



EIA REFERENCE: 16/3/3/9/1/B4/45/1412/25
ENQUIRIES: BERNADETTE OSBORNE
DATE OF ISSUE: **20 OCTOBER 2025**

Western Cape Ministry of Local Government, Environmental Affairs and Development Planning
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Attention: Mr. Marius Venter

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Dear Colleague

COMMENTS ON THE APPEAL SUBMITTED IN RESPECT OF THE ENVIRONMENTAL AUTHORISATION ISSUED IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998) AND THE ENVIRONMENTAL IMPACT ASSESSMENT ("EIA") REGULATIONS, 2014 (AS AMENDED): THE INSTALLATION OF SOLAR PANELS AND ASSOCIATED INFRASTRUCTURE ON PORTION 10 OF FARM NO. 502, STELLENBOSCH.

1. The Environmental Authorisation ("EA") issued by this Directorate on 8 September 2025 and the Appeal Form dated 29 September 2025, as received by this Directorate on 3 October 2025, have reference.
2. In accordance with the provisions of the National Appeal Regulations, 2025 the decision-maker, the **Director: Development Management (Region 1)**, submits the following responding statement to the appeal.
3. In response to the matters raised by the Appellant in the appeal submission against the decision the following matters must be highlighted:
 - 3.1. The decision on the Application, which was subject to Basic Assessment, was the culmination of the process as set out in Regulations 19 and 20 of the Environmental Impact Assessment Regulation, 2014 (as amended).
 - 3.2. With due consideration of the relevant listed activities, the Basic Assessment process was informed by independent specialist reports, which were included in the Basic Assessment Report and made available to potential and registered Interested and Affected parties.
4. Please find below the responding statement to the Grounds of Appeal as stipulated in the abovementioned appeal submission.
5. This Directorate's responding statement to the grounds for appeal, as stated by the appellant, herewith follows on below, **in bold text**.

5.1 First Ground of Appeal:

"D.1 In a nutshell"

1. Don't Worry, Just Plough: In early 2024, an area of about 36 hectares was ploughed as outlined in the first thumbnail. Of those 36 hectares, only 10 hectares had been authorised in 2021 for cultivation, the "Vineyard" (shown in Blue in the second and third thumbnails). There was no authorisation to plough the "Buffer" (Orange) or any other parts of those 26 hectares outside the "Vineyard".
2. Breaking the law: We do not know if the ploughing ("Clearing of Indigenous Vegetation") was intentional, by negligence or (at a stretch) by some unknown later authorisation. Unless proven otherwise, the Clearing was unlawful and furthermore transgresses specifically the 2021 DEA&DP authorisation (third thumbnail), the 2021 Environmental Management Programme and all related undertakings and conditions in that authorisation.
3. Sin and repentance: NEMA Section 24G is a mechanism to "correct" unlawful environmental activity ("Sorry, we have sinned!"). In July 2025, a NEMA Section 24G process was very quietly started by the Environmental Assessment Practitioner, Groenberg Enviro. Multiple requests for information on what this is all about have not been addressed. They insist that it has nothing to do with the application for Solar Panels. For details, see Subsection D.2 and Appendices G.3 and G.4. Unless proven otherwise, we believe that this S24G process is related to exactly that unlawful ploughing; if not, things are even worse than we thought, because then there is yet another environmental transgression elsewhere.
4. They are all in the same area: The footprint for "Solar Panels" outlined in White in the second thumbnail above is just a few metres away from the Red ploughed areas. Therefore, these are intimately related, and together they constitute a "Phased Activity" as defined in the EIA Regulations. The legal concept of Phased Activities is to ensure that a large development and/or environmental impact is not split into a number of separate processes in time, and that large areas are not split into a number of smaller ones which, for example, each have an area of less than 20 hectares. Impacts are cumulative, both spatially and timewise. For details, see Subsection D.3.
5. One joint process, not three separate ones: Because the ploughing, Vineyard-Buffer-Conservation-Area and Solar-Panel areas are all close to one another and all are impacted, it is not permitted to split them. The 2021 Authorisation and its transgression, the Section 24G process and the 2025 Authorisation must be treated as One Phased Activity. Again, see Section D.3 for the technicalities.
6. More than 20 hectares, so full EIA now needed: Together, the total area of affected indigenous vegetation far exceeds 20 hectares: 36 hectares have already been cleared, and more hectares would follow if the Solar Panel project went ahead. Therefore, Listed Activity 15 of Listing Notice 2 applies. This means that full Scoping and Environmental Assessment must be conducted, not just the Basic Assessment required by Listing Notice 3 which has been done so far.
7. The true Solar Panel footprint: Even without the ploughed area, the footprint of the "White" Solar Panel areas exceeds 20 hectares anyway, because the total 19.5-hectare footprint as claimed EAP's application is factually incorrect. For details, see Subsection D.4.
8. The Botanical Assessments of October 2024, the later Addendum to it and the 2020 Assessment are inadequate. We pointed this out in January 2025 already, but nothing was done except to get a reply from the botanist. Given that the (unwarranted!) conclusions of this Botanical "Assessment" plays such a central role in the entire BAR motivation, this is not just a little deficiency but goes to the heart of what an environmental assessment should be. See Section D.4 for some (incomplete) details.
9. Environmental Management Programmes (EMPr) form an integral part of all applications and authorisations. So, what happened to the 2021 EMPr? Was it carried out? Did anyone

