to promote justifiable social and economic development – i.e. ensuring the simultaneous achievement of the triple bottom-line. Considering the merits of a specific application in terms of the need and desirability considerations, it must be decided which alternatives represent the "most practicable environmental option", which in terms of the definition in NEMA and the purpose of the EIA Regulations are that option that provides the most benefit and causes the least damage to the environment as a whole, at a cost acceptable to society, in the long-term as well as in the short-term." (pg 10)

149. Therefore, it must first be determined whether a societal *need* is in fact served by the proposed activity. The notion of "need" is clarified in the Guideline as follows:

"With regard to the issue of "need", it is important to note that this "need" is not the same as the "general purpose and requirements" of the activity. While the "general purpose and requirements" of the activity might to some extent relate to the specific requirements, intentions and reasons that the applicant has for proposing the specific activity, the "need" relates to the interests and needs of the broader public." (pg 10)

150. It must then be determined whether the proposal is *desirable* by reference to the identified need and in light of any adverse ecological impacts. In essence, the question at this stage is whether the proposed activity is the best way of meeting the identified need having regard to its particular environmental impact. For purposes of this analysis, the Guideline explains that:

"Consistent with the above aim and purpose of EIA, the concept of "need and desirability" relates to, amongst others, the nature, scale and location of development being proposed, as well as the wise use of land. While essentially, the concept of "need and desirability" can be explained in terms of the general meaning of its two components in which need

primarily refers to time and desirability to place (i.e. is this the right time and is it the right place for locating the type of land-use/activity being proposed?), "need and desirability" are interrelated and the two components collectively can be considered in an integrated and holistic manner." (pg 10)

151. As for the overall evaluation:

The consideration of "need and desirability" in EIA decision-making therefore requires the consideration of the strategic context of the development proposal along with the broader societal needs and the public interest. The government decision-makers, together with the environmental assessment practitioners and planners, are therefore accountable to the public and must serve their social, economic and ecological needs equitably. Ultimately development must not exceed ecological limits in order to secure ecological integrity, while the proposed actions of individuals must be measured against the short-term and long-term public interest in order to promote justifiable social and economic development." (pg 10)

152. Significantly, the point is made in the Guideline that "what is needed and desired for a specific area should primarily be strategically and democratically determined beyond the spatial extent of individual EIAs."

153. The Guideline (from pg 11) provides a list of questions intended to elicit information bearing on these essential questions, including:

153.1. What is the socio-economic context of the area, based on... strategic plans, frameworks of policies applicable to the area? [in the context of this application, it can be accepted that the relevant "area" is South Africa as a whole]

153.2. Will the development complement the local socio-economic initiatives?

153.3. Considering the socio-economic context, what will the socio-economic impacts be of the development (and its separate elements/aspects), and specifically also on the socio-economic objectives of the area?

153.4. Do the proposed location, type and scale of development promote a reduced dependency on resources?

153.5. Does the proposed use of natural resources constitute the best use thereof? Is the use justifiable when considering intra- and intergenerational equity, and are there more important priorities for which the resources should be used (i.e. what are the opportunity costs of using these resources this the proposed development alternative?)

154. Having regard to the above, it is clear that in the context of Total's application, there is only one way of approaching the need and desirability inquiry:

154.1. The purpose of the exploration activities is to establish whether oil or gas deposits are present on the project area as a first step toward the ultimate purpose of extracting this resource. The broader purpose to which the proposal is directed is thus (for purposes of this inquiry) oil or gas production.

154.2. Whether or not there is a need to produce oil or gas on the project area must be considered by reference to pertinent strategic plans and policies, which in these circumstances include the National Development Plan, the National Climate Change Response White Paper, LEDS 2050, and the IRP 2019.

154.3. If it is found that there is a need for oil or gas extraction, it must then be considered whether the project is a desirable way of meeting this need, having regard to its ecological and socio-economic impacts and the opportunity costs of the oil and gas exploration and production. This evaluation should, of course, begin with a consideration of whether there is another more sustainable way of meeting the need.

155. If there is no need for oil and gas production, or if extraction is not desirable, then the environmental, social and economic risks associated with exploration cannot be justified.

The assessment of need and desirability

156. The evaluation of need and desirability can be found at pages 64 to 91 of the FEIR.

157. As can be seen from a perusal of these pages, the need and desirability assessment consisted of:

157.1. A broad outline of South Africa's energy sector;

157.2. a summary of 19 policies and plans deemed to be relevant to the project, including the IRP 2019;

157.3. an analysis in tabular format indicating the EAP's view on how the exploration activities are consistent with each of the principles stated in section 2 of NEMA;

157.4. an exposition on relevant provincial and local planning documents.

158. In addressing the section 2 NEMA principles, the EAP indicates that the

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exploration activities are compatible with the objective that "[d]evelopment must be social, environmentally and economically sustainable" with the following observation (at pg 84):

"The South African Government has indicated that there is a need for the country to reduce its reliance on coal-based electricity and is committed to a "just" transition to a net-zero and climate resilient society (as per SA-LEDS and draft NDC). Natural gas is included in the energy mix of the country to serve as a transition or bridge on the path to a carbon-neutral goal (as per the Paris Agreement) and provide the flexibility required to complement renewable energy sources. By determining the presence (and extent) of such resources, the sustainability of developing the petroleum sector within the country can be better considered."

159. The need and desirability section concludes with the following statement: (at pg 89):

"It is acknowledged that the proposed exploration project, itself, would not result in the production of oil and gas, but rather the generation of information on possible indigenous resources. By gaining a better understanding of the extent, nature and economic feasibility of extracting these potential resources, the viability of developing indigenous oil or gas resources would be better understood….

The proposed exploration project will potentially lead to South Africa optimising its own indigenous resources to provide its identified oil and gas needs until the 2050 deadline to achieve carbon neutrality, rather than having to mainly import, as at present (a situation which has been exacerbated by the recent closure of several South African refineries). It won't necessarily change how fossil fuels are used in South Africa in the short- to medium term in the transition towards the goal of carbon neutrality by 2050."

