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The Leader of Government Business  
The Honourable B. Mbete

Dear Honourable Deputy President

**REQUEST FOR TABLING OF MATTER REGARDING THE INTEGRATED COASTAL  
MANAGEMENT BILL**

The NEMA: Integrated Coastal Management Bill ("the ICM Bill") has been adopted in Parliament and signature and assent by the President is currently pending. Your kind assistance is requested in tabling a decision in Parliament which is to come into effect simultaneously with the ICM Bill.

**Background**

1. Transnet and the Department of Public Enterprises have been engaged in discussions with my Department on the potential impact of the ICM Bill on port operations. The ICM Bill provides for a novel concept in the Act known as "coastal public property" which, in terms of sections 11 and 12 respectively of the ICM Act, cannot be owned and is held in trust by the State on behalf of the citizens of South Africa. In general terms, coastal public property consists of the sea and seashore below the high water mark and thus incorporates all of South Africa's port areas.
2. This inclusion of port areas as part of coastal public property could potentially affect the operations of the Transnet National Ports Authority (TNPA) as the management authority currently responsible for the operation of South Africa's ports, specifically with regard to long term leases which the TNPA enter into to fund port infrastructure and which serve as security for long term financial loans as outlined above. In addition, Transnet indicated that its capital investment programme of R80 billion (over a five year period), is creating freight transport capacity to meet the demands of the South African economy. In this respect, it is a critical and strategic role player in initiatives to improve the competitiveness of the South African economy.
3. Clause 65 and 66 respectively of the ICM Bill provide for the conclusion of leases within coastal public property up to a maximum of 20 years. Since many of the long term leases entered into by the TNPA are for significantly longer periods, the limited time period for coastal leases may have a negative effect on port operations and restrict the TNPA's ability to manage

and fund port development and infrastructure such as the R80 billion capital investment programme mentioned above.

4. Clause 27 of the ICM Act provides two options for exclusions from coastal public property. In terms of clause 27(2), I may exclude any area from coastal public property by proclamation if it is for 'government purposes'. Ordinarily the management of ports would be considered to be for 'government purposes'. However the definition of 'government purposes' is restrictive in that it excludes leases concluded for more than 20 years. The relevant part of the definition reads as follows:

*"government purposes" means the exercise of functions by an organ of state that are in the national interest or in the interest of national security, but does not include donation, leases of more than 20 years or alienation by that organ of State;"*

5. Clause 27(4) however empowers me to exclude an area from coastal public property for "any other purpose" subject to ratification by Parliament. This section does not impose the same limitations as section 27(2) and would therefore allow the TNPA to enter into long term leases within port areas to support port infrastructure and development.
6. Transnet has in the interim applied to exclude confined port areas from coastal public property in terms of section 27(4) of the ICM Bill pending the passing of the Bill into law. In terms of the National Ports Act, 2005 (Act No. 12 of 2005), the port areas delineated in the legislation commonly referred to as the "reserved port areas" extend beyond the current boundaries of operational ports and cover a significant area of sea and seashore, some of which include sensitive coastal eco-systems. It is for this reason, and having regard to the objectives of the ICM Bill, that Transnet was requested to submit maps and co-ordinates for the confined port areas. As such, this application for the exclusion of port areas from coastal public property is confined to the current operational port areas, while the remaining "reserved port areas" will continue to be coastal public property and subject to the relevant restrictive and protective provisions of the ICM Act. The exclusion of the confined port areas from coastal public property would not negate the application of other provisions of the ICM Bill as well as other environmental legislation, relating to for example, environmental impact assessments (EIAs), dumping and dredging permits, and so forth to these excluded areas.
7. It is imperative that the process be initiated immediately so as to take effect as soon as the Bill becomes an Act. If the Bill comes into force and the relevant ports are not excluded, the TNPA may be at risk of being unable to secure funding for essential port developments due to the unacceptable risks and uncertainty created by the provisions of the ICM Bill pertaining to the rights and powers of the TNPA. There is also the risk of it having current loans being called up. It is for this reason that I have undertaken to facilitate commencement of the ICM Bill / Act simultaneously with the ratification of my decision to exclude the confined ports from coastal public property.

#### REQUEST

8. For the above reasons it is requested that you kindly table the attached decision in Parliament to enable the Parliamentary Committees to commence discussions and

prepare the groundwork to enable the decision to be ratified simultaneously with the coming into effect of the Bill. The ICM Bill is an essential and long-awaited law and the delays in facilitating the process next year could compromise the Department and cause much public outcry.

