational. The competent authority was entitled to take into account the policy framework existing at the time of the decision together with the specialist assessments before it.

2.5.39. The reliance placed by the applicants and the final EIAr on the IRP 2019 and existing government policy recognising a potential role for natural gas as part of the energy transition cannot, in the circumstances, be said to be irrational or legally impermissible. The CA was entitled to consider prevailing government energy policy together with the environmental impacts identified in the final EIAr. Although the appellants dispute the scientific and economic merits of natural gas as a transition fuel, the existence of competing scientific and policy perspectives does not in itself establish that the decision-making process was unlawful or irrational.

2.5.40. In the circumstances, I am satisfied that the final EIAr contained sufficient information to enable the CA to assess the need and desirability of the proposed exploration activities within the scope of the application before it. The appellants have not demonstrated that the need and desirability assessment was so materially deficient as to invalidate the decision to grant the EA.

2.5.41. Accordingly, this ground of appeal is dismissed.

2.6. SIXTH GROUND OF APPEAL: FAILURE TO CONSIDER THE CUMULATIVE IMPACTS OF PRODUCTION ACTIVITIES AND GHG EMISSIONS ASSOCIATED WITH PRODUCTION ACTIVITIES

Submission by the appellants

In support of this ground of appeal, the appellants submit as follows:

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- 2.6.1. The final EIAr failed to adequately assess the cumulative impacts associated with the proposed exploration activities as required under NEMA and the 2014 EIA Regulations.
- 2.6.2. The appellants rely on the definition of “*cumulative impact*” in the EIA Regulations, which requires consideration of past, present, and reasonably foreseeable future impacts of an activity together with impacts associated with related activities.
- 2.6.3. The final EIAr adopted an unduly narrow approach by limiting its assessment to the immediate exploration activities and excluding the cumulative impacts associated with future production-related activities.
- 2.6.4. According to the appellants, exploration and production are intrinsically linked, as the purpose of exploration is ultimately to facilitate commercial oil and gas production.
- 2.6.5. They therefore contend that production-related impacts, including extraction, refining, transport, combustion, and associated greenhouse gas emissions, are reasonably foreseeable consequences of exploration activities and ought to have been considered as part of the cumulative impacts assessment.
- 2.6.6. The final EIAr failed to adequately assess the cumulative effects of multiple existing, approved, and proposed offshore oil and gas activities within the Orange Basin and along the West Coast.
- 2.6.7. They refer to previous seismic surveys, exploratory drilling activities, and proposed future exploration projects in both South African and Namibian waters, including activities by Geodata, TGS, TotalEnergies, Sezigyn, Eco Atlantic, and others.
- 2.6.8. The final EIAr improperly treated each application as an isolated activity and failed to consider the additive and compounding impacts of multiple offshore exploration and production projects on the marine environment.
- 2.6.9. The appellants also raise concerns regarding the cumulative impacts of seismic surveys, sonar operations, drilling activities, and underwater noise pollution on marine ecosystems, including marine mammals, fish species, seabirds, and sensitive ecological areas such as spawning grounds and marine protected areas.
- 2.6.10. Insufficient scientific information exists regarding the long-term cumulative impacts of offshore oil and gas exploration on marine biodiversity and that the proposed mitigation

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measures are inadequate given the dynamic and unpredictable nature of the marine environment.

- 2.6.11. The final EIAr failed to assess the cumulative impacts associated with existing offshore infrastructure, including degradation of historical well plugs and the long-term environmental risks associated with offshore industrialisation of the Orange Basin.
- 2.6.12. The final EIAr expressly declined to assess cumulative impacts associated with future exploration and production activities on the basis that such impacts could not yet be reasonably defined, which the appellants contend is inconsistent with the requirements of NEMA and integrated environmental management principles.
- 2.6.13. The international best practice in offshore oil and gas development requires strategic and integrated environmental assessments that evaluate both exploration and development phases together to enable informed decision-making regarding the full scope of environmental impacts.
- 2.6.14. The final EIAr's failure to adopt such an approach resulted in an incomplete and inadequate cumulative impact assessment.
- 2.6.15. The cumulative impacts assessment in the final EIAr is materially flawed and does not comply with the requirements of NEMA, the 2014 EIA Regulations, and the principles of integrated environmental management.

Response by the applicants

In this ground of appeal, the applicants respond as follows:

- 2.6.16. The final EIAr adequately assessed all impacts relevant to the environmental authorisation sought, namely exploration drilling activities only, and that the appellants' contention that production-related impacts should also have been assessed is legally and factually incorrect.
- 2.6.17. The environmental authorisation granted on 16 September 2024 authorises only exploration drilling activities within Block 3B/4B, consisting of up to five exploration wells

aimed at identifying potential hydrocarbon resources. The authorisation does not permit production activities.

- 2.6.18. Similarly, the exploration right issued under the MPRDA authorises exploration only and not extraction or production.
- 2.6.19. It is submitted that NEMA, the EIA Regulations and the MPRDA establish separate and distinct regulatory and environmental approval processes for exploration and production activities.
- 2.6.20. Exploration activities require an exploration right and an environmental authorisation under Activity 18 of Listing Notice 2, whereas production activities require a separate production right and a separate environmental authorisation under Activity 20 of Listing Notice 2.
- 2.6.21. The legislative framework intentionally distinguishes between exploration and production because they involve different technical processes, environmental impacts and assessment requirements.
- 2.6.22. The purpose of the proposed activities is limited to determining whether hydrocarbons exist within the area of interest and that the final EIAr accordingly confined its assessment to impacts arising from exploration drilling activities.
- 2.6.23. It is further submitted that section 9.3.1 of the final EIAr identifies and assesses both planned and unplanned impacts associated with the proposed exploration programme and that the cumulative impact assessment was undertaken on this basis.
- 2.6.24. The appellants' argument that production impacts are reasonably foreseeable consequences of exploration activities requiring assessment at this stage is rejected.
- 2.6.25. Exploration does not necessarily lead to production, as any future production would depend on factors presently unknown, including whether hydrocarbons are discovered, the nature and scale of any resource, commercial viability, extraction feasibility and future development concepts.
- 2.6.26. In their view, attempting to assess future production impacts at the exploration stage would be speculative and unreliable because the necessary information is not yet available.

- 2.6.27. The applicants also dispute the appellants' interpretation of cumulative impacts under NEMA and the EIA Regulations.
- 2.6.28. It is submitted that the definition of cumulative impacts requires assessment of the reasonably foreseeable impacts of the activity being applied for, namely exploration drilling, and not speculative future activities that may never occur.
- 2.6.29. The legislation does not require assessment of hypothetical future production impacts during an exploration application process.
- 2.6.30. In response to concerns regarding cumulative marine and ecological impacts, it is submitted that section 9.4 of the final EIAr provides a detailed cumulative impact assessment relating to the proposed exploration activities.
- 2.6.31. This assessment, considered existing and reasonably foreseeable activities in the region, including other exploration and production activities, vessel traffic, vessel lighting, operational discharges, fishing activities, mining activities and climate change.
- 2.6.32. Section 9.4.1 specifically assessed cumulative impacts on marine ecology and incorporated the findings of the 2018 National Biodiversity Assessment, which evaluated cumulative pressures on marine biodiversity arising from current and historical ocean-based activities.
- 2.6.33. The final EIAr concluded that Block 3B/4B is situated in an area experiencing very low cumulative impacts and that the ecological condition of the area remains mostly natural or near natural.
- 2.6.34. The final EIAr further assessed cumulative impacts associated with existing and reasonably foreseeable exploration-related activities but did not include speculative assessments of future production activities in Block 3B/4B or neighbouring blocks because the nature, scale and extent of any such future production activities are unknown.
- 2.6.35. They argue that meaningful cumulative assessment requires sufficient information and that any future production proposal would itself be subject to a separate EIA and cumulative impact assessment process should production applications ever be pursued.

- 2.6.36. The final EIAr complies with the requirements of NEMA and the 2014 EIA Regulations in relation to cumulative impact assessment and that the appellants' assertions regarding the failure to assess production-related impacts are unsupported in law and fact.

EVALUATION (Reasons for the Decision)

- 2.6.37. The substance of this ground of appeal concerns whether the final EIAr unlawfully and/or inadequately confined its assessment to exploration activities and failed to assess cumulative impacts associated with reasonably foreseeable future production activities and broader offshore oil and gas development within the Orange Basin. The appellants further contend that the final EIAr inadequately assessed cumulative marine ecological impacts arising from multiple existing and proposed exploration activities in the region.
- 2.6.38. The ground of appeal raises two principal issues:
- whether the final EIAr was legally required to assess future production-related impacts, including downstream and lifecycle impacts, as reasonably foreseeable consequences of exploration activities; and
 - whether the final EIAr adequately assessed cumulative impacts associated with existing, approved and reasonably foreseeable exploration-related activities within the region.
- 2.6.39. On the first issue, the appellants argue that production is the intended consequence of exploration and that cumulative impacts should therefore have been assessed more broadly to include production, refining, transport, combustion and associated ecological threats. They rely on the definition of "cumulative impacts" in the EIA Regulations and contend that exploration and production form part of a continuum of offshore oil and gas development. They further submit that international best practice supports broader strategic or lifecycle assessment of offshore oil and gas developments.

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- 2.6.40. The applicants, however, submit that the applicable legislative framework under NEMA, the EIA Regulations and the MPRDA creates separate and distinct approval processes for exploration and production activities. Exploration activities require separate rights and environmental authorisations from production activities, with different listed activities applying under Listing Notice 2. The applicants further submit that future production activities are uncertain, speculative and dependent on factors presently unknown, including whether hydrocarbons are discovered at all, the scale and commercial viability of any resource, and the nature of any future production infrastructure. They argue that meaningful assessment of production impacts is therefore not presently possible and would only arise if a future production right application is submitted.
- 2.6.41. In evaluating these submissions, it is significant that the environmental authorisation under appeal relates solely to exploration drilling activities and not to production activities. The final EIA repeatedly records that the project scope is confined to exploration activities and that any future production activities would require separate environmental authorisation processes and impact assessments. The report clearly states under executive summary and section 3 of that *"a full Scoping and Environmental Impact Assessment (S& EIA) process is being undertaken to accompany the existing ER for the EIA Listing Notices listed activities applicable to the project namely: Listing Notice 2: Activity 18."*
- 2.6.42. Activity 18(a)(b) of Listing Notices 2 reads: *"Any activity including the operation of that activity which requires an exploration right as contemplated in section 79 of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), including — associated infrastructure, structures and earthworks; or the primary processing of a petroleum resource including winning, extraction, classifying, concentrating or water removal; but excluding the secondary processing of a petroleum resource, including the beneficiation or refining of gas, oil or petroleum products in which case activity 5 in Listing Notice 2 applies."*

- 2.6.43. The legislative framework cited by the applicants supports the distinction between exploration and production activities as separate regulated activities requiring separate approvals and assessments.
- 2.6.44. The definition of cumulative impacts in the EIA Regulations refers to the reasonably foreseeable impacts of “an activity” together with impacts from associated activities. While the appellants are correct that cumulative impacts must be broadly considered, the requirement remains linked to impacts capable of meaningful assessment on the basis of reasonably available information. The applicants’ submission that production impacts cannot presently be reliably assessed due to uncertainty regarding the existence, scale, location and nature of any future hydrocarbon resource carries substantial weight. A speculative assessment of hypothetical future production scenarios may not provide meaningful or reliable environmental assessment outcomes.
- 2.6.45. This approach is consistent with the reasoning adopted in *Aukotowa Fisheries Primary Co-operative Limited and Others v Director-General: Department of Mineral and Petroleum Resources and Others*, where the Court held that environmental assessment obligations must be applied to the activity before the decision-maker and cautioned against requiring assessment of future activities whose nature, extent and impacts remain uncertain and incapable of meaningful evaluation.
- 2.6.46. While I am mindful of judicial authority recognising that exploration and production may form part of a broader petroleum development continuum, I am not persuaded that the present application required a detailed cumulative assessment of speculative future production activities, where no commercially viable resource has yet been identified and where the nature, location, scale and operational characteristics of any future production activities remain unknown.
- 2.6.47. The final EIAr nevertheless remained obliged to assess cumulative impacts associated with the exploration activities themselves, including interaction with existing and

reasonably foreseeable exploration-related activities in the region. On this aspect, the final EIAr contains a cumulative impact assessment in section 9.4, including consideration of other offshore activities, shipping, fishing, mining, climate change and marine ecological pressures. The final EIAr also considered the findings of the 2018 National Biodiversity Assessment and concluded that the affected marine area remains in a largely natural or near-natural ecological condition.

2.6.48. I accept that the appellants' concerns regarding the potential cumulative effects of regional offshore industrialisation, multiple seismic surveys, exploration drilling programmes and other marine stressors are relevant considerations that require evaluation within a cumulative impact assessment. However, the question before me is whether the final EIAr adequately considered those impacts. Having considered section 9.4 of the final EIAr and the specialist studies incorporated therein, I am satisfied that cumulative impacts associated with proposed activities, including shipping, fishing, mining, climate change pressures and other exploration-related activities, were evaluated as part of the assessment process. The appellants' concern is directed primarily at the conclusions of the cumulative impact assessment, which they do not agree with, rather than establishing that cumulative impacts were omitted from consideration altogether. Consequently, I am not persuaded that the competent authority was deprived of material information necessary to assess cumulative environmental effects associated with the proposed exploration activities.

2.6.49. Similarly, the appellants' submissions regarding inadequate scientific certainty, marine ecosystem vulnerability, sound pollution and spill risks largely challenge the conclusions of the specialist studies rather than demonstrating that those impacts were inadequately considered. The final EIAr specifically addressed marine ecological impacts, vessel noise, drilling impacts and cumulative pressures, although the specialists ultimately concluded that these impacts could be mitigated and managed to acceptable residual levels.

- 2.6.50. In relation to the contention that the final EIAr failed to assess degradation of existing well plugs and long-term industrialisation impacts, these concerns relate primarily to historical conditions or speculative future conditions for which limited project-specific information was before the competent authority. The applicants' position that cumulative assessment must remain confined to impacts capable of meaningful evaluation cannot be regarded as unreasonable within the framework established by NEMA and the EIA Regulations.
- 2.6.51. Accordingly, while the appellants raise legitimate concerns regarding long-term fossil fuel development, climate implications and regional offshore industrialisation, the evidence does not demonstrate that the final EIAr failed to comply with the legal requirement to assess cumulative impacts associated with the exploration activities applied for. The final EIAr considered cumulative impacts associated with existing and reasonably foreseeable exploration-related activities and explained why speculative future production impacts were not assessed at this stage.
- 2.6.52. On balance, this ground of appeal does not establish that the competent authority committed a material error in accepting the final EIAr's approach to cumulative impact assessment. The distinction drawn between exploration and production activities is supported by the legislative framework and is reflected in the separate environmental authorisation and assessment requirements applicable to each phase, notwithstanding that future production activities may, if proposed, require separate consideration of their own cumulative environmental impacts.
- 2.6.53. This ground of appeal may therefore reasonably be dismissed.

2.7. SEVENTH GROUND OF APPEAL: THE EAP'S INDEPENDENCE

Submission by the appellants

In support of this ground of appeal, the appellants submit the following:

- 2.7.1. As has been observed on numerous occasions, a party is unlikely to act against the interests of those who provide its remuneration.
- 2.7.2. While the EAP is regarded as independent, the appellants submit that it is unlikely to produce a report that is adverse to its client.
- 2.7.3. The EAP has an interest in maintaining a favourable reputation among current and prospective clients seeking environmental assessment services and would therefore be inclined to satisfy its client, which in this case is Africa Oil (Pty) Ltd and others.

Response by the applicants

In this ground of appeal, the applicants respond as follows:

- 2.7.4. The appellant fails to recognise that regulation 12 of the 2014 EIA Regulations requires the applicants to appoint, at its own cost, an EAP to manage the EIA process as well as such specialists as may be required if the level of assessment is of the nature requiring the appointment of a specialist.
- 2.7.5. In terms of regulation 13 of the EIA Regulations, the EAP as well as the relevant specialist who informed the EIA are required by NEMA to be independent.
- 2.7.6. Furthermore, in terms of regulation 16 of the EIA Regulations the EAP is required to sign a declaration of interest which accompanies the application for the EA. The duly signed declaration of interest is enclosed in Appendix 1 to the final EIAR.
- 2.7.7. The applicants submit that both the applicants and the EAP have at all times acted in accordance with the provisions of NEMA and 2014 EIA Regulations as fully explained above and the applicants further submits that the appellants assertion that the EAP is not independent is false and is unsubstantiated, in that the appellants have provided no evidence to support their assertion.

- 2.7.8. Furthermore, the appointment of the EAP by the applicants is required by legal prescripts as explained above.
- 2.7.9. The applicant's compliance with NEMA and the 2014 EIA Regulations cannot constitute a basis on which the grant of the environmental authorisation can be appealed or set aside.

EVALUATION (Reasons for the Decision)

- 2.7.10. The essence of this ground of appeal is the appellants' contention that the EAP lacked the independence required by NEMA and the 2014 EIA Regulations because the EAP's appointment and remuneration by the applicants purportedly creates an inherent incentive to produce outcomes favourable to its client.
- 2.7.11. At the outset, the appellants do not identify any specific conflict of interest, procedural irregularity, misrepresentation of information, or professional misconduct on the part of the EAP. At the heart of this contention is a generalised concern regarding the relationship between an applicant and an EAP.
- 2.7.12. I begin my assessment of this ground of appeal, with the definition of "independent" as defined in the 2014 EIA Regulations:

"independent, in relation to an EAP, a specialist or the person responsible for the preparation of an environmental audit report, means-

(a) that such EAP, specialist or person has no business, financial, personal or other interest in the activity or application in respect of which that EAP, specialist or person is appointed in terms of these Regulations; or

(b) that there are no circumstances that may compromise the objectivity of that EAP, specialist or person in performing such work;

excluding-

(i) normal remuneration for a specialist permanently employed by the EAP; or

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- (ii) *fair remuneration for work performed in connection with that activity, application or environmental audit."*

2.7.13. This definition must be considered alongside the following provisions of the 2014 EIA Regulations:

- 2.7.13.1. Regulation 12 expressly requires an applicant to appoint and remunerate an independent EAP and any necessary specialists to manage and inform the environmental assessment process. The Regulation further requires the applicant to verify that the EAP and specialists meet the prescribed independence requirements and to provide them with all relevant information concerning the application, including information that may be unfavourable to the proposed activity. The EAP was accordingly appointed and paid by the applicants as required under this provision of the EIA Regulations. This fact cannot, without more, constitute evidence of bias or lack of independence.
- 2.7.13.2. Regulation 13(1) of the 2014 EIA Regulations requires an EAP and any appointed specialist to be independent, suitably qualified and experienced, and to ensure compliance with the EIA Regulations. They are required to undertake their work objectively and impartially, even where their findings or recommendations may not support the proposed development. The regulation further obliges them to consider all relevant environmental factors, disclose any material information that may influence decision-making or affect the objectivity of their work, and ensure that the environmental assessment process is conducted in a transparent and professional manner.
- 2.7.13.3. Regulation 16 requires both the EAP and specialists to submit declarations confirming their independence, expertise, and the absence of circumstances that may compromise their objectivity. The record indicates that the required declarations were duly completed and submitted as part of the environmental impact assessment process.

- 2.7.14. The appellants have not presented any evidence demonstrating that the EAP or any specialist had a financial, personal, or other interest that compromised their independence, nor have they identified any specific deficiencies, inaccuracies, or misconduct in the assessment process that would support an inference of bias. The allegation is therefore based on a generalised assumption arising from the contractual relationship between the applicant and the EAP, rather than on substantiated facts.
- 2.7.15. In contrast, on 12 July 2023, in his declaration under oath, Mr. Gideon Kriel confirmed that he acts as the independent EAP for the application and that he would undertake the assessment process objectively, impartially, and in compliance with the requirements of NEMA and the EIA Regulations. Further, he declared that no circumstances exist that could compromise his independence or objectivity, that he possesses the requisite expertise to conduct the assessment, and that he has no conflicting interests in the proposed activity. He further undertook to disclose all material information relevant to the application, ensure meaningful public participation, consider and record comments from interested and affected parties, provide the CA with access to all relevant information regardless of whether it supports the application, and fulfil all obligations imposed on an EAP under the EIA Regulations. Furthermore, he also acknowledged that a false declaration constitutes an offence under the Regulations and NEMA.
- 2.7.16. I further note that the EAP, holds a Master of Environmental Science degree in Water Sciences and is a Registered Professional Natural Scientist with the South African Council for Natural Scientific Professions (SACNASP), and he is also a Registered Environmental Assessment Practitioner with EAPASA, as well as a member of the Water Institute of Southern Africa (WISA). The information before me indicates that he has been employed as an environmental consultant since 2007 and possesses extensive experience in environmental assessment and management, including environmental impact assessments, basic assessments, environmental compliance monitoring, aquatic ecological assessments, water resource management, wetland assessments, waste management, and water use licence applications. His qualifications, professional

registrations, and experience demonstrate that he possesses the requisite expertise contemplated in regulation 13(1)(b) of the EIA Regulations to undertake and manage the environmental assessment process.

2.7.17. In the absence of evidence showing any real concern of bias, conflict of interest, mala fides, non-compliance with regulations 13 and 16, or any other provision of NEMA and the 2014 EIA Regulations, the appellants' contention that the EAP lacked independence cannot be sustained. Compliance by the applicants with the statutory requirement to appoint and remunerate an EAP in accordance with regulation 12 of these Regulations does not constitute a ground upon which the environmental authorisation can be set aside.

2.7.18. Accordingly, this ground of appeal lacks substantive merit and is dismissed.

2.8. EIGHTH GROUND OF APPEAL: THE EIA FAILED TO ADEQUATELY ASSESS NOISE IMPACTS

Submission by the Appellants

In support of this ground of appeal, the appellants submit as follows:

- 2.8.1. The appellants contend that the EIA failed to adequately assess and mitigate the impacts of underwater noise and other marine ecological disturbances associated with the proposed drilling activities.
- 2.8.2. They submit that noise generated by drilling operations, vessel traffic, helicopters, and other exploration activities may adversely affect marine mammals, particularly whales that migrate, breed, calve, and feed within and adjacent to the project area.
- 2.8.3. The appellants further argue that the EIA does not sufficiently consider the significance of major whale migration routes, sensitive marine habitats, or the potential effects on commercially important fish species, seabirds, and the pelagic longline fishing sector.

- 2.8.4. They maintain that underwater noise can travel considerable distances and may disrupt the behaviour, communication, migration, feeding, and breeding patterns of marine fauna.
- 2.8.5. They further contend that the proposed mitigation measures are inadequate to address these impacts and that reliance on onboard marine mammal observers is insufficient given the limitations of visual monitoring and the extensive range over which marine species may be affected by underwater sound.
- 2.8.6. In addition, the appellants submit that the Marine Ecology Report underestimates the significance of environmental impacts by focusing on the duration of project activities rather than the duration of the resulting environmental effects.
- 2.8.7. They argue that several impacts, including underwater noise, helicopter disturbance, light pollution, toxic contamination of sediments, and damage to benthic ecosystems, may persist long after drilling activities have ceased and could result in long-term, irreversible, or permanent ecological consequences.
- 2.8.8. Accordingly, it is argued that the significance ratings assigned in the EIA do not adequately reflect the extent, duration, reversibility, and probability of these impacts, particularly in relation to sensitive marine species and ecosystems.

Response by the applicants

In response to this ground of appeal, the applicants submitted the following:

- 2.8.9. The EIA adequately assessed the potential impacts of underwater noise on marine ecology, including marine mammals, fish, turtles, seabirds, and the pelagic longline fishing sector.
- 2.8.10. They refer to sections 9.3.1.1.3, 9.3.1.2.6, 9.3.2.2, and 9.4.1.2 of the final EIAr, which identify, describe, and assess the impacts of noise generated by drilling operations, support vessels, Vertical Seismic Profiling (VSP), and sonar surveys.
- 2.8.11. According to the applicants, the assessment was informed by a specialist Underwater Sound Transmission Loss Modelling Study, the findings of which were incorporated into the Marine Ecology Assessment.

- 2.8.12. The appellants have not provided scientific evidence to refute the findings of the specialist studies, nor have they identified any material deficiencies in the impact assessment or proposed mitigation measures.
- 2.8.13. They further submit that many of the concerns raised during the appeal process were previously raised during the public participation process (PPP) and were addressed by the EAP and specialists in the final EIAr and accompanying response reports.
- 2.8.14. In response to concerns regarding whales and other marine mammals, the applicants state that the final EIAr specifically considered cetaceans, including humpback whales and southern right whales, as well as sensitive marine habitats and migration routes.
- 2.8.15. The specialist studies assessed the potential for underwater noise to cause behavioural disturbance, masking of biologically important sounds, and temporary displacement from feeding or breeding areas. However, the modelling concluded that the anticipated impacts would be localised, temporary, and of low significance following the implementation of mitigation measures.
- 2.8.16. The authorised activities do not include regional seismic surveys, and that the noise sources assessed are limited to drilling operations, vessels, VSP, and sonar surveys.
- 2.8.17. The final EIAr includes a range of mitigation and monitoring measures designed to minimise impacts on marine fauna. These include the appointment of an independent Marine Mammal Observer (MMO), a Passive Acoustic Monitoring (PAM) operator, an Environmental Control Officer (ECO), and a Fisheries Liaison Officer (FLO).
- 2.8.18. Additional mitigation measures include soft-start procedures for acoustic equipment, avoidance of sensitive habitats through pre-drilling surveys and ecological review, and consideration of seasonal whale migration patterns when planning sonar surveys.
- 2.8.19. With regard to fisheries, seabirds, and other marine fauna, the applicants submit that the relevant specialist assessments considered these receptors and concluded that the impacts of underwater noise, vessel activity, and lighting would be of low to very low significance with the implementation of the prescribed mitigation measures.
- 2.8.20. They maintain that there is no evidence that the proposed exploration activities would result in population-level effects on marine mammals, seabirds, fish, or other marine organisms.

- 2.8.21. The applicants also reject the appellants' contention that the EIA underestimated the duration or significance of impacts.
- 2.8.22. They submit that both individual and cumulative impacts were assessed, including impacts on marine ecology and underwater noise, and that the specialist studies concluded that any behavioural responses would be temporary, localised, and unlikely to persist beyond the duration of the activities or result in long-term population-level effects.
- 2.8.23. Accordingly, the applicants maintain that the final EIAr adequately assessed the potential impacts of underwater noise and associated marine ecological effects, that appropriate mitigation and monitoring measures have been incorporated into the EMPr, and that the appellants have not provided evidence demonstrating that the conclusions of the specialist studies are incorrect.

EVALUATION (Reasons for the Decision)

- 2.8.24. The essence of this appeal ground is that the EIA failed to adequately assess the impacts of underwater noise and other exploration-related disturbances on marine mammals, fish, seabirds, benthic ecosystems, and the pelagic fishing sector. The appellants further submit that the assessment underestimated the significance and duration of such impacts, particularly in relation to whale migration routes, feeding and breeding areas, and other sensitive marine habitats. I have considered the submissions of the appellant, the corresponding responses of the applicant and the appeal record.
- 2.8.25. Upon perusal of the final EIAr, Marine Ecology Study and the Noise Assessment Report, I found as follows:

Noise Impacts:

- 2.8.25.1. The final EIAr on pages 32 to 34 identifies vessel propellers and dynamic positioning thrusters as the primary sources of underwater noise, with additional contributions from pontoon-related operations, support vessels, and drilling

activities. Other sources of noise include pre-drilling sonar surveys, drilling operations, machinery noise, well logging through Vertical Seismic Profiling (VSP), well testing activities, equipment deployed in the water, and helicopter operations.

2.8.25.2. The pre-drilling sonar surveys and VSP surveys are of short duration, with sonar surveys typically requiring 1.5 and 3 days and VSP surveys between 4 and 6 hours to complete. The extent and intensity of project-related underwater noise are expected to vary depending on the operational status of the vessels, the number of support vessels involved, prevailing weather conditions, background ambient noise levels, and the presence of other marine traffic in the area.

2.8.25.3. To assess the potential impacts of underwater noise on marine fauna, a specialist Underwater Noise Modelling Study was undertaken to determine sound transmission loss over distance from the well site and to compare predicted noise levels with recognised impact thresholds for marine species. The findings of this modelling study informed the assessment of impacts on marine fauna in the final EIAr.

