



CIRCULAR: EADP 0015/2014

ALL MAYORS, MUNICIPAL MANAGERS AND CHIEF TOWN PLANNERS, ALL WESTERN CAPE PROVINCIAL HEADS OF DEPARTMENT, SALGA, SAPI, SACPLAN, AND ALL ORGANISATIONS AND PRIVATE-SECTOR BODIES INVOLVED IN THE LAND USE PLANNING SECTOR IN THE WESTERN CAPE

PROPOSED SPATIAL PLANNING AND LAND USE MANAGEMENT ACT (SPLUMA) IMPLEMENTATION DATES, THE IMPLICATIONS THEREOF AND A POSSIBLE WAY FORWARD

1. PURPOSE

1.1. The purpose of this External Circular is to inform all relevant role-players involved in the land use planning sector of the proposed implementation dates of the national Spatial Planning and Land Use Management Act (Act 16 of 2013) (SPLUMA) and to set out how the Western Cape Government: Environmental Affairs and Development Planning (WCG: EA&DP), as the Western Cape provincial lead department for land use planning, proposes to move forward in this regard.

2. BACKGROUND

2.1. At the SPLUMA National Consultative Forum meeting held on 18 June 2014 the National Department of Rural Development and Land Reform (DRD&LR) publicly confirmed that the President of South Africa would be requested to implement SPLUMA as follows:

- **1 July 2014** as the date on which sections 1 to 32 and 53 to 61 of SPLUMA shall come into operation; and
- **1 September 2014** as the date on which sections 33 to 52 of SPLUMA shall come into operation.

2.2. Although the above mentioned dates for SPLUMA implementation present big challenges to many of you, the WCG: EA&DP, as the Western Cape provincial lead agent for land use planning has decided that the responsible thing to do would be to ensure that all municipalities within the Western Cape are appraised of these proposed implementation dates and are ready for implementation. In this regard, the WCG: EA&DP has performed an

initial investigation to establish the readiness of municipalities within the Western Cape to meet these dates, and to identify any possible areas of concern. The following is a summary of the investigation outcomes and potential concerns that need to be highlighted and addressed.

3. POSSIBLE IMPLICATIONS OF THE 1 JULY 2014 IMPLEMENTATION DATE OF ALL SECTIONS OF SPLUMA, EXCEPTING SECTIONS 33 - 52

3.1. In general, municipalities within the Western Cape are on track to meet the 1 July 2014 implementation date for the relevant sections of SPLUMA.

3.2. Despite this, the WCG: EA&DP has identified three (3) possible areas of concern. They include the following:

3.2.1. Section 2(2) of SPLUMA states that *"Except as provided for in this Act, no legislation not repealed by this Act may prescribe an alternative or parallel mechanism, measure, institution or system on spatial planning, land use, plan use management and land development in a manner inconsistent with the provision of this Act."*

Area of concern: This is a concern for the transition period. Municipalities may adopt their new municipal Zoning Schemes in terms of SPLUMA as of the 1st July 2014; however such an adoption will conflict with the Land Use Planning Ordinance (Ordinance 15 of 1985) (LUPO).

Way forward: The WCG: EA&DP recommends that municipalities within the Western Cape **not** adopt their new municipal Zoning Schemes until the Western Cape Land Use Planning Act (Act 3 of 2014)(LUPA) has been enacted and LUPO has been repealed.

3.2.2. Section 26 to 32 of SPLUMA deals with municipal land use schemes (in the Western Cape land use schemes are known as zoning schemes).

Area of concern: Potential legal difficulties could arise if municipalities proceed with the adoption of their zoning schemes before LUPO has been repealed and LUPA implemented – it will result in conflicts with the LUPO.

The Constitution determines that any bylaw which is in conflict with a national or provincial law is invalid. At the same time, the provincial sphere of government may not impede a municipality's ability to perform its functions, which may require a court to resolve.

Way forward: Municipalities should not adopt their zoning scheme bylaw before LUPA comes into operation and the Provincial Minister responsible for land use planning has commented on it as required in terms of LUPA. The zoning schemes should be adopted in principle as a draft, and after the commencement of LUPA should be submitted to the Provincial Minister for comment.