160. As appears from the above passage, the EAP construes the purpose of the

exploration activities as being solely that of exploration (i.e. an information gathering exercise), while simultaneously citing the prospect of "South Africa optimising its own indigenous resources to provide its identified oil and gas needs until the 2050 deadline to achieve carbon neutrality, rather than having to mainly import, as at present", as the factor which renders the exploration activities desirable. This is seemingly understood and presented as being compatible with "a "just transition to a net-zero and climate resilient society".

161. This reasoning was accepted and adopted by both the DG and the Minister.

162. The DG's conclusion as to need and desirability was expressed in a single paragraph:

> *"The motivation for the need and desirability of the proposed drilling operations is in line with the requirements of the EIA Regulations, 2014 and addresses key issues in the Need and Desirability Guideline."*

163. The Minister's evaluation of need and desirability is given at paragraphs 2.49 to 2.50 of her appeal decision:

> *"Regarding the appellants' averments that South Africa is not currently meeting its international commitments on carbon emissions and that South Africa should therefore not permit any new fossil fuel projects; South Africa is committed to implement a just transition to net zero emissions by 2050. Moreover, South Africa's commitment to reduce its emissions is reflected in the NDP which records 2030 as the time that South Africa is working toward to reduce its dependence on carbon, natural resources and energy. However, South Africa's transition to a low-carbon, resilient economy and society is a multidimensional process that requires a careful phasing and strategic planning. The appellants take an oversimplistic approach to this issue.*

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I have noted that chapter 5 of the ESIA report discussed the needs and desirability of the project which covers the context of the oil and gas industry, applicable policies and planning frameworks (local, national and international) and broad societal needs and public interest. I note too, that the project is in alignment with government policies and plans such as the IRP 2019 which recognises the need for South Africa to employ a diversified energy mix to meet the country's electricity requirements. I have furthermore considered the Guideline on Need and Desirability as well as the No-Go Alternative. I am satisfied that the No-Go alternative was assessed, as indicated in sections 5.8, 9.5 and 12.5 of the ESIA.

<u>I am therefore satisfied that the criteria for the need and desirability of the project has been demonstrated by the Applicant, in particular that the project accords with legislative requirements and government policies and plans, including the IRP 2019</u>, the NDP and the draft Marine Spatial Planning Sector Plans, which includes a Marine Offshore Oil and Gas Sector Plan (the Draft MS Plan). <u>The IRP and the IEP recognise natural gas as a required source to produce electricity and direct thermal energy. It acknowledges its role in contributing and maintaining base-load electricity and peak-load electricity and is also a recognised way to transition South Africa toward a lower carbon economy providing the flexibility required to complement the renewable energy sources as a lower carbon option compared to coal</u>." (the emphasis is mine and its relevance will become clear shortly)

A rational evaluation of "need and desirability"

164. It is clear from the treatment of "need and desirability" in both the FEIR and the decisions, in particular the appeal decision, that the "desirability" of exploring and producing petroleum in the project area is considered to relate primarily to the prospect that <u>gas</u> will be found and produced. The reason for this appears to be that gas is considered to be a "transition fuel" that will aid

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in transitioning the energy system, specifically the electricity system, away from a coal and therefore help to reduce GHG emissions.

165. This being the case, the environmental impact assessment should have been approached on the basis that the *purpose* of the exploration activities was *production* of gas. Had this occurred, the EAP and the decision-makers would have found it necessary to consider the specifics of the proposal to address South Africa's gas utilisation by means of gas extracted offshore and would have found that:

165.1. If a gas field were to be developed on the project area, it would produce gas far in excess of the maximum gas utilisation indicated by the IRP. Expert evidence substantiating this submission will be filed as soon as possible and in any event before the supplementary founding affidavit is filed.

165.2. The gas would in any event only become available about a decade discovery, which I am advised is the average lapse of time between a discovery and commercial production.

166. I pause to mention that it is possible to make calculations concerning the production quantities on the project area because Total (or its successor) would only proceed to develop the field if commercially profitable. Rough estimates as to the economics of a given gas field can be predicted on the basis of variables such as water depth, distance from shore and ocean conditions.

167. In view of the fact that the projected quantities of gas extractable from the project area exceed the gas utilisation requirements in the IRP 2019, to

establish that the project was needed and desirable (from the perspective of gas utilisation), the decision-makers would have had to apply their minds to the following further considerations:

167.1. Two offshore gas fields – Brulpadda and Luiperd - have been discovered on Block 11B/12B and are projected to produce over their lifetime approximately 3.4 trillion cubic feet of gas.

167.2. Offshore exploration activities are currently being conducted across the large part of South Africa's exclusive economic zone and any one of these projects has the potential to produce an equal amount of gas to what may be produced on the project area.

168. In determining whether the project is necessary and desirable in light of these facts, the decision-makers would have also needed to apply their minds to the following issues:

168.1. As a fuel, natural gas is associated with relatively high emissions of CO_2-eq when one accounts for the entire value chain and specifically the fugitive emissions of methane that occur during production of that gas. I refer in this regard to the expert affidavit of Mark New, which will be filed together with this affidavit.

168.2. Therefore, if South Africa also produces the natural gas that it plans to use for electricity generation, this will not necessarily improve South Africa's GHG emissions profile. As an illustrative example, at zero fugitive emissions, burning gas for electricity has a GHG forcing of ~258 g CO_2-eq/kWh_{el}, while 10% fugitive emissions increase the GHG forcing to ~1439 g CO_2-eq/kWh_{el}.

168.3. In a scenario where a lot of gas is discovered offshore South Africa and future iterations of the IRP provide for new generating capacity to make use of this gas, less electricity would be generated through renewable energy, contrary to the strategy set out in LEDS 2050.

168.4. If a lot of gas is produced and used, electricity generation would account for a much greater portion of South Africa's national carbon budget as determined in NDC 2021 and future NDCs, and the Government would be constrained in its ability to pursue specific developmental goals in future when determining sector emissions targets and carbon budgets in terms of the Climate Change Act.

168.5. Conversely, in a scenario where a lot of gas is found but not used for domestic purposes, a potentially environmentally destructive development would have been authorised in order to produce gas that is surplus to requirements.

168.6. Moreover, the revenue (and consequently the royalties) from oil and gas fields will drastically diminish in future largely as a consequence of the decrease in the cost of renewable energies and global efforts to comply with commitments in terms of the Paris Agreement. I refer in this regard to the expert affidavit of Gilian Hamilton.

