"ANNEXURE A"

FREE STATE ENVIRONMENTAL JUSTICE NETWORK (FSEJN) **Appellant**

DIRECTOR GENERAL: DEPARTMENT OF MINERAL RESOURCES AND ENERGY **First Respondent**

CHIEF EXECUTIVE OFFICER, PETROLEUM AGENCY OF SOUTH AFRICA **Second Respondent**

AFRO ENERGY (PTY) LTD **Third Respondent**

APPEAL PURSUANT TO SECTION 43(1A) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 AGAINST THE DECISION RELATED TO THE ENVIRONMENTAL AUTHORISATION GRANTED TO AFRO ENERGY (PTY) LTD ON 23 JUNE 2025

INTRODUCTION

1. This is an appeal to the Honourable Minister of Forestry, Fisheries and the Environment ("**Appeal**" to the "**Minister**"), directed to the Director: Appeals and Legal Review of the Department of Forestry, Fisheries and the Environment ("**DFFE"**), to set aside the decision of the Department of Mineral Resources and Energy (as "**First Respondent**" or **"DMRE"**) dated 23 June 2025 (as notified to IAPs On 7 July 2025) that granted environmental authorisation with application reference number 12/3/383 ("**the EA**") to undertake certain listed activities in terms of the National Environmental Management Act ("**NEMA**") and the Environmental Impact Assessment Regulations, 2014 ("**the EIA Regulations**") ("**The Decision**") to Afro Energy (Pty) Ltd (as "**Third Respondent" or "Afro Energy** ").

2. The Decision concerns an environmental authorisation of approximately 240 000ha for Afro Energy's exploration right in respect of various farms located within the magisterial districts of Fezile Dabi, Thabo Mofutsanyane and Gert Sibande in the Free State and Mpumalanga Province (the "**Project**").[1] On 23 June 2025, the DMRE issued the Decision with reasons **(Annexure B)** and stated;

[1] Department of Minerals Resources and Energy, "Environmental Authorisation in terms of the National Environmental Management Act (Act 10 of 1998): Environmental Impact Assessment Regulations (2014) for the Proposed Afro Energy Prospecting Right Extension, in the magisterial districts of Fezile Babi, Thabo Mofutsanyane and Gert Sibande, Free State

> *"In view of the above and having taken into consideration environmental management principles as set out in section 2 of the NEMA, this Department is satisfied that the proposed activities will not be in conflict with the objectives of the integrated environmental management set out in Chapter 5 of the NEMA and will not result in any detrimental risks to the environment and the public. This environmental authorization is accordingly granted."*

3. On 7 July 2025, Afro Energy's Environmental Assessment Practitioner (the "**EAP**"), SLR Consulting (South Africa) (Pty) Ltd ("**SLR**"), sent Interested and Affected Parties ("**I&APs**") a notification (the "**Notification**") summarising the Decision and DMRE's reasons for the decision.

4. The Appellant objects to the DMRE's Decision based on concerns regarding the need and desirability of the proposed project, the Climate Change impacts of the proposed project, the Air Quality impacts of the proposed project, the Geohydrological impacts of the proposed project, the socio-economic impacts of the proposed project, and the public participation process.

5. The Appellant further refers to the reasons given by the Department. The decision to grant the above prospecting right was not properly considered.

6. Pursuant to NEMA section 43(7), an appeal under section 43 "suspends an environmental authorisation, exemption, directive, or any other decision made in terms of [NEMA] or any other specific environmental management Act, or any provision or condition attached thereto." The DMRE's Decision is accordingly suspended pending the outcome of this appeal.

7. The Appellants submit that the Appeal should succeed, and that the Decision made by the DMRE should be set aside because the Decision is unlawful in that it fails to comply with, among others, NEMA and the Constitution (**"the Constitution**")[2], for the reasons detailed below.

8. The Appellants further submit that there are grounds for judicial review under the Promotion of Administrative Justice Act, 2000 ("**PAJA**")[3] because the Decision comprises administrative action that *inter alia:*

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and Mpumalanga, South Africa." (Reference number: 12/3/383) **("DMRE 23 June 2025 Decision)**

[2] Constitution of the Republic of South Africa, Act 7 of 1996

[3] Promotion of Administrative Justice Act, 3 of 2000

a. is unconstitutional or unlawful;[4]

b. was taken because of the failure to consider relevant considerations;[5]

c. is not rationally connected to the information before DMRE in making the Decision or to the reasons provided by DMRE for the Decision;[6] and

d. is so unreasonable that no reasonable person could have granted it.[7]

PARTIES

9. The Appellant is the Free State Environmental Justice Network (**"FSEJN")**. FSEJN, is a network established with the vision of promoting awareness of, and advocating for, environmental justice within the Free State and the country.

10. The Appellant has legal standing to bring the Appeal not only in terms of section 43 of NEMA, but also to enforce environmental laws (including "*a principle contained in Chapter 1, or of any provision of a specific environmental management Act, or of any other statutory provision concerned with the protection of the environment or the use of natural resources*") [8] in terms of NEMA section 32, in that they *inter alia* act: "*(c) in the interest of or on behalf of a group or class of persons whose interests are affected; (d) in the public interest; and (e) in the interest of protecting the environment.*"[9]

11. The First Respondent is the Director General: Department of Mineral Resources and Energy, cited in their official capacity as the signatory of the Authorisation ("**DMRE**").

12. The Second Respondent is the Chief Executive Officer of the Petroleum Agency of South Africa ("**PASA**"). PASA promotes exploration for, and development of, onshore and offshore gas and acts as the regulator and custodian of exploration and production activities. DMRE's decision to grant the EA to Afro Energy was made on the recommendation of PASA.

