

IN THE HIGH COURT OF SOUTH AFRICA

(LIMPOPO DIVISION, POLOKWANE)

Case No: 13525/2022

In the matter between:

**THE HERD NATURE RESERVE, NPC**

First Applicant

**LIVING LIMPOPO, NPC**

Second  
Applicant

**CENTRE FOR APPLIED LEGAL STUDIES**

Third Applicant

and

**THE LIMPOPO ECONOMIC DEVELOPMENT AGENCY**

First  
Respondent

**MEC OF ECONOMIC DEVELOPMENT, ENVIRONMENT AND**

**TOURISM, LIMPOPO**

Second  
Respondent

**CHIEF DIRECTOR: ENVIRONMENTAL TRADE AND PROTECTION,**

**DEPARTMENT OF ECONOMIC DEVELOPMENT, ENVIRONMENT**

Third  
Respondent

**AND TOURISM, LIMPOPO**

**MINISTER OF FORESTRY, FISHERIES AND THE**

**ENVIRONMENT**

Fourth  
Respondent

**MUSINA-MAKHADO SPECIAL ECONOMIC ZONE STATE OWNED**

**COMPANY**

Fifth

Respondent

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**SUPPLEMENTARY FOUNDING AFFIDAVIT**

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I, the undersigned,

**LAUREN LIEBENBERG-SOUTHWORTH**

do hereby state the following under oath:

1. I am an adult, female residing in Johannesburg,
2. I am the director of Living Limpopo, the Second Applicant. I am duly authorised to depose to this affidavit on behalf of the Second Applicant.
3. Save to the extent that the context suggests otherwise, the facts deposed herein are within my personal knowledge and are both true and correct. To the extent that I make legal submissions in this affidavit, I do so on advice of my legal representatives, whose advice I believe to be correct.

**A. INTRODUCTION**

4. The purpose of this affidavit is to supplement the Applicants' founding affidavit in terms of Rule 53(4) in response to the record filed by the State Attorney on behalf of the Second and Third Respondents under Rule 53 on 29 November 2024.
5. The primary relief which the Applicants seek is to review and set aside:
  - 5.1. the decision by the Third Respondent to grant environmental authorisation (EA) for the Musina-Makhado Special Economic Zone on 23 February 2022; and

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- 5.2. the decision by the Second Respondent to dismiss the Applicants' appeal against the granting of environmental authorisation for the Musina-Makhado Special Economic Zone ("MMSEZ") on 8 July 2022.
6. The Applicants further seek an order declaring the Fourth Respondent as the competent authority to consider the environmental authorisation application for the MMSEZ.
7. In addition, the Applicants seek condonation for the late filing of this affidavit to the extent necessary.

## **B. THE RECORD**

8. I record at the outset that the haphazard service of the supposed record of decision has been administered by the Second and Third Respondent, and the state in which it was received has resulted in confusion and delays and calls into question the integrity of the entire decision-making process as well as the decision itself, the detail of which will become evident from what is set out below.
9. In terms of Rule 53(1)(b), the Applicants' Notice of Motion called upon both the Second and Third Respondent to despatch, within fifteen (15) days of the receipt of the Notice of Motion, to the Registrar of this Honourable Court, the record of their respective decisions together with reasons that each of them desires to give or in law required to give, and to notify the Applicants that they have done so.
10. Following the service of the application on the Second and Third Respondents ("Respondents") on 20 December 2022 and their subsequent Notice of Intention

to Oppose on 09 January 2023, the Respondents were required to dispatch the record of the decision as referred to in paragraphs 1 and 2 of the Notice of Motion on 01 February 2023.

11. On 06 February 2023, the Applicants' attorneys sent a letter to State Attorney advising him to file the record of decision as soon as possible. A copy is attached hereto marked "LL1".
12. The Respondents dispatched an incomplete record of decision (three lever arch files) between 08 March 2023 and 13 March 2023. The Applicants then wrote to the State Attorney on 15 March 2023 confirming receipt, pointing out all the missing documents and informing him that the file was in disarray (no indexes and not paginated). A copy is annexed hereto, marked "LL2".
13. When no response was received, the Applicants followed up with a letter dated 3 April 2024 (attached as annexure "LL3").
14. When still no response was received, on 4 May 2023, the Applicants' attorneys wrote a letter to Deputy Judge President requesting a case management meeting to avoid having to launch an interlocutory application for filing of the record of decision. A copy is attached as "LL4".
15. A case management meeting was held on 21 July 2023 and on 4 August 2023. A directive was issued requiring the State Attorney to file the full, indexed record by 29 September 2023. A copy of the Directive is attached as "LL5."
16. On 11 September 2023, the Applicants' attorneys wrote to the State Attorney, reminding him to file the record on or before 29 September, as per the Directive received on 7 August 2023. A copy is attached as "LL6".

