



CIRCULAR: EADP 0006/2014

**ALL MAYORS, MUNICIPAL MANAGERS AND CHIEF TOWN PLANNERS IN THE WESTERN CAPE
PROGRESS WITH THE WESTERN CAPE PLANNING CHANGE MANAGEMENT STRATEGY**

1. The purpose of this circular is to provide an update on the progress that is being made in the Western Cape Government's Planning Change Management Strategy in respect of the land use planning system law reform process that is currently underway.
2. As you are aware, the national Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013) (SPLUMA) and the Draft Western Cape Land Use Planning Bill (LUPA) are the result of the current national and provincial land use planning law reform process. SPLUMA has been signed into law by the President in August 2013; however it has not yet been implemented. The Draft Western Cape Land Use Planning Bill has been submitted to the Provincial Parliament's Standing Committee on Agriculture and Environmental Planning by Cabinet, who will be driving the legislative process. The process was initiated on 4 February 2014, when a notice was placed in the Provincial Gazette (P.N. 31/2014) publishing the Bill and providing the public with an opportunity to comment on it until 4 March 2014.
3. The following sets out the progress that has been made in each of the Planning Change Management Strategy work groups, as well as other elements of the planning law reform process.

3.1. Progress in Work Group 1: Standard Draft Municipal Land Use Planning Bylaw

The purpose of Work Group 1 is to compile a Standard Draft Municipal Land Use Planning Bylaw for all of the municipalities in the Western Cape, relating to municipal land use planning. Once made available to them, municipalities can either decide to adopt the standard draft bylaw as is, or amend it first and then adopt it. The reason why a standard draft municipal land use planning bylaw is being drawn up is because both SPLUMA and LUPA are framework legislation and do not deal with the details of how, for example, a land use application will be received, processed and decided upon. The draft bylaw will also deal with other matters, such as land use enforcement.

It is significant to note that SALGA (Western Cape) has requested the Provincial Minister responsible for Planning to assist in preparing standard draft municipal land use planning bylaws, and is in support of the current efforts of the Department. Such a draft bylaw will greatly assist municipalities in adopting their own municipal planning bylaws.

It should also be noted that the Land Use Planning Ordinance, 1985 (Ordinance No. 15 of 1985) (LUPO) can only be withdrawn within a particular municipality when that municipal council adopts a municipal planning bylaw. Therefore, the Department has already drafted a technical draft of the bylaw and is hoping to advertise it by May 2014 for comment.

From a consistency perspective, it is highly desirable for all municipal planning bylaws throughout the Province to be as similar as possible so that land use applicants will not experience significant divergence or problems in submitting land development applications across the Province. Indeed, from an economic efficiency perspective, having a set of similar bylaws will remove unnecessary 'red tape' which otherwise could unnecessarily complicate the land use application process in the case where each municipality throughout the Province has a drastically different municipal planning bylaw in place.

The immediate next steps of the work group in 2014 will be to advertise the proposed standard draft bylaw for the comment of all interested and affected parties. Once final amendments to the proposed standard draft bylaw have been effected, it will be translated into Afrikaans and Xhosa and made available to the municipalities for adoption. During 2014, the Department will liaise closely with the municipalities on the implementation of these bylaws to ensure that they are ready to implement the entire new planning regime when both SPLUMA and LUPA are implemented by the National and Provincial Governments respectively.

The Department will ensure that there is sufficient time for municipalities to adapt the standard draft municipal land use planning bylaw for their particular needs and to process the adoption thereof by their councils before the SPLUMA and LUPA are implemented, possibly in the second half of 2014. A further communication will be forwarded to the officials responsible for the bylaws wherein the process to adopt the bylaws will be set out in detail together with any supporting documentation such as a copy of the standard draft bylaw, a pro-forma memorandum / item to your Council and a draft advertisement.

Furthermore, all municipal Chief Town Planners or those officials in charge of planning in municipalities are hereby invited to the **Municipal Planning Heads Forum** in which the standard draft bylaw and the Planning Change Management Strategy will be

discussed in further detail. The forum will happen on **19 March 2014** in the Strand Council Chambers, and more details regarding this meeting can be obtained from the chairperson of the Municipal Planning Heads Forum, Mr Jaco van der Westhuizen on Jaco.vanderWesthuizen@capetown.gov.za.

3.2. Progress in Work Group 2: Standard Draft Zoning Scheme Bylaws

The purpose of Work Group 2 is to compile a Standard Draft Zoning Scheme Bylaw, which is to follow a very similar process as to what is being followed by Work Group 1. Through this supporting measure, the Department will develop a standard draft bylaw and make it available to municipalities to adopt as a zoning scheme bylaw.

The reason as to why the Department is undertaking this project is to ensure that there is a degree of consistency in zoning schemes across the Province, from both a content and definitions perspective. Whilst it is acknowledged that there will be nuanced differences between municipalities in each zoning scheme, to address context specific municipal planning requirements, Work Group 2 will put in place the essential fixes which should underpin all zoning schemes in the Province.

It should be noted that a first draft has been compiled, and is presently undergoing legal scrutiny. It is envisaged that the Standard Draft Zoning Scheme Bylaw will be advertised for comment before July 2014. Once the commenting process is completed, the necessary amendments will be made to the standard draft bylaw, and the draft will be made available to all municipalities to take through their respective zoning scheme drafting and subsequent Council approval processes.

3.3. Progress in Work Group 3: LUPA Regulations

The purpose of Work Group 3 is to draft the Regulations required in terms of LUPA. The work group will publish the Draft Regulations for comment only once LUPA has been approved and gazetted within 2014. Whilst a draft has been completed of the regulations, they are subject to change based on any changes that are made to LUPA within Provincial Parliament's public participation process.