2.8.25.4. On page 80, the EAP recorded concerns regarding increased underwater noise levels. On page 145 it is further recorded

“Although the exact reason that beaked whales seem particularly vulnerable to man-made noise is not yet fully understood, the existing evidence clearly shows that animals change their dive behaviour in response to acoustic disturbance (Tyack et al. 2011), and all possible precautions should be taken to avoid causing any harm. Sightings of beaked whales in the project area are expected to be very low.”

2.8.25.5. On page 234, it is stated that the small-scale fisheries off the Northern, Western and Southern Cape coastlines are unlikely to range beyond 20 km from the

coastline, thus inshore of the AOI for proposed drilling at its closest point, and inshore of the area of noise disturbance.

2.8.25.6. On page 332 of the final EIAr, the EAP recorded noise impacts together with their pre-mitigation and post-mitigation significance ratings.

2.8.25.7. On page 347 to 350, the final EIAr provides information related to noise from Helicopter activities.

2.8.25.8. I further note that the EAP gave considerable attention to noise and noise related impacts on pages 371 to 502 of the final EIAr. Amongst others, the report provides detailed information on generation of underwater noise and vessel and drilling noise.

2.8.25.9. I further note that the final EIAr, provided mitigation measures related to noise impacts.

Marine Ecology Study:

2.8.25.10. I note that on pages 15 to 17 of the report, the specialist stated that pre-drilling sonar surveys, including multi-beam echo sounders and sub-bottom profilers, operate at high frequencies and are undertaken over a limited duration of approximately 1.5 to 10 days depending on the survey type.

2.8.25.11. Drilling activities generate low-frequency broadband noise, typically with dominant components below 100 Hz and source levels of up to approximately 190 dB re 1 μ Pa at 1 m. Propeller and thruster noise arises mainly from cavitation and may be audible over large distances, particularly during dynamic positioning. Machinery noise from onboard systems such as generators and pumps contributes to low-frequency and often tonal sound emissions, especially during stationary operations.

- 2.8.25.12. Vertical Seismic Profiling (VSP) during well logging uses a small airgun array producing short pulse noise in the 5 to 1 000 Hz range over a limited number of shots and a short duration of about six hours. Well testing may also generate short-term airborne noise from flaring activities lasting up to two days.
- 2.8.25.13. Additional minor noise sources include drilling equipment such as the drill string and helicopter operations, which generate both airborne and underwater noise affecting marine fauna.
- 2.8.25.14. The intensity and extent of underwater noise are expected to vary depending on vessel type, operational conditions, weather, and background ambient noise levels.
- 2.8.25.15. To assess these impacts, an Underwater Noise Modelling Study was conducted to determine sound transmission loss over distance and compare predicted levels with marine fauna impact thresholds, forming the basis of the marine ecological impact assessment.

Fisheries Specialist Assessment:

- 2.8.25.16. I note on page 26 to 27 of the report, the specialist considered noise impacts on fish. Moreover, the report, in its summary assessment, concludes that underwater noise impacts on fish are localised and short-term in nature. With mitigation measures in place, including advance notification to fishing operators and spatial-temporal planning of drilling activities, the significance of impacts on fisheries is assessed as low.
- 2.8.25.17. It is further noted that timing operations during periods of reduced fishing activity may further reduce potential interference with the pelagic longline sector.

- 2.8.26. Having considered the appellants' submissions, the applicants' response, the final EIAr, and the specialist studies informing the assessment, I am not persuaded that this ground of appeal has merit.
- 2.8.27. The record before me indicates that underwater noise and associated marine ecological impacts were specifically identified, assessed, and modelled as part of the EIA process. The assessment was informed by a dedicated Underwater Sound Transmission Loss Modelling Study and a Marine Ecology Assessment, which considered the potential effects of drilling activities, support vessels, Vertical Seismic Profiling (VSP), sonar surveys, and associated operational activities on marine fauna, including cetaceans, fish, turtles, and seabirds. The final EIAr also considered the potential impacts on fisheries and sensitive marine habitats.
- 2.8.28. The appellants raise legitimate concerns regarding the sensitivity of marine mammals, particularly whales, to underwater noise and the importance of migration, feeding, breeding, and calving areas. However, the existence of potential impacts does not in itself demonstrate that such impacts were inadequately assessed. The evidence before me indicates that these receptors were expressly considered by the specialist studies and that the assessment recognised the potential for behavioural disturbance, displacement, masking of biologically important sounds, and other ecological effects.
- 2.8.29. The final EIAr further includes a range of mitigation and monitoring measures aimed at reducing potential impacts, including the appointment of an independent Marine Mammal Observer, Passive Acoustic Monitoring operators, Environmental Control Officers, Fisheries Liaison Officers, soft-start procedures for acoustic equipment, pre-drilling ecological surveys, avoidance of sensitive habitats, and consideration of seasonal whale migration periods where practicable. These measures are intended to minimise impacts and form part of the environmental management commitments associated with the project.

- 2.8.30. The appellants also place considerable reliance on the impacts of seismic surveys. However, the authorised activities under consideration do not include regional seismic surveys. The assessment relates to exploration drilling and associated activities, and the specialist studies assessed the specific noise sources associated with those activities. To the extent that the appellants relied on impacts associated with large-scale seismic surveys, such concerns are not directly applicable to the activities authorised in this matter.
- 2.8.31. With regard to the allegation that the final EIAr underestimated the duration and significance of impacts, the appellants have not provided expert evidence demonstrating that the specialist methodologies, assumptions, modelling results, or significance ratings are scientifically flawed. Nor have they presented competing specialist evidence showing that the predicted impacts would result in long-term or population-level effects on marine species. In contrast, the specialist studies concluded that the anticipated impacts would be localised, temporary, and of low to very low significance following implementation of the prescribed mitigation measures.
- 2.8.32. Neither NEMA nor the precautionary principle require absolute scientific certainty as a precondition for decision-making. Rather, it requires that decisions be taken on the basis of the best available information, with due regard to identified uncertainties and the potential risks arising from the proposed activity. The issue is therefore whether the competent authority was provided with sufficient information to make an informed decision.
- 2.8.33. The information before me demonstrates that underwater noise and marine ecological impacts were expressly considered, assessed by suitably qualified specialists, and subjected to mitigation and monitoring measures. The appellants' concerns largely reflect a disagreement with the conclusions reached by the specialists rather than evidence that the impacts were ignored or inadequately assessed.
- 2.8.34. Accordingly, I find that the final EIAr adequately assessed the potential impacts of underwater noise and related marine ecological effects, and that appropriate mitigation

and management measures were proposed. The appellants have not demonstrated any material deficiency in the assessment process or any basis upon which the findings of the specialist studies and final EIAr should be rejected.

2.8.35. This ground of appeal is therefore dismissed.

2.9. NINTH GROUND OF APPEAL: INADEQUATE ASSESSMENT OF THE IMPACT OF THE PROPOSED ACTIVITIES ON THE LIVELIHOODS AND FOOD SECURITY OF COASTAL COMMUNITIES INCLUDING SMALL-SCALE FISHERS (SOCIO-ECONOMIC IMPACTS).

Submission by the appellants

In support of this ground of appeal, the appellants submit the following:

- 2.9.1. The EIA and EMPr are deficient in that they fail to adequately assess and meaningfully consider the socio-economic impacts of the proposed offshore exploration activities on coastal and fishing-dependent communities.
- 2.9.2. The assessment underestimates the extent to which fishing livelihoods, food security, and local economies may be adversely affected, particularly for small-scale fishers and rural coastal communities who rely directly on marine resources for subsistence and income.
- 2.9.3. A central concern raised is that the EIA does not properly evaluate the potential impacts of exploration activities and in particular the risk of a major oil spill or well blowout on fisheries productivity, marine ecosystems, and the broader value chain of the fishing industry.
- 2.9.4. The disruptions to fish behaviour, migration patterns, and spawning grounds may lead to reduced catches, increased operational costs such as fuel and travel distances, and shortened fishing seasons, with consequential effects on household food security and community livelihoods.

- 2.9.5. The assessment fails to adequately consider cumulative socio-economic impacts, including effects on coastal tourism and the cultural and heritage value of marine environments for coastal communities.
- 2.9.6. The reliance on mitigation measures such as compensation for loss of income is disputed, and it is argued that such mechanisms are impractical and ineffective, particularly for small-scale fishers who may struggle to prove losses and may face delays in compensation processes.
- 2.9.7. Accordingly, it is submitted that this renders the proposed mitigation inadequate as a basis for reducing the significance of socio-economic impacts.
- 2.9.8. The EIA is based largely on desktop studies and insufficient empirical investigation and therefore does not provide a robust or site-specific assessment of socio-economic risks.
- 2.9.9. The proposed activities are located in highly productive marine areas, including regions important for fisheries and ecological productivity, and that the assessment fails to adequately consider the sensitivity of these areas or the potential long-term consequences for marine biodiversity and livelihoods.
- 2.9.10. Consequently, the approval of the project would have constitutionally significant implications for environmental rights, food security, and sustainable livelihoods, particularly in light of South Africa's socio-economic context.
- 2.9.11. The failure to properly assess food security impacts, livelihood dependency, and socio-economic inequality renders the EIA incomplete and legally deficient.

Response by the applicants

In response to this ground of appeal, the applicants respond as follows:

- 2.9.12. The 2014 EIA Regulations and section 24 of NEMA require an assessment of “potentially significant” environmental impacts, meaning impacts that are likely or reasonably foreseeable, rather than remote or speculative consequences.

- 2.9.13. The interpreting “potential” to include any conceivable outcome would impose an unworkable burden on Environmental Assessment Practitioners and is not supported by section 24O of NEMA, which refers to impacts that are “likely” to occur.
- 2.9.14. On this basis, it is submitted that a catastrophic well blowout is an extremely unlikely event and therefore does not require detailed assessment beyond what has already been provided, particularly as such incidents are separately governed under NEMA’s emergency incident provisions (sections 30 and 30A) and international compensation frameworks.
- 2.9.15. In relation to fisheries and socio-economic impacts, the applicants contend that these have been comprehensively assessed in the final EIAr, particularly in sections 9.3.2 and 9.4.2, which evaluate both planned and unplanned impacts on fisheries, and section 9.3.5, which addresses social and livelihood impacts.
- 2.9.16. Most impacts are assessed as low significance post-mitigation, with only a limited number of medium negative impacts identified, including community cohesion, cultural heritage, and certain extreme scenarios such as a large-scale hydrocarbon spill.
- 2.9.17. The claims and compensation mechanisms for loss of livelihood are clearly provided for under established international regimes, including the International Convention on Civil Liability for Oil Pollution Damage and the International Oil Pollution Compensation Fund, which set out structured procedures for claiming losses such as damage to fishing gear and loss of income.
- 2.9.18. With regard to tourism, the final EIAr explicitly considers coastal tourism and concludes that routine exploration activities are not expected to significantly affect tourism due to the offshore distance from the coastline.
- 2.9.19. Even in the unlikely event of a blowout, any disruption is characterised as temporary, with oil dispersal, evaporation, and biodegradation expected to substantially reduce impacts within approximately 60 days.
- 2.9.20. The modelling demonstrates a low probability of oil reaching key fishing or tourism areas, including less than 10% probability of surface oil affecting certain fishing grounds, and a very limited overall spatial footprint.

APPEALS LODGED AGAINST A DECISION TO GRANT AN ENVIRONMENTAL AUTHORISATION TO AFRICA OIL SA CORP, RICOCURE (PTY) LIMITED AND AZINAM LIMITED, FOR THE PROPOSED AFRICA OIL SA CORP BLOCK 3B/4B OFFSHORE EXPLORATION, OFF THE WEST COAST OF SOUTH AFRICA.

- 2.9.21. On methodological grounds, the applicants reject the allegation that the assessment is deficient or based on inadequate investigation.
- 2.9.22. The final EIAr relies on best available scientific information, including underwater noise modelling, oil spill dispersion modelling, and specialist ecological and socio-economic studies.
- 2.9.23. It is emphasised that mitigation measures such as marine mammal observers, passive acoustic monitoring, fisheries liaison officers, exclusion zones, and pre-drilling seabed surveys are binding and designed to avoid sensitive habitats and reduce impacts.
- 2.9.24. The appellants' criticisms are vague, repetitive, and previously addressed during the PPP, and that no substantive new evidence has been presented to challenge the technical findings of the final EIAr.
- 2.9.25. All relevant environmental, social, and economic impacts have been adequately assessed, that mitigation measures reduce most impacts to low significance, and that the appeal should be dismissed on the basis that it is unsubstantiated and does not demonstrate any material failure in the EIA process.

EVALUATION (Reasons for the Decision)

- 2.9.26. This ground of appeal substantially raises three issues of concern regarding (i) alleged methodological flaws in the EIA process, (ii) alleged underestimation or mischaracterisation of socio-economic impacts, and (iii) procedural fairness and participation concerns. The appellants contend that the socio-economic impact assessment is deficient because it underestimates the potential effects of the proposed exploration activities on fishing-dependent communities, food security, livelihoods and local economies. They further contend that the assessment places undue reliance on the low probability of a catastrophic well blowout and does not adequately account for the potentially severe consequences of such an event.
- 2.9.27. I have considered these submissions against the provisions of NEMA, the 2014 EIA Regulations, the final EIAr, the EMPr, the Fisheries Impact Assessment and the

supporting specialist studies. The issue for determination is not whether any impact may occur, but whether the assessment identified and evaluated the reasonably foreseeable socio-economic impacts of the activity and provided a sufficient basis for informed decision-making.

- 2.9.28. In this regard, I note that the Fisheries Impact Assessment expressly considered the consequences of an uncontrolled well blowout and the implications thereof for fishing activities and associated marine resources. The specialist assessment recognised that a large spill could result in the temporary exclusion of fisheries from affected areas and evaluated the potential consequences for a number of fishing sectors operating within the region.
- 2.9.29. On page 154 of the Fisheries Impact Assessment, the specialist records that the extent of surface oiling could be regional in scale and that area closures or contamination-related restrictions could affect fishing operations. The assessment specifically evaluates the likelihood of impacts on the large pelagic longline, tuna pole-line, demersal trawl and demersal longline sectors and quantifies the potential extent of those impacts for the purposes of the assessment.
- 2.9.30. I further note that the specialist assessment records that, in the event of a spill, impacts on fisheries may arise through contamination of fishing grounds, reduced access to productive fishing areas, and temporary restrictions on fishing activities. The assessment also provides a range of mitigation and management measures and records that these measures are based on recognised industry practice and project standards.
- 2.9.31. The appellants nevertheless contend that the significance of these impacts has been underestimated and that particular regard should be had to the dependence of certain coastal communities on marine resources for livelihoods and food security. These concerns are important and warrant careful consideration, particularly where

communities have limited economic alternatives and are vulnerable to disruptions affecting fishing activities and access to marine resources.

- 2.9.32. Having considered the material before me, I am satisfied that the final EIAr and supporting specialist studies expressly considered the socio-economic implications of both routine exploration activities and low-probability unplanned events. The assessment identifies potential impacts on fisheries, livelihoods and coastal economies and evaluates those impacts through specialist investigations and modelling. The question is therefore not whether such impacts were omitted from consideration, but whether the conclusions reached by the specialists are so unreasonable or unsupported by the available information that they cannot be relied upon. On the record before me, I am not persuaded that this has been demonstrated.
- 2.9.33. This ground of appeal raises the question whether the assessment of socio-economic impacts adequately considered not only the identification of potential impacts but also the practical effectiveness of the measures proposed to avoid, minimise, manage or remedy such impacts. In this regard, the appellants contend that compensation mechanisms may not be readily accessible to all affected parties, particularly small-scale fishers, and that practical constraints such as evidentiary burdens, delays and administrative barriers may limit their effectiveness. While compensation arrangements may be relevant in addressing losses suffered by affected parties, compensation does not necessarily constitute an environmental mitigation measure and does not in itself avoid or minimise the underlying impact. The issue for consideration is therefore whether the final EIAr relied upon compensation as a substitute for mitigation, or whether the impact significance ratings were primarily informed by avoidance, management and mitigation measures directed at preventing or reducing the identified socio-economic impacts.
- 2.9.34. I note that pages 508 to 511 of the final EIAr record that the Social Impact Assessment is based on a number of stated assumptions and limitations. The assessment is confined

to the exploration phase and assumes that exploration activities will not exceed approximately 90 days. It further assumes that personnel and equipment will be mobilised through Cape Town and that personnel not accommodated on the drilling vessels will utilise existing accommodation facilities. The assessment also acknowledges that it was not possible to consult every member of the affected communities directly and that information was therefore obtained from key informants and supplemented with available secondary data sources.

- 2.9.35. The assessment further recognises that the social environment is dynamic and influenced by factors beyond the control of the project, including broader economic conditions, political developments and drought. It therefore acknowledges that social impacts cannot always be predicted with complete precision and that some impacts may be difficult to quantify. The assessment also recognises that social impacts may be experienced differently by different community groups, that both beneficial and adverse perceptions may arise, and that impacts may extend beyond the immediate project area to surrounding communities.
- 2.9.36. The assessment further notes that social impacts may arise once a project enters the public domain and may, in some instances, occur independently of project implementation. As a result, the attribution of impacts and the design of appropriate mitigation measures may be complex and require consideration of both objective and subjective social responses.
- 2.9.37. In relation to economic impacts, final EIA record that the assessment is based on a number of assumptions and limitations. All monetary values are expressed in 2023 constant prices. The modelling approach treats different categories of economic impact separately and does not aggregate them into a single value. The input-output model used is based on provincial supply and use tables, with multipliers derived from Quantec data informed by Statistics South Africa datasets, including GDP and labour force

surveys. The model estimates economic impacts over a defined period rather than as a continuous process over time.

- 2.9.38. For planned exploration activities, the assessment assumes that up to five exploration wells may be drilled over a 20-month period. The assessment also identifies potential temporary disruptions to the commercial fishing sector, particularly the large pelagic longline fishery, due to spatial overlap between fishing grounds and the project's area of activity and associated safety exclusion zones. It is estimated that approximately 127 tons of fish per year are caught within the area of interest, with a total estimated disruption value of approximately R8.07 million over the project period. Similarly, potential disruptions to maritime logistics were assessed based on vessel traffic through the area, with an estimated 125 ships per month affected and a calculated total economic impact of approximately R158.1 million due to increased transit times and rerouting requirements.
- 2.9.39. In relation to an unplanned well blowout scenario, the assessment assumes that a capping-only response strategy would be implemented, with an estimated cost of approximately US\$ 75 million, equivalent to approximately R1.37 billion. The model further assumes that such an event could temporarily disrupt fishing activities for a period of one to two months, with an estimated economic impact on the large pelagic longline fishery of approximately R807,361 over the affected period. The maritime logistics sector is also assumed to be temporarily affected, with similar rerouting of vessels resulting in an estimated total impact of approximately R15.8 million over the duration of the event.
- 2.9.40. Consequently, the EIAr concludes that both social and economic impacts are largely temporary in nature and are based on defined modelling assumptions, spatial overlaps, and estimated operational scenarios. These assumptions form the basis for quantifying potential impacts associated with both routine exploration activities and low-probability unplanned events.

- 2.9.41. On page 42 and 43 of the EMPr, the EAP recorded under section 11.3 project controls for unplanned well blowout. It is further stated that the project control measures identified during the EIA process are required for implementation during the exploration activities in order to prevent or respond to an unplanned well blowout event. On section 12 of the EMPr, Table 8 provides a comprehensive list of all the technical or management options that need to be executed as part of the environmental requirements of the project. The phase, timeframes, responsible party, monitoring party, target and performance indicator for each of the options are provided.
- 2.9.42. Notwithstanding the above, I further note the final EIAr records on page 234 that the small- scale fisheries off the Northern, Western and Southern Cape coastlines are unlikely to range beyond 20 km from the coastline, thus inshore of the AOI for proposed drilling at its closest point, and inshore of the area of noise disturbance. The small- scale fishery rights cover the nearshore area (defined in section 19 of the MLRA as being within close proximity of shoreline). As such, SSF are currently not permitted to target tuna as it is not listed in the basket of species for SSF exploitation, although they are allowed to catch up to 10 tuna per day. Based on the distance from key SSF harbours to the AOI and on vessel clarification (with Class C to E vessels not being allowed to travel beyond 28 km from the coast, tuna is caught closer to the coast by the SFF and traditional line fish and recreational fishers when warmer waters move closer inshore during the summer months.
- 2.9.43. On page 235, the final EIAr state that *“this assessment is however cognisant of the ongoing issues related to the perceived areas fished and species targeted by SSF off the West Coast of South Africa e.g. that cultural practice of SSF may occur to 55 km offshore. While SSF regulations clearly specify that fishing is required to take place “nearshore” the actual differentiation between SSF and other fishing operations that might include SSF, such as the commercial “traditional linefish” and “pole and line” and the extent to which these commercial fisheries might include SSF, remains unclear. As such the offshore extent to which SSF may operate requires a precautionary approach in*

this assessment and consideration that the possibility exists (albeit a remote possibility that cannot be verified through the information made available on these fisheries), that SSF may have occurred historically and potentially in the future further offshore than suggested by the information made available for this assessment i.e. there is a remote possibility that some SSF may have targeted certain species of which tuna and snoek are the main candidate species, further offshore than 20 km. The distance fished offshore by SSF and the associated risks determined in this assessment further necessarily considers practical aspects, notably that bottom fishing is impractical in waters deeper than 100 m and as such any bottom fishing, whether SSF or commercial, is highly unlikely beyond a precautionary depth being the 100 m depth contour." In my view, the concerns regarding small scale fishers are well addressed in the EIAR and specialist studies supporting the EIA process.

- 2.9.44. Nonetheless, I note the appellants contend that the reliance on compensation as a mitigation measure is inadequate, particularly in relation to small-scale fishers who may face practical difficulties in proving losses and who may experience delays in the processing of compensation claims. In this regard, I considered these submissions together with the provisions of the EMPr on page 42, specifically (b), which require that claimants be compensated at market rates for actual losses arising from the activities undertaken by the applicants. The EMPr further requires the applicants to establish and maintain a claims procedure appropriate to its activities and provides that compensation should be guided by recognised international standards, including the International Finance Corporation (IFC) principles, which require affected persons to be restored to the same or better position than existed prior to the impact.
- 2.9.45. I further note that neither NEMA nor the 2014 EIA Regulations, establish a statutory compensation regime for economic losses arising from authorised activities. Rather, the purpose of the EIA process under NEMA is to identify, assess and manage the potential environmental and socio-economic impacts of proposed activities and to ensure that appropriate avoidance, mitigation and management measures are implemented.

Compensation is therefore not a substitute for impact avoidance or mitigation but may constitute an additional measure aimed at addressing residual impacts that cannot reasonably be avoided. While compensation mechanisms may be provided for in an EMPr or arise from other applicable legal frameworks, including contractual arrangements, common-law remedies, or industry-specific legislation, NEMA itself does not prescribe the manner in which compensation claims must be administered.

2.9.46. Notwithstanding the above, I accept that practical challenges may arise for certain affected persons, particularly small-scale fishers, in substantiating losses and accessing compensation processes. However, the existence of such challenges does not establish that the socio-economic impacts were not assessed or that the mitigation measures contained in the final EIAr and EMPr are inherently ineffective. The relevant inquiry is whether the environmental authorisation and EMPr contain reasonable and enforceable measures to manage identified impacts. In this regard, I note that the EMPr provides for the establishment of a claims procedure and contemplates compensation in accordance with recognised international standards. While compensation is not a substitute for impact avoidance or mitigation, it may constitute an additional mechanism for addressing residual impacts that cannot reasonably be avoided. I am nevertheless of the view that additional implementation measures would enhance the accessibility, transparency and effectiveness of the claims process, particularly in relation to vulnerable fishing communities.

2.9.47. Accordingly, while I am not persuaded that the reliance on compensation renders the impact assessment inadequate, unlawful or materially deficient, I consider it appropriate, in the exercise of my appellate powers, to strengthen the implementation framework applicable to compensation-related measures. These additional conditions are imposed not because the socio-economic assessment is defective, but to ensure that the mitigation and compensation mechanisms already contemplated in the final EIAr and EMPr are implemented in a manner that is accessible, transparent and responsive to the needs of potentially affected fishing communities.

2.9.48. I therefore deem it appropriate to vary the environmental authorisation by inserting therein the following additional conditions under section 5.4 as conditions 5.4.12 to 5.4.23:

- Prior to the commencement of drilling activities, the Holder must establish and maintain a Fisheries Claims Assistance Mechanism to provide support to affected fishers in lodging, documenting, and pursuing claims for verified losses arising directly from the authorised activities;
- The mechanism must be accessible to commercial, small-scale and subsistence fishers and must not impose unreasonable administrative burdens on claimants;
- The Fisheries Liaison Officer (FLO) required under the EMPr must serve as the primary point of contact for fishing communities and must maintain regular engagement with recognised fishing associations, cooperatives and fishing community representatives;
- FLO must provide information regarding planned activities, exclusion zones, operational schedules and claims procedures in a language and format reasonably accessible to affected communities;
- FLO must maintain a register of complaints, concerns and claims raised by fishers and provide quarterly reports to the CA detailing complaints received and measures taken to address them;
- The Holder must develop and make publicly available a claims procedure that clearly sets out:
 - the categories of losses that may be claimed;
 - the information reasonably required to support a claim;
 - the process and timelines for claim assessment;
 - dispute resolution procedures; and
 - contact details for assistance with claim submission.
- The claims procedure must recognise that small-scale fishers may not maintain formal business records and must permit alternative forms of evidence, including catch

records, permit information, affidavits, cooperative records, community verification, and other reasonable forms of proof.

- The Holder must acknowledge receipt of claims within 14 days of submission and provide a written determination within a reasonable period, not exceeding 90 days, unless exceptional circumstances exist.
- Where additional information is required, the claimant must be informed in writing of the information required and be afforded a reasonable opportunity to provide such information.
- Where a claimant disputes the outcome of a claim, the matter must be referred to an independent mediator or suitably qualified dispute resolution practitioner agreed upon by the parties. The existence of this process does not limit any rights available to affected persons under applicable law.
- The Holder must implement a socio-economic monitoring programme during exploration activities to identify any material impacts on fishing activities and livelihoods. Monitoring results must be reported to the CA and used to inform adaptive management measures where unforeseen impacts are identified.
- The Holder must convene a Fisheries Stakeholder Forum at least quarterly during exploration activities. The forum must include representatives of commercial fishing, small-scale fishing, relevant community organisations, and the Fisheries Liaison Officer. The purpose of the forum shall be to facilitate communication, identify operational concerns, review complaints and claims trends, and consider measures to minimise disruption to fishing activities.

2.9.49. For the avoidance of doubt, the imposition of these additional conditions should not be interpreted as a finding that the environmental assessment or socio-economic assessment was inadequate or non-compliant with the requirements of NEMA or the 2014 EIA Regulations. Rather, the conditions are intended to strengthen the practical implementation of the mitigation and compensation measures already contemplated by the environmental authorisation and EMP, and to improve accessibility for potentially affected fishing communities.

- 2.9.50. I have also considered the appellants' concerns regarding coastal tourism and the relationship between tourism, fishing heritage, cultural identity and sense of place within coastal communities. These interests are not insignificant and form part of the broader socio-economic fabric of the West Coast. However, the evidence before me does not demonstrate that the proposed exploration activities, which are located a considerable distance offshore, would materially affect tourism-related activities, cultural tourism assets or place-based heritage values beyond the impacts already assessed in the final EIAr. While an unplanned spill event could potentially have consequences for tourism and coastal amenity, those impacts were assessed as part of the unplanned-event scenarios considered in the environmental assessment.
- 2.9.51. I have considered the appellants' concerns regarding potential impacts on coastal tourism. The applicants rely on the offshore location of the proposed activities, the findings of the oil-spill modelling and the anticipated temporary nature of any unplanned spill scenario in support of their conclusion that tourism-related impacts are likely to be limited. The appellants have not demonstrated that the assessment omitted material tourism receptors or relied on demonstrably flawed modelling assumptions. However, these concerns remain relevant as part of the broader assessment of the cumulative socio-economic effects on coastal communities, local economies, and associated cultural and heritage values.
- 2.9.52. I have nonetheless considered the appellants' concern that coastal tourism is closely connected to local fishing heritage, sense of place and cultural identity. However, the evidence before me does not demonstrate that the offshore exploration activities, occurring at a considerable distance from shore, would materially affect those tourism-related values beyond the impacts already assessed in the final EIAr.
- 2.9.53. I have considered the appellants' submission that the socio-economic assessment is deficient because it relies substantially on desktop studies and insufficient empirical investigation. I am not persuaded that the reliance on desktop information, modelling,

specialist investigations and targeted surveys renders the assessment inadequate. NEMA and the 2014 EIA Regulations do not require unlimited fieldwork in every instance. Rather, they require that an assessment be undertaken on the basis of adequate and reliable information appropriate to the nature and scale of the proposed activity. In the present matter, the assessment was informed by specialist studies, modelling exercises, pre-drilling surveys and other sources of information. The appellants have not identified any specific scientific omission, material data gap or irrational reliance on information that would justify a finding that the assessment was materially deficient on this basis.

