

PROVINCE OF THE WESTERN CAPE

**WESTERN CAPE LAND USE
PLANNING AMENDMENT BILL**

(As introduced)

(MINISTER OF LOCAL GOVERNMENT, ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING)

[B 6—2020]

PROVINSIE WES-KAAP

**WES-KAAPSE
WYSIGINGSWETSONTWERP OP
GRONDGEBRUIKBEPLANNING**

(Soos ingedien)

(MINISTER VAN PLAASLIKE REGERING, OMGEWINGSAKE EN ONTWIKKELINGSBEPLANNING)

[W 6—2020]

IPHONDO LENTSHONA KOLONI

**UMTHETHO OSAYILWAYO
WOLUNGISO LOCWANGCISO
LOKUSETYENZISWA KOMHLABA
WENTSHONA KOLONI**

(Njengoko wazisiwe)

(NGUMPHATHISWA WORHULUMENTE WOMMANDLA, IMICIMBI YOKUSINGQONGILEYO NOCWANGCISO
LOPHUHLISO)

[B 6—2020]

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with a solid line indicate insertions in existing enactments.

AMENDMENT BILL

To amend the Western Cape Land Use Planning Act, 2014, so as to do away with the reference to section 115 of the Local Government: Municipal Systems Act, 2000; and to provide for matters connected therewith.

BE IT ENACTED by the Provincial Parliament of the Western Cape, as follows:—

Amendment of section 44 of Act 3 of 2014

1. Section 44 of the Western Cape Land Use Planning Act, 2014 (Act 3 of 2014), is amended by the deletion of paragraph (*b*) of subsection (2). 5

Short title

2. This Act is called the Western Cape Land Use Planning Amendment Act, 2020.

MEMORANDUM ON THE OBJECTS OF THE WESTERN CAPE LAND USE PLANNING AMENDMENT BILL

1. BACKGROUND

- 1.1 The Western Cape Land Use Planning Act, 2014 (Act 3 of 2014)(LUPA), was assented to on 31 March 2014. Different sections of the Act commenced in different municipalities on different dates between 2015 and 2016.
- 1.2 Section 44(1) of LUPA requires a municipality to cause a notice to be served when it intends to consider certain types of land use applications. Section 44(2) of LUPA deals with the manner in which the notice must be served. The reference to section 115 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000)(the Municipal Systems Act), in section 44(2) of LUPA limits the methods that may be used to give direct notice for the purposes of section 44(1) to the following:
 - 1.2.1 personal delivery;
 - 1.2.2 leaving the notice at the person's place of residence or business in the Republic with a person apparently over the age of 16 years;
 - 1.2.3 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;
 - 1.2.4 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
 - 1.2.5 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.
- 1.3 Using any other methods for direct notification, such as electronic communication methods, is not permitted in terms of section 44(2)(b) of LUPA. The Western Cape Land Use Planning Amendment Bill, 2020 (the Amendment Bill), arose from the need to delete the reference to section 115 of the Municipal Systems Act.

2. OBJECTS OF BILL

- 2.1 The object of the Amendment Bill is to provide municipalities with a wider discretion to decide which methods to use to cause notice of their intention to consider matters contemplated in section 44(1) of LUPA to be served, by not restricting them to the methods listed in section 115 of the Municipal Systems Act.

3. CONTENTS OF BILL

- 3.1 **Clause 1** amends section 44 of LUPA by deleting subsection (2)(b) to omit the reference to the list of methods of direct notification set out in section 115 of the Municipal Systems Act.
- 3.2 **Clause 2** sets out the short title of the Amendment Bill once enacted.

4. CONSULTATION

Department of the Premier: Legal Services

5. PERSONNEL IMPLICATIONS

None

6. FINANCIAL IMPLICATIONS

None

7. LEGISLATIVE COMPETENCE

The Provincial Minister responsible for local government, environmental affairs and development planning is satisfied that the provisions of the Amendment Bill fall within the legislative competence of the Province.

ALGEMENE VERDUIDELIKENDE NOTA:

[] Woorde in vetdruk tussen vierkantige hake dui skrappings uit
bestaande verordenings aan.

_____ Woorde met 'n volstreep daaronder dui invoegings in
bestaande verordenings aan.

WYSIGINGSWETSONTWERP

Tot wysiging van die Wes-Kaapse Wet op Grondgebruikbeplanning, 2014, om die verwysing na artikel 115 van die Wet op Plaaslike Regering: Munisipale Stelsels, 2000, te verwyder; en om voorsiening te maak vir aangeleentede wat daarmee in verband staan.

