

**DEPARTMENT OF FORESTRY, FISHERIES AND THE ENVIRONMENT**

NO. 3308

14 April 2023

**NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998)****CONSULTATION ON THE INTENTION TO EXCLUDE IDENTIFIED ACTIVITIES ASSOCIATED WITH THE DEVELOPMENT AND EXPANSION OF BATTERY STORAGE FACILITIES FROM THE REQUIREMENT TO OBTAIN AN ENVIRONMENTAL AUTHORISATION BASED ON THE BATTERY STORAGE EXCLUSION NORM**

I, Barbara Dallas Creecy, Minister of Forestry, Fisheries and the Environment, hereby consult on my intention to exclude certain activities identified in terms section 24(2)(a) and (b) of the National Environmental Management Act, 1998 (Act No. 107 of 1998), associated with the development and expansion of battery storage facilities, from the requirement to obtain environmental authorisation.

Section 24(2)(c),(d) and (e) of the National Environmental Management Act, 1998 (Act No. 107 of 1998) provides for the Minister, or MEC in concurrence with the Minister to identify activities and geographical areas within which identified activities may be excluded from the requirement to obtain environmental authorisation, while section 24(2)(d) specifically provides the ability to exclude based on compliance with prescribed norms or standards, the development of which is provided for in section 24(10).

This Norm, entitled "Norm for the Exclusion of Identified Activities Associated with the Development and Expansion of Battery Storage Facilities in Areas of Low or Medium Environmental Sensitivity" has been prepared to provide rules under which activities associated with the development and expansion of battery storage facilities identified in terms of the Environmental Impact Assessment Regulations, 2014, promulgated under section 24(5) of the National Environmental Management Act, 1998 (Act No. 107 of 1998), may be excluded from the requirement to obtain an environmental authorisation prior to commencement, while meeting the objectives of the Act.

The Department of Forestry, Fisheries and the Environment developed a screening tool to identify environmental sensitivities of a specific geographical location or site related to various identified environmental themes. Environmental sensitivities are rated as "very high", "high", "medium" or "low". The environmental sensitivities related to "medium" or "low" for specific environmental themes are applicable to this Norm.

This exclusion relates only to activities as identified in terms of section 24(2)(a) and (b) of the National Environmental Management Act, 1998 (Act No. 107 of 1998), while the requirements of any other relevant legislation remain applicable including the requirements of the National Heritage Resources Act, 1999 (Act No. 25 of 1999).

This exclusion is published in terms of section 24(2)(d) of the National Environmental Management Act, 1998 (Act No. 107 of 1998), and applies subject to compliance with a prescribed norm developed in terms

of 24(10) of the National Environmental Management Act, 1998 (Act No. 107 of 1998) as set out in the Schedule.

Members of the public are invited to submit written comments or input, within 30 days from the date of the publication of this Notice in the *Government Gazette*, to any of the following addresses:

By post to: Department of Forestry, Fisheries and the Environment  
The Director-General  
Attention: Dr Dee Fischer  
Private Bag X447  
**PRETORIA**  
0001

By hand at: Reception, Environment House, 473 Steve Biko Road, Arcadia, Pretoria.  
By e-mail: [dfischer@dfre.gov.za](mailto:dfischer@dfre.gov.za)

Any inquiries in connection with the Notice can be directed to Dr Dee Fischer by phone at 012 399 8843 or by mail at [dfischer@dfre.gov.za](mailto:dfischer@dfre.gov.za).

Comments or input received after the closing date may not be considered.

The Department of Forestry, Fisheries and the Environment complies with the Protection of Personal Information Act, 2013 (Act No. 4 of 2013). Comments received and responses thereto are collated into a comments and response report which will be made available to the public as part of the consultation process. If a commenting party has any objection to his or her name, or the name of the represented company/ organisation, being made publicly available in the comments and responses report, such objection should be highlighted in bold as part of the comments submitted in response to this Government Notice.



**BARBARA DALLAS CREECY**  
**MINISTER OF FORESTRY, FISHERIES AND THE ENVIRONMENT**

## SCHEDULE

### **NORM FOR THE EXCLUSION OF IDENTIFIED ACTIVITIES ASSOCIATED WITH THE DEVELOPMENT AND EXPANSION OF BATTERY STORAGE FACILITIES IN AREAS OF LOW OR MEDIUM ENVIRONMENTAL SENSITIVITY**

#### **1. Definitions**

In this Schedule a word defined in the National Environmental Management Act, 1998 (Act No. 107 of 1998) or the Environmental Impact Assessment Regulations, 2014, as amended has the same meaning, and unless the context indicates otherwise —

"competent authority" means the organ of state that would have been designated by section 24C of the Act with considering an application for an environmental authorisation in respect of a listed or specified activity;

"corridor" means a belt of land not exceeding 200m in width, linking two locations, in which a final servitude may be registered and within which linear infrastructure is proposed to be developed;

"environmental scientist" means a person registered under the Natural Scientific Professions Act (Act No. 27 of 2003) by the South African Council of Natural Scientific Professions under a specific field of practice;  
"footprint" means the area on which the battery storage facility and associated infrastructure is proposed to be located, but excludes the area on which associated linear infrastructure is proposed to be located;

"facility" means the battery storage installation, the associated infrastructure and the linear infrastructure which is an integral part of the installation, including the land on which the installation and infrastructure is to be located;

"footprint" means the area on which the battery storage facility and associated infrastructure is proposed to be located, but excludes the area on which associated linear infrastructure is proposed to be located;

"linear infrastructure" is characterised by its straight form and in the context of this Norm such linear infrastructure must provide either services or access to the proposed facility and must form an integral part of the proposed facility;

"Listing Notice 1" means the Environmental Impact Assessment Regulations Listing Notice 1 of 2014 published under Government Notice No. R. 983 in *Government Gazette* No. 38282 of 4 December 2014, as amended from time to time;

"Listing Notice 2" means the Environmental Impact Assessment Regulations Listing Notice 2 of 2014 published under Government Notice No. R. 984 in *Government Gazette* No. 38282 of 4 December 2014, as amended from time to time;

"Listing Notice 3" means the Environmental Impact Assessment Regulations Listing Notice 3 of 2014 published under Government Notice No. R. 985 in *Government Gazette* No. 38282 of 4 December 2014, as amended from time to time;

"pre-negotiation" means discussion prior to formal negotiation, which results in the signing of a letter of no-objection or a letter of agreement;

“proponent” means a person that submits a request for registration to undertake an activity contemplated in paragraph 3 of this Schedule and is responsible for ensuring compliance with the conditions set in this Schedule;

“Renewable Energy Development Zones Notice” means the Notice containing the procedures to be followed when applying for environmental authorisation for the development of large scale wind and solar photovoltaic energy generation activities when occurring in geographical areas of strategic importance, published under Government Notice No. 114 published in *Government Gazette* No 41445 of 16 February 2018 and Government Notice No. 142 published in *Government Gazette* No. 44191 of 26 February 2021;

“screening tool” means the National Web Based Environmental Screening Tool which is accessible at <https://screening.environment.gov.za>;

“specialist” means a person who is skilled in a specific and restricted field and is registered under the Natural Scientific Professions Act (Act No. 27 of 2003) by the South African Council of Natural Scientific Professions under a specific field of practice;

“Strategic Transmission Corridors Notice” means the Notice containing geographical areas of strategic importance for the development of electricity transmission and distribution infrastructure and of procedures to be followed when applying for or deciding on environmental authorisations for large scale electricity transmission or distribution development activities when occurring in geographical areas of strategic importance, published under Government Notice No. 113 in *Government Gazette* No. 41445 of 16 February 2018, Government Notice No. 383 published in *Government Gazette* No. 44504 of 29 April 2021 and Government Notice No. 145 in *Government Gazette* No. 44191 of 26 February 2021;

“the Act” means the National Environmental Management Act, 1998 (Act No. 107 of 1998);

“the Appeals Regulations” means the National Appeals Regulations, 2014, published under Government Notice No. R. 993 in *Government Gazette* No. 38303 of 8 December 2014, as amended from time to time;

“the EIA Regulations” means the Environmental Impact Assessment Regulations, 2014, published under Government Notice No. R. 982 in *Government Gazette* No. 38282 of 4 December 2014, as amended from time to time; and

“watercourse” when related to an identified activity in the context of this exclusion means only a reference to a natural channel in which water flows regularly or intermittently and does not include a river, spring, wetland, pan, lake or dam.

## 2. Scope of the Exclusion

2.1 The activities contemplated in paragraph 3 of this Norm are excluded from the requirement to obtain an environmental authorisation prior to commencement–

2.1.1 when developed in areas of “low” or “medium” environmental sensitivity as identified by the screening tool for the following environmental themes:

2.1.1.1 Agriculture;

2.1.1.2 Aquatic biodiversity;

2.1.1.3 Terrestrial biodiversity inclusive of flora and ecosystems;

2.1.1.4 Animal species; and

2.1.1.5 Plant species; and

2.1.2 when undertaken in compliance with the requirements contemplated in paragraphs 4, 5, 6 and 7 of this Norm;

provided that where any of the requirements contemplated in paragraphs 4 and 5, read with paragraph 6 or 7 cannot be met, this exclusion does not apply and an application for an environmental authorisation must be submitted.

### 3. Activities

3.1. The activities which are the subject of this exclusion relate to the development or expansion of battery storage facilities associated with:

3.1.1 energy generation; and

3.1.2 electricity transmission and distribution infrastructure.

3.2 The activities that are excluded are as follows:

3.2.1 Listing Notice 1:

3.2.1.1 Activity 11;

3.2.1.2 Activity 12(ii)(a) and (b)<sup>1</sup>;

3.2.1.3 Activity 14;

3.2.1.4 Activity 17(iv);

3.2.1.5 Activity 17(v);

3.2.1.6 Activity 19<sup>2</sup>;

3.2.1.7 Activity 19A (ii)<sup>3</sup>;

3.2.1.8 Activity 24;

3.2.1.9 Activity 27;

3.2.1.10 Activity 28(ii);

3.2.1.11 Activity 47;

3.2.1.12 Activity 48(i)(a) and (b);

3.2.1.13 Activity 51; and

3.2.1.14 Activity 67.

3.2.2 Listing Notice 2:

3.2.2.1 Activity 4; and

3.2.2.2 Activity 9; and

3.2.3 Listing Notice 3:

3.2.3.1 Activity 3;

including any single activity or several of these activities combined.

<sup>1</sup> Where the activity relates to a watercourse the exclusion relates only to a natural channel in which water flows regularly or intermittently as defined in "watercourse";

<sup>2</sup> This exclusion applies only in so far as the activity takes place at a distance of 100 metres inland of the high-water mark of the sea or an estuary, whichever distance is the greater

<sup>3</sup> This exclusion applies only in so far as the activity takes place at a distance of 100 metres inland of the high-water mark of the sea or an estuary, whichever distance is the greater

#### 4. Site Sensitivity Verification

- 4.1 A proponent must ensure that a site sensitivity verification inspection is undertaken for the environmental themes contemplated in paragraph 2.1.1 to confirm whether or not the environmental sensitivity of the footprint is as identified by the screening tool<sup>4</sup>.
- 4.2 A “very high” or “high” environmental sensitivity rating can be disputed by the specialist provided that evidence and motivation to substantiate such a change of environmental sensitivity is provided.
- 4.3 The site sensitivity verification must be undertaken–
- 4.3.1 for the footprint on which the proposed activities contemplated in paragraph 3, are proposed to take place as well as for the proposed corridor for the linear infrastructure;
  - 4.3.2 by specialists, with demonstrated expertise in the field for which they are undertaking the verification and where relevant, the taxonomic group of the species being considered; and
  - 4.3.3 within the season which would be most relevant to identify the specific species or vegetation of interest.
- 4.4 The site sensitivity verification inspection must be a physical inspection, which may be supplemented by utilising any desk top information available, including any fine scale data available from the provincial department responsible for the environment, provincial conservation authorities or the relevant municipality, where available.
- 4.5 Where additional information identified in paragraph 4.4 has been used in the verification process, this information is to be identified in the site sensitivity verification report.
- 4.6 For the plant and animal species themes, the relevant specialist must confirm the presence, likely presence, or absence of a species of conservation concern within the footprint identified as “medium” sensitivity by the screening tool<sup>5</sup>.
- 4.7 Should a species of conservation concern be found on the footprint or have been confirmed to be likely present, this exclusion will not apply and an application for an environmental authorisation must be submitted.
- 4.8 It is advised that when undertaking the site sensitivity verification, that the verification work includes a buffer<sup>6</sup> around the footprint to allow for slight adjustments without the need to resubmit the request for registration contemplated in this Norm<sup>7</sup>, which buffer must be clearly indicated and must envelope the footprint.
- 4.9 The outcome of the site sensitivity verification must be recorded in the form of a site sensitivity report that confirms the “low” or “medium” environmental sensitivities as identified by the screening tool for the themes contemplated in paragraph 2.1.1 or disputes the “very high” or “high” environmental sensitivity for these themes, and includes the relevant evidence.
- 4.10 The site sensitivity report must be prepared by a registered environmental assessment practitioner or an environmental scientist and signed off by the relevant specialists, all of whom must meet the requirements of regulation 13(1) of the EIA Regulations, read in the context of this Norm.

#### 5. Application of the exclusion

- 5.1 This exclusion applies where the activities contemplated in paragraph 3, are to occur entirely–

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<sup>4</sup> A very high or high environmental sensitivity rating can be disputed by the specialist with motivation and evidence and confirmed to be medium or low.

<sup>5</sup> The site verification to determine the presence or likely presence of SCC must be undertaken in accordance with the *Species Environmental Assessment Guidelines*.

<sup>6</sup> The buffer is set by the proponent and has no maximum threshold although the area within the buffer must have been verified.

<sup>7</sup> A buffer around the linear infrastructure is not anticipated as the width of the corridor must allow for a buffer.

- 5.1.1 in areas of “medium” or “low” environmental sensitivity and is confirmed to be such by the site sensitivity verification inspection for the environmental themes as identified in paragraph 2.1.1; or
- 5.1.2 in areas where the site sensitivity verification for a specific theme identifies that the “very high” or “high” sensitivity rating of the screening tool is in fact “medium” or “low” sensitivity;

with the exception of linear infrastructure, in which case the pre-negotiated corridor for such linear infrastructure may be located in areas of “very high”, “high”, “medium” or “low” environmental sensitivity, if –

- 5.1.2.1 the mitigation hierarchy has been applied to the pre-negotiated corridor and the environmental assessment practitioner or environmental scientist and specialists confirm in the site sensitivity verification report, that the proposed pre-negotiated corridor avoids, areas of “very high” or “high” sensitivity, as far as practically possible;
- 5.1.2.2 through the site sensitivity verification, the relevant specialist identifies mitigation measures for any identified environmental impacts for inclusion in the environmental management programme<sup>8</sup> and confirms in the site sensitivity verification report that any remaining environmental impact is insignificant after mitigation; and
- 5.1.2.3 the environmental assessment practitioner or environmental scientist and relevant specialist confirm in the site sensitivity verification report that the necessary mitigation measures have been included in the environmental management programme.

5.2 Where the exclusion does not apply to any portion of the proposed facility or associated infrastructure, other than linear infrastructure, the entire facility, including the associated infrastructure and linear infrastructure integral to that facility, is subject to the requirements of the EIA Regulations, Government Notice No. 113 in Government Gazette No. 41445 of 16 February 2018, Government Notice No. 114 in Government Gazette No. 41445 of 16 February 2018 or Government Notice No. 144 in Government Gazette No. 44191 of 26 February 2021, whichever applies.

## 6. Registration

- 6.1 Prior to the commencement of the activities related to the development or expansion of a battery storage facility, the proponent must register the proposed facility or infrastructure with the competent authority.
- 6.2 The following documents must be submitted for registration:
  - 6.2.1 a completed and signed registration form contemplated in Appendix A, prepared by an environmental assessment practitioner or environmental scientist;
  - 6.2.2 the screening report for the footprint of the proposed facility and the proposed pre-negotiated corridor, generated by the screening tool, to be attached as Appendix 1;
  - 6.2.3 the site sensitivity verification report identified in paragraph 4.9, to be attached as Appendix 2;
  - 6.2.4 the written consent of the landowner or person in control of the land constituting the footprint, to be attached as Appendix 3;
  - 6.2.5 confirmation of pre-negotiation with landowners in the case of linear infrastructure, to be attached as Appendix 3;

<sup>8</sup> The Generic EMPR relevant to an application for substation and overhead electricity transmission and distribution infrastructure which require environmental authorisation as identified in terms of Section 24(2) of the Act gazetted in Government Notice No. 435 of Government Gazette No. 42323 published on the 22 March 2019 does to apply to this Norm and the EMPR required in terms of this Norm must include the aspects of the solar photovoltaic facility, the substations and overhead electricity transmission and distribution infrastructure.



- 6.2.6 a locality map showing the location of the footprint including the linear infrastructure overlaid on environmental sensitivities, to be attached as Appendix 4;
  - 6.2.7 an environmental management programme for the construction phase of the facility which addresses as a minimum, each of the general environmental controls identified in Appendix 10, compiled by the environmental assessment practitioner or environmental scientist and signed off by the relevant specialists;
  - 6.2.8 evidence of the public consultation process followed to bring the proposed registration process and the location at which the registration documents can be accessed to the attention of adjacent landowners and land occupiers as well as relevant environmental non-governmental organisations, to be attached as Appendix 5;
  - 6.2.9 the signed declaration of commitment by the proponent to implement the environmental management programme, as contemplated in Appendix 6; and
  - 6.2.10 the declaration of independence, curriculum vitae and professional affiliation or registration certification of the EAP or environmental scientist and specialists to be attached as Appendices 7, 8 and 9 respectively.
- 6.3 Should the footprint be amended where such amendment results in the footprint falling outside of the verified buffer<sup>9</sup>, the requirements contemplated in paragraphs 4, 5 and 6 of this Norm are applicable and must be complied with<sup>10</sup>.
- 6.4 The registration of the development or expansion will expire if commencement does not occur within 6 years of the date on which the competent authority issued a registration number, in which case the process as identified in paragraphs 4, 5 and 6 of this Norm will apply afresh.

## 7. Re-registration

- 7.1. Re-registration of the facility is required when there is a change of ownership of-
- 7.1.1. the battery storage facility for which the activities contemplated in paragraph 3 were excluded prior to construction or prior to or after the completion of the construction of the facility<sup>11</sup> and associated infrastructure; and
  - 7.1.2. a portion of the registered facility after completion of the construction phase<sup>12</sup>.
- 7.2. In the case of a change of ownership of a facility, the issued registration number is retained by the new owner.
- 7.3. In the case of change of ownership of a portion of the excluded facility, associated infrastructure or the linear infrastructure, a new registration number must be issued by the competent authority for the portion transferred.
- 7.4. A re-registration form contemplated in Appendix B, completed by the new owner and a signed declaration of commitment by the new owner to implement the environmental management programme contemplated in paragraph 6.2.7 must be submitted to the competent authority, within 30 days upon finalisation of a change of ownership, for purposes of updating of the information and commitments, where change of ownership occurs prior to completion of the construction phase; and
- 7.4.1. the change of ownership relates to the entire registered facility; or
  - 7.4.2. the change of ownership relates to a portion of the registered facility being transferred to a new owner and such transferred portion will become a separate facility.

<sup>9</sup> Where the footprint of the proposed facility is amended and remains within the buffer considered as part of the site sensitivity verification, re-registration is not required.

<sup>10</sup> It is not intended that the site sensitivity verification and the site sensitivity verification report are to be undertaken or prepared for the entire footprint of the proposed facility but only for the area which has not yet been verified.

<sup>11</sup> The re-registration in this case is required to update the information on the records of the competent authority and to ensure that the new owner declares his/her intention to implement the mitigation measures in the environmental management programme where the facility is still under construction.

<sup>12</sup> The re-registration in this case is required to ensure that infrastructure is registered in the name of the new owner or to provide a registration number for any part of the facility which is transferred to a new owner and is now a separate unit.



7.5. When the change of ownership occurs after the finalisation of the construction phase, a re-registration form contemplated in Appendix B must be completed by the new owner and a locality map clearly identifying the portion transferred and the remaining portion, including the registration number, must be submitted to the competent authority within 30 days upon finalisation of a change of ownership, to enable the issuing of a new registration number to the new owner of the portion of the facility transferred.

## 8. Processing of registration

- 8.1. Within 10 days of receipt of the correctly completed registration form and supporting documentation described in paragraph 6, or the re-registration form described in paragraph 7 of this Norm, the competent authority must register the facility or any relevant portion of the facility in the case of re-registration.
- 8.2. On receiving the registration number, the holder must notify within 7 days, those parties consulted as contemplated in paragraph 6.2.8 that the registration number has been issued.
- 8.3. The proponent must provide written notice to the compliance monitoring unit within the competent authority at least 14 days prior to the date on which the first of the activities contemplated in the scope of this Norm, including site preparation, will commence, in order to facilitate compliance inspections.
- 8.4. The competent authority must keep a register of all exclusions registered or re-registered in terms of this Norm and must make the information available on the website of the competent authority, which register should include as a minimum:
- 8.4.1. the location of the facility excluded;
  - 8.4.2. the name of the registered holder;
  - 8.4.3. the date of registration; and
  - 8.4.4. the location at which the registration documents can be accessed<sup>13</sup>.

## 9. General

- 9.1. The provisions of the Appeal Regulations are applicable to any registration issued in terms of this Norm.
- 9.2. Any amendments required to be made to the environmental management programme during the construction phase must be prepared by an environmental assessment practitioner or environmental scientist and signed off by the relevant specialist.
- 9.3. Registration or re-registration documents and the environmental management programme as well as any amendments to such programme must be available at the registered facility.
- 9.4. Non-compliance with this Norm constitutes an offence in terms of section 49A(1)(b) of the Act.

## 10. Transitional Arrangements

- 10.1. An application for environmental authorisation for activities contemplated in paragraph 3 of this Norm submitted in terms of the EIA Regulations, the Renewable Energy Development Zone Notice, or the Strategic Transmission Corridors Notice in the case of any associated activities necessary for the realisation of such facilities, which is pending on the date of coming into effect of this Notice, must be finalised in accordance with the procedures of the EIA Regulations, the Renewable Energy Development Zone Notice or the Strategic Transmission Corridor Notice, or may be withdrawn.
- 10.2. A site sensitivity verification undertaken as part of an application for an environmental authorisation within in period of four years preceding the submission of a request to register in terms of this Norm,

<sup>13</sup> This could be in the library of the competent authority, the registered holder's offices or at the site if construction has commenced or has been finalised.

and which meets the requirements set out in this Norm, including supporting evidence, may be used to support a registration request in terms of this Norm.

- 10.3. An environmental authorisation issued for developments and expansions contemplated in this Norm remains valid and are subject to the requirements of the EIA Regulations.

## APPENDIX A – REGISTRATION FORM

Registration form to request registration in terms of the “*Norm for the Exclusion of Identified Activities Associated with the Development and Expansion of Battery Storage Facilities in Areas of Low or Medium Environmental Sensitivity*” as required by paragraph 6 of the Norm.

FOR OFFICE USE ONLY	
Date of receipt of the registration form	
Registration number	

### PROJECT TITLE

1. This form must always be used when requesting registration in terms of the “*Norm for the Exclusion of Identified Activities Associated with the Development and Expansion of Battery Storage Facilities in Areas of Low or Medium Environmental Sensitivity*”. Registration in terms of this norm allows for the exclusion from the requirement to obtain an environmental authorisation from the competent authority for listed and specified activities identified in paragraph 3 of the Norm.
2. All fields must be completed in full. The submission of incomplete information will lead to the registration being returned for inclusion of the missing information.
3. The required information must be typed within the spaces provided in the form. The sizes of the spaces provided are not necessarily indicative of the amount of information to be provided. Spaces are provided in tabular format and will extend automatically when each space is filled with typing. A legible font type and size must be used when completing the form. The font size should not be smaller than 10pt (e.g., Arial 10).
4. Unless protected by law, or specifically identified by the applicant all information contained in and attached to this registration form, will become public information on receipt by the competent authority other than personal information of landowners.
5. Please note that where the competent authority is the national department responsible for the environment, this form must be copied to the relevant provincial environmental department(s) for their information.
6. Where the provincial environmental department is the competent authority, this form must be copied to the national department responsible for the environment at <https://screening.environment.gov.za>.
7. Maps must be produced using the Hartebeesthoek94 WGS84 coordinate system. Spatial data in shape file (.shp) format with associated metadata, packaged as a ZIP file (.zip), must be included in the supporting documentation. This must be provided electronically (in the form of a USB).

Departmental Details (example provided is for the national competent authority, where the provincial department is the competent authority, the details hereunder should be changed as relevant):

**Postal address:**

Department of Forestry, Fisheries and the Environment  
 Attention: Chief Director: Integrated Environmental Authorisations  
 Private Bag X447  
 Pretoria  
 0001

**Physical address:**

Department of Forestry, Fisheries and the Environment  
 Attention: Chief Director: Integrated Environmental Authorisations  
 Environment House  
 473 Steve Biko Road  
 Arcadia

**For online submissions of forms, the process outlined in the document for the submission of documents to the Integrated Environmental Authorisations Chief Directorate must be followed. The document is obtainable on the departmental website on this link: [https://www.dffe.gov.za/documents/forms#legal\\_authorisations](https://www.dffe.gov.za/documents/forms#legal_authorisations). The portal for the uploading of registration documents is (<https://sfiler.environment.gov.za:8443/>).**

Queries must be directed to the Directorate: Coordination, Strategic Planning and Support at:  
 Email: [EIAdmin@dffe.gov.za](mailto:EIAdmin@dffe.gov.za)

**COMPETENT AUTHORITY**

Identified competent authority to consider the registration form:

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**DETAILS OF THE PROPONENT**

All notifications regarding the registration will be sent to the proponent using the details provided in this section.

Name of the proponent (Company/ Trading Name):  
 Name of contact person for proponent:  
 Responsible position, e.g. Director, CEO, etc.:  
 Company Registration Number:  
 Physical address:  
 Postal address:


Postal code:		Cell:	
Telephone:			
E-mail:			

**ENVIRONMENTAL ASSESSMENT PRACTITIONER OR ENVIRONMENTAL SCIENTIST INFORMATION**

Company of environmental assessment practitioner (EAP) or environmental scientist:			
EAP or environmental scientist name:			
EAP or environmental scientist Qualifications:			
Professional affiliation/registration:			
Physical address:			
Postal address:			
Postal code:		Cell:	
Telephone:			
E-mail:			

The appointed EAP or environmental scientist and relevant specialists must meet the requirements of regulation 13(1) of the EIA Regulations<sup>14</sup> as it applies in the context of this Norm and must sign the declaration of independence included in Appendix 7. The declaration which must be sworn under oath must affirm that all the information submitted for the purposes of the registration is true and correct. A separate declaration is required by the relevant EAP/environmental scientist and each specialist. The Curriculum Vitae of the EAP or environmental scientist and specialists must be included as Appendix 8 and the professional affiliation/registration certificate is to be included as Appendix 9.

**PROJECT INFORMATION AND MAPS**

Please provide a **detailed** description of the project including the associated infrastructure which must include the following:

- preliminary technology to be used; and
- associated infrastructure including details of this infrastructures.

<sup>14</sup> The Environmental Impact Assessment Regulations, 2014, published under Government Notice No. R. 982 in Government Gazette No. 38282 of 4 December 2014, as amended from time to time.

A copy of the final screening report generated by the screening tool which identifies the site, the footprint of the proposed battery storage facility and the corridor in which the linear infrastructure will be developed where relevant, must be attached as Appendix 1 of the registration form.

A copy of the final site sensitivity verification report must be submitted as Appendix 2 of the registration form.

A locality map must be included as Appendix 4 of the registration form. The map must include the following:

- the project site;
- the footprint and buffer of the proposed facility including any relevant corridor in which the linear infrastructure is to be developed overlaid on the identified site sensitivities;
- road names or numbers of all the major roads as well as the roads that provide access to the site(s);
- a north arrow;
- a legend;
- a scale bar; and
- GPS co-ordinates of battery storage facility and associated infrastructure including, among others, power lines (strategic points along the powerline), substations and access road where relevant.

Accompanying spatial data must be submitted electronically in shape file format (.shp) files with associated metadata, packaged as a ZIP file (.zip).

#### SITE DESCRIPTION

Provide a detailed description of the site involved in the registration.

Province/s	
District Municipality/ies	
Local Municipality/ies	
Ward number/s	
Nearest town/s	
Farm name/s and number/s	
Portion number/s	

#### LIST OF APPENDICES

APPENDIX	Description	SUBMITTED	
		YES	NO
APPENDIX 1	Final screening report	YES	NO
APPENDIX 2	Site sensitivity verification report	YES	NO
APPENDIX 3	Landowner consent letter and confirmation of pre-negotiation	YES	NO
APPENDIX 4	Locality map	YES	NO



APPENDIX 5	Evidence of public consultation	YES	NO
APPENDIX 6	Declaration of commitment by the proponent/developer to implement the environmental management programme	YES	NO
APPENDIX 7	Declaration of independence of the EAP or environmental scientist and specialists	YES	NO
APPENDIX 8	Curriculum vitae of the EAP or environmental scientist and specialists	YES	NO
APPENDIX 9	Professional affiliation/registration certification	YES	NO
APPENDIX 10	Environmental management programme	YES	NO

## APPENDIX B – RE-REGISTRATION FORM

Form to request re-registration in terms of the “*Norm for the Exclusion of Identified Activities Associated with the Development and Expansion of Battery Storage Facilities in areas of low of medium environmental sensitivity*” as required in terms of paragraph 8 of this Norm where-

- there is a change of ownership of the entire registered facility or a portion of the development or linear infrastructure which occurs prior to construction or prior to the completion of the construction phase; and
- there is a change of ownership of the entire registered battery storage facility or a portion of the facility, infrastructure associated with a registered battery storage facility, or linear infrastructure after completion of the construction phase.

### FOR OFFICE USE ONLY

Date of receipt of the re-registration form	
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1. This form must always be used when requesting re-registration in terms of the “*Norm for the Exclusion of Identified Activities Associated with the Development and Expansion of Battery Storage Facilities in areas of low of medium environmental sensitivity*”. Registration in terms of this Norm allows for the exclusion from the requirement to obtain an environmental authorisation from the competent authority for listed and specified activities identified in paragraph 3 of the Norm.
2. All fields must be completed in full. The submission of incomplete information will lead to the re-registration being returned for inclusion of the missing information.
3. The required information must be typed within the spaces provided in the form. The sizes of the spaces provided are not necessarily indicative of the amount of information to be provided. Spaces are provided in tabular format and will extend automatically when each space is filled with typing. A legible font type and size must be used when completing the form. The font size should not be smaller than 10pt (e.g., Arial 10).
4. Unless protected by law, or specifically identified by the applicant, all information contained in and attached to this re-registration form, will become public information on receipt by the competent authority other than personal information of landowners.
5. Please note that where the competent authority is the national department responsible for the environment, this form must be copied to the relevant provincial environmental department(s) for their information.
6. Where the provincial environmental department is the competent authority, this form must be copied to the national department responsible for the environment at <https://screening.environment.gov.za>.

**Departmental Details (example provided is for the national competent authority, where the provincial department is the competent authority, the details hereunder should be changed as relevant):**

**Postal address:**

Department of Forestry, Fisheries and the Environment  
 Attention: Chief Director: Integrated Environmental Authorisations  
 Private Bag X447  
 Pretoria  
 0001

**Physical address:**

Department of Forestry, Fisheries and the Environment  
 Attention: Chief Director: Integrated Environmental Authorisations  
 Environment House  
 473 Steve Biko Road  
 Arcadia

**For online submissions of forms, the process outlined in the document for the submission of documents to the Integrated Environmental Authorisations Chief Directorate must be followed. The document is obtainable on the departmental website on this link: [https://www.dffe.gov.za/documents/forms#legal\\_authorisations](https://www.dffe.gov.za/documents/forms#legal_authorisations). The portal for the uploading of registration documents is (<https://sfiler.environment.gov.za:8443/>).**

Queries must be directed to the Directorate: Coordination, Strategic Planning and Support at:  
 Email: [EIAdmin@dffe.gov.za](mailto:EIAdmin@dffe.gov.za)

**COMPETENT AUTHORITY**

Identified competent authority to consider the re-registration form:

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**PROJECT DETAILS**

Existing Project Name	
New Project Name <sup>15</sup>	

Existing Registration number <sup>16</sup>	
New Registration number <sup>17</sup>	

<sup>15</sup> A new project name can be provided in the case of a change of ownership of associated linear infrastructure.

<sup>16</sup> In the case of a name change the existing registration number is maintained.

<sup>17</sup> A new registration number will be provided by the competent authority in the case of a change of ownership of associated infrastructure

**DETAILS OF THE EXISTING REGISTRATION HOLDER**

Information regarding the re-registration will be sent to the existing registration holder using the details provided in this section.

Name of the existing registration holder (Company/ Trading Name):		
Name of contact person:		
Responsible position, e.g. Director, CEO, etc.:		
Company Registration Number:		
Physical address:		
Postal address:		
Postal code:	Cell:	
Telephone:		
E-mail:		

**DETAILS OF THE NEW OWNER**

Information regarding the re-registration will be sent to the new owner and new registration holder using the details provided in this section.

Name of the new owner (Company/ Trading Name):		
Name of contact person for new registration holder:		
Responsible position, e.g. Director, CEO, etc.:		
Company Registration Number:		
Physical address:		
Postal address:		
Postal code:	Cell:	
Telephone:		
E-mail:		

**DETAILS OF THE DEVELOPMENT AND ASSOCIATED INFRASTRUCTURE REGISTERED**

Provide details of the existing registered facility	
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A locality map of the existing registered facility together with the associated infrastructure must be attached as Appendix 4 of the registration form. The map must include the following:

- the project site;
- the footprint of the proposed battery storage facility;
- the final layout of the proposed battery storage facility and linear infrastructure;

- road names or numbers of all the major roads as well as the roads that provide access to the site(s)
- a north arrow;
- a legend;
- a scale bar; and
- GPS co-ordinates of the footprint of the proposed battery storage facility and the corridor in which the linear infrastructure will be developed where relevant, including, amongst others, power lines (strategic points along the power line), substations, battery storage areas and the access road where relevant.

**This section must be completed by the existing registration holder in the case of a change of ownership related to a transfer of associated infrastructure**

**DETAILS OF THE INFRASTRUCTURE WHICH IS TO BE TRANSFERRED AND FOR WHICH THE CHANGE OF OWNERSHIP IS TO BE REGISTERED**

Existing Project Name	
New Project Name <sup>18</sup>	

**LIST OF APPENDICES TO BE POPULATED**

		SUBMITTED	
APPENDIX 4	Locality map <sup>19</sup>	YES	NO
APPENDIX 6	Declaration of commitment by the proponent/developer to implement the environmental management programme	YES	NO
APPENDIX 8	Curriculum vitae of the EAP or environmental scientist and specialists	YES	NO
APPENDIX 9	Professional affiliation/registration certification of the EAP or environmental scientist and specialists	YES	NO
APPENDIX 10	Environmental management programme	YES	NO

<sup>18</sup> A new project name can be provided in the case of a change of ownership related to a transfer of associated infrastructure.

<sup>19</sup> In the case of a change of ownership related to a transfer of associated infrastructure

**APPENDIX 1:**  
**FINAL SCREENING REPORT**



**APPENDIX 2:**  
**SITE SENSITIVITY VERIFICATION REPORTS**

**APPENDIX 3:**

**LANDOWNER CONSENT LETTER AND CONFIRMATION OF PRE-NEGOTIATION**

**APPENDIX 4:**  
**LOCALITY MAP**

**APPENDIX 5:**  
**EVIDENCE OF PUBLIC CONSULTATION**

**APPENDIX 6:****DECLARATION OF COMMITMENT BY THE PROPONENT/DEVELOPER TO COMPLY WITH AND IMPLEMENT THE ENVIRONMENTAL MANAGEMENT PROGRAMME (EMPr)****NORM FOR THE EXCLUSION OF IDENTIFIED ACTIVITIES ASSOCIATED WITH THE DEVELOPMENT AND EXPANSION OF BATTERY STORAGE FACILITIES IN AREAS OF LOW OR MEDIUM ENVIRONMENTAL SENSITIVITY**

I, \_\_\_\_\_, hereby declare that:

- I am the proponent/developer in this registration;
- I have appointed an environmental assessment practitioner (EAP) or environmental scientist to act as the independent EAP or environmental scientist for the registration/re-registration with the *Norm for the Exclusion of Identified Activities Associated with the Development and Expansion of Battery Storage Facilities in areas of low or medium environmental*;
- I have taken all reasonable steps to verify whether the EAP or environmental scientist and specialists appointed are independent and have relevant expertise, including knowledge of the Act<sup>20</sup>, the EIA Regulations<sup>21</sup> and any guidelines that have relevance to the proposed activity;
- I have provided the EAP or environmental scientist and specialists with access to all information at my disposal that is relevant to the registration;
- I am responsible for implementing the EMPr;
- I am responsible for the costs incurred in complying with the EMPr, including but not limited to
  - costs incurred in connection with the appointment of the EAP or environmental scientist or any person contracted by the EAP/environmental scientist;
  - costs incurred in respect of the undertaking of any process required in terms of the EMPr; and
  - costs associated with implementing the avoidance and mitigation measured contained in the EMPr;
- I will all obligations as expected from a proponent/developer in terms of the EMPr;
- I have read the completed registration/re-registration form and supporting documents and hereby confirm that the information provided is, to the best of my knowledge, true and correct;
- All the particulars furnished by me in this form are true and correct;
- I have not commenced with the project as described in the registration form and will not commence until a registration number has been received; or<sup>22</sup>
- I have not commenced with development or expansion of any facility or infrastructure for which re-registration is required; and

<sup>20</sup> The National Environmental Management Act, 1998 (Act No. 107 of 1998)

<sup>21</sup> The Environmental Impact Assessment Regulations, 2014, published under Government Notice No. R. 982 in Government Gazette No. 38282 of 4 December 2014, as amended from time to time.

<sup>22</sup> Delete whichever is not applicable.

- I am fully aware of my responsibilities in terms of the Act and failure to comply with these requirements may constitute an offence. I am aware of what constitutes an offence in terms of the Notice and that a person convicted of an offence is liable to the penalties as contemplated in section 49A(1)(b) of the Act.

**Proponent/developer (Name and Surname)** \_\_\_\_\_

**Name of Company (If Applicable)** \_\_\_\_\_

**Designation** \_\_\_\_\_

**Signature<sup>23</sup>** \_\_\_\_\_

**Date** \_\_\_\_\_ **Place** \_\_\_\_\_

**Commissioner of Oaths** \_\_\_\_\_

**Designation** \_\_\_\_\_

**Signature** \_\_\_\_\_

**Date** \_\_\_\_\_ **Place** \_\_\_\_\_

\_\_\_\_\_  
**Commissioner of Oaths Stamp**

<sup>23</sup> This registration form must be signed by the proponent/developer.



**APPENDIX 7:****DECLARATION OF INDEPENDENCE BY THE ENVIRONMENTAL ASSESSMENT PRACTITIONER  
OR ENVIRONMENTAL SCIENTIST OR SPECIALIST****Declaration of EAP or environmental scientist and specialist**

I, \_\_\_\_\_, declare that –

- I act as the independent environmental assessment practitioner/environmental scientist or specialist in the registration process in terms of this *Norm for the Exclusion of Identified Activities Associated with the Development and Expansion of Battery Storage Facilities in areas of low or medium environmental sensitivity*;
- I have expertise in conducting environmental impact assessments and/or specialist assessment, including knowledge of the Act<sup>24</sup>, the EIA Regulations, guidelines that have relevance to the proposed activity and professional knowledge in the relevant environmental theme for which I am the specialist;
- I have complied with the Act, the *Norm for the Exclusion of Identified Activities Associated with the Development and Expansion of Battery Storage Facilities in areas of low or medium environmental sensitivity* and all other applicable legislation;
- I have performed the work relating to the *Norm for the Exclusion of Identified Activities Associated with the Development and Expansion of Battery Storage Facilities in areas of low or medium environmental sensitivity*, in an objective manner;
- I have taken into account, to the extent possible, the requirements of the *exclusion of identified activities associated with the development and expansion of battery storage facilities*, matters listed in regulation 13(1) of the EIA Regulations read in the context of the Norm when preparing this registration process; and the reports relating to this registration process;
- I have disclosed to the proponent/developer all material information in my possession that reasonably has or may have the potential of influencing this registration process; and the objectivity of any site verification, report, plan or document to be prepared by myself to support the registration process, unless access to that information is protected by law, in which case, I have indicated that such information exists and will be provided to the competent authority as part of the registration process; and
- I have performed all obligations as expected from an environmental assessment practitioner/environmental scientist and specialist in terms of the registration process in terms of the *Norm for the Exclusion of Identified Activities Associated with the Development and Expansion of Battery Storage Facilities in areas of low or medium environmental sensitivity*.

**Disclosure of vested interest (delete whichever is not applicable)**

- I do not have any vested interest (either business, financial, personal or other) in the proposed activity proceeding other than remuneration for work performed in terms of the *exclusion of identified activities associated with the development and expansion of battery storage facilities*;
- I have a vested interest in the proposed activity proceeding, such vested interest being:

<sup>24</sup> The National Environmental Management Act, 1998 (Act No. 107 of 1998)

<hr/> <hr/> <hr/>
Signature of the environmental assessment practitioner or environmental scientist or specialist Name of Company (if applicable) Date
<b>Undertaking under Oath or Affirmation</b>
I, _____, swear under oath / affirm that all the information submitted or to be submitted for the purposes of this registration is true and correct.
Signature of the environmental assessment practitioner or environmental scientist or specialist
Name of Company (if applicable)
Date
Signature of the Commissioner of Oaths
Date

**APPENDIX 8:**

**CURRICULUM VITAE OF THE ENVIRONMENTAL ASSESSMENT PRACTITIONER OR  
ENVIRONMENTAL SCIENTIST AND SPECIALIST**

**APPENDIX 9:**  
**PROFESSIONAL AFFILIATION/REGISTRATION CERTIFICATE**

**APPENDIX 10:**  
**ENVIRONMENTAL MANAGEMENT PROGRAMME (EMPr)**

**Minimum management controls:**

- Environmental awareness training
- Construction site establishment
- Access restricted areas
- Access roads
- Fencing and gate installations
- Water supply management
- Storm and waste water management
- Solid waste management
- Protection of watercourses and water bodies
- Vegetation clearance
- Protection of fauna and flora
- Protection of heritage resources
- Safety of the public
- Sanitation
- Prevention of diseases
- Emergency procedures
- Hazardous substances management
- Workshop, equipment maintenance and storage
- Batching plants
- Dust emissions
- Noise management
- Visual impact
- Fire prevention
- Stockpiling and stockpile areas
- Finalising solar PV panel areas
- Excavation of foundations, cable trenches and drainage systems
- Installation of foundations, cable trenches and drainage systems
- Installation of equipment
- Social economic benefits and impacts
- Temporary site closure
- Landscaping and rehabilitation



## forestry, fisheries & the environment

Department:  
Forestry, Fisheries and the Environment  
REPUBLIC OF SOUTH AFRICA

Proposed Solar PV exclusion and proposed adoption of  
the National Environmental Screening Tool as an  
environmental management instrument  
Public Comment: 8 September 2022  
Closing date for comments: 8 October 2022

Circulation:	Public Comment	Compiled by:	Chief Directorate: SEI
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**Disclaimer: Organisations/People whose comments are below were made aware that their names/organisation name will be aligned to their comments and will be included on the Departments website as part of the transparency of the commenting process.**

<b>BA – basic assessment</b>	<b>GHG – greenhouse gas</b>
<b>DFFE – Department of Forestry, Fisheries and the Environment</b>	<b>NEMA – the National Environmental Management Act No. 107 of 1998</b>
<b>EA – environmental authorisation</b>	<b>PV – photovoltaic</b>
<b>EAP – environmental assessment practitioner</b>	<b>REDZs – renewable energy development zones</b>
<b>EIA Regulations – Environmental Impact Assessment Regulations, 2014</b>	<b>SEA - Strategic Environmental Assessment</b>
<b>EMI – environmental management inspector</b>	<b>Screening tool – the national web-based environmental screening tool</b>
<b>EMPr – environmental management programme</b>	

## COMMENTS AND RESPONSE REPORT

No.	STAKEHOLDER	COMMENT	RECOMMENDATION	RESPONSE
1.1 1.1.1	<b>Africa Gateway</b>	<p>It is a bold step forward in a time that South Africa is in need of electricity. This will make it easier and the time frame shortened will make it possible to overcome the power shortage.</p> <p>My concern is Civil aviation. The permits that they must issue (Glare report) are now done by ANTS as the new authority</p>		<p>The comment is noted.</p> <p>The concern is noted, and another process is underway to ensure that the entire process of obtaining the authorisations to allow solar PV facilities is streamlined</p>

		that work with this. Unfortunately they are not clear and do not know the process as yet.		and coordinated.
1.1.2	<b>Africa Gateway</b>	I would also like to see other renewable methods to be part of this poses, specifically Wave energy. I hereby request the Honourable Minister to consider the request to incorporate and include the wave energy into the development and expansion of the above mentioned renewable energy government notice.		It would not be possible at this time to exclude wave energy technology from the need to obtain environmental authorisation as the DFFE nor any other competent authority has experience with authorising wave technology.
1.2 1.2.1	<b>Mr M Roods</b>	The screening tool information is at a very high/macro level. Ground truthing by a qualified specialist was however provided for in the published notice. This provision is very important as for example there are low sensitivity areas depicted on the Gauteng EMF that is home to sensitive faunal species such as Giant Bullfrogs, etc which are not identified at a macro / screening tool level.		The Norm requires that site verification be undertaken for identified environmental themes by registered specialists to confirm the information provided by the screening tool as it is acknowledge that not all information on the screening tool has been ground truthed.  The data for the species themes include modelled data for species of conservation concern which includes the Giant Bullfrog.
1.2.2	<b>Mr M Roods</b>	Public participation to tap into local community knowledge was not provided for in the notice. Only landowner consultation was specified. In my view public participation is required (for example there are low sensitivity areas depicted on EMFs that at face value does not look sensitive (and could even seem non-sensitive for a specialist) but which is sensitive “in season”). The local community and/or Resident Associations would be aware of such sensitive areas if properly informed of any development – therefore not only		The registration process of the Norm has been amended to require the EAP/environmental scientist to provide evidence of the public consultation process followed to bring the registration, and the location at which the registration documents can be viewed, to the attention of adjacent landowners and land occupiers. In addition, landowner consent is required for the solar facility and a pre-negotiated alignment is required to be submitted for any linear infrastructure. The landowners will therefore have provided their consent for the registration and the development of the facility and supporting infrastructure. Site sensitivity verification must be undertaken within the season which would be most relevant to identify the specific species or vegetation of interest.

		landowner consent must be obtained but surrounding community consultation is required as well. The provisions of the PAJA are therefore important.	
1.2.3	<b>Mr M Roods</b>	The seasonality aspect requirement [Biodiversity (fauna, flora, vegetation), freshwater (aquatics and wetlands), etc] which is entrenched within the relevant Departmental biodiversity policies and protocols would negate any fast-tracked EMI exclusion process in my opinion. For example, it would not be accepted practice for a specialist to undertake a site verification exercise during winter months and the screening tool data quality is not at an appropriate level to exempt this requirement.	<p>Streamlining efforts do not intend to in any way reduce the environmental rigour. The site sensitivity verification required in terms of this proposed exclusion must be undertaken prior to the submission of the registration documents and the documents must be supported by the site verification report. There is no restriction on the time that the specialist would be able to spend on the verification step.</p> <p>The Norm has been amended to require that the verification inspection in the season which would be most relevant to identify the species or vegetation of interest.</p>
1.2.4	<b>Mr M Roods</b>	I am aware that the DFFE has issued various EAs for many Renewable Energy developments in the past 5 years (more than 350 as per the attached spreadsheet). The question must therefore be asked why most of these developments were never constructed as the total Megawatts authorised would definitely have aided in the current electricity provision crisis? In my opinion the challenge in commissioning Renewable Energy (RE) developments is not associated with the EIA process and associated Environmental Department review timeframes but more as a result of other hold ups / delays such as DMRE requirements (reliability run aspects, an agenda towards favouring power ships, etc), Eskom (grid connections, the SoE	<p>The comment and opinions are noted.</p> <p>The proposed exclusion is intended to deal with aspects where it is regarded appropriate not to require the normal EA process. Whilst not specifically the role of DFFE, other measures are also being put in place to deal with factors that could be causing frustration or delays in other processes. It is not possible to deny a proponent the opportunity to submit an application for EA on the basis that enough applications have been approved, as this would pose a restriction to the rights of proponents to engage in development activities.</p>



		historically protecting its market, etc), policy uncertainty, and the list goes on which prevents for example Independent Power Producers (IPPs) to commence with construction of their projects timeously.		
1.2.5	<b>Mr M Roods</b>	<p>The DFFE in my view should not be yielding to political, industry or media pressure when the challenge is not residing with Environmental Departments such as the DFFE or the environmental assessment process itself. The DFFE must stand firm in applying its mandate which is the protection of the environment and giving effect to the Fundamental Green Rights in the Constitution.</p> <p>Set timeframes are promulgated and applied for Departmental environmental assessment reviews and an applicant can plan accordingly around this. In my experience the DFFE has always complied with the set regulated and fast-tracked timeframes for the review of EA applications.</p> <p>The EIA Regulations Listing Notices already provide for exclusions such as development of PV and other infrastructure within urban areas, and by proposing to further exclude the development and expansion of solar photovoltaic installations from the requirement to obtain an environmental authorisation based on compliance with an adopted environmental management</p>		<p>The DFFE has embarked on a boarder programme to streamline the environmental impacts assessment process and the environmental legislative framework in general as from the early in 2013. The proposed exclusion of solar PV facilities in areas of confirmed low and medium environmental sensitivity is just the next step in this process and has been fast tracked to assist in alleviating the energy constraints. This process of exclusion is not being forced onto the DFFE but is part of ongoing work to ensure efficiency in the EIA process. After having reviewed over 800 solar PV applications and having utilised the screening tool since 2018, it is thought that the impacts associated with the technology and the mitigation measures are well understood and when developed in areas of low and medium environmental sensitivity, which is to be confirmed through professional specialists, that the DFFE and competent authorities will still be fulfilling its mandate to protect the environment.</p> <p>The DFFE strives to ensure that the correct level of attention is applied to the various activities that require EA and that a balance is struck between development and the environment as is required by the Constitution.</p> <p>Every exclusion which would be considered would need to be gazetted for public comment and should the DFFE be proposing exclusions which would put the environment at</p>

		<p>instrument in medium sensitivity areas the Department would in my opinion be diluting environmental assessment in SA to the point where “site verification” will replace “environmental assessment”. This may also set a dangerous precedent in that today it is solar PV but tomorrow gas infrastructure to be excluded which was a question already raised by a stakeholder during the Minister’s first consultation on this notice (i.e he asked when whether this initiative will be rolled out to gas infrastructure as well).</p> <p>A recommended approach would in my opinion rather be to further update / amend the “Renewable Energy Development Zones Notice” pertaining to the development of large-scale wind and solar photovoltaic energy generation activities when occurring in geographical areas of strategic importance. Maybe these areas can be expanded and/or additional non-sensitive REDZ’s be proposed after a SEA was undertaken. Solar development in these zones however still require some form of assessment such as a BA process instead of a full EIA process which is more thorough than just a site verification exercise.</p>		<p>risk, there would be the possibility of taking the Minister on review through a court process. What applies to solar PV cannot necessarily be equally applied to other technologies, thus the focus is on solar PV facilities. The principles of appropriateness and rationality guide the proposal of exclusions proposed and being published for public comment It is not a reason to do nothing on the fear that the process could be abused.</p> <p>The recommendation is noted.</p> <p>The REDZs SEA provided significant environmental sensitivity data as well as impact and mitigation information, was a catalyst for the screening tool and allowed the first step in streamlining the environmental assessment process for wind and solar. This information forms the foundation of the exclusion process currently being proposed. There would however be limited additional value in redoing the process as the information necessary to exclude solar PV on the basis of site verification and the preparation of an EMP is already available.</p>
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<p>1.3 1.3.1</p>	<p><b>LRC</b></p>	<p>Our clients are concerned that the exemption process would allow large-scale and potentially harmful solar PV projects to proceed around their lands without public consultation, adequate environmental assessment, mitigation requirements, or any oversight. Greenlighting solar PV projects in this manner risks a public backlash that would likely undermine the stated purpose of the proposed exclusion – to accelerate the deployment of renewable energy in South Africa.</p>		<p>The exclusion process which has now been converted into the form of a Norm, allows for consultation and consent of landowners on which the solar PV facility is to be developed. The registration process has been amended to require a pre-approved alignment for any linear infrastructure which will also require consultation and consent of landowners. The process now also requires the proponent to provide evidence of the public consultation process followed to bring the registration process and the location at which the registration documents could be access, to the attention of adjacent landowners, the land occupiers on adjacent properties and relevant environmental NGOs.</p> <p>The review of over 800 applications for solar PV facilities have identified that in areas of low and medium environmental sensitivity the impacts of large scale PV facilities can be managed and mitigated through the preparation of an EMP, which is required as part of compliance to the Norm. The process is therefore not without consultation, assessment and mitigation.</p>
<p>1.3.2</p>	<p><b>LRC</b></p>	<p>It is deeply concerning that the proposed regulation does not require the proponent or specialist to notify or consult affected or interested parties during the screening and verification process. Given that solar projects often utilise huge tracts of land, including municipal and communally owned land, and have other potential adverse impacts, as detailed below, consultation with interested and affected parties ensures that there is an understanding of the impact of the proposed project on a range of local activities, that the impacts of a project thoroughly consider harms to nearby landowners and</p>		<p>As indicated in #1.3.1 the registration process of the Norm has been amended to include evidence of the public consultation process followed to bring the registration process and the location at which the registration documents could be access, to the attention of adjacent landowners and land occupiers on adjacent properties.</p> <p>The process has also been amended to require a pre-negotiated corridor for any linear infrastructure which will require a letter of no-objection of landowners.</p>

		communities, and that there is community buy-in and support for a project. The significance of such consultation is even greater when community-owned land is involved.		
1.3.3	<b>LRC</b>	Solar companies must contribute proportionally to local economic development in the areas where they are operating. Meaningful and informed consultation with neighbouring communities is required as a minimum to better understand the needs and wishes of a community.		For the Renewable Energy Power Purchase Programme, 1 to 1.5% of the total project revenue is required to be spent on socio-economic development within a 50km radius around the site. In order to allocate these funds, there is a need to consult with communities to ensure that the investments take into consideration the needs of the community.
1.3.4	<b>LRC</b>	The use of the sensitivity tool and onsite verification provides for limited environmental and social impact assessment. It fails to require, for example, an assessment of cumulative impacts or an assessment of how climate change might harm the project or how the project might exacerbate the potential impacts of climate change in an area, such as by reducing water availability because of the need to clean the panels in more arid and dusty climates.		The consideration of cumulative impacts has been included in the prescribed procedures and requirements of the Norm. Climate change impact assessments are undertaken for projects which would contribute to GHGs through their direct operation. Climate change impact assessments are not currently undertaken to assess life cycle GHG contributions and are therefore not considered for solar PV facilities. An amendment has been made to the requirements set for the preparation of the EMPr and a list of impacts that must be considered in the EMPr has been included. Water supply management is one of these impacts and mitigation measures to reduce water consumption through construction must be included in the EMPr.
1.3.5	<b>LRC</b>	The way the regulation is drafted does not allow the competent authority to exercise their discretion to reject a project, much less require any kind of conditions or mitigation for their operation, or any oversight once a		This is intended to be an exclusion which is provided for in NEMA, as such no review is anticipated. Should all the information be provided and the declarations signed, the role of the competent authority would be to provide a registration number. If all the information is not provided, no registration may be issued, thus commencement may

		project commences. This includes any requirement to make provisions for decommissioning a project.		not take place legally in the absence of having provided all the information required.  The manner in which the development/expansion of solar PV facilities are worded does not include operational phases. For decommissioning, the aspects associated with these activities and impacts would be considered through a closure basic assessment as required under activity 31 of Listing Notice 1 of the EIA Regulations.
1.3.6	<b>LRC</b>	While PV solar projects have significantly fewer impacts on surrounding communities than fossil fuel projects, such as coal plants, coal mines, or gas plants, they can still have substantial impacts, particularly when they accumulate in a given area. Solar PV projects also require a lot of land which necessarily will impact upon the availability of land in a district for alternative livelihood activities.		The exclusion is for solar PV facilities to be developed in areas of low and medium environmental sensitivity and the themes of relevance to be considered include the agricultural theme and thus consideration of the impacts of solar PV facilities on agricultural land. Agricultural land with a high or very high environmental sensitivity (high agricultural potential) would not be considered through this exclusion and an EIA will need to be undertaken, unless the linear infrastructure integral to the solar PV facility falls within the high or very high sensitivity categories. In the latter case the necessary mitigation measures (starting with a consideration to avoid these sensitivities altogether) are prescribed as part of the proposed exclusion.
1.3.7	<b>LRC</b>	Below are several primary ways that medium- or large-scale PV solar farms (built directly on land that is greater than 1 ha, as those in the proposed regulation) can impact the landscape, and corresponding mitigation measures that can minimize potential harm. Although not a comprehensive list, it provides a picture of potential issues and the importance of mitigation to minimise harm:  <ul style="list-style-type: none"> <li>• Projects require cleared land so that maximum sunlight falls on the panels - Land clearance can lead to</li> </ul>		The impact is acknowledged. However, mitigation measures under the heading vegetation clearance, rehabilitation and landscaping are to be provided, which is the same manner in which this impact is managed under

