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Champagne Sports Resort, KZN

"New Thinking in Environmental Law"

The One System and Integrated Coastal Management

Coastal planning is both an *environmental* and a *planning* competency.

It requires VERTICAL and HORIZONTAL integration between national, provincial and municipal PLANNING and ENVIRONMENTAL departments.

Each sphere of government deals with its own level; this requires co-operation.

Difference Departments

National

- SPLUMA Rural Development and Land Reform
- NEMICMA Environmental Affairs

Provincial planning departments

Environmental Affairs and
Development Planning (names differ in provinces)

Local Government

[planning and environment usually separate]

[District and Local municipalities]

Fit together ...

- National priorities of the two national departments
- Provincial priorities of the provincial department
- Local priorities of the municipalities (local and district)
- coastal v non-coastal priorities

Fit the part into the whole

- Fit the coastal management part (x 3)
 - with its
 - visions
 - priorities
 - objectives
 - programmes
 - plans
- into the SPLUMA SDF (spatial development framework) whole (x 3: national, provincial, local)

Environmental tools (NEMA)

- environmental management frameworks
- strategic environmental assessments
- environmental impact assessments
- environmental management programmes
- environmental risk assessments
- environmental feasibility assessments
- norms or standards

+

- Coastal management programmes (ICMA)

Planning the use of space

- Societal needs
- Economic, social, cultural
- Conserve the environment
- Inter-generational
- Sustainable

Vision Strategy

Opportunity costs

Technology

Global change

Employment

Rectifying past injustices competing rights

Planning tools

- Land Use Schemes (zoning)
- Spatial Development Frameworks
- Integrated Development Plans
- Coastal Management Programmes (ICMA)
- Coastal Planning Schemes (ICMA)

NEMICMA

Two of the Act's tools:

- Coastal management programmes
(national, provincial, municipal)
- Coastal planning schemes
(national, provincial, local)

Section 1 definition

“coastal planning scheme” means a scheme that—

- (a) reserves defined areas within the coastal zone to be used exclusively or mainly for specified purposes; and
- (b) prohibits or restricts any use of these areas in conflict with the terms of the scheme

57. Coastal planning and land use schemes of municipalities.—(1) Subject to section 56 (5) [affecting the sea], a coastal planning scheme of a municipality may form, and be enforced as part of, any land use scheme adopted by the municipality.

(2) (a) A municipality may not adopt a land use scheme that is inconsistent with a coastal planning scheme established in terms of this Act.

(b) If there is a conflict between a municipal land use scheme established after the commencement of this Act and a coastal planning scheme made in terms of this Act, the coastal planning scheme shall prevail.

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(2) (a) A municipality may not adopt a land use scheme that is inconsistent with a coastal planning scheme established in terms of this Act.

(b) If there is a conflict between a municipal land use scheme established after the commencement of this Act and a coastal planning scheme made in terms of this Act, the coastal planning scheme shall prevail.

- 56 (2) A coastal planning scheme must—
- (a) be established by notice in the *Gazette*;
 - (b) be consistent with—
 - (i) this Act;
 - (ii) the national coastal management programme;
 - (iii) the applicable provincial coastal management programme; and
 - (iv) any estuarine management plan applicable in the area; and
 - (c) take into account any other applicable coastal management programmes.

...

(6) A coastal planning scheme may not create any rights to use land or coastal waters.

NEMICMA integration into SDF

- 48 (4) A municipality may prepare and adopt a **coastal management programme** as part of an **integrated development plan and spatial development framework adopted in accordance with the Municipal Systems Act** and if it does so, compliance with the public participation requirements prescribed in terms of the Municipal Systems Act for the preparation and adoption of integrated development plans will be regarded as compliance with public participation requirements in terms of this Act.

Section 1 definitions

“coastal management” includes—

(a) the regulation, management, protection, conservation and rehabilitation of the coastal environment;

(b) the regulation and management of the use and development of the coastal zone and coastal resources;

(c) monitoring and enforcing compliance with laws and policies that regulate human activities within the coastal zone; and

(d) planning in connection with the activities referred to in paragraphs (a), (b) and (c);

Coastal management plans

- Integrated and sustainable management of the coastal zone
- Vision, objectives, priorities, strategies to
- Achieve the coastal management objectives
- Performance indicators

NEMICMA alignment with MSA

51. Alignment of certain plans with coastal management programmes.—An environmental implementation or environmental management plan in terms of Chapter 3 of the National Environmental Management Act, **an integrated development plan in terms of the Municipal Systems Act and a provincial or municipal land development plan** must—

(a) be aligned with the national coastal management programme and any applicable provincial coastal management programme;

(b) contain those provisions of the national coastal management programme and any applicable provincial coastal management programme that specifically applies to it; and

(c) give effect to the national coastal management programme and any applicable provincial coastal management programme.

