

13 November 2013
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CIRCULAR __ / 2013

FROM : CHIEF EXECUTIVE OFFICER

TO : MUNICIPAL MAYORS
MUNICIPAL MANAGERS

DATE : 13 SEPTEMBER 2013

**SALGA CONCERNS ON THE PROPOSED HOUSING DEVELOPMENT AGENCY DRAFT
REGULATIONS AND POLICY ON PRIORITY HOUSING DEVELOPMENT AREAS**

The Housing Development Agency (HDA) has introduced Draft Policy and Regulations on the declaration of Priority Housing Development Areas. This is a critical policy which proposes a new mechanism and approach for ensuring an integrated approach to the development of human settlements in specified geographic areas within cities.

The areas are basically larger than a single housing project, but smaller than a city, and would be geographic areas to be prioritised by spheres of government and other stakeholders for integrated development. The Draft Policy and Regulations give the Minister the authority to declare these areas, after which a long term, integrated plan is drawn up by the HDA, in consultation with all stakeholders, for the development of the area. An Implementation Protocol between those stakeholders commits them to budget contributions to development in that area.

The following is a brief summary of the key elements of the regulations and some concerns which we preliminarily identified with the Draft Policy and Regulations. We are soliciting your input on the Draft Policy and Regulations and your view on the important concerns which we have identified below.

1. Summary of the key elements of Draft HDA Policy and Regulations

1.1. HDA Mandate. The Draft Policy and Regulations derive their mandate from Section 7(3) of the Housing Development Agency Act, which states that "the HDA must:

- a. Declare priority housing development areas for residential and community purposes in accordance with integrated development plans and provincial spatial development frameworks;

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- a. Develop and submit a development plan for such priority housing development areas as contemplated in subsection 1(a); and

- b. *Implement such measures as may be prescribed to fast-track housing development in the declared priority housing development areas.*

1.1. **Definition of Priority Housing Development Area.** The Draft Regulations set out the process for the declaration, development, funding and implementation of Priority Housing Development Areas (PHDA). A PHDA is defined as *"a geographical area which is approved by the Minister of Human Settlements to be a priority area for accelerated delivery of sustainable human settlements in consultation with participating Provincial and Municipal Government."* (Draft Policy, Section 2). Such areas would be at least 100 hectares.

1.2. **Overall Proposed Approach.** The PHDA approach is *"a facilitative initiative of government to achieve maximum impact in partnership with the private sector, by coordinating existing public resources, within a defined programme with targets and timelines for a targeted geographic space."* (Draft Policy, Section 1). The approach is intended to facilitate coherent planning, ensure prioritisation, consolidate finances, and coordinate implementation.

1.3. Steps for declaring a PHDA:

1.3.1. **Step 1. Preliminary Declaration.** The HDA may submit a proposal to the Minister of Human Settlements for the preliminary declaration of PHDA. The proposal may be initiated by the municipality, the Province, the HDA, the NDHS or any other state organ. The Minister then consults with MINMEC to consider the proposal for preliminary declaration. After/upon approval by MINMEC, the HDA must make a preliminary declaration which mandates it to oversee and manage the process, and consult with stakeholders.

1.3.2. **Step 2. Development of PHDA Plan.** Within 90 days of the Minister making a preliminary declaration of a PHDA, the HDA must finalise the comprehensive Priority Housing Development Area Plan for the designated area. In preparing PHDA Plan, the HDA must:

- Consult with "the participants and the owner of the land, and with parties with a legally recognised interest in the land, who will be impacted by the declaration of a priority housing development area" (Draft Regulations, Section 4(3)a). Although local authorities are included in the definition of 'participants', there is no explicit requirement that the Agency consult with the municipality or acquire its approval.
- Ensure that the proposed development in the area conforms to the IDP and SDF (Draft Regulations, Section 7(1)b).
- *"Ensure that the municipality consults with the community on the proposed development plan, in terms of applicable municipal legislation"* Section 4(3)d(Draft Regulations). In the consultation processes, the municipality must hold consultative meeting (as per detailed requirements set out in Draft Regulations Section 4(4)). It is not clear if this municipality-driven community consultation process is in addition to the HDA-driven consultation process set out in Section 4(3)a.

1.3.3. Step 3. Approval of PHDA Plan. The HDA submits the PHDA Plan to the Minister for consideration and approval. The Minister consults with relevant national authorities, provinces, and municipalities, and approves or rejects the PHDA Plan within 90 days of receipt.

1.3.4. Step 4. Formal Establishment of PHDA. Once the Minister approves the PHDA Plan, the HDA formally declares the PHDA by publication in the Government Gazette. Housing development in that area is then a National Programme (as per Housing Act).

1.4. **Implementation Protocol.** The HDA must develop an Implementation Protocol (Section 35 of IRFA) to be concluded by respective organs of state at national, provincial, and local levels and other housing institutions. The IP sets out the rights and obligations of protocol subscribers. The HDA must manage and administer the IP, guided by the Intergovernmental Relations Framework Act (regarding settlement of disputes etc). The IP is contained in the PHDA Plan, and therefore presumably must be negotiated and concluded within 90 days of the Minister's preliminary declaration.

1.5. **Funding.** With respect to funding, it is noted that the Draft Policy and Regulations do not introduce any 'new money'. The MEC must make a '*defined amount*' available '*from the provincial allocation in terms of the annual housing vote allocation by the Minister in terms of the DORA*' Section 9(1) (Draft Regulations). Such defined quantum must cover capital and operational requirements.

