To: SLR Consulting (South Africa) (Pty) Ltd
Environmental Assessment Practitioner for Main Street

From: Natural Justice and Green Connection
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RE: COMMENTS ON THE DRAFT SCOPING REPORT FOR OFFSHORE SURVEY ACTIVITIES IN BLOCKS 9 AND 11B/12B OFF THE SOUTH COAST OF SOUTH AFRICA

A. INTRODUCTION

1. These submissions are made by Natural Justice and the Green Connection in response to the Draft Scoping Report (DSR) published by SLR Consulting (South Africa) (Pty) Ltd on behalf of Main Street 1549 (Pty) Ltd, for proposed offshore oil and gas survey activities in Blocks 9 and 11B/12B, off the southern coast of South Africa, released for public comment on 3 March 2025.

2. Natural Justice – Lawyers for Communities and the Environment is a non-profit organisation specializing in environmental and human rights law in Africa, with a focus on the pursuit of social and environmental justice for local and indigenous communities. Natural Justice provides legal empowerment, policy advocacy, and research support to communities impacted by extractive, infrastructure and conservation-related developments.

3. The Green Connection is a registered non-governmental organisation, that believes economic growth and development, improvement of socio-economic

status and conservation of natural resources can only take place within a commonly understood framework of sustainable development. It aims to provide practical support to both the government and non-governmental/civil society sectors, which are an integral part of sustainable development.

4. These comments are submitted in opposition to the proposed offshore survey activities, in the interests of protecting the marine environment, the customary rights and livelihoods of coastal communities, and South Africa's climate and constitutional obligations. Natural Justice makes these submissions in both the public interest and in the interest of those communities and ecosystems that stand to be adversely affected by the proposed activities.

5. While this submission addresses the DSR as a whole, particular attention is given to the legal and procedural inadequacies, the insufficient treatment of cumulative and climate-related impacts, and the failure to ensure meaningful public participation – especially for those most directly affected by the proposed operations.

B. OBJECTION TO OIL AND GAS EXPLORATION

6. The exploration, development, and downstream use of oil and gas resources targeted by the proposed offshore survey activities in Blocks 9 and 11B/12B will result in unacceptable significant emissions of greenhouse gases (GHGs), increasing atmospheric GHG levels and resulting in increased adverse impacts on human health and well-being and on the environment (species and ecosystems). Impacts on human health and well-being are likely to include (among others) impacts from increased adverse environmental effects, impacts on food availability and affordability, loss of property due to sea-level rise, direct impacts of catastrophic weather events, and deterioration in physical and mental health and well-being. Environmental impacts are likely to include (among others) increased

temperatures, worsening and prolonged droughts, longer and more intense heatwaves, increases in extreme weather events, increased ocean acidity, decline in ecosystems and habitat, and increased rates of species extinction. These impacts are significant and unacceptable.

7. The exploration of oil and gas, specifically as proposed in this application, is not needed or desirable. Globally, the proven reserves of oil and gas far exceed what can be used without causing catastrophic climate change. There is already sufficient proven oil to supply over double the emissions consistent with 1.5°C, whilst already proven gas resources are nearly three times more than the 1.5°C budget. As a party to the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement, South Africa has committed to limiting the increase in the global average temperature to well below 2°C and to pursue efforts to limit the temperature increase to 1.5°C. South Africa is not, however, on track to meet these commitments. According to the Climate Action Tracker, South Africa's climate policies and commitments need substantial improvements to be consistent with the Paris Agreement's 1.5°C temperature limit.[1] Approving more oil and gas projects, including offshore exploration and production, would push South Africa further away from achieving its international climate commitments. As the public trustee of the environment generally, of biological diversity, and of protected areas, the State must take measures to ensure that our environment is used, managed, protected, conserved and enhanced in the interests of the whole community, for the benefit of present and future generations.

8. According to Regulation 21 of the 2014 Environmental Impact Assessment Regulations, the EAP must ensure that the Draft Scoping Report complies with Appendix 2 and any applicable protocols or minimum information requirements gazetted by the Minister. The competent authority must reject the Scoping Report if it is substantively deficient, fails to meet legal and procedural standards, or does

[1] https://climateactiontracker.org/countries/south-africa/

not enable proper assessment of potential environmental impacts. Should the DSR be amended to include any substantive new information, such revisions must be subject to further public participation, in line with the principles of procedural fairness under the Constitution and NEMA.

C. COMMENT ON THE DRAFT SCOPING REPORT

8.1. Need and Desirability

8.1.1. Section 24O of the National Environmental Management Act 107 of 1998 (NEMA) requires that the competent authority, when considering an application for environmental authorisation, must take into account "all relevant factors." Although the criterion of "need and desirability" is not explicitly listed in the Act, it is a mandatory component of the DSR in terms of Regulation 21(1)(f) and Appendix 2(1)(b) of the 2014 EIA Regulations (as amended). These provisions require that the DSR include "a motivation for the need and desirability for the proposed development, including the need and desirability of the activity in the context of the preferred location."

