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APPEAL AGAINST THE DECISION TAKEN BY THE WESTERN CAPE DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING TO GRANT ENVIRONMENTAL AUTHORISATION FOR THE DEVELOPMENT OF NEW WASTE MANAGEMENT FACILITY AND ASSOCIATED INFRASTRUCTURE ON PORTION 1 OF THE FARM BRAKKEFONTEIN NO. 32, ATLANTIS: REF NO: 16/3/3/2/A1/2/3026/24

APPEAL GROUNDS

INTRODUCTION

1. This document sets out the grounds for an administrative appeal against the decision by the Director: Development Management (Region 1) in the Western Cape Department of Environmental Affairs and Development Planning ("**DEA&DP**") dated 2 March 2026, granting environmental authorisation ("**EA**") to Wesco Waste Management Facility (Pty) Ltd ("**the applicant**") for the listed activities necessary for the development of a waste management facility ("**WMF"**) on Portion 1 of the Farm Brakkefontein No. 32, Atlantis ("**the site**").

2. We are authorised to submit this appeal on behalf of the Melkbosstrand Ratepayers Association ("**MRA"**). The MRA represent 5555 individuals in support of this appeal, comprising, *inter alia*:

   2.1. 144 MRA Members;
   2.2. 3913 residents in the Melkbosstrand community;
   2.3. 310 residents from areas in the immediate vicinity of the site (including Cape Farms, Atlantis Philadelphia, Mamre, Klein Dassenberg, and Witsand); and
   2.4. 326 from surrounding suburbs who will be affected by the WMF.

   For ease of reference, these parties are collectively referred to in this appeal as "**our client**" or "**the appellant**". The majority are registered interested and affected parties ("**I&APs**"), on whose behalf we have previously submitted detailed comments on both the draft and amended draft Environmental and Social Impact Assessment Reports.

As the figures above demonstrate, approximately 82% of those represented by the MRA have a direct interest in this matter and oppose the proposed development.

3. The appellant is aggrieved by and hereby appeals against the decision to grant environmental authorisation to the applicant.

4. Regulation 4 of the National Appeal Regulations, 2025 obliges appellants to submit an appeal to the appeal authority and applicant within 20 calendar days from the date that the decision was sent to them by the applicant (in this instance, by the applicant's environmental impact assessment practitioner ("EAP")). The Environmental Authorisation ("EA") was circulated to I&APs on 16 March 2026.

5. The appeal deadline was initially communicated to I&APs as 9 April 2026 and only subsequently corrected to 8 April 2026 in an email sent after-hours on a long weekend – thereby materially curtailing the time available to prepare a comprehensive appeal on behalf of numerous interested and affected parties. On 7 April 2026, the appellant sought an extension of time for the submission of the appeal until 13 April 2026. The request was granted on 8 April 2026, in terms of section 47C of NEMA, by the Western Cape Minister of Local Government, Environmental Affairs and Development Planning, Mr Anton Bredell, having regard to, *inter alia*, the scale and complexity of the matter, the considerable number of I&APs represented by the appellant, the limited duration of the extension sought, the absence of material prejudice to other parties and the interests of justice.

6. Accordingly, this appeal is timeously submitted within the extended deadline of 13 April 2026.

7. The balance of this appeal is set out as follows:

   7.1. in the section following we set out the background to our client's appeal;
   7.2. the third section comprises the appeal grounds; and
   7.3. the final section draws our conclusions and the relief sought by our client.

8. This appeal must be read together with the annexes to the appeal. A list of annexes is provided at the end of the appeal and are referred to in the appeal where relevant. These annexes are organised according to the stage of the EIA process at which they were submitted to the Applicant's EAP.

The key aspects of our client's objection to the granting of the EA are summarised below.

- **Our client's view is that the proposed site is wholly unsuitable for hazardous-waste processing or for use as a landfill.** This appeal outlines the substantive environmental, social and safety concerns underpinning this position, and, more importantly, the fact that the site is in close proximity to several protected areas.

  The site has been the subject of a previous application for authorisation for a landfill site by the City of Cape Town, for which environmental authorisation was initially granted but which authorisation then itself became the subject of many subsequent proceedings that have been scrutinised through administrative and judicial appeals, and on judicial review, and was ultimately set aside. If the DEA&DP found that an alternative site was a better option for the City of Cape Town – who sought to process only Types 3 and 4 waste in order to render a necessary service as required by legislation – then that determination establishes a precedent that ought, in principle, to be applied consistently to other applications, including those brought by private commercial entities.

  The reasons why the site was not authorised for landfill development pursuant to this first application and the many legal proceedings following it, have not been given sufficient weight in the current process. They include most notably the apartheid history of the Atlantis community as well as the constitutional rights of local communities including Klein Dassenberg and Melkbosstrand, and the needs for better land-use planning, specifically the longer-term plans of City of Cape Town for northern expansion.

  These reasons are well documented in the Record of Decision (**ROD**) dated 7 April 2009 (see pages 12 and 15) and then again in the appeal ROD of 2013 (pages 32-39) by MEC Bredell as reasons for the decision not to authorise the site.

  In our view, the history of the local communities has clearly not changed nor have the City's longer term plans to expand to the north changed. These reasons therefore remain as relevant and significant to the current application as they were to the decision not to authorise the previous application. Moreover, in 2018 EnviroServ, a commercial waste management entity, had negative mapping conducted by a consultancy who concluded that the site was unsuitable for the development of a landfill due to: 1) its proximity to a residential area 2) being within the buffer zone of a nature reserve 3) very high aquifer vulnerability, and 4) boreholes delivering more than 0.5 L/s of water.[1]

[1] Appendix D4 to the draft ESIAR dated July 2025, comment number 881 on page 211.

The proposed development is in unacceptably close proximity to established communities that pre-date it, and whose constitutional right to an environment not harmful to their health and well-being will be adversely affected. Insufficient weight has been afforded to impacts beyond the 2 km radius, notwithstanding that best practice indicates an appropriate buffer of 3–5 km for a landfill of this nature (Type 0 waste).

In these circumstances, the extent of the negative impacts that would be imposed on surrounding communities – primarily to enable a private commercial venture to generate profit – renders the proposed development, in our client's view, both unjustifiable and disproportionate.

All but one of the benefits listed by the DEA&DP in the authorisation are not specific to this site and can be achieved on an alternative site – a site that is:

- not close to large and established communities;
- does not expose large numbers of people to health and an array of other risks;
- is not adjacent to Koeberg Nuclear Power Station (a national key point);
- is not on the main tourism route to the West Coast and Namibia;
- has no aquifers underlying the site;
- is not linked to a river system that flows into the sea at a Blue flag beach; and
- is not in close proximity to several nature reserves.

In light of the above, the position of our client is that development of the WMF on the site will place disproportionate and unjustified burdens on long-established communities, undermine constitutionally protected environmental rights, and disregard the site's protected status and strategic importance.

- **Our client is of the view that the economic benefit to local communities is overstated in the EA.** Despite the overstated financial modelling conducted by the applicant's expert, the benefit to local communities will be minimal. At best, the development is expected to create approximately 130 to 160 jobs, which we would hope would be allocated to local residents who already live and contribute to the existing local economy. However, this limited economic gain cannot justify the significant health and safety risks – among other concerns – that will affect more than 100 000 people living in the surrounding areas, and who will also struggle to get to and from work because of heavy-duty trucks on local roads.

- **The need for this proposed facility has not been established,** in that it is positioned as a solution for municipal needs and challenges (without relying on any studies that demonstrate a need for hazardous-waste processing of industrial waste in the City of Cape Town), yet it is not aligned with the

needs of the City of Cape Town, which relate to municipal/domestic waste processing and landfill airspace. This view is underpinned by the types of activities that the applicant has applied for, which will clearly benefit construction, pharmaceutical, health, and other industries rather than City of Cape Town ratepayers. While a landfill is included as an activity and will be needed for the planned processing of hazardous waste, there is also no firm commitment to convert landfill gas to fuel, which is a national and City of Cape Town priority.

This application should be assessed in the same manner as any other commercial venture, without being influenced by municipal responsibilities or capacity constraints, given that there is no public-private partnership or confirmed contractual arrangement in place between the applicant and the City of Cape Town or any other municipality.

