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DMPR Ref. No: WC 30/5/1/1/2/10474PR
Our Ref: Revised THHMM Prospecting Appeal, August 2026

31 August 2026

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Dear Appeals Directorate,

APPEAL SUBMISSION: GRANTING OF ENVIRONMENTAL AUTHORISATION FOR PROPOSED MULTI-COMMODITY PROSPECTING IN SEA CONCESSIONS 11A, 12A, 13A, 11B, 12B AND 13B, WEST COAST, WESTERN CAPE (DMPR REF. NO. WC 30/5/1/1/2/10474PR)

Protect the West Coast NPC ("PTWC") hereby submits an appeal, in terms of section 43 of the National Environmental Management Act, 1998 ("NEMA") and the National Appeal Regulations, 2025 (GN R. 5985 of 13 March 2025), against the decision of the Department of Mineral and Petroleum Resources ("DMPR") to grant an Environmental Authorisation ("EA") to Trans Hex Heavy Minerals Mining (Pty) Ltd ("THHMM") for proposed multi-commodity prospecting in Sea Concessions 11A, 12A, 13A, 11B, 12B and 13B, situated in the Magisterial District of Van Rhynsdorp, Western Cape. The appeal authority considering this appeal is the Minister responsible for environmental affairs, who does so in terms of section 43 of the National Environmental Management Act 107 of 1998.

It is recorded that during the environmental impact assessment (EIA) process, the PTWC made detailed legal and substantive comments (see Annexure "A"). These comments should be read as specifically incorporated into these grounds of appeal.

A full list of the annexures referred to in this appeal can be found at the end of this appeal. Due to the file sizes of the annexures referred to, a link to a publicly accessible shared folder of the annexures is included in the appeal submission and available both directly below and at the end of this appeal document in accordance with Regulation 4(3)(c) of the National Appeal Regulations, 2025.

https://drive.google.com/drive/folders/1rKztl8dRRUF0eWoOBIND8CmcZ1WB5h8I?usp=drive_link

Locus standi

PTWC, Registration No. 2020/8865535/08, is a non-profit company established in 2020, comprised of individuals with expertise in media, law and science, dedicated to informing and empowering civil society regarding prospecting and mining activities on the West Coast and their associated environmental and social impacts, and to promoting lawful decision-making in relation to such activities.

PTWC registered as an interested and affected party in respect of this application and submitted substantive written comments on the Environmental Impact Assessment Report during the comment period of 12 June to 14 July 2025 attached as Annexure "A". Those comments, and the responses to them, are recorded in the Issues and Responses Summary at comments 115 and following (Annexure "H", PDF pages 53 to 71). PTWC's comment on cumulative impacts is recorded as comment 119 (Annexure "H", PDF pages 58 to 60).

Section 43(1A) of NEMA provides that any person may appeal to the Minister against a decision made by the Minister responsible for mineral resources, or any person acting under delegated authority. The decision to grant the EA was taken by the Regional Manager: Mineral Regulation, Western Cape Regional Office, under delegated authority, and is accordingly appealable.

Timing

The EA was granted on 14 July 2026 and issued to THHMM on 14 July 2026 (Annexure "B", EA internal page 1 of 16). Notification of the decision was sent to registered interested and affected parties by SRK Consulting (South Africa) (Pty) Ltd on behalf of THHMM by letter dated 21 July 2026 (Annexure "B", PDF page 1).

Regulation 4(1)(a) of the National Appeal Regulations, 2025 requires an appeal to be submitted within 20 calendar days from the date that the decision is sent by the decision-maker, or where applicable by the applicant, to registered interested and affected parties. Regulation 1(2) provides that the period is reckoned from the start of the day following that date to the end of the last day of the period, and that where the last day falls on a Saturday, Sunday or public holiday the period is extended to the end of the next day which is not a Saturday, Sunday or public holiday.

Reckoned from 22 July 2026, day 20 falls on Monday 10 August 2026. Women's Day falls on Sunday 9 August in 2026, and Monday 10 August 2026 is accordingly a public holiday. The period is accordingly extended to Tuesday 11 August 2026.

On 5 August 2026 PTWC's attorneys of record, Cullinan & Associates Incorporated, addressed a letter to the Minister of Forestry, Fisheries and the Environment, care of the Director: Appeals and Legal Review, for the attention of Mr Pieter Swart, requesting an extension of 20 calendar days, until 31 August 2026, within which to submit this appeal. The extension was sought by agreement, alternatively in terms of section 47CB(1) of NEMA. The letter was copied to THHMM for the attention of Mr Aaron Larkens, and requested acknowledgement of receipt and written approval by no later than 12h00 on Thursday 6 August 2026 (Annexure "L"). No response to

that letter had been received by 11 August 2026, and Grounds 1 to 9 of this appeal were accordingly submitted on that date, on PTWC's own calculation of the period set out above, and were timeous on that calculation.

The extension was in fact granted. By decision dated 11 August 2026, the Director: Appeals and Legal Review, exercising the powers under sections 47C and 47CB of NEMA sub-delegated to that office, granted PTWC an extension within which to submit its appeal, recorded in that decision as running to 31 August 2026 (Annexure "R"). PTWC received that decision on 18 August 2026 through its legal advisors, Cullinan & Associates Incorporated. Ground 10 below is added pursuant to that extension, for the reasons given in the introduction to that ground. This consolidated submission, restating Grounds 1 to 9 and adding Grounds 10, 11 and 12, is submitted on 31 August 2026, within the period allowed.

PTWC records the circumstances in which the appeal has been prepared. The decision authorises prospecting across six marine concessions with a combined extent of approximately 32 113 hectares over a five year programme, in an area which includes two estuaries recorded by the provincial environmental department as having an ecosystem threat status of endangered, areas mapped as Critical Biodiversity Areas, commercial and small-scale fisheries, and coastal communities dependent on them. The record comprises the Final Environmental Impact Assessment Report, four specialist reports, the Environmental Management Programme, the closure and decommissioning plan and the public participation record. The extension was sought so that the appeal could be prepared on the whole of that material and with the benefit of specialist input. Nothing in the appeal as submitted is advanced on an insufficient basis. Should further material come to PTWC's attention, PTWC respectfully reserves its right to request leave to supplement this appeal with such further grounds and material as may be necessary.

Summary of grounds

a) The competent authority was the second respondent in proceedings in which, on 29 August 2023, the High Court made an order prohibiting a related Trans Hex entity from undertaking any mining and related activities, whether beach, shore or vessel, within a defined area which straddles Concessions 12A and 13A. No reference to the order appears anywhere in the record. Vessel-deployed vibracore and bulk sampling, which the practitioner classifies as destructive prospecting, are authorised in both of those concessions, and no area is excluded from prospecting by coordinate or otherwise. Recommendations by Cape Nature and by the provincial environmental department that the estuary mouth be avoided by demarcation were not adopted, and no reason for departing from them is recorded.

b) The cumulative impact assessment was inadequate. The coastal ecosystem types inshore of the six concessions were categorised and assigned a threat status in the 2018 National Biodiversity Assessment, and much of that coastline carries a status of Near Threatened or Vulnerable, with one ecosystem type recorded as Endangered. The applicant's own marine specialist records that those statuses reflect the condition of the ecosystem types "following decades of shore- and vessel-based diamond mining and mining of heavy mineral sands", and the same specialist separately acknowledges ongoing heavy minerals and beach diamond

mining at Brand-se Baai and in the surf zone concessions adjacent to Concessions 11A, 12A and 13A. Against that history, the cumulative impact assessment omits the two concurrent applications by Trans Hex Operations (Pty) Ltd to mine Concessions 11B and 13B, being the applications on which this application's own project motivation expressly rests, and omits an approved third-party prospecting right application over Concession 12B which the report records in its own table of West Coast applications. Both mining applications were identified to the practitioner before the final report was submitted, one of them by an organ of state and by reference number, and neither table was amended. By the date of the decision the competent authority had itself authorised mining in two of the six concessions. The finding that cumulative effects are highly unlikely rests on a prospecting footprint of 0.011 km² measured against the extent of two ecoregions, reached on a coastline the applicant's own specialist records as already degraded by decades of the very activity now being added to it.

c) The prospecting stage is the last point at which a benthic baseline for these concessions can be established. If mining follows, the seabed sampled here will already have been disturbed, and a baseline taken at that later stage cannot describe what the seabed looked like before this authorisation was acted on. The Environmental Authorisation permits the seabed to be disturbed at more than 4 500 sample locations without requiring the collection of any pre-disturbance benthic data. The baseline placed before the competent authority is a desktop description of the West Coast drawn substantially from sources published in 1999 and 2007 and from assessments prepared for other operations, and neither of the two factors the specialist identifies as governing benthic community structure was measured at any location. On 20 February 2026 the same regional office made a pre-mining benthic baseline survey of benthic communities a condition of mining in Concession 13B, being one of the six concessions covered by this authorisation. The closure work for which financial provision is made is a post-closure survey to demonstrate recovery, which cannot be done where no prior state was recorded.

i) That absence of a baseline cannot be dismissed as a formality. Further north on this same stretch of coast, within a lease formerly held by De Beers Consolidated Mines for marine diamond mining, careful survey work identified a fossilised yellowwood forest on the seabed, a find substantial enough that a 250 metre no-go buffer was imposed around it and the area was left unmined.¹ That protection was possible only because the seabed was surveyed properly before it was disturbed. This application proposes no comparable survey before disturbing 4 500 locations across six concessions.

d) The assessment predicts that suspended sediment plumes will be localised and ephemeral, and predicts specifically that plumes generated in the southern portion of Concession 12A are highly unlikely to penetrate the mouth of the Olifants River. It does so without any measurement of the particle size distribution of the sediments to be disturbed, any characterisation of the fine

¹ Namaqua Fossil Forest, Ecologically or Biologically Significant Area description, Institute for Coastal and Marine Research, Nelson Mandela University, available at <https://cmr.mandela.ac.za/Research-Projects/EBSA-Portal/South-Africa/Namaqua-Fossil-Forest> (accessed 28 August 2026). See also Stevenson R and Bamford M K, "Submersible-based observations of in-situ fossil tree trunks in Late Cretaceous seafloor outcrops, Orange Basin, western offshore, South Africa" (2003) 106 South African Journal of Geology 315.

fraction of the hangingwall and footwall material, or any dispersion modelling. When accepting the Scoping Report the competent authority directed that the report indicate how plume migration would be monitored. It does not, and no condition of the authorisation addresses the plume.

e) The marine specialist recommended that destructive prospecting be excluded from areas classified as CBA-Natural and CBA-Restore within all six concessions. The practitioner adopted that limit, recommended approval only for the sections of the precinct not delineated as Critical Biodiversity Areas, and referred the balance of the question to the competent authority for decision. The Department of Environmental Affairs and Development Planning (DEA&DP) recommended the same exclusion twice, on 2 October 2024 and again on 15 July 2025, the second time recommending in terms that the competent authority adopt a risk averse and cautious approach by excluding invasive prospecting from CBA 1 and CBA 2 areas. Cape Nature, by letter dated 17 July 2025, objected to the application on the same basis and called for full avoidance of the CBA areas. The competent authority nevertheless, authorised destructive prospecting across the whole of all six concessions, excluded no area, demarcated no area, and recorded nothing in its reasons to show that either recommendation was considered. Neither department is named anywhere in the reasons for the decision. It then approved an environmental management programme which declines the exclusion while imposing a condition requiring the specialist's recommendations to be strictly adhered to.

f) The financial provision was not determined in accordance with regulations 5, 6 and 7 of GNR 1147. The annual rehabilitation figure is nil, on the stated basis that no invasive prospecting will be undertaken in the first year, which the project description in the same application contradicts. The latent risk figure is nil, in the face of the marine specialist's finding that long-term or permanent changes in sediment grain size may occur. The whole of the provision is allocated to a post-closure survey which cannot achieve its stated purpose. The Environmental Authorisation records no amount, no method and no reference to GNR 1147.

g) The whole of the authorised activity takes place in coastal waters, which are coastal public property. The factors which section 63(1) of the National Environmental Management: Integrated Coastal Management Act 24 of 2008 requires the competent authority to take into account were not taken into account. The practitioner answered the point by asserting that coastal public property would not be affected because there are no land-based activities, which is wrong on the terms of section 7(1)(a). The Environmental Authorisation makes no reference to the Act, to coastal public property, to any coastal management programme or objective, and to the interests of the whole community, which the Act defines as including the interests of other living organisms dependent on the coastal environment.

h) The Fisheries Impact Assessment records that the concessions overlap recruitment areas for small pelagic species and are situated within nursery areas of many of those species, that the sediment plume may move shoreward towards sensitive nursery areas, and that larval mortality and damage could significantly reduce recruitment potential. It then rates the impact as of very low consequence and of overall insignificance by reason of the localised nature of individual sampling events, and proposes no mitigation. The consequence for recruitment at the level of

the stock, the fishery and the dependent predator populations, including the Critically Endangered African Penguin, was not assessed.

i) The Final Environmental Impact Assessment Report states the correct distinction between need, being the interests and needs of the broader public, and the applicant's motivation for the project, and then discharges the need enquiry by cross-reference to the applicant's motivation. The competent authority's finding on the point is that the need and desirability of the project was outlined in detail. That is a finding about the presence of material in the applicant's report. It is not a finding on the matter which regulation 18 of the EIA Regulations, 2014 required the authority to have regard to.

j) The small-scale fishers of Doringbaai, Papendorp and Ebenhaeser hold fishing rights over the waters in which this prospecting is authorised, and the Department, when it accepted the scoping report in December 2024, requested that consultation be extended to the fishing and coastal communities of the area. Fishers from Ebenhaeser asked for a focus group meeting in their own community. They were told to come to the open day instead, and none of them were able to. The only public participation event in the impact assessment phase directed specifically at these communities was accordingly a focus group meeting held in Doringbaai on 2 July 2025. It ran for approximately an hour and a half before an angry stakeholder ordered the other attendees to leave. Three of the four pages of the attendance register were destroyed, and the applicant's own reports give two different accounts of what transpired. The only surviving record of who attended is a single page bearing sixteen names, against a figure of approximately 45 attendees placed before the competent authority which no document in the record supports. The open days do not fill the gap. Six of the ten signatories at the first are the applicant, its own environmental assessment practitioner and the author of one of the four specialist studies, leaving only four community members. The destruction of the participation register was raised in writing during the comment period by a registered interested and affected party, who described it as reflecting the community's frustration at not being heard, and the response did not deal with it. The consequence is that nothing these communities know about these waters reached the assessment. The fisheries specialist records that the fishing grounds of the small-scale sector were inferred from the distribution of the commercial sectors, and that in the absence of catch data the study assumed the whole of the concession areas was fishable. The practitioner was told all of this in writing before the report was finalised, and did not go back to them. Meaningful consultation requires a genuine, two-way process conducted with the affected communities themselves and not with a proxy for them, in which the issues those communities raise are heard and are either incorporated or answered with reasons. The competent authority nonetheless recorded that the concerns raised by interested and affected parties had been addressed by the applicant in the assessment and the Environmental Management Programme, when the only documentary record of who attended the one meeting convened with these communities is a single page.

k) The Final Environmental Impact Assessment Report identifies two Ecologically or Biologically Significant Areas within and overlapping the precinct, being the transboundary Benguela Upwelling System, which it describes as globally unique, and the Namaqua Coastal Area, which Concessions 11A and 11B overlap in the north. It describes their ecological importance, records

that one of them is transboundary, and sets out the Benguela Current Convention and its cooperative and ecosystem based framework. It then assesses neither. No assessment of the impacts of the authorised activities on either area appears in the impact assessment, in the cumulative assessment or in the principal findings, and the Convention is not referred to again. When the provincial environmental department recommended in terms that the prospecting area exclude both areas, the recommendation was answered by a cross-reference to a response dealing with the draft status of a different instrument, being the National Coastal and Marine Spatial Biodiversity Plan, which does not identify these areas at all. The Environmental Authorisation makes no reference to either area, to the Convention, or to transboundary effects of any description, and section 21 of the National Environmental Management: Integrated Coastal Management Act 24 of 2008 required the competent authority to control and manage activities in coastal waters in accordance with the Republic's obligations under international law.

l) The Socio-economic Impact Assessment prepared for the applicant records what the affected communities told it. It records that small-scale fishers derive their livelihood from fishing, which was usually considered insufficient to meet basic needs, that one key informant put the proportion of households in Doringbaai dependent on fishing or other marine resources at about 90 per cent, that having no income fuels the high rate of school dropouts, and that fishers attribute reduced catches of snoek and rock lobster to mining activity in the concession areas in issue. None of that material was carried into the socio-economic baseline or into the assessment in the Final Environmental Impact Assessment Report. The impact on the small-scale fishing sector was rated as of low intensity, which the report's own methodology defines as meaning that social functions and processes are negligibly altered. The mitigation proposed for it is the notification of fishing industry associations and the issuing of navigational warnings, and on the report's own table that mitigation moves no rating other than the probability, from probable to possible, which is the single movement that converts very low significance into insignificance. An identified impact on cultural and spiritual attachment to the sea was dismissed with no mitigation and no reasons. No socio-economic component was carried into the cumulative analysis at all. The one recorded benefit is rated low in two places in the report and medium in the two places from which the competent authority was invited to read, and the elevation is nowhere explained. The reasons for the decision dispose of the whole subject in a single sentence which records nothing about these communities or their dependence on the resource.

m) The defects are not free-standing. The absence of any site-specific benthic and sediment data, raised at Grounds 3 and 4, is what leaves the impact ratings without a measured foundation, and it is those ratings which are then relied on to answer the recommendation that Critical Biodiversity Areas be excluded, at Ground 5, and to support the conclusion that cumulative effects are highly unlikely, at Ground 2. The same ratings are what curtail the enquiry twice over. They are the reason the areas identified in the report itself as ecologically or biologically significant were never assessed, at Ground 11, and they are the reason no socio-economic component entered the cumulative analysis, at Ground 12, the report having confined that analysis to components on which the project was found to have a potentially significant impact. The absence of any spatial delineation, raised at Grounds 1 and 5, means that the one mechanism by which the identified sensitivities could have been protected, being

the exclusion of defined areas by coordinate, was available, was recommended by the applicant's own specialist and by two organs of state, and was not used. The financial provision at Ground 6 is costed for closure work which the absence of a baseline at Ground 3 renders incapable of performance. The participation failure at Ground 10 is what kept the knowledge held by the people who fish these waters out of a record which is otherwise a desktop record throughout. The same failure explains why the only account of these communities anywhere in the record is the one the applicant's own socio-economic specialist gathered, and Ground 12 is that even that account did not survive into the assessment or into the reasons.

n) Taken together, what the record discloses is a decision taken on an assessment which did not measure the receiving environment, did not assess the authorised activity alongside the mining which the same authority had already authorised over two of the same concessions, did not delineate any area as off limits, did not assess the areas its own report identifies as ecologically or biologically significant, did not carry its own specialist's evidence about the affected communities into either the assessment or the reasons, and did not record consideration of the recommendations of the two provincial authorities or of the question which the practitioner expressly reserved to the decision-maker. Each of those is either a failure to take into account a matter which section 24O(1) of NEMA required to be taken into account, or a failure to comply with a requirement of the EIA Regulations, 2014. Each ground is advanced as sufficient on its own.

In the circumstances, the Environmental Authorisation ought not to have been granted. A brief background to the application and the grounds of appeal are set out below.

Background

THHMM applied for a multi-commodity prospecting right over six marine concessions with a combined extent of approximately 32 113 hectares off the Western Cape coast, between a point approximately 7 km south of the Western Cape and Northern Cape provincial boundary in the north and the latitude of Doringbaai in the south. The A concessions extend from the deep edge of the surf zone to 1 km seaward of the high water mark. The B concessions extend from 1 km seaward of the high water mark to approximately 5 km offshore (Final Environmental Impact Assessment Report, report page 7, PDF page 26, Annexure "C").

The prospecting programme is to run over five years and comprises geophysical surveys totalling a maximum anticipated swathe of 6 965 km over 74 survey days, 2 230 vibracore samples, 1 650 drill samples and 25 bulk samples comprising 625 grab samples (Annexure "C", Tables 2-3 to 2-6, report pages 14 to 19, PDF pages 33 to 38). The EA authorises 1 650 drill samples, 2 230 vibracore samples and 625 grab samples, with a total area of disturbance of 10 771 m², and confines drill sampling to Concessions 11B, 12B and 13B (Annexure "B", EA internal pages 4 and 5 of 16).

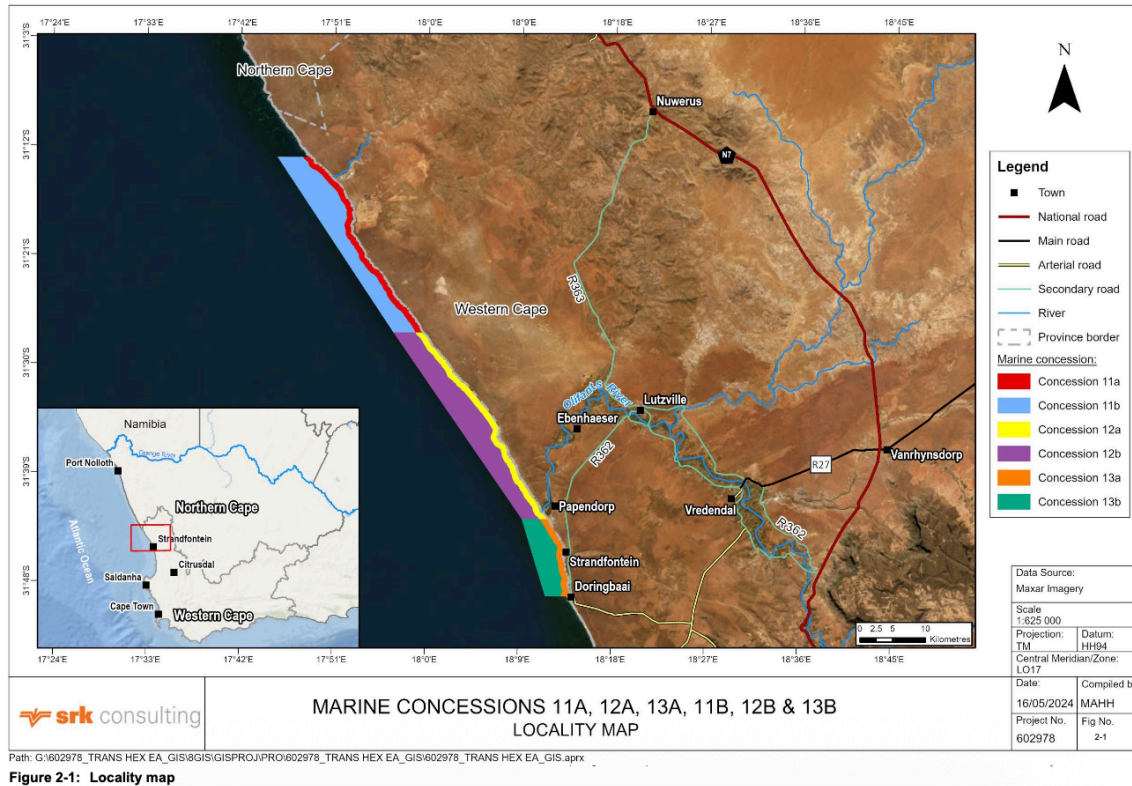


Figure 2-1 of the Final Environmental Impact Assessment Report (Annexure "C", report page 9, PDF page 28), the locality map for the application, depicting Marine Concessions 11A, 12A, 13A, 11B, 12B and 13B. Source: SRK Consulting, 16 May 2024, scale 1:625 000. The six concessions form a continuous band along the coast. The A concessions, being 11A, 12A and 13A, are the landward of each pair, and the B concessions, being 11B, 12B and 13B, lie seaward of them. The Olifants River enters the sea between Ebenhaeser and Papendorp, at the southern end of Concession 12A and the northern end of Concession 13A. Strandfontein and Doringbaai lie along the coastline of Concession 13A.

Four specialist studies were undertaken: a Marine Ecology Impact Assessment by Dr Andrea Pulfrich of Pisces Environmental Services (Pty) Ltd, a Fisheries Impact Assessment by Sarah Wilkinson of Capricorn Marine Environmental (Pty) Ltd, a Socio-economic Impact Assessment by Randolph Mouton of Sustainable Development Africa, and a Marine Heritage Impact Assessment by John Gribble of TerraMare Archaeology (Pty) Ltd (Annexure "C", Table 4-1, report page 40, PDF page 59).

The Final Environmental Impact Assessment Report records that the concessions were targeted "due to the expectation of rich heavy mineral deposits in the precinct as well as the fact that a separate but related entity, THO, holds diamond Prospecting Rights for Marine Concessions 11B and 13B", and that THHMM "already has access to valuable survey data for these concessions" (Annexure "C", report page 11, PDF page 30).

Three appeals lodged by PTWC against related decisions are presently pending before the appeal authority:

- an appeal lodged by PTWC on 9 April 2026 against the decision of DMPR, taken on 24 February 2026, to approve the amendment, upgrade and consolidation of the Environmental Impact Assessment and Environmental Management Programme for marine diamond mining by THO in Sea Concessions 11A, 12A and 13A and the corresponding surf-zone concessions, under DMPR Ref. Nos. WC 30/5/1/2/2 10066 MR and WC 30/5/1/2/2 10130 MR to 10138 MR. That approval was given in respect of the upgraded Environmental Management Programme which paragraph 4 of the order of 29 August 2023 (Annexure "D") required to be applied for;
- an appeal lodged on 27 March 2026 against the EA granted on 20 February 2026 to THO for diamond mining in Sea Concession 13B, under DMPR Ref. No. WC 30/5/1/2/2(10186) MR, in respect of which a responding statement has been filed by THO; and
- an appeal lodged on 13 May 2026 against the EA granted to THO for diamond mining in Sea Concession 11B, under DMPR Ref. No. WC 30/5/1/2/2(10185) MR, in respect of which a responding statement has been filed by THO.

The two mining applications and this prospecting application were assessed by SRK Consulting (South Africa) (Pty) Ltd under SRK Project No. 602978, by the same environmental assessment practitioner and the same marine specialist. The upgraded Environmental Management Programme was prepared by SLR Consulting (Pty) Ltd. Each of the four decisions was taken by the Western Cape Regional Office of the DMPR. The 11B and 13B appeals contend that the mining assessments failed to assess the cumulative effect of THHMM's prospecting activities over the same concession areas, and this appeal is the mirror of that contention. The Environmental Management Programme appeal concerns the same A concessions as those over which prospecting is authorised by the decision under appeal, and raises the identification and spatial delineation of no-go areas under the order of 29 August 2023. PTWC respectfully requests that this appeal be considered together with those three appeals.

On 29 August 2023 the High Court of South Africa, Western Cape Division, Cape Town, under case number 21414/2022, made an order by agreement establishing no-go areas around the Olifants River Estuary and imposing obligations in relation to the 11A, 12A and 13A concession areas. PTWC was the first applicant in those proceedings and the Regional Manager: Mineral Regulation, Western Cape Region was the second respondent (Annexure "D").

PTWC understands that it is not privy to all the information informing this application and can only raise queries on what it has seen and been able to analyse. It may be that the applicant holds information not presently available to PTWC that would assist in clarifying the matters raised, and PTWC raises these concerns in that spirit.

Grounds of appeal

1. Failure to take into account the order of the High Court of 29 August 2023 and the position and ecological significance of the Olifants River Estuary in relation to the concession areas.

a) The activity authorised is prospecting, and the impacts assessed are those of prospecting alone. The Final Environmental Impact Assessment Report records that the objective of the prospecting is "to evaluate whether it would be viable to mine and possibly beneficiate such resources" (Annexure "C", report page 7, PDF page 26). Section 19(1)(b) of the Mineral and Petroleum Resources Development Act 28 of 2002 confers on the holder of a prospecting right, subject to section 19(2), the exclusive right to apply for and be granted a mining right in respect of the mineral and prospecting area in question. This ground is advanced on the footing that the two stages are sequential rather than discrete, and that the treatment of the Olifants River Estuary at the prospecting stage sets the position from which any later application to mine the same waters will be considered.

b) The order and its continued operation:

i) On 29 August 2023 the High Court of South Africa, Western Cape Division, Cape Town, before the Honourable Justice Gamble, under case number 21414/2022, made an order by agreement between the applicants and the fourth and eighth respondents. PTWC was the first applicant. The Doringbaai Small Scale Fishing Community and the Olifants River Small Scale Fishing Community were the second and third applicants, and Mr Preston Goliath and Mr Fabian Mohammed were the fourth and fifth applicants. The order was granted in full and final settlement of the relief sought in Parts A and B of the notice of motion (Annexure "D", paragraph 11).

ii) The order distinguishes between obligations of general application and obligations tied to the approval of the application contemplated in paragraph 4. Paragraph 9 applies "[p]ending the approval by the DMRE of the Application". Paragraph 10 applies "[b]oth pending the approval by the DMRE of the Application and following the approval by the DMRE of the Application (should such approval be granted)". Paragraphs 1 and 2 are qualified in neither way. They are unconditional prohibitions, and neither is expressed to be of limited duration or to lapse upon the approval of that application. Paragraph 1 accordingly remains in force.

iii) In any event, the approval given on 24 February 2026 is the subject of a pending appeal by PTWC, as recorded in the background above. Section 43(7) of NEMA provides that an appeal under that section suspends an environmental authorisation or any other decision made in terms of the Act, or any provision or condition attached to it, save for a directive or administrative enforcement notice aimed at addressing significant harm to the environment. Section 43(9) permits the appeal authority, on application and on good cause shown, to direct that the decision not be suspended, and PTWC is not aware of any such direction having been sought or given. On either reading of the order, the prohibition in paragraph 1 was in force when the decision under appeal was taken on 14 July 2026, and remains in force.

c) Paragraph 1 of the order prohibits the fourth respondent and its contractors from undertaking any mining and related activities, whether beach, shore or vessel, in the area delineated with points 1 to 4 on the map annexed to the order and marked "A", with the seawards boundary being 500 m from the high-water mark. The map records the four corner points in WGS84 UTM33 coordinates and depicts the no-go area as extending approximately 300 m along the coast north of the Olifants River mouth and approximately 2.5 km south of it, a total of approximately 2.8 km of coastline, extending 500 m seaward (Annexure "D", paragraph 1 and map "A").

d) The second respondent in those proceedings was the Regional Manager: Mineral Regulation, Western Cape Region. That is the office which took the decision under appeal. The first respondent was the Minister responsible for mineral resources, and the third respondent was the Minister of Forestry, Fisheries and the Environment (Annexure "D", page 1).

e) As to the identity of the party bound by paragraph 1 of the order:

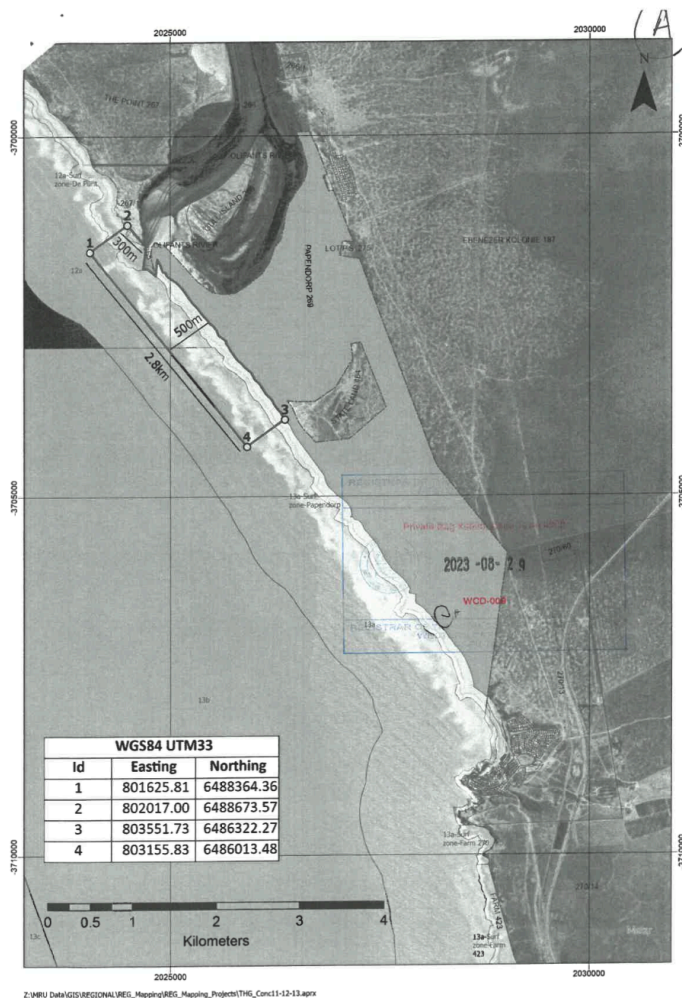
i) The fourth respondent is cited in the order as Moonstone Diamond Marketing (Pty) Ltd and is defined in the order as "Trans Hex". PTWC understands that Moonstone Diamond Marketing (Pty) Ltd subsequently reverted to the name Trans Hex Operations (Pty) Ltd, and that the two names denote the same juristic person. The ground does not depend on that being so.

ii) Trans Hex Operations (Pty) Ltd applied for, and on 24 February 2026 obtained, approval of the amended, upgraded and consolidated Environmental Management Programme for marine diamond mining in Sea Concessions 11A, 12A and 13A and the corresponding surf-zone concessions, which paragraph 4 of the order required to be applied for within six months. PTWC contends in a pending appeal against that approval that the approved programme does not comply with the order, and nothing in this ground should be taken as an acceptance that it does. The relevance of the application here is narrower. It establishes that the obligations created by the order have been discharged, or purportedly discharged, by Trans Hex Operations (Pty) Ltd.

iii) The applicant, Trans Hex Heavy Minerals Mining (Pty) Ltd, is a related entity within the same group. The Final Environmental Impact Assessment Report records that the six concessions were targeted "due to the expectation of rich heavy mineral deposits in the precinct as well as the fact that a separate but related entity, THO, holds diamond Prospecting Rights for Marine Concessions 11B and 13B", and that the applicant "already has access to valuable survey data for these concessions" (Annexure "C", report page 11, PDF page 30). The same natural person, Mr Aaron Larkens, is recorded as the responsible person for the applicant in this application and as the responsible person for Trans Hex Operations (Pty) Ltd in the Environmental Authorisation granted over Sea Concession 13B (Annexure "C", Table 2-1, report page 7, PDF page 26; Annexure "E", internal page 4 of 26).

f) As to the location of the no-go area relative to the concession areas:

i) Map "A" to the order records the four corner points of the no-go area in WGS84 UTM33 coordinates. It is reproduced below.



