

**TRANSMITTED BY EMAIL**

TO: **SLR Consulting (South Africa) (Pty) Ltd** Date: 4 July 2022

ATT: TEEPSA Stakeholder Engagement Team [TEEPSA-567@slrconsulting.com](mailto:TEEPSA-567@slrconsulting.com)  
Mr Jeremy Blood [jblood@slrconsulting.com](mailto:jblood@slrconsulting.com)

FROM: Ricky Stone [ricky@greencounsel.co.za](mailto:ricky@greencounsel.co.za)

Total pages: 5 Our ref: E040-027

---

The information contained in this document is confidential and intended for the exclusive attention of the addressee. Unauthorised disclosure or distribution of the information is prohibited. Please advise us immediately should you have received this document in error.

---

Dear Sirs,

**ENVIRONMENTAL AND SOCIAL IMPACT ASSESSMENT (ESIA) FOR A PROPOSED OFFSHORE EXPLORATION WELL DRILLING IN BLOCK 5/6/7, SOUTH-WEST COAST, SOUTH AFRICA: TOTALENERGIES EP SOUTH AFRICA BLOCK 567 (PTY) LTD – COMMENTS ON SCOPING REPORT**

1. We act for the EMS Foundation ("*client*"), a registered Interested and Affected Party ("*I&AP*") in respect of the proposed offshore exploration well drilling in block 5/6/7, South-West Coast, South Africa ("*Project*").
2. SLR Consulting (South Africa) (Pty) Ltd ("*SLR*") has been appointed by TotalEnergies EP South Africa Block 567 (Pty) Ltd ("*TEEPSA*") as the environmental consultants for the Project and SLR is authorised to take responsibility for the public participation process ("*PPP*") and to prepare the Environmental and Social Impact Assessment ("*ESIA*") on TEEPSA's behalf.

**Introduction**

3. We thank you for granting the two-week extension to submit comments on the draft Scoping Report and for providing/uploading the additional information and documentation which was requested during the public meetings and in our 17 June letter. To the extent required, our comments will include observations on the additional information as provided by SLR.

---

**Expertise grounded in experience**

Cullinan & Associates Incorporated (2001/001024/21)

DIRECTOR: CP Cullinan

ATTORNEYS: M Groenink, K Handley, P-M Keichel, P King, SD Kvalsvig, R Stone, HD Wessels

CONSULTANTS: BL Adams, GD Daniels

<http://cullinans.co.za/>

18A Ascot Road

Kenilworth 7708

Cape Town

[info@greencounsel.co.za](mailto:info@greencounsel.co.za)

T +27 (0) 21 671 7002

4. We intend to provide general overarching comments on the draft Scoping Report which should be considered during preparation of the ESIA, as well as comments on the proposed Specialist Reports and certain additional aspects which our client submits must be considered in such reports during the ESIA stage to ensure that all relevant information on the Project is placed before the decision-maker.

#### **Draft Scoping Report - General**

5. We note from the pre-application minutes of the 19 May 2021 meeting with the Petroleum Agency of South Africa (“PASA”) that SLR confirms that the ESIA will only “*focus on the proposed exploration project, not any potential future production (which is unknown at this stage). This is in line with the EIA Regulations 2014 (as amended) specifically separates out exploration from production.*”
  - 5.1. Whilst we accept that the EIA Regulations, 2014, specifically distinguish between “exploration” and “production”, we respectfully submit that such distinction is clearly intended to refer to the fact that each such activity – exploration versus production – are separate Listed Activities, and as such, different considerations apply to each activity. It does not mean that the impacts of the Project as a whole, and therefore the material which will be placed before the decision-maker, should be confined solely to the exploration phase.
  - 5.2. Although the assessment of environmental and other impacts associated with exploration versus production would indeed differ, the two activities are intrinsically linked – exploration is the means to achieve the ends of production. Indeed, the need and desirability section of the draft Scoping Report makes it plain that the purpose of the exploratory drilling is to cater for South Africa’s energy sector through the production of hydrocarbons.
  - 5.3. Therefore, the decision-maker must be furnished with information, specifically in terms of the need and desirability aspects of the Project, which would allow him or her to determine whether it is necessary and desirable to permit the drilling of exploratory wells that would ultimately lead to production at a future time in an area of the ocean with significant ecological and biodiversity importance to South Africa as a whole.
  - 5.4. As a bare minimum, the ESIA should accordingly provide the decision-maker with sufficient details and projected timelines on how the exploration stage ties into the production stage and whether, should the anticipated exploration discover exploitable oil and/or gas reserves, such intended production would commence before or after 2030.
6. The Scoping Report confirms that *inter alia* the Area of Interest (“AOI”) for the exploration activities is located within an area of the ocean which includes critically endangered eco-systems and benthic habitats; is situated in close proximity to a significant number of Marine Protected Areas (“MPAs”), Critical Biodiversity Areas (“CBAs”), and Ecologically or Biologically Significant Areas (“EBSAs”); is situated along cetacean migratory routes and breeding grounds; and is located within a measurable distance from the penguin colonies of Boulders and Robben Islands, and the seal habitat on Seal Island; such that any worst-case scenario impacts, particularly a well blow-out, would have an ecologically damaging and irreversible impact on these MPAs, CBAs, EBSAs, and all species which thrive within these areas of the ocean.

