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Our Ref: E01180
Date: 27 May 2021

COPY TO: THE HONOURABLE ERIN O'TOOLE, MP, LEADER
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COPY TO: THE HONOURABLE ELIZABETH MAY, MP
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**COPY TO: THE HONOURABLE SEAMUS O'REGAN
MINISTER OF NATURAL RESOURCES**

Hill Office

House of Commons

Ottawa, Ontario,

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**COPY TO: THE HONORABLE JONATHAN WILKINSON
MINISTER OF ENVIRONMENT AND CLIMATE CHANGE**

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House of Commons

Ottawa, Ontario,

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Jonathan.Wilkinson@parl.gc.ca

***** PER EMAIL ATTACHMENT *****

Dear Sirs/Mesdames,

**RE: RECONAFRICA PETROLEUM EXPLORATION ACTIVITIES IN PEL NO. 73 KAVANGO BASIN,
NAMIBIA**

1. The above matter refers.
2. We, as Schindlers Attorneys, a law firm based in Johannesburg, South Africa, and Schindlers EcoForensics ("**Schindlers**") a registered interested and affected party ("**IAP**") for the above matter, address this letter in our capacity as such with regard to the Environmental Impact Assessment ("**EIA**") for the petroleum exploration activities



conducted by ReconAfrica in Pel No. 73 Kavango Basin, Namibia ("**the Project**"). An email confirming Schindlers' registration as an IAP is attached hereto, marked as Annexure "**A**".

3. This letter is intended to convey our concerns regarding Reconnaissance Energy Africa Ltd ("**ReconAfrica**"),¹ specifically whether ReconAfrica have successfully complied with all the statutory requirements in terms of the Namibian Environmental Impact Assessment Regulations ("**EIA Regulations**") as well as the provisions of the Namibian Environmental Management Act ("**EMA**"),² insofar as same relate to the Project. A letter containing Schindlers' comments and submissions in relation to the above is attached hereto, marked as Annexure "**B**".
4. Furthermore, this letter addresses our concerns over the actions of a Canadian-registered company which is clearly violating international agreements to which Canada is a signatory.
5. If the Project is allowed to proceed, the proposed activities will have devastating effects on global climate change and the ecosystem within the proposed drilling site, further infringing both the human and socio-economic rights of the local and indigenous peoples of Namibia.

Climate Change & The Ecosystem

6. Canada and Namibia are both signatories to the Paris Agreement under the United Nations Framework Convention on Climate Change ("**the Paris Agreement**"), in terms of which, both countries agreed to meaningfully engage in the strengthening of the global response to the threat of climate change,³ through various mitigating means,⁴ including the reduction of carbon emissions.

¹ ReconAfrica (a Canadian publicly listed company) is the holding company of Reconnaissance Energy Namibia (Pty) Ltd, being the subsidiary in charge of operations within Namibia.

² Act 7 of 2007.

³ Article 2 of the Paris Agreement.

⁴ Article 4 of the Paris Agreement.



7. According to ReconAfrica's projections, the extraction of oil contained in the Kavango Basin (the proposed drill site for the Project) would be the equivalent of one-sixth of the world's remaining carbon budget.⁵
8. Article 9.1 of the Paris Agreement states:

Developed country Parties [Canada] shall provide financial resources to assist developing countries [Namibia] with respect to both mitigation and adaptation in continuation of their existing obligations under the convention.
9. It is clear that any project involving the drilling for oil and gas (and related activities), particularly one with the proposed magnitude of the Project, would aggravate the expulsion of carbon emissions rather than mitigate them as per the requirements of the Paris Agreement.
10. Thus, not only is the Project in contravention with the provisions, and the spirit and purport, of the Paris Agreement, it would also place a larger burden on developed countries like Canada to financially assist Namibia in the mitigation of carbon emissions during and subsequent to the Project.⁶
11. The local and indigenous communities within the Kavango Basin which borders the Okavango Delta and covers part of the watershed thereof, a UNESCO World Heritage and Ramsar Wetland Site, rely on groundwater for both domestic and agricultural purposes, which ReconAfrica has failed to consider, as evidenced by, *inter alia*, their failure to line the waste pits on their drill sites.⁷
12. Furthermore, the Kavango Basin and Okavango Delta is home to the world's largest population of African Elephants.⁸ As elephants use sound and vibration as a means of

⁵ Fridays for Future: "[ReconAfrica's Kavango oil and gas play is 'carbon bomb' with projected 1/6 of world's remaining CO2 budget](#)".

⁶ Article 9.1 of the Paris Agreement.

⁷ National Geographic: "<https://www.nationalgeographic.com/animals/article/test-drilling-oil-namibia-poses-water-risk>".

⁸ National Geographic: "[Oil drilling, possible fracking planned for Okavango region—elephants' last stronghold](#)".



communication,⁹ they are highly sensitive to vibrations such as those caused by the seismic drilling required for the Project and any other petroleum exploration and related activities in the area.

