



CIRCULAR: EADP 0021/2014

ALL MAYORS, MUNICIPAL MANAGERS AND CHIEF TOWN PLANNERS, ALL WESTERN CAPE PROVINCIAL HEADS OF DEPARTMENT, SALGA, SAPI, SACPLAN, AND ALL ORGANISATIONS AND PRIVATE-SECTOR BODIES INVOLVED IN THE LAND USE PLANNING SECTOR IN THE WESTERN CAPE

AN UPDATE ON THE IMPLEMENTATION OF THE SPATIAL PLANNING AND LAND USE MANAGEMENT ACT, 2013 (ACT 16 OF 2013) INCLUDING THE PUBLICATION OF THE SPLUMA REGULATIONS AND THE IMPACT THIS HAS ON THE MUNICIPAL LAND USE PLANNING BYLAW ADOPTION PROCESS

1. PURPOSE

- 1.1. The purpose of this External Circular is to inform all Mayors, Municipal Manager and Chief Town Planners in the Western Cape of the:
- a. latest development relating to the implementation of the national Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013)(SPLUMA);
 - b. Department of Environmental Affairs and Development Planning's (the Department) concerns surrounding the content of the recently published proposed SPLUMA Regulations; and
 - c. impact the proposed SPLUMA Regulations will have on the respective municipal processes to adopt Municipal Land Use Planning Bylaws in term of the Municipal Systems Act, 2000 (Act 32 of 2000).

2. BACKGROUND

- 2.1. The Department would like to extend its thanks and appreciation to all our Municipal Planning colleagues and Municipal Councillors for the cooperation provided with the process of getting the proposed land use planning bylaws advertised for public comment in the respective municipalities. The level of cooperation and the team-work displayed is indicative of how the Western Cape land use planning fraternity has matured over the last 3 years.

- 2.2. The Department would like to re-iterate that it remains convinced that the approach adopted by the Western Cape Government is constitutionally correct. The adopted approach requires all municipalities within the Western Cape to develop and adopt municipal land use planning bylaws as the most important part of the land use planning regulatory regime created by the framework legislation of SPLUMA and the Western Cape Land Use Planning Act, 2014 (Act 3 of 2014)(LUPA).
- 2.3. To this end, the Department has been assisting, advising and guiding Municipalities in this process based on the best available information gained during regular engagements with the National Development of Rural Development and Land Reform (NDRD&LR).
- 2.4. The approach adopted by the Department has continuously been communicated to the NDRD&LR and the understanding has always been that the Western Cape, and its Municipalities, would be exempted from the regulations in terms of SPLUMA.

3. SPLUMA IMPLEMENTATION DATE

- 3.1. As indicated in previous Departmental Circulars (Circular EADP 0015/2014), the NDRD&LR plans to implement SPLUMA on 1 September 2014.
- 3.2. The Department is not aware of any communication from the NDRD&LR indicating that the 1 September 2014 implementation date has been changed. As such, the Department must continue to work on the assumption that SPLUMA will be implemented on 1 September 2014.
- 3.3. In the above regard, the Western Cape Minister of Local Government, Environmental Affairs and Development Planning, Minister Anton Bredell, has officially requested the national Minister of RD&LR to delay the implementation of SPLUMA in the Western Cape to 1 February 2015 (refer to attachment). No response has, as yet, been received in regard to this request.

4. THE IMPLICATIONS OF THE PROPOSED SPLUMA REGULATIONS

- 4.1. On 4 July 2014 the proposed SPLUMA Regulations were published for public comment. The closing date for comment is 4 September 2014.
- 4.2. The content of the proposed SPLUMA Regulations is, in the opinion of the Department, problematic because it goes counter to the approach adopted by the Western Cape Government. While the Department intends to submit detailed comments to the NDRD&LR on the proposed SPLUMA regulations the following aspects need to be highlighted at this point in time.
 - a. The proposed SPLUMA Regulations overlaps, and in some instances contradicts, the Standard Draft Municipal Land Use Planning By-law proposed by the Department; and
 - b. The proposed SPLUMA Regulations does not contain a clause that allows municipalities to be exempted from the SPLUMA regulations, if they have adopted a municipal land use planning bylaw which is in accord with the SPLUMA principle Act.