- **Site alternatives have not been adequately assessed.** We note that one of the criteria for selecting the top three alternative sites, as well as the preferred site by the DEA&DP, was distance from the source of the waste. We contend that proximity to Cape Town is only a valid consideration if the waste that the applicant will be processing is confirmed to come from Cape Town. The applicant has conceded that this is not a given and even seeks authorisation to import waste from other provinces. The fact that the top three sites selected by Wesco include sites in Velddrift and Brakkuil, demonstrates that close proximity to Cape Town is not important. Sufficient information about the other two sites was not disclosed, but it is unlikely that there will be communities of more than 100 000 people in close proximity to either Brakkuil or Velddrift.

- **Our client regards the reliance on desktop exercises and theoretical modelling – conducted without local knowledge – as unreliable** and these downplay several high-risk factors identified by Wesco itself, which are now deemed low risk due to mitigation plans in which our client have little confidence. If mitigation fails or is ineffective, these risks will again be high for the community who will bear the brunt thereof. This is not acceptable to our client, especially in light of the fact that NEMA requires a risk-averse approach.

BACKGROUND

The appellant's interest in the application

9. The majority of persons represented by the appellant are residents of either Melkbosstrand, Cape Farms or Atlantis, living in close proximity to the site, and using the roads in the vicinity of the site. All of them are resident within the City of Cape Town Metropolitan Area.

10. The application concerns the development of a WMF that will:

    10.1. process various types of wastes including extremely hazardous waste;
    10.2. generate landfill gas;
    10.3. generate and transport leachate; and
    10.4. dispose of extremely hazardous waste to land.

11. Therefore the potential impacts of the WMF on our client in terms of traffic, noise, odours, dust, loss of sense of place, groundwater impacts, loss of biodiversity and others are of a material and significant nature.

Scoping and EIA process

12. Since becoming aware of the proposed development of the site, our client has attended public meetings, engaged directly with the applicant's EAP and consistently commented on iterations of reports during the EIA process.

13. Our client's comments on both the draft and final Environmental and Social Impact Assessment Reports ("**ESIAR"**) raised significant concerns around various issues with the EIA process, including that:

    - there are critical gaps in the information provided in the DESIAR with the result that there is not enough information for I&APs to understand the full impacts of the project, as detailed in these comments. These relate to: social impacts, air quality, traffic impacts, risk assessments, visual impacts, impacts on tourism and others.

    - the mitigation measures proposed are unrealistic/unlikely to be enforced/premature, changing the impact significance;

    - the applicant is not a fit and proper person to operate the WMF comprising the project;

- the project is not necessary or desirable;
- the project is not aligned with current, applicable waste policy;
- site alternatives have not been adequately assessed; and
- on the basis of the information that is in the DESIAR, the proposed project will have very significant and long-term impacts that are not capable of being mitigated to an acceptable level ("**fatal flaws**"). These include that:
    - no mitigation measures are proposed in respect of high negative impacts on aquatic ecosystems;
    - notwithstanding the revisions to the hydrogeological report, our client's specialists' view remains that from a hydrogeological perspective, the site is highly unsuited for a landfill development;
    - that potential job losses resulting from the closure of for example the Philadelphia Chick Breeders may exceed the number of direct employment opportunities created by the project;
    - the overwhelming resistance of local communities which in terms of the DWAF Minimum Requirements for Landfill, 1998, becomes a Fatal Flaw if it cannot be addressed to the satisfaction of the Department; and
    - the impacts on property values have a medium-high rating which is not mitigated.

APPEAL GROUNDS

14. A decision to grant an environmental authorisation is administrative action as defined in the Promotion of Administrative Justice Act, 2000 ("**PAJA**"). In terms of section 33 of the Constitution and PAJA itself, administrative action which materially and adversely affects the rights or legitimate expectations of any person must be procedurally fair. Section 6 of PAJA set out the circumstances in which administrative action is reviewable by the Courts.

15. A decision to grant an environmental authorisation also constitutes a decision by an organ of state that may significantly affect the environment for the purposes of section 2(1) of NEMA. As such, it must be informed by the environmental management principles set out in section 2, including the requirement that development be socially, environmentally, and economically sustainable.

16. Our client's view is that the decision to grant the authorisation is reviewable in terms of PAJA on the basis that it is not procedurally fair, does not comply with the requirements of the EIA Regulations, 2014 and that the decision does not adequately take into account the principles in section 2 of NEMA. We say so for the reasons set out below.

(1) The decision is not rationally connected to the information before the decision-maker

17. The EA authorises the commencement of two listed activities, for which the applicant did not apply. There is no mention of Activities 4 and 12 on Listing Notice 3 in Table 2-1: *NEMA Listed Activities applied for as part of the proposed Project* on page 6 of the Final Environmental and Social Impact Assessment Report ("**FESIAR"**). However, on pages 6 to 7 of the EA, the competent authority lists these two activities under the heading "LIST OF ACTIVITIES AUTHORISED". There is no assessment of the impact of these two activities in the FESIAR. Therefore the decision-maker erred in authorising these two activities as there is no rational connection between the decision to authorise them and the information before the decision-maker.

18. There is a further significant error in the FESIAR. The EA authorises Activity 14 on Listing Notice 1. The comment on page 4 of the EA states that "*Activity 14: The development proposal will store more than 80m3, but less than 500m3 of a dangerous good*". This is clearly incorrect as the EA also notes on page 9 that:

"Diesel, fuel and oil will be stored in tanks within bunded areas to contain spills. The following dangerous goods will be stored on site as part of the effluent treatment plant:

Approximately eight (8) chemical storage tanks with a capacity of approximately 1m3 each to

store hydrochloric acid, hydrogen peroxide, sodium hydroxide, ferric, cleaning chemicals, anti-foam, sulphuric acid and polymer;

Approximately eight (8) tanks with a capacity of 30m3 each for the storage and neutralization of incoming effluent from third parties; and

Approximately five (5) tanks with a capacity of 100m3 each for the storage of treated effluent."

19. The combined volumes of the tanks are therefore 748m3, not 500m3. We also do not believe that the total combined storage takes into account the Type 0-2 hazardous waste that will be stored on the premises for processing for an unknown period of time.

20. Accordingly the decision-maker has not taken into account that the applicant intends to store a volume of dangerous goods on the site that exceeds 500m3 by almost 50%. This is a significant oversight. Notwithstanding that the applicant may not fill the tanks, the Listed Activity authorises only containers with a combined **capacity** of 500m3, not an actual stored volume. Accordingly the decision maker erred in authorising Activity 14.

21. Furthermore, the EA wrongly treats the Applicant as the owner of land and imposes conditions on neighbouring property not under its ownership. In this regard, the EA explicitly states that "[p]ortion 1 of Farm Brakkefontein No. 32, Atlantis is the preferred site […] and the site is owned by the holder"2 and later on imposes conditions on Portion 6 of the same farm.3 However, both portions are in fact owned by Varenne Investments (Pty) Ltd, a distinct subsidiary of Séché Environnement, separate from the Applicant and Interwaste Holdings (Pty) Ltd – the applicant itself is a subsidiary of Interwaste Holdings (Pty) Ltd, which is owned by the Séché Environnement Group. The FESIAR confirms this by stating that the "registered landowner for the subject property is Varenne Investments (Pty) Ltd, also a subsidiary of Séché,"4 and that "Portion 6 … is also owned by Varenne Investments (Pty) Ltd (a subsidiary of Séché)."5 Because this information regarding the distinct ownership and relationships of the entities – including that the Applicant is Wesco and not Séché – was clearly before the decision-maker, the EA's imposition of conditions on land the Applicant neither owns nor controls cannot be rationally connected to the information before the decision-maker. There is no guarantee that the applicant would be able to secure the protection of the Biodiversity Conservation Area since the applicant is not the owner of portion 6.

[2] Page 24.
[3] Page 14.
[4] Page 1 of the FESIAR.
[5] Page 171 of the FESIAR.

22. Among the reasons contained in the EA for granting the application, is the fact that the site has a connection to rail. However, there is no evidence in the application that the applicant consulted with the Department of Transport, Prasa or Transnet regarding this, or that the transport of waste by rail will be possible or feasible. The decision-maker ought not to have relied on this assumption in granting the EA.