13. In addition to the above, the Okavango Delta and the Kavango Basin (the area affected by ReconAfrica's Project) are also home to a number of threatened and endangered species, including cheetahs, African wild dogs, and various endangered species of rhinoceros.¹⁰

The Local & Indigenous Peoples

14. The impact that the Project will have on the climate and the surrounding eco-system, as highlighted above, will have further material and adverse impacts on the local and indigenous communities, as highlighted below:

- 14.1. The contamination of drinking water will infringe the people of Namibia's constitutionally protected right to life (Article 3 of the Namibian Constitution), as the access to safe drinking water is intrinsic to life and a basic human right according to the United Nations.¹¹

- 14.2. Furthermore, many of the locals in the affected areas depend on fishing for their livelihood, and as a means of feeding their families. Therefore, any contamination of the rivers will hinder and/or prevent them from earning a living and ensuring that both themselves and their families do not starve.

- 14.3. It should be noted, the indigenous people have inhabited the affected land for thousands of years, and the Project will ultimately lead to the land becoming uninhabitable due to water contamination, thus displacing thousands of people from their ancestral homes.

⁹ "Elephants feel it in their feet", <https://www.krugerpark.co.za/> (accessed on 18/05/2021).

¹⁰ "5 Reasons to Save the Okavango Delta", <https://www.greenpeace.org> (accessed on 26/05/2021)./

¹¹ Resolution 64/292 passed in July 2010.



- 14.4. ReconAfrica has failed to meaningfully engage with the local and indigenous communities as evidenced by the limitations placed on attendance during consultations, the disregard for language barriers, and the difficulty which many faced in accessing the locations in which these consultations took place.¹²

Mandatory Human Rights and Environmental Due Diligence in Canada

15. Canada is a signatory of the United Nations Declaration on the Rights of Indigenous Peoples ("**the Declaration**") and has taken further steps in ensuring that the human rights of indigenous peoples are recognized and protected by introducing legislation to implement the Declaration in 2020.¹³
16. Contrary to the above, the Canadian government appears to disregard the local and indigenous people of the Kavango Basin by allowing ReconAfrica to proceed with the Project, for the aforementioned reasons.
17. We submit that the new office of the Canadian Ombudsperson for Responsible Enterprise ("**CORE**") be given the adequate powers to properly and independently conduct, and follow through on, an investigation into the legality of the Project and the implications that will follow if it is allowed to proceed.
18. Furthermore, we submit that the Canadian government, as signatories of both the Paris Agreement and the Declaration, undertake a comprehensive due diligence in relation to the Project and ReconAfrica, regarding human rights and environmental rights.

Conclusion

19. We therefore submit, without reservation, in light of the immediate threat to the environment, the people, and the biodiversity of Namibia as a result of the Project, that

¹² National Geographic: "[ReconAfrica, exploring for oil upstream of the Okavango Delta, accused of ignoring Namibians' concerns](#)".

¹³ Implementing the United Nations Declaration on the Rights of Indigenous Peoples in Canada, <https://www.justice.gc.ca>, (Accessed on 18 May 2021).



the above submissions be considered by yourself and your Offices, particularly due to ReconAfrica being a Canadian company, and that your actions be guided accordingly.

20. This correspondence is intended to serve as an amicable instrument for the resolution of the concerns raised, and, further, as an attempt to protect the Namibian environment and the environmental rights of its citizens.
21. We trust that you find the above in order and will be guided accordingly.
22. Should you have any queries, please do not hesitate to contact the writer hereof or alternatively Marc Barros Gevers at Gevers@schindlers.co.za.

Yours Faithfully,

Divina Naidoo pp

SCHINDLERS ATTORNEYS AND SCHINDLERS ECOFORENSICS

PER: DIVINA NAIDOO OBO MAURICE CRESPI

Email: NaidooD@schindlers.co.za

From: Danisha Naidu
Sent: Wednesday, 17 March 2021 16:09
To: Blake Hamilton
Subject: FW: Confirmation of Your Registration as a Stakeholder for the Proposed 2D Seismic Survey Over AOI in PEL 73
Attachments: SCHINDLERS ECOFORENSICS I&AP CONTACTS.pdf

From: Divina Naidoo
Date: Monday, 25 January 2021 at 21:10
To: Dr Sindila MWIYA , 'Sindila Mwiya'
Cc: Anja van Wijk , Nicole Rens , Marc Gevers
 , Danisha Naidu , Lesai Seema

Subject: RE: Confirmation of Your Registration as a Stakeholder for the Proposed 2D Seismic Survey Over AOI in PEL 73

Dear Dr. Mwiya,

Thank you for your response and the confirmation of our team's registration as Stakeholders for the proposed 2D Seismic Survey Operation over the AOI within PEL 73, situated in the Kavango and East Regions.

As per your request, attached hereto is a list of each member of the team, along with the relevant details.

In consideration of the draft scoping report ("**the Report**"), as previously attached, we kindly request an extension in which to provide our written submissions. Given the highly technical scientific nature and the sheer volume of the Report together with the material risk to the livelihood of the local communities as well as the irreversible environmental damage we would need more time to consider and have our experts assess the Report.