8.1.2. The DSR submitted by Main Street 1549 (Pty) Ltd claims that offshore oil and gas exploration aligns with national development priorities and contributes to energy security. It specifically references South Africa's National Development Plan (NDP 2030), stating that the country will

> *"explore the use of natural gas as a less carbon-intensive transitional fuel"*

and that there is a policy imperative for

> *"increasing exploration to find domestic gas feedstock… to diversify the energy mix and reduce carbon emissions"* [2]

[2] Draft Scoping Report: Proposed Survey Activities in Blocks 9 and 11B/12B, South Africa, page 28.

8.1.3. Similarly, the DSR cites the Integrated Resource Plan (IRP 2019) as supporting the need for increased gas capacity, referencing its inclusion of natural gas as a component of the national electricity generation mix. These statements are presented to imply that the proposed exploration is aligned with broader state energy objectives.

8.1.4. However, while the DSR draws upon these policy documents to support its application, it does so selectively and without critical engagement. The DSR fails to acknowledge that the IRP 2019 allocates only a minor role to gas—projecting that by 2030, less than 1.3% of installed capacity will come from gas and diesel combined—undermining the notion that gas is central to South Africa's future energy mix. Moreover, the DSR does not engage with the updated climate science, the implications of South Africa's Nationally Determined Contribution under the Paris Agreement, or the 2024 Climate Change Act, which together require a decisive shift away from new fossil fuel development. It similarly omits any analysis of whether investing in new offshore gas infrastructure is economically prudent or environmentally justifiable in the context of global decarbonisation trends.

8.1.5. Exploration for oil and gas is not undertaken in a vacuum. It is conducted with the explicit intention of identifying reserves for future commercial extraction. In terms of the MPRDA[3] the holder of an exploration right enjoys the exclusive right to apply for a production right, reinforcing the legal and practical continuum between these phases. Accordingly, a proper need and desirability assessment must take into account the foreseeable consequences of a successful exploration outcome, including the environmental burdens of offshore production.

[3] Mineral and Petroleum Resources Development Act 28 of 2002 (hereafter *MPRDA*)

8.1.6. Despite this, the DSR fails to assess the negative impacts that may result from the extraction and commercialisation of any discovered resources. It also fails to consider whether exploration for new fossil fuel reserves is compatible with South Africa's climate obligations, including its Nationally Determined Contributions under the Paris Agreement and the objectives of the Climate Change Act, 2024.

8.1.7. The DSR does not meaningfully evaluate alternative development pathways that would contribute to energy resilience without entrenching dependence on fossil fuels. No consideration is given to how the diversion of public and regulatory resources toward new hydrocarbon exploration may undermine the country's transition to a low-carbon economy or constrain its ability to meet long-term sustainability objectives. Nor does the DSR assess whether authorising offshore oil and gas exploration is a responsible and equitable use of South Africa's non-renewable natural resources, as required by NEMA section 2(4)(a)(v).

8.1.8. The result is an incomplete and legally deficient assessment of the need and desirability of the proposed activity. While the DSR invokes high-level policy objectives, it fails to interrogate whether this specific project, in this location, under current climate and ecological conditions, is necessary, desirable, or defensible in terms of ecologically sustainable development. As such, the competent authority is not equipped to make an informed decision under section 24O of NEMA.

8.2. Failure to Substantially Comply with Need and Desirability Requirements

8.2.1. Inadequate Policy Basis for Claimed Need

8.2.1.1. The relies heavily on national energy planning instruments, particularly the Integrated Resource Plan (IRP 2019) and the National Development Plan (NDP 2030), to justify the need and desirability of

the proposed offshore oil and gas exploration activities.[4] The DSR asserts that exploration is aligned with the national objective to secure indigenous gas supply, which is framed as essential for energy security, emissions reduction, and economic growth.[5]

8.2.1.2. This reliance is misplaced and misleading. Firstly, South Africa does not have a finalised, integrated national energy policy. Despite a statutory obligation under section 6 of the National Energy Act 34 of 2008, no Integrated Energy Plan (IEP) has been published. In the absence of such a plan, policy coherence on energy has been lacking. The IRP (intended only to regulate new electricity generation under the Electricity Regulation Act 4 of 2006) does not constitute a binding or comprehensive gas development policy. Its references to gas cannot be relied upon to support oil and gas exploration outside of the electricity context, and the draft IRP 2023 remains unfinalized and carries no legal weight.

8.2.1.3. Furthermore, the Upstream Petroleum Resources Act 23 of 2024, which may govern this sector, has not yet commenced. Section 111 provides that it will come into operation only on a date fixed by the President by proclamation in the Gazette. At present, there is no consolidated or operational policy framework mandating increased fossil fuel exploration.

8.2.2. Failure to Consider Climate and Economic Policy

[4] IRP 2019 (GN 1360, GG 42784 of 18 Oct 2019) and NDP 2030 (2012) outline energy planning priorities but do not mandate or justify offshore oil and gas exploration, particularly in light of updated climate commitments.

[5] See DSR, Main Street 1549 (3 March 2025), Section 4.1.1 and 4.4, asserting exploration aligns with national goals of securing indigenous gas for energy security, emissions reduction, and economic growth.

