

Implementation of the Development Facilitation Act

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The first major piece of post-apartheid planning legislation, the Development Facilitation Act, 67 of 1995 (DFA), was promulgated towards the end of 1995. Amongst other things, it provides general principles applicable to planning in all spheres of government; creates a national planning commission; creates a fast-track approval process for development; opens up a new approach to planning through preparation of 'land development objectives' (LDOs); and provides for establishment of provincial Development Tribunals as independent bodies to decide on development applications, the basis of whose decisions will be the general principles and LDOs.

After an initial hiatus, many of the nine provinces are beginning to make significant progress in its implementation.¹ Certainly some are moving more quickly than others but the momentum that has built up both around the process of establishing Land Development Objectives and setting up Development Tribunals is increasing every month. Simultaneously, four provinces are also engaged in the development of their own individualised planning legislation. The planning law scene in South Africa, one which has long been characterised by inertia and neglect, is now breaking out into a relative frenzy of activity. The small pool of people with expertise and interest in the field is growing rapidly. Similarly, the attention it receives from political leaders is increasing.

The promulgation of the DFA was a bold step for the South African parliament. That a bold

¹ This note reflects the state of implementation at the end of June 1997.

approach was, and is, necessary is generally agreed upon. The inadequacy of the existing laws' capacity to drive and enable post-apartheid reconstruction and development was also widely recognized. Whether the DFA is indeed the means to bridge adequately the chasm that yawns between, on the one side, the inherited laws and regulations that created the apartheid landscape and, on the other, a future national framework for the long term management and planning of the urban and rural environment remains, obviously, a big question.

In this short article I provide first a brief overview of the situations in the different provinces, including the various initiatives being undertaken by provinces writing their own planning and development laws. In conclusion I provide an update on the process of establishing the Development and Planning Commission.

It is beyond the scope of a note such as this to tackle the many complex discussions and arguments generated by the implementation of the DFA. It is however hoped that such discussions and arguments will soon begin to be reflected in the pages of journals such as this one.

The Provinces

Eastern Cape

Although dogged by cabinet shuffles and other administrative challenges the officials of the Eastern Cape government working on the implementation of the DFA have made steady progress. A list of proposed Development Tribunal members has now been approved by the

province's Executive Council and the province's regulations for the establishment of Land Development Objectives are now in their sixth draft and will apparently be promulgated shortly. A positive development in the province has been the co-ordinating role played by the Eastern Cape Socio-Economic Consultative Council. ECSECC established a Consultative Forum on which key role players from both provincial government and relevant NGOs meet regularly to ensure that all available resources are used to best effect in the implementation of the DFA. Local government understanding of the DFA has been enhanced by a series of workshops hosted by ECSECC and the provincial government and which were directed primarily at councillors.

Free State

Similarly afflicted by a period of uncertainty at a high level within the provincial government, as well as the loss of a key official to another province, the Free State's progress in implementation of the DFA has been somewhat sporadic.

Gauteng

Driven by an energetic MEC (provincial minister, or member of executive committee), the implementation of the DFA in Gauteng has been relatively rapid, especially in the establishment of Land Development Objectives. Provincial regulations for the establishment of LDO's were published in August 1996 and most municipalities had completed the compilation of LDO's by the March 1997 deadline. The Gauteng LDO experience, being the first example of a post-apartheid planning process, warrants a great deal more attention than is possible here. It will be particularly interesting to observe the process of interpreting and implementing the province's LDO's.

The Gauteng Development Tribunal was appointed in late 1996. It held its first hearing in Kempton Park on 1 July 1997. The province of Gauteng is currently working on a draft bill which, it is envisaged, will incorporate and expand upon the DFA in the province.

Kwazulu-Natal

After a period of some vacillation the province of Kwazulu-Natal opted, in late 1996, to implement the DFA in conjunction with a proposed provincial planning and development bill. The implementation of the DFA in the province was officially launched early in July 1997. The process of soliciting nominations to sit on the Development Tribunal began at the same time. The province intends not to implement LDOs as such but rather to require all local government bodies to prepare 'Local Development Plans' which will incorporate both the DFA's LDOs and the Integrated Development Plans required in terms of the 1996 amendment to the Local Government Transition Act.

Mpumalanga

Mpumalanga province has moved relatively swiftly with its implementation of the DFA. The province achieved the first national hearing of an application before a Development Tribunal on 3 June 1997. LDO regulations have been compiled and are currently awaiting ratification by the provincial Executive Committee. The provincial government has held a number of workshops for local government on the DFA.

Northern Cape

The Northern Cape, similarly to Gauteng and Kwazulu-Natal, intends to implement the DFA in conjunction with a new provincial planning and development management statute. LDO regulations are currently being drafted in the province.

Northern Province

The Northern Province was one of the first provinces to appoint a Development Tribunal. LDO regulations have also been promulgated. The implementation of the DFA in the province has however been dogged by uncertainty as to which MEC holds political responsibility for the Act.

North West

The Development Tribunal of the North West has been appointed and LDO regulations have been

promulgated.

Western Cape

The Western Cape has opted not to implement the LDO or Development Tribunal aspects of the DFA. Instead it has decided to draft its own alternative to the DFA. A draft bill was gazetted in late 1996 but no further drafts have been produced.

Provincial Planning Law Initiatives

The DFA does not provide a mechanism for the day-to-day management of land use development by a local authority. Nor does it do the actual rationalisation of the often extraordinarily complex set of laws currently governing land use, development and planning. A number of the provinces are thus complementing the DFA's procedures and principles with mechanisms to address these two issues.

In the provinces of Gauteng, Kwazulu-Natal, Northern Cape and Western Cape different processes are being led by their respective provincial governments to draft new provincial planning legislation. These initiatives reflect the growing richness of debates around the role of law in development and planning in South Africa. The nature of these different initiatives, particularly in relation to the legislative framework provided by the DFA, varies substantially. The issues to be tackled in this regard by the Northern Cape legislature (large province, small population, low capacity) on the one hand, and Gauteng (small area, very large population, far greater resources) on the other, are clearly different. Within a broad policy direction shaped by the DFA provinces are now able to determine those legal and regulatory instruments which are best suited to their particular developmental needs.

The Development and Planning Commission

The DFA establishes a Development and Planning Commission, to be appointed by the Ministers of Land Affairs and Housing. It also provides for the establishment of provincial Commissions, where a province opts to appoint one: draft legislation for

both KwaZulu-Natal and for Gauteng provides further for provincial commissions in those cases. The national commission is hoped to be in operation by September 1997. The extensive terms of reference provided in the DFA have been condensed into revised terms of reference, by agreement between the two Ministers of Housing and Land Affairs. They are set out below:

1. To elaborate on, and provide mechanisms and procedures for, the effective use of Chapter One general principles of the DFA; and to establish mechanisms for monitoring compliance with these principles;
2. To analyse and assess all existing planning legislation and its consistency with the DFA; and to devise appropriate mechanisms for establishing a framework for planning at national, provincial and local government levels;
3. To investigate instruments that may be used for the establishment and administration of appropriate land use planning and control systems, for both urban and rural areas, at local government level.

Conclusion

If nothing else the burgeoning world of South African planning and development law deserves the critical attentions of journals such as this, of the professions, the NGO's and the academic institutions. As was grimly illustrated under colonialism and apartheid, laws relating to the residential, working and recreational environments profoundly impact on the lives of every South African. Reversing that grim legacy will be neither easy nor quick. With the implementation of the DFA the process of doing that has begun in earnest.²

² The views expressed in this note do not necessarily reflect those of the Minister, Director-General or Department of Land Affairs.