23. The assessment places undue reliance on the use of a defunct railway line as a mitigation measure for transport impacts. There is no reasonable prospect that this railway line will be operational in the short- to medium-term, particularly in light of well-documented constraints affecting rail infrastructure. In circumstances where the applicant has itself emphasised the urgency of the development, it is irrational to attribute any weight to rail-based transport, and the assessment should not have proceeded on this basis.

24. In light of the above, the decision to grant the EA is not rationally connected to the information that served before the decision-maker. Material activities have been authorised in the absence of any assessment, key factual errors underpin the scope and scale of the authorised activities, and reliance has been placed on unverified assumptions regarding critical aspects of the development. These deficiencies are not merely technical in nature, but go to the heart of the lawfulness and reasonableness of the decision.

25. Accordingly, the EA falls to be set aside on the basis that it is irrational, was taken on the basis of materially incorrect information, and fails to meet the requirements of lawful and procedurally fair administrative action.

(2) Relevant information was not taken into account by the decision-maker

Failure of EAP to provide the decision-maker with the expert peer review reports submitted to it by our client

26. It is apparent from the FESIAR and the decision, that none of the findings of our client's expert peer review specialists were placed before the decision-maker alternatively these findings were not taken into account in making the decision. The reports detailed material gaps in baseline information, inadequate scoping of specialist studies, the application of misplaced criteria to motivate the project (need and desirability) and provision of conflicting and unclear information. The reports are attached now.

27. The failure to provide the reports to the decision-maker means that there are still critical gaps in the information provided in the FESIAR with the result that there is not enough information for I&APs to understand the full impact of the proposed WMF. These relate to: social impacts, air quality, traffic impacts, risk assessments, visual impacts, impacts on tourism and others.

28. The reports also indicate the following fatal flaws of which the decision-maker was not aware when the decision to authorise the WMF was made:

    28.1. the presence of multiple faults in quartzite bedrock with medium to high hydraulic conductivity, which are red flags in terms of suitability of site for WMF, particularly in respect of the disposal of hazardous waste;
    28.2. there is an extremely high level of community opposition to the project. It terms of the DWAF Minimum Requirements for Landfill, 1998, "While not necessarily Fatal Flaws, economic, environmental and public acceptance criteria may be critical factors…A critical factor may, however, become a Fatal Flaw if it cannot be addressed to the satisfaction of the Department";
    28.3. for example, the statement that there are no Black Harrier breeding sites on the site is refuted by our client's expert but this information was apparently not before the decision-maker; and
    28.4. Philadelphia Chick Breeders may be impacted resulting in closures. This might result in direct job losses.

29. Our client is of the view that the impact of the proposed WMF on property values is misleading as the assessment excludes one of the biggest communities in the area, Melkbosstrand. Again the evidence of our client's specialist was not taken into account.

30. According to Annexure D5, the traffic impact assessment failed to consider the approximately 23–30 days per year during which fog occurs on the R27, including 8–15 days of heavy fog, and the consequent impact on visibility. This omission is premised on the view that such conditions constitute "adverse weather conditions" that need not be taken into account. However, evidence from our client's specialist – submitted to the applicant's EAP – indicates that these are not anomalous conditions, but rather typical and recurring weather patterns in the area.

31. This omission is material, as reduced visibility is likely to result in traffic bottlenecks and increased safety risks at the Brakkefontein turn-off. It also calls into question the reliability of the broader assumptions underpinning the traffic assessment, particularly where these were neither disclosed to, nor subjected to scrutiny by, I&APs.

32. Therefore, the failure by the EAP to place before the competent authority the expert peer review reports submitted by the Appellant resulted in relevant information not being taken into account in the decision-making process. In terms of regulation 44(1) of the EIA Regulations, the Applicant is required to ensure that all comments of I&APs, including written submissions and responses thereto, are recorded and attached to the reports and plans submitted to the competent authority. The omission of the Appellant's specialist peer review reports from the record meant that material concerns regarding the adequacy and reliability of the ESIAR – including identified gaps in baseline data, scoping deficiencies, and flawed impact assumptions – were not properly before the decision-maker. As a result, the decision was taken without regard to relevant considerations that ought to have informed the exercise of the competent authority's discretion.

Failure to adequately consider South Africa's obligations under the Doha Amendment as part of the Climate Change Assessment

33. Section 2(4)(n) of NEMA requires that "Global and international responsibilities relating to the environment must be discharged in the national interest."

34. The FESIAR does not address, reference, or assess the proposed WMF's potential GHG emissions in the context of South Africa's ratified commitments under the Doha Amendment to the Kyoto Protocol (adopted 2012, ratified by SA in 2014, entered into force 2020). This amendment established the second commitment period (2013-2020) for emission reductions, emphasising sectors like waste (which generates methane, a potent GHG). Although post-2020, it forms part of SA's ongoing UNFCCC obligations and informs national strategies (e.g., National Climate Change Response White Paper). The FESIAR includes a Climate Change specialist study but it lacks detail on how the facility's operations (e.g. landfill emissions, waste treatment) align with or mitigate against these international benchmarks, rendering the assessment incomplete and non-compliant with holistic impact evaluation.

35. This omission also violates the precautionary principle (NEMA Section 2(4)(a)(vii)) by ignoring legacy commitments that could inform emission baselines.

Insufficient Consideration of Cumulative Climate Impacts in Light of Doha Amendment Targets

36. The EIA Regulations 2014 require an FESIAR to contain "an assessment of each identified potentially significant impact and risk, including cumulative impacts…"[6]

37. The report acknowledges specialist studies on Climate Change but fails to evaluate cumulative GHG emissions from the Wesco WMF (e.g. from hazardous waste disposal, transport, and leachate) against South Africa's Doha Amendment obligations, which aimed for economy-wide reductions (18% below 1990 levels for participating nations, with SA's voluntary actions tied in). Waste facilities contribute significantly to national methane emissions (~10-15% per SA's GHG Inventory), yet the FESIAR does not quantify how this project exacerbates or mitigates these, especially near sensitive areas like Duynefontein (2 km from Koeberg). This gap undermines the assessment's sufficiency, as Doha emphasized monitoring and reporting for sectors like waste.

Omission of Information regarding Transitional Relevance from Doha Amendment to Paris Agreement in Climate Mitigation Measures

38. While the Doha Amendment bridged to the Paris Agreement (SA's NDCs post-2020), the FESIAR does not discuss this transition or how the WMF's design (e.g., waste minimization, recycling) supports SA's shift from Kyoto-era voluntary actions to binding NDCs. Doha required enhanced mitigation in developing countries like SA, particularly for waste (via CDM projects), but the report's mitigation measures (implied in EMPr, not detailed) ignore this, potentially allowing non-compliant emissions. This is especially critical for a facility handling hazardous wastes, which could release persistent GHGs. The FESIAR mentions alignment with national strategies but omits international treaties like Doha. There is no discussion of this aspect in the FESIAR methodology.

No input by stakeholders on international climate change obligations

39. The Scoping and EIA phases involved public participation but did not solicit or incorporate input on international obligations like the Doha Amendment, despite its relevance to SA's waste sector emissions reporting (e.g., under UNFCCC). The FESIAR revisions addressed some gaps but ignored Doha, leading to an incomplete baseline for climate impacts. This procedural flaw limits I&APs' ability to comment on global compliance.

[6] Paragraph 3(1(i) of Appendix 3 to the Regulations.

The Economic Impact Assessment is flawed

40. The Economic Impact Assessment estimates economic activity but does not demonstrate that the project will generate a net economic benefit or meaningful job creation. It relies on a multiplier-based model using undisclosed inputs and simplifying assumptions. While it quantifies potential benefits, it does not quantify associated costs, nor does it apply a formal cost-benefit framework. Reported employment figures reflect model-based estimates of jobs supported over time, rather than clearly identifiable, sustained job creation. As a result, the findings should be interpreted with caution and should not be relied upon, in isolation, as evidence that the proposed development will result in net economic gains. We say so for the reasons set out below.

41. WESCO acknowledges that the economic impact results are indicative of orders of magnitude rather than precise values, implying that the estimates are model-driven and subject to material uncertainty.

42. The report states that the Social Accounting Matrix (**SAM**) "represents the total direct contribution and indirect impact" on the economy.[7] This is conceptually inaccurate. A SAM is an accounting framework that captures economic flows; it does not represent economic impacts. The estimation of indirect and induced effects arises from the application of multipliers derived from the SAM, based on simplifying and restrictive assumptions, rather than being directly observed or measured.

