



Province of the
EASTERN CAPE
Cooperative Governance
& Traditional Affairs

GREEN PAPER

Eastern Cape: Spatial Planning & Land Use Management

Outline of Green Paper
14 September 2016

What Is This Process About?

This process deals with the Eastern Cape Provincial Government's intention to draft legislation that will guide and regulate the manner in which Spatial Planning and Land Use Management will take place in the Province.



The EC Green Paper on SPLUM

- The Green Paper on Spatial Planning & Land Use Management for the Eastern Cape Province sets out the proposed policy to be adopted by the Province to guide the drafting of a new Provincial law on Spatial Planning & Land Use Management
- The Green Paper initiates the Provincial legislative process to build on the National Spatial Planning & Land Use Management Act (SPLUMA, Act 16 of 2013)
 - *SPLUMA is a Framework Act*
 - *Provides for Provinces to draft their own SPLUM law*
 - *Came into operation on 1 July 2015*



What Is Spatial Planning & Land Use Management?

- **Defined in Section 2 of the Planning Profession Act (Act 36 of 2002) as follows:**

- (a) Planning and the planning profession are areas of expertise which involve the initiation and management of change in the built and natural environment across a spectrum of areas, ranging from urban to rural and delineated at different geographic scales (region, sub-region, city, town, village, neighbourhood), in order to further human development and environmental sustainability in the fields of –
 - (i) The delimitation, regulation and management of land uses;
 - (ii) The organization of service infrastructure, utilities, facilities and housing for human settlements; and
 - (iii) The co-ordination of integration of social, economic and physical sectors which comprise human settlements.
- (b) Planning must pursue and serve the interests of the public to benefit the present and future generations.



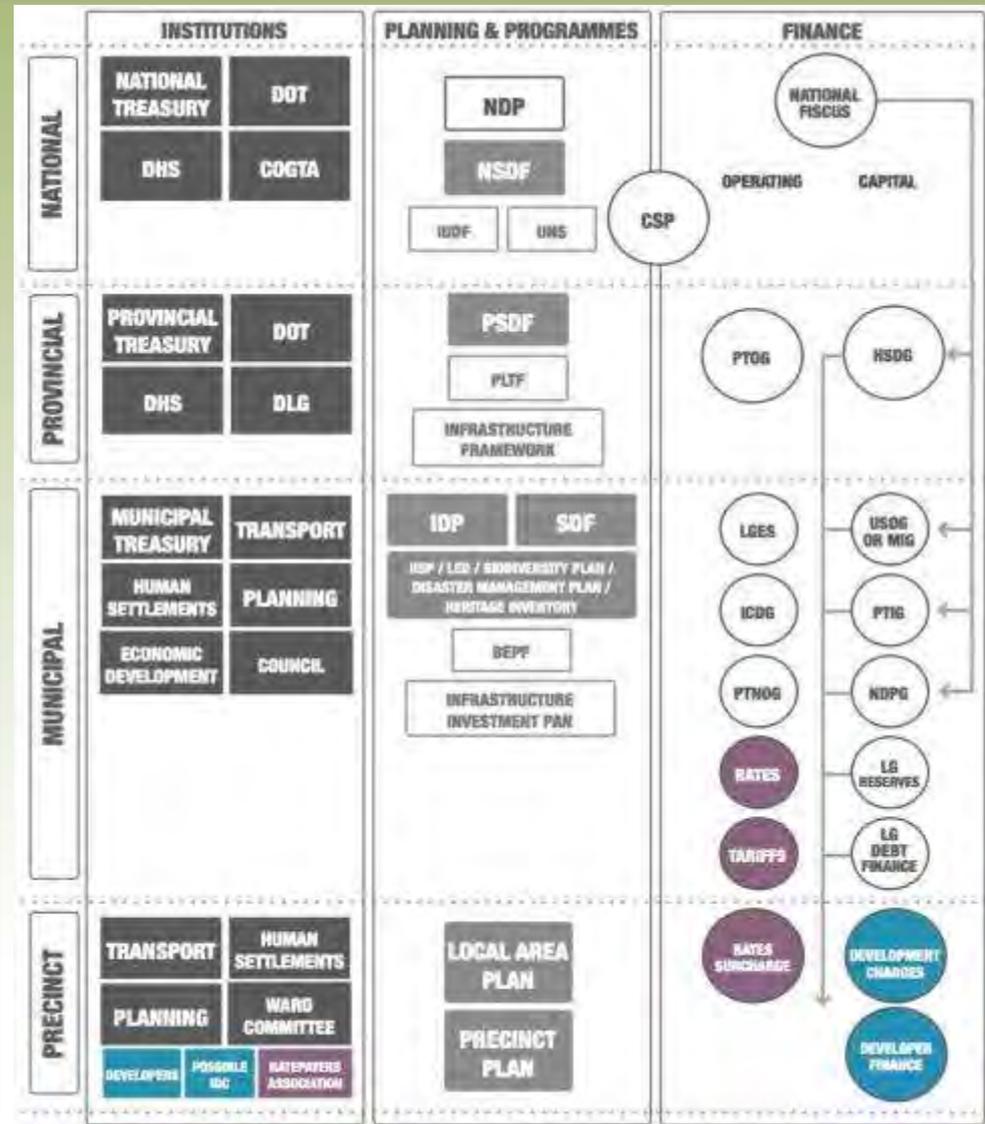
Where does SPLUM Fit In?