2.9.54. I have also considered the appellants' reliance on section 24 of the Constitution, the precautionary principle and concerns relating to the livelihoods, food security and well-being of fishing-dependent communities. These considerations are relevant and are recognised within the environmental management principles contained in section 2 of NEMA, which require consideration of vulnerable and disadvantaged persons and the equitable distribution of environmental impacts and benefits. However, the mere existence of potentially adverse impacts does not establish that the assessment was deficient. The relevant question is whether those impacts were identified, assessed and considered during the environmental assessment process. Having regard to the final EIAr, the specialist studies and the information before me, I am satisfied that issues relating to livelihoods, food security, fisheries and socio-economic vulnerability were expressly identified and assessed.

2.9.55. To the extent that the appellants allege bias or a failure by the EAP to objectively assess socio-economic impacts, I note that such allegations must be supported by evidence demonstrating a material conflict of interest, prejudice, partiality or other conduct capable of compromising the integrity of the assessment process. On the information before me, no such evidence has been presented. The appellants' disagreement with the conclusions reached by the specialists or with the significance ratings assigned to particular impacts does not, without more, establish bias or a lack of independence.

2.9.56. Having considered the submissions of the appellants, the responses of the applicants, the findings contained in the final EIAr and EMPr, as well as the applicable provisions of NEMA and the 2014 EIA Regulations, I am not persuaded that the appellants have demonstrated that the socio-economic impacts, including impacts on fisheries, livelihoods, food security, cultural heritage, tourism and coastal communities, were omitted from consideration or materially misrepresented during the environmental assessment process. The record demonstrates that these impacts were identified, assessed and considered, and that mitigation and management measures were proposed in relation to both planned and unplanned events. While I acknowledge the concerns raised regarding the practical implementation of compensation-related measures, particularly for small-scale fishers, those concerns are appropriately addressed through the additional conditions imposed in this decision to improve the accessibility, transparency and effectiveness of the claims process.

2.9.57. Accordingly, and subject to the inclusion of the additional conditions set out above, this ground of appeal is dismissed.

2.10. TENTH GROUND OF APPEAL: FLAWED ASSESSMENT AND MITIGATION OF ENVIRONMENTAL RISKS AND IMPACTS

Submission by the appellants

In this ground of appeal, the appellants submit as follows:

- 2.10.1. The EIAr concludes that there are no environmental fatal flaws, provided the recommended mitigation measures are implemented.
- 2.10.2. The Reasons for Decision similarly assess most negative impacts as low significance, with a well blowout assessed as low to medium significance with mitigation.
- 2.10.3. The assessment does not provide a sufficiently sound basis for meaningful public participation or for the competent authority to make a defensible decision.

- 2.10.4. The EIA recognises a major crude oil spill from a blowout as the greatest environmental threat associated with offshore drilling.
- 2.10.5. The worst-case scenario modelling was limited to only two well sites and assumed that capping would occur within 20 days.
- 2.10.6. The 20-day capping assumption may not adequately account for adverse weather conditions, debris clearance and other operational constraints that could delay intervention.
- 2.10.7. The actual environmental impacts of a blowout could therefore be significantly greater than those predicted in the EIA.
- 2.10.8. The EIA identifies potential blowout impacts ranging from HIGH to VERY HIGH, with pelagic seabirds being particularly vulnerable.
- 2.10.9. Impacts on marine mammals, turtles, benthic communities, spawning areas, cetacean and seal breeding areas are assessed as high, while impacts on pelagic seabirds are assessed as very high.
- 2.10.10. Despite these findings, the overall environmental risk is subsequently characterised as ranging from medium to high, with the collective impact on marine fauna recorded as high.
- 2.10.11. The impact significance was therefore incorrectly recorded as HIGH rather than VERY HIGH for certain impacts, resulting in an inaccurate representation of the potential consequences of a well blowout.
- 2.10.12. This compromises the overall impact assessment and the consideration of relevant environmental factors by the competent authority.
- 2.10.13. The assessment relies on mitigation measures contained in plans that had not yet been developed at the time of the EIA.
- 2.10.14. High and medium impacts are consequently downgraded to lower levels of significance based on mitigation measures that had not been sufficiently detailed or assessed.
- 2.10.15. The proposed mitigation for a major spill includes an Oil Spill Contingency Plan (OSCP), Oiled Wildlife Contingency Plan, response resources, well-specific spill modelling and intervention plans for sensitive areas.
- 2.10.16. These plans were not included in the EIA for consideration and comment during the EIA process.

- 2.10.17. The environmental authorisation permits exploration to proceed subject to the relevant plans being submitted to the Agency 60 days before drilling commences.
- 2.10.18. The OSCP and Oiled Wildlife Contingency Plan will therefore not necessarily have been subjected to public participation or substantive consideration by the competent authority before exploration begins.
- 2.10.19. These plans constitute critical mitigation measures for potentially significant impacts on marine and coastal environments and biodiversity.
- 2.10.20. Reliance on undeveloped plans to reduce the significance of impacts effectively prevents I&APs from considering and commenting on those mitigation measures.
- 2.10.21. The omission of the contingency plans from the EIAR means that relevant information concerning the adequacy of measures to contain and respond to an oil spill was not placed before the competent authority.
- 2.10.22. The competent authority therefore could not properly assess the adequacy of the proposed mitigation measures or the applicants' capacity to implement them effectively.
- 2.10.23. This raises non-compliance with section 24O(1)(b) of NEMA, which requires consideration of the measures to mitigate substantially detrimental environmental impacts and the applicant's ability to implement those measures.

Response by the applicant

The applicants respond to this ground of appeal as follows:

- 2.10.24. The EIA process complied with the 2014 EIA Regulations and applicable guidelines, and the final EIAR accurately reflected the findings of independent specialist studies and the public participation process.
- 2.10.25. The potential impacts of a well blowout and oil spill were identified and assessed in the final EIAR, despite the extremely low probability of such an event occurring.
- 2.10.26. The pre-mitigation environmental risk of an unplanned blowout was assessed as HIGH, not VERY HIGH. The significance assessment methodology provides for low, medium and

high overall environmental risk ratings, although individual impact characteristics such as magnitude or intensity may be rated very high.

- 2.10.27. Oil spill drift modelling was undertaken for Points A and D, which were selected as representative worst-case and likely drilling locations, including locations closest to the coast and sensitive marine protected areas.
- 2.10.28. The modelling considered a conservative 20-day capping period, consistent with global industry capping studies. The modelling indicated that coastal impacts were generally unlikely, although oil could potentially reach the South African coastline under certain seasonal conditions if surface oil was not recovered within 60 days.
- 2.10.29. The assessment of the blowout impact on marine fauna was therefore recorded as HIGH pre-mitigation, with the significance reduced to MEDIUM post-mitigation through the implementation of the prescribed mitigation measures.
- 2.10.30. Mitigation measures include blowout preventers, well-control systems, drilling-fluid and pressure controls, capping equipment, oil-spill response resources, well-specific spill modelling, intervention plans, response exercises and arrangements with oil-spill response organisations.
- 2.10.31. The OSCP, BOCP and associated contingency plans are site-specific and require detailed information concerning the final well location, drilling contractor, operational systems and site conditions before they can properly be developed.
- 2.10.32. The final EIAR and EMP require the development of the OSCP, Oiled Wildlife Contingency Plan, well-specific oil-spill modelling and other response measures before commencement of drilling.
- 2.10.33. The OSCP and BOCP are to be developed in consultation with SAMSA, PASA and the DFFE Oceans and Coast Unit, with the OSCP requiring SAMSA approval before operations commence.
- 2.10.34. Condition 5.5.6 of the environmental authorisation requires the submission of the identified site-specific management plans, including the OSCP, OWCP, Emergency Response Plan and Well Control Contingency Plan, 60 days before commencement of drilling operations.

- 2.10.35. NEMA and the EIA Regulations do not require the OSCP, BOCIP and related site-specific contingency plans to be finalised and included in the EIA before the environmental authorisation is granted.
- 2.10.36. The development of these plans after the granting of the environmental authorisation but before commencement of drilling does not constitute a failure of public participation under regulation 23 of the 2014 EIA Regulations.
- 2.10.37. The final EIA contained sufficient information regarding the potential impacts and proposed mitigation measures to enable the competent authority to assess the environmental risks associated with the proposed drilling activities.

EVALUATION (Reasons for the decision)

- 2.10.38. The crux of this ground of appeal is whether the environmental risks and impacts associated with offshore exploration drilling, particularly the risk of an unplanned well-blowout and major crude oil spill, were adequately and accurately assessed in the EIA, and whether the mitigation measures relied upon in reducing the significance of those impacts were sufficiently identified and secured to enable the competent authority to make an informed and defensible decision.
- 2.10.39. The EIA in its summary expressly identifies a major release of crude oil arising from a blowout or loss of well control as the greatest environmental threat associated with the proposed offshore drilling operations. It recognises that such an event could have significant and potentially devastating consequences for the marine environment, including deterioration of water quality, mortality or adverse effects on marine fauna and impacts on sensitive coastal habitats. The EIA nevertheless records that the probability of such an event is extremely low, relying, amongst other things, on the absence of recorded blowouts from approximately 47 wells previously drilled in the West Coast offshore environment and global data indicating a blowout frequency of approximately 1.43×10^{-4} per exploration well drilled. The EIA therefore did not disregard the potential consequences merely

because the probability of occurrence was low. Rather, it considered both the likelihood and potential consequences of the event.

2.10.40. The EIAr further identifies a range of measures intended to prevent or respond to an unplanned blowout. These include maintaining appropriate drilling-fluid density and pressure, monitoring abnormal formation pressures, the use of well-control equipment and a Blowout Preventer (BOP), redundant pressure-control mechanisms, and the mobilisation of a capping system in the event that the BOP fails.

2.10.41. The EIAr also requires the operator to be a member of Oil Spill Response Limited (OSRL) and records the availability of capping equipment at Saldanha Bay. Additional measures include compliance with applicable maritime conventions, safety zones around the drilling unit, Shipboard Oil Pollution Emergency Plans, an Emergency Response Plan, an Oil Spill Contingency Plan (OSCP), spill containment and clean-up equipment and emergency response exercises.

2.10.42. These measures demonstrate that the potential consequences of a blowout were considered together with both preventative and responsive controls.

2.10.43. The contention that the significance of the blowout impacts was incorrectly assessed as HIGH rather than VERY HIGH is not persuasive. The significance assessment methodology applied in the EIAr considered the consequences of the impact, including its nature, extent, duration, magnitude and reversibility, together with the probability or likelihood of occurrence. I perused the final EIAr and note, the report records that due to its offshore location, plankton abundance is expected to be low, with the major fish spawning and migration routes occurring further inshore on the shelf. The dominant fish in the area would include the migratory large pelagic species such as tunas, billfish and pelagic sharks. Seabirds will be dominated by the pelagic species such as albatross, petrels and shearwaters. Migrating turtles in the area would include the leatherback and loggerhead turtles. Marine mammals likely to occur offshore include a variety of baleen whales including humpbacks, Antarctic minke, fin and sei whales. Toothed whales will include

sperm and killer whales, as well as a variety of beaked whales and dolphins. The licence area overlaps with the Childs Bank MPA and the Childs Bank and Shelf Edge EBSA.

2.10.44. I further note the Area of Interest for drilling, however, specifically avoids these areas. The highest sensitivities to the proposed drilling activities are i.e. the Childs Bank, which is located ~ 50 km East of the Area of Interest block, that potentially supports vulnerable, long-lived benthic invertebrate species; numerous vulnerable and endangered pelagic shark species; Leatherback turtles that migrate through the area; Sperm whales, which occur in the area year-round; Humpback and Fin whales, which migrate through the area between May and December; and the Orange Shelf Edge Marine Protected Area (MPA), and the Orange Seamount and Canyon Complex Ecologically and Biologically Significant Area (EBSA).

2.10.45. Notwithstanding the above, I note the proposed Block 3B/ 4B application does overlap the spatial extent of the large pelagic longline ground. The fishery operates extensively within the South African exclusive economic zone (EEZ), primarily along the continental shelf break and further offshore. Figure 9 of the final EIAr shows the spatial extent of pelagic longline fishing grounds in relation to the licence block and area of interest (AOI) for proposed drilling.

2.10.46. Consequently, the environmental risk and significance rating are not determined solely by the highest rating assigned to an individual characteristic of the impact. The fact that certain characteristics or consequences may be described as very high does not necessarily mean that the overall environmental risk or significance must be rated as very high. The EIAr records the overall environmental risk associated with an unlikely and unplanned blowout as HIGH. On the information before the decision-maker, there is insufficient basis to conclude that the application of the approved significance assessment methodology was irrational or that the HIGH rating was unsupported.

2.10.47. The concern regarding the oil-spill modelling was also considered. The EIAr records that the Oil Spill Modelling Study considered both condensate and crude oil and modelled high

blow rates representative of a worst-case scenario. Two release points were selected from the potential well locations, one in the northern and one in the central area of interest. The Applicants explained that these points represented the most appropriate locations for assessing the worst-case consequences, including consideration of proximity to the coast and sensitive marine protected areas. The selection of representative worst-case release points is not, in itself, indicative of an inadequate assessment. There was insufficient evidence before the decision-maker to establish that the selected locations failed to represent the locations with the greatest potential environmental consequences or that modelling every potential well location was necessary to reach a reasonable assessment of the impacts.

2.10.48. The concern regarding the assumed capping period of 20 days was likewise considered.

The duration of an uncontrolled release is plainly relevant to the extent and severity of the resulting environmental impacts. However, the information before the decision-maker indicates that the 20-day period was adopted as the conservative scenario for purposes of the modelling and was supported by the applicants' evidence regarding the mobilisation of capping equipment. The EIAr further requires access to capping equipment and provides for measures intended to reduce the duration of a spill. In the absence of evidence demonstrating that the 20-day assumption was arbitrary, technically unsupported or materially inconsistent with the available response capability, the assumption does not render the assessment defective.

2.10.49. The EIAr also considered potential socio-economic consequences arising from a blowout.

It identifies potential impacts on fishing grounds and catches potential for the large pelagic longline fishing industry, as well as possible disruption to established shipping and cruise tourism routes. The impacts were assessed having regard to their anticipated temporary nature and the expected duration and spatial extent of a spill. The evidence therefore does not support a finding that these potential consequences were ignored or excluded from the assessment.

2.10.50. The more material concern relates to the reliance on the development of site-specific contingency plans after the granting of the EA. The EIAr, on pages 35 and 36, provides that a project- and well-specific OSCP would be prepared and submitted to the relevant authorities for review and approval. The OSCP is intended to address the specific conditions applicable to the final well location and to provide for notification, escalation, command and control, response strategies and the deployment of appropriate resources. The EIAr further identifies the need for a Well Control Contingency Plan and other emergency response measures. These plans constitute important mitigation and response measures given that the EIAr itself identifies a major crude oil release as the greatest environmental threat associated with the proposed activity.

2.10.51. It is accepted that certain contingency plans can only properly be finalised once site-specific information, including the final well location, drilling contractor, equipment and operational arrangements, is available. It would not necessarily be reasonable to require a fully site-specific response plan before those particulars are known. However, the importance of these plans means that their development and implementation cannot be left entirely to the discretion of the operator after drilling has commenced. The plans must be sufficiently secured through the conditions of the environmental authorisation to ensure that the mitigation measures relied upon in the impact assessment are actually implemented.

2.10.52. In this regard, the environmental authorisation requires the relevant management plans to be submitted before commencement of the drilling operations. This requirement is material because it ensures that the identified contingency measures are to be developed and made available before the activity, giving rise to the relevant risk commences. The record further indicates that the OSCP and BOCIP are to be developed in consultation with the relevant authorities and that the OSCP is subject to the applicable approval requirements. Accordingly, the fact that the final site-specific contingency plans were not appended to the EIAr does not, on its own, establish that the competent authority acted without sufficient information to make its decision.

2.10.53. Nevertheless, given the severity of the potential consequences associated with an uncontrolled blowout, it is appropriate that the conditions of the environmental authorisation expressly secure the implementation of the mitigation measures relied upon in the EIAr. In particular, before commencement of drilling, the holder should be required to have in place and obtain the necessary approval for a site-specific OSCP, BOCIP and Oiled Wildlife Contingency Plan, supported by site-specific oil-spill modelling, confirmed access to appropriate capping and oil-spill response resources, adequately trained personnel and emergency response arrangements. The relevant plans should also be subject to appropriate testing or exercises to demonstrate operational readiness.

2.10.54. On the evidence before me, I am not persuaded that this ground of appeal establishes a basis for interfering with the decision to grant the environmental authorisation. While the appellants raise concerns regarding the potentially severe consequences of a blowout and the importance of site-specific emergency response planning, the evidence does not establish that the competent authority failed to consider the risk of a blowout, that the overall HIGH significance rating was irrational, or that the oil-spill modelling was so deficient as to render the environmental authorisation unlawful or unreasonable. The EIAr contains a substantive assessment of the risk, potential consequences, modelling, preventative controls and mitigation measures. Furthermore, the environmental authorisation contains requirements aimed at ensuring that critical site-specific mitigation and emergency response measures are developed, reviewed and approved prior to the commencement of drilling operations.

2.10.55. While the appellants contend that the absence of the final site-specific plans deprived interested and affected parties of an opportunity to comment on those plans during the EIA process, I am satisfied that the underlying blowout risks, mitigation concepts, emergency response framework and contingency requirements were described and assessed in the EIAr. The absence of the final site-specific plans did not therefore prevent consideration of the relevant risks, although the final plans should be subjected to appropriate consultation prior to implementation.

2.10.56. I am also satisfied that sufficient information was before the competent authority regarding the applicant's capacity to implement the proposed mitigation and response measures. The record reflects commitments relating to capping capability, oil-spill response arrangements, emergency response planning and participation in recognised response organisations. In the circumstances, I am not persuaded that the competent authority lacked sufficient information to evaluate the applicant's ability to implement the identified mitigation measures as contemplated in section 24O of NEMA.

2.10.57. Notwithstanding the aforesaid, this ground of appeal is dismissed.

2.11. ELEVENTH GROUND OF APPEAL: FAILURE TO ADEQUATELY CONSIDER THE CLIMATE CHANGE IMPACTS OF THE PROPOSED ACTIVITIES

Submission by the appellants

In support of this ground of appeal, the appellants submit the following:

- 2.11.1. The EIAr/ final EIAr does not adequately assess the potential climate change impacts of the proposed exploration activities, particularly the project's contribution to greenhouse gas (GHG) emissions.
- 2.11.2. The climate change assessment is largely confined to the exploration phase and does not adequately consider the reasonably foreseeable climate change impacts associated with subsequent oil and/or gas production if commercially viable resources are discovered.
- 2.11.3. Although exploration and production may require separate environmental authorisations, the potential impacts of production are relevant to determining the need and desirability of the exploration activities. The exploration is undertaken for the purpose of identifying resources that may subsequently be exploited.
- 2.11.4. The final EIAr does not adequately quantify or assess the potential GHG emissions associated with the full lifecycle of the project, including emissions arising from future

production and the eventual combustion or use of the hydrocarbons. In particular, Scope 3 emissions are not adequately addressed.

- 2.11.5. The judgments in *Earthlife Africa Johannesburg v Minister of Environmental Affairs and Others* and *Sustaining the Wild Coast NPC v Minister of Mineral Resources and Energy and Others* ("*Shell*") establish the relevance of climate change considerations in environmental decision-making, notwithstanding the absence of an express statutory requirement for a standalone climate change assessment.
- 2.11.6. A proper determination of the need and desirability of the exploration activities requires consideration of the potential climate consequences of successful exploration and subsequent production.
- 2.11.7. The approach of deferring consideration of production-related climate impacts to a future production authorisation does not adequately address the relevance of reasonably foreseeable production impacts to the present exploration decision.
- 2.11.8. Insufficient consideration is given to the compatibility of the proposed exploration and potential future production with South Africa's domestic and international commitments to reduce GHG emissions and transition towards a lower-carbon economy, including its commitments under the Paris Agreement and its Nationally Determined Contribution.
- 2.11.9. The CCIA does not adequately assess how the proposed activities may interact with and exacerbate existing climate-related vulnerabilities in marine and coastal ecosystems and communities.
- 2.11.10. The assessment does not sufficiently consider the cumulative and compounding effects of the proposed activities and climate change, including the potential for project-related disturbances to reduce the resilience of marine ecosystems and communities already affected by changing ocean temperatures, currents, species distribution and resource availability.
- 2.11.11. Climate change is already affecting marine ecosystems and the availability and distribution of marine resources. These changes have implications for communities dependent on marine resources, particularly fishing communities, and the proposed activities may further increase these vulnerabilities.

- 2.11.12. Insufficient consideration is given to how accidental events, particularly an oil spill, could interact with existing climate-related pressures and further compromise the resilience and adaptive capacity of marine ecosystems important for food security and livelihoods.
- 2.11.13. The rapidly changing marine environment requires current and comprehensive baseline information. Gaps concerning the distribution, abundance and seasonality of marine species affect the reliability of predictions regarding the project's environmental and climate-related impacts.
- 2.11.14. The final EIAr indicates that the details of venting and flaring are not yet certain. The absence of sufficient information concerning potential emission sources and quantities limits the ability to properly assess the project's climate impacts.
- 2.11.15. The assessment does not adequately consider whether South Africa's energy requirements could be met through renewable energy and energy-storage technologies instead of further investment in oil and gas exploration and production.
- 2.11.16. The conclusion that natural gas may serve as a transition fuel is not adequately supported by current scientific, technological and economic evidence. The assessment relies substantially on the 2019 IRP without sufficiently considering developments in renewable energy and energy-storage technologies.
- 2.11.17. Insufficient consideration is given to the potential economic consequences associated with future fossil-fuel development, including climate-related regulatory and market changes and the risk of stranded infrastructure and assets as global energy systems transition towards lower-carbon technologies.
- 2.11.18. The assessment places emphasis on the potential economic benefits associated with future oil and gas production without adequately considering those benefits against the potential climate-related costs, risks and long-term consequences.
- 2.11.19. The CCIA does not contain sufficient information regarding lifecycle emissions, cumulative climate impacts, climate vulnerability, ecosystem resilience and the compatibility of the project with South Africa's climate commitments.
- 2.11.20. The deficiencies in the assessment resulted in incomplete information being placed before the competent authority and affected the ability to properly assess the climate change

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implications, environmental significance, and need and desirability of the proposed exploration activities.

Response by the applicants

The applicants in reply to this ground of appeal, they submit as follows:

- 2.11.21. The climate change ground had previously been raised during the commenting periods on the draft EIAr and updated EIAr and was addressed by the EAP and specialist consultants.
- 2.11.22. The proposed activities are limited to the exploration and identification of oil and gas resources and do not include production activities. The assessment of impacts was therefore directed at the exploration activities for which environmental authorisation was sought.
- 2.11.23. The 2014 EIA Regulations require consideration of the cumulative impacts of the activity for which authorisation is sought and its reasonably foreseeable impacts. They do not require an assessment of undefined and speculative future production activities.
- 2.11.24. Section 9.4 of the final EIAr assesses the potential and reasonably foreseeable cumulative and confounding impacts associated with the proposed exploration activities.
- 2.11.25. The assessment considers existing and ongoing activities in the region, including other exploration and production activities, maritime vessel traffic, vessel lighting and operational discharges, mining, fishing and climate change.
- 2.11.26. Section 9.4.1 of the final EIAr specifically considers cumulative impacts on marine ecology and takes account of the 2018 National Biodiversity Assessment.
- 2.11.27. The assessment indicates that Block 3B/4B is situated in an area experiencing relatively low cumulative impacts from other users and that the ecological condition remains largely natural or near-natural.
- 2.11.28. The climate change impacts of the proposed exploration activities were specifically assessed in the Climate Change Report prepared by Airshed and incorporated as Appendix 4.2 to the final EIAr. Section 9.3.7.2 of the final EIAr considers the potential climate change impacts arising from both planned and unplanned events.

- 2.11.29. The specialist assessment concluded that the climate change impacts of the proposed exploration activities would be of low significance. Based on the 2020 National GHG Inventory and a maximum survey duration of 84 days, the project's routine CO₂-e emissions were estimated to contribute approximately 0.008% of the 2020 South African energy-sector emissions and 0.007% of the national GHG inventory total, excluding FOLU.
- 2.11.30. Although the estimated emissions exceed the EBRD threshold of 25 kt CO₂-e per year, they remain below the DFFE PPP threshold of 100 kt CO₂-e. The low significance attributed to the impacts was based on their low intensity and limited duration.
- 2.11.31. The final EIA also considered climate change in the assessment of need and desirability.
- 2.11.32. Given that the project is limited to exploration, the direct GHG emissions are limited and the climate change vulnerability risk associated with the project was assessed as very low due to its limited duration.
- 2.11.33. The assessment further considered South Africa's climate change commitments and the need to manage the transition towards a lower-carbon economy while taking account of energy security, economic considerations and the social consequences of the transition for vulnerable groups.
- 2.11.34. South African energy policy recognises a continuing short- to medium-term role for oil and natural gas and supports the exploration of indigenous resources as part of efforts to diversify energy supply and reduce dependence on imported fuel products. This policy context is reflected, inter alia, in the 2021 NDC, the Just Energy Transition Plan and the 2019 and 2021 IRPs.
- 2.11.35. The reference to COP23 in December 2023 is factually incorrect. COP23 took place in November 2017, whereas COP28 was held in December 2023. The assessment nevertheless recognises the transition away from fossil fuels and South Africa's associated climate change commitments.
- 2.11.36. The potential climate change and cumulative impacts of future production activities were not assessed as part of the present application because production does not form part of the proposed activities.

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- 2.11.37. At this stage, it is not known whether a commercially viable resource will be discovered or, if discovered, what its size, location, production method, scale, duration or associated infrastructure would be.
- 2.11.38. An assessment of future production impacts in the absence of such information would therefore be speculative and would not permit those impacts to be meaningfully evaluated.
- 2.11.39. The circumstances relevant to future production may also be affected by developments in technology, climate change legislation, energy policy, economic conditions and market demand.
- 2.11.40. Exploration does not necessarily result in production. Any decision to proceed to production would depend on, among other factors, the discovery of a commercially viable resource, its characteristics, the technical and environmental feasibility of production, the applicable legal framework and prevailing economic conditions.
- 2.11.41. Should production be pursued, it would require a separate environmental authorisation and environmental assessment. That future process would provide for the assessment of the impacts, including climate change and cumulative impacts, associated with the defined production activities.
- 2.11.42. The requirement for a separate environmental authorisation for future production does not, in itself, require the current exploration assessment to incorporate undefined production activities whose nature and extent cannot presently be established.
- 2.11.43. The cumulative assessment was accordingly confined to impacts that could presently be identified and meaningfully assessed. Future production-related impacts can be assessed once the relevant activities are sufficiently defined and the necessary information becomes available.
- 2.11.44. On this basis, the climate change and cumulative impacts associated with the proposed exploration activities were assessed in the final EIA, including their significance and relationship with South Africa's climate change commitments.
- 2.11.45. The information before the competent authority was therefore considered sufficient for purposes of deciding the application for environmental authorisation.

EVALUATION (Reasons for the decision)

2.11.46. The nub of this ground of appeal is whether the environmental assessment adequately considered the climate change implications and cumulative impacts associated with the proposed exploration activities, including whether the assessment was required to extend to potential future oil and gas production activities.

2.11.47. At the outset, I note that the issues relating to future production activities and need and desirability have been addressed in my assessment of the preceding grounds of appeal and will not be repeated under this ground. I further note that the issues raised under this ground formed part of the comments submitted during the public participation process and were responded to by the EAP in the Comments and Response Report (CRR).

2.11.48. To the extent that this ground repeats arguments relating to future production activities, lifecycle emissions, need and desirability, energy policy, transition fuel considerations and stranded asset risks, those issues have been addressed under the preceding grounds of appeal and are not repeated here. The present evaluation focuses on whether the climate change assessment adequately assessed the climate-related impacts associated with the exploration activities that form the subject of the application.

