



DEVELOPMENT MANAGEMENT SCHEME COMPLIANCE ADVISORY: 9 OF 2021

AMENDMENT TO SECTION 44 OF THE WESTERN CAPE LAND USE PLANNING ACT, 2014 (LUPA)

1. PURPOSE OF ADVISORY

- 1.1. This advisory is for information purposes regarding the deletion of section 44(2)(b) of the Western Cape Land Use Planning Act, 2014 (LUPA) and the possible future implications thereof on the City of Cape Town Municipal Planning By-law, 2015 (MPBL), which includes the Development Management Scheme (DMS).

2. SECTION 44 OF LUPA AND ITS REFERENCE TO SECTION 115 OF THE MUNICIPAL SYSTEMS ACT (MSA)

- 2.1. Section 44(1) of LUPA requires and sets the minimum standards for a municipality to cause a notice to be served when it intends to consider certain types of land use applications.
- 2.2. Section 44(2) of LUPA deals with the manner in which the notice must be served.
- 2.3. The reference to section 115 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) (MSA) in the now deleted section 44(2)(b) of LUPA limited the methods that may be used to give direct notice for the purposes of section 44(1) to the following:
- personal delivery;
 - leaving the notice at the person's place of residence or business in the Republic with a person apparently over the age of sixteen years;
 - posting the notice by registered or certified mail to the person's last known residential or business address in the Republic, and obtaining an acknowledgement of the posting thereof from the postal service;
 - serving the notice on the person's agent or representative in the Republic using one of the methods indicated above if the person's address in the Republic is unknown; or
 - posting the notice in a conspicuous place on the property or premises, if any, to which it relates if the person's address and agent or representative in the Republic is unknown.

- 2.4. Using any other methods for direct notification, such as electronic communication methods, was not permitted in terms of section 44(2)(b) of LUPA.
- 2.5. Part 2 of Chapter 7 of the MPBL sets the notice and comment provisions required for applications in terms of the MPBL. However, since the MPBL must be consistent with the minimum requirements in LUPA, the notification methods to a person was limited to what LUPA allowed at the time (i.e. methods in terms of section 115 of the MSA).

3. IMPACT OF THE LUPA AMENDMENT TO FUTURE AMENDMENTS TO THE MPBL

- 3.1. The City must, in accordance with the requirements of Part 2 of Chapter 7 of the MPBL, cause notice to be given of its intention to consider certain applications to a person whose rights or legitimate expectations are materially and adversely affected if an application will be approved.
- 3.2. The use of email (or some other form of electronic communication) as a method of advertising is available (section 111 of the MPBL) but still limited, as the MPBL requires the consent of an interested and affected party before such method can be employed (section 111(3)). In addition to this consent, the City must also serve the same notification in the relevant manner provided by subsections (1)(b)(i)-(1)(b)(v).
- 3.3. This amendment to LUPA permits the City to consider deleting section 111(3) from the MPBL. This will be considered in the current review of the MPBL and DMS.
- 3.4. If such an amendment to the MPBL is approved, notification by email (or some other form of electronic communication) will be permitted without the need to obtain consent for it and to serve the same notice in the other described methods as well.

4. WAY FORWARD

This advisory is merely for information purposes at this stage.



PLEASE NOTE

Always consult the City of Cape Town Municipal Planning By-law, 2015 (as amended), before any land use application is submitted to the Department.