7. In addition, the draft Scoping Report confirms that anticipated impacts and risks of the Project are not insignificant and would include the contribution to greenhouses gases (and thus climate change); a reduction in air quality; a reduction in water quality; displacement of fauna from important feeding and breeding sites; physical seabed and benthic fauna/habitat disturbance; destruction of eggs and larvae of many marine species; excessive underwater noise from drilling activities; disturbance of marine mammals; reduction in fish populations; displacement of fish; impacts on recreational, subsistence, and industrial fisheries; drilling in close proximity to a disused explosive dumping ground; drilling in potentially radioactive areas of the seabed; drilling through toxic muds; discharge of cuttings and/or debris and oil and/or gas; spills of oil and/or gas; loss of exploration equipment at sea; and well blow-outs.
  - 7.1. In the light of the above significant potential impacts of the Project, and the cumulative effect any single impact may have on the marine environment, particularly the MPAs, CBAs, and EBSAs, our client requires that, considering SLR's proposal to model on the 'worst-case scenario' when finalising the Specialist Reports, that such a worst-case scenario be prepared for the cumulative effects of more than one of the potential impacts occurring at the same time, and although unlikely, what the impact to the marine environment would be if all of the potential impacts occurred at the same time or within a relatively close period of time.
  
8. Due to the scientific nature of the Specialist Reports and the complexity of these types of exploration applications in general, the proposed thirty (30) day commenting period on the ESIA is considered to constitute too short a period within which I&APs can commission their own experts, undertake research, and prepare comments on the ESIA.
  - 8.1. SLR is aware, and as pointed out in our 17 June letter with reference to the enabling legislative framework, that the 30-day period associated with each aspect of the PPP is a minimum period and not the maximum period.
  - 8.2. Accordingly, our client requests that SLR seeks the approval of PASA, to the necessary extent, to set the commenting period for the ESIA stage at a minimum of ninety (90) days and a maximum of one hundred and twenty (120) days.
  
9. The draft Scoping Report indicates that the relevant legislation which applies to the Project, and which the decision-maker therefore needs to consider before making any decision, includes a comprehensive list of South African legislation and the regulations thereto, and the relevant international instruments.
  - 9.1. As indicated in the draft Scoping Report, *"(t)he Minister is required to consider environmental policy, norms and standards, while promoting economic and social development, in order to ensure that the development of South Africa's mineral and petroleum resources is undertaken in a sustainable manner."* The draft Scoping Report is thus framed in this context and has been compiled taking certain "key" pieces of legislation into account to mould the assessment matrix and the information which shall be placed before the decision-maker.
  - 9.2. However, and of concern to our client, is the statement in the draft Scoping Report that there is *"(o)ther South African legislation that TEEPSA **may** need to comply with should approval be*

*granted to undertake the proposed exploration activities...*” (our emphasis). One such “other” piece of South African legislation is listed as the National Environmental Management: Integrated Coastal Management Act, 24 of 2008 (“ICMA”).

