SPATIAL PLANNING & LAND USE MANAGEMENT ACT

12 May 2014
“AND WHEREAS it is the State’s obligation to realise the constitutional imperatives in—

section 24 of the Constitution, to have the environment protected for the benefit of present and future generations through reasonable legislative and other measures, which include a land use planning system that is protective of the environment;

section 25 of the Constitution, to ensure the protection of property rights including measures designed to foster conditions that enable citizens to gain access to land on an equitable basis;

section 26 of the Constitution, to have the right of access to adequate housing which includes an equitable spatial pattern and sustainable human settlements; and

section 27(1)(b) of the Constitution, to ensure that the State takes reasonable legislative measures, within its available resources, to achieve the progressive realisation of the right to sufficient food and water;

AND WHEREAS the State must respect, protect, promote and fulfil the social, economic and environmental rights of everyone and strive to meet the basic needs of previously disadvantaged communities;

AND WHEREAS sustainable development of land requires the integration of social, economic and environmental considerations in both forward planning and ongoing land use management to ensure that development of land serves present and future generations; “
Multiple laws, multiple institutions and parallel processes instituted by the pre-1994 pieces of legislation;

Planning legislation were fragmented across the old boundaries of the then four (4) provincial administrations, homelands, and Self-Governing Territories (SGT);

In 1994, South Africa inherited complex and disjointed planning systems which manifest in unequal, incoherent and inefficient settlement patterns;

The Development Facilitation Act, 1995 (Act No. 67 of 1995) was promulgated as an interim measure to deal with the apartheid spatial legacy.

SPLUMA emerged through a Green Paper and White Paper processes to replace the DFA and a host of other laws as the legislative instrument to regulate spatial planning and land use management in the country.
Multiple and conflicting laws and interests
± Parallel tools, systems and institutions
± Incoherent regulatory systems
± Uncoordinated vision of role-players
± Lack of synergy: land use & related planning laws
± No protection for the poor & no place for former homelands & rural/urban poor
± Existing system is only for the privileged
± Lack of predictability in the land market
± Constitutional allocation and distribution powers around “land use”
± Current processes focus on protecting rights and property values of a privileged minority
± Distorted settlement patterns, with poorest communities having to travel the longest distances
± Inequalities in levels of economic development between regions within a country are frequently regarded as a problematic global phenomenon.

± The severity of the problem is more pronounced in developing countries than in developed countries.

± Spatial economic development is generally uneven at all levels, at city, district, national, continental and even global level.

± The geographical economic inequalities within a country arise over a long period of time and are the results of the interaction between people and their physical, social and cultural environments.

± Regional economic and socio-economic inequalities within a country/province often create social, political and economic problems.
search for solutions

± The fundamental question in spatial development planning is how to explain the riddle of uneven spatial development and prepare measures to address this unevenness.

± There are substantial inequalities in the spatial distribution of economic output across different spaces in the South Africa. For instance, in KZN Province, eThekwini Metro contributes close to two thirds of provincial output.

± Spatial planning refers to the methods used by the public sector to influence the distribution of people and activities in spaces of various scales. Spatial planning includes all levels of land use planning including urban planning, regional planning, environmental planning and national spatial plans.

± By focusing on space policy makers can think specifically about competitive attributes between local economies to macro economies.

± Spatial economic planning helps governments to formulate policies that consider their surroundings and competitors in defining alternative scenarios for sustainable growth.

± Proliferation of service delivery agents - public and private;

± Proliferation of plans and programmes; and

± Multiple agencies and mandates pursuing different positive, sometimes contradictory goals in the same space.

**Resulting from absence of a credible SP system are:**

± Complex webs of relationships;

± Institutional fragmentation;

± Disparity of powers and responsibilities; and

± Increased cost due to multiple players, plans and programmes
planning issues

± Who does what when it comes to land use planning?

± Constitution allocates land use planning and development powers to national, provincial & local government

± “Wall-to-wall” local government → no division on basis of territory, but on basis of interests

± How to manage the confusion?
desired outcomes

± Coherent regulatory framework
± Constitutional synergy (clear delineation, distribution & allocation of powers among spheres)
± Predictable and transparent regulatory system
± Clear, rational and efficient inter-linkages of sectoral and inter-sphere planning tools and policies
“... the local government sphere should be the cutting edge of the system, in the sense that most spatial decisions should appropriately be made in this sphere. However, such planning must be contextualised. **For this to happen, local planning must be informed by both provincial and national spatial priorities and plans.”**

Green Paper on Planning & Development, 1999
The Constitution

† Provides that the local government sphere consists of municipalities, which must be established for the whole territory of the Republic [s151 (1)]. All land in the country falls under the jurisdiction of duly established municipalities.