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17. On 18 September 2023, the Respondents delivered 16 lever arch files to the Applicants' correspondent attorneys in Polokwane. The pages were not indexed or paginated.
18. On 26 September 2023 (annexed at "LL7"), the Applicants' attorneys sent a letter to the State Attorney advising that the record was not indexed and paginated and requesting that it be uplifted to urgently attend to the indexing and pagination thereof before re-serving on or before 29 September 2023.
19. On 2 November 2023, a further case management meeting was held where, in the absence of the State Attorney, who did not arrive, the State was directed to paginate and chronologically index the record and to file an affidavit confirming that the record is the complete record. The State was directed to do so by 31 January 2024. This directive was not circulated by the Court after the case management meeting, and numerous requests to obtain this directive from the Court were unsuccessful.
20. On 17 January 2024, the Applicants' attorneys reminded the State Attorney to comply with the above. A copy is attached as Annexure "LL8".
21. The State Attorney wrote to the Applicants on 02 February 2024, requesting a 6-week extension to file the record. The Applicants agreed to it on 08 February 2024 and once again pointed out the many concerns with the content of the record.
22. On 08 March 2024, indexes were received electronically from the State Attorney. It was not clear what documents they related to as nothing was filed with them.

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23. On 19 March 2024 Applicants' attorneys wrote a letter to the State Attorney requesting that he index and file the complete record no later than 26 March 2024. Alternatively, index and paginate the current record and file an affidavit confirming that it is the final record no later than 26 March 2024. A copy is annexed as "LL9".
24. The State Attorney failed to do so.
25. On 26 July 2024, the State Attorney informed the Applicants' attorneys that the record had been dispatched to the Registrar. Applicants' correspondent attorneys attended court to find same, but the record could not be found.
26. A further letter was sent to the State Attorney on 30 July 2024 (annexed hereto as "LL10"), to which no response was received. This left the Applicants with no other option but to serve and file a Rule 30A notice on 28 August 2024, which is annexed and marked "LL11".
27. In terms of Rule 30A, the notice stipulates that should the Respondents fail to dispatch the Rule 53 record within 10 days, the Applicants would apply for an order compelling the filing of a complete Rule 53 record within 10 days of such order.
28. Nothing was forthcoming, and the Applicants were forced to set the matter down for hearing on the unopposed roll on 06 December 2024.
29. On 29 November 2024, the State Attorney delivered 17 lever arch files to the Applicants' correspondent attorneys in Polokwane. According to the State Attorney, the bundles served were the full record and the bundles were indexed and paginated to correspond with the indexes served electronically.

57 6 RL

30. The Applicants' correspondent attorneys couriered these as well as the files delivered on 18 September 2023 to the Applicant attorneys' offices in Durban in 5 large boxes on 12 December 2024.
31. In going through the documents in the indexed record, there were so many duplicated pages, missing pages, incorrect pagination, and vague references made in the attached indexes that it took a very long time to make sense of it and necessitated checking it against the documents filed on 18 September 2023. It ultimately became necessary to create a new index in an effort to understand and keep track of it all.
32. The Applicants' attorneys finalised their index on 3 February 2025. A copy is attached as annexure “LL12”. As can be seen from the final page, the total number of pages in the combined record is 25 777, of which 18 845 are repeats. In spite of this, the entire record consists only of the Environmental Impact Assessment (“EIA”) reports, specialist studies and the correspondence related thereto. There is nothing in the record that includes the documents we requested in our various letters to the State Attorney, nor any documents that would have informed the decisions made by the Respondents.
33. Further, despite numerous written requests to do so, the State Attorney has refused or failed to confirm on affidavit that the record as filed is the complete record of the decision. The Applicants requested this of the State Attorney on at least four occasions: 3 April 2023, 26 September 2023, 2 November 2023 and 8 February 2024.
34. At the very least, the record fails to include:

A handwritten signature consisting of the letters 'J' and 'R'.

