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LSSA warns planning professions against monopoly in reserving work

The Law Society of South Africa (LSSA) has described the schedules and regulations gazetted late last year in terms of the Planning Professions Act 36 of 2002 as 'a massive attempt by the planning profession to annexe areas of work on which they do not presently have, and may not claim, a monopoly'.

In its submissions to the Department of Land Affairs at the end of 2008, the LSSA called on the Department to hold the regulations while proper negotiation and consultation took place with the legal and other affected professions. The LSSA warned that the promulgation of the regulations in their present form would be challenged by the legal profession as unconstitutional and anticompetitive.

In submissions prepared by its Committee on Environmental Affairs, the LSSA pointed out that the planning profession comprises persons trained in spatial planning. Through the regulations, the planning profession was seeking to protect work firstly for its members' economic interests, and secondly in the public interest, since planners perform a host of public functions. The LSSA claimed that the schedules to the regulations had confused these interests.

'The regulations may not go beyond the public interest, as any attempt solely to protect the planning profession's economic interests is anticompetitive and consequently unconstitutional,' said the LSSA.

The LSSA did indicate in its submission that it had no objection to the planning profession delineating, according to differing levels of experience and training, the different areas of planning work that may be conducted by various categories of its registered members. However, the LSSA pointed out that many of the areas of work contained in the schedules are the legitimate domain of many non-planners. It explained that: '[L]awyers routinely prepare and lodge land development applications for projects entailing the amendment of approved plans and policies. Rezoning and special consent and DFA applications fall into this category, and it would be absurd to suggest that lawyers should henceforth be excluded from such work. Indeed, certain senior practitioners specialising in these forms of legal work have more expertise than recently registered professional planners.' The LSSA added that it was equally unacceptable that lawyers should be excluded, for example, from formulating statutory planning instruments or considering land-use relationships between buildings.

The LSSA also pointed out that lawyers were not the only groups of persons excluded by the regulations from reserved work and other professionals such as engineers, project managers and surveyors would also be affected.

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