DAAR WORD BEPAAL deur die Provinsiale Parlement van die Wes-Kaap, soos volg:—

Wysiging van artikel 44 van Wet 3 van 2014

1. Artikel 44 van die Wes-Kaapse Wet op Grondgebruikbeplanning, 2014 (Wet 3 van 2014), word gewysig deur paragraaf (b) van subartikel (2) te skrap. 5

Kort titel

2. Hierdie Wet heet die Wes-Kaapse Wysigingswet op Grondgebruikbeplanning, 2020.

MEMORANDUM OOR DIE OOGMERKE VAN DIE WES-KAAPSE WYSIGINGSWETSONTWERP OP GRONDGEBRUIKBEPLANNING

1. AGTERGROND

- 1.1 Die Wes-Kaapse Wet op Grondgebruikbeplanning, 2014 (Wet 3 van 2014)(LUPA), is op 31 Maart 2014 bekragtig. Tussen 2015 en 2016 het verskillende artikels van die Wet op verskillende datums in verskillende munisipaliteite in werking getree.
- 1.2 Artikel 44(1) van LUPA vereis dat 'n munisipaliteit 'n kennisgewing moet laat beteken wanneer hy van voorneme is om sekere soorte grondgebruikaansoeke te oorweeg. Artikel 44(2) van LUPA handel met die wyse waarop die kennisgewing beteken moet word. Die verwysing na artikel 115 van die Wet op Plaaslike Regering: Munisipale Stelsels, 2000 (Wet 32 van 2000) (die Munisipale Stelselswet), in artikel 44(2) van LUPA beperk die metodes wat gebruik kan word om vir die doeleindes van artikel 44(1) direk kennis te gee, tot die volgende:
 - 1.2.1 deur persoonlike aflewering;
 - 1.2.2 deur die kennisgewing by die persoon se woning of sakeonderneming in die Republiek by 'n persoon wat oënskynlik oor die ouderdom van 16 jaar is, te laat;
 - 1.2.3 deur die kennisgewing per geregistreerde of gesertifiseerde pos na die persoon se laaste bekende woon- of sakeadres in die Republiek te pos en bevestiging van die pos daarvan van die posdiens te verkry;
 - 1.2.4 deur die kennisgewing op die persoon se agent of verteenwoordiger in die Republiek te bestel op een van die metodes aangedui hierbo indien die persoon se adres in die Republiek onbekend is; of
 - 1.2.5 deur die kennisgewing op 'n opsigtelike plek te plak op die eiendom of perseel, indien enige, waarop dit betrekking het, indien die persoon se adres en agent of verteenwoordiger in die Republiek onbekend is.
- 1.3 Die gebruik van enige ander metodes vir direkte kennisgewing, soos elektroniese kommunikasiemetodes, word nie ingevolge artikel 44(2)(b) van LUPA toegelaat nie. Die Wes-Kaapse Wysigingswetsontwerp op Grondgebruikbeplanning, 2020 (die Wysigingswetsontwerp), spruit uit die behoefte om die verwysing na artikel 115 van die Munisipale Stelselswet te skrap.

2. OOGMERKE VAN WETSONTWERP

- 2.1 Die oogmerk van die Wysigingswetsontwerp is om aan munisipaliteite 'n wyer diskresie te gee om te besluit watter metodes om te gebruik om kennis van hul voorneme om aangeleenthede beoog in artikel 44(1) van LUPA te oorweeg, te laat beteken, deur hulle nie te beperk tot die metodes wat in artikel 115 van die Munisipale Stelselswet vermeld word nie.

3. INHOUD VAN WETSONTWERP

- 3.1 **Klousule 1** wysig artikel 44 van LUPA deur subartikel (2)(b) te skrap om die verwysing na die lys metodes van direkte kennisgewing uiteengesit in artikel 115 van die Munisipale Stelselswet weg te laat.
- 3.2 **Klousule 2** bevat die kort titel van die Wysigingswetsontwerp wanneer dit bekragtig is.

4. OORLEGPLEGING

Departement van die Premier: Regsdienste

5. PERSONEELIMPLIKASIES

Geen

6. FINANSIËLE IMPLIKASIES

Geen

7. WETGEWENDE BEVOEGDHEID

Die Provinsiale Minister verantwoordelik vir plaaslike regering, omgewingsake en ontwikkelingsbeplanning is tevrede dat die bepalings van die Wysigingswetsontwerp binne die wetgewende bevoegdheid van die Provinsie ressorteer.

AMAGQABANTSHINTSHI ACACISAYO:

- [] Amagama abhalwe ngqindilili kwizibiyeli ezisikwere abonakalisa oko kuye kwasuswa kwimithetho esele iphunyeziwe.
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- Amagama akrwelelwe umgca ongqindilili ngaphantsi abonakalisa oko kufakelweyo kumthetho osele uphunyeziwe kwimithetho ekhoyo.
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UMTHETHO OFAKELA IZILUNGISO

Ukulungisa uMthetho woCwangciso lokuSetyenziswa koMhlaba weNtshona Koloni, 2014, ukuze kupheliswe isalathisi secandelo le-115 loRhulumente woMmandla: UMthetho weeNkqubo zikaMasipala, 2000; nokubonelela ngemiba enxulumene noko.

