



Province of the
EASTERN CAPE
Cooperative Governance
& Traditional Affairs

GREEN PAPER

Spatial Planning & Land Use Management

Analysis, Synthesis & Policy Framework
September 2015



What is this process about?

This process deals with the EC 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.

- “Spatial Planning” means deciding on and directing how land will be used in future
- “Land Use Management” relates to management of current use



Understanding our history

To make sense of the present and plan for the future, we first need to understand the past.

How history has left us with a province that is characterised by contrasting conditions that continue to exist (Levels of Infrastructure, Education, Health, Employment etc.)

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Historical Perspective

- **The systems of governance that emerged over the past 200 years differ between the western and eastern parts of the Province.**
 - *The system in the west, and urban parts of the east reflects Western (international) models.*
 - *In rural east, governance was based on exclusion from the national polity, compromises based on local popular demands, and the co-option of indigenous systems, backed up by an ever-increasing threat of repression.*

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Examples of remnants of the history impacting on planning and governance

WEST	EAST
Only municipal administrative demarcation.	Municipal ward demarcation not aligned with Traditional Administrative boundaries.
Freehold, with restriction on ownership by non-whites	“Communal” / “Trust” land with rights held by heads of households on behalf of family, forms of tenure ie. PTO / Quitrent not formally administered.
Formal registry system	Access to land is i.t.o. local conventions and practices. Level of security in holding rights to “common” land depends on the extent to which established conventions are upheld.
	Eventual withdrawal and collapse of essential public rural land administrative functions. TLGFA provides that national or provincial government, “through legislative or other measures” may provide a role for Traditional Councils and traditional leaders in respect of inter alia land administration. Currently vague....

History - Significance for Land Use Management (LUM)

- Many people associate planning with negative memories of past state interventions such as betterment, segregation, forced removals, restrictions on ownership based on race etc.
- Spatial planning and land use management address mainly issues of development and land usage and not ownership.
- However, as access to and ownership of land is at present a burning issue in RSA, it is very difficult (and at times impossible) to separate “use-rights to” / “access to” land and “control of type of use on land”.

History - Significance for LUM

- Looking back at the history of the Eastern Cape, it is therefore critical to ensure that local government's land use management function is based on sound policies, principles and procedures, to prevent it from being used as a mechanism for social, economic and political abuse.

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History - Significance for LUM

- With the perceived role of Planning in past spatial structuring, it is therefore critical for planning processes to be central to any programme aimed at addressing the legacy of dispossession, underdevelopment and poverty.
- Governance or management of land related matters are obviously critical to the effective and sustainable development and utilisation of land.

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Evaluating existing LUM system

To critically assess the existing performance of **SPATIAL PLANNING AND LAND USE MANAGEMENT** systems

Is the problem in the system or the way in which it is being implemented?

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Lack of integration between Traditional and Local Governance

- Procedures of local administration that prevail in communal areas are not integrated with Municipal systems.
- Demarcation of Municipal Wards has ignored the established boundaries of most Administrative Areas.
- Withdrawal and collapse of essential communal land administration systems (ie. **PTO**) and along with it, rural revenue collection.
- Some rural land administration functions continue to operate, but outside of current legislated system.

Lack of integration between Traditional and Local Governance

- Scheme categories, concepts and terminology exclude rural land management characteristics and needs.
- Procedures around land use management are complex, whilst there is generally a lack of administrative systems and capacity to manage such complexities.
- Whilst demand exists for local infrastructure and social services to be rendered in the “rural”, the systems to raise taxes to fund these are absent in these areas.
- Significant revenues generated, especially in “informal” retail and accommodation markets, goes undeclared and untaxed.

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Inadequacy of systems to recognise the “informal”

- In and around our urban areas, informal development is fast exceeding the formal. However planning and management of land use seemingly is still ignoring informality.
- Where the public sector fails to provide, the poor have little option but to revert to informal systems of delivery.
- Land Use Management systems stemming from the past are not adequately geared to deal with the full spectrum of current realities.
- There is a tension between what people need or will do to survive and compliance to current Land Use Management systems.

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Food for thought

- What will an SDF and LUMS look like if it had to be drafted by:
 - *“Haves” vs. “Have nots”*
 - *Unemployed vs. Employed vs. Entrepreneur /Industrialist*
 - *Different cultures*
 - *Landless vs. Land owners*

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Local Government's performance in Spatial Planning and Land Use Management

- Although most **LM's** are compliant in terms of preparing **SDF's**, the quality of the content does not always meet criteria for credibility.
- Spatial development policy documents often do not achieve statutory status by way of formal adoption by Councils.
- Poor level of integration between sector plans (as part of an **IDP**). Departments continue to plan and operate in silos.
- Emphasis is often driven by performance-monitoring milestones. Whether plans effectively guide and inform development is at times secondary - *“As long as it looks good approach”*

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Local Government's performance in SPLUM

- Key elements of Land Use Management systems are poorly administered (records outdated / at times absent) - “*Forgetting the basics*”
- Key information and records are not captured in systems and files, but held by individuals - leads to loss every time individuals leave.
- Processing of development applications often takes too long or exceeds what can be considered as acceptable.
- Options to approach courts as recourse to poor administrative performance and or unfair decision-making is expensive and beyond the reach of most South Africans.