† The institution, status and role of traditional leadership, under customary law, are recognized, subject to the Constitution [s211 (1)].

† National legislation may provide a role for traditional leadership as an institution at local level on matters affecting local communities [s212 (1)].
In *Wary Holdings (Pty) Ltd v Stalwo (Pty) Ltd and Others* the Constitutional Court held as follows:

“Planning entails land use and is *inextricably connected to every functional area that concerns the use of land*. There is probably not a single functional area in the Constitution that can be carried out without land. *Land-use planning must be done at three levels at least: provincial planning, regional planning and municipal planning.*”

The Constitution confers “planning” on all spheres of government by allocating “regional planning and development” concurrently to the national and provincial spheres, “provincial planning” exclusively to the provincial sphere, and executive authority over, and the right to administer “municipal planning” to the local sphere.
In the *City of Johannesburg Metropolitan Municipality*, the Constitutional Court stated:

“...it is clear that the word “planning”, when used in the context of municipal affairs, is commonly understood to refer to the *control and regulation of land use*, and I have no doubt that it was used in the Constitution with that common usage in mind. The prefix “municipal” does no more than to confine it to municipal affairs. That construction, which gives meaningful effect to the term, has the effect of leaving in the hands of national and provincial government the authority to legislate in the functional area of “urban . . . development”, but *reserving to municipalities the authority to micro-manage the use of land for any such development*. On that construction the functional area of “urban development” retains considerable scope for national and provincial legislation.”
inter-governmental relations

In the **City of Johannesburg Metropolitan Municipality**, the Constitutional Court stated:

“the government consists of three spheres: the national, provincial and local spheres of government. **These spheres are distinct from one another and yet interdependent and interrelated.** Each sphere is granted the autonomy to exercise its powers and perform its functions within the parameters of its defined space. Furthermore, **each sphere must respect the status, powers and functions of government in the other spheres and —not assume any power or function except those conferred on [it] in terms of the Constitution.**”

See also Ss 40 & 41 of the Constitution
Spatial planning involves ‘critical thinking about space and places as the basis for action or intervention’ (RTPI, 2007).

‘spatial planning goes beyond traditional land use planning to bring together and integrate policies for the development and use of land with other policies and programmes which influence the nature of places and how they can function’. (UK Planning Policy Statement 1: Delivering Sustainable Development, 2005)

A Spatial Development Framework (“SDF”) is a framework that seeks to guide overall spatial distribution of current and desirable land uses within a municipality in order to give effect to the vision, goals and objectives of the municipal IDP.

The aims of a Spatial Development Framework are to promote sustainable functional and integrated human settlements, maximise resource efficiency, and enhance regional identity and unique character of a place.

Spatial planning is a planning process that is inherently integrative and strategic, takes into account a wide range of factors and concerns and addresses how those aspects should be arranged on the land.
The implementation of the spatial objectives contained within planning policy is:

- highly dependent upon the coordinating role of national government;
- local discretion over the interpretation of such policy guidance and the resources and action of developers and other stakeholders;
- degree of consistency between broad policy objectives (and governance structures associated with their delivery) across different sectoral interests.

The reality is that there remain complex relationships between policies, and even high-level policy outcomes may be contradictory.
Land resources are used for a **variety of purposes** which **interact** and may **compete** with one another; therefore, it is desirable to plan and manage all uses in an **integrated manner**.

Land-use management **examines all uses of land in an integrated manner**, it makes it possible to minimize conflicts, to make the most efficient trade-offs and to link social and economic development with environmental protection and enhancement, thus helping to achieve the objectives of sustainable development.

The essence of the integrated approach finds expression in the **coordination of the sectoral planning and management activities** concerned with the various aspects of land use and land resources.

Integration should consider all environmental, social and economic factors.

Integrated consideration facilitates appropriate choices and trade-offs, thus **maximizing sustainable productivity and use**.