actually verify that the undertakings of that plan were carried out, and did anyone pick up that perhaps the ploughing may not be planned or allowed? Was it reported by the Environmental Control Officer responsible? And what does that imply for the credibility of the 2025 EMPr proposals? See Section D.5.

10. Our proposals: The consequences of the above seem to be obvious. A detailed analysis and possible sequence of steps is given in Subsection D.7. They include:
 - (a) Suspend the 2025 Authorisation and all activity on the ground except ongoing rehabilitation and maintenance.
 - (b) Find out why the mandatory 2021 Environmental Management Programme failed to prevent the unlawful ploughing and why the ploughing was never mentioned in the 2024/2025 Botanical Assessments and Application.
 - (c) Have Spier and Groenberg Enviro spell out exactly what the Section 24G process is all about and feed that information as input into the next EIA.
 - (d) Require Spier to start a single joint process encompassing the 2021 process (Vineyard etc), the 2025 process (Solar panels) and the S24G issues, plus any other environmental issue that may come out in the new process.
 - (e) As part of that joint EIA, commission a new Botanical Assessment by a different botanist, for example Dr Stuart Hall or Dr Brian du Preez.
 - (f) Explicitly allow for, and make use of, citizen participation by means of inaturalist.org as input into the future Botanical Assessments.
 - (g) Also update the 2020 Rehabilitation and Restoration Plan of Professor Holmes, which should answer questions such as What valuable CBA or support area is still out there? What can still be rescued? Are the remaining CBA pieces linked? What about the eastern area close to the airfield which also forms part of this single entity? What rehabilitation and restoration is possible for the ploughed area, if any? Given the failure of the last EMPr and the broken promises: How will effective monitoring on what happens out there be implemented? Who checks up on the ECO if he does not do his job? Can Solar Panels be erected on those areas which have been destroyed irrevocably instead of doing additional damage?
 - (h) Apply meaningful consequence management to perpetrators for unlawful activities once the S24G and/or unlawful ploughing have been investigated and completed. See Section D.7."

This Directorate's response:

D1: 1-3

The appellant is referring to an area of 36ha that was cleared of vegetation. An EA was issued on 1 April 2021 for the clearance of 10ha of indigenous vegetation for the establishment of vineyards. After conducting a **compliance site visit on 13 March 2024**, it has come to this Directorate's attention that an **area outside the approved footprint as included in the 2021 EA, was cleared**. However, the **extent of the cleared footprint** and whether this triggered a listed activity in terms of the NEMA Environmental Impact Assessment Regulations ("EIA") 2014, (as amended) was **unknown at that time**. The Environmental Control Officer ("ECO") later confirmed that an additional area **0.55ha was cleared**. It was also confirmed by the ECO that this triggered a listed activity in terms of the NEMA EIA Regulations, 2014 (as amended) and that a **Section 24G process will be followed** to rectify this matter. Section 24G of the National Environmental Management Act (NEMA), provides for the rectification of the unlawful commencement of a listed activity. Accordingly, any person is entitled to apply in terms of this section of the legislation, to rectify such unlawful commencement. This process is currently underway, and the outcome will be determined by this Department's Directorate: Rectification. It must be noted that the clearance of indigenous vegetation outside the

approved footprint relates to the EA issued on 1 April 2021. This Directorate cannot provide further comment on the statement that 36ha instead of the approved 10ha was cleared. If the appellant is of the opinion that this area was cleared, the matter must be reported to this Department's Directorate: Environmental Law Enforcement for further investigation.

D1:4-7

While it is acknowledged that all activities are occurring on the same property, there is no functional or operational link between the cultivation activity and the development of the solar facility. These are two entirely separate developments, each with its own purpose, infrastructure, and environmental considerations.

As such, the "phased activity" as contemplated in the EIA Regulations is not applicable in this instance.

