IPHALAMENDE LAKWAZULU-NATALI KWAZULU-NATAL PROVINSIALE PARLEMENT

KWAZULU-NATAL PROVINCIAL PARLIAMENT

NEGOTIATING MANDATE

TO: HON AND QIKANI
CHAIRPERSON OF SELECT COMMITTEE ON LAND AND ENVIRONMENTAL AFFAIRS

NAME OF BILL: NATIONAL ENVIRONMENTAL MANAGEMENT: INTEGRATED COASTAL MANAGEMENT BILL

NUMBER OF BILL: B8B – 2013

DATE OF DELIBERATION: FRIDAY, 14 FEBRUARY 2014

VOTE OF THE LEGISLATURE:
The Portfolio Committee on Conservation & Environmental Affairs met today, Friday, the 14th of February 2014 to consider the National Environmental Management: Integrated Coastal Management Bill [B8B-2013].

The following comments and amendments were proposed and considered on the Bill and are attached hereto as Annexure A.

The Committee agreed to mandate the KwaZulu-Natal delegation to the National Council of Provinces to support the Bill provided that the above comments and proposed amendments are considered and consolidated in the Bill.

.....
HON A SINGH
CHAIRPERSON: PORTFOLIO COMMITTEE
FOR CONSERVATION & ENVIRONMENTAL AFFAIRS

14/2/2014
DATE

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Annexure A

Clause 1

1(n) "Estuary" has already been defined, i.e. in the EIA Regulations, 2010 (LN3, GNR. 546). It is suggested that the existing definition be considered. As per LN3, GNR.546, "estuary" means "the estuarine functional zone as defined in the National Estuaries Layer, available from the South African National Biodiversity Institute's BGIS website (http://bgis.sanbi.org).

1(q) "high water-mark" - What is regarded as "abnormal or exceptional weather or sea conditions"? In the absence of a benchmark, implementation challenges will arise. It is proposed that a reasonable alternative should be provided for what is an exceptional or abnormal weather or sea condition, on the assumption that "once in ten years" is problematic and therefore has been deleted.

The relationship between the proposed definition and the existing (historically surveyed) SG-determined HWM needs to be clarified, with specific reference to which "HWM" informs [fixed] property boundaries and EIA sea-based activity triggers (i.e. 100m from the HWM) respectively. KZN's implementation experience suggests these two "HWMs" are often distinctly separate – i.e. one is historical and tied to title deed, while the latter is informed by a more recent physical determination. Needless to say, this creates confusion for the layman.

It is proposed that one authority (the Surveyor-General) should determine "high water-mark"

Further, it must be made clear that high water mark is important for long term protection of physical environment and access to and recreational use of coastal public property.

Clause 6 amending section 7B

Clarity is requested on the precedence of the Infrastructure Development Bill [B49-2013] in relations to Integrated Coastal Management Bill and the provisions regarding reclaiming land for state infrastructure. In KZN railway line and other infrastructure owned by Transnet falls within the coastal line.

Clause 6 amending section 7C

Insert requirements of section 53 of the principal Act requiring public participation to conform to those defined in the EIA Regulations.

Clause 9(b) amending section 13

Municipalities have recourse to charge fees/tariffs in terms of "cost recovery" for services provided in the coastal zone, e.g. a launch fee at boat launch sites, which includes cost recovery for use of a tractor to launch a vessel, boat-washing facilities etc. In many instances, municipalities then have agreements in place with boat clubs to manage such facilities on their behalf, and these charge cost recovery (launch) fees. Where such tariffs for cost recovery are not regulated (or a maximum fee not determined/stipulated), it could impact on access as in effect persons may not be able to launch a vessel at a site if the launch fee determined is too high. Resultantly, there could be a loophole here as unreasonable "cost recovery" tariffs may hinder public access. In KZN, there is much inconsistency across the coast on what a "reasonable" cost recovery fee is for different activities and this has impacted on access for some users, specifically at boat launch sites.

Cost recovery' and 'access' can be interconnected, and the former also needs improved regulation, albeit this may have to be dealt with outside of the NEMA amendment process.

Clause 10 amending section 14

Provision must be made for proper and effective public participation when any boundary is determined. In addition, the provincial coastal committee and the provincial department responsible for environmental affairs must consent to any such determination.

10 (d) Is it implied that the owner loses ownership of immovable structures/property built on that coastal land unit or portion of it in the event of any erosion, sea-level rise or other causes.

In the absence of a reference point, how does one effect this provision? Moreover, many processes in the littoral active zone are cyclical or periodic (i.e. loss of sand in one season followed by nourishment in the next).

Clause 11 amending section 15

Having dealt with a number of coastal erosion "emergencies" recently in KZN, neither the Act nor "any other SEMA" adequately deals with private property owners preventing erosion by placing structures on CPP or land adjacent to CPP. Unless the authorities know "what other law/s" there are for dealing with such matters, this section is vague and therefore challenging to implement. Some municipalities in KZN have proposed to deal with these matters through encroachment agreements, but this needs to be clarified in terms of whether such agreements are in the spirit of the ICM Act, as well as what unintended consequences could occur as a result of such agreements being concluded.

of the organisations/departments in question who play a significant role in undertaking or regulating activities that may have an adverse effect on the coastal environment.

