

PROVINCE OF WESTERN CAPE

**WESTERN CAPE
LAND USE PLANNING
ORDINANCE, 1985
AMENDMENT BILL**

(As introduced)

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

[B 1—2009]

PROVINSIE WES-KAAP

**WES-KAAPSE
WYSIGINGSWETSONTWERP OP
DIE ORDONNANSIE OP
GRONDGEBRUIKBEPLANNING,
1985**

(Soos ingedien)

(MINISTER VAN PLAASLIKE REGERING, OMGEWINGSAKE EN ONTWIKKELINGSBEPLANNING)

[W 1—2009]

IPHONDO LENTSHONA KOLONI

**UMTHETHO OSAYILWAYO
WOLUNGISO WOMMISELO
LWESICWANGCISO
SOSETYENZISO LOMHLABA
WENTSHONA KOLONI, 1985**

(Njengoko wazisiwe)

(UMPHATHISWA WoRHULUMENTE woMMANDLA NEZEZI NDLU, iMICIMBI YEZOKUSI NGQONGILEYO
noCWANGISO LOPHUHLISO)

[B 1—2009]

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.

BILL

To amend the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985), so as to provide for the continued existence of certain land use rights that have not been exercised within the prescribed time period; to provide for a further period during which owners of land may exercise such land use rights; and to provide for matters incidental thereto.

WHEREAS the Land Use Planning Ordinance, 1985, Amendment Act, 2007, (the Amendment Act), provided for the extension of the time period during which owners of land may exercise certain land use rights, which period was due to expire;

WHEREAS the Amendment Act was published in the Provincial Gazette on 5 July 2007, and, in terms of section 33(1) of the Constitution of the Western Cape, 1997, took effect on that date, which date was after the expiry of the time period within which the said rights had to be exercised;

WHEREAS certain land owners, municipalities and other roleplayers were apparently not aware of the expiry of the time period and conducted processes in respect of land use rights as if the said time period had not expired;

WHEREAS there are administrative burdens and legal uncertainty with regard to the effect of the Amendment Act; and

WHEREAS it is necessary to have legal certainty in respect of the period within which the said rights may be exercised and to extend that period,

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

Repeal of Act 4 of 2007

1. The Land Use Planning Ordinance, 1985, Amendment Act, 2007, is hereby repealed. 5

Amendment of section 14 of Ordinance 15 of 1985

2. (1) Section 14 of the Land Use Planning Ordinance, 1985, is amended by the substitution for paragraphs (a) and (b) of subsection (2) of the following paragraphs:

“(2)(a) If [**after the expiry of a period of 21 years after the date of commencement of this Ordinance**] any use right in respect of land to which the 10

applicable provisions of section 7 apply **[has]** is not **[been]** exercised before 30 June 2011, the land concerned shall, subject to the provisions of paragraph (b) of this subsection, be deemed to be zoned in accordance with the utilisation thereof, as determined by the council concerned, and any applicable zoning map existing **[at]** on the said **[expiry]** date shall lapse. 5

(b) Subject to the provisions of paragraph (c) of this subsection an appeal committee shall, before **[expiry of the period of 21 years]** the date mentioned in paragraph (a) of this subsection or any extended **[period]** date determined by the said appeal committee in terms of this subsection, on the application of the owner concerned and if, in the opinion of the said appeal committee, the said owner has suffered or will suffer loss, extend the said **[period]** date or extended **[period]** date in relation to the said land concerned **[by]** to such **[period]** date as the appeal committee may determine; provided that such extension shall be for a period of at least 5 years.” 10

(2) Subsection (1) is regarded as having taken effect on 30 June 2007. 15

Validation of certain acts

3. Anything done by any person, including any organ of state, after 30 June 2007 and which is invalid, but which would have been valid had section 2(1) of this Act been in operation at that stage, is regarded as valid.