Furthermore, the suggestion that a joint process must be followed, is not permissible. The environmental legislation clearly prescribes distinct processes for different types of activities. Section 24G of the NEMA provides a specific process for the rectification of unlawful commencement of listed activities, while the EIA process must be followed for proposed new developments. These two processes are separate and cannot be combined, specifically if there is no link between the different developments. Each activity must follow the legally applicable process, and any deviation from this would be contrary to the provisions of the law.

The appellant further states that more than 20ha of indigenous vegetation was cleared, which includes the 36ha area that was cleared and that a Scoping and EIA process had to be followed. As indicated above, the developments are not linked and therefore the footprint of the solar facility cannot be combined with that of the area where vegetation was cleared to calculate a combined footprint of more than 20ha. According to the information contained in the final BAR, the footprint of the solar facility and associated infrastructure is approximately 14.4ha (well below 20ha). Therefore, the correct application process was followed to obtain authorisation for the solar facility.

D1: 8

According to the Terrestrial Biodiversity protocol, the Terrestrial Biodiversity Impact Assessment must be prepared by a specialist registered with the South African Council for Natural Scientific Professionals ("SACNASP") with expertise in the field of terrestrial biodiversity. The specialist who conducted the specialist study, Dr. David McDonald, has the required registration and expertise. This Directorate was therefore satisfied that the specialist had the relevant expertise to conduct the specialist study and accepted the findings of the specialist study. It must be further noted that CapeNature, who is the custodian of biodiversity in the Western Cape, did not raise any objections to the specialist study.

D1: 9

Compliance with the EA issued on 1 April 2021 for the clearance of vegetation is a separate issue to the solar facility that was approved on 8 September 2025. However, it is noted that site

visits were conducted by the ECO to verify compliance with the Environmental Management Programme (“EMPr”) and the **EA issued on 1 April 2021**. The issue of non-compliance was brought to the attention of the competent authority. The non-compliance issue is currently being addressed through a **Section 24G process**. The outcome of that process will determine which further action will be required. As far as the **EA issued on 8 September 2025** is concerned, it is the responsibility of the ECO to monitor and identify non-compliance with the EA and EMPr specific to the solar facility, and to report such instances to the competent authority as required by law.

D1:10

It has been clarified in the comment above that the **EIA process and S24G cannot be combined in this instance, as there is no link** between the clearance of vegetation that forms the subject of the S24G application, and the development of a solar panel facility authorised on 8 September 2025. Additionally, it should be noted that the Protocols promulgated in terms of NEMA specifically requires specialist studies to be conducted by a professionally registered specialist, and **does not make provision for “citizen science”** to inform such specialist studies. The appeal process and the outcome of the S24G process will determine the way forward. This Directorate can therefore not provide further input on the recommendations made by the appellant.

5.2 Second Ground of Appeal

“D.2 NEMA Section 24G Process starting in July 2025

1. On 10 July 2025, a tiny notice appeared in the local newspaper Eikestadnuus as reproduced as a blow-up in Appendix G.1. The notice was just a few centimetres high. The text of that notice is reproduced in Appendix G.2. No reference number was provided, no link to information, and no corresponding entry on the EAP website groenbergenviro.co.za.
2. The S24G notice did not announce the commencement of a public participation process either but set a 19-day timeframe for IAP registration only.
3. This is all highly unusual. Normal practice is for all that information to be provided along with the S24G notice.
4. The date of the Eikestadnuus notice was also strange; it fell between the finalisation of the Solar Panel Final Basic Assessment Report (FBAR) of May 2025 and the DEA&DP authorisation dated 8 September 2025. In other words, these two processes were simultaneous.
5. FSM registered as IAP for the S24G process on 12 July 2025 and enquired by email from the EAP about the missing details. Emails from July 2025 are reproduced in Appendix G.3.
6. Following notification of the DEA&DP Authorisation of 8 September, two more emails were exchanged as reproduced in Appendix G.4.
7. The only nontrivial information provided in the notice was that it related to the unlawful clearance of vegetation on Portion 10 of Farm 502.
8. An earlier email exchange in December 2018 directly with Spier Management is reproduced in Appendix G.5. This occurred ten days after publication of the first DBAR on 5/6 December 2024. The claim was made that the process followed in ploughing the Southern Areas was in accordance with an approved EIA and ploughing certificate. This may well be the case with respect to the approved Vineyard area of 10 hectares, but this approval certainly did not extend to the full 36 hectares which had been ploughed. We doubt that any other authorisation was ever granted. Since, however, FSM had no details on the matter at that point, we did not comment on it in January 2025.

9. FSM did not have a copy of the 2021 BAR until recently, which explains why the Vineyard, Buffer Area and Conservation Area were not raised by us in the DBAR public participation phase.
10. The S24G process was not mentioned at all in the 2025 DBAR, FBAR and DEA&DP authorisation."