- 9 Due to Parliament's current programme, it would be prudent to ratify this request as soon as possible and I accordingly appeal to you for your assistance in tabling the matter urgently so as to expedite the process.

Yours faithfully

**MARTHINUS VAN SCHALKWYK**  
**MINISTER OF ENVIRONMENTAL AFFAIRS AND TOURISM**  
18/11/2008

Mrs G Mahlangu Nkabinde MP  
Speaker of the National Assembly  
P O Box 15  
**CAPE TOWN**  
8000

Dear Honourable Mrs Mahlangu Nkabinde MP

**REQUEST FOR TABLING OF MATTER REGARDING THE INTEGRATED COASTAL  
MANAGEMENT BILL**

The NEMA: Integrated Coastal Management Bill ("the ICM Bill") has been adopted in Parliament and signature and assent by the President is currently pending. Your kind assistance is requested in tabling a decision in the National Assembly, which is to come into effect simultaneously with the commencement of the ICM Bill.

**Background**

1. Transnet Ltd and the Department of Public Enterprises have been engaged in discussions with my Department on the potential impact of the ICM Bill on port operations. The ICM Bill provides for a novel concept in the Bill known as "coastal public property" which, in terms of sections 11 and 12 respectively of the ICM bill, cannot be owned and is held in trust by the State on behalf of the citizens of South Africa. In general terms, coastal public property consists of the sea and seashore below the high water mark and thus incorporates all of South Africa's port areas.
2. This inclusion of port areas as part of coastal public property could potentially affect the operations of the Transnet National Ports Authority (TNPA) as the management authority currently responsible for the operation of South Africa's ports, specifically with regard to long term leases which the TNPA enter into to fund port infrastructure and which serve as security for long term financial loans as outlined above. In addition, TNPA indicated that its capital investment programme of R80 billion (over a five year period), is creating freight transport capacity to meet the demands of the South African economy. In this respect, it is a critical and strategic role player in initiatives to improve the competitiveness of the South African economy.

3. Clause 65 and 66 respectively of the ICM Bill provide for the conclusion of leases within coastal public property up to a maximum of 20 years. Since many of the long term leases entered into by the TNPA are for significantly longer periods, the limited time period for coastal leases may have a negative effect on port operations and restrict the TNPA's ability to manage and fund port development and infrastructure such as the R80 billion capital investment programme mentioned above.
4. Clause 27 of the ICM bill provides two options for exclusions from coastal public property. In terms of clause 27(2), I may exclude any area from coastal public property by proclamation if it is for 'government purposes'. Ordinarily the management of ports would be considered to be for 'government purposes'. However the definition of 'government purposes' is restrictive in that it excludes leases concluded for more than 20 years. The relevant part of the definition reads as follows:

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7. It is imperative that the process be initiated immediately so as to take effect as soon as the Bill becomes an Act. If the Bill comes into force and the relevant ports are not excluded, the TNPA may be at risk of being unable to secure funding for essential port developments due to the unacceptable risks and uncertainty created by the provisions of the ICM Bill pertaining to the rights and powers of the TNPA. There is also the risk of it having current loans being called up. It is for this reason that I have undertaken to facilitate commencement of the ICM Bill / Act simultaneously with the ratification of my decision to exclude the confined ports from coastal public property.

## REQUEST

- 8 For the above reasons it is requested that you kindly table the attached decision in the National Assembly to enable the Portfolio Committee to commence discussions and prepare the groundwork to enable the decision to be ratified simultaneously with the coming into effect of the Bill. The ICM Bill is an essential and long-awaited law and the delays in facilitating the process next year could compromise the Department and cause much public outcry.
- 9 Due to Parliament's current programme, it would be prudent to ratify this request as soon as possible and I accordingly appeal to you for your assistance in tabling the matter urgently so as to expedite the process.

Kind regards

MARTHINUS VAN SCHALKWYK, MP  
MINISTER OF ENVIRONMENTAL AFFAIRS AND TOURISM  
DATE:

Mr M J Mahlangu MP  
The Presiding Officer  
National Council of Provinces  
Parliament of the Republic of South Africa  
P O Box 15  
**CAPE TOWN**  
8000

Dear Honourable Mr Mahlangu MP

**REQUEST FOR TABLING OF MATTER REGARDING THE INTEGRATED COASTAL  
MANAGEMENT BILL**

The NEMA: Integrated Coastal Management Bill ("the ICM Bill") has been adopted in Parliament and signature and assent by the President is currently pending. Your kind assistance is requested in tabling a decision in the National Council of Provinces, which is to come into effect simultaneously with the commencement of the ICM Bill.

