



Spatial Planning and land use Management (SPLUMA) Task team Workshop Report no. 1
Afesis-corplan and the Eastern Cape NGO Coalition
24 February 2016

1. Present

See attendance register attached.

2. Introduction

New Spatial planning and land use (SPLUM) legislation has been developed nationally and is being rolled out locally. The provincial department of Cooperative Governance and Traditional Affairs (CoGTA) is also in the process of developing provincial SPLUM legislation for the province. A draft green paper has been produced and it is planned to complete a Policy (white paper) and Bill by December 2016.

Afesis-corplan has received funding from the Multi Agency Grants Initiative (MAGI) to raise awareness of SPLUMA and facilitate a process for Civil Society Organisations (CSO's) to develop a policy position on what they would like to see in provincial policy and legislation. It is intended to submit a set of recommendations that are supported by various CSO's to provincial CoGTA in May 2016.

Afesis-corplan and the Eastern Cape Non Governmental Organisation Network (ECNGOC) held a training seminar on SPLUMA in September 2015, where it was agreed to establish this task team meeting today. The purpose of this task team workshop is to explore and develop (1) a draft set of recommendations that we would like to see in provincial SPLUM legislation, and (2) an advocacy campaign plan for how we will publicise and get support for the policy positions.

3. Background to SPLUMA and the provincial SPLUM legislation development process

See separate PowerPoint presentation for information on SPLUMA and the provincial green paper (internal discussion document).

4. The existing situation

The provincial COGTA have completed the provincial green paper (internal discussion document) on SPLUM in the province, and submitted the report today (24 February 2016) to an appropriate committee of the provincial legislature for consideration. It is not clear when this green paper will be approved and when the provincial government will begin a process of developing and consulting on the white paper and SPLUM bill. Provincial CoGTA is aiming to have provincial policy and a provincial bill in place by December 2016. The provincial COGTA do not yet have a budget for the

white paper and bill development process, but they are looking at how they can fund for this process.

5. Questions and discussion on SPLUMA

The following lists the questions and issues raised by participants together with the response after the '→' sign.

1. How can we 'force' municipalities to set up Municipal planning tribunals (MPT)? → We can use community lobbying and advocacy. We can get the press involved to raise awareness of issues. We can call on higher levels of government to investigate. We may need to resort to courts.
2. Is municipal council the right body to be an independent and impartial appeal body? → Communities only left with courts (which are expensive) if they want to challenge council (if they appeal body) and appeal their decision. We need to think how to make appeal processes fair and affordable.
3. How accountable is the MPT? → It is elected by council and includes combination of officials and outside experts and people with experience.
4. How is SPLUMA being done now in the interim when systems are not yet all in place? → It is all very confusing. Some people say the national act did not repeal provincial acts, so provinces can continue to use aspects of old legislation as long as this not contradict the SPLUMA. Provincial legislation is not needed to implement SPLUMA. As long as municipalities have approved by-laws and an MPT established work can continue.
5. How do we define CSO's in the context of getting CSO support for policy recommendations? → It is up to us as the task team to determine this, but it is generally CBOs and NGO's.
6. Many of the issues we identify are not just for provincial government, who else should we target for submitting some of our recommendations? → We can target some recommendations to municipalities and national Department of Rural Development and Land Reform (DRDLR) and even national CoGTA etc. We must use this opportunity of reviewing SPLUMA and related (existing and possible) legislation to 'push the boundaries' of what we are asking for, including for example making comments on communal land policy etc.
7. How can we increase opportunities for community participation when it comes to land use change decision making? → We need to look at, for example, requiring municipalities to develop principles in a participatory manner, which MPT/ appeal bodies must take into account when making decisions.
8. Can we use SPLUM to improve community participation in SDF development. → Yes, we can specify in more detail how communities can participate in SDF development. We may have to also look at participation requirements stemming from the IDP as the SDF is a part of the IDP and must be developed following the IDP participation process. Provincial SPLUM can also make public participation better when it comes to making decisions on land use change by for example making provision for pre-consultation before plans are developed and submitted for land use change.
9. Can a land use change be approved if it contradicts what SPLUMA says? → Generally land use change decisions have to conform to the SDF, and if it deviates it needs to be very strongly motivated.
10. Why does SPLUMA only reference traditional councils when it comes to structures that can enter into agreements with municipalities? → This was probably an attempt to appease Traditional Councils and was an oversight in forgetting about CPA's and other legitimate community leadership structures.
11. What can communities do if municipalities don't do their job? → There is other legislation dealing with what consequences there are for poor performance. SPLUMA needs to highlight this.

