



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

Ref: LSA 185626

APPEAL DECISION

**APPEALS AGAINST THE DECISION TO GRANT AN INTEGRATED ENVIRONMENTAL
AUTHORISATION TO MINERAL SANDS RESOURCES (PTY) LTD FOR THE PROPOSED
MINING OF HEAVY MINERALS**

Mineral Sands Resources (Pty) Ltd	Applicant
Centre for Environmental Rights (CER)	First Appellant
North Western Cape Mining Forum (NWCMT)	Second Appellant
Raakvat Boerdery (Edms) Bpk	Third Appellant
Merle Sowman	Fourth Appellant
Department of Mineral Resources	Competent Authority

Appeal: These appeals were lodged against the decision of the Regional Manager: Mineral Regulation of the Department of Mineral Resources, Western Cape Regional Office (DMR) to grant an Integrated Environmental Authorisation (IEA) to Mineral Sands Resources (Pty) Ltd (the applicant) on 7 June 2019, for the proposed mining of heavy minerals, namely, ilmenite, leucoxene, rutile, zircon, monazite, garnet and staurolite on the farm Geelwal Karoo 262 and 10 Beaches adjacent to the Remaining Extent of the farm Klipvley Karoo 153, portions 4, 5, 6 and 7 of the farm Klipvley Karoo 153, the farm Perseel Wekus 191, 192, 193, 194, 196, 200, 201, 202, 203, 204, 205 and portion 3 of the farm Graauwduinen 152, in the Magisterial District of Vanrhynsdorp, in the Western Cape Province.

1. BACKGROUND AND APPEAL

1.1 The applicant owns and operates the Tormin Mineral Sands Mine (Tormin Mine) on the West Coast of South Africa. Tormin Mine is located on and adjacent to Farm Geelwal Karoo 262, approximately 18 km north of the Olifants River Estuary and 25 km west of Lutzville. The mine holds two mining rights (MR162 and MR163), covering an area of 119.9 ha, and an approved environmental management programme (EMPr) to mine valuable heavy minerals (VHM) on beaches below the high-water mark adjacent to Farm Geelwal Karoo 262.

1.2 Tormin Mine operation includes:

- Mining on the beach;
- Access roads;
- Water supply; and
- Power supply.

1.3 The applicant proposes to extend the mining operations at Tormin Mine in terms of section 102 of the Mineral and Petroleum Development Resources Act, 2002 (Act No. 28 of 2002) (MPRDA), into the following areas:

- Ten beaches adjacent to Remainder of Graauw Duinen 152, and Portions of the Farm Klipvley Karoo 153, along a stretch of coastline north of Tormin Mine comprising of 43.7 ha mining and 6 ha for haul road widening;
 - Inland “strand line” mining area on the Farm Geelwal Karoo 262, inland of the existing processing plant comprising of 75 ha for mining; and
 - An infrastructure / plant expansion area of 64 ha adjacent the existing processing plant to accommodate additional processing plants, stockpile areas, industrial yards, parking and laydown areas.
- 1.4 On 12 April 2018, the applicant lodged an application for amendment of an existing mining right, in terms of section 102 of the MPRDA. The applicant proceeded to simultaneously apply for an IEA with the DMR in respect of the proposed development. The application for IEA was lodged in terms of section 24 of the National Environmental Management Act, 1998 (Act No. 107 of 1998) as amended (NEMA) and the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008) (NEMWA), read with regulation 21 of the Environmental Impact Assessment Regulations, 2014, as amended (2014 EIA Regulations).
- 1.5 The applicant appointed SRK Consulting (South Africa) (Pty) Ltd as an independent environmental consultancy to undertake the Scoping and Environmental Impact Assessment (EIA) process in respect of the IEA application. The Scoping Report (SR) was received by the DMR on 25 May 2018 and accepted on 25 June 2018. Subsequent thereto, the final Environmental Impact Assessment Report (EIAR) and Environmental Management Programme (EMPr) were thereafter received by the DMR on 14 November 2018.
- 1.6 Upon evaluation of the final EIAR and EMPr, the DMR was satisfied that the applicant complied with the requirements of the 2014 EIA Regulations and that the final EIAR and EMPr adequately assessed and addressed the impacts associated with the proposed activities. As a result thereof, the DMR granted an IEA to the applicant on 7 June 2019.

- 1.7 Subsequent to the decision by the DMR to grant the aforementioned IEA, the Directorate: Appeals and Legal Review within the Department of Forestry, Fisheries and the Environment (Appeals Directorate) received four appeals from CER (the first appellant), North Western Cape Mining Forum (NWCMF) (the second appellant), Raakvat Boerdery (Edms) Bpk (the third appellant) and Merle Sowman (the fourth appellant) on 26 June 2019, 9 July 2019 and 10 July 2019 respectively.
- 1.8 On 23 July 2019, the applicant provided their responding statements in respect of the above appeals.
- 1.9 Comments on the grounds of appeals were thereafter received from the DMR on 29 July 2019.
- 1.10 The appeals by the appellants are premised on the following grounds:
- 1.10.1 Objection to the granting of an IEA in order to expand an authorised mining area;
 - 1.10.2 Flawed approach to assessing impacts;
 - 1.10.3 Impact significance on terrestrial biodiversity;
 - 1.10.4 Inappropriate reliance on rehabilitation and re-vegetation to mitigate negative impacts;
 - 1.10.5 The need for a biodiversity offset;
 - 1.10.6 Failure to take a risk-averse and cautious approach;
 - 1.10.7 Rehabilitation obligation, liability and financial provision;
 - 1.10.8 Need and desirability;
 - 1.10.9 No effort to promote ownership and management of locally based Historically Disadvantaged Persons (HDPs);
 - 1.10.10 Accuracy of maps;
 - 1.10.11 Western boundary of section 6 of Klipvlief Karoo Kop 153, and the Coastal Protection Zone;
 - 1.10.12 Access to the proposed mining areas;
 - 1.10.13 Cumulative impacts; and
 - 1.10.14 Specialist studies.

1.11 APPEAL BY THE FIRST APPELLANT

Objection to the granting of an IEA in order to expand an authorised mining area in terms of section 102 of the MPRDA

- 1.11.1 The appellant objects to the applicant's reliance on section 102 of the MPRDA to amend their mining right and to expand the footprint significantly without applying for a new prospecting or mining right. The appellant argues that using a section 102 of the MPRDA to significantly expand an authorised mining area is an unlawful circumvention of the application process for prospecting and mining rights. It is further submitted that the DMR should have taken into account the intention of the legislature to amend this section in order to exclude applications for extensions. In this regard, the appellant submits that although the amendment to section 102 of the MPRDA has not come into effect, it is clear that the legislature intends to exclude extensions and thus the DMR should have requested the applicant to apply for a new mining right. It is submitted that Parliament intends to exclude any substantive amendment of a mining right to be effected in terms of section 102(1) of the MPRDA, by introducing section 102(2) in the Amendment Act, which limits the application of section 102(1) as follows:

"The amendment or variations referred to subsection (1), shall not be made if the effect of such amendment or variation is to – Extend an area or portion of an area, or Add a share or shares of the mineralised body, unless the omission of such area or share was a result of an administrative error."