Map "A" to the order of the High Court of South Africa, Western Cape Division, Cape Town, of 29 August 2023 under case number 21414/2022 (Annexure "D"). The four corner points of the no-go area are marked 1 to 4, and their WGS84 UTM33 coordinates are tabulated on the map. The annotations record the seaward boundary as 500 m from the high-water mark, the extent of the area north of the Olifants River mouth as 300 m, and the total extent along the coast as 2.8 km. The map bears the Registrar's stamp dated 29 August 2023.

ii) Converted to geographic coordinates and compared with the concession corner coordinates recorded in Table 2-2 of the Final Environmental Impact Assessment Report, the four corner points establish that the no-go area straddles the boundary between Concession 12A and Concession 13A, its northern portion falling within the latitudinal extent of Concession 12A and its southern portion within that of Concession 13A (Annexure "C", report page 8, PDF page 27).

iii) That placement is recorded on the record by two other parties. The Department of Environmental Affairs and Development Planning, in its comments on the Draft Scoping Report dated 2 October 2024, records that "[t]he extent of the activities is near the Sout River Estuary in Marine Concession 11A and the Olifants River Estuary on the boundary between Marine Concessions 12A and 13A" (Annexure "G", PDF page 5, paragraph 4). The Marine Ecology Impact Assessment places the permanently open Olifants River estuary in Concession 12a (Annexure "F", report page 88, PDF page 104).

iv) The seaward boundary of the no-go area is 500 m from the high water mark. The A concessions extend to a line 1 km from the high water mark (Annexure "C", report page 10, PDF page 29). The no-go area accordingly falls within the seaward extent of Concessions 12A and 13A.

g) The activities contemplated within Concessions 12A and 13A, as described in the Final Environmental Impact Assessment Report on which the Environmental Authorisation was granted, are the following. The Environmental Authorisation confines drill sampling to Concessions 11B, 12B and 13B, and no drill sampling is accordingly authorised in either Concession 12A or Concession 13A (Annexure "B", Environmental Authorisation, internal page 5 of 16; Annexure "C", Table 2-5, report page 18, PDF page 37). Geophysical surveying of 900 km over nine days is contemplated in Concession 12A and of 305 km over three days in Concession 13A (Annexure "C", Table 2-3, report page 14, PDF page 33). Vibracore sampling of 275 samples over four years is contemplated in Concession 12A, and of 80 samples over four years in Concession 13A, with a recorded disturbance area of 2.62 m² and 0.76 m² respectively (Annexure "C", Table 2-4, report page 16, PDF page 35). One bulk sample is contemplated in each of Concessions 12A and 13A in Year 5, each of approximately 100 tonnes, taken by a mechanical clam grab of 1.5 m³ capacity deployed from a vessel, excavating samples of approximately 4 tonnes at a time over a footprint of approximately 100 m² (Annexure "C", Table 2-6 and report page 19, PDF page 38).

h) Of those activities, the vibracore sampling and the bulk sampling are classified by the environmental assessment practitioner as destructive prospecting. The Issues and Responses Summary records, in a footnote to the practitioner's response on the treatment of Critical Biodiversity Areas, that "[d]estructive prospecting includes vibracore sampling, drill sampling and bulk sampling" (Annexure "H", PDF page 31, footnote 4). Both activities involve the physical excavation of seabed material, and both are conducted from a vessel.

i) PTWC does not contend that paragraph 1 of the order, in terms, prohibits the activities authorised by the Environmental Authorisation. Prospecting is not mining. What PTWC contends is that whether any of the authorised activities falls within "any mining and related activities (beach, shore or vessel)" as those words are used in paragraph 1 is a question which arises on the facts, and which arises with particular force in respect of the vessel-deployed vibracore and bulk sampling described at paragraphs g) and h) above, being activities which the practitioner classifies as destructive, which physically excavate the seabed, and which paragraph 1 of the order addresses in terms by extending the prohibition to vessel activity. That

question was never asked, because the order was not before the competent authority and was not otherwise taken into account.

j) The order imposed further obligations bearing on these same concession areas. Paragraph 2 prohibits land-based mining in identified conservation worthy areas "along the West Coast adjacent to the 11A, 12A and 13A concession areas". Paragraph 7.3 requires the application to the Department to assess the cumulative impacts of Trans Hex's operations. Paragraph 7.4 requires the identification, on the basis of the specialist studies, of any areas where no mining may be undertaken, and records that such no-go areas "may result in the extension of the area surrounding the Olifants River Estuary no-go areas referred to in paragraph 1". Paragraph 7.6 requires a map of the coastline of the 11A, 12A and 13A concession areas at an appropriate scale, superimposing the proposed activities on the environmental sensitivities of the concession areas and indicating any areas that should be avoided, including buffers, as contemplated in regulation 1(c) of Appendix 4 of the EIA Regulations, 2014. Paragraph 10.1 anchors the high-water mark to the definition in section 1 of the National Environmental Management: Integrated Coastal Management Act 24 of 2008 (Annexure "D").

k) Two estuaries lie in or adjacent to the concession areas, and both are of high conservation significance:

i) The Marine Ecology Impact Assessment records that "[t]hose estuaries in the project area are the intermittently-open Sout River estuary in Concession 11a, and the permanently-open Olifants River estuary in Concession 12a" (Annexure "F", report page 88, PDF page 104). The Department of Environmental Affairs and Development Planning records that both estuaries "have a national biodiversity assessment ecosystem threat status of endangered" (Annexure "G", PDF page 5, paragraph 4).

ii) As to the Olifants River Estuary, the Marine Ecology Impact Assessment records that it supports salt marsh habitat with a combined inter-tidal and supratidal area of 1 010 ha (Annexure "F", report page 88, PDF page 104), rates estuarine shores within Concessions 11a, 12a and 13a as an endangered ecosystem type (Annexure "F", report page 105, PDF page 121), and lists the estuary at its Table 4-13 as a confirmed coastal Important Bird Area, ZA078, under criteria A3 and A4i (Annexure "F", report page 101, PDF page 117).

iii) The Site Sensitivity Verification Report dated August 2024, which was submitted to the Department with the application, is recorded as confirming a "very high" sensitivity for the aquatic biodiversity theme by reason of the proximity of the Olifants River Estuary, the Sout River Estuary and wetlands (Annexure "H", comment 68, PDF page 31).

iv) The coastal waters adjacent to the estuary form part of the sediment transport system on which the condition of the estuary mouth depends. The Marine Ecology Impact Assessment itself records the northward littoral drift of coarser bedload sediments parallel to the coastline, generated by the prevailing south-westerly swell and

wind-induced waves, and records that longshore sediment transport is substantially higher in the surf zone than at depth (Annexure "F", report page 28, PDF page 44). The morphology and stability of an estuary mouth, and whether and when it remains open, constricts or closes, are determined by the exchange of sediment between the nearshore seabed, the beaches and the mouth.

v) PTWC has searched the Marine Ecology Impact Assessment and the Final Environmental Impact Assessment Report and has been unable to locate any assessment of the effect of the removal of seabed sediment within Concessions 12A and 13A on that system, or on the condition of the Olifants River Estuary mouth. What the Marine Ecology Impact Assessment assesses is a different question, being whether suspended sediment plumes generated in the southern portion of Concession 12a and 12b would penetrate the river mouth, which it concludes is "highly unlikely" (Annexure "F", report page 119, PDF page 135). The bulk sampling authorised in each of Concessions 12A and 13A removes approximately 100 tonnes of seabed material at each sample site, in addition to 275 and 80 vibracore samples respectively (Annexure "C", Tables 2-4 and 2-6, report pages 16 and 19, PDF pages 35 and 38). PTWC understands that it is not privy to all the information informing this application and can only raise queries on what it has seen and been able to analyse.

l) Notwithstanding that, the same specialist report states, immediately above Table 4-13, that there are a number of coastal Important Bird Areas in the general project area "but none overlap with Concessions 11a, 12a, 13a, and 11b, 12b and 13b" (Annexure "F", report page 100, PDF page 116). That statement cannot be reconciled with the same report's placement of the Olifants River Estuary within Concession 12a, or with the listing of that estuary in the table immediately below it. What PTWC contends is that the estuary was not assessed as a receptor lying within the concession areas.

m) The area delineated on map "A" is not a measure determined on any assessment of the effects of prospecting on the estuary. It was agreed in 2023 in settlement of litigation concerning mining by Trans Hex Operations (Pty) Ltd, and it extends approximately 2.8 km along the coast and 500 m seaward. PTWC does not contend that an area of that extent is sufficient to protect the Olifants River Estuary from the cumulative effects of the prospecting and mining activities presently authorised and applied for in the vicinity, and does not ask the appeal authority to treat the imposition of that area as a condition of this Environmental Authorisation as an answer to this ground. What PTWC contends is that the order records that a spatial exclusion around the estuary was required, that paragraph 7.4 of the order contemplates in terms that the no-go areas may fall to be extended on the basis of specialist studies, and that no delineation exercise of any kind, whether of that area or of any larger area determined on assessment, was undertaken for this application.

n) No reference to the order appears anywhere in the record made available to PTWC. PTWC has searched the Final Environmental Impact Assessment Report, each of the four specialist reports, the Environmental Management Programme and the Environmental Authorisation, and has been unable to locate any reference to the order, to the proceedings under case number

21414/2022, to any settlement, or to any no-go area in the vicinity of the Olifants River Estuary. PTWC understands that it is not privy to all the information informing this application and can only raise queries on what it has seen and been able to analyse.

o) Concerns about the proximity of the prospecting activities to the Olifants River Estuary were raised during the public participation process and are recorded in the Final Environmental Impact Assessment Report as one of the key comments and concerns raised by stakeholders, described as concerning "the proximity of prospecting activities to the Olifants River Estuary, which serves as a vital breeding and nursery ground for marine species, including potential impacts on estuarine dynamics and sediment transport" (Annexure **"C"**, report page 87, PDF page 106). They were not answered by reference to the order.

p) The recommendations made during the process in relation to the estuaries and to the areas mapped as Critical Biodiversity Areas were not given effect:

i) Cape Nature commented on the application by letter dated 17 July 2025 under its reference SSD14/2/6/1/8/3/_10474PR. Its paragraph 4 opens: "Cape Nature objects to the application on the basis that there has not been sufficient planned demarcation/delineation of avoidance areas." It continues that "it is strongly recommended that marine CBAs as delineated be respected", and that "the CBA areas adjacent to and including nearshore threatened marine ecosystems especially estuaries such as the Olifants estuary mouth be avoided by demarcation using coordinates to limit prospecting outside of these areas as a condition of authorisation". It records further that "[f]or the Olifants and Sout estuaries where CBA may not be delineated at the mouth, then the entire section of A concession should be avoided and demarcated as such and included as a condition of environmental authorisation" (Annexure **"G"**, PDF page 27).

ii) Cape Nature records at its paragraph 5 that "[t]here could be potential indirect impacts on estuaries considering that the Olifants estuary is marine dominated from November to April", and that avoiding the areas in the A concessions identified in its paragraph 4 "should then avoid these indirect impacts on the estuary" (Annexure **"G"**, PDF page 27).

iii) The Department of Environmental Affairs and Development Planning, in its comments on the Draft Scoping Report dated 2 October 2024, recommended that a separate Aquatic Biodiversity Assessment be undertaken to adequately assess potential impacts on the two estuaries (Annexure **"G"**, PDF page 5, paragraph 4). No such assessment appears among the four specialist studies recorded in the Environmental Authorisation.

iv) The Department of Environmental Affairs and Development Planning, Directorate: Development Facilitation, commented on 15 July 2025 that it "is not supportive of any invasive prospecting activities that overlap with areas mapped as CBA 1 and 2", and, while noting that the National Coastal and Marine Spatial Biodiversity Plan has not been adopted as policy, "strongly recommends that the competent authority, during its decision-making process, adopt a risk averse and cautious approach by refusing/ excluding invasive prospecting activities in areas mapped as CBAs 1 and 2" (Annexure

"H", comment 172, PDF page 83). The same Directorate had earlier recommended, at the scoping stage, that areas mapped as CBAs 1 and 2 be excluded from the proposed invasive prospecting areas in Marine Concessions 11A, 12A, 11B, 12B and 13B, and that the section on alternatives consider the exclusion of those areas from invasive prospecting and bulk sampling (Annexure "H", comment 69, PDF pages 31 to 32).

v) The applicant's own marine specialist made the same recommendation. The Final Environmental Impact Assessment Report records that the sea-use guidelines treat destructive prospecting as "not compatible" in proposed Critical Biodiversity Areas, and that "[i]n compliance with this prescription, the Marine Ecology Impact Assessment (see Appendix C1) recommends that destructive prospecting (core, drill and grab sampling) be precluded in proposed CBAs within the precinct" (Annexure "C", report page 135, PDF page 154). Concessions 11A and 12A each overlap with proposed Critical Biodiversity Areas, Concession 11A to the extent of 2.1 per cent CBA1 Natural, 8.6 per cent CBA1 Restore, 23.7 per cent CBA2 Natural and 2.9 per cent CBA2 Restore, and Concession 12A to the extent of 6.2 per cent CBA1 Restore and 9.1 per cent CBA2 Restore (Annexure "C", Table 4-4, report page 57, PDF page 76).

vi) That recommendation was not adopted. The applicant motivated instead that prospecting be allowed to proceed in Critical Biodiversity Areas as well as outside them, on the footing that the impacts are rated very low to insignificant and that the sea-use guidelines are non-binding (Annexure "C", report page 135, PDF page 154). The practitioner's authorisation opinion recommends that destructive prospecting be approved for the sections of the precinct not delineated as Critical Biodiversity Areas, and records that "DMPR will need to decide whether destructive prospecting should be authorised within the sections of the precinct that are proposed as CBAs" (Annexure "C", report page 136, PDF page 155).

vii) The Environmental Authorisation contains no condition demarcating any area by coordinate, and no condition excluding any part of any concession from prospecting. The question which the practitioner expressly referred to the Department for decision is not addressed in the Environmental Authorisation or in the reasons recorded at Annexure 1 to it (Annexure "B", Environmental Authorisation, Annexure 1, internal pages 8 and 9 of 16). None of the recommendations set out at sub-paragraphs i) to iv) above is recorded in those reasons, and no reason is given for departing from any of them. Site-specific condition 14 requires that "[a]ll the specialist studies' recommendations must be strictly adhered to" (Annexure "B", Environmental Authorisation, internal page 7 of 16). On the face of the Environmental Authorisation it is accordingly unclear whether the holder is or is not required to preclude destructive prospecting in proposed Critical Biodiversity Areas, that being a recommendation of the Marine Ecology Impact Assessment.

q) The legal obligation relied on is the following. Section 24O(1) of NEMA provides that if the Minister responsible for mineral resources considers an application for an environmental authorisation, that Minister must, among other things, comply with the Act, and must take into account all relevant factors, which may include:

i) at section 24O(1)(b)(ii), measures that may be taken to protect the environment from harm as a result of the activity which is the subject of the application, and to prevent, control, abate or mitigate any pollution, substantially detrimental environmental impacts or environmental degradation;

ii) at section 24O(1)(b)(iv), where appropriate, any feasible and reasonable alternatives to the activity which is the subject of the application and any feasible and reasonable modifications or changes to the activity that may minimise harm to the environment;

iii) at section 24O(1)(b)(vi), information contained in the application form, reports, comments, representations and other documents submitted in terms of the Act in connection with the application;

iv) at section 24O(1)(b)(vii), any comments received from organs of state that have jurisdiction over any aspect of the activity which is the subject of the application; and

v) at section 24O(1)(b)(viii), any guidelines, departmental policies and environmental management instruments adopted in the prescribed manner, "and any other information in the possession of the competent authority that are relevant to the application".

vi) Section 24O(1)(c) further requires the competent authority to take into account the comments of any organ of state charged with the administration of any law which relates to the activity in question.

vii) The obligation in section 24O(1)(b)(vi), (vii) and (c) is not qualified by the status of any underlying plan or guideline. Whether the National Coastal and Marine Spatial Biodiversity Plan has been adopted as policy determines whether the competent authority was bound to give effect to its sea-use guidelines. It does not determine whether the competent authority was obliged to take into account the recommendations of two organs of state and of the applicant's own marine specialist that destructive prospecting be excluded from areas mapped as Critical Biodiversity Areas. It was so obliged, and the reasons record no consideration of the question.

r) Section 2(1)(c) of NEMA provides that the principles set out in section 2 serve as guidelines by reference to which any organ of state must exercise any function when taking any decision in terms of the Act or any statutory provision concerning the protection of the environment. Section 2(4)(r) provides that sensitive, vulnerable, highly dynamic or stressed ecosystems, such as coastal shores, estuaries, wetlands and similar systems, require specific attention in management and planning procedures, especially where they are subject to significant human resource usage and development pressure. Section 2(4)(a)(vii) provides that a risk-averse and cautious approach must be applied, which takes into account the limits of current knowledge about the consequences of decisions and actions.

s) The failure is as follows. The order was information in the possession of the competent authority within the meaning of section 24O(1)(b)(viii), the Regional Manager: Mineral Regulation, Western Cape Region having been the second respondent in the proceedings in

which it was made. It was relevant to the application, because it identifies by coordinate a defined area within Concessions 12A and 13A in which a related entity within the same group as the applicant is prohibited from undertaking mining and related activities, whether beach, shore or vessel, and because it records at paragraph 7.4 that the no-go areas so identified may fall to be extended. Nothing in the Environmental Authorisation, and nothing in the reasons for the decision recorded at Annexure 1 to it, discloses that the order was taken into account, or that its bearing on this application was considered at all (Annexure **"B"**, Environmental Authorisation, Annexure 1, internal pages 8 and 9 of 16). The order was made on 29 August 2023, some fourteen months before the Scoping Report for this application was received by the Department on 24 October 2024, and almost three years before the decision under appeal was taken (Annexure **"B"**, Environmental Authorisation, Annexure 1, internal page 8 of 16). The relevance of the order is not confined to the area it delineates. Paragraph 7.4 requires the identification, on the basis of specialist studies, of areas where no mining may be undertaken, and records that such areas may result in the extension of the no-go area referred to in paragraph 1. Paragraph 7.6 requires a map of the coastline of the 11A, 12A and 13A concession areas superimposing the proposed activities on the environmental sensitivities of those areas and indicating any areas that should be avoided, including buffers. The order is accordingly evidence, in the possession of the competent authority, that a spatial exclusion exercise directed to these same concessions was required and had been accepted as necessary by that authority. No such exercise was undertaken for this application, whether by reference to the order, to the estuaries, or to the areas mapped as Critical Biodiversity Areas.

t) The failure is material for the following five reasons:

i) First, the Environmental Authorisation authorises vessel-based bulk sampling and vibracore sampling within the two concessions the no-go area straddles, and imposes no spatial exclusion of any kind. Site-specific condition 7 requires only that the holder "[a]void sampling in the immediate vicinity of the rocky outcrop areas or identified sensitive habitats", which identifies no area, delineates no boundary, and is not capable of enforcement against a defined line (Annexure **"B"**, Environmental Authorisation, internal page 7 of 16).

ii) Second, the receptor the order was made to protect lies within Concession 12A on the applicant's own specialist evidence, and section 2(4)(r) of NEMA required that it receive specific attention.

iii) Third, the competent authority was a party to proceedings in which it accepted an order requiring, in respect of these same A concessions, that a map be prepared indicating areas that should be avoided, including buffers, and it has now authorised activity across those concessions on a record which contains no such map and identifies no such area.

iv) Fourth, had the order been taken into account, the competent authority would have had to decide whether a corresponding exclusion should be imposed as a condition of this authorisation. That question was never reached.

v) Fifth, the condition PTWC seeks was recommended to the competent authority during the process by a conservation authority, in terms which identified the Olifants estuary mouth by name and specified demarcation by coordinate as the mechanism. The competent authority was accordingly not required to devise the remedy for itself. It was asked to impose it, and did not.

u) In the premises, and in PTWC's respectful submission, the decision was taken without regard to a relevant consideration which the competent authority was obliged by section 24O(1) of NEMA to take into account, and without the specific attention which section 2(4)(r) of NEMA requires be given to estuaries and coastal shores. The Environmental Authorisation ought not to have been granted in its present form, and the appeal authority is respectfully requested to set it aside.

v) The relief sought on this ground is relief items 1, 2, 3 and 5. Relief item 5 seeks a direction that the areas within Concessions 11A, 12A and 13A in which no prospecting may be undertaken be delineated by coordinate, on the basis of specialist assessment of the estuaries and of the areas mapped as Critical Biodiversity Areas, and that the area delineated on map "A" to the order be included within any such delineation. PTWC records that the area delineated on map "A" is a minimum and not a sufficient measure, for the reasons set out at paragraph m) above, and that the imposition of that area alone as a condition would not answer the failures identified in this ground. The delineation sought accords with the recommendation made by Cape Nature on 17 July 2025 and with the recommendations made by the Department of Environmental Affairs and Development Planning at the scoping stage and on 15 July 2025.

2. Inadequate assessment of cumulative impacts

a) The Final Environmental Impact Assessment Report records the reason the six concessions were selected. It states that Marine Concessions 11A, 12A, 13A, 11B, 12B and 13B "are targeted due to the expectation of rich heavy mineral deposits in the precinct as well as the fact that a separate but related entity, THO, holds diamond Prospecting Rights for Marine Concessions 11B and 13B", and that "[a]s such the applicant already has access to valuable survey data for these concessions" (Annexure "C", report page 11, PDF page 30). The relationship between the applicant and Trans Hex Operations (Pty) Ltd, and that entity's existing rights over two of the six concessions, are accordingly not incidental to this application. They are the stated basis on which the concessions were chosen.

b) The Final Environmental Impact Assessment Report does contain a cumulative impact assessment, at section 6.6, at report pages 113 to 120 (Annexure "C", PDF pages 132 to 139). PTWC does not contend that the assessment is absent. What PTWC contends is that it is inadequate in three respects. First, it omits the concurrent mining applications made by Trans Hex Operations (Pty) Ltd over Concessions 11B and 13B, being the applications on which this application's own project motivation rests. Second, it omits the prospecting right application held over Concession 12B by an unrelated party, which the report itself records in its table of West

Coast applications. Third, and more generally, it does not address what the allocation of this coastal and marine area to mineral prospecting and mining would mean, assessing instead a footprint of 0.011 km² against the extent of two ecoregions, and treating the question of what the area should be used for as one to be settled after the prospecting has taken place rather than before. The three limbs are addressed below, and the facts relied on in each are set out in full.

c) Table 4-7 of the Final Environmental Impact Assessment Report is headed “Applications for mineral prospecting and mining on the South African West Coast”, and lists applications made since 2011. The entities listed are Aurumar, Belton Park Trading, De Beers Marine, Samara Mining, Trans-Atlantic Diamonds and Nisarox (Pty) Ltd in each case as recorded in the table. No Trans Hex entity appears in the table (Annexure "C", report pages 74 to 76, PDF pages 93 to 95).

d) Table 6-24 is headed "Projects / stressors considered in the cumulative impact analysis". It identifies past and present activities comprising shore based and surf zone diamond mining adjacent to Marine Concessions 11A, 12A and 13A, recorded as ongoing, geophysical surveys and coring in identified C concessions, and mining, surveys, coring and bulk sampling in Concessions 2C, 3C and 6C. It identifies future activities in Concessions 14A, 14B, 15B, 17B, 11C, 13C, 15C, 16C, 17C, 18C, 4C and 5C. Each of the two entries in the table is expressed to be a reference to Table 4-7. The shore based and surf zone mining adjacent to the A concessions is referred to generically and the operator is not named. Neither Trans Hex Operations (Pty) Ltd nor any other Trans Hex entity is identified anywhere in the table, no reference is made to the applications for mining rights over Concessions 11B and 13B, and Concession 12B does not appear in the table at all (Annexure "C", report page 115, PDF page 134).

e) The omission of Concession 12B from Table 6-24 is not explicable on the footing that the activity was unknown. The following appears from the record:

i) Table 4-7 of the Final Environmental Impact Assessment Report records, as its final entry, an application made in 2023 by Nisarox (Pty) Ltd over Marine Concession 12B for geophysical surveys, coring and bulk sampling, with approval recorded as granted and the activity recorded as not yet conducted (Annexure "C", report page 76, PDF page 95).

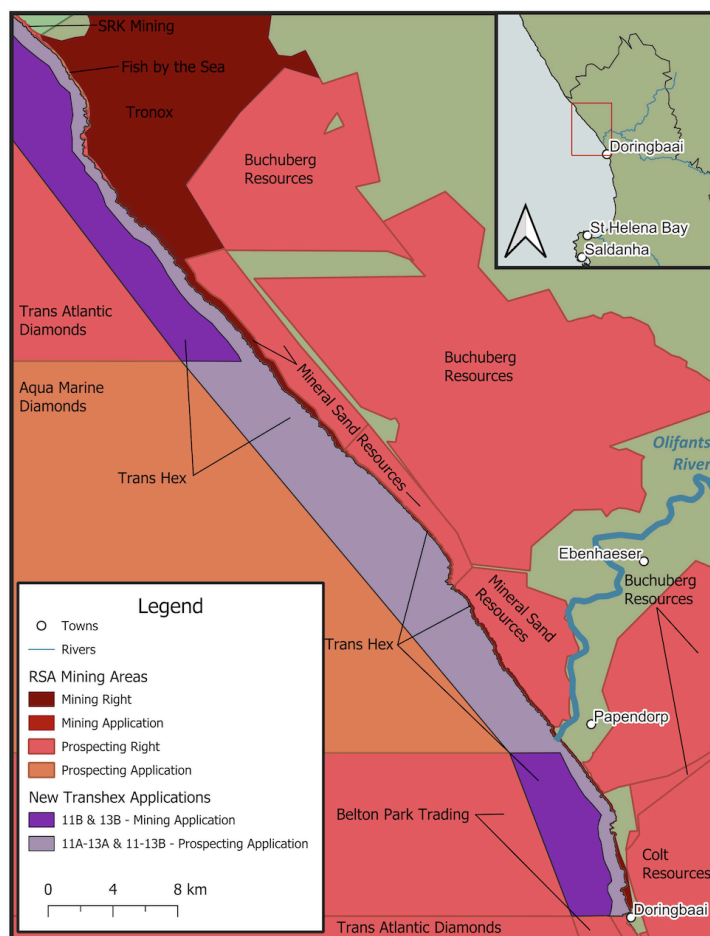
ii) Nisarox (Pty) Ltd is a registered interested and affected party in this process and commented twice. In its comment of 27 September 2024 it recorded that it "applied for a prospecting right WC 30/5/1/1/2/10424 PR over sea concession 12B for diamonds (general and alluvial)", and that the application was then being processed by the Department (Annexure "H", comment 39, PDF page 18). It commented again on 12 July 2025, and its comment and the applicant's response are recorded in the Issues and Responses Summary (Annexure "H", comment 113, PDF pages 51 to 52).

iii) Concession 12B is one of the six concessions covered by the Environmental Authorisation, and is one of the three concessions in which the whole of the authorised

drill sampling is to be undertaken (Annexure "C", Table 2-5, report page 18, PDF page 37).

iv) The position is accordingly that the Final Environmental Impact Assessment Report records in one table an approved application by a third party to survey, core and bulk sample in Concession 12B, and omits that activity from the table which records what was taken into the cumulative analysis, notwithstanding that the second table cross-refers to the first. No explanation for the omission appears in the report. PTWC has been unable to locate any assessment of the effect of prospecting by two operators in the same concession, and understands that it is not privy to all the information informing this application and can only raise queries on what it has seen and been able to analyse.

f) The spatial context in which these omissions fall to be considered is depicted in the map reproduced below.



