

ANNEXURE 1

SUMMARY OF SPECIFIC COMMENTS AND PROPOSALS ON THE PDAL BILL

The organisations that made inputs (written and oral) and supported the Bill in principle, highlighted a number of areas of concern on certain clauses and made proposals to which the Department responded, as outlined below.

A clause by clause summary of the written and oral submissions on PDAL Bill [B8 - 2021]

Clause/Section on Bill	Organisation(s)	Summary of submission	Department's Response
Preamble	Biowatch SA	In the second paragraph add, in the last sentence after land, add the words in bold ...land, to stem the loss of agricultural biodiversity , and to provide for food and water security;	Comment noted, however the current Preamble expresses the spirit of the Bill.
1. Definitions	Agbiz	“agricultural land.” The exclusion of land which has been excluded in terms of SALA by means of a notice in the Gazette should perhaps be reconsidered.	The definition of agricultural land has been amended from SALA with the specific intent of including all agricultural land and publicly owned land.
	Western Cape (WC) Ministry of Agriculture	“agricultural land.” Paragraph (b). Consent uses or other permissions in terms of a zoning scheme of other land use planning legislation is not provided for and may result in an overly restrictive definition. Furthermore, there will be many land units which are exempted from the provisions of SALA, but with the enactment of the PDAL Bill (and based on the current definition) will be ‘re-subjected’ to obtaining an approval.	The intent of the definition is the demarcation area of the applicability for the Bill and has no other meaning.
	Biowatch SA	“Agricultural potential”: Emphasis on productivity per unit area in time with <i>specified management inputs for a given crop</i> implies monocultural production. Assessment of other approaches to production, such as Agroecology and traditional	Comment noted, however the analysis and calculation will be conducted by officials of the Department or land owners who are capable of doing so.

		farming using polycultures that produce diverse yields (not only of food) should also be considered. Who will analyse and calculate this potential?	
Biowatch SA		“Agriculture” : Propose that non-food production (timber, biofuels, sugar) should have a lower priority than primary food production and decision making should also reflect the impacts of these non-food production forms of agriculture on other critical resources such as water and soil. There needs to be a principle reflecting a necessary and more transformative approach to a just transition of farming systems that supports more equitable access to land, and more democratic, integrated, smallscale and biodiverse production for local food security.	Comment noted, principle of equitability intends to create a balanced approach on the use of the natural agricultural land and does not regulate ownership of land within the context of this Bill.
Agbiz		“high value agricultural land.” This is a critical definition. Agbiz is of the view that the norms and standards should be directly linked to high value land.	This will be dealt with in the regulations.
Agbiz, AgriSA		Definition of “land owner” should be expanded to include other users without title deeds	Proposal will be considered.
Agbiz		“land use” refers to activities which are directly related to the land, making use of its resources, or having an impact on it. It is not clear if this corresponds to the land use zonation or whether it relates to the de facto land use? Furthermore, it is also unclear if it only considers the dominant land use while in some cases land is used for both human settlements and agriculture as is typical across many of the communal areas in South Africa	Land use is as defined in the Act. Comments noted
Eskom		“land use” : The inclusion of “having an impact on it” on the definition, makes the term unnecessarily and impractically wide. Activities may have an	The comment is noted. The inclusion of the phrase “having an impact on it” was to acknowledge that

		impact on land, but not impact or change the underlying land use. For instance, where overhead conductor is strung, normal farming activities continue.	certain land uses do have an impact on the land resources.
	Agbiz	<p>“Protected Agricultural Area”: The term ‘protected against non-agricultural land uses’ is too prescriptive as it precludes the possibility of mixed-uses or non-agricultural uses that are compatible with agriculture.</p> <p>“sustainable agriculture”: The requirement of “economically viable” goes beyond the natural resource base as it deals with management aspects which is not the purpose of this Bill and goes beyond the mandate of the Department to regulate.</p>	<p>Noted, however the intention of Protected Agricultural Areas is to prohibit non-agriculture activities that will have a direct or indirect impact to agricultural land.</p> <p>The Bill intends to preserve agricultural land for agricultural production to grow the agricultural sector. Preservation goes hand in hand with management hence optimal use is core.</p>
	WC Ministry of Agriculture	“sustainable agriculture” : definition should be amended, where relevant, to also cater for the protection of natural resources that occur on agricultural land.	The definition of sustainable agriculture covers the protection of natural resources.
	Agbiz	“viable farming unit” : The definition is acceptable, however regulations or operational guideline documents should prescribe in more detail what ‘economically viable’ is and what level of income is acceptable. It is recognised that what was regarded as economically viable when the 1970 Act was envisioned, will not necessarily still be the case.	Comment is noted. The supported land use options per each of the Protected Agricultural Areas will be addressed in the Regulations.
	Biowatch SA	“viable farming unit” : Suggest that the framing of viability also takes a longer-term approach and not only that of short-term economics, where revenue may be impacted by very variable prices resulting from global commodity trading. Viability should include the dimensions of land care and	Comment is noted and is addressed in the Bill.