168.7. A carbon intensive electricity system will expose South African exporters to taxes levied by the developed world on goods that have high levels of "embedded carbon" (i.e. a carbon intensive production process). Such taxes are already being implemented in the United Kingdom and the European

Union. This issue is also explained by Gillian Hamilton in her affidavit.

169. All of these relevant factors would have had to be considered in determining whether a gas-predominant energy sector is desirable, and weighted against the ecological impact of the project.

Conclusion

170. On the basis of what is set out above, I submit that the need and desirability assessment was irrational and bore no relation to the assessment of need and desirability contemplated in NEMA and the EIA Regulations.

171. I therefore submit that the decisions fall to be set aside on the following bases:

171.1. they were not rationally connected to the purpose of the empowering provision in that the irrational assessment of need and desirability precluded a proper evaluation in terms of section 24O whether the exploration activities were the best practicable environmental option; and

171.2. they did not take account of relevant considerations;

171.3. They accordingly fall to be reviewed in terms of section 6(2)(e)(iii) and 62(f)(ii)(bb) of PAJA.

SECOND GROUND: FAILURE TO ASSESS THE IMPACT OF PRODUCTION

172. From the above assertions regarding the scope and purpose of the need and desirability assessment, it follows that consideration should have been given to the ecological impacts of the production phase.

173. I do not suggest that the assessment should have been exhaustive of all production phase impacts - obviously specific impacts would be determined by reference to the precise form and location of the production operation ultimately established. These matters are appropriately postponed to the later process to obtain Environmental Authorisation for production activities. Rather, it is my contention that the general ecological impact associated with production activities should have been assessed during this environmental impact assessment process.

174. Importantly, this assessment would have included the cumulative ecological impact of such production activities, taken together with other exploration and production activities that are proposed across South Africa's exclusive economic zone, as required by item 3(3)(j) of Appendix 3 to the EIA Regulations.

175. In anticipation of an argument that such an exercise would be impossible because the scope of a future production operation is entirely unknown, I point out that the nature of a production operation is in fact relatively predictable – at least for purposes of an environmental impact assessment.

176. Total has recently conducted an environmental impact assessment in respect of production operations on Block 11B/12B, which is situated approximately 120 kilometres offshore of Mossel Bay. A summary of the project activities and components is set out in a document entitled *Draft Environmental and Social Impact Assessment Report – Non-technical Summary* ("the 11B/12B ESIA"). A copy of this document is attached marked **"JWS14"**.

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177. The ESIA report for this block is still to be finalised. TEEPSA was recently granted a further extension to submit its final EIA report until 19 May 2025.

178. As a matter of logic, one can extrapolate from the operation on Block 11B/12B and arrive at some approximation of the infrastructure and activities that would be implemented on the project area.

179. A description of the essential elements of the production activities is given on page 6 of the 11B/12B ESIA. It reads:

> *"With reference to Figure 2-1, the development of Block 11B/12B will involve the following activities within the Project Development Area and the Project Pipeline Corridor:*
> *Drilling of five production wells, with the option of drilling a sixth well.*
> *The construction of subsea infrastructure to connect the wells.*
> *The installation of a pipeline, approximately 100 km long, to carry both gas and condensates from the wells to the existing F-A Platform.*
> *Gas and condensate will be processed at the F-A Platform.*

180. It is reasonable to hold that the long-term operation of the activities described above would increase the magnitude of the impacts identified and assessed in the Final EIR.

181. Section 7.1 of the 11B/12B ESIA (on page 10), deals with the impacts of "normal operations". The following appears under this section:

> *"Of these, the most significant negative impacts are:*
>
> • *The impact of drill cuttings discharges on the marine environment.*
>
> • *The potential impact of introducing alien invasive marine species due to discharges of ballast water from the drill rig and vessels.*

• Direct loss of benthic habitat where wells and subsea infrastructure are placed and along the production pipeline route, with a consequent reduction in fish catch and subsequent impact on livelihood of fishers.

• The impact on squid fishery, small-scale fishers and large pelagic fishery as a result of maritime safety zones.

• Impact on various aspects which make up people's intangible cultural heritage, which include ancestry / spirituality and sense of place.

• The contribution of the Project to greenhouse gasses and climate.

• The potential impact on health, safety and security resulting from Project workers spending leisure time in local communities and impacts on air quality as a result of emissions from support and supply vessels."

182. Section 7.2 (on page 11) deals with unplanned events. The following appears under this section:

"Unplanned events or accidents that could have the greatest environmental impact is a major spill of hydrocarbons from a subsea well blowout, or a rupture of the production pipeline. The cause of a well blowout is due to failure of pressure control systems which causes the uncontrolled release of hydrocarbons from a well.

Although the probability of a well blowout occurring is extremely low; a blowout or pipeline rupture has the potential to affect various marine ecological receptors, including phytoplankton, zooplankton and microbes; benthic fauna; fish; seabirds; turtles and large marine mammals. If the spill were to reach the coastline the coastal environment as well as fishery and mariculture activities would be impacted.

In addition, these impacts would have knock-on effects on other receptors and aspects, including tourism, community livelihoods, human rights and intangible cultural heritage. However, the full impact of the unplanned event will depend on the duration of the spill and the ocean *and weather conditions at the time of year that will determine the direction and size of the plume and whether the condensate or oil reaches the coastline.*

Other unplanned events that would also have impacts include accidental spills during refuelling vessels at sea and vessel on-vessel collision."

183. On this basis, even without expert assessment, it is reasonable to conclude that the effect of production activities on the project area would be to amplify (in terms of both geographical extent and duration) the major impacts associated with Total's exploration activities.

184. I note that the major environmental consequence of the exploration activities – the effects of a well-blowout – was deemed acceptable in the FEIR principally on the basis that the chances of such an event was "unlikely". The effects of such a scenario were nonetheless acknowledged to be very serious.

185. No consideration has been given to how the magnitude of this risk and associated impact will increase as a result of the expanded scope and duration of the project, *i.e.* additional wells and pipelines operated of a period of up to 30 years.

