



**DEA&DP Circular No 0009/2020**

**To: ALL MUNICIPAL MANAGERS, HEADS OF MUNICIPAL PLANNING COMPONENTS AND SPATIAL PLANNING AND LAND USE MANAGEMENT SERVICE PROVIDERS IN THE WESTERN CAPE PROVINCE**

**CLARIFICATION OF MUNICIPAL PLANNING (SPLUM) FUNCTION UNDER THE COVID-19 RISK ADJUSTED STRATEGY AND PRACTICE NOTES ON LAND USE MANAGEMENT**

The declaration of a National State of Disaster on 15 March 2020, the Nation-wide lockdown period stretching from 27 March 2020 to 30 April 2020, and the amended Regulations (the "Regulations") issued on 29 April 2020 refer. The Minister of Cooperative Governance and Traditional Affairs on 29 April 2020 released Government Gazette No 43258, with R.480 *Disaster Management Act (57/2002): Regulations issued in Terms of Section 27 (2) of the Act*, which replaces the previous Regulations and also introduces the concept of a "COVID-19 Risk Adjusted Strategy" and provides the detail of what the **Alert Level 4 Control Conditions and Restrictions** are. The Government Gazette can be accessed on the following weblink: <http://www.cogta.gov.za/?p=8050>.

Our thanks and appreciation go to all our stakeholders that provided comments and suggestions after we issued our DEA&DP Circular No 0004/2020 on 2 April 2020.

**1. INTRODUCTION**

- 1.1** The "Schedule of Services: Framework for Sectors" provides for an industry classification for readiness to return to work at each level, based on certain criteria, together with restrictions that should remain after the lockdown, regardless of the alert level.
- 1.2** Initially, return to work will be based on the National determination, but will progressively be expanded to provincial and district levels, enabling workplaces to adapt to the level of infection and healthcare readiness in their locality.

- 1.3 The announcement by the President and the Regulations published on 29 April 2020 has initially placed the entire South Africa on Alert Level 4, effective from 1 May 2020.
- 1.4 Numerous queries have been received from Municipalities and Spatial Planning and Land Use Management (SPLUM) Service Providers, requesting clarity around the interpretation of the Alert Levels specifically with respect to the SPLUM function and whether Municipalities will be able to operate under Level 4 of the Regulations.
- 1.5 The Department has studied the Regulations and the descriptions and wording of the Alert Levels, and also engaged with the National SPLUM Branch in the Department of Agriculture, Land Reform and Rural Development (DALRRD).
- 1.6 The latest version of the Disaster Management Regulations do not specifically cater for each sector in the economy or sphere of government and needs to be interpreted carefully, in order to decide which sectors are prioritised to gradually commence their activities at their places of work. Discretion is also given to Executive Authorities and HODs to provide clarity in certain areas.
- 1.7 This Circular attempts to provide some guidance and also additional Practice Notes to Municipalities and SPLUM Service Providers in order to assist in improving service delivery and to ensure that development applications can be processed by Municipalities.

## **2 ALERT LEVEL 4**

- 2.1 Table 1 of the Regulations (Paragraph "O"), which deals with "*Public administration, government services and other arms of the state*", stipulates that "*Essential Municipal Services*" and "*Any other service designated by the Executive Authority, HODs, Heads of Courts, and Heads of other Chapter 9 Institutions*" are allowed at Level 4, in addition to the industries allowed under Level 5. Reference is also made to "Permitting and Licensing" which in our view can be interpreted to also include some of the Land Use Management (LUMs) functions.
- 2.2 The LUMs components at Municipalities, responsible for accepting, processing and deciding of development applications, of the SPLUM function is considered an "Essential Municipal Service", particularly in support of Construction and related services under Category "D", as well as professional services under Category "H", which are sectors able to operate in addition to those under Alert Level 5, and can operate from Municipal Offices under Level 4.

- 2.3** With respect to Paragraph 2.2 above, please note that the “General Conditions” contained in Chapter 3 of the Regulations contain stringent measures for the return of staff to the workplace.
- 2.4** Please also note that under Alert Level 4 all persons that are able to work from home should do so. Our SPLUM sector can, to a large extent, do so effectively, both at the Municipal Sector, as well as the Consultant/Service Provider levels.
- 2.5** We acknowledge, however, that there are limitations to what can be achieved through working remotely. The progression to Alert Level 4 on 1 May 2020 should be used to staff offices with a small and absolute minimum number of personnel that would enable Municipalities to start up their LUM functions again.
- 2.6** Practically, this would mean that only the minimum number of staff members who are required to assist with rendering the essential LUM functions (specifically excluding the Spatial Planning functions), that will not be possible through a work-from-home basis, should be in attendance at the office. Depending on the size of the LUM staff complement in the Municipality, it may be necessary for staff to work on a rotation/roster basis.

