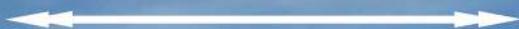


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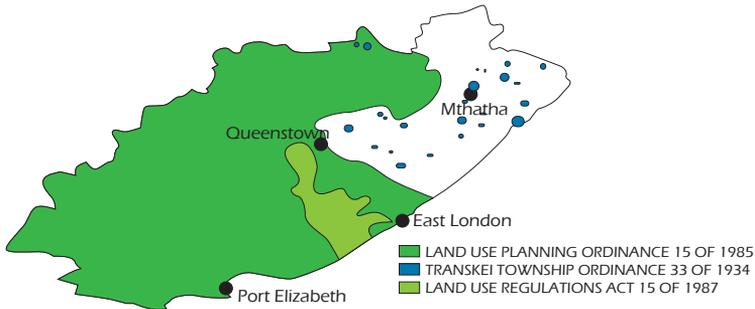


Spatial Planning and Land Use Management
Act No 16 of 2013

SPATIAL PLANNING AND LAND USE MANAGEMENT ACT NO 16 OF 2013 (SPLUMA) - Implemented Nationally from 1 July 2015.

Spatial planning and land use management has been governed by multiple pieces of legislation. **Diagram 1** shows how areas of the Eastern Cape province fell under different legislation in the past.

**DIAGRAM 1: LAND USE MANAGEMENT LEGISLATION
APPLICABLE TO THE EASTERN CAPE**



The SPLUMA brings all this legislation under one piece of framework legislation.

regarding a land development decision at a municipal level the provinces made the final decision.

In the past, provincial governments were ultimately responsible for spatial planning and land use management (SPLUM). In some places, Provinces delegated decision-making powers over certain categories of land development applications to municipalities. If there was a dispute or an appeal

A Constitutional Court ruling in 2010¹ turned the relationship between provincial and municipal government in relation to SPLUM on its head. Municipalities are now ultimately responsible for all SPLUM.

PAST LAND USE CHANGE DECISION MAKING

Province made decisions
whilst Municipalities only made
recommendations

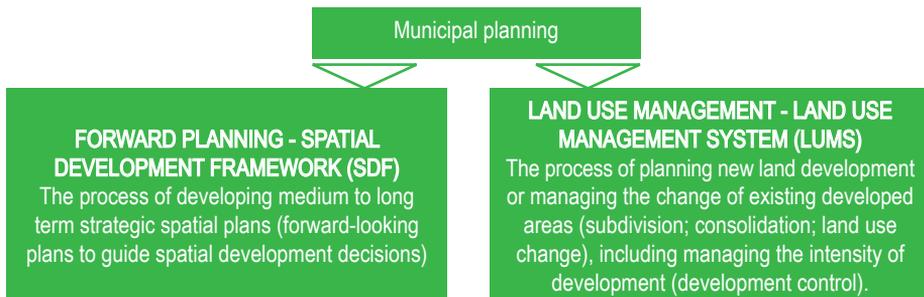
At times authority to make decisions were
delegated to Municipalities

FUTURE LAND USE CHANGE DECISION MAKING

Province and National only participate in
matters of provincial and national importance

Municipality to make decisions whilst Province
supports and builds capacity

SPLUM at a Municipal level (often referred to as Municipal Planning) includes mainly two broad categories:



The SPLUMA has been introduced as framework legislation to outline how SPLUM must be done by municipalities with the support of provinces and national government. The aim of the SPLUMA is to:

- Provide a single, uniform framework for spatial planning and land use management on a national level;
- Provide for inclusive, developmental, equitable and efficient spatial planning at the different spheres of government;
- Provide a framework for policies, principles, norms and standards for spatial planning and land use management;
- Address past spatial and regulatory imbalances;
- Promote greater consistency and uniformity in procedures and decision-making by authorities;
- To provide for the establishment, functions and operations of Municipal structures (Planning Tribunals) to consider development applications; and
- Provide for the facilitation and control of land use and development.