186. Over and above this, the ecological impact of production operations might increase with the changing climate over the lifespan of the project. This point was made in the Green Connection and Natural Justice appeal submission:

"The climate change impact assessment does not adequately assess risks that climate change poses to the project and the resilience of the surrounding marine environment to climate change. The risk that the project poses to adaptation is regarded as a "non-issue" because of the temporary and short nature of the exploration activities.

However, no consideration is given to how an unplanned event, such as a spill, could aggravate the surrounding marine environment's resilience and adaptation to climate change. In other words, there has been no assessment of the compounding effects of a spill on the ecological infrastructure that is important in South Africa's resilience to climate change - such as the marine species that are important for food security - in circumstances where the marine environment is already being impacted by climate change. The ESIA acknowledges that the impacts on the fishing sector could be increased due to additive cumulative impacts of climate change. Yet this was not addressed in sufficient detail in the ESIA - where climate projections should have been factored into the baseline assessment for the area."

187. One of the major deficiencies in the Final EIR and the Minister's appeal decision is a failure to consider the cumulative GHG production impacts should many of the dozen or more of oil and gas projects in the pipeline lead to production. By approving each project in isolation, the government cannot know whether the major push to develop South Africa's oil and gas resources is consistent with the country's climate change obligations. In a country where effectively no oil and gas is being produced, the introduction of these many projects could have an outstanding influence on South Africa's carbon budget, potentially far exceeding its NDC targets. There is no adequate reason for why this type of cumulative GHG assessment was not done, and approving each project without this cumulative impact assessment is unreasonable and contrary to the requirements of NEMA.

188. The expert report of Drs. Mark New and Lawrence Meckel provide a clear and relatively straightforward methodology to transparently estimate hydrocarbon volumes that might possibly be produced by a series of commercially-viable

oil and gas projects in the future and the associated greenhouse gas (GHG) emissions from those projects.

189. All of the above considerations were omitted from the assessment.

Conclusion

190. In the premises, I submit that the decisions fall to be set aside in terms of section 6(2)(e)(iii) of PAJA on the basis that they did not take account of relevant considerations.

THIRD GROUND: FLAWED ASSESSMENT OF OIL SPILL RISK

191. The third ground of review concerns the assessment of oil spill risk.

192. As I have stated, the possibility of an oil spill is the most serious environmental impact associated with the exploration phase of the project by some margin.

193. The FEIR assessed the impact of a blow-out on marine ecology, commercial fisheries, coastal and nearshore users and intangible heritage and in every case estimated the residual impact as "high" or "very high".

194. The following qualitative statements in the FEIR give some indication of how the effects of an oil spill would manifest:

> *"Crude oil spilled in the marine environment will have an immediate detrimental effect on water quality, with the toxic effects potentially resulting in mortality (e.g., suffocation and poisoning) of marine fauna or affecting faunal health (e.g., respiratory damage) (direct negative impact). Sub-lethal and long-term effects can include disruption of physiological and behavioural mechanisms, reduced tolerance to stress and incorporation of carcinogens into the food chain. If the spill reaches*

the coast, it can result in the smothering of sensitive coastal habitats and oiling of marine fauna." (pg 456)

"In addition to the impact of an oil spill on the marine environment, it would result in the degradation of the coastline in terms of aesthetic and landscape appeal. Any impact on the integrity of the coastal and marine ecosystem through a large oil spill could in turn impact various aspects that makes up people's intangible cultural heritage." (pg 469)

195. The scope of the impact on the marine environment is described as follows:

"Assuming the worst-case scenario, the intensity of the potential impact of a blowout of hydrocarbons varies depending on the faunal group affected ranging from medium for offshore benthic macrofauna, marine mammals and turtles, and deep-water reefs to high for pelagic seabirds. As the area does not have confirmed oil seep anomalies and is therefore unlikely to have established oil-degrading microbial communities (especially considering the harsh offshore oceanographic conditions), the impacts of deposited oil on the seabed is likely persisting over the medium- to long-term. In the unlikely event of a blowout the slick would spread into Namibia and International waters beyond the EEZ and thus be of international extent. The impact magnitude would therefore range from medium to very high magnitude depending on the faunal group affected. However, collectively, the impact on marine fauna is assessed to be of very high magnitude."

196. The FEIR estimates that "visitor spend" attributable to tourism would diminish by R1.35 billion (5% of the total spend of R26.3 billion) based on the assumption that the oil spill would last for 1 month (pg 467) and a loss to the commercial fishing sector of R600 million per year, sustained over three years (pg 468).

197. An oil spill is a therefore a highly significant potential impact of the exploration

activities, with effects that would be felt most acutely by west coast communities, fishers like Aukotwa, as well as across the country and for years after the event.

198. This risk called for a full and thorough assessment, including:

198.1. a reasoned opinion by the EAP as to the probability of an oil spill occurring (item 3(3)(j)(vi) and item (3)(3)(p) of Appendix 3 to the EIA Regulations);

198.2. an investigation of the mitigation measures and residual risk after mitigation (section 24(4)(b)(ii) of NEMA and item 3(h)(iii) of Appendix 3 to the EIA Regulations).

199. Neither of these matters were adequately addressed in the FEIR with the result that they did not form part of the evaluation undertaken by the Competent Authority in terms of section 24O.

"Likelihood" of a well blow-out

200. Throughout the FEIR, the risk of an oil spill is characterised as "unlikely". This is the basis on which the EAP deemed the exploration activities acceptable, notwithstanding the significant potential impacts.

201. The executive summary of the FEIR concludes with the following recommendation in this regard:

> *"As noted previously, the greatest environmental threat from offshore drilling operations is a major spill of crude oil and/or natural gas occurring either from a blowout or loss of well control (unplanned event). Although the probability of a blowout occurring is highly unlikely, the impacts of a*

well blowout, should it occur, range from HIGH to VERY HIGH significance. The probability is lowered further as TEEPSA has gained valuable experience and is well aware of the local conditions and requirements to operate in these local conditions, as it has successfully drilled two wells off the South Coast (in 2019 and 2020), with the metocean conditions off the South Coast (strong Agulhas Current) considered to be more extreme than those in Block DWOB."