- 1.11.2 The appellant argues that it is clear that the legislature intend to limit any extensions or variations of a mining right, to disallow amendments or variations that involved extensions of the area of operation.
- 1.11.3 In response to this ground of appeal, the applicant submits that section 102(1) of the MPRDA provides that:

"A reconnaissance permission, prospecting right, mining right, mining permit, retention permit, technical corporation permit, reconnaissance permit, exploration right, production right, prospecting work programme, exploration work programme, production work

programme, mining work programme, environmental management programme or an environmental authorisation issued in terms of the National Environmental Management Act, 1998, as the case may be, may not be amended or varied (including by extension of the area covered by it or by the additional of minerals or a shares or seams, mineralised bodies or strata, which are not at the time the subject thereof) without the written consent of the Minister."

- 1.11.4 The applicant submits that they have not deviated from the prescript of the law and has complied with the current applicable law. The applicant acknowledges that there was a proposed amendment to some sections of the MPRDA, including section 102, however these amendments were not enacted into law. Thus the applicant argues that the application of section 102 of the MPRDA remains in effect.
- 1.11.5 In their comments on this ground of appeal, the DMR submits that the expansion of an authorised mining area is empowered by section 102 of the MPRDA and this process is a subject of a mining right and administered through the MPRDA, and as such this ground of appeal should be advanced through the MPRDA process.
- 1.11.6 It is further submitted that the applicant applied for an IEA as guided by the NEMA and the 2014 EIA Regulations as well as Listing Notices. After a thorough evaluation of all the information submitted in support of the application for IEA, the DMR decided to grant an IEA to the applicant.
- 1.11.7 In evaluating this ground of appeal as well as responses thereto, I have taken note of the concerns raised by the appellant regarding the use of section 102 of the MPRDA to expand the authorised mining area, I have taken note that this ground of appeal deals with the application for mining right. This application is lodged and processed separately and in terms of the MPRDA. IEA was applied for and granted by the DMR in terms of NEMA and the 2014 EIA Regulations. For these reasons, I concur with the DMR this ground of appeal should have been brought in terms of the MPRDA, not section 43 (1A) of NEMA.

1.11.8 In this regard, I am aware of section 96 of the 96 (1) of the MPRDA, which provides that *“Any person whose rights or legitimate expectations have been materially and adversely affected or who is aggrieved by any administration decision in terms of this Act may appeal in the prescribed manner to (a) the Director-General, if it is an administrative decision by a Regional Manager or an officer; or (b) the Minister, if it is an administrative decision by the Director-General or the designated agency”*.

1.11.9 In light of the above, this ground of appeal is accordingly dismissed.

Flawed approach to assessing impacts on terrestrial biodiversity

1.11.10 The appellant submits that the approach to determine the significance in terms of assessing impacts on terrestrial biodiversity is flawed. In this regard, it is submitted that the probability that the area will suffer from irreplaceable loss of resources has not been taken into account. The appellant further submits that the reports conflate 'long term' impacts with 'irreversible' impacts. It is contended that neither the permanence nor reversibility of the impact has been covered.

1.11.11 The appellant contends that the Constitution of the Republic of South Africa, 1996 requires 'ecologically sustainable' development and the objective of the EIA process is *“to determine the degree to which these impacts can be reversed, and may cause irreplaceable loss of resources”*. It is submitted that section 2(4)(a) of NEMA specifies that sustainable development requires the consideration of all relevant factors and goes further to list these.

1.11.12 The appellant further contends that the development poses a potential threat to the functioning of the affected CBAs, both in terms of a direct impact on species diversity (biodiversity pattern) as well as on broad-scale ecological processes (biodiversity process). The appellant submits that the dominant vegetation type on site is Namaqualand Strandveld, which has little formal protection and is steadily declining. It is submitted that an analysis done in 2016 by CapeNature shows that the remaining extent of Namaqualand Strandveld has decreased by more than 20% since 2011. It is also submitted that this stretch of coastline and inland area has been identified as an important ecological corridor, the importance of

which has been elevated due to notable loss and degradation of habitat between the Olifants and Sout Rivers.

1.11.13 The appellant further submits that the loss of any material area of critical biodiversity would generally be seen as constituting 'irreplaceable loss' and its significance as being 'very high' or 'high'. The appellant argues that the terrestrial ecology specialist evaluates the impacts on vegetation and flora in the CBA as being of 'local' extent (i.e. "confined to the mining area and immediate surroundings", as defined in Appendix 10). It is further argued that it appears as if no consideration has been given to the regional, if not national, importance of the impact areas, and that the specialist has assessed and evaluated these impacts as if they were in a comparable area outside of a CBA. It is submitted, furthermore, that the statements in the I&R Summary by the terrestrial ecology specialist all point to a skewed interpretation of the impacts of mining in a critical biodiversity area as well as a significant under appreciation of the value and importance of these areas.

1.11.14 In response to this ground of appeal, the applicant submits that this issue was previously raised by the appellant and responded to by the environmental assessment practitioner (EAP) and the specialists in the Issues and Responses (I&R) summary submitted with the final EIAR on page 85. The applicant submits that the EAP and the specialists took the irreversibility of impacts into account and further that the EAP's impact rating methodology provides a clear and useful way of rating and differentiating the significance of different project impacts.

1.11.15 The applicant further submits that the impact assessment methodology has been utilised, and accepted in a large number of EIAs in South Africa and abroad, and none of the independent assessments by numerous specialist have come to the conclusion that there will be "irreplaceable loss of important biodiversity".

1.11.16 In response to this ground of appeal, the applicant submits that the proposed project relates to the mining of specific minerals and the fixed location of the mineral deposit dictates possible mining locations. According to the applicant, specialists considered the location of new mining areas and infrastructure footprints within the extension areas and considered

environmental constraints identified during their site visits. It is further submitted that the terrestrial ecology specialist did not identify any specific areas of high sensitivity within the proposed mining areas and infrastructure footprints that should be designated as "exclusion zones".

1.11.17 The applicant further submits that the significance of Impacts on CBAs was also further elaborated on in response to comments by CapeNature and CER (I&R Summary pages 40 and 89), which stated, *inter alia*, that in relation to the Tormin Mine extension project, the CBA has been designated to protect the coastal strip and associated ecological processes. Inland mining will adversely affect the function of the CBA, but given the intact nature of the surrounding landscape, the function of the CBA would certainly not be lost completely. The applicant further submits that given that most fauna appear to still be using the site, the terrestrial ecology specialist does not deem that inland mining will have a regional impact on connectivity and ecological function in the area.

1.11.18 The applicant submits furthermore, that the EAP applied the mitigation hierarchy in refining the project layout and mitigation measures. It is submitted that to avoid impacts as far as possible, the EAP compiled a Site Screening Report (In the Pre-Application Phase) based on specialist screening studies of biophysical aspects (aquatic ecology, terrestrial ecology, land capability, heritage) that could be sensitive to disturbance and influence the decision to mine in the area, and during this initial phase, the specialists described, assessed and delineated areas of high, medium and low sensitivity in the study area relevant to their area of expertise. The applicant submits that sensitivity was determined by the specialists based on their professional expertise and by considering the following criteria:

- Current condition;
- Tolerance to disturbance;
- Importance to conservation or scientific understanding; and
- Remaining extent / rarity.

1.11.19 Further to the above, the applicant submits that during the EIA process, they initially proposed a layout alternative for the infrastructure / plant expansion area that extended close to the eastern (fenced) boundary of Farm Geelwal Karoo 262. It is argued that under advice of the terrestrial ecology specialist, the layout of the infrastructure (plant expansion area) was revised to avoid portions of this ecological corridor between the infrastructure (plant expansion area) and the eastern fence line. The revised layout also reduces the overall disturbance footprint in the CBA, as portions of the infrastructure and plant expansion area are now located partly over areas to be mined. The applicant further contends that although impacts on the CBAs could not be completely avoided, the impact on the CBA was mitigated by revising the layout of the infrastructure / plant expansion area, and mitigation measures specify that areas affected by the project must be rehabilitated.