- Planning in SA encompasses: -
 - *National Planning*
 - *Provincial Planning*
 - *Municipal Planning*
- All based on Constitution of RSA
 - *Constitutional democracy*
 - *Rights-based*
 - *3 Spheres of Government inter-related*
- SPLUM a crucial administrative action



Where does SPLUM Fit In?

SPLUM a core activity linking institutional relationships, planning programmes and financial mechanisms across the 3 spheres of government



Outline of EC-SPLUM Green Paper

- Document structured in 3 Sections:
 1. *Introduction*
 2. *The Body of the Green Paper*
 3. *Brief Conclusion on Next Steps*

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Background

- Spatial planning and land use management in SA historically used by post-colonial and Apartheid states as a tool to plan and rationalise separate development. Some examples:
 - *Betterment Planning*
 - *Group Areas*
- SPLUM legal frameworks often racially specific
- Range of SPLUM laws overlapping, fragmented and created a too-complex planning environment
- Planning system thus in need of reform and transformation to meet needs of SA constitutional democracy



Enactment of SPLUMA

- Recognizing how crucial a reformed SPLUM system is to achieve development goals of democratic SA, government enacted SPLUMA
- SPLUMA sets in place a new SPLUM system:

4. The spatial planning system in the Republic consists of the following components:

- (a) Spatial development frameworks to be prepared and adopted by national, provincial and municipal spheres of government;
- (b) development principles, norms and standards that must guide spatial planning, land use management and land development;
- (c) the management and facilitation of land use contemplated in Chapter 5 through the mechanism of land use schemes; and
- (d) procedures and processes for the preparation, submission and consideration of land development applications and related processes as provided for in Chapter 6 and provincial legislation.



Key Provisions of SPLUMA

- SPLUMA legislates 5 Development Principles that are to be adhered to in the practice of Spatial Planning and Land Use Management in South Africa
 1. *The Principle of Spatial Justice*
 2. *The Principle of Spatial Sustainability*
 3. *The Principle of Efficiency*
 4. *The Principle of Spatial Resilience*
 5. *The Principle of Good Administration*



Key Provisions of SPLUMA

- SPLUMA is intended to function at the centre of a range of other legislation and activities that make up the overall processes of SPLUM.
 - *It is aligned with and gives effect to the provisions related to planning and associated activities of the state as set out or prescribed in a range of core legislation, starting with the Constitution and including the Municipal Systems Act and numerous Acts dealing with cooperative governance, environmental conservation and management etc.*
- The SPLUM process is not subordinate to the dictates of any one Department.
 - *All government Departments have a responsibility to add value to planning and developmental processes in and across the national, provincial and local government spheres.*



Key Provisions of SPLUMA

- SPLUMA sets in place processes and institutional structures and provides for Regulations and Municipal By-Laws to:
 - *render support and monitoring with regard to the planning function on a cooperative governance basis;*
 - *prepare SDFs at National as well as Provincial, Regional and Local levels;*
 - *give effect to land use management processes and the formulation of Land Use Management Schemes;*
 - *make provision for Land Use Scheme Amendments;*
 - *carry out the removal of restrictive conditions of title endorsed on individual property title deeds; and*
 - *deal with appeals against decisions on Land Use Scheme Amendments.*
- The SPLUM system thus put in place provides a basis for property valuations and assists the formal property market in its functioning



Why is SPLUM Important?