43. The Construction Phase assessment is deficient in a number of respects:

    43.1. It considers Medium and High scenarios only, with no Low (or downside) scenario presented. The omission of a lower-bound case limits the ability to assess the sensitivity of the results and introduces a potential upward bias in the reported impacts.

    43.2. Capital expenditure inputs are not disclosed due to confidentiality constraints (footnote 3, p. 37) and are described as estimates based on limited available information. This lack of transparency restricts independent verification and adds to the uncertainty surrounding the modelled impacts.

    43.3. Referring to Table 4 (pp. 37–38), Gross Geographic Product (GGP) measures the actual value added to the economy — in simple terms, the value of final goods and services after removing the inputs used to produce them. By contrast, the reported R3.5 billion in "production" (output) includes all sales at each stage of production. This results in double counting, as the same value is recorded multiple times as it moves through the economy. Consequently, the output figure overstates the true economic contribution, which is more appropriately reflected by the GGP estimate of R1.335 billion.

[7] Page 37.

43.4. Referring to Table 4 (pp. 37–38), the report states that "employment does not necessarily imply NEW jobs, but sustainable employment for employees of contracted service providers not operating at full capacity." In simple terms, this means that many of the reported jobs may not be new positions, but rather existing workers being more fully utilised. As a result, the employment figures do not necessarily reflect a reduction in unemployment or the creation of new jobs in the economy

43.5. Referring to Table 5 (p. 39), the same distinction between output and value added applies. The reported R5.1 billion in "production" (output) reflects total business turnover and includes intermediate inputs, meaning that the same value is counted multiple times as it moves through the economy. The more meaningful measure of economic contribution is Gross Geographic Product (GGP), estimated at R1.94 billion. As in the Medium scenario, the output figure overstates the underlying economic impact.

43.6. The report states that the economic benefits "will not be realised without the proposed development." (p.40) This framing assumes that, in the absence of the project, no comparable economic activity would take place. However, the analysis does not consider alternative uses of capital or resources. As a result, it does not account for opportunity costs and may overstate the net economic benefits attributable to the project.

43.7. The impacts in the High scenario scale broadly in proportion to the assumed increase in capital expenditure. In simple terms, a higher level of spending results in a proportionally larger estimated impact. This suggests that the results are driven largely by the model structure, rather than by realistic economic dynamics such as capacity constraints or diminishing returns.

43.8. Referring to Table 5 (p. 39), the reported employment impact of 7,151 jobs in the High scenario reflects a scaled-up version of the same modelling approach used in the Medium scenario. As noted in the report, employment does not necessarily imply new jobs but may reflect existing workers being more fully utilised. In addition, the figures represent cumulative job-years over the construction period rather than sustained employment. As a result, the reported increase in employment may overstate the project's impact on job creation and unemployment and does not necessarily translate into a lasting improvement in labour market outcomes.

44. Projected financial data, e.g., a projected income statement, was not supplied to assist I&APs to grasp the value additions to the Western Cape as stated by Dr. Bloom. The WESCO report refers to **11,464 to 16,388 jobs** during the operational phase. This may create the impression that thousands of people will gain permanent employment. In fact, according to the report's own business plan, only about **130 to 160 permanent workers** will be employed at the facility This is the **actual number of people working on-site**.

45. The larger figures are **not actual jobs at the facility**. They include:

    45.1. **Indirect jobs** (suppliers, transport, services)

    45.2. **Induced jobs** (jobs supported when wages are spent)

    45.3. **Job-years** (the same job counted multiple times over time)

    where a job-year means **one person working for one year**.

    For example: 1 person working for 10 years = **10 job-years**

    - 100 people working for 1 year = **100 job-years**

    This means the same job can be counted **many times**.

46. The report itself notes that employment does not necessarily mean new jobs. Some of the reported "jobs" may reflect: existing workers working more hours and businesses that already employ people but are not fully utilised This is known as spare capacity.

47. Therefore when the report refers to 11,000+ jobs, it is describing model-based estimates of economic activity spread across the economy over a 10-year period. It does not mean that 11,000 people will be permanently employed.

48. The report also refers to "net movement in jobs". This does not mean the number of new permanent jobs created. It is a model-based estimate of how employment levels change over time, after adjusting for previous years. It still includes indirect and induced effects and may reflect existing workers being more fully utilised. As a result, "net job movement" should not be interpreted as the number of new jobs available to unemployed people.

49. In summary, the employment figures should be interpreted with caution. They do not represent the number of people who will gain permanent employment, but rather a model-based estimate of economic activity over time. Projected financial data, e.g., a projected income statement, was not supplied to assist I&APs to grasp the value additions to the Western Cape as stated by Dr. Bloom.

Heritage Impacts not taken into account

50. The decision fails to take into account potential heritage impacts on the Mamre heritage site. In terms of the Mamre Local Spatial Development Framework (**LSDF**) which has been formally adopted by the City of Cape Town, the site is a significant "gateway into the City from the north" and requires the enhancement of its "sense of place".

51. Under Guideline 2 of the Mamre LSDF, the City explicitly requires the protection of "views and visibilities from the R304 scenic route". The R304 is a historical heritage corridor characterized by its Eucalyptus tree lane.

52. With the site's location within the R27–R304 corridor and the project's reliance on rail infrastructure, there is a credible risk that road-based transport could increase along alternative routes, including the R304. This is significant as the R304 forms part of the scenic and heritage approach to Mamre, and any increase in industrial traffic would contribute to cumulative impacts on the cultural landscape and heritage setting.

53. The proposed facility falls within the visual catchment of this route, and the high-impact industrial nature of a hazardous waste plant will permanently degrade the visual integrity of this legislated scenic approach.

54. The development is situated in a high-sensitivity area directly adjacent to the Proposed Mamre Heritage Protection Overlay Zone (**HPOZ**), as delineated in Figure 11 (Page 41) of the LSDF. Under section 31 of the National Heritage Resources Act (**NHRA**), the character of a proposed heritage area must be maintained until final declaration.

55. The EA decision therefore fails to establish a sufficient visual and environmental buffer to prevent the "creeping industrialization" that threatens the integrity of this proposed cultural landscape.

56. The proposed WMF poses a significant risk to the Outstanding Universal Value (**OUV**) of the Robben Island UNESCO World Heritage Site. Despite its distance, the WMF is located in a sensitive catchment area that drains toward the Robben Island Marine Protected Area (**MPA**), whose boundary sits only 3.5 km off the Melkbosstrand coast. Furthermore, the development fails to assess its impact on the visual integrity of the island's mainland viewshed, violating the viewshed protection requirements mandated for World Heritage Sites under the National Environmental Management: Protected Areas Act."

57. The decision also fails to take into account that the Marine Protected Area (MPA) which acts as an ecological buffer for the Robben Island UNESCO site, extends to within 3.5 km of the mainland. Any groundwater or chemical leak from the proposed site Brakkefontein into the sea is likely to violate the integrity of this buffer zone.

58. In early 2024, Heritage Western Cape ("**HWC**") submitted a comment indicating that no further heritage studies were required. However, this conclusion was reached in the absence of any Visual Impact Assessment (**VIA**), despite the proposed facility being of a large-scale, high-impact industrial nature and located within a recognised scenic and cultural landscape corridor associated with the R304 and the Mamre area.

59. In circumstances where the development is likely to have material implications for the visual character and "sense of place" of a heritage-sensitive landscape, the absence of any visual analysis renders the heritage assessment incomplete. HWC's comment was accordingly based on insufficient information, and the

competent authority's reliance thereon – without further interrogation – constitutes a failure to take into account relevant considerations, including the potential impact on the cultural landscape as contemplated under the NHRA.

Key impact assessment studies relied on are not scientifically sound

60. While the Property Impact Assessment is based on property data and statistical modelling, it relies on a proxy comparison with the Vissershok landfill to predict impacts. This assumes that property market responses in the Melkbosstrand area will mirror those observed in a fundamentally different context. Melkbosstrand is a coastal, residential and lifestyle-driven area with tourism sensitivity and property values strongly influenced by environmental quality and perception. In contrast, Vissershok is located inland, adjacent to the R27 (West Coast Road) and within a different land-use context characterised by proximity to industrial activities and low income housing (significant footprint). The assessment does not demonstrate that these contexts are comparable, and therefore the validity of applying the proxy model to the Melkbosstrand property market is doubtful. In particular, the assessment does not consider location-specific perception effects, which are a primary driver of property values in coastal and lifestyle markets.