As framework legislation SPLUMA needs to be read and understood as part of a broader set of national, provincial and local laws and regulations.

National Framework legislation

SPLUMA | SPLUMA regulations | Norms and Standards

Provincial legislation

Provincial SPLUMA | Provincial SPLUMA regulations | Provincial guidelines

Municipal by-laws

Municipal SPLUMA by-laws | Municipal wall to wall land use

SPLUMA recognises the existence of and allows for the participation of Traditional Councils and makes provision for their involvement in planning matters, where such planning may impact communities residing in areas where Traditional Councils exist.

SPLUMA allows for the “incremental upgrading of informal areas” by progressive introduction of administration, management and tenure rights in rural and other areas.



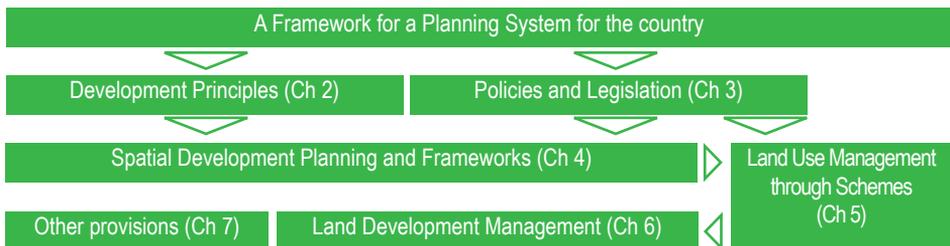
SPLUMA provides for **Regulations** (made by the Minister) to prescribe any matter relating to the Act, including national norms and standards, policies and directives, measures to be taken if a municipality fails to fulfil their planning mandate, procedures for lodging, consideration and deciding applications or appeals, codes of conduct for Tribunal members etc.

Notwithstanding the above, SPLUMA also allows for the creation of **Provincial Legislation** and **Municipal By-laws**, to make provision for matters dealt with in the regulations in a manner that relates to the specific context in a province or municipality.

Municipal by-laws give Municipalities opportunities to structure provisions to overcome local challenges such as:

- Rural areas not previously administered as part of a Land Use Management Schemes.
- Local conditions, customs and established (customary) practices.
- Overcomplicated administrative systems.
- Lack of alignment of application processes and inter-governmental co-ordination.
- Unique concepts of ownership, use-rights and demarcation of such (with no cadastral boundaries).

WHAT DOES SPLUMA ENTAIL?



Chapter 1 – DEFINITIONS AND OBJECTIVES

Providing list of definitions to clarify meaning of terminology used in the Act, setting out the objectives of the Act and the spatial planning system.

Chapter 2 - PRINCIPLES FOR DEVELOPMENT

Sets out list of principles to be considered by all government departments / spheres when making decisions. The principles are summarised below:

Spatial justice

Plans must include everyone. Past spatial and other development imbalances must be redressed through the improved access to and use of land. Land use management systems must include all areas of a municipality and include provisions that are flexible and appropriate for the management of disadvantaged areas, informal settlements and former homeland areas. Land development procedures must include provisions to accommodate access to secure tenure and incremental upgrading of informal areas.

Spatial sustainability

Land development that is within the fiscal, institutional and administrative means of the country must be promoted. Prime and unique agricultural land must be protected and environmental management instruments applied to development. The effective and equitable functioning of the land market and development in locations that are sustainable and limit urban sprawl must be promoted.

Spatial Efficiency

Land development that optimises the use of existing resources/ infrastructure, while minimising the negative financial, social, economic or environmental impacts, must be encouraged.

Spatial resilience

Flexibility in spatial plans, policies and land use management systems must be accommodated to ensure sustainable livelihoods in communities most likely to suffer the impacts of economic and environmental shocks.

Good administration

Inter- governmental coordination at all spheres is vital to ensure an integrated approach to spatial planning and land use management. Transparent processes of public participation are required in the preparation and amendment of spatial plans, policies, land use schemes and procedures for development applications.