13. The Third Respondent is Afro Energy (Pty) Ltd ("**Afro Energy**"). Afro Energy is a wholly owned subsidiary of **Kinetiko Energy Ltd** and is the holder of the EA granted in terms of the impugned decision.

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[4] PAJA section (6)(2)(d)(f)(i) and (i).
[5] PAJA section 6(e)((iii).
[6] PAJA section 6(f)(iii) (cc) and (dd).
[7] PAJA section (6)(h).
[8] NEMA section 32(1).
[9] NEMA section 33(1)(c)-(d).

DESCRIPTION OF THE PROJECT AND BACKGROUND TO THE APPEAL

14. On 25 July 2024, Afro Energy lodged an application[10] for a right to explore conventional, natural gas, over an area of approximately 240 000ha in the Free State and Mpumalanga Province with reference number ER383. The Scoping Report was made available for comment.

15. On 6 September 2024, the Centre for Environmental Rights ("the **CER**") submitted comments on behalf of FSEJN detailing their concerns about the above application for exploration right by Afro Energy and the Scoping Report.

16. From 13 February 2025 to 14 March 2025, Afro Energy's Environmental Impact Assessment ("**EIA"**) and Environmental Management Programme ("**EMPr"**) were made available for public review and comment. On 14 March 2025 CER submitted comments on behalf of FSEJN objecting to Afro Energy's EIA and EMPr.

17. On 2 April 2025, Afro Energy submitted its EIA and EMPr to the DMRE.

18. On 23 June 2025, the DMRE advised that it had considered the EIA, *inter alia*, and was satisfied that Afro Energy had met all the requirements for the granting of an EA. Afro Energy were accordingly granted the EA.

19. The Appellant submit that all the impacts of the proposed project were not adequately identified or assessed. The Appellant further submit that the project is neither necessary nor desirable, will have adverse climate change, environmental and socio-economic impacts and that these impacts were not adequately assessed, that there was no meaningful public participation and that the decision is not properly considered.

20. The Appellant submit that in granting the EA to Afro Energy, the DMRE did not apply its mind in making its decision. In the Grounds of Appeal below, the Appellant will demonstrate that DMRE's decision is unlawful in that DMRE did not consider relevant considerations and thus that the decision to grant the EA was not rationally connected to the information before DMRE, among others.

[10] The application is in terms of section 79 of the Mineral and Petroleum Resources Development Act, 2002 (No. 28 of 2002) (MPRDA)

RELEVANT LEGAL STANDARDS

21. As the supreme law of the Republic of South Africa, the Constitution of the Republic of South Africa bears reference. Section 24 of the Constitution provides that;

> *"Everyone has the right—*
>
> *a. To an environment that is not harmful to their health or well-being; and*
>
> *b. To have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that—*
>
> - *Prevent pollution and ecological degradation;*
> - *Promote conservation; and*
> - *Secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development."*

22. The provisions contained within NEMA aim to give effect to section 24 of the Constitution. Section 2 of NEMA lays out fundamental environmental management principles.

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24. Section 2 provides that these principles must "*serve as guidelines by reference to which any organ of state must exercise any function when taking any decision in terms of* [NEMA] *or any statutory provision concerning the protection of the environment*" and must "*guide the interpretation, administration and implementation of* [NEMA], *and any other law concerned with the protection or management of the environment*."

    a. Section 2(2) of NEMA stipulates that "*environmental management must place people and their needs at the forefront of its concern, and serve their physical, psychological, developmental, cultural and social interests equitably*.

    b. Section 2(3) of NEMA requires that development be socially, environmentally and economically sustainable.

    c. Section 2(4)(a) of NEMA provides that:

i. "*sustainable development requires the consideration of all relevant factors including, but not limited to, the following: …*

ii. *(vii) that a risk averse and cautious approach is applied, which takes into account the limits of current knowledge about the consequences of decisions and actions; and*

iii. *(viii) that negative impacts on the environment and on people's environmental rights be anticipated and prevented, and where they cannot altogether be prevented, are minimised and remedied*.

d. Section 2(4)(b) of NEMA requires as follows: "*environmental management must be integrated, acknowledging that all elements of the environment are linked and interrelated, and it must take into account the effects of decisions on all aspects of the environment and all people in the environment by pursuing the selection of the best practicable environmental option*". The best practicable environmental option is that "*option that provides the most benefit or 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*."

25. Section 24(1) of NEMA states: *"In order to give effect to the general objectives of integrated environmental management…, the potential consequences for or impacts on the environment of listed activities or specified activities must be considered, investigated, assessed and reported on to the competent authority or the Minister responsible for mineral resources, as the case may be, except in respect of those activities that may commence without having to obtain an environmental authorisation in terms of this Act."*

26. Section 24O(1) of NEMA requires the competent authority to account for all relevant factors, in particular those regarding pollution, environmental impacts or environmental degradation "*likely to be caused if the application is approved*", as well as any guidelines, departmental policies, and environmental management instruments and any other information in the possession of the competent authority relevant to the Application. Section 24(4) of NEMA also requires that an activity's potential environmental impacts are properly assessed.

27. Section 24E of NEMA further requires that, "*[e]very environmental authorisation must as a minimum ensure that— (a) adequate provision is made for the ongoing management and monitoring of the impacts of the activity on the environment throughout the life cycle of the activity*".

28. The NEMA EIA Regulations, Appendix 3 section 3(j)(i), requires that "*an environmental impact assessment report must contain the information that is necessary for the competent authority to consider and come to a decision on the application, and must include each identified potentially significant impact and risk, including (i) cumulative impacts…".* Regulation 18 of the EIA Regulations requires a competent authority, in considering an application for an environmental authorisation, to have regard to the need and desirability of the undertaking of the proposed activity.