Whilst we note that the intended lodgment of the ECC is **5 February 2021** we kindly request that our submissions be accepted by **1 February 2021** due to the aforementioned reasons provided.

We look forward to hearing from you and to further meaningful engagement.

Best regards,

Divina

From: Dr Sindila MWIYA
Sent: 22 January 2021 08:02
To: 'Sindila Mwiya'
Subject: RE: Confirmation of Your Registration as a Stakeholder for the Proposed 2D Seismic Survey Over AOI in PEL 73
Importance: High

Dear Interested /Affected Party,

I hereby confirm your registration as a Stakeholder for the proposed 2D Seismic Survey Operation over the exploration Areas of Interest (AOI) within PEL 73 situated in Kavango West and East Regions.

Please Note: If NOT provided, you are hereby required to provide us with the following additional information in validating your registration and email address on our AI existence screening system: Your full names, mobile \telephone numbers and Organisation that you are representing.

Please see attached to this message the Draft Scoping Report for your information. The following public meetings and open days sessions are organised as part of the stakeholder and public consultation process for the proposed 2D seismic survey operations in PEL 73 and specifically targeting the regional and local communities of Kavango West and East Regions and an opportunity for a factual field visits for I&APs from outside the two (2) regions:

- (i) **Kavango West Region, Nkurenkuru, Nkurenkuru Community Hall, Wednesday, 20th January 2021, Morning Session from 10hrs00 to 12hrs00 Formal Meeting and Afternoon Session from 14hrs30 to 16hrs30 Open Sessions Public walk in as needed.**
- (ii) **Kavango East Region, Rundu, AMTA, Friday 22nd January 2021, Morning Session from 10hrs00 to 12hrs00 Formal Meeting and Afternoon Session from 14hrs30 to 16hrs30 Open Sessions Public walk in.**
- (iii) **Field-based public / local villages community meetings and poster sessions at key settlements such as Ncamagoro, Gcuru, Ncuncuni, Cuma, Mbambi, Ncaute and Kawe, all situated along the various seismic survey lines. The field-based meetings / sessions will be undertaken in coordination with the regional councillors and traditional authorities from Saturday 23rd to Monday 25th January 2021.**

REGISTER BY EMAIL AND RESERVE A PLACE FOR THE MEETINGS: frontdesk@rbs.com.na or Contact Dr Sindila Mwiya for more Information: smwiya@rbs.com.na, Mobile: +264-811413229

DEADLINE FOR WRITTEN SUBMISSIONS IS: **FRIDAY 29th January 2021**, date for the lodgement of the application for Environmental Clearance Certificate (ECC) is **FRIDAY 5th February 2021**

Additionally, all the environmental reports that will be submitted to the Environmental Commissioner will be subjected to further public consultation and disclosure by the Environmental Commissioner for a period of fourteen (14) days. All registered stakeholders will be informed once the environmental reports are available at www.eia.met.gov.na.

Many thanks,

Dr. Sindila Mwiya

PhD, PG Cert, MPhil, BEng (Hons), Pr Eng

International Resources Consultant /Founder RBS CC & FGN (Pty) Ltd

Risk-Based Solutions (RBS) CC, Consulting Arm of Foresight Group Namibia (FGN) (Pty) Ltd

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admin@reconafrica.com

Our Ref: E01180

Date: 23 April 2021

RISK-BASED SOLUTIONS (RBS) CC

Cnr of Lazarett and Feld Street
Windhoek, Namibia

PER EMAIL: smwiya@rbs.com.na;
frontdesk@rbs.com.na

**DEPARTMENT OF ENVIRONMENTAL AFFAIRS
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*****PER EMAIL*****

*****ATTENTION: DR. SINDILA MWIYA & MR. MUFETI*****

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©2020 SCHINDLERS FORENSICS AI. REGISTRATION NO.: 2019/621012/07. DIRECTORS: ISRAEL NOKO, DAVID HEPBURN

Dear Sirs/Mesdames,

RE: WRITTEN SUBMISSION IN RESPONSE TO RISK BASED SOLUTIONS'S EIA AND EMP FOR A 2D SEISMIC SURVEY IN PEL 73 BY RECONNAISSANCE AFRICA

1. The above matter refers.
2. Schindlers Forensics ("**Schindlers**") is placed on record as an interested and affected party ("**I&AP**") in respect of the above matter, and authors this document on behalf of other interested and affected parties, as well as communities surrounding the areas due to be affected by the Petroleum Exploration activities in PEL 73 ("**the Project**"). Other than being an I&AP in this process, we have no direct business, financial, personal or other material interests in the outcome of the EIA.
3. In this document, Schindlers puts forth its objections and comments in their own name, and on behalf of Interested and Affected Parties and Communities within the jurisdiction of the proposed 2D seismic project. Schindlers has previously demonstrated its concerns, opposing the aforesaid project and further submits herein its response to the *Final Environmental Impact Assessment (EIA) Report Vol. 2 of 3 to Support the Application for an Environmental Clearance Certificate (ECC) for the Proposed 2d Seismic Survey covering the Areas of Interest (AOI) in Petroleum Exploration Licence (PEL) No. 73, Kavango Basin, Kavango West and East Regions, Northern Namibia, Volume 2 of 3 ("**EIA Report**")*, as well as the *Environmental Management Plan for the Proposed 2D Seismic Survey covering Areas of Interest (AOI) in Petroleum Exploration Licence (PEL) No. 73, Kavango Basin, Kavango East and West Regions, Northern Namibia, Volume 3 of 3 ("**EMP Report**")* as proposed by Reconnaissance Energy Namibia (Pty) Ltd and compiled by Risk Based Solutions ("**RBS**") and the Environmental Assessment Practitioner ("**EAP**"), Dr. Sindila Mwiya.
4. Therefore, all comments, suggestions, and/or recommendations made herein will refer to the EIA Report and the EMP Report.