		<p>soil erosion. Erosion is particularly problematic on slopes where there is heavy rain, or conversely, in arid regions where the wind blows de-vegetated soil into the air. In wet regions, this erosion can result in silt runoff into waterways and therefore degradation in water quality. In arid regions, this dust (particulate matter) production can both affect the health and well-being of local populations and reduce the efficiency of the solar installation where dust settles on the panels or is suspended in the air above the panels. Cleaning of the solar panels is then required, which requires water that is likely constrained in an arid environment.</p> <ul style="list-style-type: none"><li>• Projects take up a lot of land - Generally, gently sloping north-facing hillsides and flat land is cleared and used to build solar farms. In places where there is already vegetation, including natural forests, developers may clear this vegetation to build solar farms. The soil is also generally graded to create a smooth surface for the installation and then compacted.</li><li>• Medium and large projects must be connected into distribution or transmission lines, which require their own land clearing and space.</li></ul>		<p>the current EIA process.</p> <p>Cleaning of solar panels through compressed air is an option often used in arid areas.</p> <p>The exclusion would not be applicable in forested areas which would be identified as very high or high in the terrestrial biodiversity theme on the screening tool. These impacts are common to all solar PV projects and not just these that would be the target of this exclusion. An EMPr that must indicate the manner in which mitigation measures would be applied, is required and is this is similar to the manner in which these impacts is addressed in the EIA process. There would be no difference to the manner in which these impacts would be addressed in the requirements of the Norm. The only difference is that the EMPr would not be approved by the competent authority. For this reason, the aspects that must be addressed in the EMPr is set up front. Recently EAPs have been required by law to be registered to ensure a high level of quality and professionalism and recourse should the required standards not be met. This heightened level of professionalism and sanction has allowed the DFFE to allow EAPs to take accountability for the quality of their work and the ability to meet the requirements of the Norm.</p>
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		<ul style="list-style-type: none"> <li>• Solar panels contain toxic elements and must be properly handled and recycled at the end of their lives.</li> </ul>		
1.3.8	<b>LRC</b>	<ul style="list-style-type: none"> <li>• In order to avoid erosion and soil degradation, leaving existing vegetation intact during the installation and minimizing or eliminating land grading and soil compaction is preferable.</li> <li>• We also recommend that the use of cement in the installation of the panels be minimized, so as to enable easier recuperation of the land for other uses in the future.</li> <li>• Planting vegetation around and under the panels is an important way of reducing soil erosion associated with solar projects. Agrivoltaics, the practice of planting agricultural crops or native grass that sheep can graze, around solar panels, is also growing in popularity.</li> <li>• Some solar installations have used herbicides to prevent vegetation growth and to avoid shading. This is a harmful practice, releasing toxins into the local environment, further degrading the land, and failing to</li> </ul>		<p>The impact is noted, this is however not the usual practice. Any areas that have been disturbed would be rehabilitated and landscaped. The methods would be included in the EMPr which is a requirement of the exclusion process.</p> <p>The comment is noted, however due to engineering concerns the amount of concrete used would be determined by a professional engineer in relation to the conditions on site.</p> <p>The comment is noted. These aspects will be covered in a generic EMPr which will be developed for solar facilities in the near future.</p> <p>The use of herbicides is not the norm in the maintenance of a solar PV facility. The areas are usually cleared by hand or sheep are used to maintain the desired vegetation cover. However, should a herbicide be used, these chemicals would be approved for application by the Department of Agriculture who is tasked to ensure that the negative impacts of such chemicals would not be unacceptable to the surrounding environment and extend way past the desired application area. In addition, the management and use of these substances would be</p>

		<p>reduce erosion. We recommend that the use of herbicides be explicitly prohibited in new solar installations. If under-plantings require maintenance to prevent shading, this should be done manually. Similarly, dust suppressants that use any toxic chemicals should be prohibited in solar project operations.</p>		<p>covered under the heading “hazardous substances management” in the EMPr.</p>
1.3.9	<b>LRC</b>	<p>The quantities of land needed for solar installations are perhaps the largest concern with the technology. Projects generally take between 2 and 4 hectares per megawatt of alternating current electricity produced, depending on the type and efficiency of the panels and the design of the installation. While well-designed installations can have multiple benefits for the ecosystem and landowners, they can also displace other land uses and fragment animal habitat. This fact supports the need for impact consultations and social studies to be conducted.</p> <p>The proposed regulation prohibits the siting of PV projects greater than 20 MW on highly sensitive and sensitive agricultural land. On medium- and low-sensitive agricultural land outside of crop boundaries, projects would have to comply with development limits specified in a protocol promulgated by the Department. In theory, these limitations should minimize widespread</p>		<p>The comment is noted.</p> <p>The landowner or person in control of the land will be consulted as consent is required.</p> <p>Agriculture is one of the themes that required site verification, the screening tool therefore is used as a first screening. Agricultural land is fairly easily determined from</p>



		<p>displacement of the country's better agricultural lands by solar farms. However, it is unclear in practice how well the screening tool identifies these lands.</p> <p>The regulations should specifically require an assessment of the impact that the project will have on land uses in the district, in particular if these support the livelihoods of local people (such as grazing land, access to resources etc).</p> <p>Siting projects on less productive lands, degraded lands, or previously developed brownfield sites are ways to reduce displacement of other important land uses.</p>		<p>a site inspection.</p> <p>The landowner and land occupier will be consulted. The landowner is required to provide consent to the construction of the facility on the land.</p> <p>The low and medium environmental sensitivity ratings are generally lands of less productivity. The medium rating is classified as having a land capability evaluation of 4 – 7 which is described as very marginal arable land. The low rating is described as “non arable land”.</p>
1.3.10	<b>LRC</b>	<p>Under one interpretation of the exclusion, transmission and distribution lines associated with a given excluded solar project could also be exempt from any sensitivity analysis and would not require an EA.</p> <p>Where new transmission lines are required to carry away a solar farm's energy, they will result in a much larger linear footprint. Additionally, power lines pose a threat to avian wildlife because they pass at the height of common bird flight paths but are hard for birds to see</p> <p>The proposed regulation's exemption of linear infrastructure is concerning and requires additional clarification.</p>		<p>Transmission lines will not be included in this exclusion, this exclusion will cover only linear infrastructure which will be needed as an integral part of the solar PV facility. In terms of bird diverters, currently EWT engages with consultants to identify areas in which bird diverters must be located to protect birds from collision as part of an existing and long standing programme with Eskom. The Norm requires consultation with relevant NGOs, therefore the engagements with EWT would continue.</p>

		<p>There are best practices for transmission line installations that can reduce their impacts on the land and risks to birds, such as by siting the lines alongside roads or putting diverters on the lines that allow birds to see them better.</p>	
1.3.11	<b>LRC</b>	<p>Solar panels contain toxic elements and must be properly handled and recycled at the end of their lives. Plans for the end of life of the solar panels at a solar farm should be developed as part of an environment impact assessment and environment management plan.</p> <p>Solar installations may last 30 years, although individual panels generally need replacing over that period. The manner in which the panels and the entire project at the end of its productive life are managed requires foresight and commitment by project developers, solar panel producers, recyclers, and regulators.</p> <p>Many photovoltaic solar panel technologies today include cadmium, arsenic, and sometimes lead, all of which can leach out into the environment if not properly disposed of. Additionally, there are valuable materials in solar panels that warrant recycling them to recover those materials.</p> <p>South Africa has made progress in its regulatory framework for the handling of</p>	<p>As the solar PV facility will be in operation for at least 20 to 30 years as identified in the comment, during this time new waste recycling and management technologies will be identified, it is not considered necessary to include waste management options in the initial registration process as they would be outdated by the time the facilities close.</p> <p>For ongoing disposal of panels during operation, hazardous landfill sites are available for disposal, although not in each province, but transporting of hazardous waste is an ongoing activity for other sectors and the solar PV sector would not be different.</p> <p>In addition, activity 31 of Listing Notice 1 of the EIA Regulations makes provision for a BA to be undertaken for the closure of any activity which is identified in any of the Listing Notices. The issues of waste management related to the solar panels will be dealt with through this process. As indicated in the comment, there will be value in the metal components of the panels and stands which could be used to fund the waste management solution.</p>

		<p>solar panel waste. As of August 2021, South Africa prohibits landfill disposal of photovoltaic panels. Solar panels also fall under the electronic waste (e-waste) regulations that mandate extended producer responsibility for all e-waste.</p> <p>Solar developers should be required to explain how they will comply with these regulations, in addition to following other best practices for project decommissioning, when solar projects undergo environmental review.</p> <p>As the above discussion demonstrates, solar projects, while beneficial, have potential to harm communities living around the proposed projects. It is for this reason that a regulation, like the one proposed, that bypasses notice and comment, that requires limited environmental assessment, and that takes away full discretion of the competent authority to reject or approve a project, or to require mitigation or other conditions, must be set aside.</p>		<p>Activity 31 of Listing Notice 1 of the EIA Regulations makes provision for a BA to be undertaken for the closure of any activity which has been listed in the various Listing Notices.</p> <p>The comment is noted and the individual comments have been responded to.</p> <p>The DFFE does not agree that the exclusion should be set aside, several amendments have been made to the notice to strengthen the environmental protection measures to address relevant comments made by stakeholders. With these amendments made. A focused consultation and an appeal process has been added to the proposed Norm which would ensure that there is no bypassing of consultation and the right of appeal.</p>
1.3.12	<b>LRC</b>	<p>The Sanddrift community in Richtersveld has previously had bad experiences with proposed solar projects. The community is made up of 4000 people who are mainly small-scale farmers and derive a livelihood from farming cattle and in particular, sheep. The community has been inundated with proposed solar projects on, or</p>		<p>The experience with the Sanddrift community is noted.</p> <p>On communal land, the community in ownership of the land must be consulted. The proposed Norm would require</p>

		<p>adjacent to, community-owned land for the past decade.</p> <p>The Richtersveld Solar Project, which was estimated to take up 200 hectares of land, was eventually abandoned due to disagreement between the proposed project's developers and the community as the initial consultation did not inform them of the extensive land use required for the project.</p> <p>This emphasises the importance of meaningful consultation with the impacted community as well as presenting the information in a neutral manner. In doing so, good faith discussions on the potential benefits such as job creation can also exist alongside potential impacts to the community's land.</p> <p>Notably, the environmental and social report for this project, both failed to capture the potential impact that it would have to communities who live off the land through subsistence and small-scale farming.</p> <p>Community members in Sanddrift, have emphasised that other potential projects must also give consideration to future use of the land, as the maintenance required in the surrounding area of the solar project often includes weedkillers and pesticides which remain in the soil for long periods after use. This is</p>		<p>consultation with such a community as identified in the Norm. No development could be undertaken on the land of a community without consultation.</p> <p>The requirement of meaningful consultation is noted.</p> <p>The deficiency in the EIA report is noted but is not related to this exclusion.</p> <p>Weedkillers are not used as a norm in the maintenance of a solar PV facility. The areas are usually cleared by hand and sheep are used to maintain the desired vegetation cover. However, should weedkillers be used these chemicals would be approved for application by the Department of Agriculture who would be tasked to ensure that the negative impacts of such chemicals would not be unacceptable to the surrounding environment and extend way past the desired application area. In addition, the management and use of these substances would be covered under the heading "hazardous substances management" in the EMPr.</p> <p>The solar facility would be restricted to the land owned by the landowner and not extend into community grazing land. Should the community be the landowners, the proponent would be required to engage with the community to obtain their approval to utilise the land.</p>
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		<p>particularly important in communities who derive livelihoods from farming such as this one.</p> <p>Furthermore, the establishment of solar projects located near communities may pose potential issues for the extent of grazing land and access to water sources utilised by the communities. Consideration must be given to these overlapping rights and consensus must be reached prior to the establishment of the project. Notably, land most suitable for solar projects are in dry climates where water is extremely scarce. While solar PV facilities may not require large amounts of water in its operations, in more arid areas such as the Northern Cape the scarcity of water sources may pose a problem for communities who make use of natural sources of water. Issues around water scarcity will only get worse from the impacts of climate change in the area.</p>		<p>In order to utilise any water resource, the proponent would be required to obtain a water use licence or general authorisation, whichever is relevant. The current use of water in the area would be part of the consideration of such a water use application.</p>
1.3.13	<b>LRC</b>	<p>The sensitivity tool and verification process cannot fully address community concerns without an informed consultation process and exempting these projects from mitigation measures and best practices is hugely problematic. Any future regulation that seeks to fast-track solar projects on low-sensitive or degraded land must meet mitigation measures and best practice requirements, at a minimum.</p>		<p>The registration process of the proposed Norm has been amended to include evidence of the public consultation process followed to bring the registration process and the location at which the registration documents could be access to the attention of adjacent landowners and land occupiers. Should the community concerned be the owners of the land on which the facility is to be developed, the proponent will need the consent of such a community.</p> <p>The impacts and mitigation measures related to solar PV facilities are well understood after having assessed over 800 applications. NEMA does make provision for exclusion of activities and the DFFE intends to make use</p>

		<p>The full potential environmental impacts of solar projects must be assessed prior to the project being authorised.</p> <p>The cumulative impacts must be assessed for all solar PV projects.</p> <p>All municipal and provincial zoning and siting regulations must be respected in any streamlined permitting process. These regulations and local ordinances reflect communities' collective identification of sites appropriate for medium- and large-scale solar projects, and are important for preventing and mitigating harmful cumulative impacts of these projects.</p> <p>The competent authority must require mitigation and other measures as a condition of approval.</p> <p>There must be provision for notification to interested and affected parties, and for informed and meaningful consultation.</p> <p>With large-scale solar installations being new in many communities, it is important that there be significant community outreach and public participation opportunities from the conception of a project so that communities are aware of the benefits and risks of these facilities. This can help avoid the perpetuation of any misunderstandings or myths that arise</p>		<p>of the exclusion provision.</p> <p>The procedures required for registration have been amended to include a statement from the relevant theme specialists on the acceptability of cumulative impacts. Should a statement on the acceptability of the cumulative impact not be possible, the exclusion would not apply.</p> <p>All municipal and provincial zoning and siting regulations will be respected, the exclusion process can only exclude aspects related to NEMA.</p> <p>Although approval is not required as this is an exclusion process, an EMPr is required which will contain mitigation measures.</p> <p>The registration process has been amended to include a stakeholder notification process.</p> <p>The comment is noted and the registration process has been amended to include notification.</p> <p>The comment is noted and any development on communal land will require the consent of the community as is currently required through regulation 39(2) of the EIA Regulations, 2014.</p>
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		<p>around them. Moreover, local engagement will ensure that projects are developed in better ways and in better locations, and potentially minimise community blow-back about the project, or opposition to renewables projects more broadly in the future. The EA process offers a way to consolidate this feedback into a final project proposal and ensure that is the strongest project possible.</p> <p>The installation of large, fenced solar installations on communal land, without consultation will prove problematic, as customary property rights provide for the consent of land rights holders in the event that their rights are being threatened. Early consultation with users of the land to ensure, for example, the inclusion of corridors for livestock and herders to pass, is imperative.</p> <p>Although we oppose the proposed regulation, we are not opposed to the idea of fast-tracking solar PV projects under certain circumstances and conditions. We support striking a balance between accelerating renewables deployment and ensuring space for meaningful community engagement in the siting of medium- and large-scale solar projects. There are many sites where solar has a minimal impact, or even generates benefits to the landscape, such as on brownfield sites that previously housed</p>		<p>The opposition to the proposed exclusion is noted and amendments have been made to address many of the concerns of stakeholders to strike the balance as identified.</p> <p>The DFFE cannot impose on a developer, the siting of any development, although the developer must consider several factors which would influence the siting. It should also be noted that there is a shortage of grid infrastructure to evacuate the energy produced by renewable energy facilities in general and this aspect will therefore be a major consideration in the developer's choice of site.</p> <p>The screening tool does identify agricultural potential and high agricultural potential land would be identified as having a very high and high environmental sensitivity and would not fall within the ambit of this exclusion.</p>
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	<p>industrial activity but are not currently in use, including old mines, coal plant sites, or landfills. Right-of-ways for railroads and highways are other excellent options for installing extensive solar without competing with other valuable land uses. Many analyses have shown that it is possible to meet much, if not all renewable energy needs by prioritizing these and other degraded or unused sites non-urban sites when combined with solar installations in the built environment, including on rooftops of residential, commercial, and industrial buildings. Research has shown that even in prime agricultural regions, there is often plenty of land for renewables siting that need not compete with food production.</p> <p>Some initiatives, tools, and regulations aim to direct and accelerate development at such sites. The United States, Environmental Protection Agency, for example, oversees a RE-Powering program that helps accelerate brownfield renewables development, including by providing best practice guidelines, case studies, and mapping tools to identify worthy sites at a national scale and supporting initiatives to do the same at a state or county level. Many U.S. states have financial incentives and procurement policies for promoting solar development on brownfields, and a handful have also passed laws enabling streamlined permitting and</p>		<p>The comment is noted, it should also be noted that the DFFE has identified renewable energy development zones.</p>
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		<p>environmental review processes that ensures community engagement. Some of these regulations, like those in New York State, have created special offices to oversee renewables permitting. None of U.S regulations, use general screening tools to entirely exempt large projects from environmental authorization. We urge the DFFE to explore policy and regulatory options for South Africa as those used in the United States of America.</p>		
<p>1.4 1.4.1</p>	<p><b>EWT</b></p>	<p>The online Environmental screening tool was not designed for the proposed purpose. The screening tool uses verified data to screen for potential impacts and therefore guide specialist assessment requirements, but it is intrinsically limited by the data that are available and these data are never complete. So to use the absence of data (which would result in a low or medium sensitivity outcome) as a signal for excluding the need for assessment is fundamentally flawed.</p>		<p>The screening tool was designed as a flexible tool which housed a wealth of environmental data which is regarded as the best quality data that is currently available. There are no limitations to the use of this data. The screening tool is an asset into which the DFFE as well as other data custodians and data developers have invested significant time and effort. The screening tool is flexible and the asset should be used and will be used in a multitude of applications. The DFFE has a high level of confidence in the data and does not see the data as being deficient. The screening process is also associated with a site verification process undertaken by specialists in the relevant fields. The impacts and mitigation measures associated with solar PV facilities are well understood after reviewing over 800 applications. The screening and site verification process is therefore regarded as being sufficient to protect the environment from unsuitable impacts. The DFFE therefore does not agree with the EWT's view that a low or medium environmental sensitivity would be the result of a lack of data.</p>

1.4.2	EWT	<p>There is no provision for public participation or consultation of commenting authorities, this is an oversight of this proposal and if implanted in its current form, is subject to challenges based on administrative laws.</p> <ul style="list-style-type: none"> <li>• The proposal conflict with NEMA principles, including precautionary principle, polluter pays and mitigation hierarchy. We point out that all decisions affecting or have potential to affect the environment must be guided by the NEMA principles. Failure to consider NEMA principles is a contravention of the NEMA and can lead to such decisions being legally challenged.</li> <li>• An adaption of the polluter pays principle directing accountability for the burden of proof for a proposed activity, as well as all associated costs in the process, to the applicant/s. This would shift the current approach where DFFE or the provincial authorities. This shift addresses the problem that arises from the difficulty in proving or accurately quantifying all financial costs and potential impacts on biodiversity and the burden of demonstrating no harm should rest on the applicant and not on government.</li> <li>• The proposal addresses monitoring and enforcement, we suggest that</li> </ul>		<p>The registration process has been amended to require evidence of the process followed to bring the registration, and the location at which the registration documents can be viewed, to the attention of adjacent landowners and land occupiers. In addition landowner consent is required for the solar facility and a pre-negotiated corridor is required to be submitted for any linear infrastructure. The landowners will therefore have provided their consent for the registration and the development of the facility and supporting infrastructure.</p> <p>The DFFE has reviewed over 800 solar applications since 2011 and it is thought that the experience gained in understanding the impacts and mitigation measures, and the requirement of a site verification process by professional specialists is sufficient to address the precautionary principle.</p> <p>The polluter pays principle is still applied in the case of the proposed exclusion. The site sensitivity verification process which requires work to be undertaken by a number of specialists is paid for by the proponent as is the registration process which requires the expertise of a registered EAP/environmental scientist. Declarations and confirmation of certain information by the proponent and all the professionals involved is key before the exclusion will be capable of being applied.</p> <p>The preparation of the EMPr to manage the environmental impacts for the construction phase of the project is to be prepared by the EAP and signed off by the relevant specialists. The costs associated with the development of the EMPr are born by the proponent. The registration process also requires the holder of the registration number or new owner to sign a declaration that they will comply with the mitigation measures contained in the EMPr, therefore they would need to determine the implementation and monitoring requirements to be able to</p>
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		<p>requirement to register the site brings the entire process of site verification into question. Surely the competent authority needs to retain unfettered discretionary powers to decide whether the level of investigation is sufficient to anticipate and prevent significant environmental harms? To state that the proposal "must" be registered implies that registration will take place irrespective of the competence of the EAPs and specialists, and the standard of content in the application.</p>		
1.5 1.5.1	<b>EAP</b>	<p>The management of waste from the PV Solar facilities cannot be neglected during this process.</p>		<p>As the solar PV facility will be in operation for at least 20 years and there could be new waste recycling and management technologies identified within this period, It is not considered necessary to include waste management options in the initial registration process as these would be outdated when the facility is decommissioned. In addition activity 31 of Listing Notice 1 of the EIA Regulations makes provision for a BA to be undertaken for the closure of any activity which is identified in any of the Listing Notices. The issues of waste management related to the solar panels will be dealt with through this process. The damaged panels that need disposal before the decommissioning will be handled in the same manner as other hazardous waste. The EMPr will cover waste issues. There will be value in the metal components of the panels and stands which could be used to fund the waste management solution.</p>
1.5.2	<b>EAP</b>	<p>Although this exemption will provide a short-term solution in terms of fast tracking the development of alternative energy sources in our country, cognisance must also be taken of the</p>		<p>The DFFE is not following the path of exclusions to only alleviate the energy constraints in the country. The DFFE has embarked on a broader programme to streamline the environmental impact assessment process and the environmental legislative framework in general as from</p>

		<p>potential unintended long-term effect of this exemption on other developments, land use, social and economics of communities, etc.</p> <p>We realise the need and urgency for this type of development and acknowledge that the proposed exemption of this listed activity from the requirement to obtain environmental authorisation is an attempt by DFFE to streamline and assist the national government to roll out the national strategic energy plans. However, the long-term management and environmental risks may become unregulated if this is implemented without more defined requirements and standards.</p> <p>The following could be considered:</p> <ul style="list-style-type: none"> <li>• If exemptions are to be implemented, at least limit the footprint / output of exempted installations only to Listing Notice 1 activities.</li> <li>• It is assumed that if the exemption be decided to be enforced, it will not exempt a proponent to comply with other environmental legislation, E.g. National Water Act (NWA), 1998 (Act 36 of 1998).</li> <li>• Implement a regulated time frame for competent authorities to review the registration application to verify findings stated and management measures incorporated in the EMPr.</li> </ul>		<p>early in 2013. The proposed exclusion of solar PV facilities in areas of confirmed low and medium environmental sensitivity through the implementation of the proposed Norm, is just the next step in this process. The exclusion was however planned for later in the year and has been fast tracked due to the energy constraints.</p> <p>The DFFE has considered over 800 solar PV applications and do believe that the risk that this technology poses in areas of confirmed low and medium environmental sensitivity are well understood and can be managed through the registration process, which requires site sensitivity verification of several environmental themes and the preparation of a construction EMPr.</p> <p>The proposal is noted, however the exclusion is intended to be for all solar PV facilities as it is thought that the impacts are well understood and can be managed through firstly avoiding sensitive areas and preparation of an EMPr by specialists and professional EAPs/environmental scientists.</p> <p>The exclusion can only be considered for activities identified under NEMA and all other relevant legislation will need to be complied with.</p> <p>The exclusion is intended to represent a “hands off” approach an no review is anticipated.</p> <p>Any review will defeat the objectives of an exclusion which is the intention of this notice.</p> <p>The basic assessment process has already been achieved in the renewable energy development zones, while this notice intends to take the next step which is to exclude the activity in areas of confirmed low and medium</p>
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		<ul style="list-style-type: none"> <li>• Allow stakeholders and commenting authorities the opportunity to comment to allow for an integrated approach.</li> <li>• Rather than to totally remove the requirement to obtain environmental authorisation, allow for a shortened regulated Basic Assessment process where specialist input over all the necessary environmental features are still obtained and stakeholders could still provide comments. Focus on “low” and “medium” sensitivity areas of the Energy Corridors which has been strategically identified.</li> <li>• Incorporate the sensitivity layer of “grazing pastures” in the agriculture theme.</li> </ul>		<p>environmental sensitivity.</p> <p>This work is underway with the Department of Agriculture and the layer will soon be included in the screening tool.</p>
1.6 1.6.1	<b>Korean Solar Power Consortium SA Ltd</b>	<p>We hereby stand in agreement with the motion to exclude the environmental authorization process for solar photovoltaic applications, and rather opt for compliance, based on the screening tool and the Environmental Management Programmes. The reality is that the country is in an energy crisis as Eskom is pushed towards a state of collapse, and the process for environmental authorization is too long. Projects such as these will not only assist in shedding the load from Eskom, but will help in terms of creating employment and developing</p>		<p>The support is noted.</p> <p>The DFFE believes that the registration process will</p>



		<p>skills especially for the already struggling youth of South Africa.</p> <p>Any development should be done with taking the environment into consideration, but at what cost, because ultimately the “Triple Bottom Line” should be considered. We cannot focus on sustaining the environment and let the economy suffer, there has to be a mutual benefit somewhere.</p>		<p>provide the necessary environmental protection as the economy is also reliant on an environment that can absorb development pressures.</p>
1.7 1.7.1	<b>Mr Prashika Reddy</b>	<p>One of the objectives of an EIA study is to assess alternatives, this usually involves various input e.g. technical, economic, social and environmental. We usually have a larger development area and through various assessments, scope out sites with significant environmental impacts to proceed with more detailed assessments. By using the tool for a set area with a buffer, seems to go against the mitigation hierarchy of first avoiding.</p>		<p>The screening tool environmental sensitivity ratings of “low” or “medium” would already have taken the mitigation hierarchy into account. These areas are areas of lower environmental sensitivity which must be confirmed by a site sensitivity verification, which includes a physical site inspection. The requirement to undertake a physical inspection has been highlighted through an amendment made to the relevant provision of the proposed Norm.</p>
1.7.2	<b>Mr Prashika Reddy</b>	<p>Does the DFFE Screening Tool take into account the Birdlife Guidelines: Birds &amp; Solar Energy for example a Medium Sensitivity Site of a Medium Size (30-150ha) requires a Regime 2 that includes Pre-and post-construction; minimum 2-3 x 3-5 days over 6 months (including peak season); carcass searches?</p>		<p>The BirdLife SA Guideline: Birds &amp; Solar Energy is a guidance document which is not specifically identified in the exclusion. However, the developer will be able to consider this guideline, including the monitoring requirements, as best practice.</p>
1.7.3	<b>Mr Prashika Reddy</b>	<p>What about alignment with other licences required for a PV development i.e. AEL for example.</p>		<p>There is no atmospheric emissions licence required for a solar PV facility as there are no associated atmospheric emissions flowing from such facilities.</p> <p>There are no combustion engines used of a size which is</p>

		Combustion Engines are required, and Water Use Authorisations for impacts on watercourses. How will an exclusion align with an Environmental and Social Impact Assessment that is undertaken to meet lender requirements?		identified in the emission limited associated with the National Environmental Management: Air Quality Act. No 39 of 2004. Should a water use licence be required, the exclusion as provided for in the notice only excludes activities as identified through NEMA, while other legislation will still need to be complied with. With respect to social impacts, a list of environmental management controls to be discussed in the environmental management programme has been included in Appendix 5. This list of management controls includes controls to manage social impacts which must be considered when constructing the solar PV facility.
1.7.4	<b>Mr Prashika Reddy</b>	How will cumulative impacts be catered for in the Site Verification exercise?		The procedures required for registration have been amended to include a statement from the relevant theme specialists on the acceptability of cumulative impacts. Should a statement on the acceptability of the cumulative impact not be possible, the exclusion would not apply.
1.7.5	<b>Mr Prashika Reddy</b>	How will stakeholders and interested and affected parties be consulted with in the Site Verification exercise?		The landowner on which the facility or linear infrastructure is proposed will be required to provide written consent in terms of regulation 39(2) of the Environmental Impact Assessment Regulations, 2014 or a letter of no objection to allow a pre-approved alignment being provided for registration. Evidence of consultation with adjacent landowners and land occupiers as well as environmental NGOs has been added to the requirements to be provided by the proponent.
1.7.6	<b>Mr Prashika Reddy</b>	How often are the data layers updated on the DFFE Screening Tool?		The data on the screening tool is provided by the relevant data custodians, updating will therefore be in line with their programme for updating. From March 2020 until June 2022, 46 updates were made to the data on the screening tool and one change was made to the functionality of the screening tool.
1.7.7	<b>BLA</b>	BirdLife South Africa is aware of, and has been involved in, several instances where solar projects have been proposed in sensitive areas for birds and other species. This tends to happen		

		<p>under one or more of the following circumstances:</p> <ul style="list-style-type: none"> <li>• The Screening Tool and associated Protocols have not been applied properly;</li> <li>• Inadequately trained or poorly qualified Environmental Assessment Practitioners (EAPs) and Specialists have been involved (of which there are many in our experience, despite the registration requirements);</li> <li>• The results of the Screening Tool have not identified sensitive ecosystems or species due to a lack of fine scale data;</li> <li>• Species are overlooked because they are not sufficiently threatened to be covered by Screening Tool ratings, but may be important at a local or regional scale;</li> <li>• Impacts on species of conservation concern (SCC) are overlooked because the Screening Tool only reflects breeding habitat and confirmed habitat for some species, although other areas may be associated with elevated risk or may be important at a local or regional scale;</li> <li>• There is a risk of cumulative negative impacts on a species or habitat.</li> </ul>		<p>The circumstances are noted and are associated with the current EIA process.</p> <p>The circumstance is noted, however these perceived shortcomings are not related to the exclusion which is not yet in place.</p> <p>The information obtained from the screening tool is always to be verified.</p> <p>The DFFE is very confident that the screening tool includes the best and most up to date information available. However, the site investigation should identify any species that are of concern if not included in the national information available.</p> <p>The information obtained from the screening tool is the best information available and must be verified by a site investigation.</p> <p>The EIA Regulations require the consideration of cumulative impacts in the current EIA process and the proposed Norm requires consideration of cumulative impacts by the specialists and a discussion thereof in the site sensitivity verification report. This discussion must include a statement on the environmental acceptability of any cumulative effects on the site after mitigation.</p>
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1.8 1.8.1	<b>BLA</b>	Of concern to BirdLife South Africa is that the proposed exclusion Notice condones a blanket exemption applicable across the country, including areas which are not covered by the Strategic Environmental Assessment for RE installations, and the associated Integrated Environmental Management Programme.		<p>The concern is noted, however there are processes in place to ensure environmental protection and registration requirements associated with the exclusion. The proposed exclusion is for areas of low and medium environmental sensitivity, thus is not a blanket exemption.</p> <p>The information gathered in the SEA was applied nationally. There is therefore no need to restrict the exclusion to the REDZs areas.</p>
1.8.2	<b>BLA</b>	By 2018, renewable energy projects with the combined capacity of 55 714 MW of (30 512MW for solar PV) had received environmental authorisation in South Africa (DFFE, 2019). This is already well above the targets set in South Africa's Integrated Resources Plan (i.e. 8 288 MW solar by 2030), yet BirdLife South Africa is aware that many more proposed solar energy projects have subsequently received environmental approval. DFFE has indicated that over 900 environmental authorisations had been issued for solar PV facilities since 2011. Furthermore, according to a study by Meridian Economics (2020), key constraints to renewable energy development include lack of political commitment and policy certainty, regulatory restrictions in the electricity sector, grid capacity and connection issues and local content requirements. Notably environmental regulations were not identified as a constraint to solar energy. We are, therefore, circumspect about the extent to which the environmental		<p>The National Development Plan identified the environmental legislative framework as a risk to achieving the objectives of the plan and Cabinet has indicated that government departments need to simplify and coordinate their authorisation processes. This concern was similarly identified by the High Level Panel on the assessment of key legislation and the acceleration of fundamental change. Using housing as an example the panel called for the reduction of red tape in approval processes by consolidating the four separate approval processes for environment, heritage, water use and land use planning to avoid overlaps and unnecessary duplication causing significant delays and excessive costs. In addition the NatJoints Committee on the Energy Crisis has called for Departments to reduce by half the timeframes for authorisation processes.</p> <p>In order to proactively and coherently respond to Cabinet and Parliament's requests, the DFFE and provincial competent authorities have embarked on a programme to improve the efficiency and effectiveness of the environmental authorisation process as a contribution to simplifying and coordinating the overall environmental framework. This programme included the development of environmental management instruments and tools to allow for the exclusion of identified activities where these were relevant and warranted. To date, the following has been</p>

		<p>authorisation process is a bona fide impediment to the rollout of solar installations that would ordinarily qualify for a Basic Assessment, or Scoping and EIR. Large solar installations take several years of planning, staffing and financing. Given the One Environmental System (with its stipulated timeframes), in addition to the REDZ zones and other allowances, it is unclear why the EIA Authorisation process ought to be a significant temporal obstacle, provided the assessment is initiated early in the project planning process.</p>		<p>achieved in relation to adoptions and exclusions:</p> <ul style="list-style-type: none"> <li>• In March of 2018 the Gauteng Provincial Environmental Management Framework Standard was gazetted which allowed for the exclusion of identified activities from the need to obtain and EA when developed in Zone one or five of the standard.</li> <li>• In March 2019 the DFFE adopted the Integrated Environmental Management Plan for the Square Kilometre Array as an environmental management instrument and based on the adopted IEMP excluded the first phase of the development from the requirement to obtain and EA prior to commencement.</li> <li>• In March 2021 the DFFE adopted generic EMPs for the “Working for Programmes” and the “Land Care Programme” and excluded the identified activities related to the programmes from the requirement to obtain and EA.</li> <li>• In April 2022 the DFFE in partnership with the City of Cape Town adopted the Generic Environmental Management Programme for Development Projects within the Atlantis Urban as an environmental management instrument and excluded identified activities from the requirement to obtain environmental authorisation prior to commencement.</li> <li>• In July 2022 the DFFE adopted the standard for the development and expansion of transmission and distribution power lines and substations within areas of low or medium environmental sensitivity within identified transmission corridors and excluded these developments from the requirement to obtain an environmental authorisation prior to commencement based on compliance with the standard.</li> </ul> <p>The current proposed exclusion was the next exclusion being considered in this programme, which was brought forward due to the energy constraints. Over the years of approving these solar PV facilities, it is thought that the</p>
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			<p>impacts and mitigation measures are well understood and should the developments be planned in areas of confirmed low and medium environmental sensitivity, the technology could be subject to an exclusion process as provided for in NEMA.</p> <p>DFFE is not able to restrict the number of applications accepted for proposed solar PV facilities, as this would also amount to a barrier to potential energy generation.</p>
1.8.3	<b>BLA</b>	<p>Notwithstanding the above comment, BirdLife South Africa acknowledges that considerable time and resources are wasted in the preparation and review of speculative proposals from prospective bidders for the REIPP Programme. This Programme has both local content and environmental requirements which could be better leveraged to address the problem of speculative EIAs, within the confines of the programme, without resorting to a blanket exclusion and the risks that accompany this intervention.</p>	<p>It is thought that a more predictable process provided for by the exclusion and registration would reduce the need to apply for speculative EIA, as the process has been further streamlined and is very much in the hands of the proponent and their professional team. Speculative EIAs are not good for the EIA process or for conserving the resources of any competent authority. To reduce the number of speculative EIAs it would be advantageous when the impacts of the excluded activity are regarded as being low.</p> <p>The DFFE strives to ensure that the correct level of attention is applied to the various identified activities and that a balance is struck between development and the environment as is required by the Constitution. The impacts associated with solar PV facilities are regarded as being low when developed within areas of confirmed low and medium sensitivity and when developed within the ambit of a construction EMPr.</p>
1.8.4	<b>BLA</b>	<p>We would welcome a fuller, evidence-led justification by DFFE for why the exclusion is required. In our relatively long-term involvement with RE projects, we have not met with many complaints about delays due to the EIA studies. In our experience, many developers welcome the structured requirements for consultation with stakeholders, and</p>	<p>Please see the response to #1.8.2.</p> <p>The exclusion is focussed on ensuring efficiency in the overall environmental legislative framework and associating the correct level of attention to the various identified activities. The impacts associated with solar PV facilities are regarded as being low when developed within areas of confirmed low and medium sensitivity and when developed within the ambit of a construction EMPr.</p>

		advice on how to design, implement, manage and monitor projects to avoid damage to the environment, and that protect applicants from liabilities.	
1.8.5	<b>BLA</b>	<p>We infer from the exclusion pertaining to EIA authorisation that public consultation will no longer be required in respect of large solar installations, other than permission from the landowner. In a conventional EIA process (be it for a Basic or full Scoping and EIR) consultation is mandatory because all South Africans have a Constitutional right to administrative justice (which includes a right to be heard), and because public participation and transparent decision- making are key principles in NEMA. The EIA Regulations are the legal mechanism by which these requirements are fulfilled when it comes to responsible environmental governance. It is, therefore, concerning that the adoption and exclusion Notices appears to obviate the requirement for stakeholder consultation, unlike the recently introduced standards for powerlines and substations within identified geographical areas. These standards expressly confirm the need for public participation, and that the right of appeal must be allowed (Regulation 9 GN 2313 in GG 47095 of 27 July 2022).</p> <p>The key question that arises regarding exemption from site-specific consultation requirements is whether</p>	<p>It is noted that the exclusion will be considered only in areas of confirmed low or medium environmental sensitivity. This restricted environment for the application of the exclusion will deal with many of the concerns which would usually be identified by a broader group of stakeholders, for example SANParks. In addition, the requirements of the National Heritage Resources Act and the National Water Act will still need to be complied with and additional interaction will need to be undertaken with the relevant authorities. In addition, the proposed Norm has been amended to include consultation with adjacent landowners and land occupiers as well as environmental NGO's. It is thought that these would be the people affected by the proposed development. The need for consultation has therefore been addressed.</p> <p>The Norm has been reviewed by the DFFE legal team and found to meet the requirements for consultation.</p>

		<p>the exclusion Notice conforms to the NEMA principles, and whether it deprives or compromises host communities' and other stakeholders' rights in relation to administrative justice. It is unclear if and how interested and affected parties would be informed of a registration decision, and what avenues would be available to them to be involved. The onus to consult in terms of NEMA cannot be substituted with consultation required by planning legislation. Not least because planning is a municipal function, and environment is a shared provincial and national competence, these two areas of law are separate and distinct. As confirmed by the Maccsand ruling, among others, the boundary between competencies (including the consultation requirements) cannot be blurred in an inconsistent and piecemeal manner.</p>		<p>The amendments made to the proposed Norm now requires consultation with specific affected parties in addition to the landowner. The consultation required in terms of the National Heritage Resources Act, the National Water Act and the planning legislation will allow for additional public consultation. Notification regarding the registration decision has now been included in the Norm.</p>
1.8.6	<b>BLA</b>	<p>Many preferred sites for large solar farms are in remote and rural areas where host communities may be unaware of their rights. In this regard we draw the Ministers attention to section 2(4)(f) of NEMA:</p> <p>The participation of all interested and affected parties in environmental governance must be promoted, and all people must have the opportunity to develop the understanding, skills and capacity necessary for achieving equitable and effective participation, and participation by vulnerable and</p>		<p>The comment is noted, consultation is required with landowners and land occupiers of adjacent properties. The methodology to be used by the EAP/ES will be determined by EAP/ES to ensure that they will meet the requirements of NEMA. It is not anticipated that the development of a solar PV facility would have an impact on the livelihoods of adjacent land owners or occupiers.</p> <p>The impacts of both of the activities which were the subject of these judgements would affect the rights and livelihoods of a much larger group of stakeholders. The scale and</p>



		<p>disadvantaged persons must be ensured.</p> <p>As has been confirmed by the Thabametsi and the Shell judgement, all subsidiary legislation, drafted in terms of NEMA and associated decision-making, must uphold this principle, in addition to other principles in section 2 of NEMA related to transparency, avoidance of impacts and precaution.</p>		<p>impacts of developments do not always warrant the same level of outreach, and it is thought that the process provided in the notice for solar PV facilities developed in areas of low and medium environmental sensitivity does meet the requirements of transparency and avoidance of impacts. Consultation requirements have also been added to the proposed exclusion.</p>
1.8.7	<b>BLA</b>	<p>An EIA Authorisation's conditions of authorisation always include the requirement to implement an auditable environmental management programme (EMPr). The Notice has not provided for any generic EMPr or minimum standard to comply with in this regard. Furthermore, without the EMPr being included in the Authorisation it is unclear how it will be enforced. The substitution of the enforceable conditions with a signed commitment by the developer (Appendix 6 of the Notice) is, in our view, highly problematic and we do not support this approach. At some point an applicant is not going to comply with the commitment, and because the commitment has no clear source of enforcement, the onus will fall back on NGOs and civil society to intervene and bear the associated costs.</p>		<p>An EMPr is required to be prepared by the EAP based on information provided by the specialists and signed off by the relevant specialists. The proposed Norm also requires the proponent to declare that he/she will comply with the requirements of the EMPr.</p> <p>Enforcement of the EMPr will be achieved by requiring the proponent to notify the competent authority 14 days prior to commencement to facilitate compliance inspections and should non-compliance be identified, a compliance notice can be issued. Non-compliance with the provisions of the proposed Norm will constitute an offence in terms of the NEMA.</p>
1.8.8	<b>BLA</b>	<p>In terms of the signed commitment, the proponent is expected to:</p>		<p>These two requirements have been copied taken from the current EIA form which have not caused concern before. These are standard clauses.</p>

		<ul style="list-style-type: none"><li>• indemnify the Government of the Republic of South Africa, the competent authority and all its officers, agents and employees from any liability arising out of the content of any registration/re-registration, any procedure or any action which as the proponent or the EAP is responsible for in terms of the EMPr;</li><li>• not hold the competent authority responsible for any costs that may be incurred in proceeding with an activity prior to obtaining confirmation of registration/re-registration.</li></ul> <p>The first undertaking appears to conflict with DFFE's duty to be a custodian of the environment on behalf of the citizens of the country, who are entitled to reasonable legislative measures to protect their right to an environment which is not harmful to their health or well-being. We question whether indemnity clauses such as these are appropriate in a "Declaration of Commitment by a Proponent" appended to a Government Notice. We also question whether this does not effectively amount to the DFFE absconding from its custodianship responsibilities, should the activities of the developer cause environmental damage. It is also unclear what defines an "EMPr" in the absence of a formal EIA context in which the meaning of</p>		<p>Guidance on the minimum content of the EMPr has been included in the proposed Norm.</p>
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		<p>EMPr has been defined and contextualised.</p> <p>The first undertaking also seems problematic when it comes to local and district municipalities as proponents and applicants for large solar installations. The City of Cape Town has already announced an intention to build a solar plant, and other municipalities are likely to do the same. One assumes that municipalities are “agents” of Government. It would, therefore, be non-sensical for them to indemnify themselves from liability for their own actions.</p> <p>The second undertaking is confusing as to the legal status of the registration requirements, and how they will be enforced. It is unclear whether it is an offence for proponents not to comply with the registration and, if they do not, under what circumstances the proponent might want to claim costs from the DFFE (out of court).</p>		<p>The registration requirement is a legal one and is associated with the requirements set out in the exclusion that requires registration. The decision that there is sufficient information to issue a registration number can be appealed and non-compliance with the requirements stemming from the registration will be an offence.</p>
1.8.9	<b>BLA</b>	<p>The proponent is expected to testify to having complied with "all obligations as expected..." How is this possible at the registration stage, i.e. before construction has commenced?</p> <p>In our opinion, and with insight into the often complex partnerships and consortia that develop large RE projects, few proponents will be advised by their lawyers to sign this Declaration</p>		<p>The notice has been amended to indicate that the proponent will perform all the obligations in connection with the EMPr.</p> <p>The opinion is noted, however several proponents and legal firms have provided comment to the proposed amendment and have not identified this requirement to be a concern.</p>

		<p>without clarity on if and how it can be enforced. In this regard, it must be stressed in respect of the language used in the proposed commitment that applicants are seldom a singular "I". Responsibilities are spread across a range of legal, investment, procurement and construction companies.</p>		<p>A duly mandated person may sign on behalf of the company/entity it represents, and the same applies to joint ventures.</p>
1.8.10	<b>BLA</b>	<p>We infer from the exclusion pertaining to EIA authorisation that public consultation will no longer be required in respect of large solar installations, other than permission from the landowner. In a conventional EIA process (be it for a Basic or full Scoping and EIR) consultation is mandatory because all South Africans have a Constitutional right to administrative justice (which includes a right to be heard), and because public participation and transparent decision-making are key principles in NEMA. The EIA Regulations are the legal mechanism by which these requirements are fulfilled when it comes to responsible environmental governance. It is, therefore, concerning that the adoption and exclusion Notices appears to obviate the requirement for stakeholder consultation, unlike the recently introduced standards for powerlines and substations within identified geographical areas. These standards expressly confirm the need for public participation, and that the right of appeal must be allowed.</p>		<p>The proposed Norm has been amended. Consultation with landowners and land occupiers of adjacent properties is now required. These would be the parties that would be affected by any development of a solar PV facility.</p> <p>The area of impact of a solar PV facility and a transmission powerline are quite different as the PV facility is local and only has a short linear connection for services while a transmission powerline alignment of over 100km for example would have to consider the number of people who could be affected along the route.</p> <p>As indicated above the proposed Norm has been amended to include consultation with adjacent land owners and land occupiers. Consent is required from the landowner and pre-negotiation is required for the servitude for linear activities over the landowners property.</p>

		<p>The key question that arises regarding exemption from site-specific consultation requirements is whether the exclusion Notice conforms to the NEMA principles, and whether it deprives or compromises host communities' and other stakeholders' rights in relation to administrative justice. It is unclear if and how interested and affected parties would be informed of a registration decision, and what avenues would be available to them to be involved. The onus to consult in terms of NEMA cannot be substituted with consultation required by planning legislation. Not least because planning is a municipal function, and environment is a shared provincial and national competence, these two areas of law are separate and distinct. As confirmed by the Maccsand ruling, among others, the boundary between competencies (including the consultation requirements) cannot be blurred in an inconsistent and piecemeal manner.</p> <p>Many preferred sites for large solar farms are in remote and rural areas where host communities may be unaware of their rights. In this regard we draw the Ministers attention to section 2(1)(f) of NEMA:</p> <p>The participation of all interested and affected parties in environmental governance must be promoted, and all people must have the opportunity to</p>		<p>The Norm has been amended to include a focused consultation process with land owners, adjacent land owners and land occupiers. There is also an inclusion of a notification to stakeholders of the registration which will facilitate the appeal process. In addition to the consultation from an environmental perspective, there is also consultation through the obtaining of other licences for example the water, heritage assessment and the planning legislation.</p> <p>Please see the note about the proposed Norm being amended to include consultation with adjacent landowners and land occupiers.</p> <p>The consultation methodologies currently applied by EAPs will be used through the exclusion process.</p> <p>Both the Thabametsi and Shell activities would impact on a very broad stakeholder basis due to the nature of the activity, while a solar PV facility has no such extended impact. The situations are therefore quite different and the level of consultation required would also be different.</p>
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		<p>develop the understanding, skills and capacity necessary for achieving equitable and effective participation, and participation by vulnerable and disadvantaged persons must be ensured.</p> <p>As has been confirmed by the Thabametsi and the Shell judgement, all subsidiary legislation, drafted in terms of NEMA and associated decision-making, must uphold this principle, in addition to other principles in section 2 of NEMA related to transparency, avoidance of impacts and precaution.</p>		
1.8.11	<b>BLA</b>	<p>One would assume local and multinational companies participating in the REIPP programme are also covered by the exemption. As it stands, the Notice does not provide guidance for this category of applicant. Legal uncertainty is detrimental to the programme, particularly as many partners to applications are multinational companies and investors.</p> <p>Further consideration is required as to how REIPPP bidders are affected and at what point in the bidding process (or thereafter) they should apply for registration. Our prior comments about targeted solutions to speculative EIAs within the ambit of REIPPP are relevant here.</p>		<p>The proposed Norm does not distinguish between the different options to enter into the energy market, thus all energy programmes therefore fall within the Solar PV exclusion. There would be no difference in consideration of the requirements as the impacts relate to the technology not the size of the company developing the facility. The restrictions for private energy producers have been lifted and any company can now generate electricity to any MW.</p> <p>The proponent will decide at what stage to submit a registration request. The proponent would just need to ensure that the various site inspections to verify environmental sensitivity are undertaken within the correct seasons to ensure the best outcome of the verification process.</p>
1.8.12	<b>BLA</b>	<p>consideration needs to be given to how much will be gained by this intervention, compared to what may be lost. On the</p>		<p>As indicated in #1.2.5 above, this technology was the next for consideration for exclusion in the DFFE's streamlining programme and is in line with the planned work. The</p>

		<p>downside, the following may be sacrificed:</p> <ul style="list-style-type: none"><li>• Application of the Mitigation Hierarchy which prioritises the avoidance of impacts.</li><li>• The opportunity for specialised assessments to be conducted by qualified experts, with data collected in accordance with the Species Protocols and associated Guidelines.</li><li>• Associated with the above, the opportunity for the accuracy and credibility of the Screening Tool to be enhanced by information and data points gathered on what are often remote sites in areas that have not been mapped at a fine scale.</li><li>• Attention to potential cumulative effects as a result of numerous projects being developed in the same area such that habitats are compromised, and challenges arise in respect of benefits to host communities.</li><li>• Ability to glean knowledge from and gain buy-in from local residents.</li><li>• Inclusion of clear management and mitigation measures the feasibility of which have been confirmed by experts in the context of an enforceable and auditable EMPr, linked to unambiguous management objectives and outcomes.</li></ul>		<p>exclusion and the proposed Norm being considered to exclude the activity have been carefully considered and is regarded by DFFE as being relevant for this technology when developed in areas of low or medium environmental sensitivity and when the associated activities integral to the facility are specifically considered by the relevant specialists and any additional impact associated with a high or very high sensitivity can and will be mitigated.</p> <p>The application of the mitigation hierarchy will still be relevant and required as the areas to which this exclusion apply are low and medium sensitivity and for associated activities additional specialist work will be required where areas of high or very high sensitivity are traversed with the linear infrastructure. The specialist verification is still required to be undertaken by taxa specific specialists and the same outcome required as per the current species protocols is to be achieved. The specialists are professionally registered and are bound by their professional ethics to perform within the criteria of their profession and where this is not done the professional body can institute proceedings against them. The proposed Norm has been amended to include cumulative impacts consideration. The requirement for the proponent to undertake a focused consultation has been included into the proposed Norm. An EMPr prepared by an EAP and signed off by the specialists is to be prepared and implemented.</p>
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		<ul style="list-style-type: none"> <li>• An opportunity to require financial provisions for post-closure/de-establishment rehabilitation and monitoring.</li> <li>• An opportunity to explore biodiversity offsets in sensitive areas, with the benefit of adding to the Protected Area network.</li> </ul> <p>BirdLife South Africa urges the Department to contemplate the potential loss of sensitive habitat that could result from a process that can readily be abused by unscrupulous EAPs and applicants. This is a likely consequence given that there is no discretion or powers allocated to the competent authority to refuse registration where projects will have negative environmental impacts. The next CBD COP will see a target of 30x30 for protected areas;- an ambition that relies of astute in-country environmental planning and a commitment to ensuring that key habitats are not fragmented, and that opportunities to expand our formal protected area network and other effective area-based conservation measures (OECMs) are not undermined.</p>		<p>There will be value in the materials used in the plant which can be sold at the time of closure, closure will be orderly as a BA will be required.</p> <p>There should be no need for any biodiversity offset as the activity is to be undertaken in areas of low or medium environmental sensitivity.</p> <p>The DFFE believes that the proposed Norm and the process provides the relevant environmental protection associated with this technology.</p> <p>NEMA makes provision for exclusions and the DFFE believe that this is an appropriate technology to be considered for such an exclusion due to the low impact of the technology on areas of medium or low environmental sensitivity.</p>
1.8.13	<b>BLA</b>	<p>BirdLife South Africa does not support the exclusion Notice as a feasible means of expediting the roll out of RE projects. In our view, the Notice conflicts with fundamental NEMA principles of inclusivity, precaution and transparency. It paves the way for sensitive sites and</p>		<p>The views of BLA are noted.</p>