		ecological viability over time, social and cultural appropriateness, and contribution to longer term food sovereignty.	
	WC Ministry of Agriculture	Suggested that throughout the Bill, the term ‘land use planning legislation’ be used as a generic term which may be defined to include SPLUMA, any provincial spatial planning and land use management acts, municipal land use planning by-laws as well as zoning schemes.	Comment is noted
2	BACF	2: Objects of the Bill need to be aligned to those of the UN’s Decade on Ecosystem Restoration: 2019 to 2030.	Comment is noted. The Bill focuses on Agricultural Production within the context of an agro-ecosystem approach that will complement the recommendations of the UN Decade on Ecosystem Restoration: 2019 to 2030.
	Agbiz	2(d): Although the sub-clause refers to norms and standards these are not elaborated on anywhere in the substantive provisions of the Bill.	Comment is noted and accepted. Norms and standards will be part of the Regulations to the Act.
	WC Ministry of Agriculture	2(d)(ii) As “agricultural use” and “non-agricultural use” are not defined in the Bill and if the terms are to be interpreted to have the same meaning as “agricultural purposes”, it is recommended that clause 2(d)(ii) be reworded as follows, so as to also cater for the protection, where relevant, of the agricultural land in its natural state (or the rehabilitation to a natural state): “(ii) discourage land use that will impact on the integrity of agro-ecosystems, or the fragmentation of the agro-ecosystems; and”.	Comment is noted, however, it is covered within the objects of the Bill and it will further be covered in the norms and standards.

3	Agbiz	3(3): It is not clear what the words “in conjunction with the application of any other law” means. What will transpire if there is in fact a clear conflict between the provisions of this law and another piece of legislation?	Intergovernmental Relations Framework Act will apply in the event of conflict.
	WC Ministry of Agriculture	3(3): Based on the broad definition of “agricultural land” and “agro-ecosystems” and the associated significant implications for the management of natural resources, it is recommended that clause 3(3) be amended to also specifically refer to NEMA, should the reference to SPLUMA be retained. It is recommended that clause 3(3) be amended to read as follows: “This Act applies in conjunction with the application of any other law, including national and provincial legislation, but not limited to, the Spatial Planning and Land Use Management Act and the National Environmental Management Act.”	Comments are noted
4	WC Ministry of Agriculture	4(1)(b)(iii): The phrase “development frameworks” is not defined, which may lead to future interpretational challenges as it will include Integrated Development Plans (IDPs) and Spatial Development Frameworks (SDFs), and as such it is suggested that the phrase be defined. Also, the phrase “development frameworks” does not include Environmental Management Frameworks (EMFs) that are important environmental planning instruments. It is recommended that the phrase “development frameworks” be replaced with “strategic planning frameworks” and that it be defined as “Spatial Development Frameworks developed in terms of SPLUMA and Environmental Management Frameworks developed in terms of NEMA, to guide the use of land and natural resources”.	The phrase “development frameworks” within the context of Clause 4(1)(b)(iii) relates to the principles of agricultural productivity.

5	BASA	5(1)(a): Agreed to, provided that the Minister will develop Regulations and that such will be subjected to a consultation process.	Comment is noted
	Agbiz	5(1)(b): The provision is agreeable provided that the classification does not automatically lead to restrictions on land use. The classification should be used to inform the proclamation of protected areas, but the regulatory restrictions should apply by virtue of their protected status and not by virtue of their classification according to capability or potential.	Comment is noted
	WC Ministry of Agriculture	5(2): In view of the fact that Agriculture is a concurrent national and provincial mandate, and this provision will have direct and significant impacts and consequences at provincial level, it is recommended that it be amended to require the concurrence of the MEC in the province in which the land is situated.	Comment not accepted
6	BACF	6(1): Proposed that after (d) before the existing (e), add, “(e) preserves, protects and expand land for the cultivation of indigenous agricultural commodities such as fruit and herbal plants; (f) recognises and respects the diversity of cultural uses of agricultural land among those who use it;”	The Bill does not prescribe the farming commodities.
	Agbiz	6(1)(e): The provincial Spatial Development Plans already include aspects related to where certain economic activities should be pursued. How will the Provincial agricultural sector plans feed into these?	Agricultural Sector informs the specific section of the Spatial Developments Plans relating to agricultural land. It is the intention to align these two mentioned planning aspects but also to elaborate within the agricultural sector plans aspects

			pertaining to the development of agricultural land, which is not addressed with the SDFs.
		6(1)(f): Agbiz suggest that the manner and form of this participation should be expanded upon in the regulations to ensure that the consultations reach the correct institutions. It may for example be difficult for a provincial department of agriculture to consult with the Department of Mineral Resources where it is a national and not provincial function, but one must make provision for this.	Comments on public participation are noted and accepted.
	Inyanda Movement	6(1)(f): Considering that many communities in the former homelands are marginalised in decisions by traditional authorities and government as their land is targeted by local and foreign investors, it is proposed that whenever plans are made to target agricultural land and resources held by communities the principle of Free, Prior and Informed Consent (FPIC) must be complied with by any interested party, including provincial government. FPIC is a principle embodied in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), giving people the right to give, deny or withdraw consent to any activity or project that may affect their ancestral lands, territories and natural resources.	Noted, the Minister will ensure that there is compliance with clause 6(1)(f).
	WC Ministry of Agriculture	6(2) requires the MEC to draft such provincial agricultural sector plans with the concurrence of the Minister. It is recommended that the reference to the concurrence of the Minister is an unnecessary administrative step as such plans are already governed by the criteria to be set by the Minister,	Comment noted. However, such plans need to be in alignment with national plans and strategic interventions, especially in relation to ensure long-term

