

SPATIAL PLANNING AND LAND USE MANAGEMENT ACT (Act 16 of 2013)

Proposed SPLUMA Amendments

25 August 2017



rural development
& land reform

Department:
Rural Development and Land Reform
REPUBLIC OF SOUTH AFRICA

CHAPTER 1

Introductory Provisions (Sections 1 to 5)

Definitions proposed to be reworked:

- **Executive authority** is the appeal authority but can delegate this authority
- **External engineering services & Internal engineering services** to be deleted see amendment to sec 49
- **Inspector**- Peace officers enforce a range of by-laws and Acts. An inspector to SPLUMA has labour relations issues.

CHAPTER 1

Introductory Provisions (Sections 1 to 5)

Definitions proposed to be reworked:

- **Incremental upgrading of informal areas to incremental upgrading:** means the progressive introduction of administration, management, engineering services and land tenure rights.
- Delete the rest of the definition
- Include definition of informal settlement - unplanned settlement on land which has not been surveyed or proclaimed as residential consisting mainly of informal dwellings which are make shift structures not erected according to approved architectural plans

CHAPTER 1

Introductory Provisions (Sections 1 to 5)

Definitions proposed to be reworked:

- **Land development;** Delete reference to erection of buildings or structures as this relates to building plan approval,
- **Owner-** The definition of an owner includes a beneficial owner, but beneficial owner is not defined. This is important especially when dealing with applications that fall within Traditional Areas and are under control of Chiefs.

CHAPTER 1

Introductory Provisions (Sections 1 to 5)

Definitions proposed to be reworked:

- **Public place;** Issue of vesting needs to be addressed(when does it vest) in Provincial legislation or Bylaw (14/7/2016).
- **No change in SPLUMA.**
- **"Restrictive Condition"** although the Act is silent on servitudes and based on that servitudes have to be cancelled through proper procedure dealing with real rights. It must be considered to maybe exclude servitudes. Caution: many restrictions found in a deed are servitudes rather than conditions of establishment.

CHAPTER 1

Introductory Provisions (Sections 1 to 5)

Definitions proposed to be added:

- Traditional Council
- Court
- Land development application
- Institution
- Development charges

CHAPTER 1

Introductory Provisions (Sections 1 to 5)

- Section 2(2) is creating challenges in transitional measures particularly with old provincial laws.
- Hence should be rephrased particularly to acknowledge municipal by-laws consistent with SPLUMA.
- This section should be deleted due to its unconstitutionality and wide ranging effect.

CHAPTER 2

Development Principles and Norms and Standards

- Principles should find resonance at policy level, this can be used to measure the outcome of the application.
- Provincial legislation can substantiate norms and standards (deal with this in regulations).
- More consideration is required with reference to issues of enforceability, i.e. s8(2)(d) and (3).
- Section 8 should also regulate process/procedures for public participation.

CHAPTER 3

Intergovernmental Support (Sections 9 to 11)

- The issue of national support and monitoring, and the “...mechanisms to support...” in section 9(2) should be addressed in the regulations.
- Section 9 and 10 overlap and necessitate the differentiation of monitoring powers between national and provincial (in terms of constitution).

CHAPTER 4

Spatial Development Frameworks (Sections 12 to 22)

- Major conflict between SPLUMA and MSA
- Section 12(2)(b) must guide and inform decision making, however this is in conflict with section 35 of the MSA that binds the executive of a municipality to its IDP which in turn contains the SDF of a municipality.
- Difficult to reconcile the provisions of the MSA and SPLUMA in that regard.
- Might require the amendment of SPLUMA s12(2)(b), s22 & s42, and MSA s35 (inconsistent).
- Open for debate.

CHAPTER 4

Spatial Development Frameworks (Sections 12 to 22)

- Sections 15(7) and 17(1) refer to publishing of provincial SDF and amendments in *provincial gazette*.
- Wording amendment required, considering the wording of publishing notice vs publishing the actual document (Publication - general notice).
- Powers to develop RSDF must be amended to include provincial in terms of regional planning, not limited to minister.
- It is linked to the Issue regarding definition of region.

CHAPTER 4

Spatial Development Frameworks (Sections 12 to 22)

- Reconsider the relationship between MSDF & IDP.
- Consider the implications of annual IDP review on SDF in terms of amendments.
- There is a need to formulate possible process for the amendment of SDF.
- Also, section 21 does not allow for differentiation of municipalities (content requirements for SDF's are problematic for different types of Municipalities).
- May also need to amend s21 in terms of the MSA.

Spatial Development Frameworks (Section 12 to 22)

Section 22 (MPT decisions) may need amendment with due consideration to:

- Binding nature of the SDF in section s22(1);
- Ad hoc amendments to the SDF;
- Clarity to departure in site specific circumstances s22(2);
- Approval/refusal of application inconsistent with SDF;
- Terminology (departure/deviation);
- Recording of departures in IDP/SDF; and
- The delegation of departing from the SDF - power of council.

