

NOTICE 450 OF 2015

NATIONAL DEPARTMENT OF ENVIRONMENTAL AFFAIRS

**NATIONAL ENVIRONMENTAL MANAGEMENT: INTEGRATED COASTAL MANAGEMENT ACT,
2008
(ACT NO. 24 OF 2008)**

DRAFT APPEAL REGULATIONS

I, Bomo Edith Edna Molewa, Minister of Environmental Affairs, hereby give notice of my intention to make the regulations pertaining to the process to be followed on the processing and consideration of, and decisions on appeals, under section 74 read with section 83(1)(j) of the National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008), set out in the Schedule hereto.

Members of the public are invited to submit to the Minister, within 30 (thirty) days after the publication of this notice in the *Gazette*, written comments or inputs to the following addresses:

By post to: The Deputy Director-General
Environmental Affairs
Oceans and Coasts
Attention: Mr. Heinrich Muller
P. O. Box 52126
V and A Waterfront
Cape Town
8002

By hand at: East Pier Building 1, East Pier Road, V & A Waterfront, Cape Town

By e-mail: hmuller@environment.gov.za

Any enquiries in connection with the notice can be directed to Mr. Heinrich Muller. Comments received after the closing date may not be considered.



**BOMO EDITH EDNA MOLEWA
MINISTER OF ENVIRONMENTAL AFFAIRS**

SCHEDULE

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CHAPTER 1

INTERPRETATION AND PURPOSE OF REGULATIONS

Interpretation

1. In these Regulations any word or expression to which a meaning has been assigned in the Act has that meaning, unless the context requires otherwise—

“appellant” means a person or organ of state who wishes to appeal against a decision in terms of the Act and includes an applicant;

“applicant” means a person to whom a decision has been issued in terms of the Act;

“independent”, in relation to a person appointed as a member of an appeal panel, means—

- (a) that such a person has no business, financial, personal or other interest in the appeal in respect of which that person is appointed in terms of these Regulations other than fair remuneration for work performed in connection with that appeal; or
- (b) that there are no circumstances that may compromise the objectivity of that person in performing such work; and

“the Act” means the National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008).

Purpose of Regulations

2. The purpose of these Regulations is to regulate the procedure contemplated in sections 74, 75, 76, 77 and 78 of the Act relating to the submission, processing and consideration of, and a decision on an appeal.

Application of Regulations

3. (1) These Regulations are applicable to a decision that is subject to an appeal to the Minister or MEC in terms of section 74 of the Act.

(2) No appeal is available if the Minister or MEC took the decision himself or herself in his or her capacity as the issuing authority.

CHAPTER 2

ADMINISTRATION AND PROCESSING OF APPEALS

Lodging of appeal

4. Any appellant who wishes to appeal against a decision in terms of the Act must—
 - (a) within the time periods specified in section 74(3)(a), lodge an appeal in writing; and
 - (b) include in addition to what is contained in section 74(3) of the Act —
 - (i) a statement setting out the grounds of appeal;
 - (ii) supporting documentation which is referred to in the appeal; and
 - (iii) proof of payment of a non-refundable appeal fee if prescribed in terms of the Act.

Responding and answering statement

5. (1) The Minister or MEC shall within 10 days of receiving an appeal in terms of regulation 4 from any appellant, notify the applicant, if applicable—
 - (a) that such appeal has been lodged and submit a copy thereof to the applicant; and
 - (b) that the applicant may submit to the Minister or MEC, a responding statement within 30 days from the date on which the applicant was notified of the appeal by the Minister or MEC.
- (2) An applicant who submits a responding statement in terms of sub-regulation (1), must within 10 days after the submission of the responding statement, serve a copy of the responding statement on the appellant.
- (3) If the responding statement introduces any new information not dealt with in the appeal submission contemplated in regulation 4 of these Regulations, the appellant is entitled to submit an answering statement to such new information to the Minister or MEC, within 15 days after being served with a copy of the responding statement.
- (4) The appellant must, within 10 days after the submission of the answering statement contemplated in sub-regulation (3), serve a copy of the answering statement on the applicant.

Processing of an appeal

6. (1) The Minister or MEC must within 14 days acknowledge receipt of the appeal, responding statement and where applicable an answering statement, as contemplated in regulations 4 and 5 of these Regulations, respectively.
- (2) The appellant and the applicant, if applicable, must be notified of—
- (a) any interim order issued in terms of section 76 of this Act, if the Minister or MEC, as the case may be, issues such an order; or
 - (b) the appointment of an appeal panel in terms of section 75 of this Act read with regulation 8 of these Regulations, if the Minister or MEC, as the case may be, appoints an appeal panel to consider and advise the Minister or MEC on the appeal.
- (3) The Minister or MEC, as the case may be, may request the appellant or the applicant to submit such additional information in connection with the appeal as the Minister or MEC may require.

Decision on appeal

7. (1) The Minister or MEC, as the case may be, must reach a decision on an appeal within 90 days of receipt of all information, including—
- (a) any responding or answering statements;
 - (b) supporting documentation, reports or any other additional information requested; or
 - (c) recommendations of an appeal panel, if appointed.
- (2) The Minister or MEC, as the case may be, must notify the appellant and the applicant, where applicable, of the appeal decision within 14 days after the appeal decision being made.
- (3) The decision contemplated in sub-regulation (1) must contain reasons.

Appeal panel

8. (1) If the Minister or MEC, as the case may be, decides to appoint an appeal panel to consider and advise the Minister or MEC on the appeal, the Minister or MEC must furnish the appeal panel with a written instruction concerning—
- (a) the issues in respect of which the appeal panel must make recommendations; and

- (b) the period within which recommendations must be submitted to the Minister or MEC.
- (2) In addition to the criteria in sections 75(3) and (4) of the Act, a member of the appeal panel must be independent.
- (3) The appeal panel must administer and process an appeal referred to the appeal panel in accordance with the timeframes set out in regulations 4, 5, 6, and 7 of these Regulations.
- (4) If an appeal panel introduces any new information not dealt with in the appeal lodged by the appellant, or in the responding or answering statements contemplated in regulation 5 of these Regulations, the appellant and the applicant, where applicable, is entitled to submit to the appeal panel, within a period determined by the appeal panel, additional statements rebutting or supporting such new information.
- (5) The recommendations of the appeal panel must be submitted in writing to the Minister or MEC.
- (6) An appeal panel must keep a record of all recommendations submitted to the Minister or MEC.

CHAPTER 3

GENERAL MATTERS

Assistance to people with special needs

9. The Minister or MEC processing an appeal in terms of these Regulations must give reasonable assistance to people with—
- (a) illiteracy;
- (b) a disability; or
- (c) any other disadvantage,
- who can not, but desire to, comply with these Regulations.

Short title and commencement

10. These Regulations are called the Integrated Coastal Management Appeal Regulations, 2015, and take effect on the date of publication in the *Gazette*.