		and Clause 8 setting the content requirements.	national food security.
8	Agbiz	8(b) should allow provincial government to also take into consideration where investment from the private sector will be rolled out.	Comment is noted.
	Biowatch SA	8(b): The assessments of what is viable agricultural land and what is the ‘optimal use’ of an agricultural area (Clause 8b) must include diverse measures of value (communal, social, spiritual, cultural, ecological, etc.) beyond economic value alone.	Factors other than economic value will be considered but provided that they do not interfere with the optimal agricultural use of the land.
	Agbiz	8(c) refers to “controls and performance criteria”. It is not clear what is intended here, as our understanding is that the Provincial Sector Plans are not regulatory instruments.	Clause 7 clearly sets out the purpose of provincial agricultural sector plans.
	WC Ministry of Agriculture	8(d): Considering that provincial agricultural sector plans are to be reviewed every 5 years, it is recommended that the implementation programmes be drafted as separate documents that can be amended on an annual basis, based on the availability of resources.	Comment is noted
9	Eskom	9: The agricultural sector plans also need to consider the national, provincial or regional spatial development framework as contemplated in Chapter 4 of SPLUMA, that have been approved.	Comment is noted
	WC Ministry of Agriculture	9(4): Considering the overlap between the PDAL Bill and NEMA in the management of natural resources (on agricultural land and being part of agro-ecosystems), it is recommended that clause 9(4) be amended to also refer to Environmental Management Frameworks. The following amendment is recommended:	Comment is noted

		“(4) The content of any applicable provincial agricultural sector plan must be taken into consideration when preparing, reviewing or amending a national, provincial or regional spatial development framework as contemplated in Chapter 4 of SPLUMA and Environmental Management Frameworks in terms of NEMA.”	
	Inyanda Movement, BACF	9 to 13 and 16 to 17: Publication of notices only in the Gazette and/or in at least two national newspapers distributed in affected area will exclude the participation of “vulnerable and disadvantaged and potential farmers” as stated in 4(f)(iii). It is proposed that such notices should be published through a variety of media including local newspapers (in the predominant local languages), social media, government websites, local radio and TV broadcasts, etc.	Comment is noted and accepted
11	WC Ministry of Agriculture	11(2)(a): The use of the word “higher” is of concern as it is comparative and implies ‘higher than something else’. The term “moderate” is also used, however, it is not connected to the relative term 'higher'.	The reference to higher in Clause 11(2)(a) is elaborated further in clauses 11(2)(a)(i)-(iv).
	Biowatch SA	11(2)(a): Propose an additional 11(2)(a)(v) to add “areas of unique agricultural biodiversity and heritage”	Comment is noted and not accepted
	Agbiz, AgriSA	11(2)(b) refers to “ food production ”. It is proposed that it should be more broadly stated, using the word “ agricultural production ” so as to include other commodities that require high value agricultural land such as fibre, animal feed, beverage inputs, etc.	Comment accepted
	WC Ministry of Agriculture	11(3): In view of the fact that Agriculture is a concurrent national and provincial mandate and the provision will have direct	Comment is noted

		and significant impacts and consequences at provincial level, it is recommended that the requirement for the approval of the Minister be amended to provide for consultation with the Minister.	
13	WC Ministry of Agriculture	13(2): In view of the fact that Agriculture is a concurrent national and provincial mandate and this provision will have direct and significant impacts and consequences at provincial level, it is recommended that the requirement for the approval of the Minister be amended to provide for consultation with the Minister.	Comment is noted
Chapter 3 (Clauses 14 – 20)	WC Ministry of Agriculture	Chapter 3 (provision for agro-ecosystem authorisations): It is recommended that an additional clause be added to this Chapter to make provision for the integration of agro-ecosystem authorisation processes with other regulatory processes. This will allow for integrated decision-making processes where appropriate. It is recommended that provision be made for a clause similar to Sections 24K and L of NEMA	Comment is noted. The details on consultations will be provided for in the Regulations. Considering that the integration can be managed within the context of each stakeholder's own legislation and skills sets.
14	Agbiz	Objectives are vague from a legal point of view. Clarity sought on factors/criteria that must be taken into consideration when making decisions?	The principle of agro-ecosystem management is introduced in the Bill. Criteria for evaluation will be included in the Regulations to the Act as it varies across different agro-ecosystems.
	Biowatch SA	14: Impact assessments should include the impact of the agricultural activities themselves, which depending on the approach, may have impacts on the climate, water use and pollution, land degradation and toxic load, etc.	Comment is noted. The Bill is however not prescriptive in terms of agricultural land uses as it is the right of the land user to decide as such. However, where