5. In line with section 23(1) of the Environmental Impact Assessment Regulations, 2011 ("**EIA Regulations**") we are entitled to bring to the attention of the Environmental Commissioner any issues which we deem as significant and/or important in the consideration of an application under the EIA Regulations.

6. Our overall submission is that there must be an immediate rejection of the EIA Report and the EMP Report for all petroleum exploration activities in Kavango, Namibia. Our main submissions are separated into three independent but related groups, namely general comments, comments *in re* the EIA Report, and comments *in re* the EMP Report. It should be noted that three core issues are highlighted in our general comments, namely: principled basis for decision making; non-compliance with general requirements for EAPs, and; misrepresentation of Namibia's National Climate Change Policy. Our submissions are detailed hereinbelow:

General Comments:

- 6.1. The Environmental Commissioner of Namibia is tasked with reviewing an assessment report compiled for purposes of an environmental assessment process, and for issuing environmental clearance certificates in terms of the Environmental Management Act 7 of 2007 ("**EMA**"). In this task, he is bound to consider the principles of environmental management set forth in section **3** of EMA, which principles "serve as guidelines for any organ of state when making any decision in terms of [EMA] or any other law relating to the protection of the environment."

- 6.2. We submit that the following principles are especially pertinent when the Environmental Commissioner exercises the function of assessing ReconAfrica's EIA Report for a 2D Seismic Survey in PEL 73 and the EMP Report:

- 6.2.1. Promoting and facilitating community involvement in natural resources management and the sharing of benefits arising from the use of natural resources (section **3(2)(b)** of EMA);
 - 6.2.2. Promoting the participation of all interested and affected parties and taking into account the interests, needs and values of interested and affected parties in decision-making (section **3(2)(c)** of EMA);
 - 6.2.3. Promoting equitable access to environmental resources and taking the functional integrity of ecological systems into account to ensure the sustainability of such systems and prevent harmful effects (section **3(2)(d)** of EMA);
 - 6.2.4. Promoting sustainable development in all aspects relating to the environment (section **3(2)(f)** of EMA);
 - 6.2.5. Protecting and respecting Namibia's cultural and natural heritage (including its biological diversity) for the benefit of present and future generations (section **3(2)(g)** of EMA);
 - 6.2.6. Choice of the most beneficial, or least damaging option to the environment as a whole, at a cost acceptable to society, over the long and short term (section **3(2)(h)** of EMA); and
 - 6.2.7. Applying a precautionary approach when there is sufficient evidence of threats of serious or irreversible damage to the environment (section **7(2)(k)** of EMA).
- 6.3. These principles have similarly guided our comments on, and objections to, the reports submitted by ReconAfrica.

Non-compliance with general requirements for EAPs

- 6.4. An EAP appointed to manage an environmental assessment process is required to perform the work relating to an application in an objective manner (section **4(b)** of the EIA Regulations). It is patently obvious from numerous complaints that the EAP appointed to manage ReconAfrica's environmental assessment, Dr. Mwiya of RBS, has not performed the work in an objective manner. Apart from his hostile and disrespectful behaviour towards interested and affected parties at the public meeting hosted in Windhoek, his biased attitude toward pro-environment comments received from I&APs is evident from email communications with Dr Annette Hubschle and Mr Jan Akert in which he made astonishing, defamatory remarks about both these professionals belonging to "uninformed cliques"; further, his patronising and demeaning response to Mr Max Muyemburuko, chairperson of the Kavango East and West Regional Conservancy and Community Forestry Association regarding the latter's concerns about a public meeting convened for the assessment at Rundu (see [ReconAfrica adviser calls oil-drilling concerns 'stupidity' \(oglinks.news\)](#)). Dr Mwiya has clearly not promoted the participation of all interested and affected parties in a manner that takes into account their interests, needs and values, and has therefore directly undermined the principles of EMA. Dr Mwiya's conduct has damaged the integrity of the entire assessment process and the assessment report should be rejected on this ground alone.
- 6.5. We also note with concern that while Dr Mwiya claims to be a member of the Engineering Council of Namibia, an online search using his name on the ECN's registered members' database delivered a "no results" response ([Who is Registered? - ECN](#)). If Dr Mwiya is indeed a registered engineer with this institution, he is bound by its Code of Conduct, which requires that members "shall order their conduct so as to uphold the dignity, standing and reputation of the profession" (see [Code of Conduct - ECN](#)). However, Dr Mwiya's conduct

towards I&APs throughout the assessment process has brought his profession into disrepute.