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Local Government's capacity to implement SPLUM

- Average level of technical capacity at LM's (in terms of staff, qualifications, experience and resources) to effectively deal with Land Use Management appear to be low.
- No consistent system of monitoring and intervention to assist planning officials at LM level or intervene where there is a lack of performance.
- Administrative performance is affected when there is political instability and interference.

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Land Use Management in context

- Too many segmented approval processes are confusing, both to officials and communities, ie.:
 - *Environmental approvals*
 - *Water Use approvals*
 - *Planning approvals, etc.*
- Processes to obtain approvals are complex, slow, overlapping and as a result - expensive.

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Are LUM processes / plans of relevance to people?

- Intended impact of planning processes do not always reach the people it is meant for. Therefore communities often do not relate to plans, nor do they own or support plans.
- Efforts to extend municipal administrative systems, including land use management systems, are at times met with suspicion - "*SPLUM has in many instances become irrelevant*"
- Some people take advantage of the lack of administration and management (by avoiding rates and service charges).

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Understanding the wider legislative context

The legal context within which Provincial SPLUMA must function

Navigating the legislative maze

Drawing lessons from international discourse

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Relevant Legislation

Planning is central to a range of equally important other legislation, ie.:

- The Constitution of the Republic of South Africa (Act 108 of 1996)
- The Environment Conservation Act (Act 73 of 1989)
- The National Environmental Management Act (Act 107 of 1998)
- The Municipal Structures Act (Act 117 of 1998)
- The Promotion of Administrative Justice Act (Act 3 of 2000)
- The Municipal Systems Act (Act 32 of 2000)
- The Eastern Cape Traditional Leadership & Governance Framework Act (Act 4 of 2005)
- The Intergovernmental Relations Framework Act (Act 13 of 2005)

RSA Constitution - The supreme law

- All rights, including the right to land, must be consistent with all other provisions of the Bill of Rights.
- The Constitution provides explicitly for the recognition of traditional leadership and customary law. However, interpretation of customary law is often contested.

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International Discourse – lessons learnt

UN-FAO Voluntary Guidelines commit the state to the following principles, to;

- **RECOGNIZE AND RESPECT** all legitimate tenure rights and the people who hold them.
- **SAFEGUARD** legitimate tenure rights against threats.
- **PROMOTE AND FACILITATE** the enjoyment of legitimate tenure rights.
- **PROVIDE** access to justice when tenure rights are infringed upon.
- **PREVENT** tenure disputes, violent conflicts and opportunities for corruption (UN FAO 2012).

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Where to from here.....

**Building on the good from the past,
while recognizing the weaknesses of
the present.**

**What should provincial SPLUM
legislation focus on....?**

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Preliminary Proposals

- **Require clear protocols to manage roles and relationships between elected ward councillors and traditional and community leaders – to enable introduction of LUM system in all situations that may exist (including where no systems exist).**
- **Need to adopt a step-by-step learning approach to the introduction of LUM systems in communal areas, including:**
 - *flexibility*
 - *incremental introduction of new systems*

Preliminary Proposals

- Introduce practical tools to integrate sustainability principles in day-to-day land use decision-making
 - *Taking care of today's needs without compromising future generations ability to do same*
- Align practice with changing paradigms: Change from “control/ compliance/ enforcement” approach towards “system of principles, guidelines and standards” approach that will mitigate negative impacts of activities.

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Preliminary Proposals

- Use IGR framework to streamline application and approval processes.
 - Relationship between spatial, natural and heritage resources and environmental management reconfigured and closely integrated.
- Need to optimise use of new technology to overcome limitations in recording a range of rights.
 - This will require leadership and interdepartmental collaboration

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Preliminary Proposals

- Incorporate incremental approach to development - enabling steps to stimulate ability to self-help, whilst giving certainty of permanence.
- Where there is no eminent danger and subject to feasibility confirmation, create permanence in space and rights, whilst allowing for gradual improvement of built environment.

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Preliminary Proposals

- Establish appropriate mechanism for general public to gain affordable and easy access to recourse when there is a need to challenge decisions or demand compliance by all decision-makers.
- Necessary to be conscious and incorporate different conceptions (world views) of terminology such as “title”, “certificate”, “permission”, “register”, “record”, “survey”, “demarcation”, “delineation of boundaries” etc.
- Need to incorporate appropriate actions for intervention and remedies where decision-makers fail to perform duties.

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