34.1. Internal minutes, memos, reports and correspondence showing deliberation of the application for Environmental Authorisation (“EA”).

34.1.1. As indicated in the Applicants’ Founding Affidavit, the EIA process must investigate, assess, and report on potential environmental impacts before an EA is granted.<sup>1</sup> This means that the EIA process operates under a regulatory framework that requires a basic assessment or a comprehensive full scoping and EIA based on thresholds of impact.

34.1.2. These internal records are essential in revealing whether the Third Respondent (Limpopo Department of Economic Development and Tourism (“LEDET”)) and the First Respondent properly considered the required thresholds in assessing the application to develop the MMSEZ South Site.

34.1.3. Furthermore, EIAs serve as the principal developmental planning mechanism in assessing the sustainability of natural resource use and the value of environmental goods and services.<sup>2</sup>

34.1.4. Any internal deliberations on the EA application could provide insight into whether LEDET adequately weighed environmental concerns or prioritised certain economic and political considerations at the expense of environmental protection and environmental asset protection that would support a biodiversity-based economy. This is particularly important given the flawed site

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<sup>1</sup> Applicant’s Founding Affidavit at para 83.

<sup>2</sup> Applicant’s Founding Affidavit at para 85.

selection process and the lack of consideration of alternatives, as noted in the Applicants' Founding Affidavit.<sup>3</sup>

**34.2. Internal minutes, memos, reports and correspondence showing deliberation of the multitude of appeals and decision to grant EA:**

34.2.1. Multiple internal appeals were submitted by numerous civil society organisations, legal representatives, and environmental advocacy groups, including All Rise Attorneys, the Centre for Applied Legal Studies (CALS), Herd Reserve, the Vhembe Biosphere Reserve, Endangered Wildlife Trust, BirdLife SA, Natural Justice, Wildlife and Environment Society of South Africa (WESSA), Earthlife Africa, groundWork, Dzomo La Mupo, and MEJCON-SA.

34.2.2. These appeals, brought in terms of Section 43 of the National Environmental Management Act, 1998 (NEMA), sought to challenge the granting of EA based on substantive and procedural deficiencies in the EIA process.<sup>4</sup> They were submitted to the Second Respondent – the appeal authority that decided on the appeals against the decision made by LEDET to grant the first Respondent the EA.

34.2.3. On 8 July 2022, the Second Respondent rejected the appeal by All Rise Attorneys, Herd Reserve and CALS, thereby finalising the internal appeal process.<sup>5</sup>

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<sup>3</sup> Applicant's Founding Affidavit at para 36.

<sup>4</sup> Applicant's Founding Affidavit at para 58.

<sup>5</sup> Applicant's Founding Affidavit at para 59.

34.2.4. The internal records relating to these deliberations are material as they may reveal whether the Second Respondent properly considered the grounds of appeal or merely dismissed them to expedite the MMSEZ project.

34.2.5. They may also indicate whether any internal concerns were raised regarding environmental risks, procedural flaws, or legal non-compliance but were ignored or overridden in favour of certain political or economic considerations.

34.2.6. Additionally, these records could show whether officials expressed reservations about the EIA process, flawed public participation, or biodiversity and biodiversity economy impacts but failed to act on these concerns. The internal appeals were rejected without adequate reasons<sup>6</sup>. This is a failure to comply with the duty to provide reasons under the Promotion of Administrative Justice Act, 2000 (“PAJA”).<sup>7</sup>

34.2.7. The internal minutes, memos, and correspondence may further reveal whether the Second Respondent engaged in any meaningful deliberation on the appeals or if the decision was pre-determined, whether there were internal directives instructing officials to reject the appeals regardless of their merit, and whether officials internally acknowledged weaknesses in the EA decision

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<sup>6</sup> Applicant’s Founding Affidavit at para 60.

<sup>7</sup> Applicants Founding Affidavit at para 151.

or the EIA process but failed to reflect these concerns in their official rejection of the appeals.