8.2.2.1. The DSR omits any engagement with South Africa's key climate policy instruments including the Climate Change Act, 2024, South Africa's 2021 Nationally Determined Contribution (NDC) under the Paris Agreement, and the Presidential Climate Commission's Just Transition Framework. While the DSR invokes gas as a "transitional fuel," it fails to meaningfully assess whether this proposed activity is consistent with South Africa's legally binding commitment to reduce GHG emissions and achieve net-zero carbon emissions by 2050.

8.2.2.2. The DSR does not consider whether fossil fuel exploration aligns with basic macroeconomic planning, nor does it assess risks such as carbon lock-in, stranded assets, or misalignment with future trade and finance conditions in a decarbonising global economy. The omission of these considerations undermines the DSR's motivation for the project's desirability and public interest value.

8.2.3. Artificial Separation of Expropriation and Production

8.2.3.1. The DSR asserts that the climate and ecological impacts of oil and gas production are irrelevant at this stage, as the current application concerns only exploration. This assertion is untenable. Exploration is conducted for the sole purpose of discovering commercially viable oil and gas deposits to exploit through production. The exclusive right to apply for a production right granted under the MPRDA confirms this legal and developmental continuum. To argue that production-related impacts are too remote to be considered at this stage is a legally and logically flawed position.

8.2.3.2. As held in *Earthlife Africa Johannesburg v Minister of Environmental Affairs and Others,*[6] climate-related risks must be assessed at the earliest possible stage of the environmental authorisation process.

[6] [2017] ZAGPPHC 58.

Moreover, in *Sustaining the Wild Coast NPC and Others v Minister of Mineral Resources and Energy and Others*,[7] the High Court emphasised that authorising seismic surveys without considering their link to downstream emissions and ecosystem disruption would violate the constitutional rights to environmental protection and intergenerational equity. The SCA's judgment did not displace the obligation to consider climate-related impacts holistically, nor did it dispute the link between exploration and future GHG emissions. That appeal is currently before the Constitutional Court (Case No. CCT 196/24).

8.2.3.3. The DSR's treatment of exploration as isolated from production ignores the precautionary principle in section 2(4)(a)(vii) of NEMA, which requires authorities to act with caution where the consequences of a decision are uncertain or potentially harmful. The foreseeable climate and environmental impacts of production are precisely the kind of impacts that demand caution at the earliest stage.

8.2.4. Incompatibility with South Africa's Climate Commitments

8.2.4.1. The DSR references the National Development Plan (NDP 2030) in support of its claim that gas extraction is consistent with South Africa's long-term vision for a just transition. However, it omits the NDP's commitment to reducing emissions by 34% below the baseline by 2020 and 42% by 2025, as well as the goal that, by 2030, "South Africa's transition to a low-carbon, resilient economy and just society will be well under way."

8.2.4.2. Since the drafting of the NDP, South Africa's carbon space has significantly narrowed. The upper bound of permissible emissions has been halved compared to earlier projections. Any additional fossil

[7] [2022] ZAWCHC 91.

fuel developments threaten to lock the country into a path that is incompatible with its NDC and its net-zero trajectory, increasing the likelihood of stranded assets and external trade penalties under emerging global carbon adjustment mechanisms.

8.2.4.3. Furthermore, the National Climate Change Response White Paper (2011) and the Climate Change Act affirm the objective to make a "fair contribution" to stabilising global greenhouse gas concentrations. These policies prioritise energy efficiency, demand-side management, and investment in renewables—not the expansion of fossil fuel infrastructure.

8.3. Failure to Properly Assess Cumulative Environmental and Social Impact

8.3.1. The The EIA Regulations state the following with respect to identifying cumulative impacts of the proposed activity at the scoping stage:

> "*The objective of the scoping process is to, through a consultative process—*
> *(d) identify and confirm the preferred site, through a detailed site selection process, which includes an identification of impacts and risks inclusive of identification of cumulative impacts and a ranking process of all the identified alternatives"*[8]

8.3.2. Furthermore, when it comes to assessing possible cumulative impacts to the marine environment as well as climate change impacts, the specialist should assess and consider the broad context of the proposed project (i.e. beyond the boundaries of the specific site) and the role of the site within that context (e.g. whether or not the fact that the site is located within a migratory corridor influences the spatial boundary of the specialist's input).

[8] EIA Regulations, Appendix 2, Regulation 1(d).

8.3.3. The specialist must consider the full spectrum of contexts within which impacts may be realized, i.e. the local, regional, national or global context. The specialist must consider potentially significant direct, indirect and cumulative impacts of a proposed activity. This requires consideration of the following:

- Conceptualisation of possible cause-effect pathways resulting from the proposed development
- An understanding and assessment of the current and future plans, projects and activities in the same area
- An awareness and identification of other threats or trends that could affect the system, communities or species located within the area in which the development is proposed
- An understanding of the likely resilience and status of affected systems, communities or species
- Anunderstanding of broader strategic goals or targets for the area that would be affected by the proposed project.

8.3.4. The current DSR has failed to apply the above methodology with regards to the assessment of the cumulative impacts as required by NEMA. This methodology and approach must be considered and adopted in subsequent impact assessment reports in order to comply with the requirements of NEMA and its EIA regulations.

