



TO: Chairperson, Select Committee on Finance [Mr Y Carrim, MP]

FROM: Constitutional and Legal Services Office

DATE: 22 September 2023

SUBJECT: Advice on clause 9F of the Municipal Fiscal Powers and Functions Amendment Bill [B 21B—2022]

Brief

1. Our Office was requested to advise the Select Committee on Finance (SeCoF) on the submission from the City of Cape Town on clause 9F of the Municipal Fiscal Powers and Functions Amendment Bill [B 21B—2022].
2. Clause 9F requires that an engineering services agreement “must be concluded in respect of any approved land development which necessitates the installation of internal engineering services or external engineering services, whether by the municipality or an applicant” and provides for the inclusion of essential provisions in that agreement.¹

¹ Engineering services agreement

9F. An engineering services agreement must—

- (a) be concluded in respect of any approved land development which necessitates the installation of internal engineering services or external engineering services, whether by the municipality or an applicant;
- (b) be consistent with the conditions of approval of the land development;
- (c) in the event of any changes to the conditions of approval of the land development, be amended to the extent necessary for consistency with the changed conditions of approval; and
- (d) include provisions regulating at least the following matters:
 - (i) The nature and extent of the internal engineering services or external engineering services that must be installed by the municipality or an applicant;
 - (ii) the timing of commencement and completion of the internal engineering services or external engineering services that must be installed by the municipality or an applicant;
 - (iii) the amount of an applicant’s costs of installation, or the process for determining that amount, where an applicant is to install link engineering services or bulk engineering services, including the process, after installation, for making any adjustments to that amount;
 - (iv) dispute resolution;
 - (v) the engineering and other standards to which the installed internal engineering services or external engineering services must conform;
 - (vi) external engineering services of greater capacity than that which is required by the applicant; and
 - (vii) the party responsible for the ownership of the internal engineering services after completion.

3. The submission from the City of Cape Town is that clause 9F be inserted in the Spatial Planning and Land Use Management Act, 2013 (Act No. 16 of 2013) (SPLUMA) given that section 49 of SPLUMA refers to the provision of engineering services and this requirement will be imposed through planning legislation.²
4. Section 49 of SPLUMA provides for the responsibility to establish engineering services in the context of submitting an application to a Municipal Planning Tribunal, specifically in respect of the processes of Municipal Planning Tribunals.
5. National Treasury responded that the suggestion is not supported “given that the requirement to conclude an engineering services agreement is not a planning issue, but a legal issue and any sphere of government can prescribe key matters to be regulated through an agreement.” The response indicated that the Bill makes provision for a municipality and applicant to conclude the engineering services agreement to regulate key matters that must be considered when concluding an agreement to give effect to Chapter 3A of the Municipal Fiscal Powers and Functions Act, 2007 (Act No.12 of 2007) (MFPFA).
6. The City also suggested that sub-clause (v) of cause 9F be removed from the Bill as the City cannot contractually commit to future repayments to developers as it might not be in line with their budget process and budget provision. National Treasury indicated that subsection (v) does not refer to repayments but instead refers to engineering and other standards to which the installed internal engineering services or external engineering services must conform. This is evident from the text and I offer no comment on this (see footnote 1).

² **49. Provision of engineering services.**—(1) An applicant is responsible for the provision and installation of internal engineering services.

(2) A municipality is responsible for the provision of external engineering services.

(3) Where a municipality is not the provider of an engineering service, the applicant must satisfy the municipality that adequate arrangements have been made with the relevant service provider for the provision of that service.

(4) An applicant may, in agreement with the municipality or service provider, install any external engineering service instead of payment of the applicable development charges, and the fair and reasonable cost of such external services may be set off against development charges payable.

(5) If external engineering services are installed by an applicant instead of payment of development charges, the provision of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), pertaining to procurement and the appointment of contractors on behalf of the municipality does not apply.

Advice

7. Clause 9F of the Bill is consequential to the approval of an application for development of land, whereas section 49 of SPLUMA deals with the process preceding the approval of an application to determine land use and development applications in the relevant area. The provisions are related from the perspective of an application as both provisions inform the municipality and the applicant of the steps that need to be taken from application to concluding the agreement post approval. In my opinion clause 9F is correctly situate in the Bill.



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