The Implementation Protocol will bind municipalities and other signatories to specific budget commitments. According to the Draft Policy (Section 13): "*Relevant sector departments whose mandates impact on the PHDA must determine and commit a percentage of funds from its existing grants to cover the additional funding requirements the PHDA.*" Further: "*It is the responsibility of the sector departments, provinces and municipalities that their mandates and funding are aligned and allocated as per the PHDA development plan.*" (Section 14). The IP will include binding funding commitments over the life cycle of the PHDA.

1.6. **Role and Responsibilities of HDA.** Section 10(b) of the Draft Policy sets out the role of the HDA.

- i. It will provide an **overall coordinating and facilitative role** in each of the PHDA/s;
- ii. The HDA, province and relevant municipalities will work in a collaborative manner: to identify the PHDA/s; to **prepare the development plan** for the PHDA/s; and to **compile the implementation protocol**;
- iii. It will provide an **oversight role** on behalf of the State during the pre-declaration, declaration and implementation phases of PHDA and make formal submissions to the Minister of Human Settlements.

Specifically, the HDA is responsible for:

- Compiling and submitting the PHDA Plan to the Minister.

- Acting as an implementing agent of a housing development, or can procure services of a third party; and
- Co-ordinating and monitoring implementation of housing development and performance of protocol subscribers. In the event of non-performance, the HDA can request a party to provide written reasons and refer the matter to the Minister. (Section 12(2) of Draft Regulations). The Agency may also, at any time, request the municipality to provide written confirmation of their financial commitment. (Section 15(1)2).

1.7. Leveraging cooperation and contributions. Section 15(1) of the Draft Regulations states:

All other organs of state must cooperate with and support the Agency in order to achieve the planning, implementation and funding of the priority housing development area in the manner contemplated in the implementation protocol, and in this regard every protocol subscriber and participating party must be deemed to have—

- (a) committed to expedite and fast-track the subscriber's functions and duties as set out in the implementation protocol; and*
- (b) guaranteed performance in terms of any financial undertaking or commitment given by that subscriber to the Agency in terms of the implementation protocol.*

Further, Section 15 (3) states: "Unless the Agency had in writing agreed to release or conditionally release a protocol subscriber from any financial commitment or any other commitment, such subscriber may not cancel, withdraw or in any way fail to perform in terms of the commitment given." Such a failure would constitute a breach of contract.

1.8. Obligations of Local Government. According to the Draft Policy, municipalities must:

- Work with the HDA and the Province to ensure the identification and preparation of the PHDA Plan is aligned to the municipal IDP.
- "Engage and manage liaison with the affected parties of a PHDA from inception to completion." Draft Policy Section 12(b)
- "Where necessary, the municipality must reprioritise its plans/projects and funding in order to achieve the objectives of the identified PHDA." Draft Policy Section 12(c).
- "Where the municipality has the authority for approval and compliance management and decision making it must give priority to the PHDA." Draft Policy Section 12(d)

2. Preliminary Concerns/Issues Identified by SALGA

SALGA has identified the following preliminary concerns with the Draft Policy and Regulations as proposed.

- 2.1. Whilst the introduction of an IGR tool to line up support across spheres of government for integrated development of a particular urban area is welcomed, the proposed PHDA process has a strong potential to undermine the objective of IDPs. In this regard, municipalities must

be central to the process and PHDAs must be in accordance with municipal IDPs and provincial SDFs. Thus, the Draft Policy must be amended to state explicitly that, in order for the Minister to issue final approval of a PHDA, the Municipal Council must have already approved the: a) preliminary declaration of the PHDA, b) the PHDA Plan, and c) the Implementation Protocol. This will ensure that Integrated Development Planning is elevated to the cornerstone of all development planning in the country, particularly in urban contexts, and gives effect to the developmental orientation of local government.

2.2. Furthermore, the role of, and relationship between, the Municipality and the HDA as implementing agents needs to be clarified. Determination of the Implementing Agent should rest with the Municipality, and appointment of a third-party Implementing Agent by the HDA not be permissible without approval of the Municipality.

2.3. If IDPs are to be the cornerstone of all developmental planning in the country, particularly urban areas, the municipalities must play a central role in the implementation phase of any large scale housing development. The gains made in the decentralisation framework and the objectives as indicated in Chapter 8 of the NDP (in terms of equipping cities with more, not less, built environment authority) must be advanced in all our development instruments. PHDAs should be no exception.

2.4. As proposed, the Implementation Protocol obligates signatories to make budget contributions. This is problematic for a number of reasons, not least because the signing of the IP is voluntary on the part of the municipality. The feasibility of the Municipality obligating itself to budget contributions in outer years is unrealistic, as other competing budget priorities may arise. Unless approved by the Council, such a contractual obligation undermines municipalities' budgeting autonomy.

3. Consultation Process by HDA

The HDA presented the Draft Policy and Regulations to MINMEC on 9 May 2013, at which point a resolution was taken that members should apply their minds to the presentation and provide inputs to the CEO of the HDA, Mr. T Adler. The final document should be presented at the next meeting of MINMEC for approval. However the item has not yet been taken back to MINMEC.

Further, the HDA has already consulted with the Portfolio Committee and received a legal opinion from the Chief State Law Advisor.

The HDA is aiming for the Minister to publish the final regulations in the Government Gazette in September 2013.

4. Request for comments by municipalities on Draft Policy and Regulations

Given its importance, SALGA has begun to engage the HDA on our preliminary concerns and we will also be making a written input. To ensure that such input is a comprehensive local government position, we require municipalities' input on the draft policy and regulations.

SALGA will be submitting written comments to the HDA by 2 October. **Your municipality is therefore requested to submit your comments and concerns by 30 September 2013.** Input should be sent by email to Alison Tshangana, email

atshangana@salga.org.za . For further information, she can be reached by telephone: work 012 369 8000 or cell 083 280 2759.

Yours faithfully,

XOLILE GEORGE
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