

Implications of the Coastal Management Bill

Our coastal zones are one of South Africa's most valuable assets, containing a wealth of ecological habitats; diverse marine resources; and while sustaining the livelihoods of local communities, its diverse landscape is among the most beautiful in the world. In the past this national resource has not been afforded adequate protection or managed in a sustainable manner. The approach to coastal zone management has been reflected in uncoordinated policies and inequitable and outdated legislation. It is estimated that the direct benefits derived from coastal resources is approximately R168 billion annually, about 35% of South Africa's GDP, however these benefits have not been equitably developed and a wide range of environmental and social issues, such as habitat destruction, loss of biodiversity, pollution and social deprivation have not been adequately addressed.

The Integrated Coastal Management Bill (the Bill) was gazetted on 14 December 2006 (GN R 1829) and has been released for public comment. The Bill aims to provide the legal basis for integrated management and preservation of coastal resources and give effect to the White Paper for Sustainable Coastal Development in South Africa of April 2000. When promulgated, the Bill will repeal the 1935 Sea-shore Act and the 1980 Dumping at Sea Act in their entirety. It has far-reaching implications and seeks to ensure that all resources are managed in a sustainable manner that will benefit the interests of the whole community by ensuring equitable access to coastal resources and in respect of future generations. The Bill's stated objective is the fulfilling the State's duties in terms of section 24 of the Constitution, whilst giving effect to South Africa's international obligations regarding coastal management.

Towards this end, the Bill empowers the State to extend coastal public property in order to improve public access to the sea-shore or protect sensitive coastal ecosystems. Any State owned land may be declared as "coastal public property" and the State may acquire private land for this purpose. In terms of section 9, the Minister may purchase, exchange or expropriate any private land for the purpose of declaring that land as "coastal public property", thereby enforcing the general public's right to enjoy access to beaches, which has been impeded by many exclusive developments in certain areas. In terms of section 11, ownership of "coastal public property" is inalienable and can no longer be sold or acquired and is to be kept in trust for the benefit of present and future generations.

The Bill also provides for new innovative measures to protect the coast such as the establishment of "buffer zones", in an effort to stem the tide against inappropriate developments that are currently mushrooming along coastal zones and which endanger the natural character of coastal landscapes. The "buffer zones" also aim to protect the ecological integrity, as well as protecting people and property against rising sea levels. "Buffer zones" are defined as, *inter alia* "any land which falls within an area declared to be a sensitive coastal area in

terms of the Environment Conservation Act No. 73 of 1989; any coastal protected area which is not coastal public property and any land which when the Act takes effect, is part of a land unit that has been zoned for residential, commercial or industrial use and is situated within 100 meters inland from the high water mark". No activity listed in Schedule 3 of the Bill or any development that involves such a listed activity may be undertaken unless a "coastal use permit" has been granted in terms of section 64. Activities incorporated in Schedule 3 include: the erection, construction, placing or any significant alteration or extension of a building or structure; the clearing of indigenous vegetation other than cultivated indigenous vegetation and the draining or reclaiming of any coastal wetland. The State's power to preserve the aesthetic value of the coastal zone is boosted by the provision for the establishment of "coastal set-back lines", which allows the MEC to prohibit or restrict the building or extension of structures which are wholly or partially seaward of the designated set-back line. The Bill also provides for stricter controls over illegally constructed structures in the coastal zones such as jetties, houses and retaining walls. The Minister is empowered to take measures to stop or mitigate any adverse effects, by issuing notices for the repair or removal of structures within the coastal zone. Failure to comply may result in the Minister or MEC authorising the required action to be carried out and recovering costs from the responsible person.

A welcome addition to the Bill is the provision for improved estuarine management, which is currently not dealt with in the Sea-shore Act. In terms of the Bill, an over-arching national estuarine management protocol will be established to ensure that estuaries are managed in a coordinated and standardised manner and that minimum requirements for estuarine management plans, for individual estuaries, are provided.

The Bill also provides for greater controls over marine pollution, in line with South Africa's international obligations. It is estimated that pollution from land based sources accounts for approximately 80% of marine pollution in South Africa and that there are over 80 marine outfall pipes along the South African Coast. The Bill proposes to tighten control, by introducing a permitting system for activities causing adverse effects to the marine environment, including discharges via sea outfall pipes. In terms of section 63 a permit must be obtained for the disposal of solid waste, rubble, unprocessed sewage or any other effluent that is likely to cause adverse effects, unless the operation is authorised by the Minister by way of a general authorisation under section 74. The permitting system has the potential to control discharge via outfall pipes, which should no longer prove to be a cheap and convenient disposal method of industrial effluent and raw sewerage.

One of the problems facing ecological and sustainable coastal planning is the uncoordinated application of disjointed coastal management plans and policies, within the relevant spheres of government. The Bill aims to remedy this fragmented approach by creating a comprehensive integrated system. Curiously,

the preparation and adoption of a national coastal management programme (CMP) must take place within six years of the Act taking effect, whilst coastal provinces and municipalities have four years in which to adopt a provincial or municipal CMP. It could be argued that the process would have benefited from the adoption of a single national plan first to set the standard and to guide the provinces and municipalities. However, to ensure consistency, the Bill does provide for a review mechanism to prevent conflict between provincial and municipal CMPs and the national CMP. Although, several draft CMPs are already in place, as part of integrated development plans (IDPs) adopted in accordance with the Municipal Systems Act No. 32 of 2000, the enactment of the Bill will undoubtedly improve management of coastal resources as it provides for improved enforcement procedures.

In conclusion, the Bill provides a progressive legislative framework that emphasizes the importance of ecological protection and equitable access to marine resources in line with section 24 of the Constitution. The important role of coastal municipalities in administration and monitoring of coastal zones is acknowledged within an integrated system of coastal management that seeks to preserve the integrity of the South African coastline. It is very likely that certain of the measures described in the Bill will impact on property rights protected in terms of section 25 of the Constitution which *inter alia* provides that property may be expropriated only in terms of a law of general application for a public purpose or in the public interest; and is subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court. If the Bill does impact on property rights and section 25 of the Constitution is used in defence of such rights, then it will be interesting to see how a court will balance these two competing interests.

Article by Melissa Basterfield, an environmental legal consultant with IMBEWU Enviro-Legal Specialists (Pty) Ltd and Warburton Attorneys specialising in environmental law.

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