			such activity results in the degradation of the resource it will be addressed through CARA.
	BACF	14(2): To add that “Similarly, the Director-General must facilitate the activities of farmers’ organisations referred to in this Act and may assist them in giving effect to the principles and objectives of this Act.”	Comment is noted.
15	BASA	15: Adds another legislative burden to farmers without imposing obligations on the State. There should be defined timelines for the State to process and approve all agro-ecosystem authorisations. It is recommended that should the Bill be passed, the operation of clause 15 must be suspended until the State complies with section 16. Alternatively, it must be clarified that no farmer will be in contravention of the Act due to the State’s non-compliance with section 16.	Comment is noted and will be addressed in the Regulations.
	Agbiz	There are no time frames for the competent authority to deal with applications, which may lead to long delays and does not provide certainty to land owners. It proposed that applications should be dealt with in a specified time frame.	Time frames will be gazetted in the Regulations.
	Agbiz	15(3): The words “except in respect of those activities that may commence without having to obtain an agro-ecosystem authorisation” should be deleted as we believe that this should be the default not an exception. In other words, an investigation should only be required where the activity is listed.	Listed and non-listed activities will be covered within the Regulations to provide required clarity.
	WC Ministry of Agriculture	15(3): Rationale for reporting to the Minister and how it will influence the decision-making powers of a competent authority.	This provision provides for the monitoring of the effectiveness of the

		There is no clarity on how such reporting must be done. It was recommended that the phrase be deleted as there is no need for a competent authority to report to the Minister.	Bill's implementation and the amendment, where needed, of listed activities per geographic region(s). Furthermore, the processes will be expanded on in the Regulations.
	Agbiz	15(4)(f): the words "where required" should be added at the end of the sentence.	Comment noted and accepted
		15(5): Agbiz is of the view that an express provision should be made to incorporate agro-ecosystem authorisations within the EIA process where applicable to form a joint authorisation.	
	WC Ministry of Agriculture	15(5): It is recommended that the provision be amended to read as follows: "Compliance with the procedures laid down [by the Minister] in terms of this Act, does not absolve a person from complying with any other statutory requirement to obtain an authorisation from any organ of state ...".	Comment noted and accepted
15 and 16	Eskom	15 and 16: Propose that Eskom and other Organs of State delivering essential services be exempted from Sections 15 and 16 when acquiring agricultural land or portions thereof for public purposes or registering servitudes related to essential services.	The proposal for exemption is not accepted as the Bill provides for local level planning through the PAAs and Agricultural Sector plans where the construction of the relevant energy infrastructure can be addressed accordingly so that both agriculture and the energy sector can co-exists within the same geographical space.

16	BASA	16: Should already include a list of activities that require an agro-ecosystem authorisation in order for the impact of Section 15 to be fully assessed.	Comment on clause 15 and 16 are noted. The listing of activities in terms of clause 16 will be compiled by the time the Act is signed into law.
	WC Ministry of Agriculture	16: It is difficult to assess the effects of this provision without these activities being specified. It is anticipated however, that the listing of such activities, may overlap with activities provided for in other statutes such as the NEMA, SPLUMA or the National Water Act. As such, it is important to include provisions to allow for the integration of regulatory processes (i.e. to avoid the duplication of information gathering processes and the alignment/integration of decision-making processes), similar to what is provided for in SPLUMA and NEMA (Section 24K and L of NEMA).	Comment is noted and will be addressed in the applicable Regulations.
	Ministry of Forestry, Fisheries and Environment	16: To improve government efficiency and to simplify, streamline and remove duplication in decision making within government as required in the NDP, the Minister of FFE submitted the following comments on the PDAL Bill: <ul style="list-style-type: none"> ○ Support the identification of agricultural areas to ensure their protection. ○ However, does <u>not support</u> the identification of activities requiring agro-ecosystem authorisations for persons conducting activities on agricultural land as NEMA already makes provision for the identification of activities that will have a detrimental effect on the environment including agricultural land, and provide for the authorisation of these activities. ○ Further, Environmental Impact Assessment (EIA) 	<i>Not responded to</i>