Short title 20

4. This Act is called the Western Cape Land Use Planning Ordinance, 1985, Amendment Act, 2009.

EXPLANATORY MEMORANDUM

1. Section 14 of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985), originally provided for the lapsing of certain land use rights dating from prior to Ordinance 15 of 1985, which were not exercised for a period of 15 years after the commencement of the Ordinance on 1 July 1986. The relevant land would then have been deemed to be zoned in accordance with the legal utilisation thereof, as determined by the local authority. This provision was included in the Ordinance so that long term planning decisions, which were taken before the commencement of the Ordinance, would not exist *ad infinitum*.
2. The 15-year period within which the said land use rights had to be exercised was extended through various Amendment Acts and was due to expire on 30 June 2007.
3. The Land Use Planning Ordinance Amendment Act, 2007, (the Amendment Act) proposed a further extension of the time period with 6 months. The Amendment Act was published on 5 July 2007. In terms of section 33(1) of the Constitution of the Western Cape, 1997, the Amendment Act took effect on the date of publication, which date was after the expiry of the time period within which the said rights had to be exercised.
4. Certain land owners, municipalities and other roleplayers were apparently not aware of the expiry of the time period and conducted processes in respect of land use rights as if the said time period had not expired.
5. There are administrative burdens and legal uncertainty with regard to the effect of the Amendment Act. It is the object of the Bill to ensure legal certainty in respect of the period within which the said rights may be exercised. The object of the Bill is to accordingly ensure the continued existence of the land use rights referred to in section 14(2) of the Land Use Ordinance, 1985 (15 of 1985) and to extend the period within which those land use rights may be exercised to 30 June 2011. This would ensure that there is sufficient time for Provincial and Local Government, the private sector and the public to prepare for the final completion of the transition from perpetual to utilisation zoning as intended by the Land Use Planning Ordinance, 1985.
6. The Bill further has the object to validate any action which would be invalid if such continued existence of those rights is not provided for and if the period within which those rights may be exercised is not further extended.

ALGEMENE VERDUIDELIKENDE NOTA:

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

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

WETSONTWERP

Tot wysiging van die Ordonnansie op Grondgebruikbeplanning, 1985 (Ordonnansie 15 van 1985), om sodoende voorsiening te maak vir die voortgesette bestaan van sekere grondgebruiksregte wat nie binne die voorgeskrewe tydperk uitgeoefen is nie; om voorsiening te maak vir 'n verdere tydperk waarin eienaars van grond grondgebruiksregte kan uitoefen; en om voorsiening te maak vir verwante sake.

AANGESIEN die Ordonnansie op Grondgebruikbeplanning, 1985, Wysigingswet, 2007, (die Wysigingswet), voorsiening gemaak het vir die verlenging van die tydperk waarin eienaars van grond grondgebruiksregte kon uitoefen, welke tydperk sou verstryk;

AANGESIEN die Wysigingswet op 5 Julie 2007 in die *Provinsiale Koerant* gepubliseer is en ingevolge artikel 33(1) van die Grondwet van die Wes-Kaap, 2007, op daardie datum in werking getree het, welke datum na die tydperk was waarin die genoemde regte uitgeoefen moes word;

AANGESIEN sekere eienaars van grond, munisipaliteite en ander rolspelers oënskynlik nie bewus was van die verstryking van die tydperk nie en prosesse aangevoer het ten opsigte van grondgebruiksregte asof die tydperk nie verstryk het nie;

AANGESIEN daar administratiewe verpligtinge en regsonsekerheid is in verband met die uitwerking van die Wysigingswet; en

AANGESIEN regsekerheid nodig is ten opsigte van die tydperk waarin die genoemde regte uitgeoefen mag word en dit nodig is om die tydperk te verleng,

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

Herroeping van Wet 4 van 2007

1. Die Ordonnansie op Grondgebruikbeplanning, 1985, Wysigingswet, 2007 word hiermee herroep. 5

Wysiging van artikel 14 van Ordonnansie 15 van 1985

2. Artikel 14 van die Ordonnansie op Grondgebruikbeplanning, 1985, word gewysig deur die vervanging van paragrawe (a) en (b) van subartikel (2) deur die volgende paragrawe:

“(2)(a) Indien [na die verstryking van ‘n tydperk van 21 jaar na die datum van inwerkingtreding van hierdie Ordonnansie] enige gebruiksreg ten opsigte van

grond waarop die toepaslike bepalings van artikel 7 van toepassing is, nie voor 30 Junie 2011 uitgeoefen is nie, word die betrokke grond behoudens die bepalings van paragraaf (b) van hierdie subartikel geag gesoneer te wees in ooreenstemming met die aanwending daarvan, soos deur die betrokke raad bepaal, en verval enige toepaslike soneringskaart wat [by] op genoemde [verstryking] datum bestaan. 5