- *Assists government and communities to respond to the most pressing challenges facing our society - For example:*
 - *At a global and national scale:*
 - **Climate change, which will have consequences ranging from:**
 - ✓ Changes in weather patterns and more severe weather events (disasters)
 - ✓ Changes in the natural environment
 - ✓ Threats to water, energy supplies and safe and healthy human environments;
 - ✓ Economic impacts, including impacts on agriculture (food supplies);
 - ✓ Vulnerability of human settlements (e.g. threat to coastal settlements of rises in sea levels and surge tides);
 - ✓ Large scale migrations of people seeking safer and healthier living environments or access to opportunities.
 - **The impacts of globalisation and the technological revolution on human economies and associated land use and settlement patterns.**
 - ✓ Rapid changes in societies (based on rapid flows of information and shifting of resources across the globe)
 - ✓ Impacts include an apparently deepening and speeding up in the growth of economic inequality at global, national, regional and local scales.
 - *At a national, provincial and local scale: -*
 - **The need to continue addressing the core challenges of transformation and the revitalisation of the economy to enable more equitable socio-economic development going forward;**
 - **The need to transform inequitable urban and rural human settlement formations into more functional, sustainable and productive use patterns**



Motivation for EC-SPLUM legislation

- The unique history of EC and the socio-cultural and developmental consequences thereof give the motivation for taking the new system provided by SPLUMA and working to extend it and make it function more effectively in the varying contexts of different areas (communities) in the cities, towns and rural areas of the Province.
- Unique challenges include: -
 - *The complexities of undertaking SPLUM in a diverse socio-cultural society with varying norms and standards related to land, its use and development as well as its ownership (and the purpose thereof);*
 - *Dealing with the consequences of impoverished urban and rural communities that have been marginalised due either to historical factors or, often, factors related to poor access to opportunities;*
 - *The reality that the Eastern Cape is socio-culturally and economically marginalised within the national space economy and thus many of its government institutions as well as the majority of its communities are not optimally-resourced and well-capacitated.*



Main Body of the Green Paper: 1

- Addressing the context of the drive to draft Provincial legislation: SPLUMA
 - *The provisions of SPLUMA outlined*
 - *Emphasising the conceptual importance of the SPLUMA Development Principles*
- Highlighting Issues, Lessons and Obligations guiding SPLUM legislation that are drawn from international discourse, treaties etc.
- Outline of key aspects guiding the way forward on Green Paper content and legislation focus areas
- Putting forward a VISION for a revitalised planning system in EC
- Setting out proposed Focus Areas for new EC-SPLUM law



Vision for EC-SPLUM System: 1

In order to Put People First, to better Deliver Basic Services, Provide Good Governance, ensure Sound Financial Management and Build Local Government Capabilities, the system of Spatial Planning & Land Use Management (SPLUM) to be developed in the Eastern Cape Province will include the following functions and characteristics: -

- Planning must be carried out in such a way that it gives material effect to the provisions of Chapter 4 of the Municipal Systems Act in respect of community capacitation (enabling an informed constituency), and citizen involvement in governance activities and developing locally-based inputs (future visions, strategies and proposals) for their communities.
- From the perspective of oversight, this informed constituency shall become a principle driver of and participant in the planning endeavours of the state, and must hold the state accountable for achieving agreed upon outcomes;
- While placing citizen participation (consensus) at its heart, SPLUM in the Eastern Cape shall furthermore be an integrating discipline, bringing together technical aspects of environmental management (wise land use), service delivery (how and where to develop and maintain infrastructure, roads and pedestrian networks, social facilities), economic development and human settlement (how best to facilitate and to manage where or how people live, work and play) and the key linkages between all these aspects.