34.2.8. Given that the Second Respondent's decision to reject the appeals triggered the 180-day period under PAJA for instituting judicial review<sup>8</sup>, the rationale and process behind the rejection are central to determining whether the decision was lawful, rational, and procedurally fair. If internal records demonstrate that the appeals were dismissed without meaningful engagement or legal justification, this would support the contention that LEDET's decision was arbitrary and unlawful, further strengthening the basis for judicial review.

#### **34.3. Minutes of meetings between the EAP, EA applicant and/or LEDET:**

34.3.1. The original Environmental Authorisation Practitioner (EAP), DeltaBEC, submitted a Final Environmental Impact Assessment Report (EIAR) on 1 February 2021 that did not recommend authorisation. However, LEDET nonetheless requested an Action Plan to address outstanding issues, leading to additional public participation.<sup>9</sup>

34.3.2. It would be important to understand the discussions in meetings between DeltaBEC, the applicant, and LEDET, which would clarify what the "outstanding issues" were and whether any undue pressure was applied to revise conclusions. DeltaBEC eventually

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<sup>8</sup> n 5 above.

<sup>9</sup> Applicant's Founding Affidavit at para 54.

withdrew from the process, and Limpopo Environmental Development Agency (LEDA) appointed a new EAP (Enviroxcellence). One would need to rely on the minutes to determine the rationale behind this switch and whether it was due to the refusal of DeltaBEC to alter its professional findings.

- 34.3.3. Additionally, the revised EIAR issued on 13 September 2021 under Enviroxcellence was linked to a flawed public participation process, with reports of *inter alia* community members being barred from meetings.<sup>10</sup>
- 34.3.4. On 23 February 2022, LEDET granted environmental authorisation for limited activities on the MMSEZ South Site.<sup>11</sup>
- 34.3.5. However, the decision included references to specialist reports that had found that the development complied with integrated environmental management principles and that mitigation measures were sufficient.<sup>12</sup> Given that DeltaBEC's Final EIAR did not recommend authorisation, the meeting minutes could shed light on whether there was pressure to reinterpret or downplay environmental risks in the revised EIAR under Enviroxcellence.
- 34.3.6. Furthermore, meeting minutes would be essential in revealing internal deliberations that led to the shift from a non-recommendation to approval. The minutes could also potentially expose whether LEDET improperly influenced the EAP's findings or

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<sup>10</sup> Applicant's Founding Affidavit at para 55.

<sup>11</sup> Applicant's Founding Affidavit at para 56.

<sup>12</sup> Applicant's Founding Affidavit at para 57.

if there were discrepancies in specialist report interpretations. Lastly, they could confirm whether the flawed public participation process was intentional, further undermining the legitimacy of the authorisation.

**34.4. Attendance registers of meetings held with the EAP, applicants and/or LEDET:**

- 34.4.1. The attendance registers of meetings held with the EAP, applicants, and/or LEDET are crucial in assessing the integrity of the public participation process. There are serious concerns regarding the integrity of this process, including reports that community members were deliberately excluded from meetings.<sup>13</sup>
- 34.4.2. The attendance registers will show who was present at key engagements and whether affected stakeholders were afforded a genuine opportunity to participate.
- 34.4.3. Furthermore, they will provide a record of the officials, consultants, and decision-makers involved in shaping the EIA process, which is critical to understanding the extent to which independent specialists, environmental experts, and relevant government representatives were engaged.

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<sup>13</sup> n 10 above.

34.4.4. These records may also reveal procedural irregularities, such as the selective exclusion of key stakeholders or a failure to ensure that legally required participants were included.

34.4.5. Such deficiencies would amount to non-compliance with the public participation requirements under the NEMA. If it is established that critical stakeholders were not afforded an opportunity to participate meaningfully, this would constitute a material defect in the decision-making process and further grounds for review of the decision to grant EA.

**34.5. Any memos or reports that were drafted based on science, stakeholder engagements and/or any other information that was placed before the decision-maker for internal deliberation:**

34.5.1. These documents may reveal whether scientific evidence and expert assessments, including concerns related to biodiversity loss, water security, air pollution, climate impacts, human health impacts and negative economic spillovers, were properly considered or disregarded in the decision-making process.

34.5.2. They may also indicate whether stakeholder concerns, particularly those raised by affected communities and the many environmental organisations who submitted detailed comments to the EAP throughout the public participation process, were meaningfully engaged with or merely acknowledged without substantive consideration.

