



CIRCULAR: DEA&DP 0015/2016

**TO ALL MAYORS, MUNICIPAL MANAGERS, IDP MANAGERS AND CHIEF MUNICIPAL TOWN PLANNERS
IN THE WESTERN CAPE**

Dear Colleagues

**INTEGRATING THE MUNICIPAL SPATIAL DEVELOPMENT FRAMEWORK WITH THE INTEGRATED
DEVELOPMENT PLAN**

1. Purpose

The purpose of this circular is to again alert all municipalities within the Western Cape to the fact that a Municipal Spatial Development Framework (MSDF) is a core component of an Integrated Development Plan (IDP) and as a result of this, needs to be integrated into the IDP development and amendment process, as dictated by a municipality's IDP process plan.

2. The MSDF as Core Component of the IDP

In the Department's Circular EADP: 0011/2016, dated 25 July 2016, distributed to all municipalities, the relationship between the MSDF and IDP was set out. That Circular emphasizes that the legislation explicitly makes the MSDF part of the IDP and most importantly that the legislation does not allow for the MSDF to be drafted, adopted or amended in isolation or separately from the IDP. A MSDF must therefore be drafted, adopted or amended as part of the municipal IDP drafting, adoption and amendment process. A copy of the previous Circular is attached hereto for ease of reference as **Annexure A**.

As all the municipalities in the country are embarking on the next generation IDP's over the next few months, the Department herewith provides some guidance on the integration of the MSDF's into the municipal IDP process. Subsequent to the adoption of the current IDPs, several changes have been made to the laws governing the spatial planning and land use management sector which have significant implications on the way MSDF's in particular have to be dealt with in the IDP process. In the Western Cape, three new planning laws have been introduced which specifically regulate SDF's and which will have to be taken into consideration when municipalities introduce their SDF's into the IDP process (refer to **Annexure A** for a reference to the relevant laws).

Municipalities are therefore encouraged to ensure that whilst following the IDP process in terms of the Municipal Systems Act, to also comply with the other legal requirements applicable to SDF's.

3. Transitional Measures for integrating SDF's into the IDP's

Considering the above-mentioned legislation, the ideal scenario would have been if all municipalities were in a position to introduce a new or reviewed MSDF simultaneously with the next generation IDP to ensure that the IDP and MSDF are fully synchronised for the five year term of the IDP. In reality, only a small number of municipalities in the Western Cape are ready at this stage to adopt a new or revised MSDF as part of their IDP process. The other municipalities have approved MSDF's which were approved at various stages during the previous IDP term.

The current situation therefore leaves municipalities with three main options to comply with the legal requirements at the start of the new generation IDP's.

(a) Option 1: Fully Synchronised SDF's

The few municipalities that are in a position to introduce their new or reviewed SDF's into the procedure of the IDP adoption process in the months following the August 2016 election are in the fortunate position that their SDF and IDP five-year terms will be synchronised going forward.

Municipalities must ensure that whilst following the MSA procedure for the adoption of the IDP, they should also comply with the three new planning laws in the Western Cape as outlined in **Annexure A** (both procedurally and in terms of content requirements).

(b) Option 2: Introducing Existing SDF's without any amendments

The majority of the municipalities in the Western Cape have MSDF's which were approved during the previous five years and which will only be revised after the next generation IDP's have been adopted. For municipalities in this situation, we recommend that the existing SDF as approved previously, be introduced into the IDP process in its current format for adoption along with the IDP. In following this approach, municipalities should take cognisance of the following:

- (i) Municipalities must ensure that whilst following the MSA procedure for the adoption of the IDP, they should also comply with the three new planning laws in the Western Cape as outlined in **Annexure A** (both procedurally and in terms of content requirements).
- (ii) Municipalities should consider the impacts of Section 22 of SPLUMA which determines that a Municipal Planning Tribunal may not take planning decisions which are inconsistent with the provisions of the adopted MSDF's.
- (iii) Should MSDF's be outdated in some respects or contain elements which may cause unintended consequences as a result of the effects of SPLUMA, municipalities should consider amending their SDF's (refer to Option 3).