Chapter 3 – INTERGOVERNMENTAL SUPPORT

Setting out requirements for National and Provincial monitoring and support for Municipalities and differentiation of municipalities

Chapter 4 - SPATIAL DEVELOPMENT FRAMEWORKS

Requirements from the Municipal Systems Act (MSA) 32 of 2000 include:

- The Spatial Development Framework (SDF) (See [Diagram 2](#)) is part of the Integrated Development Plan (IDP) and must follow public participation processes for approval
- The SDF informs the IDP and is not intended to be just a spatial demarcation of projects identified in the IDP

Additional requirements from SPLUMA:

- National, Provincial, and regional SDF's can be produced over and above local (municipal) SDF
- MSA rules must be followed when doing a local SDF
- Approved SDFs must be advertised in the provincial gazette
- The SDF and Land Use Management System (LUMS) must be aligned

Chapter 5 - LAND USE MANAGEMENT

Land Use Schemes (LUS) must include the following:

- Scheme regulations (See [Diagram 4](#)), indicating the land purpose, boundaries, provisions relating to height, coverage, parking, etc. These will be approved and gazetted as a municipal by-law
- A map indicating land use zones or purposes, which will cover the whole municipality (see [Diagram 3](#))
- A register of amendments which have been made to the scheme following the procedures set out in the by-laws, including public participation.
- A LUS can only be adopted once the necessary public participation has been undertaken.

Each Municipality must extend the LUS wall-to-wall (including communal areas). It can be done incrementally. Traditional councils' role in administrative matters is recognised, but they MAY NOT make decisions relating to the LUS. Development decisions must be consistent with the Municipal SDF.

A Land Use Scheme can be amended under the following circumstances:

- At the initiative of the municipality (such as when there is a change in a SDF)
- At the request of applicant (to change land use).

Chapter 6 - LAND DEVELOPMENT MANAGEMENT

A process is outlined explaining what a Municipality needs to do when it receives and application for a land use change. Decisions on whether to grant this application or not can be made by either:

- The Municipal Planning Tribunal for more complex decisions, or
- The designated official of the municipality for simpler decisions.

The Municipal Planning Tribunal is appointed by Council and must include at least 5 people (not Councillors) made up of officials and external experts. The Tribunal can use advisors.

The SPLUMA makes provision for District or Joint Tribunals so municipalities can agree to combine this function to save costs and share scarce skills. Prescribed time frames for processing and deciding applications are provided.

The chapter makes provision for municipalities to decide how appeals are to be heard and decided. This is either:

- By executive authority of Municipality, or
- By a municipal approved external structure

Any person whose rights are affected by a decision taken by a Municipal Planning Tribunal or Designated Official may appeal against that decision. If an applicant is not satisfied with the outcome of an appeal, they can approach the courts for relief.



Chapter 7 – GENERAL PROVISIONS

Dealing with regulations, exemptions, delegation, offences and penalties, repeal of laws and transitional provisions.