29. Furthermore, Section 33 of the Constitution recognises that everyone has the right to administrative action that is lawful, reasonable and procedurally fair. The PAJA seeks to give effect to this right.

30. Section 6(2) of PAJA provides that a court or tribunal has the power to judicially review administrative action if, *inter alia:*

    a. irrelevant considerations were taken into account or relevant considerations were not considered;

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d. the exercise of the power or the performance of the function authorised by the empowering provision, in pursuance of which administrative action was purportedly taken, is so unreasonable that no reasonable person could have so exercised the power or performed the function.[11]

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[11] Section 6(2),PAJA

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g. the exercise of the power or the performance of the function authorised by the empowering provision, in pursuance of which administrative action was purportedly taken, is so unreasonable that no reasonable person could have so exercised the power or performed the function[12].

GROUNDS OF APPEAL

Ground 1: Climate change impacts not adequately assessed

Inadequate, misleading and fundamentally flawed climate impact assessment

42. The Appellant asserts that the authorization for the project should be revoked because the Climate Change Risk Assessment (**CCRA**) is inadequate, misleading, and fundamentally flawed, and fails to provide a credible assessment of the project's climate impacts. These concerns were raised during the commenting period on Afro Energy's EIA, but they were not addressed prior to the EA being granted.

43. The CCRA utilizes a recent and unrepresentative historical baseline (1995-2014) for its climate description, which is insufficient to illustrate the full extent of climate change already underway and thus underestimates the context of future change and risk. An older baseline would better highlight the changes from climate change.

44. Furthermore, the CCRA systematically omits significant emissions sources and underestimates others, leading to an incomplete and inaccurate representation of the project's carbon footprint. It fails to include methane emissions from flaring, despite flaring typically resulting in the release of some uncombusted methane. It incorrectly excludes significant fugitive methane emissions from drilling fluids from its summary of GHG emissions, despite acknowledging them elsewhere. These fugitive emissions (11.88 tons of methane) are equivalent to 351.6 tons of CO2e (using a GWP of

[12] Section 6(2), Promotion of Administrative Justice Act, 3 of 2000

29.8), which is significantly larger than the project's estimated mobile combustion emissions that were included.

45. The CCRA contains numerous errors, inconsistencies, and misleading statements regarding GHG emissions and their impact. It consistently uses an outdated and lower Global Warming Potential (GWP) value for methane (23) instead of the latest IPCC value for methane from fossil sources (29.8), leading to an underestimation of total CO2e emissions. It includes inaccurate and inconsistent reported emissions values for natural gas combustion, with disparities between text and tables, and lower values compared to standard emission factors. It makes misleading statements about methane's decomposition in the atmosphere and its impact, incorrectly stating emissions are not anticipated to have a measurable impact on climate change, despite methane being a potent GHG that breaks down into carbon dioxide (another GHG).

46. The CCRA fails to assess the full life-cycle climate impact of the project. It negligently excludes potential emissions from the future production and eventual combustion of natural gas from the site, which is the entire purpose of the exploration project. These subsequent emissions would dwarf those from the exploration activities. The discussion of carbon pricing and public policy restrictions incorrectly focuses solely on the duration of the exploration project itself, ignoring their potential impact on future gas production from the site.

47. The CCRA utilizes irrelevant and misleading methodologies for assessing climate impacts. It inappropriately compares the project's estimated GHG emissions to South Africa's national GHG inventory, a method explicitly identified as unhelpful and not best practice for understanding a project's climate impact. This approach does not reveal anything beyond the nature of the climate change challenge itself. It uses significance criteria developed by the European Bank of Reconstruction and Development (EBRD) that are unsuitable for fossil fuel exploration projects. These thresholds are not based on specific climate impacts but on a bank's internal inventory, and the EBRD has since stopped investing in upstream oil and gas to align with Paris Agreement goals, meaning they would not apply these thresholds to or invest in this project.

48. The stated mitigation measures for GHG emissions are recommended rather than required, limiting their likelihood of resulting in any meaningful reduction in emissions.

49. According to the International Energy Agency's Net-Zero Roadmap 2023 Update, under a net-zero by 2050 scenario with a chance of limiting the global temperature rise to 1.5 °C, "there is no need for investment in new coal, oil and natural gas" as demand for fossil oil and gas is set to decline by at least 80% by 2050 and "the pace of decline in oil and gas demand in the 2030s may also mean that a

number of high cost projects come to an end before they reach the end of their technical lifetimes".[13] Similarly, a 2024 paper published in Science, shows "that no new fossil fuel projects are needed in a 1.5°C world" and "existing fossil fuel capital stock is sufficient to meet energy demand in representative scenarios aligned with the Paris Agreement target of limiting global warming to 1.5°C above pre-industrial levels".[14] Several of the paper's authors from University College London published a report in June 2025 stating:[15]

50. "The world has more oil and gas in existing fields than can be consumed while achieving the Paris goals. 'Committed emissions' from consuming the oil and gas in the world's existing fields (those already producing or that have received production consent or final investment decision) would exceed the remaining global carbon budget for 1.5°C by a long way. Exploring for or developing new oil and gas fields would exacerbate that excess. Projected production from existing fields is sufficient to meet or exceed demand in 1.5°C scenarios published by the International Energy Agency, the Intergovernmental Panel on Climate Change and others. To stay within the 1.5°C carbon budget, some oil and gas fields will need to close before the end of their economic life, and all undeveloped fields will need to remain untapped."