This Directorate's response:

Any matters pertaining to the Section 24G application must be addressed through the Section 24G process and cannot form part of this appeal, which pertains to the EIA decision issued on 8 September 2025. All comments or concerns relating to the S24G process must be directed to the appointed Environmental Assessment Practitioner ("EAP") for consideration and response. As this Directorate is not the competent authority responsible for administering the Section 24G process, it is not in a position to comment on the issues raised in this regard.

Furthermore, the Section 24G process was not referenced in the decision relating to the solar facility, as it pertains to a **separate non-compliance matter under a different EA**. There was no direct link between the solar facility application and the ongoing Section 24G process, and as such, it was treated as separate processes.

5.3 Third Ground of Appeal

"D.3 Phased Activities, "delinking", and the 20-hectare threshold

1. We here motivate why the ploughing and the Solar Panel application constitute phased activities and must therefore be treated as a single process, not two processes which can be completed in succession. The same line of thought implies that a full EIA is now needed.
2. Listed Activity 26 of Listing Notice 3 reads (our emphasis):
Phased activities for all activities –
 - i. listed in this Notice and as it applies to a specific geographical area, which commenced on or after the effective date of this Notice; or
 - ii. similarly listed in any of the previous NEMA notices, and as it applies to a specific geographical area, which commenced on or after the effective date of such previous NEMA Notices – where any phase of the activity was below a threshold but where a combination of the phases, including expansions or extensions, will exceed a specified threshold.
3. There can be no doubt that the 2021 Application footprint (Vineyard, Buffer, Conservation Area) are in the same geographical area as the 2025 Solar Panel footprint. They are physically linked. Therefore, they should also be assessed together as phased activities.
4. Assessing them together immediately triggers Listed Activity 15 of Listing Notice 2, which reads, The clearance of an area of 20 hectares or more of indigenous vegetation. The threshold of 20 hectares is far exceeded by the sum of the various areas in question (2021 areas, ploughing, 2025 Solar Panel areas).
5. All activities within Listing Notice 2 require a full Scoping and Environmental Impact Assessment, not just the Basic Assessment carried out so far.
6. It is therefore not surprising that the Applicant is trying hard to avoid the 20-hectare threshold and the recognition of the ploughing as part of a larger phased activity.
7. It may be that the Applicant is trying to exploit a loophole. The amended 2017 Regulations have added a rider to the definition of phased activities; the new definition is an activity that is developed in phases over time on the same or adjacent properties to create a single or linked entity, but excludes any activity for which an environmental authorisation has been obtained in terms of the [Biodiversity] Act . . . By the 2017

definition, the “link” between phased activities is broken once an environmental authorisation has been obtained for one part or phase.

8. That loophole would be unlawful. Of course, the Vineyard was authorised in 2021, but the unlawful 2024 ploughing of the other 26 hectares was not. This unlawful ploughing thereby constitutes a new activity which is not covered by the delinking clause of the 2017 regulations.
9. Therefore, apart from the illegality, these ploughed areas constitute a “Phase 0” which is linked to the 2025 “Phase 1” and “Phase 2” Solar panel case both spatially and in time.
10. In any case, the flagrant transgression of the 2021 DEA&DP authorisation and the EMPr mean that that authorisation cannot be used as a smokescreen to artificially split into pieces what in reality is one entity.
11. It is possible that the secrecy and legal contortions surrounding the July 2025 Section 24G process are motivated by an attempt to “delink” the unlawful ploughing from the Solar Panel application within the context of “phased activities”. However: unlawful activity cannot be used to escape legal requirements.”

This Directorate’s response:

Please refer to the responses in D1: 1-7 above with regards to the lack of a link between the clearance activities and the authorised solar facility.

The appellant’s understanding of activity 26 of Listing Notice 3 is incorrect. The reference to “specific geographical area” does not, in this instance, have a broad meaning as the appellant indicates. Instead, it refers to the specific geographic areas indicated for each province, where each of the listed activities in Listing Notice 3 is applicable. Reference to the other activities contained in Listing Notice 3 confirms this, where specific geographical areas and where such activities apply in each of the provinces are indicated. Furthermore, this activity is only applicable “for all activities listed in this Notice and as it applies to a specific geographical area”. Since none of the activities in Listing Notice 3 were triggered by the application for the solar facility, this activity cannot be applicable to that development.

5.4 Fourth Ground of Appeal

“D.4 EAP misrepresentation of area size

In order to stay below the 20-hectare threshold triggering Listed Activity 15 of LN2, the EAP has systematically underestimated impacts and areas.

