

- 16.2 The main objective of the Building and Standards Act is to prescribe and promote uniform building standards for the Republic<sup>98</sup>. The building standards were prescribed in the National Building Regulations; and the municipalities have the primary responsibility to ensure that this Act and the Regulations are complied with in the areas under their jurisdiction<sup>99</sup>. To this end, *inter alia*, no building may be erected before prior written approval is given by the municipality concerned; and in case of non-compliance in this regard, the municipality has the power to stop the construction work<sup>100</sup>. Accordingly, municipalities are authorised to inspect the erection of buildings and land, to ensure that the Act and Regulations are complied with<sup>101</sup>.
- 16.3 However, the **State** is not bound by the Building and Standards Act; and as such, prior written approval of the municipalities is not required and they are not obliged to carry out inspections, in respect of buildings erected by or on behalf of the State<sup>102</sup>.

16.4 The reference to the "State" is not defined in the Act; and there appears to be no statutory provisions that *expressly* or clearly indicate whether or not SANParks falls under the category of the "*State*", and/or the buildings it erects in the national parks are erected by or on behalf of the State. Nevertheless, in all cases where a building is erected by or on behalf of the State, except where exemption<sup>103</sup> has been granted, the plans and specifications of the building and the prescribed certificate; have to be lodged with the municipality concerned for its information and comment, before the construction of the building may be commenced<sup>104</sup>.

16.5 After studying and analysing the relevant provisions of the Constitution, the various legislation and regulations, and the case law; I have come to the conclusion that SANParks acts on behalf of the State, when it builds in national parks<sup>105</sup>. Therefore in my opinion, SANParks is not required to apply and obtain prior written approval from the municipalities, before it can erect buildings in national parks.

- 16.6 Nevertheless, SANParks is required to lodge with the municipalities, for their information and comment, the plans, specifications and the prescribed certificate in respect of the buildings it erects in the national parks; before it may start the construction work of the building concerned<sup>106</sup>. Accordingly,
- 16.7 Further, I have found no statutory provision in terms of which the municipalities are required to inspect buildings erected by or on behalf of the State; or in terms of which they are given the power to halt the construction of such a building, in the case where the State has failed to lodge the plans, specifications and/or the prescribed certificate with the municipality concerned<sup>108</sup>.
- 16.9 Furthermore, my opinion is that even though the State is not bound by the Building and Standards Act; the intention in this regard was just to relieve the municipalities from the obligation to administer the Act and the National Building Regulations, in respect of buildings erected by or on behalf of the State. However this obligation remains; and by implication, it is transferred to the State to fulfil it<sup>110</sup>. With regard to national parks, the obligation is assigned to SANParks<sup>111</sup>.

- 16.10 Given that SANParks will continue to engage in numerous building projects in the national parks<sup>112</sup>, in respect of which it is required to administer the National Building Regulations, and to comply with the CIDB Act<sup>113</sup>; it is advisable that SANParks should always maintain the requisite capacity to fulfil those obligations. And in cases where it lacks such capacity, it should be willing to engage the municipality concerned or any other organ of State with the requisite capacity, to carry out those obligations on its behalf<sup>114</sup>.
- 16.11 Nonetheless, considering the further information provided<sup>115</sup>, it appears that SANParks has the necessary capacity to administer the National Building Regulations in national parks; although it also contracts private professionals in the building construction business, to supplement its capacity. And any suggestion that this function or obligation should be carried out by the municipalities would not be practical, and would cause big challenges to the municipalities<sup>116</sup>.