Misrepresentation of Namibia's National Climate Change Policy

- 6.6. Namibia's contribution to global GHG emissions is negligible. Its 2016 CO_{2e} emissions stood at 3.9Mt, a mere 0.01% of the global share. The country's 2016 Intended Nationally Determined Contribution aimed at a reduction of 89% of its GHG emissions by 2030 compared to the Business As Usual Scenario. The INDC indicated that the government aimed to increase the share of renewables in electricity production from 33% to 70% by 2030. Namibia submitted a fourth national communication to the United Nations Framework Convention on Climate Change of March 2020, which outlines the government's policy to mitigate GHG emissions from energy production with reference to the 2016 National Integrated Resource Plan (NIRP). In this communication, the NIRP "the level of penetration of renewables" is described as a "determining factor since the objective is to reduce emissions of GHGs and the country's strategy is geared towards increasing the share of renewables in the electricity generation sector to 75% in the medium term" (p. 191). These statements build on the National Policy for Climate Change of Namibia, 2011 which supported sustainable energy and exploration of low carbon development (p. 18).
- 6.7. The negative climate change impacts of the 2D seismic survey are set out on pp. 220 – 221 of the EIA Report. Given the "salami-slicing" approach to the assessment of developing the Kavango Basin for conventional or unconventional oil exploration and production, it is unsurprising that the report finds that the climate contributions of the 2D seismic survey, considered in isolation, will be site-specific, short-term, and of low intensity and significance.
- 6.8. Yet at the same time, in an apparent attempt to justify the overarching long-term project of oil production in the Kavango region, the Report argues (under the rubric of "co-existence developmental approaches") that fossil fuel

development will in fact help Namibia achieve its climate change commitments. The following paragraphs illustrate this argument:

Through the National Policy on Climate Change, introduced in 2011, Namibia is working towards reducing the effects of global warming on communities and sectors through short and long-term resilience and adaptation strategies. However, the current green environmental financing models that are dependent on donations, loans and grants from developed countries coupled with massive socio-economic challenges and rural generational poverty, will see Namibia struggle to achieve its NetZero by 2050. As such Namibia cannot afford to abruptly stop all greenhouse gas emitting industries such as oil and gas exploration and switch to green energy overnight. Even the developed and industrialised countries responsible for all the historical, current and next thirty (30) years of greenhouse gases (sic) emissions have adopted long-term strategies of transforming to greener economies and hope to achieve NetZero by 2050.

Namibia is a developing country struggling economically with high levels of debt, high unemployment, high poverty levels, challenging social economic issues, riddled with unequal distribution of wealth and majority of the indigenous Namibians swimming in inherited generational poverty. The adoption of co-existence developmental approaches in the diversification of the natural resources base will greatly help the country to widen it (sic) income base and financial independence to be able to fund both the short and long-term climate change resilience and adaptation strategies for the benefit of all Namibians

- 6.9. These false, misleading, unsubstantiated and untrue claims falsely misrepresent the climate change policy of Namibia and the extensive planning that has already been undertaken to increase the share of renewables in the Namibian energy sector.

In re the EIA REPORT:

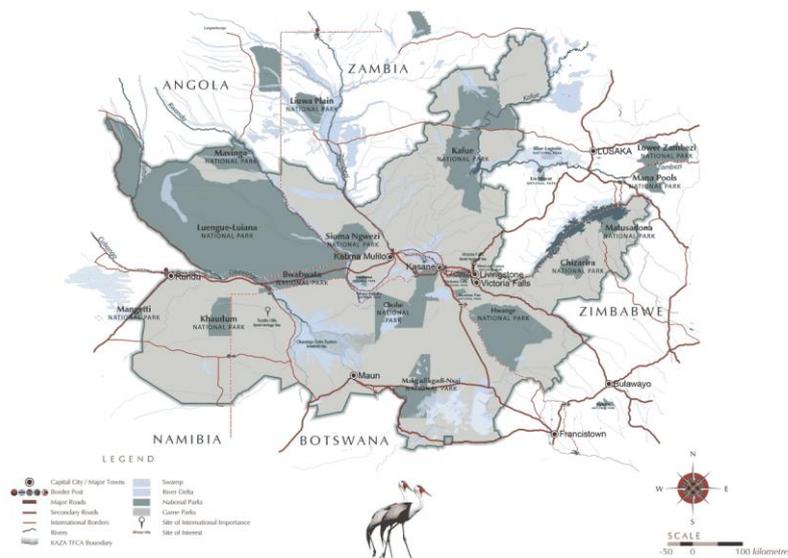
- 6.10. ReconAfrica makes submissions that "the company purchased additional high-resolution aeromagnetic data covering the license area and conducted a detailed analysis of the data, including the reprocessing and reinterpretation of all existing geological and geophysical data sets".¹ We hereby submit that the EIA Report is vague and fails to provide the requisite data in support of its submissions.