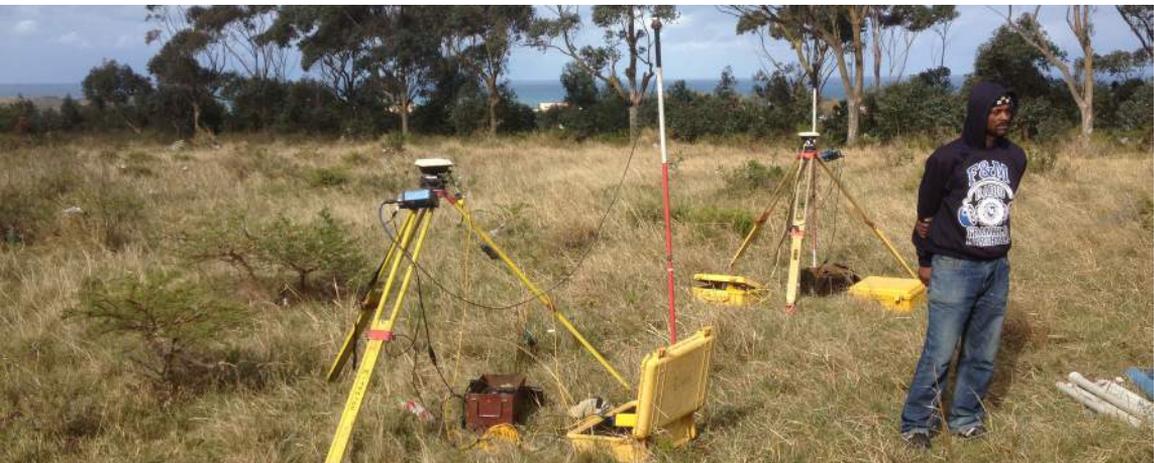


DIAGRAM 2: EXAMPLE OF SPATIAL DEVELOPMENT FRAMEWORK

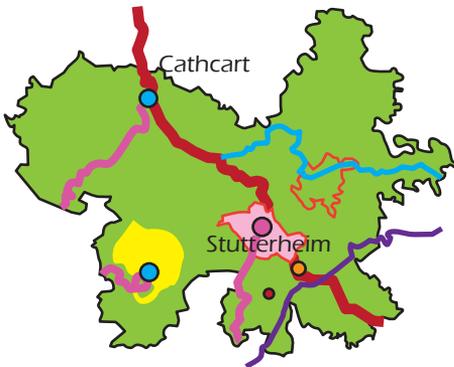


DIAGRAM 3: EXAMPLE OF ZONING SCHEME MAP



DIAGRAM 4: EXTRACT FROM SCHEME REGULATIONS

	Business zone 1	Residential zone IV (townhouse)
Colour	Dark blue	Orange
Primary use	Business premises, supermarkets, bottle stores, town houses, flats, residential buildings, funeral parlours, place of worship	Town house - up to 50 units per Ha, dwelling house
Consent use	Commercial workshop, place of assembly, place of instruction, day care centre, service station, shopping centre, place of entertainment, adult shop, mortuary	Retirement village, day care centre, boarding house
Coverage	100%	At most 70%
Height	Unrestricted	At most 2 storeys
Street building line	Zero, subject to 10,0m from centre line of road reserve if the road reserve width is less than 20,0m	4.5m

HOW DO WE ANTICIPATE THINGS TO CHANGE FROM PAST SYSTEMS

- Decision-making relating to land development management is now entirely a municipal function, executed by a technical body (a Municipal Planning Tribunal, MPT) or a designated official with no role for provinces to play in making municipal land use decisions.
- Appeals to decisions of the MPT or designated official are dealt with at Municipal level by a Council executive structure (unless the municipality decides to delegate the responsibility to an external entity), not by provincial structures.
- Political office bearers (council members) make strategic level decisions (like adopting the SDF, and the scheme regulations and dealing with appeals at executive level) and do not make primary decisions on land development applications
- Land Use Management Systems (LUMS) will incrementally start to incorporate areas that have so far been excluded from land use management such as rural areas, communal areas and informal settlements.
- The MPT, designated officials and appeal bodies have to take SDF's into account when making land development decisions, whereas in the past SDF's were not always considered when making land development decisions.
- Integration between departments and spheres of government is a key objective requiring greater involvement/ participation of line departments and alignment in development control processes.

ABBREVIATIONS

IDP - Integrated Development Plan

LUMS - Land Use Management System

LUS - Land Use Scheme

MPT - Municipal Planning Tribunal

MSA - Municipal Systems Act 32 of 2000

SDF - Spatial Development Framework

SPLUM - Spatial Planning and Land Use Management (in other words Municipal Planning)

SPLUMA - Spatial Planning and Land Use Management Act



To find out more about the work of Afesis-corplan visit our website at:

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