8.4. Failure to Address Climate Change Impacts on the Proposed Project

8.4.1. In addition to assessing the impacts of the proposed project on climate change, the Scoping Report and subsequent environmental impact assessment process must assess the impacts of climate change on the proposed project. The Scoping Report does not indicate what climate change impacts may affect the proposed project, nor does it assess the effect of these impacts on the project's viability, desirability, or environmental and socio-economic impacts. Further, the Scoping Report fails to identify how the future climate change impact

assessment and related assessments will identify, study, and assess the impacts of climate change on the project. The absence of such information from the Scoping Report is particularly concerning, as climate change increases the likelihood of spills and blowout events,54 which would have a major environmental, economic, and human rights impact in and beyond the proposed drilling area.

8.4.2. In *Earthlife Johannesburg v Minister of Environmental Affairs and Others*, the High Court held that a climate change impact assessment must be undertaken and that such an assessment not only must include an assessment of the project's contribution to climate change over its lifetime, but the climate change impact assessment must also assess the resilience of the proposed project to the impacts of climate change.[9]

8.4.3. As discussed in prior comments, South Africa is particularly vulnerable to the impacts of climate change, including the impacts of sea level rise, temperature increase, and increased frequency of extreme weather events. Energy infrastructure is not immune from these impacts.

8.4.3.1. A 2022 study published in the Journal of Marine Science and Engineering, which included a review of recent research on climate change impacts on oil and gas infrastructure, concluded that "climate change represents a serious threat to the coastal and offshore oil and gas infrastructure and contributes to the oil spill risks"[10]

8.4.3.2. Among other impacts, the study found that sea level rise can impact offshore oil and gas infrastructure through both flooding and erosion—putting the drilling infrastructure and pipelines at risk of

[9] Earthlife Johannesburg and Another v. Minister of Energy and Others 2017 2 All SA 519 (GP), paras. 6, 91.
[10] Dong et al, Climate Change Impacts on Coastal and Offshore Petroleum Infrastructure and the Associated Oil Spill Risk: A Review, page 10.

damage and disruption.[11] Extreme wave heights and extreme weather events render offshore drilling infrastructure particularly vulnerable to damage, which of course can then lead to further environmental harm such as by the increased likelihood of oil spills.[12] Further rising ocean temperatures can cause maintenance issues and reduce the efficiency of the drilling process.

8.4.3.3. The DSR does not address the impact that climate change is likely to have on the proposed project. Without this information, it is not possible for the Scoping Report to properly motivate the need and desirability of the project or make a preliminary assessment of the project's likely environmental impacts, as required by the EIA Regulations.

8.4.3.4. Further, the DSR does not indicate how climate change impacts will be considered throughout the environmental impact assessment process as required by the EIA Regulations. This omission means that interested and affected parties (I&APs) do not have the opportunity to comment on the adequacy and scope of any study to be undertaken on these climate impacts.

8.4.3.5. Without an adequate assessment of the impacts of climate change on the proposed project, including impacts efficiency, environmental harm, and likelihood of spills and blowouts, any subsequent study will fail to provide the decision-maker with sufficient information to grant an environmental authorisation.

[11] Dong et al, Climate Change Impacts on Coastal and Offshore Petroleum Infrastructure and the Associated Oil Spill Risk: A Review, page 4.
[12] Dong et al, Climate Change Impacts on Coastal and Offshore Petroleum Infrastructure and the Associated Oil Spill Risk: A Review, page 7.

8.5. Failure to Adequately Consider the National Environmental Management: Integrated Coastal Management Act

8.5.1. The DSR mentions but does not give due consideration to the National Environmental Management: Integrated Coastal Management Act, 24 of 2008 (NEM:ICMA), in describing the legislative framework, and any subsequent impact assessment must provide adequate consideration to the NEM:ICMA and its requirements.

8.5.2. The EIA Regulations require that aDSR contain:

"a description of the policy and legislative context within which the development is proposed including an identification of all legislation, policies, plans, guidelines, spatial tools, municipal development planning frameworks and instruments that are applicable to this activity and are to be considered in the assessment process".[13]

8.5.3. The proposed offshore exploration activities by Main Street 1549 (Pty) Ltd are situated within South Africa's coastal waters,[14] which, in terms of section 7(1) of NEM:ICMA, form part of coastal public property. These waters and the associated seabed also fall within the coastal zone, as defined in section 1 of the Act. Consequently, the proposed activities constitute a coastal activity under NEM:ICMA, and the competent authority is therefore legally obliged, in terms of section 63(1), to consider a range of statutory factors relating to the protection, management, and sustainable use of coastal public property when deciding whether to grant environmental authorisation.

8.5.4. Section 63 of NEM:ICMA sets forth numerous considerations which the decision-maker must make, and as such, it is crucial that the Scoping Report

[13] EIA Regulations, Appendix 2, Regulation 2(1)(e).