### **3 PRACTICE NOTES ON MUNICIPAL LAND USE MANAGEMENT**

#### **3.1 Applications**

- (a) Applicants are encouraged to finalise applications and submit same for processing to municipalities **in electronic format** to enable municipalities to transfer information to officials working from home and distribute applications to interested and affected parties for processing.
- (b) Initial discussions with some of the role-players indicate that most municipalities can accept electronic submissions and payments and can process the applications based on electronic submissions.
- (c) It is accepted that different municipalities will have different requirements and procedures and SPLUM consultants must liaise with the respective municipalities in this regard.
- (d) Where pre-application meetings are required, municipalities are encouraged to conduct these meetings through electronic platforms, and to also consider other alternatives such as a normal written request for confirmation of procedures and required information. In this way physical meetings could be avoided.

### 3.2 Evaluation of applications

- (a) The second aspect we should consider is our ability to process applications remotely. Many Municipal and WCG officials are currently working from home, but we have received feedback that some Municipalities have limited abilities in this regard and that some officials are not able to function remotely. We do understand the constraints of some Municipalities and their staff, but we implore our Municipalities that process the bulk of the LUM applications in the Province, to investigate and devise strategies that will capacitate more officials to work from home. We need to anticipate that the work-from-home arrangement might continue for a few more months.
- (b) These are anxious times and we have seen that authorities assist their staff with the provision of computer equipment (even allowing staff to take their desktop computers home for the time being), software, and particularly the ability to communicate through internet and availability of data. Each Municipality has its own challenges and we know that there is no one-size-fits-all solution for these challenges. All we can ask is that our Municipalities investigate all their options in this regard.

### 3.3 Municipal Planning Tribunal and Authorized Officials

- (a) In most Municipalities the Municipal Planning Tribunal (MPT) meetings that were scheduled for March and April 2020 were cancelled. In terms of the Regulations, physical MPT meetings should not be taking place, so we must consider alternative arrangements.
- (b) We need to anticipate that we may not be able to have face-to-face MPT meetings for a few more months.
- (c) A very important initiative for every Municipality to consider is the possibility to **amend the categorization of applications**. This is an initiative I think all of us should investigate for Alert Levels 2 to 5 to assign more powers in terms of the Planning By-law to an Authorised Official during this period (except maybe for applications initiated by the Municipality themselves). Some Municipalities have already done this.
- (d) The use of **digital meeting platforms**, such as Microsoft Teams, Zoom or Skype, specifically for the MPT meetings, should be investigated. The size of some MPT's would make it difficult for meetings through digital means and some members and officials may not have access to these facilities.

- (e) For this reason, it is proposed that the **size and quorum of the MPT's** also be investigated. It is within the power of the Municipalities to reduce the size of MPT meetings to have more options available. Changes to the rules of the MPT sittings, as well as the size of the panels and quorums, are all aspects that are within the power of the Executive Mayors during the lockdown period. We recommend that Municipalities specifically investigate their rules and MPT arrangements to find ways to have smaller and more manageable meetings. Please note that SPLUMA does allow for an MPT to designate at least three members of the MPT to hear, consider and decide a matter that comes before it. This can be of assistance as well and will also make it easier to have meetings via electronic platforms as noted above.
- (f) Under these circumstances and with the limited technical and administrative capacities available in some of the Municipalities, it is essential that good record keeping of meetings, discussions, reasoning and reasons for decisions are ensured.
- (g) We are aware that there may be a range of practical challenges, that will vary from Municipality to Municipality. These could include:
- Ability to compile agendas remotely;
  - Attendance/ participation of interest groups and persons that want to make representations at MPT meetings;
  - Etc.

### **3.4 Public Participation**

- (a) The public participation processes and communication with interested and affected parties are probably our biggest challenges during this period. DEA&DP Circular No 004/2020, as well as the City of Cape Town's media statement that accompanied the Circular, suggested that public participation could not be concluded during the lockdown period and timeframes should be extended accordingly after the lockdown period.
- (b) This advice now needs to be amended under the Regulations applicable to Alert Levels 2 to 5, and we need to find a solution to this challenge.
- (c) Both LUPA and the Municipal Planning By-laws require public participation to include the publication of notices, the posting of notices on municipal websites, and other alternative methods of participation, but importantly also direct notifications.

