



Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID AFRIKA

Regulation Gazette

No. 10693

Regulasiekoerant

Vol. 620

24

February
Februarie

2017

No. 40638



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ISSN 1682-5843



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GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF ENVIRONMENTAL AFFAIRS

NO. R. 167

24 FEBRUARY 2017

**NATIONAL ENVIRONMENTAL MANAGEMENT: INTEGRATED COASTAL MANAGEMENT ACT,
2008 (ACT NO. 24 OF 2008)****DRAFT RECLAMATION OF LAND FROM COASTAL WATERS REGULATIONS**

I, Bomo Edith Edna Molewa, Minister of Environmental Affairs, hereby publishes for public comment, the draft Regulations for the Reclamation of Land from Coastal Waters Regulations in terms section 83(1)(g), read with sections 7B and 7C of the National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008) as set out in the Schedule hereto.

Any person who wishes to submit representations or comments in connection with the draft regulations are invited to do so within 30 days after the publication of these regulations in the *Gazette*. Comments received after this time may not be considered. All representations and comments must be submitted in writing to the Deputy Director-General of the Department of Environmental Affairs, Branch: Oceans and Coasts.

By post to:

The Deputy Director-General
Department of Environmental Affairs
Attention: Mr J Ryan Peter
PO Box 52126
V&A Waterfront
CAPE TOWN
8002

By hand to:

The Deputy Director-General
Department of Environmental Affairs
Attention: Mr J Ryan Peter
East Pier Building 2, East Pier Road
V&A Waterfront
CAPE TOWN

Enquiries to: Mr J Ryan Peter by email: jpeter@environment.gov.za



BOMO EDITH EDNA MOLEWA
MINISTER OF ENVIRONMENTAL AFFAIRS

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1. Definitions

In these Regulations, unless the context indicates otherwise, a word or expression that is defined in the Act bears the same meaning in these regulations, and in addition—

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

"final reclamation decision" means the Minister's final decision on applications for reclamation of land contemplated in sections 7B(5) and 7C(7) of the Act;

"Minister's pre-approval" means the in-principle approval contemplated in sections 7B(3)(b) and 7C(3) of the Act; and

"reclamation lease" means a lease contemplated in section 7C(9)(b) of the Act, read with regulation 7(4).

2. Application for Minister's pre-approval

- (1) Any person intending to undertake reclamation in terms of sections 7B and 7C of the Act must apply for the Minister's pre-approval.
- (2) An application for the Minister's pre-approval in terms of sub-regulation (1) must—
 - (a) be made to the Minister in writing on the application form obtainable from the Department;
 - (b) be accompanied by proof of payment of the fee, if prescribed;
 - (c) be accompanied by all supporting documents required to assess the application including those required by the application form and these regulations; and
 - (d) be lodged—
 - (i) in duplicate together with any other copies, if required; and
 - (ii) electronically, if required.
- (3) The Minister must, within 10 days after receipt of an application for the pre-approval, acknowledge receipt of the application in writing.

3. Minimum information and assessment of application for Minister's pre-approval in terms of section 7B

- (1) An application for the Minister's pre-approval in terms of section 7B(3)(b) must contain the following:
 - (a) a written motivation—

- (i) comprehensively setting out the purpose for the proposed reclamation, by explaining the following:
 - (aa) why the reclamation of land is necessary to undertake the proposed development;
 - (bb) how the land will generally be used in the short-term and how the land may be used in the long-term;
 - (cc) whether any extension of the land by way of additional reclamation of land may be sought in future; and
 - (dd) whether the ownership of the land or any part thereof may be transferred in the future;
 - (ii) containing the information required by section 7B(3)(a) of the Act, including details of the following:
 - (aa) the list of all other alternative land identified for the development proposed for the reclaimed land, and the reasons why the development can not take place on that land;
 - (bb) a plan, layout or map depicting all of the land uses and land zonations proposed for the reclaimed land;
 - (cc) the buildings, facilities and other infrastructure to be built on the land;
 - (dd) whether or not the public will have access to the land, the buildings, facilities and other infrastructure on the land, and what cost will be imposed for such access;
 - (ee) the location of the public access points and details about the nature, the times and the conditions of public access;
 - (ff) vehicular access to the buildings, facilities and other infrastructure on the land;
 - (gg) a comprehensive description of all commercial and government-related activities which will be undertaken on the land and how those activities will benefit the State; and
 - (hh) how the proposed development on the land, and state infrastructure planned for the land, will positively impact on the Republic;
 - (iii) a detailed map, with co-ordinates, of the location and scope of the proposed reclamation;
- (b) diagrams, graphic depictions and architects' sketches of the development, including any facilities and infrastructure proposed for the land; and

- (c) the identity of the sources of the funding, whether public or private, for the proposed reclamation of the land and for the subsequent development on the land, including—
 - (i) copies of the agreements or undertakings governing that funding; and
 - (ii) an explanation of the nature and extent of the interest which each funder has in the proposed development.