- 9.3. The use of the word “may” indicates that TEEPSEA has an election whether to comply with *inter alia* the ICMA. This is wholly incorrect. TEEPSEA **must** comply with the provisions of the ICMA in its entirety, and in particular, with section 63 of the ICMA. The decision-maker similarly needs to consider the ICMA framework when deciding whether to grant or refuse the application for an Environmental Authorisation. The decision-maker is therefore enjoined to ensure that the Project is in the “interests of the whole community” as defined in the ICMA, which includes the interests of non-human species.
- 9.4. The draft Scoping Report has therefore been framed in a manner which does not deem the ICMA to be a “key” piece of legislation which **must** be complied with by TEEPSEA, and as a result, the draft Scoping Report is fatally flawed. On this basis, and with respect, PASA has no option but to reject the draft Scoping Report and direct that it is redrafted in a fashion which elevates the ICMA as one of the key pieces of South African legislation within which the application is submitted thereby ensuring that the ultimate decision is consistent with the provisions of the ICMA and the Government’s duty as public trustee of all coastal property.

#### **Proposed Specialist Reports**

10. We note the proposed Specialist Reports and Technical Studies which SLR will procure during the Impact Assessment Stage of the Project, and the terms of reference for such studies and reports. Overall, our client takes no issue with the Reports and Studies that have been identified as necessary for the Impact Assessment Stage. It is further noted with appreciation that the Oil Spill Modelling Study will undergo an independent assessment.
- 10.1. Notwithstanding the single independent assessment which will be undertaken, and as mentioned in para 8.2 above, our client is entitled to appoint its own experts and specialists to independently assess the accuracy of the Specialist Reports and Technical Studies which will form part of the ESIA. Therefore, our client, and any other I&APs who are similarly inclined to obtain their own expert input before submitting comments on the ESIA, will require a minimum period of ninety (90) days to engage with experts and formulate their substantive comments on the ESIA.
- 10.2. In the interests of practicality, it would be appreciated if SLR seeks the necessary permission from PASA to set the commenting period on the ESIA at a minimum of ninety (90) days and a maximum of one hundred and twenty (120) days, before the final Scoping Report is submitted for a decision. In other words, SLR should be placed in a position to communicate to I&APs that the commenting period for the next stage will be longer than thirty (30) days (and to confirm the number of days) while PASA is making their decision on the final Scoping Report. This will allow our client, and other I&APs, to then engage and retain appropriate specialists to allocate time for the next phase, without needing to only commence doing that once the ESIA Report has been received.

11. As mentioned in paragraph 5 above, exploration is intrinsically linked to production, and as such, the Specialist Reports must include a section on the likely impacts of production should the exploration activities locate exploitable reserves. The Specialist Reports must also include a full cost benefit analysis (of exploration **and** production), including what has come to be known as “the social cost of carbon”, to enable the decision-maker to assess whether the benefits of exploration and production shall be in the interests of the whole community.
12. We note that the AOI shall cover 5.4% of CBAs and that it is situated within proximity to many MPAs and EBSAs, and that the exploration may impact up to ten (10) RAMSAR sites (in the indirect area of influence). We therefore expect that the Specialist Reports will include a comprehensive analysis on the potential and likely impacts to these CBAs, MPAs, EBSAs and the RAMSAR sites.
13. Similarly, we note that the AOI overlaps with approximately 20% of the effort expended by commercial fisheries, particularly, the Demersal Trawl, Hake Demersal Longline, Pelagic Longline, and Tuna Pole sectors. This is a significant overlap, and when appreciating that the planned exploration is merely the next step in TEEPSA’s intended production efforts, the Specialist Reports should explain in detail what the impacts of the exploration **and** production will be on these commercial fisheries, who will, likely, need to fish elsewhere if TEEPSA is eventually awarded Production Rights. The impact to the South African economy for this scenario must therefore be included in the cost-benefit analysis sections of the relevant Specialist Report/s.
14. For the avoidance of any doubt, our client’s submission of these comments on the draft Scoping Report should not be construed as support for the Project, and to the extent necessary, our client’s rights to oppose the Project remain reserved.
15. We look forward to hearing from you in due course.

Yours sincerely,



**CULLINAN & ASSOCIATES INC.**

per: Ricky Stone