

SAPI members comment on the new KZN Planning & Development Act

Kevin Suzor, deputy manager, development administration, KwaZulu-Natal, comments in his personal capacity:

"KZN is the first province to have its own Planning & Development Act (PDA). Other provinces still use old ordinances. The PDA and DFA will be used concurrently for six months thereafter the PDA will take precedence over the DFA in the province.

When any act comes into being; it's hard to hit the ground running in implementation. The first few applications under the new act might go slowly. However, Chapter Six of the PDA, which concerns the removal of alteration, suspension or deletion of restrictions pertaining to land has already been in use for some time.

Does the KZN PDA provide a good blueprint for other provinces?

In terms of the constitution each province is meant to come up with its own PDA. There is national legislation that can be adopted by provinces. However, there is also no reason why the KZN PDA cannot be adapted for use by other provinces.

There have been very few applications through the system as yet, because each application will require a planning report and the formation of special delegations. These two features might slow applications down somewhat.

Advantages of the Act

It is user friendly. Each section or chapter deals with a specific topic.

For example there is a section on subdivision, one on road closures, another on enforcement and so on. Schedule 1 then gives details of the application process, time frames and so on.

Many applications can be made within the same application. In this way, the PDA is similar to the DFA (which is national legislation).

Disadvantages

What can slow things down is the fact that municipal assessments of the applications must be complete before the application can proceed. And one cannot subpoena the municipality as is possible under the DFA. One also cannot override pre-existing legislation.

Lekha Allopi works for the eThekweni municipality, but comments on the Act in her personal capacity:

Shortcomings

This Act has been long awaited. I personally hoped it would be user friendly but found it confusing and ambiguous.

The Act does not echo the strategic vision of the country and higher order legislation. It in no way promotes economic development at the rate at which it should be occurring. The Act is over-prescriptive and will make the process long and drawn out.

Where a development proposal requires more than two persons to be notified, a longer process with higher tariffs is now required. This makes little economic sense as we need to reduce poverty levels and grow this economy. The Act has gaps in it which could open up legal battles for municipalities. The Appeal process remains unclear. Municipalities need clear concise directives as they are the delivery arm of Government.

The time period for translating strategic documents such as IDP's into practical schemes are far too short - six months. This cannot be realised by larger municipalities mainly because their planning is so intricate.

No mention is made of a "package of plans". Planners have been talking about this missing layer for the past 10 years!

Positives

The new Act gives municipalities a chance to review their processes, and become innovative in the interests of service delivery. A way forward will be establish a task team comprising planners and legal people to reduce the anomalies.

A planner in private practice, Kavi Soni, director of SiVEST Town & Regional Planning Division comments on the Act:

"The Act represents a move towards consolidating legislation in KwaZulu Natal which historically was not only convoluted but also very complex and cumbersome.

Historically, there were a number of pieces of legislation which sought planning approvals from different bodies. This represents (in part) a significant deviation from the previous position and seeks to address matters with one entity, that being a municipality.

Positive aspects

To some extent, the new Act will address a number of issues which, historically, were unnecessarily complex and frustrating. Ideally, the legislation is structured in a manner which outlines process, responsibility and time frames, which is very encouraging.

Negatives

The legislation is premised on the principle that with wall to wall municipalities, the authority for development decisions should be a municipality. Municipalities are notorious for making poor decisions, late decisions or at times, making no decisions. Bearing in mind that municipal officials only make recommendations, it is the political arm that will make decisions. Therefore one is likely to find that the political will supersede the planning merits at times. Not that this is endemic to KwaZulu Natal or South Africa.

The underlying premise is that an Act, which requires that a registered town planner makes a decision, should give the registered planner the means nor tools to ensure that their planning decisions are adhered to. It is unlikely that the PDA or any piece of legislation is able to ensure planning integrity.

The legislation is premised on the principle that every planning decision by an authority must be signed off by a registered town planner. There are currently some 55 municipalities in KwaZulu Natal. There are not 55 registered town planners in the province! This represents a capacity constraint. Municipalities will have to 'share services' and planners will constantly be under pressure to deliver decisions timeously.

Apart from the limited capacity, from our experience, even those planning practitioners employed by municipalities sometimes struggle with the legal interpretation of the legislation and hence its application. There is therefore a need for specialist legal training which in my view will assist in better advice to the public and minimise costly litigation which the municipality opens itself up to.

The major flaw in the PDA, in my view, is the inability to comprehensively deal with wall to wall urban areas. Simply, anything outside a town planning scheme is by default zoned 'agriculture' in KwaZulu Natal. Yet, the Act was designed for KwaZulu Natal and with the knowledge that a significant portions of the province lie outside town planning scheme areas. This in effect means that a Municipality is unable to make decisions unless an Authority, in terms of National Legislation, is adhered to. This presents a clear contradiction in process, as there are many instances, where municipalities are trying to stimulate rural development initiatives, whilst on the other hand the National Department of Agriculture is trying to preserve resources. In the event of a conflicting opinion where the planning merits are sound, yet the Department of Agriculture disagrees, who becomes the final arbiter? It is fundamental contradictions like this that will result in the PDA not serving its objective.

The timeframes prescribed by the PDA do not take into account capacity constraints and municipal processes. For example, a decision needs to be made in 90 days by a municipality. In the case of an application for a scheme amendment, the decision sought is a Council Resolution. Municipal process (for example in eThekweni), requires that a matter be presented to its Joint Decision Making Committee, then to EXCO, then to Council for adoption. Just this process exceeds 90 days. How then will the implementation be effective?

It was intimated that as part of the PDA implementation that the use of the DFA be limited, if not 'expelled'. This is not only short sighted but premature as the implementation of the PDA is still in its infancy and a 4-5 year window period needs to be in place to see how this can work.

The PDA places onerous burden on an applicant to achieve 'all approvals" prior to Submission, which in itself is a frustrating and cumbersome and costly exercise, with no guarantees. There needs to be some re-consideration as how and what decisions can be made, but this again links to legal training.