2.11.49. I note that the final EIA specifically addresses the relationship between the proposed project, climate change and South Africa's energy policy. At pages 43 to 55, the EIA considers various national policy and planning instruments of relevance to the project, including the Integrated Resource Plan 2019, National Development Plan 2030, White Paper on the Energy Policy of the Republic of South Africa, National Gas Infrastructure Plan, Paris Agreement, National Climate Change Response White Paper, South African National Climate Change Response Policy, Nationally Determined Contribution, National GHG Emissions Inventory, Marine Spatial Planning Framework and the Just Energy Transition Investment Plan. The assessment therefore demonstrates that the proposed exploration activities were considered within the broader policy context governing energy

security, economic development, environmental protection and South Africa's transition towards a lower-carbon economy.

2.11.50. I note further that the EIAr does not disregard South Africa's climate change commitments.

The discussion of the Paris Agreement, National Climate Change Response Policy and Nationally Determined Contribution recognises South Africa's commitments to reduce greenhouse gas emissions and to adapt to the impacts of climate change. The EIAr also recognises the policy direction towards diversification of the energy mix and lower-carbon energy sources. At the same time, the EIAr considers the role attributed to natural gas and domestic oil and gas resources in certain national energy policy instruments, including the IRP 2019 and the White Paper on the Energy Policy. I therefore consider that the assessment acknowledged the potential tension between energy development and climate change objectives rather than proceeding on the basis that the proposed activity was exempt from climate change considerations.

2.11.51. The final EIAr further contains a specific section dealing with climate change. At pages 319 to 324, section 8.11 Climate Change provides an assessment of the climate change characteristics associated with the proposed project and records that the information was sourced from the Climate Change Assessment undertaken by Airshed and contained in Appendix 4. The assessment considers both mitigation and adaptation. In particular, it recognises that mitigation requires consideration of measures to reduce greenhouse gas emissions associated with the project, while adaptation requires consideration of how the project may be affected by projected future climate conditions.

2.11.52. I note that the assessment did not limit itself to present climatic conditions. At page 320, the EIAr considers temperature and rainfall projections based on the South African Weather Service Climate Change Reference Atlas and considers the RCP4.5 and RCP8.5 scenarios. Under the RCP4.5 scenario, projected increases in annual average near-surface temperatures in the project region are considered for both the near future (2036–2065) and far future (2066–2095), together with projected changes in rainfall. The EIAr

similarly considers the RCP8.5 scenario and records projected temperature increases and changes in rainfall for the project region.

2.11.53. The EIAr also considers more recent climate projections based on IPCC AR6. On pages 321 to 322, the assessment considers the SSP2-4.5 and SSP5-8.5 scenarios and compares the projected changes in annual average temperature for the project region. The assessment therefore considers different climate scenarios and timeframes and does not treat climate change as a static or present-day phenomenon.

2.11.54. On page 323, the EIAr considers projected sea-level rise under the AR6 scenarios for Port Nolloth and Granger Bay. The assessment records projected increases in mean sea level for the mid-term period (2041–2060) and long-term period (2081–2100) under both SSP2-4.5 and SSP5-8.5. This is particularly relevant to the proposed marine project because it demonstrates that potential changes to the physical climate environment were considered in assessing the project's vulnerability to climate change.

2.11.55. The EIAr also considers rare and extreme events and records the potential for increased heat waves, warm spells, drought and other climate-related events. These considerations further demonstrate that the climate change assessment was not confined to greenhouse gas emissions generated by the proposed activities but also considered the potential effects of climate change on the receiving environment and the project itself.

2.11.56. I further note that the final EIAr considers climate change within the broader marine ecological assessment. At page 149, the EIAr records the 2021 mortality event affecting seal colonies along the West Coast and notes that possible causes included climate change and/or overfishing, although the underlying causes remained uncertain. At pages 160 to 161, the EIAr also considers the potential relationship between climate change and changes in the distribution of marine species, including the freshwater mullet. These considerations demonstrate that climate change was recognised as an existing and

potential future pressure on the marine environment within which the proposed activities would occur.

2.11.57. The EIAR also considers marine protected areas in the context of climate change. On page 243, the discussion of the Namaqua National Park Marine Protected Area recognises climate change as one of the ecological changes against which the protected area provides an important baseline and identifies protection of the coastline as part of South Africa's climate adaptation strategy. This provides further evidence that climate change was incorporated into the broader environmental and ecological assessment.

2.11.58. I further note the appellants' submission that the proposed activities may interact with existing climate-related stressors affecting marine ecosystems and coastal communities. The information before me indicates that climate change was considered as an existing pressure operating within the receiving environment and that the cumulative assessment considered climate change together with other marine stressors. I am therefore not persuaded that climate vulnerability or ecosystem resilience were ignored in the environmental assessment process.

2.11.59. The appellants further contend that gaps in baseline information relating to marine species distribution, abundance and seasonality undermine the reliability of the climate change assessment. While the assessment acknowledges limitations in available information, I am satisfied that it was undertaken using the best available scientific information and that the identified limitations were disclosed and considered in the assessment process.

2.11.60. In relation to greenhouse gas emissions, I note that the climate change assessment specifically considers emissions associated with the proposed exploration activities. The assessment distinguishes the emissions attributable to the exploration phase from emissions that could arise from future production activities. The exploration activities are of limited duration and do not constitute production. I therefore consider it appropriate that the assessment focused on the emissions that can reasonably be attributed to the activities for which environmental authorisation is sought.

2.11.61. I have also considered the complaint that the cumulative assessment should have extended to potential future production activities. Section 9.4 of the final EIAr addresses cumulative and confounding impacts associated with the proposed exploration activities. The assessment considers existing and ongoing activities and pressures within the region, including other exploration and production activities, maritime vessel traffic, vessel lighting, operational discharges, mining activities, fishing activities and climate change.

2.11.62. Section 9.4.1 of the final EIAr specifically considers cumulative impacts on marine ecology and incorporates the 2018 National Biodiversity Assessment. The use of this assessment is relevant because it provides a broader assessment of the cumulative pressures arising from existing and historical ocean-based activities and their effects on marine biodiversity. The cumulative assessment therefore did not consider the proposed exploration activities in isolation from the existing environmental pressures within the receiving environment.

2.11.63. I accept that future production may potentially give rise to additional greenhouse gas emissions and cumulative impacts. However, production does not form part of the activities presently proposed for authorisation. At this stage, it has not been established whether a commercially viable hydrocarbon resource will be identified, nor its size, characteristics, location, recoverability or the manner in which any future production would be undertaken. The infrastructure, duration, scale and operational characteristics of such production are consequently also unknown.

2.11.64. In these circumstances, I consider that an assessment of the detailed environmental and climate change impacts of hypothetical future production would necessarily involve a degree of speculation. The significance and nature of those impacts would depend upon facts and circumstances that cannot presently be established. The absence of such an assessment therefore does not, in my view, demonstrate that the assessment of the proposed exploration activities was inadequate.

2.11.65. I further note that the EIAr expressly distinguishes the proposed exploration activities from future production. Should a commercially viable resource be identified and the applicant seek to proceed with production, such activities would be subject to the applicable environmental authorisation requirements. That process would provide an opportunity for the environmental impacts of the defined production activities, including their climate change and cumulative impacts, to be assessed on the basis of information available at that stage.

2.11.66. I further perused the Climate Change Specialist Study dated March 2024, prepared by Airshed Planning Professionals. This study assessed the Scope 1 greenhouse gas (GHG) emissions associated with the proposed exploration activities in a portion of Block 3B/4B. The study estimated routine CO₂-e emissions at 31.813 kt, with potential upset emissions estimated at 450 kt. The assessment was undertaken using South African-specific calorific values and fuel densities, where available, together with applicable IPCC emission factors.

2.11.67. The study found that the routine emissions from the proposed exploration activities, assuming a maximum survey duration of 84 days, would constitute approximately 0.008% of South Africa's 2020 energy-sector emissions and approximately 0.007% of the national GHG inventory total, excluding FOLU. Although the routine emissions exceed the 25 kt CO₂-e threshold regarded by the EBRD as significant GHG emissions, they remain below the 100 kt CO₂-e DFFE PPP threshold. Having regard to the low intensity and short duration of routine emissions, the specialist assessed the environmental risk associated with routine operations as low. The potential upset emissions, although assessed as having medium intensity, were also assessed as presenting a low environmental risk because of their shorter duration and lower probability of occurrence.

2.11.68. The study further concluded that, given the temporary nature and anticipated short duration of the project, changes in meteorological parameters were not expected to have a significant impact on the proposed exploration activities.

2.11.69. In respect of mitigation, the specialist recommended the implementation of a maintenance plan for all ship engines and boilers to ensure adequate maintenance, minimise the release of unburnt fuel and improve energy efficiency. The specialist also identified applicable monitoring and reporting requirements under NEM:AQA, the National Greenhouse Gas Emission Reporting Regulations and the 2022 Methodological Guidelines. GHG emissions are required to be reported annually through SAGERS, and applicable carbon-tax requirements must be considered in accordance with the Carbon Tax Act.

2.11.70. The specialist further concluded that, although GHG reporting through SAGERS would be required, the proposed exploration activities would not trigger the requirement for a Pollution Prevention Plan, as the anticipated emissions from the relevant production process would not exceed 100 kt CO₂-e.

2.11.71. Consequently, the Climate Change Specialist Study concluded that the climate change and GHG emission risks associated with the proposed exploration activities are low, primarily due to the temporary and limited duration of the activities. The recommended maintenance and monitoring measures provide additional mechanisms for managing and minimising the project's GHG emissions.

2.11.72. The appellants also contend that uncertainty regarding venting and flaring limits the reliability of the climate change assessment. However, the Climate Change Specialist Study assessed emissions associated with the exploration activities as presently defined and applied recognised methodologies to estimate routine and upset emissions. The appellants have not demonstrated that any uncertainty regarding future operational details materially undermined the reliability of the emissions assessment undertaken for the exploration phase.

2.11.73. In considering the ground as a whole, I am satisfied that climate change was adequately incorporated into the environmental assessment. The final EIAr considered the relevant

national and international policy framework at pages 43 to 55, the project's climate change characteristics and projected climate conditions at pages 319 to 324, climate-related ecological considerations at pages 149, 160 to 161 and 243, and cumulative impacts in section 9.4 of the final EIAr. The assessment therefore addressed both the potential contribution of the proposed exploration activities to climate change and the potential vulnerability of the project and receiving environment to climate change.

2.11.74. I am accordingly satisfied that the information before me is sufficient to enable an informed consideration of the climate change and cumulative impacts associated with the proposed exploration activities. The requirement to consider climate change does not, in the circumstances of this application, require an assessment of undefined future production activities for which the nature, scale, location and environmental consequences cannot presently be established.

2.11.75. This ground of appeal is therefore not substantiated and is dismissed.

2.12. TWELFTH GROUND OF APPEAL: FAILURE TO ASSESS TRANSBOUNDARY IMPACTS

Submission by the appellant (the Green Connection, Natural Justice & Masifundise)

In support of this ground of appeal, the appellant submits as follows:

- 2.12.1. The NEM: ICMA mandates the DMPR to manage coastal activities in line with international law.
- 2.12.2. South Africa has two key obligations regarding environmental authorisations for activities with transboundary impacts i.e. (a) assessing these impacts and (b) consulting relevant foreign authorities. However, the final EIAr acknowledges the risk of a transboundary oil spill but overlooks potential non-domestic impacts.

- 2.12.3. Furthermore, it lacks evidence that foreign authorities were consulted during the assessment and the EMP development, violating South Africa's international obligations.
- 2.12.4. The final EIA inadequately evaluates the non-domestic impacts of potential transboundary oil spills, violating South African law.
- 2.12.5. Consequently, the Competent Authority (CA) issued an environmental authorisation without full consideration of relevant information. The International Court of Justice's Pulp Mills case underscores the obligation to assess transboundary impacts under international law.
- 2.12.6. While the final EIA acknowledges that oil spills could affect Namibia and international waters, it limits its impact assessment to South Africa, neglecting specific implications for Namibian communities. This oversight is significant, as the socio-economic consequences for Namibia, with its smaller economy and different resource dependencies, could be severe but were not analysed in the final EIA.
- 2.12.7. Failure to consult with Namibian Government relating to transboundary impacts, the final EIA was compiled without meaningful consultation with relevant Namibian authorities, violating South Africa's international commitments.
- 2.12.8. Both countries are signatories to the Benguela Current Convention and the Abidjan Convention, which mandate consultation when marine ecosystems are at risk. These agreements promote environmentally responsible industrial development and cooperation to protect biodiversity.
- 2.12.9. The Abidjan Convention requires states to avoid transferring environmental damage, while the Benguela Current Convention calls for joint efforts to prevent pollution and conduct environmental assessments. South Africa is thus obligated to support coordinated conservation efforts in the Benguela Current marine ecosystem, including Namibian waters.
- 2.12.10. In our comments on the draft EIA, we highlighted the lack of evidence for meaningful consultation with Namibian authorities, violating South Africa's international obligations.
- 2.12.11. Both the draft EIA and final EIA claim to include Namibian stakeholders in its initial database but provided no specifics on who was contacted and how. This vague assertion fails to demonstrate compliance with obligations to prevent transboundary harm.

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- 2.12.12. Notice letters sent to Namibian authorities only offered a generic invitation for public comment, without indicating potential impacts on their waters.
- 2.12.13. This approach did not facilitate meaningful engagement or address the transboundary nature of the project, contradicting South Africa's commitments.

Response by the applicants

In this ground of appeal, the applicants responded as follows:

- 2.12.14. Section 9.3 of the final EIAr assesses the potential impacts associated with both planned and unplanned activities, including the potential consequences of an unlikely blowout.
- 2.12.15. The Oil Spill Dispersion Modelling (OSDM), contained in Appendix 4.1 of the final EIAr, models the potential distribution of pollution arising from a blowout and recognises that a spill could extend beyond South Africa's borders into Namibian and international waters.
- 2.12.16. Sensitive receptors in adjacent Namibian waters are included in the baseline environmental description, and the impact assessment incorporates the potential transboundary and international extent of a spill into the extent and significance ratings.
- 2.12.17. The assessment of impacts on marine fauna is not confined by national boundaries, as marine species are not restricted by political borders. The impact ratings applicable to South African waters would therefore also apply to affected Namibian and international waters.
- 2.12.18. The final EIAr acknowledges that oil would not reach the Namibian coastline and that threatened and endangered seabird species associated with the offshore islands within the Namibian Islands Marine Protected Area (NIMPA) would not be directly affected, although they could potentially encounter a spill while foraging offshore.
- 2.12.19. The potential impact intensity of a spill is assessed as High, including where the impact extends into Namibian or international waters.
- 2.12.20. The detailed impact assessment in Appendix 3 of the final EIAr assigns an International extent rating to various potential impacts, with the significance scores adjusted accordingly.

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- 2.12.21. The final EIA does not provide a specific description of the Namibian fishing sectors that could potentially be affected.
- 2.12.22. The potential spill footprint could be substantially reduced through the implementation of surface response measures, capping and subsea dispersant injection (SSDI).
- 2.12.23. Potential transboundary impacts were addressed during the draft EIA and updated EIA commenting processes, with relevant authorities and stakeholders identified for participation in the EIA process.
- 2.12.24. Relevant Namibian and regional stakeholders included the Benguela Current Commission, Namibian Ministry of Environment and Tourism, Directorate of Scientific Services, Namibian Research and Permit Control Department, Shell Namibia, NatMIRC, Confederation of Namibian Fishing Associations and various Namibian fishing associations.
- 2.12.25. Relevant representatives of the Abidjan Convention were also included in the stakeholder database.
- 2.12.26. Limited responses were received from the identified Namibian stakeholders, comprising an acknowledgement of notification from the Namibian Large Pelagic Association with no further comment and a registration request from Shell Namibia representatives, also with no further comment.
- 2.12.27. The relevant Namibian authorities, organisations and potentially affected stakeholders were accordingly identified and afforded an opportunity to participate in the EIA process.

EVALUATION (Reasons for the decision)

- 2.12.28. The nub of this ground of appeal is whether the environmental assessment adequately considered the potential transboundary impacts of a possible oil spill into Namibian and international waters, and whether the relevant Namibian authorities and stakeholders were sufficiently consulted during the environmental assessment and public participation processes (PPP).

2.12.29. At the outset, I note that the appellant raises two principal concerns. First, that although the final EIAr acknowledges the possibility of a transboundary oil spill, it allegedly fails to assess the potential impacts beyond South African waters, particularly the potential socio-economic and environmental consequences for Namibia. Second, that there was allegedly no meaningful consultation with the Namibian Government and other relevant Namibian authorities, notwithstanding the potential transboundary nature of the proposed activities and South Africa's international obligations.

2.12.30. I have considered these submissions together with the responses to the ground, the final EIAr and the public participation records. I note that the issue of transboundary impacts is not absent from the environmental assessment. The final EIAr expressly recognises the possibility that an oil spill could extend beyond South Africa's maritime boundaries into Namibian and international waters. The Oil Spill Dispersion Modelling (OSDM), contained in Appendix 4.1 of the final EIAr, was used to model the potential distribution of pollution arising from an unlikely and unplanned blowout. The results of this modelling informed the specialist assessments of the potential consequences of such an event.

2.12.31. I further note that the information presented on pages 238 to 240 of the final EIAr specifically identifies and considers the Namibian marine environment and the activities undertaken within Namibian waters. The assessment recognises the ecological and socio-economic importance of marine resources in the region and the potential interaction between the proposed activities and the wider Benguela Current marine ecosystem. The assessment therefore cannot, in my view, fairly be characterised as having proceeded on the assumption that the potential effects would necessarily terminate at South Africa's international boundary.

2.12.32. I also note that the impact assessment tables in the final EIAr expressly provide for an "International" extent rating. Various potential impacts were accordingly assessed on the basis that their geographical extent could extend beyond South African waters. The extent of the potential impact was therefore not mechanically restricted to the jurisdiction in which

the proposed activity is located. Where the modelling and specialist assessments indicated the potential for transboundary effects, the international extent was incorporated into the assessment and the significance ratings adjusted accordingly.

2.12.33. In respect of marine fauna, I note that the assessment appropriately recognises the nature of the receiving environment. Marine species and ecological processes are not confined by political boundaries. Consequently, an assessment of the potential effects of an oil spill on marine fauna cannot meaningfully be limited by the South African/Namibian boundary. The potential effects were therefore assessed having regard to the broader marine environment. The assessment further recognises that oil would not reach the Namibian coastline under the modelled scenario and that threatened and endangered seabird species associated with offshore islands within the Namibian Islands Marine Protected Area (NIMPA) would not be directly affected, although indirect exposure during foraging activities remained possible.

2.12.34. I acknowledge, however, the appellant's concern that the final EIA did not provide a detailed description of the particular Namibian fishing sectors that could potentially be affected by a transboundary spill. This is a relevant consideration given the socio-economic importance of fishing activities in Namibian waters. Nevertheless, the omission must be considered against the broader assessment undertaken. The potential international extent of the spill was identified, the relevant marine receptors were considered, and the potential spill footprint was modelled. The specialist assessments consequently incorporated the relevant transboundary consequences into their assessment of impact significance.

2.12.35. I further note that the potential consequences of an oil spill were assessed on the basis of an unlikely and unplanned blowout. The OSDM provides a modelled scenario of the potential distribution of pollution. The assessment also recognises that the implementation of response measures, including surface response, capping and subsea dispersant injection (SSDI), could substantially reduce the potential spill footprint. These measures

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are relevant when considering the likelihood, extent and significance of the potential impact.

2.12.36. I have also carefully considered the allegation that Namibian authorities and stakeholders were not consulted. On this issue, the evidence before me does not support the appellant's contention. I have perused the Public Participation Report Revision 4 dated 20 May 2024 and note that the relevant authorities and stakeholders consulted during the process are listed on pages 3 to 10 of that report. The list includes relevant Namibian authorities, institutions and industry stakeholders. The consultation included, amongst others, the Benguela Current Commission, the Namibian Ministry of Environment and Tourism, the Directorate of Scientific Services, the Namibian Research and Permit Control Department, the Namibian National Marine Information and Research Centre (NatMIRC), Shell Namibia and various Namibian fishing associations. The Namibian fishing stakeholders included representatives of the Namibian Hake Fishing Association, Namibian Crab Association, Namibian Hake & Tuna Longline Association, Namibian Large Pelagic Association, Namibian Line Fish Association, Namibian Rock Lobster Fishing Association and Namibian Small Pelagic Association.

2.12.37. The appellants further contend that the notifications provided to Namibian authorities and stakeholders were generic and failed to specifically highlight potential transboundary impacts. However, the relevant question is whether potentially affected stakeholders were provided with sufficient information to understand the nature of the proposed activity and to participate meaningfully in the process. Having considered the public participation record, I am satisfied that the proposed exploration activities and associated environmental documentation were made available to the identified stakeholders and that they were afforded an opportunity to comment on the potential impacts of the project, including those of a transboundary nature.

2.12.38. The evidence of consultation is therefore more substantial than the appellant's characterisation that the final EIA merely contained a generic statement that Namibian

stakeholders had been placed on an I&AP database. The Public Participation Report provides the relevant stakeholder information and demonstrates that Namibian authorities and stakeholders were identified and brought within the public participation process.

2.12.39. I further note that the response by the applicants to the ground identifies the participation of Namibian stakeholders and records that notification was provided to the relevant authorities and organisations. The fact that certain stakeholders did not provide substantive comments does not, without more, establish that consultation did not occur. The record reflects that the Namibian Large Pelagic Association acknowledged receipt of the notification without providing further comment, while Shell Namibia representatives requested registration and likewise provided no further comment. The absence of substantive comments from a stakeholder who was afforded an opportunity to participate cannot reasonably be attributed to a failure by the applicants to facilitate participation.

2.12.40. I have also considered the appellant's reliance on South Africa's international obligations, including those arising from the Benguela Current Convention and the Abidjan Convention, as well as the principle of transboundary environmental harm referred to in the Pulp Mills judgment. These instruments and principles reinforce the importance of considering potential transboundary environmental impacts and cooperation with affected states. They do not, however, support a conclusion that the mere possibility of a transboundary impact renders an environmental authorisation invalid where the potential transboundary effects have in fact been identified and assessed and the relevant foreign authorities and stakeholders have been afforded an opportunity to participate.

2.12.41. In this matter, the evidence demonstrates that the potential transboundary nature of an oil spill was identified, that the potential spread was modelled, that Namibian waters and receptors were considered, and that the impact assessment incorporated an international extent where appropriate. The evidence further demonstrates that relevant Namibian authorities, institutions and fishing-sector stakeholders were identified and consulted through the public participation process.

2.12.42. I therefore do not accept the contention that the environmental assessment was confined exclusively to South African waters or that the relevant Namibian authorities were not consulted. While I acknowledge that the final EIA could have provided a more detailed discussion of the specific Namibian fishing sectors potentially affected by a transboundary spill, this does not, in the circumstances, constitute a material deficiency that renders the assessment inadequate. The broader transboundary implications were identified and incorporated into the impact assessment, and the relevant Namibian stakeholders were afforded an opportunity to participate.

2.12.43. I am accordingly satisfied that the information before the decision-maker adequately addressed the potential transboundary impacts associated with the proposed activities and that the public participation process included relevant Namibian authorities and stakeholders. The allegation that the environmental authorisation was issued without consideration of relevant transboundary information is therefore not substantiated.

2.12.44. This ground of appeal is accordingly dismissed.

2.13. THIRTEENTH GROUND OF APPEAL: THE EAP FAILED TO ADEQUATELY ADDRESS IMPACTS ON CULTURAL AND SPIRITUAL HERITAGE AND THE NATIONAL HERITAGE RESOURCES ACT

Submission by the appellants

In support of this ground of appeal, the appellants submit, in summary, the following:

- 2.13.1. The assessment of the cultural, spiritual and living heritage impacts of the proposed exploration activities, including compliance with the National Heritage Resources Act, was inadequate.
- 2.13.2. Failure to adequately recognise the cultural and spiritual relationship between coastal communities and the ocean, including the significance of the sea for full-moon rituals,

baptism and cleansing ceremonies, traditional healing, natural medicine and spiritual practices.

- 2.13.3. Potential disruption of access to culturally and spiritually significant marine areas, which may affect the ability of communities to practise their cultural and religious traditions.
- 2.13.4. Failure to adequately consider living heritage, including cultural traditions, rituals, indigenous knowledge systems, livelihoods, performances and the intergenerational relationship between coastal communities and the ocean.
- 2.13.5. Insufficient consideration of the sense of place and cultural identity associated with the West Coast, including the historical dependence of coastal communities on fishing and the ocean.
- 2.13.6. Inadequate assessment of the potential effects of a well blow-out or oil spill on cultural and spiritual heritage, particularly the consequences of pollution of areas used for cultural, religious and traditional practices.
- 2.13.7. The significance of impacts arising from an unplanned oil-spill event was allegedly understated, with insufficient consideration of consequences that cannot readily be quantified or remedied through financial compensation.
- 2.13.8. Reliance on compensation as a mitigation measure was questioned, particularly because small-scale fishers may experience difficulties proving their losses and may face delays before receiving compensation.
- 2.13.9. Insufficient assessment of the potential impacts on coastal tourism, particularly where tourism is closely connected to fishing heritage, coastal identity and the cultural significance of the ocean.
- 2.13.10. Failure to adequately consider the cumulative impacts of the proposed exploration activity together with associated and reasonably foreseeable activities, as contemplated by the 2014 EIA Regulations.
- 2.13.11. Insufficient consideration of the broader life-cycle impacts of petroleum development, including subsequent production, downstream activities, infrastructure, transportation and greenhouse-gas emissions.

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- 2.13.12.Limited engagement with relevant cultural groups, including traditional healers, religious communities and small-scale fishers, resulting in an allegedly incomplete understanding of the cultural and spiritual significance of the ocean.
- 2.13.13.Reliance on the views of traditional leaders as representative of broader communities, without adequately capturing the diverse views and experiences of other affected community members.
- 2.13.14.Insufficient consideration of the concerns raised by more than 50% of interviewed fishers regarding offshore oil and gas activities and their potential implications for cultural heritage and livelihoods.
- 2.13.15.Failure to adequately interrogate the concerns raised during public participation regarding the potential consequences of an unplanned well blow-out and oil spill.
- 2.13.16.The decision-maker's reliance on the final EIAr's conclusion that a well blow-out was unlikely and that its impacts would be low to medium with mitigation, without adequately interrogating the contrary concerns raised by I&APs.
- 2.13.17.Alleged failure by the decision-maker to apply an independent mind to the cultural, spiritual and heritage impacts raised during the EIA process before granting the environmental authorisation.

Response by the applicants

In this ground of appeal, the applicants respond as follows:

- 2.13.18.The final EIAr comprehensively identifies and assesses the potential impacts of the proposed activities on cultural, spiritual and heritage resources, including impacts arising from both planned and unplanned events and cumulative impacts.
- 2.13.19.Section 9.3.4 and 9.4.5 of the final EIAr specifically addresses potential impacts on cultural heritage. The specialist assessment rated the identified impacts as low to medium significance following the implementation of the recommended management and mitigation measures.

- 2.13.20. A specialist Cultural Heritage Impact Assessment (CHIA) was undertaken and is included as Appendix 4.5 of the final EIAr. The CHIA specifically considered the cultural, heritage and spiritual connection of coastal communities to the ocean.
- 2.13.21. The cultural heritage assessment recognised that the ocean has cultural, spiritual, religious, psychological, social and economic significance to different communities living along the South African coast.
- 2.13.22. The CHIA considered the cultural and religious diversity of affected communities, including indigenous communities, persons who attach spiritual or religious significance to the ocean, persons who value the ocean for recreational or economic purposes, and coastal communities involved in fishing, tourism and related activities.
- 2.13.23. The CHIA recognised the constitutional and legislative protection afforded to cultural and religious diversity and incorporated these considerations into the assessment and proposed mitigation measures.
- 2.13.24. The assessment included engagement with relevant cultural stakeholders and considered cultural perspectives in determining appropriate mitigation measures.
- 2.13.25. Potential impacts associated with underwater noise, disturbance or behavioural changes to marine fauna, fishing activities, and cultural heritage are specifically addressed in the final EIAr, including sections 9.3.1.2.6, 9.3.2.2, 9.3.3 and 9.3.4.
- 2.13.26. With regard to vessel movements, the CHIA considered that vessel activity is not unique to offshore exploration and that the marine environment is already subject to disturbance from commercial fishing vessels and other vessels operating along the South African coast.
- 2.13.27. The CHIA further considered the potential disturbance of ancestors believed to be situated on the seafloor, but concluded that normal vessel operations would occur sufficiently far from tangible cultural heritage sites, such as caves and the shoreline, and would therefore be unlikely to materially interfere with cultural practices.
- 2.13.28. Project controls and mitigation measures are required to avoid areas where activities could directly impact cultural heritage, thereby reducing the potential significance of identified impacts.