		<p>species to be negatively affected and sets a dangerous and unwarranted precedent for additional exclusions.</p> <p>If the backlog of applications and lack of resources to review applications is a problem, a wholesale legal reform process that addresses the root of the problem needs to be undertaken in a manner that respects and preserves the integrity of our diminishing ecological resources and upholds the rights of public stakeholders and civil society. The current proposal demonstrates lack of insight into the purpose of the Screening Tool, the limitations of the data layers, and associated gaps in knowledge that affect the sensitivity ratings. There is much to be gained from the Screening Tool, given the time and effort contributed by scientists and experts across the country to ensure that the Tool adds value to EIAs. It would be unfortunate if the benefits of the Tool were undermined by it being used for purposes for which it was not intended and to which it is not suited.</p> <p>Compared to wind energy, the impacts of solar energy on biodiversity are easier to predict and, in the right environments, these impacts can be relatively benign. In previously-disturbed habitats, solar facilities may even result in a positive impact on biodiversity. The proposed exclusion Notice will result in missed opportunities</p>		<p>The exclusion is not being considered due to any backlog of applications or any pressure on resources, the DFFE meets a 100% review timeframe within the regulated timeframe and is adequately resourced to achieve the 100% target. This exclusion is being considered to ensure the effective and efficient implementation of the environmental legislative framework.</p> <p>The screening tool was developed by the DFFE, in addition the data used and the method of determining the environmental sensitivities is also well understood by competent authorities. The DFFE does not share the views of BLA that the screening tool is being undermined.</p> <p>The DFFE does not agree that there are missed opportunities as the areas in which the exclusion will be implemented are areas of low and medium environmental sensitivity, the technology and the associated impacts and mitigation measures are well understood and deemed to be appropriately addressed in the proposed Norm and exclusion process.</p> <p>The views of BLA are noted.</p>
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		<p>to avoid, minimise and offset negative impacts on biodiversity, and could result in significant cumulative impacts on threatened and near threatened species.</p> <p>We believe that there are other ways to expedite the rollout of solar installations that do not amount to a blanket exemption covering potentially sensitive areas. If the de facto purpose of the exclusion is to facilitate the transition to RE, the question that DFFE needs to ponder is what reasonable incentives can be created according to its mandate to protect the environment and promote sustainable development. In this regard it must be stressed that the Basic Assessment is already a relatively fast-track process that is clearly legislated and enforceable. Our suggestion is for DFFE to explore the feasibility of proactive interventions for fast-tracking applications, such as:</p> <ul style="list-style-type: none"><li>• Extending the RED Zones: the CSIR has already done comprehensive studies that could be used as a starting point to expand existing RED Zones, and for additional areas to be demarcated. The Screening Tool could be used in this process to check the sensitivity levels of expanded areas.</li><li>• Dedicating resources to verify and assess environmental sensitivity in priority areas: Existing</li></ul>		<p>The REDZs SEA was commissioned by the DFFE and the value and uses are well understood but not felt appropriate for the objectives to be achieved which is an exclusion.</p> <p>The DFFE has paid for and developed the first screening step, the proponent in line with the polluter pays principle must confirm the environmental sensitivity by procuring the services of taxa specific specialists. The level of protection is regarded as being relevant to the nature of the impact of the proposed facility when developed with areas of low and medium environmental sensitivity.</p>
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		<p>environmental datasets are good at highlighting potential risks that require further assessment, but are generally inadequate to allow development applications to be fast-tracked. The cost of site verification is currently born by developers, who must appoint experts to conduct fieldwork on a site-by-site basis. A more strategic and cost-effective approach would be for DFFE (or provincial authorities) to appoint experts to verify sensitivity for larger priority areas, and to recommend mitigation measures and robust thresholds for development.</p> <ul style="list-style-type: none"> <li>• Allowing for an expedited process for installations on disturbed areas, particularly closed or abandoned mining sites: There are many sites, particularly in Mpumalanga and Limpopo, that have been disturbed by mining or quarrying operations and could be re-purposed for RE projects. Suitable sites could be identified in conjunction with the DMRE, and applicants incentivised to use these sites with exemption from having to go through the full EIA process.</li> <li>• Encouraging municipalities to identify and demarcate appropriate sites in their areas of jurisdiction: Municipalities are well placed to identify suitable areas for RE installations. They ought to be encouraged to identify and include these in their SDFs and EMFs. Such</li> </ul>		<p>These areas would fall within the targeted area for the implementation of the proposed exclusion as they would be of low or medium environmental sensitivity.</p> <p>The suggestion is noted, but please note that DFFE has no authority to require the municipalities to identify these areas and should some municipalities not do this there would be unequal opportunities. DFFE believes that this technology can be excluded when developed in areas of low and medium environmental sensitivity and when the associated activity is confirmed to have impacts which can be mitigated and confirmed to be acceptable by specialists in the field.</p> <p>The suggestion is noted. Provincial competent authorities are able to set up these units without the influence of DFFE, however 90% of competent authorities meet the legislated review timeframe and is therefore able to manage the number of applications being submitted.</p> <p>The suggestion is noted, however large scale solar would unlikely be able to be located in areas already zoned for commercial and industrial development.</p>
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		<p>sites could then be fast-tracked through the EIA Authorisation process or potentially included.</p> <ul style="list-style-type: none"><li>• Requiring that provincial environmental departments set up dedicated RE application review centres: DEADP in the Western Cape has a dedicated section 24G processing centre. A similar approach could be adopted in respect of RE projects. Provincial departments (and the national department) could be encouraged to (temporarily) allocate staff dedicated to reviewing EIA applications for RE projects as expediently as is feasible. Dedicated RE units could also be a source of advice and assistance to project proponents.</li><li>• Offering a fast-track procedure for installations on properties already zoned for commercial or industrial development: Increasingly solar installations will be associated with commercial and industrial ventures already be zoned for commercial or industrial development. Such sites could be fast-tracked through the EIA process.</li><li>• Targeted measures within REIPPP: DFFE should engage the REIPPP office in a search for specific measures and leverage opportunities to counter speculative EIAs. The requirements of REIPPP are more flexible than legislation and the timing for EIAs could be</li></ul>		<p>The suggestion is noted. It is thought that a more streamlined and predictable process will avoid the need to submit speculative applications and to ensure that the applications are submitted closer to the time of construction.</p> <p>The suggestion is noted, it is unlikely that government would have an incentive to purchase additional land.</p>
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		<p>adjusted to allow for a high-level screening, aided by the Screening Tool, followed by a more comprehensive process applicable to preferred bidders.</p> <ul style="list-style-type: none"> <li>• Incentives to target non-sensitive areas: The Screening Tool can be declared an EMI specifically to enable government to identify areas of low sensitivity that can be demarcated and auctioned off to prospective developers of solar projects by national or provincial governments.</li> </ul>		
1.9 1.9.1	<b>Birds and Renewable Energy Specialist Group</b>	The suitability of the Screening Tool as an environmental management instrument. The Screening Tool does help identify potential impacts that require further investigation, but the data are not robust enough to replace the need for thorough assessment.		All information from the screening tool is to be verified by specialists who specialize in the relevant theme.
1.9.2	<b>Birds and Renewable Energy Specialist Group</b>	The requirements for site verification. The procedures to be followed, definitions of sensitivity and the expertise of the appointed specialists all need to be more explicit and aligned to existing Protocols (i.e. Terrestrial Animal Species Protocol for the Specialist Assessment and Minimum Report Content Requirements for Environmental Impacts on Terrestrial Animal Species).		The need to verify the information for the animal and plant species themes has been included and the outcome of the verification has been identified and is as per the species protocols.
1.9.3	<b>Birds and Renewable Energy Specialist Group</b>	Application of the exclusion. Excluding solar PV development in areas confirmed to be of medium sensitivity for fauna could result in the significant, unmitigated, and undocumented loss of		<p>The view is noted but not supported by the DFFE.</p> <p>The Norm includes verification of the environmental sensitivity as identified by the screening tool, and the</p>

		<p>biodiversity. Similarly, excluding linear infrastructure associated with a solar facility from the requirement to obtain an environmental authorisation irrespective of whether this occurs in verified or unverified areas of "very high" and "high" sensitivity could result in significant and irreversible loss of biodiversity. There appears to be no requirement to first attempt to avoid, minimise and then compensate these impacts.</p>		<p>footprint of the facility is only allowed in areas of verified medium or low environmental sensitivity.</p> <p>The requirements for allowing linear infrastructure integral to the facility in areas of high and very high, have been amended to require the specialist to confirm that the mitigation hierarchy has been implemented and that the impacts are acceptable with mitigation and the specialist is required to confirm that the mitigation is included in the EMPR.</p> <p>By developing on the low or medium environmental sensitivity the decision has already been made to reduce impacts and for linear infrastructure the requirement to apply and confirm that the mitigation hierarchy has been included in the notice.</p>
1.9.4	<b>Birds and Renewable Energy Specialist Group</b>	<p>Lack of stakeholder consultation, and discretionary powers of the component authority. Without these safeguards, there seems to be little in place to ensure that the EAPs and specialists undertaking site verifications are competent, and the content of registration reports are of an adequate standard.</p>		<p>The proposed Norm has been amended to include consultation with adjacent landowners and occupiers.</p> <p>In August 2022 the compulsory requirement for EAPs to be registered with EAPASA came into effect. Professionalism is therefore expected and there can be consequences for poor quality and unethical work.</p>
1.10 1.10.1	<b>Wilderness Foundation Africa</b>	<p>Should this application be implemented it will open the door to development in our country's most sensitive areas without seeking alternatives or applying the mitigation hierarchy which prioritises the avoidance of impacts.</p>		<p>The exclusion applies to the development of solar PV facilities which must be developed in areas of low or medium environmental sensitivity. It is only the associated activities which are integral to the facility which could be located on areas of high or very high sensitivity and this has merely been allowed as linear infrastructure will inevitably go through some areas of high or very high sensitivity. These are subsidiary to the proposed development (solar PV) and it has been required that the EAP and specialists indicate how they have incorporated the mitigation hierarchy and what mitigation measures will be applied.</p>

1.10.2	<b>Wilderness Foundation Africa</b>	WFA is also concerned that South Africa will also lose the opportunity to implement offsets in these sensitive areas with the benefit of adding to the Protected Area network.		Please see the response to #1.8.12.
1.10.3	<b>Wilderness Foundation Africa</b>	The gazettement of the above mentioned (GN 2466 in GG 46871 and the intention to adopt the national web-based Environmental Screening Tool as an environmental management instrument (GN 2464 in GG 46867 seeks to undo the intention of Key pieces of legislation, policy and guidelines, and other well thought out documents that have been through the rigours of public participation.		The adoption of the screening tool and the exclusion of solar PV facilities from the requirement to obtain an EA is part of the DFFE's ongoing programme to streamline the environmental authorisation framework and respond to the request of Cabinet and Parliament to streamline and simplify the authorisation processes.
1.10.4	<b>Wilderness Foundation Africa</b>	Even with the above listed legislation and guidelines currently in place we still find inadequate applications being submitted by Environmental Impact Practitioners (EAPs) who are poorly qualified and frequently "cut and paste" information from previous reports that does not even correspond with the correct Province.		All EAPs and specialists must now be registered with their relevant professional bodies which is aimed at improving the quality of work and ensuring that there can be consequences for sub-standard and unethical work.
1.10.5	<b>Wilderness Foundation Africa</b>	The Screening Tool should not be used as a stand-alone decision-making instrument but rather to flag issues of concern and was intended as a guide for the screening step of a conventional EIA. The implementation of this short cut by using the Screening Tool as an Environmental Management Instrument, to enable development, by unqualified EAPs will be disastrous for South Africa's environment.		The screening tool is not used as a stand-alone decision making tool, all the information obtained from the screening tool must be verified and all EAPs/ES's and specialists must be registered by their relevant professional bodies. DFFE does therefore not agree with the concern raised.

1.10.6	<b>Wilderness Foundation Africa</b>	<p>WFA is not supportive of the implementation of the Screening Tool as a fast-track instrument for certain types of development.</p> <p>WFA can also not endorse the blanket exclusion contemplated in the “Exclusion Notice” for the development and expansion of solar photovoltaic installations in South Africa. WFA are of the opinion that significant, negative impacts stand to be sustained in the event that DFFE proceeds with publication of the exclusion which may lead to justification for legal challenge resulting in further delays in the implementation of the transition to renewable energy in South Africa.</p> <p>We therefore urge the DFFE to reconsider the approach proposed in the “Exclusion Notice” and the implementation of the Screening Tool as an Environmental Management Instrument.</p>		<p>Please see the response to #1.10.5.</p> <p>The exclusion is for facilities developed in areas of low and medium environmental sensitivity.</p> <p>The opinion is noted. DFFE has attempted to address the relevant concerns of stakeholders who have provided comment and amendments have been made to the exclusion notice and proposed Norm to reflect the amendments.</p> <p>The request is noted.</p>
1.11 1.11.1	<b>EAP</b>	<p>During discussions with colleagues at Department of Agriculture, Land Reform and Rural Development (DALRRD), it became clear that this Department is loaded with applications for solar photovoltaic installations on agricultural land. Although the sensitivity of agriculture is considered in the proposal from by Department Forestry, Fisheries and Environment (DFFE), does the sensitivity layers of the Screening Tool</p>		<p>The screening tool currently has two pasture classes which are included in the field crop boundaries. These are as follows:</p> <ul style="list-style-type: none"> <li>• Non-pivot irrigated Annual Crop Cultivation / Planted Pastures</li> <li>• Rainfed Annual Crop Cultivation / Planted Pastures</li> </ul>



		include sensitivity of “grazing pastures” or only “crop fields”?	
1.11.2	<b>EAP</b>	<p>By allowing installations of this nature under Activity 1 or Activity 36 of Listing Notice 1; or Activity 1 of Listing Notice 2; together with any associated activity identified in Listing Notice 1, 2 or 3 of the EIA Regulations of 2014 as amended are leaving room for major environmental risks. This given that:</p> <p>The footprint extent would not matter and some of these applications range up to 200+ ha. Can there not at least be a threshold from Listing Notice 2? If PV Solar as an activity is excluded from Environmental Authorisation, it would be anticipated that there would be wide spread comments from developers and applicants from other sectors and activities as well. There is a real concern that there will be a perception created among the public and proponents of other development types that the process to obtain environmental authorisation is an administrative process of null and void value.</p> <p>Some areas may have a “medium” or “low” sensitivity in terms of the environmental sensitivity, but there remains a risk of overlooked features. Although a sensitivity screening may confirm the status quo as indicated during the consultation webinar held by IAIAAsa, there is still a concern in terms of how this will be verified if DFFE will</p>	<p>The comment is noted. The solar PV technology has been specifically chosen for this exclusion as these facilities are well suited to be located in areas of low and medium environmental sensitivity. In addition, when developed in areas of low or medium environmental sensitivity the impacts and mitigation measures are well understood. This cannot be said for all other activities as indicated in the comment. DFFE does not support the notation that because one technology is excluded there is no need for other activities to go through the EIA process. The DFFE has implemented exclusions for other activities for example the first phase of the Square Kilometre Array, and the provincial environmental department in Gauteng has excluded certain identified activities in zone 1 and 5 of the Gauteng EMF. The DFFE does intend to exclude other activities which are relevant in time as the use of instruments and exclusions are part of an ongoing programme to simplify and streamline the environmental authorisation framework.</p> <p>Site verification is required to identified any overlooked risks or sensitivities.</p> <p>Verification is to be done by professional specialists and EAPs.</p> <p>Please refer to #1.2.2.</p>

		<p>not be processing these registrations but merely registering them.</p> <p>Public consultation with the opportunity to gain valuable insight from local knowledge on potential sensitive areas, community and social concerns as well as stakeholder input will be lost if this type of development is excluded from the need to obtain environmental authorisation. How will DFFE manage complaints from the general public in the event of comments or complaints after construction of these facilities.</p> <p>Associated activities may include roads, sub-stations, abstraction of water, temporary batching plants depending on the installation platforms, not to mention the vast areas to be cleared of vegetation and potential risks of erosion etc. associated with the construction site camp. Who will ensure compliance with the Environmental Management Programmes (EMPRs) and rehabilitation of these construction site camps.</p>		<p>The public will have access to the appeal process as all administrative decisions are appealable. The register of projects excluded will be uploaded to the website of the competent authority. This requirement has been included in the proposed Norm.</p> <p>The proponent is required to notify the competent authority 14 days prior to commencement to facilitate compliance monitoring which is the current process followed in the EIA process. No annual audit is required through the registration process, however as construction is usually between 12 to 14 months, it is not anticipated that an audit would be required within that period, as the activity does not have an operational component and auditing must be restricted to the construction phase.</p>
1.12 1.12.1	<b>Savannah environmental</b>	It is clear that the obstacle to implementation of such projects is not the EIA process but rather all the other processes required. What processes are being considered for these other permitting processes and will these be aligned with the registration process proposed within this Gazette?		The NatJoints process is considering additional streamlining between all authorisations and work is underway.
1.12.2	<b>Savannah environmental</b>	There is no provision for public participation or consultation with		

		adjacent landowners, even after the issuing of the registration such as is the case for registrations under EMF exclusions (such as that for the Gauteng Province EMF). It is every citizen's right in terms of the Constitution of the Republic of South Africa to be informed of a proposed development that might impact their livelihood / environment. It is suggested that there should be provision for, at least notification of adjacent landowners and an opportunity for them to comment on the proposed registration, as well as a requirement to notify these parties once the project is registered.		The comment is noted and the requirement to consult with adjacent landowners / land occupiers has been included in the notice. Notification requirements once the registration process has been concluded has also been added.
1.12.3	<b>Savannah environmental</b>	There is no provision for an appeal process in terms of the Gazette. Provision for this should be made as is the case for EMF registration processes (such as the Gauteng EMF).		An appeal is always possible when an administrative decision is taken. The notice has been amended to specifically identify this.
1.12.4	<b>Savannah environmental</b>	Specialists are not required to provide an assessment of the impacts but must provide mitigation measures. The concern in this regard is that these mitigation measures are likely to be generic and not site-specific. There is the potential for residual impacts to be high in instances where specific impacts are not mitigated or managed appropriately.		The sites on which the exclusion is being considered are of low and medium environmental sensitivity which would mean that impacts are not site-specific but generic. Where the linear infrastructure may impact on areas of high or very high, there would be limited impact and the specialists and EAP/ES must consider the acceptability of the impacts with mitigation and to ensure that the mitigation measures are included in the EMPR. Site sensitivity verification is however required through a physical inspection.
1.12.5	<b>Savannah environmental</b>	The EMPr is only applicable for construction. It is suggested that an operational EMPr should also be required as many impacts such as erosion, alien plant invasion, impacts on watercourses as a result of		Solar PV as a technology is an activity which does not have an operational component as the long term auditing requirements were not regarded to be necessary when making the 2014 amendments to the EIA Regulations. The same timeframes for the EMPr required in terms of the proposed exclusion will be applied as in the EIA

		sedimentation and spillages, and impacts from inappropriate waste management (such as disposal of broken panels) occur during operation. These must be managed.		dispensation. Waste management does not need to be audited as the activity would be on land that is leased and the landowners would not allow poor waste management. Solid waste management and hazardous substances management are part of the controls to be included in the EMPr.
1.12.6	<b>Savannah environmental</b>	There is no provision for the authority to include project-specific conditions as part of the registration. Will all requirements now be included in the approved EMPr for a project? Is the DFFE going to provide any additional conditions which should be included in the EMPr?		The technology and the mitigation measures are well understood, there should be no need for specific conditions and as this is an activity which does not have an operating component as the impacts have been determined not to be long term. Any management requirements can be included in the EMPr. Construction impacts will be addressed in the EMPr which is required as part of the registration process identified in the proposed Norm.
1.12.7	<b>Savannah environmental</b>	It is recommended that provision be included for compliance monitoring of the projects during construction and operation in line with the requirements of NEMA and the EIA Regulations.		The requirement to notify the competent authority 14 days prior to commencement to allow for compliance monitoring has been added to the exclusion notice.
1.12.8	<b>Savannah environmental</b>	The process proposed is unlikely to meet the requirements of Lenders who require compliance with the IFC Standards and Equator Principles. It may happen that developers will now need to undertake additional environmental assessments in order to meet these requirements. This will result in significant delays in implementation of projects.		Several developers have made inputs and have not identified this concern, however, what DFFE is ensuring is that the correct level of attention is applied to specific technologies, if a lender has additional requirements that is unfortunate but must then be complied with.
1.12.9	<b>Savannah environmental</b>	It is not clear how the National DFFE and the Provincial Governments will work on the standard together. Have the Provincial Governments been consulted thoroughly? If the Provincial Government is the competent authority, will they have enough knowledge and		The instruments are developed in consultation with provincial competent authorities as environment is a concurrent function.  It is unfortunate if some provincial competent authorities are not up to speed with the REDZs as you have indicated, but to date provincial competent authorities have not

		<p>understanding of the standard to ensure that the correct advice is provided to the consultants? We have had experiences where the provincial authorities are not aware of the current regulations for the REDZ, which is concerning considering these have been in place since 2018.</p>		<p>authorised renewable energy projects as they were all processed through the REIPPPP. This will change now as not all projects will be procured through the REIPPPP. Training will be provided as part of this implementation.</p>
1.13 1.13.1	<b>Natural Justice</b>	<p>Although solar energy projects have fewer negative effects than fossil fuel projects, they still might. This is especially true for medium-or large-scale projects or when there are many projects in a single area.</p> <p>Natural Justice is deeply concerned about the proposed blanket and overbroad exclusion of activities from the environmental impact assessment (EIA) process and the proposed use of the Screening Tool as a virtual substitute for EIA.</p> <p>Natural Justice strongly urges that both proposals be withdrawn.</p>		<p>The comment is noted.</p> <p>The concern is noted, however the exclusion is not a blanket exclusion, it applies only to solar PV facilities developed on land confirmed to be of low or medium environmental sensitivity. The screening tool is not a substitute for the EIA process and is used in the same manner as in the EIA process i.e. for screening. The information from the screening tool is to be verified through an onsite inspection undertaken by taxa specific specialists.</p>
1.13.2	<b>Natural Justice</b>	<p>Conducting EIA on the development and expansion of all proposed solar PV installations, with robust consultation with all stakeholders, is fundamental to informed decision making. Greenlighting listed activities in areas that the proposed Environmental Screening Tool deems to be low or medium environmentally sensitive without an EIA puts the environment, communities, and public health at risk.</p>		<p>Please see the response to #1.13.1. Also please note that the need for consultation with adjacent landowners and land occupiers has been included as a requirement in the proposed Norm.</p>

1.13.3	<b>Natural Justice</b>	<p>Should the Exclusion become law, it will result in sacrificing administrative justice, principles of participatory democracy, the importance of public participation, communities' rights, public health, and protection of the environment for misguided attempts at expediency. The results will go against the principle of environmental justice as stated in NEMA, with adverse environmental impacts felt by affected communities or individuals who will not be entitled to a voice in these projects.</p> <p>The constitutional right to just administrative action in terms of PAJA will be violated should there be no avenue for review of the application of the Screening Tool, nor any opportunity to appeal the Screening Tool results should a critical area be missed because of inadequate mapping or be poorly applied and miss a critical risk or potential impact.</p>		<p>The comment is noted but not supported. There is protection for the environment and consultation with affected parties is required.</p> <p>Construction impacts will be mitigated through an EMPr which is enforceable through section 49A(1)(b) of the Act.</p> <p>The proposed Norm has been amended to require a registration register to be uploaded to the competent authority's website. The consultation requirements with adjacent landowners and occupiers requires that the place at which the registration documents can be view be identified. Specialists are required to undertake a physical inspection to verify the low/medium sensitivity rating.</p>
1.13.4	<b>Natural Justice</b>	<p>The Exclusion fails to provide adequate time and resources for meaningful consultation on a proposed installation project. It does not give the right to bring objections or have written reasons for approval of a proposed project. The rights of interested and affected parties to just administrative action, as guaranteed in Section 3 of the Constitution and the PAJA, are thus violated. The Exclusion will lead to more projects that have already begun based on the Screening Tool being judicially</p>		<p>Please see the response to #1.13.2 and #1.13.3.</p> <p>Please see the response to #1.8.6.</p>

		<p>appealed or reviewed by communities whose participation rights have been infringed and whose local knowledge of the potential environmental and public health impacts of the project has not been heard, much less duly incorporated into appropriate environmental assessment and siting analysis.</p> <p>The impact of the Exclusion will be felt in medium or large projects that will have investment or finance involved. This will lead to a decrease in these types of projects and adversely affect the energy transition as required.</p> <p>The principles that inform and govern the consultation process, as outlined in NEMA and the EIA Regulations, should be used to guide public participation. The EIA Regulations prescribe mandatory conditions by which notice must include posting on public media sites; an adequate reasonable time; and prior arrangement.</p> <p>Without transparency, there is no way to hold the government accountable for its actions or to assess whether the project is upholding its constitutional and NEMA commitments.</p>		<p>The screening tool is no longer to be adopted and the site sensitivity identified by the screening tool is to be verified by a physical site visit.</p> <p>The view of Natural Justice is not supported. If international lenders require additional assessments, these are done outside of the existing environmental processes.</p> <p>NEMA makes provision for the exclusion of activities and must have anticipated these, therefore adherence to the requirements of the EIA Regulations is not required, which also must have been anticipated. The same principles that are applied in the consultation requirements as contained in the EIA Regulations are followed in the proposed Norm.</p> <p>The DFFE believe that the process contains sufficient transparency to allow affected stakeholders to be informed. This is deemed acceptable due to the ambit of the impacts.</p>
1.13.5	<b>Natural Justice</b>	The Notice, which was gazetted on 06 September 2022, provides 30 days for the public to make comments on the Minister's intention to adopt the Tool as		

		<p>an Environmental Management Instrument.</p> <p>Thirty days is a short period of time for the public to make a meaningful response to the Notice.</p> <p>A meaningful response would entail a thorough understanding of the Tool including its authority, use, purpose, mechanism, and potential risks. In addition, the Minister invited public comments on Consultation on the Intention to Exclude the Development and Expansion of Solar Photovoltaic Installations from the Requirement to Obtain an Environmental Authorisation Based on Compliance with an Adopted Environmental Management Instrument simply two days after, on 08 September 2022 (the Consultation).</p> <p>Natural Justice submits that the 30-days' timeframe to consider the Notice and its application in the Consultation falls short of the standard of public participation as Constitutionally protected to comment on the Notice within a reasonable amount of time.</p> <p>As such, Natural Justice submits that the Minister has infringed the Constitutionally protected right, and the Minister must extend the period to comment on the Notice.</p>		<p>The notices were not voluminous. The standard 30 day comment period was regarded as being sufficient to engage with the content. The proposed Norm will be gazetted for comment again to ensure that stakeholders can comment on the amendments made.</p> <p>The screening tool has been available for use and exploration since early 2019. The screening tool includes a webinar which provides step by step guidance on how to use the tool, download information and print reports among others.</p> <p>The submission is noted.</p>
1.14 1.14.1	<b>CSIR</b>	It is suggested that the registration form must include an I&AP list and proof of		It is not intended that the proposed Norm would require a large I&AP list, the consultation is intended to focus on



		notice to I&APs of the intention to register a project, so that I&APs may be aware of their opportunity to scrutinise and appeal a registration outcome.		affected stakeholders. This requirement has been included in the exclusion notice. See also #1.13.3.
1.15 1.15.1	<b>Biodiversity Law Centre</b>	<p>The BLC is concerned that the proposed exclusion may expedite the rollout of renewable energy (solar PV) projects to the potential detriment of indigenous species and ecosystems. We say this because renewable energy installations often extend over vast areas that are relatively undisturbed, and the environmental impact assessment (“EIA”) of the areas in question prior to project implementation therefore becomes critical. The potential impacts associated with wind and solar PV expansion have been deemed significant enough for the IUCN to publish guidelines for Mitigating biodiversity impacts associated with solar and wind energy development. The following is recorded in the Guideline:</p> <p>Renewable energy development, including solar PV, is going to increase significantly over the next few years as government aims to meet the projected targets set out in the Integrated Resource Plan, 2019. In order to ensure that renewable energy is developed in a manner that does not come at an unacceptable cost to nature, it is imperative that development of solar PV is carefully planned and managed, and that the potential impacts of such</p>		<p>The concern is noted.</p> <p>The sensitivity is to be confirmed by taxa specific specialists.</p> <p>The proposed registration process identified in the proposed Norm includes the verification of the environmental sensitivity as identified by the screening tool and an EMPr is required as part of the process.</p> <p>The current registration process required by the Norm is thought to provide the necessary consideration of environmental sensitivity and appropriate mitigation measures.</p>

		development are carefully assessed and mitigated (where necessary) through the imposition of project-specific conditions of authorisation. This cannot be achieved with the process envisaged by the Exclusion Notice.		
1.15.2	<b>Biodiversity Law Centre</b>	<p>One of the primary concerns we have with the Exclusion Notice is that the need for the procedure it endorses is not justified. In this regard, we wish to emphasise that DFFE has already adopted reasonable legislative measures to streamline the EIA process in relation to renewable energy developments.</p> <p>There is consequently already a process in place that expedites the development of solar PV energy facilities located in areas which have, through the SEA, been identified as suitable for such development.</p> <p>We are concerned that notwithstanding the SEA and designation of the REDZ and concomitant procedures for applying for environmental authorisation, the Exclusion Notice now seeks to impose a blanket exemption applicable across the entire country, including areas which are not covered by the SEA. We are of the view that this approach is unjustified and undermines DFFE's efforts to develop renewable energy in areas which are best suited for</p>		<p>Please see the response to #1.8.2.</p> <p>The process in place still requires an EA before commencement, while the nature of the impacts associated with the development of solar PV facilities in areas of low and medium environmental sensitivity can be excluded based on compliance with the screening and site sensitivity verification process, the focused consultation process and the preparation of an EMPr containing relevant mitigation measures prepared by specialists and a registered EAP.</p> <p>The information obtained through the SEA process was extrapolated to apply to the entire country and included the country information prepared by several data custodians, including SANBI and the department responsible for agriculture, etc. This information is then to be confirmed through a site specific inspection by various taxa specific specialists and experts. The proposed exclusion is only to be applied if projects are proposed in areas of low or medium sensitivity,</p>

		<p>such development, as identified by the SEA.</p> <p>It therefore does not appear that the EIA and environmental authorisation process is an impediment to rolling out renewable energy development. In addition, the Scoping and EIR process has been truncated to a basic assessment process when occurring in a REDZ, and decision-making timelines have also been cut by almost half to 57 days. Consequently, the exemption included in the Exclusion Notice appears to be neither necessary nor justified, and rather opens the door to potentially deleterious development without the necessary environmental scrutiny.</p>		We draw you attention to #1.8.2.
1.15.3	<b>Biodiversity Law Centre</b>	<p>At an online stakeholder meeting with Dr. Dee Fischer on 4 October 2022, it was repeatedly mentioned that DFFE has processed over 900 renewable energy applications and it seeks to manage the number of appeals it adjudicates. To the extent that DFFE wishes to alleviate its own administrative burden by excluding solar PV from having to obtain an environmental authorisation, this is not a justifiable reason for deviating from impact assessment procedures and regulatory approval processes designed to safeguard the environment.</p>		We draw you attention to #1.8.2. and #1.8.13.
1.15.4	<b>Biodiversity Law Centre</b>	<p>Integrated environmental management requires:</p>		

	<ul style="list-style-type: none"> <li>• the integration of NEMA section 2 principles of environmental management into all decisions that may affect the environment;</li> <li>• the identification, prediction and evaluation of actual and potential impacts on the environment, socio-economic conditions and cultural heritage, the risks and consequences and alternatives and options for mitigation of activities;</li> <li>• ensuring that the effects of activities on the environment receive adequate consideration before actions are taken in connection with them; and</li> <li>• crucially, ensuring adequate and appropriate opportunity for public participation in decisions that may affect the environment.</li> </ul> <p>None of the above requirements are met by the Exclusion Notice. Not only are the NEMA principles overlooked, particularly in relation to public participation, but there is inadequate identification, prediction and evaluation of impacts. There is furthermore no opportunity for the assessment of cumulative impacts, which becomes particularly important in circumstances which contemplate the blanket approval (and associated proliferation) of facilities which may have significant, negative cumulative impacts on social and ecological aspects of the environment. We have already emphasised our</p>		<p>The comment is noted but not supported by DFFE. The principles of NEMA are considered and the exclusion has been amended to specifically deal with consideration of identified and predicted of environmental impacts is considered, mitigation measures are to be included and focused public consultation is ensured.</p> <p>The need to consider cumulative impacts has been included in the exclusion notice.</p>
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		concern at the lack of opportunity for public participation.		
1.15.5	<b>Biodiversity Law Centre</b>	<p>We are primarily concerned that there is insufficient justification for the wholesale exclusion from the need to obtain environmental authorisation for solar PV facilities. In this regard, a number of key environmental regulatory safeguards that are usually implemented through an EIA and environmental authorisation will be forfeited. Specifically:</p> <ul style="list-style-type: none"> <li>• the mitigation hierarchy, which calls for impacts to first be avoided, will not be implemented;</li> <li>• linked to the absence of implementation of the mitigation hierarchy, valuable opportunities to offset residual environmental impacts through conditions in environmental authorisations will be lost;</li> <li>• specialised assessments to be conducted by qualified experts, with data collected in accordance with the species protocols and associated guidelines, will not be conducted;</li> </ul> <p>the opportunity to impose conditions (in an environmental authorisation) in relation to the activity, thereby mitigating potential negative impacts associated with a solar PV facility (should the activity be authorised) will be lost;</p>		<p>Please see the response to #1.8.2. and #1.8.13.</p> <p>Please refer to #1.7.1, #1.8.12 and #1.9.3.</p> <p>Please refer to #1.8.12.</p> <p>Specialists with the relevant experience and expertise are required to undertake site verification inspections. The notice has been amended to identify the two species themes and the same outcomes required in the protocols are set as requirements in the proposed Norm.</p> <p>Please refer #1.12.5.</p> <p>The construction period for a solar PV facility is between 12 to 24 months. Management of mitigation measures</p>

		<ul style="list-style-type: none"> <li>• no provision can be made for the regular auditing of compliance with the EMPr, which is in any event not enforceable;</li> <li>• because no environmental authorisation is issued, the registration of solar PV facilities falls outside of the ambit of the compliance and enforcement provisions contained in Part 2 of Chapter 7 of NEMA; and</li> <li>• there is no procedure or penalty in place for the commencement of construction of a solar PV facility prior to registration (akin to the section 24G process), which means that there is little incentive to register a facility in the first place.</li> </ul>		<p>during this time will be facilitated through the implementation of an EMPr and compliance monitoring can be undertaken by the relevant competent authority. There would be no requirement for auditing after this time as there is no operating component to this activity.</p> <p>The commencement of any activity must be in compliance with the law. If there is non-compliance with the registration requirements, the commencement of the activity would not be sanctioned and would be subject to sanction through NEMA.</p>
1.15.6	<b>Biodiversity Law Centre</b>	In light of the above concerns, the BLC is of the view that the blanket exclusion contemplated in the Exclusion Notice is not justified, and further that significant, negative impacts stand to be sustained in the event that DFFE proceeds with publication of the exclusion.		The concern is noted, however this process does not result in a blanket exclusion.
1.15.7	<b>Biodiversity Law Centre</b>	We are also concerned that in the absence of regulatory control measures in place to monitor compliance with EMPr's, the potential loss of sensitive habitat could result with no opportunity to mitigate or offset. Furthermore, the process could easily be abused by unscrupulous EAPs and applicants. This is a likely consequence given that there is no discretion or powers allocated to the competent authority to		<p>The EMPr would be able to be monitored as the holder is required to inform the competent authority 14 days prior to the commencement of the construction, as is the current procedures. The relevant competent authority is therefore able to undertake compliance monitoring.</p> <p>Mitigation is provided for through the preparation of the EMPr. Should an EAP or proponent intend to be unscrupulous the process being followed would not make any difference. The requirement for the specialists and</p>

		<p>refuse registration where projects will have negative environmental impacts.</p> <p>In the absence of provisions rendering failure to obtain registration prior to development an offence, there is little incentive for project proponents to even bother with the registration process in the first place.</p>		<p>EAP/ES to be registered is intended to mitigate against unscrupulous actors.</p> <p>Please refer to #1.4.2, 1.8.7. and 1.15.5.</p>
1.15.8	<b>Biodiversity Law Centre</b>	<p>The DFFE has other options available to expedite the roll out of solar PV energy rather than the exclude it from the need to obtain environmental authorisation. Declaration of the REDZ and the procedure to be followed (namely a basic assessment process) if the proposed renewable energy facility falls within one of the REDZ provides an adequate mechanism for expediting renewable energy development in a manner that is sensitive and responsive to environmental, social and economic constraints. In this regard we reiterate BirdLife's comment that the CSIR has already done comprehensive studies that could be used to expand existing REDZ, and for additional areas to be demarcated. The Screening Tool could be used in this process to check the sensitivity levels of these areas.</p>		<p>Please refer to #1.8.2. and #1.8.13.</p> <p>The recommendations from BLA have been considered and responded to under #1.8.13.</p>
1.16 1.16.1	<b>NECXON Alternative Energy</b>	<p>Firstly we are in agreement with the overall proposal.</p>		<p>The agreement is noted.</p>
1.16.2	<b>NECXON Alternative Energy</b>	<p>Will a similar regulation be issued for wind projects?</p>		<p>There is risk involved with bird and bat collisions which will need further work before an exclusion for wind could be considered.</p>

<p>1.17 1.17.1</p>	<p><b>South African Property Owners Association</b></p>	<p>SAPOA therefore urges the DFFE, DMRE, NERSA, Eskom, local government structures and municipal electricity distributors to unlock the potential of electricity customers in general, and SAPOA members in particular, to become part of the electricity supply solutions in South Africa, by updating, modernising and reducing unnecessarily restrictive policy, legislation and regulations which serve to inhibit such investments.</p>		<p>The comment and support is noted.</p>
<p>1.17.2</p>	<p><b>South African Property Owners Association</b></p>	<p>As a matter of principle, and in general:</p> <ul style="list-style-type: none"> <li>• SAPOA supports clarity and consistency of definitions and terminology.</li> <li>• SAPOA supports increased policy, regulatory, planning and pricing certainty.</li> <li>• SAPOA supports reducing unnecessary regulatory red tape.</li> <li>• SAPOA supports simplified and streamlined regulatory and environmental compliance processes.</li> <li>• For qualifying solar PV installations, SAPOA supports the replacement of a full environmental authorisation process with a simplified DFFE registration process.</li> <li>• For distributed, embedded and self-generation installations in general, and solar PV installations in particular, SAPOA supports exemption from licencing by NERSA, and its replacement with a</li> </ul>		<p>The support is noted.</p> <p>The support is noted.</p> <p>The support is noted.</p> <p>The support is noted.</p> <p>The support is noted.</p> <p>The support is noted.</p> <p>The NERSA process has been streamlined as part of a separate process in government.</p>



		simplified and streamlined NERSA registration process.		
1.17.3	<b>South African Property Owners Association</b>	<p>SAPOA welcomes and supports the proposed Schedule published for public consultation</p> <p>The intention by the DFFE to exclude the development and expansion of qualifying solar PV facilities, including any associated activity or infrastructure, from the requirement to obtain environmental authorisation is welcomed and supported by SAPOA and its members.</p> <p>As such SAPOA believes it is right and proper for the DFFE to implement sensible and rational processes to exclude qualifying solar PV facilities from the requirement to obtain environmental authorisation, and to remove any unnecessary regulatory red tape in order to reduce this burden.</p> <p>Furthermore, the reduction of unnecessary red tape holding back and delaying the construction of roof-top and ground-based solar PV (and other) renewable energy projects in South Africa has been identified by the President as requiring urgent attention in order to expedite the delivery of new generation capacity to the South African grid.</p>		<p>The support is noted.</p> <p>The comment is noted.</p> <p>The comment is noted.</p> <p>Roof-top solar does not require environmental authorisation and the other constraints which delay the rapid roll out of this technology is being dealt with through other government interventions.</p>

		<p>It must be stressed that SAPOA is not advocating the removal of all regulatory processes in this sector, but SAPOA supports the DFFE's efforts to streamline environmental compliance processes, and to remove unnecessary regulatory processes that serve to delay commencement of construction of roof-top and ground- based solar PV (and other) renewable energy projects in South Africa.</p>		<p>The comment is noted.</p>
<p>1.18 1.18.1</p>	<p><b>Susanna Nel</b></p>	<p>Public Participation - It was stated that the public participation followed during the town planning application will suffice and that there is no reason why a Public Participation Programme (PPP) is also required in terms of NEMA.</p> <p>Most concerning is that there is no place for mitigation within the town planning PPP processes. By means of an example: the neighbouring farmer has a thriving eco-tourism / hunting business and the visual impact of a 100MW solar farm can kill such a business if not properly mitigated. If the neighbour becomes aware of the solar farm only during the town planning PPP process it is too late for mitigation. Mitigation in this instance could be to move the proposed solar facility to a different location on the same farm and/or site specific visual impact mitigation such as tree planting, screening, etc. Should a different location on the same farm be used, specialist studies will again be</p>		<p>The comment is noted, the proposed Norm has been amended to include consultation with adjacent landowners and land occupiers.</p>

		<p>required, which is not allowed for in the town planning process.</p> <p>Surely the DFFE knows that the PPP undertaken in terms of NEMA is much more comprehensive? To mention but one obvious issue, the IAP register in the town planning PPP process mainly focusses on the directly adjacent neighbours and not other organisations such as farmers' associations, rate payers association, wildlife NGOs / private organisations, etc. The impact of a huge solar facility is more far reaching than just the directly adjacent neighbour.</p> <p>The local communities has an intimate knowledge of the area in which they reside and it is a common occurrence that issues, which could easily have been overseen by the EAP/specialists/professional team, are brought to the attention of the EAP by the public.</p> <p>It is incomprehensible why the lack of PPP can be justified in any way. For example: public participation for a 100m power line is required, even if it falls within a STC (and we agree to this) but a solar facility of a 100MW on ±200 hectare doesn't require any PPP. There is zero rationale behind this.</p>		<p>Affected stakeholders will be consulted.</p> <p>Land occupiers will be consulted through the process.</p> <p>The concern is noted. Focussed consultation has now been provided for in the proposed exclusion.</p>
1.18.2	<b>Susanna Nel</b>	It is highly alarming that the services of a registered EAP are not required to		The services of an EAP are required as well as registered specialists. The notice has been amended to include the

		oversee/manage the specialists and subsequent registration of the facility. This means that the developer has everything in his hands and there is absolutely no independency. We request that the services of a registered EAP are compulsory.		requirement for the specialists to be taxa specific for the species themes which have also now been included.
1.19 1.19.1	<b>Indalo private game reserve association</b>	<p>Indalo's main concerns with excluding solar PV installations from requiring an EA include:</p> <ul style="list-style-type: none"> <li>• Setting a precedent to make the same exclusion for other projects, such as wind energy, which may have greater environmental impacts;</li> <li>• The lack of public participation and consultation in the proposed registration process;</li> <li>• The Screening Tool is meant to be used a starting point and is not always accurate on the ground.</li> </ul>		<p>It is the intention of DFFE to ensure that all relevant activities are managed in line with the impacts that they pose to the environment. However, each exclusion will require consultation through gazetting, as such I&amp;APs will be able to provide input.</p> <p>The concern has been noted and the PP requirements extended to adjacent landowners, land occupiers and NGO's.</p> <p>All information from the screening tool is to be verified by specialists.</p>
1.19.2	<b>Indalo private nature reserve association</b>	Another main concern is that an important part of the EIA process would be skipped – that of public participation. Stakeholders, as well as Interested and Affected Parties have the fundamental right to administrative justice and to receive notice of, as well as comment on, any such listed activities taking place. This is outlined in the Promotion of Administrative Justice Act, the NEMA, the EIA Regulations and the Code of Ethics that bind EAPs in terms of their registration. All of these emphasize the		The comment is noted and consultation requirements have been set in the proposed exclusion to be undertaken for adjacent landowners, land occupiers and NGO's.

		<p>need to consult with IAPs. According to section 2(1)(f) of NEMA: “The participation of all interested and affected parties in environmental governance must be promoted, and all people must have the opportunity to develop the understanding, skills and capacity necessary for achieving equitable and effective participation, and participation by vulnerable and disadvantaged persons must be ensured.”</p>		
1.19.3	<b>Indalo private nature reserve association</b>	<p>Hand in hand with the right to consultation is the right to appeal. If IAPs have not been informed of the process of the development, do they have the right to appeal? How do they go about this, and how do they get all the relevant and important information to create a scientifically sound appeal if they have not been given access to reports developed for the registration of the project? We once again stress the importance of NEMA and the right to administrative justice. It is not fair to expect all parties to regularly check registration databases to determine if they may be affected by a project.</p>		<p>All administrative decisions are appealable and the proposed Norm has been amended to indicate that the provisions of the Appeal Regulations, 2014 will apply. The ability to appeal was already possible but explicit reference thereto has been included in the proposed Norm.</p> <p>The concern has been noted and is addressed.</p>
1.19.4	<b>Indalo private nature reserve association</b>	<p>With regards to the Screening Tool, we understand that it was designed to apply to the scoping stage of the EIA process, to determine which aspects needed to be further investigated by a specialist in order to create a more thorough, and efficient EIA process. However, the screening tool is not concrete evidence for the impacts that may be faced, it</p>		<p>Please refer to #1.4.1.</p>

	<p>gives potential sensitivities that need to be investigated on the ground for confirmation through a site verification. Removing the need for site verification, in these often remote, and potentially broadly mapped areas in terms of sensitivity, potentially puts many aspects of the environment, including biodiversity, water resources, and heritage sites, among others, at risk. Thus, repurposing the Screening Tool to expedite projects only has negative outcomes for the environment, as opposed to limiting development in sensitive</p> <p>Moreover, including “Medium” sensitivity areas for “terrestrial biodiversity inclusive of fauna, flora, avifauna and ecosystems” (clause 3.1.2.1) is strongly disagreed with as these areas are important for site verifications, especially in more remote areas that may not have as fine sensitivity mapping. Additionally, the linear infrastructure that accompanies a solar facility should not be allowed through verified or unverified “Very High” or “High” sensitive areas. Roads, powerlines, and substations have been shown to have significant negative impacts on biodiversity, for example, disrupting bird flight paths, roadkill, and fragmenting habitats. This goes against the NEMA principle to conserve and protect the environment. Renewable energy developments should not be</p>		<p>Site verification of the screening tool information is required through the registration process.</p> <p>The sensitivity of all themes identified are to be verified on site as part of the registration process. The two species themes have been included for consideration and site verification purposes.</p> <p>The exclusion notice has been amended to include the need for a specialist to confirm the mitigation and suitability for development after mitigation. The concerns raised would be addressed when rendering such a professional opinion.</p>
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		detrimental to the environment and should not put important biodiversity species at risk.		
1.19.5	<b>Indalo private nature reserve association</b>	Another important point is that international and listed companies must adhere to the requirements set out by their stakeholders and lenders. These include ESG policies, World Bank and IFC Principles, and Equator Principles. The World Bank and IFC Standards have requirements for environmental, social and health impact assessment (ESHIA). These requirements would not be met if a thorough EIA Process is not conducted, and thus many of these companies, which participate in the REIPPP, would not be able to secure funding for the development.		Please refer to #1.12.8.
1.19.6	<b>Indalo private nature reserve association</b>	Indalo warns against the use of the Screening Tool to fast-track certain developments as the negative implications from this are far-reaching and can have cascading negative effects which were not originally planned. While the Screening Tool is an incredibly helpful tool for the scoping phase of an EIA, it has certain limitations that cannot, and should not, be overlooked. All parties have the right to administrative justice through public consultation; protected areas, both public and private, are looking to expand in many parts of the country, and this draft notice puts expansion plans at risk; sensitive habitats are likely to be lost if this is gazetted; this would create inconsistencies with previously gazetted		<p>The screening tool is not used to fast track development but is used to identify certain environmental sensitivities which are to be verified by a physical inspection by registered and independent specialists.</p> <p>Protected areas including their expansion strategies have been included in the information on the screening tool and would be identified.</p>

		<p>Guidelines, including NEMA; there will be conflicts with international commitments, the discretion of the Competent Authority will be undermined, and EAPS and other developers will be able to abuse the screening tool and the process for their own financial gain. These are some of the main negative impacts of this draft notice. Indalo believes there are other, better, ways to fast-track the growth of solar PV in this country. The Basic Assessment Process is already relatively short. If the purpose of the exclusion is to facilitate the transition to renewable energy, this needs to be done in a way that promotes sustainable development while protecting the environment. Some suggestions are:</p> <ul style="list-style-type: none"> <li>• Allow for an expedited process for solar PV projects on largely disturbed areas, e.g. abandoned mining sites or properties that have been previously zoned for commercial/industrial development.</li> <li>• Dedicate time and resources to assess the environmental sensitivity in priority areas</li> <li>• Create renewable energy review panels in regional/provincial environmental departments</li> </ul>		<p>The screening tool is not able to be manipulated, the information in the report is produced automatically without any input from an EAP/ES or specialist.</p> <p>The recommendations have been noted.</p> <p>Please refer to the responses in #1.8.13. Largely disturbed areas will in all likelihood fall within the "low" or "medium" sensitivities which is the focus of the proposed exclusion.</p>
<p>1.20 1.20.1</p>	<p><b>Environamics</b></p>	<p>We want to applaud the Department for their efforts in streamlining the EIA process for solar PV installations as well as their thorough consultation with the</p>		<p>The support is noted.</p>



		public to date. In this regard, we would like to submit the following comments on the proposed regulations:		
1.20.2	<b>Environamics</b>	The proposed regulations refers to site sensitivity verification being required and the use of any available desktop information. It is not clear whether a site visit will be required as part of the site sensitivity verification or whether a desktop analysis will suffice.		The notice has been amended to clarify that a physical inspection is required.
1.20.3	<b>Environamics</b>	It is noted that the competent authority may be the provincial authority. Our concern are raised with regards to their capacity and competence of the provincial authorities in dealing with these registrations. According to regulation 7.1 the application for registration may be submitted up to 15 days prior to the expected commencement date of the proposed development or expansion while regulation 9.1 states that the application for registration must be processed and a registration number provided within 10 days. Our concerns are raised regarding potential delays and the lack of the proposed regulations in accounting for such delays, should an application for registration be submitted 15 days prior to construction. Furthermore, we argue that the proposed timeframes will not ensure the rigorous consideration of the information contained in the site verification report and/or associated documents such as the environmental management programme. The processing of registrations would		<p>The registration process does not require review by the competent authority but confirmation that the information has been provided. For this reason the requirements of the minimum content of an EMPr required for this purpose has been stipulated and certain information must be supplied by the EAP/ES in order for the exclusion to be applicable.</p> <p>It is thought that the timeframe provided for consideration of the document is sufficient as the information is not reviewed by the relevant competent authority.</p> <p>The EMPr is also not to be reviewed by the relevant competent authority. The EAP/ES and specialists are required to act professionally and honestly.</p>

		therefore become an administrative process without due consideration of the substance of the reports, leaving the decision about whether a project should be registered or not in the hands of EAPs and specialists.		
1.20.4	<b>Environamics</b>	Our concern is raised with regards to the need for public participation and the apparent lack of providing the public with the opportunity to provide inputs to the registration process. We argue that the public participation process conducted for the strategic environmental assessment (SEA) is not sufficient to adequately address concerns or incorporate valuable inputs from the public. The integration of indigenous knowledge is a important part of best practice for impact assessment and the need to transition to renewable energy should not be assumed to be in the best interest of the public.		The requirements for public participation have been incorporated to include consultation with adjacent landowners, land occupiers and relevant NGOs.
1.20.5	<b>Environamics</b>	Our concern is raised with regards to the consideration of cumulative impacts when considering the massification of solar PV and the scale of development which we will now witness across the country. Cumulative impacts are not considered as part of the SEA or the proposed registration process. We argue that cumulative impacts could relate to all environmental impacts and are not restricted to the loss of agricultural land and the impact of solar PV projects on food security.		The notice has been amended to require the consideration of cumulative impacts.