202. At no stage in the FEIR is any empirical basis laid for the conclusion that an oil spill on the project area is "highly unlikely". The most that is offered for this conclusion is the following:

> *"The probability of a well blowout occurring is considered to be extremely unlikely. In a South Africa context, 358 wells have been drilled in the offshore environment to date (based on shapefile provided by PASA in 2021) and no well blowouts have been recorded to date. Global data maintained by Lloyds Register indicates that frequency of a blowout from normal exploration wells is in the order of 1.43 x 10-4 per well drilled." (pg 452)*

203. However, neither of these factors is particularly relevant to the determination of "probability" for purposes of item (3)(3)(j) of Appendix 3 to the EIA Regulations.

204. For purposes of determining the risk of a blow-out for a given exploration well, relevant factors include geology, sea conditions and the depth of the well.

205. The latter factor is of particular relevance because some of the project area constitutes what might be referred to as "ultra-deep offshore" for purposes of exploration drilling, the deepest point is 3100m. Generally, ultra-deep wells present more complex and difficult challenges. I am advised that there are studies to demonstrate that the risk of serious incidents, such as blow-outs,

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injuries, and oil spills, increases incrementally for every 30 metres increase of depth.

206. Inasmuch as the FEIR justifies the assertion of improbability based on the fact that 358 other wells have been drilled offshore South Africa without incident, this statistic is of limited relevance without, at minimum, details of the depth of those wells.

207. I refer in this regard to the affidavit of Professor Bracco.

Speculative mitigation measures

208. It is recorded at page 453 of the FEIR that:

> *"As part of TEEPSA's Emergency Response Plan, a detailed Oil Spill Contingency Plan and Blowout Contingency Plan (BOCP) will be prepared specifically for each of the drilling operations which considers the project specific conditions, well location, metocean conditions, equipment and resources used in line with applicable requirements (including national/local regulations) and guidelines related to oil spill preparedness and response."*

209. The Oil Spill Contingency Plan ("OSCP") and the Blowout Contingency Plan ("BOCP") referred to are yet to be formulated.

210. Notwithstanding this, they are cited and relied upon in the FEIR as "project controls" and "mitigation measures" (see for example page 434, page 454 and the impact summary at pg 474):

> *"The OSCP specifies how best to control an unlikely spill, how to prevent certain sensitive habitats / environments from exposure to oil, and what can be done to minimise the damage done by the spill (containment and recovery) and is based on the specific project conditions for that well. The*

OSCP is the operational document prepared and aligned with local and national regulations, including the South Africa's National Oil Spill Contingency Plan, applicable international conventions and internal rules. The primary objective of the OSCP is to set in motion the necessary actions to minimise the effects of an oil spill."

211. The OSCP in particular is relied upon as a source of critical assumptions in the OSM Report (at page 40). Most notably, the proposition that a "capping stack" could be deployed within 20 days. A capping stack is an emergency response device used to stop the flow of oil or gas from an uncontrolled well (FEIR, pg 129).

212. According to Professor Bracco, the notion that a capping stack could be deployed within 20 days is "*extremely optimistic and not justified*". The basis for this view is elaborated in her expert affidavit. Given this concern, the specifics of the OSCP and the BOCP were highly material to evaluating the risk and impacts of the exploration activities.

213. It is apparent that both decision-makers relied upon the BOCP and the OSCP in arriving at their decisions.

214. Paragraph 3.2 of the DG's decision cites the following "key finding":

"The impact of unplanned events such as well blowout range from high to very high, however the occurrence of such events is very unlikely, and the holder has strategies in place to safeguard against the occurrence of such an event. TEEPSA will also have a Blowout Prevention Plan in place that sets out its detailed response plan and intervention strategy to be implemented should an unplanned well blowout event occurs."

215. At paragraph 2.33 of the Minister's decision, it is stated:

"In addition, various mitigation measures for unplanned events such as blow-outs are described in the ESIA Report. The mitigation measures include, among others, blow out and oil spill contingency plans, an emergency response plan, a shipboard oil pollution emergency plan, the availability of capping stacks. All of these will be implemented if there is a spill or blow-out. I am satisfied that these contingent plans, properly implemented, will prevent or reduce the impacts of an oil spill or blow-out on the receiving environment."

Conclusion

216. In summary, despite identifying an oil spill as the most significant risk associated with the project and describing the consequences as "catastrophic": the FEIR:

216.1. recommended that the exploration activities be authorised on the basis that this risk was "highly unlikely" without providing any empirical basis for this conclusion; and

216.2. based this recommendation on plans containing vital mitigation measures that are yet to be formulated.

217. In arriving at their decisions, the decision-makers relied on these conclusions. In the premises, I submit that the decisions fall to be set aside on the following bases:

217.1. they did not comply with a material procedure in that the FEIR, (i) did not assess the probability of an oil spill as required by *inter alia* 3(3)(j)(vi) to the EIA Regulations; and (ii) did not assess the mitigation measures that would be applied and residual risk as required by *inter alia* section 24(4)(b)(ii) of NEMA and item 3(h)(iii) of Appendix 3 to the EIA Regulations;

217.2. they did not take account of relevant considerations;

217.3. they were not rationally connected to the purpose of the empowering provision; and

217.4. they were unreasonable

218. They accordingly fall to be reviewed in terms of section 6(2)(b), section 6(2)(e)(iii), 62(f)(ii)(bb) and section 6(2)(h) of PAJA.

FOURTH GROUND: FAILURE TO CONSIDER SOCIO-ECONOMIC IMPACTS

219. The members of Aukotowa are wholly dependent for their livelihoods and their sustenance on what we catch from the sea.

220. If the exploration activities result in an oil spill and we cannot fish, or our catch is radically reduced, most of our members will have no other means of feeding themselves or supporting their families.

221. The SEIA Report describes the implications of an oil spill for the fishing sector as being:

> *"Reduction in both recreational, small-scale and commercial fishing in the region, including all forms of near-shore and offshore fishing (e.g. fishing exclusion areas, non-consumption of fish due to toxicity, decline in recruitment of fish stocks)."* (pg 75)

222. We assume that this situation would persist for at least three years as this is the time period used in the SEIA Report to assess the impact of an oil spill on the fishing industry (see page 76).

