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GENERAL NOTICES • ALGEMENE KENNISGEWINGS

DEPARTMENT OF RURAL DEVELOPMENT AND LAND REFORM**NOTICE 311 OF 2019****GENERAL NOTICE OF AN APPLICATION FOR EXEMPTION IN TERMS OF SECTION 55 OF THE SPATIAL PLANNING AND LAND USE MANAGEMENT ACT, 16 OF 2013**

Notice is hereby given in terms of Section 51(1) of the Spatial Planning and Land Use Management Act (Act 16 of 2013) read together with regulation 33(5): that the under-mentioned application has been received by the Minister of Rural Development and Land Reform and is open for perusal during normal office hours at the office of the Acting Deputy Director-General: Spatial Planning and Land Use Management Act, Office 612, 6th Floor, Capitol Towers Building, 224 Hellen Joseph Street, Pretoria; or on the departments website: <http://www.ruraldevelopment.gov.za>. Any objections/representations must be lodged in writing within 60 days of this notice, to the Acting Director-General, at the above-mentioned address, posted to Private Bag X 833, Pretoria, 0001 or by Email on rajesh.makan@drdlr.gov.za on or before the closing, quoting the above-mentioned heading, interest in the matter, the ground(s) of the objection/representation.

1. THE NATURE OF THE APPLICATION

Application for exemption from the provisions of section 43(2) in terms of section 55(1) of the Spatial Planning and Land Use Management Act, 16 of 2013 for the geographic area of the province of the Western Cape as defined in the Constitution (Act 106 of 1996).

Section 43 (2) of the Act states:

43. Conditional approval of application:

(2) A conditional approval of an application lapses if a condition is not complied with, within—

- (a) a period of five years from the date of such approval, if no period for 40 compliance is specified in such approval; or
- (b) the period for compliance specified in such approval, which, together with any extension which may be granted, may not exceed five years.

1.1. Area:

The Whole of the Western Cape Province as provided for in Schedule 1A of the Constitution (Act 106 of 1996)

1.2. Organ Of State Requesting Exemption:

Western Cape Department of Local Government, Environmental Affairs and Development Planning:-
PROVINCE: Western Cape

2. REASONS FOR EXEMPTION

The reasons for the request are stated by the applicant are as follows:

"The main concern is that development projects (small, medium and large and regardless of the scale and type of land use application) within the Western Cape may be at risk and may not be able to

comply with the requirement of Section 43(2) of the Act. This will ultimately have negative consequences for economic growth, job creation and poverty alleviation.

Related to the above, municipalities and developers would be reluctant to invest in large infrastructure and land development projects if development rights cannot be secured for periods longer than five years on approval or at least have the possibility of extensions to validity periods begin granted.

Municipalities and other organs of state responsible for infrastructure provision and human settlement projects are also subject to the limitations imposed by this provision. It would be undesirable at various levels, if infrastructure projects, budgeted for and partially implemented had to be abandoned due to the lapsing of land use rights provided for in the Act. Section 43(2) also presents the following challenges: -

- the absolute requirement that all conditions must be complied with is a different concept as a validity period coupled with the non-commencement of an approval which has been the custom in the Western Cape;
- in terms of this section, an absurd situation may present itself in terms of which a semi-completed development will lapse if one of the conditions has not been complied with. The whole approval will lapse, which means even the completed phases become illegal;
- there is no provision for any extension of the validity period beyond the five years. The only recourse in such an event is to submit a fresh application, with all its related challenges of costs, time, public participation and resultant uncertainty of a reinstatement of the previous approval;
- if the initial development application was subjected to an appeal or even a judicial review, this section will mean that any new application may invoke an appeal and judicial review on the same application again.
- The five year period creates too much uncertainty, is shorter than the average economic cycle and will affect private developers (large and small), municipalities, as well as private individuals alike, negatively; and
- It does not support a developmental approach; it may work against it.

3. PROPOSED ALTERNATIVE PROCEDURE

The application proposes the following to be substituted as an alternative provision as required in terms of Section 55(1)(b) of the Spatial Planning and Land Use Management Act, 16 of 2013. That the provision of section 43(2) be substituted with the following provisions:

- i. The exemption granted for the province of the western cape will be effective in the area of a municipality only if :-
 - a. the municipal council has taken a resolution to accept and implement the exemption from the provisions of section 43(2) of the Spatial Planning and Land Use Management Act, 16 of 2013; and
 - b. the municipality has regulated for the lapsing of rights and extension of validity periods in their respective by-laws on municipal land use planning.
- ii. In absence of a council resolution contemplated in paragraph i(a) and the inclusion of the relevant regulations in their respective by-laws as contemplated in paragraph i(b) hereinabove, the provisions of section 43(2) remain applicable and enforceable in the area of that municipality.

The Western Cape Government fully supports the principle of validity periods/lapsing of rights but is of the opinion that it should be regulated for and be extendable, by a municipality as circumstances dictate.

Since SPLUMA, as national framework legislation does not provide for such extension to be considered beyond five years, as a result, it could also not be provided for in Western Cape Land Use Planning Act, 2014 or in By-laws on Municipal Land Use Planning of individual municipalities."



MINISTER: MS M NKOANA-MASHABANE