[14] Coastal waters" means—
(a) the internal waters, territorial waters, exclusive economic zone and continental shelf of the Republic referred to in sections 3, 4, 7 and 8 of the Maritime Zones Act, 1994 (Act No.15 of 1994), respectively; and
(b)an estuary;

outline what these numerous considerations are, and how it intends to address these concerns as part of its plan of study.

8.5.5. The DSR should have described the relevant legislative requirements that NEM:ICMA stipulates for coastal property and coastal activities, including the protection and use of coastal property in the interests of the whole community.

8.6. Marine Protected Areas and Biodiversity

8.6.1. Though the DSR indicates that the proposed exploration activities will not be conducted within Marine Protected Areas (MPAs), there are numerous MPAs, Marine Managed Areas (MMAs), and Ecologically or Biologically Significant Areas (EBSAs) that overlap with or traverse the boundaries of Blocks 9 and 11B/12B, and even more within the broader area of indirect influence of the proposed project.

8.6.2. The absence of physical activities within the MPAs is not synonymous with the absence of harm in the MPAs. The proposed seismic surveying and seabed sampling have the potential to cause adverse impacts on marine life outside the immediate survey area, including in the adjacent MPAs, MMAs, EBSAs, and Critical Biodiversity Areas (CBAs). Further, offshore exploration activities in close proximity to these MPAs may undermine the very purposes for which the MPAs were designated.

8.6.3. At a minimum, the DSR should have analysed whether underwater noise pollution, benthic disturbance, or other foreseeable ecosystem disruptions from the proposed exploration could cause harm outside of the defined activity areas, including in adjacent MPAs, MMAs, and EBSAs.

8.6.4. The EIA Regulations require that a scoping report contain information on the potential harm to the environment:

"A scoping report must contain the information that is necessary for a proper understanding of the process, informing all preferred alternatives, including location alternatives, the scope of the assessment, and the consultation process to be undertaken through the environmental impact assessment process, and must include—

(vii) positive and negative impacts that the proposed activity and alternatives will have on the environment and on the community that may be affected focusing on the geographical, physical, biological, social, economic, heritage and cultural aspects."

8.6.5. No such analysis appears to have been undertaken in the Scoping Report. If the project moves beyond the scoping phase, the EIA process and specialist reports must assess all potential impacts on MPAs, CBAs, and EBSAs, factoring in the likely effects that may arise from the proposed exploration activities, and from any reasonably foreseeable production activities that may follow.

8.6.6. If the effects of the exploration activities are ultimately experienced in MPAs, this could constitute a violation of the National Environmental Management: Protected Areas Act (NEM:PAA), which has not been adequately considered in the legislative framework set out in the DSR.

8.6.7. NEM:PAA provides that no person may, in a protected area, "in any manner which results in an adverse effect on the marine environment, disturb, alter or destroy the natural environment" or "carry on any activity which may have an adverse effect on the ecosystem of the area."[15]

8.6.8. The EIA Regulations further require that a scoping report must include:

"a description of the policy and legislative context within which the development is proposed including an identification of all legislation,

[15] Section 8A(1)(a)–(b) of the National Environmental Management: Protected Areas Act 57 of 2003 (as amended).

policies, plans, guidelines, spatial tools, municipal development planning frameworks and instruments that are applicable to this activity and are to be considered in the assessment process"

8.6.9. The DSR has failed to recognise the applicability and importance of NEM:PAA in describing the regulatory context governing this proposed offshore activity. Compliance with NEM:PAA must be explicitly addressed in the EIA phase and form part of any legal review of the project.

8.6.10. As outlined above, the Scoping Report must contain all relevant information on how the proposed project site was selected, including a detailed explanation of potential environmental risks and negative impacts. However, key information on ecologically sensitive areas is missing, and the Scoping Report appears to rely on outdated or incomplete ecological studies in asserting that sensitive habitats are not present within or near the project area.

8.6.11. The report concedes that there is a current lack of knowledge regarding the community structure and endemicity of South African infauna off the edge of the continental shelf, particularly in the South Atlantic Bathyal and Abyssal Unconsolidated Habitat Types. These areas, found at depths beyond 500 metres, were classified as of "Least Concern" in the 2018 National Biodiversity Assessment, but this categorisation reflects the spatial extent of the habitat, not the absence of vulnerability or ecological importance.

8.6.12. Given that there is limited ecological information available for the area in question, it will be difficult to make accurate predictions about the environmental impacts in the upcoming EIA unless thorough and reliable data is collected. This includes making sure the data covers enough time and space, identifies species properly, and helps us understand how marine ecosystems react to human activities. At present, DSR seems to rely on outdated or incomplete ecological data, which makes its assessment of potential impacts unreliable.

8.7. Heritage Resources

8.7.1. NEMA was enacted to give effect to the Constitutional right to a healthy environment encapsulated in Section 24 of the Constitution. NEMA's definition of the term "environment" specifically includes the "culture properties and conditions" of the land, water, atmosphere, and biodiversity that comprise the surroundings within which humans exist.[16] This means that cultural significance and values associated with the natural environment are inextricable from the environment and must be considered in identifying and assessing the impact of a proposed activity on the environment.