1.20.6	<b>Environamics</b>	PV solar projects are large infrastructure projects with potentially significant social impacts, both positive and negative. We are unsure how the registration process and the screening tool will assess or consider potential social impacts resulting from the massification of solar PV in South Africa.		The content of the EMPr has been provided and includes mitigation measures for social impacts through the construction phase.
1.20.7	<b>Environamics</b>	We are concerned about how the registration process will ensure compliance with international lender requirements and obligations, for example the equator principles and the IFC standards.		Please refer to # 1.12.8.
1.21 1.21.1	<b>Minerals Council South Africa</b>	<p>The Minerals Council South Africa supports further regulatory reforms to streamline the process of regulatory approval and licensing of self-generation electricity projects from a 'red tape' situation towards a 'smart tape' process that will enable shorter timelines and a less bureaucratic approach.</p> <p>Self-generation projects have the potential to contribute significantly towards easing the electricity supply constraints in South Africa while at the same time improving the competitiveness of the mining sector by reducing the cost of electricity and the industry's carbon footprint.</p>		The support is noted.
1.21.2	<b>Minerals Council South Africa</b>	The use of the screening tool in isolation amounts to disregarding the broader Environmental, Social and Governance (ESG) issues especially social matters,		The screening tool will not be used in isolation but rather it will be used to screen environmental sensitivity, which is one of the current purposes for which the screening tool is

		<p>including the socio-economic impacts associated with the development of renewable energy. The requirement of the screening tool in the absence of consideration of broader ESG and socioeconomic benefits of the renewable energy projects, including local livelihood, capacity building and advancement of small-to-medium enterprises may not be realised if the screening tool is used in isolation. Thus, there is a need to use the specialist studies and site visits in addition to the screening tool in order to support informed decisions on how to identify, manage and mitigate environmental impacts. Therefore, as an improvement area, the exclusion process must take into consideration the socio-economic benefits and align with the ESG requirements of Funding Agencies, NERSA, World Bank Stakeholder processes and other compliance hurdles of Renewable Energy Projects, to truly ensure fast tracking to implementation phase.</p>		<p>used. There is a site verification process that must follow the initial screening.</p> <p>This is provided for in the proposed Norm and the exclusion procedures.</p>
1.21.3	<p><b>Minerals Council South Africa</b></p>	<p>Because the screening tool is being proposed for use as an exclusion mechanism to exclude solar PV projects that would otherwise have required environmental authorisation, one needs to consider which solar PV projects do require environmental authorisation. If no triggering of a listed activity occurs, then the screening tool has no purpose. The activities referred to in the notice; Activity 1 &amp; 36 in Listing Notice 1 and</p>		<p>Solar facilities in excess of 10MW unless developed in an urban area requires authorisation. The listing notice does not relate only to specific areas.</p>

		<p>Activity 1 in Listing Notice 2, which have to do with the generation of electricity actually refer themselves to the exclusion of photovoltaic generation installations where this occurs in an urban area or on existing facilities. Possibly the argument should be made that the exclusion be broadened or extended in the Listing Notices to facilities located within a mining footprint (current wording provides for excluding where such development of facilities or infrastructure is for photovoltaic installations and occurs— (a) within an urban area; or (b) on existing infrastructure).</p>		<p>The exclusion will apply to PV facilities developed on mining land.</p> <p>The exclusion identified in the LN1 is not the same as the exclusion identified in the notice. Only if a proposed development/expansion requires EA will this exclusion have possible relevance and application.</p>
1.21.4	<p><b>Minerals Council South Africa</b></p>	<p>Minerals Council fully support, the Minister's intention to exclude the development and expansion of solar photovoltaic installations from the requirement to obtain an environmental authorization (EA). However, the requirements a proponent would need to satisfy looking at what is contained in the proposed exclusion notice GN2466 before an exclusion can be registered do not differ much from the process of obtaining an EA from the competent authority. The exclusion and registration processes to be followed and the requirements to satisfy the criteria for exclusion are too onerous, burdensome and a costly exercise because an independent EAP is required to get the site verification report and to have the exclusion registered. The unintended consequence of this proposed exclusion</p>		<p>Exclusions contemplated in this Norm must be capable of being made rationally. The difference is that there is no requirement for an assessment but rather a site verification and there is limited oversight by the relevant competent authority. It is not deemed to be too onerous, burdensome or costly.</p> <p>The current exclusion relies on the professionalism and independence of the relevant specialist and EAP/ES. It is</p>

		<p>is that proponents will be discouraged from using the exclusion opportunity and rather opt for an EA instead, especially if such a PV installation is proposed to be located inside the mine area. The time required and assessments to be conducted to generate the documentation needed in support of the registration of exclusion adds up to the time it will take to register the projects e.g. EMP, etc. which might be similar to conducting an impact assessment and obtaining an EA. Our recommendation is that a simplified, easy to follow and cost-effective process with minimal requirements be proposed that would compel proponents to apply for exclusion. In this regard, the Minerals Council submit that the more pragmatic approach for such facilities which are located within a mining footprint would be for an exclusion to be applied automatically in mining areas. The alternative is for a proponent of a PV project being a mining right holder to follow the process of amending the existing environmental management programme (EMP) and environmental authorisation of a mining authorisation to add a solar PV activity as opposed to again undertaking the full process as outlined in the published gazette.</p>		<p>important therefore that there is independence and professionalism.</p> <p>It would be untenable to provide different processes for activities developed in specific areas and it is necessary for some process to be followed. Legal certainty and clarity should be provided in the legislative framework and any automatic application of an exclusion to EA requirements would not be responsible, as site sensitivity should be verified in order to meet the minimum requirements set in the proposed exclusion.</p> <p>Changes in scope of a project can no longer be amended in the EMP, an EMP is intended to include mitigation measures not the scope of the project.</p>
1.21.5	<b>Minerals Council South Africa</b>	Sites outside the mine leased areas proposed for solar PV could be subjected to exclusion requirements		The comment is noted.

		and conditions such as contained in this notice, but account should be taken of the comments made above as to whether the use of the screening tool to generate a report and the registration process being proposed, really serve to facilitate the process whilst taking into account the environmental sensitivities.		It is thought that the registration process does serve a necessary purpose. If a mining area is regarded as of “low” or “medium” environmental sensitivity as set out in the proposed exclusion, the exclusion should find application in such areas.
1.21.6	<b>Minerals Council South Africa</b>	The process for the registration of proposed development or expansion of facilities and infrastructure as outlined in the published Solar Exclusion Notice add another layer of bureaucracy for approval.		The comment is noted, but the DFFE believes that it reduces the complexity of the current process.
1.21.7	<b>Minerals Council South Africa</b>	Mine Closure planning is evolving towards taking into consideration the sustainable development principles as well as incorporating economic diversification options when one is determining the feasible end land use objectives and coordinating mine closure at a regional scale. This new way of mine closure planning has been further cemented through the introduction of the draft mine closure strategy by the Department of Minerals Resources and Energy which provide policy direction on new thinking around closure planning. Effectively the economic diversification opens opportunities for consideration of renewable energy projects as end land use objectives by the mines. In this regard there has been notably implementation of solar PV projects as part of the mine closure plan. Thus, the regulator is requested to be flexible		<p>The comment is noted.</p> <p>The comment is noted and it is thought that PV does provide a sustainable end use and could be included as part of the mine closure plan.</p>

		<p>enough to consider solar PV's as part of the closure planning projects.</p> <p>Furthermore, consideration should also be made for exemption in instances where rehabilitated areas are being utilized for the purpose of this projects when included in the closure plans or as part of end land use objectives.</p>		<p>This exclusion process should be applicable to mining land.</p>
1.21.8	<b>Minerals Council South Africa</b>	<p>Based on the arguments advanced above and also in the spirit of the One Environmental System for the mining industry which seeks to streamline the authorisation process Minerals Council submits that solar PV projects to be undertaken in the land that has already been subjected to EIA, specialist studies, and authorised in terms of the MPRDA as well as NEMA should be exempt from the requirements of this gazette. In instances, wherein the land has not been subjected to EIA or relevant authorisation we recommend that the mining company to establish solar PV undertakes the process to amend the EMP to include the activity without undertaking the registration process envisaged through this gazette.</p>		<p>The environmental situation before mining would be very different to the environmental situation after mining. The initial EIA process would bear no resemblance to a secondary use of the land. The process being proposed is a lot less onerous to that of an EIA process.</p> <p>A second process will be required to ensure there is management of even the secondary activity undertaken on the land.</p>
1.22 1.22.1	<b>Centre for Environmental Rights</b>	<p>Should this proposed exclusion be promulgated, it would apply to, and potentially adversely affect, all future developments and expansions of solar photovoltaic (PV) installations and associated activities in different parts of the country. We raise concerns around the adverse impacts of solar PV projects as well as the unreliability of sensitivity</p>		<p>The proposed exclusion is only for solar PV facilities that are to be developed in areas of medium or low environmental sensitivity. It is not applicable to all solar PV facilities.</p> <p>The sensitivity ratings on the screening tool are produced from the best available and most up to date data that is</p>



		<p>ratings as an environmental management instrument in lieu of an environmental impact assessment (EIA) process. Importantly, we are deeply concerned that the proposed exemption from compliance with the public participation and transparency requirements of the EIA Regulations will facilitate the violation of constitutional rights that are central to environmental governance. Moreover, it would situate these developments outside the mitigation hierarchy – an untenable departure from our environmental framework - and exclude an assessment of cumulative impacts, which is irresponsible and dangerous.</p>		<p>available in the county. However, the process does not only rely on the screening tool, as the information on the environmental sensitivity from the screening tool is to be verified by specialists with demonstrated expertise in the relevant field and in the case of species, within the relevant taxa.</p> <p>With respect to public participation please refer to #1.3.1.</p> <p>Please note that NEMA makes provision for exclusions of identified activities based on adopted instruments and therefore such exclusions should be anticipated as well as the dispensing with usual EIA and consultation requirements.</p>
1.22.2	<p><b>Centre for Environmental Rights</b></p>	<p>We record that we do not support the outright exclusion of any listed activities from the EIA process. Provision still needs to be made for some form of impact assessment – even if a basic assessment - for proposed listed activities to be undertaken, consultation with stakeholders, and decision-making by a competent authority. Enabling listed activities to proceed without any of these checks and balances in place poses high risks to the environment, human health and wellbeing and is prejudicial to potential interested and affected parties as well as other stakeholders. Further, the potential cumulative impacts in the area where these installations will occur will remain unknown until these impacts are visibly affecting local biodiversity and the local</p>		<p>The non-support of the exclusion is noted.</p> <p>Exclusion from the EIA process will mean exclusion from the assessment process, in order to confirm the sensitivity ratings site verification is required. In order to qualify for an exclusion, certain requirements must be met as set out in the revised exclusion.</p> <p>The impacts associated with the development of solar PV facilities are localised with minimum human health aspects.</p> <p>Regarding cumulative impacts please see the response to #1.3.13.</p>

		<p>population – and thus may be irreparable. Understanding the potential cumulative impacts in advance is important, and the chosen site- specific analysis aimed at replacing the process of obtaining an EA does not provide adequate depth of information.</p>		
1.22.3		<p>The proposed exclusion is not sufficiently justified. It is not evident how an EIA would be an impediment or constraint to the expansion and installation of solar facilities. A basic assessment under the EIA Regulations with reasonably truncated timeframes may be sufficient if the aim is to expedite the transition to renewable energy. In general we note that any fast tracking of renewable energy (including through the development of renewable energy development zones) must still meet the needs of communities; and include them in decision-making.</p>		<p>For the justification please refer to #1.8.2.</p>
1.22.4	<p><b>Centre for Environmental Rights</b></p>	<p>We, and our clients are not, in principle, opposed to the fast-tracking of solar PV projects under certain circumstances and conditions. Striking a balance between accelerating renewables deployment and ensuring space for meaningful community engagement in the siting of medium- and large-scale solar projects is driving the development of careful and creative regulatory solutions around the world. There are many sites where solar has a minimal impact, or even generates benefits to the landscape, such as on brownfield sites that previously housed industrial</p>		<p>The minimum impacts and benefits of the technology are not restricted to brownfields sites, but also to sites that have minimum environmental impact e.g. low and medium environmental sensitivity.</p>

		<p>activity but are not currently in use, including old mines, coal plant sites, or landfills. Right-of-ways for railroads and highways are other options for installing extensive solar without competing with other valuable land uses. Many analyses have shown that it is possible meet much if not all renewable energy needs by prioritising these and other degraded or unused sites when combined with solar installations in the built environment, including on rooftops of residential, commercial, and industrial buildings. Research has shown that even in prime agricultural regions, there is often plenty of land for renewables siting that need not compete with food production. Such plans, however, must be guided by best practice guidelines, case studies, community consultation and mapping tools to identify worthy sites at a national scale and supporting initiatives to do the same at a state or county level. The use of general screening tools to entirely exempt large projects from environmental authorisation, like the proposed exclusion and adoption of the screening tool, is not an appropriate means to achieve the above objectives.</p>		<p>A consideration for the location of solar PV facilities is also the intensity of the irradiation. It is not possible for DFFE to restrict areas in which developers wish to develop projects. Rooftop solar is at a different scale to large scale solar and addresses different objectives. It is not the mandate of DFFE to interfere with the IRP roll out or the business aspirations of developers.</p> <p>The screening tool is not used as an exclusive tool to exclude, it is merely used to identify areas of low or medium environmental sensitivity. The sensitivity must be verified by specialists and this includes agricultural aspects.</p>
1.22.5	<b>Centre for Environmental Rights</b>	<p>As much as the development and expansion of solar photovoltaic will promote an expedited transition to renewable energy, excluding these activities from having to obtain an environmental authorisation could also have a number of negative</p>		

		<p>environmental impacts, as set out as follows:</p> <p>Firstly, the land that is required for these installations often exceeds 1 hectare in size. Land clearance at a large scale, especially in areas where there are slopes, may result in soil erosion. In areas where there is heavy rain, silt may run off into waterways which may result in poorer water quality in those areas, whereas in arid regions, in a case where there may be de-vegetated land in order to make provision for solar developments, wind-blown de-vegetated soil and dust may impact on the health of local populations. In addition to impacts on the health of a local population, the dust could reduce the efficiency of solar installations if it so happens that dust settles on the panels. This would result in the need to clean those panels with water that is most likely scarce in areas that are already arid. This is important considering that the proposed exemption would apply in areas that are designated as low or medium significance, namely areas that are likely already degraded.</p> <p>Additionally, since only 20% of the energy absorbed from the sun by solar panels is converted into electricity, the rest of the energy results in added heat to the environment. This is also as a result of the albedo from panels being lower than that of the surrounding</p>		<p>Issues of erosion are to be considered and included in the required construction EMP, after construction there is landscaping required which will reduce the potential for erosion after construction. It is not to the benefit of the developer to allow large scale erosion on their sites as this would undermine both the foundations as well as the road infrastructure, and as mentioned, will require more regular cleaning of panels in dry weather.</p> <p>Low and medium environmental sensitivity does not automatically imply already degraded areas, it is more indicative of areas that are not environmentally sensitive due to their geographical location. The sensitivity is subject to verification.</p> <p>These are all impacts that currently apply to the technology. The released heat is not an impact that is currently considered in the EIA. It is also not clear, other than a no go option or an option of moving the developments to areas of lower environmental sensitivity or as indicated in the comment areas of higher rainfall, which would then have better agricultural potential, what the mitigation measures are that should be applied.</p>
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		<p>environment. A potential consequence of this is a change in microclimatic dynamics similar to the urban heat island effect. The climatic effects of large-scale solar installations in dry areas may range from contributions towards warmer weather.</p> <p>Furthermore, clearing of large spaces of land may disturb smaller ecosystems in the areas where solar photovoltaic installations will take place and also disturb movement and migratory patterns of terrestrial and arboreal animals. In addition to this, although this is an ongoing area of investigation, the reflectivity of photovoltaic solar panels may have ecological effects, such as the possible attraction of water birds to the panels as birds may believe them to be lakes, which is also known as the 'lake effect'. This effect may be associated with avian mortality.</p> <p>The potential cumulative impacts in the area where these installations will occur will remain unknown until these impacts are visibly affecting local biodiversity and the local population after the installation of the solar photovoltaic facilities has occurred. Knowing about this in advance would be a better position to be in, and unfortunately the chosen site-specific analysis aimed at replacing the process of obtaining an EA</p>		<p>Terrestrial and species sensitivities are considered through the process and the impacts are to be confirmed to be low or medium.</p> <p>Regarding cumulative impacts please see the response to #1.3.13.</p> <p>A physical site verification process is a requirement and these are to be undertaken by registered specialists.</p>
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		<p>does not provide such depth of information.</p> <p>As mentioned, oftentimes large areas of land are required for solar installations. Wetlands and pans in these areas are sometimes only discoverable upon impact site assessment with wetland specialists. Wetlands play a vital role in recharging groundwater systems, and also in retaining water in the case of floods, thereby minimising damage to the surrounding areas. Thus, wetlands and pans have significant climate change value from a water availability perspective as well as minimisation of climate change impacts.</p>		
1.22.6	<b>Centre for Environmental Rights</b>	<p>While we and our clients accept and support the development of renewable energy on land already degraded by mining and industrial activities in keeping with a just transition plan, we submit that doing away with the EIA process is not an appropriate, or safe manner in which to expedite much-needed renewable electricity capacity, particularly with reference to the potential harms listed above. The risks of harm and prejudice to interested and affected parties outweigh any benefits of an expedited process. In any event, we note that, predominantly, the delays in the deployment of clean energy lie with the need for policy certainty and electricity plans to provide for the needed volumes of clean energy; and</p>		<p>The concerns of the CER are noted but not supported.</p> <p>The request to abandon the proposal is noted but is not supported by DFFE.</p>

		<p>expedited procurement of clean renewable energy projects.</p> <p>We therefore recommend that the proposed exclusion be abandoned insofar as the concerns raised in these comments are not addressed, as it is not appropriate for corners to be cut on environmental assessments for projects with potential for negative environmental impacts through a nationwide blanket exemption from the EIA requirements.</p>		
1.22.7	<b>Centre for Environmental Rights</b>	<p>There is no provision for public participation or even notification or access to registration documents. This is highly concerning. We foresee a highly prejudicial barrier being created for stakeholders and their ability to know whether an exclusion of an EIA and subsequent environmental authorisation is validly applied, and whether the tool was correctly applied. It will mean that stakeholders are in the dark as to when the installations are taking place and the various details of a proposed project; and importantly whether the project proponent is in fact acting within the confines of the registration. There is potential for communities to be adversely affected and prejudiced here if there is no provision for people to be consulted or notified of the processes and projects, or to have any automatic access to records dealing with proposed and existing PV projects that entail listed</p>		Please refer to #1.2.2, 1.3.1, 1.3.2, 1.11.2 and 1.13.3.

		<p>activities. During the EIA process, whether it be a basic assessment, or full EIA with scoping, consultation is an essential part of the process. It ensures that the Constitutional right to just administrative action, as contained in section 33 of the Constitution and encapsulated in the Promotion of Administrative Justice Act, Act 3 of 2000 ("PAJA"), is fulfilled and that the voices of all interested and affected persons are heard. Furthermore, public participation and transparent decision-making are important principles contained in NEMA, with the EIA Regulations. Section 2(1)(f) of NEMA provides that the participation of all interested and affected parties must be promoted and such persons must have the chance to develop the understanding, skills and capacity in order to achieve meaningful participation. This is qualified with the proviso that the participation of vulnerable and disadvantaged people must be ensured. Excluding public participation may lead to the loss of critical local knowledge that local communities have regarding the biodiversity, air, water and other environmental aspects of the land that they live on. The inclusion of local communities through a consultative process is also critically important for the preservation of cultural heritage such as graves and sacred sites, much of which is not necessarily documented or readily available to an environmental</p>		<p>Cultural heritage aspects will still need to be considered through the requirements of the National Heritage Resources Act. This exclusion will only be able to exclude from the NEMA or SEMA requirements.</p> <p>Consultation with adjacent landowners and land occupiers will be required as part of the registration process.</p> <p>NEMA makes provision for exclusion and therefore must have anticipated that some activities would not go through the formal EIA process.</p>
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		assessment practitioner other than through consulting with interested and affected parties in local communities. Without consultation, important local knowledge relevant to the proposed development will be excluded. Additionally local acceptance of, and willingness to actively support and participate in, a project will be excluded. This approach flies in the face of a range of NEMA principles and defies the (state- endorsed) conception of the Just Transition.		
1.22.8	<b>Centre for Environmental Rights</b>	The competent authority appears to have no discretion or decision-making powers under the proposed exclusion. The competent authority must have power to refuse registration and/or re-registration. There must be express provision for the competent authority to confirm registration and to refuse to register a project if the records are inadequate or show evidence of potential significant impacts, or for any other reason. It is also not clear whether the registration would be an appealable decision under section 43 of NEMA.		<p>The objective of this process is to exclude the activity from the need to obtain an EA, therefore the competent authority is not intended to review the documents but merely to consider if all the work has been done. The competent authority will not accept the registration without all of the requirements of the registration process being completed. Commencement prior to receipt of a registration number will constitute an offence in terms of NEMA.</p> <p>Registration would be regarded as an administrative decision which would be appealable. The proposed Norm has been amended to indicate that the provisions of the Appeal Regulations, 2014 apply.</p>
2.1 2.1.1	<b>Mr M Roods</b>	In the Notice no reference is made to the DFFE Aquatic Biodiversity and Terrestrial Biodiversity Protocols? These protocols also provide for a site verification exercise. Only the “Agricultural Specialist Assessment Protocol” was mentioned.		The exclusion is not intended to require an assessment, therefore the protocols have not been used. Only one aspect of the Agricultural Specialist Assessment Protocol has been used which is the calculation of the development footprint for agricultural land.
2.2 2.2.1	<b>EWT</b>	We note the definition of “screening tool” to mean the National Web Based Environmental Screening Tool as		The screening tool will no longer be adopted, the

		<p>adopted in Government Notice No. 678 published in Government Gazette No. 46867 of 06 September 2022;</p> <p>We point out that the Notice No. 678 is a “Consultation on the intention to adopt the National Web Based Environmental Screening Tool as an Environmental Management Instrument”, calling on the public to submit comment on the intention to adopt the said screening tool, and reference to it “as adopted” is therefore incorrect. We note further that the published notice is 687 and not 678 as stated in the Exclusion Notice.</p>		<p>amendment will not be necessary.</p>
<p>2.3 2.3.1</p>	<p><b>Meadows Energy</b></p>	<p>The exclusion of solar photovoltaic installations from the requirement to obtain an environmental authorisation will significantly reduce the development costs of the development of renewable energy projects. The costs that would be allocated to the environmental authorisation process could subsequently be re-allocated to the development of additional renewable energy projects by Independent Power Producers (IPPs). Moreover, excluding solar projects from the environmental authorisation process, expedites the development process and gives IPPs the ability to develop more projects that would add more generation to the South African electricity grid and thus, could contribute positively to alleviating the long- standing issue of loadshedding</p>		<p>The comment on the cost reduction is noted.</p> <p>The comment is noted.</p>

		<p>that is currently heavily impacting South Africa.</p> <p>We are pleased to have been invited to submit a comment on this gazette and are looking forward to hearing a positive outcome to the exclusion of solar projects from the environmental authorisation process.</p>		
2.4 2.4.1	<b>South African Wind Energy Association</b>	Please include a definition for “associated infrastructure”, i.e., Please clarify if this includes Battery Energy Storage Systems (BESS).		The DFFE would rely on a dictionary definition of associated. Battery Energy Storage Systems would be associated activities if these were part of the development. Some clarity has been provided in this respect in the exclusion.
2.4.2	<b>South African Wind Energy Association</b>	Linear infrastructure should be defined upfront.		The term has been defined.
2.4.3	<b>South African Wind Energy Association</b>	Is there a reason only the Agricultural Specialist Assessment Protocol is defined? If the proposed Solar Facility is less than 20MW, please confirm that no agricultural specialist assessment protocol will be required?		The agricultural protocol is used only to identify the development footprint, so it is just that calculation that is relevant from the protocol. An agricultural verification is required for any activity that is to be considered under the exclusion.
2.4.4	<b>South African Property Owners Association</b>	<p>In line with modern document practice, and for ease of reference, SAPOA suggests that all references to external documents in the Schedule in general, and in Paragraph 1: Definitions, in particular, should be accessible via hyperlinks in the published Schedule.</p> <p>In particular, this should apply to:</p> <ul style="list-style-type: none"> <li>National Environmental Management Act, 1998 (Act No. 107 of 1998).</li> </ul>		The DFFE will consider this request and see if it is possible.

		<ul style="list-style-type: none"> <li>• Environmental Impact Assessment Regulations, 2014.</li> <li>• Agricultural Specialist Assessment Protocol.</li> <li>• Environmental Impact Assessment Regulations Listing Notices 1, 2 and 3.</li> <li>• Renewable Energy Development Zones Notice.</li> <li>• National Web-based Environmental Screening Tool.</li> <li>• Strategic Transmission Corridors Notice.</li> </ul>		
3.1 3.1.1	<b>South African Property Owners Association</b>	<p>The proposed Schedule in general, and Paragraph 2: Context, in particular, does not indicate whether environmental authorisation, or the exclusions thereto, apply only to land-based solar PV installations, or to both land-based and roof-top solar PV installations.</p> <p>Neither does the Schedule in general, and Paragraph 2: Context, in particular, give any indication as to the size of solar PV installations for which environmental authorisation is still required, or for which the exclusions thereto apply, either in terms of area (square meters) or capacity (kW or MW).</p> <p>SAPOA suggests that such clarification should be provided in Paragraph 2: Context.</p>		<p>Roof top solar PV is not an activity which currently requires an environmental authorisation.</p> <p>LN 1 activity 1 excludes the development of facilities or infrastructure is for PV installations and occur within an urban area or on existing infrastructure.</p> <p>The identification of the size of the MWs is contained in the Listing Notices. This exclusion applies where an EA is required.</p>

<p>3.2 3.2.1</p>	<p><b>Minerals Council South Africa</b></p>	<p>According to the notice, the exclusion only applies in areas of medium or low environmental sensitivity that is confirmed to be such by the site sensitivity verification inspection with the exception of linear infrastructure that can be allowed in areas of very high, high, medium or low environmental sensitivity. This is concerning for the mining industry because the proposed exclusion based on those parameters might serve to prevent some mining sites classified as highly sensitive areas from being possible development sites. In some of the cases the areas were classified highly sensitive before mining activities commenced. In this instance different criterion that overlooks the sensitivity for such mining sites should be applied for those areas to qualify for exclusion.</p> <p>Even though the use of the screening tool might find that an area is of low or medium sensitivity, the Environmental Assessment Practitioner (EAP) must do a site-specific verification inspection and compile a report to satisfy that all the environmental themes are addressed.</p> <p>The Civil aviation and Defence themes are excluded from site verification inspections in the gazette, it is recommended that they be included. This is required to ensure that issues that are relevant to themes like Civil aviation, Defence and Cultural Heritage</p>		<p>The mining land would already have been an environmental sensitivity assigned to it by the screening tool. Mining land which is identified and confirmed to be of medium and low environmental sensitivity is intended to be part of this exclusion.</p> <p>The site verification that is required will be able to identify any changes in the use of the land. Under the application of the exclusion, the notice does indicate that if the verification identifies that the site is in fact not high or very high, but is in fact low or medium, this can be indicated and evidence provided.</p> <p>This understanding is correct.</p> <p>These two themes have been removed from the themes required for consideration as the relevant Departments responsible for these aspects have their own processes. This therefore reduces duplication of processes.</p>
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		for instance are addressed with the relevant departments before registering the project with the competent authority.		
4.1 4.1.1	<b>Mark Botha</b>	The exclusion proposed in 3.1.1 of the Notice could conceivably exclude projects with a medium significance impact in one or more of the themes. According to the recently published Biodiversity Offsets Guideline, a 'medium significance' could also trigger the need for a biodiversity offset – even if the activity doesn't require authorisation. How will the process of quantifying and designing the offset happen within a site sensitivity verification inspection?		It would be very difficult to insist that a developer pay for an offset for a development which does not require an authorisation. The exclusion will be applied if the necessary mitigation measures have been incorporated. In addition it would be unreasonable to require an offset for land that is of low or medium environmental sensitivity.
4.2 4.2.1	<b>EWT</b>	<p>We refer specifically to paragraph 3.1.1.1, whereby the development or expansion of facilities or infrastructure for the generation of electricity from a solar photovoltaic installation are excluded from the requirement to obtain an environmental authorisation prior to commencement when developed in areas of "low" or "medium" environmental sensitivity as identified by the screening tool for the Terrestrial Biodiversity theme.</p> <p>We note that the "medium" sensitivity rating for plant and animal species of conservation concern is defined as 'suspected habitat...based either on historical records (prior to 2002) or being a natural area included in a habitat suitability model for this species' (Notice</p>		Please refer to #1.4.2 and #1.9.2.

		<p>No. 1150, Government Gazette 43855). The “medium” refers to the level of the precision of whether we know a species occurs at a particular site, and NOT the sensitivity of that site to development. In a country as vast as South Africa, it is natural that large swathes of habitat have not been recently, or ever, surveyed for species of conservation concern. This is particularly pertinent for cryptic species, seasonal species, or those species naturally occurring at low densities who, due to under-detection since 2002, are only represented in the “medium” sensitivity rating, and not in the “high” or “very high” sensitivity ratings. A loss of suitable habitat for these species may have devastating consequences and push them towards extinction.</p> <p>Similarly, a “low” sensitivity rating is defined as “1) Areas where no natural habitat remains, or 2) Natural areas where there is no suspected occurrence of species of conservation concern” (Notice No. 1150, Government Gazette 43855). This layer is informed by the limited biodiversity data we have available to us and may not directly translate into sites without the presence of species of conservation concern. To repeat, these sites are not guaranteed to have low sensitivity to development and require a compliance statement in accordance with Notice No. 1150, Government Gazette 43855 and the</p>		<p>The site verification would identify if there are any overlooked sensitivities on the site.</p> <p>The two species themes have been added to the exclusion notice as themes for verification.</p>
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		<p>associated Species Environmental Assessment Guidelines.</p> <p>While we acknowledge the requirement for site sensitivity verification inspections for these exclusion sites, we are concerned that the notice in question makes no reference to the Species Environmental Assessment Guidelines, specifically section 5.1 which details the requirements for site sensitivity verification. Furthermore, in the aforementioned guidelines “the purpose of the site sensitivity verification step is to address potential inconsistencies (if any) between the screening tool data and the current status quo or current use of land” and is primarily used for when the screening tool erroneously assigns an environmental sensitivity. This is NOT synonymous with the protocol required to be followed should the screening tool identify a site as “medium sensitivity” or indeed the requirement for a compliance statement for “low sensitivity”. We believe that the proposed sensitivity verification inspection is wholly insufficient in confirming the presence of species of conservation concern identified by the medium sensitivity layer of the screening tool.</p> <p>Here again we re-emphasize our concern linked to the lack of transparency in the entire process, whereby there is no mention of public</p>		<p>The guideline has not been referenced as the process does not require an assessment.</p> <p>The outcomes of the site verification for the two species themes have been aligned to that of the species protocol.</p> <p>There is no intention that there would be consultation with commenting authorities as this is intended to be an exclusion process.</p>
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		<p>participation, or consultation with commenting authorities. Furthermore, it is unclear whether there is an appeals process. We fear that in an effort to fast track the approval of solar photovoltaic developments, some of the important checks and balances are being ignored which is in contrast with NEMA principles (specifically the precautionary principle), with potentially damaging impacts on species of conservation concern.</p>		
4.3 4.3.1	<b>South African Wind Energy Association</b>	<p>Clarity is required on the process if one or more of the themes are identified as 'high' or 'very high' but the rest are 'low' to 'medium'? In other words does every theme need to be in 'low' or 'medium' areas to allow for the adopted process?</p> <ul style="list-style-type: none"> <li>• Example: what if all environmental themes are 'low' and 'medium' but one or two are 'high' or 'very high'.</li> </ul> <p>Example: Palaeontology is 'Very high' but all environmental themes are low' and 'medium'. Will the theme that is rated 'high' be required to go through standard processes then? Then the movement of the project will pause until that is ranked and approved? Will the department then follow standard approval processes for these outliers or will they be expedited?</p>		<p>The exclusion applies only to areas of confirmed low or medium environmental sensitivity, therefore if one theme is identified as being high or very high, the exclusion would not apply with the exception of the linear activity which is integral to the solar PV facility. This has been clarified in the exclusion.</p>
4.3.2	<b>South African Wind Energy Association</b>	<p>Further, is there a percentage level of acceptance. For example, if 85% is in 'low' or 'medium' and the remaining 15% is in 'high' then will this be accepted as</p>		<p>There is no percentage as to how much of the development should be in high or low sensitivity. The exclusion applies only when the development footprint is in areas of confirmed to be of low or medium</p>

		part of the exemption. Or is it a case of, if a percentage of the area is high or very high, then the entire area of interest is considered to be High / Very high?		environmental sensitivity.
4.3.3	<b>South African Wind Energy Association</b>	If the environmental screening tool identifies certain themes as high or very high but these are confirmed to be low or medium through a site sensitivity verification process, can the exclusion process still be followed?		Please refer to #3.2.1.
4.4 4.4.1	<b>Savannah environmental</b>	There is no consideration of impacts on the social environment. These relate to safety and security, impacts on land uses (especially for adjacent landowners who have conflicting land uses such as game farms or nature reserves), visual impacts, etc.		The issue of social impacts has been included in the headings to be discussed in the EMPr.  Adjacent landowners and land occupiers as well as relevant NGO's are required to be consulted in an amendment to the exclusion notice.
4.4.2	<b>Savannah environmental</b>	The required themes to be considered do not include RFI. This is particularly important within the Northern Cape where the location of the SKA is a consideration. This should be included as a requirement for projects proposed in the Northern Cape to ensure compliance with the relevant legislation in this regard and confirmation of no objection for the project from SARAO.		The SKA gazetted boundaries are included in the screening tool, if the site was located on the boundary of the SKA, the adjacent landowner would be the SKA management authority and the proponent will need to engage with the management authority. Any sensitivity would be identified through this consultation.
4.4.3	<b>Savannah environmental</b>	The required these to be considered do not include avifauna or fauna. Solar facilities can pose significant impacts to avifauna and fauna, specifically in terms of habitat loss. The BirdLife Guideline for Solar PV facilities also requires monitoring to be undertaken to confirm the sensitivity of the site. How will these guidelines be considered within the registration process?		The plant and animal species themes have been included in the list of themes to be considered. The animals species theme will consider impacts on birds of conservation concern.

4.5 4.5.1	<b>CSIR</b>	The split between clause 3.1.1. and 3.1.2 is confusing – it implies two routes – 1) direct registration or 2) sensitivity verification. However, Section 6 of the regulations clarifies that site sensitivity verification (SSV) is required regardless of initial Screening Tool (ST) sensitivity class. The wording must be adapted throughout the proposed Exclusion Regulations to make clear that SSV is required as point of departure to determine whether the exclusion can apply.		The sensitivity verification is always required. The section has been amended to remove any confusion while the separate themes for verification has been removed.  The terminology <i>site sensitivity verification</i> has been used consistently.
4.5.2	<b>CSIR</b>	<p>Why doesn't the registration address all the themes on the ST?</p> <ul style="list-style-type: none"> <li>• Suggestion: The regulation must be explicit on what needs to be considered for registration and if / how gazetted assessment protocols need to be applied with regards to registration. Surely all aspects that would be considered for EA needs to be considered and demonstrated as non-issues for the registration to be a responsible environmental management tool?</li> <li>• For example, must the Landscape theme (visual) and Radio Frequency Interference be totally disregarded? If yes, why? This must be clarified.</li> </ul>		<p>The separate list of themes to be verified has been removed.</p> <p>The specialist assessment protocols do not apply to the exclusion as no assessment is required. Only the section related to the development footprint from the agriculture protocol has been cross referenced.</p> <p>Not all the themes will be relevant as only NEMA related activities or requirements can be excluded.</p> <p>With respect to RFI please see the response to #4.4.2.</p>
4.5.3	<b>CSIR</b>	Why does clause 3.1.1 mention Civil Aviation and Defence, whilst clause 3.1.2 doesn't? This implies that civil aviation and defence cannot be verified		This has been amended, the themes in clause 3.1.2 have been removed.

		<p>“down” and that the ST sensitivity is absolute. This is concerning since these sensitivities are largely based on coarse buffer distances which are meant to flag potential issues for consideration and not trigger the need for EA.</p> <p>Why does only clause 3.1.2 mention species and ecosystems? This seems to imply that if the plant species sensitivity is verified High, but terrestrial biodiversity is verified Low, the plant species theme and verification is disregarded, and registration will be allowed?</p> <p>Suggestion: since the ST is the core of determining solar photovoltaic (PV) environmental registration procedures, the ST themes must be used consistently between the exclusion regulations and the ST to avoid confusion and make explicit what are the determining factors for registration and what must be considered for sensitivity verification.</p>		<p>The two species themes have been added to the list of themes to be verified.</p>
4.6 4.6.1	<b>NECXON Alternative Energy</b>	<p>Paragraph 3 – In 3.1.2 the list does not include Civil Aviation or Defence as being subject to a site sensitivity verification inspection, is this an error?</p>		<p>Please see the response to #4.5.3</p>
4.7 4.7.1	<b>South African Property Owners Association</b>	<p>SAPOA presumes that the words “prior to commencement” refer to the commencement of physical construction on site. SAPOA suggested that for clarity this sentence should be amended to reflect: “... prior to commencement of physical construction on site”.</p>		<p>The term has been defined in NEMA and means the start of any physical implementation in furtherance of an identified activity, including site preparation. It is therefore not necessary to define it again.</p>

4.7.2	<b>South African Property Owners Association</b>	<p>SAPOA queries why the wording used in paragraph 3.1.2.1, namely “Terrestrial biodiversity inclusive of fauna, flora, avifauna and ecosystems” has been shortened to “Terrestrial biodiversity” in Paragraph 3.1.1.1.</p> <p>Is there any significance behind the shortening of the wording by leaving out the words “fauna, flora, avifauna and ecosystems” in Paragraph 3.1.1.1?</p>		The terms have been rationalised by removing the sub-criteria as the species themes have been included.
4.8 4.8.1	<b>Centre for Environmental Rights</b>	<p>As stated throughout, we object to the exclusion of activities from the requirement to obtain an environmental authorisation regardless of sensitivity of the area – this fatally disregards potentially far-reaching project-specific impacts; and removes crucial accountability mechanisms under the environmental management regime as envisaged by NEMA.</p> <p>Worryingly absent from the listed themes in this clause are:</p> <ul style="list-style-type: none"> <li>• Hydrology - particularly as solar PV development may likely often happen in water scarce areas – and wetlands; and</li> <li>• Climate impacts – not necessarily greenhouse gas emissions (although lifecycle emissions should be considered), but it is important that consideration be given to how the project and surrounding area might be affected by climate change for the duration of the project.</li> </ul>		<p>The objection is noted.</p> <p>The exclusion is only relevant for NEMA activities, the aspects of hydrology will be included in the requirements from DWS.</p> <p>Climate change impacts are not considered in the current EIA process for solar PV facilities and is not regarded as being necessary for consideration as there are no sector carbon budgets identified for the renewable energy sector to date. There would therefore be no targets to compare with or comply to. The inclusion of lifecycle impacts would therefore add complexity and costs with little value.</p>

		<ul style="list-style-type: none"> <li>The above themes should, at the very least, be added to 3.1.1 and 3.1.2.</li> </ul>		
5.1 5.1.1	<b>Mr M Roods</b>	Section 4.1 – reference to “an any associated activity” (what for example if a BESS of a type that uses electrolyte and not Lithium Ion is proposed as part of an PV facility?) – this would mean dangerous goods storage applies. Therefore, it is my view that a distinction cannot be drawn to “and all associated activities” when the impact is not properly assessed.		<p>Battery storage is not a listed activity, although some of the activities associated with the development of battery storage facilities do trigger EA requirements.</p> <p>Activity 4 which is the storage and handling of dangerous goods is included in the activities to be excluded if they are to be developed within areas of medium and low environmental sensitivity.</p>
5.2 5.2.1	<b>South African Wind Energy Association</b>	Kindly clarify Item 4, if the proposed solar PV facility included a Battery Energy Storage System (BESS) within the development footprint, would the BESS and its associated activities also be excluded from the need to obtain Environmental Authorisation if located within an area that is also verified to be of low or medium environmental sensitivity?		The activities associated with the development of battery storage facilities associated with the solar PV facility would be included as part of this exclusion if the development is located within areas of low or medium environmental sensitivity.
5.2.2	<b>South African Wind Energy Association</b>	Confirmation required on which Listing Notice Activities are excluded from requiring an EA. For example, does this include the Listing Notice Activities associated with the storage of hazardous goods or a telecommunications mast in the substation?		If the activities are associated and integral to the solar PV facility then the exclusion provisions apply. It was intentional not to include all of the listed activities as some would certainly be missed out and will defeat the objective of the proposed Norm which is to exclude all activities associated with the development of solar PV facilities in areas of low or medium environmental sensitivity, subject to the requirements set in the proposed exclusion.
5.2.3	<b>South African Wind Energy Association</b>	It might be worthwhile to define or explain what “...necessary for the realisation of such facilities” entails or constitutes?		The activity would need to be associated and integral to the realisation of such a facility. Any definition runs the risk of some activities being left out and not achieving the objective of the notice.

5.3 5.3.1	<b>NECXON Alternative Energy</b>	Paragraph 4 – 4.1 defines the extent of the activities covered for a solar pv installation, however there is no explicit reference to battery energy storage systems “BESS”, can you confirm that BESS is included?		Please see the response to #5.1.1 and 5.1.2.
5.4 5.4.1	<b>South African Property Owners Association</b>	In line with modern document practice, and for ease of reference, SAPOA suggests that Listing Notices 1, 2 and 3 referred to in the proposed Schedule should be accessible via hyperlinks in the published Schedule, and in particular in Paragraphs 1: Definitions, and in Paragraph 4: Activities.		The comment was noted in #2.4.4 and will be considered if possible.
5.5 5.5.1	<b>Centre for Environmental Rights</b>	<p>The listing notice activities provided for above pertain to activities that are considered to be likely to have significant impacts on the environment, hence their placement on a list of activities that requires environmental authorisation. To negate the requirement that an EIA be undertaken creates potential for environmental harm that may have otherwise been avoided through an EIA process.</p> <p>The provision in 4.1 extending the exclusion to: “any associated activity identified in Listing Notice 1,2 or 3 necessary for the realisation of such facilities” is hugely problematic and must be deleted. It opens the door too wide for additional activities to proceed without EIA or environmental authorisation and risks abuse and uncertainty in the application of the exclusion. If the associated activity is a</p>		<p>Comment is noted but not supported.</p> <p>The concern is not shared, these activities are well known through the review of many solar PV EIAs to date, in addition the activities must be integral to the solar PV facility and must be in areas of confirmed “low” or “medium” environmental sensitivity.</p> <p>It would be of little effect if the solar PV facility is excluded but if this exclusion doesn’t consider and provide for the full extent of the facility. The requirements set out in the exclusion must be met before an exclusion will be relevant to a proposed development.</p>

		<p>listed activity under NEMA, then an EIA is required. If it is to remain then, at the very least, these 'associated activities' must be defined and clearly delineated.</p>		<p>It is intentional that the activities are not listed as any activity associated and integral to the solar PV facility is intended to be subject to this exclusion.</p>
6.1 6.1.1	<b>Mr Prashika Reddy</b>	<p>Section 5.4 - It is advised that, when undertaking the site sensitivity verification, that verification includes a buffer around the proposed development footprint, to allow for slight adjustments without the need to resubmit the request for registration contemplated in this Schedule.</p> <p>What is considered an adequate buffer? Will the addition of a larger buffer for example not provide incorrect outputs in terms of sensitivity?</p>		<p>The buffer is to be determined by the proponent as the entire area would need to be verified which has cost and time implications.</p>
6.2 6.2.2	<b>Mark Botha</b>	<p>The envisaged buffer in Section 5.4 needs to be stipulated – otherwise unscrupulous applicants or lazy specialists might opt for a buffer of 10m. The buffer should at least stretch to the perimeter of the cadastre under scrutiny or 500m, whichever is the least. This is relatively easy and cheap in those sites where PV is likely to be rolled out.</p>		<p>The proponent must determine the buffer, as the entire development area and buffer will need to be verified by a specialist. The buffer will allow the proponent to move certain aspects of the development in areas that have been verified. The proponent will decide if they are certain about their layout or if they still need to confirm some of the siting aspects and would need more flexibility. The relevant component authority will not be able to determine a relevant buffer.</p>
6.3 6.3.3	<b>EWT</b>	<p>Based on the concerns outlined above we do not feel that these listing notice exclusions are acceptable and if excluded this will have significant detrimental environmental impacts.</p> <p>Of even greater concern, is the phrase “any associated activity identified in Listing Notice 1,2 or 3 necessary for the realisation of such facilities.”, which implies that road and powerline</p>		<p>The comment is noted.</p> <p>Please see the response to #5.2.1 and 5.2.2.</p>



		development associated with solar photovoltaic will be excluded from the requirement to obtain environmental authorisation. The impacts of these additional associated activities are not informed by the screening tool data and will have impacts extending far beyond the site level footprint. These associated developments are also highly likely to cause extensive fragmentation in the landscape and ongoing risk to sensitive biodiversity through collision (especially for large birds and powerlines and for a variety of biodiversity and roadkill). It is imperative that these associated activities are not excluded from the requirements for environmental authorisation.		<p>The location of the associated activity is also considered by the screening tool as is the corridor for the linear infrastructure.</p> <p>The impacts of associated activities will be the same as those considered through the EIA process and for which mitigation measures are applied. Mitigation measures are also required under the proposed exclusion.</p>
6.3.4	<b>EWT</b>	We reiterate the importance of public participation processes and appeal opportunities for Interested and Affected Parties in the process of reviewing the relevant proposed developments and the need for extensive cumulative impact assessment. We do not feel that the proposed exclusion from the requirement to obtain environmental authorisation for solar photovoltaic developments is responsible or suitable as outlined.		The consultation requirement of the registration process has been strengthened. The proposed Norm has also been amended to indicate that the provisions of the Appeal Regulations, 2014 will apply to the registration process.
6.4 6.4.1	<b>BLA</b>	The Protocols also describe the steps necessary to confirm the sensitivity of a site. However, the link between the Protocols, the Screening Tool and the exclusion Notice is unclear. We are concerned that the requirements for site sensitivity verification in the draft Notice		The protocols are not relevant to the proposed exclusion as the protocols have been prepared for a specialist assessment and an assessment is not being required for the registration.

		do not reflect or align with sections 2.2, 2.3 and 4 of the Animal Species Protocol. We suggest that Notice should include references to the National Protocols and Guidelines regarding standardised requirements for Specialist Studies in EIAs. These Protocols should still be applicable to the content of the site sensitivity verification report (referred to in sections 5.3 to 5.7), given that these have been gazetted as the minimum requirements for the specialist assessment and reporting of environmental impacts. These Protocols also provide clarity on what is "low" or "medium" sensitivity. As noted above, these terms are pivotal to the proposed exclusions.		<p>The requirements of 2.2 and 2.3 of the Animal Species Protocol are included in the exclusion notice as well as the outcomes of paragraph 4 of the protocol have been included in the exclusion notice.</p> <p>The protocols relate to specialist assessments no assessments are required in the exclusion notice.</p> <p>For the species protocols, the meta data provided for the layer on the screening tool provide the manner in which the sensitivities have been determined.</p>
6.4.2	<b>BLA</b>	The content of the draft Notice (specifically sections 5.1. and 5.2.) is unclear about the requirements for site verification. The wording in section 5 is ambiguous: "on the site" (in sub- section 5.2.1) can refer to being physically present on the site, or to desk-top investigative activities which are focused on the site. There needs to be more explicit wording requiring that the EAP and relevant specialists physically visit the area and inspect the site and its surrounds.		The requirement for a physical inspection has been clarified. The desktop work can be used as support to the information provided by the site inspection.
6.4.3	<b>BLA</b>	The draft Notice (specifically clause 5.2.2) is unclear regarding the expertise of specialists undertaking the site verification. It states that specialists must have "demonstrated expertise in the field for which they are undertaking		The species themes have been included and the requirements for a specialist with demonstrated experience in the specific taxa that is being investigated.

		<p>the verification,” which could imply that they must have previous experience for the relevant taxon. However, when listing the themes that require verification, fauna, flora, avifauna and ecosystems are all included under terrestrial biodiversity, which implies that more general biodiversity experience is adequate. We refer to Sections 2.1 and 4.2 of the Terrestrial Animal Species Protocol which states that specialists must have previous experience for the relevant taxon in "Medium" to "Very High" sensitivity areas.</p>		
6.4.4	<b>BLA</b>	<p>One of the limitations of the Screening Tool is the lack of a continual improvement (feedback) mechanism linked to the site verification process (Lambrecht et al., in press). This issue has been dealt with, to an extent, in the Species Protocols and associated Guidelines by requiring that confirmation (with photographic evidence) of the occurrence of a sensitive species be submitted to a virtual museum (iNaturalist or other) by the specialist who visits the site. Given that solar projects are often located in relatively remote areas, which may not have been mapped at a fine scale, it is critical that Specialists and EAPs provide this feedback. The need to adhere to this aspect of the Protocols and associated Guidelines should be explicitly stated in the Notice and a reminder included in Appendix 2.</p>		<p>This is not a correct statement, the data on the screening tool is updated as new and updated information is provided or identified. From March 2020 until June 2022, 46 updates were made to the data on the screening tool and one change was made to the functionality of the screening tool.</p> <p>The data on the screening tool is provided by the data custodians, updating will therefore be in line with their programme for updating.</p> <p>Should the data be updated on the iNaturalist, this information would be included in the update of the SANBI data which will then be included on the screening tool.</p> <p>The information from the site verification would confirm only a low or medium sensitivity, should a high or very high rating be confirmed the EIA would be followed and the protocol would apply.</p>

6.5 6.5.1	<b>South African Wind Energy Association</b>	Is there a prescribed structure for the site sensitivity verification report? If there is a prescribed structure, will industry be allowed to comment on the report structure?		It is not intended that there would be a template provided. The required outcome has been identified which should be sufficient.
6.5.2	<b>South African Wind Energy Association</b>	Should the specialist site sensitivity verification reports contain recommendations for the EMPr?		The EMPr is prepared by the EAP/ES with input from the various specialists. These specialists are to indicate that the mitigation measures will ensure that the residual impacts are acceptable.
6.5.3	<b>South African Wind Energy Association</b>	Confirmation required on the extent of the buffer referred to in Item 5.4 (i.e., 500m or a maximum?)?  Confirmation on if the buffer can be a simple polygon shape surrounding the area.		Please see the response to #6.1.1 and #6.2.2.
6.5.4	<b>South African Wind Energy Association</b>	May we have confirmation on Item 5.7, that no CARA application to DALLRD is necessary if the Agricultural Specialist Signs off that development limits are not exceeded.		If the development limits are exceeded, the exclusion does not apply and an EIA will need to be undertaken. This exclusion can only apply to NEMA activities, all other requirements in terms of other relevant legislation will need to be complied with.
6.6 6.6.1	<b>Biodiversity Law Centre</b>	The Exclusion Notice refers, in section 5.2, to Site Sensitivity Verification being undertaken "on the site". The wording is ambiguous as to the precise requirements of the verification process. "On the site" can mean physically present on the site, or simply refer to a desktop analysis. There needs to be more explicit wording requiring that the EAP and relevant specialists physically visit the area and inspect the site and its surrounds.		It has been confirmed that the site inspection is a physical inspection.
6.6.2	<b>Biodiversity Law Centre</b>	We furthermore agree with BirdLife South Africa's recommendation regarding the inclusion of references to the National Protocols and Guidelines		Please see the response to #6.4.1

		<p>regarding standardised requirements for Specialist Studies in EIA. These Protocols should still be applicable to the content of the site sensitivity verification report (referred to in sections 5.3 to 5.7), given that these have been gazetted as the minimum requirements for the specialist assessment and reporting of environmental impacts. These Protocols also provide clarity on what is “low” or “medium” sensitivity. These terms are pivotal to the proposed exclusions, yet they are not defined in the Site Screening Tool or in the Exclusion Notice.</p>		
6.7 6.7.1	<b>NECXON Alternative Energy</b>	<p>Paragraph 5 – 5.2 at 5.2.2 does not list Civil Aviation or Defence, is no specialist study required for these sensitivities or is this an error?</p>		<p>Paragraph 5.2.2 has been removed, therefore all themes identified must be verified.</p>
6.7.2	<b>NECXON Alternative Energy</b>	<p>In 5.4 no minimum buffer is provided, please can you give guidance on the size of the buffer and whether it will be defined in the final regulation?</p>		<p>Please see the response to #6.1.1 and #6.2.2</p>
6.8 6.8.1	<b>South African Property Owners Association</b>	<p>SAPOA notes that the Schedule “advises” that the Proponent should allow for a buffer around the proposed development footprint to allow for slight adjustments without the need to re-submit the request for the registration contemplated in the proposed Schedule.</p> <p>SAPOA suggests that such a buffer should be made mandatory, and that a minimum buffer size (meters) should be indicated in the published Schedule in order to minimise the need for rework</p>		<p>Please see the response to #6.1.1 and #6.2.2. If the proponent does not include a buffer and it is needed due to a slight change, the process in the proposed Norm will be required to be redone as the verification process will need to be extended.</p>

		and re-submissions that are problematic for both the DFFE and the Proponent.		
6.9 6.9.1	<b>Minerals Council South Africa</b>	It is proposed that a site sensitivity verification inspection must be undertaken utilising any desk top information available, including any fine scale data available from the provincial department responsible for the environment or the relevant local municipality, where available to confirm that the environmental sensitivity of the development footprint is as identified by the screening tool. Desktop information can't be used to verify site sensitivity in most instances it is the very same information contained in the screening tool. This will be like a repeat of using the screen tool. Important to note is that ground truthing should therefore be done more often to update the sensitivity maps over time.		The requirement for a physical site inspection has been clarified.  This comment is noted, and the need for a physical site inspection has been clarified.
6.9.2	<b>Minerals Council South Africa</b>	The notice advises that, "when undertaking the site sensitivity verification, that verification includes a buffer around the proposed development footprint, to allow for slight adjustments without the need to resubmit the request for registration contemplated in this Schedule. The buffer must be clearly indicated and must envelope the proposed solar photovoltaic facility and infrastructure". No guidance is provided on the minimum and maximum buffer that is required for different environmental themes.		Please refer to #6.1.1 and #6.2.2.

6.9.3	<b>Minerals Council South Africa</b>	5.4 of the notice advise that," when undertaking the site sensitivity verification, that the verification includes a buffer around the proposed development footprint, to allow for slight adjustments without the need to resubmit the request for registration contemplated in this Schedule. The buffer must be clearly indicated and must envelope the proposed solar photovoltaic facility and infrastructure". Of major concern is that the "Buffer" is not specified which might cause challenges in the future for proponents. Because different "Buffers" might be required for different environmental themes. Although the intention behind the buffer is supported it is requested that the department clearly defines term and the required buffers for the themes instead of leaving it to the EAP in order to remove ambiguities and to ensure a clear understanding of the term.		<p>The DFFE does not wish to define the word "buffer" as the dictionary definition will be relied on.</p> <p>Please refer to #6.1.1 and #6.2.2.</p>
6.10 6.10.1	<b>WWF</b>	Consideration of site footprint should indeed include a buffer as specified in 5.4, but it is essential that this buffer be specified in the regulation (WWF would suggest 500m as a minimum to accommodate re-placement, or otherwise the cadastral boundaries of the proposed site).		Please refer to #6.1.1 and #6.2.2.
6.10.2	<b>WWF</b>	Furthermore, since the Biodiversity Guidelines highlight that some areas of medium sensitivity may still require offsets in many cases, the exclusion of an EA would also exclude the critical EIA process that would result in the		It is not intended that the exclusion process includes an offset. The areas that are the subject of this exclusion are of low or medium environmental sensitivity, no offsets are therefore intended.

		<p>determination of the extent and nature of such offsets.</p> <p>There is also a high risk that this is a “thin edge of the wedge”, in that once an exclusion from EA is provided for one priority activity, it becomes significantly harder to justify not continuing to do so for others. It is unclear what the justification for excluding PV is, but it is highly likely that this justification or another will be forcefully made for many alternative development purposes, given the importance of development outcomes for the country. Consequently, the legislation of an unbounded exclusion for one purpose can lead to large numbers of subsequent exclusions, undermining the efficacy of NEMA.</p>		<p>The DFFE intends to consider other activities for exclusion where relevant, however all exclusions will need to be gazetted for public comment before the identified activity can be excluded.</p> <p>The justification is identified in the response to #1.2.5.</p>
6.11 6.11.1	<b>Centre for Environmental Rights</b>	<p>We support the provision for site sensitivity verification in this clause.</p> <p>While we note the attention of the notice to the assessment of the sensitivity of the environment, there is no provision for consideration of cumulative impacts at site and the development footprint – for example, in instances where multiple PV and/or other projects are proposed in the same area. We suggest that the notice makes express provision for the consideration of cumulative impacts on the proposed site as part of the verification process.</p>		<p>The inclusion of the need to consider cumulative effects has been included in the notice.</p> <p>The inclusion of the need to consider cumulative effects has been included.</p>



6.11.2	<b>Centre for Environmental Rights</b>	<p>We further note that the site sensitivity verification accommodates verification by professionals in the areas of terrestrial biodiversity inclusive of fauna, avifauna and habitat, aquatic biodiversity, agriculture, cultural heritage, and palaeontology resources. As above in relation to clause 3, the areas of climate change and hydrology are notably absent as no professionals specialising in these areas have been included at 5.2.2. This should be amended.</p> <p>As a point of reminding the Department of the necessity of these two areas, climate change is a phenomenon currently at play, thus all activities affecting the environment should be verified for their impact on climate change – as well as the ways in which climate change will impact the proposed activities. Regardless of the fact that solar PV constitutes clean energy with lower impacts than other energy sources, the failure to include professionals in climate change as verifiers for such a sensitive environmental problem, is a significant oversight. Additionally, due consideration should be given to the fact that some of the installations or expansions may be conducted in areas prone to droughts or wetland habitats, in which case the expertise of a professional in hydrology would be essential for verification purposes.</p>		<p>See the response to #1.3.4, #1.4.2 and #4.8.1.</p> <p>Solar PV facilities are not net water users other than for panel cleaning which could use compressed air. In addition, the exclusion applies only to areas or confirmed low or medium environmental sensitivity which would not include wetlands.</p>
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7.1 7.1.1	<b>Mr M Roods</b>	Section 6.1 – reference to linear infrastructure is made [in my view and as per 2(a) above associated infrastructure must be further qualified].		A definition for linear infrastructure has been included.
7.2 7.2.1	<b>Mr Prashika Reddy</b>	<p>Section 6.1 – with the exception of linear infrastructure which is necessary and that forms an integral part of such activity, in which case such infrastructure can be in areas of “very high”, “high”, “medium” or “low” environmental sensitivity.</p> <p>The DFFE Screening Tool only uses one type of Application Category e.g. you have a solar PV development but not able to include the grid connection and access i.e. linear infrastructure. Overhead powerlines and access roads can go through very sensitive geographical areas as well as associated activities such as battery energy storage and Internal Combustion Engines may have significant impacts on the environment. Therefore, I do not agree with this statement.</p>		The comment and disagreement is noted, the notice has included the need for a specialist and the EAP to agree that after mitigation the impacts for linear infrastructure are acceptable and mitigation measures are included in the EMP. In order to achieve the objective it is necessary to allow for the associated activities which are integral to the facility to be constructed through the exclusion, subject to these conditions.
7.3 7.3.1	<b>Mark Botha</b>	Section 6.1.2 places massive pressure on a specialist or EAP to secure a finding on medium or low. While significant and sensitivity ratings are notoriously difficult to systematise or replicate rigorously, there are also a multitude of different specialists’ perspectives on what is medium or high. The Impact Significance Guideline has not yet been finalised, but the Offset guideline provides some guidance as to what features are likely to trigger		The requirement of the proposed Norm from the specialist is to confirm the low or medium environmental sensitivity. This is not different for the themes identified in the exclusion notice to what is currently required in the protocol requirements. If it cannot be confirmed, the exclusion doesn’t apply. Seeing this as pressure being put on specialists to secure such findings assume unethical conduct and leaves such professionals open to disciplinary and punitive measures.

