



# **Spatial Planning & Land Use Management**

**November 2015**

**East London**

# Spatial Plan vs Land Use Map

## Spatial Plan (SDF)

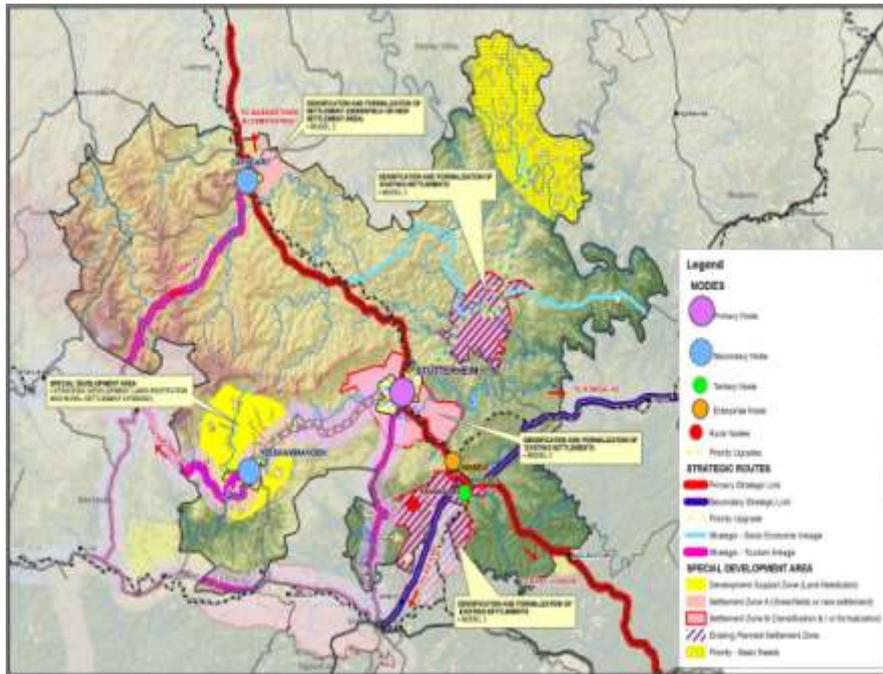
- Provides broad suggestions for where activities and roads should be in future
- Does not give or take away land use rights

## Land use scheme map

- Provides details as to what people can do on a particular erf
- Gives rights as to what people can do on the land

# Spatial Plan vs Land Use Map

- Spatial Development Framework (SDF)