**Background**

1. Transnet Ltd and the Department of Public Enterprises have been engaged in discussions with my Department on the potential impact of the ICM Bill on port operations. The ICM Bill provides for a novel concept in the Bill known as "coastal public property" which, in terms of sections 11 and 12 respectively of the ICM bill, cannot be owned and is held in trust by the State on behalf of the citizens of South Africa. In general terms, coastal public property consists of the sea and seashore below the high water mark and thus incorporates all of South Africa's port areas.
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investment programme of R80 billion (over a five year period), is creating freight transport capacity to meet the demands of the South African economy. In this respect, it is a critical and strategic role player in initiatives to improve the competitiveness of the South African economy.

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rights and powers of the TNPA. There is also the risk of it having current loans being called up. It is for this reason that I have undertaken to facilitate commencement of the ICM Bill / Act simultaneously with the ratification of my decision to exclude the confined ports from coastal public property.

#### REQUEST

- 10 For the above reasons it is requested that you kindly table the attached decision in the National Council of Provinces to enable the Select Committee to commence discussions and prepare the groundwork to enable the decision to be ratified simultaneously with the coming into effect of the Bill. The ICM Bill is an essential and long-awaited law and the delays in facilitating the process next year could compromise the Department and cause much public outcry.
- 11 Due to Parliament's current programme, it would be prudent to ratify this request as soon as possible and I accordingly appeal to you for your assistance in tabling the matter urgently so as to expedite the process.

Kind regards

**MARTHINUS VAN SCHALKWYK, MP**  
**MINISTER OF ENVIRONMENTAL AFFAIRS AND TOURISM**  
DATE:



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REPUBLIC OF SOUTH AFRICA

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Dr M Sutcliffe  
City Manager: eThekweni  
PO Box 1014  
DURBAN  
4000

Dear Dr Sutcliffe

**URGENT REQUEST FOR INTERVENTION: INTEGRATED COASTAL MANGEMENT BILL**

I refer to your letter dated 17 October 2008.

I have noted the concerns raised in your letter regarding the possible impact of the Integrated Coastal Management Bill (ICM Bill) on the Small Craft Harbour Development at the Durban Point Development Precinct.

Unfortunately it is no longer possible to make any changes to the ICM Bill. The Bill has been through an extensive public participation process prior to its introduction and there were various public hearings during the deliberative process in the Provinces and in Parliament and the Bill was adopted by the National Assembly on 23 October 2008. The Department has attempted to address similar concerns by requesting amendments to the legislation, but these attempts have been unsuccessful. However, in order to address your concerns around the proposed Small Craft Harbour Development, the Bill provides a mechanism for reclamation and exclusion from coastal public property in certain circumstances. In this regard I draw your attention to the provisions of clause 27 (2) – (7) of the ICM Bill. ✕ 27(2-4)

Clause 27(2) states: "The Minister may exclude any area from coastal public property for government purposes, by proclamation" while clause 27(3) requires the Minister to consult with interested and affected parties. In terms of clause 27(4) "The Minister may exclude any area from coastal public property for any other purpose with the ratification of Parliament". Clause 27(5) clarifies that an area so excluded forms part of State owned land. Subclause (6) further makes provision for the Minister to approve reclamation of land on application. If the purpose for the exclusion does not meet the definition of "government purposes" as contemplated in clause 27 (7), the decision would require the ratification of Parliament. The objects of the Bill and the principles governing coastal public property would guide all decisions made in terms of clause 27

In summary, the Parliamentary processes for the ICM Bill have now been concluded and I am therefore unable to accede to your request to introduce your proposed amendment to the ICM Bill. To address your concerns, upon commencement of the ICM Act, you are advised to make an application for exclusion as contemplated in clause 27 which will be duly considered. In addition, other procedures and legislation will have to be complied with, such as the EIA procedures and procedures in terms of the State Land Disposal Act, 1961 (Act No. 48 of 1961). Incidentally, the latter two will apply to your proposed development even if the ICM Bill is not enacted.

Kind regards

*Martinus van Schalkwyk*

MARTHINUS VAN SCHALKWYK, MP  
MINISTER OF ENVIRONMENTAL AFFAIRS AND TOURISM

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