		<p>moderate or high concern. It is crucial that:</p> <ul style="list-style-type: none"> <li>• there is alignment created between these regulatory tools;</li> <li>• DFFE provides training for EAPs, specialists, commenting authorities and its own case officers as to what the nuance and differences are between these findings;</li> <li>• There are real consequences for EAPs, specialists, and applicants who deliberately provide false information or ratings. This is only provided for generically in the EIA regulations.</li> </ul>		<p>For the agricultural theme – the medium and low sensitivity are combined and a compliance statement is required which is to confirm the low and medium rating.</p> <p>For the aquatic and terrestrial biodiversity themes – there is only a very high or low environmental sensitivity identified, for the low environmental sensitivity a compliance statement is required which is to confirm that the sensitivity is low.</p> <p>For both the species themes – the requirement for the outcome of the medium sensitivity inspection required in the protocol is the same as in the proposed Norm which is to identify the presence, likely presence or absence of species of conservation concern. The requirements for further assessment is also the same for the protocol and the exclusion notice.</p> <p>Offsets are not anticipated as the areas falling within the ambit of the proposed Norm are low and medium. EAPs and specialists are paid professionals and should understand how to undertake site inspections and given the guidance provided in the proposed Norm on the content of the site verification reports, it is anticipated that these trained professionals will be able to provide a compliant service. As from 8 August 2022 all EAPs were to be registered with EAPASA therefore, consequences should be applicable through the registration body for deliberately providing false information. Specialists are also held to account through the SACNASP registration.</p>
7.3.2	<b>Mark Botha</b>	<p>The exception provided for linear infrastructure (i.e. all grid expansion) is problematic. While I concur that many of the features driving theme sensitivity to “very high” need refinement and improved mapping to reduce their potential conflict with bona fide activities in the public good, it is inappropriate to</p>		<p>The linear infrastructure must be integral to the solar PV facility and must provide services or access from an existing service or access point to the proposed site. Therefore not all grid expansions will be allowed to be part of this exclusion, as it needs to be integral to the solar PV facility.</p>

		<p>remove any site assessment and requirement for authorisation from these activities. There are many alternatives for grid infrastructure to be routed.</p>		<p>Where linear infrastructure is to be routed through an area of very high or high environmental sensitivity, the proposed Norm now indicates that the specialist and EAP must confirm that the mitigation hierarchy has been applied and they have as far as practically possible avoided areas of very high or high environmental sensitivity. The specialists and EAP must also identify that they have identified mitigation measures for the identified impacts in the EMPr and that they can confirm that any impact is insignificant after mitigation.</p> <p>The objectives of the exclusion would not be achieved if the associated infrastructure that is integral to the solar PV facility must go through an EIA process.</p>
<p>7.4 7.4.1</p>	<p><b>EWT</b></p>	<p>We are very concerned that the exclusion is intended to apply in areas, even those with “very high” or “high” sensitivity rating*. These have been recognised using known and verified sensitive species data and this clause opens up a loophole for specialists to overlook species through inappropriate or insufficiently robust surveys. We feel strongly that the risk associated with this is too high and that if the necessary survey effort required to verify a site no longer supporting sensitive species would effectively equate to a full EIA anyway.</p> <p>The implication of using the low/medium sensitivity layers from the screening to inform exclusion from authorisation requirement implies a level of faith in the coverage of data that is not realistic (ie in many instances there is simply a lack of data to assign them to a higher</p>		<p>The concern is noted, however in most cases animal species will be displaced for a period of time and would be able to return to the area. The clearance of vegetation leading to habitat loss is linear in nature and not experienced over a large area, where linear infrastructure is buried, the corridors would be limited in width and the vegetation will be rehabilitated, thus in many areas having no long-term impacts. For overhead power lines, it is possible to reduce habitat loss by not cutting vegetation under the overhead lines, thus reducing the impacts to the pylon footprints. The risks are therefore limited. In addition, for mitigation and the consideration of severity please refer to #7.3.2.</p> <p>The DFFE does not agree with the opinion on the data deficiencies, and site investigation to confirm the site sensitivity per theme.</p>

		sensitivity). However, the associated implication implies that high and very high sensitivity areas should not be questioned, and no such loophole should be offered in these verified high sensitivity sites.		
7.5 7.5.1	<b>BLA</b>	BirdLife South Africa is concerned that the Screening Tool can, on one hand, be considered robust enough to meet the criteria for an EMI (in terms of section 23A of NEMA) but, on the other hand, be so inaccurate that a "Very High" or "High" sensitivity rating could 'in fact' be "Medium" or "Low" sensitivity. Our argument here is not that the Tool cannot be wrong, but rather it is about whether it is not, in principle, premature and irresponsible to adopt a Tool as an EMI when (by implicit admission) it is incomplete for some areas and potentially unreliable. Queries and discussion at the webinar presented by the DFFE, on 4 October 2022, confirmed that many EAPs and other stakeholders lack confidence in the Tool as a decision instrument.		<p>The screening tool provides the sensitivity ratings, and in the case of this exclusion the sensitivities related to low and medium are the focus. There is a high level of confidence in the themes which would be impacted by solar PV facilities and their associated infrastructure. In addition the screening tool information is used as a screening mechanism only in the exclusion process as site inspections to check the validity of the sensitivity data is still to be undertaken and mitigation measures applied.</p> <p>The implicit admission of layers that do not contain sufficient data is the avian layer and an avian study is a requirement for wind energy technologies, for solar PV the impacts relate more to habitat loss and these impacts are covered in the species layer.</p>
7.5.2	<b>BLA</b>	It must be stressed that that the "High" and "Very High" sensitivity ratings are least likely to be incorrect, given that the allocation of this rating is only admissible in instances where fine scale mapping and accurate data points are available. Consequently, it is more likely that "Medium" and "Low" ratings (indicative of less reliable or absence of fine-scale data) will be inaccurate. This means that the development of intrinsic		Please see the response to #7.3.2. The requirements to consider medium and low environmental sensitivity are similar in output as those of the current specialist assessment protocols.

		infrastructure in areas that have a "High" or "Very High" rating are likely to cause significant and irreversible damage.		
7.5.3	<b>BLA</b>	<p>We question the logic of extending the exclusion to areas confirmed to be "Medium" sensitivity for "terrestrial biodiversity inclusive of fauna, flora, avifauna and ecosystems" (clause 3.1.2.1). Sensitivity of fauna and avifauna is reflected in the Terrestrial Animal Species Theme of the Site Screening Tool and the "sensitivity" classes are described in the Animal Species Protocol. Medium sensitivity indicates predicted or modelled habitat for SCC. In other words, robust field surveys are often required to confirm the likely presence or absence of the species. If the species is confirmed present or likely present, the sensitivity should be upgraded to "High" or "Very High". Should the presence of SCC be confirmed as unlikely, the sensitivity should be treated as "Low" sensitivity. As previously suggested, confirming a "Medium" sensitivity for animal species simply implies that the site verification was inadequate to assess the presence of SCC. It would not be risk averse or precautionary to allow development within these areas based on a superficial and fast-tracked verification process.</p>		<p>The comment is noted, the two species themes have been included in the requirements for site verification. In addition please see the response to #7.3.1. The requirements to consider medium and low environmental sensitivity are similar in output as those of the current specialist assessment protocols.</p> <p>The comment is noted please see the response above.</p>
7.5.4	<b>BLA</b>	BirdLife South Africa is particularly concerned that linear infrastructure associated with a solar facility is permissible irrespective of whether this		Please note the response to #7.3.2.

		<p>occurs in verified or unverified areas of "Very High" and "High" sensitivity. It is irrefutable that roads, sub-stations and powerlines can cause harmful impacts: in remote areas such infrastructures can extend over many kilometres, disrupting bat and bird flight paths, and fragmenting habitats. To permit development in areas of "High" and "Very High" sensitivity seems counter to the NEMA principles and DFFE's mandate to conserve and protect the environment (in this regard our prior comment is relevant, stressing that the "High" and "Very High" ratings are likely to be the most accurate of the sensitivity ratings).</p>		
7.5.5	<b>BLA</b>	<p>Section 5.2.3 of the exclusion Notice refers to a source of additional verification as "any desk top information available, including any fine scale data available from the provincial department for the environment or the relevant local municipality, where available". If the desk top information is available from government departments, one would presume such data would already be included in the Screening Tool, and if not should be made available to and verified by SANBI and other data holders as a matter of urgency. An ad hoc downgrading of the sensitivity supported by "any desk top data" would appear to undermine the scientific evidence that underpins the data layers. It is based on the shaky assumption that such data, albeit available from</p>		<p>Many provincial and municipal departments believe that they have additional information, this makes provision that should such information be available that it should be obtained. The DFFE has confirmation from SANBI that the provincial and municipal information prepared in biodiversity plans etc, are included in the national data sets. For the CBAs the SANBI BGIS does include a layer which shows the remaining extent of CBAs, however for sensitivity purposes the original extent of the CBA is used as there could be remnants of such CBAs in existence and these remnants could still be providing ecosystem services. The remaining extent layer will also be included on the screening tool as part of the original data layers for information purposes.</p>

		<p>government departments, are more accurate than the data in the Screening layers. There are many unscrupulous EAPs who are likely to argue that alternative data sources are superior to the content of the Screening Tool. There appears to be no recourse for competent authorities to test or refute such claims, given that they "must" issue the registration.</p>		<p>The requirements of the proposed Norm is based on the screening tool information. The site inspection would be the primary confirmation data source.</p>
<p>7.6 7.6.1</p>	<p><b>EAP</b></p>	<p>Section 6 of the proposed Regulation states the following:</p> <p>“...with the exception of linear infrastructure which is necessary and that forms an integral part of such activity, in which case such infrastructure can be in areas of “very high”, “high”, “medium” or “low” environmental sensitivity.”</p> <p>If this statement is understood correctly, this means that regardless in which sensitivity class the linear activity (e.g. associated powerline, road, etc) that may be associated with the solar photovoltaic installation falls, no authorisation would be required? It is my opinion that this leaves much room for continuation of unregulated activities.</p>		<p>The comment is noted, however please refer to #7.3.2.</p>
<p>7.7 7.7.1</p>	<p><b>South African Wind Energy Association</b></p>	<p>Clarity required for Item 6.1.2, in these instances, specialist specific mitigation incorporated into the required EMPr to ensure impact significance is kept within acceptable / tolerable levels will be critical. We suggest that this specific requirement (for mitigation in high and</p>		<p>The need to include mitigation measures for the high and very high areas for linear infrastructure has been included in the proposed Norm.</p>



		very high sensitivity areas), is incorporated into the Solar Exclusion.		
7.7.2	<b>South African Wind Energy Association</b>	Based on Item 6.1.2., please confirm that the Registered Environmental Practitioner can downgrade a sensitivity area post a site verification visit. Although we concur that the screening tool is not 100% accurate there is concern that this would need to be done with certain checks and balances by the DFFE to confirm this downgrade. Otherwise the process is open to manipulation and unethical behaviour. Will downgraded sensitivities be updated on the screening tool?		The requirement for EAPs to be registered with EAPASA has been legislated as from the 8 August 2022, therefore there are consequences through the registration body for deliberately providing false information. Specialists are also held to account through the SACNASP registration. In addition, should it be identified that the area is not of low or medium sensitivity the proponent would not have met the requirements of the registration process and the commencement would be illegal. It should also be noted that the registration documents are available for public consideration once the registration number is provided.
7.7.3	<b>South African Wind Energy Association</b>	Based on Item 6.1.2, if areas in which the site sensitivity verifications for specific themes in the screening tool are identified as “high” or “very high” but are found to be in fact “medium” or “low” sensitivity, does the need for a compliance statement/specialist report as per the protocols fall away? How do the protocols apply in this instance?		The protocols do not apply to the exclusion process as these provide the minimum information and report content for specialist assessments, assessments are not required in the exclusion but rather site verification.
7.7.4	<b>South African Wind Energy Association</b>	Based on Paragraph 6, it is understood that the exclusion from the need to obtain environmental authorisation and the registration process would apply to linear infrastructure (i.e. high voltage transmission lines, substations, access roads and all relevant ancillary equipment and connections) within areas of “very high” and “high” environmental sensitivity if they are necessary to the realisation of the solar PV facility as they form an integral part of the activity. Kindly confirm if this is		The linear infrastructure must be integral to the solar PV facility and must provide services or access from an existing service or access point to the proposed site. Therefore not all grid expansions will be allowed to be part of this exclusion, transmission lines would therefore not be considered under this exclusion unless transmission lines are used for extraction of the electricity generated by the PV facility which is generally not the case. Other associated and integral infrastructure is included in the exclusion notice. The Generic EMPr for power lines relates to an environmental authorisation, this is an exclusion therefore under this exclusion the EMPr that is required

		correct and if the Generic EMPr for overhead electricity infrastructure (or similar management tool) would then also need to be submitted with the registration.		should include the mitigation measures related to the overhead power lines.
7.7.5	<b>South African Wind Energy Association</b>	Paragraph 6 makes allowance for linear infrastructure that "forms an integral part of such activity" located in areas of high and very high sensitivity to be registered as part of the exclusion - we feel that this concession is too open-ended and would be open to abuse (e.g., a 200 km powerline needed to evacuate power from the facility could be considered "an integral part" but also could be associated with many high / unacceptable environmental impacts). How will this be addressed?		The requirements in this regard have been strengthened. Please refer to #7.3.2.
7.7.6	<b>South African Wind Energy Association</b>	Would a separate registration process still be required for the powerline associated with the PV as per the adopted Standard (R.2313 of 2022) if this powerline falls within a STC?		The comment is noted but not supported as should this be implemented there would be a possibility of the proponent applying for three different processes. Where the infrastructure is integral to the facility it falls within the proposed Solar PV exclusion Norm, this has been clarified in the proposed Norm.
7.7.7	<b>South African Wind Energy Association</b>	Will linear infrastructure, such as overhead powerlines, located through high sensitivity areas, still be exempted across all categories of sensitivities regardless of impacts, i.e., impact to birds?		The proposed Norm has included the need for the proponent to include evidence of the consultation process undertaken which includes the need to consult with relevant NGOs, it is therefore possible to engage with EWT who current engage with Eskom on areas for the placement of flappers and clappers.
7.8 7.8.1	<b>CSIR</b>	The application of the exclusion needs to be clear on whether all the required themes need to be Medium or Low in order to apply. Can the majority of the required themes be Medium or Low and the exclusion still be followed? Must the exclusion only be done for the themes		The notice identifies the themes for consideration and indicates that for the solar PV facility the themes must be confirmed to be of low or medium environmental sensitivity.

		<p>that are Low or Medium and then normal EA processes be followed for the remaining themes that are High or Very High? The hybrid process of normal EA and registration may raise a few concerns, may not ultimately streamline the overall process, and may create complications with Interested and Affected Parties (I&amp;APs). It is recommended that the registration must only apply if all themes are in verified Low or Medium sensitivity.</p>		<p>It is not intended that two authorisation processes be followed, this is very undesirable. If the criteria of the exclusion notice are not met then the EIA process applies. Additional clarity has been provided in the proposed Norm.</p>
7.8.2	<b>CSIR</b>	<p>Exclusion applies where main aspect of the development is entirely within verified Low / Medium sensitivity, however, ancillary infrastructure needed to realise the PV facility may still be in High / Very High sensitivity.</p> <ul style="list-style-type: none"> <li>• Suggestion: the SSV Report must stipulate whether any ancillary infrastructure in High / Very High sensitivity is acceptable and is sufficiently addressed in the Environmental Management Programme (EMPr).</li> <li>• If a solar PV project is located in the gazetted Electricity Grid Infrastructure (EGI) corridors, where the EGI standard is enforced, should registration be sought for Solar PV exclusion for the entire solar PV project and the powerlines that are needed for it, as part of one exclusion process, or is it mandatory for the EGI Standard process to be followed also?</li> </ul>		<p>The process as proposed here has been included in the exclusion notice.</p> <p>It is not intended that a hybrid process be followed the exclusion is intended for the main activity as well as the associated activities. A footnote has been added to provide this clarity.</p>

		<p>Preferably only one process would be followed - i.e. this solar PV exclusion process for the PV and the power lines associated with it. There needs to be clarity on what happens for Solar PV that will have power line and substation components in the EGI Corridors.</p>		
7.8.3	<b>CSIR</b>	<p>The registration form must show the development footprint in the ST report and SSV Report submitted together with the registration form.</p> <ul style="list-style-type: none"> <li>Clarify: detail is only required down to development footprint level, not layout level?</li> </ul>		<p>Often the final layout is not known at the time of registration, the exclusion is related to the areas that has been verified. The exact layout is not documented for any purpose by the competent authorities, therefore for the purposes of this exclusion the verified footprint is sufficient.</p>
7.8.4	<b>CSIR</b>	<p>The EMPr in the proposed exclusion regulation means an EMPr in terms of Appendix 4 of the NEMA Environmental Impact Assessment (EIA) Regulations, which mentions “a description of the impact management outcomes, including management statements, identifying the impacts and risks that need to be avoided, managed and mitigated as identified through the environmental impact assessment process for all phases of the development...” (Appendix 4, Section 1(1)(d)).</p> <ul style="list-style-type: none"> <li>This could create confusion since the registration process will not entail impact identification or assessment, therefore the link to the</li> </ul>		<p>The term EMPr as defined in NEMA and the EIA Regulations do not apply as the term is written out to avoid this confusion. The EMPr contemplated in Appendix 4 would relate to an EA application. This is an exclusion therefore there is no EA application.</p> <p>The proposed Norm has been amended to include the minimum environmental controls.</p>

		<p>EMPr as in Appendix 4 of the regulations is not explicit.</p> <ul style="list-style-type: none"> <li>• Suggestion: The SSV must at least include a list of impacts that needs to be managed. This will not be an onerous addition since it should be included in the EMPr in any case. A generic solar PV EMPr will also contribute to solving this issue. Alternatively, the wording of EIA regulations must ultimately be adapted to accommodate EMPrs developed under environmental management instruments other than EIA.</li> <li>• Is the EMPr approved if registration is successful, or is there still a need for final layout and EMPr approval shortly before financial close / commencement as is currently usually the case?</li> </ul>		<p>It is intended that a generic EMPr for the construction of a solar PV facility will be prepared and a draft is in place and will be finalised in the 2023-2024 financial year. The generic EMPr will be gazetted for public comment as soon as it has been finalised.</p> <p>The impacts have been determined by CAs as part of the classification process in the screening tool.</p> <p>There is no requirement for additional approval other than the registration process and the preparation of the EMPr is part of that registration process. The final layout of the solar PV facility is not required as part of this registration process. The final layout will be constructed on the registered footprint and corridor.</p>
7.8.5	<b>CSIR</b>	For powerlines associated with a solar PV facility, must the Generic EGI EMPr be populated and followed, or incorporated into the PV EMPr?		Please see the response to #7.7.4.
7.8.6	<b>CSIR</b>	<p>Registration is valid for three years and lapses if the development does not commence within this timeframe, and if the registration lapses, the site sensitivity verification and registration must be repeated.</p> <ul style="list-style-type: none"> <li>• If the registration lapses within three years and sensitivity verification must be re-done, is there not also a basis to limit the age of the site</li> </ul>		The lapsing period has been extended in the amendment to the proposed Norm and further amendment has been made to the transitional provisions which indicate that a specialist verification undertaken with a four year period

		<p>verification? Scenario, someone did an EIA for a solar PV facility ten years ago, but the project did not commence, their Environmental Authorisation (EA) has long since lapsed and the project stalled – would they be able to register their project based on the specialist investigations and sensitivity analysis from 10 years ago?</p> <ul style="list-style-type: none"> <li>• Suggestion: Add under Section 5 a recency requirement for site sensitivity verifications, e.g. three years.</li> </ul>		<p>prior to the finalisation of the site verification report, and evidence can be provided, the verification can be used to support a registration.</p>
<p>7.9 7.9.1</p>	<p><b>Biodiversity Law Centre</b></p>	<p>We note that the Exclusion Notice contains, in sections 7 and 8, the requirement for an EMPr (compiled by the environmental assessment practitioner and signed off by specialists) and a signed declaration of commitment by the project proponent that the EMPr will be implemented.</p> <p>We are however very concerned that this declaration constitutes no more than a watered-down gesture to comply with an EMPr, with no provision made for monitoring compliance, and no obligation in law for a project proponent to in fact abide by the declaration.</p> <p>The declaration (Appendix 6) makes provision for the proponent to attest that they are fully aware of their responsibilities in terms of NEMA and failure to comply with ‘these</p>		<p>The EMPr can be implemented as a requirement of the registration, the notice has been amended to include the notification by the holder to the competent authority of commencement which will trigger the ability for compliance monitoring to be undertaken. A compliance notice can be issued should there be non-compliance.</p> <p>The DFFE does not agree that the requirements are vague, the proponent is bound by all the requirements that are relevant.</p>

	<p>requirements' may constitute an offence. It is however unclear from this discretionary language what 'requirements' are contemplated by the provision and what circumstances would render non-compliance an offence. It certainly can't be argued that failure to comply with the Exclusion Notice is an offence, as no provision is made to this effect. Further, if implementation of the EMPr is not a condition of an environmental authorisation, failure to implement the EMPr is also not an offence in terms of NEMA.</p> <p>In addition to the above, the proponent is expected to testify to having complied with "all obligations as expected...in terms of the EMPr." This is simply not possible or logical, given that at the registration stage construction of the facility would not have commenced and implementation of the EMPr not yet required.</p> <p>There is no legal obligation for a project proponent to comply with the EMPr. The declaration of commitment is unenforceable, and because it is not a condition in an environmental authorisation, falls outside the ambit of the compliance and enforcement provisions of Part 2 of Chapter 7 of NEMA. This is entirely inadequate, considering the potential for abuse of</p>		<p>The solar PV facility is an identified activity in relation to LN1 and LN2. Failure to obtain an EA is a contravention of the NEMA requirements, for this activity when developed on areas of confirmed low and medium environmental sensitivity the requirements is to comply with the registration process, if the proponent does not comply with the relevant requirements they are in non-compliance to the Act.</p> <p>The wording has been amended and the compliance is forward looking.</p> <p>The DFFE does not agree with this interpretation. Compliance with the EMPr can be enforced in terms of section 49A(1)(b) of the Act. The exclusion notice has been converted to be a Norm in order to ensure enforcement is possible. Compliance with an EMPr is part of the registration requirement.</p>
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		the exclusion by unscrupulous developers.		
7.10 7.10.1	<b>NECXON Alternative Energy</b>	Paragraph 6 – 6.1 refers to “linear infrastructure”, there is no definition of this term, please can you give guidance what this refers to/includes (transmission lines?) and whether it will be defined in the final regulation?		A definition has been included, the definition notes that the infrastructure must be integral to the solar PV facility.
7.11 7.11.1	<b>South African Property Owners Association</b>	SAPOA notes that any necessary “linear infrastructure” can be situated in areas classified as having “very high”, “high”, “medium” or “low” environmental sensitivity. However, SAPOA is not aware of what is meant by “linear infrastructure”, and is the term is not defined. SAPOA requests clarification of this term in the published Schedule, for example in Paragraph 1: Definitions.		A definition of linear infrastructure has been provided.
7.12 7.12.1	<b>Susanna Nel</b>	Paragraph 6.1 states that linear infrastructure may be constructed in Very High, High, Medium or Low sensitive areas. Perhaps the DFFE didn’t realise the far reaching implications of this statement. Note that this means that power lines or roads may be constructed, without any specialist input or mitigation, through wetlands, rivers, highly sensitive biodiversity areas and so on. This, coupled with the proposal that the registration process can be managed by the developer, makes the proposed registration process a joke, to say the least.  It is incomprehensible why power lines which does not form part of a solar		The proposed Norm has been amended to ensure improved protection related to linear infrastructure. Please refer to #7.3.2 for the detail.  Focused consultation has been included as part of the proposed Norm.



		facility need to undertake PPP and specialist investigations but power lines that forms part of a solar facility is completely exempted from these requirements.		
7.12.2	<b>Susanna Nel</b>	Section 6.1: Could you please confirm that an EIA/BA needs to be undertaken if only one of the environmental themes as per Section 5.2.2 is rated by the specialist as being Very High/High? The EIA/BA will then be as per the standard NEMA requirements?		The requirements of the proposed Norm indicate that the themes identified in paragraph 2.1 must be confirmed to be of low or medium environmental sensitivity. Should these requirements not apply the proposed Norm and associated exclusion does not apply.
7.12.3	<b>Susanna Nel</b>	Could you please explain what needs to be done if the other environmental themes that are not listed in the Gazette are rated as Very High / High? These are Avian, Civil Aviation, Defence, Landscape and RFI. For example, if the appropriate avian/visual/RFI specialist confirms the rating of Very High/High, it will require a full impact assessment. What will the impact of this be and where does this fit in with the registration process?		The Civil Aviation, Defence, Landscape and RFI themes are not included as these impacts are addressed through separate processes. The Avian impacts are considered under the species. Should the requirements of the exclusion not be met a BA/EIA will be required depending on the situation.
7.12.4	<b>Susanna Nel</b>	The Screening Tool will recommend certain studies, i.e. Social Impact Assessment. Are these recommendations simply ignored or will the Screening Tool be 'streamlined' for solar facilities to be more in line with the Gazette?		Only the sensitivity rating of the screening tool is relevant to this exclusion. The specialist assessments are not relevant as no assessments are required for the exclusion. The mitigation for social impacts is to be included in the EMP.
7.13 7.13.1	<b>Environamics</b>	Regulation 6.1 states that linear infrastructure which is necessary and that forms an integral part of the		The section has been amended please refer to response to #7.3.2.

		development or expansion of a solar photovoltaic installation, can be in areas of “very high”, “high”, “medium” or “low” environmental sensitivity. Our concern is raised with regards to the unscrupulous development of linear infrastructure with no due concern for environmental sensitivity due to a lack of legal requirements to do so.	
7.14 7.14.1	<b>Centre for Environmental Rights</b>	We are concerned with, and object to, clause 6.1.2, which provides for the exclusion to apply “in areas where the site sensitivity verification for a specific theme identifies that the “very high” or “high” sensitivity rating of the screening tool is in fact “medium” or “low” sensitivity”. In our experience, Environmental Assessment Practitioners often make conclusions of medium/low impact - often without justification or in relying on unverified or unattainable mitigation measures - even if the specialist studies reference high impacts. In the case of <i>EarthLife Africa v Minister of Environmental Affairs and Others</i> , the court recognised that it is not sufficient for developers and consultants to provide generic assumptions of climate change impacts on projects and merely state that they are not very high without sufficient evidence supporting these claims.	The concern is noted please see response to #7.3.2  The screening tool is the first indication of low or medium sensitivity, whereafter specialists are then required to confirm the sensitivity and the exclusion process does not rely on only the EAP. In the case of this exclusion the EAP and specialists are jointly required to sign off on the EMPr.
7.14.2	<b>Centre for Environmental Rights</b>	Similarly, reliance on practitioners appointed by project proponents deciding on the level of sensitivity without sufficient justification cannot suffice. This additionally creates a	Any rating that is downgraded by the specialist would require evidence, this evidence would be viewed by the EAP who would be collating the information.

	<p>perverse incentive to degrade sensitive areas so that projects may proceed. It therefore opens the door to abuse by proponents and incentives to degrade highly sensitive areas – if it then means they can proceed without any EIA, public participation or prior approval from a competent authority.</p> <p>This is not a concern that is raised without a reasonable apprehension; it is not uncommon for environmental assessment practitioners (EAPs) to be lazy in some instances and unscrupulous in others. EAPs have been found to have misrepresented their qualifications, and ignored the adverse effects that proposed developments may have in the compilation of their impact assessment reports. At least one EAP faces criminal charges for professional misconduct entailing the plagiarism of reports that were location-specific. There is thus the reasonable apprehension that some EAPs may lack the independence, professionalism and honesty required of them to perform their environmental protection functions meaningfully. This is hugely problematic in a process where no provision is made for public scrutiny and consultation or for discretion and decision-making by the competent authority, as in the proposed exclusion. We thus suggest that clause 6.1.2 be deleted.</p>		<p>The proposed Norm has been amended to include focused public consultation.</p> <p>This is a generalisation, very few EAPs or specialists have been reported to their professional bodies either by the public or the competent authorities for being lazy or unscrupulous.</p> <p>As of 8 August 2022, EAPs are required by law to be registered with EAPASA, who would check the qualifications as part of the registration process and there would be consequences through the registration body for deliberately providing false information.</p> <p>As part of the proposed Norm, EAPs and specialists are required to declare their independence. This is as per the current requirements of the EIA process.</p> <p>The proposed Norm has been amended to add a focussed public consultation process and the location for accessing documents will be made known to allow for an appeal process. Please see #7.3.2</p>
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7.14.3	<b>Centre for Environmental Rights</b>	<p>We are also concerned about the exception provided for at the end of clause 6.1 for “linear infrastructure which is necessary and that forms an integral part of such activity, in which case such infrastructure can be in areas of “very high”, “high”, “medium” or “low” environmental sensitivity.” We strongly recommend that this be deleted. Firstly, “linear infrastructure” is not defined – lending to uncertainty as to what this entails and exposing the application of the exclusion to abuse. Secondly, it is unacceptable that activities can take place in areas of high sensitivity simply by virtue of being allegedly integral to excluded activities, and without any prior assessment or approval by a competent authority – this poses room for grave risk to environment, and prejudice to human health and well-being and renders redundant the EIA and environmental management system.</p>		<p>Linear infrastructure has now been defined and is required to be associated and integral to the solar PV facility.</p> <p>Please see the response to #7.3.2: a process has been included to consider the mitigation hierarchy as well as mitigation measures.</p>
8.1 8.1.1	<b>Mr Prashika Reddy</b>	<p>Section 7.2.6 – An environmental management programme compiled by the environmental assessment practitioner and signed off by the relevant specialists.</p> <p>It would be difficult for an EAP to compile an outcomes-based EMP with only a Site Verification being undertaken.</p>		<p>The impacts associated with solar PV facilities when developed in areas of low and medium environmental sensitivity are well studied and generic. The mitigation measures are to be prepared by the specialist and EAP who are experts in these matters.</p>
8.2 8.2.1	<b>Mark Botha</b>	<p>The way it is written, Section 7.1 read with 10.1 implies that any existing application for PV or associated grid</p>		

		<p>connection can re-register just 15 days prior to commencement – it is not limited to those projects specified in Section 8. This means that a large project currently under-assessment could potential withdraw their application for EA, re-register under this notice, and continue with construction on receipt of a favourable site verification? This is going to cause significant problems, not least with administrative justice.</p>		<p>The proposed exclusion is not for all projects, merely the ones that can be confirmed to be on low and medium environmental sensitivity. If the proponent has done the site specific verification, it is not thought that the timeframe for registration is problematic as there is no review required.</p>
<p>8.3 8.3.1</p>	<p><b>EWT</b></p>	<p>The proposed registration is 15 days prior to the commencement of the activity, our view is that this period should be expanded significantly, for a number of reasons. Primarily, 15 days is grossly insufficient to fulfil the requirements as set out in 5.1 and 5.2 of this same gazette relating to site sensitivity verification by specialists. Surveys to illustrate the presence of threatened, cryptic, secretive, seasonal and scarce species are time-consuming. Surveys, as required here, to verify the absence of these same species require significantly more time and effort.</p> <p>Proposed timeframe from registration to commencement should be shortened to 12 months, in the spirit of expediting the process or renewable energy development. This is also to allow for quicker detection of any ecological changes that might impact on the sensitivity of the area.</p>		<p>The registration process can only commence once the site verifications and the site sensitivity report including the focused consultation have been prepared and finalised. As long as a registration number is obtained prior to commencement, this will be compliant with the prescribed requirements.</p>

8.4 8.4.1	<b>South African Wind Energy Association</b>	Please clarify Item 7.1 – does this mean that the registration form only needs to be submitted 15 days before the expected commencement date or if the response from the competent authority is required 15 days prior to commencement, thus requiring the registration form to be submitted 25 days prior to commencement, to allow the competent authority 10 days to register the proposed development or expansion as indicated in Item 9.1?		The notice indicates that the competent authority is to provide the registration number 10 days after receipt of a completed registration form.
8.4.2	<b>South African Wind Energy Association</b>	Confirmation is required from DFFE that other authorities, such as Local Municipalities, the DWS, DMRE, DALRRD, and provincial environmental affairs, will accept a registration certificate instead of an environmental authorization.		There is no legal requirement for an EA prior to other departments accepting and processing the authorisations mandated under their specific legislation. This is a practice that has crept into the overall authorisation process and has been requested by Cabinet and Parliament to be corrected, as it unnecessarily extends the authorisation timeframe, often delays implementation and is not aligned with the legal requirements whenever EA is not required in terms of NEMA.
8.4.3	<b>South African Wind Energy Association</b>	Item 7.2 - Confirmation required if written consent is required from powerline and/or road servitude landowners in addition to the PV-facility landowner.		The proposed Norm has been amended to clarify that the route of the linear infrastructure requires pre-negotiation. Written consent of land owners/ occupiers is required.
8.4.4	<b>South African Wind Energy Association</b>	Item 7.3 - The registration period of three years provides insufficient time for a project to achieve all requisite milestones prior to commencement. These include: (1) obtaining all permits, approvals, and licences from various authorities; (2) awarded “Preferred Bidder” within a government or private tender process; (3) reach financial close; (4) EPC contract negotiated and awarded; and (5) site mobilization.		The timeframe has been amended to 6 years.

8.4.5	<b>South African Wind Energy Association</b>	It is recommended that the registration period is extended to 5 years.		The suggestion has been considered and the timeframe amended to 6 years to ensure that the financial close and construction matters can be dealt with before the timeframe expires and the process must start again. .
8.4.6	<b>South African Wind Energy Association</b>	Will there be a mechanism to extend a Registration validity period?		The timeframe has been increased to 6 years. It is not intended that the timeframe be extended longer than the 6 years as there could be additional facilities built within 1km within the 6 years, in addition there could be changes to the landowners and land occupiers within the 6 year timeframe. As there would be a requirement to consider additional cumulative effects and the focused public consultation would be required for an expansion, it is thought that a new registration process should be followed.
8.5 8.5.1	<b>Savannah environmental</b>	The registration process proposed for solar PV differs from that for Electrical Grid Infrastructure, which includes provision for public participation, and also provides a longer period for authority consideration and registration. It is suggested that the various registration processes to be gazetted should align to avoid confusion and challenges by affected parties.		A focussed public consultation process has been added to the exclusion process.  It is not a requirement that the process for the EGI standard and the solar PV exclusion be the same, the two processes are different.
8.5.2	<b>Savannah environmental</b>	It is noted that the Authority has only 10 days to register the project. This does not provide sufficient time for informed decision-making and verification of the site sensitivity verification report to be submitted. It is not stated how comments from Organs of State that may have jurisdiction with regards to the project will be consulted as required in terms of NEMA. Of specific importance would be DFFE: Biodiversity Directorate, Provincial Conservation authorities and DWS.		There is no intention that the exclusion process be a review process. There is also no intention that the competent authority verify the site verification. This process is an exclusion process which is provided for in NEMA. It is foreseen that the preparation, verification and consultation on information must occur prior to submission of a request for registration as such a request must contain all relevant information to inform a registration request.

8.5.3	<b>Savannah environmental</b>	It is noted that other associated infrastructure such as access roads would also be registered through this process. It is not clear whether landowner consent is required for linear components of the project such as roads. This is currently not required in terms of the EIA Regulations and should be specified.		The proposed Norm has been amended to confirm that the linear infrastructure routes are to be pre-negotiated. Written consent from the footprint landowner is required in the proposed Norm. The term “footprint” is defined to exclude linear infrastructure thus written consent is not needed for such linear infrastructure.
8.5.4	<b>Savannah environmental</b>	In terms of Re-registration process, the Gazette specifies that it should be undertaken when there is a change of ownership or when there is a change of the development footprint which will fall outside the verified buffer. There is no process defined in the event that this extended area triggers a high/very high sensitivity, when initially it only triggered low/medium sensitivity. Further, there is no provision for an instance where only the SPV name is changed and not the holding company. It is not clear whether the re-registration process in this instance requires a repeat of all the site sensitivity verification studies.		<p>The change of development footprint has been removed from the proposed Norm. If there is to be development outside of the footprint that has been verified, the proponent will need to redo the process i.e. follow paragraph 4, 5 and 6 of the proposed Norm again and not just re-register.</p> <p>Re-registration will now apply if the facility in its entirety is changed to a new owner or if a portion is registered in the name of a new owner. In this case a re-registration process is followed. Should the change be made through construction or before construction then the new owner will need to sign a declaration that the EMPr will be implemented by the new owner.</p>
8.5.5	<b>Savannah environmental</b>	Construction will be required to commence within 3 years which is a really short period considering the obtainment of various permits, licenses etc. There is no mention in the Gazette as to how many times an applicant can re-register a project should the project not commence within 3 years.		<p>The timeframe has been amended to 6 years and it is not intended that the registration would be re-registered for a reason other than a change of name or the movement of a portion of the facility (i.e. distribution line or substation) to a new owner.</p> <p>The timeframe between preferred bidder and construction is lengthy as there is a need for financial close as well as all the construction related matters.</p>
8.5.6	<b>Savannah environmental</b>	There is no guidance regarding the size of the buffer area around the		For the size of the buffer please refer to #6.1.1 and #6.2.2.



		development footprint for a project or how this must be estimated/determined.		
8.6 8.6.1	<b>Natural Justice</b>	<p>The government has provided a 15-day period for registering a proposed facility. It is important to provide firms and people with a reasonable amount of time to gather information, make plans for their registration in advance, and complete the relevant paperwork, including looking for forms, seeking assistance if necessary, and filling them out.</p> <p>The Notice should advance and apply the principles of the process as highlighted in the EIA Regulations on public participation. The timeframes offered in the Act must be justifiable in their operation and support fair procedures and processes for consultation that we believe are necessary to give effect to lawful, reasonable, and procedurally fair administrative action as provided for in the EIA Regulations on public participation and PAJA. The time frames should be extended to 30 days, which is the period set out in the EIA Regulations.</p>		<p>The timeframe for registering by the relevant competent authority is not affected by the time of preparing the documents and the focused consultation process. The site verification report is to be attached to the registration form.</p>
8.7 8.7.1	<b>Biodiversity Law Centre</b>	<p>We also note, as an aside, that the requirement for the competent authority to register a solar PV facility within 10 days of receipt of the registration documents means that registration of a facility in terms of the Exclusion Notice would therefore be only 47 days faster than registration for a solar PV facility to</p>		<p>The registration process is only a part of the overall process. The DFFE does not agree that the total process will be negligibly shorter.</p>

		<p>be developed in a REDZ. The slightly longer timeframe does not justify exclusion from the need to obtain an environmental authorisation in circumstances where law already makes provision for truncated timeframes, and the time to be gained by the procedure outlined in the Exclusion Notice is negligible.</p>		
8.7.2	<b>Biodiversity Law Centre</b>	<p>We note that in terms of sections 7 and 8 of the Exclusion Notice, a project proponent needs simply to register the proposed facility and infrastructure 15 days prior to the expected commencement date of the proposed development or expansion. We are deeply concerned that the registration process makes no provision for public participation and consultation with interested and affected parties.</p> <p>The registration process is consequently not only procedurally unfair, but unlawful insofar as it fails to comply with requirements of integrated environmental management and impact assessment and the section 2 principles contained in NEMA. The Exclusion Notice would not withstand judicial scrutiny on this basis.</p> <p>All South Africans have a right to administrative action that is lawful, reasonable and procedurally fair. Procedurally fair administrative action requires a person whose rights stand to be adversely affected by a decision to</p>		<p>A focused public participation process has been included in the notice.</p> <p>NEMA makes provision for an exclusion process, it should be expected that the requirements would be different to that of the EIA process.</p> <p>The comment is noted and it is DFFE's opinion that the process as amended will withstand judicial scrutiny.</p>

		be given adequate notice of the nature and purpose of the proposed decision, and an opportunity to make representations in relation thereto.	
8.7.3	<b>Biodiversity Law Centre</b>	<p>By enabling a proponent to register a solar PV facility without notifying potentially interested and affected parties of the impending registration, and without affording those parties an opportunity to make submissions in respect of the proposed facility, rights to procedurally fair administrative action are undermined. The Exclusion Notice fails to comply with provisions of NEMA which explicitly requires public participation in environmental decision-making.</p> <p>At the stakeholder meeting of 4 October 2022, DFFE commented that there is no need to have a second public participation process as part of the registration process, as public participation is already conducted as part of the application for a change in land use, and there is accordingly no need to duplicate this process. We strongly object to this line of reasoning for the following reasons:</p> <ul style="list-style-type: none"> <li>• it is inconsistent with South African jurisprudence which recognises the land use planning process (in terms of which land is rezoned for the purposes of solar PV development) is separate and distinct from the environmental regulatory process;</li> </ul>	<p>The comment is noted and a focused consultation process has been added to the process.</p> <p>There are consultation processes associated with the Heritage Resources Act, the Water Act as well as the municipal rezoning process. These are now in addition to the focused public process required through the exclusion process.</p> <p>The comment is noted.</p> <p>The comment is noted.</p>

		<ul style="list-style-type: none"> <li>the former falls within the regulatory authority of municipalities, and the latter with provincial or national departments responsible for the environment; the constitutionally mandated functions of the different spheres of government must be respected;</li> </ul> <p>the public participation process as part of the land change application can never be a substitute for public participation in terms of NEMA.</p>		
8.7.4	<b>Biodiversity Law Centre</b>	<p>In addition, no provision is made for interested parties to be notified of a registration decision. It is therefore quite conceivable that the entire registration process takes place without the people who may stand to be most affected thereby having any knowledge of it. In this regard, we note DFFE's concession at the stakeholder meeting that there is no social layer in the Screening Tool for solar PV. There is consequently no means of taking into account the views and concerns of persons who stand to be directly affected by solar PV developments of significant magnitude.</p>		<p>The registered projects will be included on a register to be kept by the competent authority and uploaded onto the website of the competent authority. This will allow potential affected parties to know about the registration. A requirement for notification once registration is received has also been added.</p>
8.7.5	<b>Biodiversity Law Centre</b>	<p>Furthermore, in addition to being denied the opportunity to participate in decisions regarding the registration of solar PV facilities, interested and affected parties are also left without the option to appeal against those decisions. If interested and affected parties are not notified of the registration</p>		<p>The notice has been amended to include a focused consultation process and the notice has also been updated to indicate that an appeal is possible on such a registration. The register of projects registered under this exclusion will be uploaded and be available to the public for consideration should parties wish to appeal. A requirement for notification once registration is received has also been added.</p>

		<p>decision, it is unclear how they would know to submit an appeal.</p> <p>Further, no right of appeal is in any event available to affected persons in terms of section 43 of NEMA because the decision to register a solar PV facility in terms of the Exclusion Notice is not a power delegated to the competent authority under NEMA. The only option available to a person whose rights have been affected by a decision to register is to approach the High Court to judicially review such decision. Insofar as the DFFE has published the Exclusion Notice in an effort to alleviate its administrative burden, it is highly likely that it will find itself burdened with defending applications for the judicial review of registration decisions in the absence of a right to appeal being available to affected persons.</p>		<p>The comment is noted.</p>
<p>8.8 8.8.1</p>	<p><b>NECXON Alternative Energy</b></p>	<p>Paragraph 7 – 7.1 refers to the “expected commencement date” there is no definition of this term, please can you give guidance on whether this is the date that any work/actions take place at the site relating to the solar pv or if it has a different meaning? 7.1 also refers to the “competent authority” which for mines is the DMR, please give guidance on whether a specific contact at DMR will process these registrations as DMR not responsive in progressing current EIA applications, example being no official designated five weeks after</p>		<p>The term commencement is defined in NEMA.</p> <p>It is not anticipated that DMRE would be the competent authority for a stand alone solar PV facility. DMRE is only the competent authority should the solar PV plant be planned as part of a mining application, in which case an exclusion would not be possible as the scope of the mining activity would include a solar PV facility and would be part of the overall mining right assessment, which would be</p>

		submitting Scoping Report which includes a solar pv project.		subject to the requirements for environmental authorisation.
8.9 8.9.1	<b>South African Property Owners Association</b>	<p>SAPOA presumes that the words “the expected commencement date of the proposed development or expansion” refer to the commencement of physical construction on site. SAPOA suggests that this wording be amended to reflect: “...the expected commencement date of physical construction on site of the proposed development or expansion...”.</p> <p>SAPOA requests clarification of the wording in Paragraph 7 in the proposed Schedule that “at least 15 days prior to the expected commencement date of the proposed development or expansion, the Proponent must register or re-register the proposed [solar PV] facility or infrastructure with the competent authority”.</p>		Please refer to the response to #8.8.1
8.9.2	<b>South African Property Owners Association</b>	<p>Does the “competent authority” refer only to the competent authority in respect of environmental matters i.e. the DFFE, or to any other competent authorities such as local government / municipal authorities, NERSA, etc.?</p> <p>Is the registration or re-registration with the relevant environmental authority a pre-condition and/or requirement for registration of the project with other competent authorities such as NERSA?</p> <p>SAPOA suggests that clarification of these issues should be provided in the published Schedule.</p>		<p>The competent authority is identified in NEMA section 24C and defined in the proposed Norm and in the case of this exclusion would include the provincial competent authority. The requirements of all other legislation still applies and must be complied with.</p> <p>Please refer to the response to #8.4.2.</p>

8.9.3	<b>South African Property Owners Association</b>	<p>SAPOA noted the wording “The following documents must be submitted...” in Paragraph 7.2 of the proposed Schedule.</p> <p>SAPOA suggests that more detail is required in respect of to whom, where and how the documents must be submitted.</p>		<p>The registration is to be submitted to the relevant competent authority. Paragraph 7.1 identifies this.</p>
8.9.4	<b>South African Property Owners Association</b>	<p>The allowable limits for the size (area) of solar PV installations on agricultural land, expressed in hectares per MW of installed generation capacity for solar PV installations above 20 MW, are specified for agricultural land in the Agricultural Specialist Assessment Protocol referenced in the proposed Schedule.</p> <p>The limits specified apply to agricultural land either within or outside of field crop boundaries, that are deemed to have either “very high”, “high”, “medium” or “low” sensitivity ratings, as determined by the DFFE national web-based environmental screening tool.</p> <p>The Agricultural Specialist Assessment Protocol does not, however, appear to take into account the significant improvements that are taking over time in respect of the increased efficiency and reduced overall area taken up by a solar PV installation of a particular installed generation capacity.</p>		<p>The comment is noted and through the next phase of the REDZs the MW/hectares can be reviewed to take account of improved technology.</p> <p>The comment is noted and the DFFE is aware of agrivoltaics. This is however new research and is unlikely</p>

		<p>Nor does the Agricultural Specialist Assessment Protocol appear to take into account the technology known as agri-voltaics, where agricultural land is, in fact, not displaced by solar PV installations, but is indeed enhanced through intensive agricultural opportunities beneath the solar PV panels within a solar PV installation.</p> <p>SAPOA suggests that the Agricultural Specialist Assessment Protocol and the associated limits specified for solar PV installations on agricultural land should be revisited to take the above into account.</p>	<p>to impact much on the lower quality of land associated with the low and medium agricultural sensitivity.</p> <p>This protocol can be revisited in phase III of the REDZs SEA which will be initiated in the first quarter of 2023-2024.</p>
8.10 8.10.1	<b>Environamics</b>	<p>Our concern is raised with regards to the validity period of the registration, namely 3 years. The Department should avoid a situation similar to what was experienced with the validity period of EAs for solar PV projects where numerous applications for amendments had to be submitted to extend the validity period. In this regard it is unclear how substantial amendments will be dealt with as part of the proposed regulations. Regulation 5.4 advises that verification includes a buffer around the proposed development footprint to allow for slight adjustments without the need to resubmit the request for registration. However, it is unclear how substantial amendments within the boundaries of the assessed footprint will be dealt with.</p>	<p>The timeframe has been amended to 6 years.</p> <p>The proposed Norm has been updated to remove the ability to change the footprint through a re-registration.</p> <p>Please see the response above.</p>
8.10.2	<b>Environamics</b>	<p>It is unclear why re-registrations is not required if a change of ownership</p>	<p>There is no requirement applicable after construction.</p>



		occurs after the construction of the facility and infrastructure is completed. We argue that the operational and decommissioning phases of the project may also have significant impacts.		The listed activity does not have an operational component and a BA is required for closure of the facility.
8.11 8.11.1	<b>Minerals Council South Africa</b>	It is not clear where in the NEMA the regulatory basis for a requirement for registration to occur where exclusions from EIA processes are provided. This registration process goes beyond a record keeping process. The Notice contemplates the submission of a registration form (with a pro forma set out in the notice). This amounts to a request for Registration – what would happen if there is a refusal to register or a challenge as to the adequacy of the supporting documents. As one of the requirements to register for the proposed development or infrastructure, the proponent must submit an environmental management programme (EMP) compiled by the environmental assessment practitioner and signed off by the relevant specialists. In the case of mining, this requirement is against the principle of integrated licencing and add another layer of bureaucracy as opposed to companies asked to amend their existing EMP incorporating the Solar PV activity.		Using section 24(2)(d) and 24(10) of NEMA provides the mandate to prescribe norms/standards to be complied with as basis for exclusion from requiring an environmental authorisation. These would be used to achieve the objects of the NEMA, which, amongst others relate to the NEMA section 2 principles. A norm/standard need not be limited to record keeping measures.  Section 49A(1)(b) also indicates that a failure to comply with a prescribed norm/standard constitutes an offence.  This exclusion would not be applicable if the application was for a mining right or permit as the solar PV facility would be part of the mining application and not a stand-alone application. Therefore the EMPr referred to in the Norm is related only to the solar PV facility in the case of the exclusion. In the case of a mining application the mitigation measures would be part of the overall mitigation measures of the EMPr related to the mining application.
8.11.2	<b>Minerals Council South Africa</b>	The Minerals Council is concerned about the appropriateness of a registration being necessary. The way this notice has been drafted will facilitate challenges being raised by disgruntled		The concern has been noted, but there is a requirement to ensure that the environment is protected even when the activity is the subject of an exclusion.

		stakeholders who will attack the process of registration on administrative law grounds. The requirement for an EMP is part of the environmental assessment process and should not be part of an exclusion process – either you exclude an activity or not as the proposed process suggest a hybrid.		<p>An EMPr is a tool to manage mitigation measures and it could be appropriate in many different circumstances other than the environmental assessment process.</p> <p>The comment is noted but there is a need to manage the exclusion through registration in the view of the DFFE as this is not a delisting but an exclusion under certain circumstances. If a mining operation has already been authorised and those approvals have included solar PV facilities, these are already approved and can continue as authorised. If solar PV facilities are newly proposed, it would not be provided for in the existing EMPrs issued and if it falls within the realm of the requirements of the proposed Norm, it may qualify for exclusion.</p>
8.11.3	<b>Minerals Council South Africa</b>	Again, the notice requires “the written consent of the landowner or person in control of the land to undertake such activity on that land as contemplated in regulation 39 of the EIA Regulations, to be attached as Appendix 3”. It is not clear what should happen in cases where the landowner or person in control of the land in question refuses or delays to give such a consent.		Where there is refusal of the landowner to give consent the registration process cannot be initiated until that situation has been resolved. It is not possible neither would be desirable to build a facility costing millions on land that is creating a dispute. The same principle is applied for solar PV facilities that are currently subjected to the EA process and requirements.
8.11.4	<b>Minerals Council South Africa</b>	Statements in item 7.1 and 7.3 seem to be contradictory and require rephrasing, or clarification.		The statements have been re-read and no contradiction can be determined, 7.1 relates to the timeframe for registering the project and 7.3 deals with the validity of the registration.
8.11.5	<b>Minerals Council South Africa</b>	The notice only refers to the DFFE and provincial departments as the CA and is quiet on a scenario where the DMRE would be the CA, i.e. the establishment of a renewables project within the boundary of a mining right or for the exclusive use of the mine. The notice specifically mentions the registration process that will be followed by the		Please refer to the response in #8.8.1 and #8.11.1.