The **broad objective** is to facilitate allocation of land to the uses that provide the **greatest sustainable benefits** and to promote the transition to a sustainable and integrated management of land resources.
`multi-level' governance landscape

Challenges

† Weaknesses in implementation of good planning principles especially at local levels, and inconsistencies between national policies

† Exploitation of weaknesses in planning strategies / guidelines by property developers and others (issue of excessive zoning)

† Unresolved issue: re public vs private gains arising from land rezoning

Yet

† We see the emergence of spatial strategy making over older models of land-use blueprinting
A positive planning system is necessary for a number of reasons:

**VISION**
- To provide vision and consistent direction, as well as a strategic assessment not only of what is desirable, but what is possible in various contexts;

**EMPOWERMENT**
- To protect the rights of people. Once people gain access to land, in effect they obtain certain rights and obligations. It is necessary to manage change in such a way that those rights and obligations are respected;

**NATURAL RESOURCES PROTECTION**
- To protect natural systems. Natural systems have their own operational requirements which must be respected if long-term sustainable human development is to be achieved and if large-scale environment degradation is to be avoided or at least minimised;

**EFFICIENCY**
- To make efficient use of resources. Resources, such as land, water, energy, finance, building materials, skills and so on are in short supply. Those that are available must, in all contexts, be used wisely to ensure that maximum benefit is obtained from them;

**IMPROVED SERVICE DELIVERY**
- To achieve a higher quality of service delivery by all spheres of government;

**COORDINATION**
- To co-ordinate actions and investments to ensure maximum positive impact from the investment of resources, it is necessary to co-ordinate actions and investments in time and space. This co-ordination is of two kinds: the coordination of different forms of public authority actions and investments, and a greater co-ordination between public and private actions;

**SETTING PRIORITIES**
- To set priorities. To enable significant inroads to be made into meeting the developmental needs of the country in a fair way, it is necessary to provide a rational basis for prioritisation, and to manage and direct resources to where they are needed most;

**INTEGRATION**
- To avoid duplication of effort by different departments and spheres of government
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)

Land Development Management (Chapter 6)

other provisions (Chapter 7)
the Act introduces provisions to cater for:

† Development Principles;
† Norms and Standards;
† Inter-Governmental Support;
† Spatial Development Frameworks (SDFs) across National, Provincial, Regional & Municipal scales;
† Land Use Schemes;
† Municipal Planning Tribunals; and
† Applications affecting National Interests.
chapter 1 - introductory provisions

Definitions (Sec 1)

Application of Act (Sec 2)

Objects of Act (Sec 3)

• Uniform, Effective, Comprehensive system
• Social, economic inclusion
• Development principles, Norms & Standards
• Sustainable Development
• Cooperative Governance
• Redress Imbalances of the Past
spluma - development principles

- The principle of spatial justice
- The principle of spatial sustainability
- The principle of efficiency
- The principle of spatial resilience
- The principle of good administration
**chapter 1 - introductory provisions**

**Spatial Planning System** (sec 4)

1. Spatial Development Frameworks
2. Development Principles, Norms and Standards
3. Management of land use
4. Land development management

**Categories of Planning** (sec 5)

<table>
<thead>
<tr>
<th>National</th>
<th>Provincial</th>
<th>Municipal</th>
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<tbody>
<tr>
<td>• Spatial planning and policies (National Spatial Development Framework)</td>
<td>• Provincial SDF</td>
<td>• Integrated development plan (IDP)</td>
</tr>
<tr>
<td>• National planning &amp; Regulation relating to land use</td>
<td>• Provincial planning relating to land use</td>
<td>• SDF and other components of IDP</td>
</tr>
<tr>
<td>• Policies and legislation to support other spheres</td>
<td>• Policies and legislation to implement provincial legislation</td>
<td>• Control &amp; regulation of land use</td>
</tr>
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<td></td>
<td>• Monitoring compliance of local government land use management system</td>
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</table>
chapter 3 – intergovernmental support

- National government
  - Must provide support and assistance, create capacity: Sec 9 (1) (a)
  - Must monitor compliance of municipalities and provinces: Sec 9 (1) (b)
  - Must develop mechanisms to support and strengthen: Sec 9 (2)
- Municipal differentiation

- Provinces
  - Provincial legislation
  - May support municipalities SDF, LUM etc
  - Resolve disputes
  - Monitor municipalities and provide support
An SDF is a framework that seeks to guide overall spatial distribution of current and desirable land uses within a sphere/municipality in order to give effect to the development vision, goals and objectives.