51. It was further stated that "Opening new oil and gas fields will make it harder to achieve the Paris goals, and lead to economic and social disruption. Existing fossil fuel infrastructure causes "carbon lock-in", as there are major economic, political and legal barriers to closing oil and gas fields once they start operating. Therefore allowing any additional fields will make it harder to achieve the Paris goals. Opening new fields will leave companies with stranded assets if governments achieve the Paris goals, leading to losses for companies, financial institutions and the wider economy, and undermining the prospects for a just transition. A less costly and more orderly path is to cease opening new fields."

52. The Appellant submits that Afro Energy's assessment of the climate impacts of the proposed project is misleading, inadequate and fundamentally flawed and the EA should be set aside in order for the climate impacts to be properly assessed. This would bring the climate impact assessment in alignment with the 2017 judgment in the case of *Earthlife Africa Johannesburg v the Minister & Others* ("the *Thabametsi* judgment"), which confirmed that a CCIA with a life-cycle GHG emissions assessment is a necessary component of an EIA for projects with climate impacts[16].

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[13] Net Zero Roadmap A Global Pathway to Keep the 1.5 °C Goal in Reach. https://iea.blob.core.windows.net/assets/13dab083-08c3-4dfd-a887-42a3ebe533bc/NetZeroRoadmap_AGlobalPathwaytoKeepthe1.5CGoalinReach-2023Update.pdf

[14] Green, Fergus, et al. "No new fossil fuel projects: The norm we need." Science 384.6699 (2024): 954-957. https://www.science.org/stoken/author-tokens/ST-1888/full

[15] https://www.ucl.ac.uk/policy-lab/sites/policy_lab/files/report-climate_implications_pages_online.pdf

[16] *EarthLife Africa Johannesburg v. Minister of Environmental Affairs and Others*, Case no. 65662/16, High Court of South Africa, Gauteng Division, Pretoria. Available at http://climatecasechart.com/wp-content/uploads/sites/16/non-us-case-documents/2017/20170306_Case-no.-6566216_judgment-1.pdf

Ground 2: Air quality impacts not adequately assessed

Insufficient air quality impact assessment

53. The authorization for the project should be revoked because the Air Quality Impact Assessment (**AQIA**) is insufficient and fundamentally flawed, failing to provide an adequate basis for understanding the likely air quality impacts of the proposed activities.

54. The AQIA fails to assess and quantify existing background air pollution levels. It omits crucial data from the SAAQIS monitor at Standerton, located immediately outside the exploration area, which shows significantly high air pollution levels, including PM2.5 and PM10, exceeding South Africa's National Ambient Air Quality Standard (NAAQS) values. The EIA's description of the area conveniently omits several adjacent settlements like Standerton (a city of over 83,000 in 2011), despite the exploration area extending within 4km of it, and the region being known for poor air quality, falling within the Highveld Priority Area (HPA) and identified as an air quality hot spot.

55. The AQIA provides a very limited and inaccurate description of project emissions, failing to comprehensively assess their spatial distribution and impact. It omits key emissions sources in its assessment, including methane emissions from flaring, pre-decommissioning project activities, and fugitive methane emissions from drilling fluids, despite estimates showing these would be a meaningful source (e.g., 11.88 tons of fugitive methane, equivalent to 351.6 tons CO2e, much larger than included mobile combustion emissions). It uses inappropriate and inaccurate (zero) emissions factors for particulate matter from diesel combustion in drilling rigs and from flaring, despite well-documented facts and industry sources confirming these emissions. It only modeled the spatial distribution of pollutants resulting from flaring, neglecting other identified emission sources such as diesel consumption by drilling rigs, generators, and vehicles, and fugitive emissions from degassing drilling fluids. A "worst-case" impact assessment is incomplete without including all emission sources simultaneously, cumulatively, and alongside background concentrations.

56. Furthermore, the AQIA fails to consider critical air pollutants and their health effects. It omits any assessment of Ozone (O_3) pollution, despite substantial emissions of its precursor chemicals, including methane itself. Standerton's 1-hour ozone concentrations exceeded the NAAQS for over 480 hours in 2025, indicating it is an important pollutant in the area. Methane emissions directly contribute to ozone pollution, with significant leakage occurring in natural gas exploration and production processes. There is little discussion of health or environmental impacts resulting from the increase in air pollution.

57. An insufficient assessment of these impacts will mean that more local communities, and society at large, will be exposed to poorer ambient air quality and the concomitant adverse health impacts of those. This will lead to the more strain on an already struggling public healthcare sector, with the most disadvantaged having to bear the environmental and physical impacts of the proposed project.

58. It is the Appellants submission that an adequate assessment of the air quality impacts should be conducted before the project can commence. A failure to do so will disproportionately burden society's most vulnerable.

Ground 3: Groundwater impacts not adequately assessed

Flawed modelling techniques used

59. The authorization for the project should be revoked because the Geohydrology Impact Assessment (**GIA**) is fundamentally flawed in its modeling of potential contaminant migration, failing to adequately assess the risk to crucial shallow aquifers which are a source of water supply in the project area.

60. The GIA's prediction of limited contaminant plume movement relies on an incorrect assumption of uniform soil porosity. The assessment assumes a very low primary porosity (0.05) throughout the block, despite the aquifers resting in "predominantly argillaceous rocks comprising shale, mudstone and siltstone". In these types of soils, water movement occurs primarily through fractures and secondary porosity, not through the rock matrix, which has extremely low permeability. The GIA's model ignores fracture permeability.

61. Appellant asserts that this is an issue because ignoring the dominant role of fractures in groundwater movement leads to inaccurate predictions of contaminant spread. Assuming uniform porosity fails to account for variations in fracture spacing, connectivity, and aperture, which can lead to overestimation or underestimation of contaminant spread. This approach also ignores matrix diffusion effects, resulting in inaccurate long-term predictions of contaminant persistence.