		<p>DFFE or provincial environmental departments for low and medium sensitivity. It is silent on whether the same registration process will be followed in the event where DMRE is the competent authority. This point requires further clarification by the department.</p>		
8.12 8.12.1	<b>Centre for Environmental Rights</b>	<p>The absence of any provision for a decision to be made by a competent authority whether the project can proceed or not based on the verification report and tool (this also applies to clause 9, as below). This must be corrected. There must always be provision for a competent authority to confirm or reject registration, to exercise necessary discretion to stop an activity from proceeding irrespective of the application of the tool and independent verification, failing which there is a fundamental breach of the competent authority's custodial duties and obligations;</p>		<p>The process is intended to be an exclusion process and no review by the competent authority is envisaged. The exclusion potential is provided for in NEMA. The decision issued would be the issuing of a registration number. This can only be done once all requirements have been met. Commencement can only occur legally once a registration number has been obtained. Therefore, the necessary clarity has been provided in the Norm.</p> <p>The process relies on the professionalism of the EAP and specialists who are all to be registered by their relevant professional bodies. The competent authority has set out the first environmental precaution by requiring the site to be within an area of low or medium environmental sensitivity as identified through the national web based environmental screening tool.</p>
8.12.2	<b>Centre for Environmental Rights</b>	<p>The absence of any provision for public participation or public notification of the registration. This must be addressed.</p>		<p>A focused public participation process has been included as well as notification once registration has been issued in the proposed Norm.</p>
8.12.3	<b>Centre for Environmental Rights</b>	<p>We submit that registration or reregistration only 15 days prior to proposed commencement is too short a period to enable any meaningful, and necessary, consideration by a competent authority as well as notification to, and consideration by, the public and relevant stakeholders and interested and affected parties.</p>		<p>The public process is done through the verification process, and there is no review process required from the competent authority. The role of the competent authority is to ensure that the documents and declarations have been submitted and signed as required. As long as a proposed facility is registered prior to commencement, the requirements have been met.</p>

8.12.4	<b>Centre for Environmental Rights</b>	The absence of any provision for notification and public participation on registration is a fatal flaw.		The requirement for a register of all registered projects to be kept by the competent authority and uploaded to the website of the competent authority, has been included in the exclusion notice. Refer to #8.12.3.
8.12.5	<b>Centre for Environmental Rights</b>	Further, express provision must be made for the registration documents listed in clause 7.2 to be publicly available on the website of the Department, on the project site, on the website of the proponent, and where the proponent does not operate a website, then automatically on request.		Registration documents must be made available for purposes of consultation. The competent authorities will not keep copies of the actual document but rather a register of projects. The register will indicate where the documents can be obtained.
9.1 9.1.1	<b>South African Wind Energy Association</b>	For Item 8.1.1, we request that the change of ownership requirements excludes a change in Special Purpose Vehicle (SPV) naming. The change of naming occurs frequently in these developments and results in delays. It should be clearly noted as a separate issue that if ownership remains but the name changes that this will not result in a re-registration process.		The objective of the re-registration process is to ensure that the developer (person responsible for constructing the facility) commits to implementing the EMPr. Therefore, it is generally the special purpose vehicle who are responsible for the construction and when there is a change of name it is necessary for the developer to re-register should the construction not be complete.
9.1.2	<b>South African Wind Energy Association</b>	Based on the statement in Item 8.3, kindly confirm that it would be acceptable to change the ownership of a power line (registered as infrastructure associated with the solar PV facility) to the grid operator (i.e., Eskom) after construction is complete. Kindly clarify if the new owner (i.e., Grid Operator) would then be liable to implement the operational phase mitigation measures specified in the environmental management programme.		<p>The construction of the activity is to be registered, and once the construction is complete there are no other requirements or conditions to be complied with. There is a requirement to re-register should the owner change for a portion of the facility at any time during or after the construction.</p> <p>The EMPr is a construction EMPr only. There would be no mitigation measures required for the operation or closure of the facility at this time. When the facility is closed a further EA for closure will be required as closure will trigger a basic assessment process and thus require environmental authorisation.</p>

9.1.3	<b>South African Wind Energy Association</b>	Is the understanding correct that the Re-registration process is different for Items 8.1.1 and 8.1.2? Essentially for Item 8.1.1 the new owner completes a Re-registration form as contemplated in Appendix B. For Item 8.1.2, you will need to undertake a full new Registration Process? Will it only be required for the new development footprint areas, or will it need to be for the full facility area?		The section on re-registration has been amended significantly. Re-registration is required after construction where the entire activity is changed to a new owner or where a portion of the facility is transferred. In both of these cases no additional verification work is required but the information is to ensure that the information is updated. Where re-registration in terms of a new owner before construction is undertaken or during, then the new owner needs to sign the declaration regarding the implementation of the EMPr.
9.1.4	<b>South African Wind Energy Association</b>	For the Re-registration process applicable to Item 8.1.1 – can the Appendices from the original registration submission be utilised?		Not all of the original appendices are to be submitted, and some of the appendices will require updating in the case of a change of name associated with a transfer of infrastructure.
9.2 9.2.1	<b>CSIR</b>	Re-registration is required when: There is a change in ownership of the project before commencement; The development footprint is amended to extend outside the verified site – in which case only the area that was not previously verified, must be verified (the entire site does not need to be re-verified). 4.1.1. Clarify: the development footprint can be changed and micro-sited as long as it stays within verified Low / Medium sensitivity. If the footprint of the registered project needed to encroach on verified High / Very High sensitivity EA would be required. The EMPr must be explicit on planning phase actions – i.e. remaining within verified Low / Medium sensitivity.		The proposed development would be non-compliant should the registered boundary be traversed.  The wording of the section indicated has been amended to clarify the requirement of the buffer.
9.2.2	<b>CSIR</b>	Re-registration is not required if a change of ownership occurs after the construction of the facility and infrastructure is completed.		The re-registration is required after registration in order to ensure that the information is relevant at all times. If there is a new owner for a portion of the registered facility, re-

		4.2.1. Clarify: Whilst it is acknowledged that the relevant listed activities for solar PV development do not have an “operation” component, and are focused on “development” and construction, the EMPr for the project will still most likely include operational phase management actions e.g. management of panel washing waste water. For this reason, it is important that re-registration applies to change in ownership after construction is completed.	<p>registration of that portion will be required, although no additional verification work will be required.</p> <p>Where an activity does not include an operational component, it is not intended that requirements would apply. Every company should practice best practice approaches on their sites as part of their corporate responsibility. There is also the duty of care principles which apply to all developments and which can be enforced should there be practices ongoing which could endanger the environment.</p>
9.3 9.3.1	<b>NECXON Alternative Energy</b>	Paragraph 8 – 8.3 states that re-registration is not required if a change of ownership takes place “after construction of the facility and the infrastructure is complete”, please give guidance on the reason why the Dept of Environment is not maintaining a list showing current owners of registered solar pv projects as these will have an EMP that requires oversight?	<p>The re-registration is required after registration in order to ensure that the information is relevant at all times. If there is a new owner for a portion of the registered facility, re-registration of that portion will be required, although no additional verification work will be required.</p> <p>A list of facilities registered is required to be kept by the CA. The list is merely to ensure that stakeholders know which facilities have been registered. The EMPr is a construction EMPr dealing with impacts from construction as there is no operational component related to solar PV facilities. Once construction is complete there are no further requirements of the developer, other than ensuring that the developer applies best practice in relation to their operations as would be required by any professional company.</p>
9.4 9.4.1	<b>Minerals Council South Africa</b>	To re-registration a facility a re-registration form contemplated in Appendix B is to be completed by the new owner due to a change of ownership. It must be appreciated that some of the information that is required in appendix B is already in possession	The onus is on the holder to make amendments and to comply with the requirements. If the owner changes the new owner must submit a declaration. This is not in the possession of the CA nor regarded as an administrative burden.

		of the competent authority (CA) and re submission of such could amount to administrative burden to both the new owner and the CA. In instances where the facility information is already submitted it should not be submitted again because it will be a duplication, thus the item 8.4.1 should cater for that.		
9.5 9.5.1	<b>Centre for Environmental Rights</b>	Our concerns and objections in relation to registration (clause 7) and processing of registration (clause 9) apply equally to re-registration and this provision. The recommendations made in respect of clauses 7 and 9 must apply here too. Namely there must be provision for: public participation on re-registration; and for discretion of the competent authority to refuse re-registration where appropriate.		The re-registration has been amended to include only a name change or a name change related to the change of a portion of the facility after completion. There are no further environmental impacts associated with the name change and consultation has therefore not been required.
10.1 10.1.1	<b>BLA</b>	Section 9.1 of the exclusion Notice states that the competent authority "must register the proposed development or expansion and provide the proponent with a registration number". The absolute requirement to register the site brings the entire process of site verification into question. Surely the competent authority needs to retain unfettered discretionary powers to decide whether the level of investigation is sufficient to anticipate and prevent significant environmental harms? To state that the proposal "must" be registered implies that registration will take place irrespective of the competence of the EAPs and		<p>NEMA makes provision for exclusion, which would not require decision-making. The DFFE is intending to utilise this provision to exclude solar PV facilities when developed in areas of low or medium environmental sensitivity. This exclusion process requires the input of professional taxa specific specialists and registered EAPs. Registration can only occur once all requirements set in the proposed Norm has been complied with.</p> <p>In relation to the competency of the EAP, it is noted that since August 2022 all EAPs are now required to be registered with EAPASA, who will ensure that their qualifications comply with the professional requirements and their behaviour is ethical.</p>

		<p>Specialists, and without regard to the standard of content in the application.</p> <p>At minimum any fast-track process should allow the competent authority to adjudicate the submission, require additional information if deemed necessary, or ask for third - party/independent/peer review. In this respect, our preceding comments about the DFFE's role as a custodian of the environment are relevant.</p>		<p>The exclusion is not intended to rely on a review process and for additional information to be submitted. Only when some required information has not been provided would the registration process not proceed.</p>
10.2. 10.2.1	<b>EAP</b>	<p>Section 7 – Section 9 refers to the registration of such projects with the competent authority. Would the competent authority be in a position to verify and process the documents submitted in support of this registration process given the limited time frame of 15 days prior to commencement of such installation? If there should be a discrepancy in the actual sensitivity of an area or some other risks identified, or the Environmental Management Programme is not sufficient to address all aspects, 15 days may not be enough to highlight this and stop the continuation of a development.</p>		<p>The relevant competent authority is not required to review the document but to check that all the documents and declarations have been provided. Registration prior to commencement is required. The reference to 15 days has been deleted.</p>
10.3 10.3.1	<b>CSIR</b>	<p>The CA must register the project and issue a registration number within 10 days of receipt of a correctly completed registration form.</p> <ul style="list-style-type: none"> <li>• Is it recommended that a pre-application meeting be held to confirm way forward with regards to registration vs. EA?</li> </ul>		<p>If the project fulfils the requirement for an exclusion the exclusion process must be applied. Any uncertainty can be discussed between the proponent and competent authority if the need arises.</p>



		<ul style="list-style-type: none"> <li>• Is 10 days sufficient for a case officer to consider the registration, SSV report, and EMPr, confirm that the submitted documents are credible, and that registration is applicable?</li> </ul>		<p>The information is not reviewed by the competent authority.</p>
<p>10.4 10.4.1</p>	<p><b>Biodiversity Law Centre</b></p>	<p>Section 9 of the Exclusion Notice stipulates that within 10 days of receipt of the correctly completed registration form and supporting documentation described in paragraph 7 of the Schedule, the competent authority must register the proposed development or expansion.</p> <p>The peremptory nature of this section unduly fetters the discretion of the competent authority. It is left with no choice to refuse a registration or call for additional information. As long as a registration form and completed documentation is filed with the competent authority, the latter compelled to register the proposed facility. The competent authority therefore has no discretion to refuse a registration in circumstances where the information supplied may be complete, but inadequate, or where more detailed information regarding certain aspects of the proposed development may be required.</p> <p>This provision should be contrasted with Regulation 20 of the EIA Regulations, 2014, which provides that the</p>		<p>NEMA makes provision for exclusions and therefore anticipated that some activities would be allowed without consideration by the competent authority. The nature of impacts associated with the development of solar PV facilities is such that an exclusion is deemed to be appropriate should the exclusion process be followed and the facility be developed in an areas of low or medium environmental sensitivity. If all the required information is not provided, registration will not occur. Commencement without a registration number in the case of the exclusion will be regarded as an offence.</p> <p>This is intended to be an exclusion process. The requirements to qualify for exclusion are set in the Norm.</p>

		<p>competent authority must within 107 days of receipt of the basic assessment report and accompanying documents (a) grant environmental authorisation in respect of all or part of the activity applied for; or (b) refuse environmental authorisation.</p> <p>This regulatory tick-box approach is inadequate considering the potential impacts on the receiving environment. The competent authority's discretion should not be restricted in this manner, and it must have the option of refusing a registration, or calling for additional information.</p>		<p>The comment is noted but not supported.</p>
10.5 10.5.1	<b>NECXON Alternative Energy</b>	<p>Paragraph 9 – 9.1 refers to the issuing of a registration number within ten days, please give guidance on whether a registration number is required before the start/commencement of any work/actions relating to the solar pv installation. Please also give guidance on whether a designated department will deal with registrations, including those at mine sites, to prevent the delays currently experienced by the DMR not providing required response in legislated timeframes</p>		<p>The registration is required before commencement and the declaration required as Appendix 6 requires that the proponent declare that no construction has commenced and will not commence before the registration number has been provided.</p> <p>DMRE will not be the competent authority to provide a registration number for a solar PV facility as this is not an activity which requires a right or permit. If a mining activity which required a right or permit included a solar PV facility, this activity would form part of the EIA process and not be managed under an exclusion.</p>
10.6 10.6.1	<b>Centre for Environmental Rights</b>	<p>We reiterate the same concerns shared in our comment on clause 7.</p> <p>The use of the word 'must' in 9.1 suggests a lack of decision-making power and discretion by the competent authority. This suggests that anyone can effectively proceed irrespective of</p>		<p>The reports are produced by specialists and EAPs who are registered with their professional bodies and are required to provide information which is correct and complies with the requirements of the process. Any verification would defeat the objective of an exclusion. A registration number</p>

		what the reports and application documents say – rendering redundant the report and verification process. This is a fatal flaw and shortcoming in the proposed exclusion.		can only be issued once all required information has been provided. Commencement prior to receiving the registration will constitute an offence.
	<b>Centre for Environmental Rights</b>	Further, there is no possibility of appeal in terms of section 43 of NEMA if there is no decision by a competent authority and no possibility to stop the activity in instances that would require such an intervention.		Any administrative decision is appealable and the right to appeal has been included in the notice. The right to appeal would have been possible even if the Notice does not specify this.
11.1 11.1.1	<b>South African Wind Energy Association</b>	Kindly clarify what is meant by Item 10.2.		Item 10.2 has been deleted, it is deemed to be too difficult to identify which existing facilities would comply with the requirements and it would defeat the objective to redo site verifications to check if the site complies or not.
11.2 11.2.1	<b>Savannah environmental</b>	It was mentioned in the presentation by the DFFE that holders of existing EAs would be considered to have complied with all the conditions in the EA. It is however not clear how it would be verified that these projects are in fact within areas of low and medium sensitivity as required by the exemption.		Please see the response to #11.1.1.
11.3 11.3.1	<b>NECXON Alternative Energy</b>	Paragraph 10 – 10.1 refers to transitional arrangements and provides that an application can be “withdrawn”, please give guidance on this procedure in the event that the solar pv installation forms only part of work/actions/operations included in the application for a mine, for example can the item be deleted from the application and no time delays incurred with the amended application provided to the competent authority and all other stakeholders at whatever stage of the application is underway?		Please see the response to #10.5.1.

12.1 12.1.1	<b>NECXON Alternative Energy</b>	Appendix A – the Registration Form asks for “project details” to be provided, please give guidance on the level of detail required for the project, for example is it only the footprint of the project from the environmental impact or does it include capacity, output, lifetime, behind the meter or export etc. Please note MWs value differs depending on whether DC or AC capacity		It would include capacity, output. The form must be completed by a registered EAP who would be able to provide input.
12.2 12.2.1	<b>Centre for Environmental Rights</b>	We note that Appendix A – registration form – refers to consideration of the form and application by the competent authority. Notably, however, this is not provided for in the provisions of the proposed exclusion. This should be addressed for consistency and certainty.		Only the reference to the registration form is retained in Appendix A. The competent authority is required to consider registration documents submitted, this is intended to be an exclusion.
13.1 13.1.1	<b>Rita Faria</b>	As a layperson in respect of environmental matters, I accessed the DEFF’s National Web Based Environmental Screening Tool for a first-hand experience of the Tool and discovered that the land earmarked for the project I am involved in, is flagged for ‘high’ sensitivities many of which in terms of the actual specialist studies conducted by the relevant environmental experts (in particular fauna and flora and agricultural) are deemed to be of ‘low’ sensitivity. Hence, although I am certainly in favour of using what appears to me to be a very sophisticated Environmental Screening Tool to fast-track EIA applications in the light of our energy crisis and need for Independent Power Producers to		The objective is not to fast-track applications but to streamline applications for solar PV facilities in areas of only low and medium sensitivity. A verification of the

		produce renewable energy urgently in a bid to stabilize the grid, in the case of this particular project I am involved in, the Tool will not allow any new environmental approval to be fast-tracked		screening tool sensitivity is required and if the development footprint is confirmed to be of high sensitivity an assessment is required to assess potential impacts and safeguard the environment. There is an opportunity to dispute the information provided by the screening tool through verification, as detailed in the exclusion.
13.1.2	<b>Rita Faria</b>	In the instances, I was hoping that your Department would see fit to offer applicants who have already secured environmental approvals (which have almost run their course of ten years), the option to renew same for an additional reasonable period obviating the need to recommence a full scoping EIA process, which will take at least eighteen months if not more.		In 10 years, the situation around the proposed facility could have changed, for example new residents could have entered the area and not know about the proposed development or other facilities could be developed and cumulative impacts need to be considered.
13.1.3	<b>Rita Faria</b>	In summary: having accessed the Department's National Web Based Environmental Screening Tool as a lay person, I found it to be user - friendly and sophisticated and hence I would strongly recommend it be considered as a tool to fast-track environmental approvals in the renewable energy sector. Furthermore I respectfully request the Department to consider the plight of projects such as the one highlighted above, in respect of which the relevant Environmental Authorisations will have run their course in 2023 when the market is just opening for the private sector to participate in power generation on a large scale, ie: if there is a disjunct between the Tool and the actual specialist studies conducted for a property in respect of environmental sensitivities, would the Department consider an extension of such		The support of the screening tool is noted.  The reasons for reconsidering projects over 10 years has been explained above.

		Environmental approvals for a reasonable period or perhaps allow these projects to also fast-track their applications based on the existing specialist studies and / environmental approvals.		
13.2 13.2.1	<b>South African Wind Energy Association</b>	This Draft Gazette appears to be straightforward to implement, prescribes pragmatic sensitivity verification requirements, and has the potential to significantly fast-track solar development throughout South Africa. We therefore believe that in general, the proposed exclusion should be supported by the industry. The Draft Gazette is clear that the Solar Exclusion is only applicable when a project occurs entirely in areas of low and medium sensitivity by the undertaking of site sensitivity verification by specialists, registered as professionals by their relative registration bodies, with demonstrated expertise in the field for which they are undertaking the verification. Applicable environmental themes requiring verification are specific and clear in the Draft Gazette. The Draft Gazette provides for flexibility for placement of infrastructure following registration, including allowance for a pragmatic buffer, acknowledging that the design of renewable energy facilities is seldom finalised at environmental approval stage.		The comment is noted.
13.2.2	<b>South African Renewable Energy Association</b>	To address the need for a fast-track and pragmatic process for the registration or authorisation of off-site power line infrastructure (which appears to be		

		<p>acknowledged by the proposed exemption in the Solar Exclusion and which we strongly support), we suggest that:</p> <ul style="list-style-type: none"> <li>• Practical challenges with the implementation of the Power Line Standard (GN2313) are addressed through urgent amendments, and to align with the processes in this Gazette;</li> <li>• The applicability of the Power Line Standard is expanded to all areas in the country (not just Strategic Transmission Corridors (STCs); and</li> <li>• The applicability of the Power Line Standard is expanded to areas of low, medium and high sensitivity (subject to specialist specified mitigation and limits of acceptable change in areas of high sensitivity - in order to ensure that impact significance is kept to tolerable / acceptable levels), but to preclude registration of such infrastructure through the Standard in areas verified to be of very high sensitivity (or specialist identified "No-Go" areas).</li> </ul>		<p>The challenges are noted and amendments will be made when updating the Standard to apply countrywide.</p> <p>The expansion of the Standard is in progress.</p> <p>This proposal is being considered in the update of the Standard.</p>
13.2.3	<b>South African Renewable Energy Association</b>	The "environmental instrument" proposed in the draft Gazette is The National Web based Environmental Screening Tool (GN. 678.) thus the registration process outlined in this Draft		The comment is noted. However, the screening tool is longer proposed to be adopted for purposed of the proposed exclusion.

		Gazette (GN2466) is uncomplicated in comparison to GN 2313 of 2022		
13.2.4	<b>South African Renewable Energy Association</b>	Like GN2313, will a Standard be released for this Draft Gazette? If so, will the Standard be made available for Public Review?		There is no standard associated with this exclusion, as the exclusion notice provides the requirements.
13.2.5	<b>South African Renewable Energy Association</b>	Please confirm that exclusion is not restricted to projects located in Renewable Energy Development Zones (REDZs) (i.e., not restricted to sites in REDZ), and would be for any projects where the screening tool identifies low and medium sensitivity for the listed themes or the specialists have confirmed it is low and medium (high or very high and this is disputed and confirmed to be lower) through a site sensitivity verification inspection		The exclusion is not restricted to REDZs and is applicable to any site which meets the criteria.
13.2.6	<b>South African Renewable Energy Association</b>	No Public Participation Process is required nor is an appeal process defined in the Gazette. DFFE to confirm how this aligns with a fair administrative procedure as defined by the Promotion of Administrative Justice Act 3 of 2000. If Public Participation will be required as part of the exclusion process, where will this be detailed and will industry have an opportunity to comment on the Public Participation Process that will be required, if required.		The exclusion notice has been amended to include a focused consultation process. The notice has also been amended to make it clear that the Appeal Regulations apply.
13.2.7	<b>South African Renewable Energy Association</b>	No socio-economic impact assessment is required. In terms of section 2(4) of NEMA “development must be socially, environmentally and economically sustainable”. If there is no socio-economic assessment, how would one		Minimum control measures have been identified to be included in the EMPr.



		fulfil the requirement to develop in a sustainable manner?		
13.2.8	<b>South African Renewable Energy Association</b>	No cumulative assessment is required. How would one assess the impacts of the project/s from a broader perspective?		The proposed Norm has been amended to include a consideration of cumulative impacts.
13.2.9	<b>South African Renewable Energy Association</b>	Notwithstanding the above observations and suggestions, we are of the opinion that a developer should always have the prerogative to elect to undertake the existing relative Environmental Authorisation (EA) application process for a development (as opposed to, for example, registration through the Solar Exclusion) regardless of the underlying environmental sensitivity. In other words, a developer should never be forced to register a project through the Solar Exclusion or Standard and other existing environmental instruments should remain available for the applicable listed activities. For various reasons, such as International Financing, a full Environmental Impact Assessment may very well be needed to meet IFC Standards etc.		Should the development footprint fall within the criteria of the proposed Norm the exclusion must apply. This would be the legislated procedure to follow in this case.  International requirements cannot force a government to approve a document which is not a requirement in terms of legislative requirements of the relevant country. In such a case the EIA could be undertaken but not submitted for authorisation as the competent authority would have no mandate to approve such a document.
13.2.10	<b>South African Renewable Energy Association</b>	If a developer, who has assessed the specifics of a particular proposed development, believes that (even though they qualify for the Solar Exclusion and / or Standard), following a more comprehensive existing assessment process would be the most appropriate, least risky, or more streamlined approach they should be allowed to do this. This given the developer has all the site-specific		The EIA could be undertaken but would not be able to be authorised by the competent authority as this is not the prescribed process.

		knowledge, they are incentivised to get the project approved as quickly and risk free as possible, and most importantly this would not be prejudicial to the receiving environment given it is a more comprehensive assessment process already prescribed for such an activity.		
13.2.11	<b>South African Renewable Energy Association</b>	DFFE to please confirm that the Registration process will be adopted by Provincial Authorities and whether the same Application forms will apply for submission to Provincial Authorities.		The proposed Norm applies nationally, should the competent authority be a province then the provincial department would be required to provide the registration number after having complied with the registration acceptance requirements. The same Appendices included in the proposed Norm are to be used for purposes of the exclusion.
14.1 14.1.1	<b>EAP</b>	Just as it will be used to identify projects that are exempt from requiring Environmental Authorization, could it not also be used to identify projects that may not proceed to apply for EA because of being in highly sensitive environments? For example, applications for EA to mine coal in the Kruger or Kruger buffer zone?		The screening tool does not identify projects to be exempted, the screening tool only identifies the site sensitivity. The proposed Norm identifies the proposed exclusion of Solar PV facilities from the need to obtain an EA.  The competent authority would need to apply their minds to this application and it could pose a potential flaw.
14.2 14.2.1	<b>Dale Barrow</b>	I think it is crucial that we start to recognize the importance of groundwater to us a country, and to improve our consideration and protection thereof. I recommend that we incorporate appropriate groundwater protection information in the tool, to ensure we are safeguarding our vulnerable and significant aquifers?		Discussion are underway with DWS who is the data custodian to obtain the groundwater data for inclusion in the screening tool.
14.3 14.3.1	<b>Carin Bosman</b>	Although this is a good idea, and I have used the Screening Tool many times, it has a major gap: It currently does not address groundwater aspects at all, and that means that sensitive aquifers, as		Please see the response to #14.2.1.

		<p>identified on the DWS's maps, or aquifers used for community water supply purposes, etc., are currently not considered as relevant when using this screening tool to determine the potential impacts of new developments.</p> <p>Adopting the Screening Tool as it currently stand as a National Environmental Management Instrument will thus not highlight the potential impact of development on aquifers.</p>		
14.4 14.4.1	<b>EAP</b>	<p>In the Eastern Cape we as EAP's have been required to submit a Screening Report generated by the National Web Based Environmental Screening Tool with any application for Environmental Authorisation so in effect it is already been used as an Environmental Management Instrument. However, there are problems with the tool in that it makes assumptions on certain themes, which in many cases are not actually applicable to a proposed project. For instance, an application for a housing development in Gonubie, East London, which was at a lower altitude than the main feeder road reportedly had a High Sensitivity to the 'Civil Aviaon Theme Sensitivity'. This could not be further from the truth because a double storey housing unit within an urban edge and downhill from a main feeder road cannot be a threat to Civil Aviation (the street lights along the road are more of a threat). The result of an assumption like this is that some department officials</p>		<p>The comment is noted, the submission of a screening tool report is a requirement of the EIA Regulations.</p> <p>Aspects of civil aviation will be covered by the ACSA process.</p> <p>If the development will occur in areas of low environmental sensitivity there are no requirements and the EAP can just indicate this in the report prepared. There is an ability to dispute site sensitivity information indicated by the screening tool through site sensitivity verification.</p>

		expect to see a Specialist Report dealing with the assumption which costs the applicant more, and this becomes unnecessary work and cost.		
14.4.2	<b>EAP</b>	I have found the tool to make assumptions which are generalized and not as localized as would be more suitable and applicable to a proposed project, and in many cases, as previously mentioned, department officials will require Specialist Studies to confirm the assumption. This becomes inhibiting to some applicants and NEMA is meant to 'manage development' and not inhibit or prevent development.		<p>The assessments must be considered with the specialist assessment protocol which provides guidance as to the level of assessment required, generally if there is a medium or low sensitivity only a compliance statement is required and no assessment.</p> <p>Before proceeding with the assessment, a site sensitivity verification is also to be done at which point the EAP or specialist can dispute that the situation is not the same as that provided in the screening tool and provide evidence of such. In this case and if well motivated and evidence is provided, the EAP can motivate to do no assessment, but this must be documented and evidence must be provided.</p>
14.4.3	<b>EAP</b>	I think the tool is a good guide as to what sensitivity themes should be considered but the findings (assumptions) in the generated report should not be considered definite and as such require Specialist Studies for corroboration. In most cases the EAP will be able to determine, just with a site assessment, what sensitivities should be considered. Even the Regional Biodiversity Conservation Plans have to be assessed for site specific applicability because these too have been found to be too general in many cases.		The list of specialist assessment reports produced by the screening tool are not definitive. The wording above the list clearly indicates that the list is based on the selected classification and the EAP must confirm the list and motivate in the assessment report the reasons for not including any identified specialist study including the provision of evidence.
14.5 14.5.1	<b>Mark Botha</b>	While I am all for reducing any unnecessary regulatory burden on PV (and renewables in general) there are some clear administrative and legal problems with the approach proposed in the Notice. From two virtual meetings,		Please refer to #1.2.5.

		<p>the Department appears resolved to follow this course of action, despite providing any clarity on what the regulatory/political/administrative drivers behind this decision are or acknowledging the risks and consequences.</p> <p>There is widespread alignment (informally gleaned) from the industry i work with, as well as lawyers and NGOs canvassed, that this use of the Screening Tool and the Delisting of PV from Environmental Authorisation are very ill-advised regulatory approaches. They will surely create greater uncertainty and legal challenges for PV developers going forward - and are likely to achieve the opposite of what I surmise the department's intention to be. They will prejudice the responsible developers who already have a large, long pipeline of execution ready projects with suitable mitigation in place.</p> <p>Permitting linear associated developments such as roads and grid connection through high &amp; very high sensitivity is exceedingly risky from both biodiversity impact and protected area expansion and management perspectives. This approach cannot enjoy the support from your colleagues responsible for these branches in the Department?</p>		<p>The activity is not delisted it is excluded when developed in confirmed areas of low and medium environmental sensitivity and when complying with the requirements of the exclusion notice. There would always be certain concerns identified when a new approach is being proposed, however it is possible to work together to provide the confidence needed.</p> <p>The exclusion will not impact on existing authorised projects or projects for which an application for EA has been submitted and its pending, therefore no prejudice is anticipated.</p> <p>The exclusion notice is consulted through the WG structures which include other branches within the Department and vetted. This work is the work of the DFFE and is the intention of the Minister as indicated in the exclusion notice. Certain additions have been made to the proposed Norm in relation to the linear infrastructure in area of high/very high sensitivity.</p>
14.5.2	<b>Mark Botha</b>	The adoption of the Screening Tool as an EMI fails to recognise other, more fit-		Please refer to the justification for this exclusion provided in #1.2.5.

		<p>for-purpose options to alleviate the bureaucratic burden on DFFE from PV projects:</p> <ul style="list-style-type: none"> <li>• require a performance bond/application fee for substantial PV projects to deter speculative chancers</li> <li>• delegate assessment to provinces as competent authorities</li> <li>• Identify brownfields and low impact areas requiring a more streamlined assessment than a BAR</li> <li>• redefine the REDZ to a far more narrowly delineated zone of only low sensitivity and proactively mitigate most of the anticipated impacts in these new REDZ.</li> </ul>		<p>The screening tool is no longer to be adopted as an environmental management instrument.</p> <p>The provinces are responsible for the consideration of assessments for solar PV not related to the REIPPPP process. The justification is not the workload.</p> <p>Brownfield sites would meet the low or medium environmental sensitivity requirement and would be part of the exclusions scope.</p> <p>The comment is noted.</p>
14.5.3	<b>Mark Botha</b>	<p>The specific objective for promoting the ST as an EMI for PV is not provided. This makes it difficult to interrogate the intention and to propose alternatives which may be more fit-for- purpose. If the intention is to fast-track energy provision into the grid, then there are other limitations constraining this that mean that removing environmental due diligence is not prudent. If it is to alleviate the workload on case officers, then the proposals will likely fail as the discrepancies between the screening tool and sound site investigation are substantial in my experience. The result will be a fast-tracked timeline to assess and work through conflicting reports or information. The Notice needs to explicitly define the problem which is</p>		<p>It is no longer intended to adopt the screening tool. Only the environmental sensitivity ratings of the screening tool are intended to be used to exclude activities identified in terms of section 24(2)(a) and (b) of the National Environmental Management Act, 1998 (Act No. 107 of 1998) from the requirement to obtain environmental authorisation prior to commencement, as contemplated in terms of sections 24(2)(c) and (e) of the National Environmental Management Act, 1998 (Act No. 107 of 1998), when identified by the Minister in a Government Notice.”</p> <p>The screening tool is no longer to be adopted.</p> <p>The justification has been provided in #1.2.5.</p>

14.5.4	<b>Mark Botha</b>	<p>being encountered to properly assess the regulatory response proposed.</p> <p>I'm all for a trimmed down approach to EIAs, especially one which limits unnecessary reams of paper and impenetrable reports that hide important details of impacts and implications in annexes. But removing requirements for assessment and just using an EMI like the screening tool is very unlikely to provide the regulator with sufficient information. Worse, it could be used as a thin-end-of-the-wedge to leverage other listed activities (mining, fracking, bulk sample prospecting, Wind Energy Facilities etc) into an EMI-only regulatory regime.</p> <p>Most importantly, there is a surfeit of renewable energy generation projects already authorised. A glance at the REIPPP database of DFFE shows the extensive list and spread of existing approved projects (and the few that have lapsed). Apart from what has already been authorised and/or contracted in REIPPP (over 80 GW), a further 50 GW of RE projects are EIA ready, or plan to be submitted within the next few years (SAWEA &amp; SAPVIA Survey April 2022). PV amounts to just over 44% of this. Together with newer applications being considered by mining houses or otherwise in final stages of authorisation, and the massive number of brownfields (unlisted activities) PV</p>		<p>Any new approach would create concern about the “what if” scenario. It is important to ensure a robust process which achieves the implementation objective while protecting the environment. Just being too cautious could stifle innovation and progress.</p> <p>The adoption of the screening tool is no longer going ahead. Any activity which would be proposed for excluded would be gazetted for public comment. Any decision that is irrational can be challenged.</p> <p>The DFFE cannot impose on a developer the siting of any development. A proponent must consider several factors which would influence the siting. It should also be noted that there is a shortage of grid infrastructure to evacuate the energy produced by the facility. This aspect will therefore be a major consideration in the proponent's choice of site.</p> <p>Please refer to the justification in #1.2.5.</p>
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		<p>projects being executed, this implies that:</p> <ul style="list-style-type: none"><li>• Environmental authorisation is not a limiting factor in solar PV roll out – and this misperception should not be allowed to drive knee-jerk regulatory amendments. (There are very sound reasons to retain some form of EIA); and/or</li><li>• If rapid new energy supply is the intention, there is not a desperate need to authorise a raft of new RE projects – the optimal sites and grid access locations have almost all been snapped up in the earlier REIPPP rounds. Significant changes to operating rules, grid infrastructure and/or access or demand/offtake points would need to have materialised to justify a large new investigation into new RE projects. While the grid is changing, and demand is shifting, it needs to be shown that this is sufficient to require much new RE EA; and/or</li><li>• Other licencing processes are limiting. These could be under the National Forests Act or National Water Act (especially WUL S 21 c &amp; i) but are more likely in the Energy sector purview (grid access, connection capacity, licencing, PPAs etc); and</li><li>• The best RE development sites have already been secured, leased, or otherwise spoken for, and new</li></ul>		<p>It is agreed the EA is not a limiting factor, the exclusion is merely the next step in the streamlining process.</p> <p>The amendments made to the environmental legislative process does not interfere with the licence requirements of the National Forest Act or National Water Act, these requirements will still apply.</p>
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		entrants will be dealing with sub-optimal sites from a PV generation, environmental impact or economic perspective.	
14.5.5	<b>Mark Botha</b>	<p>My engagement with the RE sector regarding implementing mitigation measures, is that obtaining EA is not a limiting factor if predictable and equitably applied. What is problematic is unpredictable spurious appeals on thin grounds, which injects significant delay and uncertainty into the process. DFFE investment into the Appeals directorate or management (as well as convening expert panels to consider the technical aspects) would have a far more beneficial effect on RE and especially SE rollout.</p> <p>There is a real risk of serious negative unforeseen consequences if the existing pipeline (&gt;64GWp of which 27,8GW is PV) of well-assessed and mitigated projects is to be overtaken by poorly assessed and hurriedly permitted PV projects. There is no sound argument to reduce the EA requirements for PV activities, but many other avenues to encourage and incentivise roll-out in the right places.</p>	<p>The comment is noted. Please refer to #1.2.5 for the justification for the exclusion process.</p> <p>The comment is noted. The DFFE does not agree that the process would lead to poorly assessed and hurriedly permitted PV projects. The DFFE believes that these are sound reasons for considering the exclusion process for solar PV facilities.</p>
14.5.6	<b>Mark Botha</b>	<p>The additive nature of the themes in the ST makes it difficult to assess which layer is more important than any other. Further, but by assigning them effective equal weights it ends up equating very different types of features – which defy</p>	<p>There are no layers more important than others, there are no weightings given to the sensitivity of the feature, only a rating of very high, high, medium or low.</p> <p>The themes do not interact with each other on the screening tool, therefore they cannot down weigh each</p>

		<p>easy or sensible comparison, especially on a simplistic Low to Very High scale. This unintentionally ends up down weighting certain themes over others – which is what Systematic Biodiversity Planning strives to avoid or at least make explicit through assumptions and weightings.</p>		<p>other. Each theme must be considered by the relevant specialist on its own terms, and require a confirmation of the low or medium environmental sensitivity. Even the site sensitivity report is unable to down weigh another sensitivity as each theme must be confirmed to be of low or medium environmental sensitivity in order for the exclusion to apply.</p>
14.5.7	<b>Mark Botha</b>	<p>The terrestrial biodiversity theme becomes rather binary. By displaying as V High or Low – and thus avoiding the nuance, alternatives and options, and data idiosyncrasies – it unfortunately achieves the exact opposite of the intention behind CBA maps. If so much of the landscape is rated as Very High – then by definition nothing is a priority. Much of the terrestrial biodiversity theme unnecessarily constrains development. This would not be a good outcome of using the ST as an EMI. However, a worse outcome (perhaps the worst for biodiversity) would be to NOT USE verified, ground-truthed and defensibly identified CBAs and other systematic biodiversity planning designations as a screening for development. These are well catered for in SANBI's BGIS, but rather lost in the application in the ST.</p>		<p>The information on the CBAs is available on the screening tool on the LHS panel without any sensitivity data added, it is therefore possible to consider the information in the same manner as the BGIS database. For the purpose of the exclusion the rating of merely very high and low would be more protective of the environment.</p>
14.5.8	<b>Mark Botha</b>	<p>The tool is rife with false positives and false negatives – this is the nature of biodiversity data (but likely also other fields like palaeontology, geology etc) and the less than equal effort of different taxon groups and the vastly different approaches by provinces in compiling</p>		<p>The data on the screening tool is provided by SANBI who is the data custodian. Our understanding is the provinces collect information on CBAs, etc. in a similar manner which allows SANBI to collate the information to create a national dataset.</p>

		<p>systematic conservation plans. Layering error upon error yields many spurious results in the ST. The point of biodiversity impact assessment is to at least put some effort into checking whether there are false positives or negatives on site, and modifying layouts accordingly. This process cannot be short-circuited without serious long-term implications for heightened ecological risk posed to installations (floods, wildfires, droughts and the like) let alone incurring unnecessary biodiversity impact.</p>		<p>The site sensitivity verification that is required through the exclusion notice is the same process that is currently required for low or medium sensitivity in the current EIA process for the themes identified in the exclusion notice, so there would be no short circuiting of the system.</p>
14.5.9	<b>Mark Botha</b>	<p>Scale is problematic. The ST bundles different features mapped at very different scales into one un-interrogatable layer. Often small developments could easily be accommodated within themes signified as Very High sensitivity, especially if mitigation was prudent and proactive. Further, the ST does not indicate regional features and the spatial components of ecological processes and functioning – e.g. large scale climate adaptation corridors or ecological movement corridors. Understanding these processes is crucial for climate-smart and risk averse development – by avoiding unnecessary impacts on ecosystem functioning that maintains biodiversity and provision of ecosystem services, but also by keeping developments out of harm's way of natural processes (floods, droughts, wildfires etc).</p>		<p>Each layer on the screening tool can be viewed individually (without environmental sensitivity) and can therefore be interrogated. The screening tool report also identifies for each theme the reason for the sensitivity rating. The interrogation is therefore also provided automatically should you not wish to interrogate the original layers separately.</p> <p>The areas to which the exclusion would apply would not be areas high in biodiversity or sensitive in terms of vegetation.</p>

14.5.10	<b>Mark Botha</b>	The ST does not indicate the kind of requisite mitigation that should inform long-range upfront project planning – especially around ecological compensation or biodiversity offsets. It is difficult to see how adopting the ST as an EMI would improve and target mitigation measures.		<p>The screening tool does just what the name identifies, i.e. screening. It tells you what sensitivities are potentially on site, there is no intelligence built in to consider mitigation. The screening tool in the exclusion serves the same role as the screening tool in the EIA process. The specialists need to consider mitigation.</p> <p>Please see the response to offsets # 1.8.12.</p>
14.5.11	<b>Mark Botha</b>	While not intended to be complete and fully sufficient screening of all aspects, the use of ONLY the ST is problematic – especially as it often doesn't pick up key planning informants (e.g. presence of Protected Areas for mining right applications – see Annex 1.) There would be a need to verify and curate all the layers in the ST to remove those that don't add value, or are not useful as this scale, or which don't belong in environmental screening (e.g. palaeontology, noise, visual and other human receptor defined impacts).		<p>Protected areas as well as their buffers are included in the screening tool information. Mining applications are not available to the public as data and no tool will provide this to the public. The DMRE does manage the SAMRAD system, but it is not always working and to the public it is a one way information depository.</p> <p>The palaeontology data is provided by SAHRA and is based on rock types which do not change over time. The information is regarded as being necessary for screening. Noise is for wind and is based on the spot count (i.e. buildings) which are sensitive receptors to wind technology. It is not known what other human receptor defined impacts are referred to, but the DFFE believes that the data on the screening tool is relevant and necessary.</p>
14.5.12	<b>Mark Botha</b>	Its apparent from the REIPP spatial database that that the REDZs did not drive RE development in any meaningful way. Taking lessons from that initial attempt, coupled with insights from RE developers, grid expansion, wheeling arrangements, substation location, and end user offtake agreements, it may be possible to develop a new, smaller, downscaled suite of REDZ that more tightly align with the RE sector needs for streamlined authorisation. These REDZ could be subsets of the existing REDZ, plus new		<p>The DFFE does not agree with the opinion expressed.</p> <p>The comment is noted.</p>

		<p>areas of historical REIPPP aggregation around grid access (see the April 2022 RE industry survey results, and the demand around the Hydra Cluster for instance which has no REDZ near it).</p>	
14.5.13	<b>Mark Botha</b>	<p>This approach could identify smaller, less sensitive areas where the is minimal conflict, and where development could be located without an EA, if a standard EMP was complied with, and certain proactive mitigation measures adopted.</p> <p>Each REDZ, for instance, could be accompanied by a pre-developed biodiversity offset receiving area (an offset bank) that would de-risk much of the impact of the RE installations at a known mitigation cost, and which could be facilitated by SANParks, Provincial entities or private providers. This would serve to advance:</p> <p>South Africa's commitments to international biodiversity protection targets, compliance with international green finance requirements, putting nature into the Just Transition, and greater cooperation between green NGOs and other potential RE detractors and the RE industry.</p> <ul style="list-style-type: none"> <li>• It could be possible to trial use the screening tool for new projects/applicants on sites were: prior authorisations have already lapsed; and/or</li> </ul>	<p>The areas identified for the application of this exclusion are to be of confirmed low and medium environmental sensitivity.</p> <p>The Department is working on a standard EMPr for solar facilities.</p> <p>Offsets should not be used as a standard.</p> <p>The comment is noted. The proposals are noted but will not achieve the current objectives of the DFFE.</p>

		<ul style="list-style-type: none"> <li>• within a downscaled new set of REDZ where the ST info has already been verified at a strategic regional scale; and/or</li> <li>• on brownfields sites that may harbour other regional level features (such as PA expansion priorities or climate corridors).</li> </ul> <p>There are existing government properties or installations that would benefit from RE installations as anchor tenants, which would incur very little or no environmental impact, and which may otherwise generate positive environmental outcomes. E.g. the surface area of many DWS- and water board-owned dams (Gariiep, Van der Kloof, Bloemhof, Voelvlei etc) is perfect for PV development (existing grid, Tx and Distribution infrastructure is already in place), and being on water will also reduce evaporation and treatment costs, and improve PV efficiency through the cooling and reflective effect of the dam surface. No evidence of a tender or proposals to use dams for PV could be found.</p>		<p>Work on government or state-owned properties is in planning. This work will supplement this proposed exclusion and allow for proactive decision-making for other environmental legislation, including requirements in terms of the MPRDA, rezoning activities, Civil Aviation and Defence and is hoped to further streamline and simplify the process of renewable energy rollout.</p> <p>The use of technologies is driven by the feasibility studies of developers. The department is not undertaking research into water PV and can therefore not promote the technology.</p>
14.5.14	<b>Mark Botha</b>	<p>DFFE could also make greater use of existing projects and processes (e.g. BioFin roll out of the National Biodiversity Offsets Implementation Guideline, ELSAA etc) to design a better, quicker, more predictable, and lower impact/higher co-benefit alternative authorisation pathway for RE projects.</p>		<p>The comment is noted, and when additional strategic work is programmed these inputs can be considered.</p>

14.5.14	<b>Mark Botha</b>	<p>The shortcomings and inefficiencies of the current EIA regime for renewable energy projects is acknowledged. However, replacing the requirement for authorisation with a truncated EMI approach based on the Screening tool is unlikely to be of much benefit to the energy sector, DFFE case officers or South Africa, but may result in unacceptable and unnecessary biodiversity loss. While there are improvements and streamlining required in the screening tool anyway, there are limits to its use as an alternative to EIA.</p> <p>A better approach might be to identify a finer scale of REDZ where impacts are known to be low and manageable, along with standard proactive mitigation measures (e.g. offset receiving areas with set exchange rules and ratios). Further, damaged, and brown field state land could be made available to the RE sector for facilitated roll out of the required RE fleet, at very low environmental cost, and the real possibility of positive outcomes for all parties. There may be an argument for trial use of the screening tool as an EMI in a more limited set of geographic areas where there is higher confidence in the integrity of the themes' information, or the risk of unintended biodiversity impact is low.</p>		<p>The comment is noted. It should be noted that the screening tool is not used as an alternative to the EIA but merely identifies areas of low and medium environmental sensitivity which would then be subject to site verification by specialists for the relevant themes.</p> <p>The comment is noted.</p> <p>The DFFE is confident in the quality of the biodiversity information included in the screening tool and with the site verification is confident that significant environmental impacts will be avoided.</p>
14.6 14.6.1	<b>Larry Eichstadt</b>	The use of the Screening Tool during EIA's over the last 2-3 years has firmly		

		<p>confirmed that the information which supports and informs the outcomes of the screening tool is extremely limited with very little ground truthing that has been completed to give the screening tool the level of confidence that is required for the desired task. During the completion of a number of EIA's the outcomes of the screening tool have been shown to be largely incorrect. This leads to a great deal of frustration as the regulatory officials purely use the screening tool as a decision making instrument without actually going to site to verify the information.</p> <p>It is therefore quite easily concluded that the Screening Tool cannot be adopted for prescribed purpose for the reason/s mentioned above. This further confirms that the significant shift to move solar photovoltaic applications out of the current EIA regulatory process is not possible based on the intent to use the Screening Tool which is not up to standard for this regulatory shift.</p>		<p>The screening tool is not and will not be used as a standalone decision-making tool. The information in the screening tool is required to be verified by specialists.</p> <p>It is the role of the specialists and EAPs to ensure that the information provided in reports is correct and verified.</p> <p>The comment is noted, however the screening tool is used in tandem with the exclusion notice with identified minimum exclusion criteria.</p>
14.6.2	<b>Larry Eichstadt</b>	<p>It is extremely difficult to understand why DFFE had not applied their minds to two aspects which affect the timeline of an EIA and this case would be beneficial for renewable energy projects.</p> <p>1) The 150 days granted to regulatory officials to comment on EIA reports and make decisions is one of the primary reasons why EIA's take so long!</p>		<p>Please refer to #1.2.5 for the justification for the exclusion.</p> <p>Generally 157 days is provided to CAs to review and make decisions on documents submitted as part of the EIA process. Where the facilities are to be developed in</p>



		2) The primary listed activities related specifically to renewable (solar) projects should be moved from the complete EIA process to the BA process and the regulatory decision making time reduced. This process will still accommodate a 30 day stakeholder comment period.		REDZs the timeframe is reduced to 57 days as there was pre-assessment work done. For the proposed Norm, 10 days is provided for checking compliance of all the corresponding documentation. There is no need to undertake any review in the process and it is thought that 10 days to ensure the completeness of the process is sufficient.
14.6.3	<b>Larry Eichstadt</b>	In conclusion it is considered unacceptable from a professional perspective that environmental standards and public consultation should be undermined due to the Government's inability to govern effectively and efficiently. The lack of a stable energy supply is a government fault and therefore should not lead to processes and procedures which undermine Environmental integrity. The points mentioned above provide adequate opportunity to reduce the EIA process time for solar photovoltaics project and whilst still providing a fair balance for sound EIA (BA) processes to be followed.		The exclusion notice has been amended to accommodate a focused consultation process.  Please refer to #1.2.5 for the justification for the exclusion.
14.7 14.7.1	<b>Susanna Nel</b>	The Screening Tool is being seen as an authoritative tool that should guide development in many ways. However, this tool is only as good as the information it provides and, unfortunately, it falls far short in this regard. For example, as far as the Terrestrial Biodiversity environmental theme is concerned, the Screening Tool is not usable in any way.		

		<p>The entire Johannesburg and Pretoria in a Very High biodiversity area. This theme therefore has no meaning and can, for all practical reasons, be deleted from the data base unless a more reliable data base can be used. The fine scale municipal plans as per the SANBI website is much more accurate and can be used as a guidance right at the beginning of the development. Even though this is, amongst others, the purpose of the Screening Tool, it cannot be used as such.</p>		<p>The screening tool uses the original extent of CBAs, with the remaining extent being included on the layers based on information provided on the LHS of the screen. It is for the EAP to motivate why the area is not of high or very high environmental sensitivity and to provide evidence.</p>
14.7.2	<b>Susanna Nel</b>	<p>We know that NEMA will not be triggered by such powerline developments, but this is just to illustrate the lack of accurate data within the Screening Tool. Please refer to the attached Screening Tool Reports which indicates that the following specialist studies should be undertaken: Agriculture, Landscape/Visual, Archaeological and Cultural Heritage, Palaeontology, Terrestrial Biodiversity, Aquatic Biodiversity, Avian, Civil Aviation, Geo-technical, RFI, Plant and Animal Species (and this in the middle of the two biggest cities in SA).</p> <p>We do know that it is up to the EAP to argue against these studies but Site Verification Reports have to be undertaken for each theme. For example, the EAP will have to spend some time on a Site Verification Report to state that agriculture is actually non-existent in the middle of Joburg and that</p>		<p>The list of specialist studies is identified through the project classification and is based on the known impacts of the activity. These specialist studies will always come up for the specific classification chosen for screening. It is for the EAP to identify which studies would not be relevant noting the situation and to provide evidence of that. If the project is proposed in the middle of two big cities this would then be the reason for not requiring many of the studies identified. Palaeontological issues will not be dealt with under the proposed Norm, but rather through the National Heritage Resources Act.</p> <p>Site verification reports do not need to be undertaken before the motivations can be made, the site sensitivity verification identifies clearly that the motivation can be made based on the site verification inspection. Verification through physical inspections can lead to a dispute of the sensitivity rating given in the screening tool, based on evidence and this can be done by an EAP.</p>

		<p>the Screening Tool rating of Medium is incorrect.</p> <p>The aquatic sensitivity is rightly so rated as Low, but it is still a requirement under the specialist studies, so, once again, time will have to be spent on a Site Verification Report. The Animal Species Theme is rated as Medium with six listed animal species. This means that a specialist will have to be involved to state that these species are not evident in the Joburg and Pretoria CBDs.</p>		<p>Please see the response above, the list of specialist reports is identified through the classification of the activity.</p>
14.7.3	<b>Susanna Nel</b>	<p>The Screening Tool does not guide development but it does increase the work of the EAP considerably, with financial implications to the client. The idea behind the Screening Tool is truly an excellent one, but the idea is only as good as the accuracy of the data base, which is not accurate at all. It is extremely time consuming to argue against a long list of recommended specialist studies and to write Site Verification Reports where it is clearly not needed (i.e. High agriculture in the Joburg and Pretoria city centres). The public is now also using the Screening Tool as part of their arguments if they don't want a development, and once again, the only thing it does is to increase the workload of the EAP because the data is so inaccurate and, in many cases not usable. The environmental case officers within the various Environmental Departments are also relying on the Screening Tool and</p>		<p>Please see the response to #14.7.4 it is the EAPs responsibility before specialists are employed to motivate why some studies would not be necessary and to provide the evidence.</p> <p>The EAP is employed to ensure that the environment is protected and the client is not paying for work which is not necessary. The ability to view in a transparent process why some studies will not be undertaken provides for clarity of all stakeholders and not just the EAP and CA. If a report is showing that there is sensitivity where there is clearly not, as identified in the example, then the EAP must motivate that the land is not high agricultural potential but that it is built up.</p> <p>It is the EAPs responsibility to motivate why some studies would not be necessary and to provide the evidence. This is to be written up in the scoping report or the basic assessment report, or in the case of the proposed Norm</p>

		insist on detailed reports, etc where is it clearly not needed, simply because the "Screening Tool says so". It is incredibly frustrating. The Screening Tool data is in fact in all cases not usable because it needs to be verified by EAPs and/or specialists in any way, so the purpose of the Screening Tool is unclear.		and would provide clarity to all stakeholders as to why the studies would not be undertaken, this provides a transparent process.
14.7.4	<b>Susanna Nel</b>	The idea now is to use the Screening Tool as a basis from which certain developments will be excluded from NEMA, but the Screening Tool information, as stated above. has to be verified in any way so it make no sense to give any 'weight' or legal status to a tool that cannot be relied on for any kind of accurate data. Certain information provided may however be correct, but one can never know unless it has been verified, which once again negates the purpose of the Screening Tool.		The screening tool is not to be used to exclude activities but to provide the site environmental sensitivities which will needs to be confirmed or disputed through on site investigation for the identified themes.  All the information obtained from the screening tool in terms of site environmental sensitivities is to be verified and the relevance of the specialist studies identified by the screening tool report must be confirmed by the EAP.
14.7.5	<b>Susanna Nel</b>	The Screening Tool is truly frustrating and increase the EAPs workloads unnecessarily without adding value. The Screening Tool will however have meaning if the databases used can be updated and be true to that what is actually happening on site.		Please see the responses to #14.7.3 and 14.7.4.
14.8 14.8.1	<b>Susie Brownlie</b>	The original concept of screening was to decide whether or not a proposed development required an EIA, and the level of detail, or extent and type, of that EIA. The basis for this decision was the potential significance of impacts.  Although in some cases it may be appropriate to rely only on the sensitivity		It was never the intention of the screening tool to decide whether or not a proposed development required an EIA. The need for an EA is identified by the Listing Notices associated with the EIA Regulations. The level of assessment is determined by the environmental ratings considered in conjunction with the relevant specialist assessment protocol.