34.5.3. Furthermore, these internal records could provide insight into whether LEDET conducted a rigorous assessment of risks and properly considered alternatives or whether the decision was pre-determined in favour of the project.

34.5.4. The EIA process under NEMA and the EIA Regulations requires a comprehensive assessment of environmental risks and alternatives. These records are essential in determining whether LEDET complied with its legal obligations and ensured a scientifically and procedurally sound decision-making process.

**34.6. Internal deliberations of the specialist reports:**

34.6.1. The internal deliberations on the specialist reports are crucial as they may provide insight into how LEDET officials engaged with the specialist findings and whether these reports were subjected to proper scrutiny before the decision to grant EA was made.

34.6.2. The decision relied on the conclusions of certain specialist reports, which stated that the development does not conflict with the principles of integrated environmental management under Chapter 5 of NEMA and that mitigation measures could reduce environmental impacts to acceptable levels.<sup>14</sup>

34.6.3. However, records of internal deliberations may reveal whether LEDET officials critically assessed these findings or merely accepted them without proper interrogation. These records could

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<sup>14</sup> n 12 above.

importantly show whether any internal concerns were raised about the adequacy, accuracy, or scientific credibility of the specialist reports and other defects identified by many interested and affected parties, and whether any risks, uncertainties, or limitations flagged by specialists were overlooked.

34.6.4. Furthermore, it is crucial to assess whether LEDET properly evaluated the feasibility and effectiveness of the proposed mitigation measures or simply relied on them to justify a predetermined decision. Additionally, any internal disagreement among officials or specialists regarding environmental risks may shed light on whether concerns were downplayed or ignored to facilitate the project's approval.

34.6.5. The specialist reports are a fundamental component of the EIA process under NEMA and the EIA Regulations. Access to internal deliberations would be essential in determining whether LEDET conducted a rigorous and lawful assessment of environmental risks or merely rubber-stamped the findings to justify the granting of the EA.

**34.7. Recommendations and/or comments made by members of LEDET:**

34.7.1. The internal assessment of the EIA and the reasoning behind the decision to grant EA need to be evaluated. The relevant documents may indicate whether LEDET officials recommended modifications to the project, the imposition of stricter mitigation

measures, or even the rejection of the application, but were overruled in favour of other considerations.

34.7.2. These records may also reveal the extent to which LEDET scrutinised the findings of the specialist reports and the input of the public during the public participation process or whether the approval was merely a rubber-stamping exercise.

**34.8. Recommendations and/or comments made by any other department other than LEDET:**

34.8.1. The MMSEZ development has significant conflicts with regional development plans and environmental considerations.<sup>15</sup>

34.8.2. It does not align with local and regional developmental plans, which means that other government departments responsible for infrastructure, environmental management, and economic planning must be involved to ensure coherence with broader government strategies.

34.8.3. The site-specific assessment reveals substantial environmental and cultural sensitivities that go beyond LEDET's mandate.<sup>16</sup> Furthermore, the MMSEZ has failed to conduct a Strategic Environmental Assessment ("SEA"), which is a critical tool for evaluating large-scale developments. The Department of Forestry, Fisheries, and the Environment ("DFFE") should play a leading role in overseeing a SEA that includes input from multiple

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<sup>15</sup> Applicant's Founding Affidavit at para 321.

<sup>16</sup> Ibid.

government departments, civil society organisations, and affected communities.<sup>17</sup>

34.8.4. Additionally, there is a need for an inclusive consultation process that goes beyond LEDET and involves other relevant government departments, organised labour, affiliated unions, and civil society groups.<sup>18</sup> Departments such as the Department of Mineral and Petroleum Resources (“DMPR”) and the Department of Human Settlements must also be involved to ensure that economic, social, and environmental impacts are holistically considered.

34.8.5. Therefore, recommendations from a range of government departments are necessary to provide a comprehensive and balanced evaluation of the MMSEZ’s impact on the region.

**34.9. Terms of reference and scope of work in respect of any review called for by LEDET:**

34.9.1. In the case of a large-scale development like the MMSEZ, this is particularly significant because the project has far-reaching environmental, social, and economic implications.

34.9.2. A well-defined scope of work ensures that all critical factors, including environmental sustainability, social impact, and

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<sup>17</sup> Applicant’s Founding Affidavit at para 324.