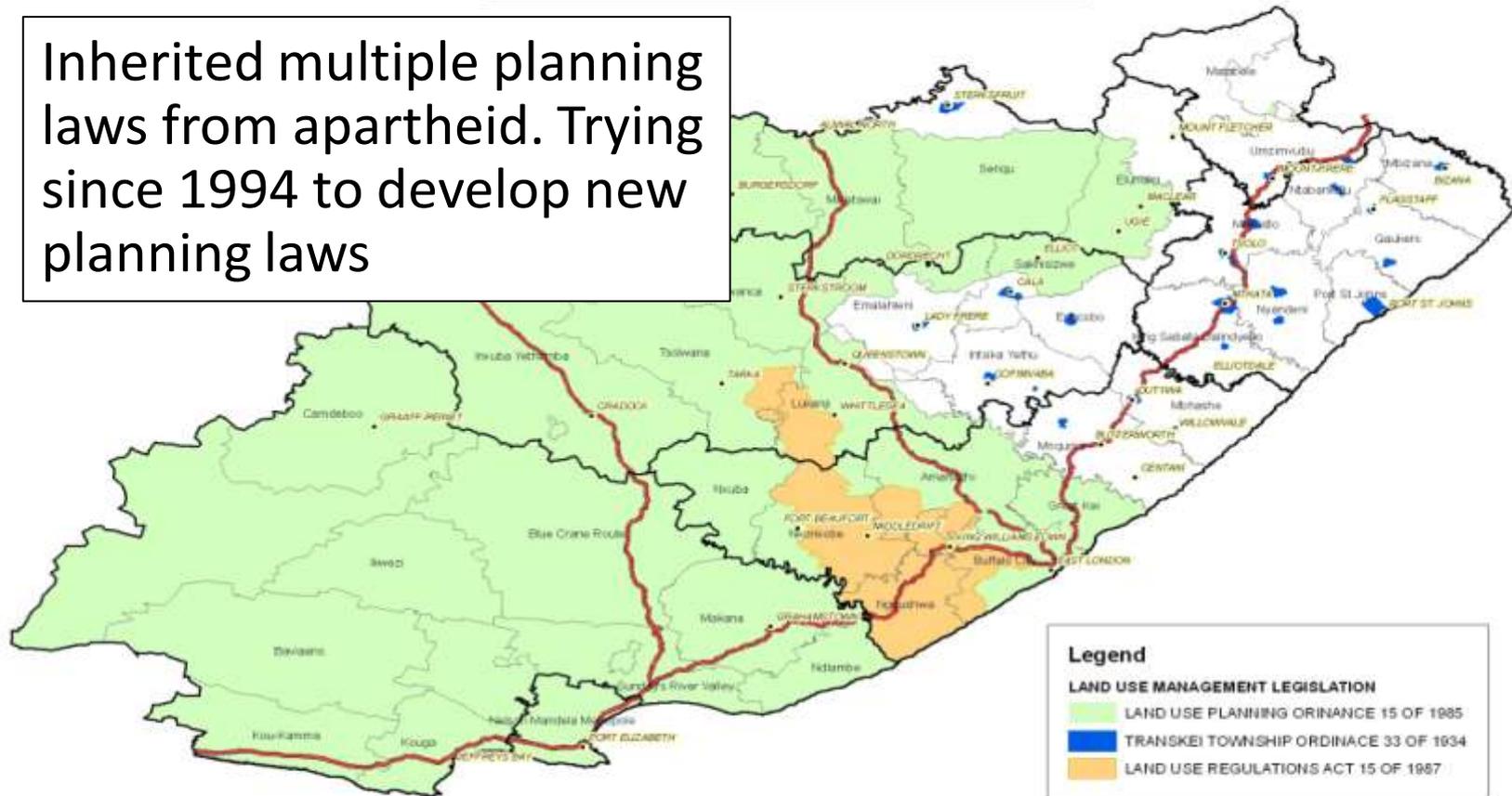
- Land use scheme map



# Problem statement

## LAND USE MANAGEMENT LEGISLATION APPLICABLE TO THE EASTERN CAPE

Inherited multiple planning laws from apartheid. Trying since 1994 to develop new planning laws