1.11.20 According to the applicant, where the CBAs have a high irreplaceability value, then losses of habitat are highly undesirable and can have regional level impacts. However, in areas where the vegetation is still largely intact and there are no specific features of high value in the CBA, then the loss of vegetation will be less significant.

1.11.21 Furthermore, the applicant submits that the "habitat loss within a CBA only constitutes irreplaceable loss where there are specific features or species present within the CBA that are not well represented elsewhere. The applicant submits that there are no species of very high concern, rare or specialised habitats present in the affected area and impacts on the CBA are not considered to have regional significance.

1.11.22 In their comments on this ground of appeal, the DMR submits that they relied on legislation, the findings / recommendations of the specialist reports and the relevant guidelines.

1.11.23 The DMR submits that the Mining and Biodiversity Guidelines recognise that mineral resources will lie in areas of high biodiversity importance and in such instance, the guideline proposes the certain factors to be considered. The DMR goes further to list these factors and provides that it was satisfied that destruction of Critical Biodiversity Areas (CBA) / Species of Conservation Concern (SCC) will be moderate to low, and very low, thus making the project sustainable.

1.11.24 Once again, the DMR reiterates that the Mining and Biodiversity Guideline was developed to guide the industry (both conservation and mining) and Government on how to approach such CBAs. As such, the DMR submits that following the Guideline, they evaluated the information presented and decided to grant an IEA taking into account the following issues:

- Presence of SCC (*low abundance of SCC*), vegetation diversity (*moderate and it is not unique*),
- Impacts of to CBA after mitigation measures (*moderate to very low*), connectivity/corridor (*mitigation measures deemed sufficient particularly given that the resident mammalian fauna appear to be tolerant of the current mining activities on Geelwal Karoo 262 and did not avoid the plant and haul roads to a significant degree*),
- Site specific conditions (*approval needed from Cape Nature to remove/disturb SCC if not granted that implies a safety distance will be managed*), site specific condition (*search and rescue of SCC prior to commencement of activities*) and likelihood of fatal flaw (*no fatal flaw identified*).

1.11.25 It is therefore the DMR's conclusion that the development is environmentally acceptable and meets the sustainable development factors described under section 2 of NEMA and by extension, it fulfils the requirements of section 24 of the Constitution of the Republic of South Africa, that is, "(iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development".

1.11.26 The DMR states that they maintain support on the "significance rating" used in assessment report, by the EAP as supported by numerous specialist reports (including the Biodiversity Report), and have confirmed that the impacts will be confined to the mining area and immediate surroundings.

1.11.27 In evaluating this ground of appeal, I have perused the final EIAR and EMP which provides for methodology used in determining and ranking the nature, significance, consequences, extent, duration and probability of potential environmental impacts and risks. I have also

taken note of the "*Table 39: Criteria used to determine the consequence of the impact*" as well as "*Table 40: Method used to determine the consequence score*".

1.11.28 Further to the above, I have taken note of the specialist reports submitted as part of the IEA application to deal with concerns relating to CBAs and SCC. In this regards, I am satisfied with the key mitigation / optimisation measures to mitigate the impacts on terrestrial ecology as well as the significant rating before and after mitigation/optimisation (page 153 to 154 of the final EIAR). I have also taken note of the submission by the DMR that some search and rescue will also ensure that SCC are not permanently lost, and this will be done by a qualified botanist. In addition, the EMPr was approved with recommendations from specialists, amongst others, to "*(a) appoint a suitably qualified specialist to undertake a preconstruction walk through to identify SCC and protected species within the construction footprint and oversee the rescue and relocation of these species, (b) obtain a permit from Cape Nature for the removal and/or destruction of SCC, (c) prohibit trapping, collecting and hunting fauna, (d) limit vegetation clearance to the minimum required. The measures proposed will ensure that destruction of SCC is avoided, and where it cannot be altogether avoided is minimised and remedied*".

1.11.29 The information before me indicates that the predicted impacts on terrestrial ecology are rated as medium during construction, very low to medium during operations, and insignificant during closure.

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

Inappropriate reliance on rehabilitation and re-vegetation to mitigate negative impacts

1.11.31 The appellant contends that the Namaqualand Strandveld is extremely difficult to rehabilitate. In addition, the appellant submits that it is improbable that it will lead to the return of an ecologically equivalent habitat. Furthermore, the appellant further submits that the specialist notes that while "*rehabilitation of the inland mining area can largely ameliorate the long-term impacts on connectivity, the diversity of the affected area will never be fully restored and*

regardless of the mitigation and rehabilitation applied, some residual impact will remain in this regard."

1.11.32 It is further submitted that a 'high-level' rehabilitation and re-vegetation plan is presented, however, the appellant submits that there is no information on the likely outcomes of this plan. It is submitted that the DMR's failure to critically engage with whether or not rehabilitation will be effective or successful in light of past experiences is material.

1.11.33 It is submitted, furthermore, that without having had access to the financial provision for rehabilitation / restoration, the appellant cannot comment on its adequacy. It is further submitted that the impacts on CBAs affect both biodiversity pattern and ecological process, and present a material risk of jeopardising the ecological integrity of the affected areas.

1.11.34 In response to this ground of appeal, the applicant reiterates that the issues were previously raised, and responded to by the EAP and specialists in the I&R Summary submitted with the final EIAR. It is further submitted that the *"Rehabilitation is an important mitigation measure, particularly for areas that are disturbed by the project. The EMPr also lists a large number of other mitigation measures to minimise impacts"*. The applicant submits therefore, that measures were also taken to avoid and reduce impacts such as by adjustment of the project layout.

1.11.35 Moreover, the applicant submits that for the avoidance of doubt, *"demonstrated success of past rehabilitation or re-vegetation efforts in this vegetation type and setting"* has been highly successful as referred to in the report of JR Blood in 2006 *"Monitoring Rehabilitation Success on "Namakwa Sands Heavy Minerals Mining Operation"*. The applicant further submits that this study indicated that topsoil replacement and plant translocation facilitate the return of similarity, species richness, species diversity and vegetation cover to mined areas. It is submitted that the rehabilitation site that had the greatest amount of biological input (topsoil replacement and plant translocation) appeared to be the most successful technique in facilitating vegetation recovery similar to reference sites.

- 1.11.36 It is therefore the applicant's submission that an iteration approach to rehabilitation is a very successful and effective method whereby a planned methodology is adapted to site specific conditions and experience over time, and that this is a best practice approach and this adaptive management approach has implemented successfully in the adjacent Namakwa Sands mine as referred to above.
- 1.11.37 In their comments on this ground of appeal, the DMR submits that the intended outcomes and goals of the rehabilitation has been clearly defined in Annexure 11F, of the "Rehabilitation and Re-Vegetation Plan", under the heading Rehabilitation Goals. It concludes by stating that the plans specified that "the ultimate goal of the rehabilitation is two-fold. Firstly and primarily, it is to restore ecological-function and secondly it is to remediate and improve the visual impacts of the post-mining landscape.
- 1.11.38 The DMR submits that they are satisfied with the submission of the specialist as the plan has defined species suitable for rehabilitation, species suitable for transplant and species suitable for seeding. It is further submitted that the Rehabilitation Progress Report and Environmental Audit Report (by an independent EAP) will be submitted to the DMR on an annual/biannual frequency. The said reports will reveal progress, successes and challenges and should there be a need to adopt an adaptive approach to reach favourable or intended status then the Rehabilitation Plan can be amended.
- 1.11.39 Moreover, the DMR submits that in the Rehabilitation and Re-Vegetation Plan, it is clearly stated that *"a lot of practical lessons have been learnt in this regard at other mines in the area such as Brand-se-Baai and it would be valuable to investigate the approaches that have been successful here first hand"*. Therefore, the DMR submits that this implies that there is existing knowledge of successful rehabilitation.
- 1.11.40 In evaluating this ground of appeal, I note, as per the applicant's submission that Annexure 11 F, in the "Rehabilitation and Re-Vegetation Plan", under the heading Rehabilitation Goals, states that the plans specified that "the ultimate goal of the rehabilitation is two-fold. Firstly and primarily, it is to restore ecological-function and secondly it is to remediate and improve the visual impacts of the post-mining landscape. Moreover, the appellant cannot pre-empt

unsuccessful rehabilitation methods proposed by the applicant before the proposed expansion has even started.

