

THE SPLUMA SPLASH: SWINGS AND ROUNDABOUTS

Certain members of the Association and colleagues from other professions will probably take a measure of wry satisfaction to learn that, as predicted, the coming into effect of the Spatial Planning and Land Use Management Act, 2013 (SPLUMA) on 1 July 2015 was bound to result in various problems for the property development industry.

The latest glitch which has come to the attention of the Association is in the form of wailing discontent from various conveyancers responsible for attempting to register subdivisions, consolidations and township establishment matters in the various Deeds Registries. Apparently, various such matters are being rejected out of hand by the Deeds Office officials, ostensibly as a result of non-compliance with, inter alia, Section 53, of SPLUMA. For ease of reference the wording of Section 53, is quoted below:

“Commencement of registration of ownership 53. The registration of any property resulting from a land development application may not be performed unless the municipality certifies that all the requirements and conditions for the approval have been complied with”.

Whilst the chosen wording of Section 53 is not so specific as to be considered to only apply to the provisions of SPLUMA, one school of thought suggests that, since the coming into effect of SPLUMA in July 2015, the Deeds Registry is duty-bound to insist on a certificate from the relevant municipality with regard to the registration of any property (as result of subdivision, consolidation, township establishment, etc.). In other words, on the part of the Deeds Registry, it is required that the responsible municipality must make reference to Section 53 of SPLUMA in the certificates, albeit that the matter under consideration may have been submitted and determined in terms of prior legislation, such as the provincial ordinance or similar legislation (used pre-SPLUMA).

This simplistic view requires to be further unpacked, as a number of further considerations are relevant thereto. The following scenarios are evident:

SCENARIO 1:

An application resulting in the requirement for registration in the Deeds Office, submitted in terms of legislation other than SPLUMA (prior to SPLUMA being brought into effect) and having been determined prior to 1 July 2015.

It would appear to be evident that a matter which falls in the aforesaid scenario does not trigger any requirement in terms SPLUMA and, as a result, Section 53 of SPLUMA finds no application under such circumstances. Any call by the Deeds Registry for a certificate contemplated in Section 53 under such circumstances would therefore be entirely unjustified.

SCENARIO 2:

An application which requires registration in the Deeds Office, submitted in terms of legislation other than SPLUMA (prior to 1 July 2016) but having been determined post the coming into effect of SPLUMA (i.e. after 1 July 2015).

Having regard to the judgment of the Constitutional Court in the Tronox KZN Sands matter it appears evident that the same logic should apply to the aforesaid scenario and that, as a result, Section 53 of SPLUMA again does not find application under such circumstances. The calling for a certificate in terms of Section 53 of SPLUMA would therefore again appear to be unjustified. Refer to Tronox KZN Sands (Pty) Ltd v KwaZulu Natal Planning and Development Appeal Tribunal and Others [2016] ZACC 2.

SCENARIO 3:

An application requiring registration in the Deeds Office, which application was submitted to the relevant municipality post the coming into effect of SPLUMA in July 2015, but which application was submitted in terms of legislation other than SPLUMA, given that the municipal by-law in the particular municipal jurisdiction may not have come into effect. In other words, there was no mechanism to make application to the municipality other than in terms of the available Ordinance or similar legislation at the time.

In the aforesaid scenario, SPLUMA is in place and requires to be adhered to whilst, simultaneously, the provisions of the prior legislation in terms of which the application was indeed submitted also requires to be adhered to. It follows that the relevant municipality will be required to issue 2 certificates or a dual certificate, alluding to both the Ordinance and Section 53 of SPLUMA by certifying that all requirements and conditions of approval have been complied with by the applicant. In such an instance, the municipality may be requested to amplify its typical wording of its certificate of clearance for registration (by example Regulation

38 of Ordinance 15 of 1986 or Section 82 of the same Ordinance), by confirming that, for the purposes of the matter under consideration, the clearance issued by the municipality will be deemed to be a clearance contemplated in Section 53 of SPLUMA, or words to such effect.

SCENARIO 4:

An application requiring registration in the Deeds Office, as a result of an approval procured in terms of the municipal by-law.

It goes without saying that any application submitted and determined in terms of the municipal by-law (which is umbilically linked to SPLUMA) must, of necessity, result in a requirement for the municipality to certify compliance in terms of Section 53 of SPLUMA.

The Association will be communicating the above to the Chief Registrar of Deeds and various municipalities, with a view to reaching agreement on the practicalities of the matter. Obviously, when an application for registration in the Deeds Office is rejected for unjustified reasons, it will inevitably delay the registration process to the detriment of the applicant.

Planning practitioners are forewarned to take proactive steps with regard to land development applications which require registration and to ensure that the clearances/certificates required from the municipality are issued in the correct context.

SAACPP: July 2016