(c) Option 3: Submitting Amended or only Parts of Existing SDF's

If a municipality is not in a position to submit a completely revised or new MSDF to coincide with the new generation IDP, as outlined in Option 1, nor is the municipality in a position to adopt the existing MSDF in full as outlined in Option 2, the municipality may have to consider amending the existing MSDF in the process of adopting the new generation IDP. Municipalities in this position may, for example elect to only submit strategic thrusts of their existing MSDF's and omit detailed provisions which may be outdated. In following this Option 3 approach, municipalities should take cognisance of the following:

- (i) Municipalities must ensure that whilst following the MSA procedure for the adoption of the IDP, they should also comply with the three new planning laws in the Western Cape as outlined in **Annexure A**, specifically the provisions regulating amendments to existing SDF's (both procedural and content requirements).
- (ii) The Department is fully aware that municipalities are going to struggle to meet all the procedural and specifically the content requirements of all the relevant laws governing MSDF's and IDP's. It is, therefore, imperative that municipalities indicate in the IDP process plans when the shortcomings in this transitional phase will be addressed and the processes which will be followed also need to be highlighted.

4. SDF Reviews Subsequent to the Adoption of the New Generation IDP's

As noted above, the majority of municipalities in the Western Cape have planned to revise their MSDF's only after the new generation IDP's have been adopted. This means that the IDP will have to be amended at that stage to incorporate a new or revised MSDF. As indicated above, municipalities must at this stage anticipate when this subsequent MSDF review and IDP amendment will be done and include these plans in the process plans of the IDP.

Municipalities should also consider if the review of the MSDF and IDP amendment process will coincide with the annual IDP review process, which is legislated and coordinated with other spheres of government or whether an *ad hoc* amendment process will be followed. Generally MSDF's require a longer time period to be reviewed or compiled afresh, than the period available for an IDP adoption process, and municipalities will have to consider very carefully whether to align the two processes.

As with the IDP process that will be followed to adopt the next generation IDP's in the next few months, the process to be followed when amending the IDP to introduce a revised MSDF includes many procedural and content requirements that must also be carefully considered.

5. Ad Hoc Amendments

Whilst the legislation makes provision for an annual review process of the IDP / MSDF which in certain circumstances may lead to amendments to the IDP / MSDF, municipalities should also consider how to deal with *ad hoc* amendments. These *ad hoc* amendments may arise as a result of changed circumstances affecting the MSDF or as a result of a development application which the existing MSDF does not cater for and in which there are no site specific circumstances to justify a deviation from the MSDF. This is due to the effect of Section 22 of SPLUMA, which states that the Municipal Planning Tribunal may not approve such an application, which may in turn result in a request being made to the Council, from a developer or even the municipality itself, to process an IDP / MSDF amendment prior to submitting a development application.

It is imperative to indicate at this stage in the IDP process plans how your municipality intends dealing with such requests for *ad hoc* amendments procedurally in future. As an example, some municipalities have already indicated that they would not entertain requests for *ad hoc* amendments outside of the annual IDP review process. Irrespective of the decision or approach to be followed by a municipality, it is important that this be incorporated into the IDP process plans.

6. WCG Assistance

The Department recognises that the foregoing guidance is very compliance orientated – however, the underlying aim is still to achieve greater levels of integration in the planning between the various spheres of government. The WCG through the Department of Environmental Affairs and Development Planning: Directorate Spatial Planning is supporting municipalities to achieve greater levels of integration through various initiatives, such as the following:

- Municipal support with MSDF's – financial assistance where possible, as well as capacity and advisory services. In this regard see attached hereto a guideline compiled by the Department in a simplified table format, setting out the process to amend an SDF in terms of the legislation mentioned above. (Refer to **Annexure B**)
- Integrated Spatial and Infrastructure Planning Services – through this programme the Department is liaising with other Provincial Departments to align and integrate other sector plans into the MSDF's (Human Settlement Plans, Infrastructure and Growth Plans, Integrated Transportation Plans).
- Inter-Departmental alignment of Provincial Planning and Budgeting – mainly aimed at the Provincial budgeting process. The Department is striving to ensure spatial alignment of Provincial spending with the PSDF as well as MSDF's.
- The Department is also exploring various avenues available in current legislation to develop more enabling MSDF's that incentivise developments in desirable locations. The use of tools available in other legislation such as National Environmental Management Act, 1998 (NEMA) and the Subdivision of Agricultural Land Act, 1970 in combination with MSDF's are being investigated and will be shared with municipalities.

Municipalities are therefore encouraged to make contact with the Department's Directorate: Spatial Planning for assistance during this period, for any advice or guidance and also to ensure optimal integration of the MSDF's with the IDP process.