Section 37 (1) (b) that is proposed for deletion must be retained.

Clause 30(e) amending section 59

Section 59 (e) provides for protections of rights of access to, use and enjoy coastal public property by natural persons against activities however such activity must be having or likely to have an adverse effect on the rights of natural persons. The proposed definition of adverse effect is that it "means any actual, potential or cumulative impact on the environment that impairs or may impair, the environment or any aspect of it to an extent that it is more trivial or insignificant.

The current definition of "adverse effect" includes any actual or potential impact on the environment that results in – (a) detrimental effect on the health or well-being of a person; (b) an impairment of the ability of any person or community to provide for their health, safety or social and economic needs; or .... These paragraphs provide some light as to what would be an adverse effect on the rights of natural persons to access, to and enjoy coastal public property.

With the proposed amendment to "adverse effect" it is not clear if any aspect of the environment, "that is more than trivial or insignificant", covers the health or well-being of a person and provision of their health, safety or socio-economic needs

It is proposed that the possible effects to the rights of natural persons to access to, use and enjoy coastal public property be clarified or non-exhaustive list be provided.

The other alternative would be to amend the proposed definition of **"adverse effect"** to include possible effects that may be adverse to rights of natural persons to access to use and enjoy coastal public property, as the current definition.

Clause 39 amending section 68

Section 68 (7) refers to factors referred to in subsections (1), (4), (5) and (6). It is not clear from the Bill as to what factors are in subsection (5).

It is recommended that a paragraph providing for the consideration of the written representations made, as requested in terms of section 68 (2) be inserted and then that can be a factor for reference under subsection (7).

Clause 48 (b) amending section 84

The proposed addition of subsection (3) is the power/function of the Minister whereas section 84's heading is "regulations by MEC".

It is proposed that the proposed subsection be added in section 83 of the Act.

Clause 58 amending section 95

Does this section imply that existing leases issued by the Provinces in terms of Seashore Act assignments (No. R. 27, 1995) will now require a coastal use permit from the Minister within a period of 180 days of the publication of the notice listing such activities? Should this be the case, the implication is that revenue received from such a permit would then go to the National Department [as opposed to the current leases where such monies are paid to the Province].

Guidance and clarity is needed on how the Province should negotiate current [and future] leases in terms of the existing Seashore Act assignment. Moreover, the Province must also be engaged on any likely loss of revenue to be faced by the KZN Department of Agriculture and Environmental Affairs through the proposed coastal use permit system.

Additional comment from the provincial Department of Agriculture and Environmental Affairs

According to section 60(1) of the Act, the Minister or MEC, may issue a written repair or removal notice to any person responsible for a structure on or within the coastal zone if that structure—
(a) is having or is likely to have an adverse effect on the coastal environment by virtue of its existence, because of its condition or because it has been abandoned; or
(b) has been erected, constructed or upgraded in contravention of this Act or any other law.

The Province has attempted to implement this provision (i.e. removal notice) in relation to the construction of a structure that was "erected historically, in Admiralty Reserve, in contravention of another law". The National Department of Environmental Affairs advised the Provincial Department that removal notices were not intended to deal with such matters as adverse effect, in this case, could not be proved. However, the word "or" implies that removal notices can be issued when dealing with such matters - the structure in question had no town planning approval and was built in Admiralty Reserve without approval from the Department of Public Works.

On a [KZN] coastline where there are hundreds of historically (pre ICMA)-built structures encroaching Admiralty Reserve/ municipal land, constructed illegally but where no adverse effect can be shown, there is uncertainty on how to deal with such structures given the feedback received from National Department of Environmental Affairs. Do municipalities or the Department of Public Works deal with such issues as non-compliance in terms of their respective mandates or can the MEC take this responsibility over (as prescribed in legislation, i.e. "in contravention of this Act or any other law")?

An interpretation of section 60(1) of the ICMA which deprives the State powers to issue a removal order to a responsible person regarding the erection or construction of a structure which, notwithstanding the fact that such erection or construction occurred before the commencement of the ICMA, is located on or within the coastal zone in a manner which contravenes the ICMA or any other law would render the obligations of the State meaningless. In fact, such an interpretation would grant to relevant persons rights and expectations which they do not have.

CONCLUSION

Having considered all the above proposals and the fact that some of the comments above propose amendments to the National Environmental Management: Integrated Coastal Management Act, 2008, the Committee met on 14 February 2014 and agreed to support the Bill subject to all proposed amendments above being considered for incorporation in the final version of the Bill.

The Committee also confers authority on the provincial delegation to the NCOP to support the Bill with the proposed amendments. Negotiating mandate is attached as Annexure "A" of the report.

HON A SINGH
CHAIRPERSON: CONSERVATION AND ENVIRONMENTAL AFFAIRS PORTFOLIO COMMITTEE