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223. Although some might see this as a comparatively small impact relative to the massive scale of the impact of an oil spill for the commercial fishing industry (R600 million per year)[3] and other industries such as tourism (R1.35 billion for one month),[4] from our perspective, the loss of our livelihoods and the impact that it will have on our lives is immense and existential. Fishers in poor and remote communities such as Port Nolloth do not have easy access to alternative employment.

224. There is no reason why the socio-economic impacts on us as small-scale fishers should be regarded as trivial or immaterial such that they did not warrant the normal standard of assessment required by NEMA and the EIA Regulations. It therefore should have been assessed to the level required by item 3(3)(*j*) of Appendix 3 to the EIA Regulations. Specifically, the EAP should have investigated and reported on the significance and consequences of the loss of livelihood for small-scale fishers such as the members of Aukotowa.

225. Neither the FEIR nor the SEIA Report gives any indication of the magnitude of such an impact of an oil spill for small-scale fishers, or to the extent of our vulnerability to socio-economic impact of such an event. In fact, while a "local socio-economic profile" is provided for both Cape Town and Saldanha Bay in chapters 5 and 6 of the SEIA Report, our socio-economic context in Port Nolloth is not even mentioned.

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[3] SEIA Report, pg 76.

[4] Ibid.

Conclusion

226. I am advised and I respectfully submit that the assessment of impact in terms of item 3(3)(j) of Appendix 3 to the EIA Regulations should be construed in the light of the following principles in section 2 of NEMA:

226.1. environmental management 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;

226.2. the 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; and

226.3. the environment is held in public trust for the people, the beneficial use of environmental resources must serve the public interest.

227. Construed thus, the assessment of socio-economic impact as set out in the SEIA Report and the FEIR does not comply with NEMA and the EIA Regulations.

228. All of these ecological impacts have the potential for severe socio-economic impact upon small scale fishers if they result in reducing fish stocks.

229. In the premises, I submit that the decisions fall to be set aside on the following bases:

229.1. they did not comply with a material procedure in that the FEIR did not assess the impact of the exploration activities on small-scale fishers as required by item 3(3)(j) of the EIA Regulations; and

229.2. they did not take account of relevant considerations.

230. They accordingly fall to be reviewed in terms of section 6(2)(b), section 6(2)(iii) and section 6(2)(f)(ii)(bb) of PAJA.

FIFTH GROUND: FAILURE TO TAKE ACCOUNT OF IMPACT ON PUBLIC PROPERTY

231. As set out above, the National Environmental Management: Integrated Coastal Management Act, 24 of 2008 ("the ICMA") provides specific protection to South Africa's coastal areas.

232. The ICMA applies to South Africa's coastal waters, which includes South Africa's territorial waters and exclusive economic zone.

233. The Proposed Project will take place in South Africa's exclusive economic zone. Therefore, it falls within the coastal zone and is a coastal activity regulated by the ICMA

234. As such the decisions were 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:

234.1. 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*));

234.2. if the activity affects coastal public property, whether it is inconsistent with

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the objective of conserving and enhancing coastal public property for the benefit of current and future generations (section 63(1)(*h)(i)*);

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

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

235. South Africa's coastal waters form part of the coastal public property. Therefore, the Proposed Project will affect coastal public property.

236. 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.

237. The following provisions of the ICMA are of particular relevance:

237.1. 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).

237.2. 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 community as a whole" 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).

237.3. The ICMA is explicit in addressing how the public interest must be construed for purposes of the Act. The term "the interests of the community as a whole" 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".

238. In terms of section 7A, coastal public property is established *inter alia* to:

238.1. protect sensitive coastal ecosystems;

238.2. secure the natural functioning of dynamic coastal processes;

238.3. protect people, property and economic activities from the risk arising from dynamic coastal processes include the risk of sea-level rise.

239. 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.

240. 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)).

241. 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: (i) ensure that coastal public property is used, managed, protected, conserved and enhanced in the interests of the whole community; and (ii) 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).

242. Of relevance is the fact that the project carries with it environmental risk and impact that will extend far into the future and may well be irreversible. I am referring here specifically to the potential oil spill impact and the long-term consequences of enabling substantial GHG emissions through the burning of fossil fuels extracted from the project area, which will in turn impact upon the ocean environment.

243. The fact that an oil spill would precipitate long-lasting unquantifiable environmental pollution and degradation directly implicates the enjoinder in section 12 that the State must take reasonable measures to conserve and protect coastal public property for the benefit of present and future generations.

244. I am advised that to discharge its duty in the context of Total's application, the competent authority would, at minimum, have had to consider:

244.1. whether the Proposed Project would affect coastal public property;

244.2. whether the Proposed Project is consistent with the objective of conserving, protecting and enhancing coastal public property for the benefit of current and future generations;

244.3. whether the Proposed Project is likely to cause irreversible or long-lasting adverse effects to the coastal environment that cannot be satisfactorily mitigated;

244.4. whether the Proposed Project would substantially prejudice any costal management objective;

244.5. whether the Proposed Project is socially and economically justifiable and ecologically sustainable and consistent with 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;

244.6. whether the Proposed Project is in the interests of other living organisms that are dependent on the coastal environment;

244.7. whether granting an environmental authorisation for the Proposed Project 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.

245. Neither the DG nor the Minister made any attempt to do so.

246. The reasons for the DG's decision give no consideration to the ICMA or

section 63 of that Act. In fact, the DG's decision fails even to mention the ICMA.

247. The gravity of this failure is underscored by the fact the DG specifically identifies other statutory considerations. For example, the DG's decision records:

247.1. that the motivation for need and desirability of the Proposed Project complied with the EIA Regulations and addressed the key issues set out in the Need and Desirability Guideline (p. 17 of the DG's decision); and

247.2. that the public participation process complied with the EIA Regulations (p. 18 of the DG's decision).

248. The DG's decision also failed to consider or even mention the following considerations:

248.1. Coastal public property.

248.2. The objective of conserving and enhancing the coastal public property for the benefit of current and future generations.

248.3. Coastal management objectives.

248.4. The interests of the whole community.

249. Thus, it is apparent that the DG failed to consider the ICMA and section 63 of that Act.

250. The failure to consider the ICMA was raised in the appeals submitted by the Applicants.

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251. The Minister dismisses these appeals. In doing so, she did not pertinently address any of the issues raised in relation to the ICMA. All she did was summarise the submissions made by Total in this connection.