The following colleagues in the Directorate: Spatial Planning can be contacted for assistance in the above regard:

- **Region 1 (West Coast and City of Cape Town)**
Marek Kedzija at Marek.Kedzija@westerncape.gov.za or 021 483 4525.
- **Region 2 (Overberg and Cape Winelands)**
Tania De Waal at Tania.DeWaal@westerncape.gov.za or 021 483 4360.
- **Region 3 (Central Karoo and Eden)**
Allan Rhodes at Allan.Rhodes@westerncape.gov.za or 021 483 0764.

Yours sincerely



PIET VAN ZYL
HEAD OF DEPARTMENT
ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING
DATE: 5 September 2016



CIRCULAR: EADP 0011/2016

**ALL MUNICIPAL MANAGERS, MUNICIPAL PLANNING HEADS AND INTEGRATED
DEVELOPMENT PLAN MANAGERS**

**SUBJECT: MUNICIPAL SPATIAL DEVELOPMENT FRAMEWORKS (SDFs) AND INTEGRATED
DEVELOPMENT PLANS (IDPs)**

1. As you are no doubt aware, to date all Municipalities in the Western Cape, bar one, have introduced the new spatial planning and land use management regime (herein after referred to as the "Planning" regime) through implementing the Spatial Planning and Land Use Management Act, 2013(Act 16 of 2013) (SPLUMA), the Western Cape Land Use Planning Act, 2014 (Act 3 of 2014)(LUPA), and the municipal planning bylaws (MPB). The institutionalization of this new "Planning" regime comes at a time when municipalities are heading into the start of a new five year Integrated Development Plan (IDP) cycle. In some municipalities this provides an opportunity to revise their Municipal Spatial Development Frameworks (SDFs) to bring them in line with any new legislative requirements or changed circumstances, while simultaneously drafting and adopting a new Municipal IDP.
- 1.1 In drafting, adopting and amending a SDF one needs to understand the relationship between the SDF and the IDP. To provide clarity on this matter, we turn to what the incumbent legislation says about the relationship between the SDF and the IDP.

a) The Local Government Municipal Systems Act, 2000 (Act 32 of 2000) (MSA)

Section 26(e) of the MSA refers to the municipal SDF as a "core component" of the municipal IDP along with, amongst others, the council's development strategies, the council's operational strategies, disaster management plans, a financial plan and key performance indicators and targets.

In this regard, it is worth noting the High Court Judgement in **Shelfplett 47 (Pty) Ltd v MEC for Environmental Affairs & Development Planning and Another** (16416/10) [2012] ZAWCHC 16; 2012 (3) SA 441 (WCC) (5 March 2012) where the presiding Judge made it clear that "an SDF forming part of the municipality's duly adopted

IDP" (para. 117), "Section 25 of the Systems Act requires the IDP (including the SDF) to be adopted by the municipality's council" (para. 107) and that an amended SDF must "be submitted to the MEC for Local Government as required by s 32(1) of the Systems Act" (para. 108).

b) *Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013)(SPLUMA)*

Section 20(2) of SPLUMA indicates how a municipal SDF must be prepared "as part of" a municipal IDP, in accordance with the provisions of the MSA. Furthermore, Section 20(1) of the SPLUMA refers to how a Municipal Council must by notice in the Provincial Gazette adopt a municipal SDF.

c) *Western Cape Land Use Planning Act, 2014 (Act 3 of 2014)(LUPA)*

In Section 10(1) of LUPA, reference is made to a municipality adopting or amending its SDF in terms of the MSA. In this regard it is significant to note that the MSA does not provide separate processes to draft, adopt or amend an SDF independently from the IDP. The only process the MSA regulates is the process to draft, adopt and amend an IDP and therefore the SDF must follow this process.

d) *Municipal Planning Bylaws*

Section 3(1) of the Standard Draft Municipal Land Use Planning By-law, prepared and distributed by the Department, makes reference to a Municipal Council compiling or amending its municipal SDF in accordance with the MSA. Your specific municipal planning bylaw may have a similar clause. Here again, it must be stressed that it is significant that no separate process to compile, adopt or amend a municipal SDF is provided for in the MSA. As a municipal SDF is a core component of a municipal IDP, i.e. part of an IDP, any amendments to the municipal SDF must be subject to the MSA and its regulations.