1.11.41 I have also noted through the EIAR that the inland strand line mining area will be rehabilitated during the Operational Phase as soon as the mining path allows. Furthermore, that the beach access roads and infrastructure expansion area will be rehabilitated at the end of the life of the mine in the Closure Phase.

1.11.42 Moreover, I have noted that during the rehabilitation process, green wind screens (shade cloth) will be installed across large strand line areas to facilitate establishment of vegetation. I note that these wind screens will remain in the Post-Closure Phase. The EIAR further states that this green material is incongruent with the natural colour and texture of the surrounding vegetation, especially when the sunlight reflects off this surface. The manufactured texture of the screens and the high reflectivity (causing glare) may compromise the sense of place compared to the quasi rural/natural character of the area, although receptors will have previously been exposed to these wind screens in the study area.

1.11.43 I further note that besides the abovementioned rehabilitation measures, the Rehabilitation Progress Report and Environmental Audit Report (by an independent EAP) will be submitted by the applicant to the DMR on an annual / biannual frequency. The said reports will reveal progress, successes and challenges and should there be a need to adopt an adaptive approach to reach favourable or intended status then the Rehabilitation Plan can be amended.

1.11.44 In light of the above, this ground of appeal is dismissed.

The need for a biodiversity offset

1.11.45 The appellant contends that both the provincial guidelines and the draft national policy on biodiversity offsets (gazetted in 31 March 2017) require that *"Biodiversity offsets should be considered to remedy residual negative impacts on biodiversity of 'medium' to 'high' significance" and that "Residual impacts of 'medium' to 'high' significance should trigger a*

requirement for a biodiversity offset". It is further mentioned that according to the draft national policy, *"Areas of composite biodiversity significance recognised in approved biodiversity policy, bioregional, biodiversity or spatial conservation plans"*, such as CBAs are areas in which *"impacts [are] preferably to be avoided"*, and where an offset ratio of "at minimum 20 times the impacted area" should be applied. Furthermore, the appellant submits that offset sites are to comprise *"areas of highest conservation priority that are currently without protection"* and it is submitted that the need to consider offsets is also set out in DEA's 2017 Need and Desirability Guideline.

1.11.46 Based on the above, the appellant argues that an offset would be required to remedy impacts on biodiversity. According to the appellant, it is wholly unacceptable to state that "based on their professional judgment, specialists have not recommended offsets for this project". The appellant further submits that it does not appear from the decision made by the DMR that biodiversity offsets were considered for purposes of addressing the residual impacts on biodiversity.

1.11.47 In response to this ground of appeal, the applicant submits that, *"The specialists appointed by SRK are experts in their fields and expected to be familiar with the concept of offsets and guidelines pertaining to them. On other projects and where they deem applicable, specialists do recommend offsets. Based on their professional judgment, specialists have not identified any fatal flaws or unacceptable impacts. The terrestrial ecology specialist has assessed the impact of the project on flora and fauna and has recommended mitigation measures to avoid and/or minimise impacts. The specialist does not consider a biodiversity offset to be warranted based on the significance of the identified impacts."*

1.11.48 Moreover, the applicant submits that environmental offsets are normally recommended where a permanent or long lasting impact will occur, resulting in the permanent change in land use or land capability. It is further submitted that the proposed work and impacts under this application do not result in such an outcome.

1.11.49 In their comments on this ground of appeal, the DMR submits that they relied on recommendations submitted by specialists. The DMR submits that the biodiversity specialist did not recommend biodiversity offsetting. The DMR states that biodiversity offsetting is not

an automatic application that supersedes the findings of the specialist who have conducted the actual ground-truthing exercise and to anticipate offsetting under all CBAs defeats the purpose of ground-truthing. As such, the DMR submits that it should be remembered that financial provision as required by NEMA caters for latent/residual impacts.

1.11.50 In evaluating this ground of appeal, I have noted the applicant's counter-argument in this regard, and further note the DMR's submission highlighting the importance of biodiversity offsets. I further note the DMR's submission to say that it relies on recommendations submitted by the Specialists. The Biodiversity Specialist did not recommend Biodiversity Offsetting. As such, the DMR submits that this conclusion should be interpreted alongside the findings (by ground-truthing) of the Biodiversity Specialist as described in the comments/arguments made in response to the second ground of appeal above.

1.11.51 I further note that according to the I&R Summary, the impact of the project on flora and fauna (including avifauna) has recommended mitigation measures to avoid and/or minimise impacts. Moreover, I further note that the specialist does not consider a biodiversity offset to be warranted based on the significance of the identified impacts. Hence I proceed to dismiss this ground of appeal.

Need and Desirability

1.11.52 The appellant submits that the DEA's guideline is clear that "need" is not the same as the "general purpose and requirements" of the activity; the "need" relates to the interests and needs of the broader public.

1.11.53 The appellant further submits that the response to Question 1.7 (Appendix 14) of the DEA's Need and Desirability guideline refers. It is submitted that the answer given does not respond to some key points of this question, which relate to ecological integrity and limits of acceptable change. Given that the project will affect a CBA, that the "*diversity of the affected area will never be fully restored*" according to the terrestrial ecology specialist (page 32 of Appendix 11F), and mitigation measures (primarily rehabilitation) have uncertain outcomes, it is clear that the proposed use is unlikely to be justifiable when considering 'best use' and 'intra and intergenerational equity'.

1.11.54 The appellant further submits that the response to Question 8, which requires a risk-averse and cautious approach, it appears that this has been misinterpreted to mean the same thing as the mitigation hierarchy. It is further stated that *"the following risk-averse principles were applied to the investigation and assessment of ecological impacts: Wherever possible, ecological impacts to be avoided; and where ecological impacts cannot be avoided, they will be mitigated as far as practicably possible on site."* It is further submitted that this interpretation is incorrect, and it is thus not at all clear how a risk-averse and cautious approach is to be applied, particularly given that there are gaps in determining the flora baseline for the project and uncertainties regarding SCC, and also the uncertainties about rehabilitation outcomes.

1.11.55 The appellant submits that no response is given to Question 1.9, namely, *"How will the ecological impacts resulting from this development impact on people's environmental right?"*. It is further submitted that given the long-term and cumulative impacts of medium significance on terrestrial vegetation, flora and fauna, and the fact that the proposed activity is in a CBA, where the main mitigation measure proposed is rehabilitation / re-vegetation with uncertain outcomes, it is crucial that the impact on environmental rights is addressed. The appellant further submits that the admission that *"there may be some impacts that are not ecologically sustainable"* is hugely problematic and has implications for exercising environmental rights.

