



Reference: 15/3/3 LUPA Change Management Strategy

LUPA External Circular: L2/2013

ALL MAYORS, MUNICIPAL MANAGERS AND CHIEF TOWN PLANNERS IN THE WESTERN CAPE

PREPARATIONS FOR THE IMPLEMENTATION OF THE PROPOSED NATIONAL SPATIAL PLANNING AND LAND USE MANAGEMENT ACT (SPLUMA) AND THE PROPOSED DRAFT WESTERN CAPE LAND USE PLANNING BILL (LUPA), AND THEIR IMPLICATIONS FOR MUNICIPAL READINESS

1. The national Spatial Planning and Land Use Management Act (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 passed by both houses of Parliament and awaits assent by the President. The draft Western Cape Land Use Planning Bill was advertised in January 2013 for comment, and is currently being adjusted both to align it with SPLUMA and to address the comments received during the public participation process. Thereafter, LUPA will be sent to the Provincial legislature for the required legislative process. It is expected that both SPLUMA and LUPA will be enacted within the next 12 months. It should be noted that this law reform process aligns land use planning with specific provisions in the Constitution, on which a number of recent court judgments have provided much needed clarity. These place 'municipal planning' firmly within the sphere of local government, and require profound adjustments in the way in which both spatial planning and land use management is currently being practised within the municipal and provincial spheres of government.
2. Whilst LUPA is still being amended before being finalised, as mentioned above, a number of implications are now known that will significantly change the manner in which spatial planning and land use management is practised both within the municipal and provincial spheres of government. This circular highlights these implications for all municipalities in the Western Cape Province, so that municipalities can prepare for the implementation of both of these laws.
3. For municipalities, the **key issues** which need to be planned for are the following:

3.1. Assessment and decision-making on land use management applications

Currently, municipalities are not responsible for the administration, assessment and decision-making on all land use management applications, such as appeals against decisions on land

use management applications in terms of the current land use management legal regime (Land Use Planning Ordinance, Ordinance 15 of 1985 (LUPO)), where such appeals are presently the responsibility of the Western Cape Government. This is a situation which is set to change significantly when SPLUMA and LUPA are ultimately implemented. Appeals on municipal decisions, in terms of SPLUMA and LUPA, will be a core component of municipal planning, as contemplated in the Constitution, and therefore will be dealt with by municipalities. Therefore, municipalities need to have some idea of both the quantity and type of land use management applications that they are likely to encounter within their area of jurisdiction. This information will form the basis of projections that municipalities will need to make in order to plan for the anticipated changes in administrative work load, as well as the implications of new functions. Some of these new functions, which are detailed in subsequent sections, are the potential functioning of a Municipal Planning Tribunal, the administration of an internal appeal mechanism with respect to land use management applications and the removal of restrictions applications (which may involve the safe keeping and transporting of original title deeds).

Together with the above, it must also be noted that the new land use planning legal regime (SPLUMA and LUPA) will possibly require that only registered professional town planners sign off on recommendations to the relevant decision makers in a municipality regarding certain land use management applications. This Department is aware that there are municipalities in the Western Cape Province who do not have registered professional town planners on their staff establishment, and that this situation may continue into the future. This Department will therefore, together with affected municipalities, explore various operational options to address such situations. In addition to this, administrative capacity may also need to be increased. This is also an area where the Department of Environmental Affairs and Development Planning is willing to assist municipalities with an assessment of their needs, with the view to work with them to put in place solutions that are practical and reasonable.

3.2. The need for a Municipal Planning By-law

Since both SPLUMA and LUPA are regarded as "framework legislation", municipalities will be required to develop more detailed legislation to regulate their municipal planning function by drafting and adopting a Municipal Planning By-law. In this regard, the Western Cape Government is in the process of preparing a standard Municipal Planning By-law, which could easily be adopted by a municipality or be adjusted to suit individual municipal needs before adoption. It is critical that municipalities have a by-law in place when both SPLUMA and LUPA commences, so that planning applications may be processed and spatial planning administered, since LUPO will by then have been repealed.

The Western Cape Government is also in the process of drafting a model zoning scheme (*land use scheme*) as a standard by-law which could be adopted by municipalities or be adjusted to suit individual needs before adoption. SPLUMA currently requires municipalities to have an integrated zoning scheme (*land use scheme*) within 5 years from the date of its enactment. It is therefore necessary that one integrated zoning scheme by-law for the whole area of jurisdiction of each municipality is adopted as soon as possible.

3.3. The competent authority for dealing with and processing appeals on municipal planning decisions

In terms of SPLUMA, appeals on land use management decisions will not be handled and decided upon by the Western Cape Government, but by municipalities. This will have legal implications that municipalities will have to provide for, both in terms of funding for possible legal actions as well as the need for suitably qualified personnel to deal with these potential appeals. All municipalities will be required to have an internal appeal authority with respect to land use management applications. This will require structural changes as set out in the next section of this circular. Additional regulations can be expected on appeals in terms of SPLUMA, but the important point is that the Western Cape Government will not be the appeal authority for municipal planning decisions once the new legislation commences.