¹ See paragraph 1.3.1, page 5 of the EIA Report

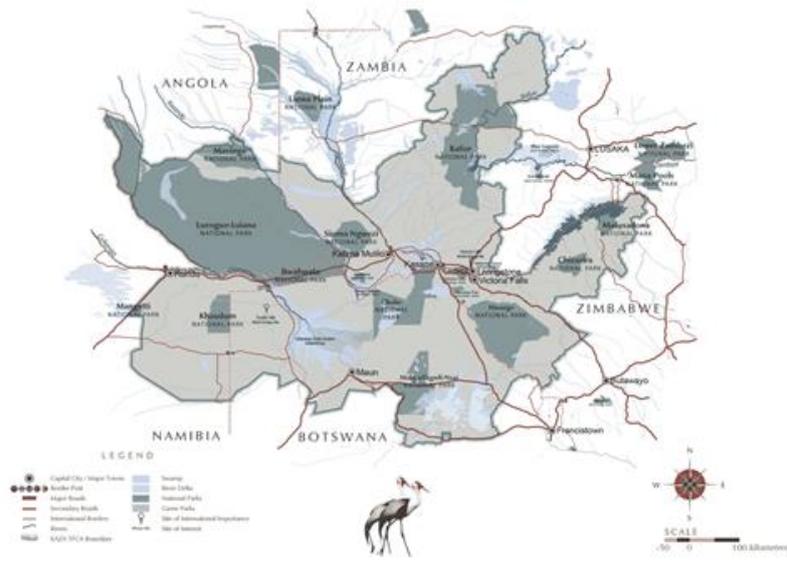
6.11. The EIA Report omitted to take into account the protected-area and the conservation of Biodiversity such as the plants, animals, micro-organisms, their genetic variations, as well as the habitat of the area in which the proposed project will take place.²

6.12. It is thus evident that the proposed project, and any petroleum exploration activities, within KAZA TFCA will have a definite impact on the area. The EIA Report failed to identify and discuss a number of communal conservancies which are in close proximity to the areas of interest, some of which are identified in the below map

6.13. Furthermore, the EIA Report does not mention that the proposed project falls within conservation areas (either nationally or internationally recognized). The EIA Report blatantly omitted to address the fact that the project is located near Kavango Zambezi Transfrontier Conservation Area ("KAZA TFCA")¹³, as seen from the maps below:



² See paragraph 1.3, page 1 of the EIA Report



6.14. The above maps serve as evidence, and may thus be used in support of our submission, that ReconAfrica failed to mention and/or consider a number of other conservancies. Consequently, such failure ultimately poses a threat to the biodiversity in the affected AOI and affected surrounding areas, which, *inter alia*, includes the plants, animals, micro-organisms, and their genetic variations, as well as the habitats that fall within the respective areas.

- 6.15. The EIA Report fails to take all precautions, alternatively fails to identify all precautions taken, as may be necessary to protect the environment and conservancies within the affected AOI.
- 6.16. The EIA Report makes submissions that “the EIA process was performed by a qualified and experienced team, objectivity and reasonable skill, care, and diligence in accordance with professional standards and practices existing at the date of performance of the assessment and that the guidelines, methods and techniques used and applied in this study conformed to the national regulatory requirements, processes and specifications in Namibia and in particular as required by Ministry of mines and energy, Ministry of environment, Forestry and Tourism and the client”.³ These submissions are misleading, since the EAP who conducted the process, does not appear to have any environmental qualifications, academic or otherwise, as would be part of the expected requisite expertise required to compile an expert report on the environmental impact of any project akin to the proposed project.
- 6.17. The EIA Report is in contravention with the EMA, specifically with regard to section 2 which provides that:⁴

...

(k) where there is sufficient evidence which establishes that there are threats of serious or irreversible damage to the environment, lack of full scientific certainty may not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

(l) damage to the environment must be prevented and activities which cause such damage must be reduced, limited or controlled.

It is thus evident from the report that the proposed project could significantly cause irreversible damage and harm to the environment.

³ See paragraph 2.1, page 51 of the EIA Report.

⁴ Section 2 of the Environmental Management Act.

- 6.18. Furthermore, it appears, from the EIA Report, that ReconAfrica's failure to adequately and/or clearly consider the negative impact of the noise and nuisance caused by the proposed project, on the environment and people living around the AOI.
- 6.19. The EIA Report, and the project as a whole, evince a clear threat to the guiding environmental principles in the Namibian Constitution, which affirm that:⁵

the state shall actively promote and maintain the welfare of the people by adopting policies [which inter alia includes] ...

(l) the maintenance of ecosystems, essential ecological processes and biological diversity of Namibia and utilisation of living natural resources on a sustainable basis for the benefit of all Namibians, both future and present

The EIA Report evidences that ReconAfrica failed to take into account the significant role that Human Rights play in the facilitation of an effective EIA system. Schindlers hereby submits that the welfare of the Namibian people is of vital importance and ought to be safeguarded.