Status of Prospecting and Mining in the vicinity of the Olifants Estuary, West Coast

Data gathered and synthesised by One Ocean Hub Research Group, Department of Environmental and Geographical Science, UCT. Disclaimer: This map is subject to constant updates based on available information. However, the accuracy of the polygons and the metadata cannot be guaranteed. Map compiled by Michael Lambrecht, July 2025

Figure A: Status of prospecting and mining in the vicinity of the Olifants Estuary, West Coast. Data gathered and synthesised by the One Ocean Hub Research Group,

Department of Environmental and Geographical Science, University of Cape Town. Map compiled by Michael Lambrecht, Protect the West Coast, July 2025. The map depicts existing mining rights, mining applications, prospecting rights and prospecting applications along the coastline and in the adjacent marine area between Doringbaai and the north of the mapped extent, and distinguishes the Trans Hex Operations (Pty) Ltd mining applications over Concessions 11B and 13B and the multi-commodity prospecting application over Concessions 11A to 13A and 11B to 13B which is the subject of this appeal. PTWC records that the map was compiled in July 2025, that the underlying data are subject to continual revision, that the accuracy of the polygons and metadata cannot be guaranteed, and that the map does not depict the prospecting right application made by Nisarox (Pty) Ltd over Concession 12B under reference WC 30/5/1/1/2/10424 PR. It is furnished to illustrate the concentration of rights and applications in the area and not as a survey record.

g) The conclusions of the cumulative assessment follow from that exclusion. On sediment disturbance, mortality of macrofaunal communities and increased turbidity, the assessment records that "[t]he prospecting activities would impact a maximum area of 0.011 km² in the Namaqua Bioregion, an insignificant percentage (0.001 %) of the Namaqua Sandy Inner Shelf and Namaqua Sandy Mid Shelf ecoregions as a whole", that "[s]ampling on the inner and mid shelf region south of Hondeklipbaai is currently extremely limited", and that "any cumulative effects on biotic communities inhabiting unconsolidated sediments from diamond mining or other mineral prospecting in the region are highly unlikely" (Annexure "C", report page 118, PDF page 137). On socio-economic impacts, it records that cumulative impacts are expected only if simultaneous surveys take place in relatively close proximity to each other or shortly after each other, and that "[g]iven the different project status of exploration in adjacent concessions, this is deemed unlikely at present" (Annexure "C", report page 119, PDF page 138). The same report records the condition of the receiving environment against which that finding was made. It states that the coastal ecosystem types inshore of the precinct were categorised and assigned a threat status depending on their geographic extent and extent of ecosystem degradation, that much of the coastline inshore of the precinct has been assigned a status of Near Threatened or Vulnerable, and that those statuses reflect the condition of the ecosystem types "following decades of shore- and vessel-based diamond mining and mining of heavy mineral sands" (Annexure "C", report page 46, PDF page 65). Table 4-2 on the same page lists nine ecosystem types under the heading "2019 Threat Status", of which five Namaqua ecosystem types are recorded as Vulnerable, one as Near threatened, the Southern Benguela Reflective Sandy Shore as Endangered and two as Least Concern. The Marine Ecology Impact Assessment states the same position and attributes the categorisation and the assignment of threat status to Sink et al. (2019), being the 2018 National Biodiversity Assessment (Annexure "F", report page 82, PDF page 98). The threat status is accordingly a national assessment and not the specialist's own rating. What the specialist contributes, and what PTWC relies on, is the explanation recorded for it. The cumulative assessment itself acknowledges the heavy minerals and beach diamond mining at Brand-se Baai and in the surf zone concessions adjacent to Concessions 11A, 12A and 13A, and disposes of it on the footing that indirect impacts around the low water mark "can be expected to be short-lived only" (Annexure "C", report page 118,

PDF page 137). What PTWC contends is that a finding that cumulative effects are highly unlikely, reached by measuring a prospecting footprint against the extent of two ecoregions, does not engage with the condition of the coastline as the applicant's own specialist describes it, being one already altered by decades of the same class of activity.

h) The practitioner was told, before the Final Environmental Impact Assessment Report was submitted, that the two mining applications existed. By letter dated 15 July 2025 commenting on the Draft Environmental Impact Assessment Report dated June 2025, the Department of Environmental Affairs and Development Planning recorded the following:

i) "The use of pre-2018 cumulative pressure data, as noted in the Marine Biodiversity Assessment and Draft EIA Report does not reflect the marked increase in prospecting and mining applications submitted post-2020 in various concession areas along the West Coast."

ii) "Consequently, the cumulative impact ratings may underrepresent current and projected future pressures on benthic and pelagic ecosystems, and therefore possibly undermine precautionary environmental planning."

iii) "We are aware of the diamond mining rights applications in Marine Concessions 11B and 13B (reference numbers: (WC)30/5/1/2/2/10185MR and (WC)30/5/1/2/2/10186MR)."

(Annexure "G", PDF page 22, paragraph 4.)

i) PTWC raised this ground in terms during the comment period. In its written comments on the Draft Environmental Impact Assessment Report submitted on 14 July 2025 (Annexure "A"), PTWC recorded that "[t]he cumulative impact assessment in this PR application however, has failed to incorporate the cumulative impacts of the MR application in Marine Concessions 11B and 13B, by Trans Hex Operations, and has not included this into table 4-7 (page 75-76)", and that the statement in the report that significant cumulative impacts are "deemed unlikely at present" is "therefore misleading and not an accurate representation of the likely impacts of mining and prospecting activities in the A and B Marine Concessions". PTWC further recorded that "Trans Hex has two applications in this marine area under consideration at the present time, as well as rights to mine diamonds in Concession areas 13A, 12A and 11A and associated surf and admiralty zones", and that while a section on cumulative impacts had been included, the assessment "is undertaken in a very generic way across the west coast marine environment, and does not focus on cumulative impacts associated with mining activities in and around the two applications under consideration where specific data on for example areas to be disturbed, volumes of materials to be removed, tailings to be discarded, extend of encroachment on CBAs and ESAs are available for each of the mining and prospecting applications and operations" (Annexure "H", PDF pages 58 to 60, comment 119).

j) The response recorded in the Issues and Responses Summary does not answer that comment. It records that cumulative impacts were identified based on the extent and nature of the area of influence, the status of valued environmental and social components and an

understanding of external natural and social stressors, and lists the four components considered. It then records that "[w]hile we acknowledge the broader concerns regarding cumulative impacts across the West Coast marine environment, these are best addressed through strategic or regional environmental assessments, such as the Marine Area Plan (MAP) being developed under the Marine Spatial Planning Act (201[8])", and that "in the absence of such an SEA, THHMM is permitted in law to apply for a Prospecting Right and undertake an EIA process in NEMA and the EIA Regulations, 2014" (Annexure **"H"**, PDF pages 58 to 60, response to comment 119). The response does not address the omission of the two mining applications from Table 4-7, does not explain it, and Table 4-7 and Table 6-24 were not amended in the Final Environmental Impact Assessment Report.

k) The response to comment 119 places the broader cumulative question outside the scope of this application, on the footing that it is best addressed through strategic or regional environmental assessment such as the Marine Area Plan being developed under the Marine Spatial Planning Act 16 of 2018. That answer does not hold, for the following reasons:

i) Marine spatial planning exists to determine how competing uses of the ocean are to be balanced, taking account of ecological sustainability, economic development, social benefit and cumulative impact. Its purpose is to determine what an area of the sea should be used for. Where prospecting rights are granted over a substantial marine area before that determination is made, the effect is that the area is committed to potential mineral exploitation before its suitability for that use has been assessed strategically.

ii) PTWC accepts that a prospecting right does not of itself exclude other uses of the sea. What it creates is a legal and commercial interest in eventual extraction, held by the person who has expended five years and the cost of a survey and sampling programme in establishing that the resource exists. Interests of that kind are not readily set aside by a planning process that comes afterwards.

iii) The applicant has put that sequence on the record in terms. The Final Environmental Impact Assessment Report records that THHMM motivates that prospecting be allowed to proceed in areas proposed as Critical Biodiversity Areas, and "that sections of the proposed CBAs be reevaluated through the required MSP stakeholder engagement processes if prospecting finds significant mineral resources in these areas" (Annexure **"C"**, report page 135, PDF page 154). What is proposed is accordingly that the outcome of the prospecting should inform the revision of the biodiversity plan, rather than that the biodiversity plan should inform whether the prospecting is appropriate. The order of decision-making is reversed.

iv) The report's own treatment of the spatial planning framework does not answer the point. It relies on the Western Cape Provincial Spatial Development Framework of 2014, and records of the Matzikama Local Municipality Spatial Development Framework of 2023 that it "has limited relevance to the project" (Annexure **"C"**, report pages 32 and 34, PDF pages 51 and 53).

v) What PTWC contends is that where the strategic instrument is incomplete, that is a reason for the competent authority to apply the risk-averse and cautious approach required by section 2(4)(a)(vii) of NEMA, and not a reason to treat the cumulative question as one that need not be answered in this process. On the reasoning recorded in the response, the question is answered in neither process.

l) The two applications were accordingly identified to the practitioner within two days of each other, by a registered interested and affected party on 14 July 2025 and by an organ of state, by reference number, on 15 July 2025. The Final Environmental Impact Assessment Report is dated July 2025 and was required to be submitted on or before 25 July 2025. Table 4-7 and Table 6-24 of that report nonetheless omit both applications and every Trans Hex entity, and the conclusions set out at paragraph g) above were not revisited. The comments were recorded in the Issues and Responses Summary and answered there. They were not integrated into the assessment. Appendix 3(3)(h)(iii) of the EIA Regulations, 2014 contemplates that the report reflects the incorporation of comments received, and not merely that comments are tabulated alongside responses to them. The competent authority nonetheless recorded, at Annexure 1, paragraph 1(e) to the Environmental Authorisation, that the results of the public participation process show that the concerns raised by interested and affected parties and by the authorities "were addressed by the Applicant in the EIA and EMPR" (Annexure "B", Environmental Authorisation, Annexure 1, internal page 8 of 16).

m) The same organ of state had already recorded its position on cumulative impacts in its comments on the Draft Scoping Report dated 2 October 2024, in which it observed that there are numerous proposed and approved prospecting and mining activities in the surf zone and marine concession areas along the West Coast, all proposed or approved in the absence of a strategic environmental assessment or environmental management framework, that "[g]iven the absence of a SEA/ EMF and the seemingly limited data on the actual sensitivities within these surf zone and marine concession areas, the overall risk of the potential cumulative impacts of all the proposed activities increases", and that "[t]his Directorate is not supportive of further prospecting, exploration, or mining activities within the land, surf zone, and marine concession areas along the West Coast of South Africa until such time where sufficient and strategic level information is available on the cumulative impacts of these activities" (Annexure "G", PDF page 5, paragraphs 5.1, 5.3 and 7). It repeated that position on 15 July 2025 (Annexure "G", PDF page 22, paragraph 5).

n) Cape Nature, commenting on 17 July 2025, recorded that "[t]he uncertainty indicated regarding cumulative impact is a concern", and that the uncertainty "provides more reason to rely and adhere to the available marine biodiversity spatial planning tools" (Annexure "G", PDF page 28, paragraph 6).

o) The applications were not at different project status (paragraph g) above), and they were not distant in time. The following appears from the Department's own decisions and from the record:

i) The Scoping Report for this prospecting application was received by the Department on 24 October 2024, acknowledged on 29 October 2024 and accepted on 11 December

2024 (Annexure **"B"**, Environmental Authorisation, Annexure 1, internal page 8 of 16). The Scoping Report for the Concession 13B mining application was submitted on 25 November 2024 and accepted on 10 December 2024 (Annexure **"E"**, internal page 10 of 26). The same regional office accepted the two Scoping Reports on consecutive days.

ii) Both mining applications and this prospecting application were assessed by SRK Consulting (South Africa) (Pty) Ltd under SRK Project No. 602978, as appears from the project number on the Final Environmental Impact Assessment Report and on both notification letters (Annexure **"C"**, cover page; Annexure **"B"**, PDF page 1; Annexure **"E"**, PDF page 1).

iii) The Marine Ecology Impact Assessment relied on in this application was prepared by Dr Andrea Pulfrich of Pisces Environmental Services (Pty) Ltd, as was the marine ecology assessment relied on in the Concession 13B mining application (Annexure **"C"**, Table 4-1, report page 40, PDF page 59; Annexure **"E"**, Annexure 1, paragraph 1.5, internal page 10 of 26). The terms of reference recorded in the Marine Ecology Impact Assessment required the specialist to compile a marine ecology impact assessment report "for each of the five projects" (Annexure **"F"**, report page 1, PDF page 17).

p) The overlap is spatial as well as temporal. Concessions 11B and 13B are two of the six concessions covered by this Environmental Authorisation, and are two of the three concessions in which the whole of the authorised drill sampling of 1 650 samples is to be undertaken (Annexure **"C"**, Table 2-5, report page 18, PDF page 37). The Environmental Authorisation granted over Concession 13B authorises seabed disturbance estimated at 534 000 m², with a maximum annual impact of approximately 67 000 m², over a project life of 35 years (Annexure **"E"**, internal page 4 of 26). The Environmental Authorisation granted over Concession 11B records the maximum seabed disturbance as 665 000 m² and the maximum annual seabed disturbance as 67 000 m² (Annexure **"S"**, Environmental Authorisation, internal page 6 of 16, site-specific conditions 2 and 3). Against those figures, the 0.011 km² on which the cumulative assessment rests its conclusion of insignificance is the prospecting footprint alone.

q) By the date of the decision under appeal the position had moved further. The Department granted the Environmental Authorisation for diamond mining in Concession 13B on 20 February 2026, and the Environmental Authorisation for diamond mining in Concession 11B on 16 April 2026 (Annexure **"S"**, PDF page 1), in each case before it granted this Environmental Authorisation on 14 July 2026. Whatever the position when the Final Environmental Impact Assessment Report was compiled in July 2025, by 14 July 2026 the competent authority had itself authorised mining over two of the six concessions and was in possession of the decisions it had taken.

r) The Environmental Authorisation contains no reference to cumulative impact assessment of any kind. Neither the key factors recorded at Annexure 1, paragraph 1 nor the findings recorded at Annexure 1, paragraph 3 mentions cumulative impacts, the Trans Hex Operations mining applications, or the concurrent authorisation of mining in Concessions 11B and 13B (Annexure **"B"**, Environmental Authorisation, Annexure 1, internal pages 8 and 9 of 16). No site-specific

condition addresses concurrent or simultaneous operations. By contrast, the Environmental Authorisation granted over Concession 13B by the same regional office imposes site-specific condition 20, which provides that if simultaneous nearby prospecting or mining activities result in unacceptable cumulative impacts, additional mitigation measures may be required, that the holder shall cooperate with regional authorities in monitoring and managing cumulative impacts, and that if monitoring indicates greater than predicted impacts, mitigation measures must be revised and approved before continuation (Annexure "E", internal page 8 of 26).

s) The legal obligations relied on are the following:

i) Regulation 1 of the EIA Regulations, 2014 defines "cumulative impact", in relation to an activity, to mean "the past, current and reasonably foreseeable future impact of an activity, considered together with the impact of activities associated with that activity, that in itself may not be significant, but may become significant when added to the existing and reasonably foreseeable impacts eventuating from similar or diverse activities". Applications for mining rights over two of the six concessions, made at approximately the same time by a related entity, assessed by the same practitioner under the same project number and by the same marine specialist, fall within that definition on any reading.

ii) Appendix 3(3)(j)(i) of the EIA Regulations, 2014 requires an environmental impact assessment report to contain "an assessment of each identified potentially significant impact and risk, including - (i) cumulative impacts".

iii) Regulation 10(c) of the EIA Regulations, 2014, which appears in Part 2 of Chapter 2 under the heading duties of proponents and applicants, requires an applicant to "provide the competent authority with all information that reasonably has or may have the potential of influencing any decision with regard to an application".

iv) Section 24O(1) of NEMA requires the competent authority to comply with the Act and to take into account all relevant factors, which may include, at section 24O(1)(b)(i), any pollution, environmental impacts or environmental degradation likely to be caused if the application is approved or refused; at section 24O(1)(b)(vi), information contained in the application form, reports, comments, representations and other documents submitted in terms of the Act in connection with the application; and, at section 24O(1)(b)(viii), "any other information in the possession of the competent authority that are relevant to the application".

v) Section 24O(1)(b)(vii) of NEMA requires the competent authority to take into account any comments received from organs of state that have jurisdiction over any aspect of the activity, and section 24O(1)(c) requires it to take into account the comments of any organ of state charged with the administration of any law which relates to the activity in question.

vi) Section 2(1)(c) of NEMA provides that the principles in section 2 serve as guidelines by reference to which any organ of state must exercise any function when taking any

decision in terms of the Act, and section 2(4)(a)(vii) requires that a risk-averse and cautious approach be applied which takes into account the limits of current knowledge about the consequences of decisions and actions.

vii) Appendix 3(3)(h)(v) of the EIA Regulations, 2014 requires an environmental impact assessment report to contain the impacts and risks identified, including their nature, significance, consequence, extent, duration and probability, and the degree to which those impacts (aa) can be reversed, (bb) may cause irreplaceable loss of resources, and (cc) can be avoided, managed or mitigated.

t) The failure is fourfold:

i) First, the assessment placed before the competent authority did not assess the cumulative impact of the concurrent Trans Hex Operations mining applications over Concessions 11B and 13B, and did not identify those applications in either of the two tables which purport to record the activities considered. It reached its conclusions of insignificance on a footing which excluded them, and in the case of the socio-economic conclusion expressly relied on "the different project status of exploration in adjacent concessions" in circumstances where the applications were being processed in parallel by the same practitioner under the same project number.

ii) Second, by the date of the decision the competent authority had itself granted the mining authorisations over Concessions 11B and 13B, and was accordingly in possession of information relevant to the application within the meaning of section 24O(1)(b)(viii). Nothing in the Environmental Authorisation or in the reasons for the decision discloses that it was taken into account.

iii) Third, two organs of state raised cumulative impact with the practitioner and with the competent authority, one of them identifying the omitted applications by reference number and warning in terms that the cumulative impact ratings may underrepresent current and projected future pressures. Neither set of comments is recorded in the Environmental Authorisation, and no reason is given for the decision to proceed on a cumulative assessment which did not address them.

iv) Fourth, the assessment omitted from Table 6-24 an approved application by an unrelated party to survey, core and bulk sample in Concession 12B, being one of the six concessions covered by this Environmental Authorisation and one of the three in which the whole of the authorised drill sampling is to be undertaken. That activity is recorded in the report's own Table 4-7, to which Table 6-24 cross-refers. Its omission is not explained.

u) The failure is material for the following reasons:

i) The conclusion that cumulative effects on biotic communities inhabiting unconsolidated sediments are "highly unlikely" rests on a prospecting footprint of 0.011 km² measured against the extent of two ecoregions. The seabed disturbance authorised by the

Department in Concession 13B alone is, on the Department's own figure, 534 000 m², which is 0.534 km². The premise of the conclusion does not survive the addition of the omitted activities.

ii) The statement that sampling on the inner and mid shelf region south of Hondeklipbaai "is currently extremely limited" is the foundation of the finding on sediment disturbance. The concessions the subject of this application lie south of Hondeklipbaai, and the Department has authorised diamond mining in two of them.

iii) The applicant's own project motivation depends on the relationship with Trans Hex Operations (Pty) Ltd and on that entity's holdings in Concessions 11B and 13B. An assessment which relies on that relationship to justify the application and then omits it from the cumulative analysis is internally inconsistent, and the inconsistency was apparent on the face of the Final Environmental Impact Assessment Report.

iv) The consequence of the omission is that no condition regulates concurrent operations. The Environmental Authorisation contains no equivalent to site-specific condition 20 of the Concession 13B Environmental Authorisation, with the result that where prospecting under this authorisation and mining under that one occur simultaneously in the same concession, the obligation to cooperate in monitoring and managing cumulative impacts binds one operator and not the other.

v) The omission cannot be attributed to the applications being unknown or not reasonably foreseeable. They were identified to the practitioner, by an organ of state, by reference number, before the final report was submitted, and the report was not amended.

vi) The effect of the omissions, taken together, is that the cumulative assessment on which the decision was taken considered no activity by any operator within any of the six concessions other than the applicant's own, notwithstanding that mining applications over two of them were being processed in parallel by the same practitioner under the same project number, and that a prospecting right over a third is recorded in the report as approved.

vii) The assessment is the instrument through which the competent authority is placed in a position to weigh the impacts of the activity against its benefits. Where the assessment does not include all the relevant information, that balance cannot be struck, because the material on which it depends is not before the decision-maker. The failure to include an assessment of the activities identified above accordingly compromises the decision taken on the strength of that assessment, and leaves the requirements of Appendix 3(3)(h)(v) and Appendix 3(3)(j)(i) of the EIA Regulations, 2014 unmet.

v) PTWC records, for the assistance of the appeal authority, that the contention advanced here is the corollary of the contention advanced in PTWC's pending appeals against the Environmental Authorisations granted over Concessions 11B and 13B, in which PTWC

contends that the mining assessments failed to assess the cumulative effect of the prospecting activities now authorised. PTWC does not contend that the cumulative burden was discharged in either process. It is for that reason that PTWC respectfully requests that the appeals be considered together.

w) In the premises, and in PTWC's respectful submission, the Final Environmental Impact Assessment Report does not comply with Appendix 3(3)(h)(v) or Appendix 3(3)(j)(i) of the EIA Regulations, 2014, and the decision was taken without regard to relevant factors which section 24O(1) of NEMA required the competent authority to take into account. In *Fuel Retailers Association of Southern Africa v Director-General Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province and Others* [2007] ZACC 13; 2007 (6) SA 4 (CC) at paragraph 89 the Constitutional Court accepted that where an environmental decision-maker misconstrues what NEMA requires and, in consequence, fails to consider an environmental impact which it ought to have considered, its decision stands to be reviewed and set aside for failure to comply with a mandatory and material condition. That is what occurred here. The Environmental Authorisation ought not to have been granted on that record.

x) The relief sought on this ground is relief items 1, 2, 3, 4 and 6.

3. Failure to require a pre-disturbance benthic baseline at the last stage at which one can be established

a) The Environmental Authorisation authorises the removal of seabed sediments at 1 650 drill sample sites, 2 230 vibracore sample sites and 625 grab sample sites, over a total area of disturbance recorded as 10 771 m², comprising 8 250 m² of drill disturbance, 2 500 m² of grab disturbance and 21 m² of vibracore disturbance (Annexure "B", Environmental Authorisation, internal pages 4 and 5 of 16).

b) The nature of the disturbance appears from the Final Environmental Impact Assessment Report. Drill sampling is undertaken from the MV Explorer using a drill bit of 2.5 m diameter within a drill frame with a base of 6.5 m by 6.5 m, standing 23 m high and weighing 147 tonnes. The drill bit penetrates sediments to a depth of up to 12 m. The sediments are fluidised with water jets and airlifted to the support vessel, where they are treated in an onboard mineral recovery plant, and all oversized and undersized tailings are discharged back to the sea in situ. Sample locations are spaced 50 to 500 m apart, and up to 40 samples may be taken per day (Annexure "C", report pages 17 and 18, PDF pages 36 and 37). Bulk sampling is undertaken by a mechanical clam grab of 1.5 m³ capacity which excavates samples of approximately 4 tonnes from the seafloor (Annexure "C", report page 19, PDF page 38).

c) The Marine Ecology Impact Assessment on which the decision rests is not based on any site-specific benthic sampling within the six concessions. The specialist records, under the heading assumptions, limitations and information gaps, that "[a]s determined by the terms of reference, this study has adopted a 'desktop' approach", and that "[c]onsequently, the description of the natural baseline environment in the study area is based largely on the

descriptions provided in various EIAs undertaken for coastal and offshore diamond prospecting and mining operations and a review and collation of existing information and data from the scientific literature, and internal reports". The identification of potential impacts is recorded as having been drawn from scientific publications, the Generic EMPr for Diamond Mining on the South African West Coast (Lane and Carter 1999), the Benguela Current Large Marine Ecosystem Thematic Report (Clark et al. 1999), the assessment of cumulative effects of marine diamond mining activities on the BCLME Region (Penney et al. 2008) and information sourced from the Internet (Annexure "F", report page 3, PDF page 19). The specialist records, in describing the baseline marine environment, that the descriptions of the physical and biological environments along the South African West Coast "focus primarily on the study area between Hondeklipbaai and Cape Town", and that the summaries presented "are based on information gleaned from Lane & Carter (1999) and Penney et al. (2007) and more recent scientific studies undertaken in the general area" (Annexure "F", report page 17, PDF page 33). The area so described extends far beyond the six concessions, which lie within it. What is placed before the competent authority as the baseline for these concessions is accordingly a regional description, resting substantially on two sources published in 1999 and 2007 and on assessments prepared for other operations, and not a description of the seabed within the concessions themselves. PTWC's contentions as to the treatment of cumulative impacts, which rest in part on the same body of material, are set out at Ground 2 and are not repeated here. This ground does not depend on them.

d) The specialist declares information gaps in terms, being information specific to the marine communities of nearshore and deep-water reefs, and current information on the distribution, population sizes and trends of most cetacean species occurring in South African waters and in the project area in particular (Annexure "F", report page 3, PDF page 19). The specialist further records that water depth and sediment grain size are the two major factors that determine benthic community structure and distribution on the South African west coast (Annexure "F", report page 37, PDF page 53). No measurement of either was undertaken at any sampling location. The record is not silent on what such measurement would have been for. The Final Environmental Impact Assessment Report records that the invertebrate macrofauna influence major ecological processes and serve as an important food source for commercially valuable fish species and other higher order consumers, and that by reason of their comparatively limited mobility and permanence over seasons "these animals provide an indication of historical environmental conditions and provide useful indices against which to measure environmental impacts" (Annexure "C", report page 47, PDF page 66). No such index was established for any of the six concessions.

e) The limitations of the assessment were identified to the competent authority by an organ of state. In its comments on the Draft Environmental Impact Assessment Report dated 15 July 2025, the Department of Environmental Affairs and Development Planning recorded that "[t]he Draft EIA Report acknowledges that given the state of current knowledge of South African macro-infauna, it is not possible to determine the threat status or endemism of macro-infauna species on the West Coast", that the Marine Biodiversity Assessment "confirms that the assessment was limited to a desktop study and a literature review which included a review of

other EIA studies", and set out the specialist's two declared information gaps (Annexure **"G"**, PDF pages 21 and 22, paragraphs 2, 2.1 and 2.2).

f) The same Department had earlier asked, in its comments on the Draft Scoping Report dated 2 October 2024, what data was available. It recorded that "[i]t is unclear what level of data with a high degree of confidence on the anticipated impacts to the marine environment is available for these concession areas to clearly define, measure and mitigate potential impacts", and that "[i]t will be important to determine the actual degree of marine sensitivity in the impacted areas; or use a risk averse and cautious approach in the absence of adequate data" (Annexure **"G"**, PDF page 5, paragraph 5.2).

g) Cape Nature, commenting on 17 July 2025, recorded that "[i]t is clear from the desktop marine assessment report provided that the proposed activity will have multiple intersections with marine faunal and ecosystem sensitivities within the concession areas", and that "[a]ll areas therefore appear sensitive" (Annexure **"G"**, PDF page 27, paragraph 2).

h) Notwithstanding that, the specialist recommends against establishing a baseline at the prospecting stage. Under the heading of recommended mitigation, the Marine Ecology Impact Assessment records that "[c]onsidering the comparatively small area of seabed impacted by sampling activities, the development of a monitoring plan to demonstrate natural recovery processes is not deemed necessary during the prospecting phase", and that "[s]hould prospecting activities indicate economic viability of the resource, allowances for a well-designed benthic monitoring programme should be made during the feasibility phase of the project" (Annexure **"F"**, report page 146, PDF page 162).

i) The Environmental Authorisation contains no condition requiring the collection of benthic baseline data, whether before, during or after the authorised sampling. None of the fourteen site-specific conditions addresses benthic baseline survey, benthic monitoring, or the recording of pre-disturbance seabed condition (Annexure **"B"**, Environmental Authorisation, internal page 7 of 16).

j) The same regional office has taken the opposite position at the mining stage over one of the same concessions. Site-specific condition 7 of the Environmental Authorisation granted on 20 February 2026 to Trans Hex Operations (Pty) Ltd in respect of Sea Concession 13B requires the holder to "[c]onduct Habitat Monitoring by Conducting pre-mining baseline surveys of benthic communities, undertake post-mining monitoring at defined intervals (e.g., 1 year, 3 years, 5 years)", and to submit monitoring reports to the competent authority (Annexure **"E"**, internal page 7 of 26). Mining in Concession 13B may accordingly not lawfully commence until a pre-mining benthic baseline has been established.

k) The consequence of the two decisions read together is that a benthic baseline is required before mining may commence, and is not required at the stage at which it can be collected. Intrusive seabed sampling is itself a disturbance of the seabed which requires environmental authorisation before it may be undertaken. This Environmental Authorisation is that authorisation. It is the regulated window within which benthic baseline sampling over these

concessions can be carried out in advance of mining, and it is the stage at which such sampling is most useful, because baseline stations can only be sited sensibly once the geophysical surveys and sampling have identified the areas likely to be mined. Baseline stations sited without that knowledge are unlikely to be the stations against which the effects of mining will later need to be measured.

i) The value of surveying the seabed before it is disturbed is not hypothetical on this coast. Further north, on the mid-shelf off Namaqualand, a seabed outcrop of in situ fossilised yellowwood tree trunks colonised by cold-water corals was identified during the period in which De Beers Consolidated Mines held the marine diamond mining right over the area. The site was not mined. A no-go buffer of 250 m around the known locations of the fossilised trees was subsequently carried forward as a requirement of the environmental assessment for the prospecting right held over the same concessions by Belton Park Trading 127 (Pty) Ltd, and the site is recorded as remaining unmined.² What that record shows is that a feature warranting exclusion was identified because the seabed was examined before it was disturbed, and that the exclusion was then capable of being carried into the conditions imposed on the operator that followed. No equivalent examination is required anywhere in this Environmental Authorisation.

l) No provision is made for a baseline survey. The Environmental Management Programme records the whole of the closure liability of R853 476.30 excluding value added tax under the heading of final closure and decommissioning, with the annual provision recorded as R0.00. The benthic zone sampling item of R196 035.00, the laboratory costs item of R172 040.00, the reporting item of R55 210.00 and the specialist studies item of R300 000.00 are all allocated to post-closure work (Annexure "I", report page 11, PDF page 19). There is accordingly no funded benthic sampling before or during the authorised activity.

m) The closure regime the Environmental Authorisation approves cannot be performed as designed. The post-closure work is described in the Environmental Management Programme as sidescan sonar and benthic faunal community surveys to monitor and demonstrate the natural recovery process of sampled areas (Annexure "I", report page 11, PDF page 19). Recovery is a change measured against a prior state. Where no pre-disturbance data exists for the sampled areas, a post-closure survey can record the condition of the seabed at the time of the survey, but it cannot demonstrate recovery, and it cannot establish whether the condition recorded represents recovery, partial recovery or no recovery at all.

n) The specialist's own findings on persistence are not consistent with the proposition that no baseline is required. The Marine Ecology Impact Assessment records that sampling is undertaken in depths beyond the wave base, that excavations may therefore have slower infill

² Namaqua Fossil Forest, Ecologically or Biologically Significant Area description, Institute for Coastal and Marine Research, Nelson Mandela University, available at <https://cmr.mandela.ac.za/Research-Projects/EBSA-Portal/South-Africa/Namaqua-Fossil-Forest> (accessed 28 August 2026). See also Stevenson R and Bamford M K, "Submersible-based observations of in-situ fossil tree trunks in Late Cretaceous seafloor outcrops, Orange Basin, western offshore, South Africa" (2003) 106 South African Journal of Geology 315.

rates and could persist for several months to several years depending on depth, that long-term or permanent changes in grain size characteristics of sediments may thus occur, potentially resulting in a shift in community structure, and that differences following disturbance below the wave base may endure beyond the medium term, which the same report defines as a period of two to fifteen years (Annexure **"F"**, report page 114, PDF page 130; Table 1-2, report page 3, PDF page 19). Those findings describe effects capable of persisting for the greater part of the five year prospecting programme and beyond it.

o) PTWC records that the Final Environmental Impact Assessment Report states that the applicant "already has access to valuable survey data" for Concessions 11B and 13B by reason of the rights held by Trans Hex Operations (Pty) Ltd (Annexure **"C"**, report page 11, PDF page 30). PTWC understands that it is not privy to all the information informing this application and can only raise queries on what it has seen and been able to analyse. If benthic data for those concessions exists, it does not appear in the Marine Ecology Impact Assessment, which is expressly a desktop study, and it was not placed before the competent authority. If it does not exist, there is no baseline at all. On either footing the decision was taken without it.

p) The legal obligations relied on are the following:

i) Section 24(4A) of NEMA provides that where environmental impact assessment has been identified as the environmental instrument to be utilised in informing an application for environmental authorisation, section 24(4)(b) is applicable. An environmental impact assessment was the instrument used in this application.

ii) Section 24(4)(a)(iii) of NEMA requires that a description of the environment likely to be significantly affected by the proposed activity be contained in the application.

iii) Section 24(4)(b)(iv) of NEMA requires reporting on gaps in knowledge, the adequacy of predictive methods and underlying assumptions, and uncertainties encountered in compiling the required information.

iv) Section 24(4)(b)(v) of NEMA requires the investigation and formulation of arrangements for the monitoring and management of consequences for or impacts on the environment, "and the assessment of the effectiveness of such arrangements after their implementation".