12. Can we change the national SPLUMA act? We can 1) challenge aspects we don't like in court, and 2) try and motivate to government for amendments.
13. What does it mean that municipal planning is an exclusive municipal competency? → Municipalities are responsible for making decisions on SPLUM.
14. Does SPLUMA recognise customary law? → Yes, customary and any other laws or rules (like rules from a residents association) must be in terms of the constitution.
15. How does SPLUMA deal with multiple laws and approvals? → All laws like mining laws and environmental and land use laws must all be followed. No single law (except the constitution) 'trumps' (overrides) another law. For example the Dept. of Minerals can give permits for mining but municipalities following SPLUMA, and communities following customary laws, must all also give approval as well. If anyone says no, then the mining cannot go ahead. They all must agree. If dispute must use available dispute resolution channels.
16. Who is the community in SPLUMA? → We need to give more thought to how we can use SPLUMA to help define who is 'the community' in communal areas. SPLUM legislation can accommodate multiple community structures from Traditional Leaders, CPA boards, home owner association, community leaders etc.
17. Who is the owner of the land in SPLUMA (as only the owner can apply for a land use change)? Is it the Traditional council, the underlining rights holder or the DRDLR as custodian (trustee) of the land? → We need to use SPLUM to help clarify this. For example, the 'owner' could be the community, and for homestead land it could be household.

6. Recommendation ideas

The following ideas were raised when it came to how to improve SPLUM legislation.

Broad recommendations

1. Establish a provincial advisory committee
2. Review and identify appropriate terminology to use within spatial planning and land use management
3. Make provision for shared planning and land use management services between municipalities
4. Require province to develop summary of provincial SPLUM legislation
5. Highlight what other legislation can be used if SPLUMA is not implemented properly

SDF related

6. Make provision for municipalities to develop Local SDF's.
7. Require municipalities to develop LSDF's using community based planning (like ABCD – Asset Based Community Development) methodologies
8. Require municipalities to develop local planning and land use principles (guidelines) as part of the LSDF
9. Require municipalities to identify incremental settlement areas in L&MSDF's
10. Assist community to develop local plans, including local spatial planning principles.
11. Explore how we would like to improve participation in the IDP process
12. Require communal areas, under traditional leadership, under community leadership, under a CPA and other communal property institution → let them develop their own plans and spatial and principles, as well as criteria to be taken into account when making land use change decisions.

Land use scheme and management related

13. Draw communities attention to existence of municipal by-laws for SPLUM
14. Require municipalities to develop a summary manual of municipal by-laws
15. Require decision makers to take these LSDF's into account when making decisions

16. Put in place conditions for what to do if land use decision contradicts what SPLUMA says. Require MPT to keep a record of all decisions, with motivations where deviation. Require motivation to make reference to SPLUMA principles

MPT related

17. Have rural development people on MPT
18. Have community / social people on MPT
19. Have mechanism to recall MPT members – petitions with large number of signatures ??

Appeal process related

20. Consider constitutional court challenge for municipalities being appeal body
21. Review the original Development Facilitation Act (DFA) ruling that says that SPLUM are municipal competencies, in relation to its implications for municipalities being appeal structures.