252. In the light of what is set out above, it is apparent that:

252.1. The DG's decision did not take into account section 63 of the ICMA or any other consideration under that Act.

252.2. This defect was perpetuated by the Minister on appeal, who also did not take account of these factors.

253. Therefore, the decisions stand to be reviewed and set aside on two bases, as set out below.

254. First, in failing to take into account the ICMA and section 63 of the ICMA, the Decisions under Review:

254.1. did not comply with a mandatory and material procedure prescribed by NEMA and the EIA Regulations;

254.2. were materially influenced by an error of law;

254.3. were taken because irrelevant considerations were taken into account and relevant considerations were not considered; and

254.4. were not rationally connected to the information before the decision makers.

255. Therefore, the Decisions under Review stand to be reviewed and set aside in terms of sections 6(2)(b), 6(2)(d), 6(2)(e)(iii), 6(2)(f)(cc) and 6(2)(h) of PAJA.

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256. Second, in the alternative to the above, the decisions:

256.1. do not set out any findings or process of reasoning in relation to any of the factors required to be considered by section 63 of the ICMA; and

256.2. do not set out any findings or process of reasoning in relation to a determination that the granting of the environmental authorisation for the Proposed Project was warranted in the light of considerations prescribed by section 63 of the ICMA.

257. Therefore, the decisions do not contain adequate reasons for any findings in relation to section 63 of the ICMA. Accordingly, per section 5(3) of the PAJA, the decisions are presumed to have been taken without good reason and, as such, stand to be reviewed and set aside in terms of sections 6(2)(e)(iv) and 6(2)(f)(ii)(aa) to (cc) of PAJA.

RELIEF

258. The Applicants respectfully submit that this is not a case in which the decisions under review should be remitted to the decision-makers. For reasons fully canvassed above, the FEIR is fatally flawed by reason of its limited scope and cannot serve as a basis for lawful decision-making.

259. In the premises, we submit that the Court should make an order in terms of section 8(1)(c)(ii)(a) declaring that the environmental authorisation is refused.

COSTS

260. The applicants have brought these proceedings in the public interest alongside the interests of Aukotwa. I am advised that in such circumstances

a litigant is, as a rule, not liable for an adverse costs order in favour of the State Respondents, if unsuccessful, save in circumstances where the proceedings were vexatious, frivolous or misconceived.

261. I submit that none of the above exceptions apply in the circumstances of this case. This application is based on substantial grounds and has good prospects of success.

262. I am further advised that a litigant in the position of the applicants should not be liable for the costs of a private respondent such as Total.

263. The question of costs will be fully addressed in argument at the hearing.

CONCLUSION

264. In the circumstances, I respectfully submit that the applicants have established that the decisions fall to be reviewed and set aside in terms of section 6 of PAJA.

265. The applicants accordingly pray for an order in terms of the notice of motion, subject to the right to supplement the grounds for review upon receipt of the decision-makers records of decision in terms of rule 53.

JOHANNES WALTER STEENKAMP

I hereby certify that the deponent has declared that he knows and understands the contents of this Affidavit and that to the best of his knowledge and belief it is the truth, which Affidavit has been signed to and affirmed to before me at CAPE TOWN on

this the 31 day of OCTOBER 2024.

COMMISSIONER OF OATHS

NAME:

TITLE:

ADDRESS:

RICHARD ALLAN LIDDLE
COMMISSIONER OF OATHS (RSA)
PRACTISING ATTORNEY & CONVEYANCER (RSA)
RICHARD LIDDLE ATTORNEYS
13 BELGRAVIA ROAD, ATHLONE
TEL: 021 697 8610

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AUKOTOWA FISHERIES PRIMARY CO-OPERATIVE

(Registration Number: 2018/005127/24)

(Hereinafter referred to as the "**Co-Operative**")

RESOLUTION SUBMITTED TO THE DIRECTORS (CONSTITUTING ALL OF THE DIRECTORS OF THE CO-OPERATIVE):

1. RECITALS

WHEREAS the Co-Operative intends bring a review application in the High Court of South Africa having jurisdiction, in respect of TotalEnergies EP South Africa BV ("TEEPSA") and TGS Geophysical Company (UK) Limited ("TGS") for relief set out in the notices of motion (the "**Applications**"), *inter alia*, to apply for an order to review the decisions of the competent authorities and, more specifically, the following:

1.1. The Environmental Authorisation ("EA") granted by the Department of Mineral Resources and Energy to TEEPSA to undertake exploration drilling activities in the Deep Water Orange Basin ("DWOB"); and the appeal decision of the Ministry of Forestry Fisheries and the Environment to uphold the EA; and

1.2. The EA granted by the Department of Mineral Resources and Energy to TGS to conduct seismic survey activities in the DWOB and the appeal decision of the Ministry of Forestry Fisheries and the Environment to uphold the EA.

2. RESOLUTIONS

2.1. NOW THEREFORE BE IT RESOLVED THAT as per the decision of the Co-Operative on 14 October........., the Co-Operative may and will proceed to bring the Applications in the appropriate division of the High Court or any forum with jurisdiction to adjudicate upon the Applications; and

2.2. BE IT FURTHER RESOLVED THAT the Co-Operative appoints and authorises Chennells Albertyn Attorneys, as attorneys of record for the Co-Operative, to proceed with any application, action or legal process to enforce the rights of the Co-Operative in respect of the Applications together with interest and legal costs; and

2.3. BE IT FURTHER RESOLVED THAT Johannes Wolter Steenkamp (Identity Number: 7402055047089.....) in their capacity as chair..........................of the Co-Operative, be authorised to sign and/or depose to any and all documentation, inclusive of founding affidavits, replying affidavits and/or any ancillary affidavits, certificates or supporting documents in support of the Application.