v) Appendix 3(3)(p) of the EIA Regulations, 2014 requires an environmental impact assessment report to contain a description of any assumptions, uncertainties and gaps in knowledge which relate to the assessment and mitigation measures proposed. Appendix 3(3)(m) requires the recording of proposed impact management objectives and impact management outcomes for inclusion in the environmental management programme as well as for inclusion as conditions of authorisation.

vi) Section 24O(1) of NEMA requires the competent authority to comply with the Act and to take into account all relevant factors, which may include, at section 24O(1)(b)(ii), measures that may be taken to protect the environment from harm as a result of the

activity and to prevent, control, abate or mitigate any substantially detrimental environmental impacts or environmental degradation.

vii) Section 24O(1)(b)(vii) of NEMA requires the competent authority to take into account any comments received from organs of state that have jurisdiction over any aspect of the activity, and section 24O(1)(c) requires it to take into account the comments of any organ of state charged with the administration of any law which relates to the activity in question.

viii) Section 2(1)(c) of NEMA provides that the principles in section 2 serve as guidelines by reference to which any organ of state must exercise any function when taking any decision in terms of the Act. Section 2(4)(a)(vii) requires that a risk-averse and cautious approach be applied, "which takes into account the limits of current knowledge about the consequences of decisions and actions". Section 2(4)(a)(viii) requires that negative impacts on the environment and on people's environmental rights be anticipated and prevented, and where they cannot be altogether prevented, are minimised and remedied.

q) The failure is that the competent authority authorised the disturbance of the seabed at more than 4 500 sample locations across six concessions without requiring the collection of any pre-disturbance benthic data, in circumstances where the specialist had declared that the baseline was drawn from other assessments and from the literature rather than from the site, much of it published in 1999 and 2007 and describing a study area extending from Hondeklipbaai to Cape Town, where the two factors the specialist identifies as governing benthic community structure were not measured, where the same competent authority had, on 20 February 2026, made the establishment of such a baseline a precondition of mining in Concession 13B, being one of the same six concessions. That was done notwithstanding that the provincial environmental department had twice raised the sufficiency of the data before it, and had recommended in terms that a risk averse and cautious approach be applied in the absence of adequate data.

r) The failure is material for the following reasons:

i) The arrangements for monitoring which section 24(4)(b)(v) of NEMA requires to be formulated are incapable of the assessment of effectiveness which the same provision requires, because the only monitoring provided for is a post-closure survey with nothing to compare it against.

ii) A risk-averse and cautious approach which takes account of the limits of current knowledge, as section 2(4)(a)(vii) requires, points toward requiring the baseline in the face of declared information gaps, not toward deferring it to a later phase which may never occur. If the resource is not found to be economically viable, the feasibility phase to which the specialist defers the monitoring programme will never arrive, and the seabed will have been disturbed at more than 4 500 locations with no record of its prior condition.

iii) The prospecting phase is the last stage at which a pre-disturbance benthic baseline can be established for the areas which this Environmental Authorisation permits to be disturbed. That is so for two distinct reasons:

aa) Within Concessions 11B and 13B, the prospecting authorised here may lawfully be undertaken before mining commences. To the extent that the pre-mining baseline required by site-specific condition 7 of the Concession 13B Environmental Authorisation is taken after prospecting has occurred, it will be taken against a seabed already disturbed by drill, vibracore and grab sampling, and neither authorisation records where or when that disturbance will have taken place.

bb) The pre-mining baseline required at the mining stage will not in any event cover the areas disturbed under this authorisation. The applicant records that it intends surveying and sampling for multi-commodities excluding diamonds "within the sediment layer/s", and that "this process will not target the gravel deposits within which diamonds are ordinarily found" (Annexure "H", comment 113, PDF pages 51 to 52). The target horizon for heavy mineral prospecting is accordingly not the target horizon for diamond mining, and the locations selected for the one need not coincide with the locations selected for the other. A benthic baseline established for diamond mining in Concession 13B is therefore not a baseline for the areas sampled under this authorisation. For Concessions 11A, 12A, 13A and 12B, over which no mining authorisation has been granted, no baseline is required at any stage by any decision presently in existence.

iv) The financial provision approved under the Environmental Authorisation is costed for work which cannot achieve its stated purpose, with the result that the sum of R853 476.30 does not represent the cost of the closure activity described. PTWC records, on its own research and analysis, that across the South African sea concessions between Alexander Bay and St Helena Bay, an area of approximately 3.24 million hectares, it has been able to identify in the order of 24 baseline benthic samples taken by mining companies, which is approximately one sample for every 135 000 hectares, and that the nearest such sample to Concession 11B lies approximately 200 km north-north-west of it. PTWC advances that as its own assessment, drawn on the expertise of its members, and not as a matter recorded in the reports placed before the competent authority. It advances it to show the state of the regional data on which a desktop baseline for these concessions necessarily draws.

v) The competent authority was invited by an organ of state either to determine the actual degree of marine sensitivity in the impacted areas or to apply a risk averse and cautious approach in the absence of adequate data. It did neither. It authorised the activity on the desktop assessment and imposed no requirement that the data be obtained.

vi) The baseline against which the impacts were assessed is a regional description of the West Coast and not a description of the seabed within the six concessions. The specialist's own finding is that water depth and sediment grain size are the two major factors determining benthic community structure and distribution on the South African west coast (Annexure "F", report page 37, PDF page 53). A description drawn at regional scale from sources of 1999 and 2007 vintage cannot establish what communities are present at the more than 4 500 locations which the Environmental Authorisation permits to be disturbed, and the competent authority had nothing else before it.

s) In PTWC's respectful view, the Environmental Authorisation ought not to have been granted without a condition requiring the collection, before or during the authorised sampling, of benthic baseline data at stations selected so as to be capable of serving as the pre-mining baseline required at the mining stage, together with provision in the Environmental Management Programme for the cost of that work. What PTWC contends is that the prospecting programme is the proper and the only available vehicle for that work, and that the decision to authorise the activity without it was not one that could reasonably have been taken on the material before the competent authority.

t) The relief sought on this ground is relief items 1, 2, 3 and 7.

4. Absence of characterisation of the fine sediment fraction, and the consequent unreliability of the sediment plume assessment

a) The generation of suspended sediment plumes is one of the principal impacts of the authorised activity. Drill sampling is undertaken with a bit of 2.5 m diameter penetrating sediments to a depth of up to 12 m. The sediments are fluidised with water jets and airlifted to the support vessel, where they are treated in an onboard mineral recovery plant, and all oversized and undersized tailings are discharged back to the sea in situ (Annexure "C", report page 17, PDF page 36). Bulk sampling is undertaken by a mechanical clam grab of 1.5 m³ capacity which excavates samples of approximately 4 tonnes from the seafloor (Annexure "C", report page 19, PDF page 38). The Marine Ecology Impact Assessment rates the resulting turbidity impacts as of Very Low significance or Insignificant (Annexure "H", PDF page 12, response to comment 27).

b) The assessment makes a specific spatial prediction about the Olifants River Estuary. The practitioner recorded, in response to comment by the Department of Environmental Affairs and Development Planning, that "[t]he Marine Ecology Impact Assessment found that suspended sediment plumes generated in the southern portion of Concession 12a and 12b and in proximity to the mouth of the Olifants River are highly unlikely to penetrate the river mouth and influence the estuary, even during summer months when the waters of the estuary are clear and marine-dominated due to the highly localised and ephemeral nature of the plumes", and that "[i]n the unlikely event that plumes enter the estuary, suspended sediment concentrations are unlikely to reach levels that would have lethal or sub-lethal effects on marine biota" (Annexure "H", PDF page 31, response to comment 68).

c) That prediction is not supported by any site-specific measurement. The Marine Ecology Impact Assessment was conducted as a desktop study, and the specialist records that "[a]s determined by the terms of reference, this study has adopted a 'desktop' approach", with the baseline description drawn from environmental impact assessments undertaken for other operations and from the literature (Annexure "F", report page 3, PDF page 19). No sediment particle size distribution, no measurement of the silt and clay fractions, no granulometric analysis and no ocean current or plume dispersion modelling for any of the six concessions appears anywhere in the Final Environmental Impact Assessment Report, in the Marine Ecology Impact Assessment or in the Environmental Management Programme. PTWC understands that it is not privy to all the information informing this application and can only raise queries on what it has seen and been able to analyse, and if such work exists it has been unable to locate it in the reports as furnished.

d) The assessment does not merely omit the data. It puts an affirmative characterisation of the sediments in its place, and reasons from it. The Final Environmental Impact Assessment Report records that the unconsolidated sediments in the sampling target areas "comprise primarily medium to fine sands, with a minimal silt and clay fraction", and immediately concludes that the plumes generated through the discharge of fine tailings during drill sampling will be localised to within a few hundred metres of the sampling vessel (Annexure "C", report page 96, PDF page 115). The Marine Ecology Impact Assessment states the relationship causally, recording that the plumes are "thus expected to remain far more localised" than those reported from previous studies of deepwater mining vessels (Annexure "F", report page 118, PDF page 134). The same characterisation is carried into the practitioner's summary of key findings placed before the competent authority (Annexure "C", report page 130, PDF page 149). The silt and clay content of the material to be placed into suspension is the quantity which governs how a plume behaves. It is stated as a finding of fact about the six concessions, and nothing in the record supports it. The Final Environmental Impact Assessment Report records, among its assumptions and limitations, that where detailed information is not available a conservative approach which overstates negative impacts and understates benefits has been adopted (Annexure "C", report page 6, PDF page 25). The characterisation of the sediments is not that approach.

e) The report does not hold to one figure. At report page 96 and again at report page 130 the plume is described as localised to within a few hundred metres of the sampling vessel (Annexure "C", report pages 96 and 130, PDF pages 115 and 149). At report page 103 the plumes are expected to be localised, with impacts primarily within 25 to 50 m of the source (Annexure "C", report page 103, PDF page 122). The two figures differ by an order of magnitude, and the same report contains both. What PTWC contends is that a report which gives two answers to the question of how far the plume travels, neither derived from measurement, does not establish the fact on which the finding of insignificance rests.

f) The conclusion on toxicity is expressed in the same way. The Final Environmental Impact Assessment Report records that even the highest concentrations in the immediate discharge are unlikely to reach concentrations that would have lethal effects on marine fauna or inhibit primary productivity of phytoplankton or nearshore algae (Annexure "C", report page 96, PDF

page 115). The practitioner's response quoted at paragraph b) above puts the same proposition about the estuary. No concentration is stated anywhere in the record. The threshold at which lethal or sub-lethal effects occur is not given for any species, the concentration anticipated at the seabed or in the water column is not given for any location, and the comparison between the two is accordingly not one the competent authority was in a position to check. The Marine Ecology Impact Assessment adds that marine communities in the Benguela Shelf ecoregion are frequently exposed to naturally elevated suspended-sediment levels and can be expected to have behavioural and physiological mechanisms for coping with that feature of their habitat (Annexure "F", report page 118, PDF page 134). That is a proposition about the region. No study of the response of the communities within these six concessions to sampling-related suspended sediment appears in the record. PTWC raises these matters as questions which the record does not answer, and not as findings.

g) The data matters on the specialist's own evidence. The Marine Ecology Impact Assessment records that water depth and sediment grain size "are considered the two major factors that determine benthic community structure and distribution on the South African west coast" (Annexure "F", report page 37, PDF page 53). Neither was measured at any sampling location. The behaviour of a suspended sediment plume, its concentration, its settling rate and the distance over which it travels are governed by the particle size distribution of the material placed into suspension. A prediction that a plume will be localised and ephemeral is a prediction about particle size, made without measuring it.

h) The receiving environment is one in which fine sediment is abundant. The Final Environmental Impact Assessment Report records a mud belt approximately 500 km long, up to 40 km wide and of 15 m average thickness situated over the inner shelf between the Orange River and St Helena Bay (Annexure "C", report pages 40-41, PDF pages 59-60). The Marine Ecology Impact Assessment records that the offshore portions of the B concessions extend into the Southern Benguela mudbelt (Annexure "F", report page 106, PDF page 122). The mud belt has accumulated from sediment delivered by the Orange and Olifants rivers, and the concessions lie across it.

i) The lithologies to be disturbed compound the difficulty. Heavy mineral and diamond bearing successions of the kind targeted in these concessions are characteristically overlain and underlain by fine-grained clayey material of inconsistent compressive and shear properties. Footwall material of that character is routinely recovered together with the target horizon and passes through the recovery plant, from which the undersize fraction is discharged back to the sea. Hangingwall and footwall lithologies accordingly require sampling and fine fraction analysis if the plume risk is to be assessed rather than assumed.³

j) The specialist accepts that the effects on sediment character may be lasting. The Marine Ecology Impact Assessment records that long-term or permanent changes in grain size characteristics of sediments may occur, potentially resulting in a shift in community structure,

³ Makhubelo D N, The challenges associated with footwall clay in offshore diamond mining, thesis presented in fulfilment of the requirements for the degree of Master of Engineering (Geotechnical Engineering), Faculty of Engineering, Stellenbosch University, 2023. See also De Wet W M, Bathymetry of the South African Continental Shelf, MSc, Department of Geological Sciences, Faculty of Science, University of Cape Town, December 2012

and that excavations below the wave base may have slower infill rates and could persist for several months to several years (Annexure **"F"**, report page 114, PDF page 130). A finding that the character of the sediment may be permanently altered cannot rest on an assessment which never established what that character is.

k) The competent authority itself directed that the plume issue be addressed, and it was not. In its letter accepting the Final Scoping Report on 11 December 2024, DMPR directed that, in addition to the matters already covered, "[t]he EIA must indicate how you intend to monitor the migration of the pollution plume particularly at bulk sampling phase" (Annexure **"H"**, PDF page 32, comment 72 and comment 73). The response recorded in the Issues and Responses Summary does not answer that direction. It records that a marine ecologist identified and assessed the potential impacts, that those impacts were not considered significant, and that breeding seasons and migration routes were considered. No plume migration monitoring methodology is set out in the Final Environmental Impact Assessment Report, no such monitoring is provided for in the Environmental Management Programme, and no site-specific condition of the Environmental Authorisation requires it.

l) Two organs of state raised the sufficiency of the data:

i) The Department of Environmental Affairs and Development Planning recorded, in its comments on the Draft Scoping Report dated 2 October 2024, that "[i]t is unclear what level of data with a high degree of confidence on the anticipated impacts to the marine environment is available for these concession areas to clearly define, measure and mitigate potential impacts", and that "[i]t will be important to determine the actual degree of marine sensitivity in the impacted areas; or use a risk averse and cautious approach in the absence of adequate data" (Annexure **"G"**, PDF page 5, paragraph 5.2). In its comments on the Draft Environmental Impact Assessment Report dated 15 July 2025 it recorded that the Marine Biodiversity Assessment "confirms that the assessment was limited to a desktop study and a literature review which included a review of other EIA studies" (Annexure **"G"**, PDF pages 21 and 22, paragraph 2).

ii) The same Department recorded that Table 3-1 of the Site Sensitivity Verification Report dated August 2024 confirms very high sensitivity for the aquatic biodiversity theme, and that the very high sensitivity "is due to the proximity to the Olifants River Estuary, the Sout River Estuary and wetlands" (Annexure **"G"**, PDF page 6, paragraph 8). The feature which drives that rating is the feature about which the plume prediction at paragraph b) above is made.

m) The question was also raised by members of the affected communities during the scoping phase. The Issues and Responses Summary records comments to the effect that clay coming down the Olifants River has been deposited between the Olifants mouth and Doringbaai for approximately 8 000 years, that the mud layer covering the marine orebodies will be put back into suspension, that surface clay will add to the plumes, and that the method of extraction will silt the Olifants River mouth and estuary. A water quality specialist study was expressly

requested (Annexure "H", PDF pages 12 and 13, comments 27 and 28). No water quality specialist study was undertaken.

n) The measure by which the impact was found to be insignificant excludes the plume. The cumulative assessment records that "[t]he prospecting activities would impact a maximum area of 0.011 km² in the Namaqua Bioregion, an insignificant percentage (0.001 %) of the Namaqua Sandy Inner Shelf and Namaqua Sandy Mid Shelf ecoregions as a whole" (Annexure "C", report page 118, PDF page 137). That figure of 0.011 km² is the direct sampling footprint recorded in the Environmental Authorisation as 10 771 m² (Annexure "B", Environmental Authorisation, internal page 4 of 16). It is the area of seabed physically excavated. It does not include the area over which suspended sediment is dispersed and redeposited, and no figure for that area appears anywhere in the record.

o) The Environmental Authorisation imposes no measure directed at the plume. None of the fourteen site-specific conditions addresses sediment plume management, turbidity monitoring, water quality monitoring, discharge depth or orientation, or the suspension of operations in sea conditions which increase dispersion. Site-specific condition 10 requires only that mariculture operators be notified 48 hours before sampling in their vicinity, which is a notification measure and not a management or monitoring measure (Annexure "B", Environmental Authorisation, internal page 7 of 16). By contrast, the Environmental Authorisation granted over Concession 13B by the same regional office imposes site-specific condition 5, requiring the holder to optimise discharge depth and orientation to reduce plume spread and to avoid operations during extreme sea conditions that may increase plume dispersion; condition 11, requiring turbidity-generating activities to be managed to minimise plume dispersion; and condition 26, requiring water turbidity to be monitored at existing and potential mariculture sites including shore-based abalone farms and areas identified for kelp or abalone ranching (Annexure "E", internal pages 7 and 9 of 26).

p) The legal obligations relied on are the following:

i) Section 24(4A) of NEMA provides that where environmental impact assessment has been identified as the environmental instrument to be utilised in informing an application for environmental authorisation, section 24(4)(b) applies. Section 24(4)(b)(iv) requires reporting on gaps in knowledge, the adequacy of predictive methods and underlying assumptions, and uncertainties encountered in compiling the required information. Section 24(4)(b)(v) requires the investigation and formulation of arrangements for the monitoring and management of consequences for or impacts on the environment.

ii) Appendix 6(1) of the EIA Regulations, 2014 requires a specialist report to contain, at paragraph (e), a description of the methodology adopted in preparing the report or carrying out the specialised process; at paragraph (f), the specific identified sensitivity of the site related to the activity; at paragraph (i), a description of any assumptions made and any uncertainties or gaps in knowledge; and, at paragraph (m), any monitoring requirements for inclusion in the environmental management programme or environmental authorisation.

iii) Appendix 3(3)(p) of the EIA Regulations, 2014 requires an environmental impact assessment report to contain a description of any assumptions, uncertainties and gaps in knowledge which relate to the assessment and mitigation measures proposed.

iv) Section 24O(1) of NEMA requires the competent authority to comply with the Act and to take into account all relevant factors, which may include, at section 24O(1)(b)(i), any pollution, environmental impacts or environmental degradation likely to be caused if the application is approved; at section 24O(1)(b)(ii), measures that may be taken to protect the environment from harm and to prevent, control, abate or mitigate any pollution; at section 24O(1)(b)(vi), information contained in reports, comments and representations submitted in connection with the application; and, at section 24O(1)(b)(vii), any comments received from organs of state that have jurisdiction over any aspect of the activity. Section 24O(1)(c) requires the competent authority to take into account the comments of any organ of state charged with the administration of any law which relates to the activity in question.

v) Section 2(1)(c) of NEMA provides that the principles in section 2 serve as guidelines by reference to which any organ of state must exercise any function when taking any decision in terms of the Act. Section 2(4)(a)(vii) requires that a risk-averse and cautious approach be applied, "which takes into account the limits of current knowledge about the consequences of decisions and actions". Section 2(4)(r) provides that sensitive, vulnerable, highly dynamic or stressed ecosystems, such as coastal shores and estuaries, require specific attention in management and planning procedures.

q) The failure is that the assessment predicted the extent, concentration and persistence of suspended sediment plumes, including a specific prediction that plumes generated in the southern portion of Concession 12a would be highly unlikely to penetrate the mouth of the Olifants River, without measuring the particle size distribution of the sediments to be disturbed, without characterising the fine fraction of the hangingwall and footwall lithologies, and without any current or dispersion modelling. The competent authority accepted that prediction, notwithstanding that it had itself directed that the report indicate how plume migration would be monitored, and imposed no condition addressing the plume.

r) The failure is material for the following reasons:

i) The prediction relied on is spatially specific and is directed at the receptor which the Site Sensitivity Verification Report identifies as the reason for a very high aquatic biodiversity sensitivity rating. It is not a general statement about turbidity. It is a statement that plumes will not reach the Olifants River Estuary, and it is unsupported by measurement.

ii) The finding of insignificance rests on a footprint figure which measures excavation and not dispersion. The area affected by redeposited sediment is not quantified anywhere, and cannot be, because the particle size data from which it would be calculated does not exist.

iii) A risk-averse and cautious approach, as section 2(4)(a)(vii) requires, calls for the uncertainty to be resolved before the activity is authorised, rather than for the absence of evidence of harm to be treated as evidence that harm will not occur. The provincial environmental department put that proposition to the competent authority in terms and it was not addressed.

iv) The consequence of accepting the prediction without the data is that no monitoring was imposed. If the prediction is wrong, there is no mechanism by which that will be discovered, because no turbidity or water quality monitoring is required, and there is no baseline against which any monitoring could be measured.

v) The competent authority's own direction of 11 December 2024 was not complied with, and the Environmental Authorisation records no reason for granting the authorisation notwithstanding.

vi) The report gives two different figures for the distance over which the plume travels, and the competent authority accepted the finding of insignificance without either being reconciled or measured.

s) In PTWC's respectful view, the sediment plume assessment does not provide a basis on which the competent authority could lawfully be satisfied that the impact would be insignificant, and the Environmental Authorisation ought not to have been granted without the characterisation of the fine sediment fraction which the competent authority had already directed be addressed. What PTWC contends is that the analysis required is analysis that the prospecting programme is designed to produce in any event, since hangingwall and footwall lithologies must be sampled and analysed to define the resource, and that the incremental cost of fine fraction analysis of that same material is small.

t) The relief sought on this ground is relief items 1, 2, 3 and 8.

5. Failure to give effect to the recommended exclusion of Critical Biodiversity Areas from destructive prospecting

a) The Final Environmental Impact Assessment Report records that Concessions 11A, 12A, 13A, 11B, 12B and 13B overlap with areas proposed as CBA 1 and CBA 2 by the National Coastal and Marine Spatial Biodiversity Plan (Annexure "C", report page 57, PDF page 76). Under that Plan, destructive prospecting is classified as not compatible with the management objectives of CBA-Natural and CBA-Restore areas, and as having restricted compatibility in Ecological Support Areas. The environmental assessment practitioner defines destructive prospecting, for the purposes of this application, as including "vibracore sampling, drill sampling and bulk sampling" (Annexure "H", PDF page 31, footnote 4).

b) Table 4-4 of the Final Environmental Impact Assessment Report quantifies the overlap for each concession as a percentage of concession area (Annexure "C", report page 57, PDF page 76). It is reproduced below. On the figures recorded in that table, approximately 74 per cent of

Concession 11B, being some 7 188 ha, is CBA-Natural, and Concession 13A is recorded as containing no Critical Biodiversity Area or Ecological Support Area at all.

Table 4-4: Percentage of concession overlapping with proposed Critical Biodiversity Areas and Ecological Support Areas

Concession	Area (ha)	CBA1:N (%)	CBA1:R (%)	CBA2:N (%)	CBA2:R (%)	ESA (%)
Concession 11A	3 195	2.1	8.6	23.7	2.9	15.0
Concession 12A	3 360	0.0	6.2	0.0	9.1	0.0
Concession 13A	1 254	0.0	0.0	0.0	0.0	0.0
Concession 11B	9 700	10.3	0.0	63.8	2.1	14.4
Concession 12B	10 600	0.11	1.16	2.56	4.65	0.0
Concession 13B	3 980	0.0	7.5	0.0	10.1	0.0

c) The same overlap is depicted spatially at Figures 4-11 to 4-13 of the Final Environmental Impact Assessment Report, which are reproduced below (Annexure "C", report pages 58 to 60, PDF pages 77 to 79). Each figure superimposes the proposed Critical Biodiversity Areas, Ecological Support Areas and Marine Protected Areas on the boundaries of a pair of concessions. None of the three figures depicts the proposed sampling positions, the geophysical survey transects or the bulk sampling locations, and none identifies any area to be avoided or any buffer.

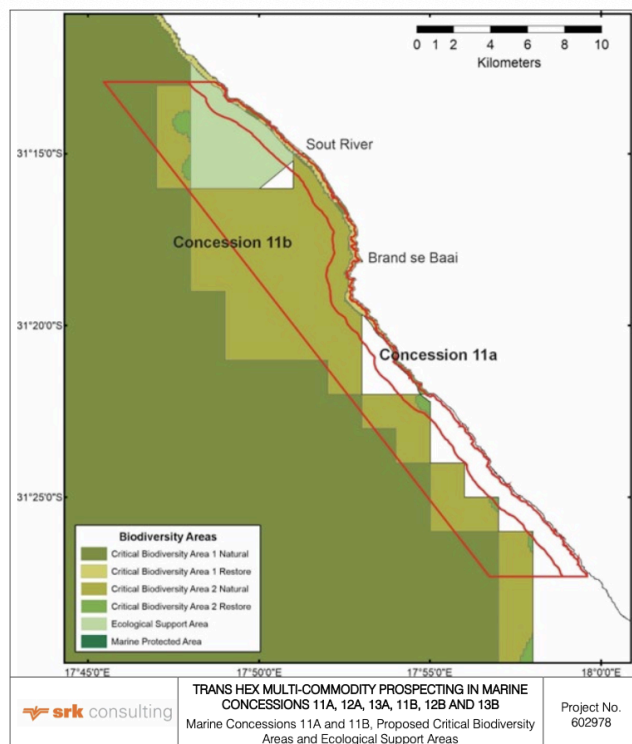


Figure 4-11: Marine Concessions 11A and 11B, Proposed Critical Biodiversity Areas and Ecological Support Areas

Source: (Pisces Environmental Services, 2024)

Figure 4-11 of the Final Environmental Impact Assessment Report (Annexure "C", report page 58, PDF page 77), depicting Marine Concessions 11A and 11B and the proposed Critical Biodiversity Areas and Ecological Support Areas overlapping them. Source: Pisces Environmental Services, 2024. The concession boundaries are shown in red. Concession 11B, being the seaward of the two, is shaded across substantially its whole extent as Critical Biodiversity Area 1 Natural or Critical Biodiversity Area 2 Natural, consistent with the figures of 10.3 per cent and 63.8 per cent recorded for that concession in Table 4-4. The Sout River estuary lies at the northern end of Concession 11A.

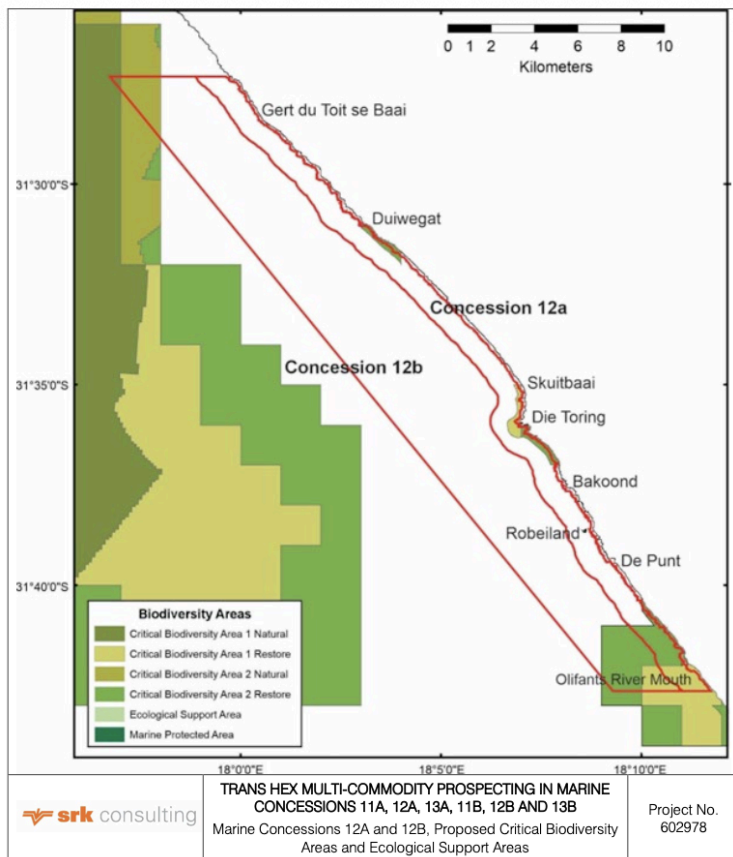


Figure 4-12: Marine Concessions 12A and 12B, Proposed Critical Biodiversity Areas and Ecological Support Areas

Source: (Pisces Environmental Services, 2024)

Figure 4-12 of the Final Environmental Impact Assessment Report (Annexure "C", report page 59, PDF page 78), depicting Marine Concessions 12A and 12B and the proposed Critical Biodiversity Areas and Ecological Support Areas overlapping them. Source: Pisces Environmental Services, 2024. Critical Biodiversity Area 1 Restore and Critical Biodiversity Area 2 Restore areas are shown at Duiwegat, at Die Toring and, at the southern end of the concessions, surrounding the Olifants River Mouth.