(b) Behoudens die bepalings van paragraaf (c) van hierdie subartikel moet 'n appèlkomitee voor [verstryking van die tydperk van 21 jaar] die datum in paragraaf (a) van hierdie subartikel vermeld of enige verlengde [tydperk] datum ingevolge hierdie subartikel deur genoemde appèlkomitee bepaal, op aansoek van die betrokke eienaar en indien genoemde eienaar na die mening van genoemde appèlkomitee verlies gely het of nog sal ly, genoemde [tydperk] datum of verlengde [tydperk] datum [met] na die [tydperk] datum deur genoemde appèlkomitee bepaal, met betrekking tot die betrokke grond verleng; met dien verstande dat sodanige verlenging vir 'n tydperk van minstens 5 jaar sal wees.''. 10

(2) Subartikel (1) word geag om in werking te tree vanaf 30 Junie 2007. 15

Bekragtiging van sekere handelinge

3. Enige handeling verrig na 30 Junie 2007 deur enige persoon, insluitende 'n staatsorgaan, en wat ongeldig is, maar wat geldig sou wees indien artikel 2(1) van hierdie Wet reeds in werking was op daardie stadium, word geag geldig te wees.

Kort titel 20

4. Hierdie Wet heet die Wes-Kaapse Wysigingswet op die Ordonnansie op Grondgebruikbeplanning, 1985, 2009.

VERKLARENDE MEMORANDUM

1. Artikel 14 van die Ordonnansie op Grondgebruikbeplanning, 1985 (Ordonnansie 15 van 1985), het oorspronklik voorsiening gemaak vir die verstryking van grondgebruiksregte wat Ordonnansie 15 van 1985 voorafgegaan het wat vir 'n tydperk van 15 jaar na die inwerkingtreding van die Ordonnansie op 1 Julie 1986, nie uitgeoefen is nie. Die betrokke grond sou dan geag gesoneer te gewees het in ooreenstemming met die wettige aanwending daarvan soos bepaal deur die plaaslike owerheid. Hierdie bepaling is in die Ordonnansie ingeskryf sodat langtermynbeplanningsbesluite, wat voor die inwerkingtreding van die Ordonnansie geneem is, nie *ad infinitum* sou voortbestaan nie.
2. Die 15-jaar-tydperk waarin die genoemde grondgebruiksregte uitgeoefen moes word, is deur verskeie Wysigingswette verleng en sou op 30 Junie 2007 verval het.
3. Die Ordonnansie op Grondgebruikbeplanning, Wysigingswet, 2007 (die Wysigingswet), het 'n verdere verlenging van die tydperk met ses maande voorgestel. Die Wysigingswet is op 5 Julie 2007 gepubliseer. Ingevolge artikel 33(1) van die Grondwet van die Wes-Kaap, 1997, het die Wysigingswet in werking getree op die datum van publikasie, welke datum na die verstryking van die tydperk waarin die genoemde regte uitgeoefen moes word, was.
4. Sekere eienaars van grond, munisipaliteite en ander rolspelers was oënskynlik nie bewus van die verstryking van die tydperk nie en het prosesse ten opsigte van grondgebruiksregte aangevoer asof die tydperk nie verstryk het nie.
5. Daar is administratiewe verpligtinge en regsonsekerheid in verband met die uitwerking van die Wysigingswet. Dit is die oogmerk van hierdie Wetsontwerp om regsekerheid te verseker ten opsigte van die tydperk waarin die genoemde regte uitgeoefen mag word. Die oogmerk van hierdie Wetsontwerp is om die voortgesette bestaan van grondgebruiksregte waarna verwys word in artikel 14(2) van die Ordonnansie op Grondgebruikbeplanning, 1985 (Ordonnansie 15 van 1985) dienooreenkomstig te verseker en om die tydperk waarin die grondgebruiksregte uitgeoefen mag word te verleng na 30 Junie 2011. Dit sal verseker dat daar genoegsame tyd is vir Provinsiale en Plaaslike Regering, die privaat sektor en die publiek om voor te berei vir die finale oorgang van ewigdurende sonering na sonering volgens aanwending soos bedoel deur die Ordonnansie op Grondgebruikbeplanning, 1985.
6. Hierdie Wetsontwerp beoog verder die geldigmaking van enige handeling wat ongeldig sou wees indien daar nie voorsiening gemaak word vir die voortgesette bestaan van vermelde regte nie en indien die tydperk waarin die regte uitgevoer mag word, nie verder verleng word nie.

INQAKU JIKELELE ELICACISAYO:

[] Amagama abhalwe ngqindilili kwizibiyeli ezisisikwere achaza okushiye wayo kwimithetho ekhoyo.