- 2.13.29. The final EIAr and CHIA therefore did not disregard cultural or spiritual heritage considerations; rather, these issues were expressly identified, assessed by specialists, subjected to stakeholder engagement and incorporated into the proposed mitigation measures.
- 2.13.30. The appellant's allegations were regarded as vague and insufficiently substantiated, particularly insofar as no specific finding in the final EIAr or CHIA was identified as incorrect and no specific deficiency in the proposed mitigation measures was demonstrated.
- 2.13.31. The several appellants had participated as I&APs since the Scoping phase and had previously raised substantially similar concerns during the EIA public participation process (PPP). Those concerns were responded to by the EAP and relevant specialists.
- 2.13.32. The same or similar concerns regarding cultural heritage had been addressed during the commenting periods on the draft EIAr and updated final EIAr, including in the response dated 17 May 2024 to comments received on 10 May 2024.
- 2.13.33. The response provided during the EIA process confirmed that a cultural heritage assessment had been undertaken to understand the intangible value attached by communities to ocean resources and the marine environment, including through engagement with representatives of Nelson Mandela University and fieldwork.
- 2.13.34. The complete record of comments received and responses provided during the EIA process is contained in Appendix 2 of the final EIAr, demonstrating that cultural and spiritual heritage concerns were considered during the public participation and assessment processes.
- 2.13.35. Concerns relating to the existing fishing permitting system fall outside the scope of the EIA process and the decision to grant the EA. Such grievances therefore do not, in themselves, demonstrate that the environmental authorisation decision was unlawful or that the final EIAr failed to assess cultural heritage impacts.
- 2.13.36. The significance-rating methodology applied in the final EIAr considered the nature, extent, duration, magnitude, reversibility, probability, cumulative impacts and potential irreplaceable loss of resources in determining the overall significance of impacts.

2.13.37. The cultural and heritage impacts were therefore assessed using the methodology approved in the Plan of Study for EIA, and the resulting low-to-medium significance ratings were supported by the specialist assessments and proposed mitigation measures.

2.13.38. On the basis of the comprehensive assessment contained in the final EIAr and CHIA, together with the mitigation and management measures contained in the EMP, there was no demonstrated basis for concluding that the competent authority failed to properly consider cultural, spiritual or heritage impacts, including the considerations arising under the National Heritage Resources Act.

EVALUATION (Reasons for the decision)

2.13.39. The nub of this ground of appeal is whether the Cultural Heritage Impact Assessment undertaken in the final EIAr, adequately assessed and addressed the cultural, spiritual and living heritage impacts associated with the proposed exploration activities, including whether the requirements. The appellant also raises whether considerations arising from the National Heritage Resources Act 25 of 1999 (NHRA) were properly taken into account.

2.13.40. Before turning to the specific issues raised in this ground of appeal, I wish to emphasise that the concerns relating to small-scale fishers, fishing communities and coastal communities have been considered with the utmost seriousness. As Minister responsible for fisheries, I am mindful that the ocean is not merely an economic resource but also forms part of the cultural, spiritual and living heritage of many coastal communities. I have therefore carefully considered the submissions relating to livelihoods, cultural identity, access to marine resources, traditional practices and the broader relationship between coastal communities and the marine environment in assessing this ground of appeal.

2.13.41. The importance of properly considering cultural and spiritual relationships with the marine environment has recently been emphasised by the Constitutional Court in *Sustaining the Wild Coast NPC and Others v Minister of Mineral Resources and Energy and Others*; *Natural Justice and Another v Minister of Mineral Resources and Energy and Others*

[2026] ZACC 33, where the Court recognised that coastal communities' relationship with the sea extends beyond economic considerations and includes cultural, spiritual and livelihood dimensions. Having considered the CHIA and final EIAr, I am satisfied that these considerations were identified, described and assessed in the present matter.

2.13.42. Upon consideration of the final EIAr, the CHIA, the public participation record and the responses provided to the issues raised during the EIA process, I am not persuaded that the alleged deficiencies proposed by the appellants are established. The evidence demonstrates that cultural, spiritual, living and tangible heritage considerations were expressly identified and assessed as part of the EIA process and that the CA had material information before it regarding these matters when exercising its decision-making function.

2.13.43. I note, in particular, that page 40 of the final EIAr expressly refers to the National Heritage Resources Act 25 of 1999. The final EIAr records the statutory framework applicable to cultural heritage resources and explains the relevance of the NHRA to the identification, evaluation and management of heritage resources. It specifically addresses section 38 of the NHRA and records that the South African Heritage Resources Agency (SAHRA) was notified of the proposed development and would act as a key commenting authority. The final EIAr further recognises the protection afforded to archaeological resources, including shipwrecks and associated material that may be found on or disturbed from the seabed. The report also records the statutory requirements relating to the discovery and disturbance of archaeological material. I therefore cannot find, as alleged by the appellants, that the NHRA was disregarded or that the heritage implications of the proposed activities were assessed without regard to the applicable heritage legislation.

2.13.44. The final EIAr further demonstrates that the assessment extended beyond tangible heritage resources. On pages 61 and 62, the report considers the Convention for the Safeguarding of the Intangible Cultural Heritage and recognises the importance of intangible heritage in maintaining cultural diversity and facilitating respect for different ways of life. This consideration is material to the appellants' concerns regarding cultural

practices, traditions and the spiritual relationship between coastal communities and the ocean.

2.13.45. I have also considered section 8.8 of the final EIA, at pages 295 to 299, which provides a detailed overview of the cultural and heritage environment of the study area. The assessment recognises that marine resources have a long history of human exploitation and records archaeological evidence demonstrating the longstanding relationship between communities and the West Coast Marine environment. The assessment refers to shell middens, cave deposits, rock art, stone tools and fish traps and records the historical use of coastal resources by San and Khoikhoi communities. It further identifies the origins and historical presence of indigenous communities in the West Coast region, including the CochoQua and ChariGuriQua (GuriQua) groups associated with the lower Berg River, St Helena Bay and surrounding areas.

2.13.46. Importantly, the final EIA does not treat fishing solely as an economic activity. The section dealing with the history of fishing on the West Coast considers the development of fishing communities over several centuries and records the emergence of subsistence and small-scale fishing communities and fishing villages along the West Coast, including Saldanha, Langebaan and St Helena Bay. It further records the historical hardship experienced by fishing communities, their competition with large-scale fisheries and the effects of overexploitation and other historical developments on local fishing communities. Of particular relevance, the final EIA records that, despite the discrimination and forced removals experienced during the apartheid era, West Coast communities continued their fishing traditions through generations of fisher families. This demonstrates that the historical, social and cultural dimensions of the relationship between coastal communities and the ocean were considered as part of the assessment.

2.13.47. The final EIA also contains a substantive assessment of maritime heritage. It records that South Africa has a rich underwater cultural heritage and identifies historical shipwrecks and associated cultural material as potentially significant heritage resources. The report

considers the maritime heritage of Block 3B/4B and refers to the Maritime Heritage Assessment undertaken by TerraMare Archaeology, included in Appendix 4. The assessment considered known shipwreck records and the possibility of currently unknown wrecks occurring within the block. While the possibility of unknown wrecks was acknowledged, the assessment concluded that the known wrecks identified in the relevant records are located outside Block 3B/4B and would not be interfered with or impacted by the proposed exploration activities. The assessment therefore did not proceed on the basis that no maritime heritage resources could exist, but considered both known and potential unknown resources.

2.13.48. I have further considered the information contained on pages 301 to 317 of the final EIAr concerning the seabed geology and palaeontological resources. The assessment considers the geological setting of the area, the nature of the seabed sediments and the potential occurrence of fossil and microfossil resources. The assessment records that the palaeontological value of the deep-sea environment is associated, amongst other things, with microfossils and the information that such resources may provide regarding past oceanographic and climatic conditions. This further demonstrates that the assessment considered the heritage significance of the marine environment from both an archaeological and palaeontological perspective.

2.13.49. The appellants' contention that the cultural and spiritual relationship between communities and the ocean was inadequately assessed must further be considered against the specialist Cultural Heritage Impact Assessment, which is included as Appendix 4.5 of the final EIAr. The CHIA expressly recognises the cultural, heritage and spiritual connection of people to the ocean and that different coastal communities attach different values to the ocean, including religious, spiritual, cultural, psychological, recreational and economic values. The assessment accordingly did not proceed on the assumption that coastal communities constitute a homogenous group with a single understanding or relationship with the ocean. Rather, the diversity of cultural values and relationships with the marine environment was recognised and considered in the assessment.

2.13.50. I note further that the CHIA recognises the spiritual and religious beliefs of South Africans and refers to the constitutional protection of cultural and religious diversity. It also considers the views of communities that have been historically displaced or marginalised and those whose relationship with the ocean is simultaneously cultural, recreational and economic. In this regard, the appellants' concerns regarding living heritage, cultural identity and the intergenerational relationship between coastal communities and the ocean were not wholly absent from the assessment.

2.13.51. On page 54, the CHIA concludes that intangible cultural heritage receptors within the area of indirect influence are sensitive and may be affected by the proposed activities. Although these areas are already subject to existing and cumulative impacts, the assessment identifies the need for appropriate mitigation measures and precautionary protocols to address potential impacts arising from both normal operations and unplanned events. The assessment identifies a range of culturally significant receptors and stakeholders, including potential underwater cultural heritage, small-scale fishing families and communities, persons using the sea for cultural, recreational and commercial purposes, and communities relying on the ocean for psychosocial well-being.

2.13.52. Regarding the appellants' concern that the proposed activities may interfere with access to marine areas used for cultural, spiritual and religious purposes, the information before me does not demonstrate that the proposed exploration activities would result in the long-term exclusion of communities from areas used for such practices. To the extent that operational activities may result in temporary restrictions within limited areas, these must be viewed in the context of the scale, location and duration of the authorised activities.

2.13.53. The CHIA accordingly recommends that the protection of highly valued natural and cultural heritage along the potentially affected coastline be prioritised. Importantly, the assessment emphasises the need for meaningful engagement with Indigenous and local peoples and communities, particularly in light of the historical exclusion of such communities from decision-making concerning natural resource management. It further recognises that

coastal cultural heritage comprises both tangible and intangible heritage, and that it has broader significance for restorative justice, cultural identity, and the psychological and physical well-being of affected communities. The assessment therefore recommends inclusive, consultative and participatory engagement with local communities in the development and management of the proposed activities.

2.13.54. The appellants further contend that insufficient consideration was given to the potential impacts of an unplanned well blow-out or oil spill on cultural and spiritual heritage, including the possibility that pollution could affect areas used for cultural, religious and traditional practices. This concern is relevant, particularly because the significance of cultural and spiritual resources cannot necessarily be reduced to an economic value or readily remedied through financial compensation. However, the existence of a potentially serious consequence does not, in itself, establish that the EIA process was deficient. The final EIA expressly identifies and assesses planned and unplanned events and considers their potential environmental and socio-economic consequences. The cultural heritage assessment specifically considers potential impacts associated with planned and unplanned events and cumulative impacts in sections 9.3.4 and 9.4.5.

2.13.55. I further note the appellants' concern that compensation mechanisms may not adequately address losses suffered by small-scale fishers or communities reliant upon marine resources. While compensation arrangements may be relevant in addressing economic losses after they occur, compensation is not a substitute for avoiding or minimising impacts. The issue before me, however, is whether the cultural and heritage impacts were identified and assessed in the environmental assessment process. I am satisfied that such impacts were expressly recognised and considered within the CHIA and final EIA.

2.13.56. The applicants' response further indicates that the potential impacts of the proposed activities were assessed using the significance-rating methodology approved in the Plan of Study for EIA. That methodology considers consequence and probability, including factors such as nature, extent, duration, magnitude, reversibility, cumulative impacts and the

potential for irreplaceable loss of resources. The appellants have not demonstrated that this methodology was improperly applied to the cultural heritage impacts or identified a specific specialist finding that is unsupported by the information before the competent authority. Their disagreement with the ultimate significance rating does not, without more, establish that the rating is irrational or that the assessment is materially defective.

2.13.57.Regarding the appellant's concerns relating to coastal tourism and its connection to fishing heritage, cultural identity and the social significance of the ocean, these issues form part of the broader socio-economic and cultural context considered in the assessment and do not demonstrate that the cultural heritage assessment was materially deficient.

2.13.58.I have also considered the appellants' concerns regarding the adequacy of stakeholder engagement, including the alleged limited engagement with traditional healers, religious communities and small-scale fishers and the reliance on traditional leaders to represent broader communities. These concerns are not without relevance, particularly in light of the Constitutional Court's guidance in *Sustaining the Wild Coast*. However, the record demonstrates that cultural heritage was considered through the specialist assessment and that cultural stakeholders and different community perspectives were taken into account. I am further not persuaded that the assessment relied exclusively on the views of traditional leaders as representative of all community perspectives. The record indicates that the assessment considered a range of cultural stakeholders and community viewpoints.

2.13.59.The final EIAR also records the PPP and, on page 65, records questions from I&APs concerning the potential disturbance of landscapes and sites constituting the nation's cultural heritage and the measures available to avoid, minimise and remedy such impacts. The EAP's response directed I&APs to section 8.8, section 9.3 and the Cultural Heritage, Tangible Heritage and Palaeontological Assessments contained in Appendix 4, where the relevant impacts and mitigation measures were addressed.

2.13.60.I further note that the appellant, Chief Anthony Andrews representing the West Coast Guriqua Council, was registered as an I&AP from the Scoping phase and had an

opportunity to participate in the EIA process. The applicants indicate that substantially similar concerns were raised during the commenting periods on the draft EIAr and updated EIAr and were responded to by the EAP and specialists. The response dated 17 May 2024 to comments received on 10 May 2024 specifically reaffirmed that a cultural heritage assessment had been undertaken to understand the intangible value attached by communities to ocean resources and the marine environment, including through engagement with representatives of Nelson Mandela University and fieldwork. These responses are further recorded in the public participation report contained in Appendix 2 of the final EIAr.

2.13.61. The appellants' concern that more than 50% of interviewed fishers expressed concerns regarding offshore oil and gas activities also does not, in the absence of a demonstrated deficiency in the assessment methodology or failure to consider those concerns, establish that the final EIAr is inadequate. The EIA process is required to identify and assess environmental impacts and to consider the representations received from I&APs. It is not necessarily required to adopt the views expressed by I&APs or to reach the same conclusions as individual stakeholders. The relevant consideration is whether the concerns were placed before the CA and materially considered in the assessment and decision-making process. On the record before me, the concerns relating to fishing, cultural heritage and the potential consequences of an oil spill were considered and responded to during the EIA process.

2.13.62. I also note that provision has been made for the appointment of a Community Liaison Officer as part of the project's stakeholder-engagement framework. This measure may assist in ensuring that concerns relating to cultural heritage, spiritual practices and community impacts are identified and communicated during project implementation, thereby supporting the ongoing management of issues affecting affected communities.

2.13.63. The appellants also raise concerns regarding cumulative impacts and the broader life-cycle implications of petroleum development, including future production, downstream

activities, infrastructure, transportation and greenhouse-gas emissions. The final EIAr expressly considers cumulative impacts in the cultural heritage assessment, including in sections 9.3.4 and 9.4.5 (pages 436 to 441). The potential climate change implications are separately addressed in the Climate Change Report, which forms Appendix 4.2 to the final EIAr, and section 9.3.7.2 of the final EIAr assesses the potential impacts of planned and unplanned events on climate change. It must be emphasised that the issues relating to climate change have been considered separately in the preceding assessment under a distinct ground of appeal and will not be revisited in detail in this assessment.

2.13.64. Considering the aforesaid, the appellants have not demonstrated that a specific cumulative cultural heritage impact identified in the assessment was omitted or that the competent authority was required, in determining the present application, to assess future activities that are not themselves the subject of the present environmental authorisation as though they had already been authorised.

2.13.65. I have also considered the applicants' reliance on the finding that the impacts identified in the final EIAr were generally assessed as having low to medium significance following implementation of the recommended management and mitigation measures. The fact that an impact has been assigned a low or medium significance rating does not mean that the impact was regarded as insignificant or that it was not considered. The significance-rating methodology expressly takes into account the characteristics and probability of an impact and the effectiveness of mitigation measures. In this matter, the final EIAr identifies specific cultural heritage impacts and provides mitigation and management measures in the EMP. The appellants have not established that the mitigation measures are incapable of addressing the identified risks or that the significance ratings were arrived at without a rational basis.

2.13.66. The applicants also refer to the final EIAr and CHIA in relation to normal vessel operations and the potential disturbance of ancestors believed to be situated on the seafloor. The CHIA considered that vessel movements associated with the proposed activities would not

be unique to offshore vessel movements along the South African coast and considered the existing disturbance caused by commercial fishing and other vessels. It further records that normal operations would occur far from tangible cultural heritage sites such as caves and the shoreline and would therefore be unlikely to materially interfere with cultural practices. The CHIA also provides for project controls intended to avoid areas where activities may directly impact cultural heritage. While the appellants may disagree with these conclusions, no sufficient evidence has been presented to demonstrate that the specialist's conclusions are unsupported or that the competent authority was not entitled to consider them.

2.13.67. The question of whether the CA applied an independent mind must ultimately be determined from the record as a whole. In this regard, the CA had before it information concerning the NHRA on page 40; intangible cultural heritage on pages 61 to 62; cultural and heritage resources in section 8.8 at pages 295 to 299; maritime heritage and shipwrecks; palaeontological resources and the seabed on pages 301 to 310; the concerns raised by I&APs on page 65; the specialist CHIA in Appendix 4.5; and the assessment of cultural heritage impacts associated with planned, unplanned and cumulative events in sections 9.3.4 and 9.4.5. The decision-maker was therefore presented with substantive information concerning the cultural, spiritual, living and maritime heritage implications of the proposed activities.

2.13.68. Having regard to the totality of the information contained in the final EIAR and its appendices, I am unable to conclude that the cultural, spiritual and living heritage impacts were inadequately assessed or that the requirements of the NHRA were disregarded. The record demonstrates that the historical relationship between West Coast communities and the ocean, indigenous communities, fishing traditions, intangible cultural heritage, maritime heritage, potential archaeological and palaeontological resources, and the potential impacts of planned and unplanned events were all considered. The concerns raised during public participation were also recorded and responded to, and the specialist findings and mitigation measures were placed before the CA.

2.13.69. Accordingly, although the appellants have raised legitimate concerns regarding the importance of the ocean to the cultural, spiritual and living heritage of coastal communities, the appeal does not establish that these considerations were omitted from the EIA process or that the CA failed to consider relevant information before granting the EA. The appellants have further not demonstrated that the specialist assessments or the significance ratings were irrational, unsupported by the information before the CA, or materially inconsistent with the applicable legal framework. The allegation that the CA failed to apply an independent mind is therefore not substantiated.

2.13.70. For these reasons, this ground of appeal is dismissed.

2.14. FOURTEENTH GROUND OF APPEAL: INADEQUATE MITIGATION MEASURES FOR IMPACTS ON MARINE BIODIVERSITY AND MARINE PROTECTED AREAS

Submission by the appellants

In support of this ground of appeal, the appellants submit as follows:

- 2.14.1. The 2014 EIA Regulations require the assessment of cumulative impacts as part of the impact assessment process. The definition of “*cumulative impact*” requires consideration of past, current and reasonably foreseeable future impacts of an activity together with the impacts of associated activities, including impacts that may become significant when considered together with existing and reasonably foreseeable impacts.
- 2.14.2. The proposed Africa Oil Block 3B/4B drilling application follows closely after Geodata Searcher’s seismic application, which was granted permission to proceed by the Government in December 2023. Each application and its EIA should not be viewed in isolation, as the cumulative effect of multiple marine exploration activities, and ultimately oil rigs, may have substantially greater impacts on fisheries and marine life.

APPEALS LODGED AGAINST A DECISION TO GRANT AN ENVIRONMENTAL AUTHORISATION TO AFRICA OIL SA CORP, RICOURE (PTY) LIMITED AND AZINAM LIMITED, FOR THE PROPOSED AFRICA OIL SA CORP BLOCK 3B/4B OFFSHORE EXPLORATION, OFF THE WEST COAST OF SOUTH AFRICA.

- 2.14.3. The granting of the Geodata seismic permit within a six-month period, followed directly by the Africa Oil drilling application, raises concerns regarding the extent to which the cumulative impacts of these activities have been adequately researched and assessed.
- 2.14.4. The Geodata application concerns a block approximately 200 kilometres from the coast, while the Africa Oil application is approximately 100 kilometres from the coast. This raises concerns regarding the extent to which offshore oil and gas exploration activities may progressively move closer to the coast and coastal marine protected areas, with increasing impacts on marine and coastal species, including endangered seabirds.
- 2.14.5. Geodata's previous seismic activities off the Transkei Coast and subsequently off the West Coast, together with the court interventions in relation to those activities, demonstrate the sensitivity of marine environments to seismic exploration.
- 2.14.6. The reliance on desktop surveys and assessments of the potential impacts of oil and gas exploration does not adequately address the sensitivity of areas such as Child's Bank and the spawning grounds of anchovies, sardines and snoek.
- 2.14.7. Despite the responses to the WILDTRUST comments in the final ESIA Report, referred to as Appendix D in the main document, and the relevant changes made, serious concerns remain regarding the risks posed by the proposed exploration activities to marine biodiversity and the livelihoods of coastal communities along the coast of Southern Africa.
- 2.14.8. The potential impacts on threatened species, critical habitats and fisheries within nearby marine protected areas and marine ecosystems have not been fully articulated, rated and evaluated, and the mitigation measures proposed do not adequately address these risks.
- 2.14.9. The identified impacts include the low-volume release of diesel or hydraulic fuel from vessels or the drilling unit, a large-scale uncontrolled blow-out of hydrocarbons at the well due to a failure of pressure-control systems, and the loss of equipment to sea.
- 2.14.10. The mitigation measures relating to acoustic impacts, including vertical seismic profiling, sonar surveys and sub-bottom profiling, as well as artificial light, are inadequate.
- 2.14.11. The final EIA also does not adequately describe the potential impacts of oil spills on local marine biodiversity.

APPEALS LODGED AGAINST A DECISION TO GRANT AN ENVIRONMENTAL AUTHORISATION TO AFRICA OIL SA CORP, RICOCURE (PTY) LIMITED AND AZINAM LIMITED, FOR THE PROPOSED AFRICA OIL SA CORP BLOCK 3B/4B OFFSHORE EXPLORATION, OFF THE WEST COAST OF SOUTH AFRICA.

- 2.14.12. The final EIA's Marine Ecology Report underestimates the significance of the project's environmental impacts by failing to adequately consider environmental impacts that may persist beyond the duration of the project.
- 2.14.13. The final EIA does not adequately apply the precautionary principle when assessing impacts characterised by high levels of uncertainty.
- 2.14.14. The proposed activity, together with other marine exploration, production and mining activities off the West Coast, may increase the intensity of environmental stressors on the broader regional ecosystem and alter the current risk status of marine biodiversity and climatic conditions.
- 2.14.15. The final EIA relies on outdated information and data from previous environmental impact assessments relating to other marine exploration, production and mining activities off the West Coast. Without a comprehensive and up-to-date understanding of regional environmental trends within the offshore areas demarcating the Orange Basin, there is a risk that critical interactions have not been identified and that the resulting mitigation strategies may be ineffective.
- 2.14.16. The final EIA contains no data concerning benthic fauna in the project area and acknowledges that information on benthic fauna of the lower continental slope and abyss, beyond 1 800 metres depth, is largely lacking due to limited opportunities for sampling.
- 2.14.17. The reliance on deep-water benthic sampling from a separate project area in Namibian waters, hundreds of kilometres away from Block 3B/4B, does not adequately address the lack of site-specific information.
- 2.14.18. The final EIA further acknowledges that very few national IUCN Red List assessments have been conducted for marine invertebrate species due to inadequate taxonomic knowledge, limited distribution data, a lack of systematic surveys and limited capacity to advance species red-listing for these groups.
- 2.14.19. The final EIA does not adequately describe the potential impacts of oil spills on local marine biodiversity.
- 2.14.20. The final EIA's assessment of oil-spill impacts on marine biodiversity underestimates the risks of an unplanned event by grouping substantially different types of marine fauna together and failing to fully consider the toxic effects associated with dispersant use.

- 2.14.21. The Southern Benguela is South Africa's most productive ecoregion due to the influence of the cold, equatorward-flowing Benguela Current and large-scale intensive upwelling of nutrient-rich water. The final EIA itself recognises that upwelling supports a highly productive pelagic community and a food chain comprising plankton, anchovy, pilchard, round-herring, hake, snoek, seals, dolphins and seabirds.
- 2.14.22. The maps contained in Chapter 8.3 of the EIA demonstrate that the distributions of various fish, birds and marine mammals overlap with the area of the modelled oil-spill scenarios. These include species listed by the IUCN as endangered, threatened or vulnerable.
- 2.14.23. Different marine species are affected by oil in different ways. Oil exposure may be lethal to plankton communities, fish, fish eggs, birds and marine mammals, while the use of dispersants may increase the toxicity and absorption of oil by organisms and result in sub-lethal effects, including bioaccumulation of polycyclic aromatic hydrocarbons (PAHs) within marine food webs.
- 2.14.24. Although the final EIA describes the different effects of oil and dispersants on various groups of marine fauna and habitats, including plankton, benthic biota, sandy shores, rocky shores, fish, seabirds, turtles, seals and cetaceans, the impact assessment matrix combines these different species groups.
- 2.14.25. The use of a combined matrix has the effect of averaging impacts across different marine fauna and habitats, potentially masking extreme impacts on particular species groups, including seabirds, turtles and seals, by lower and shorter-term impacts on other groups.
- 2.14.26. A comprehensive assessment of the impacts should therefore have considered the potential impact significance for each faunal group and habitat separately, and for each oil-spill scenario, including condensate and crude-oil spills.
- 2.14.27. The final EIA reduced the significance of oil-spill impacts from "HIGH" to "MEDIUM", notwithstanding that substantially the same mitigation measures had been proposed in the previous iteration of the draft EIA, save for the addition of an Oiled Wildlife Contingency Plan.
- 2.14.28. The proposed mitigation includes the use of "low toxicity dispersants that rapidly dilute to concentrations below most acute toxicity thresholds". However, while dispersants may

individually have low toxicity, the combination of oil and dispersants may increase the overall toxicity and absorption of oil by marine organisms.

2.14.29. The final EIA itself acknowledges, in its discussion of the Deepwater Horizon spill, that the application of dispersants modified the spreading, dispersal, weathering, biodegradation and toxicity of spilled oil and may have negatively influenced the overall environmental impact of the spill.

2.14.30. The final EIA should therefore have explained the basis for selecting dispersants as a mitigation measure and demonstrated how their use would contribute to reducing the impacts to "MEDIUM" significance, particularly where the evidence indicates that dispersants may, in certain circumstances, aggravate rather than reduce the environmental impacts of an oil spill.

Response by the applicants

In this ground of appeal, the applicants respond as follows:

2.14.31. The assessment of cumulative impacts is governed by the definition of "cumulative impact" in the applicable NEMA framework and is confined to the past, current and reasonably foreseeable future impacts associated with the activity for which authorisation is sought, together with associated activities. It does not require the assessment of speculative future production activities for which no authorisation is presently sought.

2.14.32. Section 9.4 of the final EIA identifies, describes and assesses potential and reasonably foreseeable cumulative and confounding impacts associated with the proposed exploration activities in Block 3B/4B. This assessment includes other exploration and production activities in the region, maritime vessel traffic, vessel lighting and operational discharges, mining activities, fishing activities and climate change.

2.14.33. Section 9.4.1 of the final EIA specifically addresses cumulative impacts on marine ecology and makes reference to the cumulative pressures assessment undertaken as part of the 2018 National Biodiversity Assessment.