As the Provincial Minister at that stage may have already provided comment on the draft zoning scheme, it should be possible to finalise the comments quickly if the zoning scheme is not amended substantially. Formal compliance with the requirements of LUPA could be finalised within a short period of time and the municipality can then adopt their zoning scheme within a matter of weeks after LUPA comes into operation.

3.2.3. Section 59 of SPLUMA states that *"The laws in Schedule 3 are hereby repealed to the extent indicated in the third column of that Schedule"*.

Area of concern: The associated Schedule includes the Removal of Restrictive Conditions Act (Act 84 of 1967) (RoRA) and Less Formal Township Establishment Act (Act 113 of 1991) (LFTEA). It should be noted that both of these Acts have been assigned to the Provinces, including the Western Cape.

Way forward: As a result of the aforementioned assignment, legal advice obtained by the WCG: EA&DP indicates that applications in terms of RoRA and LFTEA can continue to be received and processed under these pieces of legislation until LUPA and the Municipal Land Use Planning bylaws are implemented, and the WCG: EA&DP repeals the RoRA and the LFTEA.

4. POSSIBLE IMPLICATIONS OF THE 1 SEPTEMBER 2014 IMPLEMENTATION DATE OF ALL THE SECTIONS OF SPLUMA

4.1. The main area of concern with the 1 September 2014 implementation date for all the sections of SPLUMA is that all municipalities within the Western Cape must have adopted their Municipal Land Use Planning Bylaw on or before this date. If this is not achieved by then, the SPLUMA Regulations (not yet published) will be applicable in terms of how the municipalities receive, process and decide on land use planning applications, as well as other land use planning matters. Therefore, if municipalities within the Western Cape have not adopted their relevant bylaws by the 1 September 2014 deadline, all new planning applications will be submitted in terms of the SPLUMA Regulations.

4.2. Therefore municipalities within the Western Cape are requested to do everything in their power to ensure that their Municipal Land Use Planning By-law has been adopted before 1 September 2014. In order to achieve this the following steps should be followed:

- Present the draft Municipal Land Use Planning Bylaw to the Municipal Council with the aim of receiving approval for advertising;
- Advertise the draft Municipal Land Use Planning Bylaw for a recommended period of 30 days;
- Amend the draft Municipal Land Use Planning Bylaw based on the comments received;
- Present the Municipal Land Use Planning Bylaw to the full Municipal Council for adoption; and
- Publish the adopted Municipal Land Use Planning Bylaw in the Provincial Gazette.

Due to the tight timeframes, municipalities that have not presented their draft Municipal Land Use Planning Bylaw to their Municipal Council for approval to advertise by the end of June will most probably have to call a Special Council Meeting, as soon as possible, to enable them to make the 1 September 2014 deadline.

4.3. The 1 September 2014 implementation of SPLUMA also requires municipalities to establish Municipal Planning Tribunals (MPT). The implications of this include:

4.3.1. Municipalities will need to have MPTs established shortly after the 1 September SPLUMA implementation date.

Area of concern: Municipalities must begin the process of establishing their MPTs, as set out in SPLUMA. There are various options as to how these MPTs may be set up, such as jointly between two or more municipalities or District-wide, or just for one municipality. There is a significant process required to establish MPTs, which all municipalities would have to follow concurrently to the approval of their municipal land use planning bylaw.

Way forward: The WCG: EA&DP will be calling meetings with all municipalities within the Western Cape during July 2014 in which the Municipal Planning Tribunals options and implications will be discussed. The aim of these meetings will be to clarify a practical way forward for all municipalities within the Western Cape with respect to the establishment and implementation of MPTs. This said, all municipalities within the Western Cape are encouraged to actively interrogate how they envision their MPTs will operate. In this regard, Municipalities are welcome to call on the WCG: EA&DP for advice.

The abovementioned proposed meetings are scheduled to take place as follows:

- 8 July 2014 to be held in Paarl for the Cape Winelands & Cape Town areas;
- 9 July 2014 (to be held in Bredasdorp or Caledon for the Overberg areas;
- 10 July 2014 to be held in Moorreesburg for the West Coast areas; and
- 15 July 2014 to be held in George for the Eden and Central Karoo areas.

