



## rural development & land reform

Department:  
Rural Development & Land Reform  
**REPUBLIC OF SOUTH AFRICA**

**Chief Directorate: Spatial Planning & Information**

Private Bag X 833, Pretoria, 0001; Tel: 012 312 9371; Fax: 086 692 8882; 184 Jacob Mare Street, Pretoria, 0001

Email: [sogunronbi@ruraldevelopment.gov.za](mailto:sogunronbi@ruraldevelopment.gov.za), Cell: 082 577 5655

Enquiries: Sunday Ogunronbi, Executive Manager: Spatial Planning & Information.

### **Statement by the Department of Rural Development and Land Reform on the Spatial Planning and Land Use Management Bill (SPLUMB) and the Constitutional Court Judgment in the Development Facilitation Act (DFA) case.**

22 March 2012

- 1.1 The Department is pleased to announce that the Cabinet has approved the Spatial Planning and Land Use Management Bill (SPLUMB) on the 20 March 2012 for introduction to Parliament. Cabinet further approved that the Leader of Government Business will liaise with Parliament to explore expedited processing of this Bill through Parliament.
- 1.2 This Bill is approved against the background of the pending expiration on the 17 June 2012 of the deadline imposed by the Constitutional Court judgment in the Development Facilitation Act (DFA) case.
- 1.3 On the 18th June 2010 the Constitutional Court in the case between the City of Johannesburg Metropolitan Municipality vs Gauteng Development Tribunal and others declared chapters V and VI of the Development Facilitation Act No 67 of 1995 as constitutionally invalid.
- 1.4 In terms of its reach, the Constitutional Court Order included:
  - (a) the constitutional invalidity of chapters V and VI of the DFA which was suspended for 24months;
  - (b) Parliament must within 24months from 18 June 2010 remedy the defects in the DFA or enact a new legislation to address the same;
  - (c) with effect from the 18 June 2010 no Development Tribunal must exclude any legislation from applying to land forming the subject matter of an application to it;
  - (d) with effect from the 18 June 2010 Development Tribunals must take into consideration in all applications before them the Spatial Development Frameworks (SDFs) and plans of the municipality where the land is situated; and
  - (e) no new application to be received with effect from the 18 June 2010 in respect of any land within the areas of the City of Johannesburg Metropolitan Municipality or eThekweni Metropolitan Municipality.

2. Considering that the Development Facilitation Act at its inception was conceived by the State as an interim piece of legislation, the Spatial Planning and Land Use Management Bill will be processed through Parliament as a response to the defects in the DFA and to achieve other related policy objectives.
3. The Department acknowledges that there is genuine apprehension on the following issues:
  - (a) possibility of the non-enactment of the Spatial Planning and Land Use Management Bill (SPLUMB) by the 17 June 2012 to respond in time to the judgment of the Constitutional Court;
  - (b) clarity on applications pending before the Development Tribunals as at 17 June 2012;
  - (c) clarity on the regulatory and administrative environments for receiving, processing, determining land use/land development applications from the 18 June 2012;
  - (d) clarity on whether, when and how the Government will respond to the looming deadline of the 24 months suspension of the constitutional invalidity of chapters V and VI of the Development Facilitation Act No 67 of 1995, and whether a request for extension of the deadline determined by the Order of the Constitutional Court will be considered by the State.
4. The explanations to these issues are as follows:
  - 4.1 Official position on the DFA regarding applications received in terms of the DFA before the 17 June 2012
    - (a) the Constitutional Court did not order the repeal of the whole of the DFA but found only chapters V and VI of the Development Facilitation Act as constitutionally invalid;
    - (b) applications received by Development Tribunal before 17 June 2012 will continue to be heard and determined by the Tribunals even after 17 June 2012 as if the Constitutional Court had not declared invalid chapters V and VI of the DFA **BUT** subject to:
      - (i) no Development Tribunal must exclude any legislation from applying to land forming the subject matter of an application to it; and
      - (ii) Development Tribunals must take into consideration in all applications before them the Spatial Development Frameworks (SDFs) and plans of the municipality where the land is situated.