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- 2.14.34. The final EIAr concludes that Block 3B/4B is situated in an area experiencing very low cumulative impacts from other users and that the ecological condition is mostly natural or near-natural.
- 2.14.35. The cumulative assessment considered existing and reasonably foreseeable impacts, including those associated with other exploration and production activities.
- 2.14.36. It was not considered appropriate to assess potential future production activities for the block or adjacent blocks where the nature and extent of such activities are presently unknown, as such an assessment would be speculative and could not meaningfully inform the decision-maker.
- 2.14.37. Section 9.4 of the final EIAr also considers cumulative effects arising from the Searcher 3D seismic survey, which covers the same area as the authorised TGS survey, while section 9.4.1.2 specifically identifies and assesses potential cumulative underwater noise impacts.
- 2.14.38. The EIA process relates to the exploration activities presently proposed and does not extend to a separate production phase for which authorisation has not been sought.
- 2.14.39. Exploration does not necessarily lead to production, and any future production activities would require the necessary authorisations and a separate environmental assessment and public participation process.
- 2.14.40. Section 10 and Appendix 6 of the final EIAr address well decommissioning and closure, including well sealing and plugging. The final EIAr concludes that, with the implementation of industry-standard plugging and abandonment procedures, the probability of a release from an abandoned well is very low.
- 2.14.41. The NEMA Financial Provision Regulations further require adequate rehabilitation, decommissioning and closure, including provision for residual and latent impacts.
- 2.14.42. The final EIAr does not underestimate the potential impacts of oil spills on marine biodiversity. Sections 9.3.1.1.1, 9.3.1.2.2, 9.3.1.2.3, 9.3.1.3.3 and 9.3.1.3.4 identify and assess potential impacts on marine ecology arising from planned and unplanned discharges.
- 2.14.43. The assessment of marine fauna as a group, rather than assessing every individual species separately, was intended to avoid unnecessary repetition.

- 2.14.44. The sensitivity of receptors was considered in each assessment, and the assessment adopted a precautionary approach by considering the most sensitive species or groups. The unplanned blowout assessment in section 9.3.1.3.4 considered worst-case condensate and crude oil scenarios.
- 2.14.45. Section 8 of the final EIAr provides the baseline environmental information based on the best available information, while the Oil Spill Drift Modelling Report, attached as Appendix 4.1, assessed the movement and potential consequences of a blowout.
- 2.14.46. The modelling indicated that, due to the prevailing current, a blowout plume would generally be transported in a north-westerly direction, away from the coastline.
- 2.14.47. In the modelled scenarios where a spill was capped within 20 days, no oil reached the shoreline from Release Points A or D during any of the four seasons.
- 2.14.48. Although some residual oil could reach the South African coastline where oil remained unrecovered after 60 days, the assessment concluded that a significant coastal impact was unlikely if the prescribed management and mitigation measures were implemented.
- 2.14.49. Section 9.3.1.3.4 specifically considers the potential effects of an unplanned blowout on sensitive receptors, including MPAs, EBSAs and vulnerable marine fauna, with reference to the findings of the Oil Spill Drift Modelling Report.
- 2.14.50. The grouping of marine fauna did not result in the averaging or downgrading of impacts. In terms of section 4.9.4 of the Marine Ecology Report in Appendix 4.6 of the final EIAr, the assessment applied the upper end of the relevant ratings, including high to very high intensity, international extent, medium duration, partial reversibility and definite probability.
- 2.14.51. The crude oil blowout scenario was consequently assessed as having a High significance rating without mitigation, reflecting a conservative and precautionary approach.
- 2.14.52. The updated final EIAr expanded the assessment from the draft EIAr, which had considered only a condensate-based blowout, to include both condensate and crude oil scenarios. The condensate scenario was assessed as Medium significance both before and after mitigation, while the crude oil scenario was assessed as High significance without mitigation and Medium significance with mitigation.

- 2.14.53. The final EIAr acknowledges the potential toxicity associated with dispersants. The proposed use of low-toxicity dispersants is subject to caution and requires the permission of DFFE.
- 2.14.54. The National Oil Spill Contingency Plan, 2019, recognises that dispersants may provide an effective response when applied timeously, correctly and in a controlled manner, but also recognises that inappropriate use may have long-term adverse environmental consequences.
- 2.14.55. The use of dispersants is therefore not proposed as an automatic response. Their use must be assessed against the particular spill scenario and approved before implementation.
- 2.14.56. The National Oil Spill Contingency Plan further requires consideration of a Net Environmental Benefit Analysis before chemical dispersants are used.
- 2.14.57. The assessment of the blowout scenario also considered the Oil Spill Drift Modelling Report, including scenarios both with and without surface response and Subsea Dispersant Injection (SSDI), as reflected in Appendix 4.9 of the final EIAr.
- 2.14.58. The applicants accordingly maintain that the final EIAr placed sufficient information regarding cumulative impacts, marine biodiversity, oil-spill risks, vulnerable marine species, dispersant use and mitigation measures before the competent authority and that the appellants have not demonstrated that these matters were inadequately assessed.

EVALUATION (Reasons for the decision)

- 2.14.59. At the outset, it is noted that the issues raised under this ground of appeal have, to a substantial extent, already been addressed in my evaluation of previous grounds of appeal. In particular, the issues relating to oil spills and uncontrolled releases of hydrocarbons, marine and protected biodiversity, cumulative impacts, including impacts associated with potential future production activities, and the National Oil Spill Contingency Plan have already been dealt with under the respective grounds. Those issues will therefore not be unnecessarily duplicated in my assessment and evaluation of this ground of appeal. Nevertheless, I have considered the Marine Biodiversity Specialist Assessment

(the MBSA), particularly the Executive Summary and the relevant sections and pages dealing with the identified impacts to determine whether the issues raised under this appeal ground disclose any material deficiency in the environmental impact assessment.

2.14.60. The appellants also refer to previous and ongoing exploration applications, including the Searcher/TGS seismic survey and other offshore exploration activities, and contend that these demonstrate a progressive expansion of offshore petroleum activities towards the coastline. To the extent that these activities formed part of the receiving environment and were reasonably foreseeable, they were considered within the cumulative impact assessment. I am not persuaded that the mere existence of other exploration applications demonstrates a deficiency in the marine biodiversity assessment undertaken for the present application.

2.14.61. In this regard, I note the potential cumulative impacts have been identified, evaluated, and mitigation measures suggested where appropriate. I further note pages 162 to 163 of the final EIAr acknowledge that the southern Benguela ecosystem is characterised by high productivity, driven by nutrient upwelling, which supports complex food webs comprising phytoplankton, zooplankton, fish, marine mammals and benthic communities. The EIAr further recognises that offshore features, such as seamounts and submarine canyons, support localised increases in primary and secondary production, provide important habitats for cold-water corals and contribute to the maintenance of commercial deepwater fish stocks. These ecosystem functions may be affected by multiple anthropogenic pressures, including hydrocarbon exploration, drilling activities, underwater noise and the harvesting of marine resources. The EIAr accordingly acknowledges the need to consider cumulative impacts at population and ecosystem levels, rather than limiting the assessment to individual species or isolated project-related disturbances.

2.14.62. On pages 163 to 164, the EIAr identifies potential cumulative effects associated with anthropogenic noise, including behavioural and physiological changes in marine animals that may affect feeding, growth, reproduction and survival. Such effects could extend

beyond individual species by altering food-web interactions and potentially triggering trophic cascades. The EIAr also notes that disturbance of marine mammals from important feeding areas could affect nutrient cycling and primary productivity, while large-scale disturbances to plankton communities could have bottom-up effects on fish populations, marine mammals and other ecosystem components. Although studies indicate that the effects of drilling discharges are generally concentrated within approximately 1–2 km of discharge points and that benthic communities may recover within 4–10 years, the EIAr acknowledges that knowledge gaps remain regarding the long-term effects on certain benthic communities, population dynamics and ecosystem functions. Consequently, the possibility of subtle, cumulative impacts at population and ecosystem levels cannot be disregarded.

2.14.63. To address cumulative impacts, the EIAr discusses ecosystem-based management and the integrated ecosystem assessment framework as approaches for evaluating the effects of multiple pressures on multiple ecosystem components. These approaches may assist in assessing cumulative impacts, balancing potentially conflicting ocean-management objectives and evaluating trade-offs between different human activities and ecosystem services. However, the EIAr recognises that quantifying ecosystem thresholds and reference points remains challenging because of the multidimensional nature of ecosystem pressures and responses. It further indicates that complex numerical modelling is required to identify ecological thresholds and support ecosystem-based management. The discussion therefore acknowledges both the potential for cumulative ecosystem-level effects and the limitations in the available scientific understanding and modelling approaches for comprehensively quantifying such effects.

2.14.64. Nonetheless, I have perused the Marine Biodiversity Specialist Assessment (MBSA), and note the Executive Summary of the report records that the proposed exploration drilling is located in the Deep Water Orange Basin, approximately 190 km from the coastline at its closest point, with water depths ranging from approximately 1 000 m to 3 000 m. The Specialist Assessment identifies the relevant marine biodiversity receptors occurring in the

broader area, including pelagic fish, pelagic sharks, seabirds, turtles, marine mammals and benthic communities.

2.14.65. Importantly, the Executive Summary specifically identifies the Tripp Seamount, vulnerable and endangered pelagic shark species, leatherback turtles, sperm whales, humpback whales and fin whales as receptors of high sensitivity. It also identifies the Orange Shelf Edge Marine Protected Area ("MPA") and the Orange Seamount and Canyon Complex EBSA as sensitive receptors. The assessment records, however, that the specific Area of Interest for drilling avoids the identified MPA and EBSA. The Executive Summary further records that Tripp Seamount is situated approximately 25 km northwest of the Area of Interest and may support vulnerable, long-lived benthic invertebrate species.

2.14.66. The assessment therefore demonstrates that the specialist did not proceed on the basis that the marine environment was of low or negligible ecological importance. Rather, the relevant sensitive receptors were identified and their vulnerability to the proposed activities was expressly considered. This is further supported by the discussion on pages 149 to 150, where the MBSA considers the potential physical disturbance of the seabed associated with ROV surveys, drilling, installation of casing and wellheads, and abandonment activities. The assessment records that drilling would result in the direct physical disturbance and removal of seabed sediments and that casing and wellhead installation could further disturb or crush benthic organisms. It also recognises that ROV activities could resuspend fine sediments and increase turbidity, potentially affecting benthic communities.

2.14.67. The MBSA nevertheless distinguishes between the generally less sensitive unconsolidated sediment habitats and potentially more sensitive deep-water hard substrata. At page 150, it records that the benthic biota inhabiting unconsolidated sediments are poorly known but that the sensitivity of those communities is considered MEDIUM. In contrast, deep-water reef communities associated with hard substrata are considered to have HIGH sensitivity, owing particularly to their vulnerability to physical disturbance and long generation times.

- 2.14.68. The assessment also records a specific mitigation measure in relation to these sensitive habitats, namely that, based on pre-drilling ROV surveys, the wells will be sited so as to avoid sensitive or potentially vulnerable hardground habitats. The physical disturbance impacts associated with ROV surveys and drilling are consequently assessed as having a LOW environmental risk, with the disturbance and potential loss of benthic communities ultimately assessed as being of NEGLIGIBLE significance, having regard to the identified sensitivity, the localised nature of the disturbance and the proposed mitigation measures.
- 2.14.69. The concerns relating to drilling discharges and their effects on marine biodiversity are considered in greater detail in section 4.4.2.1.1, commencing at page 153 of the MBSA. The specialist further expressly identifies the potential for cuttings, drilling fluids and cement to cause both direct and indirect impacts on benthic communities. It records that cuttings and water-based muds discharged during the riserless drilling stage would accumulate around the wellbore and could smother or crush benthic communities. It further records that cuttings and drilling mud discharged from the drilling unit during the risered drilling stage would disperse over a wider area and could result in changes to sediment structure and community composition within the fallout footprint.
- 2.14.70. The assessment also expressly considers the potential impacts associated with residual cement. On page 153, it records that residual cement discharged during cementing and plugging may accumulate on the seabed and potentially smother benthic organisms. It further recognises possible toxicity and bioaccumulation effects arising from the leaching of potentially toxic cement additives.
- 2.14.71. These findings are significant because they demonstrate that the concerns raised under this ground regarding impacts on marine biodiversity were not overlooked or merely addressed at a superficial level. The MBSA specifically considered the mechanisms through which drilling activities could adversely affect benthic organisms, including burial,

smothering, physical disturbance, changes in sediment characteristics and potential toxicity.

2.14.72. On page 154, the MBSA further considers the sensitivity of the receiving environment and records that the unconsolidated slope habitats are classified as "Least Threatened", while acknowledging that deep-water hard substrata, should they occur, may have HIGH sensitivity. The assessment also recognises that the consequences of drilling discharges depend on factors such as the mass of material discharged, water depth, current strength and the characteristics of the benthic environment.

2.14.73. Of particular relevance is the discussion at pages 154 to 157, where the specialist recognises that the effects of drilling discharges may be more severe and longer-lasting in low-energy deep-water environments such as those associated with Block 3B/4B. It records that coarse cuttings may generally accumulate within approximately 200 m of the drilling unit, although some material may disperse further depending on prevailing currents. The assessment further acknowledges that ecological impacts may include reduced species diversity, enrichment of opportunistic or pollution-tolerant species and loss of more sensitive species.

2.14.74. The MBSA does not, therefore, disregard the possibility of significant effects on sensitive benthic organisms. On the contrary, page 157 specifically recognises that deep-water corals and associated communities may be particularly sensitive to increased turbidity and sediment deposition, with impacts potentially persisting longer than those experienced by soft-sediment communities. The report further notes that international best practice recommends appropriately designed pre-drilling site surveys and monitoring to identify and avoid vulnerable seabed habitats.

2.14.75. The appellants further contend that the MBSA failed to adequately apply the precautionary principle in circumstances characterised by scientific uncertainty, particularly in relation to deep-water benthic communities, sensitive marine receptors and the long-term

consequences of offshore exploration activities. I am not persuaded that this criticism is supported by the record.

2.14.76. The specialist assessment expressly acknowledges limitations in existing scientific knowledge, identifies sensitive and vulnerable receptors, recognises uncertainty regarding aspects of the receiving environment and incorporates measures aimed at avoiding or minimising potential impacts. These include pre-drilling surveys, the identification and avoidance of sensitive habitats, the siting of wells away from vulnerable hardground features, and the implementation of monitoring and management measures. The precautionary principle does not require absolute scientific certainty before a decision may be taken. Rather, it requires a risk-averse and cautious approach, taking into account the limits of current knowledge.

2.14.77. Having considered the specialist assessment as a whole, I am satisfied that the identified uncertainties were considered, assessed and taken into account in formulating the proposed mitigation and management measures, and that the assessment did not proceed on the basis that the absence of complete scientific information equated to an absence of environmental risk.

2.14.78. The MBSA accordingly incorporates this consideration into the proposed controls. It records that pre-drilling surveys, including ROV surveys, will be used to identify sensitive or vulnerable hardground habitats and that the wells will be sited to avoid such areas.

2.14.79. The cuttings dispersion modelling discussed at pages 157 to 159 is particularly relevant to the appellant's concerns regarding the spatial extent and persistence of impacts. The MBSA records that two drilling discharge scenarios were modelled. Under the water-based mud scenario, approximately 278 m³ of cuttings would be generated, with approximately 116 m³ discharged directly at the seafloor and the balance discharged from the drilling unit after treatment. The assessment also models a scenario involving the use of non-aqueous drilling fluids for deeper sections, under which substantially greater quantities of cuttings and drilling fluids could be discharged.

2.14.80. The modelling results are not simply based on an assumption that the impacts would be insignificant. On page 158, the assessment records that, under one modelled scenario, the maximum cumulative deposition thickness at the discharge point could reach approximately 65.2–69.2 mm, progressively reducing with distance. Importantly, the report records that the deposit thickness under that scenario could remain at approximately 30 mm even ten years after drilling, exceeding the identified 6.5 mm threshold.

2.14.81. The MBSA further records that approximately 60% of the deposit is attributable to riserless discharges at the seabed and that weak bottom currents contribute to the persistence of the deposited material. At page 159, the assessment records that the environmental risk associated with the riserless drilling stage is principally physical and relates to deposition thickness and changes in sediment characteristics, with oxygen depletion in the sediment also contributing to the overall risk.

2.14.82. These findings in my view are relevant because they demonstrate that the specialist assessment considered not only the immediate footprint of drilling but also the extent, thickness and persistence of drilling discharges. Moreover, the fact that the assessment identifies a potential persistence of deposited material over a ten-year period does not, in itself, demonstrate an inadequacy in the assessment. Rather, it demonstrates that the specialist identified the potential long-term consequences and incorporated them into the environmental risk assessment.

2.14.83. The Executive Summary further identifies underwater noise, vessel movements, lighting and other drilling-related activities as potential sources of disturbance to marine fauna. These include behavioural changes, avoidance of feeding areas, effects on breeding areas and potential abandonment of nests or young.

2.14.84. The assessment also identifies accidental releases of fuel, hydraulic fluids and uncontrolled releases of oil or gas as potential impacts. In particular, the Executive Summary records that an uncontrolled release of oil or gas from the well could result in

toxic effects on marine biota and reduced faunal health, as well as pollution and smothering of coastal habitats.

2.14.85. Accordingly, the concern regarding oil spills does not establish that the marine biodiversity assessment failed to consider such impacts. The potential effects of accidental releases and uncontrolled hydrocarbon releases were expressly identified as impact pathways in the Specialist Assessment. The adequacy of the emergency response arrangements and the National Oil Spill Contingency Plan has separately been considered under the relevant ground above.

2.14.86. I have also considered the appellants' concerns regarding the proposed use of dispersants and the possibility that dispersants may in certain circumstances increase the toxicity or bioavailability of hydrocarbons. The material before me indicates that the use of dispersants is not proposed as an automatic response measure but would be subject to regulatory approval and a Net Environmental Benefit Analysis. The specialist assessment also acknowledges the potential risks associated with dispersant use. I am therefore not persuaded that the assessment failed to consider the environmental implications of dispersant application when evaluating oil-spill response measures.

2.14.87. The MBSA ultimately records that, even after the implementation of the proposed mitigation and management measures, residual impacts on pelagic fish and larvae, seabirds, marine mammals and turtles would remain moderate to high intensity, although the extent and duration would be reduced. The overall residual impact is assessed as being of MEDIUM significance.

2.14.88. While the appellants contend that each faunal group should have been assessed separately, the specialist explains that the grouping approach did not dilute impact significance because the assessment applied the assessment adopted ratings at the upper end of the relevant significance range and specifically took into account the sensitivity of the most vulnerable receptors.

2.14.89. I have noted that the MBSA does not conclude that all impacts will be eliminated through mitigation. Instead, it acknowledges the existence of residual impacts and assigns an overall residual significance to those impacts. The mere fact that the specialist reached a conclusion that the impacts were acceptable, subject to mitigation, does not render the assessment inadequate.

2.14.90. Additionally, the appellant's concerns regarding cumulative impacts, including impacts that may arise from future petroleum production activities, have already been considered and evaluated under the appeal ground regarding cumulative-impacts above. To the extent that the appellant seeks to rely on the MBSA's reference to international studies concerning oil and gas production, it should be noted that the specialist assessment refers to such studies at page 147 in order to inform the understanding of possible impacts associated with hydrocarbon exploration and production.

2.14.91. Therefore, in my view, reference to international literature does not mean that future production activities have been authorised by the present decision or that the exploration project has been assessed as though production were presently occurring. The relevant question concerning the adequacy of the cumulative impact assessment has been addressed under the separate ground and does not establish a material deficiency in the MBSA itself.

2.14.92. Having regard to the Executive Summary and sections 4.4.1.1 and 4.4.2.1.1, read together with pages 147 to 159 of the MBSA, I am satisfied that the concerns raised under this ground were substantially considered by the specialist. The specialist assessment identifies the relevant marine biodiversity receptors; recognises the presence of sensitive species and ecological features; identifies the Orange Shelf Edge MPA and Orange Seamount and Canyon Complex EBSA; assesses physical seabed disturbance; considers the impacts of drilling muds, drill cuttings and cement; considers smothering, toxicity and bioaccumulation; undertakes cuttings dispersion modelling; considers the persistence and spatial extent of deposition; identifies accidental fuel and hydraulic-fluid releases and

uncontrolled oil and gas releases; and assesses residual impacts on pelagic fish, seabirds, marine mammals and turtles.

2.14.93. The assessment further proposes specific mitigation measures, including the use of pre-drilling ROV surveys to identify sensitive habitats and the siting of wells to avoid vulnerable hardgrounds. The assessment also recognises that certain residual impacts remain despite mitigation and assigns a MEDIUM residual significance to those impacts.

2.14.94. The appellant's concerns therefore amount principally to disagreement with the conclusions reached by the specialist rather than demonstrating that the relevant impacts were not considered. There is a material distinction between an assessment that fails to consider a relevant environmental impact and an assessment which considers the impact but reaches a conclusion with which an appellant disagrees. The material placed before me supports the latter rather than the former.

2.14.95. Having considered the ground of appeal against the Executive Summary and the relevant findings recorded on pages 147 to 159, including sections 4.4.1.1 and 4.4.2.1.1, I find that the material issues raised under this ground have been adequately considered in the MBSA and, where applicable, under the other grounds of appeal dealt with above.

2.14.96. In particular, the MBSA expressly considered the potential impacts on marine biodiversity, sensitive and protected marine receptors, seabed disturbance, drilling discharges, smothering, toxicity, cumulative deposition, accidental releases of fuel and hydraulic fluids, and uncontrolled releases of oil or gas. The assessment further considered the spatial extent and persistence of drilling discharges through modelling and identified mitigation and management measures to reduce the potential impacts. Accordingly, I find that this ground of appeal is without merit.

2.14.97. Consequently, this ground of appeal is dismissed.

**2.15. FIFTEENTH GROUND OF APPEAL: THE PUBLIC PARTICIPATION PROCESS (PPP)
DID NOT ACHIEVE MEANINGFUL CONSULTATION**

Submission by the appellants

In support of this ground of appeal, the appellants submit as follows:

Bias and omission by the EAP

- 2.15.1. The EAP, Environmental Impact Management Services (EIMS), needs to be investigated for bias in the omission of many concerns and deficiencies in the Environmental Impact Assessment.
- 2.15.2. The application fails completely to address the constitutional right of each citizen to a clean, unpolluted and healthy environment.
- 2.15.3. This application has a high potential to affect this right, and the omission represents a fatal flaw.
- 2.15.4. The right to a clean, unpolluted and healthy environment is fundamental to the lives of all South Africans. The application should therefore address all South Africans, and not only coastal communities.
- 2.15.5. The fact that the application was circulated only to local communities, by the minimum prescribed method, falls short of the NEMA requirements for notification of all potentially Interested and Affected Parties and thereby represents a fatal flaw.

Failure to properly assess environmental and socio-economic impacts

- 2.15.6. The EIA and EMPr do not, as required in terms of sections 2(4)(a)(viii), 2(4)(c) and 2(4)(i) of NEMA, contain a proper and objective assessment of the negative impacts of the project on peoples' environmental rights.
- 2.15.7. The EIA and EMPr fail to assess the socio-economic impact of the project and to identify that the adverse impacts of the project are likely to be distributed so as to unfairly

discriminate against poor rural communities in the area who are dependent on existing natural resources for a livelihood, as entrenched by the Constitution.

- 2.15.8. The government needs to enforce the principle of consulting communities when a development is planned for an area where the sole source of income is the sea.
- 2.15.9. Communities have requested a moratorium until such time as adequate consultation has been undertaken around mining applications on the West Coast.
- 2.15.10. Communities have also requested that Marine Spatial Plans and Coastal Marine Protected Areas be finalised before exploration proceeds.

Inadequate consultation and public participation

- 2.15.11. Inadequate consultation and lack of meaningful platforms, structured in an empowering way to invite maximum participation.
- 2.15.12. The majority of small-scale fishing communities have not participated.
- 2.15.13. Those who attended and signed the attendance register did not receive notification of the final process.
- 2.15.14. Communities demand that the people be informed and properly consulted at the outset of mining exploration and prospecting, including when the A and B municipalities meet with mining companies.
- 2.15.15. There must be transparency in the process, as the public participation process is flawed.
- 2.15.16. The EAP should follow and embark on meaningful public participation processes, but in this instance many communities were not considered.
- 2.15.17. There are communities situated a few kilometres from the coast, including Graafwater and Leipoldville, whose residents are also dependent on the ocean for its products, spiritual connection and cultural practices, and they were not included in the processes.
- 2.15.18. The Sandveld, approximately 30 kilometres away from the coast, is also dependent on products of the ocean supplied by small-scale and Indigenous fishers. There is a direct connection with the coastal communities in terms of the supply of local products as well as family and community relationships, yet the Sandveld communities were not consulted in the public participation processes.

- 2.15.19.Despite some attempts to allow for public participation in decisions that affect everyone, very few people on the ground are aware of such opportunities.
- 2.15.20.People on the ground are forced to rely on social media to access information and voice their concerns regarding offshore mining activities along the coastline.
- 2.15.21.The same trend has been noted in various other decisions taken at Government level without meaningful public participation.

Failure to ensure meaningful engagement with communities

- 2.15.22.The EAP's failure to properly consult communities rendered the public participation process a tick-box exercise as opposed to a meaningful consultation process.
- 2.15.23.The public participation process did not achieve meaningful consultation.
- 2.15.24.Previous comments highlighted the need for an approach that not only acknowledges and addresses community concerns, but also fosters an environment of trust, inclusivity and genuine collaboration with relevant stakeholders.
- 2.15.25.The right to public participation is enshrined in the Constitution and, in terms of NEMA, must be meaningful and effective. Any participation process that functions as a tick-box exercise fails to give effect to these objectives.
- 2.15.26.The amount of information that rural communities had to understand, and the manner in which that information was presented, were major issues in the public participation process. These issues were not remedied in the subsequent round of public participation.
- 2.15.27.The technical nature of the presentations made it difficult for communities to understand the information, even when presented in Afrikaans.
- 2.15.28.At the last public participation meeting in Cape Town on 19 April 2024, there were no questions raised by the attendees.
- 2.15.29.The fact that Ms. Pekeur made substantial efforts to submit comments from a number of community members in Doringbaai, while there was no substantive engagement with their concerns, does not constitute meaningful consultation.

Failure to meaningfully respond to comments

- 2.15.30. The final EIAr contains a table of correspondence, but comments from various stakeholders have not been responded to meaningfully.
- 2.15.31. The comments submitted by Ernest Titus at page 81 raised numerous concerns, including the technical nature of the presentations which made it difficult to understand the information even when presented in Afrikaans. The response from EIMS did not engage with the numerous points raised, but merely acknowledged that the comments had been recorded and would be submitted.
- 2.15.32. The comments submitted by Ms. Wendy Pekeur at page 89 on behalf of a number of people from Doringbaai were not responded to in detail or meaningfully engaged with, but were merely “noted”.
- 2.15.33. The concerns raised by community members should have been addressed.
- 2.15.34. Similarly, the comments from Mr. Edward Jantjies, Mr. George Lenard Johnson, Charmaine Andrew, Loren Gosling and Ms. Menka Vansant at pages 103–120 were not meaningfully engaged with.
- 2.15.35. The comments and concerns raised by affected communities cannot simply be recorded or “noted”; there must be substantive engagement with the issues raised and an indication of how those concerns have been considered and addressed.

Fishing communities and indigenous communities

- 2.15.36. Even though some small-scale fishing communities between Hout Bay and Port Nolloth attended public participation meetings, there remains a question as to what was actually addressed from the concerns raised by those communities.
- 2.15.37. What benefits are ensured from the PPP and how will the concerns and needs raised by communities be met?
- 2.15.38. Approximately 80% of communities feel that this exploration is not desirable, based on the attendance register and comments.

- 2.15.39. There is a need to understand what the outcomes of the full life cycle of the oil and gas exploration will be and whether the needs raised by the communities will be addressed by the EAPs on the Social Impact Assessment.
- 2.15.40. Small-scale fisher and Indigenous leader, has been engaging in small-scale fishing since the age of thirteen through the Indigenous Khoi Khoi cultural practice of traditional line fishing, which is considered an integral and special practice of the Khoi Khoi people of the Western, Northern and Eastern Cape.
- 2.15.41. Traditional line fishing and small-scale fishing provide a livelihood for affected communities and their families.
- 2.15.42. Extensive knowledge and experience of the coastal marine areas and marine environment off the West Coast have been developed through fishing activities in areas including Port Nolloth, Hondeklip Bay, Doring Bay, Lamberts Bay, Elands Bay, St Helena Bay, Paternoster and Langebaan.
- 2.15.43. Through extensive experience and knowledge of the ocean and its marine ecology, it has been witnessed that plankton are very sensitive to oceanic changes and any impacts to the behaviour of plankton.

