The implications of a new planning legislative framework for biodiversity planning in the Western Cape.

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Background

- A CHANGING LEGISLATIVE CONTEXT IN THE Western Cape
- Land Use Planning Ordinance
- Less Formal Township Establishment Act
- Rural Areas Act
- Municipal Ordinance
- Divisional Council Ordinance
- Removal of Restrictions Act
- Black Communities Development Act
- Physical Planning Act
- The above replaced by: Land Use Planning Bill, 2013 - February 2013 – now promulgated as Western Cape Land Use Planning Act (Act 3 of 2014) (7 April 2014)
FUTURE LEGISLATIVE CONTEXT

National
- Spatial Planning Land Use Management Act (SPLUMA)
- Municipal Systems Act (MSA)

Provincial
- Draft Land Use Planning Bill (LUPA)

Municipal
- Municipal By-laws on Land Use Planning
NATIONAL PLANNING

- President approved SPLUMA 5 August 2013 (Spatial Planning and Land Use Management Act (Act 16 of 2013)
- Implementation (September 2014)
- Outlines planning responsibilities across three tiers of government
- LUPA falls within framework of SPLUMA
- Regulations or Bylaws
- Municipalities to adopt bylaws before September 2014
- Provincial Readiness
- Municipal Readiness
Planning and Environmental Impacts

- Controlled through EIA legislation under National Environmental Management Act (Act 107 of 1998) - Listed activities
- Development rights through planning approvals that don’t require EIA still have impacts e.g.
  - Subdivisions: subdivisions of large properties into multiple properties in sensitive areas. Primary right for a single dwelling (or more depending on zoning). May still trigger EIA. Difficult to not authorise. Cumulative impacts e.g. Betty’s Bay, Pringle Bay (both historical subdivisions – still dealing with the impacts now, both located in highly sensitive environments – wetlands & high conservation value vegetation)
  - Rezoning
- Therefore important to have biodiversity inputs into spatial planning approvals
LUPA REGULATIONS

- “Must prescribe”
  - Procedures for PSDF
  - Procedures for Land Development Applications
- “May prescribe”
  - Application Fees
  - Further land use planning principles
  - Further transitional arrangements
  - Monitoring & Support
- Guidelines (e.g. Development Contributions, Desirability, categories of applications requiring provincial approval)
- Standardised models and drafts of municipal policy, by-laws (e.g. Bylaw on Land Use Planning, Zoning Scheme Bylaw)
MUNICIPAL PLANNING

- Bylaws compiled and approved in terms of Municipal Systems Act (S12 – 14)
- Align with SPLUMA and LUPA
- User Friendly (One-stop-shop)
- Uniform procedures across the Province
- Constantly being updated
- 90% of time – all you need
- Biodiversity/conservation/environmental considerations?? – how to ensure included (SDF?)
## Change vs Implications

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<tr>
<th>Change</th>
<th>Implications</th>
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<td>Planning functions to the municipal sphere</td>
<td>• Applications delegated</td>
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<td>• Municipal decision → municipal appeal → review to the courts</td>
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<td>Municipal Planning Tribunals,</td>
<td>• Staff</td>
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<td>• Budget</td>
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<td>Provincial land use applications that have a ‘regional’ or ‘province wide’ impact</td>
<td>• Province to only consider applications that have provincial or regional planning considerations</td>
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<td>Municipal Planning Bylaws will govern the ‘details’</td>
<td>• Adoption of by-laws</td>
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<td>Two separate approvals required from Province and Municipality (regional importance)</td>
<td>• Municipal decision (&amp; possibility to appeal to Council)</td>
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<td>• Provincial decision (&amp; possibility to appeal to Provincial Minister)</td>
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<td>Plan lead Development</td>
<td>• SDF’s at all three spheres of Gmt</td>
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<td>• Zoning Schemes consistent</td>
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<td>• Depoliticizing planning</td>
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<td>• Tribunals</td>
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A RENEWED ROLE FOR PROVINCE IN PLANNING

- Provincial & Regional Spatial Planning – PSDF & Regional SDF’s
- Provincial & Regional Land Use Management - (applications with regional impact)
- Regulate - setting minimum standards, principles, norms and standards etc.
- Support - to municipalities in executing their municipal planning function
- Monitor - of all aspects of the planning process
- Coordinate - in respect of all other provincial competencies in so far as it relates to both provincial and municipal planning
What are the implications?

Implications for the Municipality

• Capacity (small municipalities)
• Funding
• Court cases
• Competency

Implications for CapeNature

• Capacity for decisions with biodiversity implications varies widely between municipalities.
• Commenting authority needs to ensure that comments are enforced/applied
• Closer relations with municipalities
CapeNature’s way forward as Commenting authority

- Environmental legislation is the primary tool regulating biodiversity impacts from development.
- However, planning legislation also plays an important role as it results in primary development rights that don’t necessarily trigger environmental legislation.
- Municipalities must establish Municipal Tribunals to make decisions on planning applications.
- At least 5 members:
  - Municipal officials
  - Non-municipal officials with knowledge of spatial planning, land use management and land development (no councillors)
• Council needs to appoint a representative for environmental/biodiversity inputs – essential for sustainable planning. CapeNature ideally suited (provincial conservation agencies for other provinces)
Spatial Development Frameworks

- Requirement for all municipalities under SPLUMA and LUPA
- Required to incorporate provincial spatial biodiversity planning into SDFs (not optional)
- Ensure that CBAs etc. are incorporated into development application
Thank you