The immediate next steps of the work group in 2014 will be to, once LUPA is approved, go out to public participation, make any necessary amendments and gazette the regulations.

3.4. Progress in Work Group 4: Internal Restructuring and Training

The purpose of Work Group 4 is to consider the new functions that the Department of Environmental Affairs and Development Planning will need to perform in the future

planning regime, and propose a revised structure for the planning components of the Department.

The team has performed a thorough assessment of all relevant planning legislation in order to determine what functions the Province will need to perform in the future planning system. What has been established through this analysis is that, whilst the Department will still perform many of its current functions, it will in future play a stronger role in terms of assisting municipalities to perform their municipal planning functions through various support and monitoring initiatives. The restructuring process is also drawing on several recent court rulings, related to land use planning, which have provided greater clarity on the roles and responsibilities of the municipal and provincial spheres in terms of municipal and provincial planning. Additionally, the Department will also take a lead role in ensuring that provincial plans are transversally implemented through sector Departments, as well as ensuring that regional planning takes place in the most integrated and coordinated manner as possible.

The immediate next steps of the work group in 2014 will be to finalise a service delivery model and amended internal structure for the Department, in cooperation with a Service Provider which was appointed to navigate these operational changes. In parallel with navigating the changes, training programmes are being identified and put in place, whereby existing officials affected by the changes will be assisted to perform newly adopted functions.

3.5. Progress In Work Group 5: Municipal Readiness Programme

The purpose of Work Group 5 is to ensure that municipalities in the Western Cape are aware of the key changes that will be brought into effect in the new planning regime, as well as to prepare them by rolling out a series of support measures. Work Group 5 acts as a coordinating body to ensure that planning support initiatives and efforts planned by the Department of Environmental Affairs and Development Planning, SALGA and the National Department of Rural Development and Land Reform are streamlined, focused and complementary.

The first step undertaken by Work Group 5 was to perform a Municipal Readiness Survey. The purpose of the survey was to ascertain the state of readiness of municipalities to undertake their current and future municipal planning functions, and ultimately assist all role-players that had a support role to play, to direct their energies at the most appropriate assistance programmes.

The immediate next steps of the work group in 2014 will be to, in partnership with key stakeholder organisations, devise a set of support initiatives that will be offered to municipalities in preparation for the implementation of the new planning system.

3.6. Progress in LUPA

The process followed in drafting the Land Use Planning Bill has been one involving a high degree of collaboration, participation and subsequent re-drafting. A memorandum was drafted in which the draft Bill was advertised Departmentally between 15 January and 5 March 2013, during which regional road shows were held throughout the province. The team received 62 sets of comments from various stakeholders and systematically went through and, where appropriate, amended the draft Bill between April and October 2013. The Bill was referred to both internal legal services and Advocates for legal advice on various aspects during the months of October and November 2013. The Bill has, as of mid-December 2013, been submitted to the Secretary of Provincial Parliament, where after it is to be subject to the legislature-driven public participation process.

It should be noted that the Bill that has been submitted to Provincial Parliament is significantly different from the version that was advertised in early 2013. Stakeholders are therefore urged to ensure that they comment and make final inputs on the Bill that will be advertised by Provincial Parliament.

3.7. SPLUMA Implementation

The Spatial Planning and Land Use Management Bill was assented to by the President on 2 August 2013 and gazetted on 5 August 2013 as the Spatial Planning and Land Use Management Act, No. 16 of 2013.

The Act seeks to bridge the racial divide in spatial terms and to enable transformation of the settlement patterns of this country in a manner that gives effect to the key constitutional provisions, by the introduction of a new approach to spatial planning and land use management, based on the following instruments:

- Development principles, norms and standards that must guide spatial planning, land use management and land development,
- Spatial development frameworks, to be prepared by national, provincial and local government,
- Land use schemes to manage and facilitate land use and land development, and
- Land development management procedures and structures for dealing with land development applications.

The Department of Rural Development and Land Reform (DRDLR) has prepared an Implementation and Change Management Plan for the Spatial Planning and Land Use Management Act (SPLUMA) that will guide the transition from the current planning system, which is rooted mainly in the provincial Ordinances and remaining apartheid

legislation governing former Black areas, to the new planning system ushered in by SPLUMA.

A core component of the Implementation and Change Management Plan is the ability of government to implement the Act. The DRDLR is working closely with national and provincial government departments to ensure their readiness to implement the Act. However, the priority of the DRDLR is to ensure that local government is ready to implement SPLUMA. The DRDLR is therefore assessing the state of readiness of municipalities to implement SPLUMA, and is preparing various support measures to assist and guide municipalities in the implementation of the Act.

The level of readiness of the local government sphere in particular to implement SPLUMA will be the key to determining the commencement date of the new Act. It is expected that municipalities, with the support of national and provincial government, will have the necessary action plans in place to enable SPLUMA to be brought into operation in the second half of 2014.

The successful enactment of SPLUMA may largely be ascribed to the extensive process of consultation with government, civil society and private sector stakeholders. These role players helped shape the structure and content of the Act, and their further participation will be critical to ensure that SPLUMA is effectively implemented.

4. Conclusion

2014 will be a critical year for the Planning sector in South Africa. It is the year within which the implementation of planning legislation will take centre stage, invariably placing pressures, exposing weaknesses and creating opportunities for great growth and development of all role players in the sector. It is now, more than ever, that dynamic partnerships and jointly run initiatives will ensure that all stakeholders truly are **better together**.

Yours sincerely



HEAD OF DEPARTMENT

DATE: 14.03.2014