1. On 27 January 2025, DEA&DP itself pointed out in its Item 3.1 that the Botanical Assessment had indicated a footprint of 24.6ha while the EAP claimed it was 19ha, and that LA15 could be triggered. This post-facto correction indicates that the true impact footprint will likely exceed 20ha.
2. Sun and shade: On several occasions, the EAP claims that the shade provided by the Solar Panel installation would benefit the vegetation. That is not true. To reiterate item E1.5 of the FSM January 2025 comments: Indigenous vegetation in general and Renosterveld in particular does not need shade; it needs full sun. We are not in the Karoo. Permanent shade causes the veld to deteriorate and die.
3. Controlled burns: Indigenous vegetation needs to burn every few years; controlled burns are essential to maintain it. This is especially true of most geophytes. Solar panels will, however, make burning impossible. Therefore, the indigenous vegetation will die from shade and old age.
4. The claim that the disturbance itself is “33 millimetres per pole” and hence sums to only 0.5 hectares is ludicrous. Access and maintenance impacts are not limited to the poles.

5. *Implications: the indigenous vegetation under the solar panels will deteriorate and die in time. The overall area impacted constitutes the entire Solar Panel footprint, not a part of it. The 20-hectare threshold will be exceeded.*

This Directorate's response:

According to the information contained in the final BAR, the proposed solar development will have a disturbance footprint of 0.5ha and a development footprint of **14.5ha**. The impacts associated with the loss of indigenous vegetation for the entire facility (not only the disturbance footprint) was assessed by the Botanical specialist with the relevant SACNASP registration and expertise.

Based on the information presented above, including the reasons why this development is not considered a phased activity, the **total development footprint of the facility will not exceed 20 hectares.**

5.5 Fifth Ground of Appeal

"D.5 The **2021 Environmental Management Programme (EMPr)**

1. *The ploughing brings into focus the fact that a Condition of the 2021 DEA&DP authorisation was implementation of the Environmental Management Programme (EMPr) as proposed by the EAP himself in the then application.*
2. *That EMPr and all its obligations are now relevant and must be audited in all detail. If reports by the ECO are available, those are also pertinent, including specifically reference to the ploughing of 2024. Compliance and/or Noncompliance will directly impact the content and credibility of the 2025 proposed EMPr.*
3. *With a view to the future, Spier Farm Management should act responsibly and scientifically by conducting a controlled burn in the 2026 winter season. This was already undertaken in the 2020 EMPr (Page 59) and was recommended by the Botanical Assessment (Page 33 of that EMPr). Following the burn, a new botanical assessment would be due and may yield a raft of previously unseen species."*

This Directorate's response:

A compliance audit was conducted by the competent authority to verify compliance with the EA and EMPr relating to the EA that was issued on 1 April 2021. The issue of non-compliance is currently being addressed through the **S24G application process**. Please note that the **EA and EMPr for the solar facility has its own requirements that must be met by the holder**. This will be monitored once the development of the solar facility has commenced. It should also be noted that the submission of independent audit reports is a condition of approval contained in the 8 September 2025 EA.

5.6 Sixth Ground of Appeal

"D.6 **On the Botanical Assessments**

1. *FSM provided well-founded criticism of the Botanical and Biodiversity Assessment and its scientific merit; see Item E2 in the January 2025 comments. The criticisms include statistical methodology, insufficient data gathered, spatial and time variability, species dependence on fire to sprout, and (worst of all) undue confidence in coming to scientifically unsupported conclusions, specifically that the assessed area is not even potentially a CBA or Support Area. These statements were disputed in comments provided in Appendix F of the FBAR. We here address the matter further.*

