



CIRCULAR EADP 0018/2017

**TO ALL MAYORS, MUNICIPAL MANAGERS, MUNICIPAL PLANNING HEADS, THE REGISTRAR OF DEEDS
(CAPE TOWN), SOUTH AFRICAN GEOMATICS INSTITUTE (WESTERN CAPE BRANCH)**

SUBJECT: WITHDRAWAL OF GUIDE PLANS AND EXEMPTIONS OF ACT 70 OF 1970

Dear Sir/Madam,

The purpose of this circular is to provide additional clarity regarding the effect of the withdrawal and amendment of the Urban and Regional structure plans (former guide plans) in terms of the Physical Planning Act, 1991 (Act 125 of 1991), (PPA) and the Western Cape Land Use Planning Ordinance, 1985 (LUPO) on the applicability of the Subdivision of Agricultural Land Act, 1970 (Act 70 of 1970), (SALA). Recent advice from Senior Counsel resulted in an improved understanding of the matter necessitating a need to revisit the provincial position as stated in Circular 14/2012 and to provide additional clarity to the Surveyor-General when dealing with subdivision approvals of agricultural land.

1. Withdrawal of Urban and Regional Structure Plans and previous provincial position.

On 4 July 2012 the Minister responsible for Planning withdrew all remaining urban and regional structure plans in terms of the PPA, excluding the Knysna Wilderness Plettenberg Bay Guide Plan, which was declared unconstitutional. In Circular 14/2012, par. 4.5 it was communicated that "...Under the urban or regional structure plans areas earmarked for purposes other than agriculture were excluded from the definition of "agricultural land" and therefore were exempted from the provisions of the Act 70 of 1970. This exemption no longer applies with the withdrawal of these plans and approvals in terms of Act 70 of 1970 will again be required for newly created land portions in areas defined as "agricultural land" in terms of Act 70 of 1970."

This stems from Section 27(1)(d) of the PPA which determined that land in the area to which a former guide plan applied, other than land which is agricultural land as defined in section 1 of the SALA, and which in terms of the relevant plan may be used for agricultural purposes only, shall be excluded from the provisions of the SALA.

Whilst this exemption from the SALA was a well-established practice and implemented effectively, some confusion has emerged since the withdrawal of the former guide plans in 2012 and the repeal of the PPA.

2. Revised position on the effect of withdrawal of Urban and Regional Structure Plans.

The Department of Agriculture, Forestry and Fisheries obtained the opinion and advice from Senior Counsel in this regard as a result of ongoing interpretational issues. The opinion states that notwithstanding the withdrawal of the former guide plans or the repeal of the PPA, legislation and administrative action is not intended to operate with retrospective effect or in such a manner as to interfere with existing rights and liberties. Section 12 of the Interpretation Act, 1957 (Act 33 of 1957) determines that where enabling legislation is repealed, the repeal does not affect the legal consequences as a result of administrative action taken before the legislation was repealed.

This means that the withdrawal of the former guide plans as well as the subsequent repeal of the PPA was not intended to have retrospective consequences or to change the status quo in respect of the exemption of certain areas from the provisions of SALA. The withdrawal of the former guide plans and the repeal of the PPA did therefore not affect the exemption of certain areas from the provisions of SALA. Areas that were exempted from the provisions of SALA prior to the withdrawal of the former guide plans and the repeal of the PPA, therefore remain exempted from SALA.

The advice provided in Circular 14/2012 (par 4.5) is herewith amended and replaced with the following: -

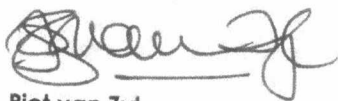
"Cognisance should also be taken of the implications of the withdrawal of the urban or regional structure plans on areas subject to the Subdivision of Agricultural Land Act, 1970 (Act 70 of 1970). Under the urban or regional structure plans areas earmarked for purposes other than agriculture were excluded from the definition of "agricultural land" and therefore were exempted from the provisions of the Act 70 of 1970. These areas remain exempted from the provisions of Act 70 of 1970, until such time as the repeal of Act 70 of 1970 is implemented or the Act amended."

3. Implications of the above mentioned advice:

- a) The definition of agricultural land in terms of SALA remains unchanged.
- b) The exemptions in terms of SALA remains unchanged.
- c) As long as SALA remains in place, areas previously excluded from the provisions of SALA due to the designations in former guide plans in terms of the PPA, remain excluded from the provisions of SALA subsequent to the withdrawal of the guide plans and the repeal of the PPA. These exclusions also include ad-hoc Ministerial amendments to former guide plans, where the designation e.g. from agriculture/forestry was amended to township development.
- d) The new planning dispensation of the Municipal Systems Act, 2000 (MSA), the Spatial Planning and Land Use Management Act, 2013, the Western Cape Land Use Planning Act, 2014 or the various By-laws on Municipal Land Use Planning does not effect the above.
- e) The MSA and the Spatial Development Frameworks do not regulate/address/effect any exemptions from SALA.
- f) The Surveyor General, Registrar of Deeds, municipalities and land surveyors are advised that where a SALA approval of a subdivision is submitted, it must be accompanied by a certification by the municipality that it is exempted from municipal approval or be accompanied by a municipal approval of the subdivision in terms of the relevant municipality's by-law on land use planning.
- g) The Surveyor-General and the Registrar of Deeds be advised that where only a municipal approval of a subdivision of agricultural land is submitted, that it be checked if it is not also in an area where an approval in terms of SALA is also required.

If any further assistance is required regarding the contents of this circular, please direct such request to **Theo Rebel** (021-483 8375)/ theo.rebel@westerncape.gov.za or **Kobus Munro** (021-483 4796)/ kobus.munro@westerncape.gov.za

Yours Sincerely



Piet van Zyl

Head of Department
Environmental Affairs and Development Planning

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