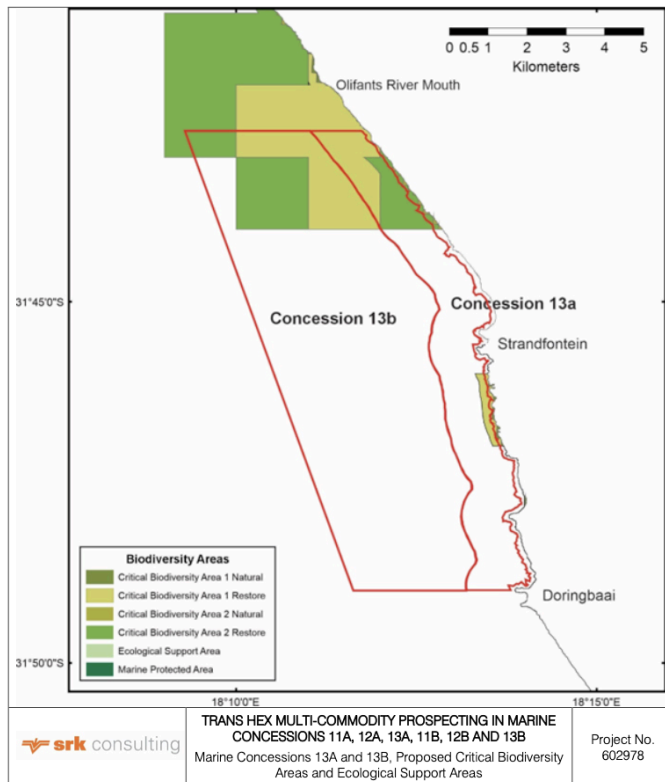


Figure 4-13: Marine Concessions 13A and 13B, Proposed Critical Biodiversity Areas and Ecological Support Areas

Source: (Pisces Environmental Services, 2024)

Figure 4-13 of the Final Environmental Impact Assessment Report (Annexure "**C**", report page 60, PDF page 79), depicting Marine Concessions 13A and 13B and the proposed Critical Biodiversity Areas and Ecological Support Areas overlapping them. Source: Pisces Environmental Services, 2024. The Critical Biodiversity Area 1 Restore and Critical Biodiversity Area 2 Restore areas surrounding the Olifants River Mouth, shown at the southern end of Figure 4-12, continue southward into the northern portion of Concession 13B and into the vicinity of Concession 13A. A further band shaded as Critical Biodiversity Area 1 Restore is shown along the coast to the north of Strandfontein. Table 4-4 records Concession 13A as containing no Critical Biodiversity Area.

d) The figures and the table do not appear to be consistent with one another in respect of Concession 13A. Figure 4-13 depicts areas shaded as Critical Biodiversity Area 1 Restore and Critical Biodiversity Area 2 Restore falling within, or on the boundary of, Concession 13A in the vicinity of the Olifants River Mouth and to the north of Strandfontein. Table 4-4 records Concession 13A as containing no Critical Biodiversity Area. The Marine Ecology Impact Assessment, for its part, recommends the exclusion of CBA-Natural and CBA-Restore areas "within Concessions 11a, 12a, 13a, and 11b, 12b and 13b", which includes Concession 13A (Annexure "**F**", report page 146, PDF page 162). PTWC has been unable to reconcile the three, and is not able to determine from the reports as furnished which of them correctly records the position in Concession 13A. The georeferenced spatial data underlying Figures 4-11 to 4-13

would resolve the question. PTWC understands that it is not privy to all the information informing this application and can only raise queries on what it has seen and been able to analyse, and it may be that the applicant holds information that would clarify the matter. What PTWC contends is that where the extent of a Critical Biodiversity Area within a concession cannot be determined from the assessment on which the decision was taken, no condition excluding that area can be framed, monitored or enforced, and none was.

e) Destructive prospecting is authorised throughout. The prospecting programme on which the Environmental Authorisation was granted provides for 550 drill samples in Concession 11B, 600 vibracore samples in Concession 11B, 275 in Concession 11A and 275 in Concession 12A, and bulk sampling in every concession, including one bulk sample in each of Concessions 11A, 12A and 13A and ten in each of Concessions 11B and 12B (Annexure **"C"**, Tables 2-4 to 2-6, report pages 16 to 19, PDF pages 35 to 38). No part of any concession is excluded.

f) The marine specialist recommended exclusion. The Marine Ecology Impact Assessment records that sampling and bulk sampling would be considered destructive prospecting, "which is classified in the Sea Use Guidelines as being non-compatible with the management objective of CBA-Natural, CBA-Restore and have restricted compatibility in Ecological Support Areas", and that "CBA-natural and CBA-restore areas within Concessions 11a, 12a, 13a, and 11b, 12b and 13b should therefore be excluded from future prospecting plans within these marine concessions" (Annexure **"F"**, report page 146, PDF page 162). The same report records that the A concessions overlap with CBA 1 and CBA 2 areas in which destructive prospecting and mining are considered not compatible, and that the majority of Concession 11b lies within CBA 1: Natural and CBA 2: Natural areas (Annexure **"F"**, report pages 105 and 106, PDF pages 121 and 122).

g) The environmental assessment practitioner did not recommend that destructive prospecting be authorised in Critical Biodiversity Areas. Its reasoned opinion, given in section 7.4 of the Final Environmental Impact Assessment Report, is that "on purely 'environmental' grounds (i.e. the project's potential socio-economic and biophysical implications) non-destructive prospecting should be approved for the whole precinct, and destructive prospecting should be approved for the sections of the precinct that are not delineated as CBAs, provided the essential mitigation measures are implemented". It continues: "Furthermore, DMPR will need to decide whether destructive prospecting should be authorised within the sections of the precinct that are proposed as CBAs, taking account of the draft (non-binding) status of the NCMSBP sea-use guidelines as well as the predicted insignificant or very low significance of impacts of prospecting on marine ecology. Ultimately, DMPR will need to consider whether the project benefits outweigh the potential impacts" (Annexure **"C"**, report pages 135 and 136, PDF pages 154 and 155).

h) The practitioner accordingly identified the authorisation of destructive prospecting within Critical Biodiversity Areas as a discrete question, separated it from the recommendation it was prepared to make, and referred it to the competent authority for decision. Two matters were identified as bearing on that decision, being the draft status of the sea-use guidelines and the

predicted significance rating, and the practitioner recorded that the competent authority "will need to consider whether the project benefits outweigh the potential impacts".

i) The reasons for the decision do not disclose that the question was considered. Regulation 4(1)(b) of the EIA Regulations, 2014 requires the competent authority, within five days of reaching a decision on an application, to give reasons for the decision. The reasons in this matter are recorded in Annexure 1 to the Environmental Authorisation, under the headings "Key factors considered in making the decision" at paragraph 1, subparagraphs a) to l), and "Findings" at paragraph 3, subparagraphs a) to g) (Annexure "**B**", Environmental Authorisation, internal pages 8 and 9 of 16). PTWC has searched the whole of the Environmental Authorisation and has been unable to locate any occurrence of the terms "Critical Biodiversity Area", "CBA", "Ecological Support Area", "National Coastal and Marine Spatial Biodiversity Plan", "sea-use guidelines", "destructive prospecting", "Ecologically or Biologically Significant Area" or "EBSA".

j) The following appears from Annexure "**B**" (internal pages 8 and 9 of 16):

i) The reasons record, at paragraph 3(d), a summary of the Marine Ecology Impact Assessment. That summary records that the main marine impacts are associated with acoustic impacts on marine mammals and the disturbance and loss of benthic fauna in the sampling footprint, that most impacts would occur in the immediate vicinity of the vessel and would be of short-term duration and low to medium intensity, and that the recommended management actions and mitigation measures would reduce the negative impacts. It does not record the specialist's recommendation that CBA-Natural and CBA-Restore areas be excluded from prospecting within the six concessions.

ii) The reasons record, at paragraph 1(e), that the public participation process "shows that the concerns raised by the I&APs and the Authorities were addressed by the Applicant in the EIA and EMPR", and at paragraph 1(f) that comments received from interested and affected parties were considered. Neither the Department of Environmental Affairs and Development Planning nor Cape Nature is identified anywhere in the reasons, and neither the recommendation to exclude Critical Biodiversity Areas nor Cape Nature's objection is recorded.

iii) The only organ of state comment identified by name in the reasons is recorded at paragraph 1(k): "The Comments from Mine Health and Safety were in support of the proposed project".

iv) Neither the qualified nature of the practitioner's opinion, nor the fact that the practitioner recommended the approval of destructive prospecting only for the sections of the precinct not delineated as Critical Biodiversity Areas, nor the question the practitioner referred to the competent authority for decision, is recorded anywhere in the reasons.

k) What PTWC contends is that the reasons, read as a whole, do not disclose that the competent authority applied its mind to the question the practitioner reserved to it. The reasons summarise the specialist report while omitting the recommendation which qualified it, record the comments of the one organ of state which supported the application while omitting the two which did not, and give no indication that the distinction between destructive and non-destructive prospecting, on which the practitioner's opinion turned, was recognised at all. On the reasons as given, the appeal authority is not able to determine whether the competent authority weighed the project benefits against the potential impacts in Critical Biodiversity Areas, as the practitioner recorded that it would need to do, and PTWC is not able to determine it either. In PTWC's respectful view, a decision which authorises more than the practitioner recommended, on a question the practitioner expressly reserved to the decision-maker, calls for reasons which address that question, and none were given.

l) Two organs of state recommended the same exclusion:

i) The Department of Environmental Affairs and Development Planning, in its comments on the Draft Scoping Report dated 2 October 2024, recorded that under the National Coastal and Marine Spatial Biodiversity Plan invasive prospecting activities are considered as not compatible in CBAs Natural and Restore, and "strongly recommend[ed] that areas mapped as CBAs 1 and 2 be excluded from the proposed invasive prospecting areas in Marine Concessions 11A, 12A, 11B, 12B and 13B, and that the section on alternatives consider the exclusion of said areas from invasive prospecting and bulk sampling" (Annexure "G", PDF page 6, paragraph 9).

ii) In its comments on the Draft Environmental Impact Assessment Report dated 15 July 2025, the same Department reiterated "that it is not supportive of any invasive prospecting activities that overlap with areas mapped as CBA 1 and 2", and then addressed the answer that had been given to its earlier comment in terms: "Although noting that the NCMSBP has not yet been adopted as policy and should be construed as a draft guideline, this Directorate strongly recommends that the competent authority, during its decision-making process, adopt a risk averse and cautious approach by refusing/excluding invasive prospecting activities in areas mapped as CBAs 1 and 2, should the competent authority decide to authorise the listed activities applied for" (Annexure "G", PDF page 22, paragraph 6).

iii) Cape Nature, by letter dated 17 July 2025, recorded that it "objects to the application on the basis that there has not been sufficient planned demarcation/delineation of avoidance areas", that "it is strongly recommended that marine CBAs as delineated be respected", and that "[i]t is noted that there are areas in concessions 12 and 13 that do not overlap with CBAs facilitating full avoidance. Such full avoidance of CBAs must be implemented for these concession areas with coordinates demarcating the CBA areas to be avoided" (Annexure "G", PDF pages 27, paragraphs 4).

m) The Department of Environmental Affairs and Development Planning made a further recommendation, in respect of Ecologically or Biologically Significant Areas, which is not

addressed anywhere in the Environmental Authorisation. It recorded that "[t]he precinct falls within the transboundary Benguela Upwelling System Ecologically or Biologically Significant Areas ('EBSAs'), with Marine Concessions 11A and 11B overlapping in the north with the southern portion of the Namaqua Coastal Area EBSA", and that "[i]t is recommended that the prospecting area exclude the mentioned EBSAs" (Annexure **"G"**, PDF page 4, paragraph 3). No exclusion of any EBSA appears in the Environmental Authorisation, and no reason is recorded for declining that recommendation.

n) The approved Environmental Management Programme declines to give effect to the exclusion. Beneath each of the composite sensitivity maps it records that the National Coastal and Marine Spatial Biodiversity Plan, the CBAs and ESAs, "and the compatibility of certain activities within proposed CBAs and ESAs, are currently non-binding" (Annexure **"I"**, report pages 6 to 8, PDF pages 14 to 16). That is the same answer which the provincial environmental department had already addressed and rejected in the passage quoted at paragraph l)(ii) above.

o) The Environmental Authorisation contains no condition excluding any Critical Biodiversity Area, Ecological Support Area or Ecologically or Biologically Significant Area from prospecting, and no condition demarcating any area by coordinate. Site-specific condition 7 requires only that the holder "[a]void sampling in the immediate vicinity of the rocky outcrop areas or identified sensitive habitats". The Marine Ecology Impact Assessment records that the impacts of smothering by discharged tailings on rocky outcrop communities would be of medium intensity and highly localised, but potentially enduring over the medium term due to their slow recovery rates (Annexure **"F"**, report page 123, PDF page 139), and no rocky outcrop area is identified, mapped or given a coordinate anywhere in the Environmental Authorisation, in the Environmental Management Programme or in the specialist report. Site-specific condition 14 provides that "[a]ll the specialist studies' recommendations must be strictly adhered to" (Annexure **"B"**, Environmental Authorisation, internal page 7 of 16).

p) The result is that the Department approved, in terms of section 24N of NEMA, an Environmental Management Programme which declines to implement the exclusion, and in the same instrument imposed a condition which makes the specialist's recommendation, including the exclusion, binding on the holder. The approved Environmental Management Programme and site-specific condition 14 cannot both be complied with. A holder complying with the Environmental Management Programme will sample within Critical Biodiversity Areas. A holder complying with site-specific condition 14 will not.

q) Figures 4-11 to 4-13, reproduced at paragraph c) above, depict the Critical Biodiversity Areas against the concession boundaries. They do not superimpose the proposed activity on those areas, they identify no area to be avoided, and they show no buffer. They accordingly do not answer the requirement in Appendix 4(1)(c) of the EIA Regulations, 2014 for a map which superimposes the proposed activity on the environmental sensitivities of the site "indicating any areas that should be avoided, including buffers", and no map answering that requirement appears in the Environmental Management Programme or in the Environmental Authorisation. The Marine Ecology Impact Assessment's own compliance table cross-refers the Appendix

6(1)(g) requirement to identify areas to be avoided, including buffers, to its section 4.4.2, which is a descriptive account of conservation areas, marine protected areas, sensitive areas, Ecologically or Biologically Significant Areas, biodiversity priority areas and Important Bird Areas within the baseline chapter. It does not delineate any area to be avoided by coordinate and identifies no buffer. The same table cross-refers the Appendix 6(1)(h) map requirement to Chapter 4 generally, and leaves blank the entries for Appendix 6(1)(l), being any conditions for inclusion in the environmental authorisation, and Appendix 6(1)(m), being any monitoring requirements for inclusion in the environmental management programme or environmental authorisation (Annexure "F", Table 1-1, report page 2, PDF page 18).

r) The legal obligations relied on are the following:

i) Section 24N(1A) of NEMA requires the submission of an environmental management programme before an application for environmental authorisation is decided where an environmental impact assessment has been identified as the environmental instrument, and section 24N(2) requires that programme to contain the information that is prescribed.

ii) Appendix 4(1)(c) of the EIA Regulations, 2014 requires an environmental management programme to include "a map at an appropriate scale which superimposes the proposed activity, its associated structures, and infrastructure on the environmental sensitivities of the preferred site, indicating any areas that should be avoided, including buffers". Appendix 4(1)(d) requires a description of the impact management objectives identifying the impacts and risks that need to be avoided, managed and mitigated, and Appendix 4(1)(e) requires a description and identification of the impact management outcomes required.

iii) Appendix 3(3)(m) of the EIA Regulations, 2014 requires an environmental impact assessment report to record, based on the assessment and where applicable on recommendations from specialist reports, proposed impact management objectives and impact management outcomes "for inclusion in the EMP as well as for inclusion as conditions of authorisation". Appendix 3(3)(o) requires the recording of any aspects which were conditional to the findings of the assessment, either by the environmental assessment practitioner or by a specialist, which are to be included as conditions of authorisation.

iv) Appendix 6(1)(g) of the EIA Regulations, 2014 requires a specialist report to contain an identification of any areas to be avoided, including buffers, and Appendix 6(1)(h) requires a map superimposing the activity on the environmental sensitivities of the site including areas to be avoided, including buffers.

v) Section 24O(1) of NEMA requires the competent authority to comply with the Act and to take into account all relevant factors, which may include, at section 24O(1)(b)(ii), measures that may be taken to protect the environment from harm; at section 24O(1)(b)(iv), any feasible and reasonable modifications or changes to the activity that

may minimise harm to the environment; at section 24O(1)(b)(v), any information and maps compiled in terms of section 24(3), including any prescribed environmental management frameworks, to the extent that they are relevant; at section 24O(1)(b)(vi), information contained in reports, comments and representations submitted in connection with the application; at section 24O(1)(b)(vii), any comments received from organs of state that have jurisdiction over any aspect of the activity; and at section 24O(1)(b)(viii), any guidelines, departmental policies and environmental management instruments adopted in the prescribed manner and any other information in the possession of the competent authority that is relevant. Section 24O(1)(c) requires the competent authority to take into account the comments of any organ of state charged with the administration of any law which relates to the activity in question.

vi) Section 2(1)(c) of NEMA provides that the principles in section 2 serve as guidelines by reference to which any organ of state must exercise any function when taking any decision in terms of the Act. Section 2(4)(a)(vii) requires that a risk-averse and cautious approach be applied, which takes into account the limits of current knowledge about the consequences of decisions and actions.

s) The failure is as follows. The exclusion of Critical Biodiversity Areas classified as Natural and Restore from destructive prospecting was recommended by the marine specialist, was carried into the practitioner's reasoned opinion as the limit of what it was prepared to recommend, was recommended twice by the provincial environmental department and once by the provincial conservation authority, which objected to the application on that basis, and was referred to the competent authority by the practitioner as a question for its decision. The competent authority authorised destructive prospecting across the whole of all six concessions without excluding any area, without demarcating any area, and without recording in its reasons that the question had been considered at all. It then compounded the position by approving an environmental management programme which declines the exclusion while imposing a condition which requires it.

t) The failure is material for the following reasons:

i) The recommendation was not marginal to the assessment. It was the qualification on which the practitioner's opinion that the activity should be authorised was expressly conditioned, and the practitioner referred the balance of the question to the competent authority for decision. A decision-maker which grants an authorisation wider than the practitioner recommended, on a question the practitioner expressly reserved to it, must engage with that question in its reasons.

ii) The area affected is substantial and quantified. On the figures in Table 4-4, approximately 74 per cent of Concession 11B is CBA-Natural, being some 7 188 ha, and it is in Concession 11B that 550 of the 1 650 authorised drill samples and 600 of the 2 230 authorised vibracore samples are to be taken.

iii) The answer given, that the National Coastal and Marine Spatial Biodiversity Plan is not binding, is not an answer to the recommendation. The provincial environmental department accepted that the Plan is not binding and recommended the exclusion notwithstanding, on the basis that a risk-averse and cautious approach is required by section 2(4)(a)(vii) of NEMA where knowledge of environmental consequences is limited. The status of the Plan does not displace the biodiversity information it contains, which is the product of national biodiversity planning and which the competent authority was required by section 24O(1)(b)(v) and (viii) of NEMA to take into account.

iv) Site-specific condition 14 is not a substitute for an exclusion condition. It incorporates by general reference a recommendation which is nowhere mapped, nowhere reduced to coordinates and nowhere costed, and it does so in an instrument which simultaneously approves an environmental management programme rejecting that recommendation. A condition which contradicts the approved environmental management programme cannot be complied with, monitored or enforced.

v) The exclusion was practicable and was demonstrated to be so. Cape Nature recorded that there are areas in Concessions 12 and 13 which do not overlap with Critical Biodiversity Areas, facilitating full avoidance, and that full avoidance must be implemented for those concessions with coordinates demarcating the areas to be avoided. The competent authority was not asked to prohibit the activity. It was asked to confine it, and it did not.

u) In PTWC's respectful view, the Environmental Authorisation ought not to have been granted in terms which permit destructive prospecting within Critical Biodiversity Areas classified as Natural or Restore without any consideration of the question the practitioner reserved to the competent authority, and without any reason being given for departing from the recommendations of the specialist, the practitioner and two organs of state. What PTWC contends is that a condition excluding those areas, demarcated by coordinate, was available, was recommended, and was not imposed.

v) The relief sought on this ground is relief items 1, 2, 3 and 9.

6. Financial provision under section 24P of NEMA and GNR 1147

a) The Environmental Authorisation records only that "[t]he Applicant has complied with Section 24P of the National Environmental Management Act, 1998 (Act 107 of 1998) and provided the financial provision for the management of environmental impacts" (Annexure "B", Environmental Authorisation, Annexure 1, paragraph (I), internal page 8 of 16). It records no amount, no method and no reference to GNR 1147.

b) Regulation 5 of GNR 1147 requires an applicant to make financial provision for rehabilitation and remediation, for decommissioning and closure activities at the end of operations, and for the remediation and management of latent or residual environmental impacts which may become known in future. Regulation 6 requires the provision to be determined "through a

detailed itemisation of all activities and costs, calculated based on the actual costs of implementation" of the measures required for annual rehabilitation, for final rehabilitation and closure, and for remediation of latent or residual impacts, each reflected in a corresponding plan or report. Regulation 7 requires that the financial provision be, at any given time, equal to the sum of the actual costs of implementing those plans "for a period of at least 10 years forthwith". Regulation 10(a) requires the determination and the plans to be submitted as part of the information placed before the Minister responsible for mineral resources on an application for environmental authorisation. Regulation 12(4) requires the applicant to include the sum of the financial provision and an indication of how it was determined in the environmental management programme submitted under section 24N of NEMA.

c) The three instruments were compiled in a single document. Appendix D to the Final Environmental Impact Assessment Report, dated June 2025, records that it "has been prepared to comply with the requirements of Appendix 3 (ARP), 4 (Rehabilitation, Decommissioning and Closure Plan) and 5 (Environmental Risk Assessment Report) of GNR 1147", and its Table 2-1 maps each requirement to a section of the document (Annexure "J", report page 5, PDF page 12, and report page 6, PDF page 13).

d) The resulting figures are set out in Table 2-1 of the Environmental Management Programme. The total is R853 476.30 excluding value added tax, made up of benthic zone sampling of R196 035.00, laboratory costs of R172 040.00, reporting of R55 210.00 and specialist studies of R300 000.00, with preliminary and general costs at 12 per cent and contingencies at 6 per cent. The whole of that amount sits under final closure and decommissioning. The annual rehabilitation column reads R0.00 and the latent risk column reads R0.00 (Annexure "I", report page 11, PDF page 19; Annexure "J", PDF page 59).

e) The annual rehabilitation plan is costed at nil for a stated reason. Appendix D records that "[a]t the time of compilation of this report, no prospecting activities have occurred within the concession area. The first year of prospecting will be largely focused on desktop analysis, and no invasive prospecting will be undertaken", and concludes that "[a]s the first 12 month of prospecting are expected to be desktop analysis and not completed invasive sampling will be done, the ARP equates to R0" (Annexure "J", report pages 47 and 48, PDF pages 54 and 55).

f) That premise is contradicted by the project description in the same application. Table 2-5 of the Final Environmental Impact Assessment Report records 100 drill samples in Concession 11B and 100 in Concession 12B in Year 1 (Annexure "C", report page 18, PDF page 37). Table 2-4 records vibracore sampling in Year 1 in every concession, being 50 samples in Concession 11A, 50 in Concession 12A, 20 in Concession 13A, 100 in Concession 11B, 100 in Concession 12B and 50 in Concession 13B (Annexure "C", report page 16, PDF page 35). Table 2-3 records geophysical surveying in Year 1 in every concession (Annexure "C", report page 14, PDF page 33). Vibracore and drill sampling are classified by the practitioner as destructive prospecting (Annexure "H", PDF page 31, footnote 4). Invasive prospecting is accordingly planned for Year 1 across all six concessions, and the sole stated basis for the nil annual provision does not hold.

g) Regulation 7 requires in any event that the financial provision be, at any given time, equal to the sum of the actual costs of implementing the plans and report contemplated in regulation 6 for a period of at least 10 years forthwith. A figure calculated on what is expected within the first twelve months does not meet that requirement.

h) The latent risk provision is likewise nil, on the basis that "[c]urrently no latent risk is associated with the prospecting operations in the sea concession. The latent risk liability is therefore R0" (Annexure "J", report page 48, PDF page 55). The Marine Ecology Impact Assessment records that long-term or permanent changes in grain size characteristics of sediments may occur, potentially resulting in a shift in community structure, that excavations below the wave base may persist for several months to several years, and that differences following disturbance below the wave base may endure beyond the medium term, which the same report defines as a period of two to fifteen years (Annexure "F", report page 114, PDF page 130; Table 1-2, report page 3, PDF page 19)". Those are the residual impacts for which regulation 5(c) requires provision to be made.

i) Appendix D advances a second reason for the nil annual figure, being that "[o]nce invasive prospecting is required, active and mechanical rehabilitation of the mined-out areas is not practical or required", because "[s]eabed sediments are remobilised and redistributed by wave base actions and ocean currents" (Annexure "J", report page 47, PDF page 54). That reason cannot stand alongside the nil latent risk figure. Either the disturbance is remobilised and redistributed by natural processes, in which case the seabed returns to its prior condition and there is no basis for the specialist's finding that long-term or permanent changes in grain size characteristics may occur and that differences may endure beyond five to fifteen years; or those findings are correct, in which case the disturbance persists after the operation ends and regulation 5(c) of GNR 1147 and section 24P(4) of NEMA require provision to be made for it. What PTWC contends is that the determination proceeds on the first proposition when calculating the annual figure and on neither when calculating the latent risk figure, and that the marine specialist's findings support neither figure.

j) The costed closure activity cannot be performed as described. The R853 476.30 is allocated to post-closure sidescan sonar and benthic faunal community surveys "to monitor and demonstrate the natural recovery process of sampled areas" (Annexure "I", report page 11, PDF page 19). No pre-disturbance benthic baseline is required by the Environmental Authorisation and none has been collected. Recovery is a change measured against a prior state. A survey with no baseline can record the condition of the seabed on the day it is taken, but it cannot demonstrate recovery.

k) The Environmental Authorisation records none of this. It states none of the three figures, identifies no plan, and makes no reference to GNR 1147. Departmental standard condition 5.3 requires the holder to assess the environmental liabilities annually using the master rates in line with the applicable Consumer Price Index and to "address the shortfall on the financial provision submitted in terms of section 24P of NEMA" (Annexure "B", Environmental Authorisation,

internal page 14 of 16). The Environmental Authorisation does not record the figure against which a shortfall would be measured. Annual reassessment also cannot cure a provision which omits a category of work, as opposed to underpricing work already included.

l) The adequacy of the financial provision was raised during the process. The Final Environmental Impact Assessment Report records, among the key comments and concerns raised by stakeholders, "[r]ehabilitation and financial provision: Criticism of the lack of an annual rehabilitation plan, and inadequate financial provision for rehabilitation" (Annexure **"C"**, report page 87, PDF page 106). Neither the Environmental Authorisation nor its reasons deals with that concern.

m) Section 24P of NEMA provides at subsection (3) that "[w]here prescribed, an applicant, must, before the competent authority issues an environmental authorisation, determine the financial provision which is required for undertaking progressive rehabilitation, decommissioning, closure and post-closure activities, including the pumping and treatment of extraneous and polluted water, where relevant". Subsection (4) provides that "[w]here prescribed, the applicant, holder of an environmental authorisation, holder or holder of an old order right must provide financial provision for progressive rehabilitation, mitigation, decommissioning, closure and post-closure activities ... to ensure the mitigation and rehabilitation of adverse environmental impacts, including latent environmental impacts". Subsection (5) provides that a holder of an environmental authorisation "must annually undertake, as prescribed, the mitigation, remediation and rehabilitation measures".

n) The obligations in section 24P(3) and (4) operate where prescribed, and the instrument which prescribes is GNR 1147. The Environmental Authorisation records that the applicant "has complied with Section 24P" (Annexure **"B"**, Environmental Authorisation, Annexure 1, paragraph (l), internal page 8 of 16). That finding presupposes that a determination was prescribed and was made. The applicant approached the matter on the same footing, Appendix D having been prepared to comply with Appendices 3, 4 and 5 of GNR 1147 (Annexure **"J"**, report page 5, PDF page 12). On that common footing, the determination fell to be made in accordance with regulations 5, 6 and 7 of those regulations, and PTWC's contention is that it was not.

o) What PTWC contends is that the financial provision approved under the Environmental Authorisation was not determined in accordance with regulations 5, 6 and 7 of GNR 1147. The annual rehabilitation figure of R0.00 rests on a factual premise which the project description in the same application contradicts. The latent risk figure of R0.00 rests on a conclusion which the marine specialist's own findings contradict, in circumstances where section 24P(4) requires provision for latent environmental impacts and regulation 5(c) requires provision for residual impacts which may become known in future. The closure figure is costed for work which cannot achieve its stated purpose. A nil annual provision also sits uneasily with the duty in section 24P(5) to undertake mitigation, remediation and rehabilitation measures annually. PTWC records that it is not privy to all the information informing this application, and that if a revised determination exists it has been unable to locate it in the reports as furnished.

p) The relief sought on this ground is relief items 1, 2, 3 and 11.

7. Failure to consider the factors prescribed by the National Environmental Management: Integrated Coastal Management Act 24 of 2008

a) The authorised activity takes place within coastal public property. Section 7(1)(a) of the Integrated Coastal Management Act ("ICMA") provides that coastal public property consists of coastal waters, and section 7(1)(b) that it consists of land submerged by coastal waters, including the substrata beneath such land. "Coastal waters" is defined in section 1 as the internal waters, territorial waters, exclusive economic zone and continental shelf of the Republic, and an estuary. The six concessions lie within coastal waters, extending seaward from the surf zone to approximately 5 km offshore (Annexure "C", report pages 7 and 10, PDF pages 26 and 29), and the Olifants River estuary lies within the project area (Annexure "F", report page 88, PDF page 104). Coastal waters as defined include an estuary, so the estuary itself forms part of coastal public property.

b) Section 2(c) records as an object of the Act the preservation, protection, extension and enhancement of the status of coastal public property as being held in trust by the State on behalf of all South Africans, including future generations. Section 5(1) provides that the Act must, in relation to coastal management, be read, interpreted and applied in conjunction with NEMA, and section 5(2) that it must be regarded as a specific environmental management Act as defined in section 1 of NEMA.

c) Section 21 provides that an organ of state legally responsible for controlling or managing any activity on or in coastal waters must control and manage that activity in the interests of the whole community and in accordance with the Republic's obligations under international law.

d) Section 63(1) provides that where an environmental authorisation in terms of Chapter 5 of NEMA is required for coastal activities, the competent authority must take into account all relevant factors. Four of those factors are set out at paragraph e) below. Two further factors bear directly on this ground and are recorded here. At paragraph (d), the competent authority must take into account the estuarine management plans, coastal management programmes, coastal management lines and coastal management objectives applicable in the area. Section 63(5) requires the competent authority to ensure that the terms and conditions of any environmental authorisation are consistent with any applicable coastal management programmes and promote the attainment of coastal management objectives in the area concerned.

e) The competent authority was obliged to take into account the factors listed in section 63 of the ICMA in addition to the requirements of NEMA and the EIA Regulations. These factors include the following:

i) whether coastal public property will be affected by the activity and, if so, the extent to which the proposed development or activity is consistent with the purpose of establishing and protecting these areas (section 63(1)(c));

ii) if the activity affects coastal public property, whether it is inconsistent with the objective of conserving and enhancing coastal public property for the benefit of current and future generations (section 63(1)(h)(i));

iii) whether the activity would be contrary to "the interests of the whole community" (section 63(1)(h)(vii)); and

iv) the objects of the ICMA (section 63(1)(k)).

f) South Africa's coastal waters form part of the coastal public property. Therefore, the authorised activity will affect coastal public property. Broadly, the above provisions require the competent authority to give specific consideration to the compatibility of a proposed activity with the framework of principles and objectives established by the ICMA.

g) The following provisions of the ICMA are of particular relevance:

i) Coastal public property is vested in the citizens of the Republic and is held in trust and managed on their behalf by the State (section 11).

ii) In performing this function, the State is under a duty to ensure that coastal public property is managed, conserved and enhanced in "the interests of the whole community" and to take whatever reasonable legislative and other measures it considers necessary to conserve and protect coastal public property for the benefit of present and future generations (section 12).

iii) The ICMA is explicit in addressing how the public interest must be construed for purposes of the Act. The term "the interests of the whole community" is defined in section 1 to mean:

[t]he collective interests of the community determined by-

(a) prioritising the collective interests in coastal public property of all persons living in the Republic over the interests of a particular group or sector of society;

(b) adopting a long-term perspective that takes into account the interests of future generations in inheriting coastal public property and a coastal environment characterised by healthy and productive ecosystems and economic activities that are ecologically and socially sustainable; and

(c) taking into account the interests of other living organisms that are dependent on the coastal environment".

iv) In terms of section 7A, coastal public property is established inter alia, to:

aa) protect sensitive coastal ecosystems;

bb) secure the natural functioning of dynamic coastal processes;

cc) protect people, property and economic activities from the risks arising from dynamic coastal processes including the risk of sea-level rise.

h) Thus, the ICMA seeks to ensure the protection of coastal resources and the coastal environment as a public good and to this end: first gives particular prominence to the collective public interest and the interests of other living organisms that are dependent on the coastal environment, and second imposes specific duties on the State. In fulfilling the rights in section 24 of the Constitution, the State, through its functionaries and institutions which implement the ICMA, must act as the trustee of the coastal zone (section 3(a)). In relation to coastal public property (ownership of which vests in the citizens of the Republic but is held in trust by the State on their behalf) the State, in its capacity as the public trustee, must: (a) ensure that coastal public property is used, managed, protected, conserved and enhanced in the interests of the whole community; and (b) take whatever reasonable legislative and other measures it considers necessary to conserve and protect coastal public property for the benefit of present and future generations (section 12).

i) To discharge its duty in the context of the impugned decision, the competent authority would, at minimum, have had to consider:

i) whether the authorised activity would affect coastal public property;

ii) whether the authorised activity is consistent with the objective of conserving, protecting and enhancing coastal public property for the benefit of current and future generations;

iii) whether the authorised activity is likely to cause irreversible or long-lasting adverse effects to the coastal environment that cannot be satisfactorily mitigated;

iv) whether the authorised activity would substantially prejudice any coastal management objective;

v) whether the authorised activity is socially and economically justifiable and ecologically sustainable and consistent with section 24 of the Constitution regarding the interests of future generations in inheriting coastal public property and a coastal environment characterised by healthy and productive ecosystems and economic activities that are ecologically and socially sustainable;

vi) whether the authorised activity is in the interests of other living organisms that are dependent on the coastal environment;

vii) whether granting an environmental authorisation for the authorised activity is consistent with the duties of the decision-maker to conserve and protect coastal public property for the benefit of present and future generations and to ensure that it is used, managed, protected, conserved and enhanced in the interests of the whole community.