The aims of SDF include to promote sustainable functional and integrated human settlements, maximise resource efficiency, and enhance regional identity and unique character of a place.

Sec 12(1)(m) take cognisance of any environmental management instrument adopted by the relevant environmental management authority;

All the three spheres must now make SDFs;

SDF must give effect to National, Provincial or Municipal Planning;

Aligned to and consistent with the frameworks of other spheres;

Reviewable every 5 years or less; and,

Must involve public participation.
overview of plans

PROVINCIAL

NATIONAL

REGIONAL

MUNICIPAL
chapter 5 – land use management

† Municipality is responsible for Land Use Management

† Primary instrument is the Land Use Scheme (LUS)

† Municipality must, after public consultation, prepare, adopt and implement a LUS within 5 years of the Act being enacted

† LUS must be consistent with and give effect to Municipal SDF

† take cognisance of any environmental management instrument adopted by the relevant environmental management authority, and must comply with environmental legislation;

† include land use and development provisions specifically to promote the effective implementation of national and provincial policies; and

† All land development applications must be determined within context of the LUS

† An approved and adopted LUS has the force of law and binds all owners and users of land
Each municipality must adopt a scheme

A scheme must

- Have categories of land use zoning for entire municipal area,
- Take cognisance of any environmental management instruments
- Provisions that permit the incremental introduction of LUM in areas under
  - traditional leadership,
  - rural areas,
  - informal settlements,
  - other areas not previously subject to a land use scheme;
chapter 6 - land development management

† Land development applications are determined by Municipalities as the authority of first instance

† Municipalities are required to establish Municipal Planning Tribunals to discharge this function

† Municipalities may co-operate to establish Joint Municipal Planning Tribunals

† The Tribunals consist of municipal officials and suitably qualified external persons appointed by Municipal Councils

† Appeals lay to the Executive Authority from decisions of MPTs
areas for common interests: biodiversity/ spatial planning

† Alignment of authorisations / Joint Authorisations / Records of decisions
† Inputs into Planning Instruments – Norms & Standards, Guidelines, Spatial Development Frameworks, Land Use Schemes, etc
† Taung SDF and EMF projects to be used to model a credible Spatial Planning Tool
† Taung SDF and EMF projects involve an investigation into the feasibility of developing a single joint EMF and SDFs
† Development of guidelines for the consideration of environmentally sensitive areas on land use schemes e.g. dolomitic areas,
† development of guidelines on the provision of land for parks or open spaces within the land area to be covered by land use scheme.
† Alignment of Authorization Project is underway.
† Land Use Suitability Assessment Framework
† Land Use Management Systems Guidelines
† Guidelines for the development of Spatial Development Frameworks
**areas for alignment: biodiversity/ spatial planning**

NB: There is a need to determine the extent to which biodiversity plans may be integrated into the spatial development frameworks. Ideally it should done as follows:

<table>
<thead>
<tr>
<th>Spatial Plan</th>
<th>Biodiversity Plan</th>
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<tbody>
<tr>
<td>National Spatial Development Framework (NSDP)</td>
<td>National Biodiversity Framework (NBF)</td>
</tr>
<tr>
<td>Provincial Spatial Development Framework (PSDF)</td>
<td>Bioregions and Bioregional Plans within boundaries of a particular province</td>
</tr>
<tr>
<td>Regional Spatial Development Framework (RSDF)</td>
<td>Bioregions and Bioregional Plans within identified / declared region</td>
</tr>
<tr>
<td>Municipal Spatial Development Framework (MSDF)</td>
<td>Biodiversity Management Plan</td>
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concluding remarks

† SPLUMA is concerned with one specific dimension of land – how land is used.

† It introduces strategic and practical instruments, available to all spheres of government, to manage how land is used (development principles, spatial development frameworks, municipal land use schemes, municipal planning tribunals and appeal authorities).

† It ensures that these instruments are developed, used and changed in a transparent and inclusive way.

† It specifically ensures that traditional leadership and communities are included in municipal land use management, which directly affects local communities.

† It provides flexibility for provinces and municipalities to introduce further measures to ensure the effective interaction of people-space-place.
Sunday Ogunronbi
Branch: Spatial Planning & Land Use Management
| Department: Rural Development & Land Reform
| +27 12 312 9371 | 086 692 8882 (f) |
SOGunronbi@ruraldevelopment.gov.za