Vision for EC-SPLUM System: 2

In order to Put People First, to better Deliver Basic Services, Provide Good Governance, ensure Sound Financial Management and Build Local Government Capabilities, the system of Spatial Planning & Land Use Management (SPLUM) to be developed in the Eastern Cape Province will include the following functions and characteristics: -

- This will require SPLUM and integrated planning to take centre stage and play a co-ordinating and integrating role with and between different sectors within government as well as with and between the public and private sectors;
- In all its undertakings, planning in the Province shall be characterised by an approach that is sensitive to the cultural and economic contexts of the area(s) where the planning activity is taking place, as well as the norms, standards and expectations of the communities who are resident in such area(s);
- Plans and Schemes to be formulated in terms of SPLUM activities in the Province must be informed by and take account of the expressed needs of all stakeholders but must also remain realistic about the availability of resources in the public and private sectors (human resources, financial resources and environmental capacities to support proposed activities) and how this may impact on their ability to achieve the desired outcomes.
- A social compact approach shall underpin the new system of planning in so far as all stakeholders will be enjoined to commit to its ongoing development.



Goals for EC-SPLUM System

- Three Goals are highlighted:
 1. *To re-establish planning (spatial planning & land use management and integrated development planning) as a crucial administrative action and discipline that is central to the successful achievement of integrated development and developmental local government;*
 2. *To achieve the restructuring and revitalisation of the planning profession in such a way that it performs its constitutional mandate and, accordingly, takes its place as a crucial occupation that plays an important role in bringing people together to a better understanding of each other's worldviews and, along with this, to a better understanding of the key decisions that need to be taken to ensure that our culturally diverse society endures and prospers in a way that is more equitable, sustainable and resilient.*
 3. *To re-affirm the spatial planning system and applicable standards as a primary responsibility of local government (municipalities).*



Proposed Focus Areas

- Operationalising the Development Principles in the EC system
- Clarifying Roles & Functions of three spheres of government
- Dealing with Cultural Diversity and Customary Law
- Broadening thorough and sustained consultation in planning
- Ensuring Administrative Justice in planning processes
- Ensuring accessible and fair avenues for appeal and/or redress
- Institutional arrangements
- Developing the Planning Profession
- Providing ways and means to address unforeseen problems related to SPLUMA
- Providing for Emergency Measures in planning
- Providing Transitional Measures to bridge to the new EC system



Operationalising SPLUMA Principles

- All planning must be guided by the need to achieve outcomes that are in line with or give effect to the SPLUMA Development Principles
- SPLUMA Development Principles are not sector specific and achieving them will require a cooperative governance approach to be prioritised
- Therefore, planning (Spatial Planning and Land Use Management as well as Integrated Development Planning) must be recognised as being a pivotal administrative action of government that is central to the efforts of government to improve its functioning and delivery



Operationalising SPLUMA Principles

- This means that. . . :
 - *Within the organisational structures of both Provincial and Local Government, the function of planning must be resourced appropriately*
 - *A properly resourced Provincial planning function will make it feasible for the Province to engage meaningfully with its core functions of Provincial Planning and rendering support to, and monitoring the planning systems of municipalities*
 - *A properly resourced Provincial planning function would also play a vital role in liaising with key national departments to ensure that a correctly functioning planning system is put in place and sustained in the Province*
 - *As almost half of the geographic area of the Eastern Cape Province is bound up in a customary cultural ethos, the province in conjunction with the affected municipalities must provide planning support to Traditional Councils*
 - *Where applicable, the Province must develop appropriate Provincial Policy, Regulations and Norms and Standards in relation to planning processes, including:*
 - **Guidance on pursuing the outcomes associated with the SPLUMA Development Principles.**
 - **The development over time of Procedural Manuals and Guidelines to assist under-capacitated municipalities in ensuring that sound planning procedures are followed**