Monitoring and evaluation

22. Explore systems to monitor all of SPLUMA including:
 - a. SDF established correctly and functioning
 - b. LUS established correctly and functioning
 - c. MPT established correctly and functioning
 - d. appeal systems established correctly and functioning

7. Way forward

1. Afesis-corplan (A-c) to write up the task team report and circulate to team members
2. A-C to (1) develop a short background pamphlet on SPLUMA and (2) circulate to task team members for comment. The background document will remind communities of the importance of the IDP process and its associated SDF's.
3. A-c to (1) develop a draft set of SPLUM recommendations that will be submitted as a petition to the province (and for other structures) and (2) circulate to task team members for comment
4. A-c will (1) find out from EC CoGTA what processes they have planned for public participation in the white paper development process, and (2) inform task team (and others).
5. A-c to find out what the EC CoGTA's petitions policy is.
6. A-c to (1) develop a draft letter for submission to the provincial CoGTA a) requesting province to prioritise the funding and resourcing of the SPLUM white paper and Bill development process so as to ensure adequate community participation in this process; and b) asking to be included as an interested party in a white paper/ SPLUM Bill development steering committee; (2) circulate the draft to task team members for comment; and (3) submit the letter to CoGTA
7. A-c will (1) update the SPLUM website at <http://www.incrementalsettlement.org.za/wiki/index.php?title=SPLUMA>, and (2) remind task team members to find more information on this site and to inform other organisations that they can find information on this site
8. Ntinga Ntaba kaNdoda (Ntinga) Border Rural Committee (BRC) will use its community networks to 'sell' the recommendations that the task team comes up with.
9. Ntinga and BRC will include section on SPLUMA in cluster meetings and in provincial meeting on Rural development that are likely to be in March and April.
10. Ntinga/BRC (and other task team members) will use their email network to also share and circulate information on SPLUMA and the draft recommendations.
11. ECNGOC will use its various networks and events to help publicise SPLUMA and the work of the task team and invite organisations to find out more on the SPLUM website (that Afesis-corplan has established).

12. The ECNGOC secretariat and ECNGOC members present in the task team will use existing platforms such as district dialogues to raise awareness of SPLUMA and share the draft recommendations.
13. CALUSA will inform TCOE and other structures of SPLUMA and arrange for TCOE affiliates to also help publicise SPLUMA and the SPLUM recommendations.
14. Task team members will (1) use the SPLUM pamphlet to raise awareness of what SPLUMA and the provincial SPLUM legislation process is all about; (2) publicise and 'sell' the draft recommendations inviting organisations to help modify and improve the recommendations.
15. Task team members will determine how best to work with, and when to engage media organisations to help publicise SPLUMA and the recommendations made by the task team. This includes print and electronic media from communities, the state and the commercial sector.
16. The ultimate aim is to get as many organisations to endorse and support the provincial SPLUM recommendations (as well as any other possible recommendations that get developed).
17. Afesis-corporplan will develop a special form for organisations to sign, confirming their support of the SPLUMA recommendations.
18. Copies of this form will be (1) circulated at meetings attended by task team members, and (2) placed on a dedicated web site where organisations can download, sign and return to Afesis-corporplan. These forms will be used to confirm who has endorsed the recommendations.
19. Social media and radio will also be used by task team members to inform the public about SPLUMA
20. In the background document and any other publicity material (e.g. social media) A-c and others will draw attention to organisations and individuals that they can (1) also submit their own independent recommendations to provincial SPLUM and that they can (2) arrange their own separate petitions and recommendation for provincial SPLUM.
21. Afesis-corporplan will collate all endorsements for the recommendations and arrange, with the advice of the task team, for the recommendations to be submitted to province (and others as identified).
22. The task team will determine how the recommendations will be handed over to the province. This could include, for example, a march, a meeting, a press release, etc

Spatial Planning and Land Use Management (SPLUM) Seminar 24-02-2016

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