62. Furthermore, the GIA fails to employ advanced and necessary modeling techniques for fractured argillaceous formations. Accurate assessment of plume migration in such formations requires methods like fracture network mapping, geophysical surveys, and numerical modeling techniques (e.g., discrete fracture network models). The GIA should have utilized more appropriate models such as Discrete Fracture Network (DFN) Models, Dual Porosity & Dual Permeability Models, or Stochastic Flow and Transport Models, which are designed for complex flow and transport behavior in fractured systems.

63. Historical examples, such as the Hanford Site, illustrate that initial models assuming uniform porosity in fractured layers underestimated contaminant migration rates, necessitating revisions with dual-porosity models to accurately reflect faster pathways. This demonstrates the severe consequences of using an inappropriate model.

64. It is for the above reasons that the Appellant asserts that the GIA is defective and cannot accurately inform decision-makers regarding the consequences of a loss of well casing integrity, as it fails to account for fracture permeability, which is critical for understanding groundwater flow and contaminant migration in the project area.

65. A comprehensive GIA is absolutely essential in a water scarce country like South Africa. This need is exacerbated by the water-intensive nature of oil and gas projects and the injustice that many members of local communities face due to not being provided with water and being unable to access it. For those that are able to access water, borehole water is a crucial water source and the activities conducted by Afro Energy threaten this vital lifeline.

66. The Appellant submits that the EA should be set aside and the GIA should be revised.

Ground 4: Socio-economic impacts not adequately assessed

Impacts on agriculture

67. The Free State and Mpumalanga provinces, where the exploration activities will occur, are highly dependent on agriculture as a major source of livelihoods. Despite acknowledging the potential for positive local economic stimulation, Afro Energy's socio-economic impact analysis does not sufficiently explore how petroleum exploration could disrupt the agricultural industries of the Free State and Mpumalanga regions, an industry on which many vulnerable and disadvantaged people are dependent on for their lives and livelihoods.

68. While Afro Energy mentions the potential for additional land use in conjunction with agricultural activities if gas resources are found to be viable, it is our client's submission that there is little discussion on the possible displacement of agricultural activities, particularly the use of land for exploration activities. Exploration could lead to soil degradation, water contamination, air pollution and the disruption of farming operations—all of which are critical to the local economies in the Mpumalanga and Free State regions.

69. It is asserted that the socio-economic analysis conducted is too vague on how exploration activities

could affect agricultural output or the ability to carry out farming – which is directly linked to the ability to employ farm workers. Our clients assert that the socio-economic analysis needs to provide more concrete data on how exploration could disrupt seasonal agricultural cycles and the impacts that this would have on farmers, as well as the spin-off effect that would be faced by farm workers and farm-dwellers. This further assessment could potentially be in the form of a report by an agricultural economist.

70. The region's economy relies on a range of agricultural activities, from crop production to livestock farming, which in turn supports local businesses, including processing, transportation, and retail. The socio-economic impact assessment fails to identify specific risks to these value chains. It is argued that the absence of direct consideration of how exploration could affect farm productivity, livestock health, or local agricultural businesses is a significant oversight in the EIA process.

71. Due to the significance of agriculture in the regions affected by the proposed project, it is submitted that the lack of information in this regard renders the information before the DMRE and PASA incomplete.

Tourism

72. Furthermore, the affected regions are home to tourism that relies on the natural environment, cultural attractions, and rural landscapes. The socio-economic impact analysis briefly notes that local attractions could be compromised, but it fails to assess the economic significance of tourism in these regions, and how exploration could undermine this sector.

73. For example, exploration activities, particularly drilling and the use of heavy machinery, could detract from the natural beauty of the Free State and Mpumalanga provinces, which form the backbone of their tourism sectors. The noise, visual disturbances, and potential pollution from exploration could decrease the attractiveness of the region for both local and international tourists.

74. There is a lack of thorough impact assessment on how these disruptions could reduce the region's tourism revenue. This is critical because tourism may provide a sustainable alternative to fossil fuel extraction in these areas and serves as a valuable sector which creates jobs for local communities both directly and indirectly.

75. Tourists could choose other regions with cleaner environments, reducing local revenues from hospitality, transport, and service industries. Additionally, potential environmental damage from exploration (e.g., oil spills, habitat destruction) could make the region a less desirable tourist destination. The socio-economic assessment misses this long-term economic consideration. A comprehensive cost-benefit analysis should be conducted, factoring in the potential loss of tourism income.

Farm workers and farm dwellers

76. The socio-economic analysis does not sufficiently address the well-being of farm workers and farm dwellers. These individuals often live in close proximity to agricultural activities and are highly vulnerable to external disruptions.

77. Many farm dwellers rely on access to land for subsistence farming and traditional livelihoods. Any disruption in land use through activities such as exploration would negatively affect their food security, income, and social structures.

78. It is asserted that the socio-economic analysis fails to adequately assess how exploration will disrupt farm dwellers' access to land and resources that are crucial for their livelihoods. Our clients assert that Afro Energy should have assessed the potential socio-economic displacement that these communities will face, as well as their ability to remain on the land post-exploration.

79. Furthermore, as will be pointed out in the public participation section, farm workers and farm dwellers were largely excluded from the public participation process. This further exacerbates the adverse impacts that exploration activities will have on them while at the same time flouting their Constitutional rights to be consulted and to meaningfully participate in a decision that would significantly impact their lives.

80. The presence of unfamiliar personnel (contractors, exploration crews) on farms can introduce significant health and safety risks, especially if safety protocols are not well-implemented. Issues such as increased traffic, unfamiliar machinery, and potential accidents could disproportionately impact farm workers.