		<p>Regulations (2014), Listing Notices 1 to 3 as amended, already include agricultural activities and activities to be taken on sensitive environments, which could include high potential agricultural land.</p> <ul style="list-style-type: none"> ○ If further agricultural areas or areas of agricultural sensitivity require listing, the Listing Notices can be amended to incorporate these activities or sensitive environments that would be identified by DALRRD. ○ Government Notice 320 in Government Gazette No. 43110 published on 20 March 2020 and came into effect on 09 May 2020 has a specific Protocol applying to Agriculture that ensures that as part of the EIA process, certain specialist studies are required that need to include specific report content requirements as identified in the Protocol. For all activities that could impact high potential agricultural land, an agro-ecosystem specialist assessment, which conforms to the requirements of the Protocol, must be prepared. ○ The national web-based environmental screening tool published under Government Notice No. 960 in Government Gazette No. 42561 on 05 July 2019 identifies very high, high, medium and low sensitivity agricultural land. The data provided by the screening tool includes land capabilities and field crop boundaries and is classified according to the current agricultural land classification as provided by DALRRD. It is the most up-to-date data and will be updated as and when data is available. 	
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	WC Ministry of Agriculture	<p>16(1), (2) and (3): It is recommended that the Bill be amended to also allow the MEC in respect of the Province concerned, after consultation with the Minister, to identify listed activities in a province. This will cater for specific sensitivities that may be unique to a province or specific geographical area and will provide consistency with the requirements for provincial agricultural sector plans as well as provincially declared Protected Agricultural Areas.</p>	<p>Comment is noted, however, for consistency and alignment the Minister in consultation with the MEC will be responsible for listing activities.</p>
	Agbiz	<p>16(1)(a): this should be limited to land situated within declared Protected Agricultural Areas.</p> <p>16(1)(c): the listing should only apply in designated areas which must be limited to national or provincial Protected Agricultural Areas.</p> <p>16(1)(d): clarity sought on types of activities envisioned in this sub-clause.</p>	<p>Only high potential agricultural land will be included within Protected Agricultural Areas (PAAs). Moderate and lower potential agricultural land will not be within PAAs but can still contribute towards food security, best available land, economic agricultural interventions - especially in terms of intensive agricultural production or supported agricultural infrastructure or related activities. Therefore, listed activities will also need to reference such areas that will act as buffer areas to the PAAs in order to ensure compatible land uses within such areas. Listed activities within the mentioned areas will be prescribed in Regulations.</p>
	AgriSA	<p>16(1)(c): “agricultural areas in which listed activities may be</p>	<p>Clause 35(4) provides for</p>

		excluded from agro-ecosystem authorisation by the competent authority” ought to be limited to national or provincial protected areas. Leaving the clause too broad could result in misuse.	determination of norms and standards for listing activities in terms of section 16.
	Agbiz	16(3): propose that the word jurisdiction be replaced with the following: “has an impact on activities which fall under the functional competence of another Minister as per legislation.”	
	Eskom	16(3): A number of Organs of State fall under more than one Minister, such as Eskom. Therefore, “ministers” should be added at the end of sentence.	Comment is noted
	Agbiz	16(4): Agbiz submits that the concepts will have to be unpacked in greater details so that an applicant is able to know what factors are taken into account when decisions are made.	
	WC Ministry of Agriculture	16(4) and 17: Clause 16(4) makes provision for the Minister to “compile information and maps that specify the attributes of agricultural areas and agro-ecosystems...” Provincial agricultural sector plans as well as provincially declared Protected Agricultural Areas also constitutes such information and maps. It is therefore recommended that this clause be amended to read as follows: “The Minister, or an MEC in respect of the province concerned, after consultation with the Minister, may compile information and maps that specify the attributes of agricultural areas and agro-ecosystems...”. The necessary consequential amendments should also be made in clauses 17 and 18 .	Comment is noted

	KWANALU	16-18: Regulation in South Africa is typically poorly administered, highly burdensome and has very slow turn-around times. These regulations, in this form run a significant risk of destabilising investment in what we are specifically targeting as the highest potential agricultural land.	Comment is noted and not in agreement.
17	Eskom	17(a): proposes an addition of (iii) that reads as “notify affected parties and Organs of State to submit written comments on the proposed listing within a period of at least 45 days of such notice;”	<i>The Bill does not have 17(a)(iii)</i>
19	WC Ministry of Agriculture	19: It is not clear what the purpose of sub-cause (1) is as sub-clauses (2) and (3) are clear on who the competent authority will be. It is recommended that sub-clause (1) be deleted; and also that a provision be made for the Director-General and Head of Department to reach an agreement for the change in who the competent authority could be in a specific instance.	The section is to provide for the delegation of powers related to functions and demarcations within a specific geographic region. The Minister remains responsible to identify a competent authority for areas that may not fall within clause 19(2) and 19(3).
20	BASA	20: The activities contemplated in this section must be concluded within a defined time so as not to frustrate applicants and their proposed activities, lenders and other interested or affected parties.	Comment is noted and will be addressed in the Regulations.
	Agbiz	20(1)(a)(i): Agbiz propose using “functional area of competence in terms of legislation” rather than “jurisdiction”.	Comment is noted and not accepted.
	Eskom	Section 20(1)(a)(i): When considering an application for an agro-ecosystem authorisation, a listed activity may not necessarily fall under the jurisdiction of a specific Organ of State, but may impact a specific Organ of State, such as Eskom, and thus should be	Comment is noted and accepted.

		included under section 20(1)(a)(i), especially if it may impact safety requirements under existing legislation such as the Occupational Health and Safety Act. Proposed on (i) after ‘... organ of state’, the addition of “or impacts one or more organs of state;”	
WC Ministry of Agriculture		20(1)(a)(iv) does not clearly state whose responsibility it is to facilitate the public consultation process.	Comment is noted
		20(1)(a)(v): The sub-clause should be amended to also refer to “information”, consistent with clause 16(4). Sub-clause (v) should be amended to read as follows: “any information and maps compiled in terms of section 16(4) are taken into account; and”.	Comment is noted and accepted
		20(1)(b)(ii): It is recommended that sub-clause (ii) be amended to be consistent with the internationally accepted notion of the application of the impact mitigation hierarchy and be substituted as follows: “investigation measures to avoid potential adverse consequences or impacts or, where they cannot be altogether avoided, are minimized and remedied;”.	Comment is noted
Agbiz		20(2): Agbiz proposes that in addition to keeping a record, reasons must also be provided to the applicant.	
Eskom		20(4): To ensure efficient service delivery and against the backdrop of Section 23 that seeks to monitor, evaluate and assess the performance of competent authorities in administering the legislation, an addition of 20(4) with timelines is proposed. The proposal reads as “The Minister must publish timelines to be adhered to by the Department of	<i>The current Bill does not have clause 20(4)</i>