61. The Noise Impact Assessment did not take into account noise generated by transport of waste to the site by rail.

62. The Visual Impact Assessment is based on a single site visit undertaken in March 2022 with no evidence of updated field verification or repeat surveys to reflect current conditions

Value of the Conservation Area to mitigate negative impacts on biodiversity is overstated

63. The value of the Conservation Area as a corridor is overstated in the FESIAR and the decision-maker did not take into account that both the Koeberg Nature Reserve and the proposed Conservation Area are, or will be, fenced and therefore cannot function as a corridor. The proposed area is narrow and it is unlikely that small fauna and birds will freely move in land right next to a brightly-lit, noisy waste site operating 24 hours a day and seven days per week.

64. In terms of the conditions in the EA, the waste will be covered only once per day and with prevalent summer and winter winds, plastics and other litter are likely to enter the Conservation Area and be a danger to the animals using it. Clean-up operations of wind-blown litter on the perimeter or in the Conservation Area are likely to further deter small fauna from using the proposed corridor.

65. The Environmental Authorisation seems to balance the loss of 208ha of habitat for the endangered Black Harrier and Secretary Bird against the creation of the Conservation Area. It does not take into account that loss of habitat for endangered species directly contributes to their extinction and is

unacceptable.

66. While mitigation measures are proposed, the Faunal Assessment study explicitly acknowledges that "even with intervention this impact will still occur". This indicates that mitigation does not prevent or adequately address the ecological impact, but rather reduces the assessed significance, with residual and irreversible effects remaining for the species.

67. The impact on these species, even with mitigation, is unacceptable. For the reasons above, the Conservation Area is likely to be of limited value as an off-set to this loss of habitat. Accordingly, the ecological risks to the site have not been fully taken into account by the decision-maker.

General

68. While the FESIAR refers to perimeter controls such as fencing and site security, it does not assess the effectiveness of these measures in preventing unauthorised access or managing associated off-site impacts by informal waste-pickers and littering close to the site, leaving uncertainty as to whether these risks can be adequately controlled in practice.

69. The Aquatic Impact Assessment dated June 2025 expressly stated that it was "compiled prior to completion of the geohydrological baseline report – the findings of this report are material to the identification of risks to surface aquatic ecosystems"[8] indicating reliance on incomplete groundwater inputs. No update appears to have been undertaken to resolve this dependency.

70. No cumulative risk assessment with respect to the cumulative risks of a nuclear facility and a hazardous WMF which falls just outside the 5km Precautionary Action Zone (PAZ) and within the Urgent Protection Action Zone (UPAZ) was undertaken.

71. We note that a proposal for a medium industrial and medium dense housing plan in Morningstar was rejected by the City of Cape Town as it falls in the 5-16km UPAZ.

72. The EA does not provide sufficient clarity or certainty regarding the management of risks associated with the Astron pipeline, owned by Glencore, which traverses land forming part of the Koeberg Nature Reserve within the PAZ and is subject to a registered servitude. This is a particularly sensitive and high risk environment, given both its conservation status and its proximity to the Koeberg Nuclear Power Station. While the amended Condition 32 states that access for heavy waste vehicles to the site from the R27 may only occur once the "Astron pipe crossing has been secured," the EA and its amendment do not define what is meant by "secured," nor do they specify the technical, legal or operational

[8] Section 1.7, p.8.

requirements necessary to achieve this. In the absence of such detail, it is unclear whether the servitude permits heavy vehicle access of this nature, whether the pipeline infrastructure is capable of accommodating such loads and what measures are required to prevent damage or failure, particularly given the conservation status of the area. This lack of specificity renders the condition vague and potentially unenforceable, and indicates that the risks associated with transporting hazardous waste over or near the pipeline have not been properly assessed. This risk was only disclosed at a late stage in the process, and most of the I&APs were not afforded a meaningful opportunity to consider or respond to it.

73. Furthermore, the decision-maker failed to take into account relevant information concerning the cumulative risks associated with the proximity of the development to Koeberg Nuclear Power Station, due to deficiencies in the FESIAR. A portion of the erf comprising the site falls within the 5 km PAZ, yet the FESIAR relies on Eskom's "Safety Case for Long-Term Operation of Koeberg Nuclear Power Station, (Report no. 331- 618, dated 9 February 2023)" which includes a generic hazard screening undertaken to assess whether external hazards pose a risk to the nuclear facility itself. In this context, risks associated with "land-based stationary and transport sources (off-site sources) of hazardous materials" were screened out based on distance, on the basis that they do not threaten the safe operation of Koeberg. However, this screening is not project-specific and does not consider the cumulative risks arising from the proposed WMF, including the co-location of hazardous waste activities, increased heavy vehicle traffic transporting toxic waste, and the presence of critical infrastructure such as the Astron pipeline within a highly sensitive environment. The reliance on this generic screening to discount site-specific and cumulative risks is misplaced. This omission is particularly concerning given that Appendix 3, paragraph 3(1)(j) of the NEMA EIA Regulations expressly requires that an EIA report must include an assessment of each identified potentially significant impact and risk, including cumulative impacts. The failure to do so constitutes a material omission and is inconsistent with the requirements of NEMA which mandates a risk-averse approach to environmental decision-making.

74. In light of the above, the decision-maker failed to take into account material and relevant information necessary to make an informed decision on the application. This failure arises both from deficiencies in the FESIAR and from the omission of critical expert inputs and impact assessments, which resulted in the decision-maker not being placed in possession of all relevant facts, risks and consequences associated with the proposed development. The information omitted or inadequately assessed is not peripheral, but goes to the core of the environmental, social, economic and cumulative impacts of the proposed WMF, including site suitability, public safety, climate change obligations, and the integrity of sensitive ecological and heritage environments. In these circumstances, the decision is vitiated by a failure to consider relevant considerations, as required under NEMA and the applicable EIA Regulations, and ought to be set aside.

(3) Applicant failed to properly consider site alternatives

75. Section 2(4)(b) of NEMA requires that environmental decision-making must take into account the effects of decisions on all aspects of the environment and all people in the environment by pursuing the selection of the best practicable environmental option. The term "best practicable environmental option" is defined in section 1 as "*the option that provides the most benefit or causes the least damage to the environment as a whole, at a cost acceptable to society, in the long term as well as in the short term*." It is therefore important that the competent authority is provided with options for choice in the context of the EIA process to enable the selection of the best practicable environmental option.

76. Section 24(4)(b)(i) of NEMA requires that the EIA process "*must include… investigation of the potential consequences or impacts of the alternatives to the activity… including the option of not implementing the activity*."

77. Section 24O(1)(b)(iv) further requires the competent authority to take into account "*any feasible and reasonable alternatives… and any feasible and reasonable modifications… that may minimise harm to the environment*." These are mandatory requirements directed at enabling the selection of the best practicable environmental option.

78. The DEA&DP Guideline on Alternatives (EIA Guidelines and Information Documents Series, 2013) requires that a "reasoned explanation" is given as to why an alternative was or was not found to be "feasible" and "reasonable".[9] The FESIAR does not comply with this requirement and the reasons for rejecting the alternative sites are unconvincing. The decision-maker does not seem to have taken into account the fact that the applicant purchased the site specifically in order to establish a WMF on it. As a result, there is virtually no information in the FESIAR regarding the alternative sites, which were not properly assessed as alternatives.

79. According to the EA "The "R27/Velddrif" and "Brakkuil" sites were not deemed feasible due to the sites being a significant distance from the main waste generating area of the City of Cape Town." (page 24) However, considering that the applicant has indicated that it will import waste from other provinces, it is not clear why it needs to be close to the main waste generating centre of Cape Town. If that is the case then other regional landfill sites should have been taken into account in considering the need and desirability for another landfill.