CHAPTER 5

Land Use Management (Sections 23 to 32)

- The role/participation of traditional council suggested for a need to be aligned with s4 of the Traditional Leadership and Governance Framework Act (Act 41 of 2003).
- However, as much as SPLUMA is a framework Act, provincial legislation and municipal by-laws may detail the participation of traditional council.

CHAPTER 5

Land Use Management (Sections 23 to 32)

Issues highlighted for attention under s24(2):

- Refer content to WG 2 to distinguish which provisions should be within the SDF and which should be within LUS – **PENDING.**
- Section 25 requires some minor wording amendments, i.e.
 - Scheme “regulations” should be ‘Provisions’.
- There is a need to rationalise sections 26, 27, 28 (and 41) There should be one clause dealing with the amendment of a LUS

CHAPTER 5

Land Use Management (Sections 23 to 32)

- The whole of section 32 on enforcement needs a rethink.
- There are even unconstitutional statements within this section, i.e. issue of warrant.

CHAPTER 6

Land Development Management (Sections 33 to 52)

- Clarity is required on whether opening a sectional title register is a land development application or not and how it should be handled.
- Suggestions:
 - Use by-laws to provide for certificate for land use confirmation for S/T .
 - Definitions of land & land development need reconsideration (with reference to real rights).

CHAPTER 6

Land Development Management (Sections: 33 to 52)

- The question posed:
 - How do JMPT and DMPT relate to the Tronox Case Judgement?
- No councillors should sit in the MPT; and
- the municipality must constitute a quorum.

CHAPTER 6

Land Development Management (Sections 33 to 52)

- Perhaps reword Section 41 to read as:
The MPT may decide of the following applications-
 - (a) zoning;
 - (b) rezoning;
 - (c) consent or permission in terms of LUS;
 - (d) township establishment;
 - (e) subdivision of land;
 - (f) consolidation of land; and
 - (g) restrictive conditions / conditions of title.

CHAPTER 6

Land Development Management (Sections 33 to 52)

- Conditional approvals as per s43 (lapsing) should have a provision for extension beyond just 5 years depending on the type of application yet with an imposed maximum period.

CHAPTER 6

Land Development Management (Sections 33 to 52)

- Section 45 still fails to address the issue of a beneficial owner and clarity is required.
- Reference to the service provider is too broad.
- Provisions relating to interested person and intervener status in Section 45(2) to 45(5) is open for abuse, it should be deleted; these provisions should be dealt with by municipal by-laws (possible amendment also affects regulation 31).

CHAPTER 6

Land Development Management (Sections 33 to 52)

- Delete section 49(1) and (2) Provision of Engineering Services
- In regard to the provision of engineering services, A municipality should determine who provides engineering services in accordance with the policies, legislation and standards and engineering services guidelines.

CHAPTER 6

Land Development Management (Sections 33 to 52)

- Section 51(3) should be followed by a clause to clarify that the appeal may be a wide or narrow appeal.
- find wording for narrow appeal and give both options.
- Section 51(6) should be amended such that an external technical advisory body or internal advisory body is able to make a recommendation to the appeal authority.
- The appeal authority must make a decision in respect of the appeal within 120 days

CHAPTER 6

Land Development Management (Sections 33 to 52)

- Section 52 must be redrafted
- Municipal planning powers must be respected.
- Provision shall be for national government to comment/input on municipal planning application.
- National government decision making powers must be refined.
- Cooperative governance and dispute resolution clauses should be inserted.
- More clearer criteria for national interest must be developed.

CHAPTER 7

General Provisions (Sections 53 to 61)

- The concern is that a property arising from a consolidation does not constitute a first registration.
- Section 53 amend to:
“The first registration of any property resulting from a land development application in respect of township establishment, subdivision of land or consolidation of land may not be performed unless the municipality certifies that all requirements and conditions of the approval which must be complied with prior to the registration of any property, have been complied with”

CHAPTER 7

General Provisions (Sections 53 to 61)

- Amend s60(2)(b) and (c) for all DFA applications to be dealt with in terms of the DFA not in terms of SPLUMA and all powers and functions that were available to the GDT, registrar and DO's should be included in order to finalise the DFA applications.
- Amend s60(2)(d) for all applications to be dealt with within 2 years after the amendments come into force and all appeals to be dealt with within 3 years.

CHAPTER 7

General Provisions (Sections 53 to 61)

- Section 54 (regulations) regulates procedures in municipal space whereas these should be regulated by municipal by-laws.
- Provisions for minimum procedures and public participation should be placed in section 8 instead.

CHAPTER 7

General Provisions (Sections 53 to 61)

- Schedule 1 Matters to be addressed in Provincial Legislation- shall be deleted.
- Amend column dealing with extent of repeal
 - Delete "the whole" and replace with "to the extent that the law has not been assigned to provinces“.
- Regulations will be thoroughly considered at the later stage.

Thank you

Department of Rural Development & Land Reform
Spatial Planning and Land Use Management
Tel: (012) 312 9568



rural development
& land reform

Department:
Rural Development and Land Reform
REPUBLIC OF SOUTH AFRICA