		Agriculture by which such applications for an agro-ecosystem authorisation must be acknowledged, processed and decisions issued.”	
21	BASA	21(7): Should include persons who are disqualified from serving as a director in terms of Section 69 of the Companies Act, 2008.	Comment is accepted
	Agbiz	21(7)(a): There is no reason to exclude foreign nationals who bona fide live and work in South Africa.	Comment is not accepted
	BACF	21(2): Proposed a 4:4:1:1 split across bullet points a; b; c & d for representation in the Advisory Committee to ensure that at least two of the farmer organisations represented in (a) are from the Designated Groups as contemplated in the Black Economic Empowerment Act.	The proposed configuration of advisory committees provided for in clause 21(2) is sufficient.
21 and 22	WC Ministry of Agriculture	<p>21 and 22: The substance of the provisions of clauses 21 (appointment of advisory and technical committees) and 22 (appointment of technical and other advisors) overlap and it is hence recommended that the two clauses be consolidated into one clause.</p> <p>It is recommended that the empowering provision in clause 22(1) be inserted after clause 21(6) and clauses 21(7), (8) and (9) be amended to also refer to technical and other advisors.</p> <p>Clauses 21 and 22 must furthermore be amended to provide for MECs to similarly establish advisory and technical committees and technical and other advisors.</p>	Comments noted, clause 22 may be reconsidered.
	Minerals Council SA	21 and 22: It should expressly be provided in clauses 21(2) and (5) and 22(1) that representative of the minerals minister and of the	The required skills for the advisory committee members

		minerals and petroleum industries be members of any advisory committee and be included as technical and other advisors.	are provided for in Clause 21(2)(b).
Chapter 5 (Clauses 24-26)	WC Ministry of Agriculture	<p>Chapter 5: The proposed national agro-eco information system must consider the National Environmental Authorisation System and the National Spatial Planning Data Repository System, that are investments already in place in respect of land use management and Spatial Planning and Land Use Management related information. Further, it is crucial that the proposed national agro-eco information system be linked into the broader system of planning and information (that is Spatial Development Frameworks and Environmental Management Frameworks, etc.), and spheres of government where extensive investment in geospatial and development data is kept.</p> <p>To enable transversal and inter-governmental collaboration, it is important that the data gathered as part of the agro-eco information system is accessible and user-friendly and that the necessary arrangement/ rules are devised (such as setting clear data standards) to enable data sharing. Consider the Bill in the context of the Presidential Commission of the 4th Industrial Revolution Strategy 1, driven by the Department of Communications and Digital Technologies</p>	<p>Comment is noted</p> <p>Comment is noted</p>
	KWANALU	24: Should specify that the custodian of Agro-Eco information should be the relevant provincial Spatial Planning and Land Use Management officer.	The system will be tailor made for agro-eco information and processes, and the data collected and collated may be used by SPLUM officers in the provinces.

26	Minerals Council SA	26: Should also refer to mineral and petroleum potential, capability, sustainability, use, socio-economic information, and information concerning any holder of or applicant for, permits, permissions or rights in terms of the MPRDA	Clause 26 refers to spatial information on natural agricultural resources for the purposes of agricultural production.
	KWANALU	26: Provision of information on the land owner should not be made optional but compulsory so that it is feasible to investigate, through research, levels of inequality in as far as land ownership and management, through the agro-eco information system.	The purpose of collecting information in this Bill is for statistical purposes.
	Eskom, KWANALU	Section 26(f), (g)(ii) and (h): Some of this information may be contrary to the Protection of Personal Information Act, No. 4 of 2013 (POPIA) and needs to be reconsidered. It may be advisable to add such a rider after section 26 (h).	Comment is noted and accepted. The information will be gathered for statistical purposes and all endeavors will be made to comply with the Protection of Personal Information Act 4 of 2013 (POPIA).
	Agbiz	26(g): information per farming unit, may prove to be very onerous. 26(g)(ii) reference to nationality and gender is questioned. There is no rational connection between this information and the purpose of the Bill. It is also not that easy to obtain this information as the majority of land is registered in the name of juristic persons.	Comment is noted. The information is going to enhance decision making and statistical reporting.
27	Agbiz	27(1): Agbiz proposes that the word “any person” should be qualified by the word “affected” to ensure “locus standi”.	Comment is noted and not accepted.
	Eskom	27(3): For efficient service delivery and similarly to Section 20, the clause should specify timelines for dealing with appeals. Eskom proposed that on 27(1) after prescribed manner, to add,	Clause 27(3) is proposed that reads as “The Minister must issue a response to such an appeal within 30”