Response by the applicants

In this ground of appeal, the applicants respond as follows:

Bias and omission by the EAP

- 2.15.44. The allegation that the EAP, EIMS, needs to be investigated for bias in the omission of concerns and deficiencies in the Environmental Impact Assessment is unsubstantiated.
- 2.15.45. The appellants have not identified any specific information or material concern which was deliberately omitted from the final EIAr, nor have they identified any facts demonstrating bias on the part of the EAP.
- 2.15.46. The allegation that the application fails completely to address the constitutional right to a clean, unpolluted and healthy environment is similarly unsupported. The final EIAr

assesses the environmental impacts associated with the proposed activities and identifies mitigation measures to address those impacts.

- 2.15.47. The proposed activities will take place more than 120–150 km offshore. The public consultation and participation process was designed having regard to the nature and scale of the anticipated impacts associated with the proposed activities and the level of interest in the project.
- 2.15.48. The allegation that the application was circulated only to local communities is incorrect. The PPP included SMS/WhatsApp, email, post, radio, newspapers, virtual meetings and in-person meetings.
- 2.15.49. A National Gazette Notice containing the details of the project was published on 15 June 2023 as part of the initial call to register. Notifications were also provided to identified landowners, occupiers and other key I&APs by email, fax and/or post.
- 2.15.50. In addition, 150 site notices in English, Afrikaans and isiXhosa were placed at 108 separate locations along the West Coast, advertisements were placed in five newspapers, and radio advertisements were broadcast on KFM, Radio NFM, Radio West Coast and Radio Namakwaland.
- 2.15.51. The allegation that the notification process was restricted to coastal communities and therefore constituted a fatal flaw is accordingly without merit.

Failure to properly assess environmental and socio-economic impacts

- 2.15.52. The allegation that the EIA and EMPr do not contain a proper and objective assessment of the negative impacts of the project on peoples' environmental rights is denied.
- 2.15.53. The final EIAr assessed the environmental impacts associated with the proposed activities and the relevant mitigation measures were incorporated into the EMPr and conditions of the EA.
- 2.15.54. The appellants have not identified any particular environmental impact which was omitted from the final EIAr or any specific assessment which is alleged to be deficient.
- 2.15.55. The allegation that the socio-economic impacts of the proposed activities were not assessed is likewise unsupported. The final EIAr considered the anticipated impacts

associated with the proposed activities, including the potential implications for communities and other users of the marine environment.

- 2.15.56. The assertion that the adverse impacts are likely to be distributed so as to unfairly discriminate against poor rural communities is not substantiated by any specific assessment or evidence demonstrating such discrimination.
- 2.15.57. The request by certain communities for a moratorium until adequate consultation has been undertaken does not, in itself, establish that the EIA process was defective or that the environmental authorisation was unlawfully granted.
- 2.15.58. Similarly, the request that Marine Spatial Plans and Coastal Marine Protected Areas be finalised before exploration proceeds does not identify any deficiency in the final EIA or any specific legal requirement which was not complied with by the Applicants.
- 2.15.59. The CA was provided with the relevant information concerning the environmental and socio-economic impacts and considered that information in deciding to grant the EA.

Inadequate consultation and public participation

- 2.15.60. The allegation that the public consultation and participation process was inadequate and lacked meaningful platforms is denied.
- 2.15.61. The applicants undertook an extensive public consultation and participation process which complied with and exceeded the requirements of NEMA, the EIA Regulations and the Public Participation Guidelines. The following were undertaken:
- 2.15.61.1. The Draft Scoping Report was made available for public review from 19 July to 21 August 2023 at publicly accessible locations in Hout Bay, Sea Point, Yzerfontein, Vredenburg, St Helena Bay, Elandsbaai, Lamberts Bay, Hondeklip Bay and Port Nolloth;
- 2.15.61.2. Public meetings and focus group discussions were held in Port Nolloth, Hondeklip Bay, Doringbaai, Lamberts Bay, Elands Bay, Steenberg's Cove, Saldanha Bay, Yzerfontein, Cape Town and Hout Bay, as well as a virtual meeting;
- 2.15.61.3. The draft EIA was made available for public review from 8 January to 8 February 2024, followed by public open days in Port Nolloth, Hondeklip Bay, Doringbaai,

Ebenhaeser, Lamberts Bay, Elands Bay, St Helena Bay, Saldanha Bay, Yzerfontein, Cape Town and Hout Bay, together with a virtual engagement;

2.15.61.4. The updated EIAr and associated appendices were subsequently made available for further public review and comment from 8 April to 9 May 2024; and

2.15.61.5. Further public meetings were conducted between 15 and 25 April 2024 at various locations along the West Coast, including Port Nolloth, Hondeklip Bay, Doringbaai, Ebenhaeser, Lamberts Bay, Elands Bay, Steenberg's Cove, Saldanha Bay, Yzerfontein, Cape Town and Hout Bay, together with a virtual meeting.

2.15.62. The appellants' allegation that the majority of small-scale fishing communities did not participate is unsubstantiated. No evidence has been provided to establish the extent of alleged non-participation or to demonstrate that the consultation process failed to reach those communities.

2.15.63. Those who participated in the process were afforded opportunities to raise comments and concerns, which were captured and considered as part of the EIA process.

2.15.64. The allegation that persons who attended meetings and signed attendance registers were not notified of the final process does not identify a specific procedural irregularity or demonstrate that registered I&APs were deprived of an opportunity to participate.

2.15.65. The allegation concerning meetings between municipalities and mining companies and the request for an investigation into "procedures" is vague and unsupported by specific facts which can be meaningfully interrogated or responded to.

2.15.66. The PPP was not confined to social media, it included newspapers, radio, site notices, the National Gazette, direct notifications, SMS/WhatsApp, email, post, public meetings, open days, focus group discussions and virtual meetings.

2.15.67. The allegation that communities such as Graafwater, Leipoldville and the Sandveld were not considered does not, without more, demonstrate that the statutory public participation requirements were not complied with.

Failure to ensure meaningful engagement with communities

- 2.15.68. The allegation that the PPP constituted a “tick-box exercise” is denied, it is submitted that the applicants specifically introduced the Grassroots Communication Framework (GCF) through Abalobi Express Consulting and Project Management (Pty) Ltd to strengthen the reach and inclusivity of the public consultation process.
- 2.15.69. Abalobi Express distributed information through pamphlets and additional notices across more than 60 communities and towns along the West Coast.
- 2.15.70. A total of 1,264 households participated in surveys conducted across 16 local municipalities and three district municipalities considered to be affected.
- 2.15.71. The GCF was intended, amongst other things, to distribute information to identified communities, allow interested persons to register as I&APs and gain a better understanding of the proposed project, and obtain information regarding the dynamics of the communities engaged with.
- 2.15.72. Non-Technical Summaries of the draft EIAr and updated EIAr were prepared in English, Afrikaans and isiXhosa to address the concern that the EIAr might be too technical or voluminous for members of the public to engage with.
- 2.15.73. The Non-Technical Summaries were distributed with notifications of the draft EIAr and updated EIAr, made available on the EAP’s website, distributed at public engagements and through Abalobi Express.
- 2.15.74. The allegation that the technical nature of the presentations rendered consultation ineffective is therefore not supported by the additional measures adopted to facilitate understanding and participation.
- 2.15.75. The fact that no questions were raised at the Cape Town meeting on 19 April 2024 does not establish that the meeting was ineffective or that meaningful participation was not afforded.
- 2.15.76. The comments and concerns raised during public participation were captured in the meeting minutes and considered as part of the EIA process.

2.15.77. The appellants' assertion that the concerns submitted by Ms. Pekeur were merely noted and not substantively considered is addressed by the responses contained in the final EIAr and the responses provided during the EIA process.

Failure to meaningfully respond to comments

2.15.78. The allegation that comments from stakeholders were not meaningfully responded to is denied.

2.15.79. Section 7 of the final EIAr presents the public consultation and participation process, while the correspondence and responses form part of the EIA record.

2.15.80. The comments raised by the appellants during the EIA process were considered and responses were provided.

2.15.81. The appellants comments in the appeal substantially duplicate comments previously raised during the EIA process, to which responses were provided.

2.15.82. The appellant has not identified any particular response in the final EIAr which is alleged to be inadequate, or any specific environmental impact raised in the comments which was omitted from consideration.

2.15.83. The allegation that comments were simply "noted" does not, without identification of the specific comment and response relied upon, establish that the CA was deprived of relevant information.

2.15.84. The views, concerns and objections received from I&APs were captured and articulated in the EIA documentation for consideration as part of the decision-making process.

Fishing communities and indigenous communities

2.15.85. The allegation that the opportunities for the participation of indigenous people and small-scale fishing communities were inadequate is denied.

2.15.86. The PPP was designed to facilitate participation by communities along the West Coast and included specific measures aimed at reaching disadvantaged communities.

- 2.15.87. The Grassroots Communication Framework was specifically introduced to improve the reach and inclusivity of the PPP, including through the distribution of information and on-the-ground engagement.
- 2.15.88. Non-Technical Summaries were also prepared in English, Afrikaans and isiXhosa to enable broader engagement with the EIA information.
- 2.15.89. Majority of the appellants participated in the EIA process and attended an EIA public meeting where the appellants' comments and concerns were recorded.
- 2.15.90. The appellants were also afforded an opportunity to comment on the updated EIAr but did not take advantage of that opportunity.
- 2.15.91. The assertion that approximately 80% of communities considered the exploration undesirable is unsubstantiated. The attendance register and comments register cannot, without further evidence, establish that 80% of communities oppose the proposed activities.
- 2.15.92. I&APs are not required to state whether they support or oppose a project. The purpose of the commenting process is to afford I&APs an opportunity to raise concerns for consideration and response.
- 2.15.93. The absence of comments from other I&APs cannot be characterised as opposition, support or neutrality. The attendance register and comments register therefore cannot constitute evidence for the percentage asserted by the Appellants.
- 2.15.94. The applicants' response to the concerns raised by fishing and coastal communities is contained in the final EIAr and associated public participation documentation.
- 2.15.95. Regarding the submission by the Paramount Chief Regan James who is a leader of the Katz Korana Royal House of the Korana, the applicants acknowledge his personal experience as a small-scale fisher and Indigenous leader.
- 2.15.96. However, it is submitted that experience does not establish that the EIA process failed to assess the relevant marine environmental impacts or that the public participation process was unlawful.

EVALUATION (Reasons for the decision)

- 2.15.97. The central issue for determination under this ground of appeal is whether the PPP undertaken in relation to the proposed project was meaningful and effective to protect the constitutional rights of I&APS. The appellants submit that the EIA and the associated PPP were materially defective by reason of alleged bias or omissions by the EAP, inadequate assessment of environmental and socio-economic impacts, inadequate or ineffective consultation with I&APs, failure to meaningfully engage with community concerns, failure to respond adequately to comments, failure to adequately engage with and consider the interests of fishing and indigenous communities. For avoidance of doubt, the appellants do not deny that consultation took place. Their concern is that the approach taken was overly formalistic (tick-box in nature) and resulted in a lack of meaningful and effective engagement.
- 2.15.98. Having considered the appellants' submissions, the applicants' responses, the Public Participation Report (PPR), the correspondence record and the opportunities afforded to I&APs throughout the assessment process, I am not persuaded that the alleged deficiencies have been established.
- 2.15.99. The evidence demonstrates that the PPP commenced in June 2023 and continued through the Scoping, EIA and updated EIA phases. The PPR records that the process was designed, amongst other things, to identify and record issues, concerns, suggestions and objections, provide opportunities for local knowledge to be incorporated into the assessment, and identify mitigation measures.
- 2.15.100. The record further demonstrates that the public was afforded repeated opportunities to participate. These included the initial notification process, 150 multilingual site notices, newspaper and radio advertisements, the Grassroots Communication Framework, public review of the Scoping Report, public meetings and focus groups, public review of the EIAr, open-day sessions, public review of the updated EIAr and further public meetings.

2.15.101. Importantly, the PPR records that the comments and queries received during the process were collated and incorporated into the comments and response report (CCR) before final submission of the EIAr. The issues recorded include concerns regarding marine ecology, fisheries, cultural heritage, oil spills, blow-outs, water quality, oil-spill modelling, protected biodiversity areas, community engagement and the extent of public participation.

2.15.102. The mere fact that certain I&APs remained dissatisfied with the project or with particular responses does not, without more, establish that the PPP was legally defective or that the CA was precluded from granting the EA.

2.15.103. Notwithstanding the above, I am mindful that the requirement to consult with I&APs accords with the specified principles of NEMA, as set out in section 2 thereof. In particular, subsection (2) provides that *“Environmental Management must place people and their needs at the forefront of its concern, and serve their physical, psychological, developmental, cultural and social interests equitably”*. Moreover, subsection (4)(f) provides that *“the participation of all interested and affected parties in environmental governance must be promoted, and all people must have the opportunity to develop the understanding, skills and capacity necessary for achieving equitable and effective participation, and participation by vulnerable and disadvantaged persons must be ensured.”* Subsection (4)(g) records that *“decisions must take into account the interests, needs and values of all interested and affected parties, and this includes recognising all forms of knowledge, including traditional and ordinary knowledge.”*

2.15.104. It is well established that PAJA mandates public participation in administrative decision-making, particularly when decisions may materially and adversely affect the rights or legitimate expectations of individuals or the public. PAJA ensures fair administrative action by requiring organs of state to consider public input.

2.15.105. For all the above stated reasons, I approached this matter with the utmost of seriousness.

2.15.106. To give effect to section 2 of NEMA, the 2014 EIA Regulations require compliance with specific public participation requirements. In particular, regulation 3(8) requires any PPP undertaken in terms of these Regulations must be for a period of at least 30 days. Furthermore, regulation 3(4) read with regulation 40(1) of the 2014 EIA Regulations require potential or registered I&APs, including organs of state, to be given a period of at least 30 days to submit comments on the EIAr and EMPr, amongst other reports. Regulation 41(6) stipulates that the person conducting the PPP must facilitate participation in a manner that ensures all potential or registered I&APs are given a reasonable opportunity to comment on the application or proposed application. These provisions are written in peremptory terms.

2.15.107. Regulation 41(2)(a) and (b) of the 2014 EIA Regulations provides as follows:

“(2) The person conducting a public participation process must take into account any relevant guidelines applicable to public participation as contemplated in section 24J of the Act and must give notice to all potential interested and affected parties of an application or proposed application which is subjected to public participation by-

(a) fixing a notice board at a place conspicuous to and accessible by the public at the boundary, on the fence or along the corridor of- (i) the site where the activity to which the application or proposed application relates is or is to be undertaken; and (ii) any alternative site;

(b) giving written notice, in any of the manners provided for in section 47D of the Act, to-

(i) the occupiers of the site and, if the proponent or applicant is not the owner or person in control of the site on which the activity is to be undertaken, the owner or person in control of the site where the activity is or is to be undertaken or to any alternative site where the activity is to be undertaken;

(ii) owners, persons in control of, and occupiers of land adjacent to the site where the activity is or is to be undertaken or to any alternative site where the activity is to be undertaken".

2.15.108. In this matter, I have considered the follows under each sub-heading below:

Bias and omission by the EAP

2.15.109. The allegation that the EAP was biased and omitted material concerns is not substantiated by the record. No specific evidence has been identified demonstrating that the EAP deliberately excluded material information or deliberately suppressed concerns raised during the EIA process. On the contrary, the PPR records an extensive database of pre-identified authorities, stakeholders, specialist interest groups and I&APs. The process of identifying I&APs included consultation with the applicant and government departments, consideration of previously conducted studies and identification of key interest groups and authorities within the vicinity of the study area and affected municipalities.

2.15.110. The record further demonstrates that a broad range of government authorities, municipalities, fishing organisations, conservation organisations, community organisations and other stakeholders were identified and notified.

2.15.111. The allegation that the process was directed only at a narrow group of coastal communities is therefore not supported by the PPR. The initial notification included newspapers, the National Gazette, radio, direct notifications and site notices. The newspaper and National Gazette notices were published in English, Afrikaans and isiXhosa, while 150 multilingual site notices were placed at locations along the West Coast.

2.15.112. The mere allegation that the EAP failed to address the constitutional environmental right is similarly not sufficient to establish a defect in the EIA process. NEMA and the Regulatory framework under the 2014 EIA process gives effect to section 24 of the Constitution. By following the process for an environmental authorisation under NEMA, this right is given effect to. The assessment and decision-making process that properly considers the environmental consequences of the proposed activity and affords relevant I&APs an opportunity to participate.

2.15.113. This aspect of the appeal ground therefore lacks merit.

Failure to properly assess environmental and socio-economic impacts

2.15.114. The allegation that the EIA and EMPr failed to properly assess environmental impacts is not supported by the record before me. The public participation report (PPR) evidence that substantial environmental concerns were identified through the PPP, including potential impacts on the seafloor, marine life, ecosystems, spawning of fish and other marine species, marine fauna, underwater noise, seabirds, turtles and cetaceans, water quality and oil spills.

2.15.115. The record further demonstrates that concerns relating to oil-spill modelling, blow-out response, water quality, oil dispersion, upwelling and the impact of the project on commercial fisheries were raised and recorded before the final submission of the EIAr.

2.15.116. The complaint that socio-economic impacts were inadequately assessed substantially overlaps with the standalone ground of appeal dealing with socio-economic impacts. Those issues have already been considered and evaluated under that appeal ground, and it would serve no useful purpose to determine them again merely because they have been repeated under the present ground. Having determined under that appeal ground that these impacts were adequately addressed and considered, it follows that the public

participation process could not have been negatively affected by the lack of inadequate information.

2.15.117. The appellants' submissions that coastal communities rely on fishing and marine resources for their cultural, heritage and livelihoods. The importance of these considerations cannot be gainsaid. However, the existence of such dependence does not, in itself, demonstrate that the EIA process was defective. The record shows that fishing, livelihoods and the economic wellbeing of coastal communities were expressly raised during the EIA process and were recorded as issues requiring consideration. These issues were considered and addressed during the EIA process.

2.15.118. The requests for a moratorium and for the finalisation of Marine Spatial Plans and Marine Protected Areas likewise do not establish a defect in the EIA process. The EIA process is considered within the existing framework at the time of the decision. A moratorium is a temporary suspension of an activity pending further investigation, planning or regulatory action. The appellants' request for a moratorium reflects a view that exploration activities should not proceed until broader marine governance measures have been finalised. However, such a request constitutes a policy position rather than a demonstration of non-compliance with a legal requirement governing the EIA process. Without identifying a specific statutory or regulatory requirement that was not complied with, these submissions do not establish that the environmental authorisation was unlawfully granted.

2.15.119. This part of the ground therefore has no sufficient merit to warrant interference with the EA.

Inadequate consultation and public participation

2.15.120. The evidence before me does not support the conclusion that the PPP was inadequate. The record demonstrates a sustained and multi-layered PPP. The initial notification

commenced in June 2023. Direct notifications were sent by fax, email and SMS; 150 multilingual site notices were placed along the West Coast; newspaper advertisements were published; and radio advertisements were broadcast. Moreover, I note the Grassroots Communication Framework is particularly relevant to the allegation that the process did not reach persons on the ground. Through Abalobi Express, information was disseminated to more than 60 communities and towns along the West Coast, and 1,264 households were engaged through surveys across 16 local municipalities and three district municipalities. The initiative was specifically intended to improve the reach and inclusivity of the PPP.

2.15.121. The public was then afforded successive opportunities to review the Scoping Report, draft EIAr and updated EIAr. In this regard, I note the following amongst others:

- Considerable number of site notices were placed in different areas along the coast;
- Newspaper advertisements were placed in different publishing institutes and in three languages i.e. Afrikaans, English and IsiXhosa;
- Also, radio advertisements were also made to cover communities and members who are disadvantaged and cannot afford to buy newspapers;
- Notification letters were sent to landowners and adjacent landowners as well as identified occupiers;
- The Scoping Report was available from 19 July to 21 August 2023;
- The draft EIAr from 8 January to 8 February 2024;
- The Updated EIAr from 8 April to 9 May 2024; and
- Correspondence and comments were responded to and the CRR was submitted to the CA in support of the EIAr.

2.15.122. These review periods were accompanied by public meetings, focus-group discussions and open-day sessions. The Scoping phase included meetings at Port Nolloth, Hondeklip Bay, Doringbaai, Ebenhaeser, Lamberts Bay, Elands Bay, Steenberg's Cove, Saldanha Bay and Yzerfontein, together with a virtual meeting. The EIA phase similarly included

open-day sessions in Port Nolloth, Hondeklip Bay, Doringbaai, Ebenhaeser, Lamberts Bay, Elands Bay, St Helena Bay, Saldanha Bay, Yzerfontein, Cape Town and Hout Bay, as well as a virtual session. Moreover, the updated EIAr was again accompanied by public meetings in the relevant coastal communities. The fact that the Cape Town and Hout Bay meetings initially had to be postponed because of public unrest does not demonstrate a failure to consult. The PPR records that the meetings were cancelled for safety reasons and that further arrangements were made.

2.15.123. Against this factual record, the broad allegation that the majority of small-scale fishing communities did not participate is insufficient to establish that they were denied a reasonable opportunity to participate. Public participation creates an opportunity to participate; it does not guarantee that every person or every community will make use of that opportunity.

2.15.124. The appellants have also not identified any particular registered I&AP who were excluded from subsequent phases of the process despite having previously participated. In the absence of evidence demonstrating that registered participants were denied further notification or deprived of an opportunity to participate, I am unable to conclude that a procedural irregularity occurred.

2.15.125. The allegations concerning Graafwater, Leipoldville and the Sandveld must similarly be considered against the overall notification and grassroots process rather than solely by reference to whether a particular community attended a meeting. The record reflects an effort to extend participation beyond the immediate coastal meeting venues through direct notification, site notices, radio, newspapers and the Grassroots Communication Framework.

2.15.126. The complaint that persons were required to rely on social media is also not supported by the record. In my view, the social media or electronic communication was not the sole mechanism employed. I note the process expressly included physical site notices,

newspapers, radio, direct correspondence, public meetings, focus groups and physical document repositories. The PPR therefore demonstrates that there were multiple and repeated avenues through which affected persons could obtain information and participate.

2.15.127. The allegation of inadequate consultation accordingly has no merit.

Failure to ensure meaningful engagement with communities

2.15.128. From the outset, I must point out that meaningful participation must be assessed with reference to the process as a whole and not solely by reference to the outcome desired by individual participants. A process does not become meaningless merely because participants remain opposed to the proposed activity or because every concern cannot be resolved to the satisfaction of the person who raised it. In this regard, I am of the view that the allegation that the process amounted to a "tick-box exercise" is not borne out by the evidence.

2.15.129. In this matter, the EAP did more than merely publish a statutory notice. The Grassroots Communication Framework was specifically introduced to strengthen the reach and inclusivity of the process. It involved dissemination of information, registration of I&APs and community surveys, with engagement across more than 60 communities and 1,264 households. The evidence relating to the Grassroots Communication Framework, multilingual engagement materials, focus-group engagements and repeated consultation opportunities further demonstrates an attempt to extend participation beyond formal statutory compliance and to improve inclusivity and accessibility within the process.

2.15.130. The allegation that the technical nature of the EIAR prevented meaningful participation is also weakened by the preparation of Non-Technical Summaries in English, Afrikaans and isiXhosa. These were distributed with the updated EIAR notifications, made available on the EIMS website, distributed at public engagements and disseminated through Abalobi

Express. The PPR specifically records that these summaries were prepared because of the volume and technical nature of the EIAr.

2.15.131. The absence of questions at a particular meeting cannot, without more, establish that the process was ineffective. As prescribed in Chapter 6 of the 2014 EIA Regulations, in particular regulation 40, participation may take place through written submissions and correspondence. Notwithstanding this, the applicants went further and consult through meetings, focus groups and other channels. The correspondence record confirms that numerous issues were raised during the process and were responded to.

2.15.132. Similarly, the concerns submitted by Ms. Pekeur and other community members must be considered together with the record of correspondence and the responses incorporated into the EIA process, rather than treating the existence of a particular response described as “noted” as determinative of the adequacy of the entire process. Additionally, the PPR confirms that the comments and queries received during the process were recorded and incorporated into the final submission. These comments were responded to in the CRR.

2.15.133. This aspect of the ground therefore does not establish that the PPP was a mere procedural formality.

Failure to meaningfully respond to comments

2.15.134. The allegation that comments were merely recorded and not meaningfully considered requires distinction between the recording of a comment during the public participation process and the substantive consideration of the issue in the EIA and decision-making process. The PPR records that comments received from 15 June 2023 to 10 May 2024 were collated and updated before the final submission of the EIAr. The issues recorded were not confined to procedural matters but included detailed concerns regarding marine ecological impacts, fisheries, cultural heritage, oil spills, blow-outs, water quality, oil-spill modelling, biodiversity, climate change, livelihoods and community engagement.

2.15.135. The correspondence record is consequently important. The appeal identifies particular comments by Ernest Titus, Wendy Pekeur, Edward Jantjies, George Lenard Johnson, Charmaine Andrew, Loren Gosling and Menka Vansant as examples of comments allegedly not meaningfully addressed. However, the fact that an individual response may have acknowledged that a comment was recorded does not, by itself, establish that the underlying issue was ignored in the EIA process. The relevant question is whether the concerns were brought into the assessment and whether the decision-maker had the material information necessary to consider them, the record indicates that they were. For example, the PPR specifically records concerns regarding the technical nature of the process, oil-spill risks, blow-outs, marine ecology, fisheries, water quality, oil-spill modelling, cultural heritage and community participation.

2.15.136. The appellants have also not demonstrated, in respect of the individual comments relied upon, that the alleged inadequacy of the response resulted in the omission of a material environmental consideration from the EIA or that the competent authority was deprived of information necessary for its decision.

2.15.137. While certain responses in the correspondence record are concise, and in some instances record that comments were "noted", the adequacy of the response must be assessed in the context of the assessment as a whole. The relevant question is whether the underlying issue raised was incorporated into the assessment and decision-making process, rather than whether each comment received a lengthy individualised response.

2.15.138. The purpose of a public participation process is to inform decision-making and ensure that affected parties have a reasonable opportunity to raise concerns and place information before the competent authority. It does not guarantee that all concerns will be accepted or that the project must be altered in accordance with every request received.

2.15.139. I further accept that the local and traditional knowledge held by fishers constitutes a relevant form of knowledge contemplated by section 2(4)(g) of NEMA. However, the existence of such knowledge does not establish that the EIA process was inadequate

where those concerns were recorded and considered alongside the specialist evidence before the competent authority.

2.15.140. Accordingly, although I accept that meaningful consideration of comments is required and that merely recording a comment cannot substitute for consideration, the record before me does not establish that the comments relied upon were disregarded in the assessment as a whole.

2.15.141. This aspect of the ground therefore does not have sufficient merit to justify setting aside or varying the EA.

Fishing communities and indigenous communities

2.15.142. The interests and knowledge of fishing communities are plainly relevant to an assessment of an offshore exploration project. The record, however, demonstrates that these interests were not excluded from the PPP. The PPR identifies numerous fishing associations, fishing enterprises, small-scale fishing organisations, indigenous and community organisations and other stakeholders among the identified and notified I&APs. The record includes, amongst others, various fishing associations, small-scale fisher organisations, Khoisan-related organisations and community structures.

2.15.143. I must reiterate that fishing-related concerns were expressly recorded during the process and I have already dealt with these issues in my previous assessment under socio-economic impact assessment. These included impacts on the fishing sector, fisheries and fishermen, snoek and snoek fishing, commercial fisheries, livelihood impacts and the economic wellbeing of coastal communities.

2.15.144. I am mindful that many participants in the public participation process expressed concerns regarding the proposed exploration activities and that these concerns are important considerations in environmental decision-making. However, the contention that

approximately 80% of communities regarded the exploration activities as undesirable cannot be verified from the record cited. An attendance register reflects participation in the process but does not, on its own, establish the views of all potentially affected persons or communities. Likewise, while the comments received provide important insight into the issues raised by stakeholders, their number alone cannot be regarded as a definitive or representative measure of overall community support for or opposition to the project.