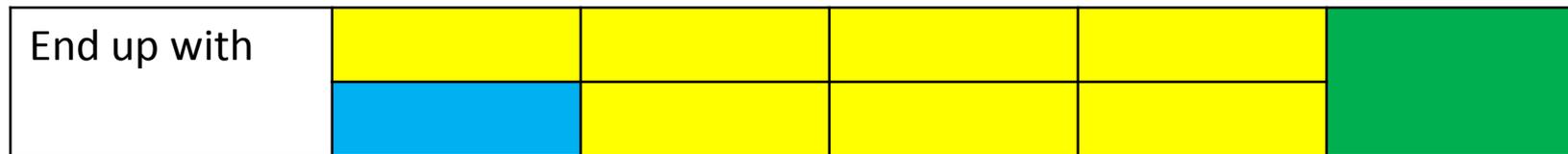
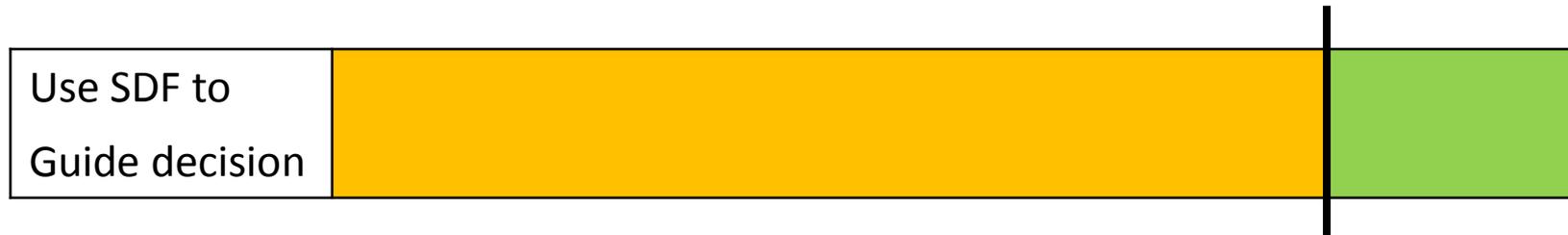
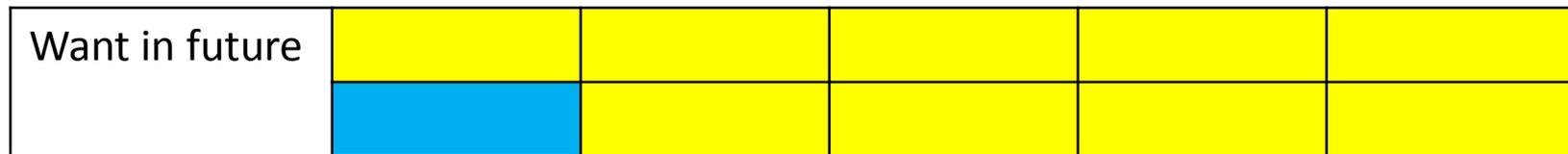
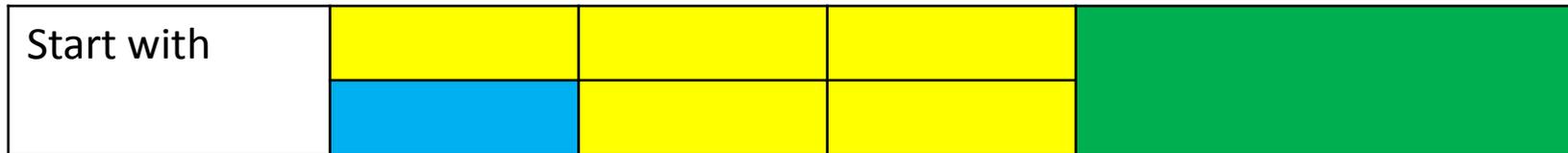
# Defining municipal planning

- Joburg vs. Gauteng ruling (province claimed they had right through DFA tribunal to determine urban edge for city)
- Constitutional court ruled (2010)
  - Municipalities have exclusive responsibility for forward planning and land use management
  - The DFA was therefore unconstitutional – the province could not decide on rezoning and sub divisions.
  - Provinces cant interfere in decisions of municipalities

# Where we are now

- SPLUMA started to be implemented 1 July 2015
- SPLUMA must be implemented wall to wall in all municipalities
- Municipalities must have by-laws to explain how they will implement SPLUMA
- Province is looking at developing provincial planning laws

# Example of 'land use change' application



# What Does SPLUMA Entail?

A Framework for a Planning System for the country (sec 2[2])

