

COMMENTS BY THE LAW SOCIETY OF SOUTH AFRICA (LSSA)
ON THE DRAFT REGULATIONS IN TERMS OF THE SPATIAL PLANNING AND LAND USE
MANAGEMENT ACT, 16 OF 2013

The Law Society of South Africa (LSSA) wishes to comment as follows on the Draft Regulations in terms of the Spatial Planning and Land Use Management Act, 16 of 2013, which was published for comment in Government Gazette 37797.

General comment

Regulations generally tend to over-regulate and to spell out every eventuality in detail. Differences of opinion and unforeseen circumstances which will require interpretation by the courts may arise. This is unfortunate, because development of land will be hampered and delayed, while developers will have to take a very cautious approach, as almost all developments are crucially dependent on cash flow, which is often blocked or delayed by uncertainties and problems with the interpretation of land use legislation and regulations.

Clause 1(i)

The term "any other development on the land" is too wide and may lead to uncertainty.

Clause 4(4)

This clause, which requires the Premier of a province to take steps to amend a provincial spatial development framework that is not aligned with the plans, policies and development strategies of a municipality by revising the provincial spatial framework and the plans, policies and development strategies of the municipality concerned, goes against the principle that the policies of a local authority must enjoy

preference over the provincial policies. A municipality's right to determine its own policies will be curtailed if the Premier can in any event require it to change the policy.

Clause 7(1)

It is unnecessary to make provision for the appointment of a special panel of facilitators by the Minister. The Department of Co-operative Governance and Traditional Affairs (COGTA) should be equipped to deal with such disputes.

Clause 18(1)(c)

We refer to our comments in respect of clause 4(4) above. It is conceivable that the Minister may not agree with the steps taken by the Premier in terms of clause 4(4) above and direct the municipality to take different measures, which can lead to uncertainty and court challenges.

Clause 23(1)

The inclusion of this clause is commendable. Information regarding environmental factors and development prohibitions should be available upfront and not after expensive impact studies had been undertaken.

Clause 24(1)

It is unclear how the requirement for a municipality to identify areas with "high agricultural potential" must be aligned with the functions of the Department of Agriculture, Forestry and Fisheries in terms of the Subdivision of Agricultural Land Act, 70 of 1970 and under whose jurisdiction land with agricultural potential will fall.

Clause 52(2)(g)

Many conditions of title are imposed by individuals or institutions from the private sector and who may consent, or decline to consent, to deviations from such conditions. It is not clear how this must fit in with the local authority.

Clause 57(3)

It is suggested that general principles should define the meaning of "spouse". The definition of "spouse" in the Regulations is very wide and includes a relationship that "resembles" a marital partnership or custom reunion. This is in contrast to the interpretation of "spouse" in terms of other legislation, for instance the Housing Development Schemes for Retired Persons Act 85 of 1988.

Clause 81(1)

The requirement that a determination must be made within 60 days is supported. However, it is unclear what the remedies are of an applicant who does not receive a determination within the specified time. The remedies stipulated in the Regulations and in the Promotion of Administrative Justice Act 3 of 2000 could burden the applicant with further costs and delays.

Clause 87(1)(d)

The transfer of any land in a development is prohibited until all conditions of development have been complied with. It should therefore not be necessary for the applicant/developer to provide a guarantee over and above the prohibition against transfer of the land that generates the income for the development.

Clause 92(1)

The provision for the amendment of development conditions is commendable. Developers were subjected to much misery and expenses by the interpretation that, once issued, an approval is cast in stone and require extensive procedures to be subsequently rectified or amended.

Clause 95(9)

The requirement that all development contributions must have been paid before any property in a development may be transferred will cause problems. In large developments, the developer and local authority concerned are locked in a quasi-partnership where infrastructure over a wide area is jointly planned and phased in as the development proceeds. Strict interpretation of this clause will force the local authority to insist on payment of large amounts long before any income can be generated from the subdivision and sale of land within the development relating thereto. It is suggested that this clause be qualified to allow that registration may proceed if the local authority is satisfied that the developer has furnished adequate security for the provision of services and payment of development contributions on an on-going basis.

Clause 95(10)

This clause is welcomed.

Clause 95(11)

The problems caused in earlier legislation by the "vesting" requirement will persist because there is no requirement that the fact of vesting must be recorded in the Deeds Office. The larger municipalities in particular have serious problems with rating and valuation where public land has long since vested, but has not yet been transferred in the Deeds Office. A local authority uses the Deeds Office registration as the official reference and therefore regards such vesting land as still being owned by the developer until the land is formally transferred.

Provision should be made that, upon the first transfer of an erf in a development, the Deeds Office must be notified to endorse all affected properties to the effect that same vests (usually) in the local authority and is now registered in the name of such authority without the need for further transfer.

Clauses 99 to 144

The appeals procedures might be too extensive and complicated for applicants to follow.