80. The decision-maker listed "Optimal use of available land earmarked for a landfill site" as a reason for its decision. The site is outside the urban edge, is currently zoned for Agriculture and can be used viably for livestock. A previous application for authorisation for a landfill site on the site was set aside for

[9] Page 10.

reasons that included the apartheid history of the Atlantis community as well as the constitutional rights of local communities including Klein Dassenberg and Melkbosstrand, and the needs of better land-use planning, specifically the longer-term plans of City of Cape Town for northern expansion, which in our view, have not changed and are still relevant. While it may be indicated in the Blaauwberg Spatial Development Plan as a possible site for a landfill, the Appellants submit that the "earmarking" related to the development planned by the City of Cape Town, for the handling of Types 3 and 4 waste, while the proposed WMF is intended to process Types 0-4 waste.

81. The applicant has not assessed any alternative uses for the site other than a WMF, which might be more compatible with surrounding land uses. In this regard we note a comment from the Chief Director: Hazardous Waste Management and Licensing to the effect that "The proposed site was previously authorised for the proposed construction of a 75 MW solar photovoltaic facility and associated power line (referred to as the 'Brakkefontein Solar Park'), however the project has not commenced, and an amendment application was lodged through the process with the Department. The Department recommends that all relevant authorisations relating to Brakkefontein Solar Park must be attached to the EIAR to confirm the findings reported."[10] This indicates that other uses of the site with much lower impacts are both reasonable and feasible.

82. Imported waste, even if some of it can be recycled or re-used or destroyed will be disposed of in a Cape Town landfill so that the contribution of this landfill is less significant than it seems. The applicant is a commercial enterprise which will accept waste on the basis of what is more profitable. There is no guarantee that it will receive nor prioritise the City of Cape Town's municipal waste over imported waste and thus be a solution to the shortage of licensed airspace. There is no agreement in place between the applicant and the City as evidenced by the fact that the City intends to appeal the granting of the EA and has indicated in comments that it has not ruled out developing the site itself.

83. The FESIAR contains only a very brief assessment of the "no-go" alternative,[11] which is not considered the preferred alternative based solely on need for adequate waste management capacity. Presumably on the basis of this, the EA states that the "no-go" alternative is not warranted (page 27). However, the City of Cape Town is appealing the granting of the EA, which suggests that it does not agree with the statement that the WMF is needed because there is no possibility of it developing the required airspace by 2028 (page 29 of the EA).

84. In light of the above, the decision-maker failed to properly consider feasible and reasonable site alternatives, as required by sections 2(4)(b), 24(4)(b) and 24O of NEMA. This failure stems from the

[10] Appendix C2: Acceptance of Final Scoping Report, to the FESIAR.
[11] Table 2 on page xxiii, pages 118 and 387-388 of the FESIAR.

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deficiencies in the FESIAR, which did not provide a meaningful or reasoned assessment of alternative sites, land uses, or the "no-go" option, and instead appears to have been driven by the Applicant's prior acquisition of the site for the purposes of establishing a WMF. As a result, the decision-maker was not placed in a position to evaluate and select the best practicable environmental option, nor to properly interrogate whether less harmful or more appropriate alternatives existed. The omission of a proper alternatives assessment goes to the heart of the EIA process and fundamentally undermines the lawfulness and rationality of the decision, rendering it susceptible to being set aside on appeal.

(4) Need and desirability of the project has not been established

85. NEMA requires that "[e]nvironmental justice must be pursued so that adverse environmental impacts shall not be distributed in such a manner as to unfairly discriminate against any person, particularly vulnerable and disadvantaged persons."[12] Allowing the applicant to import waste, including hazardous waste, from other provinces to be disposed of for profit in close proximity to the Appellants' existing residences and subjecting our client's members to all the negative impacts, whether mitigated or not, contravenes the principle of environmental justice in NEMA.

86. The need for the WMF is overstated in the FESIAR in a number of respects.

87. The statement in paragraph 12.3 on page 75 of Annexure D.5 (Comments and Responses Report) that "that the CoCT will not be able to develop the necessary airspace in time to resolve the immediate need for additional, accessible airspace by the end of 2028" is misleading to the decision-maker as the City's Waste Management Strategy, 2025 states that Vissershok can accommodate waste for the next 13 years. While the strategy does state that a new landfill is required, it does not anywhere state that a new commercial landfill site is the only way to meet the demand for airspace. (page 34) This is particularly so in respect of HR1 and HR2 waste which makes up a tiny proportion of municipal waste: for example, it comprises 1% of waste currently disposed of at Vissershok.

88. The decision-maker has also failed to take into account that the 2025 Strategy sets out in detail the City's plans for diversion of waste from landfills as well as the target of zero waste-to-landfill beyond 2035.

89. In balancing the negative impacts on our client and the surrounding communities against "the wider benefits to the hundreds of thousands of CoCT ratepayers that would arise from the facility's provision of integrated waste management services and disposal airspace to legislated and policy standards over the long-term (>30 years)", the applicant misled the decision-maker. There is no agreement in place

[12] NEMA, section 2(4)(c).

with the City for municipal waste to be accepted at the site, and the City is not in favour of the authorisation of the site and is appealing the granting of the EA. The applicant is a company establishing a commercial WMF. There is no guarantee that any municipal waste will be processed at the site or that rate-payers will benefit at all. It is against the principles in NEMA that communities should suffer the negative impacts of such a commercial venture.

90. We acknowledge the statement that the landfill site can proceed in the absence of a contract with the City of Cape Town since the facility will service the applicant's parent company's existing customer base and new commercial clients. (Annexure D, paragraph 12.4) but this does not mean it is equitable to balance a commercial companies profit-making venture against the Constitutional right of existing residents to an environment that is not harmful to their health and wellbeing.

91. This response does not take into account that the need for additional airspace could be met by other private waste management facilities or companies, for example, EnviroServ or other regional landfill sites such as Drakenstein, Stellenbosch or Saldanha.

92. In light of the above, the Applicant has failed to demonstrate the need and desirability of the proposed WMF, and the decision-maker accordingly erred in accepting that such need exists in a manner sufficient to justify the significant environmental and social impacts associated with the development. The record reflects material overstatement and mischaracterisation of the urgency and nature of the purported waste disposal shortfall, including reliance on assumptions regarding municipal dependency on the facility which are not supported by any binding agreement or policy commitment from the City of Cape Town. The decision-maker further failed to adequately consider the City's own Waste Management Strategy, 2025, which contemplates extended landfill capacity at Vissershok and a long-term transition toward diversion of waste from landfill. In these circumstances, the asserted public benefit of the project is uncertain and speculative, and is primarily framed in terms of commercial advantage rather than demonstrated public necessity. The application therefore rests on an overstated "need" case, with the result that the justification for the significant adverse impacts associated with the development has not been properly established in terms of NEMA.

(5) The conditions subject to which the EA is granted do not ensure the project makes a contribution to sustainable development

93. Our client remains opposed to the establishment of a WMF on the site. However, if the appeal authority dismisses all of the appeals, our client is of the view that the EA must be amended in the following respects.

94. The benefit of the Conservation Area as a linkage to the Koeberg Nature Reserve or as a North-South

linkage between the Witzands Aquifer Nature Reserve and Brakkefontein Conservation Area is overstated in the EA, as both the WMF site itself and the Koeberg Nature Reserve are or will be fenced,[13] which restricts the movement of small fauna. If the appeals are dismissed on appeal, the EA should be amended to include a condition that the fences are dropped or gaps made in the fence to provide true linkage between the sites.

95. Furthermore, there is no justification for allowing the applicant a period of 24 months in which to finalise the Memorandum of Agreement and Biodiversity Management Plan.

96. The period of 30 years during which the holder of the EA must comply bear the costs of implementing the Biodiversity Management Plan is arbitrary and does not comply with section 2(4)(p) which requires that "[r]esponsibility for the environmental health and safety consequences of a policy, programme, project, product, process, service or activity exists throughout its life cycle. There is no reason why the condition should not stipulate that the costs should be borne by the holder for the full life-cycle of the proposed WMF.

97. The EA only requires that environmental audit reports are submitted at 5-yearly intervals after the first report has been submitted.[14] This interval is far too long to ensure that the applicant is complying with the EA and is an ineffective enforcement measure, bearing in mind the extent of the development and the potential for high impacts if mitigation measures are not complied with fully. If the decision of the competent authority to grant authorisation to the site is upheld on appeal, the EA should be amended to require the submission of annual audit reports.