52. Ensuring consistency between coastal management programmes and other statutory plans.—(1) For the purposes of this section, “statutory plan” means a plan, policy or programme adopted by an organ of state that may affect coastal management, and without limitation, may include —

(a) an environmental implementation or environmental management plan prepared in terms of Chapter 3 of the National Environmental Management Act;

(b) **an integrated development plan adopted by a municipality in terms of the Municipal Systems Act;**

(c) the national biodiversity framework referred to in section 38 of the Biodiversity Act and a bioregional plan prepared in terms of that Act;

(d) **a provincial or municipal land development plan;**

(e) a provincial strategic policy and plan concerned with promoting sustainable development; and

(f) the national estuarine management protocol.

62. Implementation of land use legislation in coastal protection zone.—(1) An organ of state that is responsible for implementing national, provincial or municipal legislation that regulates the planning or development of land must, in a manner that conforms to the principles of co-operative governance contained in Chapter 3 of the Constitution, apply that legislation in relation to land in the coastal protection zone in a way that gives effect to the purposes for which the protection zone is established as set out in section 17.

(2) An organ of state may not authorise land within the coastal protection zone to be used for any activity that may have an adverse effect on the coastal environment without first considering an environmental impact assessment report.

Coastal boundaries must be delineated on a zoning scheme

31. If the Minister, an MEC or a municipality determines or adjusts a coastal boundary in accordance with section 26, a local municipality within whose area of jurisdiction the coastal boundary is situated must delineate that coastal boundary on a map or maps that form part of its zoning scheme in order to enable the public to determine the position of the coastal boundary in relation to existing cadastral boundaries.

Section 26 refers to coastal boundaries of -

- Coastal public property (Minister)
- The coastal protection zone (MEC)
- A special management area (Minister)
- Coastal access land (Local authority)

[A coastal planning scheme would also include: the coastal zone, special management areas, coastal setback line, estuaries]

re NEMA listed activities

63. Environmental authorisations for coastal activities. –

...

(5) The competent authority must ensure that the terms and conditions of any environmental authorisation are consistent with any applicable coastal management programmes and promote the attainment of coastal management objectives in the area concerned.

The full text of section 63 of ICMA

63. Environmental authorisations for coastal activities.—(1) Where an environmental authorisation in terms of Chapter 5 of the National Environmental Management Act is required for coastal activities, the competent authority must take into account all relevant factors, including—

(a) the representations made by the applicant and by interested and affected parties;

(b) the extent to which the applicant has in the past complied with similar authorisations;

(c) whether coastal public property, the coastal protection zone or coastal access land will be affected, and if so, the extent to which the proposed development or activity is consistent with the purpose for establishing and protecting those areas;

(d) the estuarine management plans, coastal management programmes, coastal management lines and coastal management objectives applicable in the area;

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(e) the socio-economic impact if the activity—

(i) is authorised;

(ii) is not authorised;

(f) ...

(g) the likely impact of coastal environmental processes on the proposed activity;

(h) whether the development or activity—

(i) is situated within coastal public property and is inconsistent with the objective of conserving and enhancing coastal public property for the benefit of current and future generations;

(ii) is situated within the coastal protection zone and is inconsistent with the purpose for which a coastal protection zone is established as set out in section 17;

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(iii) is situated within coastal access land and is inconsistent with the purpose for which coastal access land is designated as set out in section 18;

(iv) is likely to cause irreversible or long-lasting adverse effects to any aspect of the coastal environment that cannot satisfactorily be mitigated;

(v) is likely to be significantly damaged or prejudiced by dynamic coastal processes;

(vi) would substantially prejudice the achievement of any coastal management objective; or

(vii) would be contrary to the interests of the whole community;

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(i) whether the very nature of the proposed activity or development requires it to be located within coastal public property, the coastal protection zone or coastal access land;

(j) whether the proposed activity or development will provide important services to the public when using coastal public property, the coastal protection zone, coastal access land or a coastal protected area; and

(k) the objects of this Act, where applicable.

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(5) The competent authority must ensure that the terms and conditions of any environmental authorisation are consistent with any applicable coastal management programmes and promote the attainment of coastal management objectives in the area concerned.

(6) Where an environmental authorisation is not required for coastal activities, the Minister may, by notice in the Gazette list such activities requiring a permit or licence.

Summary

- IDP's must align with NCMP and PCMP (51(1))
- MCMP must be consistent with NCMP and PCMP (49(1))
- PCMP must be consistent with NCMP (47(1)) and national and provincial statutory plans (incl. SDF's) (52(3))
- NCMP must be consistent with national statutory plans (includes NSDF) (52(2))
- MCMP may be part of SDF and IDP (48(4))
- CPS must be consistent with CMP's (56(2))
- LU Scheme must not be inconsistent with CPS (57)
- CPS may be part of a LU Scheme (57 (1))
- LU Scheme gives rights (SPLUMA 26(1))
- CPS does not give rights (56(6))
- Inter-government co-operation



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