		“...within 30 days of such authorisation being issued.”	
27 and 28	WC Ministry of Agriculture	27 and 28: MECs are competent authorities under the Bill (clauses 19 and 20). However, provision is only made for appeals to be lodged with “the Minister”.	MECs are not competent authorities in terms of the Bill. Appeal is to be lodged with the Minister.
27-30	BASA	27-30: The appeal process contemplated in these sections must be concluded within a defined time so as not to frustrate the appellant.	Comment noted and will be addressed in the Regulations
28	Minerals Council SA	28: Minerals Council submits that clause 28(2) should provide that when the appeal relates to mining, a member appointed by the Agriculture Minister to the Appeal Board should have knowledge of mining.	Clause 28(2)(a) provides for a person with knowledge in the relevant fields of law, therefore mining is included.
28-31	Eskom	28-31: Timelines should be specified.	Timelines and other related procedural matters will be addressed in the Regulations.
28	Biowatch SA	28(2): The Advisory Appeal panel contemplated in clause 28(2) must include a person with expert knowledge in ecology with respect to agro-ecosystems.	<i>Clause 28(2)(a) provides for a person with knowledge in the relevant fields of law, therefore mining is included.</i>
31	Agbiz, AgriSA, KWANALU	Stakeholders registered serious reservations about clause 31 noting that it is unacceptable that the search and seizure powers provided for, make provision for the same level of invasiveness and violation of privacy and dignity when an official is investigating a crime vis-à-vis determining compliance with a provision which does not constitute a crime.	Comment is noted and notice may be considered in respect of clause 31(3)(a)
		Major concerns were in respect of sub-clauses 31(3)(a) and 31(3)(g) , stakeholders highlighting that compliance inspectors cannot have powers	Clause 31(6) provides for access to a private dwelling without notice subject to a search

		that exceed those of the SAPS, which must first obtain a search warrant or enter and seize without a search warrant only where there is a reasonable suspicion that a warrant would be obtained and where the delay in obtaining such a warrant would defeat the object of the search. It was proposed that upon suspicion of non-compliance, a search and seizure warrant should be obtained only if an appointment is not agreed upon and there is reasonable suspicion.	warrant by the magistrate court or the high court.
	BASA	31(3)(a): An amendment must be made that all physical inspections must be made with reasonable notice to the owner of the relevant agricultural land. This is for the protection of the persons on the agricultural land and the inspector.	Comment noted and notice may be considered in respect of clause 31(3)(a).
	Eskom	31(3): Reasonable notice is required for the purposes of safety to ascertain if the inspector can legally request access as some areas are restricted and to avoid infringing on other legislation in respect of paperwork, information, etc. For example, some Environmental law requires that certain documents must be on site, and thus, can't be removed. Eskom proposed that on 31(3) after subsection (6) to add, "may only as relevant legislation allows –"	Comment noted and accepted
	KWANALU	31(3)(f) and (g): Outside of a warrant for removal, there is no legal reason that this clause (3)(f) could remain in effect as it is. A receipt as outlined in Clause 31(5) is insufficient to guarantee such assets. 31(3)(g) is unacceptably broad and empowers the inspection officer as a detective, the court and the police. It is unacceptable in its current form and the information removed may	Clauses 31(3)(f) & (g) are to ensure that evidence is not tempered with and will be applied on a case by case basis.

		constitute the very fabric of a private business or may be personal information.	
	BASA	31(5): It must be clarified that the State remains liable for any damage, destruction or loss of any article, substance, plant, machinery, book, record or other document that is removed or seized from the agricultural land during an inspection.	<i>Not responded to</i>
	KWANALU	31(5) is too broad and should specify a time frame by when machinery or other assets that have been ‘removed’ will be returned.	Each case will be handled according to its own merits.
		31(8) is important and true, and should be the spirit of Clause 31, not an ‘add-on’ to attempt to redeem otherwise abusive powers.	Comment is noted.
		The principle of preservation of Agricultural Land is crucial, however the mechanism for realistically applying this Bill in practice requires significant further work.	Comment is noted.
32	Eskom	32: No provision in the Contravention directives to allow for a land owner or land rights holder to comment or oppose a directive prior to it being issued, should it be issued in error and work has to continue. If the Directive is issued in error, there is no recourse for the land owner or right holder who might incur losses as a result of inactivity. Eskom proposes that on 32(1), after ‘under this Act,’ and before ‘the competent authority’, an addition of “after having obtained comment from that person,”	Comment is noted. Clause 32 does not provide for engagement prior to directives being issued. In practice, however, with the implementation of CARA, the officials engage with the land owner or land user prior to issuing directive in terms of that legislation.
33	Agbiz	The clause should be distinguished from clause 31 and the authority should attempt to get an appointment, failing which a court order should be sought.	Comment is noted