- 6.20. The EIA Report is fatally flawed in its failure to adequately address the issues which would reasonably be expected to be addressed, specifically all reasonable impacts of the proposed project (both positive and negative) and mitigation measures that ReconAfrica will take into account, in order to minimise the negative impact on the environment.
- 6.21. Furthermore, the EIA Report proves that ReconAfrica failed to ensure that the environment is given full and proper consideration in the decision-making process, with regard to the proposed project which has clear potential adverse consequences to the environment. Rather, it would appear that the

⁵ Article 95 of the Namibian Constitution.

process taken, and the decision ultimately flowing therefrom, is focused purely on profit at the expense of the environment.

- 6.22. It further appears that RBS and/or ReconAfrica failed to set out the study content, phases, and the anticipated results of the project in an appropriate and intelligible manner. The EIA Report provides misleading information, which arguably is intended to influence the reader and/or affected persons and communities into the belief that the proposed project will improve the lives and infrastructure of the communities and persons within the affected areas, within a short-term period.⁷
- 6.23. The EIA Report infers that ReconAfrica has thoroughly studied the receiving environment, however, no documents have been annexed to the report confirming same. The EIA Report has failed/alternatively omitted to furnish the public with a detailed report, wherein it sought to obtain suitable and accurate data on the baseline flora and fauna that occurs within the area. Schindlers, hereby wishes to ascertain whether such a report was obtained by ReconAfrica and further wishes to request a copy of same in order to establish the accuracy of the data contained therein.

In re the EMP REPORT:

- 6.24. The EMP Report is fatally flawed in a number of ways, a summary of these failures and shortcomings are listed below:

- 6.24.1. The EMP Report fails to consider:

- 6.24.1.1. the potential and/or actual environmental impact of the proposed project on climate change at large, the local biodiversity and ecosystem services, such as,

⁷ See paragraph 5.4.2.3, page 148, of the EIA Report

agroecosystems, forest ecosystems, grassland ecosystems and aquatic ecosystems; and

6.24.1.2. the human rights and traditional values of the indigenous and local communities, which have preserved their way of life for generations, prior to the contemplation of the proposed Project.

6.24.2. The EAP lacks the requisite academic qualifications, expertise and objectivity to have drafted the Report. The EAP does not, to our knowledge, have any environmental or related academic qualifications which would, in the ordinary course, enable him to consider the adverse environmental impact and the extent thereof, of the project. Furthermore, the EAP's career is intrinsically linked to the oil and gas industry which industry stands to gain the most in the contemplation of the Project.

6.24.2.1. Therefore, the EAP's knowledge and expertise in the environmental landscape as well as his impartiality and objectivity in preparation of the Report is, therefore, brought into question.

6.24.3. The requirements in terms of section **21** of the EIA Regulations for public participation have not been adequately complied with.

6.24.4. The EMP Report is vague and contradictory, including the sections pertaining to vehicles, pollution and the consideration of the local and indigenous communities.

6.24.5. The EMP Report, and the project as a whole, evidences a clear threat to Articles **6; 8; 10;16;18;** and **95** of the Namibia Constitution.

FAILURE TO CONSIDER IMPACT

- 6.25. The EMP Report fails to consider the adverse impact of the proposed Project on the environment, biodiversity, climate change and on the local and indigenous communities in the affected areas, in that, *inter alia*:
- 6.25.1. the author thereof lacks an environmental law or similar academic qualification; therefore, he is unable to adequately assess the potential consequences of the Project on the environment, biodiversity and climate change;
 - 6.25.2. there has been no consideration given to the Paris Agreement,⁷ to which Namibia is a signatory;
 - 6.25.3. there is no proper consideration given to the contamination of ground water which will be a direct result of the construction in and around the drilling sites as well as the actual drilling itself;
 - 6.25.4. the focus of the EMP Report is on the economic boost and commercial benefit of the Project and completely overlooks the detriment caused to the local and indigenous communities;
 - 6.25.5. the United Nations Declaration on the Rights of Indigenous Peoples ("**The Declaration**") was not considered in drafting the EMP Report; and
 - 6.25.6. there is a seemingly superficial regard for the aforementioned communities and the adverse effects that the proposed project will have on their livelihoods, health and well-being.

⁷ Ratified on 21 September 2016.

EAP

- 6.26. The EAP does not appear to have any environmental or related qualifications therefore we submit that his submissions cannot be regarded as that of an expert in the present circumstances.
- 6.27. The EAP's career is evidenced to be intrinsically linked to the oil and gas industry, which evidences a potential lack of impartiality. This coupled with his seemingly dismissive and superficial mentioning of the impacts that the proposed project will have on the environment and the local indigenous communities, shows that the EMP Report was not independently prepared in an unbiased manner.
- 6.28. Accordingly, it is for the abovementioned reasons that we submit that the EAP should recuse himself from his position as an EAP due to his lack of expertise and impartiality.

PUBLIC PARTICIPATION

- 6.29. Section **21** of EIA Regulations provide for public consultation and participation, which while providing certain procedural requirements, also provides for the substantive realisation of this requirement. Such procedural and substantive requirements have not been met by RBS and/or ReconAfrica and/or the EAP with regard to the proposed project.
- 6.30. The EAP has failed to properly address the concerns and written submissions of various Interested and Affected Parties, including those submissions submitted on the Draft Scoping Report, and those submitted between such date and date hereof.

