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Developers ride roughshod over laws

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12 September 2005 03:00

Large developers are bulldozing through laws and processes set up to ensure development is sustainable, and government officials and judges appear powerless to stop them.

Faced by what they call "a national crisis" caused by dodgy developers of townhouse complexes and golf estates, sustainable development activists are calling on Minister of Environmental Affairs and Tourism Marthinus van Schalkwyk to appoint a ministerial commission of inquiry.

Dr Nick King, CEO of the Endangered Wildlife Trust (EWT), says checks and balances built into the legislative framework to ensure development is sustainable are not working, and government officials and the judiciary are not sorting out the problems. "The judges and officials appear to favour the economic interests of the developers, even where the law is being ignored and there may be irreparable damage to the environment," he says.

Environmental NGOs and concerned neighbouring residents have launched legal action against developers who started building, even though prescribed procedures and regulations have not been adhered to.

In two decisions involving golf estates in August -- in Mpumalanga and Gauteng -- the complainants wasted their time and money as judges dismissed their applications for urgent relief, which were aimed at stopping development until the court had an opportunity to hear their main objections.

King adds that, although the law insists government officials consider refusing development under certain circumstances, this "no-go option" is rarely, if ever, applied. The general attitude was summed up by the words of the Mpumalanga minister of agriculture and land administration, Madala Masuku, who replied on August 19 to an appeal by the EWT against a large golf resort in Belfast: "The 'no-go option' could not be adopted as the developer will lose the opportunity for economic investment and the resulted [sic] gain."

Helen Duigan, chairperson of the Rhenosterspruit Conservancy near Lanseria airport and a member of the National Association of Conservancies, says the conservancy movement has to radically reinvent itself in response to threats from developers.

"In the past, the focus was on being a voluntary association of landowners who had a life quality they wanted to preserve," she says. "The new front is promoting community-responsible development and conservation in the face of unscrupulous exploitation of rural areas vulnerable to urban encroachment.

"The only weapon in our hands is the legal process -- environmental legislation which is largely new, untested and possibly not well known by the authorities who have to implement it."

'Legislating for sustainability' was the theme of the annual conference of the South African affiliate of the International Association for Impact Assessment (IAIAsa) last week. Cape High Court Judge Dennis Davis, delivering the keynote address, underlined some of the misunderstandings in the judiciary about environmental impact assessments (EIAs) and sustainable development.

He pointed out that the rights of property owners and developers must be subject to the Constitution's vision of sustainable development, which balances environmental, economic and social aspects in light of what is sustainable in the long term.

IAIAsa, along with the EWT and nine other prominent South African environmental NGOs, is tackling Van Schalkwyk about revisions to the EIA regulations that are expected to become law this month. The NGOs say they have not been given the opportunity to comment properly on the new regulations, which will effectively streamline procedures.

"The focus of the regulations strongly displays the government's desire to improve administrative efficiency and reduce development delays ... The focus is biased towards a prescriptive process of information provision by consultants," the NGOs wrote in a letter to the minister in April.

A request by the NGOs for a meeting with the minister before the draft regulations became law was rejected in July.

In response to questions from the *Mail & Guardian*, Van Schalkwyk said he believed the Department of Environmental Affairs and Tourism had sufficiently consulted affected parties in drawing up the regulations.

"The implementation of the new regulations should be monitored closely for at least a year before the need for an inquiry into alleged abuse is considered," he said. "Aggrieved participants have not to date exhausted the avenues available to them to address the alleged abuse of the process."

The minister added he was "not aware of any training on EIA legislation solely aimed at the judiciary", though prosecutors were recently given training in the enforcement of EIA regulations.

Greenies are getting teed off

When President Thabo Mbeki criticised golfing and polo estates for being elitist empires, he probably had no idea quite how difficult it is to stop them rolling on. In recent court cases, objections from neighbours and environmental NGOs have landed dead in the bunker:

n A Pretoria High Court judge last week rejected an urgent application by the Endangered Wildlife Trust to stop bulldozing at the Highland Gate Golf and Trout Estate in Dullstroom, Mpumalanga. Construction activities began in mid-August despite the fact that the developers had allegedly not been given permission by the national Department of Agriculture to sub-divide the agricultural land on which the development will be situated.

n An urgent interdict attempting to stop Wraypex developers from construction work on a golf course and boutique hotel estate called Blair Atholl bordering the Cradle of Humankind World Heritage Site was thrown out of court in early August.

Members of the neighbouring Rhenosterspruit Conservancy who have appealed against the development have received threatening letters from Wraypex's lawyers. The conservancy's secretary received a summons for more than R35-million after he allegedly disseminated "false information" about Wraypex, causing construction delays. -- *Fiona Macleod*