

SPATIAL PLANNING AND LAND USE MANAGEMENT

AN EVER-CHANGING LANDSCAPE

Against the backdrop of the much anticipated SPLUMA enactment comes the news of a number of new challenges for planners and developers. We await with bated breath the coming of July 2015 when SPLUMA is expected to rise from the ashes, as it were, like the proverbial Phoenix.

Peter Dacomb provides an overview of a number of recent developments that may have a bearing on the day to day activities of a planning practice. These are:

- ❖ a Draft Policy and Bill on the Preservation and Development of Agricultural Land Framework, aimed at replacing the Subdivision of Agricultural Land Act, 70 of 1970; and
- ❖ a new circular from the Chief Registrar of Deeds, known as Circular 3 of 2015, stipulating the pro forma requirements for Conditions of Establishment for new townships which is sure to become a thorn in the flesh of professional planning practitioners, conveyancers, land surveyors and their clients in the property development sector.

DRAFT PRESERVATION AND DEVELOPMENT OF AGRICULTURAL LAND FRAMEWORK BILL (PDALF).

In a notice which appeared in the Government Gazette on 13 March 2015, the Department of Agriculture, Forestry and Fisheries (DAFF) invited public comment on a draft Policy and a draft Bill, ostensibly aimed at the preservation and development of agricultural land. Comments in this regard may be submitted to the Director: Land Use and Soil Management of the aforesaid department before or by 30 May 2015 (E-mail reference LydiaB@daff.gov.za).

The purpose of the draft Bill and Policy appears to focus on the custodianship of "agricultural land" and, inter alia, to regulate the subdivision and rezoning of so-called:

- ❖ High Potential Cropping Land; and
- ❖ Medium Potential Agricultural Land; and

to provide for proclaiming so-called Protected Agricultural Areas.

Yes – your eyes are not deceiving you – DAFF intends to regulate rezoning of such land (not only subdivision).

Considering that the draft Bill is aimed primarily at repealing and replacing the Subdivision of Agricultural Land Act, 1970 (SALA), it now also curiously also aims to regulate the subdivision and rezoning of certain land components which will purportedly fall under the jurisdiction of the Minister of Agriculture, Forestry and Fisheries.

The operative terms which inform the various sections of the Bill with regard to matters of subdivision and rezoning are:

- ❖ High potential cropping land -

this means land best suited to and capable of consistently producing acceptable levels of goods and services for a wide range of agricultural enterprises in a sustainable manner, taking into consideration expenditure of energy and economic resources and includes -

- Land capability Class 1 land;
- Land capability class 2 land;
- Land capability Class 3 land;
- Unique agricultural land;

- Irrigated land; and
- Land suitable for irrigation.

(How's that for a vaguely formulated definition?)

❖ Medium potential agricultural land -

this means all land available for agricultural production purposes -

- Excluding high potential cropping land; and
- Including a land capability classes IV, V, VI, VII and VIII land

Under Section 3 of the draft Bill, the custodianship of so-called "agricultural land" is assigned exclusively to the Department of Agriculture, Forestry and Fisheries. In Section 3(2), DAFF confirms that, acting through the National Minister or MEC's at provincial level, as the case may be, DAFF will:

- approve;
- reject;
- control;
- administer; and
- manage.

any rezoning or subdivision of agricultural land.

This appears to fly in the face of various constitutional imperatives and constitutional court judgements alluding to the authority and competencies of municipalities with regard to decisions on the use and development of land and related matters.

The Bill furthermore suggests that with regard to the purported custodianship of DAFF, it requires to consider the definition of "agricultural land" namely

- Means all land in the jurisdiction of the Republic, excluding land –

- in a proclaimed township;
- with regard to which an application for declaration as a township has been submitted in accordance with applicable township establishment legislation prior to the date of commencement of this Act: Provided that such application is approved;
- which, immediately prior to the date of commencement of this Act was formally zoned for non-agricultural purposes by any sphere of government or any public entity; or
- which the Minister, after consultation with other relevant Ministers and Provincial MECs concerned, within the provisions established in this Act, excludes by means of a notice in the Gazette.

Depending on the municipal context within which such land may be situated, the aforesaid definition potentially incorporates all land held under farm title, which is not zoned for a non-agricultural purpose.

Until the Minister publishes a further notice in the Gazette to exclude certain land portions which may fall within the ambit of what is described above, the Bill suggests that, potentially, massive tracts of land within the boundaries of a municipal jurisdiction (i.e. portions of land held as farm portions and not specifically zoned for non-agricultural purposes) will fall directly under the jurisdiction of DAFF with regard to any intended rezoning or subdivision thereof. The latter will, by extension, include the establishment of townships on land within any municipal jurisdiction (unless excluded by DAFF).

The space available in this article is insufficient to deal with all the pertinent details of the draft Bill and Policy. Suffice it to confirm that the potentially disastrous effect of the draft Policy and Bill on spatial planning and land use considerations should be self-evident. On a realistic evaluation of the current draft, it appears, at first blush, to be incapable of standing muster with regard to a number of constitutional realities. The SAACPP will be responding in detail to the draft policy and bill (as it has done before). It does however appear that the authors of the draft policy and Bill have, to date, simply ignored the earlier submissions and proposals of various stakeholders (including SAACPP). Interested and affected parties are reminded to

respond in writing before end May 2015. A copy of the draft Bill and Policy has been posted on the SAACPP website (www.saacpp.org.za).

SAACPP: 27 March 2015