j) Section 63 was drawn to the practitioner's attention during the process. In its comments on the Draft Scoping Report dated 2 October 2024, the Department of Environmental Affairs and Development Planning quoted section 63(1)(c) and section 63(1)(h)(i) in terms (Annexure **"G"**, PDF page 5, paragraph 6). In its comments on the Draft Environmental Impact Assessment Report dated 15 July 2025, it reminded the practitioner of the duty of care in section 28 of NEMA read with section 58 of ICMA (Annexure **"G"**, PDF page 23, paragraph 9).

k) The answer given was that the Act does not bite. The Issues and Responses Summary records the practitioner's response: "There are no land-based activities proposed and therefore coastal public property, the coastal protection zone and coastal access will not be affected" (Annexure **"H"**, PDF page 13, response to comment 29). That response is not correct. Coastal public property is not confined to land. Section 7(1)(a) provides that it consists of coastal waters, and the whole of the authorised activity takes place in coastal waters and disturbs the substrata beneath them to a depth of up to 12 m (Annexure **"C"**, report pages 17 and 18, PDF pages 36 and 37).

l) The Environmental Authorisation makes no reference to ICMA. PTWC has searched the whole of it and has been unable to locate any mention of the Act, of coastal public property, of the coastal zone, of any coastal management programme or coastal management objective, or of the interests of the whole community. The reasons for the decision at Annexure 1 record no finding on any of the factors in section 63(1) (Annexure **"B"**, Environmental Authorisation, internal pages 8 and 9 of 16). No condition of the authorisation refers to the Act.

m) The same regional office took a different course five months earlier, in respect of Concession 13B. Site-specific condition 2 of the Environmental Authorisation granted on 20 February 2026 in respect of Sea Concession 13B requires the holder to comply with all applicable legislation, "including but not limited to" the Mineral and Petroleum Resources Development Act, the Integrated Coastal Management Act, the Marine Living Resources Act, the National Heritage Resources Act and applicable international maritime conventions (Annexure **"E"**, internal page 6 of 26). No equivalent condition appears in the Environmental Authorisation under appeal.

n) The Department of Environmental Affairs and Development Planning is the provincial lead agency for coastal management in the Western Cape, and the comments referred to at paragraph j) above were made by it in that capacity. Section 24O(1)(b)(vii) of NEMA requires the competent authority to take into account any comments received from organs of state that have jurisdiction over any aspect of the activity, and section 24O(1)(c) requires it to take into account the comments of any organ of state charged with the administration of any law which relates to the activity in question. Section 24(4)(b)(vii) of NEMA further requires that the procedures for the investigation, assessment and communication of the potential consequences or impacts of activities on the environment include "provision for the adherence to requirements that are prescribed in a specific environmental management Act relevant to the listed or specified activity in question". ICMA is such an Act. Section 1 of NEMA defines "specific environmental management Act" and lists, at paragraph (f) of that definition, the National Environmental Management: Integrated Coastal Management Act, 2008 (Act 24 of 2008). Section 5(2) of ICMA is to the same effect.

o) A failure to take the requirements of ICMA into account is a failure to take a relevant consideration into account.

i) In *Sustaining the Wild Coast NPC v Minister of Mineral Resources and Energy* [2022] ZAECKMKHC 55; [2022] 4 All SA 533 (ECG); 2022 (6) SA 589 (ECMk), the High Court, Makhanda, reviewed and set aside an exploration right and its renewals on three independent grounds, the second of which was that the Minister had failed to take relevant considerations into account under section 6(2)(e)(iii) of PAJA. The requirements of ICMA were among those considerations, and the Court held that the failure to consider them rendered the decisions reviewable (at paragraph 130). The Constitutional Court records the High Court's holding in these terms: "In relation to the ICMA, the High Court found that the ICMA considerations are not only triggered in the event that an environmental authorisation is required. The High Court also found that the Minister was duty-bound to consider the ICMA, particularly in light of the special legal status of the Wild Coast" (*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 at paragraph 44; and see paragraph 91, recording the three independent grounds). The present matter is a stronger case, because here an environmental authorisation under Chapter 5 of NEMA was required and was granted, which is the circumstance in which section 63(1) of ICMA applies in terms.

ii) In *Minister of Mineral Resources and Energy and Others v Sustaining the Wild Coast NPC and Others* [2024] ZASCA 84; 2024 (5) SA 38 (SCA), delivered on 3 June 2024, the Supreme Court of Appeal held that in assessing and granting an application for an exploration right "a number of relevant factors were not considered", including "the requirements of the National Environmental Management: Integrated Coastal Management Act 24 of 2008 (ICMA), which creates specific measures for the protection of the coastal zone" (at paragraph 25). It held that "[i]t is thus clear that there was a failure to take relevant considerations into account and as such the decision is reviewable under s 6(2)(e)(iii) of PAJA" (at paragraph 26). The appeal was dismissed save for the addition of an order suspending the setting aside of the exploration right and its renewals pending determination of a renewal application (at paragraph 32). The Constitutional Court has since recorded that the Supreme Court of Appeal "did not unsettle any of the grounds upon which the High Court found that the impugned decisions were reviewable" (ZACC 33 at paragraph 47).

iii) The Supreme Court of Appeal's judgment was taken on appeal to the Constitutional Court, on the question of remedy. In ZACC 33, delivered on 14 August 2026, the Constitutional Court granted leave to appeal and upheld the appeal against the Supreme Court of Appeal's order. The judgment of Kollapen J, in which Maya CJ, Mathopo J, Mhlantla J, Musi AJ, Theron J and Tshiqi J concurred, is the judgment of the majority; Rogers J, with Savage J concurring, delivered a minority judgment on the question of remedy. The finding that the failure to take ICMA into account rendered the decision reviewable was not itself under appeal. The majority recorded that the Supreme Court of

Appeal had "explicitly endorsed the substantive findings" of the High Court, which had reviewed and set aside the exploration right and its renewals on three independent grounds, one being the failure to take relevant considerations, including the ICMA, into account under section 6(2)(e)(iii) of PAJA (at paragraph 91). The majority held that the Supreme Court of Appeal had erred in characterising most of the defects as a logical corollary of the inadequacy of the consultation process, when "the defects in the impugned decisions extended beyond procedural shortcomings" (at paragraph 92), and that it had "incorrectly conceptualised the deficiencies in the taking of the impugned decisions as consultation-linked" and had failed to consider how its remedy would address "the review grounds that were not consultation-linked", which the Court identified as including "the failure of the decision-maker to take into account climate change considerations and the ICMA" (at paragraph 93(b)). The Constitutional Court set aside the order of the Supreme Court of Appeal and replaced it with an order dismissing the underlying appeal, with the effect that the High Court's order, which had set aside the exploration right and its renewals without the further opportunity to cure that the Supreme Court of Appeal had allowed, stands.

p) That approach has since been applied in a matter concerning an environmental authorisation for offshore exploration drilling. In *Green Connection NPC and Another v Minister of Forestry, Fisheries and the Environment and Others* (5676/2024) [2025] ZAWCHC 349, delivered on 13 August 2025, the Western Cape Division reviewed and set aside an environmental authorisation granted for offshore exploration drilling, and the appeal decision dismissing an appeal against it, on five grounds, one of which was a failure to consider the factors prescribed by ICMA. The matter was remitted to the decision-maker for reconsideration, with directions that the applicant be afforded an opportunity to submit new or amended assessments to cure the deficiencies identified, and that public participation be conducted in regard to those assessments before a decision is taken. In relation to ICMA the Court held as follows:

i) that section 7(1)(a) provides that coastal public property includes the Republic's coastal waters, and that since the proposed project was to take place within those waters it fell within coastal public property and was subject to ICMA (at paragraph 112);

ii) that a failure to consider ICMA renders the decisions at issue reviewable, following the decision of the High Court, Makhanda, referred to at paragraph o)(i) above, which the Court cited at paragraph 130 of that judgment (at paragraph 116);

iii) that the decision under review listed the information considered but made no specific mention of ICMA (at paragraph 117), and that "[e]ven based on a generous reading of the record, I am unable to conclude that the Final EIR, and by extension, the DG, considered ICMA factors. To reach a conclusion that ICMA factors were considered incidentally, there must be some reasoning which relates to ICMA factors, and I have found none" (at paragraph 121);

iv) that a contention that references in the environmental impact report amounted to consideration of the ICMA factors "though under a different rubric" did not assist,

because whether the factors were considered is a matter of fact, and because the references relied on were contained in the report and not in the decision (at paragraphs 118 and 119);

v) that none of the material cross-referenced made any attempt to explain findings or assessments relating to whether coastal public property would be affected, whether the project was inconsistent with the objective of conserving and enhancing coastal public property for the benefit of current and future generations, or whether it would be contrary to the interests of the whole community (at paragraph 120);

vi) that contentions to the effect that the areas of interest do not overlap with any marine protected area, that the report reviewed the critical biodiversity areas and ecologically or biologically significant marine areas, and that the conditions of the authorisation mandate a pre-drilling survey to gather information on seabed habitats, did not amount to an allegation that the decision-makers had considered the ICMA factors, and did not "bear any relation to the ICMA factors" (at paragraph 126);

vii) that ICMA introduces concepts which are not present in NEMA or other aspects of environmental law, by conferring a special legal status on coastal public property which affords the environment a particularly high level of protection, that it creates the concept of the interests of the whole community, "which specifically recognises the need to take into account the interests of other living organisms which are dependent on the coastal environment", and that "ICMA's requirements cannot be satisfied by generic consideration of NEMA" (at paragraph 122); and

viii) that an appeal decision which recorded that "the provisions of the ICMA and section 63 were considered", without identifying any portion of the decision under appeal which considered them and without setting out any findings in respect of them, was "woefully deficient", did not go beyond mere conclusions, did not provide adequate reasons, and itself stood to be reviewed and set aside (at paragraphs 124, 125 and 128 to 129).

q) PTWC records the status of that judgment. On 12 November 2025 the Western Cape Division delivered judgment on applications for leave to appeal brought by the fifth respondent and the state respondents. Leave to appeal was granted in relation to the third and fourth grounds of review only, being the failure to assess the climate change impacts of burning any gas discovered, and the failure to assess the transboundary impacts of the proposed project. The Court recorded that it was not satisfied that the remaining grounds met the requirements of section 17(1) of the Superior Courts Act 10 of 2013, and that the order granted at paragraphs 3 to 5 of the judgment is not affected. By a variation order in terms of Rule 42 delivered on the same date, the order was amended to record that leave to appeal is granted to the Supreme Court of Appeal. The second ground of review, being the failure to consider the factors prescribed by ICMA, is accordingly not the subject of the appeal, and the review and setting aside of the two decisions stands.

r) The failure in the present matter is of the same character, and in one respect goes further. The competent authority made no reference to ICMA. The practitioner did address the question, but answered it by asserting that coastal public property would not be affected because there are no land-based activities, which is wrong on the terms of section 7(1)(a). The record accordingly contains no assessment of whether coastal public property will be affected, no assessment of the extent to which the activity is consistent with the purposes for which coastal public property is established and protected under section 7A, no identification of any estuarine management plan, coastal management programme or coastal management objective applicable to the area, and no consideration of whether the activity would be contrary to the interests of the whole community and no consideration of the objects of the Act, which section 63(1)(k) required to be taken into account.

s) The failure is material for the following reasons:

i) Section 63(1) is peremptory in its terms. It provides that the competent authority "must take into account all relevant factors", and lists them.

ii) The interests of the whole community, as defined, require the interests of future generations and of other living organisms dependent on the coastal environment to be weighed. Those are not considerations which the assessment of impact significance under NEMA supplies, and on the authority referred to at paragraph p)(vii) above they cannot be satisfied by generic consideration of NEMA.

iii) The interests of other living organisms dependent on the coastal environment were, on the record, never considered as such. The Marine Ecology Impact Assessment records that the concession areas fall within the range of several cetacean species, including migratory baleen whales moving between southern feeding grounds and low latitude breeding grounds, and resident odontocetes; that the coastline supports breeding colonies of Cape fur seals; and that threatened seabird species forage in the area, including African penguins, Cape gannets and various cormorants and terns. It records the presence of small pelagic, linefish and rock lobster resources, and of benthic macrofaunal communities whose structure is governed by water depth and sediment grain size (Annexure "F", report pages 37 and 38 and 58 to 65, PDF pages 53 and 54 and 74 to 81). Each of those was assessed under NEMA as a receptor, by rating the significance of the disturbance to it and by identifying mitigation to reduce that rating. None was considered as the holder of an interest which section 63(1)(h)(vii) of ICMA, read with the definition in section 1, required to be weighed in determining whether the activity would be contrary to the interests of the whole community. The two exercises are not the same. An impact rated as being of low significance after mitigation may still be an impact upon an interest which the Act requires to be taken into account, and the Environmental Authorisation records no such consideration.

iv) The receptors at issue include an estuary which the marine specialist places within Concession 12A and which the provincial environmental department records as having an ecosystem threat status of endangered. Section 63(1)(d) required the applicable

estuarine management plan to be taken into account, and no such plan is identified anywhere in the record.

v) Section 63(5) required the competent authority to ensure that the conditions of the authorisation are consistent with applicable coastal management programmes and promote the attainment of coastal management objectives in the area. No coastal management programme or objective is identified in the Environmental Authorisation, so that exercise cannot have been performed.

t) In PTWC's respectful view, the Environmental Authorisation was granted without regard to a mandatory statutory framework governing the authorisation of activities in the coastal zone, and ought to be set aside on that ground.

u) The relief sought on this ground is relief items 1, 2, 3 and 12.

8. Authorisation of prospecting within a pelagic fish recruitment and nursery area

a) The Fisheries Impact Assessment records that the concessions are situated inshore of spawning areas but overlap recruitment areas for small pelagic species (Annexure "K", Fisheries Impact Assessment, report page 38, PDF page 39), and that the concession area is situated within nursery areas of many of these species (Annexure "K", report page 89, PDF page 90). It records that, given the prevailing wind conditions within the concession area, the sediment plume may move shoreward and towards sensitive nursery areas, and that the mortality and damage of larvae through abrasion, extended time in larval forms, and increased risk of predation could significantly reduce the recruitment potential of fish and invertebrate species within the concession area (Annexure "K", report pages 89 to 90, PDF pages 90 to 91). Having so recorded, the assessment rates the impact on fish recruitment as of very low consequence and of overall insignificance by reason of the localised nature of the proposed sampling events in relation to fish nursery areas, and proposes no mitigation (Annexure "K", Table 5.4, report page 90, PDF page 91).

b) The EIA Report records that the principal objective of prospecting is to identify and quantify potential mineral resources within the precinct, to evaluate whether it would be viable to mine and possibly beneficiate such resources (Annexure "C", report page 7, PDF page 26).

c) Section 24O(1)(b) of NEMA requires the competent authority to take into account all relevant factors, which may include any pollution, environmental impacts or environmental degradation likely to be caused if the application is approved or refused. Regulation 18 of the EIA Regulations, 2014 requires the competent authority, when considering an application, to have regard to section 24O and section 24(4) of the Act and to the need for and desirability of the undertaking of the proposed activity. Section 2(4)(a)(vi) of NEMA requires that the development, use and exploitation of renewable resources and the ecosystems of which they are part do not exceed the level beyond which their integrity is jeopardised. Section 2(4)(a)(vii) requires that a risk-averse and cautious approach be applied, which takes into account the limits of current knowledge about the consequences of decisions and actions.

d) Prospecting should not be authorised where it initiates a development pathway that threatens nationally significant fisheries resources. As the appeal authority, the Department of Forestry, Fisheries and the Environment must consider the foreseeable consequences of authorising prospecting within an ecologically significant pelagic fish recruitment and nursery area, especially since the stated purpose is to establish the feasibility of future commercial seabed mining. Available scientific evidence, including DFFE pelagic recruit surveys, indicates that the proposed concession areas directly overlap with critical recruitment grounds. In the Benguela marine ecosystem, these pelagic resources perform a vital ecological role as a primary food source for a range of predatory species including marine mammals, fish, turtles, and the Critically Endangered African Penguin. Typically, these pelagic fish recruit in the northern region of the Benguela Current before moving south in dense shoals confined to nearshore marine waters. This environmental significance is further underscored by historical and increasing scientific support for an anchovy nursery area north of 32°30'S, which facilitates the northward migration of larger larvae.⁴ The convergence of these vital recruitment and nursery grounds within the targeted concession areas highlights the ecological and economic importance of these nearshore waters to the broader pelagic fishery.

e) The authorisation of prospecting within a broader area identified as a pelagic fish recruitment and nursery ground raises concerns regarding the coherence and effectiveness of measures adopted to arrest the decline of the Critically Endangered African Penguin (*Spheniscus demersus*). In *BirdLife South Africa and Another v Minister of Forestry, Fisheries and the Environment and Others (2024-029857) [2025] ZAGPPHC 264* (18 March 2025), through the court-ordered settlement that secured fishing closures around key penguin colonies, the need for an integrated and precautionary response to the multiple and interacting pressures contributing to the species' decline was recognised. The purpose of those closures is to improve penguins' access to their principal prey, sardine and anchovy. That objective cannot reasonably be pursued in isolation from the ecological processes that sustain the availability and replenishment of those prey populations.

f) Permitting prospecting and other mining activities within a recognised pelagic fish recruitment area therefore introduces a potentially significant additional pressure into the very system upon which the effectiveness of the island-closure measures depends. Viewed cumulatively, this risks creating a situation in which one arm of government policy seeks to restore penguin access to prey through spatial restrictions on fishing, while another decision permits activities in areas critical to the replenishment and productivity of that prey base. Such an approach would be difficult to reconcile with the integrated, precautionary and science-based conservation response contemplated by the court order and by NEMA. The appeal authority is respectfully requested to consider the prospecting authorisation not as a discrete activity, but within the broader cumulative impact framework governing the recovery of the African Penguin.

g) Aside from being keystone species in the marine food web, these pelagic fish support commercially and culturally important fisheries, including the pelagic and snoek fisheries. These resources also underpin employment and economic activity, as well as food security and

⁴ Shelton & Hutchings, 1982; Boyd & Hewitson, 2010.

livelihoods in coastal communities. The South African Pelagic Fishing Industry Association states that the small pelagic fishing industry contributes approximately R5.5 billion in sales to the South African economy. A recent peer-reviewed study reports that nearly 5 000 people were directly employed in the South African small pelagic fishery, with more than 10 000 estimated to be employed directly and indirectly, the authors indicating that employment fluctuates with stock status.⁵ The economic, social and cultural value of the snoek fishery, which preys on small pelagics, to small-scale fishing communities on the west and south coast of South Africa has been highlighted in various publications and in a recent legal case.⁶ The record also identifies a direct exclusion effect on the same fisheries. The Final Environmental Impact Assessment Report records, as potential impact F1, that the proposed survey and sampling activities will create temporary exclusion zones affecting access to fishing grounds, and that the 500 m safety zone around the survey and sampling vessels will restrict vessel movement in those areas (Annexure "C", report page 101, PDF page 120). The operations recorded as affected include the pelagic purse-seine vessels targeting small pelagic species and the traditional and commercial line fishery (Annexure "C", report page 102, PDF page 121).

h) The potential effects of prospecting activities themselves, together with the broader consequences of the development trajectory they may initiate, must be assessed in the context of scientific uncertainty regarding the ecological sensitivity, spatial extent and functional importance of these recruitment grounds and nursery habitats, and their response to physical disturbance. The relevant inquiry therefore extends beyond the immediate or project-level effects of prospecting to the foreseeable implications of facilitating a pathway towards potentially extensive seabed mining, including risks to pelagic recruitment success, nursery habitat integrity, population dynamics, trophic interactions, ecosystem productivity and, ultimately, fisheries yield and associated socio-economic benefits.

i) This requires consideration not only of direct impacts, but also of the opportunity costs and cumulative effects of introducing an extractive use into an area supporting renewable marine resources. The proposed prospecting right must be considered alongside existing and proposed mining and prospecting activities and the Marine Spatial Planning process currently under way. Authorising exclusive prospecting rights in these circumstances risks creating legal and commercial interests in future extraction before the strategic suitability of mining in the area has been determined. Given the potentially significant ecological and socio-economic values at stake, and the uncertainty regarding cumulative impacts on fisheries productivity and ecosystem functioning, it is incumbent upon the appeal authority, in accordance with the risk-averse and cautious approach required by NEMA, to avoid initiating a development pathway where significant environmental harm remains uncertain but potentially serious.

j) The failure is accordingly that the record before the competent authority identified the concession areas as recruitment and nursery grounds for small pelagic species, identified sediment plume movement into those grounds as a mechanism capable of significantly reducing recruitment potential, and then rated that impact as insignificant on the basis of the localised

⁵ Cochrane et al., 2019.

⁶ Isaacs, 2013; *Adams & Others v Minister of Mineral Resources and Energy & Others*, 1306/22.

nature of individual sampling events, without proposing any mitigation and without assessing the consequence for recruitment success at the level of the stock, the fishery or the dependent predator populations. PTWC understands that it is not privy to all the information informing this application and can only raise queries on what it has seen and been able to analyse. It may be that the applicant holds information not presently available to PTWC that would assist in clarifying the matters raised, and PTWC raises these concerns in that spirit.

k) The failure is material because the recruitment and nursery function of the area is what connects the authorised activities to a national fishery, to the food base of a Critically Endangered species, and to the livelihoods of coastal communities. Where the compatibility of future mining with the ecological functions and socio-economic values of the area has not been demonstrated, authorising prospecting would be premature and inconsistent with the precautionary approach required by NEMA. It is respectfully submitted that the competent authority did not take into account all relevant factors as required by section 24O(1)(b) of NEMA read with regulation 18 of the EIA Regulations, 2014, and did not apply the risk-averse and cautious approach required by section 2(4)(a)(vii) of NEMA, and that the decision falls to be set aside on that basis.

l) Relief. PTWC relies on this ground in support of relief items 1, 2, 3 and 10.

9. Failure to consider the need for and desirability of the proposed activity

a) Regulation 18 of the Environmental Impact Assessment Regulations, 2014, as amended by GN R326 of 2017, provides that when considering an application the competent authority must have regard to section 24O and section 24(4) of NEMA, "the need for and desirability of the undertaking of the proposed activity", the requirements of those Regulations, and any relevant guideline published in terms of section 24J of NEMA. Appendix 3, item 3(f) of the Regulations requires an environmental impact assessment report to contain a motivation for the need and desirability of the proposed development, including the need and desirability of the activity in the context of the preferred location.

b) In *Fuel Retailers Association of Southern Africa v Director-General Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province and Others* [2007] ZACC 13; 2007 (6) SA 4 (CC) ("*Fuel Retailers*") the Constitutional Court set aside an environmental authorisation where the environmental authorities had not themselves considered the need and desirability of the proposed activity, having assumed that the question was disposed of by another authority under a different statute. The Court held that they had misconstrued the nature of their obligations, and that this fact alone was sufficient to warrant the setting aside of the decision (paragraphs 84 to 86). It held further that where an authority relies on material generated for another purpose which it has neither seen nor read, that amounts to an unlawful delegation of its own duty (paragraph 88). What section 24 of the Constitution requires, and what NEMA gives effect to, is that socio-economic development must be justifiable in the light of the need to protect the environment (paragraph 79).

c) *Fuel Retailers* indicates that the following considerations ought to inform the enquiry into need and desirability:

- i) environmental decisions must balance environmental and socio-economic developmental considerations through the concept of sustainable development;
- ii) the need for development must be determined by its impact on the environment, by sustainable development, and by social and economic interests;
- iii) environmental authorities must integrate these factors into their decision-making; and
- iv) unsustainable developments are inherently detrimental to the environment, especially if they entail potential threats to the environment.

d) Put simply, the evaluation of need and desirability is concerned with whether the broader public need that the activity in question proposes to address justifies the environmental risks or impacts that would accompany it, and whether authorising the activity concerned represents an appropriate balancing of developmental and environmental considerations. That is the enquiry which PTWC contends was not undertaken in this matter, either by the environmental assessment practitioner or by the competent authority.

e) The Final Environmental Impact Assessment Report addresses need and desirability at section 7.2 (Annexure "C", report pages 131 to 134, PDF pages 150 to 153). That section sets out the correct approach. It records that the principles in NEMA guide the interpretation of "need" but do not conceive need as synonymous with the general purpose and requirements of the project, that the latter might relate to the applicant's project motivation, while need relates to the interests and needs of the broader public (Annexure "C", report page 131, PDF page 150).

f) Having stated that distinction, the report then discharges the need enquiry by cross-reference to the applicant's motivation. Section 7.2 records that the need of the project in terms of motivation for the project is discussed in section 2.3, and that the desirability in terms of the different environmental aspects is discussed below (Annexure "C", report page 132, PDF page 151). Section 2.3 is headed "Proponent's Project Motivation" and records that the proponent's motivation is to identify and quantify potential mineral resources within the precinct, to evaluate whether it would be viable to mine and possibly beneficiate such resources (Annexure "C", report page 10, PDF page 29). The remainder of section 7.2 addresses desirability alone, under the headings social aspects, economic aspects and ecological aspects, and resolves each by reference to the impact significance ratings arrived at in the assessment (Annexure "C", report pages 132 to 134, PDF pages 151 to 153).

g) On the report's own framework, the need enquiry, being the enquiry into the interests and needs of the broader public, was therefore not undertaken. What was undertaken was an assessment of the applicant's motivation for the project, coupled with an assessment of whether the impacts of the project are acceptable. Neither answers the question the regulation poses, and neither performs the balancing which *Fuel Retailers* requires. An assessment which resolves desirability by reference to the significance ratings it has itself arrived at cannot weigh

the development against the need to protect the environment, because it has already treated the environmental side of that weighing as satisfied.

h) The competent authority's finding on the point is a single sentence. Annexure 1 to the Environmental Authorisation records, under the heading "Findings", that "[t]he need and desirability of the project was outlined in detailed" (Annexure "B", EA internal page 8 of 16). The reasons for the decision contain no other reference to need or to desirability. They record no consideration of what public need the activity meets, no consideration of the opportunity cost of authorising prospecting in this location, and no engagement with the guideline material the assessment itself identifies as applicable, being the Department of Environmental Affairs Guideline on Need and Desirability (2017) and the Department of Environmental Affairs and Development Planning guideline series, both recorded at section 3.5 of the report (Annexure "C", report page 37, PDF page 56).

i) A finding that a matter "was outlined" is a finding about the presence of material in the applicant's report. It is not a finding on the matter itself. Regulation 18 requires the competent authority to have regard to the need for and desirability of the undertaking of the activity, which requires that the authority form and record a view on it, and *Fuel Retailers* requires that the authority integrate the environmental, social and economic factors into that view rather than adopt the applicant's account of them.

j) The failure is material. Need and desirability is the enquiry through which the strategic question is reached, namely whether the activity should be undertaken in this location at all, as distinct from whether its impacts can be mitigated once it is. That question carries particular weight where the stated purpose of the activity is to evaluate whether it would be viable to mine, and where the areas concerned are mapped as Critical Biodiversity Areas in respect of which the report itself records that the sea-use guidelines proscribe destructive prospecting (Annexure "C", report page 134, PDF page 153). Had the enquiry been undertaken, the competent authority would have had before it a reasoned assessment of the public interest in authorising the activity, weighed against the opportunity cost of doing so. That question was put to the applicant by the affected community itself. The Focus Group Meeting Notes record that the community asked about the absence of benefit to Doringbaai from three decades of mining, and about Trans Hex dealing with the municipality rather than with the community (Annexure "N", PDF page 2). PTWC includes among its members and advisers people who live on this stretch of coastline, and what they observe is that the towns along it have not, over that period, seen the benefit which the need enquiry assumes will follow. Whether that is so is the question regulation 18 required the competent authority to form a view on. It formed none, and the material which would have informed it was on the record in the applicant's own appendix.

k) In consequence, it is respectfully submitted that the competent authority did not have regard to the need for and desirability of the undertaking of the proposed activity as required by regulation 18 of the EIA Regulations, 2014, and did not undertake the balancing exercise required of it, and that the decision falls to be set aside on that basis.

l) The relief sought on this ground is relief items 2 and 3.