- 1.2 What is clear from the above is that the MSA and SPLUMA explicitly makes the municipal SDF part of the municipal IDP, while LUPA and the Standard Draft Municipal Land Use Planning By-Law make it clear that the process to be followed in the drafting, adoption and amendment of an municipal SDF is the same process used for the drafting, adoption and amendment of a municipal IDP as set out in the MSA and its regulations.
- 1.3 The compilation and adoption of a municipal SDF is therefore regulated by all four laws mentioned above which contain both procedural and content requirements that municipalities have to adhere to. Most importantly the said legislation does not allow for a municipal SDF to be drafted, adopted or amended in isolation or separately from the IDP. A municipal SDF must therefore be compiled, adopted and

amended as part of the municipal IDP drafting, adoption and amendment process. If a municipal SDF is to be amended after the adoption of the five-year IDP, then the municipal SDF amendment must be done as part of the amendment process of the municipal IDP.

2. While many are familiar with the fact that the municipal SDF is a core component of the IDP, what has yet to be mainstreamed and institutionalised is the fact that a municipal SDF amendment is a municipal IDP amendment and that the process to amend a municipal SDF must comply with the municipal IDP amendment process as set out in the Local Government: Municipal Planning and Performance Management Regulations, 2001. This Department is therefore in the process of developing a Guideline for drafting, adopting and amending a municipal SDF which will be distributed in due course.
3. The Department will also schedule training and discussion workshops for municipal SDF practitioners and municipal IDP managers during the second half of the year to ensure that the aforementioned requirements are understood by all. These workshops will further unpack the various benefits and incentives which municipal SDFs are capable of.
4. In the interim please be aware that the requirements for amending a municipal SDF, is contained in Section 3 of the Municipal Planning and Performance Management Regulations, SPLUMA, LUPA and in your own Municipal Planning By-Law. This is particularly relevant now as you draw up your municipal IDP Process Plan for the development of the new fourth generation IDP.
5. Finally, the Department would like to stress the importance of following the correct procedures, particularly at the land use decision-making level, in order to prevent any unintended consequences such as legal review.
6. The content of this Circular is based on our current understanding of the relationship between municipal SDFs and IDPs. We are however in the process of obtaining a legal opinion from Senior Counsel to provide additional clarity on this matter.
7. Please do not hesitate to contact Kobus Munro of DEADP should the need to amend an SDF arise. Mr Munro can be reached on (021) 483 4796 or kobus.munro@westerncape.gov.za

Yours sincerely



PIET VAN ZYL
HEAD OF DEPARTMENT

DATE: 25.07.2016

Annexure B

Guideline for the Amendment of Spatial Development Frameworks

Step	Steps to be undertaken	Underpinning Legislation
1.	The Municipality must decide whether or not to establish an Intergovernmental Steering Committee	LUPA – Section 11 (a) and (b) and the Relevant Bylaw on Municipal Planning, Chapter 2, Section 5
2.	All members of the Council must be given reasonable notice of the amendment	MSA Local Government Municipal Planning and Performance Management Regulations, 2001, Section 3(4)(a)
3.	Notice of the proposal to amend the SDF must be published in in two of the official languages of the Province, most spoken in the area, in two newspapers circulating in the area. The notices must indicate: a) The Municipal intention to compile or amend an SDF b) The process to be followed for the amendment of the SDF	Relevant Bylaw on Municipal Planning, Chapter 2 Section 3 (2) (a) (i)(ii) SPLUMA –Section 20 (3) (a); MSA Regulations, 2001 – Chapter 2 Section 4(a)
4.	The Municipality must inform the Provincial Minister in writing of the intention to amend the SDF, indicate whether or not the ISC process will be undertaken and the process to be followed in the amendment	Relevant Bylaw on Municipal Planning Chapter 2 Section 3(2)(b) (i-iii)
5.	Register relevant stakeholders who may be invited to comment on the draft amendment of the SDF	Relevant Bylaw on Municipal Planning Chapter 2 Section 3(2)(c)
6.	The Municipality must establish a project committee. The project committee should consist of: <ul style="list-style-type: none"> • the Municipal Manager (or a municipal employee designated by the Municipal Manager) • Municipal employees appointed by the Municipal Manager from at least the following municipal departments – IDP, Spatial Planning, Engineering, LED and Housing 	Relevant Bylaw on Municipal Planning Chapter 2 Section 4(1) and (2)