2. Species and diversity

- (a) On the few waypoints visited on the single day, the botanist in 2024 found the usual dominant species *Eriocephalus africanus* (kapokbos or wild rosemary), *Dicerotheramnus rhinocerotis* (renosterbos), *Seriphium plumosum* (slangbos), *Passerina corymbosa* plus the following species: *Aspalathus aculeata*, *Athanasia trifurcata*, *Avena fatua*, *Bulbinella* sp., *Chrysocoma ciliata*, *Cissampelos capensis*, *Conyza scabrida*, *Cotula* sp., *Cynodon dactylon*, *Dimorphotheca pluvialis*, *Ehrharta villosa*, *Ficinia* sp., *Helichrysum petiolare*, *Hermannia multiflora*, *Leysera gnaphalodes*, *Osteospermum moniliferum*, *Oxalis obtusa*, *Oxalis pes-caprae*, *Oxalis purpurea*, *Psoralea hirta*, *Romulea flava*, *Romulea* sp., *Rumex* sp., *Salvia africana-caerulea*, *Senecio* (1), *Senecio* (2), *Senecio burchellii*, *Struthiola myrsinites*, *Thesium* sp., *Ursinia* sp., *Wachendorfia paniculata*.
- (b) To that list we can now add species positively identified in the nearby area by Dr Stuart Hall in 2020. He found: *Cyphia volubilis*, *Aspalathus cordata*, *Lobostemon fruticosus*, *Ischyrolepis* sp., *Phylla* cf. *thunbergiana*, *Hermannia alnifolia*, *Chasmanthe aethiopica*, *Protea laurifolia*, *Drosera trinervia*, *Restio* sp., *Aspalathus ericifolia*, *Chironia baccifera*, *Albuca* sp., *Drosanthemum hispidifolium*, *Monsonia speciosa*, *Gladiolus alatus*, *Serruria fasciflora*, *Aspalathus* sp., *Aristea africana*, *Eriocephalus africanus*, *Helichrysum petiolare*, *Athanasia trifurcata*, *Osteospermum moniliferum*, *Stoebe plumosa*, *Elytropappus rhinocerotus*, *Senecio hastatus*, *Passerina corymbosa*, *Geissorrhiza aspera*.
- (c) There is minimal overlap between the Hall and McDonald (Bergwind) lists. Together there are 59 species. There is a third separate species list for the area now ploughed, compiled by the same botanist: see the 2020 BAR specialist report.
- (d) Furthermore, a ten-minute glance at the area within the app *inaturalist.org* shows the *Plantae* entries reproduced in Figure 5.

3. Consequences: Based on the above minimal desktop combination effort regarding species diversity and location, it is already clear that the Botanical Assessment is highly inadequate, no matter what the botanist would claim, and that his conclusions on the area are not supported by the facts. This shows many entries even in areas just metres away from the Solar Panel areas. The entries on the ploughed area date to May 2025, meaning there is a need to do a proper botanical assessment there, too. This shows that many species have been recorded in short walks and times even by volunteers. The linear record patterns also reflect the specific paths of volunteers taken and underscore that:

- (a) many more plants would be elsewhere, as yet unrecorded, and
- (b) a proper botanical assessment would need to cover the areas in question by many waypoints, not just the small number recorded in the Botanical Assessment shown in Fig. 6. *Inaturalist* also shows that the area to the east abutting the airfield is well worth investigating also.

4. Unwarranted Conclusions and overall CBA status

- (a) As motivated, further Botanical Assessments will also determine the overall CBA status of the areas in question. The question is of course what non-pristine condition implies for such status, and what to do about it. With this in view, the Western Cape Biodiversity Spatial Plan makes clear that CBAs and Support Areas cannot be summarily written off based on non-pristine condition (as attempted by the botanist): CBAs (Table 4.1): Maintain in a natural or near-natural state, with no further loss of natural habitat. Degraded areas should be rehabilitated. Only low-impact, biodiversity-sensitive land uses are appropriate. Support Areas should be maintained in a functional near-natural state as far as possible and avoided for any activity resulting in habitat loss (Table 4.2)
- (b) Here are some verbatim quotes from the botanist as reproduced in Appendix F of the FBAR (with rejoinders by us) which motivate our statement that he drew scientifically unsupported generalized conclusions:
 - i. the Threatened Vegetation Type no longer exists on the site

- ii. No dedicated ground-truthing has been done to verify whether the vegetation is viable Renosterveld or not. (Reference the above species lists and the Assessments of Professor Holmes).
 - iii. In my opinion, it therefore does not have the attributes of undisturbed renosterveld, and this site make no contribution in any way to the conservation targets for Renosterveld. (This is not the viewpoint of other ecologists and the Western Cape Spatial Biodiversity Framework.)
 - iv. No further loss of Swartland Granite Renosterveld would happen because there simply is none of this vegetation type present. (Evidently untrue. And as stated many times, the five waypoints visited on a single outing are not nearly enough to make that statement. As is also well known, some geophytes remain hidden until they re-emerge and masse after a fire.)
 - v. Nowhere is it clearly stated what the deficiencies are in the Biodiversity and Botanical Assessment. No facts or cogent argument are presented to back up the above sweeping statement. (The FSM comments made detailed statements as to sloppy statistical methodology, insufficient data gathered, spatial and time variability, species dependence on fire to sprout, and the usual practice of not jumping to unwarranted conclusions. The response was not a substantial one but consisted of statements pointing to the experience and record of the botanist.)
5. Motivation for new and independent botanical assessments: It is clearly imperative to revisit what is now remaining of these areas and do a proper job and to broaden the information basis to include citizen science. We have little confidence that this can be achieved under the auspices of the current and 2020 botanical specialist. The above motivates our request that a different, hopefully more observant, botanical specialist should be appointed to conduct future Botanical Assessments.

