



environmental affairs

Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA

Private Bag X447, Pretoria, 0001, Environment House, 473 Steve Biko Road, Pretoria, 0002

APPEAL RESPONSE REPORT

PROJECT NAME/TITLE: ENVIRONMENTAL AUTHORISATION IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT 107 OF 1998, (NEMA) AS AMENDED, AND THE ENVIRONMENTAL IMPACT ASSESSMENT (EIA) REGULATIONS, 2014 AS AMENDED FOR A MULTI-COMMODITY A SEA CONCESSION 11A, 12A, 13A, 11B, 12B AND 13B MAGISTERIAL DISTRICT OF VAN RHYNSDORP: WESTERN CAPE REGION

PROJECT LOCATION: SEA CONCESSION 11A, 12A, 13A, 11B, 12B AND 13B MAGISTERIAL DISTRICT OF VAN RHYNSDORP: WESTERN CAPE REGION

PROJECT REFERENCE NUMBER: WC 30/5/1 /1/2/10474 PR

DATE PROJECT/ACTIVITY AUTHORISED: 14 July 2026

DATE OF NOTIFICATION OF THE DEPARTMENTS DECISION: 22 July 2026

DETAILS OF THE APPELLANT	DETAILS OF THE APPLICANT
Name of appellants: Biodiversity Law Centre, Conservation Outcomes, and Masifundise Development Trust	Name of applicant: Trans Hex Heavy Minerals Mining (Pty) Ltd
Appellant's representative (if applicable): N/A	Applicant's representative (if applicable): N/A
Postal addresses: Biodiversity Law Centre: Ground Floor, Tokai on Main, 382 Main Road, Tokai, Western Cape, 7945 Conservation Outcomes: P.O. Box 1430, Howick, 3290, KwaZulu-Natal, South Africa. Masifundise Development Trust: 10 Nuttal Road, Observatory, Cape Town, Western Cape, 7925	Postal Address: PO Box 723, Parow, 7499
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Telephone number: N/A	Telephone number: N/A

Fax Number: N/A	Fax number: N/A

GROUND OF APPEAL	RESPONDING STATEMENT BY THE APPLICANT	COMMENTS BY THE DEPARTMENT
A1. Failure to account for the ecological significance of the southern Benguela upwelling system, and to consider this ecosystem as a whole as part of an ecosystem-based management approach. This is a violation to sections 6(2)(b), 6(2)(d), 6(2)(e)(iii), 6(2)(f)(ii) of the Promotion of Administrative Justice Act 3 of 2000 (“PAJA”). The Marine Concessions all fall within the Benguela ecosystem, a nutrient rich, eastern boundary upwelling system that supports a diverse food web. The resilience of the Benguela ecosystem depends on, among other things, a healthy and functioning food web. A resilient ecosystem can continue to provide ecosystem services for both present and future generations. This was a relevant consideration in terms of section 24O of NEMA that should have been taken into account, and the EA is, therefore, in violation of section 6(2)(e)(iii) of the Promotion of		

Administrative Justice Act, Act 3 of 2000 ("PAJA"). Additional relevant considerations for the Benguela ecosystem in its entirety are the National Coastal Marine Spatial Biodiversity Plan ("NCMBSP"),¹ the National Environmental Management: Biodiversity Act, Act 10 of 2004 ("NEMBA"), and the National Environmental Management: Integrated Coastal Management Act, Act 24 of 2008 ("NEMICMA") (and these considerations were not adequately accounted for in terms of section 24O of NEMA). The EA is in further violation of section 6(2)(b), 6(2)(d), and 6(2)(f)(ii) of PAJA because, by not considering the above, amounted to a mandatory and material procedure or condition prescribe by an empowering provision that was not complied with, the decision was materially influenced by an error of law, and the decision was not rationally connected to the information before the decision-maker or the reasons given for it by the decision-maker.		
A2. No Aquatic Impact Assessment was undertaken in respect of the Olifants River Estuary and the Sout Estuary. This is a violation to sections 6(2)(b), 6(2)(c), 6(2)(e)(iii), 6(2)(f)(ii), 6(2)(h) of PAJA.		

¹ Harris, L.R., Holness, S.D., Kirkman, S.P., Sink, K.J., Majiedt, P., Driver, A. 2022. National Coastal and Marine Spatial Biodiversity Plan, Version 1.2 (Released 12-04-2022): Technical Report. Nelson Mandela University, Department of Forestry, Fisheries and the Environment, and South African National Biodiversity Institute. South Africa. 280 pp.