10. Failure to afford the affected communities a reasonable opportunity to participate, and reliance on an attendance record which the applicant's own reports record as having been destroyed

a) This ground is raised for the first time in this revised submission. PTWC records the reason. The Constitutional Court delivered judgment 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 on 14 August 2026, three days after this appeal was lodged on 11 August 2026. The extension granted to PTWC permits the filing of this submission by 31 August 2026 (Annexure "R"). The ground rests principally on material in the applicant's own reports, which PTWC has re-examined in the light of that judgment.

b) The activity authorised is prospecting, and the impacts assessed are those of prospecting alone. The Final Environmental Impact Assessment Report records that the objective of the prospecting is "to evaluate whether it would be viable to mine and possibly beneficiate such resources" (Annexure "C", report page 7, PDF page 26). Section 19(1)(b) of the Mineral and Petroleum Resources Development Act 28 of 2002 confers on the holder of a prospecting right, subject to section 19(2), the exclusive right to apply for and be granted a mining right in respect of the mineral and prospecting area in question. This ground is advanced on the footing that the consultation conducted at the prospecting stage is the consultation which determines the terms on which these communities enter, or do not enter, the process which may end in mining over the waters they fish.

c) The communities concerned are Doringbaai, Papendorp and Ebenhaeser. Doringbaai lies on the coastline adjacent to Concessions 13A and 13B. Papendorp and Ebenhaeser lie inland, upstream of the mouth of the Olifants River, and their fishers fish the estuary and launch from Doringbaai to fish the coastal waters in which the authorised prospecting is to take place. The Socio-economic Impact Assessment records that many of the small-scale fishers of Ebenhaeser and Papendorp are estuarine gill net fishers (Annexure "T", report page 58, PDF page 68). These fishers hold rights and permits over the waters concerned, and have fished this stretch of coastline for generations. Their catch is directly connected to the ecological function of the concessions. The Fisheries Impact Assessment records that in relation to Concessions 13A and 13B vessels operate from Doring Bay and Strandfontein, that catches from those launch points are reported to be within 5 km of the shore, and that catches within the concession area are exclusively snoek (Annexure "K", report page 54, PDF page 55). The same report records that snoek is the main predator of anchovy and sardine, exercising direct top-down control on those prey species (Annexure "K", report page 54, PDF page 55, footnote 9). It separately records the concession areas as overlapping recruitment areas for small pelagic species and as situated within nursery areas of many of those species (Annexure "K", report pages 38 and 89, PDF pages 39 and 90). The small pelagic fishery is a commercial purse-seine fishery and these communities do not participate in it. What connects them to it is the fish they do catch. What is at stake for those communities in this application is accordingly not an abstract environmental interest. It is the basis on which they live.

d) The public participation process conducted during the impact assessment phase comprised the following, as recorded in the Final Environmental Impact Assessment Report:

i) a thirty day comment period commencing on 12 June 2025, with comments due by 14 July 2025 (Annexure "C", report page 85, PDF page 104);

ii) a focus group meeting held with small-scale fishers, representatives of small-scale fishing cooperatives and community members from Papendorp, Ebenhaeser and Doringbaai at the Miriam Owies Community Hall, Doringbaai, on 2 July 2025 at 10h00 (Annexure "C", report page 85, PDF page 104; Annexure "N", PDF page 1); and

iii) two public open days, at the Ebenhaeser Community Hall on 1 July 2025 and at the Miriam Owies Community Hall, Doringbaai, on 2 July 2025, each from 15h30 to 18h30 (Annexure "C", report page 86, PDF page 105; Annexure "M", PDF pages 36 and 37).

iv) A request by small-scale fishers from Ebenhaeser that a separate focus group meeting be held in Ebenhaeser was declined. The response to comment 120 in the Issues and Responses Summary records that the environmental assessment practitioner engaged telephonically with small-scale fishers from Ebenhaeser on 27 June 2025 to follow up on the invitations, that "there was a request to hold a separate Small-Scale Fishers Focus Group Meeting in Ebenhaeser, to which it was indicated that they should come to the Public Open Day in Ebenhaeser", and that "[n]o Small-Scale Fishers attended the Public Open Day in Ebenhaeser" (Annexure "H", PDF page 61).

e) The Final Environmental Impact Assessment Report records the attendance at each of those three events. Of the focus group meeting it records that the meeting "was attended by ~45 stakeholders" (Annexure "C", report page 85, PDF page 104). Of the open days it records that the Ebenhaeser open day "was attended by ~10 stakeholders", and that the Doringbaai open day "was attended by ~four stakeholders" (Annexure "C", report page 86, PDF page 105). Those are the figures on which the competent authority was invited to be satisfied that the affected communities had been consulted.

f) The attendance register for the Ebenhaeser open day of 1 July 2025 records ten signatures (Annexure "M", PDF page 36). Six of the ten record an affiliation to the applicant, to the environmental assessment practitioner or to the specialist team engaged by them:

i) Sam Leyde and Yakira Naina, each recorded as SRK.

ii) Elza Klopper, recorded as Trans Hex.

iii) Sarah Wilkinson, Llewellyn Lewis and Chris Heinecken, each recorded as CapMarine. Appendix B7 identifies Mr Heinecken as "a fisheries specialist from CapMarine, the company that conducted the Fisheries Impact Assessment Specialist Study", and identifies Ms Wilkinson and Mr Lewis as his colleagues from that company (Annexure "N", PDF page 1). Ms Wilkinson is the author of the Fisheries Impact Assessment relied on in this application (Annexure "C", Table 4-1, report page 40, PDF page 59). The

remaining four signatories record their capacity as "private" or record no organisation. The figure of approximately ten stakeholders recorded in the Final Environmental Impact Assessment Report accordingly counts the applicant's own team, its environmental assessment practitioner and the author of one of the four specialist studies among the stakeholders said to have attended. On the register as it stands, four members of the public attended the Ebenhaeser open day.

g) The attendance register for the Doringbaai open day of 2 July 2025 records four signatures (Annexure "M", PDF page 37), being Thesmé van Zyl of the Matzikama Municipality, recorded as Environmental Officer; Suzanne du Plessis of the Strandfontein Ratepayers Association; Peter Owies, recorded as Environmental Educator; and Louis Africaner, recorded as small-scale fishing. One of the four is a municipal official. Three are members of the public, one of whom records a small-scale fishing capacity.

h) As to the focus group meeting of 2 July 2025, the position appears from the applicant's own reports as follows:

i) The Focus Group Meeting Notes record, under the heading "Present", "See Attendance Register attached as Appendix 1", and carry a footnote to that entry reading: *"Note that between 40 and 50 people attended the meeting, however one stakeholder became angered and ordered other attendees to leave the meeting and had the attendance registers removed and torn up. Only one of the four pages was recovered, See Appendix 1"* (Annexure "N", PDF page 1, footnote 1).

ii) The same notes record that the meeting "ended at approximately 11h30, when one stakeholder became angered and ordered other attendees to leave the meeting" (Annexure "N", PDF page 2).

iii) The single recovered page is reproduced at Appendix 1 to those notes (Annexure "N", PDF page 4) and again in Appendix B6 (Annexure "M", PDF page 51). It records sixteen names. The whole of the documentary record of who attended the focus group meeting is that one page.

i) The two reproductions of that page carry different accounts of what occurred. The reproduction at Annexure "N", PDF page 4 carries the caption quoted at paragraph h)(i) above, recording that the registers were "removed and torn up". The reproduction at Annexure "M", PDF page 51 carries the following caption: *"Note that between 40 and 50 people attended the meeting, and there were four pages of attendance registers. However one stakeholder ordered other attendees to remove the attendance registers upon leaving. Only one of the four pages was recovered"*. The scan is the same scan of the same register, for the same meeting, at the same hall, on the same date and at the same time. The two captions are not the same account. The first records that the registers were torn up. The second omits the tearing and reframes the removal as an instruction given to other attendees on their way out. PTWC does not know which of the two accounts is correct, and makes no contention as to which is. What PTWC contends is that the applicant's own reports give two different accounts of the destruction of the only record

of who was consulted, and that neither the environmental assessment practitioner nor the competent authority reconciled them. The response to comments 108 and 120 give a third account of the meeting. Each records that “[t]he Small Scale Fishers Focus Group Meeting in Dorinbair on 2 July 2025 was well attended and effective in providing a platform for the fishers and community members to voice their concerns and ask questions” (Annexure “H” pdf page 49 and 61). The response to comment 120 adds that “an individual stakeholder disrupted the meeting and demanded that the meeting be adjourned after approximately 1.5 hours.” The response to comment 108 omits the ending of the meeting entirely. Neither response mentions the attendance register.

j) The consequence of the destruction is not in dispute on the record. The figure of approximately 45 stakeholders recorded at Annexure “C”, report page 85, and the range of between 40 and 50 people recorded in both captions, are unsupported by any document. Three of the four pages do not exist. What exists is one page bearing sixteen names. Neither the Final Environmental Impact Assessment Report nor the Focus Group Meeting Notes records how the estimate of 40 to 50 was arrived at, whether a count was taken, or by whom. PTWC understands that it is not privy to all the information informing this application and can only raise queries on what it has seen and been able to analyse. If a record of the attendance at the focus group meeting other than the single recovered page exists, PTWC has been unable to locate it in the reports as furnished.

k) Regulation 42 of the EIA Regulations, 2014 requires an applicant to ensure the opening and maintenance of a register of interested and affected parties, and to submit that register to the competent authority. The register must contain the names, contact details and addresses of, among others, *“all persons who, as a consequence of the public participation process conducted in respect of that application, have submitted written comments or attended meetings with the proponent, applicant or EAP”* (regulation 42(a)). Attendance at a meeting with the applicant or the environmental assessment practitioner is accordingly one of the two events which, of itself, obliges the applicant to capture a person's particulars and place them on the register. The attendance register circulated at the meeting is the means by which those particulars are captured, and it is for that reason that the regulation requires names, contact details and addresses rather than a headcount. On the applicant's own account, the particulars of between approximately 24 and 34 people who attended the focus group meeting of 2 July 2025 were recorded on the three pages which were destroyed. Those particulars were not carried onto the register from those pages, because the pages no longer exist. Whether any of those attendees were already registered from an earlier step in the process cannot be determined, and cannot now be determined by anyone, because the document which recorded who they were has been destroyed. What PTWC contends is that the applicant is not in a position to demonstrate compliance with regulation 42(a) in respect of the persons who attended that meeting, and that the competent authority was in no better position when it took the decision.

l) The destruction of the register was raised in writing, during the comment period, by a registered interested and affected party who had attended the Doringbaai open day the same day. Comment 92 in the Issues and Responses Summary is recorded against Suzanne du

Plessis of the Strandfontein Ratepayers Association and is dated 14 July 2025 (Annexure "H", PDF pages 38 to 39). It runs across both pages and raises, in sequence, poor attendance at the September 2024 scoping open day; the absence of transport for participants in rural areas without a bus or regular taxi service; the failure to hold a meeting in Afrikaans; the recording of comments in reports and plans under regulation 44(1); the position of participants who lack the skills to read or write, of participants with disabilities, and of participants without access to digital information; and then the following:

"By ignoring requests and insisting on Focus groups led to attendees being upset; in tearing up the Attendance Register only serves to show their frustration of not being heard and their comments and requests refuted."

m) The response recorded against that comment does not answer it. It runs the full length of Annexure "H", PDF pages 38 and 39, and records that *"SRK is confident that the public participation process complied with and exceeded the requirements of Chapter 6 of the EIA Regulations, 2014"*; that stakeholders were added to the database throughout the process and were informed of the open days and focus group meetings by email or SMS, with chairpersons of fishing cooperatives and influential community members contacted telephonically; that discussions at the open days are not recorded in the Issues and Responses Summary and that stakeholders were requested to submit comments in writing; that meetings were arranged in both Doringbaai and Ebenhaeser to shorten travel distances; that a stakeholder inquired about transport and was told it could be arranged and paid for but responded that it was too late notice, although notice had been provided eighteen days prior; that an Afrikaans translation of the executive summary was distributed and Afrikaans printouts of the posters were available; that two Afrikaans speaking fisheries specialists accompanied SRK; and that *"SRK is committed to running a transparent EIA process and agrees that meaningful stakeholder engagement is fundamental to an EIA process"*. Nowhere in that response is the destruction of the attendance register addressed. No corrected attendance figure is offered. No explanation is given for the difference between the two captions. The response asserts that the process exceeded the requirements of Chapter 6, and leaves standing, unanswered, the comment that the record of who attended had been destroyed by the people who attended.

n) The concern was also raised by other registered interested and affected parties, and by appellants against this same decision. PTWC relies on the following not as proof of the facts asserted by those parties, but as showing what was independently placed on the record:

i) Peter Owies signed the attendance register for the Doringbaai open day of 2 July 2025 (Annexure "M", PDF page 37) and is recorded at Table 5-4 of the Final Environmental Impact Assessment Report as having submitted written comment on 14 July 2025 (Annexure "C", report page 86, PDF page 105). He has lodged his own appeal against this Environmental Authorisation, in which he contends under the heading "Inadequate Consultation" that affected communities, small-scale fishers, tourism operators, educators and recreational users were not meaningfully consulted, and that the socio-economic and educational impacts were not properly assessed (Annexure "O", PDF pages 4 to 5). His attendance is recorded in the applicant's own appendix.

ii) Suzanne du Plessis, the author of comment 92, has likewise lodged her own appeal, in which she contends under the heading "Public Participation" that an enhanced public participation process should have occurred, that two separate applications for two different forms of extraction were dealt with together at the open days in a manner apt to create confusion, and that the meeting was conducted in English with an Afrikaans translator when it should have been conducted in Afrikaans, which is the language the community speaks (Annexure "P", PDF pages 6 to 7).

iii) Andre Cloete, the Western Cape Provincial Chairperson of Coastal Links, has lodged an appeal in which he contends under the heading "Inadequate public participation" that he did not attend any meeting with the environmental assessment practitioner because he received no notification of the meetings, that sufficient effort was not made to ensure that those most affected by the operations were in attendance, and that small-scale fishers are rights holders in the concession areas rather than merely interested and affected parties, whose existing rights should have been engaged with directly (Annexure "Q", PDF pages 6 to 7).

iv) A total of 11 appeals have been lodged against this Environmental Authorisation, of which this is one. Regulation 4(4)(a) of the National Appeal Regulations, 2025 requires an applicant to notify, and make a copy of the appeal available to, registered interested and affected parties within 5 calendar days of the expiry of the 20 day period in regulation 4(1). That period expired on Tuesday 11 August 2026, for the reasons set out in the Timing section above. Reckoned in accordance with regulation 1(2) from Wednesday 12 August 2026, the fifth day fell on Sunday 16 August 2026 and the period was accordingly extended to Monday 17 August 2026. The appeals were circulated on 19 August 2026. No copy was served on PTWC, which is and has at all material times been a registered interested and affected party in respect of this application, and PTWC obtained copies from other interested and affected parties. PTWC records this because it bears on how the copies came to be before the appeal authority in this submission, and not as a ground of appeal. PTWC does not ask the appeal authority to accept the contents of those appeals. What PTWC asks the appeal authority to note is their number, the fact that several are lodged by individual small-scale fishers and community organisations from Doringbaai, Ebenhaeser and Papendorp, and the fact that inadequate consultation is raised in more than one of them by people whose attendance at the applicant's own meetings is recorded in the applicant's own appendices.

o) The legal obligations relied on are the following:

i) Section 24(4)(a)(v) of NEMA provides that procedures for the investigation, assessment and communication of the potential consequences or impacts of activities on the environment must ensure, with respect to every application for an environmental authorisation, "public information and participation procedures which provide all interested and affected parties, including all organs of state in all spheres of government that may have jurisdiction over any aspect of the activity, with a reasonable opportunity to participate in those information and participation procedures".

ii) Section 2(1)(c) of NEMA provides that the principles set out in section 2 serve as guidelines by reference to which any organ of state must exercise any function when taking any decision in terms of the Act. Section 2(4)(f) provides that "[t]he 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". Section 2(4)(g) provides that "[d]ecisions 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".

iii) Regulation 40(2) of the EIA Regulations, 2014 requires that the public participation process provide access to all information that reasonably has or may have the potential to influence any decision with regard to an application, and include consultation with all potential or, where relevant, registered interested and affected parties.

iv) Regulation 41(6)(b) of the EIA Regulations, 2014 requires that the person conducting the public participation process ensure that "participation by potential or registered interested and affected parties is facilitated in such a manner that all potential or registered interested and affected parties are provided with a reasonable opportunity to comment on the application or proposed application".

v) Regulation 42 of the EIA Regulations, 2014 requires the applicant to ensure the opening and maintenance of a register of interested and affected parties and to submit that register to the competent authority, which register must contain the names, contact details and addresses of, among others, all persons who as a consequence of the public participation process have submitted written comments or attended meetings with the proponent, applicant or environmental assessment practitioner.

vi) Regulation 44(1) of the EIA Regulations, 2014 requires the applicant to ensure that the comments of interested and affected parties are recorded in reports and plans, and that such written comments, including responses to them and records of meetings, are attached to the reports and plans submitted to the competent authority.

vii) Appendix 3(3)(h)(ii) of the EIA Regulations, 2014 requires an environmental impact assessment report to contain "details of the public participation process undertaken in terms of regulation 41 of the Regulations, including copies of the supporting documents and inputs". Appendix 3(3)(h)(iii) requires "a summary of the issues raised by interested and affected parties, and an indication of the manner in which the issues were incorporated, or the reasons for not including them".

viii) Section 24O(1)(b)(vi) of NEMA requires the competent authority to take into account information contained in the application form, reports, comments, representations and other documents submitted in terms of the Act in connection with the application.

ix) Regulation 41(2)(e) of the EIA Regulations, 2014 requires the person conducting the public participation process to give notice to all potential interested and affected parties "using reasonable alternative methods, as agreed to by the competent authority, in those instances where a person is desirous of but unable to participate in the process due to (i) illiteracy; (ii) disability; or (iii) any other disadvantage". The identification of a method of participation appropriate to the community concerned is accordingly a duty imposed by the Regulations on the person conducting the process, and not a matter of professional preference.

p) As to the standard by which the adequacy of consultation falls to be measured, PTWC relies on *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, delivered on 14 August 2026. The judgment of Kollapen J, in which Maya CJ, Mathopo J, Mhlantla J, Musi AJ, Theron J and Tshiqi J concurred, is the judgment of the majority. Rogers J, with Savage J concurring, delivered a minority judgment. The matter concerned an exploration right granted under section 79 of the MPRDA for offshore oil and gas exploration off the Wild Coast, and the consultation conducted with the coastal communities affected by it. The following bears on this ground:

i) The Court recorded that NEMA is the central umbrella environmental legislation in South Africa, that a primary purpose of the Act is to establish principles guiding organs of state in making decisions that may affect the environment, and that those principles include the principle that the environment is held in public trust for the people and the need to avoid discriminating against vulnerable and disadvantaged persons. It recorded that NEMA "ensures that decisions take into account the interests, needs and values of all interested and affected parties", citing section 2(4)(b) and (g) (at paragraph 28).

ii) The Court recorded that the environmental authorisation protocol under section 24 of NEMA includes procedural requirements, "including an obligation to ensure that every application has 'public information and participation procedures which provide all interested and affected parties . . . with a reasonable opportunity to participate in those information and participation procedures'", citing section 24(4)(a)(v) (at paragraph 29). That is the provision engaged in the present matter.

iii) The Court recorded the High Court's finding that meaningful consultation "entails providing communities with the necessary information on the proposed activities and affording them an opportunity to make informed representations", and that consultation with a representative figure cannot stand in for consultation with the community itself (at paragraph 36).

iv) The Court recorded the High Court's holding that "the fact that the communities might have had little or nothing to say regarding whether or not the exploration right should be granted is not germane to the enquiry whether the communities were entitled to meaningful consultation", and that meaningful consultation consists in "engaging in a

genuine, bona fide substantive two-way process aimed at achieving, as far as possible, consensus" (at paragraph 41).

v) The Court recorded that the Supreme Court of Appeal agreed that the public consultation process was "more illusory than real [and] was thus manifestly inadequate", and that the Supreme Court of Appeal "did not unsettle any of the grounds upon which the High Court found that the impugned decisions were reviewable" (at paragraph 47).

q) The Constitutional Court then addressed, in its own reasoning, whether a fresh consultation could cure a consultation that had been inadequate at the outset. It held that it could not:

i) "However, consultation is not merely about the opportunity to express a view or influence an outcome. On a more fundamental level, regardless of whether input has any effect, it is a process which affirms human dignity by affording a seat at the table to those whose lives are impacted by decisions. It affirms the agency of affected communities and their status as participants rather than obstacles in decisions that profoundly affect their land, culture and livelihoods" (at paragraph 131).

ii) In the context of extractive industries, the Court held, the enquiry "cannot be reduced to a formal balancing exercise that treats cultural, religious, spiritual and environmental concerns as merely competing interests against economic development", and it is "ahistorical to place these interests on equal footing, given the long history of dispossession and marginalisation of coastal communities whose relationships with land and sea have often been subordinated to commercial extraction". The Court held that although job creation is a legitimate consideration, "it cannot be assumed to be inherently beneficial without asking who receives those jobs, how secure they are and what social, ecological and cultural costs the affected communities are expected to bear", and that in that context the communities' constitutionally protected rights "are given practical force through procedural duties of meaningful consultation, participation and respect for their cultural and spiritual relationship with the environment" (at paragraph 132).

iii) As to the sufficiency of a later consultation, the Court held: "To tell communities, more than a decade after the fact, that they may now be consulted, is not curative. It says to them that the violation of their rights was not a matter of substance but rather a matter of process. Requiring a consultation to be conducted now does not vindicate the right to be consulted at the outset and does not vindicate the infringement of the applicant communities' right to dignity" (at paragraph 133).

r) PTWC records the respects in which the present matter differs from *Sustaining the Wild Coast*, so that the appeal authority is not asked to accept a parallel which does not hold. That matter concerned consultation under sections 79 to 81 of the MPRDA, not the public participation requirements of Chapter 6 of the EIA Regulations, 2014. The remedial question before the Constitutional Court arose more than a decade after the impugned decision, and the passage at paragraph 133 was addressed to a delay of that length. The scale of exclusion

found in that matter, being thousands of community members, is not the scale contended for here. What PTWC contends carries across is the standard, being that consultation must be a genuine two-way process which affords the affected community itself, and not a proxy for it, the information and the opportunity to make informed representations; that the adequacy of consultation is not answered by asking whether the community's input would have changed the outcome; and that where the affected community is a coastal community whose livelihood and cultural life are bound to the sea, the procedural duty is the mechanism through which the substantive rights are given effect.

s) The failure is that the affected communities were not afforded a reasonable opportunity to participate, and that nothing they know, hold or fear about these waters entered the assessment. The particulars are as follows, and PTWC records that the numerical difficulties set out at sub-paragraphs i) to iii) below are relied on not for their own sake but because they are the measure of how little was in fact before the competent authority:

i) The competent authority was told that approximately 45 stakeholders attended the focus group meeting with the small-scale fishing communities of Papendorp, Ebenhaeser and Doringbaai. The supporting document for that figure, being the attendance register required by regulation 44(1) to be attached to the reports submitted to the competent authority and by Appendix 3(3)(h)(ii) to be included as a supporting document, exists as to one page of four. That page records sixteen names. The competent authority had no means of verifying the figure it was given, and nothing in the Environmental Authorisation or in the reasons recorded at Annexure 1 to it discloses that it noticed the difficulty (Annexure "B", Environmental Authorisation, Annexure 1, internal pages 8 and 9 of 16).

ii) The competent authority was told that approximately ten stakeholders attended the Ebenhaeser open day. Six of the ten signatories are the applicant, its environmental assessment practitioner and the author of one of the four specialist studies relied on in the assessment. The figure as presented does not distinguish between the people conducting the consultation and the people being consulted.

iii) The particulars of between approximately 24 and 34 people who attended a meeting with the applicant and the environmental assessment practitioner were destroyed. Those particulars were required by regulation 42(a) to be carried onto the register of interested and affected parties and submitted to the competent authority. To the extent that they were not recovered from another source, those people did not become registered interested and affected parties, were not notified of subsequent steps, and are not among the 28 stakeholders recorded at Table 5-4 as having submitted written comment (Annexure "C", report page 86, PDF page 105).

iv) The destruction of the register was put in writing to the environmental assessment practitioner by a registered interested and affected party within the comment period, in a comment which also raised language, transport, literacy and disability. The response asserted that the process complied with and exceeded Chapter 6, and did not deal with

the destruction of the register at all. Appendix 3(3)(h)(iii) requires an indication of the manner in which issues raised were incorporated, or the reasons for not including them. Neither was given.

v) The competent authority nonetheless recorded, at Annexure 1, paragraph 1(e) to the Environmental Authorisation, that the results of the public participation process show that the concerns raised by interested and affected parties and by the authorities "were addressed by the Applicant in the EIA and EMPR" (Annexure "**B**", Environmental Authorisation, Annexure 1, internal page 8 of 16). The duty to satisfy itself that Chapter 6 had been complied with rested on the competent authority, and on the material before it there was nothing on which it could have been so satisfied in respect of the focus group meeting.

vi) The competent authority had directed that consultation be extended to these communities. Comment 122 in the Issues and Response Report records that a letter from the DMPR accepting the Scoping Report, dated 11 December 2024, recorded at item 3 that "[y]ou are requested to extend consultation to the fishing and coastal communities around the area", as recorded at comment 122 in the Issues and Responses Summary (Annexure "**H**", PDF page 62). The response did not dispute that the requirement had been given. The one event held with those communities in the impact assessment phase ended after an hour and a half, the request for a further meeting in the community which did not attend had been declined a week before it, and no further engagement with those communities is recorded in the Final Environmental Impact Assessment Report.

vii) The consequence is that the knowledge those communities hold did not enter the assessment. The Fisheries Impact Assessment records, among the assumptions and limitations of the study at section 1.6, that "[s]mall-scale fishers are not required to report fishing positions therefore the mapping of the spatial extent of fishing grounds used by this sector is less accurate than that of the commercial sectors", and that "[f]ishing areas have been inferred from the spatial distribution of commercial sectors which share targeted fish stocks" (Annexure "**K**", report page 13, PDF page 14). When that limitation was put to the practitioner during the comment period, the response recorded that in the absence of fine-scale resolution of catch data "the study assumed the entirety of the concession areas was fishable", and relied, as evidence of meaningful engagement with small-scale fishers, on engagement conducted in connection with applications for offshore oil and gas exploration and facilitated by a third party, which is not engagement conducted in respect of this application (Annexure "**H**", PDF page 62). The inference was not corrected by asking the fishers where they fish.

viii) The practitioner knew, before the Final Environmental Impact Assessment Report was submitted, that the process had not achieved what it was convened to achieve. The meeting was held on 2 July 2025. The comment period closed on 14 July 2025. Comments 108, 120 and 122 were received within that period and stated in terms that the fishing communities of Ebenhaeser, Papendorp and Doringbaai had not been

meaningfully consulted, that fishers had not been asked where they fish, what species they harvest or which areas they regard as critical, and that local knowledge had not been integrated into the assessment (Annexure "H", PDF pages 47 to 50, 61 and 62). Regulation 41(2)(e) required the person conducting the process to use reasonable alternative methods where a person is desirous of but unable to participate, regulation 41(6)(b) required that participation be facilitated so as to provide a reasonable opportunity to comment, regulation 40(2) required consultation with all registered interested and affected parties, and section 2(4)(f) of NEMA required that participation by vulnerable and disadvantaged persons be ensured. Having been told before finalising the report that the one event directed at these communities had produced nothing, and having already declined the alternative method those communities themselves proposed, the practitioner did not return to them. No further engagement with the small-scale fishing communities of Ebenhaeser, Papendorp or Doringbaai is recorded in the Final Environmental Impact Assessment Report or in Appendices B1, B5, B6 or B7 to it, and PTWC has been unable to locate any in the reports as furnished. The report was finalised, and the comments were answered by the assertion that the process complied with and exceeded the requirements of Chapter 6.

t) The failure is material for the following reasons:

i) The focus group meeting was the single event in the whole of the impact assessment phase directed specifically at the small-scale fishers and the fishing cooperatives of Papendorp, Ebenhaeser and Doringbaai. It is the event on which any contention that those communities were consulted must rest. Of the two open days, the register records four members of the public at the first and three at the second. If the focus group meeting is set aside, what remains on the record is seven members of the public across two open days.

ii) The meeting did not run its course. On the applicant's own account it ended at approximately 11h30, an hour and a half after it began, when a stakeholder became angered and ordered other attendees to leave. Whatever the merits of what occurred, a meeting which ends in that manner did not produce what the consultation was convened to produce, being the concerns, views and knowledge of the affected communities in a form capable of being recorded, assessed and answered in the Final Environmental Impact Assessment Report. On the standard recorded at paragraph p)(iv) above, that is not a genuine, bona fide substantive two-way process. The applicant's own record of the meeting shows that the community's questions on the Social and Labour Plan, on the absence of benefit to Doringbaai from three decades of mining, and on Trans Hex dealing with the municipality rather than with the community, were answered and the meeting then broke up (Annexure "N", PDF page 2). What PTWC contends is that a process which produced that outcome, and then produced no record of who was present, cannot support a finding that the affected communities were afforded a reasonable opportunity to participate within the meaning of section 24(4)(a)(v) of NEMA and regulation 41(6)(b) of the EIA Regulations, 2014. The applicant's account attributes the ending of the meeting to the conduct of a single individual. That is not the only

account on the record. Comment 92 records that "[b]y ignoring requests and insisting on Focus groups led to attendees being upset", and that the tearing up of the register "only serves to show their frustration of not being heard and their comments and requests refuted" (Annexure "H", PDF pages 38 to 39). Comment 120 records that fishers and community members from Doringbaai attended the meeting on 2 July 2025 "but were very upset about the proposals and consultation and information sharing was not possible" (Annexure "H", PDF page 61). PTWC does not ask the appeal authority to prefer one account over another, and does not contend that any individual acted improperly. What PTWC contends is that on every account before the competent authority, including the applicant's own, the meeting ended without the affected communities having conveyed their concerns in a form capable of being recorded, assessed and answered, and that the reason it ended is contested on the record and was never investigated.

iii) The destruction of the register is itself evidence bearing on the adequacy of the process. PTWC does not ask the appeal authority to make any finding as to the conduct of any individual. What PTWC contends is that the destruction of an attendance register by the people whose attendance it recorded, at a meeting convened to consult them, is not consistent with the account given in the response to comment 92, which is that the process complied with and exceeded the requirements of Chapter 6. The comment which put that point to the environmental assessment practitioner put it in exactly those terms, recording that the tearing up of the register served to show the frustration of those present at not being heard. That characterisation may be right or wrong. It was placed on the record, it was not answered, and the competent authority was left with the practitioner's assurance and nothing else.

iv) The people whose participation was at stake are the people identified in the assessment itself as bearing the socio-economic impact of the authorised activity. Section 2(4)(f) of NEMA requires that participation by vulnerable and disadvantaged persons be ensured, and section 2(4)(g) requires that decisions take into account the interests, needs and values of all interested and affected parties, recognising all forms of knowledge including traditional and ordinary knowledge. The small-scale fishers of this coastline hold knowledge of these waters which exists nowhere in the four specialist studies, all of which were conducted at a desktop level or from commercial fishing data. The mechanism by which that knowledge was to reach the competent authority was the consultation process, and the record of that consultation is one page.

v) The number of appeals lodged against this decision, and the fact that inadequate consultation is raised in several of them by named individuals whose attendance is recorded in the applicant's own appendices, is a matter the appeal authority is respectfully asked to weigh in assessing whether the process achieved what Chapter 6 requires of it.

vi) The practitioner declined to obtain the material which the consultation would have produced. The response to comment 110 records that "[c]onsidering the limited

anticipated impacts to small-scale fishers, a cultural heritage impact assessment specific to small-scale fishers was not deemed to be necessary" (Annexure "H", PDF page 50). The limited anticipated impacts relied on for that conclusion are the impact ratings arrived at in an assessment which had not obtained the fishers' account of where they fish, what they catch, or which areas they regard as critical. The reason given for not gathering the information is the conclusion reached without it.

vii) The persons not consulted are not merely interested and affected parties. The small-scale fishers of Doringbaai, Papendorp and Ebenhaeser hold fishing rights and permits over the waters in which the authorised activity is to take place, allocated under the Marine Living Resources Act 18 of 1998 and held through community cooperatives, as the Fisheries Impact Assessment records (Annexure "K", report page 67, PDF page 68). A person whose existing right is exercised in the same waters as the authorised activity stands in a different position from a member of the public with a general interest in the outcome. That distinction was put to the appeal authority by another appellant, Andre Cloete of Coastal Links, in the terms recorded at paragraph n)(iii) above. What PTWC contends is that the holder of a right over the area in question is entitled to be consulted about an activity authorised over that area, that the consultation conducted did not achieve that, and that the practitioner was aware of it before the report was finalised.

u) PTWC understands that it is not privy to all the information informing this application and can only raise queries on what it has seen and been able to analyse. It may be that the applicant holds a record of the attendance at the focus group meeting which is not among the reports as furnished, and PTWC raises these concerns in that spirit. What PTWC contends is that if such a record exists, it was not before the competent authority, because it does not appear in Appendix B1, Appendix B6 or Appendix B7 to the Final Environmental Impact Assessment Report.

v) In the premises, and in PTWC's respectful submission, the public participation process did not afford the affected communities a reasonable opportunity to participate as required by section 24(4)(a)(v) of NEMA and regulation 41(6)(b) of the EIA Regulations, 2014, the record placed before the competent authority did not comply with regulations 42 and 44(1) or with Appendix 3(3)(h)(ii) and (iii), and the competent authority could not lawfully have been satisfied on that record that the requirements of Chapter 6 had been met. The Environmental Authorisation ought not to have been granted.

w) The relief sought on this ground is relief items 1 and 2. PTWC records that on this ground it does not seek the remittal contemplated by relief item 3, and does not ask that a further public participation process be directed. For the reasons given by the Constitutional Court at paragraph 133 of *Sustaining the Wild Coast*, a consultation conducted now, after the authorisation has been granted and after these communities have had to appeal in order to be heard, would not vindicate the right to be consulted before the decision was taken. The applicant is not precluded from applying afresh and consulting properly at the outset. What the applicant should not be permitted to do is to retain an authorisation obtained on a consultation record of this quality and to repair the record afterwards.