This Directorate's response:

As indicated above, the Botanical Assessment was conducted by a suitably qualified specialist with the required professional registration and expertise. This Directorate reviewed and accepted the findings of the specialist report. It is further noted that CapeNature, the relevant biodiversity commenting authority, did not raise any concern regarding the adequacy or findings of the Botanical Assessment and supported the preferred alternative that was approved.

The specialist study concluded that the site historically supported endangered Swartland Granite Renosterveld vegetation; however, this vegetation type has been largely removed due to historical agricultural activities. The current vegetation on the site is classified as secondary shrubland, not pristine or intact Renosterveld.

The appellant's concerns are primarily based on a different botanical assessment conducted by Mr. Stuart Hall in 2020 for a nearby area that is not the subject of the current application. It must be emphasized that the requirements for botanical assessment under the applicable legislation and environmental assessment process stipulate that the study must be undertaken on the preferred site and within the proposed development footprint. This requirement was met in the assessment conducted by Dr. McDonald for the solar facility.

In addition, the Botanical Specialist provided a direct response to the issues raised by the appellant, further reinforcing the validity of the assessment. Based on this, there is no basis to

question the adequacy of the Botanical Assessment included in the final Basic Assessment Report.

5.7. Seventh Ground of Appeal

"D.7 Proposed Measures to be taken"

The measures proposed to address this appeal have been motivated in the sections above. The "Southern Area" pertains to the 36 hectares of land which were ploughed in early 2024, to all areas which were considered in the 2020/21 EIA such as the "Vineyard", "Conservation Area", "Buffer Area", everything else which was ploughed, and to area(s) visited by the 2020 and 2025 Botanical Assessments, whether ploughed or not.

1. Instruct the Applicant to provide details on the impending Section 24G process to DEADP, government departments and IAPs immediately, even before a full S24G report is ready, in order to determine whether this S24G process does in fact pertain to the area which was ploughed or whether additional areas have to be included.
2. In the unlikely case that the S24G process does not pertain to the ploughed area(s): Instruct the EAP and Applicant to immediately provide full details on whatever other area is the subject of the S24G process.
3. Whatever area the S24G process may refer to and, in any case, we propose that DEA&DP take these measures, among others, in the following time order:
 - (a) Suspend the DEADP Authorisation of the 2024/2025 application, Ref 16/3/3/1/B4/45/1086/24 ("2025 Process") indefinitely, until such time as the S24G process has been completed. Suspend all physical activity on the ground except ongoing rehabilitation and maintenance everywhere, which should be ongoing in terms of the 2021 EMPr in any case.
 - (b) Once the S24G process has been completed, formally recognise that there are three or four areas to be assessed, not two, namely the current "Phase 1" and "Phase 2" areas plus the ploughed areas, plus whatever S24G may come up with.
 - (c) As a consequence, record that the ploughed areas constitute part of a larger "Phased Activity" in terms of Listed Activity 26 of Listing Notice 3, which phases started in 2021 and are now continuing, and that the ploughed areas must be viewed as a "Phase 0" of one larger phased process.
 - (d) In view of the fact that the total area cleared of these three phases far exceeds the threshold of 20 hectares, record that Listed Activity 15 of Listing Notice 2 has been triggered, and that therefore there is no longer a legal basis for conducting a Basic Assessment but that instead a full EIA has become mandatory.
 - (e) Even if for some inexplicable and irrational reason the ploughing is considered to not form part of an overall phased process: record that LA 15 of LN2 has been triggered anyway, based solely on the true total footprint of Phases 1 and 2 which exceeds 19.5ha.
 - (f) Hence, in all cases: Require the Applicant and EAP to conduct a full and joint Scoping and Environmental Impact Assessment for all areas involved from 2020 to 2025.
 - (g) Then rescind the 2025 DEA&DP Authorisation altogether, since there is no longer a legal basis for applying the Basic Assessment Process, never mind authorising it.
 - (h) Revisit the DEADP Authorisation of the 2020/2021 application, Ref 16/3/3/6/7/1/B4/45/1140/20 ("2021 Process") and take appropriate consequence measures for violations of the Conditions of that authorisation. Process and the S24G Process.
4. Revisit the Rehabilitation Plan of Professor Holmes as contained in Appendix G6 of the 2021 Basic Assessment Report. While this originally pertained only to the "Buffer Area" (called "Corridor Area" by Prof Holmes), extend the scope to cover all areas under

scrutiny. The report of Professor Holmes should also determine what, if any, rehabilitation measures were undertaken earlier by the Applicant in the period 2021 to 2024.

