

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



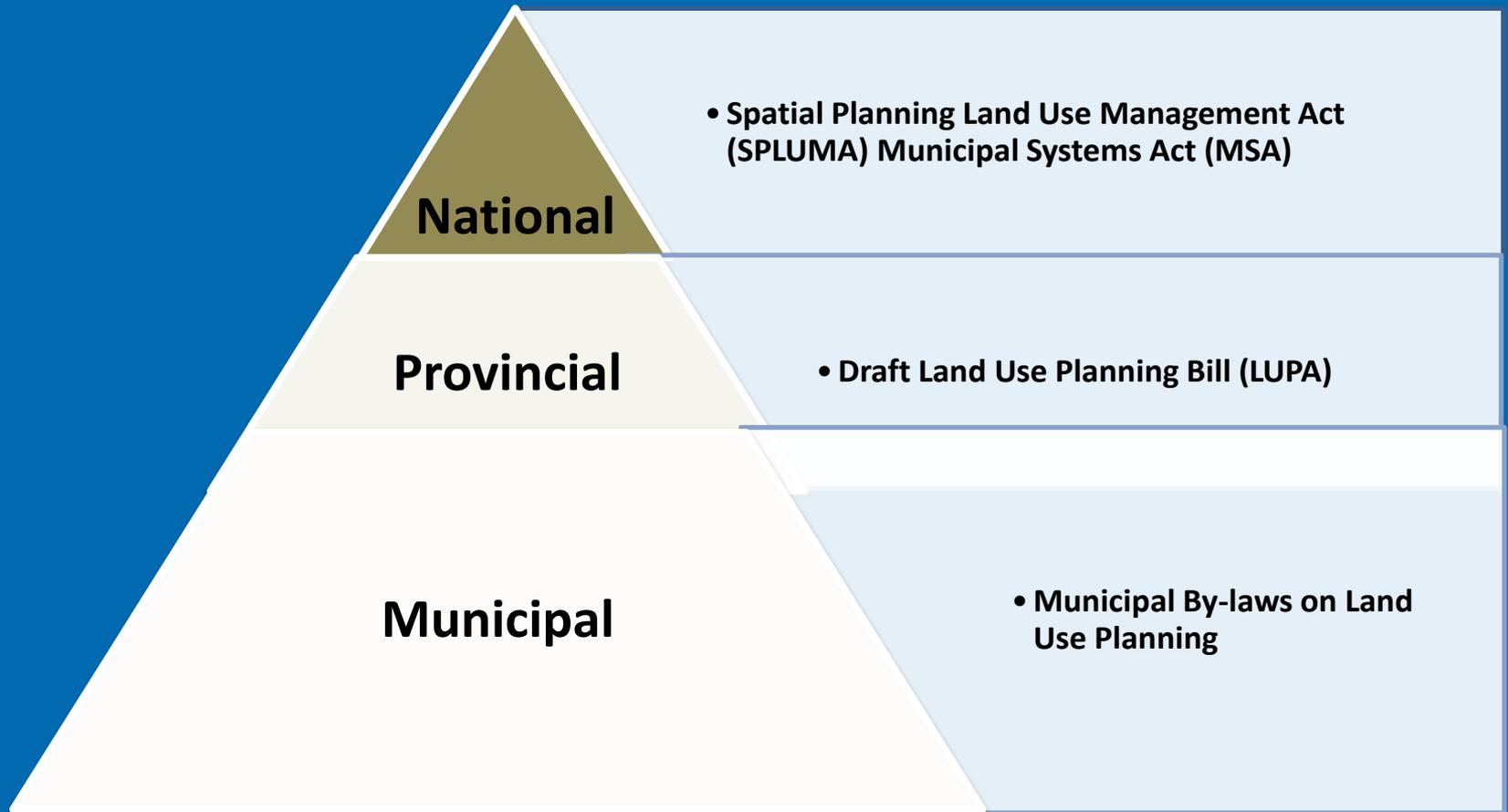
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National Biodiversity Planning Forum, Mpekweni Beach Resort, 13-16 May 2014

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 PLANNING

- **Municipal Systems (Act 32/2000)**
- **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

Change	Implications
Planning functions to the municipal sphere	<ul style="list-style-type: none"> • Applications delegated • Municipal decision → municipal appeal → review to the courts
Municipal Planning Tribunals,	<ul style="list-style-type: none"> • Staff • Budget
Provincial land use applications that have a 'regional' or 'province wide' impact	<ul style="list-style-type: none"> • Province to only consider applications that have provincial or regional planning considerations
Municipal Planning Bylaws will govern the 'details'	<ul style="list-style-type: none"> • Adoption of by-laws
Two separate approvals required from Province and Municipality (regional importance)	<ul style="list-style-type: none"> • Municipal decision (& possibility to appeal to Council) • Provincial decision (& possibility to appeal to Provincial Minister)
Plan lead Development	<ul style="list-style-type: none"> • SDF's at all three spheres of Gmt • Zoning Schemes consistent • Depoliticizing planning • Tribunals

A RENEWED ROLE FOR PROVINCE IN PLANNING



- **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

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