1.11.56 The appellant submits that in the response to Question 2.5.11, *"Encourage environmentally sustainable land development practices and processes"* it is stated that *"For the Mine to be commercially viable, there may be some impacts that are not environmentally (ecologically) sustainable. These impacts have been assessed in the EIA Report (see previous responses). Wherever possible, ecological impacts will be avoided and, where ecological impacts cannot be avoided, they will be mitigated as far as is practicably possible"*. As such, it is submitted that the applicant thus acknowledges that the proposed activity would not satisfy sustainable development principles.

1.11.57 The appellant further submits that in Appendix 8B, in the I&R Summary, the same statement is repeated, that *"For the Mine to be commercially viable, there will be some ecological impacts. It is submitted that these impacts have been assessed by the specialists and have been presented in the EIA Report. Based on their professional judgment, specialists have not identified any fatal flaws or unacceptable impacts."* Therefore, instead of addressing the substantive issues raised in respect of the need and desirability of the mining operation, the same statement is repeated in response the concern.

1.11.58 The appellant further submits that it appears that the DMR has not questioned these issues at all and merely relied on the reports and specialist studies prepared, without any interrogation thereof, making a generic decision for what is a massive extension of a mining operation in the Critical Biodiversity Area.

1.11.59 In response to this ground of appeal, the applicant submits that the EAP acknowledges in the EIAR that: *"The principles in NEMA serve as a guide for the interpretation of the issue of "need", but do not conceive "need" as synonymous with the "general purpose and requirements" of the project."* The consideration of the need and desirability in EIA decision-making therefore requires the consideration of the strategic context of the project along with broader societal needs and the public interest (DEA, 2014). However, it is important to note that projects which deviate from strategic plans are not necessarily undesirable. The DEA notes that more important are the social, economic and ecological impacts of the deviation, and "the burden of proof falls on the applicant (and the EAP) to show why the impacts...might be justifiable" (DEA, 2010b).

1.11.60 It is further submitted that the section on "need and desirability" in the EIA Report and Appendix 7 (DEA Need and Desirability Guidelines) should be read in their entirety: ecological integrity and limits of acceptable change are explicitly considered.

1.11.61 According to the applicant, the EAP previously noted in the I&R Summary submitted with the final EIAR (page 95) that: *"SRK has adopted a risk averse and fit-for-purpose approach throughout the report by consistently assuming actual or worst scenarios, identifying associated risks and impacts, recommending mitigation measures as well as monitoring to gauge compliance and implement corrective action if warranted."* In stating that *"there may be*

some impacts that are not ecologically sustainable", the EAP is acknowledging that, as is the case for many/most other mining projects or complex projects of this nature, there are going to be environmental impacts (which need to be considered in conjunction with other impacts, both positive and negative). The EAP is not suggesting the project is unsustainable. This statement additionally supports our position that the EAP engage with a risk-averse approach.

1.11.62 According to the proposed Tormin Mine extension, the project will entail so-called triple bottom line costs / benefits, i.e. social, environmental (taken to be ecological and/or biophysical) and economic costs / benefits, in line with the three pillars of sustainable development. As such, no pillar can be viewed in isolation, and after the assessment of individual impacts, the three pillars and anticipated trade-offs between social, environmental and economic costs and benefits need to be considered holistically. The trade-offs are documented in the EIAR. As shown in the EIAR, the proposed mine expansion is not expected to have unacceptably significant adverse impacts, while socio-economic benefits are noteworthy.

1.11.63 In their comments on this ground of appeal, the DMR reiterates its submission mentioned above under the grounds of appeals dealing with *the flawed approach to assessing impacts, inappropriate reliance on rehabilitation and re-vegetation to mitigate negative impacts within a CBAs and questionable assessment and evaluation of impact significance on terrestrial biodiversity*.

1.11.64 It is submitted by the DMR that the appellant fails to take into account the Mining and Biodiversity Guidelines developed by multiple institutions in that it does not seek to prohibit mining in CBA, on the contrary, the guideline recognises the value of both biodiversity and mining and their importance in achieving the nation's development aspirations in a sustainable manner. The DMR states that the appellant adopts a narrow reading and does not apply full consideration to the entire document and related specialist reports especially the ground-truthing reports.

1.11.65 In evaluating this ground of appeal, I am aware that best practice as well as the 2014 EIA Regulations requires that the need and desirability of a project are considered and evaluated against the tenets of sustainable development. This requires an analysis of the effect of the project on social, economic and ecological systems; and places emphasis on consideration of a project's justification not only in terms of financial viability, but also in terms of the specific needs and interests of the community and the opportunity cost of development.

1.11.66 In this regard, I have taken note of the "*Summary to the Need and Desirability*" which provides as follows:

- *The expansion of the Mine (and related LoM) is compatible with some, but not all, of the regional planning objectives, and addresses many of the needs expressed in the policies, particularly with regards to job creation and economic growth;*
- *The socio-economic benefits of continued mining at Tormin Mine need to be considered and weighed up against ecological concerns; and*
- *Social, economic and ecological factors have been considered and are assessed in Appendix 10. Mitigation measures have been recommended to prevent, minimise and (optimise) impacts and to secure stakeholders' environmental rights. An EMPr has been drafted and must be implemented to ensure that potential environmental pollution and degradation can be minimised, if not prevented.*

1.11.67 It is against this background that this ground of appeal is dismissed.

1.12 APPEAL BY THE SECOND APPELLANT

No effort to promote ownership and management of locally based Historically Disadvantaged Persons (HDPs)

1.12.1 The appellant submits that no serious, substantial and meaningful effort before and after 1994 has been made by the private and public sector to promote ownership and management of locally based Historically Disadvantaged Persons in the mining industry in the Matzikama municipal and West Coast areas. In this regard, the appellant submits that EAs, Mining Permits and Rights in the Matzikama municipal area and the West Coast have been granted

to few mining companies which dominate the mining industry for decades, without any substantial transformation and/or proof of ownership and management by locally based Historically Disadvantaged Persons. Therefore, the appellant request a full and thorough research and investigation by the DMR regarding the status of current mining rights and its holders, as well as the remaining mineral deposits in the area.

- 1.12.2 In response to this ground of appeal, the applicant submits that this is a statement, not a ground of appeal relevant to the IEA granted by the DMR on 7 June 2019. This issue is regulated by the DMR in terms of the MPRDA and has very little, if any, relevance to the IEA granted in terms of the 2014 EIA Regulations. Notwithstanding this, the applicant submits that categorically, it is 50% owned by a BEE partner, and has contributed significantly to transformation within the municipal area of Matzikama through SLP, SMME development and Procurement initiatives.
- 1.12.3 In their comments on this ground of appeal, the DMR submits that their mandate emanates from section 24 of the Constitution of the Republic of South Africa, which makes provision for securing ecologically sustainable development and use of natural resources while promoting justifiable economic and social development. The DMR further submits that to ensure sustainable development of mineral resources, developers are required by various laws to submit applications with supporting documentations to adjudicate their ability to meet sustainable development. It is further submitted that for the Environmental Protection pillar, NEMA calls for an application for IEA and provides guidance on issues that must be covered in the EIA process.
- 1.12.4 For socio-economic pillar, the MPRDA calls for application for a mining right and provides guidance on issues that must be covered in the application. The DMR submits that this issue raised in this ground of appeal is regulated by the MPRDA, as amended. It is further submitted that in the same manner that NEMA makes provision for appeal of an IEA, the MPRDA as well makes provision for appeal against the decision on the mining right application. Therefore this ground of appeal should be advanced through the MPRDA.
- 1.12.5 Regarding the granting to EAs, the DMR submits, EA applications in terms of NEMA does not discriminate between dominant companies and Historically Disadvantaged Persons (i.e. there is no provision that prevents this company from exercising the right to apply for an EA on the

basis of their dominance and equally the DMR cannot refuse an application for EA on the basis of the company's dominance.