7.	<p>If the decision above was to establish an IGSC, then the Municipality must invite, in writing, written nominations for representatives to serve on the IGSC from the following persons or organs of state:</p> <ul style="list-style-type: none"> • The head of the provincial department responsible for land use planning; • The head of the provincial department responsible for environmental affairs • Other relevant organs of state 	Relevant Bylaw on Municipal Planning Chapter 2 Section 5
8.	<p><i>The LUPA proposed Standard Draft By-Law includes a long process of how the IGSC and Project Committee should be involved. For those municipalities not following the LUPA proposed Standard Draft By Law, please check your own By-Laws in this regard.</i></p>	
9.	<p>The public / local community must be invited to submit written comment on the proposed amendment within 60 days of the publication thereof In addition, any organs of state or other role players must be identified and consulted on the amendment of the SDF.</p>	<p>SPLUMA – Section 20(3) MSA, Section 29(1)(b)(iii)</p>
10.	<p>Assuming that an Intergovernmental Committee has been established, members of this committee must be given a chance to comment on the proposed SDF amendment during the compilation process.</p>	LUPA Section 12 (4)
11.	<p>The District Municipality must be consulted and given an opportunity to comment in writing.</p>	MSA Regulations Chapter 2 Section 3(6)
12.	<p>If the Municipality has decided not to establish an IGSC , the draft SDF with the proposed amendment must be submitted to the Provincial Minister for written comment</p> <p>The Provincial Minister must submit written comment to the Municipality within 60 days (The period can be extended if the municipality agrees) The municipality may not approve an amendment to the SDF, until comment has been received or 60 days have passed</p>	<p>LUPA – Section 13</p> <p>LUPA – Section 13 (2)</p> <p>LUPA – Section 13 (1)(b)</p>

13.	Any comments from the District Authority, the IGSC, the public, the Provincial Minister must be taken into account.	MSA Regulations Section 3 (6) and others
14.	A member or committee of a municipal council may introduce a proposal for amending an SDF in the Council	MSA Regulations Chapter 2 Section 3(1)
15.	Any proposed amendment submitted to Council must be accompanied by a memorandum setting out the reasons for the proposal and must indicate how the amendment is in line with the District Municipality's Framework for Integrated Planning	MSA Regulations Chapter 2 Section 3(2)
16.	If the final draft of the amendment to the SDF is materially different from what was published under point 11 or 14 above, the Municipality must follow a further consultation and public participation process before the amendment is adopted by Council	Relevant Bylaw on Municipal Planning, Chapter 2, Sections 6(7) and 7(2)
17.	The Municipal Council must consider all representations received in respect of the proposed SDF amendment.	SPLUMA, Section 20 (3)(c)
18.	Once adopted by the Council, a notice of this adoption must appear in the media and the Provincial Gazette, within 14 days of the date of adoption	SPLUMA Section 20(1) Relevant Bylaw on Municipal Planning, Chapter 2, Sections 6(9) and 7(3)
19.	Once adopted, the Municipal Manager must submit a copy of the amended SDF as adopted by the Council to the MEC for Local Government, within 10 days of the adoption. This submission must include: a) a summary of the public participation process b) a statement that the process set out in Section 29(1) of the MSA has been complied with c) a copy of the Districts Framework for Integrated Development Planning (See Section 27 of the MSA)	MSA Section 32 (1)
20.	Within 30 days from the date of receipt of the amended SDF, the MEC for Local Government must determine if: a) the SDF amendment complies with the MSA and / or	MSA Section 32(2)

	<p>b) whether the amendment is in line with any development plans and strategies of other affected municipalities or organs of state</p> <p>c) the public participation process outline in Section 29 of the MSA has been complied with</p>	
21.	Should the amended SDF not comply with the above, the MEC for Local Government should request the relevant municipal council to amend the SDF	MSA Section 32 (2)
22.	<p>The Municipal Council must consider the MEC's request to amend the SDF , and within 30 days of receiving the MEC's request, the Council must consider:</p> <p>i) If it agrees with the proposals to adjust the SDF in accordance with the MEC's request.</p> <p>ii) Object to the MEC's request and furnish the MEC with reasons in writing why it disagrees</p>	MSA Section 32(3)
23.	If the Municipality objects to the MEC's request, the MEC may refer the municipality's objection to an ad hoc committee (see Section 33 of the MSA). The MEC must refer an objection to the ad hoc committee within 21 days of receiving the objection.	MSA Section 32 (4)
24.	See Section 33 of the MSA which deals with the Ad Hoc Committee process	
25.	Also note Section 22.(3) of the SPLUMA which states that where a PSDF is inconsistent with a MSDF, the Premier must in accordance with the Intergovernmental Relations Framework Act, take the necessary steps to support the revision of those spatial development frameworks in order to ensure consistency between the two	

*** PLEASE NOTE: that the Section numbers referred to in the “Relevant Bylaw on Municipal Planning” relates to the numbering in the LUPA Proposed Standard Draft By-Law, which may be different from the corresponding numbers in your own Municipal Planning By-law.**