		<p>ratings of environmental themes on the specific development site as determined by the screening tool to determine exemptions from the EIA regulations, there is a considerable risk in relying on this tool alone to reach conclusions about the potential significance of proposed activities.</p>		<p>The information provided by the screening tool must all be verified through the exclusion requirements. It is not the intention of the Government Notices to exclude activities through the site sensitivity ratings alone.</p>
14.8.2	<b>Susie Brownlie</b>	<p>The proposed adoption of the screening tool does not provide sufficient information on the manner in which the instrument is to be used. It is not clear how the categories of environmental sensitivity are to be used to exempt activities from the NEMA EIA regulations. The intended approach needs to be made explicit. For example:</p> <ul style="list-style-type: none"> <li>• It is not clear if the intention is to give EAPs an opportunity to confirm and/or change the environmental sensitivities determined by the screening tool through a site sensitivity verification, in order to qualify for exemption from the need to meet the EIA regulations requirements.</li> <li>• Is only the 'low' sensitivity of the receiving environment to be taken into account, or other levels of sensitivity too? It is deemed that the most cautious and defensible approach would be to limit exemptions on the basis of 'low' environmental sensitivity.</li> <li>• Should areas of 'medium' sensitivity be exempt from the EIA</li> </ul>		<p>The requirements for the exclusion is contained in the proposed Norm for the exclusion for Solar PV facilities.</p> <p>The exclusion notice indicates in paragraph 5 that the exclusion will apply in "areas where the site sensitivity verification for a specific theme identifies that the "very high" or "high" sensitivity rating of the screening tool is in fact "medium" or "low" sensitivity". The screening tool sensitivity rating must be confirmed or disputed.</p> <p>The proposed Norm clearly indicates that the exclusion applies to footprints of the facility that are located on areas confirmed to be of low or medium environmental sensitivity.</p> <p>Offsets are intended in areas where mitigation is not possible and the development cannot be relocated for</p>

		<p>Regulations, the proposed requirement in draft and current guidance for mitigation of impacts of potentially 'medium' or 'moderate' significance, in terms of requiring due compensation or offsets, would effectively be reversed.</p> <ul style="list-style-type: none"> <li>• Who is to decide on the spectrum of potentially significant impacts of the particular proposed activities on the receiving environment? Even where environmental sensitivity may be 'low' or 'medium', the type, severity and risk of significant impacts will depend on the nature of the project type.</li> <li>• The proponent, where there are sensitive environmental components, should be applying the mitigation hierarchy and striving to avoid or minimize negative impacts, as set out in the NEMA principles. Exemption from having to undertake an EIA would essentially give proponents 'carte blanche' and sidestep the need for mitigation.</li> </ul>		<p>some reason. The areas to which the exclusion notice will apply are of low and medium environmental sensitivity and would not warrant an offset.</p> <p>No assessment is intended, the verification process identified in the exclusion notice is the same as identified in the specialist assessment protocols for the relative environmental themes.</p> <p>Please see the response to #1.8.12.</p>
14.8.3	<b>Susie Brownlie</b>	<p>The reliability of the screening tool to determine exemptions from the EIA regulations is in question. The basis for categorising environmental sensitivity is not explicit, but – from correspondence with your Department – seems to be based on the REDZ SEA undertaken by the CSIR, using an 'out of 10' scoring system for input data.</p>		<p>The requirements of the exclusion is contained in the proposed Norm. The screening tool only identifies the site sensitivity which must then be verified on site.</p> <p>The environmental sensitivity is not determined by scoring but rather the overlay of various layers of information that</p>

		<p>Without explicit communication and review of the basis for determining these sensitivity categories, and clarity on how gaps in information or data have been treated, the use of the screening tool alone to exempt particular activities from EIA requirements is seen to present an unacceptable environmental risk.</p> <p>It is erroneously assumed that all features have comparable importance or value and can be rated on the same scale.</p> <p>It is not clear whether the thresholds between 'very high', 'high', 'medium' and 'low' sensitivity have been subject to peer review, and/ or are sufficiently robust and/ or acceptable to specialists in relevant fields.</p> <p>The significance of impacts depends on the sensitivity of the receiving environment (a technical/ scientific measure), the values of the environment which would be negatively affected (societal and/ or affected party values), and the nature of the proposed activities. The screening tool takes only the targeted project site into account, and the direct 'footprint' impacts; it does not take into account the values attached to the affected themes.</p>		<p>identify various sensitivities for example CBAs. etc. This was also the case in the REDZs.</p> <p>The screening tool is not used to exempt particular activities as a standalone tool, the screening tool only provides screening data which must then be verified as per the content of the exclusion notice.</p> <p>There was no scoring undertaken in the REDZs and there is no scoring of sensitivities in the screening tool. The process of identifying the environmental sensitivity is determined by agreed criteria with the data custodian and then applied.</p> <p>The data provided as well as the sensitivity rating have been provided by the data custodians and these custodians are regarded as being the experts in the field.</p> <p>The exclusion is identified only for solar PV facilities and associated activities, therefore the nature of the activities is known.</p>
14.8.4	<b>Susie Brownlie</b>	<p>The impacts of a proposed activity on the development site comprise direct ('footprint') impacts, indirect and induced impacts which can manifest off</p>		<p>The nature of solar PV facilities is unlikely to have off site impacts. With respect to cumulative impacts, the exclusion notice has been amended to consider cumulative impacts.</p>

		<p>site and/ or in future, as well as cumulative impacts.</p> <p>The screening tool provides information on the potential impacts on the development site only; i.e. only direct impacts. In some (if not many) cases, the indirect and cumulative impacts far exceed any direct impacts.</p> <p>The screening tool does not indicate the potential for significant indirect, induced or cumulative negative impacts on/ within different environmental themes.</p>		<p>The screening tool does not provide information on potential impacts, it merely identified the environmental sensitivity of a site.</p> <p>Please see the response to the first comment in this section.</p>
14.8.5	<b>Susie Brownlie</b>	<p>There are numerous cases where the input layers to the screening tool are inadequate due to problems of spatial layers being too broad, finer-scale information being inaccurate, and/ or use of outdated information or data. For example, the screening tool appears not to have been updated to incorporate the changed ecosystem/ vegetation type threat status determined in the 2018 Red Listing of Ecosystems, and is thus inaccurate. Furthermore, biodiversity spatial plans ('CBA maps') in some provinces are incomplete.</p>		<p>SANBI is the data custodian of the biodiversity layers. They are currently finalising an update to the terrestrial ecosystems data layers which is to be uploaded in the next month.</p> <p>If the CBA maps are incomplete then the information would not be available at all. This would therefore not be a flaw of only the screening tool. It must be noted that verification is required of all data provided by the screening tool.</p>
14.8.6	<b>Susie Brownlie</b>	<p>The data on species distributions are patchy at best, depending on sampling intensity. They cannot be relied upon to give assurance of no significant negative impacts.</p>		<p>SANBI has provided this data and they are extremely confident regarding the accuracy of the plant species data and the models used where actual sampling was not done for the animal species.</p>
14.8.7	<b>Susie Brownlie</b>	<p>A recent postgraduate study by Lambrecht M, Department of Environmental and Geographical Science, UCT (2022: A preliminary</p>		<p>DFFE participated in the survey.</p>



		<p>assessment into perceptions of accuracy and utility of the environmental impact assessment screening tool, South Africa: <a href="http://hdl.handle.net/11427/36475">http://hdl.handle.net/11427/36475</a>) found that:</p> <ul style="list-style-type: none"> <li>• There is limited information available online about the source data and the process of assigning sensitivity ratings for the different environmental themes used in the screening tool.</li> <li>• The screening tool highlights the importance of ground truthing of a site, and is intended as a guide only.</li> <li>• The majority of EAPs 'generally do not believe the screening tool accurately assigns sensitivity ratings for the various biodiversity themes', and that 'better communication from the DFFE on the process of assigning sensitivity ratings could also enhance perceptions'.</li> <li>• The perceived lack of accuracy of the environmental themes has implications for the levels of trust in the outcomes of the screening tool.</li> <li>• Most EAPs disagreed that the screening tool was their preferred source of environmental information for a site.</li> </ul>		<p>The information contained in the paper was gathered by opinions rather than fact.</p> <p>This is correct, all information in the screening tool is to be verified on site.</p> <p>The sensitivities are assigned by the data custodians and in many cases the methodology is contained in the meta data. The DFFE is currently in contact with data custodians to improve on the meta data where it is currently not satisfactory.</p> <p>These are views of EAPs surveyed.</p> <p>These are views of the EAPs surveyed.</p>
14.8.8	<b>Susie Brownlie</b>	A number of the ratings of sensitivity appear to be inappropriate and questionable; e.g.		

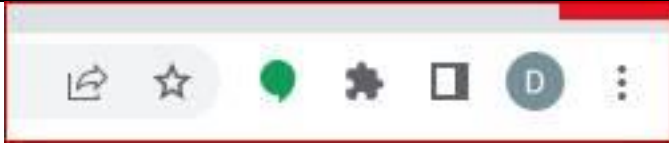
		<p>CBA1 areas are categorized as 'high' sensitivity. These areas are deemed to be 'irreplaceable' as any loss cannot be compensated. In short, they are seen to be 'fatal flaws' or 'no go' areas for modification, as portrayed in draft national guidelines and provincial guidelines on biodiversity. As such, they should be regarded as being of 'very high' sensitivity. Regionally endemic vegetation types without buffers are rated as being of 'medium' sensitivity, without adequate justification.</p>		<p>The comment is noted. SANBI has provided the sensitivity ratings in relation to CBAs and have not identified this as being very high. However, a high sensitivity rating will require an EIA to be undertaken and an assessment to be undertaken to determine the capability of development on the specific site. This assessment will also identify any fatal flaws and any 'no go' areas.</p>
14.8.9	<b>Susie Brownlie</b>	<p>How often will the screening tool be updated to ensure that information is current and accurate?</p>		<p>Please refer to the response in #1.7.6.</p>
14.9. 14.9.1	<b>Carla Vd Vyver</b>	<p>I have experienced the Screening Tool as a helpful instrument but found it uninformed about the locations where I work. It either provides illogical generic requirements for all aspects it assesses or gives odd sensitivity range to some parts. I, therefore, cannot support the implementation of this tool as an Environmental Instrument through any assessment levels of the Environmental Authorization process.</p>		<p>The comment is noted, however all data provided by the screening tool is to be verified on site.</p>
14.10 14.10.1	<b>WWF</b>	<p>The Screening tool is a valuable resource to support the user with information to inform development proposals. It integrates data from multiple sources into a standard format. The report, which is generated as a product of the screening tool, assists with initial decision- making for which specialists' studies may be required.</p>		<p>The comment is noted.</p>

		<p>The report provides a comprehensive overview of several thematic considerations.</p> <p>Access to this information will save the applicant time and money in compiling a basic assessment report.</p> <p>We would like to acknowledge the DFFE's stance on making information open and freely available to support informed decision-making.</p>		<p>The comment is noted.</p> <p>The comment is noted.</p>
14.10.2	<b>WWF</b>	The purpose of the screening tool needs to be clearly articulated that is an initial desk- top assessment that does not replace any site-specific investigations.		The information in the screening tool is always to be verified by a site inspection.
14.10.3	<b>WWF</b>	In this regard the screening tool should not be used as a replacement for a detailed EIA process in any development context (including renewable energy development applications)		The screening tool is not intended to be used to exclude activities, but rather to provide the sensitivity ratings, which requires verification.
14.10.4	<b>WWF</b>	Caution must also be applied to the screening tool being used as an Environmental Management Instrument. An alternative should be a more formula driven approach to EIA processes (determined at a biome specific level).		The adoption of the screening tool has been reconsidered and will no longer be undertaken. However, the sensitivity ratings on the screening tool will still remain relevant for purposes of the proposed exclusion.
14.10.5	<b>WWF</b>	As a further means to streamline the EIA process in the Renewable Energy space, we can redefine the Renewable Energy development zones to coincide with grid access and primary offtakes with predefined mitigation into offset requirements.		The comment is noted.

14.10.6	<b>WWF</b>	The original intent of the tool was not to act as an authorising environmental management instrument, but rather as an advisory tool. The screening tool, as it is designed is therefore not fit-for-purpose as an environmental management instrument.		The screening tool is not to be used as an authorising tool, and remains as an advisory tool. The screening tool will no longer be adopted.
14.10.7	<b>WWF</b>	The tool is mostly intuitive for users with experience with spatial data and related tools.		The screening tool can be used by anyone who can operate a computer. In the context of the proposed exclusion would be used by EAPs and specialists.
14.10.8	<b>WWF</b>	The search for erven, farm numbers or portion numbers becomes a challenge if the format is exactly aligned with the database. The system should allow some fuzzy tolerance and provide options, e.g. a list of similar matches. As an example, the Suikerhoek farm, number 104HT, could not be found on the system. However, doing a spatial search, i.e. on the map it was located.		The tool provides several options to locating erven including: SG21 Digit Code Farm no. and portion Farm name – with location on the map Erf No, and areas name Placename or address  An EAP should be aware of the Erf Number or SG21 Digit Code.
14.10.9	<b>WWF</b>	It is not possible to add adjacent sites through the search functionality. This would then require the generation of two reports. A manual site selection allows for multiple site selection, however, at a scale of 1:72000 or greater, thereby limiting the user's ability to easily find the site under investigation.		It is not possible for search for 2 adjacent sites at once however if you know where the one site is and you know the other is adjacent and it is possible to select both and prepare the screening report for both. This is done by using the "activate select features using the polyline tool". You can draw a line between the two sites that you are wanting to select and then just select them.  It is not necessary to prepare to site screening reports.
14.10.10	<b>WWF</b>	The ability to save a screening in progress would be a good functionality.  The ability to share a screening, either through a link or a unique number, will also be a useful additional feature.		The comment is noted.  The comment is noted.
14.10.11	<b>WWF</b>	The metadata is not fully descriptive of the provenance. Therefore, the source,		The incomplete meta data has been identified as a concern and the data custodians have been requested to

		<p>version and date of the dataset are not obvious. As an example, the source and version of the freshwater dataset as well as the SWSAs are not defined. Providing comprehensive metadata will assist the user in understanding the opportunities and limitations of the data.</p> <p>Having complete metadata also comes sharply into focus if there are any challenges in a development application, as the veracity of the data will come into question.</p> <p>More information is also needed on the methodology to create synthesised layers, e.g. how the level of sensitivity was derived at.</p> <p>The lack of consistent granularity of the data does not lend itself to whole-scale informed decision-making.</p>		<p>provide meta data where this is lacking all together and then to improve on the meta data where it is not adequate.</p> <p>The comment is noted and supported.</p> <p>The comment is noted and work is underway to improve on the quality of meta data.</p> <p>Decisions should not be made on the information provided by the screening tool in isolation, verification is always necessary.</p>
14.10.12	<b>WWF</b>	<p>The report lists various biodiversity 'features' that inform the sensitivity rating. This can be complemented with the names of the plans and links to the various plans or reports. As an example, for the above-mentioned site, the links to the Mpumalanga Biodiversity Sector Plan, the Mpumalanga Conservation Plan, National Protected Areas Expansion Strategy, and the Mpumalanga Protected Area Expansion Strategy would be useful.</p>		<p>The comment is noted and can be considered through the updating of meta data.</p>

14.10.12	<b>WWF</b>	<ul style="list-style-type: none"> <li>• Whilst the tool is intuitive for users with a background in GIS or data handling, it may be a challenge for new users.</li> <li>• Users should also be informed about the rationale and trained on the methodology of how the data is compiled and synthesized for use.</li> <li>• Scheduled online training sessions can help new users to become familiar with the purpose and functions of the tool.</li> <li>• The training sessions can also act as a feedback loop to provide valuable feedback for possible enhancements.</li> <li>• DMR should be encouraged to use the tool and promote the use of the tool in the mining sector.</li> <li>• The Biodiversity &amp; Mining Guidelines must be integrated into the assessment results.</li> </ul>		<p>There are two webinars which give step by step guidance on how to use the tool.</p> <p>This gap has been identified and it is intended to do a webinar to address this.</p> <p>The user is able to utilise the two webinars which provide the step by step guidance on the use of the tool. Several training sessions were held when the tool was implemented.</p> <p>The comment is noted.</p> <p>The comment is noted, DMRE has been trained on the use of the tool.</p> <p>The comment is noted however, guidelines are not integrated to the system but can be linked if there is a specific layer. There is however no mining layer included in the tool.</p>
14.10.13	<b>WWF</b>	<p>The requirement to clear the cache is a technical limitation and it would be valuable to the user if this could be resolved. Undertaking two different assessments can result in the merging of information and maps of the first assessment into the second, compromising the integrity of the report.</p>		<p>Related to the cache – this is always good practice when users use the Google (or internet platforms) often to clear cache or basically clear history not only for Screening – in general eg Chrome</p> <p>Click on the 3 vertical dot (options) in the Browser at the top right corner:</p>

				 <p>Click on History and clear History.</p> <p>It is not possible to merge two reports. If two different reports have been generated both are saved, the one would not be saved over the other.</p>
14.10.14	<b>WWF</b>	The website should also provide feedback on a periodic basis, specifically on all the screening in the landscape. The data can be anonymised showing the number, spatial distribution and the type or nature of the application. This map will provide an indication of possible development pressures in various landscapes. This will be valuable information to inform future planning and action.		This is the long-term plan and will be achieved when the coordinated and integrated permitting system is linked to the screening tool.
14.10.15	<b>WWF</b>	Data-driven decision-making is only as good as input data. We need to ensure feedback to the producers of the data to ensure the content evolves to greater granularity and context-specific application.		The comment is noted and supported. There are regular discussions with data custodians.
14.10.16	<b>WWF</b>	An active feedback mechanism is needed for users to alert the administrators to technical problems or new relevant or updated data sets.		There is a help desk contact provided which is serviced daily, any help needed can be obtained and any technical problems can be submitted for resolution.
14.11 14.11.1	<b>EWT</b>	The EWT urges the DFFE to carefully consider the content and drafting of the proposed exclusion Notice. In doing so we ask that the Department revisit the fundamental NEMA principles and the		The comment is noted.

		<p>purpose of the EIA regulations**, and consider the rights of public stakeholders and civil society. We also recommend the Department consult with SANBI and others who have an in-depth understanding of the data and sensitivity ratings in the Screening Tool. There is much to be gained from the Screening Tool, given the time and effort contributed by scientists and experts across the country to ensure that the Tool adds value to EIAs. It would be unfortunate if the benefits of the Tool were undermined by it being used for purposes for which it was not intended and to which it is not suited.</p>		<p>The DFFE is in consultation with SANBI.</p> <p>The comment is noted. The requirements of the proposed Norm is in line with the compliance statement requirements in the current EIA protocols, and with the inclusion of the two species themes and the alignment of the requirements for medium environmental sensitivity to that of the protocol, the DFFE believes that the proposed exclusion provides the necessary environmental protection.</p>
14.11.2	<b>EWT</b>	<p>Data updates: If the screening tool is to be relied upon as an Environmental Management Instrument, then the department must ensure that sufficient resources are available to update biodiversity data and species models. The EWT is willing to assist with this process, but funding is not available within the EWT for ongoing work. The extensive work done on the species data layers and modelling work was funded by a corporate sponsor for a three-year period. That funding is now completely depleted.</p> <p>It is imperative that funds are set aside from the department to ensure data maintenance of the screening tool.</p>		<p>In the context of the proposed exclusion the screening tool is not relied on for decision making. The process identified in the exclusion notice is to be followed which includes on site verification of the sensitivity ratings.</p> <p>SANBI is the data custodian for the biodiversity information and they do make resources available to update the information.</p> <p>The comment is noted.</p> <p>SANBI is an entity of the DFFE and is funded by the DFFE.</p>



		<p>In conclusion, we feel that this proposed legislation is fundamentally flawed based on the inappropriate implementation of the online screening tool which was designed as first phase trigger of specialist survey needs based on existing data and is limited in its functionality to the data underlying the layers within the tool.</p> <p>We support the continued use of the screening tool for its intended purpose of screening prior to the formal EIA process. We feel that if low or medium sensitivity sites are used to downgrade the requirements to basic assessment following verification of sensitivity and the remaining concerns raised above, it would possibly be acceptable as a means of expediting the transition to renewable energy (which we fully support).</p>		<p>The comment is noted. The information provided in the screening tool is all to be verified.</p> <p>The comment is noted.</p>
<p>14.12 14.12.1</p>	<p><b>BLA</b></p>	<p>BirdLife South Africa is concerned about the re-purposing of the Screening Tool and it then being used in an inverse way, i.e. to condone and expedite development, rather than to demarcate and limit activities in sensitive areas. The function of the Screening Tool is implicit in its name: it was designed to facilitate or assist with the Screening Process. Screening determines which aspects of a project proposal's interface with the environment needs investigation, and what can be excluded from additional scrutiny. The data collected and fed into the GIS layers that</p>		<p>The screening tool function of screening for environmental sensitivity is not being changed. The proposed exclusion is contained in the proposed Norm. The only purpose for which the screening tool is being used is to do an initial identification of sensitivity ratings, which all need to be verified by site inspection.</p>

		comprise the Screening Tool are intended to facilitate this sorting process at the outset of an EIA.		
14.12.2	<b>BLA</b>	<p>The environmental sensitivity associated with the Terrestrial Biodiversity Theme of the Site Screening Tool is described in the associated Protocol for the Specialist Assessment and Minimum Report Content Requirements for Environmental Impacts on Terrestrial Biodiversity (hereafter Biodiversity Protocol). Only two sensitivity classes are provided for - "Low" and "Very High". These categories for the Terrestrial Biodiversity Theme are based on Critical Biodiversity Areas, Freshwater Ecosystems, National Forests, Strategic Water Sources Areas, Protected Areas, Protected Area Expansions and Threatened Ecosystems. The following caution should be noted:</p> <p>As a megadiverse country, South Africa primarily adopts an ecosystem-driven approach to conservation, built on the premise that protecting an ecosystem on the premise that protecting an ecosystem will ensure that its associated species will be protected. However, while this approach works well for common and widespread species, SCC do not occur evenly throughout the landscape and there is no direct relationship between the occurrence of SCC and the presence of threatened ecosystems. As a result, the</p>		<p>The input is noted.</p> <p>The requirement to verify plant and animal species has been included in the exclusion notice.</p>

		impact of a development may have negligible impacts on a particular ecosystem type but severe negative impacts on an SCC (SANBI 2020).		The presence, likely presence or absence of a species of conservation concern are to be specifically identified in the site sensitivity inspection.
14.12.3	<b>BLA</b>	Based on the above, it must be appreciated that the Screening Tool is an initial step. Its core function is to initiate or to set the course for a host of subsequent steps, prior to decision-making. The use of the Screening Tool to circumvent these subsequent steps is not the intention of the Tool. In this respect, the DFFE website that hosts the Screening Tool indicates that "(t)he Screening Tool therefore flags the need for an Assessment, but the developer/EAP/CA will decide on the process going forward sourcing relevant data". Our Appendix illustrates some of the risks to fauna if the opportunity for assessment is forgone.		<p>The screening tool functions in the same way within the EIA process and the proposed exclusion process, i.e. as the first screening step. Both the EIA process and the exclusion process then require a site inspection to verify the information identified in the screening report.</p> <p>The example is noted.</p>
14.12.4	<b>BLA</b>	Given the reliance on third-party data and external support, we are concerned about ongoing maintenance, monitoring, development and improvement of the Screening Tool. There is no guarantee that the mechanisms currently in place to support and update the Tool will remain in place for the foreseeable future. In other words, the Government Notices may endure beyond such time that the expedited process is required, or beyond such time that the Screening Tool provides a robust and		<p>The tool and the data is maintained by data custodians and the DFFE. The updating of the screening tool is part of the annual work plans of the GIS unit within the DFFE and the system maintenance is part of the annual budget of the CD Information Management.</p> <p>The requirement to attach a screening tool report is a legislated requirement, therefore DFFE must ensure that EAPs can comply which would mean that the screening tool must be available 24/7. There is no basis to assume that the screening tool would not remain in place.</p>

		comprehensive repository of relevant information.	
14.12.5	<b>BLA</b>	<p>BirdLife South Africa's comments are based on our understanding that the exclusion of solar PV installations, via the adoption of the Screening Tool as an EMI (as allowed for in terms of section 24(2)(e) of the National Environmental Management Act (NEMA), foreshadows the potential exclusion of other activities listed in the EIA Regulations. In this regard, BirdLife South Africa recognises the complex and often onerous procedures required for environmental authorisation, how this may deter investment and may be perceived as an impediment to socio-economic development. In principle, BirdLife South Africa is not averse to recognising and implementing alternative mechanisms that afford protection and sustainable utilisation of sensitive sites and ecosystems in the interests of securing livelihoods and creating employment. The choice, design and implementation of such mechanism should be focused on promoting sustainable and equitable solutions over the long-term, and should not be 'quick fix' solutions that run counter to the fundamental principles of environmental governance as per section 2 of the National Environmental Management Act (NEMA). Such solutions run the risk of creating more problems than they solve.</p>	<p>Based on comments received, the screening tool will no longer be adopted as an environmental management instrument and the exclusion notice has been converted into a proposed Norm to ensure enforceability of the EMP. The objectives of excluding solar PV facilities in areas of low or medium environmental sensitivity remains but is to be achieved in a different manner. If other exclusions are proposed, they will each be subjected to consultation processes.</p> <p>The proposed exclusion of solar PV facilities is not a “quick fix” solution but just the next environmental management instrument which is being considered by the Department in the process of streamlining of the legislative framework. The DFFE believes that the Norm will provide the environmental protection and management measures required by this technology when developed in areas of low and medium environmental sensitivity.</p>

14.12.6	<b>BLA</b>	<p>Against this backdrop, some of the justifications provided during the webinar for the adoption of the Screening Tool as an EMI as a vehicle for excluding developments from requiring an environmental authorisation (EA) were, in our view, problematic.</p> <p>The EA process is taking too long and there are too many speculative EIAs:</p> <p>There may well be a problem associated with the length of time and amount of resources required to process EIA applications. However, this is not unique to certain types of activities. A more considered and sustainable solution that looks at the listing notices and prescribed nature of the process would be appropriate. The issue of speculative applications is primarily associated with REIPPP and should, therefore, be addressed within that context. A blanket exclusion is not a solution to programme-specific issues.</p> <p>Public participation forms part of the land-use planning application and is, therefore, not necessary:</p> <p>Planning legislation has always been distinct from environmental legislation, and the planning tribunals are not competent to judge applications in terms of NEMA principles. It would also be inconsistent to apply this justification to</p>		<p>The screening tool will no longer be adopted and the exclusion has been converted into a Norm.</p> <p>There is no concern with the time and resources required to process EIAs CA's are managing the EIA process and are generally achieving 100% compliance with the legislated review timeframes.</p> <p>Please see the response to #1.2.5.</p> <p>A focussed consultation process has been included in the proposed Norm.</p>
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		<p>some developments and not others, as the same drawbacks and limitations would apply. As the jurisprudence has confirmed, planning is a distinct municipal function - the planning mandate must not usurp or interfere with the environmental management competency allocated to the province and national government. In addition, the Promotion of Administrative Justice Act, the NEMA, the EIA Regulations and the Code of Ethics that bind EAPs in terms of their registration, emphasise the need to consult in a proactive and transparent manner. According to section 2(1)(f) of NEMA:</p> <p>The participation of all interested and affected parties in environmental governance must be promoted, and all people must have the opportunity to develop the understanding, skills and capacity necessary for achieving equitable and effective participation, and participation by vulnerable and disadvantaged persons must be ensured.</p>		<p>All authorisations are required in order for any development to proceed. Should a land use change approval not be provided, the decision on the EA would be irrelevant, as the facility would not be able to be developed.</p> <p>Adjacent land owners and land occupiers as well as environmental NGOs will be consulted through the focused consultation process added to the Norm.</p> <p>Public consultation is not new in the EIA process, therefore the EAPs/ES would be aware of the manner to allow the participation by vulnerable and disadvantaged persons.</p>
14.12.7	<b>BLA</b>	<p>The function of the Screening Tool is implicit in its name - it was designed to facilitate or assist with the screening process. The purpose of an EMI is prescribed by section 23A(2) of the National Environmental Management Act (NEMA). Accordingly, it must:</p>		<p>The comment is noted.</p>

		<p>a) integrate environmental considerations into decision-making;  b) provide for the implementation of best environmental practice;  c) promote the progressive adoption of environmentally sound technology; or  d) promote sustainable consumption and production, including, where appropriate, eco- endorsement or labelling.</p> <p>What was clearly in evidence during the webinar was a lack of confidence in the robustness and accuracy of the Screening Tool. As a data provider for the avifauna layers, BirdLife South Africa can testify to the large measure of uncertainty underpinning the data, particularly when it comes to the "Medium" and "Low" sensitivity categories. Apart from being a relatively new Tool, our understanding is that it has only ever been intended to apply to the screening stage of the EIA process. Screening determines which aspects of a project proposal's interface with the environment needs investigation, and what can be excluded from additional scrutiny. The data collected and fed into the GIS layers that comprise the Screening Tool are meant to guide and facilitate this sorting process at the outset of an EIA.</p>		<p>The screening tool is no longer to be adopted as an EMI, however the site sensitivities for the relevant themes will still be used to guide the EAP/ES.</p> <p>The data custodians are confident about the data provided to the screening tool. All sensitivity data is to be verified through a physical inspection by a professional specialist.</p> <p>The process to verify the environmental sensitivity for a species within the proposed Norm is the same process as provided for in the species protocol. There is no difference in the work to be undertaken for a site with a medium or low environmental sensitivity. The sensitivities identify the assessments required to be undertaken, so the sensitivities on the screening tool dictate the rest of the EIA process.</p> <p>This understanding is correct, the environmental sensitivity can identify that a compliance statement is required, the site verification required in terms of the proposed Norm meet the requirements of a compliance statement.</p> <p>The use of the screening tool has not changed, all sensitivities are to be verified.</p> <p>The guidance role of the screening tool has not changed as all sensitivity data is to be verified by physical inspection by specialists.</p>
14.12.8	<b>BLA</b>	BirdLife South Africa has provided data for the avifaunal layers in the Screening		

		<p>Tool and can testify that the ratings ("Low", "Medium", "High" and "Very High") are determined by the scale of mapping and the associated confidence limits. For example, in the Species Environmental Assessment Guideline the criteria for a "High" sensitivity rating are described as follows:</p> <p>Recent occurrence records for all threatened (CR, EN, VU) and/or Rare endemic species are included in the high sensitivity level. Spatial polygons of suitable habitat have been produced for each species by intersecting recently collected occurrence records (those collected since the year 2002) that have a spatial confidence level of less than 250 m with segments of remaining natural habitat (SANBI, 2022).</p> <p>The description indicates that the sensitivity rating has much to do with the type of data, and confidence levels in that data; arguably the Screening Tool ratings should be labelled as potential rather than actual sensitivities. Outputs from the Screening Tool reflect the current state of knowledge, as a basis for further determination. Hence the Screening Tool, when used as part of an EIA authorisation process, has a mandatory site verification procedure.</p>		<p>Please see the response to #14.12.7</p> <p>The input is correct.</p> <p>As specialists must physically inspect the site to verify the information and any gaps in data will be identified. There is no difference between the current EIA process related to low and medium species data to that of the proposed Norm.</p>
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14.12.9	<b>BLA</b>	<p>BirdLife South Africa's reading of section 5.1. and 5.2. of GN 2466 suggests that a site visit is not required, i.e. that the practitioner can do the "sensitivity verification inspection" based on "any desk top information available, including any fine scale data available from the provincial department for the environment or the relevant local municipality, where available". The obvious question pertains to the word "available". If the desk top information is available from government departments, one would presume such data would already be included in the Screening Tool. Hence, it is concerning that the practitioner (and relevant specialists) would not need to visit the site. One of the chief complaints about the Screening Tool is the absence of an accessible way in which ground-truthed information can be fed back into the Tool as a continual improvement mechanism. This issue has been dealt with, to an extent, in the Species Protocols and associated Guidelines by requiring that confirmation (with photographic evidence) of the occurrence of a sensitive species (not detected by the Screening Tool) be submitted to a virtual museum (iNaturalist or other) by the specialist who visits the site. Given that solar projects are often located in relatively remote areas which may not have been mapped at a fine scale, it is critical that experts provide this feedback. An ad hoc downgrading of the sensitivity as</p>		<p>The reading of BLA is incorrect, a physical site visit is required, and this has been clearly identified in the proposed Norm.</p> <p>There may be locally available data that is generated at a micro scale which does not fit into the national mapping produced by SANBI. This information would not be captured in the screening tool but can still be used to supplement any site verification.</p> <p>The comment is noted but falls outside of the proposed exclusion. All site sensitivity data is to be verified by a physical inspection by a specialist.</p> <p>The information from iNaturalist is available to SANBI and therefore allows the data to be updated.</p>
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		<p>allowed for in section 6.1.2 of the Notice would appear to undermine the scientific evidence that underpins the data layers. It is based on the very shaky assumption that unverified data which (inexplicably) have not already been input into the Tool, can be presumed more accurate than the data in the Screening layers.</p>		<p>The underlying information of the screening tool provides the sensitivity. The desk top data merely supplements the screening tool data and does not participate in the sensitivity determination of the screening report. There is no ad hoc downgrading of sensitivity. Any difference in sensitivity would need to be verified, motivated and accompanied by evidence.</p>
14.12.10	<b>BLA</b>	<p>Further to the prior comment, it is concerning that the Screening Tool can, on one hand meet the criteria for an EMI, but on the other, be so inaccurate that a "Very High" or "High" sensitivity rating could 'in fact' be "Medium" or "Low" sensitivity. Our argument here is not that the Tool cannot be wrong, but rather about whether it is not, in principle, premature and irresponsible to adopt a Tool as an EMI when (by the DFFE's implicit admission) is incomplete and unreliable.</p>		<p>There is no difference between the ability to motivate and provide evidence to dispute an environmental sensitivity in the EIA protocol process that in the proposed Norm.</p> <p>All environmental sensitivity data is to be verified by a physical inspection by the relevant specialist for the specific environmental theme. All changes to an environmental sensitivity need to be motivated and evidence provided.</p>
14.12.11	<b>BLA</b>	<p>A key concern for BirdLife South Africa, echoed by a number of other science-based NGOs that we have been in discussion with, is that the adoption of the Screening Tool as an EMI will smooth the path for less desirable developments that will further contribute to ecosystem impacts and greenhouse gas emissions (e.g. coal mining, bulk prospecting, refining, fracking). We foresee that others may argue that solar installations are being advantaged. Minister Creecy may well find herself pressured in the face of motivations for excluding other types of development to which the Screening Tool can be</p>		<p>There is no basis for this concern. The intention to exclude any activity is to be gazetted for public comment and inputs of stakeholders must be considered. Only rational decisions will pass legal muster. The screening tool is no longer to be adopted.</p>

		<p>applied. Two such activities were mentioned in the webinar, but there is no guarantee that this list will not expand given the absence of any clear criteria for types of activities that can be subsequently also excluded.</p>	
14;12.13	<b>BLA</b>	<p>The exclusion pertaining to EIA authorisation appears to infer that consultation will no longer be required, as confirmed in the example of PV solar installations. In a conventional EIA process (be it for a Basic or full Scoping and EIR), consultation is mandatory because all South Africans have a Constitutional right to administrative justice (which includes a right to be heard), and because public participation and transparent decision-making are key principles in NEMA. The EIA is the mechanism by which these requirements are met when it comes to environmental governance. It is, therefore, concerning that adoption of the Screening Tool as an EMI seems to obviate the requirement for stakeholder consultation on a project-by-project basis. The key questions that arise are whether the exclusion notice conforms to the NEMA principles, and whether it deprives host communities and other stakeholders of their rights to administrative justice? In this regard please also refer to our prior comment about the consultation for rezoning applications not being a substitute for consultation under NEMA.</p>	<p>NEMA makes provision for exclusions and therefore must have anticipated that some identified activities would proceed without EIA. Notwithstanding, a focused public consultation process has been included in the proposed Norm.</p> <p>The screening tool is no longer to be adopted. The requirements for registration are identified in the proposed Norm.</p> <p>The appeal process is available should any stakeholder feel aggrieved.</p>

14.12.14	<b>BLA</b>	Linked to the above is a concern about the implications of the adoption Notice on the right of appeal. If interested and affected parties are not notified about the installation and given an opportunity to comment, how do they engage with their right of appeal? In this regard, we stress again the principle of NEMA that the participation of all interested and affected parties in environmental governance must be promoted. Affected parties cannot be expected to peruse registration databases on a regular basis to check whether they may or may not be affected.		<p>The proposed Norm includes notification to the identified stakeholders of the registration which facilitates an appeal.</p> <p>Adjacent land owners, land occupiers and NGOs parties will be informed of the application for registration through the focused consultation process and they must be notified of the outcome of the registration process.</p>
14.12.15	<b>BLA</b>	An EIA authorisation includes conditions of approval, including a requirement to implement an auditable environmental management plan (EMP). Forfeiting of these enforceable conditions is, in our view, problematic. In the absence of a legal source, which allows a listed activity to proceed, how can applicants be held to account by the licencing authority or the Environmental Management Inspectorate?		The requirement to implement an EMP is included in the proposed Norm. The requirements of the proposed Norm are enforceable with sanction should there be non-compliance.
14.12.16	<b>BLA</b>	Using the solar installation exclusion as an example of what can be justified based on the adoption of the Screening Tool as an EMI, it is stated that the competent authority "must register the proposed development or expansion and provide the proponent with a registration number". This appears to fetter the discretionary powers of government officials to decide whether the level of investigation is sufficient to		NEMA makes provision for the implementation of an exclusion which anticipated that for some identified activities the CA would not be required to make a decision. The requirement in the proposed Norm is for EAPs and specialists to be registered with professional bodies which set requirements for the field of practice including minimum entry requirements, professional conduct and ethics. These are all aspects included in NEMA to allow for the maturity of the sector and for different requirements to apply. EIA has been in practice in the country since 1997 and a vast body of experience has been generated over

		anticipate and prevent significant environmental harms. This accords the Screening Tool, and those that rely on the information therein, too much say in whether a project should proceed or not. It appears to be first step in an unravelling of the EIA process and the safeguards that built into the regulatory framework.		these years, as well as experience since 2013 with the identification and management of impacts related to solar PV facilities. The screening tool has been introduced to provide guidance on environmental sensitivities, which is based on information collected by many departments and data custodians over many years and support their individual policy and decision making. Therefore the DFFE believes that there is a firm basis for preparing a proposed Norm for the exclusion of solar PV facilities in areas which have been confirmed to be of low and medium environmental sensitivity.
14.12.17	<b>BLA</b>	<p>In conclusion, we stress the risk of reliance on the Screening Tool as a fast-track instrument for certain types of development instead of as a general guide for the screening step of a conventional EIA. BirdLife South Africa urges Minister to consider the negative, long-term implications of the adoption Notice and the potential slippery slope this may become in respect of future exclusions. It must be recognised that the Screening Tool is simply a database of best available information which has numerous limitations. It is helpful as a guide, but is not robust enough to justify the following:</p> <ul style="list-style-type: none"> <li>• Obviate the need for public consultation,</li> <li>• Justify development in areas that have "Moderate", "High" and "Very High" rating,</li> <li>• Undermine the discretionary powers of the Competent Authority,</li> <li>• Reliance on the integrity of the EAPs and Specialists (in the employ</li> </ul>		<p>As stated, the screening tool is no longer to be adopted, and environmental sensitivity as identified by the screening tool is to be verified on site by a registered specialist.</p> <p>It is unrealistic to expect no change to the EIA system and to base an objection to progress on perceptions of potential slippery slopes.</p> <p>This summary is not supported.</p> <p>The proposed Norm now requires a focused consultation process with affected parties.</p> <p>Only the associated linear infrastructure will be allowed in areas of high or very high sensitivity and this is conditional to requirements and confirmations by specialists that all impacts have been avoided, mitigated or managed.</p> <p>NEMA has anticipated that some identified activities would be excluded.</p>

		<p>of applicants) to use the Screening Tool in a discriminate and circumspect manner,</p> <ul style="list-style-type: none"> <li>• Undermine access to administrative justice for affected parties and civil society,</li> <li>• Significantly compromise the much need expansion of protected areas,</li> <li>• Result in further loss of sensitive habitat and increase the likelihood of species extinction,</li> <li>• Conflict with international commitments and undertakings,</li> <li>• Inconsistency with other Guidelines and initiatives, including the Biodiversity Offset Guideline and the promotion of the Mitigation Hierarchy.</li> </ul>		<p>The EAPs and specialist are registered through their professional bodies at an annual cost. The requirements for registration are set within the boundaries of legislation, it is therefore reasonable to rely on their expertise and professionalism.</p> <p>The measures put in place through the proposed Norm are regarded as being just.</p> <p>The protected area expansion strategy information is identified in the screening tool. All species of conservation concern are considered through the requirements of the proposed Norm.</p> <p>There should be no conflict with internal commitments as protected areas are protected and solar PV technology contributes to reduced carbon emissions.</p> <p>The requirements for offsets on land which has a low to medium environmental sensitivity is not anticipated.</p>
<p>14.13 14.13.1</p>	<p><b>EAP</b></p>	<p>The EIA Screening Tool is a great start and assisting a lot in identifying sensitive areas for the respective environmental features. It is acknowledged that the respective sensitivity layers will be updated as new information become available. But it is uncertain whether this tool alone can be used to confidently allow exemption for this type of listed activities based on the screening tool's results alone. However, Environmental Assessment Practitioners are required to provide the competent authority with the GIS information during the application</p>		<p>The screening tool is used as a guide, after which the site is to be physically inspected by a specialist to confirm or dispute the sensitivity and the applicability of the proposed Norm.</p>

		process. Would it be possible to integrate this information during update cycles as it would assist in providing detailed information for sites already assessed.		The procedures for updating the data of the screening tool are noted but fall outside of the ambit of the proposed Norm and the associated exclusion.
14.13.2	<b>EAP</b>	How will this development be regulated by the competent authorities in future if an environmental authorisation with stipulated conditions whereby developers are kept are not required? Again, if there is no timeframe allowed for the competent authority to review the Environmental Management Programme, even this may not be enough.		<p>The developers are bound to implement the EMPr which is prepared by the EAP/ES and signed off by specialists. It would be similarly managed as a project authorised through EA when the EA has been fully exhausted and complied with.</p> <p>The timeframes for checking that the information required by the Norm is submitted is regarded as being sufficient, there is no review required by the Norm.</p>
14.13.3	<b>EAP</b>	Would the development of PV Solar override any other preferred or planned land use, e.g. if an area is earmarked for housing development in terms of the SDF or IDPs? From experience in working in smaller towns, the spatial development of the communities are very sensitive and also high in municipalities' priority. Will does not "compete" with other important land uses and potentially be prioritised due to the expected funding to be channelled to this type of development and also ad hoc placement of facilities not necessarily strategic in terms of the energy network or users.		There can be no decision that trumps another. All Departments derive their mandate from the relevant Acts. If land has been earmarked for a certain development the municipality will not provide a land use change authorisation which is a requirement to develop.
14.14.1	<b>Natural Justice</b>	From the reading of this Notice and the notice of the Screening Tool, it is clear that public participation is being removed from the proposed projects of solar PV and replaced with a screening		

		<p>tool to speed up the process of solar energy project siting's. Public participation includes access to information in the form of environmental authorisation of the proposed project. The constitutional right of access to information in terms of PAIA will be violated if communities or individuals whose environment, health, or livelihoods may be affected are not given the opportunity to access the project's documents and to provide input to prospective activities.</p>		<p>A focused consultation process has been included into the proposed Norm as well as the requirement to notify parties consulted of the registration to facilitate an appeal .</p>
14.14.2	<b>Natural Justice</b>	<p>Excluding the EIA process, community consultations, and public participation for the development and expansion of solar PV installations risks generating local opposition and social backlash, which could stymie solar projects. Stakeholders and communities are more likely to demonstrate little support and increase resistance to the projects when they are not given the chance to participate through workshops, consultations, and being heard.</p> <p>EIA processes have been shown to improve project acceptance and minimise project derailment. Transparent procurement and sitting processes that allow for acceleration of clean energy and electricity planning that prioritises renewable energy should be the priority for the government to meet its goals of renewable energy deployment. Furthermore, it will encourage investment in renewable</p>		<p>The comment is noted, please refer to #14.14.1</p> <p>For REIPPPP projects, the IPP office requires that communities within a 50km radius are required to be consulted in terms of the community spend of the programme.</p> <p>The comment is noted.</p>



		<p>energy projects. To date, in South Africa, activities that have lacked public participation and/or transparency have slowed investment and deployment of solar PV. This results in uncertainty in policy and regulation and a high cost of capital. It also often results in projects being stopped by the courts. This can be seen in examples of the Karpowerships agreements and the lack of public participation in the case of Makhanda High Court, where Impact Africa and Shell's exploration rights were found invalid. The Court further found that the decision to grant the exploration right did not use the cautionary approach as mentioned in NEMA. EIA exemptions are likely to increase public discontent where there is a lack of public participation and result in more litigation; a more uncertain and riskier investment environment; and a higher cost of capital for renewable energy projects, which could lead to potential decreases in investment.</p>		<p>The comment is noted.</p> <p>There is a large body of expertise and understanding in the impacts associated with solar PV facilities and the screening tool has been developed and used for four years which give initial guidance on site sensitivities.</p> <p>NEMA has made provision for the exclusion of identified activities. An exclusion process would by its nature differ from the requirements of the EIA Regulations.</p> <p>The knowledge of impacts and management measures associated with solar PV activities are well established and therefore not the same as the impacts of the Karpowerships, which is new technology for the country and there is little known about e.g. the noise transfer in the deep ocean as the research is lacking.</p>
14.14.3	<b>Natural Justice</b>	<p>More importantly, communities and the environment may be harmed by projects that have passed the Screening Tool. Local knowledge regarding potential harm and mitigation possibilities will not be addressed or made available to government decision-makers and project proponents without substantive public engagement processes, such as those offered by the EIA.</p>		<p>The site sensitivity is to be physically verified by professional specialists in the identified environmental themes.</p> <p>The comment is noted and a focused consultation process has been included in the proposed Norm.</p>

		<p>Though PV solar projects are less harmful to communities and the environment compared to non-renewables, impacts can nonetheless take place, especially in terms of medium or large-scale projects, and especially where multiple projects in an area have cumulative impacts. These impacts include projects that use large portions of cleared lands, maximizing sunlight for panels prior to installation. Furthermore, land clearing and space are required should the PV project connect to distribution or transmission lines.</p> <p>Large quantities of solar panels can affect the temperatures in a region and have climatic impacts. Reflection from the solar panels can attract water birds who believe them to be lakes. There are toxic materials and elements in most solar panels today, which can contaminate soil and water should they not be properly handled and recycled at the end of their useful lifespan.</p>		<p>The proposed Norm has been amended to include a discussion on possible cumulative impacts.</p> <p>The impacts on terrestrial biodiversity and species must be considered in relation to proposed site sensitivity.</p> <p>The increase in temperature is not an impact that is currently being considered through the EIA process, and mitigation, other than applying a no-go option. would be difficult.</p>
14.14.4	<b>Natural Justice</b>	<p>While PV solar projects have significantly fewer impacts on surrounding communities than fossil fuel projects, such as coal or gas extraction or generation, they require a lot of land, which will inevitably reduce the availability of land in a district for alternative livelihood activities and impact the environment, especially when these solar projects accumulate within a given region. PV solar</p>		<p>The land to which this proposed exclusion will apply is of low to medium environmental sensitivity, which includes agricultural sensitivity. These areas should not be highly biodiverse or productive from an agricultural perspective.</p>

		<p>generation generally requires 2 to 4 hectares of land per MW of electricity generated (depending on type and efficiency rating). In certain settings, solar facilities can be beneficial for some aquatic ecosystems and some agricultural and livestock systems. However, they can also displace other productive uses of land and destroy or fragment animal habitats. Additionally, most medium, and large-scale projects will be grid-connected, hence requiring the build out of distribution and possibly transmission grids. Transition and distribution lines can have large footprints. Based on the EA exemption in the proposed exclusion of "linear infrastructure", it seems these lines may also be exempt from any sensitivity analysis under the proposed regulation and would not require an EA.</p> <p>The EIA process and conclusion are critical to evaluating the cumulative impact of multiple projects in the same area and projects that require land for transmission and distribution line construction. The Screening Tool and the Exclusion will not include a methodology or requirement to consider the cumulative impact. Individually, a project may not have a significant impact, but collectively, it could be devastating.</p>		<p>The residual impacts of solar PV facility to the environment will be managed through a site specific EMP. The registration process of the proposed Norm also requires verification of the environmental sensitivity of the proposed location of the solar PV facility.</p> <p>The solar PV facility will not require as part of the project the development of transmission lines. Such installations will be managed under the "standard for transmission and distribution lines".</p> <p>There is an existing exclusion for the development of transmission and distribution lines in place which was gazetted for implementation in 2022.</p> <p>The environmental sensitivity associated with the site will be verified by specialists and the cumulative impacts must be discussed in the site sensitivity verification report.</p> <p>The comment is noted, and it is thought that the proposed Norm adequately deals with the issues.</p>
14.14.5	<b>Natural Justice</b>	Not only can environmental damage occur, but due to the land requirements of solar projects, the land rights of		

		<p>communities can be affected. Land ownership and contested claims over land in South Africa are issues that only a more serious process, such as an EIA process, would uncover, even though provisions are made for landowners to give consent in terms of the forms required to be filled out to use the Screening Tool.</p> <p>Through colonialization and Apartheid, South Africa has a dark history of land being appropriated from the indigenous and local communities. This proposed Exclusion further illustrates the importance of the EIA process to not only ensure rights to public participation but also the security of tenure and access to traditionally used lands of local communities.</p> <p>Should land not be dealt with sufficiently and cautiously, the proposed Exclusion will result in conflict and delays in all projects.</p>		<p>The proposed Norm requires consent from the landowner/occupiers as noted in the comment.</p> <p>The consent of the landowner is required and consultation with adjacent land owners and land occupiers is required. For the linear infrastructure, pre-negotiation is required which will again constitute consent.</p> <p>The comment is noted. It is thought that the ownership of land is adequately dealt with through the requirements of the Norm, which will protect communities who reside on land on which the facility would be proposed to be developed.</p>
14.14.6	<b>Natural Justice</b>	<p>While we strongly urge that the exemption proposal and proposed use of the web-based screening tool be withdrawn, if nonetheless, they go forward, we strongly recommend that the Department amend the screening tool to ensure that fundamental deficiencies are addressed, including, inter alia:</p>		<p>The screening tool is no longer to be adopted, however the environmental sensitivities are still to be applied to guide the further site inspections that must be undertaken by professional specialists.</p>

		<p>The Department should also further-define low and medium environmental sensitivity areas. Some areas are in the process of recovering from natural disasters such as floods, fires, and vegetation fragmentation, which may not be recorded on the Screening Tool.</p> <p>South Africa is a water-scarce country, and climate change will likely make areas of it more water-stressed. As such, the Screening Tool should include a special process to evaluate areas subject to periodic drought to take these extreme conditions into account. Where solar installations may interfere with water rights and aquatic biodiversity, the government should create strategies to protect those rights.</p> <p>Medium and large solar PV projects require water to clean the solar panels for optimal usage. That water usage should be regulated under a water use license under NEMA. This type of license will usually be considered in the process of the EIA. There is no clear indication that the Screening Tool will consider these impacts.</p>		<p>The site sensitivity data is based on the precautionary approach which would not be influenced by timebound events. The areas would also need to be inspected by professional specialists to confirm the screening tool sensitivity.</p> <p>The sensitivities associated with aquatic biodiversity are included in the site inspections that must be undertaken by the relevant specialists. Should the area be of high environmental sensitivity for aquatic biodiversity this proposed Norm will not apply. A solar PV facility is not an intense water user and the availability of water and the impact of such water use on the existing water balance will be considered by the DWS when providing a general authorisation or a water use licence, depending on the outcome of the risk assessment and expected water use.</p> <p>The DWS administers its own process when considering a water use licence which is not impacted by this proposed exclusion.</p>
14.14.7	<b>Natural Justice</b>	<p>The proposed Exclusion is tantamount to making decisions behind closed doors, with no provision for public notification, access to project documents, or participation. Decision-making without transparency and public engagement risks a major backlash when communities perceive that deals</p>		<p>The proposed Norm has been amended to include a focused public consultation process.</p> <p>NEMA makes provision for exclusions which would have anticipated identified activities proceeding without</p>

		are being made behind closed doors as projects advance without public consultation or environmental and social impact assessment. This backlash could easily undermine the stated purpose of the proposed Exclusion – to accelerate and deregulate the deployment of renewable energy in South Africa		following the procedures of the EIA Regulations. Notwithstanding the proposed Norm requires a focused public consultation process to ensure that the rights of affected stakeholders are not prejudiced.
14.14.8	<b>Natural Justice</b>	Natural Justice strongly suggests withdrawal of the proposed Exclusion. Nonetheless, Natural Justice acknowledges that considering regulatory reform to expedite deployment of solar PV in the future is appropriate. Such legal reform must carefully formulate approaches to expedite permission of solar PV installations on land. It needs to include looking at land that can be used where just transition policy considerations would steer its deployment, like in the case of unrehabilitated mining sites, landfills, land where there is soil destruction, and other similar lands. These designations of land should include local land use planning and approval. They should also ensure constitutionally required and meaningful public consultations.		The comment is noted. The screening tool has been developed to identify environmental sensitivities of land. The Norm considers land with a low to medium environmental sensitivity other than for linear infrastructure which has its own requirements. The registration requirements of the Norm are regarded as being a process to balance the need for renewable energy and development while ensuring the protection of the environment. There is a large body of knowledge built up with the review of over 800 solar PV applications which has contributed to the preparation of the proposed Norm.
14.14.9	<b>Natural Justice</b>	The need to strike a balance between accelerating renewables deployment and allowing for meaningful community engagement in the siting of medium- and large-scale solar projects is driving the development of careful and creative regulatory solutions worldwide. There		The sites to which this proposed exclusion would apply are sites with confirmed low to medium environmental sensitivity.