- 1.12.6 In evaluating this ground of appeal, I note that this ground appeal deals with matters relating to upliftment of Historically Disadvantaged South Africans (HDSAs) and SLP, which matters are dealt with in terms of the MPRDA. For this reason, I concur with the DMR that this ground of appeal should be advanced in terms of section 96 of the MPRDA. This ground of appeal finds no relevant in the application for EA, and therefore ought to be dismissed accordingly.

1.13 APPEAL BY THE THIRD APPELLANT

Accuracy of maps

- 1.13.1 The appellant submits that they object to the accuracy of the maps on which the areas within which the proposed mining right extension is proposed to take place.
- 1.13.2 In response to this ground of appeal, the applicant submits that the property boundaries were not generated by the IEA, but were obtained from the Western Cape Department of Agriculture's "Cape Farm Mapper" tool. The applicant further submits that the Department obtained their information from the Surveyor General, and the assumption is that the boundaries are accurate.
- 1.13.3 In their response to this ground of appeal, the DMR submits that the appellant does not provide the area of inaccuracy. It is further submitted that all interested and affected parties (IAPs) were given an opportunity to present their concerns, and that the appellant did not submit this concern and did not bring this matter to the attention of the DMR before the IEA was granted.
- 1.13.4 In evaluating this ground of appeal, I note the submission by the applicant that the property boundaries were not generated by the IEA, but were obtained from the Western Cape Department of Agriculture's "Cape Farm Mapper" tool. I further note the submission by the DMR that the appellant failed to raise this issue during the public participation process (PPP).
- 1.13.5 I am entitled to accept the proposition by the applicant that, since the maps were obtained from the Western Cape Department of Agriculture's "Cape Farm Mapper" tool, same is assumed to be accurate, unless the contrary is proven.

1.13.6 I must add that the appellant does not provide details on their alleged inaccuracy of the maps. On this note, I find that this ground of appeal is without merit, and therefore dismissed accordingly.

Western Boundary of section 6 of Klipvlei Karoo Kop 153, the Coastal Protection Zone

1.13.7 The appellant submits that the western boundary of section 6 of Klipvlei Karoo Kop 153 is the high water mark of the sea and it is indicated way inland on the map. In this regard, the appellant submits that they are concerned about the proposed mining activities that will take place in the "*Coastal Protection Zone*".

1.13.8 In response to this ground of appeal, the applicant depicted a figure page 54 of the Appeal Response Report (ARR) which indicates the location of Farm 6/153 (highlighted in red). The applicant submits that there are two additional "strip" properties seaward of Farm 6/153: Perseel Weskus 199 and Perseel Weskus 200. The applicant submits that, as shown in the figure, the high water mark of the sea is not the western boundary of Farm 6/153.

1.13.9 The applicant further submits that the Marine and Coastal Ecology impacts (i.e. impacts in the Coastal Protection Zone) were assessed by Anchor Environmental specialist, a recognised and experienced independent consulting company. This specialist concludes that during beach mining, the beach habitat and its associated communities will be severely impacted. However, the Anchor emphasise that:

- *Available evidence points to relatively rapid recovery of beach communities post disturbance if rehabilitation and other mitigation measures are implemented; and*
- *The communities in question are not considered unique to the region are not expected to be in pristine condition due to historical mining.*

1.13.10 It is further submitted that the specialist has identified mitigation measures, including any No-Go areas and setback lines, to avoid and/or minimise impacts and/or optimise benefits associated with the proposed project.

1.13.11 Furthermore, the Beach mining will occur between the low water mark and the toe of the foredune(s), with a 10m setback from the toe of the dunes. The 10m setback (buffer zone) was proposed by the developer and approved by the geotechnical specialist.

1.13.12 In their comments on this ground of appeal, the DMR submits that the argument submitted by the appellant is not clear (the western boundary on which map). It is further submitted that all I&APs were given an opportunity to present their concerns, but the appellant did not raise this concern or bring same to the attention of the DMR before the IEA was granted. Nonetheless, it is submitted that the proposed mining area is as follows:

- *Ten beaches adjacent to Remainder of Graauw Duinen 152 and portions of farm Kliepvley Karoo Kop 153, along a stretch of coastline north of Tormin Mine comprising 43.7 ha intended for mining and ~6ha for haul road widening; and*
- *Inland "strand line" mining area on the farm Geelwal Karoo 262, inland of the existing processing plant comprising 75ha for mining.*

1.13.13 The DMR submits that the Specialist have identified mitigation measures, including any No-Go areas and setback lines, to avoid and/or minimise impacts and/or optimise benefits associated with the proposed project.

1.13.14 In evaluating this ground of appeal as well as responses thereto, I have taken note of the summary of the positive and negative implications and risks of the proposed activity and identified alternatives outlined on page 186 of the final EIAR. The predicted geotechnical impact is rated as very low during operations as the cliff stability analysis indicated that the infrastructure / plant expansion area, inland mining and beach mining are unlikely to adversely affect the dunes / cliffs.

1.13.15 I have also taken note of the Marine Specialist Report dated September 2018, which deals with Marine Impact Assessment (MIA) for the proposed expansion of the current Valuable Heavy Minerals (VHM) beach mining. This report indicates that existing mining impacts, largely due to historical and current diamond mining, are present at the site. Land-based excavations have left deep furrows in the coastal zone that are vulnerable to erosion, while

marine diamond mining has resulted in large areas of barren offshore and intertidal environments.

1.13.16 Further to the above, I have taken note of the recommendations in respect of beach mining expansion. Under recommendations, the report outlines the mitigation measures for the constructional, operational and decommissioning phases of the proposed northern beach mining expansion. Amongst others, essential mitigation measures include:

- *Constrain the spatial extent of access road construction to the minimum required to minimise disturbance within the coastal zone.*
- *Inform all staff about sensitivity marine habitats*
- *Ensure that the 10m buffer zone from the foot of the dune / cliffs seaward remains undisturbed outside of the construction footprint.*
- *As the best practice mitigation, perform a thorough search of the construction footprint for bird nests and eggs and relocate to within the 10m buffer zone before commencing construction.*
- *Enforce a 10m buffer zone from the toe of the sand dune / cliffs towards the sea in which no mining or disturbance may take place.*

1.13.17 I am also aware of the comments received from the Branch, Oceans and Coasts (O&C): Integrated Coastal Management (ICM) within the Department in the letters dated 10 June 2018 and 4 December 2018, objecting to the 10m buffer proposed by the applicant, which recommend that a 20m buffer from the toe of the dune / cliff should be considered. However, I noted that the 10m buffer zone from the toe of the dune / cliffs towards the sea, was recommended by the Marine Specialist as an essential mitigation measure during the construction and operation of beach mining.

1.13.18 I have further noted the contents of the I&R summary where the specialists recommended that they must enforce a 10m buffer zone from the toe of the sand dunes and cliffs towards the sea (and from rocky shores) in which no mining or disturbance may take place (this buffer zone cannot be indicated at a suitable scale on a single map). Further, that the applicant will be required to take weekly photographs of beach mining areas (dunes and cliffs) which will track their compliance with this requirement.