98. The EA makes no mention of a complaints process or how complaints by members of the public will be addressed during the construction and operational phases. The complaints received and how they were resolved, should be a component of the audit report and the EA should contain a condition to this effect. The Emergency Preparedness and Response Plan should also address disasters at Koeberg and the Koeberg evacuation plans.[15]

[13] See page 9 of the EA: "Access will be restricted via a gated controlled access. The perimeter of the proposed Waste Management Facility will be…)
[1414] Paragraph 15.4 of the EA.
[15] EA at paragraph 29.10.

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99. The condition in paragraph 33 of the EA that heavy waste vehicle arrivals from the R27 should not exceed 30% of total arrivals will be impossible to monitor and enforce. Arrivals are out of the control of the applicant and it is unfeasible for the applicant to dictate to its customers which road they may use to approach the site. In addition, members of the public can access the site and these numbers also cannot be controlled by the applicant. It does not make sense to only prescribe a maximum number of arrivals when those same heavy waste vehicles must also leave the site, presumably via the same route as they arrived.

100. In any event, since total arrivals and departures are not known, the impacts of 30% of those arrivals and departures using the R27 are also unknown. Accordingly, this condition is ineffective as a means of mitigating traffic and air quality impacts of heavy waste vehicles arriving and leaving the site. It would be preferable for arrivals of heavy vehicles from the R27 to be disallowed altogether.

101. Our client remains of the view that it is unacceptable in terms of the impacts on the aquatic ecology for any treated effluent to be released into the Donkergat river. The EA should prohibit the release of treated effluent into this river.

102. The conditions relating to the management of the landfill including leachate dams are inadequate:

102.1. The landfill site should be covered more frequently than once daily. To do otherwise would allow the Conservation Area to be polluted with windblown litter which will pose a danger to the small fauna in the area (paragraph 29.3);

102.2. The EA conditions should make the development of a landfill gas to energy facility mandatory to align with applicable waste management policy and specify a timeline for extraction of landfill gas. “As soon as is reasonably practicable” is too vague in this context;

102.3. Covering of leachate dams is supported but there must be a minimum freeboard of 0.8m above the full supply level;

102.4. The appellants disagree that the destruction of CBAs has been avoided as far as possible (page 28 of the EA) since more than 300m2 will be destroyed; and

102.5. The condition that storage of diesel, fuel and oil must be in bunded tanks is inadequate; the condition must require full compliance with the OHS Act and relevant SANS codes that require a layered safety approach that includes active response systems to spills.

103. In our client’s view, the impact of the transport of leachate has been understated in the FESIAR as, based on data from Vissershok, it appears likely that there will be more than one trip per week as

stated in the FESIAR. Moreover, the possibility of vehicles transporting leachate being involved in accidents hasn't been properly considered.

104. The life-span of the landfill site should be restricted to 30 years to align with the National Waste Management Strategy 2025 which envisages an end to disposal of waste to landfill beyond 2035 and the City of Cape Town Municipal Special Development Framework dated January 2023 that references the need for a new regional landfill site with a maximum of 35 years' airspace.

105. There is no requirement in the EA for the applicant and, preferably, its holding company and group companies to provide security for the costs of closure/remediation of the site should the applicant company be placed in liquidation. This constitutes a major risk for I&APs and for the environment.

106. While our client welcomes the condition that no waste may be imported from outside South Africa, how will this be enforced when there is a possibility that the waste may be imported by third parties and then processed at the proposed WMF?

107. The decision-maker ought to have made it mandatory for the site to be subdivided prior to construction of the WMF, failing which the development restrictions applicable to the PAZ apply to the whole property, not just the footprint of the development.

108. Many of the conditions attached to the EA are vague, discretionary or incapable of effective monitoring and enforcement, and fail to adequately address the severity, cumulative nature and long-term implications of the identified impacts, particularly in a highly sensitive environmental context. As a result, these conditions are not sufficient to ensure that the proposed development achieves sustainable development as required by NEMA, nor does it give proper effect to the precautionary principle and life-cycle responsibility under section 2 of NEMA.

(6) Public participation process failed to satisfy the requirements of procedural fairness

109. As set out above, the decision to grant an environmental authorisation is administrative action as defined in PAJA. Section 3 of PAJA provides that "administrative action which materially and adversely affects the rights or legitimate expectations of any person must be procedurally fair." Procedural fairness entails (amongst other things) a meaningful opportunity to make representations before administrative decisions are made. Meaning representations cannot be made in the absence of the information which is to inform the administrative decision in question.

110. Section 2(4)(f) of NEMA requires transparent and representative participation.

111. Regulation 23(1)(a) of the 2014 EIA Regulations requires an applicant to submit an EIA report (and

related documents) "*which must have been subjected to a public participation process of at least 30 days and which reflects the incorporation of comments received, including any comments of the competent authority*". It follows that the version of the report which is ultimately submitted to the competent authority should therefore be one on which meaningful public participation has occurred, and on which parties can verify how their comments were dealt with.

112. The ESIA process failed to ensure meaningful and inclusive participation of all Interested and Affected Parties (I&APs). We say so because:

112.1. the Construction and Operational Phase EMPrs were not included in the submission to DEA&DP, as reflected on the project website, which created confusion for I&APs;

112.2. advertisements were placed in the Weskus Nuus but not in Tabletalk or Tygerburger which may have excluded a large portion of the affected residents;

112.3. communities most affected (Atlantis, Duynefontein, Melkbosstrand, Cape Farms and other smallholdings) were underrepresented;

112.4. the Applicant's documentation was framed in highly technical and specialist language, which is not readily accessible to members of the general public and, as a result, is likely to have had an intimidating and exclusionary effect on meaningful public participation;

112.5. engagement sessions were dominated by technical presentations with limited opportunity for community-driven concerns; and

112.6. community objections (compatibility with land use, farming risks, poultry biosecurity) were noted but not resolved.

113. Furthermore, the competent authority failed to consult with key organs of state with direct and relevant expertise in relation to nuclear safety, including Koeberg Nuclear Power Station and the National Nuclear Regulator. Given the proximity of the proposed development to Koeberg and its location within a sensitive nuclear risk zone, such consultation was necessary to ensure that all relevant risks were properly identified and assessed. The omission of this engagement constitutes a material procedural and substantive flaw in the public participation and ultimately decision-making process.

114. Further, the applicant failed to comply with regulation 44(1) of the EIA Regulations, which provides that the applicant must ensure that the comments of I&APs are recorded in reports and plans, and that such written comments, including responses thereto and records of meetings, are attached to the

reports and plans submitted to the competent authority. In this instance, the annexures submitted by the appellant, comprising detailed specialist peer review reports, were not properly incorporated into the final reports placed before the competent authority. These reports contained substantive technical objections to the adequacy of the ESIAR, including material gaps in baseline information and flawed assumptions underlying key impact assessments. The failure to ensure that these representations were properly recorded and included in the final submission undermined the integrity of the public participation process and deprived the competent authority of a complete record of I&APs' inputs, thereby rendering the process procedurally unfair.

115. Taken together, these defects rendered the public participation as being deficient and procedurally unfair, as well as being non-compliant with the EIA Regulations. The environmental authorisation must therefore be set aside by the appeal authority.

(7) Unlawful deferral of critical assessments and mitigation to the post-authorisation stage

116. The environmental authorisation process prescribed in NEMA and the EIA Regulations is intended to enable the identification, assessment and reporting of the potential impacts of a proposed activity before authorisation is granted, so as to inform lawful and rational environmental decision-making. That process is central to integrated environmental management and must ensure that potentially significant environmental and socio-economic impacts are adequately investigated and assessed before a decision is taken, and that any mitigation relied upon is sufficiently developed, feasible and capable of implementation and enforcement.

117. In the present matter, the FESIAR did not provide an adequate basis for the competent authority to conclude that the impacts of the proposed WMF had been properly assessed and could be reduced to acceptable levels. As set out elsewhere in this appeal, and as appears from our client's comments dated 6 August 2025, the assessment record remained materially incomplete in a number of respects.

118. That deficiency is compounded by the terms of the EA itself, which grants authorisation while deferring a number of critical matters to a post-authorisation stage. In particular, the EA requires, only after authorisation has been granted:

    118.1. the finalisation and submission of the Biodiversity Agreement, Memorandum of Understanding and Biodiversity Management Plan within 24 months of the EA;

    118.2. the compilation and approval of a River Maintenance and Management Plan before commencement of construction;

118.3. the updating and submission of a Community Health Monitoring and Management Plan prior to construction;

118.4. the compilation of an Emergency Preparedness and Response Plan; and

118.5. future environmental auditing to identify and assess new impacts and risks arising from the activity.