Clarifying Respective Roles & Functions of 3 Spheres of Government

- Planning as an administrative activity of the state should be seamless and bound together in a cooperative approach to governance. Therefore: -
 - *Firstly, need to clarify further the operational definition of (and how to manage) the roles and functions included under the terms “Provincial Planning” and Municipal Planning” and to provide for a better understanding of how to deal with “regional planning”, which may entail planning for an area that is not Province-wide but rather crosses municipal boundaries and is functionally based (e.g. an agricultural region).*
 - *Secondly, this Focus Area emphasises the need to clarify how best to organise and manage the relationship between Province and Municipalities in relation to Integrated Development Planning (IDP), Spatial Planning and Land Use Management.*



Dealing with Cultural Diversity and Customary Law

- Recognise that cultural diversity is central to enabling any prospects of sustainable development in urban and rural areas
- The realities of socio-cultural diversity in urban and rural areas present challenges to the planning discipline as space (land) is viewed in unique ways by different cultural communities :
 - *Provincial SPLUM legislation must give effect to a more appropriate way of dealing with cultural diversity in planning processes and recognise the importance of customary law, local cultural norms and standards, and local leadership.*
 - *Need to develop appropriate Protocols to inform planning processes*
 - *Need to ensure that forward planning (Spatial Planning) is done in a manner that will ensure that subsequent planning proposals and Land Use Management Schemes are seen to be consensus-based and valid*



Broadening Consultation in Planning Processes

- Need to revitalise the processes applied to community participation in all planning and governance activities, as provided for in MSA
- Promotion of dialogue between all parties is seen to be essential to “humanise” planning processes
 - *Between government and communities*
 - *Between government agencies in the different spheres*
- All dialogue to subscribe to the principle of **FREE, PRIOR AND INFORMED CONSENT (FPIC)**



Ensuring Administrative Justice in Planning Processes

- Administrative Justice without prejudice is key to achieving Social (and Spatial) Justice
 - *All stakeholders to have access to procedures that ensure administrative justice*
 - *All stakeholders to have access to proper avenues of redress in relation to decisions taking as a result of a planning process or planning decision*
- Proposal:
 - *Alternative Dispute Resolution (ADR) measures must be introduced to facilitate conciliation and mediation processes, when needed*
 - *EC-SPLUM legislation to provide for a MEC or a municipal council to consider the desirability of referring a matter to conciliation or mediation when a difference or disagreement has arisen*



Ensuring Accessible Avenues for Appeal and Redress: 1

- Section 51 of SPLUMA raises two concerns:
 1. *whether an appeal body contemplated in SPLUMA could be seen as an impartial body ;*
 2. *whether the right of appeal has been framed too narrowly in SPLUMA*
- Proposal regarding impartiality of Municipal appeal body:
 - *Based on fact that section 51(6) of SPLUMA permits a municipality to authorise an outside body or institution to assume the obligations of an appeal authority and indicates that the manner in which this is done may be regulated in terms of provincial legislation. . .*
 - **EC-SPLUM to Provide for Provincial-level Appeal Tribunal that could deal with appeals against decisions of Municipal Planning Tribunals (MPTs)**
 - **PROVIDED THAT a Provincial Appeal Tribunal will only be able to operate in the place of a Municipal Executive Authority where so authorised by the municipality in question**



Ensuring Accessible Avenues for Appeal and Redress: 2

- Section 51 of SPLUMA raises two concerns:
 1. *whether an appeal body contemplated in SPLUMA could be seen as an impartial body;*
 2. *whether the right of appeal has been framed too narrowly in SPLUMA*
- Proposal regarding narrow right of appeal:
 - *the qualifications attached to the meaning of an interested party under sections 51(4) and (5) of SPLUMA require modification to ensure that the recognition of customary law is given effect and that the principles of Free, Prior and Informed Consent are protected;*
 - *provisions need to be considered to include Traditional Councils and duly-legitimated community representatives as having the right to give input on relevant matters as well as having representation on Appeals bodies, where relevant.*