- (c) Since the appointments of Development Tribunal members were done in terms of Chapter III of the DFA (which remains unaffected by the Concourt order) tribunal members may continue to hold office beyond the 17 June 2012 until the DFA is repealed.
- (d) The appointment of other public functionaries performing any function (such as Designated Officers) including the consideration and disposal of all applications received before 17 June 2012 is unaffected by the Concourt order and may continue to hold office beyond the 17 June 2012 until current applications before the Development Tribunals are disposed of and the DFA is repealed.
- (e) No new application may be received by the any Development Tribunal in terms of the DFA on a date beyond 17 June 2012.

#### 4.2 Official position on all land development applications with effect from the 18 June 2012

- (a) The Government accepts and abides with the declaration of unconstitutionality of chapters V and VI of the DFA, and offers the Spatial Planning and Land Use Management Bill as the remedy and response to the judgment.
- (b) Application to the Constitutional Court by the Government for an extension to the 24 months will be made in time if it is established that no other viable alternative exists to processing land applications in any part of the country except via the DFA.
- (c) The Department notes that the volume of applications brought in terms of the DFA are substantially small in numbers compared to applications in terms of the others existing laws such as the Ordinances. For instance, 14,000 applications in terms of the Ordinance were received in Gauteng Province in 2008 compared to the 62 DFA applications in that province in the same year (Source: Urban Land Mark 2008).
- (d) The DFA did not repeal existing pre-1995 planning laws and they remain on the statute book. Land development applications in terms of these laws continued to be the case exclusively and not under the DFA in Western Cape, Free State, and Northern Cape.
- (e) In KwaZulu-Natal Land development applications are now maintained in terms of the KwaZulu--Natal Planning and Development Act. These will continue to be the case until the enactment of the Spatial Planning and Land Use Management Bill into an Act of Parliament.
- (f) In the North-West, Limpopo, Mpumalanga, Eastern Cape, and Gauteng Provinces it is important to note that the pre-1995 laws on land development management remains in the law books. These laws are still in use, and they will continue to be used until the enactment of the

Spatial Planning and Land Use Management Bill into an Act of Parliament.

- (g) The Department notes that in some geographic areas of the country, such as a number of former homelands and self-governing territories, laws were enacted to deal with land development applications and while these laws remains on the statute books, there may not be institutional mechanisms to give effect to these laws.
  - (h) In provinces where reliance will be placed on the pre-1995 laws from the 18 June 2012 and the Municipalities that may fall outside of the Ordinance, National Government will ensure that adequate support is offered on appropriate institutional capacity to handle Land Development Applications without any major disruptions. It is also noted that the volume of land Development applications in these areas are not substantial and appropriate mechanisms will be put in place to deal with these.
  - (i) Engagement workshops with Provinces and Municipalities and other Stakeholders on the approved Bill and the transitional/interim arrangements have been scheduled for the 26 March through to 04 April 2012.
5. In conclusion, the Department of Rural Development and Land Reform continues to assure all interested persons and professionals involved in the land development and land use management fields that the Department will not allow a situation where a vacuum is allowed to exist in this regulatory environment. The Department remains open to dialogue, engagement and interaction on matters of clarity regarding the processing of the Spatial Planning and Land Use Management in Parliament and the impact of the Constitutional Court judgment on land development management.

Thank you

Further enquiries, please contact:

**Sunday Ogunronbi**  
**Executive Manager: Spatial Planning & Information**  
**Department: Rural Development & Land Reform**  
**Cell. [+27 82 577 5655](tel:+27825775655)**  
**Work [+27 12 312 9371](tel:+27123129371)**  
**Fax 086 692 8882**  
**Email. [sogunronbi@ruraldevelopment.gov.za](mailto:sogunronbi@ruraldevelopment.gov.za)**