Co-Operative Executive Committee:	Position	Signature:	Date of Signature:
Johannes Walter Steenkamp	Chair	[signature]	24/10/2024
Morgan Johnny	A/Chair	[signature]	24/10/2024
Rudi Young	Aukotowa Secretary	[signature]	24/10/2024
Terisa Ouies	Aukotowa	Ouies	24/10/2024

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Co-Operative Executive Committee:	Position	Signature:	Date of Signature:
Willem Rossouw	Treasurer	[signature]	24/10/2024

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AUKOTOWA FISHERIES **14 Oktober 2024**

Presensielys

Vergadering met Lede

Naam	Van	Kontak Nommer	Handtekening
André	Cloete	072 872 5297	A Cloete
Berend	Diergaardt		
Berend	Van Wyk	0822380759	BVWyk
Bronwen	De Klerk	0605096464	
Bruce	De Klerk		
Charles	Townsend		
Chris	Diergaardt		C. Diergaardt
Christiaan	Mackenzie		Mackenzie
David	Cloete	0607622864	
Elroy	Adams		
Elton	Duraan		
Eric	De Wet		
Eugene	Cloete		
Freddie	Joseph		F JOSEPH
Gert	Saal		G. Saal
Glen	Rooi	~~R~~ G. 0826613061	R. C. ROOI
Harry	Coraizen		
Hendrik	Van Wyk		
Jakobus	Saal	0723436111	JPSaal
Jerome	Ovies		

Joseph G	Cloete		
Josef H G	Cloete	0763232960	
Josef	Louw		Josef Louw
Joey	Cloete		
Johannes	Cloete		
John	Arendse	0642525613	
John	De Wet	0741885103	
John	Dirkse		
John	Martin		J. MARTIN
Juliana	Rooi	062 1414248	
Koos	Van Wyk		
Margaret	Malan		M. MALAN
Marius	Stuurman		
Melvin	Tsoaeli		
Morgan	Johnson	07645815[illegible]	
Petrus	Carolus	0787479124	
Pieter	Olivier	0761766111	
Rendall	Uys	063 721 9628	
Renthia	Van Wyk	0637219428	
Richard	De Wee	0627216114	RDeWee
Rose	Malan	0729129396	RMalan
Rudi	Young	065 1641 497	
Samuel	Slander		

Silino	Jaftha	0635806577	[signature]
Stanley	Young		
Stuart	Thomas		
Terisa	Ovies	0632617923	[signature]
Vivian	Van Wyk	VIVIANVANWYK	
Walter	Steenkamp	084 087 5199	JW. Steenkamp
Willem	Rossouw	061 669 5065	[signature]
William	Klaasen		
William	Ruiter		[signature]

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IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

CASE NO.: 23619/2024

In the matter between:

AUKOTOWA FISHERIES PRIMARY CO-OPERATIVE LIMITED	First Applicant
THE GREEN CONNECTION NPC	Second Applicant
NATURAL JUSTICE	Third Applicant

and

DIRECTOR-GENERAL: DEPARTMENT OF MINERAL AND PETROLEUM RESOURCES	First Respondent
MINISTER OF FORESTRY, FISHERIES AND THE ENVIRONMENT	Second Respondent
TOTAL ENERGIES EP SOUTH AFRICA S.A.S.	Third Respondent

CONFIRMATORY AFFIDAVIT: PRIYANKA NAIDOO

I, the undersigned,

PRIYANKA NAIDOO

do hereby make oath and state as follows:

1. I am the Legal and Outreach Advisor of The Green Connection NPC ("Green Connection").

P.N.

2. The Green Connection NPC's registered office is situated at Unit B1, Clareview Business Park, 236 Imam Haron Road, Claremont, Cape Town.

3. I am duly authorised to depose to this affidavit on behalf of The Green Connection NPC, who is the second applicant.

4. The facts contained in this affidavit are within my personal knowledge, unless the context indicates otherwise, and are, to the best of my knowledge and belief, both true and correct.

5. I have read the founding affidavit deposed to by Johannes Walter Steenkamp. I confirm all of the allegations in the founding affidavit insofar as they pertain to me and to The Green Connection NPC.

PRIYANKA NAIDOO

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at CAPE TOWN on this the 31 day of OCTOBER 2024, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended by R1648 of 19 August 1977, and as further amended by R1428 of 11 July 1989, having been complied with.

COMMISSIONER OF OATHS
Full names:
RICHARD ALLAN LIDDLE

RICHARD ALLAN LIDDLE
COMMISSIONER OF OATHS (RSA)
PRACTISING ATTORNEY & CONVEYANCER (RSA)
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13 BELGRAVIA ROAD, ATHLONE
TEL: 021 697 8610

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Address: 13 BELGRAVIA ROAD ATEVORE
Capacity: ACCOMPANY

A FOS
P.N.

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IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

CASE NO.: 23619/2024

In the matter between:

AUKOTOWA FISHERIES PRIMARY CO-OPERATIVE LIMITED	First Applicant
THE GREEN CONNECTION NPC	Second Applicant
NATURAL JUSTICE	Third Applicant

and

DIRECTOR-GENERAL: DEPARTMENT OF MINERAL AND PETROLEUM RESOURCES	First Respondent
MINISTER OF FORESTRY, FISHERIES AND THE ENVIRONMENT	Second Respondent
TOTAL ENERGIES EP SOUTH AFRICA S.A.S.	Third Respondent

CONFIRMATORY AFFIDAVIT: DELME CUPIDO

I, the undersigned,

DELME CUPIDO

do hereby make oath and state as follows:

1. I am the Southern African Hub Director of Natural Justice.

2. Natural Justice's principal place of business is situated at Mercantile Building, 63 Hout Street, Cape Town, 8000, South Africa.

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3. I am duly authorised to depose to this affidavit on behalf of Natural Justice, who is the third applicant.

4. The facts contained in this affidavit are within my personal knowledge, unless the context indicates otherwise, and are, to the best of my knowledge and belief, both true and correct.

5. I have read the founding affidavit deposed to by Johannes Walter Steenkamp. I confirm all of the allegations in the founding affidavit insofar as they pertain to me and to Natural Justice.

DELME CUPIDO

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at CAPE TOWN on this the 31 day of OCTOBER 2024, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended by R1648 of 19 August 1977, and as further amended by R1428 of 11 July 1989, having been complied with.

COMMISSIONER OF OATHS
Full names:
Address:
Capacity:

RICHARD ALLAN LIDDLE
COMMISSIONER OF OATHS (RSA)
PRACTISING ATTORNEY & CONVEYANCER (RSA)
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