The proposed meetings will provide further detail to the information presented during the training sessions held in April 2014 as well as provide an overview of the legal opinions obtained by the WCG: EA&DP on MPTs. Hopefully, at the end of these engagements, municipalities will be in a position to make better informed decisions with regards to the specific MPT option they would like to pursue.

In terms of operationalising MPTs, the following is a basic list (not exhaustive or complete) of what needs to be achieved prior to 1 September 2014:

- Identification of MPT option, structure and potential membership.
- An advert needs to be drafted and sent out calling for prospective MPT members to apply;

- Evaluation criteria need to be developed for the selection of prospective MPT members;
 - Applications need to be received, evaluated, and vetted by an established task team.
 - Approval of recommended MPT members by the relevant Municipal Councils.
 - Successful MPT members to be notified and accept.
 - Notice published in Provincial Gazette of the approved MPT members.
- 4.3.2. Section 34 of SPLUMA makes provision for municipalities to enter into agreements with neighbouring municipalities to share the financial and administrative burden associated with the MPTs.

Area of concern: The WCG: EA&DP is currently not confident that all municipalities within the Western Cape are aware of the financial and administrative considerations associated with the establishment and operation of the MPTs.

Way forward: In addition to the workshops scheduled, as detailed above, the WCG: EA&DP is currently busy with a number of initiatives to assist municipalities to prepare themselves for the implementation of the MPTs. These include:

- Preparing a Guideline on the establishment and operation of the MPTs.
- An investigation into the costs associated with the various MPT options. This investigation will be influenced by the specific option chosen by municipalities.
- Offering the possibility of deploying provincial officials to sit on MPTs, should this be required, or to assist municipalities in drafting Municipal Land Use Planning Reports.

5. POSSIBLE IMPLEMENTATION OF LUPA ON 1 SEPTEMBER 2014

5.1.1. As a result of the SPLUMA implementation dates, the Premier of the Western Cape will be requested to implement LUPA on 1 of September 2014. Having said all of the above, the WCG: EA&DP does not foresee any major challenges in achieving this date if the above mentioned items are met.

5.1.2. If the Premier of the Western Cape agrees to implement LUPA on 1 September 2014 then the LUPA Regulations **must concurrently be adopted** by the Premier of the Western Cape. In this regard, the WCG: EA&DP is currently finalising the draft LUPA Regulations which will be submitted to the Western Cape Government's Legal Services for comment within the next two weeks for legal vetting and comment. Once this comment has been received and the necessary amendments have been made the draft LUPA Regulations will be published for public comment.

6. SUMMARY OF THE KEY ISSUES MENTIONED ABOVE

6.1.1. Although the proposed dates of SPLUMA implementation, as publicly conveyed by DRD&LR, may seem improbable to many, it would be irresponsible of the WCG: EA&DP and

all municipalities in the Western Cape not to work towards these proposed SPLUMA implementation dates.

- 6.1.2. In the above regard, municipalities **must adopt** their Municipal Land Use Planning Bylaws on or before the 1 September 2014 deadline. If municipalities fail to meet this deadline then by default the national SPLUMA Regulations will be applicable in those municipalities. As yet, the draft national SPLUMA Regulations have not been advertised and the content of these SPLUMA Regulations is therefore still unclear at this point in time.
- 6.1.3. Municipalities are requested **not to adopt** their new Zoning Schemes before the enactment of LUPA and the repeal of LUPO.
- 6.1.4. All municipalities in the Western Cape **must start thinking** about how they want to operationalize MPT's within their areas of jurisdiction and must consider the implications of their preferred MPT option.
- 6.1.5. The **implementation of LUPA is linked to the implementation of SPLUMA** and should the President of South Africa announce the implementation dates of SPLUMA as mentioned above, then the Premier of the Western Cape will be requested to implement LUPA on 1 September 2014.

As the Western Cape provincial lead agent for land use planning, WCG: EA&DP, commits to providing the necessary support to all municipalities within the Western Cape in terms of getting ready for SPLUMA, LUPA and municipal land use planning bylaw implementation. We trust that all our partners in the land use planning sector in the Western Cape find the above in order.



ACT. HEAD OF DEPARTMENT

Date: 2014.6.25