8.7.2. According to NEMA, the tools intended to ensure integrated environmental management, such as scoping reports and environmental impact assessments, should be in furtherance of the following objective:

> *"The general objective of integrated environmental management is to-*
>
> *(b) identify, predict and evaluate the actual and potential impact on the environment, socio-economic conditions and cultural heritage, the risks and consequences and alternatives and options for mitigation of activities, with a view to minimising negative impacts, maximising benefits, and promoting compliance with the principles of environmental management set out in section 2"*[17]

8.7.3. The list of communities and groups who will be consulted as part of the heritage impact assessment process should have been made available to interested and affected parties during the scoping phase in order for I&APs to identify gaps in the proposed consultation and assessment process.

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[16] Act 107 of 1998, Preamble and s 1(1) (definition of "environment"); read with s 24 of the Constitution, 1996.

[17] See NEMA, 1998, s 23(2)(b)

8.7.4. The EIA Regulations require that the person conducting the public participation process ensure that;

> *"(a) information containing all relevant facts in respect of the application or proposed application is made available to potential interested and affected parties".*[18]

8.7.5. The details of the proposed consultation process to be undertaken with impacted communities constitutes relevant facts and should have been made available to potential I&APs for comment. These relevant details include a list of which communities will be consulted, the methodology used to identify the communities to be consulted, the proposed methodology for the consultation itself, and whether the proposed project has been subject to any prior consultation thus far with particular communities who may be impacted.

8.7.6. The failure of the EAP to include this crucial information in the DSR has deprived interested and affected parties of their right to review and comment on the development of the methodology to be adopted and to identify which cultural groups or communities should form part of the scope of the consultation to be undertaken with respect to heritage and cultural resources and rights.

8.7.7. The DSR fails to adequately describe the envisaged methodology for undertaking the heritage impact assessment and consultation process with local and indigenous communities. Because of the Scoping Report's insufficiency in this regard, it is unclear whether the envisaged heritage assessment process will include proper consultation of indigenous and local communities in identifying heritage resources and the potential impacts of the project on these resources.

8.8. Failure to Properly Assess the No-Go Alternative

[18] EIA Regulations, 2014 (GN R982 of 4 Dec 2014), reg 41(2)(a).

8.8.1. In terms of Regulation 21(1)(b)(ii) of the 2014 Environmental Impact Assessment Regulations (as amended), the scoping report is required to include a description of "the need and desirability of the proposed activity, including the need and desirability of the activity in the context of the preferred location," and must assess reasonable and feasible alternatives, including the no-go alternative. This requirement is further elaborated in Appendix 2(1)(h), which compels the scoping report to provide "a motivation for the preferred development footprint within the approved site including a full description of the process followed to reach the preferred footprint," and must include "details of the alternatives considered, including the no-go option."

8.8.2. Despite this clear legal obligation, the DSR submitted by Main Street 1549 fails to provide a substantive, comparative, or evidence-based assessment of the no-go alternative. Rather, the no-go option is cursorily mentioned as a formality, without any meaningful engagement with its environmental, legal, or climate-related implications.

8.8.3. The no-go alternative is not a procedural checkbox. It represents a legally mandated baseline against which the impacts and desirability of all other alternatives must be assessed. Its purpose is to ensure that the decision-maker is confronted with the real environmental consequences of proceeding with the activity, and to safeguard the principle of sustainable development, as enshrined in section 24 of the Constitution and operationalised through section 2(4)(a)(vii) of NEMA, which states:

> *"A risk-averse and cautious approach which takes into account the limits of current knowledge about the consequences of decisions and actions must be applied, especially where decisions may cause serious or irreversible damage to the environment."*

8.8.4. The Constitutional Court has reinforced the importance of this approach. In *Fuel Retailers Association of Southern Africa v Director-General, Environmental Management, Mpumalanga Province*,[19] the Court affirmed that decision-makers are constitutionally obliged to consider whether a proposed development is sustainable, and must actively assess whether the anticipated environmental impacts justify the economic and social benefits. The no-go alternative is a central tool in that evaluative process.

8.8.5. Given that the ultimate purpose of the exploration activities is to enable future production and exploitation of fossil fuels, the no-go alternative must also consider the foreseeable consequences of approving exploration in this context, including GHG emissions, biodiversity loss, and conflicts with national and international climate obligations. As such, the DSR cannot legally or ethically ignore the downstream implications of authorising exploration.

8.8.6. This position is supported by the Western Cape High Court in *Sustaining the Wild Coast NPC and Others v Minister of Mineral Resources and Energy and Others* [20] (the Shell Seismic Survey case), where the Court held that the public interest, climate change impacts, and the protection of marine life must all be considered at the earliest possible stage, including exploration.

8.9. Inadequate Cumulative Impact Assessment

8.9.1. The DSR fails to meet the legal and procedural requirements for identifying and assessing cumulative impacts at this stage of EIA process. Appendix 2(1)(e) of the 2014 EIA Regulations requires the DSR to include a description of potential environmental issues and impacts, explicitly including cumulative impacts. Regulation 21(1)(b)(ii) further provides that the Plan of Study for EIA must indicate how such cumulative impacts, including those related to climate change, will be assessed.