**Dev Principles**  
(sec 7)

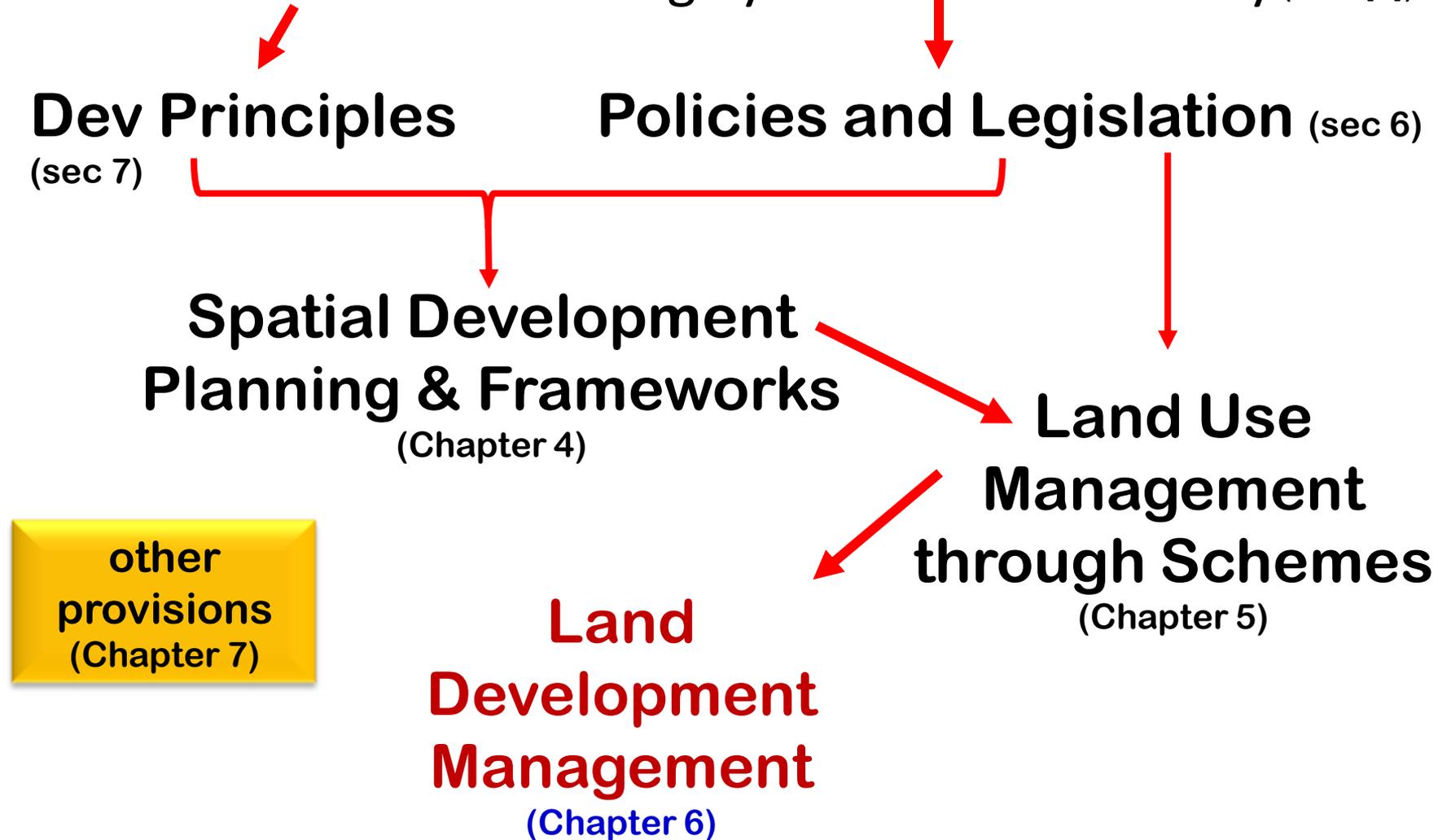
**Policies and Legislation** (sec 6)

**Spatial Development  
Planning & Frameworks**  
(Chapter 4)

**Land Use  
Management  
through Schemes**  
(Chapter 5)

other  
provisions  
(Chapter 7)

**Land  
Development  
Management**  
(Chapter 6)



# Principles

- Spatial justice
  - Plan must include everyone including former homelands
  - Must not take NIBY'ism into account when making a decision
- Spatial sustainability
  - Limit sprawl
- Efficiency
  - Optimise use of existing resources/ infrastructure
- Spatial resilience
  - Accommodate flexibility in plans
- Good administration
  - Inter governmental coordination
  - Include transparent processes of public participation
- All government departments/ spheres must consider principles when making decisions

# Spatial Development Framework

- From Municipal Systems Act
  - SDF part of IDP (follow public participation process for approval)
  - SDF informs the IDP not just a spatial demarcation of projects identified in IDP
- From SPLUMA
  - Must follow MSA rules when doing SDF
  - Approved SDF must be advertised in provincial gazette
  - SDF and LUS must be aligned

# Scales of SDF's

- National government - New
  - National SDF
  - Regional SDF (initiated by national)
- Provincial government – New
  - Provincial SDF
  - Regional SDF (initiated by province)
- Local government – was in MSA
  - District SDF
  - Municipal SDF

# Land Use Management (1)

- Land Use Scheme includes:
  - Scheme regulations - Zone categories, Land Use categories, Development parameters (building lines, height, coverage, parking, etc) – approved as a by-law
  - Map indicating land-use zones (cover whole municipality)
    - Residential, agriculture, business, institutional etc
  - Register of amendments to scheme
- Must be public participation before adopting LUS

# Land Use Management (2)

- LUS must be consistent with municipal SDF
  - Any change to LUS does NOT require change to SDF (otherwise would need to process of changing IDP & get council approval for every rezoning)
  - Any change to SDF does require change in LUS (within 5 year cycle)
- LUS amended
  - At initiative of municipality (eg. they change their SDF so then change the LUS)
  - At request of applicant (eg developer asks to change land use).