119. The difficulty is not merely that these plans are required as conditions. The difficulty is that the competent authority appears to have accepted conclusions that a number of significant impacts could be reduced from high or medium negative significance to low negative significance, despite the fact that the actual content, adequacy, feasibility and enforceability of the measures said to achieve those reductions had not yet been properly established.

120. In other words, the EA approves the project first and leaves critical aspects of impact assessment and mitigation to be developed later. That approach is impermissible where the deferred measures are not minor refinements within an already assessed envelope of impacts, but are instead central to whether the project is environmentally acceptable at all.

121. The present matter is distinguishable from cases where limited post-authorisation refinement is permissible because the material impacts have already been comprehensively assessed and the remaining discretion is genuinely minor. Here, the deferred plans and measures do not involve minor optimisation within an already assessed and accepted impact envelope. They concern core matters going directly to biodiversity offsets and corridor functionality, aquatic and river impacts, health monitoring, emergency response and the identification of further impacts and risks. Their final content may materially affect the scale, significance and acceptability of the project's impacts.

122. In this respect, the EA effectively authorises the project on the basis that the missing detail will be worked out later. That is inconsistent with the purpose of the EIA process and with section 24(4)(b)(i) of NEMA, which requires the investigation of the potential consequences or impacts of the activity before authorisation.

123. Put differently, the competent authority was required to decide, on the basis of sufficiently complete information, whether the impacts of the proposed WMF were acceptable and capable of mitigation. It was not open to the authority to approve the project while leaving the substantive content of key mitigation measures to later plans, particularly where those measures were central to converting impacts assessed as high or medium negative into impacts said to be low negative.

124. The decision is accordingly vitiated by the unjustifiable deferral of core environmental assessment and

decision-making requirements to the post-authorisation stage. As a result:

124.1. substantively relevant considerations were not properly taken into account before the EA was granted;
124.2. the decision was premature on an incomplete and inadequately developed record;
124.3. the conclusion that impacts could be mitigated to acceptable levels was not rationally connected to adequately established mitigation measures; and
124.4. the grant of the EA undermined the purpose of the EIA process and the risk-averse and cautious approach required under NEMA.

125. For those reasons, the EA falls to be set aside on appeal

CONCLUSIONS

126. The decision to grant environmental authorisation for the proposed WMF is fundamentally flawed, both procedurally and substantively. As set out above, the decision is vitiated by multiple, interrelated defects which go to the heart of sound environmental decision-making under the Constitution, PAJA and NEMA. These defects include, *inter alia*:

126.1. the failure to take into account the original and supplementary specialist studies commissioned by the appellants or to allow other stakeholders access to those studies;

126.2. the failure to take into account other relevant information including climate-related impacts of the proposed WMF; the Integrated Pollution and Waste Management Policy;

126.3. the fact that the need and desirability of the project has not been established;

126.4. the failure to properly consider and to assess feasible and reasonable alternatives;

126.5. the conditions subject to which the EA is granted do not ensure the project makes a contribution to sustainable development;

126.6. a procedurally unfair public participation process; and

126.7. critical assessments and mitigation has been unlawfully deferred to the post-authorisation stage.

127. The flaws in the assessment process and procedural irregularities have resulted in substantively relevant considerations being overlooked by the competent authority, the decision to grant the environmental authorisation was also not rationally connected to the information before the

competent authority, nor does it reflect that the decision was rationally connected to the purpose of the empowering provisions in NEMA. Instead, the decision reflects an impermissible approach in which material uncertainties, unresolved impacts and incomplete assessments were deferred to a stage after authorisation had already been granted. This approach undermines the precautionary principle, defeats the purpose of the EIA process and is incompatible with the constitutional obligation to ensure environmentally sustainable development.

128. In the circumstances, the appeal authority is respectfully requested to set aside DEA&DPs decision to grant the EA. In the alternative, if the EA is not set aside, the conditions subject to which it is granted must be amended to deal with issues raised in this appeal.

129. We reserve the right to supplement this appeal in the event that new relevant information is placed before the appeal authority by the decision-maker, an I&AP or any other party.

CULLINAN & ASSOCIATES INC.

per: Sarah Kvalsvig & Chloë Lead

13 April 2026

CULLINAN & ASSOCIATES
Environmental and green business attorneys

TABLES OF ANNEXES

Original Peer Review/Specialist reports submitted along with our client's comments on the DESIAR (dated 14 April 2025)

No.	Title	Author
A1	Review of the DESIAR by Infinity Environmental dated 22 March 2025	Jeremy Rose
B1	Review of Social Impact Assessment dated April 2025	Hilda Bezuidenhout
C1	Botanical Comments on the WESCO application dated 5 March 2025	Petra Broddle
D1	Peer-Review Report: Marine Environment	Dr Zanne Zeeman-du Toit
E1	*Gauteng Department of Agriculture and Rural Development v Interwaste (Pty) Ltd and Others [2019] ZASCA 68*	
F1	Poison Under Europe's Biggest Aquifer: How the never-ending story of France's Stocamine waste dump leaves a toxic legacy	Investigative Journalism for Europe
G1	Minutes of a Meeting between our client's Waste Task Team, the applicant and SLR on 5 March 2025.	
H1	The Effects of a Large Landfill Site on Agricultural Land Over Years - Agriculture	Client
I1	Review of the Artesium SA Specialist Hydrogeology Report dated March 2025	Peter Rosewarne
J1	Report on Per- and Polyfluoroalkyl Substances (PFAS) – Their Risks and Effects on Humans and the Environment in the vicinity of Waste Facilities	Clients
K1	Review of the Health Impact Report by SLR Consulting dated 14 March 2025	Jacqueline Faulconbridge

L1	Letter City of Cape Town to Jody Francis dated 31 October 2024	City of Cape Town
M1	Letter City of Cape Town to Communicare dated 5 February 2025	City of Cape Town
N1	Review of the Air Quality Impact Assessment Report for SLR Consulting on the proposed WESCO landfill site near Atlantis dated 11 March 2025	Esther Cecilia Keet
O1	Response to the Traffic Impact Assessment for Proposed Wesco WMF 2 April 2025	Clients
P1	The Effect of VOCs from the Wesco HWMF and Temperature Inversion in the Donkergat catchment valley and legal guidelines in terms of stack requirements.	Clients
Q1	Architectural Commentary on SLR Draft EIA for the Proposed Wesco Waste Management Facility on a portion of Portion 1 of Brakkefontein Farm 32 dated 1 April	Theo Gutter
R1	Fire Risks in a Hazardous Waste Manufacturing Facility and supportive legislation	Clients
S1	Review of draft Economic Impact Assessment and Property Impact Assessment for the proposed WMF on farm portion 1 of Brakkefontein 32, Cape Town, by Coastal and Environmental Services (Pty) Ltd dated 3 April 2025	Annette Verryn

Supplementary Peer Review/Specialist reports submitted along with our client's comments on the Revised DESIAR (dated 6 August 2025)

No.	Title	Author
A2	Review of revised DESIAR by Infinity Environmental (EAP)	Jeremy Rose
B2	Further comment on Agricultural Impact Assessment	Johann Lanz & David Lakey
C2	Review of Specialist Hydrogeological Report in revised DESIAR	Peter Rosewarne

D2	Review of Community Health Impact Report	Jacqueline Faulconbridge
E2	Review of Risk Assessment (Appendix F18) in revised DESIAR	Charmaine Vermeulen
F2	Comments on revised DESIAR by PSI Risk Consultants	Johan Slabbert
G2	Review of Risk Assessment in revised DESIAR	Rhine Barnes
H2	Peer review of the Traffic Impact Report (Appendix F16)	Client
I2	Further commentary on Traffic Impact Assessment	Client
J2	Review of Integrated Wildfire Management Plan (Appendix F20)	George Bergh
K2	Further comment on the revised Visual Impact Assessment	Theo Gutter
L2	Review of amended Social Impact Report	Hilda Bezuidenhout
M2	Further comment on impacts on tourism	Tertius Watney
N2	Review of Economic Impact Assessment and Property Impact Assessment in revised DESIAR	Annette Verryn