	AgriSA	<p>Clause 33 only deals with an investigation and information gathering. It is proposed a request for an appointment be required and only if that is declined may the official request a search warrant.</p>	<p>Clause 31 of the Bill provides for compliance and inspection which will cater for monitoring and compliance for land users.</p>
		<p>The mechanisms used in the Expropriation Bill ought to be considered as an alternative process to avoid unconstitutionality.</p>	<p>Clause 31(6) provides for access to a private dwelling without notice subject to a search warrant by the magistrate or high court.</p>
35	WC Ministry of Agriculture	<p>35(1)(e)(v): Clause 35(4) makes provision for the content of, and the procedure to be undertaken before norms and standards are issued. Clarity must be provided on the need for laying down the procedures to be “followed for the preparation, evaluation and adoption” of norms and standards in clause 35(1)(e) in light of the content of clause 35(4).</p>	<p>The Regulations will expand further on the procedures to be followed.</p>
		<p>Various provisions in the Bill make provision for MECs to compile guidelines, standards and procedures (e.g. clause 10). However, clause 35 does not enable the MECs to do so.</p>	<p>MECs will be consulted in the development of norms and standards.</p>
		<p>Draft regulations must be made available for consideration prior to the passing of the Bill and the final regulations should be issued simultaneously with the commencement of the Bill.</p>	<p>Comment is noted.</p>
	Agbiz	<p>The Bill should distinguish between areas which the Minister may make regulations on and those over which he or she must make regulations. Agbiz proposed that clauses 1(b), (c)(i) to (iii), (g), (h), (3) and (5) should all read “must”.</p>	<p>Comment is noted. The drafting of Regulations is imperative for operationalisation of the Act.</p>

		<p>35(2): Agbiz is not in favour of creating crimes via regulation.</p> <p>35(3): should not be in this section but under the section which deals with norms and standards.</p> <p>35(4)(a): Norms and Standards are regulatory instruments which work in conjunction with authorisation based on listed activities. This provision should be deleted as it confuses the two regulatory instruments.</p>	
		<p>35(4)(c): should only apply within protected areas.</p>	
	Minerals Council SA	<p>35(4)(d) and (5) should provide that the process of developing norms and standards, and the making of regulations, should be in consultation with the Minerals Minister, i.e. that such process and such making should include notice to, consultation with, and the concurrence of, the Minerals Minister.</p>	<p>The norms and standards will be published for public comments in the gazette.</p>
36	Agbiz	<p>36(a): Agbiz disagrees as it believes that there should not be restrictions in addition to listed activities and norms and standards.</p>	<p>Comment is noted and not accepted</p>
	Agbiz; AgriSA	<p>36(c) is not practical. The authorisation should be revoked rather than criminalising non-compliance.</p>	<p>Comment not accepted.</p>
	Agbiz	<p>36(d): proposes that whenever a listed activity is commenced without authorisation or a norm and standard contravened, the first option should be a directive and only if the directive is disobeyed should you be subject to the criminal sanction.</p> <p>36(i) is too vague.</p>	<p>Comment is noted and not accepted.</p>

37	Agbiz	37(2)(a): Agbiz submit that this is not a penalty for criminal offences and should rather be worded in the form of an administrative penalty.	Comment is noted and not accepted.
		37(3): The penalty is excessive.	
		37(3) and (4), it does not make sense that a repeat offence justifies a less onerous penalty than an offence in the first instance.	The intention is to deter at the very first instance.
	AgriSA	37(2)(a) & (b) limits the courts' discretion regarding penalties and these could rather be inserted as administrative penalties and enable the courts to make any order that would be just and equitable in the circumstances.	Comment is not accepted
Schedule	WC Ministry of Agriculture	Schedule: The proposed insertion of Section 1A (2) in the Subdivision of Agricultural Land Repeal Act, 1998, relates to transitional arrangements and provides that “any consent granted or deemed to have been granted...” in terms of SALA, “remains valid for the specified period or if not specified, for a period of five years from the date of the commencement of this Act”. However, the provision does not explicitly state that an existing approval lapses if it has not been implemented within five years.	The consent would lapse within the period specified by operation of law.
Additional Proposals	WC Ministry of Agriculture	Consideration should be given to the inclusion of a “duty of care and remediation of agro-ecosystem damage” provision similar to what is included in section 28 NEMA. This places the onus on all individuals to consider their duty of care responsibility and provides scope for competent authorities to issue directives in cases where a lack of action results in harm to the agro-ecosystem.	Comment is noted

	Geological Society of South Africa	Suggests that the Bill be modified to include specific clauses providing exemptions for prospecting, mining, exploration, production, mineral/petroleum processing and related or incidental operations. These exemptions should include permits already granted and those to be granted in the future in terms of the Mineral and Petroleum Resources Development Act, (MPRDA), 2002.	The recommendation is not in line with the objects of this Bill.
	Inyanda Movement	Recommend that the PDAL Bill includes support for other agriculture methods of production – specifically agroecology – and compliance with the recommendations of the UN Rapporteur on Toxics and Human Rights’ report that has been submitted to the South African Government in August 2023, for the government to immediately ensure the safe destruction of existing stockpiles of hazardous pesticides.	Comment noted, the production systems will clearly be articulated by the agro-ecosystem sector plans.
	Inyanda Movement	Recommends that agroecological farming leaders should be included in contributing to the definition of provincial agricultural sector plans.	Comment is noted and not accepted.