3.4. The need to establish Municipal Planning Tribunals and a system of delegations

SPLUMA requires a municipality to establish a Municipal Planning Tribunal for making decisions on land use applications. Amongst other requirements, it stipulates that no municipal councillor may be part of such a Municipal Planning Tribunal and that it must have members who are not municipal officials, but who have knowledge and experience in spatial planning land use management, land development or the law related thereto. SPLUMA does not provide the option that a municipality may resolve not to have a Municipal Planning Tribunal, as it is a specific requirement. It does, however, specify that a Municipal Council may authorise that certain land use management and land development applications may be considered and determined by an official employed by the municipality. Consequently, a municipality must in this regard:

- Consider and prepare a system that makes provision for a Municipal Planning Tribunal, start determining the skills needed on such a tribunal (both internally and externally), as well as establish the financial implications of the tribunal for the municipality. *Note that an external member does not necessarily mean a town planning consultant or a practising attorney. It should also be noted that if a practising consultant in a particular municipal area is appointed as a member of the Municipal Planning Tribunal, it will place limitations on applications that such a person may submit to that municipality. Disclosure of interests would be a prerequisite for serving on such a tribunal.*
- Revisit its current system of delegations for land use management decision making.
- Consider the frequency of sittings of the Municipal Planning Tribunal, depending on the system of delegations and the estimated number of applications to be seen by the tribunal. For most municipalities one sitting per month may be sufficient, however, where the demand for a Municipal Planning Tribunal meeting is less than this, meetings could perhaps be held on an ad hoc basis, as the need arises.

3.5. Administration of land use management and land development applications

Since the number of applications to be dealt with by a municipality will potentially increase, the need for proper administration will also increase as well. As a result, current manual systems may no longer suffice, and there will be an increased need for an electronic-based administration system. The Department of Environmental Affairs and Development Planning has developed such a system known as "LUP" (Land Use Planning System) which can be used for the purpose of processing and tracking applications. The new legislation will require that certain notices be published at various stages in the process, and that certain actions undertaken within specific time frames. The use of a system like LUP will assist in this regard. However, where a municipality already has its own electronic-based administration system, it must be ensured that such a system suffices for its required purpose and that the municipality's system and LUP are able to interface with one another. The reason for this is that the Department will have to be able to access information on the municipal electronic administration system in order for it to perform its municipal monitoring and support function in terms of the Constitution.

It is very important to ensure that the application process is managed and implemented in the most procedurally and administratively correct manner to limit and ideally avoid cases being taken on judicial review because of improper administration. There would also be a need for adequately trained administrative staff in this regard, which may have an impact on the current organisational structure and the budget for personnel in the municipality.

3.6. Budgetary implications

From the above it can be seen that the workload for municipalities in terms of land use planning is likely to increase. This will affect the organisational structure as well as the land use management administrative processes, both of which have implications for the operating budget of the municipality. It is from this perspective that municipalities are urged to consider the above-mentioned matters and to start implementing a change navigation strategy that will ensure municipal readiness well in advance of implementation of the various requirements of SPLUMA and LUPA.

3.7. The Municipal Readiness Survey

The changes highlighted above are unavoidable and emanate primarily from the implementation of Constitutional requirements and court judgements. National and Provincial Governments are, however, acutely aware of capacity constraints within some municipalities and it is expected that various forms of assistance would be needed for municipalities to overcome the challenges which will result from the implementation of the new planning legislation. With this in mind, it is necessary that the status quo in respect of land use planning in the province be determined for each municipality, in order to determine the extent of assistance that each municipality may require. The key information required would be that on town planning staff and capacity within the municipality. A Municipal Readiness Survey has

been developed to determine this and it is of utmost importance that the survey be completed as accurately by the municipality as possible. The Western Cape Government is willing to assist all municipalities in this regard.

3.7.1. Online access to the Municipal Readiness Survey

An online version of the Municipal Readiness Survey can be accessed on the following internet address:

<http://eadp-westerncape.kznsshf.gov.za/lupa-portal/workgroups/workgroup-5-municipal-readiness-programme>

The Department prefers that the municipality completes the survey online; however the municipality also has the option of completing the survey in hardcopy and physically returning it to the Western Cape Department of Environmental Affairs and Development Planning.

The online version allows for multiple entries, and can be saved at certain stages of completion. It also houses certain fields, pre-populated with information already known to the Department, which the municipality can verify and save.

Please note that in order to access your municipality's unique online survey, a username and password must be acquired by phoning or emailing Mr Andre Vancoillie on 021 483 5108 or Andre.Vancoillie@westerncape.gov.za.

3.7.2. Municipal Planning Change Navigation Nominee

Kindly ensure that an official from your municipality is nominated as the municipal liaison for Planning Change Navigation. Essentially, this will be the key official with whom the Department will interact, and will also be responsible for completing the Municipal Readiness Survey. Ideally, the official should be the Chief Town Planner in the municipality responsible for land use management.

The details of the nominee must be forwarded to Andre Vancoillie on 021 483 5108 or Andre.Vancoillie@westerncape.gov.za.

3.7.3. Completion Date

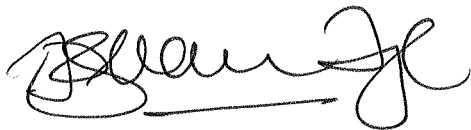
The completed survey must reach the department no later than **16 August 2013**.

3.7.4. Survey Assistance

Should you require any clarity on the content of this circular, or assistance with the completion of the survey, please contact Andre Vancoillie. Should it be necessary, members of the Municipal Readiness Work Group from the Department will gladly visit your municipality.

Your assistance in completing the survey and forwarding the contact details of your nominated official will be greatly appreciated. It has become clear that as we work towards the implementation of the new planning legislation, all spheres of government are being encouraged to work "**better together**"!

Yours sincerely,

A handwritten signature in black ink, appearing to read "Andre Vancoillie". The signature is fluid and cursive, with a long horizontal stroke at the end.

HEAD OF DEPARTMENT

Date: 25.07.2013