_____ Amagama akwelwe umgca ongahlula-hlulwanga ngaphantsi achaza okufakiweyo kwimithetho ekhoyo.

UMTHETHO OSAYILWAYO

Ukulungisa uMmiselo weSicwangciso sokuSetyenziswa koMhlaba ka1985 (uMmiselo we15 ka 1985), ukuze kuqhubekwe ukubonelelwa kobukho kwamalungelo athile angasetyenziswanga ngexesha amiselwe lona, ukubonelela elinye ixesha apho abanini-mihlaba bazakusebenzisa la malungelo, nokubonelela imicimbi enxulumene noko.

NANGONA uMmiselo wesiCwangciso sokuSetyenziswa koMhlaba ka 1985, UMthetho woLungiso ka 2007, (UMthetho woLungiso), ngaphandle kokuba kwixesha elandisiweyo abanini-mihlaba bazakusebenzisa amalungelo athile okusetyenziswa komhlaba, asele ezakuphelelwa lixesha.

NANGONA uMthetho woLungiso upapashwe kwiGazethi yePhondo ngomhla wesi 5 Julayi 2007, ngokwemigaqo yecandelo 33 (1) yoMgaqo-siseko weNtshona Koloni, ka 1997 oqalise ngalo mhla, umhla lowo osemva kokuphelelwa kwexesha, apho la malungelo akhankanyiweyo kwakufuneka esetyenzisiwe.

NANGONA abanini-mihlaba abathile, oomasipala nabanye abathathi-nxaxheba bebengaqondi ngokuphelelwa lixesha bakhokele iinkqubo ezinxulumene nokusetyenziswa kwamalungelo emihlaba ngokungathi ixesha elixeliweyo aliphelelwanga.

NANGONA kukho iingxaki zolawulo nokungaqiniseki ngokunxulumene nomthetho malunga nokuqaliswa koMthetho woLungiso, kunye

NANGONA kufuneka kuqinisekiwe ngokunxulumene nomthetho malunga nexesha apho la malungelo axeliweyo anokusetyenziswa ze kwandiswe nexesha.

OLU YILO LOMTHETHO MALWENZIWE LUSEBENZE yiPalamente yePhondo leNtshona Koloni ngolu hlobo:—

Ubhangiso loMthetho wesi 4 ka-2007

1. UMmiselo wesiCwangciso sokuSetyenziswa koMhlaba, ka-1985, UMthetho woLungiso, ka-2007, ubhangisiwe. 5

ULungiso lwecandelo le-14 loMmiselo we-15 ka 1985

2. (1) Icandelo le-14 loMmiselo wesiCwangciso sokuSetyenziswa koMhlaba, ka-1985, ulungiswe ngokufakelwa imihlathi (a) no (b) yamacandelwana (2) yalemihlathi ilandelayo:

“(2) (a) ukuba [emva kokuphelelwa kwexesha kwiminyaka engama-21 emva 10 komhla wokuqaliswa kwaloMmiselo] nawaphi amalungelo asetyenziswayo

ngokunxulumene nomhlaba apho izibonelelo zecandelo 7 ezikhoyo zithe zacelelwa azashiywa lixesha phambi komhla wama 30 Juni 2011, umhlaba ochaphazelekayo ngokwezibonelelo zomhlathi (b) wecandelwana, mawohlulwe kuvunyelwane ukwusebenzisa ngokokutsho kwekhansile echaphazelekayo, nayo nayiphi na imephu eyahlula ngokwemida ekhoyo ngalo mhla ukhankanyiweyo iyakuphelelwa. 5

(b) Ngokwamalungiselelo omhlathi (c) weli candelwana ikomiti yesibheni iyakufuneka phambi **[kokuphelelwa kwexesha lama 21 eminyaka]** umhla okhankanyiweyo kumhlathi (a) weli candelwana nalo naliphi na ixesha elongezelelweyo umhla oyakumiswa yikomiti echaziweyo yesibheni ngokomgaqo weli candelwana, ngokwesicelo somnino ngamnye kwaye ukuba kungolwazi lekomiti exeliweyo yesibheni, umnini womhlaba lowo uchaziweyo wabandezeleka okanye ezakulahlekelwa kabuhlungu malandiswe elo xesha lichaziweyo okanye kubhekiswe umhla ochaziweyo ngokunxulumene nomhlaba ochaziweyo kangangexesha apho ikomiti yesibheni ingachaza, ukuba ixesha elandisiweyo iyakuba yiminyaka emi-5 10 15

(2) Icandelwana (1) lithathwa njengeliqalise ukusebenza ngomhla wama 30 Juni 2007.