5. If rehabilitation of some parts of the ploughed area is found to be not feasible, require the future full EIA process EAP to include those parts as an alternative site for solar panels. In particular, we note that resiting the solar panels to part of the ploughed area will significantly shorten the length of cables needed to the Spier housing complex and the electrical substation.
6. Require the Applicant to appoint an independent Botanical Consultant to assess all areas concerned and have him/her conduct a full and scientifically acceptable Botanical Assessment. Possible independent and qualified consultants include Dr. Stuart Hall, who already visited some areas in 2020, and Dr. Brian du Preez. Both have conducted many botanical assessments and are registered with SACNASP. Areas to be included in the Terms of Reference would be
 - (a) the entire ploughed areas,
 - (b) the remainder of the "Conservation Area" west of the ploughed area,
 - (c) the entire area comprising Phase 1 and Phase 2 of the 2025 Preferred Alternative,
 - (d) any areas impacted by the laying of electrical cables for the solar farm,
 - (e) the area to the east, bordering the Stellenbosch Flying Club (see also the Addendum to the Botanical Assessment, February 2025), and
 - (f) any other remnant area in the gaps between the above.
7. The Terms of Reference for the Botanical Assessment should also explicitly require input from citizen science, both by use of available data on inaturalist.org and by inviting citizens to create further in at data on all areas concerned.
8. Of course further measures will have to follow once the above preliminaries have played out and it has become clear exactly what is going on with respect to the actions and lawfulness of various parties in these processes. To the extent that rehabilitation of any area is found feasible, include this as mandatory in S24G consequence management."

This Directorate's response

This Department's Directorate: Rectification is currently administering the S24G process and must be consulted regarding any matters relating to the S24G application.

An EIA process cannot be followed in instances where there was unlawful commencement with a listed activity. As has been indicated above, the EIA and S24G processes cannot be combined in this instance.

6. In conclusion, please note the following:

- 6.1. The grounds of appeal provided by the appellant is mostly regarding the EA issued on 1 April 2021 (16/3/3/1/B4/45/1034/20) for the proposed clearance of indigenous vegetation for the establishment of vineyards on Portion 10 of the Farm No. 502, Spier Wine Estate, Stellenbosch. It was found that the holder of the EA was non-compliant with Condition 21 of the EA. Clearance of indigenous vegetation took place outside the authorised development footprint and the matter is being processed by this Department's Directorate: Rectification.
- 6.2. Further issues relating to the consideration of phased activities and the footprint allegedly being more than 20ha was highlighted. However, the previous development of cultivation areas and the development of the solar facility cannot be regarded as phased activities as there is no functional or operational link between the cultivation activity and the development of the solar facility.

- 6.3. The **Botanical Assessment** was criticised by the appellant, who is of the opinion that the report is deficient. It must be noted that according to the Terrestrial Biodiversity protocol, the Terrestrial Biodiversity Impact Assessment must be prepared by a specialist registered with the South African Council for Natural Scientific Professionals with expertise in the field of terrestrial biodiversity. The specialist who conducted the specialist study, Dr. David McDonald, has the required registration and expertise. This Directorate was therefore satisfied that the specialist had the relevant expertise to conduct the specialist study and accepted the findings of the specialist study. Furthermore, CapeNature did not raise any concerns regarding the specialist study.
- 6.4. It must be noted that the **EA issued by this Directorate is consistent with the various Guidelines, relevant legislation and the National Environmental Management Principles** set out in section 2 of the NEMA, which apply to the actions of all organs of state, and does not conflict with the general objectives of integrated environmental management stipulated in Chapter 5 of the NEMA. The review of the application for the solar facility, including the specialist studies and various comments received during the public participation process, concluded that potentially detrimental environmental impacts resulting from the implementation of the listed activities can be mitigated to acceptable levels.
- 6.5. This Directorate remains of the opinion that the decision has been considered carefully and due consideration has been given to the principles of NEMA. **Due process has been followed to address the requirements of the Public Administration Justice Act, 2000 (Act no 3 of 2000)** to achieve a decision that balances the environmental aspects, interests of the public and the interest of the applicant. These various issues are reflected in the written record of the decision. It is this Directorate's respectful submission that the decision was properly, rationally, and lawfully taken with due regard to all relevant facts and circumstances.
- 6.6. In view of the abovementioned response to the grounds of appeal for the EA granted for the proposed installation of solar panels and associated infrastructure on Portion 10 of Farm No. 502, Stellenbosch, **this Directorate recommends that the appeal against the abovementioned Environmental Authorisation should be dismissed.**

Yours faithfully

MR. ZAAHIR TOEFY
DIRECTOR: DEVELOPMENT MANAGEMENT (REGION 1)

Copy to: Mr. Hans Eggers (Friends of Stellenbosch Mountain)

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