4. Minimum information and assessment of application for Minister's pre-approval in terms of section 7C

- (1) An application for the Minister's pre-approval in terms of section 7C(3) must explain—
 - (a) why the proposed development is exceptional in nature; and
 - (b) why it is not contrary to the purposes of coastal public property as set out in section 7A.
- (2) In addition to sub-regulation (1), an application for the Minister's pre-approval in terms of section 7C(3) must contain the following:
 - (a) a written motivation—
 - (i) comprehensively setting out the purpose for the proposed reclamation, by explaining the following:
 - (aa) why the reclamation of land is necessary to undertake the proposed development; and
 - (bb) how the land will generally be used in the short-term and how the land may be used in the long-term;
 - (ii) containing the information required by section 7C(2) of the Act, including details of the following:
 - (aa) a plan, layout or map depicting all of the land uses and land zonations proposed for the reclaimed land;
 - (bb) the list of all other alternative land identified for the development proposed for the reclaimed land, and the reasons why the development can not take place on that land;
 - (cc) the buildings, facilities and other infrastructure to be built on the land;
 - (dd) whether or not the public will have access to the land, the buildings, facilities and other infrastructure on the land, and what cost will be imposed for such access;

- (ee) the location of the public access points and details about the nature, the times and the conditions of public access;
 - (ff) vehicular access to the buildings, facilities and other infrastructure on the land;
 - (gg) the identity and nature of the business ventures which will operate on the land;
 - (hh) an explanation as to why the reclamation of the land and the development proposed for that land is socially and economically desirable;
 - (ii) the nature and scope of the various employment opportunities, whether skilled, unskilled, short-term or permanent, which will realistically be created by the proposed development and businesses located on the land;
 - (jj) an explanation of when the various kinds of employment opportunities, contemplated in sub-regulation 4(2)(a)(ii), will materialise in the reclamation of, and in the development of the infrastructure on the land; and
 - (kk) how the proposed development on the land will positively impact on the Republic;
- (ii) a detailed map, with co-ordinates, of the location and scope of the proposed reclamation;
- (b) diagrams, graphic depictions and architects' sketches of the development, including any facilities and infrastructure proposed for the land; and
- (c) the identity of the sources of the funding, whether public or private, for the proposed reclamation of the land and for the subsequent development on the land, including:
- (i) copies of the agreements or undertakings governing the funding provided; and
 - (ii) an explanation of the nature and extent of the interest which each funder has in the proposed development.

5. Application for final reclamation decision

- (1) An application for a final reclamation decision must be made in writing to the Minister by using a form obtainable from the Department.
- (2) An application for a final reclamation decision must be lodged—
 - (a) in duplicate together with any other copies, if required; and

- (b) electronically, if required.
- (3) The Minister must, within 10 days after receipt of an application for a final reclamation decision, acknowledge receipt of the application in writing.
- (4) Pursuant to sections 7B(5) and 7C(7) of the Act, an application for a final reclamation decision must contain the following information:
 - (a) proof of payment of the fee, if prescribed;
 - (b) the relevant environmental authorisation, including all expert and other reports used to inform the granting of the environmental authorisation; and
 - (c) in the case of an application for reclamation in terms of section 7C of the Act, Parliament's ratification in terms of sections 7C(4)(b) and 7C(6) of the Act.

6. Minister's powers in assessing applications

- (1) The Minister may, in respect of applications for the Minister's pre-approval or for a final reclamation decision, request the applicant to—
 - (a) provide further information by a specified date;
 - (b) carry out further investigations and to provide the results of those studies by a specified date;
 - (c) consult with specific organisations, authorities, persons or interested parties and submit the results of those consultations by a specified date; or
 - (d) request the applicant to make oral representations to the Minister relating to the application and to answer any questions raised at such meeting.
- (2) If an applicant fails to—
 - (a) comply with a request made in terms of sub-regulation (1);
 - (b) pay any fee, if prescribed;
 - (c) fully complete all required parts of, and provide all information required by an application form referred to in these regulations; or
 - (d) provide any information required in terms of the Act or these regulations by a specified date,

the application will be regarded as incomplete and it will not be considered.

- (3) When assessing any application in terms of these regulations, the Minister may consider—

- (a) whether or not the applicant has been convicted of contravening—
 - (i) the Act,
 - (ii) the National Environmental Management Act;
 - (iii) any specific environmental management Act; or
 - (iv) these regulations;
- (b) whether or not the applicant has contravened conditions of any permits or authorisations granted to the applicant in terms of—
 - (i) the Act;
 - (ii) the National Environmental Management Act;
 - (iii) any specific environmental management Act; or
 - (iv) these regulations; and
- (c) any other relevant consideration.

7. Decisions

- (1) The Minister may, in writing—
 - (a) grant or refuse an application for the Minister's pre-approval; and
 - (b) grant or refuse an application for a final reclamation decision.
- (2) A decision to grant an application in terms of sub-regulation (1)(a) or (b) may be issued subject to conditions.
- (3) A final reclamation authorisation in terms of these regulations must be issued in writing and must include the following details:
 - (a) the identity and contact details of the authorisation holder;
 - (b) the geographic location of the proposed reclamation; and
 - (c) the conditions to the authorisation.
- (4) A final reclamation authorisation in terms of section 7C is subject to the signing of a written reclamation lease agreement with the Minister. Any physical reclamation-related activities may not commence without the written conclusion of the agreement with the Minister.
- (5) Any authorisation issued in terms of these regulations is not transferable.

(6) A decision to refuse any application in terms of these regulations must include—

- (a) the reasons for the decision; and
- (b) the date of the decision.

8. Offences and Penalties

In addition to any offence contained in section 79 of the Act, any person who contravenes or fails to comply with regulation 7(4) and any other provision of these regulations is guilty of an offence and liable on conviction to—

- (a) imprisonment for a period not exceeding five years;
- (b) an appropriate fine not exceeding R2 million; or
- (c) both such fine and imprisonment.

9. Short title and commencement

These regulations are called the Reclamation of Land from Coastal Waters Regulations, 2017, and shall take effect the date of publication in the *Gazette*.

Printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001
Contact Centre Tel: 012-748 6200. eMail: info.egazette@gpw.gov.za
Publications: Tel: (012) 748 6053, 748 6061, 748 6065