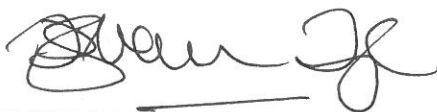
4.3. The absence of the above mentioned exemption clause puts at risk the approach adopted by the Western Cape Government and its Municipalities to adopt municipal land use planning by-laws.

5. THE PROPOSED WAY FORWARD

- 5.1. Taking the above into consideration the Department proposes the following way forward.
- 5.2. Municipal officials are requested to inform their respective Councils' of the developments contained in this communication. The Department will further communicate this information through the Western Cape Municipal Managers Forum on 11 August 2014.
- 5.3. Municipalities are requested **NOT** to submit their municipal land use planning by-law to your respective Council's for final adoption until further clarity on the proposed SPLUMA Regulations can be obtained.
- 5.4. Municipalities are requested to continue with their SPLUMA and LUPA readiness programmes. The Department is continuing to develop the guidelines and pro-forma templates and application forms despite the uncertainty detailed above.
- 5.5. Municipalities are to provide the Department with comments received through the advertisement of the Municipal Land Use Planning Bylaws. This will enable the Department to refine the Standard Draft Municipal Land Use Planning Bylaw.
- 5.6. Municipalities are urged to critically review the proposed SPLUMA Regulations. As indicated above, the Department intends to submit detailed comment to NDRD&LR. These comments will be made available to all Municipalities for their information and support. If any Municipality intends providing comment on the proposed SPLUMA Regulations, they are urged to forward these to the Department for its information.

6. CONCLUSION

- 6.1. While this turn of events is unfortunate, it would be irresponsible for the Department to advise municipalities to proceed with the final adoption of their municipal planning bylaws knowing that certain adjustments may be necessary as a result of the finalisation of the SPLUMA Regulations, a process the Department nor municipalities have no control over.



PIET VAN ZYL

HEAD OF DEPARTMENT

DATE: 05.08.2014



REFERENCE: 1/4/1/1/2, 15/P (2013/641)

Mr G Nkwinti

Minister of Rural Development and Land Reform

Private Bag X833

Pretoria

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Dear Mr Nkwinti

REQUEST TO POSTPONE PROPOSED IMPLEMENTATION DATE OF CHAPTER 6 OF THE SPATIAL PLANNING AND LAND USE MANAGEMENT ACT (SPLUMA)

My Department has been informed of the proposed implementation of Chapter 6 of the Spatial Planning and Land Use Management Act (SPLUMA) which is set for 1 September 2014.

All the municipalities in the Western Cape are currently in the process of compiling Municipal By-laws on Municipal Land Use Planning and it is imperative that the municipalities have adopted the By-laws by the proposed implementation date of SPLUMA.

My Department is continuously monitoring the progress of the Western Cape municipalities with regard to the compilation and adopting of the Municipal Land Use Planning By-laws and at the end of June 2014 indications were that a substantial number of the Western Cape municipalities will not be able to adopt and publish their Municipal Land Use Planning By-laws by 1 September 2014.

In addition to the Municipal Land Use Planning By-laws it is clear that the establishment of Municipal Planning Tribunals (MPT's) is taking more time and effort than what was initially envisioned and municipalities may also not be ready in this regard by 1 September 2014. Whilst my Department is actively assisting municipalities with the establishment of the MPT's, indications at this stage also suggest that there may be a number of municipalities which will not have established their MPT's by the said date.

The progress with the compilation and adoption of the Municipal Land Use Planning By-laws as well as the establishment of the MPT's have been hampered due to the

uncertainties created by the fact that the SPLUMA Regulations have not been published or made available yet.

In view of the above I would like to request that the implementation of Chapter 6 of SPLUMA be postponed until at least 1 February 2015. The main reason for our request is to ensure that service delivery to our communities is not affected and that a smooth transition to the new planning system is facilitated.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'A. Bredeell', with a large, sweeping flourish at the end.

A BREDELL

MINISTER

DATE: 04/07/2014