<sup>18</sup> Ibid.

alignment with national and regional development plans, are considered.

34.9.3. This is important given the concerns raised in the Founding Affidavit (paras 321-324), which highlight the MMSEZ's conflict with existing land-use planning, the lack of a SEA, and the need for an inclusive consultation process involving multiple stakeholders.

34.9.4. Additionally, establishing proper terms of reference and scope of work ensures that any review conducted is not narrow or biased but rather comprehensive, addressing key issues such as land use compatibility, environmental sensitivities, socio-economic implications, and regulatory compliance. This helps ensure informed decision-making that aligns with broader governmental objectives and safeguards the rights and interests of affected communities.

**34.10. The Specialist Review of the EIA done by Tholoana Environmental Consulting in March 2021:**

34.10.1. In the time period between the first EAP's Final EIAR and the second EAPs' EIAR, an independent review of Deltabec's EIAR was commissioned by the Respondents.

34.10.2. The review was done by Tholoana Environmental Consulting ("Tholoana") and is attached as "LL13". The finding was that the Deltabec EIAR and EMPr were fatally flawed and could not be relied upon for decision-making purposes. Many of these flaws

were not addressed by the second EAP and, therefore, persist in the second EIAR. The fact that the Tholoane report is not included in the record suggests that the EIAR has not been considered with the deficiencies in mind.

- 34.10.3. As mentioned in paragraph 35 of the Founding Affidavit, the Tholoane report was never released to interested and affected parties, meaning that the deficiencies raised by the independent expert were hidden from the public during the public participation process.
- 34.10.4. This undermines the transparency and credibility of the EIA process. The report, along with the Remedial Action Plan, was a direct response to deficiencies in the Deltabec EIAR. There is no evidence to suggest that LEDET instructed the second EAP to address the shortcomings or even considered the Tholoane report.

**34.11. Any other independent review or report that was requested by LEDET:**

- 34.11.1. An independent review or other similar assessment report would show an objective, expert analysis of the MMSEZ project and/or the EIA, ensuring that the decision was based on credible, evidence-based findings rather than political or commercial interests.

- 34.11.2. Independent reviews help verify whether the development aligns with legal, environmental, and socio-economic requirements and whether concerns raised by stakeholders such as communities,

civil society organisations, and other government departments have been adequately addressed. In the case of the MMSEZ, such reviews are particularly significant given the conflicts already outlined above which indicate the environmental sensitivities, threats to the cultural significance of the region, and misalignment with local and regional development plans.

34.11.3. An independent review is a necessary checks-and-balances mechanism, holding the decision-maker accountable. It also ensures that due diligence is followed, regulatory frameworks are adhered to, and the findings of the EIA are critically evaluated.

34.11.4. If the review identifies flaws in the EIA or gaps in stakeholder engagement, it can provide recommendations to rectify shortcomings before irreversible decisions are made.

34.11.5. The failure to disclose any such independent review and related records accordingly compromises the review of the decision to grant EA and dismiss the appeals against the decision.

**34.12. Internal minutes, memos, reports, correspondence, deliberations, recommendations and / or comments relating to any site visits:**

34.12.1. In terms of development of this magnitude, these documents could provide a detailed and first-hand record of the actual conditions at the site, the concerns raised during inspections, and the observations made by officials and experts. They would further serve as key evidence in assessing whether the MMSEZ complies with environmental regulations, planning frameworks,

and stakeholder expectations. If the site visits exposed issues that were ignored or downplayed in final approvals, such documentation is crucial in determining accountability and ensuring that regulatory processes were not compromised or influenced by external pressures.

35. The concerns raised in the Founding Affidavit and reiterated in this Supplementary Affidavit show that without full disclosure of the above-mentioned documents, it would be impossible to assess whether relevant considerations were properly taken into account, whether statutory and procedural obligations were adequately met, and whether the decision to grant the EA was rational and justifiable in law. A thorough review of these documents is, therefore, essential.
36. Given the failure of the State Attorney to confirm the completeness of the record on affidavit, the Court and the Applicants are left to assume that the record as filed is indeed the record as required by Rule 53.
37. If that is the case, then the following conclusions are inescapable:
  - 37.1. The EA process failed to consider the multiple internal appeals as detailed in the Founding Affidavit, and the Second Respondent simply dismissed the appeals out of hand.
  - 37.2. The Third Respondent failed to apply its mind to any scientific report, assessment or opinion before it and simply accepted the EIA without question.
  - 37.3. The Third Respondent failed to exercise any discretion in granting EA.