6.31. There has been little to no effort in ensuring that the local and indigenous communities have been properly consulted regarding their views and concerns in relation to the proposed Project.

VAGUE, OVERLY BROAD, AND CONTRADICTIONARY

6.32. In the EMP Report, the EAP places emphasis on the health and safety regulations put in place with regard to driving. However, Schindlers' understanding is that the vehicles being used, are left-hand drive vehicles, which contravenes section 22(4) of the Road Traffic and Transport Regulations 2001, thereby making it illegal to drive these vehicles in Namibia. We therefore submit that the EAP should supply the public with proof contrary to the above.

6.33. For the sake of transparency, we request that the EAP furnish the public with proof that ReconAfrica was in fact granted the requisite permits in relation to the importing of vehicles that are to be used in the proposed Project, in Namibia.

6.34. The EAP makes submissions stating that the local and indigenous communities will benefit economically from job creation upon completion of the proposed Project, yet fails to adequately address the opportunity cost thereof, being the impact that the proposed Project will have on the livelihoods of the local fishermen and subsistence farmers.

6.35. The EAP addresses the necessary measures that will be taken to prevent the contamination of groundwater. In order to prove that there are no inadequately and/or unlined waste pits in the proposed drilling sites, we request proof thereof.

THE NAMIBIAN CONSTITUTION

- 6.36. It is clear from the comments made in the EMP Report, that the intended project poses a significant, imminent and real threat, thereby acting contrary to the purpose and intention of Article **95**.
- 6.37. Furthermore, the Human Rights and socio-economic elements contained in Articles **6; 8; 10; 16;** and **18**, *inter alia*, of the Namibian Constitution were not properly considered, in that the EMP Report fails to adequately canvas clear protection of the indigenous and local communities' rights to the protection of life, human dignity and equality and freedom from discrimination.
- 6.38. In addition, the lack of proper public participation, especially in relation to the aforementioned people, evidences the lack of regard for their views and concerns, despite the fact that the proposed project will have a direct and detrimental consequence on such people.

Concluding remarks

7. This correspondence is not intended to be, nor should it be construed as, a threat against your Offices, rather this correspondence is intended to serve as an amicable instrument to resolve the issues raised without unnecessary legal actions, and, further, as an attempt to protect the Namibian environment and the environmental rights of its citizens.
8. In conclusion, it is prudent to highlight the negative implications associated with the aforesaid project, especially since there are numerous proven risks and adverse impacts related to the development of fracking and/or petroleum exploration projects, such as industrialization of former rural areas, heavy freshwater consumption, water and soil contamination, public health impacts and the significant contribution to global warming. Neither the EIA Report nor the EMP Report have undertaken or accepted any liability in the event of any of the aforesaid

circumstances occurring. This raises a great concern and should have thus been taken into consideration when preparing the EIA Report and the EMP Report.

9. In addition to the above, it should be noted that the process undertaken by RBS and/or ReconAfrica in any and all proposed projects and actions for PEL.73 appears to have been deliberately separated and isolated into disparate activities. This conduct appears to be an intentional attempt to confuse and hinder I&APs and the general public and affected communities from receiving the full scope of ReconAfrica's plan for PEL. 73, and thus hinders such people from adequately and appropriately responding. Furthermore, by staggering the process in such a way, it is clear that RBS and/or ReconAfrica can present the illusion that such projects will apparently have limited adverse effects on the environment and affected people.
10. All of Schindlers' previously raised concerns, comments, and objections (specifically those raised in the comments and objections to the Draft Scoping Report dated **29 January 2021** as well as those raised in the Letter to the Commissioner dated **9 April 2021**) are incorporated by reference herein as if fully set forth herein.
11. The aforementioned concerns, and all previously raised concerns, all clearly illustrate the need for the revocation of the ECC and/or conduct a new EIA and EMP, which accurately and correctly takes into consideration all relevant factors (not just those beneficial to ReconAfrica) and which further attends to all necessary and accurate studies. Furthermore, it is evident that in such process the deadline for the submission of comments will need to be appropriately extended and further proper and extended public hearings will need to be held.
12. It is further submitted, without reservation, that:
 - 12.1. any and all permits obtained by ReconAfrica from the Namibian government and in relation to the proposed project, be made available to the public for consideration and scrutiny; and

12.2. as a result of the apparent impartiality of the EAP and the inadequate exploration of the threat to the environment, the people and the biodiversity of Namibia, as well as the undeniable threat of the oil and gas industry on climate change, that the proposed project be immediately denied and withdrawn.

13. We trust the above to be in order and anticipate your actions being guided accordingly.

14. Should you have any queries, do not hesitate to contact the writer hereof and Marc Barros Gevers at Gevers@schindlers.co.za

Yours Faithfully,



SCHINDLERS FORENSICS

PER: MAURICE CRESPI

Email: Crespi@schindlers.co.za