Institutional Arrangements: 1

- In order to achieve the EC-SPLUM Vision and Goals it is crucial to acknowledge the need for a reconfigured institutional arrangement to enable more effective and responsive planning to inform development management and delivery. The following are proposed: -
 - *A Provincial Planning Board should be established that will advise the MEC of COGTA on a range of matters affecting SPLUM.*
 - *The Provincial Planning Board may also provide research, guidance and advice upon request by any provincial department or the House of Traditional Leaders, or a municipality or a Traditional Council on a range of SPLUM and human settlement issues.*
 - *The provincial mandate to support and monitor spatial planning and land use management must be given “flesh” and a clear institutional home with provision for capacity to be set in place to enable the Province to render the function at an appropriate level to assist the municipal sphere as per the obligations of Province in terms of Section 139 of Constitution and Section 10 of SPLUMA.*



Institutional Arrangements: 2

- *Finally, whilst remaining consistent with the provisions of SPLUMA, it is proposed that Provincial Planning must at least undertake the following activities:*
 - The formulation of a Provincial SDF
 - The formulation of Provincial Policy on matters of interest and/or concern for spatial planning and land use management in the Province
 - Representing the Province in different forums on matters of interest to planning in the Eastern Cape
 - Provincial-based research and the development of knowledge databases and GIS data
 - Assisting in conflict-resolution between stakeholders, where so requested
 - Establishing appropriate protocols to guide planning and land use management processes as well as participatory methods need to inform and guide such processes
 - Facilitating and/or participating in Implementation Protocols as provided for in Section 35 of the Intergovernmental Relations Framework Act (Act 13 of 2005)
 - Establishing technical support structures as provided for in Section 30 of the Intergovernmental Relations Framework Act (Act 13 of 2005)
 - Collaborate with and advise on request the Eastern Cape House of Traditional Leaders and/or Traditional Councils
 - Where deemed vital, and following due process, to undertake work for and on behalf of a municipality that is unable to perform its functions



Developing the Planning Profession

- Provide for measures to set minimum standards in relation to:
 - *Planning education and training*
 - Develop a new ethos of planning in the Province that questions prevailing planning rationalities in the context of socio-economic and cultural diversity
 - The development of broader and deeper skill sets to deal with the scope of the work that planners are called upon to do
 - *Identifying areas of work that may be carried out by different categories of planners*
 - *Putting in place support mechanisms to underpin continuing professional development (CPD) and knowledge development.*
Examples: -
 - Formalising support of SA Council of Planners (SACPLAN) and SA Planning Institute (SAPI) structures in the Province; and
 - Ensuring clarity around the need of the Province to monitor and support SPLUM in the Province, including monitoring professional standards of work (quality) and communicating with SACPLAN on ensuring due diligence in the maintenance of standards as well as corrective action, if needed.
 - *Putting in place a Peer Review mechanism that could be accessed on request by any client of a registered professional planner, or by any stakeholder concerned about the quality of work of such a planner*



Providing for Emergency Measures in Planning

- Planning required to play a central role in assisting society to deal with the implications and consequences of unforeseen events, including natural and human-made disasters
- EC-SPLUM must make provision for emergency measures in spatial planning and land use management matters. Examples:
 - *The need for temporary accommodation of communities as a result of natural disaster;*
 - *The need to seek alternative land for settlement;*
 - *The need for transitional arrangements related to the upgrading of informal settlements.*



Transitional Measures

- In order to ensure a smooth transition from the system existing at the time of implementation of the new EC-SPLUM Act, need to provide guidance on measures to ensure that the planning system continues to function smoothly. Examples:
 - *Any relevant Planning Advisory Board, Land Use Planning Board and/or Townships Board will remain functioning until such time as they are disestablished by Notice in the Provincial Gazette*
 - *Actions taken in terms of a previous law that is repealed by the P-SPLUM Act will need to be considered as having been done in terms of the Act and, as such, maintain their legality until such time as an affected action is expressly repealed or withdrawn in terms of the Act or subsequent by-laws.*
 - *Any action taken in terms of an Act or by-law repealed by the new P-SPLUM Act and which has not been finalised at the date of enactment of the new Act may be finalised as determined by the relevant Regulatory Authority of legal standing.*



Concluding Chapter: Next Steps

1. Development and approval of a White Paper on Spatial Planning & Land Use Management in the Eastern Cape
2. Initiate a parallel process to prepare draft Legislation



THANK YOU