81. While Afro Energy outlines basic safety protocols, there is minimal mention of how these might directly affect the daily lives and livelihoods of those who work on or reside on farms. It is submitted that the socio-economic report should delve into the potential health risks, the economic vulnerabilities faced by these workers (especially seasonal farm workers), and whether the exploration would lead to job losses or displacement.

82. Afro Energy suggests that there will be limited employment opportunities for local communities due to the highly specialized nature of the work. While this may be realistic for technical roles, the report does not fully engage with the broader employment impacts.

83. While the report suggests that local employment would be minimal, an indication of the lack of its comprehensiveness is its failure to explore opportunities for indirect employment, such as in service industries (e.g., hospitality, transport, retail), or through skill development that could benefit the community in the long term.

84. While this speaks to our client's assertion that the socio-economic assessment was insufficient, even if the indirect employment opportunities were addressed, the short-term nature of the exploration activities means that any employment created would be temporary. Afro Energy should assess whether this transient employment would have a long-term benefit for local workers or whether the community would be left with little to show after the project ends.

85. Also, our clients assert that a deeper focus on skills transfer, long-term employment opportunities, and retraining programs for local workers would further improve the assessment.

86. Afro Energy lists mitigation measures like engagement with farm security groups and the development of a farm access protocol. However, these measures primarily focus on security and access protocols rather than on addressing deeper socio-economic issues related to agriculture, tourism, and impacts on vulnerable communities. However, the lack of proactive socio-economic mitigation strategies is a glaring gap. Afro Energy should be encouraged to develop more inclusive, community-centred solutions to help mitigate adverse effects on local populations.

87. It is submitted that Afro Energy needs to explore more comprehensive measures to assess and address the adverse socio-economic impacts on agriculture and tourism, including creating alternative livelihood options for affected workers, improving local agricultural resilience, and compensating for lost revenues due to tourism decline.

88. It is our clients' assertion that Afro Energy's socio-economic impact analysis is limited in its understanding of the broader, long-term consequences of exploration on agriculture, tourism, and vulnerable communities, such as farm workers and farm dwellers. The report underestimates the negative externalities that could arise from exploration activities, and it does not provide sufficient detail on how to mitigate these adverse impacts.

89. A comprehensive socio-economic impact analysis would include an expanded analysis that provides; (a) a more detailed assessments of agricultural disruption, loss of tourism income, and the socio-economic vulnerability of farm communities, (b) robust mitigation measures that go beyond short-term safety protocols, including long-term employment, community development programs, and economic compensation for affected groups and (c) incorporates more stakeholder engagement to ensure that all affected parties, especially vulnerable farm workers and dwellers, have their concerns heard and addressed.

90. This has not been included in the socio-economic impact assessment compiled by Afro Energy's environmental assessment practitioner and it is for this reason that we assert, on behalf of our client, that Afro Energy's ER383 environmental authorisation should be set aside.

Ground 5: the need and desirability was not adequately assessed

The project's alignment with South Africa's energy policies

91. The need and desirability assessment conducted by Afro Energy seems to rely heavily on South Africa's current energy policies and strategies. While the reliance on governmental policy may seem like an irrefutable bar at first glance, a deeper analysis raises critical concerns about the project's alignment with national policy, as well as broader environmental and social considerations.

92. Afro Energy argues that their exploration project aligns with South Africa's existing energy-related plans, particularly focusing on the increasing demand for gas and petroleum products for industrial use and electricity generation. The report mentions a variety of relevant national policies such as the Integrated Resource Plan ("the IRP"), the Gas-to-power Independent Power Producer Programme and the Gas Master Plan, *inter alia.*

93. While this demonstrates a certain degree of alignment with South African energy policy, the report's reliance on the economic desirability of petroleum exploration without sufficient critique of the sustainability thereof raises concerns.

Sustainability

94. Regard must be had to the DFFE Need and Desirability Guideline (GN R891 of 2017) which makes it clear that in the assessment of a project's need and desirability, the potential impacts on sustainability (such climate change, food security, socio-economic impacts and biodiversity, inter alia) must be given due consideration.

95. Afro Energy's report, however, appears to primarily focus on economic feasibility and the short-term benefits of fulfilling South Africa's energy demand, with less emphasis on climate change and greenhouse gas (GHG) emissions. The report acknowledges global and local emissions concerns but fails to adequately address how continued reliance on hydrocarbons will contribute to South Africa's GHG emissions, especially as the country struggles to meet international climate targets.

96. Furthermore, in terms of the just transition, South Africa is transitioning towards renewable energy, and this transition may conflict with further investment in fossil fuel infrastructure, even for the exploration that the proposed Afro Energy project would entail. The report mentions that petroleum use is "supportive of" renewable energy growth, but it does not critically engage with how new

fossil fuel projects could potentially undermine this goal.

97. The global push towards transition to net zero (which includes South Africa's commitments under the Paris Agreement) advocates for energy transition away from fossil fuels towards renewable resources, which Afro Energy's exploration project does not sufficiently address in its analysis of need and desirability.

Gas as a "transition fuel"

98. Furthermore, the need for hydrocarbon exploration is framed largely within the context of energy security, especially with regard to the increasing demand for gas. However, it is argued that the need and desirability assessment does not delve into the long-term sustainability of relying on hydrocarbons like oil and gas as a central energy source.

99. While gas could potentially reduce South Africa's reliance on imports, this need must be balanced against the country's broader energy strategy, which is increasingly focused on renewables. South Africa has set ambitious targets to reduce its reliance on coal, an energy source that currently dominates the country's energy mix. The South African Renewable Energy Masterplan ("the SAREM"), the Just Energy Transition Investment Plan ("the JETP") focus on transforming the renewable energy and storage value chains by 2030. Furthermore, the Climate Change Act seeks to ensure that climate change considerations are taken into account in all government strategies and policies.