- (d) Our initial engagements with Colleagues from the Municipalities indicate that most Municipalities do not foresee big challenges with publication of notices, posting of notices on municipal websites and other alternative methods of participation.
- (e) The single biggest challenge we have, is to notify interested and affected parties in terms of Section 44 of LUPA, which in the past was concluded mostly via registered post.
- (f) Although electronic communication methods are allowed as an alternative to registered post, we have been informed of logistical problems to access the electronic contact details of all interested and affected parties. To address this challenge the Department is suggesting the following for the period under Alert Levels 2 to 5:
  - (i) The Department will approach the Western Cape Minister responsible for Local Government, Environment Affairs and Development Planning to **exempt Municipalities from the minimum requirements of Sections 39(2) and 44 of LUPA.**
  - (ii) This will have the effect that the requirements in both LUPA and the Municipal Planning By-laws for direct notification are exempted.
  - (iii) This does not mean that Municipalities do not have to notify interested and affected parties. It only allows Municipalities to employ alternative measures to notify interested and affected parties of public participation during this period. Municipalities must still ensure that every effort is made to contact interested and affected parties.
  - (iv) The Department has not taken this decision lightly. In fact, we have decided to follow the same approach for applications in terms of the Environmental legislation and to also exempt the EIA process from this requirement.
  - (v) The worrying times that we are in requires some carefully considered measures and a balanced approach between the rights of interested and affected parties to be notified "directly" and the need to move the economy forward has to be achieved. The Department is of the view that for this period, the exemption is justified, considering that the other forms of public participation will still be used.
  - (vi) We also encourage Municipalities 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 and even to communicate the application to such parties.
  - (vii) It is essential that evidence of public participation conducted by consultants and/or applicants be provided to and kept on the record by the Municipality.

### **3.5 Communication of Decisions**

- (a) The same principles applicable to the public participation process outlined in Paragraph 3.4 above must also be employed as the minimum requirements applicable to the notification of decisions to interested and affected parties.
- (b) In this regard, a similar exemption from the minimum requirements in Section 50 of LUPA and the corresponding sections in the Municipal Planning By-laws could be issued to assist the Municipalities to employ alternative methods to notify interested and affected parties of decisions, reasons for the decision and parties' right of appeal.
- (c) In DEA&DP Circular No 0004/2020 we indicated that decisions by the Appeal Authority could continue and be finalised during this lockdown period and the gradual application of the Risk Adjusted Strategy.

## **4 SPATIAL PLANNING**

**4.1** Spatial Planning processes underway relating to the preparation of Municipal Spatial Development Frameworks or local area planning should continue as far as the technical preparation processes can be undertaken on a work-from-home and virtual meeting basis. It is likely that Municipalities will not be able to conduct mass-based meetings for a long time yet. Municipalities are, however, encouraged to seek alternative ways to engage the public in spatial planning processes.

**4.2** The 60-day public comment period allows for significant time for alternative approaches to be followed, preceded by good preparation. This is an opportunity for Municipalities and their Service Providers to be innovative.

## **5 PROVINCIAL PLANNING (SPLUM) SERVICES**

### **5.1 Land Development Applications**

The same principles outlined above for Municipal LUM will apply to applications submitted in terms of Section 53 of LUPA to the Western Cape Department of Environmental Affairs and Development Planning.

### **5.2 Provincial Comment on Applications and other services**

The Department will continue to provide comment on applications in terms of Section 45 of LUPA, Municipal By-laws, human settlement projects, environmental

impact assessments and will issue certificates in terms of the Subdivision of Agricultural Land Act, 1970 (Act 70 of 1970), etc.

## **6 ZONING SCHEMES**

- 6.1** We acknowledge that the Regulations will have the effect that certain Municipalities will not be able to comply with the SPLUMA requirements with respect to integrated zoning schemes by June 2020 as stipulated in the Act.
- 6.2** The Department will again approach our National Colleagues at the Department of Agriculture, Land Reform and Rural Development about this challenge and will again request that a national exemption be issued by the National Minister from the provisions of SPLUMA.

Colleagues, as Municipal practitioners and private sector service providers/consultants, you are at the forefront of service delivery and face the daily challenges of trying to keep providing a good service to your respective clients. Please inform us of these challenges to allow us to assist you where possible, but more importantly, that we can share best practices with the other Municipalities. It is only together that we will overcome these challenges and emerge with a better and stronger planning (SPLUM) system and a development industry that thrives. We are looking forward to your further comments and responses in this regard.

For further details please engage with our Director: Development Management, Kobus Munro, at [Kobus.Munro@westerncape.gov.za](mailto:Kobus.Munro@westerncape.gov.za).

Yours sincerely



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