Uqinisekiso lwemithetho ethile

3. Nantoni na eyenziwe nguye nawuphi na umntu kuquka naliphi na icandelo likarhulumente, emva kowama 30 Juni 2007 kwaye ingenagunya, kodwa ebinokuba negunya ukuba ngaba icandelo 2(1) lalo Mthetho belisetyenziswa ngelo xesha esi senzo sithathwa ngokuba sinegunya. 20

Isihlokwana esifutshane

4. Lo Mthetho ubizwa ngokuba nguMmiselo wesiCwangciso soSetyenziso loMhlaba weNtshona koloni, 1985, UMthetho woLungiso, 2009 25

IMEMORANDAM ECHAZAYO

UMMISELO WESICWANGCISO SOKUSETYENZISWA KOMHLABA, KA 1985, UMTHETHO OSAYILWAYO WOLUNGISO (UMMISELO WE-15 KA 1985)

1. Icandelo 14 loMmiselo wesiCwangciso sokuSetyenziswa koMhlaba, ka1985 (UMmiselo we-15 ka 1985), ekuqaleni ibilungiselela ukuphelelwa kokusetyenziswa kwamalungelo athile omhlaba ukusukela phambi koMmiselo we-15 ka 1985, ezingakhange zisetyenziswe kangangeminyaka eli 15 emva kokuqala kwaloMmiselo ngomhla woku 1 Julayi 1986. Umhlaba lowo uchaziweyo ukulungele ukwahlulwa ngokuvumelana ngokunxulumene nokusetyenziswa komthetho, njengoko kumisiwe nguMasipala woMmandla. Isibonelelo sifakiwe kuMmiselo ukwenzela izigqibo zesicwangciso sexesha elide, ezazithathwe phambi kokuqalisa koMmiselo ,zingabikho ngonaphakade.
2. Ixesha leminyaka eli-15 apho lamalungelo osetyenziso lwemihlaba achaziweyo kufuneka esetyenzisiwe abhekiselwa kwiMithetho yoLungiso eyahlukeneyo kwaye ezakuphelelwa ngomhla wama 30 Juni 2007.
3. UMthetho woLungiso woMmiselo loSetyenziso loMhlaba ka 2007, (UMthetho woLungiso) bacele kwandiswe ixesha kangangenyanga ezi-6. UMthetho woLungiso wapapashwa ngomhla wesi-5 Julayi 2007. Ngokwemigaqo yecandelo 33 (1) loMgaqo- siseko weNtshona Koloni ka 1997, uMthetho woLungiso uqale ukusebenza ngosuku lokupapashwa, umhla lo ubusemva kwexesha lokuphelelwa kwamalungelo achaziweyo ebukufuneka esebenzile.
4. Abanini-mihlaba abathile, ooMasipala kunye nabanye abathathi-nxaxheba bebengaqondi ngokuphelelwa kwexesha baza bakhokela iinkqubo ezinxulumene namalungelo okusetyenziswa komhlaba ngokungathi ixesha elixeliweyo aliphelelwanga.
5. Kukho iingxaki zolawulo kunye nokungaqiniseki ngokunxulumene nomthetho malunga nokuphumeza uMthetho woLungiso. Luxanduva loMthetho oSayilwayo ukuqinisekisa ngezoMthetho malunga nexesha apho amalungelo achaziweyo anokuthi asetyenziswe. Uxanduva loMthetho oSayilwayo kukuqinisekisa ngokukuko ukuqhubeka kobukho kwamalungelo omhlaba asetyenziswayo ethunyelwe kwicandelo 14 (2) loMmiselo wokuSetyenziswa koMhlaba ka-1985 (15 ka 1985) nokwandisa ixesha apho lamalungelo okusetyenziswa komhlaba anokusetyenziswa de kube ngumhla wama 30 Juni 2011. Oko kuyakuqinisekisa ukuba kuyakubakho ixesha elaneleyo lamaPhondo kunye noRhulumente woMmandla, amashishini abucala kunye noLuntu kulungiselelwe ukugqiba utshintsho okokugqibela kwesisimakade kuye kukuzonwa okusebenzekayo ngokweenjongo zoMmiselo wesiCwangciso sokuSetyenziswa koMhlaba ka 1985
6. UMthetho oSayilwayo uphinda ubenoxanduva lokuqinisekisa nasiphi isenzo esingenasihlahla ukuba ngaba ubukho bamalungelo buyaqhubeka bungalungiselelwanga kwakhona ukuba ngaba kwangelo xesha loo malungelo asengasetyenziswa akuzokongezelelwa elinye ixesha.