100. All of this is against the backdrop of the International Court of Justice's Advisory Opinion, dated 23 July 2025, which lays the foundation for the possibility of states being held accountable for the actions and/or omissions of private actors which are under their jurisdiction. In terms of the Advisory Opinion, the failure to regulate or constrain the production or consumption of fossil fuels may potentially constitute a breach of international law[17].

101. It is in this context that our client questions the potential for gas to act as a "bridge" fuel, especially in light of commitments to carbon neutrality and the shift towards cleaner sources of energy.

102. Tied to this is the risk of oil and gas infrastructure becoming stranded assets in the future. While Afro Energy assumes the economic feasibility of the project, a deeper analysis is required to assess whether the long-term benefits of exploration (including potential jobs and revenue) outweigh the environmental risks and the socio-economic costs of proceeding with the proposed project.

[17] The Court gives its Advisory Opinion and responds to the questions posed by the General Assembly

103. As was mentioned in our clients' objections to Afro Energy's EIA, the discussion of stranded assets on page 294 of the EIA appears to be incomplete – the last sentence in the section abruptly ends – this is a gap in the EIA.

104. Furthermore, the existing, limited, discussion around stranded assets and liabilities on page 294 asserts that "The risk of not being able to fully recover investment in the project is that of the company.[18]" This statement ignores the other stakeholders that will bear the financial burden of potential stranded oil and gas assets such as shareholders and investors, the government and, by extension, taxpayers, and employees of the company as well as local communities.

105. In cases of decommissioning or in the event of environmental liabilities, taxpayers may end up footing the bill in instances where a company goes bankrupt or where the financial provisioning turns out to be insufficient. Furthermore, workers in oil and gas may face layoffs when projects are canceled or shut down and communities dependent on fossil fuel industries such as oil and gas can initially go through a 'boom' phase but may eventually suffer economic decline leading to potential ghost towns.

106. Afro Energy's need and desirability assessment is not sufficiently robust in addressing critical environmental, social, and global sustainability concerns. Although the project may align with some aspects of South Africa's energy policy, it fails to engage with the broader implications of climate change, renewable energy targets, and the adverse impacts of the proposed project on the environment. The assessment should be revised to take into account the above considerations.

107. Beyond the question of need, the desirability of this project is diminished by potential negative impacts on: groundwater and soil quality in a region dependent on agriculture, public health due to air and noise pollution and community livelihoods, especially if there are risks of land degradation or social displacement.

108. It is submitted that Regulation 18 of the Environmental Impact Assessment Regulations as well as the DFFE's Guideline on Need and Desirability, which provide the need and desirability criterion that should be considered, have not been complied with. The Appellants submit that there is no adequate assessment of reasonable alternatives which should be comprehensively assessed, along with a meaningful analysis of the no-go option.

109. It is asserted that these impacts are not fully assessed and transparently disclosed; as it stands, this has not been done in the EIA Report compiled by Afro Energy. For this reason it is argued that the

[18] Page 294, EIA, Afro Energy ER383

EA should be set aside.

Ground 6: the Project did not comply with relevant law pertaining to public participation

110. As was asserted in the objections to Afro Energy's EAI dated 14 March 2025, public participation is one of the most important aspects of the environmental authorisation process and it is because people have a right to be informed about potential decisions that may affect them and to be afforded an opportunity to influence those decisions.

111. The public participation process must achieve adequate and meaningful participation of interested and affected parties, particularly affected farmworkers and farm dwellers who experience high levels of poverty and insecurity and are among the most vulnerable and marginalised groups in South Africa.

112. In *Sustaining the Wild Coast NPC and Others v Minister of Mineral Resources and Energy and Others 2022 (6) SA 589 (ECMk)* the court stated that "meaningful consultations consist not in the mere ticking of a checklist, but in engaging in a genuine, *bona fide* substantive two-way process aimed at achieving, as far as possible, consensus, especially in relation to what the process entails and the import thereof."

113. The majority of the proposed exploration area is rural in nature and is comprised mostly of farmsteads which includes scattered communities. According to the Integrated Development Plan (IDP)[19] of the relevant district municipalities, farm workers and farm dwellers are part of the community in the proposed project area[20] and social context and sensitivities within which the proposed project activities would occur.

114. Consequently, the minimum requirements for public participation outlined in the EIA Regulations is not sufficient as the characteristics of the potentially affected parties must be considered when planning the public participation processes for the proposed project. The DFFE Public Participation Guidelines[21] issued in terms of the EIA regulations state that where I&APs include rural or historically disadvantaged communities or people with special needs (e.g. illiteracy, disability, or any other disadvantage), the following could, inter alia, be considered to

[19] http://www.mafube.fs.gov.za/wp-content/uploads/2022/08/MAFUBE-L-M-FINAL-IDP-2022-2027-2.pdf , https://lekwalm.gov.za/wp-content/uploads/2023/09/Lekwa-LM_Final-2023_24-IDP-Vol-3.pdf andphumelela.gov.za/wp-content/uploads/2023/09/Phumelela-2022-2027-FINAL-IDP.pdf
[20] Fezile Dabi District Municipality and Thabo Mofutsanyana District Municipality
[21] *Public Participation Guidelines,* Department of Forestry, Fisheries and Environment.

facilitate their participation or overcome potential constraints:

h. Announcing the public participation process on a local radio station in a local language, at an appropriate time (e.g., peak hours);
i. Using participatory rural appraisal and participatory learning and action approaches to build the capacity of the I&APs to engage and participate more effectively;
j. Holding public meetings at times and venues suitable to the community;
k. Holding separate meetings with vulnerable and marginalised groups; and
l. appropriate access to information must be provided; and reasonable assistance to people with special needs must be provided[22].