[19] 2007 (6) SA 4 (CC).
[20] [2022] ZAWCHC 91.

8.9.2. These provisions are not procedural formalities; they are rooted in section 24 of the Constitution, which guarantees everyone the right to an environment that is not harmful to their health or well-being and mandates the protection of the environment for the benefit of present and future generations. Section 2 of NEMA further requires a risk-averse and cautious approach to decision-making, especially where uncertainty or irreversible environmental consequences are present.

8.9.3. Despite these clear obligations, the DSR provides only a cursory reference to cumulative impacts. It fails to identify or assess the overlapping and foreseeable effects of ongoing or planned offshore oil and gas activities in the same or adjacent regions, including those by Shell, CGG and TotalEnergies. It also omits consideration of concurrent anthropogenic stressors, such as commercial fishing, increased shipping traffic, ocean warming, and habitat degradation, which are known to compound ecological damage and threaten marine biodiversity. The DSR does not evaluate how the proposed survey activities in Blocks 9 and 11B/12B might interact with these existing or planned uses of the marine environment.

8.9.4. The Report similarly neglects to assess how cumulative impacts could affect marine megafauna, benthic habitats, critical biodiversity areas, and local coastal livelihoods. These are not speculative risks, but predictable and material outcomes that must be identified and scoped from the outset to ensure an integrated and lawful EIA process. The omission of these impacts impairs the utility of the DSR as a screening and scoping tool and undermines the legitimacy of the Plan of Study for EIA.

8.9.5. The impacts of production, including significant greenhouse gas emissions, habitat fragmentation, and large-scale marine infrastructure, are foreseeable consequences of exploration. If these downstream impacts are environmentally

unacceptable, then the exploration activities intended to enable them are equally unjustifiable. The Environmental Impact Assessment Regulations may list exploration and production as distinct activities, but in reality, they are phases of a single development process. Failing to account for this continuum distorts the DSR's impact characterisation and leads to an unbalanced assessment of the project's desirability.

8.9.6. In addition, the DSR fails to align with strategic environmental planning instruments that mandate ecosystem-based and integrated ocean governance. The National Biodiversity Assessment (2018), the National Coastal Management Programme (2014), and the Operation Phakisa Oceans Economy Programme all emphasise the need to assess cumulative impacts across space and time and to manage ocean resources within a holistic governance framework. The DSR's omission of these key frameworks reflects a narrow, fragmented approach that is inconsistent with the environmental governance principles set out in section 2 of NEMA, which requires environmental management to be integrated, informed by science, and protective of ecological integrity..

8.9.7. The cumulative impacts associated with offshore fossil fuel development are real, measurable and increasingly urgent in the context of South Africa's international climate obligations. Without a credible cumulative impact assessment, the DSR cannot serve as a sound basis for identifying issues to be investigated in the EIA phase. It also denies the public and affected communities a fair opportunity to understand the long-term consequences of this project, thereby undermining their right to informed participation.

8.10. Climate Change and the Right to Sustainable Development

The proposed application, through its greenhouse gas emissions and contributions to global climate change, undermines the constitutionally protected rights of present and

future generations to environmental protection and ecologically sustainable development.

8.10.1. Section 24 of the Constitution states

"*Everyone has the right—To have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that –*

iii. Secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development" (emphasis added)

8.10.2. The principles and provisions of NEMA provide legislative implementation for these rights to environmental protection and sustainable development

8.10.3. NEMA states that "the environment is held in the public trust for the people and the beneficial use of the environmental resources must serve the public interest and the environment must be protected as the people's common heritage", and the preambles of the Mineral and Petroleum Resources Development Act and National Environmental Management: Integrated Coastal Management Act (NEM:ICMA) similarly state that South Africa's resources are held in the public trust and must be protected for future generations.

8.10.4. Further, one of NEMA's core principles is that "the exploitation of non-renewable resources must be responsible, equitable and take into account the depletion of that resource."

8.10.5. Therefore, not only does an applicant for environmental authorisation need to provide an assessment of the project's localised impact on the environment and communities, including cumulative impacts, but the project's proponents must also satisfy the decision maker that offshore oil and gas exploration and production are a *responsible* and *equitable* use of South

Africa's resources and that they serve the interest of the wider South African public.

8.10.6. In *Earthlife Africa Johannesburg v. Minister of Environmental Affairs and Others*, the High Court held that "climate change poses substantial risk to sustainable development in South Africa, which is enshrined in the constitutional environmental right.

8.10.7. The High Court elaborated on the connection between consideration of climate change and intergenerational justice:

> *"The effects of climate change, in the form of rising temperatures, greater water scarcity, and the increasing frequency of natural disasters pose substantial risks. Sustainable development is at the same time integrally linked with the principle of intergenerational justice requiring the state to take reasonable measures protect the environment 'for the benefit of present and future generations' and hence adequate consideration of climate change. Short-term needs must be evaluated and weighed against long-term consequences."*

8.10.8. The In line with the Earthlife Africa judgment and section 2(4)(a)(vii) of NEMA, the competent authority is required to apply a risk-averse and cautious approach which takes into account the limits of current knowledge about the consequences of decisions and actions. Where the potential for irreversible climate harm exists—as is the case with activities that unlock future fossil fuel production—a cautious approach would require that such activities be curtailed at the earliest possible stage, including at the scoping phase.

