



CIRCULAR: EADP 0011/2014

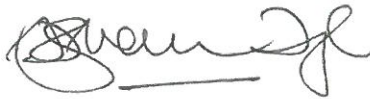
**ALL MAYORS, MUNICIPAL MANAGERS AND CHIEF TOWN PLANNERS IN THE WESTERN CAPE
ALL WESTERN CAPE PROVINCIAL HEADS OF DEPARTMENT
NATIONAL DIRECTORS-GENERAL WITH DIRECT LINKAGES TO LAND USE PLANNING**

**PROCEDURES REGARDING APPEALS IN LIGHT OF THE DECLARATION OF INVALIDITY OF
SECTION 44 OF THE LAND USE PLANNING ORDINANCE 15 of 1985 ("LUPO") BY THE
CONSTITUTIONAL COURT AND RELATED LAND USE MATTERS.**

1. Circular No. C8/2013 set out the procedures to be followed in dealing with all appeals in terms of section 44 of LUPO in accordance with the Western Cape High Court ruling in *Habitat Council and Another v Provincial Minister of Local Government etc., Western Cape, and Others* [2013] ZAWCHC 112; 2013 (6) SA 113 (WCC) ("the High Court decision"), and provided for an interim measure until the Constitutional Court was seized of the issues and provided judgment thereon.
2. On 4 April 2014 the Constitutional Court in *Minister of Local Government, Environmental Affairs and Development Planning, Western Cape v The Habitat Council and Others; Minister of Local Government, Environmental Affairs and Development Planning, Western Cape v City of Cape Town and Others* [2014] ZACC 9 (Case No.CC117 /13) (hereinafter referred to as "the Constitutional Court decision"), delivered a unanimous judgment in respect of the above matter, and confirmed the following:
 - 2.1 The declaration of constitutional invalidity of section 44 of LUPO, as contained in Paragraph 1 of the High Court decision, was upheld.
 - 2.2 That declaration of invalidity is not retrospective and does not apply to appeals pending in terms of section 44 of LUPO.

3. The interim procedures relating to any on-going application of section 44 of LUPO as set out in Circular C8/2013 are accordingly hereby withdrawn and replaced, with effect from 4 April 2014, with the procedures set out herein.
4. As of **04 April 2014** (i.e. the date of the Constitutional Court decision) there is no longer a right of appeal in terms of section 44(1)(a), (b), (c) or (d) of LUPO to the Minister of Local Government, Environmental Affairs and Development Planning, Western Cape, as such matters fall within the exclusive functions of a municipality in terms of the Constitution.
5. Henceforth, no reference should be made in any correspondence from a municipality to any interested or affected party to the existence of a right of appeal, in terms of section 44 of LUPO, to the Minister of Local Government, Environmental Affairs and Development Planning, Western Cape. It is recommended that municipalities inform all interested and affected parties in their standard decision notification correspondence in respect of any municipal land use planning decisions that there is no right of appeal in terms of section 44 of LUPO as such an appeal to the Minister of Local Government, Environmental Affairs and Development Planning, Western Cape has been declared unconstitutional.
6. Any appeal in respect of such a decision which has been submitted to the Minister of Local Government, Environmental Affairs and Development Planning, Western Cape on or after 4 April 2014 will accordingly not be considered and the appellant(s) and the respective municipality will be informed accordingly.
7. Land use planning appeals in terms of LUPO which were lodged with the DEADP **before 04 April 2014** (hereinafter referred to as "pending land use planning appeals"), will not be dealt with in terms of the provisions of the High Court decision (as communicated in Circular C8/2013) given that the Constitutional Court did not confirm that aspect of the prior ruling by the Western Cape High Court. As such, as from 4 April 2014, pending land use planning appeals will be considered and decided upon by the Minister of Local Government, Environmental Affairs and Development Planning, Western Cape in accordance with the existing provisions of sections 44 (1) (2) and (3) of LUPO. This will not affect any decisions issued and conveyed by the Minister prior to 04 April 2014, and such decisions remain valid.
8. The standard internal DEADP procedures relating to LUPO appeals that were lodged with DEADP before 4 April 2014 will thus also still apply to pending land use planning appeals and Provincial Circular No. 1 (of 2 February 2007), which dealt with the procedures pertaining to appeals in terms of section 44 of the LUPO, is therefore still applicable to these pending land use planning appeals and will be applied.

9. Finally, please note that the Constitutional Court judgment does not affect any other internal right of appeal that may apply to any particular municipal land use planning decision, for example, in terms of section 62 of the Municipal Systems Act, 2000 (Act 32 of 2000).
10. Any queries regarding the contents of this circular could be directed to **Zahir Toefy** (021-483 2700), **Henri Fortuin** (021-483 5842) or **Kobus Munro** (044-8058 618).



PIET VAN ZYL

HEAD OF DEPARTMENT

Date: 05.05.2014