The Precinct straddles the mouths of two estuaries classified as Endangered in the National Biodiversity Assessment 2025 ("NBA 2025"), on a site the Screening Tool rated Very High for aquatic biodiversity. That rating made an Aquatic Biodiversity Specialist Assessment obligatory. None was obtained, and no referral was made under section 24O(4) of NEMA: a failure to comply with a mandatory and material procedure in violation of section 6(2)(b) of PAJA. The DMPR accordingly failed to consider the Olifants EMP, the NBA 2025 classifications, section 2(4)(r) of NEMA and the recommendations of the Western Cape Department of Environmental Affairs and development Planning ("DEADP"), CapeNature and the Matzikama Local Municipality, in violation of section 6(2)(e)(iii). The estuarine objections of organs of state and registered interested and affected parties ("I&APs") were neither incorporated nor answered with reasons, contrary to item 3(1)(h)(iii) of Appendix 3 and in violation of section 6(2)(c) of PAJA. The finding of insignificant estuarine impact, and conditions which do not mention either Estuary, notwithstanding their proximity to the Precinct, bear no rational connection to the information before the decision-maker, in violation of section 6(2)(f)(ii) of PAJA. Cumulatively, the decision is one no reasonable decision-maker would have taken, in		
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violation of section 6(2)(h) of PAJA;		
A3. No assessment of the climate change impacts and climate-related risks of the proposed prospecting activities and/ or mining activities was conducted. Alternatively, this was or grossly inadequate. This is a violation to sections 6(2)(b), 6(2)(e)(iii), and 6(2)(f)(ii) of PAJA. No Climate Change Impact Assessment and no dedicated climate or greenhouse gas specialist study was commissioned. The vessel emissions acknowledged in section 2.5.7 of the EIA Report were never quantified, rated or carried into the impact assessment or the need and desirability analysis, contrary to Appendix 3 to the EIA Regulations: a violation of section 6(2)(b) of PAJA. The Climate Change Act, Act 22 of 2024 ("Climate Change Act"), the 2025 Draft National Guideline, the National Climate Change Response Policy, and South Africa's obligations under United Nations Convention on the Law of the Sea ("UNCLOS") and the Convention on Biological Diversity ("CBD") appear nowhere in the EIA Report, nor does any assessment of the climate vulnerability of the species identified in the Applicant's own specialist appendices: a violation of section 6(2)(e)(iii) of PAJA. Climate change is named in narrative text in both appendices and then omitted from the operative		

cumulative impact methodology of the same reports, so that there is no rational connection between the information before the decision-maker and the finding that impacts are low or insignificant, nor between the benefits of future mining relied on in the need and desirability analysis and the silence on that mining's climate consequences: a violation of section 6(2)(f)(ii) of PAJA; and		
A4. No Cumulative Impact Assessment was conducted, including the omission of climate-related and other cumulative marine stressors from the cumulative impact methodology. This is a violation to sections 6(2)(b) and 6(2)(e)(iii) of PAJA. The cumulative impact assessment in the EIA report does not satisfy the requirements of the EIA Regulations because it does not adequately assess the proposed prospecting together with relevant existing, authorised and reasonably foreseeable activities affecting the same receiving environment. This is a failure to comply with a mandatory and material content requirement of the EIA Regulations, and the decision to grant the environmental authorisation in absence of this complete assessment amounts to a failure to take a relevant consideration into account (section 6(2)(b) read with section 6(2)(e)(iii) of PAJA).		

B1. Inadequate needs and desirability assessment. This is a violation to sections 6(2)(d) and 6(2)(f)(ii) of PAJA. The EA was granted without compliance with the mandatory content requirements of Appendix 3 concerning the motivation of need and desirability To the extent that the competent authority accepted a motivation that dismissed the applicable biodiversity plan as non-binding, the decision was materially influenced by an error of law (section 6(2)(d)) and was not rationally connected to the information before it (section 6(2)(f)(ii)).		
B2. No alternatives assessment. This is a violation to sections 6(2)(b) and 6(2)(e)(iii) of PAJA. The EIA Report has failed to properly assess alternatives to the proposed prospecting, as required by the EIA regulations, and dismissed the no-go alternative because it would preclude the benefits of the activity. This has resulted in the EA having been granted in the absence of relevant considerations into account (section 6(2)(b) read with section 6(2)(e)(iii) of PAJA).		
C1: The impacts to the livelihoods of the small-scale fishing communities in proximity to the project site were not adequately considered during the Public		

Participation Process. This is a violation of sections 6(2)(b), 6(2)(f)(ii), and 6(2)(h) of PAJA. Views and comments were inadequately taken into account and responded to. This is procedurally unfair and a violation of section 6(2)(c) of PAJA.		
C2: Crucial documents that formed or should have formed the basis of granting the EA were not made publicly available during the EIA process and had to be individually requested. This is a violation to sections 6(2)(b) and 6(2)(c) of PAJA. This is procedurally unfair and therefore a violation of section 6(2)(c) of PAJA, as well as a mandatory and material procedure or condition prescribed by an empowering provision that was not complied with in terms of section 6(2)(b) of PAJA read with Regulation 40(2) of the EIA Regulations.		
D: The decision to grant the EA was taken in the absence of the necessary Marine Spatial Planning tools being in place. This is a violation to sections 6(2)(e)(iii) and 6(2)(f)(ii) of PAJA. The decision failed to give meaningful effect to the integrated governance framework established by the MSPA, frustrated the purpose of that Act, failed to take into account highly relevant statutory considerations, and was inconsistent with the		

environmental management principles contained in NEMA and the constitutional obligation to secure ecologically sustainable development. This is a violation of sections 6(2)(f)(ii) and 6(2)(e)(iii) of PAJA.		
Taken in its totality, and as evidenced below, the decision was so unreasonable that no reasonable person would have made such a decision based on the information before them. This is a violation of section 6(2)(h) of PAJA.		

ARR comments by Case Officer

Name & Surname:

Date:

Signature:

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Approved by Supervisor

Name & Surname:

Date:

Signature:

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