8.10.9. South Africa has committed under the Paris Agreement to limit the increase in global average temperature to well below 2°C, and to pursue efforts to limit it to 1.5°C. These obligations are now reinforced in the national legal

framework through the Climate Change Act, 2024, which obliges organs of state to consider the impacts of GHG emissions and climate resilience when making decisions that affect the environment. Authorising further fossil fuel exploration in the absence of a full climate change impact assessment or analysis of alignment with South Africa's Nationally Determined Contribution (NDC) undermines these obligations and sets back the country's ability to achieve a just transition.

8.10.10. Global scientific consensus, including from the Intergovernmental Panel on Climate Change (IPCC), confirms that no new fossil fuel reserves can be exploited if the world is to have a reasonable chance of limiting warming to 1.5°C. The proposed offshore exploration by Main Street 1549 (Pty) Ltd is incompatible with this scientific reality and with South Africa's moral and legal responsibility to contribute to global mitigation efforts.

8.10.11. The DSR fails to scope or propose any methodology for assessing the project's contribution to climate change or its alignment with national climate policy instruments. This omission renders the DSR legally deficient and fails to give effect to the principles of sustainable development, intergenerational justice, and integrated environmental management as required by NEMA and the Constitution.

8.11. Lack of Specificity in the Description of the Proposed Activity

8.11.1. The EIA regulations require sufficient detail to be provided on the activity being proposed:

> *"A scoping report must contain the information that is necessary for a proper understanding of the process, informing all preferred alternatives, including location alternatives, the scope of the assessment, and the*

consultation process to be undertaken through the environmental impact assessment process, and must include—

(d) a description of the scope of the proposed activity, including—

(ii) a description of the activities to be undertaken, including associated structures and infrastructure"[21]

8.11.2. The DSR does not provide sufficient technical or operational detail about the pre-drilling survey activities to satisfy this requirement. For instance, while the DSR refers to the use of sonar surveys, single and multibeam echo sounders to establish areas of interest within Blocks 9 and 11B/12B, it fails to detail the operational parameters, data acquisition methods, and spatial/temporal extent of these surveys. At page 6-4, the DSR states:

"These surveys would not be limited to a specific time of the year but would be of short duration (around 15 days per survey) and focused on selected areas of interest within the block. These surveys would take up to four weeks to complete"[22]

8.11.3. It further notes that:

"The project proposes to utilise a single beam echo-sounder with a frequency range of 38 to 200 kHz, and multibeam echo sounders (70 - 100 kHz range and 200 dB re 1µPa at 1m source level)"[23]

8.11.4. Despite these inclusions, the DSR fails to explain how this equipment will be used in practice (e.g., vessel path, depth and intensity of transmissions), nor does it provide information on acoustic thresholds for marine fauna, or how

[21] EIA Regulations, Appendix 2, Regulation 2(1)(d)(ii).

[22]

[23]

risks will be managed. Given the known overlap between these frequencies and the hearing sensitivities of cetaceans and other marine species, the use of this equipment could pose a significant risk to marine life.

8.11.5. The DSR also lacks clarity on what techniques will be used to map sensitive benthic habitats such as deep-water coral communities. While Chapter 8 acknowledges the ecological significance and vulnerability of these deep-sea ecosystems, it is not evident that the survey design incorporates direct seabed sampling, ROV observations, or visual habitat mapping necessary to inform impact predictions. Instead, the DSR appears to rely on outdated or sparse secondary data, which, as it admits, may include dead or displaced organisms and imprecise geolocations.[24]

8.11.6. This is of particular concern given the statement that deep-water coral habitats may exist in the proposed project area, and the known impacts of seabed disturbance, drilling muds, and acoustic pollution on such habitats. However, the DSR is silent on what fluid types will be used during potential future drilling phases, despite these decisions having significant implications for toxicity and seabed contamination.

8.11.7. While the DSR mentions the use of acoustic equipment for bathymetric surveys, it does not propose a dedicated underwater acoustic impact study, despite clear evidence from global literature and local concern that echo sounders and sonar systems can cause behavioural disturbances or even injury to marine mammals. The precautionary principle, as enshrined in section 2(4)(a)(vii) of NEMA, mandates that a lack of full scientific certainty should not be used to postpone cost-effective measures to prevent environmental degradation. Accordingly, the EAP should have proposed an acoustic specialist study during this phase.

[24] DSR, Main Street 1549 (3 March 2025), Ch. 6.3.1 and Ch. 8.2.2, noting limitations of existing benthic data and uncertainty in baseline characterisation.

8.11.8. The DSR lacks sufficient specificity about the proposed activities to comply with Regulation 21(1)(d)(ii). It fails to detail critical environmental risk factors, omits key technical information, and does not propose appropriate specialist studies for marine acoustic impacts. This omission compromises the reliability of the preliminary assessment, deprives I&APs of a meaningful opportunity to comment, and undermines the application's procedural and substantive integrity