



File Ref: 15/2 & 15/3/1/12

Circular: DEA&DP 0003/2021

TO: ALL MUNICIPAL MANAGERS, MUNICIPAL PLANNING HEADS AND SPATIAL PLANNING AND LAND USE MANAGEMENT PLANNING CONSULTANTS

FOURTH MINISTERIAL AUTHORISATION IN TERMS OF SECTION 60(2) OF THE WESTERN CAPE LAND USE PLANNING ACT, 2014 (ACT 3 OF 2014), TO ALL WESTERN CAPE MUNICIPALITIES TO DEVIATE FROM CERTAIN PROVISIONS OF THE ACT.

1. Introduction

- 1.1. On 20 May 2020, 17 August 2020 and again on 16 November 2020, I authorised municipalities to deviate from certain provisions of the Western Cape Land Use Planning Act, 2014 (Act 3 of 2014) (LUPA) (refer to DEA&DP Circulars No. 0011-2020, 0016-2020 and 0027-2020) (the initial, second and third authorisations).
- 1.2. Each of these authorisations were issued in terms of section 60(2) of LUPA and enabled all municipalities in the Western Cape to deviate from the provisions of section 44(2)(b) of LUPA.
- 1.3. In terms of section 60(3) of LUPA, the third authorisation expires 90 days from being given, which date is 15 February 2021.
- 1.4. This Circular needs to be read with Circular 0011-2020 in so far as it sets out the details and motivation for the initial authorisation to deviate from the provisions of LUPA.

2. New authorisation to deviate from the provisions of LUPA

- 2.1. The implementation of mitigating measures during the current state of disaster has exposed the overly restrictive minimum requirements in section 44(2)(b) of LUPA regarding direct notification.

- 2.2. The current (third) authorisation expires on 15 February 2021. LUPA does not enable me to renew an authorisation. As a result, I have again authorised a deviation.
- 2.3. The new (fourth) authorisation is attached to this Circular.
- 2.4. In terms of section 60(3) of the Act, the third authorisation expires 90 days from being given, unless it is withdrawn before its expiry.
- 2.5. Since the authorisation to deviate from this provision of LUPA is a temporary solution, I have on 09 November 2020 submitted the Amendment Bill to the Speaker for introduction in the Western Cape Provincial Parliament to permanently delete section 44(2)(b). The Amendment Bill has been formally introduced in the Western Cape Provincial Government on 12 November 2020.

3. Practical implications of the authorisation

- 3.1. The authorisation will in no way absolve municipalities from compliance with other legal prescripts contained in legislation, case law, etc. Municipalities will still be obligated to comply with the other provisions in LUPA, and other legislation, such as the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013), and the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000). The authorisation will only ensure that municipalities who do not comply with section 44(2)(b) of LUPA will not be non-compliant with LUPA.

4. Provisions in the municipal land use planning by-laws

- 4.1. Most municipal planning by-laws of the municipalities in the Western Cape contain the following provision: *"If the Provincial Minister grants an exemption or authorisation to deviate from a provision of the Land Use Planning Act to the Municipality in terms of section 60 of the Land Use Planning Act, the Municipality is exempted from or authorised to deviate from any provision in its By-law that corresponds to the provision of the Land Use Planning Act in respect of which an exemption was granted or deviation was authorised"*.
- 4.2. If a municipality included the above provision in its planning by-law, it would not have to authorise a similar exemption or deviation in terms of its by-law.
- 4.3. Despite the authorisation granted to deviate from section 44(2)(b) of LUPA, municipalities may decide, and are encouraged, to comply with this section where possible.
- 4.4. This authorisation only affects the giving of direct notification. It enables municipalities to employ alternative methods to ensure direct notification.
- 4.5. Planning legislation makes provision for a range of public participation methods to ensure the public is afforded ample opportunity to take note of development

proposals and to participate in the relevant processes. In addition to direct notification, municipalities must / may publish notices, post notices on municipal websites, publish notices in the *Provincial Gazette*, place notices on site and use other alternative methods to ensure public participation.

5. A balanced approach

5.1. The state of disaster requires carefully considered measures, and a balance between (a) the rights of interested and affected parties to be notified directly, and (b) the need to move the economy forward, must be achieved.

5.2. Municipalities are encouraged to make use of consultants and/or applicants to assist with the direct notification challenges. Applicants could be required to obtain the e-mail or other social media contact details of interested and affected parties to communicate the application to such parties. A combination of methods may be used to achieve necessary notification.

5.3. It is essential that evidence of direct and public notification conducted by the municipality should be recorded. Evidence of direct and public notification conducted by consultants and/or applicants should be provided to, considered by, and kept on record by, each municipality.

If any further information is required, please direct such request to the Head of Department, Mr Piet van Zyl, at pieter.vanzyl@westerncape.gov.za or Kobus Munro at kobus.munro@westerncape.gov.za or telephonically at 083 701 1890.

Kindly acknowledge receipt of the authorisation.

Yours sincerely

A BREDELL

**MINISTER : LOCAL GOVERNMENT,
ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING**

Date:

Copies to:- Mr. Rajesh Makan (email: Rajesh.Makan@drdlr.gov.za)