		<p>are many sites where solar energy generation has a minimal impact or even generates benefits to the landscape, such as on brownfield sites that previously housed industrial activity but are not currently in use, including old mines, coal plant sites, or landfills. Right-of-ways for railroads and highways are other excellent options for installing extensive solar without competing with other valuable land uses. Many analyses have shown that it is possible to meet much, if not all, renewable energy needs by prioritizing these and other degraded or unused non-urban sites when combined with solar installations in the built environment, including on rooftops of residential, commercial, and industrial buildings. Research has shown that even in prime agricultural regions, there is often plenty of land for renewable energy sitting that need not compete with food production.</p>		<p>Brownfields sites would fit into the category of sites which are the subject of this proposed Norm.</p> <p>The lands to which the standard would apply would not be valuable in terms of agriculture and would be of low or medium environmental sensitivity.</p> <p>The maximum area which a solar PV facility can occupy on agricultural land has been set and is used in the proposed Norm. The agricultural specialist is required to confirm that the development limits are adhered to. These limits have been agreed by the Department of Agriculture and are based on the land capability.</p>
14.14.10	<b>Natural Justice</b>	<p>Some initiatives, tools, and regulations have been developed in other jurisdictions to direct development toward these sites. The U.S. EPA, for example, oversees a RE-Powering program that helps accelerate brownfield renewables development, including by providing best practice guidelines, case studies, and mapping tools to identify worthy sites on a national scale and supporting initiatives to do the same at a state or county level. Several U.S. states have passed laws</p>		<p>The comment is noted, however DFFE has opted to identify Renewable Energy Development Zones, develop a screening tool and to consider exclusions for projects for which the impacts are well known and are predictable. Further work on the development of environmental management tools is also ongoing.</p>

		<p>enabling streamlined permitting and environmental review processes that make room for respecting local regulations and ensuring community engagement. For fostering solar production on brownfields, many of these states also offer financial incentives and procurement regulations. Some of these regulations, like those in New York State, have created special offices to oversee renewable energy permitting. None of these regulations use screening tools that are not fit-for-purpose to entirely exempt large projects from environmental authorization, like the proposal at hand.</p>		<p>The comment is noted.</p> <p>A screening tool has been used in Ireland and Norway that DFFE is aware of and the use of a screening tool is therefore not isolated to South Africa. The use of the screening tool as a guidance to development to avoid areas of high or very high environmental sensitivity is seen as being protective and fit-for-purpose.</p>
14.15.1	<p><b>Biodiversity Law Centre</b></p>	<p>The Screening Tool, as its name suggests, is designed to facilitate or assist with the screening process. Screening determines which aspects of a proposed project need investigation based on identified themes, and what can be excluded from additional scrutiny. The data collected and fed into the GIS layers that comprise the Screening Tool are intended to facilitate this sorting process at the outset of an EIA.</p> <p>We are further advised by BirdLife that the Screening Tool sensitivity ratings of “low”, “medium” and “high” are being misapplied by the Exclusion Notice. In this regard, the sensitivity ratings – which are not defined in the Exclusion Notice – are determined by the scale of mapping and the associated confidence</p>		<p>The comment is noted and the screening tool is used in relation to its screening and guidance role within the proposed Norm. The sensitivities must be verified by specialists by undertaking site inspections.</p> <p>The requirements of the terrestrial and animal species protocols are duplicated in the process identified by the proposed Norm.</p>



		<p>limits in the data, and to ensure alignment with the definitions in the Terrestrial Animal Species Protocol for the Specialist Assessment and Minimum Report Content Requirements for Environmental Impacts on Terrestrial Animal Species (“the Animal Species Protocol”).</p> <p>This Screening Tool consequently indicates the likelihood of species of conservation concern and other environmental features being present at a site, assigns a corresponding level of sensitivity to the site, and dictates what specialist studies must take place as part of the environmental authorisation process. Sensitivity is not a measure of potential impacts of development; it only flags potential risks that need assessment. Outputs from the Screening Tool reflect the current state of knowledge, as a basis for further determination. Hence the Screening Tool, when used as part of an EIA authorisation process, has a mandatory site verification procedure, and is supported by species and ecosystem specific Protocols and accompanying Guidelines. The sensitivity rating for Terrestrial Animal Species is based on the type of data, and confidence levels in that data.</p> <p>Based on the above, it must be appreciated that the Screening Tool is an initial step. Its core function is to</p>		<p>The comment is noted and the manner in which the species protocols are applied is understood and is the same process applied in the proposed Norm.</p> <p>The mandatory site verification process is a requirement of the proposed Norm.</p> <p>The comment is noted and appreciated, the screening tool is used in the same manner in the tried and tested EIA process to that of the proposed Norm for species.</p>
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		<p>initiate, or set the course for a host of subsequent steps, prior to decision-making. The use of the Screening Tool to circumvent these subsequent steps is not the intention of the Tool. In this respect, the DFFE website that hosts the Screening Tool indicates that "(t)he Screening Tool therefore flags the need for an Assessment, but the developer/EAP/CA will decide on the process going forward sourcing relevant data".</p> <p>The Screening Tool therefore should not be used as a basis for excluding the need to obtain an environmental authorisation, as this is not its intended purpose.</p>		<p>The screening tool is not used as the basis of an exclusion but used as part of the process of the proposed Norm which requires site verification and focused consultation.</p>
14.16.1	<b>Biodiversity Law Centre</b>	<p>Given what we have said in the preceding sections regarding the Screening Tool's ratings of "high", "medium" and "low" referring to the likelihood of occurrence of species of conservation concern, it must be stressed that that the "High" and "Very High" sensitivity ratings are least likely to be incorrect, given that the allocation of this rating is only admissible in instances where fine scale mapping and accurate data points are available. Consequently, it is more likely that "medium" and "low" ratings (indicative of less reliable or absence of fine-scale data) will be inaccurate.</p> <p>Accordingly, development should be even less permissible in areas of "low"</p>		<p>Site verification is required as part of the proposed Norm. The species of conservation concern are specifically to be considered through the verification process. The process mimics the current process for species determination of the EIA Regulations and Specialist Assessment Protocols.</p>

		<p>or “medium” sensitivity, as these are the areas for which habitat for species of conservation concern is merely suspected, whereas for “high” sensitivity, habitat for species of conservation concern is confirmed.</p> <p>It is nonsensical for the exclusion to apply in areas where the site sensitivity verification for a specific theme identifies that the “very high” or “high” sensitivity rating of the screening tool is in fact “medium” or “low” sensitivity. Again, the use of the sensitivity ratings is being misapplied here.</p> <p>We are also very concerned that development of linear infrastructure that forms an integral part of an excluded activity may take place in areas of “very high”, “high”, “medium” or “low” environmental sensitivity. Linear infrastructure such as roads, sub-stations and powerlines can cause harmful impacts: in remote areas such infrastructure can extend over many kilometres, posing a significant risk to bats and birds, and fragmenting habitats. It is therefore extremely concerning that such infrastructure is receiving a blanket exclusion, as it stands to have a significantly detrimental impact on terrestrial biodiversity. Deciding to exclude, under any and all circumstances, the requirement to obtain an environmental authorisation in the instance of linear</p>		<p>Site verification is a requirement of the proposed Norm. The occurrence of the species would be determined through a site verification process that must be undertaken by a professional specialist associated with the relevant theme.</p> <p>The comment is noted but not supported, the process used is the same as the current EIA process for the environmental sensitivity rating of medium or low.</p> <p>The mitigation hierarchy will have to be applied, and a specialist with expertise in the relevant theme will need to provide assurance that the impacts have been avoided and where avoidance was not possible that they are managed within the site specific EMP.</p>
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	<p>infrastructure that forms part of a solar PV facility is contrary to the principles contained in section 2 of the National Environmental Management Act, 1998 (“NEMA”).</p> <p>It is nonsensical for the exclusion to apply in areas where the site sensitivity verification for a specific theme identifies that the “very high” or “high” sensitivity rating of the screening tool is in fact “medium” or “low” sensitivity. Again, the use of the sensitivity ratings is being misapplied here.</p> <p>We are also very concerned that development of linear infrastructure that forms an integral part of an excluded activity may take place in areas of “very high”, “high”, “medium” or “low” environmental sensitivity. Linear infrastructure such as roads, substations and powerlines can cause harmful impacts: in remote areas such infrastructure can extend over many kilometres, posing a significant risk to bats and birds, and fragmenting habitats. It is therefore extremely concerning that such infrastructure is receiving a blanket exclusion, as it stands to have a significantly detrimental impact on terrestrial biodiversity. Deciding to exclude, under any and all circumstances, the requirement to obtain an environmental authorisation in the instance of linear infrastructure that forms part of a solar</p>		<p>The DFFE does not agree that the proposed Norm is contrary to the principles contained in section 2 of the NEMA. The impacts associated with linear infrastructure are considered and mitigated through the procedures of the proposed Norm.</p> <p>The manner in which the identified activities have been drafted will trigger a very high or high environmental rating for development in a water course as a water course includes channels in which water flows. These channels exist in all areas as water collects and drains. Any linear activity would traverse such an area, therefore the objectives of the exclusion would not be met should the linear infrastructures need to be considered through an EIA process. The proposed Norm has identified several requirements for such infrastructure which is thought to be protective of the environment and meets the objectives of the Act.</p> <p>Linear infrastructure associated with power lines is required to be discussed with EWT and is required to have bird deterrents where areas of the power line traverses areas of possible collision.</p>
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		PV facility is contrary to the principles contained in section 2 of the National Environmental Management Act, 1998 ("NEMA").		
14.17.1	<b>EAP</b>	<p>I've noticed the DFFE screening tool is not a reliable source to indicate site sensitivity. I'm making particular reference to my field of expertise, botany.</p> <p>The Screening tool seems to lack updating, and understandably so; I understand that mapping all sensitive resources at a fine enough scale is impossible, but this does present a particular issue. For example, I've noticed that a floral SCC was recorded in an area almost eight years ago (see attached pictures for reference), but the DFFE screening tool still identifies the general area's terrestrial plant species theme as "low". Seeing that the DFFE screening tool lacks updating, it concerns me that some PV developments within REDz areas will be streamlined, presenting the potential of missing possible SCC identifications and, consequently, the loss of such species.</p>		<p>The data on the screening tool in relation to biodiversity including species has been provided by SANBI who is the data custodian in the country, and is mandated to collate the provincial biodiversity information.</p> <p>For species even if the site sensitivity is low the specialist is required to confirm this rating by looking for species of conservation concern. If such a species is found the proposed Norm will not apply.</p> <p>The EIA process in REDZs has been streamlined since February 2018. The proposed exclusion would not be limited to the REDZs but would apply in areas of confirmed low and medium environmental sensitivity.</p>
14.18.1	<b>EAP</b>	<p>Much of the REDz fall within areas which receive high irradiation levels. It makes sense as this should equate to greater energy production potential. Due to the higher irradiation levels, plants have also adapted to thrive in such (relatively) dryer habitats. Often, these species are cryptic and may very</p>		<p>The site verification is required to be undertaken in the season most likely to reveal the species under consideration.</p>

		<p>well be missed during the site verification.</p> <p>I'm curious about how often the screening tool gets updated and whether specialists like myself have other means of contributing spatial data of SCC recordings, which might streamline the updating process.</p> <p>On a last note, I don't recall reading in the "intent to exclude..." document that the site verification process should follow the protocol for specialist assessment and minimum report content requirements (published in 2020). At least within the specialist protocols, it highlights the requirement for reporting on the presence of floral SCC.</p>		<p>The screening tool is updated as new information is provided by the data custodian. In the case of plant species, SANBI is the data custodian and updates the information on at least an annual basis. Specialists can contribute to the information by uploading their data to iNaturalist.</p> <p>The proposed Norm uses the process as per the species specialist assessment protocol.</p>
14.19.1	<b>SAHRA</b>	<p>SAHRA is concerned that the DFFE did not consult with SAHRA regarding this proposed legislative process prior to the public commenting period as part of the Gazetting process, as the proposed procedure has a direct impact on the development application process in terms of section 38 of the National Heritage Resources Act, Act 25 of 1999 ("NHRA").</p>		<p>Consultation with government departments and CA's takes place through the Working Group 5 meetings. Through this process it has been identified that SAHRA is not on the meeting invitation data base. This has since been corrected. We do apologise for the gap, and do note that a specific meeting has been set up where the proposed Norm has been discussed.</p>
14.19.2	<b>SAHRA</b>	<p>Section 38(9) of the NHRA states the following: "The provincial heritage resources authority, with the approval of the MEC, may, by notice in the Provincial Gazette, exempt from the requirements of this section any place</p>		<p>It is agreed that the proposed Norm can only exclude authorisations required in terms of NEMA.</p>

		<p>specified in the notice.” In this regard, only a PHRA may exempt the need to follow a process for specified areas in terms of section 38(8) of the NHRA, which requires that “...the consenting authority must ensure that the evaluation fulfils the requirements of the relevant heritage resources authority in terms of subsection (3), and any comments and recommendations of the relevant heritage resources authority with regard to such development have been taken into account prior to the granting of the consent.”</p> <p>In this regard, the need to conduct an assessment of the impact to heritage resources as part of section 38(8) of the NHRA cannot be excluded from the NEMA EA process, unless an area has been excluded in terms of a section 38(9) gazette notice.</p>		<p>SAHRA will still authorise any solar PV facilities as required by the NHRA.</p> <p>The comment is noted and DFFE agrees.</p>
14.19.3	<b>SAHRA</b>	<p>The data provided by SAHRA for inclusion in the Environmental Screening Tool included major caveats, which include the following:</p> <ul style="list-style-type: none"> <li>• The grading of the identified heritage sites has not been formally accepted, with the exception of National and Provincial Heritage sites. All other identified heritage resources are assigned with a recommended field rating</li> <li>• There are large areas of the country where we have no data regarding heritage resources, which we</li> </ul>		<p>The proposed Norm has not included any heritage or cultural requirements as this will be considered through the SAHRA/NHRA process.</p>

		<p>understand show up as low sensitivity areas as per the Screening Tool. It really should reflect as “unknown sensitivity” with the need for a field-assessment;</p> <ul style="list-style-type: none"> <li>• Boundaries of Gazetted heritage sites have not been finalised;</li> <li>• The buffers provided around the various heritage sites were provided as per the CSIR SEAs, and not based on further research and consultation.</li> </ul> <p>Additionally, in the draft Heritage Protocols for the Screening Tool, SAHRA stated that the assessment of the impact to heritage resources must always include a public consultation component as per section 38(3)(e) of the NHRA.</p>		<p>This is agreed and the proposed Norm does not include any requirements with respect to heritage and culture as this will be dealt with by SAHRA through the authorisation process required by the National Heritage Resources Act.</p>
14.19.4	<b>SAHRA</b>	<p>SAHRA always understood that the Screening Tool would be used to show the levels of assessment required for the EA process, and not to exclude areas from undertaking an assessment. This (the different levels of assessment) was discussed when drafting the Heritage Protocols for the Screening Tools, which SAHRA has not seen since November 2020. At no point was the need to exclude areas from an assessment discussed with SAHRA.</p>		<p>The screening tool is not used for the exclusion, it is only used to identify the site sensitivity which is then to be verified by a registered specialist in the theme being considered.</p> <p>The DFFE has been engaged in a programme of streamlining the environmental legislative process and the exclusion for solar PV facilities was the next exclusion for consideration. There will be more exclusions considered in the future. Heritage and cultural themes cannot be excluded as this is the mandate of SAHRA.</p>
14.19.5	<b>SAHRA</b>	<p>If the NEMA EA Exclusion process is gazetted, the implementation of the process as described in section 38(1) of the NHRA, would then make the relevant Heritage Resources Authority</p>		<p>The comment is noted and is also the interpretation of DFFE.</p>



		(HRA) a deciding authority for all PV facilities and associated activities in areas of low and medium sensitivity across the country. The current Heritage Resources Authorities including SAHRA have insufficient capacity to implement this function at the scale and speed required to address the Electricity crisis.		There would be no additional capacity required as SAHRA currently reviews /comments on all the solar PV EA applications.
14.19.6	<b>SAHRA</b>	Permits in terms of section 27, 34, 35 and 36 of the NHRA would also need to be applied for if any heritage resources require mitigation due to unavoidable impacts. The grave relocation process in terms of section 36 of the NHRA and relevant Chapters of the June 2000 Regulations may take a very long time to conclude. These can be fatal flaws to a project and the process of consultation and permitting cannot be excluded. Permits in terms of section 34 of the NHRA are currently administered by the 9 PHRAs, and six of these PHRAs are severely under capacitated to issue permits in good time.		The comment is noted and is understood.  The comment is noted, however this would be the case in terms of an EIA as well.
14.19.6	<b>SAHRA</b>	The same concerns would be relevant to any development located in the KZN Province due to the existence of the KZN Heritage Act. All of the nine PHRAs have their own processes and would also need to be consulted regarding the impact of the exclusion process on their own application procedures. SAHRA has advised DFFE to consult with the various PHRAs regarding the process on several occasions.		The comment is noted and is agreed.  The comment and advice is noted. The role of the provincial heritage associations to authorise the relevant applications in terms of the NHRA would not change.

14.20.1	<b>Indalo private nature reserve association</b>	Indalo's main concern over the adoption of the Screening Tool as an EMI to allow for the exclusion of solar PV installations from requiring an EA, is that this will set a dangerous precedent for the exclusion of other activities with greater environmental impacts. Indalo recognizes that there is an energy crisis in South Africa and is not opposed to creating alternative measures that protect sensitive areas while fast-tracking renewable energy projects, however, the fundamental principles of environmental governance in NEMA must not be overlooked or ignored simply to push through energy developments.		Please refer to the response to #14.12.11  The comment is noted, however, DFFE is of the view that the proposed Norm is in line with the fundamental principles of environmental governance in NEMA.
14.21.1	<b>Environamics</b>	The scale of the data used to develop the screening tool -  Our concern is raised regarding the scale of the data used to develop the screening tool. Typically the data that are used when developing strategic assessment tools are at a bigger scale when compared to the scale of data used during environmental impact assessments (EIAs). The purpose of any strategic assessment tool is to provide a strategic direction, but it is limited in that it cannot make assumptions on the site specific sensitivities that may occur at a smaller site specific scale.		DFFE does not agreed with this statement. The scale of the data is the same as what has been used by consultants for years through SANBI's BGIS. In addition, all of the environmental sensitivities identified on the screening tool is to be verified by specialists.
14.22.1	<b>Minerals Council South Africa</b>	The use of the National Web Based Environment Screening Tool as an environmental management instrument		The support is noted.

		<p>for site sensitivity to very high, high, medium and low environmental sensitivity determination is supported. However, we are concerned by the accuracy of the tool since it is based on desktop studies and large sensitivity maps, thus ground truthing should therefore be done regularly to update the sensitivity maps.</p> <p>Given the challenges with the accuracy of the tool we submit that in cases wherein the specialist studies and site-specific reports are available for a development area, or where the development area has been subject to previous authorisations, these must be used in addition to the screening tool, and this could also override the decision making and output from the screening tool.</p>		<p>The data on the screening tool is not based on desktop studies. The species data is based on actual occurrence of species. The terrestrial and aquatic biodiversity information is based on provincial environmental data produced through their biodiversity plans. It should also be noted that all of the environmental sensitivity data identified on the screening tool is to be verified on site by specialists. The screening tool data is to be used only as guidance data.</p>
14.22.2	<b>Minerals Council South Africa</b>	<p>In terms of the projects happening in a mining area wherein various specialist studies and the EIA has been conducted the existing information should be sufficient for a mine to be exempted from obtaining an authorisation as opposed to the process outlined in the gazette. For example, a solar PV panels which occupied 106 ha (1 km<sup>2</sup>) for the 50MW solar PV plant was implemented by one on the member companies. The power is connected to the Mine's electrical infrastructure via an 11kV power line. Several specialist studies were also undertaken, and potential impacts were assessed as part of the</p>		<p>The Norm does indicate that any relevant information can be used to supplement the environmental information used to support the exclusion, and this will include any information produced by the EIA to support the original mining activity authorisation.</p> <p>The information in the example provided would be useful should an applicant wish to apply for additional solar PV capacity on the site.</p>

		EIA and all potential impacts were assessed to be of negligible to minor significance. The project was welcomed by the local community and positive results are being realized.		
14.23.1	<b>Natural Justice</b>	<p>Currently, there is little information demonstrating the use of the Tool. The Tool does not include aspects of public participation or participation processes that are proposed in NEMA and the EIA Regulations. Further the Screening Tool does not show a risk averse and cautious approach when it evaluates projects or activities.</p> <p>The current reading of the gazetted Notice entails that areas identified as “low” or “medium” sensitivity would be excluded from the requirement to facilitate public participation. This is an infringement on the Constitutionally supported right to public involvement.</p>		<p>The screening tool has been required to be used within the EIA process since July 2019, which is now almost 4 years, the DFFE does therefore not agree with the statement.</p> <p>The screening tool only provided environmental sensitivity data, it is not designed to in any way provide public consultation data. The public consultation is done as part of the EIA system normally and the Norm in the case of the proposed exclusion. The screening tool also does not evaluate projects or activities and is not intended to do so. With respect to applying a risk averse approach, the screening tool is specifically designed to identify the environmental sensitivity on different sites or proposed footprints, in the manner high environmental sensitivity sites can be avoided. In addition, footprints can be moved off of areas of high environmental sensitivity.</p> <p>The Norm has been amended to include a focused public consultation process.</p>
14.23.2	<b>Natural Justice</b>	There is little transparency in the background information and data that informs the reports generated by the Tool. In the web seminar posted on the Tool’s website, the speaker indicates that data informing the Tool is collected from various custodians who are experts in their fields. However, the Tool, or its website, does not disclose the identity of these custodians. The expertise and authenticity of the custodians are called into question.		<p>Each layer used to build the data in the environmental screening tool includes meta data which identifies the supplier of the information and in most cases how the information has been collected.</p> <p>The various data custodians are the experts to produce the information.</p>

14.23.3	<b>Natural Justice</b>	Furthermore, there is no information or access to the actual data being referred to by the Tool. The public are forced to blindly believe and comply with the report generated by the Tool. Further, there is no metadata regarding the information collected from the custodians. The public has no forum to know whether the data collected is accurate, up-to-date, reflective, or reliable.		<p>This is not a correct statement, all of the original data used to identify the environmental sensitivity data is included on the screening tool and the meta data is provided, the statement is not supported.</p> <p>The statement is not supported as there is a community of practice drawn from all data custodians that meet quarterly to discuss data and the updating data.</p>
14.23.4	<b>Natural Justice</b>	Even if the information collected is reliable, Natural Justice submits that the Tool oversimplifies the complexity of environmental protection. It is unclear how the Tool can evaluate numerous aspects of environmental sensitivity. The amount of weight the Tool gives to different criteria is also unclear, such as species, water sources, traditional usage of the land/area, cultural connections to the area and the connection of biological processes.		<p>The screening tool only provides data, the Norm must be complied with in order to comply with other aspect of environmental protection.</p> <p>The data that is used includes meta data which identifies how the information is determined.</p>
14.23.5	<b>Natural Justice</b>	The Tool doesn't evaluate cumulative and indirect environmental impacts where several projects proposed for a low or medium sensitivity area would nonetheless have significant impacts.		<p>The screening tool is not intended to identify cumulative impacts or indirect impacts. The screening tool only identifies environmental sensitivity. The impacts of activities have been identified by CA through the development of the screening tool and including in the classification of activities identified in the screening tool. The Norm indicates that the cumulative impacts must be discussed. The screening tool is used in tandem with the Norm.</p>
14.23.6	<b>Natural Justice</b>	The Tool is not a sufficiently sensitive gauge of environmental impact as it only indicates broad categories of low, medium, high, and very high environmental sensitivity. A project with		<p>Impacts are not identified by the screening tool, the screening tool only provides environmental sensitivity of a site.</p>

		<p>a huge impact of an area of low or medium environmental sensitivity may still have significant environmental impacts. It is also unclear how the Tool can assess the myriad different elements of environmental sensitivity, and how it gives weight to criteria as diverse as hydrology and species composition, and the many ways in which ecosystem function is based on the interdependency of multiple interrelated biological processes.</p>		<p>Impacts to be discussed is included in the Norm. Where the screening report identifies areas of high environmental sensitivity for a specific theme, the Norm is not applicable.</p> <p>The possible occurrence of species on a site is identified by the screening tool. If the occupancy is expected to be high the Norm does not apply and an EIA will need to be undertaken. Solar PV activities do not impact on hydrology other than to ensure uninterrupted water movement in the case of rain events. In order to ensure the uninterrupted operation of the facility, hydrology is considered by the proponent in their engineering requirements.</p>
14.23.7	<b>Natural Justice</b>	<p>The Tool may help reduce environmental degradation and human error. It was developed to inform the Environmental Impact Assessment (EIA) process and help determine which elements of a proposed project would require assessment and which did not as part of the EIA.</p> <p>It appears that the Tool was developed according to section 16(1)(b) of the Environmental Impact Assessment Regulations, 2014 (the EIA Regulations) The specific provision was referred to in the government gazette No. 42561 of 05 July 2019, when the Tool was previously introduced. It is unclear why the provision was not repeated in the Notice this time.</p>		<p>The screening tool plays the same role in the implementation of the proposed Norm, the only difference is that an assessment is not undertaken but the sensitivity is verified as the Norm applies only on the areas of medium and low environmental sensitivity.</p> <p>Regulation 16(1)(b) just indicates the information that needs to accompany the application of an EA, therefore it would not be necessary to include that reference in an exclusion application.</p>

		<p>Against the above background, the Tool is envisioned as an additional requirement of the EIA process. As a result, this Tool could be useful in protecting the environment and local communities. It is critical to stress that the purpose of the Tool is not to determine whether a project could be excluded from the EIA requirement.</p> <p>As such, the current Notice effectively changes the purpose of the Tool. Instead of making the EIA process more stringent, the current Notice impedes environmental protection by anticipating excluding various activities from the EIA process.</p> <p>A real and imminent misuse of the Tool is the Consultation to exclude solar photovoltaic installations. The Consultation intends to utilize the report generated by the Tool and support exclusions of solar photovoltaic installations.</p> <p>Natural Justice submits that this is an abuse of the Tool, contradicting the initial objective to establish the Tool.</p>		<p>The screening tool does not exclusively determine whether the exclusion will be appropriate. The screening tool is intended to identify if the site has a medium or low environmental sensitivity, which must then be verified through a physical site inspection by a specialist in the relevant field.</p> <p>The use of the screening tool is not to make the EIA process more stringent. The DFFE is implementing a programme of streamlining the EIA process based on proactive tools and assessments. The understanding of the introduction of the screening tool is not correct. The current process of a proposed exclusion is part of the programme of overall environmental legislative streamlining.</p> <p>The DFFE does not agree that the exclusion is a misuse of the screening tool but rather is part of the intended streamlining process for the environmental legislative process.</p> <p>The proposed exclusion of solar PV facilities is part of the ongoing streamlining of the environmental legislative process, and the use of the screening tool supports that proposed exclusion and streamlining process.</p>
14.23.8	<b>Natural Justice</b>	<p>The Notice claims to affect section 24(2)(a), (b), (c), and (e) of NEMA by adopting the Tool. Section 24(2)(c) and (e) enable the Minister to exclude an activity from environmental authorisation, based on an environmental management instrument</p>		<p>The screening tool is no longer intended to be adopted as an environmental management instrument.</p>

		<p>adopted in the prescribed manner by the Minister. (Emphasis added by the writer)</p> <p>The prescribed manner is provided in section 24A of NEMA. Natural Justice submits that the prescribed manner in section 24A applies not only to activities identified in section 24(a) and (b) but also to the activities excluded by section 24(c) and (e). Followingly, the Tool does not comply with the manner prescribed in section 24A(a).</p> <p>The Tool does not serve as a description specifying the activity or area that the Minister is proposing to exclude. The Tool is a map simply reflecting the generic environmental sensitivity of a given area. The Tool provides no specific descriptions or guidelines to identify the areas or activities proposed to be excluded.</p> <p>In other words, a map describing the specific areas or activities, proposed to be excluded, must be published under section 24A of NEMA before the Minister can affect section 24(c) and (e). A map, like the Tool, which only reflects the general sensitivity of any given area, does not meet the requirement under section 24A.</p> <p>This point complements Natural Justice's earlier comments about the Tool's inadequacy to reflect the myriad different elements of environmental</p>		<p>There is compliance as the activities and development types are identified in the proposed Norm.</p> <p>The activities to be excluded are identified in the proposed Norm.</p> <p>It is agreed that the screening tool does not identify the activity and it is not designed to do so. The screening tool in the context of the Norm will provide an initial screening of the sites on which exclusion for solar PV can be considered. After that there is site verification required as well as compliance with the provisions of the Norm.</p> <p>The exclusion is specific to solar PV facilities. The screening tool provides guidance on environmental sensitivity for specific environmental themes only.</p>
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		<p>sensitivity. Each environmental element will be impacted differently by different activities. As such, a map must be introduced with the proposed activities or areas in mind before they can be excluded by the Minister under section 24(c) and (e), as envisioned by the Notice.</p>	
14.23.9	<b>Natural Justice</b>	<p>Natural Justice urges the Minister to provide the communities with more information about how the Tool works and how data was collected. We urge the Minister to provide resources, such as GIS skills and an investor base, to enable communities (particularly youth and women) to learn how to use the Tool. The creation of an ENV App can help with communication and the acquisition of community knowledge.</p> <p>Natural Justice advised that the tool could be used with areas that have already been thoroughly evaluated and assessed. Especially areas that are not usable and no persons/communities use or live in the area due to previous usages like unrehabilitated mines. Land that has been destroyed by unrehabilitated mines could be used for projects such as envisioned in the Consultation on the Intention to Exclude the Development and Expansion of Solar Photovoltaic Installations from the Requirement to Obtain an Environmental Authorisation Based on Compliance with an Adopted Environmental Management</p>	<p>Should any person wish to utilise the screening tool there is a YouTube webinar which provides guidance on how to use the tool. The information on the data is included in the meta data associated with each layer, and each layer used in the theme is identified on the LHS on the screening tool. The screening tool produces a report which visually represents the information.</p> <p>The areas identified in the comment would be identified as areas of low or medium environmental sensitivity.</p> <p>The suggestion is noted and these areas would be identified as area of low or medium environmental sensitivity.</p>

	<p>Instrument. The Tool could be used as a way for applicants for projects to identify this land and be able to use land that has become unusable due to damage previously having occurred.</p> <p>Furthermore, it is recommended that the Tool be removed as a screening tool for land that has occupants or communities or indigenous communities or used by communities or indigenous communities for cultural practices or other reasons. In these situations, or circumstances, a full EIA process must be completed. This is inclusive of effective and meaningful participation as protected in the Constitution, NEMA and EIA regulations.</p> <p>In South Africa, everyone has the right to information as in the Constitution. As a result, the Minister should establish procedures for obtaining access to the gathered information. Section 31 addresses the right to information, stating that information must be provided in accordance with the provisions of the Promotion of Access to Information Act (Act No. 2 of 2000).</p> <p>In addition, to assess environmental sensitivity, the Tool proposed by the government should also improve and carry out public consultations, participation strategies, and participation processes in accordance with the Constitution. The Tool should</p>		<p>The comment is noted but it is not possible to identify sensitivities for specific lands only.</p> <p>Cultural aspects for excluded areas will be considered through the implementation of the National Heritage Resources Act.</p> <p>The information prepared as part of the proposed exclusion Norm will be available to the public at venues or on the proponent's website.</p> <p>The comment is noted.</p>
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		not limit or impede South Africa's efforts to increase public participation. Economic development should be aligned with social and environmental protection through sustainable development.		
14.23.10	<b>Natural Justice</b>	<p>Natural Justice acknowledges the attempt to address environmental assessment of projects with the use of the Tool. However, it must be noted that the National Environmental Management Act of 1998 (NEMA) and the Environmental Impact Assessment (EIA) Regulations inform and govern the EIA and consultation process. As such, the principles in NEMA and the EIA regulations should be used to inform the role, function, and way public participation is to be facilitated within this legislative framework. We urge the Minister to recognise the internationally accepted principle of free, prior, and informed consent.</p> <p>In conclusion Natural Justice does not believe that a screening tool can replace the important processes of EIAs and public participation to sufficiently protect the environment and communities.</p> <p>The Tool should act as an additional requirement within the EIA process, as required by section 16(1)(b)(v) of the Regulations, instead of a leverage for exclusion from the EIA. Natural Justice submits that the current Notice has distorted the objective of the Tool, and</p>		<p>NEMA anticipates the ability to exclude identified activities and EIA would therefore not always be required while the NEMA principles are addressed in the proposed exclusion.</p> <p>A focused public consultation process has been added to the Norm.</p> <p>There is a requirement to follow the procedures and meet the requirements set out in Norm in order to be excluded and the exclusion applies only on land that is identified and confirmed to have low or medium environmental sensitivity other than the linear infrastructure which then require specific procedures.</p> <p>The objective of the process is to exclude solar PV facilities where there are limited environmental</p>

		the Consultation to exclude solar photovoltaic installations from environmental authorisation, using the Tool, has been shown to be an abuse of the Tool.		sensitivities. The screening tool is currently part of the EIA process.
14.24.1	<b>WWF</b>	<p>This proposed use of the NWEMST is effectively an inversion of the reason for which screening tools are typically developed. In general, tools such as the Land-Use Decision Support Tool (LUDS) managed by the South African National Biodiversity Institute are designed as a “first pass” to enable developers and planners to avoid areas of high biodiversity impacts, since the likelihood is that such sites would be either unfeasible or would require extensive mitigation and offsetting work. This cautionary phrase from the LUDS is informative: “The LUDS tool is simply the first step in performing an environmental assessment and is not meant to replace specialist ecological assessments. Most of the datasets incorporated into the tool was mapped at a scale of 1:250 000 or greater. It is therefore of the utmost importance that information is ground truthed before making any land-use decisions” (SANBI, 2018).</p> <p>Whilst some of the data on the NWEMST is of higher resolution, much of the information is aggregated, and the final ranking is on the basis of a combined hierarchy that cannot consider fine-scale data that it does not</p>		<p>The screening tool in the implementation of the proposed Norm would represent a first screening, the role of the screening tool in the current EIA process and the proposed Norm is not different.</p> <p>The information in the screening tool would be verified by a professional specialist and collated by a professional EAP or environmental scientist.</p>

	<p>possess. It is entirely possible for the tool to miss out on critical biodiversity, public interest, social and heritage issues that would result in irreplaceable loss, even within areas demarcated as low or medium sensitivity. As such, localized ground truthing is essential, and if the specifications of a standard EIA approach are not required for such ground-truthing, there is a strong risk that critical biodiversity and spatial processes may be overlooked. Historical evidence suggests that in most cases there is a significant discrepancy between modelled and ground-truthed data, such that an inadequate EIA process would result in large negative consequences to biodiversity.</p> <p>The NWEMST as currently constructed does not adequately consider spatial requirements and linkages for such ecological processes as climate change corridors and migration corridors, impact. Moreover, it does not consider at all many of the specific processes of cultural heritage, social linkages and palæontological resources that are also included in the scope of an EIA.</p> <p>In addition, for even high environmental sensitivity areas, there is likely some potential for minimum impact development on portions of land that are identified as “very high” sensitivity by the NWEMST assuming the footprint is</p>		<p>The data is not regarded as fine scaled and is required to be verified both in the EIA process and in the process of applying the proposed Norm.</p> <p>Consultation is not done through the screening tool, social impacts are considered in the EMPr and heritage impacts will still be considered through the National Heritage Resources Act.</p> <p>The Norm has been amended to identify the need to consider ecological corridors. Migration corridors would be identified as areas of high environmental sensitivity and would fall outside of the Norm. Should this not be identified on the screening tool, such migration corridors would be identified through the site sensitivity verification and inspection.</p>
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		<p>strategically managed and adequate mitigation is undertaken – but this could only be determined by in-depth local assessment by relevant experts. By contrast, the blanket provision of exclusion for linear infrastructure (transmission and transport) on even “high”, “very high” sensitivity areas will necessarily result in significant biodiversity impacts. Given the potential length and linear nature of such structure, this exclusion will remove an incentive to mitigate impacts by diverting to lower sensitivity areas, which would otherwise be accommodated by an appropriate EIA process. Of particular concern is the manner in which linear infrastructure can fragment habitats –this impact on ecosystem function would likely only be adequately assessed through an EIA process.</p>		<p>The EIA process will still apply in areas of high and very high sensitivity other than the linear infrastructure which is integral to the facility.</p> <p>Procedures have been added to the proposed Norm to ensure that the mitigation hierarchy has been applied to the areas for linear infrastructure, where development will occur on areas of high or very high environmental sensitivity and that the impacts have been mitigated through the provisions of the EMPr.</p>
14.24.2	<b>WWF</b>	<p>Lastly, the weight of decision-making responsibility on EAPs for the sensitivity confirmation is much higher than in a standard EIA, with significant pressure to conform to the finding of the NWEMST with regard to low or medium-sensitivity. The lighter touch evaluation, failure to include the rigours of a full EIA analysis and potential variance in individual EAP ratings mean that in general such an analysis is far more likely to overlook potentially highly relevant issues.</p>		<p>A specialist and EAP need to provide credible information based on thorough review and site investigation. The information must be scientific and of a high quality. There would be no difference in the information required from an EAP or specialist in an EIA process or when adhering to the Norm. Since late in 2022 EAPs are required to be registered with a professional body to ensure that they act with integrity and professionalism and should this not be the case that there is sanction.</p> <p>A professional EAP or specialist should not overlook any potential relevant issue.</p>
14.24.3	<b>WWF</b>	<p>Whilst we agree that “24(2)(e) of the [National Environmental Management]</p>		<p>The screening tool is no longer to be adopted as an environmental instrument.</p>

		<p>Act enables the Minister to exclude activities identified in terms of sections 24(2)(a) and (b) of the Act from the requirement to obtain an environmental authorisation based on compliance with an environmental management instrument adopted in the prescribed manner” it is important to read this in conjunction with the specifications in section 23 that describes what is required for such an instrument, specifically:</p> <p>Such instruments must, at least—  (a) integrate environmental considerations into decision-making;  (b) provide for the implementation of best environmental practice;...” (RSA, 1999) WWF considers that the tool misses the former requirement, and in no way meets the second. Use of the screening tool or otherwise excluding all PV operations from an EA is a dereliction of duty by the DFFE, opening this entity and the proposed exclusions to legal challenges.</p>		<p>The view of WWF is noted however not supported. An exclusion based on site verification, adhering to a Norm which includes consultation and a process which is open to appeal is not regarded by DFFE as a dereliction of duty.</p>
14.24.4	<b>WWF</b>	<p>An additional shortcoming is the effective waiving of the Constitutional obligation for public administration to foster transparency “by providing the public with timely, accessible and accurate information” (RSA, 1996, Section 195(1)(g)) and that the “needs must be responded to, and the public must be encouraged to participate in policy-making” (RSA, 1996, Section 195(1)(e)), as well as the Section 33</p>		<p>The Norm has been amended to include a focused consultation process. The appeal process has also been provided for.</p>

		<p>requirement for just administrative action. It is critical to understand that policy making also includes the implementation of said policy. The EIA process gives effect to the section 4(1) of the Promotion of Administrative Justice Act, whereby an administrative action (“(1)... any decision taken, or any failure to take a decision, by- (a) an organ of state, when - ... (ii) exercising a public power or performing a public function in terms of any legislation...”) that “materially and adversely affects the rights of the public” must “give effect to the right to procedurally fair administrative action” through public consultation (RSA, 2000). Waiving this process effectively undermines the procedural fairness and public interest of NEMA, since each instance of development must necessarily consider other constitutional obligations such as Section 24 of the Constitution (the right to have the environment protected, etc).</p> <p>This means that each individual registration would be open to legal challenge from adjacent landowners, as well as the exclusion itself from a constitutional perspective.</p>		<p>Please see the response above.</p> <p>The focused consultation process includes adjacent landowners and land occupiers. Should the adjacent landowner / land occupier be aggrieved, the appeal process is available.</p>
14.24.5	<b>WWF</b>	<p>Moreover, PV proponents to date have adhered to more stringent requirements and have invested considerable effort and expense into both compliance with EIA assessments and mitigation requirements and securing of high-viability and low-impact areas. The</p>		<p>The legal requirement at the time of application is what is required to be followed. There is no basis for the argument of procedural fairness. Any new set of rules must have a commencement date and contain clear and fair traditional arrangements, both of which form part of the proposed exclusion.</p>



		<p>exclusion of EA requirements for new entrants that could then conceivably start development before earlier compliant developer, creates the possibility for a procedural fairness challenge – potentially with costs – against the Department.</p>		
14.24.6	<b>WWF</b>	<p>Finally, the “thin edge of the wedge” argument as articulated in (3) above opens the Department to increased onus of justification, stakeholder interaction and possibly further litigative action as other sectors seek to obtain similar exclusions and classification as similarly essential activities.</p> <p>Overall, the high likelihood of legal action in all cases would likely delay rollout of PV considerably, impose additional overhead load and expenses on the Department and government, and fail to deal with critical environmental and public interest considerations.</p>		Please refer to #14.12.17.
14.24.7	<b>WWF</b>	<p>Since there has been no publicly provided rationale for the undertaking of this approach, it is necessary to conjecture as to what specific issue is being addressed through the proposed use of the NWEMST, and therefore how best to remedy the problem. It is assumed that one or more of the following has bearing:</p> <ul style="list-style-type: none"> <li>• The President’s declaration of an energy crisis and the need to rapidly</li> </ul>		Please refer to the response to #1.2.5.

		<p>roll out PV to fill the generation shortfall;</p> <ul style="list-style-type: none"> <li>• Lack of capacity within DFFE to manage the large volume of applications, leading to delays;</li> <li>• The need for streamlining of the PV approval process to simplify engagements;</li> <li>• Perceived limitations of viable remaining area for PV rollout, given that early developments made use of optimal locations.</li> </ul> <p>Many of these concerns can, however, be addressed.</p> <p>If the rationale is to address the energy crisis in line with the crisis statement by the President, a specification of a limited period AND spatial scope may reduce the impact of this exclusion. For instance, limiting it to projects approved under Bid Window 5 of the REIPPP, and specifying key locations within the REDZs that are adequately close to grid connection may be viable. Alternatively (or additionally) some particular receiving areas that are close to grid infrastructure might be considered for the exclusion, whilst still requiring a full EIA scoping for other areas. However, this is not optimal, since the potential biodiversity impacts of these projects would still be unmeasured, uncompensated and unavoidable. WWF would prefer to see a proactive</p>		<p>The exclusion was just the next step in the process of streamlining the EIA process. DFFE and the provincial competent authorities meet their legislated review timeframes at 98%.</p> <p>Streamlining of the EIA process for activities which do not need the detailed level of assessment is part of the proposed exclusion.</p> <p>There are no limitations of land for the roll out of PV facilities.</p> <p>Please see the response to #1.2.5.</p> <p>Exclusions based on a time limited period or a Bid Window would not be technically sound. Exclusions should be based on acceptable risks.</p> <p>This is the reason why the approach would not be technically sound.</p>
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		<p>approach to enabling PV infrastructure as detailed below.</p> <p>However, by identifying specific classes of land and criteria under which an EA exclusion might well be viable, a large amount of area for PV development can be freed up, without requirement a blanket exemption. Some good potential areas include:</p> <ul style="list-style-type: none"><li>• The surfaces of dams and artificial water storage areas. Many of these are already linked to the grid, making connections relatively simpler, and floating PV has already been demonstrated to reduce water loss (Abdelal, 2021) whilst also increasing PV efficiency through cooling of the arrays (Yadav, Gupta &amp; Sudhakar, 2016). The total area of artificial dams in South Africa is very large, and this would yield multiple benefits.</li><li>• Rooftops and parking infrastructure. Such areas are already excluded from EA requirements, and whilst the fragmented nature of smaller households can limit the potential for large-scale generation, this can be overcome by aggregation. In addition, many logistics, warehousing and industrial complexes have very large roof areas. Furthermore, incentivising PV as shading for parking areas in urban and peri-urban areas can</li></ul>		<p>The screening tool does identify areas with different environmental sensitivities.</p> <p>The competent authority is not able to dictate development areas, government can only incentive areas for development.</p> <p>Rooftop PV is not a listed activity and can be erected without the need for an environmental authorisation.</p>
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		<p>leverage considerable potential additional areas with minimal additional grid infrastructure.</p> <ul style="list-style-type: none"> <li>• Government-owned land. There are significant portions of state, provincial and municipal land adjacent to grid infrastructure for which large-scale EIAs could be undertaken. Alternatively, degraded and brownfield state land could also be designated as a priority for PV rollout. These could then be prioritised for rental for private sector development or for public-sector development of PV infrastructure.</li> </ul> <p>By identifying and incentivising the development of offset receiving areas adjacent to high-priority PV development areas that secure key biodiversity, the process of EIA offsetting for biodiversity can be simplified. This can be a proactive process of identifying high-risk, high-priority sites and securing them with appropriate management activities. These receiving areas can therefore simplify the EIA process for nearby low- and medium-sensitivity sites by providing an anchoring process for the centralisation of PV in key locations.</p>		<p>Government owned land can be identified but would still need to have the impacts determined.</p> <p>Incentives for rooftop solar are being developed.</p> <p>The screening tool has been developed to identify areas of high environmental sensitivity. The process required by the Norm for the exclusion provides the guidance for the verification process, the focused consultation process and the registration process.</p>
14.25.1	<b>Centre for Environmental Rights</b>	The screening tool as an environmental management instrument which precludes the requirement of an environmental authorisation (EA) and EIA, or at the very least a basic		The screening tool is not the instrument that excludes any activity. The activity is excluded based on the desire of the Minister to exclude an activity which has been identified to have impacts that are well understood and for which the mitigation measures are known. Each exclusion would be

		assessment, is wholly unfit for purpose. It has problems related to accuracy, sufficiency of information and level of detail that render it inappropriate for use as an environmental management instrument.		identified through publication of a notice in the Government Gazette and would be based on an environmental instrument which in this case is the Norm for the exclusion of solar PV facilities in areas of verified medium and low environmental sensitivity.
14.25.2	<b>Centre for Environmental Rights</b>	The proposed exclusion makes no provision for checks and balances or risk management, for example if: the screening tool is defective; if sensitive areas are poorly mapped; if the verification is flawed; and/or if the proposed activities pose significant negative and far-reaching impacts irrespective of the sensitivity of the project area. The exclusion cannot allow activities to proceed irrespective of what the reports say and whether requirements have, in fact, been met.		The screening tool provides only guidance, while the information is to be verified by undertaking a site specific inspection at the correct time of the year which would be most relevant to identify the feature under consideration. The site verification is done by experts in their field and checked by registered professional EAPs or environmental specialists. The specialists and EAPs are to sign declarations that the information provided is correct and that they have no interest in the project and are merely providing a professional service. The process is open to appeal and there could be sanction should the EAP or specialist be found to have provided incorrect, false or misleading information.
14.25.3	<b>Centre for Environmental Rights</b>	<p>We have significant concerns over the screening tool's envisaged application in this context:</p> <ul style="list-style-type: none"> <li>• We submit that the screening tool is not fit for the proposed purpose, as it was never intended as a tool to replace an EIA process. The screening tool is used for the purpose of screening, which is a requirement of the initial stages of the EIA process. The use of a screening tool therefore does not, and should not, automatically negate the necessity of an EIA process.</li> <li>• There is inadequate provision for consideration of project-specific</li> </ul>		The comment is noted but not supported. The screening tool has been developed by experts in the field, the data has been provided by the relevant data custodians who are the experts in their field. The DFFE believes that the tool is fit for purpose and provides a wealth of valuable information. The screening tool does not negate the necessity for an EIA, that is decided based on the level of understanding of the impacts of the activity and consulted through the gazetting process.

		<p>impacts. The screening tool looks more at the sensitivity of an area, as opposed to how a proposed project and activities might affect an area (irrespective of area sensitivity).</p> <ul style="list-style-type: none"> <li>• We also understand that a number of governmental departments may not have the expertise and technology to apply the screening tool.</li> <li>• It is concerning that no provision is made for considering cumulative impacts in circumstances where there may be multiple PV projects proposed for the same area.</li> </ul>		<p>The screening tool looks at the sensitivity of a particular site. Therefore the statement is noted but not supported. The site sensitivity verification is then undertaken which is also site specific.</p> <p>The screening tool has been developed for ease of use, the tool has many help functions and has a YouTube video indicating how to use the tool. There is also direct and personal help available.</p> <p>Cumulative impacts are to be identified through the requirements set out in the Norm and not the screening tool or the screening report.</p>
14.25.4	<b>Centre for Environmental Rights</b>	<p>The screening tool was developed as a means to gauge whether or not a proposed project would need an EIA to be conducted. If an EIA was found to be necessary, the screening tool would then provide for the type of EIA required, especially with regard to the level of detail that is required to be in the EIA.</p>		<p>This is not a correct statement, the need to undertake an EIA is identified through the Listing Notices of the EIA Regulations and is not influenced by the screening tool. The screening tool merely screens the site for the environmental sensitivity. The screening report identifies the specialist assessments to be undertaken, but this is not based on the site sensitivity it is based on the anticipated impacts of the activity as provided by the competent authorities. Based on the verified sensitivity the specialist assessment protocols identify the level of assessment required.</p>
14.25.5	<b>Centre for Environmental Rights</b>	<p>The screening tool, at the inception of a project, will determine the level of sensitivity of a project area based on a multitude of factors, including terrestrial, aquatic, agricultural, cultural heritage and paleontology. This initial screening is not an intensive, on-site study, but rather constitutes a desktop study. Purely relying on the screening tool to reach conclusions about the potential</p>		<p>It is agreed that the screening tool provides a desk top analysis based on the best information available in the country. There is however no reliance on this screening data, verification is required which requires a physical on</p>

		significance of proposed activities will result in risks and unwanted environmental impacts that could otherwise have been avoided.		site inspection by professional specialists in their respective fields.
14.25.6	<b>Centre for Environmental Rights</b>	Even for the purpose of screening, the screening tool cannot serve as a comprehensive tool to conduct a thorough screening of all environmental features. For example, essential information such as the presence of Protected Areas is often not picked up by the screening tool. Along with this, there are spatial layers that the screening tool uses that should not be in an environmental screening process. We submit that the screening tool should be revised to excise spatial layers that do not add merit to environmental screening, pending such revision the screening tool's implementation as an environmental management instrument would be untimely.		<p>Protected areas and the buffer zones of protected areas are included in the screening tool and are updated on a quarterly basis. This is a data set for which DFFE is the data custodian. The screening tool report will identify if the site is within a protected area.</p> <p>Without more information on the specific layers referred to the comment is incomplete and we are unable to respond.</p> <p>The comment is general and the DFFE is unable to respond. More detail is required to understand which are the offending layers and what revisions are being required. DFFE believes that the screening tool has been developed by experts the information included in the screening tool has been derived by experts and relevant data custodians and does not agree with the statement.</p>
14.25.7	<b>Centre for Environmental Rights</b>	The foundation of this decision to adopt the screening tool as an environmental management instrument to exclude activities as per section 24(2)(a) and (b) of NEMA is based on the screening tool's assessment of the potential significance of impacts. While in some instances it can be argued that it may be appropriate to base all reliance on the sensitivity ratings, as provided for by the screening tool, it is inherently risky to anticipate and draw conclusions about the potential significance of proposed		The statement is not correct, the screening tool does not identify impacts, impacts have been identified based on the assessment of over 800 applications for solar PV facilities. The screening tool merely guides the proponent on the potential sensitivity of the site for a variety of environmental themes. This sensitivity information is then to be verified by professional specialists.

		<p>projects based solely on the screening tool.</p> <p>The screening tool was merely meant to function as a means to assist in the screening stage of the EIA process with the screening process being intended to determine which aspects of a proposed project merit greater inspection and which aspects can be safely excluded from further inspection. It is not up to standard as a blanket environmental management instrument.</p>		<p>The use of the screening tool is not different to that of the use within the EIA process. All sensitivity information is to be verified.</p>
14.25.8	<b>Centre for Environmental Rights</b>	<p>The screening tool notice does not provide enough information regarding the way in which it is to be used as an environmental management instrument. For example, it is not clear how the categories of environmental sensitivity (low, medium, high, very high) are to be used to determine exemptions from the NEMA EIA Regulations. Notably, the screening tool merely looks at the sensitivity of a proposed project's site as opposed to the project- specific impacts that a proposed project would have.</p>		<p>The screening tool is no longer to be adopted. It is regarded that the Norm provides sufficient detail on the requirements to be fulfilled for the registration of an exclusion under the Norm. Any gaps in understanding have been thoroughly dealt with in the responses to comments received from stakeholders through the consultation process on the intention to implement the Norm and exclude solar PV facilities in areas of confirmed medium or low environmental sensitivity.</p>
14.25.9	<b>Centre for Environmental Rights</b>	<p>Furthermore, it is not inherently clear whether the sensitivity ratings, and the thresholds between them, have been subject to peer review. It is our submission that the intended approach for the use of the sensitivity ratings be made explicitly clear as well as the level of academic and professional scrutiny that they have been through.</p>		<p>The screening tool has been prepared using the country's best experts drawn from research institutions, environmental NGOs, SANBI as well as the various experts from the data custodians. The intended use of the screening tool to provide environmental sensitivity ratings was gazetted for comment in 2014 before implementation, the tool was also widely demonstrated and extensive training was provided prior to its implementation.</p>



14.25.10	<b>Centre for Environmental Rights</b>	Along with the lack of sufficiency regarding the information provided and the lack of public participation in the screening process, there remains concern about the reliability of the screening tool as an environmental management instrument.		The screening tool is no longer to be adopted as an environmental management instrument. The Norm has been amended to include a focused consultation process and the Screening tool is regarded as being reliable. The information provided by the screening tool is also to be verified by professional specialists.
14.25.11	<b>Centre for Environmental Rights</b>	The basis for the categorisation of environmental sensitivity is not clear. With no communication and review of the categories, there are questions around not only the basis for categorising environmental sensitivity but also about how the information and knowledge gaps have been dealt with. With this aspect unaddressed, the use of the screening tool alone to exempt certain activities from the EIA requirements poses potentially significant and unacceptable environmental risk.		<p>The screening tool has been developed over several years with the assistance of experts in their field and has included the expertise of environmental NGOs.</p> <p>Most of the layers in the screening tool include meta data describing the methodology used to collate the data as well as the data used and the source of the data.</p> <p>The comment is noted but not supported.</p>
14.25.12	<b>Centre for Environmental Rights</b>	The inaccuracy of the screening tool reflects in the sensitivity ratings. It is submitted that the “very high”, “high”, “medium” or “low” sensitivity ratings are inaccurate. While the “very high” and “high” sensitivity ratings are less likely to be incorrect because these ratings are only allocated in instances where fine scale mapping and accurate data points are available, the “medium” and “low” ratings are allocated in the absence of fine-scale data.		<p>The DFFE does not agree with the statement. DFFE has a high level of confidence in the biodiversity and species data.</p> <p>On site verification of the sensitivity ratings is required to confirm the sensitivity ratings.</p>
14.25.13	<b>Centre for Environmental Rights</b>	It is argued that it is premature to adopt the screening tool as an environmental management instrument at this juncture due to the fact that it is incomplete for		The screening tool is no longer to be adopted but merely to provide the environmental sensitivity ratings.

		some regions and therefore unreliable as a blanket tool.		The screening tool is not to be used as a blanket tool and all information from the screening tool is to be verified by registered specialists in their field.
14.25.14	<b>Centre for Environmental Rights</b>	It is erroneously assumed that all biodiversity and environmental features have comparable importance or value and that they can be measured on the same scale. The significance of impacts, however, depends on several factors including the sensitivity of the receiving environment, the values of the environment which would be negatively affected and the nature of the proposed activities. The import of these factors are synergistic and there is not a 'one-size-fits-all' metric that can be used to measure them.		<p>The screening tool does not measure environmental features in the same manner. The information on biodiversity and species has been contributed by experts in the field including environmental NGOs and SANBI. The DFFE has a high level of confidence in the information and the methodologies used to prepare the data.</p> <p>The various environmental data layers do not use a one size fits all approach but rather a dedicated analysis of the specific environmental theme being considered. In addition, the Norm uses the screening tool only to guide the development to avoid areas of very high and high sensitivity and even then verification of the medium and low environmental sensitivity outcomes is required.</p>
14.25.15	<b>Centre for Environmental Rights</b>	<p>The screening tool merely provides limited information on the direct impacts of development on a specific geographical area. However, there are indirect impacts, which can occur off site, as well as cumulative impacts which are added to and interact with other impacts in a synergistic manner.</p> <p>These indirect, induced and cumulative impacts often far exceed the direct impacts. The screening tool's failure to indicate the potential for indirect, induced and cumulative impacts on and within different environmental categories renders it unsuitable for use as a whole-scale environmental management instrument which effectively negates the comprehensive</p>		<p>The comment is noted, however the areas on which the Norm will apply are of low and medium environmental sensitivity, in addition the Norm requires that the specialists specifically consider the cumulative impacts on the site and surrounding the site.</p> <p>The screening tool is used as a guide only and on site physical inspections are required to be undertaken by professional specialists in their various fields.</p>

		<p>and rigorous requirements contained in the EA process.</p> <p>This is even more crucial in instances where there are multiple solar PV projects proposed for the same area. There is a greater duty to understand the environmental impacts in such instances as a result of the fact that the adverse effects on the environment are compounded.</p>		<p>The comment is noted and the need for the specialists to consider cumulative impacts has been included in the Norm.</p>
14.25.16	<b>Centre for Environmental Rights</b>	<p>We recommend that the proposed exclusion be abandoned, for undue risks of harm posed to the environment and constitutional rights, or at least substantially amended in accordance with our recommendations above.</p> <p>With due support for the necessity to speedily transition to renewable energy, we cannot put this before the health and safety of people and the protection of our environment.</p> <p>It is essential to bear in mind that solar photovoltaic installations and expansions can have negative impacts on local populations and biodiversity, and proper environmental authorisation would need to be obtained before commencing developments in order to ensure that these possible impacts are avoided or minimised, managed and rehabilitated.</p>		<p>The comment is noted but not supported. The Norm has been amended in order to address the concerns that have been identified by a number of stakeholders.</p> <p>The Norm is protective of the health and safety of people and the protection of the environment.</p> <p>The impacts of solar PV facilities are acknowledged but with the review of over 800 applications by the DFFE sufficient knowledge has been gained in understanding the impacts and the mitigation measures when developed on areas that are not environmentally sensitive. The Norm is also regarded as providing a sufficient level of environmental protection through the procedures which are to be followed.</p>
14.25.17	<b>Centre for Environmental Rights</b>	<p>We are highly concerned about the level of self-regulation, gaps and absence of any discretion or power for the</p>		<p>NEMA makes provision for the exclusion of identified activities from the need to obtain an environmental authorisation prior to commencement. This implies that</p>

		competent authority to confirm or reject registration and/or re-registration – if the exemption is to be implemented, this must be addressed as per the above recommendations.		<p>self-regulation was anticipated. The requirement to have EAPs and specialists registered with their professional bodies has been implemented and the screening tool which provides guidance to the environmental sensitivity of areas has been developed.</p> <p>These are all mechanisms and procedures which have been applied for the purpose of allowing more discretion in decision-making. Over 800 Solar PV facilities have been assessed by DFFE since 2013 and it is thought that the impacts associated with this technology as well as the mitigation measures are well understood and predictable when developed on areas of low or medium environmental sensitivity.</p> <p>There is a need to streamline the environmental management framework where appropriate and the tools have been developed and the process of assessment is mature. It is thought that with these interventions that have been put in place over the past years that exclusion of identified activities is possible without detrimentally affecting the environment.</p>
14.25.18	<b>Centre for Environmental Rights</b>	Provision must be made for public participation and automatic public access to registration records.		A focused public consultation process has been provided for as suggested.
14.25.19	<b>Centre for Environmental Rights</b>	We are highly concerned with the lack of details surrounding the screening tool and the way in which it is intended to be used as an environmental assessment tool.		The screening tool is no longer being adopted however the environmental sensitivities assigned are still being used as a guide to the environmental sensitivity which then requires site verification by professional specialists in the relevant field.