11. Failure to assess the impacts of the authorised activities on the identified Ecologically or Biologically Significant Areas and on the transboundary Benguela Current Large Marine Ecosystem

a) The Final Environmental Impact Assessment Report identifies two Ecologically or Biologically Significant Areas ("EBSAs") within and overlapping the precinct. Section 4.3.3 records that the precinct falls within the transboundary Benguela Upwelling System EBSA, and that Marine Concessions 11A and 11B overlap in the north with the southern portion of the Namaqua Coastal Area EBSA (Annexure "C", report page 55, PDF page 74). The Benguela Upwelling System EBSA is described in that section as characterised by very high primary production, as globally unique in being the only cold-water upwelling system bounded in the north and south by warm-water current systems, and as including important spawning and nursery areas for fish as well as foraging areas for threatened vertebrates such as sea and shorebirds, turtles, sharks and marine mammals. The Namaqua Coastal Area EBSA is described as characterised by high productivity and biomass along its shores, as important for several threatened ecosystem types represented there, including two endangered and four vulnerable ecosystem types, and as important for the conservation of estuarine areas and coastal fish species.

b) The applicant's marine specialist records the same overlap. The Marine Ecology Impact Assessment describes both EBSAs in its baseline (Annexure "F", report page 93, PDF page 109) and, in its summary of the features of the concessions, records that there is overlap of Concessions 11A, 12A and 13A with the Benguela Upwelling System transboundary EBSA and the Namaqua Coastal Area EBSA (Annexure "F", report page 106, PDF page 122), and that there is overlap of Concessions 11B, 12B and 13B with the Benguela Upwelling System transboundary EBSA, with Concession 11B overlapping the Namaqua Coastal Area EBSA (Annexure "F", report page 107, PDF page 123).

c) The report addresses the Benguela Current Convention separately, at section 3.4.1, under the heading "Benguela Current Convention 1994" (Annexure "C", report page 35, PDF page 54). It records that the Convention is a multilateral environmental agreement aimed at the sustainable management and protection of the Benguela Current Large Marine Ecosystem, which spans the coasts of Angola, Namibia and South Africa, and that its components include ecosystem-based management, the conservation of marine biodiversity and the protection of vulnerable species and habitats within the Benguela Current region, pollution control, research and monitoring, cooperation and coordination among member states to address transboundary environmental issues and implement joint management strategies, and capacity building.

d) That is where the treatment of both matters ends. The EBSAs are identified in the abbreviation list, described in the baseline at section 4.3.3, shown on Figure 4-10 and repeated in the marine specialist's summary of features. PTWC has been unable to locate any assessment of the impacts of the proposed activities on either EBSA in section 6 of the report, which contains the impact assessment, in section 6.6, which contains the cumulative impact assessment, or in section 7, which contains the evaluation and principal findings. The Benguela

Current Convention is not referred to again after section 3.4.1. PTWC has likewise been unable to locate any reference to either EBSA, to the Benguela Current Convention, or to the Republic's obligations under international law in the Marine Ecology Impact Assessment beyond the baseline and summary passages cited above, in the Fisheries Impact Assessment, in the Socio-economic Impact Assessment or in the Marine Heritage Impact Assessment.

e) The Environmental Authorisation contains no reference to either EBSA, to the Benguela Upwelling System, to the Benguela Current Convention or to transboundary effects of any description. The reasons for the decision at Annexure 1 to the Environmental Authorisation record no consideration of any of them (Annexure "B", Environmental Authorisation, internal pages 8 to 10 of 16).

f) The exclusion of the EBSAs from the prospecting area was recommended to the applicant by an organ of state, and the recommendation was answered by a cross-reference to a response dealing with a different instrument:

i) Comment 60 in the Issues and Responses Summary is recorded against the Directorate: Biodiversity and Coastal Management of the Western Cape Department of Environmental Affairs and Development Planning, and is dated 2 October 2024. It records that the precinct falls within the transboundary Benguela Upwelling System EBSA, with Marine Concessions 11A and 11B overlapping in the north with the southern portion of the Namaqua Coastal Area EBSA, and states in terms that it is recommended that the prospecting area exclude the mentioned EBSAs (Annexure "H", PDF page 29).

ii) The response recorded against that comment reads, in its entirety, "See response to comment 33 above" (Annexure "H", PDF page 29).

iii) Comment 33 is a comment submitted by PTWC on 10 October 2024, and concerns the encroachment of the prospecting extent into a conservation area. The response to comment 33 addresses the overlap between the concessions and areas proposed as CBA 1 and CBA 2 in the National Coastal and Marine Spatial Biodiversity Plan, records that the plan and its sea-use guidelines are in effect draft documents requiring further stakeholder engagement, and concludes that the sea-use guidelines are non-binding (Annexure "H", PDF pages 14 to 15).

iv) A recommendation by an organ of state that the prospecting area exclude two identified EBSAs was accordingly answered by a passage about the draft status of a different instrument, being the National Coastal and Marine Spatial Biodiversity Plan. The EBSAs are not identified by the Plan. They are identified by the Benguela Current Commission and its member states, as the report itself records at section 4.3.3. The response does not address the recommendation, does not give reasons for departing from it, and does not record that it was considered and rejected.

g) The legal obligations relied on are the following:

- i) Section 24(4)(a)(iv) of NEMA provides that procedures for the investigation, assessment and communication of the potential consequences or impacts of activities on the environment must ensure, with respect to every application for an environmental authorisation, "investigation of the potential consequences for or impacts on the environment of the activity and assessment of the significance of those potential consequences or impacts".
- ii) Regulation 23(3) of the EIA Regulations, 2014 requires an environmental impact report to contain all information set out in Appendix 3 to those Regulations. Appendix 3, item 3(i) requires a full description of the process undertaken to identify, assess and rank the impacts the activity will impose on the preferred location through the life of the activity, including a description of all environmental issues and risks identified and an assessment of the significance of each. Appendix 3, item 3(j) requires an assessment of each identified potentially significant impact and risk, including its cumulative impacts, its nature, significance and consequences, its extent and duration, the probability of it occurring, the degree to which it can be reversed, the degree to which it may cause irreplaceable loss of resources, and the degree to which it can be mitigated.
- iii) Regulation 16(3)(c) of the EIA Regulations, 2014 requires that any report, plan or document submitted as part of an application take into account any applicable government policies and plans, guidelines, environmental management instruments and other decision making instruments that have been adopted by the competent authority in respect of the application process or the kind of activity which is the subject of the application, and indicate how the relevant information has been considered, incorporated and utilised.
- iv) Section 21 of the National Environmental Management: Integrated Coastal Management Act 24 of 2008 provides that an organ of state that is legally responsible for controlling or managing any activity on or in coastal waters must control and manage that activity "(a) in the interests of the whole community; and (b) in accordance with the Republic's obligations under international law". The concessions lie in coastal waters and the competent authority is the organ of state responsible for controlling the activity authorised in them.
- v) Section 2(1) of NEMA provides that the principles set out in that section apply throughout the Republic to the actions of all organs of state that may significantly affect the environment, that they serve as guidelines by reference to which any organ of state must exercise any function when taking any decision in terms of the Act, at section 2(1)(c), and that they guide the interpretation, administration and implementation of the Act and of any other law concerned with the protection or management of the environment, at section 2(1)(e). Section 2(4)(a)(vii) requires that a risk-averse and cautious approach be applied, which takes into account the limits of current knowledge about the consequences of decisions and actions. Section 2(4)(a)(viii) requires that negative impacts on the environment and on people's environmental rights be anticipated and prevented and, where they cannot altogether be prevented, be

minimised and remedied. Section 2(4)(l) requires intergovernmental co-ordination and harmonisation of policies, legislation and actions relating to the environment. Section 2(4)(n) requires that global and international responsibilities relating to the environment be discharged in the national interest.

vi) Section 24O(1)(b)(vi) of NEMA requires the competent authority to take into account information contained in the application form, reports, comments, representations and other documents submitted in terms of the Act in connection with the application.

vii) Section 231(2) of the Constitution provides that an international agreement binds the Republic after it has been approved by resolution in both the National Assembly and the National Council of Provinces, and section 231(3) provides that an international agreement of a technical, administrative or executive nature, or one which does not require ratification or accession, binds the Republic without such approval. Section 232 provides that customary international law is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament. Section 233 provides that when interpreting any legislation every court must prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law. The Benguela Current Convention is an international agreement binding on the Republic, and its cooperative and ecosystem-based framework was accordingly relevant to the assessment and determination of this application. PTWC does not contend that the Convention is law in the Republic in the sense contemplated by section 231(4). What PTWC contends is that the Republic is bound by it, and that the obligations it creates are given direct application to this decision by section 21(b) of the Integrated Coastal Management Act, set out at sub-paragraph iv) above, which makes the Republic's obligations under international law the standard by which the control and management of activities in coastal waters falls to be measured. Neither the assessment nor the decision engaged with that standard at all.

h) The failure is one of assessment and not of identification. The report identifies both EBSAs, describes their ecological importance, records that one of them is transboundary, and records the existence of a multilateral agreement directed at the ecosystem within which the precinct falls. Having done so, it does not assess the nature, extent, duration, intensity or significance of the potential impacts of the authorised activities on those areas, does not consider whether the impacts of an activity within a transboundary ecosystem may extend beyond the immediate project area, and does not explain how the proposed activity or the proposed mitigation measures accord with the cooperative and ecosystem-based framework it has itself set out at section 3.4.1. The identification of a receptor is the beginning of an assessment. It is not the assessment.

i) It is anticipated that it may be said in answer that the EBSAs carry no legal status, the report having recorded at section 4.3.3 that they currently carry no such status (Annexure "C", report page 55, PDF page 74). That answer does not meet the ground, for four reasons. The first is that section 24(4)(a)(iv) of NEMA and Appendix 3, item 3(j) of the EIA Regulations, 2014 require the assessment of impacts on the environment, and are not confined to areas carrying a legal

designation. The second is that the ecological attributes recorded at section 4.3.3, being the spawning and nursery areas, the foraging areas for threatened vertebrates and the endangered and vulnerable ecosystem types, exist as a matter of fact and are not a function of designation. The third is that the obligation relied on does not derive from the designation. The Benguela Upwelling System is a transboundary ecosystem, the Republic is bound by an international agreement directed at its cooperative and ecosystem-based management, and section 21(b) of the National Environmental Management: Integrated Coastal Management Act 24 of 2008 requires the organ of state controlling activities in coastal waters to do so in accordance with the Republic's obligations under international law. That obligation is unaffected by whether the areas mapped within that ecosystem presently carry a domestic legal status. The fourth is that the exclusion of these areas was recommended by an organ of state exercising a coastal management function, and section 24O(1)(b)(vi) of NEMA required the competent authority to take that comment into account.

j) The deficiency also bore on public participation. Regulation 41(6)(a) of the EIA Regulations, 2014 requires the person conducting the public participation process to ensure that information containing all relevant facts in respect of the application is made available to potential interested and affected parties. Where the assessment placed before interested and affected parties identifies two areas of recognised ecological sensitivity but does not disclose the nature, extent and significance of the potential effects of the authorised activities on them, those parties cannot evaluate the conclusion reached or comment on appropriate avoidance and mitigation measures. PTWC and other parties were left to comment on an assessment which the report had not undertaken.

k) The failure is material. The competent authority was not placed in possession of the information required to make a properly informed decision under section 24O of NEMA in respect of two areas which the applicant's own report and the applicant's own specialist identify as falling within, and overlapping, the precinct. Had the assessment been undertaken, the competent authority would have had before it an assessment of the effect of five years of intermittent geophysical survey, vibracore, drill and bulk sampling on a system the report describes as globally unique, and a reasoned answer to the recommendation by the provincial environmental department that the EBSAs be excluded from the prospecting area. It had neither.

l) In consequence, it is respectfully submitted that the Final Environmental Impact Assessment Report did not comply with section 24(4)(a)(iv) of NEMA, with regulation 16(3)(c) of the EIA Regulations, 2014, or with regulation 23(3) of those Regulations read with Appendix 3, items 3(i) and 3(j), that the competent authority did not take into account relevant considerations as required by section 24O(1)(b) of NEMA, and that in failing to assess or consider the transboundary effects of the authorised activities the decision was not taken in accordance with section 21 of the National Environmental Management: Integrated Coastal Management Act 24 of 2008, read with sections 231, 232 and 233 of the Constitution. The decision falls to be set aside on that basis.

m) The relief sought on this ground is relief items 2, 3 and 13.

12. Failure to assess the socio-economic impacts on the affected small-scale fishing communities on the evidence gathered by the applicant's own specialist

a) The socio-economic baseline in the Final Environmental Impact Assessment Report is at section 4.4 (Annexure "C", report pages 61 to 69, PDF pages 80 to 88). It presents municipal-level statistics for the Matzikama Local Municipality and the West Coast District Municipality, including population, unemployment and housing figures, and sectoral contributions to the municipal economy at Table 4-5 (Annexure "C", report pages 63 to 64, PDF pages 82 to 83). At section 4.4.8.1 it records that there are 2 748 registered small-scale fishers in the Western Cape, and that the communities closest to the precinct with registered small-scale fishers are Doringbaai with 88 fishers, Papendorp with 11, Ebenhaeser with 58 and Lutzville Wes with 158, being 315 in all (Annexure "C", report page 66, PDF page 85). It records that small-scale fishers fish to meet food and basic livelihood needs, but may also be involved in fishing for commercial purposes.

b) The Socio-economic Impact Assessment prepared for the applicant by Sustainable Development Africa records materially more than the baseline in the report reflects. At section 6.2.1.2 the specialist records the following, gathered from focus group discussions and key informant interviews with the affected communities:

i) that small-scale fishers derive their livelihood from fishing, which was usually considered insufficient to meet basic needs, and that other sources of income include piecework, state grants and employment in the services sector (Annexure "T", report page 58, pdf page 68);

ii) that one key informant stated that about 90 per cent of the households in Doringbaai depended on fishing or other marine resources, and that it is their main livelihood (Annexure "T", report page 58, pdf page 68);

iii) that income derived from fishing supports the provision of basic needs including food, education and health, and that having no income is the biggest threat and fuels the high rate of school dropouts as parents do not have money to pay for transport to schools (Annexure "T", report page 58, pdf page 68);

iv) that small-scale fishers in focus group discussions attributed reduced numbers of fish and other marine living resources in part to inshore and offshore mining activities in the marine concession areas of 13A and the southern part of 12A, especially adjacent to Doringbaai and Papendorp, that they had witnessed decreases in snoek, rock lobster and other finfish catches, and that rock lobster is now caught only at night because of mining activities during the day (Annexure "T", report page 58, pdf page 68).

c) None of that material appears in the socio-economic baseline in the Final Environmental Impact Assessment Report, and none of it is reflected in the assessment of the impact on the small-scale fishing sector. The impact is assessed at section 6.4.2.2 and rated at Table 6-19

(Annexure "C", report pages 106 to 107, PDF pages 125 to 126). The intensity of the impact is rated as low. The report's own rating methodology defines low intensity as meaning that site-specific and wider natural or social functions and processes are "negligibly altered" (Annexure "C", Table 6-1, report pages 89 to 90, PDF pages 108 to 109). A finding that the social functions and processes of a community in which one informant put household dependence on marine resources at about 90 per cent will be negligibly altered is a finding which the specialist's own record does not support, and which the report does not attempt to reconcile with that record.

d) The essential mitigation measures for that impact are the notification of fishing industry associations and named stakeholders, and the issuing of daily navigational warnings through the South African Naval Hydrographic Office (Annexure "C", Table 6-19 and section 6.4.4, report pages 107 to 108, PDF pages 126 to 127). No measure requires the monitoring of catch rates before or during operations, no compensation or livelihood restoration mechanism is proposed, and no trigger is provided by which the predicted post-mitigation rating may be verified as having eventuated. What those measures do to the rating is apparent from the table itself. Comparing the ratings before and after mitigation, the extent remains local, the intensity remains low, the duration remains medium-term and the consequence remains very low. The only rating that moves is the probability, from probable to possible, and under the report's own Table 6-4 that single movement is what converts a significance rating of very low into a rating of insignificant (Annexure "C", Table 6-4, report page 90, PDF page 109). The mitigation proposed does not reduce the effect of the authorised activities on the fishers. It reduces the assessed likelihood of that effect occurring, and it does so by means of notifying industry associations.

e) The impact of the authorised activities on cultural and spiritual attachment is identified and then dismissed. Section 6.4.2.3 records that the sea is a significant component of the sense of place of Papendorp, Strandfontein, Doringbaai and surrounds, shaping the visual landscapes, providing livelihoods through fishing and influencing cultural identities, and that it enables several recreational activities and holds spiritual significance for the local communities, contributing to their unique character and way of life. The report then concludes that no mitigation is possible or necessary, and Table 6-20 records the essential mitigation measures as "None" (Annexure "C", report page 107, PDF page 126). No reasons are given for that conclusion, and no record of engagement with the affected communities on the question is identified.

f) The cumulative assessment of socio-economic impacts is confined in a manner the record does not justify. Table 6-24 lists the projects and stressors considered in the cumulative impact analysis, and identifies the common valued ecosystem components as marine habitats and ecosystems, marine fauna, fisheries and cultural heritage resources (Annexure "C", report page 115, PDF page 134). No socio-economic valued ecosystem component appears in that table. The report records in the same passage that cumulative impacts are only assessed for valued ecosystem components on which the project has a potential significant impact, with the result that the low ratings arrived at in the project-specific assessment operate to curtail the cumulative enquiry. Section 6.6.3.3, headed "Cumulative Socio-Economic Impacts", then addresses two mechanisms only, being temporary exclusion from fishing grounds and noise

effects on catch rates, and concludes that significant cumulative impacts are only expected if simultaneous surveys take place in relatively close proximity or shortly after each other, which is deemed unlikely at present (Annexure "C", report page 119, PDF page 138). The section does not assess the cumulative effect on the livelihoods of the affected communities over the life of the project, which the report elsewhere records as extending intermittently over a period of up to five years, of the authorised activities together with the shore-based and surf zone diamond mining adjacent to Concessions 11A, 12A and 13A which Table 6-24 itself lists as an ongoing stressor sharing the fisheries valued ecosystem component. Nor does it assess the compounding interaction between reduced catch and disrupted coastal activity on the same four communities. That omission is the more difficult to explain because the applicant's own specialist recorded that those communities attribute past declines in catch to mining activity in the very concessions in issue.

g) The report is internally inconsistent as to the one positive rating it records, and the inconsistency runs into the material the decision-maker was directed to:

i) Table 6-18 rates the significance of increased employment, income and skills development as very low positive before optimisation and low positive after optimisation (Annexure "C", report page 106, PDF page 125).

ii) Section 7.1.1 records that the predicted socio-economic benefits, being increased employment, income and skills development, "are rated as low" (Annexure "C", report page 126, PDF page 145).

iii) Table 7-1, which the report describes as summarising the potentially significant impacts and their significance ratings before and after mitigation and optimisation, records the rating after optimisation as medium (Annexure "C", report page 124, PDF page 143).

iv) Section 7.1.3, headed "Principal Findings", and introduced as reducing the decision factors to the key points which the authorities should consider, records at item 7 that the benefits of increased employment, income and skills development "are deemed to be of medium significance" (Annexure "C", report page 131, PDF page 150).

v) The elevation from low to medium is nowhere explained. It is also difficult to reconcile with the substantive assessment, which records that the vessels require a highly skilled crew, that limited new direct employment opportunities will therefore be created, and that indirect employment is expected to be slightly strengthened (Annexure "C", section 6.4.2.1, report page 106, PDF page 125). The optimisation measure on which the elevation depends refers to a corporate social responsibility programme including, by way of example, scholarships to vocational training centres or internships for members of the affected communities. It sets no minimum number of beneficiaries, no budget, no timeframe, no local employment target and no enforceable outcome, and it is not carried into any condition of the Environmental Authorisation.

h) The legal obligations relied on are the following:

i) Section 2(4)(i) of NEMA provides that "[t]he social, economic and environmental impacts of activities, including disadvantages and benefits, must be considered, assessed and evaluated, and decisions must be appropriate in the light of such consideration and assessment".

ii) Section 2(4)(b) of NEMA provides that "[e]nvironmental management must be integrated, acknowledging that all elements of the environment are linked and interrelated, and it must take into account the effects of decisions on all aspects of the environment and all people in the environment by pursuing the selection of the best practicable environmental option".

iii) Section 2(4)(c) of NEMA provides that "[e]nvironmental justice must be pursued so that adverse environmental impacts shall not be distributed in such a manner as to unfairly discriminate against any person, particularly vulnerable and disadvantaged persons". Section 2(1)(a) provides that the principles apply alongside all 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 categories of persons disadvantaged by unfair discrimination.

iv) Section 2(4)(a)(iii) of NEMA requires that the disturbance of landscapes and sites that constitute the nation's cultural heritage is avoided or, where it cannot be altogether avoided, is minimised and remedied. Section 2(4)(r) requires that sensitive, vulnerable, highly dynamic or stressed ecosystems, such as coastal shores, estuaries, wetlands and similar systems, receive specific attention in management and planning procedures, especially where they are subject to significant human resource usage and development pressure.

v) Regulation 23(3) of the EIA Regulations, 2014 requires an environmental impact report to contain all information set out in Appendix 3. Appendix 3, item 3(h)(iv) requires the environmental attributes associated with the development footprint alternatives, focusing among other things on the social and economic aspects. Item 3(h)(v) requires the impacts and risks identified, including their nature, significance, consequence, extent, duration and probability. Item 3(h)(vi) requires the methodology used in determining and ranking them. Item 3(h)(vii) requires the positive and negative impacts that the proposed activity will have on the environment and on the community that may be affected. Item 3(h)(viii) requires the possible mitigation measures that could be applied and the level of residual risk. Item 3(j)(i) requires an assessment of each identified potentially significant impact and risk including cumulative impacts, and item 3(j)(vii) requires an assessment of the degree to which the impact and risk can be mitigated. Item 3(k) requires, where applicable, a summary of the findings and recommendations of any specialist report complying with Appendix 6 and an indication

as to how those findings and recommendations have been included in the final assessment report.

vi) Section 24O(1)(b)(vi) of NEMA requires the competent authority to take into account information contained in the application form, reports, comments, representations and other documents submitted in terms of the Act in connection with the application.

i) The failures contended for are accordingly these. A rating of low intensity, defined as meaning that social functions and processes are negligibly altered, was applied to communities whose dependence on marine resources the applicant's own specialist recorded in terms, and that specialist material was not carried into the baseline or the assessment in the Final Environmental Impact Assessment Report, contrary to Appendix 3, items 3(h)(iv) and 3(k). Administrative notification of industry associations was treated as mitigation of an acknowledged livelihood impact, when on the report's own tables it altered only the assessed probability of the impact occurring, contrary to Appendix 3, items 3(h)(viii) and 3(j)(vii). An identified cultural and spiritual impact was dismissed without reasons. The cumulative assessment excluded socio-economic conditions as a valued ecosystem component altogether and confined itself to two mechanisms, contrary to Appendix 3, item 3(j)(i). And the summary and principal findings placed before the competent authority recorded a benefit at a rating higher than the assessment which generated it, without explanation.

j) The failures are material, and their effect on the decision is apparent on the face of the Environmental Authorisation. The reasons for the decision record, under the heading "Findings", that "[t]he Socio-economic Impact Assessment was compiled, stated that the prospecting activities would have a very low to medium impacts on employment, fishing, aquafarming, tourism, social services, sense of place and health and safety", and that the activities can contribute towards the country's public services, infrastructure development and social programmes through taxes and prospecting fees (Annexure "B", Environmental Authorisation, internal page 9 of 16). That single sentence is the whole of the competent authority's recorded consideration of the socio-economic effects of the authorised activities. It collapses a positive benefit and three adverse impacts into one band. It records nothing about the small-scale fishing communities, nothing about their dependence on the resource, and nothing about what the applicant's own specialist was told by them. PTWC includes among its members and advisers people who live on this stretch of coastline, and what the specialist recorded from those communities is what PTWC has heard from them for years. That material was on the record. It did not reach the reasons.

k) In consequence, it is respectfully submitted that the competent authority could not rationally have been satisfied that the requirements of section 24(4) of NEMA and of regulation 23(3) of the EIA Regulations, 2014 read with Appendix 3, item 3, had been met, and that in granting the Environmental Authorisation on the basis of that assessment the competent authority failed to take relevant considerations into account and reached a decision not rationally connected to the material before it. It may be that the applicant holds information not presently available to PTWC that would assist in clarifying the matters raised, and PTWC raises these concerns in that spirit. The decision falls to be set aside.

l) The relief sought on this ground is relief items 2, 3 and 14.

Relief sought

In light of the grounds set out above, PTWC respectfully requests that the appeal authority:

1. uphold this appeal;
2. set aside the Environmental Authorisation granted on 14 July 2026 under DMPR Ref. No. WC 30/5/1/1/2/10474PR;
3. alternatively to relief item 2, remit the matter to the competent authority for reconsideration, with a direction that the matters set out in relief items 5 to 14 be addressed before the application is reconsidered, further alternatively that they be imposed as conditions of any authorisation granted;
4. direct that this appeal be considered together with the three appeals lodged by PTWC which are presently pending before the appeal authority, being the appeal against the approval given on 24 February 2026 under DMPR Ref. Nos. WC 30/5/1/2/2 10066 MR and WC 30/5/1/2/2 10130 MR to 10138 MR in respect of the amended, upgraded and consolidated Environmental Impact Assessment and Environmental Management Programme for Sea Concessions 11A, 12A and 13A and the corresponding surf-zone concessions, the appeal lodged on 27 March 2026 against the Environmental Authorisation granted under DMPR Ref. No. WC 30/5/1/2/2(10186) MR in respect of Sea Concession 13B, and the appeal lodged on 13 May 2026 against the Environmental Authorisation granted under DMPR Ref. No. WC 30/5/1/2/2(10185) MR in respect of Sea Concession 11B;
5. direct that no prospecting activity of any description be authorised within the area delineated at paragraph 1 of, and on map "A" to, the order of the High Court of South Africa, Western Cape Division, Cape Town, of 29 August 2023 under case number 21414/2022, and that any authorisation granted spatially delineate, by coordinate, the areas within Concessions 11A, 12A and 13A in which no prospecting activity may be undertaken;
6. direct that the cumulative impact assessment be revised to assess the impact of the authorised prospecting activities together with the mining activities authorised in Concessions 11B and 13B and the existing Trans Hex operations adjacent to Concessions 11A, 12A and 13A, and that any authorisation granted include a condition in the terms of site-specific condition 20 of the Environmental Authorisation granted under DMPR Ref. No. WC 30/5/1/2/2(10186) MR;
7. direct that any authorisation granted include a condition requiring a pre-disturbance benthic baseline survey of the areas to be sampled, undertaken before the commencement of drill and bulk sampling, at stations agreed with the competent

authority and designed to serve as the baseline against which the monitoring required at the mining stage will be measured, with the cost of that survey itemised in the Environmental Management Programme and secured by the financial provision;

8. direct that any authorisation granted require, as a condition, the sampling and granulometric analysis of the hangingwall and footwall lithologies of the target successions, the characterisation of the fine sediment fraction of the material to be discharged, and plume dispersion modelling informed by that data and by measured current regimes, together with turbidity monitoring at defined locations including in the vicinity of the Olifants River Estuary, in each case before bulk sampling commences;
9. direct that any authorisation granted exclude from destructive prospecting, as defined in the Final Environmental Impact Assessment Report as including vibracore sampling, drill sampling and bulk sampling, all areas within the six concessions mapped as CBA-Natural and CBA-Restore and the portions of Concessions 11A and 11B overlapping the Namaqua Coastal Area Ecologically or Biologically Significant Area, that those areas be delineated by coordinate in a schedule to the authorisation and on a map at an appropriate scale forming part of the approved Environmental Management Programme, and that the Environmental Management Programme be amended so as to be consistent with that exclusion;
10. direct that the assessment of impacts on fisheries be revised to assess the recruitment and nursery function of the concession areas for small pelagic species as a receptor in its own right, including the effect of sediment plume movement into recruitment and nursery grounds on recruitment success at stock level, the consequences for dependent predator populations including the African Penguin, and the cumulative effect of that impact together with existing and proposed prospecting and mining activities on the West Coast, and that no authorisation be granted until that assessment has been undertaken;
11. direct that the financial provision be redetermined in accordance with regulations 5, 6 and 7 of GNR 1147, that the annual rehabilitation plan be recalculated on the invasive prospecting actually planned for each year of the programme, that the environmental risk assessment report address the residual impacts identified in the Marine Ecology Impact Assessment, and that the sum determined and the method by which it was determined be recorded in any authorisation granted;
12. direct that the factors prescribed by section 63(1) of the National Environmental Management: Integrated Coastal Management Act 24 of 2008 be considered and that written findings be made in respect of each, including a finding on whether the activity would be contrary to the interests of the whole community as defined in section 1 of that Act, determined with reference to the interests of future generations and to the interests of other living organisms dependent on the coastal environment, and that any authorisation granted include a condition requiring compliance with that Act in terms equivalent to site-specific condition 2 of the Environmental Authorisation granted under DMPR Ref. No. WC 30/5/1/2/2(10186) MR;

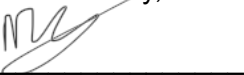
13. direct that the assessment be revised to assess the nature, extent, duration, intensity and significance of the potential impacts of the authorised activities on the Benguela Upwelling System Ecologically or Biologically Significant Area and the Namaqua Coastal Area Ecologically or Biologically Significant Area, including impacts capable of extending beyond the immediate project area, that the assessment address how the proposed activities and the proposed mitigation measures accord with the cooperative and ecosystem-based framework recorded at section 3.4.1 of the Final Environmental Impact Assessment Report, that reasons be given for the departure from the recommendation of the Directorate: Biodiversity and Coastal Management recorded at comment 60 of the Issues and Responses Summary that the prospecting area exclude those areas, and that the revised assessment be subjected to a further public participation process before the application is reconsidered; and
14. direct that the socio-economic assessment be revised so as to incorporate the findings recorded in the Socio-economic Impact Assessment as to the dependence of the affected communities on marine living resources, to re-rate the impact on the small-scale fishing sector on that evidence, to propose mitigation directed at the livelihood impact rather than at notification alone, including monitoring of catch rates before and during operations, to give reasons in respect of the identified cultural and spiritual impact, to assess the cumulative socio-economic effect of the authorised activities together with the existing and proposed mining and prospecting activities identified in Table 6-24 over the full duration of the programme, and to reconcile the significance rating recorded at Table 6-18 with those recorded at Table 7-1 and at section 7.1.3 of the Final Environmental Impact Assessment Report.

PTWC attaches the following documents in support of this appeal:

- Annexure "A": PTWC comments on the Environmental Impact Assessment Report, 14 July 2025
- Annexure "B": THHMM Environmental Authorisation and SRK notification letter, 21 July 2026
- Annexure "C": Final Environmental Impact Assessment Report, SRK 602978/09, July 2025
- Annexure "D": High Court order, 29 August 2023, case number 21414/2022, with maps "A" and "B"
- Annexure "E": Sea Concession 13B Environmental Authorisation and SRK notification letter, 6 March 2026
- Annexure "F": Marine Ecology Impact Assessment, Pisces Environmental Services, December 2024
- Annexure "G": Authority comments (Appendix B3 to the Final Environmental Impact Assessment Report)

- Annexure "H": Issues and Responses Summary (Appendix B2 to the Final Environmental Impact Assessment Report)
- Annexure "I": Environmental Management Programme, June 2025
- Annexure "J": Closure and Decommissioning Plan, June 2025 (Appendix D to the Final Environmental Impact Assessment Report)
- Annexure "K": Fisheries Impact Assessment, July 2025
- Annexure "L": Request for extension letter, 5 August 2026
- Annexure "M": Public Open Day and Focus Group Meeting Posters and Attendance Register (Appendix B6 to the Final Environmental Impact Assessment Report)
- Annexure "N": Focus Group Meeting Notes (Appendix B7 to the Final Environmental Impact Assessment Report)
- Annexure "O": Appeal of fellow appellant, Peter Owies
- Annexure "P": Appeal of fellow appellant, Suzanne du Plessis
- Annexure "Q": Appeal of fellow appellant, Andre Cloete
- Annexure "R": Decision of the Director: Appeals and Legal Review, Department of Forestry, Fisheries and the Environment, granting an extension of time within which to submit this appeal, dated 11 August 2026
- Annexure "S": Sea Concession 11B Environmental Authorisation and SRK notification letter, 21 April 2026
- Annexure "T": Social Impact Assessment, Sustainable Development Africa (Appendix C3 to the Final Environmental Impact Assessment Report)
- The above annexures can be found via the following link:
https://drive.google.com/drive/folders/1rKztl8dRRUF0eWoOBIND8CmcZ1WB5h8I?usp=drive_link
- The prescribed Appeal Form, containing the grounds set out above.

Yours faithfully,



Michael Yaman
 Attorney (In-House)
 Protect the West Coast