YENZIWE yiPalamente yePhondo leNtshona Koloni ngolu hlobo lulandelayo:—

Ukulungiswa kwecandelo lama-44 loMthetho wesi-3 ka-2014

1. Icandelo lama-44 loMthetho woCwangciso loSetyenziso loMhlaba weNtshona Koloni, 2014, ulungiswe ngokususwa komhlathi (b) wecandelwana (2). 5

Isihloko esifutshane

2. Lo Mthetho ubizwa ngokuba nguMthetho woLungiso loCwangciso lokuSetyenziswa koMhlaba weNtshona Koloni, wama-2020.

**IMEMORANDAM KWIINJONGO ZOMTHETHO OSAYILWAYO
WOCWANGCISO LOKUSETYENZISWA KOMHLABA WENTSHONA
KOLONI**

1. IMVELAPHI

- 1.1 UMthetho woCwangciso lokuSetyenziswa koMhlaba weNtshona Koloni, 2014 (uMthetho 3 ka-2014)(i-LUPA), wamkelwa ngomhla wama-31 kweyo-Kwindla 2014. Amacandelo ahlukeneyo aqala koomasipala abohlukeneyo ngemihla eyohlukeneyo phakathi ko-2015 no-2016.
- 1.2 Icandelo 44(1) le-LUPA lifuna ukuba umasipala enze isaziso ukuze sithunyelwe xa siceba ukuqaphela iintlobo ezithile zezicelo zokusetyenziswa komhlaba. Icandelo 44(2) le-LUPA lijongana nendlela ekufuneka sinikezwe ngayo isaziso. Ukubhekiswa kwicandelo le-115 likaRhulumente woMmandla: UMthetho weeNkqubo zikaMasipala, 2000 (UMthetho 32 ka-2000) (UMthetho weeNkqubo), kwicandelo 44(2) le-LUPA linciphisa iindlela ezinokuthi zisetyenziselwe ukunika isaziso ngqo ngeenjongo lecandelo 44(1) koku kulandelayo:
 - 1.2.1 ukuhanjiswa ngumntu ngokwakhe;
 - 1.2.2 ukushiya isaziso kwindawo ahlala kuyo umntu okanye ishishini kwiRiphabhlikhi kumntu ongaphezulu kweminyaka;
 - 1.2.3 ukuthumela isaziso ngeposi ebhalisiweyo okanye eqinisekisiweyo kwidilesi yomntu yokugqibela yendawo yokuhlala eyaziwayo okanye yeshishini kwiRiphabhlikhi, kwaye kufunyanwe isiqinisekiso soku-poswa kwayo kwinkonzo yeposi;
 - 1.2.4 ukuhambisa isaziso kwi-arhente yomntu okanye ummeli kwiRiphabhlikhi ngenye yeendlela ezichazwe apha ngasentla ukuba idilesi yomntu kwiRiphabhlikhi ayaziwa; okanye
 - 1.2.5 ukuthumela isaziso kwindawo ebonakalayo kwipropathi okanye kuloo ndawo, ukuba ikho, enxulumene nako ukuba idilesi yomntu kunye ne-arhente okanye ummeli wakhe kwiRiphabhlikhi ayaziwa.
- 1.3 Ukusebenzisa naziphi na ezinye iindlela zokwazisa ngokuthe ngqo, njengeendlela zoxibeelwano ze-intanethi, akuvumelekanga ngokwemigaqo yecandelo 44(2)(b) le-LUPA. UMthetho oSayilwayo woCwangciso loSetyenziso lweMihlaba eNtshona Koloni ka-2020, (uMthetho oSayilwayo), uvele kwimfuno yokucima isalathiso secandelo le-115 loMthetho weeNkqubo zikaMasipala.

2. IINJONGO ZOMTHETHO OSAYILWAYO

- 2.1 Iinjongo zeZilungiso zoMthetho oSayilwayo kukubonelela oomasipala ngobulumko bokuzithathela isigqibo sokuba zeziphi iindlela emabazisebenzise ukwenza isaziso senjongo yabo yokujonga imicimbi echazwe kwicandelo 44(1) yeLUPA ukuba ihanjiswe, ngokungabathinteli ekusebenziseni ezinye iindlela ngaphandle kwezo zidweliswe kwicandelo 115 loMthetho weeNkqubo zikaMasipala.

3. IZIQULATHO ZOMTHETHO OSAYILWAYO

- 3.1 **Igatyalo-1** lenza izilungiso kwicandelo 44 le-LUPA ngokucima icandelo (2)(b) ukushiya isalathiso kuluhlu lweendlela zesaziso ezichazwe kwicandelo le-115 loMthetho weeNkqubo zikaMasipala.
- 3.2 **Igatyalo-2** libeka isihloko esifutshane soMthetho oSayilwayo woLungiso emva kokuba wawuwisiwe.

4. UKUCETYISWA

ISebe leNkulumbuso: Iinkonzo zezoMthetho

5. IIMPEMBELELO ZABASEBENZI

Azikho

6. IIMPEMBELELO ZEZEMALI

Azikho

7. ISAKHONO SEZOMTHETHO

UMphathiswa wePhondo ojongene noxanduva lorhulumente wommandla, imicimbi yokusingqongileyo kunye nokucwangciswa kophuhliso wanelisekile ukuba imigqaliselo yoMthetho oSayilwayo iwela kubuchule bezomthetho bePhondo.

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