# Land Development Management (1)

## Municipality

- Receives Land development and change applications and allocates them to:
  - MPT (bigger decisions)
  - Designated official (smaller and more regular decisions)

## Municipal Planning Tribunal (MPT)

- Includes at least 5 people (not councillors) – officials and external experts – appointed by council
- Can have sub committees making decisions
- Can use advisors

## District/ Joint MPT

- Combine to save costs and make use of skills if agreed by the municipalities

# Land Development Management (2)

- Applicant
  - Land owner including the state
  - Duly authorised agent of land owner
  - Person to whom land made available
  - Service provider for electricity, roads etc
- MPT/ designated official must make decision within time frames

# Appeals

- Appeals can't go to province (like past), municipality must decide how appeals to be heard and decided
  - By council
  - By approved outside structure
- Interested persons who may reasonably be expected to be affected by the outcome of the proceedings may appeal
- Can be granted intervener status by MPT/ appeal authority at any time in process
- If not satisfied with appeal can go to court
- s34 of constitution: Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum

# Coordination

- NEMA 1998 (National Environmental Management Act)
  - Environmental approvals for larger projects
- Infrastructure Development Act 2014
  - Speed up development proceed for projects with national significance
- Provincial land use approval
  - Provinces support municipalities
  - Develop own land use planning laws for activities of provincial interest (e.g. golf-estates)

# Multiple approvals

- Macsands ruling (sand miner claimed they had mining approval so did not need municipal planning approval)
- Constitutional court ruled (2012)
  - Each sphere / sector can develop law related to their competency
  - But need all approvals for development to proceed
  - No one approval overrides another
  - If dispute follow appropriate dispute channels

# Communal areas

- Municipality must include communal areas in SDF
- Municipality must extend LUS – zoning map - into communal areas (can do it incrementally)
- Traditional councils (TC) must ‘participate’ in land use management system
- Municipalities can enter into service level agreement with TC’s for TC to perform agreed functions, but TC can NOT make decisions relating to LUS.
- TCs, where found, must provide proof of allocation of land according to customary law (land tenure vs land use)
- members of HTL can’t be on MPT

# Relevant legislation

- National SPLUMA (2013)
  - SPLUMA regulations (2015)
  - SPLUMA norms and standards & guidelines

- Provincial SPLUMA (only Western Cape → LUPA)
  - Provincial regulations

- Municipal by-laws

Framework legislation



More detailed procedures

# Outstanding activities

## Provincial laws

- Province is finalising a discussion paper (green paper) on issues and options for provincial SPLUM
- Will circulate and hold series of workshops
- Then will develop policy and Bill (with emphasis on how to do SPLUM in rural areas)
- End up with provincial Planning and Land Use Management Act

- **Municipal by-laws**
- DRDLR helping municipalities to improve their SDF's & develop by-laws for LUM
- Municipalities finalising their LUM by-laws and establishing MPT
- Municipalities now must incrementally introduce LUS into communal areas

# What issues have emerged?

1. Role of CSO's in approving SDFs, approving LUS, in MPT & as interveners?
2. Role of traditional leaders & CPAs etc. in SPLUM?
3. Appeals through Municipalities?
4. Land use categories for communal areas?
5. Recognise IPILRA rights and plots (vs erfs)
6. Identification of incremental upgrading areas?
7. How to improve community participation?
8. Role of communities in asset mapping, visioning, CBPs, etc?

# What does all this mean for NGO's

- .A. How can NGO's/ communities use SPLUMA to push for good development
  - Participate in SDF
  - Get projects in IDP
  - Make sure LUS are relevant – and easy to implement
  - Get supporters for good projects
  - Get NGO people as members of MPTs
  
- .B. How can NGO's/ communities use SPLUMA to object to bad developments
  - Make sure get to hear about all new developments
  - Write to and object to MPT's on bad development
  - Become an intervener
  - Appeal to courts



**Thanks**

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To find out more on SPLUMA see

<http://tinyurl.com/pkg66hv>