115. As directly concerned, the guideline includes language considerations. This does not, however, appear to have been taken into account. StatsSA information indicates that large portions of the demographic in the affected areas speak isiZulu – 48% of the population in Standerton, 27% of the population in Cornelia, 20% of the population in Vreded and 12% of the population in Frankfort speak isiZulu. Yet the notifications provided via site notices, advertisements and radio were not in isiZulu, with English, Afrikaans and Sesotho being the languages used.

116. The response to this by the EAP is that no requests for project information in isiZulu were received from stakeholders. A promise was made by the EAP to provide key information in isiZulu moving forward. This response failed to acknowledge that isiZulu-speaking individuals may not have even been aware of the call for registration due to an inability to read the relevant documents or understand the radio broadcasts, as they were in a language that is not their native tongue.

117. Further, providing future key documents in isiZulu ignores the fact that such individuals would have effectively been excluded from participating in the Scoping Report phase and would have failed to register as interested and affected parties. The court in *South Durban Community Alliance v The Trustees of the Ground Work Trust [2022] ZAGPHC 741* : noted that notification by English and Afrikaans, excluding local language that accommodates most of the region, renders anyone who did not speak English and Afrikaans unable to register. In this case, notices were only made in English and Afrikaans (in a +70% Zulu region). The court emphasised the importance of language to ensure proper participation.

118. The appellant therefore, submits that failure of the EAP to provide information in isiZulu amounts to ignorance and negligence, which is not an excuse in law.[23]

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[22] National Environmental Management Act: Regulations: Environmental Impact Assessment: Public Participation Guideline (dffe.gov.za)
[23] C S v De Bloom1977 (3) SA 513 (A)

119. Appellants submit that farm workers and farm dwellers on the target properties were largely excluded from the public participation process. Public participation is not meant to be limited to farm owners and farmers unions. Information on how many households are situated on the target farms together with how many people work and/or live on the impacted farms was not accurately gathered, leading to improper public participation.

120. While the EIA refers to the Gert Sibande District Municipality which states that Standerton, Ermelo, Bethel and Piet Retief is a strong agricultural area which varies between crops and livestock farming, the EIA states that a preliminary I&AP database was compiled which included "key stakeholders (including farmers unions)."

121. Appellant submits that no regard was had to farm workers or farm dwellers, which constitutes a vulnerable demographic whose livelihoods would be uprooted by the proposed project. This is further compounded by the heritage and cultural practices of the farm workers and farm dwellers. It is noted that "many farms and communities in rural areas have graveyards located near them[24]." The Appellant further submits that extra steps should be taken to ensure the meaningful inclusion of this vulnerable demographic in the public participation process.

122. These aspects were clearly not considered by the DMRE when granting the EA. The Appellant thus submits that there was no adequate public participation conducted due to the failure to consult with farm workers and farm dwellers and the failure to provide information notices in Isizulu, as the most commonly used language in the region.

123. The Appellant submit that the DMRE's decision to grant Afro Energy an EA should be set aside on this basis.

Ground 7: it is not rational to authorise projects with significant impacts when the State lacks the capacity to ensure compliance with licences and environmental laws

124. The Appellants further assert that the proposed project should not have been authorised because South Africa still does not have the capacity to adequately ensure that gas operations are compliant with environmental laws and license through monitoring and enforcement.

125. The DMRE, and PASA as the designated agency in terms of section 70 of the MPRDA, holds the mandate to recommend the granting of EAs and to undertake monitoring, enforcement and

[24] Page 214, Environmental Impact Assessment

compliance at oil and gas operations. This is conducted through Environmental Mineral Resource Inspectors ("**EMRIs**").

126. The Appellants submit that there ae 94 designated EMRIs in South Africa, with all 94 of these being designated for mining, and none being designated for the oil and gas sector. Furthermore, PASA only has one office which is situated in Cape Town, with no regional offices in the provinces which are most directly affected by oil and gas operations.

127. It is submitted that neither the DMRE nor PASA have the capacity to fulfill their legislative obligations in terms of compliance monitoring and enforcement as well as to give effect to section 24 of the Constitution.

128. The decision to grant Afro Energy an EA is thus irrational and dangerous and should be set aside.

COMPLIANCE WITH APPEAL REGULATIONS

129. In accordance with the requirements of Regulation 4(2)(a) of the Appeal Regulations this Appeal is submitted in writing in the form obtained from the Appeal Administrator, and accompanied by this more detailed appeal document, being a statement setting out the grounds of appeal ("**the Grounds of Appeal**"). The Appellants are entitled to also submit these more detailed Grounds of Appeal as the Appeal submission. This submission must be considered by the Minister in deciding the Appeal.

130. Appellants confirm, in compliance with Regulation 4(1) of the Appeal Regulations, that this Appeal is submitted within 20 days[25] from the date of notification to I&APs to the Appeal Administrator. A copy of the Appeal will be provided to the Applicant and to those registered I&APs, and organs of state with an interest in the matter, insofar as possible and within time and cost constraints. The statement regarding compliance with Regulation 4(1) is contained in the cover letter to which these Grounds of Appeal are attached. In any event, Appellants confirm compliance with Regulation 4(1).

[25] The Appellants submit that the process provided for in the Appeal Regulations, in particular the requirement to submit an appeal in 20 days of the notification, severely prejudices the Appellants and infringes on their rights to a fair process. The Appellants continue to assert that the unreasonably short timeframes and onerous notification requirements of regulation 4(1), among others, render the Appeal Regulations a violation of the rights to just administrative action, and are thus unconstitutional.

CONCLUSION

131. The Appellants reserve the right to supplement the grounds of appeal as more information regarding the scope of First Respondent's Decision becomes available.

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