- 37.4. The Third Respondent failed to adequately consult with affected persons and other stakeholders.
- 37.5. The Third Respondent failed to apply an independent mind in granting EA.
38. It is reasonable to have expected that decisions taken on a project as large as the MMSEZ, and indeed a project with an environmental impact as significant as the MMSEZ, would have, at the least had a record including the aforementioned documents. Its absence from the record is a clear indicator that the Respondents:
  - 38.1. Failed to consider relevant information,
  - 38.2. Did not reasonably apply their mind to the numerous negative impacts on the environment, as detailed in the Founding Affidavit and this Supplementary Affidavit, in circumstances where it is reasonable to have considered those negative impacts.
  - 38.3. Took illegal decisions by failing to administer a proper EA application process as required by law.
  - 38.4. Failed to adequately and meaningfully consult with affected parties and relevant departments, which rendered the decisions procedurally unfair.
  - 38.5. Failed to bear any mind to the numerous internal appeals and simply dismissed the said appeals out of hand.
39. Quite apart from the fact that the manner in which this record has been provided calls into question the very administrative process upon which decisions of this nature are taken, it manifestly delays, frustrates and aggravates the resolution

of this matter, an issue I am advised should at the very least be addressed by way of an appropriate costs order.

40. In addition to the above, however, and with specific reference to the actual merits of the matter, the Applicants are left wondering what, in fact, constituted the record that served before the Respondents when called upon to make the necessary decisions. This is manifestly a critical issue and one upon which this entire application rests.
41. In an effort to provide the parties in this matter with a record that is not filled with duplicate pages, the Applicants' attorneys created a Master Bundle. Pages from Bundles 1-13 were moved to insert the missing pages in Bundles A- O.
42. The Master Bundle was finalised on 24 February 2025 whereafter it was scanned and paginated electronically to send to all the parties. This was done on 6 March 2025. Owing to the size of the Master Bundle it has not been attached to this affidavit.

### **C. CONCLUSION**

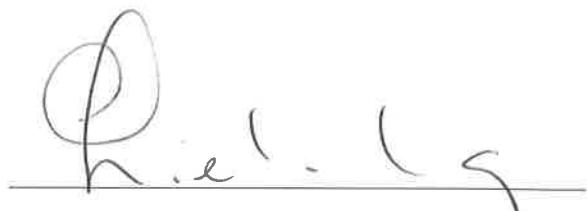
43. The Applicants' attorneys spent nearly twenty full days going through the record, comparing it to the documents filed on 18 September 2023, drafting a new index and creating a Master Bundle for this Honourable Court and the other parties to this matter.
44. This affidavit is filed for the purposes of:
  - 44.1. explaining the delay in the matter to date;

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44.2. showing that, apart from the EIA reports, very little, if anything, was considered in the decision-making process; and

44.3. calling into question the integrity of the entire decision-making process as well as the decisions themselves.

45. Given the mammoth amount of time expended by the Applicants' attorneys in effectively doing the State Attorney's job, the Applicants' costs order against the Second and Third Respondents on an attorney and own client scale is fully justified.



L. LIEBENBERG-SOUTHWORTH

SIGNED and SWORN to BEFORE ME at

on this **29<sup>th</sup>** day of **MARCH** **2025**,

by the Deponent who has acknowledged that she knows and understands the contents of this affidavit, and she has declared that he has no objections to taking the oath, that she regards the oath as binding on his conscience and he has uttered the following words : "I swear that the contents of this Affidavit are true, so help me God".



COMMISSIONER OF OATHS

COMMISSIONER OF OATHS  
**Lance Ian Neame Tomlinson CA (SA)**  
Commissioner of Oaths (RSA)  
Ernst & Young  
102 Rivonia Road, Sandton, Gauteng, South Africa

FULL NAME : \_\_\_\_\_

ADDRESS : \_\_\_\_\_

CAPACITY : \_\_\_\_\_

AREA : \_\_\_\_\_

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