2.15.145. I have therefore considered the substance of the concerns raised rather than attributing a particular level of support or opposition based solely on attendance records or comment statistics. In this regard, it is also noted that the environmental authorisation includes the appointment of a Community Liaison Officer. The purpose of this measure is to provide an accessible channel of communication between the holder of the authorisation and affected communities, facilitate the ongoing exchange of information, ensure that community concerns are raised and addressed in a timely manner, and assist in allaying fears and uncertainties that may arise during the implementation of the authorised activities. I am therefore satisfied that mechanisms have been included to promote continued engagement with affected communities and responsiveness to their concerns.

2.15.146. The individual experience and knowledge of persons engaged in small-scale or traditional fishing is acknowledged as potentially valuable local knowledge. However, that knowledge does not establish, without further evidence, that the public participation process was unlawful or that the CA failed to consider the interests represented. Additionally, the repeated socio-economic and livelihood concerns raised under this sub-heading overlap substantially with the standalone socio-economic ground already considered. Those issues should therefore not be reconsidered here as though they constitute a separate demonstration of procedural invalidity. Therefore, this aspect of the ground does not establish a material defect in the PPP.

- 2.15.147. Having considered the ground as a whole, I find that the appellants have not established a material defect in the PPP, the EIA, the consideration of comments, or the decision-making process.
- 2.15.148. The evidence before me demonstrates a prolonged and extensive PPP involving multiple forms of notification and communication, multilingual notices and documentation, a grassroots engagement initiative, repeated opportunities to review the environmental reports, public meetings, focus groups, open-day sessions and a virtual engagement platform.
- 2.15.149. The PPR further demonstrates that the issues raised by I&APs were not limited to procedural matters but included the substantive environmental and socio-economic concerns now relied upon in the appeal. Those concerns were recorded in the PPR before the final submission of the EIAr for consideration by the CA.
- 2.15.150. I accordingly find that the allegations of bias, inadequate consultation, failure to facilitate meaningful participation, and failure to respond to comments failure are not substantiated on the record.
- 2.15.151. I am mindful of the Constitutional Court's observations in *Sustaining the Wild Coast NPC and Others v Minister of Mineral Resources and Energy and Others*; *Natural Justice and Another v Minister of Mineral Resources and Energy and Others* that meaningful participation is not measured solely by the number of notices issued or meetings held, but by whether affected persons were afforded a genuine and reasonable opportunity to understand the proposed activity, raise concerns and place information before the decision-maker. Having considered the record as a whole, including the repeated notification processes, multilingual notices, public meetings, focus-group discussions, grassroots engagement initiatives, comment periods and the responses recorded in the consultation record, I am satisfied that affected communities were afforded such an opportunity in the present matter and that a mere tick-box approach was not followed.

2.15.152. To the extent that the appellants repeat allegations concerning the socio-economic impacts of the proposed exploration, including impacts on fishing-dependent communities, livelihoods and the distribution of impacts on rural communities, those matters have already been considered under the standalone ground dealing specifically with socio-economic impacts. They do not warrant a separate finding under this ground.

2.15.153. Accordingly, the appellants' submissions under this ground do not have sufficient merit to warrant interference with the EA.

2.15.154. For the above reason, this ground of appeal is dismissed.

2.16. SIXTEENTH GROUND OF APPEAL: OIL SPILL CONTINGENCY PLAN AND OILED WILDLIFE CONTINGENCY PLAN

Submission by the appellants

In support of this ground of appeal, the appellants submit as follows:

- 2.16.1. The final EIAr does not include response and contingency plans for comment.
- 2.16.2. The mitigation measures proposed in respect of the potential impacts include the development of a "response strategy and plan (OSCP), aligned with the National OSCP that identifies the resources and response required to minimise the risk and impact of oiling (shoreline and offshore)".
- 2.16.3. The EIAr proposes that the response strategy includes an Oiled Wildlife Contingency Plan, assessment of response resources and selection of appropriate resources, well-specific spill modelling for spill purposes and intervention plans for sensitive areas.
- 2.16.4. However, no such plans are included in the EIAr for consideration by Interested and Affected Parties or the competent authority.
- 2.16.5. Despite this, the Department granted the environmental authorisation for exploratory offshore drilling and simply required that all relevant plans, including the Oil Spill

Contingency Plan and Oiled Wildlife Contingency Plan, be submitted to the Agency 60 days prior to commencement of drilling operations.

- 2.16.6. Those plans will therefore not be subject to public participation or authority approval before exploration is commenced.
- 2.16.7. The OSCP and Oiled Wildlife Contingency Plans constitute critical mitigation measures against potential spills which could result in significant damage to the marine and coastal environments and biodiversity.
- 2.16.8. The downgrading of impacts on the basis of plans which have not been developed and considered as part of the EIAr process amounts to a misrepresentation of the significance of those impacts.
- 2.16.9. This effectively denies all Interested and Affected Parties the right to consider and comment on the plans and violates the right to public participation as provided for under regulation 23 of the EIA Regulations, 2014.
- 2.16.10. The omission of those documents from the EIAr also constitutes a failure by the JV and EAP to place all relevant information before the competent authority for consideration.
- 2.16.11. The environmental authorisation was consequently issued without consideration of the adequacy of the measures in place to contain an oil spill, as well as the applicants' capacity to effectively implement those measures.
- 2.16.12. This is in contravention of section 24O(1)(b) of NEMA, which requires the competent authority to take into account, among other things, the measures to be taken to mitigate any substantially detrimental environmental impacts and an applicant's or applicants' ability to implement those measures.

Response by the applicants

In this ground of appeal, the applicants submit the following:

- 2.16.13. The allegation that the final EIAr was required to include the project-specific OSCP and OWCP for public comment before the environmental authorisation could be granted is denied.

APPEALS LODGED AGAINST A DECISION TO GRANT AN ENVIRONMENTAL AUTHORISATION TO AFRICA OIL SA CORP, RICOCURE (PTY) LIMITED AND AZINAM LIMITED, FOR THE PROPOSED AFRICA OIL SA CORP BLOCK 3B/4B OFFSHORE EXPLORATION, OFF THE WEST COAST OF SOUTH AFRICA.

- 2.16.14. An OSCP is developed once a specific well site has been identified, a drilling contractor has been selected and detailed site-specific information is available to inform the specific plan.
- 2.16.15. The OSCP and associated plans are developed prior to commencement of drilling, based on the mitigation measures contained in the EMPr and information relating to the final well location and drilling contractor's systems and procedures.
- 2.16.16. The OSCP and BOCp are contingency plans which define actions to be taken in the event of an incident. They are not the primary preventative measures relied upon to avoid an oil spill or blowout.
- 2.16.17. Multiple design, technical and management barriers will be implemented to prevent drilling operations from resulting in an uncontrolled release of hydrocarbons.
- 2.16.18. These measures include well-site assessment, conservative well design, technical peer review, integrity engineering and risk assessment, casing design, wellbore pressure management, pressure monitoring, early kick detection, continuous monitoring, trained and certified personnel and testing and certification of safety-critical equipment.
- 2.16.19. In the unlikely event that a kick occurs, measures will be implemented to control the source of the flow, including closing in the well and increasing mud weight. Where necessary, the BOP will be used to control pressure and shut in the well.
- 2.16.20. Oil spill response equipment will also be available, including subsea dispersant injection kits and capping stacks, and preparations for drilling a relief/kill well will form part of the BOCp.
- 2.16.21. The applicants' position is that the appellants have not identified any provision of NEMA or the EIA Regulations requiring project-specific OSCP and OWCP plans to be prepared and subjected to public participation before the environmental authorisation is granted.
- 2.16.22. The OSCP and BOCp are developed in consultation with SAMSA, PASA and the DFFE Oceans and Coast Unit.
- 2.16.23. The OSCP must be approved by SAMSA in order to obtain an Oil Pollution Safety Certificate prior to commencement of operations.
- 2.16.24. Condition 5.5.6 of the environmental authorisation requires the holder, within 60 days before commencement of the proposed drilling operations, to submit the identified specific

management plans to the Agency, including the SOPEP, OSCP, OWCP, ERP, Waste and Discharge Management Plan, Chemical Management Plan, Ballast Water Management Plan, Well Control Contingency Plan, Vessel Maintenance Plan, Stakeholder Engagement Strategy/Plan and Operational Plan.

- 2.16.25. The allegation that the environmental authorisation therefore permits exploration to commence without the relevant contingency and management plans being in place is incorrect.
- 2.16.26. The applicants further rely on the ENI Appeal Decision, in which the Minister of Environment confirmed at paragraph 3.4.2 that preparation and circulation of a project-specific OSCP is not a legal requirement and goes beyond the standard practice for EMPs and OSCPs for oil and gas exploration in Africa.
- 2.16.27. The allegation that the absence of the OSCP and OWCP from the EIA process constitutes a violation of regulation 23 of the EIA Regulations, 2014 is therefore denied.
- 2.16.28. The appellants have not identified a legislative provision requiring these plans to be subjected to public participation or prepared before the grant of the EA.
- 2.16.29. The allegation that the CA failed to consider the adequacy of measures to contain an oil spill or the applicants' ability to implement those measures is likewise denied. The relevant mitigation measures, technical barriers and contingency arrangements were placed before the competent authority through the EIA and EMP.

EVALUATION (Reasons for the decision)

- 2.16.30. The crux of the matter under this ground of appeal is whether the failure to include the final, site-specific Oil Spill Contingency Plan (OSCP) and Oiled Wildlife Contingency Plan (OWCP) in the final EIA deprived the CA of material information necessary to assess the risks associated with an oil spill or blow-out and to determine appropriate mitigation and response measures before granting the EA. Though this was raised under PPP, I deem it appropriate to consider this issue separately from the adequacy of the public participation process, as the complaint concerns the substance, timing and regulatory status of

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contingency planning rather than whether adequate opportunities for public participation were afforded.

2.16.31. It is common cause from the appeal material that the final EIAr did not contain the final site-specific OSCP and OWCP for public comment. The appeal material further records that the environmental authorisation requires specified management and contingency plans, including the OSCP and OWCP, to be submitted to the CA before the commencement of drilling operations. The issue for determination is therefore not whether the final site-specific plans were included in the EIAr, but whether their absence rendered the environmental assessment and the resulting environmental authorisation legally or substantively deficient.

2.16.32. The record before me does not support a finding that the absence of the final site-specific OSCP and OWCP resulted in the underlying risks associated with oil spills and blow-outs being excluded from the environmental assessment. The PPR records that concerns relating to oil spills, blow-outs, spill mitigation, oil-spill modelling, marine pollution, response measures and the adequacy of measures to address such risks were raised during the EIA process. These concerns were therefore before the environmental assessment process and formed part of the information considered in relation to the potential environmental impacts of the proposed exploration activities.

2.16.33. Moreover, I have dealt with oil spills and blow-outs significantly in my previous assessment under separate appeal grounds. I have concluded that the EIAr and specialist studies undertaken provided sufficient mitigation measures regarding these impacts. Nonetheless, the environmental authorisation condition requires that these plans must be submitted for approval prior to the commencement of the exploration process.

2.16.34. Additionally, the distinction drawn by the applicants between the assessment of environmental risks and the preparation of operational contingency plans is material. The final OSCP and OWCP are site-specific operational instruments intended to prescribe the

detailed response measures applicable once the relevant well location, drilling arrangements, contractor and other operational particulars are known. Their subsequent finalisation does not, in itself, demonstrate that the environmental risks which those plans are intended to address were not assessed at the environmental authorisation stage.

2.16.35. This distinction is particularly relevant where the environmental assessment has already identified and considered the potential consequences of oil spills and blow-outs and has considered mitigation and response measures. The fact that the detailed operational response arrangements are required to be finalised at a later stage does not necessarily render the preceding impact assessment inadequate, provided that the competent authority had sufficient information concerning the nature and significance of the risks and the measures available to prevent, mitigate and respond to those risks.

2.16.36. In the present matter, the environmental authorisation itself provides a mechanism for the further development and implementation of the relevant contingency arrangements. The applicants' response records that the environmental authorisation requires specified management and contingency plans, including the OSCP and OWCP, to be submitted before drilling. The requirement therefore operates as a further control before the activity to which the plans relate is undertaken. This is material to the assessment of whether the absence of the final site-specific plans from the EIAr necessarily resulted in an unregulated or inadequately considered environmental risk. I note that the environmental authorisation requires these plans to be submitted for review and approval prior to commencement of drilling operations

2.16.37. The allegation that regulation 23 of the 2014 EIA Regulations required the final, site-specific OSCP and OWCP to have been completed and incorporated into the EIAr before the environmental authorisation could be issued has not been established on the material before me. In particular, the appellants have not identified a specific provision demonstrating that the final operational versions of these contingency plans, as opposed to

the assessment of the underlying risks and proposed mitigation measures, were required to form part of the EIAr at the environmental authorisation stage.

2.16.38. The appellants further contend that the absence of the final site-specific OSCP and OWCP denied interested and affected parties an opportunity to comment on those plans and therefore resulted in a violation of the public participation requirements contained in the EIA Regulations. However, the relevant risks associated with oil spills and blow-outs, together with the proposed mitigation and response framework, were identified and assessed during the EIA process and formed the subject of public comment. Neither NEMA nor the 2014 EIA Regulations require the final operational version of every management or contingency plan to be circulated for public comment prior to the granting of an environmental authorisation. To require a further round of public participation each time operational management plans are finalised would undermine administrative finality and could result in the environmental assessment process never reaching conclusion.

2.16.39. The same consideration applies to the reliance placed on section 24O(1)(b) of NEMA. The relevant enquiry is whether the CA had sufficient information before it concerning the environmental impacts of the proposed activity, the measures available to avoid or mitigate those impacts, and the manner in which those measures would be implemented and controlled. I accept that the OSCP and OWCP constitute important mitigation and response instruments given the potential consequences of an uncontrolled oil spill. The question, however, is not whether these plans are important, but whether their final site-specific versions were legally required to form part of the EIAr before the environmental authorisation could be granted.

2.16.40. On the record before me, the risks associated with oil spills and blow-outs were considered during the EIA process, while the environmental authorisation imposed additional requirements relating to the preparation and submission of contingency and management plans before drilling commenced.

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2.16.41. I accordingly do not find that the absence of the final site-specific OSCP and OWCP from the EIAr demonstrates that the competent authority was deprived of material information necessary for its decision. Nor has it been demonstrated that the CA was required, as a matter of law, to have before it the final operational versions of those plans before issuing the EA. The concern raised is nevertheless legitimate and important, given the potential severity of an oil spill or blow-out and the particular vulnerability of the marine and coastal environment. That importance, however, does not by itself establish a legal defect in the environmental authorisation process.

2.16.42. It follows that this aspect of the ground of appeal has not established that the environmental risks associated with oil spills and blow-outs were inadequately assessed, that appropriate mitigation and response measures were absent from the assessment, or that the CA failed to have sufficient information before it when exercising its decision-making powers. The subsequent requirement for the relevant contingency plans to be finalised and submitted before drilling further provides an additional regulatory safeguard.

2.16.43. Having considered the appeal material, the PPR and the applicants' response, the EIAr as well as its annexures, I find that the complaint concerning the OSCP and OWCP does not establish that the environmental authorisation was materially defective or that the CA failed to properly apply its mind to the potential risks associated with oil spills and blow-outs. The absence of the final site-specific OSCP and OWCP from the EIAr, without more, does not constitute a sufficient basis to interfere with the EA.

2.16.44. This ground of appeal is therefore dismissed.

2.17. SEVENTEENTH GROUND OF APPEAL: FAILURE BY THE COMPETENT AUTHORITY TO PROPERLY APPLY ITS MIND

Submission by the appellants

In support of this ground of appeal, the appellants submit the following:

- 2.17.1. The flaws in the EIAr mean that it has provided an inadequate basis for a decision to grant the EA.
- 2.17.2. The CA also failed properly to consider the significant environmental and other impacts related to the proposed exploration activities, despite numerous concerns being raised by I&APs during the PPP.
- 2.17.3. The conclusion that there will not be any detrimental risks to the environment and the public demonstrates that the competent authority failed to appreciate and apply its mind to the significant environmental threats posed by the exploration activities.
- 2.17.4. The CA's decision to grant the environmental authorisation was neither reasonable nor rational in light of the issues raised in the appeal.

Response by the applicants

In reply, the applicants submitted the following:

- 2.17.5. The allegation that the final EIAr provided an inadequate basis for the CA's decision to grant the environmental authorisation is denied.
- 2.17.6. The CA considered the relevant and substantiated information placed before it in deciding to grant the EA.
- 2.17.7. The appellants have not identified any specific environmental impact which was omitted from the final EIAr or any particular finding of the competent authority demonstrating that it failed to apply its mind.

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- 2.17.8. The allegation that the conclusion regarding detrimental risks to the environment and public demonstrates a failure to appreciate the environmental threats posed by the proposed activities is therefore unsupported.
- 2.17.9. The fact that the appellants disagree with the outcome of the assessment does not establish that the CA failed to consider the relevant information or failed to apply its mind.
- 2.17.10. The appellants have not identified any specific provision of the environmental authorisation which they contend is unreasonable or irrational, nor have they demonstrated any material error, omission or misunderstanding that would support a conclusion that the decision was irrational, unreasonable or taken without proper regard to the information before the competent authority.
- 2.17.11. The assertion that the CA's decision was neither reasonable nor rational is accordingly denied.

EVALUATION (Reasons for the decision)

- 2.17.12. The substance of this ground of appeal is that the competent authority allegedly failed to properly apply its mind to the application and the environmental information before it, including concerns raised by I&APs during the environmental assessment process. The appellants essentially contend that, because the environmental assessment record allegedly contained deficiencies and did not adequately reflect or address certain concerns, the CA could not have properly considered all relevant information before taking the decision.
- 2.17.13. At the outset, the appellants' submissions under this appeal ground regarding alleged deficiencies have already been considered under the evaluation of preceding grounds of appeal. For the reasons set out in those evaluations, I was not persuaded that the environmental assessment failed to assess the relevant impacts, omitted material information or applied an irrational methodology. In the absence of such deficiencies, the allegation that the competent authority failed to apply its mind necessarily loses much of its force.

2.17.14. Nevertheless, the assessment of the record before me does not demonstrate that the CA failed to apply its mind to the application or that it considered a materially incomplete record in the manner alleged by the appellants. The record indicates that the PPR was updated for submission to the CA following the public review of the revised and updated EIAr. The comments, concerns and queries received from I&APs during the PPP were incorporated into the record presented for consideration.

2.17.15. Importantly, the record contains extensive evidence of the issues raised by I&APs in relation to the proposed activity. These include concerns relating to environmental impacts, marine ecology and biodiversity, fisheries, cultural heritage, oil-spill risks, water quality, livelihoods and the adequacy of public participation. The existence of these concerns in the record demonstrates that the CA was placed in a position to consider the relevant environmental and socio-economic issues associated with the proposed activity.

2.17.16. The appellants have not identified a specific material consideration contained in the EIAr nor its annexures including specialist studies undertaken for this development that were required to be considered by the competent authority but was demonstrably ignored. Nor have they identified evidence showing that the competent misunderstood the nature, extent or potential environmental consequences of the proposed activity. An allegation that a decision-maker failed to apply its mind must be supported by evidence of a material failure to consider relevant information or a material misunderstanding of the matter before it. The mere identification of concerns raised during the assessment process does not, in itself, establish that those concerns were ignored by the competent authority.

2.17.17. The fact that the CA ultimately reached a conclusion that was contrary to the position advanced by some of the appellants or I&APs does not, without more, demonstrate a failure to apply its mind. A decision-maker is required to consider relevant information and material considerations; it is not required to agree with every concern or objection raised during the assessment process. Similarly, disagreement with the weight afforded to a particular concern does not establish that the CA failed to consider it, unless the record

demonstrates that the consideration was materially overlooked, misunderstood or otherwise disregarded.

2.17.18. In this regard, the appellants have not demonstrated that the CA's decision was based on an absence of relevant information, that any material consideration was excluded from its consideration, or that the CA failed to understand the environmental risks associated with the proposed activity. The record, on the contrary, reflects that the relevant environmental and socio-economic issues were before the CA when it considered the application.

2.17.19. Accordingly, the allegation that the CA failed to apply its mind is not substantiated on the record. The appellants have not established a material failure by the CA to consider relevant information or concerns placed before it, nor have they demonstrated any material error that would render the decision irrational or unreasonable on this basis.

2.17.20. The ground of appeal is therefore dismissed.

2.18. EIGHTEENTH GROUND OF APPEAL: CONSTITUTIONAL AND ENVIRONMENTAL RIGHTS

Submission by the appellants

In this ground of appeal, the appellants submit as follows:

- 2.18.1. All South Africans have a right to a clean, unpolluted and healthy environment, and the proposed exploration activity has the potential to affect that right.
- 2.18.2. The environmental right must be considered together with the socio-economic realities of communities that depend directly or indirectly on the marine environment for their livelihoods, cultural practices and spiritual connection.
- 2.18.3. Section 28 of NEMA requires every person who causes, has caused or may cause significant pollution or degradation of the environment to take reasonable measures to

prevent such pollution or degradation from occurring, continuing or recurring and, insofar as such harm cannot reasonably be avoided or stopped, to minimise and rectify such pollution or degradation. This principle is applicable to the marine environment as well.

Response by the applicants

In this ground of appeal, the applicants respond as follows:

- 2.18.4. The applicants do not dispute the importance of the constitutional environmental right or the need for environmental protection. However, the existence of the constitutional right to a clean and healthy environment does not, without more, establish that the environmental authorisation was unlawfully granted.
- 2.18.5. The final EIAr assessed the potential environmental impacts associated with the proposed exploration activities and identified mitigation measures intended to avoid, minimise and manage those impacts.
- 2.18.6. The environmental impacts were considered together with the socio-economic implications of the proposed activities and the interests of communities and other users of the marine environment.
- 2.18.7. The appellants have not demonstrated that the competent authority failed to consider the constitutional environmental right when exercising its decision-making powers.
- 2.18.8. The reference to section 28 of NEMA does not identify a failure by the applicants to take reasonable measures to prevent or minimise environmental pollution or degradation.
- 2.18.9. The EIA and EMPr contain mitigation measures and management controls directed at preventing and managing potential environmental impacts.
- 2.18.10. In particular, the applicants have identified multiple preventative and response measures relating to the risk of an oil spill or blowout, together with specific management plans required by condition 5.5.6 of the environmental authorisation before commencement of drilling.

2.18.11. The appellants' reliance on the constitutional and environmental rights therefore does not establish that the EIA process was defective, that the public participation process was unlawful, or that the environmental authorisation should be set aside.

EVALUATION (Reasons for the decision)

2.18.12. The crux of this ground of appeal is whether the granting of the environmental authorisation is inconsistent with the constitutional right to an environment that is not harmful to health or well-being and with the environmental management obligations imposed by NEMA. The appellants rely, in particular, on the potential environmental consequences of the proposed activity and contend that the identified risks, including marine ecological impacts, fisheries, water quality, oil spills, blow-outs, biodiversity, cultural heritage and livelihood impacts, are such that the environmental authorisation ought not to have been granted.

2.18.13. Section 24 of the Constitution recognises the right of everyone to an environment that is not harmful to their health or well-being and requires the environment to be protected for present and future generations through reasonable legislative and other measures that promote sustainable development and secure ecologically sustainable development while promoting justifiable economic and social development. NEMA gives legislative effect to these constitutional objectives and requires environmental management and decision-making to be guided by the environmental management principles.

2.18.14. The recognition of the environmental right, however, does not mean that the existence of environmental risks automatically precludes the authorisation of an activity. The statutory environmental management framework recognises that development may have environmental consequences and establishes a decision-making framework within which such consequences must be identified, assessed and, where possible, avoided, minimised, mitigated and managed. The question is therefore not whether the proposed activity carries environmental risk, but whether those risks were properly considered within

the applicable statutory framework and whether appropriate measures have been imposed to address them.

2.18.15. In the present matter, the record demonstrates that the environmental risks relied upon by the appellants were not matters that fell outside the environmental assessment process. Concerns relating to marine ecology, fisheries, water quality, oil spills, blow-outs, oil-spill modelling, biodiversity, cultural heritage and livelihoods were raised during the PPP and formed part of the information available in the environmental assessment record. The fact that these risks were identified and raised by I&APs does not, in itself, demonstrate that the granting of the environmental authorisation is inconsistent with section 24 of the Constitution or the principles of NEMA.

2.18.16. The reliance on section 28 of NEMA similarly does not establish a basis for setting aside the EA. Section 28 imposes Duty of care and remediation of environmental damage. Sub-section (1) specifically provides that *“every person who causes, has caused or may cause significant pollution or degradation of the environment must take reasonable measures to prevent such pollution or degradation from occurring, continuing or recurring, or, in so far as such harm to the environment is authorised by law or cannot reasonably be avoided or stopped, to minimise and rectify such pollution or degradation of the environment.”*

2.18.17. That duty must be understood within the broader regulatory framework applicable to the authorised activity. The mere existence of potential pollution or environmental harm does not establish a breach of section 28. It must be demonstrated that the authorised activity, the conditions of the environmental authorisation, or the conduct contemplated by the authorisation is inconsistent with the duty to take reasonable measures to avoid, minimise or rectify environmental harm.

2.18.18. In this regard, the appellants have not demonstrated that the environmental authorisation authorises the applicants to disregard their obligations under NEMA or other applicable environmental legislation. Nor have they demonstrated that the mitigation, monitoring and

management measures contained in the environmental authorisation and associated environmental management instruments are incapable of addressing the identified risks. The existence of residual environmental risks, without a demonstration that those risks were inadequately assessed or that the measures imposed are unreasonable or insufficient, does not establish a violation of the constitutional environmental right.

2.18.19. The constitutional right in section 24 must therefore be considered together with the principle of sustainable development and the statutory scheme established by NEMA. The right does not require the elimination of all environmental risk before an activity may be authorised. Rather, it requires environmental protection to be integrated into decision-making and requires reasonable measures to be adopted to promote environmental protection while permitting appropriate social and economic development.

2.18.20. On the record before me, the appellants have not established that the CA failed to give effect to the constitutional environmental right or the environmental management principles in granting the EA. They have also not demonstrated that the environmental authorisation is inconsistent with the obligations imposed by section 28 of NEMA or that the mitigation and management measures are so inadequate as to render the authorisation unlawful.

2.18.21. Accordingly, this ground of appeal is dismissed.

3. DECISION

3.1. In reaching my decision on these appeals, I have taken the following into consideration:

- 3.1.1 The information contained in the project file with reference number: 12/3/339, in particular the final EIAR and EMPr dated 20 May 2024 and submitted to the DMPr on 20 May 2024;
- 3.1.2 The environmental authorisation issued to the applicants, dated 16 September 2024;
- 3.1.3 Notice of the environmental authorisation decision dated 30 September 2024;

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- 3.1.4 The grounds of appeals received from the appellants between 30 September 2024 to 18 October 2024;
 - 3.1.5 Responding statement submitted by the applicant on 29 November 2024; and
 - 3.1.6 Relevant legislative law.
- 3.2 In terms of section 43(6) of NEMA, I have the authority, after considering the appeal, to confirm, set aside or vary the decision, provision, condition or directive or to make any other appropriate decision.
- 3.3 Having duly considered all the information pertaining to the appeals, and in terms of section 43(6) of NEMA, I have decided as I hereby do to:
- 3.3.1 dismiss the appeals subject to the inclusion of the additional conditions set out under the ninth appeal ground above;
 - 3.3.2 confirm the decision of the DMPR to grant an environmental authorisation to the applicants on 16 September 2024, in respect of the proposed project; and
 - 3.3.3 Instruct the DMPR to amend the environmental authorisation to include additional conditions as stipulated above.
- 3.4 In arriving at my decision on the appeals, it should be noted that I have not responded to each and every statement set out in the appeals and responses thereto, and where a particular statement is not directly addressed, the absence of any response should not be interpreted to mean that I agree with or abide by the statement made.
- 3.5 Should any party/ies be dissatisfied with any aspect of my decision, they may apply to a competent court to have this decision judicially reviewed. Judicial review proceedings must be instituted within 180 days of notification hereof, in accordance with the provisions of section 7 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000) (PAJA).

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"Should any party/ies be dissatisfied with any aspect of my decision, they may apply to a competent court to have this decision judicially reviewed. Judicial review proceedings must be instituted within 180 days of notification hereof, in accordance with the provisions of section 7 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000) (PAJA)."

A handwritten signature in black ink, appearing to read 'Maynier', with a stylized initial 'D'.

DAVID MAYNIER, MP

MINISTER OF FORESTRY, FISHERIES AND THE ENVIRONMENT

DATE: 13 OCTOBER 2026