1.13.19 Furthermore, I have taken note of site specific **Condition 3** of the IEA which provides that:

"The buffer zone of 10m must be demarcated from the edge of the cliff and the actual mining area. The area must be demarcated as a no-go area for the duration of mining activities. Any mining work including driving within this area is strictly prohibited".

1.13.20 In light of the above, I am also mindful of the comments by O&C, dated 10 July 2018 and 4 December 2018. I am informed that the issue of the 20m buffer from the cliff was only addressed in the second comments dated 4 December 2018, that were received late by the EAP. However, it appears that even though the comments were forwarded to the DMR, the recommendations of the 20m instead of 10m was not taken into consideration when granting the EA to the applicant. I have also noted that the O&C did not have an objection against the proposed development. As such, the DMR is therefore directed to amend site specific condition 3 of the IEA as quoted above in line with the specialist recommendation, to read *"The buffer zone of 10m must be demarcated from the toe of the cliff and the actual mining area. The area must be demarcated as a no-go area for the duration of mining activities. Any mining work including driving within this area is strictly prohibited".* al erosion of the cliff. This amendment is required to align the IEA with the recommendations of the Geotechnical Impact Assessment specialist.

1.13.21 In light of the above, this ground of appeal is accordingly upheld.

Access to the proposed mining area

1.13.22 The appellant submits that they are concerned about how access will be gained from the proclaimed road to the proposed mining areas as it will have to be over private land.

1.13.23 In response to this ground of appeal, the applicant submits that the relevant beach mining areas adjacent to farm 6/153, are Beach 5 and Beach 6. The figures indicated within the ARR indicate the authorised access roads (in purple) from the proclaimed road (OP9764) to Beach 5 and Beach 6. The applicant further submits that approximately 47m of access road from OP9764 is located between the red property boundaries on Farm 6/153. It is submitted that the EMPr requires the applicant to engage with all affected landowners, e.g. to negotiate

access.

1.13.24 In their comments on this ground of appeal, the DMR submits that the applicant will use existing beach access roads being used by Trans Hex Group and the public and previously by Namakwa Diamond Company and De Beers. No new roads will be constructed. Existing beach access roads will be widened by a maximum of 4m.

1.13.25 The DMR further submits that the applicant will widen the public road OP9764 to 8m to safely accommodate the two way traffic and will implement management measure in consultation with relevant road authority (e.g. road signs, speed limits) to ensure that the public is able to safely use the road to access the coast. It is submitted that the existing informal beach access roads will also be used.

1.13.26 In evaluating this ground of appeal as well as responses thereto, I have perused the final EIAR and noted that beach 1 and beach 10 are located approximately 2.5 km from the Tormin Mine entrance, respectively. The access roads from OP9764 to the beaches will be via existing gravel roads which range between 150 and 2.2 km in length with an average length of about 500m. It is further indicated that the existing beach access roads will be widened by a maximum of 4m to achieve a road width of 7 – 8.75m. It is further indicated that the applicant will grade the roads as required. A suitable road surface material will be used which may need to be replenished (due to gravel loss). The quality of material is expected to be at least a G7 subbase material.

1.13.27 I further note that, the applicant is required to maintain and repair roads damaged by construction vehicles as a mitigation measure in consultation with relevant road authorities. The applicant is also required to schedule the road widening of OP9764 during “off season” periods.

1.13.28 Moreover, I have taken note that the EA does not contain any provision in relation to access by the public to the beaches. As such, the provisions of sections 13(1) (a) and 13(1A) of the National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008) (NEM:ICMA), which relate to access to coastal public property are applicable. Section 13(1) (a) of NEM:ICMA provides that *“Subject to this Act and any other applicable legislation, any natural person in the Republic has a right of reasonable access to coastal*

public property.” Section 13 (1A) of NEM:ICMA provides that “Subject to subsections (2) and (3), no person may prevent access to coastal public property.”

1.13.29 As such, the DMR is therefore instructed to include a site specific condition 7 to read, *“Mining right activities or operations must not encroach on road access to the beaches and the applicant must facilitate reasonable access to the public in a practical manner.”*

1.13.30 In light of the above, this ground of appeal is accordingly upheld.

1.14 APPEAL BY THE FOURTH APPELLANT

Cumulative Impacts

1.14.1 The appellant submits that the first issue concerns the failure to consider cumulative impacts especially given that there are several other applications to undertake prospecting and mining for heavy mineral resources along this stretch of coast from the northern bank of the Olifants estuary to the northern most beach associated with this application. It is submitted that while some applications have been refused, others have been granted IEA pending certain additional studies. The appellant submits that his main concern is that each of these applications is being assessed on a project/application basis without undertaking a strategic environmental assessment (SEA) of the coastal area in question and without considering the cumulative effects of these various applications as required by the 2014 EIA Regulations.

1.14.2 In response to this ground of appeal, the applicant submits that the cumulative impacts, including cumulative Marine and Coastal Ecology impacts, were discussed in section 3 of the final EIAR. The project area overlaps with marine diamond concessions and the associated Weskus surf-zone concession and admiralty strip area over which the Trans Hex Group (THG) holds long-term mining rights. THG has been actively prospecting and mining these beaches for some time and previously, the broader area has been subject to mining activities since 1950s. The specialist notes that sandy beaches are highly dynamic environments and macro faunal communities are resilient to change as demonstrated during long-term monitoring of beach mining in Southern Namibia. The applicant further submits that the cumulative impact of beach mining was assessed and found to be of low significance.

1.14.3 It is further submitted that the applicant would welcome a SEA and would support any

initiative by the relevant authorities to commission such a study, since it is not the responsibility of the applicant, as the proponent, to initiate a SEA for the stretch of coast north of the Olifant's River Estuary.

1.14.4 In their comments on this ground of appeal, the DMR submits that the appellant makes a number of arguments which come down to development of a SEA to inform the fitness mining. In that case, it will be unreasonable for the DMR to reject the application on basis of the absence of a SEA.

1.14.5 The DMR submits that it should be noted that the Overview of Integrated Environmental Management Series page 10 and 14 (developed by the Department of Environmental Affairs and Tourism (DEAT)) provides over 22 environmental tools to inform decision-making including (a) *Screening*, (b) *Environmental Impact Assessments (EIA)*, (c) *Environmental Management Plan (EMP)*, (d) *Stakeholder Engagement* and (e) *Cumulative Assessment*. The DMR further submits that as legislatively required by the Competent Authority, the EAP conducted a full scoping and EIA which is a combination of environmental tools [this process encompasses screening, EIA, EMP and Public Participations (i.e. stakeholder engagement)]. Furthermore, it is submitted that as part of the scoping and EIA, the EAP also considered cumulative impacts and conducted various specialist studies that proposed mitigation measures.

1.14.6 In evaluating this ground of appeal and the responses thereto, I have taken note of Marine Specialist Report which also deals with cumulative impacts. This report indicates that cumulative impact on the beach habitat and its associated macrofaunal communities in the context of beach mining operations is an impact that:

"Occurs on a beach which is experiencing, has experienced, or may foreseeably experience similar impacts in the future (e.g. further heavy mineral sands or diamond mining in the same area);

Occurs where there is potential for synergistic interaction between impacts (i.e. diamond mining and heavy mineral sands mining impacts interact with each other to produce a total effect greater than the sum of the component impacts); and/or

Occurs where ecological thresholds may be breached by a number of consecutive or simultaneous impacts, which individually may not have resulted in impacts".

