

THREATENED BIODIVERSITY, THE NEMA EIA REGULATIONS AND  
CULTIVATION OF VIRGIN LAND:  
MORE OF THE SORRY SAME?

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Summary

The environmental impact assessment (EIA) regulations published in terms of the National Environmental Management Act 107 of 1998 (NEMA) have extended an unprecedented degree of environmental oversight into the domain of agricultural decision-making. However, threatened Cape flora occurring in remnants of less than three hectares in extent will be denied such protection pending their incorporation in a national list of threatened ecosystems. Until such listing, unresolved legal questions that inhibited the effective consideration of biodiversity in agricultural decision-making prior to the promulgation of the NEMA EIA regulations are likely to persist—to the detriment of a globally imperilled biodiversity. This contribution sets out to identify some of the key issues that inhibited mainstreaming of biodiversity in agri-environmental decision-making in the Western Cape. It also attempts to show that the NEMA EIA dispensation has inherited some problems in respect of cultivation that would result in the transformation or removal of less than three hectares of vegetation in Critically Endangered and Endangered ecosystems—which, until listed in terms of biodiversity law, will have no legal protection. Lastly, the contribution provides an analysis of, and suggest a number of options for ensuring that biodiversity is given its appropriate due in the issuing of cultivation permits that otherwise may contribute to the further degradation and loss of some of the most threatened elements of the globally unique Cape flora.

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