1.14.7 The report also indicates that the proposed expansion of beach mining in addition to the current THG and Tormin operations will thus create additive, special and temporal cumulative impacts on the faunal beach communities. In conclusion, the report indicates that *"provided that active rehabilitation and other mitigation procedures listed in this report are implemented, it is unlikely that the cumulative impacts of beach mining for both diamonds and heavy mineral sands in the area of interest on sandy beach benthos will endure beyond the short to medium term"*.

1.14.8 I am accordingly satisfied that cumulative impacts have been investigated, assessed and considered by the DMR prior to granting an IEA to the application for the proposed expansion of Tormin Mine Operations. In light thereof, this ground of appeal is accordingly dismissed.

Specialist studies

1.14.9 The appellant submits that the Specialist Studies in the EIA indicate a number of impacts of high significance in particular in relation to marine ecology and terrestrial ecology. According to the appellant, another issue of concern is that several of the mitigation measures listed are vague and unrealistic.

1.14.10 The appellant further submits that the west coast north of the Olifants estuary remains one of the last unspoilt stretches of coast along the west coast of South Africa. It is further submitted that the Northern Cape coast has been devastated by mining activities and the costs of rehabilitation have been found to be exorbitant and not feasible. In view of the above, and South Africa's commitments to the Aichi targets and Sustainable Development Goals, it would be unwise to allow this application to be approved without undertaking a SEA and ascertaining whether mining at the scale and scope proposed by the applicant is in the best interests of the environment and society.

1.14.11 In its response to this ground of appeal, the applicant submits that Marine and Coastal Ecology Impact Assessments were assessed by Anchor Environmental, a recognised independent consulting company with vast experience in marine and coastal projects including numerous projects on the West Coast and for similar beach mining projects in

Namibia.

1.14.12 It is submitted that the Anchor Environmental identified marine and coastal ecology impacts of 'high' significance from beach mining (e.g. shoreline erosion and altered beach profiles, changes in macro-faunal community structure). However, it is submitted that with the implementation of mitigation measures as identified by the specialist, these impacts will be reduced to 'medium'.

1.14.13 The applicant further submits that mitigation and management measures identified by the specialist and those included in the EMP are not considered to be "suggestions", but are essential measures which must be implemented and are non-negotiable. It is further submitted that these essential measures, and ongoing monitoring thereof, are conditions of authorisation.

1.14.14 In their comments on this ground of appeal, the DMR submits that it will be unreasonable to reject the application on basis of the absence of a SEA. The DMR further submits that the EAP conducted a full scoping and EIA which is a combination of environmental tools. It is submitted that as part of the scoping and EIA, the EAP also considered cumulative impacts and conducted various specialist studies that proposed mitigation measures.

1.14.15 In evaluating this ground of appeal, the information before me indicates that the EAP conducted over 10 specialist reports all of which identify impacts and propose mitigation measures. When mitigation measures are applied, impacts range from moderate – low – very low and insignificant. In relation to CBA, the specialist report revealed no fatal flaw and the following findings:

- Vegetation diversity is moderate with a relatively low abundance of species of conservation concern (SCC) (Appendix 11F, page 50).
- Vegetation of the affected areas was not distinct from adjacent areas, indicating that it is not unique and that the affected habitat is more widely available outside of the affected area (Appendix 11F, page i).
- The resident mammalian fauna appear to be tolerant of the current mining activities on Geelwal Karoo 262 and did not avoid the plant and haul roads to a significant

degree (Appendix 11F, page 50).

- No highly sensitive avifaunal features such as communal breeding or foraging sites were identified along the coastline, with the result that no loss of critical habitats is expected (Appendix 11F, page i).
- The study area is affected by mining activities and grazing (Page 22).
- On the issue of Olifants Estuary, the Departments provides the following arguments as found in specialist reports:
- The lower reaches of the Olifants River Catchment incorporating the Olifants River Estuary as well as several small drainage lines, mapped in the 1:50 000 rivers layer as non-perennial or ephemeral systems, lie outside of and to the south of the study area. These are considered to be too far from the study area to be vulnerable to any direct impacts associated with mine expansion.
- The Olifants River Estuary is approximately 20 km south of Tormin mine.
- The Olifants Estuary is approximately 13km south of Tormin Mine.

1.14.16 As indicated in paragraph 1.13.9 above, the Marine Specialist Report concludes that during beach mining, the beach habitat and its associated communities will be severely impacted. However, the Anchor emphasise that:

- *Available evidence points to relatively rapid recovery of beach communities post disturbance if rehabilitation and other mitigation measures are implemented; and*
- *The communities in question are not considered unique to the region are not expected to be in pristine condition due to historical mining.*

1.14.17 The final EIAR indicates that the report has identified and assessed the potential biophysical and socio-economic impacts associated with the proposed extension of Tormin Mine. It is indicated that the proposed *"Tormin Mine extension will result in unavoidable adverse environmental impacts. None of these adverse impacts are considered unacceptably significant and all can be managed to tolerable levels through the effective implementation of*

the recommended mitigation measures. In addition, the project will directly and indirectly benefit the local and regional economy".

1.14.18 The report goes further to indicate that *"the fundamental question is whether to allow the development, which brings economic benefits and is generally consistent with development policies for the area, but which may have limited biophysical impacts. The specialist studies have shown that the Tormin Mine extension project is generally acceptable. The EIA has also assisted in the identification of essential mitigation measures that will mitigate the impacts associated with these components to within tolerable limits".*

1.14.19 Accordingly, I am satisfied that the environmental impacts associated with the proposed extension of Tormin Mine were adequately assessed and where necessary, appropriately mitigated. I am also satisfied that the DMR considered, evaluated and assessed all relevant information, including specialist reports prior to granting an IEA to the applicant.

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

2. DECISION

2.1 In reaching my decision on the appeals against the decision of the DMR to grant the aforementioned IEA to the applicant, I have taken the following into consideration:

2.1.1 Information contained in the project files (WC 30/5/1/2/3/2/1 (162 and 163 EM), with specific reference to the EIAR and EMPr together with the specialist reports thereto;

2.1.2 IEA granted to the applicant on 7 June 2019;

2.1.3 The appeals submitted by the first, second, third and fourth appellants on 26 June 2019, 9 July 2019, and 10 July 2019 respectively;

2.1.4 The responses thereto submitted by the applicant on 23 July 2019;

2.1.5 Comments submitted by the DMR on 29 July 2019; and

2.1.6 Comments submitted by the Branch: O&C, dated 10 July 2018 and 4 December 2018.

- 2.2 In terms of section 43(6) of NEMA, I have the authority, after considering the appeal, to confirm, set aside or vary the decision, provision, or condition or directive, or to make any other appropriate decision.
- 2.3 Having duly considered the above mentioned information, and in terms of section 43(6) of NEMA, I have decided to dismiss the appeals by the first, second and fourth appellants and uphold the appeal by the third appellant, except the ground dealing with the accuracy of maps. The IEA granted by the DMR to the applicant is hereby varied as alluded above.
- 2.4 In arriving at my decision on the appeals, it should be noted that I have not responded to each and every statement set out in the appeals and/or responding statements, and where a particular statement is not directly addressed, the absence of any response thereof should not be interpreted to mean that I agree with or abide by the statement made.
- 2.5 Furthermore, should the appellants be dissatisfied with any aspect of my decision, they may apply to a competent court to have this decision judicially reviewed. Judicial review proceedings must be instituted within 180 days of notification hereof, in accordance with the provisions of section 7 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000) (PAJA).



MS B D CREECY, MP

MINISTER OF FORESTRY, FISHERIES AND THE ENVIRONMENT

DATE: 26/3/2020 .